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"The Halachah of The Zagoth"

by

Robert A. Rothman

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Since this organization called the Great Sanhedrin, or Bet Din Hagadol, did not operate in a vacuum, nor was it an accidental creation with no causes, this thesis begins with a brief analysis of the origin and originality of the Great Sanhedrin, the word and its usage in other sources (not just those of the Talmud), the meeting place of this legal assembly, the function of the Nasi and of the Ab Bet Din(his vice-president, as it were)and a general discussion of the Halachoth and their character in the period of the Zugoth. The historical era of the Zugoth is, of course, discussed as well, for an historical understanding of the period may often lend itself to a more profound and comprehensive understanding of the motivations for the issuance of certain Takanoth, Gezaroth and Halachoth.

The second through the sixth chapters inclusive, deal with the specific Zugoth, each with its own peculiarities and interests, laws and decrees, men and leaders. The reasons for the issuance of certain laws and decrees are given whenever possible. Some of the Musar, as found in Abot 1, are discussed in the light of the period and era of their originators. Where material was available (both primary and secondary), the personalities and character traits of the Nesim and Abot Bet Din were touched upon.

Chapter seven, which deals solely with the Semicha problem or controversy, was set aside as a separate chapter rather than incorporated into the discussion of each

Zug individually, for this problem bisects the Zugoth vertically, dividing the Neslim and the Abot Bet Din through each and every one of the Five Zugoth. It is for this reason, that although there may be some repetition in chapter seven of material previously discussed in prior chapters, it is viewed from another perspective, that of a motive for a stand either in favor of or opposed to the laying on of hands.

In most instances, the opinions of leading scholars who have grappled with this problem of the Halachah of the Zugoth, is presented. Where-ever possible and whenever possible, the comments of this author are offered. When they are offered, it is with a profound realization that it can be no more than a testing of the argument of one scholar against that of another prominent sage. For this author presume to offer insights based on originality.

Where it is impossible to make any decision regarding a problem (such as the Semicha controversy), the author merely presents the opinions of leading scholars and leaves the decision up to the reader.

The Great Sanhedrin, Origin and Originality.

The origin of the Great Sanhedrin is the subject of much controversy. It is surrounded in obscurity. The early history of the Sanhedrin is not clear. Some of the views of the historians on this subject are as follows:

Chapter I: The Great Sanhedrin.

A. Origin and Originality.

B. Name, Membership, Meeting Place.

C. Period of Activity of Great Sanhedrin & Zugoth.

D. Function & Nature of The Great Sanhedrin.

E. Nasi & Ab Bet Din.

F. Character of The Halacha of The Zugoth.

A. The Great Sanhedrin: Origin and Originality.

The origin of the Great Sanhedrin or the Bet Din ha-Gadol, is enshrouded in obscurity. We shall attempt below, to present some of views of the outstanding scholars who themselves, wrestled with this very problem.

I. H. Weiss approaches it from this perspective. Simon the Just, the father of Onias¹, was a High Priest who lived during the years 300-270 B.C.E. It was in his day that the Great Assembly (Knesseth ha-Gedolah) terminated.² This Great Assembly that ended with Simon the Just was replaced by the Great Sanhedrin.³ Yet how could Antigonus, a man of Socho, have obtained the tradition from Simon the Just, when we know that he stood at the head of the Sanhedrin during the reign of Antiochus IV (Epiphanes), ca. 175-164?⁴ There is a discrepancy of 100 years which the Mishnah fails to explain.⁵

The answer lies in the fact that there were two by the name of Simon the Just.⁶ The one recorded in Mishnah Abot⁷ was the grandfather while the one who passed on the tradition to Antigonus, a man of Socho, was the grandson. It was the latter who was not mentioned in the chain of tradition.⁸

Sidney B. Hoenig, on the other hand, maintains that the desire to hark back to earliest times for proof of the Great Sanhedrin was deemed necessary by the Rabbis of the Talmud in order to establish, maintain and strengthen their authority in the eyes of the people through the tradition of their institution.⁹ He goes on to say that "... unable to assign the origin of the Sanhedrin to the days of Moses

or of King Jehosophat, Graetz advanced the view that, after the return from the Babylonian Exile, the Soferim, seeking to enforce the law, established a council called Bet Din."

This, to Hoenig, is an untenable position for "... there is no indication of any special court then. The sources give ample proof that under the entire Persian rule, the High Priest supreme in his theocratic government, still interpreted the law."¹¹ It was at this time that the Jews had an all powerful Gerousia.¹² "The institution known as Gerousia in Palestine was not mentioned after the Greek period (circa 143 B.C.E.). However, the body called Synedrion already is referred to in Jewish sources at the beginning of the Roman period (circa 63 B.C.E.). Hence the establishment of the Great Sanhedrin must have occurred somewhere in these four-score years."¹³

"Zunz and Derenburg considered John Hyrcanus, the son of Simon the Hasmonean, as the one in whose reign the Great Sanhedrin was created, since he displayed an attachment for the law and had more time than his predecessors for internal reforms."¹⁴ This view is based on the statement as

found in Sota 48a, which states:

Hoenig, however, maintains that the Zugoth referred to in

Tractate Sota are not in consideration of the heads of the Bet Din but rather refer to the overseers of the tithe collections who were appointed by Johanan the High Priest in order to execute the decrees of Demai. It was an administrative position rather than an appointment to a judicial office.

But what of the Zugoth themselves? Are we to consider them apart from the Sanhedrin and its inception or are they one and the same? Weiss is of the opinion that they are separate and considers the problem in that light. For him, the Zugoth listed in Abot¹⁵ are nothing new.¹⁶ As far as Weiss is concerned, there were Zugoth in the time of Jehosophat, king of Judah,¹⁷ albeit one was installed for religious purposes and the other for monarchical purposes.¹⁸ Nor did the Zugoth end with the monarchy in the First Temple. This sharing of responsibilities in the administering to the needs of the people of Palestine was also manifest in the Return in 532 B.C.E. when Zerubabel and Joshua the High Priest were the leaders. Nor did it end with them, as well. For in a little more than half a century later, Ezra and Nehemiah¹⁹ shared in the role of leadership.

Chaim Tschernowitz takes issue with this view, maintaining that this theory is far-fetched. Those mentioned above in support of Weiss' contention, possessed a separation of duties into the categories of religious and secular. Whereas, the Nasi and the Ab Beth Din of the Zugoth recorded in the Mishnah, had no such separation. They both dealt with religious matters primarily and shared²⁰ equally in problems common to both. In addition, for those who say that Johanan the High Priest established the Zugoth on the basis of the phrase in the Talmud Yerushalmi²¹ "וְעָנִי וְעָשִׁיר", Tschernowitz maintains that those appointed were for the purpose of collecting tithes alone. Furthermore, Johanan the High Priest came after the first Zug had already been in existence.

B. Great Sanhedrin: Name, Membership, Meeting Place.

There are, in the main, four sources for the derivation and establishment of the ~~name~~ Sanhedrin, an institution equated with the Bet Din ha-Gadol in most of the Jewish sources. The first of these sources is to be found in classical literature.²³ Here we find it to signify a conference, a general assembly or a court of war. This in the earlier Greek writings. In the later writings it takes on the connotation of a magisterial or judicial body. In addition to these characteristics, it also represented the Areopagus which was the highest permanent council in Athens. It was the Areopagus that had some outstanding similarities to the Bet Din ha-Gadol in Jerusalem. Both had seats in the most prominent locations in the capital cities, the Bet Din ha-Gadol being in the Temple in Jerusalem and the Areopagus being in the Acropolis in Athens. Both were superior over the lower courts and both tried cases dealing with sovereign power.²⁴

In the Papyri sources we find that the Ptolemaic era referred to it as a permanent and not temporary body.²⁵ It characterized it as a body that dealt with problems of a criminal nature, which included theft, assault, and the like, in addition to commercial problems. The court termed Synedrion, acted as a circuit court, a magistrate court and as land-survey councils.²⁶ In fact, "... during the pre-Christian era... 'synedrion' meant not merely an assembly but also designated, specifically, a court of law."²⁷

The Jewish-Greek sources, consisting mainly of the Septuagint and the Apocrypha, establish that this word Synedrion was known to the Judeans by the year 130 B.C.E. It was in that year, during the time of Ben Sira's grandson, that the verbal meaning of Synedrion in the Greek (to sit together)²⁸ became an accepted term. Through the influence of Greek culture and language, so important in that era to commerce and culture, when the word Sanhedrin was adopted,²⁹ it became synonymous with the Hebrew Bet Din.³⁰ Thus, Philo in his "Legato ad Gaium" "... complains that Caligula acted not as a judge sitting with his synedrion but rather as an accuser."³¹ In Josephus³² are mentioned "... the synedria which served as tribunals in the life of Herod; a synedrion of dignitaries tried Herod's son for disloyalty; a synedrion of friends tried Pherora's wife for aiding the Pharisees against Herod and for alienation of affections;³³ and a synedrion of friends and relatives tried Antipater."³⁴

"All that may be gained from Josephus is that he, as all Hellenistic writers, used 'synedrion' as a generic term: a meeting, conference, political assembly, council of war or tribunal."³⁵ By the same token, "... no definite picture of the Great Sanhedrin is revealed in the Gospels."³⁶

In a summation of the three types of sources thus far examined, Hoenig posits that "... it is to be concluded that classical literature as well as the vernacular of the papyri testify to the popularity of the term 'synedrion' as a trial court. Probably in the second and first centuries before the Common Era, when Jewish and Greek civilizations

met, 'synedrion' was also adopted into Judeo-Hellenistic literature as a technical term and became a synonym of Bet Din in ancient Judea.³⁷

Our fourth source is Tanaitic. The Talmud, in referring to a court, usually uses the term Bet Din. When it wishes to refer to the highest court in the land it stipulates it by the terms *בית דין הגדול*, *בית דין הגדול*, and *בית דין*. It is important for us to note that the term Sanhedrin appears as a synonym to some of these aforementioned names thus proving the interchangeability of the two appellations. As an example of this, we find in one Tanaitic source³⁸ the following statement:

אין חושבין סע חסיד וסע
הדיוט אלא במעלה וביא ואורח וטעם
this being equated with *אין סע פה בית דין*³⁹

Beginning with Jose ben Joesser and Jose ben Johanan, the first pair of the Zugot and continuing on through the last four pairs, concluding with Hillel and Shammai, the Great Sanhedrin consisted of 71 members, the traditional odd number in ancient courts.⁴⁰ It was this august body

that found its meeting place in the Lishkat ha-Gazit, the Gazit chamber.⁴¹ In fact it was referred to as *בית דין*

הגזית.⁴² This Gazit Chamber was "... situated on the south side of the inner Temple court..."⁴³ In fact, due to

recent archeological finds, we can pin-point its location to an extent reached by Hoenig when he states that "... the accurate place of the Gazit Chamber was in the southwestern

portion of the Temple mount."⁴⁴ References are made to this

word "Gazit" in the Bible as well as in the Talmud, the meaning of which is "hewn-stones."⁴⁵⁴⁶

C. Period of Activity of Gt. Sanhedrin and Zugoth.

Following the period of the Knesseth ha-Gedolah and the Soferim, Palestine suffered an era of intellectual decline coupled with a legal and judiciary depreciation.⁴⁷ The three pillars (upon which Judaism is ever based) established by the Anshe Knesseth ha-Gedolah (Torah, Avodah and Gemilath Hasadim) collapsed with but vestiges remaining.⁴⁸ The cause for this decline, Tschernowitz attributes to the Hellenistic influence, the tentacles of which fastened its tenacious root growth into the very core of Judaism killing and paralyzing its life-giving principles. It set up two camps within the fold of Israel; the Sadducees supporting Hellenism countered by the Pharisees and the early Hassidim who turned to the tradit'on and the heritage that was theirs.⁴⁹

Yet how did the Great Sanhedrin, the Bet Din ha-Gadol, this Halachic supreme court of the Second Commonwealth originate, it and its subsidiary courts? Why this sudden resurgence of interest in matters legal in the land of Palestine? What medium of growth developed so that this culture of Judaism might awake, shake off its matle of dormancy and begin its reinterpretation of Jewish law in connection with the then contemporary needs of its adherents?

All this, Hoenig attributes to the Hasmonean revolt, a revolt that established not only political independence but wrought profound changes in all facets of Jewish life.⁵⁰ The priests, who had been in control of the government up to that time, lost their power. A govern-

ment of the people, a people's commonwealth, a Heber ha-⁵¹
Yehudim, replaced the aristocratic priests regime. The
priests now were limited to the Temple and its manifold
rituals. The priests were no longer the sole bearers of
the Torah tradition and its interpreters.⁵² Thus we find
that "... the Hasmonean revolt... resulted in a three-
fold separation of the forces of the Jewish state: 1) the
administrative or political, 2) the ecclesiastical or
ritual, and 3) the halakic or Torah-legislative."⁵³

Understandably, changes such as these are
not accomplished with easy facility. It takes time
before the people can learn to accept an authority
and to even yearn for a particular manifestation of it.
Thus, in the opinion of Hoenig, this Sanhedrin ha-Gadol
was not established in the time of Judah Maccabee, but
rather "... when Simon, the last of the Hasmonean brothers,
became ruler of the Jewish state⁵⁴ ... a new form of
government finally came into existence and the old Gerousia
disappeared, not to be recorded any more."⁵⁵ Thus, the
Sanhedrin originated "... with the inception of the Common-
wealth under Simon the Hasmonean."⁵⁶

According to A. Geiger, relying on I Maccabees⁵⁷
⁵⁸ 7:12 ff., Jose ben Joezer probably was among the 60 Hassidim
or company of scribes who were killed by Bacchides at the
instigation of the High Priest Alcimus. This places Jose
ben Joezer's death at about 160 B.C.E. which contradicts
the hypothesis of Hoenig, who places the beginning of the
Zugoth with Jose ben Joezer at 141 B.C.E.⁵⁹

This seeming discrepancy, Hoenig resolves by poin-

ting to the source of Geiger's hypothesis, a source which⁶⁰ does not mention Jose ben Joezer's name. It refers only to the Hassidim in general and not to any person in particular. Furthermore, Geiger analyzes the word Hassid as⁶¹ found in Hagiga 2.7, as implying a different group. Hoenig maintains that rather than Jose ben Joezer being a member of a different group called Hassidim, he was merely a⁶² pious man. He was not an Essene.

Naturally, opinions among the scholars, vary. Weiss maintains that as the Great Assembly ended with Simon⁶³ the Just I, it was replaced by the Great Sanhedrin. He holds this opinion even though he realizes that the Zugoth as listed in the Mishnah Abot, came much later.

S. Zeitlin posits that the Zugoth began with "... the days of Jose ben Joezer and Jose ben Johanan⁶⁴ (about 160 B.C.E.) till the time of Hillel and Shammai." Although not explicitly stated, I assume that he feels the Sanhedrin to have begun at that same time. Yet Hoenig states categorically, that the Zugoth "... lasted from⁶⁵ about 141 B.C.E. to 10 C.E." And with the beginning of the Zugoth, there began the functioning of the Great Sanhedrin. In addition, Jose ben Joezer did not flourish about the year 160 B.C.E., but rather in the year 141 B.C.E. For when the Mishnah Abot mentions Jose ben Joezer as having followed Simon the Just, we are not certain as to which Simon the Just is implied. Hoenig feels that it was Simon⁶⁶ the Hasmonean, who was also called "the Just." As proof for

his contention, we are directed to the eulogy over Simon⁶⁷ as found in the book of the Maccabees. "And the land had rest all the days of Simon; and he sought the good of his nation; and his authority and glory pleased them well all his days... and they tilled their land in peace; and the land gave her increase, ... and the old men sat in the streets, all spoke together of the common weal... until his glorious name was proclaimed to the end of the earth. He made peace in the land and Israel rejoiced with great joy, and each sat under his vine and his fig tree and there was none to make them afraid." Also, "He strengthened all those of his people that were brought low; he sought out the law⁶⁸ and put away the lawless and the wicked." Thus, it is feasible for Hoenig to claim that Simon the Hasmonean was of such a revered nature by the dwellers in the land of Palestine, that the Mishnah might have referred to him as Simon the Just.

To reconcile his belief that the Sanhedrin began⁶⁹ immediately following the culmination of the Great Assembly, and that the lineage as recorded in the Mishnah is correct, Zeitlin in his work "Shimon ha-Tzadik u' Chnesseth ha-Gedolah", suggests a transposition of the letters in the word

'נ' ע' so as to read 'ע' נ', meaning leader rather than remnant of the Great Assembly. He believes this to be Simon the Second. Hoenig rejects this theory on the grounds that Josephus, when speaking about Simon II, only mentions the Gerousia and not the Great Assembly. It is difficult,

continues Hoenig, to identify the Gerousia of Simon II in
⁷⁰
 Josephus with the Great Assembly of Simon the Just in Abot.
 The answer for Hoenig, lies in I Maccabees 14.27 wherein Simon
 is referred to as *סרסר דע*, "prince of the people of God."
 The reading in Abot was originally *דבריהם דע דע דע*,
 "of the princes of the Great Assembly" rather than the present
 reading of "remnant." Tanaitic literature refers to the fam-
 ily of Mattathias as Hasmoneans which means princes. "This
 basically is a synonym for hegemon, *דע*, or Tzadik, the
⁷¹
 titles given to Simon in the different sources."

Yet we do find the name Antigonus, a man of Socho
 between Simon and the listing of the Zugoth? The reason for
 this name appearing at this point, Hoenig says, is that
 Antigonus was Simon's assistant in the Bet Din of the Has-
⁷²
 moneans. But why the text reading "Antigonus, a man of Socho,
 received (the tradition) from Simon the Just?" The reason
 for this wording is that Simon the Just, at first, was head
 of the Bet Din while his brothers were in power. When he,
 the last of the Hasmonean brothers took over the reigns of
 government he was too occupied to head the Bet Din himself
⁷³
 and so designated Antigonus, a man of Socho, to head it.

