

The Schools of Hillel and Shammai*

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In many ways, Hillel and Shammai, and the ‘Houses’ they established, can be considered the beginning of what we call ‘the world of the Sages.’¹ The halakhic traditions of the House of Hillel and the House of Shammai constitute the earliest and most fundamental layer of the Tannaitic literature--indeed, of the Rabbinic literature in general.² The Houses of Hillel and Shammai are presented in the sources as distinct jurisprudential schools of thought upholding different opinions as to the law (halakha), and, less frequently, lore (Aggada). But what was the essential nature of these ‘Houses,’ and what engendered such pervasive and systematic controversy between them? In this article I will argue that the two Houses are distinct ‘schools’ not only insofar as their legal–halakhic thinking is concerned, but also in terms of their very approach to study. Indeed, the two are distinct academies (*batei midrash*) characterized by distinctive approaches to learning. My goal is to describe--to the extent that the sources allow this--the organizational structures, pedagogic methods, and views of the two Houses qua both halakhic schools of thought, and academic institutions. Focusing on their views as to tradition and reason as sources of knowledge and law, I will show that the Houses represent two distinct epistemic outlooks, reflected in the Houses’ approaches to

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- 1 This was apparent to the Sages themselves, not only to the external observer. E.g., Hillel and Shammai are called “the fathers of the world” (mEduyot 1:4); cf. Ben-Sira 44:1. Also tEduyot 1:1 “When the Sages assembled in the vineyard of Yavneh they said: a time will come when someone will seek a dictum of the Torah, and will not find it, a dictum of the Soferim, and will not find it. ... They said: Let us begin from Hillel and Shammai” (Zuckerman edition, p. 454).
- 2 To be sure, this literature contains earlier traditions too. Some are adduced in the name of Sages who preceded Hillel and Shammai, and some are anonymous traditions whose interpretation is disputed by the Houses of Hillel and Shammai. But these traditions are too few to constitute a comprehensive literary stratum like the teachings of the Houses.

Torah study and the development of the halakha.³ Let me begin with a short introduction on the historical background and sources.

I Historical Background and Sources

A baraita in bShabat 15a asserts: “Hillel and Shimon [his son], Gamaliel and Shimon wielded their Patriarchate during one hundred years of the Temple’s existence.” This indicates that the Patriarchate of Hillel commenced about 30 BCE. Another Tannaitic source, Sifre Deuteronomy 357 (p. 429), states that Hillel “sustained Israel for forty years.” It would seem to follow that Hillel’s administration ended in 10 CE. But both these traditions are schematic in nature. The first enumerates the Patriarchs who held their positions during the Temple era, rounding off the time period to “one hundred years.”⁴ The other tradition lists Hillel among those who lived 120 years and “sustained Israel” for forty of these years.⁵ Hence it is difficult to determine precise dates on the basis of these sources. Another source that might help determine the true chronology is Josephus Flavius (Joseph b. Matityahu), who mentions two

3 On the Houses’ jurisprudential concepts, see H. Shapira and M. Fisch, “The debates between the Houses of Shammai and Hillel—the meta-halakhic issue” (Hebrew), *Iyunei Mishpat: Tel Aviv University Law Review* 22 (1999), 461-97. In this paper, I seek to present the Houses’ teachings and concepts in the context of the actual background of the respective academies, showing the relationship between the Houses’ epistemologies and jurisprudence.

4 Shimon the son of Hillel apparently did not exist, see G. Alon, “The Patriarchate of Rabban Johanan b. Zakkai” (Hebrew), in his *Studies in Jewish History* (Hebrew), (Tel Aviv: 1957), vol. 1, 264; E.E. Urbach, “Class-status and leadership in the world of the Palestinian sages” (Hebrew), *Proceedings of the Israel Academy of Sciences and Humanities*, vol. 2 (Jerusalem: 1965), 313 and n. 27.

5 Alon, n. 4 above, 264-65 invokes these traditions and includes in the forty years that Hillel sustained Israel various positions he held before being appointed Patriarch. I. Gafni, *The Jews of Babylonia in the Talmudic Era: A Social and Cultural History* (Hebrew), (Jerusalem: 1991), 71, notes the schematic nature of the descriptions given in the sources, but maintains that they nonetheless can serve as the basis for determining the actual chronology of the developments in question.

sages who flourished at the time of Herod (the Great): Samias and Pollion.⁶ According to some scholars, these sages can be identified as Shammai and Hillel.⁷ On this opinion, Hillel and Shammai flourished at the time of Herod, in the second half of the first century BCE. However, it is more likely that these sages should be identified as Shemaya and Avtalion.⁸ If so, then Hillel and Shammai flourished a generation later, at the turn of the first century BCE.

The two Houses, once established, continued their activities in the first century CE, at least up to the time of the destruction of the Temple.⁹ The controversies between the two Houses continued after the destruction, until they were resolved during the Yavneh period.¹⁰ But the status of the Houses after the destruction of the Temple has not been adequately clarified. Some scholars argue that the Houses ceased to exist after the Temple's destruction.¹¹ But some of the controversies surely took place after the destruction, and there

6 *Antiquities* XIV, 172 (Samias in the context of Herod's trial); XV, 3-4 (Pollion the Pharisee and his student Samias, in the context of the siege of Jerusalem, also mentioned in passim is Pollion's role in Herod's trial); XV, 370, (Pollion the Pharisee and Samias, with respect to the oath of fealty to Herod).

7 See, e.g., A. Shalit, *King Herod* (Hebrew), (Jerusalem: 1964), 374-5, n. 10, where further references are provided.

8 E. Schuerer, *The History of the Jewish People in the Age of Jesus Christ*, vol. II, revised and edited by G. Vermes, F. Millar, M. Black (Edinburgh: 1982), 362-63; G.F. Moore, *Judaism in the First Centuries of the Christian Era* (Cambridge MA: 1946), vol. 1, 313; L.H. Feldman, "The identity of Pollio, the Pharisee, in Josephus," *JQR* 49 (1958), 53-62; Urbach, n. 4 above, 36 n. 17; I. Ben-Shalom, *The School of Shammai and the Zealots' Struggle against Rome* (Hebrew), (Jerusalem: 1994), 289-92.

9 It is difficult to know which controversies originated at the time of Hillel and Shammai themselves, and therefore difficult to determine to what extent the Houses had already coalesced around their founders during their lifetimes. Among the issues debated around the time of the Temple's destruction was that of the 'eighteen enactments.' See the discussion in Ben-Shalom, n. 8 above, 252-72.

10 The sources indicate that the decision that the law was to be decided in accordance with the House of Hillel was made at Yavneh (jBerakhot 1:4; 3c and parallels), though it is doubtful this was a single decision; more likely it was a gradual process. See S. Safrai, "The ruling is according to Beit Hillel" (Hebrew), in S. Safrai, *In Times of Temple and Mishnah: Studies in Jewish History* (Hebrew), (Jerusalem: 1996). Nevertheless, apparently in the generation following the destruction, the House of Hillel gained the upper hand, ensuring the ascendancy of its outlook; see Ben-Shalom, *ibid.*

11 Ben-Shalom, 273-76.

are further indications that the Houses continued to exist in the generation after the Temple's destruction.¹² In any case, it seems that in the second generation of Yavneh, from the time of Rabban Gamaliel on, the Houses can no longer be said to exist as organized entities. From this point on, halakhic traditions are adduced in the names of individual Sages, not the Houses. Yet in this period too, we can discern Sages who identify with one or the other of the Houses, and uphold their methods, such as R. Eliezer, who follows the House of Shammai, and R. Joshua b. Hanania and R. Akiva, who continue in the path of the House of Hillel.¹³

The controversy between the Houses was comprehensive, extending to all the realms of the halakha, and even certain points of Aggada. Altogether, more than three hundred matters over which there is controversy between the Houses are mentioned in the sources.¹⁴ But the sources provide very little information about the history of the Houses, and their actual organizational framework. It seems that the controversies between the Houses had a socio-political dimension. According to Graetz, the House of Shammai was affiliated with zealots, whereas the House of Hillel was associated with the moderate pro-peace circles.¹⁵ This view was adopted by scholars such as Weiss, Derenbourg, and Epstein, and comprehensively developed by Ben-Shalom in his work on the House of Shammai.¹⁶ Other

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- 12 Two controversies are explicitly dated after the destruction of the Temple: mMaaser Sheni 5:7, and bMenahot 63a. In this context Epstein notes the substitution of R. Joshua for the House of Hillel and R. Eliezer for the House of Shammai; see J.N. Epstein, *Introductions to Tannaitic Literature* (Hebrew), (Jerusalem: 1957), 60-1.
- 13 See Y.D. Gilat, *The Teaching of R. Eliezer b. Hyrcanus* (Hebrew), (Jerusalem: 1968); Epstein, *ibid.*
- 14 See the list in I.H. Weiss, *Dor Dor Vedorshav* (NY-Berlin: 1924), vol. 1, 167ff. Also I. Kanovitz, *The House of Shammai and the House of Hillel* (Hebrew), (Jerusalem: 1965), 31-136; J. Neusner, *The Rabbinic Traditions about the Pharisees before 70* (Leyden: 1971), vol. 2, 344-53. The contentious points of Aggada are relatively few, see Kanovitz, 29-30.
- 15 H. Graetz, *History of the Jews* (Philadelphia: 1947), vol. 2, 256-71.
- 16 Weiss, n. 14 above, vol. 1, 175; J. Derenbourg, *Masa Eretz Yisrael* [Hebrew translation of *Essai sur l'histoire et la géographie de la Palestine*], (St. Petersburg: 1896), 145-48; J.N. Epstein, "Sifre Zuta, Parashat Para," *Tarbiz* 1 (1930), 50; Ben-

scholars, led by Ginzberg and Finkelstein, saw the Houses as reflecting social status, arguing that the House of Shammai represented the upper classes—the nobility and the wealthy, while the House of Hillel represented the lower social strata.¹⁷ This approach was roundly criticized by Alon, and now seems to have lost its appeal.¹⁸ Social and economic elements are also invoked in Ben-Shalom’s analysis, but lead him to a diametrically opposed conclusion. In his opinion, the law as taught by the House of Shammai reflects an ancient pietistic halakha, characterized by strict and uncompromising principles of justice and social solidarity, that originated in the rural communities of the land of Israel. Conversely, the law as taught by the House of Hillel, characterized by compromise and adaptation to changing circumstances, originated in wealthy urban circles.¹⁹ There have also been other attempts to explain the differing halakhic approaches of the Houses on matters of substance, procedure, and interpretation; they will be discussed below.²⁰

II The Academies (*batei hamidrash*)

The actual picture of the House of Hillel and the House of Shammai is shrouded in mystery. We know almost nothing about the organizational structure of the Houses and the various institutions associated with them. We do not know how they arrived at their halakhic

Shalom, n. 8 above.

- 17 L. Ginzberg, *On Jewish Law and Aggada* (Hebrew), (Tel Aviv: 1960), 13-40; L. Finkelstein, *Akiba: Saint, Scholar and Martyr* (NY: 1936), esp. 29-47, 279-306. Finkelstein’s account integrates earlier views, describing the House of Shammai as aristocratic, conservative and nationalistic, and the House of Hillel as plebeian, open to the new, and pacifistic.
- 18 Alon, n. 4 above, vol. 2, 181-227.
- 19 Ben-Shalom, n. 8 above, 172-230, esp. 192-93, 196-97.
- 20 E.g., it has been proposed that some of the points of contention reflect a principled controversy as to the action–intention relation. See Y.D. Gilat, *Studies in the Development of the Halakha* (Hebrew), (Ramat Gan: 1992), 72-83, nn. 1, 2. For another explanation, see S.J. Zevin, *Leor Hahalakha* (Hebrew), (Tel Aviv: 1964), 302.

positions, nor are we familiar with the framework within which they met to debate each other.²¹

The term ‘House’ may denote either a family or a dynasty,²² but the Houses of Hillel and Shammai were neither. Neither the sages identified as affiliated with the House of Hillel, nor those identified as affiliated with the House of Shammai, belong to a single family.²³ Though the dynasty of the Patriarchs (נשיאים) descended from Hillel, the Patriarchs themselves did not necessarily identify with the views of the House of Hillel. Rabban Gamaliel II of Yavneh illustrates this well: a descendant of Hillel, on several issues he nonetheless upheld—self-consistently, it appears—the view of the House of Shammai.²⁴ The House of Hillel thus cannot be identified with Hillel’s descendants (the Patriarchs), nor can the House of Shammai be associated with any particular dynasty.²⁵

The term ‘House’ can also denote a sect or a separatist group,²⁶ but there is no indication that the Houses were organized as closed frameworks. We find no hint of any

21 Ben-Shalom, n. 8 above, 231-35, makes some tentative suggestions; as will become clear below, I disagree with him regarding a number of these points.

22 In biblical and talmudic Hebrew; the House of Eli, the House of David, the House of Boethus, the House of Kathros, the House of Garmu, the House of Avtinus, and so on.

23 For a list of sages affiliated with each House, see H. Albeck, *Introduction to the Mishnah* (Hebrew), (Jerusalem: 1960), 218-20; Ben-Shalom, n. 8 above, 235-49.

24 Safrai, n. 10 above, 29-40.

25 It should be noted that the dynasty of the Patriarchs, descended from Hillel, is referred to as “the House of Hillel” only in the scholarly literature, which borrowed the epithet from the Rabbinic sources, but uses it in a different sense. The Talmud uses the expression to refer to a halakhic school of thought, not the Patriarchal dynasty.

