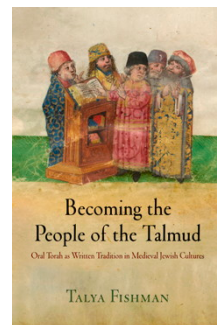


***Becoming the People of the Talmud: Oral Torah as Written Tradition in Medieval Jewish Cultures*, by Talya Fishman**

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When was the Babylonian Talmud first considered to be a code of applied law? What was its original Mesopotamian *Sitz im Leben*, and how did it

come to be perceived and used in the diaspora communities of North Africa and the Iberian peninsula—before Rashi and the glossators known as the Tosafists in eleventh- to thirteenth-century Northern France turned it into a canonical text for both education and adjudication?

According to Talya Fishman of the University of Pennsylvania, the keyword that helps to answer these questions is “textualization,” a term that describes the “slow and unconscious” (9) process in northern Europe between the mid-eleventh and mid-twelfth centuries through which, among both Christians and Jews, the written word gradually acquired intellectual and legal prestige and came to preserve memory, a status and function previously granted primarily to transmission via spoken words and gesture. As the studies of Ya‘aqov Sussmann, Robert Brody and Nahman Danzig have shown, the Mishnah and the Babylonian Talmud were transmitted orally until the eleventh century and the end of the period of the classical Iraqi *ge'onim* (leaders of the rabbinical schools of Iraq)—as the Talmud itself puts it, “It is forbidden to put oral matters in writing” (b. *Temurah* 14a–b). This remained true despite the high degree of textualization that the multicultural society of Iraq had already reached by the tenth century. Putting the Oral Law in writing was a concession that the *ge'onim* made to the necessity of offering a guide to religious life and creating a network of patronage in the farthest reaches of the Mediterranean (ch. 1). The difference between the two Jewish subcultures of Ashkenaz and Sefarad, Fishman argues, is best explained in light of the Roman past and the diffusion and survival of its juridical culture and practices: in Sefarad (North Africa, al-Andalus and France south of the Loire), the heritage of *Latinitas* and its legal culture persisted even after the collapse of the Roman Empire in the form of a continued dependence on written documents as evidentiary and dispositive sources of legal authority (ch. 2). In France north of the Loire, the end of the Carolingian Empire brought about the end of the professional legal class, and social life was once again regulated by non-written means (ch. 3). The textualization of Jewish culture and the focus of the Jewish curriculum around the Talmud provoked considerable resistance and came to be perceived negatively not only by Christians, but even by many Jewish intellectuals, according to whom the end of unmediated master-disciple relationships and their *ethos* brought about increased ignorance of the Oral Law and its investigation (*talmud*), as individual scholars instead came to exercise their hermeneutic acumen on written texts. The textualization of the Talmud, its canonization both as a written corpus and as a central pedagogical text, and its adoption

as a normative source for applied law took place in northern France between the eleventh and thirteenth centuries through the works of Rashi and the Tosafists (ch. 4). The beginning of Christian attacks on the Talmud—first in learned works starting with Peter the Venerable (1146), then materially beginning with the Talmud Trial of Paris (1240)—can best be explained by the increasingly widespread diffusion of a standardized Talmudic text in written form. Even cultural phenomena internal to late medieval Judaism can be understood as reactions to the process of textualization: the Rhineland pietists (*Haside Ashkenaz*) opposed textualization and privileged living over written memory, granting continuity to a cultural past that after Rashi and the Tosafists had begun to be perceived as different from the present—the same historicist attitude that starting in the fourteenth century began to characterize the thought of the early humanists (chs. 5–6)—but in doing so, they adopted the very strategies and tools of textualization that they apparently opposed, putting “old wine in new bottles.”

