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**The Social Structure
of the Rabbinic Movement
in Roman Palestine**

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"had nothing to do with an all-encompassing political-judicial rabbinic institution. Throughout the third and fourth centuries, there is no allusion either to a convocation of leading sages or to any kind of officially recognized body. In short, there is simply no evidence of a countrywide rabbinic framework with a recognized leadership, a clearly defined organizational structure or authoritative prerogatives".⁷

On the other hand, Levine maintains that in the third century permanent rabbinic academies developed in many cities: "When a leading sage died another was appointed in his place, thus maintaining institutional continuity. Such was not the case previously ...".⁸ Thus, with regard to rabbinic academies, Levine assumes that in the third century the rabbinic movement became institutionalized.⁹

A third institution which has often been connected with the rabbis is the synagogue. At least until E. R. Goodenough's distinction between the alleged "mystical" Judaism of the synagogue and Pharisaic-rabbinic Judaism, most scholars assumed that the synagogue was a rabbinic institution.¹⁰ According to S. W. Baron, for example, the tannaim already had control over the synagogue service. Rabbis delivered homilies which served the purposes of both education and edification.¹¹ The increasing congregational participation in services made some scholars lose interest in the synagogue.¹² Nevertheless the synagogue remained under scholarly control, so much so that in the Talmud and Midrash synagogues and study houses are often mentioned together as one unit.¹³

In the following, the existence of the sanhedrin and the academy as well as the relationship between the rabbis and the synagogue shall be reexamined. Did the rabbis really have well-established legal, educational, and cultic institutions at their disposal? Was their authority based on these institutions? Or did the rabbinic movement function more informally in a rather unorganized way?

A. The Sanhedrin or Central Rabbinic Court

Until recently, the existence of a sanhedrin before *and* after the Destruction of the Temple has rarely been questioned.¹⁴ Scholars have taken rabbinic references to the "sanhedrin" literally as historical evidence for an institution by

⁷ Ibid. 77–78.

⁸ Ibid. 25.

⁹ See *ibid.*

¹⁰ See S. J. D. Cohen (1987b) 170.

¹¹ See Baron 280.

¹² Ibid. 282–283.

¹³ Ibid. 281.

¹⁴ See, for example, Mantel (1961) ch. II and IV; Zucker ch. IV and V; Alon (1989) ch. X and XI. Hoenig reckons at least with a pre-70 sanhedrin. He thinks that the sanhedrin ended

that name. The rabbinic sanhedrin, which was allegedly established by Yochanan b. Zakkai or, according to others, by Gamliel II shortly after the Destruction, was assumed to have been a continuation of the sanhedrin headed by the high priest in the Second Temple period, even though it may have differed from that earlier institution in certain respects.¹⁵ Only the specific nature of this institution remained controversial. While some considered it a judicial or legislative body, others maintained that it was a political council. Some even believed that two institutions by the name existed.¹⁶ The sanhedrin was believed to have moved from Yavneh to Usha before or after the Bar Kokhba revolt or migrated between the two places.¹⁷

The existence of a post-70 institution such as the sanhedrin mentioned in rabbinic texts has recently been questioned by Efron, Levine, Goodblatt, and Jacobs, as already indicated above.¹⁸ Goodblatt has extensively discussed the rabbinic sources referring to a sanhedrin or similar institution in tannaitic and amoraic times¹⁹ and confirmed Efron's and Levine's rejection of the possibility that a central rabbinic court or council existed after 70:²⁰ "Our review of the evidence has confirmed the suggestion of Levine. There is no more evidence for the existence of a sanhedrin/great court/national council in the period 70–220 than there is for the third and fourth centuries".²¹

with the outbreak of the Jewish revolt in 66 (*ibid.* 113), but that "after 70 C. E., the rabbis aimed to retain in their councils in Jabneh and Usha many of the features and characteristics of the Great Sanhedrin as it had existed in earlier decades" (*ibid.* XVI).

