

A TALMUDIC PROBLEM AND PROPOSED SOLUTIONS

BY HENRY MALTER, Dropsie College

IT is perhaps not too hazardous an assertion that in every branch of the world's ancient and mediæval literature there are some works that stand out as a query awaiting solution. The problem often centers around the identity of the author, the time, the place, the mode, and the purpose of the original composition, or concerns all these points at once. Jewish literature offers more peculiarities than are known in any other field of ancient and mediæval literature. It is particularly rich in such enigmatic productions, which have vexed the ingenuity of scholars past and present, and have given rise to new cycles of literature. Leaving the Bible with its immense problems aside, we need point only to the works or collections known as Mishnah and Talmud, and some of their immediate adumbrations, the origin and development of which have not yet been fully cleared up, in spite of the assiduous labors of many generations. For nearly a thousand years the authorities have been divided into two camps even on the question whether the Mishnah and the Talmud were transmitted in written form from the very start or were handed down orally during a period of five centuries. Somewhat nearer to our own time we are confronted by that mysterious book called *Yesirah*, by *Eldad ha-Dani*, by

the *Zohar*, and several other works, which have kept and still keep the pens of the best Jewish scholars busy with new solutions for what seems insoluble. None of the anonymous or pseudonymous works in which Jewish literature abounds, offers, however, so many perplexing difficulties to the investigator, as the work known under the name *Tosefta*, a collection which has given rise to the most contradictory theories and bitter controversies.

The purpose here is not to give a detailed account of these theories. My chief concern is to present to the reader a synopsis of one of the most complicated talmudic problems and to point out the great importance which one of the proposed solutions may have for our conception of the entire post-biblical history of the development of Judaism. I refer to the works and views of Dr. M. S. Zuckerman. Before entering upon the discussion of his recent work on the subject we may briefly pass in review the main theories advanced and held regarding the *Tosefta*, during the last fifty years. For those not familiar with the subject a few words descriptive of the *Tosefta* may not be out of place by way of preliminary.

The *Tosefta* (properly a plural: *Tōsefātā*), meaning addition or supplement, is a collection of tannaitic teachings and maxims (*halakot*). In its present form, it may be called a duplicate of the Mishnah. Like the latter it is divided into six orders or sections, subdivided into treatises bearing, with slight variations, the same titles as the corresponding treatises of the Mishnah. The content, too, is practically the same; the main difference between the two is that the Mishnah presents the traditional law in a highly condensed form, whereas the *Tosefta* gives, aside from new material, the same maxims more elaborately, adding

some elucidating remark or introducing a new aspect under which a certain law is applicable. In its present, or perhaps in an earlier, redaction the *Tosefta* is referred to already in the *Talmud*,¹ where its origin, at least in spirit, is attributed to R. Akiba.

Aside from the specific references to the work as a whole, there are very numerous passages, called *Baraitōt*, scattered throughout the Babylonian and Palestinian *Talmuds*, which occur either verbally or in a somewhat different form, also in the *Tosefta*. The question thus arises, whether these sentences are merely citations from the work before us, with only verbal changes or are taken from some earlier collection, now lost. Both assumptions involve serious difficulties, and of the various solutions offered, none settles the matter definitely.

No less puzzling is the question of the authorship of the extant *Tosefta*. According to tradition the author of the present *Tosefta* is the Tanna R. Ḥiyya b. Abba, a pupil of R. Judah ha-Nasi, the compiler of the *Mishnah*. The first author to credit R. Ḥiyya with this work is the Gaon Sherira (tenth century) in his famous chronological treatise (*אגרת ר' שרירא גאון*). His view is repeated by Maimonides in the introduction to his *Commentary on the Mishnah*, and by others after him. Modern critics, however, reject this view as untenable for various reasons, one of which is that Ḥiyya himself and even his disciple, the Amora Rab,² occur in the *Tosefta* as speakers, a circumstance that points to a final redactor later than Ḥiyya.

¹ *Sanh.* 86a; *Yoma* 70a; see, however, Weiss, *Dor*, Wilna 1904, II, 197, who denies this.

² See Hoffmann, *Magazin für die Wissenschaft des Judenthums*, XI, 126.