There is, however, one group of individuals thus
 far not considered. They comprise what the Mishnah calls,
⁷⁴
 the Eshkelot or Ashkelot. The meaning of the term or name
 Ashkelot is unclear. By the same token, their function
 is equally unclear. An interpretation offered by Tscherno-
 witz based on the statement by the Amora Samuel, is that it

is a contraction of the phrase *in soe ek*, "a man in whom all is."⁷⁵ Prior to the establishment of the first Zug, the Parnassim were the Anshe Ashkeloth. All the power was in the hands of one Ashkol at one time. When the Zugoth arose all of this concentrated power was divided in twain between the Nasi and the Ab Bet Din and, hence, no longer justifying the term *in soe ek*. As proof of this, Tschernowitz adds that since there were now two heads whereas before there was only one, controversies began. The Semichah⁷⁶ problem is but one such example.⁷⁷

Hoenig points out that "... probably these individuals were teachers who centralized all duties within themselves and who, like Moses, possessed the reigns of power."⁷⁸ These Anshe Ashkelot were priests for since in the early Jewish state of the Second Temple, men of dominance were the priests. They were both the political and spiritual leaders, the final judges and teachers of the law.⁷⁹ The Ashkeloth might be identified as "... the men in the gerousia where, in addition to the other combined functions, the priests were also the scholars and the interpreters of the law."⁸⁰ But with the heightened "... Pharisaic influence and the Hasmonean democratization of the government, the High Priest, by virtue of being the supreme ruler of the state, no longer was the supreme judicature in Jewish law. It was vested now⁸¹ ... in the Bet Din ha-Gadol."

There is a great difficulty in determining the exact length of Nesiuth for each Zug. As we find in Abot 1, there are three Zugoth between the first, Jose ben Joezer, a man of Zeradah, and Jose ben Johanan, a man of Jerusalem and the

last Zug comprising Hillel and Shammai. We know from Shabbath⁸² 15a that Hillel became the Nasi 100 years prior to the⁸³ destruction which leaves 122 or 121 years for no more than⁸⁴ three Zugoth. This gives each Zug over 40 years of tenure in office apiece.

If we maintain, as does Frankel, that Jose ben Johanan and Jose ben Joezer began functioning before 151 B.C.E. (for the latter died in that year) then the solution offered by Frankel is an extremely attractive one. For he says that the list of Zugoth as recorded in Aboth does not intend to report a direct chain of tradition, that is to say, a direct lineage of Kabbalah from one Zug to the next, nor does it purport to offer a teacher-pupil relationship between one Zug and the next. It rather speaks about the tradition of the Nesiuth, the tradition of Nasi-ship. Therefore, if some years elapsed between one Nasi and the next, it is not recorded. There could very easily be the chronological account totaling 121 or 122 years⁸⁵ after the first Zug and prior to the fifth or last Zug.

L. Ginzberg finds no such problem. He states that the period of the Zugoth lasted for about 150 years beginning with the time of the persecutions by Antiochus and ending with the death of Hillel, about fifty years before the destruction (approximately 70 C.E.) of the⁸⁶ Temple.

Nor does Hoenig finds any chronological difficulty for he maintains that the Zugoth began with Simon the Has-

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monian's era and ended in 10 C.E. with the death of Hillel.

D. Function and Nature of the Great Sanhedrin.

While Ginzberg feels that it is "... difficult to define the nature of the court over which the pairs presided",⁸⁸ other scholars present the Great Sanhedrin's activities with no such qualms. Tschernowitz points out that the Bet Din ha-Gadol had jurisdiction over religious laws plus all the laws of populace and state. At times, when conditions permitted, it even controlled political laws. There were instances during the history of the Bet Din ha-Gadol which limited its legislative power. It was then that it controlled only the religious laws, the authority over which it always had.⁸⁹

Hoenig limits the range of jurisdiction claimed for the Great Sanhedrin by Tschernowitz. For him it functioned in matters religious and not political. "The Great Sanhedrin was a religious body devoted to the interpretation of the biblical and traditional law, the Halakah."⁹⁰ "The religious-legislative body was the Great Sanhedrin. Its specific nature throughout all the decades of the Second Commonwealth was that of a Bet Din, a court of law and interpretation, a religious halakic institution composed of scholars."⁹¹ It was this Bet Din ha-Gadol, with its majority and minority representatives that was the only interpreter of the Halachah, of Jewish tradition and practice, for the Jews of the era of the Second Commonwealth. "It was the body which regulated the religious life of the Jews and gave sanctions to practices connected with religious questions, in accordance with the Bible(the constitution)

and the tradition of Halakah (the common or enacted law). The decision of the Bet-Din ha-Gadol was final and its decrees were by Jews even in the diaspora.⁹² Through the recognition of its spiritual authority by the royal and priestly groups, it was elevated to a place of high prestige in the state.⁹³ It was empowered with the duty of maintaining the law. "Its particular concern was the preservation of the Torah — the source of all Jewish law — the Pentateuch, for on the basis of this text constitutional rights were established and affirmed."⁹⁴ The Great Sanhedrin whose judgements were final and irrevocable, which was the final court of appeal in the interpretation of laws, not only rendered decisions on the interpretation of law but was also empowered to act in cases of emergency.⁹⁵ The Tosefta also laid particular stress "... on the importance of this chamber and the scope of its [the court's] functions by declaring: 'Rendering decisions of law is of greater importance than trial of capital punishment. Decisions of law were rendered only in the Bet Din ha-Gadol of the Gazit Chamber, whereas capital punishment trials could be conducted in any locality.'⁹⁶"

The Bet Din ha-Gadol set up smaller courts for different sections of the country,⁹⁷ which used to meet at the beckoning of the Nasi, the High Priest or the government and used to judge capital punishment cases.⁹⁸ There were about two or three of these Sanhedrins.⁹⁹ The judges for the lower courts were appointed by the Great Sanhedrin.¹⁰⁰

* accepted .

S. Zeitlin posits that there were two Sanhedrins, one concerned with religious matters and another with political.¹⁰¹ Tschernowitz grants that there were problems of not only a religious nature with which the Sanhedrin concerned itself but he feels that there was but one Sanhedrin with no division between its religious and secular activities. Rather there were two offices within the same Sanhedrin; one for legislation and the other for judgment, and in particular, cases involving capital punishment.¹⁰²

The Temple ritual "... was directed by the High Priest, while a new body was formed to supervise the interpretation of the religious law in the state. The activity of the Bet Din of the Hasmoneans and the ordinances of Jose ben Joezer¹⁰³ who functioned as Nasi at that time, testify to the existence of such a religious body.¹⁰⁴" To obtain members for this Great Sanhedrin, scholars were tested throughout the country and seated in the Gazit Chamber only after due testing as to their legal knowledge and ability.¹⁰⁵

Yet this Sanhedrin, which supervised the spiritual life of the Jews under the monarchy of the later Hasmoneans (103-63 B.C.E.) even though they would not tolerate interference from others, was composed of both Sadducees and Pharisees.¹⁰⁶ The Pharisees represented the common people and were liberal and progressive. The Sadducees represented mainly the priesthood and the old line aristocracy and were primarily conservative in nature.¹⁰⁷ At the outset, that is to say, in its earlier years, the Sanhedrin was dominated by

the conservative Sadducees, hence the Nasi was chosen from among those partial to the Sadducees. Conservatism dominated in the law since interest was to combat the evils of the pre-Maccabean period. Priests and sages feared innovations, especially after they had seen the effect of the Hellenistic influence in Judaism.¹⁰⁸

We must grant to Dr. Hoenig that it is true, as he maintains, that the Sadducees did participate in the Sanhedrin. And it is equally true that the Sanhedrin became predominantly if not completely Pharisaic in membership during the time of Simon ben Shetach.¹⁰⁹ Yet if the Sadducees dominated the Sanhedrin during the presidency of the first two or three Nesiim, and if it true that the Nasi was chosen on the basis of his leanings towards the direction of the Sadducees, and if it also true that the Sadducees were conservative in their approach to Halachah and matters religious, how then can we reconcile the statement found in Eduyoth 8.4 which describes Jose ben Joezer as a permitter?¹¹⁰ Furthermore, if Hoenig himself maintains that the Sadducees had lost their singularly powerful rule to the Heber ha-Yehudim, a people's commonwealth,¹¹¹ the Pharisees being the people's representatives, how can he equally maintain that they were not the dominant group in an institution brought about to meet the needs of the people? Furthermore, was it not the aristocratic group of priests and wealthy nobility that sponsored the Hellenistic movement prior to the Hasmonean revolt? It seems unlikely that this same group would then be given the control of an organisation

dedicated to the interpretation and development of law which they only a few years previously, had neglected to the extent of its reinstatement being made possible only by a revolution. If the Great Sanhedrin or Bet Din ha-Gadol was dominated by the Sadducees and the Sadducees were supported by the priests, it seems somewhat self-deprecating in the light of what we find in Yoma 1. In this chapter we find elders of the Bet Din appointed to literally guard him, read to him, nudge him, prod him, teach him (if he isn't able to learn himself), and in general control all his activities on the eve of Yom Kippur to make certain that he fails not in any of his tasks nor becomes impure for the day ahead. The impression one cannot help obtaining is a feeling of deprecation toward the subject of the entire chapter. Realizing that they have no choice, since sacrifice is Biblical in origin which must be performed by the priests (not that the men of the Bet Din ha-Gadol were opposed to sacrifices), they accepted the High Priest ~~for~~ his ritualistic function alone, but did not trust him in its interpretation and implimentation.

The approach of the people toward the Sanhedrin and of its expression by scholars, can be easily summed up in the laconic statement as found in Sanhedrin 32b: "Tzedek tzedek shall you pursue... after the scholars in the Gazit
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Chamber."

E. Nasi and Ab Bet Din.

This subject will be dealt with at length during the course of this paper. Suffice it to say at this point, that they are analogous to the British Parliament in that

one represented the majority view and the other the minority view, the latter similar to "His Majesty's Loyal Opposition." There was no separation into religious and secular functions.¹¹³ Both the Nasi and the Ab Bet Din dealt with religious matters.

The problem of who was the Nasi and who was the Ab Bet Din was discussed above.¹¹⁴ The particulars of the problem will be discussed below when dealing with the matter of the Semicha.

F. Character of the Halacha of the Zugoth.

The manner of the Takanoth, Gezaroth and Midrashel Halachah of the Zugoth was originated and established during the period of the Soferim.¹¹⁵ In addition, they continued beyond the Zugoth period.¹¹⁶ In fact, most of the Takanoth and Gezaroth of the Zugoth are found in older laws.¹¹⁷

But the laws of the Zugoth were not creations of the House of Study. They were an expression of life itself. "We cannot, therefore, understand its course without reference to our national history, just as it is impossible to comprehend our national history without reference to the Halachah and its development."¹¹⁸ We shall attempt during the course of this paper, to offer historical backgrounds for Halachoth wherever possible.

With regard to the manner of presenting Halachoth, we find that "... up to the Hasmonean period there is not recorded any Halakah in the name of any individual teacher. Beginning with this period, however, we notice Halakot recorded by individual scribes (Soferim) scholars. The first two men in whose names Halakot are recorded were Jose b. Johanan and Jose b. Joezer; they lived during the Hasmonean period."¹¹⁹

"As a rule, decrees were issued in the name of the Nasi, the head of the entire judicial system and the leader of the majority faction. Hence all documents and decrees were made official with his approval."¹²⁰

In summation, the highest court in Palestine was the Bet Din ha-Gadol, which under Hellenistic influence also assumed the appellation, Great Sanhedrin. Its origin lies in the early Hasmonean period (probably the year 160 or thereabouts) with the chronological difficulty removed¹²¹ through the insight afforded by Frankel. For it was the institution of the Nesiuth that the Mishnah wishes to record and not the direct lineage of Nesim. The period of activity for the Sanhedrin ranged from its Hasmonean inception until the year 66 C.E. (about 225 years) with the Zugoth ending with the death of Hillel (circa 10 C.E.). The function of the Bet Din ha-Gadol or Great Sanhedrin was primarily religious, although at times it did exert¹²² some political power. It appointed judges for the smaller courts and was comprised of scholars, tried and tested as to their knowledge and ability. The Nasi was the president of the Bet Din ha-Gadol and the Ab Bet Din was the second in importance. It was in this period, with the beginning of the Zugoth, that laws were recorded in the name of their propounders. Their manner of interpretation of laws was not original with them. There had already existed a tradition of interpretation emanating from the Anshe Knesseth ha-Gedolah. The Zugoth employed this approach to Halachah to evaluate, interpret and decide legal matters vital to

their contemporary era. Their decisions were final and irrevocable. The outstanding question which was not resolved throughout all the five Zugoth, was the problem of the Semichah, the laying on of the hands. We shall attempt to analyze this problem below in order to obtain a keener insight into the approach to Halacha by the Zugoth.

1. Max L. Margolis and Alexander Marx, A History of The Jewish People, Philadelphia, The Jewish Publication Society of America, 1947, Page 139.

2. Mishnah Abot 1.2-4.

3. Weiss, Der Dor ve'Dorshay, Vol. 2, page 100.

4. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

5. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

6. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

7. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

8. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

9. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

10. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

11. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

12. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

13. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

14. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

15. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

16. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

17. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

18. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

19. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

20. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

21. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

22. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

23. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

24. Weiss, Der Dor ve'Dorshay, Vol. 1, page 100.

1. Heinrich Graetz. History of The Jews. Philadelphia, The Jewish Publication Society of America, 1891, Vol.I, page 421.
2. A. H. Weiss. Dor Dor ve'Dorshav. New York, Platt and Minkus, 1924. Vol.I, page 94.
3. *ibid.*, page 99.
4. Max L. Margolies and Alexander Marx. A History of The Jewish People. Philadelphia, The Jewish Publication Society of America, 1947. Page 135.
5. Mishnah Abot 1.2-4.
6. Weiss. Dor Dor ve'Dorshav. Vol.I, page 100.
7. Mishnah Abot 1.2.
8. Weiss. Dor Dor ve'Dorshav. Vol.I, page 100. *אין שום מקום נאמר שיש בית דין אחד*
9. Sidney B. Hoenig. The Great Sanhedrin. Philadelphia, The Dropsie College, 1953. Page 16. "Though there is mention of judges and elders in the text of the Bible, there is no evidence of any distinct and separate court in the early centuries of Jewish history paralleling the Halakic supreme court of the Second Commonwealth. Only special individuals such as kings, elders and prophets assisted by subordinates meted out justice. But there is no special and distinct Great Sanhedrin of Halakah interpreting the law..."
10. Hoenig. The Great Sanhedrin. Page 18. The reference is to H. Graetz's History of the Jews (German edition), Leipzig, 1897-1911. Vol. II, page 189.
11. Hoenig. The Great Sanhedrin. Page 18. As proof for his

contention, he offers the text from Ezekial 44:23-24.
"And they shall teach My people the difference between the holy and the common, and cause them to discern between the unclean and the clean. And in a controversy they shall stand to judge: according to Mine ordinances shall they judge it; and they shall keep My laws and My statutes in all My appointed seasons, and they shall follow My Sabbaths."

12. Hoenig. The Great Sanhedrin. Page 18.
13. *ibid.*, page 23. Also, Solomon Zeitlin. The History of The Second Jewish Commonwealth. Philadelphia, The Dropsie College, 1933. page 40, footnote #123. "It is most likely that the Sanhedrin was instituted at the time of Judas Maccabaeus when he had established the courts to judge and punish the people who had transgressed the Jewish law, joined the Syrians and betrayed the Jewish cause."
14. *ibid.*, page 37.
15. Mishnah Abot 1.4-12.
16. Weiss. Dor Dor ve'Dorshav. Page 103.
17. *ibid.*
18. II Chronicles 19:5-11. "And he set judges in the land throughout all the fortified cities of Judah, city by city, and said to the judges: 'Consider what ye do; for ye judge not for man, but for the Lord; and (He is) with you in giving judgement. Now therefore let the fear of the Lord be upon you; take heed and do it; for there is

Great Sanhedrin, by S.B. Hoenig.

23. Hoenig. The Great Sanhedrin. Page 3.
24. *ibid.*
25. *ibid.*
26. *ibid.*, page 4.
27. *ibid.*
28. *ibid.*, page 5.
29. *ibid.*
30. Philo lived in Alexandria, circa 40 C.E. Margolies and
Marm. History of the Jewish People. Page 186.
31. Hoenig. The Great Sanhedrin. Page 6.
32. Antiquities 16.11.1.
33. Antiquities 17.3.1. Hoenig. The Great Sanhedrin. Page 228,
note 37.
34. Antiquities 17.5.2. Hoenig. The Great Sanhedrin. Page 228,
note 38.
35. Hoenig. The Great Sanhedrin. Page 8.
36. *ibid.*
37. *ibid.*, page 9.
38. Shebuoth 2.2.
39. Sanhedrin 1.5.
40. Sanhedrin 1.6:
ibid 1.5: מסדורי גדולה פירג של אגדיו ואמר.
"אין דנין עמ אר פסג ולאו אר הנגיו שר ולא אר כהן
גדול אלא אר סי גיר דין של ע"א."
41. Middoth 5.4: לשכר באצור ער פירג סבדרי גדולה יושגת."
42. Sanhedrin 11a.
43. Hoenig. The Great Sanhedrin. Page 74.
44. *ibid.*, page 77.

45. Lamentations 3:9, I Kings 5:31, Isaiah 9:9, Exodus 20:25.
46. Reuben Grossman. Hebrew-English Dictionary. Tel Aviv, Dvir Publishing House, 1951. Page 57.
47. G. Tchernowitz. Toledoth ha-Halakah. Vol.IV, page 101.
 "הַיְיָ יִשְׁרָאֵל הָיָה לְעַמּוּלָא דְּמִלְכֵי בְּרִיטְיָא וְלְעַמּוּלָא דְּמִלְכֵי רֹמָא."
48. *ibid.*
49. *ibid.*, page 102.
50. Hoenig. The Great Sanhedrin, page 23.
51. *ibid.*, page 24.
52. *ibid.*
53. *ibid.*, page 25.
54. 143 B.C.E.
55. Hoenig. The Great Sanhedrin, page 25.
56. *ibid.*, page 26.
57. As referred to by Hoenig's The Great Sanhedrin, page 29.
58. I Maccabees 7:12 ff. "Then did there assemble unto Alcimus and Bacchides a company of scribes, to require justice. Now the Assideans [Assidim] were the first among the children of Israel that sought peace among them: for they said, 'One that is a priest of the seed of Aaron is come with this army, and he will do us no wrong.' So he spake unto them peaceably, and swore unto them saying, 'We will procure the harm neither of you nor your friends.' Whereupon they believed him; howbeit he took of them threescore men, and slew them in one day, according to the words which he wrote." The Apocrypha, edited by Manuel Komroff. New York, Tudor Publishing Company, 1936. Page 277.

