



# Rabbi David Tzvi Hoffmann's Torah Commentary

Marty Lockshin, Torah in Motion 2020

# Biography

1843-1921

Born in Verbo in Hungary which was part of the Austrian empire back then. Verbo is actually in Slovakia today.

Father died when he was five years old.

Studied with Rabbi Azriel Hildsheimer (1820-1899) in his youth in Eisenstadt in Hungary. When Hildesheimer left, so did Hoffmann.

One of his first jobs was teaching at a school headed by Rabbi Shimshon Rafael Hirsch (1808-1888).

# Biography

Studied philosophy, history and Semitic languages at the University of Vienna, the Friedrich Wilhelm University in Berlin and the University of Tübingen, where he received a doctorate degree for academic Talmud studies.

1873 Rabbi Azriel Hildesheimer founds the Rabbinical Seminary in Berlin and hires Hoffmann to teach there. After Hildesheimer dies, Hoffmann becomes head of school.

Reputation as punctilious in observance while being lenient in his religious decisions.

# Responsum on counting in a minyan

שאלה: במנין שלנו יש אחד או שנים שמחללים שבת בפרהסיא לא לבד במלאכתם כי אם גם עושים מוגמר, ואפילו קידוש והבדלה אינם עושים, אי שרו לצרפם למנין.

תשובה: הפרמ"ג סי' נ"ה באשל אברהם ס"ק ד' כ' דמחלל שבת בפרהסיא אין מצרפין למנין. וכ"כ בתשו' חכם צבי סי' ל"ח, . . . . וכ' המג"א סי' קצ"ט ס"ק ב' מי שהוא רשע בפרהסיא אין מזמנין עליו. .

..

Question: In our minyan there are one or two men who desecrate shabbat in public, not just by going to work. They even smoke [on shabbat]. They do not even make kiddush and Havdalah. May we count them in the minyan?

Answer: [Lists sources that take a stringent position...]

# Responsum on counting in a minyan [cont.]

היוצא מכל הנ"ל שעפ"י דין מחלל  
שבת בפרהסיא אין מצטרף למנין,

אך בזמן הזה נוהגין להקל אף בארץ  
אונגארן ומכש"כ בארץ אשכנז.

From all this we see that following  
the law, one who desecrates  
shabbat in public cannot be  
counted in a minyan.

Nevertheless, the custom is to be  
lenient nowadays in Hungary, how  
much more so in Germany.

# Responsum on counting in a minyan [cont.]

זכורני שפעם אחת אירע אבילות לאיש  
אחד שחנותו פתוח בשבת, והוא אחד  
מבעלי בתים של קהלתנו, קהל עדת  
ישראל, וירד לפני התיבה בבית הכנסת  
של קהלתנו, אך הגבאי ידע לרצות אותו  
ולפייסו שלא ירד עוד מפני שהקהל ירננו  
על זה, ואח"כ הלך זה האיש לביהכ"נ  
של חברת ש"ס, ואף שהגבאי דשם היה  
איש חרד ויר"א, הניחו לירד לפני התיבה  
בלי מניעה,

I remember that one time a member  
of our community, Kehal Adat  
Yisrael, who kept his store open on  
shabbat became an aveil and led the  
services in our community's shul.  
Our gabbai knew how to placate  
him, telling him that it was best that  
he not lead the service as the other  
congregants might gossip about him.  
Then the man went to the Chevra  
Sha's synagogue. Even though the  
gabbai there is a God-fearing haredi,  
he let him lead the services there  
without a problem.

# Responsum on counting in a minyan [cont.]

וכאשר שאלתי את הגבאי למה לא  
מנעו, אמר לי שכן הוא ג"כ מנהג  
מימים קדמונים בבית המדרש דפה  
שאין מונעין מלירד לפני התיבה  
האנשים שמסחרם פתוח בשבת, וכיון  
שהרבנים דשם שהיו אנשי שם לא  
מיחו מסתמא היה טעמם ונימוקם  
עמם,

When I asked the gabbai why he did not prevent the man from leading the services, he answered that from time immemorial the custom here in his beit midrash is that they do not prevent people whose stores are open on shabbat from leading the services. Since the rabbis at the beit midrash were famous scholars, we can assume that they had valid reasons.

