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## gemirna readings

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CHAPTER SIX

# Rabbinic Literature

*Michal Bar-Asher Siegal*

## Introduction

The term rabbinic literature generally refers to the texts composed, edited, and transmitted by rabbinic circles between the late-Second Temple period (the years leading up to 70 CE) and the Islamic conquest in the seventh century CE. This dating is neither precise nor clear-cut, however. On the one hand, the earliest surviving compilation of rabbinic texts, the Mishnah, was edited around the turn of the third century CE. In other words, the editing of the Mishnah occurred at least a hundred years after the destruction of the Second Temple, though at least some of the traditions preserved in this anthology reportedly date back to the Second Temple period itself. On the other hand, we find in the rabbinic genre of midrash (pl. midrashim), compilations postdating the seventh century, though they include earlier material and possess characteristics that clearly identify them as rabbinic. In any case, the chronological framing of rabbinic literature should be taken as a general guideline and carefully checked in the case of each compilation and each individual passage. I shall begin this survey by outlining the parameters of rabbinic literature along a number of different axes, including chronology, geography, genre, and language.

Rabbinic literature can be divided chronologically into two main periods:

1. Tannaitic literature (derived from the Aramaic term *Tanna*, "teacher," from the verb "to teach/learn," literally, "to repeat"): compositions edited around the early-third century CE and containing literary traditions dating back to the Second Temple and early post-Destruction period. These works include the Mishnah, Tosefta, and tannaitic midrashim, as well as possible tannaitic traditions (*baraitot*) found in later sources.

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2. Amoraic literature (derived from the Aramaic *Amora*, "teacher," from the verb "to say"): works that include traditions originating in the third through fifth centuries CE, often presented alongside earlier, tannaitic material. The main amoraic compilations were edited between the fifth and seventh centuries, including the Palestinian and Babylonian Talmuds, and the early aggadic midrashim (see below on the distinction between *halakhah* and *aggadah*). Some of these amoraic anthologies also include an additional layer of later material from the sixth and possibly seventh centuries. Most famously, the Babylonian Talmud contains the so-called stammaic layer, anonymous additions that include everything from brief editorial comments on earlier material to entirely new passages interspersed among arranged tannaitic and amoraic traditions.

The anthologies that comprise rabbinic literature are composed of several distinct stages. At the heart of rabbinic works are traditions transmitted in the name of specific rabbis. These sayings were presumably composed by the named rabbi or by a later composer attributing this tradition to an earlier sage. They were studied and preserved and later redacted as part of an anthology of rabbinic sayings. This redacted compilation of rabbinic traditions then went through several additional stages of redaction, resulting eventually in the various rabbinic compilations that survive today. During and after the creation of these rabbinic works, the traditions were transmitted and preserved by later rabbis and their students.

While the oral nature of rabbinic literature is evident in almost every aspect of the texts, the actual method of the transmission was already being debated by medieval commentators. Rashi, for example, held that the texts were transmitted almost exclusively through oral recitation and memorization, while others, such as Maimonides, thought the traditions were transmitted in writing. A few texts are mentioned that were already written in rabbinic times, for example, the Second Temple *Megillat Ta'anit* with its post-talmudic *scholion*, while others such as some legal midrashim, were proven to have existed in written form (Naeh 1997). The oldest inscription of rabbinic texts is the mosaic at the Rehov synagogue, a close parallel of a Palestinian Talmud passage dealing with the Sabbath year and tithing, which dates to the first half of the seventh century (Sussmann 1973–1974). The oldest geniza fragments of rabbinic texts are dated to the late seventh or eighth century, while complete manuscripts of rabbinic texts are only found in later medieval manuscripts and, later still, in print (Strack and Stemberger 1992, pp. 31–37). At this stage, the texts continued to evolve as changes of a different nature took place: scribal errors and corrections, printing errors, and censorship.

The rabbinic corpus can also be divided along geographical lines. There is general agreement among scholars that all of the tannaitic literature originated in Palestine. Amoraic literature, however, was created in two different geographical regions: Palestine and Babylonia. The Palestinian and Babylonian Talmuds each contain literary traditions stemming from both of these two geographic Jewish community centers. However, the Palestinian Talmud was redacted in the land of Israel, as were the early aggadic midrashim, while the Babylonian Talmud was redacted in Babylonia, in the narrow region between the Tigris and Euphrates Rivers, in modern-day Iraq.

The two Jewish communities that produced these texts lived under very different historical circumstances. In the West, the land of Israel was a province of the Roman Empire,

while in the East, Jewish Babylonia was a part of the Sasanian Persian Empire. Moreover, in the course of the fourth century CE, the Roman Empire legalized Christianity and eventually made it the state religion of the Roman Empire. In the Persian Empire, Zoroastrianism was the Persian national religion, while Christianity remained a minority religion alongside Judaism.

These differing historical circumstances impacted the nature of the Palestinian and Babylonian rabbinic compilations in both form and content. For example, the language of the tannaitic compilations is largely mishnaic Hebrew, alongside some Aramaic and scattered words in other languages, such as Greek. Amoraic literature, however, is written mostly in two dialects of Aramaic (Jewish-Palestinian Aramaic and Jewish-Babylonian Aramaic) as well as Hebrew, though amoraic collections also include words in other languages, including Greek and Persian (Sperber 2006; Breuer 2006; Bar-Asher 2006). In terms of content, for example, studies suggest certain Persian literary contacts with Babylonian talmudic texts (Secunda 2014), while others have noted connections between the Palestinian and Greco-Roman culture (Lieberman 1942) (for more on language see Yadin-Israel, Chapter 4).

Genre is another key characteristic that distinguishes groups of rabbinic works. The Mishnah and Tosefta are thematic compilations. They are, in most cases, collections of halakhic (= legal) sayings organized around themes such as the Sabbath, various holidays, marriage, torts, and other key issues in Jewish law. Both of the later two Talmuds were redacted according to the organizational and thematic structure covering most of the Mishnah. In contrast, both tannaitic and amoraic midrashim (derived from the Hebrew *darash*, "to seek," which is the verb used to describe rabbinic exegetical and homiletical practice) follow the order of the biblical books and verses.

One result of this distinction is that the laws discussed in the midrashic compilations are presented in connection with their supposedly biblical source whereas the thematic compilations often offer legal rulings as self-contained statements. The organization by theme allows for more straightforward access to specific rules and sometimes allows for the treatment of a much broader range of rules than what is derived directly from biblical verses. For example, the laws of the Sabbath are discussed in very few verses in the Pentateuch and primarily in very general terms (Tigay 1985; Exod. 20: 8–11, 23: 12, and 31: 12–17; Lev. 23: 3; and Deut. 5: 12–15). Only a handful of specific rules are mentioned: the prohibition of gathering food, plowing and reaping, kindling a fire, and chopping wood (Exod. 16: 29–30, 34: 21, 35: 3; Num. 15: 32–36); and the positive commandments to give rest to one's servants and animals (Exod. 20: 10, 23: 12; Deut. 5: 14). As a result, the tannaitic midrashim contain few passages on the topic of Sabbath observance, and only in connection with these specific verses. However, *tractate Shabbat* in the Mishnah is quite large, consisting of 24 chapters mostly comprising self-contained Sabbath laws, which are expanded upon greatly in the Tosefta and later in both Talmuds.

While rabbinic literature can indeed be divided based on these and other criteria, there are also many characteristics common to the entire corpus:

1. Traditions are preserved either anonymously (*stam*) or attributed to a named sage. The names of specific sages mostly appear throughout all of rabbinic literature, and we often encounter the same rabbis across different compilations, such as the tannaim R. Akiva and R. Yose; the amoraim R. Abbahu and Rava; and many others.





2. Compilations preserve traditions in a series of (generally) chronological layers. One can often read a topical discussion starting with an early sage and ending with comments on the same topic from a sage who lived many years or even centuries after the first.
3. Rabbinic literature is often laconic. Especially in tannaitic compilations, but even in later talmudic texts, passages of laws and narratives are composed with minimal use of adverbs, adjectives, and background detail.
4. Rabbinic texts do not have an authoritative author and we rarely know the identity of the editor. Nonetheless, the chain of transmission of rabbinic traditions is taken quite seriously. The texts are full of named sayings and seemingly meticulous attention to the verification of the source of each individual statement. We often find a string of names, reading "Rabbi X said that Rabbi Y said in the name of Rabbi Z," etc.
5. Earlier traditions stand at the center of later discussions and are treated with varying degrees of authority, depending on their provenance. Often later amoraic and post-amoraic sources will attempt to reconcile contradictory traditions in creative ways in order to preserve the authority of both.
6. Biblical verses are authoritative and central to all of rabbinic literature. They are regularly quoted, even in non-midrashic literature.
7. Rabbinic texts incorporate, to various degrees, both halakhah (legalistic sayings; see Safrai 1987) and aggadah (non-legal material). The latter category can include everything from biblical exegesis to stories about sages' lives to scientific investigations, and much more. Often the distinction between halakhah and aggadah is blurred and the two intertwine to create a fuller treatment of the topic at hand.
8. Rabbinic narratives are impressive in their audacious literary treatment of major themes, such as rabbinic authority and hierarchy; the relationship between humanity and God; God's attributes; and so on. The rabbis often treat sensitive issues with directness and openness in traditions that have, perhaps surprisingly, been preserved in rabbinic anthologies and transmitted over centuries. There is often a sense of self-reflection and even irony in the treatment of certain issues. When a rabbi, Ben Azzai, states that whoever avoids having children is a murderer and "decreases the image of God" (*t. Yebam.* 8: 7), it is indeed a severe warning. However, the rabbis' response to Ben Azzai which follows, reveals that he himself did not have children! He responds, "What can I do? My soul longs for the Torah." Here, as in other cases, rabbinic literature preserves both a saying and a self-critical look at the underlying attitude expressed.

## Mishnah

The earliest surviving rabbinic compilation is the Mishnah. The word *mishnah* derives from a Hebrew root meaning literally "to repeat" (a cognate of the Aramaic root of *Tanna*, see above). This verb also means "to learn" in mishnaic Hebrew, since oral traditions were studied and memorized through repetition. The editing of the Mishnah is attributed to Rabbi Judah the Patriarch (or the Prince), often known simply as "Rabbi," in the beginning of the third century CE.

Rabbi probably relied on earlier compilations of rabbinic legal traditions in the creation of his Mishnah, though these do not survive independently. The Mishnah itself refers numerous times to a "first (or earlier) Mishnah" (*mishnah rishonah*). For example, after *Mishnah Sanhedrin* 3: 4 lists the various people who are disqualified from serving as witnesses or judges (among them: "a suitor's father, brother, father's brother, etc.") the text records the comment of R. Yose: "Such was the Mishnah of R. Akiva, but the first Mishnah also included a suitor's uncle, first cousin, and all who are qualified to be his heirs."[1]

The Mishnah is organized thematically and consists of six parts known as "orders" (sing. *seder*; pl. *sedarim*):

1. *Zera'im* ("seeds"): laws dealing primarily with agriculture.
2. *Mo'ed* ("festivals"): laws dealing with festivals and special days such as Shabbat.
3. *Nashim* ("women"): laws dealing with women, including the laws of marriage and divorce.
4. *Neziqin* ("damages"): tort law.
5. *Qodashim* ("holy things"): laws dealing with sacrifices and temple offerings.
6. *Teharot* ("purities"): laws dealing with purity and impurity.

Each order is divided into tractates (sing. *masekhet*; pl. *masekhtot*), and each tractate into chapters (sing. *pereq*; pl. *peraqim*) and then individual *mishnayot* (sing. *mishnah*). We have a number of textual witnesses to the Mishnah, prior to its printing, including several complete or nearly complete manuscripts (as early as the eleventh and twelfth century) and numerous earlier fragments preserving smaller sections of the text.

The *mishnayot* that comprise the Mishnah can be divided, generally speaking, into three categories:

1. *Self-contained laws.* For example, *Mishnah Ketubot* 12: 3 reads: "If a widow says, 'I do not wish to leave my husband's house,' the heirs cannot say to her, 'Go to your father's house, and we will maintain you [there].' They must maintain her in her husband's house and provide her a dwelling befitting her condition."
2. *Laws connected to a biblical source.* For example, Numbers 5: 11–31 describes the "bitter water ceremony," a trial by ordeal prescribed for a woman suspected of adultery. *Mishnah Sotah* 1: 6 determines that "all women are allowed to behold her, for it is written, 'That all women may be taught not to act in accordance with your lewdness' (Ezek. 23: 48)."
3. *Aggadic passages that include non-legal statements.* These include: commentaries on biblical stories, for example *Mishnah Sotah* 1: 8, "Samson went after [the desire of] his eyes—therefore the Philistines put out his eyes, as it is written: 'And the Philistines took hold of him and put out his eyes' (Judg. 16: 21);" narratives about sages, such as the story of Honi the Circle-Maker, who was asked to pray for rain in a time of drought and succeeded (*m. Ta'an.* 3: 8); or even meta-reflections about the nature of the rabbinic project, such as *Mishnah 'Eduyot* 1: 4, "And why do they record the opinions of Shammai and Hillel when these do not prevail? To teach the generations that come after that none should persist in his opinion, for even 'the Fathers of the World' did not persist in their opinion [after another's argument was accepted as law]."





The Mishnah became the authoritative source of tannaitic teachings for later generations, due in large part to the stature of its editor and compiler, Rabbi Judah the Patriarch. Rabbi was a leader in the Palestinian community and its representative to the Roman imperial authorities, and sources depict him as coming from an affluent and influential family. This standing must have played a large part in the acceptance of the Mishnah as the authoritative legal text upon which both Talmuds were later built. Even so, the Mishnah contains a few passages that must have been added after the time of Rabbi, including a tradition mentioning Rabbi's death (*m. Sotah* 9: 15).

The Mishnah does not include *all* tannaitic material, for other early collections, such as the Tosefta and the tannaitic midrashim, preserve a great many other tannaitic statements and traditions that were not included in the Mishnah. While the Mishnah includes many disagreements and opposing views, it nonetheless preserves a greater proportion of teachings originating from the school of Hillel and the followers of R. Akiva. The Mishnah's original purpose is debated by scholars. Some argue that it is simply a collection of rabbinic teachings; others that it is a teaching manual; and still others see it as an authoritative law code (Strack and Stemberger 1992, pp. 135–138). Later sources, especially the two Talmuds, treat the Mishnah as though it were a systematic law code. However, contradictions and repetitions within the Mishnah often complicate this approach and compel the amoraic sources to offer corrections or forced arguments in an attempt to create a unified system.

The oral character of the Mishnah is evident from its style, which is often designed to facilitate oral recitation through the use of parallelism and other mnemonic devices. For example, when *Mishnah Shabbat* 7: 2 enumerates the 39 activities prohibited on the Sabbath, the long list is preceded by a header, "The primary labors are forty less one," which is then repeated at the conclusion of this passage. The list is also divided according to the type of activity and then arranged based on the sequence of actions. For example, prohibited activities related to bread-making are listed in the order they would be performed: planting, plowing, reaping, gathering, threshing, winnowing, sorting, grinding, sifting, kneading, and baking. These and other stylistic elements aid in the memorization of long lists of details most likely to be transmitted orally.

## Tosefta

The Tosefta (from the Aramaic for "addition") is another thematic compilation of tannaitic literary traditions, four times larger than the Mishnah. The Tosefta as it stands before us is framed as a supplement to the Mishnah; it is organized according to the same six orders and is dependent on its rhetoric and argumentation. The Tosefta often adds to and comments on the Mishnah in the following ways:

1. It quotes the Mishnah verbatim.
2. It complements and adds to the Mishnah's content without explicitly quoting it.
3. It contains independent statements that do not rely on the Mishnah.

For example, *Mishnah Pesahim* 10:1 describes meal preparations for the Passover *seder*:

> On the eve of Passover, from about the time of the Evening Offering, a man must eat nothing until nightfall. Even the poorest in Israel must not eat unless he reclines. They must not give them less than four cups of wine to drink, even if it is from the [charity] plate.

The parallel Tosefta reads:

> On the eve of Passover, from about the time of the Evening Offering, a man must eat nothing until nightfall. Even the poorest in Israel must not eat unless he reclines. They must not give them less than four cups of wine to drink, which contain at least a *revi'it* [a specific measure], whether it is mixed or unmixed, old or new. R. Judah says: So long as it has the taste and appearance of wine.[2]

The Tosefta here quotes the Mishnah and adds its own legal discussion of the quantity and quality of the wine that must be drunk at the Passover *seder*. The Tosefta then adds the following independent statement, which is neither found in the Mishnah nor dependent on the Mishnah:

> A person is commanded to make his children and the members of his household happy on the pilgrimage festivals. How [should he make them happy]? He makes them happy with wine! As it is written, "And wine will gladden a man's heart, etc." (Ps. 104: 15). R. Judah says: Women as appropriate for them and minors as appropriate for them.

While its redaction appears to be later than that of the Mishnah (some scholars disagree even on this point; see Hauptman 2005), the Tosefta also preserves earlier traditions on occasion (even in this Pesahim passage; see Friedman 2002). Scholarship has thus emphasized the importance of analyzing every Mishnah–Tosefta parallel on its own in order to determine the relationship between the traditions preserved in each corpus.

# Midrash

Midrash is a diverse genre within rabbinic literature, comprising compilations edited as early as the third century CE and as late as the thirteenth century. What these works all share is a central focus on the exegesis of biblical verses. Midrash addresses difficulties in the biblical text and attempts to clarify ambiguous passages. Because the Bible is laconic in style, often omits details, and rarely describes the emotions, motivations, or thoughts of its protagonists, midrashic texts seek to fill in these biblical lacuna. Thus, for example, the midrashic texts offer reasons for Cain and Abel's disagreement or set forth interpretations that attempt to reconcile the two apparently distinct creation stories in the first chapters of Genesis. Midrash also attempts to adapt biblical verses to changing social realities. For example, *Sifre Deuteronomy* 218 uses exegetical moves to limit the circumstances in which the laws of the rebellious son apply (Deut. 21: 18–21), making it nearly impossible for parents to ask that their gluttonous son be killed.

These sorts of midrashic readings allowed this rabbinic genre to develop as a site of engagement with major theological issues. At times, midrashic works contain far-reaching statements about the nature of God, God's relationship with the Jewish people, and other





thorny religious questions. There is scholarly debate about the sources of different midrashim, with theories ranging from popular synagogue sermons to textual study among the sages in the elite circles of the study house.

## *Tannaitic Midrash*

The tannaitic midrashim are a part of the broader corpus of tannaitic literature that includes the Mishnah and Tosefta. These compilations are also known as halakhic or legal midrashim, as they are mostly centered on the legal portions of the Pentateuch. For example, there is no surviving tannaitic midrash on the book of Genesis, a book with very few laws, and the *Mekhilta de Rabbi Ishmael* on Exodus starts only in Chapter 12, the first substantive legal passage in Exodus. However, while these midrashim do indeed focus primarily on legal issues, there are nonetheless numerous passages of a non-legal, aggadic nature.

The tannaitic midrashim belong to one of two rabbinic schools: the school of Rabbi Ishmael and the school of Rabbi Akiva. The school of R. Akiva was the larger of the two and the more influential. Indeed, the school of R. Akiva became the central tradition of midrashic legal exegesis in the generations that followed. Not all of the compilations of midrashic readings produced by these two schools were recorded in manuscripts and later printed. Recently, scholars have attempted to reconstruct the missing midrashim based on manuscript fragments and later medieval quotations. The surviving midrashic collections include, from the school of R. Ishmael: *Mekhilta de Rabbi Ishmael* on Exodus (*mekhilta* is Aramaic for "rule," in the sense of a hermeneutical rule) and *Sifre* (Aramaic for "books") on Numbers; we also have parts of the *Mekhilta* on Deuteronomy (reconstructed in Hoffman's *Midrash Tannaim*). From the school of R. Akiva, we have: *Sifra* (Aramaic for "book") on Leviticus and *Sifre Deuteronomy*; we also have parts of the *Mekhilta de Rabbi Shimon bar Yoḥai* on Exodus (reconstructed by Epstein and Melamed 1979), *Sifre Zuta* (Aramaic for "the small books") on Numbers (in Horowitz's edition), and *Sifre Zuta* on Deuteronomy (in Kahana's edition). The following table (Table 6.1) is an outline of the midrashim by school and biblical book (* indicates a reconstructed midrash):

**Table 6.1** Tannaitic Midrashic Literature by School.

| Biblical book: | School of R. Ishmael: | School of R. Akiva: |
|---|---|---|
| Exodus | *Mekhilta de Rabbi Ishmael* | **Mekhilta de Rabbi Shimon bar Yohai* |
| Leviticus | | *Sifra* |
| Numbers | *Sifre Numbers* | **Sifre Zuta Numbers* |
| Deuteronomy | **Mekhilta Deuteronomy* | *Sifre Deuteronomy*<br>**Sifre Zuta Deuteronomy* |

Modern scholarship established the origins of these tannaitic midrashim from two separate midrashic schools based on several factors (Kahana 2006):

1. *Names of sages.* While the sages who appear in the tannaitic midrashim as a whole are the same sages known from the Mishnah and Tosefta, a handful of sages are more

dominant in certain midrashim. For example, we find in the Ishmaelian midrashim names of prominent sages who do not appear at all in the Mishnah, such as R. Yoshiya and R. Natan, while the sages in the Akivan midrashim are closer to the names appearing in the Mishnah.

2. *Midrashic hermeneutics.* Certain hermeneutic tools are used more often in the midrashim of one school or the other. For example, the school of R. Ishmael relies on fixed hermeneutic rules, such as the proper way to compare parallel verses in order to learn by analogy from one legal case to another, while the school of R. Akiva uses more elaborate biblical exegesis, sometimes based on a single letter.
3. *Terminology.* Each school's midrashim uses unique terms for similar notions. For example, when a tannaitic midrash offers an explanation only to reject it later on, Ishmaelian texts use the term, "Do I hear (*shome'a ani*)...?," while Akivan midrashim texts use the term, "Could it be (*yakhol*)...?"
4. *Anonymous sayings.* In numerous places, when a tannaitic midrash offers a saying anonymously, later sources such as the two Talmuds will quote the saying in the name of R. Akiva or R. Ishmael.

The fact that these early rabbinic works still preserve these two separate midrashic traditions—which is not the case in later, amoraic compilations—provides a unique opportunity to compare rabbinic attitudes on many legal and non-legal issues. Ultimately, this is a window into the nuance and complexity of rabbinic thought. As an example, *Sifre Deuteronomy* 157 relates the following story (which also appears in *m. Sotah* 7: 8) about King Agrippa, a descendant of Herod the Great and thus partly of Idumean origin:

> Whenever Agrippa came to this verse ["You may not set a stranger over you (i.e. as king) who is not your brother" (Deut. 17: 15)], he wept, and all the people of Israel said to him, "Fear not, Agrippa, you are our brother, you are our brother."

However, the parallel midrash from the school of R. Ishmael, *Mekhilta Deuteronomy* (in *Mid. Tan.* 17: 15) preserves the following version of this story:

> When he came to this verse, "You may not set a stranger over you" (Deut. 17: 15), he wept. [The sages] said to him, "Fear not, Agrippa, you are our brother, our brother!" At that time our fathers' verdict was sealed to be exiled, since they ingratiated themselves [to Agrippa].[3]

Interestingly, a view similar to the one expressed in this anonymous saying in the *Mekhilta* is attributed to R. Natan, the uniquely Ishmaelian scholar, in a later talmudic source (*b. Sotah* 41b). This comparison between the two midrashim reveals that some circles were critical of this mishnaic story amid tensions involving the appeasement of royal magistrates.

## *Aggadic Midrashim*

The early aggadic midrashim, such as *Genesis Rabbah*, *Leviticus Rabbah*, and *Lamentations Rabbah*, were edited in the amoraic period (these books are part of a larger collection known as the *Midrash Rabbah*; see Freedman and Simon 1983). As opposed to the



tannaitic midrashim, which focus on the legal sections of the Pentateuch, the aggadic midrashim focus primarily on non-legal passages.

*Genesis Rabbah* was redacted in the fifth century CE in Palestine. It is, for the most part, a verse-by-verse exegesis of the book of Genesis, offering simple explanations of words and sentences alongside longer aggadic passages. For example, *Genesis Rabbah* grapples with the meaning of the use in Genesis 1: 26 of a plural form to describe God's decision to create man: "And God said: Let us make humankind (lit. adam = human)." The midrash (*Gen. Rab.* 8) asks: "With whom did God take counsel?" It provides a number of answers, ranging from the elements to God's own heart to the angels. This midrash is also in conversation with contemporary claims that rely on the use of the plural here to argue that more than one heavenly being was present at the creation of Adam, particularly Christian claims (see, for example, Justin Martyr, *Dialogue with Trypho* 62).

