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DARKE HA-MISHNAH by Dr. ^eZachariah Frankel

His Methods and Theories

by

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Preface

Preface

The first thought that one is likely to get when first seeing the title of this thesis is that it is a mere rustling of old leaves and dry bones. On the surface there does not seem to be any life to the subject which we have chosen for ourselves. This view, however, is not borne out after a careful and exact study of the book under discussion. "Darke ha-Mishnah" has become a classic and as such is surely worthy of our investigation. The book stands out as one of the greatest products of Jüdisches Wissenschaft. It stands at the culmination of one great period of Jewish learning and marks the beginning of another. X

In this book the author sums up all that has been said before him. Thus for example, in his discussion of the generations of Tannaites he is fully aware of the work of Maimonides, the Meiri on Pirke Aboth, "Seder ha-Kabbalah", "Sefer Krithuth", the "Iggereth" of Sherira Gaon and many others.¹ Also, when he speaks of the methodology of the Mishnah, he mentions all those who preceded him in this work. X

¹Darke ha-Mishnah, pp. 22, 23

He brings before us Rabbi Samuel ha-Naggid,
Maimonides, Rabbi Samson of Chinon and a host of others.¹

Gotthard Deutsch in speaking of the book says:

"It is one of the most valuable
attempts at a systematized exposition
of the history of early rabbinical lit-
erature and theology, and has largely
inspired subsequent works of that kind
as those of Jacob Brüll and Isaac H. Weiss."²

Rabbinowitz lists a whole host of scholars who owe
their inspiration to Frankel's "Darke ha-Mishnah".
Among them may be mentioned Rabbinovicz-"Dikduke
Soferim", Dr. David Hoffman, Zukermantel, Friedmann
and Bacher. Rabbinowitz concludes by saying:

וְהַיְתָּא הַזֶּה כְּדֵי שֶׁיִּהְיֶה
לְפָנֵינוּ סֵפֶר

Rabbinowitz's prediction certainly has become a fact.
We find the book always referred to as a standard work
on the subject of "Halakah".⁴

"Darke ha-Mishnah" on its appearance evoked a
storm of criticism. Frankel was attacked and defended.
He was severely criticised by Fischer, S.R.Hirsch,

¹ibid., pp. 282, 283

²Jewish Encyclopedia, Vol.V,p.483; cf.Otzar Israel,
Vol. VIII, p. 295

³Rabbinowitz, p. 216, 217, cf. Jüdischer Lexicon ed.
Herlitz Vol. II, p.726

⁴cf. List of references re "Halacha", Encyclopaedica
Judaica, Vol. VII, p.847

Auerbach, and Klein. Among his defenders were ~~Ma~~empfe, Rapoport, and others. Frankel is usually criticised on two counts. Firstly, he never says that the Oral Law comes directly from Sinai. Secondly, Frankel refuses to take the term "Halakah le-Mosheh mi-Sinai" literally. As part of our thesis we propose to review and summarize the controversial literature on these two subjects. It may be said in passing that only rarely is Frankel charged with incomplete scholarship.

Before this discussion proceeds any further, we must speak of the contents of "Darke ha-Mishnah". The book contains five chapters:

- Chapter I - The History of the Mishnah
- Chapter II - The Order of the Tannaites and the Methods of Their Study
- Chapter III - The Compilers of the Mishnah; the Recensions of the Mishnah that are in Existence today; the Order of the Sedarim and Masichtoth
- Chapter IV - Methodology of the Mishnah
- Chapter V - The Books that aid in the Understanding of the Mishnah

Professor Ginzberg makes the following remark on this outline:

"Of these sections of unequal length and of unequal importance the second is undoubtedly the most valuable even today, and in research concerning the mishnaic doctors, one invariably falls back upon Frankel's clear,

comprehensive and judicious work."¹

When the first outline of this thesis was projected, the writer thought to include a discussion of Frankel's method of outlining the generations of Tannaites and to contrast it with the methods of those who came before him and after him. After a good deal of investigation and study, the writer finds that such a discussion is beyond the scope of this thesis and leaves such a discussion for some future time. This thesis will concern itself with a discussion of Frankel's life and work, his views on Torah she-Baal Peh, Halakah le-Mosheh me-Sinai, early mishnayoth, old Halakah, and ancient customs. We will attempt to summarize the controversial literature which the book brought about. Finally we will conclude with a chapter on Frankel's method and his theories about the Mishnah.

¹Ginzberg, pp. 213, 214

Chapter I

Frankel's Life and Work

Frankel's Life and Work

It is our purpose here to give a short sketch of Frankel's life and work. If it were our intention to go into lengthy details we could together with Deutsch¹ and Rabbinowitz² describe the city of Prague and point out the environmental influences which played a part in moulding Frankel's life and character. For our purposes it is sufficient to say that Frankel was born in the city of Prague on September 30, 1801. His early life was spent in the study of the Torah. At the age of twenty-four he matriculated at the university in Budapest from which he received his Doctor's degree in 1830.

Rabbinowitz calls Frankel the first rabbi in Austria with a modern education.³ In 1831 Frankel was appointed district rabbi (Kreisrabbiner) of Leitmeritz in Bohemia.

"Such a district rabbi had to take up his residence in one of the cities of his district, and it depended entirely

¹Deutsch, Gotthard-"Zachariah Frankel", pp.2,3

²Rabbinowitz, S. P. pp. 11-21

³ibid., p. 24, cf. Jewish Encyclopedia Vol. V, p. 482

on the congregation where he resided whether it wished to elect him as 'Lokalrabbiner' or not.... The congregation (of Teplitz) was willing, and the president in notifying the candidate of this fact, expressed the hope that the new rabbi, being a man of modern education would abolish the corrupt practices of old Judaism."¹

Frankel's answer was

"That as to the 'misbraeuche' it was only the rabbi business to do away with them, if there were any."²

Frankel certainly showed his independence in this matter, but he did introduce certain slight reforms such as the abrogation of the piyuttim and the introduction of a choir of boys.³ In all of this, Frankel foreshadowed the course which he was to pursue throughout his life.

In 1836 Frankel was called to Dresden to be the chief rabbi there. This position he held until 1854 when he became the president of the theological seminary in Breslau. Frankel's first major literary work "Die Eidesleistung der Juden in Theologischer und historischer Bezeichnung" appeared in 1840 and was evoked by the political conditions of the Jews

¹ Deutsch, p.6

² Deutsch, p. 6

³ Jewish Encyclopedia, Vol. V, p. 482

of Saxony.¹ The government discriminated against the Jews in supposing that the testimony of a Jew in court could never be trusted. Frankel's work was instrumental in removing these restrictions. To this same class of writings belongs "Der gerichtliche Beweis nach mosaisch-talmudischem Rechte etc. nebst einer Untersuchung über die Preussische Gesetzgebung hinsichtlich der Zeugnisse der Juden", (1846) which was evoked by discrimination against Jews in Prussia.

Frankel published his second major literary work in 1841, "Vorstudien zu der Septuaginta". Here Frankel attempted to trace the earliest beginnings of the Halakah. To this class of writings belongs "Über den Einfluss der palästinensischen Exegese auf die alexandrinische Hermeneutik" (1851) and "Über palästinensische und alexandrinische Schriftforschung" (1854). Of these last two Ginzberg says:

"In both of which he endeavors to trace the old Halakah in the Greek

¹ Rabbino-witz always attempts to put Frankel on a par with Zunz. cf. Rabbino-witz, p. 42:

באר יצחק ספרו הקדוש של צעק. הרמב"ם
דבית הכנסת לישראל לא הייתה במחלוקת תחלה
זמן. יצחק מורה ואמר כי אם להוכיח צדק
הוא נאמר שחמשת פוסקים, כי אין יאמר דבורה
לצדקם שגזרו על הרמב"ם, כן ספרו הרמב"ם
של פראנקל נאדו ארץ מאורע הקצין יקרה
דבר וצדק השם.

translation of the Bible. Important as both these works are for the understanding and proper valuation of the Septuagint, their chief importance for Frankel and, indeed, for Jewish science, lies in the detection of the oldest components of the Halakah contained therein. He shows how the translators of the Bible into Greek as early as the third century before the common era were influenced in their understanding of the Bible by the traditions of the Halakah."¹

The period of Frankel's life was marked by the growth of two great movements in Judaism, i.e. Jüdisches Wissenschaft and reform. We have already seen the extent to which Frankel contributed to Jüdisches Wissenschaft and we shall have ample opportunities to point out his other contributions to this field. However, for the time being, we turn aside to discuss Frankel's relationship with the reform movement. The Hamburg Temple was organized in 1818. In 1841 a revised and second edition of the Temple's prayer-book was published. This immediately aroused a storm of protest. There were many opinions pro and con. Frankel, also was asked to express an opinion in the matter. He criticised the editors of the prayer book for not having before them a definite set of guiding principles. Frankel was ready to admit

¹ Ginzberg, p. 213

that legally and according to Halakic principles changes in the liturgy were permissible, but in matters which concern worship and man's highest feelings, the law is not to be the criterion. Frankel refused to admit that the belief in the Messiah could be eliminated from Judaism. Both Rabbinowitz¹ and Ginzberg² see in Frankel a foreshadowing of Zionism.

In reviewing these events, Deutsch³ points out:

"His position in the controversy of the new Hamburg prayer-book (1842) displeased both parties: the Liberals were dissatisfied because instead of declaring that their prayer-book was in accord with Jewish tradition, he pointed out inconsistencies from the historical and dogmatic points of view; and the Orthodox were dissatisfied because he declared changes in the traditional ritual permissible."

Rabbinowitz is undecided. Once⁴ he says that Frankel deferred to Riesser and his group, and once he sees in it a tendency towards the right.⁵

¹Rabbinowitz, pp. 76-81

²Ginzberg, p. 210

³Jewish Encyclopedia, Volume V, p. 482

⁴Rabbinowitz, p. 76: נחמא דא דהאבא טל
פיהא דא דהאבא טל פניה דהאבא טל

⁵ibid., p. 81 האבא דהאבא טל פיהא דהאבא טל
אלא דהאבא טל פיהא דהאבא טל
אין דהאבא טל פיהא דהאבא טל

Whichever, it was, Frankel appears here as a "follower of the middle path"¹ or as the man of the "golden mean."² Ginzberg³ calls it

"a standpoint which must undoubtedly be styled new, inasmuch as it ran counter to strict orthodoxy and reform, his actual leadership of a new and living school in Judaism must be considered to have begun upon his departure from the celebrated Frankfort Rabbinical Conference."