Modern research into the problem of the Tosefta was inaugurated by the great talmudic critic Zecharias Frankel, whose thorough discussion of the question in his *דרכי המשנה* (1859), p. 304-8, and *מבוא הירושלמי* (1870), p. 22-27, gave the impetus to new investigations. In Frankel's theory the Tosefta is a combination of two independent Baraita collections, namely one by R. Ḥiyya and one by his disciple R. Hoshaya, in which the views of the former are dominant.³ That the numerous Baraitot quoted in the Talmuds as from the Tosefta differ so widely from the corresponding text of the Tosefta itself, he explains as due to the fact that these Baraitot were taken from the independent collections of R. Ḥiyya and R. Hoshaya before these were blended together by a later redactor into one text. Subsequently additional material, based on the Talmuds, was freely interpolated.

Not satisfied with the results obtained by Frankel, J. H. Dünner advanced a somewhat complicated theory of his own. The Tosefta, he holds, is the work of some compiler who lived after the conclusion of both Talmuds, or about the beginning of the sixth century. This compiler utilized not only the various Baraitot, found in the Talmuds, but also drew upon old authentic material of tannaitic law, which had originally been the source of the Mishnah, and which was lost after the redaction of the Mishnah had been made and remained unknown during the whole period of the Amoraim.⁴ This explains, accord-

³ In a fragment of a manuscript belonging to Judge Mayer Sulzberger, which was published by Prof. Schechter, *Saadyana*, p. 141, n. 1, R. Hoshaya is considered the author of the Tosefta (communication of Prof. Alexander Marx).

⁴ *Monatsschrift für Geschichte und Wissenschaft des Judenthums*, 1870, 298-308, 355-564.

ing to him, the divergences between the Baraitot quoted in the Talmud and their parallels in the Tosefta.

Both Frankel's and Dünner's views were opposed by I. H. Weiss. He assumed that the compiler, a Palestinian by birth, lived in Babylonia during the last generations of the Amoraim (about 450-70 C. E.) and drew his material from different sources, making liberal use also of the discussions in both Talmuds (*Dor*, II, 193 ff.).

These theories, and especially those of Dünner and Zuckermandel (see below), were opposed by Adolf Schwarz. Going further he criticises the value of any inquiry into time and authorship of the Tosefta as long as the relation of the Tosefta to the Mishnah was not definitely established. On this point Schwarz in his article "*Studien über die Tosifta*"⁵ propounded a new theory holding that the paragraphs of the Tosefta were in a hopeless state of confusion, and had to be completely rearranged in accordance with the paragraphs of the Mishnah. He followed out this plan in his works "*Die Tosifta der Ordnung Moed*," I-II, Carlsruhe 1879-82, and "*Tosifta juxta Mischnarum Ordinum Rccomposita et Commentario Instructa*," I, Wilna 1890, Frankf. a-M. 1902.

The exact counterpart of the view of Schwarz was adopted by the late Nehemiah Brüll, who on various occasions⁶ shows how the original wording and order of the Mishnah can be reconstructed on the basis of the Tosefta. In a separate article discussing the origin and meaning of the Tosefta, Brüll maintains that it is a product of tannaitic

⁵ *Monatsschrift*, 1874, 464 ff; 1875, 274 ff.

⁶ *Jahrbücher für jüdische Geschichte und Literatur*, V, 145-8; VII, 140-4; *Central-Anzeiger*, 1891, 70.

times in a somewhat later redaction, and in its present form, it is referred to in the *Talmud*.⁷

A somewhat different view is taken by David Hoffmann. Unlike Frankel, who claims that the *Tosefta* originated contemporaneously with the *Mishnah*, he places the *Tosefta* somewhat later in time and assumes that just as the original *Mishnah* of the older *Tannaim* went through several stages and was subsequently embodied in and superseded by the redaction of R. Judah ha-Nasi, so the original *Tosefta* may have been absorbed in the later redaction of R. Ḥiyya, which constitutes the *Tosefta* now extant. The *Amoraim* of both *Talmuds* have made frequent use not only of our *Tosefta* but also of other *Tosefta* collections no longer in existence. Hoffmann further claims that all the quotations in the *Talmuds*, which are introduced by the phrase תנא עלה (תני), "it was taught regarding it" (i. e. the *Mishnah*), have reference either to our *Tosefta*, where such passages are found sometimes with mere verbal differences, but far more often with differences in substance—, or they refer to the *Toseftot* now lost.⁸

The above summary does not exhaust all the theories that have been advanced regarding the *Tosefta*; the others, covering the problem wholly or in part may, however, be left out of consideration here. The reader who has followed us so far will certainly have a suspicion that a problem which enjoys so many solutions is in all probability not solvable at all. This is, indeed, the prevailing opinion among the present-day *talmudists*, perhaps even among those who have volunteered solutions. Not so, however, with Dr. Zuckerman, the author with whose

⁷ *Zunz Jubelschrift*, p. 94, n. 10; comp. above, note 1.

