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plains that they were Nesi’im. The fact that they are not enumerated among the Zugoth militates against this explanation. On the other hand, Judah Ha-Nasi, who was certainly well acquainted with the history of the Patriarchate, considered them Nesi’im though only by implication. Ber. Rabbah, Chapter 33,3 relates: “Our Master [Judah Ha-Nasi] was very humble and said ‘Whatever a person tells me, I shall do, except that which those of the House of Bathyra did to my ancestor [Hillel],’” i.e., they relinquished their high office (Gedullah) in favor of Hillel. Gedullah here clearly refers to a leadership, such as Hillel held subsequent to the discussion in B. Pes. 66a (and parallels). Here we have the clear-cut statement that “they appointed him [Hillel] as their Nasi.” Yet, the Bene Bathyra could not have been Nesi’im of the same rank as other Nesi’im, since their names are consistently omitted from the chains of the leading transmitters of the Torah, which include the Nesi’im. The most plausible answer to this difficulty is that the Bene Bathyra were only interim leaders, acting presidents, holding office in the Sanhedrin that was established after Herod massacred the members of the Sanhedrin that had tried him.99 Judah Ha-Nasi’s comparison dooms the conjecture that the Bene Bathyra were heads of the Sabbath committee of the Temple.100 Besides, we have no record of the existence of such a committee. Whatever the official standing of the Bene Bathyra may have been, we know even less about their activities, since they left no evidence of achievement.101

ZUG 5: HILLEL AND SHAMMAI, 
BETH HILLEL AND BETH SHAMMAI*

As time went on, Pharisaic Judaism became progressively diversified, some of its groups developing certain theological ideas, and others emphasizing (or de-emphasizing) other aspects of religious life, and life in general.102 One of

the Pharisaic groups projected law and ritual into the foreground of Judaism and Jewish life. This group was destined to develop into Rabbinic Judaism, the Judaism of our day. To understand the foundations of Rabbinic Judaism fully we must examine closely its beginnings in the Pharisaic era, particularly the activities of Hillel, Shammai, Beth Hillel and Beth Shammai, the leadership most responsible for ushering in the period of Rabbinic Judaism.

In order to appraise properly the activities and achievements of Hillel and Shammai, as well as the activities of the schools bearing their names, many questions have to be answered. For instance, what is the relationship between Hillel and Shammai, what are the divergencies between their methods and principles? What are their respective relationships to their schools? Are they but elected heads of schools which existed before their participation, or are they the founders of their schools, or were the schools bearing their names established after their deaths? Were the schools physically separated, or did they convene in joint sessions? How long did they exist? What brought about their termination?

Let us first see what the sources reveal about the motives of Hillel and Shammai, explicit or implicit, in their controversies.

1) M. Nid. I,1 = ‘Eduy. I,1:

Shammai says: For all women it is enough for them [that they be ritually unclean only from] their time [of suffering a flow]. Hillel says: [A woman is unclean] from [the previous] examination to [the present] examination, even if [the interval is of] many days. And the sages say: It is not according to the opinion of either; but [she is unclean] during the preceding twenty-four hours, if this is less than [the time] from [the previous] examination to [the present] examination if this is less than twenty-four hours.

In this controversy, dealing with a phase of defilement by menstruation, Shammai is lenient, Hillel is strict. Tannaitic sources reveal
no motivation for their respective views. A. Schwarz\textsuperscript{104} suggests that Hillel rendered his decision under the influence of the strict attitude of the Persian religion of his native Babylonia but this is a mere conjecture.

The view of the sages (which was accepted as the Halakhah, see B. Nid. 15a) represents the middle road between the respective opinions of Shammai and Hillel.

2) M. 'Eduy. I.2:

Shammai says: [Dough made] from one qav [of flour] is liable to Dough-offering. And Hillel says: Two qavs. And the sages say: It is not according to the opinion of either; but one qav and a half is liable to Dough-offering, etc.

In this controversy, dealing with the Dough-offering Hallah, Hillel is lenient, Shammai is rigorous. Tannaitic sources reveal no motive. Since the Hallah is given to the priest (kohen), Hillel's lenient position is advantageous to the layman, exempting him from giving Hallah when baking a small bread. Shammai's view favors the priest. The third view, as in the previous instance, is a compromise of the sages.

3) M. 'Eduy. I.3:

Hillel says: One hin of drawn water renders the Miqwah [ritual pool] unfit ... And Shammai says: Nine qavs. And the sages say: It is not according to the opinion of either; but when two weavers came from the Dung Gate in Jerusalem and testified in the name of Shemaiah and Avtalion that three logs of drawn water render the Miqwah unfit, the sages confirmed their opinion.

In this controversy, dealing with a certain aspect of the Miqwah, Hillel is rigorous, Shammai is lenient. Ancient sources reveal no motive, and the third view is once more a compromise.

Of particular significance is the latter part of the Mishnah, which
reveals that the sages gave preference to a view related in the names of Shemaiah and Avtalion over the views of Hillel and Shammai. The respective motives are not even investigated. The question now is: Why were Shemaiah and Avtalion preferred? Is it because they were older than Hillel and Shammai? This fact alone does not have much weight, particularly when the view of a younger sage has a better foundation. As we pointed out elsewhere, the authority, based on an official endorsement, gave Shemaiah and Avtalion authority and recognition basically superior to that of Hillel and Shammai.105

4) B. Shab. 17a (Baraita. Parallels indicated, ibid.):

When one vintage [grapes] for the vat [to make wine], Shammai says: It is made fit [to become unclean]; but Hillel says, It is not made fit. Said Hillel to Shammai: Why must one vintage grapes in purity, yet not gather olives in purity? He replied: If you provoke me, I will declare uncleanness in the case of olive gathering too. A sword was planted in the Beth Hamidrash and it was proclaimed, “He who would enter, let him enter, but he who would depart, let him not depart!” And on that day Hillel sat submissive before Shammai, like one of the disciples, and it was as grievous to Israel as the day when the golden calf was made.

In this discussion dealing with an aspect of defilement, Hillel is lenient, Shammai is rigorous. More important than this are the details of our Baraita. To Hillel’s logical objection Shammai replies with a threat. The reference to the sword at the Beth Hamidrash and the prohibition to leave it probably mean, as Rashi ad loc. and others explain, that the matter was to be decided by vote; and therefore, the presence of many sages was sought. This probability becomes almost a certainty if we keep in mind Tos. Shab. I,17, where, after Beth Hillel was defeated by vote, the statement was made as in our case: Hillel’s defeat was as calamitous for Israel as the day on which the golden calf was made.

The following statement presents some ambiguity: “On that day
Hillel was sitting submissively in front of Shammai, like one of the disciples.” If we combine this remark with Shammai’s threat to issue a decree, the inference that Shammai held the presidency at that time is fully justified. The apparent reason for the change in leadership was the defeat of Hillel in this one particular case.

Of equal or perhaps greater significance is the fact that Hillel and Shammai subsequently issued a joint decree—the result of the vote, upholding Shammai. Obviously the defeated party accepted the majority decision.

The Baraitha concludes with the observation that the joint decree had not been accepted (by the people). However, when the same decree was issued by Hillel’s and Shammai’s disciples, it was accepted.

This casual remark sheds light on the type of authority Hillel, Shammai, and their disciples possessed. The effectiveness of their decrees depended on the willingness of the people to accept them. Enforcement was obviously out of the question. The leaders had no executive power. They were not much more than great teachers.

5) The fifth controversy between Hillel and Shammai is the mysterious semikhah dispute in M. Hag. II.2. This is essentially different from the previous cases inasmuch as it is a controversy transmitted from “Pair” to “Pair.” It is the only controversy of this type, and is apparently the shibboleth of two Pharisaic parties. The particular significance of this controversy for our period (the period beginning with Hillel and Shammai) is that this ancient controversy terminates with Hillel and Shammai (or perhaps with Beth Hillel and Beth Shammai).

Let us supplement what we said above and take a closer look at the exigencies of this dispute during Hillel’s time.

B. Bezah 20a adduces two contradictory interpretations, both Baraithoth, in regard to the controversy of Beth Hillel and Beth Shammai which we read in the Mishnah. The first Baraitha is advanced by Rabbi Jose (third generation Tanna); and the other, by R. Josse bar Jehudah (fourth generation). Their interpretations have no particular significance at this stage of our investigation. Of genuine importance is the Baraitha that follows:
It once happened that Hillel the Elder brought his burnt-offering into the Temple Court on a Festival for the purpose of laying hands thereon. The disciples of Shammai the Elder gathered around him and asked: What is the nature of this animal? He replied to them: It is a female and I brought it as a peace offering. Then he swung its tail for them and they went away. On that day Beth Shammai got the upper hand over Beth Hillel and wished to fix the Halakhah according to their opinion. But an old man of the disciples of Shammai the Elder was there named Baba ben Buta, who knew that the Halakhah was in accordance with Beth Hillel, and he sent and brought all the sheep of Kedar that were in Jerusalem and put them into the Temple Court and said: Whoever wishes to lay on hands let him come and lay on hands; and on that day Beth Hillel got the upper hand and established the Halakhah according to their opinion and there was no one there who disputed it.

This Baraitha contains the statement, “on that day Beth Shammai gained the upper hand” over Beth Hillel. This means, no doubt, that they outnumbered Beth Hillel. Why, then, did they not carry out their intention to establish the Halakhah as they saw fit? The answer of the Baraitha is that Baba ben Buta, a Shammaite, knowing that the Halakhah was in accordance with Beth Hillel, brought many sheep to the Temple and gave them away free to anyone who would perform the *semikhah* as required by Beth Hillel. As a result of this action, Beth Hillel won the argument. “There was no longer any person who would object.” This indicates that the *semikhah* controversy had now been settled once and for all. Some individual Shammaites may have continued to adhere to their original opinion,
as indicated by another incident (ibid.). This, however, has no bearing on the problem as such. It is possible that the incident recorded after the report on the ultimate decision actually occurred before that decision.

Tos. *Hag.* II,11,12(236) and P. *Hag.* II,3; 78a offer different versions of the above incident. Yet, on every point of importance they agree with the version of the Babylonian Talmud.

The significance of this passage becomes apparent, if we realize that it reveals the following:

1) Beth Hillel and Beth Shammai already existed during the lifetime of Hillel and Shammai.
2) Beth Hillel and Beth Shammai decided the issue in a joint session, by majority vote.
3) This act terminated the *semikhah* dispute. We hear of no continuation of the *semikhah* controversy.
4) The decision had been prompted by a Shammaite who knew that the Halakhah was in accordance with Beth Hillel. What does this mean? Knowledge of the Halakhah here certainly means knowledge and acceptance of a certain tradition or practice. But was not the *semikhah* dispute the shibboleth of the Zugoth and their respective parties? How could a Shammaite, and subsequently many Shammaites, accept a basic position of the opposition and still remain Shammaites?

During Hillel's time the number of differences between the "Houses," as is well known, increased. Consequently, the *semikhah* question ceased to be the sole dividing issue. One could remain a good Shammaite without adhering to the party view on *semikhah*, which formerly served to divide the parties.

5) This and similar instances indicate that the priests, or high priest, did not regulate all phases of the sacrificial cult. They must have acted, at certain times and instances, as mere practitioners, performing certain duties when called upon. In legislative matters, particularly when referring to actions to be performed by the people (e.g., the *semikhah*, or bringing certain types of sacrifices to the Temple), they obviously refrained from making decisions.

After having pointed to the five instances in which Hillel and Shammai disagree, the question arises: Why does the Babylonian
Talmud say that there were but three cases where Hillel and Sham­
mai disagreed (B. Shab. 15a ff.); and why does the Palestinian Tal­
mud give the number four (Hag. II,3;78a), including the semikhah controversy?

This question, raised already in the Babylonian Talmud (loc. cit.),
had been answered quite satisfactorily, ibid. The semikhah controversy is not counted because it did not originate with Hillel and Sham­mai. Controversy 4 is not counted because Hillel (complying with the majority decision) accepted Shammai’s view in this case.

If the latter reasoning is correct, we have to assume that in the first three cases Hillel and Shammai did not reach an agreement. In fact, we do not find any trace of such agreement. But, why was it not possible to resolve these controversies as was the case in the instances 4 and 5?

It stands to reason that a similar solution was not necessary in these three instances, since the sages, probably the majority comprising members of both parties, adopted rulings differing with both Hillel and Sham­mai and representing compromise solutions. If this is correct, we have to assume that these sages are contemporaneous or nearly contemporaneous with Hillel and Sham­mai, i.e., the views of the sages cannot represent an appreciably later stratum.

A further question that deserves an answer is why does the Gemara not include in its answer to the semikhah controversy the answer given in case 4, since it would be valid here just as in 4?

The Gemara, quite understandably, does not always advance all possible reasons. In addition, none of the versions recording discus­sion and incident leading to the settlement of the semikhah controversy mentions Sham­mai. It stands to reason that Sham­mai was no longer living at that time. Consequently, the answer that Sham­mai conceded to Hillel (corresponding to the answer given in 4) could not be suggested in the semikhah case.

Considering these five controversies, we see that Hillel is lenient in 2 and 4, (in which he ultimately conceded to Sham­mai’s strict decision) and 5. In 1 and 3 he is rigorous. For Sham­mai, the opposite holds true. He is rigorous in 2, 4, and 5, and lenient in 1 and 3. As to subject matter: instances 1, 3, and 4 deal with defilement; Hallah is the subject of 2; and semikhah, of 5.
We see that the five controversies do not permit any inference as to strictness or leniency on the part of Shammai or Hillel. In order to clarify matters further, all the instances in which Shammai or Hillel speak directly, would have to be investigated.

The same holds for the question of whether their decisions were influenced by the subject matter or any other consideration.

Let us now look at the instances where Hillel and Shammai give their respective views, though they do not oppose each other.

6) Mishnah ‘Eduy. I,7
Discussants: Beth Shammai, Beth Hillel, and Shammai. Beth Hillel are most lenient, Shammai most rigorous, and Beth Shammai follow a middle road. The passage does not reveal whether Beth Shammai, opposing Shammai (and Beth Hillel), are contemporaneous with Shammai, or are of a later generation. It shows, nonetheless, that Beth Shammai did not hesitate on occasion to oppose their head. Subject: Defilement

7) M. ‘Eduy. I,8 (=Ma'aser Sheni II,4)
Discussants: Beth Shammai, Beth Hillel, Shammai, R. Akiba. The situation here is similar to that in 1. Inclusion of Akiba’s view demonstrates that the Mishnah is composed of various strata. Subject: Terumah

8),9) M. Kelim XXII,4
Discussants: Beth Shammai, Beth Hillel, Shammai. Tos. Kelim, Bava Bathra 1,12 (591) R. Meir and R. Judah disagree as to the point of difference between Beth Shammai and Beth Hillel. Subject: Defilement. The situation as to leniency, etc. is similar to the above cases cited.

