

RABBI JEHUDA HANASI

An Analysis of his Halakot

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7. PREFACE

A. General Conceptions and Past Attitudes of Scholars Towards Rabbi.

The traditional accounts of the life and activity of Rabbi¹ Jehudah HaNasi glorify his role in the transmission of the Oral Law in the form of our present Mishnah. Frankel views Rabbi's work as sealed with a firm stamp, not to be altered, as a product of the spirit of God working through his servant, Rabbi. Weiss points to his stature of scholarship as fitting him for this task. Heiman speaks of his saintliness of character, as he was known as **רבינו הקדוש** for never having placed his hand inside of his garment.² These works make up in enthusiastic admiration what they lack in critical analysis. Their short essays on the life and times of Rabbi contain much material of a contradictory nature that has lead to the investigation of this thesis.

On the one hand it is said in Sota 9:15, that when Rabbi died 'humility departed'. To the eyes of his contemporaries, Rabbi appeared as a benevolent despot. Many stories found throughout the Talmud indicate that he possessed much pride and jealousy. In his lifetime he abolished the **ל' ב' ת' ד'** and

ד' ח' נ',³ Rav Tzair remarks that Rabbi could tolerate no second, since he did not appoint Rabbi Chanina bar Chama as Head of the Scholars until he was about to die.

In regard to the distribution of food during the days of famine, the Babylonian Talmud Baba Bathra 8a, records Rabbi excluded those who were not learned in the law. In another passage, Baba Bathra 5a, he believed that all the evil which was visited in this world was in punishment for the sins of the Ame-Aratzim.

It also seems highly contradictory that the Nasi, chief of

the Jewish community, renowned for all his wealth, should have said in Ketubôth 104a, "I have not enjoyed the pleasures of this life in the slightest measure".

Only one work has appeared, The Political and the Social Leaders of the Jewish Community of Sepphoris in the Second and Third Century, by Adolph Buchler, that has treated the personality of Rabbi in the context of his age. This study, however, is not an exhaustive treatment of Rabbi. It is confined "to the position of the leading and the wealthy men within the Jewish community in their relations to the Jewish population, which honoured them for their official position, and in spite of their inveterate selfishness bore with them for fear of their power and influence grounded on the Roman support at their disposal".⁴

B. Origin of this Thesis

In order to reconstruct the personality of Rabbi and his influence, it is necessary to turn to the decisions in the Mishnah that are quoted in his name. From a fuller understanding of the history of this period we begin to discover Rabbi's uniqueness in the political immunity which he held within his society.

Bacher claims that Rabbi wore the crown of the patriarchate on account of his work in the field of Torah. While Rabbi did have a large share in the furtherance of the Torah by establishing courts of law, the patriarchate was mainly an hereditary office. For collecting and redacting the various recensions transmitted orally for several generations, Rabbi achieved distinct recognition ~~for~~ in his lifetime, ^{and} all these recensions were brought together in one work known as Mishnah. The redaction filled a pressing need, as a study of the religious law fell into abeyance during the Hadrianic persecutions. By assuming complete authority of the courts and the rabbinic college in Sepphoris, Rabbi was able to give the Palestinian Jewish community the cohesiveness it needed. While the traditional accounts favor him for being responsible for transmitting the Oral Law in a more permanent form, they fail to see this part of his life activity as a reflex of a more basic urge, which was to impress the generation of that day with the undisputed authority of his office as nasi.

II. I N T R O D U C T I O N

A. Rabbi as Nasi

As a result of the Bar Kochba revolt in 135 C.E., most of the succeeding Jewish leaders had a difficult time of keeping peace with the Romans. The Hadrianic persecutions had so embittered the scholars that the hostility engendered could lead onto open conflict at any time, without too much provocation. When these outbreaks did occur, no one could measure the suffering that might be inflicted on the Jewish community. That the administration was singularly free from these disturbances was probably one of the main factors why later tradition regarded him as a man possessing unusual merit. For only in times of peace and relative prosperity could the scholars live and work. That Rabbi came to be considered as the greatest of authorities was due not merely to the office of Head of the Academy in Sepphoris where the Mishna was compiled, but due to his position as the chief political representative of the Jews to the Roman government,

Bauchier's volume, "The Political and the Social Leaders of the Jewish community of Sepphoris in the Second and Third Centuries" affords us the only critical appraisal of the period in which Rabbi lived and had his being. "Rabbinic literature reflects life of Galilean Jews. But the various legal discussions and decisions of the schools of Galilee reflect religious needs and deficiencies, worse than usual which forced themselves upon the attention of the scholars of the Second Century and were met by suggestions, well meaning, though without legal force".¹ Legal force, however, characterized the patriarchate of Rabbi because all power had been concentrated in a single authority.

Sepphoris was the most important city of Galilee since it was the center of the Roman and Jewish administrations. Rabbi was responsible for transferring the Beth Din to Sepphoris, and it remained there for over fifty years. The Mishna was composed there and several of the collections of the Braithot were brought together there.

The civil leaders were known as the "gedolay hador". In Moed Katan 22b, Rabbi and his friend R. Jacob b. Aha, are quoted by the Babylonian authority Samuel as, "the great of the generation". Rabbi's leadership is attributed to his position and wealth, not to his scholarship. The patriarch Rabbi is said to have been very wealthy and invited his disciples frequently to his house. Perhaps this economic difference in the position of Rabbi and his contemporaries best explains the conflict between them.

One of the expectations, on the part of the people, of the patriarch, was sustenance in the years of drought. Rabbi is said to have opened his storehouses and invited all the scholars, and even those who possessed some knowledge of the law, to partake of the food. But this action was restrictive, not showing his generosity, as the traditional historians would have us believe, but his commanding authority. For by this procedure he aimed to gain prestige for his court and administration, since food would be denied to those untutored in the Law.

According to Buchler, the nobility was regarded as haughty. Was not Rabbi of the nobility? Yet upon his death, it was said of him, "humility had departed". It is very likely that such praise was added by his students and does not represent popular

sentiment.

Rabbi decreed that the scholars should not teach in the market place. "He who deals with the Torah quietly inside the school, it will become manifest on the outside. Rabbi objected to those colleagues who were interested in making the Torah available to the people. Those who taught in the market place were acting in protest to the ruling of the nasi, who insisted that the Torah be studied at designated places. Rabbi had nothing but contempt for the ignorant. Baba Bathra 8a, tells us, "all those who engage in study are allowed to eat meat and fowl and those who do not engage in study, it is forbidden". In addition to these strictures, Rabbi enjoined upon the scholars, "Learn a craft along with the Torah". It would seem that Rabbi was predominantly concerned with achieving full independence for the learned.

From these facts, we can conclude that as nasi, Rabbi was concerned with unifying the response of the people to his authority. This could best be done by making the study of the law a prerequisite for favor in the eyes of the nasi. Possession of the foodstuffs in times of disaster could have easily impressed the people with his power. Even in his school, Rabbi was concerned with raising the prestige of his office. This is reflected by his insistence that when the nasi entered all would rise and would not be seated until ordered to do so.