26 This usage is found in the Qumran literature. See D. Flusser, “Pharisees, Sadducees, and Essenes in *Pesher Nahum*,” in M. Dorman et al. (eds.), *G. Alon Memorial Volume* (Tel Aviv: 1960), 140. So too “the House of Judah” (*Pesher Habakkuk* 8:1); “the House of Kodesh” (Community Rule 8:5, 9:6); “the House of Yahad (Community Rule 9:6); “the House of Truth” (Community Rule 5:6); “the House of Peleg” (*Pesher Nahum* 4:1); “the House of Avshalom” (*Pesher Habakkuk* 5:9). The Sages seem to use the term in a similar way. Particularly noteworthy is the term ‘Boethusians’ (בייתוסים); in some of the manuscripts it appears as “Beit Sin” (בית סין), the House of Sin, which led some to identify them as the Essenes. Cf. M.D. Herr, “Who were the Boethusians?” *Proceedings of the Seventh World Congress of Jewish Studies* (Jerusalem: 1980), 1-20; J. Sussmann, “The history of halacha and the Dead Sea Scrolls—preliminary observation on 4QMMT,” *Tarbiz* 49 (1990), 41-4, 54-6; A.

procedure for admitting new members, which were the norm for brotherhoods and sects. On the contrary, the robust social relationships described in the Mishnah between members of the Houses indicate that they were open frameworks.

And although these pronounced unfit that which the others pronounced fit, the House of Shammai did not shrink from marrying women from [the families of] the House of Hillel, nor the House of Hillel from marrying women from [the families of] the House of Shammai. And as to all matters of purity and impurity with respect to which these pronounced fit what the others pronounced unfit, they did not shrink from making use, in matters of purity, of that which belonged to the others.²⁷

A baraita in the Jerusalem Talmud appends to this the statement: “Indeed they conducted themselves truthfully and peaceably, as it is said, ‘Love truth and peace’ (Zech. 8:19).”²⁸ Nevertheless, there is reason to doubt whether this idyllic description indeed reflects the nature of the relationship between the Houses for the entire period they were in existence. Other sources tell of serious and even violent confrontations between the Houses; their relations were not always conducted “truthfully and peaceably.”²⁹ But as Zacharias Frankel noted, the crucial point is that “the House of Hillel and the House of Shammai separated into two distinct Houses, but not two different sects,”³⁰ that is, the Houses diverged only with respect to their views, and remained members of the same reference group. Compare this to

Schremer, “The name of the Boethusians: a reconsideration of suggested explanations and another one,” *Journal of Jewish Studies* 48 (1997), 290-99.

27 mEduyot 4:8, mJebamot 1:4.

28 jJebamot 1:6 (3b).

29 jShabat 1:4 (3c); bShabat 17a, also Ben-Shalom, n. 8 above, 231-35, Sussmann, n. 26 above, 37 n. 119.

30 Z. Frankel, *Darkhei Hamishna* ([Leipzig: 1859] Tel Aviv: 1959), 47. On the question of their actual conduct regarding matters over which they had serious controversies, see jJebamot 1:6 (3b); bJebamot 13b-16a. See too Gilat, n. 20 above, 161-66; Ben-Shalom, *ibid.*

the situation described by the author of the Qumran scroll *Miktzat Maasei Tora* (4QMMT), who, using a similar turn of phrase, describes how his sect separated from mainstream Judaism: “[And you know that] we separated from the multitude of the people [and from their impurity], and from being involved with these matters, and from participating [with them] in these things”³¹--as opposed to the Houses of Hillel and Shammai, which “did not shrink from making use, in matters of purity, of that which belonged to the others.”

But in our context, namely, the Houses of Hillel and Shammai as portrayed in the Rabbinic sources, what, exactly, did it mean to be a ‘House’? The evidence reveals that a House was a group that had a characteristic halakhic methodology and jurisprudential outlook. It is reasonable to suppose that the emergence of two distinct and incompatible such orientations took place within some sort of institutional context, for which the two most plausible candidates would be the court (*beit din*) and the academy (*beit midrash*). I will argue that they were, indeed, institutions of the latter sort, that is educational institutions.³² In other words, the Houses were schools in two both senses: they both represented distinct halakhic-jurisprudential outlooks, and functioned as academic institutions.³³ We do not have

31 MMT, C, 7-8 (J. Strugnell and E. Qimron, *Discoveries in the Judean Desert X* [Oxford: 1994], 58-59); this contrast was noted by Sussmann, n. 27 above, 37.

32 The Houses were already described as educational institutions by Derenbourg, n. 16 above, 105; E. Bickerman “La chaîne de la tradition pharisienne,” *Revue Biblique* 59 (1952), 47-9; and M.D. Herr (ed.), *History of Eretz Yisrael. The Roman-Byzantine Period, The Mishna and Talmud Period, and the Byzantine Rule (70—640)* (Hebrew), (Jerusalem: 1985), vol. 5, 154-55.

33 Ben-Shalom, n. 8 above, 231-35, 242-51, is of the opinion that the two Houses had separate courts of law, but there is no conclusive proof that this was indeed the case. The House of Shammai’s ruling in mMikvaot 4:5 regarding the case of the trough of Jehu does not necessarily indicate that the House of Shammai had a court, and may simply be a learned opinion as to a point of law, and this also applies to matters of ritual purity and marital law on which the Houses disagreed. Sages issued various rulings on these matters, but this by no means entails the existence of separate courts. Reports that have come down to us about a court in the 2nd Temple period relate to the court of the Pharisees, which was presided over by descendants of Hillel (see Ben-Shalom, 243-45). This court dealt with the calendar (lunar cycles, leap years, etc.), supervision of matters connected with the Temple, and enacting various regulations. Apparently this court was recognized by all the Pharisaic sages, and in some cases by

sufficient sources to afford us a detailed understanding of the Houses qua academic institutions, but there are enough sources for us to outline the basic parameters.

Elders and Students

‘Elders’ and ‘students’ are characteristically associated with the academy, and represent the two main categories of participants in its activities. The elders are those sages who were ordained and are qualified to teach and to decide legal questions, and the students are those who have yet to attain this status, usually young people just starting out.³⁴ And indeed, there are some sources that mention ‘elders’ and ‘students’ of the Houses.

In mSuka 2:7, there is a controversy between the Houses over whether someone whose head and most of his body are in a sukkah, but the table at which he is sitting is inside the house, has discharged his religious obligation. The House of Shammai maintain that he has not, whereas the House of Hillel maintain that he has, after which the following discussion is reported:

The House of Hillel said to the House of Shammai, did it not in fact happen that the elders of the House of Shammai and the elders of the House of Hillel went to visit Johanan the Horonite, and found him sitting with his head and the greater part of his body within the sukkah, and his table within the house. The House of Shammai

34 the entire community. Thus it is unwarranted to conclude that the Houses maintained their own courts, and in any case, there is no evidence for this thesis. On this distinction, see tDemai 2:13 (Lieberman p. 71); tKidushin 3:9 (p. 288); tSanhedrin 7:8 (Zuckerman edition, p. 426), 7:10 (Zuckerman edition, p. 427). And see Alon, n. 4 above, 294-302; S. Safrai, *At the End of the Second Temple and the Period of the Mishnah* (Hebrew), (Jerusalem: 1982), 182-85; H. Shapira, “Beit Hamidrash (the House of Study) during the Late Second Temple Period and the Age of the Mishnah” (Hebrew), (Ph.D. dissertation, Hebrew University of Jerusalem, 2001), 182-84. On a similar distinction in the context of the ancient Greek philosophical academies, see J.P. Lynch, *Aristotle’s School* (Berkeley CA: 1972).

answered, is that a proof? Indeed they said to him, if you have so conducted yourself, you have never in your life fulfilled the law of the sukkah.

Johanan the Horonite³⁵ was associated with the House of Shammai, but conducted himself in accordance with the view of the House of Hillel. It is said of him that “even though he was a student of the House of Shammai, he conducted himself solely in accordance with the view of the House of Hillel.”³⁶ And in this case too, he conducted himself in accordance with the view of the House of Hillel. The dispute between the Houses focused on the reaction of the elders of the House of Shammai to the conduct of Johanan the Horonite. The House of Hillel seek to interpret their silence as a sign that they concede to the House of Hillel, but the House of Shammai reject the description of the incident, claiming that their elders had protested. What is the significance of the term “elders” in this context? In the Rabbinic literature, the title ‘elder’ usually denotes wisdom and status: “there is no elder but one who has acquired wisdom.”³⁷ It can be assumed that in our passage too, the term “elders” does not denote those advanced in years, but rather, important sages whose views represent those of the respective Houses. It should also be noted that the anecdote as a whole does not reflect a discussion carried out within an institutional framework, but rather, a discussion between sages at an informal meeting.

There is another reference to the elders of the Houses in the Tosefta, in tractate Rosh Hashana. Here, the controversy between the Houses concerns the number of blessings to be

35 This is the correct name according to the better MSS of the Mishnah (Kaufmann; Parma, de Rossi 138). And see tSuka 2:3 (p. 261); tEduyot 2:2 (p. 457), where it is related that he taught R. Eliezer b. Zadok. Regarding all these passages, he is not called ‘Rabbi’ in any of the textual witnesses that reflect the land of Israel tradition; the title ‘Rabbi’ appears only in passages in the Babylonian Talmud and those textual witnesses influenced by it; see M.Z. Fuchs, “A Critical Edition of Mishnah Sukka” (Hebrew), (Ph.D. dissertation, Hebrew University of Jerusalem, 1979), 63.

36 tSuka 2:3, tEduyot 2:2. Cf. S. Lieberman, *Tosefta Kifshuta* (NY: 1962), vol. 4, 854.

37 Sifra Kidushin, ch. 3, sec. 7; bKidushin 32b.

recited in the Amidah for festivals that coincide with the Sabbath: the House of Shammai says eight, and the House of Hillel, seven:

The House of Hillel said to the House of Shammai: Is it not the case that in the presence of all of you, the elders of the House of Shammai, Honi the Small went down [before the Holy Ark] and recited seven, and the whole congregation said to him: you ought to feel contented? The House of Shammai said to them: Because the time was appropriate for brevity. The House of Hillel said to them: If the time was appropriate for brevity, he should have abbreviated all of them.³⁸

The passage describes a debate between the elders of the House of Hillel and the elders of the House of Shammai. The elders of the House of Hillel want to support their view by adducing an incident that took place earlier: the elders of the House of Shammai had praised the prayer-leader (*shaliah tzibur*) even though he had conducted the service in accordance with the House of Hillel's view. This anecdote, like the previous one, does not portray a formal decision-making process in a court, but a discussion between the sages in the course of the prayer service. In adducing the Houses' views, however, both anecdotes cite the Houses' elders.

The following story mentions the elders of the Houses in a slightly different context:

And the elders of the House of Shammai and the House of Hillel have already convened in the upper chamber of Jonathan b. Bathyra and said: Fringes (*tzitzit*) have

38 tRosh Hashana 2:17 (p. 320).

no prescribed size. Similarly they said: The palm branch (*lulav*) has no prescribed size.³⁹

Unlike the incidental encounters described above, this appears to be a planned meeting, in the attic of Jonathan b. Bathyra's home.⁴⁰ In this exceptional case the Houses were in agreement as to the law, and there was no controversy among them. At the meeting, certain laws were indeed decided, but this does not prove that they were acting as a court or legislative body. In fact, no such institution is named in this passage, and those mentioned as participating in the decision-making are "the elders," who, as I said, are those of the academy's sages who have received ordination. Here too, then, the incident described is one where scholars make a decision based on study and scholarly deliberation.

In addition to the elders, the sources mention the "students" of the House of Shammai and the House of Hillel. The Mishnah mentions Dosethai of Kfar Yathma as one of the "students of the House of Shammai," saying he recited a tradition he heard from Shammai the Elder.⁴¹ That tractate also mentions Joezer Ish Habira, a "student of the House of Shammai," who reported Rabban Gamaliel the Elder's response to a query.⁴² The Tosefta mentions a contemporary of Hillel the Elder, a sage by the name of Baba b. Buta: "he is a student of the House of Shammai, and knows that the law on all matters is in accordance with the view of the House of Hillel."⁴³ Of R. Johanan Hahoroni, mentioned above, it is also said: "Even

39 Sifre Numbers, 115, p. 124.

40 In the parallel version in the Babylonian Talmud, bMenahot 41b, the name is Johanan b. Bathyra, of whom nothing is known except that he belonged to the Bnei Bathyra family. On the Bnei Bathyra family, see Alon, n. 4 above, 263-67; Ben-Shalom, n. 8 above, 62-68.

41 mOrla 2:5.

42 mOrla 2:12.

43 tHagiga 2:11, p. 385. It should be noted that Dosethai of Kfar Yatma and Baba b. Buta, who were contemporaries of Hillel and Shammai, are already referred to as students of the House of Shammai. This seems to prove that as early as the days of Hillel and Shammai themselves, the academies were already being called by the

though he was a student of the House of Shammai, he conducted himself solely in accordance with the view of the House of Hillel.”⁴⁴ It has already been pointed out that the students of the House of Shammai mentioned by name are those who side with the House of Hillel; this is apparently the reason their names were preserved in the Mishnah of the House of Hillel.⁴⁵ Yet the comment about R. Johanan merits further attention. Unlike Baba b. Buta, who only **knew** that the law was in accordance with the view of the House of Hillel, R. Johanan **conducted himself** in accordance with the view of the House of Hillel. It is hard to understand what the import of being a “student of the House of Shammai” could be here, given that he conducted himself solely in accordance with the view of the rival school. It would seem that the only meaning that can be attributed to the term ‘student’ is that of academic affiliation: a student is someone who studied at a certain educational institution, or studied its doctrines. We need not maintain that at the time in question those described as students were not yet qualified to render halakhic decisions. On the contrary, Baba b. Buta is described as a man of status, and so too Johanan the Horonite, who was the teacher of R. Eleazer b. Zadok.⁴⁶ Clearly, then, the term describes one who had at some point studied at the House of Shammai’s academy, or who regarded himself as committed to studying its teachings and continuing its path.

Sometimes the students of the House of Shammai are mentioned anonymously.⁴⁷ A well-known Genizah fragment of Sifre Zuta, Parshat Para, refers to the “Idumean students” of

names of their founders, that is, were referred to as the House of Hillel and the House of Shammai. But this is not a definitive proof, since it may be that the Tanna is using the term anachronistically.

