

Yom Tov Sheni Shel Galuyyot

The True Signification of the Second Festival Day.

Before about 325 The Jewish Babylonian communities did not know the fixing of the moon, they kept on each holiday two festival days out of doubt. It was likely a ספק דאורייתא, each of the two days could in principle be the true festival day.

After about 325, the Babylonian communities began to receive in advance the *kevia* of the next year. From that time onwards they knew the fixing of the moon and they could have begun to keep one festival day, in the same way as the Palestinian communities. However the Palestinian Rabbis taught them to go on keeping two festival days as before. The first festival day was now the true festival day and the second one, in fact a normal weekday had to be kept, no more out of doubt but by rabbinical decree.

The problem is now to define the exact status of this second festival day. What was exactly the signification of the message that the Babylonians received from Palestine?

1. Whether they had to go on keeping the two festival days as if they still doubted which day was the true festival day. It was thus a ספק דרבנן.

2. Whether they had to keep the first festival day as the true festival day and the second day – although a weekday- as a festival day in pursuance of a *takana – rabbinical enactment-* (or a *minhag – custom-*) for the case there would be a disruption in the communication of the calendar information. This second festival day had thus to be kept without any reason of doubt as a rabbinic decree, a תקנת ודאי.

3. Or the same assumption as n° 2 above but with an additional condition that the rules of this second festival day could never be more strict than before when they were keeping the second festival day out of doubt.

This paper aims at studying the problem thoroughly and understanding the true signification of the status of the second festival day.

We will show that Maimonides chose the second assumption but it appears that only the first assumption is fully satisfactory with regard of all the Talmudic passages referring to the second festival day.

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The True Signification of the Second Festival Day.

I. Introduction.

It was always believed that the transition from the empirical observation calendar to the fixed calendar was clear cut with the fixed calendar immediately adopting its definitive form. In other words it was believed, according to a tradition reported in the name of Rabbi Hai Gaon and mentioned in Sefer ha-Ibbur by R' Abraham bar Hiya that the empirical observation calendar was replaced in 358 C.E. by our modern Jewish calendar. In fact it is known today that the Jewish calendar became rigorously identical to our modern calendar only in 923 C.E when R' Sa'adia Gaon prevailed over Ben Meir. However, if we neglect the marginal controversy between R' Sa'adia Gaon and Ben Meir, we can consider that the calendar was identical to our modern calendar from about 839 onwards. The evolution of the Jewish calendar from an empirical and variable to a fixed and predictable calendar occurred during the first half of the fourth century but the fixed calendar which came to light continued to evolve until the beginning of the tenth century.¹ This evolution toward the precedence of the calculation and the predictability upon the observation and the empiricism was thus progressive and not clear cut.² We have already shown³ that the transition between an empiric and a predictable calendar seems to occur in about 325 C.E. From this time onwards, the Babylonian community began to receive communication in advance of the *kevia* i.e. the characteristics of the next year. That means that from the reign of Abaye onwards, the Babylonian Academies knew the calendar of the year in advance, in contrast with the situation prevailing before when they had to hold two festival days out of doubt, because the messengers coming from Palestine could not reach them in time. Thus before 325, the calendar was an empirical observation calendar. People living in Israel knew the fixing of the new moon. The Talmud writes about them:

¹ J. Ajdler: Rav Safra and the Second Festival Day: Lessons About the Evolution of the Jewish Calendar. Tradition , Vol. 38 n° 4, Winter 2004.

² However the classical commentators believed –and this is still believed by most of the people- that the transition from the period when the Babylonians did not know the fixing of the moon to the new period when they knew the fixing of the moon as mentioned by R' Zeira II in B. Beitsah 4b corresponded to the introduction of the fixed calendar i.e.our modern calendar.

³ J. Ajdler : Hilkhhot Kiddush ha-Hodesh al-pi ha-Rambam, Sifriati 1996, p. 697 bottom. See also note1.

אִינְהוּ דִידְעֵי בְקִיבוּעַתָּא דִירְחָא.⁴ This means more precisely that the people living in Palestine knew the exact day of the Neomenia before the fifteenth of each Jewish month.⁵ Therefore they held only one festival day. They had a doubt only for Rosh ha-Shanah and therefore they held in Jerusalem one or two days according to the moment when the eye-witnesses arrived at the Court; but anywhere else they were holding two days. In principle a little part of the Israeli population had a doubt about the true day of the Day of Atonement but they relied on the fact that generally Elul is defective month of 29 days. By contrast the Babylonian community did not know the fixing of the moon and the Talmud writes about them: אֲנִן לֹא יִדְעִינן בְקִיבוּעַ דִירְחָא.⁶ Therefore the Babylonian had to hold two festival days out of doubt.⁷ Even if the first festival day was generally the true festival day i.e. the festival day held in Palestine, it could happen that this was not the case. We know about a few instances where Elul was a full month of 30 days and therefore the second day of Rosh ha-Shanah was the true festival day and the Day of Atonement in Israel fell therefore a day later than in Babylonia.⁸ Thus even if statistically the first festival day was generally the true festival day, on a legalistic point of view each of the two festival days was the possible true festival day. Therefore the Jewish population of Babylonia lived an uncomfortable situation in which they never knew the true festival day. In the case of Yom Kippur the situation was even more Cornelian. From one side it was impossible to impose two days fast on the population- only a few individuals imposed upon themselves such a burden⁹ but from the other side they were lead considering the day after Yom Kippur as a normal weekday in contrast with the principle of the second festival days. Thus they rested on the statistics in the treatment of Yom Kippur and of the next day although the desacralisation of “*safeik Yom Kippur*” is certainly more serious than that of *safeik Yom Tov*. Thus the impossibility to fast two days lead to desacralize completely the day following Yom Kippur although it represented a more serious doubt than that of a normal second festival day. They accepted the risk of desacralisation of the true day of Yom Kippur because they had no alternative solution. They could indeed not consider the intermediary solution of eating without performing any forbidden activity. But they did not want to take an additional risk, even if less reprehensible, at the level of the second festival day of the other festivals.¹⁰

⁴ B. Sukkah 43a.

⁵ Y. *Sanhedrin* 5: 3 (Mishna and beginning of Gemara).

⁶ B. *Sukkah* 43a and b.

⁷ סִפְקָ דְאִוְרִייתָא. However some rabbis consider that they relied on the fact that statistically the first day was most frequently the true festival day and therefore the doubt was of rabbinic order.

⁸ B. *Rosh ha-Shanah* 21a (Rav Nahman) ; B. *Rosh ha-Shanah* (Rabbah), B. *Rosh ha-Shanah* 20a (Ulla), B. *Rosh ha-Shanah* 21a (Levi), B. *Rosh ha-Shanah* 21a (R' Eivu bar Nagadi and R' Hiya bar Abba).

⁹ Rav Nahman and Rabbah (not Rava).

¹⁰ R' Moses Sofer in Hatam Sofer, Yoreh Deah 250 asked also himself if it makes sense to keep two festival days on Sukkot and Shemini Atseret when we keep only one day for Yom Kippur. He proposed that this attitude can be justified by the rules of H.K.H. III: 16-18 according which a late testimony after the end of Yom Kippur could drag a revision a posteriori of the calendar and change the true festival days of Sukkot and Shemini Atseret. The keeping of the two festival days would account for this little risk. In fact the explanation of Hatam Sofer seems impossible: indeed the invoked rule of Maimonides allows only correcting the calendar if Elul had been made full because of the absence of witnesses. In such a case Tishri 1 would become Tishri 2 and the true festival days of Tishri 15 and 22 would be one day before the foreseen days.

Because of the difficulty of Yom Kippur mentioned above it has also been suggested that “by Torah obligation” they could rest on the statistic and consider that they could accept the fact that Elul and Adar were generally defective months and therefore the first days were the true days kept in Palestine. Therefore the doubt in which they were was a doubt of rabbinical order;¹¹ in the case of Yom Kippur, because of the impossibility to impose a two days fast they rested on the fact that Elul is defective and they did not keep the day after. By contrast they kept the second festival day of the festivals out of doubt, but it was apparently, according to this last reasoning, a doubt of rabbinical order.¹²

After 325 C.E the situation changed completely when the information about the next year was communicated in advance to Babylonia. The population could hope to take advantage of the new situation and hold only one festival day like the people of Palestine. However we find in Y. Eruvin, at the end of chap. 3:

רבי יוסי משלח כתב להון, אף על פי שכתבנו לכם סדר מועדות, על תשנו מנהג אבותיכם נוהי נפש.

Rabbi Yose sent them [the people of Alexandria] a letter: although I sent you the order [the keviah] of the next festivals, do not change the custom of your late parents.

There is a parallel passage in B. *Beitsah* 4b:

והשתא דידעינן בקביע דירחא מאי טעמא עבדינן תרי יומי, דשלחו מתם, הזהרו במנהג אבותיכם בידכם, זמנין דגזרו המלכות גזירה ואתי לאקלקולי.

And now, when we know the fixing of the moon, why are we observing two festival days? Because they sent from Palestine the following order: be careful to maintain the practice of your late parents. It could once happen that the authority enacts [unfair] laws [again the Jews] and you could be wrong [if you observe only one day].

Thus Rabbi Yose¹³ imposed upon the Diaspora the observance of the second festival day on the ground that new persecutions could provoke disruption of the communication of the calendar information and place the Babylonian population again in the situation of not knowing the fixing of the moon. The traditional commentators could not explain this passage; they thought that the knowledge of the fixing of the moon was the result of the introduction of the fixed calendar. The Babylonians were by now able to calculate the calendar by them and according to this understanding, the reason for the Palestinian rabbis to impose to the Diaspora to go on keeping two festival days was really difficult to

¹¹ This point of view is mentioned in *Temim De'im* 120.5, a dissertation about *Yom Tov Sheni* by R' Asser ben Meshulam, a disciple of Rabad. But the opposite point of view is also mentioned in 120. 4

¹² There is thus some hesitation whether this doubt was of Torah order or of rabbinic order. The solution “doubt of rabbinic order” allows understanding and justifying their behavior on Yom Kippur. However there are serious arguments in favor of the solution “doubt of Torah”: see *infra*.

¹³ By analogy with the parallel quotation from Talmud Yerushalmi. The attribution of שלחו מתם to Rabbi Eleazar ben Pedat according to B. Sanhedrin 17b cannot fit. Rabbi Eleazar ben Pedat died in 279, the same year as Rabbi Johanan, at a moment when they did not yet know the fixing of the month, when it happened that the Palestinians fasted a day after the Yom Kippur of the Babylonians. Rabbi Jose was the head of the Academy of Tiberias and he took an important part in the construction of the fixed calendar. He was the friend and colleague of Rabbi Mana I and the teacher of the latter's son, Rabbi Mana II.

grasp. Rashi was obliged to give a farfetched explanation that they feared that anti-Jewish rules would prevent the Jewish communities of Babylonia from studying the Torah and the rules of the Jewish calendar could be forgotten because of these persecutions; therefore the Babylonian communities could eat *hamets* on Pesah.

In fact these two passages provide evidence that the Diaspora was not yet able to calculate the calendar by itself. The Babylonians depended on the information sent in advance from Palestine each year. These elements prove the fragility of the Jewish calendar and the danger of disruption of the Jewish calendar in case of persecution and prevention from communication. It is only when the Babylonians began to calculate the Jewish calendar by themselves, in the ninth century that they could have considered holding only one festival day. However the observation of two festival days was so entrenched that it was out of question to consider removing the second festival day. On the contrary, by Talmudic law, this custom which was in application in the whole Diaspora and which was known by all of Israel could not be removed, in the case of the disappearance of its cause, without a decision and a vote of a Sanhedrin.¹⁴

II. The Status of the Second Festival Day.

Once the characteristics of the coming year was communicated to Babylonia, its inhabitants were aware, as the people living in Palestine, of the true festival day; the first festival day was the true festival day held in Israel and the second day was in principle a weekday. It is only because the Sages ordered to keep the second day as a festival day with all the rules of Yom Tov, as it was held before, that this day is held as a festival day. On the same ground the Sages abrogated the positive order to put *tefilin* on that day. It is important to understand the exact status of the second festival day. The Talmud examines different problems with regard to the second festival day. The analysis of these issues allows us better grasping the essence of the rules regarding the second festival day and by the way the exact status of *yom tov sheni shel galuyyot*, the second festival day.

