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The Rabbinic Perspective on the Minhagim of the People

Thesis submitted in partial fulfillment of
The requirements for Ordination

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I had two major goals that I hoped to achieve with this thesis. Firstly, I wanted to have the opportunity to become more confident with Rabbinic texts. Secondly, as I transition into the Rabbinate myself, I yearned to explore the challenges of Rabbinic relationships with the community at large. I feel quite blessed to have accomplished both these goals with the ongoing support and wisdom of my thesis advisor, Dr. Dvora Weisberg. I would like to thank Dr. Weisberg for her dedication and care throughout the thesis writing process, as well as the entirety of my studies at HUC in Los Angeles. I would especially like to make note of Dr. Weisberg's patience, as my grammar skills can sometimes leave something to be desired. Dr. Weisberg helped to make this thesis journey exciting, meaningful and informative. This work will help to guide my Rabbinic path.

I am grateful to my parents and sister, especially my mother who has become my editor of sorts over the years. Thank you for your confidence, love and strength. Also thank you to my friends for their endless encouragement, companionship and cheer.

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Introduction: The Rabbinic Perspective on the Minhagim of the People

The story of the Jewish people begins at Mount Sinai. Judaism teaches that in a sense every Jewish person was symbolically at Mount Sinai and while camped at the side of the mountain received the Torah from Moses. According to the Babylonian Talmud, not only did Moses receive the written Torah - the Tanach, but also the oral Torah – the Mishnah and the Talmud.[1] Included were the traditional laws and customs on how to engage in Jewish practice. Every Jewish person – both the leadership and individuals at large - is a link in a chain that goes back to the beginning of peoplehood.

This study picks up the chain following the destruction of the Second Temple with the development of the Rabbinic movement. This study focuses on the Rabbinic period, when both the Mishnah and the Talmud were redacted. In the ideal world of the Rabbis of this era, the elitist Rabbinic word would have been the primary voice of the Jewish community. The Rabbis would have served as the exclusive leaders of the Jewish people and their interpretation of Torah would have guided communal practice. In fact, Torah would have been a central priority for the entire Jewish population. However, the Rabbis had to live in a world that was far from their ideal. In reality, the people had a strong influence on society and their actions could not be ignored. The Rabbis also had to contend with the surrounding non-Jewish culture and leadership that also influenced Jewish communal life.

The customary practices of the people (*minhagim*) have played a strong role in the evolution of Judaism. Some of these *minhagim* originated with the Rabbis, but the people

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[1] Eisenberg, Ronald L. *The JPS Guide to Jewish Traditions.* Philadelphia, PA: Jewish Publication Society, 2004, p. 498.

initiated many customs of their own. The Rabbis had to give careful thought as to how they considered *minhagim* as their response impacted how the community at large received them as leaders. In order to function, the Rabbis needed to be accepted as leaders by the people. The people learned to rely on the Rabbis for religious and spiritual needs. Jewish society in the Rabbinic age reflected the connection between the Rabbis and the people. Judaism as we know it today is the result of this co-dependence that developed through the ages. This study will explore the parameters of this relationship in the Rabbinic era.

Chapter 1 of this study discusses the history of the Jewish people from the destruction of the Second Temple in the year 70 CE through the seventh century. This was a time of transition for the Jewish people, both politically and spiritually. The rise of the Rabbinic movement in the Land of Israel as well as Babylonia is described. The instrumental role of *minhagim* in society is illustrated in the closing section of the chapter. Many of the sources used for this section are based on contemporary scholars' close readings of Rabbinic texts.

Rabbinic texts serve as journals of sorts that speak to the emotions and concerns of the Rabbis. The documents are one-sided in that the cast of characters speak in accordance with the inclination of the Rabbis – the people do not have a direct say. The greater community was not writing its own memoirs and therefore we cannot directly access its thoughts and motives. However, we can get a taste of the interactions between the Rabbis and the public by looking at the latter's words.[2]

[2] Jacob Neusner's English translations of Rabbinic texts are the basis for the texts cited in this study.

A number of Rabbinic scholars hold perspectives that are valuable to the process of this study. Daniel Boyarin teaches that Rabbinic texts are essentially fictional collections, and yet they serve as signifiers of the authentic values within the culture.[3] Conversely, Rabbinic culture also organized itself around the values that were presented in Rabbinic literature.[4] The construction of Rabbinic texts was a means for the ideologies of the Rabbis to dialogue, specifically around cultural tensions.[5] A major struggle was determining how Rabbinic practice fit in a world where Jews lived with other peoples.[6]

Jeffery Rubinstein understands that Rabbinic stories were composed as a means to instruct, teach morals, stake claims, and provide positive and negative role models. They were not meant to be reliable historical accounts; rather they were intended to teach values, culture and situation.[7] The narrative expresses the tensions inherent in the Torah centered worldview of the Rabbis and the conflict between Torah study and other values.[8] No easy answers were provided, rather the sages were provided with tools to work through challenging concerns.[9] The redactors sought out "truth," in terms of the eternal truths that the meaning of their subject held.[10] Rubinstein stresses that to appreciate the significance of a Rabbinic story requires a sense of the prevailing concerns of the time.[11]

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[3] Boyarin, Daniel. *Carnal Israel: Reading Sex in Talmudic Culture.* Berkeley, CA: University of California Press, 1993, p. 11.
[4] Boyarin, p. 12.
[5] Boyarin, p. 15 and 28.
[6] Boyarin, p. 233.
[7] Rubinstein, Jeffery L. *The Culture of the Babylonian Talmud.* Baltimore, MD: John Hopkins University Press, 2003, p. 6.
[8] Rubinstein, Jeffery L. *Talmudic Stories: Narrative Art, Composition, and Culture.* Baltimore, MD: John Hopkins University Press, 1999, p. 2.
[9] Rubinstein (1999), p 3.
[10] Rubinstein (1999), p. 6.
[11] Rubinstein (1999), p. 15.

Richard Kalmin finds that although Talmudic narratives are fundamentally ahistorical, they are nonetheless susceptible to historical analysis.[12] Often beneath the surface of *halachic* debate is the prevalence of Rabbinic intent. The presence of God as a member of the conversation highlights the importance.[13] Exaggerations and idealizations served as literary tools to convey tangible concerns.[14] David Kraemer stresses that in order to interpret Rabbinic texts one must imagine the intention of the author and specifically the intended audience.[15] The Babylonian Talmud was not meant for popular communication, rather it was intended for the sixth century sage who had specialized tools to interpret the text.[16]

Lee Levine cautions that when looking at Rabbinic texts it's important to distinguish between words and actions. Incidents are often a reliable type of evidence, while opinions merely represent hopes, not necessarily reality.[17] Stuart Miller points out that when the Rabbis refer to people other than themselves, a new perspective can be teased out that speaks to the Rabbis' place in society.[18] He emphasizes the importance of considering the intention of the Rabbis because therein lies Rabbinic assumptions about their perception of society.[19]

In my work, I use these scholars' outlook on Rabbinic literature to analyze Rabbinic texts. Rabbinic wisdom and narrative is penetrated in order to interpret the

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[12] Kalmin, Richard. *The Sage in Jewish Society of Late Antiquity.* New York: Routledge, 1999, p. 1.
[13] Kalmin, p. 4.
[14] Kalmin, p. 14.
[15] Kraemer, David. *Reading the Rabbis: The Talmud as Literature.* New York: Oxford Press, 1996, p. 12.
[16] Kraemer, p. 12.
[17] Levine, Lee. *The Rabbinic Class of Roman Palestine in Late Antiquity.* Jerusalem: Yad Izhak Ben-Zvi Press, 1989, p. 19.
[18] Miller, Stuart S. *Sages and Commoners in Late Antique 'Erez Israel: A Philological Inquiry into Local Traditions in Talmud Yerushalmi.* Tubingen, Germany: Mohr Siebeck, 2006, p. 20.
[19] Miller, p. 264.

intent of the written word. Rabbinic texts are used to extract the values of the Rabbi and to build a picture of the Rabbinic relationship with the people, specifically with regards to *minhag*. The Rabbis were faced with the daunting task of bringing Torah to the Jewish community. To do so effectively demanded sensitivity, compromise and careful thought. This study highlights the great tension that the Rabbis encountered and the insights that they shared with one another as they strove to serve the community effectively.

Chapter 2 analyzes the usage of seven key Rabbinic terms that describe how the Rabbis viewed the behavior of the people. Each phrase occurs numerous times in Rabbinic texts, thereby allowing for a close reading of the Rabbis' intent. By integrating each of these texts, it is apparent that the Rabbis had a complicated relationship with the people. The people were viewed as distinct, and yet they were also part of a collective Jewish whole. In the Land of Israel this bond was fragile, while in Babylonia the Rabbis became quite confident in their stature. In both regions the people were often only reluctantly acknowledged as potential partners, but a close reading illustrates that the behavior of the people served as a guide for the Rabbis. On the surface the Rabbis portrayed themselves as dominating and directive, but a more careful reading of Rabbinic texts reveals that there was tension in this outspoken role and the Rabbis were in fact humble in their ways.

Chapter 3 again uses Rabbinic texts, this time *aggadic* narrative, to look at the Rabbinic perspective of the people's views of the Rabbis. These stories portray how the Rabbis understood their role in the community. The Rabbis struggled to define their own role in addition to understanding the role of the people. They had to balance idealistic hopes with pragmatic realities. The Rabbis appreciated that they were empowered to use

the gift of Torah to bring holiness to society, but they also admitted that they sometimes abused Torah, ignoring its great value. Somewhat surprisingly, Rabbinic humility is highlighted as well as the potential for non-Rabbis to serve as informal teachers of Torah. These texts portray an ongoing struggle as the Rabbis tried to refine their place in the community, especially with regard to the people. This was the beginning of an ongoing exploration as to how to most effectively serve the Jewish people.

In every culture, there are inevitably, "those things we do." As human beings, we depend on the routine of our regular acts, which are sometimes simply performed by rote, but more often have deep meaning. Society and community are strengthened by the stabilizing power of custom. Inevitably the leadership (i.e. the "elite") and the main body (i.e. the "folk") are not always on the same page with regards to behavioral expectations and this is not surprising as the two have separate outlooks and priorities. And yet, community is the result of both parties learning to encounter the other and working as a team (even though this may be implicit). The Rabbis and the larger Jewish community of the Rabbinic era were no exception to this model. For fifteen hundred years the two have been fine-tuning the best way to function effectively in relationship with one another. This study serves as an exploration of the origins of that relationship of co-dependence – a journey stretching back to Sinai, formulated after the destruction of the second Temple, traveling across lands, times and crises to the present, and still marching forward, recalibrating along the way.

Chapter 1: The Rabbis in Post-Temple Times and the Role of Minhag

For five hundred years the Second Temple in Jerusalem served as the center of Jewish life both religiously and politically. Since the destruction of the Second Temple, Jewish society and its leadership have been in a constant state of transition.[20] At the beginning of this era, the majority of the Jewish people lived within the Roman Empire, in the Land of Israel and in the large Hellenistic Diaspora. A large minority lived in Babylonia and its surroundings.[21] By the end of this period, Babylonia replaced Jerusalem as the religious center and most of the Jews resided outside the Land of Israel. This chapter integrates secondary sources to illustrate the rise of the Rabbinic movement, first in the Land of Israel and then in Babylonia. Special attention will be focused on the relationship of the Rabbis to the folk in these two communities. The concluding piece of this chapter will look at the historical role of customary practices (*minhagim*) in representing the relationship between the Rabbis and the community at large.

Life Without the Temple – The Jews of the Land of Israel

Major Events from the Destruction of the Temple to the Arab Conquest

Transitioning to life without the Temple was difficult for both those in the east and the west. Rabbinic literature of the period reflects widespread dejection, pain and

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[20] Levine, p. 14.

[21] Safrai, Shmuel. "The Era of the Mishnah and Talmud (70-640)." In *A History of the Jewish People.* Ed. H.H. Ben Sasson. Cambridge, MA: Harvard University Press, 1976, p. 307.

suffering.[22] The central institutions of the Land of Israel had collapsed[23] and patterns of social structure and spiritual trends underwent extensive alteration.[24] Practically everything that the Jewish people had known and relied upon was shaken. There was suddenly a great vacuum in the spiritual beliefs and everyday practices of the people. Centers and focal points of creativity that had exerted predominant influence on the ways of the nation were now replaced.[25]

Both religiously and politically, the Jews of the Rabbinic era faced new realities that demanded adjustment. The immediate change in the Land of Israel after the destruction of the Temple was a shift in leadership. The Herodian dynasty, the Temple priests, the Jerusalem aristocracy and various other sects no longer had roles in the community. New leadership positions included the Nasi (i.e. the Patriarch), the Galilean aristocracy and the Rabbis of the Galilean academies.[26]

It is difficult to determine the strength of the Rabbinic presence at this time. Shmuel Safrai paints the picture of a strong Rabbinic presence that immediately exerted leadership led by the Nasi who presided over the Sanhedrin as a spokesman of the generation in matters of Torah.[27] Seth Schwartz cautions that although the Rabbis played a leadership role in this society, it was initially peripheral and weak.[28] This was a dynamic period and the exact place of the Rabbis in the community likely fluctuated

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[22] Safrai, p. 318.
[23] Schwartz, Seth. *Imperialism and Jewish Society, 200 BCE to 640 CE.* Princeton, NJ: Princeton University Press, 2001, p. 110.
[24] Safrai, p. 307.
[25] Safrai, p. 307.
[26] Levine, p. 15.
[27] The Sanhedrin was a religious legislative-judicial assembly originating in Temple times (Seltzer, Robert M. *Jewish People, Jewish Thought: The Jewish Experience in History.* New York: Macmillan Publishing Co., 1980, p. 205.)
[28] Schwartz, p. 103.

considerably as the people adjusted to their new environment. We cannot know exactly the Rabbis' place along the leadership spectrum; however, this study points to the Rabbinic role as developing with time, becoming more defined and stronger in Babylonia around the fourth century.

As is the case with any major trauma, there are various means to cope and move forward. The Rabbis defiantly mapped out one pathway to ease the transition to life without the Temple by exerting leadership in a unique way. Without a state and without a Temple, the Rabbis knew that Jewish national identity was at a risk of being lost. They tried to refocus the nation on a sense of peoplehood that centered on Torah and its commandments (*mitzvoth*).[29] While their teachings were largely derived from the Temple period, they introduced many innovations to adapt to the new setting.[30] In this way the Rabbis preserved the heritage of the Jewish nation, while also renewing and expanding it. Most important to their initiatives was the concern for ***halachah*** and the maintenance of a system of autonomous Rabbinical courts.[31] While the Rabbis were clear about their role, the community at large was more ambivalent to the Rabbis, especially since Roman rule did not recognize the Rabbis as authorities until the beginning of the fourth century.[32] The Rabbis faced the challenge of enticing the people to follow their religious path. As an alternative to Rabbinic practice, the people could have easily turned to assimilation or rejection. Perhaps acknowledging this risk, the Rabbis presented their alternative as the only Jewish pathway forward.

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[29] Safrai, p. 312.
[30] Safrai, p. 311.
[31] Safrai, p. 311.
[32] Schwartz, p. 111.

Moving ahead was a challenge as the demographics of this time were initially dismal. The destruction of the Temple and the great revolt was a heavy blow to Jerusalem as well as the surrounding towns and villages of the Land of Israel. While Rome was generally tolerant of the local traditions of the regions that it conquered, the long war had led to resentment and oppressive measures.[33] However, this demographic and economic impoverishment did not last long. By the end of the first century, the region had largely restored and returned to its numeric and economic strength.[34] Once the setting was stabilized, the community could once again re-organize.

Rabban Johanan ben Zakkai was instrumental in the re-establishment of Jewish communal life in the Land of Israel.[35] He chided his colleagues for their elitist behavior. The pursuit of peace was an important element of his teachings.[36] R. Johanan designed practices intended to fill the vacuum created by the destruction of the Temple.[37] Some of these acts memorialized the Temple, but R. Johanan sought to break the bond with the Temple in areas where this focus interfered with the course of life.[38] R. Johanan's words illustrate the complicated dynamics of the early Rabbinic era. The people longed to understand their past while also moving forward. There was conflict between community members as each longed to make sense of the new reality. It was important to honor the past, but it was also essential to be focused on the present and the future.

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[33] Safrai, p. 318.
[34] Safrai, p. 314.
[35] Safrai, p. 319.
[36] Safrai, p. 319.
[37] Safrai, p. 320.
[38] Safrai, p. 320.

Rabban Gamliel replaced R. Johanan towards the end of the first century and he resided in Yavne, which had become a major center of learning.[39] Rabbinic texts describe R. Gamliel traveling to towns throughout the Land of Israel, issuing decrees that touched all aspects of life. The custom developed to refer matters requiring explicit decision to the Sanhedrin and R. Gamliel.[40] The Rabbis understood their wisdom as guiding the lost people, this may have been wishful thinking on their part and it is unclear whether the community followed their words. At this time the Sanhedrin developed into the executive organ of *halachah*, the source of *halachic* interpretation and the place for the academic study of Torah.[41] During Temple times Rabbinic scholars had *halachic* freedom, but R. Gamliel insisted on a campaign of uniformity in *halachah* and *minhag*.[42] This likely reflects R. Johanan's perception that in order for the Rabbinic class to be respectable and build influence, there was a great need to be consistent and thoughtful.

Things became tense again in the early years of the second century. When Hadrian ascended the throne in 117 CE, he initially provided hope that the Temple could be rebuilt. However, he later changed his mind, inflaming the emotions of the Jews.[43] This was another period filled with heightened emotions and dynamic change. The direction of national life was chaotic and unstable, leaving gaps for leadership to develop as the people aspired to transition to a firmer position. In 132 CE, Bar Kochba led a revolt against Rome. This revolt had severe consequences for the Jewish people, leading

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[39] Safrai, p. 323.
[40] Safrai, p. 323.
[41] Safrai, p. 324.
[42] Safrai, p. 324.
[43] Safrai, p. 331.

to demographic and territorial hardships.[44] The Romans were anxious about letting Jews gather to pray, study or maintain communal institutions. This would have put the Rabbis in an awkward position, advocating for the people to ignore Roman decrees. Facing loss the people tended to deny the meaningfulness of Jewish existence and despair the nation's redemption.[45] In the face of this despair the Rabbis served little good for the community. Suddenly the Rabbis were faced with the task of re-building faith in God for a population that was bruised and battered.

The disastrous outcome broke down the nation's opposition to Rome and as a result restrictive measures were relaxed with Antoninus Pius.[46] When Rome no longer felt threatened, the community could re-configure in earnest. The first signs of recovery were seen in the Galilee. It was there that Tannaitic[47] and Amoraic[48] literature was collected.[49] Rabbi Meir was the greatest *halachic* authority of his time. He had a large influence on Mishnaic *halachah*, which was compiled in the following generation.[50] His teachings taught respect, understanding and love for living creatures and above all for the Land of Israel and the Hebrew language.[51] Rather than opposing Rome, the Rabbis found it advantageous to emphasize peaceful co-existence. In this complimentary role they could build trust and influence with the people. By making connections with other leaders, whether political or aristocratic, the Rabbis progressively increased their

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[44] Safrai, p. 334.
[45] Safrai, p. 335.
[46] Safrai, p. 335.
[47] The first generation of Rabbis were known as the Tannaim because they "repeated" the oral law.
[48] The Amoraim were the second generation of Rabbis who collected, interpreted and expanded the oral law, as passed down from the Tannaim.
[49] Safrai, p. 336.
[50] See below, "The Development of the Mishnah and the Jerusalem Talmud."
[51] Safrai, p. 336.

influence. To build this clout, the Rabbis valued the need to be less strict with their rulings, displaying understanding and concern for the needs of the community.

Towards the end of the second century Rabbi Judah haNasi emerged as a strong leader. He lived at a time of economic and political prosperity for the Jewish community of the Land of Israel.[52] He had close relationships with the ruling Severans. From this time onwards the Nasi conducted himself in a royal manner. R. Judah succeeded in bringing leading citizens of the towns and the rich families to his court, involving them in national affairs.[53] This period was noted for its legislation, especially the *halachic* modifications reflecting the time. Many of R. Judah's rulings show a tendency to relax the stringencies of *halachah*.[54]

In the third century, there was a change in the structure of Jewish public leadership.[55] After the redaction of the Mishnah, there was a division of power and the Nasi no longer presided over the Sanhedrin. The Nasi became the leader of the people and the temporal head, while the Sanhedrin was independent in questions of Torah, *halachic* rulings and spiritual matters. The separation was due to the increasing power of scholars who wished to distinguish between the Nasi and the Rabbis.[56] As a more powerful body, the Rabbis were more selective about their friends. In the two hundred years since the destruction of the Temple the Rabbis had increased in stature.

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[52] Safrai, p. 339.
[53] Safrai, p. 339.
[54] Safrai, p. 339.
[55] Safrai, p. 345.
[56] Safrai, p. 346.

The rise of Christianity to the status of official religion of the Empire in 313 CE had a great impact in relations between citizens of the Roman society.[57] Christianity was intolerant of other religions and the Church took a special interest in converting Jews. The Church fostered hatred and contempt for everything that was Jewish. There was inconsistency with the emperors from the fourth century through the fall of Rome with regard to their attitude towards the Jews.[58] Again the Jews faced instability; however, by the fourth century the Rabbis were a known and a somewhat trusted entity, no longer needing to prove themselves as they had in the past.

Early in the fifth century, the status of the Nasi deteriorated.[59] In accordance with the aims of the Church, the government used the opportunity provided by the death of R. Gamliel to abolish the institution of the Nasi. The institution that had lasted for three and a half centuries was now gone. The two centuries between the abolition of the Nasi and the onset of Byzantine rule were difficult years for the Jewish people in the Land of Israel.[60] Numbers continued to dwindle and the legal status of the Jews further diminished. The influence of the Sanhedrin decreased significantly. As the Rabbinic era came to a close, the situation was shaky again for the Jewish people. The role of the Rabbi has continued to evolve through the ages from this era and onwards to the present.

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[57] Safrai, p. 349.
[58] Safrai, p. 351-355.
[59] Safrai, p. 355.
[60] Safrai, p. 357.

Who's On First? – The Leadership of the Land of Israel

Class distinction was not highly emphasized in the Roman Empire and different groups interacted with one another.[61] This interaction can be seen among Palestinian Jewish groups. For instance, unlike in Babylonia, Rabbis in the Land of Israel engaged regularly with non-Rabbis.[62] The office of the Nasi, in addition to the Rabbis, the aristocracy and other groups all played an important role in the Land of Israel.[63] Each had to adjust to a constantly changing reality. Following the model of the Empire, there was collaboration between groups and a fine balance between various leaders. Society would have been more easily structured with isolated parties with separate leaders like in Babylonia; however, things were more blended in the Land of Israel and demographics are therefore more complicated to define.

a) The Office of the Nasi

Amongst the many groups, the office of the Nasi had a distinguished role. At first the power of the Nasi was limited, but this role developed and evolved with time and his influence increased.[64] The office of the Nasi became the major Jewish political force of the Rabbinic era in the Land of Israel.[65] The Roman government recognized the Nasi as the political head of the Jewish people in order to more effectively control the Jewish

[61] Kalmin, p. 7.
[62] Kalmin, p. 7.
[63] Levine, p. 42.
[64] Safrai, p. 310.
[65] Levine, p. 134.

population.[66] The Nasi also proved advantageous to the people since he represented a Roman official sympathetic to their needs. Only the Nasi had the economic means, the independent political base and the unequivocal social support to allow him to function autonomously in the community. Early in the Rabbinic era, all other forms of leadership, including the Rabbis, were dependant on the Nasi and he was therefore a sought after figure by other groups.[67] The Nasi was often himself a Rabbi, which made his relationship with other Rabbis complicated and nuanced at times. He was not a typical Rabbi as his responsibilities extended beyond his Rabbinic colleagues. The Rabbis exercised flexibility with *halachah* in favor of the Nasi in order to allow him to sit in Roman society with greater ease.[68] Early Rabbinic texts describe the Nasi as guiding *halachic* practice, but after the split between the Nasi and the Sanhedrin in the third century, the Nasi did not hold the same clout in determining Rabbinic ways. His support was valued for its influence in the community, but his scholastic abilities were not necessarily viewed as Rabbinically important.

b) The Rabbinic Class

As mentioned, the Rabbis also developed with time as a group. The collective of Rabbis in the years following 70 CE resembled a class.[69] The *beit midrash* (house of study) was the center of their world, and their ideology focused on the study of Torah and the fulfillment of God's commandments.[70] The Rabbis received *semichah* (Rabbinic

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[66] Blidstein, Gerald J. "Nasi." In *Encyclopedia Judaica* (Volume 11). Jerusalem: Keter Publishing, 1974, p. 836.
[67] Levine, p. 134.
[68] Blidstein, p. 836.
[69] Levine, p. 14.
[70] Levine, p. 14.

ordination) that allowed them to serve as judicial authorities, instructing the people in legal norms and reflecting a notion of divine law.[71] Since the number of Rabbis was relatively small, there was a high degree of social and religious cohesiveness among them.[72]

The Rabbinic influence on the community changed with time, as did the Rabbis' impression of themselves. New realities forced new outlooks. The Rabbis attempted to reduce the presentation of Judaism to basic principles and establish a foundation for the people to rebuild their lives.[73] This was not an easy task, and there was often widespread contention between the scholars in matters of *halachah*, religious thought and social guidance. Therefore not only were there intricate inter-group dynamics in the Land of Israel, there were also complicated intra-group relations among the Rabbis. While the Rabbis often spoke with force in terms of highlighting the *halachic* path, their ongoing discussions and quarrels suggest that it was no easy task determining the holy route to choose.

