

## I

## Hillel and Shammai

The historicity of the Pharisaic leaders Hillel and Shammai is not in doubt; but for the present, it is not their actual history that concerns us.<sup>28</sup> These legendary sages came to epitomize two ends of the giyyur spectrum. Hillel stands for those who leave no stone unturned to facilitate a convert's halakhic entry into Israel, while Shammai exemplifies the family man whose solicitude for people's religious observance extends to those around his hearth and to the community with whom he identifies.<sup>29</sup> People beyond those perimeters might just as well keep their distance. The evidence suggests that in principle the Pharisees believed in giyyur; and thus, as one would expect, Shammai did not abnegate it. On the other hand, we cannot be sure that Shammai would have considered giyyur the mišvah that our extant tannaic laws presuppose it to be<sup>30</sup> since those laws might very well hail from Hillel's school. Medieval rabbis differentiated between obligatory and

<sup>28</sup> The reconstructions of this chapter do not depend on the historicity of the characters or the events connected with them. We are dealing with history as remembered and transmitted by the sources. Needless to say, that does not imply sympathy with nihilists for whom rabbinic reports have a knee-jerk presumption of unreliability. Adopting scholarship's criteria of dissimilarity and embarrassment, the Bathyran presidency gains cogency by dint of its irregularity. Again, using the criterion of multiple attestations, Talmud critics find many a rabbinic reminiscence corroborated in extraneous sources, notably Josephus. That corroboration is particularly strong for Agrippa, the priests, the Sects and very possibly even for Sameas and Pollion – identified by Louis H. Feldman (d. 2017) as our Shema'iah and Abtalyon (see *Studies in Hellenistic Judaism*, Brill 1996 pp.44–51).

<sup>29</sup> E.g. M. Suk. 2:8; M. Edu.1:14. <sup>30</sup> E.g. Yeb. 47b.

optional,<sup>31</sup> or concessionary, *mišvoth*. Perhaps Shammaism regards *giyyur* as a concessionary *mišvah* in the league of the comely captive law of Dt 21:10–14 – which tradition construed as appeasement to man’s evil inclination (Qid.31b); or of *mišvoth* such as divorce,<sup>32</sup> *sheḥiṭah*<sup>33</sup> or even the second Passover. In any event, the way the Talmud contrasts Hillel and Shammai’s attitudes to *giyyur* invites the use of their names as shorthand for, respectively, champions of *giyyur* and those for whom bringing *gerim* on board is not the ideal. Hillel believed, like Abraham and Sarah of the *aggadah* we met earlier, that letting others share in their faith would meet with the approval of the God they worshipped. Hillel’s name is attached to that *aggadah*’s counterpart in *Aboth de R. Nathan* where it serves to illustrate Hillel’s memorable aphorism “Love your fellow humans and draw them close to Torah”.

Hillel said: [love your fellow humans] and draw them close to Torah’. This teaches that one breaks into people [’s lives] and causes them to enter under the *Shekhinah*’s wings just as our father Abraham would break into people [’s lives] and cause them to enter under the *Shekhinah*’s wings. Sarah did the same as it says [Gen 12:5] ‘... also the souls they made in Haran’. Now even the whole world in joint effort cannot create so much as a single gnat. So what does ‘the souls they made’ signify? It signifies that the holy One blessed be He reckoned it unto them as though they had created [those that they caused to enter under the *Shekhinah*’s wings].<sup>34</sup>

Another of Hillel’s mottos – “If I am for myself what am I?” (Aboth 1:14) – is the voice of openness rather than insularity; of unselfishness rather than egoism. But topping all are Hillel’s famous *ger* stories that portray him practising what he preached. Hillel was Hillel and not Shammai because, as already noted, even when uncertain of their motivation, he preferred to give the benefit of the doubt<sup>35</sup> to those

<sup>31</sup> See *Yad Berakhoth* 11:2.

<sup>32</sup> “The house of Shammai say a man shall not divorce his wife unless he found impropriety in her” (Git. 9:10).