Prior to the patriarchate of Rabbi, power was in the hands of the Beth Din to grant ordination. However, when he took office, he was granted the power to ordain without the Beth Din. It would hardly seem possible that the members of the court could rejoice over this change in policy. It is more likely

that they conceded reluctantly to Rabbi's request. Rabbi could have bargained for this power on the basis of his position with the Roman authorities. The wealthy land owners appreciated the respect in which the patriarch was held by the Romans and accepted the protection of his authority. Newman mentions that Rabbi was the sole individual who could confer ordination upon the Rabbis, and that this regulation could not have been made by any other person than Rabbi. Much bitterness existed in the camp of his contemporaries, who were refused ordination, because at some time or other they ^{had} flaunted his authority.

The Romans accepted the patriarch as the supreme authority for the entire Jewish community within the empire. In Megilah 5a, Rabbi is reported to have wanted to eliminate Tisha B'av. It was Rabbi's intention to return Roman favor by removing the stigma of rebellion that had long been associated with this day, marking the destruction of the Temple. Some say that Rabbi only wanted to eliminate it in the year that it fell on the Sabbath. The following passage on Shabbath 8a, however, would reveal that the former motivation is correct.

וכעין כי ראינו בטענת יאשת לר"נא שחטבה כי היהודים
אבלים בתשעה באב ביום שנוהד להבן ושחחים בחנוכה ביום שמחלקת

A statement of one of his contemporaries reveals their regard for his influence. In his warning against pride, Eleazar Hakapar said: "You must not strive to be like the highest stair, but rather like the doorstep upon which everyone treads, for when the house is being destroyed the doorstep remains in place to the very end." ² The highest stair could be no other person than Rabbi himself.

"Upon his death, troubles doubled". This statement in Tosefta Sota 15:5, indicates that Rabbi's administration had failed to strengthen the scholars and the leaders within the Jewish community. The latter days of Rabbi's rule as nasi were very disappointing. Much dissension, that was suppressed during his rise to power, now broke forth with additional schools that were formed in the south of Galilee. These schools emerged because of their desire for independence from a central authority.

ככה החל ברקפא לסדר את אסופות הידועה בשם משנה
ברקפא צוה בח"ב' כנראה וכן נ' ח"א הבב"ת
שלו יונה המתמנה בתלמוד בבלי נקראה 'מרא' לו מחזיק נכר'.

The great redaction of the Mishna by Rabbi was to have another formulation of cases and decisions known as the Tosefta. The formulation of the Tosefta had its origin in Sephoris, but many separate editions of the laws under the names of other scholars began to emerge.

ככה הולש ומודל כבוד הנשיא בימים ההם והתלמודים
עגבו הישיבה הגדולה ללכת אל הישיבות אשר
נקבעו סוף ימי רבי בצירות הדומיות של צפרי וטבריה
כמו ישיבות לוד ופרוד מקומות של ברקפא ולימא ... 4

After Rabbi, the patriarchate no longer represented the most learned of the day, but became solely an hereditary political office. This was what the statement in Gitin 59a referred to when it said: "From Moses until Rabbi we have not found Torah and greatness in one person."

B. Rabbi as Redactor

To prevent the further attenuation of the religious life and to impress the authority of the patriarchate upon the people, Rabbi collected all the Tanaaitic material which he took possession of through his various travels. From these manuscripts, he made his own arrangement. In selecting his material he intended to include those cases in which the ^{decisions} contained an independent legal principle. He set aside many laws which were concerned with new cases because they were implicit in other laws.

"Everything explicit in the Baraita is implicit in the Mishna" is recorded in Taan~~at~~ 21a. All that Rabbi omitted from his redaction came to be classified under the name of Tosefta. This formulation included many of Rabbi's own opinions and the opinions of other scholars as well.

Although Rabbi Meir had disputed the authority of Rabbi's father, Rabban Simon b. Gamliel II, nevertheless, his recension became the basis of Rabbi's work. Rabbi regarded Rabbi Meir as one of his teachers.

The statement in Pirke Aboth 4:20, said in the name of Rabbi, certainly casts light on the delicate position which Rabbi found himself as head of the college. "Regard not the container but that which is therein. There is a new container full of old wine and an old container in which there is not even new wine." This can best be understood metaphorically. Rabbi had to contend with all types of men who wanted to show their superiority in matters pertaining to the knowledge of the Torah and the Religious Laws. As a young man, when attaining the nesiut, approximately 30 years old, Rabbi had to defend himself from the attacks of the older colleagues.

In Abodah Zarah 17a, there is the following statement: "One may earn his place in the world Rabbi once reflected through the efforts of many years and another earns it in one hour". Exactly what is referred to is not indicated, but it certainly would corroborate the claim that has been made for the redaction of Rabbi, which gained currency, while the other recensions had either been incorporated or ^{had} lost their individual status. Rabbi did not create the Mishna. He was responsible for giving it a form that made it easily accessible for his contemporaries. and/

Rabbi's prominence in the community, his reputation in the field of traditional law ...served almost immediately to win universal recognition for his Mishnah. ⁵

C. The Ethics of Rabbi

Rabbi is accredited with several statements found in the Ethics of the Fathers which would indicate that his outlook had certainly influenced an entire generation. Many of the dicta found in this text were principles of procedure by which the Rabbis were aided in rendering decisions regarding public and private behaviour. These passages offer us a clue to the personality of Rabbi. That Rabbi was speaking as the nasi is apparent from the following:

"Which is the right path a man should choose? In a Baraita, he answers: He should love reproaches. For while there are reproofs in the world, there is peace in the world. Goodness and blessing come to the world and evil departs. In the Mishnah, however, Rabbi prescribes, "That which is an honour to him and gets him honour from men". In the first answer Rabbi demands for others what he found extremely difficult ~~for~~ to fulfill himself. Many situations arose where Rabbi obviously could not suffer reproaches of any sort. From the Mishnaic statement, we can derive the conclusion that Rabbi set himself as the embodiment of the ethical life.

Further in Abot 2:1, "Be heedful of a light precept as of a weighty one, for thou knowest not the recompense of reward of each precept; and reckon the loss through (the fulfilling of) a precept against its reward, and the reward that comes from transgression against its loss".

The situation of the religious laws during the second and third centuries had undergone considerable transformation. While many of the laws had validity during the days of the Temple, they ceased to have any effective meaning any longer. Many other laws created by

the Rabbis, as extensions of the Biblical laws, came to have increasing importance. The term 'light precept' may well apply to the laws established by the Rabbi's which Rabbi here enjoins upon the jurists and the scholars. Since these laws have been derived, for the most part, from the Torah, they certainly have an equal place with the other established traditions. Such statements are mentioned in the Jerusalem Talmud Demai, Perek Beth: "The situation is one where Rabbi exercises leniency concerning the selling of produce on the close of the Seventh Year. He is rebuked by a member of his own family to whom he replies: 'The crown (i.e. the crown of the patriarch) was given to me by God to be attired in and what is the crown? The privilege which is given only to the upright in their heart to judge according to the benefit of the people and the needs of the time.' As a principle of legal procedure Rabbi was certainly concerned with giving prestige to what might be regarded by some as the 'light precepts'.