One reason for these different outlooks is that the Rabbis were not a homogeneous group.[74] They came from different geographical regions and from different economic backgrounds. They had a wide variety of attitudes towards fellow Jews, gentiles, Hellenism and Roman rule among other things. There was a wide spectrum of Rabbinic attitudes about the relationship between the Rabbis and the populace.[75] The

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[71] Segal, Peretz. "Jewish Law During the Tannaitic Period." *An Introduction to the History and Sources of Jewish Law*. Ed. N.S. Hecht, et al. New York: Oxford University Press, 1996, p. 126.
[72] Levine, p. 67.
[73] Safrai, p. 327.
[74] Levine, p. 194-195.
[75] Levine, p. 126.

Rabbis disputed how much communal involvement was appropriate.[76] For some, total immersion in the academy was ideal. The Rabbis agreed that they lived in a pluralistic society that brought them into daily contact with Gentiles and fellow Jews who challenged their outlook; however, they disagreed on how to respond to this reality.[77]

At this early stage in Rabbinic history, the Palestinian Rabbis frequently interacted with other members of Palestinian society in formal and informal contexts, including commoners and aristocrats.[78] They sought to strengthen ties with them. They even interacted with non-Jews and heretics who shared a preoccupation with the Bible. Palestinian sources reflect a Rabbinic movement that struggled with opposing impulses.[79] On the one hand, the Rabbis wished to strengthen their status to be included among the leaders of the Jewish community. In order to gain a stronger foothold in society, Palestinian Rabbis appealed to non-Rabbis for financial support, marriage ties and social advancement. However, these same Rabbis also wished to have little to do with non-Rabbis whom they often labeled as sinners and ignoramuses.[80] During the early Rabbinic era, the Rabbis realized that they could not isolate themselves and expect to build influence. This necessitated putting aside their elitist views, especially since as mentioned, Roman society was interwoven. The Rabbis recognized the need to interact with the non-Rabbinic world.

The Rabbis of the Rabbinic period would have liked to be recognized as the elite of the Land of Israel, though significantly, they did not carry the status of the elitist

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[76] Levine, p. 181.
[77] Miller, p. 3.
[78] Kalmin, p. 5.
[79] Kalmin, p. 6.
[80] Kalmin, p. 14.

priests of Temple days.[81] They were not recognized officially by Rome, but they did enjoy a certain level of prestige as a result of their unique role that centered on Torah.[82] In this role, the Rabbis were neither universally accepted or rejected in Roman Palestine.[83] M. Baba Metzia 2:11 identifies the Rabbi as one who teaches Torah – written or oral. The Rabbis were looked to as experts in Torah. The Rabbis represented a somewhat ambiguous class, influential but officially powerless, unique but not separate, specialists in a realm without a clearly defined societal place.

Among the sages, the status of a Rabbi was determined primarily by his mastery of Torah and his devotion to study and observance.[84] They functioned within their own unique framework, developing close ties with members of their own inner circle while also attempting to exert influence on the society at large.[85] Rabbinic texts describe a broadly based movement with followers, rooted in major towns and urban centers.[86] In each region there were likely Rabbis of differing postures and attitudes, with the relative strength of each tendency varying by locale and time.[87] *Halachic* differences between Rabbis were often influenced by local custom.[88] These differences were not always graciously accepted. In an attempt to reach out to the often separate regional needs of the community, Rabbinic influence was often locally focused without a central hard line approach. This respect for local practice allowed the Rabbis to build influence in their various communities, though it was a stressor in terms of consistency as a Rabbinic

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[81] Safrai, p. 327.
[82] Schwartz, p. 128.
[83] Levine, p. 192.
[84] Levine, p. 43.
[85] Levine, p. 192.
[86] Levine, p. 394.
[87] Levine, p. 85.
[88] Levine, p. 92. Also see below, "The Role of Minhag in the Rabbinic Era."

whole. The Rabbis were placed in the position of distancing themselves from their ideal world in order to establish the greater good of their reputation and build their place in the community.

Not only was the role of the Rabbis in transition, so too was their place of residence. After the Bar Kochba rebellion, most of the Rabbis moved from the southern areas of Judea to the north of the country.[89] This was a difficult transition as the Rabbis lacked a recognized institutional base in their new home. They functioned in a unique role combining characteristics of priest, prophet, miracle worker and holy man.[90] The Rabbis integrated aspects of sophists, philosophers and jurisprudents like no other in the Roman Empire.[91]

Though it's difficult to determine the nature and extent of their participation in the first and second century, it appears that the Rabbis assumed a more active role in communal affairs following the Bar Kochba revolt.[92] By the end of the third century, following a period of migration, retrenchment, redefinition and rebuilding, the Rabbis emerged as a coherent and organized class.[93] Acknowledging limited authority, the Rabbis became more aggressive in the third century and this led to increased influence.[94] It's important to note that no one could be compelled to accept Rabbinic authority; therefore their strength depended on finding a path to consensus.[95] By the third century the Rabbis had developed a unique voice that could authentically compete with other

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[89] Levine, p. 194.
[90] Levine, p. 194.
[91] Schwartz, p. 163.
[92] Levine, p. 24.
[93] Levine, p. 24.
[94] Schwartz, p. 120.
[95] Schwartz, p. 120-121.

groups for the support of the people. They recognized the value of advocating for a Jewish pathway that the community could accept and appreciate. They learned how to garner respect in order to guide the population.

Patterns of Rabbinic life changed in the fourth century.[96] The role of the Rabbi evolved, reflecting the urbanization and institutionalization of Roman society. The Rabbis adapted to the city as the focus of Greek culture - the center of political, social and intellectual life.[97] Permanent academies in urban centers brought the rabbis close to the rest of society, exposing them to new challenges. The Rabbis were aware that their relation and participation in the larger society could have a lasting impact for generations to come.[98] This appreciation fostered a sense of responsibility towards communal affairs.[99] Rabbis functioned in the public realm in greater numbers and in diverse positions. The economic crisis of the time induced some Rabbis to be more flexible with certain laws, including permitting more extensive contact with the non-Jewish world.[100] The Rabbis recognized that they could only hope to influence those people with whom they came into contact, and their frequent mention of non-Rabbis indicates a desire to do so.[101] The Rabbis are portrayed as dynamic, changing their role as time progressed, acknowledging that in order to reach the people they needed to speak the dominant cultural language. The new challenges of the big city demanded a new approach.

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[96] Levine, p. 194.
[97] Levine, p. 25.
[98] Levine, p. 194.
[99] Levine, p. 31.
[100] Levine, p. 31.
[101] Miller, p. 462.

While the Rabbinical interest and engagement with city life may have changed with urbanization, their encounter with the community was still on their own terms.[102] The Rabbis viewed themselves as a distinct group, and others recognized this uniqueness as well.[103] This distinctive position was reinforced by a number of social habits designed to set the Rabbis apart.[104] The Amoraim continued to cultivate the interests of the Tannaim. While the Rabbis did occasionally make egalitarian statements with regards to the people as a whole, they also proclaimed their superiority.[105] Rabbinic texts describe the public recognizing the presence of a Rabbi with acts such as rising upon his entrance and kissing his feet.[106] However, the Rabbis recognized that elitism had disastrous effects with the community at large and they repeatedly admonished one another to avoid this type of attitude that might cause resentment or hostility.[107] The Rabbis presented themselves as an elite class, but this was not a typical elitist attitude for it included humility, tolerance, understanding and cohesion.[108]

Once more adapting to Roman urbanization, the Rabbis displayed a preference for living, studying, and teaching in large towns, but they never lost sight of the villages that they recognized as receptive to *halachah*.[109] However, the Rabbis felt that small villages could not cultivate individual Rabbis with *halachic* expertise.[110] The Amoraim were concerned that the Rabbis of these towns lacked a full appreciation of *halachah* and that

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[102] Levine, p. 296-297.
[103] Levine, p. 47.
[104] Levine, p. 52.
[105] Levine, p. 49.
[106] Y. Kiddushin 1, 7 61a.
[107] Levine, p. 49.
[108] Notably, Palestinian sources downplay the importance of genealogy. While genealogy sometimes influences their verdicts, they are cautious to rule in private and they never do so with prominent non-Rabbis (Kalmin, p. 51).
[109] Miller, p. 207.
[110] Miller, p. 210.

they were a threat to the authority of the urban academies.[111] They were dismissed as "wonder workers and holy men."[112]

Even in the cities the Rabbis were also called upon to work wonders in addressing the needs of the people. For instance, the community occasionally called upon the Rabbis to bring rain.[113] While the Rabbis were inclined to respond to the needs and wishes of the people in various areas, they generally operated within the parameters of the academy, synagogue, charity organizations, judicial apparatus and other educational institutions.[114] The religious leadership of the Rabbis was unique in that it was not focused on politics or military considerations. As a result, defeats in these areas allowed for increased Rabbinic presence in society.[115] The Rabbis had a special role in the community. They were perceived as a pathway to God and therefore a unique vehicle to go to when in need. The Rabbis were faced with the challenge of constructing their role in such a way that the people would consistently need them, thus ensuring that they would be respected and listened to. While generally respected for their communal contributions, the special expectations of the Rabbis did lead to points of tension and friction.[116]

One method of expressing and bringing their views to the community was preaching. The Rabbis delivered sermons that were intended to enlighten and instruct their followers.[117] It is likely that the audience was largely Rabbinic. Friends, neighbors

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[111] Miller, p. 334.
[112] Miller, p. 334.
[113] For example, y. Ta'anit 1:4, 64b.
[114] Levine, p. 195.
[115] Levine, p. 193.
[116] Levine, p. 195.
[117] Levine, p. 104.

and acquaintances may have been present, but commoners were likely missing.[118] While the influence of the Rabbis may not have gone beyond their peers, their words projected a sense of common purpose and authority over their circles and households.[119] The Rabbis of the Land of Israel perceived their interests as relevant to the community at large, certainly within the communities where they lived.[120] This understanding motivated the Rabbis in their work and was essential to their self-identity. While they may not have been successful in reaching large numbers of people, they were successful in defining themselves and setting out a path for their followers that would extend for generations.

c) The Aristocracy

The Rabbis often found themselves competing for influence with the Galilean Jewish aristocracy.[121] The two groups were constantly courting the favor of the Nasi. As in any society, the wealthy class played a vitally important socio-political role.[122] Accordingly, the Rabbis had to learn to accommodate them while functioning in their own way. At times in the Rabbinic period, the Nasi cast his lot with the wealthy of the community, weakening the position of the Rabbis. In this lesser role, the Rabbis had to share responsibilities with non-Rabbis.[123] The Rabbis displayed a frustration that they were not accorded the recognition they felt they deserved.[124] In the world of the Rabbis, Torah represented wealth; however, in the outside world it was money that often carried

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[118] Miller, p. 235.
[119] Miller, p. 218.
[120] Miller, p. 464.
[121] Levine, p. 41.
[122] Levine, p. 171.
[123] Kalmin, p. 77.
[124] Levine, p. 96.

more influence. The Rabbis were respected as leaders due to their expertise, but they also had to learn to understand the reality of the role of finances in society.

d) The *Am Ha'aretz*

The Rabbinic attitude towards the *am ha'aretz* (lit. "people of the land") is indicative of a chasm that existed between the Rabbis and the greater community.[125] Most likely the *amei ha'aretz* were a segment of the community at large, and one would have to assume by the Rabbinic resentment voiced towards them that they represented a threat to the Rabbis' ideals for Jewish society.[126] They were viewed with derision and apprehension. The Amoraim and Tannaim associated the *am ha'aretz* with rural life, even though they may have resided in the cities as well.[127] The *am ha'aretz* likely had little place for Torah in their lives, and accordingly the Rabbis frowned upon this population that ignored this sacred gift. By the middle of the third century, the Rabbinic attitude towards the *am ha'aretz* became more balanced, suggesting a more tolerant attitude.[128] Perhaps the Rabbis realized that it was possible for even the *am ha'aretz* to find a place for Torah in their lives.

The rise of Christianity may have attenuated the animosity and suspicion of the Rabbis towards the *am ha'aretz*. Suddenly there was something worse than ignoring Torah, as Christianity was perceived to misconstrue Torah. Accordingly, acknowledging competition and hostility, the rise of Christianity may have illustrated to the Rabbis the importance of tolerating the *am ha'aretz*.

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[125] Levine, p. 40.
[126] Levine, p. 113.
[127] Miller, p. 336.
[128] Levine, p. 113.

Even in this time period, points of friction still existed between the Rabbis and the *am ha'aretz*.[129] It is likely that the study of Torah and the observance of *mitzvot* were the areas of conflict. The *am ha'aretz* were painted as untrustworthy with regard to tithing and ritual purity, but not in disparaging terms.[130] While the *am ha'aretz* were viewed as distinct from the rulers of Israel, the *hasid* (lit. "righteous one"), the *haver* (lit. "associate") and the *talmid chacham* (lit. "student of the wise"), they were not viewed in the same way as the lowly characters that included the boor, the wicked and those who distanced themselves from fellow Jews.[131] The *am ha'aretz* were looked down upon, but they were not dismissed completely. Following the Rabbinic trend, in an ideal world the Rabbis may have preferred to never encounter the *am ha'aretz*, but they likely realized that they were a populous segment of society that could not be ignored, and might even be influenced to their ways.

e) The Observant Commoner

Another group within Jewish society was the commoner who appreciated *halachic* matters. The Rabbis spoke of this class of non-Rabbi with the term, *anshei/benai* X.[132] The Rabbis presumed that this type of commoner was observant of *mitzvot*, especially with regard to Shabbat, festivals, agricultural and ritual purity. It is interesting to note that the focus on these individuals was one-sided.[133] These characters may have appeared alongside the Rabbis and they may have taken interest in some

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[129] Levine, p. 117.
[130] Miller, p. 305.
[131] For example, M. Avot 2.5 and 5.10.
[132] Miller, p. 177-178.
[133] Miller, p. 177-178.

Rabbinic views, but it was the Rabbis who derived *halachic* significant and ramifications from their behaviors, actions and practices. The Rabbis were most interested in the customs, habits and civic communal responsibilities of this trusted class. Their knowledge of Torah and their personal religious observances were not a concern.[134] The "observant commoner" represented a middle group for the Rabbis. They were trusted as neighbors, but not as scholars; their behavior was respected, but not their words. The existence of this group highlights the Rabbinic awareness of a possible discrepancy between one's Torah practice and Torah knowledge and indicates that one's place in society varied in accordance with the strength of the two.

f) The Rabbinic Household

The households of the Rabbis were key starting points for the dissemination of Jewish law.[135] Members of a household, including non-Rabbinic members, regularly interacted with one another, allowing for Rabbinic attitudes, ideas and especially *halachic* views to permeate domestic life.[136] The influence went in both directions, with members of a household playing a role in the formulation of *halachah* pertaining to the family and the home.[137] This class of commoner enjoyed close relations with the Rabbis, even though they were not (and often could not be) a part of the inner Rabbinic circle.[138] Individuals in this group included wives, children, day laborers, slaves and servants. Reference to these individuals leads to the impression that the Rabbis intentionally co-

[134] Miller, p. 305.
[135] Miller, p. 462.
[136] Miller, p. 339.
[137] Miller, p. 339.
[138] Miller, p. 339.

opted the world around them. To describe encounters with these people was a means for the Rabbis to ensure vitality and endurance. The Rabbis did not need to go further than their households and Rabbinic circles to articulate and promote their interests and way of life.[139] To illustrate the fulfillment of Torah, the Rabbis could simply transmit knowledge to their immediate followers and family. These non-Rabbis had contacts in the outside world that the Rabbis did not entertain, thereby Rabbinic knowledge could potentially disseminate, albeit slowly.

g) Non-Jewish Members of Society

The dominant Greco-Roman culture and especially pagan religiosity presented a serious problem for the Rabbis.[140] The Rabbis aimed to win the support of urban Jews who were at risk of assimilating to pagan practice. The Rabbinic strategy was implicitly accommodative, though it is not clear if this was an active choice.[141] Palestinians of Jewish background in the second through the fourth centuries had the choice of Hellenistic/Pagan practice or Rabbinic Judaism among other alternatives.[142] The Rabbis could not ignore the surrounding Greco-Roman practice. While the Rabbis outwardly resisted the influence of this dominant culture, it had a lasting impact on the Jewish community.

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[139] Miller, p. 447.
[140] Schwartz, p. 162.
[141] Schwartz, p. 173.
[142] Schwartz, p. 175.

It is interesting to note that while the position of the Nasi was eliminated in 429 CE, the Rabbinic class remained relatively unscathed.[143] During late antiquity, the Rabbis were independent enough to survive the demise of the office of the Nasi, while sufficiently identified with it to gain positions of influence. This points to the delicate acrobatics in which the Rabbis had to engage. They were seemingly experts at this balancing act since they maintained a leadership role for generations to come. They mastered the means of dealing with their frustrations with the less than ideal world in order to assure themselves a voice in the community.

Spoken Words Transformed – The Development of the Mishnah and the Jerusalem Talmud

R. Judah haNasi's projects included the redaction and completion of the Mishnah. The Mishnah represents a summary and compendium of much of the *halachic* material of the oral tradition. He collected the teachings of earlier authorities; summarized new rulings made by his own generation and arranged them in chapters and tractates according to subject matter.[144] Often no final *halachic* decision was made; rather various opinions are found side by side. The Mishnah reflects R. Judah's eclectic and synthetic teaching style that integrated elements of various traditions and systems. [145] Beginning with the Mishnah, classical Rabbinic Judaism was represented by lists and categories. As categories and limits were defined, each of the world's components was placed into

[143] Levine, p. 195.
[144] Safrai, p. 340.
[145] Safrai, p. 341.

appropriate categories that represented reality to the Rabbis.[146] The Rabbis aspired to make Jewish practice coherent and clear. However, in actuality the Rabbis struggled to find this clarity in lived society. Beyond the surface of the text, this tension is evident.

The Mishnah became the second basis of Jewish culture after the Tanach.[147] It would serve as the foundation for the Jerusalem Talmud (the Yerushalmi) and the Babylonian Talmud (the Bavli). Subsequent to the completion of the Mishnah, all law took into account the Mishnah's views.[148] In the second half of the fifth century the Jerusalem Talmud was compiled, mainly in Tiberias. It summarizes the thinking of the Palestinian Rabbis during the time span that followed the redaction of the Mishnah.[149] The Palestinian Talmud takes the form of a commentary on the Mishnah. However, this commentary goes beyond an explanation of the Mishnaic text. It includes decisions on points on which the Mishnah does not rule, as well as *halachic* discussions and additions presented as they arose in the course of academic debate or in practical life.[150] Often these discussions represent the challenges of the Rabbis in guiding Jewish practice effectively in a less than ideal world. Similar conversations were also being had in Babylonia.

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[146] Kraemer, p. 19.
[147] Safrai, p. 341.
[148] The law was determined by the discussions of the academy (Segal, p. 117).
[149] Safrai, p. 355.
[150] Safari, p. 356.

Left of Center – The Jews of Babylonia

Major Events in Babylonia from the Destruction of the Temple Until the Sixth Century

After the destruction of the Temple, Jewish communities outside the Land of Israel increased in size and number. At first Egypt was the leading center, but Babylonia took over this role by the end of the Rabbinic era.[151] There was a distinction between communities within the Roman Empire and those communities subject to Parthian or Persian rule. The political conditions in the Parthian kingdom allowed the Jews to develop independently in terms of government, legal system and culture.[152] Living in relatively isolated communities, the Jews of Babylonia faced fewer outside influences when compared to the Land of Israel. They were generally able to direct their own religious life styles.

Jewish life had existed in Babylonia since the destruction of the First Temple, but little is known about this population before the second century.[153] Throughout the second and third centuries, the Babylonian communities became active in the intellectual field and began to play an important role in Jewish national life.[154] The Rabbis of Babylonia regarded themselves as the faithful guardians of Jewish tradition and lineage.[155] They saw themselves as being even more stringent than their Palestinian colleagues. Just as in the

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[151] Safrai, p. 364.
[152] Safrai, p. 367.
[153] Safrai, p. 374.
[154] Safrai, p. 368.
[155] Safrai, p. 373.

Land of Israel, the Rabbis were faced with the task of helping the community adjust to life without the Temple and finding a means to move the community forward.

The decline of the Arsacids and the rise of the Sassanid dynasty in the beginning of the third century were accompanied by an upsurge of national-religious consciousness in the Persian Empire, but these harder conditions did not last long.[156] In the second half of the second century there was a great Jewish spiritual awakening in Babylonia, likely a result of the large influx of refugees from Palestine at the time of the Bar Kochba revolt and the persecutions that followed it.[157] The Jewish community underwent a renaissance, rebuilding a new life in a new land. The Rabbis were key to the development of Judaism as part of this rebirth.

Cultural and social developments that began in the Land of Israel continued in Babylonia.[158] At times, Babylonian Jewry tried to free itself from the influence of the Land of Israel, especially during times when political activities made it impossible for the Palestinian centers to carry out its activities.[159] Among those who emigrated from the Land of Israel to Babylonia were scholars whose creative work contributed to the study of Torah and the spiritual development of Babylonian Jewry.[160] These Rabbis brought with them expertise from the Land of Israel to serve as a foundation for further study in Babylonia.

The return to Babylonia in 219 CE of Abba Arikah, a Babylonian scholar educated in the Land of Israel also known as Rav, was a turning point in the spiritual,

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[156] Safrai, p. 376.
[157] Safrai, p. 377.
[158] Safrai, p. 367.
[159] Safrai, p. 374.
[160] Safrai, p. 374.

halachic and judicial development of Babylonian Jewry.[161] He founded the great academy of Sura. Another returnee, Samuel, re-established a second great academy in Nehardea.[162] The towns of Babylonia were divided in terms of which academy they looked to for guidance.[163] Some adopted the rulings and decisions of Sura, while others went to Nehardea. Pumbadita succeeded Nehardea in 259 CE after the latter academy was sacked by Palmyran regiments.[164] Many students joined these academies and Torah study became a common feature of Jewish life in all of Babylonia.[165] As in the Land of Israel, studies were mainly based on the Mishnah.[166] These two academies existed through the middle of the tenth century.[167] They were the spiritual focal points of Babylonian Jewry.

Until the founding of the State of Israel in 1948, Jews resided exclusively as minority populations in foreign lands. They lacked a central entity like the Temple had represented. The Jews of Babylonia were the first of a long line of Jewish communities faced with the challenge of cultivating a religious and cultural identity in exile. They encountered questions of communal identity that still exist today. The Rabbinic studies of the Babylonian academies as well as the cultural practices of the Babylonian Jewish communities of the Rabbinic generations laid the groundwork for Judaism as it is presently known.

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[161] Safrai, p. 377.
[162] Safrai, p. 377.
[163] Safrai, p. 377.
[164] Safrai, p. 377.
[165] Safrai, p. 377.
[166] Safrai, p. 377.
[167] Safrai, p. 377.

The Rabbinic Upper Hand – The Jewish Leadership of Babylonia

Babylonian Jewry consistently enjoyed a large measure of autonomy with regards to internal affairs.[168] This was likely a result of their consolidated population as well as the decentralized feudal government of the Persian Empire.

a) The Exilarch

The head of the community was the Exilarch, who claimed descent from the kings of Judah exiled after the First Temple.[169] The Exilarch wielded considerable power in the region. However, as the great academies became more established and as Torah study spread, the activities of the Exilarch were reduced in certain areas of communal life.[170] Various functions were taken over by the Rabbis of the academies. At times the Rabbis limited the rule and authority of the Exilarch, even though they did much to increase the splendor in his court.[171] Some Exilarchs chose to interfere with the Rabbis despite having little knowledge of Torah, while others befriended the Rabbis and were Torah scholars themselves.[172] The Exilarch was a leader that the Rabbis could not ignore. However, as the Rabbis developed in stature they insisted on independence in the areas surrounding Torah. The Rabbis played the game of courting the influence of the Exilarch, while keeping him out of their holy affairs at the same time.

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[168] Safrai, p. 374.
[169] Safrai, p. 374.
[170] Safrai, p. 375.
[171] Safrai, p. 375.
[172] Safrai, p. 375.

b) The Rabbinic Class

The Babylonian Rabbis depicted themselves as the leaders of the Jewish community. Specifically, they saw themselves as religious authorities, teachers, inspiring figures and guides.[173] Yet they also described themselves as turning their backs on many individuals and groups within the Jewish community, relating to them only in controlled and formalized manners.[174] In Rabbinic texts, the Babylonian Rabbis speak about interacting with non-Rabbis in a variety of formal settings that include the courts, schools and work. However, they rarely speak about interacting in informal settings such as the street, marketplace or home.[175] Questions arise as to whether the Rabbis were as aloof as they portray themselves.[176] Their written words portray Rabbis as confident, exclusive and powerful. There are no records of the community's own perspective of the Rabbis, though there are hints in Rabbinic texts that the stature of the Rabbis was not as elevated as they described.

For the most part the Rabbis drew a tight circle around their movement, only venturing out in select circumstances. The Rabbis feared that increased contact would lead to more intimacy, potentially detrimental to their superiority.[177] The Rabbis were frightened of assimilation with the larger Jewish society. They were obsessed with genealogy and this was a crucial factor in motivating the Rabbis to detach from society.[178] This corresponds to the Persian attitude towards lineage and the rigid

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[173] Rubenstein (2003), p. 124.
[174] Kalmin, p. 35.
[175] Kalmin, p. 5.
[176] Kalmin, p. 7.
[177] Kalmin, p. 5.
[178] Kalmin, p. 7. It is interesting to note that the Rabbis of the Land of Israel were not concerned with genealogy, rather Torah capabilities was their exclusive concern. In Babylonia both were deemed essential.

hierarchical divisions between classes in Persian society.[179] Movement between classes of the Persian Empire was extremely difficult. While the Rabbis placed distance between themselves and the dominant culture of the land, they still reflected Persian ways of thought. The Rabbis envisioned a community that was clearly structured and divided. They spoke in terms of finite lines and strict definitions of rights versus wrongs. The communal integration that was seen as a result of the Roman influence in the Land of Israel was not present within the Rabbinic mindset of Babylonia.