44 tEduyot 2:2, p. 457; tSuka 2:3, p. 261.

45 Ben-Shalom, n. 8 above, 237.

46 With regard to Baba b. Buta, see the sources given in A. Hyman, *A History of the Tannaim and Amoraim* (Hebrew), (Jerusalem: 1964), vol. 1, 261. On Johanan Hahoroni, see n. 35 above. It should be noted that the two sages are not titled R. (=Rabbi).

47 e.g., tKilaim 1:4 (p. 204), (MS Vienna [variant spelling], MS Erfurt, and talmudic parallels); tHagiga 2:12 (p. 386); tOholot 5:11 (p. 603). The references in tKilaim and

the House of Shammai, from the region also referred to as “the South.”⁴⁸ There are also references to students of the House of Hillel.⁴⁹

In sum, the sources present the Houses as institutions made up of elders and students. The elders are the main lecturers and are those who engage in decision making; the students are those who uphold the teachings of the elders, in theory or in practice. The sources thus provide compelling evidence for the view that the Houses indeed functioned as academic institutions (*batei midrash*).

Meetings

As a rule, the talmudic sources make no reference to the location and circumstances of the meetings at which the law is decided and the opinions of the Houses are expressed. In only a handful of cases are the circumstances of the meetings explained. As noted above, some of the meetings were informal and incidental, taking place during social visits, joint meals, prayer services and so on.⁵⁰ But there were also planned meetings at which important decisions were made. What can we learn from these meetings about the Houses and their interactions?

The best-known such assembly is that at which the “eighteen decrees” were enacted. According to the Mishnah, it took place “in the loft of Hanania b. Hezekiah b. Geron, when they went to visit him ... and eighteen decrees were issued on that day.”⁵¹ This Hanania was

tOholot are to students of the House of Shammai after the destruction of the Temple, whereas that in tHagiga pertains to the Temple period. (In these cases, where the students of the House of Shammai conducted themselves in accordance with the view of the House of Shammai, their names are indeed not mentioned.)

48 This fragment corroborates the connection between the House of Shammai and the zealots with whom the Idumeans were associated; see Epstein, n. 16 above, 52 and 70.

49 tHagiga 2:12 (p. 386) and jShabat 1:7 (7c).

50 See e.g., mSuka 2:7; tRosh Hashana 2:17.

51 mShabat 1:4; tShabat 1:15 (p. 4). The name is spelled variously in the printed and MS

apparently a student of the House of Shammai. According to the Talmud, he is the author of Megilat Taanit.⁵² We also know that his son R Eleazar relayed a tradition identical to that upheld by Shammai the Elder.⁵³ We have only fragmentary information about this important meeting. For example, we are not sure exactly which eighteen things were declared prohibited at the meeting. The Talmuds report various traditions, and there are numerous scholarly opinions on the matter.⁵⁴ It is known that the event turned into a violent confrontation between the Houses. The Jerusalem Talmud relates:

R. Joshua Oniah taught: The students of the House of Shammai stood below and were killing the students of the House of Hillel. We learned: six of them ascended and the rest pressed upon them with swords and lances.⁵⁵

A baraita in the Tosefta and the Jerusalem Talmud states: “And that day was as hard for Israel as the day on which the [golden] calf was made.”⁵⁶ This incident is the basis for the view, held by certain historians, that the confrontation between the Houses reflected the controversy between zealots and moderates. On this view, the House of Shammai was inclined toward zealotry and separatism, and issued decrees with the object of promoting

editions. MS Kaufmann reads “Hanina b. Hezekiah b. Geron,” but the Genizah fragments read “Hanania”; see A. Goldberg, *Masekhet Shabat* (Jerusalem: 1976), 15; Mekhilta de-Rabbi Ishmael, Bahodesh 7 [p. 229].

52 bShabat 13b; Ben-Shalom, n. 8 above, 225; V. Noam, *Megillath Taanith* (Jerusalem: 2004), 28-33.

53 “If you come upon a goodly portion, designate it for the Sabbath,” Mekhilta de Rabbi Ishmael, Bahodesh 7 [p. 229]; cf. Mekhilta de-Rabbi Shimon b. Yohai 20:8 (p. 148): “They said of Shammai the Elder that the recollection of the Sabbath never left his tongue. He purchased a goodly portion and said, ‘this is for the Sabbath,’ a new vessel, and said ‘this is for the Sabbath’; so too bBeitza 16a.

54 jShabat 1:4 (3c-d); bShabat 13b-17b. See Goldberg, n. 51 above, 15-22, and Ben-Shalom, n. 8 above, 252-72.

55 jShabat, *ibid.*

56 tShabat 1:16 (p. 4); jShabat 1:4 (3c-d); see Lieberman, *Tosefta Kifshuta*, 3:15; *idem*, *Yerushalmi Kifshuto*, 38; Ben-Shalom, n. 8 above, 252-72.

separation from non-Jews, whereas the House of Hillel was inclined toward moderation, and opposed the decrees in question.⁵⁷ For our purposes, however, this is mere speculation, as the Talmud provides no information as to the framework within which the assembly convened. From the fact that it issued “decrees,” it would seem we can infer that it was legislative in nature, and reflected institutional authority. But this argument is by no means decisive, since the verb ‘to decree’ (*ligzor*) has broad semantic scope and does not necessarily refer to legislation. It can also mean ‘to issue a ruling,’ and refer to an opinion handed down by a sage.⁵⁸ Furthermore, even if, in the context of our discussion, it does suggest the exercise of institutional authority, the text tells us nothing about the institution in question, or the nature of its authority.⁵⁹

The first mention of such an institution by name occurs in the Babylonian Talmud. It describes an assembly of Hillel and Shammai and their students, also involving a halakhic matter, and the Talmud is explicit that it took place “in the study hall”:

A sword was planted in the study hall (*beit hamidrash*), and they 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 students, and it was as hard for Israel as the day on which the [golden] calf was made.⁶⁰

57 Graetz, n. 15 above, vol. 2, 89-94; this view was adopted by Epstein, n. 16 above, 53, and developed by Ben-Shalom, *ibid.*

58 See, e.g., mYadain 4:3: “What is the law applying to Ammon and Moab in the seventh year? R. Tarfon decreed it was the tithe for the poor, and R.. Eleazar b. Azariah decreed it was the second tithe.” Thus ‘to legislate,’ is only one of the meanings of the root גזר. See B. Lifshitz, *Law and Action: Terms of Obligation and Acquisition in Jewish Law* (Hebrew), (Jerusalem: 2002), p. 79.

59 This also applies to the meeting in Jonathan b. Bathyra’s attic; see Sifre Numbers 115 (Horowitz edition, p. 124).

60 bShabat 17a.

But it is highly dubious whether the term “study hall” here is authentic, or provides any information not given by the other sources, because this passage is a Babylonian reworking of sources from the land of Israel. It is easy to discern in the story motifs and phrases from the incident of the eighteen decrees reported in sources from the land of Israel: the “sword planted in the study hall” is parallel to the Jerusalem Talmud’s “swords and lances”; the declaration “he who would enter, let him enter, but he who would depart, let him not depart” parallels the reference to students of the House of Shammai ascending and entering; the description of Hillel sitting submissively before Shammai parallels the description of the House of Shammai’s subdual of the House of Hillel when the decrees were enacted; and the expression “and it was as hard for Israel as the day on which the calf was made” appears in both versions.⁶¹ It is reasonable to assume, therefore, that the Babylonian version echoes the violent confrontation between the Houses as reported by the Jerusalem Talmud.⁶² As we saw above, the term “study hall” does not appear in the Jerusalem Talmud’s account of the incident.⁶³

To summarize, the sources do not provide us with an explicit account of the organizational framework within which the Houses functioned, separately or together. Nevertheless, we can learn something about the nature of the Houses from these sources. Despite the fact that they are speaking of gatherings to determine the halakha and to issue decrees, it is striking that that they do not describe these meetings as sessions of a ‘Sanhedrin’ or even a ‘court.’ And not only are these terms not used, but the locations at which they take place also suggest that the meetings are not sessions of a court. The Houses

61 And see *Tosefta Kifshuta*, vol. 3, 15.

62 We can add to this the clichéd description of the gruff Shammai and gentle Hillel in the spirit of the anecdote reported in bShabat 31a; see Ben-Shalom, n. 8 above, 102-103.

63 As J. Rubenstein recently showed, the Babylonian Talmud is apt to link various events to the study hall, whereas the parallel land of Israel sources contextualize them differently. See J. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: 2003), 23-28.

did not meet at any of the places where official bodies convened to conduct their deliberations, such as the Temple courtyards, the Hall of Hewn Stone, and the Temple Mount stairs.⁶⁴ Rather, they got together in the lofts of homes, far from the Temple or any other institution. So it seems clear that these gatherings were not meetings of the Great Court or any other official institution, but rather scholarly meetings that can be characterized as ‘academic’ in nature. It appears that these meetings mark the beginnings of the institution of the study hall as a center of independent adjudication not connected with the Temple or the Great Court.⁶⁵

III The Controversy over the Criteria for Admitting Students

A definite indication that the Houses were academic institutions is their controversy regarding the criteria for admitting students. As we will see, this debate also sheds light on the Houses’ divergent philosophies more generally. Let us examine the core disagreement. In the first version of *Fathers according to Rabbi Nathan*, we find the following statement:

The House of Shammai say, “One should teach only someone who is intelligent (חכם) and modest (עניו) and of good parentage (בן אבות) and wealthy (עשיר).” And the House of Hillel say, “One should teach everybody, because many sinners were among Israel, and they drew themselves close to the study of the Torah, and became pious and decent (כשרים).”⁶⁶

64 E.g., mSanhedrin 11:2; mMidot 4:5; mPeia 2:6; tSanhedrin 2:6 (Zuckerman edition, p. 416).

65 On the origins of the institution of the study hall, see Shapira, n. 34 above, 37-50.

66 ARN1, 3 (Schechter edition [Vienna: 1887], 14-15). All references to ARN in this article are to this edition.

According to the House of Shammai, only those with intellectual ability, those of good character and lineage, and those who are wealthy should be taught. The House of Hillel, on the other hand, maintain that “one should teach everybody,” and give the reason for this policy. It is immediately apparent that the House of Shammai represents an elitist and aristocratic approach, while the approach of the House of Hillel is plebeian and democratic. And indeed, this debate was seized upon by scholars who invoked it to anchor the view of the House of Shammai as an aristocratic faction.⁶⁷ Other scholars, who had reservations about this view, tried to address the problem posed by the passage in various ways. Alon suggested emending “wealthy” (*ashir*) to “decent” (*kasher*),⁶⁸ for two reasons. (1) In the passage, the rationale given by the House of Hillel is that “many sinners ... became pious and decent.” So the relevant contrast is that between sinners and those who are decent, not that between the rich and the poor. (2) In the second version of *Fathers according to Rabbi Nathan*, the word “decent” replaces “wealthy”:

The House of Shammai say, “We teach only those who are decent, of good parentage and of good ancestry, and the House of Hillel say, “everyone.” They told a parable: To what is the matter comparable? To a woman who sets a hen [to brood] upon eggs, from many, she will get but a few [hatched], and from the few, she may get none.⁶⁹

But this emendation does not dispel the socio-economic undertone. In both passages the House of Shammai accept only students of “good parentage.” The import of this criterion is that only those from respectable families of good lineage (*meyuhasot*) are to be taught.

67 E.g., Ginzberg, n. 17 above, p. 29; L. Finkelstein, *The Pharisees and the Men of the Great Synagogue*, Texts and Studies of the Jewish Theological Seminary of America, vol. 15 (NY: 1950), 66, and see n. 17 above.

68 Following Reifman, “Kuntres ruah hadasha,” *Beit Talmud* 4 (1885), 48; see Alon, n. 4 above, vol. 1, 317, vol. 2, 221 n. 88.

69 ARN2, 4 (p. 14).

Such families were, as a rule, also rich, so to require that those taught be of good lineage is also to require that they be wealthy.⁷⁰ Indeed this approach reflects an aristocratic outlook, on which high socio-economic standing imparts intellectual and moral superiority. A similar outlook is expressed in another tradition adduced in the name of Rabban Gamaliel I:

With regard to students, Rabban Gamaliel the Elder expounded four things: impure fish, pure fish, fish from the Jordan, and fish from the great sea. What is analogous to [lit., how so] impure fish? One from a poor family who learned Scripture, Mishnah, laws and lore (*agadot*), but has no comprehension. What is analogous to pure fish? This is one from a wealthy family who learned Scripture, Mishnah, laws and lore, and has comprehension.⁷¹

Here, wealth is mentioned explicitly: a wealthy student is regarded as superior to a poor one. The poor student is identified with one who has no comprehension, while the rich student is identified with one who does.⁷² This passage reflects the aristocratic tendency characteristic of the House of Shammai.⁷³

70 Alon's attempt to interpret "good parentage" (*ben avot*) to mean 'from a learned family,' seems artificial and is implausible; see jKidushin 4:11 (66c) (good parentage as opposed to slaves); Midrash Agadat Bereishit 82 [p. 156] (good parentage as opposed to gladiators). Note that the term "ancestral merit" (*zkhut avot*) is used similarly in jBerakhot 4:1 (7d) (the son of great people, whose ancestors gave him merit). But cf. bBerakhot 28a, where the term has a completely different meaning.

71 ARN 1, 40 (p. 127).

72 On the difficulties that arise in interpreting this parable, see Schechter's notes, *ibid.*

73 Some suggest the parable should be attributed to Rabban Gamaliel II of Yavneh (in which case the 'Elder' should be deleted), who systematically upheld the view of the House of Shammai; see L. Ginzberg, *Peirushim Vehidushim Bayerushalmi*, vol. 3 (NY: 1941), 188; Finkelstein, n. 17 above, 114-15. On the other hand, see Safrai, n. 10 above, 396. Alon saw the parable as reflecting a general inclination toward elitism in the world of the Sages, not peculiar to Rabban Gamaliel; see Alon, n. 4 above, vol. 2, 71 n. 49.

