

On the Account of the Banning of R. Eliezer ben Hyrqanus: an Analysis and Proposal*

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It seems best after all to accept as historical that the colleagues of R. Eliezer ben Hyrqanus imposed a ban on him, although the talmudic reports certainly are a combination of fact and fantasy that reveals more of the storyteller's mentality, or redactor's, than of what actually took place (hardly unique in the world of narrative). In the Talmud the account appears twice, in TB *Baba Meṣia*^c 59b and TP *Mo'ed Qaṭan* 3:1, 81c–d. Why the story should have been included in the latter source is obvious. The Mishnah ad locum, in listing those who are permitted to cut their hair on the intermediate days of a festival, includes “him who had been under a ban and was now released by the Sages.” It therefore makes sense to explain and illustrate in the talmudic give-and-take incidents of *niddûy* (banning). Indeed, in the *sugya* of the Palestinian Talmud not only is the story about R. Eliezer told, but a number of examples of contemplated bans are assembled and arranged one after another.¹ However, in the Babylonian Talmud, where the story is narrated in better wrought composition and continued with presumable further consequences of that remarkable academic session (so also TP *Mo'ed Qaṭan*), the issue of *niddûy* is not at all primary. The relevant mishnah (*Baba Meṣia*^c 4:10) states that even as in buying and selling there is such a thing as wronging (ʿōnāʾā) and that it is forbidden, “so is there such a thing as wronging by mere speech.” Now, since Rabban Gamaliel had apparently approved of

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In the following pages there is no intention to obscure or minimize the importance of “*yāhīd wērabbīm*” as an operating principle, especially in the Aknay-oven case. What is suggested is that *yāhīd wērabbīm* is not a mere arithmetical strategy, and that the concept of *šēmūʿā* is related to it, as can be discerned clearly in M. *Eduyot* 5:7 quoted below; and in the question put to R. Eliezer in TB *Sukkah* 28a, “Is everything you say only by way of *šēmūʿā*?” The storyteller's phrase in *Baba Meṣia*^c, *kol tēšūbôt šebāʿōlām*, is pure rhetorical exaggeration; it does not appear in the parallel versions.

1 The expression in the Palestinian Talmud, “they sought to ban” = “they banned”; see S. Abramson in *Hebrew Language Studies* presented to Prof. Zeev Ben-Hayyim (Jerusalem, 1983), 1–3 [Hebrew]. Note continuation of PT account. The expression may have been adopted to correspond to the idiom of the preceding report about R. Meʾir as well as to that of the stories that follow.

the ban, and thus brought grief to R. Eliezer, R. Eliezer's wife (Gamaliel's sister) was convinced that her brother's death was the result of her husband's supplications to God—for all the gates to heaven may (on occasion) be closed to one who offers up prayer, but never to one who has been wronged in speech: his prayer will always be answered (see also TB *Baba Meṣia*^c 58b, R. Yoḥanan in name of R. Simeon ben Yoḥai).

In other words, in the Babylonian Talmud the theme is ²*ḥōnāḥ*. The banning of R. Eliezer is reported not for its own sake but almost as prolegomenon to dramatic exemplification of what happens when there is ²*ḥōnāḥ* of speech. Not of *niddūy* (banning) but of ²*ḥōnāḥ* (wronging) is the discussion in *Baba Meṣia*^c.

The story as it is finally drafted in both versions cannot be earlier than the third or fourth century, and maybe even a bit later, since it cites R. Jeremiah (*Baba Meṣia*^c) or R. Ḥaninah (*Mo'ed Qaṭan*),² both amoraim. In both versions the debate of the scholars is accompanied by sensational (and incomprehensible!) signs—uprooted carob tree (in the Palestinian Talmud, once again amazingly replanted) thrown a distance of one hundred ells (some say: four hundred ells!); the current of a stream turned in reverse;³ walls about to tumble down, but don't completely out of consideration for the dignity of the chief protagonists in the debate. R. Eliezer had invoked such supernatural support because his colleagues had refused to accept any of his arguments in behalf of his view, says the Babylonian Talmud; and they refused to be impressed by celestial performances—uprooted carob trees, streams going berserk, walls tumbling *prove* nothing. And that is just as true of the last appeal of R. Eliezer: “If the halakah agrees with me, let heaven be the proof!” A *bat qōl*⁴ thereupon proclaimed, “How dare you oppose Rabbi Eliezer, whose views are everywhere (correct) halakah!” At that point R. Joshua rose to his feet and declared: (The right answer,) “it is not in heaven” (Deut. 30:12). This is now explained by R. Jeremiah (or R. Ḥaninah) to mean that ever since Torah was given at Mount Sinai, “we pay no attention to a *bat qōl*, for Thou hast already written in the Torah at Mount Sinai (Exod. 23:2), ‘You must follow the majority (opinion).’” When scholars are engaged in debate, the supernatural is out of order (TP *Mo'ed Qaṭan*)!

This is perhaps the most emphatic and triumphant defense of intellectual “freedom” (better, independence) preserved by the Talmud and is rightly cherished by students of Jewish literature and thought.⁵ The Palestinian Talmud in fact exclaims, after all those supernatural endorsements, is the law not to be in accordance with R. Eliezer's view? Inevitably, however, another question must be asked: What is the specific meaning of R. Eliezer's fantastic (but successful!) appeals itemized by the storyteller:⁶ uprooted and

2 Ḥaninah bar Ḥama (?), first generation Palestinian amora; Jeremiah, fourth generation (?). On R. Ḥaninah (!), see TB *Baba Batra* 23b.

3 This miracle is not referred to in the Palestinian Talmud ad loc., and the next is only lightly mentioned and in slightly different words. On “four hundred,” cf. *Proceedings, AAJR Jubilee Volume* 46–47 (Jerusalem, 1980), 63–65 [Hebrew].

