

WHEN RABBI ELIEZER WAS ARRESTED FOR HERESY

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Introduction: A Shared History

This study is part of a larger project the ultimate aim of which is to write a shared, twin or intertwined history of Jews and Christians in the first and second centuries CE. The first stage of the project will be to select relevant sources, to describe their literary and historical characteristics, and to read and reread them in view of their significance vis-à-vis other sources. The second stage will encompass the writing of a historical synthesis of the shared history.

We stress the shared aspect of the history because Judaism and Christianity in the ancient world are usually studied separately, as though involving not just two distinct histories, but also two separate sets of sources, two frameworks of interpretation and reflection, two programs of academic teaching, research, and writing, and two canons of judgment and review. While Jewish and Christian history can be considered separately in the Middle Ages and later, including modern times, this is not the case for Antiquity, and particularly not regarding the first two centuries CE, before what is known as the “parting of the ways.” Although there was some movement toward separation during the first two centuries CE, as evinced, for instance, in such sources as the *Didache*, the Gospel of Matthew, and the Epistle of Barnabas,¹ this was by no means a “parting of the ways” and certainly does not justify separating the history of early Christianity from Jewish history. Hence, it is necessary to study the sources together.

The background of the shared history of the Jews and early Christians is the Roman Empire. Although the history of the Jews in the Land of Israel and in neighboring countries is often examined in light of developments in the Roman world, the history of Christianity and its relationship to Judaism is not studied that way. We argue that

¹ See Peter J. Tomson, “*Didache, Matthew, and Barnabas as Sources for Early Second Century Jewish and Christian History*” (forthcoming). Cf. also John 9:22, 12:42, 16:2.

students of Second Temple Judaism and early Christianity must carefully investigate the underlying Jewish causes of the revolts against Rome, and that the Roman persecution of the Christians must be studied within the framework of social and religious relations of Christians, Romans, and Jews. The working hypothesis of our project is that essential theological differences were not the cause of the “parting of the ways”. Rather, disagreement between the Jews and Christians became a separation marker under the Roman occupation, including the three Jewish revolts and their massive repression.

The tradition we have chosen to examine – the arrest of Rabbi Eliezer – has been much studied. Nevertheless, rereading these Rabbi Eliezer traditions in light of the close connection between Judaism and early Christianity will shed fresh light on the shared history of both religions in a period when some rabbinic literature appears to be interested in separating them. In other words, this historical episode can be seen as contributing to that separation.

Rabbi Eliezer: The Arrest Story

According to a story told in three different contexts and in three different forms in rabbinic literature, Rabbi Eliezer b. Hyrcanus, a late first century CE sage famous both for his memory and his religious conservatism,² was arrested on suspicion of *minut* or “heresy”³ and

² See in general Jacob Neusner, *Eliezer ben Hyrcanus: The Tradition and the Man* (Leiden: E.J. Brill, 1973), vol. I-II, and Yitzhak D. Gilat, *R. Eliezer ben Hyrcanus: A Scholar Outcast* (Ramat-Gan: Bar-Ilan, 1984). Cf. most recently Vered Noam, “Between Polemic and Dispute: Why was Rabbi Eliezer Excommunicated?” *Massekhet* 5 (2005/06), pp. 125-144 (Heb.). The thrust of this last study is a comparison of certain Rabbi Eliezer traditions with Qumranic law.

³ Adiel Schremer, *Brothers Estranged: Heresy, Christianity, and Jewish Identity in Late Antiquity* (Oxford: Oxford University Press, 2010), p. 16 (and throughout the book), insists that *minut* is not heresy, and does not relate to theological issues in particular, but rather it reflects a polemic over the unity and social existence of the Jewish community. *Minim* are Jews who separated themselves from the community, at least according to the Rabbis. In the one case of the R. Eliezer story, *minim* is found to include Christians. Cf. also *idem*, “‘The Lord Has Forsaken the Land’: Radical Explanations of the Military and Political Defeat of the Jews in Tannaitic Literature”, *Journal of Jewish Studies* 49 (2008), pp. 183-200. In our view, Schremer’s all-encompassing caveat against associating *minim* with heretics and heresy is forced and artificial. Most scholars, as we shall see, do associate *minim* with heretics and heresy in one form or another.

brought before a Roman judge to be tried. He was released from the trial almost immediately, but he remained preoccupied and distressed by the accusation until his former disciple, Rabbi Akiva, managed to discover what had happened and eventually succeeded in comforting him. R. Eliezer realized that his arrest must have been caused by an accidental meeting with a disciple of “Yeshu ha-Notsri”, who had told him a teaching of his master, and this teaching had apparently pleased him. Evidently this exchange was witnessed, and either the witnesses had denounced Rabbi Eliezer to the Roman authorities or knowledge of the exchange had spread, providing an opportunity for others to denounce him. We shall, of course, comment in great detail on all this below, as we analyze the different versions of the story.

Jesus and Christianity are seldom mentioned in rabbinic sources; hence this story has been the subject of critical discussion for over a century.⁴ Much of the study of these scarce statements in the last few decades has been characterized both by historical skepticism and by atomizing applications of form-critical analysis.⁵ True, as long as no external evidence is adduced, form-critical analysis remains locked within a hermeneutical circle: the meaning of the story must be

⁴ See Peter Schäfer, *Jesus in the Talmud* (Princeton and Oxford: Princeton University Press, 2007), pp. 1-14 and *passim*. Especially worthwhile is Hermann L. Strack, *Jesus, die Häretiker und die Christen nach den ältesten jüdischen Angaben* (Leipzig: Hinrichs; Schriften d. Inst. Judaic. Berlin 37, 1910), who begins by listing Jewish statements about Jesus as documented in patristic literature, in Greek (8-13) and in Latin sources (14-16).

⁵ Neusner, *Eliezer ben Hyrcanus*, vol. 1, p. xiii, proposes “a form-critical structure and system”. Ultimately, however, this methodology in his own view brings nothing of historical usefulness regarding the traditions about R. Eliezer (vol. 2, p. 62) and our knowledge is limited (vol. 2, p. 366). Form-criticism often leads to the disparaging of historical conclusions, largely because its practitioners refuse to consult evidence external to the text. To a certain extent, this method had been inspired by the form-critical method of Gospel studies of half a century earlier, and it has the same limitation as that discipline. A sober evaluation of this method and others as used in New Testament interpretation is given by C.A. Evans, “Source, Form and Redaction Criticism: The ‘Traditional’ Methods of Synoptic Interpretation”, in: S.E. Porter and D. Tombs (eds.), *Approaches to New Testament Study* (Sheffield: Sheffield Academic Press; JSNT Sup Ser 120, 1995, 17-45); for the same as applicable to rabbinic literature, see C. Hezser, “Form-Criticism of Rabbinic Literature”, in R. Bieringer *et al.* (eds.), *The New Testament and Rabbinic Literature* (Leiden, E.J. Brill; Sup JSJ 136, 2010), pp. 97-110, and esp. 104-107 on the importance of synoptic comparison.

understood from the social context, but that context (the famous *Sitz im Leben*) can only be deduced from the story.⁶ Our method is different, but not radically so, since it is applied quite successfully today to analysis of the Gospels. It requires comparing the different versions of the story, analyzing them in their redactional contexts, discerning the respective redactors' interventions, and all of this within the context of a close reading of the different versions. At the same time, any available external evidence having a bearing on the traditions should be adduced, breaking out of the closed circle of hermeneutical reasoning and allowing for historical understanding of the traditions, or at least of their settings. This does not necessarily mean acknowledging the historicity of the stories themselves, or of the events mentioned in the traditions, but rather interpreting the traditions in view of their historical framework and using external material to construct that framework. Ultimately the different materials might all have bearing on the historical setting. In terms of New Testament scholarship, our method would be called redaction criticism, i.e., the method whereby a document is studied in its final form, but always keeping its probable component elements in view, as well as the way these might have been edited to form the extant text.⁷

The Traditions and Their Redaction History

We are in possession of three versions of the story,⁸ which appear in different redactional contexts. We present an English translation of each version and discuss them in their respective contexts.⁹

⁶ On the hermeneutical circle, cf. R. Bultmann's form-critical classic, *Geschichte der synoptischen Tradition*, 5.

⁷ Cf. the survey by C.A. Evans, *supra* n.5. He concludes that apart from being the most successful among the various branches of historical criticism, redaction criticism is also most compatible with literary criticism.

⁸ There are a number of very late secondary versions. These are compilations of earlier versions which help understand the complex development of the tradition and contain some important textual variants, esp. *Midrash Haggadol* on Deut 23:19 (p. 528 ed. Fisch). See also Yalkut Shimoni Micah #551 (Yalkut Shimoni Proverbs #937); Sefer Ha-Maasiyot, #36 (p. 26 ed. Gaster). See our discussion below.

⁹ It would seem to be a *sine qua non* for understanding the traditions that all three major traditions should be examined. This however does not always seem to be the case. Neusner, *Eliezer ben Hyrcanus*, vol. 1, pp. 400-403 and vol. 2, pp. 365-367 presents a translation of Kohelet Rabbah after the translation of the Tosefta and Bavli, but mostly discusses Tosefta Hullin, mentions the tradition in Bavli Avodah Zarah just once and does not discuss the version in Kohelet

Tosefta Hullin 2:24 (p. 503, ed. Zuckerman):¹⁰

It once happened that R. Eliezer was arrested on account of heresy (על דברי מינות) and they brought him up to the *bema*¹¹ (במה) to be tried. The *hegemon* asked him: Should an elder like you engage in those things? He answered: I consider the Judge trustworthy (נאמן דיין עלי).

Now the *hegemon* thought that he had referred to him – though he referred only to his Father in Heaven – and so he said to him: Since you have deemed me reliable (האמנתני), I also said to myself, would these grey hairs¹² err in those

Rabbah. Likewise, Richard Kalmin, “Christians and Heretics in Rabbinic Literature of Late Antiquity”, *Harvard Theological Review* 87 (1994), pp. 155-169 does not mention Kohelet Rabbah at all. This is also true regarding Schremer, *Brothers Estranged*, who ignores Kohelet Rabbah. Even Gedaliah Alon, *The Jews in Their Land in the Talmudic Age (70-640)*, translated and edited by Gershon Levi (Jerusalem: The Magnes Press), I, pp. 292-293 does not mention Kohelet Rabbah. Cf., for example, David Rokeah, “Ben Stara is Ben Pantera – Towards the Clarification of a Philological Historical Problem”, *Tarbiz* 39 (1970), pp. 9-15 (Heb.), who claims that Kohelet Rabbah is nothing more than a contamination of both the Tosefta and the Bavli. Schäfer, *Jesus in the Talmud*, starts from the Bavli version, and takes additional information from the other versions, but does not explain why. See, however, Dan Jaffé, *Le judaïsme et l'avènement du christianisme: Orthodoxie et hétérodoxie dans la littérature talmudique I^{er}-II^e siècle* (Paris: Cerf, 2005), pp. 117-128 for a basic discussion of all three versions.

¹⁰ The English translation is ours with reference to Jacob Neusner, *The Tosefta, Fifth Division, Qodoshim, The Order of Holy Things* (Atlanta: Scholars Press, 1997), pp. 74-75 and Schremer, *Brothers Estranged* (*supra* n. 3), p. 88.

