

The Development of a Waiting Period Between Meat and Dairy: 9th – 14th Centuries

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Introduction

Unlike common practice in halakhic Judaism in modern times, waiting six hours between the consumption of meat and the consumption of dairy was not customary in early, post-Talmudic centuries. The Babylonian geonim merely rinsed their mouths after eating meat and transitioned to dairy right away. It was only in the eleventh century that halakhic authorities imposed a multi-hour waiting period after eating meat. A careful analysis reveals that these changes in rabbinic law parallel reverse developments in Karaite law, suggesting anti-sectarian intent formed the base for the amendments in halakha. No rinsing or waiting was required by the Talmud, geonim, or rishonim between the eating of poultry and dairy until Maimonides required it in his *Mishneh Torah*. At approximately the same time, Ashkenazi Jews began refraining from eating dairy after poultry in one meal. Possible local non-Jewish cultural influences, as well as anti-sectarianism, will be considered as potential motivations for these changes in the halakhic attitude towards poultry. This paper will argue that the waiting periods common today between meats and dairy are not of Talmudic origin, but rather evolved in the Middle Ages and continued to develop late into the 14th century. These assertions will include a response to Aviad Stollman's claim that waiting between meat and dairy was a common custom amongst the Babylonian Jews beginning in the sixth century.

Rabbanite-Karaite Interactions

Because the bulk of the arguments presented below hinge upon the relations between Rabbinic (or Rabbanite) Judaism and the Karaite sect, a short introduction to this topic is presented here.

In the early Middle Ages, Karaism and its vast literary output posed an intellectual and ideological threat to Rabbanite Judaism.¹ Salo Wittmayer Baron described the proselytizing efforts of the Karaites:

Missionary aims colored Karaite behavior... during the Karaite “golden age”... [Karaites] embarked on a large scale conversionist enterprise.

... [Karaites] not only used personal suasion on individuals with whom they came in contact, but often went out into streets and synagogues to present their case to the Jewish public at large. An outstanding apologist like Sahl ben Masliah (910–990) undertook a regular missionary journey from Jerusalem to Baghdad, the very center of Rabbanite orthodoxy.²

* I am grateful to Rabbi David Bar-Hayim of Machon Shilo, who demonstrated the basic notion of this paper that a waiting requirement after meat was most likely a very late interpretation of b*Hullin* 104b-105b (“Milk and Meat Series”, audio, July 15 2010 <<http://Mechon-shilo.org/en/eng/list-audio-shiurim/41-audiohalakha/395-meat-and-milk-series>>). The central thesis of this paper occurred to me as I reflected upon the rabbi’s insights while reading a Karaite history.

1 Leon Nemoy argued that the notion that Karaism presented a demographic threat to rabbinic Judaism in its early centuries is overstated (see Leon Nemoy “Early Karaism (The Need for a New Approach),” *JQR* 40, 3 (1950): pp. 307-315). However, it is not clear to what extent Nemoy considered the many novel rulings and admonitions that appear in the halakhic literature produced in this period (many of which are described or referenced within this article) which appear to have been initiated in order to shield Rabbanite Judaism from Karaism.

2 Baron, *A Social and Religious History of the Jews* 5 (New York, 1957), pp. 268-269.

Defectors from the Rabbanite community to Karaism were not uncommon.³ Understandably, confronting Karaism featured high on the agendas of the geonim and rishonim. During the tenth century, Saadya Gaon famously engaged in anti-Karaite polemics in his writings.⁴ R. Yehudah ben Barzillai (11th – 12th centuries, Spain), demanded that co-religionists eat warm foods on Shabbat, accusing those who did not of Karaite heresy.⁵ Other anti-Karaite motions from the Rabbanite community were more discreet. The intriguing statement of the ninth century compendium, *Halakhot Gedolot*, that Hanuka is biblically mandated (*d'oraita*) was elucidated by Baron by placing these words in the context of rabbinic conflict with sectarian groups.⁶ Bernard Revel demonstrated that the early ninth century authors of *Targum Yonatan* included many subtle anti-Karaisms in the translation in order to protect

- 3 Marina Rustow, “Karaites Real and Imagined: Three Cases of Jewish Heresy,” *Past and Present* 197 (2007): pp. 43-44; Kaufmann Kohler and Abraham Harkavy, “Karaites and Karaism,” *The Jewish Encyclopedia* VII (New York, 1904), p. 441.
- 4 Saadya went so far as to ‘reconstruct’ Talmudic events for political purposes. Saadya claimed that brawls and murders between the quarrelling schools of Shammai and Hillel never occurred. By stating this he sought to ignore an account, embarrassing to the Rabbanites, recorded in yShab 1 (Simḥah Pinsker, *Likute kadmoniyot: le-ḳorot dat benei miḳra ve-haliṭeraṭur shelahem, ‘al pi kitve yad ‘Ivriyim ye-‘Arviyim* (Hebrew; Wien, 1860), p. 14). To counter the Karaites, Saadya deceptively claimed that a fixed calendar was already in place in the time of the Mishna (Pinsker, *ibid.*, 13; Mordechai Akiva Friedman, “Minhag avoteichem bideichem: teshuva min ha-geniza al yom tov sheini shel galyot” [Hebrew] *Tarbiz* 83, 4 (2015): p. 583.
- 5 Yehudah ben Barzillai, *Sefer Ha-Itim*, ed. Yakov Shur (Krakow, 1903), p. 25. Yehudah ben Barzillai may have been the first author to express this practice as an obligation. For the Karaite view see Levi ben Yefet, *Sefer ha-Mitzvot le-Rabbi Levi ben Yefet Halevi – Targum*, MS Warner no. 22 in the Bibliothek der Rijksuniversiteit Leiden, Shabbat and Moadim, 3, 1, on the Historical Dictionary of the Hebrew Language – Academy of the Hebrew Language website.
- 6 Baron, *History* 5, pp. 246, 256, 284; *Halakhot Gedolot*, ed. Hildesheimer, (Berlin, 1887), p. 14.

their readership from sectarian influence.⁷ Even many *minhagim* extant today were arguably initiated as a response to the Karaite movement. For example, many historians agree that the recital of the 3rd chapter from *Mishnat Shabbat*, “*Bamme Madlikin*,” on Friday evenings following the prayer service was introduced during the time of the geonim with the intent of reinforcing the rabbinic stance on having fire prepared before Shabbat, in opposition to the Karaite view that no fire may be present in one’s home on Shabbat.⁸ Similar arguments have been made for the origins of the custom of reading *Pirkei Avot*, the introduction of which traces rabbinic teachings to Sinai, on Shabbat afternoons.⁹ Recent scholarship has demonstrated that the creation of Ta’anit Esther in geonic times was likely a reaction to Karaite practices.¹⁰

- 7 Bernard Revel, “Targum Yonatan al ha-Torah,” [Hebrew] *Ner Maaravi* 2 (1925): pp. 77-122.
- 8 Naphtali Wieder, *The Formation of Jewish Liturgy in the East and the West* 1 (Hebrew: Jerusalem, 1998), pp. 323-351; Yakov Shur’s *Itim LeBina* n. 27 in *Sefer Ha-Itim*, p.177. Friday night after prayers was the best time for this recital. Since Rabbanites returning from synagogue would take note of the dark houses of the Karaites, the rabbinic interpretation of the verse, “You shall kindle no fire throughout your settlements on the Sabbath day,” (Ex. 35:3 JPS) needed to be reinforced.
- 9 Wieder, *Jewish Liturgy*, p. 350; compare Alexander Guttman, “Tractate Abot: Its Place in Rabbinic Literature,” *JQR* 41 (1950), pp. 190-193, who argues that the rabbinic chain of tradition in *Avot* was a late stratum added under the influence of hadith scholarship. His arguments do not preclude the existence of anti-Karaite intentions behind Amram b. Sheshna and Saadya’s inclusion of this portion of *Avot* in their liturgies.
- 10 Compare Mitchell First, “The Origin Of Ta’anit Esther,” *AJS Review* 34, 2 (2010): pp. 334–341, with Levi ben Yefet, *Sefer ha-Mitzvot*, Shabbat and Moadim, 5, 1 on the Historical Dictionary of the Hebrew Language – Academy of the Hebrew Language website, Judah Hadassi, *Eshkol ha-Kofer* 150 (Gozlva, 1836), p. 56; further sources for the Karaite practice of fasting on the Sabbath can be found in Bernard Revel, “Inquiry into the Sources of Karaite Halakah,” *JQR* 3, 3 (1913), p. 356 and Baron, *History* 5, p. 245). M. First wrote to me (Dec. 17th, 2015) that he did not mention the Karaite sect explicitly in his article only because at the time of his writing he had not sufficiently familiarized himself with Karaite literature.

Similarly, as will be demonstrated, the Talmud's minimal requirement of rinsing one's mouth between meat and milk may have been expanded upon by leading rishonim as an anti-Karaite measure.

Waiting Six Hours – R. Hananel's Innovation

Until the eleventh century, waiting between meat and milk was not considered mandatory by halakhic authorities. One could choose, instead, to perform *kinuach ve'hadacha* – cleaning out one's mouth and rinsing one's hands, if one's hands were soiled by the meat.

Here are the lines from the Talmud (*Hullin* 105a-b) which are most relevant to this discussion:

אמצעיים רשות. אמר רב נחמן: לא שנו אלא בין תבשיל לתבשיל, אבל בין תבשיל לגבינה - חובה

'The middle washing is a matter of free choice.' R. Nahman said: They said this only [of the washing] between one course and another course, but between a [meat] course and cheese it is an obligation to do so.

The "middle washing" reflected ancient etiquette which called for cleaning one's soiled fingers between dishes at a multi-course meal. It is clear from this text that R. Nahman permitted the eating of dairy immediately after meat in a single meal, so long as one's hands and mouth were washed in between. However, the Talmud also cites authorities who appear to prohibit consuming dairy products immediately after eating meat:

אמר רב חסדא: אכל בשר - אסור לאכול גבינה

אמר מר עוקבא: אנא להא מלתא חלא בר חמרא לגבי אבא, דאילו אבא כי הוה אכיל בשרא האידנא לא הוה אכל גבינה עד למחר עד השתא, ואילו אנא בהא סעודתא הוא דלא אכילנא, לסעודתא אחריתא אכילנא

R. Hisda said: If a person ate flesh he is forbidden to eat cheese [after it].

Mar 'Ukba said: In this matter I am as vinegar to wine compared with my father. For if my father were to eat flesh now, he would not eat cheese until this very hour tomorrow, whereas I do not eat [cheese] in the same meal, but I do eat it in my next meal.¹¹

The simple reading of these lines is that R. Hisda ruled that one may not eat dairy right after a meat meal. Mar Ukba then addressed the issue of how long one needs to wait between meat and dairy meals, stating that whereas his father would wait a full twenty-four hours, he contented himself with waiting from one meal to the next. Clearly, Mar Ukba's father's practice was an act of great piety rather than a halakhic requirement. The status of Mar Ukba's own practice remains unclear. Was this also a personal stringency, albeit of a lesser degree than his father's, which was still significantly longer than the minimum waiting period required by R. Hisda's ruling? Or does Mar Ukba's practice represent the bare letter of R. Hisda's law? Given Mar Ukba's own reputation for extreme piety and righteousness,¹² it seems likely that this statement is best understood as another example of Mar Ukba's personal religiosity and not a reflection of the minimum requirements of the law.¹³

This entire passage would later be subject to a wide range of interpretations by medieval halakhic authorities. There are several sources that testify to rulings and practices regarding this issue in the geonic period.

11 The above translations are adapted from the *The Soncino Babylonian Talmud*, ed. Reuven Brauner bHul Book IV 105 (2010), pp. 51-53.

12 See bKet 67b and *Rashi* bSan 31b *s.v. ledizav*.

13 Note, however, that Aviad A. Stollman discusses the possibility that the Mar Ukva who appears here is not the same sage mentioned in other places in the Talmud (see Stollman, "The Sugyot of Separation Between Milk and Meat in the Eighth Chapter of Bavli Hullin: A Critical Edition and a Comprehensive Commentary," Master's thesis, Bar-Ilan University (2001), p. 100 n. 40).

The earliest of these is found in the mid-ninth century work *Halakhot Gedolot*, generally attributed to Shimon Kayyara.¹⁴

אמצעיים רשות. אמר רב נחמן: לא שנו אלא שבין תבשיל לתבשיל, אבל בין בשר לגבינה – חובה. והאי דשרו רבנן גבינה בתר בשר משמעתיה דרב נחמן ... אמר רב חסדא: אכל בשר - אסור לאכול גבינה, ודוקא בלא קינוח, אבל מקנה פומיה - שרי למיכל...

[The Talmud stated:] Rinsing one's hands in the middle of a meal is a matter of free choice. R. Nahman said: They said this only [of the washing] between one course and another course,¹⁵ but between a [meat] course and cheese it is an obligation to do so. [Kiyarra interjects:] That which our rabbis **permit the eating of cheese after meat** [is derived from the teaching of R. Nahman] ... [Talmud:] R. Hisda said: If a person ate flesh he is forbidden to eat cheese [after it]. [Kiyarra comments: Hisda intended this restriction to apply] only if one did not rinse. However, if one rinses his mouth he is permitted to eat [dairy]...¹⁶

A second testimony is recorded by Shlomo ben Aderet ("Rashba," 1235–1310) and Yitzhak ben Abba Mari ("Ittur," 1122 – c. 1193). After citing the position of *Halakhot Gedolot* they write:

וגאון זכרונו לברכה גם כן כתב אכל בשר מותר לסעודה אחרת למיכל גבינה. וה"מ בהסידי, אבל אנן מקנחינן ומחורינן ידן ופומן ואכלי'.

Similarly, the Gaon, of blessed memory, wrote, "if one ate flesh one is permitted cheese at the next meal." This, though, is only

14 *Halakhot Gedolot*, Berakhot 6 (Jerusalem, 1991), p. 76. Kiyarra's view is cited in *Tur* O.C. 173.

15 These courses are understood to be of the same variety, meat or dairy dishes, or alternatively, they are neutral, *pareve*.

16 Translation adapted from *Soncino*, 53.

the practice of the pious, we, however, [merely] rinse and cleanse our hands and mouths and [proceed to] eat.¹⁷

The “gaon” referred to by Rashba and the *Ittur* is apparently R. Hai Gaon (939-1038), who is frequently referred to simply as “the gaon” or “gaon” in 11th to 13th century halakhic literature.¹⁸ The “pious” figures

17 *Hiddushei ha-Rashba* Hullin 105a (Jerusalem, 1986), p. 597; Yitzhak of Marseille, *Sefer ha-Ittur*, ed. Meir Yonah, vol. 2 (Warsaw, 1873), p. 26.

18 At an early date, it became customary to refer to Hai Gaon as “the Gaon of blessed memory” (הַגָּאוֹן ז"ל) or “Gaon of blessed memory” (גָּאוֹן ז"ל) without any further identification: Rabbenu Hananel would refer to Hai as “the gaon” without mentioning him by name (Isaac Hirsch Weiss, *Dor Dor ve-Dorshav* 4, (Rom, 1904), p. 166; *Peirush Rabbenu Hananel* bBM 48a (Jerusalem, 2013), p. 144 n. 147). This phenomenon may be due to Hai’s reputation as the last and perhaps most illustrious and influential of the Babylonian geonim (see Albert Harkavy, “Haye, Rav,” *Otzar Yisroel*, ed. J. Eisenstein, vol. 4 (New York, 1910), pp. 92-98). *Yad Malachi*, a guide to reading Talmudic and halakhic literature, clarifies that it was Hai that Alfasi referenced whenever he cited the “gaon,” unnamed, in his *Halakhot* (Malachi ben Jacob ha-Kohen, *Yad Malachi* Guide to Alfasi 14 (Sittenfeld, 1853), p. 124). Scholars agree that when Nathan ben Yehiel (c. 1035 – 1106) quotes an unspecified gaon in his *Arukh* he refers to Hai Gaon (I. H. Weiss, “Rav Hai Gaon: shir mussar haskeil,” *Likkutei kodmonim: kovetz shirei meshorarim kodmonim* vol. 1 (Hebrew: Warsaw, 1893), p. 22; B. M. Lewin, *Ginzei Kedem* 2 (Haifa, 1922), p. 23). Similarly, a search using the Bar Ilan Online Responsa Project indicates that where Rashba’s mentor, Nahmanides, mentions an anonymous gaon (גָּאוֹן) in his Talmud commentary, external sources can often verify that the stated opinion is that of Hai (*Hiddushei ha-Ramban: Gittin, hilchot nedarim, hilchot bechorot*, ed. Eliyahu Raphael Hishrik, bGit 85b (Hebrew: Jerusalem, 1972), p. 436 n. 150; *Hiddushei ha-Ramban: Hullin*, ed. Avigdor Areali, 108b (Hebrew: Jerusalem, 2010), p. 594 n. 157. (I could not find an anonymous gaon reference in Nahmanides whose identity is externally established as a different gaon.) In Rashba’s own writings, external sources often support the identity of “the gaon,” or “gaon,” as Hai. Such instances include: *Hiddushei ha-Rashba* BB, ed. Mordechai L. Katzenellenbogen 61b (Hebrew: Jerusalem, 2008), 996; *ibid.* 5a, p. 77 n. 15; *Hiddushei ha-Rashba* Berakhot, ed. Yair Broner 21a (Hebrew: Jerusalem, 2007), p. 133 n. 126; *ibid.* 23a, p. 145 n. 192; *Shu”t ha-Rashba*, ed. Aaron Zaleznik 1:91 (Jerusalem, 1996), p. 51; *ibid.* 1:158, p. 80 n. 1; compare *ibid.*, 1:775, p. 365, with *Otzar ha-Geonim* Ketubbot, ed. M. Lewin vol. 8

mentioned are Mar Ukba and his father.¹⁹ Thus, both *Halakhot Gedolot* and R. Hai ruled that there is no absolute requirement to wait between meat and dairy. They understand R. Hisda's ruling as relating only to cases in which one fails to wash one's hands and rinse out one's mouth. However, if one follows this procedure, any need for waiting is obviated. R. Hai additionally testifies that it was indeed common practice in his day to wash and rinse after eating meat and then consume dairy products without waiting at all.²⁰

(Hebrew: Jerusalem, 1939), pp. 229-230. However, there are places where Rashba uses the unnamed "gaon" to reference *Halakhot Gedolot* (for example see *Shut ha-Rashba ha-meyuhsot la-Ramban* 165 (Hebrew: Jerusalem, 2001), p.145 n. 9). *Halakhot Gedolot* cannot be the intended reference in our discussion because Kiyarra is previously cited by Rashba as an independent source.

When attempting to establish the identity of the anonymous gaon cited in Rashba, a significant consideration is that the overwhelming majority of geonic citations in Rashba's own writings (Talmudic commentaries, *Torat ha-Bayit*, and responsa), as well as those of his mentors, Ramban (Talmudic commentaries and *Milhamot Hashem*) and Rabbenu Yonah (*Aliyot Bava Batra* and *Talmidei Rabbenu Yonah* Brachot), and his contemporaries, students, and landsmen –Ritva, Ra'ah, Ran (Talmudic commentaries), and Vidal of Tolosa (*Maggid Mishneh*) – are from Hai Gaon's rulings (these searches are made feasible by the Bar Ilan Online Responsa Project). The same can be said for the vast majority of geonic citations found in works produced in medieval Provence, including Abraham ben Isaac of Narbonne's *Sefer Eshkol* (Albeck edition), Zerahya Halevi's *ha-Ma'or*, and Raavad's writings (*Katub Shem* on the Talmud and *Hasagot al-Rambam*) – in all of these, Hai is the most cited of the geonim. *Sefer Ittur* itself contains many quotes from the anonymous "gaon."

Though it is highly likely that Rashba and Yitzhak ben Abba Mari were referring to Hai in our discussion, the possibility that "gaon" is a generic term and is used here to refer to an unknown geonic source cannot be ruled out.

- 19 This is apparently how Rashba understood the gaon's words (see *Hiddushei ha-Rashba* bHul 105a (Jerusalem, 1986), p. 598).
- 20 Further indication of the lack of a long waiting custom amongst Rabbanites, even in the 10th century, is perhaps supplied by the lack of mention of such a practice in early Karaite literature. For example, the prominent Karaite scholar Levi ben Yefet (10th century) describes how far some Rabbanites stretched the biblical injunction

As the centers of Torah scholarship began to shift westward, moving from the geonic academies of Babylonia to North Africa and Spain, a new understanding of the passage in *Hullin* emerged. R. Hananel of Kairouan was a younger contemporary of Hai Gaon, who often cites Hai's teachings. Hananel's radical new reading of the passage in *Hullin* is preserved in the writings of two late thirteenth - early fourteenth century figures, Rashba and Asher ben Yehiel (the "Rosh," 1250 -1327). Here is what they report:²¹

וזה לשון רבינו חננאל ז"ל, ולא מצינו מי שהתיר לאכול גבינה אחר בשר בפחות מעת לעת אלא מר עוקבא, דאכל בשר בסעוד' אח' בסעוד' אחרת גבינ', ואמ' על עצמו דבהא מלתא חלא בר חמרא אנא. ואי אפשר להתיר בפחו' מזה... ע"כ

R. Hananel, of blessed memory, taught: We do not find [in the Talmud] any [rabbi] who allowed the eating of dairy after meat with less than a twenty-four hour wait, other than Mar Ukva, who ate meat in one meal and then cheese in the following meal; however, he said of himself [regarding his conduct]: "In this matter I am as vinegar to wine compared with my father," [and therefore] it is impossible to allow [eating dairy after meat] within [a shorter period of time] than this.

against cooking a kid in its mother's milk – their extreme view included the mixed cooking of any meat and dairy, as well as alternate food preparation forms, such as salting and pickling. He then mentions the most extreme (Rabbanite) practice he was aware of: ודבר מי נתרחה בזה עד שמנע בבלתי הקריב על שלחן אחד בשר וגבינה וכל אשר – "some extend their interpretation of the injunction so far as to refrain from placing meat and cheese or any dairy product upon one table – this practice is also very remote [from the Divine intention]" (*Sefer ha-Mitzvot*, Ma'achalot, 8, 1). If Rabbanites commonly waited six hours after meat, Levi ben Yefet would surely have recorded that custom.

21 *Hiddushei ha-Rashba* bHul 105a), p. 596; *Tosfot ha-Rosh al ha-shas* bHul 105a (Hebrew: Jerusalem, 2008), p. 536.

R. Hananel explained R. Hisda's ruling as positing an unqualified requirement to wait between milk and meat and not as simply addressing a case in which one has failed to wash and rinse, as understood by the geonic era authorities. Hananel further interpreted Mar Ukba's practice of waiting until the next scheduled meal as reflecting the *minimal* possible waiting period, while his father's practice of waiting twenty-four hours was in fact reflective of the normative requirement. As we have noted, this reading does not appear to conform to the simple reading of the Talmudic passage. Mar Ukba's father's behavior is clearly portrayed as being beyond the letter of the law, and Mar Ukba's own practice, if not itself a significant personal stringency, at the very least represents normative practice and not a lenient ruling. Indeed, Mar Ukba and his father are the only sages we ever hear of who waited for an extended period. If Jews commonly waited twenty-four hours before dairy after eating meat in the Talmudic period we would expect to find some reference to this somewhere in the vast body of Tannaitic and Amoraic literature.²² We would also expect the geonim to be aware of this practice.

Nevertheless, in R. Hananel's wake, many of his successors in the Sephardic rabbinic world, including no lesser figures than R. Yitzhak Alfasi (Fez, Kairouan, and Lucena, Spain, 1013 – 1103) and Maimonides (1138 -1204), similarly ruled that a substantial break between meat and

22 Aaron ha-Levi (Barcelona, 1235-1290) raised exactly this claim in his *Bedek ha-Bayit* (see *Torat HaBayit ha'arokh ve'hakatzer* vol 1, Bayit 3: Sha'ar 4 (Jerusalem, 2010), pp. 1050-1051):

והא מילתא תמיהא טובא: הכשר של שהייה ודין זה של שהייה - היאך לא נשנה במשנה ולא בברייתא ולא נאמרה במימרא, אלא אגב גררא הביאזה ודרך סיפור?

“This matter of requiring waiting [after eating meat] is very strange: How could such a rule have been omitted from the Mishna and Baraita; in the discussion of the Talmud it is merely mentioned inadvertently and as part of a recollection [of Mar Ukva].”

dairy was mandatory, requiring a pause of (approximately) six hours between the two.²³

R. Nahman's statement (bHul 105b) posed a challenge for the new ruling instituted by Hananel:

אמצעיִים רשות, אמר רב נחמן: לא שנו אלא בין תבשיל לתבשיל, אבל בין תבשיל לגבינה - חובה

Rinsing one's hands in the middle of a meal is a matter of free choice. R. Nahman said: They said this only [of the washing] between one course and another course, but between a [meat] course and cheese it is an obligation to do so.