10) B. Pes. 115a
A Baraita records a practice of Hillel. R. Johanan claims that his (Hillel’s) colleagues differ with him and cites a Baraita in support of his claim. As the Baraita does not specify Beth Hillel, the probability is that those whom R. Johanan calls the “colleagues of Hillel” are, in fact, the sages of a later generation. Accordingly, we may have to rule out this passage as being a case of disagreement between Hillel and Beth Hillel.
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In this case, dealing with certain dishes for the Seder, Hillel follows the most literal interpretation of Scripture.

11) B. Bezah 35a

The words of the Baraita הילל לעצמו ראש are ambiguous. They may mean “Hillel himself prohibits it,” “Hillel alone prohibits it,” or “Hillel prohibits it for himself.” If the last translation is correct, the passage reflects the notion that Hillel was more strict toward himself than he was for others. If the second possible meaning, accepted by Rashi, is correct, Hillel stands in opposition to all sages, including Beth Hillel. The implications of the first meaning will be evident after we shall have pointed to the case now following. The subject of this passage is tithe.


We have here three cases obviously similar in principle to those of the Baraita in B. Bezah 35a. The first Tosefta passage is quite clear and informs us that not only Beth Hillel, but also Hillel himself had already made the rigorous decision. Beth Shammai, however, rendered a lenient decision. — The subject is tithe.

15) M. B. M. V,9; Tos. ibid. VI,10; Baraita in P. B. M. V,7; 10d.

In this instance an anonymous (“sages”) view is contrasted with Hillel’s view. The wording of all the versions indicates that the sages were contemporaries of Hillel.

In contrast to the sages, Hillel renders here a rigorous decision. The subject is interest.

15b) Mishnah, ibid. Another rigorous decision by Hillel is unopposed. The subject is interest.

16) B. Pes. 66a and parallels.

This instance is similar to that of 15 inasmuch as Hillel is opposed by the sages in general, not by a particular “House” or Shammai.

Considering all these sixteen controversies, we find that Shammai, participating in nine controversies, is lenient in two of them (1 and 3) which deal with certain aspects of defilement (Niddah and Miqvah). He is rigorous in seven cases: 2, which deals with Hallah; 4, 6, 7, 8, and 9, which deal with certain aspects of defilement; 5, which treats the semikhah problem.

Hillel, participating in twelve controversies, is lenient in four
cases (but in one of these he reverted to Shammai’s view): nos. 2 (Hallah); 4 (defilement); 5 (semikhah); 16 (slaughtering the Paschal lamb on the Sabbath). He is rigorous in seven or eight instances: 1 (Niddah); 3 (Miqwah); 10 (?) (Seder); 11–14 (tithe); 15 (interest).

In five of the sixteen controversies Beth Shammai participate. In 5 (semikhah) they are in agreement with Shammai; in 6–9 they are in disagreement with both Shammai and Beth Hillel.

Beth Hillel participate in the same five controversies as Beth Shammai and are always lenient.

The sages, probably referring to the sages (i.e., majority) of both Houses, are in disagreement with both Shammai and Hillel in cases 1, 2, and 3.

These sixteen controversies in which Shammai and/or Hillel participate are significant because they point in certain directions.

1) Shammai, strict in seven out of nine cases, is justly considered the conservative leader of his time, and is in perfect harmony with his “House.”

2) Hillel is lenient only in four out of eleven or twelve cases. This fact might be taken to indicate that the issue dividing the two parties was not that of conservatism and liberalism, stringency and leniency, but closer inspection shows this conclusion to be false.

The concept of leniency and strictness is often relative: a rigorous decision rendered against one litigant often amounts to a lenient decision for the other.

In talmudic terminology, however, leniency simply means that the possessor of the disputed goods does not have to surrender these goods to the other party; the economic status of the respective parties is not a factor.

In the majority of cases in which Hillel is considered strict, his stand favors the poor over the rich. In 11–14, dealing with Ma'aser, and 15, dealing with interest, Hillel’s favoritism to the poor, with certain boundaries delineated by Torah and tradition, is obvious.

These five cases in which Hillel’s “strict” decision favors the poor are not suitable instances that would point to Hillel’s general attitude as per leniency and strictness. In order to find this general attitude we need more material.
We saw above that Beth Hillel and Beth Shammai existed already during Hillel's and Shammai's lifetimes. Yet, we have very few instances in which Hillel and Shammai participate in controversies in which Beth Hillel or Beth Shammai appear. Does this mean that Beth Hillel and Beth Shammai did not have more controversies during Hillel's and Shammai's time? We see that the Semikhah controversy in M. Be'ah II,4 designating the discussants Beth Shammai and Beth Hillel does not give the name of Hillel. Yet we have evidence—a Baraita in B. Be'ah 20a (and M. Ḥag. II,5)—proving that Hillel was included in “Beth Hillel.” This fact suggests that this was the case in many other instances. In other words, many of Beth Hillel's views were, at the same time, the views of Hillel himself. How often this was the case cannot be determined. However, it is reasonable to assume that this was so in numerous instances. The same holds true for the Halakhoth of Shammai and Beth Shammai, i.e. many views of Beth Shammai are shared by Shammai himself. Halevy even suggests that in all the instances in which Hillel or Shammai are named, they differed with their respective schools, otherwise they would not have been mentioned.¹¹²

The validity of the above view is indicated in some of the cases, e.g., the first three and 6, 9, and 11. It may be true in some of the other cases where matters are not so obvious. In some instances other exceptional circumstances might have caused the explicit reference to Hillel and Shammai. In brief the names of Hillel and Shammai are mentioned only when the situation was exceptional. This fact prompts the inference that normally, i.e., when Hillel and Shammai agree with their Houses, their names would not be recorded. The number of such instances was, undoubtedly, larger than was the number of the exceptions. Of course, we have no means to determine their exact number. I. Halevy’s inference¹¹³ (for which he also uses the fact that, after Shammai, no other head of the party is mentioned, proving for him that none existed) that Beth Hillel and Beth Shammai were on the whole, simply contemporaries of Hillel and Shammai is not merely an exaggeration; it is contrary to the facts as well. We know, for example, that the discussion between Beth Hillel and Beth Shammai on the “Eighteen Matters” took place shortly before the Jewish-Roman war (about 65 c.e.).
We also know that the struggle between Beth Hillel and Beth Shammai for supremacy was fought in Javnch after the fall of the Temple, i.e., several decades after the deaths of Hillel and Shammai.

What we wanted to demonstrate is that, in determining Hillel's and Shammai's respective attitudes as to strictness and leniency, we cannot stop at the instances in which they are mentioned explicitly. These are merely the exceptions. We have to add to these a number (though an unknown number) of views by Beth Hillel and Beth Shammai which include the views of Hillel and Shammai themselves. Under this consideration, Hillel's basically lenient attitude in comparison with that of Shammai must be considered a well-established fact.

Hillel's significance for the history of the Halakhah is evident not merely in his controversies but in other halakhic endeavors as well.

1) Prozbul.

M. Shevi'ith X.3:

"A loan secured by a prozbul is not cancelled by the seventh year. This is one of the things that Hillel the Elder ordained. When he saw that the people refrained from giving loans one to another and transgressed what is written in the Torah" (Deut. 15:9) "Beware that there be not a base thought in thy heart, etc.," Hillel ordained the prozbul.

Ibid. 4: "This is the text of the prozbul: 'I affirm to you, such-a-one and such-a-one, the judges in such-a-place, that touching any debt due to me, I will collect it whenever I will.' And the judges sign below, or the witnesses."
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M. *Git.* IV,3:

"Hillel ordained the *prozbul* for the general welfare." (Cf. also *Sifre* Deut. 113; P. *Shevi‘ith* IX,2;39c; Tos. *Shevi‘ith* VIII,3–10 [72–73]; and Tos. *B.B.* XI,7.)

A legal fiction, perhaps the first one in the history of the Halakah, the *prozbul* effects a fictitious transfer of a private debt to the court. No longer legally a private debt, the obligation is not cancelled by the sabbatical year.

Why did Hillel introduce this Taqqanah? The brief answer "for the general welfare" is but an indication. The more explicit answer in *Sifre* and *M. Shevi‘ith* is unequivocal: The wealthy of Hillel’s time disregarded the biblical warning of Deut. 15:9,10 and would not lend money to the poor shortly before the sabbatical year. In order to induce them to lend money to the poor before the sabbatical year Hillel, through his *prozbul*, permitted a law of the Torah to be disregarded.

The obvious intention of this Taqqanah seems clear. It was introduced in order to help the needy. Nonetheless, other views exist, too, based on the erroneous opinion that Hillel and his descendants were wealthy, therefore he favored the rich. Accordingly, Hillel introduced the *prozbul* in order to help the wealthy. At first glance this seems to be correct, since the *prozbul* protected the money of the wealthy from loss in the seventh year. However, since taking of interest was prohibited, the lending of money was an act of charity, and the poor are the obvious beneficiaries of charity. The *prozbul* made a loan to the poor less risky and, therefore, more acceptable to the wealthy. The wealthy individual was not directly benefited, as his money was more secure in the pre-*prozbul* days, when he refrained from lending money altogether. While helping the needy improves the general economy, and thus indirectly aids the wealthy also, there can be no doubt that Hillel introduced the *prozbul* in order to help the poor, as he said.

2) M. ‘*Arakhin* IX,4: ‘If the last day of the twelve months has come and it was not redeemed, it becomes his for ever, no matter whether he bought it or it was given him as a gift, for it is written,
‘In perpetuity’ (Lev. 25:30). Beforetime the buyer used to hide himself on the last day of the twelve months so that it [the house] might be his forever; but Hillel the Elder ordained that he [the seller] could deposit his money in the Temple Chamber and break down the door and enter, and that the other, when he would, might come and take his money.”

In this Taqkanah Hillel permits a departure from the literal observance of the law (Lev. 25:29-30) in order to protect the right of the seller of a house in a walled city to buy it back on the last possible day in spite of the trickery of the buyer. While this Taqkanah may not conform to the letter of the law, it is in full harmony with its spirit.

3) B. B. M. 104a:

Hillel the Elder used to interpret common speech. For it has been taught: The men of Alexandria used to betroth their wives, and when they were about to take them for the wedding ceremony, strangers would come and kidnap them. Thereupon the sages wished to declare their children bastards. Hillel the Elder said to them, “Bring your mother’s kethuvah.” When they brought them, he found written therein, “When thou art taken for the huppah, be thou my wife.” And on the strength of this they did not declare their children bastards.

In this instance Hillel protects the status of the children against the intent of the sages who wanted to declare them bastards. This he accomplished by a suitable literal interpretation of the text of the kethuvah written in the language of the common people, not in accordance with the prescribed formula (cf. Tosafoth, ibid.). Accepted by the sages, Hillel’s humane interpretation also benefited the mothers, since their marriages to the kidnapers were now legally valid. Whether a controversy preceded the decision is not known. The context shows that the sages here were contemporaries of Hillel, but it does not indicate whether they were Beth Hillel or another group of sages.

4) B. Pes. 66b (Baraita): “It was related of Hillel, as long as he lived no man ever committed trespass through his burnt offering. But he brought it unconsecrated to the Temple Court, consecrated it, laid his hand upon it, and slaughtered it.”
RABBINIC JUDAISM IN THE MAKING

Here Hillel introduced a new practice in order to prevent people from committing a me'ilaḥ — transgression pertaining to their sacrifices. This innovation violated no existing law and apparently met no opposition.

5) Exegesis.

Talmudic sources indicate that Hillel’s significance for the history of the Halakhah is rooted in the fact that he projected text interpretation into the foreground of legalistic methodology. According to P. Pes. VI,1;33a (cf. Tosefta Nega'īm 1,16) the very reason for Hillel’s coming from Babylonia to Palestine was to expound some difficult passages from the Torah.116 His ascent to the presidency of the Academy (Sanhedrin) is attributed to his ability to settle a hotly debated issue: Does the sacrificing of the Paschal lamb (or goat) supersede the Sabbath or not?117 In this debate, Hillel made extensive use of the hermeneutic rules and demonstrated that the conclusion reached by the use of these rules coincided with authoritative tradition.

Hillel was the first Jewish sage officially to introduce a system of hermeneutic rules, seven in number.118 The rules were not original with him. Some of them were employed already in the Bible, all of them had been in use among the learned men of the Roman Empire.119

The use of exegesis in general and hermeneutic rules in particular shows a peculiar line of development. It is prominent at the beginning of Hillel’s career but slackens later and plays a minor role until the destruction of the Temple. In the second century C.E. exegesis becomes most important. What might be the reason for this?

After Herod’s massacre of the sages of the Sanhedrin that tried him, the surviving sages established an unofficial Sanhedrin which, at the beginning, had the character of an academy and lacked the backing of the political authorities. Therefore, to direct Jewish life effectively, the leaders of Judaism needed a new source of authority. Hillel demonstrated that the hermeneutic rules applied to the Torah could provide this new authority. However, the broad application of these rules, being new, met natural resistance, as is so often true, particularly in the realm of religion. Also, expanded use of the
hermeneutic rules became unnecessary as the power of the Sanhedrin increased after Hillel, even to the extent of possessing jurisdiction in (certain) capital cases, rendering exegesis unimportant as a source of authority.

However, after the destruction of the Temple and the termination of the authoritative Sanhedrin, exegesis became of paramount importance. The authority of the Beth Din Ha-Gadol, the successor to the Sanhedrin, was based on its spiritual stature. Its limited power was insufficient for introducing all the changes necessitated after the destruction of the Temple. The limited power of the Nasi and the Beth Din Ha-Gadol was now supplemented by the unlimited realm of exegesis.

