

Digitales Brandenburg

hosted by Universitätsbibliothek Potsdam

Rabbinic-lay relations in Jewish law

Jacob, Walter

Tel Aviv, c1993

THE PROFESSIONALIZATION OF THE RABBINATE in the Talmud and the
Halakhic Commentaries of Rambam and Karo

urn:nbn:de:kobv:517-vlib-10159

THE PROFESSIONALIZATION OF THE RABBINATE in the Talmud and the *Halakhic* Commentaries of Rambam and Karo

Richard Rheins

The modern rabbinate, with its array of professional organizations, pension plans, tenured positions and complex contracts, hardly seems concerned with the *halakhic* justification for rabbinic salaries and financial compensation. And yet, the question of whether the office of rabbi should be an unpaid position or one entitled to financial emoluments was once the center of a passionate *halakhic* debate. By reviewing *halakhic* evidence for the "professionalization" of the rabbinate, we can gain both a greater understanding for the foundations of the modern rabbinate, as well as an appreciation for the courage and insight of our sages as they employed *halakhic* principles in order to span the gap between an ethical ideal and a moral responsibility.

It is popularly held that the office of rabbi originally was strictly an honorary position and that rabbis did not receive salaries prior to the fourteenth century.¹ If it is true that, as Ephraim Urbach states: "The acceptance of remuneration from the public was forbidden,"² then how did the later rabbis justify their salaries and fees? What is the *halakhic* foundation of the professional rabbinate?

In order to understand the key *halakhic* issues that affected the development of the professional rabbinate, we will first examine several Talmudic passages which address the question of awarding financial compensation and benefits to the earliest sages and rabbis.³ Second, we will turn to the twelfth century comments of one of the last great authorities who opposed rabbinic salaries, Moses Maimonides (Rambam). His remarks, quoted at length, effectively sharpen the focus of the *halakhic* debate. Finally, we

will see how Joseph Karo justified the professional rabbinate in opposition to Rambam's position.

For the purpose of this paper, a "professional rabbi" is defined as: "one who receives financial compensation and benefits in support of his rabbinic vocation."⁴

THE PROFESSIONAL RABBINATE AS EVIDENCED IN THE TALMUD⁵

Contrary to "popular opinion," the traditions preserved in the Talmud do not universally prohibit rabbinic salaries, fees and benefits. True, some authorities such as Hillel and Rabbis Zadok and Tarfon were opposed to deriving benefit from teaching Torah,⁶ but others (Judah, Assi and Raba)⁷ established the *halakhic* foundations for financial compensation, communal salaries and other benefits.

It is important to begin with a review of those Talmudic passages which are most frequently cited in *halakhic* literature in relationship to the issues of rabbinic compensation, salaries and benefits. Below, the passages have been divided into two major groupings: 1) Talmudic traditions which prohibit salaries and limit privileges; and 2) Talmudic traditions which permit financial compensation and privileges.

1. The Talmudic Traditions which Prohibit Salaries and Limit Privileges

Two passages are frequently cited by those authorities in opposition to rabbinic salaries, fees and benefits:⁸

"R. Zadok said: Do not make [the Torah] a crown to make yourself great, nor a spade with which to dig." "And Hillel used to say: He who makes worldly use of the crown [of the Torah] shall

THE PROFESSIONALIZATION OF THE RABBINATE

perish." From this you learn that whoever uses the words of the Torah for his own benefit will cause his own destruction.⁹

If one takes payment (*sekhar*) to act as a judge: his judgements are void; to give evidence, his evidence is void; to sprinkle¹⁰ or to sanctify, the waters are considered cave waters and the ashes are considered only ordinary ashes.¹¹

Gemara: Where is it proved [that one may not take payment for teaching the Torah and rendering decisions]? R. Judah reported in the name of Rav: "Scripture says: 'Behold I have taught you laws and statutes....'¹² Just as I teach you gratuitously, so you should teach gratuitously."¹³

The passages above delineate a clear position against the acceptance of salaries (*sekhar*) for rabbis. Hillel's statement was understood to prohibit someone from earning a livelihood or deriving material advantage from his expertise of the Torah.¹⁴ The *d'rash* of Deuteronomy 4.5, in B. Bekhorot 29a, established the ideal of teaching the Torah for free because God gave the Torah to us for free. This interpretation became an often cited anthem for those authorities who sought to prohibit financial compensation for the rabbis. The Talmud also preserves traditions that are opposed to judges who are in the habit of borrowing.¹⁵ Some authorities, Rabbi Tarfon, for example, were most extreme in their refusal to benefit from their Torah scholarship. Tarfon grieved all his lifetime because he had once saved his own life by informing an attacker that he was a rabbi.¹⁶

2. Talmudic Passages which Permit Financial Compensation and Privileges

Notwithstanding the above mentioned prohibitions against rabbinic salaries and benefits, the Talmud also contains several traditions which permit:

- a) compensation for "time and trouble"
- b) tax exemptions
- c) business advantages
- d) salaries from communal funds.

Below, we will examine each of these areas of rabbinic support.

A) *Compensation for "time and trouble"*

While payment for the performance of a *mitzvah* is technically prohibited,¹⁷ the Talmud does establish the foundation for rabbinic compensation through the principles of *sekhar batalah* and *tirha*.

Sekhar batalah and *sekhar tirha* [also referred to by its Aramaic equivalent, *agar batalah*] is compensation for the loss of time. In theory, a rabbi would "normally" earn a living by means of a secular occupation. Whenever he took time off from his occupation in order to perform some rabbinic function, the rabbi would suffer a loss of wages. The principle of *sekhar batalah* and *sekhar tirhah* empowered the rabbi to demand just compensation for his lost wages. A good example of this is found in the following:

"Karna used to take one *istira* from the innocent party and one *istira* from the guilty party. But how could he act in such a manner? Is it not written in Scripture, And thou shall take no gift...."¹⁸ But this applies only where he [the judge] takes [the gift] as a bribe, but Karna took [the money] as a fee (*agra*). But is it permissible [for a judge to take money] as a fee? Have we not in fact learned that the legal decisions of one who takes a fee for acting as judge are null and void?¹⁹ This applies only to a fee for pronouncing judgement, while Karna was only taking compensation for loss of work (*agar bateilah*)."²⁰

THE PROFESSIONALIZATION OF THE RABBINATE

Karna earned a living as a wine-tester. Therefore, he could demand his wine-tester's wages when he was called away to perform a rabbinic function.