Implicit in this statement is the understanding that cheese may be eaten immediately after meat with mere rinsing. Though no explanation of these lines by Hananel is extant, the comments of his student, Alfasi, are preserved.²⁴ Unlike his geonic predecessors, who based their lenient practice upon the very sequence of food items featured in Nahman's statement,²⁵ Alfasi dismissed the source's significance by claiming that the order of the items in this succinct legal statement was unintentional.²⁶

What triggered this halakhic transformation on the part of the Maghrebi and Spanish scholars, leading them to reject the rulings and practices of the geonim?²⁷ Did they simply understand the Talmudic

23 Alfasi, *Halakhot* bHul 37b; *Mishneh Torah* Maacholot Assurot 9:27; see also *Hiddushei ha-Ritva al ha-shas* bHul 104b-105a (Hebrew: Jerusalem, 2008), pp. 203 n. 47, 205. Menahem Meiri reports that this was the custom in Spain (*Magen Avot*, ed. Isaac Lest (Hebrew: London, 1909), p. 11).

24 Hananel's teachings heavily influenced Alfasi. It is not clear, however, whether this influence was exerted through personal mentorship or through Hananel's writings (see Shalem Yahalom, "The Rif's Hand in Creating Various Editions of the Halakhot: Goals and Processes," [Hebrew] *Tarbiz* 77, 2 (2008): p. 241).

25 See the excerpt from *Halakhot Gedolot* cited above.

26 *Halakhot* bHul 37b.

27 The halakhic traditions of the Maghreb, and Kairouan in particular, were generally inherited from the Babylonian center. North African scholars sent their difficult

passages differently? Or did something perhaps change in the historical circumstances of these rishonim which led them to impose more stringent practices regarding the prohibition of eating milk and meat together? I would like to suggest that it is not coincidental that Hananel and Alfasi's ruling was issued at about the same time that Karaites began to eat milk and meat together. It was this relatively sudden appearance of the widespread violation of this prohibition, which rabbinic tradition considers a severe infraction of biblical origins, that led R. Hananel and his successors to impose even more severe restrictions regarding the separation of milk and meat. There is substantial evidence that indicates that Hananel,²⁸ Alfasi,²⁹ and other 11th century Kairouanese Rabbanite

halakhic questions to the geonim in Iraq for resolution. See the full discussion and sources at the end of this paper.

- 28 Hananel's Torah commentary contains much anti-Karaite material. Hananel explains at length why the Karaite literalist reading of the *lex talionis* in Exod. 21:24 is incorrect (*Perushei Rabbenu Hananel al ha-Torah*, ed. Charles B. Chavel (Hebrew: Jerusalem, 1972), pp. 30-31). Hananel's commentary on Gen. 18:19 emphasizes the value of the Oral Law (ibid. p. 9). Commenting on Exod. 12:2, Hananel explains that during their forty years in the wilderness the Israelites could not see the sun or moon due to the "*ananei ha-kavod*" ("clouds of glory"). Therefore, Hananel argues, the Israelites certainly must have relied upon astronomic computations to set their calendar – clearly a polemical claim (p. 23, and see Chavel's note there). However, Aaron Greenbaum has observed that at least some parts of the Torah commentary attributed to Hananel were in fact authored by Shmuel ben Hofni Gaon (Greenbaum, *Peirush ha-Torah le-rav Shmuel ben Hofni Gaon* (Hebrew: Jerusalem, 1979), pp. 48-51. The admonition cited in Hananel's commentary on *Ta'anit* 30a is likely a reaction to the influence of Karaites, who did not observe the fast of the 9th of Av (for the Karaite practice, see Baron, *History* 5, pp. 214, 246). Hananel addressed the contemporary philosophical problem posed by anthropomorphic *aggadot*, which Karaites pointed to in order to prove the illegitimacy of the Talmud. He wrote, "all Talmudic scholars who are fluent with the words of the sages of the Talmud explain these [anthropomorphisms] as parables" (Hananel's commentary printed on the side of the standard Talmud bBer. 59a). Similarly, Hananel lets loose an anti-Karaite barb in his explanation of apparent anthropomorphisms in bBer. 6a:

ולמביני מדע יראי שמים בפחות מזה (היה) די להם להבין ולידע שאין בכל התלמוד דבר מודיע שיש בישראל נותן דמות לבוראנו ישתבח שמו ויתעלה זכרו. אמנם חלוקי לב רשעי ארץ, המינים, מחפאים דברים אשר לא כן כדי לגנות עצמם, מי שפרע מאנשי דור המבול יפרע מהם

Wise and God-fearing men understand with an even briefer explanation [than I have offered above] that in the entire Talmud there is no indication that God has a physical form. However, the wicked heretics search in the Talmud for references to the corporeality of God in order to make mockery, [let them be punished]

- 29 Alfasi is often regarded as a rigid halakhist, focused exclusively on the interpretation of the legal parts of the Talmud. However, flexibility in the Rif's halakhic thinking can be observed in the revisions he made to his *Halakhot* after emigrating from North Africa to Spain, adjusting several of his rulings to align with trends in contemporary rabbinic Andalusian teachings (Yahalom, "The Rif's Hand in Creating Various Editions," *Tarbiz* 77:2 (2008): pp. 246-255). Yahalom argues that it was a priority for Rif that his *Halakhot* be relevant for his readership, and that he therefore adjusted them accordingly (pp. 245, 267). Avraham Grossman argues that Alfasi loosened the Talmud's "*katlanit*" remarriage restriction out of a consideration of the needs of women in his community (Grossman, *Pious and Rebellious: Jewish women in Europe in the Middle Ages* (Hebrew: Jerusalem, 2001), pp. 482).

Fez, where Alfasi spent much of his rabbinic career, was an important center of both Karaite and Rabbanite learning (Baron, *History* 5, p. 34). It should surprise us that reactions to contemporary affronts directed at Rabbanite halakha by Karaite practice may be detected in *Halakhot* as well. For the benefit of his Rabbanite readers, Rif included an expanded explanation of a brief statement of the Talmud permitting the *alya*, sheep tail (compare bHul. 117a with Alfasi, *Halakhot* Hullin 31a; see note 48). Arguably, Alfasi even displaced Talmudic laws with this anti-Karaite purpose in mind. Defying the rules set out by the Talmud (bRosh. 29b), Alfasi instructed that the shofar be blown on Shabbat Rosh Ha-Shanah in his court in Fez, Morocco (*Hiddushei ha-Ritva al ha-Shas* bRosh, 29b (Hebrew: Jerusalem, 2008), p. 287; see Zerahya HaLevi: "this is one of the most bizarre statements found in *Halakhot*" in *Baal hama'or le-rabbenu zerahya im hasagot ha-ravaad rosh ha-shana* 30a (Hebrew: Jerusalem, 2003), p. 67). The purpose of this decree was to oppose the Karaite biblical interpretation and practice, which viewed "*yom truah*" (Num. 29:1) as merely designating a "day of raising of the voice in song," and not the Rabbanite *teki'ot* or horn blasts (for Karaite views, see Levi ben Yefet,

Sefer ha-Mitzvot, Shabbat and Moadim, 16, 1; *Eshkol ha-Kofer* 225 (Hebrew: Goziva, 1836), p. 86a; Leon Nemoy, *Karaite Anthology* (New Haven, 1980), p. 173). We know from other sources that the *tek'iot* of Rosh Ha-Shanah were a significant point of contention in the North African Karaite-Rabbanite community (see Menahem Ben-Sasson, "The Jewish Community of Medieval North Africa – Society and Leadership: 800 – 1057," [Hebrew] PhD Thesis (Hebrew University, 1983), p. 34).

Another example of this phenomenon is Alfasi's role in solidifying the obligatory nature of *aravit*, the evening prayer. Anan rejected the evening prayer (Jacob Mann, "Anan's Liturgy and his half-yearly cycle of the reading of the law," *Karaite Studies* ed. Philip Birnbaum (New York, 1971), p. 285). In the tenth and eleventh centuries, Karaites came to follow a bi-daily prayer system (Levi ben Yefet, *Sefer ha-Mitzvot*, Shabbat and Moadim, 18, 2; Daniel Frank, "Karaite Prayer and Liturgy," *Karaite Judaism: A Guide to its History and Literary Sources*, ed. Meira Polliack (Leiden: Brill, 2003), p. 570; Baron, *History* 5, p. 248). Against the Talmud's (bBer. 27b) conclusion that *aravit* is voluntary, Saadya, Sherira, and then Alfasi, likely in order to segregate the two communities, taught that the third daily prayer was highly encouraged or even obligatory in their time (Alfasi, *Halakhot Berakhot* 19a; *Siddur Rav Saadiyah Gaon* (Hebrew: Jerusalem, 1963), p. 31; responsum of Sherira in *Otzar ha-Geonim: Berakhot*, ed. B. M. Lewin (Hebrew: Haifa, 1928), p. 70). The Talmud (bRosh 18b) maintained that fasting on the Seventeenth of Tammuz, the Tenth of Tevet, and the Fast of Gedalia is often elective ("if there is no persecution but yet not peace, then those who desire may fast and those who desire need not fast"). This halakhic leeway was upheld during the geonic era, but Alfasi refrained from mentioning it in his *Halakhot* (see B. M. Lewin, *Ginzei Kedem* 3 (Haifa, 1922), p. 43; *Peirush Rabbenu Hananel* bRosh 18b; compare Alfasi, *Halakhot* bRosh 4b-5b). This omission may have been intended to encourage fasting in order to differentiate Rabbanites from Karaites, who did not acknowledge these rabbinic holidays (for the Karaite practice see Levi ben Yefet, *Sefer ha-Mitzvot*, Shabbat and Moadim, 17, 8; Yoram Erder, "The Fasts in the Early Karaite Halakha," eds. Dov Gera and Miriam Ben-Zeev, *The Path of Peace: Studies in honor of Israel Friedman Ben-Shalom* (Beersheva, 2005), pp. 507-537; note the admonition cited in the Hananel's commentary on bTa'an. 30a).

Alfasi, along with other early Rabbanite halakhists, stated that the restriction on advancing more than twelve *mil*, or 2,000 cubits, beyond one's abode on the Sabbath was biblically mandated by the verse "אל יצא איש מקומו ביום השביעי" – "Let everyone remain where he is: let no one leave his place on the seventh day"

scholars were particularly concerned about the threat posed by Karaism to the rabbinic traditions of North African Jewry and diligently responded to it.³⁰ Consideration of the possible influence of Karaism may

(Ex. 16:29, JPS). This statement was very likely intended to counter the literal Karaite explanation and confining practice, which required remaining within one's home on the Sabbath (see Alfasi, *Halakhot* bEiruv 5a; Bernard Revel, "Targum Yonatan," *Ner Maaravi* 2 (1925), pp. 87-89 – Revel references many Karaite sources as well; Maimonides, *Sefer haMitzvot*, negative commandment 321; *Mishneh Torah* Hil. Shab 27:1; *Halakhot Gedolot* and another gaon (Hai) cited in Yehudah ben Barzilah, *Sefer Ha-Itim*, ed. Yakov Shur (Hebrew: Krakow, 1903), pp. 45-46, see the geonic sources in Yakov Shur's *Itim LeBina*, note 24). Moshe Coucy follows Maimonides's position and then cites Meshullam ben Kalonymus's repudiation of the Karaite understanding of this verse (*Sefer Mitzvot Gadol* vol. 1, negative commandment 66 (Hebrew: Brooklyn, 1959), pp. 114-115). I am grateful to Jay Shapiro for sharing with me his insight that Maimonides and others may have been guided by anti-Karaite motivation in their expression of the biblical nature of the *tehumim* laws. In the 13th century, halakhists were less concerned with responding to Karaism and were perhaps more purely focused on accurate interpretation of the Talmud (see *Hasagot haRamban* and Vidal's *Maggid Mishneh* to Maimonides's *Sefer haMitzvot*; *Hiddushei ha-Rashba al ha-shas* bEiruv 17b, ed. Yakov Ilan (Hebrew: Jerusalem, 2008), p. 127 n. 526; *Hiddushei ha-Ritva al ha-shas* bEiruv 17b, ed. Moshe Goldstein (Hebrew: Jerusalem, 2008), p. 147, esp. n. 364; Zerahya ha-Levi, *ha-Ma'or haKatan* Eiruv 5a).

One wonders if Alfasi's choice to omit the laws of impurity and leprosy from *Halakhot* was in part a reaction to the Karaite practical obsession with these laws (for Karaite practice see Baron, *History* 5, pp. 249-251).

- 30 Rabbenu Nissim ben Yakov of Kairouan (990–1062), a colleague of Hananel, frequently addressed Karaite issues. Contentions between the two Kairouanese communities included the Rabbanite practice of observing "*shnei yomim tovim shel galiot*," a second day of Yom Tov, in the diaspora, as well as the correct interpretation of "*mi-maharat ha-shabbat*," which determined the calendar date for the Shavuot holiday (*Otzar ha-Geonim*, vol. IV Yom Tov, Hagiga, Mashkin, ed. B. M. Levin, (Hebrew: Jerusalem, 1931), p. 3; Mordechai Akiva Friedman, "Minhag avoteichem bideichem: teshuva min ha-geniza al yom tov sheini shel galyot" [Hebrew], *Tarbiz* 83, 4 (2015): pp. 557-603; *R. Nissim Gaon: Libelli Quinque*, ed. Shraga Abramson, (Jerusalem, 1964), pp. 32-33; J. Hadassi, *Eshkol*, 224, p. 86a). Nissim wrote of how anthropomorphic *aggadot* in the Talmud were a sore point

have stimulated the halakhic revolution of the ‘meat and dairy’ laws as well.

The Consumption of Meat, With and Without Milk, in Karaite Halakha

From the inception of Karaism, Karaite scholars rejected the rabbinic claim that cooking milk and meat together, as well as eating or even benefiting from such a mixture, were biblical prohibitions. Karaites generally interpreted the biblical command, “לא תבשל גדי בהלב אמו,” “You shall not boil a kid in its mother’s milk,” (Ex. 23:19 and Deut. 14:21,

for the Rabbanite students when dealing with their Karaite coreligionists: “אמר לו הקב"ה ל משה משה החייתני בדבריך. זה הדבר קשה היה בפני התלמידים והיו מלעיזים בו עלינו ז"ל – “God told Moses ‘Your words have given me life.’ This [Talmudic] passage perturbed the students greatly; those who reject the words of our Sages [i.e. Karaites] would mock us [over it]” (see Nissim’s commentary, printed on the side of the standard bBer. 32a; see also in *Sefer ha-Mafteah*, ed. Jacob Goldenthal (Hebrew: Wien, 1847), p. 19b). Nissim also composed a no longer extant “Hilkhot Lulav.” Harkavy believed that this work contained a defense against the Karaites who did not identify the Rabbanite *lulav* and *esrog* in the biblical verses (Albert Harkavy, “Hadashim gam yeshanim,” *Festschrift zum achtzigsten geburtstage Moritz Steinschneider's* (Hebrew: Leipzig, 1896), Part II, p. 24 n. 1; compare *Eshkol ha-Kofer* 225, p. 88). Further indication that Karaism was a significant concern of Kairouan Rabbanites may come from the *Epistle of Sherira Gaon*. Many assume that this letter of Sherira Gaon provided the Kairouan Rabbanites with a response to Karaite challenges to the authority and antiquity of the written rabbinic traditions (for anti-Karaite elements in the *Epistle*, see Menachem Kellner, *Maimonides on the "Decline of the Generations" and the Nature of Rabbinic Authority* (New York, 1996), p. 20; Tayla Fishman, “Claims about the Mishna in the *Epistle* of Sherira Gaon,” *Beyond Religious Borders: Interaction and Intellectual Exchange in the Medieval Islamic World*, ed. D. Freidenreich and M. Goldstein (Philadelphia, 2011), pp. 70-74). However, Menahem Ben-Sasson has argued that the 10th century Kairouanese scholars were not hoping for a response to Karaism in the *Epistle* – and that there was an insignificant Karaite presence in the Maghreb until the 11th century (Ben-Sasson, “Jewish Community,” pp. 27-36, 185). See Ben-Sasson, *ibid.*, *Ha'arot*, p. 20 n. 119, for further possible Karaite-provoked halakhic discussions in 11th century Kairouan.

JPS) literally, restricting the prohibition only to the milk of the specific slaughtered animal's mother.³¹

Thus, from the outset, Karaites would have had no compunctions about cooking or eating milk and meat together. This, of course, would have represented a major break with Rabbanite practices, and would have greatly increased the gap between Rabbanites and Karaites. However, in practice, Karaites did not in fact engage in this practice in the early centuries of Karaism. This was due to the fact that they refrained from eating meat altogether. Anan Ben David (c. 715 - c. 795), who later Karaites would view as the founder of their movement,³² maintained that it is forbidden to eat meat until the Temple is rebuilt.³³ Benjamin Nahawendi (early 9th century),³⁴ Daniel al-Kumisi (late 9th to early 10th centuries), Sahl ben Matzliah Abu al-Sari (910–990), and Yefet ben Ali (10th century),³⁵ all early prominent Karaite scholars and philosophers,

- 31 See al-Qirqisani, *Kitab al-Anwar*, XII, 25:4 ed. Nemoy, vol. 5 (New York, 1939-1943), pp. 1226-1227, “‘in its mother’s milk’ refers only to the milk of its mother,” and Levi ben Yefet, *Sefer ha-Mitzvot*, Ma’achalot, 8, 1; *Eshkol ha-Kofer* 240 (Hebrew: Goziva, 1836), p. 91b. The latter two sources explain that calves are included in the prohibition because the verse does not limit itself to “*gedi izzim*” – the broader term used, “*gedi*,” includes offspring of non-goat species as well. For Saadya’s “definitely polemical” counter-Karaite explanation of the early rabbinic expansion of ‘meat and dairy’ laws, see Alan Cooper, “Once Again Seething a Kid in Its Mother’s Milk,” *Jewish Studies, an Internet Journal* 10 (2012): p. 118 n. 21.
- 32 See Moshe Gil, “The Origins of the Karaites,” *Karaite Judaism: A Guide to Its History and Literary Sources*, ed. Meira Polliack (Leiden, 2003), pp. 71–118.
- 33 Baron, *History* 5,p. 214. Baron has already noted that Anan’s liberality in permitting the simultaneous consumption of milk and meat was “meaningless in practice because of his nearly total outlawry of meat until the rebuilding of Jerusalem” (p. 218).
- 34 For Nahawendi’s view see Yoram Erder, “Remnants of Qumranic Lore in Two Laws of the Karaite Benjamin al-Nihāwandī Concerning Desired Meat,” *Zion* 63:1 (Hebrew:1998), pp. 8-9,19-22; Y. Erder, “The Centrality of Eretz Israel in Early Karaite Circles as Reflected in the Halakha of Mishawayah al-'Ukbari,” *Zion* 60 (Hebrew:1995), p. 59.
- 35 See Erder, “Centrality of Eretz Israel,” 7-14. Karaites did not extend this prohibition to poultry and game meat (*haya*) (ibid., p. 8); Y. Erder, “The

similarly forbade their followers to eat meat until the restoration of the sacrifices. Some scholars of the Tustari family, a family of wealthy influential Karaites with independent philosophic and halakhic views, also forbade eating meat.³⁶ For the Mourners of Zion (*A'veley Tziyon*), an important Karaite congregation in Jerusalem (10th and 11th centuries), abstinence from meat and wine was a central mourning practice.³⁷

Daniel al-Kumisi (Northern Iran, d. Jerusalem) wrote:

כל האוכל בשר בגלות הוא טמא, ככ' כל אוכליו יטמאו, כי לא היה בשר מותר בלא מזבח מימי אדם עד הקריב נוח, ואחרי כן כת' כל רמש אשר הוא חי לכם יהיה לאכלה, על כן אסור בגלות לאכול בשר.

Whoever eats meat while in exile is tainted, as is written 'all who eat it will be defiled' (Hosea 9:4), for non-sacrificial meat was prohibited from the time of Adam until Noah brought his sacrifice; thereafter, [the Torah] reads 'every moving living creature is food for you (Genesis 9:3).' Therefore, it is forbidden while in Exile to eat meat.³⁸

Observation of the Commandments in the Diaspora on the Eve of the Redemption in the Doctrine of the Karaite Mourners of Zion," *Henoch* 19 (1997): p. 187.

36 Moshe Gil, *The Tustaris: Family and Sect* (Hebrew: Tel-Aviv, 1981), p. 62.

37 Y. Erder, "The Observation of the Commandments in the Diaspora," *Henoch* 19 (1997), pp. 187-199.

38 Daniel al-Kumisi, *Pitron shenem 'ašar: perush li-tere 'ašar*, ed. Isaac Marḳon (Hebrew: Jerusalem, 1957), p. 15. It seems that Daniel's view was popular amongst Karaites, as it is repeated later by others, including Hadassi (*Eshkol ha-Kofer* 233, pp. 14b, 89a). Saadya Gaon was likely aware of Daniel's argument, and seems to have attempted a response to it. Rejecting the view of Rav (bSan. 59b) that meat was forbidden until the era of Noah, Saadya opined that mankind was only commanded to refrain from the slaughter of animals until the latter had reproduced and multiplied sufficiently so that hunting would not bring about the extinction of a species (*Saadya's Commentary on Genesis*, ed. and trans. Moses Zucker, (Hebrew-Arabic: Jerusalem, 1984), pp. 260, 304). Zucker suggests that Saadya took this approach for polemical purposes. By removing the date of permission to eat meat from Noah's sacrificial ceremony, the source of the Karaite

Likewise, Sahl ben Matzliah Abu al-Sari (Jerusalem, 910–990), expressing dismay at the ‘sins’ of the Rabbanites, wrote: "ועקרו של דבר" "בשר בקר וצאן אסור בגלות" - it is forbidden to eat the meat of cattle and sheep in exile."³⁹

To be sure, as in other matters, Karaite views on this issue were not uniform. Yacob Qirqisani, a leading Karaite scholar of the first half of the tenth century, limited this meat restriction to Jerusalem, but allowed consumption of meat and wine outside Jerusalem.⁴⁰ Nevertheless, refraining from meat was the mainstream practice among Karaites in the early centuries of the movement.⁴¹

However, over the course of the tenth century the abstinent trend amongst Karaites was gradually loosened and it became acceptable to allow meat consumption at least outside of Jerusalem.⁴²

law requiring abstinence from non-sacrificial meat was eliminated (Moses Zucker, *Rav Saadya Gaon's Translation of the Torah: Exegesis, Halakha, and Polemics* (Hebrew: New York, 1959), p. 446).

39 *Sefer Tochahat Megulah* in Pinsker, *Likute kadmoniyot*, p. 32. The intention of this phrase is probably to restrict meat consumption during a time in which there is no Temple, and is not to be understood as signifying a geographical distinction (Moshe Gil, *A History of Palestine, 634-1099* (Cambridge, 1997), p. 800).

40 *Kitab al-Anwar*, XII. 33. Also Leon Nemoy, "Al-Qirqisānī's Account of the Jewish Sects and Christianity," *Hebrew Union College Annual* 7 (1930), p. 394.

41 See Israel Friedlaender, "Jewish-Arabic Studies. I. Shiitic Elements in Jewish Sectarianism," *JQR* 3, 2 (1912), p. 294:

In the time of Kirkisani, as we learn from his own words, the bulk of Karaites refrained from eating meat, and the wide currency of this restriction may perhaps be best inferred from the exceptions quoted by the same author who circumstantially relates that one of the Karaitic sectarians had composed several pamphlets to prove that meat was permissible ...

42 Israel Friedlaender argued that early Jewish sectarians, including followers of Abu 'Isa al-Isfahani and Yudghan of Hamadan (both of 8th century Persia), were influenced by Manichaeism in forbidding the consumption of the flesh of "any creature endowed with a living spirit" due to of the cruelty involved in the destruction of life (Friedlaender "Shiitic Elements," pp. 296-297; for the prohibition of meat consumption by Isfahani and Yudghan see Nemoy, "Al-

A letter penned in the year 1024 by Shlomo ben Yehuda Gaon (Jerusalem, 11th century) tells how, after friction between the Karaite and Rabbanite communities was reported to the Fatimid Caliph Az-Zahir, Shlomo received an order to allow the 'Karaites to have their own meat market without Rabbanite oversight': "וכי יבדלו להם הקראין חנות אחר בשוק ... והיהודים לשחוט ולמכור [בשר] בלא בדיקה באין איש רואה...".⁴³ A Karaite marriage contract written in 1028, Jerusalem, and signed by prestigious Karaite scholars, includes a clause, "[they agreed that they] will not eat the meat of cattle and sheep in Jerusalem until the altar of the Lord is rebuilt," "ובלי לאכול בשר בקר וצאן בירושלם עד יתכן מזבח יי".⁴⁴ Implicit in this phrasing is the understanding that such meat could be eaten outside the boundaries of Jerusalem. No doubt the lax attitude in Palestine, the

Qirqisānī's Account of the Jewish Sects," *HUCA* 7 (1930), pp. 382-383). Karaite Tustaris who forbade eating meat and drinking wine did so for the same philosophical reasons as the sect of Abu 'Isa (see Gil, *The Tustaris*, p. 62). If these elements shaped the development of mainstream Karaite law, we may understand why, in the 10th and 11th centuries, as Manichaeism in Persia dwindled due to persecution by Muslims, and Karaites simultaneously emigrated westward, these external cultural influences disappeared and laxity followed. (For a discussion and sources on whether early Jewish sectarians influenced Karaism, see Steven M. Wasserstrom, *Between Muslim and Jew: The Problem of Symbiosis Under Early Islam* (Princeton, 1995), p. 86 n. 179).