Just as the designation Beth Hillel often includes Hillel himself, the designation Beth Shammai likewise often includes Shammai himself. This fact is an additional indication as to Shammai's strict position, though the instances in which Shammai is explicitly mentioned already point to his rigorous (or conservative) attitude. In view of all the facts and indications cited, one must reject L. Ginzberg's thesis that it is erroneous to consider Beth Shammai as generally strict, Beth Hillel as lenient.120

The fact that social and economic implications often played a role does not refute the existence of strictness and leniency as decisive motives in many cases. The fact that Beth Shammai were conservative and Beth Hillel liberal, a fact which Ginzberg recognizes,121 naturally suggests that Beth Shammai were more strict than Beth Hillel. Shammai's personal strictness is well documented, even in halakhic matters, see, e.g., Tosefta Yoma V(VI),2: "It happened that Shammai the Elder wanted to feed his child [on Yom Kippur] with one hand, but the [sages] prevailed upon him that he fed him with both hands." Mishnah Sukkah II,8 states: "Minors are exempt from [the law of] the Sukkah. . . . The daughter-in-law of Shammai the Elder once bore a child; and he broke away some of the roof-plaster and made a Sukkah roofing over the bed for the sake of the child."122

Ginzberg stresses the role of intention and asserts that, according to Beth Hillel, an act not accompanied by intention is not to be
considered an act, while Beth Shammai hold that deed is more important than thought. He claims that there are at least fifty controversies of this kind and gives a few examples.\(^{123}\) Tchernowitz points to a few controversies in which just the opposite is true.\(^{124}\) The fact is that it is the nature of the liberal halakhist to interpret the law more freely, particularly when he has its applicability in mind. This was precisely the reason why Beth Hillel several times departed from the literal meaning of the text of a law to reinterpret it in the light of their time. The method of this reinterpretation varied with circumstances. Occasionally, the intent of the law was used as a means if it served the purpose, although this did not occur as often as Ginzberg would like to have it. Most of Ginzberg’s explanations are forced and unacceptable, leaving but a small number of cases where intention may have been the decisive factor. On the other hand, Beth Shammai, being conservative, more often interprets literally, which perforce curtails the use of methods which uproot the literal meaning of the text. For this reason, Beth Shammai, in contradistinction to Hillel, do not make use of legal fiction. Hillel’s liberalism is evident in the fact that he introduces practices in vogue in Alexandria. Beth Hillel’s consideration for the needs of the time is also obvious when we keep in mind that they abrogated old laws מפור את חוק העולות “for the welfare [or betterment] of the world.”\(^ {125}\)

Although the traditional notion claiming that Shammai–Beth Shammai are in general rigorous while Hillel–Beth Hillel, on the other hand, are more lenient, is, as we have seen, well established, there are still questions to be answered. Why are Shammai–Beth Shammai rigorous? Why are Hillel–Beth Hillel lenient? Why do Beth Hillel revert occasionally to Beth Shammai’s view, but hardly ever vice versa? Why do, in a number of instances, Beth Hillel hold the rigorous views, Beth Shammai, however, the lenient ones?

It is certainly true that the conservative and the liberal sections of the Pharisees, which alternated in the leadership during the period of the Zugoth, were represented later by Beth Shammai and Beth Hillel. It is also known that Shammai and his followers were wealthier than the average number of the opposite faction. This is a factor of influence on the unconscious level. Also, a minority party, by its nature, is an opposition party. Some of Beth Shammai’s
views cannot be explained as being anything but an expression of opposition at all costs. Furthermore, an opposition party does not always have to cope with reality, since the majority view is the Halakhah to be followed even by the minority party. B. Yev. I4a even advances a controversy as to whether or not Beth Shammai ever followed their own decisions (see page 115). Already the Tosefta informs us that in spite of the marked divergence between Beth Shammai and Beth Hillel in regard to marriage laws, Shammaites would not in practice refrain from marrying Hillelites and vice versa. Such practices would have been impossible if both schools had adhered rigidly to their own views.

Since the “Sanhedrin” of this period had for decades, only the character of an academy, without power to enforce its decisions, individuals of both Houses occasionally disregarded them and continued to follow practices rejected by the joint meeting of the Houses. Some would not hesitate on occasion to follow practices suggested by the opposition, though contrary to the practice endorsed by their own party. The significance of this point will be discussed later, when we define the party lines.

Let us now turn to the strange phenomenon that in a number of instances Beth Hillel reversed their original opinion, accepting Beth Shammai’s view. Beth Shammai, however, hardly ever reversed their stand in favor of Beth Hillel. References:


In this case, involving the Agunah problem, Beth Hillel, originally rigorous, later accepted Beth Shammai’s lenient view. The divergence is rooted in a different interpretation of a past incident. Beth Hillel limits the law to a case analogous to the incident, whereas Beth Shammai considers the incident as a precedent, applicable to parallel cases. A reversal by Beth Hillel was not difficult in view of their generally liberal tendency.

Tosefta, ibid. I,6b adds an insignificant supplement to Beth Shammai’s reasoning.

2) Mishnah, ibid., 12b.

This Mishnah deals with another phase of the same discussion, whether the above woman should receive the kethuvah money. Beth
Hillel, originally, refused her the *kethuvah* but were convinced by Beth Shammai’s reasoning based on the text of the *kethuvah* document.\(^{127}\)

3) Mishnah, ibid. 13.

The subject is the plight of the half-slave. Beth Hillel reverse their legally correct but less humane view in favor of Beth Shammai’s more humane solution of the problem.


In this case of defilement, Beth Hillel reverse their original, more lenient view in favor of Beth Shammai’s more cogent logic.


This Mishnah differs from the passages above in that it does not give the controversy between Beth Shammai and Beth Hillel. First, it advances an anonymous view, then asserts that Beth Hillel reversed their stand in favor of that of Beth Shammai. The two detailed parallel passages, Tosefta, ibid. V,11,12 and a *Baraita* in *Hag* 22b, neither give the controversy as one conducted between Beth Shammai and Beth Hillel, nor contain the clause "Beth Hillel reversed their stand, etc." According to these sources, the dispute involved a disciple of Beth Shammai and Rabbi Joshua and took place outside of the *Beth Hamidrash* and at a time when Beth Hillel and Beth Shammai no longer existed. We have discussed this matter elsewhere.\(^{128}\) Later we shall have to elaborate somewhat more on this instance, but for the time being it is sufficient for us to show that this instance is properly omitted in discussing occasions on which Beth Hillel reversed themselves and adopted the view of Beth Shammai.

6) Mishnah *Kelim* IX,2.

In this case of defilement, Beth Hillel, originally lenient, revert to Beth Shammai’s strict rule. Commentaries point to the better logic behind Beth Shammai’s view as the cause for Beth Hillel’s change of mind.

When we sum up the above instances, the following becomes evident: Beth Hillel abandoned their decisions in a few instances and accepted Beth Shammai’s rulings when Beth Shammai’s views had a more humane character or when Beth Shammai’s views were based on superior reasoning.
Yet, how shall we understand the fact that there is no instance related in which Beth Shammai reversed themselves in favor of Beth Hillel?

The absence of such instances in the tradition is no evidence to the effect that such a change never occurred. Yet, even if it did occur, it had no significance. Since the Halakhah was decided by the majority, a change of mind by the minority group, i.e., Beth Shammai, could have no consequences. The Halakhah followed the majority no matter whether the minority changed its stand or not. Therefore, there was no point in recording instances in which Beth Shammai might have reversed themselves. On the other hand, Beth Hillel's reversal was significant for the establishment of the Halakhah. The semikhah controversy might be adduced as an instance where Beth Shammai abandoned their original stand in favor of that of Beth Hillel, but this case is essentially different from the above cases because of unusual circumstances.

The next question to be discussed here is why, in a number of instances, do Beth Shammai take a lenient point of view, whereas Beth Hillel are rigorous? Does this mean that there is something wrong about the notion that Beth Shammai are rigorous while Beth Hillel are lenient?

Adolf Schwarz devoted an entire book to this subject. Unfortunately, Schwarz concentrates his acumen on one phase only, on the methodological one, disregarding other aspects almost completely. His conclusion is, therefore, dictated by forcing this one aspect even where it may not apply. He goes so far as to fabricate his own gezeroth shawoth, etc., in order to “prove” that a respective leniency of Beth Shammai and strict decision of Beth Hillel is based on methodological grounds. Whereas in a few instances his keen conjectures might reflect the actual reason for the difference between Beth Hillel and Beth Shammai, in no case can such conjecture be considered as a fact. For this reason we deem it necessary to investigate other aspects besides methodology. We have to bear in mind that in practical decisions of Halakhah exegetical considerations were mostly secondary, having no other functions than to justify and endorse certain ways and practices. Exegetical methods
were the tools for carrying out legislation in an indirect way, when direct legislation was impossible.

Let us now point to the instances in which Beth Shammai are lenient while Beth Hillel appear to be rigorous.

I

1) M. ‘Eduy. IV,1a; Bezah I,1a:

"If an egg was laid on a Festival-day Beth Shammai say: It may be eaten. And Beth Hillel say: It may not be eaten." The subject matter (egg laid on a holiday) is relevant to Yom Tov. There are no economic implications.

2) Ibid. 1b:

"Beth Shammai say: An olive’s bulk of leaven and a date’s bulk of what is leavened. And Beth Hillel say: An olive’s bulk of either.” The subject matter (leaven and what is leavened) is pertinent to Passover. There is no apparent economic implication.

3) M. ‘Eduy. IV,2:

"If a man slaughtered a wild animal or a bird on a Festival day, Beth Shammai say: He may dig with a mattock and cover up the blood. And Beth Hillel say: He should not slaughter unless he had earth set in readiness.” The situation is similar to the above cases. The subject matter (slaughtering of a wild animal or a bird on Yom Tov when no material has been readied before Yom Tov to cover the blood) is relevant to Yom Tov. No economic implications are apparent.

4) Ibid., 3a:

"Beth Shammai say: If produce is proclaimed ‘ownerless’ for the benefit of the poor, it is [legally] ownerless [and tithe free]. And
Beth Hillel say: It can only be ownerless if it is made ownerless also for the rich as in the Sabbatical Year.”

The subject matter (produce proclaimed ownerless) is relevant to charity. The economic implication is the following: theoretically Beth Shammai is more favorable to the poor; practically, however, there is hardly any difference. Charity, which is made available to both rich and poor, is normally accepted only by the poor.

5) Ibid., 3b:

“If the sheaves in the field was each of one qav’s weight but one was of four qavs, if this one was forgotten Beth Shammai say: It may not be considered a Forgotten Sheaf. And Beth Hillel say: It may be considered a Forgotten Sheaf.”

The subject matter (forgotten sheaf) is charity. The economic implication is: Beth Shammai’s leniency favors the owner of the land; Beth Hillel’s stringency promotes the interests of the poor.

6) Ibid., 4 and Peah VI,2:

“If a sheaf lies near to a wall or to a stack or to the oxen or to the implements, and is forgotten, Beth Shammai say: It may not be deemed a Forgotten Sheaf. And Beth Hillel say: It may be deemed a Forgotten Sheaf.”

The situation is the same as above.

7) Ibid., 5a:

“Beth Shammai say: The rules of the [Added] Fifth and of Removal do not apply to [the grapes of] a Fourth Year Vineyard. And Beth Hillel say: They do apply.”

The subject matter (added fifth and removal in regard to the grapes of a fourth year vineyard) is charity. The economic implication is as above.

8) Ibid., 5b:
“Beth Shammai say: The laws of grape-gleanings and of the defective cluster apply, and the poor redeem the grapes for themselves. And Beth Hillel say: The whole yield goes to the winepress.”

The subject is (grape-gleanings and defective cluster) charity. The economic implication is: Beth Shammai are more favorable to the poor than Beth Hillel. The matter has other aspects as well, such as Qodashim and Yom Tov.

9) Ibid., 6a:

“A jar of pickled olives, according to Beth Shammai, need not be broached. And Beth Hillel say: It must be broached.”

The subject is defilement. There are few if any economic implications.

Tosefta II,2 cites an incident in which a Shammaite followed the Hillelite Halakhah.

10) Ibid., 6b. Cf. also Tosefta II,2:

“If a man anointed himself with clean oil and then became unclean, and he went down and immersed himself, Beth Shammai say: Even though he still drips [with oil] it is clean. And Beth Hillel say: [It is unclean so long as there remains] enough to anoint a small member.”

The situation is the same as above.

11) Ibid., 6c:

“And if it was unclean oil at the outset, Beth Shammai say: [It remains unclean, even after he has immersed himself, so long as there remains] enough to anoint a small member. And Beth Hillel say: So long as it remains a moist liquid. R. Judah says in the name of Beth Hillel: So long as it is moist enough to moisten something else.”

The situation is the same as above.

12) Ibid., 7a:

The situation is the same as above.
“According to Beth Shammai, a woman is betrothed by a denar or a denar’s worth. And Beth Hillel say: By a perutah or a perutah’s worth.”

The subject is marriage (betrothal). The economic implication is that Beth Hillel are more lenient, while Beth Shammai are more stringent.

13) Ibid., 7b:

“Beth Shammai say: A man may divorce his wife with an old bill of divorce. And Beth Hillel forbid it.”

The subject is marriage (divorce). The economic implication is difficult to determine. Beth Hillel protect the marriage and the woman’s interests better than do Beth Shammai. Beth Shammai is more favorably inclined toward the interests of the man, who economically is usually stronger than the woman.

14) Ibid., 7d:

“Beth Shammai say: She does not need another bill of divorce from him. And Beth Hillel say: She needs another bill of divorce from him.”

The subject is marriage (divorce). The situation is as above: Beth Hillel’s position protects moral principles more effectively than does that of Beth Shammai.

15) Ibid., 8: = Yev. I,4:

“Beth Shammai permit levirate marriage between the co-wives and the surviving brothers. And Beth Hillel forbid it. If they perform haliẓah Beth Shammai declare them ineligible to marry a priest, but Beth Hillel declare them eligible. If they had been taken in levirate marriage, Beth Shammai declare them eligible but Beth Hillel declare them ineligible.”

The subject is marriage (levirate). Beth Hillel are basically strict, while Beth Shammai are lenient, though as to the consequences,
Beth Hillel is lenient in a particular case. Beth Hillel’s strict position is advantageous to the woman.

16) Ibid., 9. Same as Yev. III, 5:

“If there were three brothers, two married to two sisters, and one unmarried, and one of the married brothers died, and the unmarried brother bespoke the widow, and then his second brother died, Beth Shammai say: His [bespoken] wife abides with him and the other is free as being his wife’s sister. And Beth Hillel say: He must dismiss his [bespoken] wife both by bill of divorce and by halizah, and his brother’s wife by halizah.”

The subject is marriage (levirate). In this specific case Beth Hillel’s strict position weakens the bond of the levirate tie. This is in line with the above observation: weakening of the levirate tie is, in principle, a strengthening of the status of the woman.

17) Ibid., 10a:

“If a man vowed to have no intercourse with his wife Beth Shammai say: [She must wait] two weeks. And Beth Hillel say: One week.”