We therefore proceed to a consideration of this period in Frankel's life.

The first important rabbinical conference met in Brunswick in 1844. Frankel was not present at this conference, but his work in the magazine "Zeitschrift für die religiösen Interessen des Judenthums" which he was then publishing shows that he was deeply concerned with the problem of reform. He criticised the conference for "keeping in view

¹ibid., p. 76. אמנם בדיקור הדבר נכדדה לנו תשובה. פרומקרא זלם בדי נראו דבור. הרב במהלך במחצית דרכים. דמיתק שיה מן השלדוד לאחיות. להמרה, מדי שיה אז לכוונה, וכן זמח' הולק הירבנים. עמנו אדם כלב מנהל כנס. נכדולה והמשלל מן אסמור ואדקור מדי יכולת. וכן מדי חפץ אכונה ואנא.

²Jewish Encyclopedia, Volume V, p. 482

³Ginzberg, p. 199

only the 'age' and not the 'faith'.¹ Frankel attended the second conference which met at Frankfort-on-the-Main in 1845. He thought that by his presence at the conference he probably would be able to stem the tide of extreme reform. The most important subject for discussion was whether it was necessary to retain Hebrew in the prayer-book. The first vote taken was: "whether it is objectively, legally necessary to retain the Hebrew in the language of the service."² Frankel at first refrained from voting, but on the following day he voted with the majority that it was not. The next question for consideration was: "Is the retention of Hebrew in the public service objectively necessary on other than legal grounds?"³

Frankel stated:

"that religion as something abstract required outer symbols which remind us of God. This was the purpose of such commandments which enjoined the use of Tefillin, Mezuzah, etc., this also is the purpose of

¹ Philipson, David "The Reform Movement in Judaism" (1931), p. 157

² ibid., p. 167

³ ibid., p. 168

Hebrew as the language of prayer."¹

On this second question the majority of the conference voted in the negative, i.e. that Hebrew was not objectively necessary as the language of prayer[†].

"The third question was now broached, viz., whether it appeared advisable, i.e., subjectively, necessary to retain the Hebrew in part in the public service. This was not debated at length, and the vote showed that the members of the conference answered the question unanimously in the affirmative."²

It was at this point that Frankel withdrew from the conference. He objected to the vote of the conference that it was advisable (rathsam) to retain the Hebrew.³ For him Hebrew was absolutely essential. He pointed out that without a knowledge of Hebrew the end of Judaism would be similar to that of Alexandrian Jewry, where even Philo could not translate a Biblical verse correctly.⁴ Frankel's withdrawal from the conference was warmly applauded

¹ibid., p. 169, cf. Rabinowitz, p. 113

²Philipson, p. 172

³ibid., p. 190

⁴Rabinowitz, p. 115

by many rabbis and friends.

In 1854 Frankel was chosen president of the new rabbinical ^(School) assembly at Breslau. The seminary was founded by the Jonas Fraenkel Foundation. It was Geiger who had influenced Jonas Fraenkel to provide the money for such an institution. However, when the time came to choose a president for the seminary the directors of the Foundation felt that Geiger was too radical. Frankel was the man of the golden mean was accordingly chosen president."¹ Geiger was naturally very much embittered at the opening of the institution. Samson Raphael Hirsch requested Frankel to lay down the religious principles which would guide the new institution.² In characteristic fashion, Frankel refused to answer. Seven years later when the first class was graduated, Geiger published the examination questions with the intent of ridiculing "the casuistic method of Talmudic instruction."³

Frankel's great book, "Darke ha-Kishnah", the

¹Deutsch, "Zachariah Frankel", p. 16 cf. Jewish Encyclopedia, Vol. V, p. 482

²Jewish Encyclopedia, Vol. V, p. 483
Encyclopaedia Judaica, Vol. VI, p. 1091

³Jewish Encyclopedia, Vol. V, p. 483

subject of this thesis, appeared in 1859. It was the first of his works to be written in Hebrew. Rabbinowitz¹ calls him the only one of the German rabbis to write in Hebrew. David Kaufmann says that he wrote this work in Hebrew at the suggestion of Dr. Jakob Bernays. Frankel had demonstrated the value and importance of scientific method in other fields of research. He now was turning his attention to Talmud. Was it not necessary to demonstrate this method to Jews who did not understand German!²

Immediately upon the appearance of "Darke ha-Mishnah", there was a storm of criticism. Frankel was attacked by Gottlieb Fischer and S. R. Hirsch in "Jeschurun" 1860; Abraham Auerbach - "ha-Zofeh al Darke ha-Mishnah" 1861; Solomon Zeeb Klein - "Mi-Pne Koshet" 1861; Samuel Freund "Passnegen ha-Iggereth" 1861. Frankel's defenders were S. L. Rapoport -

¹Rabbinowitz, p. 8: הוא היחידי (אם כן החולק) (היחידים) דברי אלקנה אבנר מן פת גוריון

²Kaufmann, David - "Gesammelte Schriften", Vol. I, p. 268: "Es galt nun, die Methode zu lehren, auch Anderen den Weg zu solchen Ergebnissen zu weisen. Und wer vor Allem musste in methodische Auffassung des Talmuds eingeführt werden? Wer anders, als die Juden. Weithin, in Ländern, wo die Juden der deutschen Sprache unkundig sind, wirkt jetzt die Saat dieses hebraischen Werkes."

"Dibre Shalom we-Emet" 1861; Saul Kaempf - "Mantik Sod" 1861¹ ^{and others.} To all of this controversy Frankel remained silent. In 1861 he published an "Erklärung" in the Monatsschrift.¹ And again in 1867 he published "Hosafoth u-Mafteah le-Sefer Darke ha-Mishnah". Frankel never fully clarified his position, and in the course of time the whole controversy was forgotten.

Before concluding this biographical sketch it is necessary to enumerate a few further details to show Frankel's character. In 1843 he was invited to become the chief Rabbi of Berlin. He refused this honor on the ground that the position was not officially recognized by the Prussian government. He founded the "Monatsschrift für Geschichte und Wissenschaft des Judenthums" in 1851 and continued to edit it to 1867. He also wrote two other volumes in Hebrew, "Mebo ha-Jerushalmi" (1870), and a commentary "Ahavat Zion" on Talmud Jerushalmi, Berakoth and Peah, (1874), Demai, (1875), Frankel continued active to the end of his life. He died on February 13, 1875.

David Kaufmann in writing about Frankel says that there were many investigations about the Talmud, but not in it, and it therefore remained uninvestigated

¹M. G. W. J., Vol. X, p. 159

until Frankel.¹ Ginzberg's evaluation is significant.

He says:

"Frankel's true superiority over Geiger and indeed one might say over almost every other Jewish scholar of modern times in Western Europe - consists in the fact that he united in himself old-Jewish learning and modern critical schooling, so that it is difficult to say whether he was more an old time Landan or a modern scholar."²

and we may well agree with Ginzberg's conclusion

"the whole future of Jewish science depends upon whether we shall number among ourselves many more men, who, like Frankel, shall combine harmoniously the old and the new."³

¹Kaufmann, David, p. 260

²Ginzberg, p. 215

³ibid., p. 216

Chapter II

Frankel's Views on Torah she-Baal Peh and Halakah
le-Mosheh mi-Sinai

Frankel's Views on Torah she-Baal Peh and Halakah
le-Mosheh mi-Sinai

In attempting to present a clear and concise summary of Dr. Frankel's views on Torah she-Baal Peh and Halakah le-Mosheh mi-Sinai one is immediately confronted with serious difficulty. Nowhere in the book "Darke ha-Mishnah" does the author present any continuous discussion of these two subjects. In fact, to a critical reader it would seem that the author is studiously avoiding any mention of them. The best that one could hope to do is to cull various passages from the book, and in the light of those passages and in the light of what we know about the author's literary activity and general position in Jewish life, we may come to some conclusion as to what were the author's views.

Probably the clearest expression of Frankel's opinion is to be found in a discussion of Stam Mishnah.

These are his words:

בבב זכרני. לכוונת המאמר :
בתם מחנכות ר"מ היא, ר"מ סודר בתם בלומר
הוא בבב המאמרים הנאמרים בתם לבית
המדרש וסידורם במקום המלך. וז"ל הרמז דהקדמה
א"ל זכרים פ"ו: אלא בתם מלך בנו מה שמבינים
אלו דברים רבים והשואבה יונקת דא ואלא נפלה דו
מחנכות אלא שזכרונם רבים מפי רבים דברים אלה

כפי אשר חזקתו בפתיחתו ובהקדמתו
הקדמה לפתיחתו של המשנה הוא כ"ה וכו'
דעתו לאחרי שגם חזקתו כ"ה (פ"ג)

At first thought it would seem that Frankel is subscribing completely to the idea that the Oral Torah was given to Moses on Sinai. But on closer examination one realizes that Frankel is here hiding behind a quotation. He brings the words of Maimonides to his support. And even in this quotation there is nothing to indicate that he believes wholeheartedly in "Torah min ha-Shamaim". He is simply agreeing with Maimonides in saying that those laws in which there was no difference of opinion or which had a direct tradition to Moses were included in the Mishnah as Stam Mishnah. It is important to notice that the author admits the possibility of Oral Tradition to Moses, but says nothing about "Moses received the Law from Sinai." For this reluctance to state his beliefs openly, he was severely criticized and bitterly attacked.

In speaking of the men of the Great Synagogue, Frankel makes one of the few direct references to

"Torah she-Baal Peh": ולא כל אדם ואין חזקתו
ואין. כי המשנה היא שיש לה
ולדינה וחקקה ודבר וחסות חסות כדור. כי
זה פירושו המשנה והוא לא. וכל אדם
הוא שיש לה; ואין חזקתו דבר כלל?

x באמת ומה מן השמים את חזקתו (פתיחתו)

אנא פוילאין זאלן נאמאל דאס צווייטע חזק
אזוי פונעם, וואס נאכדעם וועט זיין באוויזן
דריט... וואס באצוג אפצוהאלטן אונז דעם פאקטאריזם
אזוי, אז יעדער (5)

He says that the work of the men of the Great Synagogue in interpreting the commandments for practical and theoretical purposes was the very essence of Torah she-Baal Pen. This is true enough. Since those interpretations became the Oral Law. But in the same connection he says that "these interpretations were expressed in council and with due consideration." At the first reading, such a statement is likely to impress the reader with the author's orthodoxy. But it is this phrase more than any other which aroused the ire of the orthodox.

