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NOT JUST ANOTHER CONTEMPORARY
JEWISH PROBLEM
A HISTORICAL DISCUSSION OF PHYLACTERIES

I

“And thou shalt bind them for a sign upon thine hands and they shall be for frontlets between thine eyes.”¹ Maimonides writes that contained in these words of the Torah are the injunctions to wear the phylactery of the head and the phylactery of the arm.² It would appear however, that as early as the Talmudic period, these precepts were the victims of circumstances which led to their incomplete or inferior performance by some portion of the Jewish population. The difficulties which prevented the complete fulfillment of these commandments by all were enlarged in the Gaonic period as well as in the time of the Rishonim. It is clearly not the author’s purpose to cast aspersions on, or to judge the actions of the Jews of a particular period.³ Rather, the author wishes to present and analyze, from a historical viewpoint, a spectrum of sources that deal with this topic, in order to shed light on the intriguing circumstances and problems that surrounded the performance of these injunctions.^{3*}

We find in Tractate Shabbat⁴ a statement by R. Shimon b. Elazar, “Any commandment for which [the people of] Israel gave their lives at the time of persecution, such as [the prohibition of] idol worship and circumcision is still strong in their hands, and any commandment for which Israel did not give

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their lives . . . such as phylacteries is still weak^{4*} in their hands." In support of this, a statement of R. Jannai describing someone called Elisha Baal Kenafaim is quoted. R. Jannai states⁵ that "Tefillin need a clean body, [in order to wear them] as evidenced by Elisha Baal Kenafaim." What degree of cleanliness is required? Abaye states, "One shouldn't flatulate while wearing them." Rava states, "One shouldn't sleep while wearing them." Why was Elisha called "Baal Kenafaim" (possessor of wings)? The Talmud relates that Elisha wore phylacteries even after a decree banning them under penalty of death was pronounced.^{5*} When spotted by an officer, Elisha removed his phylacteries and hid them in his hand. The officer asked, What is in your hand? Elisha answered. "The wings of a dove," and he opened his hand to reveal exactly that — thus his title. As Rashi⁶ points out, it is apparent from this narrative that only Elisha dared to risk his life in order to wear his phylacteries.⁷ It would also appear from the Talmud that the reason for the weakness mentioned by R. Shimon in regard to phylacteries, which continued even during periods of non-persecution, can be attributed to the difficulty in maintaining the necessary level of cleanliness.⁸

The extent and nature of the weakness might be further clarified by examining several places in the Talmud which indicate that tefillin were worn at that time for the entire day.⁹ Hence, it might be suggested that because of the difficulty experienced by many in maintaining the proper degree of cleanliness for the entire day, the amount of time that tefillin were worn was shortened.¹⁰ This theory might be substantiated by several Talmudic statements which give praise to those who wore their phylacteries for the entire day.¹¹

The Jerusalem Talmud¹² offers a very interesting explanation as to why people did not uphold the precept of phylacteries properly. After quoting the statement of R. Jannai mentioned above, the question is raised, "Why did the people not strongly uphold them (phylacteries)? Because of tricksters!" Often someone would entrust his fellow Jew with property

because his friend was wearing tefillin (and was therefore assumed to be trustworthy). The latter might deny that he was entrusted with anything. This caused an apparent "loss of faith" in regard to the precept of tefillin.¹³

The difficulty in analyzing any Talmudic source for the purpose of extracting historical information is that it is impossible to determine with complete accuracy whether a particular statement reflects actual practice or was addressed to an exceptional circumstance or was postulated to instill a particular attitude. Our study also encounters this problem. In Tractate Rosh haShannah,¹⁴ the question is raised, "Rebels of Israel who rebel with their bodies, who are they? Rav says, they are heads, (people) who do not put on tefillin."^{14*} Similarly, we read the statements of Ula and R. Yohanan,¹⁵ "One who reads Shema without his tefillin on is as if he brought false testimony about himself . . . is like one who brings a burnt offering without a meal offering . . ." i.e., he has not fulfilled his obligation completely. As before and again here it is difficult to determine with any exactness the historical ramifications to be evidenced.^{15*}

Of course, it is likewise difficult to determine how many people were affected by the cleanliness problem or by the other considerations mentioned earlier. Indeed, Maimonides claims that it was not necessary to include the specific laws of phylacteries, fringes and mezuzot in the Mishnah, because these laws were known and practiced in great detail by everyone at the time that the Mishnah was compiled.¹⁶ It is therefore beyond our scope to pinpoint which segment of the population was involved in the problems relating to the proper fulfillment of the obligation to put on phylacteries. We have only suggested some of the reasoning which may have contributed to inferior fulfillment of this precept; inferior in that a perfect compliance was not recorded in the Amoraic period.

