

The Legal Methodology of Late Nehardean Sages in Sasanian Babylonia

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By Barak S. Cohen

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PREFACE AND ACKNOWLEDGMENTS

This book consists of a systematic analysis of the halakhic/legal methodology of fourth and fifth century Nehardean amoraim in Babylonia. My analysis of this literature expands upon similar studies that I have published elsewhere concerning the methodology of Babylonian amoraim with whom I do not deal directly here. In those articles I described various distinct characteristics present in the halakhic decision making and source interpretation (Bible, Mishnah, baraitot, and early amoraic statements) ascribed to certain outstanding Babylonian amoraim. I documented how certain amoraim can be characterized as portraying consistent interpretive and legal approaches throughout talmudic literature and that this consistency is most evident in the discourse found in the Babylonian Talmud (Bavli).

Uncovering the methodological characteristics that distinguish some amoraim from other amoraim can aid the talmudic interpreter/scholar in clarifying the legal foundations of their rulings, the proofs that they bring within talmudic discourse, as well as their disputes and interpretations. This is especially significant in cases where such literature is strained or complicated, presenting difficulty to the traditional scholar and modern interpreter alike. My basic claim is that each statement attributed to an amora must be analyzed not only on a point by point basis, but also in light of that amora's broader methodology. This type of analysis occasionally prevents the necessity of attributing what seems to be a strained statement or interpretation to an interpolation made by a later anonymous editor, a "solution" often proffered by modern talmudic scholars.

Besides the aid this type of "broad analysis" provides in interpreting isolated difficult passages, there are other more general benefits as well. For instance, the systematic study of the methodology of the amoraim allows us to better understand the development of the talmudic legal system. Perhaps most significantly, this analysis has considerable consequences as to the reliability of the ascription of amoraic statements in the Babylonian Talmud, which has been questioned throughout the history of modern talmudic scholarship. The fact that different amoraim exhibit distinctive methodological approaches throughout the Talmud, approaches that occasionally sharply contrast with those of

their colleagues, strengthens the general reliability of the ascription of statements in the Bavli. It seems quite unlikely that such a high degree of consistency could be the result of statements being written or constructed by later editors, especially when the distinct dialectics of the amoraim are also documented in traditions ascribed to them in the Palestinian Talmud. Rather, the analysis found in this book strongly suggests that the transmitters of talmudic literature have passed down their traditions in a relatively reliable fashion, even if the level of this reliability does not extend to the very words attributed to the amora.

Turning our attention to the particulars of Nehardea and its sages, our analysis of the methodology of late Nehardean amoraim leads to a reevaluation of some assumptions and theories that have been accepted among modern scholars as to the sources and characteristics of the legal literature produced in Nehardea during the fourth and fifth centuries. For instance, systematic analysis of the halakhic traditions ascribed to late Nehardean amoraim does not support the generally accepted theory that the source of this literature is to be found in early Babylonian halakhah from the pre-talmudic period, or slightly thereafter. Another example is the new light this study brings as to the source of the collection of baraitot found in Nehardea that R. Hoshaya, a third generation amora, regularly quoted.

Perhaps of greatest consequence as to our understanding of Nehardea and its sages, our analysis leads us to reject the tendency among modern scholars to perceive Nehardean amoraim throughout the talmudic period as a “school” with a conservative tendency, tending to rule systematically according to local halakhic traditions which originated with Samuel or R. Nahman. We shall also question the notion that the Nehardean sages can be characterized as focusing more on the interpretation of Mishnah and baraita than their counterparts in Sura and Mahoza. These types of claims, and others which have been suggested by talmudic scholars and historians, will be reevaluated based on the findings that emerge from my systematic analysis of late Nehardean halakhic literature and its comparison with contemporary literature produced in both Babylonia and Palestine.

This book further reevaluates the identity and dating of some of the sages who stand at the center of our discussion. Employing recent research into talmudic terminology and the hierarchical relationship between Babylonian amoraim, I have re-examined a series of assumptions and theories that are found in both medieval geonic chronologies

of the talmudic period and in modern research. This analysis has led to some adjustments in the chronology and identification of a few late Babylonian amoraim.