The Rabbis of Babylonia prioritized Torah study even more than their counterparts in the Land of Israel. The Rabbis envisioned Torah scholarship as the noblest pursuit and as a universe-maintaining activity.[180] The harsh ideology of the Babylonian Rabbis came from this guiding supreme understanding.[181] They prided themselves on their virtues as opposed to the lax behavior of the Palestinian Rabbis.[182] They even saw themselves as above their predecessors.[183] The academy was described as the private domain of the Rabbis and to let non-Rabbis in would have transgressed forbidden boundaries.[184] The Babylonian Rabbis understood society to be full of divisive walls that could only be passed with care. A degree of Torah capabilities as well as the right family connections were necessary to enter this elite group. Rabbinic practice had developed to be refined, specific, trained and haughty.

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[179] Kalmin, p. 7.
[180] Rubenstein (2003), p. 31.
[181] Miller, p. 324.
[182] Levine, p. 94.
[183] Rubenstein (2003), p. 35.
[184] Rubenstein (2003), p. 137.

The words of the Rabbis speak to their beliefs and attitudes, but they are not necessarily representative of their authentic place in Persian society.[185] Their written words were generally intended exclusively for Rabbinic audiences.[186] It is likely that as the leaders of an exiled population the Rabbis sought to bolster their Jewish identity by constructing elaborate barriers against the outside world.[187] This fairy tale of sorts may have bolstered their spirits as they envisioned an ideal world where their views dominated.

In their world, non-Rabbis were viewed as "others." The Rabbis described nasty competitions between Rabbis and non-Rabbis vying for power.[188] Babylonian Rabbis were depicted as clashing with prominent Jewish individuals. They did not hesitate to publicize the genealogical blemishes of non-Rabbis.[189] The makeup of the Rabbinic academy is described as structured and clean, but these outside events point to the reality of societal relations that were not as mapped out as the Rabbis would have liked. The Rabbis may have been able to view their immediate surroundings with precision, but the Jewish community at large was more complicated. Passionate Rabbinic discussions reflect the challenges that the Rabbis faced as they encountered the realities of Jewish life for a society that included not only themselves, but also the community at large.

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[185] Rubenstein (2003), p. 141.
[186] Rubenstein (2003), p. 141.
[187] Kalmin, p. 59.
[188] Kalmin, p. 51.
[189] Kalmin, p. 51.

c) The *Am Ha'aretz*

The Amoraim had harsh words for the *am ha'aretz*.[190] They cautioned against social relations with these individuals. While the *am ha'aretz* were not seen as ideologically opposed to the Rabbis, they were viewed as lax in their religious commitments.[191] The antipathy towards the *am ha'aretz* was likely heightened as a result of geographical and temporal differences.[192] The Rabbis elevated themselves above this class of people, perceived as discouraged in their lack of appreciation for Torah.

d) The Commoners

Unlike in the Land of Israel, the Babylonian Rabbis left little room for a class of commoner observant of religious commandments. As a result the community at large is seemingly brushed off in the same manner as the *am ha'aretz*. The divide that existed between the Rabbis and the commoner likely grew from a different value placed on Torah and a different social dynamic.[193] The esteem of the Babylonian Rabbis for Torah study was accompanied by contempt for outsiders and a devaluation of other pursuits.[194] The Babylonian concept of Torah was so rarified that it remained beyond attainment for the masses, whom the elitist Rabbis regarded with suspicion, disgust, and ultimately disdain.[195] The Rabbis viewed all people who didn't study Torah as useless.[196] Proud of their personal stature, the Rabbis looked down on all others, leaving little room for

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[190] Rubenstein (2003), p. 124.
[191] Rubenstein (2003), p. 125.
[192] Kalmin, p. 6.
[193] Miller, p. 325.
[194] Rubenstein (2003), p. 2.
[195] Miller, p. 326.
[196] Rubenstein (2003), p. 33.

respect of others, even those who may have been observant of the *mitzvot*. Again, presuming that the Rabbis did not live in an exclusive Rabbinic bubble, they would have needed to interact with others and even display respect. However, their written word illustrates that they would have preferred a more limited existence.

e) Other Powerful Positions

The Rabbis could not turn their back on powerful government officials or aristocrats, even though they likely would have preferred to ignore these people. Unlike their counterparts in the Land of Israel, they were more secure in their position and less dependant on others. Accordingly, there are no records of the Rabbis of Babylonia making appeals to non-Rabbis for financial support, marriage or social advancement.[197] The Babylonian Rabbis probably sought help from non-Rabbis too; however, not to the same degree as the Rabbis of the Land of Israel. Significantly they did not speak about these encounters, longing to portray themselves as independently strong.

Initially the Babylonian Rabbis envisioned themselves in a position where they could act alone, without participating directly in the community. Within the walls of the academy they could ignore the outside demands of the people. Guided by Torah, they would know how to act appropriately. For instance, there is no record of the people demanding that the Rabbis bring rain in the Babylonian Talmud. The Rabbis would presumably have acted on this need from their own initiative if necessary.[198] This

[197] Kalmin, p. 6.

[198] Kalmin, p. 75. The Babylonian Talmud does contain such stories, but they are told of Palestinian Rabbis.

suggests that even in times of hardship there was minimal communication between the people and the Rabbis.

Towards the end of the Amoraic period, the Rabbis changed their behavior, following their counterparts in the Land of Israel.[199] This hints that the Rabbis recognized their perceived superiority as a problem. Many Jews had not committed themselves to Rabbinic practice thereby creating a social and religious gap.[200] If the Rabbis truly longed to be religious authorities for the Jewish community, they would need to change their attitude. The Rabbis initially thought that the people would respect their stature and follow their ways. With time, they realized that in order to speak to the people, they would have to lower their perception of themselves and stand on the same societal ground. Only then could they hope that their words would carry influence. The Rabbis consistently encountered tension in navigating their relationship with the community at large!

The Talmud, the Sequel – The Development of the Babylonian Talmud

Just as the Jerusalem Talmud took shape in the Land of Israel, a parallel text emerged in Babylonia referred to as the Babylonian Talmud (the Bavli). Likewise, this text represented discussions that interpreted, expanded and supplemented the Mishnah. These words represented the oral tradition that was transmitted from teacher to student in the academy. These discussions were summarized and edited during the long presidency

[199] Kalmin, p. 38.
[200] Rubenstein (2003), p. 124.

of R. Ashi of Sura (371-427 CE).[201] It is unclear exactly when the text was redacted. It could have been completed as early as the fifth century, or as late as the eighth century.[202] The Babylonian Talmud reflects the Persian culture from which it came.[203] The final redaction was completed during a hard time for the Jewish people with the hope that the words would persist for generations to come.

The Rabbis dedicated themselves to a rigorous analysis and explanation of earlier sources. However, the Talmud also goes beyond that point.[204] Creative editing influenced the text of the Babylonian Talmud.[205] It contains centuries of thought and experience in the nation's history that goes well beyond the context of the Mishnah. The Talmud does not emphasize conclusions; rather the focus is on the investigations of the Rabbis as they attempted to solve theoretical or legal problems.[206]The legal sections of the Babylonian Talmud illustrate how to think like a Rabbi, mastering and producing Torah, while the narrative teaches how to be a Rabbi, embodying Torah.[207] The Babylonian Talmud presents a broad view of many aspects of life for Babylonian Jewry, specifically the challenges.[208]

Quite significantly, the Babylonian Talmud does not represent a clean text with a focused articulated path to follow. On the surface the Rabbis describe a black and white world with clear delineations, though a closer reading reveals sharp tension with regards to most concerns. Living in Babylonia entailed a complicated life full of questions with

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[201] Safrai, p. 378.
[202] Personal communication with Dr. Weisberg, Nov. 2007.
[203] Boyarin, p. 24.
[204] Rubinstein (2003), p. 48.
[205] Safrai, p. 378.
[206] Safrai, p. 378.
[207] Rubinstein (1999), p. 282.
[208] Safrai, p. 368.

multiple answers pulling the Rabbis in various directions. The words of the Babylonian Talmud represent the Rabbinic quest for a holy path – an intricate and sophisticated path that the Rabbis struggled to define. First impressions of this path are easily misguided. It's easy to envision the Rabbis on a solo mission, but the tensions within the text reveal an understanding that the Jewish community included both the Rabbis and the community at large. This implicit integration made the lives of the Rabbis complicated - even as they aspired for their own authenticity they could not ignore the ways of the people.

Those Things We Do – The Role of Minhag in the Rabbinic Era

Human behavior tends to be somewhat predictable as is illustrated with the performance of customs (*minhagim*). Individuals learn acceptable norms and generally adhere to these expectations. In society, these repeated actions bring order and structure to an otherwise chaotic state of being. Habits and patterns pertain to every area of life, including manners, business, religious ritual and economics. Customs vary over time and across regions. *Minhag* has played a strong role in the development of Judaism from the Rabbinic period onwards. Since the Rabbinic role developed in a time of transition, *minhagim* were embraced to build and establish a communal identity for the Jewish people.

A number of scholars have researched the role of *minhag* in Rabbinic society. Moshe David Herr describes *minhag* as: 1) customs which having been accepted in practice become binding and assume the force of *halachah* in all areas of Jewish law and

practice, 2) custom obtained in one locality, whether a whole country or a single community, but not in another which is binding upon the local community, and 3) the designation of various liturgical rites which have developed.[209] He adds that *minhag* is an important foundation of *halachah* and that written law takes for granted the continuation of some customs that were probably the practice before the establishment of the law. He finds that *halachah* is often the consolidation of customs that have existed for generations. However, *minhag* is also unique in that it may relate to an area with which *halachah* does not deal and may even oppose. Therefore *minhagim*, which begin as voluntary, can become obligatory as their practice is popularized. Often this pressure is acknowledged by *halachah*. Though noticeably, *minhagim* are not necessarily consistent across regions or times; therefore they potentially represent an ambiguous entity. While the Rabbis noticeably preferred black and white, *minhagim* represented a grey that they were forced to regularly encounter.

Herr points out that regardless of opposition from the Rabbis, sometimes *minhag* arose from ignorance that penetrated the limits of *halachah*.[210] Sometimes foreign practices became *minhagim*. The Rabbis often went to great lengths to permit such customs due to popularity with the people.[211] Herr finds that *minhag* is the most important channel by which external influences find their way into *halachah*, whether desired or not.[212] The Rabbis acknowledged that customs took on a life of their own, and that rather than oppose them due to their questionable (or even objectionable) origins, it

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[209] Herr, Moshe David. "Minhag." In *Encyclopedia Judaica* (Volume 12) Jerusalem: Keter Publishing, 1972, p. 265.
[210] Herr, p. 266.
[211] Herr, p. 266.
[212] Herr, p. 266.

was important to find a way to justify their existence. Once embraced, it is difficult to abolish customary practice.

Elliot Dorff and Arthur Rosett affirm that law is often the result of the accumulation of social practices and customs.[213] They point out that Rabbinic law and common law are similar in that: 1) they both have an appreciation of traditional rules and accept norms that are not based on, or embodied in, an explicit provision of positive law, 2) they both acknowledge that law develops unconsciously and informally as the group carries out and repeats the pattern of its activity, and 3) they both recognize that custom influences law, contributes to its development and sometimes even displaces it. While custom may appear on the surface light and insignificant, custom is in fact powerful and potentially binding. This is especially interesting since *minhagim* often develop without clear intent.

Dorff and Rosett find that legal authorities sometimes treat *minhag* as suspect due to unknown origins.[214] And yet many Biblical and Rabbinical laws have their origins in the social practices of the people.[215] There are several cases when custom was used to decide the law when legal authorities differed, even when the majority of the Rabbis disagreed.[216] The Rabbis were pressured to accept the force of customary practice even though they would have preferred to be more confident with the traditional origins of *minhag*.

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[213] Dorff, Elliot N. and Arthur Rosett. *A Living Tree*. Albany, NY: State University of New York Press, 1988, p. 421.
[214] Dorff and Rosett, p. 424.
[215] Dorff and Rosett, p. 425.
[216] Dorff and Rosett, p. 426.

Dorff and Rosett show that the Rabbis often asserted the authority of law over *minhag* when customs developed due to misunderstood laws.[217] However, the Rabbis were reticent to act in civil matters where customs were locally accepted. The ability of the Rabbis to question a practice with success varied according to their prestige and power at that time and location.[218] Furthermore, while the Rabbis sometimes questioned a specific *minhag*, they did not question the authority of *minhag* in general.[219] The first three generations of Tannaim held that people were not free to make stipulations contrary to the Torah's laws in any area. However, from the fourth generation onwards, Jewish law followed the opinion of R. Yehuda who permitted Jews to practice contrary to Biblical law in regards to monetary issues.[220] With regards to business, custom thereby trumped Torah. While this only applied to money matters, it is significant that Biblical practices were put aside due to the perceived weight of *minhag*. This indicates that the Rabbis felt tension around the power of *minhag*. The Rabbis valued that while they could generally hold firm with religious practice, they were not authorities in other areas. By the fourth century the Rabbis had come to appreciate the weight of *minhag*.

Dorff and Rosett define tradition as the repository of accumulated wisdom.[221] The repeated nature of tradition over the long term enhances the security of social transactions and increases the likelihood that they will be done sensibly. Majority will is displayed by how people choose to behave over time persistently deciding to act in a specific

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[217] Dorff and Rosett, p. 427.
[218] Dorff and Rosett, p. 429.
[219] Dorff and Rosett, p. 429.
[220] Dorff and Rosett, p. 430-431.
[221] Dorff and Rosett, p. 429.

manner.[222] To this day, *minhag* effects the formation of law, its contents, the degree of its authority and the conditions under which it is annulled.[223] With time, as the Jewish community adjusted to life without the Temple, new customs developed. These customs provided the foundation for the community to once again find order reaching out from the vacuum that the destruction and exile produced.

Ephraim Urbach points out that sometimes *minhagim* are remnants of laws and regulations for institutions that no longer exist.[224] Accordingly, the reason behind certain *minhagim* is forgotten. He also finds that not all *minhagim* reach elevated status.[225] Some are only accepted in limited circles and in specific locations. Urbach shows that *minhag* was so highly regarded that if the general public practiced a custom, that custom had the force to annul *halachah* even if only one Rabbi supported it.[226] He describes a chain of evolution in which people practice a custom, which then becomes a custom, and then develops into a custom of consciousness and finally *halachah*.[227] Once accepted as *halachah*, the *minhag* has an obligatory nature.

Menachem Elon states that the formative stages of any legal system involve directions originating from customs that evolve from the practical life of society until they are legally recognized.[228] Therefore custom serves to prepare society for the normative direction of law. Legally, *minhag* generally serves two purposes: 1) it can act as legislation to fill a void in existing *halachah* or, 2) it can rectify or vary existing legal

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[222] Dorff and Rosett, p. 429.
[223] Dorff and Rosett, p. 431.
[224] Urbach, Ephraim. *The Halachah: Its Source and Development.* Jerusalem: Yad la-Talmud, 1986, p. 32-33.
[225] Urbach, p. 33.
[226] Urbach, p. 38. See below, "Minhag Mevatel Halachah."
[227] Urbach, p. 39.
[228] Elon, Menachem. "Minhag as a Source of Jewish Law." In *Encyclopedia Judaica* (Volume 11). Jerusalem: Keter Publishing, 1972, p. 267.

rules when the need arises. Customary practice is therefore trusted as a resource to rely upon when legal needs arise.

Elon finds that *minhag* functions without preconceived intent and anonymously at the hands of the people at large.[229] *Minhag* is unique in that it places the public in the role of *halachic* authority.[230] *Halachic* scholars, understanding that *minhag* cannot be overlooked, have sought to rely on various Scriptural prooftexts to prove the validity of *minhag*.[231] Elon describes three functions of *minhag*: 1) it serves as a decisive factor in a case of disputing opinions as to a particular *halachic* rule, 2) it adds to the existing *halachah* when practical realities give rise to new problems to which the former has no available answer, and 3) it can establish new norms which stand in contradiction to the existing *halachah*.[232] The ability of *minhag* to override *halachah* has been especially valued as economic realities have changed.[233] *Minhag* empowers the people to act as legal authorities, potentially displacing the Rabbis. Customary practice cannot be ignored since it is central to the balance of society. To exert leadership in any community, custom must be appreciated.

According to Elon, there are three requirements to determine the validity of a *minhag*: 1) it must be widespread over the whole country, or in the whole of a particular class of people, according to its purported field, 2) it must have frequent application, and 3) it must be clear.[234] Elon notes that *halachah* dispenses with the formalities of evidence for the purpose of ascertaining the authenticity of a *minhag* and therefore there is wide

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[229] Elon, p. 267.
[230] Elon, p. 267.
[231] Elon, p. 268.
[232] Elon, p. 269.
[233] Elon, p. 271.
[234] Elon, p. 274.

creativity with the establishment of *minhag*.[235] And yet, because of its spontaneous and undirected nature, Elon finds that *minhag* calls for a measure of supervision and control.[236] The Rabbis were faced with the challenge of discerning which *minhagim* were authentic and to be acknowledged, and alternatively, which were to be managed appropriately and potentially devalued. How the community perceived the Rabbis was dependant on how they balanced these needs.

In the Land of Israel, geographical differences between various regions encouraged the development of varying traditions.[237] In the third century, the people's acceptance of a decree became a key factor in its acceptance; therefore it was important to consider the practices of the people.[238] *Minhag* played an important role in the formation of *halachah*.[239] However, while local *minhag* was upheld, there was a tension evident between Rabbis in the North of the country and the Rabbis of the South.[240] The Rabbis may have debated the legitimacy of local *minhag*, but its role in deciding *halachah* was often so strong that it was taken for granted.[241]

In Babylonia, custom held less authority than in the Land of Israel.[242] This was likely due to the stronger role of the Rabbi as a leader in the community and the centralized and consolidated nature of Babylonian Jewry around the Rabbinic academies. The *minhagim* of the people in Babylonia did not necessarily take on the force of law like they did in the Land of Israel. However, while the Rabbis may have been reluctant to

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[235] Elon, p. 274.
[236] Elon, p. 276.
[237] Levine, p. 89.
[238] Levine, p. 112.
[239] Miller, p. 35.
[240] Miller, p. 39.
[241] Miller, p. 375.
[242] Miller, p. 378.

promote public practice, they privately admitted that *minhag* had *halachic* authority.[243] Custom was appreciated implicitly and the habits of the people were valued, even though the Rabbis did not publicize this appreciation. The Rabbis of Babylonia likely feared for their own influence if they were to openly acknowledge the force of public practice. There was tension present with regards to affirming Rabbinic leadership in addition to respecting the ways of the people.

Living in a Less Than Ideal World

The communal identity of the Jewish people was forced into question with the destruction of the Second Temple. Suddenly the community needed to re-evaluate its existence and construct a new pathway of existence. The Rabbinic class developed with time, first in the Land of Israel and then in Babylonia. The Rabbis filled a spiritual vacuum and strived to provide order to communal life that had become chaotic. However, the Rabbis were forced to compete with other leadership bodies and cultural entities. It was important for them to be strategic as they courted the influence of the people. Life in both regions was dynamic throughout the Rabbinic era. There were hostile periods when the people dismissed the role of the Rabbi, but there were also calmer time spans when the Rabbis were able to build strength, garnering the trust of the community. With time the Rabbinic class became more influential and as a result their place in Jewish society became long lasting.

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[243] Miller, p. 379.

An ongoing struggle of the Rabbis existed in determining how to effectively construct a Jewish identity for themselves as well as for the community at large. Living as a minority people in lands with dominant foreign cultures, the Rabbis yearned to illustrate how to successfully live a Jewish path guided by Torah in places full of obstacles and challenges that understandably courted for human practice and interest. There was great tension amongst the Rabbis in dealing with these issues of communal survival.

One means for the Rabbis to build respect with the community at large was to acknowledge the power of *minhagim*. The Rabbis recognized the need to represent a presence complementary to the behavior of the people. Therefore it was important to appreciate the customary practices of the community at large, even when they seemingly opposed Rabbinic ideals. Rabbinic texts represent the struggles of the Rabbis as they adapted to life in the Land of Israel and in Babylonia. The Rabbinic existence was not easy and its relationship with public was complicated and intricate. The Rabbis were forced to balance their idealistic hopes with pragmatic realism. As the Rabbis navigated their path, *minhag* played a key role in forging their relationship with the community at large. In their ideal world, the Rabbis were on top, though a careful reading of Rabbinic texts reveals that *minhag* often superceded this placement. Chapter 2 will look at this intricate relationship between the elitist Rabbis and the folk practices of the people as represented in the Jerusalem Talmud and the Babylonian Talmud.

Chapter 2: The People as a Silent Partner

The structure of any functional society is comprised of relationships, and the Rabbinic era was no exception. The communal configuration of the Rabbinic era was chaotic as the Jewish people strived to adapt to its environs. The Rabbis hoped that they could serve as teachers and guides to the community in this precarious time. Their written words contain rich discussions and arguments that map out Rabbinic wisdom, but also emphasize the tension surrounding the renewed Jewish path in the Diaspora. Rabbinic texts speak to the struggles of the Rabbis as they focused much of their energy on trying to influence the makeup of community life through their Jewish lens.

The Rabbis understood that society was composed of various distinct groups with unique concerns, and that order would only result when the specific societal needs of these various groups were suitably met. The Rabbis imagined themselves as an authoritative entity, separate from the community at large. However, in reality they had relationships, albeit complicated, with the people. They reluctantly depended on the people, recognizing them as a partner of sorts as they attempted to navigate a healthy path for both themselves and the public. The favor of the people was central to their influence as leaders. This Rabbinic nuanced trust of the people spread from areas of economics to religious practice. Admittedly, the Rabbis felt tension surrounding the confines of this reliance. Significantly it was not the words of the people that were valued; rather it was the observed behavior of the people that served as a resource.

The Rabbis portrayed themselves as knowledgeable, not only about Jewish law, but also about the human mind. As experts, they knew when to hold firm to their

concerns and also when to be more flexible. The Rabbis presented themselves as constantly balancing various competing interests. In exile, living in a world that was less than ideal, the Rabbis tried their best to offer support to the people, while recognizing that there was tension present when articulating this guidance. The Rabbis readily acknowledged that there were discrepancies that arose when they sought the "right" answer and that determining the correct plan of action demanded careful thought – even perhaps learning from the people. On the surface, Rabbinic texts portray the Rabbis as exclusive; however, a more careful look reveals that the Rabbis appreciated that they were connected to the rest of the Jewish community in a complicated form of trust. A close reading and comparison of key Rabbinic terms highlights this intricate relationship.

Eem Einan Nevi'im B'nai Nevi'im Hem- If They Are Not Prophets They Are the Descendants of Prophets

The nuanced nature of the trust with which the Rabbis viewed the community at large is evident from the Rabbinic term (that refers to the public): "*Eem einan nevi'im b'nai nevi'im hem - if they are not prophets they are the descendants of prophets.*" There was great tension surrounding the relationship between the Rabbis and the people. On the one hand, the trust between the two parties comes across as authentic, but on the other hand this same trust can appear strained and grudgingly given. When the trust appears authentic, the separation between the Rabbis and the people was minimal. When the trust was not readily recognized, there was a sharp line between the Rabbis and the rest of the Jewish community. Four times when faced with a *halachic* concern, the sage Hillel

responds by applying this phrase to the community as a whole. Analyzing each example allows us to map out the various types of trust that the Rabbis invested in the people. Since the term is used in the Jerusalem Talmud and the Babylonian Talmud, we have the opportunity to consider how the respective communities understood the term.[244]

Y. Pesachim 6.1-33a	B. Pesachim 6-65b
A. These matters regarding the Passover sacrifice etc.	A. Our rabbis have taught on Tannaite authority:
B. The law was forgotten by the elders of Beterah. Once the fourteenth [of Nisan] fell on the Sabbath and they did not know if the Passover sacrifice overrides the Sabbath or not. [They] said, "There is here a certain Babylonian, and Hillel is his name, who served Shemaiah and Abtalion. [Perhaps he] knows whether a Passover sacrifice overrides the Sabbath or not. Possible something good [can come] from him."	B. This law was lost by the sons of Beterah. Once the fourteenth of Nisan coincided with the Sabbath. People forgot and didn't know whether or not the rite of the Passover-offering overrides the restrictions of the Sabbath. They said, "Is there anybody around who knows whether or not the rite of the Passover-offering overrides the restrictions of the Sabbath?"
	C. They said to them, "There's a fellow who has just emigrated from Babylonia, named Hillel the Babylonian, who has served as disciple to the two preeminent authorities of the generation, Shemaiah and Abtalion, and who knows whether or not the rite of the Passover-offering overrides the restriction of the Sabbath."
	D. They sent and summoned him. They said to him, "Do you know whether or not the rite of the Passover-offering overrides the restrictions of the Sabbath?"
C. They said to him, "Have you ever heard when the fourteenth [of Nisan] falls on Sabbath, whether [it] overrides the Sabbath or not?"	
D. He said to them, "Do we have only one Passover offering alone that	E. He said to them, "Do we have only a single Passover in the year that

[244] The divergence of the Babylonian text relates to the varied context, different than the Land of Israel. The Babylonian Rabbis revised and recontextualized the text to fit their intentions (Rubinstein, 1999, p. 267).