Some of Fishman’s main theses have not convinced all her reviewers. An important and lively discussion has already taken place in journals and on the Internet. Some scholars insist on dating to the beginning of the ninth century the Babylonian Talmud’s acquisition of authority as a normative text among the Jews of the Islamic world (at the time, 90% of Jews worldwide); its authority, according to Haym Soloveitchik, is demonstrable from its pervasive citation in the vast corpus of gaonic responsa. In chapter 4, Fishman maintains that the Tosafists thought of the Talmud as a code of applied law (*halakhah le-ma’aseh*), and aimed to make it this by standardizing the Talmudic text and eliminating its variant readings. But according to Soloveitchik (“The People of the Book: Since When?” *Jewish Review of Books* (2012): 14–18), when the Tosafists found themselves confronted with varying or contradictory legal opinions in a single Talmudic discussion (*sugya*), they never put forward a position as to which opinion had normative value; likewise, their supposed preoccupation with textual matters is evident in no fewer than three percent of the corpus of their glosses; and the typical readings of the so-called “Ashkenazi text” of the Talmud—which for Fishman represents the final stages of the Tosafist activity—are already attested in Yemeni manuscripts and fragments from the Cairo Genizah.

Another example of this type of discussion: Fishman (143–44) translates a passaf from the *Sefer ha-Yashar* of Rabbenu Tam in order to demonstrate that as late as the twelfth century among the rabbis of northern Europe there was no consensus surrounding the Talmud’s authority in adju-

dication, and that applied law could be based either on customary law, on aggadic (narrative) traditions or on halakhic traditions from outside the Talmud. Soloveitchik countered that the quotation that Fishman brings from Rabbenu Tam elides an all-important phrase: extratalmudic legal traditions can be accepted “when they do not conflict with our Talmud” (*Sefer ha-Yashar le-Rabbenu Tam. Heleq she’elot u-tshuvot*, ed. by Sh. F. Rosenthal [Berlin: Itzkowski, 1898], 81) —the missing phrase strengthens the idea that the authority of the Talmud was already widely accepted by his day. Indeed, the central chapters of the book, from 2 through 5, suffer at times from a dearth of analysis of textual examples, with the result that at times the argument becomes somewhat abstract and difficult to follow. It would, for example, be beneficial in a subsequent edition of the book (and it certainly merits one) for the description of the activity of the Tosafists that provoked Soloveitchik’s criticisms to be supported by an analysis of how they harmonized differing opinions in order to elicit applied law from specific Talmudic *sugyot*, or else of how they intervened in textual variants in order to standardize the text. Fishman’s point about the Tosafists could be more clearly formulated if rendered not in terms of a specific textual activity, or of a codification and canonization of the Talmud as a manual of applied law, but in terms of a progressively broader recognition by Jews of its prestige.

Fishman’s book nonetheless has the great merit of having abundantly illuminated one of the main contradictions animating the evolution of Jewish culture (and Jewish communities) between late antiquity and the end of the Middle Ages: the tension between the traditional commitment to avoid putting legal matters into writing and the actual diffusion and centrality of written legal texts. She also highlights (though without always getting to the bottom of the problem) numerous parallels between Jewish conceptions of law and the innovations that were taking place in the Islamic and Latin Christian worlds. The salient and innovative feature of the book, as Joseph Shatzmiller has observed (*H-Judaic*, October 2011), is the comparison of orality and textuality among Jews with the same phenomena among Christians and Muslims (via, for example, the now classic studies of Michael Clanchy, Mary Carruthers, and Brian Stock); in this sense, the book is ground-breaking, and has opened the way for further research. Fishman has daringly attempted to overcome long-entrenched scholarly schemata in search of a more dynamic vision and of a new and more capacious paradigm that unites rabbinic erudition with cultural history. The vision of the Tosafists as *lomde Torah lishma*, “learners of Torah for its own

sake,” whose dialectic was not connected to the search for applied law, is a perfectly valid one, but only as far as it goes; Fishman instead brings the Tosafists into a broader historical framework as markers of cultural change.

I must conclude with some observations on the decline of the art of the academic book. The publisher does not appear to have devoted adequate editorial attention to the volume: the transliteration from Hebrew is inconsistent (*'alef* and *'ayin* are not generally distinguished from one another; *dagesh forte* is almost never rendered); there are errors and inconsistencies not only in the transcription of Greek and Latin words (*pieta* for *pietas* [116]; *redivivus* for *redivivi* [133]; *deuteroses* for *deuteroeis* [169]), but in the spelling of words in French and German (*Universitat* for *Universität* [106]; *de rigueur* for *de rigueur* [109]) and even in English (*propadeutic* [153]; *indispensible* [175]), not to mention errors in punctuation (R, instead of R. for “rabbi”). Fortunately, the book’s contents are well worth the \$65 the press charges for the hardcover edition.

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