- 43 For the original text of the letter see Jacob Mann, *The Jews in Egypt and in Palestine under the Fatimid Caliphs* (Ktav Publishing, 1970), Part II, p. 154 (Appendix B). Also see *ibid.*, I, p. 137; J. Mann, *Texts and Studies in Jewish History and Literature*, vol. 2 (Cincinnati, 1972), p. 63. Karaite law did not recognize the various *treifot* and slaughter requirements of the Talmud, and therefore Karaite meat would not be suitable for consumption by strictly observant Rabbanites without rabbinic supervision (see Hadassi, *Eshkol*, p. 89a).
- 44 Judith Olszowy-Schlanger, *Karaite Marriage Documents from the Cairo Geniza* (Leiden, 1998), pp. 388-392; Cambridge University Library Add. 3430. These Karaites opined that meat could be eaten at a distance of two thousand cubits from Jerusalem (see Y. Erder, "The Observation of the Commandments in the Diaspora," *Henoch* 19 (1997), pp. 195-196).

central Karaite intellectual center of the tenth and eleventh centuries, influenced Karaite communities across North Africa and Spain.⁴⁵

Karaite ketubot from 11th century Fustat contain clauses to protect the traditional customs of Karaite women who married into the Rabbanite community. These clauses include the commitment to respect the woman's requirement to abstain from eating the sheep's tail and kidney (both considered by Karaites to be *heilev* – biblically forbidden fats), and the meat of a pregnant animal⁴⁶:

הדה נסכה כתבה מצר לבני מקרא... וחיי חתן וכלה אורה ושמה. ובחיי בני מקרא הגפן פרחה.

ביום כן וכן בשבוע, שהוא שהוא יום כן וכן מחדש פלוני משנת אלף ושלוש מאות שנה ושבעה וארבעים שנים למספר יונים בארץ מצרים, במדינת פאסטאט שעל נהר פישון מושבה, ביום הזה העיד פלוני בן פלוני החתן על נפשו לפני הזקנים החתומים למטה...

This is the formula of the Egyptian ketuba of the Karaites... On the day so-and-so of the week which is so-and-so of the month so-and-so, of the year 1347 A.G.⁴⁷ [= 1036 CE] ... in the land of Egypt, in the city of Fustat which is situated on the river Nile. On this day, so-and-so son of so-and-so, the groom, declared about himself before the elders who sign below...

הדא שרוט ללמרה אלקראיה אלי אלרגל אלרבאן:

45 Jerusalem was the center of Karaite intellectual activity from the mid-tenth century until the capture of Jerusalem by the crusaders in 1099 (Jacob Mann, *Texts and Studies in Jewish History and Literature 2* (Cincinnati, 1972), pp. 33-46, 289-290; Mann, "New Studies in Karaism," *Early Karaite Bible Commentaries* (Philadelphia, 1922), 7; Baron, *History 5*, pp. 234, 236-237); Yoram Erder, "The Mourners of Zion: The Karaites in Jerusalem in the Tenth and Eleventh Centuries," *Karaite Judaism*, ed. Meira Polliack (Leiden, 2003), p. 232.

46 Mann, *Texts and Studies*, II, pp. 171-173; Bodl. MS Heb. d. 66. 49v-50r.

47 Karaites marriage contracts found in the Cairo Genizah were dated per the Seleucid era, called *mispar yevanim*, "the counting of the Greeks" (Judith Olszowy-Schlanger, *Karaite Marriage Documents*, pp. 160-161).

This is the formula (inserted into the ketuba) for [the marriage of] a Karaite woman and a Rabbanite man:

... וכי לא יביא אל ביתו אשר היא בו בהיותה אשתו אליה, ולא שתי הכליות ולא יותרת הכבד ולא בשר נקבה נפל בה הריון... ולא יבעיר נר בלילות בשבתות... ולא ישכב עמה בימי השבתות... ולא יכריח אתה על חלול מועדי י' צבאות אשר על ראיית הירח... כי היא מאנשי המקרא ודתיים

... and that he, the groom, will not bring to his house where she dwells as his wife, not the meat of the sheep tail,⁴⁸ the two

- 48 The inclusion of the *alya*, sheep tail, in the Karaite ketuba is best understood in its historical context. The tail of the Awassi and similar fat-tailed sheep breeds was prized across North Africa and the Middle East for its delicate fatty flavor. Early Medieval Arab recipes called for starting every dish with melting the tail-fat (Nawal Nasrallah, *Annals of the Caliphs' Kitchens: Ibn Sayyār al-Warrāq's Tenth-Century Baghdadi Cookbook* (Leiden, 2007), p. 47; Sami Zubaida, "The Succulence of Kabab," *The Fat of the Land: Proceedings of the Oxford Symposium on Food and Cooking 2002*, ed. Harlan Walker (Bristol, 2003), p. 304). Unlike Rabbinic Judaism, per Karaite biblical interpretation the tail is forbidden (for Rabbanite sources see bHul. 117a; mShabbat 5:4; *MT Ma'achalot Assurot* 7:5; Avraham ibn Ezra and Nachmanides on Lev. 3:9; for Karaite sources see Nemoy, "Al-Qirqisānī's Account of the Jewish Sects," *HUCA* 7 (1930), p. 339; Hadassi, *Eshkol*, 232, p. 87; Aaron of Nicomedia, *Sefer ha-Mizvot ha-Gadol Gan Eden*, "Inyan Shehitah," (Hebrew: Gozleve, 1864), chapter 20-21, pp. 95-96). Since the pre-Islamic era, Jews in Arabia were renowned for a special Shabbat meat-filled dough dish made with sheep tail-fat. For Egyptian Jews the fat tail was served as a holiday treat (Goitein, *Mediterranean Society, The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* IV (Berkeley, 1983), pp. 227, 231, 234). The ketuba's stipulation against use of the *alya* was therefore a significant restraint for a medieval Rabbanite groom. The significant space devoted to defending the permissibility of the *alya* in 11th and 12th century Rabbanite literature may be further indication of a prevalent Karaite meat-eating practice. Because Karaites ate meat like their Rabbanite counterparts – with the exception of the *alya* – the sheep tail became a highlighted point of contention between the two groups. In previous centuries Karaites did not eat meat at all, so the Rabbanite indulgence with regards to the *alya* was hardly noticed.

kidneys,⁴⁹ and the caudate lobe of the liver,⁵⁰ nor the meat of a pregnant animal.⁵¹ ... He will not light the candle on Sabbath evenings, ... he will not make love with her on Sabbaths⁵² ... he will not force her to profane the Karaite calendar dates of the holidays determined by sight of the moon... For she is a member of the Karaite community and adheres to their doctrine.⁵³

Another, similar Egyptian Rabbanite-Karaite marriage ketuba from 1082 CE contains the following clause:⁵⁴

... עוד קביל על נפשיה שלא להכריח אנשיה אינתתיה דא שתשב עמו בנר שבת
ושלא תאכל אליה...

... he further accepts upon himself not to coerce this wife to sit with him in [the presence of] a flame on the Sabbath, and that [he will allow her to] not eat [the forbidden] tail meat...

- 49 Karaites considered the kidneys and the small lobe of the liver to be forbidden as *heilev* fats (see Qirqisani in Nemoy, "Al-Qirqisānī's Account," p. 339; Aaron ben Joseph, *Sefer ha-Mivhar ve-Tov ha-Mis'har*, ed. Joseph Yerushalmi (Hebrew: Gozleve, 1835), pp. 7a-7b; Levi ben Yefet, *Sefer ha-Mitzvot*, Ma'achalot, 15, 1.
- 50 Unlike Rashi (Lev. 3:4), who translated "*yoteret ha-kaved*" as the diaphragm, Maimonides and Hai understood it to refer to the small lobe of the liver, (see Isser Zalman Meltzer, *Even ha-Azzel* Ma'aseh Hakorbonot 1:18 vol. 6 (Hebrew: Israel, 1954) p. 2a; *Encyclopedia Mikrait* 3 (Hebrew: Jerusalem, 1965) s.v. *yoteret hakaved*, p. 958). Presumably Karaites understood the term in the same fashion as the local scholars, Maimonides and Hai. Leon Nemoy translated this portion of prohibited meat in Qirqisani's Arabic writings as the "caudate lobe of the liver" (Nemoy, "Al-Qirqisānī's Account," p. 339).
- 51 Karaite law prohibited slaughtering a pregnant animal (see Levi ben Yefet, *Sefer ha-Mitzvot*, Ma'achalot, 7, 1; *Eshkol Ha-Kofer* 238; Aaron of Nicomedia, *Gan Eden*, chapter 4, pp. 83b-84a; Bernard Revel, "Inquiry into the Sources of Karaite Halakah," *JQR* 3, 3 (1913), p. 368).
- 52 See *Sefer ha-Mitzvot*, Shabbat and Moadim, 6, 3.
- 53 Translation adapted from Olszowy-Schlanger, *Karaite Marriage Documents*, pp. 434-436.
- 54 Solomon Schechter, "Geniza Specimens. A Marriage Settlement," *JQR* 13, 2 (1901), pp. 218-221.

It is evident from these stipulations that by the eleventh century Karaites had no qualms about eating meat, so long as it was kosher by Karaite rules.⁵⁵

As Karaites began to eat meat they did not hesitate to do so together with dairy products. Thus we find that Shlomo ben Yehuda Gaon records that the Karaites ate dairy with meat.⁵⁶

These Karaite developments coincided almost exactly with the rabbinic revolution in the laws regulating the separation of milk and meat. Sometime in the same half century in which Shlomo b. Yehuda Gaon was active, Rabbenu Hananel authored his ruling that the halakha requires an extensive delay between eating meat and milk.⁵⁷ The

- 55 Judah Hadassi (12th century Constantinople), who was generally loyal to early Karaite traditions (see *Eshkol ha-Kofer* (Hebrew: Gozleve, 1836), p. 89b, and Daniel Lasker, *From Judah Hadassi to Elijah Bashyatchi* (Leiden, 2008), pp. 42-59), wrote:

אשר מתאוננים ויתירו הבשר היום, באמרם: הלא היה אסור' לחם וקלי וכרמל לאכילה במצות נורא ואיום, עד יום אשר יקריבו עומר ועולתו כתורתך

Nowadays 'complainers' (a biblical reference to meat lovers) permit the consumption of meat. They [defend their practice with the argument that]: "Was is not forbidden [according to the plain text] to eat bread and grain kernels per the command of the Almighty [as the Torah states:] 'until the day on which they bring the *omer* offering...' [and of course people cannot be expected to wait for the Temple to be rebuilt before eating bread].

He then devotes most of a page to explaining why the comparison of meat to *omer* with respect to its leniency is incorrect. Hadassi's lengthy repudiation of the permissive arguments of his contemporary Karaites is testimony to the widespread nature of the lenient practice. Aaron ben Joseph (Constantinople, c. 1260 – c. 1320), recalls the early Karaite abstinent practice as one which "has no support" from the biblical narrative (*Sefer ha-Mivhar ve-Tov ha-Mis'har*, Re'ah, ed. Joseph Yerushalmi (Hebrew: Gozleve, 1835), p. 10).

- 56 Mann, *Texts and Studies* II, p. 63.

- 57 The effect of this newly imposed, long waiting period before a cheese-meal on Mediterranean Jews was significant. Cheese was a substantial source of nutrition in the medieval Mediterranean diet, the most important food after bread, and a

correlation raises the possibility of causation. Hananel's prohibition may be seen as a Rabbanite fence around the laws of combining meat and dairy, enacted in response to the fact that the Karaites had begun to actively breach these halakhot regarding the mixing of meat and milk over the course of the previous generation.⁵⁸

valuable trade item for Rabbanite and Karaite merchants alike (for the significant involvement of Kairouanese Jews in the dairy industry from the 9th through 11th centuries see Ben-Sasson, "Jewish Community," 39; for the production and trade of cheese in Palestine see Gil, *Palestine, 634–1099* (Cambridge, 1992), pp. 214, 238 n. 13, 767 n. 184, 809; for sources on Egypt, Syria, and Palestine see Goitein, *Mediterranean Society IV*, pp. 251-252; for the involvement of Jews in medieval Spain with the production of cheese see Rosa Tovar, "Spanish Thistle-Bloom Cheese," *Gastronomica* 2.2 (2002), pp. 78-79, although her halakhic theories may be incorrect; on Jewish cheese merchants between Sicily and North Africa see Nadia Zeldes and Miriam Frenkel, "The Sicilian Trade — Jewish Merchants in the Mediterranean in the Twelfth and Thirteenth Centuries" *Michael: On the History of the Jews in the Diaspora* 14 (Hebrew: Tel Aviv, 1997), pp. 101-102). Rabbanites in Egypt, Syria, Palestine, and Spain supervised the production and sale of cheese because of the *kashrut* requirements involved (*MT Ma'achalot Assurot* 3:10; Gil, *Palestine*, pp. 800-801; Marina Rustow, *Conjunctions of Religion and Power in the Medieval Past: Heresy and the Politics of Community: The Jews of the Fatimid Caliphate*, (New York, 2014), p. 285; E. Ashtor, "Some Features of the Jewish Communities in Medieval Egypt," *Zion* 30 (1965), p. 67). Goitein describes the general appreciation Jews of this period had for food:

According to a competent observer, even the Jewish scholars passed their time in taking delight in the vanities of This World: distinguished clothing and delicious food. Muslim sayings singled out the Jews for being particularly dedicated to culinary relish. "Sleep in a Christian bed and enjoy Jewish food," says a widely-known maxim. (Goitein, *Mediterranean Society IV*, pp. 226-227).

The significant effect a legal restriction on a major food group had upon society was certainly taken into consideration by the rabbis who implemented and upheld these new laws.

- 58 Rabbanite and Karaite halakha allowed for eating many dairy products with members of the other sect (see Appendices A-B). David C. Kraemer notes the obvious - "requiring maximal separations (of milk from meat) has social and other consequences" (David C. Kraemer, *Jewish Eating and Identity Through the Ages* (New York, 2007), p. 91). Hananel's enactment was likely intended to curb these

Karaite-Rabbanite Community Settings

The development of a Rabbanite requirement of a waiting period between meat and milk corresponds not only with the emergence of the Karaite practice of consuming milk and meat together, but also with the rise of Karaite communities across the Jewish world. During their early centuries of development, Karaites were concentrated in Iraq and Persia, but in the middle of the tenth century they began moving westward to Jerusalem, North Africa, and Spain. As a result of this development, by the eleventh century Karaites lived throughout the Jewish-inhabited world. Karaite communities could be found alongside nearly every important Rabbanite community outside of France and Germany.⁵⁹ Notably, for our purposes, R. Hananel and R. Yitzhak Alfasi both lived side by side with Karaite communities in Fez, Kairouan, and Spain. Many of the Karaites were great philosophers, writers, physicians, and wealthy merchants; some were invested with high political power.⁶⁰ In Cairo, Karaites were well represented amongst court physicians, some having served the Fatamids and Saladin.⁶¹

Analysis of Cairo Geniza documents shows that Karaite and Rabbanite communities of North Africa and Palestine during this period collaborated on legal affairs, political endeavors, and commerce. Shelomo Dov Goitein, the preeminent scholar of the Cairo Geniza, wrote:

The reports about clashes between the two groups, also preserved in the Geniza, should not be taken as representing the

social opportunities and was also a mechanism for strengthening rules which symbolized rabbinic law in general (see quote from David Kraemer below).

59 Rustow, *Heresy and the Politics*, p. 3; Yehudah Rosenthal, "Karaites and Karaism in Western Europe," *Sefer ha-Yovel le-Rabi Hanokh Albeq* (Hebrew: Jerusalem, 1963), pp. 425-426; see also below, note 74.

60 For example, see Moshe Gil, *The Tustaris: Family and Sect*.

61 See Joel Kraemer, *Maimonides: The Life and World of One of Civilization's Greatest Minds* (New York, 2008), p. 531 n. 113.

day-to-day relationships between the two groups. Rabbanites and Karaites regarded each other as belonging to one *umma*, "a nation constituted by religion," and were recognized in legal documents as "our coreligionists."⁶²

There were frequent, mutually respectful Karaite-Rabbanite marriages.⁶³ From a practical question to Maimonides concerning whether Karaites can complete the quorum of three necessary for *zimun* (the after-meal prayers recited by one leader on behalf of the others), it is apparent that Rabbanites and Karaites frequently dined with one another.⁶⁴ The 12th century merchant-scholar Halfon ben Netanel reported (though with disapproval) that Rabbanites in Egypt dined with Karaites.⁶⁵ The two communities were dependent on each other in many ways.⁶⁶

62 Goitein, *Mediterranean Society* V (Berkeley, 1988), p. 367.

63 See the Karaite-Rabbanite ketubot in Mann, *Texts* II, 159-160, 168-173, 177-180. Baron sees evidence of commonplace intermarriage in *Mishneh Torah* Isurei Biah 11:15: "...the reiterated explanations by Maimonides and other rabbis that such and such customs had crept into Rabbanite life under Karaite influence can only be understood because of these easy and inconspicuous forms of transition from one to the other group" (*History* 5, p. 413 n. 76).

64 *Teshuvot haRambam* vol. 2, responsum 265 (Hebrew: Jerusalem, 1960), p. 502. Avraham Maimoni testifies that "most of the time the Karaites buy their wine from Rabbanites" (Rustow, *Heresy*, p. 284). On the Rabbanite side, Maimonides (*Teshuvot haRambam*, vol 2, responsum 449, pp. 729-732) and his son Abraham (*Teshuvot Rabbenu Avraham ben haRambam*, ed. A. H. Freimann and S. D. Goitein, responsum 80 (Hebrew: Jerusalem, 1937), pp. 104-105), considered Karaite wine permissible, Maimonides even going so far as to say that one can visit a Karaite home and drink the host's wine. These legal positions demonstrate that the opportunity for merry social interactions over meals was vast (For a resolution of the seemingly contradictory attitudes of Maimonides towards Karaites, see Yuval Sinai, "Maimonides' Contradictory Positions Regarding the Karaites: A Study in Maimonidean Jurisprudence," *Review of Rabbinic Judaism* 11.2 (2008), pp. 277-291.)

65 BM Or. 5566 D, f. 24a, translated into Hebrew from Judaeo-Arabic in: Shelomo Dov Goiten, *The Yemenites: History, Communal Organization, Spiritual Life*, ed. M. Ben-Sasson (Hebrew: Jerusalem, 1983), p. 68; Yoram Erder, "The Split," *Zion* 78:3 (Hebrew: Jerusalem, 2013), p. 331. Goiten believed this letter was penned in

We thus see that it was particularly the rabbis of North Africa and Spain, and not the heirs of the gaonate in Iraq, who would have felt a need to defend Rabbanite halakha against Karaite legal interpretations and to erect a social barrier between the two camps. By the end of the tenth century the center of Karaite activity had already migrated from Iraq to the Mediterranean Basin. It was these North African rabbis who found themselves at close quarters with the Karaites. As the divide between the communities was sometimes blurred, reinforcement was necessary.

‘Meat and Dairy’ – Unique and Symbolic

Evidence for the notion that Rabbanite leaders saw the laws of milk and meat as critical to their struggle against the Karaites can be found in eleventh century texts. During the tenth and eleventh centuries, Rabbanites from all over the Mediterranean would make yearly pilgrimages to Jerusalem for Sukkot. On Hoshana Rabba the custom was

1132 (see Goiten, *Yemenites*, p. 57). The context in Halfon’s letter may suggest that the phenomenon was limited to a simpler class of people (see Goiten, *ibid.*, p. 68 n. 8).

- 66 See Marina Rustow, “Karaites Real and Imagined: Three Cases of Jewish Heresy,” *Past and Present* 197 (2007), pp. 41-43; Rustow, *Heresy*, Introduction [xvii]:

[Early scholars] extrapolated social history from polemical and prescriptive sources with little by way of other evidence, claiming that after Se’adya, rabbinic Judaism and Karaism parted company, and never did the twain again meet.

The sources I have examined in writing this book suggest to me that this “forced estrangement” never took place. Long after Se’adya, Rabbanites and Karaites remained in productive contact with one another in their writings and in daily life, marrying one another, cooperating in business ventures, and maintaining formal and informal alliances.

However, Rustow’s work should be compared with Yoram Erder, “The Split between the Rabbanite and Karaite Communities in the Geonic Period,” *Zion* 78,3 (Hebrew: Jerusalem, 2013), pp. 321-349, who argues that the relations between the communities were filled with more strife than presented by Rustow.

for all to gather at the Mount of Olives and, amongst other things, declare blessings and bans. In 1029 and 1038, the Rabbanites proclaimed a ban against the Karaites. The wording of these bans, preserved in manuscripts penned by Shlomo ben Yehuda Gaon, is very revealing. The ban was worded against the eaters of “meat with milk.”⁶⁷

Marina Rustow explains the deeper context and meaning behind the ban:

... the Rabbanites and the Karaites in the Fatamid realm conducted regular professional and personal relations. The ban’s aim was not to correct Karaite religious behavior, but to achieve symbolic or ritual separation between the two groups. ... the principle violation with which the Karaites stood charged – challenging the rabbinic claim to exclusive authority in interpreting biblical law ... The ban was couched, by a synecdoche that stood for an entire theological aberration, in terms of a specific infringement: eating meat with milk.⁶⁸

Word of these yearly bans reached as far as Spain. They are described in Abraham ibn Daud’s 1161 chronicle, *Sefer ha-Kabbalah*.⁶⁹ The mixing of milk and meat by the Karaites had come to symbolize the divide between the Karaite and Rabbanite camps, and this may have provided a reason for Rabbanite leaders to strengthen these laws.

Another consideration is that the Talmud’s ‘meat and dairy’ separation laws are uniquely rabbinic in that they are several steps removed from any biblical violation. Eating meat and dairy in one meal, or even in one mouthful, would not violate the biblical command as long as the two foods were not cooked together. The Talmud restricts eating from the two categories, even if not in one mouthful, without *kinuah* in between. David C. Kraemer recognized that the long waiting custom did

67 Jacob Mann, *Texts and studies in Jewish History and Literature*, 1 (Cincinnati, 1931), pp. 315-316.

68 Rustow, *Heresy*, 206-207.

69 “*Sefer ha-Kabbalah le-Rav Avraham ben David*” in A. Neubauer, *Mediaeval Jewish Chronicles and Chronological Notes* (Oxford, 1887), pp. 77.

not originate in the Talmud but was a later development of 11th century North African rabbis. He explains why rabbis may have been determined to add extra levels of stringency to these laws:

The interpretive tradition (of Alfasi and Hananel – T.A.) whose path we are following here ... has taken the fear of mixing a significant step beyond its origins, absolutizing the demand for separation ... Let us not forget: in the rabbis' understanding, the "Torah's" prohibition of mixing meat and dairy pertains only to cases where they are cooked together. Any further requirement—say, insisting that cold meat and cheese be kept apart—is a rabbinic enhancement of the Torah's law (again, as the rabbis interpret it). Thus, when one eats dairy after meat at "the next meal," whether fifteen minutes or six hours later, one runs no risk whatsoever of transgressing the Torah's prohibition. By choosing to valorize the Talmudic teachings that require extreme separation (Mar Ukva's teaching), by defining their purpose to be the avoidance of any possible mixture of the offending food substances, and by seeing these as unyielding minimums, the approach of these authorities effectively obscures our recognition of the fact that none of this is actually necessary according to the rabbis' understanding of the Torah. → Perhaps this is—wittingly or unwittingly—their point: rabbinic law, like Torah law, is Torah. Its prohibitions must be protected by the same powerful fences as the Torah's prohibitions. As Jewish society has finally become, powerfully and unambiguously, *rabbinic* society, rabbinic interpretation has come to define mechanisms that will symbolize the full gravity of rabbinic power. The boundaries, even when rabbinically defined, must be absolute. Dairy substance must be kept separate from meat substance, and this absolutely.⁷⁰

70 See David Kraemer's remark cited in note 58.

When we consider the contemporary developments in Karaism, as well as the exceptional nature of the ‘meat and dairy’ separation laws, it is clear why the leading rabbinic sages of this era would want to fortify this particular area of law.

