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Bekhol Derakhekha Daehu

Journal of Torah and
Scholarship

33

March 2018

Author's Copy

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Journal of Torah and Scholarship

No. 33 – March 2018

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BAR-ILAN UNIVERSITY PRESS, RAMAT GAN

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Published with the assistance of the President's Fund, Bar-Ilan University

ISSN 0793-3894

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Printed in Israel, 2018

Lavi Ltd., Tel Aviv

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J. JEAN AJDLER

Haym Soloveitchik, *Collected Essays II*.
The Littman Library of Jewish Civilization 2014.

This second volume by Haym Soloveitchik contains a series of collected essays whose publication stretches back some forty-five years. It contains two parts. The first is devoted to the cultural origin of German Jewry, which the author refers to as “Ashkenaz”. The second part of the volume treats the issue of martyrdom practiced by Jews under Islam and Christianity. It studies the practice of *Kiddush ha-shem* in German Jewry – the phenomenon of voluntary martyrdom and the killing of one’s children in order to avoid apostasy. We limit the present review to the first part of the volume (221 pages out of 395) devoted to the cultural origin of Ashkenaz. The general consensus is that the roots of German Jewry’s culture, which appeared in the Rhineland in the second half of the tenth century and before, are Palestinian. This view is championed especially by Grossman in *Hakhmei Ashkenaz ha-Rishonim*, Jerusalem 1981, and by Ta-Shema in *Minhag Ashkenaz ha-Kadmon*, Jerusalem 1992. They claim that it was only towards the middle of the eleventh century that the Babylonian Talmud came to be regarded as fully authoritative in Ashkenaz. The author questions this view and shows that, already towards the middle and the second half of the tenth century, the Jewish scholars of Rhineland displayed a perfect command of the Babylonian Talmud, including the tractates that were not taught in the Babylonian academies of Sura and Pumbedita, and behaved according to its prescriptions in all facets of life.

The author admits that the Ashkenazic liturgical poetry (*piyyut*) is patterned after Italian models and that these Italian models were unquestionably developments of the Palestinian ones, as demonstrated by Ezra Fleischer. Nevertheless, in contrast with the general consensus, the author shows that the structure of the Ashkenazic prayer, and the organization and the length of the prayers are strictly Babylonian, even if there are punctual minor Palestinian influences. From the middle of the tenth century onwards, German Jewry adopted the Babylonian Talmud. There is

* I thank Dr. Hadassah Pardes, PhD, who had the kindness to read the paper and make editorial improvements.

no complete manuscript of the Talmud Yerushalmi, which dates from before the middle of the twelfth century.

The author examines two rulings, the first by Rabbi Gershom ben Judah, *me'or ha-gola* and the second by his pupil Rabbi Yehudah *ba'al sefer ha-dinim*.¹ The first ruling deals with the order of the benedictions in the *havdalah* service that is said at the end of Sabbath, when a festival (*Yom Tov*) begins on Saturday night, together with the *kiddush*. The question was whether one should recite the blessing of the spices or not. In the second ruling Rabbi Yehudah ruled that a grandson should sit *shiva* for a grandparent. Both rulings are based on the Talmud Yerushalmi. Soloveitchik devotes several pages to demonstrate that these two rulings do not contradict the Talmud *Bavli*. He contends that there is no evidence of the existence in Ashkenaz of any custom or halakhic ruling which goes according to the Talmud Yerushalmi and which contradicts the Talmud *Bavli*. Thus, Soloveitchik objects to the present scholarly consensus. In order to demonstrate his theory, he notes the following points:

– By the end of the tenth century, the Babylonian Talmud was studied in Spain and in North Africa in a manner similar to that of the two Babylonian *yeshivot* of Sura and Pumbedita.

– In Germany, in the same period, Rabbeinu Gershom and his disciples, the scholars of Mainz, commented on the Talmud. They included in their commentary the tractates that were not taught in the Babylonian *yeshivot*. Indeed, in Babylonia the *yeshivot* did not learn the tractates *Temurah*, *Keritut*, *Me'ilah* and *Tamid* in *Seder Kodashim*, nor *Nazir* and *Nedarim* in *Seder Nashim*. Apparently this was because these tractates are related to subjects that did not apply at that time. These six tractates were thus not part of the Geonic curriculum. Soloveitchik notes that they are edited in a dialect that differs from that of the rest of the Talmud. Medieval commentators already noted this difference and spoke of "*lashon meshunah*". Is there a link between the difference in editorial style and the absence of these tractates from the curriculum of the two *yeshivot*? Soloveitchik writes that this remains an open question.

– The commentary of R. Gershom and his disciples differs from the commentaries written by R. Hananel and the Babylonian Gaonim. The latter commentaries summarize the discussion and put the emphasis on the conclusion but neglect the

1 See Haym Soloveitchik, *Essays II*, pp. 77 – 80.

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detail of the discussion preceding the conclusion. The commentary of R. Gershom aims at understanding the different stages of the discussion and introduces the concept of “*divrei ha-mathil*” in order to explain the intermediary words during the discussion.

– R. Gershom did not show any sign of reverence to the Gaonim of Sura and Pumbedita. He considered that the authority of his teacher R. Judah Leontin was superior to that of the Gaonim.²

– The German rabbis of the yeshivot of Mainz and Worms had no intellectual interest besides the Talmud and the halakhah. By contrast, in the academies of Sura and Pumbedita, during the tenth century there is a significant development. Talmudic studies were no longer the only preoccupation: they were now one subject parallel to other new subjects: philosophy, science, biblical exegesis and grammar. Talmudic studies occupied only a portion of the intellectual agenda. The appointment in 928 CE to the Geonate of Sura of Rav Sa’adya al Fayumi confirmed this tendency.