Another form of compensation was recompense for *tirha* (the physical labor or "trouble" required in preparation for a *mitzvah*). In the following passage, note that the Mishnah could be understood to permit the payment of fees. The Gemara, however, explains the fees as compensation for *tirha*:

"If one takes payment for inspecting the firstlings, they must not be slaughtered by his instructions, unless he was an expert (*mumheh*) like Ila in Yavneh whom the sages permitted to accept four Roman coins for small cattle and six for large cattle, whether they were unblemished or blemished."²¹

Gemara: What is the reason? In one case (i.e., with the large cattle) he has much trouble (*tirhah*), whereas in the other case (i.e., the small cattle) he does not have much trouble."²²

In the above case the Gemara draws a fine line in order to justify the acceptance of fees. Still mindful of the prohibition forbidding fees for performing a religious act, the Gemara contends that Ila received his fees because of the physical difficulty of handling animals, but not for the *mitzvah* of the inspection. Thus the officiant's duties are separated into two categories:

- a) the physical labor required in preparation for the *mitzvah*
- b) the performance of the religious act or *mitzvah* itself.

One could thereby receive compensation for the non-religious functions involved in the preparation for a *mitzvah*.²³

The establishment of these two forms of compensation, *sekhar batalah* and *tirha*, effectively laid the groundwork of the

halakhic justification for rabbinic fees.

B) *Rabbinic tax and business benefits*

We have already learned how the Talmud *halakhically* justified certain fees and payments to the rabbis. But *sekhar batalah* and *tirha* can be seen as compensations for loss and not actual benefits. However, special rights and privileges were granted to the rabbis, for example, the benefit of tax-exemption.²⁴

In order to extend their rights and benefits, the rabbis, as depicted in the Talmud, were understood to be the natural inheritors of the privileges previously belonging to the Temple priests.²⁵ The following passages link the rights and privileges of the rabbis to those of the *kohanim* (the Temple priests):

"Rabbi Yonah gave tithes to Rabbi Acha bar 'Ulla, not because he was a priest but because he studied the Torah."²⁶

"Raba said, "A rabbinical scholar may assert, I am a rabbinical scholar; let my business receive first attention, as it is written, 'And David's sons were *kohanim* [of course, David's sons were not *kohanim*, but this verse in II Samuel 8:18, simply is used to show that just as David's sons received priestly privileges, though they were not priests, so, too, should rabbis receive priestly privileges;'²⁷; just as a priest receives first, so does the scholar receive first." And from where do we know that a priest receives first? Because it is written, "Thou shall sanctify him; for he offers the bread of thy God."²⁸

The benefit of tax-exemption was defended staunchly. Rabbi Nahman ben Isaac even declared that the right of rabbis to exemption from poll-taxes was *d'oraita* (Biblical) and not simply a rabbinic ruling.²⁹ The following passage shows to what lengths the rabbis may go in order to avoid paying the poll-tax:

THE PROFESSIONALIZATION OF THE RABBINATE

Raba said: "A rabbinic scholar may declare, I will not pay the poll tax, for it is written: 'It shall not be lawful to impose *mindah*, *belo*, or *halak* upon them."³⁰ R. Judah then said: "*mindah* is the King's portion [of the crops]; *belo* is a head tax; and *halak* is *arnona* [possibly a produce tax, or a tax for the sustenance of marching troops]." Raba also said: "A rabbinical scholar may assert, 'I am a servant of fire, and will not pay poll-tax."³¹

The Persian government granted tax-exemptions to clergy in the Persian fire-cult. Therefore, Raba permitted rabbis to claim that they were fire-worshippers in order to avoid paying taxes!³² Of course, a rabbi would avoid the apparent heresy of claiming to be a fire-worshipper by thinking about the Lord as the "all consuming fire."³³

The Talmud³⁴ presents laws and customs dealing with the business issues of local monopolies and restraint of trade. The discussion therein established the principles that scholars were exempt from certain business prohibitions. It also confirmed the right of a community to reserve a special space in the market for a worthy scholar:

Rabbi Dimi from Nehardea brought a load of figs in a boat. The Exilarch said to Raba, "Go and see if he is a scholar, and if so, reserve the market for him."³⁵

Obviously, tax-exemptions and business advantages were desirable privileges that benefitted the early rabbinite. It is surprising that we do not find strong arguments against these benefits. Perhaps even those who opposed rabbinic benefits agreed that rabbis deserved the priestly prerogatives.³⁶

C) Rabbinic salaries and fees

Let us now examine a tradition that is preserved in the

Talmuds of both Babylonia and *Eretz Yisrael* which provides evidence that, at least in certain places, it was acceptable to pay salaries to the teachers of Scripture. In the following passage the Gemara examines some of the consequences which result when one vows not to derive benefit from another:

"He may teach him *Midrash, Halakhot* and *Aggadot*, but not Scripture. Why not Scripture? Because it benefits him. But Midrash does not benefit him? Samuel said: 'This refers to a place where the teaching of Scripture is remunerated. But Midrash is not remunerated.' How state this definitely? The Tanna informs us that even where a fee is taken, it may be accepted only for Scripture and not for Midrash. Why does Midrash differ? Because it is written, 'And the Lord commanded me at that time to teach you.'³⁷ And it is also written, 'Behold I have taught you statutes and judgements even as the Lord my God has commanded me.'³⁸ Just as I taught you gratuitously, so you must teach gratuitously. Then should Scripture be remunerated? Rab said: 'The fee is for guarding the children.' Rabbi Johanan maintained: 'The fee is for teaching the accentuation.'³⁹

"It is written, 'Behold, I have taught you statutes and ordinances.'⁴⁰ Just as I do so without remuneration, so you must do so without remuneration. Is it possible that the same rule applies [i.e., no remuneration] also to the teaching of Scripture and the translation? The text says, 'Statutes and ordinances.' Statutes and ordinances must be taught without remuneration, but not so Scripture and translation. And yet we see that those who teach Mishnah receive remuneration. Said Rabbi Judah b. Rabbi Ishmael, 'It is compensation for their loss of work.'⁴¹

In the above passages one can sense the heightened tension between the "ideal" of scholars who "should" teach without compensation and the reality of the necessity of material support.