The subject is marriage (vow, divorce). Beth Shammai’s leniency favors the husband; Beth Hillel’s “stringency” grants greater protection for the rights of the woman.

18) Ibid., 10b:

“If a woman miscarried on the night of the eighty-first day, Beth Shammai declare her exempt from an offering. And Beth Hillel declare her liable.”

The subject is sacrifice (subsequent to a miscarriage in a very specific case).

In the economic area, Beth Shammai are lenient. According to Schwarz (op. cit., p. 61), the controversy is the consequence of a difference in phrasing Lev. 12:6.
19) Ibid., 10c:

“Beth Shammai declare a linen garment exempt from the law of the Fringe. And Beth Hillel declare it subject to the law.”

The subject is ritual (fringes on a sheet). In economic terms, Beth Shammai’s leniency is more advantageous to the rich, who have more sheets than the poor.

20) Ibid., 10d:

“A basket of fruit intended for the Sabbath Beth Shammai declare exempt [from tithes], and Beth Hillel declare it liable.”

The subject is tithe. Beth Shammai’s leniency favors the owner of the fruit crop.

21) Ibid., 11a. Nazir III,6:

“...and afterward came to the Land [of Israel], Beth Shammai say: He needs to be a Nazirite for thirty days [more]. And Beth Hillel say: He must be a Nazirite as from the beginning.”

The subject is Nazirdom. There is a minor economic implication: Beth Shammai’s stand is advantageous to the wine producer (and dealer), but it is doubtful if Beth Shammai had this point in mind. Schwarz (op. cit., p. 64 ff.) attempts to prove that Beth Hillel’s opinion was the result of their progressive attitude, whereas that of Beth Shammai is rooted in their conservatism.

22) Ibid., 11b = Nazir III,7:

“If two pairs of witnesses testified of a man, and the one testified that he had vowed two Nazirite vows, and the other that he had vowed five, Beth Shammai say: Their testimony is at variance, and the Nazirite-vow cannot be held binding. And Beth Hillel say: The
two are included within the five, so that he must become a Nazirite for two periods.”

The subject is Nazirdom. The situation is as above (except for Schwarz’s interpretation).

23) Ibid., 12:

And two are included within the five, so that he must become a Nazirite for two periods.”

The subject is Nazirdom. The situation is as above (except for Schwarz’s interpretation).

23) Ibid., 12:

“..."If a man was put there below the split, Beth Shammai say: He does not give passage to the uncleanness. And Beth Hillel say: A man is hollow, and his upper part gives passage to the uncleanness.""

The subject is defilement. Even Schwarz admits (ibid., p. 69) the futility of an attempt to find the true reason for the difference between Beth Shammai and Beth Hillel in their text interpretation.

Since Tosefta ‘*Eduy.* II,2a claims that there are twenty-four controversies in which Beth Shammai are lenient while Beth Hillel are rigorous, though the Mishnah lists only twenty-three, attempts have been made to find the twenty-fourth such controversy. Schwarz thinks that the twenty-fourth controversy appears in Tosefta II,2b (ibid. 69 ff.). It is omitted in the Mishnah, he believes, because Rabbi (*Nazir IV,6*) incorporates only the view of Beth Hillel in an anonymous form. Since the main purpose of the Tosefta is to supplement the Mishnah, and II,2b is given in conjunction with II,2a, there can be little doubt, at least in the opinion of the Tosefta compiler, that II,2b is the twenty-fourth controversy in our category. It may have been omitted in the Mishnah, since formally (though not in effect) Beth Shammai are rigorous, whereas Beth Hillel appear to be lenient.

The subject here is Nazirdom.

II

In addition to the above list, individual Tannaites cite controversies of Beth Shammai and Beth Hillel in which the former are lenient and the latter strict.

Rabbi Judah transmits the following controversies:

1) M. *Eduy.* V,1b.

The subject is defilement.

The controversy is not repeated in the Mishnah (as are most of
the above controversies), but is cited in the Gemara as a Baraita in Shabbath 77a with the supplement of Tosefta 'Eduy. II,5.

2) Ibid., 1c.

The subject is ritual law (food, "egg of a Nevelah"). In the economic aspect, Beth Shammai are lenient. Talmudic sources give no reason for the difference of opinion.

3) and 4) Ibid. 1d; These are repeated, without the transmitter, in Niddah IV,3.

The subject is defilement (gentile woman and Jewish woman afflicted with leprosy).

5) Ibid. 1e (cf. Shevi‘ith IV,2 and Sifra Behar on Lev. 25:6). The subject is fruits of the sabbatical year.

6) Ibid. 1f.

The subject is defilement. Even Schwarz (ibid., p. 82) admits that the difference cannot be based on hermeneutics or other text interpretation.

III

R. Jose transmits the following controversies:

1) M. 'Eduy. V,2a.

The subject is food law (whether fowl and cheese may be placed on the same table). Both Beth Shammai and Beth Hillel agree that they could not be eaten together. Schwarz (ibid., p. 83) suggests that our controversy is rooted in the question of whether the biblical prohibition of basar behalav (meat with milk) includes the meat of fowl or not. Beth Shammai's leniency is the consequence of their opinion maintaining that the biblical prohibition does not include the fowl whereas Beth Hillel hold that it does.

2) Ibid., 2b.

The subject is Terumah. Beth Shammai's leniency favors the owner of the crop. According to the version transmitted anonymously in Mishnah Terumoth 1,4 Beth Shammai and Beth Hillel agree as to the law in principle (lekhathillah) and differ merely as to an ex post facto situation (bediavad) (cf. Tosefta Terumoth III,14, p. 29).

3) Ibid., 2c = Kil. IV,5.
The subject is *Kil'ayim*. Beth Shammai’s stand favors the owner of the crop.


The subject is *Ḥallah*. Beth Shammai’s position favors the owner of the dough at the expense of the priest.


The subject is defilement.


The subject is proselytism with an aspect of defilement in regard to the Paschal sacrifice. Beth Shammai’s leniency favors the proselyte. According to *Pesahim* 92a, the Hillelites’ stringency represents a “fence,” a *gezerah*. Schwarz (ibid., pp. 89–90), suggests, instead, a *gezerah shawah* of his own creation and considers it as the true reason for Beth Hillel’s position. *P. Pes.* VIII,8; 36b advances a difference in the interpretation of Num. 31:19 (not a *gezerah shawah*), as the reason for the controversy.

IV

R. Yishmael (or R. Simon) relates the following controversies:

1) *M. 'Eduy.* V,3b; *Yad.* III,5.

The subject is whether *Qoheleth* defiles the hands or not, i.e., whether it is part of the Canon or not. Beth Shammai think it should not belong to the Canon. Even Schwarz (p. 91) admits that here no hermeneutics or any other type of exegesis is involved.


The subject is defilement.


The subject is defilement. Beth Shammai’s position is somewhat advantageous to the owner.

4) *Ibid*.

The subject is a tithe. Beth Shammai’s stand is advantageous to the owner of the crop.

V

R. Eliezer transmits the following controversies:

1) *M. ‘Eduy.* V,4; *Niddah* IV,3.

The subject is defilement. Schwarz (ibid., pp. 94 ff.) refutes
Geiger’s theory given in *He-Chaluz* VI,28 ff. that the reasoning of the Shammaites is similar to that of the Sadducees, Samaritans, and Karaites in the matter.

2) Ibid., V,5.

Beth Shammai are lenient in the matter of *Yibbum*. Tosefta II,9 (458) = *Yev.* V,1 (245) is a parallel to our Mishnah with certain additions: Of particular interest among these is that R. Simon agrees with the Shammaitic view (cf. P. *Yev.* III,1; *Yev.* 28a).

### VI

Other exceptions are as follows.

1) Schwarz (op. cit., p. 99) points to a Baraita in B. *Yoma* 80a (cf. Mishnah VIII,2) which should have been listed among the leniencies of Beth Shammai, etc., but was not. The Gemara eliminated the difficulty by resorting to a forced interpretation.

The subject is ritual (drinking on Yom Kippur).

2) *M. Ket.* VIII,1.

The subject is certain property rights in marriage.

P. T. ad loc. and P. *Peah* VI,2; 19bc consider this case one of the leniencies of Beth Shammai, etc. Why, then, is it not enumerated among the twenty-four cases, asks the Gemara. The Talmud answers: because Beth Shammai’s leniency toward the wife is, at the same time, a disadvantage to the husband. Subsequently, the Gemara observes that this was also the case elsewhere among the listed cases.


This is related by R. Eliezer ben Jacob.

The subject is sacrifice.

Gemara ibid. 38b points out there is also an aspect of leniency on Hillel’s side, etc.

4) Baraita in B. *Bekhor.* 30b.

The subject is acceptance of an *am haarez* as a *haaver*.

The Talmud makes an emendation which reverses the situation.

5) *M. Ohaloth* II,3.

The subject is defilement.

It is not at all certain that this controversy is, in fact, one in which Beth Shammai are lenient, etc. This would be the case merely under
special circumstances. Tannaitic sources do not claim that this is a
case of our category.

6) M. *Ohaloth* II,3.
The subject is defilement.

According to *Hul.* 42b the situation as to leniency and strictness
is reversed if applied to *terefuth* instead of defilement. So we cannot
speak of Beth Shammai's leniency as absolute. Again, no tannaitic
source claims that this case belongs in our category.

7) Baraita in *Hul.* 104b.
The subject is a food law (meal with milk).

The *Talmud* wonders why this case was not enumerated among
Beth Shammai's leniencies etc. Schwarz (op. cit., p. 104) shows that
there is genuine doubt whether Beth Shammai actually are more
lenient, etc. Tannaitic sources do not support the Gemara's sugges-
tion.

8. In B. *'Arakhin* 27b, the Gemara cites a Baraita (cf. Mishnah
VIII,3). In the course of a discussion, a text manipulation leads to
the objection that now there is a case of Beth Shammai's leniency
etc. Subsequently the matter is straightened out so that no leniency of
Beth Shammai is present. No tannaitic source designates this in-
stance as one belonging to our category.

The subject is Qodashim.

Schwarz (op. cit., pp. 105 ff.) discusses numerous controversies
between Beth Shammai and Beth Hillel which some commentators
place in our category. He succeeds in showing that these suggestions
have no solid basis.

What do the above instances indicate?

The cases in which Beth Shammai are lenient and Beth Hillel
are rigorous are limited in number. According to a tannaitic tradi-
tion, they are only twenty-four, but the actual list is larger. The rea-
son appears to be the same as in the case of the 613 commandments
of the *Torah*. When Rabbi Simlai transmitted the number of the
commandments, he failed to enumerate them. The result was disa-
greement among the sages as to the way of counting them, since
a simple counting would not result in 613. Similarly, there was a
tradition that the number of controversies in with Beth Shammai
took the lenient position in opposition to Beth Hillel was twenty-four. Yet, obviously, the originator of this tradition failed to specify and transmit the controversies, which resulted in disagreement among the sages of successive generations. The Mishnah redactors first present a list of twenty-three controversies (supplemented in the Tosefta by the twenty-fourth case), transmitting it anonymously, thus making it the "official" (accepted) list. Then they add the traditions of individuals. This is in line with redactorial activities of the time. In this connection, we must raise the following question: What is the reason for the difference in the listing?

In many of the instances listed here, leniency and strictness are a relative matter. A decision or law which favors one of the parties concerned often affects the other party adversely. Consequently, whether a case should be included in our category or not often will depend on the viewpoint of the individual. Therefore, cases which have aspects of both leniency and strictness ought not to be included in the list of exceptions. This holds true particularly for the cases in which Beth Shammai's "leniencies" favor the owner of property to the detriment of a poorer person, cases which constitute approximately one third of the instances listed as leniencies of Beth Shammai. Only very few of Beth Shammai's leniencies show a tendency unfavorable to the wealthy. These may have originated at a later period, when the economic advantage of the (leading) Shammaites vanished.

The tabulation of the controversies considered gives the following picture:

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Economic aspect, if any</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Festival</td>
<td></td>
</tr>
<tr>
<td>2. Festival</td>
<td></td>
</tr>
<tr>
<td>3. Festival</td>
<td></td>
</tr>
<tr>
<td>4. Charity</td>
<td>Theoretically, Beth Shammai favor the poor; practically, little consequence.</td>
</tr>
<tr>
<td>5. &quot;Charity&quot; (forgotten sheaf)</td>
<td>Beth Shammai favor the owner of the land.</td>
</tr>
<tr>
<td>6. As in 5</td>
<td>As in 5.</td>
</tr>
</tbody>
</table>
8. "Charity" (grape-gleanings and defective clusters, also an aspect of *Qodashim*)

9. Defilement

10. Defilement

11. Defilement

12. Marriage (betrothal)

13. Divorce

14. As in 13

15. Levirate

16. As in 15

17. Divorce, Vow

18. Sacrifice

19. Fringes (*Sadin bezizith*)

20. Tithe

21. Nazirate

22. As in 21

23. Defilement

24. Nazirate

II (R. Juda's traditions)

1. Defilement

2. Food—Law

3. Defilement

4. Defilement

5. Fruits of the sabbatical year

Beth Shamai more favorable toward the poor.

In an economic consideration, Beth Hillel more lenient than Beth Shamai.

Beth Hillel protect marriage and the woman's interests better than Beth Shamai. Let us keep in mind that usually the woman is the weaker partner in economic matters.

As in 13.

Beth Hillel's stringency is favorable to the woman.

As in 15.

Beth Shamai favor the husband, i.e., the economically stronger partner.

In an economic consideration, Beth Shamai are lenient.

In an economic consideration, Beth Shamai are favorable toward the wealthy.

Beth Shamai favor the owner of the crop.

Beth Shamai's position is favorable to the wine producer-dealer.

As in 21.

Beth Shamai are lenient concerning the economics involved.
Subject Matter

6. Defilement

III (R. Jose’s traditions)
1. Food — Law
2. Terumah
   Beth Shammai’s position favors the owner of the crop.
3. Kil‘ayim
   As in 2.
4. Hallah
   Beth Shammai’s position favors the owner of the dough.
5. Defilement
6. Proselyte
   Beth Shammai’s leniency favors the proselyte.

IV (R. Yishmael [or R. Simon]’s traditions)
1. Canonicity of Qoheleth
2. Defilement
3. Defilement
   In an economic consideration, Beth Shammai’s position is somewhat advantageous to the owner.
4. Tithe
   Beth Shammai’s position is advantageous to the owner of the crop.