– Soloveitchik assumes that this tendency must have raised the suspicion and contempt of the German communities. Similarly, he assumes that there existed in Babylonia, parallel to the two yeshivot and their progressive tendencies, a more conservative trend opposed to the intellectual evolution of the two *yeshivot*. In a stroke of wit and humor, he suggests that the appointment of Rav Sa’adya to the head of the academy of Sura must have been felt by the more conservative as if R. David Hoffman had been appointed during the second half of the nineteenth century to the head of the yeshiva of Volozhin.

– Soloveitchik examines the answer to the query sent by the people of Rhineland to the communities of Erets Yisra’el in 960 CE about the time of the advent of the messiah. The Gaon of Israel answered as follows: “As to the coming of the messiah, you were not worth replying to...It were better that you had asked us about the deep topics of the tractates *Yevamot* and *Eruvin*”. This answer is full of contempt to a serious question asked in all sincerity. The relationship between the Gaon of Israel and the people of Rhineland appears to be incomprehensible in this contemptuous answer. Soloveitchik suggests that in this answer the Gaon of Israel treated the German communities like yokels. This could have been the decisive element that triggered a decision that had been a while in the making –

2 I found the following reference: Grossman, *Hakhmei Ashkenaz ha-Rishonim*, p. 157 with reference to responsum 264 of R. Meir ben Barukh in the Prague edition.

the breaking of the people of Rhineland with the official institutions and the two *yeshivot*.

– Based on these various elements, Soloveitchik elaborates his “theory of the third *yeshiva* of Bavel”. He suggests that there was a “third *yeshiva*” in Babylonia, which constituted the conservative trend. He suggests that the last anonymous editors of the definitive text of those tractates of the Talmud that were not taught in the two *yeshivot* belonged to the third *yeshiva*. This thesis explains why these tractates share a common linguistic denominator, reflecting a different editorial origin. These conservative Babylonian scholars studied all the tractates of the Talmud without any exclusion. The denomination “the third *yeshiva*” of Babylonia is apparently just an expression; it does not imply an organized physical *yeshiva*. Soloveitchik assumes also that these scholars were idealists who worked in complete anonymity.

– Soloveitchik suggests that the Jewish merchants of Mainz who actively engaged in vigorous local and international trade, wanted to create a cultural center befitting their economic position and success. He then makes the audacious assumption that the “third *yeshiva* of Bavel”, this group of conservative scholars, got into contact with German Jewry and decided to emigrate to Mainz.

He suggests that the date 960 CE of the query sent by the people of Rhineland and the contemptuous answer received, could be the “terminus post quem”, the “third *yeshiva* of Bavel” migrated to Germany; i.e. the earliest possible date of the considered migration.

– He postulates that this idealistic group, which had worked in Babylonia in complete anonymity, continued to work in the same spirit, without leaving any visible trace. This group would thus have introduced the complete Babylonian Talmud in Rhineland and turned out the first scholar of Ashkenaz, R. Judah Leontin, R. Gershom’s teacher.

This is the theory proposed by Soloveitchik in order to solve the conundrum raised by the cultural origin of German Jewry and to reconcile the various points that he made. His theory explains the introduction of the Babylonian Talmud in Rhineland, which is the counterpart of the introduction, at about the same period, of the Babylonian Talmud in Spain and in North Africa. That narrative was immortalized by the legendary account of the “four captives” reported by R. Abraham ibn Daud in his *Sefer ha-Kabalah*.

Even the most creative novelist could not imagine the scenario created by

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Soloveitchik. The method used by Soloveitchik to solve an historical difficulty is surprising. He created the fiction of the “third *yeshiva* of Bavel” and a complete scenario in order to solve the conundrum of the cultural origin of German Jewry, and the assumed existence of at least one additional cultural center in Babylonia, different than the two *yeshivot*, where the six neglected tractates would have been edited. Soloveitchik’s method reminds us of the process of discovery of the Higgs boson, an elementary particle in particle physics. Its existence was postulated in 1964 in order to explain some physical phenomenon. Its material existence was experimentally confirmed only in 2012. Nevertheless, the method seems more audacious when applied to historical events, and it could be a very long time until we find historical confirmation of his hypothesis!

Let us now return to some of the author’s claims.

1. **The Ashkenazi prayer is Babylonian.** We must nevertheless note that the Ashkenazi prayer is filled with Palestinian *piyyutim*, mainly by the Kalir, the Palestinian liturgical poet “par excellence”. His production constitutes the overwhelming part of the *piyyutim*. We also find some other Palestinian *paytanim*, Italian *paytanim* from the school of Oria, R. Gershom ben Judah (*me’or ha golah*) and R. Yossef Bonfils of Limoges. The insertion of *piyyutim* in the prayer is a Palestinian practice;³ it was absolutely not a Babylonian practice.⁴ We know also, according to a testimony of R. Isaac ben Dorbelo, that as late as 1070⁵ the Jews of Germany were divided on whether they should include in *Mussaf* of Rosh ha-Shannah and Yom Kippur the passage והשיאנו מועדיך את ברכת מועדיך ..., according to the Palestinian custom.⁶ It was R. Isaac ha-Levi, Rashi’s teacher in Worms, who abolished this custom.⁷ The re-alignment

3 See *Tefilat ha-ashkenazit ha-kedumah*, I.M. Ta-Shema, Magnes, Jerusalem 2004, pp. 35–38.

4 See *Tshuvot ha-Rambam*, edition Blau, Jerusalem, 1986, n° 180 and 207, 208. See also *Shulhan Arukh Orah Hayyim* 68, 1 and 112, 2. Note, that during the tenth century, some *paytanim* were also active in Babylonia and among them R. Sa’adya Gaon. This current will continue in Spain where it will reach its golden age. However the rabbinic authority will oppose the inclusion of the *piyyutim* in the *berakhot*. See *Tshuvot ha-Rambam* above.