The midrash also deals with contradictions between the biblical sources. Famously, Genesis 1: 27 records the creation of male and female humans together, while Genesis 2: 18–24 puts the creation of man first, followed by the animals, and finally woman. *Genesis Rabbah* 8 synthesizes the two sources and from this contradiction describes a two-stage creation:

> R. Jeremiah b. Eleazar said: When the Holy One, blessed be He, created Adam, He created him as androgynous, for it is said, "Male and female He created them... and He called their name Adam" (Gen. 5: 2). R. Samuel b. Naḥman said: When God created Adam, He created him double-faced, then He split him and made him of two backs, one back on this side and one back on the other side.[4]

In this way, *Genesis Rabbah* reads Genesis 1 as describing the creation of a human being containing both man and woman in some fashion, whereas Genesis 2 describes the separation of woman as an individual creature from the man.

*Genesis Rabbah* is divided into sections called *parashiyot*. These sections often begin with a proem called a *petiḥta* (pl. *petiḥtot*). The proem will start by quoting a verse from a biblical book, usually from the Writings (the third section of the Hebrew Bible) and sometimes the Prophets, and end with a local verse, in this case from Genesis. For example, when *Genesis Rabbah* 19: 1 discusses the verse, "Now the serpent was more crafty than any of the wild animals the Lord God had made" (Gen. 3: 1), the midrash begins by quoting Ecclesiastes 1: 18, "For in much wisdom is much anger, and whoever increases in knowledge increases in sorrow." The midrash comments: "When a person increases his wisdom, he increases anger against himself, and when he increases his knowledge, he adds to his sorrow." The midrash goes on to offer several additional sayings which address the theme of the greater the man, the greater his downfall. Finally, the passage returns to the local verse, as follows, "It was taught in the name of R. Meir: According to the greatness of the serpent, so was his downfall; because he was 'more crafty than any of the wild animals the Lord God had made.'" *Petiḥtot* are found in other midrashim as well, such as *Lamentation Rabbah*, another of the early midrashim that appears to have been redacted in fifth century CE Palestine.

The legal nature of much of Leviticus makes the verse-by-verse structure of *Genesis Rabbah* a poor fit for an aggadic midrash of this book. *Leviticus Rabbah* instead offers

37 homilies, each beginning with at least one *petiḥta*. The *petiḥtot* of *Leviticus Rabbah* are arranged according to the Palestinian Torah reading cycle (which is designed to complete all five books of the Torah twice every seven years) with a few later additions. The homilies focus on the first verses of each biblical unit, on the connections between close biblical units, and on larger thematic issues, rather than individual verses. We find homilies on the soul (*Lev. Rab.* 4); the burnt offering (7); peace (9); and other broad ideas. A number of homilies contain folkloristic literary traditions. For example, *Leviticus Rabbah* 12 comments on Leviticus 10: 8–9:

> Then the Lord said to Aaron, "You and your sons are not to drink wine or other fermented drink whenever you go into the tent of meeting, or you will die."

The midrash discusses the ill effect of wine-drinking and brings a group of stories about inebriated people, some of them clearly meant to be humorous:

> R. Aha said: There is a story of a man who would sell his household goods—even the beams of his house—and drink wine with the proceeds. His sons said, "Our father will leave nothing for us after his death! What shall we do with him? We shall go, ply him with drink, make him drunk, take him out, say he is dead, and place him in his resting place." And so they did: they plied him with drink, made him drunk, took him out, and placed him in a cemetery. Wine merchants passed the gate of the cemetery, and, hearing that a seizure [of goods] for public service was to take place in the province, they said, "We shall leave our barrels in this cemetery and leave." And so they did: they left their loads inside the cemetery and went to witness the uproar in the province. And they saw the man there and thought he was dead. The man woke up from his sleep and, seeing a skin bottle above his head, untied it, put it in his mouth. and began drinking and singing. Three days later, his sons said, "Should we not go to see what father is doing and whether he is dead or alive?" They went and found him with the wine-skin in his mouth, sitting and drinking. They said, "Even here your Creator has not forsaken you. Seeing that He has given you [wine], we do not know what we should do to you." They made an arrangement amongst themselves that the sons should each take turns providing him with drink each day.

In addition to the works surveyed above, rabbinic literature includes a number of other aggadic midrashim, including *Pirke de R. Eliezer* and *Tanhuma-Yelamdenu*. However, these and others were redacted well after the "rabbinic period," and we will not treat them in depth here, though they often contain earlier traditions and bear rabbinic characteristics.

## Talmuds

The two Talmuds (derived from the Hebrew *lamad*, "to learn"): the Palestinian Talmud (also called the *Yerushalmi*) and the Babylonian Talmud (often referred to as the *Bavli*), are composed of the statements of Amoraim living in the third through fifth centuries CE and the anonymous editors who followed them.

Both Talmuds are arranged as an interpretation of the text of the Mishnah, although each given *mishnah* is, in most cases, just a starting point for a much larger, encyclopedic



collection of rabbinic traditions connected associatively to the topic at hand. Furthermore, the two Talmuds only cover four of the six orders of the Mishnah: the Palestinian Talmud does not have the orders *Qodashim* (Holy Things) and *Toharot* (Purities), while the Babylonian Talmud does not have *Zera'im* and *Teharot* (with the exception of standalone tractates such as *Berakhot* and *Niddah* in the Babylonian Talmud, and chapters missing in a few of the existing tractates in the Palestinian Talmud). The absence of these mishnaic orders does not mean that they were not studied by the Amoraim. Rabbinic discussions of *mishnayot* from these orders are found throughout other parts of both Talmuds. Scholarly theories suggest that the topic of agriculture (the main focus of *Zera'im*) was not relevant outside the land of Israel and may therefore have been less important to the Babylonian sages; similarly, the laws of purity in *Toharot* may have been less meaningful for post-destruction Jewish communities in Palestine and Babylonian without access to the Temple cult (Strack and Stemberger 1992, pp. 166–168).

The two Talmuds show great similarities in their overall sequence and construction, and they often share similar content at the level of the traditions themselves. Traditions clearly traveled between the two Jewish geographical centers and each of the Talmuds contains quotes from named sages from both Palestine and Babylonia. Indeed, in one of the ways for the traditions to travel, the Talmuds tell stories of the so-called *neḥute*, rabbis who made the journey between the two centers and transmitted traditions from one to the other (on the relationship between the two Talmuds see, for example, Hayes 1997; Gray 2005).

### *Palestinian Talmud*

The Palestinian Talmud was redacted around the end of the fourth century CE. Though it is sometimes called the Jerusalem Talmud, the Talmud was actually redacted, at least in parts, in Tiberias, which we know through the use of the term "here" in various places to indicate Tiberias. Scholars have shown that the redaction of tractate *Nezikin* (which is traditionally divided into three parts, or "gates") is significantly different in style from the rest of the Palestinian Talmud (Lieberman 1931, 1968). It uses shorter phrasing, differs considerably in vocabulary and the spelling of amoraic names, and mentions different rabbinic figures. Scholars have argued that this tractate, at least, may have been redacted by the school of Caesarea.

There is only one complete, surviving manuscript of the Palestinian Talmud, MS Leiden Scaliger 3, copied in 1289, along with other partial manuscripts and genizah fragments. A passage closely related to Palestinian Talmud *Demai* 2: 1 was found in a seventh century synagogue inscription in Reḥov. This passage delineates the boundaries of the land of Israel for the purpose of the agricultural laws and sets forth a list of fruits and vegetables prohibited in the sabbatical year.

The Palestinian Talmud is characterized by frequent verbatim repetitions of entire passages (Strack and Stemberger 1992, p. 169), terse or minimal language, enigmatic sayings, and a generally fragmentary character. When one compares parallel passages in the Palestinian and Babylonian Talmuds, the Babylonian passages are almost always longer and more stylistically and rhetorically developed. Scholars suggest that the later redaction date of the Babylonian Talmud offered more time for textual development and

the accretion of additional traditions. One salient narrative example is the story of R. Shimon bar Yoḥai. The Palestinian version of the story is found in Palestinian Talmud *Shevi'it* 9: 1:

> For thirteen years R. Shimon b. Yoḥai lived hidden in a cave of carobs of *terumah* [= priestly offerings]. [He stayed there] until his body became afflicted with [a skin disease that looked like] rust spots. At the end of thirteen years he said, "Shouldn't I ]go out[ to see what has happened in the world?" He went out and sat at the mouth of the cave.

When compared to *Babylonian Talmud Shabbat* 33b, we find that the latter story contains an additional exposition explaining why R. Shimon felt the need to flee to the cave (a Roman decree) and his first attempt at hiding in a different place. Furthermore, in the Babylonian Talmud's version R. Shimon hides in the cave along with his son:

> So they went and hid in a cave. A miracle occurred and a carob-tree and a water well were created for them. They would [strip their garments and] sit up to their necks in sand. The whole day they studied; when it was time for prayers they robed, covered themselves, prayed, and then took off their garments again, so that they would not wear out. They lived twelve years in the cave. Elijah came and stood at the entrance to the cave and exclaimed, "Who will inform the son of Yoḥai that the emperor is dead and his decree annulled?" They emerged. Seeing a man ploughing and sowing, they exclaimed, "They forsake life eternal and engage in a temporal life!" Whatever they cast their eyes upon was immediately burned up. Thereupon, a Heavenly Echo came forth and cried out, "Have you emerged to destroy my world: Return to your cave!" So they returned and lived there twelve months, saying, "The punishment of the wicked in Gehenna is [limited to] twelve months." A Heavenly Echo then came forth and said, "Go forth from your cave!"

The Babylonian Talmud's version of this story is longer, more developed, and adds details missing in the Palestinian version: What did they do in the cave? What did they eat? What did they wear? What was their reaction to the world upon exiting the cave? And more. The changes expand the story, but also shift the story to focus on aspects such as the merits and drawbacks of solitary study and asceticism. The cave changes its function from a hiding place to a place of spiritual transformation and can be compared, for example, to analogous Christian stories about monks and their stay in caves (Bar-Asher Siegal 2013, pp. 133–169) (see also Watts Belzer, Chapter 23).

The difficulties presented by the Palestinian Talmud are made more challenging by the absence of a chain of transmission via medieval commentary. Because the Babylonian Talmud eventually achieved predominance in Jewish circles, the Palestinian Talmud was much less well studied than its eastern sibling. We do not have the advantage of commentaries dating back to a period relatively close to the text's redaction, as we do for the Babylonian Talmud; the commentaries we do have almost all date from the sixteenth century and onward. As a result, it is much harder to understand the Palestinian Talmud. However, recent studies suggest that our knowledge about the Greco-Roman world in which the Palestinian traditions were created, alongside contemporary Christian traditions, can significantly advance our understanding of the Palestinian Talmud.



## *Babylonian Talmud*

The Babylonian Talmud was redacted in Jewish Babylonia, among a community that traced its roots to the Judaean exile following the destruction of the First Temple in the sixth century BCE. However, the pre-talmudic Babylonian Jewish literary corpus is non-existent and the only evidence of the Babylonian Jewish community before this period is found in Hellenistic writings and the presence of Babylonian names in tannitic literature (such as "Nathan the Babylonian"). With the arrival of Rabbi Judah the Patriarch's student, Rav, to Babylonia from Palestine in the early-third century CE (traditionally dated to 219), we mark the beginning of the amoraic period in Babylonia. Scholars believe that the Babylonian Talmud was redacted sometime in the sixth or the seventh century CE. There are also extensive, post-amoraic anonymous additions to the Babylonian Talmud that include entire passages often found at the beginning of tractates and individual chapters (for example, the famous opening of tractate *Qiddushin*); the addition of mnemonic devices (such as lists of words, each standing for sequential passages in a certain sections); and interpretive glosses. Some scholars even credit the so-called "Stammaites" as the redactors of the entire Talmud (Rubenstein 2005).

Of all of rabbinic literature, the Babylonian Talmud has undoubtedly had the most significant impact on the creation of medieval and modern Jewish practices, traditions, and scholastic syllabi. The struggle for halakhic hegemony between the Babylonian and Palestinian Talmuds was decidedly won by the former, and by the eleventh century the Babylonian Talmud was the dominant source for halakhic decision-making throughout the Jewish world.

The Talmud's encyclopedic character is one of its central features. It includes a wealth of information connected to the rabbinic world of its time, ranging from medical advice, mathematics, astronomy, and astrology to dream interpretation, midrashic exegesis, aggadic narrative, and fantastical stories (Kottek 2006; Harari 2006; Shemesh 2006; Safrai 2006). The quantity and breadth of literary material in the Babylonian Talmud is no doubt connected to the longer time span of its redaction (which occurred approximately 150 years after the redaction of the Palestinian Talmud).

Recent studies suggest that the non-Jewish cultural background to the Talmud's creation, particularly contemporary Zoroastrian and Christian texts, is crucial for our understanding of the Talmud itself and of the relationship between Jewish and non-Jewish communities in the Persian Empire (Secunda 2014; Bar-Asher Siegal 2013; 2019). For example, recent archeological finds from this period, such as incantation bowls, reveal a wealth of magical practices complementary to those mentioned in the Talmud; Zoroastrian texts about agricultural policy provide an illuminating background to certain Talmudic passages; and Christian monastic texts can explain the source of some Babylonian additions to earlier narratives, such as the above-mentioned story of R. Shimon bar Yohai in the cave (see Mokhtarian, Chapter 9 and Ronis, Chapter 24).

Five tractates are linguistically and grammatically distinct from the rest of the Babylonian Talmud: *Nedarim*, *Nazir*, *Me'ilah*, *Keritot*, and *Tamid*. Scholars debate whether the reason for these differences is chronological or geographical (related to the date and/or location of redaction; Strack and Stemberger 1992, pp. 195–197). The Babylonian Talmud continued to evolve even after its initial redaction. There were smaller additions

during the Geonic period starting in the eighth century CE; changes due to medieval censorship (for example, the removal of the name Jesus from Talmudic stories); and corrections following medieval interpretations (particularly the influential works by eleventh century commentator Rashi and his students).

Despite its paramount importance through the centuries, we have only one surviving manuscript of the entire Babylonian Talmud (MS Munich 95), which dates from the fourteenth century. This is complemented by numerous partial manuscripts and genizah fragments. The reasons for this are not clear, but the paucity of complete manuscripts must be due in part to the great financial expense of copying the full text of the Talmud and occasional attacks on the Talmud that resulted in the burning of books and manuscripts. One such attack was the famous Disputation of Paris in 1240, when the Talmud was literally put on trial after a Jewish apostate named Nicholas Donin submitted a list of charges to Pope Gregory IX. The trial took place in the court of Louis IX, King of France. The rabbis who provided the Talmud's defense eventually lost and the Talmud was condemned to be burned in June 1242.

The first complete printed edition of the Talmud was prepared in Venice by a non-Jew named Daniel Bomberg from 1520 to 1523. This edition fixed the appearance of the printed talmudic page: each folio has two sides, marked "a" and "b," and each tractate begins with a title page, followed by page two. The Talmud also has a vast related literature of interpretation, collected sayings, introductions, and responsa (an enormous body of literature comprising questions about talmudic law asked of sages from the Geonic period onward and their responses).

## Conclusion

This essay offered a survey of the rabbinic literature, outlined the corpora and genre of this literature, and introduced its main sources. This survey of the literature ends at the end of the talmudic period, while its impact was, and still is, considerable.

## NOTES

1 All mishnaic translations according to Danby (1933).
2 All Tosefta texts are author's translations.
3 Author's translation.
4 Midrashic and talmudic translations based on the Soncino editions, 1983 (Midrash), 1935–1952 (Talmud).

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**Talmud**

The Palestinian Talmud (Yerushalmi) and the Babylonian Talmud (Bavli) are the two foundational literary works of post-Biblical Judaism. Complex and layered documents that weave together *halakha* (law) and *aggada* (narrative) into one discourse, they provide us with a window into ancient rabbinic culture. Edited over a number of centuries, the Babylonian Talmud eventually became the central text of rabbinic Judaism. It continues to be a foundational text for contemporary Jewish life and practice.

**1. Historical Background**
**2. The Mishna**
**3. Palestinian and Babylonian Talmud**
    **3.1 General Characteristics**
    **3.2 Palestinian Talmud (Yerushalmi)**
    **3.3 Babylonian Talmud (Bavli)**
**4. Commentaries**
**5. Contemporary Significance**

**1. Historical Background**

Writing a history of the rabbinic period, commonly dated from seventy CE with the destruction of the second Temple through the mid-seventh century CE, is a complex endeavor. First, written evidence for Jewish life during this period stems primarily from the corpus of rabbinic literature, a term used by contemporary scholars to describe the various texts produced during this period by the distinctive group that has come to be known as "the rabbis" (masters/teachers). We thus have little written evidence about non-rabbinic Jews. Second, while a significant amount of research has been conducted on Roman Palestine and its intersections with rabbinic culture, similar research into Sasanian Persia is still in its infancy. We are only now beginning to understand the wider societal context of the Bavli.

The internal narrative about the emergence of the rabbinic movement depicts this group as playing a central role in post-destruction Palestinian Jewish society and in transforming a tradition centered around the Temple into one centered around Torah.

More realistically, the rabbinic movement was small and a minority of the Jewish population. The ascendancy of the rabbinic movement took place over several centuries, its dominance likely occurring no earlier than the seventh century. Much as rabbinic Jews were a minority within Jewish culture, they also lived within two other majority cultures: that of Roman Palestine and Sasanian Mesopotamia. The Talmuds should be viewed not only as reflecting rabbinic culture but also as interacting with the respective Hellenistic and Sasanian cultural and textual worlds of these two empires. Thus the Talmuds can be read in light of the *Digest* of the Roman emperor Justinian (written before 245 CE) and in light of Zoroastrian texts such as the *Zand*. Contact between the different cultures is represented not only by Greek, Latin, and Persian loan words found in the Talmuds but also by instances such as depictions of conversations between sages and magi that reflect rabbinic knowledge of Zoroastrian beliefs such as a dualistic conception of the physical body (eg. B. Sanhedrin 39a).

Rabbinic schools of the tannaitic (first century CE to early third century CE) and following amoraic (early third century CE to sixth century CE) periods are most accurately described as disciple schools rather than academies. Instruction took place in the form of small gatherings of disciples around a master. These gatherings occurred in a master's home, in courtyards, in public locations, and in the *bet midrash* (study house). The larger hierarchical rabbinic academy (Hebrew: *yeshiva*; Aramaic: *metivta*) most likely arose only in the post-amoraic period. Sages living during the tannaitic period are commonly referred to as tannaim (sg. tanna, "repeaters") and those living during the amoraic period as amoraim (sg. amora, "speakers," "interpreters"). Since the twelfth century, the tannaitic period has customarily been subdivided into five generations and the amoraic into seven. The Houses of Hillel and Shammai mark the first generation of tannaim. Yavne, Usha, Beit She'arim, and Sepphoris were centers of tannaitic activity. During the amoraic period, Tiberias and Caesarea were centers of Palestinian activity, while Nehardea, Sura, Pumbedita, Mahoza, Naresh, and Mata Mehasya were centers of Babylonian activity.

**2. The Mishna**

The Mishna is the foundational work of rabbinic literature and the core around which the

Bavli and Yerushalmi are organized. Although the name Mishna, from the root *sh-n-h* (to repeat), was applied to a number of collections of early rabbinic teachings, the compilation attributed to Rabbi Yehuda Ha-Nasi (the patriarch), edited c. 200 CE in the land of Israel, gained priority and became known as "our Mishna" or simply the Mishna [Kraemer, "The Mishnah," 299]. Although the Mishna was edited more than a century after the destruction of the Temple, a significant proportion of the Mishna is nevertheless dedicated to Temple law. Yet alongside Temple law, the Mishna also declares laws for everyday behavior. The Mishna may thus be viewed as a work that simultaneously looks backward and forward, transforming the Temple past into a rabbinic future.

The Mishna is divided into six larger topical units or orders (*sedarim*; sg. *seder*): *Zera'im* ("Seeds;" blessings and agricultural law), *Mo'ed* ("Festivals," Sabbath and holiday law), *Nashim* ("Women," marriage, divorce, and votive law), *Nezikin* ("Damages;" civil and criminal law), *Kodashim* (Holy Matters," sacrificial and Temple law), and *Toharot* ("Purities," purity and impurity law). Each order is further subdivided into tractates (*masekhtot*, sg. *masekhet*), for a total of sixty-three tractates. In contrast to midrash which is explicitly organized around scripture, the Mishna presents its teachings as largely independent of scripture. Written in succinct Hebrew, the Mishna stands as both the central document of tannaitic literature and the organizing focus of the Talmuds.

## 3. The Palestinian and Babylonian Talmud

### 3.1. General Characteristics

Known also by the Aramaic term Gemara (teaching), the Palestinian and Babylonian Talmuds are the two monumental texts of rabbinic Judaism. While both are ostensibly organized as commentaries on the earlier Mishna, they also move far beyond the genre of Mishna commentary. Spanning law and narrative, the Talmuds not only expand upon the Mishna's topics but also include interpretations of scripture, reflections on the Divine, court cases, folk tales, magical formulas, medical remedies, dream interpretation, and a variety of everyday realia. The Talmuds should thus not be classified within the genres of either legal statute or legal code. Indeed, they rarely explicitly decide between conflicting opinions in a dispute. Although, as will be explained in greater detail below, the Bavli came to take cultural and legal precedence over the Yerushalmi, the two Talmuds

nevertheless comprise a record of rabbinic culture from the second to seventh centuries.

While a surface reading of the Yerushalmi and Bavli may give the impression that they transmit conversations from the rabbinic academies, they are in fact composite edited documents that weave together voices from a number of different time periods into a larger unit of literary discourse called a sugya (pl. sugyot; from the root *s.g.y.*, to walk). Comprised of three different literary strata - tannaitic, amoraic, and anonymous - a complex and lengthy dialectic argument structure is one of the most salient literary characteristics of a sugya, particularly those of the Bavli. Tannaitic statements comprise the earliest literary layer of the sugya. Stemming from first century CE to early third century CE Palestine, they are composed mainly in Hebrew and are often prescriptive. They include not only Mishna citations but also baraitot (sg. baraita; external or supplementary traditions not part of the Mishna) and halakhic midrashim. The next strata, the amoraic, derives from early third to late fourth century in Palestine and early third to sixth centuries in Babylonia. Like tannaitic statements, amoraic dicta are primarily in Hebrew and their argumentation tends to be relatively brief. It is the anonymous material, also known as the *stam*, that provides the Talmuds, and in particular the Bavli, with the dialectic style of argumentation for which they are famous. Generally considered to post-date tannaitic and amoraic traditions, anonymous material is distinguished by the unattributed form of its statements and its lengthy and complex Aramaic argumentation [Kalmin, "The formation and character of the Babylonian Talmud," 840]. The intricate analytical argument of dialectic is a particularly salient characteristic of the Bavli.

The following sugya from Bavli Pesahim 4a provides an example of the Bavli's dialectic. Rabbinic law prohibits not only eating leaven during the Passover festival but also possessing leaven. As part of the process of ensuring that one does not possess leaven, rabbinic law prescribes checking one's house on the fourteenth of the month of Nisan, the day before the Passover festival begins, to ensure that no leaven is found there. This sugya discusses the ambiguous situation of a renter. Must a renter check the home he has rented or is it the owner's responsibility?

**[A]** They asked a legal question of Rav Naḥman the son of Yiẓḥak: One who rents the house of his fellow on the fourteenth [of Nisan], upon whom [does responsibility] to check the house for leaven [fall]?

**[B]** [Does it fall] upon the one who rents [i.e. the owner of the house] to check [the house for leaven] since the leaven is his, or perhaps [responsibility falls upon] the renter to check [the house for leaven] because the prohibited substance is in his domain?
**[C]** Come and hear. [A baraita teaches]: One who rents a house to his fellow, it is [the responsibility] of the renter to affix a *mezuza* [on the door. Formulating a comparison between the cases of *mezuza* and checking for leaven, the Bavli's citation of the baraita implies that the renter must check for leaven].
**[D]** There [in the case of the *mezuza*] did not Rav Mesharshiya state: [Affixing] a *mezuza* is the obligation of the one who lives in the dwelling?! [Therefore, the case of *mezuza* and checking for leaven are not similar and one cannot extrapolate from *mezuza* to leaven.]
**[E]** Here [in our case of checking for leaven] what is the [ruling]?
**[F]** Rav Nahman the son of Yitzhak said to them: We have taught [in a baraita], One who rents a house to his fellow, if before he has sent him the keys it becomes the fourteenth of Nisan, it is the liability of the owner to check [the house for leaven]. If the fourteenth of Nisan occurs after [the owner] has sent the [renter] the keys, it is the liability of the renter to check [the house for leaven].