II

In the Gaonic period the problem of neglect of the commandment to put on phylacteries intensified. Furthermore,

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as evidenced by the responsa of that period, the problem was no longer one of how long to wear phylacteries, but whether to wear them at all.

From the early Gaonic period, we have a responsum from R. Yehudai (c.750) on this topic.¹⁷ He begins by stating (based on the Talmudic source which we have quoted above), that whoever reads Shema without his phylacteries on is likened to one who bears false witness on himself; one who does not wear tefillin at that time has not completely accepted the yoke of God upon himself. He cites other Talmudic passages which state that one who does not put on tefillin has violated eight positive commandments and is likened to an ignoramus, whereas one who does observe this precept will be rewarded.¹⁸ Especially important is R. Yehudai's response to one who wishes to exempt himself from this precept by saying that putting on phylacteries requires strict cleanliness as evidenced from the narrative of Elisha Baal Kenafaim. R. Yehudai explains that the Gaonim have already declared that this stringent level of cleanliness is only required in order to wear tefillin during the time of persecution. He supports this by the fact that we read from the Torah frequently, with just the normal level of cleanliness.¹⁹ R. Yehudai concludes by saying that every male above the age of thirteen must wear phylacteries. One who does not put them on, and willfully neglects this precept will be punished, in accordance with the Talmud's statement in Tractate Rosh haShannah, while one who observes this precept will be rewarded.²⁰ It appears that this responsum represents the reality of the times. The question might have been asked by people who were not quite sure as to the stringency of this commandment, and who had either seen or contemplated its neglect.²¹

Apparently, the situation had worsened by the late Gaonic period, as we read in a responsum of R. Joseph Gaon.^{21*} "A merchant involved in business,²² should he put on tefillin during prayer (Shemona Esrei) and Shema, or perhaps only a great person puts them on, while one who is not such an

important person doesn't so as not to appear haughty,²³ since the entire congregation does not put them on?" R. Joseph answers that only one who has a stomach ailment is exempt.^{23*} One must be careful not to flatulate while wearing them, but he emphasizes that all Israel is obligated to put on phylacteries.

Even towards the end of the Gaonic period by the year 960 C.E. a similar question was asked of R. Sherira.²⁴ The questioner points out that the Talmud dictated strong punishments for those who do not put on phylacteries. Why then do most people neglect this commandment. If it is because they are afraid that they are not clean enough, the questioner offered that the early Gaonim had already interpreted that this (extra) cleanliness was necessary only during the time of persecution.²⁵ "There are places where students put on tefillin; is this haughtiness^{25*} or does the performance of the commandment override it? "How do our masters and the yeshiva hold? If they do not do thusly (i.e. put on tefillin etc.), please tell us the reason."

The answer given is that in earlier times, it had been difficult to obtain and wear tefillin in Israel because of the numerous persecutions which had occurred there. As such a commoner might appear haughty were he to wear them. In Babylonia, however, tefillin were easily obtainable and therefore one need not worry about appearing haughty by wearing them.²⁶ Only in commands that are not obligatory upon every Jew do we say that haughtiness should be eliminated. But since everyone is obligated to put on tefillin, one who puts them on need not worry about appearing haughty, even though he is not exceptionally clean and pious.²⁷

Thus, it is fairly evident that the problem of maintaining proper cleanliness compounded by the reluctance to appear haughty led to a greater neglect in the fulfillment of the precept of phylacteries in the Gaonic period as compared to the Tannaitic and Amoraic periods. As stated above, it is difficult to pinpoint how widespread this problem was, although we have sources which deal with halakhic questions and instruc-