The concluding statement, recorded in the name of Rabbi, would reflect Rabbi's austere position. That he wished to rule with complete authority and control is known from the consequences of those scholars who dared to ridicule his position. "Consider three things and thou wilt not fall into the hand of transgression: Know what is above you-- a seeing eye and a hearing ear and all thy deeds written in a book." Was he actually considering ethical sins-- people falling into transgression in the ethical sense? It seems more likely that transgression has a wider meaning. It could conceivably be taken to mean any kind of disobedience toward the court. For in the final analysis, all life is to be regarded as having a public character. This would be more consistent with Rabbi's position than to say that he was indulging in pious religious phraseology.

IV CASES INVOLVING RELIGIOUS LAW

A. Prayer

In the Babylonian Talmud Berachot 27b, it is said that once on Sabbath the sky became overcast with clouds and the congregation thought that it was night time, and they went into the Synagogue and said the prayers for the termination of the Sabbath. Then the clouds scattered and the sun came out, and they came and asked Rabbi, and he said to them: "Since they prayed, they have prayed". A congregation is different since we avoid troubling them as far as possible.

Not only was Rabbi's ruling lenient with respect to the regulations of prayer, but also based on the legal principle that we do not burden the community more than necessary. In Berachot 30a, it is stated that "if one was riding on an ass, and the time arrived for saying Tefilah, if he has some one to hold his ass, he dismounts and prays, if not he sits where he is and prays." Rabbi says, "in either case he may sit where he is and pray, because otherwise he will worry."

Rabbi was known to have insisted that only two languages be used in the study of the Torah, Greek and Hebrew, yet regarding prayer he stated: The prayers of Hallel, Shema and Tefilah may be recited in any language.

From this we may conclude that Rabbi did not regard prayer with the punctiliousness that he demanded for the study of the laws.

B. Sabbath

The stipulations regarding the observance of the Sabbath have as their source Ex. 16:29, "let no man go out of his place on the Seventh Day." "To go out" is taken to imply in our Mishna as carrying a burden from one domain to another. In Shabbath 6:5, Rabbi permits one to go out with a false tooth or a gilded tooth, but the Sages forbid it. According to Rabbi whatever detracts ~~from~~ personal appearance will not be displayed by them. This would result in a curtailment of movement. However, according to what we know about life on the Sabbath in Sepphoris, there was a great deal of movement. This might tell us more about Rabbi's pride than the people over whom he ruled.

In Mishna Shabbath the prohibition regarding of any sort ^{work} is treated in great detail. In Shabbath 12:3, the case is cited, "he is culpable that writes two letters, whether with his right hand or whether his left, whether with the same or different letters, whether in different inks or in any language." Rabbi Jose said they have declared culpable the writing of two letters only by reason of their use as a mark; for so used they to write on the boards of the tabernacle that they might know which adjoins which. Rabbi said we find a short name from a longer name: Shem from Shimeon or Shemuel, Noah from Nahor, Dan from Daniel, Gad from Gadiel."

Rabbi Jose discusses marks ^{as} enabling correct placement of boards in the tabernacle. This would indicate that if the writing was not used on boards on the Sabbath, it would be permissible. Rabbi may infer that since shortened

names are derived from longer names and that a shortened name may stand for one or more individuals (such as Shem from Shimeon and Shemuel) this procedure is prohibitive on any occasion to avoid confusion.

Rabbi is credited according to the Jerusalem Talmud, Berachot 3 ¹² for having required a separate garment on the Sabbath, known as 'Tzizith'. Bacher claims that Rabbi considered the observance of the Sabbath as equal to observing all the commands. This is the interpretation that he gave to the verse in Numbers 15:40, "...in order that you will remember all my commandments".

In Middoth 3:4, the case deals with the details concerning the reconstruction of the altar. Rabbi says that the stones of the altar were whitewashed every Friday on account of the blood stains. By this opinion, Rabbi indicated the importance of the Sabbath, since the anonymous Tana says; "they used to whiten them twice a year, once at Passover and once at the feast of Tabernacles".

C. Circumcision

The rite of circumcision was one of the prohibitions imposed upon the Jews during the early period of Roman rule under Hadrian. During the period of Rabbi Simeon ben Gamliel II, the Romans had relaxed their severe attitude regarding the Jewish mores. Full religious autonomy was not regained until the patriarchate of Rabbi. The blow that had been meted out had to be compensated for by even a higher value being placed upon that rite which marked the Jew from the rest of the pagan world.

In a section ^{of} laudatory comments with regards to circumcision in Nedarim 3:11, Rabbi joins with his contemporaries in reinstating the priority of circumcision in the scale of Jewish values. Rabbi says, "Great is circumcision for despite all the religious duties which Abraham our father fulfilled, he was not called perfect until he was circumcised, as it is written, "Walk before Me and be thou perfect". (Gen. 17:1)

Rabbi's comment as to the qualifications for perfection is low, for according to him, circumcision is the only requirement needed for perfection. "He has the boldness to assume that his authority in Genesis 17:1 backs up his view. even though this is out of context. The quotation from Genesis infers; that if Abraham be perfect, then God will make a covenant with him. The word covenant in Hebrew is ברית which is also used to mean circumcision.

Rabbi had no other choice but to endorse the older generation of scholars in the matter regarding circumcision.

D. Vows

The Nazarite, one who undertook a self imposed pledge, usually of an ascetic nature, was not countenanced by the Pharisees. In our Mishna we have retained the older custom which defined the status of a Nazir, while at the same time recording the ruling of Rabbi which cast an impossible character to the Nazarite practice. In Nazir 1:4, we have the statement, "I'll be a Nazarite like the hairs of my head", or 'like as the dust of the earth', or 'like as the sands of the sea', he becomes a life long Nazarite and must cut off his hair every thirty days. Rabbi says: Such a one does not cut off his hair every thirty days; but who is he that cuts off his hair every thirty days?--he that says; 'I pledge myself to as many Nazarite-vows as the hairs of my head', or 'as the dust of the earth', or 'as the sand of the sea'."

Since it is impossible to count the hairs on one's head or the dust of the earth, or the sand of the sea, so it is impossible for one to assume all the vows of the Nazareth. This is Rabbi's position, and in no uncertain terms he has renounced the legitimacy of the Nazarite tendencies, perhaps dealing the final blow to the Nazarite group within the camp of Israel.

Another dictum of Rabbi may be cited to indicate that he was interested in diminishing the Nazarite society. Although his reason for doing so is nowhere stated explicitly, it might be inferred from Rabbi's general attitude towards life that the Nazarite did not add to the prosperity or the social cohesiveness of the Jewish community. The dispute

is between Rabbi Akiba and Rabbi. While the first part of the Mishna shows that Rabbi insists that vows are to be taken seriously, the important emphasis is that when vows are in direct conflict with the intention of the one who vows, the intention is to be given consideration and not the mere verbal commitment made sacrosanct by the sacrificial ritual. It should be remembered that the institution of sacrifices had long disappeared and that the discussion is largely theoretical.