¹⁵ See, for example, Zucker 126. Alon (1989) 206 suggests that the "sanhedrin" could not have been reestablished earlier than a quarter of a century after the Destruction: "Not until then did the conquered people in its conquered land begin to retrieve some of its lost autonomy ...". He goes on to discuss the changes which distinguished the post-70 "sanhedrin" from its predecessor.

¹⁶ See the discussion of the various views in Mantel (1961) 54–101. Mantel himself believes that before 70 two sanhedrins existed, a political council ("Small Sanhedrin") headed by the head of the state, and a legislative body ("Great Sanhedrin") for whose leadership priests, Pharisees, and secular rulers competed, see *ibid.* 92–98.

¹⁷ See Mantel (1961) 140. Mantel himself thinks that there was only one move and that it took place after the Bar Kokhba revolt, see *ibid.* 174.

¹⁸ See p. 172 n. 126 above.

¹⁹ See Goodblatt (1994) 232–276.

²⁰ See Efron 301: "No Sanhedrin in the talmudic sense, either great or small, survived in Eretz Israel after the destruction of the Temple, except perhaps in deviant episodes like the Bar-Kokhva rebellion". See also Levine (1989) 77–78. As already mentioned, Levine is slightly ambiguous with regard to the existence of a sanhedrin in the late first and early second century, see *ibid.* 76–77.

²¹ Goodblatt (1994) 273. While Levine seems to assume that a sanhedrin existed in the pre-70 period, see *idem* (1989) 76, Goodblatt (1994) 77–130 convincingly argues against the existence of a sanhedrin in Second Temple times. *Ibid.* 232 he concludes: "... there was no ancient institution waiting to be reestablished after the first revolt against Rome". The sanhedrin described in rabbinic texts is an idealized image which never existed in reality: "... the rabbinic account was not intended by its authors to be a description of a contemporary or

Two tannaitic sources explicitly deny the existence of a sanhedrin after the Destruction. According to M. Sotah 9:11 and a *baraita* in b. Ket. 30a-b the sanhedrin "ceased" (בטלה) when the Temple was destroyed. Goodblatt refers to a third tannaitic text which, according to him, implies the nonexistence of a sanhedrin, but this argument is not very convincing. In M. Mak. 1:10 R. Tarfon and R. Aqiba indicate that they were not members of a sanhedrin (אילו היינו בסנהדרין). From this Goodblatt concludes: "In view of the leading role assigned to them, especially Aqiva, by our sources, this can only mean that in their days there was no sanhedrin".²² It could also mean, however, that there was a sanhedrin and that they were not members. In any case, the nonexistence of a sanhedrin in the tannaitic period is explicitly stated in two sources. "And reinforcing these data is the failure of any tannaitic source to assert the existence of a contemporary sanhedrin".²³

The only text which explicitly mentions a sanhedrin in amoraic times is the tradition about the migration of the sanhedrin from Jerusalem to Tiberias with stop-overs in between (b. R.H. 31a-b; cf. Gen. R. 97, pp. 1220-1221). This text has been rejected by Levine, Goodblatt, and Jacobs as evidence for the existence of a post-70 sanhedrin.²⁴ Its assertions are not corroborated by other sources. The journeys of the sanhedrin are reminiscent of the journeys of the *Shekhinah*. In addition: "The locales mentioned are more indicative of the seats of the Patriarch than of any specific rabbinic body. Rabbis may have gathered in these places from time to time, but usually only at the behest of the Patriarch".²⁵

Goodblatt has also examined the evidence for the existence of any other "regularly meeting, formally defined group", such as the sources commonly regarded as testimony to a national council in Yavneh and Usha.²⁶ He has suggested that those texts which seem to assume a unique status of the court in Yavneh (such as M. Sanh. 11:4 and Sifre Deut. 154, p. 207) could refer to the time of R. Gamliel II. "And if they reflect the era of Gamliel II, then the special status of Yavneh may derive from it being the site of the patriarchate, not of a national council".²⁷ Yochanan b. Zakkai, on the other hand, never

recent historical institution. Rather it is meant to describe the ideal Israelite polity as it existed in pre-exilic times and as it would exist again in the future with the restoration of the Israelite state" (ibid. 108). The sanhedrin mentioned in Josephus may have been an *ad hoc* advisory council or *consilium* which was convened only occasionally. The book of Acts is the only source which presents the sanhedrin as an on-going Judaeian national council. Since this portrait is not corroborated by other sources, its historical reliability is doubtful (see ibid. 124).

