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AS EVIDENCED IN THE HALAKHIC SOURCES

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THE DEVELOPMENT OF THE PROFESSIONAL RABBINATE
AS EVIDENCED IN THE HALAKHIC SOURCES

by

Richard S. Rheins

Thesis submitted in partial fulfillment
of the requirements for Ordination

Hebrew Union College-Jewish Institute of Religion

February, 1989

Referee, Dr. Mark Washofsky

I dedicate this thesis to my parents, Irvin and Joy Rheins. With unrestrained love they have raised a son. Oh, sure. They also raised my two sisters (Carole and Cherie) and my brother (David), each worth kvelling about. We were all nurtured in a home buzzing with intelligence and emotion, sincere convictions and sharp-edged wit, a critical eye and unwavering loyalty. I carry that home with me at all times. With unrestrained love they have raised a Rabbi. With God's help I hope always to make them proud.

DIGEST

This thesis explores the development of the professional Rabbinate as evidenced from the Halakhic sources. In the first chapter we reviewed several seemingly contradictory passages from the Talmud. We discovered that certain passages were staunchly opposed to Rabbinical salaries and benefits, while other passages justified financial compensation and the need to support Scholars. We concluded that the Talmud deals with the professional Rabbinate as an unresolved controversy. However, I am inclined to believe that the extensive passages which approve of Rabbinical salaries, benefits, and authority are proof that the Rabbinate, as a professional institution, was already clearly envisioned.

In the preceding chapters we reviewed the Responsa and commentaries of Rabbenu Gershom, Isaac Alfasi, R. Solomon ben Isaac (Rashi), R. Moses Maimonides (Rambam), the Tosafot, Meir ben Baruch of Rothenburg, R. Solomon ben Adret (Rashba), R. Asher ben Yehiel (Rosh), R. Jacob ben Asher, R. Isaac ben Sheshet "Perfet" (Ribash), R. Israel Isserlein, R. Jacob Weil, R. Joseph Kolon (Maharik), R. Simeon b. Zemach Duran (Rashbaz), Joseph Karo, and, Moses Isserles.

We carefully progressed century by century. We sampled the rulings of both Sephardic and Ashkenazic authorities. And, with one exception, they all permitted Rabbinical fees, salaries, benefits and tax exemptions. They were all familiar with the practice of Rabbis receiving money in exchange for their services, and they did not prohibit this practice.

Even the one exception, Rambam, permitted sekhar batalah (compensation for loss of time) and acknowledged the minhag for a teacher of children to receive remuneration. Joseph Karo, in his Kesef Mishneh (a commentary on Rambam's Mishneh Torah) claims that Rambam had "softened" his opposition to the professional Rabbinate from the time of his commentary to the Mishna (written when Rambam was a young man) to the time of his Mishneh Torah.

In conclusion, we pointed out that those historians who perpetuate the broad and popular generalizations that: 1) the Talmudic Rabbinate was strictly honorary and they did not receive fees; 2) the professional Rabbinate was created from the fifteenth century onward; and, 3) that Simeon ben Zemach Duran was the "first professional Rabbi," are clearly wrong.

The medieval Scholars cannot be accused of creating the institution of the professional Rabbinate as some radically new innovation. Rather, they simply reinstituted some of the organizational characteristics of the Talmudic Rabbinate after they had lain dormant for several centuries. The post-Talmudic Rabbis never had much of a problem justifying their fees, benefits and tax exemptions but over time there grew the need to form some organization. Thus we witnessed

the reinstitution of: a form of smekhah, Rabbinical conferences, Chief Rabbis, etc.

The Halakhic authorities did have to fight against those unscrupulous individuals who became "Rabbis" in order to benefit from the financial rewards. Indeed, the Talmudic passages which are opposed to Rabbinic benefits were understood by the majority of the authorities to be legislation against the charlatans. However, Israel is obligated to support those Rabbis who sincerely wish to devote their lives to Talmud Torah.

It is true that the Halakhic authorities retained their "ideal" of a world in which all Jews would be scholarly and where Rabbis could support themselves, teach and learn without financial need. But this "ideal," like so many of our other ideals, will have to wait.

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ACKNOWLEDGMENTS

I gratefully acknowledge my many professors at Hebrew Union College-Jewish Institute of Religion. Without exception they have inspired in me a thirst for knowledge and a respect for scholarship.

Solomon Freehof once wrote: "Whoever writes a book in the field of Rabbinics is bound to think of the teacher who first taught him to swim in the 'Sea of Talmud.'" His teacher, Jacob Lauterbach, of blessed memory, was a great scholar of Rabbinics at the Hebrew Union College.

Mark Washofsky was the professor of my first course in Talmud. In each of the next four years he continued to kindle the fires of our tradition in me. From Talmud, to Codes, to Responsa, and now for my thesis, he has been my Rav Muvhak. For his great erudition and his personal warmth, I will always thank him. I am sure that one day he will be recognized as one of our greatest scholars.

I would also like to acknowledge Rabbi Jonathan Stein who has long been my mentor and who inspired me to follow in his Rabbinical footsteps. "Thanks" also to Grandpa Rheins and my friends for their companionship and their delightfully distracting humor. And I want to thank Rabbi Susan Miller for her constant encouragement, and most of all, for the love we share.

INTRODUCTION

Judaism has survived and prospered throughout the millennia in no small part due to her tremendous ability to adapt to the demands of the present while maintaining the time honored ideals of her heritage. Note that there is an inherent tension between the two verbs "adapt" and "maintain." Of course, in nearly every generation there were some Jews who felt that Judaism did not adapt soon enough or boldly enough while there were others who felt that the slightest accommodation to modernity would bring the ruin of our people. Halakha, the vast body of Jewish law, has served as an effective forum for mediating the differences between these opposing schools of thought. Without a doubt, the idealogues were never quite satisfied. "Moderate change" was not enough for some and too much for others. But as an end result, Judaism did not trade in all of her values for the latest fad, nor did she fossilize into an anachronistic cult by denying the reality of the modern world.

The tension between the opposing trends, adaptation versus petrification, remains one of the greatest challenges to modern Judaism. Unfortunately, we no longer have a common forum in which to mediate our differences. While some arrogantly claim sole possession of the "true" Halakhic

forum, others passively abandon their inherited right to participate in Halakhic debates. Perhaps we might benefit from a review of the historical Halakhic process at work.

This thesis will trace the development of the institution of the professional Rabbinate as it is evidenced in the Halakhic literature. We will witness how an ideal, that one should not earn a living through religious instruction and duties, is met with the pragmatic need to attract and maintain scholars who will help lead the religious life of the Jewish community. We will trace this debate from the Talmud through to the great law code of the sixteenth century, the Shulchan Arukh. Our manifest objective is to gain a better understanding of the development of the professional Rabbinate. The latent desire, however, is that we gain a better appreciation for the value of the Halakhic forum which has served our people so well.

Defining the "professional Rabbinate"

As this thesis intends to outline the development of the professional Rabbinate as it is evidenced in the Halakhic literature it behooves us to first consider what we mean by a "professional Rabbi."

One might think that any Rabbi who receives financial

support for his Rabbinical services is a professional Rabbi. Indeed, the simplest and most broad definition of "professional" is "one who is a provider of a service and who receives financial compensation from an individual or group of individuals in exchange for the performance of a particular function."

However, there are scholars who have a more strict definition of the professional Rabbinate. Dr. Irving Agus has written invaluable historical perspectives of medieval Jewish life based on the Responsa literature. For Agus, the financial relationship between Rabbi and community is but one of several of the required qualifications for title "professional Rabbi." He presents his definition of professional Rabbi in his commentary to Responsum #32 of Rabbi Gershom.¹ The Responsum records an incident from the end of the tenth, or the beginning of the eleventh century in Mayence, in which several preeminent Rabbis, including R. Gershom, debate whether a circumcision on Rosh Hashanah should precede the blowing of the Shofar (i.e. thus taking precedence) or if it should be postponed until after the service.² Because there was a debate and not a single

¹. Irving Agus, Urban Civilization in Pre-Crusade Europe: A Study of Organized Town-life in Northwestern Europe during the Tenth and Eleventh Centuries Based on the Responsa Literature, (New York: Yeshiva University Press, 1965), Volume Two, p.486.

². Irving Agus, Urban Civilization in Pre-Crusade Europe, p. 486.

authoritative voice Agus draws the following conclusion:

"The community of Mayence had no Rabbi (in the sense ascribed to this term in the past four or five centuries). There was in that community no elected, or appointed, spiritual head whose function it was to render final and authoritative opinions of law and ritual. Neither R. Gershom, R. Simon the Great, nor R. Judah the Great, was endowed with the typed of authority exercised by the Rabbi of the Polish community in the sixteenth through the nineteenth centuries. For in the latter community a question on ritual law would naturally be asked of the Rabbi; and no other scholar, no matter how erudite or profound, would dare to express an opinion --in accordance with the talmudic decision (Sanh. 5b): "a scholar may not render decisions about ritual law in his teacher's locality." For the above cited incident could not be interpreted as merely a discussion preparatory to an authoritative decision, [therefore] . . . R. Gershom was not the authoritative talmudic scholar and the unquestioned religious authority later generations thought him to have been. There was no official Rabbi in Mayence, only a group of outstanding Talmudic scholars. In an important problem on ritual law, a consensus of opinion by these scholars was usually sought."³

Thus, for Dr. Irving Agus, the professional Rabbinate involves these major issues: 1) payment and privileges; 2) unquestioned authority in his locality (i.e. the community would only address questions to their Rabbi, the "Rav ha-ir"); and, 3) exclusive authority in his locality (i.e. no other Rabbi can come and contradict his rulings). Agus claims that these qualifications have been met by Rabbis for "the past four or five centuries," or at least by the Polish Rabbis in the sixteenth through the nineteenth centuries. But other scholars, and many Rabbinic sources, would

³. Agus, pp.486-488. Agus offers similar, if not shorter, evaluations to several other Responsa. See, for example pp.465-486 in which the lack of a single, authoritative Rabbi leads Agus to conclude, "The absence of a professional Rabbinate is quite apparent."

indicate that Agus' description of the "professional Rabbi" is much too narrow for it fits only the exception and not the normative.

Salo Baron relates that in 1370 Meir ben Baruch of Vienna issued an ordinance by which qualified Rabbis would receive the title Moreinu (lit. "our teacher," i.e. a qualified Halakhic authority). The Moreinu would then be eligible to be named Rab ha-ir (i.e. "the official Rabbi of the town"). These official Rabbis were to serve as teachers, preachers, and experts of ritual law. They had a contractual relationship with the community (i.e. ketav Rabbanut). This contractual Rabbinate specified required duties in exchange for certain privileges and compensation.⁴ But the Rabbi did not have unquestioned authority. For example, the Rabbi's right to issue the punishment of cherem (i.e. "excommunication") was often dependent on the approval of the community's lay leaders. Community control over the Rabbi could be very powerful. In Venice in the seventeenth century the Rabbi was forbidden to ordain except with the lay approval. And in 1628 the Venetian lay leaders empowered themselves to impose excommunication even without their Rabbi's approval.⁵ Thus we have a financially compensated Rabbi who is called the

⁴. Salo Baron, The Jewish Community, (Philadelphia: The Jewish Publication Society of America, 1948), Volume Two, pp. 67-90.

⁵. Baron, p.77.

"official Rabbi of the town" but who nevertheless does not possess the unquestioned authority that Dr. Agus requires.

From the medieval period through the modern era there has been a sharing of power and judicial responsibility between the Rabbinical and the lay leaders of a community. The non-Rabbinical courts ruled on civil and financial cases while the Rabbi dealt with ritual and religious matters.⁶ Rabbis have even had to share some of their religious authority with lay leaders.⁷ There was a natural tension between the Rabbis and the parnasim (i.e. the lay leaders, usually men of wealth). The situation that existed in sixteenth century Prague is a good example of the tension that existed between the Rabbi and the lay leaders.

The Maharal (Rabbi Yehuda Low of Prague, sixteenth century) describes how difficult it was for the Rabbis who had to depend on the parnasim for the renewal of their contracts. "Woe to us, for the Judges and the Rabbis that live in these countries, all of them are dependent on the leaders of the community. Every year, or every three years the Rabbi's appointment is up for renewal. And why should

⁶. Solomon Zeitlin, Religious and Secular Leadership, (Philadelphia, Dropsie College, 1943), passim.

Mordechai Breuer, The Rabbinate in Ashkenaz During The Middle Ages [Hebrew], (Jerusalem: The Historical Society of Israel, The Zalman Shazar Center For The Furtherance Of The Study Of Jewish History, 1976) p. 14.

⁷. Harold Saperstein, "The Origin and Authority of the Rabbi," in Rabbinic Authority, ed. Elliot Stevens, (New York: Central Conference of American Rabbis, 1982), pp.15-27.

he (the Rabbi) not be afraid of them (the parnasim)? He is totally in their power; for perhaps, they will not renew his Rabbinic appointment . . . There is even the concern that the Rabbi will be afraid of the common citizens (lit. the heads of the households) unless he does what they want."⁸

Harold Saperstein summarizes the historical tension between the Rabbis and the lay leaders, saying:

"There were, of course, contradictory trends. The Rabbi's theoretical position in the community was central, and where one had scholarly competence and a strong personality, he might very well be accepted as the acknowledged leader of Jewish life. Baron cites the heyday of Rabbinic power and influence in Germany from the fifteenth to the seventeenth century and in Eastern Poland in the nineteenth, when the Rabbi wielded almost unchallenged power. In Eastern Europe, for example, Rabbinic tenure became law. Moses Sofer could say, 'No one ever heard or saw in these lands that a Rabbi should be deposed, and one ought never do such a thing.' A unique situation developed in the Chasidic movement, which began as a rebellion against the rigid authority of law and ended as acceptance of the absolute authority of the tzaddik. But in general we find the Rabbi in the difficult and paradoxical position of one who must maintain his integrity when employed by people he sought to lead."⁹

The historian, H.H. Ben-Sasson, clearly demonstrates that even in seventeenth century Poland the Rabbis did not have undisputed authority. Ben-Sasson writes:

"...there was a tension of a different kind: between the rabbis, for whom the study of Torah was both an ideal and a life occupation, and the wealthy, respected householders, who directed communal affairs because the voters in communities and Councils had elected them to that position. The scholars complained when these lay leaders dared to allocate to themselves the authority to impose punishments

⁸. Breuer, pp. 118-119.

⁹. Saperstein, p. 21.

for ordinances they had ordained, without the authorization of the scholars. They complained even more when the community heads simply exercised legal powers, as happened in many instances. During the 1620s R. Joel Sirkes of Poland wrote two letters to 'the nobles of the Land . . . namely the heads and leaders of the Land who are meeting in Council at the Lublin Fair', by which he meant the heads of the Council of the Lands of Poland. In the second letter he offers a complete set of detailed regulations to prevent the heads of the Lands from using the sanction of cherem (excommunication) without the authorization of scholars. 'Who has permitted you to proclaim excommunication against the entire community without the approval of the sages? And although you have been elected and deputed from all the communities in the realm, it is nonetheless conceivable that there is scarcely any validity in any of the penalties of the cherem which you are imposing.' He advises them not to make any further use of excommunication as a punishment, but to make use of a system of 'secular' punishments. 'I do not say that ordinances should not be ordained . . . for certainly all that you have ordained until now and will continue to ordain is an urgent necessity. But you must specify in the ordinances . . . that anyone who transgresses against them will be fined such and such an amount of money, or will suffer some physical punishment, or will be expelled from the kingdom or handed over to the civil authorities as you see fit for the good of the generation.' (Joel Sirkes Additional Bayit Hadash Responsa, Korzec, 1785, no. 43, fol. 22v-23r).¹⁰

Since Irving Agus' definition of the professional Rabbi as the unquestioned authority describes a Rabbinate that only existed for a relatively short period of time (and even then there is the debate as to what is meant by "unquestioned authority") this thesis will apply the more simple and broad understanding of what makes a Rabbi a "professional." That is, we will seek to trace the Halakhic justification for the payment of salaries and the granting of privileges to Rabbis in exchange for their services to a

¹⁰. H.H. Ben-Sasson, A History of the Jewish People, (Cambridge, Massachusetts: Harvard University Press, 1976) p. 686.

community.

Besides salaries, another crucial characteristic of the professional Rabbi is that he is a "full-time Rabbi." That is, that he devotes all of his time to his Rabbinical duties and he does not maintain a separate occupation. These Rabbis receive all of their financial support in return for their services. There is a popular assumption that the advent of the "full-time" professional Rabbinate marked a change between the Rabbinate of the Talmud and the Rabbinate of the later middle-ages. According to this assumption the Talmudic Rabbis supported themselves with secular vocations in addition to their Rabbinical work, but centuries later, it became more and more common for the Rabbis to have but one occupation: that being their Rabbinic occupations.¹¹ One of the tasks of this thesis will be to determine the veracity of these assumptions.

We will review the differences between the Rabbinate as it is portrayed in the Talmud and the later halakhic works. We will focus on the differences, if any, in three main areas: 1) Rabbinic salaries and benefits, 2) Rabbinic authority, and 3) the Rabbinate as a full-time or part-time vocation. Obviously, not every Halakhic code,

¹¹. A typical example of this popular assumption is the article "Rabbi, Rabbinate" in the Encyclopaedia Judaica, pp.1446-1447, written by the editors. It maintains: "The office of Rabbi was originally an honorary one on the principle that the Torah had to be taught free of charge. It was not until the 14th century that there is the first clear evidence of a Rabbi receiving emoluments."

Responsum, or commentary will address each of our three main areas. Still, each of our selections from the post-Talmudic literature will enable us to determine how the medieval professional Rabbinate developed from its Talmudic roots.

Methodology

In declaring our intention to explore the issue of the development (or "evolution") of the medieval professional Rabbinate from its Talmudic roots, it would seem that it is accepted as a given that the Rabbinate evolved. We will try to suppress any presuppositions. However, clearly there are differences between the Talmudic Rabbinate and the Rabbinate one thousand years later. Still, we will try to avoid making assumptions as to the nature of those changes. Rather we will let the texts speak for themselves.

One of the reasons why we will concentrate on the texts themselves and why we will minimize historical speculation is because objective historical sources concerning the early Rabbinate are virtually nonexistent. Our information about the early Rabbinate is, for the most part, limited to that which can be culled from the Rabbinic sources (i.e. the Talmud and the Halakhic literature), and the Rabbis, as we know all too well, were not historians.

The other reason why the primary focus of this study will be on the Talmudic and Halakhic literature is because we hope to identify and trace the various Halakhic

principles that are central to the professional Rabbinate.

First we will review selections from the Mishnah and the Gemara that concern Rabbinical salaries, and benefits. Then we will progress from century to century, sampling some of the major Halakhic works from both Sephardic and Ashkenazic authorities. Will determine whether or not the Rabbinate changed and if so, how it changed. Our survey will conclude with a review of the sixteenth century code, the Shulchan Arukh. The differences between the Rabbinate as it is portrayed in the Talmud and the Rabbinate of the Shulchan Arukh will, for the purposes of this thesis be considered the "development" or "evolution" of the professional Rabbinate.

Defining "Rabbi"

The title of "Rabbi" is hardly a universal term. Various Jewish communities used different titles throughout the ages. Originally the title "Rabbi" was accorded only to those who had received smekhah ("ordination"). The Babylonian Sages used the term "Rav" since proper smekhah was only carried out in the land of Israel.¹² Since a Rabbi

¹². For a more complete discussion of the various titles employed by Jewish Scholars as well as a comprehensive treatment of the whole issue of smekhah I refer you to Allen Podet's Morenu Harabh, (Cincinnati, D.H.L. Thesis-HUC-JIR, 1963). Also, see "Rabbi, Rabbinate" Encyclopaedia Judaica.

was called upon to decide ritual and monetary cases he was also given the title "Dayyan" (i.e. Judge). In the medieval era, the title "Ha-Rav" often signified that one was a great Scholar. Sephardic Jews called one of their Scholars "Chakham" (i.e. Sage). Another title is: "Talmud Chakham" (i.e. a Scholar).

In order to avoid confusion, I will use the term "Rabbi" in reference to both Sephardic and Ashkenazic Scholars. Not infrequently, I will refer to Rabbis simply as Scholars.

It is important to note that, for the most part, the various terms are interchangeably used throughout the Rabbinic literature.

CHAPTER ONE

The Rabbinate as Evidenced in the Talmud

By reviewing the Mishna and Gemara it is hoped that we can establish both the Talmudic "ideal" for the Rabbinate as well as the early roots of the professional Rabbinate. We will discover, however, that the picture of the Rabbinate as evidenced in the Talmud is inconsistent. In the following chapter we have selected those Talmudic passages which are most frequently cited in the halakhic literature in relationship to the roles, obligations and privileges of the Rabbinate. The passages have been divided into three major groupings: 1) those passages that are prohibit salaries and limit privileges; 2) those passages that permit financial compensation and privileges; and, 3) those passages that deal with Rabbinic honor and jurisdiction.

Talmudic Passages¹ that Prohibit Salaries and Limit Privileges

Two passages in Mishna Avot and one in Mishna Bekhorot

¹. The translations for the passages of the Mishnah and Gemara in this thesis are based on the Soncino editions. I have frequently modified their translations in order to give a more literal reading of the text or in order to clarify a difficult passage.

Words in [brackets] are my own explanatory notes.

Words in (parenthesis) provide either the english or hebrew equivalent of the previous word.

I will underline and bold certain passages which I deem significant.

are most frequently cited as evidence of the Talmud's opposition to Rabbinical salaries. Note that some of these passages are opposed to Rabbis deriving any benefit lest it even appear as if their judicial rulings were being influenced by material gain.

Mishna Avot I.13

"He [Hillel] said: 'A name made great is a name lost; he that does not increase, decreases; he who does not study is deserving of death; and one who makes worldly use of the crown [of Torah] shall perish.'"

Mishna Avot IV.5

"Rabbi Ishmael, son of Rabbi Jose, said: 'He who learns in order to teach will be able both learn and to teach. One who learns in order to practice will succeed in learning and teaching, in observing and practicing.' Rabbi Zadok said: 'Do not make [the Torah] a crown to make yourself great, nor a spade with which to dig.' And so also Hillel used to say: 'He who makes worldly use of the crown [of Torah] shall perish.' From this you learn that whoever uses the words of the Torah for his own benefit takes his life from the world."

Mishna Bekhorot IV.6

"If one takes payment [sekhar] to act as a Judge, His judgments are void; to give evidence, His evidence is void; to sprinkle [the water of purification] or to sanctify, the waters are considered cave waters and the ashes are considered only ordinary ashes."

The Gemara of Bekhorot 29a continues:

"Whence is it proved [that one may not take payment for teaching Torah and rendering decisions]? Rab Judah reported in the name of Rab: Scripture says: 'Behold I have taught you...' [Deut. 4:5]. Just as I teach you gratuitously, so you should teach gratuitously."

The above three passages delineate a clear position against the acceptance of [sekhar] salaries for Rabbis. The drash of Deuteronomy 4:5 in Bekhorot 29a becomes an often cited anthem for all the authorities who seek to prohibit financial compensation for the Rabbis. In these passages one may derive the feeling that the Talmud is only struggling against those wicked few who might be charlatans. But the following passages make it clear that the Talmud sets down certain general principles that prohibit deriving any benefit from teaching Torah, even under the most innocent of circumstances.

Baba Batra 8a

"Rabbi [Judah HaNasi] once opened his storehouse (of food) in a year of scarcity, proclaiming: 'Let those enter who have studied Bible, Mishna, Gemara, Halakha, or Aggada. But there is no admission for the ignorant. R. Jonathan b. Amram pushed his way in and said, 'Master, give food.' He said to him, 'My son, have you studied the Scripture?' He replied, 'No.' 'Have you studied the Mishna?' 'No.' 'If so,' he said, 'how can I give you food?' He said, 'Feed me as the dog and the raven are fed.' [A reference to Ps.147:9 In which God is praised for providing food for all of the animals.] So he gave him some food. After he went away, Rabbi's conscience bothered him. He said: 'Woe is me that I have given my bread to a man without learning!' R. Simeon, the son of Rabbi, ventured to say to him: 'Perhaps it is Jonathan Amram your student, who all his life has made it a principle not to derive material benefit from the honor paid to the Torah.' Inquiries were made and it was found that it was so; whereupon Rabbi said: 'All may now enter.'"

Ketubot 105a

"What was the purpose of the statement: 'And thou shall take no [shochad] gift' [Exodus 23:8]. If

the purpose was to teach us that one must not acquit the guilty or than one must not condemn the innocent [then one could object by saying], it was already stated elsewhere in Scripture 'Thou shalt not wrest judgment' [Deut. 16:19]. Consequently it must be concluded that even [where the intention is] is acquit the innocent or to condemn the guilty the Torah rules, 'And thou shalt take no gift.' . . . "Our Rabbis taught: 'For a gift doth blind the eyes of the wise' [Ex. 23:8] and much more so those of the foolish. 'And pervert the words of the righteous' [Deut. 16:19] and much more so those of the wicked. Are then fools and wicked men capable of acting as judges? But it is this that is meant: 'For a gift doth blind the eyes of the wise' i.e. even a great Sage who takes bribes will not depart from the world without [the affliction of] a dullness of the mind; 'And doth pervert the words of the righteous' [beginning of Ket. 105b] i.e. even one who is righteous in every respect and takes bribes will not depart from this world without a confused mind." . . . "Rab stated: 'What is the reason for [the prohibition against taking] a gift? Because as soon as a man receives a gift from another he becomes so well disposed towards him that he becomes like his own person and no man sees himself in the wrong. What is the meaning of shochad? she-hu-chad ["he who is at one" i.e. with the other].

Nedarim 62a

"Rabbi Tarfon was found by a man eating [of the figs] when most of the knives had been folded [i.e. when it was permissible for one to eat freely of another's figs] whereupon he [the farmer] threw him [Tarfon] into a sack and carried him to cast him in the river. 'Woe to Tarfon,' he cried out, 'whom this man is about to murder.' When the man heard this he abandoned him and fled. Rabbi Abbahu said on the authority of Rabbi Hananiah b. Gamaliel: 'All his lifetime that pious man [Tarfon] grieved over this, saying, 'Woe is me that I made use of the crown of the Torah.' For Rabbah b. Bar Hanah said in Rabbi Johanan's name: 'Whoever puts the crown of the Torah to [profane] use is uprooted from the world.'" . . . "Now since Rabbi Tarfon ate when most of the knives were folded, why did that man ill-treat him? Because someone had been stealing his grapes

all the year round, and when he found Rabbi Tarfon, he thought that it was he. If so, why was he [Tarfon] so grieved [at revealing his identity]? Because Rabbi Tarfon, being very wealthy should have pacified him with money. It was taught: 'That thou mayest love the Lord thy God and that thou mayest obey His voice, and that thou mayest cleave unto Him.' [Deut. 30:20] This means that one should not say, 'I will read Scripture that I may be called a Sage. I will study that I may be called Rabbi. I will study to be an Elder and sit in the assembly of Elders. Rather, learn out of love, and honor will come in the end.'

It is especially interesting that sekhar ["salary"] and shochad ["gift" and sometimes, "bribe"] have virtually the same meaning in these passages. Neither sekhar nor shochad assume evil intent. Both are prohibited, not just to thwart the greedy, but to protect the innocent scholar from possible corruption.

The example of Rabbi Tarfon and his lament that he made use of Torah is an ideal. The text takes note of the fact that certain people do strive after ecclesiastical honors and positions. Human nature and ego are recognized as factors that can corrupt the Rabbinic ideal.

What is the Rabbinic ideal? Sincerity and true conviction are absolute musts for the Rabbi. Raba said: "Any scholar whose inside is not like his outside is no scholar." [Yoma 72b] "Woe unto the enemies of the scholars [i.e. those corrupted scholars] who occupy themselves with the Torah, but have no fear of heaven." [Yoma 72b] The ideal Rabbi must be thoroughly versed in all matters of Halakha.

Rabbi Johanan said: "Who is the scholar that is appointed a leader of the community? He who when asked a matter of Halakha in any place can answer it, even in the tractate Kallah." [Shabbat 114a] The ideal Rabbi supported himself by means of a secular vocation. Shammai was a builder [Shabbat 31a]; Rabbi Joshua was a blacksmith [Berakhot 28a]; Rabbi Jose was a tanner [Shabbat 49b]; Abba Hoshai of Turya was a laundryman [JT. Babba Kama 10.10]; Rabbi Chanina and Rabbi Oshaya were shoemakers [Pesachim 113b]; Karna was a wine expert [Ketubot 105a]; and Chisda and Rabbi Pappa were brewers of mead [Pesachim 113a]. Other Rabbis were sandal makers, carpenters and merchants, but most worked in agriculture.² Thus the ideal Rabbi was a pious and humble man who sought no advantage due to his scholarship. He was thoroughly expert in all the law, and he supported himself by means of a secular vocation and devoted all his spare time to teaching and study. It is little wonder, therefore, that many were unable to live up to the Talmud's Rabbinic ideal.

The corruptibility of human nature was not the only concern of the Rabbis. Harsh economic realities also threatened to disrupt the Rabbinic ideal.

Berakhot 35b

"Our Rabbis taught: 'And thou shall gather in thy grain' [Deut. 11:14]. What is to be learnt from

². Judah David Eisenstein, "Rabbi," The Jewish Encyclopedia, pp. 294-295.

these words? Since it says: 'This book of the law shall not depart out of thy mouth' [Joshua 1:8] I might think that this injunction is to be taken literally. Therefore it says, 'And thou shall gather in thy grain,' which implies that you are to combine the study of them [i.e. words of Torah] with a worldly occupation. This is the view of Rabbi Ishmael. Rabbi Simeon b. Yochai says: 'Is it possible? If a man ploughs in the ploughing season, and sows in the sowing season, and reaps in the reaping season, and threshes in the threshing season, and winnows in the season of wind, what is to become of the Torah?' . . . "Rabbah bar Bar Chanah said in the name of Rabbi Johanan, reporting Rabbi Judah bar Ila'i: 'See what a difference there is between the earlier generations and the later generations. The earlier generations made the study of the Torah their main concern and their ordinary work subsidiary to it, and both prospered in their hands. The later generations made their ordinary work their main concern and their study of the Torah subsidiary, and neither prospered in their hands."

The warning of Rabbi Simeon b. Yochai that it is impossible to combine real scholarship with the demands of a full-time, worldly vocation is supported by Rabbah b. Bar Chanah's lament. The Talmud contains several passages which permit scholars to receive financial compensation, tax exemptions, and other benefits. Were these "permissive" passages written in order to alleviate the financial and social burdens placed on the Rabbis by the "prohibitive" and "idealistic" passages listed above? It is certainly possible. In fact, the lament of Rabbah b. Bar Chanah that the later Rabbis just cannot live up to the standards of the earlier Rabbis may support such a conclusion. Still, such speculation, is just that, speculation. We will confine ourselves simply to listing those "permissive" passages

(below) and recording the fact that there are many passages that seem to contradict or circumvent the "prohibitive" passages.

Talmudic Passages that Permit Financial Compensation and Privileges

Bekhorot 28b-29b [Mishna IV.5]

MISHNA: "If one takes payment for seeing the firstlings, they must not be slaughtered by his instructions, unless he was an expert [Mumcheh] like Ila in Yavneh who the sages permitted to accept four Roman coins for small cattle and six for large cattle, whether they were unblemished or blemished."

GEMARA: "What is the reason? In one case [i.e. with the large cattle] he has much trouble [tircha] whereas in the other case [i.e. the small cattle] he does not have much trouble."

At first glance it seems as if Mishna Bekhorot IV.5 and its Gemara contradicts Mishna Bekhorot IV.6 and the other "prohibiting" passages. But the Gemara to Mishna Bekhorot 4.6 helps draw out a crucial distinction. Abaye, commenting on Bekhorot 4.6 says: "There is no difficulty. In the case mentioned above [a Baraita quoted in the Gemara] it is payment for bringing the ashes or for filling the waters [thus payment is permitted---because it is payment for tircha, "trouble"], but in the case [of the Mishna] it is payment for the actual ritual obligation [mitzvah] of sprinkling or sanctification."

Thus the prohibition for receiving a salary in exchange for the performance of a religious commandment is still in force. But one can receive a salary for all of the non-religious functions one must do in preparation of the mitzvah. This compensation for tircha ["trouble"] becomes one of the foundations for the permissibility of Rabbis accepting financial support. Kiddushin 58b reiterates the concept of compensation for tircha.

Kiddushin 58b

"We learnt: [from the Mishna] 'If one betroths [a woman] with terumot, tithes, priestly gifts, the water of purification or the ashes of purification, she is betrothed, even an Israelite.' But the following is opposed to this: 'If one accepts payment for judging, his judgments are null; for testifying, his testimony is worthless; for sprinkling and mixing the ashes [of the Red Heifer with water], his water is cave water [i.e. useless] and his ashes are ashes of a hearth [i.e. of no value].' Said Abaye, 'There is no difficulty: here it [the Mishna] refers to payment for bringing [the ashes] and drawing [the water]; while there, payment for sprinkling and sanctification [are meant, and thus payment is prohibited because sprinkling and sanctification are mitzvot].'"

In the following lengthy passage from Ketubot 105a the Talmud establishes the foundation of the concept sekhar batalah [compensation for the loss of work], also referred to by its Aramaic equivalent, agar bateilah.

Ketubot 105a

"Rab Judah stated in the name of Rabbi Assi: 'The Judges of Civil Law in Jerusalem received their salaries out of the Temple funds [at the rate of] ninety-nine maneh. If they were not satisfied

they were given an increase.' They were not satisfied? Are we dealing with wicked men? The reading in fact is: '[If the amount was] not sufficient an increase was granted to them even if they objected.'

Karna used to take one istira from the innocent party and one istira from the guilty party and then informed them of his decision. But how could he act in such a manner? Is it not written in Scripture, 'And thou shall take no gift?' [Exodus 23:8] And should you reply that this applies only where he does not take from both [litigants] since he might [in consequence] wrest judgment, but Karna, since he took [the same amount] from both parties, would not come to wrest judgment, [it can be retorted:] 'Is this permitted even where one would not come to wrest judgment? Was it not in fact taught: 'What was the purpose of the statement? 'And thou shall take no gift' if only to teach that one must not acquit the guilty or that one must not condemn the innocent.' [If thus, the objection surely could be raised:] It was already specifically stated elsewhere in Scripture, 'thou shall not wrest judgment.'

Consequently it must be concluded that even [where the intention is] to acquit the innocent or to condemn the guilty the Torah laid down, 'And thou shall take no gift' - - But this applies only where [the judge] takes [the gift] as a bribe, but Karna took [the money] as a fee [agra]. But is it permissible [for a judge to take money] as a fee? Have we not in fact learned : The legal decisions of one who takes a fee for acting as judge are null and void [Kiddushin 58b, Bekhorot 29a]? This applies only to a fee for pronouncing judgment, while Karna was only taking compensation for loss of work [agar bateilah].

But [is a judge] permitted to take compensation for loss of work? Was it not in fact taught: Contemptible is the judge who takes a fee from pronouncing judgment; but his decision is valid? Now, what is to be understood [by fee]. If it be suggested [that it means] a fee for acting as judge [the objection would rise: How could it be said,] 'his decision is valid,' when in fact we have learned: The legal decisions of one who takes a fee for acting as judge are null and void? Consequently it must mean a fee for loss of work. And yet was it not stated: 'Contemptible is the Judge...?' This applies only to loss of work that cannot be proved, but Karna received [compensation for] loss of work that could be proved, for he was

[regularly employed as a] wine expert, and for this he was paid a fee. This is similar to the case of Rabbi Huna. when a lawsuit was brought to him he would say, 'Provide me with a man who will draw the water in my place [i.e. irrigate my land] and I will pronounce judgment for you.'

Thus the Gemaras of two "prohibitive" passages [Bekhorot IV.6 and Ketubot 105a] create legal scenarios by which one may receive a salary or financial compensation.

There are several other passages in which we see that the Rabbinat was not just seeking opportunities for individuals to be compensated, but rather there is evidence of the Rabbinat as an institution, in service of, and supported by, the Jewish community. The latter authorities were not quite sure what is being discussed in Gittin 60b when it refers to the shifora:

Gittin 60b

"'An Erub should be placed in the room where it has always been placed, in the interests of peace.' What is the reason? Shall we say it is out of respect for the owner of the room? Then what of the shifora which at first was in the house of Rab Judah and later in that of Rabbah and then in the house of Rabbi Joseph and then in the house of Abaye and finally in the house of Raba? The real reason is, so as not to excite suspicion."

It is possible that the shifora was simply the shofar that was used to signal in Shabbat. But Rashi in his commentary to Gittin 60b (s.v. "v'ha shofar") quotes Rav Sherira Gaon who maintained that the shifora was a receptacle in which were placed the voluntary contributions that were sent on behalf of the Yeshiva students. This

community charity box would be evidence of the institutionalization of the scholastic world.

In Baba Batra 22a the laws and customs dealing with restraint of trade and local monopolies. The discussion exempts scholars from the prohibitions.

Baba Batra 22a

"Rabbi Nachman b. Isaac said: 'Rabbi Huna, the son of Rabbi Joshua, also agrees that itinerant spice-sellers cannot prevent on another from going to any given town, because, as a Master has stated, Ezra made a rule for Israel that spice-sellers should go about from town to town so that the daughters of Israel should be able to obtain finery. This, however, only means that they are at liberty to go from house to house [in a strange town], but not to settle there. If, however, the seller is a student, he may settle also, a precedent having been set by Raba in allowing Rabbi Josiah and Rabbi Obadiah to settle. The reason he gave was that, as they were Rabbis, they would be disturbed in their studies [if they had to return to their own town].'"