4 Cf. S. Lieberman, *Hellenism in Jewish Palestine* (New York, 1962), 194ff.

5 See, e.g., G. Scholem in *Eranos-Jahrbuch* 31 (Zürich, 1963), 31ff.

6 See, for example, *Shiṭṭah Mequbbeṣet Baba Meṣia*^c ad loc. (New York, 1972) and *Hiddushe Geonim in 'Eyn Ya'aqob Baba Meṣia*^c ad loc. (New York, 1955), quoting R. Ḥananel and R. Nissim Gaon (on the latter, cf. the fragment in S. Abramson, *R. Nissim Gaon* [Jerusalem, 1965], 164f.), and cf. Maharsha and *'Anaf Yosef* in *'Eyn Ya'aqob*.

far-flung carob tree, stream flowing backward, walls beginning to tumble down (“and still sloping in that position”)?

The latter question (to my knowledge) has yet to be answered satisfactorily by either the traditional commentators or by modern students (as for the *bat qôl*, see below). But one thing, it seems to me, may be said confidently, namely, that the storyteller—either by inventing or by drawing upon current folkloristic motifs—is doing all he can to make us appreciate that the controversy between R. Eliezer and his colleagues over the oven of ‘Aknay⁷ is not just another customary halakic controversy between sages (characteristic of talmudic literature as a whole) or R. Eliezer and his colleagues, but of fundamental and permanent consequence. Though he had heaven as his ally, Eliezer could not prevail:⁸ that earthenware oven—with sandfill between the horizontal earthenware segments into which the oven was divided, then plastered over—which Eliezer said was not susceptible to uncleanness the Sages said, was susceptible. And no arguments or reasonings that may have been brought up by R. Eliezer availed. Even a heavenly *bat qôl* in his support was rejected; as R. Joshua declared at that point of the exchange, not heaven but the scholars decide what is halakah; and as the cited amoraim spell it out, that means the halakah is in accordance with the view of the majority. Thereupon “they burned in the fire all the *ṭōhārôt*⁹ which R. Eliezer had ruled as clean.” And they imposed the ban on him. Or, as R. Aqiba put

7 So the vocalization by Yalon in M. *Kelim* 5:10; in the Palestinian Talmud, *ḥkyny* (cf. the Tosafot in *Baba Meṣia*^c, s.v. *ze(h) tannûr*). (See also the text published by J. N. Epstein in *Alexander Marx Jubilee Volume* [New York, 1950], 29 [Hebrew].) It is interesting that already in the time of the amora Samuel the word ‘Aknay calls for explanation (TB *Baba Meṣia*^c 59b, top). On the name ‘*kyn*’y see TB *Shabbat* 49a.

8 Note how TP *Mo‘ed Qaṭan* undertakes to defend Eliezer’s resistance and resentment of the decision and action of the sages “to his face!”

9 Rashi: “. . . when into the hollow space of this oven there had fallen an unclean object and then on that oven clean foods (*ṭōhārôt*) were prepared, R. Eliezer ruled that they were clean. Now (the sages) brought these and burned them up in his presence.”

If not for Rashi, with whom it is almost preposterous to disagree, I would be tempted to interpret “On that day they brought all the *ṭōhārôt* which R. Eliezer had ruled as clean and burned them in the fire” as reference to some kind of records or archive in which R. Eliezer’s rulings were preserved. The word *ṭōhārôt* is of course used for foods (e.g., TB *Sukkah* 42a, bot.; etc.; Tos. *Demai* 2:20, euphemistically, *unclean* foods), but it is also a title of a whole order of the Mishnah, of a treatise in that order as well. Further, “burning” is used in connection with what is written down (I’m not thinking of Apostomos burning the Torah; what else could you expect—TB *Ta‘anit* 28b; cf. also Josephus, *War*, II, 229), e.g., TB *Hullin* 60b, in the translation of S. Lieberman (*Hellenism*, 110 plus note), “There are many [single] verses which [one might think] may be burned (like the books of” Homer). Or again the imagery in the TB *Shabbat* 115b saying, “Those who write down benedictions are like them that burn the Torah” (cf. Rashi ad loc.). See also TB *Temurah* 14b on those who write down halakot, and cf. the two explanations in Rashi. On the image see also Version B of *ARN*, 123, toward bot.

All I’m trying to point out is that the verb “burn” or the expression “burn in the fire” is indeed applicable to what is in writing. And J. N. Epstein (*Mēbō‘ôt lēSifrūt haTTannā‘īm* [Jerusalem-Tel Aviv, 1957], 70) speaks of “apparently (*knr’h*), R. Eliezer recorded (*rām*) his mishnaḥs (traditions; views?), but of course as was customary at that time and later, recorded them for himself only, personal-private notes, and handed on (his teachings) orally.”

But Professor Yakov Sussmann reminds me rightly that in talmudic sources when they wish to refer to writings being put out of circulation, the verb used is *gānaz* and not *sāraf*. A telling criticism. Yet these two verbs, as alternative treatments, can be thought of in connection with a Torah scroll (prepared by a *mîn* or a heathen), in other words, something written down, TB *Giṭṭin* 45b; and “burning” would be even harsher

it delicately, "Master, it seems to me that the scholar-colleagues are staying away from you."¹⁰

That there can be sharp disagreements in talmudic debates is in no way extraordinary.¹¹ But in the case of the [°]Aknay oven the intransigence on both sides is so extreme and absolute, and the aftereffects so devastating,¹² it is not unjust to propose that for the storyteller, in fact, a fundamental issue was at stake. That issue was *šēmū[°]ā* vs. *rabbîm* (*mē[°]rūbbîm*), that is, received tradition by an individual vs. majority opinion.

Let me explain. Even though the term *šēmū[°]ā* and its Aramaic equivalent seem to be of amoraic currency,¹³ what it represents ("received tradition") was not unknown in tannaite centuries.¹⁴ Not the word then are we focusing on but on an intellectual attitude for which a noun will prove useful before long, a presumption, a confident assumption that the correct teaching or doctrine is the inherited one, what one has learned from his master and the latter from his master and so on. Typical of this attitude are well-known statements like the following: "Nahum the librarius said, I received it from R. Miasha, who received it from father (or, Abba), who received it from the Zugot, who received it from the Prophets, a halakah (transmitted) to Moses from Sinai" (M. *Peah* 2:6). "R. Joshua (!) said, I have received from Rabban Yoḥanan ben Zakkai who learned it (*šāma[°]!*) from his teacher and his teacher from *his* teacher, a halakah (transmitted) to Moses from Sinai" (M. *Eduyot* 8:7). "I have received it from Rabban Yoḥanan ben Zakkai who learned it (*šāma[°]!*) from his teacher and his teacher from his teacher as far back as halakah (transmitted) to Moses from Sinai" (R. Eliezer, in M. *Yadayim* 4:3). Doubtless stereotypical, but let's go on.¹⁵

When in connection with a give-and-take of Shammaites and Hillelites, it is proposed that R. Yose (father of Ishmael ben Yose) is offering a compromise view,

treatment than "suppressing." Note by the way the view attributed to R. Eliezer, *ibid.* (Yet the force of Sussmann's remark is not diminished, for "like them who burn the Torah" is *topos*.)