In Nazir 4:5, the case is one where a husband makes a vow for his wife, and after the blood of one of the offerings has been tossed for her against the altar, he may not revoke the vow. Rabbi Akiba maintains that ...if the hair-offering (was not offered, and the vow fulfilled) not in cleanliness (and the vow needed to be fulfilled afresh) he may revoke her vow, since he may say, 'I have no pleasure in a squalid woman.' Rabbi says: it applies even after the hair-offering has been offered in cleanliness, since he may say, 'I have no pleasure in a shorn woman'.

Rabbi says in the Babylonian Talmud, Shabbath 32b, "For the sin of unfulfilled vows one's children die young". There seems to be a contradiction between this statement and the above. For, in the above we can see that Rabbi made it very easy for the vower to revoke his vow. Only if we interpret this passage as reflecting Rabbi's attitude towards the sacrificial system, does it become intelligible.

E. Idolatry-Gentiles

The tractate, Abodah Zarah, deals with all matters pertaining to the prohibitions of idolatrous customs and general non-Jewish relationships, whether of a commercial or social character. Roman occupation of Palestine brought along in its train many pagan practices and images. Coming in close contact with the Jewish community, many Romans were brought ^{closer} to individual Jews. As Nasi, Rabbi was particularly concerned with maintaining friendly relations with the non-Jews.¹

Rabbi was also concerned in maintaining the high level of prosperity which served both the interests of the Roman administration and the house of the Nasi.

Our case in Abodah Zarah 4:5, pertains to the question, "How is an idol desecrated? If a gentile cut off the tip of its ear or the end of its nose or the tip of its finger or battered it even though nought was broken off, he has desecrated it. If he spat in ~~its~~ face, or made water before it, or dragged it about, or threw filth at it, he has not desecrated it. If he sold it or gave it in pledge, Rabbi says: he has desecrated it. But the Sages say he has not desecrated it." While the Sages are mainly interested in the intention of the seller, Rabbi's view was more direct. It would be a very complicated process to determine exactly what the owner or the seller intended by his action. Rabbi's view simplified the law and made it ~~more~~ operative. Due to the large number of idols in the land, the purpose of which were doubtful, Jews could now benefit from this heap of scrap, and

they would not have to fear being suspected of idolatry. It seems more likely that such a ruling would be made in the interest of the wealthier classes, who could benefit by these objects that were sold.

The Sages were always wary of contact with idolatrous things.

In Abodah Zarah 5:11, we have the following case: "If a heathen covered a stone winepress with pitch, it may be scoured and is then clean (often wine had been thrown in to remove the smell of the pitch). But if it was of wood, Rabbi says that it may be scoured with water and ashes, but the Sages say that he must peel off the pitch. If it was of earthenware, even though the pitch is scaled off, it is forbidden."

In matters concerning relations with non-Jews, Rabbi's attitude is more favorable than that of the Sages. By allowing leniency with regarding the cleaning of winepresses Rabbi made it possible for many more winepresses to have been brought into use. As wine was an essential factor in the economy of the country, Rabbi's ruling can best be understood in terms of the economic demands which his office had to fulfill. Being a diplomat, he deemed this more important, rather than maintaining the strict cleavage between things Jewish and things idolatrous.

The following rulings are cited because of their reference to the court of Rabbi. Abodah Zarah 6:2 states: "These things of the gentiles are forbidden, but it is not forbidden to have any benefit from them; milk which a gentile milked when no Israelite watched him; their bread and their oil (Rabbi and his court permitted the oil) stewed or pickled vegetables

into which it is their custom to put wine or vinegar; minced fish, or brine containing no fish; hilek fish; drops of asafoetida or sal conditum. Lo, these are forbidden, but it is not forbidden not to have any benefit at all from them.

The Soncino translation claims that this reference ~~of~~ (Rabbi and his court) is actually to Rabbi Jehudah Nesiah, the grandson of Rabbi and the parenthesis must be a later interpolation. This assumes that Rabbi could not have written this down by himself. Weiss says that Rabbi did not edit the entire Mishna in its present form. Otherwise, he would not have referred to himself in the third person. He says that the court of Rabbi was largely responsible for the present arrangement, and that Rabbi might have given it his organizing talent.

The discussion in the Babylonian Talmud, Abodah Zarah 29b, deals with the possibility for one court to annul the decision of another court. Rabbi Chanina bar Chama says in the name of Rabbi Jochanan, "Yes". Oil had become a very integral part of the economy. Its prohibition was not in the same category as other commodities, as evidenced by the statement in Abodah Zarah 29b: "prohibition of oil had not spread among the majority of the Israelites".

Rabbi and his court adopted the principle of: "We make no decree upon the community unless the majority of the people are able to abide by it".²

In Oholoth 18:9, we have a situation where Rabbi was favorably disposed to easing the religious regulations in order to accomodate the gentiles. It was generally regarded that the dwelling places of gentiles are unclean because they throw abortions down their drains (Oholoth 18:7). The hostility of previous generations abated during Rabbi's patriarchate. This is attested to by many incidents e.g in Oholoth 18:9, (a habitation of gentiles)/ Rabbi and his court voted on Keni and declared it clean.

It should be born in mind that Rabbi Simeon ben Gamliel LI was responsible for easing these restrictions. Keni was situated five miles from Sepphoris, the seat of both Rabbi's court and the Roman administration.

F. Hallowed Things

The subject matter of Kodoshim had lost much of its operative character to ^{due/}the destruction of the Temple and the elimination of the Priestly functions within the Jewish communal structure. Nevertheless, the laws regarding "hallowed things", ranging from the vessels allowed to be used in the Temple, ^{to/}and the manner of assigning gifts for Temple and Priestly use, were studied by the scholars.

As tithing underwent a transformation from being the gift to the Temple, to becoming the gift to the house of the patriarch, so too, many regulations which were originally connected with the Priestly function were applied to the ruling authority. This was especially so in the case of gifts ~~in~~ which the patriarch expected to be generous. One fact in understanding the role which the nasi occupied, is that on the one hand many of these laws had originally been formulated not for a necessarily wealthy landed aristocracy, but largely for a plebian group, and so the Sages who represented the less monied interests in the economy are very frequently opposed to the rulings of the nasi.

In Menachot 6:3, the case speaks of the procedure in offering meal-offerings. "All meal-offerings that are made ready in the vessel require three acts in the putting in of the oil-pouring (oil in the vessel), mingling (the meal in the oil), and (again) putting in the oil in the vessel-before they are ready. The cakes, too, were mingled (with oil). So Rabbi. But the Sages say: The fine flour (only)." This would bear out my thesis that Rabbi prescribes a great amount of oil while the Sages require less.

Another case in which Rabbi's stipulation is greater than that required by the Sages is in Menachot 8:6, "They may not bring old wine. So Rabbi. But the Sages permit it." The reason that is offered to explain this is that old wine, which is more than a year old, lacks the sparkling quality of redness. Red wine of one year vintage is the choicest and hence to be brought as an offering.

What is the basis for Rabbi's view? The Babylonian Talmud, Menachot 87a, tries to determine his view on the basis of Scripture. Num. XXVIII:3 where the verse reads: "a lamb of one year of age". As a lamb for an offering may be only one year old, so wine may be only one year old. The discussion continues trying to argue that wine of two years vintage would be valid. Rabbi, however, states that one should bring the choicest wine although wine of two years vintage would be valid. This certainly indicates to what degree the sacrificial institutions had been replaced with new crops, and that the nasi set his own standards of what constituted acceptable offerings.