59. Hoenig. The Great Sanhedrin. Page 59.
60. Note footnote #58 above.
61. Hagiga 2.7: *"...בשם ה' יתברך חסד שמואל נ."*
62. Hoenig. The Great Sanhedrin. Page 29.
63. Weiss. Dor Dor ve'Dorshav. Vol.I, page 99.
64. Solomon Zeitlin. "The Semikah Controversy Between the
Sugoth" (Jewish Quarterly Review, Vol.VII, No.4).
Philadelphia, April, 1917. Note on page 499.
65. Hoenig. The Great Sanhedrin. Page 14.
66. *ibid.*, page 31.
67. I Maccabees 2,65.
68. *ibid.*, 14.14.
69. In the year 160 B.C.E.
70. Antiquities 12.3.3.
71. Hoenig. The Great Sanhedrin. Page 33.
72. *ibid.*, page 35.
73. *ibid.*, page 36.
74. Sota 9.9: *"...בשם ה' יתברך חסד שמואל נ."*
75. Sota 47b. Tchernowitz. Toledot ha-Halakah. Vol.IV, page
143.
76. To be discussed below.
77. Tchernowitz. Toledot ha-Halakah. Vol.IV, page 143.
78. Hoenig. The Great Sanhedrin. page 28.
79. *ibid.*
80. *ibid.*, page 29.
81. *ibid.*
82. Shabbath 15a:- *הבית נאמר כן ושמעון אמר ושמעון נאמר ושמעון
לפי הדין אמר נ."*

סיכ' למורג ושיעור האחד שרבה על אבי סוס גמול גימל ארץ והביא לה
עביר קין וסקלונו לא ארץ שראוי להם אלא שיעור זריכה להם."

Hoenig. The Great Sanhedrin. Page 94: "Stoning a person for violating the Sabbath by riding a horse — a transgression not mentioned in the Bible, or even deduced therefrom — could not be adjudicated by a smaller court. The ancient law had to be adjudged by a superior court and reinterpreted. Only the Bet Din ha-Gadol could deal with it."

96. Hoenig. The Great Sanhedrin. Page 104. Horaoth 13:

"חומר המוכרח חסר מאן כן קפיד במה שמוכרח עד שמונו ה' י'
דין שאלהם כשם והדין למורג למען גיל מקום."

97. Sanhedrin 1.5: מאן עזרן סנהדרין אלא על
ס' שור קין על ע"א."

98. C. Tchernowitz. Toledot ha-Halakah. Vol. IV, page 260.

99. *ibid.*

100. Sanhedrin 1.5. (See footnote #97.).

101. Solomon Zeitlin. Who Crucified Jesus. New York, Harper & Brothers, 1947. Page 76: "Besides the religious Sanhedrin, there was another Sanhedrin whose main function was to try offenders against the state... the political Sanhedrin."

102. C. Tchernowitz. Toledot ha-Halakah. Vol. IV, page 261.

103. Hoenig. The Great Sanhedrin. Page 231, footnote #9.

104. *ibid.*, page 13.

105. Tosefta Sanhedrin 7.1: *והוא עומד ומוציא את ידיו... ומוציא את ידיו... ומוציא את ידיו...*

106. Hoenig. The Great Sanhedrin. Page 44 ff.

107. *ibid.*

108. *ibid.*

109. *ibid.*, page 46.

110. Eduyoth 8.4: *והוא עומד ומוציא את ידיו...*

111. Note page 8 above.

112. Sanhedrin 32b: *והוא עומד ומוציא את ידיו... ומוציא את ידיו... ומוציא את ידיו...*

113. C. Tchernowitz. Toledot ha-Halakah. Vol.IV, page 142.

114. Note page 16 above.

115. C. Tchernowitz. Toledot ha-Halakah. Vol.IV, page 141.

116. *ibid.*

117. *ibid.*

118. L. Ginzberg. On Jewish Law and Lore. Page 79.

119. S. Zeitlin. The History of the Second Jewish Commonwealth. Philadelphia, The Dropsie College, 1933. Page 40.

120. Hoenig. The Great Sanhedrin. Page 107.

121. Note page 13 above.

122. The activities of Simon ben Shettach during the reign of Salome Alexandra (76 to 67 B.C.E.). The Jewish Encyclopedia. New York and London, Funk & Wagnalls Company, 1901. Vol.I, page 360.

Chapter II: The First Zug.

Jose ben Joezer, a man of Zeradah&

Jose ben Johanan, a man of Jerusalem.

The chain of tradition, as established in Abot 1¹ and in Peah 2.6, places the Nasi in the primary position and the Ab Bet Din in the capacity of second to the Nasi. According to the Rambam,² the wisest sage was set up as the head of the Yeshiva and called the Nasi. The wisest of the seventy elders sat at his right and was called the Ab Bet Din. He was second in sagacity. Yet each spoke as an individual and was respected as such. Although the Ab Bet Din often deferred to the Nasi, there were instances³ of the reverse. Tchernowitz takes issue with the Rambam's approach and maintains that when we read about the Zugoth in Hagiga 16b,⁴ the implication is that the Mishnah is recording the Ab Bet Din secondly but not in terms of the level of importance.⁵ Tchernowitz does grant that in⁶ matters of authority and state, the Nasi was the superior, yet the duties were divided between the Nasi and the Ab Bet Din. Thus, the Nasi was the leader of the national and the religious community and the head of the Sanhedrin while the Ab Bet Din established the laws and was the head⁷ of the judges.

⁸ Tchernowitz, in his discussion of the Semichah problem, offers a very interesting theory. He maintains that the Nasi was located in Jerusalem and was head of the Sanhedrin in that city while the Ab Bet Din was in Alexandria and the head of the Bet Din ha-Gadol located⁹ in that city. This situation existed up to the time of Rabban Gamliel when both became the heads of the Sanhedrin

¹⁰
in Jerusalem. These Zugoth began with the Hasmonean battles and ended with Hillel the Babylonian because Hillel came from Alexandria and with his leaving that city, the Alexandrian Bet Din ha-Gadol collapsed. Hillel now united the two different schools.

Hoenig takes issue with this theory maintaining that "... the opinion is easily controverted simply by recalling the name and place of the first Ab Bet Din Jose ben Johanan of Jerusalem." ¹² This is a very weak argument in disproving Tchernowitz's theory. We might better ask this question. If, as Tchernowitz claims, the head of the Egyptian Bet Din ha-Gadol was called the Ab Bet Din, and if Hillel was supposed to have been the head of that group, do we anywhere find reference to him as an Ab Bet Din? Tchernowitz offers us no such proof, nor do we find such a reference.

The title "Nasi" served no function in the government except as a term for the head of the Sanhedrin which interpreted the law for the government. The Zugoth were "... politically subordinated to the rulers." ¹³ The Nesim did not serve as heads of the government. ¹⁴ "Most likely the title 'Nasi' became prominent only after the strengthening of Hillel's leadership and especially when there was no Ab Bet Din during his family's domination of the Sanhedrin. When the Roman government recognized the spiritual head, the Patriarch of the Jews, as the leader of the nation, the title became very significant. ¹⁵ Thus Rabbi Judah ha-Nasi possessed it."

Jose ben Joezer, the first Nasi, was a priest. This is ascertained through the statement in Hagiga which declares him to be "a pious one among the priests."¹⁶ The reason for a priest being the Nasi is offered by Hoenig when he says that the conservatism of the Sadducees prevailed as the majority opinion and so one of their supporters, a priest, was appointed head of the Great Sanhedrin.¹⁷ We cannot accept his view for reasons stipulated on page 17 above.

It was this Jose ben Joezer about whom we find a recognition of his having followed the tradition of¹⁸ Moses. It was after his death that this tradition was neglected and forgotten. This, Weiss feels, was the cause for the split between the Pharisees and Sadducees. They had neglected the learning and the tradition to such an extent that they no longer could make definitive legal¹⁹ and religious decisions.

Jose ben Joezer issued three laws in his own name in which he "... testified that the Ayil-locust is clean [do not defile], that the liquid (that flows) in the slaughter-house [in the court of the Temple] is not susceptible to uncleanness; and that he who touches a corpse becomes unclean. And they called him Jose the²⁰ Permitter." What new interpretation did Rabbi Jose offer when he declared a person touching a corpse to be impure? The Torah itself specifically states that he who touches a corpse is immediately impure. Furthermore, they refer to him in the Mishnah, as Jose "The Permitter", yet he dec-

lared that person impure.

Frankel offers the following answer to this
²¹problem. During the Maccabean fighting, a group of Hassidim
developed with Jose ben Joezer a member of that group.
²²These Hassidim were extremely stringent in matters of
ritual purity and impurity, giving birth to many laws
on that subject. Now he who touches a corpse is not in
the same category of impurity as the corpse itself.
²³

The one who touches the cadaver is referred to as one
unclean through the term *NICAN*, while the cadaver
itself is termed unclean through the use of the word

NICAN. It appears that some Hassidim of Jose's
time intended to place the toucher of the corpse in the
same category as the corpse itself. They chose, therefore,
the word *NICAN* when referring to him. He would then
make impure a greater variety of objects. Jose ben Joe-
zer felt that this was too stringent an attitude and so
employed the word *NICAN* instead. Thus, although a
member of the Hassidic group, he still set a limit to
their fanaticism, at least in matters of legality. He
could, therefore, be termed Jose "The Permitter" for
he was more lenient than they.

Weiss, in dealing with this problem of recon-
ciling the adjectival appellation found in Eduyoth 8.4
with the actual cases decided upon in that same Mishnah,
arrives at this conclusion. The leniency of Jose ben Joe-
zer rests in the fact that he declared a person doubtful

as to whether or not he actually touched a cadaver, to be not defiled. He chooses to build his theory on the word

אָנְטִיף. In his day, many hesitated going to the army for fear of being defiled through the sword (the sword being the agent between the wielder and the slain thus making the wielder impure ritually). Therefore, he declared that only he who knows definitely that he has touched a cadaver is ritually defiled. If he is in doubt then he is not defiled. Just stabbing him does not mean that he is dead, nor does it mean that the wielder is in direct contact with the slain. It is through this interpretation, feels Weiss, that the Mishnah is justified in terming Jose ben Joezer, "The Permitter."

There are two laws or decrees, attributed to the First Zug which declare foreign lands impure and glassware impure. The reason for declaring foreign lands impure, Weiss explains by stating that it was an attempt to stop the movement of Jews away from the land of Palestine, an exodus brought about through persecution and oppression on the part of invading powers. It was also directed in opposition to the Essenes who did not fight against Antiochus but escaped to the desert and to foreign lands.

With regards to the glass vessels being capable of obtaining impurity, Weiss feels that the First Zug suddenly became aware of the fact that this material was similar to clay and therefore liable to impurity.

Ginzberg agrees with Weiss in his interpreta-

tion and adds that this was a time when "... ritual impurity was to them a more serious matter than the shedding of blood." In the light of this fact, the First Zug hoped they would discourage emigration if the people were told they would live in a land of perpetual impurity.

The reason for the decision that glass is capable of becoming impure, is for Ginzberg, an economic one. Glass was made by the Canaanites of Sidon and Tyre. The importation of glassware into Palestine caused great competition between the domestic earthenware and metal vessels which were liable to become impure and the imported glassware which was free of potential impurity. Competition was thus lessened to some extent although the inherent value of glass did not decrease.

In the matter of these two laws discussed above, Tchernowitz takes the same view as does Ginzberg, namely, that they served the economic interests of the time. He does, however, add a most interesting insight into the matter of "Erets ha-Amim", the phrase as found in Sabbath 14b, "the land of the nations (implying Gentiles)." Rather than consider this phrase as meaning foreign soil, we should consider this as the land of Palestine, the sections of which were inhabited solely by Gentiles. It acted as a form of boycott against non-Jews living in Palestine. In addition, it afforded some protection for the Jews for it discouraged their moving into those areas for fear of being plundered and killed. Still another motive for the issuance of that decree, adds Tchernowitz, was that it eliminated the opportunity for Jews to meet in social

intercourse with non-Jews with the possible outcome that
³⁵
 Jews would learn Heathen ways.

As far as Tchernowitz is concerned, the Musar of
 the Zugoth is general and could have been said in any
³⁶
 generation. Weiss, however, finds that they do have some
³⁷
 significance at times. For example, we find in Abot the
 following statement:

י"ד' א' יוחנן...אמר 'ה' ביתך פתוח
 פתוחה י' א' עזק בני ביתך ואם רבם שמה עם האשה."

The import of this Mishnah is that it affords us an in-
 sight into the Ab Bet Din, Jose ben Johanan. This Mishnah
 implies that Jose ben Johanan was in contact with the Essenes
 and had some relationship with them. For this statement
 attributed to him points to a form of socialism (opening
 the door wide and sharing all that one possesses). It
 stressed the theme of no contact with women which was
 carried to an extreme by the Essenes who didn't marry wo-
³⁸
 men, in the main. Yet generally, we must concur with
 Tchernowitz, and say that most of the Divre Musar could
 very easily have been said by many other sages in other
 generations.

1. Peah 2.6: וְעַל לְעִשְׂתֵּי בָּאִיִּם וְשָׂאֵל אֶת מַחֲזִיק הַלֵּוֹי מִקֶּדֶם אֶת אֶתְנֵי אֶתְנֵי אֶתְנֵי
קֶדֶם אֶתְנֵי אֶתְנֵי אֶתְנֵי אֶתְנֵי אֶתְנֵי אֶתְנֵי אֶתְנֵי אֶתְנֵי אֶתְנֵי אֶתְנֵי

The Zugoth were the spiritual heirs of the prophets, as recorded in this Mishnah. While in Abot 1 there is an addition of the Anshe Knesseth ha-Gedolah as members of this chain of tradition, we find no such reference in this Mishnah. Hoenig answers this by stating in The Great Sanhedrin, page 180: "The Zugoth are the first sages in the Mishnah to be mentioned by specific name, i.e., as individuals with distinct identities. Such individualism was not possessed by those teachers who were the 'men in the Great Assembly.' Therefore, Peah which deals with specific halakah omits 'Great Assembly' but records the 'Zugoth', since these pairs of individuals distinctly follow the prophets who are clearly identified in the Hebrew sources. Thus Peah and Abot are not only parallel accounts based on different principles of chronology, but are also complimentary, dove-tailing histories."

2. Hilchoth Sanhedrin, 1.3.
3. Tchernowitz. Toledoth ha-Halakah. Vol.IV, page 264.
וְאֵלֶּיךָ יָבוֹאוּ כָּל הַיְּהוּדִים לְפָנֵי שְׂמֵי שָׁמַיִם מִן הַיָּמִין
4. Hagiga 16b: וְהָיָה כִּי יִשְׁמַע יְיָ אֱלֹהֵינוּ בְּקוֹל הַיָּמִין
5. Tchernowitz. Toledoth ha-Halakah. Vol.IV, page 264.
6. *ibid.*, page 265. Moed Katan 27:
וְהָיָה כִּי יִשְׁמַע יְיָ אֱלֹהֵינוּ בְּקוֹל הַיָּמִין
7. *ibid.*, page 268. Rosh Hashonoh 2.7: וְהָיָה כִּי יִשְׁמַע יְיָ אֱלֹהֵינוּ בְּקוֹל הַיָּמִין
וְהָיָה כִּי יִשְׁמַע יְיָ אֱלֹהֵינוּ בְּקוֹל הַיָּמִין

Tchernowitz equates Rosh Bet Din with Ab Bet Din.

8. The Semicha problem will be discussed at length in a later chapter.

9. Tchernowitz. Toledot ha-Halakah, Vol. IV, page 165.

10. *ibid.*

11. *ibid.*, page 166. That Hillel came from Alexandria, we

know on the basis of Tosefta Ketuboth: *היה שם רבן לרשון דבית
בבלי ויהי שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית
המדרש ויהי שם רבן לרשון דבית המדרש ויהי שם רבן לרשון דבית המדרש*

From this we learn that Hillel was the head of the sages in Alexandria for he was legally victorious over them.

But why the term Babli, a seeming contradiction if he hailed from Alexandria? Tchernowitz explains that often the term Babli was applied to an Egyptian Jew by the Talmud.

12. Hoenig. The Great Sanhedrin. Page 276, footnote #46a.

13. *ibid.*, page 173.

14. Sota 9.9: *היה שם רבן לרשון דבית דין*

15. Hoenig. The Great Sanhedrin. Page 188.

16. Hagiga 2.7: *היה שם רבן לרשון דבית דין*

17. Hoenig. The Great Sanhedrin. Page 48.

18. Weiss. Dor Dor ve'Dorshav. Vol. I, page 107: *היה שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית דין*

19. *ibid.*

20. Eduyoth 8.4 (One of the few Mishnayoth found in Aramaic):

היה שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית דין ויהי שם רבן לרשון דבית דין

Chapter III: The Second Zug

Joshua ben Perahya

Nitai the Arbelite

The members of the Second Zug, Joshua ben Perahya¹ and Nitai the Arbelite², differed a bit in their attitudes. That is to say, Joshua ben Perahya loved man and all of God's creatures while Nitai the Arbelite was filled with anger and severity. This is manifest and substantiated by the words of Musar attributed to them. Joshua said:

"³ *אין אדם נאדם ואלו הן כל האנשים אשר ברא הקדוש ברוך הוא*, while Nitai⁴ is recorded as saying *אין אדם נאדם ואלו הן כל האנשים אשר ברא הקדוש ברוך הוא*.

The reason for Joshua making this statement is explained by Frankel when he says that Joshua lived in the period⁵ of the reign of Johanan Hyrcanus, and during that phase of the monarch's rule when he favored the Pharisees and was kind to them. This climate of favorability toward the group represented by Joshua ben Perahya, inclined the latter to feel and deal kindly with his fellow Jews. His outlook had not been reduced to pessimism. On the other hand, Nitai uttered his statement after Johanan Hyrcanus had broken with the Pharisees and aligned himself with the Sadducees and their cause. His suggestion to remove oneself from an evil neighbor was in direct reference to this event as was his last statement *אין אדם נאדם ואלו הן כל האנשים אשר ברא הקדוש ברוך הוא*, which implied that the Sadducees and Johanan Hyrcanus would soon⁶ get their just rewards.