My problem is that I can't picture all those baked or cooked foodstuffs left lying around as though waiting to be burned or not; particularly if any credence is to be given to the *Tosefta* (*Eduyot* 2:1), that "over the [°]Aknay oven there were many (= for a long time?) controversies in Israel." (Or does this mean that even after the Eliezer ben Hyrkanus affair, the halakah was occasionally still debated because Eliezer's view was not entirely dismissed? On an unaccepted view of R. Eliezer's adopted [by R. Joshua!] after Eliezer's death, see Tos. *Niddah* 1:5.)

The expression "on that day" in the story is stereotype employed for dramatic effect. As for the oven, cf. Y. Brand, *Klē haHerēs* (Jerusalem, 1953), 565f.

10 This is not reported in the Palestinian Talmud, *Mo[°]ed Qaṭan*, *ibid.*

11 This hardly requires elaborate documentation; let these few references to lively and even sharp disagreements suffice: M. *Yadayim* 4:3; M. *Makshirin* 6:8; M. *Nega[°]im* 5:3 (the retort to R. Aqiba); Tos. *Shabbat* 1:16-17; TB *Hullin* 6b-7a; *Sifre Num.* 118, ed. Horowitz, 141 (cf. *Midrash Tannaim*, 88) and so on and on.

On Eliezer opposed to a number of sages, cf. also TB *Baba Qamma* 84a.

12 See both Talmuds on R. Eliezer's fatal stare. Cf. TB *Shabbat* 33b on Simeon ben Yoḥai. See L. Blau, *Altjüdische Zauberwesen* (Graz, 1974), 152-56. A folklore cliché.

13 See Bacher, *Erkē Midrāš*, s.v. *šēmū[°]ā*, 306. But see Tos. *Eduyot* 1:3, see next note. In Scripture *šēmū[°]ā* = report, news.

14 As Bacher himself notes, *ibid.*, 131. And I think the word involves this too in M. *Eduyot* 5:7; and see *Sifra* 6b (R. Tarfon), in ed. Finkelstein (New York, 1983), 37f., where note in particular Aqiba's brilliance, and then *Abot de-Rabbi Natan*, 29. On the word "masoret," cf. Bacher, 74f. and 227.

15 Note also the idiom quoted by S. Lieberman in *Tosefta Kifshuṭah, Berakot* (New York, 1955), 33, lines 8-9.

R. Yoḥanan the amora declares, (Not so! R. Yose's view is not an original personal one) but a tradition (*šēmû^câ*) received from Haggai, Zechariah, and Malachi (TB *Hullin* 137a–b). In his prolonged argument with the Batyrites, Hillel fails to convince them though he resorts to one exegetical device after another, until he finally invokes the authority of his teachers, “so I learned (*šāma^ctī*) from Shemaiah and Abtalyon” (TP *Pesaḥim* 6:1; cf. Tos. *Pesaḥim* 4:1–2, ed. Lieberman, p. 165). Or R. Aqiba to R. Joshua, “If it's a halakic tradition (halakah), I'll accept; if it's (independent) reasoning (*dīn*) counterargument is possible” (*Sifra*, ed. Weiss, 16c; cf. *Sifre Deut.* 253, ed. Finkelstein, 279, the Sages to R. Simeon and his reply! with which cf. M. *Yebamot* 8:3).

In other words, at no time do either tannaim or amoraim disparage *šēmû^câ* or take it lightly. One scholar might report that he had heard (*šāma^ctī*) a halakah and therefore debate is superfluous, and a second scholar (R. Joshua!) might reply, “I can't contradict you, but you heard the general statement while I heard the explicit one (*bēpêrûš*).”¹⁶ (See further below.) But no one says anything like, “Never mind the *šēmû^câ*,” or, “It's only a *šēmû^câ*!” The attitude is in some ways akin to what H. I. Marrou says of classical humanism: “For in the last resort classical humanism was based on tradition, something imparted by one's teachers and handed on unquestioningly. This, incidentally . . . meant that all the minds of one generation, and indeed of a whole historical period, had a fundamental homogeneity which made communication and genuine communion easier.”¹⁷

Received tradition is always taken seriously. And in the earlier centuries, at least up to the Hillelites and Shammaites, was almost the exclusive principle governing the methods to arrive at a conclusion, or resolution of disagreement, in the rabbinic academies. Naturally there were controversies: the one over Semikah seemed interminable.¹⁸ And surely the account in Tos. *Hagigah* 2:8–9¹⁹ is idealization or romanticization of sorts—but the notion that when a difficulty could not be resolved, one turned for help to superiors or the more expert, should not be dismissed as fanciful. This however is not our immediate problem.

All that is being underscored at the moment is that in the pharisaic-early tannaite academies (before the Yabneh reorganization), though there were disagreements, they were probably not prolonged indefinitely despite Semikah (and that is one reason the sources preserve so few²⁰ and Semikah is recalled). To arrive at agreement there must have been resort to some pragmatic arrangement; perhaps occasionally they did take a count; or men acted in accordance with the view they preferred without a special passion for uniformity.²¹

16 *Sifre Zuta*, ed. Horovitz, 313, and on the halakah, cf. S. Lieberman, *Siphre Zutta* (New York, 1968), 59f.

17 H. I. Marrou, *A History of Education in Antiquity* (New York, 1956), 224. Note also a haggadic *qabbalah* cited by Resh Laqish in TB *Shabbat* 119b.

18 See M. *Hagigah* 2:2 and cf. L. Ginzberg in *On Jewish Law and Lore* (Philadelphia, 1955), 89ff.; Lieberman, *Tosefta Kifshuṭah* (1962), 1300.