The term *תרומה* as used in our Mishna, could very well be the gift or tax payable to the nasi as a communal tax. Originally the *תרומה* offerings were made to the Sanctuary. With the destruction of the Temple and the emergence of an organized community under Rabbi, the attempt was made to justify the new demands of life on the basis of established traditions, thereby giving them a more authoritative basis. The distinction between the gift to God, as personified in his Sanctuary, and that to the house of the patriarch is not as great as imagined.

The following case in Menachot 13:2, indicates how strict Rabbi's position was regarding the discharge of obligations with respect to gifts. "If one said: I pledge myself to offer a meal-offering or some kind of meal-offering, he must bring one of any kind. If he said: Meal-offerings or some kind of meal-offerings, he must bring two of any kind. If he said: I expressly said which kind, but I do not know which kind I expressly said, he must bring the five kinds. If he said: I expressly said a meal-offering of such a number of tenths, but I do not know what number I expressly said, he must bring a meal-offering of sixty-tenths. Rabbi says he must bring meal-offerings of every number of tenths from one to sixty."

Rabbi is of the opinion that once a certain number of tenths had been determined for one vessel, that vessel may contain neither more nor less than the number specified. Accordingly, the only possible solution is to bring sixty meal-offerings, each containing a different number of tenths. In this way he will certainly have brought the meal-offerings he specified.

Such stringency seems hardly applicable, and ^{it} is dubious as to whether the law was ever applied in such a manner. However, it reveals the degree to which Rabbi would go in order to maintain a respect for his authority and the entire procedure of obligations. He probably adopted this view to counteract the tendency of people to take their obligations too lightly. Beuchler tells us of the ["]complaint that people did not pay the charity promised in the synagogue in Sepphoris!"

Another case in Menachot 13:5 proves the point. (If a man said) 'I pledge myself to give wine', he must not give less than three logs; (and if) 'oil', not less than one log. Rabbi says: three logs. (If he said) 'I expressly said (how much I would give) but I do not know what I expressly said, he must offer what is brought on the day when most is offered."

Rabbi derives his rule that oil may be offered as a free will offering, from the drink offering, and not from the meal offering, as the anonymous Tana, which would only require one log.

In Menachot 13:8, the case is one where a person obligates himself to bring a specific animal as an offering.. "If he said a small ox and he brought a large one, he has fulfilled his obligation. But Rabbi says, he has not fulfilled his obligation. According to Rabbi he must fulfill the exact condition of his commitment. Such punctiliousness can best be explained according to the view that Rabbi's principle of rendering legal decisions was regarded by its public character. He was concerned with the enforcement of verbal promises which were probably all too frequently made and seldomly fulfilled. His basis in this case, and in similar cases, is entirely pragmatic with the view to furthering his ends as nasi, the representative and chief tax collector to the Romans.

Rabbi's attitude towards substitution in the case of offerings is as follows Menachot 13:9, (If he said,) 'This ox shall be a whole-offering', and it suffered a blemish, if he was so minded he may bring two that are of like value to the first. (If he said,) 'These two oxen shall be a whole-

offering, and they suffered a blemish, if he was so minded he may bring one that is the value of two. But Rabbi forbids this. (If he said, 'This ram shall be a whole-offering', and it suffered a blemish, if he was so minded he may bring a lamb of like value. But Rabbi forbids this.

To the Sages who disagree with Rabbi regarding the act of substitution, for they allow it and he forbids it, the subject is of mere academic inquiry. For Rabbi the economic value of two oxen is more than its equivalent in money. The use of oxen in the cultivation of fields was very ~~necessary~~, hence the obligation had to be fulfilled according to the original intention. Furthermore, Rabbi regards this case in the category of a pledge and is consistent in his strictness regarding its fulfillment.

I have been unable to discover any evidence that might lead us to believe that Rabbi was interested in the re-establishment of the old sacrificial system. His interest in these matters was determined by the needs of his office and the way in which he wanted obligations to be discharged.

Rabbi's ruling might have been motivated by his disinterest in the sacrificial cult which converted payments to Temple use. It also struck at the idolatrous practices that were connected with beasts, the income of which was derived from lewd practices.

Meilah deals with the unlawful use or employment of the property of the Temple or things consecrated to the Temple, an act of sacrilege.

Meilah 5:3: "Sacrilege cannot twice be committed with (the same) hallowed things, save only with cattle and the vessels of ministry. Thus, if one man rode on a beast and another came and rode on it, and yet another came and rode on it; or if one drank from the golden cup, then another came and drank, and yet another came and drank; or if one plucked wool from a sin-offering, and then another came and plucked and then another came and plucked, all are guilty of sacrilege." Rabbi says: "Sacrilege can be committed repeatedly with aught that is not subject to redemption."

Rabbi disagrees with the anonymous Tana who says: "one does not commit sacrilege with consecrated things where sacrilege had already been made by another person." The laws of sacrilege according to Meilah 5:1 applies to those things that suffer deterioration. Rabbi's rulings differ from the Sages in that objects of redemption cannot be considered even once as sacrilege. The Sages, however, have varying degrees of sacrilege according to the hallowed objects. Sacrilege may be committed once even with a hallowed object.

It is difficult to see what the relevance of sacrilege

is to the practical considerations of Rabbi's policy. While the study of those regulations concerning the Temple cult was given the prestige of fulfilling the commandments themselves, Rabbi's ^{lack of} interest in these matters is reflected in ~~the~~ type of disagreement.

In Temurah 4:3, ^Nif a man set apart a sin offering and it was lost and he set apart another in its stead, and, before he could offer it, the first was found, and both were without blemish, one should be offered as a sin offering and the other left to die. So Rabbi. But the Sages say: no sin offering may be left to die save only that which is found after its owner had made atonement.²

The Babylonian Talmud, Temurah 24a further states: if a sin offering is still ^{lost} lost when another is set in its place according to Rabbi the animal is left to die, whereas according to the Sages it pastures. If a sin offering was still lost, however, when ~~atonement~~ atonement was obtained, it is the opinion of all the authorities concerned that it is condemned to die.

The Talmud goes on to clarify this dispute. The dispute between Rabbi and the Sages refers only to the case where the owner comes to consult the (Beth Din), as to which sin offering he should offer. Rabbi holds that no remedy was devised for dedications, It is significant to note that Rabbi wanted to give authority to the court rather than render an individual opinion.