5 See Grossman, Hakhmei Ashkenaz ha-Rishonim, Jerusalem 1981, pp. 391-392. See also *Ozar Dinim u-Minhagim*, J.D. Eisenstein, New York, 1917 and Tel Aviv 1975, entry והשיאנו.

6 This prayer is mentioned in *Yerushalmi Berakhot* in connection with *mussaf* of Rosh Hodesh.

7 See *Mahzor Vitry*, Nuremberg 1923, pp. 360 – 361, chap. 221 and 222. Idem in *Sefer ha-Pardes*, Budapest 1924, p. 216 and *Siddur Rashi*, Berlin 1912, p. 81 chap 177. See also

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of the German tradition and halakhah on the Babylonian Talmud was thus continuous, and spanned more than a century.

2. **How could R. Gershom explain the six tractates which did not belong to the curriculum of the two *yeshivot*, unless assisted by the hypothesized “third *yeshiva of Bavel*”? A similar question could be asked about R. Hananel of Kairouan. The account of the “four captives” must explain how the Babylonian teaching and tradition⁸ were introduced in Spain and in North Africa. Now if R. Hananel was the bearer of the Babylonian tradition, how could he understand the Talmud Yerushalmi and introduce it systematically in his commentary? The truth seems to be the following: the four captives departed from Bari and were probably from Southern Italy⁹ or had lived there; they were the bearers of the Italian traditions. They were in contact with Babylonia but also with Palestine. R. Tam could write that R. Hananel was a disciple of R. Hai Gaon, Tossafot could write that R. Hananel was the bearer of Geonic tradition, but in fact because of his Italian origin he was also aware of the Palestinian tradition. It is likely that, in Italy as in Germany, the Babylonian influence superseded progressively the Palestinian one on the Talmudic and halakhic levels. Now to come back to R. Gershom, his origin was much discussed.¹⁰ Many birthplaces were suggested, such as Metz and Narbonne. There is some evidence that R. Gershom was born in 960 CE in Ancona in Italy, from a family originating from Oria.¹¹ This is coherent with the Italian sound of his teacher’s name, R. Judah Leontin.¹² If so, R. Gershom and his teacher would then be the bearers of Italian tradition, which would explain their knowledge of the Babylonian Talmud and also their acquaintance with the Talmud Yerushalmi.**

Ozar Dinim u-Minhagim, Eisenstein, entry **יהשיאני**.

- 8 According to the account of the “four captives” the people of Spain and North Africa knew already the Babylonian Talmud but they lacked the Babylonian interpretative traditions.
- 9 Rabad I in *Sefer ha-Kabalah* qualified R. Moses and R. Hanokh as “Italians”. See Grossman, *Hakhmei Tsarfat ha-Rishonim*, Jerusalem 1997, p. 556. Similarly in Mahzor Vitry p. 244 R. Isaac ben Dorbelo quotes “R. Hananel ben Hushiel, ish Romi”.
- 10 See Grossman, A. *Hakhmei Ashkenaz ha-Rishonim*, Jerusalem 1981pp. 113 – 116.
- 11 See Flusser, D: *Sefer Yossifon*, 2 vol, Mossad Bialik Jerusalem 1978 - 1980 (Vol 2, introduction p. 5). I thank Professor Meir Bar-Ilan who provided me the exact reference.
- 12 However Grossman in *Hakhmei Tsarfat ha-Rishonim*, Jerusalem 1997, p. 559 considered, from the literality of a reference text, that R. Gershom studied under R. Leontin in Mainz.

3. **The linguistic differences between the tractates belonging to the Geonic curriculum and the six tractates** absent from this curriculum, and the resulting difficulty elucidating them, must not be exaggerated. There are testimonies of two well-known rabbis who commented much more difficult and unexplored texts without any external help. R. Abraham ben David wrote in the introduction to his commentary of *Eduyot*: כי אין עימי בכל אלה לא מפי רב ולא מפי מורה, כי מעזרת האל לבדו המלמד אדם דעת... Such a remark would have been even more justified at the beginning of his original commentary on *massekhet Kinim*. Similarly, Rashi wrote in his commentary on Ezekiel 42, 3: ואני לא היה לי לא רב ולא עוזר בכל הבנין הזה אלא כמו שהראוני מן השמים.
4. **Soloveitchik quoted the summary of a query that the people of Rhineland sent to those of Erets Yisra'el in 960 CE** and suggested that the dismissive reply could have been the turning point of German Jewry's attitude regarding the official institutions of Israel and Babylonia. According to this conjecture, he said that 960 CE would be the terminus post quem¹³ for the emigration of the "third *yeshiva* of Bavel" to Germany. In fact, a correct reading of the responsum shows that the reply sent by the Palestinian Gaon was not as dismissive and contemptuous as Prof. Soloveitchik claims. Their reply attests to their great fear from embarking on discussions about messianism, and to their will to cut short any such discussion. In any case, the date of 960 CE as terminus post quem is much too late, and does not leave enough time for R. Leontin's lifetime.¹⁴ It would only be possible if R. Leontin belonged to this "third *yeshiva* of Bavel"; but this is certainly not the case. It seems that Soloveitchik perhaps neglects that, according to his piece of evidence, in 960 CE the people of Rhineland were still sending their queries to Palestine. However, at the same period R. Meshulam ben Kalonymus was sending queries to R. Sheriria Gaon,¹⁵ and fifty years later the German Rabbis wrote to R. Hai Gaon, the heads of the academy of Pumbedita – the "discredited" official Jewish institution of Babylonia, according to Soloveitchik's thesis. Furthermore, there is no reason to link a supposed feeling of revolt against the Palestinian "contemptuous" Gaon and a close association with the "third

13 The earliest time the event may have happened.

14 Grossman in *Hakhmei Ashkenaz ha-Rishonim*, p. 85 considers that R. Leontin was born in about 930-940 and was still alive in 1010.