THE PROFESSIONALIZATION OF THE RABBINATE

We see how the ideal (as reflected in the *d'rash* of Deut. 4.5, in B. Bekhorot 29a, that we should teach for free because God taught for free) is contradicted by the custom of some communities to pay fees to scholars. The contradiction is "resolved" by Rav and Rabbi Johanan who taught that the fees were compensation only for the *sekhar tirha* (i.e., the trouble and physical labor). The passage from the Talmud of *Eretz Yisrael*⁴² is especially interesting. The Jerusalem Talmud determined that remuneration for the teaching of Scripture and translation was not prohibited *d'oraita*, and, by implication, that teachers of Scripture could receive direct fees. Only "statutes and judgements" (i.e. Mishnah and *halakhot*) had to be taught gratuitously. Even so, teachers of Mishnah were eligible for compensation for loss of time (*agar bateilah*).

While compensation by means of *sekhar tirha* and *sekhar batalah* was widely accepted, we cannot speak of a "professional" rabbinate without evidence of salaries. Salaries paid to scholars out of communal funds would free the scholar from the necessity of a secular occupation and would make him regularly available to attend to the community's needs. The following passages establish the existence of communal funds through which rabbis and judges received salaries:

R Judah stated in the name of R. Assi: "Those who enact laws (*gozrei gezerot*) in Jerusalem received their salaries out of the Temple funds [at the rate of] ninety-nine *maneh*. If they were not satisfied, they were given an increase." They were not satisfied? Are we dealing with wicked men? The reading in fact is: "[If the amount was] not sufficient, an increase was granted to them even if they objected."⁴³

Of course, drawing salaries from communal funds was controversial. Such support seemed contradictory to the above

mentioned prohibitions against deriving benefit from the Torah. The following two passages present additional evidence of rabbis who "enriched" themselves through their rabbinic office and of communities who paid rabbis salaries. Note especially the wistful hope that rabbis should rank highest among their brethren in wealth!

"There once arrived at the *beit midrash* [a gift of] a bag of dinars. Rabbi Ammi came in first and acquired them. But how may he do such a thing? Is it not written, 'And they shall give,'⁴⁴ but he shall not take it himself? Perhaps Rabbi Ammi acquired them on behalf of the poor. Or, if you wish, you may say that in the case of an eminent person it is different. For it has been taught: 'And the priest that is highest among his brethren' implies that he shall be highest among his brethren in beauty, in wisdom, and in wealth. Others say, 'Where is it proved that if he does not possess any wealth, his brethren, the priests, shall make him great?' It is proved in the Scripture: 'And the priest that is highest [by reason of gifts] from his brethren.'⁴⁵

"Rabbi Simeon b. Menasha taught: If you see that the towns have been destroyed in the Land of Israel, you should know that it is because the inhabitants did not pay the scribes and the teachers their due salary."⁴⁶

Already by the third century the rabbis had established the *halakhic* justification for an economic support system.⁴⁷ Indeed, it certainly appears that the rabbinate, as portrayed in the Talmud, already embodied the main characteristics of a professional institution. In the Talmud we find *halakhic* principles by which rabbis would receive financial compensation (*tirha* and *sekhar batalah*). Rabbis were exempt from poll-taxes. Rabbis were granted advantages in the business world. And finally, rabbis were understood to be the inheritors of the priestly benefits which included support from communal funds and tithes.

THE PROFESSIONALIZATION OF THE RABBINATE

It is also clear that this professionalization was controversial and violated a cherished "ideal" that, likewise, was preserved in the Talmud.

What was the rabbinic ideal? Talmudic passages suggest that sincerity and true conviction were absolute musts for the rabbi. Raba said: "Any scholar whose inside is not like his outside is no scholar....Woe unto the enemies of the scholars [i.e., those corrupted scholars] who occupy themselves with the Torah, but have no fear of heaven."⁴⁸ The ideal rabbi had to be thoroughly versed in all matters of the *halakhah*. Rabbi Johanan said: "Who is the scholar that is appointed a leader of the community? He who when asked a matter of *halakhah* in any place can answer it, even in the Tractate Kallah."⁴⁹ The "ideal rabbi" supported himself by means of a secular vocation. Shammai was a builder; Rabbi Joshua was a blacksmith; Rabbi Jose was a tanner; Abba Hoshaiiah of Turya was a laundryman; Rabbi Hanina and Rabbi Oshaya were shoemakers; Karna was a wine expert; Hisda and Rabbi Pappa were brewers of mead; and while other rabbis were sandal makers, carpenters and merchants, most worked in agriculture.⁵⁰ Thus, the ideal rabbi was a pious and humble man who sought no advantage due to his scholarship. He was thoroughly expert in all the law, and he supported himself by means of a secular vocation and devoted all his spare time to teaching and study. Is it any wonder, therefore, that many were unable to live up to the Talmud's rabbinic ideal?⁵¹ It is in this vein that we can fully appreciate Rabbi Simeon b. Yochai's lament: "Is it possible? If a man ploughs in the ploughing season, and sows in the sowing season, and reaps in the reaping season, and threshes in the threshing season, and winnows in the season of wind, what is to become of the Torah?"⁵²

How can we explain the contradictory traditions? One could make a case for the fact that the ideals of "gentlemen

scholars" who refused to use their expertise for personal support and gain were ascribed to the early generations of Hillel and R. Tarfon respectively.⁵³ While the more permissive traditions were ascribed to the later Amoraic generations of Rab Judah and Raba.⁵⁴ But modern scholars are usually hesitant to put undue emphasis on the Talmudic attributions to specific personalities. Another explanation of the varying traditions is that the social realities changed and therefore Jewish custom was forced to adjust. This is certainly possible, but in which direction did the custom adjust? Must the ideal precede pragmatism?