It is interesting to note that statements regarding Joshua ben Perahya are found in other sources besides the one in Abot, while, on the other hand, there is found no other reference to Nitai the Arbelite. For example, Frankel⁷ cites Sota 47, wherein we find that Joshua ben Perahya went

to Alexandria since that city was more at peace. Simon ben Shetah wrote to him from Jerusalem saying, "Unto you, Alexandria my sister, my master dwells securely in your midst and I dwell desolate." Frankel points out that in Talmud Yerushalmi the same story appears word for word, only the name Judah ben Tabbai of the Third Zug appears in place of Joshua ben Perahya's name. Frankel concludes from this that the Talmud Yerushalmi is correct in its relating of the account since Simon ben Shetah was the Ab Bet Din to Judah ben Tabbai, both being in the Third Zug. If the Babli account were correct then Simon ben Shetah would have had to sit at the head of the Sanhedrin with Joshua ben Perahya. Yet we do know specifically that he was the Ab Bet Din for Judah ben Tabbai alone.

It was Joshua ben Perahya who taught that wheat coming from Alexandria is liable to impurity because of the local use of Antalya. The Sages said, if so, let it be impure for Joshua ben Perahya and pure for all of Israel.

The reason for Joshua teaching this Halachah is that we find in Leviticus 11:38 the words "...וְהַיִּדְיוֹת..." Water was not permitted to be allowed to fall on ripe or cut grain. This makes it liable to ritual impurity. Frankel maintains that the Sages disagreed for the following reason: We know that something attached (*שֶׁנֶּחֱסַד*) to the soil and still in the process of growing is not liable to ritual impurity if water falls on it. Joshua felt that even though the water was drawn with the express purpose

of watering something attached (such as a tree or still growing wheat) and in the course of transporting the water some of it spilled and fell on cut grain without prior intent (/1978/82), the cut grain is thereby liable to ritual impurity. The reason for the Sages disagreeing with Joshua ben Perahya is that they felt that if the water was drawn to begin with, with the purpose of irrigating something attached to the soil and still growing, the cut grain upon which some of the water may have fallen without intent is therefore, not liable to ritual impurity.¹⁴

Ginzberg feels, however, that there is more involved than merely a ritual law. This concern for ritual purity in our case, is but an excuse for something more crucial to that time. It was at that time that grain competition between Egypt and Palestine was very heavy. Joshua ben Perahya seized upon this ritual law as a means of limiting this competition, thus aiding the Palestinian farmer. His colleagues, however, preferred to encourage trade with Egypt for the general good through competition in foodstuffs.¹⁵ "This dissent is to be interpreted... that the limitation of competition in basic foodstuffs is an unenforceable law and that, though an individual is at liberty to restrict himself as he will, he cannot impose such a restriction on others."¹⁶

Even though Joshua ben Perahya met with a dissenting opinion on the part of the Sages, Frankel feels

that this Tosefta proves Joshua ben Perahya taught not just decrees and principles but Halachoth as well. This was the only Halachah remaining from these generations and is called "אָנִיָּה" ¹⁷ meaning "quote."

Weiss takes a completely different view in explaining the motive for the issuance of the Halachah by Joshua ben Perahya. Joshua's motive was based on his opposition to the priestly House of Onias which was found in Egypt. In his declaring all the Egyptian wheat liable to impurity, he as much as said that all the meal offerings by the ¹⁸ House of Onias were defiled.

It is our opinion, however, that the explanation ¹⁹ as offered by Ginzberg and supported by Tchernowitz, is the more valid one. It is quite understandable that Joshua, being the head of the Palestinian Sanhedrin would be interested in the welfare of the people of that land. This would help eliminate competition from foreign countries, thus enhancing the crop value of the Palestinian farmers. ²⁰ We might still maintain with Finkelstein, when he says that Joshua represented the wealthier gentry and land owners for this would raise the prices on their produce. ²¹ The Sages were opposed for they, as Nitai the Arbelite, representing the humbler lower class, were opposed to the raising of food costs which would arise out of a virtual monopoly of grain by the Palestinian land-owners.

1. Abot 1.6.
2. Frankel. Darke ha-Mishnah. Page 33.
3. Abot 1.6.
4. *ibid.*
5. Simon's son, 135-104 B.C.E. Note Margolies and Marx. History of The Jewish People. Page 151.
6. Frankel. Darke ha-Mishnah. Pages 33-34. He offers no substantiation or historical proof for this hypothesis.
7. Frankel. Darke ha-Mishnah. Page 34. The edition of the Talmud Frankel cites is the "תלמוד פנקס", I could not find this account in Sota 47 of the Warsaw edition.
8. *ibid.*
9. Talmud Yerushalmi, Hagiga 2.2.
10. Frankel. Darke ha-Mishnah. Page 34.
11. Louis Finkelstein. The Pharisees. Philadelphia, The Jewish Publication Society of America, 1946. Vol.II, page 597.
Joshua ben Perahya "... represented the wealthier gentry..." in the Sanhedrin while Nitai the Arbelite represented the humbler plebian group.
12. Antalya (*אנטליה*) was the vessel by which the Egyptians used to transport water from the Nile River to their fields. Note Weiss. Dor Dor ve'Dorshav. Vol.I , page 131.
13. Tosefta Machshirin, chapter 3 and the commentary of Rabbi Shimshon of Chinon, France, to the Mishnah Machshirin 6.2.
*יבוס בן פרחיה אמר חסידהא דהאמורא איהו דאמורא דמאמא דמאמא
אמריהו דאמורא דמאמא דמאמא דמאמא דמאמא דמאמא דמאמא דמאמא
דמאמא דמאמא דמאמא דמאמא דמאמא דמאמא דמאמא דמאמא דמאמא*
14. Frankel. Darke ha-Mishnah. Pages 34-35.
15. Ginzberg. ON Jewish Law and Lore. Page 81.

16. L. Ginzberg. On Jewish Law and Lore. Page 82.
17. Frankel. Darke ha-Mishnah. Page 35.
18. Weiss. Dor Dor ve'Dorshav. Vol.I , page 132.
19. Tchernowitz. Tobdot ha-Halakah. Vol.IV, pages 170-171.
20. Footnote # 11 above.
21. *ibid*.

It was this Third Zug that "... undertook... the improvement of administration of the law, the re-establishment of neglected religious observances, the furthering of education, and generally the fashioning of such regulations as times required." They "... insisted upon a return to the strictest form of Judaism; and if they were obliged to employ severe and violent measures, these are not to be ascribed to any personal malice, but to the sternness of the law."

Chapter IV: The Third Zug.

Judah ben Tabai

Simon ben Shetah

... the fact that legal problems,

... is President. Thus,

... calls

It was this Third Zug that "... undertook... the improvement of administration of the law, the re-establishment of neglected religious observances, the furthering of education, and generally the fashioning of such regulations as the times required.¹" They "... insisted upon a return to the strictest form of Judaism; and if they were often obliged to employ severe and violent measures, these are not to be accounted to any personal malice, but to the sternness of the age itself.²" "From the days of Judah ben Tabai and Simon ben Shetah, the rule of Judean law, according to the views of the Pharisees, may be said to have begun, and it grew and developed under each succeeding generation. These two celebrated have, therefore, been called 'Restorers' of the Law' who 'brought back to the Crown (the Law) its ancient splendor.'³"

It is interesting for us to note, that although Mishnah Abot places Judah ben Tabai first in its account of the traditional lineage,⁴ The Tractate Hagiga claims⁵ Simon ben Shetah to be the Nasi and Judah ben Tabai to be the Ab Bet Din. Frankel attempts to answer this problem by offering that Judah was truly the Nasi and Simon the Ab Bet Din, in the beginning. After Judah erred in adjudicating the case of capital punishment,⁶ killing the one false witness which was contrary to Pharisaic law,⁷ he stepped down from the Presidential seat, deferring to Simon in matters of Halachah. Since Simon now decided legal problems, it was tantamount to actually being the President. Thus, in his assuming the duties of the President, Hagiga calls⁸ him the actual Nasi.

It was this Zug that lived in the time of Alexander Jannai and Salome Alexandra. Because of the oppression of the Pharisees by Alexander Jannai, Judah ben Tabai, together with thousands of Pharisees, fled for their very lives and reached Alexandria. Even Simon ben Shetah, the reputed brother of the queen, Salome Alexandra, was forced to go into hiding.¹⁰

When all this passed with the death of Alexander Jannai in the year 76 B.C.E., Simon ben Shetah returned to his former status in the Sanhedrin and in the Jewish community in general. He then called to Judah ben Tabai and invited him back to Alexandria.¹¹ Judah returned and the Sanhedrin functioned once more as the arm of Pharisaic interpretation of law and the then contemporary problems.

The words attributed to the members of this Zug by the Mishnah Abot, direct themselves to judges primarily. Thus we find Judah ben Tabai saying: "Do not make yourself as one of the litigants."¹² The Rav Obadiah of Bartenoro in his commentary on the Mishnah, explains this by saying that the judge is not to act as one who prepares the claims and arguments of the litigants. That is to say, the judges are not to be the lawyers in the case, not even in advice. For the judge cannot reveal the decision beforehand to one of the litigants, though the latter may have a just claim and be in the right. Through aiding the litigant, the judge may divulge his view and thus the final decision.

Judah ben Tabai also said, "And when the litigants stand before you, let them be as guilty."¹³ The Rav Obadiah

explains this by saying that you should not be swayed towards one of them saying, this fellow is an important person and so I must honor him in my decision.

"And when they leave your presence they should be as innocent in your eyes, after they have received the adjudication." ¹⁴ Now, implies this statement by Judah ben Tabai, they are done with the legal process and should not be penalized for having been involved in a court litigation. They now assume their rightful place in society and in the Jewish community.

Simon ben Shetah offered these words of Musar.

"Multiply the testing of witnesses and be careful in words ¹⁵ lest by them they learn to lie, (by virtue of your words)."

But in addition to these words of musar there are specific laws and legal decisions attributed to each of the members of this Zug. It is recorded that Judah ben Tabai executed a false witness (*PNIS 70*) in spite of the Sadducaic position which maintained that the defendant must first be executed before the witness proven to be false might receive ¹⁶ the same punishment. His purpose was to prove the Sadducees wrong in their interpretation. This implies that all the laws regarding witnesses proven false were not fully known at that time in the Pharisaic courts, for Simon ben Shetah and his colleagues said to Judah ben Tabai that he had slain an innocent man for both witnesses must be proven false ¹⁷ before any one of them can be executed as false witnesses.

Tchernowitz explains this by maintaining this to be a problem dealing with the strength of the Bet Din. The Pharisees felt that the decree of the Bet Din was equivalent to the actual fulfillment of that decree. It is not that they punished because of thought, idea or intent but rather, the Bet Din's decree was comparable to its actual fulfillment. Therefore, there is no need for the defendant's sentence to be carried out in order to justify the punishment of the false witnesses. Thus, Judah ben Tabai's decision and subsequent fulfillment through the slaying of the false witness was repudiated only by virtue of his reasoning and deciding on the basis of proving only one witness to be false rather than the two witnesses required by Pharisaic law. Since one witness cannot cause the death penalty for the defendant, by the same token, if one witness is found to be false, he cannot receive the death penalty himself. The Sadducees, however, felt that as long as the defendant was not killed, the court cannot impose the death penalty upon the two false witnesses. It was against this position, primarily, that Judah ben Tabai was judicating.

By far the outstanding and more popular member of this Third Zug was Simon ben Shetah, a man who fought bitterly against the Sadducees. It was under his influence that the Pharisees established that anyone teaching the interpretation of the law in the Torah in a manner differing from that decided upon by the majority of the Sanhedrin is liable to capital punishment. His verse for proof is from Deuteronomy

17:12 which states, " And that man shall die and you shall destroy the evil from out of Israel." ²⁵ Furthermore, if anyone changed the teaching of the Soferim, he too is liable ²⁶ to the death penalty. They, the leaders of the Sanhedrin, based their right to judicate and interpret matters legal, on the verse, "Thou shalt not turn from that which they shall tell you." ²⁷

Simon ben Shetah also decreed an obligation upon ²⁸ all Israelites to send their children to school. This was done to counter the lack of Pharisaic learning under the Sadduceaic domination from the time of Johanan Hyrcanus to the era of Simon ben Shetah. Loyal Pharisees hadn't sent their children to school since they felt it would turn away the hearts and minds of the children and direct them towards the Sadducees rather than the Pharisees. Thus, when Simon ben Shetah returned Pharisaic learning to the schools, he ²⁹ ordered parents to send their children once again.

Simon also decreed regarding the Ketubah or marriage contract. Up to his time, husbands had been divorcing their wives with great ease. To counter this, Simon declared that the husbands property now becomes collateral for the Ketubah, ³⁰ thus tending to hamper easy divorces.

It was this same Simon ben Shetah who hung 80 women ³¹ suspected of being witches, in one day, even though they may not necessarily have been worthy of such a severe punishment. Weiss justifies this by offering the fact that Hachashim through-out the ages had always done things above and beyond ³² the law in an emergency, simply as a protective measure. So

too, did Simon ben Shetah. Proof of the Hachamin making a legal fence (C⁴⁰) either in the direction of leniency or stringency in times of emergency, can be found in the Hasmonians being permitted to fight on the Sabbath.

But this incident of Simon's slaying the 80 "witches", had some interesting results. False witnesses, relatives of the slain women, testified against Simon's son with the court subsequently handing down a decision of capital punishment for Simon's son. The witnesses were proven false and Simon ben Shetah desired to reverse the decision of the court against his son. But his son, now declared innocent, said, "Father, if you wish that the salvation of Israel should be wrought by your hand, consider me but the threshold over which you must pass without compunction."³⁴

Tchernowitz offers us an insight into this seemingly uncomprehensible statement by Simon's son. There is no situation here of the witnesses testifying and then returning and reversing their testimony under questioning. Here we find a second group of witnesses declaring the first pair to be false. The question which arises from this is, can the judgement be reversed after the court has handed it down? The decision of Simon ben Shetah is that it cannot for he maintained *אין אנו יכולים להחליט*, the final decision is as the deed itself. The "Teshuah" here was the victory over the Sadducees, for the Pharisees believed in testing witnesses and judging on that basis.³⁵ It was a means of strengthening the position of the Bet Din. The reason for Simon's son being executed was that the opinion had to be firmly established which declared that the Bet Din could never make a

mistake. Since they judged him and decided on capital punishment, he undoubtedly was guilty and deserving of such punishment. Hence he was executed.³⁶

Simon also decreed and stipulated that a litigant must stand on his own feet and present his case.³⁷ Furthermore, it was legally inconsequential whether the interested party was Jewish or non-Jewish.³⁸

One of the outstanding decrees attributed to this Zug, is in the name of Simon ben Shetah. It was he who decreed that metal vessels were henceforth capable of receiving ritual impurity.³⁹ Ginzberg explains this decree by stating that this report implies that prior to Simon's time, ritual impurity could not be applied to any metal vessels other than those six kinds mentioned in the Torah. These included gold, silver, brass, iron, tin and lead,⁴⁰ these being substances from which all vessels were produced in the Holy Land from earliest times until the age of this scholar.⁴¹ At this time, or by this time, people began importing bronze and gilded objects from Asia Minor and Greece (that is to say, during the time of Alexander Jannai and Salome Alexandra). In order to protect the native products, Simon placed these new metals imported from foreign lands, in the same category as the native. They too, were then liable to ritual impurity.⁴²

This is not the only economic decree which we might attribute to Simon ben Shetah and to his ~~era~~. There is a Mishnah in Pesahim which states that Jews do not sell large cattle to non-Jews, which Ginzberg feels "cannot be dated

later than the time of Simon ben Shetah.⁴³ In fact, adds Ginzberg, it was the custom in some places not to sell gentiles small cattle, as well (goats, sheep, etc.). The reason for this is offered by the Amoraim who came to the conclusion that it is based on the theory of the fear of so-called "tryouts", which means that sometimes an animal which had been sold to a gentile on a trial basis was returned after three days. This may have occasioned a gentile's causing a Jew's animal to work on the Sabbath.⁴⁴ Ginzberg disagrees for the Amoraic analysis offers insubstantial argument. It is impossible to believe, he says, that the early Sages suffered from such far-fetched apprehension.⁴⁵ For Ginzberg, this is merely one link in a long chain of decrees which proposed to strengthen the Jewish settlement in Palestine. Not all of Palestine belonged to the Jews. In fact, as was mentioned above, important sections were inhabited almost exclusively by gentiles even in the time of the Second Temple's greatest days. The Sages, therefore, proposed to safeguard Jewish interests which were in competition with those of the gentiles round-about and within the Jewish settlements. As substantiation for this contention, Ginzberg directs our attention to Abodah Zarah 1.8 which records enactments prohibiting the sale or rental of houses and fields to gentiles. This is based on Deuteronomy 7:1-2, which demands the destruction of all the non-Jewish nations in the land of Palestine. For Ginzberg, this Biblical source is not the incentive for the enactment of the law but rather

the support for a desired law. It is nothing more than another example to prove Ginzberg's contention that these decrees and laws were based on economic considerations and the ritual or legal elements were only colorations.⁴⁶

There is but one more account which concerns this Third Zug. It is the association of Honi, the rain-maker, with Simon ben Shetah.⁴⁷ "Though the incident itself may be dismissed as legendary, there is still in it that kernel of truth which demonstrates that matters of religious-economic welfare of the community, such as prayer for rain, were also among the functions of the Sanhedrin to engage the special interest of the Nasi."⁴⁸

1. Graetz. History of the Jews. Vol.II, page 49.

2. ibid.

3. ibid. Kidushin 66:

"אביהם של בעלי המעשרים עד מהר אמרין בן שלם והחזיר הנהרה ע"ש."