⁸ *Magazin für die Wissenschaft des Judenthums*, 1882, 152-163.

theory the rest of this paper is concerned. Nearly forty years ago he ventured a new solution to the Tosefta problem, which amazed the scholarly world by its boldness and still more by its far-reaching and radical consequences. Ever since he has unflinchingly stood by his theory, defending it against attacks and constantly strengthening it by adding new proof and argument taken from the great arsenal of the Talmud.

In substance the theory of Dr. Zuckermann is as follows: The Tosefta is the original Palestinian Mishnah, as compiled by R. Judah ha-Nasi. The famous work known to us under the name of Mishnah is *not* the original work of R. Judah, but the makeshift of the Babylonian Amoraim, who, living outside of Palestine under different conditions and different customs and practices, felt themselves called upon to modify the code of R. Judah, the authoritative law-book of Palestinian Jewry, in order that it might fit Babylonian conditions and become, as in Palestine, the authoritative code of the people. The changes and alterations, which the Babylonian Amoraim took the liberty of making in R. Judah's Mishnah during a period of several centuries, were of such a thoroughgoing nature that the code which they finally produced, namely the work that goes under the name of Mishnah, and is ascribed to R. Judah, was entirely different from its prototype, the original Mishnah of that Palestinian Tanna, which was preserved to us in a mutilated form and under the wrong name of Tosefta. The Babylonian Talmud which was hitherto thought to be based on the genuine Mishnah of R. Judah, is in fact the mutilator of that Mishnah and the maker of a new one, on which it bases itself.

While this destructive work was going on in Babylonia, the Palestinian authorities were guarding *their* authentic code, compiled by the patriarch R. Judah, that is to say the Tosefta in its original form and content upon which they were basing their own discussions and deductions, the Palestinian Talmud. This accounts for the fact that, as the author believes, in the majority of cases, in which Mishnah and Tosefta are in contradiction, the Palestinian Talmud is found on the side of the Tosefta, while the Babylonian Talmud, as may well be expected, agrees with *its* Mishnah.⁹ Passages in the Yerushalmi that run contrary to this rule, and seem to agree with the Mishnah as against the Tosefta, the author endeavors, often with success, to prove to be either outright interpolations or modifications of the original wording for the obvious purpose of making the Yerushalmi agree with the Babli.

An ominous objection here presents itself that the Babylonian Mishnah, and not the Tosefta, happens to be prefixed to the Palestinian Talmud. Assuming the author's view to be correct, we would have here a gross literary fraud adding, as we may say here, insult to injury, and this in a field from which all Israel is supposed to draw its religious inspiration. The author meets the situation by the assertion that originally neither Tosefta nor Mishnah were prefixed to the Palestinian Gemara. Only in later ages, when the main differences between the two Talmuds had been obliterated by the Babylonian harmonizers, was the Babylonian Mishnah innocently added also to the Palestinian Talmud, a view which finds support in the fact that in the oldest known manuscript of a large portion of the

⁹ This is disputed, however, by others who admit that the Babli always agrees with the Mishnah, while the Yerushalmi sometimes agrees with the Tosefta but more frequently with the Mishnah.

Yerushalmi, discovered by Schechter in the *Genizah* and published recently by Prof. Louis Ginzberg,¹⁰ no Mishnah is attached to the talmudic text.