The answer is beyond us. Still, it is enough that we recognize that even though there were varying opinions, the rabbinate of the first centuries of the common era was or was in the process of becoming a professional class. A significant number of rabbis saw themselves as the inheritors of priestly benefits. And like the priests, provision had to be made for the rabbi's material support and welfare. Incidentally, just from the Talmudic evidence we can see that the "common knowledge" (which maintains that the professional rabbinate was a creation of the 14th century) is, to say the least, an exaggeration.

As it turned out, the later *halakhic* authorities were generally permissive of rabbinic compensation, benefits and salaries. Some openly promoted the professionalization of the rabbinate, while others simply turned a blind eye to the fact that rabbis were being hired by communities.⁵⁵ Joseph Karo summarized the need for leniency in regard to rabbinic financial support:

"If there had not been support for those who study and teach on a regular basis, then no one would have been able to endure the hardship of Torah [study] as it is deserving [to be studied]."⁵⁶

THE PROFESSIONALIZATION OF THE RABBINATE

Yet, there was one great *halakhic* authority who was opposed to the professionalization of the rabbinate: Rabbi Moses Maimonides, the Rambam.

THE PROFESSIONAL RABBINATE AND MOSES MAIMONIDES

We divided rabbinic remuneration and benefits into three categories: a) compensation for "time and trouble;" b) tax-exemptions and business advantages; and c) salaries from communal funds. While Moses Maimonides (1135-1204) protested vigorously against the practice of rabbinic salaries, he approved the other forms of compensation and benefits. He wrote passionately against rabbinic salaries in both his commentary to the Mishnah (specifically, Mishnah Avot IV.5) and in his *halakhic* masterpiece, the *Mishneh Torah*. Let us begin by focusing on a few key passages in his lengthy commentary.

Rambam's commentary on Mishnah Avot IV.5 ⁵⁷

"After I had decided not to discuss this commandment, for it is quite clear, and since I also know that what I have to say on it does not please the majority of the great Torah scholars, or possibly all of them, I subsequently changed my mind concerning this decision, and I shall discuss it without considering earlier or contemporary works. Know that the meaning of the saying that "one should not make the Torah a spade with which to dig" is that one should not consider it a means for making a living. He [Hillel] explains and says that whoever benefits in this world from the honor of the Torah removes his life from the world (this is interpreted as "the World to Come"). People have misunderstood this clear expression, and have cast it aside in their mimicry of the nations, and have rather depended on literary meanings which they did not understand, as I shall explain. Thus, they imposed laws on individuals and on communities and caused people to think, in

complete foolishness, that it was their logical and moral duty to support scholars and students, as well as men whose exclusive occupation is the study of the Torah. All this is a mistake. Neither in the Torah, nor in the words of the sages, is there any word that proves it true, nor a support on which they might lean at all...."

There are several interesting aspects to Rambam's commentary to Mishnah Avot IV.5. One is struck by Rambam's admission that most of the other *halakhic* authorities ("possibly all of them") disagreed with his position. Thus, by Maimonides' own account, most rabbinic authorities permitted scholars to receive salaries from the communal fund.⁵⁸ Of course, Rambam maintained that the other authorities all were mistaken, that they misunderstood the Talmud, and that some of them were "*hameshuga'im hamvohalim*," "confused fools."⁵⁹

What is most evident is Rambam's opposition to rabbinical salaries from communal funds. And yet he was relatively lenient vis-a-vis the other categories of rabbinic benefits and compensation (*sekhar batalah*).

Maimonides agreed that rabbis qualified (*d'oraita*) for business advantages and tax exemptions. This was made clear in his commentary:

"On the other hand, what the Torah has permitted scholars to do is to give their money to someone to use it in business for them at his discretion, and that all the profit should be theirs, if he so agrees, and the one who does that for them has a great merit. A similar (permissible) practice is to give scholars merchandise in commission (so that they gain a profit), and to let them sell their merchandise first, at the opening of the market. These benefits God has decreed for them just as He has instituted the special gifts for the *kohen* and the tithe for the *levi*. Merchants even practice such customs as courtesies to each other, although no scholarship is

THE PROFESSIONALIZATION OF THE RABBINATE

involved. It is certainly in order that a scholar should be equal to a respected layman.

The Torah has exempted Torah scholars from special tributes as well as individual taxes. The community will exempt them from "head-taxes," and they [scholars] are relieved of building [fortification] walls and the like. Even if the Torah scholar happens to be a well-to-do man, he is free from any of the aforementioned obligations....This is a law of the Torah. Just as Torah freed the Temple priests from paying the half-shekel [so, too, are the rabbis exempt], as we have explained."⁶⁰

In the same commentary, Maimonides also confirmed the legitimacy of compensation for loss and trouble (*sekhar batalah* and *tirha*):

"Karna was a judge. He would say, 'Give me someone to draw water in my place, or compensate me for my actual loss ("batalti"), and I will judge your case.'"

Still, Rambam was explicit in his disdain for those scholars who relied on public assistance. He wrote:

"One should strive not to be dependent on other people and not to be a public charge. So, too, the sages have enjoined us, saying: 'Rather make your Sabbath a weekday than be dependent on men.'⁶¹ If reduced to poverty, even a distinguished scholar must not disdain manual labor, no matter how repulsive it is to him, in order to avoid dependence on others. One should preferably flay animal carcasses instead of telling the people: 'I am a great scholar, I am a priest, provide for me.' The sages have indeed commanded us to act like this. Some of the great sages derived their livelihood from chopping wood, carrying lumber, watering gardens, working in iron or making charcoal, and asked no help of the community; neither would they have accepted

charity had it been offered them."⁶²

Rambam reiterated his opposition to communal support for Rabbis:⁶³

"Anyone, however, who makes up his mind to study Torah and not work but live on charity (*tzedaqah*), profanes the name of God, brings the Torah into contempt, extinguishes the light of religion, brings evil upon himself and deprives himself of life hereafter. For it is forbidden to derive any temporal advantage from the words of the Torah. The sages said: 'Whoever derives a profit from use of the teachings of the Torah is helping to remove his life from the world.'⁶⁴ They have further charged us:

'Do not make it [the Torah] a crown by which to magnify yourself, nor a spade with which to dig.'⁶⁵ They, likewise, exhorted us: 'Love work, hate lordship.'⁶⁶ 'All study of the Torah, not conjoined with work, must, in the end, be futile and become a cause of sin.'⁶⁷ The end of such a person will be that he will rob his fellow men."