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tions regarding tefillin, indicating that normal usage did take place.²⁸

III

When analyzing Rishonic material for the purpose of extracting historical information, there are three types of sources encountered: (1) Commentaries on the Talmud and Gaonic works which may be found either in designated commentaries or in codes of law. Particularly in the latter, verbatim quotes are brought to prove the point;^{28*} (2) Responsa, and (3) Direct descriptions of events and social conditions (which may appear intermingled with sources of the first two types). It is very difficult to use sources of the first type to conclusively suggest historical description. Certainly the time and place in which a Rishon lived had some influence on his interpretation of Talmudic passages or formulation of codes of law. However, his interpretations can be used at best as a corroboration or amplification of historical data extracted from other sources, except for unique cases.²⁹ Responsa obviously reflect actual events provided that the question deals with a practical matter in the questioner's period, or the responder uses actual cases to explain an answer. There is little indication however, as to what extent the problem presented to the responder affected the entire Jewish population of the areas involved. Historians will argue whether a responsum reflects the usual or the unusual; there is no iron-clad rule in any event.³⁰ The third type of source, because it is a spontaneous narrative, usually affords the maximum opportunity to discover historical evidence. It is also perhaps the rarest of the three. We will attempt to present sources from which the broadest picture of this period can be created. Clearly, there are many other sources from which inferences can be drawn.

We read in Tosafot,³¹ "It is not a wonderment why this precept (tefillin) is weak in our hands,³² since it was also weak in the days of the sages."³³ It would appear from a responsum of R. Jacob Marvége³⁴ (C. 1190) that part of the

problem in this period was whether the phylacteries were being worn for the entire day or for just a part of it:³⁵ "Those who do not put on phylacteries for the whole day, is this a grave sin with a severe punishment and is it similar to one who does not build a succah or take a lulav, for whom the punishment of flagellation is prescribed, or does he have a valid complaint based on cleanliness of the body, i.e., he should not sleep in them etc., and for this reason we do not put them on for the entire day?"³⁶

It would appear that the problem of maintaining proper cleanliness which we have seen to be a major factor in the neglect of the precept of tefillin in the previous periods is of equal importance in explaining this problem in the Rishonic period.³⁷ Thus states R. Bahye b. Asher — c. 1320). "There are those who degrade the commandment to put on phylacteries by not being exacting in wearing them because they think that phylacteries require too great a level of holiness and purity." R. Bahye goes to great lengths to discourage this attitude. One who observes the conditions set forth in the Talmud, i.e. that he must not sleep in them etc. and provided he does not have a stomach ailment, is obligated to put on phylacteries. R. Bahye continues by asking that this commandment become one which is observed regularly. He reiterates that one who can keep his body free from sickness is worthy to wear phylacteries. One should not be mistaken and think that he must be as clean as Elisha, for whom a miracle was performed. Such devotion is only required to wear phylacteries during times of persecution, but during normal times, anyone can wear them. Or, one can say that one must be like Elisha to wear tefillin all day, but for part of the day, anyone can wear them.³⁸

The last explanation echoes the words of R. Asher b. Yehiel — c. 1270). "At this time, when the custom is to put on phylacteries only during prayer, it is easy for anyone to be careful."³⁹ However, after quoting several Talmudic sources describing the punishment for not putting on tefillin, he continues, "Therefore everyone should be exacting in this

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commandment. And the fact that it is weak in the hands of a few today is reminiscent of the Talmudic statement regarding those precepts which were upheld even at times of persecution etc." This would imply that aside from those who did not put on tefillin regularly or who put them on for a limited time only because of the cleanliness problem, there were those who simply did not fulfill the commandment of tefillin.