Another and not less serious objection is the fact that most of the paragraphs in the *Tosefta* unmistakably bear the character of explanatory notes on and additions to the corresponding paragraphs of the Mishnah, thus stamping the whole work as a supplement to the latter (as the name *Tosefta*, "addition," implies) rather than its original text. Dr. Zuckerman meets this point by claiming that these supplementary or explanatory remarks in the *Tosefta* have reference to their respective paragraphs, not as they are in the Mishnah, but as they were originally in the *Tosefta* itself, the source from which they were taken to serve, in a modified form, as the Mishnic text of the Babylonian Talmud. Subsequently, when the Mishnah, as fixed by the Amoraim, had become the recognized code of the Babylonian Jewry, the parallel passages in the *Tosefta* were gradually left out and only such parts retained as had not been embodied in the Mishnah. The result of this procedure is that to-day neither *Tosefta* nor Mishnah can be properly understood, when studied independently. The former suffers, because it had been despoiled of such a considerable part of its contents that the remaining portions, aside from inner textual corruptions, naturally lack all coherence. The Mishnah on the other hand is frequently unintelligible because its sections are only fragments of the body of another comprehensive work, the original Palestinian Mishnah, now called *Tosefta*, and these were changed and modified at the hands of the Babylonian doctors, in order to lend authority to their divergent individual views

¹⁰ שרידי הירושלמי, New York 1909.

and decisions. To be sure, the Talmud *does* interpret the Mishnah, rendering its paragraphs intelligible in its own way, but these interpretations are, in our author's opinion, mere sophistry (*pilpul*) and cannot stand the light of modern objective criticism. They not only do not represent the views of the original Mishnah, but, apart from innumerable and unclassifiable distortions, often teach the very opposite of what was intended by the author. In order to understand Mishnah and Tosefta properly, in other words, in order to get back to the original code of R. Judah the patriarch, it is necessary to study, and to compare closely both works not with the purpose hitherto held in view of rearranging the Tosefta so as to accord with the Mishnah (Schwarz), but rather of reconstructing the Mishnah on the basis of the Tosefta.

It is to this work of reconstruction, or more correctly, to pointing the way for such work, that Dr. Zuckerman has devoted his entire life. In the effort to recover what he considers the only authentic halakic code, the lost Palestinian Mishnah, the groundwork of the entire Oral Law, he has since 1874 been championing his own cause so to speak, undeterred by want of support and encouragement from any of the scholars in this field.

This lack of appreciation on the part of specialists may seem strange to the reader, considering the greater plausibility of the arguments advanced by the learned author for his solution of the problem as compared with the other proposed solutions. One reason for this apparent indifference lies in the implicitness of the author's doctrine. The reader who is not familiar with the literature of the Talmud may feel inclined to think that Dr. Zuckerman's theory, too, is but a variant on one or the other of the

doctrines reviewed in the preceding pages, and does not call for particular attention except from a merely academic point of view. It is therefore proper to show briefly the exceptional character of this theory. Its intrinsic divergence from other theories and its implications will explain, if not justify, the attitude taken by other scholars and make the reader realize what is actually at stake and how far-reaching are the consequences of our author's position.

Tradition has it that the oral law is the immediate continuation of the written law (Bible) and only second in importance thereto. Nay, there are numerous utterances in Talmud and Midrashim to the effect that the oral law ranks higher than the written.¹¹ The greatest men in Israel since Ezra, all divinely inspired, were engaged in working out this remarkable system of Jewish lore, handing it down for centuries from generation to generation by word of mouth up to the beginning of the third century or the end of the tannaitic period. The Mishnah, as compiled by R. Judah ha-Nasi, whether originally committed to writing or arranged only for oral transmission, a much disputed question, is the great depository of the best part of all that divine oral science which bygone ages had accumulated. As the Mishnah is the continuation of the Bible, so is the Talmud, properly the Gemara, both Palestinian and Babylonian, the completion and consummation of the Mishnah. The teachers of the Talmud, the Amoraim, were all men of holiness and saintliness, their teachings were begotten of a superior religious spirit, and their decisions have, therefore, become binding upon all Israel down to the present day. These are,

¹¹ Comp. *Babli Gittin 60b*; *Yerush, Pea II, 4*; *Pesikta rabbati*, ed. Friedmann, v, and the references given there by the editor.