Rambam's intention was that rabbis must support themselves by their 'worldly occupation.' Their free time must be devoted to the study of Torah. Maimonides disapproved of those who received charity in order to devote themselves solely to the study of Torah. Furthermore, he warned against spending too much time in "worldly occupations," lest the study of Torah be neglected. Thus, it appeared that Rambam offered Torah scholars two options: either be independently wealthy, or mortify yourself. Indeed, he championed the life of mortification in the next passage:

"The words of the Torah do not abide with one who studies listlessly, nor with those who learn amidst luxury and high living, but only with one who mortifies himself for the sake of the Torah, constantly enduring physical discomfort, and not permitting sleep

THE PROFESSIONALIZATION OF THE RABBINATE

to his eyes or slumber to his eyelids....⁶⁸

Rambam maintained that manual labor was a virtue, even for Torah scholars. He referred to the example of Rav Joseph who carried heavy loads of wood, and he praised those who sweated from difficult labor. However, he did say: "As soon as the judge (*dayyan*) is appointed as the leader of the community, he must not do menial labor in front of three men (i.e., in public), so that he does not degrade himself in front of them."⁶⁹

In any case, Rambam believed that the Jewish community of the future would not have to (or at least, *should not* have to) suffer the indignity of scholars and judges who receive salaries from communal funds. Ultimately, he said, God would provide for the scholars for doing the Lord's work.⁷⁰

While the practice of rabbinic support from communal funds was contradictory to Rambam's ideal, Rambam also opposed the professional rabbinate because he saw it in the corrupting influence of the Babylonian *Gaonate*. Rambam identified the *Gaonate* as one of the great causes of the phenomenon of "rabbis for hire."⁷¹ Isadore Twersky pointed out that Rambam chafed at the anachronistic *Gaonate* which relied upon pomp and circumstance and insisted on the formal retention of institutional prestige and primacy.⁷² In fact, Rambam refused to grant the academies of Babylon sole right to the title "Gaon" (lit. "the pride" i.e., of Jacob). In his introduction to the *Mishneh Torah*, he conferred the title on sages everywhere:

"The sages, however, who arose after the compilation of the Talmud, studied it deeply and became famous for their wisdom, are called 'Gaonim.' These *Gaonim*, who flourished in the Land of Israel, Babylon, Spain and France, taught the method of the Talmud."

Twersky summed up Rambam's daring effort to wrest the primacy of the Babylonian *Gaonate*, saying:

"Maimonides' *halakhic*-historical formulations underscored a basic socio-political fact: *Gaonic* teachings lacked intrinsic authoritativeness and could not possibly aspire to universal recognition. In other words, while the *Gaonim* constructed their platform upon a three-pronged supremacy--of the Oral Law, of the Babylonian Talmud, and of the Babylonian *Gaonim* in all matters of interpretation and application--Maimonides knocked out the third prong. Simultaneously, fully conscious of the fact that his forthright criticism would be uncongenial to most scholars, he repudiated the hierarchic-dynastic structure of the *Gaonate* and denounced their managerial methods, i.e., the maintenance of a retinue of scholars at public expense by relentless importuning for contributions. Oblivious of predecessors or contemporaries, he challenged the conventional proofs and values on which the system rested. The existence of an institutionalized and professionalized class of scholars supported by public and often high-pressured philanthropy was antithetical to Maimonides' existential posture as well as ideological position."⁷³

Twersky's theory helps us understand that Rambam's battle to help create the ideal Jewish community forced him to take on the hierarchical status quo of the *Gaonate* and the image of the "professional rabbinate" which they promoted.

As Maimonides himself stated, the vast majority of the *halakhic* authorities had already decided in favor of rabbinic support from communal funds. Still, Rambam's opinion carried so much weight that 250 years later Rabbi Simeon ben Zemah Duran, in his defense of the professional rabbinate, was forced to say:

THE PROFESSIONALIZATION OF THE RABBINATE

"I have seen that many people are grumbling at the fact that it was our custom throughout all the Jewish communities and many generations to give a salary to our scholars...they (who complain) base their argument in the light of what was written by the Rambam."⁷⁴

Joseph Karo opposed Rambam's opinion on the professional rabbinate. Karo summarized the reasons for rabbinic salaries in his *Kesef Mishneh*. We will review Karo's analysis of the issue before drawing our final conclusions.

THE PROFESSIONAL RABBINATE AS EVIDENCED IN JOSEPH KARO'S KESEF MISHNEH

The *Kesef Mishneh*, by Joseph Karo (1488-1575), is an important commentary to Rambam's *Mishneh Torah*. As we review the *Kesef Mishneh to Hilkhos Talmud Torah* 3.10, note that Karo focused primarily on Rambam's earlier commentary to Mishnah Avot IV.5. Karo began:

"In his comments to Mishnah Avot IV.5, our Rabbi (Rambam) derides the support given to students and rabbis. [However,] it appears from his own comments that most of the great Torah scholars of his day, or even all of them, did [receive support from their communities]".⁷⁵

Karo proceeded to systematically analyze Rambam's opposition to salaried rabbis. First, Karo dismissed Rambam's Talmudic examples of sages who supported themselves with their occupations and not from their rabbinical positions:

"He (Rambam) brings the example of Hillel the Elder⁷⁶ who was both a wood chopper and still studied. But there is no proof from this example, for this was, of course, at the beginning of his studies and it was during a time when there were thousands

of students. Perhaps they only gave aid to some of them or, perhaps, anyone who could [support] himself would not receive benefits. But when a sage became worthy and he taught his wisdom to the people, he would be elevated accordingly. You should not think that he remained a wood chopper!"