In speaking about "Halakah le-Mosheh mi-Sinai" the author is more certain of his views. Here he marshals his authorities to prove that the statement is not to be taken literally. The Rabbis meant to say that the particular law which is called "Halakah le-Mosheh mi-Sinai" is as clear and certain as if it were such a law.

וואס פארא אסאך זאכן אונזער
האבן און פארא פונדעם נאכאלאז און פארא אסאך
אז אסאך זאכן אז אסאך, און אקאדעמיע וועלכע האבן
אסאך אסאך. וועלכע אסאך דא פארא אסאך

On page 304 Frankel speaks of those Halakoth which are introduced by the phrase "be-emeth amru". He mentions the fact that these are considered as Halakah le-Mosheh mi-Sinai. He again insists that they are not to be taken literally.

In another connection, in commenting on Rabbi Akiba's method our author makes the following statement:

ואין כלום אצלם יצאין מן הכלל אלא הם אע"פ
 כי אצלם חיבור חסידות אלא המעשה הן דין דב: וזה
 בדרך פשוט: כיון שבגזר אלה אחר אחר: כי אצלם
 דבר מן אלה אלא אלא אלא אלא (120)

This would again support Frankel's contention that the Rabbis were not naive enough to believe that Moses actually received these laws on Sinai. He maintains that when the Rabbis were convinced of the validity of some law and wanted to stop all difference of opinion concerning it they said, "Halakah le-Mosheh mi-Sinai."

As was stated at the beginning of this chapter, one must examine Frankel's general position in the Jewish life of his day. It must be remembered that the period was marked by the beginnings of Reform Judaism.

¹Men. 29b

The first Rabbinical Conference met in Brunswick in 1844. The second Conference was convened in Frankfort in July, 1845. Frankel was present at the Frankfort Conference, but parted company with it when he saw that its leaders were neither interested in the perpetuation of Judaism or the Jewish people. It must also be remembered that the first half of the 19th Century marked the great efflorescence of "Jüdisches Wissenschaft. The Giants were in the earth in those days - Zunz, Geiger, Sachs. Frankel himself was one of the greatest leaders in this movement. S.P. Rabbino-witz, his biographer, calls him "the first of the rabbis of the new school".¹ This is the period which gave us notable investigations into Israel's past history. Not only was the validity of the Oral Tradition called into question, but doubts were even cast upon the very fountainhead of Jewish tradition - the Bible. 2

In reviewing these events, it is very difficult to imagine that Frankel, who was part and parcel of them, remained untouched. In Chapter I of "Darke ha-Mishnah" Frankel deals with the "History of the Mishnah". On p. 15 he devoted a paragraph to what he thinks on the approximate dates for the different

¹Rabbino-witz, p. 186

Alexandrian Hermeneutics" and "Targum of the Prophets".¹ Frankel's purpose in these works is to make the Jewish Halak~~ah~~ as ancient as possible. "It was his object to show that the exegesis of the Alexandrian Jews and with it that of the early Church Fathers was dependent on Talmudic exegesis".²

As has already been stated at the beginning of this chapter, in "Darke ha-Mishnah" Frankel takes no definite stand on Torah she-Baal Pen and Halakah le-Mosheh mi-Sinai. However, in conformity with his theory that the origins of the Halakah are very old, he makes frequent mention throughout the book of such concepts as early Mishnayoth, old Halakoth and ancient customs. An analysis of those passages is left to a later chapter. The mere terminology is enough to indicate the author's love for Jewish tradition. We have only one clear indication of what was Frankel's purpose in saying that "Halakah le-Mosheh mi-Sinai" is not to be taken literally. In the Monatschrift for April, 1861 he publishes a note relating to the "Darke ha-Mishnah". With reference to Halakah le-Mosheh

¹cf. M.G.W.J., Vol.X, p. 159; Hirsch, Vol. VI pp. 380-382

²Jewish Encyclopedia, Vol. V, p. 483

mi-Sinai he says this:

"The question, i.e., which Halakah is to be considered as having been received by Moses on Sinai, has no place in this work, which does not concern itself with dogmatic problems. Furthermore, the number of Halakoth le-Mosheh mi-Sinai has not been determined to this day, and great authors of recent times differ in their opinions concerning this. It was my intention with what I said in my book to disarm those who increase the number of Halakoth le-Mosheh mi-Sinai in order to make it subject to mockery and scorn. And in order to refute the opinion of these scorers I said what I did."¹

We can now form some tentative conclusions.

Frankel absolutely refuses to admit that the concept of Halakah le-Mosheh mi-Sinai is to be taken literally. For him it can only be considered as a figure of speech. Whenever the term is used it can only mean that the Halakah in question is a very clear one and beyond reproach. Frankel supports this view by quoting Rabbenu Asher and the author of "Hawoth Yair", and the quotation concerning Akiba. However, not once in the book does he mention that Moses received the tradition on Mt. Sinai. Frankel is read to admit that there may be traditions which are very ancient. A discussion of "Mishnayoth Yesnanoth" is presented in the following chapter. X

¹M.G.W.J., Vol. X, (1861) Erklärung, pp. 159, et. seq.

CG 1057/KK Tanna v'gubla' m'le' m'le' m'le' 12 y' m'le' m'le' X

Chapter III

Early Mishnayoth - Ancient Customs - Old Halakoth

Early Mishnayoth - Ancient Customs - Old Halakoth

We have stated in the previous chapter that Frankel makes no definite statements about "Halakah le-Mosheh mi-Sinai". But throughout the book there are frequent references to early Mishnayoth, ancient customs, and old Halakoth. Frankel has been repeatedly called the father of the "positive historical school". Professor Ginzberg in speaking of Frankel says:

"For an adherent of this school the sanctity of the Sabbath reposes not upon the fact that it was proclaimed on Sinai, but on the fact that the Sabbath idea found for thousands of years its expression in Jewish souls. It is the task of the historian to examine into the beginnings and developments of the numerous customs and observances of the Jews."¹

This is the task which Frankel set for himself, and, as we shall show, carried to successful completion.

In the introduction to chapter two of the book Frankel speaks about the value to be derived from a knowledge of the correct order of the generations of Tannaim. His second reason is that such a knowledge

¹Ginzberg, p. 206

will enable us to recognize old Halakoth.

אז יבי יחידים בכוונת נחל אשכנזי זמן איזה
הלכה ולכן אז היא מאלו (פ' 28).

26

This statement sets the tone for a good deal of his work.

Frankel sets up principles which guide him in discovering early Mishnayoth, which in turn lead him to old Halakoth. Such a principle is for him the case where early Tannaim have difficulty with the meaning of some Halakan or differ as to the manner in which it was said.

אז נחל הלכה אז כפי נחל היתאוי ההלכות
ההנהגות אז נחלן באיזה דין נחיה. (פ' 28)

In this connection he lists five Mishnayoth which show such a difference of opinion. A second indication of an old Mishnah is the very language of the particular Mishnah in question.

אז נחל הלכה אז נחלן באיזה דין נחיה.
אז נחל הלכה אז נחלן באיזה דין נחיה.
(פ' 28)

Here also he lists five Mishnayoth² which fall under this category. In Chapter four, when Frankel deals with the methodology of the Mishnah, he expands further

¹Peah, IV-5; Kiddushin, I-1; Analoth, II-2; III-5; Niddah, IX-6.

²Bab. kam, I-2; Melim., I-2; Sabbath, I-1; Bab. lam., I-5; Negaim, I-1.

These to him appear to be very old and come from the period of the Soferim and show the earmarks of the Soferic methods of interpretation.

ובואו נקודו בדיון זה בני יום במלך נמלא אצח
משניות משניות מאד מחזקתהו כי לא נלך בנצח
מדרש זה לא ינצח מהלכה כי אם בדרך פניו
ומשניות אלה נחזק ינעם מאד ונלא מפי פלפול
ומן מקדש הכרן אשר ברב דב. ז"ל נקדים פירוש
עד סוף פסוק. דמה ממה: ביצד הווי פסוק
ואם אשר לו הביט וכו', ומן דברי המקרא דר:
בנצח נראה לי דקייט, אפילו ת"ח ודע שלם נצח
ודאי לא ינצח וכו', אבל הפירוש אפסי ממקרא בנצח וכו'.
מ"ל: אינו הולך למקדש היום ומקדש וכו' והמקדש
הביט לדעתו ומ"ל: וכו' ונראה אם כן אלא הכן
וכו'. הן דברי המקרא, אינו נלא אגונים מפרש
ומביט צד וכו' בלא פניו. מ"ל: הווי
לדע וכו' אם חזר ונלא אם הביט וכו' בלא וכו' המקרא.
ואם אדם במלך ודע למין פון במלך בלא אפסי
מקראת אלוה וכו'. ויתר וקלם אפסין למשניות
אלה נחזק בפירוש בלא זה פירוש אמת. וזה אין
ענין בלא אפסונם אשר ביוון. אולי מוספי במלך...
אכן נראה בפירוש נלא זה. פה מדרש באפסין
ודרך אימאדס, אבל פירוש מאד ומפירוש
במקרא. ובואו הווי אפי' נקדים במחול. אחר
אפסלם ביצד הווי פסוק וכו'. אף המקרא:
ואם אשר לו הביט וכו'. בנצח וכו', אפילו
אפילו ת"ח ודע וכו'. ואחז פירש המקרא וראה אם
פירש וכו'. אינו נלא אגונים מפרש דב וכו' הווי בלא
וכו' וכו'. - וכן מפרש. זה פירוש אמת וכו' שני
מלך פ"ה מ"ה. ודד לא הווי אפסין הקדש מחר
אחריכ וכו'. הווי אפסין וכו' אפסין וכו' וכו'.

ואז מלול כי תכלה מ' חזק שן ע"ה מ"ז וז'
בהיפך קצת מיר בקאי אחי בארץ (פ"ב, ק"א)

In addition to presenting these four rules Frankel presents proof that there actually are early Mishnayoth included in our present Mishnah. In discussing the final compilation of the Mishnah, he says that the Mishnah was compiled in a somewhat incomplete form by Rabbi Akiba and that even before Akiba there was a "Mishnah Rishonah"¹. But it is not enough for Frankel to produce these early Mishnayoth. He goes further and insists that they are ancient Halakah.