III. The second festival day: a *Takana* or a *Minhag*?

Rabbinical enactments can take the shape of *gezeirah*, *takana* or *minhag*.

Let us first examine the meaning of these words.

- *Gezeirah*.

1. Governmental order of interdiction of limitation of the Jewish life.¹⁵
2. Mitzvah or obligation without rational explanation.¹⁶
3. Rabbinical enactment of interdiction in order to protect and guarantee the respect of the laws of the Torah¹⁷ like the eighteen articles.¹⁸

¹⁴ Rambam *Hilkhos Mamrim* II: 2.

¹⁵ B. *Betsah* 4b, reference mentioned above. B. *Mei'ila* 17a: גזירה שלא ישמרו את השבת.

¹⁶ B. *Sanhedrin* 70a : גזירת הכתוב היא.

¹⁷ B. *Sabbath* 30a : משה רבנו גזר כמה גזירות ותיקן כמה תקנות.

¹⁸ Eighteen *gezeirot* taken during a meeting on the story of Hanania by a majority (Beit Shamaï were the most numerous at this session) during the beginning of the first century. See B. *Sabbath* 13b.

- **Takanah.**

1. Repair, restoring.¹⁹
2. Rabbinical decision adopted by a rabbinical council in favor of the community.²⁰ The *takana* and the *gezeirah* are two aspects of the rabbinic legislative power;²¹ the first one has a positive and creative aspect while the second has a negative and restrictive aspect. Both have much similarity and it happens even that the vocabulary is confused.²²

In the Talmud they consider celebrated *takanot* like: the *takanot* of Moses,²³ Joshua²⁴ and Ezra,²⁵ the *takanot* of Rabban Johanan ben Zakkai²⁶ and the *takanot* of Rabban Gamliel II in Usha.²⁷

3. Area of extension of the *takana* and *gezeirah*.

The *takana* and the *gezeirah* can be universal and apply to anyone (חובת גברא),²⁸ it can have a local character and apply to anyone in this area;²⁹ it can also apply in a restricted area and during a restricted span of time.³⁰

- **Minhag.**

1. The normal behavior of people (without any reference to the Jewish law).³¹ The *minhag* plays an important role in the civil laws because the meaning of the engagements depends on the people's behavior and their way of speaking i.e. the *minhag*.
2. The accepted behavior of the Jews in an area or in a community, although it is not mentioned in the Talmud or in the *halakha*. The *minhag* has generally a local character. Its origin is often uncertain. Some *minhagim* are not contradicted and may be taught.³² Other *minhagim* are sometimes contradicted by some Rabbis. In this case they are not taught but if someone follows them

¹⁹ B. Hagigah 15a : תלמיד חכם, אף על פי שסרח, יש לו תקנה : B. Hagigah 15a.

²⁰ B. Sabbath 30a : משה רבנו גזר כמה גזירות ותיקן כמה תקנות : B. Sabbath 30a.

²¹ B. Pesahim 30b writes : כל דתקון רבנן כעין דאורייתא תקון : B. Pesahim 30b.

²² In B. Sabbath 15b it writes about a *gezeirah*: ... ויאמר עולא אלו ו' ספיקות באושא התקינו :
In Gittin IV: 2 Rabban Gamliel enacted a *gezeirah* and it uses the verb תקן.

²³ B. Sabbath 30a.

²⁴ B. Berakhot 48b.

²⁵ B. Bava Kama 82a.

²⁶ Rabban Johanan ben Zakkai enacted nine *takanot* : B. Rosh ha-Shanah 31b.

²⁷ Tosefta sheviit I : 1 and VI : 19.

²⁸ For example – 1. All the Jews keep two festival days on Rosh ha-Shanah.

–2. All the Jews say the non obligatory prayer of *Ma'ariv*.

²⁹ For example – 1. *Kerem reva'i*: As long as the Temple of Jerusalem was existing, the fruits of the fourth year of the fruit trees growing in an area of one day- walking around Jerusalem must be brought and eaten in Jerusalem and not redeemed. See B. Beitsah 5a.

– 2. The potters, between Jerusalem and Modi'im, are believed about the purity of the pottery that they sell. See B. Hagigah 25b.

– 3. One of the 18 items is the enactment of impurity on the areas outside of Israel. It concerns anyone traveling or living in this area. See B. Sabbath 15a and b. See also Rambam, *Hilkhot Tumat Met* chapter XI for the practical consequences of this enactment.

³⁰ For example: in **Jerusalem** the peasants are considered as pure **during the three festivals**. See B. Hagigah 26a and B. Nidah 34a.

³¹ Y. Yevamot XII : 3. אני איני יודע מנהג מקומכם, אלא שלום עליכם כמנהג מקומנו.

³² For example: Women do not work on *Motsae Sabbath*, *Rosh Hodesh* and after sunset during the *sefirat ha-omer*. The order of the prayers depends on the local *minhag*.

we do not prevent him and we do not challenge him.³³ Some *minhagim* are considered as incorrect and are not taught and if the Rabbis were powerful enough, they would eradicate them. The *minhag* is thus a much weaker source of *halakha*. However a *minhag* which was not contradicted cannot be removed³⁴ and if it extended itself upon all Israel, it cannot be abrogated, even if the cause of its introduction disappears.³⁵ The origin of the *minhag* is generally uncertain; some *minhagim* are attributed to the prophets or to the rabbis; others are considered as spontaneous. A Court can thus introduce a *minhag*³⁶ but it has then less power than a *takana*: we don't pronounce a benediction upon the accomplishment of a *minhag* by contrast with a *takana*³⁷ and the transgression of a *minhag*, by contrast with a *takana*, is not sanctioned by beating with a stick: *malkut mardut*.³⁸

3. Area of extension of the *minhag*. The *minhag* apply to anyone living in the area covered by the *minhag*. However, people traveling, are bound by the *minhag* of their place of origin, whether it is more or less severe than in the visited place. In this last case, one must be discreet and not show off one's difference in order to avoid any dispute.³⁹

Let us come back to the problem of the festivals and of the introduction of the second festival day out of doubt before 325 when the Babylonian community did not know the fixing of the moon. We have mentioned the two opinions about the nature of the doubt.⁴⁰ When we consider the importance of the means brought into operation to send regularly messengers abroad in order to inform the Diaspora,⁴¹ it seems likely that they considered that their doubt was of Torah order. Similarly the discussion between Rabbi Johanan and Rabbi Simeon ben Lakkish⁴² in order to know if it is possible to warn someone validly against the transgression of the two festival days of the Diaspora⁴³ proves clearly that Rabbi Johanan, the head of the Academy of Tiberias, understood that there was a doubt of Torah⁴⁴ order about the true festival day.

³³ B. Ta'anit 26b : אורווי לא מורינן ואי עביד הכי לא מהדרינן ליה.

³⁴ B. Pesahim 50b, the story of the people of *Beishan* who wanted to remove the *minhag* initiated by their elders, not to travel from Tyr to Sidon on Friday. Rabbi Johanan refused to assent to their request.

³⁵ Rambam *Hilkhot Mamrim* II : 2.

³⁶ As mentioned by Rambam in *Hilkhot Mamrim* II: 2.

³⁷ See note 54.

³⁸ With the exception of the transgression of the second festival day. See B. *Pessahim* 52a. See also Rambam *Hilkhot Talmud Torah* VI, 14, 11 and *Hilkhot Yom Tov* I, 22.

³⁹ See Rambam, *Hilkhot Yom Tov* VIII: 20.

⁴⁰ Doubt of Torah order or doubt of rabbinic order.

⁴¹ See Mishna Rosh ha-Shanah I: 3 and 4.

⁴² Y. *Pessahim* V, 4, 32c; Y. *Nazir* VIII, 1, 57a and Y. *Yevamot* XI, 7, 12b.

⁴³ Because we do not know which of them is the true festival day. Therefore the warning that they warned was conditional *התראת ספק*, and they differed about the validity of such a warning.

⁴⁴ In fact during the direction of Rabbi Johanan we find several cases of the month of Elul made full in connection with the *Takana lo DU Rosh* reported by Ulla. The doubt was thus real and not anymore academic. However this real doubt was perhaps not a doubt of torah order because the number of cases of full month of Elul remained the minority. This could explain why Rabbi Johanan said (B. *Sukkah* 46b bottom) שמיני לזה ולזה. According to the second explanation of the Talmud it means that Rabbi Johanan did not eat in the *Sukkah* on *Shemini Atseret* because of the contradictory character of this day and *Sukkot*.

There is an interesting passage of Talmud *Yerushalmi* quoting R' Hisda:⁴⁵

תמן חשין לצומא רבא תרין יומין. אמר לון רב חסדא למה אתם מכניסים עצמכם למספק הזה המרובה, חזקה שאין בית דין מתעצלין.

There, in Babylonia, they are worried about the true day of the fast of Kippur (and some Rabbis fast two days). Rav Hisda said to them: "Why are putting yourself in this big doubt? There is a strong presumption that the Court is not neglectful."

This quotation of Rav Hisda must be from the very beginning of the fourth century; he was the head of the academy of Sura during ten years from 300 until 309. The classical commentary is that the court sent the messengers immediately. This explanation seems untenable because we know that the messengers could never reach Babylonia in time to inform them about the true day of Yom Kippur. I think that the correct explanation of this quotation is the following. Until this period the Babylonian community did not know in advance whether the Court in Israel decided that Elul would be a defective month of 29 days or a full month of 30 days and therefore they lived in a real doubt, especially about Kippur. Therefore some people fasted two days on Yom Kippur. Rav Hisda seemed to know that the Court of Palestine changed its conduct and abandoned the possibility of having the month of Elul full. Elul was again, as it used to be always before, a defective month of 29 days. If it was necessary to avoid an instance of Rosh ha-Shanah falling on Wednesday or Friday, the Court would move the Neomenia of Elul or even the Neomenia of Av by one day in order to obtain the desired result without making Elul full. "The Court is not neglectful" would then mean that the Court reacts in time, enough in advance, and does not more wait for the last moment. Of course this last attitude implied that it was necessary to consider calculation more than observation. If our assumption is correct, the situation during the first quarter of the fourth century would have evolved and would be different than before. While, before the beginning of the fourth century, the Babylonian community did not know the fixing of the moon and had a real doubt, during the first quarter of the fourth century, although still under the status of not knowing the fixing of the moon, it appeared that the true festival day did not fall anymore on the second festival day. The heads of the Babylonian Academies established that the true festival day corresponded always to the first festival day and therefore their doubt about the true day of Yom Kippur and the true festival day, which had been a real doubt, of Torah⁴⁶ order, became a doubt of rabbinical order.⁴⁷ It is likely that the laymen did not notice anything but the doubt being now a doubt of rabbinic order, the current behavior, which was no more dictated by a Torah obligation, became a *minhag*; a quarter of a century being enough to shape a *minhag*.

When in about 325, the Babylonian community began to know the fixing of the moon it was instructed by the heads of the Palestinian Academy to go on keeping two festival

Such attitude would be impossible if the doubt that this day is the seventh day of Sukkot was of Torah order.

⁴⁵ Y. Rosh ha-Shanah I, 4, 57b (at the end of *halakha* 4), (8b in the Vilna edition) and Y. Hallah I, 1, 57c (4a in the Vilna edition).

⁴⁶ See note 44.

⁴⁷ If not « de jure », at least « de facto ».

days. In the both existing versions⁴⁸ of this message the word *minhag* appears: “go on keeping the minhag of your parents”. The practice existing before in Babylonia is called *minhag*. The use of this word was the origin of much confusion in the rabbinical literature.

According to the generally accepted understanding that the communities had still a doubt of Torah order about the true festival day, it was a matter of fact and it was in no way an additional burden that the community would have imposed upon itself. The word *minhag* must thus be understood according to the general acceptance.⁴⁹ However the relations between both communities, the Palestinian and the Babylonian, about the keeping of the second festival days, were governed by the laws of the *minhag*.⁵⁰ It is thus likely that the Palestinians, in their message, without paying too much attention to the weight of the words, considered, by extension and generalization, the keeping of the second festival day by the Babylonians, although because of a doubt of Torah order, as a foreign *minhag*.