Ben Shalom contends that the controversy over admission criteria in no way reflects the opinion of the House of Shammai, which was not identified with the upper classes. Adducing the fact that the controversy is not mentioned in other Rabbinic sources, he argues that the passages in question are from a late source that imputes an elitist view to the House of Shammai. In his opinion, this source is the Babylonian Talmud, which manifests admiration for wealthy sages.⁷⁴ But the fact that a researcher's preconceived idea fits a text poorly is not sufficient reason to repudiate the text. On the contrary, it is reasonable to suppose that the debate does represent a genuine controversy from the Second Temple period. The upper classes were not comprised solely of priests (*kohanim*) and Sadducees. We thus cannot rule out the possibility that some of the Sages, even some Pharisaic sages, considered social standing—belonging to the upper social strata—a condition for admission to the academies. Rabban Gamaliel came from an aristocratic family that was part of the Pharisaic leadership, and it is not surprising he upheld this view. Furthermore, it must be kept in mind that at the time, there was no institutionalized financial support for scholars. This being so, systematic specialized study of the Torah could be undertaken only by the few who had the wherewithal to do so; it was beyond the reach of the masses.⁷⁵ It stands to reason that this social reality nurtured the elitist approach that saw limited student admittance not only as a pragmatic necessity, but also an ideological value.

The restricted admissions should also be considered against the backdrop of Second Temple period sectarianism. Restrictions on teaching are characteristic of closed groups and sects. The Judean Desert sect, for instance, placed strict restrictions on teaching the Torah to anyone who was not a member of the group. Those who sought to join them and learn their

74 I. Ben-Shalom, "Torah study for all or for the elite alone?" (Hebrew), in A. Kasher et al. (eds.), *Synagogues in Antiquity* (Jerusalem: 1988), esp. 100-101, 105.

75 See E.E. Urbach "The *derasha* as a source of halakha and the problem of the Soferim" (Hebrew), *Tarbiz* 27 (1958), 172, idem, n. 4 above, 34, 37-38; M. Baer, "Torah and *derekh erez*," *Bar Ilan, Annual of Bar Ilan University* 2 (1964), 135-41; M.D. Herr, n. 32 above, 154.

teachings had to first undergo a long period of supervised initiation.⁷⁶ The affinity between the positions taken by the House of Shammai and the sectarian laws is well known,⁷⁷ and may be reflected in the admission criteria controversy. There is no reason to doubt the likelihood of the opinion attributed to the House of Shammai, and certainly, no reason to deny the existence of the controversy itself.

If we, then, assume that the debate indeed reflected the Houses' divergent approaches, then here too the view of the House of Shammai reflects the early custom. After the destruction of the Temple, the view of the House of Hillel gained primacy, and that of the House of Shammai fell out of favor and all but disappeared. The liberal notion that "one should teach everybody" became dominant and was developed and emphasized by the Sages: "Lest you say: Let the sons of the elders be taught, or the sons of the great, or the sons of prophets, therefore Scripture says 'but ye shall diligently keep,' to say that all are equal in the study of the Torah" (Sifre Deut. 48, p. 112). Similarly, "I understand that it is the heritage of princes, but whence do I know that it also the heritage of commoners? Therefore Scripture says 'you stand this day all of you' (Deut. 29:9)" (ibid 345, p. 402). These exegeses argue against those who might claim to have a monopoly on education, and declare that "all are equal in study of the Torah." This outlook explains why, as noted above, this controversy between the Houses does not recur in the talmudic literature. The view of the House of Shammai was intentionally concealed and consigned to oblivion. But this does not cast doubt on its authenticity—quite the contrary—the report of this rare controversy is an authentic

76 On the prohibition against teaching outsiders, see Manual of Discipline IX l. 17; Damascus Covenant XV l. 10; Josephus Flavius, *The War of the Jews* II, 141. On initiation procedures, see: Manual of Discipline VI ls.13-23; J. Licht, *The Rule Scroll. A Scroll from the Wilderness of Judaea* (Hebrew), (Jerusalem: 1965), 145-48. On the policy of keeping the halakha concealed among 'the pious,' see B. Lifshitz, "'Aggadah' and its role in the history of the Oral Law (Hebrew), *Shenaton Hamishpat Haivri* 22 (2001/ 2003), 297-308.

77 See V. Noam, "Beit Shammai and the sectarian halakha" (Hebrew), *Jewish Studies* 41 (2003), 45-67, and Lifshitz, *ibid.*

vestige of an early outlook that languished and ultimately died out after the destruction of the Temple.⁷⁸

The existence of controversy between the Houses with regard to admitting students reflects, as we said, the fact that the Houses were academic institutions devoted to study and teaching. It also implies that the Houses had different educational structures and pedagogic outlooks and policies. But the debate also reflects much deeper differences in the Houses' philosophical orientations. To fully grasp these divergences, it will be useful to adduce certain concepts from the sociology of knowledge that can help us achieve a broader philosophical picture.

IV Closed Knowledge and Open Knowledge

Funkenstein and Steinsaltz distinguished between two types of knowledge: open knowledge and closed knowledge.⁷⁹ Closed knowledge is knowledge that is handed down from father to son or teacher to student. It is characterized not only by restriction to a specific occupation or group (those of noble lineage, scribes, priests, etc.), but more importantly, by a lack of agreement as to what knowledge is part of a given field, and what knowledge is excluded from that field, and a lack of agreement regarding the criteria that determine what is correct and what is not. Conversely, open knowledge is, in principle, accessible to everyone, and not

78 After the Destruction too, certain Sages pronounced various entrance restrictions, seemingly eroding the “one should teach everybody” ideal. But these were strictly moral and educational requirements, that, having been articulated, everyone had the opportunity to meet. They were thus very different from the social class requirements espoused by the House of Shammai, which could not be met by all, and were thus truly restrictive. E.g., “R. Shimon b. Yohai taught: ‘And these are the judgments which you shall set before them’ (Exod. 21:1)--just as the hidden treasure is not revealed to just anyone, so too you are not permitted to immerse yourself in Torah study, except in the presence of suitable people (כשיריז)” (jAvoda Zara 2:5 [41d]).

79 A. Funkenstein (with A. Steinsaltz), *The Sociology of Ignorance* (Hebrew), (Tel Aviv: 1987).

restricted in advance to members of a certain group. Most importantly, its transmission is transparent. What knowledge is comprised by a given field is manifest to all, as are the criteria for determining what is correct and what is not.

By its very nature, the ideal of open knowledge is characterized by constant examination of the information in question in the light of these criteria, which are in themselves subject to scrutiny and tested by other criteria. Indeed, this is the definition, the primary characteristic, of rationalism. The ideal of closed knowledge, on the other hand, is characterized by constant effort to preserve the given body of knowledge in a pristine state. This effort is often accompanied by a doctrine about the origins and nature of this knowledge, a doctrine that justifies this preservation and even renders it mandatory, for example, the thesis that it originates in divine revelation. In any case, on this approach, it is of vital importance to preserve the authentic ancient knowledge. The further its origins recede into the past, the more this knowledge is exposed to the dangers of degeneration resulting from the obscurity of the original knowledge and the natural process of forgetting. The ideal of closed knowledge is thus forced to undertake a constant struggle against the forces of time, which generate distortion, oblivion, and loss.⁸⁰ The authors emphasize that the distinction is between the two 'ideal types' of knowledge, two conceptualizations of knowledge that are not found in reality in their pure form, but in more complex forms in which elements of both closed and open knowledge are intermingled. Nevertheless, the distinction is useful for describing the interrelations between various approaches, and enables us to categorize pedagogic institutions, methodologies, and processes.

Funkenstein and Steinsaltz maintain that the concept of open knowledge was an element of Jewish culture early on, but became the dominant model only in the period after the destruction of the Second Temple, after waging a long struggle. In this context they

80 Ibid, p. 21.

mention, among other things, the controversy between the Pharisees and the Sadducees. But the authors' focus on describing the ideal of open knowledge, not on the various approaches and debates within the Jewish world that were instrumental to the eventual triumph of open knowledge. In the following sections, I will argue that the controversy between the Houses can be understood against this background. In other words, the assumption that they upheld divergent conceptions of knowledge enables us to explain a number of controversies and disagreements between the Houses. The House of Shammai upheld the ideal of closed knowledge, whereas the study hall of the House of Hillel nurtured the ideal of open knowledge. These differing conceptions are vividly reflected in the dicta of the students and the adherents of the Houses in the generation of Yavneh.

V Tradition and Reason

The differences between the conceptions of knowledge upheld by the Houses are connected to differing approaches to tradition, and in particular, to the relationship between tradition and rationality. The ideal of closed knowledge reflects an approach that stresses commitment to tradition; the ideal of open knowledge, an approach that stresses rationality. Let us explore the Houses' stance on this issue.

Josephus Flavius notes the devotion of the Pharisees to the traditions of their forefathers (*paradosis ton pateron*), remarking that they passed down to the people laws reflecting these traditions, which were not written in the Torah of Moses.⁸¹ From the New

81 See *Antiquities* XIII, 297, 408 and XVIII, 12-13, where Josephus notes that one element in the Pharisees' approach was understanding or reason (*logos*). This sentence is translated and interpreted by some scholars to mean that the Pharisees did not accept the entire tradition as binding, but only those parts of the tradition that were rationally necessary, i.e., that Josephus described the method of the Pharisees as based on reasoning. This is how it is translated by Whiston, for instance, and so too in Shalit's Hebrew translation, followed by many others. But according to other

Testament, too, we can see that the Pharisees regarded their creed as the tradition handed down by their forefathers or elders (*paradosin ton presbuteron*).⁸² This characterization of the Pharisees is also apparent in the Rabbinic literature, and is, indeed, at the core of the notion of the Oral Law.⁸³ The picture of the Pharisees that emerges, then, is that of a group whose law is based on tradition. But did they also recognize other sources, such as reason and creative exegesis (*midrash*), as valid sources of the law? And given their affinity for tradition, to what extent did they recognize the possibility of new interpretations of the received tradition? Was the Pharisaic view monolithic? As Josephus tells us little about all this, we must turn to the Rabbinic literature--the literature of the Sages--for answers.

These writings attest to the existence of a fundamental disagreement in the world of the Pharisees, namely, the division between the House of Shammai and the House of Hillel. The most salient aspect of this divide is that the House of Shammai tends to strictness in interpreting the law, whereas the House of Hillel tends to leniency. These tendency were already noted by the Mishnah, which makes a point of presenting the exceptional cases in which the House of Shammai take a lenient position and the House of Hillel a stringent one.⁸⁴ Research into the history of the halakha has shown that the stricter views of the House of Shammai preserve, as a rule, the early halakha, whereas the lenient views of the House of Hillel express later developments.⁸⁵ The explanation that has been offered for this connection

translations, the criterion was not rationality, but whether an opinion was sanctioned by tradition; see, e.g., Feldman's translation in the Loeb edition, IX, p. 11: "They ... follow the guidance of that which their doctrine has selected and transmitted as good"; and see note C there.

82 Mark VII, Matthew XV, Galatians I:14

83 The most salient example is mAvot 1:1, but it is evident in numerous other places. See M.D. Herr, "Continuum in the chain of Torah transmission" (Hebrew), *Zion* 44 (1979), 53-56; A. Baumgarten, "The Pharisaic paradosis," *Harvard Theological Review* 80 (1987), 63-77; Lifshitz, n. 76 above, 275-88.

84 See mEduyot 4:1-5, also E.E. Urbach, *The Halakhah; its Sources and Development* (Hebrew), (Ramat Gan: 1984), 176.

85 This approach originated in the works of Geiger, and gained wide acceptance among scholars of various stripes; see A. Geiger, *Hamikra Vetargumav* (Hebrew translation

between the early law and the tendency to strictness is that the early halakha took a uniform approach to legal issues, and refrained from considering circumstances that arose out of local conditions and changing times.⁸⁶ On the other hand, the later law developed new distinctions and definitions, making it possible to take current problems and emerging conditions into consideration, for example, distinctions between different levels of legislation (scriptural, Rabbinic), different levels of legal obligation and competency (adults and minors, men and women), and different temporal periods (the Temple era, “the present day” –viz., after the destruction of the Temple, times of exigency).⁸⁷ Overall, we can say that the development of new law can be ascribed to two main factors: on the one hand, responsiveness to the vicissitudes of life, and on the other, legal scholarship. It follows, then, that the Houses indeed differed in their attitude to tradition and the possibility of changes to the law. The House of Shammai tended to submit to the yoke of tradition, and deviated from it very rarely, while the House of Hillel was willing to deviate from the received halakha and adopt novel distinctions and laws.

of *Urschrift und Uebersetzungen der Bibel* [*The Original Text and Translations of the Bible*] (Jerusalem: 1949), 69-102; idem, *Collected Essays* (Hebrew), edited by S. Poznanski (Warsaw: 1910), 60-91; Weiss, n. 14 above, vol. 1, 167ff.; Frankel, n. 30 above, 48-49; Sussmann, n. 26 above, 65 n. 206. Reservations about this approach are voiced in Urbach, *ibid.*, 176.

86 Frankel, n. 30 above, p. 48 describes the House of Shammai’s approach as follows: “Shammai decided the law steadfastly, whether on matters of ritual law or matters pertaining to the pure and the impure, down to the last detail, and as soon as he decreed that something was prohibited or impure, he made no distinction between different aspects of the prohibition, and did not differentiate between different aspects of the impurity, or say that the prohibition extends to a certain point but no further. But rather, his legal approach was to make all parts of the matter equally prohibited, without any mitigation.”