אז אם נראה בדיוק כי בונה האמר
מלך האומר י"ח ל"ה מלך דקדוש אלה
היא דיקדש אלה דם חלכה, ובונה. מלך האמר
היא דהלכה אלה נאמר דיומא קדמא (פ"ב, ק"א)
He concludes the discussion by saying:

הנה נראה לדיוק מלך האמר האמר
לנה מקדש (פ"ב, ק"א)

We now see Frankel coming out in the open so that we may recognize the direction in which he is moving. He has already demonstrated that from the internal evidence of the Mishnah we can prove that the language of the Mishnah is old. Then he brings to our attention those Mishnayoth which say that

¹Mishnah: Sanhed., III,4; Nazir., VI,1; Gittin,V,6; Edyoth,VII,2; Ketub.,V,3; Tosefta-Maaser Sheni, ch.II; Paran, Ch. XIV

there was an earlier Mishnah. And he concludes by saying that the early Mishnayoth are old Halakah. Therefore in discussing the period of the Soferim and their method, he says that their interpretations are "the very essence of old Halakah".

והנה החמשה נקראים ספרים, כי ידברו מלאכה מלאכה
אחרי היתה האופן הכולל: דאורייתא מלאכה מלאכה
המלאכה. והלכות המלאכה היתה קשורה עם אומדן
המקנה, כלומר בזה פה אולי אומדן אולי פה
המלאכה פירוש. חיד המלאכה, כגון בשר קדש אולי הפסח
עין אחרי עין, פירוש אולי אולי המלאכה עין אחרי עין
אחרי כ"א אולי. ולקחתי אולי חלק המלאכה פירוש פירוש
פירוש עין אחרי. וכלומר... והפירוש היו אולי
כפי המלאכה וכל עם המלאכה אולי הם המלאכה המלאכה.

We have already stated that Frankel considers those Halakoth which are introduced with the phrase "be-emeth amru" as being Halakah le-Mosheh mi-Sinai. But they are not to be taken literally. He does, however, insist that they are old Halakah.

לפיכך כל המלאכה אינה אחרי דאורייתא אולי.
כל אחרי דאורייתא אולי המלאכה המלאכה. (pp. 3-4)
In the same connection he says:

עם המלאכה המלאכה ברוב המלאכה. המלאכה המלאכה
דאורייתא המלאכה. עין אולי פירוש המלאכה המלאכה.
אולי פירוש אולי אחרי המלאכה. המלאכה פירוש המלאכה
אחרי המלאכה פירוש המלאכה. המלאכה המלאכה.
מלאכה המלאכה. עין דאורייתא המלאכה. המלאכה
מלאכה המלאכה, אולי דאורייתא המלאכה. המלאכה
מלאכה המלאכה. המלאכה המלאכה. המלאכה המלאכה.
כל המלאכה המלאכה המלאכה המלאכה המלאכה
המלאכה המלאכה. (pp. 304-5)

Once again we find Frankel referring the Halakah back to the period of the Soferim. Witness what he says on page 12:

ואלו נמצאו גם כן במלכה
הלכות, אבל לא נודע אם אומין וכן ילגה עד מאוד,
וילגה מפי הציבור וגם מפי שרבי אדם.

There is still one more section which shows Frankel's reverence for the Halakah and where he says that many Halakoth, customs, and ceremonies have their origin in hoary antiquity.

ובמלך נחלקה זלגה סדוק
ובכר הענין. למלך, כי הורה הלכות וצאל אל מפי הסופרים
אל מפי הציבור, ונכבד כה בקיצור ענין הלכה סדוק וצאל
האלי בלתיאם. ס' צדוק כוד בלתיאם ונהלגה עד מאוד
וצאל הדין, ונכבד, הלי ספק הלשון וזוהר וצאל דעין
קצם - וכן הלכות היום המקוריים, אשר נעלו. ה'
אשר, וצאל בכר בדיקון מפי הסופרים וגם מפי הדין
הקדמון אדם אשר מורם דבר ונחיה יז. הדין
הלכות אל ס' נלם ונחיה וסופרים אשר ה' דמלך
נחיה ס' ד'. וגם תיקון במלך ה' וכן עד מאוד, כי
בכר ה' שמין ה' אל ונלם תיקון אפיקה (במלך
סוף פ' וצאל ונחיה). מוקד מפי הקדמון נחיה
גם כן היום קצם אשר צדוק אדם - אשר נכבד
הקדמון הדין ה' מלך דעין, ונחיה וצאל
כי מוקד מפי מלך נחיה מלך. וצאל מ' אשר
עין בדיקון ה' מ' מלך וכן ב' מלך אצלי
דין כן נחיה היום מלך ג' מלך דעין
העין מלך ה' ונחיה עד מאוד וה' בכר ונלם
העין היום שמין מ' מלך - הלכות הקדמון כן
נחיה ונחיה אל מ' מלך. ב' מ' מ' מ' מ' מ'
במלך אשר ונחיה מלך - ס' מלך ה' מ' מ'
המלך ונחיה מלך מלך מלך מלך מלך מלך מלך
אל מלך מלך מלך מלך מלך מלך מלך מלך

התקנים וגם קצת אכן מביא את דעתו וזה אלא וזה
במדרש וגם מביא את דעתו וזה אלא וזה
למטה ולמטה וזה אלא וזה אלא (פ. 15)

In brief Frankel ascribes Seder Zeraim to an early period; Seder Moed to the Soferim and the generations which preceded them; Seder Nabhim to the Soferim; Seder Nezikin to "the men of the Great Synagogue"; Seder Kodashim to the Beth-Din of Priests; Seder Tamaroth to the period of the Maccabees.¹

Finally we see that Frankel goes into a lengthy discussion of those places in Mishnah, Tosefta, Talmud Babli and Yerushalmi which deal with the term "barishonah".² From the great mass of detail it is evident that these were ancient customs which were either changed in the course of time or abrogated by the rabbis. He contrasts those Mishnayoth which speak of "Mishnah Rishonah" and those which deal with "barishonah".

וכן כן. במלכות הוא קצת
א כי הוא חזק וזהו שחזק הוא ולזה
היה שכן הוא אלא וזה אלא
זהו או שגדל הוא במלכות וכן וקצת
חזק (ולזה הוא אלא) וזה הוא חזק וזה
הוא חזק וזה הוא חזק וזה הוא חזק...

¹ See above חזק שבעל פה and below Criticism of Auerbach

² pp. 140 et. seq.

ומהן מלני מנן גמלני כגילן פה אף
דינין פה אף וכו' (p. 150)

Although Frankel is sincerely devoted to Jewish custom and tradition his evidence leads him to the conclusion that some of the customs were not very admirable and therefore passed out of Jewish life. 2

We are now in a position to summarize a part of Frankel's work. He is constantly seeking the origin of Halakah and tradition. To guide himself in this work he sets up principles which lead him to the discovery of early Mishnayoth. In addition there are references in the Mishnah itself to "Mishnah Rishonah". These early mishnayoth he identifies with old Halakah. However, not belaboring the point too much, he admits that some of the old Halakah was later changed or fell into disuse.

Chapter IV

The Controversy Regarding Frankel's Views As
Expressed in Darke ha-Mishnah

The Controversy Regarding Frankel's Views As
Expressed in Darke ha-Mishnah

In this chapter we will attempt to bring together, in a condensed form all the cogent arguments which were produced by the protagonists of both sides in the controversy which raged about Frankel. As has been mentioned¹ the discussion centered about two points: Torah she-Baal Peh and Halakah le-Moshe mi-Sinai. Closely connected with the first of these subjects is the matter of the thirteen hermeneutical principles. In order to best present this material we have decided upon the following method: For all of these subjects we will present the arguments against Frankel and then the arguments in his defense, so that the reader will get a comprehensive picture of the subject.

¹Preface, p.4

Section I. Arguments of Frankel's Opponents

I. Torah she-Baal Peh

A. Fischer-Hirsch:¹

The chief criticisms center about Frankel's statement that the Oral Law was developed by the men of the Great Synagogue after due counsel and deliberation.² Fischer-Hirsch³ brings an array of laws to which every reasoned thought would be opposed. We herewith list some of these laws.

1) The blowing of the Shofar seems opposed to Numbers X:10 where a trumpet is specifically mentioned. Surely the tradition for Shofar must come directly from Sinai and not from the deliberation of the men of the Great Synagogue.

2) The Biblical command enjoins us: "but it and its young ye shall not kill in one day"

¹We link the two names together for the following reasons: In no encyclopedia and in no dictionary of biography have we been able to find any reference to Gottlieb Fischer whose Hebrew letter Hirsch translated into German and published in Jeschurun, 1861. The translation is included in Hirsch's "Gesammelte Schriften", which would seem to indicate that the editor, Dr. Naphtali Hirsch, felt that this supposed translation was part of Hirsch's own work.

²Frankel, p. 5

³Hirsch, pp. 324, 331, 332, 336-337

(Lev. XXII:28). The Halakah teaches that when the animal is not slaughtered according to the traditional method but my means of Nihur or Ikur then the Biblical command is not in force.

3) In Sanhedrin, 64b there is a discussion relating to the one who passes all his sons before the Moloch, in which case he is not guilty. Our natural sense tells us that if a man were to be considered guilty for sacrificing one of his sons he would surely be guilty were he to sacrifice all of them. But the law says Patur.

4) In Meg. 24b, the Mishnah reads:
האומר חבלי מלך סנה ליהי דהוה נהג
הוא חבלי מלך סנה ליהי דהוה נהג.

If our rabbis had depended solely upon their own reason they would have come to the same conclusions as the Karaites and Sectarrians.

5) In the case of false witnesses the law in Deut. XIX:9 is "ye shall do unto him as he thought to do unto his brother." If a death sentence is carried out as a result of false testimony, then the false witnesses are not in turn put to death.

6) How could one infer by "counsel and deliberation" that it is forbidden to write even two letters on the Sabbath, or to carry something as light as a feather four ells in **רה"י**? Who would think that one would be guilty of **כרת** and **סקילה**?

7) How is it possible to think that G-d who gave the laws of Zizith and Tefillin left the method of carrying out these laws in doubt?

We see that all of these cases involve laws which are opposed to pure reason. The Fischer-Hirsch question then is how is it possible for Frankel to say that the Oral Law came from the men of the Great Synagogue or from those who preceded them? Fischer-Hirsch quotes Maimonides commentary on Mishnah Sanhedrin, Chapter XI, Axiom 8. "Everything which we do today concerning the pattern of the Succah, the Lulab, the Shofar, Zizith, Tefillin and many others is the very pattern which the Blessed One told to Moses and he told it to us".¹ Fischer-Hirsch says

¹Maimonides: Commentary on the Mishnah, Sanhed. Ch. XI.