Now if our assumption is exact, that during the first quarter of the fourth century, Elul was no more made full, then the Babylonian institution of the second festival day really became a *minhag* in its legal and religious acceptance and this would then also be the meaning of the word *minhag* in the Talmudic quotation: הזהירו במנהג אבותיכם בידכם.⁵¹

Anyhow after 325, when the Babylonians knew the fixing of the new moon, they were invited by the head of the academy of Tiberias, namely Rabbi Jose, to go on keeping two festival days. The wording seems to indicate a rabbinic enactment, a *takana* to go on keeping two festival days although they now know officially the true festival day. After 325 there is no more question of a *minhag*. Indeed when in B. Sabbath 23a it discusses why one recites the benedictions⁵² on *Yom Tov Sheni*, this day is considered as a rabbinical enactment connected to a doubt⁵³ but it is not considered as a *minhag*, in which case no benediction should be said.⁵⁴

Thus in conclusion, the institution of the second festival day derives from the situation of doubt of the Babylonian community. The exact status of the second festival day before 325 is unknown; it could have been a doubt of Torah order or of rabbinic order. We suggested even that until about 300 it was a doubt of Torah⁵⁵ but after this date and until about 325 it became a *minhag* (a foreign *minhag*) corresponding to a not compulsory obligation with regard to the law of the Torah. After 325, when the Babylonian and Egyptian communities became aware of the fixing of the moon, the head of the

⁴⁸ See supra p. 3 and 4.

⁴⁹ The first acceptance.

⁵⁰ Keeping two festival days was the custom of the foreigners living outside of Israel. Foreign travelers coming to Palestine for the three pilgrimages had certainly no doubt during their stay and they likely kept only one festival day. Conversely Palestinians traveling to Babylonia did not keep two festival days as long as they knew the fixing of the moon. But they must however refrain from working or performing in public any forbid activity on *Yom Tov Sheni* in order to avoid any difference and dispute with the local Jews.

⁵¹ The word *minhag* having now the same legal and religious meaning as *minhag* in the quotations about the blowing of the *Shofar* before the beginning of Sabbath in B. Sabbath 35b: מנהג אבותיהם בידיהם .

⁵² Kiddush and special prayers of *Yom Tov*.

⁵³ More precisely : ספק דבריהם , see infra.

⁵⁴ See Rambam *Hilkhot Hanuka* III: 7 and Rashi on B. *Sukkah* 43a (see note 74)

⁵⁵ And also a *takana*: the *takana* of Rabbi Simeon ben Yehotsadak (see note 59).

Palestinian Academy of Palestine and his Court imposed upon the Diaspora a *takana* to go on keeping two festival days according to their former *minhag*, this word having the acceptance n°1, and by generalization the acceptance n° 2 or perhaps formally the acceptance n° 2 of the word *minhag*, according to the historical understanding of the events, if our assumption that Elul was no more made full after about 300 is exact.

Let us now examine the positions of the main rabbinical commentators on this issue.

1. R' Joseph Tov Elem ben Samuel of Limoge (France, begin of tenth century)⁵⁶

This is a strange⁵⁷ and nearly unknown responsum of the first noted French Rabbi, Talmudist and *paytan*. Its contents are untenable on historical level but it addresses many issues and compares the second festival day with the second day of Rosh ha-Shanah. The second day of Rosh ha-Shanah is considered as an old *takana* which extended to all Israel, while the second festival day is a more recent *takana* which did not extend to all Israel. This explains, according to the author, why the two days of Rosh ha-Shanah have the same sanctity and the two festival days have not.

Both *takanot* were enacted by important Sanhedrin.

שני ימים טובים של ראש השנה לאו דאורייתא ננהו, ואפילו הכי קדושה אחת הן. מה טעם, כיון דקבעום קודם חורבן הבית, דתגן בראשונה היו מקבלין עדות החודש כל היום, פעם אחת כו... ואם נפשך לומר והלא סנהדרין גדולים תיקנו לנו שני ימים טובים של גליות, ואפילו הכי שתי קדושות הן, אותם לא הוקבעו אלא לגולה ומשום ספיקא דקביעותא דירחא. ומקרא מעיד וצווח הרימו מכשול מדרך עמי. ובני גולה טפילין היו לארץ ישראל ונעשת כמי שלא פשט איסורו ברב הקהל. אבל שני ימים טובים של ראש השנה דבפני הבית נתקנו ופשט איסורו בכל ישראל נעשה הדבר כמו שניתנו מהר סיני וקדושה אחת להן שהן לא קבעום משום ספיקא דהא אינהו בקיאי בקיבוע דירחי. יוסף טוב עלם בר' שמואל

2. Maimonides has a very complete, elaborated and intricate theory about all the aspects of *Yom Tov Shenit*.

Maimonides refers at three occasions⁵⁸ to the situation before 325, when the Palestinian established their calendar through the observation of the new moon and the Babylonians did not know the fixing of the moon. Undoubtedly he considered that they kept two festival days because of the doubt, likely a doubt of Torah order. As mentioned before, this situation was undoubtedly a matter of fact⁵⁹ and it could be described by the word

⁵⁶ Mahzor Vitry, Nurenberg 1923, Vol 1, p. 357.

⁵⁷ It ignores the history of Rosh ha-Shanah in Israel and the disputes between the Gaonim of Babylonia and Palestine about the length of Rosh ha-Shanah.

⁵⁸ *Hilkhot Kiddush ha-Hodesh* V : 4.

ושאר המקומות הרחוקות שאין שלוחי תשרי מגיעין אליהם היו עושין שני ימים **מספק**.

H.K.H. V : 7.

יום טוב של ראש השנה בזמן שהיו קובעין על הראייה היו רוב בני ארץ ישראל עושין אותו שני ימים **מספק**.

Hilkhot yom Tov VI : 14.

והיו בני הגלילות עושין שני ימים כדי להסתלק מן ה**מספק**.

It seems likely that he speaks of a ספק דאורייתא.

⁵⁹ R' Joseph Caro in Kessef Mishneh on *Hilkhot Mamrim* II: 2 wrote that the ancient situation that existed when they did not yet know the fixing of the moon, that we call a matter of fact, was the result of an old *takana* enacted by the Rabbis at the end of the period of the Mishna. R' Joseph Caro proves also that the

minhag according to the acceptance n° 1 above. The Palestinian could also use the word *minhag*, by generalization, according to the acceptance n° 2 with the meaning of the custom of outside of Israel in their message: הזהירו במנהג אבותיכם שבידכם.

After 325, when the Babylonians knew the fixing of the moon, Maimonides wrote that they kept two festival days, not because of any doubt but because of a rabbinic enactment, a *takana*⁶⁰.

Now in a few instances Maimonides introduces the word *minhag* in his text in contradiction with the status of *takana* that he gave to the instruction coming from Palestine, to keep two festival days, when at the first glance this word is not necessary at all in the context. The exact meaning of these passages and the true intention of Maimonides are still a real conundrum.

rules of this enactment foresaw that the *takana* should disappear completely as soon as the incertitude of the day of the festival day would disappear. What is the origin of this apparently divergent opinion of R' Joseph Caro?

I think that he found it in *Hilkhot Kiddush ha-Hodesh* III: 12. From it we learn that the second festival days, before 325 when they did not know the fixing of the moon, were also the result of a *takana*. Indeed there was a doubt only for the festival days of Tishri in Alexandria and also of Nissan in Babylonia but certainly not for Shavuot. Thus, according to Rambam, the three festivals were already treated on the same manner, even if there was no doubt for the second festival day of Shavuot. Thus the doubt was of Torah order for some festival days but it was of rabbinic order for the others. I often asked myself where Maimonides found this theory. The commentators gave the following reference of B. Rosh ha-Shanah 21a: מכריז רבי יוחנן, כל היכא דמטו שלוחי ניסן ולא מטו שלוחי תשרי ליעבדו תרי יומי גזירה ניסן אטו תשרי. However this quotation does not mention Shavuot. I think and suggest that Maimonides refers to the teaching of Rabbi Johanan's teacher Rabbi Simeon ben Yehotsadak in B. *Ta'anit* 28b and *Arakhim* 10a according which one ends the *Hallel* eighteen times a year in Israel and in the Diaspora (anywhere outside Israel) 21 times a year. Thus as soon as the messengers did not arrive in time in Tishri, they kept two festival days during all the festival days. The *takana* was thus to keep two festival days as soon as they had a doubt about one of them. It is likely that the *takana* was to keep them with the same severity without making a difference between those second festival days kept out of Torah doubt and those kept out of rabbinic doubt. This is certainly the reference of Maimonides and it was indeed the result of a *takana*. This reference is also interesting because it shows that the keeping of two festival days is proper to the Diaspora and the keeping of one festival day is proper to Israel. It seems to contradict the theory of Maimonides: the keeping of one or two festival days depends formally on the geographical localization and not on the passage of the messengers.

⁶⁰ H.K.H V : 5.

אבל תקנת חכמים היא שיזהירו במנהג אבותיהם שבידיהם ובני ארץ ישראל בזמן הזה עושין יום אחד כמנהגם. Apparently the two words *minhag* are used in the first acceptance, the general acceptance without any legal or Jewish implications as in the acceptance n° 2.

H.K.H. V : 6.

נמצא יום טוב שני שאנו עושין בגליות בזמן הזה מדברי סופרים שתקנו דבר זה.

H.K.H. V : 8

הנה למדת שאפילו יום טוב שני של ראש השנה בזמן הזה מדברי סופרים.

Hilkhot Yom Tov I: 21.

יום טוב שני מדברי סופרים הוא ומדברים שנתחדשו בגלות ...

Hilkhot Yom Tov I: 22.

יום טוב שני אע"פ שהוא מדברי סופרים.

Hilkhot Megilah and Hanukah III: V.

הם לא תקנוהו אלא מפני הספק, כדי שלא ילזלו בו

Hilkhot Eivel X; 10:

.....הואיל ויום טוב שני מדבריהם ואבלות יום ראשון של תורה, ידחה עשה של דבריהם מפני עשה של תורה.....

Yom Tov Sheni, which is a rabbinical enactment is named here עשה של דבריהם.

1. In *Hilkhoh Talmud Torah* VI; 14, 11: where he enumerates all the cases of *niduy* or excommunication:

המחלל יום טוב שני של גליות אע"פ שהוא מנהג.

2. In *Hilkhoh Yom Tov* I; 21:

זה שאנו עושין בחוצה לארץ כל יום טוב מאלו שני ימים מנהג הוא. ויום טוב שני מדברי סופרים הוא ומדברים שנחדשו בגלות..... ובהלכות קידוש בחודש מספר זה נבאר עיקר מנהג זה ומאי זה טעם עושין ראש השנה שני ימים בכל מקום.

3. In *Hilkhoh Yom Tov* VI; 14 and 15:

...אין יום טוב להסתלק מן הספק אלא מנהג בלבד. ולפיכך אני אומר.....

In the first quotation, the *Lehem Mishneh* raised the issue and he proposed the following answer: the law of *Yom Tov Sheni* is indeed an enactment of the sages but its principle and its origin is the *minhag* according to the message they sent, in which they referred to the *minhag* of their elders.⁶¹ This explanation seems however farfetched; אלא מנהג would mean that the institution of *Yom Tov Sheni* is the consequence of the practice in the past of the Babylonians to keep two days out of doubt and it would have the same meaning as the quotation in *hilkhoh Megilah* III; 5: והם לא תקנוהו אלא מפני הספק. But why did Maimonides feel obliged to mention this fact in the different mentioned quotations? In fact the *takana* of the second festival days seems to work like a local *minhag*:⁶² the “*minhag of outside Israel*” and the obligations of both Israelis and foreigners are ruled by the rules of the *minhag*. The *takana* to which Maimonides refers, is the enactment with a stronger status of the old *minhag*. This could be the meaning of the first quotation. This could also be the meaning of *minhag* in the two other quotations. *Yom Tov Sheni* is a *takana*, but it is a special *takana* which obeys to the rules of the *minhag*.