[245] A *Hequesh*, a *qal vahomer* and a *gezerah shavah* are each Rabbinic hermeneutical tools used to analyze a text.

overrides the Sabbath in the whole year? And are there not many Passover offerings that would override the Sabbath in the whole year?" ...	overrides the prohibition of the Sabbath? Aren't there many more than two hundred Passover-offerings during the year that override the restrictions of the Sabbath?"...
G. They said to him, "We have already said that something good [can come] from you." H. He started to expound for them a hequesh, and from a qal vahomer, and from a gezerah shavah[245] based on identity of words...	
L. [They] said to him, "We have already said, 'Is there something good [that can come] from the Babylonians?'"...	
T. And even though [Hillel] sat and expounded to them all day, [they] did not accept [the teaching] from him until he told them [in the language of an oath], "May [evil] befall me [if I lie]. Thus I have heard from Shemaiah and Abtalion."	
U. As soon as they heard this from him, they stood up and appointed him Nasi over them.	I. They made him head and appointed him patriarch over them. And he expounded the entire day concerning the laws of the Passover
V. [As soon as they had appointed him Nasi over them,] he began to castigate them with words, saying, "What caused you to need this Babylonian? Is it not because you failed to serve the two great men of the world, Shamaiah and Abtalion, who were sitting with you?"	J. He began to subject them to verbal abuse. He said to them, "So what made it happen to you that I should come up from Babylonia and become Patriarch over you? It was you own slothfulness, that you didn't serve as disciple to the two greatest authorities of the generation, Shemaiah and Abtalion."
W. As soon as [Hillel] castigated them with words, a law escaped him: X. [They] said to him, "What should [we] do for the people, for [before the Sabbath] they did not bring their knives [to slaughter the animal which you have now demonstrated is permitted]?"	K. They said to him, "Lord, if someone forgot and didn't bring this knife on the eve of the Sabbath, what should he do?"
Y. He said to them, "This law I have heard but I have forgotten. But, leave it to the Israelites: **If they are not prophets, they are the descendants of prophets."**	L. He said to them, "I heard this law but I forgot it. But leave it to the Israelites: **If they are not prophets, they are the descendents of prophets."** M. The next day, someone whose Passover-offering was a lamb, stuck the

Z. Immediately whoever's Passover offering was a lamb would stick it [the knife] in the wool; [if] a kid –would tie it between his horns. As a result, their Passover offerings brought their knives with them. AA. As soon as he saw this happening, he remembered the law, saying, "Thus I heard from Shemaiah and Abtalion." BB. R. Zeira in the name of R. Eleazar [said], "Any teaching that does not have a foundation [in being attributed to an earlier authority] is not a teaching."	knife in its wool; someone whose Passover-offering was a goat stuck the knife between its horns. M. Then he saw the deed and was reminded of the law and said, "This is what I have received as a tradition from Shemaiah and Abtalion."...

Y. Pesachim 6.1 (33a) opens with a Mishnaic discussion as to which aspects of the Passover sacrifice override the Shabbat prohibitions against work. The Gemara relates that these laws had "forsaken" the elders of Beterah (B). The use of the term "elders" implies that these men were sages of sorts. The term "forsaken" suggests that the information escaped the elders, rather than simply being forgotten. A sense of purpose is implied. Perhaps this forgetfulness was divinely induced to provide for a teaching moment? There is much to learn from the story that follows.

The elders found themselves in a bind when the eve of Passover and Shabbat coincided.[246] Unclear on how to proceed, the elders called upon Hillel, a man who was known to have "served" Shemaiah and Abtalion. The term "served" becomes relevant later in the text. It implies that Hillel was consistently present for Shemaiah and Abtalion, dedicated to his work.

Unique to this text is the repeated suggestion that something, "*good can come from him*" (B, G, L). This statement suggests that help can come from surprising places,

[246] Urbach (p. 40) understands this as a case when two authorities chose to follow different existing customs and it was eventually forgotten that their disagreement had its source in different customs. Here the high priest who controlled the Temple had ruled in accordance to the custom he accepted.

even Babylonia! The Rabbis of early Babylonia were perceived to be ignorant.[247] Initially the elders appeared hopeful that Hillel could be helpful, but doubt grew with time. Once Hillel presented his initial argument, the elders responded, "*We have already said that something good [can come] from you.*" (G). The elders were ready to listen, but distant. Remaining unconvinced, the elders dismissingly declared, "*We have already said, 'Is there something good [that can come] from the Babylonians?*'" (L). The elders are portrayed as ignorant, unwilling to appreciate the available assistance that has arrived at their door. This story castigates this group of Rabbis for their ignorance in appreciating and accepting outside help.

Hillel continued to offer Rabbinic justifications for his argument, but the elders consistently rejected his words with counter arguments. Only when Hillel backed up his claims with the authority of Shemaiah and Abtalion were his words finally accepted.[248] Not only were they accepted, but Hillel was also made Nasi, finally recognized for his *halachic* gifts with great honor. This passage teaches that in the Land of Israel, a connection to past generations of scholars took precedence over one's ability to independently interpret Torah. To be seen as a trusted *halachic* authority, one had to know the teachings of the previous generations of masters as independent arguments were deemed weak. Furthermore, the text implies that the Rabbis struggled with accepting outside help and needed to feel reassured that there was authentic benefit to doing so.

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[247] Personal communication with Dr. Weisberg, Oct. 2007.

[248] Dorff and Rosett (p. 430) affirm that customs can be viewed as laws that were enacted in the past, but whose origins were forgotten with time. In this way custom has a dormant judicial and even divine authority. In this story, only when the origins were acknowledged do the people trust its authenticity.

The tale takes a turn when Hillel started to chide the sages, accusing them of needing him because they neglected to "serve" Shemaiah and Abtalion (V). Hillel was self-deprecating with his sneer, pointing out that the elders needed a Babylonian to assist them. He faulted them for failing to dedicate themselves to Shemaiah and Abtalion as he had done. Immediately as he cursed them, the *halachah* "forsook" him. It is noteworthy that the same term was used about the elders, leading one to wonder if Hillel's forgetfulness was similar in nature to theirs. Perhaps they also chided each other? Maybe Hillel too needed to learn that help could come from strange places – even the community standing in front of you.

The forgotten law pertained to bringing knives to slaughter the sacrifice before Shabbat (X). Hillel claimed to have heard the answer, but forgotten it. He commanded: "*Hanichu la'hen l'Israel, eem einan nevi'im b'nai nevi'im hem - But leave it to the Israelites, if they are not prophets they are the descendants of prophets.*" Hillel depended on the people to solve the problem and behave in the correct manner.[249] Seeing the people's solution, Hillel suddenly remembered the proper response and then attributed it to Shemaiah and Abtalion. Interestingly, the people are looked to for a very specific ritual concern. Hillel trusted the people, establishing a link between their practices and the ways of the past. However, Hillel reclaimed the *halachah*, taking credit for the foresight

[249] Elon (p. 267) states that the people are invested with this creative authority on the presumption that their conduct is founded on Torah and they will be directed in the spirit of Torah. Alternatively, Elon suggests (p. 270) that given the rise of a new problem, this is an instance when custom was used to fill a halachic gap. This custom developed into *halachah* with time.

of the people.[250] R. Zeira concludes that every teaching needs an authoritative precedent (BB). The Rabbis appropriate the law, making themselves the source of wisdom.[251]

The Tanna Kama continues by stating that the eve of Passover would often fall on Shabbat therefore it is peculiar that the people would forget:

D. Said R. Abun, "And behold, it is not possible for the years of a seven-year period to occur [without] the fourteenth of Nisan coinciding with the Sabbath [at least once – hence the situation was not so unusual]!"
E. And why did the law escape them? In order to give greatness to Hillel.
F. Said R. Mana, "I heard from R. Judah and from all the Rabbis, 'Why do they treat the lower house with respect [and do not replace it with individuals who are greater in learning, just as Hillel had replaced the Beterah elders]? So as not to increase disputes in Israel.'"

Two strong statements are made. First, the *halachah* forsook the elders of Beterah in order to give honor to Hillel. Secondly, R. Mana taught that this occurred to avoid disputes in Israel. Both statements have strong implications. Sometimes laws needed to be put aside for societal relations such as attributing honor. In addition, there were according to R. Mana, reasons to sometimes "forget" laws for the greater good. There was a value placed on keeping the peace, even if this meant, "misplacing" the law. If the law would lead to disputes amongst the people and dysfunction, there was a problem with how the law was being applied and it needed to be reconsidered.

The story affirms that there are various places to discover *halachic* wisdom and that one should be humble and open to this potential. This entails trusting various

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[250] Dorff and Rosett (p. 424) describe how the Rabbis go to pains to find ancient authority to legitimate halachic practice. They often demand Rabbinic approval before recognizing a custom's legitimacy.
[251] Elon (p. 267) finds that the term Torah is used to imply custom. There is an assumption present that the practice, now appearing in the form of custom, was originally based in ancient *halachah*. Rather than being creative, it represents testimony to an earlier source.

untraditional resources, when one might be inclined to otherwise ignore them. Perhaps these perspectives represent the surprising "*good that can come from him*?"[252]

B. Pesachim 65b includes the same story, but with significant modifications that illustrate that the Babylonian Rabbis had a less sincere trust of the community at large when compared to the Rabbis of the Land of Israel. Hillel's words were accepted without any mention of Shemaiah and Abtalion. The text is more respectful of Hillel. This text is less dismissive of wisdom from Babylonia than the Jerusalem Talmud (which is logical since the text was redacted in Babylonia). Hillel was accepted as a Rabbinic genius. He was not pushed as hard by the elders and he was recognized for his own authority. In Babylonia, Rabbinic authority was not simply a repetition of previous teachings by masters; rather thought and skill were necessary. The focus of the story shifts from the authority of previous generations to the role of prooftexts and hermeneutics in establishing the law. This reflects the greater emphasis on Rabbinic authority in Babylonia and the Rabbis' more powerful position. There is a softened tension between the elders of Beterah and Hillel, reflecting the standard argumentative culture of the Babylonian Rabbis.

Again, Hillel chided the elders of Beterah (J) and soon after he was approached with the same question about carrying a slaughtering knife on Shabbat (K). He offered the same suggestion - looking to the people - and suddenly their behavior reminded him of the law. As before, the people were seemingly relied upon with regard to a very

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[252] The same story appears in abridged form in y. Shabbat 19.1 (17a). While the Mishnah in this chapter deals with carrying a circumcision blade on Shabbat, the principle of the earlier passage is applicable and the themes remain the same.

specific ritual concern. Again, Hillel claimed this discovery as his own, but no *halachic* declaration immediately follows (M). The text goes in a different direction, questioning Hillel's earlier proof, analyzing various segments of the *baraita*.

F. But isn't he driving an animal that is bearing a burden [on the Sabbath which is forbidden]?
G. He does so with the back of his hand [in an unusual way].
H. Well, even in respect to doing so in an unusual way, while to be sure there is not a prohibition that derives from the Torah, there surely is a prohibition that derives from the authority of rabbis?
I. But that's the very point of their question to him: In respect to something that is permitted on the basis of the law in the Torah, while a consideration of Sabbath rest stands as an obstacle in its path, what is the law on uprooting that obstacle by doing the action in an unusual way when it comes to doing a religious duty?
J. He said to them, "I heard this law but I forgot it. But leave it to the Israelites: **If they are not prophets they are the descendants of prophets.**"

A. [With reference to the clause, He began to subject them to verbal abuse,] said R. Judah said Rab, "Whoever behaves arrogantly – if he is a sage, his wisdom departs from him, if he is a prophet, his power of prophecy departs from him."
B. "If he is a sage, his wisdom departs from him: This is from Hillel. For the master has said, He began to subject them to verbal abuse...[then:] 'I heard this law but I forgot it. But leave it to the Israelites: **if they are not prophets, they are the descendants of prophets.**'"

Hillel's words are marginalized as his logic is questioned. The Rabbis pursue the appropriate protocol for an act that is permitted Biblically but not Rabbinically. Hillel's haughty behavior is condemned. R. Judah teaches that one who shows haughtiness loses wisdom (A). Scriptural prooftexts are used to show the great consequences of haughtiness and anger. This ethical teaching leaves Hillel's words in question. Does this teaching serve to counter Hillel's suggestions? In this generation did the Rabbis need to assert their expertise, disregarding the potentially ignorant ways of the people? The Babylonian Talmud places less trust in the people. Perhaps this critique of Hillel is a statement on his *halachic* methods of analysis? Favoring sharp and technical Rabbinic

tactics, might the Rabbis of the Babylonian Talmud be disputing Hillel's mode of argument? Unlike the Jerusalem Talmud, the Babylonian Talmud values prooftexts and hermeneutics. The Babylonian Talmud affirms a distinct and exclusive role for the Rabbis. The behavior of the people was not necessarily an adequate means to determine practice. However, it must also be noted that Hillel's views were not questioned until a considerable length after his initial findings. A good distance from the central story of the *sugya*, it is not clear how much weight this argument carries.

The same story appears again in the Tosefta (Pischa 4:13) where complete trust in the people is emphasized:[253]

A. One time the fourteenth of Nissan coincided with the Shabbat.
B. They asked Hillel the Elder, "As to the Passover sacrifice, does it override [the prohibitions of] the Sabbath?"
C. He said to them, "Now do we have only a single Passover-sacrifice in the course of the year which overrides [the prohibitions] of the Sabbath? We have many more than three hundred Passover-sacrifices in the year, and they all override [the prohibitions of] the Sabbath."
D. All the people in the courtyard ganged up on him.
E. He said to them, "The daily whole-offering is a public offering, and the Passover-sacrifice is a public offering. Just as the daily whole-offering is a public offering and overrides [the prohibitions of] the Sabbath, so the Passover-sacrifice is a public offering [and] overrides [the prohibition of] the Sabbath."

It is ambiguous as to who the seekers are in this retelling of the story. It is unclear if these individuals were meant to represent the elders of Beterah; however, the text does infer that these people passionately cared about proper *halachic* practice and were therefore likely to be sages. These individuals rejected Hillel's words and rose up against him (D). Just as in the Talmud stories, Hillel explained his rationale, but this time Hillel did not

[253] The Tosefta is an independent collection of Rabbinic works arranged according to the order of the Mishnah. The *halachot* of the Tosefta are not necessarily consistent with the Mishnah (Eisenberg, p. 501).

chastise the seekers and noticeably he did not misplace any laws. The story continues (4:14):

C. "And furthermore: I have received a tradition from my masters that the Passover-sacrifice overrides [the prohibitions of the Sabbath] – and not [solely] the first Passover but the second Passover – sacrifice, and not [solely] the Passover – sacrifice of the community but the Passover sacrifice of the individual."
D. They said to him, "What will happen with the people, who did not bring knives and Passover lambs to the sanctuary?"
E. He said to them, "Do not worry about them. The holy spirit rests upon them. **If they are not prophets, they are the descendants of prophets.**"
F. What did they do in that hour?
G. He whose animal for the Passover – sacrifice was a lamb had hid it [the knife] in its wool.
H. He whose animal for the Passover - sacrifice was a goat had tied it between its horns.
I. So they had [in any event] brought both their knives and their Passover – sacrifices to the sanctuary.
J. And they sacrificed their Passover sacrifices.
K. On that very day they appointed Hillel to be patriarch, and he taught them the laws of Passover.

The Tosefta does not describe any tension between Hillel and the Palestinian sages; in fact his Babylonian origins are not mentioned at all. Hillel is simply a knowledgeable sage. Hillel teaches that the people are a resource for appropriate Rabbinic practice as "the holy spirit rests upon them" (E). While this spirit is not necessarily prophetic, it is divinely inspired. The people have a gift that the Rabbis lack. The Tosefta version of the story is the most focused and direct in its illustration of Rabbinic trust of the acts of people as a source of holy wisdom.

In each version of the Hillel story the use of the term, "*Eem einan nevi'im b'nai nevi'im hem - If they are not prophets they are the descendants of prophets,*" implies a

certain degree of trust in the behavior of the people.[254] These stories suggest that there are three possible theories to explain the faith that the Rabbis invested in the people. Firstly, Hillel's statement could point to a trust that the people were capable of knowing what to do in challenging circumstances. They may have had the creativity and ability to determine their own solutions to *halachic* problems. These analytical tools could have been passed down from generation to generation. Secondly, Hillel may have understood the people as living with divine inspiration (and quite significantly the Rabbis did not live with this same inspiration). This holy presence could have guided the people in solving *halachic* problems. Thirdly, the people may simply have been better at remembering that which the Rabbis had forgotten.

The variance suggests that the Rabbis felt tension in pinpointing how to look to the people. It is important to note that this confidence varied with context. When lost as to the appropriate *halachic* ruling, the people could have served as a potential resource for wisdom. In the Babylonian Talmud, this trust is applied, but questioned. In the Jerusalem Talmud, this trust is more comfortable. In the Tosefta, this trust is cherished and appreciated. This diversity of view and specifically the conflict surrounding this conviction is illustrated in various Rabbinic resources.

The People as a Valued and Respected Partner

When valued and respected as partners the people were presented as a link to the past and a resource for uncovering forgotten traditions. The reflexive behavior of the

[254] The stories were not presented in a particular order.

people modeled appropriate choices. While the people were not consulted directly, they were trusted as allies. This is seen with the Rabbinic phrases: 1) "*Pok chazi mai ama d'var - Go and see what the people are doing*," 2) "*Maqom shenahagu - In a place in which they are accustomed to*," and 3) "*Minhag mevatel halachah – Custom overrides halachah.*" These terms are found mainly in the Mishnah and the Jerusalem Talmud, but they are also present in the Babylonian Talmud. They reflect the early Rabbinic period when the Rabbis aspired to develop their communal voice.

Pok Chazi Mai Ama D'var - Go And See What The People Are Doing

It is quite common in Rabbinic literature for the Rabbis to go back and forth arguing their case. Talmudic authorities used the tools at hand to interpret the words of the sages of the Mishnah and to expand the text in various directions. While the Gemara is not a definitive *halachic* compendium, disputes often end in some kind of resolution. In three instances in the Babylonian Talmud, rather than offering a clear answer, the Rabbis suggest that the *halachah* is to be determined in accordance with the ways of the people. In response to the question, "*Mai halachah? - What is the halachah?*" we are told, "*Pok chazi mai ama d'var - Go and see what the people are doing.*" This is seen in tractates Berachot, Menachot and Eruvin.[255] When faced with the need to make a choice, one path

[255] Adin Steinsaltz offers the following explanation of the term: "If no clear-cut halachic ruling has been reached regarding a certain problem, the Talmud may suggest that popular practice serve as the basis for arriving at a decision: Go out and see what the practice of the people are following and act accordingly." (Steinsaltz, Adin. *The Talmud-The Steinsaltz Edition: A Reference Guide.* New York: Random House, p. 136).

of guidance is the customary acts of the people.[256] Acknowledging these acts displays a degree of Rabbinic trust in the community at large.

B. Berachot 44a concerns the appropriate blessings for various foods and drinks. The Mishnah introduces the question as to the appropriate blessing when drinking water to quench thirst. Two Rabbis offer suggestions as to the appropriate blessing. The Gemara (44b) restates the two positions, clarifying the motivation of each Rabbi. With no definitive conclusion the sages ask whom the *halachah* follows. Rav Yosef responds, "*Pok chazi mai ama d'var- Go and see what the people are doing.*" Quite remarkably, no stance is offered! The people are depended on to determine the appropriate ritual means to bless water.[257]

The Mishnah at b. Menachot 28a introduces various standards that make the *menorah*, *mezuzah*, *tefillin* and *tsitsit* acceptable. The Gemara (35b) features an extended discussion about the specifications for *tefillin* including design, manufacture, placement and inspection. As described, sometimes the Rabbis appealed to tradition, declaring that certain rules were *halachic*. However, the Rabbis were less definitive about other aspects. When the Rabbis were not confident, the people were viewed as a resource:

A. Abaye was once in a session before R. Joseph when the strap of his tefillin broke. He said to him, "What is the law on tying it together?"
B. He said to him, "It is written, 'you shall bind them' (Deut. 6:8), meaning, it must be an unflawed knot."
C. Said R. Aha b. R. Joseph to R. Ashi, "What is the law on sewing it together?"
D. He said to him, "**Go and see what the people are doing.**"

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[256] Dorff and Rosett, p. 423.

[257] It is interesting to note that the earlier discussion uses many references to the customs of various people in order to make decisions with regards to the blessing for foods. This includes an affirmation that people in the West (i.e. the Land of Israel) do things differently than the East (i.e. Babylonia). Even the custom of beer brewers is mentioned. Superstitious views of the folk seem to be relevant.

As evident, sometimes the Rabbis lacked clear direction with regard to Rabbinic practice and looked outside of their inner circle to learn the appropriate path. Again, the people were relied upon for a very specific ritual concern.[258] In the midst of an extended discussion on *tefillin*, this segment implies that in certain cases the acts of the people were used to determine what was acceptable.

B. Eruvin 14b introduces a Rabbinic quarrel about the minimum height, breadth and thickness required for the side posts of an alley entranceway. The Tanna Kamma says that the breadth and thickness can be "*any measure at all*," but R. Yosi finds that "*their breadth must be three tepachs.*" The discussion that follows results in confusion about whom to follow. The validity of R. Yosi's view is challenged, but he is deemed a trustworthy source. The text continues:

> A. Said Rava bar R. Hanan to Abaye, "So what's the decided law?"
> B. He said, "**Go and see what the people are doing.**"

Instead of choosing sides, or stating Rabbinic precedent, Abaye looks to the people for direction. With no consensus, Abaye lets the decision follow the practice of the community at large.

The use of the Rabbinic term, "*Pok chazi mai ama d'var – Go and see what the people are doing,*" can support a number of interpretations. Perhaps the Rabbis trusted that the people were practicing Jewish law as taught by their previous teachers. Alternatively, the Rabbis may have been acknowledging that the people served as witnesses for appropriate behavior. This would imply that they valued the creative capacities of the people to make appropriate Jewish choices. Thirdly, without a strong

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[258] It is potentially relevant that in this case the son of a scholar yearns for guidance that his father offered in the previous generation. This highlights that even from one generation to the next unique concerns must be explored.

consensus one way or the other, the Rabbis may have appreciated the need to respect the contemporary practice, perhaps saving their intellectual energy for other concerns. Without evidence about the practice of earlier times, the Rabbis may have been choosing to conform to the habitual practice of the people.

It is noteworthy that in each case the behavior of the people was relied upon in ritual matters over which there was a Rabbinic dispute. The people were looked to as a source for ritual precedent. Only the Berachot passage speaks to a relatively simple practice of the rote benediction upon water. *Tefillin* binding and side post construction represent intricate and complicated concerns. A precedent was set for depending on the people about rituals of various regularity and complexity.

Urbach emphasizes the complicated nature of the relationship between *halachah* and *minhag*.[259] Even if it was widely practiced, *minhag* still benefited from the endorsement of a recognized figure or institution. Similarly, *halachah* that was not practiced by the people was perceived as unstable. When *halachah* was viewed as unstable, the Rabbis were called to go and see how the people practiced and follow their example.

Significantly, the Rabbis sought out the acts of the people, not their views. Behavior, not testimony, was regarded as a source of the correct *halachic* path. The people were not consulted directly, rather they were observed covertly. This highlights the conflicts that the Rabbis faced. While the people did represent a resource of knowledge, a self-awareness of their "expertise" might have interfered with the elite role of the Rabbi. The Rabbis were cautious to claim explicit expertise of Jewish practice as

[259] Urbach, p. 38.

their realm, even though they appreciated that they must also look to the outside. In this way the community at large served as a silent and subtle partner of the Rabbis.

Maqom Shenahagu - In A Place In Which They Are Accustomed To

Customs often vary from region to region. This was true in Rabbinic times as it is today. The sages of the Mishnah appreciated local customs; their words offered support for the ways of the people. Custom has binding power on members of the community, so much so that it often will become law.[260] Custom is a major source for local law. Aspects of living impacting law derive from selling practices, building protocols and even ritual matters. On a number of occasions the Rabbinic phrase, "*Maqom shenahagu-In a place in which they are accustomed to,*" is used to endorse local practices in the Rabbinic era.[261] The Rabbinic term displays resignation for local ways and an appreciation for the role of customary practice in society. This value of *minhag* can be associated with a degree of trust in the people.

The Rabbis often discussed the interrelation between custom and labor. M. Shevi'it 2:5 speaks about the practice of putting oil on unripe figs to hasten ripening, ruling on permissibility of the practice during the Sabbatical year:

A. They pour oil on unripe figs and pierce them
B. Until the New Year [of the Sabbatical Year].
C. Unripe figs [which began growing] during the year preceding the Sabbatical year and which continued growing [and ultimately became ripe] during the Sabbatical year itself,

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[260] Dorff and Rosett, p. 422.

[261] Dorff and Rosett (p. 426) find that "the historical connection between custom and law depends on the ability of custom to operate as a source of rules in the absence of law in the first place. Later Jewish codes applied this principle broadly, often by simply recording common practice." The use of the term "*Maqom shenahagu*" is representative of this phenomenon.

D. [and unripe figs which began growing] during the Sabbatical year and which continued growing [and ultimately became ripe] during the year following the Sabbatical,
E. they neither pour oil [on them] nor pierce them [during the Sabbatical year].
F. R. Judah says, "**In a place in which they are accustomed to** pour oil [on unripe figs], they do not put oil [during the Sabbatical year],"
G. "because it is [considered to be the normal way in which such crops are] processed."
H. "[But] **in a place in which they are not accustomed to** pour oil, they may pour oil, [because there it is not deeded to be a normal agricultural activity]."

R. Judah recognizes that agricultural practices vary by region. He understood that the custom of putting oil on figs was considered work in communities that oiled figs regularly. Accordingly, for these communities the custom was not permitted on the Sabbatical year. In areas where this practice was not customary, one was permitted to put oil on figs because it was not viewed as work. R. Judah's statement illustrates that labor was influenced and potentially regulated by customary expectations.