Rabbeinu Tam’s Understanding

While there is no direct evidence that R. Hananel’s and Rif’s institution of a mandatory waiting period between milk and meat was a response to Karaite practice, Rabbeinu Tam (1100-1171) does state that the ruling of the great authorities of North Africa was a response to a general laxity in the practice of the separation of milk and meat. In his *Sefer HaYasher*, R. Tam, like the other rishonim of Ashkenaz, accepts the lenient position of the *Halakhot Gedolot*, which requires only rinsing and washing between milk and meat.⁷¹ However, he then goes on to explain his understanding

71 The accepted halakha in the Franco-German Jewish communities of the early Middle Ages was to allow eating dairy after meat if a disuniting *action* was performed in between. Many Ashkenazi authorities, following Rashi, required *birkhat hamazon* (the after-meal blessing) between the two food groups; others, including R. Tam, required only *kinuah ve’hadaha* (rinsing of the mouth and hands). R. Zerahya HaLevi Baal *Ha-Ma’or* of Provence (c. 1125- c. 1186) concurred independently with the view of R. Tam, and reports that this approach was in general practice amongst the Jews of France (see *Ha-Ma’or* printed on the side of Alfasi, *Halakhot* bHul. 37a in standard Talmud editions). For a discussion of the sources see Aviad A. Stollman, “The Sugyot of Separation Between Milk and Meat in the Eighth Chapter of Bavli Hullin: A Critical Edition and a Comprehensive Commentary,” Master’s thesis, Bar-Ilan University (2001), pp. 96-98. For an alternate perspective on Rashi’s opinion see Roy Zak, “Ha-hamtana bein achilat basar le-achilat halav be-torotam shel Rashi ve-shel hachmei Ashkenaz ha-rishonim,” [Hebrew] *Oreshet: A Journal of Jewish Studies, Society and Education* 3 (2011), p. 59 n. 33. For various contributing factors for the increased popularity of a longer waiting period between meat and dairy amongst European Jewry in more recent centuries, see an extraordinary study in Stollman, “Halakhic Development as a Fusion of Hermeneutical Horizons: The Case of the Waiting Period Between Meat and Dairy,” [Hebrew] *AJS Review* 28/2 (2005), pp. 20-30. David Kraemer suggests that the abundance of meat available after the

of the then relatively recent ruling of R. Hananel and Rif. The passage reads as follows:

ואע"ג דר' חננאל פליג אהאי פיסקא, לאו דסמכא. דהא דאורי שאינן בני דאורייתא. ובקעה מצא וגדר בה גדר. וכמו שפסקתי נר' מתוך ההלכה. ורב יהודאי גאון פירשה. והיא דסמכא.

Though Rabbenu Hananel disagreed with this ruling [of *Halakhot Gedolot*], his view is not practically reliable, for he only taught so because of elements who did not follow the Law. [Hananel] ‘found an open space and put a fence around it’ [- i.e., he came to a place where the people were negligent in their religious observance and therefore placed upon them additional restrictions].⁷² And that which I ruled appears correct from a [careful reading] of the [Talmudic text]; and R. Yehudai Gaon explained [as I have] – and indeed this [ruling] is reliable.⁷³

The term “*bikaa matza ve-gadar ba geder*” is an expression borrowed from the Talmud (see *Hullin* 110a). It is used in instances where a rabbi implemented strict laws upon a community in order to prevent laxities. R. Tam clearly did not understand R. Hananel’s ruling as based directly on the sage of Kairouan’s reading of the Talmudic text. Rather, according

Black Death contributed to the change in halakhic attitude (D. C. Kraemer, *Jewish Eating*, pp. 92-93).

72 The translation and interpretation of this expression is borrowed from *Soncino*, 110a, pp. 67-68.

73 *Sepher ha-Yashar by Rabbenu Tam*, ed. S. Schlesinger 472 (Hebrew: Jerusalem, 1985), pp. 282-283. The text actually reads “Hanina” (חנינא), rather than “Hananel” (חננאל), but this is clearly a typographic error, as evidenced by the paraphrase of this passage in Avraham ha-Yarchi, *Sefer ha-Manhig* (Hebrew: Jerusalem, 1978), p. 218 n. 28. R. Avraham’s citation also refers to the ruling of Rif. The citation appears in Isaac b. Moses of Vienna, *Sefer Or Zarua’* 1:460 (Jerusalem, 2009), p. 403, as well. Many rishonim assumed that the author of *Halakhot Gedolot* was Yehudai Gaon (8th century). Modern scholarship attributes the work to Shimon Kiyarra.

to R. Tam, R. Hananel's ruling was an original rabbinic enactment, instituted in response to his contemporaries who were not *benei orayta*, literally "sons of Torah." While R. Tam does not identify the offending group, it is not unreasonable to understand this reference as referring to the Karaites, and to suggest that R. Hananel imposed the long wait between milk and meat in order to counter Karaism or to prevent the weakening of Rabbanite community values due to Karaite influence. R. Tam himself, as well as most other rabbinic leaders in Ashkenaz, was perhaps less concerned with Karaism because of its limited influence in their countries.⁷⁴

Waiting After Poultry – Maimonides's Influence and Monastic Order

While it was Hananel and Alfasi who introduced a required waiting period between the eating of animal meat and of dairy, Maimonides was the first to state that one is obligated to wait after eating poultry as well. Nearly contemporaneous with this Maimonidean modification of the law came the development, in France and Germany, of a new custom to not eat dairy after poultry in one meal.

The simple reading of *Hullin* 104b is that there is no need for any sort of separation between consuming poultry and cheese:

תנא אגרא, חמוה דרבי אבא: עוף וגבינה נאכלין באפיקורן. הוא תני לה והוא אמר לה: בלא נטילת ידים ובלא קינוח הפה

Agra, father-in-law of Rabi Abba, taught [a Tannaic statement]: "Poultry and cheese are eaten [without separation]." [Agra] quoted [the teaching] and explained it as well: "[Poultry and

74 For a study of the extent of Karaite influence in France and Germany during the Middle Ages, see Salomon Buber's remarks in Tuviah ben Eliezer, *Midrash Lekah Tov*, ed. S. Buber (Hebrew: Vilna, 1880) pp. 18-19; Yehudah Rosenthal, "Karaites and Karaism in Western Europe," *Sefer ha-yovel le-rabi Hanokh Albeḳ* (Hebrew: Jerusalem, 1963), pp. 436-441, and Baron, *History* 5, p. 272. The consensus is that while many European rishonim were familiar with Karaite arguments, there is little evidence that Karaite communities existed in western Europe.

cheese] may be consumed [consecutively] without [intermediate] rinsing of the hand or mouth.”

This passage, read straightforwardly, states that poultry and cheese (even in that order) may be eaten consecutively “*be-apikoren*,” – in one kerchief or, as translated by others, without concern (לשון הפקר), even without washing one’s hands or mouth in between their consumption.⁷⁵ See, for example, Rashi’s comment, preserved in *Hiddushei ha-Ritva*:

פירש"י שאם אכל זה ובא לאכול זה, א"צ לקנח פיו ולא ליטול. ונראה מלשוננו אפי' בשאכל בשר עוף בתחילה...

Rashi commented: “if one ate this food item and then desires to eat the other item, he need not rinse his mouth or wash his hands.” It appears from [Rashi’s comment] that [Agra’s statement includes] even an instance in which poultry was eaten first...⁷⁶

This ruling rejects the need for any procedure separating the consumption of dairy from the consumption of poultry. This makes perfect sense because the prohibition against mixing milk and poultry is only rabbinic in nature. R. Hananel, in his formulation of the requirement to wait between meat and milk, refers only to *basar*, which in this context clearly refers only to red meat. The Talmud elsewhere considers poultry to be in a separate legal category from red meat, and explicitly segregates the two here.⁷⁷ This is more explicit in the words of Alfasi, who clearly contrasted the rules concerning red meat and poultry with regard to the need for a waiting period:

75 For a full discussion of the possible interpretations of Agra’s statement, see A. Stollman, “The Sugyot of Separation,” [Hebrew], Master’s thesis (Ramat-Gan, 2001), pp. 52-61.

76 *Hiddushei ha-Ritva al ha-shas* bHul. 104b (Hebrew: Jerusalem, 2008), p. 201. Tosafot (bHul. 104b *s.v. ophi*) also wrote, “עוף וגבינה נאכלין באפיקורן, דמשמע עוף, תחילה.” See also other early Tosafot, cited below (*Or Zarua'* 1:460 (Hebrew: Jerusalem, 2009), pp. 401-402).

77 See bHul. 113; bSan. 70b; bHag. 8b.

תנא אגרא, חמוה דרבי אבא: עוף וגבינה נאכלין באפיקורן, וי"א באפיקוליס. הוא תני לה והוא אמר לה: בלא קינוח הפה ובלא נטילת ידים... ושמעין מהא דהאי דא"ר חסדא אכל בשר אסור לאכול גבינה, דלא שרי למיכל גבינה בתר בשרא אלא עד דשהי ליה שיעור מה דצריך לסעודתא אחרית, דלא אשכחין מאן דשרי למיכל גבינה בתר בישרא בפחות מהאי שיעורא

Agra, father-in-law of Rabi Abba, taught [a Tannaic statement]: “Poultry and cheese are eaten *be-apikorin* (and some read:) *be-apikulis*.” [Agra] quoted [the teaching] and explained it as well: “[Poultry and cheese] may be consumed [consecutively] without [intermediate] rinsing of the hand or mouth.” ... [Alfasi continues:] We derive from [the teaching of] R. Hisda – “after eating meat one may not eat cheese” – that it is forbidden to eat cheese after meat until the [normal] amount time between meals has elapsed. [This is because] we do not find [in the Talmud] an opinion that permits cheese after meat in less than this amount of time.⁷⁸

It is clear from his discussion of Agra’s statement that Alfasi’s use of the words *basar* and *oph* denote two separate entities. Alfasi’s requirement to wait “until the [normal] amount time between meals has elapsed,” is reserved for red meat, not poultry. Alfasi moved from North Africa to Spain in 1088 and was recognized there as the leading halakhic authority. The ruling of Hananel and Alfasi became standard practice over time in Spain, and Spanish Jews waited after red meat before eating dairy; until the 13th century Spanish rabbis acknowledged that their custom was to not wait after poultry.⁷⁹

In this context, Maimonides’s ruling (*Mishneh Torah*, Ma’acholot Assurot 9:27) is most striking:

מי שאכל בשר בתחלה, בין בשר בהמה בין בשר עוף, לא יאכל אחריו חלב עד שיהיה ביניהן כדי שיעור סעודה אחרת, והוא כמו שש שעות, מפני הבשר של בין השינים שאינו סר בקינוח

78 Alfasi, *Halakhot* bHul. 37a-37b.

79 See *Sefer Magen Avot*, cited below.

When a person ate meat first - whether the meat of an animal or the meat of a fowl – he should not partake of milk afterwards until he waits the [amount of time commonly waited before] another meal, approximately six hours. This stringency is required because of the meat that becomes stuck between the teeth and is not removed by cleaning.⁸⁰

Maimonides makes no distinction between fowl and animal meat, extending the innovation of Hananel and Rif to include a requirement to wait six hours even after meat whose mixture with milk is only rabbinically prohibited.

In the two generations following Maimonides, leading Spanish rabbinic figures, including Nachmanides (“Ramban,” 1194 – 1270),⁸¹ Aaron Halevi of Barcelona (“Ra’ah,” 1230-1300),⁸² and Yom Tov ben Avraham Asevilli (“Ritva” 1260s – 1320s) challenged Maimonides’s reform, as it reversed the ruling of the Bavli. In the words of Ritva:

פשיטא דלשון עוף וגבינה [עוף ו]אחר כך גבינה משמע. ואם איתא דכי האי גוונא אין נאכלין באפיקורן, היכי תני האיסור בלשון המותר, והוה ליה למיתני איפכא: גבינה ואחר כך עוף. אלא ודאי כדאמרן

It is obvious that [Agra’s] words “poultry and cheese [may be eaten without rinsing in between]” indicate cheese being eaten *after* poultry. If it were true that such an order [of cheese following poultry] is forbidden, how could [Agra have been so careless with his words] and taught that which is forbidden [i.e. cheese post-poultry] in a formulation which indicates that it is allowed. [Agra] should have stated the opposite “cheese *and then* poultry [may be eaten without rinsing in between].”

80 Translation adapted from Chabad.org.

81 *Hiddushei ha-Ramban* Hullin 104b (Hebrew: Jerusalem, 2010), 577; also cited by his student Aaron ha-Levi in *Bedek ha-Bayit* (see *Torat HaBayit ha’arokh ve’hakatzet* vol 1, bayit 3: sha’ar 4 (Hebrew: Jerusalem, 2010), pp. 1050-1051).

82 *Hiddushei ha-Ra’ah* bHul, ed. Hayim Perush 104b (Hebrew: Jerusalem, 1974), pp. 219-220; *Bedek ha-Bayit* in *Torat HaBayit*, pp. 1050-1051.

Therefore, certainly even [cheese *after* poultry is allowed without any limitations].⁸³

There was similar agreement amongst early Ashkenazi Tosafists that fowl was distinct from meat with regard to these laws. Rabbenu Tam's lenient view on this matter is preserved in his *Sefer ha-Yashar*.⁸⁴ Yitzhak Or Zarua of Vienna (c. 1200 – c. 1270) does not mention Maimonides's stringent poultry ruling by name (though he was familiar with the *Mishneh Torah*⁸⁵), but expends much energy refuting such a notion by citing the lenient views of early French scholars, including a ruling of Ri ha-Zaken (c. 1115 – c. 1184) preserved by Yehuda Messer (Sir) Leon (1166–1224), as well as an inferred opinion of Rashi's.⁸⁶

However, in the 13th century a gradual shift in thinking occurred throughout Jewish communities in European countries. Without attempting to find precedent in the Talmud, Moses ben Jacob of Coucy (early 13th century France) says that the common custom ("והעולם נהגו") is to liken the treatment of poultry to meat, postponing dairy until the following meal.⁸⁷ Asher ben Yehiel (b. Germany, c. 1250 – 1327) notes this custom approvingly as well.⁸⁸

83 *Hiddushei ha-Ritva al ha-shas* Hullin 104b (Hebrew: Jerusalem, 2008), pp. 202-203.

84 *Sefer ha-Yashar*, pp. 282-283.

85 Haym Soloveitchik, "The Halachic Isolation of the Ashkenazic Community," *Collected Essays*, Volume I (Littman Library, 2014), p. 34.

86 Isaac b. Moses of Vienna, *Sefer Or Zarua'* 1:460 (Hebrew: Jerusalem, 2009), pp. 401-402.

87 *Sefer Mitzvot Gadol*, ed. Elyakim Schlesinger, negative commandment no. 140-141 (Hebrew: Jerusalem, 1988), p. 272. The commentary of Tosafot (bHul. 104b s.v. *oph*), printed in the standard Talmud Bavli, likewise records this new custom and attempts to reconcile it with Agra's teaching. These Tosafot are generally attributed to R. Eliezer of Touques, of the second half of the thirteenth century (Haim Yosef David Azulai, *Shem ha-Gedolim*, 'books,' letter נ: 30 (Hebrew: Vienna, 1864), p. 71).

88 *Rabbenu Asher* Hullin 8:5, printed at the back of standard Talmud editions.

In Italy, Isaiah di Trani the Younger (13th – 14th century) records that already in the early 13th century dairy was not eaten after poultry in one meal, although his grandfather, Isaiah di Trani the Elder (c. 1180 – c. 1250), disagreed with the stringent practice.⁸⁹

Avigdor Cohen of Vienna (mid-13th century), a scholar trained in Germany who later traveled to Italy, acknowledged that this recent custom was not grounded in the Talmud. He said:

עוף וגבינה הנאכלים באפילוס, פי' בלא נטילת ידים ובלא קינוח הפה, לפי שאנו
מחמירין בזמן הזה דוקא עוף אחר גבינה מותר, אבל גבינה אחר עוף אין לאכול
באותה סעודה כמו שאר בשר

Poultry and cheese may be eaten 'b'apilus' – without rinsing the hands or mouth. *In modern times we are stringent* to [only apply Agra's leniency] if poultry is eaten after cheese; however, if poultry is eaten first, one does not eat cheese in the same meal.⁹⁰

In Provence, as well, a transition may be observed. In the 12th century, the country's halakhists allowed dairy to be eaten immediately after poultry.⁹¹ For example, in Yitzhak b. Abba Mari's (Marseille, c. 1122 – c. 1193) discussion of R. Hananel's view he makes it clear that there is no waiting requirement for fowl:

והלכתא ... אלא קינוח הפה לגבינה לבשר. ושהייה לבשר וגבינה... ועוף
וגבינה א"צ שהייה לבשר וגבינה ולא קנוח הפה ונט"י לגבינה ובשר.

And the final halakha is as follows: ... when eating meat after cheese, rinsing the mouth is required. A waiting period after

89 Isaiah di Trani the Younger, *Piskei ha-Riaz Hullin*, ed. Moshe Y. Blau 103a (Hebrew: New York, 1990), p. 209; Isaiah di Trani the Elder, *Piskei Rid*, Hullin, Later Edition, 105a (Hebrew: Jerusalem, 2011), p. 331.

90 Zidkiyahu ben Abraham Anav ha-Rofe, *Shibboleiy ha-Leket*, ed. Simha Hasida vol. 2: 31 (Hebrew: Jerusalem, 1987), p. 109.

91 The Provençal custom is also indicated in Zerahya ha-Levi (died 1186, Lunel) (*ha-Ma'or* in Alfasi, *Halakhot* bHul. 37a) and Abraham ben Nathan (late 12th century Provence) in *ha-Manhig*, p. 218.

meat is required before eating dairy... *however, after eating poultry no waiting is necessary ...*⁹²

In contrast, Menachem Meiri's (1249-1306) *Sefer Magen Avot* demonstrates that by the 13th century fowl had been recategorized together with red meat in Provence.⁹³ *Sefer Magen Avot* was written to defend the customs of Provence against the ridicule and challenge of Spanish rishonim.⁹⁴ Meiri records that, unlike the lenient custom of Spanish communities, the practice in Provence was to wait a full five or six hours following the consumption of fowl:

הענין התשיעי. עוד נשאו ונתנו אתנו במה שהם נוהגים לאכול גבינה אחר עוף, ואנו מחמירים עד שישהא שש שעות או חמש, כשיעור שבין סעודה לסעודה, כדין האמור בבשר בהמה... ונמצא כלל הדברים, שכל מאכל בשר, בין של בהמה בין של עוף, אינו אוכל גבינה אח"כ עד שיעברו שש שעות או חמש...

We further debated our [divergent practices with regards to] their [Spanish] custom of eating dairy [immediately] after poultry, versus our [Provençal] custom of waiting six or five hours, the [normal] time between meals, as is required after eating red meat... In conclusion, after eating any form of meat, whether red meat or poultry, one may not eat cheese thereafter until six or five hours pass...⁹⁵

Nevertheless, Meiri himself takes an intermediate position, advocating a shorter wait after poultry than after meat:

92 *Sefer ha-Ittur*, 2: 26. At first glance it would seem that the author does require rinsing (but not waiting) between poultry and dairy. However, when read in context, it is apparent that the intention was that *all* the restrictions of red meat do not apply to poultry – the author merely lists some of the non-applicable restrictions.

93 The 14th century *Kolbo*, assumed by many to be a product of Provence, likewise requires a wait after poultry (see *Kolbo* Vol 6 (Hebrew: Jerusalem, 2009), p. 371).

94 Menahem Meiri, *Magen Avot* ed. Isaac Lest (Hebrew: London, 1909), p. 11.

95 Menahem Meiri, *ibid.*, pp. 46-49.

... ויראה לי להקל עוד, שאף באכל עוף תחילה, אע"פ שצריך שהיה, אינו צריך שש שעות, אלא כל שסעודה לסעודה, אפילו בקירוב זמן, הואיל וסילק, ועקר

In my view, even if poultry is eaten first, though a pause is required, it need not be a six hour wait – so long as the [dairy] is eaten in a separate meal [it is allowed].⁹⁶

Meiri notes reports of the lenient trend in Spain beginning to change:

אלא שהדברים ברורים כשתינו, ואף הם הודו שחכמים האחרונים שבגלילותיהם מחמירים בה ונוהגים כמנהגינו, והנאני הדבר

It is certain that the [view of the Provençal scholars] is correct and indeed, [the Spanish scholars] informed us that new (recent?) scholars in their country are stringent and practice our custom [of waiting after poultry], – and this pleased me.

The revolutionary Spanish scholars referred to in Meiri's exchange likely included Meiri's contemporary, Rashba (d. 1310), who maintained that one must wait six hours after poultry before eating dairy.⁹⁷ In Spain, the *Mishneh Torah* was likely influential in swaying many successive authorities. In the section of laws dealing with milk and meat in *Arba'ah Turim*, Yakov ben Asher (b. Germany, 1275 – d. Spain 1340) cites Maimonides's ruling on poultry as if none other exists.⁹⁸ A 14th century rabbi, Menahem ben Aaron ibn Zerah, indicates that waiting after poultry for dairy was the common custom in Spain by his time.⁹⁹ Yosef Karo

96 Menahem Meiri, *ibid.*, p. 48.

97 *Torat HaBayit ha'arokh ve'hakatzer*, vol. 1, bayit 3: sha'ar 4 (Hebrew: Jerusalem, 2010), pp. 1050-1051.

98 *Arba'ah Turim* Y.D. 89. Only in *Arba'ah Turim* O.C. 173 is the lenient position of Kiyarra cited. The author surely realized that a layman studying the laws of 'milk and meat' in the Y.D. section would not discover dissenting views.

99 Menahem ben Aaron ibn Zerah, *Zedah la-Derekh* 2:2:9 (Hebrew: Lemberg, 1859), p. 49b. This indication comes from the fact that, a few lines later, he emphasizes the importance of maintaining traditional customs regarding these laws. Additionally, if we keep in mind the purpose of this book, it is unlikely that the

(1488 – 1575) likewise only cites Maimonides's strict poultry ruling in his *Shulhan Arukh*.¹⁰⁰

Though Moshe of Coucy and Avigdor Cohen of Vienna were cognizant of the stringent poultry waiting custom's post-Talmudic nature, others creatively reinterpreted the words of Agra to demonstrate that this new custom (and Maimonides's ruling) were authorized by the Talmud. Rashba argued that, though the order in Agra's statement, "עוף וגבינה" is poultry followed by cheese, the statement should be understood as cheese followed by poultry.¹⁰¹

Given the novelty of Maimonides's opinion, the strained backwards reading of Agra, and the general lack of halakhic influence exercised by Maimonides on 12th and 13th century Ashkenazi rishonim,¹⁰² it is difficult to ascribe the change in halakhic attitude towards poultry in Ashkenaz purely to the *Mishneh Torah*'s influence.

author included his personal halakhic conclusions, especially if they were of stringent leanings:

As the author states in the introduction (ed. Sabbionetta, p. 166), it is intended mainly for rich Jews who associate with princes and who, on account of their high station and their intercourse with the non-Jewish world, are not over-rigorous in regard to Jewish regulations. For such a class of readers a law-codex must not be too voluminous, but must contain the most essential laws, especially those that the higher classes would be inclined to overstep.

(Solomon Schechter, Louis Ginzberg, "Menahem B. Aaron Ibn Zerah," *The Jewish Encyclopedia* VIII (New York, 1904), p. 466.)

100 *Shulhan Arukh* Y.D. 89:1. That these authors don't fairly represent the halakha here, ignoring the many lenient sources on the matter, demonstrates how common the notion was in their circles that poultry was equivalent to red meat.

101 Shlomo ben Aderet, *Hiddushei ha-Rashba*, p. 597. With this reading of Agra, Rashba follows the example of Alfasi who, two centuries earlier, had made the similar argument that R. Nahman's statement should be interpreted backwards.

102 On the intellectual self-sufficiency and isolation of the Tosafot school, see Soloveitchik, "Halachic Isolation," pp. 31-38.