¹¹ On the *bema* in the Roman system see Saul Lieberman, “Roman Legal Institutions in Early Rabbinics and in the Acta Martyrium”, *JQR* 35 (1944), p. 13. See also below, n. 28. The *bema* was a permanent elevated platform that served as the seat of the judge. It was the place where the trial was held. See also Shmuel Krauss, *Paras ve-Romi be-Talmud u-be-Midrashim* (Jerusalem: Mossad ha-Rav Kook, 1948), pp. 111-114. βῆμα is also used for the judge’s seat in the New Testament, e.g. Matt 27:19; Acts 18:12; 25:6.

¹² “That these grey hairs” – the text here is defective: שהסיבו' הללו, and in Kohelet Rabbah corrupt: ששיבות הללו. We read, following Lieberman, “Roman Legal Institutions”, 20: שהסיבות [שהשיבות] הללו and as already appears in the Hasdei David commentary on the printed edition of the Tosefta. Schäfer, *Jesus in the Talmud* (see n.4 above), p. 43f., accepts the unlikely interpretation of Maier, “...that they were lying down (for a meal)?” This is similar to the proposal by R. Travers Herford, *Christianity in Talmud and Midrash* (London:

matters? (Surely not!) Dismissed! (דימוס = Latin *dimissus*). You are released (or “free of liability”).

But when he left the court (= released from the *bema*), he was distressed to have been arrested on matters of heresy (מינות). His disciples came to console him, but he refused to accept [consolation].

R. Akiva came and said to him: Rabbi, may I say something to you, that you will not be distressed? He said: Speak. He said to him: Perhaps one of the heretics (מינים) told you one of their heretical teachings which pleased you? He said to him: By Heaven! You reminded me (הזכרתני)!

Once I was strolling on the road (street) of Sepphoris¹³ when I met Yaakov¹⁴ from Kfar Sakhnin (יעקוב איש כפר סכנין)¹⁵ who told me a heretical teaching (דבר של מינות) in the name of Jesus son of Pantiri (ישוע בן פנטירי),¹⁶ and it pleased me. And I was

Williams & Norgate, 1903, repr. New York: Ktav, 1975), p. 137, that ישיבות = *collegia* are meant.

¹³ See Samuel Krauss, *Griechische and Lateinische Lehnwörter im Talmud, Midrasch and Targum, Teil II* (Hildesheim: Georg Olms Verlagsbuchhandlung, 1964), p. 82 s.v. אסטרט. See also Michael Sokoloff, *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period* (Ramat-Gan, Bar Ilan University, 1990), p. 52 s.v. איסרטה, איסרטא.

¹⁴ See Jaffé, *Le judaïsme* (*supra* n.9), pp. 135-139. In spite of all the attempts, it is impossible to identify him.

¹⁵ Perhaps to be identified with Sakhnin, a village in the Lower Galilee. See Yoram Tsafrir, Leah Di Segni and Judith Green, *Tabula Imperii Romani Iudaea Palaestina: Eretz Israel in the Hellenistic, Roman and Byzantine Periods* (Jerusalem: The Israel Academy of Sciences and Humanities, 1994), p. 235, s.v. *Sogane I, Sakhnin*. See also Shmuel Klein (ed.), *Sefer Ha-Yishuv* (Jerusalem: Mossad Bialik-Dvir, 1939, rpt: Jerusalem: Yad ben Zvi, 1977), p. 95, s.v. כפר סכניא, כפר סכני (סמא), כפר סגנה, כפר סכנין. Although it is impossible to identify the site with certainty, it is likely that it was near Sepphoris. See Ray A. Pritz, *Nazarene Jewish Christianity from the End of the New Testament Period Until its Disappearance in the Fourth Century* (Jerusalem-Leiden: Magnes and E. J. Brill, 1988), p. 120. Cf. Jaffé, *Le judaïsme*, pp. 142-144.

¹⁶ From the manuscript versions of the parallel in Bavli and Midrash Haggadol, it is clear that the reference is to Jesus. The Church Fathers transmit two very different explanations of the expression “Son of Pantiri” (also Pantera / Pandera), see Strack, *Jesus, die Häretiker und die Christen* (*supra* n.4), p. 10f. Origen Cels. 1.28, 32f., 69 explains it as a deliberate corruption of “son of the Parthenos”, i.e. the virgin. See also the literature cited by Daniel Boyarin, *Dying for God: Martyrdom and the Making of Christianity and Judaism*

arrested on account of heresy, for I transgressed the teachings of the Torah¹⁷: “Keep your way far from her and do not go near the door of her house” (Prov 5:8). For R. Eliezer taught: One should always flee from what is ugly and from whatever appears to be ugly.

The story is told in the Tosefta in relation to the “laws of *minim*” (tHul 2: 19-24), and these appear within the larger context of laws relating to the slaughter of animals and inappropriate intention of the slaughterer, which included also the *minim*.¹⁸ Their sacrifices, foodstuffs and books were forbidden. The “laws of the *minim*” regulate social contacts with them. One should not buy or sell them anything, nor teach their children a craft, and one does not seek medical assistance from them. According to one reading, it is also forbidden to marry them.¹⁹ The Tosefta then goes on to tell of R. Eleazar ben Dama, who was bitten by a snake, and of Yaacov of Kefar Sama, who came to heal him in the name of Jesus son of Pantera. R. Ishmael would not allow this, in spite of R. Eleazar’s protests. R. Eleazar wished to bring proof that it was permitted, but died before he

(Stanford: Stanford University Press, 1999), pp. 154-155, n.27. A quite different tradition is found in Epiphanius, Haer. 78.7 and later sources where, apart from all polemics, Πανθήρα is mentioned as the Greek name of either Joseph’s or Mary’s father. As mentioned also by Boyarin, the name is actually found in inscriptions from 4 CE on. Citing Th. Zahn, Strack 21 n. 3 correctly concludes that had Epiphanius known the explanation given by Origen, he could not so innocently have given his own. Therefore his account may be well-founded. In any case, these data make it probable that the Tosefta reading is authentic and also make it clear that it denotes “Jesus of Nazareth”, as we have it in the Bavli mss.

¹⁷ Note the version in *Midrash Haggadol* on Deut. 23:19: For I transgressed the teachings of my fellows (חבריי). This might indeed reflect an authentic variant of the Bavli passage (see below).

¹⁸ See Schremer, *Brothers Estranged*, pp. 69-86 (= “Laws of *Minim*”) and pp. 87-99 (= “Producing *Minut*: Labeling the Early Christians as *Minim*”). While we accept much of the Schremer’s descriptions, we disagree with his definition of *minut* and *minim* (see *supra* n.3).

¹⁹ See Schremer, *Brothers Estranged*, p. 72 and pp. 186-187, n. 17. This is how Schremer interprets להק נותנין להק ואין נושאין מהן ואלו נותנין להק. Saul Lieberman (*Tosefeth Rishonim*, 4 vols., reprint New York and Jerusalem: Jewish Theological Seminary of America, 1999), vol. 2, p. 27 understands this phrase as relating to business negotiations, the more logical understanding of the phrase in context.

could do so.²⁰ R. Ishmael then states that ben Dama was fortunate that he died and did not “break down the hedge (decree) of the Sages” (גזירן / גדירן של חכמים),²¹ for if one does so, then calamity will befall one as it is stated in Kohelet (10:8), “He who breaks down a hedge (גדר) is bitten by a snake.” Ignoring the difficulties inherent in understanding this tradition,²² the point seems to be that interaction with *minim* is dangerous to one’s health, whether the implication is to one’s soul, as in the case of Eleazar ben Dama, or to one’s physical existence (and ultimately to one’s soul), as in the case of R. Eliezer. Association with *minim* was dangerous.

The Tosefta’s version is the shortest of the three and is contained in the earliest redactional context.²³ Some elements are puzzling. The source does not indicate how much time has elapsed between the encounter with Yaakov and the subsequent denunciation and trial.²⁴

²⁰ See n. 15. Perhaps identical with Kfar Sikhnin of the R. Eliezer tradition. Why would Tosefta use two different forms of the name? It is likely that these were two independent traditions. As we mentioned above, ultimately it is impossible to identify both villages with certainty. Perhaps *Sama* is a wordplay on medicine. See Boyarin, *Dying for God*, p. 159, n. 59. However, cf. T Gittin 1:3 (p. 246, ed. Lieberman): Kefar Sasi and its parallel in PT Gittin 1:2, 43c.: Kefar Sami. Do the traditions relate to the same Yaakov? Clearly Yaakov is a frequent Jewish-Christian name, among others connected to James, brother of Jesus and a prominent Jewish-Christian. This is not helpful in determining whether the persons are the same: on the contrary, R. Eleazar b. Dama was the nephew of R. Yishmael and is recorded as having asked his uncle a number of halakhic questions. The answers seem to have had less dire consequences for him than that of Tosefta Hullin. See, e.g., Bavli Menahot 99b, Bavli Berachot 56b.

²¹ Cf. “transgressing the teachings of the Torah” above, and see also n. 17 above on *Midrash Hagaddol*.

²² See PT Shabbat 14:4, 14d = PT Avodah Zarah 2:2, 41a. He was after all bitten by a snake and his death certainly was calamitous! However, as answered there, the reference is to the World to Come.

²³ Cf. Dan Jaffé, *Le judaïsme*, pp. 125-138, who sees the Tosefta as dating exactly to the period of Trajan (see our discussion below on the letters of Pliny). While there may be elements in the tradition that reflect the second century CE, as we shall discuss below in great detail, greater precision is unlikely. This is not to say, of course, that the Rabbi Eliezer tradition here should be dated to the times of Rabbi Eliezer.

²⁴ Cf., however, Aharon Oppenheimer, “L’élaboration de la Halakha après la destruction du Second Temple,” in Aharon Oppenheimer, *Between Rome and Babylon: Studies in Jewish Leadership and Society* (Tübingen: Mohr Siebeck, 2005), pp. 134-135. According to Oppenheimer, Rabbi Eliezer forgot because

Also, in this version, as in the other two, the judge acquits without reviewing the evidence, because he thought that R. Eliezer acknowledged his authority. Would it be enough for any Jewish suspect to accept the authority of the Roman judge in order to be acquitted? If that were the case, the practice would have been prevalent.²⁵ Furthermore, this short version does not include the *midrash* of Jesus and does not “rabbinize” Jesus, as happens in the other sources.²⁶ The story does, however, contain R. Eliezer’s own midrashic comment citing Proverbs, stating that he realized that he had transgressed the commandment not to engage in *minut*. The verse in Proverbs cautions against the seductive woman and as we shall see below, this seems to be the key to understanding the Tosefta tradition.

Bavli Avoda Zara 16b-17a²⁷

When R. Eliezer was arrested for heresy (למינות), they brought him up to the scaffold²⁸ to be tried. The *hegemon* asked him:

the meeting took place many years before he was arrested, when it was still allowed to meet with Jewish Christians, and he was arrested years later, after the *halakha* had changed. This scenario seems unlikely. Why was he arrested? Because he had had a conversation years earlier? It would be a case not just of Rabbi Eliezer forgetting. Who would have paid attention or remembered? Moreover, Rabbi Eliezer himself states that there was a prohibition and that he had apparently not acted in keeping with it. And why would the judge have tried him if the matter were a meeting that took place years before? While we cannot gauge the time interval that the tradition implies, that suggested by Oppenheimer seems unlikely, unless we accept the strict historical chronology, based on the manuscript tradition of the Bavli (see below), that Yaakov was an actual disciple of Jesus.