# Responsum on counting in a minyan [cont.]

ואפשר שסמכו ע"ז מה שכתוב ג"כ  
בשו"ת בנין ציון החדשות סי' כ"ג  
שמחללי שבת בזמנינו נחשבים קצת  
כתינוק שנשבה לבין הנכרים, מפני  
שבעוה"ר רוב ישראל בארצנו מחללי  
שבת הם, ואין דעתם בזה לכפור  
בעיקרי אמונתנו.

Perhaps they relied on the opinion of Rabbi Jacob Ettlinger (1798-1871) that Jews who desecrate Shabbat these days are somewhat akin to “children who were captured by gentiles,” since, for our sins, most Jews in our country desecrate Shabbat. They do not intend to deny the essential principles of Judaism when they desecrate Shabbat.



# Responsum on counting in a minyan [cont.]

וכן הגיד לי הרב מו"ה משולם זלמן  
הכהן ז"ל בשם הגאון בעל שואל  
ומשיב שכתב שהאנשים מאמעריקא  
אינם נפסלים ע"י חילול שבת שלהם  
מפני שהם כתינוק שנשבה לבין  
הנכרים

Similarly, Rabbi Meshulam Zalman Hacoheh told me in the name of Rabbi Joseph Saul Nathansohn (1808-1875) that Jews from America are not considered invalid [for a minyan? as the prayer leader? as witnesses?] because they desecrate Shabbat, since they are all like “children who were captured by gentiles.”

# Responsum on counting in a minyan [cont.]

יהי' איך שיהי' המקיל לצרף אנשים  
כאלו למנין יש לו על מי שיסמוך, אך  
מי שיכול לילך לבהכ"נ אחר בלי  
להכלים איש, פשיטא דמהיות טוב  
שלא יסמוך על היתר זה, ויתפלל עם  
אנשים כשרים.

In any case, a person who decides to be lenient and count such people in a minyan has support for that position. But those who are able to go to another shul, without insulting anyone, obviously it is better that they not rely on this leniency and that they daven with kosher Jews.

# Responsum on counting in a minyan [cont.]

עוד יש סניף להקל דבזמננו לא מיקרי  
מחלל שבת בפרהסיא, כיון שרובן עושין  
כן,

דבשלמא אם רוב ישראל זכאין, ומעטים  
מעיזים פניהם לעשות איסור זה הרי הוא  
כופר בתורה ועושה תועבה ביד רמה  
ופורש עצמו מכלל ישראל,

There is another possible argument for leniency: {People whose stores are open on shabbat} are not considered anymore to be in the category of “public desecrators of Shabbat,” because now this is what most Jews do. Granted that when the majority of the community behaves properly and some individuals have the chutzpah to go against communal norms, they can be considered to have denied the Torah, acted abominably in a high-handed manner and separated themselves from the Jewish people.

# Responsum on counting in a minyan [cont.]

אבל כיון דבעו"ה רובם פורצים הגדר  
תקנתם קלקלתם, היחיד חושב שאין זה  
עבירה גדולה כל כך וא"צ לעשות  
בצנעה, ופרהסי' שלו כבצנעה, ואדרבה  
היראים קרואים בזמננו פרושים  
ומובדלים, והפושעים הם ההולכים בדרך  
כל הארץ.

However now, since, because of our sins, the majority break the rules, their iniquity works for their benefit. Individuals [who desecrate Shabbat] think that the sin is not so serious and that there is no reason to hide it. So "public" [desecration] is now like "private" [desecration]. In fact, it is the God-fearing Jews nowadays who are called the ones who separate [from the community], while the sinners are the ones who follow the standard behaviour of the community.

# Critical scholarship.

True Talmudist and halakhist.

Academic work in critical Talmud studies.

## **משנה אבות פרק א**

משנה טו: שמאי אומר . . .

משנה טז: רבן גמליאל אומר . . .

משנה יז: שמעון בנו אומר . . .