This brief sugya from tractate Pesaḥim provides an example of central characteristics of Talmudic discourse: a legal question posed by disciples to an amoraic sage [A], an interpolation of the anonymous voice presenting an explanation of the reasoning that may lie behind the question [B] as well as a possible answer based on an earlier and potentially analogous rabbinic source [C], a dismissal of the proposed solution by differentiating between that particular situation and the one in our sugya [D], a question about the legal ruling [E], and an answer by the original sage, again based on an earlier source [F]. Like most sugyot, the text assumes knowledge of certain rabbinic categories and practices as well as the ability of the reader or listener to extrapolate from brief statements. It does not proceed directly to the sage's answer. Answers stem from analogical reasoning based on earlier authoritative texts. The sugya also contains ambiguities. For example, why does the sugya think that *mezuza* and Passover are analogous cases? What reasons may lie behind its dismissal of that analogy? Why are the keys markers of responsibility for checking for leaven? These questions and more are

asked and discussed by later commentators. The sugya thus becomes not only a record of rabbinic culture but also part of an ongoing Jewish conversation.

Conceptualized as the Oral Tora (*tora shebe-'al- pe*), the Talmuds were understood as the complement to the Written Torah (*tora shebi-khtav*) that was revealed at Mount Sinai. This understanding of two Toras, one in written literary form (the twenty-two books of the Hebrew Bible) and the other as oral teaching to be passed from master to student was central to rabbinic Judaism. Rabbinic literature conceptualized Oral Tora in two main ways: 1. As teachings that were passed from Sinai to the rabbis in an unbroken chain of transmission that was memorized and transmitted verbally and verbatim from one person to another; and 2. As teachings that emerged through interrogation, analysis, and debate, actualizing traditions latent in the Written Tora.

Rabbinic society itself was simultaneously oral and literate. Thus the Talmuds record a ban against the writing of oral teachings (Y. Megilla 4:1, 64d; B. Temura 14b; B. Gittin 60b) and prescribe the continued writing of written teachings (Y. Megilla 4:1, 64d). It is thus difficult to untangle the historical realia of when and how rabbinic literature came to be fixed in written form. One model maintains that while written versions of the Mishna existed during the tannaitic period, these were not authoritative but used as personal reference texts. [Lieberman, "Publication of the Mishnah," 83-99]. Another maintains that no written versions of the Mishna existed throughout the amoraic period. [Sussman, Tora she-be'al pe: Peshuta ke-mashma'a, 343].

Similar to the Mishna, it is difficult to ascertain a precise date for the writing down of the Talmuds. Sherira ben Ḥofni Ga'on (c. 906 CE - 1006 CE) writes, "Talmud and Mishna were not written, but were arranged [orally]. And scholars are careful to recite orally and not from written texts." [Ed. Lewin, *Iggeret Rav Sherira Gaon*, 71]. Sherira Gaon's statement implies that by the tenth century, written copies of the Bavli existed but that oral recitation took precedent. Recent scholarship in the field of orality has proposed a more dynamic interaction of oral and written transmission where written texts are seen as catalysts for an ongoing process of oral teaching. A written text may originate in oral recitation and trigger subsequent oral recitations which might result in yet another written text [Alexander, The Orality of Rabbinic Writing, 53-55].

The literary forms of the Talmuds are commonly classified as either *halakha* or

*aggada*, a terminological move which obscures the ways in which these genres are interwoven. While the Talmuds at times describe *halakha* as the elite discourse (B. Sota 40a, B. Ta'anit 7a), they also present *halakha* and *aggada* as interdependent. They present biblical narratives as sources for rabbinic law, tell stories about rabbis' behaviour (sg. *ma'ase*, pl. *ma'asim*) in order to make a point about correct practice, and recount court cases in narrative form. Although scholars of the geonic period (second half of the sixth century CE - eleventh century CE) begin to emphasize *halakha* and *aggada* as two completely separate discourses with *aggada* as the inferior and non-authoritative of the two, the Talmuds themselves belie this contention.

**3.2 Palestinian Talmud (Yerushalmi)**

Known also as *Talmud di-Vnei Ma'arava* (The Talmud of the West) or *Talmud de-Ereẓ Yisra'el* (The Talmud of the Land of Israel), the Palestinian Talmud was redacted c. 400 CE in the Galilee region of the land of Israel. The earlier of the two Talmuds, it is written in a combination of Hebrew and Western Aramaic and comments on the orders *Zera'im*, *Mo'ed*, *Nashim*, *Nezikin*, and tractate *Nidda* ("Menstrual Laws") for a total of 39 Mishna tractates. Literarily, Yerushalmi sugyot are generally more succinct and concrete than those of the Bavli, a difference in style which may be attributed to the fact that Yerushalmi sugyot do not contain a great amount of anonymous dialectic commentary. A comparison of the tannaitic and amoraic redactional layers of the Yerushalmi and Bavli reveals a shared literary inheritance, with the Bavli containing additional later amoraic traditions as well as extended anonymous commentary. The stylistic difference between the two Talmuds should thus not be attributed primarily to cultural or historical factors but rather to the Yerushalmi's earlier date of redaction. In contrast to the Bavli, approximately one-third of which can be classified as aggadic material, only one-sixth of the Yerushalmi is aggadic. This difference may be due to the fact that the major collections of midrash stem from Palestine, while in Babylonia these midrashic traditions were integrated into the Bavli and did not exist as independent collections [Rabinowitz and Wald, "Talmud, Jerusalem," 484]. Differences in the worldview of the Yerushalmi and Bavli may be seen in the Bavli's interest in complex cosmology, its transformation of

shorter aggadic Palestinian traditions into longer and more elaborate narratives, and its tendency to abstract conceptualization and legal principles. The Yerushalmi was thus a primary location for law and Mishna commentary while the Bavli was more encyclopaedic in nature, containing many more types of rabbinic literature than the Yerushalmi [Kalmin, The formation and character of the Babylonian Talmud, 841-842].

Although the Yerushalmi was studied in the schools of North African commentators such as Ḥananel ben Ḥushiel (990-1053) and Isaac Alfasi (1013-1103), the Yerushalmi's secondary role to the Bavli can nevertheless be seen in Alfasi's comment that the legal decisions of the Bavli should be preferred over those of the Yerushalmi when the two conflict (Alfasi to B. Eruvin 104b). While the Yerushalmi and Bavli were likely of equal authority in their respective post-Talmudic communities, with the establishment of the caliphate at Baghdad in the eighth century, the geonim (sg. gaon; heads of the academies in Babylonia and Palestine) of Babylonia consolidated their authority over the Jewish community and the authority of the Bavli over the Yerushalmi. Indeed, even knowledge of the transmission of the Yerushalmi from the fourth century to the tenth century is minimal. In contrast, the Bavli was studied continuously. The Bavli's privileged role in Jewish culture thus stems from the political authority of the Babylonian geonim, and the interconnected phenomena of a tradition of continual study, commentary, and more comprehensible argumentation.

The Leiden manuscript, the only complete manuscript of the Yerushalmi, was written by Yeḥiel ben Yekutiel ben Benjamin ha-Rofe in 1289 and based, as the scribe says, on an error-filled text. This manuscript became the basis for the first printing of the Yerushalmi, the Venice edition by Daniel Bomberg (1523). All subsequent printings of the Yerushalmi are based on the Venice edition. The Leiden manuscript is thus the foundation for most extant editions of the Yerushalmi. There are two methods for citation of the Yerushalmi, one according to tractate, chapter, and *halakha* (e.g. Y. Shabbat 7:4) and the second according to tractate, folio page, and column (e.g. Y. Shabbat 10d).

### 3.3 Babylonian Talmud (Bavli)

The Babylonian Talmud stands as the central document of rabbinic Judaism. Composed by rabbis who lived from the third to sixth or seventh centuries in Sasanian Persia

(modern-day Iraq), the Bavli is organized as commentary on most of four orders of the Mishna - *Mo'ed*, *Nashim*, *Nezikin*, and *Kodashim* - and tractates *Berakhot* and *Nidda*, for a total of 37 tractates. A possible reason for the Bavli's incompleteness may be that it included only laws that were relevant to a post-Temple community living in Babylonian. Thus, agricultural laws relevant to the land of Israel found in *Zer'aim* were excluded as was much of *Toharot*, concerned with Temple purity. The problem with this hypothesis is the inclusion of *Kodashim*, sacrificial law. The later of the two Talmuds, the Bavli is written in a combination of Hebrew and Eastern Aramaic. As noted earlier, the Bavli is composed of three textual layers, tannaitic, amoraic and anonymous. The largest of these three is the anonymous, unattributed commentary. While there is not a uniform consensus, scholarly opinion leans heavily towards the idea that this anonymous commentary is the latest layer of the Bavli.

Traditional approaches to the Bavli's redaction assumed a fifth-century date for the closing of the text. Two contemporary scholars, David Weiss Halivni and Shamma Friedman, have revolutionized this understanding of the Bavli's redaction. According to Halivni and Friedman, most of the Bavli's dialetical argument was produced by the Bavli's post-amoraic editors from the sixth through the seventh or possibly even the eighth centuries. While small additions to the Bavli continued to be made throughout the Middle Ages, these did not significantly alter the shape of the text. These post-amoraic editors (*stamma'im*) at times also reshaped the meaning of earlier halakhic and aggadic passages.

Another important issue in the composition of the Bavli concerns the historicity of the traditions themselves in the Bavli. One perspective contends that the final form of the Bavli is a product of its anonymous editors who so fully reworked earlier sources that these sources no longer provide information about the circles in which they originated but only about the period of the late editors. In contrast, another perspective views the Bavli as a layered compilation whose sources testify to situations prior to the Talmud's redaction. Thus the historic reliability of sources should neither be uncritically accepted nor uncritically rejected. Attention to the Bavli's particular interpretive methodologies as well as a comparative approach to its sources can reveal significant information about rabbinic culture itself.

Unlike the Yerushalmi, there are a significant number of manuscripts of the Bavli, although only one full manuscript (MS Munich 95). The first complete printed edition of the Bavli, the *editio princeps*, was produced from 1519/20-1523 by Daniel Bomberg in Venice. With its layout of the Mishna and Talmud in the center surrounded on the inside margin by the commentary of Rashi and on the outside margin by the commentary of the Tosafists, the Bomberg edition became the model for the layout of subsequent printings of the Bavli until the late nineteenth century. The edition published in Vilna between 1880 and 1886 by the Widow Romm and Sons utilized both manuscripts and additional commentaries that had been added to the text since the Bomberg addition in order to print an improved version of the Bavli. This edition, known as the Vilna *Shas* (*shas = shisha sedarim*, the six orders) became the basis for subsequent printings of the Talmud, with its pagination the standard for referencing the Bavli. Bavli passages are cited by tractate, page, and folio (eg. B. Berakhot 45b).

**4. Commentaries**

The Bavli's extensive commentary history reflects its centrality in Jewish culture. Commentary can be divided into three periods: that of the geonim, *rishonim* (early ones [authorities]; eleventh - mid-fifteenth centuries), and *aḥaronim* (later ones [authorities]; mid-fifteenth - twentieth centuries). Geonic commentaries were often lexical in nature, explaining difficult phrases. Towards the end of this period, they began to turn to exegetical forms, something would particularly distinguish the medieval period. Examples of this later type are the commentaries of Sherira Ga'on and his son Ḥayya Ga'on. These commentaries are primarily written in Hebrew and significant for their explanations of the talmudic dialectic with a secondary focus on articulating legal conclusions that could be extrapolated from the text [Robert Brody, The Geonim of Babylonia and the Shaping of Medieval Jewish Culture, 270-274].

The decline of the Babylonian geonim gave way to the rise of centers of Talmud scholarship in France, Germany, North Africa, Moslem Spain, and Christian Spain, the period of the *rishonim*. The most prominent of the Western European commentators are Rashi in France (eleventh century) and the Tosafist (Hebrew: *tosafot* = additions) school in France and Germany (twelfth and thirteenth century). An outgrowth of the

commentaries of the schools of Mainz and Worms, Rashi's commentary is distinguished by its attachment to the particular words being explicated as well as to the order of the local sugya. The standard text for explicating the Bavli, Rashi's commentary has survived on almost all tractates of the Babylonian Talmud. In contrast to Rashi's methodology of almost line-by-line explication, the methodology of the Tosafist school reflects an understanding of the Talmud as a harmonious, consistent whole. Returning to the dialectic style of the Bavli, a major aspect of their project lay in resolving apparent contradictions between various sugyot. Two of the most prominent Tosafists were Jacob ben Meir of Ramerupt (Rabbenu Tam, 1100-1171) and his nephew Isaac of Dampierre (d. 1189). The North African-Moslem Spanish school is distinguished by its comparative approach, contrasting Yerushalmi sugyot with those of the Bavli. The commentary of Ḥananel ben Ḥushiel is paraphrastic in style while also citing passages from the Yerushalmi. The commentary of Isaac Alfasi, *Sefer ha-Halakhot*, is renowned for its isolation of the Bavli's legal sections along with the provision of Alfasi's legal conclusions. Finally, Christian Spain is represented by the commentary of Moses ben Naḥman (Naḥmanides, 1194-1270) who synthesized the approaches of Rashi and Tosafot with those of Ḥananel ben Ḥushiel and Alfasi.

The publication of Joseph Karo's Shulḥan Arukh (1565) marks the conclusion of the period of the *rishonim* and the transition to the period of the *aḥaronim*. While the focus of *rishonim* commentary lay with the sugya itself, *aḥaronim* focused on interpreting the commentary of *rishonim*. They composed super-commentaries on Rashi and the Tosafists as well as works of abstract jurisprudence [Wald, Talmud, Babylonian, 479-481].

Reflecting its secondary role in relationship to the Bavli, the Yerushalmi has a less extensive history of commentary. Two commentaries have come to be seen as the standard Yerushalmi commentaries, those of David ben Naftali Fraenkel (1704-1762) of Berlin and Moses Margoliot (d. 1780) of Lithuania. Fraenkel's commentary, on most of the Yerushalmi, is known as *Korban ha-Eida*. Margoliot's, the first complete commentary on the Yerushalmi, is known by the name *Pnei Moshe.*

**5. Contemporary Significance**

The Babylonian Talmud is the central document of rabbinic Judaism and the foundational document for Jewish practice. Throughout the medieval period, the Talmud was the basis for Jewish civil law and governance. The rulings of codificatory and responsa literature, such as Maimonides' *Mishne Tora*, Karo's *Shulḥan Arukh*, and Ovadia Yosef's *Yeḥave Da'at*, all depend on specific readings of the Talmud. Although the Talmud has never been the sole text of the rabbinic curriculum, mastery of the Talmud and its interpretive traditions came to be considered the highest measure of Jewish intellectual achievement. Indeed, the ritual practices of contemporary Jewish movements, even those ones for whom Jewish law is not authoritative, stem from the Talmud. For example, across the denominational spectrum it is customary to light candles on each of the eight nights of Ḥanukah as the Talmud prescribes (B. Shabbat 21a-23b).

The contemporary period has witnessed a growing revival of Talmud study, not only in *yeshivot* (sg. *yeshiva*), Jewish academies, but in a wide variety of synagogues, small study groups, and secular universities. Talmud is seen not only as a religious text but as a Jewish cultural resource. While Talmud study had previously primarily been the realm of men, the growing number of women attaining mastery of this corpus is another essential aspect of the contemporary period. Some of the current interest and growth in Talmud study may be attributed to the availability of new and accessible translations of the Bavli into Hebrew and English. Two prominent translations are those produced by Adin Steinsaltz and Schottenstein/ArtScroll. *Daf yomi* ("the daily page"), the study of the entire Bavli over the course of seven-and-a-half years by learning a page a day, has also gained popularity. Although proposed by Rabbi Meir Shapiro, the head of Ḥakhmei Lublin Yeshivah, at an Agudath Israel convention in 1923, *daf yomi* has spread far beyond its origins in the ultra-Orthodox community. Its popularization has been aided not only by these new translations but also by a large number of podcasts and synagogue classes. Talmud study has become an important aspect of the contemporary Jewish landscape, its study an inextricable part of the revitalization of today's Jewish life.

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# INVITATION TO THE TALMUD

*A TEACHING BOOK*

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# Foreword

THIS BOOK invites the reader to try to get into the Talmud. Nowadays, and for some time past, especially in America, young Jews are scarcely able to try. They do not know how to begin or where. Getting into the Talmud is no easy matter, even for those Jews who are ardent to recover for themselves what their ancestors once knew. This invitation is to join a community of learning men and women, for Talmudic learning is collective. You do not "read" the Talmud, you "learn" it, preferably with a *haver,* or a fellow student, and always with a rabbi. Here I shall be your rabbi. In the traditional *yeshivah,* the Talmud is not "learned" in a monotone. The Talmud is the music for a choir of voices; it is sung, and the music conveys the thrust and parry, the give and take of argument, which is what is truly Talmudic about the Talmud.

The Talmud is a compendium of religious laws, wise sayings, and stories. These, obviously, preserve a particular idiom and present a unique viewpoint, that of the rabbinical sages of Babylonia and Palestine in late antiquity, from the first through the seventh centuries A.D. But the Talmud's laws, sayings, and stories are, as individual units of literature, not strikingly different from those produced within other religious communities. They are, however, put together differently, in a literary form quite without parallel in world literature. They are so related to one another that

they constitute a whole which is more than the sum of its parts. That "whole" not only relates the parts in theme but uncovers their underlying principles and harmonies, and shows how remote elements relate to one another. The Talmudic method consists in rigorous, abstract argument about fundamentally practical, mostly trivial matters, an argument thoroughly articulated and tested against all possible objections.

The Talmudic inquiry is phrased as a singing conversation among open and rational minds, united by a devotion to reason and commitment to unobstructed criticism, and dedicated in common to the cause of applying reason to the mundane issues of the workaday world. So the Talmud represents a sustained effort to apply to secular, mostly trivial and ordinary affairs the disciplines of thoughtful analysis and order. Its fundamental building block is the self-contained analysis of a law and all materials pertinent to that law. But "building block" is a false metaphor, for it obscures the Talmud's vigorous movement, the dialectic of its argument, the suppleness of its analytical capacities—its melodic line.

But you must not think that the Talmud is simply another document of law, not much different, except in detail, from Roman or Canon law. You must not suppose your rabbi's apologetic for the Talmud consists in the claim that the Talmud is an interesting document in the history of practical and applied reason. The Talmud is a document of faith, passionate and vivid. Its faith, which I shall spell out in the first chapter, is in the revealed will of God.

What makes that faith interesting is the capacity of the rabbis to discover, in both ordinary and extraordinary conduct, matters of interest to God and the divinely revealed Torah. The rabbi's logical and rational inquiry is not mere logic-chopping. It is a most serious and substantive effort to locate in trivialities the fundamental principles of the revealed will of God to guide and to sanctify the most specific and concrete actions in the workaday world. Reason and logic therefore serve as the vehicle, so to speak, to carry Torah—revealed teaching—from heaven down to earth, and, conversely, to make the profane sacred. They are modes of religious expression. In other religions of the Talmud's day, the pious served God, achieved holiness or sainthood, through prayer, or sacrifice, or celibacy, or martyrdom. Just as the last-named, martyrdom, is essential to the understanding of the early Christian and his imitation of Christ, so reason and logic are essential to the understanding of the rabbi and his imitation of Moses "our rabbi" —that is to say, of classical, Talmudic Judaism. What God does in heaven, as we shall see, is to study Torah. He taught the Torah to Moses, just as a rabbi teaches Torah to his disciple. In this setting, the mode of piety, the imitation of God, and the focus of sanctity—these are therefore the use of your mind. In context we are not talking about wonder-working philosophers, but about fully revealed religious men, within their setting, saints—but whose sainthood consisted in critical intelligence!



The importance of Talmudic faith therefore is not that it is rational. The contemporary interest of Talmudic Judaism is not that it is another form of reasonable, amiable, liberal intellectualism. The rabbis are not represented here as forerunners of good-natured, professorial *illuminés*, able to speak to contemporary men and women because all that they have to say is what we already hear, in any case, from reasonable people. If that were so, we should not need to hear from the rabbis at all. I should not ask you to accept me as your rabbi.

To be sure, a well-established apologetic argument, deriving from nineteenth-century Reform Judaism, stresses the ways in which "Judaism" of biblical or Talmudic times was already saying what we now want to hear, whether what we want to hear is about democracy in politics, or equity in economic life, or an open and just society. "Judaism" is a good thing, this argument holds, because it conforms more or less to the good hopes of our own age. The prophetic tradition taught the primacy of justice and morality over "ritual," and, living in an age incapable of entering into and being transformed by rite, people were glad to learn they had good precedent for their spiritual incapacities as much as for their social aspirations.

But if all to be heard from the prophets or the rabbis were what we already learn from the politics, economics, and social philosophy of our own day and of our own sector, generally on the leftward wing, of modern life, why listen at all to prophets or rabbis of old? What need do we have to make over into our own image the saints of ancient times? What moral authority is left to them if their message is supplied to them by us, and if in doing so, we distort, misinterpret, or simply obscure their particular meanings? Is this not a peculiarly sophisticated kind of fetishism, something that, for us, is a dishonest ritual? It is false because, if honest, we know we have made the prophets and the rabbis over into what we want them to be, rather than making ourselves over so as to be able to perceive what they were and mean even now. Like the carpenter described by II Isaiah (44:9–17), who plants a cedar and raises it, then chops it down and uses part for fuel, and part for a graven image, who roasts meat over part and turns the rest into a god, his idol, then prays to it and says, "Deliver me, for thou art my god," so are those who turn the prophets into liberal democrats and say, "These are our authorities." "*We* were right all the time." They make the rabbis into paragons of rational and liberal intellectuality and say, "These are our precedent. Nothing mysterious here, only sweet reason, 'justice' and 'mercy,' made over for our own solace."

I shall repeatedly insist, to the contrary, the rabbis of the Talmud are not third- and fourth-century college professors or social reformers or liberal, rational philosophers of a mildly religious, benign spirit. They were holy men—saints in an age which took sanctity seriously. But, as I just said, they were not like other saints of their day, whose holiness was expressed through ascetic, flesh-suppressing disciplines—through sitting on pillars or dwelling in caves, through eating only wormwood and dressing only in rags. Their sainthood consisted in the analysis of trivial and commonplace things through practical and penetrating logic and criticism. Their chief rite was *argument*. To be sure, they prayed like other people, but to them, learning in Torah was peculiarly "ours," praying was "theirs"—that of ordinary folk. Their heroes were men of learning, and they turned their biblical heroes, beginning with Moses, into men of learning. When we read their writings closely, we shall see exactly what that learning consisted of, and how they carried on their religious life and sought sanctity through arguments.



What we shall find out is a curious thing. We can, on the whole, follow and even participate in those arguments. They are not spun out within a private or esoteric logic. They center upon arcane matters, but are wholly public and remarkably open to our involvement. The modes of thought turn out to be not much different from those which shape our own intellects. The importance of this fact is not to be missed. It is not, as I have stressed, that the rabbis' mode of thought is worthwhile because it is like our own. The point is that, since ours is like theirs, we may talk with them about *their* ultimate convictions.

What I find strange and awesome is that the rabbis, unlike us, were able to conceive of practical and critical thinking as holy. They were able to claim sainthood in behalf of learned men, to see as religiously significant, indeed as sanctified, what the modern intellectual perceives as the very instrument of secularity: the capacity to think critically and to reason. Here is the mystery of Talmudic Judaism: the alien and remote conviction that the intellect is an instrument not of unbelief and desacralization but of sanctification. That conviction is the most difficult aspect of the Talmud to comprehend, because it is so easy to misunderstand and misrepresent. The external form of the belief—our ability to think clearly, to be mindful—is readily accessible to us. But the meaning of the belief, its substance, its place in the shaping of the religious imagination and the formation of the religious and traditional culture of the Jewish people—these are not so obvious. Explaining these things will, I contend, account also for the whole of the history and character of Judaism from the first century A.D. onward. It will provide the key for everything else, make sense, too, of much that has happened to the Jews in the nearly two cen-

turies since so many of them parted company with the classical modes of Judaic spirituality.