²² See ibid. 236.

²³ Ibid. See also Efron 301-302.

²⁴ See Levine (1989) 78-82; Goodblatt (1994) 237; Jacobs (1995) 97.

²⁵ Levine (1989) 81.

²⁶ Goodblatt (1994) 237.

²⁷ Ibid. 238-239. Ibid. 255 Goodblatt notes that it is not clear whether R. Gamliel II actually was patriarch.

seems to have claimed any special authority or headed a court which did.²⁸ None of the Yavnean traditions, whether referring to the "vineyard at Yavneh" or to meetings of a particular number of sages, indicate the existence of any kind of formal institution.²⁹ Neither does the story about R. Gamliel's deposition.³⁰ While Goldenberg suggested that the Palestinian version of the story deals with the issue of the legitimate presidency of the academy,³¹ Goodblatt has noticed that only according to the Babylonian version Eleazar b. Azariah was appointed "head of the session". According to the Palestinian version, he was merely "seated in session". Seating someone in session means to appoint him a judge or elder.³² Goodblatt suggests that the assembly alluded to here may have been nothing more than the private court of Rabban Gamliel.³³

There is also no evidence for a national rabbinic assembly in the so-called Ushan period. Both, references to the determination of the calendar³⁴ and references to votes taken in Usha³⁵ do not presuppose the existence of a sanhedrin or similar institution. The setting for these decisions may have been the patriarch's private court,³⁶ or a meeting of a few rabbis. The story about the plot against Shimon b. Gamliel II,³⁷ which might be considered evidence for some sort of national assembly,³⁸ seems to be a Babylonian fiction and is not historically reliable with regard to conditions in second century Usha.³⁹ Goodblatt concludes: "This leaves us with no evidence whatsoever for a sanhedrin or great court or national council at Usha in the time of Simeon II. That contemporary sages met there in small groups is beyond doubt".⁴⁰

No more evidence exists for a national rabbinic council in the time of R. Yehudah ha-Nasi. T. Ohal. 18:18, the only text which refers to a "great court" in connection with Rabbi, is "one of a series of tendentious anecdotes".⁴¹ The

²⁸ See ibid. 240.

²⁹ See ibid. 241-251.

³⁰ Cf. y. Ber. 4:1, 7c-d par. y. Taan. 4:1, 67d; b. Ber. 27b-28a. For a discussion of the various versions of this story see Goldenberg (1972) 167-190; Zahavy 146-159; Kanter 17-25; Goodblatt (1994) 251-254.

³¹ See Goldenberg (1972) 170-171.

³² See Goodblatt (1994) 252.

³³ See ibid. 253. Goodblatt (1975a) 64-66 has argued that at least in Babylonian sources the term *שׂוֹבֵר* means "court". He thinks that the same meaning may apply to the usage of the term in Palestinian sources.

³⁴ See e.g. T. R.H. 1:16 and 2:1.

³⁵ See e.g. T. Shebi. 4:21; y. M.Q. 3:1, 81d.

³⁶ See Goodblatt (1994) 265-266.

³⁷ B. Hor. 13b-14a with a partial parallel in y. Bik. 3:3, 65c.

³⁸ The story deals with rules concerning the entry of the *nasi*, *chacham*, and *av bet din* into a meeting which is not specified any further. In the following, the meeting is described as a study session and located in a study house (*בֵּית מדרש*).

³⁹ See Goodblatt (1994) 267. For an analysis of this story see Goodblatt (1984) 349-374.

⁴⁰ Goodblatt (1994) 267.