19 Cf. *Tosefta Kifshuṭah*, *Mo^ced*, 1296–99. See also Tos. *Sanhedrin* 7:1. Note also the (tannaite) anachronism in *Temurah* 15b, toward bot.

20 See TP *Hagigah* 2:2, beginning.

21 See, e.g., Tos. *Berakot* 1:4 or M. *Yebamot* 1:4. Incidentally, even in late first-early second century there were scholars who acted in accordance with Shammaite teaching. And see the remarkable statement (M. *Demai* 6:6) on the conduct of the especially fastidious among the Hillelites! S. Lieberman in “Appendices”

In the early period *šēmū^cā* is the governing principle in the academy (and court related to it) and, as we noted above, was always highly regarded, even after the disastrous Revolt of 66-73 (and even after 132-35). No scholars denied its significance. But apparently its most articulate champion was Eliezer ben Hyrḡanus of whom it was said, שלא אמר דבר שלא שמע מימי, who never in all his days said anything he had not received as a *šēmū^cā*.²² Of his teacher too (Yoḥanan ben Zakkai, but for whose program there might never have been a Yabneh and its glorious developments) it was said among other praises that "he never said anything he had not received as a *šēmū^cā* from his master."²³ There is no reason to deprive R. Eliezer of this particular tribute, for it is certainly meant as such, so long as we do not misinterpret it. No one ever intended by that statement that Eliezer never had an idea of his own! In his very legendary biography it is said that when he finally submitted to Yoḥanan ben Zakkai's prodding to deliver the lecture (and this at the beginning of Eliezer's recognition as a scholar), Eliezer "arose and delivered a discourse (*pātaḥ wēdāraš*) upon things which no ear had ever before heard" (*Abot de-Rabbi Natan*, ed. S. Schechter, Version A, p. 31; Version B, p. 32, "Rabbi Eliezer sat [like a master?] discoursing [*dōrēš*] on things even more [profounder?] than what was told to Moses at Sinai"). Obviously hyperbole, and more revealing of the storyteller's gifts at panegyric than of his subject. But such language is testimony that at least even the ancients did not hesitate to credit Eliezer with originality. The way you interpret the definite article (*wēHAbegged* in Lev. 13:47), R. Ishmael once protested to R. Eliezer, it's as though you were ordering the verse, "Hush, I've still to *interpret* (*ʿedrōš*)." You're no more than a mountain palm (incapable of producing good fruit: Rabbenu Hillel ad loc.), Eliezer retorted.²⁴ Eliezer does not say that he learned this midrash from anyone.

Modern scholarship is even more instructive. It was already Zacharia Frankel (and perhaps he is not the first) who²⁵ undertook to show that there was genuine analytic exercise (e.g., in use of *qal waḥōmer*, p. 82; striving for consistency in ruling on sundry subjects, p. 83) on the part of Eliezer in exchanges with his colleagues. And in recent years Y. D. Gilat²⁶ in his dissertation admirably described and systematically brought together teachings on all halakic subjects where R. Eliezer is referred to or quoted, and

to I. Gruenwald, *Apocalyptic and Merkavah Mysticism* (Leiden, 1980), 241ff., especially 244, deserves more than brief attention.

22 Tos. *Yebamot* 3 (ed. Lieberman, p. 9, end; and cf. *ibid.* for references to parallels). Apparently the same (in Aramaic) was said of the amora R. Ḥanina—*Tosefta Kifshuṭah*, *Yebamot* (1967), 24 ("Ḥaninah *ha-gadol*, the elder?" in contrast to Ḥaninah *qara*?; cf. TB *Taʿanit* 27b. Note also below, n. 54).

And when does Eliezer compliment a sage? When the latter can confirm the view of earlier Sages; cf. M. *Negaʿim* 9:3 (and 11:7).

23 TB *Sukkah* 28a.

24 *Sifra* 68b.

25 *Darkê haMMišnâ* (Warsaw, 1923), 78ff.—though I don't quite follow him in his interpretation (p. 86) that "he never said a thing" etc. means that when something was not completely clear to him, he did not try by forced counterargument to justify his own view, but admitted without embarrassment that he had no *šēmū^cā*. See also Ch. Albeck, *Mābō³ laTTalmūdīm* (Tel Aviv, 1969), 156.

26 *Mišnâto šel R. ʿElīʿezer ben Hyrḡānūs* (Tel-Aviv, 1968). See, e.g., 56ff., 70ff., 123ff., 165, 197, 205f.; 295f. (disagreeing with Shammaites).

argues analytically. R. Eliezer clearly emerges as essentially conservative, but just as clearly not uniformly so, and not as though he were deprived of independent judgment.

Statements like “he never said anything he had not received as a *šēmū^cā*” are like the midrashic formula, “This term everywhere (*bēkol māqôm*) means nothing other than” this or that²⁷—it has about as much value as “I never met a man I didn’t like” (Will Rogers)—inflated generalization which collapses into nonsense when put to the test. What it seems to mean is, when he could Eliezer’s first impulse was to draw upon *šēmū^cōt* available to him even as and when others had their *šēmū^cōt*,²⁸ or wished to debate by means of purely logical argument.

With *šēmū^cā* and a small number of rules of interpretation of Scripture and early commentary, intellectual activity could thrive in the academies for a long time, from whenever it began until after the Revolt of 66–73 (obviously I’m speaking in approximate dates). And the consequences of that uprising and defeat were not only political and economic and social (and religious—the destruction of the Temple and its cult), but also, inevitably, juristic, intellectual, and academic. No one has more carefully described the immediate and long-range results of that revolt than Gedaliahu Allon,²⁹ despite his approach, dominated by an intense nationalist emotion. Through his Mommsen-like dissection and interpretation of talmudic and extratalmudic primary sources, he made vivid the devastation after 70—not only of the Temple and all it represented, but of Jerusalem as a whole, and of other parts of the country too—and the gradual rehabilitation of institutional and spiritual life. He should be read without attempted intermediating paraphrase on my part. All I wish to underline in the present discussion is that the move from Jerusalem to Yabneh involved not just a change of location or a migration of scholars from one center to another, or reinterpretation of biblical verses to boost morale, or promulgation of necessary taqqanot, but a gradual (albeit not slow!) realization that past methods of study and requirements of interpretation had to be supplemented—because in the course of upheavals, despite insistence on continuity of uninterrupted tradition, as reflected by the first chapter and part of the second of *Pirque Ḥotot*, much may have been lost, or authorities of one sort or another may have been slain or disappeared, or withdrew from the Yabneh group; or, because adjustments to

27 E.g., *Mekilta, Be-Shallah* 1 (ed. Lauterbach, 1:169–70 [on which cf. A. Mirsky in *Lešonenu*, 30:302]; 3 [210]). Cf. Lieberman, *Hellenism*, 51.