What has happened is that the secular Jews, continuing in the momentum of the tradition behind them, remained within the conviction that the intellectual life was the most important expressive mode of humanity, but lost touch with the mythic and religious sources which relate that conviction to the fundamental structure of reality and impart to it cosmic meaning and metaphysical grandeur. The mind remained holy, but without the faith which made holiness matter, distinguishing the sacred from the common. This persistence within secularity of the effects of sanctity accounts for the former apologetic in behalf of Talmudism or biblical prophecy or anything that might plausibly be represented as "Judaism." The appeal from within the borders of the religious camp—though from people on its fringes, for above all the apologist seeks and needs to persuade himself—was that, on our side of the line of religious sensibility also, may be found the virtues you, on your side of the line, prize so dearly. Those outside the camp did not, for a long time, heed this invitation, or, if they did, declined it for the obvious reason: We already have, without myth, rite, faith, and mystery, what you offer us along with that unclaimed baggage.

Yet Jewish intellectualism without Judaic faith proves wanting, for, divorced from the soul of Talmudic being, secular reason among Jewish intellectuals remained formless and formal, producing, on the one side, the grotesque and the absurd, and an empty formalism, on the other. The Jewish intellectual without roots in Judaic intellectualism was seen (by his enemies) to be a creature of mere clever words, a polished, glistening surface covering nothing. But if the enemies said so, some among the intellectuals told themselves something strikingly similar, for they went in search of "faith" or "roots" wherever these might be found, except in the one sure place, the very ground on which they had all the time been standing. But that ground seemed hard and intractable, not to say infertile. And it was and would remain so, as long as the secret of its cultivation was not perceived. In its stead



would come the lush growths of mysticism, in place of substantive conviction, and faddism, in place of steady, enduring commitment.

I do not see how matters could have been otherwise, so long as Talmudic intellectualism was represented either by its enemies as desiccated logic-chopping, or by its friends as nothing other than the tired academicism everyone knew about and no one found sufficient. But wherein lay the soul which had been lost and now was so much missed? Where, if not in the very texts which to begin with had given it permanence? But these too seemed closed, for those able to open them could not then give an account of what was to be found. They reported, chiefly in addressing other scholars, about the meanings of words and the variations in manuscript readings, perhaps—in a primitive way—about history and sociology. But they seldom spoke about the religion—the life of piety and spirituality—expressed within the very study of the ancient books. For the books had once been holy books; the words sacred words, spoken as prayers were spoken; the sentences had expressed a craving for sanctity and a thirst after God. And now they were reduced to their syntax alone, to the examination of logic or philology. Or, as I said, they were presented as peculiarly modern and therefore "relevant," as though people seeking a way beyond the modern, who already knew the emptiness of relevance without a criterion for importance and meaning, should be impressed. People rich in reason were told the Talmud was rich too, as indeed is so.

But the rationally rich lived in the poverty created by the deprivation of meaning, of purposeful living. The Talmud's wealth for such people remained a hidden treasure. They might perceive in the lives of classical Jews of their own day resources of the spirit, of trust, confidence, meaning, which they did not perceive within themselves. They might even lavish nostalgia upon a lost, blessed life within the tradition. But, never confronted by the specific, uncompromising claims of Talmudic Judaism—claims about what is important in life, what is sacred in man—they took for granted that for modern Jews, the holy tradition had come to an end.

And they were surely right, for the Talmud divorced from its mythic context, its larger meanings for the construction of reality and the interpretation of life, was nothing else than a mere tradition. And a tradition perceived as traditional is also conceived as passed. But the Talmud understood as a document of religion, as the expression of the soul and of the inner world of saints, becomes a vivid alternative. For ultimate meanings are not bound to a particular place or time, and a way to the sacred, once discovered, remains forever open. What is sought, and I think what is acutely required, is not what we already have, but what we realize we do not have: a mythic context for our being, a larger world of meanings for our private and individual existence. These have been found by seekers of mystic experience in the suppression of the intellect and the willful suspension of unbelief. Within the Talmud we are able to seek them by the cultivation of the intellect and the criticism even of belief.

The mystery of the Talmud is its capacity to sanctify the one thing I do not propose to abandon, which is my capacity to doubt, my commitment to criticize, above all, the beautiful, reasoned, open-ended discourse created among contentious learning men and women. The wonder of the Talmud is its tough-minded claims in behalf of the intellect, not in search, but in the service, of God. I wrote this book to try to unravel that tangled knot, composed of strands of rationality, religiosity, and mythic perception alike: How is it possible to serve God through the life of the mind? Why is "study" the holy act within the Judaic way of life? How did the religious culture of the Jewish people come to express itself through arguments and debates, more than through prayers or asceticism? Why does the Judaic tradition find God in the thrust and parry of argument, as it does when it claims God himself studies Torah? How is the exercise of the mind, and not the suspension of its function, a sacred act?

The answers to these questions are found only within the direct encounter with the Talmudic text. The purpose of this book, therefore, is twofold. First, it offers the concrete experience of Talmudic



study. Second, it proposes to explain not its relevance to today, but the judgment of Talmudic modes of thought upon contemporary culture.

I shall set forth the first part of the invitation by presenting a single chapter of Talmudic law. That chapter of law occurs in four closely interrelated documents: first, the *Mishnah,* the law code of Judah, Patriarch of the Jewish Community of Palestine in the last quarter of the second century A.D.; second, the *Tosefta,* a corpus of supplementary traditions associated with the Mishnah; third, the *Babylonian Talmud,* a commentary on the Mishnah and Tosefta, produced in Babylonian rabbinical circles between the third and the seventh centuries A.D.; and fourth, the *Palestinian Talmud,* the equivalent, produced in Palestinian rabbinical circles from the third through the fifth centuries A.D. Laws on the same themes, in some instances identical in intent and even in language, thus produce a weave of rigorous literary and legal analyses. We shall first study the elements of the chapters of the four documents, then, in the case of the Mishnah and the Babylonian Talmud, we shall ask how these elements have been put together into a coherent corpus of legal literature.

The second part of this invitation to get into the Talmud is mostly concentrated in the concluding chapter, though in expounding the text much is suggested. Granted, there is more to be said than I am able even to propose. But I am not free to desist from the task of dealing with the larger issue: What does the Talmudic mode of critical thought and persistent, skeptical argumentation mean for contemporaries? My answer cannot be exhaustive, but it may at least propose both how those who will may appropriate part of the Talmud's achievements, and how Talmudic values of inquiry even may alter contemporary sensibility. The answer really is found in the chapters devoted to a close reading, line by line, of a significant specimen of Talmudic literature and thought. All I have done at the end is to bring to the surface what I believe is contained and hinted at within the antecedent pages. For me concreteness, the actual texts, the specific details of complex argu-

ments—these are more important than generalizations about modernity and culture, for they contain whatever is worthwhile in the consequent abstractions. The reader may well compose his own answer to the question of relevance, long before he reaches mine. To do so, he owes the text a measure of patience with arcane details and alien laws, restraint at the superficially petty problems raised and solved by the masters of the Talmud. All that is of ultimate, enduring importance lies in the details.

I have not repeated the information conveniently available in Hermann L. Strack, *Introduction to the Talmud and Midrash.** Strack seems to me to say almost everything worth knowing *about* the Talmud. He defines technical terms, tells about the several components of the Talmud and describes their contents, supplies the facts about Talmudic hermeneutics and the more important teachers. He gives exceptionally thorough, critical bibliographies (to 1925) on all aspects of Talmudic studies. Then he does the same for the biblical-exegetical literature, known as Midrash, produced by the Talmudic rabbis. His book has full notes, indices, appendices. Nothing is lacking except one thing, which my teacher, Abraham Heschel, of blessed memory, called "the spirit of the Talmud." And that spirit can be found, quite naturally, only within the Talmud's pages. Since the English reader will need some guidance in opening and studying those pages (nothing remotely Talmudic can be merely "read"), I took upon myself the tasks just now outlined. But this book may be read without reference to any other, though, if it succeeds in engaging the reader's interest in its subject, later on one will make reference to many further works on Talmudic literature, religion, and history.

This invitation is traditional. It must take its humble place at the end of a very long line, beginning over a thousand years ago, of works introducing the Talmud. Clearly, the character of these efforts depends upon the nature of the reader to whom the Talmud is to be introduced. None of them took for its reader the ordinary educated person, whether Jewish or otherwise, who wants to know

* N.Y., 1965: Harper & Row. The Temple Library.



what, if anything, the Talmud has to do with the life of the mind and its current concerns. Before modern America, it is difficult to find a situation in which gentiles took an interest in Judaism, in particular in the Judaism which flourished after the first century A.D. On the other hand, before modern times it also is difficult to find a Jewish community so remote from the classical sources of the faith of Israel as that found in this country. Curiously, one may address Jew and gentile in the same language, with the same expectations about what is and is not known in advance, because nowadays there is not much difference between them.

That ignorant and indifferent sameness, Jewish and gentile, seems to me to present advantages which outweigh the obvious disadvantages. The rabbis who produced the Talmud exhibit little "ethnic self-consciousness"—these words would have no meaning for them—for they legislated for a community of ordinary folk living commonplace lives, not much different in the fundamental ways from other groups. The Talmud is not an ethnic document. When it raises an ethical question, it speaks of "the good way in which a *man* should walk," not "in which a *Jew* should walk." When it treats dilemmas of social conflict, all parties to the conflict normally are assumed to be plain men and women—Jewish men and women, to be sure—whose claims to a cow or a palm tree are adjudicated by principles of justice everywhere pertinent and invariably right. While, admittedly, questions of mercy and of how God is to be served are referred to, and answered within, the disciplines of the Torah, the revealed will of God given to the people of Israel, and while the rabbis are well aware that some people are Jews and many are not, the Talmud is essentially interested in ordinary folk, not exclusively in Jews.

The reason is that many of its issues are not ethnic at all. Its modes of thought and argument invariably are rational and logical, therefore useful to anyone and any group, not limited to a single community, however distinguished by possession of divine revelation. The Talmud contains no special language, no esoteric or capricious logic, no private, uniquely "Jewish" forms of rea-

soning. If, therefore, the Talmud has to be introduced to a society exhibiting remarkably little substantive cultural and ethnic differentiation, that is appropriate and advantageous, because it is to the generality of man in society that the Talmud, in the first place, is addressed.

Earlier invitations, or introductions, to the Talmud, described by Jacob Schachter,* fall into three periods of development, the ninth through the twelfth centuries, the thirteenth through the eighteenth, and the nineteenth. Naturally, all introductions focused upon the discovery of general principles of Talmudic inquiry. The earliest tended to stress historical and biographical questions, the classification of the masters by generations and the assignment to them of approximate dates. In the twelfth century Maimonides offered guidance on how to study the Talmud systematically, not merely episodically. The second period continued the earlier historical and biographical work and added an interest in the analysis of Talmudic method and modes of interpretation and argument. The "modern period," which began in the nineteenth century, was marked by a wholly new range of questions, derived from modern philology, text criticism and the recovery of manuscript evidences as to the exact reading of the document, a critical approach to historical questions, and the illumination of specific passages by comparative studies of Greek and other cultures cognate to Jewish culture.

Before now no one recognized the necessity to introduce the literary and logical traits of the text itself. Anyone interested in an introduction to the Talmud already knew considerable parts of the Talmud. Anyone who had not already studied the Talmud was not likely to want to be introduced to it. As I said, we face a different situation. That is why I have tried to do what aforetimes was either unnecessary or unwanted.

* *The Student's Guide through the Talmud by the Eminent Teacher, Z. H. Chajes, Translated from the Hebrew, Edited, and Critically Annotated* (N.Y., 1960: Philipp Feldheim, Inc.), pp. xv ff.

# INVITATION TO THE TALMUD

*A TEACHING BOOK*

JACOB NEUSNER

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CHAPTER

# I

## The Talmud in Context

THE TALMUD is the single most influential document in the history of Judaism. It therefore must be read not as a historical source or a law code, though it is both, but as fundamentally and deeply religious literature. And we must come to it, if we are to learn anything about its meaning, in the spirit of anthropologists, whose questions are not of faith but of understanding.

We cannot today pay a visit to a distant community or tribe to study the classical Judaic religious tradition. All forms of contemporary Judaism, though deriving from Talmudic teachings and values, stand at too great a distance to testify to the religious world of the rabbis who created the Talmud. Too much has happened between the seventh and the twentieth centuries for any movement in contemporary Judaism to claim today exactly to represent and replicate the classical, formative tradition of the first seven centuries A.D. To pay our visit to the Talmud and through that visit to come to an understanding of the modes of faith and understanding characteristic of the men who created it, we have therefore to stand back. We must set aside, for the moment, the question of what the Talmud means to us, though at the end I shall argue it can mean a great deal.

Since I have alleged the Talmud is a document of religion, I owe at the outset a definition of religion. It comes from Clifford

Geertz*: "What a given religion is—its specific content—is embodied in the images and metaphors its adherents use to characterize reality. . . . But such a religion's career—its historical course—rests upon the institutions which render these images and metaphors available to those who thus employ them."

First of all we shall survey the central images of Talmudic Judaism. At the same time we shall attend to the organized movement of rabbis which produced the Talmud. That movement constitutes the institutionalization of Talmudic images, is responsible for making available to the Jews of its times—as of ages afterward—the Talmud's beliefs, ideals, and metaphors. Here we shall describe the context of the Talmud, and afterward shall proceed to the literature itself.

The Talmud is the product of a small group of Jewish sages, men who lived in the land of Israel, which they called "the holy land," and in Babylonia, from the first to the seventh centuries of the Common Era. What is important about them, however, is not the historical events of their day. What we want to describe is their context, their situation as men.

Four facts about them emerge even in this simple opening sentence.

First, they saw themselves as sages—men of wisdom. That means they stressed the importance of two things, learning what already is known and understanding the new in terms of the old. Right and wrong, folly and sense—these are not things decided moment to moment. To the sage they are determined within the accumulated experience of the ages. Wisdom is the deposit, the residuum of insight refined from the practical experiments of centuries.

Second, I said the sages (among others) perceived that a land could be holy—of which more later.

Third, we notice that they lived in a time of religious ferment,

* *Islam Observed: Religious Development in Morocco* (New Haven, 1968: Yale University Press; Chicago, 1971: University of Chicago Press), pp. 2–3.



in which religions were coming into being and fading away. The "first" century, after all, is *first* because it marks the beginning of one great religion, Christianity. The Talmud took shape, therefore, in a time in which men faced alternatives and made enduring and influential choices. The rabbis of the Talmud made choices which became normative for the Jews and therefore came to constitute "Judaism."

Finally, we refer to "their situation as men," and this accurately reflects the exclusively male composition of the rabbinic movement. That fact should not surprise us. The men of antiquity held a low opinion of women. Paul thought women in the church should shut up and behave themselves. Philo, the Jewish philosopher of first-century Alexandria, though sexual relations permissible only because they produce children. Eliezer ben Hyrcanus, a first-century rabbi, said one should not teach his daughter "Torah" —that is, rabbinic lore and law. We thus learn that the rabbis were very much men of their own time. What makes them interesting is their capacity to speak to men and women for a long time thereafter.

Let us abandon the historical mode of discourse. We have to, if we insist that the rabbis are interesting. I do not come merely to report that they once lived and therefore should be described as objects of historical curiosity. The rabbis are interesting because they and the literature they produced constitute alternatives for people interested in how societies take shape, how life is to be lived, and, especially, how the issues of human existence may be thoughtfully analyzed and decided. Therefore, I am going to use the present tense, even though my sources derive from men dead more than sixteen centuries.

Furthermore, in contemporary Judaism are many believing men and women for whom the ancient rabbis live, just as they live for me. Their vitality for the believers (and in some ways, I too am one with them) comes out of the rabbis' faith that their words are part of the revealed will of God, as we shall see. But for me their vitality, their intellectual interest, come because I think they testify

in the formation of religion as a cultural system. They adumbrate ways in which religious belief and rite express the religious imagination, the perception and interpretation, of the community as a whole, and so form a construction of reality. As I just said, we study the rabbis of the Talmud, therefore, as an anthropologist would study a community—literate or otherwise—and not as a historian approaches the literary evidences of an ancient civilization. Our question is not, Exactly what happened? Our question is, What *is* happening within this group, and what does this teach us about ourselves and our potentialities? That is not a historical question at all.

The first thing we want to know about the rabbis is, What is their role within the larger community? The negative answer is of greatest consequence. The rabbis are not the men who ultimately hold power within the community. The Jews live under two other, coordinated governments.

First is the empire which controls the land in which they live. The land of Israel is under Rome, part of its considerable possessions. Babylonia is a province within the Iranian empire, which extends from the Euphrates eastward into central Asia and serves as the intermediary, in trade and culture, between Rome on the west, and China and India on the east.

The two empires, moreover, leave the day-to-day governance of the Jews in the hands of Jewish authorities. But these are not rabbis. In Babylonia the state-supported Jewish authority is called the exilarch, the ruler of the Jewish community "in exile from the holy land." In the land of Israel he is called the patriarch (*nasi* in Hebrew). He is recognized by the Romans not because of his learning in the Judaic traditions, though the rabbis before the third century conceded it, but because he serves the purpose of Rome. The Romans want to keep the country at peace. The patriarch wants to run the country and claims he can keep the peace and so serve the interests of the empire. It is a fair trade and produces a stable administration from the end of the first century to the beginning of the fifth.



What do the exilarch and the patriarch have in common? Both claim to descend from the biblical king, David. This claim is not a matter of genealogy. It means that the claimant supposes he comes from the family which will produce the king-messiah. Indeed, anyone who wants to govern the Jews is going to claim he either is the messiah or may be the progenitor of the messiah. Everyone knows this genealogy was alleged in behalf of Jesus. But it also was the claim of the Maccabees, who governed the Jews from 160–150 B.C., and even of King Herod, son of an Idumean convert to Judaism in the first century B.C. In other words, the established convention to legitimate and justify your rule of the Jews is that you are, or will father, the Messiah.

Now the rabbis, for their part, form a religious and political movement, a group of men who possess particular beliefs and aim at particular social goals. The one thing they cannot claim to be is—*the* Messiah! For a collectivity may lay claim to keep the messianic promise. But it cannot personify the Messiah, and this is by definition. So it is on an unequal basis that the rabbis have to compete with important and powerful individuals, backed by the force of the great empires, on the one side, and by the inertia of their established bureaucracies, on the other. Not only so, but they will not achieve their goals if they oppose the established authorities. They can hope to accomplish them only by subverting, or taking over for their own purposes, the established authority.

The rabbis do so by serving in the autonomous administrations of exilarch and patriarch, respectively. They regard the former as "ignorant" and accuse him of being "unobservant." This tells us the exilarch is not part of their movement. For what he does not know or observe is not the religion of the ordinary Jews, but the mode of living of the rabbi. But institutional control will serve no substantial purpose without something more, a symbolic message—an ideology—as forceful, an image as powerful, as that of the Messiah. What does the Messiah promise? He inaugurates the perfect age, the end of time; he heals the sick, cures the insane, drives out the evil spirits, rids the people of all the things that bother

them. He restores the exiles to their land and rebuilds the Temple. If people believe that such wonders come of their ruler, whether he does miracles or not, he is going to have a strong hold upon their imagination and loyalty.

What can the rabbi promise instead? Several things. First, the rabbi will teach that when all the Jews do what he now does, then the Messiah will come. The way to that great day lies not through the court of the exilarch, but within the circle of the sages. So, for example, one of them said, "If all Israel will keep the Sabbath for one time only, the Messiah will come." It should be clear that "all Israel," that is, the Jewish community, do keep the Sabbath, more or less. People do not ordinarily work on that day or violate the other biblical rules which make the day holy. We know this because the rabbis seldom, if ever, complain about outright violation of the biblical commandments respecting the Sabbath as a day of rest. The complaint is, therefore, against people who do not keep the Sabbath the way *the rabbis* say it should be kept.

To take another example, the rabbis, believing they receive communications from the prophet Elijah, say he told one of them, "You ask, Why has not the Messiah come? Now today is the Day of Atonement, and yet how many virgins have been embraced this day in your town!" Modern Judaism knows the Day of Atonement—Yom Kippur—as a day of fasting and solemn reflection. But before the Temple was destroyed, in A.D. 70, the day called forth a great celebration. After the sin-offering was completed in the Temple, people felt themselves free of sin and guilt. It was a time of tremendous spiritual exultation and excitement. Then young people—we are told—would go out and dance in the fields. Evidently they did more than dance. And the pre-70 spirit of the Day of Atonement continues to prevail among ordinary folk, so the rabbis do not approve. They have another conception of the meaning of the day, of the requirements of atonement, than a mere animal sacrifice.

We observe, therefore, that the rabbis stand apart from the larger community of Israel, but not wholly so. They share the way



of living of the ordinary folk, but differ in some important ways. Similarly, some of them serve in the government of the community, though they do not fully accede to the basis on which the head of the government claims to be legitimate. Who, then, are the rabbis and what are the beliefs and practices which set them apart?

The encompassing myth revealed in the pages of the Babylonian Talmud centers upon the figure of Moses and tells the story of the Moses-piety—spirituality centered on Moses—of the rabbis. That story relates God's disclosure to Moses of a dual revelation, or Torah, at Mount Sinai—one in writing, the other handed orally from master to disciple. The whole Torah—oral and written—contains the design for the universe, the divine architect's plan for reality. It is to be studied, therefore, not merely for information, but as an act of piety and reverence for the divine lawgiver. Just as God taught Torah to Moses, so the rabbi, modeling his life after Moses "our rabbi," teaches his own disciple. In "studying Torah," and even more so in effecting it in the lives of Israel, the rabbi thus imitates God. Following the model of the "school" in heaven, the schools for Torah-study bring together masters and disciples and preserve the ancient traditions.

The most striking aspect of these schools is the rabbis' conception that in them live holy men, men who more accurately than anyone else conform to the image of God conveyed by divine revelation through the Torah of Moses "our rabbi." The schools are not holy places only or primarily in the sense that pious people make pilgrimages to them or that miracles are supposed to take place there. The schools are holy because there men achieve sainthood through study of Torah and imitation of the conduct of the masters. In doing so, they conform to the heavenly paradigm, the Torah, believed to have been created by God "in his image," revealed at Sinai, and handed down to their own teachers. Thus obedience to the teachings of the rabbis leads not merely to ethical or moral goodness, but to holiness or sainthood. Discussion of legal traditions, rather than ascetic disciplines or long periods of fasting and prayer, is the rabbis' way to holiness.

If the masters and disciples obey the divine teaching of Moses our rabbi, then their society, the school, replicates on earth the heavenly academy, just as the disciple incarnates the heavenly model of Moses our rabbi. The rabbis believe that Moses was a rabbi, God dons phylacteries, and the heavenly court studies Torah precisely as does the earthly one, even arguing about the same questions. These beliefs today may be seen as projections of rabbinical values onto heaven, but the rabbis believe that they themselves are projections of heavenly values onto earth. The rabbis thus conceive that on earth they study Torah just as God, the angels, and Moses our rabbi do in heaven. The heavenly schoolmen are even aware of Babylonian scholastic discussions, so they require a rabbi's information about an aspect of purity taboos.

So the rabbis believe that the man truly made in the divine image is the rabbi; he embodies revelation—both oral and written—and all his actions constitute paradigms that are not merely correct, but holy and heavenly. Rabbis enjoy exceptional grace from heaven. Torah is held to be a source of supernatural power. The rabbis control the power of Torah because of their mastery of its contents. They furthermore use their own mastery of Torah quite independent of heavenly action. They issue blessings and curses, create men and animals, and master witchcraft, incantations, and amulets. They communicate with heaven. Their Torah is sufficiently effective to thwart the action of demons. However much they disapprove of other people's magic, they themselves do the things magicians do.

The rabbis furthermore want to transform the entire Jewish community into an academy where the whole Torah is studied and kept. This belief aids in understanding the rabbis' view that Israel will be redeemed through Torah. Because Israel had sinned, it was punished by being given over into the hands of earthly empires; when it atones, it will be removed from their power. The means of this atonement or reconciliation are study of Torah, practice of commandments, and doing good deeds. These transform each Jew into a rabbi, hence into a saint. When all Jews become rabbis,



they then will no longer lie within the power of history. The Messiah will come. So redemption depends upon the "rabbinization" of all Israel, that is, upon the attainment by all Jewry of a full and complete embodiment of revelation or Torah, thus achieving a perfect replica of heaven. When Israel on earth becomes such a replica, it will be able, as a righteous and saintly community, to exercise the supernatural power of Torah, just as some rabbis are already doing. With access to the consequent theurgical capacities, redemption will naturally follow. The issues of Talmudic analysis, while rationally investigated, thus are transcendent and cosmic in significance.

