

## A CHAPTER IN RABBINIC HISTORY: ORIGINS OF THE SYDNEY *BETH DIN*

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Every Jewish community of any standing has always had its *Beth Din*. Indeed the existence of authoritative *dayanim* has often been the factor that lent stature to a community. No wonder then that the Jewish city fathers of late nineteenth-century Sydney fought so hard to gain the right to have a *Beth Din*, and that they felt highly insulted to be informed that matters requiring rabbinic decision could and had to be referred to Melbourne. Sydney's self-respect and its status as a viable Jewish community were at stake.

Both the genesis of mankind, through the Seven Laws of the Sons of Noah, and the historical origins of Judaism, in the Revelation at Sinai, established the principle that courts of law were indispensable to the functioning of a society. Beginning with Moses, the great biblical personages are said to have had their *Batei Din*. Moses himself was backed by the seventy elders of Israel when he gained the people's acceptance of the Torah constitution; and before long he was supported on an on-going basis by a permanent council of elders. Moses' precedent became the rule in Judaism with the command that a judicial authority be instituted in every community: "Judges and officers shalt thou make thee in all thy gates". At first there was probably no co-ordination between the courts; the systematisation came with the period of the Second Temple when the judicial hierarchy spelt out in the Mishnah Sanhedrin became established, with courts of three, twenty-three and seventy-one judges respectively making up what appears to be an effective and comprehensive court system. The law it administered was *halachah*, the written and oral legal system co-extensive with life.

After the destruction of the Temple and the end of Jewish independence, Jews continued to exercise a considerable measure of internal self-government. Indeed throughout the Diaspora period, until the Emancipation, the regimes under which Jewish communities lived generally granted the Jews wide measures of judicial autonomy. *Mishpat Ivri*, the Jewish civil law, continued to regulate Jewish affairs and the Jewish law of contracts, torts, property, partnership, trusts, inheritance and to a greater or lesser extent even criminal law continued to operate

and develop. No longer, however, was there a Sanhedrin with a subservient system of lower courts; there was no world Jewish authority, and each local community was autonomous, though bound others by their common loyalty to the *halachic* tradition.

In medieval England there was already, prior to the expulsion of 1290, a *Curia Judaica* with three *Episcopi* (*dayanim*) headed by the Presbyter of the Jews. The Jewish community was accorded judicial autonomy; Richard I declared that "All difference which did not concern pleas of the crown should be heard and decided by themselves according to their own law".

Thus an extensive scope of operations characterised the judicial bodies that represent the prehistory of the London Chief Rabbinate and *Beth Din*, under whose auspices the Melbourne and Sydney *Batei Din* eventually came into being. But in the meantime, the Emancipation drastically transformed Jewish life in Western countries and curtailed the range and powers of the traditional *Beth Din*. Despite the adamant rabbinic rule against Jews taking their disputes to gentile courts, Jewish litigants (with some exceptions) resorted to the secular judiciary, and the jurisdiction of the *Beth Din* now shrank to mainly ritual functions and voluntary arbitrations.

In England both the Sephardi and Ashkenazi congregations had their *Batei Din*, but these were not always permanent; until about the end of the eighteenth century a *Beth Din* was constituted only as and when necessary. As the office of the Chief Rabbi, emerging out of the rabbinate of the Great Synagogue, Duke's Place, gained recognition amongst the Ashkenazi communities of Britain, it became necessary for the Chief Rabbi to be supported by "ecclesiastical assessors", whom he generally paid out of his own pocket. It was one of those assessors, Aaron Levy, who was the first rabbi ever to set foot on Australian soil.