In Temurah 6:2, the subject deals with the disallowal of lambs as payments for hire which would eventually reach the Temple altar: [^]What is accounted the hire (of a harlot)? If a man said to a harlot, 'Here is this lamb as thy hire' even if he gave her a hundred they are all forbidden. So, too, if a man said to his fellow, 'Here is this lamb for thee so that thy suffer thy bondwoman to lodge ~~with~~ with my bondman'. Rabbi says: ^uThis is not accounted a hire, but the Sages say it is accounted a hire.¹

G. Valuations

The institution of valuation has its basis in Lev. XXVII: 1 ff.
...והגמרת אליהם איש כי יפליא נזר בערכך לפשרת לה

It is hardly conceivable that these practices were operative during the days of Rabbi. However, it must be remembered that Rabbi's favorable position with the Roman authorities largely depended on the flow of taxes from the people. That Rabbi had set some form of per capita tax is very likely. In Arachin 4:2, Rabbi likens valuations to offerings. Although valuations had originally an objective sum according to the years of the person, Rabbi places it in the status of a pledge, or offering, and hence, if the individual should express any preferred status such as: "If the rich man said, 'I vow my own valuation', and the poor man heard and said, 'what this man has said, I take upon myself', then he must pay the valuation of the rich man. If he was poor and then became rich, or rich and then became poor, he must nevertheless pay the valuation of the rich man."

Rabbi disagrees with the anonymous Tana in Arachin 4: 1, who claims that valuations are paid according to him that vows. Such departure from the prevailing rule reflects the arbitrariness of his power in determining what a man should pay. The least slip of the tongue is held to account. Rabbi's ruling, however, would certainly add to the income derived from the new tax structure of the community. His view is consistent both regarding valuations and offerings, another proof that the basis of his decisions held in strict account any commitment, regardless of its nature.

H. Priests - Levites

In Arachin 8:5, the case is concerned with whether Priests and Levites can devote their goods to the Temple. The statement: Priests and Levites cannot devote (their goods) would seem to refer to the Time when the Temple was in existence. But since these two classes had lost their unique position in the society, they could now devote their movable property. Rabbi agrees with the first Tana who said: "Priests and Levites cannot devote their immovable property, but may devote their movable property." Rabbi agrees with Rabbi Simeon who says: "Levites may devote their movable goods since what is devoted does not fall to them."

The Priests and Levites no longer had the status previously held when the Sanctuary existed, ^{and} with the shift of spiritual leadership, there also was the concern with maintaining the flow of goods into the seat of leadership, the nasi. Rabbi attempts to clarify what is allowable in the case to/ of the Priests and Levites.

It is not certain whether the case of Arachin 9:8 is attributed to Rabbi. Some say: Rabbi Meir. It is difficult to conceive of Rabbi maintaining the status of the Levites unless the Levites might have represented a part of the wealthy group. The ruling is restrictive-not allowing Israelites to redeem property inherited from a Levite. Rabbi says: "He cannot redeem it...unless he is a Levite and in the cities of the Levites."

I. The Law of the Seventh Year

In Shebiith, 6:4, the regulations of the Seventh Year are discussed. "When may a man buy vegetables after the close of the Seventh Year? When the same crop (again) ripens. Where the first ripening crop is ready, the later ripening crops are permissible. Rabbi permitted the buying of vegetables immediately after the close of the Seventh Year.

The institution of the Seventh Year forbids the cultivation of the land in the Seventh Year. One can readily see the great hardship that such a practice would have upon a population that is predominantly attached to the soil. Unusual preparations would be required to meet all the exigencies of that year and its aftermath, since time would have to be allowed for the growth of new crops.

Weiss regards the decision of Rabbi as favoring a reform. He considers his position³ as an indication that Rabbi was responsive to the changing conditions of life. That Rabbi did not wish the law to be a burden is evidenced in the incident of the unfortunate man who partook of the produce of the Seventh Year. Rabbi judged that his action was right since he did so in order to sustain himself and his family.

Rabbi's ruling was not greeted with favor by his contemporaries^{as} it showed too much flexibility with regard to the law of the Seventh Year. He was opposed by Pinchas ben Yair.

Besides the fact that the laws of the Seventh Year were not applied with all their former strictness, Rabbi might have been speaking about those vegetables that could be grown in the

land in two or three days.

Rabbi was very much concerned about the prosperity of the country. The law of the Seventh Year did contribute to economic hardship and thus had to be modified so as to promote the interests of the community. Religious law had to serve the full demands of life, not vice-versa.

J. Tithing

Maaseroth 1:1 tells us that, "a general rule have they laid down about tithes: whatsoever is used for food and is kept watch over and grows from the soil. " From this we see that in order for tithing to take place, the produce must be used for food.

In Maaseroth 5:5, we have the following: "If a man bought a field of vegetables in Syria before the Tithing season, he is liable to tithes, but if after the tithing season, he is exempt and may continue to gather the crop himself after his usual fashion." Rabbi Judah says: "he may also hire laborers to gather the crop." Rabbi Simeon ben Gamliel says: "This (liability on the part of the buyer if he acquired the field before the time of the tithes) applies if he had bought the land; but if he had not bought the land, although it was before the tithing season, he is exempt." Rabbi says: "howbeit he should give the tithe according to the proportion (which the crop had grown after he acquired it)."

Rabbi's ruling here applies to whether the land was bought or not. Tithing is related to the man's purchase and the possession of the land, not to the ~~the~~ time of acquisition. Rabbi disagrees with both the anonymous Tana and his predecessor Rabbi Simeon ben Gamliel II. Such a departure raises the question of: what was the status of tithing in Rabbi's time?

Tithing had ceased, for a long time, to be observed with the same meticulousness as was accustomed while the Temple existed. The institution of tithing was going through a process of transformation. If in Rabbi's time tithing had now become

related to taxes that were collected to maintain the community and the patriarchal organization, then Rabbi's ruling becomes clear. For as the representative of the Jewish community to the Roman government it became his task to devise various ways to increase income. His ruling in this case illustrates this.

The patriarch, who was recognized both by the Jews and the Romans, maintained intercourse with the communities in the Dispersion ~~through~~ delegates, whom he sent ^{on} periodic visits. These messengers were known as "shelichim" or apostoli, in Roman law. One object of these missions was to collect the tax imposed for the support of the patriarch. The Theodosian Code refers to it as the aurum coronarium.⁴

IV CASES INVOLVING CIVIL LAW

A. Contracts

The institution of witnesses occupies a significant place within the scope of Jewish legal practice. Cases involving monetary transactions required two witnesses whose reliability was beyond suspicion, while less controversial cases might be decided with the testimony of even one witness.

In Ketuboth 2:4, we have the case involving a document wherein the bridegroom pledges to the bride a certain sum of money, in the event of death or divorce. In the interim, some event occurred, the details of which would bar the pledge from being fulfilled. "If one said, 'This is my handwriting', and another said, 'This is my handwriting', they must add to themselves another witness. So Rabbi. But the Sages say they need not add to themselves another witness, but a man may be believed when he says, 'This is my handwriting'."

While the Sages' ruling seems more lenient than the ruling of Rabbi, it might be argued that the Sages have considered the handwriting alone. Rabbi, however, rules that this case involves a monetary payment, hence the necessity of conforming to the legal requirement of two witnesses. From this we may deduce that the court of Rabbi maintained the customary strictness with regard to witnesses involved in monetary matters.