Rabbinic theology includes two important elements. First are secret doctrines pertaining to the being and essence of God, the mysteries of history and redemption, and the like. These doctrines are studied in the schools and rarely, if ever, taught or even alluded to outside of them. Second, the rabbis publicly offer a self-consistent and comprehensive view of man's relationship to God. Man has to submit to God's will, and he demonstrates his submission through observing the commandments. If he sins by not doing so, he will be held responsible. Punishment follows in this world through suffering, but the suffering has to be gladly accepted, for it insures that one has at least begun atonement here, and hence may worry less about the world to come. If people sin and nonetheless prosper, or if they do not sin and yet suffer, an easy explanation is available. The wicked might enjoy this world, but in time to come they pay a terrible penalty. Similarly, the righteous suffer now, but in time to come they enjoy a great reward. This neat account suffices for the orderly conceptions of the schools, although probably not for the disorderly life of the streets.

Other elements of rabbinic theology cannot be ignored. Demons, witchcraft, and incantations; revelations through omens, dreams, and astrology; the efficacy of prayers and magical formulas; rabbinical blessings and curses; the merit acquired through study of the Torah and obedience to both the commandments and the sages —all these constitute important components of the rabbinic world

view. A comprehensive account of the rabbis' beliefs about this world and those above and below and about the invisible beings that populate space and carry out divine orders would yield a considerably more complicated theology than that briefly given here. Its main outlines, however, would not be much modified, for magic, angels, demons, and the rest represent the way the rabbis think matters work themselves out—all these elements constitute the *technology* of the rabbis' theological world view.

The spiritual attitude of both rabbis and the masses may be described in the following way: "We are absolutely worthless, and are now deprived even of the former ways of finding favor with You. Once there was a Temple, and we could offer sacrifice there, but now it is no more, so we must give the sacrifice of our flesh and blood. But who are we to propitiate, we who are of no consequence and on our own have no future? We are nothing, except that we are *Israel,* the children of men You loved, and bearers of the revelation You delivered.

"Even in the most private moments of life, therefore, we are not alone, but are surrounded by the merits of the fathers and the presence of memories of the sacred moments of our history. Nor are we hopeless, because we look forward to the fulfillment of the promises made to the prophets in olden times. We are sanctified in all which we do out of love and loyalty to You. In the hour of our greatest private joy, at the marriage canopy, we remember both the public sorrow and the coming joy of Zion, and recall not only its destruction, but what was said by Jeremiah when it was destroyed, that it *will* be rebuilt.

"So if we are sinners, we lie in the hands of a God of great mercy. The passage of the seasons, which we witness regularly month by month, testifies to Your enduring sovereignty. Just as the moon keeps Your laws, so do we, and just as it testifies to the greatness of its Maker, so would we. When we find ourselves in a time of danger, we turn to You and beseech Your blessing."

The ordinary people comprehend and believe in the faith of the rabbis as it is here expressed. The spiritual situation revealed in



the rabbis' prayers is precisely congruent to theirs. They too are "Israel," and they revere the Scriptures and remember its lessons. They too long for the coming of the Messiah, and although unable to express their yearnings in the evocative and noble language of the rabbis, they adopt the rabbinical liturgies without difficulty.

The more narrowly academic concerns include the precise and detailed discussions of laws on how and when to pray, the proper blessings to say over one thing or another, the conditions for interrupting prayer, and the like. We shall see how these rules are formulated. It is doubtful that ordinary people are much bothered by liturgical issues posed to the masters or that the instruction imparted to the disciples reaches a broad audience. To learn the proper way of saying grace proves terribly difficult even for many students, and outsiders scarcely comprehend all the rules. Indeed, knowing and keeping these rules is one of the important significations that a person has entered the rabbinical estate. Yet the issues of the common faith are not divorced from the rabbinical discussions. It is precisely ***because*** they believe in prayer as fervently as do ordinary people that they think one should pray with at least the decorum and respect shown to an earthly king of kings; therefore, they seriously inquire into the proper and improper procedures for praying. In this sense the rabbis' laws represent the continuation of popular faith: If the people believe that prayer matters, then the rabbis—who are, after all, lawyers—set out the rules of conduct and procedure which conform to such a belief.

Prayers composed by rabbis center upon four major themes: (1) the Temple and its cult, (2) the wrath of God, which is revealed in an hour of crisis, (3) the humility and helplessness of man, and (4) the corpus of ideas and symbols embodied in the sacred history of Israel. Above all, however, one is struck by the intensity of rabbinical prayers concerning the Messianic kingdom. In the liturgy for the marriage ceremony the center of attention focuses upon the coming joy of Zion, prefigured by the delight of bridegroom and bride. Just as one loves the other, and rejoices in that love, so in time would God again espouse Israel in Zion, and

rejoice in her. The private joy of life is thus seen to be paradigmatic for the public event of coming history. It is the Messianic hope which becomes vivid in times of difficulty. The deep and abiding longing for the Messiah's coming characterizes master, disciple, and outsider alike.

While they might accommodate themselves to the conditions of the current life, the Jews see this world as merely transitory and impoverished. In time to come the advent of the true and permanent age will inaugurate a time of fulfillment and completion. Although the prayers and discussions of the rabbis seem private, personal, and ahistorical, they must be seen against the broader framework of faith in which they find meaning. Within the humble affairs of Israel's life at that time one discerns though darkly the shadowed reflections of the great illumination that is to come.

It therefore would be a gross error to overestimate the differences separating the way of life of the ordinary Jews from that of the rabbinical estate. In general the rabbis' merely conventional social manners or customs are deepened into spiritual conceptions and magnified by their deeply mythic ways of thinking. In the villages the ordinary people regard the rabbi as another holy and therefore exceptional man, but still heart and soul at one in the community with other Jews. The rabbinical ideal is antidualistic; the rabbis believe that all Israel, not just saints, prophets, and sages, stood at Sinai and therefore now bear common responsibilities. No one conceives of two ways of living a holy life—two virtues or two salvations—but of only one Torah to be studied and observed by all. The cutting edge of rabbinical separateness thus is blunted.

The inevitable gap between the holy man and the layman is further reduced by the deep concern felt by rabbis for the conduct of the masses. This concern leads them to involve themselves in the everyday affairs of ordinary people, and it produces considerable impact upon daily life.

Only two really substantial, differentiating characteristics are observable. First is the relationship between master and disciple.



The rabbis' social life follows forms wholly alien to those of outsiders. The disciple reveres the master as a living Torah and humbles himself before him as before God. The outsider honors the master as a learned man, fantasizes about his magical powers, submits to his judicial authority, and accepts his communal influence. These reflect basically different attitudes: on the one hand stands a living myth; on the other, the superficial effects of that myth. Furthermore, the disciple of the sages conforms to personality traits and behavior patterns quite unnatural for ordinary folk. He forces himself into a posture of abject humility with implications far beyond what outsiders comprehend or accept. We shall see stories expressing such humility. His reverence for the master is only a little lower than his fear of the Lord. His imitation of the master's deeds and his preservation of the memory of those deeds shapes a religious discipline quite alien to the workday life of common people. The humility shown to God and to the master is supposed to extend to the disciple's behavior with everyone else.

The second characteristic separating rabbis from common Jews is study. Obviously, the reasons are not that ordinary people do not understand the need for information, that they are entirely ignorant of the world and its way, or that they know nothing of traditions. The people know the Scriptures. They listen to the reading of the Torah in the synagogues. Prophetic writings and passages of wisdom literature are also regularly read to them. The masses observe the Sabbath, the festivals, the holy days, and food and sex taboos. All these observances require knowledge, and the constant exposure to Scriptures and to the sages produces a considerable amount of it. Therefore, the "learning" of the rabbis cannot be spoken of in total contrast to the "ignorance" of the masses. Unless you accept the rabbinical belief in the rabbis' sole possession of the oral Torah, the people cannot be regarded as "ignorant" at all.

What the ordinary Jews do not know and the rabbis always do know is the one thing that makes a common man into a rabbi: *"Torah" learned through discipleship.* It begs the question to speak

of the ordinary people as "ignorant of Judaism." One does not have to exaggerate the educational attainments of the community as a whole to recognize that learning in the rabbinical traditions does not by itself separate the rabbi from other people. What is important is the rabbi's attitude toward his *own* study. Extrinsic qualities deriving from the mythic context transform the natural actions of learning facts or ideas or memorizing sayings—which anyone might do—into the ritual actions unique to the rabbi.

The "Judaism" of the rabbis at this time is in no degree either normal or normative, and speaking descriptively, the schools cannot be called "elite." Whatever their aspirations for the future and pretensions in the present, the rabbis, though powerful and influential, constitute a minority group seeking to exercise authority without much governmental support, to dominate without substantial means of coercion. What they want to accomplish is the formation of the kingdom of priests and holy people demanded at Sinai, and to do so according to the revelation of Sinai as they alone possess it. Admittedly, this description of the rabbinical schools is hardly a portrait of the religious life of Jewry. Yet, in my view, the rabbis do tend more and more to set the standard, the golden measure, the royal way.

The Talmudic chapter before us is going to focus upon one small aspect of the law, and the specific law involves very minor details of commonplace behavior. Yet within the chapter are four of the greatest themes of Talmudic Judaism. These have now to be set forth and explained.

First, the law itself involves eating a meal. Who is supposed to keep this law? In Talmudic times the laws about conduct at a meal are observed chiefly by disciples of rabbis, and then especially when they are in the presence of the master. So we are about to consider one detail in the larger "ritual of being a rabbi" we have alluded to. Yet it goes without saying that nothing in the chapter before us is going to suggest such a limited focus of law observance. On the contrary, everything is phrased in terms of what anyone should do. Indeed, subjects are rarely, if ever, given for predicates, which are simply, "[he] does . . ." or "[they] do . . ." or "[one] blesses . . ." Thus while the law may practically concern only a small group, the formulation of the law conceals that fact and announces a much wider intention, to speak to everyone and about what all are supposed to do.



To understand why meals should be subject to rabbinic legislation, we have to turn to the Hebrew Scriptures, the Torah. There we find numerous laws about food which is clean, animals which are unclean. One may eat only the clean, never the unclean. Not only so, but biblical literature tends to equate the clean with the holy, the unclean with the profane or unholy. The land of Israel is holy. Zechariah 14:20–21 holds that in the end of days, the land will also be clean. The Temple is holy—set apart, sanctified. It therefore has to be kept clean.

But what is this "cleanness" to which we refer? It is not a matter of removing dirt from your hands, of hygienic antisepsis. On the contrary, when we speak of "clean" or unclean, we are far from a concern with the physical presence of dirt. We are rather confronted with the legacy of concerns left over from pre-Mosaic Israelite culture.

That culture, like many others, regarded some things as taboo, therefore to be kept out of the holy community. Various crucial periods in life—childbirth, or the menstrual period—were regarded as dangerous. Various diseases were particularly feared, regarded as the mark of the presence of an evil spirit or demon. Chief among these was leprosy. Mildew, mysteriously appearing on the wall of a house, was feared.

When we reach the biblical legislation contained in the books of Leviticus and Numbers, we enter a world in which demons, who can do things independent of the will of God, or terrors outside of the divine power, are unknown. The biblical law comes long after the revolution effected by the concept of one, unique, all-powerful God, transcendent over the world, not subject to any of its laws. It cannot take account, therefore, of evil forces, de-

mons, that work their will outside of God's purpose. But the law must and does take account of the archaic remains of those old conceptions—the taboos associated with certain animals, certain periods of life, certain natural phenomena.

These are neutralized, first by being subsumed under the Torah's laws, therefore made to express the will of God. The laws which designate as impure certain animals, excretions, or diseases know nothing of these as malignant enemies operating independent of the divine will. Uncleanness is merely hateful to God and must be avoided by all who have anything to do with the divinity. All biblical views of purity and impurity represent an *interpretation* of taboos which must in their origins have been perceived quite differently. The taboos are not wholly neutralized; they retain the independent, antecedent, autonomous power of evil.

In biblical literature what also happens is the transformation of purity and impurity into metaphors for moral and immoral living. "Pure" and "impure" or clean and unclean to begin with connote a condition entirely lacking in ethical or moral traits. They assign to the status of impurity a bodily state or an animal, or a corpse. But they do not thereby impute a negative ethical or moral valuation, nor stand for something else. They represent the equivalent of the good or morally right, of the evil or immorality.

But the very treatment of purity in the biblical *laws,* made by the priests, accomplishes a correlative purpose. The priestly laws take for granted that whatever its cause, impurity has one constant effect: You cannot go to the Temple. Purity functions solely as the requirement of entering into and participating in the cult. The multiform world of impurities thus is homogenized. While treating purity primarily in the context of the cult may not seem so imaginative as regarding it as a metaphor for moral uprightness, in fact the force of the consequent limitation of the fear of impurity as a cause or mark of evil is enhanced. For if purity and impurity are made relative to the cult, they are, while not emptied of intrinsic power, at least limited in the locus of that power's effects. One who is impure is not everywhere a bearer of a malevolent, autonomous



power. The menstruating woman or the leper is not dangerous outside of the cult. These people are unclean—which means *only* that they cannot come to the Temple until purified. Focusing the matter upon the Temple therefore begins to convert purity into a matter of relationship or status. It eventually will remove from impurity any sort of independent, material, nonrelative significance. In Talmudic law this process of neutralization is completed. Purity and impurity constitute a set of highly complex relationships, but these have nothing to do with the physical world. All things depend upon intention and purpose, circumstance and time.

The reason we have had to review these facts is that one central issue of the chapter before us is going to concern purity in the ritualistic sense in which we have just treated it. This at the outset is surprising. For the meal of which we shall speak is not in the Temple. The participants—ordinary folk or rabbis—are not priests. But the rabbis believe exactly this: The ordinary meal of an ordinary person in his own home has to be eaten *as if* he were a priest, as if his home were the Temple, and as if he were engaged in the act of sacrifice to God. It is not merely that his food has to conform to the biblical laws of what may or may not be eaten. The man himself, his wife and family and all present also must be in a state of purity in accord with the requirements of the biblical code of the priesthood. The utensils with which he seats, the pots and pans in which the food is prepared, have likewise to conform to those requirements.

For example, a corpse is a source of "uncleanness." For students of nonliterate cultures that is not going to be surprising; in few cultures is a corpse entirely free of taboo. In biblical law the building in which a corpse is lying spreads the "uncleanness of the corpse" to all the objects under its roof. So the pots and pans of our meal must not have been in a building in which a corpse is located. They cannot have been touched by a menstruating woman, or by a leper, or by a man or woman who suffers a genital flux. So we are far from the simple requirement not to eat pork. The range of "purity" and "impurity" is, as I said, drawn

from the setting of the Temple cult, on which the Scriptures had focused the application of the purity rules to begin with.

By this point you must surely wonder why I have chosen a chapter centered upon ritual, upon such a remote and arcane matter as the purity and impurity of food and of the setting of a meal. Before I explain, let me introduce the other important themes of the laws before us.

A second major theme is the prayers you say at a meal.

A third is prayers you say at a meal on the Sabbath or on a festival.

This brings in its wake, fourth, concern for the differences between one time and another, between sacred time—a holy day, on which one behaves in accord with various rules—and ordinary days, to which such rules do not apply.

So the interrelated laws before us concern the most commonplace and fundamental concerns of the religious person: eating, praying, the awareness of the passage of time, and "ritual." "Ritual" here covers not liturgy, to which it is commonly applied nowadays, but actions or concerns subject to rules extrinsic to their normal, everyday, or "natural" character and explained by reference to a myth, in this case a story about God and his Torah.

Eating is not a ritual. It may be made so if the way in which you eat, or the words you recite before or after eating, or the foods you eat—if any of these is subject to considerations extrinsic to the actual need to prepare and put food into your mouth, eating is set within a ritualistic context. And it would be difficult to find a religious tradition without rituals of eating. Take, for example, the Christian instance, in which are involved specific ritual foods made to represent something quite other than their own substance (wine as the blood of the new covenant).

Anyone familiar with Jewish religious observance will notice that food plays a considerable part throughout. For example, even today particular sorts of food are associated with specific holy days. You have to eat in the *Sukkah*—a frail hut—on Tabernacles. You are supposed to eat a particularly fine meal on the



eve and afternoon of the Sabbath. You observe the Atonement rite and commemorate the destruction of the Temple by fasting. A Jewish wedding ceremony must be concluded with special prayers composed as part of the Grace after Meals. Purim is observed by eating a large meal and getting drunk. Passover is laden with food rites and taboos. You must eat unleavened bread and must not eat leavened bread. You eat dairy products on Pentecost (*Shavu'ot*). The list could easily be extended. That this originally religious consideration persists in the secular setting of Jewish culture goes without saying—for instance, the lavish Bar Mitzvah banquet divorced from any religious meaning, or the popularity of "*kosher*-style" delicatessens.

So the Talmud's treatment of food and eating suggests how it will deal with many other important concerns of everyday life. It provides a glimpse into the Talmudic mode of defining, of thinking about, of analyzing the most fundamental actions of ordinary people. At the same time, as I said, the meal will introduce important theological concerns. Because of the importance of praying before, after, and on the occasion of eating and drinking, the meal allows us to review important elements in Talmudic theology as expressed by prayers associated with food. At the same time, the way in which the Talmud deals with such prayers is going to tell us a great deal about its authors' conception of what praying means, how one relates to and addresses God.

Our fourth important theme—the distinctions among various days or hours, the experience of the natural course of time—recurs throughout the laws. The reason is that for the Talmud (as for biblical literature), time is not one and unchanging, but highly differentiated; the setting of the sun, on Friday, the sixth day of the week, is a tremendous event. It differentiates the profane from the holy time.

One final question remains: On what basis do the rabbis incorporate the Temple purity laws into the meal? What lies behind the rules, everywhere taken for granted, that you eat your meal like a priest in the Temple—free of contact with a corpse, or with a

creeping thing, or with a woman in her menstrual period, careful not to touch unclean objects, thoughtful about what you have done all day long and about what has been done to your food and your dishes? This is a far cry from the biblical priests' interpretation of purity, which limited purity to the Temple. For the rabbinic rule raises purity to a level of consciousness and importance without parallel in the ordinary life of Jewry in pre-Talmudic times, introduces purity and impurity into every aspect of the common life, above all, into the everyday meal.

The answer is that the Talmudic rabbis are heirs of the Pharisaic group which flourished one hundred fifty years before the destruction of the Temple in 70. And the Pharisees' interest in purity was one significant part of their legacy to the post-70 rabbis, their continuators.

The Pharisees before the destruction were those Jews who believed that one must keep the purity laws outside of the Temple. Other Jews, following the plain sense of Leviticus, supposed that purity laws were to be kept only in the Temple, where the priests had to enter a state of ritual purity in order to carry out the requirements of the cult, such as animal sacrifice. They also had to eat their Temple food in a state of ritual purity, but lay people did not. To be sure, everyone who went to the Temple had to be ritually pure. But outside of the Temple the laws of ritual purity were not observed, for it was not required that noncultic activities be conducted in a state of Levitical cleanness.

The Pharisees held to the contrary that even outside of the Temple, in one's own home, one had to follow the laws of ritual purity in the only circumstance in which they might effectively apply, namely, at the table. They therefore held you must eat secular food, that is, ordinary, everyday meals, in a state of ritual purity *as if you were a Temple priest.* The Pharisees thus arrogated to themselves—and to all Jews equally—the status of the Temple priests and did the things which priests must do on account of that status. The table of every Jew in his home was seen to be like the table of the Lord in the Jerusalem Temple. The commandment, "You shall be a kingdom of priests and a holy people," was taken literally. The whole country was holy. The table of every man possessed the same order of sanctity as the table of the Temple cult. But at this time, before 70, only the Pharisees held such a viewpoint, and eating unconsecrated food as if one were a Temple priest at the Lord's table thus was one of the two significations that a Jew was a Pharisee, a sectarian.



The other was meticulous tithing. The laws of tithing and related agricultural taboos may have been kept primarily by Pharisees. Pharisees clearly regarded keeping the agricultural rules as a chief religious duty. But whether, to what degree, and how other Jews did so, is not clear. Both the agricultural laws and purity rules in the end affected table fellowship: *How, with whom, and what you may eat.* That is, they were "dietary laws."

The commonplace setting of Pharisaic table fellowship is striking. The sect ordinarily did not gather as a group at all, but in the home. All meals required ritual purity. Pharisaic table fellowship took place in the same circumstances as did all nonritual table fellowship: common folk eating ordinary meals in an everyday way, among neighbors who were not members of the sect. They were engaged in workaday pursuits like everyone else. The setting for law observance was the field and the kitchen, the bed and the street. The occasion for observance was set every time a person picked up a common nail, which might be unclean, or purchased a bushel of wheat, which had to be tithed—by himself, without priests to bless his deeds or sages to instruct him. Keeping the Pharisaic rule required neither an occasional exceptional rite at, but external to, the meal, as in the Christian sect, nor taking up residence in a monastic commune, as in the Dead Sea sect in Judaism. Instead, it imposed the perpetual ritualization of daily life, on the one side, and the constant, inner awareness of the communal order of being, on the other.

The role of purity in the response of the Pharisees to the destruction of the Temple is known to us only from rabbinic materials, which underwent revisions over many centuries. A story

about Yohanan ben Zakkai and his disciple, Joshua ben Hananiah, tells us in a few words the main outline of the Pharisaic-rabbinic view of the destruction:

> Once, as Rabban Yohanan ben Zakkai as coming forth from Jerusalem, Rabbi Joshua followed after him and beheld the Temple in ruins.
>
> "Woe unto us," Rabbi Joshua cried, "that this, the place where the iniquities of Israel were atoned for, is laid waste."
>
> "My son," Rabban Yohanan said to him, "be not grieved. We have another atonement as effective as this. And what is it? It is acts of loving-kindness, as it is said, 'For I desire mercy and not sacrifice' " [Hos. 6:6].
>
> (Avot de Rabbi Natan, Chap. 6.)

How shall we relate the arcane rules about ritual purity to the public calamity faced by the heirs of the Pharisees at Yavneh, the rabbinic center founded in 70? What connection joins the ritual purity of the "kingdom of priests" to the atonement of sins in the Temple?

To Yohanan ben Zakkai, preserving the Temple was not an end in itself. He taught that there was another means of reconciliation between God and Israel, so that the Temple and its cult were not decisive. What really counted in the life of the Jewish people? Torah, piety. (We should add, Torah as taught by the Pharisees and, later on, by the rabbis, their continuators.) For the zealots and messianists of the day, the answer was power, politics, the right to live under one's "own" rulers.

What was the will of God? It was doing deeds of loving-kindness: "I desire mercy, not sacrifice" (Hos. 6:6) meant to Yohanan, "We have a means of atonement as effective as the Temple, and it is doing deeds of loving-kindness." Just as willingly as men would contribute bricks and mortar for the rebuilding of a sanctuary, so they ought to contribute renunciation, self-sacrifice, love, for the building of a sacred community. Earlier Pharisaism had



held that the Temple should be everywhere, even in the home and the hearth. Now Yohanan went a step further. He taught that sacrifice greater than the Temple's must characterize the life of the community. If one were to do something for God in a time when the Temple was no more, the offering must be the gift of selfless compassion. The holy altar must be the streets and marketplaces of the world, as, formerly, the purity of the Temple had to be observed in the streets and marketplaces of Jerusalem. Just as the prophets treated purity as a metaphor, so now did Yohanan interpret the Temple and its sacrifice. In a sense, therefore, by making the laws of ritual purity incumbent upon the ordinary Jew, the Pharisees already had effectively limited the importance of the Temple cult. The earlier history of the Pharisaic sect had thus laid the groundwork for Yohanan ben Zakkai's response to Joshua ben Hananiah. It was a natural conclusion for one nurtured in a movement based upon the priesthood of all Israel.

The Pharisees determined to concentrate on what they believed was really important, and that was the fulfillment of all the laws of the Torah, even ritual tithing, and the elevation of the life of the people, even at home and in the streets, to what the Torah had commanded: You shall be a kingdom of priests and a holy people. A kingdom in which everyone was a priest, a people all of whom were holy—such a community would live as if it were always in the Temple sanctuary of Jerusalem. Therefore, the purity laws, so complicated and inconvenient, were extended to the life of every Jew in his own home. The Temple altar in Jerusalem would be replicated at the table of all Israel. The biblical limitation of purity is reversed.