Axiom 8:

יזה שכל ענין שיש בו חקוקה וצורה
ושאר דברים וצורות וצורות שיש בהם
חקוקה וצורה וצורות וצורות וצורות

that there can be no greater denial of Torah min-ha-Shamaim than Frankel's "with counsel and deliberation". Then Maimonides' thirteenth Axiom is brought to bear testimony against Frankel. Anyone who does not believe in one of these principles is a sectarian and an Epicurean.¹ At other times Frankel is called a Sadducee.²

Frankel's love for the Halakah and his attempt to ascribe it to the Soferim and the men of the Great Synagogue is of no concern to Fischer-Hirsch. "Frankel speaks with great reverence of the Soferim, the men of the Great Synagogue and the Tannaites but he is very far removed from them."³ It is true that Frankel does not deny the existence of tradition. Tradition is evident in every page of the Talmud, but Frankel denies the Divine inspiration of this tradition.⁴ The antiquity which he ascribes to the Oral Law is of

לפי מה שכתבנו בלילא. והוא שחזק
אם היה בזה בלילא (במדרש) כח
ולא שחזק בזה בלילא כי לא היה
בזה חזק בלילא כי לא היה.

¹Hirsch, p. 330, 331

²ibid., pp. 326, 332, 333

³ ibid., p. 325

⁴ibid., p. 341

no consequence. How can he speak of the antiquity of the Halakah when he does not say that it is as old as the Written Law, when for him is only as old as Jeremiah.¹ So long as Frankel refuses to put the Oral Law on the same plane as the Written Law, then the antiquity of the Oral Law is unimportant.²

B. Auerbach:

Auerbach's arguments differ in a way from those of Fischer-Hirsch. He cannot agree to the great importance which Frankel ascribes to the men of the Great Synagogue. Frankel committed a grave error in not following his predecessors who wrote openly that a great part of the Halakoth in the Mishnah comes from Moses and from G-d.³ Why does Frankel stammer and stutter? Why does he not speak openly? Why does he not assert the truth of tradition?⁴

Auerbach proceeds to give references from the Talmud which prove that the Oral Law was given to Moses on Sinai. Some of his references follow:⁵

¹ibid., p. 341

²ibid., p. 415

³Auerbach, p. 1

⁴ibid., p. 10

⁵ibid., p. 3

- 1) Berachoth 5a comments on Ex. XXIV:12:
 - ואמתק אן אה לאט היאן והמרה והמלוא
 אלה במדת אבותם:

אלה is taken to mean the Pentateuch; משה is Mishnah; אלה במדת are the Prophets and the Holy Writings; אבותם is the Gemara. The conclusion is that all of them were given to Moses on Sinai.

- 2) Erubin 54b: ת"י: כילוד סודי מלכא?
 מלכא למד אפי' תגלרס.

- 3) Gittin 60b: אמר רבי יוחנן: זה
 המורה (נמנה) א' כה ומצא ככה.

- 4) In Aboth I:1 the words משי and קבל must refer to the Oral Law because the Written Law was handed over to all of Israel.¹

Auerbach very readily calls Frankel an Epicurean and heretic. He quotes² from Maimonides, Mishnah Torah Hil. Mamrim, ch. III:1: מי שחילק
 מורה במורה לגדל פה אילו זקן מורה
 נאמנו במורה אלא כח גדול העיקרון.

Auerbach goes into great length in refuting Frankel where Frankel ascribes approximate dates for the different Orders of the Mishnah.³ Auerbach shows

¹ibid.: משה קבל משה משיב ומורה איהו... ולכן
 קבל ומשי א' מורה אלא פה קבל פכמה א' משה משיב.

²ibid., p. 2

³Frankel, p. 15

that all of these laws are already in the Pentateuch.¹

He is full of biting satire over what Frankel calls

די Halakah. His comment is: יולג היא קול קורא

דמיכר יוצא בן סנהדרין
לכאן ולכאן וכלל חכמים
לכאן ולכאן

C. Klein:

Klein is the last² of the three to step out against Frankel. He is very much disappointed that Frankel turned aside from the path of his predecessors and that he does not openly say that the origin of the Oral Law is in Sinai.³ He criticizes Frankel for saying that the men of the Great Synagogue did not individually produce the Halakah but that this great work needed the approval of the sages of the generation.⁴ Klein says that it is quite certain that the individuals of the Great Synagogue did not produce their interpretation of Scripture, because those are the things which were said to Moses on Sinai.⁵ And surely they did not need "the approval of the sages of the generation" because in those Halakoth and in-

¹Auerbach, p. 19-24, cf. above p. 16. 1 - ibid. p. 19.

²In a note on page 28 of mi-Pne Koshet he says that he has seen Ha-Zofeh of Auerbach.

³Klein, mi-Pne Koshet, p. 3

⁴Frankel, p. 5

⁵mi-Pne Koshet, p. 11

Klein also bitterly attacks Frankel for ascribing ages to the different orders of the Mishnah.² The different orders have their origins in the Pentateuch and not in the periods to which Frankel ascribes them. Some of Klein's remarks are given herewith:

For Seder Zeraim: זרע נא חסד ספי מור
חלב לך מלך שולחך נאור ומהלך.³

For Seder Moed: הלא מלוא ומוקדש
(מלוא ומוקדש)
מקדש מלוא ומוקדש

For Sedeḥ Nashim: הוא חזק תמלא אפרו
בחרט שגה וגם אלפני איורסין ובידולין נודח מאץ
כי אלה זאת היתכן שבמה בוא אל אתה מזה אנדרה מאלנה
ובאלין, ואולי נרדף באחד האדם במדה לאב ואולי 5

For Seder Nezikin:

הלאוהו דברובק מדברי
מדת משה דפ' ואמה תמצה ודפ' חלול במעלות
ודפ' קדושים ודפ' דברים לאחר בן אומן וקטלם
ודפ' דפ' האב ולפולטין ולשאר וחקרת ודפ' בולח

For Seder Kodoshim: ומה נשתה ארבעות לכן
 ואלו הכהנים כהנים אלה פליגי ואלו אלה אלה
 ביום המאמץ הלאו בלז זמלא אה ביאברין ודני
 אה בקרוב קרבנותא כהני לא ודני אה המורה הכהנה
 לא אהמל. הלא אהן ואלא אה יכיה הכהנים אהרין
 ובניו ונחמך בכני כדכרס.

Ibid., p. 6

²ibid., p. 23-26

3, ibid. 4p. 23

⁴ibid., p. 24

5 *ibid.*, p. 24

⁶ibid., p. 25

⁷ibid.,

For Seder Taharoth: **אם פארום אלמאס אהא נאבאם**
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם

Thus we see expressed the feeling of Frankel's critics that he must have even denied the divine origin of the Written Law.

II. The Thirteen Hermeneutical Principles

A. Fischer-Hirsch

Here the argument centers about Frankel's statement:²

והאין לא תהיה האמת נצחית הניגון
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם

In opposition to this Fischer-Hirsch³ quotes from

Maimonides' "Introduction to Seder Zeraim":

האמת נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם

In this same connection Fischer-Hirsch asks why

Frankel did not quote Rashi Pesachim 66a, where he

says **4** Fischer-
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם

Hirsch would have us infer from this that all her-

¹ibid., p. 26

²Frankel, p. 18

³Hirsch, pp. 327-328

⁴Frankel must have been cognizant of Rashi's opinion.
 cf. Frankel, pp. 18-19:

נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם
נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם נאבאם

meneutical rules come from Sinai.

Fischer-Hirsch is somewhat surprised at Frankel's contention that Hillel was the first to arrive at the Hermeneutical Principles. The following passage from Temura 16a is quoted:

ההנהגות הללו נמצאו בלשון חז"ל
קודם שהיו נהגות על ידי חכמינו
היו אלו חכמינו חכמים ונבונים
היו אלו חכמינו חכמים ונבונים.

If the hermeneutical principles were first developed by the rabbis, there obviously must have been many laws which were not known in the days of Moses, how could so much have been forgotten?¹

B. Auerbach:

As much as Frankel tries to magnify the glory of the men of the Great Synagogue, so does Auerbach attempt to belittle them.² He is not even satisfied with Maimonides' statement that they developed the Law by means of the thirteen Hermeneutical Principles given on Sinai. He says that their greatness does not consist in this because a later Beth Din may nullify their work. Their greatness lay in the fact that they transmitted what they received

¹Hirsch, p. 354

²cf. Supra p. 46

from their masters.¹ Here we see a distinct reaction to Frankel's liberalism.

C. Klein:

Klein is astonished at Frankel's statement that the men of the Great Synagogue set up the hermeneutical principles. He alludes to Sanhedrin 99a, Temurah 16a, Kritnuth 5a, and the works of Maimonides.

III. Halakah le-Mosheh mi-Sinai

A. Fischer-Hirsch:

As we have stated² Frankel is on firm ground

¹Auerbach, p. 10:

אמת נכון הוא שגם אנשי תנ"ך
 נחשבו צדיקים וזו חז"ל הדנינום האלמג'ים
 והמסופרים. וכן כל דור ודור עד תנועת המלומדים
 במלך המלך. אך אין זה דיוק יקר גדול. אנשי
 תנ"ך... אלא האדם הזה שקראו קבלה מפי רבותא...
 בן המלך זה לא אנשי תנ"ך אלא זה
 מה שקראו מן הנביאים בדמיון ובמסורה לאנשי
 תנ"ך, ואיננו כלל אנשי תנ"ך כדורש המעלה.
 המלך, איננו אלא זהו. כיחול המלך והמלומד
 המלומד לא ידע לשלש, אלא שדברים אלו
 הם מלומד, הוא צדק וזו חז"ל שמתוך צדקתו
 האלה בדמיון. וכל זה בדמיון ואין להם
 אמונתם אלא בדמיון. אך נראה אולי
 אחר. במלך המלך שפ"ז בלח המלך.

²Supra, Chapt. II

when he deals with Halakah le-Mosheh mi-Sinai.