Baba Batra 22a continues with a passage in which a community willing to reserve a special space in the market for one who is a worthy scholar.

"R. Dimi from Nehardea brought a load of figs in a boat. The Exilarch said to Raba, 'Go and see if he is a scholar, and if so, reserve the market for him.'"

In Kiddushin 70a two important facts are established. One, that there existed the office of "Head of the community" (Parnas al ha'tsibur); and, that this community leader was forbidden from doing manual labor in public.

Kiddushin 70a

"On his (Rab Judah) arrival there he found him (R. Nachman) making a railing. He (Judah) said to

him: 'Do you not accept R. Huna b. Idi's dictum in Samuel's name that once a man is appointed head of a community, he may not do [manual] labor in the presence of three?'"

Note that Rabbi Nachman is presumed to be the head of his community. The passage also conveys the impression that it is shameful for Rabbis to do work in public.

Rabbis also enjoyed certain tax exemptions and other privileges. Nedarim 62a-62b contains passages concerning the tax exemptions. Our first passage also contains a crucial drash which will link the rights privileges of the Rabbis to those of the Cohenim [i.e. the Priests].

Nedarim 62a

"Raba said, 'A Rabbinical scholar may assert, I am a Rabbinical scholar; let my business receive first attention, as it is written, 'And David's sons were Cohenim' [of course, David's sons were not Cohenim, but this verse in IISamuel 8:18 simply is used to show that just as David's sons received Priestly privileges, though they were not Priests, so too should Rabbis receive Priestly privileges³] just as a Priest receives first, so does the Scholar receive first. And from where do we know that a Priest receives first? Because it is written, 'Thou shall sanctify him therefore, for he offers the bread of thy God' [Leviticus 21:8].

The school of Rabbi Ishmael taught: 'Thou shall sanctify him' this means, in all matters that pertain to holiness, such as: [the Rabbi has the right] to be the first to commence [the reading of the Torah], [Ned. 62b] the first to pronounce the blessing, and the first to receive a good portion."

"Raba said: 'A Rabbinical scholar may declare, I will not pay poll tax, for it is written, 'it shall not be lawful to impose mindah, belo, or halak upon them.' [Ezra 7:24] Rab Judah then said: 'mindah is the King's portion [of the

³. This is made clear in Hagahot Ha'Bach, note #7.

crops];, belo is a head tax; and, halak is arnona [possibly a produce tax, or a tax for the sustenance of marching troops. Cf. Jastrow.]' Raba also said: 'A Rabbinical scholar may assert, I am a servant of fire⁴, and will not pay poll-tax. [The Rabbi who said this to a Persian tax collector would win tax exemption for the Persian government (under Shapur II) tried to promote the Persian religion of fire worship by offering tax exemptions. Thus a Rabbi may claim that he is a fire worshipper in order to avoid paying taxes!⁵] What is the reason? Because it is only said in order to drive away the lion [i.e. the tax extortionist]. Rabbi Ashi owned a forest, which he sold to a fire-temple. Said Rabina to Rabbi Ashi: 'But there is [an injunction] 'Thou shall not put a stumbling block before the blind' [Lev. 19:14] He replied: 'Most wood is used only for heating.'"

The above passages show us how lenient the laws were when it came to supporting the Rabbis via tax-exemptions and other privileges. A key passage in Baba Batra 8a also affirms the right of Rabbis to exemption from taxes.

Baba Batra 8a

"R. Nachman b. R. Chisda levied a poll tax on the Rabbis. Said Rabbi Nachman b. Isaac to him: 'You have transgressed the Torah, the Prophets and the

⁴. The later authorities, of course, had a difficult time accepting the notion that Rabbis would resort to calling themselves "servants of fire" (i.e. idolaters) simply in order to avoid paying taxes. Ran and the Tosafot explain that what is meant is that the Rabbi could claim that he was a servant of the Priests who worship fire.

⁵. For a more comprehensive study of this phenomenon I. Epstein in the Soncino edition of the Talmud (note #11 to Nedarim 62b) refers to Funk, S. Die Juden in Babylonien II. p.3. See also, Will Durant, The Story of Civilization, Volume IV, "The Age of Faith," (New York, Simon and Schuster, 1950), pp. 139-140, who provides a background of Persian religious practices.

Of course, even while the Rabbi was saying the words "servant of fire" he would be thinking of God as the "consuming fire" as in Deut. 4:24.

Holy Writings. . . ' "

Rabbi Nachman goes on to cite Deuteronomy 33:3, Hosea 8:10 and Ezra 7:24, thereby proving that the tax-exemption for Rabbis is D'oraita [or Scriptural and not simply a Rabbinic ruling].

Parallel passages in Tractate Nedarim of both the Babylonian and the Jerusalem Talmud (Yerushalmi) give us evidence that, at least in certain places, it was acceptable to pay salaries to the teachers of Scripture.

Nedarim 36b

"'He may teach him Midrash, Halakhot and Aggadot, but not Scripture...' Why not scripture? Because it benefits him. [This section of Nedarim deals with those who take a vow not to benefit from another or not to benefit another.] But doesn't Midrash benefit him? Samuel said: 'This refers to a place where the teaching of Scripture is remunerated. But Midrash is not remunerated. How state this definitely? [Ned. 37a] The Tanna informs us that even where a fee is taken, it may be accepted only for Scripture and not for Midrash. Why does Midrash differ? Because it is written, 'And the Lord commanded me at that time to teach you' [Deut. 4:14] and it is also written, 'Behold I have taught you statutes and judgments even as the Lord my God has commanded me' [Deut. 4:5] just as I taught you gratuitously so you must teach gratuitously. Then Scripture should not be remunerated. Rab said: 'The fee is for guarding the children.' Rabbi Johanan maintained: 'The fee is for teaching the accentuation.'"

Yerushalmi Nedarim 4.3

"It is written, 'Behold, I have taught you statutes and ordinances' [Deut. 4:5] Just as I do so without remuneration, so you must do so without remuneration. Is it possible that the same rule applies [i.e. no remuneration] also to the teaching of Scripture and the translation? Scripture says, 'statutes and ordinances.' Statutes and ordinances must be taught without

remuneration, but not so Scripture and translation. And yet we see that those who teach Mishna receive remuneration. Said Rabbi Judah b. Rabbi Ishmael, 'It is compensation for their loss of work.'

Again, we see that the Talmud acknowledges the customs of paying salaries to scholars. The passage in the Yerushalmi is especially interesting for it seems to apply the legal concept of agar bateilah ["compensation for loss of work"] only in order to permit payment for the teaching of Mishna. According to their reasoning, the teaching of Scripture and translation is not prohibited "D'oraita" [i.e. via the Scriptures] and therefore the concept of agar bateilah need not be utilized.

In the following two passages, one from the Babylonian Talmud and one from the Yerushalmi, we see, once again, the willingness of the Talmud to speak of "enriching" the Rabbis, and of the responsibility of the Jewish community to support the Rabbis.

Chullin 134b

"There once arrived at the Beit Hamidrash [a gift of] a bag of denars. Rabbi Ammi came in first and acquired them. But how may he do such a thing? Is it not written, 'And they shall give' [Deut. 18:3] but he shall not take it himself? Perhaps Rabbi Ammi acquired them on behalf of the poor. Or, if you wish, you may say that in the case of an eminent person it is different. For it has been taught: 'And the Priest that is highest among his brethren' implies that he shall be highest among his brethren in beauty, in wisdom, and in wealth. Others say, 'Where is it proved that if he does not possess any wealth, his brethren, the Priests, shall make him great?' It is proved in the Scripture: 'And the Priest that is highest [by

reason of gifts] from his brethren.'"

Yerushalmi Hagigah 1:7

"Rabbi Simeon b. Menasha taught: 'If you see that the towns have been destroyed in the Land of Israel, you should know that it is because the inhabitants did not pay the scribes and the teachers their due salary.'"

The above passage in Chullin 134b, by which the Talmud establishes that the Rabbis should be enriched, is also found in Yoma 18a and Horayot 9a. Again, it is beyond our scope to know for sure how the two contradictory trends developed in the Talmud. It is not at all certain that the earliest opinions were opposed to Rabbinic salaries and benefits and the later authorities adopted more lenient opinions in order to confront the harsh realities of the chaos that plagued the post-Temple era. In fact, it is entirely possible that the later authorities confronted the plague of charlatans and other Rabbinical frauds by resurrecting the ideal of a Rabbinic ascetic. We may never know for sure. Still, it is enough that we recognize that the Talmud provides ample ammunition for those who will be on both sides of the controversy.

Major Talmudic Passages dealing Rabbinic Honor and Jurisdiction

Though this thesis will not fully explore the enormously complex issue of smekhah ("ordination") we would be remiss in not referring to Sanhedrin 5a-5b in which the

process of authorization is recorded.

Sanhedrin 5a

"Said Rab: 'Whosoever wishes to decide monetary cases by himself and be free from liability in case of an erroneous decision, should obtain sanction from the Resh Galuta (the Exilarch). And so said Samuel. It is clear that an authorization held from the Exilarch here [in Babylonia] hold good here. And one from there [the land of Israel] is valid there . . .

Now, what is the content of an authorization? When Rabba b. Chanah was about to go to Babylon, R. Chiyya said to Rabbi: 'My brother's son is going to Babylon. Yoreh?' (i.e. "May he decide in matters of ritual law?") Rabbi answered: Yoreh." (i.e. "Yes, he may decide in matters of ritual") "Yadin?" (i.e. "May he decide in monetary cases?") "Yadin." (i.e. "Yes, he may decide in monetary cases.") "Yatir bekhoret?" (i.e. "May he declare firstlings permissible?") "Yatir." (i.e. "Yes, he may rule on firstlings.")

Sanhedrin 5b also contains an important passage in which it is made clear that certain Rabbinic authorities had designated territories within which, their word was not to be contradicted.

Sanhedrin 5b

"Tanchum son of R. Ammi happened to be at Chatar, and in expounding the law to its inhabitants, taught them that they might soak the grain before grinding for Passover. But they said to him: 'Does not R. Mani of Tyre live here? And has it not been taught that a Talmid (a disciple) should not give a Halakhic decision in the place where his teacher resides, unless there is a distance of three parasot (The space occupied by the camp of Israel) between them?' He answered: 'The point did not occur to me.'"

Erubin 62b contains one of the most significant passages concerning Rabbinic jurisdiction. More

specifically, the topic of jurisdiction revolves around the issue of teacher to student, Master to disciple relationship.

Erubin 62b-63a

"R, Jacob b. Abba asked Abaye: 'Is it permitted for a disciple in a district under his Master's jurisdiction to give a ruling that was as authoritative as those contained in the Megilat Ta'anit [The scroll of Fasts] which is a written and generally accepted document?' [i.e. the disciple would only be relating what this well known and accepted halakhic work was saying.] 'Thus,' reported R. Joseph, the other replied: 'Even on the question of the permissibility of eating an egg with kutcha [the question of eating an egg with milk, i.e. an obvious question] which I have been asking him [R.Chisda] throughout the lifetime of R. Huna [Chisda's Master] R. Chisda never ruled.' R. Chisda decided legal questions in Kafri during the lifetime of R. Huna. [Huna was in Pumbedita which is far away from Kafri.] R. Hamnuna decided legal points at Charta di Argiz during the lifetime of R. Chisda. [Hamnuna could rule even though he was in Chisda's district because Hamnuna was both a disciple of Chisda, and his colleague.] Rabina examined the slaughterer's knife in Babylon. Said R. Ashi to him, 'Why does the Master act in this manner?' He replied, "Did not R. Hamnuna decide legal points at Charta di Argiz during the lifetime of R. Chisda?' 'It was stated,' said Ashi, 'that he did not decide legal points.' 'The fact is, retorted Rabina, 'that one statement was made that he did decide legal points while another was that he did not, and the explanations that only during the lifetime of his Master R. Huna did he [Hamnuna] not decide any legal points, but during the lifetime of R. Chisda, who was both his colleague and his disciple, he did decide legal points, and I too am the Master's colleague as well as disciple.

Rabbi Ashi thought that since he had taught Rabina that it was chutzpadik for Rabina to make rulings in his territory [even on a slaughterer's knife, for though a

simple decision, it is a lucrative position.] We thus have the foundation of a hierarchy:

Master Supreme [like R. Huna]; Master-Colleague [like R. Ashi was to Rabina, i.e. Ashi might have taught Rabina some subjects but not all and thus Ashi's authority over Rabina is limited]; Colleague [mutual authority with other colleagues]; and, Disciple [who must obey all of his teachers].

Kiddushin 32b [and following] contains the major Rabbinic passages concerning the honor due one's Rabbi. It is true that the phenomenon of "honoring" per se does not directly relate to our subject of the development of the professional Rabbinate. Still, one drash in Kiddushin is important to note.

Kiddushin 32b

"Our Rabbis taught: 'Thou shall rise up before the hoary head' [Lev. 19:32] I might think, even before an aged sinner; therefore [in the second half of that verse] it is written, 'and honor the face of a zakein and zakein can only refer to a Sage, for it is said, 'Gather unto me seventy men of the elders [z'kenim] of Israel.' [Num. 11:16]

Though we have reviewed a goodly number of Talmudic passages I am sure that there are several more that are worthy of mentioning that we have failed to mention. Still, we have established an extensive background as to the nature of the Rabbinate as it is portrayed in the Talmud. The unresolved controversies of the Talmud are the fuel for the

later generations of authorities. They will have to decide if the "Rabbinic ideal" is one of a ascetic scholar who is financially independent but cannot devote all his time to study or rather the scholar who is financially supported by the community so that he may serve full-time.

However, it certainly appears that the Talmudic Rabbinate already embodies the main characteristics of a professional institution. Halakhic principle have been established by which Rabbis may receive financial compensation (tircha and sekhar batalah). Rabbis are exempt from taxes. Rabbis are heads of communities. Rabbis have well established methods for the transference of authority. Different levels of authority can be conferred (i.e. the authority to rule on ritual cases, or on monetary cases, or on both). Rabbis are granted exclusive authority in their areas. This is not to say that the Rabbis had already formed a formal and organized institution, rather, it is just important to note that the characteristics of a "professional Rabbinate" are clearly present.

CHAPTER TWO

The Origin of the European Jewish Communities

The previous chapter established the Talmudic background of the professional Rabbinate. The remainder of this thesis will focus on how the professional Rabbinate is portrayed in the Responsa and law codes of the medieval Halakhic authorities. Before we begin our review, however, it is worthwhile to digress for a short summary of the origins of the European Jewish communities. Please note that I will be referring primarily to Solomon Zeitlin's Religious and Secular Leadership for my brief sketch of the development of the European Jewish communities. Zeitlin's book is used because it neatly summarizes the complexities. I have found that, for the most part, his conclusions are supported by other major scholars.¹

The two Talmuds (the Jerusalem Talmud and the Babylonian Talmud) are, of course, products of two ancient Jewish communities: one, in the land of Israel;² and, the other in Babylonia. The two communities developed different

¹. For other reviews of the origins of these communities please see: Irving Agus's The Heroic Age of Franco-German Jewry; Rabbi Meir of Rothenberg; and, Urban Civilization in Pre-Crusade Europe. Also: Louis Finkelstein's Jewish Self-Government in the Middle Ages; and Salo Baron's The Jewish Community.

². By the time of the redaction of the Jerusalem Talmud the land of Israel had her name changed to "Palestine." Thus, many of the scholars who we will refer to for our history of the development of the European Jewish community will use the name "Palestine."

communal institutions and these in turn influenced the development of the institutions in the European Jewish communities.

After the destruction of the Temple the entire authority of the Jewish community in the land of Israel was vested in the hands of a single person, the Nasi, (i.e. the Patriarch).³ The Patriarch appointed Judges for Jewish communities throughout the Roman Empire.⁴ Solomon Zeitlin reviews the Patriarch's appointment process:

"These appointments could be made for a limited time, as in the case of Hiyya, the son of Abba, to whom the Patriarch gave authorization until his return to Palestine.

It was charged that some Judges were appointed not because of their great scholarship but because they paid the Patriarch for their office. The Patriarch sometimes gave to his disciples permission to decide the law connected with ritual. This was called reshut. The Judges who were appointed by the Patriarch could in turn delegate their power to any one they thought fit. The Patriarch or the men who were delegated by him had the power to nominate and install the secular leaders in the Jewish community as well. These were known as Parnasim. Usually scholars were chosen for this office."⁵

Thus the Jewish community of the land of Israel, and those European communities that followed its leadership, were accustomed to authority being concentrated into the hands of central authority.

³. Solomon Zeitlin, Religious and Secular Leadership, pp.19ff.

⁴. Solomon Zeitlin, p.12.

⁵. Solomon Zeitlin, pp.12-13.

At first, the Babylonian community also had a single, dominant authority, the Exilarch. But over the course of time the heads of the academies in Sura and Pumbedita gained more power and contested the authority of the Exilarch.⁶ Therefore, in Babylonia there were two competing powers, one religious and one secular.

Before the seventh century the organization of the Jewish communities in France and Germany was modeled on the structure of the communities in the land of Israel, where communal life was dominated by central authorities. At the head of every city were the Parnasim. Religious life was supervised by learned men who were called "*Didascaloi*", which some believe is a title synonymous with "Rabbi" but others translate as "teacher."⁷ These "*Didascaloi*" were probably sent by the Sanhedrin or by the Patriarchs of the land of Israel.

After the seventh century, when the Arabs conquered the land of Israel from the Christians, the Jewish communities of France and Germany were cut off from the Patriarch. They began to develop their own cultural life. Solomon Zeitlin describes the early French community:

"There can be no doubt that at a very early period the Jews of France had academies of learning where Jewish lore and religion were studied, as apparent from the fact that numerous scholars flourished in France in the tenth century. In the Biblical

⁶. Solomon Zeitlin, p.17-18.

⁷. Solomon Zeitlin, p.28.

field there were Moses ha-Darshan and Menahem ben Helbo, and in the Talmudic field such men as Leontin, Joseph Bonfils, Judah ben Meir ha-Kohen (teacher of R. Gershom), Simon the Elder and others."⁸

Zeitlin maintains that until the eleventh century the Jewish communal life in France was controlled by the Parnasim. Rabbis were not yet the head of the community. It was the Parnasim that possessed the power of excommunication. Even a scholar like Rabbenu Gershom had to invoke his ordinance (Takkanah) with the consent of the community.⁹

The history of the Jewish community in Spain was different from the Franco-German communities. Jews came to Spain early in the Roman period. But the persecutions of the Visigoths in the fifth century all but wiped out these communities. However, in 711, when the Arabs and Berbers destroyed the Visigoths, many African and Babylonian Jews settled in Spain.¹⁰ Thus the Spanish Jewish community had more of a Babylonian origin and they modeled their communal institutions after the Babylonian style.

Zeitlin reviews their communal life:

"Rabbinic scholarship started to develop in Spain much later than in France. The first name which has come down to us from Spain is Hasdai ibn Shaprut (who lived in the tenth century), a patron

⁸. Solomon Zeitlin, p.29.

⁹. Zeitlin, p.30-31.

¹⁰. Solomon Zeitlin, pp.46ff.

of learning. His authority over the Jews was due to his holding a position from the rulers of Spain. In the eleventh century Samuel ha-Nagid (Prince), who was a scholar of repute, also wielded authority over the Jews because he held an important position in the government. His position was similar to the position of the Exilarch of Babylonia, who was also appointed by the government."¹¹

This brief digression into the origins of the Sephardic and Ashkenazic communities was meant only to provide a setting for the various Halakhic authorities that follow. The early communal structures and religious institutions had, of course, a tremendous influence on the future development of the professional Rabbinate.

¹¹. Solomon Zeitlin, pp.47-48.

CHAPTER THREE

The Rabbinat as Evidenced from a Responsum of Rabbenu Gershom ben Judah

Rabbenu Gershom ben Judah, also known as "the Light of the Exile," was born in Metz, 960 and died in Mainz in the year 1040. He was a towering talmudic figure for Franco-German Jewry. R. Gershom taught R. Jacob ben Yakar, who was the teacher of Rabbi Solomon Yitzchaki (Rashi).¹

In the following Responsum (no.68 in the Eidelberg collection²) we gain a unique understanding of the role and position of the Rabbis in R. Gershom's day.

Question: "For many years Reuben enjoyed the exclusive custom ('Maarufia', i.e. a customer that was exclusively his³) of some non-Jewish priests (komrim). Reuben is a Talmudic scholar who teaches Torah to the public without remuneration. His students noticed that he was deriving

¹. Solomon Freehof, A Treasury of Responsa, (Philadelphia: The Jewish Publication Society of America, 1963) p. 13.

². Teshuvot Rabbenu Gershom Maor Ha-Golah, ed. Shlomo Eidelberg, pp.159-161.

³. Irving Agus gives a detailed explanation of the term Maarufia and the "Law of Maarufia" in his book The Heroic Age of Franco-German Jewry, (New York: Yeshiva University Press, 1969) pp.79-86. He gives a more brief definition of this complicated term on p. 205 of Urban Civilization in Pre-Crusade Europe, (New York: Yeshiva University Press, 1965) Volume One. Agus says: "The term maarufia had two different meanings, legally distinct from each another: 1) A non-Jew who was on friendly terms with a particular Jew, trusted him, liked him, and traded exclusively with him--was called his Maarufia. Such a de facto Maarufia could change his mind and begin to trade with another Jew. 2) A de jure Maarufia, however, was forced to trade with a particular Jew, since the law of the community restrained all other Jews from trading with him."

considerable profit from his Maarufias so they encroached upon his interests, to his loss. He complained about them to the community; and the latter, by pronouncing a cherem and a gezerah (excommunication and interdiction), restrained them from interfering with Reuben's exclusive custom. Subsequently they were in doubt whether they wanted to include the other Israelites, who were not Reuben's students, in that cherem."

Answer: "The fact that you are posing this query indicates that it is not the custom in your locality to restrain all persons from doing business with the Maarufias. Since you have no such custom, no one can force your community to enact such a law for his personal benefit only. Rab Huna said in the Talmud (Baba Batra 21b) 'If a resident of an alley sets up a handmill and another resident of the alley wants to set up one next to him, the first has the right to say to him, 'You are interfering with my livelihood.' Still, the law is not according to R. Huna, for they raised the following objection: 'If a man establishes a store of his fellow, etc.,' and in that discussion they trace the dispute to the earlier Scholars and concluded that it was Simeon ben Gamaliel who originally said that one can prevent even one's neighbor [from opening a competitive store next door]; nevertheless the law in that earlier dispute is not according to Simeon ben Gamaliel but according to the preceding Scholar who said that one cannot prevent the competitor from opening the store. However, this applies only in those places where they do not have the custom (of permitting one a monopoly, or protection from competition). But in places where it is the custom (to permit monopolies) then the law always respects the local custom. The right of free competition applies to men in general, but not the Talmudic scholar who spends most of his time studying Torah and doing 'the Lord's wishes.' It is fitting to give such a person special privileges. For Rabbi Nachman said (Baba Batra 22a) 'the itinerant spice-sellers cannot prevent one another from going to any given town, because, as a Master has stated, Ezra made a rule for Israel that spice-sellers should go about from town to town so that the daughters of Israel should be able to obtain finery. This, however, only means that they are at liberty to go from house to house, but not to settle there. If, however, the seller is a scholar, he may settle

also, a precedent having been set by Raba in allowing R. Josiah and R. Obadiah to settle, despite this rule. The reason he gave was that since they were Rabbis, they would be disturbed in their studies (if they had, always, to return to their home city).' This Talmudic passage further states, 'R. Dimi from Nehardea brought a load of figs in a boat. The Exilarch said to Raba, 'Go see if he is a Scholar, and if so, reserve the market for him.'

It also says (Yoma 72b) Rabbi Yochanan compared two verses: 'and you (Moses) shall make an ark of acacia-wood.' (Deut. 10:1)

But it is also written: 'And they shall make an ark of acacia-wood.' (Ex. 25:10) Hence one learns that the inhabitants of the Scholar's city are obliged to do his work for him.'

Therefore, Rabbi Yochanan concludes, saying: 'How do we describe a Scholar? One whose townsmen are commanded to do his secular work for him; which means that the Scholar is one who neglects his own secular affairs and engages in the affairs of Heaven. For all these reasons we can conclude that the community is duty bound to make a special arrangement for this Scholar whose work is the work of Heaven and who teaches Torah in public without pay. He should not be disturbed in his studies. They should pronounce the ban restraining all Israelites from trading with his Maarufias; then you will receive Heavenly recompense and long life. As it is written, 'It is a tree of life for those who take hold of it and those who support it are happy.'"⁴

For our purposes, there are two important details in this Responsum: one, is that the questioners are careful to point out that their Scholar did not receive remuneration. There must have been Scholars in other localities who did receive a salary; for otherwise they would not have

⁴. My translation is based on that which appears in Agus, Urban Civilization in Pre-Crusade Europe, pp. 206-207, and in Freehof's translation of this responsum in A Treasury of Responsa, pp.14-16.

mentioned their Scholar's practice.⁵ However, it is not clear whether those other Scholars who did receive some sort of remuneration were full-time Scholars and thus fully supported by their communities or simply part time Scholars who receive compensation of sekhar batalah.

R. Gershom's Responsum no. 68 also draws on the Talmudic ruling of Rabbi Yochanan (Yoma 72b) in order to establish that the communities are required to support certain Scholars who "neglect their own secular affairs and engage in the affairs of Heaven." These are full-time Scholars. Obviously, it was an accepted social trend was to grant Scholars certain commercial advantages. The townspeople's willingness to invoke a cherem (a ban or excommunication) against the violators of their scholar's protected clientele and R. Gershom's strong approval of their actions proves to us that the principle of supporting Scholars is well entrenched in eleventh century Western Europe.

Rabbenu Gershom's Responsum #68, therefore, has established that there existed certain full-time Scholars who would receive financial support and benefits from their communities. These Scholars could be called professionals.

R. Gershom uses two of the main Talmudic passages which deal with the financial support and privileges of scholars:

⁵ S. Agus, Urban Civilization in Pre-Crusade Europe, p. 208.

1) Baba Batra 21b-22a; and, 2) Yoma 72b.

Note that R. Gershom does not make a critical comment against those Scholars who do receive salaries. The absence of any of the Talmudic passages that discourage Rabbinical salaries or receiving any benefit from teaching Torah is significant.

CHAPTER FOUR

The Professional Rabbinate as Reflected in Selected Responsa and the Talmudic Compendium of Isaac Alfasi

Isaac Alfasi (also known as "Rif") was the greatest Spanish authority of Halakha in the eleventh century. Alfasi was born in 1013 near the town of Fez in North Africa, and he died in 1103 at Lucena in Spain.¹

Alfasi's monumental compendium of the Talmud, which he called "Halakhot" provides us with his comments on those important Talmudic passages which most concern the development of the professional Rabbinate. Many of Alfasi's Responsa have been preserved including a most significant Responsum which deals with the hiring of a Scholar. We will review both this Responsum (no. 223 in the Leiter edition) as well as some of Alfasi's comments in his Talmudic compendium in order to glean some perspective of the Rabbinate in the Sephardic community of the eleventh century.

Responsum #223

Question: "Reuben and his wife and sons originally dwelt in eastern France, many days journey from Spain. He decided to tour the communities of Spain. He came to a certain town and delivered a public address. Thereupon five of the leaders of the community met him and began to urge him to bring his family and to settle in their town. But Reuben hesitated because his wife was far away. The five Jews, however continued

¹. "Isaac Alfasi," Encyclopaedia Judaica.

urging him, time and again, until he ultimately agreed. They then made a solemn agreement, reinforced by a kinyan (i.e. a formal contract of acquisition), to pay Reuben 24 gold maravedis, every year for three years, and that they would study before him Talmud, Mishna, Bible, the weekly Torah portion, and whatever else they agreed upon by formal contract, in writing, and in the presence of witnesses. Reuben further agreed, by kinyan, that he and his wife and his sons would come to the community by the festival of Sukkot. When the time came, he arrived and they welcomed him joyously. Some of them said: 'Let us begin by studying Mishna'; others said: 'let us begin by studying the Talmud.' Finally they all agreed. They began with the tractate Berakhot which they would study for four days out of the seven; on the fifth day, Scriptures; on the sixth day, interpretation of the weekly portion. But after that, one of them, Issakhar, objected and said, 'I cannot understand the profound reasoning of the Talmud.'² He demanded, therefore, that Reuben explain three lines of Talmud to his friends, and, while they repeated these lines to themselves, Reuben should explain three lines of Mishna to him. But his companions said, 'We do not want that.' Then Issakhar arose and said, 'I do not desire to study and I will not pay my share.' Thereupon Reuben said, 'I have a written contract in my hands, formalized by symbolic acquisition (kinyan) and witnesses. I

². Irving Agus refers to this Responsum as evidence that the level of Jewish scholarship in Franco-German Europe was superior to the level of scholarship in Spain. He says, "There was a greater demand for them [Scholars] in Spain, where the level of education was apparently much lower than that in the German or French communities. An honored member of the Spanish community finds the tractate Berakhot --among the simple and most elementary parts of the Talmud--too profound and too complicated. He is not ashamed of his ignorance and his deficiency, and discusses it publicly. Moreover a teacher of Talmud, Mishna and Bible (thus an elementary teacher) must be imported from France, from "a great distance" and at great expense. Hence there must have been a great difference in the level of Jewish learning between the two countries." Irving Agus, Urban Civilization in Pre-Crusade Europe, pp. 124-125. Other scholars reach similar conclusions. See, Gershom Cohen's Sefer Hakabbalah, (Phil: JPS, 1967); and Ta Shema's Shnaton Hamishpat Ha'ivri, Vol. I, p.364.

may do no other than fulfill what is in my contract and what I had agreed upon with you.'"

Answer: "We studied this question and investigated all the conditions set forth in it. We see that they are strong and valid and that it is obligatory upon you to fulfill all the conditions that you have made between you. As for Issakhar, who changed his mind and does not wish to fulfill the conditions which he agreed to together with his companions, he has not done right. He is obligated to give Reuben all that he has taken upon himself as his part of the pay. If he wishes to sit and study on the conditions that he had made (i.e. in the original contract) then all is well. If not, he has no complaint against Reuben, for not that he, Reuben, did not present an obstacle (to the fulfillment of the contract).

Even though we learn in Mishna (Baba Metzia 6.1): 'He who hires workmen and they deceive one another (as to wages) they have nothing against each other but murmurings.' [i.e. they can grumble but they have no legal recourse. The contract can be voided. But there can be no suit.] But where does this apply? This applies only when the workmen have not yet begun their work, but if they have already begun to work, the employer cannot withdraw from the arrangement. Thus we learn (Baba Metzia 76b) 'Where does this apply [that they can only complain, or void the contract, but not sue]? Only where the workmen have not yet gone to work.' So here, in the case of Reuben, if they had changed their mind before he had transplanted his family, they would be able to do so. Since, however, he has brought them from their native place and spent his money to bring them, and since he has actually begun working, they can no longer retract and are duty bound to pay him according to all the conditions."³

From Responsum #223 we can establish a number of important facts. First of all, we learn that there was a

³. Translation is based on both the translation in Solomon Freehof, A Treasury of Responsa, pp. 23-27; and Irving Agus, Urban Civilization, pp.123-124.

great demand for itinerant scholars in Spain. These scholars would both preach in the synagogues and teach members of the local community. Irving Agus maintains that this Responsum is further proof that the level of education in Spain was much lower than that in the German or French communities.⁴

The most significant detail of Responsum #223 is that a Scholar could be hired and rewarded handsomely in exchange for his teaching Torah. Note that Alfasi makes no mention of this financial arrangement between Scholar and students. Alfasi does not bother to justify the Scholar's use of the Torah for financial gain. There is not even a reference to sekhar batalah, or agar bateilah. Indeed, Alfasi likens the contractual arrangement between the Scholar and his students to that of a common workman and his boss.

Responsum #223 gives us further documentary proof that in the eleventh century some Scholars earned their living by teaching and preaching Torah. It is beyond us to say, however, that these Scholars could be considered Rabbis, much less professional Rabbis. Rather, it is enough to note that there was no taboo against Scholars "using the Torah as a spade."

In his Talmudic compendium, Alfasi has the opportunity to comment on the phenomenon of Scholars accepting fees for

⁴. Irving Agus, Urban Civilization, pp.124-125.

teaching. But Alfasi's commentary is silent on a great number of the most significant Talmudic passages which are under review in this thesis. Since Alfasi's masterpiece is not a commentary per se, but rather a digest of the Talmud in which he eliminates much of the Aggadic material and those subjects which are no longer relevant in the post-Temple era, one anticipates not finding his comments to many passages. However, upon inspection of the great number of Talmudic passages that he passed over, one begins to wonder if Alfasi did not purposefully limit his discussion of the matter of financial compensation for Scholars. Indeed, the one passage in which Alfasi quotes most extensively and makes his most significant comments (Nedarim 62a-62b)⁵ is one of the most ambiguous of all the passages (for it contains rulings that both prohibit and permit salaries and benefits for Rabbis).

In his commentary to Nedarim 62a-62b Alfasi quotes, almost verbatim, the long Aggadic story of Rabbi Tarfon. As a general rule, Alfasi does not include Aggadic material. So can we conclude that the inclusion of this Aggadic material (in which Tarfon laments the fact that he "made use" of the Torah) indicates that Alfasi is opposed to the use of one's scholastic status for benefit? No. For Alfasi also quotes extensively from the section which concludes

⁵. See page for a complete translation and review of Nedarim 62a-62b.

that a Rabbinical Scholar may demand certain privileges, such as: an exemption from taxes, his goods are sold first in the market place, the Scholar is honored with being the first to read from the Torah, the first to pronounce the Priestly blessing, and the first to receive a "goodly portion."

It is worth noting that Alfasi attributes the Rabbinical privilege of tax-exemption (beginning of Nedarim 62b) to Rabbi Ashi, while the Talmud quotes the passage in the name of Raba. It is this passage that permits a Rabbi to pose as an idolater (lit. a "servant of fire") in order to avoid paying the poll-tax. Alfasi quotes this tradition in full.

In addition to Nedarim 62, Alfasi also quotes extensively from Nedarim 37a (in which Shmuel maintains that there are places in which one is paid a fee for the teaching of Torah). Alfasi summarizes the opinions of Shmuel, Rab ("the payment is for guarding the children), and Rabbi Yochanan ("the payment is for teaching the ta'amim"). In his commentary, Alfasi mentions a variation of this passage in the Jerusalem Talmud (Nedarim 4:3) in which payment is said to be allowed both for the teaching of Scripture and its translation ("targum").

So where does Alfasi stand? May one benefit from his scholastic status or not? Can we draw any conclusions from his few comments? Is his silence significant?

I believe that Alfasi's commentary to Nedarim 62 and Nedarim 37 is significant. While he devotes much space to the Rabbinic "ideal" of Rabbi Tarfon who represents those who try not to benefit from their Scholastic status, Alfasi quotes several other traditions in which Rabbis do receive benefits. Thus, at the very least, one can conclude that Alfasi was cognizant of the contradictions in the Talmudic traditions, and that the issue of Rabbinic privileges and remuneration had not been settled by the Talmudic sages. In addition, it is quite clear from his Responsa that Alfasi is aware of the practice of paying a fee to those Scholars who teach in his own day. Thus it is safe to conclude that Alfasi understands the Halakha as permitting the paying of fees and the granting of privileges to Rabbis.

CHAPTER FIVE

The Professional Rabbinate as Reflected in the Talmudic Commentary and Selected Responsa of Rabbi Solomon Ben Isaac

Rabbi Solomon ben Isaac (Rashi) was born in Troyes, France in 1040. As a young scholar he joined the great academies of Mayence and Worms. His primary teachers were Jacob b. Yakar and Isaac b. Judah at Mayence, and Isaac b. Eleazar ha-Levi (who was a disciple of Rabbenu Gershom) at Worms.¹ It is probable that Rashi began writing his commentary to the Talmud while in Mayence and Worms. Around 1070 he founded his own school in northern France. Though the massacres of the First Crusade (1095-1096) destroyed the great academies of Mayence and Worms Rashi's Talmudic commentaries helped to preserve the wisdom of the early Ashkenazic authorities.

Through Rashi's Talmudic commentary we might have hoped to find a glimpse of his attitude concerning those Scholars who received fees or who were granted certain privileges by their communities. Theoretically, all we would need to do is to refer to Rashi's comments on each of the relevant Talmudic passages and thereby gain an understanding of

¹. Biographical information concerning Rashi is based on two sources: Aaron Rothkoff, "Rashi," Encyclopaedia Judaica, pp.1558-1559; and, Solomon Zeitlin, "Rashi and the Rabbinate," The Jewish Quarterly Review, Volume XXXI, 1940-1941, pp.1-58.

Rashi's view of the Halakha. However, Rashi's commentary is most concerned with explaining and clarifying the Talmudic text and does not often delve into Halakhic matters. There is also the problem of those commentaries ascribed to Rashi but which may be pseudepigraphic. The "Rashi-commentaries" to the tractates Ta'anit, Nedarim, Nazir and Horayot are not considered original by modern scholars.² Also, Rashi did not write a commentary to those tractates that have no Gemara, thus the commentary to Mishna Avot that is ascribed to him is, in fact, not his.³

Still, we cannot ignore Rashi's commentary. As Solomon Zeitlin makes abundantly clear, Rashi played a significant role in the development of the modern authoritative Rabbi.⁴

As mentioned earlier, Solomon Zeitlin is of that school of thought that believes that Franco-German Jewry is primarily of Palestinian origin and that Spanish Jewry is of Babylonian origin.⁵ According to Zeitlin, Franco-German Jewry inherited Palestinian Jewry's tendency after the

². Jona Fraenkel, "Rashi," Encyclopaedia Judaica, p.1564. However, even these pseudo-Rashi commentaries may, in fact, reflect Rashi's teachings for they were most probably written by his students.