28 This is well illustrated by the exchange between R. Eliezer and R. Joshua in Tos. *Niddah* 1:5 (cf. M. *Niddah* 1:3) where R. Eliezer says that the rule *dayyān ša^cātān* (the moment is sufficient for them: that is, only from the time they discover their flow, not assuming that it had begun earlier) applies to four classes of women: virgins, pregnant women, nursing ones, and old women. “R. Joshua said, I have received a *šēmū^cā* only concerning virgins. R. Eliezer said to him: A person who has not seen the new moon is not told to come and testify (whether he’s seen it), only one who has seen it. You did not receive (the full) *šēmū^cā*, but we did; you received the *šēmū^cā* of only one class, but we received it concerning all four.” Note, Joshua also bases his view on a *šēmū^cā*, but Eliezer insists that it was an incomplete one. See in this connection the report also in TB *Sukkah* 28a.

29 In the first volume of his *Tōlēdōt hayyēhūdīm bē³ereṣ yiśrā²ēl bitqūfat haM Mišnā wēhattalmūd* (Israel, 1952), esp. 25–192. “Mommsen-like” was said already by Y. F. Baer in the obituary preface to that volume. I think it is not amiss to call attention to Yehoshafat Harkabi, *Bētoqef ham-Mēyī³ūt* (Jerusalem, 1981) even for historical study.

daily life were radically transformed, or, what rabbis felt, there was serious threat to adherence to proper Jewish conduct. And naturally there was also forgetting.³⁰ The past curriculum by itself would not be sufficient; *šēmū^câ* and the few rules of exegesis available could not any longer by themselves be enough for intellectual and religious instruction and reaching a decision. When the sages came to Yabneh and were worried about what would happen in the future to the words of Torah and the words of the Soferim, they then adopted the principle of “the rule is according to the majority.”³¹ Some time then (though I cannot say exactly when) the new principle was introduced—maybe not long before or in the course of the debate of the *‘Aknay oven*.

There seems to be something so reasonable about the principle “majority rules,” that at first it is hard to understand R. Eliezer’s defiance of it. The Palestinian Talmud registers almost the same bewilderment: “And did not R. Eliezer know that one must adopt the majority opinion?”—assuming that what was adopted (formally) as a result of the present controversy was unanimously subscribed to even before. And its answer is that Eliezer (did not challenge the principle but) was offended by his colleagues “burning his *ṭōhārōt* in his presence” out of disrespect for him (*Qorban ha-‘Edah* in loc.). Although “burning in his presence” is said in TB *Berakot* 19a, hence Rashi in *Baba Mešia^c* also, this is not said in the *Baba Mešia^c* version, where R. Eliezer is portrayed as simply unyielding to his colleagues. But why should he have been opposed to so sensible a method for arriving at what is generally accepted as right (or at least as most dependable) when there is disagreement among authorities?

That “majority rules” should override a *šēmū^câ*, however, is not as self-evident as may appear at first thought, at least in talmudic literature. For there was a dramatic occasion when a vote was taken on a number of laws, and Shammaites outnumbered the Hillelites; eighteen issues were decided according to Shammaite views; “and that day was as grievous for Israel as the day the (golden) calf was made.”³² Majority rule as such is no cause for celebration.

Needless to say, this report—even if it as well as the event it refers to be dated to the years before the destruction of the Temple—is of triumph over the Hillelites and apparently included use of force (*kōaḥ hazzērōa^c*, as Lieberman puts it). Hillelite storytellers—and most midrashic-talmudic storytellers are Hillelite sympathizers—would be grieved by a vote favoring Shammaites. But the report does refract an awareness that a vote as such does not automatically lead to the ideal conclusion.

This is certainly Eliezer’s point of view, even after he had been subjected to the ban. (Eliezer is not inclined to give up his opinions, even in his last hours. See *Abot de-Rabbi Natan*, pp. 70, 80, 81.) When Yose son of the Damascene visited him in Lydda, he found him in a bakery shop; and Yose brought him news of the vote taken in the academy. Whereupon Eliezer burst into tears and said, “Go tell them, Don’t worry about your

30 See, e.g., Tos. *Parah* 4:7. Cf. J. Goldin in *History of Religions* 4 (Chicago, 1965), 285–87.

31 I am obviously trying to appropriate the idiom of Tos. *‘Eduyot* 1:1, beginning, and am *not* reproducing what the Tosefta says (q.v.). (See also TB *Shabbat* 138b and *Diqduqe Soferim* ad loc.) But I do not feel that I’m misrepresenting what was on the mind of the Sages, as M. *‘Eduyot* 1:3–6, in my opinion, almost certainly reflects (as well as 5:6–7, on which see below).

32 Tos. *Shabbat* 1:16–17. See especially *Tosefta Kifshuṭah*, *Mo^ced*, 13–16 and S. Lieberman, *Hayyērū-shalmī Kifšūtō* (Jerusalem, 1934), 37–39, to which Lieberman himself refers.

voting! I received (the identical teaching) from Rabban Yoḥanan ben Zakkai who received that *šēmū^cā* from his teacher who in turn received it from his teacher, a halakah (transmitted) to Moses from Sinai.”³³ No vote outweighs the significance of a received tradition, R. Eliezer says. (On the other hand contrast R. Me^oir in M. *Kila^oim* 2:11 and Albeck ad loc.) Though Eliezer does not elaborate, have we not the right to ask (in his defense), does a majority never make a mistake?³⁴

It's not as though talmudic tradition is insensitive to this. The halakah, says the Tosefta,³⁵ is always established in accordance with the majority. Nevertheless (when studying the halakah: Albeck) the minority (literally, the individual's, *yāḥîd*) dissension is also recalled. Why? (1) To teach a lesson to be learned from the Fathers of the universe, Shammai and Hillel, who were prepared to adopt views in conflict with theirs, that one should not stubbornly insist on one's own view; (2) that if under certain conditions the original minority view comes to be preferred by a later and proper majority, the preserved minority view will be available to serve as support; (3) that if a person protests that his teaching is a received tradition, he can be told: “Your *šēmū^cā* is only So-and-so's view.”