The correct exegesis of the three quotations could then be as follows:

1. Is also punished by excommunication the violator of the second festival day, although the rules of *Yom Tov Sheni* have much similitude with a mere local *minhag*⁶³ and could be assimilated to a “*foreign minhag*”.⁶⁴

⁶¹ R' Hayim Soloveitchik and R' Isaac Ze'ev Soloveitchik proposed a similar subtlety for the two other quotations. But not only it seems farfetched, but there is no real justification of such a precision in these passages: they make no sense in the context.

⁶² According to the rules of a *takana* anyone living or staying in the Diaspora must keep two festival days and anyone living or staying in Israel must keep one festival day. By contrast according to the rules of the *minhag* Israelis staying abroad must keep only one festival day and foreigners staying in Israel must keep two festival days (or one festival day; the problem is disputed).

R' Nahum Rabbinvitch in *Yad Peshutah* on *Hilkhoh Talmud Torah* wrote something very similar. I thank him and Dr. Dror Fixler for his communication on the subject.

An additional argument that the *takana* of *Yom Tov sheni* works like a *minhag* is the fact that the query of rav Safra (B. Pesahim 51b) about the way to behave on the second festival day when he traveled from Palestine to Babylonia is examined just after the elucidation of the Mishna Pesahim IV: 1 dealing with problem of traveling between two places having different *minhagim*.

⁶³ Which is generally not punished by excommunication or beating.

⁶⁴ A sort of תקנה של מנהג חוץ לארץ

2. The fact that we keep outside of Israel two festival days is a special rule representing all the aspects of a *minhag*: the “*minhag of abroad*”. But the institution of Yom Tov Sheni is in fact an enactment of the Rabbis with the status of a *takana*⁶⁵ and it belongs to the rules which were enacted in the Diaspora.⁶⁶And in Hilkhot Kiddush ha-Hodesh, which is part of this book we will explain the principle of this conduct⁶⁷ and the reason why all the Jews keep two festival days on Rosh ha-Shanah.

3. Today Yom Tov Sheni is no more intended to escape the doubt about the true festival day but it is a fixed institution⁶⁸ whose rules apply to Israeli and foreigners like a *minhag of the Diaspora*.⁶⁹ Therefore I say⁷⁰

It is even likely that Maimonides understood the Talmudic quotation: הִזְהָרוּ בְּמִנְהַג אֲבוֹתֵיכֶם שְׁבִידְכֶם on the same way: *be careful and behold the rules⁷¹ of your elders which applied like a minhag adapted to the Diaspora.*

Ritva in his commentary on B. Rosh ha-Shanah 18a adopted a similar position: the institution of the second festival day is a *takana* according which we should follow the behavior of our elders. Meiri wrote even in a similar case that it is a מְנַהֵג דֶּרֶךְ תְּקֵנָה. This would thus be a *minhag upgraded to the rank of takana!*⁷²

3. Tosafot.

Tosafot and R' Tam have a completely different approach and seem to follow the formal text of the message sent to Babylonia: הִזְהָרוּ בְּמִנְהַג אֲבוֹתֵיכֶם בִּידְכֶם. Their position is perhaps also the result of the fact that Tosafot consider that the application of the rules of Yom Tov Sheni to travelers from Palestine to Babylonia or the contrary, is similar to the rules which apply to travelers between two places with a different *minhag*. According to them the habit when they did not know the fixing of the moon was a *minhag* and when they became aware of the fixing of the moon and received the message from Palestine they

⁶⁵ Meiri on B. Sukkah 44a had introduced the very nice expression: מְנַהֵג דֶּרֶךְ תְּקֵנָה. It is thus a *minhag* introduced under the legal and stronger status of a *takana*.

⁶⁶ The true meaning of this remark is not evident; the enactment came indeed from Palestine. Maybe the meaning is that it was enacted for the Diaspora.

⁶⁷ Here the word *minhag* seems to have a general meaning: “the principle of this behavior” according to acceptance n° 1.

⁶⁸ This is the translation of תְּקֵנָה וְדָאֵי. This expression summarizes the explanation of Magid Mishneh on Hilkhot Yom Tov VI: 14: והלא ידוע... שהיום חול וחכמים מדרך הוֹדָאֵי עֲשָׂאוּהוּ קוֹדֵשׁ וּגְזָרוּ בוּ

In fact the old *takana* of Rabbi Simeon ben Yehotsadak to which Rambam refers in Hilkhot Kiddush ha-Hodesh III: 12, had already the same characteristics of a *minhag*. This was also the case of the new *takana*.

⁶⁹ Here my explanation is less genuine; why must he tell us that? The only thing that he wants to tell us is that the second festival day is now a fixed institution and no more a doubt, a תְּקֵנָה וְדָאֵי. Thus the emphasis must be put on the aspect *takana* and not on the aspect *minhag* and the connection Palestinians-foreigners which is not debated at all here.

⁷⁰ This a personal opinion of Maimonides not sustained by a Talmudic reference.

⁷¹ The old *takana* of Rabbi Simeon ben Yehotsadak to which Rambam refers in Hilkhot Kiddush ha-Hodesh III: 12, had already the same characteristics of a *minhag*

⁷² Meiri on B. Sukkah 44a.

went on and kept the *minhag* further. It was a *minhag* in the formal and legal meaning of the word according to the acceptation n° 2 of this word.

Now the rule that we don't make a benediction on a *minhag* is limited by R' Tam to a *minhag* which consists in a simple act. But a *minhag* like Hallel or the second festival day needs a benediction. The only difficulty in the position of R' Tam is his use of the expression: *מנהג בעלמא*. This must be a literary exaggeration; on the contrary he must accept that this is an important and severe *minhag* because this is probably the only *minhag* whose violation makes liable of excommunication or beating.

Many authorities follow the position of R' Tam, that the second festival day is a *minhag*.⁷³

4. Rashi.

The position of Rashi about the situation before 325 can be deduced from his commentary on B. Beitsah 4b about the discussion between Rabbi Assi and Rav whether we must make *havdala* between the two festival days. According to Rashi, Rabbi Assi considered that there was a *takana* imposing to keep two festival days. Rav thought that the keeping of the two festival days was a spontaneous *minhag* born out of the doubt. This last position was considered as predominant because the rule is according to Rav.

The position of Rashi about the situation after 325 must be different than R' Tam. Indeed Rashi writes clearly that one does not make a benediction on a *minhag*.⁷⁴ Therefore, the only way to justify the benediction on the second festival day is to conclude that the institution of the second festival day is a *takana*.

5. Comparison between Maimonides and R' Tam.

The positions of Maimonides and R' Tam are considered as diametrically opposed. When we look at things from nearer we observe that they are not much apart. Their difference is more formal than real.

Maimonides.

- The institution of Yom Tov Sheni is a *takana*. But is a weak *takana* whose application and extension clauses seem to look like a *minhag*.

⁷³Meiri on B. Sukkah 43a: *ומאותו זמן ואילך נאמר עלינו שאנו יודעין בקיבוע דירחא אלא שאעפ"כ אנו נוהגים בדברים אילו* .. כאילו היינו מקדשין עדיין על פי הראייה שאין יודעין בקיבועא דירחא כמו שאמרו שם הזהירו במנהג אבותיכם דילמא גזרי שמדא.. Rosh on B. Berakhot II: 5: the second festival day is a *minhag* and however we do say the benediction and we say *וציונו* Radvaz responsum 1145 at the end:

וכל שכן ביום טוב שני של גליות שהוא מנהג גדול וקבוע דשלחו מתם הזהירו במנהג אבותיכם.

R' Isaac bar Sheshet Perfet, responsum 16 : *מנהג אבותיכם בידכם ומדברי סופרים*

responsum 221:

הא דמקשי לאביי מיום טוב שני דחשבינן ליה *ספיקא דרבנן* משום דבקיענן בקביעא דירחא *ומנהגא בעלמא*

Thus always the same ambiguity: *minhag* but rabbinic enactment!

⁷⁴ B. Sukkah 43a Rashi writes :

מנהג הנהגו את העם ולא תקנו להם, נפקא מינה דלא בעיא ברכה דליכא למימר וצונו דאפילו בכלל לא תסור. ליכא

Rosh on B. Berakhot, II : 5 mentions also this position of Rashi and contradicts it.

- The peripheral applications clauses are not very clear and are debated.⁷⁵
- It is a *takana* introduced because of the doubt: Rambam writes והם תקנוהו מפני הספק. Rambam explains on the same way the expression ספק דבריהם.⁷⁶ According to Maimonides⁷⁷ such a *takana* does not deserve a benediction and it is only in order not to mock the second festival day that the benediction for Yom Tov Sheni was instituted.
- Although it is a weak *takana*, the violator of the second festival day is liable of excommunication or, in the case of a scholar, beating.⁷⁸

R' Tam.

- The institution of the second festival day is a *minhag*.
- We must however admit that it is a very strong and severe *minhag*.⁷⁹
- Although a mere *minhag* does not deserve a benediction, this *minhag* needs a benediction.
- Although the transgression of a *minhag* is not punished by excommunication or beating this is the punishment for the violation of the second festival day.

Each opinion has its weak point. Anyhow they agree on the practical dispositions; and the conclusion is that for Maimonides it is a *takana* – apparently a weak *takana*- and for R' Tam it is a *minhag* – apparently a strong *minhag*-.

IV. The second festival day and its violators.

We mentioned already above that the Amora'im in Israel discussed whether it is possible to warn someone validly against the transgression of the two festival days of the Diaspora. Indeed the application of the punishment of *malkut* for the transgression of the festival day must be preceded by a valid warning in the presence of two witnesses. In the case of the two festival days of the Diaspora, the problem can be raised only if both days can be the true festival day.⁸⁰ Necessarily the Palestinian Amora'im Rabbi Johanan and Resh Lakish considered that the two festival days were kept because of a doubt of Torah order. However the discussion between the two Palestinian authorities of the third century at a moment when the calendar was still a calendar of observation and the doubt about the true festival days was a true doubt of Torah order, had a theoretical character. Indeed the Babylonian rabbinical authorities had not the Palestinian *Semikha* given by the

⁷⁵ The case of travelers, traveling from Israel to Babylonia or the contrary. See Hilkhhot Yom Tov VIII: 20.

⁷⁶ In B. Sabbath 23a.

⁷⁷ B. Sabbath 23a. Maimonides follows the ruling of Abaye.

⁷⁸ *Hilkhhot Talmud Torah* VI: 14, 11 and Hilkhhot Yom Tov I: 22.

⁷⁹ R' Zerahia ha-Levi (p. 17a of the Rif on B. Pesahim) writes that *Yom Tov sheni shel Galuyyot* is a great *minhag* which extended to the whole Diaspora and therefore an Israeli traveling abroad is forbidden to perform any forbidden work on Yom Tov Sheni as soon as he enters a Jewish settlement abroad. R' Abraham ben David writes (ibidem) that it is such a great *minhag* that the Israeli traveling abroad is forbidden to perform any work forbidden on the second festival day as soon as he leaves Israel, even before reaching the first Jewish settlement. Let us note incidentally that these two authors consider also that the keeping of one or two festival days depends only from the localization whether in Israel or abroad.

⁸⁰ The warning was considered as “התראת ספק” because each of the two festival days was the possible true festival day. See above notes 42 and 43.

Palestinian *Nassi* and therefore they had not the power to impose penalties. This is probably the reason why the Babylonian rabbis felt obliged to introduce *makkat mardut*⁸¹ i.e. the right to impose beating of rabbinical order or *niduy* i.e. the excommunication against the violators of Yom Tov. Rav and Samuel had decided to punish the violators of Yom Tov, indifferently the first or the second day, by *niduy*. Indeed at their time, both days could be the true festival day; the doubt was a doubt of torah order.⁸² The problem was raised later under the direction of Rav Joseph but the problem was already different because it is explicitly mentioned that it concerned the second festival day. Although the calendar was still officially a calendar of observation and therefore the Babylonian community did not know the fixing of the month, it seems likely that they considered already the second festival day as a doubt of rabbinical order.⁸³ Otherwise it would not make sense to consider the second festival day particularly. This supports our assumption that during the first quarter of the fourth century, Elul was no more made full and it was always a defective month of 29 days. Therefore the first festival day coincided with the true festival day kept in Israel and the second festival day became a doubt of rabbinic order. This new reality required probably a new repressive legislation in order to fight against the desacralisation of this second festival day. It is interesting to note that the decision of Rav Joseph was adopted by the rulers for the violator of *yom tov sheni* which is thus more severely punished than the violator of the first festival day, without that anyone objected that Rav Joseph lived before the introduction of the *takana* of *yom tov sheni*. Our assumption explains that even before the *takana*, the second festival day had become a doubt of rabbinical order and therefore the application of the legislation of rav Joseph to the situation after the *takana*, makes sense.