For early Australian Jewry the authority of the Chief Rabbi was axiomatic. The Australian colonies were offshoots and outposts of England; and Australian Jews paid automatic obeisance to the Chief Rabbi of London despite his lack of concern for these often embarrassing co-religionists. The first spiritual leadership enjoyed by some at least of the Jews of Sydney came not because of but despite the Chief Rabbi. It was provided by Jacob Marcus though, as I have suggested in a recent paper, his efforts were deliberately ignored and omitted by the compilers of the landmark 1845 Report of the Sydney Synagogue. Little interest was taken by the Chief Rabbi, though we know that on a few occasions Solomon Hirschel's *Beth Din* administered religious divorces on board convict ships for Jewish husbands about to be transported to New South Wales.

The London rabbinate's first official connection with Australian Jewry came with the grant of credentials to Philip Joseph Cohen who

arrived in Sydney in May 1828 bearing Hirschel's permission to conduct Jewish marriages. Very brave and very poetic, but did Cohen or Hirschel really think there would be an immediate queue of Jewish men and women piously anxious to be united according to the laws of Moses and Israel? And how really competent was Cohen himself in any case, bearing in mind the inexpert way in which the Moses-Connolly *ketubah* was filled in, presumably by him? But in 1830 there came the trailblazing antipodean visit by Rabbi Aaron Levy, who organised a *gett*, regularised Jewish worship, supplied a Torah scroll, brought a measure of peace to a fractious community, and converted Mary Connolly.

1835 saw the arrival of the first Jewish minister, Rev. Michael E. Rose. Like most of the early ministers he was neither rabbi nor rabbinic scholar but merely a religious functionary. Only for a brief period in the 1850s was there a religious leader with rabbinic learning. Rev. Dr. Herman Hoelzel came from a community (now part of Budapest) with a tradition of rabbinic scholarship, but he was not a fully fledged rabbi (nor indeed is it certain that he had a doctorate); yet he certainly had a degree of rabbinic competence.

The synagogue board had, however, no apparent qualms about itself dealing with a number of the areas that would normally and properly require a rabbi. The York Street minutes record the acceptance of a number of converts by the board, but not without congregational protest (throughout the early period of Australian Jewry the issue of conversion was always bound to cause controversy: Rabbi Goldman's history of the Jews in Victoria in the nineteenth century traces the controversies in exhaustive, and exhausting, detail). Despite the strong feeling that no more proselytes be accepted, the board appointed in 1847 an "Ecclesiastical Board", as they called it, comprising Rev. Jacob Isaacs, Mordecai Moses and Mosel Rintel, to deal with an application – presumably for conversion – from a Mrs Shannon, but in the end the matter was referred to London. It must be said that the three members of the Ecclesiastical Board – though not ordained rabbis – were men of some learning, but Chief Rabbi Nathan Marcus Adler would not have approved their assuming rabbinical functions in view of his firm policy of centralised religious authority, known by its later detractors as Adlerism. On 7 January 1849 the synagogue board resolved, "That this Committee not have the power to form or appoint a *Beth Din* without the sanction of the Chief Rabbi, Dr. Adler".

Now which were the areas of religious concern that required competent rabbinic involvement? *Shechitah* was presumably carried out correctly, but when there was no *shohet* (and often when there was one) people got used to buying non-kosher meat. *Chevra Kadisha* work was also presumably carried out properly. The same probably applied to circumcision, but there were repeated controversies over the circumcision

of the sons of Jewish fathers married to gentile mothers, and one such controversy was a leading factor in the great split of 1859 which brought the Macquarie Street Synagogue into existence in opposition to the York Street establishment. *Gittin* (religious divorces) were very rare; probably none took place in Sydney before 1905, and in the meantime, at least after a *Beth Din* was founded in Melbourne in 1864, any *gett* had to take place there. Proselytisation was the most controversial issue, as we have seen, and with or without a *Beth Din* there was a steady trickle of applications which the local board resented having to refer elsewhere.

The first stable, long-lasting ministry in Sydney was that of Rev. Alexander Barnard Davis, minister at York Street and then the Great Synagogue for a total period of forty-one years from 1862-1903. Though popularly known as Rabbi Davis, he had no formal rabbinic qualifications and his Talmudic learning was probably scanty. His rabbinic deficiencies were mocked by Rabbi Isidor Bramson, the so-called "foreign" rabbi who spent the years 1897-1901 in Sydney, though Bramson's criticisms of Davis were clearly coloured by personal rancour.