Whatever the historical reality behind this speculative reasoning, it exhibits commitment to the principle of *hālākā kimmērbūbbîm*, but simultaneously resolution to remember *dibrē hayyāḥîd*. By the time the Mishnah and Tosefta texts are formulated, Shammai and Hillel have become role models, and the way R. Judah expresses himself in the Tosefta—if one were to say, Such-and-such a thing is unclean, he is told, “You have received a *šēmū^cā* in accordance with R. Eliezer's view”—is reminiscent of the debate of the ^cAkney oven.³⁶ The halakah follows majority opinion, but minority opinion is not to be forgotten; it has its uses! (Note also, by the way, TB *Yoma* 36b!)

Hālākā kimmērbūbbîm may very well have been resorted to occasionally, pragmatically, *faute de mieux*, even before the destruction of the Temple and Jerusalem academic institutions. But it was not till after 66–73 that a concerted effort was made to get this rule adopted in academic debate (as it is in court trials) for *šēmū^cā* by itself could not be depended on, it might not be sufficiently specific. For example, whether a grave-area³⁷ can make (the area beyond it) into another grave-area is argued by R. Eliezer (yes) and by R. Joshua (sometimes yes and sometimes no). Now in the “*Sifre Zuta*”³⁸ it is reported that R. Simeon brother of Azariah broke into the argument with: Why are you arguing? I have a *šēmū^cā* that a grave-area does make such another area.

33 M. *Yadayim* 4:3 and Tos. *Yadayim* 2:16, and note the stylization of the links in the chain of transmission in the Tosefta. Is the Tosefta reference to “sitting in the bakery shop” intended to suggest that at that time Eliezer had no scholars as companions? Note how Aqiba expresses himself, above.

34 And perhaps it is not unjust to add that the clause from Exod. 23:2 which R. Ḥaninah or R. Jeremiah interprets as “You must follow the majority opinion” (see also Maimonides, *Code, Sanhedrin* 9:3, and note how *Midrash ha-Gadol*, Exodus, ed. M. Margulies, 532 reads), is not free of syntactical ambiguity; cf. LXX and Rashi and Ibn Ezra on the verse, let alone modern translations. Of course this is not to deny that midrashically clauses from a verse are very often treated as independent units.

35 Tos. ^c*Eduyot* 1:4 and cf. M. ^c*Eduyot* 1:4–6. Note also *Soferim* 16 (ed. Higger, 287f.).

36 Although in that case Eliezer is the one who is *mēṭāḥēr*.

37 *Bêt happērās*. I'm indebted to Danby for this translation. On the halakah being debated, see M. ^o*Ohalot* (^o*Ahilot*) 17:1–2, A. Goldberg in his edition (Jerusalem, 1955), 124. See further the references in the next note.

38 Cf. Lieberman in *Siphre Zuta*, 59f. and *Sifre Zuta*, ed. Horowitz, 313.

To this R. Joshua replies: I can't contradict you but (lit., for) you heard the rule in general terms (*šētām*) while I heard it with its proper (specified) interpretation. And he proceeds to spell that out.³⁹

In the turbulence of the period, as well as in the increasing sophistication of legalistic instruction, *šēmū'ā* had to be supplemented by practical procedure at what seemed conducive to reliable conclusion. This supplementary academic principle was not greeted by all scholars at once and collisions occurred, particularly since there was constant debate in the academies. Dilemma was inevitable, and it is excellently represented by at least part of the Aqabya ben Mahalalel story, also having to do with *niddūy*, as recorded in the Mishnah: My son, said Aqabya when he was close to death, draw back from the four rulings that I had upheld; whereupon the son said, "What about you, why did you not draw back?"⁴⁰ And Aqabya replied, "I received my *šēmū'ā* from *mērūbbīm*, and they (my colleagues) received their *šēmū'ā* from *mērūbbīm*; I stood fast by my *šēmū'ā* and they stood fast by their *šēmū'ā*. But you received your *šēmū'ā* from an individual and from the many. It is best to leave the opinion of the *yāhīd* and to hold onto that of the *mērūbbīm*."⁴¹

It is difficult to give up *šēmū'ā*, but the times call for additional methods and therefore the principle of *mērūbbīm* must be adopted, if there is to be discipline in the academy and its decisions. And R. Aqiba will not hesitate to say as much forthrightly

39 Cf. TB *Sukkah* 28a, top.

40 So Kaufmann Codex at 5:9. For references see next note.

41 M. *ʿEduyot* 5:6-7. On 5:6 see also *Sifre Num.* 7, p. 11 and Horovitz's references to parallel sources. Neither *Sifre* nor TB *Berakot* 19a quotes the father and son exchange. Note how A. Saldarini treats the M. *ʿEduyot* section in *JJS* 33 (1982), 548f.

It is impossible to say when the Aqabya incident presumably took place, though from the storyteller's language, "and we will make you *ʿAb bêt dīn lē Yisrāʾēl*," I infer that the storyteller realizes that the Sages could not have said, We will make you nasi—nasi is already reserved for the Hillelite dynasty and, besides, appointing a nasi is not up to the Sages exclusively. Hyperbole or fancy though there may be, if therefore the storyteller speaks of *ʿAb bêt dīn* as though that's the very high reward, this must be (despite M. *Hagigah* 2:2) a time when the office of *ʿAb bêt dīn* as *secundus* is *familiar*. That would be at best late first-early second century. (On improper mourning for an *ʿAb bêt dīn* who died, cf. TB *Sukkah* 29a; but the statement is unclear.) The very expression *ʿAb bêt dīn lē Yisrāʾēl* is ambiguous, as L. Ginzberg observed long ago. I have tried to discuss this more fully in the Supplementary Note to my chapter on "The Teachers" (written 1974-75) for the forthcoming *Cambridge History of Judaism*, ed. W. D. Davies and L. Finkelstein.