We return to our rabbis. We see that in taking over the legacy of Pharisaism as of the much older biblical inheritance, the rabbis face the task of continuing to deal with issues originally raised in quite other circumstances and with the response, now archaic, of much different times. Purity ought not to mean much to them. After all, there now is no Temple to go to. For the Babylonian part of the rabbinic estate, purity is impossible, for one cannot be

pure in an unholy land. Yet the rabbis doggedly work out rules based upon the purity laws of olden times. They persist in assigning meaning in terms of those ancient laws to rather humble details of the meal.

It is an extraordinary act of loyalty to the long-ago past and its long-impertinent teachings. But, as we saw, once the purity laws are taken over for ordinary life, the Temple might fall, but the Temple's mode of holiness will endure. The historical event of the destruction of Jerusalem is rendered of little everyday importance for those who keep the Temple's laws wherever they may be, who view their table as the Temple altar, and who see themselves as priests carrying on the ancient cult.

What has happened, therefore, is a curious thing. The rabbis preserve the historical Pharisaic legacy and make it timeless. That legacy consequently frees the rabbis and their followers from the single most important and tragic historical event of their age—thus, from "history." Once the Temple may be everywhere and every man may be a priest, the rabbis preserve the Temple's sanctity. The belief that people are close to God and are able to serve him, the certainty that the small and private actions of men and women retain transcendent importance to God and may be holy—these things will go on and on. No longer is the holy life limited to one place, one time, subject to the exigencies of the politics in one state, and disposed of within the affairs of nations. Given the precarious context of the Jews' life on earth, in history, I think this no small achievement.

So much for the context of our particular chapter of the Talmud. Let us now turn to the document itself.

# INVITATION TO THE TALMUD

*A TEACHING BOOK*

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CHAPTER

# VII

## Talmudic Thinking and Us

THE TALMUD we have studied records not only laws, but the processes by which laws are uncovered. By describing those processes, the rabbis propose to resolve the tension between ordinary life and logic. Using the data deriving from revealed laws of ritual purity and liturgy, the Talmud engages in the give-and-take of argument about what one is obligated to do and not do in eating a meal. The argument develops its themes through inquiry into fundamental, unifying principles and their application of those to ordinary affairs. Humble matters of where one puts his napkin are shown to reveal such underlying principles. These are then subjected to analysis and produce a search for still more basic, and ultimately unifying conceptions. The primary convictions which generate this search for hidden unities are that God is one, creation derives from the single, omnipotent and omnipresent Creator, and Torah expresses his wholly self-consistent will. We deal, therefore, with the intellectual effects of the fundamental conviction of monotheism.

The conceptions turned up by the rabbis' quest for the principles to guide everyday deeds prove to be highly relative and abstract. For nothing is more abstract than the nonmaterial, or supramaterial, laws of purity and impurity. So even the placing of a napkin at a meal is turned into a sacred discipline for living, a discipline

which requires that logic and order everywhere prevail, and demands, as I said, that concerns for a vast world of unseen, well-regulated, and highly principled relationships of sanctity come to bear. Thoughtless action is elevated, sanctified, made worthy of thought, and is shown to bear heavy consequences. Thus, as Judah Goldin says, "Study, interpretation, debate are the discipline for living; without them no right action is likely. . . ."*

The Talmud is a fundamentally nonhistorical document. It does not appeal to the authority of the past. The argument, though unfolding by generations of rabbis, is not about the authority and biography of the ancients, but about their timeless, impersonal reasons for ruling as they do. The participants in the argument sometimes are named, but the most interesting constructions are given anonymously: "What is the reason of the House of Shammai?" "Do not the House of Shammai and the House of Hillel agree with R. Yosé and R. Meir, respectively?" These elegant structures are not assigned to specific authorities, because to the Talmud the time and place, name and occupation of the authority behind an inquiry are of no great interest. Logic and criticism are not bound to specific historical or biographical circumstances. Therefore, the principles of orderly, disciplined, holy life are not reduced to the personalities or situations of the men who laid down or discovered those principles.

Talmudic thinking stands over against historical and psychological interpretation because of its preference for finding abstraction and order in concrete, perennial problems of daily life. What counts is reason, ubiquitous, predominant, penetrating. The object of reason is twofold: first, the criticism of the given by the criterion of fundamental principles of order; and second, the demonstration of the presence within commonplace matters of transcendent considerations. Casuistical controversy over trivialities does not always link up to a transcendent concern for the sacred; but it always is meant to. For the ultimate issue is how to discover the order of

* *The Living Talmud* (N.Y., 1957: Mentor, New American Library), p. 15.



the well-ordered existence and well-correlated relationships; and the prevalent attitude is perfect seriousness (not specious solemnity) about life, man's intentions, and his actions.

The presupposition of the Talmudic approach to life is that order is better than chaos, reflection than whim, decision than accident, ratiocination and rationality than witlessness and force. The only admissible force is the power of fine logic, ever refined against the gross matter of daily living. The sole purpose is so to construct the discipline of everyday life and to pattern the relationships among men that all things are intelligible, well-regulated, trustworthy—and sanctified. The Talmud stands for the perfect intellectualization of life, that is, the subjection of life to rational study. For nothing is so trivial as to be unrelated to some conceptual, abstract principle. If the placing of a napkin or the washing of the hands is subject to critical analysis, what can be remote from the Talmud's rigorous inquiry? But the mode of inquiry is not man's alone. Man is made in God's image. And that part of man which is like God is not corporeal. It is the thing which separates man from beast: the mind, consciousness. When man uses his mind, he is acting like God. That surely is a conviction uncharacteristic of modern intellectuals, yet at the heart of Talmudic intellectuality.

The Talmud's conception of us is obvious: We think, therefore we and what we do are worth taking seriously. We will respond to reason and subject ourselves to discipline founded upon criticism. Our response will consist in self-consciousness about all we do, think, and say. To be sure, man is dual, we are twin-things, ready to do evil and ready to do good. The readiness is not all, though some now think so. Beyond readiness there is mindfulness. As the Talmudic warning about not interrupting one's study even to admire a tree—that is, nature—makes clear, man cannot afford even for one instant to break off from consciousness, to open ourselves to what appears then to be "natural"; to be mindless is to lose touch with revealed order and revealed law, the luminous disciplines of the sacred.

Nor is the ultimate issue of man solely ethical; it is holiness. To

be sure, one must do the good, but Torah encompasses more than ethical behavior. The good is more than the moral; it is also the well-regulated conduct of matters to which morality is impertinent. The whole man, private and public, is to be disciplined. Etiquette—who blesses first—is blended with theology—the imitation of God's behavior at the end of the first Sabbath; furthermore with something one might call metaphysics—the composition of the flame; and finally with social law—relationships with sages, on the one side, and idolators, on the other. Other examples of the Talmud would have laid greater stress on different aspects of behavior and belief; monumental discussions of civil obligations, torts and damages, for example, might well have been cited. But these would have produced a picture not much different, except in substance, from the one yielded by the Talmud's investigations into how a meal is conducted. For no limits are set to the methods of exploring reason and searching for order. Social order with its concomitant ethical concern is no more important than the psychic order of the individual, with its full articulation in the "ritual" life. All reality comes under the discipline of the critical intellect, all is capable of sanctification.

The Talmud's single-minded pursuit of unifying truths itself constitutes its primary discipline. But the discipline does not derive from the perception of unifying order in the natural world. It comes, rather, from the lessons imparted supernaturally in the Torah. The sages perceived the Torah not as a mélange of sources and laws of different origins, but as a single, unitary document, a corpus of laws reflective of an underlying ordered will. The Torah revealed the way things should be, just as the rabbis' formulation and presentation of their laws tell how things should be, whether or not that is how they actually are done. The order derives from the plan and will of the Creator of the world, the foundation of all reality. The Torah was interpreted by the Talmudic rabbis to be the architect's design for reality: God looked into the Torah and created the world, just as an architect follows his prior design in raising a building. A single, whole Torah—in two forms, oral



and written, to be sure—underlay the one, seamless reality of the world. The search for the unities hidden by the pluralities of the trivial world, the supposition that some one thing is revealed by many things—these represent, as I said, in intellectual form the theological and metaphysical conception of a single, unique God, creator of heaven and earth, revealer of one complete Torah, guarantor of the unity and ultimate meaning of all the human actions and events that constitute history. On that account the Talmud links the private deeds of man to a larger pattern, provides a large and general "meaning" for small, particular, trivial doings.

Behind this conception of the unifying role of reason and the integrating force of criticism lay the conviction that God supplies the model for man's mind, therefore man, through reasoning in the Torah's laws, may penetrate into God's intent and plan. The rabbis of the Talmud believed they studied Torah as God did in heaven; their schools were conducted like the academy on high. They performed rites just as God performed rites, wearing fringes as did he, putting on phylacteries just as God put on phylacteries. In studying Torah they besought the heavenly paradigm revealed by God "in his image" and handed down from Moses and the prophets to their own teachers. If the rabbis of the Talmud studied and realized the divine teaching of Moses, whom they called "our rabbi," it was because the order they would impose upon earthly affairs would replicate on earth the order they perceived from heaven, the rational construction of reality. It is Torah which reveals the mind of God, the principles by which he shaped reality. So studying Torah is not merely imitating God, who does the same, but is a way to the apprehension of God and the attainment of the sacred. The modes of argument are holy because they lead from earth to heaven, as prayer or fasting or self-denial cannot. Reason is the way, God's way, and the holy man is therefore he who is able to think clearly and penetrate profoundly into the mysteries of the Torah and, especially, of its so very trivial laws. In context those trivialities contain revelation.

To the Talmudic way of thinking, man is liberated, not impris-

oned, by reason, which opens the way to true creativity, that is, the work of finding, or imposing, form and order upon chaos. The wherewithal of creativity is triviality—that by now is obvious—and what is to be done with triviality is to uncover, within or beyond the simple things of chaos, the order, the complex structure, the coherence of the whole. What is concrete therefore is subordinate to what is abstract. It is the construction of the larger reality that reveals the traits of that reality. And to the Talmudic rabbi, the most interesting aspect of reality is the human and the societal: the village, the home, the individual. Talmudic Judaism, because of its stress on what and how one eats and drinks, has been called a religion of pots and pans. And so it is, if not that alone, for its raw materials are the irreducible atoms of concrete life. But these come at the beginning; they stand prior to what will become of them, are superficial by contrast to what lies beneath them, to what they adumbrate.

What is to be done with these atoms, these smallest building blocks of reality? The answer now is evident: They are to be subjected to control, the man to self-control. All impulses are to be carefully regulated in accord with the divine plan for reality. All are good and may be holy when so ordered, evil when not. The robust sexuality of the Talmudic laws of marital relations testifies to the rabbis' seriousness and matter-of-factness about what today is highly charged material. For one thing, they consistently referred to a couple's having intercourse "all night long" and promised sons and other blessings to those who engaged in sexual relations two (or more) times in succession—the more the better.

So the regulation of impulse was the opposite of its suppression; it was its liberation. But what was done had to be done rightly, had to be sanctified; the nuptial bed was the right circumstance. To be sure, appropriate social and legal regulations brought the couple to their bed; but (in theory at least), if an unmarried man, legally permitted to marry his beloved, engaged in sexual relations with an unmarried woman, the couple thereby consummated a legitimate marriage-union and were regarded as fully and legally



married in all respects. It is assumed that a man does not enter sexual relations lightly or licentiously. It is taken for granted that people intend to do the right thing. Again, the time had to be right. The Torah prohibited sexual relations during a woman's menstrual cycle. Then not during that cycle relations are to be encouraged. The circumstances then had to be discussed: Is it better in the light or in the dark? Is it all right in not completely private conditions? The pious would have relations in the dark; the ultrapious would drive away even flies and mosquitoes. So the course of law rolls on, regulating what is natural and enhancing it through good order, bringing to consciousness what is beneath the surface, through the therapy of public analysis and reasoned inquiry legitimizing what otherwise might be repressed. It is not unimportant that the Talmudic tractate on betrothals is called "sanctification."

Certainly, the Talmudic way of thinking appeals to, and itself approves, the cultured over the uncultured, those capable of self-conscious criticism over those too dull to think. "An ignorant man cannot be pious." Fear of sin without wisdom is worthless. The sages encouraged the articulate over the inarticulate: "The shy person cannot learn." For the give-and-take of argument, one cannot hang back out of feigned or real bashfulness. Reason makes men equals and reveals their inequalities. Reason is not a quirk of personality, but a trait of mind, therefore must be shamelessly and courageously drawn out. The ideal is one for intellectuals, devoted to words and the expression, or reduction, of reality to the abstractions constituted by words.

Notice, for example, how few are the simple, declarative sentences we saw in our chapter of the Talmud; the primary mode of expression is those joining-parts of language which link thought to thought, or set thought against thought: "But," "However," "Do you reason so?" "What is the presupposition?" What is Talmudic about the Talmud is expressed in the Aramaic mortar, not in the Hebrew stones. The near-grunts of the uneducated, "I want this," "I do that," "That is my opinion"—these are virtually absent in

the extended discourse. The argument is expressed in terse, apocopated phrases, moving almost too rapidly for the ordinary ear to grasp.

What is Talmudic, too, is perpetual skepticism, expressed in response to every declarative sentence or affirmative statement. Once one states that matters are so, it is inevitable that he will find as a response: "Why do you think so?" or "Perhaps things are the opposite of what you say?" or "How can you say so when a contrary principle may be adduced?" Articulation, forthrightness, subtle reasoning but lucid expression, skepticism—these are the traits of intellectuals, not of untrained and undeveloped minds, nor of neat scholars, capable only to serve as curators of the past, but not as critics of the present.

Above all, Talmudic thinking rejects gullibility and credulity. It is, indeed, peculiarly modern in its systematic skepticism, its testing of each proposition, not to destroy but to refine what people suppose to be so. As we have seen time and again, the Talmud's first question is not "*Who* says so?" but "Why?" "What is the reason of the House of Shammai?" In the Talmudic approach to thought, faith is restricted to ultimate matters, to the fundamental principles of reality beyond which one may not penetrate. Akabya warned to try to find out whence one comes and whither one is going. The answers will yield humility. But humility in the face of ultimate questions is not confused with servility before the assertons, the truth-claims, of putative authorities, ancient or modern, who are no more than mortal.

Since the harvest of learning is humility, however, the more one seeks to find out, the greater will be one's virtue. And the way to deeper perception lies in skepticism about shallow assertion. One must place as small a stake as possible in the acceptance of specific allegations. The fewer vested convictions, the greater the chances for wide-ranging inquiry. But while modern skepticism may yield —at least in the eye of its critics—corrosive and negative results, Talmudic skepticism produces measured, restrained, and limited insight. The difference must be in the open-endedness of the Talmudic inquiry: nothing is ever left as a final answer, a completed solution. The fruit of insight is inquiry; the result of inquiry is insight, in endless progression. The only road closed is the road back, to the unarticulated, the unconscious, and the unself-conscious. For once consciousness is achieved, a reason spelled out, one cannot again pretend there is no reason, and nothing has been articulated. For the Talmud the alternatives are not faith or nihilism, but reflection or dumb reflex, consciousness or animal instinct. Man, in God's image, has the capacity to reflect and to criticize. All an animal can do is act and respond. And man may be holy or unholy. An animal can only be clean or unclean—a considerable difference.



That is why energy, the will to act, has to be channeled and controlled by law. You are what you do. Therefore, deed without deliberation is not taken seriously. Examination of deeds takes priority over mere repetition of what works or feels good. For this purpose, genius is insufficient, cleverness is irrelevant. What is preferred is systematic and orderly consideration, step by step, of the principles by which one acts. The human problem in the Talmudic conception is not finding the motive force to do, but discovering the restraint to regulate that protean force. In the quest for restraint and self-control, the primal energies will insure one is not bored or lacking in purpose. For the Talmudic mode of thought perceives a perpetual tension between energy and activity, on the one side, and reflection on the other. To act without thought comes naturally, is contrary, therefore, to the fact of revealed discipline. The drama of the private life consists in the struggle between will and intellect, action and reflection. If the Talmud is on the side of the intellect and reflection, it is because the will and action require no allies. The outcome will be determined, ultimately, by force of character and intellect, these together. And the moot issue is not how to repress, but how to reshape, the primal energy.

Yet it is an error to focus so one-sidedly upon the Talmudic mind and so to ignore the other formative force in culture, the

community. The Talmud, for its part, fully recognizes the social forces, the pressures to conform and to follow established custom and habit. That is why so much attention centers upon people's doing things together. The Talmudic rabbis exhibit keen awareness that restraint is societal before it is personal; community takes priority over individuality and gives the private person nearly the whole of the structure of symbols and values that render living meaningful. "Give me fellowship, or give me death," said one of them.

The "meal" we analyzed in some detail is assumed to be a public occasion; there is nothing private about it. When people eat, it is taken for granted that they eat together and follow publicly known regulations; that is why there are such regulations. The more important parts of the Talmud, furthermore, deal with civil regulations: What to do if an ox gores another ox? How to divide a disputed prayer shawl? How to litigate a contested will, in which the material results affect the disposition of a palm tree or a tiny bit of land?

The Talmudic rabbis are well aware that society forms the individual. If a person seeks to create a disciplined individual, whose life is regulated by revealed law, he must give priority to the regulation of the society which forms the ground of individual existence. And to regulate society, he must concentrate upon the conflicts among men, the conflicting claims to unimportant things which, all together, will add up to justice and make possible dignity and autonomy. It is through law that you will revise habit, establish good customary behavior. It is through a lawful society that you will create an environment naturally productive of restraint and rational manners. If, therefore, it is correct to claim that what is Talmudic about the Talmud is the application of reason and criticism to concrete and practical matters, then the Talmud is at its core an instrument for the regulation of society in the most humble and workaday sense of the words.

To be sure, to regulate society you must have access to the institutions that exercise and confer legitimate power, and the Talmudic rabbis knew the importance of various sorts of power. They understood, first of all, the intrinsic power of law itself, which rendered unnecessary constant, *ad hoc* intervention of puissant authority into routine affairs. Once law has established how things should be done, the enforcement of the law becomes necessary only in exceptional circumstances. In normal ones the law itself ensures its own enforcement, for most men most of the time are law-abiding.



The Talmudic rabbis, second, actively sought access to the instrumentalities of Jewish autonomous government made available by the authorities of Roman Palestine and Iranian Babylonia. If the imperial regimes were content to have the Jews regulate their own affairs and fundamentally disinterested in meddling in ritual and community regulations, the rabbis were eager to take over the institutions authorized to regulate the people's lives. They worked their way into these institutions, formed by the Patriarch of Palestine and the Exilarch of Babylonia, and made themselves the chief agents for the day-to-day government of the local communities. So far as the state stood behind the Jewish community's officials, the rabbis enjoyed the benefit of state power and therefore mastered the intricacies of politics.

Third, the Talmudic rabbis exercised moral authority sufficient to make people do what the rabbis wanted without the intervention of secular authorities. That moral authority was based upon multiform foundations.

First, the rabbi was understood to have mastery of the divine revelation and unique access to part of it, the Oral Torah handed down from Sinai. So his rule was according to heavenly principles.

Second, the rabbi was seen as himself paradigmatic of the Torah's image of man. Therefore, what he did was revelatory. Common folk who proposed to obey the will of God as the rabbis explained it would not have to be coerced to do what the rabbis said. They might just as well imitate the rabbi, confident that he did what he did in order to imitate Moses "our rabbi" and God, Moses' rabbi. The Talmud we have studied is full of stories of

what individuals said and did on specific occasions. In some instances the abstract law is conveyed by such stories. In most others, the point of the story is to show, by relating the rabbi's deed, what the law is, how one should conduct himself. These are not "political" stories, yet they have a pronouncedly political result, for the story influences behavior no less than a court decree shapes action.

Finally, among the rabbis were some who could exercise miraculous and even supernatural powers. A modern anthropologist having spent a few years in Talmudic circles to study the social role of the rabbi might well call his book, "The Lawyer-Magicians of Babylonia." But the exercise of supernatural power, the ability to appeal to the fantasies of ordinary folk—fantasies the rabbis themselves certainly shared—these too constituted a kind of "moral authority." Curiously, it was intellectual achievement that produced theurgical power. The righteous were believed to have the creative power of God: "If a righteous man desires it, he can create a world." And why should the rabbi not have such power, given his knowledge of the Torah, which contained the plan and pattern for God's own creation of this world? Learning reshaped a man into the likeness of God and therefore endowed him with God's powers of creation. In a secular sense, belief in the supernatural consequences of the supernatural power of mastery of Torah traditions and reasoning about them produced a practical power considerably more efficient than political instrumentalities in moving people to do the right thing. The charisma represented by brilliance in reasoning and argument was affective outside of the circle of intellectuals, just as it is today, but with better reason then. This is what I mean in saying that the luminous becomes numinous.

One can hardly refer to politics without alluding, as well, to the construction of the family, the relationship of father to son. Here Talmudic rabbis discerned a tension and resolved it in their own favor. They understood the primacy of the father in the formation of the personality of the child and the shape of the family.



At the same time they claimed they, as masters of Torah, should shape personality and provide the model for the family. They admitted that the father brought the child into this world. But, they quickly added, the sage brings him into the next world, therefore is entitled to the honor owing from the child to the father. The sage is better than the father, above the father, just as God is the ultimate father of the child and giver of his life. If, therefore, a son sees the ass of his father struggling under his load, and at the same time he sees the ass of his sage about to stumble, he helps the ass of his rabbi, then that of his father, for the one has brought him into this world, the other, eternity. Just as the rabbi placed his rule over that of the state and the state's functionaries, the patriarch and exilarch, so he sought to take precedence over the primary component of the community, the family, by laying claim to the position of the father.

In larger terms the effort to replace the father by the rabbi symbolizes a struggle equivalent to the effort to replace the concrete, this-worldly government of ordinary officials by the nonnatural or supernatural authority of the rabbi, qualified by learning of the Torah and capacity to reason about it. The Roman authority and his representative in Jewry ruled through force or the threat of force. The rabbinical figure compelled obedience through moral authority, through the capacity to persuade and to demonstrate, through affective example, what the law required. Both political and familial life thus was to be rendered something other than what seemed natural or normal. Everyone could understand the authority of the gendarme, the priority of the father. But to superimpose the rabbi both in politics and in the family represented a redefinition of the ordinary sense of politics and the plain, accepted meaning of the family. It made both into something abstract, subject to a higher level of interpretation, than an ordinary person might readily perceive. Political life to the rabbi was not merely a matter of the here and now, nor was the family what it seemed. Both were to be remodeled in the image of Heaven, according to the pattern of the Torah. That is to say, they were to

be restructured according to the underlying principles of reality laid down by the divine plan as undercovered by rational inquiry. Society was to be made to conform to the heavenly definition of the good community; the family was to be revised according to the supernatural conception of who the father really was: God and his surrogate, the rabbi—man most closely conforming to his image.

The Talmudic stress upon criticism, therefore, produced a new freedom of construction, the freedom to reinterpret reality and to reconstruct its artifacts upon the basis of well-analyzed, thoroughly criticized principles revealed through the practical reason of the sages. Once a person is free to stand apart from what is customary and habitual, to restrain energies and regulate them, he attains the higher freedom to revise the given, to reinterpret established perceptions of reality and the institutions which give them effect. This constitutes, to begin with, the process of the mind's focusing upon unseen relationships and the formation of imposed, nonmaterial and nonnatural considerations.

We recall in this connection the purity laws, which play so considerable a role in the rabbis' regulation of eating (and other fundamental things, for instance, sexual relations). Those laws seem to have comprised and created a wholly abstract set of relationships, a kind of non-Euclidean geometry of the levitical realm. Yet such high abstractions are brought down to earth to determine in what order one washes his hands and picks up a cup of wine, or, as noted, where one puts his napkin. So what is wholly relative and entirely a matter of theory, not attached to concrete things, transforms trivialities. It affects, indeed generates, the way one does them. It transforms them into issues of some consequence, by relating them to the higher meanings (to be sure, without much rational, let alone material substance) associated with the pure and the impure. The purity laws stand at the pinnacle of Talmudic abstraction and ratiocination.

We may supply a social explanation for the intellectuality and abstraction of the Talmudic rabbis' approach to reality. They



themselves stood apart from the larger Jewish society, much as the Jews stood apart from the gentile majority. Their intent was to reshape and improve society. But they were different from other men because of their learning and intellect. They lived in this world, but in another too, one in which, for example, the unseen realities and unfelt relationships of purity and impurity were taken so seriously as to determine behavior in the world of material realities and perceived, concrete relationships. They stood apart not because they alone believed in God, for everyone did, or because they alone revered the Torah, for they were not alone, but because they alone conceived it possible for man to elevate himself heavenward through Torah, rationally apprehended. They participated in the history of this world, but were aware of the precariousness and imperfection of this world when perceived and measured by the standard of the next.

