

# The Rhetoric of Innovation

## Self-Conscious Legal Change in Rabbinic Literature



Aaron D. Panken, University Press of America, 2005

In Dr. Aaron Panken's new book, *The Rhetoric of Innovation*, he explores the profound tension that exists between the opposing tendencies of preservation and innovation in rabbinic legal literature. The rabbis made tremendous attempts to safeguard traditions handed down to them from prior generations in the face of significant new challenges. At the same time, these creative religious thinkers boldly invented new practices (or altered old ones) to fit shifting circumstances, designing and utilizing a rich rhetorical vocabulary to allow such necessary innovation.

Through critical examination of more than 1,000 occurrences of terms depicting legal innovation, this study maps the contours of legal change reported during the rabbinic period. *The Rhetoric of Innovation* examines temporal clusters of statements and actions attributed to authority figures in the Tannaitic and Amoraic periods, also reviewing the geographic distribution of these words and their divergent usages in documents edited in Roman Palestine and Babylonia. It also provides significant insight into rabbinic philosophies of legal change, through exploring the various rationales deemed acceptable within the rabbinic corpus. In this respect, the book carries a relevant message for modern Jewish life in its consideration of the history of appropriate boundaries and reasons for legal change—questions that recur frequently in Jewish discourse today.

In this excerpt, Panken discusses a text from the Palestinian Talmud that deals with the ever-persistent question of changing the qualifications required for a Jewish leader – an issue that is as relevant now at HUC-JIR as it was 1500 years ago when this text was written.

### The Developing Meaning of *Talmid Hakham* (A Disciple of the Wise)

The status of *talmid hakham* (literally “disciple of the wise” or “wise disciple”)<sup>1</sup> represented a liminal stage in the development of an individual as a Jewish religious leader. The *talmid hakham* was the quintessential apprentice, involved in the daily chore of learning his craft and imbued with some authority, but not yet complete in his own development. Many scholars have discussed the meaning of this ubiquitous term.<sup>2</sup>

In the Palestinian Talmud, Moed Katan 83b, 3:7 we find a fascinating discussion of the definition of a *talmid hakham* that reflects significant changes in the

meaning of this term over time:

אי זהו תלמיד חכם? חזקיה אמר: כל ששנה הלכות ועוד תורה. א"ל ר' יוסי: הדא דאת אמר בראשונה, אבל עכשיו אפילו הלכות. ר' אבהו בשם ר' יוחנן: כל שהוא מבטל עסקיו מפני משנתו. תני: כל ששואלין אותו והוא משיב. א"ר הושעיה: כגון אנן דרבבינן משגחין עלינן ואנן מתיבין לו. אמר רבי בא בר ממל: כל שהוא יודע לבאר משנתו. ואנן אפילו רבבינן לא חכמין מבארה מתניתין.

Who is a *talmid hakham*?

Hezekiah said: anyone who has studied *halakhot* [the body of practically applicable Jewish law created by the rabbis] and more Torah.<sup>3</sup> Rabbi Yossi said to him: that which you said is at first, but now,

[one who has studied] even *halakhot*. Rabbi Abbahu [said] in the name of Rabbi Yohanan: anyone who cancels his business for the sake of his study. It was taught: anyone of whom they ask [questions of law] and he answers.<sup>4</sup> [Rabbi] Hoshaya said: like us, since our rabbis supervise us and we answer to them. Rabbi [Ab]ba bar Memel said: anyone who knows how to explain his Mishnah.<sup>5</sup> And [with] us, even our rabbis are not wise enough to [fully] explain the Mishnah.<sup>6</sup>

The passage begins by quoting an initial statement from Hezekiah,<sup>7</sup> an Amoraic immigrant to Babylonia from Palestine who lived in Tiberias in the early

third century. Hezekiah understood the study of *halakhot* and “more Torah” to be the *sine qua non* of discipleship, representing the minimum acceptable level of achievement for this premium status to take hold.