It is now interesting to examine the nature of the violation of the second festival day by Rav Nathan bar Assia or according to another reading, Rav Nathan Assia.⁸⁴ The commentators did not discuss this issue; it is generally accepted that R' Nathan walked from the Talmudic academy of Rav, probably Surah to Nehardeah on the second festival day. He would then have walked publicly outside the *thum Sabbath* of Surah, walked between the two towns and then he would have entered publicly the *thum* of Nehardeah. However, it seems not likely that such a man, violating publicly the whole rabbinical institution of *yom tov sheni* would still be considered as a Talmudic scholar, liable only of the penalty of the scholars.

According to the commentary of Meiri,⁸⁵ it seems that Nathan bar Assia kept only one festival day⁸⁶ and he was not reprehensible as long as he was outside of the *thum* of

⁸¹ Beating allowed by the rabbis.

⁸² Beit Joseph on Tor O.H. 496 asked already what was the reason of the same penalty for both days which have a different status? This is in fact the true answer: at the time of Rav and Samuel both days had the same status, both could be the true festival days.

⁸³ One can object that already in the time of Rav and Samuel, the second festival day of Shavuot was already considered as a doubt of rabbinic order. But it is likely that as long as the second festival day of Pesah and Sukkot were considered as a doubt of Torah, all the three second festival days had probably the same status (*takana* of Rabbi Simeon ben Yehotsadak, see above).

⁸⁴ Reading of the Rif.

⁸⁵ Meiri on B. Pesahim 51b-52a.

⁸⁶ He came from Palestine or he lived in a place where the messengers arrived in time.

Nehardeah. His only mistake would then have been the fact that he entered the town of Nehardeah during the second festival day, singularizing himself in front of the Jewish inhabitants.

This explanation is supported by the reading of the manuscript of München and of the Rosh that Nathan Assia went from Biram to Nehardeah on the second festival day of Shavuot. Biram seems to be identified with Beit Biltin;⁸⁷ it was the last localization of the fires lighted in order to transmit to Babylonia the information about the new month, when they used this system of communication.⁸⁸ Biram is about 40 km (North) West of Pumbedita.⁸⁹

Isidore Epstein assumed⁹⁰ that Nathan bar Assia and the community of Biram kept only one festival day because the messengers arrived in time in Biram.

As he knew the fixing of the month he could, without any objection, walk from Biram to Nehardeah. One could only reproach him for his entering the Jewish settlement of Nehardeah and not refraining from any public manifestation of his singularity but this was certainly a minor offense. He could have even invoked the opinion of Abaye that such an interdiction is not valid in front of scholars.

Of course these elements give a more accurate picture of the situation. It is likely that Nathan Assia had committed only a minor offense which Rav Joseph punished sharply because of the fear of the bad example that such a conduct could offer.⁹¹

V. The Second Festival Day and *Muktsa* or *Nolad*.

In B. Beitsah 4b it writes:

- | | |
|----|--|
| | אמר רבא הלכתא כרב כותיה דרב בהני תלת בין לקולא בין לחומרא |
| 1. | שבת ויום טוב רב אמר נולדה בזה אסורה בזה |
| 2. | שני ימים טובים של גליות רב אמר נולדה בזה מותרת בזה |
| 3. | שני ימים טובים של ראש השנה רב ושמואל דאמרי תרוייהו נולדה בזה אסורה בזה |

These rules are undisputed and accepted by all the rulers. Rosh ha-Shanah, when the calendar was still an observation calendar, was kept in Jerusalem during one or two days but anywhere else they kept two days for Rosh ha-Shanah. This is the reason why Rosh ha-Shanah is still kept during two days even in Israel and these two days are considered as having the same sanctity and anything forbidden on the first day because of *nolad* or

⁸⁷ B. Rosh ha-Shanah 23a.

⁸⁸ Mishna Rosh ha-Shanah II: 4.

⁸⁹ See Encyclopedia le-Geographia Talmudit by Pinhas Neeman, entries Biram and Beit Biltin. See also the same entries in Encyclopedia liyedi'at Eretz Israel by Ze'ev Vilnai.

⁹⁰ See The Soncino Talmud, B. Pesahim p. 252 n. 3.

⁹¹ It is generally accepted that the ruling of Rav Joseph that the violator of the second festival day is punished by beating if he is a scholar and otherwise by excommunication, concerns people of the Diaspora. By contrast, Israelis, traveling outside of Israel, who do not behave properly and transgress the second festival days in a Jewish settlements, are not considered as having transgressed the second festival day and are not considered liable of the former punishments (Responsa of R' Moses de Trani 1500-1580, vol. 2, 149). It appears that the exegesis of the Talmudic passage proposed by Meiri seems to be genuine and it would challenge the lenient ruling regarding the Israeli in the Diaspora.

*muktsa*⁹² is still forbidden on the second day. By contrast the two festival days of the Diaspora were considered as having a different sanctity because it was considered that one of both days was the true festival day while the second was in fact a weekday. Therefore something born on the first day was forbidden this day but allowed on the next.⁹³

All the three rules mentioned were elaborated by Rav who still lived when they did not know the fixing of the moon. When Abaye and Rava acceded to the direction of the Academy (Abaye was promoted in 325) they became aware of the fixing of the moon⁹⁴ and the statement of Rava proves that the new situation did not modify the principle of these three rulings.

VI. The Second Festival Day and the Late *Eruv Tavshilin* or *Eruvei Hatseiroi*.

It is forbidden on both festival days,⁹⁵ occurring on Thursday and Friday, to lay down an *eruv tavshilin*,⁹⁶ or an *eruvei hatseiroi*;⁹⁷ it must be laid down on Wednesday. If someone forgot to lay down an *eruv* on Wednesday before the beginning of the festival he can still lay it down on the first day of the festival day according to the dictum of Rava in B. Beitsah 6a and 17a.

אמר רבא מניח אדם עירובי תבשילין מיום להבירו ומתנה

This rule has been accepted by all the rulers and Maimonides wrote it in *Hilkhot Eruvin* VIII: 14 and 15 and in *Hilkhot Yom Tov* VI: 11 and 12.⁹⁸

However in *Hilkhot Yom Tov* VI: 14 and 15 Maimonides writes that the precedent rule allowing to lay down the *eruv* on Thursday and make the following condition- *if today is*

⁹² Something which was “born” during the festival day and was not available at its beginning (*Bein ha-shemashot*) is *muktsa* and forbidden during this day, at least for two festival days of the Diaspora. But in Rosh ha-Shanah it is forbidden during both days.

⁹³ Except for Rosh ha-Shanah, where the egg is allowed only after the two festival days.

⁹⁴ However Maimonides believed that Abaye and Rava did not yet know the fixing of the moon. He accepted, however, that these rules are still valid today when we know the fixing of the moon.

⁹⁵ Except for the two festival days of Rosh ha-Shanah.

⁹⁶ It is forbidden to cook on the first festival day for the second and à fortiori for the next Sabbath, if the two festival days are followed by Sabbath. Therefore we must prepare on Wednesday, before the beginning of the festival, a dish with two species, for example a *hallah* and a boiled egg, which represent the beginning of our cooking for Sabbath.

⁹⁷ In order to be able to carry objects on the next Sabbath from one courtyard to another, both giving on the same cul-de-sac, we must put the same dish down at the entry of one of the courtyard and take up our residence in this courtyard at the beginning of the festival.

⁹⁸ I wonder that no one objected the following: when they did not yet know the fixing of the moon it was thus possible to lay down the *eruv* on Thursday, the first festival day. However we know that what about Shavuot they had no doubt anymore in Babylonia and therefore it is likely that they did not keep the second day out of doubt but as a rabbinic enactment and therefore the objection: why could they lay down a late *eruv*? In what did the situation differ from today when it is forbidden? Of course one can answer that from the leadership of Rabbi Johanan onwards Yom Kippur could not fall on Friday and Sunday and therefore Shavuot could not occur on Thursday- Friday. But this is not true because at this epoch the number of days between Pessah and the next Rosh ha-Sahanah, was not yet fixed. Furthermore, before the leadership of Rabbi Johanan, when the Braita of Rabbi Simeon ben Yehotsadak was taught, Yom Kippur could still occur on Friday and Monday. However, Rambam made no difference between the three festivals! According to his reasoning he should have made the difference between the cases of doubt and the cases of rabbinic enactment.

the true festival day and tomorrow is a weekday then I do not need to make any eruv and if today is a weekday and tomorrow is the true festival day, then this is my eruv. - was only valid when they did know the fixing of the moon. But now, he says, after that we know the fixing of the moon, the second festival day is not more a subject of doubt but it has been introduced as a fixed obligation. Therefore we know that Thursday is the true festival day and Friday is a weekday that we keep as festival day. It is not more possible to make the introductory declaration for the *eruv* because it is not true.⁹⁹

This personal remark¹⁰⁰ of Maimonides raised many objections, beginning¹⁰¹ already with R' Abraham ben David and followed by most of the rulers.¹⁰² They objected that the situation could not be more severe after the *takana* than before. The *takana* could only maintain the former situation. Another argument is that Rava belongs already to the new period, after 325, when they knew the fixing of the moon. Indeed Abaye and Rava, became the rulers and leaders of the generation after the death of their masters when they were both candidates to the direction of the Academy in 325. Furthermore the context of the Talmud in B. Beitsah 6b shows that Rav Ashi, more than 100 years later, ruled also according to the ruling of Rava and allowed the late preparation of the *eruv*. It seems that the ruling of Maimonides is the result of his historical appreciation that Abaye and Rava lived still before that the Babylonian community knew the fixing of the month as it appears from his statement in *Hilkhot Kiddush ha-Hodesh V: 3* where he wrote that the festivals were still fixed by the observation of the new moon in the time of Abaye and Rava.¹⁰³ It is likely that he was also influenced by the most prevalent¹⁰⁴

⁹⁹ But the egg which was laid on the first festival day is still allowed today (after the *takana*) on the second festival day. This is not evident to understand, according to Rambam's theory, and the question was raised by Lehem Mishneh on *Hilkhot Yom Tov VI: 14*. Similarly the rule about *safeik mukhan* (*Hilkhot Yom Tov II: 10*) allowing its consumption on the second festival day after the delay necessary for the preparation raises also difficulties. According to the theory of Rambam that the second day is not a possible day of the true festival day, the consumption of the *safeik mukhan* should be delayed until the end of the second festival day after a delay for the time necessary for the preparation. This would correspond to the opinion of R' Isaac ha-Levi of Worms (d ~ 1070), Rashi's teacher, which Rashi mentioned in B. Beitsah 24b (11 last lines from bottom).

Apparently the principle that there is only one true festival day and therefore "what was born on the first day may be used on the second day" is still valid. But in the case of the *eruv* the introductory declaration is not true (when he says: if today is a weekday and the next day when he says: if today is the festival day) when he says and therefore it does not work.

¹⁰⁰ לפיכך אני אומר is undoubtedly the sign of a personal opinion or deduction from Maimonides. See the letter of Maimonides to R' Pinhas ha-Dayyan of Alexandria in *Iguerot ha-Rambam*, Isaac Shailat, 1988 vol 2, p. 445 in which Maimonides writes that he never wrote something that is not mentioned in Talmudic sources without mentioning it clearly.

¹⁰¹ And even preceded by R' Isaac ben Jacob ha-Cohen al-Fassi in Rif on B. Beitsah who accepts the principle of the late *eruv* even after the *takana*.