Their capacity to criticize therefore derived from their detachment. They knew that what is now is not necessarily whatever was or what must always be. Able to stand apart because of the perspective of distance attained through rational criticism of the practical life, they realized men have choices they themselves may not perceive. There have been and are now other ways of conducting life and living with men, of building society and creating culture, than those the ordinary people supposed were normative. Able to criticize from the perspective of a transcendent perception of the principles of being, the rabbis could evaluate what others took for granted, could see the given as something to be elevated and transcended.

In a word, the Talmud is a document created by the intellect devoted to morality and seeking sanctity. It takes for granted that man's primary capacity is to think; he therefore is to be taken with utmost seriousness. The Talmud endures as a monument to intellectualism focused upon the application of practical rationality to society. It pays tribute, on every page, to the human potential to think morally, yet without lachrymose sentimentality, to reflect about fundamentals and basic principles, yet for concrete purposes

and with ordinary society in mind. The good, well-regulated society will nurture disciplined, strong character. The mighty man—"one who overcomes his impulses"—will stand as a pillar of the good society. This is what I understand as the result of the intellectual activity of the moral intellect. Reason, criticism, restraint, and rational exchange of ideas—these are not data for the history of Talmudic literature alone. The Talmud itself testifies to their necessary consequences for the personality and for society alike.

What are we to make of the Talmudic approach to life? How shall we appropriate the Talmud's moral intellectualism for contemporary sensibility?

Perhaps you think I have claimed too much for the Talmudic way, but I fear I have claimed too little. For what the Talmud accomplished in the formation of a specific civilization—that of the Jewish people—was to lay the foundations for a society capable of rational, supple response to an irrational situation. The Jews lived as aliens, so they created a homeland wherever they found themselves. They effectively and humanely governed themselves without the normal instruments of government, lacking much of a bureaucracy, having no consequential power at all. They created not one culture but multiple cultures, all of them quintessentially "Jewish," out of the materials of many languages, societies, sorts of natural environment, histories, and traditions. The Talmud's construction of a world of ideas and sacred principles, corresponding to, but transcendent of, reality is a paradigm of the Jews' capacity to reinterpret reality and reconstruct culture in age succeeding age, their nonmaterial power fully, rigorously, and robustly to live the life of the mind. Beyond the Jews' capacity for fantasy—after all, not unique to them—was their power to reflect, reconsider, stand back from reality, and revise its interpretation. This, it now is clear, is the end result of a society which trained its young in the Talmud and rewarded its mature and old men alike for lifelong devotion to its study.

It was the rationality and intellectuality of the Jews' culture



which led them to a way of living with one another not in perfect harmony—they were flesh and blood—but in mighty restraint and mutual respect. The inner life of the Jewish community was so organized that the people might conflict with one another, yet not through the totally free expression of the impulse toward mutual annihilation. Renunciation of brute power, affirmation of the force of ideas and reason—these represented the Jews' discovery. They cannot claim to have uncovered these principles, but they most rightly do claim meaningfully to have effected them in the formation of their community life and the establishment of their protean culture. Reason applied to practical affairs through the acute inquiry of Talmudic argument—this I think accounts for the Jews' capacity for so many centuries to accommodate themselves to a situation of worldly powerlessness. For they knew ideas could be powerful; criticism could constitute a great force in society; and, in the end, the sword, once sheathed, could change nothing, but an idea, once unleashed, could so persist as to move men to move the world.

The Talmud lays the foundation for the rational, therefore the moral culture. I refer to Philip Rieff,* who speaks of the functions of culture: "(1) to organize the moral demands men make upon themselves in a system of symbols that make men intelligible and trustworthy to each other, thus rendering also the world intelligible and trustworthy; (2) to organize the expressive remissions by which men release themselves, in some degree, from the strain of conforming to the controlling symbolic, internalized variant readings of culture that constitute individual character." Clearly, the Talmud exhibits the capacity to organize "the moral demands" of men into a system of orderly, integrated symbols. These take the form of actions to be taken, others to be rejected. The degree of order and integration depends upon the rabbis' success in locating the fundamental principles which draw together and show the interrelationships among discrete actions.

* *The Triumph of the Therapeutic. Uses of Faith after Freud* (N.Y., 1966: Harper & Row), p. 232.

But what is the form of the "expressive remissions"? How does the Talmud make room for individual character? The answer lies in the Talmud's stress on the reasons for its rules. Once the reason is made known, one makes room for contrary reason, for reason to reject or revise the established rule. Not only does the individual have the place to differ, but he also has the power through criticism to move the entire community to appropriate what to begin with expressed his private judgment, his individuality. This I think is not only to the advantage of the individual, but also fundamentally therapeutic for the community as a whole.

Now for contemporary man the Talmud presents formidable criticism, for by it the value, "follow your own impulse"—utter subjectivism in all things—is rejected. The Talmud gives contrary advice. "Tame your impulse," regulate, restrain, control energies through the self-imposition of the restraining rule of law. At the same time, the Talmud demands that a person *not* do "his own thing" alone, but persuade others to make what is his own into what is to be shared by all. The Talmud therefore subjects the individual to restraints on his pure individuality, while opening for individuality the possibility of moral suasion of the community at large. "Unrestrained" and "individualism" therefore are set over against "regulated" and "rationality," for it is rationality which overcomes the isolation of the individual, connecting one mind to another through the mediating way of reason. Through the imposition of rational, freely adopted rules, one restrains those destructive elements of the personality which potentially are damaging for both the individual and the community.

To be sure, the supernatural framework of Talmudic religion cannot claim a serious hearing among Jews who stand at a distance from the traditional world of faith, let alone among gentiles. But the Talmud serves a good purpose nonetheless, for it contains within its pages a detailed demonstration of how practical reason may be applied to humble affairs. As a whole document within the multiform historical civilizations of the Jewish people, it testifies to the concrete possibilities of rational and critical approaches



to human affairs. This it does not only in generalities, but in strikingly trivial details. The course of the Talmudic argument shows it is possible committedly, involvedly, to argue about changing hypotheses, to pay serious attention to culturally neutral matters, and to find important principles in ordinary affairs. In a way, the Talmudic rabbi takes a clinical attitude toward his own ideas, and certainly toward those of his fellows. They are there for analysis, not for either gullible acceptance or utter rejection. The purpose of the analysis, moreover, is not final commitment to some one conclusion, but provisional decision for laying the way open to further inquiry.

The open-ended character of the Talmudic argument impressed us earlier. Now its very contemporary pertinence becomes clear. Since one expects no final solutions, man is prepared for a succession of intermediate, provisional ones. He learns, therefore, the discipline of commitment within open-mindedness, the capacity to hold conviction loosely, to refrain from imposing on the other person the task of verifying, by assenting to, one's own deeply held convictions. It is the undogmatic quality of Talmudic discourse which contemporary men might well learn to emulate. They will do so when their commitment is to method, rather than to its results, and when the method, or mode, of thought recovers the form prefigured in the Talmud: above all, skepticism, criticism, easy and free movement.

The tradition of Talmudic learning prepared the Jews for the modern situation and even in premodern times carried within itself the qualities we now associate with modernity. So far as modernity requires man to take this world seriously, the Talmud met the requirements of modernity. So far as modernity is characterized by cosmopolitanism and the relativity of values, the Talmud, which could be both studied and realized in many countries and various cultures, prepared the Jews for the modern situation. By its stress on the unfolding possibilities of reason and by its relentless testing of all propositions against the measure of skeptical reason, the Talmud prepared the Jews to recognize the relativity of successive

truth claims, the probability that each would in its term have to give way to the next. A trait of modernity is the denial of the ultimacy of any values. To be sure, the Talmud affirmed the Torah and the final truth of all contained therein. But so far as the ideas were perceived as human, not divine, the Talmud spurned the claim that any insight might endure beyond its capacity to be shown to be reasonable. Later, when *all* ideas were perceived as human, the Talmud's fundamental attitude was simply extended to areas where it formerly had been absent. The Talmud's persistent dubiety disciplined the Jewish intellectual to speculate about the unthinkable—"Perhaps things are the opposite of what they seem?"—to investigate the forbidden, to reconsider the commonplace, and so to reshape reality.

The Talmud thus taught its disciples to deny the need they must have felt, the need to judge all values, all assertions, all theories by their own, particular, self-authenticating system of thought. The Talmud prepared its students to see as merely transitory and useful artifacts and ideas the world understood to be absolute and perfected. The Talmud disciplined its devotees to preserve a thoroughly skeptical attitude toward the perfections of the hour. It imparted the view that reality—the immutable truths of others—was something to be criticized, and imparted the humility likewise to perceive one's own.

So, in the end, the Talmud raised abiding skepticism about what people offered as salvation, as final solutions to the problems of the human condition. The Talmudist did not expect final solutions, was trained to ask simple, therefore devastating questions about their finality. So the Talmud readied the Jews for the modern situation of doubt, of provisional truths and hypotheses subject to testing and revision. True, the Talmud did come to decisions. But these were in matters of detail. No one ever resolved any of the really interesting questions of logic and skeptical reasoning. The Talmudic rabbi remained open to the good insights that might come, denying at the same time the finality of what was already present. This gave him the freedom to criticize the Mishnah, the



*Gemara,* Rashi, and whatever was to come thereafter. The Talmudist could deny the present achievements of the mind because he hoped for ultimately better ones.

The Jew, disciplined in the Talmud's mode of thought, could accommodate himself to the modern world's relativization of values precisely because he had already seen the vision of greater perfection than what was originally present. The Talmud produced an activist tradition of men interested in daily affairs and in their proper regulation, a tradition which told men they were partners in the task of perfecting the world under the dominion of God. If the world is perceived to be insufficient and incomplete, it is man's task to help complete it. If men saw values as in a measure relative to the situation of specific men and groups, if they understood reason to be something provisional and transitory, the Talmud taught the Jews their duty was to criticize and purify their ideas by skeptical criteria, at once most ancient and still not wholly realized.

Finally, the Talmud taught the Jews not to be terrified by the necessity to face, and to choose among, a plurality of uncertain alternatives in an insecure world. The Talmud testified that men must choose, if tentatively and for a time only, among competing interpretations, so that the law might in fact be applied, and the ordinary man might know what to do. So the Talmud forced choices, in a tentative and austere spirit, among the many truths available to reasonable men. It insisted one cannot be paralyzed before contrary claims and equally persuasive reasons. The House of Shammai and the House of Hillel both laid claim to sound law and excellent reasoning; neither party could be shown inferior to the other in critical acumen. But a choice had to be made. If heaven had to resolve the formidable problem of choice, it set a good example and did not have to intervene again.

The Talmud taught that men must end up doing some one thing when faced with conflicting choices. Values may be relative, but men must choose some ideal by which to guide their lives. Men could not endure in indecision. They have to decide to be

more than nothing in particular, for their capacity for rational thought is insufficient without an equivalent ability to make and carry out rational decision. The best proof of the duty to make reasonable decisions among unreasonable alternatives was the Jews themselves, who, because of their international character and their memories of many lands and empires, saw the world in all its complex plurality. But they also chose to form the most vivid and intense of all groups, to sustain what is, after all, one of the most particular of all literary traditions, the Talmud itself. Yet they did so in full knowledge that their group was not coextensive with society, and that their Talmudic tradition did not contain everything worth knowing about the right way of living life.

So the Talmud imparted the lesson that men may face a relativity of values, but in the end, must choose life in some specific place, among some particular group of people. In the end you do put your napkin on the cushion—or the table. The values that shape those lives are not relative to the conditions in which they are lived. When all values are seen to be relative and all reasons may be criticized with equally good reason, that is when men most need the fellowship produced by access to a common, deeply held and widely shared, discipline of thinking. The conclusions will vary; the mode of thought and argumentation must then be constant and enduring.

Having emphasized the priority of making difficult choices, we come to the final, peculiarly modern, trait of the Talmudic mind, one that has recurrently impressed us: its pragmatism. In offering Talmudic pragmatism as peculiarly modern, I do not mean to suggest that, because it is modern, the Talmud is therefore vindicated. I mean the very opposite. What makes it possible for contemporary men and women to reach out to the Talmud's power to transcend and reconstruct reality is their pragmatism and willingness to cope with details and to take seriously the trivialities of ordinary life. Because of the very secularity, the seriousness about worldly things, characteristic of our own day, we are able to understand the importance of the Talmud's lessons about the criticism and regulation of worldly things. What shall we say of a



tradition of thought that laid greatest emphasis upon deed, upon a pattern of actions and a way of living, but that it is pragmatic? What shall we say of a perspective upon the world that focused on practical reason, but that it is worldly? What shall we conclude of a religious language that called honesty or charity a *kiddush hashem*, a sanctification of God's name, but that it is deeply secular? A legal system whose deepest concerns were for the detailed articulation of the this-worldly meaning of love for one's fellow man here and now is one which long ago brought the Jews into the pragmatic, this-worldly framework of modernity.

That is why the Talmud not only relates to the contemporary world, but may stand in judgment of it. And it surely will judge a world willing to reduce man to part of himself, to his impulses and energies. It will judge an age prepared to validate the unrestrained expression of those energies as the ultimate, legitimate adumbration of what is individual about the person, as though he had no mind, no strength of rational thought. It will condemn a world of enthusiasts who make an improvement and call it redemption, come up with a good idea and, without the test of skeptical analysis, pronounce salvation. The Talmud shows a better way: It demonstrates that men have the capacity to assess the unredemption of the world, to perceive the tentativeness of current solutions to enduring problems, and at the same time to hope for sanctification and work for salvation. It is this unfulfilled yet very vivid evaluation of the world, the power to take the world so seriously as to ask searching questions about its certainties, which, I think, explains the Jew's capacity to love so much, and yet to doubt; to hold the world very near and close, with open arms. The Jew has been taught by the Talmud to engage realistically in the world's tasks, to do so with a whole heart, yet without the need, or even the power, to regard completion of those tasks as the threshold of a final and completed fulfillment of history.

Because of its mode of thinking, the Talmud teaches men to take seriously the wide range of worldly problems without expecting that in solving them—provisionally, let alone finally—they might save the world. If the Jew has found the modern situation

congenial and congruent to his perception of humanity, it is because the Talmud, writ large across the traditional culture of the Jewish people, had uniquely prepared him for the conditions of modernity, readied him not only to participate in those conditions, but deeply and unstintingly to criticize them, and, finally, in full rationality to reform them.

But to undertake reform through Talmudic modes of thought and analysis, we have, to begin with, to reconsider what makes those modes more than merely an expression of practical reason, but an expression of the transcendent which is in ourselves. We cannot ask the Talmud to vindicate itself by our standards. We have to bring to bear upon our perceptions of ourselves the Talmud's critique, *its* sacred image of us. To begin with it asks, What say you of the human condition? What is man, but that God is mindful of him? If all we are and ever shall be is here and now, if our minds are merely useful and our capacity to think entirely a secular virtue, then the Talmudic mode of reform is unavailable to us. If through our strength of reason we pursue the profound rationality which underlies, gives unity, and imparts meaning to existence, and if through our power of reflection we then undertake the reconstruction of reality, the interpretation of what is in terms of what can and should be, then we shall have already entered into the Talmudic situation. But when we do, we shall thereby have undertaken all the Talmud knows as the discipline of the sacred. We shall, in other words, have renewed the experience of sanctification both *through* the intellect and *of* the intellect. That experience is open when the pages of the Talmud lie before us, but becomes consequential when the Talmud's perceptions of life and interpretations of society come to possess us. I therefore speak, without shame, of religious experience, indeed of the turning toward God which the sages called *teshuvah,* insufficiently translated as repentance, but truly meaning, *turning*. The way of Talmudic piety and spirituality has been the path of saints, a path each chose—and may choose again—in full rationality, at life's turning.

# The *Talmud*: A Biography

400BCE
200BCE
1CE
200CE
400CE
600CE
800CE
1000CE
1200CE
1400CE
1600CE
1800CE
2000CE
Classical Antiquity
Tannaitic
Late Antiquity
Amoraic
Geonic
Middle Ages
Renaissance
Early Modern
Modern
Period
Events
People
334-331 BCE Alexander the Great conquers the Near East
167-164 BCE Antiochus's decree and resultant Maccabean revolt
70 CE Second Temple destroyed
~30 CE Jesus's death
132 CE Bar Kokhba Revolt
~200 CE Redaction of Mishnah by R. Judah the Prince
~300 CE Redaction of Tosefta
~324 CE Christianity becomes religion of Roman empire
~400 CE Redaction of Palestinian Talmud
~600-750 CE Range of possible redaction of Babylonian Talmud
Eighth Century CE Islamic Conquest
Tenth Century CE Oldest extant fragments of Talmud manuscripts
987 Letter of Rav Sherira Gaon
1147-1149 Second Crusade
1147 Almohad Oppression of Jews in Cordoba (Spain)
1096 First Crusade
1263 Barcelona Disputation
1240 Paris Disputation
1342 Munich 95 Manuscript of the Talmud written
1414 Tortosa Disputation
1565 First printed edition of Shulhan Arukh
1520-1523 First complete printed Talmud (Venice/Bomberg)
1492-1497 Expulsion of Jews from Iberia
1484 Soncino tractate Berakhot, Rashi/Tosafot around central text
1480s Spanish editions of individual tractates printed
1803 Founding of Volozhin Yeshiva
1757 Podolia Disputation
2012 ~600,000 attend parties for completion of the Talmud
2012 Artscroll releases Talmud app for IOS and Android
1992 Bar Ilan Responsa Project Version 1 released
1990-2004 Artscroll publishes English translation of the Talmud
1967-2010 Steinsaltz vocalized Hebrew-translated edition of the Talmud
1949 U.S. Army & JC publish "Survivors' Talmud" in Heidelberg
1935-1948 Soncino Press English translation of the Talmud
1923 Rabbi Meir Shapira introduces Daf Yomi, daily Talmud program
1880-1886 Printing of Vilna Edition by Widow & Brothers Romm
37-100 CE
Josephus (historian)
Judea and Rome
~ 990-1055
Rabbenu Hananel ben Hushiel
(commentator), Qairouan (Tunisia)
1013-1103
Rabbi Isaac Alfasi (codifier),
Lucena, Cordoba (Spain)
1040-1105
Rashi (commentator), Troyes, France
1077-1141
Rashbam (commentator), Troyes, France
1100-1171
Rabbi Jacob Tam
(commentator), Troyes, France
1125-1198
Rabad (commentator),
Posquières, Provence (France)
1135-1204
Maimonides
(codifier),
Fustat, Egypt
1194-1270
Nahmanides (commentator), Barcelona, Spain
1240-1305
Moses de Leon, Arévalo, Spain
1340-1411
Hasdai Kreskas (philosopher),
Saragosa, Spain
1488-1575
Rabbi Josef Karo
(codifier) Safed, Israel
1720-1797
Vilna Gaon (commentator),
Vilnius, Lithuania

# The Talmud—Essential, Enhanced, and Emblematic

PROLOGUE

The Babylonian Talmud can be accurately defined in three distinct ways:

1. The Babylonian Talmud is a work of religious literature collectively produced by a group of rabbi scholars who lived in two geographic regions (Palestine and Babylonia) between the first and eighth centuries CE.
2. The Babylonian Talmud is the central canonical work of the Judaism that emerged after the destruction of the Temple in Jerusalem; within an idiosyncratically scholastic culture that relied heavily on texts to ground religious meaning, the Talmud has been the text on which scholars have focused their energies.
3. The Babylonian Talmud is a uniquely Jewish scripture and has often come to function as the ultimate symbolic representation of Judaism, Jewishness, and Jews.

The above three definitions are not mutually exclusive. All are true and can work together. It is necessary to delineate these definitions, though, because each implicates a different historical story and each of these stories produces a register of meaning. This book will demonstrate that there are three registers of Talmudic meaning. (Chapter 1 contains a fuller description of the Talmud itself.)

To understand this notion of multiple registers of meaning, the reader who has not yet encountered the Talmud should consider the biblical Ten Commandments or the United States Constitution as comparable foundational texts. These three texts (the two comparators and the Talmud) were produced in historical time and place. The original meaning of the text is the *essential* meaning of the text. There are fundamental problems that affect one's ability to confidently recover the original meaning of a text. And yet we can easily comprehend historical meaning as an ideal to which one might strive. This is the first register of Talmudic meaning.

The three texts we are considering are fundamental to ongoing cultural (including legal and religious) practices of reading and have engendered interpretations and applications (to say nothing of explicit amendments) that exponentially expand the work as each original word or sentence generates exegesis, and becomes the basis for inferences and new applications. From its completion (ca. 750 CE) until today, the Talmud has been at the center of an active culture of reading that has generated an enormous literature of reception that understands, interprets, and applies it. This enormous

literature is often understood as the Talmud by cultural insiders and should be considered the *enhanced* Talmud.

Part of what makes the Ten Commandments or the Constitution relevant long after their respective historical moments of production is the potency of their symbolic meaning. This symbolic meaning is sometimes employed without awareness of essential or enhanced meanings and even, occasionally, in contradiction to those meanings. People regularly invoke the Ten Commandments as a symbol of divine legislation and moral justice without knowing the specifics of the commandments themselves. The Constitution is invoked as the basis for liberal democracy and all that is noble about the United States without recourse to its specific words. This book argues that the Talmud also possesses a register of meaning that is only loosely connected with the underlying original content (essential) of the work or the vast apparatus of reception (enhanced). When functioning in this *emblematic* register, the Talmud is sometimes concrete and sometimes abstract. It is concrete when the Talmud embodies tradition and a particular modern Jewish movement attempts to behead the personified Talmud on the way to a repudiation of tradition. It is abstract when the Talmud is made to signify the idea of Judaism or inherent Jewishness.

The three different registers of Talmudic meaning map somewhat neatly on three distinct scholarly fields. Academic scholars of the Talmud are primarily interested in the essential Talmud. Traditional scholars of the



Talmud engage the enhanced Talmud. Historians of all periods take a strong interest in the emblematic Talmud.

Chaim Potok's 1969 bestseller *The Promise* builds on the tension that exists among the essential, enhanced, and emblematic Talmuds.[1] The novel's first-person narrator, Reuven Malter, is a rabbinical student who spends his days immersed in intense study of the Talmud. The Talmud as a work of literature features multiple layers of rabbinic argumentation about law, myth, and theology. Students of the Talmud within a *yeshiva* [traditional learning] environment strive to decipher the Talmud's often messy text. The density and complexity of the Talmud make the reader work actively to produce both basic comprehension and a coherent sense of the whole. Talmudic aptitude is measured by assessing a reader's ability to wring coherence out of the text. Talmudic genius inheres in the ability to reimagine the set of Talmudic variables to resolve a dilemma.

*The Promise* is set in postwar New York, and its central plot device is a battle over how to read the Talmud. Reuven Malter has been trained by his father to employ the tools of a textual historian to resolve Talmudic difficulties. By altering a problematic text, the text critic can make the Talmud readable. When the correction is based on a text witness—a different version of the original text preserved in a handwritten manuscript or an alternate print edition—it is as if history itself justifies the alteration. According to the Malters' methodology, the scholar is fixing a mistake that has crept into the print editions and caused the textual dilemma. The correction restores

the text to its original unblemished form. Implicitly, this methodology argues that the essential meaning of the text—the historically original understanding—is its correct meaning.

For Rav Kalman, Reuven Malter's teacher and his father's nemesis, textual emendation is heretical. It is a cheap solution to an expensive problem. Generations of Talmud scholars sweated over the textual inconsistencies and performed logical calisthenics to circumvent and resolve such issues. Emendation retroactively transforms these creative attempts—part of the literature that constitutes the enhanced Talmud—rendering them mistaken or irrelevant. Rav Kalman resists the alluring historical solution to preserve a vision of the Talmud's reception that understands the millennium-long debate about Talmudic ideas asynchronically, as if all the rabbis from all the periods and cultures participate in a single debate that defies time and space. In defense of the expansive Talmud, Rav Kalman willfully blinds himself to the easy solution of changing the original text. And, as a result, the Talmud is an enhanced text that includes both the original text and the millennium of texts that comment upon the original.