⁴¹ See ibid. 268.

story mentions only four rabbis by name. These rabbis are said to have spent the Sabbath in Lydda. At some point they decided to vote to free Ashqelon from the necessity of tithes. One of the rabbis, who did not share the others' opinion, refused to vote with them. He was allegedly "afraid of the great court lest they crush my head". In the story's parallel in y. Yeb. 7:2, 8a this last line is missing. Goodblatt suggests that in the T. version the reference to the "great court", just as the "crushing of the head", may be merely rhetorical, indicating a more prestigious court, such as an ancient or heavenly one.⁴² What remains is a story about a meeting of a small number of sages. This "coming together of a small group of masters cannot establish the existence of a national council".⁴³

Goodblatt emphasizes that the "sanhedrins" mentioned in *Codex Theodosianus* (May 30, 429)⁴⁴ "might be no more than local community boards or courts, rather than 'national' councils with province-wide jurisdiction".⁴⁵ Yet even if one assumes that province-wide rabbinic councils called sanhedrin existed in the fifth century, such an institution must not have existed in earlier times. The fifth century sanhedrins must not have been identical with the "sanhedrin" envisioned by rabbinic texts.⁴⁶

While the hypothesis of a central rabbinic court in tannaitic and amoraic times can no longer be maintained, some rabbis may have been appointed judges in officially recognized public courts, some may have had their private courts, and others, perhaps the majority, may have given legal decisions in various settings, whenever the occasion arose. While only the public courts may have been "formal" institutions connected with a special building and a succession of officials, acknowledged by the state,⁴⁷ one might perhaps call the

⁴² See *ibid.* 270.

⁴³ *Ibid.* 269.

⁴⁴ The law refers to "the primates of the Jews who are appointed in the sanhedrins of the two Palestines ...".

⁴⁵ Goodblatt (1994) 274. See also Efron 301: John Chrysostom, *Adversus Judaeos* 1.3, PG 48, col. 848 also mentions "sanhedrins of the Hebrews", but "his reference is certainly not to a central Sanhedrin in Eretz Israel, but to local courts of Antiochian Jews at the end of the fourth century C.E. which obviously did not have the status or authority of a Small or Great Sanhedrin".

⁴⁶ Juster 400–402 and Rabello 716–717 seem to reckon with a continuous, albeit restricted, existence of "the" pre-70 "sanhedrin" during the post-70 period. Levine (1989) 82 thinks that two sanhedrins existed in fifth century Palestine, yet "their nature and connection with earlier institutions of the same name remains unclear". Jacobs' analysis of the traditions concerning the patriarch has led to the conclusion that the patriarch was not the head of a sanhedrin and that the mere existence of a sanhedrin in tannaitic and amoraic times is questionable, see *idem* (1995) 60–90.

⁴⁷ For this (structural-functional) meaning of "institution" see Hartfiel/Hillmann 341: "Bezeichnung für eine Organisation, einen Betrieb oder Einrichtung schlechthin, die nach bestimmten Regeln des Arbeitsablaufes u. der Verteilung von Funktionen auf kooperierende Mitarbeiter (im Rahmen eines größeren Organisationssystems) eine bestimmte Aufgabe erfüllt".

private courts and the practice of delivering case decisions "informal" institutions.⁴⁸ Rabbinic courts seem to have been linked to particular rabbis or patriarchs rather than being permanent bodies.⁴⁹ Case decisions by rabbis are presented as a repeated practice, but there is no evidence that they were formally organized in any way. If the term "institution" is used in the sense of a repeated pattern of interaction with fixed role expectations as, for example, Parsons and Giddens do,⁵⁰ the rabbinic practice of giving legal advice to others may be called an institution, or, more specifically, an "informal institution".