משנה יח: רבן שמעון בן גמליאל אומר . . .

## **משנה אבות פרק ב**

משנה א: רבי אומר . . .

משנה ב: רבן גמליאל בנו של רבי יהודה

הנשיא אומר . . .

משנה ג: הוו זהירין ברשות . . .

משנה ד: הוא היה אומר . . .

הלל אומר . . .

# THE FIRST MISHNA

and the Controversies of the Tannaim

◆

## THE HIGHEST COURT

in the City of the Sanctuary

by

Rabbi Dr. David Hoffmann

translated from the German

by

Paul Forchheimer, PhD.

*Sharei Torah of Rockland Library*

MAUROS HO PUBLICATIONS

of

Cong. Kehillath Yaakov, Inc., New York

5737-1977

### III. A CRITICAL INVESTIGATION OF THE TREATISE OF ABOT

A critical investigation of the treatise of Abot is to substantiate still more firmly this result regarding the first editing of the Mishna.

The treatise of Abot intended in the first place to enumerate the outstanding teachers of the tradition in chronological order. The tradition, as we saw above (p.7), was called **מטורה האכונה**, and **אכונה** was probably the common designation of the carriers of the traditional teachings. In Talmud Yerushalmi, Chagiga II, p. 77d, the "pairs" enumerated in Abot I are called **אכונה העולים**. The Sages of old are referred to in Tosefta Tewul Yom I,10 as **אכונה הראשונים**. Likewise Hillel and Shammai in particular as well as their disciples (Yerush. Hagiga ibidem, Mishna Eduyot I,4) and Rabbi Ismael and Rabbi Akiba (Yerush. Shekalim III, 47b; Rosh Hashana I, 56d) are called **אכונה העולים**<sup>1)</sup>. - at the same time, however, in the treatise of Abot (starting from the Synagoga Magna) several sayings (in the main part of the treatise usually three) are recorded of each teacher of the tradition.

A careful study of the treatise reveals immediately numerous difficulties which call definitely for a critical analysis.

1) In the first chapter there is an important gap between Hillel and Shammai and the following (M. 16) R. Gamliel. Three generations are missing: Simon b. Hillel, R. Gamliel Ha-Zaken, and R. Simon b. Gamliel Ha-Zaken.



2) R. Gamliel's son is (M.17) conspicuously mentioned only without the title of "Rabbi" (cp. רבי"ט), while immediately afterwards, M.18, he is mentioned as רבי שמעון בן גמליאל. - If we were to follow the (as we shall see erroneous) opinion of many commentators according to which M. 16-17 refer to R. Gamliel ha-Zaken and his son Simon, then the absence of any title for Simon is all the more striking, and the difficulties only mount. In that case two gaps would appear: one between Hillel and R. Gamliel I, and, again, between the two שמעון. R. Gamliel II, the grandfather of the editor of the Mishna, would be missing.<sup>2)</sup>

3) After the dynasty of the Nesiim has been listed down to R. Gamliel III, the son of the editor of the Mishna, Hillel appears once more (II, 4b -7). There is no doubt that this is Hillel ha-Zaken and not, as some would have it, a later Hillel (cp. רבי"ט), for mishna II,6 is expressly attributed to the elder Hillel in Succa 53a and in Abot de-R. Nathan c.12. (Otherwise one would have to shift II,6 to Chapter I, as do some codes, cp. Meïri.) Why now have Hillel's sayings been distributed over two places?

4) Starting with ch. 3, all chronological order seems to be lacking. Even a topical arrangement would be hard to discover.

5) The fifth chapter has no connection with the preceding ones at all. We cannot see why it has been attached to the treatise of Abot, inasmuch as most sayings by far are not attributed to any Tannaim.