There are many people to whom I owe a debt of gratitude for their help in writing this book. First and foremost, I wish to thank my father, Professor Avinoam Cohen, for his advice and comments, which have been of inestimable help to me. A special thanks to Professor Yaakov Elman, who read parts of this study and aided me in clarifying many central points discussed throughout this book. On questions of Babylonian geography and history I have been assisted throughout my research by Professor Aharon Oppenheimer. Thank you to Professor Leib Moscovitz—head of the Department of Talmud at Bar-Ilan University—for his advice and helpfulness, always offered with great patience. Dr. Carla Sulzbach, McGill University, also read and commented on a draft of this manuscript—I am thankful for her remarks, references, and pertinent suggestions.

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This book is dedicated to my wife, Mali, for her undivided support, and to my children, Afik, Meir Hayim and Gitit.

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CHAPTER ONE

INTRODUCTION

1. *The Origins of Rabbinic Activity in Nehardea*

The origins of a center of rabbinic activity in Nehardea¹ have been obscure and in dispute since the very beginning of the writing of rabbinic history, with the writing during the geonic period (ninth-tenth centuries, Babylonia) of the two classic chronologies, *Seder Tannaim ve-Amoraim* and the *Epistle of R. Sherira Gaon*.² R. Sherira describes Rav and Samuel as being the sages who originally lead two “yeshivot”³ (Babylonian academies, schools), one in Nehardea and the other in Sura: “and to Rav and Samuel there were two academies (*artin metiva’ata*).”⁴ A similar conception concerning the nature of the centers

¹ Nehardea is located on the northern portion of the Euphrates river, near the Malka river. It has been identified with Tal Nihar, found on modern maps of Iraq opposite Ctesiphon on the Tigris, the Sasanian capital. On the geographical location of Nehardea see: Oppenheimer, *Babylonia Judaica*, 287.

² On the nature and reliability of the chronological information concerning the talmudic period found in *Seder Tannaim ve-Amoraim* and the *Epistle of R. Sherira Gaon* see mainly: Beer, “The Sources of Rav Sherira Gaon’s Igeret” [Heb.], 181–197; Gafni, *The Jews of Babylonia* [Heb.], 239–265; Brody, “On the Sources” [Heb.], 92–95; A. Cohen, *Ravina and Contemporary Sages* [Heb.], 181–182. Goodblatt, *Rabbinic Instruction*, 38, expresses significant doubt concerning the reliability of the talmudic chronologies found in these two works, but in his later work he seems to temper his skepticism. See: Goodblatt, *The Monarchic Principle*, 147, n. 63, and 298. Recently, Gafni demonstrated that we must distinguish between chronological information found in the *Epistle* (and in *Seder Tannaim ve-Amoraim*) which is based on external sources stemming from the amoraic period, and the historiographical narrative which runs through the *Epistle*, whose source is likely to be R. Sherira’s understanding and commentary on the Bavli itself. See: Gafni, “On the Talmudic Historiography in the Epistle of Rav Sherira” [Heb.], 271–296. On our approach as to the reliability of the ascription of amoraic statements found in the Bavli, see below, section 4.2.

³ The terms “yeshiva” or “academy” as I shall use them throughout this book designate some type of institutional learning/instruction that existed in Sasanian Babylonia. The questions concerning the structure and characteristics of these institutions (see below, footnote 14) are not directly relevant to our discussions throughout the book.

⁴ R. Sherira Gaon, *Epistle of R. Sherira Gaon*, 81. R. Sherira does not describe their terms as academy heads with the word “rule” (*malakh*), as he typically does with other academy heads in Babylonia (see: Gafni, “Yeshiva and Metivta” [Heb.], 31–34; Brody, “On the Sources” [Heb.], 99–100). R. Sherira uses the verb “*malakh*” only from

of learning in Babylonian can be found among historiographers of Babylonian amoraim from the geonic period and onward, although these writers do not agree as to the origins of these centers.⁵