Both the Mishnah and Tosefta and the Talmud Yerushalmi transmit dozens of case stories in which rabbis are approached by colleagues or lay-people for legal advice. The form of these case stories basically remains the same in the earlier and later sources.⁵¹ Case stories are highly formulaic. They usually consist of a case-description and a rabbinic decision only. They feature an individual or a group who asked or went or brought a case before a rabbi, and a rabbi or anonymous "sages" who decided the case. The legal issue is usually not made explicit but is only implied in the short description of the case.⁵²

Tannaitic case stories mostly deal with matters of ritual purity⁵³ and family matters,⁵⁴ and, to a lesser extent, with agricultural issues,⁵⁵ Sabbath and festi-

⁴⁸ For the term "informal institution" see Henry 6–7: Formal or official institutions are "all those activities which are a recognized, regular feature in society's systems of accounting", whereas informal or unofficial institutions "are not officially recognized as part of these formal institutions".

⁴⁹ See below.

⁵⁰ See Parsons 39: an institution is "a complex of institutionalized role integrates" or status-relationships. See also Giddens 72: "... encounters typically occur as routines. That is, what from the angle of the fleeting moment might appear brief and trivial interchanges take on much more substance when seen as inherent in the iterative nature of social life. The routinization of encounters is of major significance in binding the fleeting encounter to social reproduction and thus to the seeming 'fixity' of institutions".

⁵¹ For the form of case stories in the Mishnah see Goldberg (1974) 2–13; for case stories in y. Neziqin see Hezser (1993) 292–303; for case stories in b. Neziqin see Segal 14–34.

⁵² See Hezser (1993) 292.

⁵³ See e.g. M. Kel. 5:4: uncleanness of ovens; M. Nid. 8:3: purity of menstruant; M. Yad. 3:1: uncleanness of hands contracted by touching impure vessel; T. Ter. 7:15: purity of wine into which a dead snake fell; T. A.Z. 7:4: gentile who fell into a cistern of wine; T. Kel. B. B. 1:3: purity of unguarded cloth; T. Nid. 4:3: woman producing abortions; T. Miq. 6:3: purity of immersion pool.

⁵⁴ See e.g. M. Yeb. 12:5: validity of *chalisah* performed in private; *ibid.* 16:4: remarriage after disappearance or death of husband; M. Ket. 1:10: woman marrying a priest after having been raped; M. Git. 1:5: writ of divorce signed by Samaritan witnesses; T. Yeb. 10:3: levirate marriage; T. Ket. 4:9: betrothal.

⁵⁵ Cf. e.g. M. Kil. 4:9: mixed plantings in a vineyard; M. Ter. 4:13: priestly heave-offerings mixed with non-sacred grain; T. Dem. 4:13: permissibility of produce in the market; T. Shebi. 4:13: produce planted in the Seventh Year; T. M. Shen. 5:9: deposit of second tithe money.

vals,⁵⁶ vows,⁵⁷ and idolatry.⁵⁸ A few case stories also deal with damages,⁵⁹ rent,⁶⁰ loan,⁶¹ fraud,⁶² and donations,⁶³ but these issues are rare. Purity issues and family law clearly predominate in these texts,⁶⁴ while issues of civil and criminal law are almost totally absent.⁶⁵ In the case stories in the Yerushalmi, issues of purity and family matters continue to play a large role. In addition, the Sabbath and festivals as well as damages and property cases feature more prominently here. But property cases usually concern minor property such as goats,⁶⁶ or a ladle,⁶⁷ or a husband's payment for a wife's medical treatment⁶⁸ rather than larger sums of money such as a hundred denars,⁶⁹ a minor's selling of his property,⁷⁰ or a woman's squandering of her husband's belongings.⁷¹

Since these stories are both elliptic and highly formalized, they cannot be taken at face-value as historical evidence about rabbinic adjudication of cases. Sometimes issues which occurred in theoretical discussions may have been transmitted in case story form. Issues which were discussed in much more detail in reality may have been abbreviated for purposes of transmission.

⁵⁶ Cf. e.g. M. Shab. 3:4: mixing hot and cold water on the Sabbath; M. Er. 8:7: erub concerning water channel; M. Bez. 3:5: moving impure objects on a festival day. I have not found any case stories concerning festivals in the T.