²⁵ See Schäfer, *Jesus in the Talmud*, pp. 43-46 on the view that Rabbi Eliezer was charged with prostitution or sexual deviance. There is no basis in the traditions for this, and in any case, even if he had engaged in such activities, this was hardly a matter for the Roman judiciary.

²⁶ See Kalmin, “Christians and Heretics” (*supra* n. 9). While the question of the “rabbinization” of Jesus is not central to our presentation, we think the category in itself to be superfluous as it assumes that the historical Jesus could not have used terminology known to us from rabbinic literature, and would need to be “rabbinized” in order to do so.

²⁷ The translation is our own with reference to ed. Soncino and to Peter Schäfer, *Jesus in the Talmud* (Princeton and Oxford: Princeton University Press, 2007), pp. 41-43.

²⁸ גרדום as in the Spanish Ms. of Bavli Avodah Zarah (Shraga Abramson, *Tractate `Abodah Zarah of the Babylonian Talmud: Ms. Jewish Theological Seminary of America* [New York: The Jewish Theological Seminary of

How does an elder like you engage with those senseless things?
He answered: I acknowledge the Judge (נאמן עלי הדיין).²⁹

The *hegemon* thought that he referred to him – though he really referred to his Father in heaven – so he said to him: Since I have been deemed reliable by you – *Dimissus!* You are released.

When he came home, his disciples came to console him,³⁰ but he would not accept consolation.

Then R. Akiva said to him: Rabbi, do you allow me to say something you have taught us? He said to him: Say it. He said to him: Rabbi, perhaps some heresy came your way and it pleased you, and because of that you were arrested? He said to him: Akiva, you have reminded me (הזכרתני)! Once I was strolling in the upper market of Sepphoris³¹ and I came across³²

America, 1957], fol. 14b), or גרדון in Palestinian sources. While the judge sat on the *bema*, the defendant ascended to the *gardom* (*gradum*) to be questioned. See Lieberman, *Roman Legal Institutions*, pp. 13-15. Bavli is more realistic in terms of the trial procedure. On the relationship between Bavli and “historical reality” see our discussion below.

²⁹ In Midrash Haggadol (*supra* n.8): נאמן עלי הדיין.

³⁰ Bavli does not mention explicitly that he was distressed on account of his arrest and trial, but this should be understood from the context.

³¹ As there was both an Upper and Lower Sepphoris, there might have been an upper market in which the story could have taken place. However, the second century CE and afterwards saw great public expansion in Lower Sepphoris, making it more appropriate for a market or markets. Upper Sepphoris seems to have been more residential. See Zeev Weiss, “Sepphoris”, in Ephraim Stern (ed.), *The New Encyclopedia of Archaeological Excavations in the Holy Land, 5, Supplementary Volume* (Jerusalem-Washington: Israel Exploration Society and Biblical Archaeology Society, 2008), pp. 2029- 2035. It is more likely that Bavli here makes use of a common urban market motif. On the upper market of Sepphoris (a phrase which appears only in the Bavli), see also Bavli Eruvin 54b and Bavli Yoma 11a. The first source relates to the third century sage Rabbi Eleazar ben Pedat (and not to Rabbi Eliezer ben Hyrcanus) who used to teach in the lower market, but he got so involved in his teaching that he did not realize that his outer garment was in the upper market. Somebody tried to steal the garment but found an adder lying on it. The second tradition relates to a person checking *mezuzot* in the upper market who was accosted by a “*quaestor*” who took a thousand *zuz* from him. The *quaestor* was a magistrate who was responsible for financial administration, and it would not have been unusual to find such an official in an urban provincial market. As just stated, the urban development of Sepphoris was most pronounced well after the events described in the Rabbi Eliezer story, and thus it is likely that the Bavli in the

one [of the disciples of Jesus of Nazareth]³³ called Yaakov from Kfar Sekhnia.

He said to me: It is written in your Torah,³⁴ “You shall not bring the hire of a harlot [or the wages of a dog into the house of the Lord your God in payment for any vow]” (Deut. 23:19) – what about using (that money) to make a privy for the High Priest?

But I did not reply to him.

He went on and said to me: Thus taught me [Jesus my Master],³⁵ “From the hire of a harlot she gathered them³⁶ and to the hire of a harlot they shall return” (Micah 1:7) – from a place of filth (הטנופת מקום) did they come, to a place of filth let them go! This teaching pleased me, and that must be why I was arrested for heresy. Because I have transgressed what is written

Rabbi Eliezer story is making use of common urban market motifs. Both Tosefta and KR are more realistic for the period of Rabbi Eliezer ben Hyrcanus.

³² This is the reading of the published edition. Ms. Paris 1337 and Ms JTS 44830 and Midrash Haggadol (*supra* n. 8) reads מצאני, i.e. one of the disciples found me (= Rabbi Eliezer).

³³ Thus Ms. Paris 1337 and Ms. JTS 44830 and Midrash Haggadol.

³⁴ כתוב בתורתכם appears in rabbinic literature only here (not taking into account a few appearances in *Otzar Ha-Midrashim* or *Yalkut Shimoni*). This, as well as כתוב בתורתך seems to imply a late usage, and it makes no difference whether this is intended to be the words of Jesus or of Yaakov. See David Flusser, *Jewish Sources in Early Christianity: Studies and Essays* (Tel-Aviv: Sifriyat Poalim; Ha-Kibbutz Ha-Artzi Ha-Shomer Ha-Zair, 1979), pp. 60-61 and esp. n. 2 (Hebrew). Cf., however, John 10:34, οὐκ ἔστιν γεγραμμένον ἐν τῷ νόμῳ μὲν: “Is it not written in your law...?” In KR it is the *min* who uses the phrase in his dialogue with Rabbi Eliezer. In John it is Jesus who throws this out to the Jews. Would a Jewish student of Jesus relate in this manner to R. Eliezer? By the time that KR appeared, the “Jewish” student would have been long considered “Christian” from the editorial standpoint of KR.

³⁵ The printed edition has כך לימדני. Mss. Munich and Paris 1337 read כך לימדני, which conforms with the earlier mention of that name in the tradition and may be more formulaic. Midrash Haggadol has: אמר לי משום ישו בן פנטירי, the derogatory name used in the Tosefta version. Ms. JTS 44830 reads: כך לימדו ישו רבו. We prefer this reading in spite of the fact that it is somewhat unusual and uses the third person which is indeed awkward. Therefore we have translated: ‘Thus taught me Jesus my master’.

³⁶ Schäfer, p. 42, p. 158, n. 11: was it gathered, reading *qubbatzsah* instead of *qibbatzsah*.

in the Torah:³⁷ “Keep your way far from her” – that is heresy – “and do not go near the door of her house” (Prov 5:8) – that is the authorities.

And others teach: “Keep your way far from her” – these are heresy and the authorities, and “do not go near the door of her house” – that refers to a harlot.

How far (should one keep away)? R. Hisda said: A minimum of four cubits.

For R. Eliezer used to say: One must always flee the unseemly and what resembles the unseemly.

The framework for the tradition in Bavli is Mishnah Avodah Zarah 1:7: “One does not build with them (i.e., idolaters) a basilica, a scaffold, a stadium, or a *bema* (platform).” The basilica is the courthouse and the scaffold and the *bema* were, as we explained above, used during judicial proceedings, usually to the extreme detriment of the defendant. One should not help in the construction of things that would bring grief to one’s Jewish brethren. The Rabbi Eliezer story is attached to the “scaffold” to which he was brought up. The story is not told in relation to heresy, heretics or *minim*, but rather is connected to an element of Roman courtroom architecture and to Jewish relations with pagans. After the Rabbi Eliezer story, the pericope continues with a further discussion of prostitution and sexual deviance, with the thrust being on separation, not so much from *minut* as from prostitution.

Thus, unlike the Tosefta, but very much like Kohelet Rabbah (KR) as we shall see below, the heresy story here is placed within a context which has nothing to do with *minim*. While Bavli is clearly dependent on the Tosefta in some way, and while one would assume that the Palestinian Tosefta would use the more exact terminology, Bavli actually contains more exact terminology (the judge sits on the *bema*; the defendant is on the scaffold) and does a better job of describing the courtroom architecture, being the first source to mention it. Both the Tosefta and KR, as we shall see below, follow the Bavli in bringing the defendant to the *bema* where the judge sat. We shall return to discuss the issue of Bavli’s perception of history below. As to the venue of the meeting with the *min*, we prefer the street of Tosefta and KR to the market (see n.31).

³⁷ ועברתי על מה שכתוב בתורה. Midrash Haggadol (*supra* n. 8) has the remarkable reading: שעברתי על דברי חברי – “I transgressed the words of my colleagues.” See our discussion above on the Tosefta.

In the Tosefta, as we saw above, we are not given the details of the teachings. In Bavli the matter is clearly stated: the monies might be used for the construction of a privy for the High Priest. At first glance the teaching may seem unsuited for rabbinic discourse, but this is not really the case. On the contrary: this particular teaching would be quite characteristic of Rabbi Eliezer, as he is known to allow monies from prostitution to be used even for the purchase of the red heifer which served to purify all who had been defiled.³⁸ This particular teaching was probably chosen because it would be logical for Rabbi Eliezer to accept it. The example of the High Priest's privy was probably an editorial addition: the *min* is portrayed as choosing a teaching that would be especially attractive to Rabbi Eliezer, who does not respond. He seems to be astounded. This seems to be a second stage of editorial reworking of the story, a process that can be understood in a number of ways: (1) the dialogue section was appended to a more compact form of the story similar to the Tosefta version, possibly from an independently circulating tradition; or (2) the dialogue was part of a longer version of the story co-existent with the Tosefta version and inserted in the Bavli; or (3) the redactor of the Tosefta, reflecting the heat of the conflict with Christian *minim*, omitted the dialogue and placed all emphasis on *who* is speaking, not *what* he says, since that is perilously similar to what the rabbis say. For our purposes, all of these possibilities are viable.

The story of Rabbi Eliezer's meeting with the heretic was chosen because of Rabbi Eliezer's judicial philosophy. This makes the heretic's teaching all the more dangerous, but not necessarily a matter of heresy *qua* heresy. Rather, and in keeping with the direction of the Tosefta, not the teachings, but rather the individuals associated with them, are dangerous – to some extent regardless of the teaching. On this point we take issue with the claim of Richard Kalmin that the Babylonian Talmud sees this and similar “heretic” sources not as reflecting a real danger, but more in the sense of entertainment in

³⁸ T Parah 2:2. If he is so lenient regarding the red heifer, there is no question that he would permit a privy for the High Priest. In the parallel in Sifre Deut 261 (p. 284, ed. Finkelstein), he would seem to forbid the taking of the red heifer from these monies; the sages permit them to be used for construction material of the Sanctuary. It is possible that even in this case, Rabbi Eliezer still might have been lenient in the case of a privy. See also Hirshman, *Midrash Qohelet Rabbah*, p. 56.

which ultimately “our rabbis are smarter than yours.”³⁹ In our view, the additional touch, which could be an editorial addition, magnifies the underlying danger of the contacts, and this was a real danger in Babylonia, too, as we shall see below.