¹⁰² Meiri on B. Beitsah. Ran on the Rif 9b on B. Beitsah and Rosh on Beitsah and Shulhan Arukh: Orah Hayim.

¹⁰³ What about the other argument it is likely that Maimonides had another reading in the *Gemara Beitsah*. Indeed Meiri writes in his commentary on B. Beitsah 6a that the context of the text proves that Rava considered that it applies for his time as he wrote: ולותיב מר האידינא. Thus according to this reading this sentence was pronounced by Rava, without apparently the intervention of Rav Ashi and Ravina. For Meiri, it was evident that Rava belongs already to the new period as he wrote it explicitly here and in his commentary on B. Sanhedrin 13b that the period of the fixed calendar begins with Abaye and Rava.

¹⁰⁴ But erroneous.

reading in B. Rosh ha-Shanah 21a according to which Rava was fasting two days for Yom Kippur.¹⁰⁵

Of course all the authors who considered that we keep today two festival days because of the ancient *minhag* could not accept that the situation would be different than before. But even those who accepted that the Rabbis of Israel established a *takana* in order to go on keeping the two festival days could not accept the principle that the second festival day could be more severe after the *takana* than before.

Therefore many authors considered that the *takana* was to go on and keep the second festival day and consider it as if it was still a doubt if this second day is the true festival day.¹⁰⁶ Rashi seems also to share this opinion.¹⁰⁷ Others could perhaps accept that the second festival day is not more linked to any doubt but, nevertheless the rules may not be more severe than before, when they kept two festival days out of doubt.¹⁰⁸

VII. The second festival day and its geographical extension.

We are accustomed to consider that the second festival day is the characteristic of the Diaspora and that in any place in Israel one keeps one festival day. This is indeed the generally accepted behavior. In fact the opinions on the issue are much clear cut and very divergent.

1. Maimonides.

¹⁰⁵ R' Hayim Yoseph David Azoulai (Hida) was also trapped by the same elements- Rava fasting two days and H.K.H V: 3- and considered that Rava did not know the fixing of the moon. He raises the issue in Yoseph Omets, Livorno 1798 and Jerusalem 1961, \$ 61. He objects Rosh on B. Beitsah I:4 and Meiri on B. Sabbath 23a who write that Rava knew the fixing of the moon. He raises again the issue in Birkei Yoseph, Livorno 1774, O. H. 393 and disputes the opinion of Ran (on Rif Beitsah, 9b top) that Rava knew the fixing of the moon. In Mahazik Berakha, Livorno 1785, he raises another time the issue in O.H. 393 and 527.11 and contests now the conclusions of Maharshah in Yam shel shelomo on Beitsa (I, 16) where he writes that Rava knew the fixing of the moon.

¹⁰⁶ See Ritva on B. Sukkah 43a: the *takana* is that we go on and consider ourselves as if we were still in doubt as before.

See Ritva on B. Rosh ha-Shanah 18a: he writes the same.

See Tosafot on B. Sukkah 43a: לא ידעינן

See also Meiri on B. Sukkah 43a: ומאותו זמן ואילך נאמר עלינו שאנו יודעין בקיבועא דירחא אלא שאעפ"כ אנו נוהגים בדברים אלו כאילו היינו מקדשין עדיין על פי הראיה שאין יודעין בקיבועא דירחא כמו שאמרו שם הזהירו במנהג אבותיכם דילמא.. Thus we keep the second festival day as a *minhag* and we behave as if we still did not know the fixing of the moon. In other places also, Meiri privileges the *minhag* as explanation of the second festival day today.

¹⁰⁷ See B. Beitzah 24b the nineteen last lines from the bottom. Rashi writes that *safeik mukhan* on the first festival day may be consumed on the evening at the beginning of the second festival day after a delay corresponding to the time necessary for the preparation and not on the evening of *motsaei yom tov* after the same delay of preparation. The demonstration of Rashi is based on the reasoning that either, the first festival day is the true festival day and the second festival day is a weekday or the contrary.

¹⁰⁸ Rabad finds that the argument of Maimonides is logic but he refuses it on the basis of the Talmudic context. He probably considers that the second festival day is not more connected to any form of doubt, but the ruling cannot be more severe than before. This could also be the opinion of Ran on Rif on p. 9b top and of Meiri on B. Beitsah 6a. However, see the former note, Meiri writes explicitly on B. Sukkah 43a that we behave as if we were still sanctifying the new moon and did not know the fixing of the moon. Therefore it seems contradictory to write on B. Beitsah 6a, that Maimonides' reasoning makes sense but that it is contradicted by the context of the *Gemara*.

According to Maimonides, the application of the *takana of Yom Tov Shenit shel Galuyyot* does not depend on the territorial limits of Israel or on the distance from Jerusalem but it depends on the reality of a Jewish presence on this place after the second conquest and the presumption that the messengers were passing along this place in time.¹⁰⁹ Therefore, according to Maimonides,¹¹⁰ places farther than 10 days walk, either in Israel or outside, must keep two festival days. Places in Israel which are not farther than ten days keep one festival day if we know that there was there a Jewish settlement after the coming back from Babylonia; in this case there is a good presumption that the messengers came along. If the place is outside Israel then we have not such a presumption and they will keep one day only if they have such a tradition. That means, according to Maimonides, that it is theoretically possible that a place abroad keeps one day and that a new settlement in Israel must keep two days. All places without tradition like new settlements must keep two festival days. Thus only a limited number of towns gather today the conditions to keep one festival day but most of the new settlements, even old settlements which moved during the time,¹¹¹ do not gather the requirements to keep only one day and must keep two days. Although the opinion of Rambam seems to be a personal one, it seems to be for him the logical conclusion of the *takana* enacted by the Palestinian High Court. The *takana* is to behave on the same way as the people behaved on the same place at the time of the empirical calendar.¹¹² One keeps only one festival day if it is clear that this was the conduct before at the epoch of the calendar of observation. Maimonides' theory is complicated and it would raise inextricable problems if it had to be followed. Two neighboring places could have different rules making life impossible. Furthermore the theory has a weak point because according to Rabbi Johanan, the people living in Palestine knew the exact day of the Neomenia before the fifteenth day of each month.¹¹³ This is in fact the meaning of the statement that the Palestinians know the fixing of the moon. Therefore it does not seem necessary to worry about the passage of the messengers. Similarly it seems very formal to oblige to keep two festival days in new places on the pretext that there is no local tradition of one festival day; one could also say that if there had been people at this new place they would also have known the day of the Neomenia in time.¹¹⁴ The statement of Rabbi Johanan seems to be a serious objection to

¹⁰⁹ I do not know where Rambam did find this statement in Talmudic sources. It must be a formal understanding of the injunction that the Babylonians received from Israel. However, as it is a personal deduction, Rambam should have noted it according to the rules he had imposed himself, see note 100 above.

¹¹⁰ See H.K.H. V : 6-13.

¹¹¹ For example the modern town of Modi'im is not at the place of the old settlement.

¹¹² Maimonides was asked about the town of Tyr for which B. Avoda Zara 11b mentions the presence of Jews. See Responsa of Rambam, Blau, vol. 1, n° 125.

¹¹³ Yerushalmi Sanhedrin 5 : 3 (Mishna and beginning of Gemara).

¹¹⁴ It seems that in the time of Maimonides the only place which was considered as new was Ramla, also called Gat by R' Estori ha-Farhi in Kaftor ve-Ferah. In chap 7, he writes that Ramla is 1500 cubits away from Lod. In chap 51, he mentions that Gat is 1500 cubits away from Lod. Thus Ramla = Gat. He writes that in Lod they keep one festival day but in Ramla they keep two festival days. Thus two little towns distant by less than a Tschum Sabbath would have different rules because Ramla did not exist at the time of the messengers or because they did not stop in Ramla! But an hour after the proclamation of the messengers on the market place of Lod, the whole town of Ramla would have been aware! I do not understand! It is likely that Maimonides seems to consider the injunction *היה זהרר במנהג אבותיכם בידכם* on a

the theory of Maimonides. In the same way the statement of Rabbi Johanan in the name of his teacher Rabbi Simeon ben Yehotsadak that one ends *Hallel* eighteen times a year in Israel and 21 times a year in the Diaspora seems also to contradict the theory of Maimonides.¹¹⁵ The Mishna Sabbath XIX: 5 seems also to show that in Israel Rosh ha-Shanah can fall on Sunday-Monday but the other festivals are only one day in Israel.¹¹⁶

2. Rabbi Yose in Yerushalmi.

The Rif on B. Beitsah p. 3 writes

ואסיקנא, רבא אמר אף מתקנת רבן יוחנן בן זכאי ואילך ביצה אסורה, מי לא מודה רבן יוחנן בן זכאי שאם באו עדים מן המנחה ולמעלה שנוהגים אותו היום קדש ולמחר קדש, אלמא קדושה אחת היא וביצה אסורה בתריוויו ושמעינן מיהא דבני ארץ ישראל צריכי למעבד שני ימים טובים של ראש השנה.

On the basis of this statement of Rava, which belongs certainly to the new period, when they knew the fixing of the moon, the Babylonian Gaonim always ascertained that the Palestinians must keep two days on Rosh ha-Shanah but they were not followed by the Palestinians who held only one day. The point of view of the Palestinian was summarized by R' Zerahia ha-Levi on the Rif: As soon as the whole world knew the fixing of the moon, thanks to the communication in advance of the *kevia*, all Israel could be considered as the Court's courtyard and they kept only one festival day for either Rosh ha-Shanah and the other festivals. This was valid for any localization in Israel. The Palestinian Jewish communities followed this principle until the 11th-12th centuries. But after the disappearing of the Palestinian Gaonim, Rabbis from Provence imposed upon them to keep two festival days on Rosh ha-Shanah and, according information given by the book Kaftor ve-Ferah,¹¹⁷ imposed upon them to keep two festival days in some places. The point of view of the Palestinian Gaonim was fiercely fought by the Babylonian Gaonim, it was considered as erroneous and not founded because they did not understand its origin.¹¹⁸ If we consider the two parallel passages in B. Niddah 67b and Y. Megilah IV, 1.

אמר רב הונא, אשה חופפת באחד בשבת וטובלת בחמישי בשבת שכן אשה חופפת בערב שבת וטובלת במוצאי שני ימים טובים של ראש השנה שחל להיות אחר השבת.

very formal manner: one must behave exactly on the same manner as one behaved before at the same place.

During the 11th century there was an important Jewish community in Ramla but it was dispersed by the crusaders in 1099. R' Benjamin of Tudela visited Ramla in 1170-71 and found only a few people. The Jewish community of Ramla had counted about 1000 souls at the height of its fame. I thank Yaakov Loewinger for this information.

¹¹⁵ B. Ta'anit 28b and B. Arakhim 10a.

¹¹⁶ See Rambam Hilkhos Mila I : 15 and Kesef Mishneh. Maimonides understood this Mishna formally and concluded that *mila shelo bizemana* is performed on the second festival day. By contrast Rosh concluded that the Mishna was taught in Israel where there is never a second festival day.

¹¹⁷ Chapter 51.

¹¹⁸ Razah (R' Zerahia ha-Levi) tried to justify the Palestinian position on another manner. He ascertained that the statement of Rava belonged to the former period when they did not know the fixing of the moon. But the truth is that the leadership of Abaye and Rava belongs already to the new period. Rava was probably not aware of the part of the *takana* intended for the Palestinians.

הוא התקין שתהא אשה חופפת וסורקת קודם טהרתה ג' ימים. רבי יוסא בשם..... כדי לשבת ולשני ימים טובים של גליות.

Both, Rav Hunna, the head of the Babylonian academy, and Rabbi Yose, the head of the academy of Tiberias, agree that a woman is allowed to wash her head and comb her hair three days before her purification bath. Rav Hunna gives the following example: she is allowed to wash her hair on Friday and have her purification bath on Monday evening immediately after the end of Rosh ha-Shanah following Sabbath.

Rabbi Yose, who lived after Rav Huna and was at the head of the academy of Tiberias during the first half of the 4th century, when they knew already the fixing of the moon, gives another example: she may wash her head on Friday and have her bath on Monday evening at the end of the second festival day of the Diaspora.