Two points ought to be added or perspective is lost. (1) That so much and sharp controversy should be reported about issues of cleanliness/uncleanliness (and of course other themes too) reveals how seriously the Sages regarded this matter, which would hardly surprise anthropologists. A whole order of the Mishnah, *Toharot*, is occupied and preoccupied with the subject. Two of the three cases of *Niddūy* in the Talmud (Eliezer, Aqabya, Eliezer ben Ḥanoch) were cleanliness/uncleanliness ones, and that was also part of the Aqabya four teachings. In condemning the behavior of some officiating priests which led to a horrible incident, the Talmud (TB *Yoma* 23a, b) says that for these priests the purity of vessels was more important than bloodshed! This of course is said of priests and is a furious reprimand with, perhaps, exaggeration too. But the frame of mind, that ritual punctilio is supreme obligation, is not confined to priests, though it may (if sanity survives) escape the extremes of the incident reported by the Talmud. On the Yoma story, cf. *Tosefta Kifshuṭah*, *Yoma*, 735f.

(2) The idiom of *ʿEduyot* 5:7 (*ʿānī šāmaʿatī, hēm šāmēʿū*) dramatizes for us the delicate task of the Sages: the rule will be in accordance with the many but there may well be *šēmū'ā* vs. *šēmū'ā*, of the *yāhīd* and *mērūbbīm*. Therefore, how act? And the storyteller reports how Aqabya advised his son and thus others too: after all, Aqabya had received his *šēmū'ā* also from *mērūbbīm*!

even to the patriarch (Gamaliel!): "You yourself taught us so!"⁴² For controversies flourished in the course of time, and when disciples of Shammai and Hillel did not attend upon their masters sufficiently, controversies increased in Israel and the one Torah became like two Torahs.⁴³ That controversies multiplied is evident on virtually every page of the Talmud, and the talmudic explanation thereof may have this much to justify it: by *lō³ šimmēšû kol šorkān* is meant among other things possibly that sufficient care was not taken with *šēmû^côṭ* they had received. At all events, there is increasing uncertainty with regard to received traditions, and "majority rules" is being encouraged as both a principle and method for the academy—to overcome doubts as well as disagreements.

Let us return to the ^cAknay oven. Why this particular problem should have been the cause for drastic action is not clear, though it is ridiculous to assume that for the Sages it was a trivial matter, any more than questions like: in burial how orient the corpse eastward, head first or feet first; should wine for the Mass be white or red; may or may not one stand on a rug in whose design is incorporated (holy) Arabic script? When you're committed to a system, none of its details is likely to be trivial in your sight. And perhaps the more petty the more finicky. That ^cAknay oven is referred to in several contexts,⁴⁴ and always with seriousness. Was this suddenly to be a test case? R. Eliezer, we are told by one source, tried "all the arguments in the world" but the scholars remained unmoved. Then came all those astonishing manifest signs, but the scholars refused to be impressed. Even a heavenly *bat qôl* proved ineffective—although (according to the amora Samuel)⁴⁵ after Shammaites and Hillelites had been debating for three years, a *bat qôl* exclaimed that the views of both were the words of the living God, nevertheless the halakah is as the Hillelites have it. In other words, a *bat qôl* in support of the Hillelites is received favorably but snubbed when it tries to support R. Eliezer: in part surely because he favors many Shammaite views.⁴⁶ And this too may be reflected by the ^cAknay-oven storyteller. The storyteller has his reasons for going to extremes, for he wishes to make it unforgettable that woe betide anyone who refuses to accept the new principle, *hālākā kimmē'rūbbīm*, even if he can summon the supernatural to his aid. And since R. Eliezer did refuse, the scholars imposed *niddûy*. God Himself was all smiles when they did!

So the storyteller or tellers. And it is to him or them that we owe the knowledge that Eliezer was banned. That is most probably not fantasy but fact. For other incidents reported about Eliezer would seem to bear this out. As we have already noted, Eliezer had to ask Yose son of the Damascene what was new in the academy⁴⁷ and thus learned

42 TB *Berakot* 37a, bottom.

43 TB *Sanhedrin* 88b.

44 In addition to TB *Baba Mešia^c* and TP *Mo^ced Qaṭan*, see M. *Kelim* 5:10, Tos. *Eduyot* 2:1, TB *Berakot* 19a.

45 TB *Erubin* 13b. But also note *ibid.* 7a (top) that R. Joshua always disregards *bat qôl*, and cf. Tosafot in TB *Berakot* 52a, s.v., *wērabbi yēhōshūa^c* and in TB *Pesahim* 114a, s.v., *dē³amar*.

46 Cf. Gilat, *Mišnāiō šel R. ³Elī^cezer ben Hyrḳānūs*, 309ff. But not always! See Gilat, 227, 295f., 313ff. And see also the citation from the Palestinian Talmud in Gilat, 283, on a *bat qôl* interpreted as tribute to Eliezer.

47 For the idiom "what new interpretations in the academy," cf. *Abot de-Rabbi Natan* (hereafter *ARN*), p. 67 (R. Joshua!).

that in his absence they had taken a vote about a matter that he had already known by received tradition. In his last illness,⁴⁸ when the scholars called on him, they sat before him “at a distance of four ells.”

Now, in his note (25, ad loc.) S. Schechter reports that the phrase “at a distance of four ells” does not occur in the *Abot de-Rabbi Natan* manuscripts. Nor does it occur in the version of the story in M. Gaster’s *Exempla of the Rabbis*, 86. It does not occur in the abbreviated version of TP *Shabbat* 2:6. But it does occur in TB *Sanhedrin* 68a, ^c*Eyn Ya^caqob*, and also in *Haggadoth Hatalmud* 106d. It is repeated in *Midrash ha-Gadol*, Deut., ed. Fisch, 421. Granted, these latter sources reiterate TB *Sanhedrin* and thus are not independent testimony. But it is significant that their respective compilers felt no need to edit. And see also TB *Baba Me^cia* 59b when Aqiba informs Eliezer of the ban.

It will not do to say that there has been deliberate doctoring of some sources to create consistency between various details and the principal account, for if doctoring had been decided on (not impossible of course) it is difficult to understand why a story of the banning of a leading tanna like R. Eliezer should have been preserved at all. The Rabbis are not unskilled in protecting reputations: note R. Judah in M. ^c*Eduyot* 5:6 or in TB *Rosh ha-Shanah* 22a.