In contrast, the author of *Seder Tannaim ve-Amoraim* notes that Rav and Samuel “exercised with authority (*nahagu serara*)” in Nehardea, and ascribes the first actual yeshiva to R. Huna (died in 297),⁶ “and R. Huna’s yeshiva was in Nehardea.”⁷ Both traditions⁸ locate the origins of the first Babylonian academies in the beginning of the amoraic period. They disagree as to the details: whereas R. Sherira claims that such academies existed by the beginning of the third century, during the period of Rav and Samuel, the author of *Seder Tannaim ve-Amoraim* posits a slightly later starting date, at the end of the third century, during the time of R. Huna and R. Hisda.⁹ The lack of accordance on this matter between the different geonic chronologies and the gap of eighty years between the two dates led Moshe Beer to the following conclusion: “Based on these conclusions, it becomes clear that there was no unified tradition during the geonic period as to the beginnings of the Babylonian yeshiva.”¹⁰

Modern scholars have also debated the question of the origins of rabbinic instruction in Babylonia. There are scholars who claimed that rabbinic instruction existed already during the mishnaic period,¹¹ while there are those who pushed off the origins to the period of Rav and

R. Huna’s generation and onward (towards the end of the third century): “and after Samuel, R. Huna ruled (*malakh*) . . .” (*Epistle of R. Sherira Gaon*, 83).

⁵ Concerning the two main theories as to the nature of the yeshivot in Babylonia during the amoraic period see below, n. 14.

⁶ On the date of R. Huna’s death see, *Seder Tannaim ve-Amoraim*, 5; *Epistle of R. Sherira Gaon*, 85.

⁷ *Seder Tannaim ve-Amoraim*, 4. See also the introduction attached to the story of R. Natan HaBavli, of the tenth century in: Neubauer, ed., *Seder Olam Zuta*, 77. Brody demonstrated that the author of this section based his survey upon the *Epistle of R. Sherira Gaon*, and that it should not therefore be regarded as an independent historical source. See: Brody, “On the Sources” [Heb], 102–104.

⁸ In addition to these two stances, there is a third, more radical stance, espoused by Pirqoy b. Baboy, who extends the origins of the Babylonian academies to the exile of Jehoiachin and the beginning of the Second Temple period. See: Lewin, “Geniza Fragments” [Heb.], 395, 402. This claim is obviously polemical and cannot be relied upon as historically accurate. See: Gafni, *The Jews of Babylonia* [Heb], 182; Goodblatt, *Rabbinic Instruction*, 14–15; *ibid.*, “The History of Babylonian Academies,” 822; Stern, “Rabbinic Academies in Late Antiquity,” 223–224.

⁹ See also: Goodblatt, “The History of Babylonian Academies,” 825.

¹⁰ Beer, “The Emergence of the Talmudic Academy” [Heb], 100.

¹¹ See most recently: Oppenheimer, “Battei Midrash in Babylonia” [Heb], 19–29.

Samuel.¹² Other scholars posited that rabbinic activity and instruction developed their foundations gradually, beginning during the period of Rav and Samuel and continuing to grow during the second half of the third century, the period of R. Huna and R. Hisda. This position is based, among other factors, on the appearance of certain terms which carry an institutional connotation [such as: “academy head” (*resh metivta/rosh yeshiva*), *kallah*, *pirka*] in connection with sages of the second half of the third century. According to this view, the existence of these terms strengthens the possibility of some type of development in the formation and solidification of the academies in Sura and Nehardea throughout the third century.¹³ Other scholars have taken an altogether different approach, and suggested that throughout the talmudic period rabbinic instruction took place in small settings, known as “disciple circles”—groups of students centered around one central sage. The structural change that turned these small circles of sages into the academies that clearly existed during the geonic period occurred only during the post-amoraic period, from 500 C.E. and onward.¹⁴

¹² See Goodblatt’s survey, “The History of Babylonian Academies,” 827–828. To Goodblatt’s list, we should add Frankel, “Towards an Introduction to the Talmud,” 106; Hoffman, *Mar Samuel*, 28. Nineteenth century historians and *maskilim* tended to push back the development of centers of Torah learning in Babylonia to the beginning of the talmudic period. In contrast, historians who identified with the emerging Orthodox movement tended to stake the opposite claim, namely that a center of Torah learning in Babylonia was operative from as early as the Second Temple period, and perhaps even earlier. It is clear that both of these tendencies can be tied to the political and religious leanings of the authors, and to the struggle between those historians and intellectuals who placed themselves in the Haskalah/Reform camp and those from the traditionalist/Orthodox camp. See Gafni, “Between Babylonia and the Land of Israel” [Heb.], 213–242.