15 Grossman in *Hakhmei Ashkenaz ha-Rishonim*, p. 427.

yeshiva of Bavel” leading to their migration to Germany.

5. **There is no evidence in Ashkenaz of any custom or halakhic ruling according to the Talmud Yerushalmi which contradicts the Talmud Bavli.**

In an article published in the rabbinical review *Shomer Tsion ha-Ne'eman*¹⁶ Rabbi Jacob Koppel ha-Levi Bamberger¹⁷ mentions two important surprising facts, which contradict this thesis. A) On the wall of the purification room of the old cemetery of Worms, there is an engraving of the benediction to be pronounced by those who see Jewish tombs. It contains the following words: “וְהוּא יְגַלֶּה עֵפֶר מִבֵּין עֵינֵיכֶם”, “and he will reveal the earth from between your eyes”. He adds that the same wording of that benediction appears in the old Jewish cemetery of Frankfurt am Main. This means that the benediction engraved on the wall of the building of Worm’s cemetery is the benediction according to the wording of the Talmud Yerushalmi *Berakhot* 65a¹⁸ and not the Talmud Bavli *Berakhot* 58b.¹⁹ B) R. Jacob Bamberger mentions that he wrote in a booklet²⁰ devoted to the customs of Worms, that in one law relative to the slaughtering rules, the practice in Worms was in contradiction with the explicitly mentioned rule in the Talmud Bavli. By contrast, in the Talmud Yerushalmi the rule is clearly the one that was practiced in Worms. This practice remained unchanged until 1628 when Rabbi Petahya,²¹ the son of

16 *Shomer Tsion ha-Ne'eman*, n° 15, Tuesday 2 Shevat 1846. This review in Hebrew was a rabbinic supplement to the Journal of the community of Hamburg and was edited by R. Jacob Ettlinger. R. Jacob Koppel Bamberger had the honor of writing the first article of the first issue.

17 Apparently no evident relationship with R. Isaac Dov ha-Levi Bamberger, 24 years younger.

18 According to the pagination of the Vilna edition of the Talmud *Yerushalmi*.

19 See *Shulhan Arukh Orach Hayim* 224 n° 12.

20 Which is unknown and remained in manuscript as all the books that he wrote.

21 In that year the book *Torat ha-Hatat* from R. Moses Isserles was reprinted in Hanau. It must contain the glosses of R. Petahya but for an unknown reason the glosses were not printed. Nevertheless R. Petahya is remembered as the author of glosses on *Sefer Torat ha-Hatat*. R. Petahya had a strong personality and imposed various changes in the liturgical customs of Worms. The short duration of his tenure coincided with the period of writing of the book *Minhagei Vermaiza* by Rabbi Judah Loew Kircheim and therefore the decisions of R. Petahya are mentioned several times in this book. R. Petahya had been the Rabbi of Frankfurt am Main from 1622 till 1628 and he left Worms for Nikolsburg to occupy its vacancy. He made the list of corrections to the book *ספר הכוונות* of the Ari, which was printed in Hanau in 1624. See references and additional information about him in the book of Rabbi Mordechai ha-Levi Horovitz, *Rabbanei Frankfurt*, Mossad ha-Rav

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R. Isaac of Nikolsburg,²² the new Rabbi of Worms, removed it. R. Bamberger wrote that the details about this specific law were too long to be explained in detail, and that he intended to devote another paper in the same journal to explain it in depth. Unfortunately this paper was never issued. R. Bamberger concluded, in 1846, that the Talmud Yerushalmi became known to the people of Rhineland before the Talmud Bavli. Thus the people of Rhineland had elements of the Talmud Yerushalmi for a long time. Perhaps we should write more cautiously that the people of Rhineland were under the Palestinian influence before they came under the Babylonian influence. It is not excluded that this Palestinian influence materialized very early, even in the beginning of the ninth century, even without a thorough knowledge of the Talmud Yerushalmi.²³

6. **About Ashkenazi customs or halakhah according to the Palestinian Talmud or tradition.** We have several additional examples of rules that originated in the Talmud Yerushalmi or in the Palestinian tradition.²⁴ However, five hundred years after this period, when the *Shulhan Arukh* was written, there had been some osmosis between the *halakhah Ashkenazit* and *halakhah Sepharadit*. Furthermore, the *Shulhan Arukh* was built on three pillars: the Rif, the Rambam and the Rosh. Therefore, it is difficult today to find additional indisputable examples in the *Shulhan Arukh*. Here are a few examples, but are they indisputable?

1. Ashkenazim rise for *Kaddish* and other special moments of the tefillah.²⁵
This custom is mentioned by *Rema* in *Orah Hayim* 56; 2 and is according to the Talmud Yerushalmi.²⁶ Sephardim remain seated.
2. Unmarried *kohanim* do not bless the people, *Rema Orah Hayim* 128; 44.
This was certainly the original custom in the Ashkenazi halakhah, and not in Sephardic halakhah. It corresponds to n° 50 in the Maharshal's list of differences between Eastern and Western Jews. **ב"ב אין כהן מברך את ישראל**. **עד שישא אשה, בני א"י מברך עד שלא ישא אשה**. There is certainly a correlation

Kook, 1972, p. 45 and p. 204.

22 Today Mikulov (about 100,000 inhabitants), a town in Southern Moravia which had an important Jewish community and was directed by important rabbis such as R. Mordekhai Bannet in the beginning of the nineteenth century.

23 See further in the appendix.

24 See: Course '*Shitot pessikah*' *Mikhlatat Lipschitz*, 2007. R. Dr. Solomon Toledano.

25 *Barekhu, Vayehulu, Magen Avot, Kedusha, Modim de rabbanan*.