Next, we see Hezekiah's statement overturned, classed as out of date by a statement attributed to Rabbi Yossi, a later emigrant in the opposite direction—from Babylonia to Palestine. Rabbi Yossi, also known as Assi or Issi, was a student of Rabbi Yohanan bar Nappaha in Tiberias, who lived in the mid- to late third century, two generations after Hezekiah. This is the first of three opinions from students of Rabbi Yohanan that we find cited here. Rabbi Yossi's state-

ment dropped the minimum acceptable standard for a *talmid hakham* to a lower level when he defined the requirements as: “now even one who has studied *halakhot*.” Removed from Rabbi Yossi’s requirements is the crucial clause “and more Torah.”

The third view presented in this pericope is attributed to the Palestinian Amora Rabbi Abbahu (d. 309 CE), citing Rabbi Yohanan (ca. 200-279 CE),<sup>8</sup> representing the least stringent of the views presented so far. Rabbinic legend described Rabbi Yohanan as the preeminent leader of Jewish life in Tiberias during the mid-third century. Rabbi Abbahu was his student and a contemporary of Rabbi Yossi (the prior opinion), situated in Caesarea in the late third to early fourth century CE. To qualify for discipleship in R. Yohanan’s *Weltanschauung*, one needed only to prioritize the study of Torah over one’s business obligations. Here, there was no requisite modicum of knowledge at all, simply a show of commitment to study at some personal expense.

A *baraita* forms the next piece of our passage, bringing with it the idea that anyone who participates in dialogic inquiry about



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the Wexner Graduate Fellowship, he earned his doctorate in Hebrew and Judaic Studies at New York University. Active in major Jewish organizations such as the Wexner Foundation, Birthright Israel and the New Israel Fund, he teaches and speaks widely in North America and abroad, and serves in a variety of other leadership roles within the Reform Movement. A native of New York City who graduated from Johns Hopkins University’s Electrical Engineering program, Rabbi Panken is also a sailor and instrument-rated pilot, and lives with his wife, Lisa Messinger, and their two children in the New York area. His book, *The Rhetoric of Innovation*, is available from the University Press of America.

Jewish law qualified as a *talmid hakham*. This earlier stratum is inserted to offer a new way to look at the question: being a *talmid hakham* does not imply meeting certain objective standards of Jewish practical and textual knowledge, nor is it required that one downplay the focus upon one’s livelihood. Instead, one must have enough ready knowledge to be able to engage in the ongoing shaping of Jewish law through asking and answering questions. In other words, if one asked this *talmid hakham* about any of a number of issues drawn from the broad range of *halakhab*, he had to be ready with an answer. This implies a commitment to the understanding and transmission of appropriate law given the questions being asked at the specific time and place of the disciple’s life. Thus, in the *baraita*, the minimum requirement is a steady engagement with the ongoing legal debates of one’s day and having ready halakhic answers based on an appropriate level of background knowledge.

One other important implication may be derived from this *baraita*. A distinct element of communal acceptance may also be hidden in its words: community members will only turn to an individual to answer their questions if that individual is considered worthy of providing them with counsel. Thus, this

*baraita* also suggests that the community of learners/questioners has a role in defining a person’s status as a *talmid hakham*: after all, if no one asks these questions of a scholar, then the initial clause of the definition can never be satisfied.

Hoshaya,<sup>9</sup> an unordained shoemaker and the third student of Rabbi Yohanan in Tiberias encountered in this text,<sup>10</sup> applied this *baraita* to his contemporary situation, indicating that he and his colleagues, who ask and answer questions but are still supervised by their elders, qualified as *talmidei hakhamim* under this definition. Here, the text hints at a delicate communal tension: a *talmid hakham* was neither master nor ordinary person – instead he was a master-in-training. As such, he was able to provide answers to certain halakhic questions, but was still firmly under supervision. Such oversight safeguarded the interests of both the community and the disciple, ensuring that no serious mistake in interpretation or ruling harmed either.

Another implication of this passage is that the *talmid hakham* was responsible for his actions: he *answered*, literally, to his masters. They had the right to question his determinations and to demand a response. Such oversight was not inherent in any of the prior definitions of *talmid hakham* and may have been most

visible to one who held the status of *talmid hakham* himself, such as Hoshaya. Here, the true flavor of the apprenticeship was visible.