87 These distinctions were studied in detail by Gilat; see Gilat 1968, n. 13 above, 31, on the distinction between ‘scriptural’ and ‘Rabbinic,’ also discussed in Gilat 1992, n. 20 above, 237-80. In the latter work he discusses other distinctions and definitions as well: minor, 19-31; measures, 63-71; the laws of the Sabbath, 32-62, 87-108.

I have explored these two approaches to tradition, which are reflected in the Houses' legal rulings, in detail elsewhere.⁸⁸ One approach sees tradition as the fundamental, and perhaps exclusive, authoritative source of law. Its objective is the preservation and continued existence of the tradition as it was handed down from generation to generation. It advocates total commitment to tradition and opposes any deviation from it. As a matter of principle, this approach has reservations about any innovative changes to the law, whether interpretive or legislative. It sees the thrust of Torah study as strict preservation of the halakhic dicta and their precise transmission from master to student. Fisch and I called this doctrine "traditionalism."⁸⁹

The other approach recognizes, alongside tradition, other sources of legal authority, sources that are based on human understanding, such as exegesis and reasoning. This approach has as its goal not only preservation of the tradition, but also its enhancement. In addition to preserving and transmitting the traditional dicta, it seeks to clarify their rationales. It encourages creative interpretation of the law that results in the development of new distinctions and rules. This approach thus allows for innovative changes to the law, whether by way of interpretation or by way of legislation. It can be described as rationalist and "anti-traditionalist."⁹⁰ This distinction, like that between open and closed knowledge, reflects ideal types. In reality, the sages who upheld traditionalism could not refrain from introducing new laws, and the rationalists or non-traditionalists were loyal to tradition and often preferred it to

88 Shapira and Fisch, n. 3 above.

89 Following M. Fisch, *To Know Wisdom: Science, Rationality and Torah Study* (Hebrew), (Tel Aviv: 1994), 59-71; for a comprehensive discussion, see idem, *Rational Rabbis, Science and Talmudic Culture* (Bloomington IN: 1998), 55ff.

90 The term "anti-traditionalist" is not intended to connote exclusion of tradition as a source of legal authority, but rather, opposition to traditionalism, the approach that takes tradition to be the sole source of authority. The term "rationalist" provides a positive characterization of this orientation. Cf. E.S. Rosenthal, "Tradition and innovation in the halakha of the Sages" (Hebrew), *Tarbiz* 63 (1994), 322, where another term is used. Rosenthal has doubts about identifying the said approaches, i.e., traditionalism and anti-traditionalism/rationalism, with the Houses; see Shapira and Fisch, n. 3 above, 467-68.

suggested innovations. Nevertheless, the conceptual distinction is justified, and various sages expressed quite explicit support for one or the other of the approaches, though in doing so they were not always completely consistent.

To illustrate the two approaches, we will examine the pronouncements of the students and adherents of the Houses in the Yavneh period, after which we will consider how well these pronouncements reflect the positions espoused by the Houses themselves. We will adduce a dictum of R. Eliezer b. Hyrcanus to illustrate the House of Shammai's approach, and a dictum of R. Akiva to illustrate the House of Hillel's approach. Let us start with the traditionalist point of view:

R. Joshua and R. Nehunia b. Elinathan, a man of Kfar Habavli, testified, concerning a limb from a corpse, that it is impure; whereas R. Eliezer says: they declared this only of a limb from a living being. They said to him: is there not an inference from the minor to the major: if in the case of a living person, who is pure, a limb severed from him is impure, how much more in the case of a corpse, which is itself impure, should a limb severed from it be impure! He said to them: they declared this only of a limb from a living being.⁹¹

R. Eliezer upheld a tradition that only a limb from a living being is impure. When two Sages testified to a contrary tradition, R. Eliezer rejected it. Even when they noted a problem in his stance, and proved their own claim with logic—specifically, an a fortiori argument—he refused to find fault with the tradition he upheld, replying only, “so I heard.”⁹² And it goes

91 mEduyot 6:2.

92 This is the version in the Babylonian Talmud (bHulin 129b). Although elsewhere we find R. Joshua making the same assertion, “so I heard” (mPara 1:1), in doing so he is attesting to a tradition for a different purpose. There, R. Joshua is **reporting** the tradition, so that it can be interpreted, whereas here R. Eliezer is clinging to a tradition

without saying that the traditionalist opposes any deviation from the law that is based not on tradition but rather on interpretation or taking into account the law's underlying rationale.⁹³

Another aspect of holding fast to tradition is resistance to the introduction of new laws. The traditionalist seeks to fulfill his forefathers' tradition as it has been handed down from generation to generation, without adding or subtracting anything. Hence a traditionalist will refrain, as much as possible, from introducing new laws. Now there are two channels by which new laws can be introduced: legislation, e.g., enactments, and the judicial process, e.g., when a decisor adjudicates a case or hands down a ruling. For the present it will suffice to quote from a source showing that R. Eliezer took issue with the introduction of new law by way of adjudication. In the Talmud, on a number of occasions he is asked about the law but refuses to answer, the explanation for this being that "he did not [ever] state anything that he had not heard from his teacher."⁹⁴ For instance, consider this baraita in the Babylonian Talmud:

Our Rabbis taught: It happened that R. Eliezer spent the Sabbath in the Upper Galilee, and they asked him about thirty laws from the laws of the sukkah. Of twelve of these he said, I heard [them]; of eighteen he said, I have not heard. R. Jose b. Judah said, it was the other way around: Of eighteen he said, I have heard, of twelve he said, I have not heard. They said to him, Are all your words nothing except that which you have heard? He said to them, You sought to make me say something that I did not hear from my teachers ... and I have never said anything I did not hear from my teacher.⁹⁵

even after it has been confuted. This Mishnah is discussed by M. Kahana, "On the fashioning and aims of the mishnaic controversy" (Hebrew), *Tarbiz* 73 (2003).

93 See below regarding R. Akiva's controversy with the early elders.

94 tJebamot 3 (p. 9), according to a Genizah fragment; the bracketed word appears in the variant in bYoma 66b.

95 bSuka 26a; see too bSuka 27b; tKipurim 3:14 (pp. 245-46); bYoma 66b.

On this traditionalist view, the halakha is regarded as a stable body of knowledge transmitted from generation to generation. The solution to halakhic problems must be sought in the framework of this given body of knowledge, which must not be expanded. The law must be based on the tradition, and on the tradition alone. This extreme traditionalism clearly has its shortcomings. Its distaste for anything new, even that which is needed to fill legal lacunae, makes it incapable of addressing problems for which no solution has been found within the existing body of knowledge, and in particular, finding solutions to needs arising from changing circumstances. To be sure, it is possible to conceive a more moderate traditionalist view that makes provision for innovation through well-defined and institutionalized channels such as legislation. On such a modified approach, traditionalism is expressed in adherence to tradition and rejection of any deviation from it, but does not exclude innovation where the tradition takes no stand. Innovations are thus possible if they meet two conditions: (a) they do not contradict the existing law, that is, they fill a lacuna; and (b) they are introduced by legislation, not interpretation on the part of a scholar or decisor. A striking example of this approach is evident in the following baraita:

Originally there were no controversies in Israel, but one court of seventy-[one]⁹⁶ members sat in the Hall of Hewn Stones, and other courts of twenty-three sat in the towns of land of Israel. And other courts of three⁹⁷ were in Jerusalem, one on the Temple Mount and one in the Keep. If someone needed a ruling, the local court was consulted. If there was no court in the town, he went to the nearest court. If they had a

96 In MS Vienna and the printed version. It seems that the variant readings reflect the controversy between the first Tanna and R. Judah in mSanhedrin 1:6.

97 The version in the Babylonian Talmud reads: “and two courts of twenty-three sat, one at the entrance to the Temple Mount and one at the door of the [Temple] Court.” This version seems preferable, as it is implausible that the courts on the Temple Mount were courts of three; see H. Albeck, *Commentary on the Mishnah* (Hebrew), Nezikin, 164 n. 5.

tradition, they stated it; if not, he and the most distinguished member of the court went to the court on the Temple Mount. If they had a tradition, they stated it; if not, he and the most distinguished member of the court went to the court in the Keep. If they had a tradition, they stated it, if not, both these and those went to the court in the Hall of Hewn Stones. . . . If they had a tradition, they stated it; if not, they took a vote. If those who declared it impure were in the majority, it was declared impure, if those who declared it pure were in the majority, it was declared pure. Thence was issued the law and became widespread in Israel.⁹⁸

According to this tradition, the local courts that were found throughout the land of Israel were authorized to rule only on the basis of tradition, that is, according to the existing law as they had received it. Nor were they permitted to introduce anything new. If they had no tradition about the issue brought before them, they sent the litigants to another, higher court. Nor were the courts situated on the Temple Mount permitted to introduce anything new; they were permitted to rule solely in accordance with tradition, that is, the law as they had received it from their teachers. Only the Great Court in the Hall of Hewn Stones had the authority to introduce new law. According to this description, even the Great Court only introduced new law where there was no tradition, in other words, where there was a legal lacuna. Where a tradition existed, the lower courts ruled accordingly.

Thus, the traditionalist approach seeks to preserve the halakha. A sage who upholds this approach will try to solve problems within the framework of the existing body of knowledge, and under no circumstances deviate even slightly from tradition. Even if novel interpretations or distinctions are developed, they will be presented as an application of the received ancient tradition. Conversely, the rationalist approach seeks to enhance the halakha.

98 tSanhedrin 7:1 (p. 425), tHagiga 2:9 (p. 383), jSanhedrin 1:4 (19c); bSanhedrin 88b.

A sage who takes this approach will try to interpret the law in accordance with its rationale and purpose. He will not be apprehensive about introducing new distinctions, and sometimes will even be willing to deviate from the ancient law, if he is of the view that the law's underlying rationale mandates this. Such a stance is discernible in the teachings of R. Akiva:

“And she that is sick with her impurity [lit., *nida*, seclusion]” (Lev. 15:33): The ancient elders said: [It means] she must not paint or adorn herself until she enters into [immerses herself in] water; until R. Akiva came and taught: It will bring about animosity and he [her husband] will want to divorce her. How then are we to observe [the injunction concerning] ‘and she that is sick with her impurity’? She shall remain in her impurity until she enters into water.⁹⁹

The ancient elders interpreted the laws of women's impurity broadly, forbidding the menstrually impure woman to “paint or adorn herself.” As we can see from the wording of the baraita, this was the accepted law at the time of R. Akiva. But R. Akiva objects to this law, interpreting the word “*nida*” (seclusion) as having a more limited meaning, namely, the state of impurity that persists until the woman has immersed in water. This objection is not only significant in itself, but also in terms of how R. Akiva argues for it: “It will bring about animosity and he will want to divorce her.” His argument is based, not on Scripture or the formal rules of midrashic exegesis, but on substantive, ethical grounds: the probability that harm would be done to the couple's married life, and in particular, to the woman.¹⁰⁰ This kind of interpretation is characteristic of the rationalist approach, which seeks to explore the law in light of its underlying rationales. We do not know what the ancient elders replied, but we can

99 Sifra, Metzora 5, 9, 12; jGitin 5:11 (50d); bShabat 64b.

100 The version in the Babylonian Talmud reads, “She will be repulsive to her husband”; and the Jerusalem Talmud reads: “She herself must induce this ugliness, and he will want to divorce her.”

conjecture that they supported their own position by arguing for the primacy of tradition: “the original Mishnah is immutable.”¹⁰¹ For our purposes, what is important is the following comment in the Jerusalem Talmud, “The elders follow the House of Shammai and R. Akiva follows the House of Hillel.”¹⁰² This would appear to reflect a an affinity in principle between the House of Hillel and R. Akiva, beyond mere concurrence regarding this particular issue. Both maintain that practical and ethical considerations may be cause for change in the received law, whereas according to the elders and the House of Shammai, such change is impossible.

VI Open Knowledge and Closed Knowledge in the Yavneh Period

As we said, the ideal of closed knowledge is based on the traditionalist approach, while that of open knowledge is based on the rationalist approach. These associations are not merely theoretical, but can be confirmed by comparing the method of study used in the study hall of R. Eliezer with that used in R. Akiva’s study hall. The following Mishnah records a debate in R. Eliezer’s study hall concerning the laws of leprosy.

R. Eliezer was asked, what is the ruling where a bright spot the size of a *sela* erupted on the palm of someone’s hand and covered up the scar of a boil? He said to them:

The patient must be quarantined. They said to him, for what purpose, seeing that it is

101 See ARN1, 2 (p. 8). In ARN2, 3 (p. 12), only the opinion of the ancient elders is adduced.

102 According to the House of Shammai, a man should not divorce his wife unless he finds “something unseemly” about her (mGitin 9:10), hence there is no fear a woman will be divorced because she is unattractive to her husband. But the apprehension about divorce does arise with regard to the House of Hillel, who say that he may divorce her “even if she has [merely] burnt his food,” and especially on the view of R. Akiva, who says he may divorce her “even if he [merely] finds another more beautiful than she is.”

neither capable of growing white hair, nor can it effectively spread, nor does live raw skin cause in it any impurity?¹⁰³ He said to them: it is possible that the spot will contract and then spread.¹⁰⁴ They said to him, but what about when its size is only that of a grain?¹⁰⁵ He said to them, I have not heard [the ruling regarding this case]. Said R. Judah b. Bathyra to him, May I submit an argument about this? He said to him, **if you will thereby confirm the ruling of the Sages, well and good.** He said to him: it is possible that another boil might arise outside it and then spread onto it.¹⁰⁶ He said to him, You are a great sage, for you have sustained a ruling of the Sages.¹⁰⁷

With regard to the law, R. Eliezer gave a clear answer—the person should be quarantined, but when he was asked to explain the rationale for this law, he replied, “I have not heard”—I have not received a ruling regarding this case. On hearing this answer, his student R. Judah b. Bathyra asked for permission to suggest an explanation for the difficulties raised by this law. R. Eliezer only agreed to listen if the objective of the explanation of the law’s rationale was to confirm the received law. When it was explained to him to his satisfaction, he complimented his student, “You are a great sage, for you have confirmed a

103 The three indications of impurity due to skin afflictions are as follows: “white hair”—at least two white hairs growing from the lesion; “spreading”—if the affliction spreads after quarantine; “live skin”—if live skin the size of a lentil is found within the afflicted area; see Leviticus 12; Albeck, n. 97 above, introduction to tractate Negaim, 195. These signs cannot occur in the case at hand: hair does not grow on the palm of the hand, a boil does not spread on the skin, and it does not cause impurity due to a live spot.