26 See *Magen Avraham* ad locum.

between these contradictory opinions and the original traditions. However, there is a contradiction: *Mehaber* follows the Palestinian tradition and *Rema* the Babylonian tradition. It seems that the two have been inverted in the *Maharshal's* list.

3. *Kiddush* on pasteurized wine (*mevushal*). According to *Rema* on *Orah Hayim* 272; 8, one may make *kiddush* on *mevushal* wine.²⁷ The original Sephardic rule was against this practice.²⁸
4. Estimation of the ring of *kiddushin*. According to *Shulhan Aruch Even ha-Ezer* 31;1 it is not necessary to estimate the ring of *kiddushin*. However, *Rema* on *Even ha-Ezer* 31; 2 writes that the custom is to ask the witnesses if the ring is worth one *prutah*. These rules are certainly in correlation with difference n° 25 of the *Maharshal's* list: בני בבל אינם רואין טבעת קידושין, בני ארץ ישראל רואין טבעת קידושין.
5. Attendance of the mourner in synagogue during the first week of mourning. According to *Rema* on *Shulhan Arukh Yoreh Deah* 393; 2, during the first week, the mourner does not leave his house to go to shul except on Shabbat, when he enters on Friday evening before *ma'ariv*. This special entrance is described by *Rosh* and *Tur* but in fact it was already described by R. Isaac ben Dorbelo. He personally saw it in the *shul* of Ramerupt, in the presence of R. Tam, when R. Joseph, R. Tam's son, lost a child. According to Sephardic custom the mourner leaves his house and goes to shul during the week to attend the Torah reading. These rules are certainly correlated with difference n° 14 of the series of differences of *Maharshal*: בני א"י אין מכניסים את האבל בבית הכנסת אלא שבת בלבד, בני בבל מכניסים אותו בכל יום בבית הכנסת.
6. Including a child under the age of 13 to the *minyan*. Apparently there was an old opposition between the Palestinian and the Babylonian *halakhah*²⁹ whether it is possible to improve the status of a minor by holding a *Sefer Torah* and its *azkarot*,³⁰ in order to complete the *minyan* and allow the recitation of the prayers, *Barekhu* and *kaddish* and the public reading of

27 *Tur* in the name of Talmud Yerushalmi. Rabad mentions also this opinion in Rambam, *Hilkhot Shabbat* 29:14.

28 See Rambam, *Hilkhot Shabbat* 29:14.

29 See *Ha-Tefilah ha-Ashkenazit ha-kedumah*, I.M. Ta-Shema, Magnes, Jerusalem, 2004, chap 19.

30 The holy ineffable divine names.

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the Torah from a *Sefer Torah*. The problem was raised in Bavli *Berakhot* 47a-48a and Yerushalmi *Berakhot* 53b.³¹ By the 13th century, most of the rabbis adopted the stringent position.³² However, perhaps because of the lenient position of R. Tam³³ and certainly because of the ancient Palestinian *minhag*, a popular custom remained implanted and long-lived among the people of *Ashkenaz* (German origin, Alsace) until today, that a child holding a *Humash*³⁴ can complete the *minyán*.³⁵

7. Finally we can mention the end of the harsh responsum n° 48 of R. Tam³⁶ addressed to R. Meshulam ben Natan of Melun, a Rabbi originated from Southern France who criticized the customs of Northern France. He wrote, certainly with much exaggeration and anachronism since it was written at the end of the 12th century when the Talmud Bavli had completely superseded the Talmud Yerushalmi: *אלא מנהגיני תורה היא, ומנהגיני כבבל ע"פ* ...*חכמי ארץ ישראל שהם עיקר ההוראה ולפיכך יש לסמוך על גאונינו...*
Rabbeinu Tam, one of the greatest authorities on the Talmud Bavli ever, was thus still convinced that the roots of *minhag Ashkenaz* were Palestinian.

Appendix. About an Ancient Query sent from Rhineland to Erets Yisra'el.

Professor Soloveitchik quoted a part of a query sent in 960 CE from Rhineland to Erets Yisra'el and its responsum. He referred to the book of Aaron Ze'ev Eshkoli: *Ha-Tenuot ha-Meshihiot be-Yisra'el*, Jerusalem 1957, pp. 133–136.³⁷ In fact, in the book of Eshkoli the responsum is also quoted only partially. The query dealt with two problems, the time of the advent of the Messiah and a problem connected to the kashrut of an animal after its slaughtering. Since Eshkoli was interested

31 Also in *Bereshit Rabbah* 91, 3 and in *Pirkei de-Rabbi Eliezer* chap. 8.

ואם נתמעטו, מביאין ספר תורה ופורשין אותו לפניהם ונעשין כמין גורן עגולה...

See Ta-Shema, note 30 above, for a careful analysis of these references.

32 See *Mahzor Vitry*, vol I, 81. *Rambam, Hilkhot Tefila* 8, 4. The problem is raised by nearly all the *Rishonim*.

33 He did not even require a *humash*. See *Or Zarua*, vol I, n° 196 and *Tossafot* on top of Bavli *Berakhot* 48a.

34 Apparently a long-lived popular generalization which was fought by the rabbis, see *Tossafot* ibidem and *Mahzor Vitry*, vol I, 82.

35 This custom is even mentioned in *Shulhan Arukh Orah Hayyim* at the beginning of 55.4.

36 *Sefer ha-Yashar*, Responsa, edition R. Shraga Rosenthal (1760 – 1828), Berlin 1898.

37 And not 155 – 158 as printed in the book of Soloveitchik. Grossman also mentions this responsum in note 64 p. 426 of his book *Hakhmei Ashkenaz ha-Rishonim*, Jerusalem 1981, with reference to the book of Eshkoli.