⁵⁷ Cf. e.g. M. Ned. 5:6: bindingness of vow concerning donation; M. Naz. 5:4: Nazirite vow; T. Bekh. 6:11: a father's vow that his son should study Torah and not work.

⁵⁸ Cf. e.g. M. A.Z. 1:4: trade with shops which are decorated with idols; A.Z. 4:10: usability of wine touched by a gentile; T. A.Z. 3:7: Torah scrolls written by a gentile; T. Nid. 5:16: a boy sanctified his spade to heaven; *ibid.* 5:17: a child asks sailors to "cry out to him who created the sea".

⁵⁹ Cf. M. B. Q. 8:6: damages for putting a woman to shame; T. B. Q. 6:5: digging an open pit in the public domain.

⁶⁰ Cf. M. B. M. 8:8: the rent of a bathhouse in an intercalated year.

⁶¹ Cf. M. B. B. 10:8: loan; M. Ed. 2:3: writing bonds of indebtedness.

⁶² Cf. M. B. M. 4:3: fraud in commerce.

⁶³ Cf. M. B. B. 9:7: verbal donation of a dying person; T. B. B. 10:12: donation of movables together with landed property.

⁶⁴ For the proportions of tannaic case stories dealing with each of these topics see S. J. D. Cohen (1992) 161.

⁶⁵ See Goodman (1983) 101; S. J. D. Cohen (1992) 161. Cohen noticed that besides civil cases, cases dealing with Sabbath and festival law and ritual slaughtering are also under-represented in tannaic documents.

⁶⁶ Cf. y. Ket. 9:3, 33a: a creditor seizes a goat which sons inherited from their father.

⁶⁷ Cf. y. Qid. 3:4, 64a: a person reclaims the ladle he left with someone.

⁶⁸ Cf. y. B. B. 9:5-6, 17a: question whether the costs for treating an eye disease should be charged to a woman's dowry.

⁶⁹ Cf. y. Qid. 3:4, 64a: someone owed his fellow a hundred denars.

⁷⁰ Cf. y. B. B. 9:8, 17a.

⁷¹ Cf. y. B. B. 10:15, 17d: question whether the squandering of the property might be a plot against the surety. According to Neusner (1983a) 121, the amoraic rabbis' dealing with property cases, especially land, represented their "... most striking kind of power ... The power to transfer ownership from one party to some other, or to govern transactions with that same effect, thus represents the single most important testimony to the character of the authority of the rabbi as judge".

Nevertheless the fact that numerous case stories were transmitted by both tannaim and amoraim and that rabbinic literature also contains legal statements concerning the integrity required from judges⁷² make it likely that rabbis were actually approached by others who asked them for legal advice and arbitration.⁷³

Case stories usually contain no information about the setting of rabbinic legal advice, nor do they state whether the questioners actually followed the decisions of the rabbis. The actual *Sitz im Leben* of case stories remains unknown.⁷⁴ It is likely that rabbis were approached for legal counsel in various settings. Lay-people, colleagues and students may have approached them in the street and in the market-place as well as in study houses,⁷⁵ synagogues, or private homes. According to a story in T. Ter. 2:13, for example, Sebion, the head of the synagogue at Kezib, approached R. Gamliel while he was walking from place to place (ר'גן שהיה עובר ממקום למקום). He asked him concerning the purchase of a vineyard from a gentile and wanted him to stop and deliberate his case with him (המתן עד שנוהה בהלכה). R. Gamliel obviously refused: the story does not conclude with a case decision. According to an anonymous comment, R. Gamliel later sent the questioner a message which contained his view of the case. According to another story, someone sought from R. Gamliel the absolution of a vow. He accompanied him to the Ladder of Tyre until the wine, which R. Gamliel had drunk, was worn off. Then R. Gamliel "got off the ass and wrapped himself in his cloak, and sat down and declared his vow to be absolved".⁷⁶ ARNA 15 (p. 60) contains a story about a