M. Pesachim 4:1 offers a number of perspectives with regard to local custom and labor. The Mishnah begins by stating that if the custom of the region is to work on the eve of Passover, this is permitted. Someone who travels to a region with a different custom, must accept the *"stringencies of the place he left and those of the place he arrived."* The Rabbis were aware that abiding by the customs of one's region could potentially be abused if not considered appropriately. They acted with caution so that the people were not strategically lenient. While they respected the importance of custom, they valued the need to regulate its use. Admittedly, foreign customs can endanger local customary systems.[262] It is interesting to note that sometimes the *minhag* was perceived to be stricter than the *halachah*.

M. Pesachim 4:5 discusses labor on Tisha B'Av:

[262] Elon (p. 276) finds that the Rabbis realized that a diversity of customs could lead to division and strife and they therefore required a person to follow the customs of the area where he found himself at any given time.

A. **In a place in which they are accustomed to** do work on the ninth of Av, they do it.
B. **In a place in which they are not accustomed to** do work, they do not do it.
C. And in every place disciples of sages refrain [from labor].
D. Rabban Simeon ben Gamaliel says, "Under all circumstances should a man act like a disciple of a sage."

In this case there are different sets of rules and expectations for the sages and the folk.[263] Regardless of custom, the Rabbis held themselves to a stricter standard and refrained from work. While it was acceptable for the public to work if this was the practice, R. Simeon's comment implies that it was admirable if one chose not to work. It was honorable to be a "*disciple of a sage*" and it was within the reach of the public, if they chose to put aside custom and take on the stringencies of a sage. The Rabbis respected the strength of custom and endorsed the people's practice. However, they held themselves to a higher standard hoping to inspire the people to change their ways. R. Simeon separates the Rabbis from the public at large, but he also makes it possible for individuals in the community to cross this gap if they so desire.[264] In doing so the Rabbis recognized limits to their authority, respecting the ways of others while also keeping to their own path.

These three examples discuss work on special days or special times; however, the Mishnah also deals with labor in a more general sense. Employment practices are discussed at length in m. Baba Metzia 7:1:

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[263] Dorff and Rosett (p. 422) suggest that once a group of people live together for a long time, they develop expectations as to what is proper social behavior and what sorts of deviance from these pattern are acceptable. With time, these expectations become fixed and the range of tolerated deviance becomes clear. In this case, the people became accustomed in their ways with Ninth of Av observance, and the sages were able to act differently. While the sages did invalidate customs occasionally (p. 428), they did so sparingly, holding that all is in accordance with custom. This Mishnah seems to represent a middle ground.

[264] Alon (p. 269) points out that a custom can be general in applying to the public in its entirety, or it can be focused on a particular people or place. In this case, the *minhag* seemingly does not apply to the sages.

A. He who hires [day] workers and told them to start work early or to stay late –
B. **in a place in which they are not accustomed to** start work early or not to stay late,
C. he has no right to force them to do so.
D. **In a place in which they are accustomed to** provide a meal, he must provide a meal.
E. **[In a place in which they are accustomed]** to make do with a sweet,
F. he provides it.
G. Everything in accord with the practice of the province.

The description implies that custom involved the community deciding what it could tolerate and how it could function in a healthy manner for all parties involved. It was often impossible to depart from these practices, as becomes clear in the story that follows:

H. Ma'aseh: R. Yohanan b. Matya said to his son, "Go and hire workers for us."
I. He went and made an agreement with them for food [without further specification].
J. Now when he came to his father, the father said to him, "My son, even if you should make for them a meal like one of Solomon in his day, you will not have carried out your obligation to them."
K. "For they are children of Abraham, Isaac and Jacob."
L. "But before they begin work, go and tell them, '[Work for us] on condition that you have a claim on me [as to food] only for a piece of bread and pulse alone.'"
M. Rabban Simeon b. Gamaliel says, "He had no need to specify that in so many words."
N. "Everything [in any case] accords with the practice of the province."

A system of custom is described. R. Yohanan fears that his new employees will take advantage of his son's vague offer, expecting a feast. However, R. Simeon teaches that R. Yohanan need not worry due to the prevalence of "the practice of the province" (*minhag hamaqom*) (N). This passage suggests that this system has buy-in from the employer and quite significantly, the employee. Both need each other and both have accepted the customary practice of the community, even without explicitly articulating the terms of agreement. Tension is reduced as everyone is on the same playing field. This text paints

the picture of a society that runs efficiently because of the general acceptance of *minhag*. To do more or less could alter the balance of society.

Another area that was influenced by custom was selling practices. M. Pesachim 4:3 speaks about selling animals to gentiles.[265] As described, some animals could be sold to gentiles if that was the custom of the region, but other animals could not be sold anywhere. The passage suggests that there were limits to custom. Sometimes the sages were willing to be flexible, but other times they were fixed in their ways. The Rabbis had a sense as to when to be permissive and when to hold strong. Perhaps they saved this firm concern for the areas that concerned them most, leaving more trivial concerns to the ways of the people.

M. Baba Batra 5:11 speaks about weighing goods for sale. The concept of local custom is applied to the size of the measure and the practice of smoothing out the scale. Kehati explains that one must follow local custom, for whenever there is a change from the local custom, there is fear that someone will be tricked or cheated.[266] Local custom therefore was used to create an orderly system, which complied with Rabbinic concerns.

M. Baba Metzia 4:11 forbids a person to sell produce from different fields together. The Mishnah also discusses the sale of wine. While it is permissible to mix sharp wine with smooth wine because it improves the conditions, other mixing is not permitted. It is also permissible to dilute wine, but only when this is the custom of the region. Here, the concept of custom is used to permit a practice that is potentially deceitful when not regulated or announced. Since it is custom and therefore known, the buyer expects to get diluted wine and the concern about deception is eliminated. There is

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[265] This same passage is repeated in M. Avodah Zara 1:6.

[266] Kehati is a contemporary Mishnah scholar.

an appreciation that customs were widespread and commonly known. A later passage (5:5) uses the concept of *Maqom Shenahagu* when speaking about raising animals to sell: "***In a place in which they are accustomed to*** *divide the offspring immediately, divide;* ***in a place in which they are accustomed to*** *grow them, grow them.*" Again, custom dictates the selling practice of the community. Valuing the dominance of these customary monetary practices, the Rabbis let the people be.

Building and rental protocols represent a third area that was influenced by custom. M. Baba Batra uses the phrase, "*Maqom Shenahagu,*" to discuss neighborly practices. One builds a fence in a courtyard between consenting neighbors (1.1) with materials indicated by local expectations – "*all in keeping with local practice.*" The Gemara points out that even if the custom is to construct a fence with vines, one follows the custom. Fencing around a garden (1:2), also reflects the custom of the region. The passage continues, "*with valleys,* ***in a place in which they are not accustomed to*** *build, there is no obligation upon him.*" In this case there is no custom and therefore one cannot be compelled to build a fence. The Gemara expands on what can be done in such a situation. Custom is described as having a significant role in society because it leads to obligation.

M. Baba Metzia 9:1 affirms that a renter must treat the property that he lives on in accordance with the custom of the region. Cutting, uprooting, plowing, all is practiced in accordance with the custom of the community. The passage implies that if the custom is to split up the grain between the renter and landlord, they also split the straw and stubble. Similarly if one splits the wine, one must split the branches and reeds as well. There is

the potential for a *minhag* to be logically expanded to areas where it was not initially applied.

Finally, custom played a role in ritual concerns, though in a somewhat more limited way since the Rabbis had a dominant voice in this area.[267] M. Pesachim 4:4 begins with a discussion on eating roasted meat on the first night of Passover:

A. **In a place in which they are accustomed to** eat [the meat of the Passover] roasted on the nights of Passover, they eat it [that way].
B. **In a place in which they are accustomed not to** eat it [roasted], they do not eat it [that way].
C. **In a place in which they are accustomed to** light a candle on the night of the Day of Atonement, they light it.
D. **In a place in which they are accustomed not to** light it, they do not light it.
E. But in any case they light it in synagogues, study houses, dark alleys, and for the sick.

Various Passover ritual customs are described and respected.[268] The Rabbis are illustrated as lenient in terms of the respective lighting ritual of the people on Yom Kippur.[269]

M. Sukkah 3.11 provides an example of *minhag* in liturgical practice. "***In a place in which they are accustomed to*** *repeat (the P'seukei D'Zimra)-repeat, to recite once-recite once, to bless afterwards-bless afterwards, everything is in accordance with the custom of the province.*" M. Megillah 4.1 discusses other liturgical customs: "*One can sit or stand while reading the megillah. There can be one reader or two in unison. One can bless afterwards or refrain.*" It is noteworthy that liturgical practice, which was very

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[267] Dorff and Rosett (p. 432) point out that custom played a weaker role in family and ritual law because individuals did not have a voice in this area.

[268] It is noteworthy that elsewhere the Rabbis criticized the practice of eating roasted whole lambs on Passover night pointing to tension surrounding this *minhag*.

[269] The conclusion illustrates that safety trumped custom. Regardless of the ritual custom of lighting a candle in a specific community, light was still provided in everyday places for sustenance. To conduct oneself in the dark is not safe, and this principle overrode any customs not to light. The Rabbis affirmed their appreciation for ritual lighting practices of specific communities while they also demanded that safety come first, even trumping ritual practice.

much in the domain of the Rabbis, was flexible in some cases in accordance with the custom of the people. However, the Rabbis held sway in certain liturgical areas. For instance, the same Mishnah teaches that the blessing preceding the Hallel prayer is mandatory and does not depend on local custom since a blessing is required prior to all *mitzvot*.

Custom can be seen as a way the Rabbis showed respect for the practices of the people. They depended on custom to define law and order and their opposition was therefore minimal.[270] This deference was a way for the Rabbis to gain authority for themselves. To endorse *minhag* was a way to exert some form of control over the people (i.e. order). Conquerors might similarly show respect in certain areas in exchange for acknowledgement elsewhere.[271] The Rabbis offered support for custom when it did not strongly interfere with their priorities. They displayed an awareness that *minhag* takes on a life of its own.[272] The Rabbis knew that their influence was limited in their opposition to this dominant force.

These passages describe the far-reaching impact of *minhag* in the Rabbinic era.[273] Local custom impacted practically every sphere of life for the people. The Rabbis appreciated the stability created by *minhagim*. Custom helps to foster an orderly society that responds to the complicated needs of a diverse public. The people felt strongly about their *minhagim* and it was generally best that the Rabbis did not interfere, even though they might have preferred to do so in certain cases.

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[270] Dorff and Rosett, p. 424.

[271] Personal communication with Dr. Weisberg, Oct. 2007.

[272] The Rabbinic term, "*Minhag Israel din hu*," displays further evidence of this phenomenon.

[273] It is important to note that the term, "*Maqom shenahagu*" is only found in the Mishnah. Since this term does not appear in later Rabbinic texts, there was likely a decreased appreciation for *minhag* in later times. However, as will be evident, different Rabbinic terms still ascribe respect to the role of *minhag*.

Rabbinic texts display an appreciation that customs varied by region. In the ideal Rabbinic world of black and white, the Rabbis needed to face the challenges of intricate customs that were not necessarily consistent.[274] It is noteworthy that the Rabbis did have boundaries in their acceptance of custom; there were areas in which diversity was unacceptable. There also were conflicting opinions as to whether *minhag* applied to all people, or just the folk. The text hints that the Rabbis might have been a special class, prohibited from adopting some more lenient *minhagim*. However, the Rabbinic sources illustrate that the Rabbis valued *minhag* as an integral part of the structure of society.

Minhag Mevatel Halachah – Custom Overrides Halachah

The Rabbis mapped out their practices with great care. As they interpreted the words of their treasured texts, they aspired to pinpoint correct Jewish practice. *Halachah* represented the law of the Rabbis. It was carefully crafted and often strict, specific and firm. The Rabbis held *halachah* in the highest regard as its message was believed to have been passed down from Moses at Sinai. *Halachah* was perceived to create order for the community, structuring its ways and ensuring a holy path for the Jewish people. However, on two occasions in the Jerusalem Talmud, *halachah* is trumped by the customary practices of the people that go against *halachah*. In these cases, the Rabbis affirm the *minhagim* of the people over their cherished *halachah*.

[274] The various arguments and unresolved concerns contained in Rabbinic texts suggest that the Rabbis were resigned to the fact that navigating a Jewish path was not clear-cut.

Y. Yevamot 12:1 discusses the *minhag* of performing *halitzah*[275] with a slipper rather than a sandal:

A. If she performed the rite of halitzah with a slipper, her performance of halitzah is valid.
B. From whose viewpoint was it necessary to specify that it is valid after the fact? It is necessary from the viewpoint of R. Meir
C. For R. Meir said, "They do not perform the rite of halitzah with a slipper."
D. It has been taught: Said R. Simeon, "I came across a certain elder from Nisibis. I remarked to him, 'Was R. Judah b. Betera an authority for you?'"
E. "He said to me, 'And he was constantly at my money changing stall.'"
F. "I said to him, 'Did you ever see him perform the rite of halitzah?'"
G. "He said to me, 'Yes'"
H. "I said to him, 'With what did you see him do it, with a slipper or with a sandal?'"
I. "He said to me, 'And do they perform the rite of halitzah with a slipper?'"
J. "I said to him, 'if so, on what account did R. Meir rule that they do not perform the rite of halitzah with a slipper?'"

A. R. Ba R. Judah in the name of Rab: "If Elijah should come and say that they perform the rite of halitzah with a slipper, you should listen to him. If he should say that they do not do so, you should not listen to him. For lo, the community is accustomed to perform the rite of halitzah with a slipper, and **custom overrides halachah.**"

This *sugya* values customary practice to such an extent that even the prophet Elijah is ignored if he potentially tried to override custom. It is no accident that the *sugya* mentions Elijah, for it was a major matter for the Rabbis to put aside *halachah*. As described, not only does custom trump Rabbinic practice, but also it supercedes even the prophet Elijah's words. The Rabbis display an awareness that the accepted ways of the people played an important role in society. While the Rabbis aspired for *halachah* to create order, they acknowledged that sometimes *minhag* was more effective in this task. It is noteworthy that *halitzah* was a specific ritual concern that one would imagine the Rabbis would preferred to have had exclusive authority.

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[275] If a man died without having conceived children, the man's brother was obligated to marry the widow in order to perpetuate the name of the family. This was referred to as Levirite marriage. Alternatively, the surviving brother could perform the *halitzah* ritual to absolve his responsibility (Eisenberg, p. 52-53).

Minhag supercedes *halachah* again in y. Baba Metzia 7:1.[276]

H. He who hires [day] workers and told them to start work early or to stay late –
I. in a place in which they area accustomed not to start work early or not to stay late,
J. he has no right to force them to do so.
K. In a place in which they are accustomed to provide a meal, he must provide a meal.
L. [In a place in which they are accustomed] to make do with a sweet,
M. he provides it.
N. Everything in accord with the practice of the province.
O. Ma'aseh: R. Yohanan b. Matya said to his son, "Go and hire workers for us."
P. He went and made an agreement with them for food [without further specification].
Q. Now when he came to his father, the father said to him, "My son, even if you should make for them a meal like one of Solomon in his day, you will not have carried out your obligation to them."
R. "For they are children of Abraham, Isaac and Jacob."
S. "But before they begin work, go and tell them, '[Work for us] on condition that you have a claim on me [as to food] only for a piece of bread and pulse alone.'"
T. Rabban Simeon b. Gamaliel says, "He had no need to specify that in so many words."
U. "Everything [in any case] accords with the practice of the province."

A. Said R. Hoshaiah, "That is to say that **custom overrides halachah**."

This time the overriding authority of *minhag* is seen in business practices. The Rabbis were likely more willing to affirm the great reach of *minhag* in an area that was less directly related to Jewish practice. However, as the Rabbis point out, all encounters whether ritual or not involved the "*children of Abraham, Isaac and Jacob.*" They applied a Jewish lens to every sphere of life. In doing so, there was a great need to concede to the dominant practices of the people and illustrate an appreciation for the ways of the community at large. A Jewish focus in everyday life needed to be respectful of societal concerns.

[276] This same text was analyzed above in, "Maqom Shenahagu."

At first glance one might surmise that *halachah* trumps all. However, the use of the term, "*Minhag mevatel halachah – Custom overrides halachah,*" highlights the more complicated nature of the Rabbinic response to the practices of the people. The Rabbis conceded that sometimes they needed to exert flexibility with the people, even at the cost of *halachah*. It is important to note that this phrase is only found twice in the Jerusalem Talmud and not at all in the Babylonian Talmud. Therefore, it is likely that the concept was not heavily publicized in either land and that in Babylonia the Rabbis had stronger footing. Accordingly they could ascribe more weight to *halachah*.

The People as a Forced and Weak Partner

As fellow Jews, the Rabbis begrudgingly looked to the people for guidance and support; however, this same partnership was also frowned upon and questioned. The community at large was depended on, but this reliance was forced and reluctant. Rabbinic texts often present the people as feeble and weak. The mighty Rabbis are portrayed as protectors or sorts, shielding the people from their ignorance. However, sometimes it's the Rabbis themselves who end up needing protection! These phenomenon are seen with the Rabbinic phrases: 1) "*Halachah v'ein morin ken – This is the halachah but we do not publicize it,*" 2) "*Ein gozrin gzira al ha'tzibur ela im ken rov tzibur yacholin la'amod bah - We don't impose a decree upon the public if the majority of the public cannot uphold it,*" and 3) "*Hanach lehem l'Israel, mutav sh'yihiu shogegim – Let Israel be, better that they be unintentional violators.*" These terms can be used to show how the Rabbis distinguished themselves from others. These terms allow us to look at how the Rabbis

saw themselves and also how they envisioned the community around them. Each of these terms are found in the Babylonian Talmud exclusively; therefore they are indicative of later Rabbinic development when the Rabbinic influence in society had increased.

Halachah V'Ein Morin Ken – This Is The Halachah But We Do Not Publicize It

The term, "*Halachah v'ein morin ken - This is the halachah but we do not publicize it,* " offers a unique lens into the lack of confidence the Rabbis had in the people. There are certain matters regarding which the Rabbis were permissive; however, many of these lenient rulings were only shared within Rabbinic circles. Sometimes these lenient rulings were not even shared with disciples. Fearing that the people might misinterpret their words, the Rabbis acted with caution. These rulings were intentionally not publicized so that the community at large could not take lenient attitudes towards Jewish law. The Rabbis distinguished between members of their circle and the larger community, the *tzibura*.[277] Stricter views were sometimes held for the *tzibura*! The *tzibura* was described in Rabbinic texts as less familiar with Rabbinic reasoning and therefore there was a great need for the Rabbis to be cautious.

B. Shabbat 12b looks at the tension that the Rabbis felt in determining when and how to trust people (including themselves) with complicated Rabbinic prohibitions. The *sugya* begins by looking at the prohibition of reading by candlelight on Shabbat.

III.1
A. "...or read by the light of a lamp."
B. Said Rava, "That is the rule even if the lamp is located at a height twice a man's stature or two ox goads up, even ten rooms on top of one another."

[277] Miller, p. 250-254.

III.2

A. The rule pertains to one who should not read by himself, but it's okay for two to do so.
B. But hasn't it been taught on Tannaite authority: Neither one nor two?
C. Said R. Eleazar, "No problem, the former refers to two persons together studying a single subject, the other, two."
D. Said R. Huna, "But if it is by the light of a bonfire, even ten people are forbidden to do so."

Two approaches to Rabbinic ordinances are presented. Rava presents the opinion that once a prohibition is made, one cannot make allowances, even if these allowances can be justified. Rava is concerned that by making allowances, one can easily disregard the law altogether. For instance, even if it is highly unlikely that one will tilt the lamp on Shabbat due to its height one still may not read by candlelight on Shabbat (III-1B). Rashi explains that being permissive in one area will lead to permissiveness in non-analogous areas.[278] R. Eleazar presents a more lenient alternative that permits thoughtful exceptions to a Rabbinic decree. He appreciates that one can be looser with the law if it is done with care. For instance, he infers that if measures exist to prevent tilting a lamp, reading by candlelight can be permitted. This passage illustrates a key concern of the Rabbis: When can people be depended on to abide by Rabbinic practices and how are people relied on to understand Rabbinic practices (i.e. in making appropriate inferences)?

The Rabbis painted themselves as knowledgeable about human nature. This lofty appreciation was used to consider when to trust themselves as well as others. The Rabbis seemingly understood the motives, concerns and tendencies of all people. However, there was tension around this issue since the Rabbis differed in terms of degree of confidence

[278] Rashi is an eleventh century French Rabbinic scholar.

in the people. Different rules applied to different sets of people. As the *sugya* continues it differentiates between the behavior of aristocrats, Rabbis and attendants.

Rava states that a "distinguished" individual (i.e. a wealthy person) can read by candlelight. Rashi explains that a wealthy person would never tilt a candle himself, therefore one need not be concerned with him reading by candlelight on Shabbat. This follows R. Eleazar's understanding of Rabbinic practice. However, R. Ishmael describes how even he (as a "distinguished" person and a sage) was not able to resist the urge to tilt a lamp on Shabbat!

III.3

> B. Said R. Ishmael b. Elisha, "I shall read by lamp light, I won't tilt it." Once he was studying and he wanted to tilt the lamp. He said, "How great are the teachings of sages, who have said, 'A man should not read by the light of a lamp, lest he tilt it." R. Nathan says, "He studied and he did tilt it, but he wrote in his notebook, 'I Ishmael b. Elisha studied on the Shabbat and tilted the lamp. When the Temple is rebuilt, I shall bring a fat sin offering.'"

This story validates Rava's concerns. There is reason to be cautious in making exceptions because even "distinguished" people (i.e. with the financial capabilities to hire help) may not be able to resist human urges that defy Rabbinic ways. It is interesting that R. Ishmael is also a sage, bringing to light that even knowledgeable Rabbis may transgress, further supporting Rava's stringencies.

This attitude is challenged when R. Aba states that R. Ishmael would treat himself like a "commoner" with regards to the words of Torah. This opens up the possibility that one may not act in accordance with one's role and therefore confidence cannot be applied automatically. Only "distinguished" people and sages who act in accordance with their role can be relied upon. Again a divide is present as to the Rabbinic understanding of human practice and how trusting the Rabbis were willing to be.

Another category of people that the Rabbis discussed was attendants.

III.4

A. One Tannaite statement: On the Sabbath a waiter may examine cups and plates by light of a lamp, and another Tannaite statement: On the Sabbath a waiter may not examine cups and plates by the light of a lamp.
B. No problem – the one speaks of a permanent waiter, the other a temporary. Or, if you prefer, I shall say, both refer to a permanent waiter, but there still is no problem, the one speaks of a lamp that burns oil, the other; one that burns naphtha [which has a bad small, so one won't tilt it].

III.5

A. The question was raised: As to a temporary waiter and a lamp fed with oil, what is the rule?
B. Said Rab, **"This is the halachah but we do not publicize it."**
C. But R. Jeremiah bar Abba said, "This is the halachah but we do publicize it."

The text first distinguishes between a permanent worker and a temporary worker. The Rabbis assume that a permanent worker would be fearful of his master and would tilt the lamp to make sure the vessels are clean, while a temporary worker is too lazy to check by lamp. Significantly, Rabbinic knowledge is irrelevant; rather the Rabbis are concerned with the attitude of the worker.

The text then suggests that the key factor is the type of lamp. Only certain lamps would be tilted – not a *naphta* lamp that has an awful smell. This leaves a concern as to the appropriate expectation for a temporary worker (who can be trusted) with an oil lamp (that might be tilted) (III.5A). The Gemara responds: *Halachah v'ein morin ken-This is the halachah but we do not publicize it.* While the Rabbis permit the use of light in this case, they do not speak about it. Rashi suggests that there was a fear that people would treat the decree lightly if they heard this leniency. He's cautious of people making inappropriate inferences. R. Yirmiah counters that the decree should be made public.

There was tension in determining which laws to publicize to the greater community. Confidence in terms of resisting prohibited matters was the issue of greatest concern.

As illustrated, for the Rabbis who chose to trust, there were various categories and reasons for this trust. Knowledge was a key category. Wealth was also significant as was one's outlook towards one's responsibilities. It is significant that Rabbinic knowledge was not the only concern; rather it was how one was most likely to act. The Rabbis took into account the human tendency to make inferences. The inclination was not faulted; rather it was painted as natural. Sometimes this inclination was viewed as a link to the past and a means to solve a *halachic* dispute;[279] however, the more cautious Rabbis feared that people would start to make analyses like Rabbis, but that they would do so inappropriately. When the law was complex, those who were not sages might think that they knew how to act in accordance with the law, but the Rabbis assumed that they would be mistaken in their ways.

The conclusion of the *sugya* is relevant:

III.6

A. R. Jeremiah bar Abba visited the household of R. Assi. The waiter got up and examined the dishes by the light of a candle. R. Assi's wife said to him, "But you don't do it that way."
B. He said to her, "Let him be. He concurs with the theory of his master."

Quite noticeably, there was no finite conclusion to the matter of trust. The closing story implies that one was to follow his master. The Rabbis could have chosen to be strict, cautious and prohibitive or thoughtful, lenient and confidence. This tension acknowledges that the Rabbis accepted some deviance.

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[279] See above, "Pok Hazi."

This same caution is seen in b. Eruvin 6b, as the Rabbis discuss whether one can follow the selected strict rulings of two different sages, in this case Rav and Samuel. A supporting *baraita* finds that to follow the stringencies of two sages is "foolish." R. Nahman solves the problem:

E. Said R. Nahman bar Isaac, "All the restrictions were in accord with the position of Rav, for said R. Huna said Rav, '**This is the halachah but we do not publicize it.**'"

Rav responds: "*Halachah v'ein morin ken.*" In fact, only the stringencies of Rav were followed, but it was not publicized that the stringencies of Samuel were ignored in favor of Rav's leniencies. Rashi explains that this was due to a fear that the public would become accustomed to leniencies. This lenient attitude could have spread to other areas. Rather than give the public reason to speculate, the Rabbis painted themselves as overly strict. Safeguards were kept so that the people did not drift down a non-Rabbinic path. This points to the fear and cautiousness of the Rabbis.