What is apparent so far is that in both the Tosefta and in Bavli, to cite a teaching in the name of Jesus, whether without details as in the case of the Tosefta, or with details as in the case of Bavli (and KR, see below), was not considered by Rabbi Eliezer as inherently something problematic or dangerous *a priori*. As far he was concerned, he had not heard anything untoward. Whether he remembered that the author of the teaching was Jesus, or he found out or was reminded only later, the teaching itself was not necessarily objectionable. We now ask whether this attitude was peculiar to Rabbi Eliezer, or was it more widespread? The answer will point to the nature of the attitude of rabbinical Judaism to early Christians and Christianity. Were they already actually Christians, or were they a marginal part of Jewish society and religion at the time? If the latter is the case, how long did this state of affairs continue?

Kohelet Rabba 1:8(3)⁴⁰

Another interpretation of “All things toil to weariness” (Koh. 1:8): Words of heresy (דברי מינות) weary man. R. Eliezer was once arrested because of heresy (לשם מינות). The *hegemon* took him and brought him up to the *bema* to be tried. He said to him: Can a great man like you⁴¹ engage in those senseless matters? He answered: Faithful is the Judge concerning me. He (= *hegemon*) thought that he (= R. Eliezer) was alluding to him – though he only spoke in reference to God. He (= *hegemon*) said to him: Because I have been deemed reliable by you (שהאמנתני), I considered the matter and thought: Would these grey hairs err

³⁹ Kalmin, “Christians and Heretics”, cf. Naomi Janowitz, “Rabbis and their Opponents: The Construction of the ‘Min’ in Rabbinic Anecdotes,” *Journal of Early Christian Studies* 6 (1998), pp. 449-462.

⁴⁰ Our own translation with reference to that of A. Cohen, *Midrash Rabbah, Ecclesiastes* (London: The Soncino Press, 1983), pp. 26-28. The translation is based on the text of Marc G. Hirshman, *Midrash Qohelet Rabbah: Chapters 1-4 Commentary (Ch.1) and Introduction* (Heb.) (unpublished PhD dissertation, The Jewish Theological Seminary of America, 1982; University Microfilms International, 1983). On the manuscript situation and published editions see Part I, pp. 108-123.

⁴¹ In the parallel versions: “an elder like you”.

in those senseless matters? *Dimissus!* You are released.

After R. Eliezer had left the court (i.e. released from the *bema*), he was distressed to have been arrested for matters of heresy. His disciples came to him to console him, but he refused to accept.

R. Akiva came and said to him: Rabbi, perhaps one of the heretics explained something to you that was agreeable to you?⁴²

He said: Yes, by Heaven! You have reminded me (הזכרתני)!

Once I went along the paved road (street) of Sepphoris where there came up to me a man called Yaakov from Kfar Sekhnia (יעקב איש כפר סכניא), who told me something in the name of Jesus ben Pandera⁴³ which pleased me.

This is what he told me:⁴⁴ It is written in your Torah: “You shall not bring the hire of a harlot or the wages of a dog [into the house of the Lord your God in payment for any vow]” (Deut 23:19) – what is to be done with them? I said to him: They are forbidden. He said to me: They are forbidden for offerings (לקרבן), but might they not be allowed (for disposal [לאבדן])? I asked: Then what can they be used for? He said to me: They can be used to make bath-houses and privies. I said:⁴⁵ You have spoken well, and the law escaped my memory at the time.⁴⁶

⁴² In the parallel versions Rabbi Akiva first asks permission to address Rabbi Eliezer on this matter.

⁴³ In the printed editions: “That One” (משום פלוני) need not automatically refer to Jesus or even be polemical, as is the case in the instances in which it is used in general by *Rishonim*. However, it is clear from the context and parallel versions that it replaced “Jesus” here.

⁴⁴ See Hirshman, Part II, p. 55.

⁴⁵ See T Parah 2:2 and Sifre Deut. 261 (p.284, ed. Finkelstein). We shall discuss this in relation to Bavli below.

⁴⁶ ונתעלמה הלכה appears in Rabbinic literature only here. ונתעלמה הלכה appears twice in Ruth Rabbah. The usage is certainly late. While it is tempting to think that this relates to the “laws of the *minim*” discussed above, the continuation in KR does not cite these *halakhot* of the Tosefta, although it does continue from the Rabbi Eliezer tradition to the Ben Dama tradition (this is the opposite order of the traditions in the Tosefta). KR in the next pericope presents additional *minim* teachings, but they are not related to Rabbi Eliezer or to the Tosefta Hullin, and are not connected to our story; they are probably a narrative addition by the redactor.

When he saw that I acknowledged his explanation, he added: Thus said ben Pandera:⁴⁷ From the cloaca (צואה) did they come, to the cloaca let them go (i.e. let the monies be spent on “filth”), as it is said: “From the hire of a harlot she gathered them, and to the hire of a harlot they shall return” (Micah 1:7) – let them be used to make privies for the public (כורסון לרבים)⁴⁸ and the thought pleased me. On that account I was arrested for heresy. And moreover I have transgressed what is stated in the Torah, “Remove your way far from her,” i.e. heresy, “and do not go near the door of her house” (Prov 5:8), i.e. prostitution. Why? “For many a victim has she laid low, yea, all her slain are a mighty host” (Prov 7:26). How far (should one keep away)? R. Hisda said: A minimum of four cubits.

Kohelet Rabbah, in general, borrows from Palestinian traditions, but sometimes from Babylonian material too, as seems to be the case in our tradition, and this would seem to be the latest version of the tradition.⁴⁹ The story about Rabbi Eliezer in Kohelet Rabbah appears in an encyclopedic⁵⁰ listing of things that wear one out or cause weariness (Koh 1:8). The first two such subjects to be discussed are matters of “idleness”⁵¹ and matters of “profession”.⁵² There does not

⁴⁷ In the printed editions: “That One” (כך אמר פלוני).

⁴⁸ Marcus Jastrow, *A Dictionary of the Targumim, The Talmud Babli and Yerushalmi, and the Midrashic Literature* (New York: Pardes, 1950), I, p. 626, s.v. כורסיה, כורסיה.

⁴⁹ Hirshman, *Midrash Qohelet Rabbah*, pp. 58-107 on the relation of this *midrash* to the Palestinian and Babylonian Talmuds. Many early scholars thought that Kohelet Rabbah took material from the Babylonian Talmud. Today more caution is exercised. Often both the Babylonian Talmud and Kohelet Rabbah might be dependent on the same Palestinian motifs. On matters of editing, borrowing and redaction see also *idem*, “The Manipulation of Sources by the Editor(s?) of Qohelet Rabbah,” *Teuda: Studies in the Aggadic Midrashim in Memory of Zvi Meir Rabinowitz* 11 (1996), pp. 179-180 (Heb.); Reuven Kipperwasser, *Midrashim on Kohelet: Studies in Their Redaction and Formulation* (unpublished PhD dissertation, vol. I-II, Bar-Ilan University, 2005) (Heb.); *idem*, “Structure and Form in Kohelet Rabbah as Evidence of Its Redaction,” *JJS*, 58 (2007), 283-302.

⁵⁰ Hirshman, “Manipulation of Sources”, pp. 189-190.

⁵¹ The list is incomprehensible and serves no purpose in the understanding of the Rabbi Eliezer story.

⁵² The midrash relates two stories of an extended period of apprenticeship at a baker and at a tavern-keeper, respectively. These two are irrelevant for our purposes.

seem to be any connection between these two and the third thing that wears one out, i.e., heresy. The midrash simply presents unconnected explanations for the verse. Nevertheless, it is somewhat startling to go from such mundane matters as idleness and apprenticeship to heresy. However, by the time the KR tradition appeared, the separation of Christianity from Judaism was a *fait accompli*, or at least more so than in the case of the Tosefta or Bavli, and thus “heresy” within the framework of this historical situation was mundane enough to be connected to idleness and apprenticeship by the editor of KR.

KR, like the Bavli, brings the teaching of Yaakov in the name of Jesus that pleased Rabbi Eliezer. As in the Bavli, while the teaching regarding harlots and filth might strike modern readers as strange, it certainly fits within the parameters of rabbinic teachings.⁵³ In KR the teaching is somewhat different from that found in Bavli, and the question is whether monies from prostitution might be used for any purpose, the answer being that they may be used for the building of bath-houses and privies. Unlike in Bavli, in KR it is not stated that the bath-houses and privies are connected to the Temple, although this might be assumed, as it indeed is the intent of the verse in Deut 23:19 which forbids the use of monies from prostitution in the first place. The Bavli in this case is much clearer than the reworked version of KR. KR, however, as opposed to Bavli, adds the reaction of Rabbi Eliezer to the teaching, stating that it pleased him. In Bavli there was no response, and KR seems to be filling this gap. It should of course be remembered that this entire elaboration, found in one form or another here and in the Bavli, is missing in Tosefta.

⁵³ Kalmin, “Christians and Heretics” (*supra* n. 9), sees this as the “rabbinization” of Jesus. We have seen above that this is problematical. Nor is the matter at hand extraneous to the teachings of Jesus, cf. Mark 7:18-19, “He said to them: Are you as dull as the rest? Do you not see that nothing that goes from outside into a man can defile him, because it does not enter his heart, but into his stomach, and so it passes out into the drain?” The traditions in Bavli and KR, however, go far beyond latrine metaphors, whether in the New Testament or in the literature of the Rabbis. See, e.g. Eyal Baruch and Zohar Amar, “The Latrine (*Latrina*) in the Land of Israel in the Roman-Byzantine Period,” *Jerusalem and Eretz Israel* 2 (2004), pp. 27-50 (Heb.). The general gist of the cloacal tradition is found in additional instances in rabbinic literature. See e.g., PT Kiddushin 3:15, 64d: “Rabbi Meir said: Bastards (*mamzerim*) will not be purified in the future ... mud (*tinah*) goes to mud and stench (*seriyot*) goes to stench.” See also Leviticus Rabbah 32:7 (p. 753, ed. Margulies) and cf. T Kiddushin 5:4 (pp. 294-295, ed. Lieberman and Bavli Kiddushin 72b).

As was the case in the other versions of the story, in KR there is also no information regarding the time that supposedly elapsed between the meeting of Rabbi Eliezer and Yaakov. Nor do we know how Rabbi Eliezer came to be denounced, or, for that matter, who denounced him. As in the other versions, here too Rabbi Eliezer does not appear to understand why he has been arrested and brought to trial. Similarly, it seems that a teaching in the name of Jesus need not automatically be considered dangerous. It depends on how it was presented and by whom.

Who's Who in Early Heresy?