The 13th century Ashkenazi halakhic revision of poultry can also be observed in the laws regarding which meats may be eaten during the last meal prior to the fast of the Ninth of Av. While earlier Tosafist authorities considered poultry permissible during this meal, 13th century halakhists record that the norm had become to regard poultry as similar to red meat and therefore forbidden.¹⁰³

These changes suggest that a general, subconscious reconceptualization of fowl had taken place. Perhaps the perspective of the surrounding environment, which had changed over the 12th to 13th centuries, caused the European Jewish community to view poultry differently. It is possible that, in addition to Maimonides's influence,¹⁰⁴

103 In the 12th century, Eliezer ben Yoel HaLevi of Bonn ('Ra'avyah,' 1140–1225) and Shmuel ben Natronai (born Italy c. 1100, died c. 1175 Germany) allowed poultry during this meal. By contrast, in the 13th century, Isaac ben Moses of Vienna (1200 – 1270), Mordechai ben Hillel (Germany, 1250–1298) and Yakov ben Asher (b. Cologne 1269 – d. Toledo 1343) did not allow poultry at this meal (*Sefer Ra'avyah*, ed. David Belitski, vol. 2, 3:888, bTa'anit 30a (Hebrew: Bnei Brak, 2004), p. 421; *Tur* O.C. vol 5, 552:2 (Hebrew: Jerusalem; Mechon Yerushayim, 2000), 233-234 – Ra'avyah and Shmuel ben Natronai are cited in the *Tur* as well; *Sefer Or Zarua'* 2:415 (Hebrew: Jerusalem, 2009), p. 473; *Mordechai* Ta'anit, 'Laws of Tisha'a be-Av,' 639, p. 23, found after Alfasi's *Halakhot* in standard editions of the Talmud).

Or Zarua' cites Ra'avyah's lenient view, but then disagrees with it and demands stringency, invoking the common custom, “שכבר נהגו אבותינו למנוע מכל אלו, ויש בהם משום בל תטוש תורת אמן”. Yisrael of Krems (Austria, 14th-15th centuries) admits that the halakha allows eating poultry during the pre-fast meal, but, based on *Or Zarua'*, concludes that one should not put this into play so as not to break with the common custom, “מ"מ אין נכון לעשות כן ואיסורא נמי איכא משום בל תטוש תורת אמן. מא"ז” (*Haggahot Asheri*, Ta'anit 4:35).

The text of the Mordechai in printed editions is ambiguous as to who originated the stringent stance on poultry. A manuscript of the *Mordechai* makes clear that the stringency is Mordechai's independent opinion and not that of Ra'avyah (see David Belitski's remarks in *Sefer Ra'avyah*, 421 n. 23; this also is how *Tur* perceived Ra'avyah's view).

104 When we consider that *Mishneh Torah* was completed between 1170 and 1180, that Maimonides responded to queries sent from Provence, and that Ravad of Posquières felt it necessary to critique Maimonides's work, we can assume that

the French and Provençal custom was swayed by shifting attitudes in Christian society towards poultry.¹⁰⁵

The sixth century *Rule of St. Benedict* was predominant in the West as a guide of precepts for monks.¹⁰⁶ Its stipulation that monks “abstain altogether from eating the flesh of four-footed animals”¹⁰⁷ was interpreted by early theologians as applying only to red meat, such as beef and lamb.¹⁰⁸ These regulations influenced how the general populace

Mishneh Torah's novel poultry ruling likely influenced readers in southern France towards the end of the 12th century.

- 105 Cultural parallels and probable influence of Christian doctrine and society on Judaism in medieval Europe is well attested. To mention only several contributors to this realization: Jeffrey R. Woolf, *The Fabric of Religious Life in Medieval Ashkenaz (1000-1300): Creating Sacred Communities* (Leiden, 2015), pp. 32 n. 48, 63-64, 118-120, 192; David I. Shyovitz, ““You have Saved Me from the Judgment of Gehenna”: The Origins of the Mourner's Kaddish in Medieval Ashkenaz,” *AJS Review* 39, 1 (2015), pp. 66-68; Ephraim Kanarfogel, *Jewish Education and Society in the High Middle Ages* (Detroit, 2008), pp. 70-74; On the impact of Christian penitential practices on Jewish customs, see Yitzhak Zimmer, *Society and Its Customs: Studies in the History and Metamorphosis of Jewish Customs* (Hebrew; Jerusalem, 1996), pp. 234-235; Talya Fishman, “The Penitential System of Hasidei Ashkenaz and the Problem of Cultural Boundaries,” *The Journal of Jewish Thought and Philosophy* 8 (1999), pp. 201-229.
- 106 See, for example, Dom David Knowles, *The Monastic Order in England: A History of Its Development From the Times of St. Dunstan to the Fourth Lateran Council, 940-1216* (Cambridge, 1966), pp. 3, 17-18, 25, 640-641.
- 107 *The Holy Rule of St. Benedict by Saint Benedict, Abbot of Monte Cassino*, trans. Rev. Boniface Verheyen, chapter 39 (Michigan, 1949), p. 46.
- 108 Knowles, *Monastic Order*, p. 458, 460 n. 1. See Knowles, p. 458 n. 2, who states that the tradition at Monte Cassino, Italy, home of Saint Benedict of Nursia (480-543), seems to have been in favor of eating poultry as far back as 800 CE. At the Council of Aachen in 817, directed by Benedict of Aniane (747-821), the “Second Benedict,” fowl was forbidden for the monastic diet (Knowles, *ibid.*, p. 459 n. 1; Pierre Jean-Baptiste Le Grand d'Aussy, *Catholic Fasting in France: From the Franks to the Eighteenth Century*, transl. Jim Chevallier (California, 2012), p. 13). However, these new regulations fell into disuse shortly after Benedict's death and had little influenced on the perception of fowl as a permissible food (Knowles,

conducted themselves during penitential fast days and Lent.¹⁰⁹ The Church widely considered birds to be meatless, grouping them with fish, and therefore generally allowed poultry to be eaten by monks in the abbeys. This scientific perception, based upon the biblical narrative (Gen. 1.20) that birds sprang from the water, influenced how the general population thought of birds – birds were a variety of fish.¹¹⁰ There is evidence that this perception changed in much of Europe during the 12th century and that poultry came to be considered meat, forbidden for those who chose the austere life year-round, and for all during Lent.¹¹¹ Thomas of Cantimpré (in present-day Belgium, 1201 – 1272) and Vincent of Beauvais (France, c. 1190 – 1264) reported that at the Fourth Council of

Monastic Order, p. 28, especially n. 2; Le Grand d'Aussy, *Catholic Fasting*, p. 14; Paul Lacroix and F. Kellerhoven, *Manners, Customs, and Dress During the Middle Ages and During the Renaissance Period* (London, 1876), p. 127; compare Ethelred L. Taunton, *The English Black Monks of St. Benedict* (London, 1897), p. 16 n. 1).

- 109 Christian doctrine distinguishes between two kinds of fasts. The first is absolute, as in Judaism, allowing no food or drink at all. The second kind limits what categories of food one may eat, and the quantity and time in which food can be consumed (see Thomas Aquinas, *The Summa Theologica*, trans. Fathers of the English Dominican Province (Benziger Bros. edition, 1947), Second Part of the Second Part: Question 147: Articles 6-8).
- 110 Le Grand d'Aussy, *Catholic Fasting*, pp. 11-14; Lacroix and Kellerhoven, *Manners, Customs, and Dress*, p. 127.
- 111 During this 12th century period of transition, the Cistercians, known as the White Monks, wished to return to the literal observance of the *Rule of St. Benedict* and rejected developments it had undergone over time. They ate no meat, as per the Rule, but included birds in their diet, and were mocked by British satirist Nigel Wireker (fl. c. 1190) for this seemingly contradictory behavior (Knowles, *Monastic Order*, pp. 677-678; see also Henry John Feasey, *Monasticism: What is It?: A Forgotten Chapter in the History of Labour* (London, 1898), p. 207). From Jaroslav Lev of Rožmitál we learn that, by the 15th century (in England at least?), the forbidden status of birds (other than the barnacle goose) during Lent was well established (*Hakluyt Society, Second Series: Travels of Leo of Rozmital through Germany, Flanders, England, France, Spain, Portugal and Italy 1465-1467* (London, 2011), pp. 58 n. 3, 62).

the Lateran (Rome, 1215) the eating of the barnacle goose¹¹² was prohibited for fast days. This bird, indigenous to the Baltic Sea and the shores of England, was thought to grow from fir timber in the sea, and due to its aquatic origins, was permissible on days when meat was otherwise prohibited. Since Christians could eat no other meat during the many weeks of Lent, barnacle goose meat was widely enjoyed and sought after. The council sought (unsuccessfully) to put an end to this practice.¹¹³ The Jews of England, France, and Germany were fully aware of the theory of the bird's aquatic origins and, consequently, the halakhic literature of the mid-12th to 13th centuries is replete with discussions about the barnacle goose's status in Jewish law. Rabbis used this bird in explaining the biblical text and debated the slaughter requirement and *kashrut* of these creatures.¹¹⁴ These discussions inform us that, for the most part, European Jews in the 13th century absorbed the prevalent scientific understanding of the origins of birds – barnacle geese may have sprung from the sea, but all other birds certainly were more meat-like. We see how the changing attitudes of the broader society directly impacted how fowl was perceived in the context of halakha. These changing perceptions likely also effected the halakhic status of poultry in the pre-Ninth of Av feast,¹¹⁵ as well as the laws pertaining to a waiting period before eating dairy.

112 *Branta leucopsis*.

113 Herbert Thurston, *Lent and Holy Week: Chapters on Catholic Observance and Ritual* (London, 1913), pp. 50-53.

114 Hezekiah ben Manoah, *Hizkuni*, Genesis 2:19, ed. Chavel (Hebrew: Jerusalem, 2005), p. 16; Natan Slifkin, *Sacred Monsters* 2nd edition (Zoo Torah, 2011), pp. 315-321; Richard Gottheil, George Alexander Kohut, "Barnacle-goose," *The Jewish Encyclopedia*, II (New York, 1902) pp. 538-540.

115 The 12th century generation of Tosafists (including Ra'avyah and Shmuel ben Natroni) likely only viewed the affirmation of the permissibility of poultry for the pre-fast meal as necessary because the attitude of Christian society towards poultry had changed. However, the masses gradually absorbed the new perception and refrained from mixing poultry with milk. While some rabbis acknowledged that it was merely a recent custom, other authorities, such as *Tur*, found means of

Another development of note in the mid-12th century was the institution of the Order of Grandmont, a new set of monastic rules which originated in southern France. Monks of the Order were encouraged to live in extreme poverty, while spending their time in contemplation of God. By the mid-13th century, the Grandmont rule had established 165 cells, (primarily) throughout France.¹¹⁶ The movement gained a high order of religious and political influence in parts of Europe.¹¹⁷ Unlike many earlier guidelines, the Grandmontine order required monks to abstain from fowl in addition to red meat.¹¹⁸

It may be no coincidence that Meiri, a proud defendant of his community's stringent poultry custom who lived in the neighborhood of the established Order of Grandmont in Southern France, considered how Christian Lent abstinence practices might impact halakha:

וכן שידוע מהם שאין טחין פניהם בשומן חזיר, מצד שאוכלין אותו בימים
שהבשר אסור להם

... and so it is known that [the Christians] will not smear [their cheese] with pig fat because they mainly eat cheese during the days on which meat is forbidden to them [i.e. Lent].¹¹⁹

justifying this new custom by logical reasoning based on ancient sources (see *Tur* Y.D. 89)

- 116 Carole A. Hutchinson, "Grandmontines," *Encyclopedia of Monasticism*, ed. William M. Johnston (New York, 2013), pp. 541-543.
- 117 Elizabeth M. Hallam, "Henry II, Richard I and the Order of Grandmont," *Journal of Medieval History* 1, 2 (1975), pp. 165-186.
- 118 Dianne M. Bazell, "Strife among the Table-Fellows: Conflicting Attitudes of Early and Medieval Christians toward the Eating of Meat," *Journal of the American Academy of Religion* 65, 1 (1997), pp. 82-83. See there for various earlier interpretations of the *Rule of Benedict* as well.
- 119 *Beit ha-Behira* bAZ 35b, ed. Abraham Schreiber (Hebrew: Jerusalem, 1964), 110. Rashba, the first Spanish authority on record to embrace Maimonides' stringent ruling on poultry, also considered the halakhic implications of Lent (*Torat habayit ha'arokh ve'hakatzet* vol. I bayit 3 sha'ar 6 (Hebrew: Jerusalem, 2010), p. 1094; *Hiddushei Rashba Avodah Zara* 35a; in *Responsa* 1:67 he again refers to the Lent

It was during this era that Catalonia included portions of southern France. There was extensive contact between the communities of France and Spain, which brought about the spread of new outlooks and customs into Spain,¹²⁰ notably reflected in Meiri's report on the emerging adoption, by Spanish scholars, of this post-poultry waiting practice. The influx of esteemed Franco-German scholars, including Rosh and his son, R. Yakov, into Spain during this time period surely aided in promoting this new, stringent poultry custom in that country.

The Jewish layman's early-13th-century conception of poultry slowly shifted and the latter came to be regarded as a subcategory of meat. Accustomed to not eating dairy after red meat in one meal, people gradually included poultry in this restraint due to the influence of changing cultural conceptions. Yitzhak Or Zarua of Vienna tried to curb this change by citing the authoritative voices of Rashi and early

practice of refraining from meat). It is noteworthy that Spanish Jews were known to have managed the finances of the Catholic religious orders (Jane Gerber, *The Jews of Spain: A History of the Sephardic Experience* (New York, 1992), p. 93).

120 It is understandable that a stringent custom of abstinence originating in Ashkenaz could quickly become popular in Spain, even without local external Christian influences. Generally, Ashkenazi rabbis thought of their traditions as superior to those of their Sephardic brethren (see the Rosh, who doubts the reliability of Sephardic *kashrut* traditions, *She'ailot u-teshuvot le-rabbeinu Asher* 20:20 (Hebrew: Jerusalem, 1993), p. 104; Rosh finds it necessary to explain that Sephardi Torah script is not disqualified, see *ibid.*, 3:11, p. 18; H. Soloveitchik, "Halachic Isolation"). Conversely, Spanish scholars from the 13th century onwards revered Ashkenazi teachings, carefully analyzing each word of the Tosafist school. In an atmosphere of conflicting Muslim and Christian influences in Spain, the ascetic piety encouraged by Christian doctrine was often perceived as loftier and more religious (see, for example, Rashba and Ran, who reject the ancient Sephardic/Islamic practice of shaving male pubic hair for the "more pious" Christian style – Nissim b. Reuven in Alfasi, *Halakhot AZ* 9a, and compare Rashba *Responsa* 4:90 with 5:121; for the dual Muslim and Christian influences in Spain see Gerber, "The Word of Samuel HaLevi: Testimony from the El Transito Synagogue in Toledo," ed. Jonathan Ray, *The Jew in Medieval Iberia: 1100 – 1500* (Boston, 2012), pp. 33-59).

Tosafists; however, as Moshe of Coucy and Rosh observed, the new custom soon became well established.¹²¹ Against this background, Maimonides's coincidental, novel ruling in *Mishneh Torah*, grouping poultry with red meat, was likely viewed with favor by much of Ashkenazi Jewry. Indeed, Yakov ben Asher, a native of Germany whose father, Rosh, approved of the stringent poultry custom, cites Maimonides as the basis for this stringency, projecting an image of the practice as an ancient and unanimous halakha and not merely a recent, Ashkenazi folk custom.¹²²

Whatever the stimulus for the change of attitude towards poultry in Europe, it is unlikely that these factors influenced Maimonides.

Possible Anti-Karaism in Maimonides

Maimonides's motivation in further expanding the requirement of waiting between meat and milk to include poultry may be connected to the shifting dietary practices of the Karaites.¹²³ Classical rabbinic halakha

121 In Italy, the rules reportedly established by the Fourth Council of the Lateran (Rome, 1215) indicate that poultry was already grouped with meat in the early 13th century by church standards. This may explain why Isaiah di Trani the Elder asserted his view that fowl was different than meat and required no wait – he was attempting to curb a changing cultural attitude towards the halakhic status of poultry.

122 *Arba'ah Turim* Y.D. 89. Stollman, "Halakhic Development," pp. 20-30 has demonstrated how European Jewry in recent centuries gradually absorbed the long waiting period of the Sephardim. This long waiting period was applied to poultry as well, because both forms of flesh were regarded as having equal status.

123 An overview of the historical development of Karaite rules regarding kosher birds has been adapted from Daniel Frank, "May Karaites Eat Chicken? Indeterminacy in Sectarian Halakhic Exegesis," *Jewish Biblical Interpretation and Cultural Exchange*, ed. Natalie B. Dohrman and David Stern (Philadelphia, 2008), pp. 124-138. See there for more references to primary sources. Not all Karaites adhered to this very restricted list of permitted fowl (see two 10th century sources: Levi ben Yefet, *Sefer ha-Mitzvot*, Ma'achalot, 13, 1, and Nemoy, "Al-Qirqisānī's Account of the Jewish Sects," *HUCA* 7 (1930), p. 394). However, it appears from the sources

allowed for the consumption of a wide range of birds. The Mishna (mHul. 3:6) provides various signs for identifying kosher species of birds, and the Talmud (bHul. 63b) further permits any birds which Jews have a tradition of eating. The Karaites, of course, rejected Rabbinic halakha and returned to the biblical texts to determine which bird species were kosher. The great 9th and 10th century Karaite scholars, including Benjamin Nahawandi, Daniel al-Kumisi, Jacob Al-Qirqisani, and Japeth ben Ali, argued that since the identity of most birds mentioned in the Torah was ambiguous – as biblical Hebrew was no longer the vernacular – they had no reliable means of recognizing birds as kosher, other than the turtledove and pigeon, which they felt confident identifying with the biblical *tor* (תור) and *yona* (יונה), respectively. They accused the Rabbanites of having invented physical criteria for identifying kosher birds, as Scripture does not supply these. The devout Karaite, therefore, could not partake of chicken, quail, duck,¹²⁴ and other birds which were permitted for Rabbanites. Rabbanite scholars were fully aware of Karaite claims in these matters.¹²⁵

that the more established Karaite practice was to only eat the pigeon and turtledove.

- 124 These birds were always permitted by rabbinic halakha and were eaten by Jews around the Mediterranean in the medieval period. (For chicken see Goitein, *Mediterranean Society* IV, pp. 230-231, 233, 250. For quail see Zohar Amar, *The Tradition of Fowl in Jewish Halacha* (Hebrew: Israel, 2004), pp. 88, 96-99. For duck see Tobiah ben Eliezer (b. Greece 11th century), *Medrash Lekah Tov* (Hebrew: Vilna, 1880), 31a; *Hiddushei ha-Rashba*, Hullin 62a (Hebrew: Jerusalem, 2008), p. 360; Vidal of Tolosa, *Maggid Mishneh* Ma'achlot Assurot 1:20. For pigeon see Goitein, *Mediterranean Society* IV, p. 250; *Mishneh Torah* De'ot 4:10).
- 125 This is clear from the relevant, self-justifying and anti-sectarian writings of Saadya Gaon, *Targum Yonatan*, and Tobiah ben Eliezer (Moses Zucker, *Rav Saadya Gaon's Translation of the Torah: Exegesis, Halakha, and Polemics* (Hebrew: New York, 1959), p. 447; Revel, "Targum Yonatan al ha-Torah" [Hebrew], *Ner Maaravi* 2 (1925), p. 99; Tobiah ben Eliezer, *Medrash Lekah Tov*, p. 22b, 31a).

Hananel and Alfasi would have had no need to legislate more stringent practices with regards to the prohibition against mixing fowl and milk. Not only was there no basis for such rulings in the Talmud, but there would have been no social need to reinforce these laws. The contemporary Karaites, whose rejection of the prohibition of mixing milk and meat these sages sought to counter, hardly ate fowl at all.¹²⁶ As such, they had little opportunity to violate the rabbinic prohibition against mixing them with milk.

During the century that elapsed between these sages' time and the rise of Maimonides (1138-1204), Karaite practice regarding the consumption of fowl relaxed. Over the course of the 12th and 13th centuries a lenient position, which provided legal rationale to permit the consumption of birds commonly consumed by Rabbanites, was adopted.

R. Yehuda Halevi (Spain, 1075 – 1141) wrote in his *Kuzari* (completed around 1140):

ומחמד אני שיענו לי הקראים תשובה מספקת על זה ודומיו ואשוב לשטתם...
והמדתי שיבארו לי העוף הטהור מן הטמא, חוץ מן המפורסמים, כלומר יונה
ותור. ומנין לו שלא תהא התרנגולת והאווה והברווז והחגלה מן הטמאים?

If the Karaites could only give me a satisfactory answer to questions of this kind I would join them... I desire an explanation of the lawful and unlawful birds, apart from the well-recognized ones, such as the pigeon and the turtledove.

126 Perhaps another contributing factor was the fact that, in the early days of the Karaite movement, some of its scholars allowed *melika* (מליקה), severing the bird's neck from behind, as a valid, kosher preparation method (Elijah Bashyazi, *Aderet Eliyahu* Inyan Shehita 6, (Hebrew: Gozleve, 1835), p. 63; Aaron ben Elijah, *Gan Eden* (Hebrew: Gozleve, 1864), p. 90a). A bird slaughtered in such a fashion is *neveilah* by rabbinic law, and this alone would have created a social barrier against joint poultry consumption (mHul. 1.4).

How do they know that the chicken, goose, duck, and partridge are not unclean birds?"¹²⁷

This passage indicates that by the 1130s, Karaites in Spain permitted the consumption of the same fowl eaten by the Rabbanites.¹²⁸ The Karaite scholar Judah Hadassi (Constantinople, 12th century) records, with disapproval, that most Karaites allowed themselves to partake of these fowl:

ומקצת משכילי נ"ע צדקו בגדולי הבית, העופות המתגדלים בבתיהם, ממנה ושורה יען בחירת כלל האמה, ולא מרמזי התורה להתמימה ולאזרה, ואשרי המשתמר מספקות בנפש שלמה להחמיר מכלל זביחתך

Now some of the (Karaite) teachers approved those domestic fowl, which are customarily raised in their home. (They did so) because this was the choice of the entire nation, not because there are any scriptural allusions that justify or confirm (this practice). Happy is he who guards himself wholeheartedly against uncertainties, so that he is stringent in all (matters pertaining) to ritual slaughter!¹²⁹

127 *Sefer ha-Kuzari*, translated and edited by Yosef Qafih (Hebrew: Kiryat Ono, 2002), pp. 119-120. For an analysis of Karaite activity in 12th century Spain, see Yehudah Rosenthal, "Karaites and Karaism in Western Europe," *Sefer ha-Yovel le-Rabi Hanokh Albek* (Hebrew: Jerusalem, 1963), pp. 429-436, and Daniel Lasker, *From Judah Hadassi*, pp. 123-140. Lasker writes "All in all, though, Rabbanite comments concerning Karaism can be seen as reliable indicators of a perceived Karaite threat in twelfth-century Spain" (p. 129).

128 Avraham ibn Ezra's quote from a Karaite equating the unclean bird דוכיפת with תרנגולת (commentary to Lev. 11:19) most likely refers to Anan's (8th century) interpretation – see Baron, *History* 5, p. 390 n. 6. However, subsequent Karaite scholars, including al-Qirqisani and the Karaites with whom ha-Levi was familiar, rejected Anan's identification (see Qirqisani in Nemoy, "Al-Qirqisānī's Account," 389; Mann, *Texts and Studies* II, p. 65, n. 117).

129 Judah Hadassi, *Eshkol ha-Kofer* 234 (Hebrew: Gozleve, 1836), p. 89b, translation taken from Daniel Frank, "May Karaites Eat Chicken?". It is noteworthy that Byzantium developed into a new world center of Karaite intellectualism over the 11th and 12th centuries (Fred Astren, *Karaite Judaism and Historical*

In the 14th century as well, Karaite theologian Aaron ben Elijah (Nicomedia, 14th century) indicates that it was common practice for Karaites to eat birds deemed acceptable by Rabbanites.

אכן מה שנשאר ידיעת קצת שמות מן הכתוב, ומה שנודע מסבל הירושה, כגון היונים והתורים והשלו והקורא וברבורים והתרנגולים והאווזים, שכך קבלנו איש מאיש, שהם מתגדלים בבתיהם והם בהתר

All that remains, in fact, is knowledge of several of the names (mentioned) in Scripture and those known via the tradition (*sevel ha-yerushah*¹³⁰), such as pigeon, turtledove, quail, partridge, goose, chicken, and duck. For it has been transmitted, one person to the next, that these are raised domestically and that they are permitted...¹³¹

Of course, as in the case of red meat, the Karaites would have had no hesitations in eating and cooking the newly accepted fowl with dairy. Now that a joint Karaite-Rabbanite chicken dinner was likely, the possibility of influence from the ‘milk with meat’ cooking practices of the Karaites was real.