Note Weiss. Der Dor ve'Dorshav. Vol.I, page 142 and

Frankel. Darke ha-Mishnah. Page 35, the latter stating:

"והמחלוקת תיקון תבנות, בעולם, ואגד בער צור, אשר גרסו חכמים יומין בן
אמר את גרסא דבבא, ובין אמרו מחלוקת בן שלם וחכמים הנהרה ע"ש."

4. Abot 1.8. Thus implying that Judah was the Nasi and Simon the Ab Bet Din.

5. Hagiga 16:

"והחכמים אמרין יבנה בן אבא, אביהו בן יוחנן, בן שלם ג"ס."

6. Note below.

7. Based on the passage in Deuteronomy 19:15:

"אל כי שני עדים או שלשה עדים יקום בה."

8. Frankel. Darke ha-Mishnah. Page 35.

9. ibid. Finkelstein. "The Pharisees." Philadelphia, The Jewish Publication Society of America, 1938. Volume I, page 44. Simon ben Shetah lived circa 70 B.C.E.

10. Frankel. Darke ha-Mishnah. Pages 35-36.

11. ibid. It was then that he removed the judges who were biased in their decisions. In addition, he removed the Sadducees who had been in the Sanhedrin. Note page 36 in Darke-ha-Mishnah, footnote #8.

12. Abot 1.8:

"אם ירש עמך בשרי ודנין."

31. Sanhedrin 46: "עשרה מקומות נאמרו לשם חכמים גיורא ארץ"
It too place in Ashkelon.
32. Weiss. Dor Dor ve'Dorshav. Vol.I, page 143.
33. ibid. "ידוע מהבית הברית כי לא היה שם בית דין."
34. Yerushalmi Sanhedrin 6.3.:
"אמר ר' יוחנן ברי ר' יהושע כל מקום שהיה בית דין של ישראל היה בו בית דין של עובדי כוכבים."
35. Graetz. History of the Jews. Vol.II, page 50. In the period of the Third Zug, witnesses in law courts were no longer questioned only as to the time and place of the situation under litigation, but were asked to relate minute details, as well.
36. Tchernowitz. Toledot ha-Halakah, Vol.IV, page 174 ff.
37. Weiss. Dor Dor ve'Dorshav. Vol.I, page 37.
38. ibid. Yerushalmi Baba Metziyah 2.5. The story of the pearl Simon found attached to a donkey his disciples gave him as a gift having been bought from an Ishmaelite, which Simon returned. He told his disciples that it was the donkey and not the pearl which they had purchased from that non-Jew.
39. Sabbath 14b: "וזהו המקום... שבו נמצאה תורה."
40. Numbers 31:22.
41. Ginzberg. On Jewish Law and Lore, page 83.
42. ibid., page 84.
43. ibid. Pesahim 4.3:
"ואכלו חקיקת איש מוכרי / עבדים (עליו) בביתו סוף."
Note also Abodah Zarah 1.6.
44. Yerushalmi Pesahim 4.3 and Abodah Zarah 15a.

45. Ginzberg. On Jewish Law and Lore. Page 84.
46. ibid., page 85.
47. Taanit 3.8. The account of Honi, the rain maker, making a circle and standing in it, praying to God for soft blessed rain. God sent the requested rain. Simon ben Shetah was annoyed but could do nothing against him for as he said, "you are like a son who yearns for something from his father, which his father fulfills."
48. Hoenig. The Great Sanhedrin. Page 182.

Chapter V. The Fourth Zug

Shemaiah and Abtalion

This Fourth Zug, composed of Shemaiah and Abtalion, came at the end of the Hasmonean dynasty, Shemaiah being the Nasi of the Sanhedrin when Herod was accused of killing in the Galilee.¹

The origins of each of these members is clouded in obscurity. Frankel maintains that Shemaiah was a convert and of the lineage of Senacherib, specifically, a grandchild.² Weiss, however, believes them to be the children of "Gerim" or converts to Judaism. The law forbade converts to Judaism to sit in the Bet Din as judges but not their children.³

With regard to the activities of these men, Tchernowitz states that in their attempt to escape the wrath of either Aristobulus or Hyrcanus, they fled to Alexandria.⁴ But the situation changed when Herod became king for he favored the Pharisees over the Sadducees since he had deposed the Sadducaic kings of the Hasmonean lineage. Furthermore, maintains Tchernowitz, the Pharisees had said, "Do not thrust yourselves upon the powers to gain attention."⁵ This was directed towards the Sadducaic kings who had preceeded Herod. Undoubtedly, the Pharisees were not happy with the Herodian cruelties ministered in the Roman fashion, but they viewed the Herodian reign as a foreign rule and were satisfied as long as he did not interfere in religious matters.⁶

"In the early period of the institution, the heads of the Sanhedrin were of the priestly family; in later times non -priestly Israelites sat over the Sanhedrin. The first Israelite to preside over the Sanhedrin was Shemaiah..."⁷

This is an interesting insight which will be discussed at greater length when dealing with Zeitlin's analysis of the Semichah problem.

It was this Shemaiah, who when Herod was brought before the Bet Din to be tried for a capital offense, stood up to express his opinion and denounce Herod, the then general of an Israeli army. "... in order to convict Herod of a capital offense, (Shemaiah) interpreted a Biblical passage to mean that an instigator to a crime should be counted equally with the perpetrator himself and should be made to suffer the same penalty." Incidentally, "... the law which Sameas (Shemaiah) propounded... never became part of Jewish law."

Yet when Herod became monarch he slew most of the members of the Sanhedrin but not Shemaiah and Abtalion. The reason Weiss feels is that he respected them. In addition, when he fought against Antigonus and attacked Jerusalem, laying siege to it, Shemaiah and Abtalion advised the people to surrender the city to him. Herod especially had respect for Shemaiah for the way he spoke out in the Sanhedrin and prophesied that Herod would be the staff that would punish them (the elders in the Sanhedrin) in their fear of condemning him. And so it was. Therefore, says Weiss, Herod believed the Divine Spirit spoke with him, and was afraid of him.

If we are to fully understand or accept Weiss' view we must first understand the personality of this king, Herod. His father was an Idumean and his mother an Arabian.

Since his tribe had been converted to Judaism, which had no racial attitude, Herod was considered a Jew.¹³ He became monarch of the Jews in 37 B.C.E. after his victory over Antigonus. Herod had the support of the Roman Empire while Antigonus was supported by the Parthian or Persian Empire which was fast declining. To strengthen his position among his Jewish subjects, he took to wife Mariamne, granddaughter of Hyrcanus II, the Hasmonean High Priest and ruler.¹⁴ "The two families' incompatible points of view, their mutual intrigues, and Herod's wounded pride, drove the king to the murder of his Hasmonean wife's brother, her mother, her grandfather, and his own two sons by Mariamne. Finally, in a fit of jealousy, he executed Mariamne herself."¹⁵ And he did claim to love his wife dearly.

How can we, then, possibly accept the analysis offered by Weiss, which purports to tell us that he did not kill Shemaiah and Abtalion because he respected them, when those whom he beget, and those whom he claimed to love, fell the voracious appetite of his sword? It is inconceivable that respect should be a motive for mercy when the personality of this king proves a decided lack of mercy to be its chief characteristic. "To a Hellenist despot human life meant little; it could readily be sacrificed if it served to advance his power. And Herod required power if he wanted to serve the cause of Augustus' Rome — to him the only cause worth serving, outside of personal pleasure and aggrandizement."¹⁶ The only motive we might establish with only the sources now available at our disposal, is that

Herod spared the lives of Shemaiah and Abtalion only because he felt they would help to control the subjects who respected them and who turned to them for leadership. It was his recognition of the people's respect for the Nasi and An Net Din rather than his respect for either these two men or the offices they held.

As with all the Zugoth thus far discussed, so too, with this one. Words of Musar were uttered here, as well. Shemaiah said; "Love work and hate exaltedness." On this,¹⁷ Rav Obadiah of Bartenoro comments; do not say I am great and it is below my dignity to engage in labor. Shemaiah goes on to declare; "And do not thrust yourself upon those in power (to gain attention)."¹⁸ This from a man who spoke out so strongly against Herod. It points up his firm conviction in this matter.

Abtalion said; "Wise men, take care in what you say,¹⁹ lest you are forced into exile." The Rav Obadiah explains this to mean, even though in that place in which you find yourselves there is no possibility for error, you must still be concerned lest you cause a sin (at some other time or place) and be forced into exile. "And you will be exiled to a place of evil waters, and your disciples who come after you, will drink (of these evil waters) and will die."²⁰ Regarding this, the Rav Obadiah says, a place where people misinterpret the Torah is a place of evil waters. They will learn wrong things from your words and disciples who follow you will drink of their fallacious teachings and learn to be sectarians, only to die in their iniquity. "And behold, the Name of Heaven will

²¹
be profained." The Rav Obadiah comments on this by saying that these false opinions will be perpetuated.

Weiss offers his analysis of Abtalion's plea to the Wise Men to take care in uttering statements. He says that Abtalion implies care in dealing with the government. In their dealings with the government prior to this time, the Sages had forced people into exile thus bringing about a dilution of Pharisaism with its threat to survival.²²

It was this Zug which established that all who wanted to be students must pay half a "Tarpeik" which was equivalent to one quarter of a dinar to the doorman.²³²⁴ Weiss feels that this was to lessen the possibility of the government's ire being aroused at the over-abundance of Pharisaic students enrolled in the Yeshiva. This tax's function was to help curb enrollment.²⁵ It also helped to eliminate, says Weiss, those of questionable allegiance and who study for reasons and purposes contrary to Rabbinic aims.²⁶ We might ask, however, isn't it also true that if the Sadducees or whoever it was that wanted to subvert Pharisaic teachings, ~~were~~ so concerned with this desire, wouldn't they help support a student who was needy yet who favored their perspective and was sympathetic to their cause?

In addition, says Weiss, since there would be this restriction placed on quantity, the limited amount would necessitate greater quality in order to maintain a high level of scholarship. This, too, could be questioned on the grounds that simply because a student or prospective

student may have the money to pay the doorman as an entrance fee, doesn't guarantee that he will be a better scholar. We must add, however, in all honesty, that there is a valid perspective to this statements by Weiss if we view it from this approach. Since they would have to cut the enrollment down, only those who did have the money and who did have the potential scholarship requirements would be accepted. However, those poorer students who might have helped raise the level of scholarship or at least maintain it, would be lost forever.

In a summation of the activities of this Fourth Zug,
Graetz offers us a beautiful paragraph. ²⁷ "They were indeed credited in after ages with so profound a knowledge of the law, that to cite Shemaiah and Abtalion in support of an interpretation was considered indisputable proof of its accuracy. One of the most distinguished and most grateful disciples called them 'the two great men of the ear', and the peculiarly careful study of the Law, for which the Pharisees became so justly celebrated, may be said to ²⁸ have originated with them."

Although we lack an abundance of laws in their name, the pattern of legal interpretation and insight was begun in the first day. For as we shall see below, Hillel had merely to offer his decision in the name of these masters and the Sons of Bethayra readily accepted his words.

1. Frankel. Darke-ha-Mishnah. Page 37. Shemaiah was extremely angry at his colleagues for they had displayed such fear in Herod's presence. No reference is offered by Frankel but we do find in Weiss (Dor Dor ve'Dorshav. Vol.I, page 50) that Shemaiah's refusal to bend in his firm convictions as to right and wrong gave him the strength to stand up against Herod in the Sanhedrin. This is to be found in Antiquities 14.9.
2. Frankel. Darke ha-Mishnah. Page 37. The reference is to Gitin 57b:
 "מגני נצו לשמריהם עמו תורה הרבים מאן אימן ואסר עמו."
3. Weiss. Dor Dor ve'Dorshav. Vol.I, page 148.
4. Tchernowitz. Toledot ha-Halakah. Vol.IV, page 210.
5. Abot 1.10: "בשם ה' תלמוד עולם". Said in the name of Shemaiah.
6. Tchernowitz. Toledot ha-Halakah. Vol.IV, pages 213-214. He adds there that this was a period which included the last two Zugoth, comprising Shemaiah and Abtalion, and Hillel and Shammai.
7. Zeitlin. Who Crucified Jesus. New York, Harper & Brothers, 1947, page 70.
8. *ibid.*, page 73.
9. *ibid.* Kidushin 43a: "האמר ליהושע בן גמליאל ואלו שנים ארבע" (א)
 "בשם ה' תלמוד עולם" (ב)
10. Zeitlin. Who Crucified Jesus. Page 42. Josephus Antiquities 15.1.

11. Graetz. History of The Jews. Vol.II, page 87. In the year 37 B.C.E.
12. Weiss. Dor Dor ve'Dorshav. Vol.I, page 151.
13. Nahum N. Glatzer. Hillel The Elder. New York, **Enai Brith** Hillel Foundations, 1956, page 15.
14. *ibid.*
15. *ibid.* Pages 15-16.
16. *ibid.*
17. Abot 1.10: "אמא אר-סחאוב ושא אר-פוגמא."
18. *ibid.*: "מאד תמאד ערשא."
19. Abot 1.11: "חכמים בניהם הדברים שאו תמאד חכמה אלא."
20. *ibid.*: "והשם למקום שם הדין וישל בלשחיים שמוך אחרים ויחול."
21. *ibid.*: "אחזא רע שיהי ארמאד."
22. Weiss. Dor Dor ve'Dorshav. Vol.I, page 149.
23. Marcus Jastrow. Dictionary. New York, Title Publishing Company, 1943, volume I, page 557.
24. Yoma 35b.
25. Weiss. Dor Dor ve'Dorshav. Vol.I, page 149.
26. *ibid.*
27. Shemaiah and Abtalion, circa 60-35 B.C.E. Note Graetz. History of the Jews. Volume II, page 72.
28. *ibid.*

As is true of almost each of the members of the Zugoth, this Zug contains some obscure elements, as well. Just prior to Hillel taking over the Presidency of the Sanhedrin, we find a record of a group called the Bnai Betayra. There isn't too much in their name upon which we might rely for an accurate picture of their functions and their appointer, but we do have one outstanding account of them in the Talmud. "This law was lost to the Bnai Betayra; one time the fourteenth (of Nisan) fell on the Sabbath and they did not know if the Pesah over-rides the Sabbath or not. They said: Isn't there any person who knows whether the Pesah over-rides the Sabbath or not? They said unto them: There is a man who went up out of Babylonia and Hillel the Babylonian is his name, and he served the two great men of the generation, Shemaiah and Abtalion and he knows if the Pesah over-rides the Sabbath or not.¹" The account goes on to tell us that they didn't accept his words until he said that he received it directly from Shemaiah and Abtalion, whereupon they made him the Head of the institution. His² answer was that Pesah does take precedence over the Sabbath.

To escape the wrath of either Aristobulus II or Hyrcanus II, Shemaiah and Abtalion fled to Alexandria.³ It was while they were gone and none of their disciples were left to head the Sanhedrin, that the Bnai Betayra became the heads of that institution.⁴ These men, claims Tchernowitz, were inclined towards the Sadduceaic position, siding with the Zaddokite priests.⁵ Finkelstein, on the other hand, feels that "... to identify the Bnai Betayra

with Sadducean teachers... [15] a view which is utterly without support in tradition. On the contrary, the fact that the Bnai Betayra finally submitted to Hillel when he declared that his Pharisaic masters, Shemaiah and Abtalion, had declared that the sacrifice might be offered, demonstrates that they were not Sadducees.⁶

It was in the year 30 B.C.E., that we find Hillel appearing "... in the presence of the Elders of Batya, new religious leaders in Jerusalem.⁷" The most obvious question we must ask is, if they were the religious leaders in Jerusalem, why then the manifestation of a lack of knowledge in matters religious by the ostensibly highest legal authorities?⁸ Furthermore, if they were the religious and legal leaders, shouldn't they have been aware of past decisions by the former heads of the Sanhedrin, Shemaiah and Abtalion, whose position they now occupied? In addition, why does Mishnah Abot neglect to record their names when listing the chain of tradition? Weiss offers the following answer. Herod, after Shemaiah and Abtalion escaped for their lives to Alexandria, sought men who would, rather than combat his program using the power vested in them as religious leaders, was interested in installing heads who would support his activities. In short, he wanted "yes-men." As Weiss puts it, they were to be as "clay in the hand of the potter."⁹ But they came to realize their inadequacies and bowed to the more worthy, astute and popular Hillel.¹⁰

We find that when Hillel became the Nasi, his Ab

Bet Din was, rather than Shammai as we would expect, Menahem, at first. It was only after Menahem left that Shammai became¹¹ the Ab Bet Din. We do not know to where Menahem went since the account in Hagiga is unclear. We do know, however, that he did take 80 pairs of disciples with him.¹² He may have gone to serve the king or he may have returned to the Essenes.¹³ A motive for his leaving, Weiss offers, is that he may have opposed the wider interpretations accepted at that time, a tradition of interpretation that began with Shemaiah and¹⁴ Abtalion.

The motive for offering the suggestion that he may have returned to the Essenes, is found in this statement by Glatzer. "It may well be that he was an Essene before he associated with Hillel, and that he was the same Menahem¹⁵ the Essene whom Josephus mentioned in the story of Herod." It is conceivable, that if he was dis-satisfied with the new method of interpretation, as claims Weiss, and that he did stem from and originate in an Essenean environment, that he would return there after leaving the office of Ab Bet Din. This is, however, no more than conjecture on our part. There is no actual proof to be offered as substantiation.

As was pointed out above, Tchernowitz maintains that Hillel was born in Alexandria, and was , therefore, an Egyptian Jew. It was for this reason, says Tchernowitz, that the Zugoth ended with Hillel, for he united the two schools. Yet the problem arises; how is it that all that Shemaiah and Abtalion taught was forgotten in Jerusalem

and only the Babylonian Hillel was capable of teaching them?
How did he learn these laws? Hillel learned these laws directly from Shemaiah and Abtalion, says Tchernowitz. He came to Jerusalem when he was 40 years of age and remained there for some time prior to his installation as Nasi. Yet, asks Tchernowitz, if he had been there for some time, why then do we find the statement in Pesachim, "there is a man who came up out of Babylonia?" It implies that he just arrived?