As we stated above, the Tosefta version is framed in the earliest redactional context and is the shortest of the three. It is also the one that does not contain the teaching of Jesus, but only Rabbi Eliezer's admission that he had apparently enjoyed whatever teaching it was. In this version, contact, not content, was the problem. Rabbi Eliezer's transgression was failing to keep "far away from her", and he apparently "went near her house." He was not able to see that what seemed to be enticing to him was in reality ugly. He should have fled from it.⁵⁴

If we can understand the "her" in the verse and how it relates to the episode, we shall be able to better understand all three versions of the story. As we have seen above, Bavli and KR clearly interpret the verse in terms of prostitution (and heresy). In the Tosefta, Rabbi Eliezer

⁵⁴ Cf. the comment of Trypho in his dialogue with Justin: "And Trypho said: Sir, it were good for us if we obeyed our teachers, who laid down a law that we should have no intercourse with any of you (= Christians), and that we should not have even any communication with you on these matters" (*Dialogue with Trypho* 38.1 [trans. <http://www.ccel.org/ccel/schaff/anf01.viii.iv.xxxviii.html>]). See also Avot d'Rabbi Natan, Version B, Chapter 3 (p.7 ed. Schechter) for a similar statement attributed to Rabbi Joshua ben Korhah. Lack of discourse does not mean expulsion. Cf. Shaye J. D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis and the End of Jewish Sectarianism", *Hebrew Union College Annual* 55 (1984), pp. 27-53. Early Christians were not particularly liberal when it came to discourse with people whom they viewed as heretics. See Tertullian, *Prescription Against Heretics*, chapters 16-17 (<http://www.newadvent.org/fathers/0311.htm>) in which Tertullian warns the public to avoid contact with heretics because they distort Scripture. There can be no common ground between the heretic and the believer. Of course, whether this is true or not depends on the circumstances. Also, the clash between believer and heretic is possibly fiercer to the extent that they defend rival claims on a common heritage.

does not mention prostitution, but simply cites the verse. The “strange woman” (Prov 5:8) or “alien” woman (5:20) who might entice the young man mentioned in Prov 5 is not a prostitute, but rather, another man’s potentially adulterous, unchaste, or unfaithful wife. The chapter in Proverbs deals with the fear of adultery as opposed to the wisdom of marriage.⁵⁵ The young man being advised by his father has just married, or is about to do so. The seductions of the adulterous housewife promise pleasure, but instead lead to death and condemnation. There is a steep price to pay for being entrapped in concern for wealth, physical health, mental health and reputation (5:9-14, 22-23). All of this is preventable simply by remaining faithful to one’s own lawful “wife of (your) youth” (5:18).

From a halakhic or theological standpoint, an adulterous relationship is much worse than sexual relations with a prostitute. Whereas a prostitute would not be a man’s neighbor or be part of his social circle, the potentially adulterous wife might be a man’s neighbor or relative, and would not be marked automatically as a dangerous woman, in contrast to the prostitute. The halakhic implications of such a liaison might be catastrophic, as indeed the chapter states, but a man might be lured into sin unwittingly by an adulterous woman, whereas, if he paid for sex with a prostitute, he would know he was sinning.

Rabbi Eliezer’s comments in the Tosefta, as we have seen, relate to the verse in Proverbs. After his discussion with Rabbi Akiva, he realized that he had been taken unawares and entrapped. The story implies that if he had not been arrested, the process might have continued. In this we take issue somewhat with Daniel Boyarin in *Dying for God*, who makes Rabbi Eliezer consciously sympathetic of nascent Christianity.⁵⁶ The Tosefta source seems to imply only the beginning of the process. The denunciation, arrest and trial put an end to it and turned an ingenuous sympathy into revulsion. However, if none of the legal proceedings had taken place, Rabbi Eliezer would probably have continued to enjoy the teaching, even if it remained as a faint or subconscious memory. However, Boyarin’s claim that the episode takes place in a Jewish, or at least rabbinic, milieu in which

⁵⁵ See the explanations of Bruce K. Waltke, *The New International Commentary on the Old Testament, The Book of Proverbs Chapters 1-15* (Grand Rapids and Cambridge [UK]: Wm B. Eerdmans Publishing Co, 2004), pp. 301-324.

⁵⁶ Boyarin, *Dying for God* (*supra* n. 16), pp. 26-41: “an adjunct, or perhaps a fellow traveler of Jesus” (41).

the rabbis are “both recognizing and denying at one and the same time that Christians are us”⁵⁷ is in keeping with the tenor of the quotation from Proverbs. As noted, the seductive adulterous woman might be a neighbor, friend of the family, relative etc. – one of Us. But her actions mark her as not one of Us. She herself constitutes the danger, not her teachings. She might begin seducing an unsuspecting man with actions acceptable even from a normative halakhic standpoint. It is not easy to see at the beginning that she is metaphorically ugly, or that what she is attempting to do is ugly. This explanation might even support the view of Schremer mentioned above, that *minut* is not heresy in the sense of adhering to mistaken theological tenets; rather, it challenges the unity of the Jewish community. These are Jews who separated themselves from the community, at least according to the Rabbis, and perhaps only according to the Rabbis.⁵⁸

Thus, Rabbi Eliezer might not have been aware of any problem in the unspecified teaching of Yaakov in the name of Jesus. The teaching itself was not the problem. The problem, at least for the Rabbis, was that these people were not Us. They were *ugly* and *dangerous*. It probably was an entirely different matter, though, for Jews who did not belong to rabbinic circles and who may have been less sophisticated. The Judaeo-Christians might be Us, and by the time one found out that they were really not, it might have been too late. That is why the Rabbis considered them so dangerous, and that is why they were *ugly*. Clearly the Tosefta seems to be describing a real danger and does not reflect some type of artificial literary construct. We shall return to the Tosefta when we examine the letters of Pliny below.

By the time that the story reached Babylonia, the social and theological background was entirely different.⁵⁹ While it was once

⁵⁷ *Ibid.*, p. 32.

⁵⁸ See *supra* n. 3. The fit need not be perfect, of course; Schremer sees these Jews as collaborating with the Romans (*outsiders*). The *outsiders* could also have been the incipient Gentile Christianity. Indeed, outsiders and incipient Gentile Christianity tend to be synonymous in Ps-Barnabas, cf. Tomson and Schwartz, *supra* n.1.

⁵⁹ See Daniel Boyarin, *Border Lines: The Partition of Judaeo-Christianity* (Philadelphia: University of Pennsylvania Press, 2004), p. 221: “In the Talmud, *minut* clearly no longer means what it had meant in the Mishna and the Tosefta.” As we shall see, this is correct. However, we disagree with Boyarin’s contention that in Bavli, *minut* refers in general to gentile belief and not specifically to a real Christian polemic. See our discussion in detail below. Boyarin makes reference to the “continuation” of the Rabbi Eliezer tradition in Bavli, which tells of the travails of Rabbi Eleazar ben Perata and Rabbi Hanina

assumed that the Babylonian rabbis had little knowledge of Christianity and little if any contact with Christians, it is now agreed that the Babylonian Amoraim were often in quite close contact with Christians, or at least Christian scholars, perhaps even more so than many Palestinian sages.⁶⁰ Thus for them, Christianity was not just some type of artificial literary creation to serve as straw man in an intellectual-theological debate with imaginary Christians.⁶¹ There was contact, and there was polemic, but both were of a different nature from that described by or reflected in the Tosefta.

The polemic was between Jew and Christian and not between Jew and Jewish-Christian or Judaeo-Christian.⁶² To a degree, the polemic might have revolved around Christian trends towards judaizing behavior, including circumcision, by both religions. Jewish and Christian sages might have shared the same discursive world, but they did not want to share the same ritual and ceremonies.⁶³ The changes in

ben Teradyon who were arrested for *minut*, and in this case the issue was clearly not Christianity. Nobody denies that *minut* may have more than one meaning in the Bavli. Boyarin's claim that this is the continuation of the Rabbi Eliezer tradition is difficult to accept, as the Rabbi Eliezer tradition appears in Bavli Avodah Zarah 16b-17a and the "continuation" in 17b. The two are separated by numerous discussions and issues. These are different *sugyot* with different histories of redaction; the Rabbi Eliezer tradition should indeed be analyzed in context and in relation to its background, and the three versions under discussion here appear in different redactional contexts. In any case, we believe that the Rabbi Eliezer tradition in Bavli reflects the danger of Christianity, as we explain below.

⁶⁰ See Adam H. Becker, *Fear of God and the Beginning of Wisdom: The School of Nisibis and the Development of Scholastic Culture in Late Antique Mesopotamia* (Philadelphia: University of Pennsylvania Press, 2006), pp. 5, 16-18. Cf. Schäfer, *Jesus in the Talmud*, pp. 116-129 and Daniel Boyarin, "Hellenism in Jewish Babylonia," in Charlotte Elisheva Fonrobert and Martin S. Jaffee (eds.), *The Cambridge Companion to the Talmud and Rabbinic Literature* (Cambridge-New York: Cambridge University Press, 2007), pp. 336-365.

⁶¹ Contra Kalmin, "Christians and Heretics" (*supra* n. 9).

⁶² Naomi Koltun, *Jewish-Christian Polemics in Fourth Century Persian Mesopotamia: A Reconstructed Conversation* (unpublished PhD dissertation, Stanford 1994, University Microfilms International, Ann Arbor, MI, 1995), p. 133.

⁶³ *Ibid.*, pp. 155-161. On sharing, see Boyarin, "Hellenism in Jewish Babylonia", p. 349 and Adam H. Becker, "Beyond the Spatial and Temporal Limes: Questioning the 'Parting of the Ways' Outside of the Roman Empire", in Adam H. Becker and Annette Yoshiko Reed, *The Ways that Never Parted:*

society and religion seem to be reflected in some of the nuances of the tradition in Bavli as we shall see presently.

In Babylonia the Christians suffered persecutions from time to time, as they did under Roman rule, the background to the Tosefta. The persecutions might have even driven Christians to pray in synagogues or to adopt judaizing practices, and this possibility aroused a sharp reaction in Christian polemical writings.⁶⁴ However, the persecutions were at the hands of the Sassanians, not the Romans. In fact, the Christians were often accused by the Jews of collaborating, as it were, with the Romans. For the Babylonian Christians in this period, the Romans were not the enemy. The Romans were the enemies of the Jews, as they had always been, but they were perceived as supporters of the Christians, who would not have persecuted them. This situation makes the beginning of the tradition in Bavli somewhat incongruous for the Jews; the Roman judge ought to have been replaced by a Sassanian judge, but there is a limit to how much could be changed. The backdrop of the Tosefta remains.

The confusion between Jew and Christian reflected in the Tosefta was still the danger in Babylonia, and it is this that makes the tradition viable in Babylonia. Our thesis is that the persecutions against the Christians drove some of them to take refuge among the Jews, who were protected. In the case of Christians of Jewish origin, taking refuge was actually a return home.⁶⁵ If the Jews had thought that the fuzziness between boundaries had dissipated, they discovered that this was not always the case, and Christians were able to spread their views once back in the synagogue. This is exactly what the rabbis wished to prevent (and indeed so did many *mainstream* Christians, who would view the return to the synagogue as catastrophic). In the Tosefta, the Christians appeared to be part of the community and the rabbis wanted to expel them. They were dangerous because they were insiders. In Bavli, they had left the synagogue but now were re-infiltrating. The potentially “adulterous wife” of Proverbs might have been abhorrent, but she was part of the community. The prostitute of Bavli might have ethnic claims, but is never really part of the

Jew and Christians in Late Antiquity and the Early Middle Ages (Tübingen: Mohr Siebeck, 2003), pp. 373-392.