V (R. Eliezer’s traditions)
1. Defilement
2. Levirate

VI (Other “exceptions”)
1. Yom Kippur
2. Property rights in marriage
3. Sacrifice
   In economics, Beth Shammai are lenient toward the woman, not the man.
4. ‘Am ha-arez — Haver
   There is also an aspect of leniency on Beth Hillel’s side.
5. Defilement
   The Talmud reverses the controversy.
6. Defilement
   It is quite doubtful whether this controversy belongs in this category.
   The situation as to leniency and strictness is reversed, if controversy refers to terefuth.

93
RABBINIC JUDAISM IN THE MAKING

**Subject Matter**

<table>
<thead>
<tr>
<th>7. Food — Law</th>
<th>8. Qodashim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highly questionable as to whether Beth Shammai are lenient in the economics of the matter.</td>
<td>As in 7.</td>
</tr>
</tbody>
</table>

Why do Beth Shammai and Beth Hillel deviate from their basic positions as to strictness and leniency in certain instances?

Above we pointed out that a true solution of the problem does not lie in laboring the exegesis, and that aspect alone. Whereas in a very few cases, hermeneutics, or exegesis in general, might have played a role, the formal justification of the laws is in most instances secondary and has been advanced merely as a tool in order to make a law acceptable.

Was there a certain area of the law in which Beth Shammai and Beth Hillel reversed their usual basic positions? This possibility must be rejected since the cases include diverse areas of Jewish life and practice: festivals, marriage, food laws, priestly portions, charity, sacrifices, defilement, etc.

We doubt that a satisfactory patent solution will ever be found. Yet we think that some of the exceptions can be explained most plausibly by Beth Shammai’s status as an opposition party. It is the nature of the opposition to contradict the opponent whenever possible. When, for example, the majority party proposes a strict ruling, the opposition party, if it puts opposition above consistency, would suggest a lenient ruling and then find some kind of justification.

There are many instances in which Beth Shammai and Beth Hillel differ, without the presence of aspects of leniency or strictness or any other known element in their decisions.

In concluding this chapter, let us emphasize that the few instances in which Beth Shammai and Beth Hillel deviate from their usual position as to strictness and leniency afford no basis for establishing any philosophy for the respective schools, or for ascribing the exceptions to one factor only. They are in no way sufficient to shatter the fact that basically Beth Hillel are lenient and Beth Shammai are rigorous.
**EXEGETICAL CONTROVERSIES OF BETH SHAMMAI–BETH HILLEL**

I. H. Weiss notes that less than ten percent of the 316 Beth Shammai–Beth Hillel controversies are exegetical, i.e., based on differing interpretation of texts. Let us take a close look at these exegetical controversies in order to learn their significance.

1) In Mishnah *Ber.* I,3, Deut. 6:7 is interpreted in different ways. Beth Hillel’s opinion is that "when thou liest down, and when thou risest up" reflects the proper understanding of the text. Beth Shammai’s view that these words mean “in a lying and in an upright position, respectively” is one of the possible literal meanings of the passage, but unwarranted in the given context. It could be an interpretation for the sake of mere opposition.

2) M. *Peah* VI,1. The exegesis pertaining to this passage is not given in the Mishnah. The Midrashic association is amoraic. Cf. sages.

3) Ibid. VI,5. No exegesis is given in the Mishnah. In P. Talmud ad loc. two Amoraim (R. Abun and R. Mana) differ as to the exegetical basis of the respective views of Beth Shammai and Beth Hillel.


6) M. *Shevi’ith* IV,10. No exegesis is given in the Mishnah. Exegetical association is amoraic. Cf. P. Talmud ad loc.

7) Tos. *Terumoth* III,16(30). In a direct controversy, both parties cite different verses to prove their point.

8) M. *Shab.* I,5 gives no exegesis. The Tosefta parallel ibid. I, 20–21(111) supplies the exegesis which, however, is not part of the direct controversy. P. Talmud ibid., 3d similar.

9) Baraita in B. *Shab.* 25a, B. *Men.* 40a gives no exegesis. S. Mishnah *Eduy.* IV, 10. Commentators (Rashi, etc.) refer to the exegesis in B. *Yev.* 4a (*Semukhin*), where, however, our controversy is not mentioned. Since none of the parallels contains exegesis, it is
more than doubtful that Beth Shammai and Beth Hillel based their controversy on an exegesis.

10) Baraita in B. *Shab.* 135a gives no exegesis. The same holds for Tosefta ibid, XV (XVI) 9 and P. *Yev.* 9a. *Sifra Tazria* I (58b) gives the controversy in connection with an exegesis. However, the exegesis is not advanced by Beth Shammai and Beth Hillel. In fact, there is probably no interrelation between the exegesis and our Beth Shammai–Beth Hillel controversy.

11),12) *M. Be'ah* I,1. Two controversies are both without exegesis. The exegetical association is amoraic, see Gemara, *ad loc.*

13) Baraita in B. *Yoma* 61b, Tosefta *Neziruth* I,6 (284). No exegesis advanced by Beth Shammai or Beth Hillel.

14) *M. Sukkot* I,1. No exegesis in the Mishnah. Exegesis given in the Gemara, ibid., 9a by *Amoraim.*

15)–17) *M. Yev.* I,4. Three controversies are without exegesis. B. *Yev.* 13b Simon ben Pazzi, an Amora, supplies the exegesis. In P. *Yev.* 3a R. Simon in the name of R. Josse in the name of Nehorai supplies the verse. Other Amoraim join in the discussion, *ibid.* The parallel in Tosefta *Yev.* 1,8 ff. (241) does not give an exegesis either.

18) *M. Yev.* VI,6 gives the verse for Beth Hillel, the Tosefta *ad loc.*—VIII, 4 (249) — for both. They use different verses.

19) In *M. Git.* IX,10 both Beth Shammai and Beth Hillel are using the same verse. Beth Shammai takes the verse in its most literal sense, while Beth Hillel understands 'erwath davar as a more general expression. It is quite possible that Beth Hillel is closer to the true meaning of the passage. The word ‘erwah is used already in the Pentateuch in a figurative way (see Gen. 42:9 and 12 לראות את דברי 'הארץ "to see the nakedness of the land ye are come." The phrase *באהת דברי erwath davar does not occur elsewhere*). Whenever sexual immoralities are mentioned, which is often the case, other expressions are used.\textsuperscript{133}

20) B. *B. Q.* 65b, a Baraita, is without exegesis. The exegesis is supplied by Amoraim.

21) *M. B. M.* III,12. An exegesis is given by Beth Hillel only. Noteworthy is that not all the Mishnah versions include this exegesis. The Lowe edition, for example, does not have it.

22) Baraita in B. *Hul.* 88b. Beth Shammai takes Lev. 17:13 literally,
without mentioning the verse explicitly. Beth Hillel, however, understands "far" in its more general meaning, by referring to Num. 19:17 "And for the unclean they shall take of the ashes of the burning . . . ."

23) M. Hul. XI,2. The verses are not from the Torah but from Isaiah and Samuel, respectively.

24) M. Kerithoth I,6. The Mishnah contains no exegesis, nor does the Tosefta I,9 parallel. However, in B. Talmud, ibid. 8a, Beth Hillel gives the exegesis. In Sifra Tazria III, as in the Baraitha, Beth Hillel cites the verse, but more fully. The weight of the controversy, however, rests with the logic of the reasoning based on the law, not with the wording of the text.

25) M. Zev. IV,6. No exegesis is given. This is supplied by Amoraim ibid. 37b.

26) Baraitha in B. Men. 41b gives no exegesis. Tosafoth, s.v. Beth Shammai, refer to the exegetical basis of the controversy. This exegetical basis, ibid. 39b, supporting Beth Shammai is amoraic. Sifre Num., and its parallel in Deut. add: The Halakhah is in accordance with Beth Shammai.

27) M. Bekhoroth V,2 gives no exegesis. Tosefta Bekhor. III,15, a different version, adds Akiba’s view which corresponds to Beth Hillel’s view in the Mishnah, and this—only this—is with an exegesis. Gemara ibid., 32b–33a Amoraim advance the exegetical basis. The Baraitha ibid. agrees with the Tosefta.

What do these “exegetical” controversies reveal?

The number of controversies between Beth Hillel and Beth Shammai which are based on exegetical differences is very small. In fact, it is much smaller than I. H. Weiss suggests when he considers about ten percent of the total controversies between Beth Hillel and Beth Shammai as being of exegetical character. In tannaitic sources, exegeses are offered merely in 1, 7, 8, 10, 18, 19, 21, 22, 23, and 24. Of these ten passages, in 8 and 10 the exegeses are not advanced by Beth Hillel and Beth Shammai themselves, therefore it is doubtful whether these cases should be considered as exegetical controversies. Of the remaining eight, in 21 an exegesis is given merely by Beth Hillel, and even this is not present in all the texts. In 24 it is again Beth Hillel only who offers an exegesis. In 23 the verses are not
from the Torah, which is at variance with the normal process of halakhic exegesis.

In all the other instances, and they are the vast majority (2, 3, 4, 5, 6, 9, 11, 12, 13, 14, 15, 16, 17, 20, 25, 26 and 27) the exegeses have been advanced at a later period, mostly by Amoraim. It is quite possible that in some cases the Amoraim advance the exegesis on the basis of an old tradition, but this, being a conjecture, cannot be used as evidence.

Most noteworthy is that no one of the exegeses advanced in these controversies involves any of the hermeneutic rules.

It is to be noted that, whereas the exegeses of Beth Hillel and Beth Shammai are about even in number, Hillel himself advances considerably more exegeses than Shammai. As to aggadic exegeses, cf. Bacher's discussion. The significant halakhic exegeses by Hillel are: The famous exegeses in *Pes. 66* (and parallels) advanced by Hillel in answering the Bene Bathrya; the three exegeses which are given as the reason for Hillel's coming to Palestine; and the one on eating Mazzah, bitter herbs, and meat of the Paschal sacrifice in a certain way. By Shammai, there are two to be mentioned specifically: One referring to times of war; the other deals with a specific aspect of the law about agency. It appears that after the memorable discussion between Hillel and the Bene Bathrya which gave Hillel the opportunity to employ hermeneutic rules, but in which he was rebuffed, these rules played a very small role until the destruction of the Temple. Exegesis in general was not used too frequently either. As to the hermeneutic rules, one of the reasons may be the resistance of some conservative or anti-Hellenistic sages against methods which were in vogue in the first century C.E. in Hellenistic rhetoric, though some of these methods, e.g. the *qal wehomer*, are found in ancient Jewish sources. After the times of Beth Hillel and Beth Shammai, when these rules became part of the culture in general, hermeneutics was used more freely. Almost all the controversies between the schools concern details of older laws, not basically new legislation. For these, reference to Scripture was not as important as it was for new legislation, which became imperative after the destruction of the Temple and needed a source of authority to make it acceptable. Therefore, the vast majority of
exegeses, of which the hermeneutic ones are but a fraction, date from the time after 70 C.E. Hillel himself was considerably ahead of his time when he demonstrated and urged the usage of exegesis.\textsuperscript{143}

The insignificant role of the hermeneutic rules during the Beth Hillel–Beth Shammai period is indicated by the fact that in Mishnah \textit{Bezah} I,6, Beth Shammai use the words \textit{gezerah shawah} to mean simply "analogy," without any exegetical connotation. The same holds true for Beth Hillel in the Tosefta parallel \textit{Yom Tov} I,13. Had \textit{gezerah shawah} been in vogue as a hermeneutic rule these words certainly would not have been used to express a simple analogy.

The exegetical controversies between the schools show the same picture as the rest of their controversies. Beth Shammai are more conservative in their exegesis, Beth Hillel, on the whole, more liberal. Beth Shammai cling to the literal meaning of the text, even if this may not be the true meaning of the passage. Beth Hillel, on the other hand, take a passage in its larger context. Cf. particularly I:1, 19, 22.

In instances in which Beth Shammai and Beth Hillel are using different verses in order to support their respective views, the assumption is justified that the exegesis is secondary, and had been advanced later in support of a view existing previously.

While no proof can be adduced, we should not overlook a possibility that could explain the very small role exegesis played during Hillel's and Shammai's time. It is conceivable that Beth Hillel and Beth Shammai concurred in a number of exegeses, which were not preserved except for the Halakhoth derived by these exegeses and transmitted anonymously. As a rule, anonymous Halakhoth represent views agreed upon by certain schools or certain groups of sages.\textsuperscript{144}

\textbf{INTERRELATIONS}

\textit{Contacts, personal and otherwise (after Hillel and Shammai)}

Did Beth Shammai and Beth Hillel have separate schools? If so, did they continue after Hillel and Shammai? Were they mere fac-...
tions of one school? Did they exist only during the lifetime of the masters? These questions have found contradictory answers based on the same sources. For example, the fact that no heads of Beth Shammai are mentioned after the time of Hillel and Shammai is interpreted by I. H. Weiss as meaning that separate schools existed only at Hillel’s and Shammai’s time. Afterward, both parties stayed within one school. Halevy, however, infers from the above fact that after Hillel and Shammai, Beth Hillel and Beth Shammai did not continue their existence.

We saw that at Hillel’s and Shammai’s time matters had been discussed and decided, as they came up, one by one, in joint sessions. Shammai could not have held the office of the Av Beth Din, which he did, if his party had not been part of the joint school headed by the Nasi. This does not exclude, however, the possibility that the parties, in addition to the joint academy, had separate schools.

As to the state of affairs after Hillel and Shammai, the following sources are most revealing.

M. Sukkah II, 7 gives a direct controversy between Beth Shammai and Beth Hillel. In order to decide the issue in their favor, Beth Hillel cite an incident in which the Shammaite Rabbi Johanan ben Ha-Horani(th) followed the practice approved by Beth Hillel.

If a man’s head and the greater part of his body are within the Sukkah, but his table is within the house, Beth Shammai declare it invalid, and Beth Hillel declare it valid. Beth Hillel said to Beth Shammai: “Did not the Elders of Beth Shammai and Beth Hillel once go to visit Rabbi Johanan ben Ha-Horani and find him sitting with his head and the greater part of his body within the Sukkah while his table was within the house. Beth Shammai answered: “Is there proof from this [incident]? They indeed
said to him: If such has been thy practice thou hast never in thy life fulfilled the law of the Sukkah.”