¹³ See: Brody, “On the Sources” [Heb.], 105–107 and n. 115; Goodblatt, “The History of Babylonian Academies,” 837. See also below, in sections 1.1–1.2

¹⁴ Goodblatt, *Rabbinic Instruction*, 263–285; Goodblatt, “New Developments” [Heb.], 14–25; *ibid.*, “The History of Babylonian Academies,” 830–838; Rubenstein, “The Rise of the Babylonian Rabbinic Academy,” 55–68; *ibid.*, *The Culture of the Babylonian Talmud*, 16–23, 35–38; *ibid.*, “Social and Institutional Settings,” 66–73; Stern, “Rabbinic Academies in Late Antiquity,” 237–238. Concerning the qualitative difference between an educational institution such as a disciple-circle (in the amoraic period) and an “academy for the general public” (from the post-talmudic period and onwards) Goodblatt writes,

By “school” I mean an institution which transcends its principals. It has a staff, a curriculum, and, most important, a life of its own, a corporate identity. Students come and go, teachers leave and are replaced, the head of the school dies and a new one is appointed—the institution goes on. A disciple circle, on the other hand, does not transcend its principals. Disciples meet with a master and

Despite the range of opinions as to the origins of rabbinic activity in the Babylonian academies, all scholars agree that by the first half of the third century some form of instruction took place. However it was organized and whatever its characteristics were it, already existed in Nehardea.¹⁵ Indeed, I have found that from the beginning of the amoraic period there is significant literary testimony as to the existence of a formal learning setting in Nehardea. This testimony centers around two sages who were active during the first half of the third century in Nehardea—R. Shila and Samuel.¹⁶

1.1. R. Shila

The talmudic terminology used in connection with this sage points to his having headed some kind of educational framework, in Babylonia at the beginning of the amoraic period. This evidence is mostly based on the term “of the house of R. Shila” (*devet rav shila/devei rav shila/bei rav shila*)—that is the *bet midrash/study circle* of R. Shila—which is mentioned in both talmudim (twenty-five times¹⁷). In one tradition found in *b. Yoma 20b* and in a parallel in *y. Sukkah 5:5 (55c)* in which R. Shila’s place of study is mentioned, Rav is referred to as the “amora”—one of the official positions in the Babylonian yeshiva during the talmudic period.¹⁸ Even Goodblatt, who considered the Babylonian academies

study with assistants. The group may meet in a special building... but when... the master dies, the disciple circle disbands (Goodblatt, *Rabbinic Instruction*, 267).

In contrast, Gafni perceives the yeshivot as “academies” which consisted of large assemblies of students and were the focal point for the spiritual and religious life of Babylonian Jews in the talmudic period. See mainly: Gafni, “Yeshiva and Metivta” [Heb.], 12–37; *ibid.*, “The Babylonian Yeshiva” [Heb.], 292–301.

¹⁵ This consensus is shared by all scholars mentioned above (including Goodblatt, see below near footnote 19). See also: Bacher, “Nehardea,” 208; Florsheim, “The Establishment and Early Development of the Babylonian Academies” [Heb.], 190–191.

¹⁶ There is no literary testimony that Abuha de-Shmuel (Samuel’s father) served as a rosh yeshiva. Most of the talmudic evidence points to his having acted with some leadership capacity in Nehardea and points to his ties with R. Judah Hanasi (or R. Judah Nesia). See: S. Albeck, *Mishpekhos Soferim*, 21, 25; Hyman, *Toldot Tannaim ve-Amoraim*, 1:13; Weiss, *Dor Dor Vedorshav*, 3:146; Yaavetz, *Toldot Yisrael*, 7:22; Yudolowitz, *Nehardea*, 34–35. In contrast, Halevy, *Dorot Harishonim*, 5:225–228, considered him to have served as an actual rosh yeshiva in Nehardea. However, while the evidence presented by Halevy points to his having had some power within the city, it does not actually prove that he had any institutional position within a yeshiva. As we shall see, such evidence does exist in connection with those amoraim discussed below.

¹⁷ See: Goodblatt, *Rabbinic Instruction*, 137–141.