104 The bright spot could contract during the first week of seclusion, upon which the priest would declare it pure, but later spread into the boil, rendering it impure.

105 What about a bright spot over the boil of a small grain, which even should it contract and then spread, would not spread to the boil but only the skin, which is not considered spreading that indicates impurity? If it was to contract and the priest declared it pure, it would be regarded as healed, and if it then spread again, that would be considered a new bright spot.

106 A new boil might form by the end of the week and the old boil could spread into it; this is regarded as spreading that indicates impurity.

107 mNegaim 9:3.

ruling of the Sages.”¹⁰⁸ A great sage, according to R. Eliezer, is not one who is creative and introduces legal innovations, but one who preserves and sustains the existing law. The interpretive tools of exegesis and reasoning are used by R. Eliezer to preserve the dicta of the Sages and corroborate the received law, not to enhance the law. At his academy, the course of studies concentrated mainly on preserving the tradition and transmitting it intact to the next generation.¹⁰⁹ R. Eliezer’s pedagogic methodology does not make room for any critique of the tradition, or even for new readings or enhancements; exegesis and reasoning are only employed to validate the existing tradition. Hence his praise for his student, “You are a great sage, for you have sustained a ruling of the Sages.”

Conversely, the rationalist approach stresses study of the law’s underlying rationale. It admits the possibility of critique of the traditional law on the basis of exegesis and study. The validity of the law, on this view, does not depend solely on tradition, but also on the law’s rationale. A sage who takes a rationalist approach will be willing to engage in substantive examination of the received law, and will even be willing to retract the received law on the strength of such an examination, if convinced that this is warranted by the law’s rationale. R. Akiva’s approach, as reflected in the following baraita, serves as a good example.

When R. Akiva was presenting the laws for his students, he said: **anyone who has heard a rationale that counters the view of his colleague should come and speak.**

R. Shimon said in the name of R. Eleazar b. R. Judah, a man of Bartota: The House of Shammai and the House of Hillel did not disagree about a man who saw [a discharge] on the first day, and on the second day it stopped, and on the third day he saw it twice, for this [they agree] is not a true *zav*. What did they disagree about? One who saw

108 The same dialogue is also found in mNegaim 11:7.

109 Indeed it was R. Eliezer who was praised for his ability to retain what he had been taught, being described as “a plastered cistern which loses not a drop” (mAvot 2:8); and see section IX below.

[discharge] twice, or one as copious as two, and on the second day it stopped, and on the third day he saw it once.¹¹⁰ [R. Akiva] said: **Not all who leap up [to speak] are praiseworthy, only he who gives a rationale.** R. Shimon said: Thus said the House of Hillel to the House of Shammai: What if he saw two [discharges] at the beginning and one at the end? They said to him: If he saw one [discharge] at the beginning and two at the end, the clean day [in the middle] canceled what he saw [first], and at present he has two sightings [of discharge]. But if he saw two at the beginning and one at the end, since he must count seven [clean days after the two discharges], the sighting canceled the clean day and now he has three [sightings of discharge]. R. Akiva went back to teaching the matter in accordance with the words of R. Shimon.¹¹¹

R. Akiva invites critique: “anyone who has heard a rationale that counters the view of his colleague should come and speak.” The phrase “his colleague” encompasses teachers too. R. Akiva encouraged his students not to be in awe of their teacher’s authority, and to take issue with his views.¹¹² His willingness to debate was motivated by a sincere desire to subject the accepted tradition to scrutiny. In his opinion, the rationale for a tradition is the basis for determining its validity. He is not impressed when R. Shimon quotes a tradition about the law in question that differs from his own, for “not all who leap up are praiseworthy, only he who gives a rationale.” But when R. Shimon explained the rationale, R. Akiva was convinced and “went back to teaching the matter in accordance with the words of R. Shimon.” R. Akiva

110 He is a true *zav* according to the House of Shammai, but the House of Hillel say: “he defiles those objects on which he sits or lies, and must immerse in running water, but he is exempt from bringing an offering” (mZavim 1:1).

111 tZavim 1:5-6 (pp. 676-77).

112 Unlike R. Eliezer, who said, “all who teach the law in the presence of their teacher deserve death” (Sifra, Shemini, Mekhilta de Miluim, 32-33 [p. 45c] and parallels. See Gilat, n. 13 above, 100.

invokes exegesis and reasoning as critical tools vis-à-vis the tradition, and is thus willing to abandon a tradition he has upheld and replace it with another.

VII Epistemology

Let us return now to the sources concerning the educational methods of the Houses of Hillel and Shammai and see how they reflect the said fundamental disagreement over the concept of knowledge. Let us begin with their disagreement about accepting students, discussed above. Why does the House of Shammai object to teaching Torah to students who are not “intelligent and modest and of good parentage and wealthy”? In terms of the concepts discussed above, we can say that the House of Shammai’s view that Torah study should be the domain of a small elite circle reflects the idea of closed knowledge. The transmission of knowledge only within a closed and defined group ensures conservation of the knowledge and its character. The thesis that only a closed group of students is worthy of acquiring knowledge and transmitting it to future generations reflects tacit and undisclosed conventions with regard to the said knowledge that are accepted within the group, but not necessarily by those outside it. If the knowledge is not made accessible to other groups, these assumptions are not challenged, nor is the knowledge itself subjected to critique. The House of Hillel’s approach, on the other hand, is that “one should teach everybody.” Its explicit rationale is that “many sinners were among Israel, and they drew themselves close to the study of the Torah, and became pious and decent”--if Torah study is beneficial, then sinners ought to be taught too.

But is there no danger alongside the benefit? Is there no apprehension on the part of the House of Hillel about the Torah’s being abused and distorted by unworthy students? They did not express any such apprehension, It seems that on their outlook, there is nothing wrong

with making Torah studies and knowledge accessible to all who seek it. The House of Hillel's approach, then, reflects the ideal of open knowledge. This controversy corresponds to the different educational programs of R. Eliezer and R. Akiva, as we saw above. Transmission of knowledge within a closed elite group characterizes the approach of R. Eliezer, who seeks to sustain the Sages' dicta, whereas the House of Hillel's approach is reflected in the conduct of R. Akiva, who declared: "anyone who has heard a rationale that counters the view of his colleague should come and speak."

Further differences between the study methods of the Houses can be seen in both the Babylonian and Jerusalem Talmuds. A well-known tradition explains why the law is determined in accordance with the House of Hillel.

R. Abba stated in the name of Samuel: For three years there was a dispute between the House of Shammai and the House of Hillel, the former asserting, the law is in accordance with our views, and the latter contending, the law is in accordance with our views. Then a heavenly voice went forth and said, "Both are the words of the living God, but the law is in accordance with the rulings of the House of Hillel." Since, however, both are the words of the living God, what was it that entitled the House of Hillel to have the law decided in accordance with their rulings? Because they were kindly and modest, they studied their own rulings and those of the House of Shammai, and not only that, but even mentioned the opinions of the House of Shammai before their own.¹¹³

According to this tradition, the law is decided in accordance with the view of the House of Hillel because of their good traits of character and amiable nature. These are

113 bEruvin 13b.

expressed in the Houses' different study habits. Unlike the House of Shammai, the House of Hillel "studied their own rulings and those of the House of Shammai," and not only that, but they "mentioned the opinions of the House of Shammai before their own." This invites the question: "Was the law determined in accordance with their view just because of the preponderance of their good traits of character?"¹¹⁴ What is the connection between their personal qualities and good nature, and the law's being decided in accordance with their view? The answer that has been widely given is that there is indeed a connection between personal moral virtues and attaining the truth.¹¹⁵ But we may wonder whether the explanation indeed invokes the good nature of the House of Hillel. Is the explanation really about the personal qualities and personality traits of the House of Hillel, or is it, rather, about their methods of study? A tradition reported in a parallel passage in the Jerusalem Talmud contributes to our understanding of the explanation.

Why did the House of Hillel merit the law's being decided in accordance with their view? Said R. Judah b. Pazi: They mention the opinions of the House of Shammai before their own, and not only that, but when they see [merit in] the opinions of the House of Shammai, they retract their own.¹¹⁶

This tradition characterizes the House of Hillel in a similar way, but does not refer to personal traits; only qualities of their mode of study are mentioned. The two characteristics cited are that they "mention the opinions of the House of Shammai before their own" and that they "see" the opinions of the House of Shammai--meaning, they are convinced by them—

114 R. Joseph Caro, *Klalei Hagemara*, in R. Jeshua Halevi Talmision, *Halikhot Olam* (1970 edition, p. 51).

115 This is the thrust of the explanation offered by R. Joseph Caro and many others. See Avi Sagi, *Elu V'elu, A study on the Meaning of Halakhic Discourse* (Tel Aviv: 1996), 33-34, 118-24, 131-33.

116 jSuka 2:8 (53b).

and retract their own. From the Jerusalem Talmud it is clear that the explanation for the fact that the law is determined in accordance with the view of the House of Hillel turns on their mode of study. It is likely that this was the original tradition, and this is, therefore, the thrust of the explanation. It is only the version in the Babylonian Talmud that adds the personal, psychological dimension, illustrating and highlighting the basic methodological difference between the Houses.

Combining the two traditions yields three traits: (1) studying their own opinions but also those of the House of Shammai; (2) studying the views of the House of Shammai before their own; (3) seeing merit in the views of the House of Shammai and retracting their own. The three traits are compatible; all reflect respect for one's adversary. In my opinion, this is not simply a matter of good manners, but the expression of a methodology for learning and a unique concept of knowledge.¹¹⁷ Before elaborating on this, let us examine the sources we have adduced, and assess the extent to which they can be viewed as authentic expressions of the Houses' modes of study. Both traditions are relatively late, from the Amoraic period. The tradition in the Babylonian Talmud is reported in the name of Samuel, a Babylonian Amora of the first generation, while the tradition reported in the Jerusalem Talmud is attributed to R. Judah b. Pazi, a third generation Amora of the land of Israel. It may well be that these Amoraim were preserving earlier traditions about the study habits of the Houses, but it is no less reasonable to suppose that they are offering conclusions from their own studies. The Mishnah does mention the disagreements between the Houses, presenting the view of the House of Shammai along with that of the House of Hillel. Furthermore, the House of Shammai's view always precedes the House of Hillel's. In some cases the House of Hillel

117 To be sure, there is a certain correlation between intellectual modesty and personal humility. Indeed, the passage in the Babylonian Talmud draws a moral conclusion in favor of modesty: "This teaches you that he who humbles himself, the Holy One, blessed be He, raises up, and he who exalts himself, the Holy One, blessed be He, humbles; from him who seeks greatness, greatness flees, but he who flees from greatness, greatness follows."

retracts its view and rules in accordance with that of the House of Shammai, whereas the House of Shammai does not do so (with one exception).¹¹⁸ If we assume that the Mishnah reflects the teachings of the House of Hillel, these features are due to them.

It remains to be seen what we can conclude about the Houses' actual modes of study from the Mishnah. It is, I believe, reasonable to suppose that the Mishnah reflects the teachings of the House of Hillel, and we can use it as a source of information regarding the studies that generated these teachings. With regard to the House of Shammai the situation is more complicated. It can be argued that since we do not have a Mishnah that reflects the teachings of the House of Shammai, and thus cannot compare it to that of the House of Hillel, we cannot be certain that it indeed differs from the Mishnah on the points mentioned in the Babylonian and Jerusalem Talmuds. Nevertheless, it seems that to some degree we can corroborate the systemic difference between the Houses that emerges from the Talmuds. As Urbach noted, the early halakha, namely, that which preceded the era of Shammai and Hillel, it presented in our sources as anonymous and devoid of controversy.¹¹⁹ These traits are characteristic of the decisions of legal institutions, whose interest is to determine the law by which people comport themselves. They are also characteristic of custom, which is also devoid of controversy. Urbach thus concluded that the courts, and customary practice, were the sources of the early law. On the other hand, the later law, which is characterized by attribution of rulings to named individuals, and the existence of controversy, originated in the academies that emerged at the end of the Second Temple period, and developed after the

118 mEduyot 1:13-14: "These are matters concerning which the House of Hillel retracted and taught in accordance with the opinion of the House of Shammai." There is no similar compilation with regard to the House of Shammai, though there is one instance where the Mishnah implies that the House of Shammai accepted the view of the House of Hillel (mTerumot 5:4, cf. tTerumot 6:4), which is duly commented on by the Jerusalem Talmud "But for here, we never found an occasion when the House of Shammai conceded to the House of Hillel" (jTerumot 5:4 [43c]) For a discussion of the House of Hillel's retractions, see Shapira and Fisch, n. 3 above, 476-81.

119 See Urbach, n. 75 above.

destruction of the Temple. As we saw, the House of Shammai's approach tends to conserve the early halakha. If we assume that this also applies to methods of study, it is likely that the methodology of the House of Shammai was to teach the law anonymously and without debate.¹²⁰ There is thus some basis, though--since we have no records from the Shammaitic school--no explicit proof, for the Talmuds' typological observations about the Houses and their methods of study.