B. Adultery

In Sota 3:5, the case is concerned with the question ^{of} whether merit holds or does ^{not} hold in suspense the punishment of the bitter water. According to Rabbi Simeon: "Merit does not hold in suspense the punishment of the bitter water, for if thou sayest, 'merit holds in suspense the punishment of the curse--giving water', thou wilt make the water of little effect for all the women that drink; and thou wilt bring an evil name against all undefiled women that have drunk, for it will be said, 'they are in truth defiled, but merit has held their punishment in suspense'. Rabbi says: "Merit holds in suspense the punishment of the curse-giving water; but nevertheless she will not bear children or continue in comeliness, but she will waste away by degrees and in the end will die the selfsame death."

The case of Antoninus's daughter might illuminate Rabbi's ruling. The prevailing lassitude of sexual life in Sepphoris is delineated by Buchler. He mentions the case of the daughter of Antoninus who was suspected of adultery. Rabbi, who was befriended to the Roman authority, wished to diminish a public performance which would be involved in the curse giving water. While Rabbi Simeon would maintain the older prevailing custom, dealing with the facts alone, Rabbi takes into consideration not only the act alone, but the effect that this would have on the community.

Rabbi's decision may be attributed to his friendship for the Roman authority and thus shows favoritism displayed, rather than strict adherence to legal procedure.

C. Damages

In Mishnah Baba Kamma 5:3, there is the case: 'If a man brought his ox into the courtyard of a household without permission, and the householder's ox gored it...or the householder's ox bit it, the householder is not culpable. But if it gored the householder's ox the other is culpable. If (the first man's ox) fell into the householder's cistern and befouled its water, he is culpable. If the householder's father or son was therein (and it killed them) the ox's owner must pay the ransom price. But if he had brought his ox in by permission the owner of the courtyard is culpable,' Rabbi says: 'In no case is the householder culpable unless he had undertaken to watch over it.'

Rabbi's ruling differs from the anonymous Tana in that responsibility cannot be assumed tacitly. It has to be expressed as if it were a contractual leadership, 'unless he had undertaken to watch over it'. His decision also differs from a ruling found in the Gemara: that if he entered with permission, then the case where they are joint owners and so both are culpable. Rabbi, however, insists that responsibility for bailment is no longer a matter of quibbling. It has to be expressed directly. In determining the burden of responsibility in cases involving bailment or damages, Rabbi has insisted that there be tangible proof of the bailor that he has 'undertaken to watch it'. The necessity of this position was probably due to the frequency of such incidences of shifting the blame. By placing the case in a more objective perspective, Rabbi had a guide by which to render decisions.

We also have to remember that the term, 'householder', represents those members of the landed aristocracy whose interests the nasi largely favored. This perhaps might be the key to Rabbi's view.

D. Witnesses

The case in Makkot 1:8 involves the eligibility of witnesses regarding the testimony in capital and non-capital cases. In cases involving damages the presence of two witnesses are required. The case in our Mishnah is concerned with judicial flogging given only when the offender has violated the law and was cautioned. Rabbi's ruling sets up a safeguard of not allowing witnesses too much freedom in condemning a man and yet keeps the essence of the law.

In this case there are three witnesses--one is either a kinsman or ineligible. Is the entire testimony invalid, or can the remainder eligible witnesses give testimony? The anonymous Tana says: "As the evidence of two witnesses is void if one of them is found to be a kinsman or ineligible. Rabbi Jose argues that only in capital cases would the testimony of three one of whom is a kinsman or ineligible, be considered void, however, in non-capital cases the evidence can be sustained by the remaining witnesses (that are not ineligible).

Rabbi says: "It applies alike in non-capital cases and capital cases. (When does it apply in capital cases)? The only time when the testimony of three becomes void, is if one of them is a relative or ineligible when they joined in warning (the transgressor); but if they had not joined in the warning--what should two brothers (who, together with an unrelated third witness) do that saw one that committed murder. Only where one of the brothers had not warned him can the other brother and the stranger be accounted valid witnesses.

E. Property

In Gittin 5:6...Rabbi set up a court and they decided by vote that after the field had been in the usurping occupant's possession for twelve months, whosoever first bought it secured the title, but that he must give a quarter to the owner. By indicating a fixed time to his ruling, Rabbi's decision became effective in promoting the settlement of the Jews in the lands previously made ownerless by the Romans during the Hadrianic persecutions. The situation was one where non-Jews had come into the land and taken possession of much property. They were known as "sicaricon" because they carried daggers and forced the people to yield their property to them.

By rendering judgment in favor of the non-Jewish possessors, he made it possible for the Jews to regain their lands as long as they had made a proper compensation to the owner. This eliminated the fear of repossession. In this manner, Rabbi's court had become instrumental in gaining autonomy of much area in Palestine.

The previous rulings cited in the Mishnah made a distinction of the person from whom it was purchased. This meant in some instances the field had to be purchased, then repurchased again. As nasi, Rabbi wished to have as much land under cultivation as possible, and this decision facilitated the repossession of property. According to Bikkurim 1:2, only from land that was in Jewish possession could the first fruits be brought: "They that lease the land or that hire it, a usurping occupant or a robber may not bring them for the like

reason, because it is written, The first-fruits of thy land.

The case in Arachin 9:3 records a disagreement between the Sages and Rabbi regarding the time allowed in order to redeem a house that has been sold among the houses in a walled city: "If a man sold a house from among the houses in a walled city, he may redeem it at once and at any time during the twelve months. This is a kind of usury (the buyer having the use of the house in addition to having the purchase price returned), which is not usury. If he that sold it died, his son may redeem it; if he that bought it died it may be redeemed from his son. A man can only reckon the year from the time when he sold it (to a first owner, and not from the time when it came into the possession of any later owner), for it is written, Within the space of a full year. And in that it says a 'full' year, this is also to include an intercalary month. Rabbi says: He is allowed a year and its intercalary days (the extra days by which the solar exceeds the lunar year)."

The introduction of calculation by the solar year was very seriously opposed by the Sages. Rabbi might have done this because of his relationship to the Roman authorities who were guided in all matters by the solar calendar.

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F. Capital Cases

Makkotn 2:1 deals with those situations where a person has been killed unwittingly or through the accident of some object. Legal procedure had evolved a way of dealing with those circumstances. The testimony of the two witnesses who had to be present when the act had been committed was investigated thoroughly. In addition to this, however, the community had to set up cities of refuge.

Our case involves the following: "...if the iron slipped from its helve and killed somebody, Rabbi says he does not go into banishment, (having neglected to examine his tool before using it he is not given the benefit of asylum but must evade the avenger as best as he can). The Sages say he goes into banishment. If from a split log, (i.e. the axe rebounded from the log and killed) Rabbi says he goes into banishment, and the Sages say he does not go into banishment."

The Tertimoro, in explaining the position of the Sages, says that since the log had been split due to the strength of the log cutter, and he might have controlled the amount of force applied, he does not derive the benefit of punishment.

Rabbi's view, it would seem, is based on a logical, and perhaps, an economic principle. First, it would seem that the class of log cutters comprises more members than the class of those men whose tools were not properly adjusted. In the case where the iron slipped from its helve, Rabbi imposes more responsibility, since it is due to his own negligence. While in the former case, Rabbi allows for banishment on the grounds that the class of log cutters must be protected, since accidents are more frequent and

the frequency of which was not controllable by the log cutters themselves. Since negligence is difficult to ascertain, Rabbi does not hold them responsible.