The synagogue board passed applications for conversion to Davis, who, at least at first, declined to act on them himself because the Chief Rabbi had instructed him to send such applications to Melbourne. After a few years, in 1870, Davis agreed to write to the Chief Rabbi asking for a *Beth Din* to be set up in Sydney. He argued that sending applicants to Melbourne caused inconvenience and expense; that Sydney had a right to have a *Beth Din* of its own; and that Sydney had "men of equal learning and religious zeal" to Melbourne. This third assertion was an exaggeration, since the Melbourne *Beth Din* was headed from 1861 by Rev. Samuel Herman (minister at various periods in Ballarat and Geelong), who was an acknowledged Talmudical scholar, and from 1883 by Rabbi Dr Joseph Abrahams, minister of the Melbourne Hebrew Congregation, who was the son of a *dayan* and a rabbi in his own right. Melbourne was the first community outside London to have a *Beth Din* sanctioned by the Chief Rabbi.

The Chief Rabbi opposed both the principle of a Sydney *Beth Din* and what he feared would be a flood of prospective proselytes. It should be noted that even in England there was a general policy not to accept converts; this was based on the erroneous perception that Oliver Cromwell's permission for Jews to return in 1656 was subject to a condition that no Christian ever be converted to Judaism. (The background and history of this policy is traced in a paper contributed by me to the *Festschrift* issued in honour of the late Rabbi Porush.) It was not until 1875 that converts were regularly accepted into Judaism by the English rabbinic authorities. The Chief Rabbi was clearly concerned that Sydney should not become a centre for conversion. He was also

adamant that Sydney had no-one with full rabbinic qualifications – *Hattarat Hora'ah*.

The board of the York Street Synagogue now, in 1873, decided to bypass the Chief Rabbi and to “act upon its own responsibility”. They appointed Davis, with Rev. Solomon Phillips of Macquarie Street and Lewis Goldring, the *shohet*, as a *Beth Din*, and one and possibly several converts were subsequently accepted by these three. The Chief Rabbi bitterly protested, and the *Beth Din* had to be disbanded. Adler told them that he had rejected applications for *Batei Din* from Adelaide and Auckland, and he regretted allowing a *Beth Din* in Melbourne because of the “unpleasantness” it was giving him on the issue of proselytes.

Repeated attempts were made by the Sydney community to secure the Chief Rabbi's approval. Finally, in 1885, Adler agreed, provided that in any *Beth Din* set up in Sydney Dr Abrahams participated (Abrahams was in fact Davis' son-in-law). Abrahams was willing but the Melbourne Hebrew Congregation objected to an arrangement which could have meant that their minister would be away from Melbourne more often than they felt appropriate. Faced with this deadlock, Adler gave way and allowed a local *Beth Din* of limited powers in Sydney. Its members were to be Davis; the *shohet*, Rev. P. Philippstein; and a board nominee, Rev. Abraham David Wolinski – probably the most learned of them all. It was to deal with one issue only, namely proselytisation, but all cases had to be referred to the Chief Rabbi for approval (despite, or possibly because of, the resultant delays). It was to carry out no other functions; *gittin* were to be referred to Melbourne.

There was a further limitation. The *Beth Din* was not free to act on its own, making its own independent judgments, even in the narrow area of activity allowed by the Chief Rabbi. It was the *Beth Din* of the Great Synagogue, acting under the authority of the board. Applications had to be made to the board, cases were referred to the *Beth Din* by the board, and any action was to be reported to the board. Even when the *Beth Din* was reconstituted in 1905 with the arrival of Rabbi Cohen, this general procedure continued. Not until the early 1940s, after Rabbi Porush took up office, did the *Beth Din* finally free itself of board involvement and act autonomously.