For Tchernowitz, Hillel came from Alexandria and was head of the sages there from the age 40 to 80. At 80 years of age he came to Jerusalem from Alexandria and not from Babylonia. It was customary to call an Alexandrian "Babli" if he stemmed from ancestors who had previously dwelt in Babylonia. Thus, we find Hanamel the High Priest set up by Herod, referred to as a "Babli" by Josephus, while in the Mishna he is referred to as a "Mitzri", an Egyptian. He learned from Shemaiah and Abtalion when they were in Alexandria, while escaping from the wrath of either Aristobulus or Hyrcanus. He arrived in Jerusalem after the oppressions ceased against the Pharisees (at least to some extent) and Herod who favored the Pharisees over the Sadducees, permitted the Schools of Hillel and Shammai to function and flourish under his rule. This was the time of the transference of religious authority from the Sadducees to the Pharisees.

Glatzer, together with Frankel and Weiss, maintain that Hillel came from Babylonia. His family was one of honor that claimed descendance (on his mother's side)

from David the King.²⁹ He came to Jerusalem to advance his Jewish learning about the year 40 B.C.E., when Shemaiah and Abtalion were the leading Pharisaic teachers in Jerusalem.³⁰ He returned to Palestine after a period of silence,³¹ to re-establish the Torah which had been forgotten. By virtue of the controversies between Hyrcanus II and Aristobulus II, Alexander Jannai's children, civil strife caused the Houses of Study to be destroyed and the Torah neglected.³² He first learned the Torah in Palestine and then returned to Babylonia where he made a great name for himself until the Palestinians³³ invited him to return and resolve their difficulties.

Yet there is a period of his life enshrouded in darkness. Where was he during that period. Some maintain, as does Frankel, that he returned to Babylonia. Glatzer feels that "... there is an obvious parallel between those forty years [in which Hillel and his disciple Johanan ben Zakkai "served the wise men"] and the forty years which Moses spent in the wilderness before he was ready to lead his people into freedom."³⁴ For "... in Hillel's time many wise men lived in the wilderness where they could dedicate themselves to a life of Torah and Hasidut... Hillel's special emphasis on Hasidut and learning after his return to Jerusalem suggest that he had gone through a period of contact with men, or groups, who lived this kind of Judaism outside the official centers."³⁵

"He himself must have withdrawn from a generation to which 'the Torah was not dear' and prepared himself for a return."³⁶

It was at this time that "... Ezra's endeavors in behalf of the Torah were forgotten. Hillel now aimed at re-establishing in Jerusalem a center for the forgotten Torah. To accomplish this, Hillel... carefully considered the ways of the Early Hasidim and their followers in the Essene and Covenant communities... A period of communion of life with the sectarians seems possible."³⁷

Yet why his return to Jerusalem? "Do not separate yourself from the community", was one of the words of Musar attributed to him. It "... was his final decision in a period of sectarianism and separatism. There was too much individualism in the sectarian groups; they considered themselves alone to be righteous; all others were 'wicked.' He loved Jerusalem and its people... He believed in the power of the Torah to change the heart of man... He left Jericho, near which the Essenes and the Community of the Covenant were at home, and went up the road to Jerusalem."³⁸ In substantiation of this position, namely as a re-establisher of the Torah, Weiss points out that it was said about him that he was comparable in his generation to Ezra in his, for both were

³⁹
"אברהם אבינו"

⁴⁰
Both Hillel and Shammai were called "ha-Zaken".

The reason for the adjectival appellation was not chronological but rather to differentiate between the earlier and later Hillel⁴¹ and Shammai⁴². It may be compared to the English terms Senior and Junior.

There is a Talmudic reference which seems to imply that Hillel outlived Shammai. We find there that Hillel intended to indulge in ~~Semicha~~ on the Yom Tov and the disciples of Shammai contested his action. If Shammai were still alive, wouldn't he personally contest Hillel's move? Obviously, Hillel was still alive but Shammai was dead and only his disciples carried on in his perspective.

Herod, king of the Jews during the Nasiship of Hillel, "... was aware of the animosity of the Pharisees toward the Hasmonean dynasty, hence he did not persecute them. And when he compelled all the Jews to take an oath of allegiance to him, he absolved the leaders of the Pharisees, Hillel and Shammai, and their followers from taking such an oath. However, those Pharisees who opposed him were mercilessly murdered."

Yet "... Hillel could never accept Herod's state. Nor would he engage in a futile struggle against it... As against the state, Hillel, ^{and} after the destruction of the Temple, his disciple Johanan ben Zakkai, built the community on the free and peaceful collaboration of its members. The community in turn created a dynasty of its own in Hillel's family. Hillel was considered the prince of the community and the people looked upon him as their secret counter-king, the legitimate ruler opposed to Herod the usurper."

Hillel came to Jerusalem and was forced to support himself on half a dinar per day. It was perhaps this close association with near or actual poverty that made him so concerned with the needs of the poor. For he "... made the

poor and the broken a loving concern of his private life and represented the cause of the poor in his academy as against the advocates of the older conservative, Pharisaism and its spokesman, Shammai.⁴⁷"

Here was a man who through his calmness, his patience and his ability to control anger, had a following of huge numbers of disciples and students.⁴⁸ In contradistinction to Shammai who had no patience with people and matters concerning people, Hillel considered each person seriously. He accepted proselytes and welcomed them into the Jewish fold. And when he died his "... disciples remembered the master's life and alluded to the three themes to which he had dedicated it.⁴⁹ They said, 'The Hasid, the humble man, the disciple of Ezra (is no more).'⁵⁰"

"While Hillel represented a progressive tendency, it was Shammai's office to preserve tradition. Hillel can be understood in terms of the philosophy of the Early Hasidim, Shammai in terms of the teachings of the pre-Maccabean, conservative, priesthood.⁵¹" We do not know too much about the origin of this Ab Bet Din, Shammai. His real name was either Simon or Shemaiah but it was shortened to simply Shammai.⁵² Here was a man who, in spite of the statement attributed to him in Abot,⁵³ namely, "... receive all men with a friendly countenance",⁵⁴ was of short temper, lacked a sense of humor,⁵⁵ maintained very strict views,⁵⁶ was famous for his rejection of proselytes,⁵⁷ and had a volatile personality.⁵⁸ In fact, his generation didn't care too much for him.⁵⁹ They wrote no Agadoth about him as they did about Hillel.⁶⁰ While the towns-

people and their sympathizers became the School of Hillel,⁶¹
Shammai, who had been the leader of the provincial faction,⁶²
"... the provincial group and their representatives and
scholars became the School of Shammai."⁶³

"Hillel had introduced a new principle of teaching, a new method of reading the Torah... Pharisaism had thus far conceived the oral law as a body of fixed traditions, transmitted from master to student. Hillel changed it into a movement in which Torah became the central force as the source of all law and all religious concepts. Torah was now looked upon as the perennial record of wisdom and instruction, ever ready to offer an answer to a question at hand provided the proper logical principles were applied to the text. Both historic continuity and the freedom of reasoning were safeguarded by this concept of Torah. This was a new form of Pharisaism, which we may term Neo-Pharisaism."⁶⁴ "In a more definite sense Torah, law, represents to classical Judaism the expression of God's will. Once declared on Sinai, this will is now recorded in the Torah in human language. Since God is not primarily law-giver but father, creator, lover of His creatures and of His people, the pronouncement of His will inspires ready acceptance. By living according to Halakah — the classical Jewish term for law — the Jew overcomes the chaos which threatens human life; he emerges victorious over anarchy and establishes order in himself. There is no sphere which can be considered irrelevant. Everything in life, big and small, is given form and significance by Halakah."⁶⁵ This was a perspec-

pective delineated by Glatzer which may be attributed to the
Nasi Hillel. For with him begins the definitive elevation⁶⁶
of the Pharisaic teachings to new heights. The basic differ-
ence between Hillel and those who preceded him or between
Hillel and Shammai can be found in his wider interpretation⁶⁷
of Torah and Halachah. Shammai offered a more literal inter-
pretation of Torah and Law, seeking to follow the letter
of the word. Hillel sought origins, causes, purposes, etc.,
of Halachah. He drew from previous laws in order to judicate
for new situations when he felt it proper, but more often
than not, he would depend upon reason, thought and logic to⁶⁸
meet contemporary legal demands. While Hillel would come to
decisions that were necessary for the contemporary situation,
Shammai would search established laws on which to decide
legal problems. Shammai pressed for judication as was done
in previous laws even if only somewhat similar in situation.
Where it was extremely difficult to do this, he engaged in⁶⁹
pilpul and forced analogies. Shammai was loathe to state
new laws, Hillel was not. Shammai was unconcerned with the⁷⁰
origin or cause of a law but only with its fulfillment.
Hillel traced laws to their first principles and "... raised
them out of the narrow circle of tradition and mere custom
to the heights of reason."⁷¹ Hillel did not reject what came
from earlier generations, "... but insisted that in each
generation scholars were entitled to search the Torah
thoroughly and, with the assistance of reason and logic,
derive new meanings and new legal prescriptions."⁷²

This Zug is the first in whose names we find
laws in the Mishnah and Baraita.⁷³ Hillel and Shammai were
the first to have controversies in Halachah ~~and~~ to maintain
their separate positions.⁷⁴

There is a decided difference in the attitudes
of Shammai and Hillel in the matter of individual responsi-
bility, which was but touched upon in a preceding chapter.
The plebians stressed the moral requirements of the individ-
ual and the responsibility of each man. The Shammaites
found fault with such individualism. "If a man sends ano-
ther to commit murder, the agent is guilty", held the plebian
Pharisees, 'but the principal is innocent.'⁷⁵ Shammai, who
was the spokesman of the near-patricians in the party, said,
'the principal is guilty.'⁷⁶ A perfect example of this atti-
tude of individual responsibility and the dichotomy in appre-
ach between Hillel and Shammai is found in this account.
"The book of the prophet Ezekial was ... in danger of ex-
clusion. The Shammaitic conservatives felt that in some laws
regulating priestly activity the book contradicts the pre-
cepts of the Pentateuch. But the liberal Hillelite tradition
attracted the very leader of the Shammaitic school ... who
withdrew into the solitude of an upper chamber until he
resolved the contradictions; thus he could help preserve
the book of the prophet who taught the individual responsi-
bility of man."⁷⁷

In most instances of disagreement between Hillel
and Shammai, it was Hillel who was the victorious one. There

is ,however, one account in the Talmud wherein Hillel bows to Shammai. The cause for his deferring to Shammai is not clear although Frankel maintains it was either because of Hillel's humility or Shammai's sharpness.⁷⁸ "When one vintages (grapes) for the vat(i.e., to manufacture wine), Shammai maintains :It is made fit (to become unclean);while Hillel ruled, it is not made fit. Said Hillel to Shammai: Why must one vintage(grapes) in purity, yet not gather(olives) in purity?⁷⁹ If you provoke me, he replied (Shammai to Hillel), I will decree uncleanness in the case of olive gathering too. ... And on that day Hillel sat submissive before Shammai,like one of his disciples."⁸⁰

It was Hillel who introduced the seven rules or⁸¹ Middoth. Through them "... the oral law, assumed quite a different aspect; it became more universal and reasonable in its tendency, and might be looked upon as originating from Holy Writ itself."⁸² Thus, "... the examination of the written law — the Torah — is pursued along logical, rational lines."⁸³ "These explanatory rules, moreover, intended not only to justify the oral law, but also to lay down instructions how to amplify the laws, and how to meet unforeseen cases of difficulty."⁸⁴ Hence,it was now possible "... to apply the law liberally to new conditions of time and society. Thus, everything could be found in the Torah; a tradition in law or custom did not have to rest on a school regulation or on a legal enactment but could be traced back to its origin in the Torah. In this point Hillel's activity was decisive."⁸⁵ And what were these seven working principles

for interpreting the Torah for Halachic purposes:

A. *קרייתא*: "The principle underlying the inference of *קרייתא* is, that the law is assumed to have the tendency to proportionate its effect to the importance of the cases referred to, so as to be more rigorous and restrictive in important, and more lenient and permissive in comparatively unimportant matters."
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B. *גזירה שווה*: "The term 'Gezara Shava' means literally either a similar section (part) or a similar decision(degree). In the Talmudic phraseology it denotes an analogy of expressions, that is, an analogy based on identical or similar words occurring in two different passages in Scripture. The 'Gezara Shava' is used: first, as an exegetical aid to determine the meaning of an ambiguous expression in a law; second, as an argument in construing laws with reference to each other, so that certain provisions connected with one of them may be shown to be applicable also to the other... The former is called exegetical and the latter the constructional 'Gezara Shava.' The usual formula for both kinds of 'Gezara Shava' is:

*כאן נאמר... וכן נאמר...
כאן נאמר... וכן נאמר...*

Here is said:... There is said:...

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as there,... so here..."

C. *הכלל מן המיוחד*: "It is an established principle of modern interpretation of laws: 'When the law is special, but its reason general, the law is to be understood generally.' This principle is also applied in the rabbinical legal interpretation, as may be seen from the following

example: In Deuteronomy 24:6, the law provides 'No man shall take the mill or the upper millstone as a pledge: for he taketh a man's life to pledge.' The law is special, prohibiting certain specified utensils, the hand-mill and the mill-stones, to be taken as pledges. The reason, however, which the law expressly assigns to this prohibition is general; by taking away from the poor debtor these utensils, so essential for daily domestic use, you are depriving his family of the means of preparing their food. Hence, the Rabbis feel justified in generalizing this law, so that 'Everything which is used for preparing food is forbidden to be taken as pledge.'⁸⁸"

- D. פ'אמא יענאק / יא: The general law is sometimes formed "... by a combination of two special provisions found either in one and the same passage or in two different passages of Scripture." This is termed "a general rule drawn from two provisions."⁸⁹ The formula is as follows: "Behold, this case is not like the other, and the other not like this; the common peculiarity is ..." That is to say, "first a difference between the two special provisions is stated, and then again those points are set forth which are common to both of them, and which form their characteristic peculiarity. Any other case having the same peculiarity is then subject to the same law."⁹⁰

- E. פ'אמא יענאק / יא: This is the General, "... that which comprehends a class of objects; that which is applicable to a number of things agreeing in a certain point in common."⁹¹

ג is the Particular "... or the Special, that which singles out an individual from among a number or class.⁹²"

"It is obvious that where the law speaks in general terms it intends to refer to everything included in those terms. Where, however, it used particular terms, the whole tenor of the law will decide whether it refers exclusively to the single objects mentioned and enumerated or also to others of a similar nature."⁹³

F. **באור דבר דבר**: "To which something similar in another Passage, i.e., an exposition by means of another similar passage."⁹⁴

G. **דבר דבר דבר**: "A word or passage is to be explained from its connection or from what follows. That is to say, the true meaning of a law or of a clause in a law is sometimes to be interpreted by considering the whole context in which it stands or by looking to that which follows, i.e., explaining an ambiguous word from the context, ... explaining the meaning of a passage from the context, ... and interpreting a clause in a law by a clause which follows."⁹⁵

In concurrence with this view of aiding the community in matters legal, by changing or initiating new laws, Hillel established the Prosbol.⁹⁶ The Bible stated; "At the end of every seven years thou shalt make a release. And this release shall be in this manner: every creditor shall release that which he hath lent unto his neighbor; because the Lord's release has been proclaimed. Of a foreigner thou mayest exact

it; but whatsoever of thine is with thy brother thy hand shall release.⁹⁷"

The Prosbol had a "... two-fold application in protecting the creditor from losing his loan; first when the creditor received a note which he did not deposit with the court, secondly when the loan was transacted without witnesses.⁹⁸" The Prosbol was required to be written before a court of two persons,⁹⁹ and could be written by the creditor without the knowledge of the debtor and is valid whether or not the creditor has a promisory note, and whether or not the note was deposited with the court.¹⁰⁰ The time for writing the Prosbol was on the eve of the New Year of the Sabbatical year.¹⁰¹

There is another Takanah in the name of Hillel.¹⁰²
"If the last day of the twelfth month(after the purchase of a house in a walled city) arrived and the house was not redeemed by the seller, it will be permanently for the buyer. Whether he bought it or it was given to him as a gift it is to be his permanently. In the beginning (the buyer) used to hide himself on the last day of the twelfth month in order that the house should be his permanently. Hillel the Elder made the Takanah that the seller should give his money to the office(of the Bet Din), break down the door(of his formerly sold house) and enter into it. (The buyer) may then go and redeem his money(from the court) any time he so desires.

Weiss points out that it is interesting to note that Shammai never disagrees with Hillel in his Takanoth, or at least, is never recorded as disagreeing.¹⁰³

For Hillel "... there is an intimate relationship between learning, personal ethics, and the attitude toward one's fellow man: 'Do not separate yourself from the community', 'Judge not your fellow man before you have come into his situation', and 'Say not a thing that cannot be understood at once in the assumption that sometime in the future it will be understood.'¹⁰⁴ Hillel pressed for more study and learning and against yielding to the temptations of material achievement. "Hillel used to say: The more flesh, the more worms; the more possessions, the more worry; the more women, the more witchcraft; the more maid-servants, the more immorality; the more men-servants, the more thieving. But: The more Torah, the more life; the more study and contemplation, the more wisdom; the more counsel, the more discernment; the more charity, the more peace."¹⁰⁵

For Hillel, the essence of religion is care in meeting the obligations of man's relationship with man. Therefore, he established the principle of man's love for man as primary.¹⁰⁶ "Do not unto others that which you would not have them do unto you",¹⁰⁷ "They said about him (Hillel); let everyman be as humble as Hillel."¹⁰⁸

He turned his face heavenward and thanked God for the needs of each day in their own course, for "... he trusted in God."¹⁰⁹

In contradistinction to the motive for the establishment of the door-tag in the time of Shemaiah and Abtalion, "... Hillel and his followers, initiators of a Neo-Pharisaism, maintained that one 'ought to teach every man' — rich or poor.¹¹⁰ It was in connection with this approach that he said: "He who does not add(learning) detracts; and he who does not learn, is deserving of death."¹¹¹

There isn't much in the way of Musar from Shammai. Only one Mishnah in Abot, wherein he says: "Make your (study of) Torah a fixed time(leave it not to chance); say little and do much; and receive each person with a pleasant countenance."¹¹²

Although the general opinion is that Shammai and Hillel were the founders of their respective schools that bear their names, Ginzberg maintains that "... Shammai and Hillel were not the founders of the schools to which they gave their names, but rather that they figured as the last in the period which began with the first pair, Jose ben Joezer and Jose ben Johanan, and ended with the last Pair,¹¹³ Hillel and Shammai." "... they were the pre-eminent figures among the conservatives and progressives respectively. Since they were also the most nearly contemporary with the scholars of the Mishnah, the two parties were named after them, even though the basis of their conflict was as old as the time of the First Pair. The conclusion to be drawn from these considerations is that the School of Shammai and the School of Hillel represent in actuality the end of the period of the

Pairs and not the beginning of a new era.¹¹⁴ Thus, the "... disagreements between the two wings of the Pharisees is not to be considered in the light of matters of personal temperament, but they were caused by economic and social differences.¹¹⁵" The School of Shammai, following the needs of the wealthy, spoke for the patrician class while the School of Hillel reflected the needs of the lower social class.¹¹⁶ This is the reason for Bet Shammai's strictness and Bet Hillel's leniency. For example: The School of Shammai taught only to a man who is wise, modest, high-born and rich. The School of Hillel maintained that the Torah should be taught to everyone¹¹⁷ without distinction. The School of Shammai granted more rights to^a woman, for her position was¹¹⁸ higher among the upper classes than among the lower. Another proof of the fact that the School of Shammai represented the interests of the wealthier among the Pharisees, may be deduced from the following example: "If a woman took a vow not to suckle her child, the School of Shammai say that she may withdraw her breasts from the child, but the School of Hillel say that her husband can force her to give suckle."¹¹⁹ This attitude on the part of the School of Shammai is understandable since a rich man can afford to hire a wet-nurse,¹²⁰ something, however, very difficult for a poor man.