The Babylonian Rabbi considered the case of Rosh ha-Shanah, which is valid anywhere. But the leader of the Tiberias' academy must consider the two festival days of the Diaspora because in Israel they had not anymore two consecutive festival days. But the obligation of going on keeping two festival days abroad, as enacted by Rabbi Yose, is so important in his eyes, that he accepts three days interval between the hair washing and the purification bath, because of the need of the Babylonians.

It is thus likely that the justification principle mentioned by R' Zerahia ha-Levi, that all Israel was then considered as the Court's courtyard and that in Israel they kept only one day for Rosh ha-Shanah and all the festivals, was taught by Rabbi Jose.

There was thus a real contradiction between Rava who thought that all the Jews must keep two days for Rosh ha-Shanah and Rabbi Jose whose *takana* was different for the Babylonians than for the Palestinians.

The *takana* aiming at the perpetuation of the ancient practice of keeping two festival days that Rabbi Yose sent to the Diaspora included in fact two parts. The first part was destined to the Diaspora. By contrast the second part of the *takana*, destined to Israel was very different. Until now they kept two festival days on Rosh ha-Shanah, except in Jerusalem where they kept one or two days. According to the second part of the *takana* they were now allowed to keep one festival day. If my understanding is correct, the *takana* of Rabbi Jose was a great *takana* with two non symmetrical parts. The Babylonians were not allowed to take advantage of the early communication of the calendar and they must go on enduring the inconvenience of the ancient situation. It looks like the Babylonians were punished for having left Israel. The Babylonians accepted their part of the *takana* but they never understood and accepted that the Palestinians were not treated on the same basis. In fact the inhabitants of Israel were exposed to the same dangers than them and there was no reason for them to be treated otherwise. They did not understand that the danger to which they were exposed was a disruption of the communication in advance of the *kevia*, which did indeed not exist in Palestine. Finally the Babylonians succeeded many centuries later to impose upon the Palestinians to keep two festival days on Rosh ha-Shanah. But this was not the spirit and the letter of the ruling of Rabbi Jose.

3. R' Yom Tov ben Avraham Isbili (Ritva, ~1250-1330)

In his commentary on B. Rosh ha-Shanah 18a he writes at the end that today we follow the majority: in Israel they follow the majority and keep one day, outside of Israel they

follow the majority and keep two days. Only in the case of *Rosh ha-Shanah* they keep two days even in Israel. Ritva does not give any reference to his majority theory. He does not justify on which basis he contradicts Maimonides and accepts that new settlements or old settlements without Jewish population are allowed to follow the custom of the majority. He does neither explain what the boundaries of Israel are and whether he agrees with Maimonides or not.¹¹⁹

Today the general behavior is generally justified by the position of Ritva.¹²⁰ But it seems that this is a justification “à posteriori”.¹²¹ In fact we observe that Shulhan Arukh in the sixteenth century took already exception with Maimonides’ ruling. In O.H. 496.1¹²² and 668.1,¹²³ R’ Joseph Karo seems to accept the general principle that in Israel they keep one festival day and in the Diaspora they keep two festival days.¹²⁴ When we examine the sources, we observe that most of the authorities shared this point of view that two festival days is the particularity of the Diaspora but that they keep only one day anywhere in Israel.¹²⁵

VIII. The second festival day and the *etrog* and *lulav*.

Maimonides writes that *etrog* and *lulav* which are forbidden on the first day of *Sukkot* because of shortcomings, either physical shortcomings or because it was got by robbery or theft,¹²⁶ are allowed on the second day.

Thus all these shortcomings are not more critical on the second day. Maimonides does not give any explanation but it is likely that it is because the second day is not kept anymore because of any doubt about the day of the true festival but only because of the rabbinic enactment adopted when the foreign communities began to know the fixing of the moon.

¹¹⁹ It is generally admitted today that the principle of majority applies to a broader area than the “*kibbush sheni*”, in fact it applies to the first conquest. This lenient ruling is not evident in the text of Ritva. His opinion could rest on the teaching of Rabbi Simeon ben Yehotsadak that one ends Hallel 18 times a year in Israel and 21 times in the Diaspora and on the teaching of Rabbi Johanan that in Israel they know always the fixing of the month before the fifteenth of each month.

¹²⁰ See R’ Isaac Eizik Herzog, the late chief Rabbi of Israel: *Pesakim ou Ketavim*, Vol 2, n° 88. In fact, if we exclude the issue of *Rosh ha-Shanah*, it seems that in all other issues, the Israeli behave today according to the *takana* of Rabbi Jose and all the Israeli keep only one festival day without any relation with the existence of a former settlement were messengers came along.

¹²¹ It seems difficult to understand how the new minhag could assert itself in a landscape that was won to the ideas of Maimonides: see *Kaftor ve-Ferah* chap. 51.

¹²² בגולה שעושין יום טוב מספק.

¹²³ ובחוצה לארץ אוכלים בסוכה בלילה וביום מפני שהוא ספק שביעי.

¹²⁴ However, his pupil R’ Yom Tov Zahalon (1559- ~1638) in responsum 216 follows the rulings of Maimonides and rules that Eglon, at the east of the Jordan, must keep two days. He was probably not aware that *Kaftor ve-Ferah* chap 51 mentions that in Eglon they keep only one festival day.

¹²⁵ In the text of R’ Joseph Bonfils mentioned above:...אותם לא הוקבעו אלא לגולה.

In Rashi on B. Beitsah 4b:שני ימים טובים של גלויות, שאין עושין אותו אלא בני גלויות הרחוקים מבית דין.

In Rif Beitsah 3a :ושמענין מיהא דבני ארץ ישראל צריחי למעבד שני ימים טובים של ראש השנה: But no remark about the other festivals. They keep likely only one day.

¹²⁶ See *Hilkhot Sukkah and Lulav* VIII : 9.

Maimonides is thus coherent with his general ruling about the status of the second festival day; furthermore he follows the ruling of Rif according to the behavior of R' Hanina.¹²⁷ It is thus likely that he made no difference between the first period when they kept two festival days out of doubt and the second period when they kept the second festival day out of rabbinic enactment.

However most of the rulers¹²⁸ consider that the second festival day is still kept according to the status of rabbinic doubt of the first day and require, as far as possible, all the qualities required on the first day.

IX. The second festival day and the benedictions.¹²⁹

Maimonides rules in *Hilkhot Hanukah*:¹³⁰

אע"פ שקריאת ההלל מצוה מדברי סופרים מברך עליו אק"ב וצונן כדרך שמברך על המגילה ועל העירוב שכל ודאי של דבריהם מברכין עליו אבל דבר שהוא מדבריהם ועיקר עשייתן לו מפני הספק כגון מעשר דמאי אין מברכין עליו. ולמה מברכין על יום טוב שני והם לא תקנוהו אלא מפני הספק כדי שלא יזלזל בו.

Although the reading of hallel is an obligation of rabbinic order, one pronounce the benediction mentioning that we were ordered to read it, in the same way as we do it for the reading of the megila because we always pronounce such a benediction for obligations of rabbinic order which do not suffer any doubt. But for in the case of obligations of rabbinic order which were instituted because of the doubt, for example the reduction of the tithe of demai, we do not pronounce a benediction. Why then do we pronounce benedictions for the second festival? This is in order not to hold it in contempt.

This ruling refers to a passage in B. Sabbath 23a where Abaye and Rava differ¹³¹ on this subject. In this passage it speaks about דבריהם and ודאי דבריהם.

¹²⁷ Most probably Rabbi Hanina bar Hama especially as he discusses the issue with his friend Rav. I do not understand why, no one didn't expressly mention the fact that Rabbi Hanina, although of Babylonian origin, lived and flourished in Israel. Therefore the second festival day had not the same signification as for us. For a plausible explanation of the case of Rabbi Hanina, see the commentary of Meiri on B. Sukkah 36b. Anyhow the ruling of Rif is difficult: Rabbi Hanina lived in Israel but outside of Israel, on a Torah issue we fear the doubt (according to B. Menahot 68b). Rif should have required the same qualities as for the first day.

¹²⁸ One opinion mentioned in Magid Mishneh, Ran on Rif, Meiri, on B. Sukkah 36b, R' Nathan ha-Yarhi in Sefer ha-Manhig in the name of R' Tam. This is also the ruling of Rashbah: vol 1 n° 23 and Vol 5 n° 215. Tor Orah Hayim 649 writes that "for us, who keep two festival days, the second day has the same status as the first". However Shulhan Arukh O.H. 649 writes that we use the *lulav* and *etrog* on the second day (if we cannot otherwise) but we do not pronounce the benediction.

¹²⁹ The Kiddush and the benediction of the festival day in each of the four Amidot of this festival day.

¹³⁰ Hilkhot Hanukah III: 5.

¹³¹ According to the generally accepted exegesis (see Rashi and R' Hananel ad locum). According to others (see Magid Mishneh) it is possible to understand the passage with Rava agreeing with Abaye. Anyhow the ruling of Maimonides is a real conundrum, because he seems to rule according to Abaye. Indeed Maimonides exposed the exegesis of the passage in a responsum to the scholars of Lunel (Blau responsum 333) and he explained the passage according to the exegesis of Rashi according which Rava contradicts Abaye. Furthermore the rule is like Rava against Abaye.

The first expression, ודאי דבריהם, is related to obligations of rabbinic order which do not suffer any doubt or are not involved with any doubt, like *Hanuka* candles, Sabbath candles or the reading of *Shema*.

The second expression, ספק דבריהם, is related to issues which from the point of view of the Torah do not raise any problem of doubt and hence do not exist, but the rabbis have considered that they present a doubt and therefore there exist an obligation resulting from this doubt. We deal thus with an obligation resulting from a doubt of rabbinic order. For example the tithes of the harvesting of a peasant are considered from the Torah point of view as having been reduced but the rabbis had a doubt if the peasant reduces the tithes and created the concept of *Demai*, i.e. the harvesting of the peasant which is considered as requiring a new reduction of tithe out of a doubt of rabbinic order. Similarly the second festival day is a weekday but the rabbis considered that it should be considered, as before the *takana* instituting it, as a possible true festival day out of a doubt of rabbinic order. Therefore the second festival day must be considered as a possible true festival day out of doubt (of rabbinic order).

Maimonides understands differently and writes that we deal with rabbinic obligations which were introduced because of the doubt. Thus *Demai* is a rabbinic decision which was enacted because of the doubt,¹³² whether the tithes were reduced or not.

Similarly the second festival day is a rabbinic obligation, to keep a weekday as a festival day, in full consciousness that this day is in no case the true festival day. This enactment was taken under the fear that a disruption in the communication of the calendar could bring the Babylonian community to the former situation of doubt.

Of course the explanation of Maimonides seems a little farfetched because it does not correspond to the literality of the expression ספק דבריהם.¹³³ Especially the explanation is not completely the same in both cases; in the case of *Demai* the original doubt is still extant but in the case of the second festival day there was a doubt of Torah order when they did not yet know the fixing of the month but today there is no more any doubt.¹³⁴

Furthermore Maimonides' position is difficult and contradictory; the explanation והם לא תקנוהו אלא מפני הספק, refers to the situation when the Babylonian community knew already the fixing of the month and therefore the second festival day was confirmed by a rabbinical enactment i.e. a rabbinic obligation to keep a weekday as a festival. However the whole Talmudic discussion about the obligation of the benedictions, inter alia on the second festival day, is between Abaye and Rava, who according to Maimonides, did not yet know the fixing of the month and had a real doubt about the true festival day.

The plain talmudical explanation is certainly that *Yom Tov Shenit* must be considered as a doubt of rabbinic order;¹³⁵ we must consider as if we doubted which of both festival days corresponds to the true festival day.

X. The second festival and the death.

Rava¹³⁶ said:

¹³² Apparently a doubt of rabbinic order.

¹³³ Instead of בריהם מפני הספק. Responsum 221 in *Teshuvot Bar Sheshet* is completely devoted to the understanding of the position of Abaye in B. Sabbath 23a.

¹³⁴ As Maimonides puts the emphasis in *Hilkhot Yom Tov* VI: 14.