There is nothing much that Fischer-Hirsch can do with Frankel's authorities. Instead of the passage which we have cited Fischer-Hirsch tells us that Frankel should have used the following language:

ואם כן הרי"ף
אשר יראה מהדור המקורא וכן מהדור הנדביתא נאמא
דזו הלכות אשר אין אדם רשע במקרא וכן מקוללות מבי
הגדור ומה מסיני ונאמא דאס אינא הלכות
לכן מצינו דמצינו ג' הלכות אשר מסיני אשר
חיה אינא כולם אשר כן דבריו דהר"ם בהלכות אשר מסיני.¹

and then should have cited the words of Rosh "Hilkoth Mikwa'oth" to explain those Halakoth le-Mosheh mi-Sinai which are not to be taken literally.¹ Fischer-Hirsch maintains that the Rosh does not say that all Halakoth le-Mosheh mi-Sinai are to be taken literally.² The Bertinora on Mishnah Jadaim IV:3 says הל' לא ריוקא. Fischer-Hirsch again asserts that this does not mean that the Bertinora considers all Halakoth le-Mosheh mi-Sinai as "not being necessarily so."³

Fischer-Hirsch says further that we know about certain injuries that they are Trefah only by means of Halakah le-Mosheh mi-Sinai. In Mulin 42a we have

¹Hirsch, p. 340

²ibid., p. 342

³ibid., p. 344

. יי.נא אבנל תיכל אבנל אבנל אבנל . Did the Rabbis in saying this mean that it is to be understood as if it were as clear as a Halakah le-Mosheh mi-Sinai?¹

Fischer-Hirsch can bring no serious argument against Frankel. He vents his spleen with the following quip: If Frankel refuses to admit the existence of Halakah le-Mosheh mi-Sinai then his book should not be called "Darke ha-Mishnah" but rather "Darke ha-Moshanneh."²

B. Auerbach:

Auerbach is forced to take the same position as Fischer-Hirsch. Confronted with the statement of the Rosh in Hilkoth Mikwa'oth, he can only ask why Frankel quoted this particular reference from the Rosh. Auerbach quotes the Rosh in other places where he is more definite.³

Auerbach does have a contribution to make on this subject. In the first edition of Darke ha-Mishnah p. 20 Frankel says that Halakah le-Mosheh mi-Sinai occurs only twice in the Mishnah. Auerbach reminds Frankel that Halakah le-Mosheh mi-Sinai occurs also in Edyoth VIII:7. Here at least Auerbach can

¹ibid., p. 343

²ibid., p. 348

³Auerbach, p. 15-16

question Frankel's scholarship.¹

Auerbach seems always to be following in the footsteps of Fischer-Hirsch. He too, must avail himself of satire when all else fails. Frankel says: "There are Halakoth which are called Halakah le-Mosheh mi-Sinai".² This arouses Auerbach to say that everything is not what it purports to be. The Rabbis in Poland, Germany and France are called "Morim" and "Rabbiner" but many of them are only seducers. Thus implying that Frankel is also one of them.³

C. Klein:

Klein has nothing to add to the controversy. He also points out the Mishnah in Edyoth which Frankel omitted.⁴ In a note he remarks that he has seen the work of Auerbach and that it is therefore unnecessary for him to say any more.⁵

¹Auerbach, p. 14. Frankel was forced to acknowledge this in the "Hosafoth" (1867). Frankel's comment on this Mishnah is . . .

●B. Beer in Z.D.M.G. Vol. XIV, p. 329 mentions this omission of Ed. VIII:7. He says that it was omitted because it refers to the future. It is more Haggadic in character.

²Frankel p. 20.

³Auerbach, p. 14

⁴Klein, p. 27

⁵ibid., p. 28 note

It is interesting to note Kæin's (final) conclusion. He says that the teachings in Darke ha-Mishnah are far removed from tradition. Just as the Karaites could not accept a teacher from among the Rabbanites and the Rabbanites in turn not from the Karaites, because their faiths were different, so those who believe in the tradition as it has come down to us from our fathers cannot accept the teachings of a man who ascribes to the theories concerning the Oral Law as they are presented in Darke ha-Mishnah. The two faiths are different.¹ In this manner is Frankel excluded from the congregation of Israel.

Before turning over the case to Frankel's defenders we must mention yet one more of his critics. Samuel Freund, a dayyan in Prague, was asked by Ephraim Wehli, one of the leaders of the Prague community, to express a favorable opinion in regard to Darke ha-Mishnah. Freund² refused to vindicate Frankel. He said that it was Frankel's duty, if he were innocent of the charges levelled against him, to take the stand in his own defense and to make some public statement. On the other hand, he criticized Fischer-Hirsch severely for bringing the matter into

¹ibid., p. 32

²Freund - Passhegen Ha-Iggereth

the open. The matter should have been taken up privately with Frankel and Hirsch should never have translated the Fischer letter into German.

Section II. Arguments of Frankel's Defenders

I. Torah she-Baal Peh

A. Kaempf:

Kaempf steps out strongly in defense of Frankel. He insists that nowhere does Frankel speak against tradition. The proofs from Talmud and the Poskim that one is obliged to believe in divine origin of the Oral Law are entirely unnecessary. That is something to be taken for granted. There is no heresy in Frankel - it was only attributed to him by his critics.¹

In Frankel we find the following:

יטלם המכאס נקבות ספרים, כי דרך המסורת מלאכה
 אחת הייתה... הואר מלפני המורה ושלם במלכות
 והבונה לא היה קלוקל עם אורו במקרה. כלומר
 זהו פסוק אשר אומרו לא פסא אלא במורה פירשו חז"ל
 המעשה. כגון כחלל הפסוק אין תחתיו, פירשו
 אדם לאין הכוונה אין תחתיו אלא כי אדם וכלל
 זכר הוא כחללון כפי דף חדר. פירשו גם אחרים וכו' (פ. 3).

Kaempf has a very pertinent comment on this. How was it possible for the men of the Great Synagogue in interpreting "an eye for an eye" to say that in

¹Kaempf, p. 4

their opinion it meant a monetary fine; or to interpret "the fruit of goodly trees" to mean a citron. What answer could they have given if they had been asked how they came by these interpretations?⁷ Surely the men of the Great Synagogue when they were teaching the people must have told them that the interpretations had been handed down from generation to generation and that they trace their origin to Moses who in turn received them from the Most High on Sinai.¹ And only when they could not find adequate interpretation in the tradition, then it was that they turned to each other for "counsel and deliberation".²

Kaempf seeks another means with which to vindicate Frankel. In Frankel (p.5) we have the word "Perushim" occurring very often. Kaempf quotes Neh. VIII:8 "and they read in the book, in the law of God distinctly ("Meforash")" and then the comment on this in Megillah 3a where "Meforash" is taken to mean translation (targum). Kaempf then proceeds to ask if it is possible to think that the Targum was given on Sinai. And what is more in need of counsel and deliberation than translation?³ Therefore when Frankel

¹ ibid., p.5

² ibid., pp. 5-6

³ ibid., pp. 6-7

speaks of the interpretation of the men of the Great Synagogue it means nothing more than a translation.

But Kaempf realizes that this is mere hair-splitting. He would much rather be more realistic. He discusses Maimonides statement in the "Introduction to Seder Zeraim" where he says that only those things are Halakah le-Mosheh mi-Sinai in which there is no difference of opinion. There has been much discussion on this subject. Maimonides includes among the Halakoth le-Mosheh mi-Sinai many Halakoth about which there has been a difference of opinion. Kaempf, says that if one were to count those Halakoth about which there never was any difference of opinion, one would find that they are very few in number. Therefore it is only natural to assume that most of the Oral Law developed as a result of the application of reason and intelligence.¹

Kaempf concludes his argument with a tacit admission that Frankel may be wrong. He still insists that there is nothing in Darke ha-Mishnah which is opposed to a perfect belief in the Oral Law. The author's language may be ambiguous, but what reason do we have to accuse him unjustly?² Even if the author

¹ibid., pp. 13-14

²ibid., p. 25

did not constantly reiterate his belief in Torah min ha-shomaim, silence is equivalent to an admission.¹ Frankel must have believed.

B. Rapoport:

At the outset of his work² Rapoport assumes a position similar to that of Samuel Freund. He can see no reason that impelled Hirsch to translate the Fischer letter into German. But from this point he departs from Freund and tries to clear Frankel. Although sometimes he, too, has his doubts.

Rapoport has a lengthy discussion on "the ~~m~~orrow of the Sabbath" (Lev. XXIII:15), which the rabbis always interpret to mean the day after the first day of holiday, i.e., the sixteenth. Rapoport says:

"Every sage in his own generation even until the day of Maimonides labored to explain the proofs according to his own understanding. In any event the Men of the Great Synagogue found it necessary to interpret their tradition to their hearers so that it should not seem doubtful to them. I would ask if such interpretations and opinions were not in need of counsel and deliberation."³

¹ibid., p. 26

²Rapoport, pp. 1, 27

³ibid., pp. 5, 6

He then turns his attention to the problem of the false witnesses which was raised by Fischer-Hirsch. Rapoport insists that it was laws such as this which were always in need of "counsel and deliberation".¹

To really say something in Frankel's defense, Rapoport finds it necessary to give a running commentary on that controversial paragraph of Frankel (p.5).² Frankel says that the individuals of the Great Synagogue did not come to independent conclusion, but their work needed the approval of the sages of the generation and this work of theirs was the very essence of the Oral Law.³ On this Rapoport adds:

"and in this he (Frankel) explained that the interpretations of the commandments are the essence of the Oral Law, i.e., they were received from mouth to mouth until the men of the Great Synagogue."⁴

And where Frankel says "these interpretations were expressed in council and with due consideration", Rapoport adds:

"behold, he (Frankel) did not say they made the interpretations but that 'they

libid., p. 6

²Quoted Supra, ch. II . pp. 21-22.

3 Frankel, p. 5

⁴Rapport, pp. 9

9 pp. ופצה קינח כי פיוחלי המצות הם
 יקרי תורה שחזר פה, רח המקבולות מפת אפס
 יד אשר נפח ונחלוק.

were expressed in council and with deliberation.' They were thus expressed to their hearers so that it should be acceptable to them and so that they should not doubt what, at first sight, seemed opposed to reason or to the written word."¹

Rapoport then remarks satirically that if it were a question of "counsel and deliberation", Fischer-Hirsch was entirely devoid of it.²

Thus far did Rapoport go in defending Frankel, but his own feelings finally prevailed. He complains that Frankel's concise and abstruse language has caused confusion to many readers. Frankel has brought on himself a very unnecessary suspicion.³ He points out that Maimonides when he was accused of not believing in immortality was obliged to write a defense in "Maamar Tehiyyath ha-Methim". The obvious implication is that Frankel should come to his own defense.⁴ Rapoport's work was published after April, 1861 on which date Frankel's Erklärung appeared in the Monatsschrift. Rapoport states frankly that he is dissatisfied with it.

¹ibid., pp. 9, 10

²ibid.