On the basis of the above analysis, it would be within the framework of common sense to ask, why then didn't the two schools of thought break into sects as did so many other groups in Judaism? Finkelstein hastens to answer this

question by stating that the two schools "... recognized each other as true Pharisees devoted to the fundamental principles of their society and unshakable loyalty to it." ¹²¹ Although there may have been differences of opinion, there must have been a mutual respect, admiration and a recognition of the fact that through the various opinions permitted in the Sanhedrin and within the framework of the then Pharisaic Judaism, the strength of Judaism was multiplied many-fold. As is true of all groups in all societies, the strength rests in the motto, "Out of many, one." Through the divergent opinions and approaches, through the representation of different interests within a given institution, and with its free expression of ideas, Pharisaic Judaism, indeed Judaism itself, had the potentiality of survival. This was manifest in the activities and verbalisations of the Schools of Shammai and Hillel.

16. Tchernowitz. Toledot ha-Halakah. Vol.IV, page 206.
17. Sifre to "ואמר ר' חייא: ואלו דברים שהם נשנים ונאמרים
אין שם ובראשית אומר וישמעאל ארץ ארץ."
18. Pesahim 66a: "אמר ר' חייא: ואלו דברים שהם נשנים ונאמרים
אין שם ובראשית אומר וישמעאל ארץ ארץ."
19. Tchernowitz. Toledot ha-Halakah. Vol.IV, page 208 ff.
20. Josephus. Antiquities. 15. 2-4.
21. Parah 3.5.
22. Tchernowitz. Toledot ha-Halakah. Vol.IV, page 210.
23. *ibid.*, pages 213-214.
24. *ibid.*, page 214.
25. Glatzer. Hillel The Elder. Page 24. Hillel "... was
born in Babylonia before the middle of the first pre-
Christian century."
26. Frankel. Darke ha-Mishnah. page 38.
27. Weiss. Dor Dor ve'Dorshav. Vol.I, page 155.
28. Frankel. Darke ha-Mishnah. Page 38.
29. Glatzer. Hillel The Elder. Page 24; Frankel. Darke ha-
Mishnah. Page 38. Note also Gratz. History of the Jews.
Vol.II, page 96: "Hillel, born about the year 75, traced
back his descent, on his mother's side, to the House of
David."
30. Glatzer. Hillel The Elder. Page 24.
31. Succah 20: "בשנת ה'תקנ"ה חזר ר' חייא ונשנה ונאמר
ו'סד, חזרה ונשנה ונאמר ו'סד."
32. Frankel. Darke ha-Mishnah. Page 38.
33. *ibid.*

34. Glatzer. Hillel The Elder. Page 29.
35. *ibid.*, pages 29-30.
36. *ibid.*
37. *ibid.*, page 31.
38. *ibid.*, page 32.
39. Weiss. Dor Dor ve'Dorshav. Vol. I, page 159; Succah 20a.
40. Hillel "ha-Zaken": Betzah 16, Succah 53.
Shammai "ha-Zaken": Yoma 77, Succah 28, Kidushin 43.
41. It is known that the son of Rabbi Judah the Prince was called Hillel, as were other Sages. Note Frankel. Darke ha-Mishnah. Page 38, footnote #9.
42. In Talmud Yerushalmi we find a man called Shammai. Note *ibid.*
43. Betzah 20a: *אמר רבי הילל כהן אביא סימל לעברה עמוק*
"...אמר רבי הילל, חבול עמוק ורעיד' אמר הכהן, אמרו לו..."
44. Glatzer. Hillel The Elder. Page 44.
45. *ibid.*, pages 63-64. Note Leo Baeck. The Pharisees And Other Essays. New York, Schocken Books, 1947, page 47.
Note also Zeitlin. Who Crucified Jesus. Page 70.
46. Finkelstein. The Pharisees. Page 15. Note Yoma 35b.
47. Glatzer. Hillel The Elder. Page 44.
48. Finkelstein. The Pharisees. Pages 89-90; note there an example of his patience in a story told about him. Note also Weiss. Dor Dor ve'Dorshav. Vol. I, page 169, who points to the fact that Hillel established schools for Torah and diffused learning to a very great extent.

49. Finkelstein, The Pharisees. Page 516. Note Sabbath 31a.
50. Glatzer, Hillel The Elder. Page 11a.
51. *ibid.*, page 29.
52. Frankel, Darke ha-Mishnah. Page 39, footnote # 4.
53. Abot 1:15:

"...וְהָיָה כִּי יִשְׁמַע הָעָם בְּכֹהֵן הַיִּשְׁרָאֵל..."

54. Finkelstein, The Jews: Their History, Culture and Religion,
Volume I, page 129.
55. *ibid.*
56. Graetz, History of The Jews. Volume II, page 101.
57. Finkelstein, The Pharisees. Page 516. Note also Sabbath 31a.
58. Weiss, Dor Dor ve'Dorshav. Vol. I, page 163.
59. *ibid.*
60. *ibid.*
61. Finkelstein, The Pharisees. Page 619.
62. *ibid.*, Page 516.
63. *ibid.*, page 619.
64. Glatzer, Hillel The Elder. Page 27.
65. *ibid.*, page 54.
66. Tchernowitz, Toledot ha-Halachah. Vol. I, page 197.
67. Weiss, Dor Dor ve'Dorshav. Volume I, page 170 ff. He
followed the approach only timorously begun by Shemaiah
and Abtalion. It was Hillel who truly helped it grow
into maturity.
68. *ibid.*
69. *ibid.*, page 171.
70. *ibid.*, page 172.
71. Graetz, History of The Jews. Vol. II, page 98.

72. Finkelstein. The Jews: Their History, Culture and Religion. Vol.I, page 131. It is interesting to note that "... Hillel is the first teacher to whom the use of the term 'oral law' is found ascribed." Quote from Glatzer. Hillel The Elder. Page 94, footnote #16.
73. Frankel. Darke ha-Mishnah. Page 38.
74. Excluding the conflict or controversy between the two regarding the Semichah, we also find them disagreeing in Eduyoth 1:1,2,3; Nidah 1:1; and Hagiga 2:2. This in spite of Frankel's statement that in all the Mishnayoth there isn't a single controversy between Shammai and Hillel but rather between the Schools of Shammai and Hillel. Note Frankel. Darke ha-Mishnah. Pages 39-40.
75. Kidushin 43a.
76. ibid. Note also Finkelstein. The Pharisees. Page 285.
77. Glatzer. Hillel The Elder. Page 60. Note also Sabbath 13b. The constant repetition of the words "ben Adam" in the book of Ezekial is but one indication of the prophet stressing individual responsibility, for his words are directed to each and every listener personally.
78. Frankel. Darke ha-Mishnah. Page 40.
79. H. Freedman. Tractate Sabbath. London, The Soncino Press, 1938. Vol.I, page 70, footnote #6. "You maintain that grapes are fit to become defiled and therefore must be vintaged into ritually clean baskets: why then do you not insist upon it when olives are gathered too, for surely the same reasoning applies?"

80. ibid., footnote # 8. (Note Sabbath 17a): "... i.e., the assembly voted against him — of course the actual expression is not to be understood literally." For other Halachoth in the name of Shammai, note Maaser Shenai 2:4, 8, 9; and Kelim 22:4.
81. Graetz. History of The Jews. Volume II, page 164, footnote #1; maintains that these principles were already used by Shemaiah and Abtalion who were Alexandrians and so familiar with Aristotelean thought which included these principles.
82. ibid., page 98.
83. Glatzer. Hillel The Elder. Page 54.
84. Graetz. History of The Jews. Vol. II, page 98 ff.
85. Glatzer. Hillel The Elder. Pages 54-55.
86. Mielziner. Introduction To The Talmud. Cincinnati, The Bloch Printing Company, 1894, page 130; Example, Mishnah Betzah 5:2: "כל אלו ה'קו אמרו קול וחומר משבר."
87. ibid., page 143. Example, Pesachim 66a:
"האמר מעדן הפסח ונאמר מעדן התמיד, חמ מעדן האמר האמר
פועם את פועם אל מעדן האמר הפסח דוחם את פועם."
88. ibid., page 156. Example, Mishnah Baba Metzia 9:13:
"לא מים ורבה הלמד אלה כל ימי שמשן הוא לא רב
שאר כי רב הוא חומה."
89. ibid., page 159-160. The formula is:
"לא מידי רב רבי ולא רבי רב, כבוד השלום..."

90. *ibid.*, "In making a 'Binyan ab' by a combination of two special provisions it is... necessary first to show that they are not so identical as to be regarded as *שני דברים נגזרים*, but they really do differ in some points." As an example we note *ibid.*, page 161: "In Exodus 21:26-27, the law provides, that 'if a man smite the eye of his servant and destroy it, he shall let him go free for his eye's sake. And if he smite out his servant's tooth, he shall let him go free for his tooth's sake.' Here two provisions are made, one concerning the eye and one concerning the tooth of the servant. Though different in their nature eye and tooth have that in common that they are essential parts of the human body, and the loss of them cannot be restored. Hence the Rabbis draw from these two provisions the general law that the mutilation of any member of the servant's body in consequence of brutal treatment on the part of the master, causes the immediate manumission of that slave."

Note also Kidushin 24a:

הלא כיון דבין כלי הנש, הוצא
השם שבתן שם, ואם אגריק שאין יבולאים עובדין קמיה
אמי אגריק שאין יבולאים עובדין קמיה.

91. Mielziner. Introduction To The Talmud. Page 163.

92. *ibid.*

114. *ibid.*, page 94.
115. *ibid.*, page 103.
116. *ibid.*
117. Abot de Rabbi Nathan, beginning of chapter III.
118. Ketuboth 8.1: "If a woman comes into possession of property after she is betrothed, the School of Shammai say that she has a right to sell it (and keep the proceeds as her own), but the School of Hillel say that she cannot sell it."
119. Tosefta Ketuboth 5.5.
120. For more such examples, note Ginzberg. On Jewish Law and Lore. Pages 104-118.
121. Finkelstein. The Pharisees. Page 620.

[illegible]

It seems extremely peculiar that the Semicha problem should be the "first controversy recorded in the Talmud..."¹, yet no agreement was reached throughout all the successive generations of Zugoth.² "According to Tanaitic tradition,³ the Pairs differed with respect to only one matter, the laying on of the hands, there being those who required it and those who did not."⁴

The problem before us is, why in all matters of interpretation of the Torah, the Pairs discussed, voted and fixed a precedent for the future, but could never concur on the laying on of the hands?⁵ In the first three Pairs, the Nesim were opposed while the Abot Bet Din were in favor. In the last two pairs, the Nesim were in favor and the Abot Bet Din were opposed to the laying on of hands.⁶ Furthermore, why did the last two Nesim take a position contrary to their predecessors?

Each of the scholars offers his own perspective in the analysis of this problem. We shall attempt to present the outstanding opinions extant with the hope that through a presentation of the scholarly views, some light may be shed on a very puzzling problem.

Ginzberg maintains that from the beginning to the time of the Fifth Zug composed of Hillel and Shammai, the Pharisees comprised two wings, the conservatives and the progressives.⁷ Thus the first three Pairs' Nesim were conservative and the last two Pairs' Nesim were progressive.⁸

For Ginzberg there is no question as the meaning or intent of the word Semicha, it implies simply the "... laying⁹ on of hands on the head of an animal sacrifice."

It is Ginzberg's view "... that the conflict among the Pairs was over the issue whether obligatory burnt-offerings and obligatory peace-offerings required the laying on of the hands, for the Torah mentions the laying on of the hands only in connection with the votive burnt-offerings and votive peace-offerings, or in the cases of a guilt-offering¹⁰ or sin-offering."

For Ginzberg, the Semicha problem involves four basic questions, questions of fundamental significance. The first problem deals with the issue of the extent to which scholars were empowered to derive new enactments by means of Biblical exegesis. The Conservatives "... wished to limit the authority of Biblical exegesis as a source of new law, took the position that the laying on of the hands on obligatory burnt-offerings and peace-offerings was not required, since there is no mention of such a requirement¹¹ in the Bible." The Progressives, on the other hand, "... wished to extend the legal authority of Biblical exegesis as far as possible, declared that one should lay hands on these sacrifices. They arrived at their conclusion by analogy from the sin-offering and the guilt-offering which¹² were obligatory sacrifices."

The second problem concerned the participation in

public, of any Jew and not merely the priests, in the Temple service. "The laying on of the hands was the one service in the Temple... in which the individual Israelite who offered a sacrifice had some privileges."¹³ Thus, the Progressives favored increasing the influence of the people in the Temple and wanted this ritual at every sacrifice, while the Conservatives felt it to be an infringement of the rights of the priests and felt that it should only be carried out where specifically stated in the Torah.

The third problem connected with the Semicha controversy is the porribility of increasing the return of Jews to the Holy Land. The Progressives felt that it could be used as a propaganda technique to achieve that end. All agreed that an agent could not perform the ritual of laying on¹⁴ of the hands. The Conservatives felt that such an enactment would do more harm than good since many in the diaspora would not be able to come to the Holy Land. They might then also send sin and guilt-offerings by another, offerings that required, by Biblical injunction, "the laying on of the hands."

A fourth problem to be considered in the light of progressives and conservatives as presented by Ginzberg, is the problem of the equality of the Jews of the Holy Land and of the Jews in the diaspora in the matter of offering of sacrifices. The Conservatives based their position on Biblical law and said that it was sufficient for diaspora Jews to

send obligatory burnt-offerings. "If people in the diaspora desired to sacrifice votive burnt-offerings, they could do so by coming to the Holy Land, for even though the laying on of hands is not indispensable, failure to perform it casts¹⁵ doubt on the authenticity of the atonement." The Progressives were opposed, for they felt that Jews would be divided into two classes if only votive burnt-offerings required the laying on of the hands. The Jews of the Holy Land would be able to offer any sacrifices they wanted while diaspora Jews, among whom only a small amount could come to the Holy Land, would be offering only votive burnt-offerings. They maintained that there should be no distinction between votive and obligatory burnt-offerings. "In both cases the laying on of the hands should be required, so that if it were possible for those who lived in the diaspora to come to the Temple and lay hands on their sacrifices, so much the better, and if not, let them send these offerings to the Temple where they would be sacrificed without the laying on of the hands, which ritual¹⁶ is not indispensable in any case."

The reason for this controversy never having been resolved by the Sages, Ginzberg tells us, is that any decision by the Sages or the Pairs, whether favoring the left or the right, would have been unfavorable. If they decided on no laying on of the hands, the result would have been a weakening of the link between the diaspora and the Holy Land. The sacrifices would then, simply be sent and offered up by an agent. If they decided that it was necessary to lay on the hands, it

would be regarded as of little importance, for those who¹⁷ couldn't visit the Holy Land would pay no heed at all.

Hoenig deals with this problem only briefly, offering the position (among others) of M.L. Lillienblum, who "... suggested that the Nasi was the religious leader and the Ab Bet Din was the political head. The Semikah controversy or the question of ordination of added members into the Sanhedrin thus pertained to the struggle of religious¹⁸ versus political groups in the Sanhedrin." Hoenig himself, however, maintains that it pertains to the laying of hands on the Temple offerings. The basis of division between the Nasi and the Ab Bet Din (in the first three Zugoth) was in the matter of the Temple of Onias in Alexandria, Egypt. The Nasi opposed any conduct of worship in the Temple of Onias and was, therefore, opposed to Semicha there. The Ab Bet Din, who favored sacrifices there, favored Semicha as well. The change in the last two Zugoth came about through¹⁹ "... Abtalion (who censured schisms) opposed 'Semikah' and thereby demonstrated his opposition to the Alexandrian²⁰ court. Hillel, coming from Egypt, could not oppose the Onias Temple and therefore, also sanctioned 'Semikah' there."²¹

Tchernowitz maintains that although the Semichah problem is generally felt to be one of Semichah on the Festivals, on the basis of Hagiga 2.2, he feels that it is the Semichah itself over which they disagree rather than just²² the Semichah on the Festivals. Furthermore, it couldn't be

a problem of Semichah on the Festival because that would
 be a problem of "Shevuth" and we learn in Pesachim 65: ²³ *אין שבת*,
אין חול המועד, אין חול המצות, אין חול המנוחה, אין חול המעשר, אין חול המזבח, אין חול המזבח

For Tchernowitz, the conflict lies with the Temple
 of Onias. At times the altar in that Temple in Alexandria
 was accepted by the Jerusalemites and at times it was reje-
 cted. It was accepted only when the Temple in Jerusalem
 could not be used because of oppression, ²⁴ but was rejected
 at other times. ²⁵ The Semicha controversy then, was over
 the sacrifices in the Temple of Onias in Alexandria. ²⁶ The
 Nesim were opposed, at first, since they headed the Jerusalem
 interests, while the Abot Bet Din were in favor for they
 supported the Alexandrian interests. Later, this basis
 was forgotten and the controversy turned to Semichah on
 the Festivals and then to Semichah in general. ²⁷ The reversed
 position in the last two Zugoth came about because Abtalion
 was opposed to the Sages in Alexandria. Proof for this
 contention is offered to us from his own words when he says,
 "Lest you be guilty and punished by exile..." ²⁸ This implied
 an exile to Alexandrian philosophy, says Tchernowitz. Ab-
 talion was opposed to the Temple of Onias and, therefore,
 said that he was opposed to Semicha. ²⁹ Tchernowitz adds, that
 Abtalion may have hated Alexandria since he had been forced
 to go there himself when fleeing the Hasmonean monarchs.
 This may have embittered him. We have no choice but to ask
 Tchernowitz for proof, to search for substantiation which
 is sorely lacking. One cannot help feeling that his theory

is a bit forced and even far-fetched.