Let us now explore what grounded these different approaches, and what can we learn from them about the Houses. As we said, the early halakha was based on tradition. Fidelity to tradition is the salient element of the Pharisaic outlook during the Temple period, and was reflected not only in law and conduct, but also in modes of study. Knowledge was transmitted from generation to generation, from father to son and from teacher to student. Neither students nor teachers were exposed to different ideas, or knew of any tools that might be used to critique the ancient law that had been handed down to them. The received traditions were "closed knowledge." The House of Shammai continued this pattern of handling knowledge. They did not "see" the opinions of their adversaries: they were unable to gain knowledge of these views, and unable to ascertain their rationales. There was thus no way for them to be convinced of the merits of their adversaries' views, so they did not retract their own. The House of Hillel took a different path. They studied their counterparts' views, and even did so prior to studying their own. This mode of learning exposed them to other opinions and engendered a process of critical assessment of the views. At the end of this process they sometimes chose to accept the view of their opponents and retract their own.

120 Note that there is no contradiction between the concept of tradition and the assumption that some laws originated in legislation and judicial rulings. The former does not mean that every single law can be traced back to Moses at Sinai. Tradition is holy and binding in the sense that it embodies the ancestral usage, and this encompasses ancestral decisions and rulings that were, when handed down, innovative. It is clear, e.g., that the traditionalist approach does not object to Rabbinic laws, whether based on dicta of the Prophets or the elders.

We can now proceed to examine the Houses' debates and polemics. As we know, they held debates, in which both sides raised arguments of a similar nature, based on exegesis and reasoning. If, as we have argued, there was a difference in the Houses' respective modes of study, presumably it should be evident in this context as well. In the past, scholars claimed that the House of Shammai used exegesis only to confirm existing traditions (preservative exegesis) while the House of Hillel also used it to introduce new teachings (creative exegesis).¹²¹ But it is difficult to prove this contention. However, the Houses' different stances on retracting their views may help in identifying their respective polemical styles.¹²² The willingness of a party to withdraw its views in the course of an argument is indicative of its attitude to the debate and the arguments raised therein. It obviously attests to sincerity and seriousness about the debate, and openness to the opponent's arguments. But it also attests to the fact that the said party holds the arguments put forward in the debate to be the true, and complete, justification for its stance. In the context of a halakhic controversy, one's willingness to retract his view in the wake of a debate shows that he regards a law's rationale as its very foundation. Rejection of a rationale that has been put forward for a law thus entails that the law itself must be retracted. On the other hand, refusal to retract after one's argument has been refuted attests either to sheer obstinacy, or to the fact that one does not believe the rationales adduced in the debate to reflect the law's true foundation. On this approach, the source of the law's validity does not reside in its rationale, but elsewhere—for example, tradition. The willingness of the House of Hillel to retract their views and rule in accordance with those of the House of Shammai, when persuaded by their arguments, demonstrates that

121 E.g. Frankel, n. 30 above; Gilat, n. 13 above; I. Sonne, "Schools of Shammai and Hillel seen from within," *Louis Ginzberg Memorial Volume* (NY: 1945), 275-91.

122 This is discussed in detail in Shapira and Fisch, n. 3 above. We sought to argue there that the Houses differed somewhat in the nature of their arguments, insofar as the House of Hillel raised arguments against the House of Shammai from tradition, whereas the House of Shammai based their arguments against the House of Hillel on reasoning, both schools trading, so to speak, in the coin of their opponents, but this needs further study.

they regarded a law's rationale as its true foundation. The fact that the House of Shammai did not do this, but always stood by their original view, implies that in their eyes the authoritative source of the halakhic validity was not reason but tradition.

VIII The halakha is in accordance with the view of the House of Hillel

Given my argument thus far, we can say that the tradition in both Talmuds that the law is decided in accordance with the view of the House of Hillel relates not just to the details of the laws themselves, but also to the meta-halakhic sphere. Furthermore, the determination that the law is decided in accordance with the view of the House of Hillel resulted from a fundamental acceptance of the principles of the House of Hillel's methodology. Indeed the Mishnah itself, which records controversies and presents the views of those who prohibit and those who permit, those who render a matter impure and those who render it pure, reflects the victory of the method of the House of Hillel. In fact, this is explicitly discussed by the Mishnah.

And why do they record the opinion of one person among the many, when the law must be in accordance with the opinion of the many? So that if a court prefers the opinion of one person, it may rely on him. ... R. Judah said: if so, why do they record the opinion of one person among the many [and proceed] to set it aside?¹²³ So that if someone should say, thus have I learned the tradition, it may be said to him, you heard it in accordance with the opinion of so-and-so.¹²⁴

123 Variant reading in MS Kaufmann, "to set them aside" This appears to be part of the answer, cf. the Tosefta quoted below. This reading may also be plausible for the printed version of the Mishnah..

124 mEduyot 1:5-6.

The question “why do they record the opinion of one person among the many?” implies that this is the accepted practice, and thus indicates that an outlook similar to that of the House of Hillel had indeed been adopted. Just as the House of Hillel used to cite dissenting opinions, so the view of one individual among the many is recorded.¹²⁵ This being the case, the Mishnah inquires into the rationale for this practice. The two answers given, namely, that of the first Tanna and that of R. Judah, reflect different positions as to minority opinions. According to the first Tanna, a minority opinion is recorded because in the future it is conceivable that a court will prefer it over the majority view. As a rule, a court cannot annul the decisions of another court unless it was greater in wisdom and in number. But if it has a something to rely on—the rejected minority opinion—it can overcome this restriction and change the law accordingly.¹²⁶ In other words, the rejected minority opinion has normative weight. In the opinion of R. Judah, on the other hand, the minority opinion is only mentioned to indicate that it has been rejected. Minority opinion has no normative value whatsoever, and is cited only to ensure that this has been made clear. The opinion of the first Tanna connotes the possibility of changing halakhic rulings. Reporting dissenting views enables later courts to change laws decided earlier. This calls to mind the approach of the House of Hillel, who are willing to retract their views and endorse the possibility of new understandings of the law.

It is interesting to note that in the Tosefta, the names of the Tannaim to whom the aforementioned positions are attributed are reversed: the Sages say, “the opinion of one person among the many is recorded only to set it aside,” whereas R. Judah says, “lest a time comes when it is necessary for them to rely upon it” (tEduyot 1:4). This may be an incidental variant, as is commonplace in the talmudic literature, but it is also quite plausible that the

125 Let me be more precise. When the House of Hillel cited the opinion of the House of Shammai, its own view, that is, the opinion of the House of Hillel, had not yet been accepted as binding law, whereas when the Mishnah cites the opinion of an individual, it does so on the assumption that there is a decision rule that the law is determined by the majority view.

126 See Rabad ad loc.

variation was intentional, expressing the divergent views of the respective editors of the Mishnah and Tosefta on the value of minority opinions.¹²⁷ According to the editor of the Mishnah, minority opinions have normative value, whereas according to the editor of the Tosefta, minority views have no normative value and are cited only to indicate that they have been rejected. The structure of the chapter within which the mishnaic passage is found supports this contention. The first chapter of tractate Eduyot of the Mishnah clearly expresses the rationalist approach of the House of Hillel. It opens with the important principle, “one should not always persist in his opinion” (1:4) and at the end the chapter (1:12-14) enumerates the occasions on which the House of Hillel retracted their view, illustrating that principle. The conception that minority opinions are to be cited fits in well with the theme of the chapter, particularly the Tanna’s dictum, “So that if a court prefers the opinion of one person, it may rely on him.” In the Tosefta, on the other hand, none of these elements are present. Hence it would seem that “the opinion of one person among the many was recorded only to set it aside” reflects the approach of the editors.

The principle of majority rule that is at the heart of tractate Eduyot mandates further investigation in light of the two basic outlooks we have set forth.¹²⁸ From the traditionalist perspective, majority rule cannot serve as a means of decision making, since tradition is the sole authoritative source of law. Courts cannot deviate from the accepted law, and the majority has no authority to challenge tradition. This approach is expressed in a law found in the collection of procedural rules for the study hall: “they do not take a vote where there is a tradition.”¹²⁹ If one quotes a tradition and the others say, we have not heard such a tradition—in

127 Shapira and Fisch, n. 3 above, 491-93, adduces additional differences between the Mishnah and Tosefta that support the hypothesis that the reversed attributions reflect ideological differences.

128 The development and acceptance of the principle of the decisive majority merits further study, see Urbach, n. 84 above, 93-99.

129 Cf. MS Erfurt “they do not take a vote except due to a tradition,” and MS Vienna, “they do not take the vote except where there is a tradition.” The latter version is not

such a case, they do not take a vote. But if one forbids and the other permits, one says impure and the other pure, and all say, we have not heard such a tradition—on such a matter they take a vote.”¹³⁰ According to this law, a matter on which there is a tradition is not put to a vote. It is enough if one of the sides, even just one individual, claims to have a tradition, to prevent the majority from taking a vote. In such cases, the law is decided on the basis of the tradition. Decisions are made by majority rule only where there is a controversy over the law, and all agree that they have not heard a tradition. This law does not address cases in which both sides claim to have a tradition. In such cases, would it be possible to hold a vote to decide? On the basis of the rule “they do not take a vote where there is a tradition,” it seems that here too, there would be no vote. The result would be that in such cases the controversy could not be resolved. So adopting the principle that majority rule cannot supersede tradition would lead to a situation where numerous controversies were left unresolved. Furthermore, since the traditionalist sages **always** speak in the name of tradition, it would never be possible to invoke majority view against them.¹³¹ This may explain why the main controversies between the Houses during the Temple period could not be resolved: there was no decision-making procedure that was acceptable to the House of Shammai.

The principle that majority rule was the accepted means of deciding the law could only develop in an environment where there was readiness to accept additional sources of legal authority and decision making alongside tradition. It is likely that the principle was developed and gained acceptance in the academy of the House of Hillel. After the destruction of the Temple, with the ascendancy of the House of Hillel, it came to be the prevailing

compatible with the rest of the law and has to be emended as I have above (the same emendation is made by Rosenthal, n. 90 above, 335).

130 tSanhedrin 7:7 (Zuckerman edition, p. 425).

131 As we noted, there might have been a more moderate traditionalist view permitting enactment of laws where there were lacunae in the tradition; on this view, in such cases, even traditionalists will put forward arguments on the basis of an authority other than tradition.

rule.¹³² Decision by majority rule allowed the halakha to exit the dead-end in which it had become entrapped at the end of the Second Temple period, and became the principal tool for the organization and clarification of the law in the post-Temple period.¹³³ Indeed, the traditionalist sages offered explicit and tenacious resistance to decision by majority rule, exemplified by the conduct of Akabia b. Mahalalel, who stood by his tradition and refused to retract it despite the majority decision,¹³⁴ and so too the conduct of R. Eliezer, student of the House of Shammai.¹³⁵ It might well be that this constitutes the explanation for the peculiar way the decision that the law is decided in accordance with the House of Hillel is reported: “a heavenly voice went forth and said, Both are the words of the living God, but the law is in

132 Decision in accordance with the majority view regarding controversies between the Houses during the Second Temple period is mentioned in the Mishnah apropos the eighteen enactments (“they took a vote, and the House of Shammai outnumbered the House of Hillel,” mShabat 1:4). The very fact the controversy was resolved, especially in this way, is exceptional. Elsewhere R. Meir says, “they took a vote, and the House of Shammai outnumbered the House of Hillel”; this is disputed by R. Jose, who says, “the controversy remains as it was” (mMikvaot 4:1). Indeed, as a rule controversies between the Houses were not resolved, and certainly not by majority rule, but rather, “these [conducted themselves] according to their laws and the others according to their laws” (jJebamot 1:4 (3b); Urbach n. 84 above). Note that even in those cases where the law was decided by majority rule, it was decided in accordance with the view of the House of Shammai, and it was the House of Hillel who accepted the decision of the majority. There is thus no evidence that the House of Shammai ever conceded that majority rule was a legitimate way to decide the law. Another instance where a vote is mentioned was in deciding the philosophical question of whether it would have been better for man not to have been created (bEruvin 13b). Here too, “they finally took a vote and decided that it would have been better for man not to have been created than to have been created”—in accordance with the view of the House of Shammai! (However, the authenticity of this passage is questionable; see E.E. Urbach, *The Sages* (Hebrew), [Jerusalem: 1975], 224.)

133 See tEduyot 1:1: “When the Sages assembled in the vineyard at Yavneh ... they said, “let us begin from Hillel and Shammai.” And see Epstein, n. 12 above, 428: “According to the Tosefta, the aim of tractate Eduyot was regulation of the controversies pending from the time of Shammai and Hillel to their own day [i.e., the Yavneh period], their clarification and resolution.

134 mEduyot 5:6 (The end of the narrative is controversial. The first opinion states “and he was excommunicated and died in excommunication and his coffin was stoned.” R. Judah says, “God forbid that Akabia was excommunicated”)

135 bBaba Metzia 59b; jMoed Katan 3:1 (81c-d).

accordance with the House of Hillel.”¹³⁶ It was the Sages of the House of Hillel who argued against R. Eliezer that the Torah was not in heaven, so it is strange indeed that the decision that the law is to be decided in accordance with the House of Hillel is made by a heavenly voice! Apparently, divine intervention was necessary to convince the sages of the House of Shammai, who did not accept majority rule. They would not abandon their received tradition on the strength of mere procedure, and the only thing that could possibly have convinced them was direct divine intervention.

Another confrontation between majority rule and tradition is recounted in tractate Yadaim. The issue, debated by the Sages at Yavneh, was the status of the land of Ammon and Moab in the Sabbatical year. They decided the matter by majority rule: “they put it to a vote and decided that [residents of] Ammon and Moab are subject to the tithe for the poor in the Sabbatical year.” When this was made known to R. Eliezer, who was not present at the session, “he wept and said, ‘God’s secret [is revealed] to those who fear Him; and to them He makes known his covenant’ (Ps. 25:14). Go and tell them: Care not about your voting! I received a tradition from R. Johanan b. Zakai, who heard it from his teacher, and his teacher from his teacher, and so on back to a law given to Moses at Sinai, that Ammon and Moab are subject to the tithe for the poor in the Sabbatical year.”¹³⁷

R. Eliezer’s reaction can be understood in two ways.¹³⁸ The phrase “care not about” may mean ‘do not heed,’ ‘do not rely on.’ On this interpretation, R. Eliezer rejected the Sages’ decision making by majority rule, and admonished them that it is not the majority that decides, but tradition. It is a law given to Moses at Sinai that [residents of] Ammon and Moab are subject to tithes. On this reading, the mishnaic passage reflects the fundamental and

136 jBerakhot 1:3 (3c); bEruvin 13b. Also jJebamot 1:6 (3b); jSota 3:4 (19a); jKidushin 1:1 (58d); b Eruvin 6b. But tSuka 2:3 and tJebamot 1:13 state: “the halakha is always in accordance with the House of Hillel.” The heavenly voice is not mentioned.