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only with the messianic problem, he omitted the other part. It is thus likely that Soloveitchik did not examine the complete responsum. Eshkoli gave a detailed bibliography and an explanation of the published part of the text. However, one important reference is lacking: the paper³⁸ of Rabbi Jacob Koppel ha-Levi Bamberger³⁹ published in the rabbinical journal *Shomer Tsion ha-Ne'eman*.⁴⁰ As we will see, the skipped part of the responsum is key to correctly understanding it and to determining its date. The text of the responsum published by Mannheimer in 1842 had been copied from the manuscript of the book of the customs of Worms of R. Judah Loew Kircheim by R. Jacob Koppel Bamberger. We find on page 302 of the printed version of this book the text, identical to that printed in *Shomer Tsion ha-Ne'eman* n°11:

ובזה יוכיח שהקק"ו מיוסדת כמה מאות שנה, כי מצאתי בספר ישן נושן בזה הלשון: אני יצחק בן דורבלו ראיתי בוורמיישא כתב ששלחו אנשי ריינוס לארץ ישראל שנת תש"ך לפרט שאלו את קהלות ארץ ישראל על שמועה ששמענו על ביאת משיח, וגם סירכא

38 The most ancient reference quoted by Eshkoli is the book of Moses Mannheimer: *Die Juden in Worms*, where the responsum is quoted on p. 27. The author refers to R. Bamberger and to his explanations.

By contrast with Eshkoli's claim, the text does not originate in the register (*pinkas*) of the community of Worms but in the book *Minhagot Vermaiza* (The Customs of Worms Jewry) written in 1632 by R. Judah Liva Kircheim, which was in manuscript until 1987. It was then printed under the title:

מנהגות וורמייזא, רבי יודא קירכום (קירכהיים) ע"י ישראל מרדכי פלס, מפעל תורת אשכנז

39 Rabbi Jacob Koppel ha-levi Bamberger (1784–1864) studied under Rabbi Asher Loew Wallerstein also called Asher Lion Gunsburg (Minsk 1754 – Karlsruhe 1837) (the son of the famous R. Lion Asher Gunsburg 1695 – 1785, rabbi of Metz from 1764 onwards and author of *Sha'agat Arieih*). R. Asher Loew had lived in Germany, had been rabbi in Metz in 1806, a participant in the Paris Sanhedrin and Rabbi of Karlsruhe from 1809 until 1837. R. Bamberger received *semikha* from R. Wallerstein at the age of eighteen and remained close to him. Rabbi Bamberger was appointed Rabbi of Worms in 1824 and remained there all his life. He was the last German Rabbi without any secular education and interest. He was reputed for his Talmudic knowledge, and his devotion to duty and honesty were recognized by all the inhabitants of Worms. His main disciple was R. Zevi Benjamin Auerbach (1808 – 1872) the editor of *Sefer ha-Eshkol*. Biographical elements are rare. He left about ten volumes in manuscripts which belonged to the inheritance of R. Bension Ettlinger of Mogilev, the son of R. Jacob Ettlinger, and were sold in 1914. At least one of these volumes is in the Israel National Library. Raphael Nathan Auerbach gathered the available data in *ha-Ma'ayan*, vol 15, n° 4 Tamuz 5735, available on the Israeli site *Da'at*.

40 N°11 Kislev 1847, N°12 Kislev 1847, N°13 Tevet 1847, N°14 Tevet 1847 and N°16 Shevat 1847.

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דליבא מה אתון ביה. תשובה על ביאת משיח, ביאת משיח לא הייתם כדאי להשיב, וכי אינכם מאמינים לדברי חכמים וסימניהם, ועדיין לא באו. וסירכא שבשומן הלב, נחנו סנהדרי קטנה וסנהדרי גדולה אוכלין אותה כי דביקתה מחמת שומן הוא ואין לכלות ממון של ישראל, ופי' חלב העשוי ככובע אינו סותם, אמרי לה חטי דכרכשתא, ואמרי לה טרפשא דליבא, כגון אינקוב הלב לבית חללו אין חלבו סותמו, וכך נקבה כרכשא כנגד פנים של מטה במקום שאין דבוקה בין הירכים אין חלבה סותם. וחתם הכתב ר' יעקב בר מרדכי ריש מתיבתא דמתא מחסיא וכל דורו. אמת תדעו שאין אנו נמנעין להתפלל בהר הזתים בכל המועדים, וטוב היה לכם לשאול בעמקי יבמות ועירובין. ושלום לשאלי טובותיכם

And this is the proof that the holy community of Worms was founded several centuries ago. I⁴¹ found in a very old book the following text: I, Isaac ben Dorbelo,⁴² saw in Worms, a written document which the people of Rhineland sent to Erets Yisra'el in the precise year 720. They asked to the communities of Erets Yisra'el about the rumor that we heard about the advent of the Messiah and also about adhesions which develop on the wall of the heart, what is your opinion about it. Answer: About the advent of the Messiah, you did not deserve an answer. Don't you trust in the words of the Sages and their signs? And these signs did not yet appear. And the adhesion on the authorized fat surrounding the heart we, the little Sanhedrin and the great Sanhedrin, eat it⁴³ because its adhesion belongs to the grease and we

41 R. Judah Loew Kircheim.

42 Tossafist of the 12th century disciple of R. Tam mentioned several times in Mahzor Vitry. See the references in Mahzor Vitry, edition Shimon Horovitz, Nuremberg 1923, p. 36.

43 The animal. It is possible that he considers that an adhesion makes the animal unfit for consumption only if it develops on the lungs (Mehaber and Rema). Another possibility is that he considers that the heart's wall is thick and therefore, even if we contend that there is no adhesion without a perforation, such a perforation does not perforate the wall of the heart completely until the inner vacuum.