¹³⁵ R' Hananel on B. Sabbath 23a writes: והוא יום טוב שני דספק דרבנן הוא.

אמר רבא, מת ביום טוב ראשון יתעסקו בו עממין, מת ביום טוב שני יתעסקו בו ישראל, ואפילו בשני ימים טובים של ראש השנה, מה שאין כן בביצה.....

Rava said: if someone dies on the first festival day gentiles should take care of him, if it happens on the second festival days then Jews should take care; this is also valid on the two days of Rosh ha-Shanah by contrast with the issue of the egg.

Furthermore Rav Ashi said that in face of the problem of the death, the sages considered the second festival day as a weekday.

Maimonides¹³⁷ does not apparently make any difference between the period when they did not know the fixing of the moon and the later period when they did know the fixing of the moon. Indeed Maimonides considered that Rava still belonged to the first period when they did not know the fixing of the moon. We see that rav Ashi; who belonged to the second period ruled in the same manner. It is thus normal that the ruling of Maimonides was valid for both periods. It is likely that Maimonides justified the ruling of Rava by the fact that Rava rested on the statistical frequency and considered the second festival day was a doubt of rabbinic order.

In fact we know that Rava belonged already to the second period and knew the fixing of the moon. During the former period the second festival day was probably a doubt of Torah¹³⁸ order and therefore non Jews had to take care of the Jewish deceased during both festival days.

XI. The second festival and the *sheheheyanu*.

This benediction is generally pronounced at the occasion of annual festivals.

As far as we keep the second festival day out of doubt, it is normal that we pronounce this benediction on the second day which could be the true festival day.¹³⁹

This is even valid for Rosh ha-Shanah. Indeed we consider in many instances Rosh ha-Shanah as a long day because we attribute the same sanctity to both day to commemorate the fact that nearly the whole Jewish world kept two festival days out of doubt.

But intrinsically only one of these two days was the true day of the Neomenia and the other was kept out of rabbinic doubt and it is thus normal that we pronounce the benediction on both days.

Now Maimonides considers that the second festival day is not kept today out of doubt but it is a rabbinic enactment. However he prescribes to pronounce the benediction on both festival days, even on Rosh ha-Shanah.¹⁴⁰

¹³⁶ B. Beitsah 6a.

¹³⁷ *Hilkhot Yom Tov* I: 22 and 23.

¹³⁸ See note 44. Our conclusion is thus uncertain.

¹³⁹ By rabbinic doubt.

¹⁴⁰ See Blau, vol. 1, responsum 113 p. 196.

It seems even that he prescribes to pronounce the benediction at the *shofar*'s blowing on the second day of Rosh ha-Shanah.¹⁴¹

The justification is not evident; it is probably in order not to despise the second day.¹⁴²

XII. The second festival day and *Hadash*.¹⁴³

We read in B. Menahot 68b.

רב פפא ורב הונא בריה דרב יהושע אכלי חדש באורתא דשיתסר נגהי שבסר. קסברי חדש בחוצה לארץ דרבנן ולספיקא לא חיישינן. ורבנן דבי רב אשי אכלו בצפרא דשבצר, קסברי חדש בחוצה לארץ דאורייתא ורבנן יוחנן בן זכאי מזרבנן קאמר, וכי תקינ ליום הגף לספיקא לא תקינ. אמר רבינא, אמרה לי אם, אבוך לא הוה אכיל חדש אלא באורתא דשבצר נגהי תמניסר דסבר לה כרבי יהודה וחייש לספיקא.

Rav Papa and Rav Huna¹⁴⁴ ben Josuah ate *hadash* at the end of Nissan 16; they considered that *hadash* abroad is a rabbinic obligation and therefore they did not fear the (rabbinic) doubt about the true Nissan 16.¹⁴⁵ The rabbis of the circle of Rav Ashi ate *hadash* on Nissan 17 morning because they considered the obligation of *hadash* abroad as a Torah obligation but the *takana* of Rabban Johanan ben Zakkai delaying the consumption of *hadash* until the end of Nissan 16 is of rabbinic order and he did not consider that one should fear the doubt of the Diaspora.¹⁴⁶ Ravina¹⁴⁷ said: my mother¹⁴⁸

¹⁴¹ In *Hilkhot Shofar* III: 10 Rambam explains the ceremony of blowing. In *Hilkhot Shofar* II: 10 he writes that now, when we keep two days in the Diaspora, we blow the *shofar* on the second day as on the first day. What seems very strange is the formulation, as if Rambam was aware that in Palestine they still, or at least not long ago, kept only one festival day of Rosh ha-Shanah.

¹⁴² R' Isaac bar Sheshet examined this problem lengthily in responsum 505, a fundamental responsum. He explained that when they did not know the fixing of the moon, all those out of Jerusalem, were keeping two days out of doubt and were pronouncing the benediction on both days. Today, when we know the fixing of the month, the principle of a long day is not valid in this issue; we keep the first day by Torah obligation and the second by rabbinic obligation. Therefore one can pronounce the benediction of *sheheheyanu* on its sanctity of rabbinic order in the same way as we do it on other rabbinic obligations like *Hanukah* and *megilah*. He adds that some rabbis who favor not to pronounce it suggest to take a new fruit and to pronounce it. Tor O.H 600 mentions that Rashi, Rashbam and Maharam considered that one must say it and Rosh advised, by security, the use of a fruit. Shulhan Arukh 600 made *sheheyanu* at the *kiddush* of the second evening of Rosh ha-Shanah even without a new fruit but apparently he did not pronounce this benediction at the *shofar*'s blowing on the second day, except if it was a Sunday.

¹⁴³ It is forbidden to consume any of the five species of cereal (which may be used to make matzot) from the new harvest before the offering of the Omer on the morning of Nissan 16. In the province, outside Jerusalem, it was allowed consuming the new harvest from noon onwards. After the destruction of the Temple Rabbi Johanan ben Zakkai enacted that *hadash* could not be consumed before the end of Nissan 17.

¹⁴⁴ His close friend.

¹⁴⁵ Thus when we deal with the festivals, we keep a second festival day by rabbinical enactment. When we deal with Nissan 16, יום הגף, then we consider that we have a doubt about the true יום הגף only in matters of Torah order but not in matters of rabbinic order.

¹⁴⁶ Thus the consumption was delayed from Nissan 16 to Nissan 17 because they considered that *Hadash* abroad is forbidden by the Torah and therefore they feared the rabbinic doubt of the day, but it was not delayed until the end of Nissan 17 because the principle of the *takana* of R' Johanan ben Zakkai is of rabbinic order and therefore it must not be extended to the whole Nissan 17.

¹⁴⁷ Ravina II, the son of Rav Huna and the nephew of Ravina I (see B. Ketubot 100b). Ravina II died in 499 C.E. His mother was the sister of Ravina I. He was the last or at least one of the very last *Amora'im*.

¹⁴⁸ The sister of Ravina I.

told me: “your father did not eat *hadash* before the end of Nissan 17; because he thought like rabbi Judah that Nissan 16 is completely forbidden by the Torah and he feared the doubt (of rabbinic order) about the true Nissan 16.”¹⁴⁹

Maimonides writes in *Hilkhot Ma'akhahalot Assurot* X: 2:

ובזמן הזה במקומות שעושין שני ימים טובים החדש אסור כל יום י"ז מניסן עד הערב מדברי סופרים.

Today, in the areas where they keep two festival days, *hadash* is forbidden until the end of Nissan 17 by rabbinic enactment.

Maimonides followed the ruling of Rif according to the behavior of R' Huna, Ravina's father, according to Ravina's widow.¹⁵⁰

We note that in the Talmud and in Rif it writes that this ruling is the result of the fact that the second festival day is kept out of doubt and therefore Nissan 17 must be considered as the possible true הַנֶּפֶס, the day of the offering of the and therefore, instead of eating *hadash* at the beginning of Nissan 17 we wait until the beginning of Nissan 18.

Maimonides writes, “because of the rabbinic enactment”. The commentaries did not react at all.¹⁵¹ It seems that Maimonides voluntarily changed the text in order to agree with his theory that the second festival day was not introduced for a reason of doubt but by rabbinic enactment. But this is in contradiction with the Talmudic text which writes explicitly וחייש לספיקא.¹⁵²

The ruling is very difficult to understand. According to the theory of Maimonides, that the second festival day was not introduced to solve a possible doubt but only as festival day introduced by rabbinic enactment, it makes no sense to delay the consumption of *hadash* from Nissan 16 to Nissan 17. In the same way as Maimonides does not require on the second day of Sukkot the particular requirements of the first day for etrog and lulav, *Hadash* should be allowed at the beginning of Nissan 17.

In fact the passage of the Talmud seems clearly to adopt the principle that in any issue of Torah order¹⁵³ we still consider¹⁵⁴ that we doubt whether the true day is at the calendar date or on the next day. And this also the case for הַנֶּפֶס which must be considered as

¹⁴⁹ Rashi and Rif write: כרבי יהודה, דאמר כל יום הַנֶּפֶס אסור מן התורה וחייש לספיקא, ספק דרבנן.

Thus Rabbi Judah considers that *hadash* abroad is forbidden by the Torah and the *takana* of Rabban Johanan ben Zakkai delays the consumption until the end of Nissan 16. The consumption was delayed from the end of Nissan 16 to the end of Nissan 17 because *Hadash* abroad is a Torah interdiction and therefore they feared the rabbinic doubt of Nissan 16.

¹⁵⁰ This is probably a unique case of a *halakha* ruled according to the report of a woman.

¹⁵¹ To the best of my knowledge.

¹⁵² An Israeli scholar proposed recently to deduce from this expression that even at the end of the fifth century, it still happened that they were in doubt about the true festival day of Pessah. This assumption is unfounded. We see from the quotation that the fear is only for Torah obligation and not for obligation of rabbinic order. It is clear that the Babylonians knew the fixing of the month and we are dealing here about the consequences of the *takana* instituting the second festival day. This fear exist only for obligation from the Torah. This is probably the reason why we don't take the fear of the doubt into consideration in the counting of the omer.

¹⁵³ *Yom Tov* or *hadash*.

¹⁵⁴ This is the meaning of the *takana* : we must still behave, by rabbinic order, as if we were doubting which is the true festival day or the true *yom henef*.

possible on Nissan 16 and Nissan 17 in the same way as we must consider that the first festival day of Nissan can be on Nissan 15 and Nissan 16.

The principle of doubt has lenient consequences in the case of the late *eruv*, laid down on Thursday. But it has stringent consequences for example in the case of the requirements of *etrog* and *lulav* on the second day of Sukkot or on the requirements of the *matsah shel mitsvah* on the second *seder*. Similarly this principle delays the allowed consumption of *hadash* by one day.

XIII. Conclusion

Maimonides considered that the second festival day was a fixed day enacted by the Rabbis because of the doubt that had existed before the announcement in advance of the *kevia* to the Babylonian community but it was not enacted out of doubt; the second festival day is a weekday that we are obliged to keep but it in no way a possible day for the first festival day.

However he admitted that both days have a different sanctity,¹⁵⁵ that *nolad* on the first day is allowed on the second day and that *safeik mukhan* on the first day is allowed on the second day during the evening after the delay necessary to bring it or prepare it.

In the case of *etrog* and *lulav* on the second festival day, he did not impose the special requirements of *etrog* and *lulav* of the first festival day.

He forbade laying down a late *eruv* on Thursday in the case of forgetting.

He considered that *yom Tov sheni* is a *takana* introduced because of the pre-existent doubt¹⁵⁶ but he imposed the recitation of the benedictions of the festival in order to avoid despising the second festival day. He forbade eating *hadash* before the beginning of Nissan 18. He justified this position by rabbinic decision, in contradiction with the Talmudic justification and in contradiction with the logic of his system which should allow the consumption of *hadash* a day before.

Finally it appears clearly that, out of the three possible solutions proposed in the introduction of this paper, only the first solution, that we must still behave, by rabbinic order, as if we still doubted which is the true festival day is completely satisfying and fits all the Talmudic references examined.

¹⁵⁵ Except on Rosh ha-Shanah.

¹⁵⁶ This is his explanation of the expression ספק דבריהם .