B. Beitzah 28a introduces a discussion about sharpening a knife on a festival. The Mishnah prohibits doing so in a normal manner. While food preparations are permitted on *yom tov*, actions that could have been done before, such as sharpening, are prohibited. R. Yehuda disagrees. He states that it is permissible to do even the preliminary preparations for food on a festival and the *halachah* follows R. Yehuda. This implies that one could sharpen a knife on a festival. However, as described, this leniency was not publicized:

A. Said R. Nehemiah the son of R. Joseph, "[On a festival day] I was standing in the presence of Rava, and he was strapping a knife against the mouth of a basket."
B. "I asked, 'Is the master sharpening it or removing grease from it?'"
C. "And he said to me, '[I want only] to remove the grease from it.'"
D. "But I saw through him, that he [really] intended to sharpen it."

E. "But [he did not wish to say this, since] he reasoned that **this is the halachah but we do not publicize it.**"

The story describes an example of *halachah* as hidden from the community at large due to a concern that they would make inappropriate inferences. The community might have misunderstood the leniency and applied it elsewhere inappropriately. In doing so, different standards were created for the Rabbis and the people. Even a "*glorious ruling that is worthy of honor*" (as described earlier in the *sugya*) is withheld from the people due to caution. It is interesting that the Gemara approves of misleading the people if it was in their own interests. The Rabbis are described as parental figures, knowing what's best for their community. The people are portrayed as less developed in terms of Rabbinic thought and therefore unable to grasp the significance of lenient rulings.

The same principle appears in b. Menachot 36b with regards to wearing *tefillin* at night. While this is generally prohibited, R. Elazar rules that to do so to protect the *tefillin* is acceptable. The story is told of Ravina, who sat before Rav Ashi when the latter put on his *tefillin* at night. He asked Rav Ashi if he wore the *tefilin* to protect them and he responded yes. However, Ravina saw that Rav Ashi had other intentions. He understood that this was a case of, "*Halacha v'ein morin ken.*" Rashi clarifies that R. Ashi held that under Biblical law, one can fulfill the mitzvah of wearing *tefillin* at night. However, he did not want this publicized out of fear that people would fall asleep with their *tefillin* on and pass gas. While Rav Ashi trusted himself to properly care for his *tefillin* at night, he did not trust others to do so. This is another example of a respected sage misleading others out of concern that they could not be relied on. This time it is a learned disciple who is misled! Therefore, the precautionary measures taken before with the public could

also have been used within Rabbinic circles. Again, the Rabbis are described as knowledgeable as to the weaknesses of people and they act accordingly. While they trusted themselves in certain cases, this confidence did not extend to others, even potentially their colleagues.

In b. Baba Kamma 30b, Rav and Zeiri debate whether it is permitted to take materials that have been abandoned in the public domain. The Tannaim agree with Rav that the property is ownerless; however, the invoking of, "*Halacha v'ein morin ken,*" indicates that there was a question whether to publicize this to the community. The Rabbis were worried that if they permitted taking these items, the people would assume that they could take other prohibited items. Again, the Rabbis felt tension in determining what information the public could handle. The Rabbis, with their appreciation of human nature, feared that people would make inaccurate inferences.

B. Avodah Zarah 37b tackles purity laws regarding an encounter with a corpse or with someone who has encountered a corpse. The *sugya* labels Yose ben Yoezer, "*Yosef the Permitter.*" The Rabbis agree with Yose's lenient attitude, but they disagree with making lenient ordinances public. The Gemara frowns upon Yose's publicizing the nature of these laws. There is a fear that the people will take purity laws lightly and therefore not use caution with purity matters. There is an appreciation for toughness and strictness in the public, even if one is more lenient and permissive in private. Yose is not frowned upon for his rulings; rather the concern is his display of these rulings to the public without care.

These passages paint the Rabbis as very thoughtful in their ways. Not only did they display great care with their Rabbinic discussions, they were also cautious about the

potential consequences of their rulings on a population that was perceived to be easily misled and quick to make inaccurate deductions. The Rabbis are described as having a precise understanding of the human mind and its reflexive ways. This appreciation helped them to distinguish between various groups of people, often differentiating between their self-perception and their perception of the public. Ironically, this meant that Rabbinic law may at times have been stricter with the community at large. The Rabbis permitted misleading the people at times if this would have led to stricter adherence of *halachah*. Things were kept simple, often times restrictive, in order to foster clarity for the people. The term, "*Halachah v'ein morin ken,*" points to the potential for a category of laws that were hidden from the people, restricted to the Rabbis who could have appreciated their significance and worth. The community at large was not trusted to understand the intricacies of the law and the Rabbis feared misuse. The Rabbis were likely careful not to practice these leniencies outside of their homes so that their behavior would not be misconstrued.

Ein Gozrin Gzira Al Ha'Tzibur Ela Im Ken Rov Tzibur Yacholin La'Amod Bah - We Don't Impose a Decree Upon the Public if the Majority of the Public Cannot Uphold it

The Rabbis were very demanding of the people, and yet they were aware that there were limits to what they could expect. Some demands were reasonable, while others went too far. Rabbinic texts reveal a balancing act with regard to setting limits. Sometimes, when the line was crossed the Rabbis declared: "*Ein gozrin gzira al ha'tzibur ela im ken rov tzibur yacholin la'amod bah-We don't impose a decree upon the*

public if the majority of the public cannot uphold it." This reflects a general Rabbinic principle that the law was tailored to the practices of the people.[280] The Rabbis did not want to decree laws that the community could not bear. The Rabbis aspired to create a societal system where each member of the community (including themselves) could reasonably abide. The Rabbis appreciated that it was important for them to appear as sensitive and realistic with their demands of the people. Often the phrase is used in reference to restricting a fast to certain days.

The Mishnah of b. Ta'anit 10a looks into the practice of initiating a series of fasts during a time of drought:

A. [If] the seventeenth day of Marheshvan came and rain did not fall, the individuals began to fast a sequence of three fasts [Monday, Thursday, Monday].
B. They eat and drink once it gets dark.
C. And they are permitted to work bathe, anoint, put on sandals and have sexual relations.

According to the Gemara these fasts could not commence on a Thursday, because this would disrupt price levels as people shopped for Shabbat. This economic burden as described was too much for the people to bear. Significantly, economics is described as playing a role in *halachah*. It was unacceptable for religious obligation to cause economic hardship.

This passage distinguishes "individuals" as a unique group amongst the community. It is unclear as to who these "individuals" were; they may simply have been people who fasted voluntarily to appeal to God through self-affliction. The Gemara pursues this question of identity:

A. What is the definition of individuals?
B. Said R. Huna, "These are the rabbis."

[280] Dorff and Rosett, p. 432. The Mishnei Torah – Law of Rebels 2:7, describes this principle.

C. And said R. Huna, "Individuals fast for three fasts, on Monday, Thursday and Monday."
D. So of what does he propose to inform us? We have learned as a Tannaite rule, They do not decree a fast for the community in the first instance for a Thursday, so as not to disturb market prices. But the first three fasts are on Monday, Thursday, and Monday. And the second set of three fast days are on Thursday, Monday and Thursday!
E. What might you have imagined – that is the rule for the community at large, but as to the individual, that is not the case? Thus we are informed that that is not so [but the same rule pertains even to individual actions].
F. So to it has been taught on Tannaite authority:
G. When individuals begin to fast, they fast on Monday, Thursday, and Monday. They suspend the procedure for the New Moon and for festival days that are listed in the Fasting Scroll.

R. Huna envisions these "individuals" as Rabbis. This opinion presumes that the Rabbis felt a sense of responsibility to the community as leaders. The separate classification of people is noteworthy as it sets a precedent that one could have had different expectations for sub-groups within the community, according to R. Huna, the sages and the public. However, the sages are described as being open to a broader understanding of "individuals." The *sugya* continues (10b):

A. Our rabbis have taught on Tannaite authority:
B. A person should not say, "I am merely a disciple, I am unworthy to be deemed 'an individual.'" But all disciples of sages fall into the category of "individuals."
C. Who [then] falls into the category of an "individual" and who falls in the category of a disciple?
D. An "individual" is anyone who is suitable for appointment as a responsible authority over the community. A disciple is another whom one may ask a rule of law in his learning and who can give the ruling, and even in the tractate of Kallah.

According to this understanding, while all disciples were by definition responsible to the community, this definition leaves room for some leaders who were not disciples, but were still distinguished by the title "individual." This passage presents the Rabbis as having held an authoritative role with unique responsibilities to the community, but these

expectations were not exclusive to the Rabbis and could have been shared with other distinguished leaders.

Even with regards to these "individuals," the Mishnah balances strict decrees with lenience and understanding.[281] While afflicting themselves during the day, these "individuals" could eat and drink after nightfall, work, wash, anoint, wear leather sandals and have sex. There were responsibilities that came along with being an "individual," but one was not expected to conduct oneself as an ascetic, refraining from all pleasures or indulgences. The Gemara concludes that matters that would serve as a burden to the public were also burdensome for the "individuals" and were therefore not permitted. There is a line that must not be crossed, even for "individuals" (though potentially for the Rabbis).

The Mishnah of b. Ta'anit 12b applies tough conditions to the public when there is no rainfall following the fasts by individuals.

I.

A. Once these [fasts] have gone by and they have not been answered, the court decrees a sequence of three more fasts for the community.
B. They eat and drink [only] while it is still day [on the day prior to the fast].
C. And they are forbidden...

II.

A. If these [further] fasts have passed and they have not been answered, the court decrees a sequence of seven more fasts for them,
B. which then add up to thirteen fasts for the community.
C. How are these [further fast] still more stringent than the first ones?
D. It is that on these they sound the shofar, and they lock up the stores.
E. On Mondays they partially open [the stores] after dark.
F. And on Thursday they are permitted [to open them all day long] because of the honor owing to the Shabbat.

III.

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[281] This also reflects the boundaries of certain types of fasts.

A. [If] these two have passed and they have not been answered, they cut down on commerce, building, planting, the making of betrothals and marriages, and on greeting once another,
B. like people subject to divine displeasure.
C. Individuals go back and fast until the end of Nisan.

As the Rabbis try to get God's attention, conditions get progressively more stringent, with as many as thirteen total fast days decreed. As the Rabbis increase their demands, they are also attuned to a number of needs of the community that demand moderation. This illustrates that even during hard times, economics still played a factor in Rabbinic decrees. There was also concern with appreciating the joy associated with religious occasions such as Shabbat and festivals. As described, the Rabbis understand that to interrupt the joy associated with these times would be too extreme. Peoplehood can be impacted as festival celebrations are dampened. Considering these factors, the Rabbis ask the public to "cut down" their involvement in pleasurable activities. It is significant that the Rabbis do not forbid these acts completely. This also suggests that the Rabbis understood that they had to be reasonable with their demands.

If the drought persists "individuals" were again asked to fast until the end of Nissan, but public fasts ceased. This displays that there were limits to what could have been asked of the people, and fasting during the spring, when it does not normally rain, was an example of surpassing these boundaries. However, there was a precedent for a more stringent set of rules for an exclusive group of people and more leniency for the community at large. There was a point when the Rabbis could apply a burden to themselves, but they could ask no more of the people.

The Rabbis discussed how much they could ask of the people in a *sugya* that follows (14b).

A. In the time of R. Judah the Patriarch there was some sort of trouble. He decreed thirteen fasts and they were not answered. He considered decreeing another set. Said to him R. Ammi, "Lo, sages have said, "They do not burden the community too much."
B. Said R. Abba b. R. Hiyya bar Abba, "R. Ammi in acting as he has acted in his own behalf! [For he did not want to fast.] But this is what R. Hiyya bar Abba said R. Yohanan said, "They made that statement [Ammi just now cited] only in connection with rain [that they not overburden the community], but as to other forms of calamity, people go on fasting until they are answered from Heaven.
C. "So too it has been taught on Tannaite authority:
D. "When [the sages] spoke of a sequence of three or a sequence of seven fasts, that was only in connection with rain [that they not overburden the community], but as to other forms of calamity, people go on fasting until they are answered from Heaven."
E. May we say that that [Tannaite formulation of the law] represents a refutation of the position of R. Ammi?
F. R. Ammi may respond to you, "It represents a conflict of Tannaite formulations of the law, for it has been taught on Tannaite authority:
G. "'They do not decree more than thirteen fasts for the community, since they do not burden the community too much,' the words of Rabbi.
H. "Rabban Simeon b. Gamaliel says, 'That is not the governing consideration. But it is because from that point onward the time for the rain has passed.'"

Following the Mishnaic model, R. Judah considers applying even tougher conditions on the people in response to hardship. According to R. Ammi, he desired to go too far, excessively burdening the people. R. Abba insists that R. Ammi's opinion is a minority view, and that the Rabbis are restricted only with regard to fasts that pertain to rain.[282] However, for other crises a strong response like a fast is necessary and the people would likely respond to this demand willingly. R. Ammi is not deterred. His statements emphasize that the argument was grounded in a Tannatic dispute that struggled to determine how much could be imposed on the people. While there may have been a boundary, this line was not clear to the Rabbis. Kalmin finds that in this case the Rabbis

[282] It is likely the case that this type of hardship was the most frequently decreed and therefore it's logical that the Rabbis would potentially cap this phenomenon. The Rabbis understood that sometimes it simply doesn't rain and therefore fasting is not necessary. Droughts are common therefore there needs to be a limit to the demands placed on the people (especially since they were likely accustomed to dealing with lack of water).

were either concerned about the potential for adverse reaction to Rabbinic demands or they were reluctant to saddle the community with a heavy burden.[283]

Later (18b) there is a discussion defining what constitutes a "commencement" of a series of fasts. Once begun, the Gemara describes an expectation that the series must continue, even when interrupted by a festival. There is question as to what is considered a series and there are also questions about whether such a fast must be "full" (i.e. must it continue until sunset). There is a tension present between the need to atone and the need to celebrate, both of which are important for community identity. The concluding statement comes down strong: *The halachah is to fast and complete.* The Rabbis of the Babylonian Talmud were not afraid to make a difficult demand, even in the face of dampening the joy of a festival and in contrast to the softer demands of the Mishnah. However, this firm attitude was not consistent, displaying a Rabbinic appreciation for the role of festival celebrations in fostering a sense of community. To attenuate these occasions could have been too much for the individual to bear. It also could also have been too much for the community to bear.[284] The official answer may have been tough, but the discussion reveals conflict.

There were other areas in which the rabbis were hesitant to burden the people. B. Baba Kamma 79b discusses the rules of raising specific types of animals in Israel. The *sugya* states: *In spite of the fact that they say [in the Mishnah] that one cannot raise small cattle, one can raise large cattle, since* ***we do not impose a decree on the public if the majority of the public cannot uphold it.*** The passage acknowledges that there were limits to what the Rabbis could ask of the people. In regard to raising cattle, the Rabbis

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[283] Kalmin, p. 78.

[284] This issue comes up again in b. Eruvin 41a. The Rabbis conclude with the same firmness, but again, the discussion displays hesitation by the Rabbis.

point out that they must be cautious in their demands, not asking too much of the people. Steinsaltz explains that it was easy to import small cattle, but to import large cattle was a great hardship.[285]

B. Baba Batra 60b includes a story that could have served as a guide to the Rabbis' struggle to determine what they could ask of the people. The text considers the appropriate extent of mourning.

A. Our rabbis have taught on Tannaite authority:
B. When the Temple was destroyed a second time, there multiplied in Israel abstainers, not eating meat or drinking wine. R. Joshua engaged with them, saying to them, "My children, how come you are not eating meat or drinking wine?"
C. They said to him, "Should we eat meat, from which offerings were made on the altar, and now the rite is not more, and should we drink wine, which they would pour out in libations on the altar, and which now is not more?"
D. He said to them, "Well, then bread we should now eat, for the meal offerings are not null."
E. "Still, there is produce."
F. "Produce we should not eat, for the rite of the first fruits is annulled."
G. "Still there is other produce."
H. "Water we should not drink, for the water libation is annulled."
I. That shut them up.
J. He said to them, "My children, come and I shall tell you how things are. Not to mourn at all is hardly possible, for the decree has already been made. To mourn too much also is not possible, for **we don't impose a decree upon the public if the majority of the public cannot uphold it**: 'You are cursed with a curse, yet you rob me of the tithe even this whole nation' (Mal. 3:9). So this is what the sages have said: 'one may stucco a house but should leave a bare spot.'"
K. "How much?"
L. Said R. Joseph, "A square cubit."
M. Said R. Hisda, "By the door."
N. [Joshua continues:] "A woman should put on all her jewels, but should leave off one or two..."

R. Joshua argues that not to mourn at all is impossible, but to mourn excessively is also not acceptable, for: "*Ein gozrin gzira al ha'tzibur ela im ken rov tzibur yacholin la'amod bah - We don't impose a decree upon the public if the majority of the public cannot*

[285] Steinsaltz is a contemporary Talmud scholar.

uphold it." Rabbi Joshua pleads for balance. To mourn is appropriate, but it must be kept in perspective. The Rabbis may have been in the position to make decrees, but this exercise of authority needed to be thought through carefully. The Rabbis had to be consistently astute as to what the people were capable of doing. To exceed this limit would have been inappropriate.[286]

B. Avodah Zarah 36a uses the *Ein Gozrin* principle to resolve a dispute about the use of oil made by gentiles. The Gemara disputes the Mishnaic prohibition. Each argument is refuted until the texts states: "*Ein gozrin gzira al ha'tzibur ela im ken rov tzibur yacholin la'amod bah - We don't impose a decree upon the public if the majority of the public cannot uphold it.*" To prohibit the community from using oil made by gentiles is described as unreasonable and the people would not have been able to comply. Accordingly, any court, including a lesser court, had the authority to abolish the "unreasonable" decree. The Gemara supports this, closing with a prooftext from Malachai (3:9): *With a curse, you are cursed, yet me do you rob, the entire nation.* Malachai describes a case when the entire nation had taken responsibility for an obligation of faith, but in the case of oil, the people could not make such a commitment. Accordingly, the decree is futile and void.

The use of the *Ein Gozrin* argument displays Rabbinic humility. They were not all powerful and there were limits to what they could have asked of the people. Significantly, there were also limits as to what they should have asked of the people. To push too hard would have potentially destroyed the community in one of two ways:

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[286] See below "Hanach Lehem L'Israel," for more on this passage.

1) The people would have been angered and frustrated and pushed back rejecting the Rabbis.

2) Jewish peoplehood would have been at risk as restrictive measures dominated cultural celebrations.

The Rabbis presented themselves as quite knowledgeable as to the mentality of the community. Guiding their thoughts was the need for balance. Both joy and suffering, as well as leniency and stringency, had to be thought through. There was no point to Rabbinic power if it was used to destroy. Sometimes there were competing values that had to be weighed. These included the realities of economics and the significance of celebratory religious practice. These pragmatic concerns applied to both the Rabbis and the public. There was tension amongst the Rabbis when making weighty choices. The use of the *Ein Gozrin* clause and the intricate discussions surrounding the term points to the ongoing challenge of the Rabbis in determining the appropriate path for a healthy Rabbinic influenced community.

Hanach Lehem L'Israel, Mutav Sh'yihiu Shogegim – Let Israel Be, Better That They Be Unintentional Violators

In legal matters, the Rabbis preferred to speak in terms of prohibition and permission. As they navigated their Rabbinic route, it was often difficult to suggest a middle path. However, sometimes the criteria that they used to guide their own lives were different than the lens they used to look at the community at large. The phrase: "*Hanach lehem l'Israel, mutav sh'yihiu shogegim – Let Israel be, better that they be unintentional*

violators," reveals a viewpoint that is humbling and unique. When used, it is an indication that the Rabbis disagreed with the practice of the people, but they chose to remain silent, not correcting the people regarding their prohibited ways. The Rabbis accepted that the people would ultimately act in their set ways due to human limitations or focused mindset. Transgressing unknowingly was preferable to sinning knowingly. While signaling disapproval of the folk in these specific areas of legal concern, the Rabbis didn't (or perhaps couldn't) do anything to push the people to change. This points to the complicated nature of the relationship between the Rabbis and the people. By remaining silent, the Rabbis regretfully accepted that which they could not impact and thus they demonstrated a protective stance towards the people.

In b. Beitzah 29b the Mishnah talks about the need to alter one's *yom tov* practice to acknowledge the holiness of the day in contrast to a weekday.

A. He who [on a festival] brings jars of wine from one place to another should not bring them in a basket or hamper.
B. But he brings them on his shoulder or [carrying them] before him.

Methods for the transport of straw are similarly outlined. These alternative modes replace the usual means of transport thereby illustrating the uniqueness of the day. The Mishnaic concern is to do things differently.

The Gemara limits the Mishnah with its opening statement.

A. A Tanna taught:
B. If it is impossible [for the individual carrying the load] to do so in an unusual way, it is permitted [for him to carry in the normal fashion].
C. Rava enacted at Mehoza:
D. Whatever one [usually] carries [by hand] with great effort—[on a festival] he should carry it on a carrying pole.
E. That which he [usually] carries on a carrying pole, he should carry [on a festival] on a yoke...

H. But if it is impossible [in any way to carry the load in an unusual manner], it is permitted [to carry it in the normal way].

The Gemara concedes that while the Rabbis ideally demanded that the people change their ways on the *yom tov*, sometimes this was not possible. Great efforts are made in the text to suggest alternative solutions, but in the end, it is deemed permissible if an appropriate modification cannot be identified. The Rabbis accepted that while the ideal was to modify one's acts, this was not always possible and this was acceptable. A precedent was set: The Rabbis could not always get what they wanted!

In the less than perfect world, the Rabbis realized that their demands of the people were not always reasonable and that in certain areas they needed to expect less (even in a perfect world, there are limited ways to carry a load!). As illustrated, the Rabbis were enthusiastic with their efforts, yet they also noted that these efforts did not guarantee success. It would have been unreasonable for the Rabbis to hold to their ideal.

The text continues:

J. Said Rava b. Hanin to Abaye, "Did the Rabbis say, 'on a festival day, insofar as it is possible [to do work] in an unusual way, one should [in fact] do it in the normal fashion]."
K. "For [to the contrary], these women [that is, our wives]—when they fill up water pitchers on the festival day, they do not do it differently at all,' yet we do not say a thing to them [about it]!"
L. [Abaye] said to him, "This is because it is impossible [to fill the pitchers in any other way]."
M. "For how should they do it?"
N. "If one who usually fills a large pitcher [instead] fills a small one, she will have to do more walking, [making several trips]."
O. "If one who usually fills a small pitcher [instead] fills a large one, she will increase the load that [she had to carry]."
P. "If she covers it with a lid, it might fall off, and she will wind up carrying it."
Q. "If she ties [the lid on], it might become loose and she will end up refastening it."
R. "If she spreads a cloth over it, it might get soaked with water and she will wind up wringing [it out]."

S. "Therefore, it is impossible [to bring water home in an unusual manner]."

Rava is disturbed that the Rabbis could teach a rule and then do nothing to enforce it. Abaye appreciates that there is no possible alternative. Rava resists this skeptical attitude. In response, he suggests a number of modifications for the women to follow, but each is rejected as it would take away from the joyous nature of the festival. While the Rabbis could potentially argue more defiantly, and even demand a modification, they would in effect be losing a larger Rabbinic battle (i.e. promoting the joyous nature of festivals). The Rabbis valued that all battles could not be won and that they had to be focused in their demands on the greater good for the people.

In this case it is not that the people are ignorant, rather it is the physical nature of the demands that cannot be modified. The women need to carry the water, and to change the method of transport is tremendously problematic. For the Rabbis to invest their time in creating seemingly inappropriate solutions is a waste of their energy. Perhaps the Rabbis also valued how they were looked to by the people, not wanting to appear foolish and out of touch with reality.

Rava's objection highlights the Rabbinic perspective of themselves. The Rabbis recognized that their place as teachers of the community was limited. They needed to be cautious as to how they presented themselves. The Gemara portrays Rava as innocent and naïve, unlearned in the realities of the world. The people are not faulted for their actions in this initial scenario and their behavior is deemed acceptable.

The Gemara continues with Rava challenging Abaye describing another legal matter where the Rabbis turn a blind eye.

A. Rava b. R. Hanin said to Abaye, "We have taught on Tannaitic authority: [On a festival day] they do not clap hands, slap the thigh or dance, [lest they come also to play musical instruments]."
B. "But now, when we see that people do this [anyway], we do not say a thing to them!"

Abaye responds differently this time. He first provides another example of a legal matter that is ignored by the Rabbis: the prohibition of sitting at the edge of an alleyway on Shabbat. He then elaborates: *"Hanach lehem l'Israel, mutav sh'yihiu shogegim-Let Israel be, better that they be unintentional violators."* Abaye's affirmation illustrates the perceived weakness of the people. In these instances, unlike the carrying of the water, the Rabbis disagree with the practice of the people. However, they value letting the people sin in innocence rather than making them responsible for intentional *halachic* prohibitions.

Abaye's comment suggests that there was a category of legal rulings that the Rabbis observed themselves, but let the people ignore. There was an impression that the people would inevitably do what they do even though the Rabbis objected to the behavior. Abaye implies that these sets of behavior were so engrained, that it was better to let the people just be. This admission acknowledged that people reflectively acted in certain manners and they would not change even if the Rabbis intervened. The people are presented as weak and obstinate, unable to alter their ways and incapable of the stringent behavior of the Rabbis.[287], [288]

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[287] Kalmin highlights that the different standards for Rabbis and non-Rabbis are illustrated by the publicizing of genealogical blemishes. He finds that non-Rabbis were advised not to publicize the genealogical blemishes of others because to do so would lead one to believe that they had a blemish themselves. However, the Rabbis as experts were not bound to this prohibition since their knowledge of genealogy was based on fact and true insight, not malicious speculation (p. 57).