as commonly known, the tenets of talmudic Judaism, they are the basis of all conservative Jewish theology. Now comes Dr. Zuckerman and declares that the Mishnah, the only genuine text-book of the oral law, had been lost; that the work existing under that name is a spurious fabrication of self-appointed Babylonian authorities, who in order to manufacture a new code have unscrupulously butchered the old, nay even more, that these Babylonian masters, the teachers of all Israel in the Diaspora, in order to give weight to their views and decisions, went so far as to produce from their own imagination any number of fictitious Baraitot scattered in the Talmud, and to attribute them to Tannaim, who never lived or never taught the opinions ascribed to them—, and all *ad majorem Dei gloriam*, or as the rabbinic phrase runs כְּדִי לְהַגְדִּיל תּוֹרָה וְלְהַאדִּירָה “to make the Torah great and glorious!” Dr. Zuckerman’s theory would accordingly seem to demand nothing more and nothing less than a revision of the entire post-talmudic Halakah on the basis of the Tosefta and the genuine parts thereof, which are incorporated in the Babylonian Mishnah. All the codes, from that of Isaac Alfasi down to the *Shulhan ‘Aruk* and its latest developments ought therefore to be revised and re-codified, because their paragraphs rest on misstatements of the fundamental code and fallacious deductions.

Looking at Dr. Zuckerman’s theory from the point of view of the extreme conclusions to which it may be carried we are not surprised that as soon as he had announced his doctrine one of the leading opponents came out with a very sharp rejoinder, accusing the author of having gone far beyond the radicalism of Geiger, of stigmatizing the sages of the Talmud as “an organized band of systematic forgers,”

and of breaking entirely with all the traditions of Israel.¹² Well grounded as these accusations may seem in view of the possible implications of this theory, they are nevertheless decidedly unfair to the author. Dr. Zuckermandel, by the way, a very pious, strictly observant Jew, is far from any radicalism of the Geiger sort and is not inspired by any heretical tendencies. It remains, therefore, to be seen, how such a view is compatible with conservative Judaism from the author's point of view, and here we may listen to the author's own reconciliation of the contradictions in his position.

In the first place, Dr. Zuckermandel points out that, whatever we may think about the genesis of that Mishnah, it is a commonly recognized fact that the Babylonian Amoraim have often arbitrarily changed and modified the text of the Mishnah, which they interpret. This had been admitted by mediæval authorities like Solomon b. Adret and others, whom certainly nobody will accuse of heretical tendencies. Modern scholars, conservative (Rapaport, Frankel) and radical (Abraham Krochmal, Schorr)¹³ have expressed the same view, which can readily be substantiated by any number of talmudic passages. Neither is the contention that various Baraitot in the Talmud are fictitious an invention of our author. As early an authority as the Gaon Hai had declared a certain Baraita spurious.¹⁴ It is true that our author's theory goes much further; for he

¹² Schwarz, *Monatsschrift*, 1874, 464 ff.

¹³ See *החלוץ* I, 39 ff., particularly VI, 33-47; comp. also Chwolson, *Beiträge zur Entwicklungsgeschichte des Judenthums*, Leipzig 1910, p. 61; Weiss, *l. c.*, II, 192, whose view regarding the textual changes made in the Mishnah by some Amoraim, especially Rab, is, in its way, not essentially different from that of Zuckermandel.

¹⁴ So also, among others, Zerahiah ha-Lewi (twelfth century), *באור*, on Pes., ch. 10; comp. Weiss, *l. c.*, III, 196.

does not stop at questioning the authenticity of single Mishnayot and Baraitot, but considers the whole of the Talmud a *systematic* deliberate modification and recomposition of a Palestinian law-book which happened to fall into the hands of the talmudic redactors. The underlying principle, the permissibility of applying the methods of modern scientific criticism to the Talmud, is, however, the same as that of the early Gaon. Once this principle is admitted, and the Talmud treated as a literary production of the Babylonian scholars, and, like all literature, viewed and examined with a critical eye, no line can be drawn marking the bounds for our application of the method of literary criticism. Our religion restrains us from any criticism of the Bible, because תורה מן השמים is one of the main principles of the doctrine of Judaism. No such prohibition exists against criticism of the Talmud. The Bible is the word of God, the Talmud the work of men, no matter how great and glorious.