Rabbi Ba bar Memel, a Palestinian Amora from the same period as Hoshaya known as Abba Bar Memel in BT,<sup>11</sup> concludes this pericope with a statement that rebuts Hoshaya and tells the final truth of this passage all at once: to qualify as a *talmid hakham* no objective level of knowledge can be expected in any absolute terms. Even the greatest of his contemporaries, who constantly supervise disciples, did not achieve total comprehension of what they study.

It is clear, then, that this text reports that the standards for becoming a *talmid hakham* underwent a significant shift over time. Hezekiah’s initial definition formed the basis for a useful further discussion. That discussion, if it was indeed historical, most likely took place in Tiberias, as all the voices belong to students of the prominent Tiberian master Rabbi Yohanan. Regardless of whether this is the record of an actual conversation, or a literary construct that a later editor pasted together from transmitted statements, the result is the same: when the redactor finalized this passage, he included a variety of different opinions on the nature of a *talmid hakham* that spanned several

generations and clearly evinced a forthright awareness of significant change in its definition over time. While the opinions from Tiberian authorities may well be coterminous, the opinion contained in the *baraita* is clearly portrayed as originating in an earlier period. Rabbi Yossi's claim in this pericope is that an older opinion no longer held currency because conditions related to authority and leadership had changed. ■

<sup>1</sup> This second definition is less likely, since the plural form, *talmidei hakhamim*, suggests that this term is *smikbut* (a construct form), as opposed to a noun with a following adjective.

<sup>2</sup> Cf. Aharon Oppenheimer, *The 'Am Ha-aretz*, pp. 170-199; Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tübingen: Mohr Siebeck, 1997), pp. 78-93 and 332-352; Louis Ginzberg, *Students, Scholars, and Saints* (Lanham, MD: University Press of America, 1985), pp. 35-58; Robert Kirschner, "Imitatio Rabbinii" *JJS* 17 (1986), pp. 70-9; Jacob Neusner, *Talmudic Judaism in Sassanian Babylonia* (Leiden: E.J. Brill, 1976), pp. 46-135; and *idem*, *Contemporary Judaic Fellowship in Theory and in Practice* (New York: Ktav, 1972), pp. 13-30;

Gedaliah Alon, *The Jews in Their Land in the Talmudic Age* (Jerusalem: Magnes Press, 1984), pp. 479-514; Ephraim E. Urbach, *The Sages* (Jerusalem: Magnes Press, 1975), pp. 620-30; and Richard Kalmin, *The Sage in Jewish Society of Late Antiquity* (New York: Routledge, 1999) among numerous others.

<sup>3</sup> Two major commentators to the Palestinian Talmud dispute the meaning of this odd phrase: the *Penei Moshe* suggests that this implies one who has studied enough *halakhot* that he understands how they are derived from the Torah. The *Korban HaEdah* suggests we follow its variant reading of the text, which states: הלכות בכל יום ועד תורה כל שמונה "all who study *halakhot* each day, and more Torah." The *Korban HaEdah* goes on to interpret that, in addition to being expert in *halakhot* through regular study, he must also be an expert in Torah. David Weiss Halivni, in his *Midrash, Mishnah and Gemara* (Cambridge: Harvard University Press, 1986), pp. 19-21 and nn. 17-20, strongly countermands the claim of Lauterbach that this passage represents early evidence for the development of the midrashic form, chiding Lauterbach for his neglect of Ms. Leiden's reading of תורה ועד תורה and the profusion of *rishonim* who prefer this reading. Taking this as a possibility, it may be that the text here implies that a *talmid hakham* must serve as a living witness to Torah. Given the rest of the literary structure of the passage, though, this seems less likely than the reading selected above, even if it is a more poetic choice.