³. Jona Fraenkel, "Rashi," Encyc. Jud., p. 1564.

⁴. Solomon Zeitlin's article, "Rashi and the Rabbinate," The Jewish Quarterly Review, Volume 31, 1940-1941, pp. 1-58.

⁵. Solomon Zeitlin, "Rashi and the Rabbinate," pp.7-58. specifically, see his note on page 47. Irving Agus makes a similar contention in his The Heroic Age of Franco-German Jewry, pp.2-15.

Temple's destruction to place supreme power in the hands of a single individual (the Patriarch) or a central authority. Thus each community had its own Boule, Parnasim, or body of seven men (called Sheva tuvei ha'ir) in which was vested supreme power.⁶

Up until the eleventh century the communal life in France and Germany was controlled by the lay leaders, the Parnasim. They had complete authority. The Parnasim even possessed the power of excommunication.⁷ Even Rabbenu Gershom, one of the most authoritative Scholars of the eleventh century, could only issue a Takkanah (or ordinance) with the consent of his community.⁸ But, by the twelfth century, Rabbenu Jacob Tam was able to issue ordinances that concerned ritual laws as well as social and economic laws without the consent of the leaders of the community.⁹ This

⁶. Solomon Zeitlin, "Rashi and the Rabbinat," pp. 26-31.

⁷. Solomon Zeitlin, "Rashi and the Rabbinat," p. 31.

⁸. Zeitlin, p. 31

⁹. Zeitlin, pp. 31-32. But Irving Agus disagrees. Agus says, "The statement of Zeitlin, that Rabbenu Tam enacted ordinances "independently of the community," is entirely unwarranted. The ordinances of Rabbenu Tam, as well as those of Rabbenu Gershom, were enacted at synods where the representatives of many communities were present, and were considered, Takkanot Hakehalot, community ordinances. They derived their legality from the fact that they were accepted by the people." Agus, Rabbi Meir of Rothenburg, (Philadelphia: Dropsie College, 1947) volume one, pp. 100-101. However, Agus too sees a definite attempt by the authorities in the eleventh and twelfth centuries to curb the absolute power of the secular leaders. He even uses the same example that Zeitlin uses (i.e. R. Gershom's Responsum #67) in order to show that a radical

shows that by the twelfth century the religious life of a community was controlled by the Scholars and not the secular leaders. What caused this radical shift of power? Solomon Zeitlin believes that Rashi is primarily responsible for the change.¹⁰

That Rashi exerted tremendous influence over Ashkenazic Jewry from his own day until the present is an accepted fact. Rashi's commentaries to the Torah and the Talmud have become essential pillars of Jewish scholarship. Thus, if it can be shown that Rashi desired to make a specific change in law or custom it would not be hard for us to imagine how he

shift occurred shortly after the years of R. Gershom. Agus, however, compares Gershom's Responsum #67 to one of Rabbi Eliezer b. Nathan, while Zeitlin compares Responsum #67 to one of Rashi, and Rabbenu Tam. (see Agus pp. 90-92.) Agus says, "This shift of emphasis from the all-powerful community to the voluntary agreement on the part of the individual, indicates a radical departure from the original opinion regarding the legal basis of community rule." (p. 92)

The difference is that Zeitlin sees the shift being from all-powerful lay leaders to a power share between lay and Rabbinical leaders (see Zeitlin pp. 41-46) while Agus sees the shift being from all-powerful lay leaders to a democratization of the Jewish community in which individual and minority rights were protected (Agus pp. 94-96.) Still, Agus admits that in his own community the scholar began to wield great power. He says, "In his own community, it is true, the scholar possessed great power and influence for the following reasons: a) He was entitled to a vote like any other member of the community; b) he had personal prestige that swayed others to his point of view; c) the leading members of the community were his students who, therefore, owed him honor and obedience; d) there was a prevailing opinion that no community ordinance could be passed without the consent of the resident outstanding scholar." (Agus, p. 100.)

¹⁰. Zeitlin, p. 32

was able to render such a change. Our question then becomes: did Rashi intend to shift the communal balance of power from the secular leaders (the Parnasim) to the Scholars? By comparing two Responsa, one from Rabbenu Gershom and one from Rashi, we can detect Rashi's attempt to replace the Parnasim with a Beit Din Chashuv (a court of Scholars).

Responsum #67 of R. Gershom involves the question of a community's right to issue a decree. Gershom decided that the law of the community is supreme and he quotes the Gemara from tractate Rosh Hashanah 25a-25b in order to support his decision.

The Gemara of Rosh Hashanah 25a-25b reads:

"Our Rabbis taught: Why were not the names of these elders mentioned? So that a man should not say, Is So and so like Moses and Aaron? Is So and so like Nadab and Abihu? Is So and so like Eldad and Medad? Scripture also says, 'And Samuel said to the people, It is the Lord that made Moses and Aaron.' (I Sam. 12:6) And it says, 'And the Lord sent Jerubbaal and Bedan and Jephthah and Samuel . . .' (I Sam. 12:11) Jerubbaal is Gideon. Why is he called Jerubbaal? Because he contended with Baal. Bedan is Samson. Why is he called Bedan? Because he came from Dan. Jephthah is Jephthah. It also says: 'Moses and Aaron among his priests and Samuel among them that call on His name. (Psalm 99:6) The Scripture places three of the questionable characters on the same level as three of the most estimable characters. This is to show that Jerubbaal in his generation is like Moses in his generation. Bedan in his generation is like Aaron in his generation. Jephthah in his generation is like Samuel in his generation. This teaches you that even the most worthless, once he has been appointed leader (Parnas) of the community is to be considered like the mightiest of the mighty. Scripture says, 'And thou shalt come unto the Priests, the Levites, and to the Judge that shall be in those days. . .'

(Deut. 17:9) Can we then imagine that a man should go to a Judge who is not in his days? This shows that you must be content to go to the Judge who is in your days. Thus Scripture says, 'Say not, How was it that the former days were better than these.' (Kohelet 7:10)"

Both the Talmud and Rabbenu Gershom use the title Parnas (i.e. the lay leaders). But in the Responsa of Rashi we do not find the term Parnasim.¹¹ And in Rashi's Biblical commentary to ISamuel 12:11, the crucial verse used in the above quoted Gemara of tractate Rosh Hashanah, Rashi uses the term Beit Din and not Parnas. In Rashi's explanation of the Gemara to Rosh Hashanah 25a, he once again uses the term Beit Din instead of Parnas.

It is Solomon Zeitlin's belief that Rashi replaced Parnas with the term Beit Din for he believed that scholars should be the leaders and not lay people.¹² In Rashi's commentary to tractate Nedarim 27b he explains that, according to his understanding, a member of the Beit Din must be a Scholar (Mumcheh L'rabim).¹³

But just because Rashi replaces the term Parnas with

¹¹. Zeitlin, p. 36.

¹². Zeitlin, pp. 40-41.

¹³. Even if Rashi's commentary to Nedarim does not come directly from his pen, it is still possible that since it was recorded by one of his disciples it accurately reflects his teaching. However, it is admittedly a risky venture to claim to have determined Rashi's attitude on the basis of a pseudopigraphic text. But, since, as we will soon see, this ascribed attitude is consistent with our other findings of Rashi's opinion, then we can more easily refer to this passage as well.

Beit Din in his commentary it does not necessarily mean that Rashi was making a conscious effort to eliminate the Parnasim. Commentary is, after all, just commentary. But, we do have harder evidence of Rashi's overt effort to eliminate the lay led Parnasim. In Rashi's Responsum #27¹⁴ he refers to tractate Rosh Hashanah 25a. Rashi, however, does not quote the passage exactly. Rather, Rashi eliminates the original term of Parnas and inserts in its place the term Beit Din. In this case, Rashi was not simply making a comment on a Talmudic passage, instead, he was rewriting a passage to that it would reflect his ideal.

Since Rashi maintains that the Beit Din is composed of Scholars, and since he has consciously avoided using the term Parnas in his commentaries and Responsa, then one can understand how Solomon Zeitlin reached his conclusion that Rashi is, at least in part, responsible for the shift of power from the lay leaders to the scholarly class in the eleventh and twelfth centuries.¹⁵

¹⁴. Teshuvot Chokhmei Tsarfat V'Loteir, ed. Joel HaCohen Miller, (Jerusalem, 1966) pp. 14a-14b.

¹⁵. Salo Baron disagrees with Zeitlin's theory. In Baron's three volume series The Jewish Community, (Philadelphia, The Jewish Publication Society of America, 1942) Vol. III, p. 123, note #15, he says, "The statements in both text and notes were written before the publication of Solomon Zeitlin's recent essay on "Rashi and the Rabbinate," in which the author contends that 'Rashi was the founder of the Rabbinate in western and central Europe.' However, the evidence submitted in favor of this far-reaching contention appears too arbitrary and inconclusive to warrant any change in our presentation." According to Baron's own analysis (Volume

As we mentioned earlier, the Talmud gives us conflicting rulings concerning the permissibility of accepting financial compensation in exchange for Rabbinic and Judicial services. It is logical to presume that in Rashi's commentary to the Talmud that he would reveal his resolution to the contradictions. Therefore, I reviewed Rashi's comments to the Talmudic passages that deal most explicitly with the issues of Rabbinic salary, rights, privileges, and honor (these passages are giving in full in Chapter One of this thesis). For the most part Rashi's commentary attempts simply to explicate the Talmudic passages. However, in Rashi's commentary to three of the passages (Bekhorot 28b-29b; Kiddushin 58b; Ketubot 105a-

II, pp. 66 ff.) it is unclear if there was a true "founder" of the modern Rabbinate (or even when it was founded). Baron's review is rather uneven. He mixes in anecdotes from Rabbinic and historical sources from a wide period of time. In a single paragraph (that stretches from page 66 to page 68) Baron refers (in this order) to a fifteenth century Rabbi (Simon Duran), a twelfth century traveler (Benjamin of Tudela), a tenth century physician (Shabbetai Donnolo), Rashi (late eleventh century), Jacob Tam (twelfth century), Isaac Or Zaru'a of Vienna (early fourteenth century) and Judah b. Barzilai of Barcelona (eleventh century). At last he complains that due to the lack of early medieval communal records it is difficult to determine the origin of the modern Rabbinate (page 68). Still, he credits Rabbenu Gershom for laying the foundations of the great schools of jurisprudence in Franco-Germany, and the schools of Gershom and Rashi for performing the great task of re-establishing the basic uniformity of Jewish practice by creative reinterpretation of the Talmud. To some, the accomplishment of laying the foundations of Franco-German jurisprudence, and re-establishing basic uniformity in Jewish practice can be interpreted as being one of the "founding fathers" of the Rabbinate in western and central Europe.

105b) he lays the ground work for the ultimate resolution of the problem of Rabbinic salaries.

In Bekhorot 28b-29b Rashi makes his most significant statements. The last Mishnaic statement on 28b reads, "If one takes payment for seeing the firstlings, they must not be slaughtered by his instructions, unless he was an expert like Ila..." Rashi comments that Ila was a pious person who was above suspicion and that he would regularly take payment for his examination. This would passage would seemingly open the way for Rabbis to accept payment in exchange for their services. But also in Bekhorot 29a we learn that one may not accept payment for the performance of mitzvot. Rashi begins to offer his resolution to this contradiction in his comment to a rather innocent looking question on 29a that asks why Ila would take four Roman coins for the inspection of small cattle and six for the inspection of large cattle. Rashi says that Ila's payment depended upon the amount of his trouble, or inconvenience (Nafish Tircha). Thus Ila was not paid for inspecting the cattle, rather he was compensated for having to wrestle these beasts into proper position so that they might be inspected. There's a fine difference; while it's a mitzvah to inspect the firstlings and thus no payment is permitted, there is no mitzvah for wrestling the beasts into position and therefore that tircha, or trouble, can be compensated. Rashi elaborates on this concept of compensation for tircha in his

comments to Mishna Bekhorot IV:6 on 29a. The Mishna seems to prohibit all payments to Judges: "If one takes payment to act as a Judge, his judgments are void . . . " But the last sentence of the Mishna seems to permit payment; "He also pays the Priest as he would a workman." Rashi fleshes out the solution that the Gemara proposes in order to resolve the contradiction. Rashi says, "the payment for bringing the ashes is because he had to bring these ashes a great distance, to Jerusalem. Likewise, the payment for drawing the water is permitted for drawing water is not a mitzvah and thus one is compensated for his tircha, his trouble. Conversely, sprinkling and sanctification are mitzvot and thus one cannot receive payment." Finally, in his comments Abaye's statement (Bekhorot 29b) that: "He pays the Priest like a workman idle from his work" Rashi sets the ground work for the concept of sekhar batalah, or compensation for the Rabbis for having to leave their regular occupation in order to perform a mitzvah. Rashi says, "If he (the Priest/Rabbi) was a pearl stringer, an easy job that pays well, and one told him to cease working (in order to perform some religious duty) then he would be compensated only slightly less than his regular pay. However, if his occupation is very difficult (eg. manual labor) then one may say to him, 'You receive three zuzim a day (for hard labor) take instead one zuz and lay off for the day from your occupation so that you may do this easy job (the religious

service). This is how the Priest receives payment, he is compensated for being prevented from doing his regular occupation. Still, his payment should not be fully what he would receive in his regular salary, for the religious duty is not difficult."

Rashi established two important principles from Bekhorot: 1) One is compensated for the tircha, the trouble of preparation for the performance of the mitzvah, but one is not compensated for the actual performance of the mitzvah; and, 2) One is compensated for having to leave one's usual occupation, this sets the foundation for the concept of sekhar batalah.

In both Kiddushin 58b and Ketubot 105a-105b Rashi repeats much of what he said in his commentary to Bekhorot. In Ketubot the Gemara establishes the principle of agar bateilah (the Aramaic for sekhar batalah). Rashi comments that the Judges may take payment in order to sustain themselves because they were prevented from engaging in their regular occupation. Thus, a 'wicked judge' is (not one who simply receives payment but rather. . .) one who takes more payment than is necessary to sustain himself.

When we reviewed Gittin 60b we mentioned that Rashi quotes Rav Sherira Gaon in explaining the unusual word shifora. Rashi says (s.v. "v'ha shofar") the shifora was a receptacle in which stored the contributions which were sent to support the Scholars and their students. Again, this

explanation supports the view that Rashi accepted the fact that it was normative for Scholars to be supported by the community.

Rashi's comments on a few key verses helped to set the foundation for two of the most significant principles that are used to justify Rabbinic salaries: 1) compensation for Tircha; and, 2) compensation for sekhar batalah. While it is certainly debatable as to whether or not Rashi consciously sought to establish a professional Rabbinate, his efforts, nevertheless, contributed greatly to the development of the professional Rabbinate.

CHAPTER SIX

The Professional Rabbinate and Moses Maimonides

Up to this point the post-Talmudic Halakhic authorities that we have cited have all explicitly or implicitly accepted the legitimacy of Rabbis receiving salaries and privileges. Why should we expect Moses Maimonides (Rambam) to be any less tolerant of Rabbinical fees? After all, Rambam was a man of the world: a scholar, a philosopher, a physician. Rambam was born in Cordova in 1135, which at the time was the greatest center of Jewish learning and Islamic culture.¹ His father was a prominent Judge and Scholar in Cordova and it was there that the Maimonidean family produced eight generations of scholars. So certainly, Rambam could "sympathize" with scholars. Maimonides also suffered through the horror and chaos of exile. His family, and thousands of Spanish Jews were forced to flee Spain in 1148 after the invasion of the puritanical Muslim Almohades. Certainly Rambam could understand the pragmatic urgency to foster education in those days of chaos and that this might necessitate the hiring of full time teachers and Scholars. In his Epistle to Yemen (written in 1172) Moses

¹. My biographical information relies most heavily on Isadore Twersky's, A Maimonides Reader, (New York: 1972) pp.1-29. This biography is reprinted in Studies in Jewish Law and Philosophy, ed. Isadore Twersky, (New York: KTAV, 1982).

Maimonides describes how difficult it was for him to devote time to Torah study:

"Verily, I am one of the humblest of Scholars from Spain whose prestige was lowered in exile. Although I always study the ordinances of the Lord, I did not attain to the learning of my forebears, for evil days and hard times overtook us; we did not abide in tranquility. We labored and had no rest. How could we study the law when we were being exiled from city to city, and from country to country? I pursued the reapers in their paths and gathered ears of grain, both the rank and the full ones, as well as the withered and the thin ones. Only recently have I found a home. Were it not for the help of God, I would not have culled the store I did and from which I continually draw."²

So, certainly Rambam would be understanding of the plight of Scholars and of their need to receive financial assistance.

Yet Moses Maimonides protested vigorously against the practice of paying Rabbis fees. He wrote passionately against Rabbinic remuneration in both his commentary to the Mishna (specifically, Mishna Avot IV.5) and in his Halakhic masterpiece, the Mishneh Torah. We will save our analysis as to the possible reasons why Rambam came down on the negative side of this issue until after we have fully explored his comments themselves.

Mishna Avot IV.5

"Rabbi Ishmael said, 'He who learns in order to teach will be enabled both to study and to teach. One who learns in order to practice will be enabled to study, and to teach, to observe, and to practice.'

². Twersky, p.4.

Rabbi Zadok said, 'Do not make [of the Torah] a crown to make yourself great, nor a spade with which to dig.' So also Hillel used to say, 'He who uses the crown [of Torah] shall vanish.' From this you learn that whoever derives a profit from the words of Torah removes his life from the world."³

Rambam's commentary on Mishna Avot IV.5⁴

"After I had decided not to discuss this commandment for it is quite clear and since I also know that what I have to say on it does not please the majority of the great Torah Scholars, or possibly all of them, I subsequently changed my mind concerning this decision, and I shall discuss it without considering earlier or contemporary works. Know that the meaning of the saying that 'one should not make the Torah a spade with which to dig' is that one should not consider it a means for making a living. He [Hillel] explains and says that whoever benefits in this world from the honor of the Torah removes his life from the world (this is interpreted as 'the World to Come'). People have misunderstood this clear expression, and have cast it aside in their mimicry of the nations, and have rather depended on literary meanings which they did not understand, as I shall explain. Thus they imposed laws on individuals and on communities, and caused people to think in complete foolishness that it was their logical and moral duty to support scholars and students, as well as men whose exclusive occupation is the study of the

³. This translation is my own and it is based on the Mishnah Avot as printed in Babylonian Talmud (Gross Brothers, Printing Co. Inc., Union City, N.J.). Other additions exist.

Some include "Beno" after R. Ishmael, Others include a repetition of Hillel's saying (Mish. Avot 2.5), that is, "Do not separate yourself from the congregation," and Judah, the son of Tabai's saying (Mish. Avot 1.8), that is, "Do not act as the legal advisers (for one of the parties when you are in the Judge's office, i.e. don't anticipate the questions nor tell the parties how to answer.)."

⁴. The following translation is based on the translation by Paul Forchheimer, Maimonides' Commentary on Pirkey Avoth, (Jerusalem/New York: Feldheim, 1983), pp. 114-118.

Torah. All this is a mistake. Neither in the Torah, nor in the words of the sages is there any word that proves it true, nor a support on which they might lean at all. If we search the words of the sages, we do not find that they asked people for money, nor that they collected money for the respected and dignified yeshivot, or for the secular leaders, nor for the judges, nor for those who were spreading Torah, nor for one of the great Scholars, nor for any ordinary person. Yet we find that in every generation there were in their communities really poor and ostensibly rich people. Far be it now from me to suspect these generations of not having performed social help and not having given charity. Certainly, if such a poor man had held his hand open, they would have filled his house with gold and jewels. However, he did not want to do that, but rather to get along with the work of his occupation, to provide his living, be it ample or barely. He despised accepting gifts from men, as the Torah had restrained him from that. You already know that the elder Hillel was a wood chopper [Yoma 35b], and that he learned from Shemayah and Avtaleyon. He was extremely poor, but his greatness was, as you know, evident from his students who were compared to Moses, Aaron, and Joshua [Baba Batra 134a]. The least of his students was Rabbi Johanan, son of Zakkai. There is no doubt for any intelligent person that, if he had taught his contemporaries in order to profit from them, they would not have allowed him to chop wood. [Or consider the example of] Rabbi Hanina, son of Dosa [Berakhot 17b]. A voice announced about him: 'the whole world is fed only on account of My son Hanina, and My son Hanina is satisfied with a measure of carob pods from Erev Shabbat to Erev Shabbat.' He did not make any requests from others [Ketubot 105a]. [Another example is] Karna who was a Judge in the land of Israel and he was also a waterdrawer. Whenever litigants would come before him for a legal decision, he would say: 'Give me a substitute to draw water in my place, or reimburse me for my actual loss ["batalti"], and I shall judge your case.' Yet the Jews of their generation were neither cruel nor lacking the spirit of charity, nor do we find any poor sage on record that he despised his contemporaries for not making him rich. Far be it from them! They themselves were pious and had faith in God and in the Torah of Moses through which one acquires life in the world to come. They did not

permit themselves to ask people for money, but saw that its acceptance would desecrate the name of God in the eyes of the crowd, as they would then compare Torah to any trade by which people make a living, and it would become deprecated in their view. He who would do so would fall under [the category of one about who it is said] 'the word of God he has put to shame.' Yet those are in error who take it upon themselves to differ with the truth and with simple and clear verses [from the Scriptures] by accepting money from people, be it offered voluntarily or otherwise. Only regarding invalids or people of very advanced age who are physically unable to perform any work and who have no other resort but to accept money from others, lest they die, do we find in the Talmud that the Torah has not prohibited that [i.e. they may ask for and receive charity]. Look at the event from which they bring an argument [Baba Metzia 84b] where it is quoted: 'She [the Torah] is like a merchant's ship that brings bread from afar [Proverbs 31:14].'

This refers to an invalid who is unable to perform any work. But if he were able, the Torah would not find him an easy way. Rav Joseph used to carry wood from one locality to another [Gittin 67b]. He used to praise work that makes people sweat. By this he meant physical labor, because the carrying of heavy wood, no doubt, made him sweat. He praised that and was happy with it and enjoyed what God apportioned to him, what he had in his possession, with the virtue of contentment.

Now I have heard confused fools who depend on the arguments which they offer, quoting: 'The one who wants to benefit, may benefit like Elisha; the one who wants not to benefit, need not benefit like Samuel of Ramot [Berakhot 10b].' But this argument does not fit the case at all. I consider it a great mistake to argue from this quotation. It is evident, with no room for error, that Elisha did not accept money from people, and all the more that he did not ask for it or impose contributions on them, God forbid! He only accepted honor when he consented to be a person's guest when passing by, to stay over at his house, and to share his evening meal that night, or that day, and then he continued, with his activities. Samuel did not enter anybody's house or share anybody's meal, etc. In this sense our Rabbis have said that a Scholar who wants to be like the one who did not enter

anybody's house, may do so, or if he prefers to be someone's guest when he has to pass by there on a necessary trip, he may likewise do so. They have already warned [Pesachim 49a] him not to eat without necessity at anybody's, saying: 'A Scholar who eats anywhere will finally destroy his house, leave his wife a widow, his children orphans. His learning will be forgotten. Many attacks will befall him, his words will not be heard, he will desecrate the name of God, the name of his teacher and the name of his father, and he will cause a bad name for himself, for his children, and for his descendants throughout all generations (They said further) ...A Scholar may not partake of any [festive or public] meal that is not necessitated by the observance of law [Pesachim 49a].' There is no need to go on with this topic.

I only want to mention further an episode that is mentioned in the Talmud [Rambam proceeds to paraphrase the long passage in Nedarim 62a in which Rabbi Tarfon saves himself by mentioning his name, thus making use of the Torah. R. Tarfon regretted his use of the Torah for the rest of his life.⁵ Rambam concludes: Rabbi Tarfon was distressed that he had saved himself by the honor of the Torah. Being a rich man, he could have said, 'put me down, and I shall give you so much gold, thus he could have saved himself without using his name as a great Torah Scholar. It is, however, said that this applied only to R. Tarfon, who was very rich and had the alternative of redeeming himself with money.

It also happened that Rabbenu HaKadosh [Baba Batra 8a], of blessed memory, opened his storage-houses in a year of famine and announced: 'Whoever wants to come and take the food he needs may come and satisfy himself, provided he is a Scholar. So Rabbi Yochanan, son of Amram, came and stood before him without being recognized, and requested, 'Rabbi, feed me.' He asked him, 'Did you learn Torah?' 'No.' He then asked him, 'Did you learn Mishna?' 'No.' 'So why should I feed you?' He then replied, 'Feed me like a dog or a raven, (that is to say: 'although I am not learned, feed me as God feeds the unclean animals, as an ignorant person is not less than they). So he gave it to him. But later he regretted that he

⁵. See Chapter One for a complete translation of the Nedarim 62a passage.

had been influenced by the argument and said: 'Woe to me that an ignorant person has partaken of my possessions!' Those who heard that then told him what had happened, 'Maybe it is your disciple Yochanan, son of Amram, who does not want to make use of the honor of Torah if he can possibly help it, even in a difficult situation.' He investigated the matter and found it to be so.⁶ These two examples [Nedarim 62a and Baba Batra 8a] impose silence on those who disagree in this matter. On the other hand, what the Torah has permitted Scholars to do is to give their money to someone to use it in business for them at his discretion, and that all the profit should be theirs, if he so agrees, and the one who does that for them has a great merit. A similar (permissible) practice is to give Scholars merchandise in commission (so that they gain a profit), and to let them sell their merchandise first, at the opening of the market. These benefits God has decreed for them just as He has instituted the special gifts for the Cohen and the tithe for the Levi, according to tradition. Merchants even practice such customs as courtesies to each other, although no scholarship is involved. It is certainly in order that a Scholar should be equal to a respected layman. Similarly, the Torah has eased for Torah Scholars special tributes and military billeting, as well as individual taxes. Those, called "headtaxes," the community will remit for them, and they are relieved of building (fortification) walls and the like. Even if the Torah Scholar happens to be a well-to-do man he is free from any of the aforementioned obligations. Rabbi Joseph Halevi had already decided, when a certain owner of gardens and orchards in a certain place was taxed thousands of gold pieces on the basis of his possessions, that he would be completely free from all the taxes we have mentioned, and which were levied on such possessions, because he was a Torah scholar, and this although even poor Jews had to contribute to this tax. This is a law of the Torah, in the same way as the Torah has freed the Cohanim from paying the half-shekel, as we have explained in the proper context, and the like."

⁶. We include the complete translation of Baba Batra 8a (which Rambam has paraphrased here) in Chapter One of this thesis.

There are several very interesting aspects to Rambam's commentary to Mishna Avot IV.5. First of all, one is struck by Rambam's admission that most of the other Halakhic authorities ("possibly all of them") disagree with his position. That means, that by Maimonides' own account, most Rabbinic authorities would permit Scholars to receive financial support and other benefits. Of course, he maintains that the other authorities are all mistaken, they misunderstand the Talmud, and some of them are "confused fools."

Another decision of Rambam was his refusal to discuss or contemplate the "earlier or contemporary" Halakhic opinions. This is consistent with his philosophy of Halakha which he explains in his introduction to the Mishneh Torah. Rambam maintains that the Talmud alone is the authoritative voice of the law. Therefore, it is up to the post-Talmudic authorities to base their decisions on the Talmud itself. Of course, the other possibility which may explain Rambam's reticence to refer to post-Talmudic authorities is the fact that so few of them agreed with him on this issue! Rambam may have realized that his lone voice of opposition to Rabbinical fees and benefits had little chance of curbing this already well established practice. Thus, Rambam, may have felt the necessity of "taking the high road" on this issue so that the general public might be aware of the serious ethical questions involved. Whatever his strategy

was, it is obvious from the tone of his opening few comments that he did not anticipate winning this Halakhic debate.

Besides ignoring existing Halakhic opinions, Rambam also failed to address those Talmudic passages that seem to support Rabbinical fees and benefits. Rambam's sweeping statements [e.g. "If we search the words of the Sages, we do not find that they asked people for money, nor that they collected money for the respected and dignified Yeshivot, . . ."] would have a much stronger impact if he had addressed such Talmudic passages as Bekhorot 28b-29b [Where R. Ila of Yavneh was paid money for the inspection of firstlings], and Chullin 134b [Where R. Ammi enriched himself]. Rambam used a fine-edged knife to extract isolated passages that support his view while he ignored seemingly contradictory material on the same page of Talmud. Thus Maimonides cites anti-remuneration passages in Nedarim 62a, Ketubot 105a, and Baba Batra 8a while on these very same pages of Talmud other Rabbinic authorities have cited other passages that support compensation for Rabbinical Scholars.⁷ Needless to say, Rambam's refusal to comment on these other Talmudic passages tends to weaken the effectiveness of his argument.

Rambam seems to believe that manual labor is a virtue, even for Torah Scholars. He refers to the example of Rav Joseph who carried heavy loads of wood and who praised those

⁷. Please see Part I in which each of these passages is translated in full.

who sweat from difficult labor. But certainly Rambam is aware of Rav's opinion. Rav said (Kiddushin 70b): "Once a person is installed as leader of the community, he may not perform work in public [lit. "in front of three"]." Yet, Maimonides makes no reference to Rav's opinion in his commentary to Mishna Avot IV.5. However, in his Mishneh Torah Shoftim: San. 25.4 he does say; "As soon as any one (adam) is appointed as the leader of the community, he must not do menial labor in front of three men (i.e. in public), so that he does not degrade himself in front of them." Since the Mishneh Torah was written when Rambam was an older, more mature scholar, does this reflect a change from his previous stance? As we shall see in a later chapter, Joseph Karo, for one, does indeed believe that Rambam "softened" his opposition to the professional Rabbinat.

One cannot help wondering why Rambam chose not to comment on the concepts of sekhar batalah or of the compensation for tircha in his commentary to Mishna Avot. He does hint, ever so briefly, to the possibility of compensation for time loss. Rambam relates the example of Karna was willing to judge a case if the litigants would provide a "substitute to draw water in my place, or reimburse me for my actual loss (lit. "bateilti")." Still, Rambam does not flesh out the potential of this concept of sekhar batalah. As we have already read, Halakhic authorities before Rambam and even the Talmud itself

utilized the concept of sekhar batalah in order to justify financial compensation for the Rabbis. Can we draw any conclusions from Rambam's reluctance to fully develop sekhar batalah in his comments to Mishna Avot IV:5? I think not. Indeed, Rambam does utilize the concept of compensation for loss of time in his Mishneh Torah. Thus, before we draw our final analysis let us first review some of Rambam's key comments in his Mishneh Torah.

Rambam's Mishneh Torah (also called Yad Hachazakah, lit. "The Strong Hand"⁸) was completed in the year 1177.⁹ The Mishneh Torah was his *magnum opus*. There are many theories which attempt to explain Rambam's ultimate purpose for writing such an enormous code of law. It is beyond our scope to delve into Rambam's motives.¹⁰ Rather we will be

⁸. "Yad" of course, refers to the hebrew letters "Yod" (the tenth letter of the hebrew alphabet) and "Dalet" (the fourth letter of the alphabet). Thus "Yad" is the equivalent of "fourteen." "Fourteen" refers to the fact that Rambam's Mishneh Torah is set out in fourteen books.

⁹. I refer the reader to the comprehensive analysis of Rambam and the Mishneh Torah in Isadore Twersky's, Introduction to the Code of Maimonides (Mishneh Torah), (New Haven and London: Yale University Press, 1980). Twersky provides an excellent biographical background in his introduction (pp. 1-96).

¹⁰. Twersky reviews several motives and goals of the Mishneh Torah in Introduction to Code, pp. 61-92. Twersky lists three major motives: 1) *Historical Motive: Response to Contemporary Need*, 2) *Literary-systematic Motive: Jurisprudential Need*, and 3) *Philosophic-ideological Motive: Rationalistic-spiritual Need*. He also lists certain "Institutional-Religious-Literary Realities" which influenced Rambam. These influences include: 1) The Gaonate, its vested interests and influence, 2) Karaism, its opposition to Rabbinic Judaism, 3) Rationalism, and 4) the

content to review Rambam's decisions and ideals as he wrote them in the Mishneh Torah.

In the Mishneh Torah's first book, Sefer HaMadah (lit. "The Book of Knowledge"), Rambam includes important statements concerning the "ideal Rabbi" and Rabbinical compensation in three of its sections: 1) Yesode HaTorah (lit. "Fundamentals of the Torah"), 2) De'ot (lit. "Ethical Ideas"), and 3) Talmud Torah (lit. "Torah Study").

Yesode HaTorah¹¹

there are other things that are included under the category Chilul HaShem [lit. "Profanation of the Name", i.e. the Name of God]. When a man who is a great Torah Scholar, and widely known for his piety, does something which causes people to talk about him, even if the acts are not express violations, he profanes the Name of God. As, for example, if such a person makes a purchase and does not pay promptly, provided that he has means and the creditors ask for payment and he puts them off; or if he indulges in jesting, eating or drinking when he is staying with ignorant people or living among them; or if his mode of addressing people is not gentle, or he does not receive people affably, but is quarrelsome and irascible.

general state of Talmud study and Rabbinic literature. Solomon Zeitlin maintains that the Mishneh Torah was Rambam's constitution for the coming Messianic age. (See "Maimonides," American Jewish Year Book, Vol. 31, 1935.) According to Zeitlin, Rambam believed that the horrible chaos that plagued the world and the Jewish community was a forerunner to the coming of the Messiah. Therefore, a code, like the Mishneh Torah, was necessary to prepare Jews for the renewal of their nation, Israel, and their true religious way of life.

¹¹. The translations for the passages from the Mishneh Torah are based on Philip Birnbaum's, Maimonides' Mishneh Torah (Yad Hazakah), (New York: Hebrew Publishing Company, 1967), and also on Moses Hyamson's, Mishneh Torah: (Volume One and Two) "The Book of Knowledge" and "The Book of Adoration," (Jerusalem, New York: Feldheim Publishers, 1981).

The greater a man is the more scrupulous should he be in all things, and do more than the strict letter of the law requires. . . but by devoting himself to the study of the Torah, wrapped in Talit and crowned with phylacteries, and doing more than his duty in all things, avoiding however, extremes and exaggerations--such a man has sanctified God, and concerning him, Scripture says: 'And he said unto me, Thou art my servant, Oh Israel, in whom I will be glorified.(Isaiah 49:3)'"

De'ot 5:10

"The Torah Scholar manages his affairs with judgment and prudence; spends on food, drink, and maintenance of his household, in accordance with his income and the state of his finances. He will not put himself in excessive trouble (to be considered wealthy). . . ."

De'ot 5:13

"The Torah Scholar is honest in all his business affairs. . . In commercial matters, he acknowledges liability even where the law would not hold him liable; his principle is to keep his word and not change it. . . In short, he belongs to the class of those who are persecuted but do not persecute, who are reviled but do not revile. The scripture refers to a man who acts in this manner, saying: 'And he said unto me, Thou are my servant, Israel, in whom I glory. (Isaiah 49:3)'"

In the above comments, Rambam sets out his ideal for the Torah Scholar. He utilizes Isaiah 49:3 twice; he obviously sees the Scholar as God's ultimate servant. The key point in his comments is that the Scholar should act above and beyond the law. Thus, even if there is a legal loophole that would enable the Scholars to profit from the Torah, they should avoid it.

In Hilkhos Talmud Torah 1:3 and 1:7 Rambam acknowledges

the current custom (minhag) of paying Torah teachers.

Talmud Torah 1:3

"A father is obligated to engage a paid teacher for [his son if he cannot teach him]."

Talmud Torah 1:7

"If it is the custom of the country for a teacher of children to receive remuneration, the father is to pay the fee. . . If a person cannot find anyone willing to teach him without pay, he must hire a paid teacher for it says, (Prov. 23:23) 'But the truth.'"

Of course, elementary teachers are not Rabbis. Still, the principle is the same for both, i.e. one should teach for free. But Rambam realizes that the minhag is to hire teachers regardless of what the "ideal" might be.

Rambam paraphrases his commentary to Mishna Avot in the following passage.

Talmud Torah 3:10

"Anyone, however, who makes up his mind to study Torah and not work but live on charity, profanes the Name of God, brings the Torah into contempt, extinguishes the light of religion, brings evil upon himself and deprives himself of life hereafter, for it is forbidden to derive any temporal advantage from the words of the Torah. The sages said: 'Whoever derives a profit from use of the teachings of the Torah is helping to remove his life from the world' (Mishna Avot IV:5) They have further charged us: 'Do not make of them crown by which to magnify yourself, nor a spade with which to dig.' They likewise exhorted us: 'Love work, hate lordship. (Mishna Avot I:10)' "All study of the Torah, not conjoined with work, must, in the end, be futile, and become a cause of sin. (Mishna Avot II:2)' The end of such a person will be that he will rob his fellow men."

Rambam's direction seems clear; that is, one should

maintain a "worldly occupation" ("derekh eretz" in Mishna Avot II:2 which Maimonides understands as manual labor) and simply devote all one's free time to the study of Torah. But then again, who would ever have enough free time? Joseph Karo responds to Rambam's anti-remuneration stance in his commentary, the Kesef Mishneh. We will review Karo's commentary in a later chapter.

Rambam himself recognized the difficulty in maintaining a full-time job while attempting to study Torah in the following two passages from Talmud Torah.