[288] B. Shabbat 148a introduces another example of an improper practice that the Rabbis choose to ignore, this time dealing with financial exchanges on Shabbat. A similar discussion follows and the exchange

The phrase, "*Hanach lehem l'Israel, mutav sh'yihiu shogegim – Let Israel be, better that they be unintentional violators,*" is used on one more occasion, in b. Baba Batra 60b.[289] Leading up to this passage, R. Yehoshua makes the argument that one should not respond to the destruction of the Temple with ascetic acts, even though this behavior could be justified as mourning practices. Building on this message, the *sugya* continues:

A. It has been taught on Tannaite authority:
B. Said R. Ishmael b. Elisha, "From the day on which the house of the sanctuary was destroyed, by rights we should decree for ourselves not to eat meat or drink wine. But we don't impose a decree upon the public if the majority of the public cannot uphold it"
C. "And from the day on which the wicked kingdom took over, issuing against us fierce and harsh decrees and nullifying the Torah from us and religious duties as well and not allow us to come together for the celebration of the end of the first week or a son's life [on which circumcision would take place]" – some say, "the salvation of the son" – by rights we should make a decree for ourselves not to get married or to have children. But then the seed of Abraham, our father, would become extinct on its own."
D. "**Let Israel be, better that they be unintentional violators.**"

The term "*by rights we should-din hu*" (B, C) is used carefully with shocking implications in this text. First (B), R. Ishmael clarifies that the people are justified to take on ascetic practices after the Temple was destroyed, but this practice is rejected. R. Ishmael teaches that sometimes leadership entails doing what is best for the community at the expense of what is justified. While continuous mourning is justified, R. Ishmael demands that the people seek balance and live life. It is not reasonable to expect the people to live lives of withdrawal, nor is this a healthy path to advocate.

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between Rava and Abaye from B. Beitzah 29b is repeated including the phrase: "*Hanach lehem l'Israel, mutav sh'yihiu shogegim – Let Israel be, better that they be unintentional violators.*" The message in this *sugya* is the same as in the Beitzah passage.

[289] See above, "Ein Gozrin," for an extended discussion on the lead up.

The term is used again (C) to justify ruling against *halachah* and abandoning Jewish practice given the present political realities. In the face of oppression and hardship, it was not possible to traditionally celebrate the birth of a child, and this might have justified refraining from conceiving children. Again, the Rabbis reject this justification, this time following the less stringent ways of the people. To follow a justified path would have led to communal extinction. The Rabbis navigated a path of disobedience in the face of disaster. Valuing the greater good of communal existence, the Rabbis in effect justified disregarding their *halachic* demands. This story highlights that there were extraordinary circumstances when the Rabbis had to look beyond what was justified.

This text illustrates the potential for the Rabbis and the community to act as one. The incorrect ways of the people were in fact potentially superior in the face of disaster, and the Rabbis chose to follow this path, yearning for communal survival. Left to Rabbinic logic, the Rabbis acknowledged that the Jewish people would have been destroyed. The ignorant ways of the community served as a rescue boat for the Jewish people at large. A precedent was set for sometimes ignoring the overly strict ways of the Rabbi, relying on the engrained ways of the people.

Midrash speaks of Miriam displaying similar ingenuity.[290]

> Amram went and acted upon his daughter's advice. He, as is well known, was the most eminent man of his generation. Aware that Pharaoh had decreed, "Every son that is born ye shall cast in the river" (Exodus 1:22), he said, "We labor in vain," and was the first to divorce his wife. At that, all the others divorced their wives. Then his daughter said to him, "Father, your decree is more cruel that Pharaoh's for Pharaoh has decreed only against the males, while you decree against both males and females. Pharaoh decreed only concerning this world, while you decree concerning both this world and the world to come. Now since Pharaoh is a wicked

[290] Song of Songs Rabbah 1:15.

> man there is doubt whether his decree will or will not be fulfilled; but since you are a righteous man, your decree is sure to be fulfilled." At once, he went and took back his wife, and so did all the others.

Following Miriam's teaching, the Rabbis also chose to put aside their harsh demands so that as a people, the Jewish community could follow the path of life. The human instincts of the people were presented as more useful than the *halachic* safeguards of the Rabbis.

Comparing these texts, a number of interpretations are possible. The discourse between Rava and Abaye portrays a tension between that which the Rabbis could ignore and that which they had to actively deal with. Significantly, lack of protest did not mean acceptance (though in some instances it could have). Sometimes the Rabbis recognized that their expectations could not surpass physical limitations and this had to be accepted. In this case the teachings of the Rabbis would have been a nuisance and a bother. In other instances the Rabbis objected to the practices of the people, but resigned themselves to the fact that they could not impact these engrained ways. Again, they were seemingly faced with no choice but to turn a blind eye. Baba Batra emphasizes the Rabbinic appreciation that while the people might err in their ways, there was a need occasionally not only to tolerate these transgressions, but to imitate them for the sake of collective survival. The Rabbis were presented with the challenge of discerning which approach to use when analyzing the ways of the people.

The Rabbis struggled to find a balanced role as leaders. While they thought highly of their teachings, they also acknowledged that there were limits to their power. Sometimes these limits were due to physical restraints, other times they were due to the strong will of the people. In Baba Batra, this powerlessness was in fact a blessing that prevented the Rabbis from heading down a path of self-destruction. The Rabbis were

thoughtful with their words as well as their silence. In each *sugya* the Rabbis displayed caution as they struggled to determine the appropriate path.

A number of readings stand out when analyzing the phrase: "*Hanach lehem l'Israel, mutav sh'yihiu shogegim – Let Israel be, better that they be unintentional violators.*" Perhaps the Rabbis were taking a beneficent path for the sake of the people. In doing so they could have been promoting themselves as compassionate leaders. However, the Rabbis may also have been interested in protecting their reputation and status in the community. To fight a losing battle would have denigrated the opponent (i.e. the community) and would have made the Rabbis look weak. Thirdly, the Rabbis may have been displaying begrudging respect for the people, understanding that their engrained instincts (and not *halachic* stringencies) may have been the key to communal survival.

The use of the Rabbinical term, "*Hanach lehem l'Israel, mutav sh'yihiu shogegim – Let Israel be, better that they be unintentional violators,*" reveals a truly complicated sense of self. While yearning to assert their role as teachers, guides and leaders, the Rabbis were also presented with the challenge of understanding their limitations. Furthermore, the Rabbis saw themselves as protectors of the community. Balancing these concerns, and even cautiously appreciating the intelligence of the public, the Rabbis affirmed the importance of sometimes objecting silently to the questionable acts of the people.

Trust Through the Ages

Society is built on relationships between neighbors. The Rabbis had a complicated relationship with the people who they viewed as distinct, and yet part of a collective Jewish whole. The two depended on one another, even if this confidence appeared fragile at times. With no Jewish community, there would have been no need for Rabbis; and with no Rabbis, there would have been no Jewish community. In the early Rabbinic era the Rabbis were still defining their role and they accordingly afforded much faith in the ways of the people. In Babylonia, later in the Rabbinic era, the Rabbis were more confident in their stature and influence and were therefore more independent, but even then they still acknowledged a place for the voice of the people.

The Rabbis painted themselves as experts on human nature. They acknowledged both their own strengths and weaknesses as well as those of others within the community. Amidst their great-perceived knowledge, Rabbinic discussions reveal great tension when narrowing on a specific path and balancing competing points of view. Rabbinic terminology displays the great conflict surrounding when and how to depend on the community at large. When lost, the Rabbis recognized that the people could serve as partners to guide them on their way. In the Jerusalem Talmud this partner was respected as a link to the past guided by God's teachings. In the Babylonian Talmud this partner was reluctantly acknowledged, while viewed as weak and separate. At all times this partner was silent, never consulted directly – it was their instinctive acts that guided the Rabbis.

Since behavior was the key to the trust between the Rabbis and the people, customary acts were afforded great value! *Minhagim* impacted every area of life, from economic practices to religious observance. The people relied on these *minhagim* which fostered order in society. The Rabbis appreciated that the people were quite dependent on their customs, but also that there was a holy strengthening nature to customary practice that had to be considered. The Rabbis consistently illustrated a respect for *minhagim* throughout the Rabbinic period. While the Rabbis liked to paint themselves as omnipotent, their humbling words acknowledged that in fact it was the customary acts of the people that often dominated. Chapter 3 will highlight the Rabbinic appreciation for humility in the community as the Rabbis strove to balance their elitist views with more pragmatic realism.

Chapter 3 – The Rabbinic Imagination of the People

Aggadic narrative speaks to the Rabbinic perspective of the people's views of the Rabbis. By analyzing these texts one can better understand how the Rabbis understood their role in the community. The Rabbinic descriptions of the communal outlook on Rabbinic roles were hardly unbiased and they point to Rabbinic aspirations for their stature as well as Rabbinic struggles to find their place in society. Rabbinic *aggadah* highlights the importance of Rabbinic humility and the potential for non-Rabbis to serve as teachers of authentic Torah. These stories emphasize that the Rabbinic class underwent an identity crisis of sorts as it sought to balance an elite self-image with the more humble expectations of the people.

In p. Yevamot 13:1, the people are described as articulating exactly what they were looking for in a Rabbi:

> E. The people of Simonia came before Rabbi [Judah haNasi]. They said to him, "We want you to give us a man to serve as preacher, judge, reader [of Scripture], teacher [of tradition], and to do all the things we need." He gave them Levi bar Sisi.

Quite significantly, the people are portrayed in need of guidance and services. They request Rabbinic assistance to help them find their way. Most of their demands pertain to religious duties, but they also make a more general request for "all things that we need." Rabbi does not hesitate to provide someone who can meet these expectations. This narrative points to the Rabbinic perspective that Rabbis served a unique role in that they could provide assistance for not only religious functions, but could also deal with everyday issues and concerns. The Rabbi was therefore perceived as a leader par excellence with a trained specialty that had a global reach. The people are described as

respecting of this role. According to this story, they perceived themselves as desperately in need of guidance.

The story continues:

> F. They set up a great stage and seated him on it. They came and asked him, "A woman without arms – with what does she remove the shoe?" And he did not answer.

They ask Levi two more questions, and again he does not answer. It is interesting to note that each question is rather obscure, two dealing with the practice of *halitzah* and the third an exegetical analysis of a prophetic verse. Are the people trying to stump the Rabbi? Are they hoping that the Rabbi will prove himself? Are they sincerely interested in these Rabbinic concerns? The motives of the people are unclear, but like a disciple, the public is presented as respectful, with serious questions of traditional Jewish thought. In fact these questions reflect traditional Rabbinic questions that one would expect in the academies of study.

Frustrated, the people complain to Rabbi, asking why he sent them someone who could not answer their concerns. Rabbi proceeds to scold Levi for not providing answers to the queries when the people enquired of him (which he knew!). In self-defense, Levi responds:

T. "They made a great stage and seated me on it, and my spirit became exalted."

Rabbi responds:

> V. "What caused you to make a fool of yourself in regard to teachings of Torah? It was because you exalted yourself through them."

Rabbi teaches that Levi let the warm reception of the people pollute his thoughts. Rather than using Torah to guide, he let his background in Torah elevate his ego. This superiority caused him to draw a blank when the people demanded answers. Rabbi

illustrates the consequences of putting oneself up on a pedestal; the Rabbinic class was susceptible to this weakness.

This passage teaches that the Rabbis perceived that they had the potential to fulfill a great need for the people. Torah could serve as a light for the public, and only the Rabbis were equipped with the scholastic background to answer this call. The early Rabbis dreamed of serving as effective leaders to the people. However, this text affirms the importance of humility and emphasizes that the Rabbis could only serve effectively if they understood that their status as communal leaders was not to be held far above the people. If Torah was used to elevate their role, it was being misused.

An egotistical Rabbi appears again in b. Ta'anit 20a-20b:

A. Our rabbis have taught on Tannaite authority:
B. A person should always be as yielding as a reed and never as unyielding as a cedar.
C. There is the case of R. Simeon b. Eleazar, who was coming from the house of his master in Migdal Gedor, riding on an ass and making his way along the riverbank. He was in a very happy frame of mind and feeling good about himself because he had learned a great deal of Torah. An unusually ugly man came along. He said to him, "Peace be to you Rabbi." But [Simeon] did not reply to him.
D. Then [Simeon] said to him, "Empty head! What a beast [how ugly] you are!" Is it possible that everyone in your town is as ugly as you are?"
E. He said to him, "I really couldn't say, but go to the craftsman who made me and tell him, 'How ugly is that utensil that you have made!'"
F. When R. Simeon b. Eleazar realized that he had sinned, he got off his ass and prostrated himself before the man, saying to him, "I beg you to forgive me."
G. He said to him, "I shall not forgive you until you go to the craftsman who made me and tell him 'How ugly is that utensil that you have made!'"
H. He ran after the man for three miles until he came to his town. The people of the town came out to meet him. They said toward him, "Peace be to you Rabbi, our teacher."
I. He said to them, "Who do you call 'Rabbi'?"
J. They said to him, "To the one who is going along after you."
K. He said to them, "If this is a 'Rabbi' may there not be many more like him in Israel."
L. They said to him, "God forbid! And what has he done to you?"
M. He said to them, "Thus and so did he do to me."

N. They said to him, "Nevertheless, forgive him, for he is a man who is great in Torah-learning."
O. He said to them, "Lo, for your sake I forgive him, on the condition that he not make a habit of acting in that way."
P. On that same day R. Simeon entered the great study house that was his and gave an exposition: "A person should always be as yielding as a reed and never as unyielding as a cedar."

This narrative illustrates that the study of Torah could be constructive; accordingly the Rabbis could earn respect as experts of Torah study. The public gave great honor to R. Simeon as a Torah scholar (H). However, this narrative also emphasizes that Torah study could be destructive if its values were ignored and not appropriately integrated. While R. Simeon is described as knowledgeable in Torah, he does not live out Torah based-practices, as illustrated by his disgust for the ugly man. There is a tension present in the text in determining how to effectively practice Torah.

There is an obvious reversal of roles in this story as the ugly man becomes the teacher of R. Simeon. This twist emphasizes that the Rabbis perceived the public to be capable of serving as teachers of Torah – even to the purported experts of Torah! This self-reflective story again points to the importance of Rabbinic humility and the consequences of haughty and elitist behavior. Only when the community was on the equal footing could Torah effectively serve as a guide for the people.

The ugly man, as representative of a commoner, suggests that the people could be strong willed and demanding. Noticeably, the man demands that the Rabbi atone publicly for his acts. It is also relevant that the man is eventually forgiving, pointing to the perceived patience of the people as the Rabbis struggled to find their place in the community. Interestingly, the people come to the defense of R. Simeon, asking the ugly man to look past R. Simeon's mistake. The Rabbis illustrate the people also as potential

mediators, key to the acceptance of the Rabbinic class in society. The Rabbis appreciated that the favor of the people had far reaching results. R. Simeon integrates the lesson of this experience, returning to his academy and teaching his disciples the lessons he learned. In doing so he models the importance of engaging the community in a healthy constructive manner, acknowledging wrong doing, and finding a path to move forward – all important skills for a communal entity striving to exert leadership effectively.

Another painful Rabbinic learning moment is described in Leviticus Rabbah 9:3:[291]

> It once happened that while R. Yannai was on a journey, he saw a man who looked particularly distinguished. R. Yannai asked him, "Will you, sir, deign to visit our home?" The man said, "Yes." So R. Yannai brought the man into his house and gave him food and drink. Then R. Yannai tested him in his knowledge of Scripture, and found none; in his knowledge of Mishnah, and found none; in his knowledge of Agaddah, and found none; in his knowledge of Talmud, and found none. Finally, when R. Yannai said to him, "Take [the cup of wine] and say grace," the guest said evasively, "Yannai should be saying grace in his own house." Then R. Yannai asked him, "Can you repeat what I am about to say to you?" The guest said, "Yes." R. Yannai: "Then say, 'A dog has eaten R. Yannai's bread.'" The guest immediately stood up, took hold of R. Yannai, and said to him, "My inheritance is in your possession, and you keep it from me!" R. Yannai: "What inheritance of yours is in my possession?" The guest: "Once, I passed a schoolhouse and heard the voices of your children saying, 'The Torah that Moses commanded the children of Israel is the inheritance of the congregation of Jacob' [Deut 33:4] – not 'the congregation of Yannai,' but 'the congregation of Jacob.'" R. Yannai: "How have you merited to dine at my table?" The guest: "Never in my life, after hearing evil spoken, have I brought it back to the person spoken of. Nor have I seen two people quarreling without making peace between them." R. Yannai: "You – whose conduct is so extraordinary – I presumed to call 'dog'!"

Again, the obvious roles in this narrative are reversed, with the aristocrat serving as the teacher and role model, and the Rabbi serving as the misguided student. The first half of the story highlights the Rabbinic perception of the non-Rabbi as ignorant. While R. Yannai takes note that the aristocrat is, "particularly distinguished," he dismisses the man

[291] All English translations of Midrash in this study make reference to the Soncino Press collection.

as inconsequential once he learns that his Torah background is non-existent. Significantly, he reacts to this lack of knowledge with disgust!

However, as the story progresses it becomes clear that the aristocrat has an informal knowledge of Torah and that he lives by key Torah values, such as keeping the peace and avoiding gossip. The story emphasizes that while the man is successful in living by these values, R. Yannai has failed at his Rabbinic purpose. The aristocrat infers that the Rabbinic class is responsible for caring for the inheritance of the Jewish community. Yet he suggests that the Rabbis are so caught up in their own egos and the study of Torah (without practicing Torah) that they have become blind to their misguided behavior. This story teaches that the aristocrat's lack of traditional knowledge of Torah is due to the failure of the Rabbis as teachers. With his inflated ego blurring his judgment, R. Yannai misunderstood his role as a teacher of Torah.

As previously seen in b. Ta'anit 20b, the Rabbis were forced to recognize that appearances could be deceiving. Seemingly ignorant people could in fact be quite wise. The Rabbis were called to take note that the people whom they wrote off as unworthy may have known much more than they realized and it would have been advantageous for the Rabbis to appreciate this gift; rather than constructing walls between themselves and the community at large. As represented by the aristocrat, the non-Rabbi may be polite, gracious and interactive. Furthermore, the man is quite patient, restraining himself until explicitly insulted. This narrative suggests that the aristocrat was potentially more successful as a leader of the community than the Rabbis, perhaps due to his attuned nature, refined manners and everyday intelligence – all leadership skills that the Rabbis could have certainly used.

Not only were the Rabbis selectively portrayed as willing to accept help from traditional leaders such as aristocrats, some Rabbinic narratives describe other more surprising resources. B. Eruvin 53b-54a describes the wisdom of Beruriah:[292]

> A. R. Yosi the Galilean was making a journey. He came across Beruriah. He said to her, "Which way should we take to Lud?"
> B. She said to him, "Idiot Galilean! Didn't the sages say, "One should not talk too much with a woman' [M. Avot 1:5]? You should have said, 'Which way to Lud.'"

Surprisingly, in this narrative a woman serves as a teacher to R. Yosi. Beruriah castigates R. Yosi, who may be quite knowledgeable in Torah, but who finds himself lost along his way. Again, a perceived expert in Torah draws a blank outside of the academy, lost without proper guidance. Beruriah pokes fun at R. Yosi who has forgotten the Mishnaic principle of avoiding contact with women. She seems to suggest that R. Yosi needs to open his eyes to the world – leaving the literal text and embracing less traditional resources – say the wisdom of a woman. The Mishnaic principle juxtaposed with Beruriah's sharp words suggest that there was tension in the Rabbinic world in terms of affirming Torah's fixed nature, and the need to acknowledge the role of outside factors. While Rabbinic practice taught the Rabbis to avoid the influence of non-Rabbis, this passage points to the consequences of such exclusive behavior – one is left vulnerable

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[292] Beruriah is believed to have possibly lived during the fourth generation of Tannaim. She is described as married to R. Meir. She is the only woman in the Talmud who participated in halachic debates and her views were seriously reckoned with (Frieman, Shulamis. *Who's Who in the Talmud*. Northvale, NJ: Jason Aronson Inc., 1995, p. 74).

and seemingly lost. Again, a non-Rabbi is presented as intelligent, helpful and humbling.[293]

While there are a number of narratives that speak about non-Rabbis with respect, there are other texts that portray the public in a less positive light. These opposing narratives point to the inner conflict that the Rabbis felt as they tried to navigate their role with the community. This friction is seen in Ecclesiastes Rabbah 3:3 as a group of youngsters mock Rabbinic practice:

> One of the notables of Sepphoris had occasion to celebrate the circumcision of his son, and the inhabitants of En Te'enah came up to honor him [with their presence], R. Simeon ben Halafta among them. Upon arriving at the city gate, they noticed youngsters standing around and playing in front of a courtyard. When they saw R. Simeon ben Halafta, who was both distinguished and handsome, they heckled him: "You will not get away from here until you do a little dance for us." He said to them, "You cannot expect this of me – I am an old man." Though he rebuked them, they were neither frightened nor cowed. He lifted up his face and saw [the wall of] of the courtyard about to collapse [on the youngsters because of their impertinence]; so he said to them, "Will you say loudly what I am about to tell you? Say to the owner of this courtyard that if he is asleep, he had better wake up, because while the beginning of sin is sweet, its end is bitter."
>
> At the sound of their conversation, the owner of the courtyard woke up. He came out and fell at R. Simeon ben Halfta's feet saying, "My master, I beg you to pay no attention to the words of these youngsters, who are both young and foolish." R. Simeon: "But what can I do for you seeing that the decree [for the wall's collapse] has already been issued? I will, however, postpone it for you until you remove everything you own from the courtyard." As soon as the owner removed all that he had in the courtyard, [the wall of] the courtyard trembled and collapsed.

This narrative points to the Rabbinic struggle for respect. In this story, a segment of the community persistently heckled R. Simeon, showing distain rather than revering him in his Rabbinic role. In asking R. Simeon to dance, the youngsters demand that which is not appropriate from an old man. The youngsters do not even respond to R. Simeon's rebuke.

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[293] Beruriah's command of Torah is also described in Midrash Proverbs (31:1). Facing the loss of her two sons, she eloquently explains to her husband that something borrowed must be returned to its owner (i.e. God). In both scenarios she serves as an effective teacher with a grasp of living tradition.

This illustrates the limitations of the Rabbis' influence and also portrays part of the community as unaware as to the appropriate function of the Rabbi. While R. Simeon is described as "*distinguished and handsome,*" he is not all-powerful. It is important to note that R. Simeon could not prevent the youngsters from self-destruction. Similarly, the Rabbis could not protect members of the community from the consequences of their actions. The narrative infers that segments of the people (perhaps the *am ha'aretz)* in their naivety were seemingly happy in their path, but unaware of the inevitable hardships that their ignorance would bring. It is interesting that the mistreatment of the Rabbis triggered the onset of destruction, illustrating the perceived self-importance of the Rabbis as influential figures.

The actions of the owner of the courtyard show that the public could not be dismissed outright. The owner pleaded for R. Simeon to intervene to prevent the destruction of his home. He showed respect for the Rabbinic role and saw R. Simeon as a savior of sorts. R. Simeon proved his capabilities by stepping in to temporarily prevent the walls from collapsing, but he could not revoke the decree in its entirety. In this intercessory role, the Rabbis show themselves to be powerful, yet at the same time incapable of stopping the inevitable. With their wisdom and insight, they were able to assist the people, but they could not revoke the consequences of misdeeds. The Rabbis portrayed themselves as serving a unique role for the people, serving as a crutch and guiding the people, but abstaining from redeeming them completely. The Rabbis understood that when the people heeded their words, they could serve as resource in times of trouble. The people are described as needy and ignorant, but they are also capable of learning in the face of hardship. The Rabbis present themselves as assets to the

people, if only their voices would be listened to; however, this story suggests that the Rabbis were often misunderstood and ignored.

The people are also portrayed with a mixture of positive and negative attributes in b. Shabbat 33b. In this narrative, R. Simeon ben Yohai and his son hide in a cave avoiding the harsh decrees of the Emperor. When the Emperor dies, the two emerge from the cave and found the people "*plowing and sowing.*" Outraged they declared: "*They abandon eternal life and engage in the life of the moment.*" And the story continues:

> M. Everywhere they looked was burnt on the spot. An echo came forth and said to them, "So did you emerge so as to destroy my world? Get back in your cave."
> N. They went back and stayed there twelve months, saying, "The judgment against the wicked to stay in Gehenna is for twelve months."
> O. A heavenly echo came forth and said, "Leave your cave."
> P. They came out.
> Q. Wherever R. Eleazar made wounds [by the evil eye], R. Simeon brought healing. He said to him, "My son, you and I are enough for the world."
> R. On Friday before dark, they saw an older man holding two bundles of myrtle, running at twilight. They said to him, "What do you need these for?"
> S. He said to them, "It is for the honor of the Sabbath."
> T. "Wouldn't one be enough for you?"
> U. "One matches 'remember' and the other matches 'observe' [at Ex. 20:8, Deut. 5:12]."
> V. He said to his son, "See how precious are religious duties to Israel." His mind was set at ease.

Again, the Rabbis taught with this story that initial perceptions can be false. This narrative acknowledges that the Rabbis saw themselves as inclined to brush off the public as ignorant and weak. In fact, they also appreciated that the public had the potential to be observant of Torah, even without intervention by the Rabbis. Superficially the people appeared uninterested in Jewish practice, but this does not mean that they totally dismissed their faith. While R. Simeon and his son hide in the cave, the people lived on, even establishing new customs that fostered Jewish identity. While the people are initially described as focused only on the moment, the closing piece of this narrative

highlights their ability to ground their practice in the past and look ahead to the future. This is one more example of the people serving as teachers for the Rabbis.