³ibid., p. 28

⁴ibid., p. 34

II. The Thirteen Hermeneutical Principles

A. Kaempf

Kaempf adduces a logical argument. Quoting from Frankel (p.18):

"So that the truth should not be forsaken, they established rules-called principles, by means of which the Torah is interpreted."¹

He says that if they themselves invented these rules, how can their words be tested by means of them? Kaempf therefore concludes that Frankel must be acting on the assumption that the Hermeneutical principles are Sian²itic. He sees an indication of this in Frankel's statement that

"Hillel was the first to gather them (the hermeneutical principles) and to fix their number at seven"¹

Kaempf derives extreme satisfaction from the fact that Frankel said: "Hillel gathered them and fixed their number", and that he did not say: "Hillel was the first to discover them." From this Kaempf infers that the Hermeneutical principles must have been in existence before Hillel.²

But Kaempf is prepared to go even greater lengths to vindicate Frankel. He says that nowhere

¹Frankel, p. 18

²Kaempf, p. 16

in the Talmud is there any explicit mention of the fact that the thirteen Hermeneutical principles were received on Sinai. He attributes the idea to Rashi, Hulin 116a. For fear that he himself should not be called a heretic he quickly adds that reason demands such a belief. However, insofar as Frankel is concerned, since there is no mention of this in the Talmud, and since it is only a deduction of the later sages, there is no cause to accuse a man if he ascribes to another view. Surely there is no reason for the public announcement that Frankel is a Sectarian and Epicurean.¹ Frankel is nothing but a believer.

B. Rapoport:

There is very little that Rapoport has to say on this subject. He reminds his reader that even Maimonides was suspected by Nahmanides for the stand which he took. Nevertheless, says Rapoport, Nahmanides still remained an admirer of Maimonides. Therefore it is not necessary to become so contemptuous of Frankel. It is quite evident that where he says "they established rules",² his language is brief and compact. But what Frankel means to say is that they

¹ibid., p. 16

²Frankel, p. 18

presented rules to their hearers which they already knew by tradition.¹ As we have seen above, under Torah she-Baal Peh, Rapoport always finds it necessary to enlarge upon Frankel's words.

III. Halakah le-Mosheh mi-Sinai

A. Kaempfer

Kaempfer always has something new to add to the discussion. He quotes from Maimonides' *Hakdamah* and from *Mishneh Torah*, Hil. Mamrim I:3 both of which say that there is no difference of opinion in regard to *Halakah le-Mosheh mi-Sinai*. It is, of course, well known that this was not the case. Kaempfer therefore concludes that Maimonides meant only those *Halakoth* which were being practiced by the sages at that particular time. When it was a matter of practical law, then there never was any difference of opinion. But when the practicality of the *Halakah* had already passed out of existence, then differences arose. Such was the case with the water libation. In *Zebahim* 110b water libation is considered as *Halakah le-Mosheh mi-Sinai* and in *Sukkah* 48b we see R. Jehudah differing with the *Tanna Kamma* on the method of carrying

¹Rapoport, p. 29

out the law. In the days of R. Jehudah the Temple was already destroyed. Water libation was no longer a matter of practice. There was no one to testify "so did I see with my own eyes". This is the reason why we find R. Jehuda disagreeing as to the actual practice of the Law.¹

With this assumption, that according to Maimonides a Halakah le-Mosheh mi-Sinai could be only such a Halakah which was in practical use, Kaempf has a means of vindicating Frankel. It is for this reason that Frankel did not mention the Halakah le-Mosheh mi-Sinai in Edyoth VIII:7. Not only was it not a matter of practice but it had never been so. It was a matter of prophecy, predicting the future, saying that Elijah in the end of days would do so and so. Now we see why Frankel did not number this Halakah among the Halakoth le-Mosheh mi-Sinai.²

Kaempf must also consider the statement from the Rosh. He asks: "What error did Frankel commit by quoting the words of the Rosh?" Not only the Rosh but also the Bertinora says: .הָיָה לָהֶם אֵלֶּיךָ

¹Kaempf, pp. 12-13

²ibid., p.19; cf. Beer in Z.D.M.G. Vol. XIV, p. 329, Supra, p. 55, note 2

³ibid., p. 18

Frankel's accusers should find the reason for the statement of the Rosh. If Frankel's accusers cannot find a ready reason, Kaempf has one at hand. It is in effect the reason which Frankel gave in his Erklärung. At some future date some scholar, clever in his own eyes, would arise and point to the Halakoth le-Mosheh mi-Sinai and say: "These are the laws upon which the Rabbis resolved and they tell us that their origin is in Sinai. Why should we believe them?" And from this they would draw a similar analogy to other Halakoth. Thus did the Rosh anticipate the plague by offering its cure. Under Halakah le-Mosheh mi-Sinai is sometimes subsumed that which is only as clear as if it actually were a Halakah le-Mosheh mi-Sinai.¹

B. Rapoport:

Rapoport cannot see why so much animosity was aroused by Frankel's statement:

והנה כי אם אין זהו כי הקדמה ... אבל לא
באור דבר זה כלל בזה המסך.²

He takes issue with Hirsch for translating this:

"Und was Halacha lemosche missinai bedeute, siehe

¹ibid., p. 18

²Frankel, p. 20

Rosh Hilch. Mikw.!"¹ Frankel does not imply that the whole meaning of Halakah le-Mosheh mi-Sinai can be found in the Rosh. A better translation of Frankel's words would have been: "Hinsichtlich dieses Themas."² Rapoport sees no necessity for Fischer-Hirsch bringing so many proofs for Halakah le-Mosheh mi-Sinai. Surely Frankel knew all about them. Frankel brought the words of the Rosh only for the sake of those readers who would not be able to understand Halakah le-Mosheh mi-Sinai in its simple meaning. The words of the Rosh should quiet their disturbed spirits.

IV Miscellaneous Remarks

The Hirsch-Frankel controversy evoked a whole series of articles and a continuous discussion in A.Z.d.J., Vol. XXV, (1861). The first to come to Frankel's defense was his friend and co-worker Dr. Bernhard Beer.³ He considers the Fischer-Hirsch position to be a deceptive pharisaism and idiotic hypocrisy. He is surprised at Fischer-Hirsch's list of laws which are seemingly opposed to reason. Would this be sufficient proof that they were divinely inspired? Frankel's "be-moatzuth wa-daath" does not deny

¹Hirsch, p. 340

²Rapoport, pp. 15-16

³Beilage zu No. 6 der A.Z.d.J., Vol. XXV, Dr. B. Beer, "Aufruf"

the existence of a divinely inspired tradition. It merely implies that its further development and interpretation was undertaken by the Men of the Great Synagogue. Dr. Beer quotes from B. Meziah 59b

אלהי ירושלים and תורה לא זלזול כיה. With reference to Halakah le-Mosheh mi-Sinai he says that no one can doubt the faith of the Rosh. There are many cases where that which is called תורה is nothing more than a חכמה חסידה. It is to be understood as if it were in the Torah.

Dr. Wolf Landau,¹ who succeeded Frankel in Dresden, begins his discussion by saying that it was not necessary for Frankel to assert or affirm ~~that~~ divine origin of tradition. This premise should be taken for granted. Frankel was not writing a book for the religious instruction of children. Frankel began with the men of Great Synagogue, because the history of tradition began with them. No one can deny that not only the Oral Law but also the Written Law was partly forgotten in the time of Ezra. The people heard the commandment regarding the Sukkah as something new: "They found written in the Law" (Neh. VIII:14). Therefore the men of the Great Synagogue developed and built the tradition anew,

¹Beilage zu No. 8 der A.Z.d.J., Vol. XXV, Dr. W. Landau; "Muckerthum und Ketzerrieheret"

partly through memory and partly by means of traditional rules.¹ Fischer-Hirsch must be aware of Sukkah 20b

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Why should Frankel not be privileged to speak of the scientific development of tradition?²

Landau criticizes Fischer-Hirsch for making the whole Oral Law Sinaitic. He says that actually the greater part of the Oral Law was developed by means of the Thirteen Hermeneutical Principles. To prove this he quotes from Maimonides: "There never was a time when there was no application of reason." He takes the "be-pilpulo" of Temurah 16a³ which was quoted by Fischer-Hirsch to be the same as "be-moatzuth wa-daath".⁴

With reference to Halakah le-Mosheh mi-Sinai Landau considered the proofs which were adduced by Fischer-Hirsch as being entirely superfluous. Frankel did not have to mention this to his readers. Frankel's quotation from the Tosephta, where a controversy between Hillel and Shammai is called Halakah le-Mosheh mi-Sinai, and his quotation from the Rosh are considered by Landau

¹ ibid., p. 3

² ibid., p. 7

³ cf. supra p. 51

⁴ Landau, p. 5

as sufficient proof of his position.¹

This, in essence, was the controversy which raged about Frankel. Much more was said than that which we have summarized here, but many of the arguments were repetitious. Since words are but superfluous we end this chapter here. .

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¹ibid., p. 7

Chapter V.

Frankel's Method, His Theories Concerning the Mishnah
and an Evaluation of his Work

Frankel's Method, His Theories Concerning the Mishnah
and an Evaluation of his Work

Thus far we have focused our attention on Frankel's views on Torah she-Baal Peh and Halakah le-Mosheh mi-Sinai and the discussion which followed upon these views. There is much in the book which still remains to be discussed. What did Frankel mean by "be-moazuth wa-daath"? Was this an isolated expression or was it part of his comprehensive outlook? Throughout the book Frankel tries to make out a case for the independence of scholarly research. Scientific investigation, it seems must be divorced from dogmatic theology. X

At the very outset of the book, in discussing the origin of the Oral Law, Frankel says that in the days of the Second Temple the sage displaced the prophet. "The people returned to God with all their hearts..... Their only desire was to know the commandments and the ways of the Torah. This knowledge was only in the hands of the sages and not in the hands of the prophets."¹ He says that the greatest

¹Frankel, p. 2

factor in the preservation of the Torah was the fact that it was "an inheritance to the whole congregation of Jacob. Whosoever desires may come and take up the crown of the Torah."¹ It was this more than anything else that made for the freedom of the Law and prevented the establishment of a hierarchy in Jewish life - a group to mediate between God and the people.²

Frankel always insists that a scholar has the privilege to investigate the Law according to his own understanding. In the days of Beth Shammai and Beth Hillel the Sanhedrin no longer had the same character which it had in earlier times. It became "a great study house in which the commandments of the Torah were investigated and expounded."³ In the days of Beth Shammai and Beth Hillel there were no differences of opinion between any individual of one school and some individual of the other, always the controversy is between Beth Shammai and Beth Hillel. There was complete freedom of thought and expression within any one school but then a consensus of opinion was taken and all independent opinions were given up in favor of the majority

¹ibid., p. 4

²ibid.