⁷² See e.g. M. Peah 8:9: A judge who judges for justice's sake is blessed, while a judge who takes bribes is cursed; cf. M. Bekh. 4:6: He who takes payment for judging, his judgments are void. M. Sanh. 3:3 lists those who should not serve as judges or witnesses: a person who plays dice, who lends money on interest, who raises pigeons, who does business with the produce of the Seventh Year; T. Sanh. 7:5: "The eunuch and the one who has never had children are suitable for judging property cases but are not suitable for judging capital cases. R. Yudah also adds the one who is too harsh or too forgiving". ARNA 10 (p. 61): a judge shall not favor the rich. Sifre Deut. 144:3 (p. 198): "You shall not judge unfairly [Deut. 16:18-20], you shall not say: So-and-so is beautiful, So-and-so is my relative. You shall not show partiality [ibid.], you shall not say: So-and-so is poor, So-and-so is rich". These and similar statements were probably meant to apply to the various kinds of judges, not only to those who were formally appointed or to those belonging to a hypothetical "sanhedrin".

⁷³ See Neusner (1984) 17; S. J. D. Cohen (1992) 162.

⁷⁴ See Hezser (1993) 395. Goldberg (1974) 21 suggests that the case stories preserved in the Mishnah may have ultimately derived from minutes of court proceedings. For purposes of transmission these minutes of individual cases have been abbreviated and turned into general precedents. Goldberg does not specify what he means by "court".

⁷⁵ Gafni (1982b) 31-39 argues that many case stories in the Bavli indicate a school setting: cases were decided by the "heads of schools"; students and colleagues were present. The case stories in the Yerushalmi do not provide any such direct evidence for a school setting and some of Gafni's examples in the Bavli may also be questioned, see Hezser (1993) 395 n. 539. Nevertheless it is possible that individual rabbis were approached for legal advice by lay-people or colleagues in study houses,

⁷⁶ T. Pes. 2:16. Cf. y. A.Z. 1:9, 40a.

man who repeatedly knocked on Hillel's door at night to ask him concerning a legal matter. Hillel's patience is contrasted with Shammai's impatience, who "rebuked him and threw him out".⁷⁷ According to a story in y. M. Shen. 1:1, 52c, R. Ba and R. Ammi were sitting in Tyre when a case concerning produce planted in the forbidden thirty days before the Seventh Year was brought before them. Another story reports that "R. Abbahu was sitting [and] judging alone in the rebellious synagogue [or: synagogue at the gate] of Caesarea".⁷⁸ He legitimized this practice to his students by reference to the trust which people had in him.⁷⁹ This trust in the judgment of rabbis may well have been the main basis of their legal authority. It is likely that many rabbis practiced arbitration in this unofficial way for all those who appreciated their knowledge and advice.⁸⁰

Private courts are explicitly mentioned for a very limited number of rabbis only. Once, the courts of R. Yochanan b. Zakkai and R. Eliezer are mentioned (Sifre Deut. 144:5, p. 200: "Pursue a court whose rulings are fair, [like] the court of R. Yochanan b. Zakkai and the court of R. Eliezer"). Similarly rare are references to the court of R. Shimon b. Gamliel. This court is only mentioned in the Erfurt ms. version of T. Shebi. 6:17 and in a tradition attributed to Rav in y. B. B. 10:14, 17d. More frequently mentioned are the court of R. Gamliel and Rabbi.⁸¹ Private courts in general are referred to in T. Sanh. 11:7: after a criminal has received his sentence, "they write messages and send them everywhere: So-and-so has been tried in the court of so-and-so (גמר דינו בבית) (דן של סלוני)". Since these courts are linked to particular individuals, they are unlikely to have been permanent institutions with a succession of judges. They probably ceased to exist when the person with whom they were associated died. Perhaps they were only set up occasionally, whenever the need arose.⁸² Their procedure may have been slightly more elaborate than the case decisions

⁷⁷ Par. ARNB 29 (p. 60f.).

⁷⁸ For the various possible meanings of מדרתא see Wewers (1981) 6 n. 42.

⁷⁹ "They come to me as to someone whose [judgement] they accept [כמי] (אתחן לנביי כמי) [שקיבלו עליהן]".