Talmud Torah 3:7

"Possibly you may say: 'When I will have accumulated money, then I shall resume my studies; when I shall have provided for my needs and have leisure from my affairs, then I shall resume my studies. Should such a thought enter your mind, you will never win the crown of the Torah. 'Rather make the study of the Torah your fixed occupation (Mishna Avot I:15) and let your secular affairs engage you casually, and do not say: 'When I have leisure, then I shall study; perhaps you may never have leisure. (Mishna Avot II:5)'"

Talmud Torah 3:8

". . . The sages have exhorted us: 'Engage little in business and occupy yourself with the Torah. (Mishna Avot IV:12)'"

Maimonides disapproves of those who only receive charity in order to devote themselves solely to the study of Torah, and he warns us against spending too much time in our "worldly occupations" lest we neglect the study of Torah. Thus it appears that Rambam offers Torah Scholars two options: either be independently wealthy, or mortify

yourself. He emphasizes the life of mortification in the next passage.

Talmud Torah 3:12

"The words of the Torah do not abide with one who studies listlessly, nor with those who learn amidst luxury, and high living, but only with one who mortifies himself for the sake of the Torah, constantly enduring physical discomfort, and not permitting sleep to his eyes nor slumber to his eyelids. . . "

Rambam is even more explicit in his disdain for those Scholars who rely on public assistance in this passage from the seventh book of the Yad Hachazakah, Sefer Zera'im.

Mattanot Aniyim (lit. "Gifts to the Poor") 10:18

"One should strive not to be dependent on other people and not to be a public charge. So too the sages have enjoined us, saying: 'Rather make your Sabbath a weekday than be dependent on men. (Shabbat 118a). If reduced to poverty, even a distinguished Scholar must not disdain manual labor, no matter how repulsive it is to him, in order to avoid dependence on others. One should preferably flay animal carcasses instead of telling the people: 'I am a great Scholar, I am a Priest, provide for me.' The Sages have indeed commanded us to act like this. Some of the great sages derived their livelihood from chopping wood, carrying lumber, watering gardens, working in iron or making charcoal, and asked no help of the community; neither would they have accepted charity had it been offered them."

Ultimately, Rambam maintains that God will provide for the Scholars for doing His work.

Shemitah V'Yovel 13:13

". . . each well-informed person whose spirit moves him to devote himself to the service of the Lord, to know the Lord, and has walked uprightly after casting off his neck the yoke of many a cunning wile that men contrived, is indeed

divinely consecrated, and the Lord will forever be his portion. God will provide sufficiently for his needs, as he did for the priests and the Levites. David, may he rest in peace, declared: 'The Lord is my allotted portion and my cup; Thou holdest my lot. (Psalm 16:5)'"

Zekhiyyah Umattanah 12:17 (Book Twelve: Kinyan, "Acquisition")

"Sincerely upright men of good works do not accept gifts from men; they trust in God, blessed be He, and not in philanthropists. Indeed, it is written: 'He who hates gifts (mattanot) will live. (Proverbs 15:27)'"

Rambam further addresses the issue of Judges who may be inclined to receive payment for their services in Book Fourteen, Sefer Shoftim, (lit. "The Book of Judges").

Sanhedrin 23:1

"'You shall not take any (shochad) gift (Exodus 23:8).' The purpose of this prohibition is not to caution the Judge against accepting a gift with the intention of perverting justice. Rather, its purpose is to warn him not to accept a bribe even if he proposes to acquit the innocent and condemn the guilty. He who does it transgresses this negative command. To him the Scripture says: 'Cursed is one who takes a bribe. (Deut. 27:25)' He is bound to return the bribe if the giver demands it."

In the following passage Rambam makes another reference of the concept of sekhar batalah. But unlike his comments in Mishna Avot 4:5, here his comments are more elaborate. Note that in Mishna Avot Rambam did not use the term sekhar batalah, rather he only wrote "bateilti" (i.e. "my loss"). Here Rambam makes specific use of the term.

Sanhedrin 23:5

"If a man takes payment (sekhar) for acting as a

Judge, his decisions are cancelled. This is, however, only if the payment is compensation for judicial services. But if he has an occupation in which he is engaged in and two men come before him with a lawsuit, and he says to them: 'Either find me someone who will attend to my work until I have ruled on your case or remunerate me for loss of time (sekhar batalti), he is permitted to do so, provided that it is obvious that the payment is for loss of time (sekhar Habatalah) only and he does not receive more. The fee he receives is contributed equally by both parties to the suit and is given him in the presence of both. Under these circumstances he is permitted to accept payment."

What a far cry the above opinion is from his previous comments. In fact, though the Rambam is the authority who is opposed Rabbinical and Judicial compensation it appears as though he permits the same legal loophole that the "lenient" authorities use. One thing is not clear and that is: does Maimonides differentiate between Judges and Rabbi? Perhaps. As we mentioned earlier, in Rabbinic literature, the terms "Judge" and "Rabbi" are, for the most part, interchangeable. But perhaps Rambam is making a distinction between the Torah Scholar and the one who acts as a Dayyan (lit. "Judge"). There is a technical distinction between the two roles.¹² As well, the Torah Scholar can be considered one who devotes his time (in the Yeshiva) to the

¹². Joel Roth's The Halakhic Process: A Systemic Analysis pp. 135ff. provides a cogent review of the different levels of Halakhic authority. Some Scholars are ordained with the right of lehorot i.e. "to teach." This usually refers to permission to decide cases of ritual law (issur ve-hetter). Other Scholars are given permission "to judge" (ladun) i.e. to decide monetary cases (dinei mamonot). So a distinction can be made between the two roles.

study and teaching of our religious literature, while the Judge must interrupt his occupation and his studies in order to render a legal decision for two litigants. Thus, it would seem that for Rambam, the Judge is eligible for sekhav batalah while the Scholar is not. It is worth noting that Rambam fulfilled both roles, Scholar and Judge, in his community and would have been quite sure of the differences between them.

Another ruling in Sanhedrin seems to affirm the notion that Rambam differentiates between Scholars and Judges.

Sanhedrin 25:4

"As soon as a person is appointed leader of the community (Parnas), he is forbidden to do menial labor in the presence of three men (Kiddushin 70a), so that he does not degrade himself in front of them. If he must not do menial labor in public, how much more so is he forbidden to eat, drink, and get intoxicated in the presence of many people, or attend assemblies of ignorant people or social parties. Woe unto those Judges who make a practice of such indulgences for their contempt of the Torah of Moses. They despise its judgments, lower its standards, bring it down to the dust, and cause evil to themselves and their children's children in this world and in the world to come."

Though Rambam was reluctant to apply Kiddushin 70a to Rabbis (in his commentary to Mishna Avot IV.5) he applies this ruling of Rav's (not to allow men of distinction to work in public) to Judges. This is further evidence that Rambam makes a distinction between Judges and Rabbis.

Yet, Rambam does not always draw what appears to be a distinction between Rabbis and Judges. In the following

passages Rambam seems to equate those who have been ordained as "Judges" with those who are called "Rabbis."

Sanhedrin 4:1-2

"In order to act as a Judge in the Great or in a Small Sanhedrin or in a court-of-three, one must be ordained (samukh) by someone who has been ordained. Moses, our teacher, ordained Joshua by laying his hands upon him, as it is said; 'And he laid his hands upon him and gave him charge (Numbers 27:23).' He, likewise, ordained the seventy elders and the Divine Presence rested upon them. . . Hence, there was an uninterrupted succession of ordainees reaching back to the tribunal of Joshua, indeed to Moses, our teacher.

What has been the procedure through the generations with regard to ordination? They have not placed their hands upon the head of the elder, but rather, they conferred upon him the title "Rabbi", saying unto him: 'You are now ordained and authorized to adjudicate even cases involving fines.'"

In Sanhedrin 4:11, one of his most controversial rulings, Rambam again forms a link between Rabbis and Judges.

Sanhedrin 4:11

"If there should be in all Eretz Yisrael but one man competent to confer ordination, he could invite two others to sit with him and proceed to ordain seventy men, either, en masse or one after the other. He and the other seventy men would then constitute the Great Sanhedrin and would thus be in a position to ordain other courts. It seems to me that if all the wise men in Eretz Yisrael were to agree to appoint judges and to ordain them, the ordination would be valid, empowering the ordained to adjudicate cases involving fines and to ordain others. If what we have said is true, the question arises: Why were the Rabbis disturbed over the matter of ordination, apprehending the abolition of the laws involving fines? Because Israel is scattered and agreement on the part of all is impossible. If, however, there were one ordained man who had

himself been ordained, no unanimity would be necessary. He would have the right to adjudicated cases involving fines because he would be an ordained judge. But this matter requires careful reflection."

The above passage was central to the ordination controversy in sixteenth century Safed.¹³ But it also holds two key answers for the problems we have had understanding Rambam's decisions. First of all, the process of becoming a Judge comes through the Rabbinate. Thus, one may be a Rabbi yet not a Judge, but a Judge must be a Rabbi. Therefore, Rambam drew no distinction between Rabbis and Judges, but rather between those Rabbis who were solely Scholars, and those who performed Judicial services. Secondly, Rambam is compelled to mention the sorry state of Judaism during his day. He yearns for a renewal of the the strong central authority of the Great Sanhedrin. Thus, Rambam did not just make rulings based upon the current conditions, but rather, he hoped to help create a new, stronger and vibrant Jewish community. His rulings are the ideals of the Jewish community to come. It goes without saying, that this ideal Jewish community of the future is firmly planted within the Scripturally promised borders of Eretz Yisrael.

Obviously, Rambam felt that the Jewish community of the

¹³. For a complete analysis of this smekhah (ordination) controversy see, Allen Podet's Moreinu Harab; and, Jacob Katz, "Machloket Ha-Semikhah" Zion, v.15, 1951, pp.28-45.

future would not have to (or at least, should not have to) suffer through the indignity of Scholars and Judges who receive financial compensation. More to the point, one of the great causes of the phenomenon of "Rabbis for hire" would be eliminated in the new Jewish community, that is, the Gaonate would cease to exist.

Isadore Twersky points out that Maimonides chafed at the anachronistic Gaonate that relied upon pomp and circumstance and the insisted on the formal retention of institutional prestige and primacy.¹⁴ In fact, Rambam refused to grant the academies of Babylon the sole right of the title "Geon" (lit. "the pride" i.e. of Jacob). In his introduction to the Mishneh Torah he confers the title to Sages everywhere:

"The Sages, however, who arose after the compilation of the Talmud, studied it deeply, and became famous for their wisdom, are those called 'Geonim.' These Geonim, who flourished in the Land of Israel, Babylon, Spain and France, taught the method of the Talmud. . . ."

Twersky sums up Rambam's daring effort to wrest the primacy of the Babylonian Gaonate, saying:

"Now Maimonides' assessment of the intellectual legacy of the Geonim was not, to say the least, routinely adulatory. He realized and exposed the limitations of their achievements --as in other areas, he feared mediocrity--but above all he questioned their exclusive or preemptive rights in the realm of explication and adjudication. Only

83. ¹⁴. Isadore Twersky, Introduction to the Code, pp.82-

the Mishnah and the Talmud were universally binding, the former because it was endowed with the authority of the Sanhedrin, and the latter because it reflected the consensus of the entire nation. Maimonides' halakhic-historical formulations underscored a basic socio-political fact; Gaonic teachings lacked intrinsic authoritativeness and could not possibly aspire to universal recognition. In other words, while the Geonim constructed their platform upon a three-pronged supremacy--of the Oral Law, of the Babylonian Talmud, and of the Babylonian Geonim in all matters of interpretation and application--Maimonides knocked out the third prong. Simultaneously, fully conscious of the fact that his forthright criticism would be uncongenial to most scholars, he repudiated the hierarchic-dynastic structure of the Gaonate and denounced their managerial methods, i.e., the maintenance of a retinue of scholars at public expense by relentless importuning for contributions. 'Oblivious of predecessors or contemporaries,' he challenged the conventional proofs and values on which the system rested. The existence of an institutionalized and professionalized class of scholars supported by public and often high-pressured philanthropy was antithetical to Maimonides' existential posture as well as ideological position."¹⁵

Twersky's theory helps us understand that Rambam's battle to help create the ideal Jewish community forced him to take on the hierarchical status quo of the Gaonate and the phenomenon of the "professional Rabbinate" which they promoted.

Throughout his commentary, he challenged the Halakhic status quo of the previous generation's authorities and even the Talmud itself. Have we not seen that the Talmud and the major authorities permit Rabbinical fees and benefits? Still, Maimonides hooked his opinion on the principles

¹⁵. Twersky, Introduction to the Code, p. 83.

found in Mishna Avot. For Rambam, the "current realities" should not be permitted to permanently override the eternal ideal.

CHAPTER SEVEN

The Professional Rabbinate as Evidenced in the Tosafot

The Tosafot (Lit. "Supplements") are collections of Talmudic comments compiled primarily by the French and German Yeshivot in the twelfth through the fourteenth centuries.¹ Since Rashi had already commented on the Talmud the Tosafot originally intended only to supplement his commentary, which is also known as the Kuntres. Possibly the Tosafist's original modest objective combined with the fact that two of the most prominent Tosafists were Rashi's grandsons (i.e. Rabbenu Tam and the Rashbam²) explain the modest title of their great work, "Supplements." Solomon Schechter maintained that meekness and humility typified the "style" of the Ashkenazic scholars.³ According to Schechter the Ashkenazic authorities saw the commentator in a subordinate role to his author. Schechter wrote: "Whether his author is wrong or right, his task as a commentator only consisted in conveying to us the exact meaning of the text. The Sephardic Jew, on the other hand, would very often

¹. The historical information about the Tosafot in this thesis relies on Israel Moses Ta-Shma's, "Tosafot," Encyclopaedia Judaica; as well as on H.H. Ben-Sasson's, A History of the Jewish People, pp. 525-527.

². "Rabbenu Tam" is Rabbi Jacob Tam and "Rashbam" is Rabbi Samuel. Both of them are the sons of Rabbi Meir, Rashi's son-in-law.

³. Solomon Schechter, "Jewish Saints in Mediaeval Germany," Studies in Judaism, Third Series, (Philadelphia, The Jewish Publication Society of America, 1924) pp.12-14.

compel his author to be right, that is, to agree with him."⁴

Contrary to Schechter's generalization, however, it is apparent enough that the Tosafists felt free to disagree with Rashi when their own analysis led them to a different conclusion. Ta-Shma explains their process, saying:

"By a careful perusal of his (Rashi's) commentary those who followed him were able to acquire for the first time a profound and harmonious comprehension of the Talmud. Through questioning Rashi's statements on the basis of the Talmudic theme under discussion, or of one found elsewhere, or of Rashi's own comments on some other passage, the Tosafists sought to answer their questions by pointing to differences and distinctions between one case and another or between one source and another. In this way they produced new Halakhic deductions and conclusions, which in turn became themselves subjects for discussion, to be refuted or substantiated in the later Tosafot."⁵

Thus we might hope to see some important changes in the Halakhic rulings of Rashi and those of the Tosafot.

Specifically, we will be interested in seeing if the Tosafot differed from Rashi in their commentary to the key Talmudic passages of Bekhorot 29a, Ketubot 105a, Gittin 60b, Nedarim 62a, and Eurbin 62b-63a.

We have seen in the earlier commentaries that the entire issue of the propriety of Rabbis receiving financial

⁴. Solomon Schechter, Studies in Judaism, Third Series, pp. 13. Schechter's opinion -that the Ashkenazic authorities maintained a meek and subordinate role in their commentary- is hardly universally accepted. Irving Agus' analysis of R. Meir's interaction with the Talmud (R. Meir, pp. 30ff.) clearly shows that the Ashkenazic authorities were not "subordinate to the text."

⁵. Israel Moses Ta-Shma, "Tosafot," Encycl. Jud., p. 1278.

compensation hinges on the Talmudic passages in Bekhorot 29a, and Ketubot 105a. Thus the attitude of the Tosafot to Rabbinical salaries, fees and benefits will become clear by their comments on Bekhorot 29a and Ketubot 105a.⁶

Tosafot on Ketubot 105a:⁷

"*Gozrin Notlin...* Behold, there is no objection here [i.e. there is no objection to the fact that the Judges received their salaries out of the Temple funds⁸]. But how is it that they [the Judges] did such a thing [i.e. took money]? Does not Scripture say: 'And a bribe you shall not take.' This is like the objection that was posed to Karna [who took a fee from both litigants but not, apparently from the Temple treasury. The concern of the Tosafot is that while an objection was raised against Karna, why wasn't an objection raised against those who took their salary from the Temple?].

Rabbenu Tam says, [they protested against Karna] because there is only a prohibition against [receiving fees] from the litigants [this is what Karna did] but not [when the Judges are compensated] from the Communal [funds]. And the Rabbi [Rabbenu Tam?] explains that here it is not a matter of [the Judges] receiving salary, rather [they were compensated] because they would sit all the time in Judgment and they were unable to engage in a regular occupation and thus with what were they to support themselves? So they [Judges] take from the Communal [funds] for their support.

⁶. Both passages are translated in Part One of this thesis. The passage in Ketubot deals with those Judges who received salaries out of the Temple funds. The Tosafists focus on the midrash of Deut. 4:5 (i.e. "Just as I taught you for free so you must teach for free.") that is found in the Bekhorot passage.

⁷. The translations of a the following Tosofot material are my own.

⁸. "Temple funds" is actually a loose translation of of Terumat HaLishekah. A more literal translation is "the heave offering of the (Temple's) chambers." This obviously refers to the funds that are in the Temple's treasury.

But Karna, [a Judge] of the exile,⁹ would sit in Judgment but he would not take a salary [from Communal funds¹⁰]. And there is further support for the legitimacy of this [receiving salary from Communal funds] further on (Ketubot 106a) where it is said, 'The learned men who taught the priests the laws of ritual slaughter received their fees from the Temple funds...The learned men who taught the laws of Kemizah [i.e. laws concerning the 'taking of a handful' of the meal offering] received their salaries from the Temple funds...' This is in spite of the fact that salaries are supposed to be forbidden for religious instruction [lit. Talmud Torah]."

Tosafot on Bekhorot 29a:

"*Ma ani b'chinam...*" And if you shall object, [meaning that this midrash on Deut. 4:5 - 'Just as I teach for free...' is a superfluity. It is unnecessary in light of the following quote from Ex. 23:8 which seemingly teaches the same thing] saying: 'that Scripture says: And bribes you shall not take...' (Ex. 23:8) That this is what the Merciful wrote [i.e. it is Toraitic and not a mere Rabbinic statement]. But there is no difficulty here. For is there not a difference between these two phrases? As it is proved in the last section of Ketubot 105a, there is the 'law of agar,' that is, compensation for one's tircha [lit. 'trouble'] and there is the 'law of shochad,' that is, even when a [Judge] strives to rule justly [if he receives a bribe] he is still [considered as one who] perverts justice. As it is said, 'Even if he acquits the blameless and condemns the guilty...'

And there is nothing astonishing about the fact that two Civil Judges in Jerusalem (Ketubot 105a) took their salaries from the Temple treasury even though they did not justify their salaries by reason of agar batalah (compensation for loss of time) for they justified their salaries on the fact that their only occupation was this [i.e.

⁹. "of the exile" is a possible understanding of the phrase Egra'i b'alma (translated in Jastrow "mere chance" p. 113.).

¹⁰. Possibly because after the destruction of the Temple, there was no longer a Temple treasury.

being Judges] and they were not engaging in any other work. Therefore, they had no choice but to support themselves.

As for our current custom. . .one to teach Torah¹¹ with financial compensation [B'sekhar], it is permitted if one does not have sufficient means of support. And even if one has [sufficient means of support] he may still receive 'Compensation for his loss' [sekhar bateilah], for this is justified since they must cease from their regular occupations and business. This is further proved [from the example of] Karna, who was a wine tester and received a zuz [i.e. he received money from his regular occupation and should therefore be compensated for having to cease working]. And also we know from Nedarim 37a that one may receive compensation for teaching the ta'amim [i.e. the accents] and for guarding the children.¹²

Note that the Tosafists compare the Judges of Jerusalem and their practice of taking a salary, even though they do not justify their salary by reason of agar batalah to the Rabbis and Judges of their own day who are justified in taking a salary not only because the Judges of old set a precedent, but also due to the reason of agar batalah. It is important to point out the fact that the Tosaphists do not quote any other authorities here or even the practice of the Geonim who took salaries. Rather, the Tosaphists prove the legitimacy of Rabbinic salaries directly from the Talmudic text itself.

It is curious that in their commentary to Ketubot 105a the Tosafists do not employ the terms agar batalah, sekhar

¹¹. The text actually reads, Lilmode Torah, i.e. "to learn Torah."

¹². See the translation and explanation of Nedarim 37a in Part One.

batalah, or sekhar tircha even though their explanation incorporates the principles of those terms. Yet in their commentary to Bekhorot 29a the Tosafists not only employ the above mentioned terms they also attribute these terms to Ketubot 105a. It is possible that the terminological differences indicates different authors. Another interesting nuance found in the Bekhorot commentary and not in the Ketubot is the rider that the Judges would only receive the salary she'al korcham. It is not clear what the Tosafists mean by this phrase. It can either mean that the Judges would be inclined not to accept payment but they do so only out of necessity. Or the the phrase can refer to the passage in Ketubot 105a in which it is explained that the Judges were sometimes forced to take an increase in their compensation, even if "they did not want it" [she'lo ratzu]. I am leaning toward the former explanation. It seems as though the Tosafists, as well as nearly all the other commentators, believe that in the "best of possible worlds" Rabbis and Judges would not have to receive financial support. But until that day comes, we must find practical solutions to today's problems.

The Tosafists in both passages agree that Rabbis and Judges need to receive financial compensation in exchange for their time and troubles. They differ from Rashi in that they clearly spell out that "our current custom" is to pay Rabbis, Judges and Scholars salaries.

In Gittin 60b the Tosafot interprets the unusual word shifora. They dispute the reading of this word as shofar (that is, the ram's horn that is blown on special occasions like Erev Shabbat). The Tosafists said: "Rather it appears as though this [shifora] is a different word. This shofar should be understood as something into which they put the contributions for the students." Thus the Tosafot maintain that the communal fund for the support of Scholars is a Talmudic custom. Their interpretation follows that of Rashi. Rashi, as we mentioned earlier, attributes the understanding of shifora as "a student's support fund" to Rav Sherira Gaon.

The Tosafot tempers the extreme piety of Rabbi Tarfon in Nedarim 62a.¹³ Tarfon was ashamed that he had used his good name as a Torah Scholar in order to save himself. But the Tosafists ask: "to give up one's life for the sake of honoring the Torah, is not an explicit obligation. Rather, further on one is even permitted to say, 'I am a Rabbinical Scholar, let my business get first attention...' and similar expressions whereby the benefits of the Torah Scholars is just like the benefits of the Priests and Levites [who receive] the offerings and the tithes."

The Tosafot do try to soften the radical passage found later on in Nedarim 62b where it is said that a "Rabbinical

¹³. A complete translation of Nedarim 62a is provided in Part One of this thesis.

Scholar may assert, 'I am a servant of fire, and will not pay poll-tax.'" The Tosafot differs from Rashi who reads the Peshat [i.e. "literal"] of "servant of fire." Rashi maintains that the Scholar may actually claim that he is the fire worshipper. The Tosafot say: "He [may claim] that he is the servant of the man who is the Priest of the fire worship in order to win tax exemption... So that even if they [the tax collectors] think that they are idol worshippers, the Scholar knows in his heart the true God..."

In Erubin 62b the Tosafot contains a long commentary that helps explain this difficult passage which deals with the rights and limits of where the Rabbis may teach.¹⁴ The Tosafot summarizes the key points of the passage.

Tosafot to Erubin 62a:

s.v. "Mahu..." "Is it permitted for a disciple to give a ruling in his master's district?"

"The Ri (Rabbi Yitzhak HaZaken) says: 'All of these are rulings, for example: a case that is brought before him and he decides (morah) to do such. But if they simply ask a student (Talmid) 'what is the Halakha according to so and so?' He may answer to the best of his knowledge for he is not truly deciding an actual case that is before him."

The great significance of Ri's opinion is that a more limited definition of hora'ah (deciding a legal case) is being formed. The Tosafists further define hora'ah in their comment near the bottom of Erubin 62b.

s.v. "Rav Chisda..."

"And it is taught that a Talmid [lit. "a student"] may not teach the Halakha in his Rabbi's makom

¹⁴. A complete translation of Eruvin 62b-63a is provided in Part One of this thesis.

[lit. "place"] unless he is further than three parasot¹⁵ from him. This means to say that if he is a Talmid Chaver [i.e. colleague]. And according to what is written, if he is further than three parasot he is permitted. But this is what we say, that [to teach] in his presence (lifanav) is forbidden. . . And anyone who teaches within the three parasot is deserving of the death penalty. It might be thought that [deciding a case] 'in his presence' is like a reference to that student who decided cases in the presence of Rabbi Eliezer [Erubin 63a] for he was within three parasot when he judged and he died. But the implicit meaning of this is that he wasn't necessarily actually in his presence. Similarly, in the case of the sons of Aaron [who died] it is implied that they did not actually decide a case before Moses [this refers to the Midrash on Lev. 10 which is found on Erubin 63a] and the essence of this passage is to teach us that 'three parasot' means that even if the sons of Aaron were on the other side of the camp of Israel they still would have been liable for the death penalty. Likewise, Ri (Rabbi Yitzhak HaZaken) says that, of course, in a case where there is a nuance (Chidush) for the questioner [the student is forbidden to decide the case and would be liable for the death penalty]. And even [on a simple case like] eating and egg with kutcha or [a case from] the Scroll of Fast Days, for in a case like this where one decides without receiving authorization rather we still do not listen to them, even though these students know the law themselves and would not err, it is still forbidden for them to decide (lehorot) the case. But in a case in which the questioner knows the custom (minhag) of the case, for example, in the case of notein ta'am lifgam [a simple case of Kashrut] or a similar case it is permitted for the student to decide. When there is no Chidush (nuance) the case is permitted. And Rabina, who examined knives (Erubin 63a) in Babylon is similar to a case of Chidush in that he assumed authority. Just as it is said (Chulin 17b) they only granted the authority to decide on the fitness of knives due to the honor of a Sage."

¹⁵. Parasot (the plural form of parasa) is the equivalent of the Persian parasang which, according to Jastrow is a "Persian mile."

The Tosafists, like the Rabbis of every generation were confronted with the problem of authority. Whose ruling was supreme? How is authority shared among Rabbinical equals, colleagues, and what honor is due one's teacher? As we will discover later in our review of some key fourteenth and fifteenth century responsa these questions of Rabbinic authority are at the center of some major Rabbinic disputes.

In the above passages the Tosafists helped define the terms and issues of Rabbinic authority. They differentiated between shochad and agar, between Rav, Talmid, Talmid Chaver, and Talmid Gamor. They began to narrow the definition of lehorot (to decide a legal case). By narrowing the definition of lehorot to those cases which involve a Chidush (nuance) the Tosafists, in effect, granted the student the authority to rule on the vast majority of the common Halakhic questions, for most questions do not involve a nuance.

As we shall see, the later authorities and codes built upon the foundation of these definitions and clarifications from the Tosafot.

CHAPTER EIGHT

The Professional Rabbinate as Reflected in the Responsa of Rabbi Meir Ben Baruch of Rothenburg

Rabbi Meir ben Baruch of Rothenburg (circa 1215-1293) was possibly the greatest Talmudic authority in Germany in the later half of the thirteenth century.¹ In his Responsa he mentions two uncles and twelve other relatives bearing the title Ha-Rav (signifying that they were all esteemed Talmudic scholars, and possibly heads of Yeshivot.²). Indeed his family held important positions as leaders and Judges throughout Germany.

Rabbi Meir was born in Worms. His early Talmudic studies were under Rabbi Isaac b. Moses of Vienna, the author of the Or Zarua while he was but ten years old. His intellectual growth was astonishingly rapid. By the time he was eighteen years old R. Meir was even able to dispute intricate questions of law with his Master, Rabbi Isaac of Vienna.³

In his Responsum #55 (Berlin edition) he recalls the

¹. This study's biographical information concerning R. Meir b. Baruch of Rothenburg relies on Irving Agus, Rabbi Meir of Rothenburg; His Life and His Works as Sources for the Religious, Legal, and Social History of the Jews of Germany in the Thirteenth Century, (Philadelphia: The Dropsie College for Hebrew and Cognate Learning, 1947) Two Volume

². Irving Agus lists each of Rabbi Meir's scholarly relatives and provides the source where they are mentioned in Volume One of his Rabbi Meir of Rothenburg, pp.3-4.

³. Irving Agus, Rabbi Meir, pp.7-9.

time R. Isaac listened to his opinion and did not protest, even though Meir's opinion contradicted R. Isaac's opinion.⁴ Note how Rabbi Meir's relationship with his Master contrasts with the picture of Rabbi-Student relationship that appears in the Tosafist's commentary to Erubin 62a. Rabbi Meir was also a Tosafist. Perhaps this shows that the true relationship between Rabbis and their students was much more relaxed than the formal ideal. The Tosafot does mention that a Rabbi may forgo his honor and allow his student to rule in his presence. It is most probable that gifted students were permitted to exercise their intellectual muscles before their Rabbis. Certainly, Rabbi Meir was one such gifted student.

R. Meir continued his studies in France under R. Samuel b. Salomo and R. Yehiel. While he was in France his teachers took part in the famous controversy over the Talmud with Nicolas Donin in 1240.⁵ In 1242 R. Meir witnessed the public burning of the Talmud in France. A few years later he returned to Germany and settled in Rothenburg. He taught in Rothenburg for over forty years.

By 1249 Rabbi Meir was already considered one of the greatest scholars of his generation. For nearly half a

⁴. Irving Agus, Rabbi Meir, pp.8-9. The key section of R. Meir's Responsum #55 is provided.

⁵. See Graetz History of the Jews, VII p.107; and Israel Abrahams, Jewish Life in the Middle Ages, p.416 for more information concerning the Donin affair.

century Rabbis, Judges, community leaders and members of courts of arbitration of Germany, Austria, Bohemia and France sent their queries to Rabbi Meir.⁶ Irving Agus refers to Rabbi Meir as having "acted as the supreme court of appeals for Germany and its surrounding countries."⁷

The stature of the Rabbinate during Rabbi Meir's day appears very great indeed. Consider the fact that more than ninety per cent of Rashi's Responsa deal with ritual law and very few cases of civil law, while the great majority of Rabbi Meir's Responsa deal with such civil matters as business transactions, real estate, inheritance, agents, sureties, trustees, community government and taxation.⁸ The disparity between the types of cases that were brought before Rashi and R. Meir can be partially explained by the fact that the Halakhic codes and Talmudic commentaries that were available after Rashi's day obviated the necessity of sending ritual questions to a Scholar. Still, it is also possible that these codes and commentaries which facilitated the popularization of the Talmud in turn heightened the appreciation of the Talmudic Scholar. Irving Agus also attributes R. Meir's authority to the general popularity of Talmudic scholarship. Agus says: "...he [R.

⁶. Irving Agus, Rabbi Meir, pp.14-15. Agus points out that R. Meir seldom took questions from individual litigants.

⁷. Irving Agus, Rabbi Meir, p.14.

⁸. Irving Agus, Rabbi Meir, pp.17-18.

Meir] enjoyed this authority because of his scholarship, because many leaders of the German communities were his students who owed him respect and even obedience, and because the Talmud was the 'constitution' of the community government, and R. Meir, the greatest scholar of the land, its best and most authoritative interpreter."⁹

There is a general dispute as to whether or not Rabbi Meir ever held office as the Chief Rabbi of Germany. Jost and Graetz both believe that Rudolph I appointed R. Meir as the Chief Rabbi.¹⁰ Irving Agus disputes this on the grounds that Rabbi Meir was theologically opposed to the idea of any non-Jew interfering in internal Jewish affairs.¹¹ Still, he admits that it was possible that Rudolph tried to appoint R. Meir Chief Rabbi but failed.

The determination as to whether or not R. Meir was the Chief Rabbi is important for our general understanding of the role of the Chief Rabbinate in Medieval Jewish history. Agus offers an interesting review:

"In the later years a Chief Rabbi was usually appointed by the King in order to facilitate the collection of taxes from Jews. The communities' were never happy over such an appointment but rather took it as an additional harshness imposed upon them by the government. For this reason, Rabbinic literature rarely mentions the office of Chief Rabbi or the name of the person who filled the office. In the Responsa of the fifteenth and

⁹. Irving Agus, Rabbi Meir, p.22.

¹⁰. Irving Agus, Rabbi Meir, pp. 18-19.

¹¹. Irving Agus, Rabbi Meir, p.18-19.

sixteenth centuries we can find not a single reference to such an office. The difficulty Rudolph I encountered in collecting taxes from the Jews (see chapter on R. Meir's later life) might have prompted him to resort to the expedient of appointing R. Meir Chief Rabbi of Germany. The sources, however, neither confirm nor deny this view."¹²

Regardless if Rabbi Meir was the Chief Rabbi, he certainly played a dominant role and his Responsa can teach us a great deal concerning the Rabbinate in thirteenth century Germany. Indeed his Responsa teach us a great deal about the phenomenon of the French and German Jewish community in the early Middle Ages.

We discussed the various theories of the origin of the Medieval Jewish community at the beginning of Part Two of this study. In response to the demand in the tenth century for a Halakhic foundation for communal powers Rabbi Judah b. Meir ha-Kohen and Rabbi Eliezer b. Judah developed two major principles: 1) Since Jews should compel one another to live in accordance with truth, justice, and the laws of God then it follows that if the majority agree to pass a decree that upholds the Torah, or to pronounce Cherem against someone in order to force them to comply with Jewish law, or to confiscate private property in order to punish lawlessness, then all must accept the decree of the majority and subject themselves to their rulings; and, 2) Decrees passed by the community by majority vote must be observed by the minority

¹². Irving Agus, Rabbi Meir, p.19, note 26.

even if they deal solely with secular needs such as taxation and business competition.¹³

While there was never a dispute concerning Rabbi Judah's and Rabbi Eliezer's analysis of communal rights and powers in religious matters, there was disagreement concerning the principle of "majority rules" in secular matters.¹⁴ Rabbenu Gershom found it necessary to convoke a synod of the communities in order to establish the principle of "the majority rules." But their Takkanah did not claim "majority rules" was a Talmudic law rather they only claimed that it was the "custom of the ancients, or the need of the hour."¹⁵

A century and a half after Rabbenu Gershom's synod, Rabbi Eliezer b. Nathan, a contemporary of Rabbenu Tam began the shift to the principle that the community only had power because the citizens had voluntarily agreed to it.¹⁶ Again, as we discussed earlier, there is some disagreement as to

¹³. Irving Agus, Rabbi Meir, pp.78-79. Agus maintains that the majority, therefore, possessed solemn authority over its members and was empowered to elect or appoint Rabbis, and Judges and endow them with the same power as the ancient Sanhedrin possessed. These powers, however, are in effect only over the Jews within that particular community.

¹⁴. Irving Agus, Rabbi Meir, p.83f.

¹⁵. Louis Finkelstein, Jewish Self-Government in the Middle Ages, (New York: The Jewish Theological Seminary of America, 1924), pp.111-138. On p.121 Finkelstein provides the hebrew text and the various manuscripts used and on p.132 he provides an english translation.

¹⁶. Irving Agus, Rabbi Meir, pp. 91-93.

whether this weakening of the communal powers was caused by Rashi (Solomon Zeitlin) or Rabbenu Tam (Irving Agus) but in any case the community began to lay greater emphasis upon the rights and immunities of the individual and the minority.¹⁷

The newly developed principle¹⁸ that the community's powers came from within (i.e. from the voluntary acquiescence of its citizens) and not from any outside force (i.e. the claim of traditional Jewish rulership, such as that of the family of David, or the students of Moses). This self-generated authority both protected it from outside interference as well as limited the jurisdiction of its rulings. The practical effect this had on Rabbinic authority is such that, according to Agus:

"In all Rabbinic discussions of the sources of authority in Jewish life in Germany and France, the scope and limitation of such activity, whether exercised by the community, the court, or the Scholar, no mention is made of any delegation of authority by the exilarch, the Geonim, the Nasi of Palestine, or of even a direct chain of tradition from teacher to pupil."¹⁹

Rabbi Meir confirmed this denial of the existence any special religious authority (in Responsum #271 in Agus')

¹⁷. Irving Agus, Rabbi Meir, pp.94-95.

¹⁸. These new principles were set out in the various Takkanot of the German communities in the thirteenth century, which can be found in Finkelstein's, Jewish Self-Govt., pp.218-256.

¹⁹. Irving Agus, Rabbi Meir, p.97 note 149.

Rabbi Meir, pp.302-306) in which he says:

"...You, the aforementioned community leaders, probably delude yourselves with the idea that since your permission is required before a person may divorce his wife (see Finkelstein, Jewish Self Govt., p.230), no scholar is permitted to render decisions in ritual law unless he receives your authorization. No, this is not true, for the Torah is free to anyone who is capable of arriving at a correct decision. You have gathered, and have associated with yourselves, men who do not understand the intricacies of the laws of marriage and divorce. I am not in a position to protest against my teacher of Spiers [i.e. Rabbi Samuel b. Salomo], since I am his student [and owe him the respect and subservience of a student], but I protest against those who sought to ruin my reputation and honor."

The great significance of the above Responsum is, of course, that the Rabbis do not possess any inherent authority over any other Torah Scholar, rather, a Rabbi's authority is solely contingent upon his proven erudition. Note, that Rabbi Meir opposes his Rabbi (R. Samuel b. Salomo). Accordingly, R. Meir acknowledges that he owes his teacher respect and honor, but he reserves the right to disagree with him. Again, it is important to contrast this teacher-student relationship with that which is spelled out in Erubin 62a. With R. Meir there is a great realization of the limits of Rabbinic authority.