It is possible Maimonides introduced his new, stringent law to counter the threat of Karaism. Maimonides is known for engaging in significant anti-Karaite activity.¹³² For example, Maimonides is the first

Understanding (South Carolina, 2004), pp. 125-135; Baron, *History* 5, p. 272). Byzantine lenient practice was likely influential in shaping Karaite custom around the Mediterranean. Hadassi’s *Eshkol ha-Kofer*, written in 1148-1149, predated Maimonides’ *Mishneh Torah*, which was composed over twenty years later, between 1170 and 1180 (Golda Akhiezer, “Byzantine Karaism in the Eleventh to Fifteenth Centuries,” *Jews in Byzantium: Dialectics of Minority and Majority Cultures*, ed. Robert Bonfil, Oded Irshai, et. al. (Leiden, 2011), p. 729).

130 “*Sevel ha-yerushah*” is a Karaite term for ‘commonly accepted tradition.’

131 Aaron of Nicomedia, *Gan Eden*, chapter 2 (Hebrew: Gozleve, 1864), p. 82d; translation from Frank, “May Karaites Eat Chicken?”

132 Joel Kraemer writes that Maimonides lived a short walk away from the Fustat Karaite synagogue and suggests that he was acquainted with Karaite physicians in

authority on record to disqualify a *get* (divorce document) written in a Karaite court by a Karaite scribe.¹³³ Because of laxities in the Egyptian Rabbanite community stemming from Karaite influence, Maimonides introduced a clause into the ketuba obligating the parties to abide by rabbinic rules of ritual purification.¹³⁴ For Rabbanite-protective motives, the *Mishneh Torah* uncharacteristically contains extra explanatory lines in order to clarify why the sheep tail (*alya*) is not *heilev* – forbidden fat.¹³⁵ Even Maimonides's *Moreh Nevuchim* contains important

the Sultan's court (J. Kraemer, *Maimonides: The Life and World* (New York, 2008), p. 149, 214).

133 *Teshuvot ha-Rambam* 2:351 (Hebrew: Jerusalem, 1960), pp. 628-629; Marina Rustow, *Heresy*, p. 345; Olszowy-Schlanger, *Karaite Marriage Documents*, p. 252.

134 *Kovetz Teshuvot ha-Rambam ve-Igrotov* no. 149 (Hebrew: Leipzig, 1859), p. 30. For laxity in earlier times see Schechter, "Geniza Specimens. A Marriage Settlement," *JQR* 13:2 (1901), p. 219. Another instance where Maimonides tried to remove Karaite influence from Rabbanite purity laws is in *Mishneh Torah* Isurei Biah 11:15, where a practice amongst some Rabbanite communities to abstain from intercourse until forty or eighty days after a child is born is denounced as sectarian (Karaite) heresy.

135 *MT Ma'achalot Assurot* 7:5. There are additional examples dispersed throughout *Mishneh Torah*. Haym Soloveitchik has argued that the 'Laws of the Sabbath' in *Mishneh Torah* were presented in an arrangement which counters Karaite notions (*Collected Essays*, Volume II (Littman Library, 2014), pp. 378-395). Furthermore, while the Talmud merely permitted sexual intimacy on the Sabbath, *Mishnah Torah* (Shabbat 30:14), likely for polemical reasons, expresses it in more encouraging terms (see *Eshkol HaKofer* 147, p. 55; Soloveitchik, *Collected Essays*, p. 395 and Goitein, *Mediterranean Society* 5, p. 313). Maimonides (*MT Shevitat Assur* 1:4-5) leads readers to believe that the four afflictions of Yom Kippur (excluding eating) are also biblically proscribed (for the biblical status implication of "based on the tradition they expounded" see Mordechai Z. Cohen, "A Talmudist's Halakhic Hermeneutics: A New Understanding of Maimonides' Principle of Peshat Primacy," *Jewish Studies, an Internet Journal* 10 (2012), pp. 288-289). The purpose here was arguably to counter the alternate Karaite interpretations of "inu" (Lev. 16:29; see Levi ben Yefet, *Shabbat and Moadim*, 17, 5; for a similar anti-Karaite explanation of *Targum Yonatan* see Revel, "Targum Yonatan," [Hebrew] *Ner Maaravi* 2 (1925), p. 99).

philosophical teachings which very likely carried anti-Karaite intent.¹³⁶ Born early in the 12th century, when Karaites had already relaxed their poultry-eating customs, Maimonides would have had good cause to expand the requirement to wait between meat and milk to include fowl as well.¹³⁷ It may not be a coincidence that Maimonides saw fit to introduce this legal innovation while writing in Egypt, a country known during this period for its fowl.¹³⁸

The Tactic of Concealment

The suggestion has been made that Hananel, Alfasi, and Maimonides introduced waiting periods between meats and dairy as protective

- 136 Daniel Lasker makes the following points: In contrast to Karaite legal methodology, which allowed derivation of laws from any part of Scripture, Maimonides chose to follow one view in the Talmud, according to which post-Mosaic books may not be used halakhic purposes (Lasker, *From Judah Hadassi*, pp. 168, 179). Thus, *Moreh Nevuhim* emphasizes that Daniel was not a prophet, deflating the significance of the Book of Daniel, a book central in Karaite thought (Lasker, p. 167).
- 137 Maimonides's introductory remarks to *Mishneh Torah*, which present his work as a condensed representation of laws from the Talmud and geonic literature, have proven to be an exaggeration, as in fact the *Mishneh Torah* frequently veers from the words of the Talmud and geonim. Maimonides ignored or reinterpreted non-rationalist Talmudic statements in his code: For example, Maimonides tried to roll back the Talmud's prohibition barring the "katlanit," "killer-wife," from remarriage (see Avraham Grossman, *Pious and Rebellious: Jewish women in Europe in the Middle Ages* (Hebrew; Jerusalem, 2001), pp. 475-480; for many other examples, see Norman H. Strickman, *Without Red Strings or Holy Water: Maimonides' Mishneh Torah* (Brighton, 2011), pp. 74-100). Menachem Kellner has observed that Maimonides introduced dogmatic beliefs into the conversion process, which were not required by the Talmud (Kellner, *Must a Jew Believe Anything?* 2nd edition (Littman Library, 2006), pp. 58-60). See also David Weiss Halivni's remarks about Maimonides's approach to the *stamma*, below note 157.
- 138 *Dajajii*, a dealer in chickens, was a common Jewish family name in Egypt. Chicken was the preferred meat for weekends and holidays (Goitein, *Mediterranean Society IV*, pp. 233, 249-250), "A middle-class weekend without chicken was unthinkable" (*ibid.*, I, p. 124).

measures. This argument presumes that these authorities concealed the novel nature of their rulings: Hananel and Alfasi found somewhat persuasive means of reading their laws into the lines of Talmud; Maimonides discreetly inserted fowl alongside genuine meat in his *Mishneh Torah*, confusing readers into assuming that the Talmud's contrary statement should not be read simply. This stratagem for adapting halakha has precedent in the Talmud. Per R. Tam, Hananel employed the "בקעה מצא וגדר בה גדר" technique, a tactic attributed to the Talmudic sage Rav, who issued rulings that did not reflect the true halakha or the master's true opinion, but were taught for circumstantial, protective purposes.¹³⁹ Similarly, the Talmud records that when novel rabbinic laws were instituted by sages in Palestine, the reasoning was concealed from the public until the new regulation became established:

... דאמר עולא: כי גזרי גזירתא במערבא, לא מגלו טעמא עד תריסר ירחי שתא,
דלמא איכא איניש דלא ס"ל ואתי לזלזולי בה

In 'the west', when a decree was issued, its purpose was not revealed for twelve months. This is because many people would not accept the meaning, and consequently would scorn the decree.¹⁴⁰

It is reasonable to argue that Hananel, Alfasi, and Maimonides felt justified in their amendments of halakha, based on such precedent. The general Rabbanite populace may not have adhered to the new strict laws had they realized they were merely enacted for political reasons.¹⁴¹

139 bEruv. 6a, 100b; bHul. 110a.

140 bAZ 35a.

141 The tactic of concealment is assumed by scholars including Isaac Hirsch Weiss, Salo Baron, and Naphtali Weider, who similarly explained various medieval rabbinic halakhic rulings as anti-Karaite creations. They argued that the view amongst the geonim that missing the counting the first night of *sefirat ha-omer* disqualifies the remainder of the count was stated only in order to ensure that the masses not be misled by the Karaite insistence on daytime counting (Baron, *History* 5, p. 283; I. H. Weiss, *Dor Dor* 4, p. 97; Weider similarly explained an identical position of Saadya's in *The Formation of Jewish Liturgy*, though at the

Response to Aviad Stollman

Aviad A. Stollman, in two seminal papers, thoroughly analyzed the halakhic development of dairy and meat separation practices from Talmudic to modern times.¹⁴² He writes that, already in the sixth century, Babylonian Jews were accustomed to wait an extensive period between eating meat and dairy. Stollman's premise conflicts with the anti-Karaite origin theory presented above in that he projects the beginning of the waiting custom to centuries prior to the rise of Karaism. His argument is based upon the attitude of the *stamma* (anonymous redactor) in *Hullin* 105a. Initially, the Talmud records a ruling of R. Yohanan, which requires no waiting at all *from meat to dairy*. The anonymous redactor cannot accept that this ruling is true because it seemingly conflicts with a statement of R. Hisda which forbids eating dairy after meat. The redactor concludes that R. Yohanan must surely have said the inverse – no waiting is required *from dairy to meat*:

בעא מיניה רב אסי מרבי יוחנן: כמה ישהה בין בשר לגבינה? א"ל: ולא כלום.
איני? והא אמר רב חסדא: אכל בשר - אסור לאכול גבינה, גבינה - מותר
לאכול בשר. אלא כמה ישהה בין גבינה לבשר? א"ל ולא כלום

R. Assi inquired of R. Yohanan: "How long must one wait between meat *and cheese*?" — He replied. "Nothing at all." Is this so? [This cannot be,] for R. Hisda said: "If a person ate meat

time of this writing I cannot locate the exact page). Weiss and Weider similarly opined that the blessing recited over the Sabbath lamps was a post-Talmudic practice introduced to strengthen Rabbanite halakha (Weiss, *ibid.*; Weider, *The Formation*, vol 1, p. 343). On this last point, it would follow that Shimon Kiyarra's lone ruling that the start of the Sabbath is dependent upon kindling the lights (קבלת קבלת (שבת תלויה בהדלקת הנר) had an anti-Karaite function (see *Tur* and *Bet Yosef* O.C. 263).

- 142 Aviad A. Stollman, "The Sugyot of Separation Between Milk and Meat in the Eighth Chapter of Bavli Hullin, A Critical Edition and a Comprehensive Commentary," [Hebrew] Master's thesis, Bar-Ilan University (2001); Stollman, "Halakhic Development as a Fusion of Hermeneutical Horizons: The Case of the Waiting Period Between Meat and Dairy," [Hebrew] *AJS Review* 28/2 (2005), pp. 1-30.

he is forbidden to eat cheese [after it], if he ate cheese he is permitted to eat meat [after it]!” — Rather [the following must have been R. Assi’s question]: “How long must one wait between *cheese and flesh*?” And [R. Yohanan] replied. “Nothing at all.”

Stollman infers, from the aversion of the *stamma* to the received form of R. Yohanan’s teaching, that in the *stamma*’s own cultural surroundings it was unacceptable to eat dairy immediately after meat without any waiting period. However, a closer look at the sources reveals that this is a tenuous claim.

In the eyes of medieval authorities, a requirement of a waiting period after meat consumption was a matter in dispute between the Babylonian and North African scholars. Rashba and *Ittur* could invoke no earlier authority than Hananel in defense of the stricter view. They contrast this position with the lenient view of two geonic sources, Kiyarra and the “gaon.”¹⁴³ Kiyarra explained that the source of contemporary rabbis’ leniency was Nahman’s ruling: *והאי דשרו רבנן גבינה בתר בשר משמעתייה דרב* – “this that rabbis allow dairy after meat is derived from the teaching of Rav Nahman.”¹⁴⁴ As the rabbis of the Talmud do not make this derivation, Kiyarra must be referring to the inference of contemporary, or at the very least post-Talmudic, rabbis. The “gaon” (likely Hai) cited by Rashba and *Ittur* reported: *וה"מ בחסידי, אבל אנו* – [a wait between meat and dairy] is only the practice of the pious,¹⁴⁵ we, however, [merely] wash out our mouth and hands and eat [dairy].” This source also is not merely an independent lenient scholarly opinion – it reveals what was common practice even

143 A copyist’s error replaced the words ‘*Halakhot Gedolot*’ with ‘Alfasi’ in the available *Sefer ha-Ittur* (Meir Yonah’s *Sha’ar ha-Hadash*, note 24, in Yitzhak of Marseille, *Sefer ha-Ittur*, p. 26).

144 *Halakhot Gedolot*, Berachot 6 (Hebrew: Jerusalem, 1991), p. 76.

145 The “pious” should be understood as a reference to Mar Ukba and his father, from the sugya in *Hullin* 105a (see *Hiddushei ha-Rashba Hullin* 105a (Hebrew: Jerusalem, 1986), p. 598).

amongst the rabbinic elite in Iraq. Apparently, as far as Yitzhak ben Abba Mari and Rashba were aware the custom of Iraqi Jewry followed the geonim.

It should not be assumed that this piece of *stammaic* commentary was present in the Talmud as early as the sixth century, as Stollman suggests.¹⁴⁶ It is well established that much of the anonymous layer throughout the Talmud was added at a much later date. David Weiss Halivni postulates that the general editing activity of the *stammaim* continued until the mid-ninth century,¹⁴⁷ but he believes small insertions may have continued to be added even later than that:

Indeed, later generations – probably until the time of R. Hai Gaon (10th – 11th century) – felt free to add their own comments to the discursive material (and perhaps also to alter or subtract from this material).¹⁴⁸

Indeed, Hai's numerous textual amendments to the Talmud (and to its anonymous layer) have been confirmed by recent scholarship.¹⁴⁹ Hai's editing demonstrates that the Talmudic text was perceived to have some degree of fluidity even in the 11th century.¹⁵⁰

Such fluidity may be discerned in our *stamma* as well. One *geniza* fragment of *Hullin* 105a reads:

בעא מיניה ר' א?ס?י יוחנן כמ... ישהה בין לבשר ל?גבי?נה אמ' ליה ולא כלום איני?וה?א אמ' רב ?חס?דא אכל גבינה מותר לא?כ?.. ..?ר בש?ר

146 A. Stollman, "Halakhic Development," *AJS Review* 28/2 (2005), p. 6.

147 Halivni, *The Formation of the Babylonian Talmud*, trans. to English by Jeffrey Rubinstein (Oxford, 2013), p. 9.

148 Halivni, *Revelation Restored*, p. 95 n. 1.

149 See Uziel Fuchs, "Haga'otav shel rav Hai gaon ba-Talmud," *Ta-Shma: mekharim be-ma'adei ha-yahadut le-zihro shel Yisrael Ta-Shma*, ed. Avraham Reiner, vol 2 (Hebrew: Alon Shvut, 2011), pp. 601-626.

150 U. Fuchs, *ibid.*, 626; *idem.*, "The Role of the Geonim in the Textual Transmission of the *Babylonian* Talmud," [Hebrew] Ph.D. Thesis (Hebrew University of Jerusalem, 2003), p. 66.

and Rashba) lack of familiarity with the remarks of the anonymous redactor point to a very late date for its entrance into the Talmud.

The first authority on record to make clear reference to the ‘give and take’ of this *stamma* was Alfasi, in the mid-11th century. In an argument similar to Stollman’s, Alfasi ‘proves’ from the *stamma*’s intolerance of Yohanan’s original formulation that the halakha requires an extensive wait between meat and dairy.

... דקי"ל דהא דרב חסדא הילכתא היא, דהא קא מקשינן מינה [דף ק"ה ע"א]
 לרבי יוחנן וקא [מדחינן] לדרבי יוחנן מקמה, ואי לאו הילכתא היא היכי דחינן
 למימרא דרבי יוחנן מקמה ומתריצין לה אליבא דרב חסדא, אלא שמעינן
 דהילכתא היא

... the final halakha follows Hisda [that dairy post meat is not allowed without a wait]. [The proof of this is] that the [*stamma*], noting the conflict of views between Yohanan and Hisda, adapts Yohanan’s view out of preference for Hisda’s. If Hisda’s ruling was not the final halakha, why would the [*stamma*] choose to revert and reexplain Yohanan’s ruling to be congruent with Hisda? Certainly, we must conclude the halakha follows Hisda...¹⁵⁵

In the estimation of Rabbenu Tam (1100 – 1171), Hananel (d. 1053) himself was the founder of the stringency of the long waiting period.¹⁵⁶

R. Tam purposefully suppresses the force of the *stamma* by writing:

ומה שאומר בהלכות גדולות אמילתיה דרב נחמן מהכא נהגו למיכל בתר בשר,
 (ו) לא לאפוקי מדרב חסדא, אלא לאפוקי מפרשנים שבשנים

This which is written in *Halakhot Gedolot* regarding the ruling of Rav Nahman - “relying upon [Rav Nahman’s] ruling, we are accustomed to eat [cheese immediately] after meat,” should not imply that Rav Hisda believed [the halakha] was otherwise [for

155 Alfasi, *Halakhot* bHul. 37b

156 *Sepher ha-Yashar*, pp. 282-283.

in fact Hisda is congruous with Yohanan and Nahman, as explained above (see full citation from *Sefer ha-Yasher* above)]; rather [*Halakhot Gedolot's* intention was] to refute the opinions of 'mistaken commentators'.

R. Tam argued that *Halakhot Gedolot* was aware of the ambiguity in Hisda's statement and therefore grounded his opinion (and the prevalent custom with which Kiyarra was familiar) in Nahman's unambiguous ruling. The 'mistaken commentators' (מפרשנים שבשנים) are those who detect stringency in Hisda's unclear statement. Were these 'mistaken commentators' extra-Talmudic contemporaries of *Halakhot Gedolot*, or was R. Tam's ignoble term perhaps referring to the *stamma* itself?! Whatever R. Tam's intention, what is certain is that he did not see the *stamma* as evidence of a widespread waiting custom predating Hananel (since he accused Hananel of creating the stringent practice: בקעה מצא וגדר בה גדר). According to Tam, even if the *stamma* existed in pre-Hananelian times it represented an (erroneous) theoretical interpretation of Hisda's unclear statement – it did not reflect a common practice.¹⁵⁷ R. Tam's remarks may insinuate that Hananel himself was the originator of the *stamma*.

157 The dismissive attitude of R. Tam and others (like Ra'ah and *ha-Ma'or*) towards the *stamma* here is in line with the general approach Halivni ascribes to Maimonides:

I have determined that the majority of the discursive portions of the Talmud, which are overwhelmingly anonymous, ought to be treated as a later commentary, noncontemporaneous with the statements attributed by name to the Sages (Amoraim) of the Talmud. The fact that this discursive matrix is not contemporaneous with the earlier and more carefully preserved rabbinic statements recorded in the Talmud, but is the product of later generations, entitles us to offer alternatives whenever the given explanation or understanding of an earlier statement seems unsatisfactory (either because it does not fit the words of the earlier statement or because it contradicts a parallel source). Whereas the attributed opinions were scrupulously distilled into terse, apodictic statements, which were carefully preserved and which were intended to

The argument that this *stamma* originated with Hananel is not an implausible claim.¹⁵⁸ Hananel's academy had a hand in the redaction of an authoritative version of the Talmud. Under the leadership of R. Nissim (990–1062), Kairouanese scholars in the academies of Hushiel and Hananel compared variant manuscripts of Talmud to establish the correct text. Sages from Europe and Jerusalem designated manuscripts produced

serve as authoritative dicta, the discursive material that now connects these statements was not so distilled, not so carefully preserved, and not intended to serve as authoritative pronouncements. The discursive material contains many suggestions and possibilities out of which legal data may be extracted, but which by themselves were never meant as final rulings or even tenable positions. Indeed, later generations – probably until the time of R. Hai Gaon (10th-11th century) – felt free to add their own comments to the discursive material (and perhaps also to alter or subtract from this material). Maimonides apparently did not regard the discursive turns of the Talmud as the final word in matters of law. In his famous legal code, the *Mishneh Torah*, he often codifies positions contrary to those that seem to prevail in the argumentation of the Gemara, its “give and take”, as this discursive material is traditionally called. Such contradiction can be accounted for only if we understand that Maimonides related to the discursive disputations of the Talmud, not as a passive spectator, but as almost an active participant ... Maimonides evidently recognized the anonymous “give and take” of the Gemara as a guide and a commentary to the earlier Amoraic statements, but he did not interpret this framework... as being itself a closed or final legal code.

(David Weiss Halivni, *Revelation Restored: Divine Writ and Critical Responses* (Boulder, 1997), p. 95, note 1.)

- 158 Others have similarly argued that there are late insertions in the Talmud, included for polemical purposes. Samuel Poznanski believed that *Hullin* 117a contains late editorial additions intended to weaken the objection of those who believed the *alya* was forbidden (Poznanski, *The Karaite Literary Opponents of Saadiah Gaon* (London, 1908), p. 89 n. 1). This notion may be supported when we consider that Maimonides (*MT* Ma'achalot Assurot 7:5) chose to ignore the Talmud's reasoning (117a) and offered his own, more appealing explanation for why the *alya* is not one of the forbidden fats.

in the academies of Kairouan as “*mugahim*,” “corrected.”¹⁵⁹ Bearing in mind Halivni’s words that “later generations felt free to add their own comments,” perhaps the version which included the *stamma* was authored by Hananel himself. It is also noteworthy that modern scholarship has demonstrated that portions of Hananel’s commentary entered standard Talmud editions because later copyists mistook the master’s words for his version of the text.¹⁶⁰

There is a common notion that “רבינו הננאל כל דבריו דברי קבלה,” “all the teaching of Hananel are received traditions,”¹⁶¹ i.e. from the geonim.¹⁶² Though it is true that many of Hananel’s rulings are based on the words of the geonim, he was very much an independent thinker and, as such, often rejected the geonic *p’sak* – even at times disagreeing with Hai Gaon.¹⁶³ We should not assume that his ruling on waiting from meat to dairy was based on any received tradition.

Hananel was of Italian ancestry and drew many of his teachings from the rabbinic traditions of that country.¹⁶⁴ As the early Italian custom

159 Talya Fishman, *Jewish Culture and Contexts: Becoming the People of the Talmud: Oral Torah as Written Tradition in Medieval Jewish Cultures* (Philadelphia, 2012), p. 68.

160 Saul Lieberman, *Tosefeth Rishonim: Seder Nashim* vol. 2 (Hebrew: Palestine, 1936), p. 13-15; David Rosenthal, *Rabbi Mordechai Breuer Festschrift: Collected Papers in Jewish Studies*, eds. M. Ahrend and M. Bar-Asher, (Hebrew: Jerusalem, 1992), pp. 596-600, notes 29-30. This is further supported by the arguments of Greenbaum, *Peirush ha-Torah le-Rav Shmuel ben Hofni Gaon* (Hebrew: Jerusalem, 1979), p. 50.

161 *Rosh* bShev. 6:29.

162 Albert Harkavy, “Haye, Rav,” *Otzar Yisroel*, ed. J. Eisenstein, vol. 4 (New York, 1910), pp. 95-96.

163 A. Nahalon, “On Rabbenu Hananel: The Geonim in Rabbenu Hananel’s Opus and Rabbenu Hananel in Alfasi’s Opus,” [Hebrew] *Shenaton ha-Mishpat ha-Ivri: Annual of the Institute for Research in Jewish Law* 11/12 (1984), pp. 414-419.

164 Moshe Gil, “The Babylonian Yeshivot and the Maghrib in the Early Middle Ages,” *PAAJR* 57 (1990 – 91), pp. 96-97.

(likely influenced by *minhag Ashkenaz* and *Eretz Yisrael*)¹⁶⁵ did not require any long wait after eating meat, we might have expected Hananel to similarly rule leniently – yet Hananel required a long waiting period.¹⁶⁶ One could suppose, in explanation, that Hananel chose to acclimate to the local customs of the North African community. However, there are indications that such a North African custom did not exist in his time:

Hananel's student, Alfasi, uncharacteristically elaborates upon this *sugya* to explain why waiting between meat and dairy is the correct conclusion to be drawn from it.¹⁶⁷ Apparently, it was not obvious to Alfasi's readers that a wait was required by halakha and Alfasi sought to change that perception. Hananel and Alfasi guided the North African Torah academies and communities, which had for centuries received spiritual instruction from the Babylonian geonate by means of written correspondence, the immigration of many Babylonian families, and imported scholars.¹⁶⁸ Menahem Ben-Sasson writes that the halakhic

165 Palestinian midrashim suggest that waiting between meat and dairy was an unknown practice in early *minhag Eretz Yisrael* (A. Stollman, "Halakhic Development," *AJS Review* 28/2 (2005), pp. 4-5).