This manifestation may be corroborated by an explanation given by R. David b. Levi c. 1290) in his commentary, *Sefer Mekhtam*.⁴⁰ In discussing the custom to put ashes on the head of the bridegroom (to commemorate the destruction of the Holy Temple), which is related to the putting on of the phylacteries, he mentions that there are places which do not use ashes, but instead spread a black cloth over the bride and groom. "And we have heard that therefore the previous generations did not put ashes in the groom's head, because the people were not secure at all in the putting on of phylacteries."⁴¹

We have clear evidence that a strong neglect existed in Spain at this time. R. Moses of Coucy, author of *Sefèr Mizvot haGadol*, recounts his experiences with this matter. His comments appear in reference to Positive Commandment 3, which speaks of the precepts of faith contained in Shema and which requires Shema (along with other paragraphs) to be placed in tefillin and mezuzot. R. Moses states that he is explaining the Shema paragraph within the context of the Jewish exile experience, and proceeds to tell of the importance of phylacteries, and of the reward and punishments associated with it. He says that God would rather see a wicked man put on tefillin than a righteous one, because tefillin should serve as a path.^{41*} As R. Moses himself testifies, he was in Spain in 1236 preaching these ideas, and with the help of God, many people accepted the precepts of tefillin and mezuzot.⁴² In France, however, neglect of an even stronger type existed. R. Joseph Colon (c. 1450) quotes the Tosafot of R. Judah of Paris, c. 1200) teacher of R. Moses — "On what does the

populace base its failure to put on tefillin?⁴³ In the latter part of the Rishonic period, the Maharil tells us that there were some who uttered various verses or poems to fulfill their obligations regarding tefillin and mezuzah. It might be possible to suggest therefore, that gross neglect was not just a matter of rebellion, but was linked to the paucity of the material in the Torah (written Law) on these commandments.⁴⁴

There remains but one important factor concerning the neglect of tefillin in the Rishonic period. R. Zedkiah haRofe (c. 1240) in his *Shibolei haLeket*, collected many of the sources which we have presented — from responsa of the Gaonim to comments of the Tosafists.⁴⁵ Unlike many of the sources previously quoted, his work was designed to shed light on the customs and practices of his day, giving personal reasons and preferences.⁴⁶ He claims that the main reason that people did not put on tefillin properly was because of the argument between Rashi and R. Tam regarding the order of the scriptures which must appear in the tefillin (both of whose opinions are mutually exclusive). Since according to each opinion the other is invalid, confusion and negligence resulted. In this way, we can explain why there appeared to be great confusion amongst the masses even though only a small segment appeared to be involved in hard-core neglect.⁴⁷ Other key differences, such as where to place the hand tefillin, or whether the knot must be retied each day could also have contributed to the peoples' instability in the performance of this commandment.^{47*}

Using this last approach we might even be able to suggest that the problem was not that of why to put on tefillin, but rather a lack of concern over how to put them on properly. This can be more fully understood by noting a statement by R. Abraham of Sensheim, a student of R. Meir (c. 1250) of Rothenberg: "When I left R. Meir of Rothenberg, I did not see anyone carefully observing the precepts of fringes, phylacteries and mezuzah⁴⁸ except for R. Perez⁴⁹ and my two teachers . . ." ^{49*} The mistakes that people were making were not that they weren't putting phylacteries on; rather, they were buying

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them incorrectly, and did not know many laws which render them unfit for use.⁵⁰ This theory is enhanced when we look at the amount of space and the number of sections devoted to phylacteries by R. Isaac b. Moses (c. 1200) in *Sefer Or Zarua*. Furthermore, the topics that he discusses coincide with those mentioned by R. Abraham. Such technical items as processes of construction, fixing broken pieces, dimensions and requirements, many of which can render tefillin unfit if not undertaken properly are discussed in detail. While no outright connection is suggested and while comparisons can be made between other commentaries as well, the indication is that many people were making errors in respect to phylacteries, errors which great scholars sought to correct.

The tefillin observance pattern then, is one which has changed and changed again over the years. Originally, it was simply a problem of mechanics, of maintaining a clean environment, a body conducive to the wearing of tefillin in accordance with Talmudic law. By the Rishonic period however, the problem had radically changed. No longer were people worried about cleanliness alone; their lack of observance did not only stem from religious motives. Rather the laws of wearing tefillin had become forgotten, producing a negative effect on the observance of this commandment, an effect from which we still suffer today.