That on account of their redaction of the Mishnah these men should be considered as forgers and falsifiers, is, in the author's opinion, a preposterous conclusion. First of all we know that the conceptions of literary property were not the same in ancient and mediæval times as they are to-day. Authors would often incorporate into their own works the thought and the language of other authors without any consciousness of wrongdoing. It was even considered a meritorious deed thus to give wider circulation to thoughts and opinions found worthy. Who was originator of an idea, was often a matter of indifference. Writers were, on the other hand, as ready to give as they were to take. An author would ascribe his whole work to some name of prominence in order to insure thereby the accept-

ance of his ideas (pseudepigraphy). In the case before us not even so much can be charged against the Babylonian Amoraim; they did not appropriate anything to themselves, nor did they ascribe their own works to others.¹⁵ What they did was merely to adapt a given code, which they held in high esteem, to the conditions and requirements of their own country and its inhabitants. The methods they resorted to in elaborating the new code out of the old may not find approval to-day. They added to the words of the Tannaim, omitted therefrom, and above all, even when they retained the text unchanged, often, consciously or unconsciously, interpreted it in a way that contradicts all logic, not to speak of the original intent of the Palestinian

¹⁵ To assume that there are spurious Baraitot attributed to Tannaim does not necessarily conflict with this statement. Such Baraitot are to be regarded merely as a *form of parlance*, a part of their method of interpretation. When an Amora had interpreted or misinterpreted a Mishnah so as to make it express a certain idea, he would often, in corroboration thereof, formulate the thought in the style of a Baraita, giving it either anonymously or in the name of a Tanna, whose teachings, as reported elsewhere, he knew or imagined to be in accord with that of *his* Baraita. Sometimes such a Baraita was produced by an Amora in an effort to overthrow a given interpretation or decision (see, however, the author's "*Die Erfurter Handschrift der Tosefta*," p. 76, where he adduces a Baraita, in which the very name of the Tanna—**נתן בן אנשלום**—is supposed to be manufactured!). Very often the quoted Baraitot are amplifications and modifications of a paragraph in the Tosefta (see RSbM on Baba Batra 93a, bottom, *s. v.* **המוכר**; Pes. 8b, bottom—**חייא כוותיה דרב**—where, by the way, the reading in the corresponding passage in the Tosefta, as given in the common editions and in the Vienna MS., seems to me preferable to that of the Erfurt version, ed. Zuckerman, p. 155, lines 1-2, and agrees fully with Yerushalmi Pes. I, 1, end).

A rather remarkable instance illustrating the methods of the Talmudists in the formulation of Baraitot, is the one quoted by J. H. Schorr (**החלוץ**, VII, 48) from Yoma 21b, where a haggadic dictum, which is evidently of Persian origin, is also introduced in the form of a Baraita, beginning with the words **תנו רבנן**! It is therefore possible that the Baraita in Sanh. 104a, bottom, which is considered by Bacher, *Monatsschrift*, 1870, 71, as the source of an Arabic anecdote, is likewise of foreign origin.

Tannaim.¹⁶ But is this forgery? Was it their duty to accept blindly and in its entire literalness a code of laws and practices, which in many instances was incompatible with the conditions prevailing among the people in their own country?

There is no ground for the suspicion that they had intended to displace the Palestinian code and to supplant it by one of their own making. On the contrary it was their boundless veneration for the great Palestinian teachers, the Tannaim, and especially for the "holy" compiler of their sayings, R. Judah ha-Nasi, whom they styled רבנו הקדוש (Shabb. 156a), that inspired them with zeal to make the Palestinian Mishnah authoritative also for Babylonian Jewry. As many of the rules and ordinances of that Mishnah were thought to be impracticable under the new conditions, for which they were not intended, they had to resort either to textual changes and alterations or to such interpretations as would seem to derive their logical or illogical deductions from the authoritative words of the Mishnah. The Palestinian Amoraim, naturally, did not have to cope with such difficulties. Their Talmud, following closely the original text of the Mishnah, is, therefore, free from the subtlety and artificiality which is so prominent a feature in the Babylonian Talmud.

That the Mishnah, in its Babylonian redaction, actually superseded the original version and subsequently became

¹⁶ Such methods of interpretation, as the author points out, were in vogue throughout the Middle Ages also in other fields of learning. The Mohammedan, Jewish, and Christian scholastics did the same with the philosophy of Aristotle, interpreting his words to agree with their respective religious views. This comparison, however, is not satisfactory, inasmuch as the works of Aristotle have never been considered by the interpreters as a religious code controlling the daily life of the people, as in the case of the Mishnah.