This important passage tells us that about the middle of the first century c.e. (R. Johanan ben Hahorani’s time) Beth Shammai and Beth Hillel maintained close contact both within and outside the Sanhedrin. They were not bitter at each other, as shown by the joint social visit. Some time later, when a Halakhah was discussed, Johanan’s practice was well remembered; the question was merely whether he had been reprimanded or not. At the time of the discussion Johanan was undoubtedly dead, otherwise he could have been asked to clarify the issue. On the other hand, the fact that the practice was well remembered indicates that the discussion took place not long after the incident.

Whether or not the matter was then decided is not indicated in the text. Yet, since it was a direct controversy, conducted man to man, the probability is that a decision was reached, as was the case in similar instances. A record of the decision was unnecessary from the point of view of the Mishnah redactor, since the principal decision of Javneh eliminated the need for an individual record in normal cases. A record was only needed for the exceptional cases.

Pleasant relations between the members of the houses in the middle of the first century c.e. are attested in Tos. Sukkah II,3 (193–194) = Eduy. II,2; (457 parallel Baraita B. Yev. 15b). R. Eleazar ben Zadok, a Hillelite, studied with the Shammaite R. Johanan ben Hahoraniith. The latter, on the other hand, followed a Hillelite practice. According to the version in B. Yev. 15b, he followed Hillel in every instance, but this may be an exaggeration. The case clearly shows that a Shammaite who followed some Hillelite practices did not thereby become a Hillelite. The opposite is just as true.

Tos. R. H. IV (II),11 (p. 214) relates an incident in which Honi Haqatan (about middle of the first century c.e.), obviously a Shammaite, follows a Hillelite practice in the presence of the elders of Beth Shammai (and Beth Hillel). When the matter came up in a direct discussion, Beth Hillel referred to this incident. Beth Shammai did not deny the fact but merely claimed exceptional circumstances. Here we have another case in which Shammaites at least tolerated a
Hillelite practice. The passage also indicates that Hillelites and Shammaites attended joint services.

As to the decision of the controversy, the same holds true as in the case above (M. Sukkah II,7).

M. 'Orlah II,12 relates that the Shammaite Yo'ezzer Ish Habirah said that while standing at the Eastern Gate (of the Temple enclosure), he asked Rabban Gamaliel the Elder about a ritual matter. The answer he received is given in the previous Mishnah as the view of the sages (i.e., majority opinion) against the view of R. Eliezer.

We see that a Shammaite feels free to consult with the Patriarch, a Hillelite, to learn the proper ruling. This happened, as in the two cases above, about the middle (second third) of the first century C.E. Moreover, we note that the inquiry did not take place in the academy.

Most instances discussed, so far, represent direct controversies between the schools. This fact means matters had been discussed within one and the same assembly (unless it was a private discussion, as was the last one cited above). The logical reasoning that the respective views of the parties had to be prepared in their separate schools before being brought before the joint meeting sounds sensible but constitutes no real evidence. Parties opposed to each other are able to raise objections and make counter suggestions without much preparation or even without any preparation.

Considerably more revealing are the indirect controversies, though, strangely enough, no attention has been paid to these. Many, if not most, of the controversies without dialogue in tannaitic source literature belong in this category. These controversies, or better, differences, originated at the period close to the destruction of the Temple, when only one joint meeting was held. This one session is most revealing; it is the famous conference concerning the “Eighteen Matters.” The fact that in this one conference numerous items came up for settlement proves that no joint meetings had been held for some time; otherwise the matters would have been settled one by one and would not have accumulated. It was obviously at a time when the Sanhedrin could not meet, since this conference was held in a private home under the pretext of a visit.

Where had all the matters that came up in that joint meeting been
prepared? There cannot be the least doubt that this was done in the privacy of the respective schools of Beth Shammai and Beth Hillel.

We believe that this shows unequivocally that the Houses had separate schools and were not mere factions of the “Beth Hamidrash Ha-Gadol,” the Pharisaic Sanhedrin. These separate schools still existed long after Hillel and Shammai and did not terminate when these “Eighteen Matters” were discussed shortly before the fall of the Temple. I. H. Weiss’ argument ex silentio (Dor. I. p. 184) that there were no separate schools because no head of Beth Shammai is mentioned after Shammai, is unacceptable.

In further clarifying the role of the “Eighteen Matters,” we must inquire as to the significance of the conference at Hananiah ben Hizkiah ben Garon’s home for the history of the Halakhah. We turn to the following sources: Babylonian Talmud (incl. Mishnah) Shab. 13b ff.—P. Shab. I,4; 3c ff.—Tos. Shab. I,16 (p. 111).

Each of these sources has various strata, and they are not in complete accord. They have been repeatedly discussed with contradictory results. 150

The most reliable of them is the oldest datable tannaitic report: that of R. Simon ben Johai in P. Shab. 3c. According to this report the result of the conference was the issuance of eighteen prohibitions, Gezeroth, intended to separate Jews from gentiles.

These Gezeroth were issued a short time before the Jewish War. 151 The initiative was in the hands of Beth Shammai, which displayed great fervor in the matter. They succeeded by a majority vote, which was unusual, since Beth Hillel had been the majority party since Hillel’s and Shammai’s times. The Talmud itself gives an explanation (P. Shab., loc. cit.): R. Joshua Onaia (of the second and third generation Palestinian Amoraim) cites a Baraita stating that the Shammaites allowed but six Hillelites to go up to the conference; they prevented the others by the use of force.

Had this been the case, the Hillelites undoubtedly would have repudiated these Gezeroth as soon as they could, but they did not do this. In fact, their spiritual successors, the rabbis, emphasized the superiority of these Gezeroth over all the other Gezeroth. In P. Talmud, ibid. 3d, a statement by Samuel is related advising that while other Gezeroth are revocable, the Eighteen Gezeroth are not. 152
When the Gemara (ibid.) points to the fact that the "oil Gezerah" had been revoked (150 years later by Judah II), exceptional circumstances are adduced (ibid.).

The probability is that due to the tension between Jews and heathens (Romans and others) at that time, some Hillelites voted with the Shammaites. This is nothing out of order, since we know of many other instances in which individual Shammaites sided with Beth Hillel and vice versa. It is possible, too, that the Hillelites, favoring peaceful relations with the gentiles, did not care to attend the meeting in large numbers.

While the primary purpose of the conference was undoubtedly the issuance of Gezeroth against the heathens, all the sources agree that other matters as well were considered. As to these, the sources are not in complete accord. There is a discrepancy, for example, whether there were one or two other categories of Halakhoth on the agenda. According to P. Talmud, ibid. 3c, three categories came up in this conference, each comprising eighteen cases. The first category was the jointly issued Gezeroth; the second category of Halakhoth had been decided by vote favoring Beth Shammai; the disputes of the third category had not been resolved. This latter Baraita allows the conclusion that the Hillelites, being in accidental minority, refused to settle at this time many of the unresolved disagreements.

It is to be noted that not all the Gezeroth and other Halakhoth settled at that meeting were new, or even controversial. One of the Gezeroth is, for example, the biblical prohibition of intermarriage. This Gezerah and some of the others represent a revival and strengthening of old neglected laws.

To evaluate the significance and scope of this conference let us keep in mind the following: 1) It had a limited program. It did not resolve all the pending disagreements. 2) The outcome of the meeting had no effect on the leadership. This remained in the hands of the Hillelites and vice versa. 3) The extensive agenda of the conference proves that for some time no regular joint meetings were held; otherwise no great number of unresolved controversies would have accumulated. 4) When no agreement could be reached, the issue was resolved by vote which was binding on both parties.
THE END OF THE "HOUSES"

B. 'Eruvin 13b relates:

א"ר אמא אמר להם שניים שלוש שנים חולק ב' וה' חוללו אומרים הלכות כל הלכות וההלכה לכמה ישתא תחא כל האומרים אם
ואל דברי אלוהים תקים ב' הלכות כ"ה.

To this P. Yev. I,6 end; 3b adds some significant details:

ואל דברי בית שמאם変えוהם וכתמותו ואל דברי בית הלל
כחקוקם וכתמותו. חא הדתמר עת שלא נזאת תחא ב' חולכניסהו
ב' חל פשלמה הלכות דברי בית הלל ובלו השוער על דברי בית הלל
חיר המחנה. חא נזאת תחא ב' חולא ופצרו אלוהים דברי
המה שהלא הלכה כ"הเปลו. הפארץ נזאת תחא ב' חול בברי בוש.

Rabbi Abba said in the name of Samuel: Beth Shammai and Beth Hillel argued for three years. The ones said, "The Halakhah is in accordance with us," and the others said, "The Halakhah is in accordance with us." Then a Bath Qol sounded saying, "These and these are the words of the living God, but the Halakhah is in accordance with Beth Hillel."

So far B. ‘Eruvin 13b. The passage in P. Yev. I,6; 3b states:

One should either follow Beth Shammai in both their lenient and their strict rulings; or Beth Hillel in both their lenient and their strict rulings. This, however, refers to the period prior to the Bath Qol. Yet, after the sounding of the Bath Qol, the Halakhah is always in accordance with Beth Hillel, and everyone transgressing the words of Beth Hillel is guilty of death. . . . Where did the Bath Qol come forth? Rav Bibi said in the name of Rabbi Johanan: "in Javneh."

This is the most important instance in which the Bath Qol, a voice from heaven, entered the realm of Halakhah. 154

For our present problem, three points need clarification: 1) When did the Bath Qol make this sweeping verdict? 2) Did the "Houses" continue their existence after that verdict? 3) What was the extent of the authority this Bath Qol possessed?

1) Date of the Bath Qol Verdict

Rabbi Johanan relates that the Bath Qol came forth in Javneh. The repetition of this information several times in the Palestinian Talmud confirms its accuracy. Rabbi Johanan is known to have pos-
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essed data of significance concerning the tannaitic period. Thus it is certain that this event took place (even if we do not accept it in its literal sense) at the time when Javneh was the seat of the Beth Din Ha-Gadol. Yet, this body existed over a long period, beginning with the fall of the Temple. The assumption that the conference took place under Gamaliel II, a leader much concerned with preserving Jewish unity, is a conjecture of little value for our purpose, since he held leadership for a long period.155

Circumstantial evidence indicates that our Bath Qol incident could not have taken place long after the destruction of the Temple. Such evidence is: Only very few controversies of Beth Shammai and Beth Hillel presuppose conditions that existed after 70 c.e.156 Undoubtedly, nearly all of them were conducted during the existence of the Temple. In fact, the data relevant to the cessation of the Houses, which we consider next, indicate the Houses themselves did not continue as such much after 70 c.e., thus giving us a terminus ad quem for the Bath Qol incident.

2) Time of the Cessation of the Houses

Among indications that the schools of Shammai and Hillel ended shortly after the destruction of the Temple, the following data are particularly noteworthy:

R. Eliezer and R. Joshua among others of the second tannaitic generation (principal activities 90–130 c.e.) disagree on the interpretation of controversies between Beth Shammai and Beth Hillel, indicating that at that time these schools no longer existed. Had they existed, a simple inquiry with the respective schools would have sufficed. We have pointed out elsewhere that interpretation of controversies, particularly those introduced by "לא נחלקו...על המ נחלקו..." "they do not disagree in this...but in what do they disagree?" as, for example, in Tosefta Peah III.2 (21) (cf. Mishnah, ibid. VI.2) between R. Eliezer and R. Joshua, refer to the controversies of the past.157

Most revealing is an incident given in B. Git. 81a. Here Dossa ben Horkynos, a Tanna who lived at the end of the first and the beginning of the second century c.e., is identified as belonging to Doroth Ha-Aharonim, "later generations," in contradistinction to Beth Shammai, who are called Doroth Ha-Rishonim, "earlier genera-
The implication is obvious. At Dossa’s time Beth Shammai existed no longer, otherwise they could not have been designated as “earlier generations.”

Another source proves the non-existence of both Beth Shammai and Beth Hillel about the turn of the first century C.E. (cf. P. Yev. I.6; 3a):

In the days of Dossa ben Horkynos the marriage of the co-wife of a deceased man to his brother had been permitted in accordance with Beth Shammai’s view. The sages, obviously some time later, felt bad about this decision because they believed that the highly esteemed Dossa was responsible for it. Once they decided to inquire with him about the matter. At that time Dossa was very old. He could not see any more and would not attend the sessions of the Academy. The visitors were: R. Joshua, R. Eleazar ben Azariah, and Rabbi Akiba. Even though Rabbi Eleazar ben Azariah, one of the delegates, was already a recognized sage, Dossa had not heard of him. He knew merely his father, whom he designates as his haver, colleague. Upon learning of Azariah’s having a son, now a sage before him, he exclaims (Ps. 37:25): “I have been young, and now am old. Yet have I not seen the righteous forsaken, Nor his seed begging bread.” Questioned about the above matter, he denies having promoted the cause of the Shammaites. Then he points to his brother, R. Jonathan, a Shammaite, as the man responsible for the decision and cautions them against him.

This passage is significant because it reveals that when men of the second tannaitic generation wished to clarify the circumstances under which a Halakhah had been decided in favor of Beth Shammai, they did not go to Beth Shammai or Beth Hillel, but instead to a...
very old sage who, according to some tradition, was responsible for the decision. Had the schools of Shammai and Hillel existed at this time, they would have been the logical places for the inquiry.

In Tosefta Hag. II,10 (236) Abba Saul, a disciple and contemporary of Johanan ben Zakkai quotes a qal wehomer (an inference a minori or a fortiori) in the name of Beth Hillel at variance with another tradition about the same qal wehomer. This can be taken as an indication that Beth Hillel did not exist any longer at the time of this controversy about the correct wording of Beth Hillel’s argument, which took place not long after the destruction of the Temple (Abba Saul’s time). We do not overlook the possibility that at a later period of Beth Hillel and Beth Shammai, some controversies of the earlier period became obscure and were subjected to scrutiny. We do not find here, however, a clarification by Beth Hillel but, instead, a secondary controversy is cited regarding the genuine wording used by Beth Hillel. The non-existence of Beth Hillel at this time is thus strongly indicated.

Tos. Yev. V,1 (245) (= Tosefta ‘Eduy. II,9) contains a controversy as to Beth Hillel’s and Beth Shammai’s view in a certain case. One of the men (the oldest) participating in this secondary controversy is Abba Saul. This controversy could hardly have occurred during Beth Hillel’s existence, for then their view would not have been so uncertain that diametrically opposite traditions existed about it.

Here a question had been asked of Rabbi Joshua relative to a dispute between Beth Shammai and Beth Hillel. In answering it, he expresses great veneration for both in a manner that indicates that he did not belong to either. In fact, he refuses to side openly with Beth Hillel, to which House he spiritually belonged, and cites, in-
stead, incidents indicating his stand. Moreover, had the Houses existed at that time, the question certainly would have been put before them, not before R. Joshua.