166 It was not until the 15th century that a six-hour waiting requirement was explicitly mentioned by Italian halakhists (Stollman, "Halakhic Development," p. 17 n. 60).

167 Rashba describes Alfasi's literary style (*Responsa of Rashba* 1:332 (Jerusalem, 2006), p. 149) as follows:

לפי שהרב [הרי"ף] ז"ל אין דרכו לפרש מה שנאמר בגמרא, אלא כותב והולך כדרך הגמרא ומסרן לחכמים.

"R' Alfasi's literary style [is concise; he] does not delve into explanation of the Talmud, merely [almost] repeating the Talmud, [his succinct words were intended to be carefully analyzed] by scholars..."

168 Baron, *History*, 5: 39; Moshe Gil, "The Babylonian Yeshivot and the Maghrib," *PAAJR* 57 (1990 – 91), pp. 81-83, 86-87. There is no evidence at all for any scholarly contact between the Palestine center and the Kairouan community during the ninth century (Ben-Sasson, "Jewish Community," p. 171). Kairouan attracted many Jewish immigrants from Iraq at least as early as the 10th century (Moshe Gil, "Babylonian Yeshivot," p. 81; Ben-Sasson, "Jewish Community," p. 24). On the

traditions of the Maghreb, and specifically Kairouan, were purely Babylonian traditions already from the 8th and 9th centuries.¹⁶⁹ Of the thousands of responsa of the geonim sent outside of Iraq, most were in reply to questions from the North African communities.¹⁷⁰ During the 10th and 11th centuries, the Kairouanese Jewish copyists were instrumental in disseminating geonic writings by compiling booklets of responsa to be sent to communal leaders throughout the Jewish world.¹⁷¹ Therefore, the halakhot the Kairouan community followed in their daily dietary habits was certainly under the influence of geonic teachings.¹⁷² Furthermore, as noted above, both Hananel and Alfasi employed counterintuitive arguments for a reinterpretation of the plain, straightforward text of the Talmud. Had a Babylonian geonic opinion existed which supported Alfasi's stringent position, he would not have failed to cite it in his *Halakhot*, given the recognition the geonim enjoyed throughout the Jewish world as the most authoritative sources of

correspondence of Babylonian yeshivot with the community of Fez, where Alfasi spent much of his career, see Gil, "Babylonian Yeshivot," pp. 78-79.

169 Ben-Sasson, "Jewish Community," p. 24.

170 This is true at least for those responses which are still extant. Zvi Groner, "ha-Maghreb ve-yeshivot ha-geonim be-Bavel: be-ra'i safrut ha-shailot u-teshuvot" [Hebrew], *Pe'amim: Studies in Oriental Jewry* 38 (1989), pp. 49-50; Talya Fishman, *Oral Torah as Written Tradition* (Philadelphia, 2012), p. 66 n. 8.

171 Moshe Gil, "Babylonian Yeshivot," pp. 70, 82, 87-88.

172 The "men of Kairouan" asked Sherira Gaon a halakhic question about rinsing one's hands at the end of the meal, from the very same *sugya* discussed by R. Nahman in *Hullin* 105 (B. M. Levin, ed., *Otzar ha-Geonim* Ber., responsa 349, (Haifa, 1928), p. 128). A responsum shows that they consulted the geonim concerning the laws of *treifah* (see Moshe Gil, "Babylonian Yeshivot," p. 70). Groner observes that in earlier generations the bulk of questions addressed to the geonim from Kairouan dealt with questions of practical day-to-day relevance. In the later, more independent, period, during the days of Hushiel and Hananel, the day-to-day questions were addressed to local scholars (Zvi Groner, "ha-Maghreb," *Pe'amim* 38 (1989), p. 54). This further supports the notion that the established Maghrebi daily practice followed the geonic (Kiyarra's and Hai's) ruling.

halakha.¹⁷³ All this would suggest that Hananel and Alfasi were attempting to introduce a new practice to the North African communities. Hananel, of Italian ancestry, was not bending to Maghrebi custom, but was rather reshaping it and its geonic traditions. In so doing, Hananel was following a trend begun by his father.

Under the leadership of Hananel's father, Rabbeinu Ḥushiel (b. Italy, 10th century), a new method of study was introduced into the Kairouan academy (c. 1010),¹⁷⁴ the most important center of Torah scholarship in North Africa, which did not solely rely upon the opinions of the Babylonian geonim.¹⁷⁵ This introduction resulted in a degree of intellectual independence in the school of Kairouan – Hananel himself became recognized as one of the greatest halakhic experts, even beyond

173 I borrow here the argumentation used by Avraham Grossman to adduce proof of the geonic stance vis-à-vis the *katlanit* (Grossman, *Pious and Rebellious* (Hebrew: Jerusalem, 2001), p. 478). A search using the Bar Ilan University Online Responsa Project (December 15, 2016) finds that the word “*gaon*” (גאון), appears at least 47 times in Alfasi's *Halakhot*; “*geonei*” (גאוני), and “*geonim*” (גאונים), each appear one time; “*rabevata*” (רבוותא) 17 times, and “*rabevata*” (רבוותא), 24 times – though, the latter two items may often refer to local Maghrebi scholars. (Only hits from distinctly separate discussions were counted. These counts do not include possible abbreviations of the words chosen for the search). The most frequently cited gaon is Hai. Others include Hafetz, Sherira, Natronai, Yehudai, Moshe, Tzemah, Nahshon, and often an unnamed gaon (likely Hai, again – see note 18). This search makes clear that Alfasi did not hesitate to invoke the Babylonian geonim in his *Halakhot*. If there were views amongst the geonim which sided with Alfasi on this matter he surely would have had knowledge of them and used their authority to bolster his strained position.

174 Ben-Sasson, “Jewish Community,” p. 155.

175 Gil, “Babylonian Yeshivot,” pp. 90, 96-97; and see the suggestion in n. 9 that it “was Hushiel who brought the study of the Palestinian Talmud to the Maghrib;” Zvi Groner, “ha-Maghreb,” pp.53-55. Ben-Sasson argues that the use of the Talmud Yerushalmi in Kairouan does not indicate rejection of Babylonian traditions, but rather is viewed as an additional source to be studied alongside and in benefit of Babylonian teachings (Ben-Sasson, “Jewish Community,” pp. 157-158).

Maghrebi borders.¹⁷⁶ Hananel took advantage of the sense of academic freedom his father had initiated. Aware of a timely need on the part of the Rabbanite community for reinforcement of its basic halakhot, Hananel rode on the wave of reform and devised a clever method of reexplaining a somewhat confusing *sugya*. According to Israel Ta Shma, Hananel was to the Mediterranean world what Rashi was to Northern Europe.¹⁷⁷ He therefore had the authority and responsibility to legislate a new halakha when circumstances demanded it.

176 Groner, "ha-Maghreb," 55; Baron, *History*, 5: 40; Ben-Sasson, "Jewish Community," 160-161. Ben-Sasson writes that during this phase of increasing independence fewer questions were sent to the geonim for resolution (ibid., p. 152; see also Fishman, *Oral Torah*, p. 67).

177 Fishman, *Oral Torah*, p. 264 n. 24.

Appendix A

A question most relevant to the arguments presented above is – did Karaites and Rabbanites in fact eat together during the early Middle Ages?

If we assume Karaite and Rabbanite laws of *kashrut* enabled inter-communal dining, then the Rabbanite-protective effect of Hananel's new ordinance is certainly understood: Karaites and Rabbanites meet for business, community, or family matters over dinner. They are served a meat dish; for the following course a Karaite may choose to eat a dairy dish – a Rabbanite, however, is required to abstain, emphasizing his adherence to rabbinic traditions.

Even if we were to conclude that Karaite and Rabbanite laws of *kashrut* effectively limited one or both groups from dining with the other over meat and dairy items, the defensive nature of the new, stricter rule can still be readily understood: Because a breaching of the rabbinic meat and dairy separation laws was symbolic of Karaite sectarianism, stricter regulation of these laws would have the desired protective effect even if the application of the new rule was limited to internal Rabbanite meals. Furthermore, there were surely opportunities for Karaites and Rabbanites to be together during mealtimes. For example, on a joint business journey a Rabbanite and Karaite may have each prepared their own food and sat together to converse and eat, each from his own meal.

Many sources indicate that Karaites and Rabbanites did eat together. From a question posed to Maimonides over whether Karaites may count in a *zimmun*, and from Maimonides's ruling that Rabbanites may drink Karaite wine in Karaite homes, we see that conviviality between the communities over food and drink was commonplace.¹⁷⁸ Similarly, Halfon

178 For *zimmun*, see *Teshuvot ha-Rambam* 2:265 (Hebrew: Jerusalem, 1960), p. 502; for the permissibility of Karaite wine, see *ibid.*, 2:449, pp. 729-732, and *Teshuvot Rabbenu Avraham ben haRambam*, responsum 80, pp. 104-105. It may be assumed that Maimonides was condoning a prevalent behavior more than he was encouraging new social interactions.

ben Netanel (in approximately 1132) reported that Rabbanites in Egypt dined with Karaites and Samaritans.¹⁷⁹ That these foods involved meats is implicit from stipulations in Karaite-Rabbanite ketubot of the era. These include respecting the Karaite bride's requirement to refrain from eating sheep tail, kidneys (both considered by Karaites to be *heilev* – forbidden fats), and the meat of a pregnant animal. Implied is that the couple would share any other meat dish. Presumably, dining over such meat was not limited to Karaite-Rabbanite couples,¹⁸⁰ but was the general approach of the two communities.

The riddle is – how could observant Karaites and Rabbanites have eaten together while abiding by their kashrut laws? To answer this, I will first suggest that analysis of the compatibility of the technical kashrut details of each halakhic system may, for the most part, be unnecessary. Later, I will attempt to cursorily review various Karaite and Rabbanite laws to understand how mutual kashrut tolerance was feasible by the letter of the law.

It is likely that the Jewish masses in early medieval times were not overly concerned with legal minutiae and were content if meat was ritually prepared by a member of their *umma*, Karaite or Rabbanite. This solution is more plausible when we consider how blurred the lines between the communities were throughout the medieval period. Many Karaites living amongst a Rabbanite majority would follow the Rabbanite calendar, even though by strict Karaite law, such conduct desecrates the festivals.¹⁸¹ Levi ben Yefet tells us that entire Karaite communities in Iraq followed the Rabbanite calendar. Likewise, in Byzantine communities and elsewhere, many Rabbanites observed the Karaite festivals.¹⁸² Maimonides writes in his discussion of calendation that “not even all of the Rabbanites have grasped it, and as a result, grope

179 BM Or. 5566 D, f. 24a, see note 65.

180 Note that Geniza documents indicate that the occurrence of such marriages was common until the 13th century – see Olszowy-Schlanger, *Karaite Marriage Documents*, p. 252.

181 Baron, *History* 5, p. 247.

182 Baron, *History* 5, p. 273.

around with [the Karaites] together in deep darkness,” indicating that Maimonides was familiar with the phenomenon of Rabbanites following the Karaite calendar.¹⁸³ Similarly, Elinoar Bareket writes:

The Gaon Shelomoh ben Yehuda (1025-1051) tells in one of his letters that before his appointment as gaon he served as prayer leader of the Karaites in Ramle, and would pray one day with the Rabbanites and the next with the Karaites. ... he pointed out that the two communities “complete each other as adultery to a bed...”, that is sinners are to be found in both communities and there is no difference in this matter.¹⁸⁴

The Karaite Sahl Ben Matzliah (Jerusalem, 910–990) spoke of Rabbanites who followed some important Karaite practices – “they celebrated two holidays, one per the observation of the moon, the other per their previous [Rabbanite] practice”:

והם עושים בעזרת שדי את המועדים שני ימים, יום אחד בראיית הירח ויום אחד כאשר היו עושים לפנים.¹⁸⁵

Furthermore, Rustow has demonstrated that, outside of Spain, Karaites were more tolerated and respected, the battle against heresy being mainly “limited to the pages of learned works.”¹⁸⁶ Baron believed that Karaites living outside major urban centers surely attended local Rabbanite synagogues and participated in Rabbanite community life.¹⁸⁷ Also to be

183 *MT Sefer ha-Mitzvot*, positive commandment 153.

184 Elinoar Bareket, “Karaite Communities in the Middle East,” *Karaite Judaism: A Guide to its History and Literary Sources* (Leiden, 2003), p. 240.

185 Sahl ben Matzliah, *Sefer Tochat Megulah*, in Pinsker, *Liḳuṭe Kadmoniyot*, 33. Sahl there also mentions that some Rabbanites refrained from marrying relatives forbidden by Karaite legal interpretation.

186 Rustow, *Heresy*, pp. 347-355; compare with Yoram Erder, “The Split between the Rabbanite and Karaite Communities in the Geonic Period” [Hebrew], *Zion* 78:3 (2013), pp. 321-349.

187 Baron, *History* 5, pp. 273-274.

considered is the general lack of advanced education amongst large portions of the Jewish masses, Karaite and Rabbanite.¹⁸⁸

Likely, Karaite leaders included stipulations in the mixed-marriage ketubot for respecting the major symbolic Karaite precepts (fat-tail *heilev*, refraining from sexual intimacy on, and lighting fire for, the Sabbath, etc.),¹⁸⁹ but understood that, for most couples, many of the finer details of the law would be ignored. Olszowy-Schlanger speculates that the clause of mutual religious obligations in the ketubot were “adapted according to the situation of the parties, reflecting the various degrees of orthodoxy or personal preference.”¹⁹⁰ Similarly, Rabbanite leaders, though likely aware that details of each halakhic system often precluded regular eating with the other side, understood that joint dining was in fact common practice, and therefore reacted accordingly. An exception is a ketubah fragment from 11th century Egypt, perhaps of a more pious couple, which appears to say that the wife agrees not to force her husband to eat meat other than that slaughtered according to Rabbanite tradition.¹⁹¹

The following, superficial review of Karaite and Rabbanite laws attempts to determine if mutual *kashrut* tolerance was possible.

Meat

In the formative years of Karaism, Anan and others required fowl to be slaughtered by *melika*, a severing of the bird’s head from the back of the neck. This approach would have precluded any joint Rabbanite-Karaite poultry meal, as *melika* renders the bird unkosher by rabbinic law (mHul. 1:4). By the ninth and tenth centuries many Karaite scholars, including

188 Rustow, *Heresy*, p. 23.

189 Levi ben Yefet repeatedly mentions refraining from the fat-tail *alya* and lighting fire on the Sabbath as emblematic and distinctive Karaite practices (see *Sefer ha-Mitzvot*, Ma'achalot 13, 1, and Shabbat and Moadim, 2, 1).

190 Olszowy-Schlanger, *Karaite Marriage Documents*, p. 255.

191 T-S 8.223 of the Taylor-Schechter Cairo Genizah Collection.

Nahawendi and Levi ben Yefet, rejected Anan's view and accepted rabbinic *shehita* for fowl.¹⁹²

Mishneh Torah (Shehita 4:16) permitted meat slaughtered by a Karaite in Rabbanite presence. Maimonides's ruling was generally accepted throughout the medieval period.¹⁹³ Post-Maimonidean medieval authorities disagreed on whether a Rabbanite supervisor must observe every moment of the slaughter,¹⁹⁴ or if mere spot-checking (יוצא ונכנס) is sufficient.¹⁹⁵

Karaite law required the major blood vessels of the neck (ורידין) to be severed during *shehita*. Rabbanites had diverse views on this matter. In the 9th century, *Halakhot Gedolot* required severance of these vessels in the slaughter of poultry as well as four legged animals.¹⁹⁶ In the 11th century, Alfasi made it a requirement only for poultry, while in the 12th century Maimonides did not require it at all.¹⁹⁷ Karaite law also veered from rabbinic tradition in that it required the complete severance of both the trachea and esophagus during *shehita* of poultry and meat.¹⁹⁸ However, at least for poultry this question was mainly theoretical because the trachea, esophagus, and arteries are usually completely cut during Rabbanite *shehita* and it is therefore possible that these rules

192 Elijah Bashyazi, *Aderet Eliyahu* Inyan Shehita 6, (Hebrew: Gozleve, 1835), p. 63; Aaron ben Elijah, *Gan Eden* (Hebrew: Gozleve, 1864), p. 90a.

193 See Yosef ibn Habiba, *Nemukei Yosef*, Hullin 2a, ed. Blau, (Hebrew: New York), p. 240; Rabbenu Yerucham, *Toldat Adam ve-Chava* path 15, part 1 (Hebrew: Kopyas, 1808), p. 93a - Karaites are here called "צדוקי ובייתוס"; Vidal of Tolosa, *Maggid Mishneh* Shehita 4:16.

194 Ovadya mi-Bartenura commentary to mHul. 1.2.

195 Rashba, *Torat habayit ha'arokh ve'hakatzer* volume 1, bayit 1, sha`ar 1 'ha-bayit ha-katzer' (Hebrew: Jerusalem, 2010), p. 98.

196 See *Tur* YD 22.

197 *Maggid Mishna* Ma'acholot Assurot 7:10.

198 Elijah Bashyazi, *Aderet Eliyahu* Inyan Shehita 4, (Gozleve, 1835); Hadassi, *Eshkol.*, p. 15.

would not have deterred Karaites from partaking of a Rabbanite slaughter.¹⁹⁹

After the slaughter, only Rabbanites would need to perform the *bedika*, inspection for blemishes.²⁰⁰ *Nikkur*, deveining, was required by both groups, though many Karaites required the sciatic nerve to be removed from fowl as well.²⁰¹

Though Karaites shared the rabbinic practice of *kashering* meat by salting, some Karaite authorities rejected the post-salting searing (*halita*) practice of Jewry under the influence of the geonim and Maimonides in the early medieval period.²⁰² However, *kashering* by roasting, a popular meat preparation method in medieval Islamic countries, especially for poultry, would satisfy the requirements of both communities and avoid many of the halakhic details of salt *kashering* (including the complexities of a *kli menukav*)^{203 204}.

199 This assessment of poultry *shehita* relies upon personal experience, albeit using modern super sharp stainless steel *halafim*, as well as David ibn Abi Zimra, *Shu"t Radvaz* 1:303 vol 1 (Jerusalem, 1882), p. 49.

200 See Nemoy, "Al-Qirqisānī's Account of the Jewish Sects," *HUCA* 7 (1930), p. 340; Levi ben Yefet, *Sefer ha-Mitzvot*, Ma'achalot 21, 1; Hadassi, *Eshkol*, 239, p. 89.

201 See *Sefer ha-Mitzvot*, Ma'achalot 10, 1; Hadassi, *Eshkol*, 239, pp. 89, 91; compare to rabbinic halakha mHul. 7.1. I wonder if the question posed to Radvaz (*Shu"t Radvaz*, 48b) stemmed from Karaite influence (Radvaz elsewhere writes that Rabbanite rabbis would attend Karaite weddings).

202 *MT* Ma'achalot Assurot 6:10; in the 10th century Qirqisani reported that such searing was a Rabbanite requirement and ridicules it, see Nemoy, "Al-Qirqisānī's Account," p. 341.

203 See *MT* Ma'achalot Assurot 6:11-12.

204 For roasting as a popular cooking method, see Paulina B. Lewicka, *Food and Foodways of Medieval Cairenes* (Leiden, 2011), pp. 56, 186, 322. That roasting poultry whole was common practice throughout the middle ages is clear from bHul. 28b, "בעוף הוא יל וצולהו כולו כאחד," "poultry, since it is commonly roasted whole," a statement repeated by rabbinic authorities until this method became unpopular in the 18th century (in Europe?) – see Yosef Teomim, *Mishbetzot Zahav* YD 22:7.

Some early Karaite lawmakers required that the *shohet* believe animals receive reward and punishment and must consider that the animal will be compensated for its slaughter.²⁰⁵ Many early Rabbanite scholars shared this belief in compensation (*'iwad*), and as such this matter may not have deterred Karaites from Rabbanite slaughter.²⁰⁶ Only in the 14th and 15th centuries did Karaite theologians demand that the slaughterer also affirm his belief in specific Karaite dogmatic principles.²⁰⁷

Assuming that Maimonides's approach to Karaite *shehita* was in vogue in earlier times, Rabbanites and Karaites could easily have enjoyed a Karaite-slaughtered, Rabbanite-supervised – and vice versa – meat meal together. A letter of Shlomo ben Yehuda Gaon (11th century) reports that Rabbanites in Palestine supervised the Karaite meat market.²⁰⁸ Likely, one goal of such supervision was to ensure that Rabbanites customers could eat this meat.

Dairy

The only consideration for the *kashrut* status of non-Jewish butter was that milk of a non-kosher animal may have been added to the churn.²⁰⁹ As Karaites only used milk from rabbinically kosher animals, Karaite butter would have been considered acceptable to Rabbanites – and vice versa.

The question of cheeses compatible for both sects is more complex. Because rabbinic halakha required that the rennet used to manufacture

205 Simḥah Pinsker, *Liḳuṭe Kadmoniyot* (Hebrew: Wien, 1860), p. 54.

206 Daniel Lasker, *From Judah Hadassi to Elijah Bashyatchi* (Leiden, 2008), pp. 203-208.

207 Lasker, *ibid.*, pp. 100 n. 16, 214-215 – Lasker points to Aaron ben Elijah, *Gan Eden* (Hebrew: Gozleve, 1864), 90c-91b and Bashyazi, *Aderet Eliyahu* (Hebrew: Israel, 1966), pp. 16, 175, 217.

208 See note 43.

209 *Teshuvot ha-Geonim Sha`arei Teshuva* 188 (Leipzig, 1858), p. 19; Aaron of Lunel, *Orhot Hayyim*, ed. Schlesinger 2:72 (Hebrew: Berlin, 1901), p. 333 – citing Hananel and geonim; *MT Ma'achalot Assurot* 3:16 and *Tur YD* 115:3.

cheese be of a kosher (non-*neveilah*) source, cheeses of non-Jews (*gevinat a`kum*) were suspect and regarded as not kosher.²¹⁰ Karaites had different standards than Rabbanites for what constituted a *neveilah*, and this raises the possibility that Karaite animal-rennet based cheese was perhaps not acceptable for Rabbanites. Rustow writes that “Qaraite law, by contrast, ruled that the rennet’s origin was irrelevant.”²¹¹ Accordingly, Karaites would not hesitate to partake of Rabbanite cheese. (However, I do not know the source of Rustow’s assertion and can think of reasons that Karaites would in fact be stringent.) Interestingly, a Cairo Geniza document from the 11th century suggests that a Karaite’s testimony was sufficient to verify the *kashrut* of cheeses for Rabbanites.²¹² Also significant is that various cheeses produced around the Mediterranean, and especially in Spain and Portugal, were made from plant-based rennet.²¹³ Many geonim, and perhaps Maimonides as well,²¹⁴ permitted these cheeses made with plant-based rennet if plant (e.g. cardoon thistle) pieces are discernable in the cheese product.²¹⁵ In districts where all cheeses were produced with thistle rennet many rabbinic authorities permitted their consumption even without evidence of thistle use inside the cheese. This was apparently a common viewpoint in parts of Spain where only cardoon thistle was used in the manufacturing of cheese.²¹⁶

210 Maimonides, Ma’achalot Assurot, 3:13.

211 Rustow, *Heresy*, p. 284.

212 Rustow, *Heresy*, p. 286.

213 *Hiddushei Rashba* bAZ 35a; Rosa Tovar, “Spanish Thistle-Bloom Cheese.” *Gastronomica* 2.2 (2002), pp. 78-79; Catherine Donnelly, *The Oxford Companion to Cheese* (Oxford, 2016), p. 669.

214 Avrohom Gordimer, defending the practice of R. Joseph Ber Soloveitchik, makes an argument that Maimonides himself agreed with the lenient geonic view (Avrohom Gordimer, “Davar ha-ma`amid,” *Mesorah: the Torah Journal of the Orthodox Union* 23 (Hebrew: New York, 2008), pp. 59-60; see also Meiri cited below).

215 See Maimonides, Ma’achalot Assurot, 3:14, who states that only “some of the geonim have ruled that it is forbidden.”

216 The sages of Narbonne, a city not far from the Spanish border, were famous for their lenient view on this matter; see Rashba who mentions that some (local?) authorities support this lenient view, though Rashba himself rejects it – *She’alot u-*

Menachem Meiri, citing his teachers, understood that Maimonides permitted cheese made with plant-based rennet even if no plant pieces are detectable in the cheese – so long as all local cheesemakers used only vegetable rennet.²¹⁷ R. Yosef Karo reports that this lenient approach was the custom of Italian Jewry as well, though it is not clear how ancient the practice was in that country.²¹⁸ Clearly, there was ample opportunity for Rabbanites and Karaites to comfortably share dairy foods items within each denomination's halakhic framework.