Within his own community the Rabbi possessed a great deal of power and influence. Within his own community the Rabbi was entitled to vote, he had personal prestige which would sway others to his point of view: many in the community were his students. Indeed, there was the

prevailing opinion that no community ordinance could be passed without the consent of the leading Scholar. But outside the community the Rabbi had little authority.²⁰ This limit of authority was evidenced in Rashi's days as well. Rashi wrote in his Responsum #22 (J. Mueller edition): "Far be it from me to assume the authority of a bet-din hashuv. Were I residing among you, my vote would have been counted together with yours to release the individual. Who am I, however, that I should assume authority in other localities?"²¹

Other Responsa of R. Meir help us get a fuller notion of the Rabbinate in his day. Various Responsa of Rabbi Meir inform us that the Medieval Jewish community took responsibility for erecting synagogues and houses of study (Responsum #240 Berlin edition), the collection of financial contributions in order to maintain the religious institutions (Responsa #692-3, and #998 Prague edition; Responsum #269 Lemberg edition; Responsa #371 and #883 Berlin edition) and they also took care to hire a Rabbi (Responsa #90, #942 Prague edition; Responsa #110, #112 Lemberg edition; Responsum #234 Berlin edition).²²

In one fascinating Responsum, Rabbi Meir refers to the

²⁰. Irving Agus, Rabbi Meir, p.100-101.

²¹. Irving Agus, Rabbi Meir, p.100.

²². Irving Agus, Rabbi Meir, pp.66-67: where the texts of some of these Responsa are provided.

practice of paying Rabbis fees in exchange for their ruling on a legal case. In Responsum #141 (Berlin edition) Rabbi Meir claims that he would not arbitrate in a community quarrel or in a matter of taxation "even if you paid me a great sum of money!"²³

In Responsum #942 (Prague edition) gives us a keen view of the Rabbinical selection process in a thirteenth century Rhineland community:

Question: "A gave a sum of money to a community to be used as an endowment fund for the maintenance of a Rabbi to be chosen by the community. After A's death, the people of the community chose their relative, B, as their Rabbi. A's daughter was married to a Rabbi who was the equal in scholarship to Rabbi B. Is the community obligated to accept as their Rabbi A's son-in-law in preference to Rabbi B? Moreover should some of A's children become poor, must the income from the endowment fund be used for their support rather than for the maintenance of the Rabbi, since it is to be assumed, in accordance with the principle of R. Simon b. Menassia (Baba Batra 132a) that A, while giving the money, intended that his own relatives be preferred to a strangers?"

Answer: "After the money was given over to the community, neither A nor his family had greater rights to it than any other member of the community. The community, therefore, is not obligated to appoint A's son-in-law as their Rabbi. Moreover, it is to be presumed that A made a nobly charitable gift to the community without attaching any reservations or conditions. The law of R. Simon (Baba Batra 132a) deals with a charitable gift made under an erroneous assumption, while in our case no such condition existed."²⁴

²³. Irving Agus, Rabbi Meir, p. 21. The text of Responsum #144 is provided in note 36.

²⁴. Translation of Responsum 942 Prague edition is found on page 491 of Agus, Rabbi Meir.

Responsum #942 reveals both the fact that the local Rabbi is selected by the community and that the Rabbi is supported by a communal fund. Note that there is absolutely no question raised concerning the propriety a Rabbi receiving a salary.

The Responsa of Rabbi Meir b. Baruch of Rothenburg have given us a unique picture of the Jewish community in thirteenth century Germany. But R. Meir's influence is not confined to the lands of Ashkenazim. R. Meir's greatest student, Rabbi Asher b. Yehiel (Rosh) brought his teachings from Germany to Spain where they were codified in the Tur (written by Rosh's son, Jacob b. Asher) and Joseph Karo's Shulchan Arukh.

CHAPTER NINE

Some Observations Concerning the Rabbinate as Evidenced in the Responsa of Rabbi Solomon Ben Adret

Rabbi Solomon ben Adret of Barcelona, also known as Rashba, was born in 1235 in the Christian kingdom of Aragon in Spain. Aragon included, during the time of Rashba, such major territories as Catalonia, Valencia, the Baleraric Isles--Majorca, Minorca, and Ibiza, part of Montpellier, and the Duchies of Rousillon and Cerdagne.¹ Catalonia was incorporated in Aragonia during the reign of Peter II (1196-1213). Catalonia's prosperous port city, Barcelona, lifted the economic and social conditions of the entire kingdom of Aragon. Thus, when Jayme I, The Conqueror (1213-1276) succeeded Peter II, many Jews were attracted to wealthy and stable Aragon. Rashba lived during the reign of Jayme I and his successors, Pedro III (1276-1285), Alphonse III (1285-1291), and Jayme II who ruled through Rashba's death in 1310.

For the most part, Jews of Spain were better off than Jews in France and Germany. Consider that in 1287 Rabbi Meir of Rothenberg was incarcerated by the orders of King

¹. Historical and Biographical information for this chapter come from two main sources: Isidore Epstein, The "Responsa" of Rabbi Solomon Ben Adreth of Barcelona: As a Source of the History of Spain, (New York: Ktav Publishing, 1968- first published 1925); and, Yitzhak Baer, A History of the Jews in Christian Spain, Two Volumes, (Philadelphia: The Jewish Publication Society of America, 1978).

Rudolf I²; in 1306, Philip the Fair of France expelled the Jews from France; and in 1303 Rabbi Asher ben Yehiel (Rosh, 1250-1327) and his family fled Germany in response to threats against their freedom and safety.³ Rosh eventually moved to Spain as did most of the Jews who were exiled from France. This is not to say that the Jews of Aragon did not suffer. In fact, it is clear from Rashba's Responsum (I, #634) that Jews did suffer during Jayme II's reign.⁴ Still, the Jews of Aragon were better off than their French and German kinsmen.

Rabbi Adret wrote over 3100 Responsa which enable us to form a detailed impression of life for the thirteenth and early fourteenth century Jew. However, there is very little information about the institution of the Rabbinate in Rashba's Responsa. Nothing is explicitly mentioned concerning Rabbinical fees or appointments. We are only told that no regulation could be passed or ban imposed

². Irving Agus, Rabbi Meir, pp.125-153. Agus cites Graetz and other scholars who believe that the Jews of Germany were fleeing en masse due to the proliferation of blood accusations and massacres that took place in Germany between 1283 and 1286.

³. Mark Washofsky, The Rosh and the Rambam, (Cincinnati: HUC-JIR, 1986) Doctoral Dissertation. p.3. The influence of Rabbi Asher b. Yehiel to our exploration of the professional Rabbinate will be analyzed together with his son, Rabbi Jacob ben Asher (Ba'al HaTurim) in a following chapter.

⁴. Isidore Epstein, Responsa of R. Adreth, Introduction XXIII.

without the local Rabbi's assent.⁵ Still, there are many important details in his Responsa from which can infer some significant conclusions concerning: 1) the institution of the Chief Rabbi; 2) certain religious officials who were paid; and, 3) the growing Halakhic ties between the Jews of Spain and the Franco-German Jews.

We know that in Castile the King would appoint a "*Rabbi de la Corte*" or "Crown Rabbi."⁶ These crown Rabbis were not necessarily men who met Rabbinical qualifications. For instance, in 1270 James I appointed Nasi Hasdai as Rab and Dayyan of the Jews of Lerida. He charged Nasi Hasdai with the responsibility of adjudicating disputes according to Jewish law, with the provision that before he may render his opinion he would first have to seek "sound legal advice" from two scholars.⁷ Adret, speaking about these court Rabbis said: "In our country there are Rabbis appointed by the crown who possess no learning."⁸ According to Adret, if one insulted such a "Rabbi" he would not be liable to the fine of one pound of gold, the Talmudic fine for insulting a

⁵. Isidore Epstein, Responsa of R. Adret, p.42.

⁶. Responsum vii, #246. Isidore Epstein, Responsa of R. Adret, p.42.

⁷. Responsum I, #475, Yitzhak Baer, Jews in Christian Spain, p.216.

⁸. Responsum I, #475. Yitzhak Baer, Jews in Christian Spain, p.428, note #28.

Scholar.⁹ What is of great interest here is the phenomenon of a "court Rabbi" or "Chief Rabbi." Though the institution of the state appointed "Chief Rabbi" was resisted both in Spain and in Germany¹⁰ its advent surely was an important step in the growing centralization of Rabbinic authority. We will see later how the fifteenth century Rabbi, Simon ben Zemach Duran, struggled to justify his appointment as Chief Rabbi. Perhaps some of the later resistance against the institution of a Chief Rabbi was a result of those early Royal appointments of under-qualified court Jews. Duran, however, succeeded both in securing his appointment and maintaining his prestige.

Rabbi Adret's Responsa inform us that there were several paid officials in the Jewish community of Christian Spain, including: the Shammash (his varied duties included attending to the synagogue's maintenance); the Shochet (he superintended the Kosher slaughtering); and the Preacher.¹¹ Thus we can conclude that the reason Rabbi Adret does not

⁹. Yitzhak Baer, Jews in Christian Spain, p.216.

¹⁰. Irving Agus deals with the issue of whether or not Rabbi Meir of Rothenburg was the Chief Rabbi of Germany in his Rabbi Meir, pp. 18-25. Agus maintains that the Chief Rabbi was an office created by the King and his ministers in order to force the Jewish community into paying taxes (p.20). Finkelstein's Jewish Self Govt. in the Middle Ages, contains the text and translation of R. Tam's Takkanot against accepting any "communal office at the hands of the Gentiles" (pp.148-158).

¹¹. Responsa v,#15; i,#594; ii,#260; and, v,#273. Yitzhak Baer, Jews in Christian Spain, p. 42.

refer to Rabbinical salaries is because they were not an issue. The communities took it as a matter of course that certain religious officials are entitled to financial compensation in exchange for their time and effort.

Finally, by examining two Responsa, one from early in Rashba's career and one from his waning years, we can see how there are growing Halakhic ties between Sephardic and Ashkenazic Jews. Responsum III, #446 was written by Rabbi Adret around 1255. In it a scholar of Castellon de Ampurias in Catalonia asked Rashba if the Takkanah of Rabbenu Gershom forbidding bigamy extended to all countries or was meant to apply only to Germany and France. In his reply Rashba said:

"What the full intention of Rabbenu Gershom was I do not know, but it would seem to me that he did not intend to make his ban universal. . . In any case, whatever the author's intention was, this enactment was not accepted in our realm nor have we heard of its acceptance in Provence which borders on France. In fact, there are a number of men in our community, among them scholars and communal leaders, who married a second wife while wedded to the first, and no one has ever questioned the propriety thereof."¹²

Obviously, Rashba felt at the time that Gershom's influence was limited and necessitated the approval of the local authorities. But Rashba changed his mind concerning Rabbenu Gershom in his Responsum I, #1205 which he wrote around 1300:

¹². Translation from Yitzhak Baer, Jews in Christian Spain, p.254. See also Epstein, Responsa of R. Adret, pp. 120-121, notes #63 and #64.

"With reference to your question whether there is in force in our community an enactment forbidding bigamous marriage. . . Already in olden times Rabbenu Gershom of blessed memory, the Light of the Diaspora, pronounced the ban against anyone who would, while wedded to his wife, marry another woman, even one of equal rank with his wife.¹³

Why did Rabbi Adret change his mind about the universality of Rabbenu Gershom's Takkanah? As Yitzhak Baer suggests, in his comprehensive A History of the Jews in Christian Spain, Rashba felt the need for social reformation, he wanted to "heal the breaches of family morality which appeared in certain segments of Jewish society." (p.254)

Baer also contends that Rashba was inspired by the pietism of Franco-German Jewry.¹⁴ This is an important development. This period of chaos, when the Jews of Germany and France began to pour into Spain, led to some bridging of the Sephardic and Ashkenazic Halakhic traditions. As we will discuss in the next chapter, one cannot presume that there was at this time a movement towards a synthesis of Sephardic and Ashkenazic Halakha. Still, in 1304 Rabbi Adret, the leading Spanish Talmudist, met Rabbi Asher ben Yehiel (Rosh), the student of Rabbi Meir of Rothenberg and the leading Halakhic authority in Franco-Germany. Rabbi Asher had fled Germany and he was in Spain to stay.

¹³. Translation from Yitzhak Baer, Jews in Christian Spain, pp.255-256.

¹⁴. Yitzhak Baer, Jews in Christian Spain, p. 254.

CHAPTER TEN

The Professional Rabbinate as Evidenced in the Hilkhhot Ha-Rosh and the Tur

In this chapter we will explore the great Halakhic works of Rabbi Asher ben Yehiel (Rosh) and his son, Rabbi Jacob ben Asher, in order to discover their rulings on Rabbinical fees, benefits and the limits of authority.¹

Rabbi Asher ben Yehiel (ca. 1250-1343) was one of most influential authorities in post-Talmudic Halakha.² Rosh was Rabbi Meir of Rothenburg's leading student and as such, he assumed the leadership of German Jewry when Rudolph I imprisoned Rabbi Meir in 1286.³ But Jewish suffering continued to increase and in 1303 when conditions became unbearable Rabbi Asher and his family fled Germany. He had been invited to come to Toledo by the pietists of Castile who wanted an authority of his stature in order to help combat the growing influence of secular studies (esp. philosophy).⁴ Rabbi Asher served in Toledo in the position

¹. By "limits of authority" I refer to the laws that limit what kind of legal case a student may decide, when he may decide it, and where he may decide it.

². The biographical and methodological information on Rosh in this thesis relies on: Mark Washofsky, The Rosh and the Rambam, pp.1-48; and, Yitzhak Baer, Jews in Christian Spain, Vol.I, pp.297-325.

³. Irving Agus, Rabbi Meir of Rothenburg, Vol. I, pp.142-153.

⁴. Yitzhak Baer, Vol I., pp.316ff. and 298ff.

of, as Yitzhak Baer phrased it: "the incumbent of the Rabbinat." Rabbi Asher and his sons received a salary that was attached to their office.⁵

Rabbi Asher's great work, the Hilkhoh Ha-Rosh, exerted enormous influence on all subsequent Halakhic codes. The Tur, written by his son, Rabbi Jacob ben Asher, was built on R. Asher's work and Joseph Karo includes the Rosh as one of the "three pillars of the law" along with Rabbi Alfasi and Rambam.⁶

The fact that Rosh, a great Ashkenazic authority, served as the head Rabbi in Sephardic Toledo and utilized the Sephardic authority, Rabbi Alfasi (Rif) as the foundation of his Hilkhoh Ha-Rosh, has led many scholars to assume that he wanted to create a uniform Halakha for the entire Jewish people.⁷ But, as my teacher, Mark Washofsky, points out: Rabbi Asher may simply have utilized the Rif as the "peg on which to hang the Ashkenazic Halakha" because

⁵. Yitzhak Baer, Vol., pp.316-317.

⁶. Mark Washofsky, p.38.

⁷. Mark Washofsky summarizes the "scholarly consensus" (in his The Rosh and the Rambam, pp.15ff) of the Rosh's four point Tendenz, point two says: "Asher's work is an attempt to render the Talmud into halakha pesukah. It is a 'code' rather than a commentary. His motivation in compiling this code is to reconcile the halakhic traditions of Spain and northern Europe, to bring them together and to create from them a single, uniform halakha for the entire Jewish people." He cites Freimann, Zimmels, Faur, Elon, and Zafrany as the supporters of this position.

the Rif was the primary textbook of Talmud in Spain.⁸ Thus, the Hilkhhot Ha-Rosh may have used the Rif for strictly pragmatic reasons.

The importance of Rosh to this study is in the fact that: he had mastered both the Sephardic and Ashkenazic traditions; all subsequent Halakhic codes (both Sephardic and Ashkenazic) accepted him as a preeminent authority; and, his opinion on the issues of Rabbinic fees, benefits and the limits of authority, greatly influenced the development of the professional Rabbinate.

We will present Rosh's opinions as they appear both in his Hilkhhot Ha-Rosh and in his son's Tur. The Tur presents Rosh's viewpoint on virtually every Halakhic issue.⁹

In his code to Bekhorot 29a-b (Mishna 4.5) Rabbi Asher comments on the propriety of accepting fees.

s.v. "Hanoteil sekhar . . ."

"The Judge who takes a fee, his rulings are invalid. This refers to the contemptible Judge who receives fees ladun ("to render judgment in a civil monetary case"), that kind of Judge is described in Ketubot 105a. [However] agar bateilah (compensation for the loss of time) is a justified manner of compensation. This is permitted by what is said in Ketubot 105 about the two Judges who ruled in Jerusalem and who took their salary from the Temple funds. And it was determined there when agar bateilah is not applicable and when it is permitted. [i.e. it is applicable when they are unable to engage in their regular occupations.] It is inconceivable that one should starve to death! Thus all [Judges] are obligated to take [a salary]

⁸. Mark Washofsky, pp.20-21.

⁹. Mark Washofsky, p.4.

in order to support themselves. This explains why the Sages permitted Ila of Yavneh to take a salary; because people would bring their firstlings to him all day long and this necessitated him to forego his other occupation... And what is our present day custom learning [or teaching] for a salary? If one has no other means of support, it is permitted. . ."

Rosh follows the Rif by citing Nedarim 4:3 in the Yerushalmi in which the concept of compensation for loss of time is presented. Obviously, since Rabbi Asher received a salary for his own Rabbinic office in Toledo he could hardly condemn the practice his code. In his code to Nedarim 36b (s.v. "*Velo yilmadnu mikra*") Rosh also approves of salaries for those who teach Scripture, Targum and even Midrash. It is also important to note that Rabbi Asher returns to the original sources for his opinion. He cites relevant passages in both Talmuds for his support. He does cite one post-Talmudic authority: Rabbi Moses ben Nachman (Ramban). Ramban wrote that a Judge's rulings are invalid if he took a salary unless it is clear to us that he did not accept the fee in exchange for his judgment.

The Hilkhhot Ha-Rosh to Erubin 62b comments on the rights and limits of students who wish to decide¹⁰ a legal case.

¹⁰. "To decide" here refers to both lehorot (i.e. deciding a legal case of a ritual nature --issur v'heter) and ladun (i.e. deciding a civil monetary legal case (dinei mamonot)).

Note that in the following opinion on Erubin, Rosh always uses the verb lehorot while in his opinion to Bekhorot he used the verb ladun.

s.v. "Amar Rav Yosef . . ."

"Rav Chisda decided legal cases in Kafri during the lifetime of Rav Huna. And Rav Hamnuna decided legal cases in Charta D'Argiz during the lifetime of Rav Chisda. But neither of these [Chisda or Hamnuna] were in the [restricted] district of Rav Huna, for he was in Pumbedita. And as it will be explained further on, [Hamnuna] decided legal cases during Rav Chisda's lifetime because he was his Talmid Chaver ("student-colleague"). But [Hamnuna] never decided a case during Rav Huna's lifetime, even when he was not in his presence, for he [Hamnuna] was his [Huna's] Talmid Gamur ("disciple"). And even when [a disciple] is beyond three parasot he is forbidden to decide legal cases. . . Thus, it seems that a Talmid Chaver is permitted [to decide a legal case] when he is, of course, three parasot from his colleague."

Rosh differentiates between the various categories of authority: the Master (who will be known as the Rav Muvhak, or one's principle teacher, one would be the Rav Muvhak's disciple); the Talmid Gamur (the disciple); the Talmid Chaver (the student-colleague); and, the Talmid (the student). The terms Talmid and Talmid Gamur sometimes refer to different teacher/student relationships. The student (Talmid) sometimes refers to one who learns a subject from a teacher when the teacher is not his principle teacher (Rav Muvhak). The disciple (Talmid Gamur) has more restrictions to his Master/principle teacher (Rav Muvhak) than the Talmid has to his teacher. However, these terms are sometimes found as interchangeable.

Rosh also distinguishes between an "explanation" and a

decision of Issur v'heter.¹¹ He says that the Talmid may explain the various opinions of the authorities and this cannot be prohibited for it is not a legal decision (lehorot). Also, citing Raba (in Erubin 63a i.e. a Tsorba M'raban - "a young Rabbinic Scholar" - may examine his own knife without the approval of the supreme local authority if he is using the knife to slaughter his own animal), Rosh explains that the examination of the knife is not an issue of issur v'heter. For in matters of issur v'heter the Talmid is not permitted to make a decision (lehorot) in his teacher's district: not even on a personal case.

Rabbi Asher's teachings are also presented in the Tur written by his son Rabbi Jacob Ben Asher (1270-1343). Rabbi Jacob always lists his father's opinion and will frequently note the opinions of Maimonides. It behooves us, therefore, to review the Tur on the Rabbinical issues in order to compare and contrast Rosh's opinions with Rambam's.

¹¹. Joel Roth explains the various categories of legal decisions in his The Halakhic Process: A Systemic Analysis, (New York: JTS, 1986), pp.135ff. He says: "In his capacity as judge-arbiter, an authority can be called upon, theoretically, to decide four kinds of cases: 1)cases that require the determination of that which is forbidden and that which is permissible (issur ve-hetter); 2)cases that involve judgments concerning civil monetary matters (dinei mamannot); 3)cases that require the imposition of stipulated fines (dinei kenasot); and 4)cases that involve capital crimes (dinei nefashot)."

As we learned in the chapter on Rabbi Meir of Rothenburg, the Rabbis' authority was unquestioned in matters of ritual/religious law (issur v'heter) but in civil monetary cases (dinei mamannot) the litigants had to voluntarily agree to appear before the Rabbis.

The first section we will compare is Tur: Yore Deah 242¹² with Rambam's Hilkhot Talmud Torah Chapter 5 of the Mishneh Torah. We will follow the numbering of the Halakha as it appears in Mishneh Torah for the Halakha is generally not numbered in the Tur.

Chapter five of Hilkhot Talmud Torah consists of thirteen sections. For the most part, the Tur and the Mishneh Torah agree, though it is worth noting that in this section Rambam's opinions are generally longer than Rabbi Jacob's.

In brief, both the Tur and the Mishneh Torah agree that: 1) One owes his teacher (Rabo) honor, even to a greater extent than the honor he owes his father. Anyone who disputes, rebels or even murmurs against his teacher is as one who disparages God.

2) The definition of one who disputes against his teacher is: anyone who sets up a college (Midrash) or holds sessions, discourses or teaches (Melamed) without his teacher's permission during his teacher's lifetime, even though his teacher is in another country. It is forbidden to render decisions (lehorot) in the presence of his teacher

¹². A complete translation and critical analysis of Tur, Yore Deah 242 is provided in the doctoral thesis of Allen Podet, "Morenu Harabh: Elements in the Development of Rabbinical Ordination in the Codes", (Cincinnati: D.H.L. Thesis, HUC, 1963), pp.119ff.

When I quote from the Tur my translation will be based (i.e. with frequent deviations) on Podet. My quotations from the Mishneh Torah will be based on the translation by Moses Hyamson.

at all times. Whoever decides lehorot before his teacher is deserving of death.

3) The Tur quotes Rambam here. (Note that Joseph Karo, in his commentary to the Tur [which is called the Beit Yosef¹³] questions why Rabbi Jacob is not quoting Rambam throughout this section.)

"Rambam wrote that if he is twelve mils from his teacher and someone asked him a question by mere chance [Tur inserts the words b'derekh mekara "by mere chance" even though these words do not appear in the Mishneh Torah] he could answer. But it is prohibited to set himself up lehora'ah ("to decide as a Judge"), v'lesheiv (to sit in judgment), or lehorot (to decide cases); even if he be at the end of the world he may not decide cases until his master dies or give him permission."¹⁴ (Again, note that the Tur does not quote Rambam exactly.)

The Tur continues, after paraphrasing Rambam, with a long insert of the Halakha according to "My father HaRosh zal. This is material that is not discussed by Rambam. It includes the rulings that: 1) a Talmid Gamur who decides (morah) a case within twelve mils is deserving of death; but if he is beyond twelve mils he is still prohibited however

¹³. See Beit Yosef s.v. "V'ayzahu"

¹⁴. The three verbs lehora'ah, lesheiv, and lehorot may refer to three different types of legal decisions or they may simply be an expression meaning: "no decisions what so ever!" See Allen Podet's analysis in Moreinu Harabh, pp.697ff. notes 394-397.

the penalty does not apply; 2) A Talmid Chaver within twelve mil is prohibited without penalty; beyond twelve mil he is permitted; 3) It is only called hora'ah if he actually decides (morah) a case which came before him; but if they ask a student, "according to whom (is the Halakha) then since he is not deciding (morah) a case he may answer; 4) It is only called hora'ah when there is a novel element (chidush) involved for the questioners. But in regards to a well known case (hora'ah) for example as in a case of prohibited food which may be permitted if it imparts a disgusting taste (notein ta'am lifgam¹⁵) or a similar case, since they are not novel (chidush) such rulings are permitted; 5) One may warn another, even before his master, in order to save a man from possible transgression, for whenever there is profanation of the Name, one is not concerned about the honor of his master (Rambam does have a similar ruling in Talmud Torah 5:3); 6) A Talmid is forbidden to examine a knife for slaughter in the presence of his master, which would appear as if he assumed juridical precedence over his master. However, he may examine his knife in order to slaughter his own animal, but he is prohibited from making any other legal decision

¹⁵. Notein ta'am lifgam, lit. "something that imparts a disgusting flavor" is a principle in Kashrut wherein a forbidden food accidentally falls into some permitted food and it does not enhance the flavor, rather it detracts from the flavor, then it is permitted. see Isaac Klein, A Guide to Jewish Religious Practice, (New York: JTS, 1979) p.363

(lehorot).

Note that the Tur and Rosh bring some of the opinions and definitions of the Tosafists. In fact much of the above material comes directly from the Tosafot of Erubin 62b.

After making the above additions to Rambam's text the Tur once again joins the Mishneh Torah at the end of Talmud Torah 5:3. For the most part both the Tur and the Mishneh Torah continue with rules and regulations that concern the proper way of showing honor to one's teacher. These laws do not overly concern us. Four passages, however, are very important and they both appear in the two codes:

- 1) (Talmud Torah 5:3) Not all students whose teachers have died are permitted to sit and lehorot (to decide cases) rather, only a Talmid who has attained a standard of knowledge (lehoriya);
- 2) (Talmud Torah 5:4) Any student who has not qualified lehorot and nevertheless gives decisions is "wicked, foolish and of an arrogant spirit" (Mishna Avot IV:9). And any Sage (Chakham) who is qualified and yet refrains from rendering decisions (morah) he too is wrong for he places a stumbling block before the blind;
- 3) (Talmud Torah 5:4) There are some Talmidim who seek to magnify themselves before the ignorant and their townsmen by impertinently putting themselves forward and presuming to judge (le'din) and render decisions (lehorot) in Israel. These are ones who multiply strife, devastate the world and

quench the light of the Torah;

4) (Talmud Torah 5:9) All of these things by which he is to honor his master are only said to one's Rav Muvhak (principle teacher) that is, the one who taught him the most in either Torah, or Talmud. But one's teachers who are not the Rav Muvhak, he is a Talmid Chaver (one to whom one is both a student and a colleague) one does not need to honor him in all these ways.

Thus we see that both the Tur and the Mishneh Torah tried to define the levels of Rabbinic authority, and the qualifications of Rabbinic authority. A student must qualify in order to decide legal cases by first achieving a standard level of education. A student must then receive authorization from his principle teacher. This authorization is, in effect, his ordination. We read earlier how Rambam felt that there was the possibility for reinstituting smekhah. It is interesting to note how the authorities wrestle with the need to establish an accredited system by which the Jewish community could be assured of a Rabbi's qualifications.

Both the Tur and the Mishneh Torah lament the charlatans who pretend to have the qualifications and the authority to decide legal cases but are in truth sorely lacking. This again points to the need of a system of accreditation.

In Yore Deah 243 of the Tur some of the rights and benefits granted to Rabbis are recorded. Rambam's Mishneh Torah: Hilkhos Talmud Torah, Chapter 6 also lists certain rights and benefits. We will compare the two sections below.

Both the Tur and Rambam (Talmud Torah 6:10) rule that Scholars do not have to take part with the rest of the community in its building, or digging projects. They fear that the Scholar will appear as undignified and will lose the respect of the common people. But they disagree on the issue of having to pay the assessment for the cost of building the walls and the other projects. Rambam says that the Scholars are not to be assessed for the cost of the building the walls, repairing the gates, paying the watchman's wages or even for the communal gift to the King. But the Tur says: "whenever it says 'when everyone goes out together' [then the Scholar need not participate] but when they do not go out themselves, rather they hire others to go in their stead or if the town's people are assessed a certain monetary amount to do the work then it is not called 'going out' [then the Scholars have to pay]. If there is a project that is necessary in order to sustain life, for instance; digging water wells and the like, then they [the Scholars] must pay their share."¹⁶

¹⁶. The translation and all (and all the other passages that we will quote) from the Tur 243 are my own.

Thus the Tur expects the Rabbis to pay for certain communal projects even though the Rambam exempts them. The Tur does, however, exempt the Rabbis from paying for those projects that are needed for the protection of the city, like: the building of the city walls and towers and the payment of her guards. Why? Because, "they do not need protection for the Torah is their protection!"

Both the Rambam and the Tur exempt the Rabbis from paying taxes whether they are assessed collectively from all the inhabitants of the city, or whether the tax is collected individually. The Tur includes an exemption from forced conscription (tshchoriot).

The Tur, quoting Rosh, adds a qualification to the above mentioned benefits and in doing so he also clearly defined the professional Rabbi:

"My father, HaRosh zal, wrote that, of course, [the above benefits only apply to] the Scholar for whom the Torah is their occupation (Torahtam umenotam i.e. a professional Rabbi). But if the Torah is not their full time occupation then they are obligated to pay taxes. How do we define a professional Rabbi? A professional Rabbi is one for whom the Torah is at least a little part of his occupation or a little of his business by which he earns his living so that he might survive but not enrich himself. And anytime that he is free from his [secular] business he returns to the words of Torah and studies regularly. This is who is called a professional Rabbi."

For the first time we find an authority who expressly acknowledges that there are professional Rabbis. The Rosh speaks of Rabbis: who earn a salary in exchange for their

Rabbinical services; who are exempt from taxes; who receive certain benefits in order to enhance their status and dignity; and, who devote most of their time to their Rabbinical careers (even though they may help support themselves by maintaining a secular job). In fact the description of the professional Rabbi closely fits Rabbi Asher himself. For he too was paid a salary by the city of Toledo and yet he earned additional income through moneylending.¹⁷

Rosh's comments also differentiate between those who are simply scholarly and those who devote their lives to the Rabbinate. It could have been argued that any Jew who attains a certain level of scholarship (and perhaps receives a "writ of ordination") is eligible for the benefits due a Talmid Chakham. But Rosh's ruling added the extra qualification that one must be a full time, or professional Scholar. This differentiation was necessary because while the community needed to be able to offer salaries and benefits to their Rabbis so that they may be available on a full time basis the communities could not afford to grant salaries and benefits to all their scholarly citizens.

Both the Tur and Rambam mention that if a Scholar has goods to sell, no one may sell the same goods until the Scholar's goods are sold. The Tur's Yore Deah, Chapter 243

¹⁷. Yitzhak Baer, Jews in Christian Spain, Vol. I pp.316-317.

and Mishneh Torah Hilkhos Talmud Torah 6:10 also agree that a Scholars legal case is taken before the cases of other suitors.

Finally, we will review the Tur's third section, Choshen HaMishpat: Hilkhos Dayyanim, Chapter 9, which discusses the laws of shochad ("bribery") and sekhar batalah ("compensation for loss"), and we will compare them to Rambam's Mishneh Torah's fourteenth book, Shoftim: Hilkhos Sanhedrin, Chapter 23.

The above mentioned passages in the Tur and the Mishneh Torah are, for the most part in agreement. Both begin by recalling Exodus 23:8 ("Thou shall take no bribe."). The Tur adds the hyperbolical "meod meod" (in effect saying "One really really needs to warn a Judge against taking a bribe."). Both rule that "bribery" is not simply a case of accepting money in exchange for perverting justice, but even if one accepts money and does not pervert justice it is still considered bribery. Both admonish the Judge to return the bribe (but only if and when the giver demands it!). Both (Sanhedrin 23:2) consider the giver of the bribe as guilty as the Judge who receives it. Both consider (Sanhedrin 23:3) non-monetary gifts and favors (and even compliments) as bribes. Both rule (Sanhedrin 23:4) that if a Judge has nothing of material value to lend others yet still borrows something from someone he is ineligible to try that person's case. However, if the Judge has material

things which he lends to others, then he is qualified to judge any man's case, for the man from whom he borrows may borrow things from him.

Once they defined the scope and application of shochad (bribery) the Tur and Rambam then set out to differentiate between bribes and other types of financial compensation, As we discussed earlier, though Rambam is staunchly opposed to formal salaries for Judges and Rabbis he does approve (Sanhedrin 23:5) of sekhar batalah. Still, it is obvious that Rambam attempted to limit the scope and application of sekhar batalah.

The Tur, on the other hand, expands the possibility of financial compensation for Rabbis. Rabbi Jacob ben Asher begins by quoting Rabbi Judah Barzaloni, who said: "It is our custom, in the majority of places, to create a communal fund for the Beit Din ("the Courthouse") that would parcel out mazon (lit. "food" but probably meaning: all of their material needs) for the Beit Din and support for them [the Judges]." The Tur goes on to say that the communal fund "has nothing to do with the laws of bribery or the prohibitions of profit. Rather, it is an obligation (chovah) on all of Israel to support their Judges and their Sages." The reason for the communal fund, says the Tur, is so the Judges will not have to bother with raising their own financial support, they won't have to ingratiate themselves to anyone and thus they will not be tempted to grant any

Judicial favors.

The Tur also gives an extensive definition of sekhar batalah which essentially follows the Rambam.

Tur: Choshen Mishpat: Hilkhos Dayyanim Ch.9

"Whoever takes a salary (sekhar) for judging, his judgment is invalid. But if he only takes sekhar batalah it is permitted. When is this [sekhar batalah] applicable? Only when it is obvious that the payment is simply 'compensation for his loss.' For example, if he has a secular occupation which he is known to do and at that time two litigants come to him for to judge their case he may say to them: 'Bring me someone who will do my work in my place or give me the commensurate salary for my occupation for I am being interrupted from it.' This is permitted. And, for example, if receives [compensation] equally from both of the litigants [it is permitted]. But if the above is not evident, for instance, if he does not have a known secular occupation, rather he says [to himself] that perhaps he might earn a salary via the occasional business contract or mediation. And if this is how he requests his salary, it is forbidden."

It is not expressly clear what the difference is between receiving a salary (without interruption of work) via the communal fund and the acceptance of the occasional fee in exchange for mediating the business contract. What is most probably implied here, is the difference of intent. The city's Rabbi works all day on behalf of the community and thus needs to be supported. But his first intention is his religious duty and function. The communal support only comes in reaction to a need. The forbidden salary, however, is one in which the Rabbi's intention was first on procuring a salary.

The Tur represents the codification of the laws as they had developed up to the middle of the fourteenth century. As we have seen, the rulings of Rabbi Asher ben Yehiel and his son Rabbi Jacob ben Asher confirmed the legitimacy of the professional Rabbinate. The professional Rabbinate according to the Tur was a full time occupation in which the Rabbis received financial support from a communal fund and from litigants. In addition to salaries, the professional Rabbis were also granted certain privileges and tax exemptions.

For all intents and purposes the issue of the professional Rabbinate has now been settled. Yet two problems remained that greatly troubled the medieval Sages. The first problem is that the whole issue of territorial exclusivity had not been solved. Yes, we learned that a Talmid Gamur (a disciple) may not judge cases unless he has been granted authorization from his principle teacher (Rav Muvhak) and even with authorization he may not freely judge in his principle teacher's district. But the relationship between colleagues had not yet been so clearly defined. Indeed, we will review some Responsa that wrestled with the territorial rights of Rabbinical colleagues. The second remaining problem for the Sages after the Tur is that Rambam's objections to the professional Rabbinate had not been truly "disproved." Since Rambam, arguable the most popular and revered figure in post-Talmudic Judaism, had

opposed the professional Rabbinate there were many who, naturally, continued to murmur against the full time, salaried Rabbis. In the coming chapters we will see how the later authorities dealt with these problems and thus contributed to the development of the professional Rabbinate.

CHAPTER ELEVEN

The Professional Rabbinate as Evidenced in Selected Responsa of the Fourteenth and Fifteenth Centuries

This chapter will review a few significant Responsa that deal with the rights of Rabbis to teach, judge cases and to be the supreme authority within a defined district. This issue involves the smekhah ("authorization"¹) controversy. The topic of smekhah is a complicated and deserving subject in and of itself and is quite beyond our scope.² While the Responsa under review do refer to smekhah we will limit our comments on that issue and instead focus on the struggle for determining the right of one Rabbi to "set up shop" in a certain area. Three Responsa in particular bring to light the problem of Rabbinical territories and relationships with colleagues: Responsum #271 of Rabbi Isaac ben Sheshet "Perfet" (Ribash, Spain-North Africa 1361-1408); Responsum #128 in Volume two of the "Terumat HaDeshen" written by Rabbi Isserlein (Germany 1390-1460); and Responsum #151 by Rabbi Jacob Weil (Germany c.1380-1412). These Responsa deal with controversial power

¹. Smekhah can be translated as "ordination" for that was its classical form. But, as will be explained further on, smekhah for the medieval Jewish Rabbinate was more of an "authorization."