<sup>33</sup> Based on Dt 12: 20, it was taught in a *baraita*: “A person should not eat meat unless he has a craving” (Hul.84a; Sifre Dt 75).

<sup>34</sup> *Aboth de R. Nathan A 12*, Schechter Edition Newly Corrected, New York, NY 1967 p.27b [53]; Cf. “Whoever brings in one *beriah* under the *Shekhinah*’s wings it is reckoned unto him as though he had formed him, wrought him and brought him into the world” (T. Hor. 2:7). See also Sifre Dt 32.

<sup>35</sup> See *Aboth* 1:6.

who came knocking on his door seeking *giyyur*. Shammai turfed out tiresome applicants. The stories themselves are well-known, but their finale less so.

That finale goes out of its way to track the fortunes of Shammai's three outcasts who were subsequently converted by Hillel. One day the three chanced to meet and after exchanging their adventures they agreed that "Shammai's punctiliousness sought to drive us out of the world, but Hillel's meekness drew us beneath the wings of the Shekhinah" (Shab. 31A). Shammai did not act simply out of irascibility or cantankerousness. He shooed them away – so Rashi – because it is taught in a *baraitha* at Bekhoroth 30b 'A person who comes to accept the things of *haberuth* except for one thing and similarly, a *ger* who comes to be converted and accepts upon himself the things of Torah except for one thing he is not accepted'.<sup>36</sup> So on the cognitive level, Rashi is telling us, Shammai took his marching orders from Bekhoroth and chose to follow them to the letter. By and by, we shall be analysing Bekhoroth more minutely, but one detail must be previewed here and now. The Bekhoroth pericope deals not only with the acceptance of *gerim* and *haberim* but also with the acceptance of priests and Levites and is, as we shall argue, redolent of a time when priests were serving in the temple and ritual purity still controlled Jewish life. Thus its protocols might approximate those current in Shammai's day.<sup>37</sup> Yet Shammai's contemporary Hillel found a way to navigate between Bekhoroth and his 'God-given wisdom'.<sup>38</sup> As for Shammai, perhaps a fundamentalist approach to a Bekhoroth type protocol meshed with his temperament. To the extent that action and resistance both reflect the inner man, *giyyur*'s latter-day feet draggers would seem to be possessed of Shammaitic proclivities. For as we shall witness over and over again, those who hum and haw over *giyyur* tend to be drawn instinctively to Bekhoroth 30b like moths to a lighted lamp.

An intriguing idea proposed by Yitzhak Buxbaum is that "Hillel's attitude to these [converts] was perhaps affected by the fact that his own teachers were [Shema'iah and Abtalyon]".<sup>39</sup> Although Shammai, too,

<sup>36</sup> Rashi *ibid.* s.v. *hoši'o binzifab*.

<sup>37</sup> The protocol enjoined at Yebamoth 47 is said quite explicitly to be intended for the post-Temple era, a theme we shall be returning to.

<sup>38</sup> See Tos. Yeb. 24b s.v. *lo* and 109b s.v. *ra'ab*.

<sup>39</sup> *The Life and Teachings of Hillel* Northvale, NJ 1994 p. 135.

was a pupil of Shema'iah and Abtalyon (M. Aboth 1:12) Buxbaum still has a point, because Hillel's touching devotion to his teachers (see M. Edu. 1:3) was not necessarily shared by Shammai. Now Shema'iah and Abtalyon are listed by the Mishnah (Hag. 2:2) as *nasi* [president] and *ab beth din* [vice-president] of the supreme court. Furthermore, the Mishnah tells us that, like a certain denizen of Jerusalem named Karkemith, Shema'iah and Abtalyon were not Jews-from-birth.<sup>40</sup> Because they were gerim, it would not surprise us were the Temple priesthood, that mostly disallowed conversion, to impugn the appointment of Shema'iah and Abtalyon. Indeed, in Chapter 2 we shall meet the high priest who addressed them as gentiles. But even Aqabyah b. Mahalal'el, who seems close to the Yavnean rabbis,<sup>41</sup> uses Shema'iah and Abtalyon's ger status against them when he accuses them of bending the law to the advantage of Karkemith because she was of their own kind. In return Aqabyah is excommunicated, and the gemara (Ber. 19a) explains his excommunication as punishment for maligning deceased sages who were unable to defend themselves. However, historical

