

given over to priests (b. Yebamot 86a-b; Hullin 131b; Ketubot 26a; Baba Bara 81b; Y. Maaser Sheni 5s). Although these traditions are preserved in late, amoraic sources, they do not betray any late *Tendenz* and, as T. Zatzlauer has shown, can be considered authentic transmissions of early traditions.³³ What is certain from these traditions is that R. Eleazar, a priest who was a young man when the second temple stood, took for granted the practice that priests received the Levitical tithes, and expected that a certain landowner would give his tithes to him regularly. (There was a certain garden from which Rabbi Eleazar ben Azariah used to take the first tithe [b. Yeb 86b].)³⁴ The fact that no *tanna* challenged him by citing contrary examples from recalled second temple history indicates that the Levites' loss of their tithes must be sought early in the history of the second temple.³⁵ Kaufmann's case rests on determining an early date for the emergence of this situation taken for granted at the end of the Second Commonwealth.

In a rather difficult and strange mishnah preserved both in Zeraim 51s and Sotah 910, John Hyrcanus, 135-105 B.C.E., is described as affecting both the authority and prebends of the Levites:

«Johanan, the High Priest, did away with the confession concerning the tithes *למזבח* and the *למזבח* was used to strike in Jerusalem. And in his days, no man had need to enquire regarding produce which may not have been tithed *למזבח*.»

The confession which was eliminated by Hyrcanus is that of Dtn 2613: «I have removed the sacred portion out of my house and I have given it to the Levite, the sojourner, the fatherless, and the widow according to all thy commandments, neither have I forgotten them.» By eliminating the confession, Hyrcanus abrogated the tithes; yet in doing so he was overtly violating the Torah's decree that the tithes are due to the Levites because «... it is your reward for your service in the Tent of meeting (Num 1831 [i.e., the Temple - z.z.]).»

C.H. Tchernowitz, basing himself on data from Josephus and the Mishnah, points out that many of the temple duties assigned to Levites in

³³ T. Zava, The Traditions of Eleazar Ben Azariah (= Brown Judaic Studies 2) Missoula, 1977, 30-34; 302, 305. (I thank Prof. B. Bokser of U.C. Berkeley for bringing this study to my attention.)

³⁴ Cf. b. Yebamot 86 a-b and y. Maaser Sheni 5. These are translated in Zava, The Traditions, 32-34.

³⁵ The tendency among some sages in late antiquity to argue that the Levites should be the legitimate recipients of the Levitical tithes of Num 18 which is reflected in the sources mentioned in the preceding note, is found only in late rabbinic sources and derive from a time when tithing was falling out of practice so that the discussions were theoretical. Cf. Y. M. Grintz, *Sefer Yehudith*, Jerusalem, 1957, 192.

of most of the Levitical cities as a result of the same act; but most significantly (3) the closing down of the *bamot* and the liberalization of the tithes policy in favor of the donors, as expressed in Dtn 1422-26; 2612-15.³⁰ This reconstruction of an early historical context for the Levitical tithes does not constitute proof of its pre-exilic provenience nor does it form a refutation of arguments that it is post-exilic. Rather, if a post-exilic date for these laws can be excluded by argument, it provides an alternative for their setting.

Y. Kaufmann points out that during the second temple period no law demanded that any tithes be given to the sanctuary or to the priests, and this despite the fact that priests, not Levites, were the dominant sacerdotal group.³¹ During this period, the large priestly class usurped the compulsory annual tithes, based on Num 18, at the expense of the small Levitical caste, justifying their appropriation by reference to *qns 'sr'* «the penalty of Ezra,» which penalized the Levites for not leaving the exile.³²

The few sources upon which Kaufmann bases his conclusion are traditions associated with the famous Rabbi of the first-second centuries C.E. Eleazar ben Azariah. It is he who declared that the Levitical tithes is

³⁰ The tithes law of Lev 2722-24 which uniquely includes animals, insists that payment is due only to priests (מלך שר - מלך שר. Lev 2320). This tithes, which is independent of the tithes laws in Numbers and Deuteronomy is pre-exilic though it cannot be dated securely within that period (Y. Kaufmann, *The Religion of Israel* [translated and abridged by M. Greenberg], Chicago, 1960, 189-190). We may hypothesize that it reflects a period during which the official and popular sacrifices did not supply enough meat to fill the needs of the legitimate priests. The Josianic period is a likely one because the permit to slaughter meat away from the sanctuary (Dtn 1215-16, 20-26) must have produced a radical decline in the number of donated *zebah* sacrifices (cf. Lev 711-18, especially vs. 16-18), which when brought to the altar had to be shared, in part, with the priests. (Contrast the priestly portion in Lev 731-34 with the one assigned in Dtn 183.) The Chronicler's presupposition that this tithes was operative in the time of Hezekiah (II Chr 316) is suspect because of his *Tendenz* to equate the activities of Hezekiah with those of Josiah. During the second temple, this tithes was not donated to the priests but eaten by the donors as a *zebah* (cf. Y. Kaufmann, *Toldot H'munh Hysryt*, vol. 1, 1937, reprinted Tel-Aviv, 1964, 151 and notes 13-15 for references).

³¹ Kaufmann, *The Religion*, 190. By the beginning of the post-exilic period, and presumably already at the end of the pre-exilic one, Levites had become agriculturalists (Neh 103; 1229; 131). This argument is the only significant one proffered by Kaufmann which depends neither on his presupposition that P is pre-exilic and even pre-Hezekiah (Goliath W'nekar: A Historical-Sociological Study of the Fate of the Jewish People from Early Times to the Present, vol. 1, book 2, Tel-Aviv, 1930, pp. 275-76; 279-81 [in Hebrew]) nor on arguments from silence (*Toldot* vol. 1, 113-84; 201-06; The Religion, 175-200; 205-08). He apparently did not recognize the full potential of this empirical argument and therefore did not utilize all of the available sources to develop it.

³² This expression is found in the texts cited in the next paragraph. The usurpation is already apparent in Neh 1036-40, especially vs. 39-40 where priestly control over the Levites' tithes is mandated and in Neh 1310-12. It may also be indicated by Mal 310.