². A most comprehensive study of smekhah was written by Allen Podet, Morenu Harabh: Elements in the Development of Rabbinical Ordination in the Codes, Three Volumes, (Cincinnati: HUC-JIR, 1963) D.H.L. Thesis.

struggles between Rabbis. In the process of solving the specific problems the Responsa also established the guidelines which would help shape the future of the professional Rabbinate.

We read earlier of the persecutions and massacres that ravaged the Franco-German Jewish communities and caused great numbers to flee. Rabbi Asher ben Yehiel fled, and so did many other Scholars. As a result there was a shortage of properly trained Rabbis. Many under-qualified men assumed Rabbinical positions. In order to guarantee a certain minimum standard for Rabbis and to eliminate the charlatans, Rabbi Meir ben Baruch ha-Levy, the Rabbi of Vienna from 1360-1390) instituted the modern smekhah.³ This reinstituted smekhah was simply the permission from one's teacher to instruct, judge cases, and perform Rabbinical services. But the function and limitations of this smekhah were not clear.

The question of the actual authority of the smekhah surfaced in a dispute between the French Rabbi, Isaiah ben Abba Mari who had been "authorized" by Rabbi Meir ha-Levi, and Rabbi Johanan the Chief Rabbi of France. Rabbi Isaiah maintained that he had been appointed the new Chief Rabbi of France and he sought to depose Rabbi Johanan. Johanan's position as Chief Rabbi was an appointment that had been confirmed by the King of France, still, he turned to Rabbi

³. Solomon Freehof, The Responsa Literature, pp.111-115.

Isaac bar Sheshet (Ribash) for a Halakhic ruling on the dispute. Ribash's reply is found in his Responsum #271. He confirmed that Rabbi Johanan had been properly appointed as Chief Rabbi of France. He noted that Johanan's father, Mattathias, had himself been selected by all the communities of that kingdom who accepted him as their Judge and Rabbi. Only after the people selected Mattathias did the King of France confirm his position. Ribash maintained that Johanan received his smekhah from his father and when his father died the communities appointed him as the new Chief Rabbi of France.

Thus, Ribash established that the true power of granting Rabbinical appointments was in the hands of the communities themselves. Moreover, he ruled that Rabbi Johanan had been properly authorized by his father and is, therefore, not inferior to the smekhah of Rabbi Isaiah ben Abba Mari.

In Responsum #271 Rabbi Isaac bar Sheshet also analyzes the development of the modern smekhah and defines its limits:

"The function of smekhah as practiced in France and Germany is as follows: That a student has attained the requisites for instruction (shehiggia lehorot) . . . and is allowed, by law, to judge cases (lehorot) . . . and is even obligated to judge case (lehorot). . . But because of the gezerah,⁴ he is forbidden to do so unless he has

⁴. The gezerah ("Rabbinical decree") refers the Gemara of Sanhedrin 5a-5b in which the whole issue of smekhah is discussed. The Gemara states that smekhah is necessary

received permission from his teacher, which means that his teacher grants him permission to establish an academy in any location he wishes, to expound and to instruct any who might come to ask. And this is demonstrated by his being called 'Rabbi,' which is to say that he is no longer to be considered a Talmid, but rather he is worthy and entitled to judge cases in any place and to be called a Rabbi. and if that is not the function, I find no support for this [newly instituted] smekhah at all.⁵

Ribash goes on to say that the decree issued by Meir ha-Levi (that established Isaiah ben Abba Mari as the Chief Rabbi of France) only is binding upon his own students, who only have the right to judge cases and to establish academies with his permission. As Ribash said: "How could he [Rabbi Meir ha-Levi] issue decrees over a land that is not his? Even though he is distinguished in wisdom and age, he cannot issue decrees over the kingdom of France without the permission of the congregations of that kingdom or the Rabbis of that kingdom." In short, while a Rabbi's rights extend over his disciples no matter where they are, his authority does not hold sway over a community unless they

even if it is well known that the students are knowledgeable in the ritual laws. The reason for this gezerah is because a student had issued an incorrect ruling causing transgression in a community. So, the Rabbis decreed that a student should only decide cases (Yoreh) when he received permission from his teacher. This matter is discussed in depth in Joel Roth's The Halakhic Process: A Systemic Analysis, pp.135-152.

⁵. Translation based upon that of Joel Roth p.141.

voluntarily accept him.⁶

As we shall see in the next chapter, Perfet himself becomes the target of dispute when he sought to be named the

⁶. I want to refer the reader to the debate among some noted Scholars concerning the smekhah controversy between Ribash and Rabbi Meir Ha-Levy. Solomon Zeitlin wrote in the January 1941 Jewish Quarterly Review, (and subsequently in Religious and Secular Leadership, 1943, pp.59-67.) that Ribash most probably misunderstood what Meir Ha-Levi was trying to do. Zeitlin maintained that R. Meir opposed Mattathiah's son Johanan because his position as Chief Rabbi as confirmed by the King of France violated an old takkanah which prohibited Jews from accepting religious positions with the sanction of the government. Zeitlin believed that Ribash upheld Johanan's position for he sought to justify the policy of Spanish Jewry, under which a Rabbi appointed by the government was considered the lawful spiritual Jewish leader. (The takkanah in question can be found in Finkelstein's Jewish Self-Government in the Middle Ages, pp.154-157.)

Abraham Hershman responded to Zeitlin's claim in his book Rabbi Isaac Ben Sheshet Perfet and His Times, (New York: JTS, 1943) pp.203-213. Hershman said he had "no hesitation in saying that the controversy recorded in the Responsa raged around the question of the right of Rabbi Meir to interfere with the internal affairs of the French communities. This is how Perfet understood it." (p.208) Hershman, therefore, believes that the issue did not involve the old takkanah. Perfet referred to the fact that Johanan's position was sanctioned by the King and if Rabbi Meir's point was to counter this Royal sanction then Ribash certainly would have mentioned this issue. (p.209) If Ribash sought to affirm the Spanish ideology (of royally confirmed offices) over and against the French ideology why did he not mention this issue? Instead, Ribash emphasized the fact that in Spain each aljama (community) was independent, self-governing and free to enact any measure it saw fit. In Hershman's conclusion he said: "The theory of Professor Zeitlin is admissible only on the supposition that Perfet was completely in the dark regarding the principle involved in the controversy, that Crescas, who had been in France when feeling between opponents ran high, and had been visited by a friend of Rabbi Isaiah, and thus had had ample opportunity to hear both sides, was 'taken in' by Rabbi Johanan's words and failed to grasp the real issue in conflict."

Is it possible that both Ribash and Crescas misunderstood the entire controversy? I think not.

Chief Rabbi of Algiers.⁷ In another case, the issue of a Rabbi's right of chazaka (or claim of possession) was debated. Does a Rabbi have the right to restrict other Rabbis from coming into his town and setting up shop? This issue surfaced in the famous Anshel-Bruna controversy. Both Rabbi Jacob Weil and Rabbi Israel Isserlein wrote Responsa on the Anshel-Bruna case.

Rabbi Israel of Bruna (c.1400-1480) once complained to his teacher Rabbi Isserlein about a Rabbi Goddell of Orenburg who came to Bruenn, Rabbi Israel's town. Rabbi Isserlein told him that a Rabbi has no inherent rights of exclusivity in a city unless he is granted such by the city. Latter, the roles of this issue were reversed on Rabbi Israel when he moved to the German community of Regensburg. Rabbi Anshel was already a Rabbi and head of an academy (yeshiva) in the city of Regensburg before 1450.⁸ Rabbi Israel of Bruna came to Regensburg about 1456 and opened his own yeshiva. Rabbi Anshel objected to this competition and insisted that he was the sole authority of Regensburg and

⁷. According to Hershman, Rabbi Isaac ben Sheshet, (pp.41ff.; 247-250) Ribash was not the Chief Rabbi but rather the sole dayyan of Algiers. There were Chief Rabbis in Spain; but associated with them were other Rabbis and Dayyanim who were elected or appointed by the community and then confirmed by the Chief Rabbi.

⁸. My information about the Anshel-Bruna controversy comes from two sources: Bernard Rosensweig's, Ashkenazic Jewry in Transition, (Ontario: Wilfrid Laurier Univ. Press., 1975) passim; and Solomon Freehof's, The Responsa Literature, pp.118-121.

that he had the exclusive right to perform all of the Rabbinic services. The followers of Rabbi Anshel did their best to publicly disgrace Rabbi Israel so that he might leave.

Rabbi Weil disputed Rabbi Anshel's claim of chazaka in the following Responsum.

Responsum #151

"For the sake of truth, justice, and peace; so that this dispute will not escalate, I will write my opinion. Since the community had not selected either Rabbi Anshel or Rabbi Israel, May God preserve him, and since they [the community] insist that both of them pay taxes just like any other head of the household, then neither of them has chazaka (i.e. a Rabbinical monopoly) over the other. And even though Rabbi Anshel, May God preserve him, was in Regensburg before Rabbi Israel, he still is not justified in claiming chazaka because the community has not selected him as their [Rabbinical] leader (rosh) nor their judge (katzin). Surely, this is just like any other head of the household who lives in the city and another householder comes after him to live with him in the same city, the first householder cannot claim chazaka [and deny the second the right to live in the city--even though the second family might be in the same business or trade as the first] for at this time it is no longer our custom to impose cherem hayyishuv [the prohibition against strangers taking up residence in an established community without the formal permission of the community⁹]. just as it is written in chapter "Lo Yachpor [Baba Batra 82b] . . . for even if there was another Talmid Chakham in a city there is no chazaka for 'the jealousy of scribes increases wisdom. And even if he [the new Scholar] does not know how to make money [lehestakeir] except by teaching the inhabitants of the city are required 'to do his work' [i.e.

⁹. For a complete understanding on the concept of cherem hayyishuv see L. Rabinowitz, The Cherem Hayyishuv, (London: Edward Goldston, 1945). Note that this prohibition did not apply to Rabbis and certain other professions (p.36).

compensate him for his loss of time] and even if he is rich, the Torah exempts him from having to pay taxes. In fact, it is written that even if there is one Scholar in a city then it does not matter if the city accepts him as their leader and Judge or not for we still do not find that he has the right to prevent another Scholar from coming . . . Thus we find that in our generation there are many communities in which there are two Rabbis and we have not heard that one has chazaka over the other. . ."¹⁰

Several important decisions were made by Rabbi Weil in the above Responsum. First of all he confirmed the right of the community to select its Rabbi. No outside authority can assign a Rabbi to a town against its will. Secondly, even if a Rabbi had been selected by a town as its Chief Rabbi, he could not prevent another Rabbi from living in that city and establishing a yeshiva. Rabbi Weil also informed us that cherem hayyishuv was not extinct and that it never applied to Rabbis. Finally, he told us that there were several communities where two Rabbis live, presumably in harmony, and therefore, this whole issue of Rabbinic chazaka is an isolated aberration.

Rabbi Israel Isserlein (Responsum #128 of Pesakim) confirms Rabbi Weil's opinion saying: "I hereby confirm, with all emphasis, the decision which Jacob Weil has made in this matter. My mouth is like his mouth, and my hand is like his hand."

Responsum #128

¹⁰. The translation of Rabbi Weil's Responsum #151 is my own.

"Furthermore, whoever looks closely into the Tosafot of the chapter Lo Yachpor [Baba Batra 82b] will clearly find plenty of justification for the fact that no scholar has the right to prevent a colleague from establishing his dwelling by his side. In fact, this was my decision to Israel of Bruna himself when he visited me in Neustadt after Rabbi Goddell of Orenburg wanted to establish himself in Bruenn. Indeed, all the prohibitions that the Rabbis have made against one man interfering with the livelihood of another, 'removing his boundary' (i.e. trespassing on his territory), apply only when there is a diminution of profit and a lessening of his livelihood. But in a case such as this, when one man may benefit from the gifts of the leaders of Israel, for these are gifts which have no fixed measure. It is not similar to a situation where some actually have had chazaka for many years. For it is clear from the language of Meir of Rothenburg, in the Mordecai to the third chapter of Baba Batra, that a Rabbi does have chazaka rights and no one can deprive him of them, only when he formally acquires that right from the community. Only then may he bequeath his rights to his heirs. In any other situation, the crown of the Torah and its authority lie there ready for all who wish to take them. As for the income from divorces and chalitzah and marriages, we are ashamed of the subterfuge (titzdakei) for these fees and it is very difficult even to justify receiving them; certainly, therefore, we cannot raise them to the status of justified income so that no one else may interfere with them."¹¹

Rabbi Isserlein's opinion confirms that of Rabbi Weil. Rabbis only have chazaka when they are granted that right by their communities.

Isserlein also brings up the issue of Rabbinic fees. Though he does not go so far as to say they are forbidden,

¹¹. The translation of Rabbi Isserlein's Responsum #128 in Pesakim is based on Solomon Freehof's in The Responsa Literature, pp. 119-121.

he does say they can be justified only with difficulty. Note that the fees (pras) that he refers to are in exchange for the Rabbinical duties of chalitzah (voiding a levirate marriage), gittin (divorces), and eirusin (marriage). These fees, as we learned earlier can be justified only in exchange of the tircha ("trouble") from all of the non-religious aspects of the ceremony or for sekhar batalah (compensation for the loss of time). But one is forbidden from accepting the fees for the performance of the holy act itself. In effect, Isserlein is lamenting the fact that many Rabbis were making a mockery of these legal loopholes.¹²

¹². Rosensweig in his Ashkenazic Jewry in Transition, p.72, claims that at this time (the fifteenth century) Ashkenazic Rabbis received no remuneration from their communities. He admits that "here and there, in the aftermath of the Black Death, there were Rhineland communities which began to offer stipends to their Rabbis. In the ordinances of the city of Erfurt in the year 1373, there was included the right of the community to choose and pay a Rabbi. However, none of the fifteenth century sources indicate that the communities actually paid salaries to their Rabbis."

How can Rosensweig justify his statement that no fifteenth century sources indicate Rabbinical salaries just after he mentioned the Erfurt takkanot? He claims (on page 139, note 36) that "We have no record of this ordinance ever becoming a reality." Indeed! Perhaps receipts are required, yet I fail to see the point in being so punctilious in proving the obvious. From the Tur Choshen HaMishpat: Hilkhos Dayyanim, Ch. 9 we already know that "It is our custom, in the majority of places, to create a communal fund for the Beit Din that would parcel our mazon (lit. "food" but Joseph Karo, in quoting this passage in his Shulchan Arukh: Choshen Mishpat 9:3 uses the term mamon, i.e. "money".) for the Beit Din and support for them (i.e. Judges)...it is an obligation on all Israel to support their Judges and Sages." We learned in previous chapters that both Rashi and the Tosafot believed that there were communal

It seems that during the fifteenth century Rabbinic prestige fell.¹³ Rabbinic quarrels, like the one between R. Anshel and R. Israel of Bruna, split communities and weakened the Rabbinate in the eyes of the laity. In addition to the Rabbinic controversies, the Black Death had taken its toll of great scholars and diminished the overall level of Rabbinic scholarship. While Rabbi Meir ben Baruch Ha-Levy tried to rectify the situation by reinstituting the smekhah, as we learned, that caused some problems. The title of Morenu HaRav became indispensable for anyone who sought to secure a Rabbinic position in Germany. As a result, it was not unusual for some people to acquire their smekhah through bribery (Responsum #68 of R. Weil). Certain other charlatans used their power of cherem for purposes of vengeance and extortion.

As a result of these Rabbinical abuses, communities

funds that supported the Scholars.

Rosensweig does admit that in fifteenth century Spain the Rabbis received salaries (p. 139, note 36). Perhaps his point is that the Tur Choshen HaMishpat: Hil. Dayyanim Ch. 9 only reflects Sephardic practice since it quotes R. Barzaloni (twelfth century Rabbi in Provence). It is enough that Rosensweig admits that Rabbis in fifteenth century Spain received fees in exchange for their Rabbinical services (i.e. weddings, divorces, etc.) and that and that Rabbis who were so openly approving of such remunerations could hardly of protested against the communal fund that supported a town's Rabbi.

However, our survey has shown that Ashkenazic Rabbis received salaries before the fifteenth century (cf. Tosafot) and after the fifteenth century (cf. R. Isserles) so why is it not probable that Ashkenazic Rabbis received salaries in the fifteenth century as well?

¹³. Bernard Rosensweig, pp.36-38.

began to ignore their Rabbis. Rabbi Weil himself complained that the communities now mocked the Rabbis and did not head their rulings (Responsum #157).

We said earlier that many of the Responsa attempted to answer two problems: 1) the question of Rabbinic authority and territorial exclusivity; and 2) Rabbinic salaries and benefits in the light of Rambam's opposition to them. We have reviewed a few of the most important Responsa concerning the issues of Rabbinic authorization and chazaka.

In the next we will review some of the Responsa that dealt with Rabbinic fees and Rambam's opposition. It goes without saying that it is during times of low Rabbinic prestige that the murmurs of Rambam's criticism of the professional Rabbinate become most pronounced. The Responsa of Rabbi Simon ben Zemach Duran (1361-1444) try to end once and for all the opposition to Rabbinical salaries.

CHAPTER TWELVE

The Professional Rabbinate and Rabbi Simeon ben Zemach Duran

Rabbi Simeon ben Zemach Duran (Rashbaz 1361-1444) is often credited with being the first "Professional Rabbi". Typical is the brief description of Duran in the Encyclopaedia Judaica:

"The office of Rabbi was originally an honorary one on principle that the Torah had to be taught free of charge. It was not until the 14th century that there is the first clear evidence of a Rabbi receiving emoluments. When Simeon b. Zemach Duran fled from the anti-Jewish riots in Spain in 1392 and arrived in Algiers the local community wished to appoint him as Rabbi. He pleaded inability to accept as he was penniless and had to earn a livelihood. In order to enable him to accept the position, a formula was worked out whereby instead of a salary for his services he was to receive sekhar battalah, i.e., compensation for loss of time due to his preoccupation with his Rabbinic office. This remained the legal basis in Jewish law for a Rabbi receiving a salary, even though in the modern period the Rabbi's salary is generally regarded as in the category of a professional wage with contracts written between Rabbis and their congregations."¹

Simeon ben Zemach Duran (Rashbaz) was honored with many titles and honorific attributes during his long and exciting life: "Rabbi," "Doctor," "Philosopher," and even "Polemicist," but one description he would not have taken

¹. Ed., "Rabbi, Rabbinate," Encyclopaedia Judaica, pp. 1146-1147

kindly to is that of "first professional Rabbi." The above article disregards the substantial evidence found in the Halakhic sources of the generations of Sephardic and Ashkenazic Rabbis who received salaries, fees and support from their communities centuries before Duran. In fact, Duran was not even the first paid Rabbi in his own town of Algiers.

Simeon Duran was born on the island of Majorca, 1361 and studied in the school of Rabbi Ephraim Vidal who was martyred in the massacres of Majorca in 1391.² In his important commentary to Mishna Avot IV.7³ Rabbi Duran says that due to his medical practice and the wealth of his family he did not have to accept financial support for his Rabbinical work. But in 1391 he lost all of his fortune and barely escaped Christian Spain with his life. The massacre of 1391 forced Jews from around Spain to emigrate to North Africa. Unfortunately for Duran, the North African culture was not as positively inclined toward medicine and doctors

². Rabbi Dr. Isidore Epstein, The Responsa of Rabbi Simon B. Zemah Duran, as a source of the history of the Jews in North Africa, New York, 1930. pp. 1-7.

³. Duran's commentary follows a slightly different counting of the passage in Pirkei Avot than is found in the Talmud. The crucial passage begins, "Rabbi Tzadok said: Do not separate yourself from the community; do not act as a lawyer; do not make the Torah a crown for self-glorification, nor a spade with which to dig...etc." This passage is listed in the Talmud as Mishnah Avot 4:5 (and thus Rambam's commentary is so listed). But several editions of Pirkei Avot, including the edition containing Duran's commentary list the above passage under Avot 4:7.

as was Spain. Many of the newcomers found it exceedingly difficult to survive. Fortunately for Duran, his Rabbinical expertise was highly valued.⁴

Rashbaz landed in Algiers where there was already a small community of Jews. Saul Astruc ha-Kohen, a physician to the King of Tlemcen, was the head of the Algerian Jewish community. Owing to his wealth and education, Saul Astruc was both the lay leader of the Jews as well as the leading Halakhic authority. But when the Spanish Rabbis arrived he graciously acknowledged their superiority in Rabbinics and stepped aside. Saul Astruc was even responsible for the creation of salaried Rabbinical appointments in order to support the immigrant Rabbis. Rabbi Isaac Bonastruc was the first to receive such a paid Rabbinic office; he was paid thirty doubloons a year.⁵ Thus Simeon b. Zemach Duran was not even the first paid Rabbi in Algiers. According to Dr. Isidore Epstein in his book The Responsa of Rabbi Simon b. Zemah Duran: as a source of the History of the Jews in North Africa, Duran was the second salaried Rabbi in Algiers and R. Isaac ben Sheshet Perfet (1326-1408) was the third.⁶

Perfet was one of the great Talmudic authorities of that time and shortly after his arrival he was granted as

⁴. Epstein, pp. 8-9.

⁵. Epstein, p. 18.

⁶. Epstein, pp. 18-19 and see his expansive notes. Epstein refers to the Ribash as "Barfat" and not "Perfet."

the highest authority in Algiers.⁷ Saul Astruc and his brother David solidified Perfet's position by convincing the King of Tlemcen to name him via royal appointment as the Chief Rabbi⁸ in the kingdom and granting him all-exclusive powers.⁹ This unprecedented intrusion of the secular authorities caused an uproar. Simeon Duran led the opposition to this appointment. He wrote a number of opinions which opposed Perfet's position.¹⁰ But, out of respect for the Ribash, Duran did not publish his Responsa concerning this issue until after Perfet's death in 1407.¹¹

Duran had to publish these critical Responsa after the death of Perfet because he himself was appointed Perfet's successor to the Chief Rabbinate. Thus Duran assured the Jewish community that he would not seek to obtain royal ratification of his appointment.

As the dust settled from the chaos of the massacres of 1391, and as Duran and the other Spanish Rabbis nestled into

⁷. Abraham Hershman's Rabbi Isaac Ben Sheshet Perfet and His Times, (New York: The Jewish Theological Seminary, 1943), offers a slightly different account than Isidore Epstein of the struggles between Perfet and Duran and the position of Chief Rabbi in Algiers.

⁸. Compare Abraham Hershman, Perfet: His Times, pp.248-250.

⁹. Epstein, pp.19-22.

¹⁰. Epstein, pp.20-22. Epstein lists Duran's responsa (Part) i. 158-162 in Tashbetz as his "pamphlet assailing the appointment."

¹¹. Epstein, p.22.

their salaried positions it became necessary to answer some pressing Halakhic issues. Since this was North Africa and these were Spanish Rabbis the most pertinent question was "Didn't Rambam teach us in his commentary to Mishna Avot IV.5 that a Rabbi was prohibited from accepting a salary?" Therefore, Duran was compelled to write his own Responsa justifying the salaries that he and the other Spanish Rabbis received. In Tashbez (Teshuvah Shimeon ben Zemah) Responsa 142-148 Duran reviews the important Talmudic passages, the Rishonim, the Acharonim and the Geonim.

Duran begins Responsum #142 saying, "Because I have seen that many people are grumbling at the fact that it was our custom throughout all the Jewish communities and many generations to give a salary to their Scholars and they (those who complain) base their argument in the light of what was written by the Rambam in his commentary to Tractate Avot [IV.5]. Therefore, I will examine the origins of this matter, insofar as I am enlightened from Heaven and as I search in the Talmud and other places to determine if this matter [i.e. the payment of salaries to Scholars or Rabbis] is reshut [i.e. voluntary action], or a mitzvah [i.e. a moral obligation; a strongly recommended action], or an actual choveh [i.e. a legal obligation], and whether there is in it the merest hint of a sin. I trust in the strength of the Rishonim who permitted themselves in this matter [i.e. they accepted salaries], and that I will not stumble

in this matter of Halakha and that this moot subject will be clarified."¹²

Responsum #142 is a lengthy exposition that proceeds on a careful exploration of key Talmudic passages and seeks to establish several essential points. Simeon Duran begins by stating his thesis; that is, "It is an obligation [chovah] to support the Scholars and the Judges [lit. Dayyanim ¹³] whose teaching is their occupation and so they will not have to forsake the work of heaven for secular employment, and so they will not have to be disgraced before the unlearned." Thus, Duran begins his Responsum by finding support for his position from Rambam himself. As we reviewed earlier, Rambam wrote in Hil. Sanhedrin 25.4 that "once a man is appointed as the leader of his community, he must not do menial work in the presence of three men, so that he does not degrade himself in front of them." Therefore, Duran shows that Rambam's opposition to the professional Rabbinate is more complicated than it first appears.

Duran sets out to prove his thesis by first establishing the fact that during the days of the Temple the

¹². The translation is my own. Compare Solomon Freehof's translation in A Treasury of Responsa, JPS, Philadelphia, 1963. pp.79-80.

¹³. As we discussed earlier, Dayyan in Rabbinical literature is identical with "Sage" and "Rabbi." See, "Judge," The Jewish Encyclopedia.

High Priest was supported financially. He cites Yoma 18a and Horayot 9a in which the Gemara draws an important lesson from Leviticus 21:10; "And the priest that is highest among his brethren..." The Gemara continues, "that means he should be the highest in strength, in beauty, in wisdom, and in riches. Others say: whence do we know that if he does not possess [any wealth] his brethren, the Priests, endow him? To teach us that it says: 'And the Priest who is great by reason of his brethren.' That is, make him great. To make him great from what his brethren have? R. Joseph said: That is no difficulty."¹⁴

In the Tosephta to Yoma 1:6 there is yet another example of a Priest receiving money: "They said about Pinhas of Habbata, on whom the lot fell to be High Priest, that the supervisors came along and found him cutting wood. So they filled his shed with golden dinars."

Once Duran establishes that High Priests did receive financial support, he still needs to prove that Rabbis are entitled to the same support as the High Priest. Duran cites Mishna Horayot III.8 in which it says, "A priest takes precedence over a Levite, a Levite over an Israelite, and an Israelite over a mamzer, . . . When is this the case? When all things are equal; but if a mamzer were learned [in the law] and a High Priest were an ignorant man, the mamzer

¹⁴. This and all translations of the Talmud that I will give come from the Soncino translation.

learned in the law takes precedence over the ignorant High Priest." The Gemara in Horayot 13b spells this lesson out more definitely; the Scholar is even more precious than a King, even though the King takes precedence over the High Priest. "For if a Scholar dies there is none to replace him while if a King of Israel dies, all of Israel are eligible for Kingship."

Thus Duran uses an inference a fortiori [or kal v'chomer] to prove that since a Scholar takes precedence over a High Priest and since there is an obligation to financially support the High Priest then it goes without saying that "all of Israel is obligated to enrich the Scholar."

Rashbaz still needs to prove that Rabbis did in fact receive financial support on a regular basis; for it is one thing to show theoretically that the Halakha agrees with you, but it is still necessary to show that you are correct in the practical application of that law. In Horayot 10a there is the story of how R. Gamaliel is so moved by the plight of two impoverished Rabbis that he appoints them as heads of communities so that they would be financially supported. (Note the parallel to Duran's personal story of impoverishment to supported head of a community.) In Sota 40a, Sanhedrin 14a, and Ketuvot 17a, Rabbis are shown to be quite wealthy and honored: "When R. Abbahu came from the academy to the court of the Emperor [in Caesarea] handmaids

from the Imperial house went out towards him and sang thus, 'Prince of his people, leader of his nation, shining light, blessed be thy coming.'

Simeon Duran includes yeshiva students as well as leading Sages in the category of those who deserve financial support, i.e. those who are to be supported are full-time Scholars, studying Torah day and night. Shabbat 104a helps define who is eligible; "Who is the Scholar that is appointed as leader [Parnas] of the community: He who when asked a matter of Halakha in any place can answer it, even in Tractate Kallah! R. Johanan also said: Who is the Scholar whose work it is the duty of the townspeople to perform? He who abandons his own interest and engages in religious affairs; yet that is only to provide his bread."

Duran also confirms the legitimacy of a "communal fund" that is used for the general support of the Rabbis by referring to Gittin 60b and the ensuing commentary by Rashi and the Tosafot.

Duran realizes that he must also prove that this practice of financially supporting the Rabbis in the Talmudic era was continued in the days of the Geonim Acharonim. Therefore, he cites Tanchuma and other midrashim in which Rabbis are supported by their communities. He also quotes from the Responsa of Rav Amram Gaon in which he relates receiving a monetary donation from a Ravna Ya'akov ben Ravna Yitzhak.

Duran concludes Responsum #142 with a few more contemporary examples of communal funds that are used to support Rabbis [lit. Dayyanim] and are, of course, beyond reproach or suspicion as being bribes [shochad]. Thus, he confirms his thesis that it is an obligation upon all Israel to support their Rabbis.

In his commentary to Mishna Avot IV.5¹⁵ Duran summarizes his Halakhic arguments from Responsa 142-148 and also includes a personal, biographical justification. His commentary to Avot concludes:

"For all these reasons we resolved to make a practical decision with regard to ourselves [i.e., myself] to take a salary from the congregation and to be appointed as Rabbi and Judge over them. We did not permit ourselves to do this before we had debated this matter, as we wrote in our long treatise, and before the great scholars of our generation saw it and said it was correct. Thus we have seen that this permission [to take rewards] was customary with the great Scholars before us, the highest men and men of action, Scholars and Rabbis who are far greater than we. But let it be known that the aim of our studies with the Sages [his teachers] was not for this purpose, namely, to sit at the head (of the community), Because we owned property and we had learned the art of medicine. Medicine is a wisdom which honorably supports its practitioners in the Christian lands. But for the sins of this generation, persecution was decreed in all those lands, and we were left with only our lives. We abandoned all our possessions there, and whatever we could save we gave to the idolaters in order that we might survive (literally, "that our taste remain in us" Jer. 48:11) and not come to harm. It is enough for us to have this door of permission (the Talmudic arguments cited above) which we have used in order that Torah shall be

¹⁵. Actually Mishna Avot 4:7 as explained above in Note

our work and we will not cease from it day and night.

If the profession of medicine could have supplied us a livelihood, in this land in which we have settled [i.e., Algiers], we would not have come to state. But it is of low status here; and we do not wish to return to the Christian land because of the confusion in those places where every day new persecutions are decreed; and, as the Midrash says: "Whoever was once bitten by a snake, is frightened by a rope."¹⁶

Yes, Duran seems to be saying, in the best of all possible worlds Rabbis would not have to be paid even though it is Halakhically permissible. Alas, this is not the best of all possible worlds and thus it is not only permissible to pay the Rabbis, it is, in fact, an obligation.

¹⁶. This translation is from Freehof, A Treasury of Responsa, pp. 82-83.

CHAPTER THIRTEEN

The Professional Rabbinate as Evidenced in Joseph Karo's Kesef Mishneh

We will conclude our survey, with a review of the Kesef Mishneh and the Shulchan Arukh both of which were written by Joseph Karo (1488-1575).¹ There are several good reasons for completing this study with the works of Rabbi Joseph Karo. First of all, Karo's Shulchan Arukh was up to our time regarded by all Rabbinical Jews as the authoritative code of Halakha.² Yes, the Shulchan Arukh

¹. Most of the information presented here concerning Joseph Karo and his works come from: Louis Ginzberg, "Joseph b. Ephraim Caro," The Jewish Encyclopedia, Vol. 3, pp.583ff.; Allen Podet, Moreinu Harabh, passim.; and, R.J. Zwi Werblowsky, Joseph Karo Lawyer and Mystic, (Philadelphia: Jewish Publication Society, 1980), passim.

². The Shulchan Arukh was the outgrowth of Karo's earlier and much more scholarly and comprehensive work: the Beit Yosef. The Beit Yosef was partially written in 1522 at Adrianople and finished at Safed in 1542. It followed the organization of Jacob ben Asher's Tur and is in the form as a textual commentary on the Tur. According to Louis Ginzberg, Karo refers to some thirty two authorities from the Talmud and the Halakhic midrashim through Rabbi Isserlein in his review of the Tur. The Beit Yosef depends a great deal on the Halakhic codes of three prominent authorities: Isaac Alfasi (Rif); Moses Maimonides (Rambam); and, Asher ben Yehiel (Rosh). He states in his introduction that whenever there is a disagreement among them, he will follow the opinion of any two of the three who agree versus the third. (For an in depth analysis of the methodology of the Beit Yosef please see Allen Podet's, Moreinu Harabh, pp.138ff.)

The Shulchan Arukh is the summary of his *magnum opus* the Beit Yosef. He wrote it in his old age in 1555 in the city of Safed. The great advantage of the Shulchan Arukh is that a careful scholar is able determine exactly how Karo reached his opinion by referring to the Beit Yosef.

acquired numerous commentaries and supra-commentaries on the details of its decisions but it has retained its Halakhic significance up until this day. Therefore, the professional Rabbinate as reflected in the Halakha of the Shulchan Arukh is still, for the most part, a valid picture. Secondly, the Shulchan Arukh contains the Mappa Hagahot, the commentary of Rabbi Moses Isserles. Isserles criticized Karo for neglecting the Ashkenazic practices and authorities. So, Isserles wrote his Mappa ("tablecloth") in order "to cover" Karo's Sephardic leaning text with the Halakha of the Ashkenazim. Thus, the Shulchan Arukh brings together the Sephardic and Ashkenazic rulings on all of our primary issues. Thirdly, it would be essential to review Joseph Karo's decisions concerning the issue of the development of the professional Rabbinate even if his great law code had not won such enduring fame for Joseph Karo was directly involved in an attempt to reinstitute the traditional smekhah ("ordination"³). Though we will not

Therefore, when we refer to the Shulchan Arukh we are referring to the summary of Karo's greater and more comprehensive work.

³. Of course, when we previously discussed smekhah we decided that it was best understood as "authorization" and not "ordination." That is because in the previous discussion the smekhah was a writ or a diploma which would help verify a Rabbi's claim of expertise. But Karo was a participant in the plan of his teacher, Rabbi Jacob Berab to reinstitute the historical valid smekhah that Maimonides had referred to in his Mishneh Torah. Thus, Karo's attempted smekhah can be called "ordination" and not simply "authorization."

The facts of this reinstitution of the historical

discuss this smekhah controversy in this study, it is important to note Joseph Karo's role in this event for although the restoration of the historic smekhah failed, we can see that Karo was certainly a major figure in the rethinking of the role of the modern Rabbi. Finally, we decided to conclude this study with a review of Karo's opinion because by the sixteenth century the professional Rabbinate had become a reality. Of course, it would still develop. But, for the most part, the Halakhic justification for the professional Rabbinate was determined and, dare we say, "canonized" with the completion of the Shulchan Arukh.

In our review of Karo's decisions we will begin with his response in the Kesef Mishneh to Rambam's opposition to the professional Rabbinate. We will devote the next chapter to an examination of the Shulchan Arukh.

Joseph Karo wrote the Kesef Mishneh as a commentary to

smekhah are as follows: in 1538, Jacob Berab had himself "ordained" by the leading Rabbis of what was then Palestine. Berab hoped that every Rabbi in Palestine would ordain him and thereby fulfill Rambam's requirement (Mishneh Torah: Hilkhos Sanhedrin 4:11) for the reinstitution of smekhah. Rambam maintained that once one Rabbi received smekhah by unanimous assent he then would be empowered to ordain others by his own authority. Since most of the Scholars in Palestine supported Berab he felt empowered to "ordain" four other sages among whom was Joseph Karo. Unfortunately for Berab and Karo, Rabbi Levi ben Habib opposed this new smekhah and his opposition prevented the unanimity required by Rambam for the reinstitution of smekhah.

For an in depth review of Berab's attempt to restore the historical smekhah please refer to: Allen Podet's Moreinu Harab, pp.317-423.

Rambam's Mishneh Torah. We will begin with a review Kesef Mishneh to the Mishne Torah: Hilkhhot Talmud Torah 3:10.

A complete translation of Hil. Talmud Torah 3:10 is provided in our chapter on Rambam. The highlights of his comments are: a) one who studies Torah full-time and does not work, rather supports himself on charity brings evil upon himself and our people and is denied any life in the hereafter; b) all study not conjoined with work is a cause of sin; and, one who studies without working will, in the end rob others. Rambam cites Mishna Avot I.10, II.2, and, IV.5.

It would seem that Rambam's opinion is in direct opposition to those who support the institution of a professional Rabbinate where Scholars are supported by the community in exchange for their full-time devotion to the town's religious needs.

Joseph Karo's response in his Kesef Mishneh begins by informing the reader that Rambam's opinion here is consistent with his commentary to Mishna Avot Chapter IV. In fact, this Kesef Mishneh focuses primarily on Rambam's commentary to Mishna Avot Chapter IV and not Hil. Talmud Torah 3:10.

Kesef Mishneh to Hil. Tal. Torah 3:10

s.v. "*Kol hamasim al libo*"

"Our Rabbi [Rambam] derides, in his comments to Mishna Avot Chapter IV, the support given to students and Rabbis. [However] it appears from his comments [in Mishna Avot] that most of the great Torah Scholars of his day, or even all of

them, are to included among the ones who "make up his mind to study Torah and not work." [i.e. Rambam is opposed to the practices of most of the great Torah Scholars for they are full time Rabbis and receive support from their communities.] These opinions here [in the Mishneh Torah] are consistent [with those he made in Mishna Avot].⁴

Karo proceeds to analyze Rambam's comments in Mishna Avot. Rambam tried to support his opposition to the full-time paid Rabbis by bringing several Talmudic examples of Rabbis who supported themselves with their occupations and not from their Rabbinical positions. Karo examines Rambam's examples, saying:

"There he brings the example of Hillel the Elder (Yoma 35b) who was both a wood chopper and still studied. But there is not proof from this example, for this was, of course, at the beginning of his studies and it was during a time when there were thousands and thousands of students. Perhaps they did not give except to support only some of them or any one who could support himself would not receive benefits. But when a Sage became worthy and he taught his wisdom to the people, he would be elevated accordingly. You should not think that he remained a wood chopper!"