the only authoritative code of the oral law, is due, not to any efforts in this direction on the part of the Babylonian Rabbis, but to the force of historical and political circumstances. The sufferings and persecutions which the Palestinian Jews had to endure under the rule of the Roman Governors, gradually paralyzed their intellectual activity, and Palestine ceased to be the center of Jewish learning. Babylonia, on the other hand, through its two great academies in Sura and Pumbeditha, became the main seat of learning and education for many centuries. It was through the Babylonian scholars that the Palestinian Mishnah has been preserved to posterity; for the Babylonian Mishnah together with the Tosefta, which has also come to us from Babylonia, represent the sum total of the original halakic code of the Palestinian Tannaim. To conclude, it was later ages who, unaware of the historical facts, mistook the Babylonian recension for the real Mishnah and promulgated it as such. Finding the Palestinian Talmud to be at variance with the Babylonian they tried to obliterate the differences by modifying and interpolating the text of the former, with the result that confusion was worse confounded and the problem of the Tosefta remained unsettled to the present day.

The above is the sum and substance of Dr. Zuckerman's views on the development of the Halakah in general and of his theory on the Tosefta in particular. The question remains, What, if any, are the practical consequences of his views for the religious life of the Jews in the present? Are we to remake the halakic codes and to revise their decisions so as to bring them in accord with the teachings of the Tosefta? Here again Dr. Zuckerman remains true to the conservative principles of "historical

Judaism" as laid down by his teacher Zecharias Frankel. For the Reformer, he says, the whole question has no bearing whatever on practical life, inasmuch as he has freed himself entirely from the authority of the Talmud and cares not, whether we decide according to the Yerushalmi or the Babil. For the conservative, too, however, the problem and its solution are only of a scholarly and theoretical interest; in practice we stand where history has placed us. The Babylonian Talmud was the instrument by which Providence chose to make the Jew what he is. It was *this* Talmud that shaped and moulded the lives and characters of millions of our ancestors throughout the generations past, and it is this Talmud that still actuates us in the present. Whether its methods of interpretation were right or wrong from a critical point of view,—historically it has been the "Fountain of Life" for all Israel. It has preserved Israel's unity, against all schismatic tendencies throughout the entire Disapora, a unity as needful to-day as ever before. Theoretically, however, we cannot close our eyes to the light and we must accept the results of scientific research, even when they contradict our cherished traditions. The restoration of the original text of the Mishnah and a critical revision of the Halakah on the basis thereof is, therefore, a task worthy of scholarly effort.

We may conclude with a brief characterization of the author's works as far as they are related to the subject under discussion. As stated before, he first advanced his theory in a rather casual remark in an article entitled "*Lexicalisches und Archäologisches im Talmud.*"¹⁷ Shortly thereafter he made it the subject of a special article "*Verhältniss der Tosifta(!) zur Mischna und der jerusalem-*

¹⁷ *Monatsschrift*, 1874, 32.

ischen Gemara zur babylonischen."¹⁸ The criticism which these articles called forth from talmudic scholars, made the author realize that in order to carry conviction it was necessary to prepare and publish first a critical edition of the Tosefta itself. Up to that time the text of this work, printed jointly with the Compendium of Isaac Alfasi, was in a hopeless condition and, from a scientific point of view, entirely useless. He therefore devoted several years to the examination of the two Tosefta MSS. preserved in the libraries of Erfurt and Vienna, both dating from the thirteenth century, with the view of editing the whole work critically. In 1876 he published as a preliminary study "*Die Erfurter Handschrift der Tossefta(!)*," containing a minute description of the MS. and a series of valuable observations, showing the many discrepancies between the text of the latter and that of the common editions. In connection therewith the author endeavors to prove that the authentic readings of the MS. fully corroborated his theory as to the origin of the Tosefta. The same plan was later continued in the publication "*Tosefta-Varianten*," Trier 1881. In 1880 the promised edition appeared. The merits or demerits of this edition need not be discussed here. The author's great service to the scholarly world through this standard edition has deservedly been recognized by Jewish and Christian scholars alike and it has earned for him a high position in the rank of talmudic authors. In his main hope, however, to see his cherished theory approved and adopted, he met with disappointment. The Tosefta came to life, but the doctrine which it was to confirm seemed to be dead forever. Far from being discouraged by this failure to convince his critics and unwilling to give up what

¹⁸ *Ib.*, 189 ff.

was to him incontrovertible truth, he has worked on patiently and quietly for nearly thirty years more, sifting and analyzing every point of difference between Tosefta and Mishnah on the one hand and the two Talmuds on the other, and in 1908-1910 published his great work on the subject in two volumes and a "Supplement," covering altogether 1074 pages, large octavo.¹⁹

This latest work it is which has occasioned the present article. A discussion of its contents is a task I do not care to undertake. The purpose of this paper was not to present a lengthy review of this comprehensive work, but merely to acquaint the reader with a baffling problem in talmudic literature, and to call attention to the patient and valuable research of a secluded scholar.