Karo maintained that Rambam's opposition to rabbis who accepted charity and gifts was untenable in the light of Talmudic precedent. As Karo noted, the Talmudic sages taught that when one brought a gift to a scholar it was considered as if that person fulfilled the *mitzvah* of bringing the first-fruits to the Temple priests.⁷⁷ Karo also cited the example of the *dayyanei gezerot*⁷⁸ who received gifts and fees; and he pointed to the prophet Elisha⁷⁹ who received gifts and support. Karo continued his assault on Rambam's position by citing the example in the Talmud,⁸⁰ where once a gift of a bag of golden dinars arrived at the *beit midrash*. Rabbi Ammi came in first and took the gold. Karo paraphrased the text and then concluded:

"And there was no difficulty for them [those that protested] as to why he (Rabbi Ammi) took [the gift], except for the fact that he took it for himself. So, if it were not like this it would be correct [for him to take the gift]. Furthermore, as it is implied in the commentary, an eminent person, even if he takes the gift for himself, it is permitted."

Karo referred to the Tosafot in order to support his argument permitting rabbinic salaries:

"It says that scholars who taught the priests the laws of ritual slaughter and *kemitzah* [i.e., taking of a "handful" from the meal offering] received their salaries from the Temple funds.⁸¹

THE PROFESSIONALIZATION OF THE RABBINATE

The *Tosafot* wrote that even though it is said in *Nedarim* that remuneration for study is forbidden, this case is different, for these [scholars] sit [and teach] all day and they do not have time to engage in any secular occupation. Since they have no other way to support themselves they take [remuneration] from the public. The words [of the *Tosafot*] teach us that salaries are not forbidden to those who teach except when they have other places from whence they might support themselves."⁸²

In the above commentary, Karo restated the time honored *halakhic* tradition that the prohibition against rabbinic salaries was only valid when the rabbi was not full-time and could support himself in some other manner. In his conclusion to Rambam's *Mishnah Avot* commentary and *Hilkhhot Talmud Torah* 3.10, Karo outlined the established guiding *halakhic* principles for the justification of the professional rabbinate:

"The general rule of the above is that any [scholar] who does not have enough for his support is permitted to take a salary from the public [funds] in order to decide cases or [receive remuneration] from the litigants....It is possible to say that the intention of our Rabbi [Rambam] here was that no man should cast off the yoke of a [secular] occupation and support himself from his fellow creatures just so he may study. But that one should learn a craft that will support him, and if he has enough, fine, but if he does not have enough, then he can receive support from the public. And this is basically what he [Rambam] wrote. He brought some Mishnaic passages which teach about the propriety of learning a craft. And even so, this is only the opinion of our Rabbi [Rambam] as it appears in his commentary to the *Mishnah*. In any event, we hold that when the *halakhah* is *rofefet beyadekha* (i.e., when the *halakhah* is unclear),⁸³ then follow after the popular custom (*minhag*). And we see all the sages of Israel before the time of our Rabbi [Rambam] and after him practiced the *minhag* of taking their salaries from the public. And also, even if one maintains that the

halakhah is according to the words of our Rabbi [Rambam] in his commentary to the Mishnah, then it is still possible to agree with all the sages of the generations [by recognizing that the sages simply followed the principle of]: 'It is time to act for the Lord; they have made void Your Torah;⁸⁴ i.e., current necessity knows no law. In other words, if there had not been support for those who study and teach, then no one would have been able to endure the hardship of Torah [study] as it is deserving [to be studied]. And the Torah would have been forgotten, God forbid!

In his concluding comments, Joseph Karo made three important points. First, Karo implied that Rambam's opposition to rabbinic salaries was restricted to those defined in his commentaries. Was Karo insinuating that Rambam did not actively oppose rabbinical salaries in "the real world?" Was he suggesting that the *Mishneh Torah* was merely a theoretical work which only reflected Rambam's ideal? Perhaps. In his second point, Karo noted that, at the very least, the *halakhah* concerning the propriety of rabbinic salaries is unclear (*rofefet beyadekha*). When an issue is unclear, we follow popular custom (*minhag*), and the Talmudically documented custom was to support rabbis with financial compensation, benefits and salaries. Karo's third important point concluded that even if Rambam's ideal was *halakhically* correct (i.e., that rabbis should not be supported by communal salaries), the Jewish community could not survive the consequences of such a strict interpretation. Because the survival of the Jewish people was threatened, the sages had the right to violate even a Toraitic law in order to protect the integrity of Judaism and "build a fence around the whole Torah."⁸⁵

The driving force behind Karo's entire argument, was that full-time professional rabbis were essential if Judaism was to continue to overcome the incessant challenges to its survival. It was quite apparent, even to the Talmudic sages, that it was incumbent upon the Jewish community to support the rabbinate.

THE PROFESSIONALIZATION OF THE RABBINATE

In an ideal world, the people of Israel would all be well versed in Torah and would only turn to the rabbis for the most difficult issues. In the best of all possible worlds, scholars would have easy, well paying jobs which would enable them to devote ample time to their studies. There would be no need for them to receive public remuneration. Alas, as Karo realized, there was a gap between the ethical ideal and our moral responsibility. Therefore: *Et laasot la-adonai heferu toratekha* ("It is time to act for the Lord; they have voided Your Torah").⁸⁶

CONCLUSION

Those of us who are interested in Progressive *halakhah* should take note of the courageous way the *halakhic* authorities addressed the tension between the "ethical ideal" and the moral necessity. The sages preserved the ideal of a rabbinate that was not reduced to mere occupation, and yet they realized that rabbis required financial support and benefits in order to serve the Jewish community. Idealists, like Rambam, opposed the professional rabbinate, but, by his own admission, he stood alone. Other authorities permitted salaries and benefits on two grounds. First, they believed that the Talmudic sources supported rabbinic compensation, benefits and even salaries from communal funds. Second, the *halakhic* authorities reasoned that even if the Talmudic "ideal" opposed the professional rabbinate, the *halakhah* would have to be changed out of practical necessity, because, as Joseph Karo asserted, the sages were charged with the moral responsibility of preserving the community. Sometimes, in order to fulfill that responsibility, we are called upon to overturn the *halakhah*: "It is time to act for the Lord; they have made void Your Torah."

The courage and sensitivity displayed by the sages in dealing with this vexing issue should serve as a model for all who wish to apply the traditions and ideals of our ancestors to the modern world.