<sup>40</sup> "Aqabyah b. Mahalal'el asserted four things . . . and that the bitter water ordeal is not administered to a proselytess or to a freed woman. The sages disagreed. They said to him 'Karkemith was a freed woman in Jerusalem and she was given to drink the bitter waters by Shema'iah and Abtalyon'. He replied, 'the likes of her gave her to drink'" (M. Edu. 5:6; cf. Y. Mo'ed Qatan 3:1[84d]; Ber. 19a and Rashi & Tos. ad loc.; Maimonides' introduction to his *Mishneh Torah* [*Yad ha-hazaqah* – hereafter *Yad*] and his comment on Edu. 1:3; Bertinoro on Edu. 5:6 and on Aboth 1:10). The ger status of these highest judicial appointees was always acknowledged, save for a revisionist interlude in the seventeenth century when they were stripped of their proud proselyte status and transmogrified from gerim into descendants of gerim by R. Yomtob Lipman Ha-levi Heller (d. 1654). In his Mishnah commentary *Tosafoth Yom Tob* (Prague 1615–17) at Aboth 1:10, R. Heller quotes *Derekh Hayyim* by his teacher R. Yehudah b. Bezalel Loew of Prague (MAHRAL – d. 1609) whose writings are steeped in the romanticized chauvinism of R. Yehudah Halevi (see "Proselyte Judaism, Christianity, and Islam in the Thought of Judah Halevi" by Daniel J. Lasker *JQR* 81 [1990] pp.75–91). Still, for the record, MAHRAL is sensible of the repercussions his belief in an inherent superiority of Jews could have for giyyur and makes a desultory effort to accommodate gerim (see *Tifereth Yisrael* end of the first chapter [London 1955 edition P. 10]).

<sup>41</sup> Aqabyah is never identified as a priest. Yet the laws on which he stakes his honour at Edu. 5:6 – leprosy, ritual purity, shearings of the firstborn of the flock and the water ordeal – all belong to the priestly domain. At Neg. 1:4 Aqabyah is one of three tannaim who dispute an aspect of leprosy law. One of the other two is definitely a priest namely R. Hananiah Segan Ha-kohanim. Finally, in Aqabyah's anthropology man has his beginnings in *tippah serukah* (Aboth 3:1). In a *yihbus*-oriented mind such as a priest's the thought of human incipency might well conjure up *tippah* (for connotations of *tippah* see n. 480).

excommunications seem to have been resorted to for the purpose of stemming threats of dissidence. Hence one may be forgiven for suspecting that underpinning Aqabyah's *ad hominem* snideness was a dissident priestly ideology, perchance a movement, that never fully made its peace with Pharisaism's openness to gerim. On his own, Aqabyah would not count as evidence for such a movement, but there might be additional hints. The Tosefta, Yerushalmi and Bavli all preserve a memory of Hillel upbraiding leaders called Ziqné (or Bené) Bathyra for underutilizing Shema'iah and Abtalyon. As to why the Bathyrans cold shouldered Shema'iah and Abtalyon, neither the Tosefta (Pes. 4:11) nor the Yerushalmi (Pes. 6:1 [33a]) offer any explanation. The Bavli (Pes. 66a), on the other hand, attributes the Bathyrans' behaviour to sloth, a rather implausible reason. In all likelihood, sloth is a euphemism for something far more deliberate.