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should not waste Jewish money.⁴⁴ Now the explanation⁴⁵ of the passage⁴⁶ “the fat which lies helmet-like,⁴⁷ cannot stop up a perforation”, some say⁴⁸ the nodules of fat of the rectum; others say, the pericardium around the heart. Thus if for example the wall of the heart was completely perforated until its inner vacuum, the surrounding fat of the pericardium does not stop up this perforation. Similarly if the rectum was perforated at the level of the under face of the rear in the crack between the two cheeks, the fat surrounding the rectum does not stop up the perforation. And R. Jacob ben Mordekhai, the head of the Yeshiva of *Mata Mehessia*⁴⁹ signed the present document with all his generation.⁵⁰ In fact be aware that we don't refrain from praying on the Mount of Olives on all the festivals. And it were better that you had asked us about the deep topics of the tractates of *Yevamot* and *Eruvin*. And peace⁵¹ from those who pray for your wellbeing.

Comments

1. According to Soloveitchik, this responsum deeply humiliated the Jews of Rhineland. A careful reading of the complete responsum gives a different impression. The second issue was answered carefully and the responsum ended on a positive note. The only problem was that the Palestinian Gaon could not tolerate a discussion about the messiah issue. To make a provocative comparison, as Prof. Soloveitchik likes to do in his book, imagine that the people of Worms had sent a query in about 1995 CE to the people of Erets

44 We find the same expression in Hulin 49b.

45 Apparently the query was addressing two separate issues: 1. The adhesion developed on the wall of the heart. 2. How to understand the apparent contradiction between the two principles a) permissible fat seals a puncture and b) the helmet shaped (authorized) fat cannot seal a puncture. It is also possible that the query about adhesions developing on the heart finds its origin in a difference between the rule adopted by the Palestinians (followed in Germany at that time) and that adopted by the Babylonians. We find indeed in a series of such differences established by R. Solomon Luria and printed in *Yam shel Shelomo* after the end of *Bava Kama*: n° 18: ב"ב אין בודקין אלא בריאה בלבד

46 B. Hulin 49b.

47 Surrounding an organ.

48 That it refers to...

49 Sura.

50 After correction of the text (see infra): together with those who occupy the rows (of his court).

51 Best regards.

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Yisra'el, to the Yeshiva of Ponevietz in Bnei Berak, about the rumors of the advent of the Messiah in Brooklyn New York. Do you think that the answer of Rav Shach would have been more pleasing?

2. R. Jacob Bamberger noted already that R. Jacob ben Mordekhai is just Mar Jacob Gaon, quoted by the Rosh in *Hilkhot ha-Rosh* on *Hulin*, chap. 3 n° 14, on the issue of adhesions on the lungs. Similarly, Mar Avimi Gaon and Mar Zadoc Gaon, who are mentioned there in *Hilkhot ha-Rosh* on *Hulin*, are precisely the Geonim who reigned after Mar Jacob ben Mordekhai Gaon. This appears from the list of the Geonim in the Encyclopedia Judaica, copied from the Epistle of Rav Sherira Gaon, from the *Sefer ha-Kabalah* of R. Abraham ibn Daud and the *Sefer Yuhassin* of R. Abraham Zacutto. The report of the discussion between R. Jacob ben Mordekhai Gaon and his pupils, who would later succeed him, can also be found, in slightly different terms in *Tshuvot ha Geonim, Mahzor Vitry*,⁵² and *Or Zarua*.⁵³ It is the origin of the practice adopted by Ashkenazim to accept eating an animal which presented slight adhesions on the condition that they can be easily removed by holding the lungs through the windpipe and shaking them three or four times.⁵⁴
3. It appears that the Gaon R. Jacob ben Mordekhai ha-Kohen was an expert in the slaughtering laws and therefore this increases the likelihood of the authenticity of our responsum. The opinion of Mar Jacob Gaon authorizing an animal with adhesions on the heart is according to the *halakhah*.⁵⁵
4. R. Jacob Bamberger quotes *Sefer Yuhassin* where it mentions that the head of the Yeshiva had a court of 70 people sitting in 7 rows and gathering in the months of Elul and Adar in order to answer the received queries. Therefore he validates the terms Sanhedrin which had worried him.⁵⁶ For the same reasons he considers that *וכל דורי* must be a scribal error and it must read *וכל דרי*, meaning “and all the rows of his court”. It corresponds to the formulation in the text of the *Rosh* and *Or Zarua*: *...הסכימו כל בני הישיבה*.
5. Eshkoli considered that the insertion of the answer of Rabbi Jacob ben Mordekhai Gaon about the problems of kashrut in the middle of the answer of

52 *Mahzor Vitry*, ed. Shimon ha-Levi Horovitz, Nuremberg 1923, p. 50.

53 *Or Zarua*, Zhitomir 1862, vol I, p. 114 col 2, n° 411.

54 See details *Shulhan Arukh Yoreh Deah* 39; 10 and 13.

55 See *Shulhan Arukh Yoreh Deah* 37, 39 and 41.

56 Before the later scholars as mentioned by Eshkoli.

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the Palestinian Gaon, is surprising and raises many questions. The explanation adopted by Eshkoli is the following: The query was sent in 960 CE to Palestine. The Palestinian Gaon answered the letter but he relied on an old responsum extant in his files, dating from 160 years before, and he included it in his answer. Unfortunately his own name was not recorded. This solution seems to be generally accepted. It is nevertheless surprising. Why would such a responsum of a Babylonian Gaon living 160 years before, be in the file of the Palestinian Gaon? How did he remember its existence? If the responsum was more than 160 years old then it should have been thrown in a *genizah* rather than put in a file. Furthermore, it seems unlikely that a responsum to a query would consist of the copy of an older responsum without any commentary.