Notes

1. For example, cf. *Encyclopedia Judaica*, "Rabbi, Rabbinate," written by the editors, vol. XIII, pp. 1446-1447. "The office of rabbi was originally an honorary one on the principle that the Torah had to be taught free of charge. It was not until the 14th century that there is the first clear evidence of a rabbi receiving emoluments." The reference is to Rabbi Simeon ben Zemah Duran (Rashbaz). The Rashbaz, however, maintained that he was not the first professional rabbi and that "it was our custom throughout all Jewish communities and many generations to give a salary to our scholars". (Responsum #142). He traces the halakhic support for the professional rabbinate to the Talmud. Also, see the responsum by Solomon Freehof, *American Reform Responsa*, ed. Walter Jacob, New York, 1983, pp. 523-527.
2. Ephraim Urbach, *The Sages*, Cambridge, 1987, p. 601.
3. The title "rabbi" was not used by the earliest Jewish sages. Originally, it was accorded only to those who had received *semikhah*. The Babylonian scholars used the term "Rav." Since a rabbi was called upon to decide ritual and monetary cases he was also given the title "Dayyan" (i.e., "Judge"). Sephardic Jews used the title "Hakham" ("Sage") instead of "rabbi."
 For a good review of the various titles used by Jewish scholars see *The Jewish Encyclopedia* ("Rabbi," p. 294), which also provides the text of Sherira Gaon's letter to Jacob ben Nissim with regard to the various titles that were used in different times and areas.
 In order to avoid confusion, I will use the term "rabbi" in reference to both Sephardic and Ashkenazic scholars. Not infrequently, I will refer to rabbis simply as scholars. It is important to note that, for the most part, the various terms are interchangeably used throughout the rabbinic literature.
4. There are some scholars who have stricter definitions of the professional rabbinate. Dr. Irving Agus, for example, defines the professional rabbinate as involving these major issues: 1) payment and privileges; 2) unquestioned authority in his locality (i.e., the community would only address questions to their rabbi, the "Rav ha-ir"); and 3) exclusive authority in his locality (i.e., no other rabbi could come and contradict his rulings). See, I. Agus, *Urban Civilization in Pre-Crusade Europe*, New York, 1965, volume II, pp. 486-488. Of course, Agus' definition is much too narrow; it fits only the exception and not the normative realities of the rabbinate.
5. The translations in this paper are based on the Soncino editions. Words in brackets are my own explanatory notes. Words in parenthesis provide the English or Hebrew equivalent of the previous word.

THE PROFESSIONALIZATION OF THE RABBINATE

6. See Mishnah *Avot* IV.5 (Albeck edition) for Rabbi Zadok and Hillel's opposition to those who "make worldly use of the Torah." Rabbi Tarfon (a third generation *Tanna*) was opposed to deriving any benefit whatsoever from his rabbinic position (B. *Nedarim* 62a).

7. See B. *Ketubot* 105a: "Rab Judah stated in the name of Rabbi Assi." B. *Nedarim* 62a, preserves Raba's support for rabbinic benefits.

8. M. *Avot* IV.5, and B. *Berakhot* 29a..

9. Mishnah *Avot* IV.5, quoted in full below, is listed as IV.7, in some editions. My reference is to Albeck's edition of the Mishnah.

10. "To sprinkle" refers to the ritual of purification of water mixed with the ashes of the Red Heifer. See Numbers 19:1-22, and Mishnah *Parah*.

11. M. *Bekhorot* IV.6.

12. Deuteronomy 4.5.

13. B. *Bekhorot* 29a.

14. Cf. Rambam's commentary to Mishnah *Avot* I.13.

15. Rabbah b. R. Shila, *Ketubot* 105b.

16. *Nedarim* 62a.

17. B. *Bekhorot* 29a.

18. Exodus 23.8.

RICHARD RHEINS

19. B. Bekhorot 29a, and B. Qiddushin 56b.
20. B. Ketubot 105a.
21. M. Bekhorot IV.5.
22. B. Bekhorot 28b-29a.
23. This concept of compensation for *tirha* is further defined in B. Qiddushin 58b, where payment is acceptable in compensation for the physical act of bringing the ashes and drawing the water but no payment is permitted for sprinkling the waters, which is the actual act of sanctification.
24. B. Nedarim 62b.
25. *Ibid.*, 62a-62b.
26. J.T. Ma'aser Sheni 5.5, 56b; Lee I. Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity*, Jerusalem, 1989, p. 71.
27. This is made clear in *Hagahot HaBah*, note #7.
28. Leviticus 21.8; B. Nedarim 62a.
29. B. Baba Batra 8a.
30. Ezra 7.24.
31. B. Nedarim 62b.

THE PROFESSIONALIZATION OF THE RABBINATE

32. Shapur II tried to promote the Persian religion of fire worship by offering tax-exemptions. For a more comprehensive study of this phenomenon, see I. Epstein, in the Soncino edition of the Talmud (note #11 to Nedarim 62b), which refers to S. Funk, *Die Juden in Babylonien* II, p. 3.

33. Deuteronomy 4.24.

34. B. Baba Batra 22a.

35. *Ibid.*, 22a.

36. See Lee I. Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity*, p.71.

37. Deuteronomy 4.14.

38. *Ibid.*, 4.5.

39. B. Nedarim 36b-37a.

40. Deuteronomy 4.5.

41. J.T. Nedarim 4.3.

42. *Ibid.*, 4.3.

43. B. Ketubot 105a. The *gozrei gezerot* (those who enacted *gezerot*) and the *dayyanei gezerot* (the *gezerah* judges) are both mentioned in this important passage. The fact that judges received a salary has stirred academic speculation. Ephraim Urbach in *The Halakhah, Its Sources and Development* (Massada, 1986, pp. 72ff.) maintains that the *gezerah* judges "were appointed in order to preserve traditions (ancient *gezerot* and court verdicts) and therefore they drew their salaries from the *shekel*-chamber...." others feel that this was done to permit the judges to serve on a full-time basis.