The Bathyrans' leadership role is something of a mystery. Israel Ben-Shalom scans various theories put forward by scholars from Heinrich Graetz (d. 1891) to Gedalia Alon (d. 1950).<sup>42</sup> All the theories are inevitably speculative because the sources are rather skimpy. What the sources do tell us though is that the Bathyrans held authoritative office which they abdicated in favour of Hillel after he stepped into the breach when the Bathyrans were caught off guard by an unprecedented halakhic contingency. But what exactly was the position they abdicated? This time the Yerushalmi offers a promising titbit: "They [the Bathyrans] released themselves from *nesi'uth*".<sup>43</sup> This report of their having held a position of *nesi'uth*, welcome as it is, also sets the cat among the pigeons. Because according to the Mishnah, Hillel and Shammai's immediate predecessors were Shema'iah and Abtalyon – not Bathyrans. Indeed, the latter are absent from M. Hag. 2:2's list of *nesi'im* and *aboth beth din*. Ben-Shalom conjectures that the position the Bathyrans surrendered to Hillel was not the presidency of the Sanhedrin or Supreme Court but of "some committee [*va'ad mesuyyam*]" (p. 73). As conjectures go, Ben-Shalom's is fine – except that nowhere do we hear of committees headed by *nesi'im*. Our own preferred hypothesis – reckless as it must sound – allows *nesi'uth* to remain stately insofar as it views the Bathyrans as 'antipope' *nesi'im* of a

<sup>42</sup> See *The School of Shammai and the Zealots' Struggle against Rome* [Heb. with English title-page] Jerusalem 1993 pp. 63–73.

<sup>43</sup> Pes. Ibid.; cf. Y. Kil. 9:3 [32b]; Rashi Pes. 66a s.v. Bené Bathyra.

secessionist faction that rejected the leadership of the converts Shema'iah and Abtalyon. This is not to suggest that the Bathyrans were anything other than Pharisees, but rather that Pharisaism had room within its big tent for Aqabyahs and Shammais. But even Aqabyah, let alone Shammai, would have been centrists compared to our hypothetical breakaway faction, which must have been at Pharisaism's fringe and close enough to King Agrippa's challenger Simon (see next paragraph) to bridle at gerim sitting in the Temple's Chamber of Hewn Stone and wielding authority. Nor would it be surprising to find diversity in a grass-roots, populist party such as Pharisaism. A by-product of our secessionist hypothesis might be the following explanation for why the Bathyran *nesi'uth* was so transitory and is never heard of earlier or later. For although Bathyrans do not disappear from the scene (see for example R.H. 29b), their *nesi'uth* passes. If Shema'iah and Abtalyon's appointment prompted the Bathyran *nesi'uth*, then it stands to reason that it would end with their demise.

The alleged span of divergent opinions among the Pharisees will be evident again in the story of King Agrippa who, though a darling of mainstream Pharisees, was certainly no darling of an extremist such as Simon as presented by Josephus.<sup>44</sup> A comparable diversity of opinions carried over into the rabbinic period, except that along the way the ratios got reversed. If, as seems likely, a majority of Pharisees affirmed the judgeship of Shema'iah and Abtalyon and the kingship of the philo-Pharisaic Agrippa, talmudic sources on the whole disqualify converts for kingship and for senior positions of judgeship. Nevertheless, the tradition that endorsed the appointment of ger judges was not forgotten. The Tosafists in their remarks to Ex 21:1 cite rabbinic sources that forbid Jewish litigants to take their grievances to gentile courts.<sup>45</sup> Then

<sup>44</sup> Ant. 19:7,4 [19:332]. Though Josephus does not introduce this Simon as a Pharisee, he describes him as a man *exakribazein dokon ta nomima* ('who appeared to be very accurate in the knowledge of the law' – Wiston; 'with a reputation for religious scrupulousness' – Feldman, Loeb edition p.371). The combination *dokon* and *nomima* was demonstrated by Steve Mason to belong to Josephus's stereotypical descriptions of Pharisees (see *Flavius Josephus on the Pharisees*, Brill 1991, esp. p. 108 where Mason implicitly identifies Simon as a Pharisee; p. 101 for *nomima* and p.106 ff. for *dokon*. For more on Agrippa see Chapters 3 and 18, esp. n. 527).