These conspicuous features lead us to the conviction that the Mishnaic treatise of Abot has undergone manifold rearrangements. They also call for a

reconstruction of the original plan as well as of the various transformations. There is one fact which makes this task easier for us. Aside from our Mishna one other version of the Mishnaic treatise of Abot has been preserved. The Aggada collection known as **Abot de Rabbi Nathan** (henceforth referred-to as AN) has long been recognized as Tosefta the the Mishnaic treatise of Abot. It was also known as **ספּתא דמסחא אבוּת** (cp. Tosafot to Baba Kam s.v. **קל וחומר** and the remark of R. Isaia Berlin *ibid.*). It contains a running commentary and additions to the Mishna of Abot. Yet it becomes immediately obvious that this Tosefta does not have our Mishna as its basis, but rather another version that had probably been edited by R. Nathan.<sup>3)</sup> This other version of Abot (to be called here the Mishna of Abot de Rabbi Nathan) can be easily reconstructed from AN, if not in all details, then at least in its essential constituent parts, because its text is in most cases quoted in its entirety or at least in part in the commentary of AN. Accordingly, the Mishna of Abot of Rabbi Nathan was composed of the following parts:

1. The oldest fathers of the tradition until after Hillel and Shammai (cp. AN I-XIII) identical<sup>4)</sup> with our Mishna I, 1-15; only for Hillel his saying in II, 6 and one more (from a baraita Succa 53a) had been added.

2. Immediately after Hillel and Shammai there followed **ר' יוחנן בן זכאי קבל מהלל ומשמאי וכו'** as in our Mishna II, 8-14, Rabbi Yoḥanan ben Zakkai and five of his outstanding disciples (cp. AN XIV-XVIII).

3. After that several old Tannaim up to the time of R. Akiba are enumerated: **עקביה בן מהללאל**

ר' חנינא סגן הכהנים, ר' דוסא בן הרכינס, ר' חנינא בן דוסא, ר' אלעזר בן עזריה, רבן במליאל ושמעון בנו, בן זומא, ר' אליעזר בן יעקב, אלישע בן אבויה, בן עזאי, ר' עקיבא, ר' אלעזר המודאי (cp. AN XIX-XXVI). All of these names are also found in our Mishna, but in a quite different sequence, partly also connected with other sayings than in the mishna of R. Nathan.

4. Then follow for the greater part later Tannaim, also some earlier ones without a recognizable order, and their sayings, only few of which occur in our Mishna (cp. XXVII-XXXI).

5. The last part is formed by a combination of various things that occur in equal numbers. The sayings based on the number ten, which introduce this part, are likely to have been represented most frequently. (cp. AN XXXI to end.) In this part the quotations in our Mishna V, 1-5, 7-10, 13-18 are found practically verbatim. It must be stressed especially that the sayings with the numbers ten and seven are found in both versions in the same order.

Thus we are justified in assuming that the groups of maxims that occur in both versions in like form and sequence must be considered as the older Mishna of Abot which underlies both versions. Thus this old treatise of Abot had only three sections:

- 1) The Fathers up to Hillel and Shammai (I, 1-15),
- 2) R. Yoḥanan ben Zakkai and his disciples (II, 8-14),
- 3) sayings based on the numbers ten, seven and, perhaps, also four (V, 1-5, 7-10) and several more sayings from this chapter.

These three sections of the older edition have been fairly well preserved in both later versions. They form the nucleus to which the later editors at-

# Talmud Criticism vs. Bible Criticism.

חולין קט ע"ב

כל דאסר לן רחמנא שרא לן כוותיה אסר לן  
דמא שרא לן כבדא . . . חלב בהמה חלב  
חיה חזיר מוחא דשיבוטא . . . אשת איש  
גרושה בחיי בעלה

Everything that God prohibited to us, He permitted to us some similar item. He prohibited to us the consumption of blood, yet He permitted to us the consumption of liver . . . He prohibited the consumption of the forbidden fat of a domesticated animal, but permitted the fat of an undomesticated animal. He prohibited pork, but permitted the brain of a *shibuta* fish. He prohibited sexual intercourse with the wife of another man but permitted one to marry a divorced woman in her previous husband's lifetime.