⁸⁰ See Chajes 52: "... nous arrivons à cette conclusion qu'il n'existait pas de tribunaux au véritable sens du mot, fonctionnant d'une manière permanente. Nous trouvons surtout des juges isolés, ayant des pouvoirs plus ou moins étendus, mais exerçant leur action dans un domaine restreint, avec l'autorisation ou, du moins, la tolérance des autorités". See also Goodman (1983) 102-111 for the limitations of rabbinic legal authority in the first two centuries; Neusner (1983a) 134 for rabbis as judges in the Yerushalmi: "We have no clear evidence on the actual procedures, particularly with reference to the particular sort of sanctions rabbis could impose if their orders were not obeyed". For the basis of rabbis' authority see III.4 below.

⁸¹ R. Gamliel: see e.g. M. R. H. 2:9, T. Ber. 2:6, T. Shebi. 1:1. Rabbi: see e.g. M. Git. 5:6, M. A. Z. 2:6, T. Shebi. 4:17, y. Shab. 1:4, 3c, y. Git. 7:3, 48d, y. A. Z. 2:8, 41d.

⁸² Cf. M. Git. 5:6: "Rabbi called a court into session (הושיב בית דין)". Similarly, litigants may have chosen a judge and set up a court, cf. M. Git. 4:2 with regard to a husband who wants to divorce his wife: היה עושה בית דין, and ibid. 6:7.

given by individual rabbis. Two or more judges, witnesses and scribes may have been present.⁸³ But there is no evidence that these private courts were more acknowledged by the Roman authorities than legal decisions given by individual rabbis.

As already mentioned above, at least from the third century onwards, some rabbis may have been judges in local public courts. For example, a story in y. B. B. 2:3, 13b implies that R. Acha was a court member.⁸⁴ A tradition in y. Ned. 4:10, 38a is attributed to "R. Shimon the judge (ר' שמואל) [ר' שמואל]". The profession "judge" serves as a special characteristic here by which R. Shimon can be distinguished from other bearers of the name. Local courts are explicitly mentioned for Tiberias (Sifre Deut. 155:10, p. 419) and Lydda (y. Hor. 1:4, 46a), but they probably existed at a number of other places as well.⁸⁵ Nevertheless not every town seems to have had one.⁸⁶ At places where there were public courts, private courts and individual judges, litigants with civil cases could probably choose their judges.⁸⁷

B. The Academy

Goodblatt has challenged the assumption that rabbinic academies existed in Sassanian Babylonia and has argued for the existence of disciple circles rather than formally established schools in pre-Geonic times. He defines an academy or school as

"... an institution which transcends its principles. It has a staff, a curriculum, and, most important, a life of its own, a corporate identity. Students come and go, teachers leave and are replaced, the head of the school dies and a new one is appointed – the institution goes on".⁸⁸

In contrast to such an institution, a disciple circle

⁸³ According to R. Yudan b. R. Yishmael's statement in y. Git. 7:3, 48d, Rabbi's court differed from him, that is, was stricter than him, i.e. a distinction between the "leader" of the court and its other members is made here.

⁸⁴ According to the story, R. Abdumi had a dumpling baker live underneath his apartment. He became angry with R. Acha who passed by and did not protest. His anger was so great that he became sick. In reaction to this, R. Acha speaks as a representative of the court: the court will have mercy with him (and remove the dumpling baker?) and will hold shrouds ready for him (because he will be unable to enjoy his success?). On this story see Hezser (1993) 149-151.

⁸⁵ According to the anonymous opinion in M. Sanh. 1:6, a village should have at least one hundred and twenty citizens for a court to be worthwhile; according to R. Nechemiah, two hundred and thirty citizens are the minimum. But these deliberations are merely theoretical.

⁸⁶ cf. M. B. M. 2:9 and Sifre Deut. 205:6 (p. 241).

⁸⁷ See e.g. M. Sanh. 3:1 and T. Sanh. 5:1: litigants choose judges.

⁸⁸ Goodblatt (1975a) 267.