NOTES

1. Deut. 6:8
2. *Sefer haMizvot*, positive commandments, nos. 12 and 13.
3. I must make this statement because of the nature of much of the secondary literature written on this subject. Both J. H. Schorr, whose article appeared in the periodical *HeHaluz*, vol. V (1860) pp. 11-26 and M. L. Rodkinsohn, whose book entitled *Tefilah leMoshe* (see below no. 41*) published in 1883, attempt to prove that there was almost a total breakdown in every period of Jewish history when it came to the injunctions to put on phylacteries. Rodkinsohn in particular, while displaying a great knowledge of sources, attempts

- to prove, for example that the majority of Amoraim did not put on tefillin and that those who did wear tefillin did so for only short periods of time. While he indeed quoted sources which were to be analyzed by those who followed him, including the present author, he forced his theories into many sources which have no bearing on the subject, and thus perverted many significant sources. See Urbach's comment in his *Baale haTosafot*, p. 386 n. 12. Cf. I. Kalish in *Bait ha Talmud* v. 3, pp. 149-51. In general, this subject stimulates controversy because any attack on previous generations warrants a defense. When N. S. Greenspan published his article in *Ozar haHaym* vol. IV pp. 159-64 (which was expanded upon in his book, *Mishpat Am haArez*, published in 1946), he admittedly was harsh in his view of the neglect of tefillin. This was seized upon by Z. D. Greenburger in the very next issue of the same periodical pp. 71-72. See the comment of S. Baron in his *Social and Religious History of the Jews*, vol. V, pp. 317-318 n. 72. The author has made use of these sources only insofar as they added to his knowledge of the primary sources dealing with this subject.
- 3*. Particular emphasis will be placed on the Medieval period. Rabbi M. Kasher, in the supplementary section of vol. XII of his work *To'rah Shlemah*, has gathered in his usual thorough fashion, almost all of the sources. He has presented several reasons for the neglect which was present in the Medieval period, see esp. p. 267. However, it is difficult to obtain a full historical picture from his work.
 4. 130a.
 - 4*. Literally, *merufah*. This would seem to point to a weakness in the actual performance of this precept as compared to the performance of circumcision etc.
 5. *Shabbat* 49a.
 - 5*. Cf. B. M. Lewin, *Ozar haGaonim to Tractate Rosh haShannah*, no. 18, and especially his article in *Tarbiz* vol. II, p. 391, where he deals with the persecutions in Israel and their effect on the performance of the commandment to put on tefillin.
 6. *Shabbat* 130a. Cf. *Tosafot, Baba Batra* 10b, s.v. Ela, *Sefer haYashar* (R. Tam), Schlesinger ed. no. 675.
 7. For further explanation of the requisite of cleanliness for tefillin as exhibited by Elisha, see *Tosafot, Shabbat*. 49a s.v. keElisha. The Talmud definitely does not imply that no one else wore tefillin, see below.
 8. *Commentary of Ran to Shabbat*, Goldman ed., p. 189. Cf. Kasher, *op. cit.* p. 254, and esp. p. 259 where he lists five opinions of the Gaonim and Rishonim regarding the statement of R. Jannai. See also Greenspan in *Mishpat Am haArez*, pp. 55-59.