David Zvi Hoffmann's  
*Die Wichtigsten Instanzen gegen die  
Graf-Wellhausensche Hypothese*  
("The main arguments against the  
Graf-Wellhausen hypothesis")

An annotated translation and introduction

Submitted by: Carla Sulzbach  
Student Number: 8916387  
Department of Jewish Studies  
McGill University, Montreal  
September 1996

A thesis submitted to the Faculty of Graduate Studies and Research  
in partial fulfilment of the requirements of the degree of  
Master of Arts

© Carla Sulzbach 1996

### The PC and the Post-Exilic Conditions

We have demonstrated that the PC was not newly introduced at the assembly of the people as described in Neh. 8-10, but that this codex as well as the other parts of the Pentateuch had been accepted at that time as the Torah of old as given by God. Thus, be it indirectly, the authenticity of the PC is established according to the view of the new critical school. As after this, moreover, history knows nothing of the period from the introduction of the PC to sometime before or after the Exile, this book of law should be assigned the place which the Torah and the Book itself demand, namely at the beginning of Israelite history. If, however, Wellhausen thinks it incomprehensible that the PC had been in existence before the Exile, yet meanwhile seems to have been present as a latent and ineffective force, then it would be even more incomprehensible to assume that such a codex could have entered history in such a latent and inobtrusive way. Holzinger also admits this. He says (p. 429): "P has become the foundation of the later Judaism. A corpus of such significance would not creep in tacitly. On the contrary, with regard to P it should be expected that this legislation would have been introduced in a festive manner through a public act, as happened with D." This act, now, he tries to locate in Neh. 8-10. As this is not the case, this festive act can therefore be no other than the festive legislation at Sinai with the subsequent promulgation of the other laws through Moses. In order to corroborate the opinion that a post-exilic PC would be even more an impossibility, we want to demonstrate by means of a number of startling examples, how totally unsuitable the legislation of the PC seems for the post-exilic period and how this cannot possibly have been designed for this period. We will first consider the Ark of the Covenant in the PC:

#### 71) a) *The Ark of the Covenant*

The other parts of the Pentateuch, JE and D, also mention the Ark of the Covenant, but nowhere does it appear as such an important cultic object as in the PC. It is the first holy implement which God commands to be built (Ex. 25:10 ff.); the Ark is covered by the *kaporet* with the two *kerubim*, where God's presence manifests itself (Ex. 25:22; Num. 7:89) and where on the holiest day of the year the great atonement is performed (Lev. 16:13 ff.). The holy Ark must always be equipped with staves (Ex. 25:15), by means of which it can be carried by the Levites, after it is carefully covered by the priests (Num. 4:5; 15). As things are it is generally agreed that long before the destruction of the First Temple the Ark with the Tables of the Law was no longer in the Sanctuary and that, when building the Second Temple no one thought of also placing a holy Ark in the Holy of Holies (cf. Jer. 3:16); and that, therefore, the atonement on the Day of Atonement no longer took place at the *kaporet*, but at the *'even shetiyah* [the foundation stone], which had taken the place of the Ark (M. Yoma 5:2). Why then would the author of the PC have included the holy Ark in his legislation?

And if he would have done it already in order to put an archaic stamp on his work and was therefore prompted to mention the Ark's construction, what could have moved him to associate the great atonement festival with a holy implement which, in his time, was no longer in existence and the construction of which was not at all intended? Even more so, as in this way, in the absence of the most important implement for atonement the entire atonement festival could be called into question. Or why had the prophets and the priests at the beginning of the Second Temple period, apart from the Temple, not thought of reinstating also the Ark of the Covenant with the *kaporet*, if it had really been so that the PC, in which these holy utensils play such an important role, had been composed in that very period? In vain one will try to find answers to these questions among the followers of the new school: they will only be able to reply to them by means of empty evasions. <sup>120</sup>

72) b) *The Urim and the Tummim and the Anointing of the High Priest*

Only the PC (Ex. 28:30) mentions the making of the Urim and Tummim and their purpose. It is true that it does not state of what the Urim and Tummim consisted; nevertheless their purpose is determined precisely, when it says [Ex. 28:29]: "And Aaron shall bear the names of the children of Israel in the breastplate of judgment upon his heart." Num. 27:21 (PC) says even clearer: "And he (Joshua) shall stand before Eleazar the priest, who shall inquire for him by the judgment of the Urim before the Lord: at his word shall they go out, and at his word they shall come in, both he, and all the children of Israel with him, even all the congregation." The purpose of the Urim and Tummim, then, was to transmit God's will through the high priest to the leaders of the people and conform to which they would have to act. We see, that unless it was the author's intention to wrap this holy institution in a veil of secrecy and mystery, that he could have told much more about the Urim and Tummim.