Teshuvot ha-Rashba 4:106 (Hebrew: Jerusalem, 1997), 42; likely the groups rebuked for eating gentile cheese by R. Yonah Gerondi in *Sha'arei Teshuva* 3:8 were merely relying upon this rabbinic viewpoint; for the Narbonni sages' view see Meiri, *Beit ha-Behira* bAZ 35b, ed. Abraham Schreiber (Hebrew: Jerusalem, 1964), p. 111.

217 Meiri, *ibid.*, 113.

218 *Beit Yosef* YD 115; see also Moshe Hagiz, *Leket ha-Kemah Yoreh De'ah*, (Hebrew: Amsterdam, 1707), p. 29.

Appendix B

Pots and dishes

There are additional issues to be considered regarding pots and utensils used for preparing a joint Karaite-Rabbanite meal. Would observant Karaites or Rabbanites refrain from eating foods cooked in dishes of the other group? Salo Baron assumed that “the Karaite disregard of the meat-and-milk taboo and the different forms of slaughtering prevented pious Rabbanites from eating anything cooked in ordinary dishes at Karaite homes.”²¹⁹ Baron’s assumption may be incorrect – even the pious Rabbanite was often able to enjoy foods cooked in a Karaite home in Karaite pots and ovens. While approaching this question it is important to realize that many of the (Rabbanite) *kashrut* guidelines outlined in *Shulhan Arukh* and modern codes had not yet come into being during the period discussed. The arguments below attempt to recreate *kashrut* as it was in the early Middle Ages; they should not be viewed as obscure lenient viewpoints used merely to place Jews of early Karaite-Rabbanite society in a positive light.

Concerning non-kosher gravy absorbed in a pot’s walls (called *blio`t*), the Talmud states that “לא אסרה תורה אלא קדירה בת יומא,” “the Torah only forbade a pot [used to cook non-kosher food] during the day of its use” (bAZ 75b-76a). On the following morning,²²⁰ however, any

219 Baron, *History* 5, p. 405 n. 49.

220 The earliest recorded explanation of the non-forbidden status of “קדירה שאינה בת יומא,” “a pot not within its day” is that of Rashi and R. Tam: any *blio`t* in the pot walls lose their flavor overnight (see bAZ 76a Tosafot *s.v. bat yoma*; *Sepher HaYashar*, ed. S. Rosenthal 12 (Hebrew: Berlin, 1898), p. 23). The stringent view of Rashbam, popularized by many later authorities, was that pot walls only lose their flavor after 24 hours have passed. Maimonides’s view was apparently in alignment with Rashi’s, as he uses the term *me`ait le`ait*, “twenty-four hours,” approximately 25 times throughout *Mishneh Torah* (searched through Bar Ilan University’s Online Responsa Project), but when describing these laws Maimonides (Ma’achalot Assurot 17:2) merely writes, “ולא אסרה תורה אלא קדירה בת יומא בלבד... ואם לקח ובישל בהן מיום שני והלאה התבשיל מותר” indicating that the pot

non-kosher gravy within the walls achieves the halakhic status of “נותן טעם לפגם,” “having a foul taste,” and can no longer impart non-kosher flavor to foods cooked in that pot.

Evidence supports the notion that, in the early Middle Ages,²²¹ this rule was applied practically in the kosher Rabbanite kitchen – if a pot was used to cook meat in the evening, on the following morning it could be used to cook dairy, and vice versa. Likewise, if a pot absorbed non-kosher gravy, the gravy flavor became insignificant on the following morning.²²² Therefore, even the meticulously religious Rabbanite Jew

has lost its flavors by the following day, even if twenty-four hours had not yet passed (this is also the impression recorded by Abraham Hiyya de Boton in *Lehem Mishneh*, Ma’acholot Assurot 17:2). R. Yom Tov Asevilli records that the passing of nighttime effected the status of the *blio`t* and that this was the view of “all my teachers, the earlier and the later ones,” (*Hiddushei ha-Ritva* bAZ 67b (Hebrew: Jerusalem, 2008), p. 369); R. Moshe Halava (b. circa 1290, Spain), citing Rashba and the sages of France (?), states that with the passing of daybreak the gravy trapped in the pot walls becomes *paggum* (*Hiddushei Maharam Halava*, Pesahim 30b (Hebrew: Jerusalem, 1989), p. 49); this also appears to be the view of *Peirush Rabbi Yehonatan me-Lunel al ha-Rif* bAZ 40a (Hebrew: Jerusalem, 1985). Applying *me’ait le’ait*, “twenty-four hours,” to this discussion may have been a late invention, which does not represent the way the law was commonly understood in the early medieval period. See Ovadia Yosef, *Yabia Omer*, vol. 10 Y.D. 58:12, who found additional medieval sources and commentators on Maimonides who agreed with this view.

221 In the modern era, the time required for the pot wall gravy to become *paggum* was (a) extended to 24 hours, and (b) the benefits of the “קדירה שאינה בת יומא” rule were limited to *ex post facto* scenarios – a food is not considered un-kosher if already cooked in such a pot, though it is forbidden to cook in this pot prior to its being properly *kashered* (e.g with scalding water – see *Shulhan Arukh* Y.D. 122:2).

222 To summarize a complex topic, during the Middle Ages there were three (Rabbanite) halakhic positions on this matter:

Position A) It is permissible to use the “קדירה שאינה בת יומא,” “pot not within its day,” (henceforth, described as ABY) to prepare kosher food even if the pot had previously been used to cook non-kosher, forbidden foods (איסורא); the ABY can certainly be used from meat to dairy cooking, and vice versa (היתרא). This view is attributed to Rashi and others (see below; *Tosafot Rid*, ed. Nissan Zacks, bAZ 75b

(Hebrew: Jerusalem, 1959), p. 282; however, compare *Sefer ha-Ittur*, Laws of Biur Hametz, p. 122:d).

Position B It is permissible to use the ABY interchangeably only between dairy and meat foods (היתרא). An ABY which absorbed non-kosher (איטורא, e.g. *neveilah*, pig, etc.) gravy will not disqualify foods cooked in it, but one may not choose to cook kosher foods in such an ABY. This was the view of Ra'ah, "some of the *gedolei ha-dorot*" cited by Meiri, and likely Maimonides (Ra'ah in *Bedek ha-Bayit* on Rashba's *Torat habayit ha'arokh ve'hakatzer*, ed. Moshe Braun 4:4 (Hebrew: Jerusalem, 1995), pp. 349-353; *Hiddushei ha-Ritva* bHul 97a (Hebrew: Jerusalem, 2008), p. 146; Meiri, *Beit ha-Behira* Pesahim 30a (Hebrew: Jerusalem, 1966), p. 89; this view can be implied from *Sefer ha-Rokeah* 474 (Hebrew: Jerusalem, 1967), p. 312. Only in *MT* Ma'acholot Assurot 17:2, while discussing pots of non-kosher (איטורא) use, did Maimonides limit voluntary use of ABY. This understanding of Maimonides also appears in Hayim Yehuda Eiges's *Mishneh Torah* commentary, *Izzuz Hayil*, cited by Yosef Qafih – see *Mishneh Torah*, ed. Yosef Qafih, Ma'acholot Assurot 9:11 (Hebrew: Kiryat Ono, 2006), p. 222 n. 15, paragraph 3. Maimonides, understood in historical context, did not mention that the rule in 9:11 is limited to the day of cooking because it was obvious to his readers and such a manner of usage was accepted daily practice).

Position C One may not choose to cook in the ABY even if only moving between dairy and meat (היתרא), and certainly not in an ABY previously used to cook forbidden foods (איטורא). This was the view of Rashba, Ritva, and others (*Torat HaBayit ha'arokh ve'hakatzer*, ed. Moshe Braun 4:4 (Hebrew: Jerusalem, 1995), pp. 348-349; *Hiddushei ha-Ritva* bAZ 67b (Hebrew: Jerusalem, 2008), p. 365; *Sefer ha-Ittur* 2, Laws of Food Preparation, p. 14b).

The support for forbidding voluntary use of the ABY containing non-kosher gravy (איטורא) in its walls (shared by View B and View C and popular in modern-day halakha) comes from a statement which appears in modern Talmud editions (bAZ 76a):

לא אסרה תורה אלא קדירה בת יומא, דלאו נותן טעם לפגם הוא. מכאן ואילך לישתרי?
גזירה קדירה שאינה בת יומא משום קדירה בת יומא

The Torah only forbade a pot [used to cook non-kosher food] during the day of its use. [The anonymous speaker wonders:] Should [utensils] be permitted from then onwards [without *kashering*]? — [The *stamma* responds:] A decree was made against those which had not been used the same day on account of those which had been used the same day.

One Talmud variant, attributed by Rashba to Sherira Gaon, contains an even more explicit *stammaic* statement in bAZ 75b, which forbids voluntary use of an ABY (see *Shu"t ha-Rashba ha-meyuhsot la-Ramban* 151; Moshe Halava, *Hiddushei Maharam Halava Pesahim* 30a (Hebrew: Jerusalem, 1989), p. 46):

ההלכתא גותן טעם לפגם מותר. והני מילי דיעבד, אבל לכתחלה אסור

The context into which this anonymous sentence was inserted would suggest that only non-kosher *blio`t* (View B) are included in the limitation. However, many sources suggest that View A was a common, acceptable view to the mind of the early medieval observant Rabbanite:

- 1) Shelomo Goitein writes that Jewish families of the early Middle Ages kept only one set of cutlery and cooking ware: “the dichotomy of the kitchen into a meat and a milk section, so basic in an observant Jewish household, is ... never mentioned in the Geniza” (*Mediterranean Society* IV, p. 252). We must assume that medieval Jews of North Africa ate hot dairy foods as well as hot meat foods. How could they then use one set of cooking ware for both species? This phenomenon is easily understood if we conclude that it was widespread practice to wait until the following morning for a pot to become an ABY and then cook the desired food group. (Frequently using scalding water, *haga`lah*, to *kasher* one’s pot from meat to dairy was likely an impractical task.) Goitein’s observation can be resolved with either View A or View B.
- 2) Regarding the version of bAZ 76a which explains why it is forbidden to use the ABY voluntarily, R. Tam wrote, “וס”ל דלכתחילה מותר שאינה ויש ספרים דלא גרסי ליה. וס”ל דלכתחילה מותר שאינה” “some manuscripts do not contain these words; accordingly, it is permissible to voluntarily use the ABY (even after non-kosher use); *kashering* is only needed if one desires to use the pot on the same day” (Rabbenu Tam, *Sepher haYashar*, ed. S. Schlesinger 790 (Hebrew: Jerusalem, 1959), p. 467).
- 3) From the commentaries of medieval Spanish, Italian, and some Ashkenazi halakhists it is clear that the Talmudic manuscripts available to them omitted the *stamma*’s (bAZ 76a) limitation on voluntary ABY use (see *Hiddushei ha-Ran*, ed. Eliyahu Lichtenstein bAZ 67b (Hebrew: Jerusalem, 2008), p. 234 n. 149; *Torat habayit ha’arokh ve’hakatzet*, ed. Moshe Braun 4:4 (Hebrew: Jerusalem, 1995), p. 348 n. 60; *Tosafot Rid*, ed. Nissan Zacks, bAZ 75b (Hebrew: Jerusalem, 1959), p. 282; *Sefer Ra’avan*, ed. David Belitski vol. 2 chapter 313, bAZ 67a (Hebrew: Bnei Brak, 2008), pp. 258-259 n. 39). This suggests that such a limitation on the ABY was unknown.

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- 4) Alfasi's *Halakhot*, a practical halakhic guide, does not recognize the comments of the *stamma* (see *Halakhot* bAZ, 39-40). By omitting the *stamma*'s significant halakhic limitation, Alfasi indicates that it is permissible to wait only until the following morning to resume use of the pot.
 - 5) The reading of bAZ 75b attributed to Sherira is unknown to most medieval authorities.
 - 6) A careful reading of the commentary of Isaiah Trani the Elder suggests that the words "מכאן ואילך לישתרי?" entered Talmudic manuscripts erroneously from Rashi's commentary (see *Tosafot Rid*, ed. Nissan Zacks, bAZ 75b (Hebrew: Jerusalem, 1959), p. 282 – Rashi was not commenting upon an existent Talmud query, but was factually stating that voluntary use of ABY (even of איסורא) is allowed; compare Zacks's comment, n. 527).
 - 7) Menahem Meiri wrote that View A was the view of "גדולי קדמונינו," "the greatest of our forbearers," suggesting that in earlier times it was a popular position (see Meiri, *Beit ha-Behira* Pesahim 30a (Hebrew: Jerusalem, 1966), p. 89.)
 - 8) A somewhat learned questioner wrote to Rashba that whether the ABY can be used voluntarily or not was a major dispute among halakhists:

ומה שאמרת בנותן טעם לפגם מחלוקת גדולה אם מותר לכתחלה אם לאו. נ"ל דבר ברור ופשוט שאסור לכתחלה. ומעולם לא עלה על לב שום אדם חכם שיהא מותר לכתחלה

[Rashba writes:] that which you said [regarding the law] of "foul taste [becomes permissible]," that it is a matter of great dispute [amongst halakhic scholars] whether one can voluntarily use this rule [i.e. use the ABY] or not [i.e. the rule is only intended for *ex post facto* scenarios] – in my view it is clear and certain that it is forbidden to voluntarily use [the ABY]. No sage ever thought this rule could be used voluntarily.

(*Shu"t ha-Rashba ha-meyuhsot la-Ramban* 151)

Similarly, Ran was asked:

עוד כתבת: ועוד יש כאן מחלוקת על ענין הביצים, אם יכולין לבשלן לכתחלה בקדרה של גוי אם לאו, שראובן אומר שמותר לבשלן לכתחלה בקדרתו של גוי כי סתם קדרות אינם בני יומם, ושמעון אומר שאסור לבשלן לכתחלה בקדרה של גוי

You further wrote: There has been a dispute over whether one may voluntarily cook eggs in the pot of a gentile. Reuven argued that this is allowed [because any non-kosher *bliv*'t are *paggum*], as it may be assumed that a gentile's pot is "not within its day;" Shimon dissented, maintaining that this is forbidden...

(*Shu"t ha-Ran*, ed. M. Hershler 69 (Hebrew: Jerusalem, 1984), pp. 307-308)

If we assume that, in the 11th through 12th centuries, View A was the halakha familiar to the simple kosher Rabbanite household, we can understand how, in the 13th (Rashba) and 14th centuries (Ran), this view lingered in the public's knowledge of *kashrut* laws.

I suggest that in the early post-Talmudic period the accepted halakha was View A. Later, Maimonides and others introduced View B. It may be that these authorities understood the Talmudic sources as supporting View B, or perhaps they advanced View B as a means of limiting the mealtime interactions of Rabbanite Jews with Karaites and/or gentile society in general. It would not be overly difficult to introduce View B to the public, because this view has only minor bearing on the internal affairs of the kosher kitchen. Eventually, even View B became unacceptable to leading Spanish rabbis, notably Rashba. (In the 13th century, Ritva reports that even View B was unpopular in Spain – see *Hiddushei ha-Ritva* bHul 97a (Hebrew, 2008), p. 146; Meiri indicates that View B still had a significant following in Provence – see *Beit ha-Behira* Pesahim 30a (Hebrew: Jerusalem, 1966), p. 89.) In Ashkenaz as well, View C became popular (see *Sefer Ra'avyah*, ed. David Belitski, vol. 4, 1101, bHul 97a (Hebrew: Bnei Brak, 2005), p. 144; *Sefer Ra'avan*, ed. David Belitski vol 2, chapter 313, bAZ 67a (Hebrew: Bnei Brak, 2008), pp. 258-259). During this period, Jews frequently resorted to *kashering* cooking ware between dairy and meat use (see medieval Ashkenazic sources cited in *Beit Yosef* O.C. 509:5).

Under the newly imposed, strict View C, the standard kosher kitchen, equipped with only one set of dishes (per the Cairo Genizah), was unable to easily use the same pots for both meat and dairy, as previous generations had done, by waiting until daybreak. To resolve this difficulty Rashba devised a new *heter*: To facilitate using the same cooking ware for meat and dairy consecutively, *pareve* (neither meat or dairy) food items, such as vegetables, should be cooked in the pot between the two uses (see *Tur* Y.D. 93; *Torat habayit ha'arokh ve'hakatzer*, ed. Moshe Braun 4:4 (Hebrew: Jerusalem, 1995), pp. 369-372). Rashba reasoned that the *pareve* cooking “weakens” the flavor of the previously prepared category (meat or dairy) sufficiently to remove any ‘milk and meat’ issues in the ensuing cooking. (Meiri and Ritva did not accept this new compensatory halakhic loophole – see *Hiddushei ha-Ritva* bAZ 76a (Hebrew: Jerusalem, 2008), pp. 462-463 and *Beit ha-Behirah* bAZ chapter 5 (Hebrew: Jerusalem, 1964), p. 333). The increasingly strict halakhic positions (View C > View B > View A) contributed to

could have visited his Karaite neighbor for a hot breakfast meal of mutually kosher ingredients. The Rabbanite would not be concerned about what had been prepared in these same pots the night prior because by morning any forbidden flavors in the pot walls became “*paggum*,” “of foul taste.”²²³ If the pot was later used by the Karaite in a manner which defied rabbinic halakha, the pious Rabbanite would then need to refrain from eating any food cooked in this pot for the remainder of the day. However, the Karaite’s word could be trusted that his pots were not used that day for foods unacceptable to Rabbanite halakha.²²⁴

Foods baked or roasted in Karaite ovens may have been acceptable as well. *Halakhot Gedolot*, the geonim, Alfasi, and Maimonides ruled that (otherwise) kosher meat roasted alongside non-kosher meat in one oven does not become forbidden.²²⁵ Hai Gaon was asked whether a Jew may roast meat in an oven belonging to gentiles. Hai responded that if

the creation of the modern kosher kitchen, which maintains separate cooking pots and dishes for dairy and meat. Ironically, in the 16th century, Ashkenazi Jews considered it forbidden to utilize even proper *haga`lah kashering* methods to alternate utensils from meat to dairy use and vice versa (see Avraham Gombiner, *Magen Avraham* O.C. 509:11 citing R. Mordechai Yoffe). Further research into the development of these halakhot is necessary. See also Kraemer, *Jewish Eating*, pp. 99-121.

- 223 The Talmud and halakhic codes assume that people, Jew and gentile alike, keep their dishes clean (see, for example, *Torat habayit ha’arokh ve’hakatzer*, ed. Moshe Braun 4:4 (Hebrew: Jerusalem, 1995), pp. 346-347). Therefore, there was little concern that Karaite pots contained actual food remnants – only *blivo`t* would have been a concern.
- 224 See Rustow, *Heresy*, p. 286, who states that a Karaite’s testimony was sufficient to verify the *kashrut* of cheeses for Rabbanites. Karaites were trusted to report that wine was not handled by gentiles (*Teshuvot Rabbenu Avraham ben haRambam*, ed. A. H. Freimann and S. D. Goitein, responsum 80 (Hebrew: Jerusalem, 1937), pp. 104-105). The latter point is perhaps a poor comparison, because Karaites agreed with Rabbanites regarding this halakha.
- 225 *Halakhot Gedolot*, cited in *Tur* Y.D. 108; Alfasi, *Halakhot* bHul. 31b-32b, supporting the view of “*kammai*,” “the early ones”; Maimonides, *MT* Ma’acholot Assurot 15:33.

“the meat is put on a spit and is not touching the earthenware [wall] of the oven – even if there is un-kosher meat with it in the oven – since it has not touched it, the meat is permitted This is permitted only after the fact, but not to begin with.” David Kraemer argues that, most likely, the questioner used a communal oven, as private ovens were uncommon and many had to depend upon a communal oven to roast anything at all, and that “clearly, the question assumes a reality in which some Jews are already doing what is being questioned.”²²⁶ Indeed, some early authorities maintained that one may even choose to roast this way to begin with.²²⁷ If Rabbanite Jews were liberal in roasting meats with non-Jews, they certainly shared ovens with Karaites as well.

Furthermore, it is likely that there were members of the two communities who, though adherent to their community’s respective dietary laws, were less concerned about what vessels were used to prepare acceptable foods. There are recorded instances in history where the Jewish public generally regarded the use of non-kosher pots and dishes as less significant than eating non-kosher food itself. R. Shlomo Luria reports that, to his dismay, Ashkenazi Jews commonly ate fish in non-Jewish inns, cooked in the establishment’s non-kosher pots.²²⁸ At times even rabbinic authorities allowed leeway with cookware when the

226 Translation and contextual explanation from Kraemer, *Jewish Eating*, pp. 132-133. Kraemer cites *Teshuvat ha-Geonim*, Jerusalem 1863 #163. I could not locate this source and relied solely on Kraemer’s citation.

227 Rashba writes that the Talmud Yerushalmi indicates that voluntarily roasting in such a fashion is allowed (Rashba, *Torat ha-bayit ha’arokh ve’hakatzer*, ed. Moshe Braun vol 2 shaar 4 bayit 1 (Hebrew: Jerusalem, 1995), p. 136). This lenient position was maintained by Ra’ah and Ran (Ra’ah, *Bedek ha-Bayit to Torat ha-Bayit ibid.*; *Hiddushei ha-Ra’ah* bHul, ed. Hayim Perush 93b (Hebrew: Jerusalem, 1974), p. 178; Ran to *Halakhot*, bHul. 32a). It is possible that Alfasi (bHul. 32b) was attempting to end a common practice when he argued that *reihav lav milta* was only an *ex post facto* ruling. Similarly, the views of Ran and Ra’ah were intended to defend the widespread custom.

228 *Shu”t Maharashal* 72 (Jerusalem, 1969), p. 203. R. Yonah Gerondi (*Sha’arei Teshuva* 3:8) rebukes Jews who eat *bishul a’kum*. However, he may be referring to foods cooked in kosher pots by gentiles.

food they regarded as forbidden, which had been previously cooked in the vessel, was deemed permissible by other legitimate halakhic authorities. For example, the *kashrut* status of ‘butter of gentiles’²²⁹ and of patches of fat attached to the rumen²³⁰ was a matter of dispute amongst medieval halakhists. Though in practice there were followers of both the lenient and stringent views, each group allowed themselves to eat non-related foods cooked in the pots of the other group. Such an approach may have been in vogue in significant numbers at least amongst the uneducated in Karaite and Rabbanite society, given the general tolerance and positive relations the two communities enjoyed with one another.

- 229 Aaron ha-Kohen of Lunel (13th – 14th centuries), citing an early source concerning the ‘butter of gentiles,’ says:

הואיל ונפק מפומייהו דרבנן להתיר, לא מחמירין כולי האי לאסור הכלים שנתבשלה בהן
למי שאינו רגילות לאכלה

Because many authorities have allowed [gentile butter], our policy is not to be so overly stringent as to forbid the pots within which such butter was cooked for those who refrain from eating the butter itself. (*Orhot Hayyim*, ed. M. E. Schlesinger 2:72 (Hebrew: Berlin, 1901), p. 333)

- 230 These are the patches of fat attached to the rumen beneath the greater omentum. Alexander Suslin (14th century, Germany) wrote:

בערפור"ט נוהגים לאסור, ובשאר קהלות נוהגים להתיר. אמנם אלו אין נמנעין מכלים
של אלו ומבישוליהם, אך הכרס אין אוכלין בבואם לקהלות

The Jewish community of Erfurt forbids this fat, while the Jews of other German communities allow it. However, the two communities will not refrain from using the pots and cooked dishes of each other – thought the fat itself they refrain from even when hosted in the others’ community.

(Suslin, *Sefer ha-Agudah Hullin* 89, (Hebrew: Jerusalem, 1970), 138, cited in *Beit Yosef* YD 64; see Yakov Lach, *Chullin Illuminated*, 2nd edition (Brooklyn, 2011), p. 74)

Noteworthy is that glassware, which was in common use in the medieval Islamic world,²³¹ would not have posed any *kashrut* problems due to its non-absorbent nature, even if the glass had been used by Karaites for unacceptable food items earlier that same day.²³²

This brief review suggests means by which Karaites and Rabbanites could have shared meals together while still satisfying their respective halakhic requirements.

231 Stefano Carboni, "Glassware," *Medieval Islamic Civilization: An Encyclopedia*, ed. Josef W. Meri (New York, 2005), pp. 297-298.

232 R. Shlomo ben Aderet and R. Nissim of Gerona ("Ran") adduce support for such an approach from a statement in *Avot de-Rabi Natan* (41:6) and from the fact that glass is obviously nonporous (*Shu"t ha-Rashba*, ed. Aaron Zaleznik 1:233 (Hebrew: Jerusalem, 1996), p. 101; Ran on Alfasi's *Halakhot* Pesahim, 9a). Ran argues that a ruling of Maimonides (*MT* Ma'achalot Assurot 11:19) is in line with this conclusion as well. However, compare Qafih, *Mishneh Torah* 17:2, p. 447 n. 3.