³ibid., p. 47, cf. p. 54

one.¹

In the following generations we already see Halakoth reported in the names of those who said them. "In this generation there arose great individuals whose hearts were as the hearts of the lion in the methods of interpretation. They realized that with the privilege given to every sage in Israel to interpret according to his own understanding and to express the results of his own reasoning without subjecting himself to the some one school, learning would be increased. Each one, according to his own discernment 'would magnify the law and make it glorious' "2

Once this basic premise has been laid down, i.e., that there was always a freedom of academic research within Judaism, Frankel in discussing the Methodology of the Mishnah in Chapter IV says that those who preceeded him in this work were mainly interested in the practical Halakah and therefore based their assumptions on the Gemara. He, however, is more interested in the manner in which the Mishnah was compiled. He, therefore, says: "We have created our

¹ibid., p. 54

²ibid., p. 71

own method."¹ For this he was attacked by Hirsch² and Auerbach.³ In this matter Rapoport⁴ came to his defense. He pointed out that it was only in theoretical matters that Frankel presumed to follow his own method and that he was not concerned with the practical Halakah.⁵

There are constant references in Darke ha-Mishnah to the Palestinian Talmud, ~~wherever possible, Frankel prefers the reading of the Palestinian Talmud~~ to that of the Babylonian Talmud. This too was something which found displeasure in the eyes of his enemies. Here Kaempf came to his defense. He claims that wherever it was a matter of some actual occurrence or the emendation of some text, the Palestinian Talmud is to be trusted.⁶ In the introduction to Darke ha-Mishnah, Frankel criticises his contemporaries for paying too little attention to the Palestinian Talmud.⁷

¹ibid., p. 283

²Hirsch, p. 378

³Auerbach, p. 30

⁴Rapoport, p. 23

⁵It is interesting to note that Frankel (p.340) in describing Maimonides' commentary on the Mishnah says: "Where it is not a matter of Halakah, Maimonides, if he can possibly interpret the Mishnah in a simpler way, discards the Talmudic interpretation. Where it is a matter of Halakah, he follows in the paths of the Babylonian Talmud."

⁶Kaempf, p. 17

⁷Frankel, p. VI

הוא נאמן בתלמוד הבבלי ופירוש רמב"ם

The most important chapter in the book is Chapter II, "The Order of the Tannaites and the Methods of Their Study."¹ Frankel is not contented with a mere listing of names, or even to enumerate the many places where they are mentioned. He must go further and attempt to find some logical connection among the different sayings of each Tanna.² Thus, for instance, in discussing the differences between Beth Shammai and Beth Hillel it is not enough for him to remind us of the well known fact that the former were the rigorists and that the latter stood for a more liberal interpretation. He finds it necessary to investigate the reasons which prompted Beth Shammai to seek the strict interpretation.³ His answer is that Beth Shammai followed the methods of Shammai, whose chief method was to pursue any law to its logical conclusion without taking any special details into consideration.⁴ In the same manner he discusses the differences between R. Akiba and R. Ishmael, and between the disciples of Akiba and those of Ishmael.

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Frankel's assumptions concerning the names of

¹cf. Supra, p. 4

²Frankel, p. 21

³ibid., p. 48

⁴ibid., pp. 47-48

some of the Tannaites were criticised by Schorr.¹ Frankel says that there were many Tannaites who were called in the name of their fathers.² Frankel knows no reason for this, especially since the name of the father is never mentioned. In a parenthetical remark he adds that the fathers may have been known in Mishnaic times. He accepts the opinion of the Bertinora (Aboth IV:1) that these Tannaites die^d when they were quite young. Schorr refuses to accept this opinion. He maintains that most of the names are of Greek origin which are based on some incident in the individual's life, his trade, or some Halakah which is said in his name.³ The present writer is no competent judge of Schorr's Greek scholarship and even if his criticism of Frankel is justified, it does seem as if he carried his thesis too far.

In order to get a comprehensive view of Frankel's work, we must consider what Frankel says, about the development of the Mishnah. We have seen⁴ that Frankel talks about a Mishnah Rishonah. He does not consider this to be a compilation. The first compilation

¹O.H.Schorr-HeHalutz, Vol. IX, pp. 1 ff.

²Frankel, p. 70

³Schorr, p. 9

⁴Supra, Chapter III

into the Mishnah in the name of the Tanna Kamma, or the sages, or without any differing opinions. But all of this work was not done by Rabbi on the basis of his own understanding. He must have had the counsel of the sages who were sitting before him.¹ Proof of this there is in Gittin V:6 "Rabbi established a Beth Din ~~and~~ they resolved", or Anāloth XVIII:9, "Rabbi and his Beth Din resolved." It is also possible that he took counsel² with R. Nathan, that they held discourses in order to arrive at the Halakah. This may be the meaning of B. Metzia 86a, "Rabbi and R. Nathan are the last of the Mishnaic teachers."³

Frankel is fully aware that some of this work of compilation must have been carried on even after Rabbi's death. These additions come in the Mishnah with such introductions as "Rabbi says", or "the words of Rabbi", or if some incident is narrated in which Rabbi figured. These were evidently introduced into the Mishnah in the generation after Rabbi's death.⁴

¹ibid., p. 225 .הגהת רבינו גרשון ב"ר שלום

²ibid., p. 225 .הגהת רבינו גרשון ב"ר שלום
notice Frankel's insistence on "moasuth"

³Frankel, p. 226

⁴ibid., p. 227

The foregoing may be pure history. The most important question for all investigations into the Mishnah remains: "Was the Mishnah written?" Frankel follows Sherira Gaon (in the Spanish recension of the Iggereth) and Maimonides to say that the Mishnah was written. The express purpose of R. Jehudah was to keep the great mass of Halakoth from being forgotten. Otherwise how could we expect so much to be remembered! We also see that sometimes the Talmud draws an inference from some superfluous word, or from the beginning of the Mishnah or its end. How could the order of the words be remembered if the Mishnah was merely compiled in oral form!¹

Frankel quotes the arguments against the writing of the Mishnah, especially Gittin 60b:

גמל קרינן
הא דאמר ר' יוחנן דאמר ר' יוחנן
הא דאמר ר' יוחנן דאמר ר' יוחנן

This brings Frankel to a compromise and to express a view similar to that of Sherira Gaon. It is true that the Mishnah was written. But Rabbi's intention was to write a work which would help the memory of those who were studying it. Therefore the Mishnah was written in very concise language. It was developed

¹ibid., p. 229

and expanded orally in the Boraitha.¹ These are the Boraithoth which Gittin 60b calls Halakoth and are not to be written.²

We have attempted in this final chapter to give some picture of Frankel's method. Frankel throughout insisted upon the freedom of Academic scholarship and research. This insistence of Frankel's upon the freedom of scholarship led him to an intensive study of the Palestinian Talmud. He originally intended to write the "Darke ha-Mishnah" in three volumes.³ This intention was never realized. Already in the first volume, material was included which, according to the outline, would have been more properly included in the second or third volume. With the publication of the

¹cf. Iggeret R. Scherira Gaon, Ed. by B. Lewin (1921)

אלא כי דקדוקי הדקדוקים תבין וכתבם ... נלעגא קיטלא
 באפלו-מחברא מילתא מחברא מחברא. כהנא כהנא (מלי)
 חלילי לו בלבוש נעץ פלג ... נאמא כי חילא נפלג
 דבביתא דמקדו. דקדוקי וכלא וכלא נאמא ספיקולין
 ומחברא דבביתא דקדוקי בלבוש דמחברא. (נאמא ספיקולין 36 פ.)

²Frankel, p. 229

³ibid., introd, p.VII

"Hosafoth" (1867) Frankel admitted that he found it necessary to devote the remainder of his time to the Palestinian Talmud.

The present writer believes that there is much about Frankel which still remains to be said. He does not expect to forsake his investigations but expects to enlarge upon them at some future time.

Handwritten note:
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Bibliography

Bibliography

- A.Z.d.J. Vol. XXV, (1861)
especially: Beilage zu No. 6, Dr. B. Beer,
"Aufruf"
Beilage zu No. 8, Dr. W. Landau,
"Muckerthum und Ketzerriecherei"
- Auerbach, Zevi B:- Ha-Zofeh al Darke ha-Mishnah
- Bernfeld, S.:- Toldoth ha-Riformazion ha-Dathith ba-Yisroel
- Deutsch, Gotthard:- Zachariah Frankel
- Encyclopaedia Judaica Vol. VI, pp. 1090-1094
- Frankel, Zachariah:- Darke ha-Mishnah (1923)
with "Hosafoth u-Mafteah le-sefer
Darke ha-Mishnah" (1867)
included within the text
- Freund, S.:- Passhegen Ha-Iggereth
- Ginzberg, Louis:- Students, Scholars, and Saints pp.195-216,
"Zachariah Frankel"
- Hirsch, S.R.:- Gessammelte Schriften Vol.VI, pp.322-434
"Schriften betreffend Dr.Z.Frankel's
'Darke Hamischna'"
- Iggeret R. Scherira Gaon, ed., B. Lewin (1921)
- Jewish Encyclopedia, Vol. V, pp. 482-484
- Jüdisches Lexikon, Vol.II, pp. 723-726
- Kaempfer, S.I.:- Mantik Sod
- Kauffmann, David:- Gesammelte Schriften, Vol.I, pp.258-271
"Zacharias Frankel"
- Klein, S.Z.:- Mi-Pne Koshet

Maimonides: - Hakdamah le-Seder Zeraim
Mishneh Torah

M.G.W.J.:- Vol. 10, (1861)
Vol. 45, (1901) especially pp. 262-278
Dr. L. Dobschütz, "Frankels Einleitung
in die Mischna"

Otzar Israel, Vol. VIII, pp. 294,295

Philipson, David:- The Reform Movement in Judaism (1931)

Rabbinowitz, S. P.:- R. Zechariah Frankel

Rapoport, S. J.:- Dibre Shalom we-Emeth

Schorr, W. H.:- He-Halutz, Vol. IX

Tchernowitz, C.:- Toledoth ha-Halakah, Vol.I, part I

Various volumes of the Mishnah and Talmud

Waxman, M.:- A History of Jewish Literature, Vol.III

Z.D.M.G.:- Vol. XIV - pp. 323-333

Zweifel, E. Z.:- Shalom al Yisroel, Vol. IV