Tos. *Peah* III,2 (21) relates:

Here R. Joshua and R. Eliezer had been asked to clarify the respective positions of Beth Shammai and Beth Hillel in a case under discussion. Their answers are contradictory. They possessed different traditions in the matter. Existing schools, no doubt, would have been able to clarify their own views.

P. *Terumoth* III,2; 42a (Tosefta, ibid. III,12, p. 29):

Here the sages disagree with both Beth Shammai and Beth Hillel. This may mean that they do not identify themselves with Beth Shammai or with Beth Hillel for the apparent reason that these schools had not existed at the time of the secondary controversy. Yet, it is possible that we are dealing here with post-Hadrianic sages, at whose time the non-existence of schools of Shammai and Hillel is generally admitted.

In this connection, I should like to draw attention to *Eduyyoth*, the testimonies related in the tractates of Mishnah and Tosefta bearing this name. Shortly after the destruction of the Temple, steps had been initiated to collect teachings of the past in order to preserve them in a systematic way for ready reference. Most of these traditions
are teachings of Beth Shammai and Beth Hillel, but the transmitters of the teachings are not the schools, nor their heads or representatives, but rather individuals who claim no affiliation with the schools. What is even more significant, the individual transmitters do not transmit the teachings of one of the schools— which could be taken as an indication of their affiliation with this school— but they transmit almost invariably the traditions of both schools simultaneously. Obviously, the schools belonged to past history at that time, i.e., shortly after the destruction of the Temple.

Not all the passages adduced can be considered as clear-cut evidence for our thesis. Yet even those which are acceptable merely as indications possess certain value, inasmuch as they lend cumulative support to a structure based on other unequivocal source material. We believe that the evidence adduced shows clearly that the men of the second tannaitic generation, after the destruction of the Temple, discuss Beth Shammai and Beth Hillel as schools of the past. Therefore, not long after 70 C.E. the existence of the schools was terminated.

Among other views, Z. Frankel’s opinion that the “Houses” continued their existence until the Bar Kokhba uprising deserves serious attention. For evidence, he refers to the chapter on R. Joshua in his Darke Ha-Mishnah. However, a careful reading of this chapter leaves the reader unconvinced. The passage Frankel appears to rely on most is B. Hag. 22b:

It is taught: R. Joshua said: “I am ashamed of your words, O Beth Shammai.” Is it possible that if a woman kneads in a trough, the woman and the trough become unclean for seven days, but the dough remains clean? etc. . . . [Afterward] one of the disciples of Beth Shammai joined him and said to him: “I will tell thee the
reason of Beth Shammai.” He replied, “Tell then!” He said to him. . . “This is the reason of Beth Shammai.” Instantly R. Joshua went and prostrated himself upon the graves of Beth Shammai: “If your unexplained teachings are so [good], how much more so your explained teachings!” It is said that all his days his teeth were black by reason of his fasts.

This incident is not a discussion between Beth Shammai and Beth Hillel, but between Rabbi Joshua, defending a Hillelite view, and a disciple of Beth Shammai, who merely qualifies Beth Shammai’s view but does not suggest it. The discussion was held obviously after the session of the academy and had a private character. After the qualifying statement of the Shammaite convinced R. Joshua, he went to the graves of the Shammaites to make his apology. This is most revealing. Had Beth Shammai existed at that time, R. Joshua certainly would have apologized before them, not on the graves of the deceased Shammaites. The existence of some Shammaites after the termination of Beth Shammai is no puzzle. Termination of the school does not mean the extermination of its members. As individuals they continued to live for some time. They even may have continued as a sectarian school. Yet, they did not exist at the time of this incident as the recognized school of Shammai and the surviving Shammaites ceased to play a traceable role in Judaism.

Termination of the school of Shammai made the designation Beth Hillel, for the remaining school representing the mainstream of Judaism, meaningless. Therefore, this designation was dropped. From now on, the controversies proceed under the names of individual sages, sometimes grouped together, or under the designation “sages.”

We elaborated on this point, because Frankel’s view still appears to be the predominant one, though other opinions also exist, too. I. Halevy, for example, believes that Beth Shammai and Beth Hillel existed mainly at Hillel’s and Shammai’s time. This opinion is doomed in view of abundant evidence to the contrary. For example, disputes of paramount importance, such as the “Eighteen Matters” and the three years disputes for supremacy, all took place long after Hillel’s and Shammai’s death. Halevy’s main proof, an argument ex silentio, is quite weak: After Shammai’s death no head of Beth Shammai is mentioned, therefore Beth Shammai did not exist any
longer (see page 100). On the contrary, one must consider that among the Shammaites mentioned by name, one might have been the head of their school. It is quite understandable that after Beth Shammai had been doomed halakhically by the Bath Qol, the sages as successors of the Hillelites did not care to preserve historical data on the rejected school.

Our view regarding the terminus ad quem of the school of Beth Shammai is close to that of I. H. Weiss. Weiss believes that Beth Shammai’s existence terminated with the destruction of the Temple. The two controversies between the Houses which do take into account the conditions existing *after* the destruction of the Temple, are subjected to forced interpretation by him.¹⁶²

Further indications pointing to the non-existence of the “Houses” shortly after the destruction of the Temple are the following:

Z. Frankel observed that the range of the subjects discussed by Beth Shammai and Beth Hillel is limited.¹⁶³ Most of their controversies concern prayers, festivals, precepts related to the soil of Palestine, marriage and divorce, vows, nazirdom, monetary matters relative to marriage, defilement, purity, and the like. However they do not discuss the priestly service and have only one discussion about a sacrifice and few controversies about monetary matters. They do not discuss matters of the Sanhedrin, judicial error, false witness, penalties by death or flogging. In matters of *nega'im*, “leprosy signs,” they are not even mentioned in the sources. On the other hand, all these matters are extensively discussed by Tannaim *after* the destruction of the Temple. What might be the reason for this situation?

Beth Shammai and Beth Hillel obviously concentrated on the Halakhah relevant in their day and within their jurisdiction and sphere of interest. Thus, they took little interest in discussing the details and mechanics of the sacrificial cult, since its administration was in the hands of the priests. Only occasionally did the non-priestly Pharisees enter the realm of the sacrificial cult, e.g., in the case of the *semikhah* controversy,¹⁶⁴ Paschal sacrifice,¹⁶⁵ the burning of the incense on the Day of Atonement,¹⁶⁶ and the water libation on Sukkoth.¹⁶⁷ In these and similar instances, basic issues were involved and the disputes did not arise under the names of Beth Hillel and Beth Shammai.
However, after the destruction of the Temple, the rabbis expanded their interest to all areas of Jewish law, priestly and non-priestly, practical and theoretical. This expansion of interest was induced or, at least, stimulated by the cessation of the priestly functions. Many priests, having lost their professional privileges and class distinction, joined the rabbis, sharing with them their former special interests. Moreover, the rabbis, who now included the priests, believed that their period was but an interim to be followed by the restoration of freedom, Temple, and cult. Therefore, the study of the theoretical laws was considered an essential preparation for their application in the (near) future.

In some areas, the absence of Beth Shammai and Beth Hillel can be attributed to the fact that these areas were not controversial at their time. This may have been the case regarding the matters contained in tractates Megillah, Ta'anith, and ‘Avodah Zarah.

3) The Extent of the Authority of our Bath Qol. Before suggesting an answer, let us call attention to the following problem. Since the Bath Qol possessed the power to decide the issue authoritatively, why did it wait three years before it interfered? What happened during those three years? Why was the issue not decided by vote as had been the case at a number of previous occasions?

The usual procedure of the Beth Din Ha-Gadol had been to decide the controversial Halakhoth by vote. However, in the three years’ conference obviously a principal decision had been sought. The wording "The ones said, ‘The Halakah is in accordance with us,’ and the others said, ‘The Halakah is in accordance with us,’" without any reference to particular cases indicates that the issue at stake was exclusive authority in the realm of Halakakh. The conditions after the destruction of the Temple had led the two schools to irreconcilable views regarding the ways of coping with the new situation. But why was this basic issue not decided by vote? It stands to reason that the minority would not submit to a vote, because it would thus be relegated to impotence. Because details of the three year feud have not been transmitted, we only know that the deadlock was abruptly broken by the Bath Qol. But did Beth Shammai recognize the Bath Qol at another (earlier) occasion when it entered the realm of Ha-
lakhah, even though it did not repudiate them. There can be little doubt that they rejected the Bath Qol that spelled their doom. Let us now investigate the extent of authority our Bath Qol possessed.

According to the account in the P. Talmud, “The Halakhah is always in accordance with Beth Hillel.” What does this “always” mean? The obvious meaning is that no exceptions were allowed. The fact, however, is that there were exceptions. While the Babylonian Talmud does not include the word “always,” it still wonders about the exceptions, and attempts to explain them.

One of the explanations offered is that the exceptions are in accordance with R. Joshua, who rejected Bath Qol. However, he did this, so far as we know, merely in a special case leading to R. Eliezer’s banishment, which occurred later than our Bath Qol. In our case we hear of no objection by R. Joshua and may safely assume that he raised no objection. It is quite doubtful whether he, a young man at that time, figured in that dispute. On the other hand, it is quite possible that his successful objection to Bath Qol in the R. Eliezer case, which led to a basic rejection of Bath Qol as a means of making halakhic decisions, weakened even the authority of the Bath Qol of the past. Therefore, later sages, living after the “Houses” no longer existed, and viewing the disputes of the past more objectively, without passion or animosity, allowed exceptions in the academy and in personal observance.

The talmudic conjecture that the exceptions were made prior to the sounding of the Bath Qol (ibid.) may reflect the truth merely in cases in which the matter had been decided by vote prior to our Bath Qol. However, all the cases still controversial at the time of the three years’ struggle the Bath Qol decided in favor of Beth Hillel without exception.

The controversies affected by the Bath Qol were mainly the indirect controversies, i.e., the differences which arose after the schools no longer held regular joint sessions. This was the case during an indeterminable number of years before the destruction of the Temple. The history of the “Eighteen Matters” and of other Halakhah previously decided in favor of Beth Shammai proves that the Bath Qol was not made effective retroactively so as to alter older decisions.
Further clarification and more insight in regard to our problems may be gained by considering the following problem:

Were the differences between Beth Shammai and Beth Hillel practical or merely academic? This issue is already raised in the Talmud. B. Yev. 14–16; P. Yev. 1,6; 3b and parallels transmit a controversy between Rab and Samuel in which the one Amora claimed that both schools followed the Halakhah as the one and only valid, binding law, and the other Amora maintained that each school followed its own Halakhah. Who was right? A scrutiny of the sources shows that neither of them was fully right or wrong. What actually happened was that the followers of the respective schools practiced the Halakhah of their school as long as the matter in question had not come before the joint session for a decision. The decision of the joint session usually terminated the controversy and the diversified practice. The termination of the semikhah controversy is the first significant instance where this can be observed. Tan­naitic sources make it quite clear that prior to a decision of a joint session the individual was given the freedom to practice the teachings of his own school though in general the Halakhah was in accordance with Beth Hillel. The case of the “Eighteen Matters” is another instance showing that a decision reached at a joint session was binding upon both Schools.

It is not known how many cases were decided in joint sessions of the Houses. P. Yev. 1,6; 3b and parallels state in a general way that prior to our Bath Qol one was permitted to follow either of the schools. We see that there was a number of cases that had not come before a joint conference for decision. There was an understandable reluctance on the part of the minority to submit every case to a vote. This sometimes leads to quasi-chaotic conditions, for example, in the realm of marriage practices. The obvious purpose of the conference that lasted for three years was to unify the Halakhah. Has the fundamental decision of the Bath Qol unified the Halakhah in accordance with Beth Hillel?

We observed elsewhere that halakhic decisions prevailing at a certain period often carried little weight in later periods. After leading sages of a certain period died, or old schools were replaced by new ones and conditions changed, decisions of the past often were
reversed or disregarded by new decisions. And this was the case, to a certain degree, in regard to the *Bath Qol* solution of Beth Shammai–Beth Hillel controversies. After the rivalry of the schools had been terminated, their feud became past history, the *Bath Qol* suffered a loss of prestige, and the sages felt free to make changes. To be sure, they did not reverse the principle of Beth Hillel's superiority over Beth Shammai, but they relaxed it. After the destruction of the Temple, the sages of the time, successors of the Hillelites, found existing conditions more conducive to the generally more lenient Halakhah of Beth Hillel. What actually happened was that several sages took the liberty of accepting some shammaitic Halakhoth. Whenever this happened, the *Bath Qol* remained unmentioned. It obviously had lost its prestige.

A few examples follow.

**M. Miqvaoth IV, 1**. R. Meir claims that in the case under discussion a vote had been taken and Beth Shammai won over Beth Hillel. R. Jose, on the other hand, says that the controversy still remains unresolved.\(^{178}\) The latter view is understood by commentators as a denial that a vote was ever taken in the matter. Yet, did the *Bath Qol* not decide all the unresolved Beth Shammai and Beth Hillel controversies? The obvious conclusion is that just one generation after our *Bath Qol*, it was disregarded by R. Jose. But was he the only one who disregarded this *Bath Qol*? By no means, as is shown by other incidents.

In Tos. *Yev.* 1,9, R. Johanan ben Nuri bemoans the unpleasant consequences of a disagreement between Beth Shammai and Beth Hillel. Then he suggests that the matter be settled in a certain way. However, because of unfavorable conditions (probably persecutions), the matter could not be settled.\(^{179}\) It is obvious here, as in the previous instance, that one generation after the memorable decision, the *Bath Qol* was not heeded, or else no *Taqqanah* would have been deemed necessary.

In Tos. *Pes.* 1,7 R. Jose relates that in the controversy under discussion between Beth Shammai and Beth Hillel, R. Akiba made a decision favoring Beth Hillel.\(^{180}\) The implication is clear: R. Akiba, too, ignored the *Bath Qol*, otherwise his decision would have been superfluous.
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M. B. M. III,12. Here R. Akiba holds an opinion at variance with the views of both Beth Shammai and Beth Hillel. This means he feels free to disregard the Bath Qol as well as loyalty to Beth Hillel to which he spiritually belongs. In B. B. M. 43b, Amoraim discuss the Halakhah. Samuel declares that the Halakhah is in accordance with R. Akiba, and so does R. Johanan. Only Raba sides with Beth Hillel.181 We see that the Amoraim, like the Tannaim, do not hesitate to oppose the old doctrine of Beth Hillel’s unconditional halakhic primacy.