⁶⁴ Becker, “Beyond the Spatial and Temporal *Limes*”, p. 376. On the Christian presence in general in Babylonia at the time, as well as on their persecution see also Jacob Neusner, *Aphrahat and Judaism: The Christian Jewish Argument in Fourth Century Iran* (Leiden: Brill, 1971).

⁶⁵ Becker, *ibid.*, p. 379.

community, and the danger she embodies is never potential. Her very status proves her guilt as far as the rabbis were concerned.

The teaching of Yaakov and Jesus could also fit into the scenario described above. The Tosefta, as we remember, ignored the content of the teaching; the danger was in the person of the teacher, be he Yaakov or Jesus. Bavli adds a teaching, but walks a fine line in doing so. It has Yaakov present a teaching that might be especially appealing to Rabbi Eliezer, although the subject of the teaching might have a facetious ring. Although the High Priest's privy on the Temple Mount was a legitimate topic, a privy is a privy. The Temple ritual was a bone of contention between Jews and Christians in the fourth century. The Jews, according to the Christians, had been dispersed and could no longer properly observe requirements dependent upon the Temple.⁶⁶ By focusing discussion on the High Priest's privy on the Temple Mount, the rabbis reduced the Christian claims to a grotesque level, even if the topic of the discussion was legitimate. The level of heresy attacked here is not sophisticated; it belongs rather to the realm of prostitution.

KR represents the final version of the story. This midrash collection, while Palestinian, also borrows from Babylonian material and in the case of the Rabbi Eliezer tradition, it clearly builds upon the Tosefta and very probably the additional material of Bavli. While this source is most likely dependent on Bavli, the social and theological reality in the Byzantine Palestinian milieu of KR is obviously much different from that of the Babylonian setting of Bavli. The villains are once again the Romans, not only in the tradition, but also in reality, as they have become identified with Christianity. This too is ironic, because the judge, while trying Rabbi Eliezer for heresy as a Jewish-Christian, would now represent a supporter of that religion. As was the case in Bavli, however, the backdrop remains the same, because changing it would have altered the story too much. For the reader of KR, though, the judge would not serve as a danger, but rather as a reminder that times had changed.

If the prime motif in the Tosefta had been one of confusion of boundaries, and although this confusion persisted in Bavli, albeit in a

⁶⁶ Koltun, *Jewish Christian Polemics*, pp. 139-146 (on Passover). On the ideological struggle between Christian and Jew over Temple and Temple Mount see Joshua Schwartz, "The Encaenia of the Church of the Holy Sepulcher, The Temple of Solomon and the Jews," *Theologische Zeitschrift* 43 (1987), pp. 265-281 and *idem*, "Gallus, Julian and Anti-Christian Polemic in Pesikta Rabbati," *Theologische Zeitschrift* 46 (1990), pp. 1-19.

revised form, there would have been little fuzziness in terms of boundaries for late Byzantine period Jewish readers. By now the two religions were clearly separate, and the battle lines of the polemic had long been drawn.⁶⁷ There is no real danger that Byzantine Christians would return to the synagogue to infect Jews, as it were, with dangerous teachings. It only remains for KR to launch a broad attack against Christianity. The High Priest's privy now turns into bath-houses and privies in general – the essence of heresy. It may start out as mere idleness, but it leads to feces, filth, and prostitution. The teaching once again may be legitimate, but the perils are clear. How could Rabbi Eliezer be taken in by this, and how could it have been pleasing? He almost deserved to be arrested for this, and indeed should have known better. The danger element in the meeting between rabbi and Jewish-Christian is played down in order to stress the broadside attack against Christianity in the tradition.

The Roman Side: Pliny

All three versions of the Rabbi Eliezer story are set in the framework of Roman Imperial rule in the early second century CE. The problem with rabbinic traditions, as we have seen above, is that while they may attempt to reflect particular times and conditions, their dating is often a matter of controversy. Roman material is often much easier to date, and it is fortuitous for our purposes that two letters written during the rule of Trajan relate to events which may help us understand the Rabbi Eliezer stories, and if not all of them, at least the version appearing in the Tosefta. It might also be suggested that they help anchor the core of this particular Tosefta tradition in these times.

The first letter (10.96) was written by the magistrate Pliny the Younger, praetorian commissioner with full consular powers for the province of Pontus and Bithynia, on the western Black Sea coast of Asia Minor, to his emperor Trajan. In it, Pliny asks for help in establishing procedures for dealing with a relatively large number of Christians who seem to be in conflict with the Roman way of life. Pliny's letter is among the first references to the "Christian problem" in the Roman world. The second letter (10.97) is Trajan's reply. Both letters were written sometime between September 112 and January 113. There is no doubt that the letters are authentic and they were

⁶⁷ See the studies of Schwartz cited in n. 66. See also *idem*, "The Wine Press and the Ancient Judaeo-Christian Polemic," *Theologische Zeitschrift* 49 (1993), pp. 215-228; 311-324.

quoted by early Church Fathers such as Tertulian and Eusebius.⁶⁸ We cite both letters in translation.⁶⁹

Ep. 10.96: Gaius Plinius to the Emperor Trajan

1. It is for me an important point of responsibility to refer to you as Head of State, things about which I have questions, since you are the person best able to set straight my hesitations and correct my lack of information.

Actually I have never been present at an examination (*cognitio*) of Christians, so I do not know what punishment is required or how far it is to be carried out. Nor do I understand the legal grounds for a prosecution, or how stringently it is to be prosecuted.

2. I am not clear about prosecutions in respect to the age of the persons, whether no distinction should be made between the young and the old, and furthermore whether a pardon should be granted in cases of recanting, or if there is no advantage for a person completely ceasing to be a Christian. Or is it the name “Christian” which is prosecutable, even if not involved in criminal actions, or is that “criminality” is automatically attached to the name?

In the meantime, I now handle it this way with those who are turned over to me as Christians.

3. I ask them directly, in person, if they are Christian, I ask a second and third time to be sure, and indicate to them the danger of their situation. If they persist, I order them led dispatched (executed). I have had no trouble with this, since whatever it was they admitted or professed, I decided that their obstinacy and unyielding inflexibility should be sufficient reason for punishment.

⁶⁸ See, for example, Betty Radice, *Pliny: Letters and Panegyricus* (London – Cambridge [MA]: Heinemann Harvard University Press; Loeb Classical Library, 1969), pp. 400-407; A.N. Sherwin-White, *The Letters of Pliny: A Historical and Social Commentary* (Oxford: Clarendon Press, 1966), pp. 691-712 and Wynne Williams, *Pliny: Correspondence with Trajan from Bithynia (Epistle X)* (Warminster [Wiltshire]: Aris and Phillips, 1990), pp. 70-73, 138-144.

⁶⁹ The translation used is that of William Harris at <http://community.middlebury.edu/~harris/Classics/plinytrajan.html>.

4. Some others who were virtually insane with this cult, but Roman citizens, I sent back to Rome for trial.

As I continue with this handling of the situation, as often happens, the numbers and kinds of incriminations are becoming more widespread

5. An anonymous list has been brought out which contains the names of a great many persons. I decided to dismiss charges against any on this list who stated that they were now not, nor had ever been Christians, if they repeated after me a prayer of invocation to the gods, and made an offering of wine and incense to your statue, which I had brought in to the court along with the statues of the gods, for this purpose. And in addition they were to formally curse Christ, which I understand true Christians will never do.

6. Others named by the anonymous list said they were Christians, and later changed their statement. Some said that they had been and then stopped, some three years before, some longer, some even twenty years before. All these revered your statue and those of the gods, and cursed Christ.

7. They stated that the sum total of their error or misjudgment, had been coming to a meeting on a given day before dawn, and singing responsively a hymn to Christ as to God, swearing with a holy oath not to commit any crime, never to steal or commit robbery, commit adultery, fail a sworn agreement or refuse to return a sum left in trust. When all this was finished, it was their custom to go their separate ways, and later re-assemble to take food of an ordinary and simple kind. But after my edict, issued on your instructions, which forbids all political societies, they did in fact give this up.

8. I thought at this point that it was necessary to get information from two slave women, whom they call deaconesses (*ministrae*) about the actual truth, by means of torture. I found nothing worthy of blame other than the blind and over-wrought nature of their cult-superstition.

I have therefore postponed further examinations (*cognitiones*) and made haste to come to you immediately for consultation.

9. This situation seems to demand serious consultation, especially in view of the large number of people falling into this danger. A great many persons of every age, of every social

class, men and women alike, are being brought in to trial, and this seems likely to continue. It is not only the cities, but also the towns and even the country villages which are being infected with this cult-contagion.

10. It seems possible to check and reverse this direction at this point, for it is quite clear that the temples of the gods which have been empty for so long, now begin to be filled again, the sacred rites which had lapsed are now being performed and flesh for sacrificial rites is now sold again at the shops, although for a while nobody would buy it. So it seems reasonable to think that a great many people could be persuaded to reform, if there were a legal procedure for repentance”.

Ep. 10.97: Emperor Trajan to Pliny

1. You have done the right thing, my dear Pliny, in handling the cases of those who were brought to you under the charge of being Christians. But it is not possible to make hard and fast rules with one specific formula.

2. These people must not be searched out; if they are brought before your court and the case against them is proved, they must be punished, but in the case of anyone who states that he is not a Christian and makes it perfectly clear that he is not, by offering prayers to our gods, such a one is to be pardoned on the grounds of his present repentance, however suspect he may have been in the past.

But anonymous lists must not have any place in the court proceedings. They are a terrible example and not at all in keeping with our times.

While it is clear that Pliny describes a general problem in Bithynia and Pontus, unfortunately we do not know in what city this all happened. Pliny knows that Christians have been put on trial, but he does not seem to be aware of the legal framework of these trials, and he is not sure that he has also acted correctly in the cases brought before him, because the cases seem to have been initiated by private prosecutors who had more experience than he in such matters and did not always bring them to the governor.⁷⁰ In general, it appears that provincial governors or magistrates had no qualms about executing Christians

⁷⁰ Sherwin-White, *Letters*, p. 694.

denounced by their pagan neighbors, and most of them would not have been particular about the legal niceties.⁷¹ However, Pliny's lack of experience and fear, perhaps, of a judicial error that would reflect negatively on his career, led him to ask the Emperor himself for advice and approval.

If the question was actually asked, it was necessary to determine the basis for trying Christians and for putting them to death, and for pardoning those who recanted. Pliny's policy of remission for those who recanted seems to have been of great concern to him. There had to be clear-cut legal guidelines, and here it becomes stickier. Were the Christians guilty of *scelera* or serious crimes? They had certainly been accused of such, but Pliny does not seem to have been convinced that they were actually guilty of anything more than foolish zealotry for inane superstitions.⁷² Recently some have claimed that the Christians were guilty of belonging to illegal associations or organizations, a claim that had been made long ago and was mostly discredited, even if Pliny does seem to refer to such associations.⁷³

Regardless of the legal principles involved, Pliny finds them guilty only of superstition (*superstitio*), a charge already leveled against Christians by Tacitus and Suetonius and which implied that Christianity was not a *religio*, or a Roman religion. Pliny describes Christianity as a degenerate superstition carried to extravagant lengths. While one might have expected further charges of impropriety following this accusation, Pliny is silent on this point.⁷⁴ It

⁷¹ Williams, *Pliny*, p. 141.

⁷² Sherwin-White, *Letters*, p. 696-697.