Karo turned Rambam's own argument against him. Rambam claimed that Hillel was a wood chopper throughout his life and as proof he mentioned that if Hillel "had taught his contemporaries in order to derive a benefit from them, they would not have allowed him to chop wood." Thus, according to Rambam, Hillel had to chop wood for he took no

⁴. All of the translations of the Kesef Mishneh that appear in this thesis are my own.

compensation for his teaching. But Karo points out that Hillel only chopped wood when he was a poor unknown student and when he matured into a great Sage then his contemporaries supported him, for great Sages would not be allowed to chop wood.

Karo also dismisses Rambam's example of Rabbi Chanina ben Dosa who, though a great Rabbi, would survive on the barest minimum. Karo points out that Rabbi Chanina is hardly a good example for the Talmud (Ta'anit 24b-25b) records him as a miracle worker who did not have to ask humans for anything because Heaven granted his desires.

Karo is also surprised that Maimonides brought the examples of Karna the Judge and Rabbi Huna. Indeed, even Rambam recognized that Karna would say: "Give me a substitute to draw water in my place, or reimburse me for my actual loss, and I will judge your case." Thus Rambam, as we established earlier, did permit sekhar batalah. But Rambam still objected to Rabbis taking a full time position and receiving a salary from an established communal fund. Karo rejected the example of Karna for we learn in Ketubot 105a that he obviously had an easy job (performing smelling tests at wine stores and advising the owners which wines could be stored longer and which had to be sold more quickly) and that there is no doubt whoever is so favored by God that they are supported through their secular occupations, they are forbidden to take a full time

Rabbinical salary. For that same reason, Rav Huna (Ketubot 105a) would only take sekhar batalah (and not a full time salary) for he owned property and thus did not need to take from the communal fund for his support.

Karo goes on to show why the other Talmudic examples in Rambam's commentaries are inappropriate and he brings several other passages which would seem to indicate the legitimacy of Rabbinical salaries and compensation. For instance, Karo refers to Ketubot 105b in which the Rabbis rule that it is permitted to give honorary gifts (doron) to Scholars, for it says: "For it was taught, 'And there came a man from Baal-shalishah and he brought the man of God bread of the first-fruits, twenty loaves of barley, and fresh ears of corn in his sack' (II Kings 4:42); but was Elisha (who was not a Priest) entitled to eat the first-fruit? This, lesson is intended to tell you that the one who brings a gift to a Scholar [is doing a good deed] as if he had offered first-fruits." "But," Karo tells us, "according to the plain reading of Rambam's comments also these honorary gifts (doron) are forbidden for him [a Scholar] to receive!"

Karo also brings the example of Chullin 134b where the tradition is recorded that a gift of a bag of golden dinars arrived at Beit HaMidrash ("the house of study"). Rabbi Ammi came in first and took the gold. Karo paraphrases the text:

"Some objected, 'How may he [R. Ammi] do such a thing?' Is it not written, 'And they shall give.' (Deut. 18:3) [But the protestors continued] But he should not take it himself. [Then one can respond that Ammi took them] on behalf of the poor. Or, if you wish, you may say that in the case of an eminent person it is different. That is to say, the money is for the head of the yeshiva. As it is taught, 'And the High Priest shall be the greatest among his brethren.' (Lev. 21:10) And according to the commentary of Rashi, that the dinars that came were dinars of gold that were sent from another place for [the support] of the students of the yeshiva. Certainly since R. Ammi was neither sick nor poor but rather he was well off, even so he was deserving [of the gifts]. And there was no difficulty for them [the Rabbis] as to why he took [the gift] except for the fact that he took it for himself. So, if it were not like this it would be correct [for him to take the gift]. Furthermore, as it is implied in the commentary, an eminent person even if he takes the gift for himself it is permitted."

Note that in his analysis to the passage in Ketubot 105b Karo relied on the commentary of Rashi (an Ashkenazic Scholar). Karo also referred to the Tosafot in his analysis. For example in the following quotation from the Kesef Mishneh in reference to Ketubot 106a Karo said:

"Since we say there (Ketubot 106a) that Scholars who taught the Priests the laws of ritual slaughter and kemitzah [i.e. taking of a 'handful' from the meal offering] received their salaries from the Temple funds. The Tosafot wrote that even though it is said in Nedarim that remuneration for study is forbidden this case is different for [these Scholars] sit [and teach] all day and they do not have time to engage in any secular occupation. Thus they have no other way to support themselves they take [remuneration] from the public for their support. The words [of the Tosafot] teach us that salaries are not forbidden to those who teach except for when he has another place from whence he might support

himself."

As we can see, Karo both refers directly to the Talmudic verses themselves as well as the commentaries of Rashi and the Tosafot in order to support his analysis.

The Kesef Mishneh concludes its review of Rambam's Avot commentary and Hil. Talmud Torah 3:10 by saying:

"The general rule of the above is that any [Scholar] who does not have for his support is permitted to take a salary from the public [funds] in order to decide cases or [one can receive remuneration] from the litigants. . . And after the Lord has informed of all of these things it is possible to say that the intention of our Rabbi [Rambam] here was that no man should cast off the yoke of an occupation from himself in order to support himself from his fellow creatures just so that he may study. But that one is able to learn and maintain an occupation that will support him if he has enough, fine, and if he does not have enough [e.g. if he is starving], then he can take from the public [for Rambam said that Scholars, like all people, may receive charity in order to keep from starving.]. And there is nothing wrong with that. And this is basically what he [Rambam] wrote in (s.v. 'Kol hamasim al libo...'): he brought some of the Mishnaic passages which rule against the propriety of study [to the exclusion of] an occupation.

And even if we say that this is not Rambam's real meaning rather the true opinion of our Rabbi [Rambam] is his commentary to the Mishna. In any event, we hold that when the Halakha is 'flimsy in your hand' [i.e. when the Halakha is unclear⁵] then it should follow after minhag ("custom"). And we see that all the Sages of Israel before the time of our Rabbi [Rambam] and after him had the

⁵. "When the law is flimsy in your hand" is a literal translation of "*rofefet be-yadekha*." This phrase comes from the Yerushalmi Talmud Pe'ah 7:6: "Concerning any law that is unclear to the court, and you do not know what behavior to follow go and see how the community behaves and act similarly."

minhag of taking their salaries from the public.

And also, even if one maintains that the Halakha is according to the words of our Rabbi [Rambam] in his commentary to the Mishna then it is still possible to agree with all the Sages of the generations [by recognizing that the Sages simply followed the principle of "meshum et":] 'it is time to act for the Lord, for they have made void Your Torah' (Ps.19:126⁶) [i.e. current necessity knows no law]. In that, if there had not been support for those who study and teach on a regular basis then no one would been able to endure the hardship of Torah [study] as it is deserving [to be studied]. And the Torah would have been forgotten, God forbid! And may it come to pass that there will be those who are enabled to regularly engage and be strengthened by the Torah and may they be glorified."

Joseph Karo's concluding comments contain three levels of arguments. First of all, Karo seems to imply that Rambam's opposition to Rabbinical salaries was restricted to his commentaries. He was saying that Rambam's commentary in

⁶. This important verse from Psalms 119:126 can be translated two ways: 1) "It is time for the Lord to act for they have voided Your Torah;" or, 2) "It is time to act for the Lord for they have voided Your Torah." The latter means, of course, that we must act for God's sake. There is much discussion in the Rabbinic literature concerning this verse and the principle it represents. To put it simply, the principle of "voiding the Torah in order to act for the sake of the Lord" is used by the Rabbis to justify certain actions which may be in violation of expressed Toraitic law. The violation of Toraitic law was determined by our Sages to be of necessity during times of crisis and in order to save the people of Israel. Rashi, in his commentary to Berakhot 63a brings forth on of the classic examples of this principle: "Those who do His will have violated His Torah, like Elijah on Mount Carmel, who sacrificed on a noncentral altar during a period when that was forbidden, because it was a time to make a fence and a hedge among the Jews for the sake of the Holy One, blessed be He." Joel Roth in his book The Halakhic Process (pp. 169ff.) provides an in depth discussion of this principle.

the Mishneh Torah is a "softening" of his previous commentary to Mishna Avot. Implied in this is that Rambam was a young man when he wrote his Mishna commentary but he was a mature Talmudic authority when he wrote his Mishneh Torah. Karo maintains that Rambam is only opposed to those Rabbis whose intention it is to avoid work by studying Torah. Thus, he did not actively oppose those Rabbis who were legitimate Scholars and who were engaged by a community to be their Rab Ha'ir, their Chief Rabbi (a salaried office).

Karo follows this first level of argument by saying, even if you insist that Rambam did not soften his views, then we can still claim that this is an instance of (rofefet by-yadekha) an "unclear law" and in these cases we follow the majority of the Scholars. Since the majority of the Halakhic authorities permit Rabbinical salaries then one must agree that the Halakha permits Rabbinical salaries.

Finally, Karo says that even if you insist that the "pure intention of the Halakha" follows Rambam then the opposing Talmudic authorities still had the right to permit Rabbinical salaries because they had to build a fence around the Torah. The authorities simply employed the principle of meshum et.

Karo was certainly aware that Rambam himself recognizes the necessity of violating the strict reading of the Torah in order to protect the overall integrity of Judaism.

Rambam's comments in his Mishneh Torah Hilkhos Mamrim 2:9:

"Since the court may make an enactment that forbids that which is permissible and may, permit temporarily things that are forbidden according to the Torah, what is the meaning of the Toraitic law "You shall not add to it, nor take away from it." (Deut. 13:1) Rambam goes on to differentiate between "adding a fence around the Torah" (even though that might mean adding a law that was not written in the Torah and thus in seeming violation of the Toraitic law "*Bal tosif*" and "*Bal tigra*" [i.e. "You shall not add to the law of the Torah nor shall you take away from it."]).

Thus Karo possibly was hinting that even Rambam was aware of the necessity to support a professional Rabbinate and that his opposition was strictly theoretical. In any case, Karo is quite effective in disproving Rambam's theoretical opposition as well.

Joseph Karo analyzed each Talmudic passage that Maimonides brought in his commentary. Point for point Karo succeeded in dismissing Rambam's argument.

Karo's second major concluding point, and, indeed the driving force behind his entire argument, is his firm belief that full time professional Rabbis are essential if Judaism is to continue to overcome the incessant challenges to its survival. He seems to agree that perhaps in an ideal world all Scholars might have cushy jobs like Karna's job as a wine examiner. In the best of all possible worlds Scholars

would all have easy, well paying jobs that would enable them to devote ample time to their studies. Then there would be no need for them to have full time Rabbinic positions and they would not have to receive public remuneration. Alas, this is not an ideal world. Thus, professional Rabbis are a necessity.

Karo's method for establishing his positions is quite convincing. Note that Karo first challenges Rambam on the Talmudic level. Karo, like Rashbaz, Jacob b. Asher, Rosh, the Tosafists, Rashi and Alfasi before him, referred confidently to the Talmud itself in order to justify Rabbinical fees, benefits, and tax exemptions. Therefore, he challenged Rambam point for point on his Talmudic references and Mishnaic analysis. Karo brought a number of the Talmudic passages which we have seen utilized by a number of the authorities who lean favorably to the professional Rabbinate (e.g. Ketubot 105a; Ketubot 105b; Ketubot 106a; Nedarim 62a; Baba Batra 8a; Chullin 134b;) . Thus Karo first established the Talmudic soundness of the argument in favor of the professional Rabbinate.

But Karo did not stop with his Talmudic argumentation. He proceeded to claim that even if one rejected his reasoning from the Talmud one could not reject the fact that the professional Rabbinate was already an established minhag in Israel. As we pointed out earlier, even Rambam maintained that minhag is law for the Jewish community.

Indeed, in Mishneh Torah Hilkhos Talmud Torah 1:7 Rambam says: "If is the minhag (custom) of the country for a children's teacher to receive a fee, the father should pay the fee." Rambam goes on to provide reasons why the teacher should not insist on payment, nevertheless, "if one cannot find someone to teach him freely, he should get instruction for a fee." This lends credence to Karo's opinion that Rambam's opposition was only theoretical. Thus, while Rambam wrote that the professional Rabbinate cannot be proved Talmudically it is nevertheless an accepted minhag in many places and is, therefore, not to be actively opposed.

Karo gives emotional support for the minhag of the professional Rabbinate in his concluding statement. Karo concludes by saying, yes, Torah study is difficult but it behooves us to maintain the highest level of Torah scholarship possible. Karo seems to be saying: even more than we maintain the Torah, the Torah maintains us.

CHAPTER FOURTEEN

The Professional Rabbinate as Evidenced in the Shulchan Arukh

We will now review the relevant passages in the Shulchan Arukh in order to determine the development of the professional Rabbinate as of the sixteenth century. Unlike the previous texts which we have reviewed, we will set the Shulchan Arukh in bold. The comments of Moses Isserles will be indicated by: Mappah. All of my comments will be in regular type.

Laws Concerning the Honoring of One's Rav and Other Scholars

Most of the pertinent material concerning the professional Rabbinate in the Shulchan Arukh is found in Yore Deah and much of it comes directly from the corresponding passages in the Tur as well as the Mishneh Torah. Of course, since the Tur covered many areas that did not appear in the Mishneh Torah, the Shulchan Arukh to Yore Deah 242 primarily follows the Tur.

#242 [Including the prohibition] not make halachic decisions before one's Rav, and the law concerning a Rav who forgoes the honor due him.

1. A man is obligated to honor his Rav and revere him more than his own father.

Mappah: When one's father is also Rabo Muvhak ("his principle teacher") call him by the title "Rav." But if his father is his teacher but he is not his principle teacher then call him "father."

Baer Heitev, written by Rabbi Judah b. Simon Sopher Frankfort Ashkenazi in the 18th century¹, quotes Sabbatai Kohen and his commentary Sifte Kohen (17th century) in disagreeing with Isserles. According to them, current practice is to call one's father "Rabbi" for perhaps if the father insists on being called "Rabbi" he may, in fact, relinquish some of his due honor.

2. Anyone who disputes his Rav is like one who disputes the Shechinah. Anyone who quarrels with his Rav is like one who quarrels with the Shechinah. Anyone who murmurs against his Rav is like one who murmurs against the Shechinah. Anyone who is suspicious of his Rav is like one who is suspicious of the Shechinah.

The Sifte Kohen makes a note to Halakha #2 that there is a difference of opinion between Karo and Rabbi Joel Sirkes (1561-1640), the author of the Bayit Chadash. Sirkes points out that simply "to differ" is not intended here. Rather this refers to one who "disputes" or "revolts against his master." Sirkes says: "This is like the action of Dathan and Abiram who differ in order to contradict the words of Moses. But here he only establishes for himself a school, and there is no serious transgression involved. . . [Even though Karo in Beit Yosef cites Maimonides as listing one who establishes a school in the same category as one who

¹. The Baer Hateiv was written by R. Judah b. Simon Sopher Frankfort, but it is ascribed to Rabbi Zechariah Mendel b. Aryeh Loeb of Belz, who was of the same family as Moses Isserles.

"revolts" against his teacher.]" Sirkes concludes by saying: "that establishing a school seems to be contesting the authority or the right of the superior, in the area of his expertise." Even so there is no serious transgression. Note that these comments are listed by Sifte Kohen under Halakha #2 even though they refer to Halakha #3.

3. Who is one who disputes his Rav? Anyone who sets himself up a school and instructs and makes Halahic decisions without permission from his Rav. This goes as long as the Rav is living, even if he lives in a different province.

Mappah: But one is permitted to disagree with his Rav concerning any ruling or judgment if he has proof or evidence that the law is with him.

4. It is prohibited for a man to ever make rulings before his Rav and anyone who does make rulings before his Rav is liable for the death penalty.

Mappah: Even if he has permission, he may not sit in judgment within three parasot if the Rav is his principle teacher.

The Baer Heitev, citing the Sifte Kohen, says that "the opinions of R. Abraham b. David (Rabad) and R. Solomon b. Adret (Rabash) and R. Isaac b. Sheshet (Ribash) concur that the taking of permission is valid within three parasot."

These comments show us that the "development" of the Rabbinate continued well after the Shulchan Arukh. Still, the changes are relatively minor.

Karo: cont. And if he is further than 12 mil from his Rav and a man just happens to ask him a question concerning the Halakha then he can answer. But setting oneself up to adjudicate or to teach, even if he is at the other end of the world, is forbidden until his Rav dies or until

his Rav gives him permission.

Mappah: All of this is only applicable when one's Rav is his principle teacher. But if his "Rav" is a Talmid Chaver (i.e. both his teacher and his colleague) then, even if he is within 12 miles of his Rav he is permitted to make Halakhic decisions. [He notes that this is the opinion of Rif, Rambam, and Karo in Beit Yosef]

But there are those who say that in any case if one is really before one's Rav [even if he is not his main teacher] it is forbidden [i.e. to make Halakhic decisions] and even if one's Rav is not really before him but it simply affects his Rabbi's honor, [for example:] if they started the question by saying, "Let us ask the Rav," or if the Rav is distinguished in wisdom and is an elder, then one should not make Halakhic decisions in his city.

Karo: cont. There are those who say that if a Talmid Gamur ("a disciple" i.e. not a colleague) decides a case within 12 mil he is liable for the death penalty. If he decides cases outside of the 12 mil boundary he is free from punishment but he is still forbidden to do so..

The Bayit Chadash says that "liable for the death penalty" only refers to one who does not receive permission. "In his presence" is not to be understood literally but rather anywhere within the 3 parasot limit. Thus the comment of Rabba in Eruvin 63a that "In the presence of one's Rabbi it is forbidden [to give legal decisions] under the penalty of death but not in his presence is forbidden but there is not death penalty" means that within 3 parasot one is liable and beyond 3 parasot one is still forbidden but not liable for the death penalty.

Of course, all of the above refers to the relationship between a Talmid Gamur and his Rav Muvhak.

Mappah: There are those who say that the above opinion applies only, of course, in the case when the Rav regularly goes to the student's city. But if he does not regularly go there, but rather, only goes on occasion, then any student is permitted to make Halakhic decisions as long as he is beyond the 3 parasot limit.

The Baer Heitev cites the Sifte Kohen in maintaining that a "regular visit" as Monday or Thursday, the regular market days (and days when the Torah is read).

Karo: A Talmid Chaver [i.e. he is both one's student and colleague] who is within the 12 mil limit, is not liable for punishment, but is still forbidden from making Halakhic decisions. If the he is outside 12 mil he is permitted to make Halakhic decisions.

Even though reshut ("authority") was given by one Rav, it is not enough until reshut is given by all of his Rav's who are Rabotav Hamuvhakim ("his principle teachers").

Mappah: And this [term] "Muvhakim" does not refer to the standard definition of "Muvhak" i.e. the principle teacher taught him most of his wisdom, since it is not possible for one to have many principle teachers. What Karo must have meant was to say that this is the case of a Talmid Gamur ["a disciple" who could possibly have more than one principle teacher, different principle tutors for the different disciplines] and excluding a Talmid Chaver ["a student-colleague" who could only have at this higher level of scholarship, one principle teacher] from this definition. A Talmid Chavir then is one who has grown in Torah wisdom and he then becomes a colleague to his Rav. That is he becomes nearly as great as his own Rav. ["nearly as great" but not quite for though he has obtained halachic erudition he has not yet received his diploma of authority, i.e. his "smekhah"] However, there are those that dispute this, and they hold the opinion that if he (the Talmid Gamur) received the reshut from one of the Ravs from all of those, so that he may make Halakhic decisions beyond the 12 mil limit it is sufficient.

[Compare the Responsum of Rabash #111 and Ribash #281] But if one is to make Halakhic decisions within the 12 mil limit there cannot be any objections.

And there are those that say that all of those who are not his Rav Muvhak ("principle teacher"), that is he did not learn most of his wisdom from any of them, then they are his colleagues. [So rules the Beit Yosef in the name of Rambam.]

5. No student can ordain others in place of his own Rav.

6. If one did not receive his authority of ordination from a single Rav who ordains, rather he received ordination from many Rabbis then he then will become affiliated to them. And a single Rav will not have authority over him at all, for he is not his Rav. [Even though that Rav may have had a hand in his instruction he does not have power over him for he was not his Rav Muvhak and he did not participate in his ordination.]

Mappah: But if he was ordained by only one alone then he must behave with some subordination to the one who ordained him. And so, whoever learns in a yeshiva for a period of time, should say out of respect that he is a student of the "Rosh Yeshiva (i.e. "head of the college"), even though it is possible that the head of the yeshiva learned more from him! And there is some support for this custom.

7. It is not called hora'ah ("a legal decision") except when he rules on an actual case that is before him. But if his students ask him "according to whom ...?" [i.e. a hypothetical question] then he may answer with his own opinion for there is no real case before him.

8. It is not called hora'ah except in a case in which there is some new information (chidush, i.e. some new legal twist) brought before the Sho'el ("one being asked the Halakhic question"). But in a known legal case that is entirely simple, for example: notein ta'am lifgam

Notein ta'am lifgam is a principle in Kashrut that literally means "something that imparts a disgusting

flavor." That is, if a forbidden food accidentally falls into some permitted food and it doesn't enhance its flavor, rather it detracts from the mixtures flavor, then the mixture is permitted.²

Karo: . . . or Lebatel issur bashashim [that is, if a forbidden food is accidentally dropped into permitted food, if the permitted food is 60 times the volume of the forbidden food particle, then the forbidden food is considered annulled.] something similar to that is permitted.

9. There is one who writes: "one can make legal decisions during the lifetime of his Rav by relying on the legal decisions of the Geonim ("Sages") that are written down in the law books. Only he may not add anything of his own opinion and he may not rely on his own analogies. [The opinion refers to the Hagahot Maimoniot]

So hora'ah is any new ruling, not recorded in the codes.

10. There is someone who wrote [in Hagahot Maimoniot] that it is forbidden for a sage to permit a peculiar (or unusual) thing when it appears to the multitude of Authorities that his ruling is permitting a forbidden thing.

The Baer Heitev says that this refers to an unusual thing that is not customarily permitted, but is permitted here because in this particular case though it appears to be in the class of prohibited things it really is okay. Still, because of the potential confusion, it is best to forbid such a ruling.

². For a full discussion of these principles of Kashrut see Isaac Klein's Jewish Religious Practice, pp.363.

11. One should separate someone from doing wrong. For example, when he sees a man that is transgressing because he does not know that his action is forbidden or because of some evil influence, it is permitted to warn him and to say to him that his action is forbidden, even in front of his Rav. For in all cases of the profanation of God, there is no concern for the honor of the Rav.

12. If a student's sons and/or members of his household need a legal judgment and they ask him, he may not rule on it for them in the place of his Rav.

Mappah: But, of course, not everyone whose Rav has died is permitted to sit in judgment and to rule. Only one who has received the authority to make legal decisions [i.e. one who has received smekhut, the writ of authorization from his Rav]

The Baer Heitev, citing the Sifte Kohen, says that this comment by Moses Isserles should come at the beginning of Shul: Arukh Yoreh Deah: Halakha #13.

13. A student who has not received authority to make legal decisions (smekhah) but makes legal decisions anyway; behold this one is foolish, wicked, and of an arrogant disposition! (quoting Mishna Avodah Zarah 4.7) "whoever shuns judicial office, rids himself of hatred, and robbery and perjury. But whoever presumptuously thrusts himself forward to make a legal decision is foolish, wicked, and of an arrogant disposition." And about him it is written that "he caused many to drop dead."
(Avodah Zarah 19b)

Mappah: And the young students who jump ahead to make Halakhic decisions and preside as judge and make themselves great before the ignorant, they cause quarrels and disputes, they bring on the destruction of the world and they extinguish the lamp of Torah. Likewise, all men are cautioned not to make Halakhic decisions when they drink wine or any other intoxicating things. . . this even goes if the legal matter is simple. But if the legal matter is clear (without debate) among the commentators, then one can rule on those matters that are obvious.

14. Any Chakham ("scholar") that is qualified to rule on a case but nevertheless does not sit in judgement, behold, this is an impediment to Torah. And this puts stumbling blocks before the masses. Therefore, it is said about him, [quoting from an interpretation of Lamentations Rabba to Lam. 3:4] "'He has broken my bones,' ["referring to men who were the mightiest."].

Mappah: The matter of smekhut ("ordination"): this refers to the custom of smekhut that is practiced today so that all people will know that one is qualified to give legal decisions, and that which he rules has the authority of his Rav, who ordained him. And therefore, if his Rav is already dead he does not need smekhut for authority. Similarly with a Talmid Chaver as it has been explained above, that he does not need reshut and he also does not need smekhah (after the death of his Rav.). This is according to Ribash in his Responsum #271. And there are those that say that whoever is not "ordained" to be Moreinu ("our teacher") and yet still rules in cases of divorce and chalitza ("renunciation of a levirate marriage") that his rulings are worthless. One must be concerned with gittin ("divorces") and chalitza as to whether it is correct or not. That is, unless he is known to the masses as an expert and that the only reason he did not receive smekhut is because he is strong in modesty and humility and he did not seek the status of greatness. And there are those who disagree and are more lenient in this matter (compare Ribash Responsum #271). And in the case of a desertion there is leniency if the (non-ordained scholar) has already been given the gittin or if the chalitza has already been awarded. But not in some other manner, because the minhag ("custom") of Israel is like Torah. I agree with this opinion. I also agree that one is permitted to give the title Moreinu ("our authority") to one who performs gittin even though the legal status of smekhah that was current during the days of the Rishonim ("early sages") meant much more than this. In any case, [Smekhah] is now nothing more than the receiving of reshut (permission/authority), and there is no objection.

Note that Moses Isserles succinctly summarized the

establishment of two important characteristics of the Rabbinate in the sixteenth century. First of all, he confirmed that the professional Rabbinate can be supported in the Halakha by the rule of minhag ("custom"). Minhag, as we discussed earlier, is a crucial Halakhic tool for the medieval Rabbis as they sought to solve some of their most pressing social and religious needs. Secondly, Isserles described the modern smekhah and approved of its use (though he was careful to mention that the modern smekhah is not the same as the original smekhah).

The following several laws are concerned simply with the ways in which students must show respect for their teachers. They will go without elaborate comment, for the most part, because they are not significant to our issue.

15. It is forbidden for a student to call his Rav by his name (without the respecting titles) both during his lifetime and after his death. It is even forbidden to call others by their names if their names are similar to the name of his Rav. But if his name is "Peli" [the name of an angel, i.e. if the Rav has a very unusual and easily recognized name], an uncommon name, then you can call him by his name.

Mappah: But if his name is common it is permitted to mention it but not in the presence of one's Rav. All of this is, of course, when there is only mention of the Rav's name alone, but it is permitted to say, "My Rav, my Moreh So and So." [i.e. with titles]

16. One does not greet his Rav nor does one answer his greeting in the common manner. Rather one bows before him and says with awe and respect, "Peace be upon you, Rabbi." And if one's Rav greets him, he may say, "Peace be upon you *"Mori v Rabbi."*

Mappah: This is also our custom. There are those who say that the student should never initiate conversation. For it is said, "The young men saw me and hid themselves." (Job 29:8)

Karo: One does not remove his Tefillin [In the different codes, various spellings are found, Karo, in his Shulchan Arukh and Rambam in Mishneh Torah, wrote "Teffilav"; while the Tur and Karo's Beit Yosef has "Teffilin"] in the presence of his Rabbi. Do not recline before him, rather sit, as one would sit before a King.

Mappah: When one's Rav sits to dine with others, one can sit if first one has received permission from his Rav and afterwards, permission from the others.

Karo: One should not pray in front of, behind, or to the side of his Rav. And it is not even necessary to mention that it is forbidden to walk by his side. Rather walk at a distance behind one's Rav. It is surely not the intention for one to walk directly behind him, rather, be off to one of his sides [diagonally to him] whether one is praying with him or walking with him. Any position is permitted when one is outside of 4 amot (i.e. approximately 12 feet) from his Rav. One should not enter into the bath house with him, unless he requires assistance.

Mappah: But if the student was washing before his Rav, and his Rav then came, the student does not have to leave. And with all of this only refers to a place where one goes completely naked in the bath house. But in a place where one goes into the bath house wearing some clothing, it is permitted. (i.e. to be in the bath house with one's Rav) And the common custom is that one may enter the bath house with one's Rav, or his brothers, his father in law, his step father, or his brothers in law, even though in the Gemara it is forbidden to do so. But the reason it is now permitted is that we go to bath house wearing clothes.

Karo: And one does not sit before him (the Rav) until he tells him to sit. And one does not stand until him to stand, or until he gives him permission. And when one departs from him, he should not turn away abruptly, rather he should

withdraw while facing the Rav.

Mappah: And when one departs from one's Rav and has taken authority to practice from him if he then lodges [i.e. remains in town] over night in the city, then he is required to return to the Rav for permission. But of course, this is only if the Rav was not told from the beginning that he intends to lodge overnight in the city. But if he told him at the time of getting authority one does not need to return and get permission.

Karo: Do not sit in his place and do not concur [i.e. Do not even say "you are right"] with his words before him and do not contradict his words.

And one is obligated to stand at attention before him upon clearly seeing him from a distance and remain standing until he is concealed from sight, so that one cannot tell if he is still standing, and only then may one sit. And even if he (the student) is riding in a carriage, he needs to stand before him (the Rav) for the one riding is considered just as if he was walking.

Mappah: And there are those that say that one is not obligated (*cha'yav*) [here Rambam uses the word "*Rashai*" i.e. one is not entitled] to stand before his Rav in the morning and the evening, that is, of course, only when they are in his (the Rav's) house [i.e. in school. But before others that do not know that he rises before him [i.e. they are standing before a Rav], he must stand.

17. When there are three walking together, the Rav is in the middle, the oldest student is on his right and the youngest student is on his left.

Mappah: As to what they say concerning the "honoring of the Rav along the way" this may only be when he is in the doorway, and then each goes his own way if they are not in a group. But if they are walking in a group is walking, one of them will be "the most distinguished" and thus will deserve the honored place. And in a dangerous place one does not need to honor at all.

18. If they call one's Rav up to read Torah in public one does not need to stand all the time while the Rav stands.

Mappah: And so too, when the Rav stands up in the high place of his house and the students are on the floor they do not have to stand before him. And when the Sepher Torah is on the Bimah the public that is in the Synagogue does not need to stand, since the Sepher Torah is in a different domain. [This refers to a legal fiction that says things on different levels, though they may be in the very same room, are considered as being in different domains. Thus, the congregation doesn't have to stand up throughout the Torah service.]

19. All work that a slave does for his master, a student should do for his Rav. But not if he is in a place where they don't recognize him and he does not have Teffilin for his head [and thus recognizable as a pious student and not a slave] there is a concern lest they think he truly is a slave then he does not have to serve his Rav by helping him on and off with his shoes.

20. Anyone who prevents his student from serving him is preventing him kindness and disrupts his fear of heaven. Any student that disregards any matter concerning the honor of his Rav causes the Shechinah to flee from Israel.

21. There is no allotment of honor for the student before his Rav unless his Rav gives him a portion of honor.

Mappah: Also, the student of his student or the son of his student are not permitted to stand before the Rav, nor before the father of the student unless the Rav so honors him. That is, of course, if the Rav is also the Rav of he who sits before him.
(i.e. the father's Rav is also the son's Rav)

22. If one sees his Rav transgressing some matter Torah he should say to him, "Did you not teach me Rabbi such and such?"

Mappah: If he wants to transgress only what is forbidden by the Rabbis the student should still protest against him. One who sees his Rav making some Halakhic decision and he has some difficulty concerning his decision; if the decision is forbidden by Torah he should present his difficulty before the action is done. But if the Rav's decision is forbidden by the Rabbis he can

leave protest until the deed is done and afterwards present him with the problem. That is done since one does not know if this was truly a transgression or not.

23. Anytime that one recalls a [varying] tradition than one his Rav taught, say to him, "thus you have taught me from our Rabbis."

24. One should not say anything that he did not hear from his Rav until he recalls the name of he who spoke it.

25. When one's Rav dies one rends all his garments until his heart is exposed [a major tear]. And there are those that say that one does not rend his clothes except a little bit. And one does not ever stitch the tear. And one should mourn for him by taking off his shoes. All the other laws of mourning from the dying day or from the moment one hears of his death apply.

26. Even if one hears the report of his Rav's death much latter, he should still rend his clothes just as he would for his own father.

27. He whose Rav is lying dead before him should not eat meat nor drink wine. And all the other like prohibitions that apply for one who's dead are lying before him apply to him.

28. When one mentions his Rav during the first 12 months after his death he should say, "May I be an expiation for his rest." [This is usually only said for parents who have died.]

29. Spitting in the presence of one's Rav is forbidden because, "All they that hate me love death." (Proverbs 8:36) [Spitting here is, of course considered an insult in certain circumstances.]

Mappah: This is only when his phlegm exits his body with force. But if he spits out in the world it is permitted, especially if one is compelled to spit.

Beginning with law #30 the Shulchan Arukh again addresses issues that reflect significantly on the professional Rabbinate. Below, Karo confirms the definition

of a Rav Muvhak. Isserles then makes an interesting statement concerning the essentials of the Rabbinate. Finally, though Karo says that the main body of honors are designated solely for one's Rav Muvhak he does extend certain honors to one's Rav who was not a Rav Muvhak.

30. All of these things that we spoke about concerning how one needs to honor his Rav, these were only said concerning the treatment of a Rav who is his Rav Muvhak ("principle teacher"). That is, the one who taught him most of his knowledge of either, biblical text, Mishna, or Gemara.

Mappah: And in these days the essentials of the Rabbinate do not rely on one who teaches pilpul ("rhetorical argument") or chiluk ("difficult analysis") for it is our custom these days that only those who teach legal adjudication and other deliberations that establish truth and righteousness, only they will be deserving of the honor due one's Rav. But if he did not learn most of his knowledge from his Rav he does not need to honor him in all of these matters. But he should stand before him when he comes within 12 feet and he should rend his clothes for him just as he would rend for all of those he mourns . . . even if he did not learn but one thing from him large or small. He shall stand before the Rav and rend his clothes when the Rav dies.

31. Any Talmid Chakham that has established his own opinion, may not speak of it before one who is greater than he in knowledge, even though the greater scholar never taught him anything.

Mappah: And one should not make Halakhic rulings until he is 40 years old if there is a greater scholar than he in the city, even though he is not his Rav. When a Chakham forbids something, his colleagues are not authorized to permit it by means of "judicial

discretion" ("mishkol hada'at").³ But if his ruling is based on a mistaken tradition [that is, a tradition that has been long proven as incorrect, but for whatever reason, this Chakham is still basing his decision on it] or a misreading of the Mishna [that is, all of the accepted Halakha] one may permit (what he has forbidden). But if there is an error of "judicial discretion" (*shikul hada'at*), one may debate with the Moreh until he retracts from it. And therefore, a litigant is not forbidden to ask a second Moreh [to offer a second opinion on the disputed case] as long as the litigant informs the second Moreh that a previous Moreh has already ruled on the case and forbade the litigants request. And if the first one permitted something and his legal decision has already happened then the second one can not forbid it from "judicial discretion."

All of this is when there are two legal decisions of the same case, but when there is a different case that is similar, then one can rule however it appears to him. [that is, a Moreh does not have respect precedent]

32. And if the Rav who is one's principle teacher

³. "*Shikul hada'at*" refers to a disputed issue in the Talmud which has not been decided within the Talmud. Sanhedrin 33a explains the term: "Rav Sheshet said in the name of Rav Asi: "[If a Judge] erred in a matter explicit in the Mishna (*"devar mishna"*), his decision is reversible. If he erred in a matter of "*shikul hada'at*" his decision is not reversible." . . . "What, then is *shikul hada'at*? Rav Papa said: "It occurs, for example, when two tannaim or two amoraim disagree with each other and the law has not been determined according to either opinion, but general practice follows one of the positions, and the Judge acted according to the other. That is *shikul hada'at*." Thus a Judge's decision can be refuted if one can prove that he did not follow the "*nitpashet minhag haolam*" (i.e. the widespread agreement that follows one of the two disputed opinions) rather he followed the minority opinion (the Judge can then be said to have made an error in *shikul hada'at*.) But, as Rabbi Menachem Ha-Me'iri points out, if the Judge offers proof for his "minority opinion" or if he refutes the earlier authorities then his opinion is not an error.

Therefore, the best translation of *shikul hada'at* is "judicial discretion."

For an indepth review of these principles please refer to Joel Roth's Halakhic Process, pp.90ff.

waves his honor in all of these matters, or even in only one of them for all of his students, or to one student, then his honor is waved. But it is still a commandment for all his students to honor him.

Mappah: It is forbidden to disgrace him.

33. May the honor of your students be as dear to you as your own honor. (Mishna Avot IV:15)

34. If one's father lost something and one's Rav lost something, then he retrieves what the Rav lost first. But if the father is considered as great as the Rav then retrieve the father's loss first.

If his father and his Rav are both carrying burdens, he helps his Rav first and afterwards he helps his father. If his father and his Rav are both captives in a prison, he should free his Rav first and afterwards his father. However, if his father is a Talmid Chakham, he frees his father first, and afterwards his Rav.

Mappah: And so, one extricates his father's burden, if the father is a Talmid Chakham, and afterwards helps his Rav; even if his father is not of the same scholastic stature as his Rav. But one does not return the loss of his father before the loss of his Rav unless the father is equal to the Rav in knowledge.