¹⁸ On the position of “amora” within the yeshiva framework during the talmudic period Gafni, *Babylonian Jewry and Its Institutions* [Heb.], 80 writes, “this is a posi-

to be small disciple circles, concluded from this evidence that a center of learning existed in Nehardea already in this early period:

Some kind of institution also seems indicated by *bē* (R.) Shila... In view of my conclusions regarding the *bē* Rav + MR materials, I incline toward assuming that *bē* Shila does refer to a school or disciple circle.¹⁹

1.2. *Samuel*

There are twenty-five instances in the Bavli (including manuscripts) in which the phrase “It was taught in the house of Samuel” (*Tanna/Tannu/Tannei D’Bei Shmuel*) appears.²⁰ When the Bavli uses the phrase “in the house of Rav X” (*bei rav x*) it refers to the *bet midrash/study circle* at whose head stood Rav X (with the exception of cases in which it is clear that the term refers to a private house²¹).²² In addition, Samuel’s *bet midrash/study circle* is mentioned by two sages, R. Elazar of the second generation (“the house of Mar Samuel”) and R. Nahman of the third generation (“those of the house of Samuel”).²³ Similarly, there are sages

tion parallel to the Palestinian “*meturgeman*,” whose job it was to transmit and make heard the rosh yeshiva’s lesson to the larger audience of those gathered to learn.” For more information on this position see: Rappaport, *Erekh Milin*, 1:208; Dalman, *Aramäische-Neuhebräisches Handwörterbuch*, 22; Levy, *Wörterbuch über die Talmudim und Midraschim*, 1:101; Jastrow, *Dictionary of the Targumim*, 1:76; Sokoloff, *A Dictionary of Jewish Babylonian Aramaic*, 139. Concerning the talmudic evidence as to the formality of this position within the yeshiva framework throughout the talmudic period see: Assaf, *Tekufat HaGeonim Vesifrutah*, 46; Melamed, *An Introduction to Talmudic Literature*, 414; Amir, *Institutions and Titles* [Heb.], 89–95; Albeck, *Introduction to the Talmud* [Heb.], 18; Safrai, “Amora,” 88.

¹⁹ Goodblatt, *Rabbinic Instruction*, 137, 141.

²⁰ *b. Shabbat 12a* (Mss.); *ibid. 35b* (Mss.); *ibid. 54a*; *ibid. 131b*; *b. Erwin 70b*; *ibid. 86a*; *ibid. 89b*; *b. Pesahim 3a*; *ibid. 39b* (3 times); *b. Rosh HaShanah 16a* (Mss.); *b. Yoma 70a*; *b. Sukkah 56b*; *b. Betzah 29a*; *b. Megilah 4b* (Mss.); *ibid. 23a* (Mss.); *ibid. 30a*; *b. Mo’ed Qattan 18b*; *b. Gittin 24b* (Mss.); *ibid. 66a* (Mss.); *ibid. 70b* (Mss.); *b. Bava Metzi’ah 111b* (Mss.).

²¹ The most notable example of such a case is the phrase “X happened upon the house of Y.” In the overwhelming majority of these cases “the house of Y” refers to a private house, and not a *bet midrash* with a formal learning structure. See: A. Cohen, “Towards the Historical Meaning” [Heb.], 61, 63–64.

²² See mainly: Goodblatt, *Rabbinic Instruction*, 149–151; Gafni, “Concerning D. Goodblatt’s Article” [Heb.], 54; Rubenstein, “The Rise of the Babylonian Rabbinic Academy,” 56 n. 6.

²³ *b. Kiddushin 21b*: “R. Nahman said to R. Anan: when you were in the house of Mar Samuel you played a game with tokens?!” *b. Erwin 70b*: “Rava asked of R. Nahman... He said to him: I teach...but those of the house of Samuel teach (*hanei devei shmuel tannu*).” *Ibid. 89b*: “R. Elazar said: when we were in Babylonia we would say... but those of the house of Samuel taught...” (*hanei devei shmuel tannu*). In both cases the tannaitic tradition stemming from Samuel’s *bet midrash* is cited using the term “Those of the House of Samuel [*D’Bei Shmuel*] taught [*tannu*],” where the verb *tannu* appears