⁷³ The ground for this theory is in Ep. 96.7, "my edict (*edictum*), issued on your instructions (*mandata*), which forbids all political societies." Trajan's actual *mandatum* is not extant. In Ep. 10.34, however, he instructs Pliny to be careful with a "company" (*collegium*) of firemen since it might turn into the type of "political societies" (*hetaeriae*) that has been disturbing the area. Thus Ep. 96 seems to presuppose "a general ban on any form of *collegium* in the eastern cities" (Radice 2:209, n. 1), which is not preserved in the letters. Nor is Pliny's own *edictum*. Cf. Dorothea Baudy, "Prohibitions of Religion in Antiquity: Setting the Course of Europe's Religious History", in Clifford Ando and Jörg Rüpke, *Religion and Law in Classical and Christian Rome* (Stuttgart: Franz Steiner Verlag, 2006), pp. 108-109. On the down-playing of the *collegia illicita* aspect see G.E.M. de Ste Croix, "Why Were the Early Christians Persecuted?" *Past and Present* 26 (1963), pp. 6-38, and esp. p. 18.

⁷⁴ See Mary Beard, John North and Simon Price, *Religions of Rome, Volume I, A History* (Cambridge: Cambridge University Press, 1998), p. 225. The

does seem that a few executions, together with the chance for remission, was good for (pagan) business, and the pagan Temples were once again full of worshippers offering sacrifice to the gods. Christians, of course, did not offer sacrifice, but it is doubtful that Pliny's main reason for the trials was related to the downswing in sacrifice.⁷⁵ Rather, it seems that it was Pliny's initial assumption that was the cause of the trials: "Or is it the name 'Christian' which is prosecutable, even if not involved in criminal actions?" The charge was *ob nomen*.⁷⁶ Ironically, there did not really need to be a tangible charge, short of simply being identified as a Christian, and the form of trial, the *cognitio*, allowed great legal leeway to the judge, whether proconsul, imperial legate or city prefect. The power was absolute and punishment, execution, could be immediate.⁷⁷ Trajan approves Pliny's general procedure in punishing confessed Christians and also approves his policy of remission. He corrected Pliny, however, on two points: he forbade the acceptance of anonymous denunciations and engaging in an active inquisition against the Christians: they need not be sought out.

Before attempting to see what all this adds to our understanding of the rabbinic tradition, it is necessary to determine what kind of Christians were denounced and who was most likely doing the denouncing. Were these Christians gentile or Judaeo-Christian (Jewish Christians)? The former would have been denounced by pagans and

Christians would later return the favor and term paganism to be a *superstitio* (p. 227). According to Cicero, Judaism was also a *superstitio* (*Pro Flacco* 66).

⁷⁵ Sherwin-White, *Letters*, p. 709. Robert Wilken, *The Christians as the Romans Saw Them* (New Haven [CT]: Yale University Press, 1984), p. 15 suggests that probably the denouncing was the work of local butchers who were indeed upset that there were fewer sacrifices. It seems unlikely that Pliny would have become so involved in all this just because the local butchers were upset. In any case, the damage could not have been great. Even though Pliny claims that Christianity was spreading, Wilken, p. 15, thinks that this was most likely an exaggeration based on Christian disinformation. Ultimately, however, the economic factor cannot be completely discounted.

⁷⁶ Paul Keresztes, "The Imperial Roman Government and the Christian Church, I. From Nero to the Severi", in Wolfgang Haase (ed.), *Aufstieg und Niedergang der Römischen Welt: Geschichte und Kulture Roms in Spiegel der neueren Forschung: Principat* (Grand Rapids: Eerdmans, 1979) 2.23.1, pp. 285 ff. It is of no importance at this point to determine whether this was also the case during the time of Nero, as Keresztes suggests. See also Williams, *Pliny*, p. 140.

⁷⁷ Sherwin-White, *Letters*, pp. 694-695.

<http://www.biu.ac.il/JS/JSIJ/10-2012/SchwartzandTomson.pdf>

the latter by Jews. And if they were gentile, does this mean that the ways had already parted by the early second century CE? In our view, it is most unlikely that the informers were Jewish-Christians.

The only reason to think that these Christians might have been Jewish is Pliny's reference to the fact that they "had been coming to a meeting on a given day before dawn, and singing responsively a hymn to Christ as to God." Was this "given day" the Jewish Sabbath? Although some scholars have claimed this, the vast majority do not agree.⁷⁸ If this was not the Jewish Sabbath, but probably Sunday,⁷⁹ then there is nothing Jewish about any of this: the Christians were gentiles and the informers pagan.⁸⁰ Had the ways parted? Perhaps this was the case in Pontus and Bithynia, where there was not much of a Jewish community and the Christians apparently made every effort to be distinct, whether from pagans or from Jews. Does this prove that the ways had parted in Palestine? Not necessarily.

⁷⁸ See Samuele Bacchiocchi, *From Sabbath to Sunday* (Rome: Pontifical Gregorian University Press, 1977), p. 99, who claims that Pliny is referring to the Sabbath. See, however, Paul K. Jewett, *The Lord's Day* (Grand Rapids: Eerdmans, 1971), p. 70 who claims that if it were the Jewish Sabbath, then Pliny would have certainly stated this. See also Robert Wilken, *The Christians as the Romans Saw Them*, p. 23. Wilken claims that the Christians in these areas were mostly removed from the Jewish community. Perhaps they may have had a few converted Jews among them, with resultant Christian or Jewish-Christian variations. There might have been the occasional get-together or joint meal. Most Christians there, though, were not in contact with Jews or former Jews of any type.

⁷⁹ Cf. Acts 20:7 and Did 14.1. Reference is to a prayer meeting in the morning, and a Eucharistic meal in the evening.

⁸⁰ While Asia Minor was a focal point of missionary activity in the empire, Jews in the region explicitly distanced themselves from the Christians. See Leonhard Goppelt, *A Commentary on I Peter* (Grand Rapids [MI]: Eerdmans, 1993), p. 6. Apparently this is the first time Christians were officially recognized as distinct from Jews. See also Paula Fredriksen, "What 'Parting of the Ways?' Jews, Gentiles, and the Ancient Mediterranean City", in Adam H. Becker and Annette Yoshiko Reed, *The Ways that Never Parted: Jews and Christians in Late Antiquity and in the Early Middle Ages* (Tübingen: Mohr Siebeck, 2003), p. 60. The Jews in Asia Minor and other regions might have engaged in polemic against the Christians, but did not apparently initiate persecution, even if they were not reluctant to join in occasionally when others started. All this made it unlikely that they were actively engaged in denunciation. Perhaps if the Christians here had originally been Jewish this might have been the case, but as we have seen, there is only a very slight chance of that.

Pliny, the Tosefta, and Polycarp's Martyrdom

The connection between these two letters of Pliny and the Rabbi Eliezer traditions has long been known to scholars, and some have even tried to identify the judge or *hegemon* with Q. Pompeius Falco, who served as a procurator in Judaea during the early second century CE and later as the governor of Britannia.⁸¹ As it is commonly accepted in scholarship that the story in the Tosefta cannot be taken to depict actual political history of the second century CE, it is futile to expend energy on proving or disproving this identification. However, as we shall soon see, there is much regarding the background of the Tosefta tradition that can be learned from the letters of Pliny, and it seems that not a small amount of the Tosefta tradition might reflect certain aspects of the religious history of the early second century. Indeed, there are parallels to both Pliny and the Tosefta in Christian literature of the mid-second century CE, closer in time to the events supposedly depicted in the Tosefta, and these serve as a bridge, as it were, between Pliny and the Tosefta which will heighten the relevance of the former for the latter.

As we recall, there was much regarding the behavior of the *hegemon* or judge in the Rabbi Eliezer traditions that seemed to be bewildering, especially the whimsical nature of his decisions. This, however, begins to be comprehensible in light of the process that Pliny described in his letter. The examination, or trial, was the *cognitio*, or the personal judgment of the holder of *imperium*, and it was very much a *personal* judgment. It was within the power of the judge to convict or dismiss with little consideration of the actual law,

⁸¹ Cf., e.g. Lieberman, "Roman Legal Institutions" (*supra* n. 11), p. 21, 24. On his position in Britannia see <http://www.roman-britain.org/people/falco.htm>. It should be pointed out that while there are additional Roman judgment scenes in rabbinic literature, the judges are not the same as those we find in the three traditions that we have examined. While a Jew might even have recourse to non-Jewish judges or their courts in matters of civil or criminal law (cf. Bavli Shabbat 116b), and while these judges might even deal with capital cases, the issue at hand for the Roman "judge" (who might be of a much higher station) was far from clear, and thus Pliny even needed guidance from the Emperor. In spite of this, as we have seen, their power in such cases was absolute. The judge in the Rabbi Eliezer stories would not have been the type of judge that the Rabbis, or most likely any other Jew, would have been acquainted with (e.g. Tanhuma Buber 1:1, p. 28). It also makes no difference if the Rabbis also used the term *hegemon* for some of these judges. On the other terms in Rabbinic literature to describe Roman judges see Krauss, *Paras ve-Romi* (*supra* n. 11), pp. 105-106, p. 137.

even though there apparently was an accepted legal form of recanting or remission.⁸² This is what made it so dangerous for the person on trial, who might find himself or herself quickly led away to execution or to torture before execution if his or her social status was low enough, as in the case of the two slave women or deaconesses (*ministrae*) whom Pliny had tortured. Rabbi Eliezer was indeed at the mercy of the judge, which seems to be reflected in his diplomatic answer about the trustworthy judge.

Not everything, though, is a perfect fit between Pliny and the Tosefta. In the Tosefta the judge asks Rabbi Eliezer how he can engage “in those things”, while in KR and Bavli it is “in those senseless things (דברים בטלים)”. Clearly the latter is much closer to the *superstitio* of Pliny, and at first glance would seem to be the preferred version. However, bearing in mind the capricious nature of the proceeding as described in Rabbinic literature and in Pliny, and the willingness of the judge to acquit on even less than flimsy evidence, and also recalling that Pliny was more than willing to torture and execute over “*superstitio*”, it is perhaps better to suppose that the judge did not add “senseless” to the “things” in which Rabbi Eliezer had purportedly engaged; had he done so, it would have been harder to acquit. The later versions, perhaps feeling that the Tosefta was not clear enough and missing the subtlety of the Tosefta, may have added “senseless”. The issue of “*superstitio*” was still relevant in their times, although now the tables had been turned and it was the Christians who accused the pagans of this crime.⁸³

Pliny, of course, makes no reference to the age of the Christians, because his query is of a general nature and would refer to Christians of all ages. Missing then is the “elder” of the Tosefta and Bavli. It is interesting then to cite the Martyrdom of Polycarp (156/157 CE), bishop of Smyrna, the oldest preserved Act of Christian Martyrs.⁸⁴ When Polycarp was brought into the stadium to be tried, the Roman proconsul turned to him, and after ascertaining that the accused was indeed Polycarp, he sought to persuade him to renounce Christ by

⁸² Sherwin-White, *Letters*, pp. 694-695, 697-698, 708.

⁸³ Beard, *Religions of Rome*, p. 27.