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9. See *Berakhot* 23b, B.M. 105a, *Bezah* 15a, (all quoted by R. Joel Sirkes in his commentary to *Tur Shukhan Arukh*, sect. 37). See also Tos. *Berakhot* 44b, s.v. *veLivnai maarava*, and *Sefer haEshkol*, Auerbach ed. part II, p. 90. See Kasher, *ibid.*, pp. 241-2 for other Talmudic sources from which inferences can be made, and R. Margoliot, *Responsa Min haShamaim* no. 26 n.1. Particularly interesting is the quote from *Shabbat* 13a, see Maharsha *ad. loc.*
10. See *Yoma* 86a. From the comment of R. Yohanan, it would appear that one who did not wear tefillin at all times desecrated God's name. One however, who was afflicted by certain illnesses was exempt from putting on tefillin, see Rashi *ad. loc.*, and R. Zvi Chajes, below. Cf. *Sefer haEshkol ibid.*, *Or Zarua* sect. 532, *Sefer halittur*, *Hilkhot Tefillin*, part 10. This exemption would explain several cryptic Talmudic references.
11. See *Responsa* of R. Zvi Chajes (printed in the collection of his works), no. 71. Rav is praised for this matter. See also *Shabbat* 118b, and *Megillah* 28a, where the Talmud mentions sages who wore tefillin for the entire day.
12. *Berakhot* 2:3. Cf. *Or Zarua* sect. 531.
13. Cf. opinion of R. Isaac, in *Tosafot Shabbat* 49a. The question here is whether the result of this incident was that less people wore tefillin or whether they were worn for shorter periods, or whether those who wore them were no longer trusted, cf. *Or Zarua, ibid.*, and Greenspan, *op. cit.*, p. 63. See also R. Asher in *Hilkhot Ketanot*, (published after Tractate *Menahot*) sect. 28.
14. 17a.
- 14*. The significance of this answer is increased in light of the fact that Rav was known for his wearing of tefillin the entire day, see above n. 11.
15. *Berakhot* 14b.
- 15*. This evaluation applies to several of the sources quoted by Kasher and Margoliot, see above n. 9.
16. *Perush haMishnayot to Menahot*, 4:1. Cf. S. Y. Rappaport in the first of his *drashot* as the rabbi in Czarnapol (1838), published by S. Greenbaum (Dembrowski) in *Rosh Divrei Shir* (1877). I am indebted to Dr. M. Herskovics for these sources.
17. B. M. Levin ed., *Ozar haGaonim to Berakhot*, p. 30 no. 87 and n. 3 for related sources. The question reads simply, "It was asked of R. Yehudai regarding tefillin." No more specifics of the question are preserved.
18. Cf. *op. cit.* to *Rosh haShannah*, p. 29, no. 22.
19. This is along the lines of the explanation found in *Tosafot Shabbat* 49a that Elisha was saved by the miracle of the dove's wings

- because he maintained a fastidious body. Therefore, one who wishes to wear tefillin openly during times of persecution should be as clean as Elisha, to prevent any harm from coming to him. Cf. *op. cit.* to *Berakhot*, p. 41 no. 89, and below.
20. See *op. cit.* to *Rosh haShannah* p. 27 no. 17. In *Tractate R.H.* 17a the punishment for one who rebels with respect to phylacteries is Gehenna. See above n. 14.
 21. It should be noted that when dealing with *Responsa* material, it must be ascertained whether a question represents a rare case or a frequent occurrence. This must be considered when estimating the magnitude of a discussion such as ours. One must also consider that not every Jew of a particular period was interested in or would uphold the decision rendered, and would likewise not seek advice from the responder. See below and n. 30.
 - 21*. Levin *op. cit.* n. 19, p. 41 no. 90 and n. 2.
 22. Some texts write "An invalid (lame person), should he be required to wear tefillin." See Levin, *ibid.*, n. 3, and Kasher *op. cit.* p. 261 for an explanation of the question according to the various texts.
 23. Literally, *Yuhara* meaning haughtiness in the sense that one attempts to appear more observant than others. Note that this concept has halakhic validity, see *Berakhot* 17b and comment of Ramo in *Orah Haym* 17:2; and *Responsa* of R. Meir of Rotheberg, Kahana ed. v. 1, n. 29; See also *Ozar haSheelot uTshuvot*, (Jerusalem 1970), sect. 1, for examples of this concept in later *responsa* literature.
 - 23*. See above no. 10. Cf. *Responsa Havot Yair* no. 237. Note his description of the observance of the precept of phylacteries in his time (C. 1700).
 24. Lewin, *Tract, R. H.*, p. 28 no. 18. The responder may have been R. Hai, see n. 11, and especially article in *HaDvir*.
 25. Cf. R. Yehudai, above.
 - 25*. See Lewin *ibid.*, n. 6. The sources quoted discuss measures taken by students in order not to appear haughty. Cf. Assaf, *Responsa of the Gaonim*, (Jerusalem, 1942), no. 4.
 26. It appears that tefillin were worn diligently by members of the yeshivot. Sar Shalom Gaon (C. 850) testifies that the custom of the yeshivot was to wear the phylacteries all day and to remove them at the evening service, see *Responsa of the Gaonim-Shaarei Tshuvah*, no. 153. Interestingly, in the same *responsa*, he speaks of the laws of checking the tefillin, and he concludes that they are related to regularity with which the tefillin are worn.
 27. Cf. *Responsa of the Gaonim from the Geniza*, Assaf. ed., p. 192, "Every Jew must put on tefillin while reading Shema." Lewin prints an addendum which he feels might be part of R. Sherira's answer. This part qualifies the amount of piety needed. Only one who