There are those that say that surely when his Rav is so honored before his father, this means that he studies for free... but if his father pays for him to have a Rabbi, then the father comes before the Rav in all things.

And this seems to me the principle of the Rav-Father relationship.

35. Retrieve his own loss before that of his father or Rav.

36. If one who says to his colleagues "I would never accept your ruling even if you were like Moses." They should whip him because of his contempt.

Mappah: And in the case of a Talmid Chakham who spoke about a matter of Halakha concerning a case in which he had a stake in its outcome; if he spoke before the fact, we listen to him, if not we

do not listen to him. But this only applies when he says "I received an opinion." [that is, don't listen to him] But if he provides the proof for that "received tradition", and the logic appears to be correct, then we listen to him.

Thus we do not listen to his own opinion [in a case where he has a stake] lest he be tempted to employ an inappropriate analogy to a different case.

But if it is a simple case, then we will listen to him.

The laws which we have just reviewed reflect the development of centuries of Halakhic growth. It is far beyond the scope of this work (and it is certainly beyond my expertise) to analyze the specific development of the above principles. Still, we have been privy to a glimpse of the development of the several crucial aspects of the Rabbinat. We have seen how the Shulchan Arukh accepts the reinstitution of the smekhah. We have seen how the relationships between students, their Rabbis, their "principle Rabbi," and their colleagues were defined by the succeeding generations of Halakhic commentators.

What follows is the text of Shulchan Arukh 243. In it we will see how Joseph Karo and Moses Isserles incorporate some of the various benefits and rights due a Torah Scholar. Note that Joseph Karo in 243:2 differentiates between Scholars and those full time Scholars who fill the ranks of the professional Rabbinat.

Laws Concerning the Honor of a Talmid Chakham

#243 A Talmid Chakham is exempt from taxes and he may sell his goods first.

1. The Talmidei Chakhamim do not have to go out themselves with the rest of the community to take part in building and digging and other such tasks, so that they will not lose respect from the common people. And they are exempt even from paying others to take their place (in the building of walls etc.)

2. In what context are these words, ("to go out themselves"), said? That when every man actually goes out himself to do the work. But if they do not go out themselves, rather, they hire others to go in their places or if the town's people are assessed a certain monetary amount to do the work then it is not called "going out yourself." If there is a project that is necessary in order to sustain life, for instance; digging water wells and the like, then they (the Talmidei Chakhamim) are obligated to give their share.

Mappah: Also, if at the beginning they went out themselves to help and only later did they determine to pay other to go in their places, in that case the Scholars are obligated to pay their share.

Karo: But if it is a project that is needed only for the protection of the city; for instance, the building of the city walls and towers and the payment of her guards, for these the Scholars are not obligated to pay anything. For they do not need human protection for their Torah is their protection.

And therefore they are exempt from all types of taxes, whether the taxes are assessed collectively from all the inhabitants of the city, or whether the tax is collected individually from each man, whether it is a fixed tax or whether it is not a fixed tax.

The city's inhabitants are obligated to pay for them (the Talmidei Chakhamim), even the fixed tax which is assessed on each and every individual.

Mappah: And even if the ruler says that the Talmidei Chakhamim themselves have to pay, the public is still obligated to give on their behalf. But if the public confiscates the amount due from the Talmidei Chakhamim, they may not be put in cherem ("excommunication").

But the Talmidei Chakhamim can excommunicate and ban those who are murderers. And it does not matter if the Talmid Chakham is rich or poor, he is still exempt from taxes.

Karo: Of course this applies only to those Talmidei Chakhamim who are Torahtam Um'notam ("for whom the Torah is their occupation" i.e. they are studying and teaching full time, they are PROFESSIONAL RABBIS)

But if the Torah is not their full time occupation [if they are not professional Rabbis] then they are obligated to pay taxes. How do we define a "Torahto Um'nato?" A Torahto Um'nato is one for whom the Torah is at least a little part of his occupation or a little of his business by which he earns his living so that he might survive but not enrich himself. And anytime that he is free from his secular business, he returns to the words of Torah, he studies regularly.

Mappah: And there is no difference whether he occupies a Yeshiva or not, only that he is acknowledged as a Talmid Chakham of his generation and that he understands most of the Talmud and its commentaries and the decisions of the Geonim and that his occupation is Torah (Torahto Um'nato), just as has been explained. This is so even though we do not have today, in our generation, a Chakham to whom they would give to him a pound of gold as compensation for any insult. In any case, in the matter of exempting him from taxes, the ultra-pious do not go along. Rather only those who are acknowledged as Talmid Chakham, as has been explained previously. In anycase there are places where it is their custom to exempt a Talmid Chakham from taxes and there are places where it is not their custom to exempt them.

In 243^a.2 Joseph Karo and Moses Isserles confirm the establishment of the professional Rabbinate. Much of their text comes directly from the Tur. Three interesting notes: 1) Isserles' confirmation that there were still those (ultra-pious) individuals who felt it improper to grant the contemporary Scholars tax advantages; 2) Isserles admits

that the modern Rabbi is not in the same category as the Sages of old. He makes this point by saying that today's Scholars are not to be compensated a pound of fine gold when they are offended (a Talmudic law); and 3) Isserles notes that the institution of the professional Rabbinate was not universally developed. There remained places where Rabbis did not receive certain benefits. Whether these locales made their decision based on a Halakhic opposition to the tax exemptions or it was simply a matter of economics is unclear.

The Shulchan Arukh continues with a listing of several special rights due the Torah Scholar. Again, much of the text comes directly from the Tur.

3. A Talmid Chakham that disregards the mitzvot and does not fear heaven, behold he is like the lowest of all the people.

4. If a Talmid Chakham has goods to sell, another man may not sell the same goods until the Scholar's goods are sold. But this does not apply if a non-Jewish merchant comes for if there is no benefit then we do not cause people to suffer a loss.

5. A Talmid Chakham that has a lawsuit against someone and he stands before the court and there are a number of other litigants before him, then the case of the Scholar is taken first, and he is seated. (even if the other litigants must stand).

6. It is a great sin to disgrace the Scholars or to hate them. And anyone who disgraces the Scholars will have no part in the world to come. This is the general rule (i.e. its ramifications are all encompassing) because the word of God was despised.

Mappah: And since it is forbidden to be served by one who [merely] has learned (lit. "repeats")

the law, all the more so is it forbidden to be served by one who has learned the Talmud [in Megilla 28b] [The inference is that to have one of these honored men serve you is an insult to the Torah.]

7. One who witnesses someone who disgraces a Talmid Chakham even with words (Mappah: Even if he is not before him. That is, even after the Scholar has died.) . . . the courts can excommunicate him, and they shall not free him from the ban until the Chakham wants to do so for him. And if one disgraces a Chakham after his death the court shall excommunicate him and they may not free him from the ban until he repents.

Mappah: But it is not the law concerning a Talmid Chakham of today that the one who disgraced him shall give a pound of gold as compensation. In anycase, the Beit Din (the Rabbinic court) fines the disgracer according to the sin of the disgracer and the honor of the disgracee. . . and this is only so that the Chakham will not begin to despise a fellow human being because of the controversy, and also, that he who is caused disgrace should have some protection. Anyway, even if the Chakham started (to despise that offending person) a little, no one has the right to behave insolently against another and to afflict him with impudence. All this is according to the view of the Judges.

8. The Chakham who excommunicates the ignoramus in defense of his own honor can also declare him free of the ban. And he has no need of testimony, nor eyewitness accounts, and they do not need to free him ulof the ban until the Chakham so desires. If the Chakham is dead, a Beit Din of three comes to free the offender of the ban. If the Chakham desires to wave his honor and not excommunicate, he has that right.

Mappah: There are those that say that at this present time a Talmid Chakham cannot excommunicate for the sake of his own honor, and he may not ban someone's soul. But there is disagreement. Thus it is solely determined by one who is acknowledged and found worthy, (as having the right to ban).

9. Even though the Chakham has authority to ban someone for the sake of his honor there is no praise for the Talmid Chakham that habituates

himself in this matter. This applies only to one who insulted him in secret. But if he insulted him (the Scholar) in public, it is forbidden for him (the Scholar) to forgo his honor, rather he should retaliate and bear a grudge for this matter is like the snake (that caused the down fall of Adam and Eve) and pursue him until he requests forgiveness from you, and then forgive him.

We will conclude our review of Shulchan Arukh Yore Deah with an examination of 245. Specifically 245:22 for it contains several pertinent statements concerning Rabbinical fees. Some of the laws, of course, refer to the elementary hebrew teachers and not to Rabbis. Isserles concludes with the most definitive statement yet found in the sources of the position, role and selection process of the "Rav ha-ir" (i.e. a city's Chief Rabbi).

#245: It is an obligation for every man to teach his son and to raise Scholars.

22. If one of those who live around a courtyard or on a side street requests to teach young children, his neighbors cannot protest against him. Likewise if one is teaching young children and there comes a colleague who opens another school house for young children next door, as long as he is teaching other children, or as long as the students who went to the first one continued to go there, the first teacher may not protest against his new colleague. For it is written, "The Lord was pleased for His righteousness'sake to magnify Torah and to make it glorious."
(Isaiah 42:21)

Mappah: If there is a Rav who maintains a yeshiva in a city and teaches to a great number, then another Chakham can come and can also teach there, even if the financial support of the first Rav is diminished a little. For instance; if the community accepted the first one as their Rav and he was given a salary from them, nevertheless, and

second Rav can come to dwell there and to practice Rabbinics in all ways just like the first, that is if the second is a great and worthy a Rav as the first. But if a guest Chakham comes to the city he may not diminish the income of the Rav that lives there by doing weddings or betrothals, or even by taking a future reward since that is part of the income of the Rav who lives there. But he is permitted to do the wedding and to give the payment to the established Rav. Likewise, he is permitted to judge a case between two litigants that are in the city that brought their case before him. For perhaps the Rav of the city cannot mediate. But he may not rule on cases of Issur V'heteir ("ritual law ") nor may he interpret something that would assume authority and thus exercise authority in a colleague's territory. Whoever is acknowledged as the Rav of the city (even if he only claims himself that office of authority) another may not bring down his greatness, even if the other one who comes is greater than the first. And his rule extends unto his son and his son's son forever. And those (descendants) will have priority over others as long as they succeed their fathers in piety and they have at least a little scholarly ability. And there are places where there is the custom to accept a [Chief] Rav for only an allotted time, or the custom to choose whoever they desire communities have the authority to do this. But whenever a community accepts a [Chief] Rav; all the more so, let no other authority in the world come to rule over him, nor can any other authority bring down his rulings.

While Joseph Karo's comments to 245:22 focus on the elementary hebrew teachers, Isserles moves the discussion to the Rabbinate. Isserles makes several important statements. First of all he discusses the roles and privileges of the Rab Ha-ir the communally chosen Chief Rabbi. The Rab Ha-ir is to be protected from competition from any other Rabbi who may come and perform a Rabbinic function like weddings or divorces and thus diminish the Chief Rabbi's salary base.

Note that there is no struggle here with the issue of the propriety of accepting the fees. The only concern is for the financial welfare of the Rabbi. The position of Chief Rabbi is also destined to stay within one family. Isserles cites Rambam's Mishneh Torah Hilkhoh Melakhim 1:7 (which says: "Not only Kings, but all appointed offices over the people of Israel are inherited by son and grandson forever, providing that the son succeeds his ancestors in wisdom and piety.") in maintaining that the Chief Rabbi's son should receive first priority in the selection of his replacement.

Finally, Isserles again notes the key role of minhag in the institution of the Rabbinate. In this instance, the minhag is in the selection process of the Chief Rabbi. Some communities hire a Rabbi for a limited period of time, others offer the lifetime contract. Each case, Isserles says, is justified by the law of minhag.

This review of Shulchan Arukh Yore Deah is hardly comprehensive. There are several other passages which are worthy of mention but for space and time considerations. I would like to refer to the significance of Yore Deah 246:21 in which Isserles addresses the propriety of accepting fees. He mentions the general proofs and objections on both sides of the issue. He summarizes the debate, saying:

"And therefore, it is a custom throughout all of Israel that the Rab Ha-ir has both a collection fund and maintenance fund from the people of his city so that he will not have to engage in a secular occupation. . . and thus it is permitted for us to give financial compensation from a fixed

communal fund."

The issue of a communal fund is also discussed in Shulchan Arukh Choshen Mishpat. There are several significant in Choshen Mishpat Chapter 9. We will end our study with a review of them.

Shulchan Arukh Choshen Mishpat Chapter 9

9.3 It is our custom to make a kupa (a communal fund) that will parcel out money (mamon) for the Beit Din. The raising of these funds is either in the beginning or the end of the year. And the laws of shochad (bribery) and agra (profit) have nothing to do this [custom]. For Israel is obligated (chovah) to support their Judges and their Sages. And also, if there are voluntary contributions or dedications then the Judges may take from these funds.

Mappah: It's better to raise the funds at the beginning of the year so these funds will be ready for them and so they [the Judges] will not need to ingratiate themselves or [be tempted to] grant favorable rulings to any man.

9.5 One who receives payment in exchange for his judgment, all of his judgments are invalid unless it is known that he did not [really] take payment for them [his judgments]. If one only took sekhar bateilto (compensation for his loss) it is permitted. And this [applies when he] is recognized as one who only takes a salary when he suffers a loss, for instance: when one has a secular occupation that he does at the time when two litigants [approach him for a ruling]. Then he may say to them, give me my workers wages that I will forfeit [while he is busy ruling on their case]. And he may receive from both of them equally. But if he is not recognized (Mappah: i.e. if it is not known that he has a secular occupation) for instance, one that says: "Perhaps they will offer me payment for [ruling on] this business contract or mediation" and for this he requests payment, this is prohibited.

For the most part, Karo simply confirmed the earlier

rulings of the Tur on the matter of shochad versus sekhar batalah. Note that the Bayit Chadash adds an interesting note to Karo's prohibition against receiving payment for business contracts and mediation. He says: "But payment for helping them reach a compromise (peshara) is permitted."

In any case, it is clear that what Karo opposes is that charlatan who contrives to enter the Rabbinate in order to earn a wage. One should devote themselves to the life of Talmud Torah out of love of God and not love of money. However, it is a difficult call. Who can tell if one is a pious Rabbi who justly deserves financial support, or if he is simply a charlatan? The Bayit Chadash obviously felt it was better to err on the side of generosity.

Choshen Mishpat established the institutionalization of the communal funds for the support of the Rabbis. Note that neither Karo nor Isserles presume that the communal support eliminates the need for "outside income." Thus, it is still permissible for Rabbis to maintain secular occupations and to collect sekhar batalah.

Both Karo and Isserles are careful to note the objections to the practice of Rabbinical fees, gifts, and salaries. But, they conclude, that it is the minhag of Israel to support their Rabbis and students so that they can devote all of their energies to Torah. In the end, it is the pragmatic arguments which end the debate.

CONCLUSION

At the beginning of this thesis we declared our desire to determine whether or not there was a significant change in how the Rabbinate was portrayed in the Halakhic sources from the Talmud to the Shulchan Arukh. Specifically, we were anxious to detect any development, or "evolution," of a "professional" Rabbinate. Many scholars have published their views concerning the development of the professional Rabbinate. Their articles conclude in matter-of-fact tones that certainly the Rabbinate gradually evolved into a professional institution. Many of them even are so bold as to cite specific Rabbis as the "first professional Rabbi." Let us review a few of these theories and then compare them to what we have learned in our study.

The Encyclopaedia Judaica's article "Rabbi, Rabbinate," (written by the editors) offers the following exposition:

"The office of Rabbi was originally an honorary one on the principle that the Torah had to be taught free of charge. It was not until the 14th century that there is the first clear evidence of a Rabbi receiving emoluments. When Simeon b. Zemach Duran fled from the anti-Jewish riots in Spain in 1391 and arrived in Algiers the local community wished to appoint him as Rabbi. He pleaded inability to accept as he was penniless and had to earn a livelihood. In order to enable him to accept the position, a formula was worked out whereby instead of a salary for his services he was to receive sekhar batalah i.e. compensation for loss of time due to his preoccupation with his Rabbinic office. This remained the legal basis in Jewish law for a Rabbi receiving a salary, even though in the modern period the Rabbi's salary is generally regarded as in the category of a

professional wage with contracts written between Rabbis and their congregations."¹

This article makes several assumptions: 1) the office of Rabbi was originally an honorary one and received no financial compensation; 2) there was no clear evidence of Rabbis receiving financial compensation until the fourteenth century; 3) R. Simeon b. Zemach Duran was the first professional Rabbi; 4) the Halakhic principle of sekhar batalah was "worked out" especially for R. Duran (implying that the principle heretofore had not been employed); and, 4) that Rabbis did not receive a true "professional wage" with a written contract until the "modern period." We have already reviewed the many shortcomings of this article's claims concerning R. Duran in our chapter on that great scholar. Let it suffice to say that the article's other assumptions: that the Rabbinic office was (originally) strictly honorary and received no compensation; and, that sekhar batalah was worked out especially for R. Duran, are simply wrong. We have reviewed many Talmudic passages which refer to financial compensation for the Rabbis, and the principle of agar batalah (aramaic for sekhar batalah) was well established in the Talmud.

Solomon Freehof offers a detailed and scholarly review of the development of the professional Rabbinate in the following Responsum (Vol. LXXVI) on Rabbinical fees and

¹. Encyclopaedia Judaica, "Rabbi, Rabbinate," pp.1446-1447.

salaries:

"Originally no fees and no salary were deemed to be justified or permissive for any of the functions which we now look upon as the essential part of the Rabbinate, namely, for teaching the Torah, for making decisions on the basis of Jewish law, for officiating at weddings or at divorces, etc. There was, first of all, the general ethical objection to getting any material benefit from the study of the Torah, as is stated in the Ethics of the Fathers. . . Nevertheless, even in the Talmud, as the need for special training grew, this general prohibition was mitigated step by step. A teacher could be engaged for pay to teach children. Yet could he be permitted to receive pay when the duty of teaching was religiously incumbent upon him? The Talmud says that the teachers of children were paid not actually for the teaching of the Torah (which was their religious duty), but for teaching the Pisuk Hate-amim, the punctuation and accents, etc., which they were not required to teach (Nedarim 37a)²...

Freehof goes on to mention the comments of the Tosafot to Bekhorot 29a which justify the giving of salaries when the teacher has no other means of support. He also cites Joseph Karo's rulings in his Kesef Mishneh to Rambam's Hil. Talmud Torah 3:11, and in the Shulchan Arukh Choshen Mishpat 9:5 in which financial support is justified when the Rabbi has no other means of support. Freehof also mentions the fact that Karo claims that since the time of Rambam the custom is for Rabbis to receive salaries. Freehof maintains that Karo's rulings have "to be understood in the light of the series of Responsa 142-148 of Simon Ben Zemach Duran and

². This Responsum can be found in American Reform Responsa: Collected Responsa of the Central Conference of American Rabbis 1889-1983, ed. Walter Jacob, (New York: CCAR, 1983), pp.523-527.

his commentary to Ethics of the Fathers IV.5."

Freehof concludes by saying:

"The fact of the matter is that it simply became necessary to professionalize the Rabbinate, and so Isserles (with reference to the Responsa of Simon ben Zemach Duran) simply says: 'Therefore it has become the custom in all the places that the Rabbi of the city has income and support from the community in order that he need not engage in other work.' . . . As to the difference between fees or salary, there is really no choice as to which would be deemed worthier or more ethical. The older law objected to both. Yet, as can be seen from the arguments of Duran, the paying of a regular salary developed later than the receiving of separate fees for specific services. He bases his justification for accepting a salary (hitherto unprecedented) upon the fact that Rabbis have 'always' received 'fees.' But this was to be expected as a natural evolution: first, separate fees were justified, and then the custom of a salary was established."

Freehof's theory makes several claims: 1) the Mishnaic law of Pirkei Avot (Ethics of the Fathers) I.13 and IV.5 that in effect prohibited Rabbinical fees was earlier than other Talmudic rulings that permitted them. (Note that Freehof does not mention the Mishna of Bekhorot IV.5 in which R. Ila received fees.); 2) it is implied that it was the Tosafot who devised the principle of sekhar batalah; 3) there was a "natural evolution: first, separate fees were justified, and then the custom of as salary was established"; and 4) it simply became necessary to professionalize the Rabbinate.

I certainly am in awe of the great scholarship which our teacher, Rabbi Freehof, has produced over his long and honored career. Of course, if his Responsum would have

afforded him more space he would have filled in the details which I feel are important for us to add. Freehof should have mentioned a number of the other Talmudic passages in which Rabbis received salaries from funds (and not just the occasional fee). I refer specifically to Ketubot 105a in which the Judges of Jerusalem received their salaries out of the Temple funds, and to Chullin 134b in which it is ruled that it is the obligation of Israel to make the Head of the Academy (in this case R. Ammi) the wealthiest among his brethren, and to Yerushalmi Hagigah 1:7 in which it is explained that the towns of Israel were destroyed because they did not pay the scribes and teachers their due salary. It is also curious that Freehof did not mention the evidence of Rabbis receive remuneration in the Responsa of Alfasi and Gershom. Finally, why did he not mention the very words of Rambam, who opposed Rabbinical salaries himself, yet who acknowledged that "the great majority of Torah scholars" support Rabbinical fees. Thus the custom of Rabbinical fees and salaries precedes Duran. As to Freehof's contention that separate fees preceded the establishment of set salaries; it is a logical conclusion but rather difficult to prove from the texts themselves. We have already mentioned Ketubot 105a and Chullin 143b, and Yerushalmi Hagigah 1:7 as passages which probably refer to set salaries for Rabbis; but there other passages which could be read either way. For instance, in Sota 40a we

find the following story:

"The Rabbis decided to appoint Rabbi Abbahu as principal [of the academy]; but when he saw that Rabbi Abba of Acco had numerous creditors [pressing for payment], he [Abbahu] said to the Rabbis, There is a greater [Scholar than I for the office]."

Obviously, Rabbi Abbahu saw the office of head of the Rabbinical academy as a lucrative one. Does that mean the office came with a set salary? Or would the head of the academy simply have taken his "fair share" from whatever voluntary contributions came to the academy (like R. Ammi in Chullin 134b). There certainly is a fine line between accepting a "salary" and receiving a "percentage of the take." Seder Rab Amram records the tradition of the Geonim receiving a set percentage of the contributions.³

Freehof's last point, that it simply became necessary to professionalize the Rabbinate, is indisputable. The question remains, however, as to when it became necessary. Those who wish to maintain the view that the professionalization came after the fourteenth century have to ignore a great deal of evidence in the early Halakhic literature.

Bernard Rosensweig has another theory of the development of the professional Rabbinate. He writes, both

³. On the very first page of Seder Rav Amram Gaon there is a reference to the donation from a Ravna Ya'akov ben Ravna Yitzhak of twenty gold coins, Rav Amram kept five and the other fifteen went to the general yeshiva fund. Seder Rav Amram Gaon, ed. Daniel ben Sholomo Goldschmidt, (Jerusalem, Rav Kook) p.1.

in his article "The Emergence of the Professional Rabbi in Ashkenazic Jewry"⁴ and in his book: Ashkenazic Jewry in Transition⁵ that there were no professional Rabbis in pre-Crusade Europe. He attributes this to the fact that the general community was well versed in Jewish law and thus the Rabbi's "tutorial authority" was diminished. After the First Crusade, however, the situation was radically altered. The chaos and slaughter eliminated many great scholars and diminished the general standard of learning in the community. The result was the emergence of the "outstanding scholar" whose expertise and leadership was in demand by the communities. It should be noted that in his article Rosensweig claims that the "radical change occurred, however, after the Black Death" (1348-1349) while in his book he claims that the situation was "radically altered" in the "aftermath of the First Crusade" (1096). I am sorry that I cannot explain the "radical" difference in his dating of the ascendancy of the Rabbinate.

Rosensweig maintains that while the fifteenth century Ashkenazic Rabbis received no remuneration from the communities⁶ the Sephardic Rabbis were paid salaries by

⁴. In Tradition, Volume II, Number 3, Fall, 1970, pp.22-30.

⁵. Ashkenazic Jewry in Transition, (Ontario: Wilfrid Laurier Univ. Press, 1975) pp.67ff.

⁶. Tradition, p.25.

their communities from as early as the eleventh century.⁷ Rosensweig, following the general conclusions of Irving Agus, implies that the Rabbinate develops in inverse proportion to the level of scholarship in a community. When the level of scholarship is high, there is little need for a paid, full-time resident Scholar. When the level of scholarship is low, the community needs a permanent Scholar on hand to provide leadership, education and judicial expertise. We discussed earlier how Agus maintains that the level of scholarship in the Sephardic communities was far lower than that of the Ashkenazic communities. Thus, the professional Rabbinate developed quicker in Spain. (We also discussed that this is hardly a universal opinion.)

Rosensweig's article contains another pair of glaringly contradictory statements. At the beginning of his article in Tradition (p.22) he says: "In the Pre-Crusade period particularly--and probably until the end of the thirteenth century--the most significant feature in the structure of the Ashkenazic community was the absence of a "professional" Rabbi..." I take this to mean that by the end of the thirteenth century there had emerged a professional Rabbi. But his concluding paragraph (p.29) includes the following statement: "Beginning with the sixteenth century, Ashkenazic communities began to pay their Rabbis fixed salaries from communal funds, and to exempt them from paying taxes."

⁷. Tradition, p.26.

Again, I cannot rectify his two statements. Possibly he means that the thirteenth century professional Rabbi did not receive a set salary but only supported himself on the fees he received. In any case, Rosensweig's general theory is clear (even if his data and statements are not). He claims that the professional Rabbinate developed in response to the diminishing of the level of scholarship in the Jewish communities after the Crusades and the Black Death. Note that his theory spends no time at all in tracing the Talmudic roots of the professional Rabbinate.

The above sampling of some of the theories concerning the development and "evolution" of the professional Rabbinate affords us a reference to which we can compare the findings of our review of the Halakhic sources. It is important to emphasize that just because our findings might be different than the theories put forth by the historians, does not necessarily mean that their theories are incorrect. Indeed, our survey, while it has been conscious of the historical realities and settings in which the Halakhic work was composed, is nevertheless primarily concerned with how the Halakhic codes themselves viewed the Rabbinate and justified or prohibited Rabbinical salaries and benefits. It is possible, therefore, that some of the Halakhic rulings do not reflect the actual practice of the Jewish community. However, since many of our Halakhic sources referred to actual, real life legal cases, or to the minhag that

prevailed in the Jewish communities, I am convinced that the Halakha (at least for our particular subject) provides us with a fairly accurate picture of the institution of the Rabbinat.

We discovered contradictory passages in the Talmud. Some passages were strictly opposed to anyone deriving any financial benefit from the Torah or the performance of mitzvot. The Mishnayot of Avot I.13; IV.5 and Bekhorot IV.6 set the Halakhic foundation for all of those who would oppose a professional Rabbinat. The drash of Deuteronomy 4:5 that is found in Bekhorot 29a (i.e. "Just as I teach you gratuitously, so you should teach gratuitously.") becomes the anthem for the authorities who seek to prohibit financial compensation. But we found several passages in the Talmud in which the Rabbis are permitted to receive financial compensation and benefits. The Mishna of Bekhorot IV.5 records the practice of Rabbi Ila of Jabneh who charged a fee when he inspected the firstlings. Bekhorot 28b-29b; Kiddushin 58b; and, Ketubot 105a all helped develop the principle of sekhar batalah (i.e. compensation for the loss of time) which is also referred to by its Aramaic equivalent, agar bateilah. This Talmudic principle ensured the right of Rabbis to receive financial compensation. I cannot understand why some of the above mentioned theories insist that this principle was only devised by the medieval Rabbis. We have seen quite clearly

that the Talmud has already established the Halakhic foundation for Rabbinical fees and salaries, the medieval Rabbis simply took advantage of the Talmudic options.

Certainly, one cannot argue that the Talmud projects a "purely honorific" Rabbinate. In fact, the Rabbinate of the Talmud is clearly an institution. The Rabbis have a hierarchy. They have well defined methods of ordination and appointment (Sanhedrin 3b ff.; Erubin 62b, etc.). The Talmud outlines precisely what types of cases a certain Rabbi may judge; ritual cases, monetary cases, or both of them (Sanhedrin 5b "yoreh, yoreh ; yadin, yadin"). The Rabbis were granted privileges in the market place (Nedarim 62a). The Rabbis were granted tax exemptions (Baba Batra 8a). The Talmud even establishes the Rabbis as the successors of the Priestly class (Horayot 13b ff.). The Talmud, of course, establishes the method by which Rabbis may receive compensation for their duties, but it also records examples of Rabbis who receive money from communal funds and donations (Chullin 134b; Ketubot 105a; and, Gittin 60b).

At the very least we must conclude that the Talmud deals with the professional Rabbinate as an unresolved controversy. However, I am inclined to believe that the extensive passages in the Talmud which seek to justify Rabbinical salaries, benefits, and authority are proof that the Rabbinate, as an institution, was already clearly

envisioned. Certainly the need for a professional Rabbinate was already felt. I am reminded of the passage in Berakhot 35b in which Rabbah bar Chanah said in the name of Rabbi Johanan, who reported what Rabbi Judah bar Ila'i said: "See what a difference there is between the earlier generations and the later generations. The earlier generations made the study of Torah their main concern and their ordinary work subsidiary to it, and both prospered. But the later generations made their ordinary work their main concern and the Torah subsidiary, and neither prospered." There may have been a perceived drop in the general observance and Jewish learning in Hellenized Israel. Even if Hellenization and assimilation did not threaten the continued vitality of Jewish scholarship certainly the destruction of the Temple, the devastation of the Bar Kochba revolt and the ensuing chaos of brutal occupation, and the Hadrianic laws, and exile did threaten Judaism. Is it hard to believe that the Jewish communities cried out for permanent Rabbis who would provide religious leadership, legal expertise, and education? In any case, we know from the Yerushalmi that such Rabbis did exist (Hagigah 1:7).

This does not mean that the Talmudic Rabbis dismissed the "ideal" of the Scholar who supported himself with his secular occupation and still had plenty of time for study and teaching. But, as with so many of our ideals, the "Rabbinical ideal" would have to wait ... and wait.

The conclusion that the professional Rabbinate was already an accepted institution by the redaction of the Talmuds⁸ is confirmed by what we learned from the later Halakhic sources. Rabbenu Gershom (960-1040) and R. Isaac Alfasi (1013-1105) refer to Rabbis who are paid salaries in their Responsa yet they make no protest. Instead, they treat the whole matter of Rabbinical salaries in a matter-of-fact way. Both of these great authorities defended the professional rights of the Rabbis in question. We reviewed Alfasi's Responsum 223 which dealt directly with the issue of a Rabbi's contracted salary with a community. Alfasi supported the Rabbi.

Solomon Zeitlin claimed that Rabbi Solomon ben Isaac (Rashi, 1040-1105) played a significant role in the development of the modern authoritative Rabbi. What he meant was that Rashi's rulings and influence increased the power of the Rabbis relative to the lay leadership (Parnasim). We reviewed Rashi's commentary to the Talmud and discovered that he sought to clarify the principles of tircha and sekhar batalah. Rashi also quotes the Geonic understanding of Gittin 60b in which the shifora was

⁸. According to Herman Strack the Yerushalmi Talmud was redacted at the beginning of the fifth century; while the Babylonian Talmud was redacted around the middle of the sixth century (but he notes that L. Low maintains that the Babylonian was not totally completed until the middle of the eighth century). Herman Strack, Introduction to the Talmud and Midrash, (New York: Harper Torchbooks, 1965), pp.65-69; 70-72; and 268.

understood to be a communal fund from which the Rabbis and their students were supported. Thus we can trace the acceptance of financially supporting the Rabbis from the Gaonim through Alfasi and Gershom to Rashi.

We learned that the Tosafists make it quite clear (in their commentary to Bekhorot 29a) that it is "our custom" to financially support those who teach Torah when he does not have sufficient means of support. "And even if he does have sufficient means, he can still receive sekhar batalah."

We reviewed the Responsa and Halakhic codes of: Meir Baruch of Rothenburg (1215-1293); Rabbi Solomon ben Adret (1235-1310); Rabbi Asher ben Yehiel (1250-1327); Rabbi Jacob ben Asher (1270-1343); Rabbi Isaac ben Sheshet "Perfet" (1326-1408); Rabbi Simon ben Zemach Duran (1361-1444); Rabbi Israel Isserlein (1390-1460); Rabbi Jacob Weil (c.1380-1456); Rabbi Joseph Karo (1488-1575); and, Rabbi Moses Isserles (c.1520-c.1572).

We carefully progressed century by century. We sampled the rulings of both Sephardic and Ashkenazic authorities. And, with one exception, they all permitted Rabbinical fees, salaries, benefits and tax exemptions. They were all familiar with the practice of Rabbis receiving money in exchange for their Rabbinical services, and they did not prohibit this practice.

The one exception was Rabbi Moses ben Maimon (Rambam). Yes, Rambam did condemn the practice of an institutionalized

professional Rabbinate. But he did permit sekhar batalah (Hilkhot Sanhedrin 23:5), and as we know, sekhar batalah is the Halakhic foundation for Rabbinical salaries. Rambam also acknowledged that "it is the minhag of the country for a teacher of children to receive remuneration, the father is to pay the fee..." (Hilkhot Talmud Torah 1:7) Joseph Karo also noticed an appreciable softening of Rambam's anti-professional Rabbinate stand. Maimonides' early work, his commentary on the Mishna, is vehemently opposed to the professional Rabbinate. Even still he admits that he is alone in his opposition (commentary to Mishna Avot IV.5). But Rambam's great Halakhic code, the Mishneh Torah, was written when he was a mature scholar. In the Mishneh Torah Maimonides approves of the above mentioned practices of sekhar batalah and the payment of teachers. Maimonides greatly limits his opposition to Rabbinical salaries in Mishneh Torah's Hilkhot Talmud Torah 3:10. Karo's Kesef Mishneh comments on the softening of Rambam's opposition.

Thus, one cannot speak of Rambam as a major obstacle to the professional Rabbinate. First of all, he did permit salaries. Secondly, his opposition may simply have been his way of retaining the "Rabbinical ideal" of the self-supporting Scholar. As we discussed earlier, many scholars see Rambam's commentaries as his "constitution" for a renewed, ideal, and Messianic Israel. At the very least, it can be said that Rambam was a classicist when it came to

Halakha. He prefers the law of the Talmud over minhag. And since he does not believe that the Talmud permits Rabbinical salaries, then he too stands opposed to the professional Rabbinate.

Are we concluding that there was no development whatsoever? No. While the Talmud provided the principles of sekhar batalah and tircha it took the succeeding generations of Rabbinical authorities to further define and institute these principles. The most noticeable development came in the advent of the full-time professional Rabbi: the Rab Ha'ir. We see that the Rabbinate did experience a sort of evolution. However, the evolution was not linear. In many ways the professional Rabbinate of the fourteenth century onwards simply reinstituted the characteristics of the Talmudic Rabbinate.

Now, a reaction to our analysis might be: "the Rabbinic authorities simply want us to believe that they were merely reinstituting the characteristics of the Talmudic Rabbinate. In truth the Rabbis were creating a heretofore unknown entity: Rabbis who are hired as if the Rabbinate was like any other profession. Through fancy reasoning in their codes and Responsa they may try to justify their new creation, but we know better. The classical Rabbinate was an honorific position devoted to Scholarship and sainthood and they never accepted any money for their efforts. They only accepted the occasional fee as compensation for their

loss of time."

To tell the truth, when I began this thesis I fully expected find proof that the professional Rabbinate was simply a creation of the middle-ages. I was convinced that the Talmudic Rabbinate followed the ideal of Mishna Avot IV.5, "surely, none of them accepted money!?" But our review of the Talmud showed that, yes, even the Talmudic Rabbis needed money in order to support themselves. Honestly, is that such a surprise? Indeed, is it a surprise that Rabbis of every age required money for their maintenance? The Halakhic sources show us that the professional Rabbinate was a necessity for all concerned. The Rabbis needed support and the communities needed a local authority. After all, one of the primary Halakhic justifications for the establishment of Rabbinical salaries and Chief Rabbis, was the force of custom, i.e. minhag. Put simply, Jews needed full-time professional Rabbis, Jews had full-time professional Rabbis, and the Halakha confirmed the legitimacy of the practice.

The medieval Scholars cannot be accused of creating the institution of the professional Rabbinate as some radically new innovation. Rather, they simply reinstituted some of the organizational characteristics of the Talmudic Rabbinate. The post-Talmudic Rabbis never had much of a problem justifying their fees, benefits and tax exemptions but over time there grew the need for some organization.

Thus we witnessed the reinstitution of the smekhah,
Rabbinical conferences, Chief Rabbis, etc.

The Halackhic authorities did have to fight against those unscrupulous individuals who only became "Rabbis" in order to benefit from the financial rewards. Indeed, the Talmudic passages which are opposed to Rabbinic benefits were understood by the majority of the authorities to be legislation against the charlatans. However, Israel is obligated to support those Rabbis who sincerely wish to devote their lives to Talmud Torah.

It is true that the Halakhic authorities retained their dream of a world in which all Jews were scholarly, where the Rabbis could support themselves and teach and learn without financial need. It is a credit to the inherent integrity of the Rabbinate that its members longed for the day when their "profession" was no longer needed. One day, when the great majority of Jews are inspired to devote their energy in the pursuit of Jewish wisdom there will no longer be any need for professional Rabbis. Unfortunately, we have not yet formed that ideal Jewish community. And until we do, we, like the generations of Jewish communities before us, will require the services of the professional Rabbinate.

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