137 mYadaim 4:3 and tYadaim 2:15-16.

138 For a discussion of this Mishnah, see Kahana, n. 92 above, where R. Eliezer’s response is explained in nn. 55, 57.

systematic disagreement between R. Eliezer, a student of the House of Shammai and a traditionalist who rejects the principle of decision by majority rule, and the other sages of Yavneh, who are followers of the House of Hillel, and thus take an anti-traditionalist approach. They welcome majority rule and the possibility of innovative rulings it opens up. An alternative reading of the phrase “care not about” takes it to mean, ‘have no apprehension about.’ On this understanding, R. Eliezer endorsed the Sages’ decision, invoking tradition to support it; the Mishnah reflects reconciliation between R. Eliezer and the Sages: even R. Eliezer, champion of tradition though he is, recognizes the force of decisions the Sages reach by majority rule. To be sure, this reading does acknowledge a certain tension between the two worldviews and modes of decision making. The Sages thought they were deciding about a “new enactment,” whereas R. Eliezer thought that they had followed an ancient tradition. Moreover, in R. Eliezer’s view, a majority ruling is not sufficient in itself, and requires the sanction of tradition.

IX The Legacy of the Houses: Different Approaches to Torah Study

There are additional sources that illustrate the different conceptions of knowledge and modes of study developed by the Houses and their followers. “R. Johanan b. Zakai used to recount the [praiseworthy] qualities of his students. R. Eliezer b. Hyrcanus--a plastered cistern that loses not a drop.”¹³⁹ The virtue of R. Eliezer, the quintessential traditionalist, is his ability to meticulously and fully retain the tradition. In contrast, R. Eleazar b. Arakh is described as “a spring that gathers force.” This is a salient intellectual attribute: creativity and the capacity to be innovative. The Mishnah reports conflicting evaluations of these traits. On one view, “if all the Sages of Israel were in one pan of the scales, and Eliezer b. Hyrcanus in the other, he

139 mAvot 2:8. ARN adds, “a tarred flask which keeps the wine,” ARN1, 14 (p. 58).

would outweigh them all.” In other words, Torah erudition is the foremost quality (“Sinai is preferable”). But the other opinion states, “Abba Saul said in his name: were all the Sages of Israel in one pan of the scales, and R. Eliezer b. Hyrcanus with them, and R. Eleazar b. Arakh in the other pan, he would outweigh them all.” In other words, creative intelligence is better than erudition. (“one who moves mountains is preferable”). Interestingly, the *Fathers according to Rabbi Nathan* attributes Abba Saul’s dictum to R. Akiva and implies that the preference for creative intelligence was taught at R. Akiva’s school.¹⁴⁰ So we are back to the dispute between R. Eliezer and R. Akiva: is the true sage one who preserves the traditions of the Sages, or the one who articulates rationales and introduces new laws?

The approach of R. Eliezer is expressed in various dicta attributed to him. The Talmud relates that when he was about to die, R. Eliezer said: “Much Torah have I learned, yet I have not drawn from my teachers even as much as a dog lapping from the sea. Much Torah have I taught, yet my students have only drawn from me as much as [clings] to a paintbrush from its tube [i.e., a miniscule amount].”¹⁴¹ R. Eliezer apparently hints that the amount of knowledge he absorbed from his teachers was far less than what they knew, and what he taught his students was far less than he knew. In other words, the generations are in intellectual decline. This attitude is typical of the traditionalist school, and in fact points to its weakness. Despite the most strenuous efforts to conserve knowledge, the mission was destined to fail, and some knowledge would ultimately wither and die.

140 ARN2, 29 (p. 59). This was pointed out in A. Goshen-Gottstein, “R. Eleazar ben Arach: symbol and reality,” in I. Gafni et al. (eds.), *Jews and Judaism in the Second Temple, Mishnah and Talmud Period: Studies in Honor of S. Safrai* (Jerusalem: 1993), 177.

141 bSanhedrin 68a; ARN 1, 25 (p. 81): “I have drawn from my teachers no more than one who dips his finger into the sea. And I have given my students as much as [clings to] a paintbrush from its tube.” See A. Goshen-Gottstein, “A lonely sage on his deathbed” (Hebrew), *Tirzah Lifshitz Memorial Volume* (Jerusalem: 2004), 79-112.

R. Eliezer's educational approach may also be expressed by another well known dictum attributed to him: "keep your children away from *higayon*."¹⁴² Now the root ה"גה has a number of meanings in the Rabbinic literature, yielding a variety of interpretations of the dictum. It can connote 'reading Scriptures'—Rashi offers as his first explanation "do not make them read Scriptures too much."¹⁴³ But it can also mean 'talk' or 'chatter'—Rashi's second explanation is thus "childish talk."¹⁴⁴ An interpretation from the Geonic period interprets it to refer to the wisdom of ancient Greece—logic or dialectics,¹⁴⁵ but common though this interpretation is, it has no linguistic basis in the Rabbinic literature. I would like to suggest another interpretation of this dictum. In the Rabbinic literature, a common sense of the root ה"גה, relevant to our discussion, is 'examination' or 'inference.' The Midrash from the land of Israel explains the verse "but on His law he meditates (יהגה)" (Ps. 1:2) as referring to Noah, who "inferred (הגה) something from something else."¹⁴⁶ The word is used in a similar sense by the Talmud, "Rava said: One should always first learn Torah and then scrutinize it (יהגה)."¹⁴⁷ First one should memorize the material and learn it (יהגה) from his teachers, and only later examine it in depth. R. Eliezer's dictum can be interpreted in the same spirit:

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- 142 bBerakhot 28b and Rashi ad loc. (The printed version adds "and seat them among the scholars," but this does not appear in MS Munich, and is also absent from other textual witnesses, see *Dikdukei Sofrim* ad loc., §6). The entire saying is not found in the parallel version, ARN1, 19 (p. 70). In a Yemenite MS of tractate Sanhedrin it appears in a different context – in the will of R. Judah b. Bathyra (bSanhedrin 91a), and similarly in some Geonic sources. See M. Sabato, *A Yemenite Manuscript of Tractate Sanhedrin and its Place in the Text Traditions* (Jerusalem: 1998), 140-42.
- 143 Rashi ad loc. s.v. *mihahigayon*. The word '*higayon*' has a number of meanings in the Bible; see *Otzar Hageonim*, Berakhot, Interpretations, p. 40. The *Arukh*, s.v. ה"גה, interprets it as meaning 'to clarify a verse in its true form'; see Kohut's supplementary remarks on how the root ה"גה is used in the Rabbinic literature. For a survey of the various explanations, see M. Breuer, "Keep your children away from *higayon*," *Rabbi David Ochs Memorial Volume* (Hebrew), (Jerusalem: 1977).
- 144 This explanation also has various early forms, see *Otzar Hageonim*, *ibid*.
- 145 *Ibid.*, p. 39 in the name of Hai Gaon; and see S. Lieberman, *Greek and Hellenism in Jewish Palestine* (Hebrew), (Jerusalem: 1984), 227 nn. 26, 27, 231 n. 60.
- 146 Genesis Rabbah 26, 1 (p. 244) Midrash Tehilim 1, 12 (p. 11). The Midrash is attributed to R. Judah, and this may be a Tannaitic tradition. Note that in Hebrew, 'meditate' also comes from the root ה"גה.
- 147 bBerakhot 63b; bAvoda Zara 19a.

concentrate on memorizing the traditions, and refrain from analyzing it and drawing inferences.¹⁴⁸

R. Akiva, on the other hand, stressed creativity and innovativeness in one's studies:

R. Akiva says: Scripture says, "drink waters out of your own cistern" (Prov. 5:15), your cistern, at the beginning, cannot produce a drop of water by itself, there was nothing but what was in it. So too a student has learned nothing at the beginning, there was nothing but what he had learned. "And running waters out of your own well"-- [later he becomes] like a well. Just as a well gives off running water from every side, so students come to learn from him, as it says, "let your springs be dispersed abroad" (Prov. 5:16).¹⁴⁹

R. Akiva contrasts the cistern to the well. The cistern holds but a finite amount—that which it has in it—but the well flows and increases all the time. At the first stage a student is like a cistern, and knows only what he has learned. But at a later stage he is like a well. Memorizing traditions and retaining them is only the first stage in the learning process, but in the advanced stages the student must exhibit creativity and innovativeness. To be a "plastered cistern" is an important attribute for a beginning student, but the ideal scholar has to attain the status of "a spring that gathers force."

This imagery also appears in a passage about the beginnings of R. Eliezer as a scholar and his advancement at R. Johanan b. Zakai's academy. The passage describes how R. Johanan b. Zakai tried to prompt R. Eliezer to lecture in public.

148 This interpretation fits the dictum in the context of R. Eliezer's remarks when he was on his deathbed. On the other hand, situating the dictum in the context of R. Judah b. Bathyra's will would entail interpreting *higayon* as 'excessive reading of Scriptures.' See Sabato, n. 142 above, 142.

149 Sifre Deuteronomy 48 (p. 112), MS Rome; a similar version is found in bAvoda Zara 19a.

Rabban Johanan b. Zakai said to him: Eliezer, tell us something from the Torah. He answered: I will draw an analogy for you, telling you what I am like. I am like this cistern, which cannot bring forth more water than what has gone into it. He said to him: I will draw an analogy for you, telling you what you are like. You are like a well that gives off water and brings forth water from itself. So you can recount to us more teachings of the Torah than were spoken to Moses at Sinai.¹⁵⁰

This anecdote presents the dialogue between R. Johanan b. Zakai and R. Eliezer as a dialogue between innovator and traditionalist. R. Johanan b. Zakai asks R. Eliezer to “tell us something from the Torah.” R. Eliezer understands immediately that the intent is for him to say something new, and answers that he cannot recount anything beyond that which he had received. R. Johanan tries to convince him that he can recount even more than was spoken to Moses at Sinai. R. Eliezer had not mentioned Sinai, but R. Johanan touches on the very core of the traditionalist doctrine, namely, that the tradition the student receives from his master is precisely that which the latter received from his own master, and so forth all the way back to Moses at Sinai.¹⁵¹ If so, there is no way to add and be innovative. R. Johanan therefore tells him that he can recount more Torah than was spoken at Sinai. The role of the student is not only to preserve knowledge, but also to develop and enhance it. This anecdote shifts—as anecdotes are wont to do--the systemic doctrinal differences between the camps to the personal, psychological plane. The passage continues:

150 ARN2, 13 (p. 32).

151 As the beginning of tractate Avot declares, and is repeated by the Sages many times: mPeia 2:6; mYadaim 4:3; jPeia 2:4 (17a) and parallels.

He asked him twice and thrice, but he refused. Rabban Johanan b. Zakai went out and proceeded on his way. And R. Eliezer sat and expounded more teachings than had been spoken to Moses at Sinai, and his face shone like the light of the sun, and the rays emanating from him were like those that emanated from Moses, and no one knew whether it was day or night.

Here, R. Eliezer, in contrast to his usual image in the sources, is depicted by the narrator as someone who ultimately **does** expound more than was spoken to Moses at Sinai. The story implies that it was all a matter of inhibitions that R. Eliezer succeeded in overcoming. The anecdote expresses the victory of the rationalist ideal of innovativeness and creativity over the conservationist ethos of the traditionalists. The victory is presented as complete: R. Eliezer the extreme and consistent traditionalist is vanquished, and fully concedes his defeat: the plastered cistern sought to become a spring that gathers force. We can assume that this anecdote originated in a later school that adopted the path of R. Akiva.¹⁵²

Conclusion

The academies of the House of Hillel and the House of Shammai developed two fundamentally different approaches to the halakha and Torah study. These approaches are reflected in the broad-based halakhic controversy between the Houses, as well as in the way the Houses' respective academies were organized, and their educational policies. The House of Shammai's approach was traditionalist, advocating the ideal of 'closed' knowledge. It regarded tradition as the sole source of knowledge and law, and advocated the conservation

152 See Goshen-Gottstein, n. 140 above, 178; M. Kister, *Studies in Avot de-Rabbi Nathan: Text, Redaction, and Interpretation* (Hebrew), (Jerusalem: 1998), 215-16, suggests that the anecdote is a variant of an earlier tradition about R. Eleazar b. Arakh in tHagiga 2:1 (p. 398) and parallels.

of knowledge in its original form, and its pristine transfer from generation to generation within a framework open only to students from the social elite. Conversely, the House of Hillel's approach was rationalist, upholding the ideal of 'open' knowledge. Alongside tradition, it recognized additional sources of authority, sources based on human understanding. This outlook sought not only to conserve knowledge, but also to develop and enhance it, and thus favored granting all comers access to learning. On this view, exposing knowledge to numerous students, and the use of modes of study and research that were open and transparent to all, would not be detrimental to knowledge, but on the contrary, would strengthen it. The Houses' respective legacies were preserved by the Sages who flourished in Yavneh after the destruction of the Temple, such as R. Eliezer, follower of the House of Shammai, and R. Joshua and R. Akiva, followers of the House of Hillel. During this period the approach of the House of Hillel gained ascendancy and became the mainstream orientation. The academy at Yavneh, and subsequent schools, were modeled on the spirit of the House of Hillel.