It must be borne in mind that the conflict between the Sages and Rabbi was very great. The majority of the laws are according to the Sages. Since the statement of the Sages follows Rabbi's position, it is conceivable that it was appended subsequently to Rabbi's formulation.

✓ NOTES ON PREFACE

1. Rabbi is just one of the appellations attributed to the son of Rabban Simon ben Gamliel II. He was born cir. 135 C.E. and died circ. 220 C.E. He is called Rabbi Jehudah HaNasi for at the age of thirty he became heir to the seat of the patriarchate made vacant by his father's death. His younger colleagues referred to him as Rabbi because they considered him as their teacher. The title, Rabeynu HaKodosh was given to him as a mark of his saintliness.
 - . The title 'Nasi' is the Assyrian equivalent of 'Rabbi'. Later the title was changed to 'Gaon' and then to 'Parnas'. In Israel he was referred to as HaNasi; in Babylonia he was referred to as Rabbi.
2. Babylonian Talmud, Shabbath 118b
 לא הסתכלת במילה שלי - ... לא שם את
 ידו תחת אבנא
3. Tchernowitz, Chaim, (Rev Tzeir), Toledoth Ha-HaHalakah, New York Vol. 1V, p. 275:

"...at his death, he specified that not his son, habbi Gamliel should be the head of the "etivtha, but Rabbi Uchanina bar Chama. As to why he wasn't appointed in his lifetime is due to the personal qualities of Rabbi who could tolerate no second to himself".
4. Buchler, A., The Political and the Social Leaders of the Jewish Community of Sepphoris During the Second and Third Centuries, p. 5

✓ NOTES ON INTRODUCTION

1. Buchler, A., The Political and the Social Leaders of the Jewish Community of Sepphoris During the Second and Third Centuries, p. 18
2. Eleazar HaKappar was a distinguished contemporary of Rabbi who was not quoted in the Mishnah. He is only mentioned in the Baraita. Perhaps this is the source of his remark quoted in the text of Aboth, Perek Daled, Halakah 21, 22.
3. Krochmal, A. H., The House of the Nasiah, HeChalutz, 1856 pp. 118-140
→ 4. ibid
5. Danby, H., The Mishnah, pp. xxii, xxiii.

VII NOTES ON CASES INVOLVING RELIGIOUS LAW

1. Many statements are found throughout rabbinic literature which reflect an unusual intimacy between Rabbi and Antoninus. See Appendix I.
2. This principle is stated explicitly in Taanit 14b
3. Weiss, J.H., זנר דור זדורשין , pp. 161 ff.
4. Parkes, J., A History of Palestine, pp. 108 ff.

III APPENDIX

APPENDIX I

ANTONINUS AND RABBI

Wallach, Luilpold, The Colloquy of Marcus Aurelius
and the Patriarch Judah I, JQR, 1941

1. The older "Antoninus and Rabbi" traditions of the rabbinical literature go back to an apocryphal colloquy between Marcus Aurelius Antoninus and the Patriarch Judah I.
2. The goal of the fictitious colloquy was to prove an allegedly close relation to the Stoic-Emperor philosopher with Judaism and with Rabbi. The Stoic was depicted as an adherent of Judaism and of the Jewish Patriarch.
3. The author of the colloquy was a Jewish Stoic imbued with Hellenism. He used the writings of Poseidonius of Apameia and the Self-Contemplations of Marcus Aurelius.
4. The fragments of the colloquy that have been preserved can be regarded as newly discovered fragments of the last writings of Poseidonius.

APPENDIX II

Religious Law

Sabbath:

Shabbath 6:5, 12:3.

Middoth 3:4

Circumcision:

Nedarim 3:11

Vows:

Nazir 1:4, 4:5

Idolatry-Gentiles:

Abodah Zarah 2:6, 4:5, 5:11

Oholoth 18:9

Hallowed Things:

Menahoth 6:3, 8:6, 13:2, 5, 8, 9.

Meilah 5:3

Temurah 4:3, 6:2

Valuations:

Arachin 4:2

Priest-Levite

Arachin 8:5, 9:8

Agriculture: The Law of the Seventh Year; Tithing

Shebiit 6:4

Maaseroth 5:5

APPENDIX II (cont'd)

Civil Law

Contracts:

Ketuboth 2:4

Adultery:

Sota 3:5

Damages:

Baba Kamma 5:3

Witnesses:

Makkoth 1:8

Property:

Gittin 5:6

Arachin 9:3

Criminal Law

Makkoth 2:1

Folklore

Sota 9:15

Ethics

Abot 2:1, 2:2, 4:20

IV BIBLIOGRAPHY

BIBLIOGRAPHY

- Bacher, B.Z., Agadoth Hatannaim, Dvir, Jerusalem (Hebrew).
- Baron, S.W., The Jewish Community, Philadelphia, 1942
- Bokser, B.Z., Pharasaic Judaism in Transition, New York, 1935
The Wisdom of the Talmud, Philosophica Library,
New York, 1951
- Buchler, A., The Political and the Social Leaders of the
Jewish Community of Sepphoris in the Second and
Third Century, Jews' College, London.
Der Patriarch R. Jehuda I. und die Grieschisch
Romischen Stadte Palestinas, JQR Vol. XIII, 1901,
pp. 683-740.
- Cohen, A. Everyman's Talmud, New York, 1949
- Eisenstein, J.D., A Concordance of Quotations, Sayings and Phrases
from Midrash and Talmud, New York, 1922.
- Finkelstein, L., The Pharisees, Philadelphia, 1938
- Frankel, Z., Darchay HaMishna, Lepisig, 1867 (Hebrew)
- Grasts, H., History of the Jews, (English and Hebrew)
- Halevy, Issak, Doroth Harishonim, Frankfurt, 1901
- Herzog, Rabbi Dr. Issac., The Main Institutions of Jewish Law,
Soncino Press, London, 1939.
- Heiman, Sefer Toldot Tanaim V'amorahim, London.
- Klein, S., Estates of Jehdah HaNasi, JQR, Vol. II, New Series
- Magie, D., Roman Rule in Asia Minor to the End of the Third
Century After Christ, Princeton University Press, 1950
- Moore, G.F., Judaism, Vol II, Cambridge, 1927
- Newman, Rabbi J., Semikhah, Manchester, 1950
- Parkes, J. A History of Palestine, Oxford, 1949

Rabinowitz, , Mishnah Megilah

Scherer, E., A History of the Jewish People in the Time of
Jesus Christ

Schneeberger, H.W. The Life and Works of Rabbi Jehuda Ha-Nasi,
Berlin, 1870

Strack, H., Introduction to the Talmud and Midrash, Philadelphia,
1931

Weiss, J.H. דור דור ודור דור , Vilna.

Primary Sources

The Mishnah (Soncino and Danby).

The Jerusalem Talmud

The Babylonian Talmud

Tosefta, edited by Moses Samuel Zuckermann.

Additional Bibliography

Meisler, B., Beth Shearim, Excavations, 1936-1940, Vol. I
Jerusalem, 1945

Tchernowitz, Chaim (Rav Tzair), Toledoth Ha-Halakah, New York, Vol IV
The Jewish Encyclopedia