Significantly, God rebukes the angry, destructive Rabbis. In terms of leadership models, this narrative emphasizes that to respond to unacceptable practices only with hostility is inappropriate. Only when R. Simeon and his son emerged a second time did the former appreciate the need to use a healing lens when approaching the world. This story illustrates trust between societal partners as the model community structure. People would ignore the hot-tempered Rabbi, but might listen to the open-minded and embracing Rabbi.

Other leaders of the community might have had a hard time appreciating the Rabbis as illustrated in b. Kiddushin 70a:

> A. There was a man from Nehardea who went into the butcher show in Pumbedita. He said to him, "Give me meat"
> B. They said to him, "Wait until the servant of R. Judah bar Ezekiel gets his, and then we'll give you."
> C. He said, "So who is this Judah bar Sheviskel who comes before me to get served before me?"

The Rabbis perceived the community at large to be accepting of Rabbinic status, but this narrative points to some disagreement to this point of view, perhaps between high status individuals such as aristocrats or state representatives and the Rabbis. The Rabbis saw themselves as deserving special treatment, but this story suggests that this expectation led to societal friction. What exactly was the worth of Torah? Did Torah outrank wealth or title? For the Rabbis, the answers to these questions were clear. This narrative suggests that Torah ranked high with the people too, though it's more likely that these issues were quite complicated. In terms of balancing roles in society, there was probably a power struggle amongst the various leaders. The Rabbis may have seen themselves as the most

worthy of the respect of the people, but they needed to fight to maintain this position. It was essential for the Rabbis to constantly evaluate how they presented themselves to the community.

B. Shabbat 30b-31a illustrates the ideal stance of the Rabbi in face of mockery or lack of respect:

> A. Our Rabbis have taught on Tannaite authority:
> B. A person should always be humble, like Hillel the elder, and not captious, like Shammai the elder
> C. There was the case of two people, who went and made a bet with one another for four hundred zuz."
> D. They stipulated, "Whoever can go and infuriate Hillel will get the four hundred zuz."
> E. One night they went [to try]. That day was a Friday, toward nightfall, and Hillel was washing his hair. The man came and knocked on the door saying, "Where is Hillel, where is Hillel?"
> F. Hillel wrapped himself up in his cloak and came to meet him. He said to him, "My son, what do you require?"
> G. He said to him, "I have a question to ask."
> H. He said to him, "Ask my son, ask."
> I. He said to him, "How come the Babylonians have round heads?"
> J. He said to him, "My son, you have asked quite a question: It's because they don't have skilled midwives..."

Twice more the individual disturbs Hillel with questions and both times he responded graciously. The fourth time:

> W. He said to him, "I have a lot of questions to ask, but I'm afraid that you'll get mad."
> X. He said to him, "Whatever questions that you have, go and ask."
> Y. He said to him, "Are you the Hillel, whom people call the Patriarch of Israel?"
> Z. He said to him, "Yup."
> AA. He said to him, "Well, if that's who you are, then I hope there won't be many in Israel like you."
> BB. He said to him, "My son, how come?"
> CC. He said to him, "You have cost me four hundred zuz."
> DD. He said to him, "You should be careful of your moods! Hillel is worth your losing four hundred zuz without Hillel losing his temper."

Hillel is held up in this narrative as the model of Rabbinic humility. In contrast to the image of the aloof scholar, Hillel is described as always available to meet the needs of the people – even when the demands are inappropriate and demeaning – or inconveniently timed (i.e. Shabbat eve). The narrative suggests that ideally a Rabbi should be patient, knowledgeable and available, even when the community is not respectful to the Rabbis.

The description of these two tricksters suggests that the Rabbis perceived the public as ready to test the limits of the Rabbi. The Rabbis understood that the people were trying to understand the Rabbinic role, testing to ascertain typical Rabbinic responses. Significantly, Hillel did not succumb, but exhibited respect for the people, always attempting to address their concerns. No question was a bad question, even when it was seemingly absurd. Hillel becomes a model teacher, ready to respond to every enquiry. Furthermore, members of the public, not just students of the academy, are potentially seen as disciples.

Hillel is portrayed as a man who knows who he is and what he represents as a Rabbi. He has a refined sense of self and cannot be pushed off balance. This narrative suggests that Hillel's sense of security and responsibility is something for Rabbis to emulate. The Rabbis faced an incredible challenge in trying to find their unique place in the community and serving as effective leaders for the people, even when they were not always warmly received. Hillel is portrayed as a role model, encouraging the Rabbis to remain humble, patient and accessible as they sought to provide guidance for the people.

Rabbinic *aggadah* demonstrates that the Rabbis struggled to define their role in the community. There was great tension surrounding their self-representation. There was

also difficulty with regard to their understanding of the people. The Rabbis would have ideally liked to be accepted in society as exclusive experts of Torah with the leadership capabilities to guide the community on a holy path. However, they were forced to accept a less than ideal role as they competed for the interest of the people. A large part of the authentic role of the Rabbi was dependent on how he balanced idealistic hopes with pragmatic realities.

The Rabbis envisioned themselves as religious specialists with a grand reach. They perceived themselves as able to deal with all the needs of the people. The Rabbis perceived knowledge of Torah as the principle tool to justify their role in the community. The Rabbis understood their role as unique, exclusive and powerful, with the ability to rescue a fragile people in danger. However, the Rabbis also recognized that they were susceptible to inflated egos that could distort their teaching and destroy their image. While they may have been knowledgeable in Torah, the Rabbis acknowledged that they no longer practiced Torah when they raised themselves above the people. Accordingly, they may have been Torah experts on the surface, but in reality they were sometimes careless in living the words that they preached. There is a strong message in Rabbinic texts that Rabbis needed to be humble because there were dangerous consequences to elitist and haughty behavior. The model Rabbi is described as calm, patient and ready to answer any question. The ideal Rabbi recognized his limitations and was ready to learn from various sources, including the public. For the Rabbi to find this secure sense of self was a challenge.

Just as the Rabbis were presented as having a complicated sense of self, the community at large was also described in a nuanced manner. On the surface, the public

was described as ignorant, weak and desperate – specifically lacking an appreciation of Torah. They were seemingly unaware as to the terrible consequences of their malicious non-traditional or disrespectful acts. Common characteristics of the people included: stubbornness, disrespect and inappropriateness. However, a careful examination also finds that the Rabbis found the people to be forgiving, patient and knowledgeable. While the people may have lacked traditional Torah skills, numerous *aggadot* describe commoners as embodying Torah, thereby teaching the ignorant Rabbis! They seem to naturally have known how to act appropriately, perhaps modeling a non-Rabbinic path to Jewish survival.

These tensions display how difficult it was in the Rabbinic era for the Rabbis to find their effective role in the community, especially in regard to their relationship with the people at large. The texts reflect confusion when describing the ideal Rabbinic role as well as the ideal means to interact with the public. As is often the case, it's easier to be separate, focused on individual priorities and perspectives. However, the dynamics of communal life demand integration, interaction and compromise. Embarking on this path is complicated, and yet it is meaningful, powerful and holy. As described in these texts, the Rabbinic era was the beginning of the path to a long learning process for the Rabbis. This was a time for the Rabbinic class to explore how to define itself to effectively serve the Jewish community for generations to come. Just as the Rabbis advised the people to give serious thought to their actions, the Rabbis also had to acknowledge their own challenges – at stake was the survival of the Jewish people.

Conclusion: The Ongoing Rabbinic Aspiration to Serve as Effective Leaders

Approximately fifteen hundred years have passed since the redaction of the Talmud. The Jewish centers of Pumbadita and Tiberias have been replaced by New York and the re-established Jerusalem. The Jewish community is more spread out than ever before. Arguably, post-Emancipation and post-Enlightenment Jewish perspectives on religion and the response to modernity are more diverse than they have been in earlier times of transition.[294] And yet, the more things change, the more they stay the same.

How does one live a Jewish life in a non-Jewish world? How do the values of Torah interact with the values of the secular world? How does one respect the past while also moving forward? How does one balance the authority of leadership while at the same time displaying sensitivity to the needs of the people? These questions are just as germane today as they were in the Rabbinic age. Since the destruction of the Second Temple, Rabbis have aspired to find the appropriate answers.

We have learned that the destruction of the Second Temple forced the Jewish community into a period of traumatic transition, both politically and spiritually. Rabbinic movements developed in the Land of Israel and in Babylonia. The Rabbis yearned to effectively serve as leaders of the community by offering stability and support to the people. However, they struggled establishing their role in society, especially given the competition of other leadership bodies such as wealthy citizens and government officials. They were faced with the need to balance their religious outlook and prioritization of

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[294] Arnold Eisen points out that this is the third century that Jews have struggled with effectively responding to Emancipation and Enlightenment (Eisen, Arnold M. *Rethinking Modern Judaism.* Chicago, IL: University of Chicago Press, 1998, p. 1).

Torah with the concerns and perspectives of the population. *Minhagim* played a central role in shaping communal identity. The Rabbis appreciated that customs were a means to reflect the heritage of the past. They believed that Jewish practice dated back to Moses at Mount Sinai. They also knew that respecting the habitual ways of the people was a method to build trust with the community, even when they disagreed with some of these acts.

The history of the Jewish people has been one of ongoing transitions. Contemporary challenges of the twenty-first century that must be addressed include globalization and the instantaneous nature of communication.[295] These phenomena have brought with them certain gifts, but also tremendous struggles as society yearns to return to homeostasis. Religious extremism has further destabilized societal confidence.[296] While these concerns are quite different than the physical destruction of the Temple, they have had similar consequences in that they have destroyed the traditional structure of society, leaving a tremendous vacuum in its wake. The Rabbis of today represent one set of voices struggling to fill this void, effectively listening to the people while exerting confidence, insight and spirituality.[297] Again, the *minhagim* of days past and present (both of the Rabbis and of the people) serve as one means to offer stability and structure in chaotic times.[298]

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[295] Sacks, Jonathan. *The Dignity of Difference*. New York: Continuum, 2002, p. 26.

[296] Saks, p. 4.

[297] Saks affirms that specifically with regards to religious extremism, religion can be a source of discord or a form of conflict resolution (p. 4).

[298] There is sometimes an ambiguous nature to the origins of custom that points to the partnership between the Rabbis and the people. For instance, Kol Nidre worship, arguably one of the most attended synagogue services of the year, is believed to be a result of the creation of the masses in the eighth century (Hammer, Reuven. *Entering the High Holy Days: A Guide to the History, Prayers and Themes.* Philadelphia, PA: Jewish Publication Society, 1998, p. 115).

As this work has demonstrated, the Rabbis had a complicated relationship with the people. The Rabbis understood the Jewish people as part of a collective whole, and yet they also viewed the community at large as distinct. Initially the Rabbinic relationship with the people was fragile, but it developed with time, as did the confidence of the Rabbinic voice. The Rabbis reluctantly acknowledged the people as a potential partner, and a close reading of Rabbinic texts illustrates that the behavioral acts of the community even served as a guide for the Rabbis. The Rabbis tended to portray themselves as dominating and directive, but there was tension with regards to this outspoken role and the Rabbis also advocated for humility in their ways.

The contemporary Rabbinic relationship with the people is still complicated. There has consistently been an elite versus folk divide; however, there has also always been an appreciation for Jewish unity. There are times when the Rabbinic voice is dominant and oppressive, but there are also times with the Rabbi is led by the population, even in the face of disagreement. In order to effectively serve the Jewish community, the modern Rabbi must be attuned as to when to hold strong and when to be more flexible, just like in the past.

The Rabbis struggled to define their role in the community. They had to balance idealistic hopes with pragmatic realities. The Rabbis cherished the gift of Torah, and used it as a lens to bring holiness to the community. With humility, they also acknowledged that sometimes they took their expertise of Torah too far, letting their egos become inflated and holding themselves above the people. Often on these occasions the Rabbis learned to appreciate the people as implicit teachers of Torah. The Rabbis engaged in a

continuous self-struggle as they yearned to refine their place in the community, especially in regard to the people.

This challenge has continued to the present. Rabbis play a unique role in sharing the blessing of Torah with the Jewish community. The Talmudic quarrels of the House of Shammai and the House of Hillel set a precedent for the pluralistic nature of Torah.[299] However, Rabbis have consistently struggled with the ambiguity apparent in Torah. Sometimes the Rabbi of today learns that he or she must wake up to the great potential for the people to serve as teachers of the values of sacred text. The contemporary Rabbinic movement is full of large egos that often need to be deflated to serve effectively. The Rabbinic self-reflection of the past is still an important concern of the present.[300]

Arnold Eisen has studied contemporary Jewish responses to modernity that potentially shed light on the Rabbinic perspective of the people. He points out that for people today, abstract matters like God and revelation are of secondary importance to the observance of communal commandments.[301] People are sensitive with regards to their acts; however, they are less concerned with their beliefs. Eisen suggests that this emphasis on practice, rather than belief, has provided space for defining one's role in modernity, avoiding difficult questions of ultimate meaning.[302] While the Rabbis are focused on issues of faith and revelation, the people tend to be comfortable avoiding these concerns, instead emphasizing their behavior. Perhaps this is parallel to the

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[299] Zemer, Moshe. *Evolving Halachah: A Progressive Approach to Traditional Jewish Law.* Woodstock, VT: Jewish Lights Publishing, 1999, p. 46.

[300] Contemporary Rabbinic wisdom insists that, "every good Rabbi has a good therapist" (Second Year HUC-JIR LA Course: Rabbinic Practice, Spring 2005).

[301] Eisen, p. 3.

[302] Eisen, p. 4.

Rabbinic discussions of the Talmud. The Rabbis are placed with the weight of encountering issues of theology that do not interest the community at large. More globally focused on concerns of God, the Rabbis are faced with the challenge of influencing the smaller scale concerns of the people, without frightening them or seeming out of touch with reality. Rabbis past and present have a different outlook on life and specifically religion compared to the community at large. To effectively serve as one united community, the two must find a common path where both can walk while often embarking on alternate routes.

Eisen insists that it is inadequate to define *mitzvot* solely as imperatives of faith, as this does not adequately describe the motives behind the majority of actions performed by modern Jews.[303] Ethical obligations are relevant, as is the identification with engaging in distinctively Jewish behavior that has been practiced for generations.[304] Also important in the performance and character of ritual is the political context (for example government attitudes and societal pressure).[305] These have been concerns for the Rabbis and the community at large for generations. The often-ambiguous nature of *halachah* suggests that the Rabbis have consistently felt tension when balancing these concerns – never mind the community at large that has also had to determine how to act on somewhat different priorities.

Today, Jewish practice is in effect voluntary; therefore Rabbis have been placed with the responsibility of inspiring the people to understand their obligations to

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[303] Eisen, p. 11.
[304] Eisen, p. 11.
[305] Eisen, p. 12. For example, the decision to wear a *kippa* in public has more to do with considerations of the degree of Jewish distinctiveness and gentile reaction, rather than theological considerations.

themselves, to the community and to God.[306] Eisen affirms that often this entails appealing to beliefs, assumptions and commitments that are foreign to the tradition in which the ritual arose and foreign to the beliefs associated with a given rite.[307] Eisen states, "We must widen our lens through which we look at *mitzvah* and take stock of the social, political, familial and other imperatives that have played a major role in influencing how modern Jews have decided to walk and eat and pray and marry."[308] This is a lesson that the Rabbis of past and present understand well. To serve effectively, it must be integrated and valued. The astute Rabbi sees the bigger picture.

Moshe Zemer teaches that many contemporary traditional Rabbis have failed to appreciate the importance of *halachah* in addressing the needs of the community at large. He finds that *halachah* as it has developed remains flexible and ethical, evolving in accordance with the context of each generation, but that it is often misused and seen as an antithesis to progress.[309] He affirms that Rabbis have continuously faced a grave concern in that injustice has stemmed from the requirements of the codification of *halachah*.[310] To be a Rabbi in touch with the world is to be a Rabbi who acknowledges this tension. One must exert creativity to serve the community effectively, appreciating the worth of tradition, but also valuing the need to address real concerns.[311]

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[306] In pre-modern times, there was likely stronger pressure to adhere to communal norms, even though participation could not be enforced (personal communication with Dr. Weisberg, Feb. 2008).

[307] Eisen, p. 14. For example, Chanukah appeals to the universal notion of freedom, but this notion cannot be too universal because at risk is appreciating the need to celebrate altogether.

[308] Eisen, p. 17.

[309] Zemer, p. 1-2.

[310] Zemer, p. 3.

[311] Zemer (p. 37) teaches that in antiquity, the Middle Ages and even modern times, Rabbinic authorities issued lenient rulings and permitted the transgression of serious prohibitions concerning marriage and other ethically problematic domains. He also finds that today there is a culture of fear in traditional circles that ultra-Orthodox Rabbis will attack lenient rulings (p. 38).

Zemer points out that the original Hebrew term for a Reform Jew was, "*metaken*," as in one who "repairs or modifies" in life and religion.[312] To engage in such "modifications" is no light matter, as it entails struggling to interpret the tradition in a context very different than its origins. This has been a two thousand year challenge, as the Rabbis have sought to shape Jewish tradition in accordance with a path that speaks to the people. Zemer stresses that if everything was already revealed at Sinai, there is no room for innovation and change.[313] Appropriate innovation and change in response to context and demand is essential for Judaism to effectively reach the community at large. Rabbis have consistently been empowered to manage this progressive development.

Zemer teaches that the Torah is not perfect in that it does not embrace all future knowledge. He suggests that to the dismay of the Rabbis, there are constant, dynamic changes in human society that must be addressed across regions and times.[314] Rabbinic authorities are empowered to take into account the divine authority of *halachah*, ethical concerns, inner spirituality and social justice.[315] As has become clear in this study, also relevant are the expectations and mindset of the community at large. *Halachah* must be upheld in the context of relationship with the people and their needs and priorities must be considered. Just as the Jewish people have a covenant with God, so too does the Jewish community have a covenant with each of its members. It is of the utmost importance for the Rabbis and the people to acknowledge their responsibilities to each other. To work effectively, the two must be sensitive to each other, speak in a language that the other can hear and appreciate the need to compromise.

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[312] Zemer, p. 38.
[313] Zemer, p. 41.
[314] Zemer, p. 43.
[315] Zemer, p. 45.

There are a number of parallel situations between the Rabbinic scenarios of this study and contemporary times. A few examples include:

- **The Struggle of Pragmatism Versus Idealism**: This arises as leaders of the Rabbinic movements advocate for better working conditions for synagogue employees. Unfortunately these voices are few as the fiscal concerns of the congregation dominate. Is it really naïve to suggest that the janitorial staff and security be provided with a living wage? Where would the funds come from to care for these individuals? As is clear in the Rabbinic texts, there are no easy answers, and pragmatism tends to win out. The Rabbinic texts affirm the importance of asking these questions and engaging in conversation as one searches for a healthier balance – that being said, there are no "right" answers.
- **Silence for the Sake of the Community:** Sometimes the Rabbis of today are faced with societal acts that they disagree with, and yet they decide to keep quiet rather than embark on a losing battle. This is illustrated with the phenomenon of inter-faith marriage. To object loudly to inter-faith marriage and inter-faith families is to risk alienating sizable segments of the Jewish community. Rabbis are faced with the challenge of discouraging marriage outside of the faith, while finding a means to create a safe space for interfaith families. Many liberal Rabbis have chosen to find a religious pathway to affirm the place of inter-faith couples, others have chosen to silently accept, some have vehemently voiced opposed. The Rabbinic texts model various means to respond to that which one objects to and teach that one must be attuned to the consequences of one's response.

- **Powerful or Powerless:** Today, Rabbis are presented with the challenge of appreciating their power as well as their powerlessness. Confidence and humility are tremendous assets. On the *bima*, the Rabbi can feel dominant and elite, but in doing so Rabbis can easily lose touch with the ways of the people. Acknowledging the importance of empowering the voice of the community at large, there is a growing movement to embrace the Congregational Based Community Organizing model. This synagogue model encourages the voices of the community at large to share their concerns and actively shape their community. Similarly, the Rabbis of the Talmud were constantly navigating their relationship with power.
- **Crisis Management:** Religion continues to play an important role in addressing the needs of people in times of crisis. For example, the Governor of Georgia recently led an interfaith prayer for rain, illustrating that clergy play an important societal role in the face of a desperate situation.[316] As always, the Rabbinic role is vibrant, reflecting the demands of the people and the sensitivity of the leadership.

Judaism is grounded in a rich and thoughtful heritage that goes back centuries. So much of Judaism today is a reflection of Judaism in days past. The role of the Rabbi is dynamic and has evolved with history. Rabbinic-lay relations have shaped the community as it has developed across time and place. As is apparent in this study, many of the struggles of the Rabbinic era parallel the struggles of today. The tensions evident in the Talmud are relevant to contemporary challenges of the Jewish community. Rabbinic texts

[316] CNN online, Nov. 13, 2007 (http://www.cnn.com/2007/US/11/13/southern.drought.ap/index.html).

offer tremendous wisdom, inspiring thoughtful conversations that pertain to effectively bringing Jewish values to society. Looking ahead, we can build on the experiences of the Rabbis of the past. Key lessons that have surfaced include the notion that sometimes Rabbis lead with force, other times they are led. There are certain things that can be pushed by Rabbis, but on other occasions Rabbis must exert patience and care. At all times Rabbis must be sensitive to the needs of the people. Rabbis are more than spiritual guides and teachers, they are also leaders empowered to efficiently address the concerns of the community.

Judaism prides itself on learning from models of the past. Many of the issues of today are unique, and yet, there are lessons to learn from previous teachers. This study has focused on the original Rabbis, pinpointing their struggles and interpreting their insights. These Rabbis also had earlier leadership models to learn from! Norman Cohen teaches that Moses was a leader extraordinaire who exerted unique force in shaping the nation. He played the role of priest, prophet and judge.[317] While it is difficult to identify with Moses due to the magnitude of his achievements, he was also uniquely human – with shortcomings and strengths.[318] Moses was distinguished because he understood that his life was not his own and that his life was inextricably bound up with the life of his people and his mission. Sometimes his choices were uncomfortable and self-denying.[319] Furthermore, even though Moses' authority emanated from God, his power was built via his relationships with the people.[320] He empowered the people to take responsibility for

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[317] Cohen, Norman J. *Moses and the Journey to Leadership: Timeless Lessons of Effective Management from the Bible and Today's Leaders*. Woodstock, VT: Jewish Lights Publishing, 2007, p. 2.
[318] Cohen, p. 2.
[319] Cohen, p. 3.
[320] Cohen, p. 3.

their own lives, trusting that they had the ability to do so.[321] Through the Torah, one watches Moses grow with time, succeeding and failing – consistently a role model of leadership.

Similarly, the Rabbis of past and present have served as parallel figures of Moses in their time. They have functioned as teacher, judge and parent. They have aspired to be powerful figures to guide the people, and yet they also have displayed human shortcomings that have caused them to falter. In their perfect world, they would have designed things differently. Their leadership would never have been questioned and Torah would have served as a central priority for Jewish individuals. That being said, the Rabbis have acknowledged that their lives have been tied up with the lives of the community at large. To effectively represent one community, the two have needed to integrate their visions. As a result, the Rabbis have often been placed in an awkward position, denying themselves the choices that they would have preferred. The power of the Rabbis has emanated from the relationships that they have built with the people, finding a means to connect with them as partner, trusting them – even if this is with reluctance and skepticism. The two have a long history of dependence, sensitivity and care.

Rabbis are faced with the challenge of encountering transitions. Transitions by nature are fragile and uncomfortable, forcing the transitioner to leave what he or she knows and embrace a new reality. Inevitably, some matters from the past are held close and others are left behind. While it might be easier to avoid transitions altogether or neglect their presence, history is about embracing these progressions and finding a path

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[321] Cohen, p. 4.

forward. Together, the Rabbis and the Jewish community have been embarking on a journey of many transitions, traditionally since Sinai, actively since the destruction of the Second Temple. At times the two have been in sync, other times they have been quite distant. The Rabbis have never been typical leaders, mainly due to their unique religious role that has forced them to constantly weigh their theological concerns with practical elements. *Minhagim* have been instrumental in connecting these partners, as has been the opportunities to learn from one another and grow. As in any relationship, there is fine-tuning to do along the way – there are moments of anger and frustration matched with moments of humility and care. There are destined to be many tense occasions as this love-hate relationship progresses. There will also likely be moments of comfort and joy, blessing and holiness. And so the complicated Rabbinic relationship with the Jewish people continues.

Appendix: Rabbinic Works Cited

Mishnah
Shevi'it 2:5
Pesachim 4:1
Pesachim 4:3-5
Sukkah 3:11
Baba Metzia 2:11
Baba Metzia 4:11
Baba Metzia 7:1
Baba Metzia 9:1
Baba Batra 1:1-2
Baba Batra 5:11
Avot 2:5
Avot 5:10

Jerusalem Talmud
Shabbat 19:1
Pesachim 6:1
Ta'anit 1:4
Yevamot 12:1
Yevamot 13:1
Kiddushin 1:7
Baba Metzia 7:1

Babylonian Talmud
Berachot 44a
Berachot 44b
Shabbat 12b
Shabbat 30b-31a
Shabbat 33b
Shabbat 148a
Eruvin 6b
Eruvin 14b
Eruvin 53b-54a
Pesachim 65b
Beitzah 28a
Beitzah 29b
Ta'anit 10ab
Ta'anit 12b
Ta'anit 14b
Ta'anit 18b
Ta'anit 20ab

Kiddushin 70a
Baba Kamma 30b
Baba Kamma 79b
Baba Batra 60b
Avodah Zarah 36a
Avodah Zarah 37b
Menachot 28a
Menachot 35b
Menachot 36b

Tosefta
Pischa 4:13

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