From 1880-1915, a period of thirty-five years, 68 proselytes were accepted, plus some small children whose details are not fully recorded. The statistics and much of the relevant paper-work are available to us in the now brittle pages of the *Beth Din* letter book of the time, though sometimes the copies of the letters sent by the *Beth Din* are in such a poor state that the researcher has to try to reconstruct them on the basis of the replies that were received, which are also preserved in the letter book.

In every case there is a report to the Chief Rabbi and a reply which either approves or specifies conditions for approval of the conversion

concerned. The time that elapsed between the initial report to London and the final ceremony of acceptance in Sydney varied. In one case where things went quite quickly the letter to the Chief Rabbi is dated 6 December 1887, the Chief Rabbi's reply 31 January 1888, and the candidate's immersion 21 May 1888. The policies of Nathan Marcus Adler were more or less completely followed in these matters by his son and successor, Hermann. Both were anxious that there not be too many conversions; thus on 5 February 1900 Hermann Adler told the Sydney *Beth Din* they were sending him "too many applications". In a couple of cases, in order to avoid delay, the Chief Rabbi was asked to cable his reply, but he objected, believing that in conversion cases delay was good.

The procedure was that once London had approved an application, the candidate underwent immersion and acceptance into Judaism in Sydney. This requires a *mikvah*, but though one existed at the Astra Hotel in Bondi from the 1930s or possibly a little earlier, the likelihood was that at the period we are looking at Sydney had no *mikvah*. It is of course possible that some pious families had their own *mikvah* at home, but this is not certain. The likelihood is that the immersions took place in the sea, in one or other of the sea-bathing facilities that were available at the time. The records mention some immersions taking place at Covill's Bath, Farm Cove. An immersion in early 1900 was at Bondi Bath, and a *Beth Din* letter to the synagogue board reports, presumably with some relief, that the occasion "did not excite any attention from onlookers". In the papers relating to a conversion in 1892 there is a receipt for ten shillings and sixpence from the Sydney Bathing Co., though it is not certain whether this company operated yet another sea-bath. An immersion took place at the Potts Point premises of Mr Eliot Meyer in 1900 and another at "Clifford", the residence of Mrs M. Cohen in 1905. In Rabbi Cohen's time the immersions were sometimes postponed until the weather was warmer.

The local *Beth Din* and also the board and the community felt keenly the constraint of having to refer each case to London. A letter in 1891 referred to this as an ordeal. In another letter of the same year, Dr Abrahams (signing himself "Yours affectionately") advises Davis that the Melbourne *Beth Din* do not make proselytes without the Chief Rabbi's sanction "except in urgent cases", and they require a recommendation from the board of a congregation because "every case...includes a social as well as a religious aspect".

As to who instructed the proselytes, the information is not always given, but in a case in 1898 the teacher was M.A. Cohen, headmaster of the N.S.W. Board of Jewish Education, together with "a lady member of our faith in matters connected with *niddah* etc." This latter fact indicates that the course of instruction covered the appropriate range of laws.

What appears surprising is that in all the years previous to Rabbi Cohen's arrival there is reference to only one case of religious divorce, though there could have been others which were referred directly to Melbourne. The one case found in the *Beth Din* records concerned a couple named Baumberg. There were two years of correspondence between Sydney and the Chief Rabbi on the Baumberg case, from 5 October 1887 to 31 October 1889. Immense pressure was exerted on the Chief Rabbi to allow the *gett* to take place in Sydney. One suggestion the Sydney *Beth Din* made was that Dr Abrahams write a specimen *gett* for the *sofer* (scribe) – presumably Wolinski – to copy, and would supply the *Seder haGett*, the order of procedure. Adler replied that as Davis was not a rabbi, Abrahams had to be the *Mesadder haGett*, the presiding rabbi. Later on Adler made another suggestion, that Abrahams conduct the *gett* in Melbourne, which could be done even without the wife's presence, and Adler would send Abrahams the full instructions. The fact that Davis felt competent to carry out *gett* procedures is a tribute to his devotion but not to his learning.