In M. B. B. IX,9,10 Akiba’s disagreement with both Beth Shammai and Beth Hillel furnishes another instance of disregard for the Bath Qol.

It is true that already in the time of Beth Hillel and Beth Shammai some sages occasionally disagreed with both schools. However they did so not only before the heavenly decision, but also rarely, under exceptional circumstances. Thus Zechariah ben Abqulos in a certain instance does not follow either Beth Shammai or Beth Hillel.182 Yet, we have here a case of exaggerated piety, displayed by a man whose unreasonable attitude was severely criticized.183 Aqabiah ben Mahallalel, another dissident in Beth Hillel’s and Beth Shammai’s time, was subsequently excommunicated.184

In the period following the cessation of the Houses,185 not merely disregard for Beth Hillel’s Halakhah, but also acceptance of Shammaitic views was frequent and entailed no consequences. Moreover, this acceptance of shammaitic views was not limited to the realm of theory, but it included the realm of practice as well. This is attested for all strata from the Nasi down to the common people. Unfortunately, these instances have often been misunderstood.

Examples:

Rabban Gamaliel II, though a patriarch from the House of Hillel, occasionally followed shammaitic views.186 Does this mean that he was a Shammaite? Some scholars think so. The Talmud itself rejects this thought.187 While the talmudic reasoning is forced, the fact remains that Gamaliel generally followed Hillelite views, accepting shammaitic opinions only exceptionally. Therefore, there is no justification for calling him a Shammaite.

R. Eliezer, too, occasionally followed Shammaitic views. This, in
conjunction with a misinterpretation of his epithet *Shammuti, Shammai*, induced most scholars erroneously to consider him a Shammaite.\(^\text{188}\)

Other sages accepting occasionally Shammaitic views are: R. Tarfon,\(^\text{189}\) R. Jose,\(^\text{190}\) R. Meir.\(^\text{191}\) R. Jehudah once related a tradition in the name of Beth Shammai, indicating his agreement.\(^\text{192}\)

*Tos. Terumoth* III,12 relates a case in which R. Jehudah states that the Halakhah was in accordance with Beth Shammai. Nonetheless, the people followed the practice suggested by Beth Hillel (cf. *P. Terumoth* III,2; 42a). We hear of no objection to this disregard of the authorized Halakhah.\(^\text{193}\)

Mishnah *Demai* VI,6 relates that in a particular case the particularly pious Hillelites would follow the rule of Beth Shammai, one opposed by Beth Hillel. However, they did so *before* our *Bath Qol* came forth.

Occasionally it happened that a person would satisfy a demand of both schools in certain instances. A case in point is in Tosefta *Shevi'ith* IV,21 (67), where we are informed that R. Akiba followed the rulings of both schools in the case under discussion.\(^\text{194}\)

The basic primacy of Beth Hillel was not challenged in amoraic times. *B. Ber. 36b* (and parallels) state clearly:

> בְּשֵׁי מַמְקוֹם בָּבֶית שָׁמַמְיָא הֲוָה אַחֲא הֲלָחָא “Beth Shammai’s teaching, when opposed by Beth Hillel, has no validity.” Nonetheless, *B. Ber. 11a* (partial parallel *P. ibid. 1,3,4; 3b*) presents a disagreement as to the ex post facto validity of the Shammaitic Halakhah. Rab Jehezkel holds that an act performed in accordance with Beth Shammai’s Halakhah has validity ex post facto. Rab Josef denies this, and Rab Nahman bar Jizhak’s opinion is that a man acting according to Beth Shammai deserves death.\(^\text{195}\)

*B. Ber. 48b* relates that Rabbi Johanan (the greatest Palestinian Amora) declared that, in the case under discussion, the Halakhah was in accordance with Rabban Gamaliel, who decided the controversy in favor of Beth Shammai.\(^\text{196}\)

Let us summarize, in brief, this chapter of the history of the Halakhah:

The schools of Shammai and Hillel ceased to exist shortly after
the destruction of the Temple. First, Beth Shammai was relegated to impotence. Subsequently, the designation Beth Hillel for the only remaining authoritative school became meaningless and was, therefore, dropped.

The fundamental decision in favor of Beth Hillel was made by a Bath Qol, a “Heavenly Voice,” at the end of a three years’ dispute. The immediate effect of this Bath Qol was the doom of Beth Shammai. The Bath Qol was not effective retroactively; Halakhoth decided in favor of Beth Shammai prior to this Bath Qol remained in force. As time passed, the authority of this Bath Qol weakened for the twin reasons of rejection of Bath Qol as a means for making a halakhic decision (Aknai incident), and the vanishing of the bitterness of the party struggle which allowed matters of the past to be viewed with more calmness and objectivity. Therefore, a number of sages felt free to abandon some of Beth Hillel’s Halakhoth and to accept shamaitic views in theory and in practice. Occasionally, the people too felt free to choose whatever practice they preferred, even one against the decision of the sages.

In later times, a tendency developed toward the revision of earlier Halakhoth. This phenomenon applies also to the Halakhoth of Beth Shammai and Beth Hillel. Accordingly, sages sometimes introduced Halakhoth which were at variance with those suggested by either of the schools, without drawing criticism. At times certain sages even followed the Halakah of both schools in the same case.

In amoraic times the situation was the same as in that part of the tannaitic period occurring after the bitterness of the party struggle abated. Yet, after the Bath Qol, the primacy of Beth Hillel over Beth Shammai as a principle was never challenged, neither in tannaitic nor in amoraic times.

**SUMMARY**

Our examination of the primary sources dealing with the activities of Hillel and Shammai, and Beth Hillel and Beth Shammai, reveals the following:
1) Beth Hillel and Beth Shammai already existed in Hillel's and Shammai's time. Hillel and Shammai occasionally differed with their own schools. On the other hand, these schools sometimes disagreed with Hillel and Shammai even after their deaths. Thus Hillel and Shammai were not autocratic rulers of their schools, nor were they regarded as infallible. The schools were governed by the principles of democracy. The authority of Hillel and Shammai was based on the recognition of their spiritual stature by their schools and the people.

2) In the course of the existence of these schools certain changes took place. Disregard or neglect of these developments are the most important reasons for discord among scholars as to the role of Hillel, Shammai, and their schools for the making of Rabbinic Judaism. Some of these developments are:

   a) For some time both schools convened jointly and constituted the two factions of the Beth Din Ha-Gadol, the Pharisaic Sanhedrin. In this Beth Din Ha-Gadol pending problems were discussed and decided by vote, if no accord could be reached otherwise. However, as time went on and the discord between these schools widened, they held their regular sessions separately, convening in joint session only periodically to resolve accumulated differences and so maintain the unity of the Jewish people who adhered to their leadership.

   b) At Hillel's and Shamai's time, a decision by vote of one single issue could effect a change in the presidency. However, after Hillel's and Shamai's time, the presidency became hereditary in the House of Hillel, so that even the defeat of Beth Hillel in many issues would not result in a change in the presidency. There are indications that the Nasi, though a Hillelite, considered himself the impartial leader of the entire people and enjoyed therefore the trust of at least some Shammaites.

   c) While in an earlier period of the schools differences were limited in number and importance, they grew more numerous and weighty as time went on.

3) The fundamental distinction between Beth Shammai and Beth Hillel is well attested in numerous sources notwithstanding efforts of some scholars to disregard the sources or to force them to say what they do not say: Beth Shammai is the conservative faction of
the Beth Din Ha-Gadol with an inclination toward stringency while Beth Hillel is the liberal one with a tendency toward leniency. Later, to this basic distinction other differences were added. Beth Shammai changed from a consistently conservative party to an outspoken opposition party. In a number of their decisions we find no other motive than that of opposition to Beth Hillel for the sake of opposition. At the early phase of Beth Shammai, the favorable economic position of its (influential) members inadvertently affected their views and decisions in the sphere of economics. When later their economic superiority vanished, their decisions no longer reflected a tendency favoring the well-to-do. As the tension between Jews and Romans increased, Beth Shammai militated for the introduction of laws aimed against the Romans. This indicates that not long before the Jewish war, ending in 70 C.E., Beth Shammai no longer represented a higher economic class. The wealthy seldom promote unrest and upheaval.

4) The fact that the generally strict Beth Shammai and the generally lenient Beth Hillel reverse their respective positions in some instances has misled some scholars to the conclusion that the notion about the basic stringency of Beth Shammai and the basic leniency of Beth Hillel is a myth. They suggest, instead, theories based on far-fetched conjectures. We showed that not only is the talmudic tradition about the basic stringency of Beth Shammai and leniency of Beth Hillel well established, but also that examination of the supposed exceptions reveals their inadequacy to overthrow it. The generally accepted number of reversed tendencies in their controversies as attested in tannaitic sources is but twenty-four, a small percentage of the total controversies. Moreover, several of these cases are not clear-cut cases of shammaitic leniencies and Hillelite stringencies. A lenient decision in favor of the one party represents a stringency for the other party. According to the Talmud, in financial matters a ruling is lenient if it favors the defendant. That means that such cases, having both an element of stringency and one of leniency, should be subtracted from the list of twenty-four cases. This holds particularly true for the cases in which Beth Shammai's leniency protects the owner of goods against an economically weaker opponent. Only very few of the twenty-four leniencies of Beth Shammai show an unfavorable tendency toward the wealthy. These few leniencies may
be of a later date when Beth Shammai's economic superiority had vanished. There is hardly any case left in which the leniency of Beth Shammai and the stringency of Beth Hillel can be reasonably attributed to exegetical or conceptual differences.

In regard to Bible exegesis, Beth Shammai more often adhere to the literal meaning of the text than do Beth Hillel. Beth Hillel's tendency to modify the law in order to adjust it to the changing conditions and to some extent to the \textit{Zeitgeist} compelled them to interpret the text quite liberally, to make it conform to the needs of the day as they saw it. As the ruling party whose decisions determined the Halakhah for the people, they had to consider the realities of life and the appeal and applicability of the law. Beth Shammai, whose Halakhah was not imposed upon the people, did not need to regard such considerations and could, therefore, stay closer to the literal meaning of the text. Yet, there ensued no open break between the two schools because of their differences in handling the Bible text. Beth Shammai did not utter a basic opposition against the methods of Beth Hillel nor did they ever object to the hermeneutic rules propagated by Hillel and his school. To be sure, at times they differed with Hillel and his school in regard to the applicability of a hermeneutic rule in a case under discussion. Yet, they did not do this more often than in cases where no exegesis at all was utilized in the discussion.

When increasing tension between the two schools threatened to disrupt the unity of normative Judaism, a showdown took place in Javneh shortly after the destruction of the Temple. The lost war had no doubt an adverse effect on the cause of the Shammaites for at least two reasons. First, they advocated measures that contributed, if not led, to the national catastrophe. Then, due to their conservatism, they lacked the flexibility needed to adjust religious expression to the new situation created by the cessation of the centralized Temple cult. After three years of heated debate, a drastic decision was made: the Halakhah is according to Beth Hillel in every case. This decision was made, according to talmudic tradition, by a \textit{Bath Qol}, a heavenly voice. The result was the elimination of Beth Shammai's influence in molding Rabbincic Judaism. Although Beth Shammai may have continued for some time as a peripheral or sectarian school, their
views were henceforth ignored by the representatives of mainstream Judaism.

The elimination of Beth Shammai resulted in a change in Beth Hillel's position. No longer a party, a faction of the Beth Din Ha-Gadol, Beth Hillel became the only representative of the mainstream of Judaism. This made the designation Beth Hillel meaningless and it was, therefore, dropped. Tannaites of the generation after the destruction of the Temple already quote Beth Hillel as a party belonging to the past.

A man of vision, Hillel recognized that Judaism, to live and prosper, had to be consonant with the demands of life. It had to adjust to changing political, economical, and cultural conditions, but at the same time it had to remain true to itself, to its fundamental religious and ethical principles.

He disagreed with the conservative wing of the Pharisees who were slow in adjusting to the needs of the day and the needs of all economic and social classes of the people. The needs of the day included an adjustment to the cultural environment, a most difficult task. This was the crucial area where excessive changes could de-judaize Judaism, as was the case with the Judaism of the thoroughly hellenized Jews of Egypt and elsewhere; too little adjustment, on the other hand, was insufficient to keep pace with the internal need of growth and the cultural progress of the surroundings, and resulted in sectarian or sect-like groups, drifting farther and farther from the mainstream of Judaism.

Hillel's genius was that he, a man thoroughly acquainted with both Jewish and Hellenistic thought, found a synthesis acceptable to the majority of the Jewish people and its representatives in the Beth Din Ha-Gadol. He never claimed that he intended to introduce elements of Greek or Roman culture into Judaism, but he did demonstrate the efficacy for Torah study of hermeneutic rules often used by Greek and Roman orators (including jurists) of his day. The very purpose of Hillel's going to Palestine from his native Babylonia, according to the Talmud, was to demonstrate the potency of his text interpretation. While Hillel attempted to project the hermeneutic rules into the limelight and demonstrated their methodological value, he remained firmly within traditional Judaism in
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regard to the content of his conclusions. He used methods in vogue among non-Jews only to modify Jewish law and practice and thus keep Judaism in touch with ever-changing life. Initially, Hillel met with resistance and the hermeneutic rules were applied but rarely. However, with the progress of time the resistance against the hermeneutic rules vanished.

Rabbinic Judaism commences with Hillel. He successfully demonstrated that legislation is possible even without political backing by changing the form and method of legislation. Instead of direct legislation, which was possible only as long as the government backed the Sanhedrin, Hillel, upon Herod's ascent to power, attempted to project into the limelight indirect legislation, modifications of old laws and practices, primarily by interpretation. It took about a hundred years and men like Akiba to overcome the resistance to making full use of the potentialities inherent in interpretation.

PHARISEES, SADDUCEES, ESSENES

Although it is a recognized fact that the Pharisees are of paramount importance in creating Rabbinic Judaism, a great deal of obscurity surrounds their true character and significance for religion and history. Among the points still cloudy are: What were their origins? When and why did they cease to exist? What were their tenets? What were the motives of their controversies with their adversaries? What were their political roles? Since the role of the Pharisees cannot be defined and appraised properly, unless viewed in the perspective of contemporaneous currents, we shall consider, as far as feasible, the Sadducees and Essenes as well. Of these, the Sadducees are the more important; the Essenes exerted no clearly traceable influence on Rabbinic Judaism.

The most important sources concerning Sadducees and Pharisees are found in Josephus and in talmudic literature. Other sources, including the New Testament and Philo, are of lesser value, since they