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- observes other precepts would not be showing haughtiness and would set an example by putting on tefillin publicly. An example would certainly be set by an important person.
28. Although much of the responsa material points to a large number of people who were neglecting this precept, we have responsa which answer questions pointing to normal use. See for example *Shaarei Tshuvah*, p. 16, and material quoted in *Shibolei haLeket*, Buber ed. pp. 383-4. See also Gaonic code of law on tefillin, *Shimusha Raba*, printed by R. Asher following *Hilkhot Ketanot*, which presents many laws while also quoting sources relevant to neglect. Of unusual interest is a law quoted that one who is not a scholar or has not attained a certain level of Torah scholarship cannot put on tefillin, see Lewin, *R.H.* p. 29 no. 21.
 - 28*. Included in this area are codes of law written by later Rishonim which quote earlier Rishonim for purposes of augmenting their own works. See designated sections in *Shibolei haLeket*, *Orhot Haym*, and *Kol Bo*.
 29. See for example S. Albeck, "The Attitude of R. Tam to the Problem of his Time," (Heb.) *Zion* 19, (1954), pp. 106, 111-13.
 30. See responsum of R. Meir of Rothenberg regarding mezuzah and Prof. Baron's comment, in his *Social History* . . . p. 318 n. 72. As far as the range of the population affected by responsa, see Roth in *Studies and Essays in Honor of Abraham Neuman* (Phil., 1962), p. 424 where he mentions upper classes and learned elements.
 31. *Shabbat* 49a.
 32. Namely, why this precept is not perfectly observed. Note, once again the weakness is not specified.
 33. R. Tam, *ad loc.* and in *R.H.* 17a distinguishes between those who do not put on phylacteries as an act of rebellion, and those who do not for other reasons. Cf. *Sefer Yeraim haShalem*, p. 432, *Responsa of R. Meir of Rothenberg* (Pr. 649) and commentaries of Rashba (Dimetrovsky ed., p. 77) and Ritba to *R.H.* 17a, and *Birkhei Yosef* (R.H. Azulai) to Orah Haym, sect. 37.
 34. Student of R. Tam. About his interesting work, see *Shem Hagdolim* (Azulai) under R. Jacob heHasid, and introduction of Margoliot to his edition. See also Urbach, *op. cit.*, p. 129.
 35. Note that this was the point of controversy between Greenburger and Greenspan, above n. 3. Cf. *Tosafot Pesachim* 113b, s.v. veAin and *Tos. Ber.* 44b.
 36. The answer given is that one who refrains from observing the mitzvah of succah etc. is worse because he seems to be denying this precept totally. But one who neglects part of a precept is not as bad. This is according to the explanation of Margoliot. If the