He maintains that Hillel came from Alexandria³⁰ and was, therefore, not opposed to the Temple of Onias. We must first ask, if Hillel was exiled in Alexandria (that is to say, his parents came from there), why didn't he despise the Temple of Onias as did Abtalion? Secondly, as was pointed out above in the chapter dealing with Hillel and Shammai, if the Ab Bet Din was supposed to have been the head of the Alexandrian Bet Din and was to have been called the Ab Bet Din by virtue of his position as head of the Alexandrian court, why wasn't Shammai ever mentioned as hailing from Alexandria, or Hillel as being the Ab Bet Din there since Tchernowitz claims he was head of that community prior to coming to Jerusalem?

Weiss views this as a problem not relegated only to the Festivals and Sabbath but is, in reality, much wider in scope. The question for Weiss is: Is Semichah obligatory³¹ or not? The court was in a dilemma, for if it decided that it was obligatory, the diaspora Jews couldn't send their sacrifices to the Temple; a Temple which was, after all, for all Jews both far and near. Therefore, there was no decision rendered. The court left it up to the desire of the sacrificer — whether to come and lay his hands on it or send it by messenger. But there is a more important problem represented here as well, says Weiss. It was at this time that the Sadducees were developing. The question they fought with the Pharisees was: Should Rabbinic law override Biblical law. The Semichah is not included in the list of

forbidden work on the Sabbath; the Bible does not prohibit it. But the Sages decided to prohibit Semichah because of the laws of Shevuth, and Semichah they included in the category of Shevuth. It was a conflict between the Pharisees and the Sadducees over legal authority, as much as it was a problem of a technical-legal nature.³²

Zeitlin takes a different approach. He begins by explaining the meanings of the word Semichah. In the Talmud³³ one meaning is a sense of proximity. "It is not allowed to sow mustard and bastard saffron closely adjoining to a field which was sown with grain, because this is a forbidden injunction (Kela'im); but it is allowed to sow mustard and bastard saffron closely adjoining a field which was sown with herbs, for this is not a forbidden injunction."³⁴

Another meaning for the word Semichah is laying on of the hands. "The School of Shammai says, 'It is allowed to bring peace-offerings on the holidays, but the laying on of hands must not be done on the holidays'. The School of Hillel says, 'It is allowed to bring both peace-offerings and burnt-offerings on the holidays and to lay the hands on them.'³⁵"

Semichah also implies a reliance upon authority.³⁶ "We may rely upon the authority of the aged man."

In all these instances mentioned above, the word Semicha is clearly defined from the context. It is in Hagiga 2.2 that the word Semicha is used without explanation.³⁷

Zeitlin deduces from this, that the controversy between the Zugoth is different from the controversy of the Schools of Shammai and Hillel.³⁸ "...In the case of the Schools of Shammai and Hillel, the Mishnah states explicitly the problem of their controversy, in the case of the Zugoth, the problem is stated obscurely by the words *shammai* and *hillel*.³⁹" For Zeitlin, "... the controversy centered around an important general principle rather than on the question of the propriety of performing the Semicha ceremony, in the Temple-court on holidays."⁴⁰ This is found to be true, maintains Zeitlin, after an examination of Tosefta Hagiga,⁴¹ which states: "Never was there a controversy in Israel except the one concerning Semikah. There were five Zugoth. Three of the earlier Zugoth were of the opinion *shammai* were presidents (of the Sanhedrin) and their opponents were vice-presidents; two of the latter Zugoth who held the view *hillel*, were presidents and their opponents were vice-presidents... Said Rabbi Jose, formerly no controversy occurred in Israel except in a court (Bet Din) of 23 members... Over which Semikah were the Schools of Shammai and Hillel divided? The School of Shammai said that the laying on of hands on the festive sacrifices must not be done on a holiday; the Semikah ceremony should be performed a day before the holiday. The School of Hillel said; It is allowed on a holiday to⁴² bring peace and burnt-offerings and lay the hands upon them."

Says Zeitlin, "... The fact that the Tosefta asks, 'over which Semikah were the Schools of Shammai and Hillel divided', and not over which Semikah were the Zugoth divided, clearly shows that the two controversies were not considered identical." For Zeitlin, it is wrong to consider the words

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סמיכה and *סמיכה/דה* as found in the case of the Zugoth, as identical with the words *למנו* and *למנו/ד*
⁴⁴
as used in the case of Bet Shammai and Bet Hillel. However,

"... the words *סמיכה* and *סמיכה/דה* do not denote here to lay on the hands on an object ...", but rather imply

"... to depend, to rely, to accept the authority of, and the question discussed by the Zugoth was whether we could depend upon the authority of the Hakamim." Thus, when

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we find them saying *סמיכה/דה*, they feel that we ought not to rely upon the Hakamim in their innovations upon the
⁴⁶
Torah.

Zeitlin now proceeds to offer proof from every one of the five Zugoth excluding that of Shemaiah and Abtalion. Jose ben Joezer maintained that we do not lay on hands. We have three Halachoth as testimonies from him (Eduyoth);

"... from which the inference may be drawn that by these testimonies he set himself in opposition to the ordinances of the Hakamim." First, Jose ben Joezer maintained that

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the locust is clean and may be eaten. Biblically, the locusts are clean "... that go upon all fours, which have jointed
⁴⁸
legs above their feet." The Hakamim said, however, that the

marks of cleanliness in locusts are; four legs, four wings, hindlegs for leaping and the wings covering the greatest part of the body.⁴⁹ Thus, Jose ben Joezer was more lenient⁵⁰ than the Hakamim and followed the Biblical authority.

The second instance of proof for his contention that the Nasi, Jose ben Joezer chose the Biblical authority over the authority of the Hakamim, can be found in the following: "The liquid of the slaughtering-place is clean."⁵¹ According to the Bible, "All drink shall be unclean."⁵² Thus, "... only water is susceptible to levitical uncleanness. The Hakamim, however, decreed that blood and five other kinds of liquids are also susceptible to levitical uncleanness."⁵³

A third proof is offered from the same Mishnah;⁵⁴ "One that touches a corpse becomes unclean." According to the Bible, "He that toucheth the dead, even any man's dead body, shall be unclean seven days."⁵⁵ The Hakamim maintained that the sword with which a person was killed had the same levitical status as the slain body. But Jose ben Joezer declared and decreed that the sword does not make another unclean, only the corpse that is touched can accomplish that.⁵⁶

Joshua ben Perahya, the second Nasi, falls into the same category; he too was opposed to the Hakamim introducing their changes. As was discussed in chapter three above, Joshua decreed against wheat coming from Alexandria because of their Antalya.⁵⁷ Biblically, the law is; "If any water be put upon the seed..." it becomes susceptible to levitical uncleanness with no distinction between seed

which is fixed to the ground (*שפזיב מללל*) and seed which is plucked (*ע/ל*). "Thus, water was poured on the seed and it became susceptible to levitical uncleanness. Whereupon the Hakamim answered: if so, 'let the wheat be unclean for Joshua ben Perahya' who disregards the tradition of the Hakamim, 'but clean to all Israel who accept the ordinance of the Hakamim: that seed becomes susceptible to levitical uncleanness when water has been poured over it only when it was already detached from the earth (*ע/ל*) but not while still fixed to the ground (*מללל*)."

Judah ben Tabbaï falls into this same category; that of Nasi opposed to the Hakamim extending their authority. ⁵⁹ We find in Hagiga 16b that he had one false witness executed, as act contrary to the opinions of the Hakamim. Biblically, Judah ben Tabbaï was perfectly justified in having that ⁶⁰ one false witness slain for we read in Deuteronomy: "If a witness of violence rise up against any man to testify against him for any wrong... and the judges shall inquire diligently; and behold, if the witness be a false witness, he hath testified a falsehood against his brother: then shall ye do unto him as he hath purposed to do unto his brother." Thusm even ~~one~~ false witness could be slain. The Hakamim, however, maintained that as there must be two witnesses to to convict a man of a guilt punishable by death, so must there be two witnesses and not one, proven ⁶¹ to be false before either one may be punished by death.

Zeitlin does not discuss the Fourth Zug, that of Shemaiah and Abtalion, for "... of this pair, several halakoth were transmitted by others in their name; but no halakoth have come down from them directly from which their attitude toward tradition might be inferred. In the testimonies that others made in their name they always concur."⁶²

There are four controversies, listed by Zeitlin, between Shammai and Hillel, "... these four controversies involve four principles which Hillel proposed to start a new development in the Oral Law: (1) *shema' shema'*, i.e. where an apprehension exists lest a Biblical law may be transgressed we ought to take a preventive measure. (2) Leniency in law (*lefi shema'*). (3) Semikah. (4) Subjectivity, i.e., we ought to reckon with the intention of the person. In these four principles Shammai was his opponent."⁶³ This is the last mention of the Semichah problem in this article. Zeitlin closes with, "These are the four controversies between Shammai and Hillel. They mark the beginning of the development of the controversies between the schools of Shammai and Hillel."⁶⁴ There is never any mention as to why Hillel, being the Nasi, takes the view of laying on of hands while his predecessors (excluding Shemaiah) all were opposed to the laying on of hands. It seems as if Zeitlin feels that the very mention of the existence of this problem coupled with the three other problems noted above, solves the discrepancy in the views of the *Nasim* prior to Hillel and Hillel himself. He does not bother to tell us why all the other

Nesim, in his opinion, were opposed to broadening of authority by the Hakamim, while Hillel seemed to be in favor, e.g., by his Takanoth, his being in favor of Semichah, and his general liberal attitude toward a wider interpretation.

No matter what the law or who its maker, we cannot be but highly impressed with the belief that those among the Zugoth who decreed and issued Takanoth, Gezaroeth and Hala-choth, did so mainly out of a sincere conviction that their obligation to their entrusted office was to protect the interests and needs of Jews not just in the land of Palestine but in the Diaspora as well. Their period was one which Glatzer terms "The Classical Period in Judaism", and rightly so. For it was from this time and on, that believing Jews came to the realization that they need not forego their belief in the Bible and its injunctions and exhortations simply because the times have changed. With scholarly insight, with learned erudition, and with a sincere love for and devotion to the Biblical-legal core of Judaism, the antiquated and seemingly out-dated legal pronouncements can be re-interpreted anew, combining the spirit and religious impetus of the Bible with the contemporary needs of any given era. This truly can be termed, the era of the emergence of the saving factor for Judaism, not just in that period and era but for many subsequent centuries.

1. Solomon Zeitlin, "The Semikah Controversy Between The Zugoth" (Jewish Quarterly Review, New Series, Volume VII, No. 4) Philadelphia, April, 1917, page 499.
2. *ibid.*
3. Tosefta Hagiga 2.8.
4. Ginzberg. On Jewish Law and Lore. Page 91.
5. *ibid.* According to Ginzberg, the laying on of the hands on a sacrifice in the Temple.
6. Hagiga 2.2.
7. Ginzberg. On Jewish Law and Lore. Page 96. In respect to basic principles, that is, the acceptance of the authority of the oral tradition and of the rules of exegesis of the Torah, no Pharisee differed from another.
8. *ibid.* The end of the Zugoth came about because the problems with which they dealt changed from practical to theoretical problems and they thus became two separate schools.
9. *ibid.*, pages 96-97. Note also page 248, footnote # 14 where in we find that Sidon, in the Kaufmann Kohler memorial volume maintains that it meant the laying of the hands on the head of an elder upon his election. Zeitlin's position, which will be discussed in greater detail below, maintains that it signifies the laying of the hands on the heads of Biblical verses for the sake of expounding on them.
10. Ginzberg. On Jewish Law and Lore. Page 96 ff. Note also page 249, footnote #15: "Burnt-offerings on visiting the

25. Temple and peace-offerings of the festivals were the most usual and regular sacrifices among the obligatory burnt and peace-offerings, and this controversy was therefore discussed in the tractate Hagiga which includes the laws of visiting the Temple and of the festivals.
11. *ibid.* 163. Thus, there were two sanctuaries for Torah; one in Jerusalem and the other, by virtue of expressions in the Torah, in Alexandria, Egypt. (page 165).
12. *ibid.*
13. *ibid.*, page 97.
14. Menahoth 9:8: *הם נחלקו חמץ וקמח וקמח וקמח*
... *בבית ובעיר ובעיר ובעיר*
15. Ginzberg. On Jewish Law and Lore. Page 99.
16. *ibid.* page 165.
17. *ibid.*, page 100. It is on the basis of this controversy of the laying on of hands, that Ginzberg maintains the Pairs were divided into two wings (the Conservatives and the Progressives) from the very beginning of the sect and not only in the time of Hillel and Shammai.
18. Hoenig. The Great Sanhedrin. Page 123. Quoted from "Pewlet Nesieh Yisroel Bizman Bayit Sheni", Kol Kitbe Lilblum, Gracow, 1910, Volume I, page 210.
19. Abot 1:11: *...הם נחלקו חמץ וקמח...*
20. A view also held by Tchernowitz.
21. Hoenig. The Great Sanhedrin. Page 128 ff.
22. Tchernowitz. Toledot ha-Halakah, Volume IV, page 145.
23. *ibid.* 2:3: *...הם נחלקו חמץ וקמח...*
24. For example, the time of Antiochus.
25. Erubin 65b: *...הם נחלקו חמץ וקמח...*

25. *ibid.*, page 151 ff. Proof is obtained from the verse,
 37. "ואם לא יהיה שם מזבח" and if there is no *מזבח* then
 altars are permissible.
 They must have had a Bet Din as well (*ibid.*, pages 146-163).
 38. This is derived from the phrase "אשר היתה תורה אחת",
 (page 163). Thus, there were two centers for Torah; one
 in Jerusalem and the other, by virtue of oppressions in
 Jerusalem, located in Alexandria, Egypt. (page 165).
 We might add that a contributing factor to the conflict
 over the Semicha may have been the rivalry for scholarly
 39. authority. *The Semikah Controversy Between The Zugoth.*
 26. *ibid.*, page 166.
 27. *ibid.*, page 167.
 28. Abot 1:11. *Page 2:8-10.*
 29. Tchernowitz, Toledot ha-Halakah. Vol.IV, page 167.
 30. *ibid.* 501-502.
 31. Weiss. Dor Dor ve'Dorshav. Vol.I, page 103. Note also
 32. Frankel. Der ke ha-Mishnah. Page 44, for the same approach
 33. and conclusion.
 32. *ibid.* page 504.
 33. Zeitlin. "The Semikah Controversy Between The Zugoth", page
 499.
 34. Kela'im 2:9: "אין סומכין לטעם חכמים, ואלו חכמים סומכין
 לטעם ירקון ורעל ורעל".
 35. Hagiga 2:3: "גוי שא"א מרחץ חובטין עליו סומכין על ידיו...
 והיו כולם אמרוק אבא"ם שלמים ושלמים וסומכין על ידם".
 36. Erubin 65b: "והסומכין על דברי זקן".
 37. *Blayoth 8.4.*

38. That is to say, the controversy as found in Hagiga 2.3:

Frankel. Barke ha-Mishnah. Pages 43-44, and Weiss. Dor
Dor ve'Dorshav. Vol.I, pages 103-104, felt it was the
same kind of controversy.

40. *ibid.*

41. Tosefta Hagiga 2:8-10.

42. Zeitlin. "The Semikah Controversy Between The Zugoth."
Pages 501-502.

43. *ibid.*, page 502.

44. *ibid.*, page 503.

45. **ibid.**

46. *ibid.*, page 504.

47. *ibid.*, Note also Eduyoth 8.4: *והעיד רבי יוחנן בן יוסף שלם צדק*
על אלה קומצת דבן ואלו חסדקיהו ביהמ"ד חסדקיהו דב"ן וצדקיהו חסדקיהו
והדרו ע"ה יוח"י שריא."

48. Leviticus 11:21.

49. Hulin 59a.

50. Zeitlin. "The Semikah Controversy Between The Zugoth."
Page 505.

51. Eduyoth 8.4.

52. Leviticus 2:34.
53. Zeitlin. "The Semikah Controversy Between The Zugoth." Page 506. Note Pesachim 17a for the position of the Hakamim.
54. Eduyth 8.4.
55. Numbers 19:11.
56. Zeitlin. "The Semikah Controversy Between The Zugoth." Page 506.
57. Tosefta Machshirin 3.4: *יבועש בן פנחס אמר, חלוקה
בביתא דאורייתא אמר חז"ל. אמרו חכמים,
אין בן ובין אמר חז"ל. יבועש בן פנחס ורשב"ה יבועש."*
58. Zeitlin. "The Semikah Controversy Between The Zugoth." Pages 508-509.
59. Discussed in greater detail in chapter four above.
60. Deuteronomy 19:16-19.
61. Tosefta Sanhedrin 6.6: *היה שם שני חכמים, אחד
אמר שני שנים אדם מושב שנים."*
62. Zeitlin. "The Semikah Controversy Between The Zugoth." Page 510.
63. *ibid.*, page 513. For examples note *ibid.*, pages 513-517.
64. *ibid.*, page 517.
11. Solomon Zeitlin. "The Semikah Controversy Between The Zugoth." (Jewish Quarterly Review, New Series, Vol. VII, No. 4), Philadelphia, April, 1917.
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