RICHARD RHEINS

44. Deuteronomy 18.3.
45. B. Hullin 13b; cf. B. Yoma 18a, and B. Horayot 9a.
46. J.T. Hagigah 1.7.
47. See Lee I. Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity*, pp. 69-71.
48. B. Yoma 72b.
49. B. Shabbat 114a. Rashi states that this requirement includes even the difficult tractate *Kallah*.
50. Judah David Eisenstein, "Rabbi," *The Jewish Encyclopedia*, pp. 294-295, Vol. X, pp 294-295.
51. See Ephraim Urbach, *The Sages*, London, 1987, pp. 601-608. "...The problem of the livelihood of the Sages in the framework of the question of studying Torah and practicing a craft did not cease troubling, complicating, and confusing the circles of the Sages" (p. 608).
52. B. Berakhot 35b.
53. Hillel lived during the last century B.C.E., and Rabbi Tarfon was a third generation Tanna (early second century of the Common Era).
54. Rab Judah was the second generation Amora (3-4 century C.E.) and Raba was a third generation Amora (4th century C.E.).

THE PROFESSIONALIZATION OF THE RABBINATE

55. Rabbenu Gershom (960-1040) and R. Isaac Alfasi (1013-1105) both have references in their responsa to rabbis who were paid salaries yet they made no protest. Alfasi (Responsum #223) dealt directly with the issue of a rabbi's contracted salary with a community. He supported the rabbi. Also, see the important responsa and commentaries of Rabbi Simeon Ben Zemach Duran. Duran erroneously is referred to as the "first professional rabbi." His comments trace the *halakhic* principles from the Talmud through the later authorities for support of professional rabbinat. Translations of Duran include: Isidore Epstein, *The Responsa of Rabbi Simon B. Zemah Duran*, New York, 1930; and Solomon Freehof, *A Treasury of Responsa*, Philadelphia, 1963, pp.79-80.

56. *Kesef Mishneh* commentary to Rambam's *Mishneh Torah*, *Hilkhot Talmud Torah*, 3.10.

57. For a complete translation to Rambam's commentary to Mishnah *Avot*, see Paul Forchheimer, *Maimonides' Commentary of Pirkey Avot*, New York, 1983. Forchheimer's edition of Mishnah *Avot* lists the passage under review as *Avot* IV.7. My reference is to the Hebrew text of Rambam's commentary printed in the Babylonian Talmud by the Gross Brothers, Printing Co. Inc., Union City, NJ. There, Rambam's commentary is ascribed to *Avot* IV.5.

58. Note that Rambam acknowledged that most of the *halakhic* authorities permitted rabbis to receive salaries. This establishes the existence of a communal-professional rabbinat a full 250 years before R. Simeon b. Zemah Duran ("the first professional rabbi").

59. Rambam makes this remark in the middle of his comments to *Avot* IV.5.

60. Mishnah *Avot* IV.5.

61. B. Shabbat 118a.

62. *Mishneh Torah*, *Zera'im* 10.18.

63. *Mishneh Torah*, *Talmud Torah* 3.10.

64. *Avot* IV.5.
65. *Ibid.*, IV.5.
66. *Ibid.*, I.10.
67. *Ibid.*, II.2.
68. *Mishneh Torah, Talmud Torah* 3.2.
69. *Ibid.*, *Hilkot Shoftim* 25.4.
70. See *Mishneh Torah, Shemitah VYovel* 13.13.
71. Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)*, New Haven, 1980, pp. 82-83.
72. *Ibid.*, pp. 82-83.
73. *Ibid.*, pp. 82-83.
74. Responsum #142. The translation is my own. Cf. Solomon Freehof's translation in *A Treasury of Responsa*, JPS, Philadelphia, 1963, pp. 79-80.
75. S.v. "kol hamasim al libo;" the translations of the *Kesef Mishneh* are my own.
76. B. Yoma 35b.
77. B. Ketubot 105b.

THE PROFESSIONALIZATION OF THE RABBINATE

78. *Ibid.*, 105a.

79. II Kings 4.42.

80. B. Hullin 134b.

81. B. Ketubot 106a.

82. *Kesef Mishneh to Hilkot Talmud Torah* 3.10.

83. [When the law] "is flimsy in your hand" is a literal translation of "*rofefet beyadekha*." This phrase comes from the Jerusalem Talmud Pe'ah 7.6: "Concerning any law that is unclear to the court, and you do not know what behavior to follow, observe how the community behaves and act similarly."

84. Psalms 119.126. "*Et laasot laadonai, heferu toratekha*" means, of course, that desperate times demand desperate actions. There is much discussion in the rabbinic literature concerning this verse and the principle it represents. The principle of "voiding the Torah in order to act for the sake of the Lord," is used by the rabbis to justify certain actions which may be performed in violation of expressed Toraitic law. Rashi, in his commentary to B. Berakhot 63a, brings forth one of the classic examples of this principle: "Those who do His will have violated His Torah, like Elijah on Mount Carmel, who sacrificed on a non-central altar during a period when that was forbidden, because it was a time to make a fence and a hedge among the Jews for the sake of the Holy one, blessed be He." See Joel Roth, *The Halakhic Process*, New York, 1986, pp. 169 ff.

85. See note #85 above. Karo was certainly aware that Rambam himself recognized the necessity of violating the strict reading of the Torah in order to protect the overall integrity of Judaism. See Rambam's *Mishneh Torah, Hilkhos Mamrim* 2.9.

86. Psalms 119.126.

THE RUCKENSTEIN-TOBIAS-ROSENBERG

- 62. [Faint text]
- 63. [Faint text]
- 64. [Faint text]
- 65. [Faint text]
- 66. [Faint text]
- 67. [Faint text]
- 68. [Faint text]
- 69. [Faint text]
- 70. [Faint text]
- 71. [Faint text]
- 72. [Faint text]
- 73. [Faint text]
- 74. [Faint text]
- 75. [Faint text]
- 76. [Faint text]
- 77. [Faint text]
- 78. [Faint text]
- 79. [Faint text]
- 80. [Faint text]
- 81. [Faint text]
- 82. [Faint text]
- 83. [Faint text]
- 84. [Faint text]
- 85. [Faint text]
- 86. [Faint text]
- 87. [Faint text]
- 88. [Faint text]
- 89. [Faint text]
- 90. [Faint text]
- 91. [Faint text]
- 92. [Faint text]
- 93. [Faint text]
- 94. [Faint text]
- 95. [Faint text]
- 96. [Faint text]
- 97. [Faint text]
- 98. [Faint text]
- 99. [Faint text]
- 100. [Faint text]

62. [Faint text]

64. [Faint text]

65. [Faint text]

66. [Faint text]

67. [Faint text]