6. We note that the responsum of R. Jacob Gaon sent to the people of Rhineland is absolutely unknown in rabbinic literature. If it had been sent back in about 960 – 965 CE to Rhineland, as generally accepted, then this responsum should have been known by R. Leontin and by R. Gershom *me'or ha-golah*. It should have been incorporated in his *Hilkhot Tereifot*⁵⁷ and it should have been known by all the *Rishonei Ashkenaz*. Furthermore it is difficult to accept that in 960 CE (the assumed date of the birth of R. Gershom and the beginning of the activity of R. Leontin) the Jewish communities of Rhineland were still consulting the Palestinian Gaon on the basic laws of slaughtering and thus had not yet mastered these laws. How can we then understand that a few years later R. Gershom would write a book *Hilkhot Tereifot*, which was authoritative for the two following centuries, without quoting the responsum of R. Jacob Gaon?
7. Moreover, we know that at the same period, R. Meshulam ben Kalonymus, probably the most important personality in Rhineland, sent queries to Rav Sherira Gaon to Pumbedita. Furthermore, the expression “the people of Rhineland” without the specification of a leading personality seems to be an indication of the antiquity of the query.
8. R. Jacob Bamberger hesitated about the understanding of the date תש"ך לפרט, and consulted R. Aaron Fuld.⁵⁸ The scholars who dated the responsum from 960 CE understood תש"ך לפרט as if it were לפרט קטן meaning (4)720 AM. However the indicated date is 720 “liprat” which seems to mean, according to the only

57 This book is mentioned in Tossafot on *Hulin* 46b and 48a.

58 Aaron Fuld from Frankfurt am Main 1790 – 1847.

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known reference of B. *Avodah Zarah* 9a and b, in “720 exactly”.⁵⁹ The two former rabbis proposed to understand 720 Destruction Era as corresponding to 790 CE. At this time the Destruction Era was used in Palestine and the Era of the contract was used in Babylonia.⁶⁰ Apparently the scribes did not adapt the dates and they kept the dates in their original form. For example *Maharshal*⁶¹ wrote in his responsum 29 “and king Carolus⁶² brought Rabbi Moses the Elder (of the Kalonyde family)⁶³ from the town of Lucca in the year 849 DE (919 CE)”. This provides a different understanding of the responsum: the query was sent to Palestine in 790 CE and the local Gaon answered the question. However, the Palestinian Gaon preferred to refer to the Babylonian Gaon, an expert in the subject, for the queries related to the slaughtering rules. R. Jacob Bamberger assumes that in their⁶⁴ Talmud Yerushami *Kodashim* which was existent at their time,⁶⁵ the passage “*the fat which lies helmet-like, cannot stop up a perforation*” was not explained and detailed. This would explain why the Palestinian Gaon put the question to his Babylonian colleague and why the Babylonian Gaon copied this passage followed by the explanation given in the Babylonian Talmud. The insertion of the answer of the Babylonian Gaon would thus have been written at the request of the Palestinian Gaon for the sake of this specific query.

9. There remains one last difficulty. The query was said to have been sent in 790 CE but according to the elements of the responsum of R. Sherira Gaon, R. Jacob ben Mordekhai ha-Kohen became Gaon in 797 CE. However:
- We do not know how precise the estimation of the year 790 is.
 - The dates of the Geonim given by the Epistle of Rav Sherira Gaon and the *Sefer ha-Kabalah* are not exactly the same. For example the length of the

59 In B. *Avodah Zarah*: הוי פרטיה כמה הוי ולא ידע פרטיה כמה הוי means: if the *tana* is wrong and does not know which is the exact year. Therefore one can contend that it means also: “what is the last digit”. But it certainly does not have the same meaning as the modern לפ"ק.

60 See the Epistle of Rav Sherira Gaon.

61 R. Solomon Luria (1510 – 1574).

62 Carolus the Simple (879 – 929), one of the last kings of the Carolingians.

63 In fact the grandfather of R. Meshulam ben Kalonymus quoted above in point 7.

64 R. Bamberger meant: in the *Talmud Yerushalmi* of the people of Rhineland. But maybe we should be more cautious and say: in that of the Palestinian Gaon. Thus in their *massekhet Hulin*, which is no longer available today.

65 See Rambam, introduction to Seder Zera'im, according to which there were still five extant *sedarim* (in his days).

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reign of R. Jacob ben Mordekhai was 14 years in the epistle of Rav Sherira Gaon but 18 years in *Sefer ha-kabalah*.

- We do not know when the query arrived in Palestine, when it was transmitted to Babylonia, when it came back to Palestine and, finally, when it came back to Rhineland.
- It is possible that R. Jacob was already the *Av Beit-Din* of the preceding Gaon and was already in charge of the responsa, especially in the field of his expertise.
- It is possible that the title of “*Reish Metivata de Mata Mehessia*” was added later. This was certainly the case for the title of Gaon added to the pupils of R. Jacob Gaon in the report of his discussion with his disciples, who would later become Gaon, which is quoted in the Rosh and in the rabbinic literature mentioned above.

We thus see that there are valid arguments for advancing the date of the query from 960 CE to 790 CE. The query is an important piece of evidence of the dependence of the Jews of Rhineland on the Geonim of Erets Yisra'el during the ninth century, and certainly at the beginning of that century. This Palestinian influence was probably superseded progressively during the tenth century by the Babylonian influence. This would plead in favor of the classical theory championed by Grossman and Ta-Shema, with a slight shift backwards. This would advance the time when the Jews of Rhineland were under Palestinian influence to the ninth century and the beginning of the tenth century. During the second half of the tenth century this Palestinian influence would begin to be superseded by the Babylonian influence. However the important Italian influence did not weaken. R. Jacob Bamberger proposed two original pieces of evidence about the Palestinian cultural influence, the benediction of *קברי ישראל* and a detail of the slaughtering laws practiced in Worms in the Middle Ages. Unfortunately there is no way for us to verify or validate these pieces of evidence. A further direction for research would be to search for additional pieces of evidence.