- answer is to be explained literally, cf. cryptic comments of Meiri in note following.
37. See commentary of R. Menahem Meiri to *Ber.* 14b. Note interesting explanation of Jer. Talmud and see n. 108. Concept of physical and spiritual cleanliness is also apparent from comments of R. Bayhe following. Cf. *Sefer Hasidim Vilna* ed. no. 362. A related problem is that of nocturnal pollution, see *Reponsa of Maharam Rothenberg* (Ctemona no. 37 and Lemberg nos. 223-4), and *Sefer Tashbez* nos. 272-3.
 38. See *Kad haKamah*, section on tefillin, (p. 106).
 39. It is assumed that this is referring to the morning prayers. R. Bayhe however refers to the period that tefillin were worn as *shaot yeduot*. Cf. Meiri above. From the sources seen thus far in this period, it would appear that no one was expected to wear phylacteries past the afternoon, and that use during the morning prayer period was certainly sufficient. See SeMáK sect. 153. Rabinowitz, in his *The Social Life of the Jews of Northern France* (p. 172) feels that from here we may see that tefillin were worn for one hour only but this is certainly not to be taken literally. At the end of this period however, we see clearly that the phylacteries were not left on any more than was required (i.e. during prayer). See *Leket Yosher*, Orañ Haym, question 21, and *Respõnsa Binyamin Zev*, no. 200. This extreme caution was to make sure the proper level of cleanliness was maintained.
 40. Ginzei Rishonim to Taanit, *Sefer haMekhtam*, p. 278.
 41. From a verse in Isaiah, it is derived that God will replace the ashes of destruction with glory, and we know that tefillin are called glory. The glory that will come ultimately will replace the ashes that had been placed at the site of the tefillin following the destruction. The fear was that if the first part of the condition were not fulfilled, i.e. that tefillin were not being put on, and therefore the ashes would not cover that spot, the ultimate promise, that the ashes would be replaced, would likewise not result. Therefore, the custom was changed. The difficulty here is that the phrase, in previous generations, *harishonim* must be clarified with regard to the historical period.
 42. See Urbach, *op. cit.*, p. 386. See also SeMaG, prohibitions, no. 112, where we learn that he also discussed at that time forbidden relationships. This indicates the low religious level of the people with which he dealt. Cf. *Sefer Agudah to R.H.* Chap. 1, section 6.
 43. See *Responsa of the Maharik* (Lemberg ed.) no. 174. The Maharik also quotes an exemption for scholars on the basis of the *Mekhilta*. The various opinions in this matter are enigmatic. See Lewin, *Ber.* p. 40 where R. Shmuel Bar Hofni states that there is no such

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- exemption. Cf. *Or Zarua* 531, *Rashba to R.H.*, 17a, *Agudah, ibid.*, quoted also by *Shibolei haLeket*, Buber ed. p. 382.
44. *Sefer Maharil* (minhagim) p. 86. Cf., Neuman, *The Jews in Spain* (Phila., 1942). Part of the Herem haRashba was against those who treated the Biblical commandment concerning phylacteries as an allegory. Cf. reaction of R. Joseph Bkhor Shor in Urbach, *op. cit.*, p. 117. See also Nemoj, *Karaite Anthology* (N.Y. 1969), p. XXV. This seems to have been a factor in R. Moses' drive as well.
45. Mirsky ed. p. 85 ff., Buber ed. p. 381 ff.
46. Mirsky ed., pp. 8-11. Cf. *Or Zarua* 531 who gives as an apparent reason for having quoted sources in regard to the importance of tefillin and its non-neglect: We have seen that tefillin is an important precept, and every man should uphold it.
47. Note the attitudes of Baron and Rabbinowitz, *ibid.*, Cf. *Responsa of the Radbaz*, part one, no. 229 and part six nos. 276, 287 and *Maharik, ibid.*
- 47*. See *Sefer HaYashar* (responsum) no. 58. See also Urbach, *op. cit.* p. 107. *Mahzor Vitri*, p. 645-6, *Responsa of R. Meir of Rothenberg* (Cr. 41, Pn. 424), *J. Müller, R. Maffeah leTshuvot haGaonim* p. 125
48. In both these precepts, we have several sources which would point to neglect. For example, see above, n. 30.
49. Cf. Yerushalmi ed. (1966) of *Zror haHaym* where an investigation as to which R. Perez was the teacher of the author of this book dealing with the laws of phylacteries. From this, statement of R. Abraham, another proof that it was R. Perez of Corbeil may be derived, since he was obviously concerned with the proper fulfillment of these precepts.
- 49.* See *Barukh Sheamar*, (a guide to the laws of Sefer Torah, Tefillin, and Mezuzah) by R. Shimson b. Eliezer, (Warsaw, 1880), pp. 2-3.
50. Cf. statement of R. Menahem Meiri in the introduction of his book on this subject, *Kiryat Sefer*. He wrote his book to clarify much of the confusion and eliminate ignorance in regard to these precepts.