<sup>45</sup> E.g. "R. Meir used to say Wherever you find *agoras* (gentile law courts) even if their laws are the same as Israelite law you must have nothing to do with them as it says (Ex

they proceed to make the inference that all who are not gentile, such as proselytes, may constitute a valid court – at least when qualified native Jews are unavailable “because the Torah did not disqualify gerim except when their equals can be found among native Israelites. But should nobody of their calibre be found, then they take precedence . . .”. That, in the view of these Tosafists, explains the appointment of Shema’iah and Abtalyon the proselytes to high judicial office.<sup>46</sup> The proviso limiting the viability of convert judges to situations where no born-Jews of equal (or superior) competence are available, is an obvious attempt to harmonize between a text, that at least by implication, sanctions ger judges and the mass of texts that do not. Be that as it may, it is highly significant that Tosafists were cognizant of rabbinic sources that validate proselyte judges; and the fact should be borne in mind especially when confronted by more restrictive opinions emanating from the Tosafist school. R. Shimon b. Şemah Duran (d. 1444) in his commentary to Aboth 1:10 iterates Tosafoth to the effect that if ger judges such as Shema’iah and Abtalyon have no equals, then they become the most eligible.<sup>47</sup>

As already noted, traces of what might be called a Shammaite legacy resurges once giyyur was legalized in nineteenth century Europe. The phenomenon seems worth investigating in its own right. Should the resurgence be laid at the door of Moses Mendelssohn who, as we are going to see, declared giyyur repugnant to Judaism,<sup>48</sup> or do we have Joseph Akiva Schlesinger to thank for the ascendancy of a Shammitic programme?<sup>49</sup> This is just a random swatch of the type of question that will be tackled, even when there are no definitive answers. Over against the Mendelssohns and Schlesingers, and in spite of them, there were torch bearers of Torah who kept Hillel’s flame aglow. In 1860 the rabbi of Mezritch asked R. Eliyahu Guttmacher (d. 1874) for his opinion on how to proceed with a ‘God-fearing man’ who had come to him seeking

21:1) ‘These are the the laws that you shall set before them’ – before them but not before gentiles” (Git. 88b).

<sup>46</sup> See *Da’ath Zeqenim* Ofen 1834, on Ex 21:1; *Tosafoth ha-Shalem: Commentary on the Bible*, Jacob Gellis edition vol. 8 Jerusalem 1989 col.143.

<sup>47</sup> *Magen Aboth*, Jerusalem 1960/61 (Lehorn 1762).

<sup>48</sup> Mendelssohn expressed these views most forcefully in his letter to Lavater (to be duly excerpted).

<sup>49</sup> Considerable space will be devoted to this nineteenth century mover and shaker who shrugs off Hillel’s way with gerim as preternaturally guided and therefore irrelevant – being the exception that proves the rule.

conversion. The questioner reports that after studying with the geruth seeker for about a year he learnt that the latter was in love with a certain orphan girl which circumstance aroused suspicions that the orphan might be the real motive. R. Guttmacher responds as follows.

In cases such as this, where we are unable to determine whether the individual's decision to convert is for the sake of Heaven or not, then every halakhic decisor [*kol ba'al hora'ah*] should incline to accept rather than to repulse, and here there is no certainty that the motive is other than for Heaven's sake, then it is obligatory to accept [the individual] because there is greater culpability in repulsing than in accepting even if the motive should turn out to have been not what the law wants. Think about it this way: if he is lying when he says his intentions are for the sake of Heaven and we are taken in and accept him it is not the end of the world. For behold it is stated clearly at Yeb. 24b and in Shulhan Arukh [Yoré De'ah] end of section 268 that even if the ger's motives were definitely not for the sake of Heaven and even if this was known to the *beth din* who nevertheless accepted him in contravention of the law, still he is an absolute ger in every way (*hu ger gamur kekhbol dinav*). All the more does this apply if the beth din reached its decision in reliance on his fib believing it to be the truth. For in that case even the scripturally based monition [of Yeb.24b]<sup>50</sup> would be inapplicable.<sup>51</sup>

<sup>50</sup> "Keep your mouth from crooked speech and your lips from deceitful talk" (Prov 4:24).

<sup>51</sup> *Adereth Eliyahu* vol. I Jerusalem 1984 p. 329.