If I may venture an opinion, I would say that upon perusing most of the material, I am unable to see, how his opponents will meet the overwhelming evidence in favor of his theory, no matter what the a priori objections be to its ultimate acceptance. I would not make so bold as to pilot others on the great "Ocean of the Talmud"; but when the experts are many, and opinions divergent, the plain sailor may be privileged to choose his captain. For my part I am inclined to agree with Dr. Zuckerman that the essential to a solution is that it should solve, and to believe that, as the last line of his work hopefully reads, "his theory lives and will live!"²⁰

¹⁹ *Tosefta, Mischna und Boraitha in ihrem Verhältnis zu einander, oder palästinensische und babylonische Halacha*, I, Frankfurt a-M. 1908., pp. 222 + 484; II, Frankf. a-M. 1909, pp. xvi + 508; *Supplement enthaltend Register zu Tosefta, Mischna und Boraitha in ihrem Verhältnis zu einander*, Frankf. a-M. 1910, pp. viii + 26 (J. KAUFFMANN, Frankfurt a-M.).

²⁰ I have purposely refrained from burdening this article with numerous notes on details and with references to the many passages in the works and articles of the authors referred to in this exposition. The reader who wishes

to consult the sources, especially those parts of Dr. Zuckermundel's works, in which he elucidates and defends his theory, may, in addition to the references given in the notes here, be referred to the following: Zuckermundel, *Monatsschrift*, 1874, 32; *ib.*, 189 ff.; 1875, 38 ff.; "*Die Erfurter Handschrift der Tosefta*," Berlin 1876 (enlarged reprint from *Magazin*, II); see particularly Preface and pp. 70-72, 88, 102 f., 107-110, and, against it, Hoffmann, *Magazin*, III, 165; Zuckermundel, *Tosefta-Varianten*, Trier 1881, especially pp. 13-17, 21-27, 40. For the understanding of the author's general position the particularly important references are his Prefaces to his *magnum opus*, "Tosefta, Mishnah und Boraitha," quoted above, and the "Supplement" to the same. In the Preface to the second volume he very cleverly and vigorously defends his work against an unfair attack by one of his critics, who reviewed the first volume in the "*Literarisches Centralblatt*," 1909, No. 10, while in the Preface to the "Supplement" he takes it up with Prof. Bacher, who in his review of the same volume in the "*Deutsche Literaturzeitung*" 1909, No. 27, highly appreciates the great merits of the work in many directions, but rejects his general theory on the Tosefta. To the credit of the author it should be said that, true to the rabbinical maxim **לדברי חכמים בנחת נשמעים**, he never loses his temper and never uses a harsh or unkind word against his opponents, although some of them, in no commendable spirit, never mention his name in quoting his edition of the Tosefta, but always refer to the work as "Erfurter Tosefta" or "Tosefta Pasewalker Druck," Pasewalk being an obscure German town, where the work happened to be published. A favorable review appeared by L. A. Rosenthal in *Rahmer's Literaturblatt*, 1909, No. 6-7. The author himself wrote a review on his two volumes in *Monatsschrift*, 1908, pp. 626 ff., and 1909, pp. 627 ff. Before closing this list, mention must be made of the author's latest publication which is intimately related to the general subject under discussion. I refer to his "*Gesammelte Aufsätze*," a work in two parts, of which thus far only the first has appeared, Frankf. a.M. (J. KAUFFMANN) 1911, pp. VI + 209. The volume is intended as a continuation of the last mentioned voluminous work. It contains, however, chiefly articles which had been published by the author in the *Monatsschrift* during the years 1869-1874, grouped here somewhat differently and considerably enlarged by new material, so as to form the third volume of his main work on the mutual relation of Tosefta, Mishnah, and Baraita. The second part of this volume is promised for 1912.