On objective grounds it seems to me impossible to decide which is the correct reading; indeed, it may well be that we have here survival of two literary traditions. And that which does not speak of “a distance of four ells” may be due to a desire to spare Eliezer’s feelings, as it were, especially at the end of his life. For he had been a very distinguished scholar—according to one view,⁴⁹ the most distinguished of Yoḥanan ben Zakkai’s disciples; a man with a memory that forgot nothing;⁵⁰ an expert in *ṭōhārôt*, *ṭūmē^oôt* and *miqwā^oôt*;⁵¹ from the verse (Exod. 22:17) “Thou shalt not suffer a sorceress to live,” he could derive (! but the verb is *šōneh*) three hundred—maybe three thousand—halakot.⁵² And after his death reverence for his memory increased, especially on the part of R. Joshua, of all people!⁵³ R. Eliezer remains one of the most frequently cited teachers in the Mishnah. And legend will later say that even God quotes him!⁵⁴

Such and several additional statements after his death about his eminence have all the traces of a mixture of fact and eulogy to the permanent frustration of the historian.⁵⁵

48 *ARN*, pp. 80–81. For the expression “at a distance of four ells,” see also TB *Shabbat* 127b (R. Joshua).

49 *Abot* 2:8; *ARN*, p. 58.

50 Loc. cit.; cf. Diogenes Laertius, *Lives of Eminent Philosophers*, 7:37. We might say, I suppose, a man with a “photographic” memory; and maybe this accounts for his clinging to *šēmū^cā*.

51 *ARN*, p. 80.

52 *ARN*, p. 81. Or: all these halakot he had learned (by way of *šēmū^cā*).

53 Cf. TB *Giṭṭin* 83b.

54 *Pesiḳta R.*, ed. Friedmann, 64b. See the story (of more or less similar flavor) about R. Aqiba in TB *Menaḥot* 29b. There may well have been in antiquity a cycle of Moses stories in encounter on high with leading sages.

On R. Eliezer called “R. Eliezer ha-gadol,” cf. *ARN*, pp. 62, 63. See also *Batei Midrashot*, ed. Wertheimer (Jerusalem, 1950), 1:112. (*Gādōl* = rich? Cf. Lieberman in E. S. Rosenthal, *Yerushalmi Neziḳin* [Jerusalem, 1983], 153, n. 1.)

55 E.g., *Cant. R.* 1:3:1 (end), 6c, on R. Joshua kissing the stone which was reserved for R. Eliezer to sit on in his arena-like bet midrash (once again R. Joshua!). And yet this may be a subduced midrash on Ps. 118:22, the stone which the *scholars* (see H. Yalon, *Pirḳē Lāšōn* [Jerusalem, 1971], 123ff., *bônīm*) rejected! (On amoraic *‘eben* [stone, scholar], cf. TB *Ta^canit* 4a, and Rashi s.v. *barzel*.)

And we never escape that. But the conclusion of the story of that last visit, told after Eliezer's death in the language of high praise as is to be expected, includes a necessary detail. We are told that the scholars put questions to R. Eliezer (on problems of cleanness and uncleanness!) and Eliezer's last reply-and-word was "pure." Forthwith R. Eleazar ben Azariah rent his clothes, and came out weeping to the sages and said to them, "Masters, come behold Rabbi Eliezer, for he is in a state of purity for the world to come, for his soul has gone forth pure."⁵⁶ *Tāhōr* is figurative of course and a reference to his last answer, but its meaning here is indubitable. The ban he had been under is now lifted.⁵⁷

To put it all in a few closing sentences. Because R. Eliezer refused to accept the rule *hālākā kimmērūbbīm* but insisted on the exclusive legitimacy of *šēmū^cā* (the past is pattern!)—even though, says the storyteller, he had miraculous support—even so prominent a sage as Eliezer was put under a ban. From now on, as a result of the out-of-joint times, majority opinion determines the rule. The scholars of the academy are to be guided by *šēmū^cā*, but governed by *ʿaḥārē rabbīm*.⁵⁸ But that *ʿaḥārē rabbīm* should have had to be defended so vigorously down into amoraic centuries, as reflected by the account of the banning of R. Eliezer in both Talmuds, is itself commentary on the continuing appeal and hold of *šēmū^cā* within the rabbinic academy.

56 *ARN*, p. 81. "Come" = approach. On "come behold" see also Bacher, *ʿErkē Midrāš*, 6, 157.

57 In TB *Sanhedrin* 68a the exclamation is simply "Released is the vow (*neder*), released is the vow," and the exclamer is R. Joshua. The vow refers to the *niddūy* that he had been put under (cf. Rashi and *Haggadoth Hatalmud* 106d), and perhaps there is a play on *niddūy-neder*. In *Sanhedrin* it is not said "in a state of purity for the world to come." But this hardly affects the point of the story, that R. Eliezer had been under a ban and was now released from it. (For the idiom "gone forth [= terminate] pure," cf. M. *Kelim*, end.) The conclusion in both *ARN* and *Sanhedrin* may also be an attempt to explain why no stone was laid on Eliezer's coffin (cf. M. *Eduyot* 5:5). Note that we have not been told that in the end he accepted the *ʿaḥārē rabbīm* ruling, only that his last word was *tāhōr*. (Is there a muffled echo of the *ʿAkḥay* debate?)

On the exclamation "your body and soul are clean (undefiled)" see also TB *Baba Mešia^c* 86a and TB *Abodah Zarah* 27b.

I feel no difficulty in *niknēsū lēbaqqēr* (a standard expression; see the concordances). The sages could call on him and yet keep the proper distance.

58 *Niddūy* is obviously a disciplinary measure to establish obedience and conformity. And apparently the authorities of the bet ha-midrash are prepared to resort to it, or contemplate resorting to it, in a number of situations, as the examples drawn up in TP *Mo^ced Qaṭan* 3:1 illustrate. It will be invoked therefore against great scholars also. But *niddūy* will be applied or contemplated only against those who still submit to rabbinic authority. There is no *niddūy* pronounced against Elisha ben Abuyah.