<sup>4</sup> There are two ways to read this *baraita*: alone, it seems to suggest that a *talmid hakham* is anyone who is questioned by another about Jewish law, who has some ability to answer questions. When read in conjunction with the statement of Rabbi Hoshaya that follows it, though, it appears that a *talmid hakham* is an authority in that he is questioned by others, but not the final authority, in that he has another authority who supervises him. The latter reading is more in keeping with the rest of the material in PT here, as well as with the explanation of the *Penei Moshe* (*ad loc.*).

<sup>5</sup> Literally, this could mean "explain his Mishnah," or "explain his study." Lee Levine suggests the latter translation in his *The Rabbinic Class of Roman Palestine in Late Antiquity*, (New York: Jewish Theological Seminary, 1989), p. 43, n. 1. The *Penei Moshe* suggests that this is the "way of modesty," saying that by the time this text was written, the generation involved did not have the ability to fully explain what it was studying to an ignorant person. This may reflect either a lack of teaching prowess or an underwhelming knowledge when compared to prior generations.

<sup>6</sup> This difficult clause can either suggest that the rabbis themselves were not sufficiently knowledgeable to explain the Mishnah, or, potentially, that the students were not up to the task. Here, it is translated according to the former interpretation.

<sup>7</sup> Hezekiah and Yehuda were the two sons of Rabbi Hiyya, who came with their father

from Babylonia to Palestine, living in Tiberias and working in the silk trade at the very end of the Tannaitic period, in the early third century.

<sup>8</sup> Strack and Stemberger, *Introduction*, p. 98 on Rabbi Abbahu and p. 95 on Rabbi Yohanan. For more detailed studies of the lives of these two prominent rabbis, see Lee Levine, "Rabbi Abbahu of Caesarea," in *Christianity, Judaism and Other Greco-Roman Cults: Studies for Morton Smith at Sixty 4* (Leiden: E.J. Brill, 1975), pp. 56-76 and Kimelman, *Yohanan*.

<sup>9</sup> Here it is prudent to suggest a slight emendation of the text: though Hoshaya is not ordained, in our text he is referred to as Rabbi Hoshaya. Since the majority of the statements in this pericope are from students of Rabbi Yohanan, it is logical to assume that this gloss comes from Hoshaya II, who was not ordained a rabbi, according to the information we have about him. It is not, however, entirely possible to rule out the prospect that the gloss on this *baraita* came from the earlier (and far more prominent) Rabbi Hoshaya I Rabba, a key figure in Caesarean Jewry, *fl.* 230-250 CE. The content of the gloss and the other rabbis cited all point to its author as Hoshaya II, who may well have experienced supervision by other authorities that Hoshaya I would not have warranted.

<sup>10</sup> Strack and Stemberger, *Introduction*, p. 100. Hoshaya II was usually known as Oshaya in BT.

<sup>11</sup> Strack and Stemberger, *Introduction*, p. 100.

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(continued from page 13)

the seminary of a small Protestant sect. A very pro-Israel group, they believed that Zionism and support for Israel were the first steps in bringing about the coming of the Messiah. This unusual opportunity arose as a consequence of Dr. Spicehandler's meeting one of the Seminary's professors during the course of that professor's studies in Israel at Hebrew University. Accepting his offer to teach at his Seminary in Kyoto, Dr. Spicehandler lived in a seminary dorm, Beit

Shalom, where a photo of Moshe Dayan greeted him every day. The seminarians already used Hebrew in their prayer services when

they sang hymns and Dr. Spicehandler moved them to tears when he spoke in Hebrew. They told him it was the "first time that they had heard the Lord's language spoken."

His other foreign visiting professorships included his stint in New Zealand, teaching a survey course on Jewish religious thought to students who were studying for the ministry and also lecturing on Jewish theology. In South Africa, he taught Medieval Spanish

and Hebrew poetry from the Golden Age to students and the community. In England, he taught Midrash and Hebrew Literature to undergraduate and graduate students. At Hebrew University in Jerusalem, he taught Modern Hebrew Literature in the Special Program for Foreign Students, taught Israeli students through the Department of Literature, and conducted research. In Teheran as a Fulbright Scholar, he researched Persian history, collected Judeo-Persian materials (he contributed 100 of these objects to HUC-JIR's collections), and lectured on Persian history to students and the community. ■