⁸⁴ B. Dehandschutter, “The Martyrium Polycarpi: A Century of Research”, *ANRW* 2.27.1 (1993), pp. 485-522; E. Leigh Gibson, “The Jews and Christians in the Martyrdom of Polycarp: Entangled or Parted Ways?” in Becker and Reed, *The Ways that Never Parted* (*supra* n. 63), pp. 145-158.

making clear reference to his age: “Have respect to thy old age.”⁸⁵ Apparently the Romans found it hard to understand how an “elder” or the “elderly” could believe in what they viewed as the superstitions of Christianity. The exhortation of the judge in the Tosefta is thus perfectly in keeping with what would have gone on in a Roman trial.

The continuation in Polycarp is just as fitting. When the proconsul urges Polycarp to repudiate Christ: “Swear by the fortune of Caesar, repent and say, Away with Atheists (= Christians)”, Polycarp indeed is willing to swear “Away with Atheists,” but he refers to the crowd of pagans he is facing. This is similar to the confusion in the trial of Rabbi Eliezer between the judge and God. The proconsul continues to try and convince Polycarp, who finally states clearly and unequivocally: “I am a Christian” – the exact opposite of what would have saved him, or any other Christian in the same predicament. When Polycarp still refuses to recant, the proconsul threatens that he will throw him to wild beasts, but still to no avail. All of this, together with Pliny, brings the trial scene in the Tosefta to life.

Returning to Pliny, additional elements are consistent with the Tosefta. The Tosefta is the only version in which the content of the teaching of Jesus is missing. The meeting alone was apparently enough to stigmatize Rabbi Eliezer with the “name” (*ob nomen*) of Christian, and this was also enough to denounce and try him. That the rabbis and Romans shared an antipathy for Christians of all types and varieties is apparent. Whether there was any direct connection or influence between them on this matter cannot be determined.

From the Tosefta version it is not clear who denounced Rabbi Eliezer. Trajan, as we saw above, forbade anonymous denunciations, but there is no way of knowing if this was really observed, and obviously up until Trajan’s times it was not. And from his time on, even if this decree was observed, it is impossible to know to what extent individual judges would have enforced the ruling, or even have known about it. The basic question is whether the informer was Jewish or pagan. As we saw above in the case of Pliny, the informers were most likely pagan, reflecting the demographics of Pontus and Bithynia. The situation might have been different in Palestine. However, Jews usually did not denounce wrongdoers to the civil

⁸⁵ Martyrdom of Polycarp 9.2 (<http://www.newadvent.org/fathers/0102.htm>). This is the translation of Alexander Roberts and James Donaldson, *Ante Nicene Fathers* (Buffalo [N.Y.]: Christian Publishing Company, 1885), revised by Kevin Knight for New Advent.

authorities and generally took great pains to avoid non-Jewish courts.⁸⁶ As is well known, rabbinic literature mentions the mechanisms through which the rabbinic community dealt with Jewish-Christianity if there was a need to do so.⁸⁷ Lack of discourse and polemics did not mean expulsion, and certainly not denunciation.⁸⁸ Thus, it seems inconceivable that the backdrop to the Rabbi Eliezer story, in any of the versions, would have been that he was denounced, anonymously or not, by other Jews. It might even be assumed that most Jews would have recognized Rabbi Eliezer, or at least recognized him to be a sage and would not have dared to denounce him. The only other option then is that the story posits that Rabbi Eliezer was denounced by pagans.

At first glance this conclusion may seem rather strange. Could the backdrop of the story actually be a pagan, or pagans, denouncing anonymously or not, a respected and probably well-known Jewish sage to the Romans on the charge of being a Christian? Why would they get involved at all in what in Palestine was still mainly an internal Jewish matter? First, it is important to remember that although there are many *minim* traditions in rabbinic literature,⁸⁹ the Rabbi Eliezer tradition is the only *min* tradition in which the *min* is brought to trial before a Roman judge, so we may infer that this was not a regular occurrence. This would also explain Rabbi Eliezer's responses and subsequent depression: neither he nor anybody else expected it

⁸⁶ Such denunciations even led, according to the Rabbis, to the destruction of the Temple. See the sources in Anat Yisraeli Taran, *The Legends of the Destruction* (Tel-Aviv: Hidekel, 1997) (Heb.). Going to a non-Jewish court was the equivalent of idolatry (Midrash Tannaim on Deut 16:18, p. 96, ed. Hoffman), and gentile courts should be avoided even if the judges there purported to judge according to *halakhah* (Mekhilta d'Rabbi Ishmael, Neziqin 1 (p. 246, ed. Horovitz-Rabin). A very similar sentiment is voiced by Paul, 1 Cor 6:1-5. But see also the sources cited in n. 81 above, regarding the possibility that there may be occasional recourse to non-Jewish courts.

⁸⁷ See, for example, Yaakov Y. Tepler, *Birkat haMinim: Jews and Christians in Conflict in the Ancient World* (Tübingen: Mohr Siebeck, 2007), chaps. 4, 5; Schremer, *Brothers Estranged*, chap. 3.

⁸⁸ See Cohen, "The Significance of Yavneh" (*supra* n. 54). See also Fredriksen, (*supra* n. 80). See Jaffé, *Le judaïsme*, pp. 176-177. While Jaffé sees a rather early parting, even he agrees that in the first stage of the relationship between Jews and Jewish Christians (which he sees as two distinct groups almost from the beginning), there was a *modus vivendi* of sorts.

⁸⁹ See Kalmin, "Christians and Heretics in Rabbinic Literature" (*supra* n. 9).

Why would a pagan have denounced Rabbi Eliezer? While the Jews had caused no end of trouble, they still were basically protected, and as long as they refrained from active rebellion they enjoyed autonomy. Here was a golden opportunity for anti-Christian pagans. Rabbi Eliezer was a prominent Rabbi. Yaakov of Kfar Sikhnin was apparently well-known enough in Sepphoris. His Christian sympathies and affiliation were probably no secret. Interestingly enough, it was only Rabbi Eliezer who was denounced and not Yaakov – at least according to the story. Rabbi Eliezer seems to be the only target, although whoever saw them, according to the backdrop of the tradition, would have had to also know or know about Yaakov. The pagan informer(s) thus took advantage of what is described as a coincidental meeting to strike a blow against a leading Jewish Rabbi and perhaps to gain the added benefit of sowing discord within the Jewish community. The judge was probably not accustomed to such cases, and he seems to have realized at the very least that the defendant enjoyed some degree of prestige. This might also help to explain his willingness to acquit so quickly and without requiring any formal recanting or denial. What benefit would have been served by executing a Jewish sage over questionable charges?

The case in Pliny and in the Tosefta in which the informers are apparently pagan seems to be different from the situation in Polycarp. After Polycarp confessed that he was Christian, the pagans and Jews in Smyrna cried out in fury. The Jews, together with the pagans, gathered wood to burn Polycarp alive. The Jews of Smyrna evidently felt they had parted from the Christians, which does not prove that they had ever felt connected to them.⁹⁰

How does all this then affect the issue of the parting (or non-parting) of the ways? Returning to the Tosefta, as far as the informer was concerned, there was a difference between Jew and Christian, and the latter category obviously included Jewish-Christians. The informer is not concerned with theology. It seems to be enough, as noted above, that a suspicious meeting took place. Based on the scenario that we

⁹⁰ Gibson, “Polycarp” (*supra* n. 84), p. 146, plays down active Jewish hostility, and indeed the charge of the pagans and Jews that Polycarp was the “overthrower of our gods” and has been “teaching many not to sacrifice” (12.2 [<http://www.newadvent.org/fathers/0102.htm>]) does not really make sense in relation to the Jews. However, there had been tension between the Jews and Christians in Smyrna (cf. Revelations 2:8-11) and perhaps in spite of the awkwardness of the language, it could be that this is evidence of active Jewish hostility.

have posited, the underlying causes of the denunciation in the Tosefta could have been political, social and even economic. If they were religious, it would have been merely to strike out at an important Rabbi, and not because of a theological point.

It is also worth recalling the terminology from Proverbs cited by the Tosefta. Rabbi Eliezer, while not guilty of adultery, came perilously close to being ensnared by the adulterous wife. If he had been, he would have deserved the sentence, but the adulterous relationship had not been consummated (to remain with the metaphor). The meeting might have been redolent of adultery or near adultery, albeit unconscious on the part of one of the participants, but it is all within the family. The adulterous wife discussed above is a neighbor. The relationship was problematical, and perhaps even evil, but it remained within the fold. And if this were the case for the Rabbis, then obviously it would have been much more so for the commoners. The ways had not yet parted here, although the evidence of separation and rupture visible in early rabbinic traditions and in early Christian writings tells us that there were serious problems. This of course changed in the story as it appears in Bavli and KR, versions which reflect later developments and not those of early encounters between early Christians and Jews.

Summary

Rabbi Eliezer ben Hyrcanus was arrested and charged with *minut*. His crime, according to the earliest version of the story, was not one of theology and belief, but rather of association. The arrest and trial seem to be in keeping with Roman policy towards early Christians; it was enough to be identified as one to be charged and even executed. It did not seem to matter much what they believed: their very existence was considered disruptive. In Asia Minor it was easy to distinguish them from both pagans and Jews, as is evident from Pliny's correspondence and the Martyrdom of Polycarp. In Palestine this certainly was more difficult when it came to Jews and Jewish Christians. They were all part of the family, even if according to the Rabbis the latter were no better than adulterers. Rabbis after all were human, and even they could be enticed.

The Tosefta represents the earliest version of the story in which Jews and Jewish Christians are interconnected and entangled in Roman policy and rule. The Rabbis sought to establish some means to unravel this entanglement, both with Christians and Romans, but *realpolitik*, or what the Rabbis deemed politics of survival, seemed to

make it more expedient to try to sever themselves from the Christians; after all, they had already tried to break with the Romans several times, with little success and much catastrophe. However, it is impossible to know if these attempts made any impression on the rest of Jewish society. It was certainly hard to enforce separation when it was based simply upon preventing association with people who seemed to be one of Us. Whatever the case, though, the depiction of the trial in the Tosefta vividly reflects the conditions of life under the Romans and their legal procedure.

There was still a degree of confusion between Jew and Christian in Babylonia, and this made the tradition viable also in the Bavli and in Babylonia. The confusion, however, was not between Jews and Judaeo-Christians, but rather between Jews and Christians who may have sought refuge in Judaism. Technically, the ways may have parted for both. Nevertheless, the political and religious situation in Babylonia ironically may have made it at times more convenient for Christians to be seen as Jews or to masquerade theologically as such. The story from the Tosefta developed in Babylonia to reflect these changes. By the time that it reached KR, however, the ways had not only essentially parted, but Jews and Christians maintained clear-cut distinct identities. There were new “entanglements”, but ironically, these were now between Romans and Christians. The respective versions of the story developed in order to reflect these new circumstances – circumstances in which the theological message certainly did matter. The adulterous wife was now replaced by prostitute and filth.

The Tosefta represents Jews and Christians at the core and Romans at the periphery and all encased in one social and political reality. In the Bavli, Jews and Christians were separate groups. There was more subterfuge than entanglement in the Christian relationship to the Jews. It was occasionally convenient for Christians to seek refuge in Judaism; they would depart the instant political or religious conditions made it possible. In KR there is neither entanglement nor identity subterfuge, and the story is altered to reflect the situation: the ways had parted, and new boundaries had been drawn.