In 1903 Davis retired. The board and congregation were determined that the next chief minister be a qualified rabbi. This was not only desirable in the interests of the standing of the Great Synagogue and of Sydney Jewry, but also to avoid the embarrassment of "foreign" rabbis such as Isidor Bramson and to a lesser extent Abraham Eber Hirschowitz impugning the credibility of the official spiritual head of the community. (Hirschowitz, who was briefly in Sydney in 1891, was a rabbi of acknowledged authority and the author of significant rabbinic *responsa*, which mention Wolinski as having consulted him on matters of rabbinic law.) The congregation selected as Davis' successor Rev. Francis Lyon Cohen, a minister of the United Synagogue, London, who was also the first Jewish chaplain in British military history and an expert on Jewish music. But Cohen was not an ordained rabbi. The Chief Rabbi agreed to Cohen studying for *Semichah*, but Cohen himself wrote to Sydney that obstacles had been put in his way by "conspirators". It is true that there was some apprehension in the London *Beth Din* about alleged deficiencies in Cohen's orthodoxy, but the "conspirators" may have been anti-Adler, not just anti-Cohen, and suspicious of what some thought would be a "make-believe degree".

In June 1905 Cohen arrived in Sydney as a rabbi. On 16 July Davis convened a *Beth Din* meeting with himself, Wolinski and Philippstein present. Cohen now took the chair, dissolved the previous *Beth Din*, and then formally constituted the "*Beth Din* of the Great Synagogue, Sydney" with himself as president and Wolinski and Philippstein as "assessors".

In the ensuing year the revamped *Beth Din* began a dynamic programme of activity. Illustrations of its broad scope are provided by the following summaries of meetings:

1. 16 July 1905: an unauthorised butchery was discussed and an announcement made that the only butcheries supervised by the *Beth Din* were at 101-103 Castlereagh Street and 257 King Street, Newtown.
2. 13 August 1905: an application for a *gett* was postponed pending arrangements for the wife's future maintenance; an application for conversion was approved and the candidate having been circumcised in Melbourne the immersion was carried out at Covill's Bath.
3. 3 September 1905: an application for a *gett* for a woman in Calcutta and her husband in Newcastle was postponed for further consideration; the *gett* considered at the previous meeting was carried out.
4. 29 October 1905: the arbitration of a financial dispute could not proceed as one party declined to present his case; it was decided to go ahead with the *gett* for the woman in Calcutta provided the husband deposited "at [l]e[ast] ten pounds as a gift to his wife".
5. 21 November 1905: the Calcutta *gett* was administered, the scribe being Hirsch Weinstein, and sent to India for handing over to the wife (the husband had deposited the ten pounds and promised "to continue to act as a Father to his son" who was with the wife in Calcutta).
6. 28 November 1905: Meyer Levy's application to act as a poultry *shohet* in Newtown, for which Rev. I. Morris had trained him, was postponed until he gained more practice in preparing the *shehitah* knives; subsequently he gained the necessary practice with Philippstein and was granted authorisation.
7. 29 January 1906: H. Solomon of Newtown's application to make *matzah* and other *Pesach* products was approved subject to inspection of his premises; he was later given permission. At the same meeting an applicant for conversion, taught by Miss Celia Harris, was accepted and the immersion took place at Covill's Bath.

The first year of Rabbi Cohen's *Beth Din* indicates the range of problems that now became characteristic of *Beth Din* activity. It was a busy period because of the backlog that required attention, though in some other years meetings took place much less frequently. A feature of the Cohen rabbinate was the rabbi's determination, in a growing and diversifying community, to retain central control. He did not entirely succeed, but he gave the Sydney *Beth Din* the stability that enabled Rabbi Porush, Rabbi Abramson and later *dayanim* to give the Beth Din a deeper *halachic* foundation and to serve a community that increasingly recognised the importance of *halachah*.