The consultation of the Urim and Tummim occurs very often in the Bible in the period of the Judges and the time of the first kings, Saul and David, whereby, at times the Urim and Tummim are explicitly mentioned (I Sam. 28:6 and LXX on I Sam. 14:41); but mostly they are tacitly implied through the expression of "asked (counsel of) the Lord" [*sha'al bashem*] (Ju. 1:1; 20:18, 23, 27; I Sam. 10:22; 14:37; 22:10, 13, 15; 23:2, 4, 9 ff.; 30:8; II Sam. 2:1; 5:19, 23). Nothing is heard any more of the Urim and Tummim after David. It is doubtful whether the Urim and Tummim can be associated with the 'breast-plate' [*efod*] mentioned in Hos. 3:4 (see Nowack's commentary). In any case, according to the Blessing of Moses in Deut. 33:8, the Urim and Tummim are assigned to the Tribe of Levi.

It has now been determined that after the Exile and in the Second Temple period the

---

<sup>120</sup> Cf. Klostermann, *NKZ*, 1897, p. 358.

Urim and Tummim were no longer in existence and a matter which required a divine ruling had to be postponed "till there stood up a priest with Urim and with Thummim" (Ezra 2:63; Neh. 7:65). If the PC had only been composed during the Exile, its author, who according to the critics, was a priest, and therefore always had the interest of the priests at heart and especially intended to raise the high priest's prestige nevertheless did not present the high priest as bearer of the Urim and Tummim which did not exist in his time. Through this deficiency the high priest was at risk to ruin his entire reputation. What is more, the author even suggests the question of whether a high priest who is not able to convey the divine ruling through the Urim and Tummim is still qualified to function as high priest at all and whether it would not be advisable to also wait with the appointment of a high priest "till there stood up a priest with Urim and with Thummim."

- 73) It appears in the PC that, as important as the Urim and Tummim are, the anointing with holy oil is even more important for the status of high priest. According to the PC, all priests (Aaron and his sons) were ordained through the holy anointing oil (Ex. 30:30); later, however, only the high priest who was to be ordained as his father's successor would be anointed (Lev. 6:15, 16, 32: 21:10). The anointing appears as a necessary requirement for the high priest, as afterwards he would have the title of 'anointed priest' [*ha-kohen ha-mushiach*] (Lev. 4:3 ff., 16: 6:15). In the Second Temple period, however, the anointing of the high priest was not considered to be in remembrance of the anointing ceremony practiced in earlier times, despite the fact that in a prophetic account (Zech. 4:14), the king and the high priest are called 'the two anointed ones' [*shnei-v'nei ha-yit'har*].<sup>121</sup> According to Jewish tradition the Ark of the Covenant, the Urim and Tummim, and the holy anointing oil belong to the five items, by which the First Temple is differentiated from the Second (cf. Jer. Ta'anit II, 1, 65a; Bab. Yoma 21a, etc.). According to a baraita (Horayot 12a, etc.) King Josiah hid the holy anointing oil. Again, it is unthinkable that an exilic author would have presented the anointing of the high priest as a requirement for this dignity, as a conducting of this ceremony had not been a consideration.

74) c) *The function of the Levites*

The fashion and style which the PC uses to tell about the purpose of the Levitical provisions is absolutely not in agreement with the tasks that this class of people exercised. In the PC the Levites are only assigned the authority of transporting the Tabernacle [*mishkan*] (Num. ch. 4), to guard the Sanctuary and serve as assistants to the priests (Num. 3:6 f.).

<sup>121</sup> Incidentally, this passage in Zechariah proves that in the olden times, like the king, the high priest was anointed as well. As the anointing of the high priest is only stipulated in the PC, this passage too, is a clear protest against the new school, which dates the PC in the year 444.