The climactic scene of *The Promise* stages an oral examination to certify Reuven Malter as a rabbi.[2] A tribunal disguised as an exam, the scene finds the book's hero facing a three-person panel of rabbis who test him on his control of the corpus of rabbinic Judaism. The examination stretches over several days. On day one, Reuven handles the panel's questions with aplomb, demonstrating



his ability to make both the Talmud and its commentarial texts readable—he demonstrates mastery of the enhanced Talmud. As the exam moves to a second day, though, the panel targets the core methodological divide between Rav Kalman and David Malter. Kalman begins to ask thorny questions of Talmudic exegesis—how to explain a passage's troubling logic and how to resolve apparent contradictions within the Talmudic corpus. Initially reluctant to employ his critical methodology, Reuven eventually demonstrates his aptitude (indeed his creative brilliance) by resolving textual problems through emendation—by correcting the words of the text that appear in the standard print editions. His emendations are progressively more "heretical": his first emendation draws on a variant of the text found in the printed edition of a related passage in another tractate of the Babylonian Talmud; his second derives from a version of the text found in an alternate print edition of the Palestinian Talmud; his third and most egregious draws upon a version of the text found in a handwritten medieval manuscript. This last emendation is simultaneously the most impressive (Reuven had hypothesized the existence of a variant and then discovered it) and the most heretical (from Rav Kalman's perspective). Canceling the final day of exams, Rav Kalman says that he has heard enough and indicates that Reuven will not be ordained. The rabbi relents, with conditions, a day later.

That the central tension of a major American best-selling novel should be about how one reads the Talmud may seem strange. But the conflict encapsulates one of

the core dramas of religion in modernity. The Malters, who wish to emend their Talmudic texts, stand on the side of reason, history, and autonomy, while Rav Kalman stands on the side of mystification, tradition, and romanticism. Their clash is a microcosm of the modern post-Enlightenment struggle between traditional religious life and modern scientific modes of thinking. It is precisely because the Talmud is both intellectually sophisticated and religiously essential that it can function for the novelist as the perfect symbol to evoke this tension between the critical scientific method that wishes to recover a rational historical object, and the traditional intellectual methodology that finds comfort in resisting history, and embracing the most expansive version of the Talmud.

The novel is set in the postwar period because it seeks to ask what Jewishness and Judaism will become in the Holocaust's wake. Debates about how to read the Talmud are nothing less than ruminations about the anxiety of Jewish survival after World War II. Rav Kalman's resistance to modernity is buttressed by the deep-seated fear that capitulating to text criticism finishes Hitler's work.[3] On the other side, Reuven Malter's incredulity at his teacher's resistance is a mark of his comfort in American modernity.

Historically, the tension between the essential and enhanced Talmuds in the United States was largely dissipated by the splintering that separated Conservative Judaism from Orthodox Judaism as two different denominations.[4] Today, critical readers of the Talmud and traditional readers of the Talmud in the United



States have retreated into denominational corners. Without the shared religious space of institutions and the shared public space of intellectual journals, the two distinct interpretive communities only rarely intersect.

By making Talmudic reading a stand-in for Judaism in modernity, Chaim Potok transforms the Talmud into a symbolic rope being tugged by two visions of the future of Judaism. The tension between the traditional and critical readers is significant not for its particulars (the novel doesn't really provide the specifics of either the essential or the enhanced Talmudic particulars) but because of its larger ramifications for Judaism and the universal questions of tradition and modernity. For all his originality, Potok did not originate this symbolic usage of the Talmud. For as long as the Talmud has been a canonical work, it has served as a symbol of Judaism, Jewishness, and Jews. It is this Talmudic personification in the emblematic register that most entitles the Talmud to a biography.

This book explores the three different registers of Talmudic meaning both as discrete and as intertwined entities. The opening two chapters provide historical context for understanding the essential Talmud and some examples to introduce the hero of our story. The third chapter describes the processes through which the enhanced Talmud began to be generated, while the fourth includes a large quantity of material about the earliest emblematic uses of the Talmud. The final chapter presents three stories of the Talmud in modernity that provide a thick picture of the Talmud's tremendous success and contemporary popularity.

# Gestation and Birth
(Essential Talmud Part One)

CHAPTER 1

## Talmud on Fire Liability

The Talmud is a commentary on an earlier law code, the Mishnah, which was published orally by the rabbis around the year 200 CE. Much like other ancient law codes (including the ones found in the Hebrew Bible) the Mishnah writes many of its laws as hypothetical scenarios. A far-fetched hypothetical is grounds for a fascinating Talmudic discussion of the basis of liability for fire that damages a neighbor's property. This brief foray into a Talmudic text introduces a passage about fire liability that this book will return to in greater depth in subsequent chapters.

**Mishnah Baba Qamma 2:3b**

> A dog who took a cake [baking on top of hot coals] and went to a haystack; it ate the cake and set fire to the haystack:
>
> on the cake [an owner] pays full damages, but on the haystack [an owner pays] half damages.[1]

The owner pays the full value of the eaten cake and half of the value of the burnt haystack. Liability for the full value of the cake follows a basic principle of expectation: since animals can be expected to eat cake, one is responsible to watch them and ensure that they do not do so. For the haystack, the owner of the dog is liable for half of the damages. No rationale is offered in the Mishnah and a reader must work to produce an explanation. One common explanation is that the burning of a haystack is unexpected; since the owner could not have anticipated this form of damage, the owner is only liable for half of the damages. Another common explanation considers fire damage to be a form of secondarily causal damage such as when pebbles projected by an animal's moving feet break a pane of glass.

The Talmud begins its discussion of this mishnah by citing a debate between two rabbis, R' Yohanan and Resh Laqish, who lived in Palestine and were active in the first half of the third century.

**Babylonian Talmud Baba Qamma 22a**

> It was said:[2] R' Yohanan said, "his fire[3] because [it is] his arrow."
> And Resh Laqish[4] said, "his fire because [it is] his property."

Though the Babylonian Talmud was produced in Babylonia, it preserves many texts that were first articulated by Palestinian rabbis. Each of the two rabbis explains fire liability by drawing a specific analogy. R' Yohanan says that liability for fire is like liability for an arrow: just as one is liable for the distant damage caused by a launched arrow, one is also liable for the distant damage caused by kindled fire. Resh Laqish analogizes liability for fire to property liability: as one is liable for damage caused by property (such as one's animal), one is also liable for damage caused by a set fire.

The Talmud's anonymous voice teases out the differences between these two analogies by asking after the stakes for each individual rabbi.

> Why did Resh Laqish not explain like R' Yohanan?
> (He would say to you,)[5] "arrows move from his force, this [fire] did not move from his force."
>
> And why did R' Yohanan not explain like Resh Laqish?
> (He would say to you,)[6] "property has tangibility, this [fire] does not have tangibility."

Why does R' Yohanan prefer the analogy to an arrow and Resh Laqish the analogy to property? Resh Laqish rejects the analogy to the arrow because the damage caused by the arrow is directly linked to the energy of the archer's pulling the bow; while fire may share the feature of being able to cause distant damage, it does not share this direct connection between the energy of the person responsible and the damage. R' Yohanan rejects the analogy to property because property is tangible while fire is not; though the two are similar since one is responsible for them, there is a fundamental difference between responsibility for tangible items and intangible ones.

The Talmudic passage continues by connecting this debate about fire liability to the mishnah cited above on which the entire Talmudic passage is something of a commentary. Drawing an inference, the Talmud asserts that the mishnah seems to support the view of R' Yohanan that liability for fire is like liability for the damage of an arrow:

> It was stated in the Mishnah, "A dog who took a cake, etc."[7]
>
> Granted that for [R' Yohanan] who said (fire liability is)[8] like an arrow, the arrow is of the dog[9] [and for this reason the owner is not liable for full damages]. But for [Resh Laqish] who said (fire liability)[10] is like property liability, (this fire)[11] is not the property of the dog's owner?

A hungry dog eats a cake that was cooking on some coals. The cake is still attached to a coal and the dog transports the coal to a haystack, setting the stack on fire and burning it to the ground. The mishnah rules that the owner of the dog pays full damages for the cake and half damages for the haystack. The Talmud's anonymous narrator seeks to determine whether this mishnah about a bizarre case of fire liability holds the clue to the conceptual debate regarding whether fire is like an arrow or like other property. Drawing attention to the idea of half damages for the haystack, the Talmud's anonymous voice suggests that this scenario's law reflects the arrow view more than the property view. For while one can understand a dog owner's responsibility for the secondary effects of the dog as akin to the repercussions of shooting an arrow, the indirect nature of this tort makes any liability for the haystack hard to explain for someone who thinks of fire liability as based on liability for one's property.

The anonymous voice of the Talmud does not concede that this bizarre case of the Mishnah supports R' Yohanan. Rather, it modifies the narrative of the scenario to create space for Resh Laqish's property-based notion of fire liability.

> Here with what are we dealing? [With a scenario in which the dog] threw the coal. For the cake [the dog's owner] pays full damages, for the site of the coal [the dog's owner] pays[12] half damages and for the entire haystack [the dog's owner] is exempt.

In this new version of the story, the dog threw the coal in the air and it landed on the haystack. The owner of the dog is liable for full damages for the cake, half damages for the initial landing spot of the coal and exempt from the damage to the rest of the haystack. By modifying the story such that the dog threw the cake/coal onto the haystack, the Talmud has created space within which to understand the mishnah as agreeing with the conceptual approach of Resh Laqish that fire liability is based on property liability.

The Talmud is replete with passages like this one that explore the intricacies of law (ritual, civil, criminal), metaphysics, and theology. The Talmudic method of drilling down into the underlying bedrock to uncover

core doctrines involves a marriage of creative logical deduction with careful analysis of valued canonical texts. The specific way in which the Talmud attempts to maintain the validity of the mishnah as a core textual precedent alongside the conceptual possibility of fire liability as a subset of property liability is thorny, and became the basis for commentarial controversies in the enhanced Talmud. This book will return to further probe this Talmudic passage more extensively in the second chapter, and to unpack the controversies surrounding its interpretation in the third chapter. For now, though, this taste of the Talmud provokes a series of questions:

1. The passage opens with a legal dictum from the Mishnah. What is the Mishnah and in what ways is it central to the Talmud?
2. R' Yohanan and Resh Laqish are two named rabbis whose debate structures the passage. Who were these rabbis, and what was the context in which they debated the conceptual character of fire liability?
3. The original debate is enriched through a seemingly unique idiosyncratic textual discourse. Where did this interesting rhetorical and exegetical project come from, and how did it come to be the quintessence of rabbinic religiosity?
4. The anonymous narrator thickens the respective conceptual approaches of the two named rabbis and draws their debate into conversation with the Mishnah's strange hypothetical of the dog with the cake. Who is this anonymous narrator?
5. The passage about fire liability continues in the Talmud for a few pages in the standard print editions. As we will see in the next chapter, the Talmud uses different scenarios found in rabbinic legal precepts to prove that fire liability is more akin to an arrow than to property liability and each of these is explained away.[13] Then a fourth-century Babylonian rabbi, Abaye, draws attention to a statutory scenario that works better with a property liability understanding and not as well with an arrow liability approach, and the Talmud works extremely hard to explain this problem away. The passage's conclusion is that even those who think that liability for fire is akin to arrow liability must accept, at times, that one is liable for fire because it is one's property. A reader who successfully follows the intricacies of this passage might justifiably wonder about its goals. Is the reader expected to land on a specific understanding of fire liability? If not, does this passage have a specific learning outcome? Do Talmudic passages have goals?

## Who Were the Rabbis?

### History: Continuity and Disruption

Among its many stories, the Talmud includes a legendary rabbinic origin tale.[14]

> Abba Sikra, the head of the *biryoni*[15] in Jerusalem, was the son of the sister of Rabban Yohanan b. Zakkai.

[R. Yohanan] sent (to him)[16] saying, "Come visit me privately."[17]

When [Abba Sikra] came, he said to him, "How long are you going to act this way and kill all the people with starvation?"

[Abba Sikra] replied: "What can I do? If I say something[18] to them, they will kill me."

[R. Yohanan] said: "Devise some plan for me to escape. Perhaps there will be a small salvation."

[Abba Sikra] said to him: "Pretend to be ill, and let everyone come to inquire about you. Bring something evil smelling and put it by you so that they will say you are dead.[19] Let then your disciples get under your bed, (but no others, so that they shall not notice that you are still light,)[20] since they know that a living being is lighter (than a corpse)."[21]

[R. Yohanan] did so, and R. Eliezer went [under the bier] from one side and R. Joshua from the other. When they reached the opening, [some of the people inside the walls] wanted to run a lance through [the bier].

[They][22] said to them: "Shall [the Romans] say. They have pierced their Master?"

They wanted to jostle it.

[They] said to them: "Shall they say that they pushed their Master?"

They opened a town gate[23] for him and (he got out).[24]

When [R. Yohanan] reached [the Romans] he said, "Peace to you, O king, peace to you, O king."



[Vespasian] said: "Your life is forfeit on two counts, one because I am not a king (and you call me king),[25] and again, if I am a king, why did you not come to me (before now)?"[26]

[R. Yohanan] replied: "As for your saying that you are not a king, (in truth you are a king),[27] since if you were not a king Jerusalem would not be delivered into your hand, as it is written (Isaiah 10:34), "And Lebanon shall fall by a mighty one." 'Mighty one' [is an epithet] applied only to a king, as it is written (Jeremiah 30:21), "And their mighty one shall be of themselves etc.;" and Lebanon refers to the Sanctuary, as it says (Deuteronomy 3:25), "This goodly mountain and Lebanon."[28] As for your question, why (if you are a king),[29] I did not come to you (till now),[30] [the answer is that] the *biryoni* among us did not let me."

[Vespasian] said to him: "If there is a jar of honey round which a serpent[31] is wound, would they not break the jar to get rid of the serpent?"

[R. Yohanan] could give no answer.[32] . . .

At this point a messenger came to him (from Rome)[33] saying, "Up, for the Caesar is dead, and the notables of Rome have arranged[34] to establish you as head [of the State]."

[Vespasian][35] had just finished putting on one boot. When he tried to put on the other he could not. He tried to take off the first but it would not come off. (He said: "What is the meaning of this?)"[36]

R. Yohanan said to him: "(Do not worry:)[37] the good news has done it, as it says (Proverbs 15:30),

'Good tidings make the bone fat.' What is the remedy? Let someone whom you dislike come and pass before you, as it is written (Proverbs 17:22), 'A broken spirit dries up the bones.'" He did so, [and the boot] went on.

[Vespasian] said to him: "Seeing that you are so wise, why did you not come to me (till now)?"[38]

[R. Yohanan] said: "Have I not told you?"—

[Vespasian] retorted: "I too have told you."

[Vespasian] said: "I am now going, and will send someone [to take my place]. Ask something of me and I will grant it to you."

[R. Yohanan] said to him: Give me[39] Yavneh and its Wise Men, and the [family] chain of Rabban Gamaliel, and physicians to heal R. Zadoq.

The setting for the legend is the Roman siege of Jerusalem in 70 CE. A rabbinic intellectual inside Jerusalem, Rabban Yohanan ben Zakkai, uses the ruse of death to sneak out of the city and speak directly with Vespasian, the Roman general. Fumbling over himself, the rabbi refers to the general as a monarch and the general considers this a blasphemous offense. When an emissary arrives mid-conversation informing Vespasian of a Roman election that has elevated him to the position of Caesar, the newly crowned monarch recognizes the prophetic abilities of his interlocutor. Rabban Yohanan ben Zakkai frames his ability to see the future as a byproduct of a midrashic reading of biblical verses that had predicted Jerusalem's destruction. Vespasian offers him three requests. Rabban Yohanan ben Zakkai asks



for the preservation of the Gamaliel family, for a healer to heal Rabbi Zadoq, and for Yavneh (Jamnia) and its rabbis. This last request is often understood as a trade of Jerusalem for rabbinic Judaism.[40]

The Roman siege of the city of Jerusalem[41] was a siege preceding the final battle in a war that had stretched on for more than three years. The war had been triggered by the rise of militant Judean factions who sought the kind of political autonomy enjoyed earlier in the century under the Hasmonean rulers. Such Judean autonomy was not desired by the Romans, who understood the positioning of biblical Israel along the Mediterranean Sea as pivotal.

The rabbis who collectively produced the corpus of writings known as "rabbinic literature" did not produce epic poems like Homer's *Odyssey* or national historiography along the lines of Thucydides' *History of the Peloponnesian War*.[42] On the rare occasion that they produced histories, the rabbis produced short episodic legends that densely capture important themes. The story of Rabban Yohanan Ben Zakkai and Vespasian is one such legend.

In the ancient world, religion was not a separable piece of cultural activity or identity. Religion was closely related to national activity and identity. In the decades leading up to the Temple's destruction, there was sectarian strife that pitted certain sects against the national religious leadership and its ideology, but even these sects still venerated Jerusalem. Rabbinic Judaism was a movement that gave up on the idea of political autonomy in exchange for a portable and robust religiosity. Rabban

Yohanan ben Zakkai's requests explicitly did not include a request for Jerusalem itself or for political power; he was prepared to sacrifice political hegemony for religious opportunity.

The term "sacrifice" gives pause. In giving up Jerusalem, Rabban Yohanan ben Zakkai not only sacrificed political ambition, he also acquiesced to the loss of the Temple—the building that had been the essential space of the Second Temple cult. Judean religiosity in the Second Temple period required the sacrifices that were the nearly exclusive cultic ritual; these could only be performed in Jerusalem's Temple. Rabban Yohanan ben Zakkai chooses a diasporic form of religiosity with no Temple and sacrifices, effectively renouncing the central religious cultic behaviors of prior generations.

To someone schooled in the Hebrew Bible, the story of the rabbi and the general may be surprising for its failure to directly feature God as a character. The God of the Hebrew Bible is incredibly and overwhelmingly present. God's presence is manifest both in communication and action. Within the patriarchal stories of Genesis, God is a character who interacts with other characters, engaging them in dialogue from on high. As one progresses through the historical time of the biblical story, God remains an active presence, but communication is mediated through the person of the prophet, who is distinguished by his or her ability to hear God's messages. Even though communication with God is limited, the biblical narratives continue to understand God to have an active role in historical events. The legendary



encounter with Vespasian models a different mode of relating to God than through direct divine communication or manifestation. When God appears in rabbinic texts, that appearance is often the result of human manipulation. Rabban Yohanan ben Zakkai employs *midrash*, a creative mode of reading the Bible, to *read* God into historical events. God's control of the events of the day is less direct; there are neither Egyptian plagues nor the smiting of an Assyrian army. God is present because the Bible is a lens through which to process world events. The rabbi empowers himself to see God in a world which no longer has a direct prophetic line of communication and no longer witnesses miraculous divine intervention.

Midrash, a form of biblical interpretation which will be further explained below, empowers the rabbi to introduce God into a set of historical events from which God is seemingly absent. God's voice is now the voice of the Bible *as read by the rabbi*. The rabbi is the new prophet who produces God's word in the world.[43] The relationship between God and rabbi differs from the relationship between God and prophet. The God-prophet relationship is a unidirectional one in which God overwhelms the prophet with the message; the prophet, however reluctant, accedes and represents God to the people. The God-rabbi relationship is more aptly characterized as rabbi-God; it is the rabbi who produces God in the world through an act of interpretation.

The legend of the rabbi and the Roman general has been popular throughout Jewish history because it

prefigures various events in Jewish realpolitik in the medieval and early modern periods.[44] Gauging the limited likelihood of resisting the enemy, Rabban Yohanan Ben Zakkai strikes up a vertical alliance with the most powerful enemy authority and works out a contract.[45] Pragmatism is strange in a legendary text. Rarely do peoples tout their pragmatic compromises. But the rabbis embrace their status as a political minority by creating a legend that extols a rabbi for just that pragmatism.

This rabbinic legend is often employed to assert that *rabbinic Judaism reinvents Judaism in the wake of the Temple's destruction*. This pithy formulation captures a fundamental truth about the rabbinic project. The legend of the encounter with Vespasian is evidence that the rabbis themselves were occasionally aware of this assessment of their project. But the legend is ahistorical, and the historical record is more complicated than the pithy formulation. By shifting to the unreliability of the story as history, we can attend to an alternative understanding of the rabbis that supplements the reinvention claim with an understanding of the rabbis as a continuation of Second Temple realities.

It is difficult to accept the legend as historiography.[46] It is unlikely that the historical factions in Jerusalem shared the strong commitment to the laws of purity that enables the ruse that gets the rabbi outside the city walls. The opening of the gates to the city to remove the body would literally open the door to the enemy. The similar ease with which Rabban Yohanan ben Zakkai can meet and address the Roman general is suspicious.



External historical data also makes the story hard to accept. Roman sources indicate that Vespasian first seized the title of Caesar in the Middle East and only afterwards received Roman consular approval.[47] The episode in the story would have taken place in 69–70 CE, and shows the rabbis' willing to sacrifice political sovereignty for religious space. But in 132 CE, various rabbis supported Simon ben Kosiba (Bar Kokhba) in his military revolt against Roman rule in Judea to restore Jewish self-rule. Historically, it is the crushing of *this* revolt that eliminated Jewish fantasies of sovereignty.

An autobiographical story nearly identical to the legend of Vespasian and Rabban Yohanan appears in the work of Josephus, the first-century Jewish historian who switched from the Judean to the Roman side in the war and wrote various extant works in Greek about those experiences.[48] *The Jewish War* describes how Josephus, the Judean general, was imprisoned by the Romans upon surrendering. As he was led off in chains, Josephus prophesied that Vespasian would be named the Caesar. When the prediction came true a year later, Vespasian informed his son Titus, and Josephus was elevated to Titus' *aide-de-camp*. Josephus spent the rest of the war on the Roman side before retiring to Rome where he wrote his works.

Though Josephus was a contemporary first century eyewitness to the events described, discrepancies between his own versions and his tendency towards self-aggrandizement make scholars suspicious of his work. In this particular case, Josephus' Vespasian story draws on tropes from the biblical Joseph story in which a Jewish

character is imprisoned and elevated to an important political post in exchange for an accurate prophetic prediction.[49] Bracketing the question of the historical reliability of Josephus' story about Vespasian, it is clear that a rabbinic writer, working between two to four centuries after Josephus, was familiar with the basic contours of Josephus' story when the Talmudic legend was crafted.[50]

The unreliability of the legend as historiography throws suspicion on its message that rabbinic Judaism is a post-Temple innovation, and pushes for consideration of an opposing characterization—that the rabbis continue the ideological and social realities that were present during the Second Temple period. *The rabbis magnify and unify the energy of the sectarian movements of the Second Temple period.*[51]

The elite populations of first-century Judea produced several different sects of Judaism. These sects self-segregated from the Jewish population at large—and each other—to engage in religious practices and scholarship. They were polemical rivals divided by core fundamental differences with respect to ideology and law. For all their differences, though, the sects had much in common with one another. They were highly scholastic, predominantly male organizations that filtered the world through a primarily religious lens. Their differing theologies all bore the imprint of apocalypticism, and they were staunchly committed, as both producers and consumers, to the idea of a scriptural canon.

The rabbis were a social group that perpetuated many of the values of these earlier sects without preserving the



polemical reality of multiple sects.[52] Some of the rabbis were biological descendants of Pharisees. Acts of the Apostles, a New Testament work, features a Pharisee leader named Gamaliel who saves the apostles from execution by a Jewish tribunal, which flogs them instead.[53] Rabbinic texts fill out the genealogy of Gamaliel's family, tracing a distinguished paternal line from the time of the Pharisees to the time of the rabbis. It is this distinguished family of heirs to sectarian Judaism whom Rabban Yohanan ben Zakkai saves with one of his three requests.

Both the sects and the rabbis actively attempted to resist the overwhelming influence of Hellenistic culture. The Hasmonean monarchy that ruled greater Judea for much of the first two centuries BCE was founded on a revolt that had an element of ideological resistance to Hellenic culture. The Maccabean resistance to Hellenism was but a momentary and minority phenomenon. As the centuries wore on, Judean culture became increasingly indistinguishable from other Hellenic subcultures.[54] The Hasmonean monarchs resembled other vassal kings and their children were sent abroad to receive schooling in Hellenistic schools. The sects that emerged in the last two centuries BCE were, in part, a response to increasing majority Hellenization. In this sense, they continued the trajectory of the zealous Maccabees who had revolted against Antiochus IV and set the Hasmonean Era in motion. As the populace and the royal elite were both becoming more Hellenized, the sects isolated themselves within the hermetic confines of the textual and cultic Jewish tradition. The rabbis carried on this mantle after the Temple's destruction.

Many rabbinic texts speak ill of Greek culture and mandate practices—like prohibitions on teaching Greek to one's children—that are designed to keep Jews from being overrun by Greek ideas and inventions.[55] But by the close of the first century CE, Judea had been under Greco-Roman cultural influence for more than four hundred years. Roughly one-third of the vocabulary in rabbinic Hebrew and rabbinic Aramaic is comprised of words with Greek etymologies.[56] Archeological evidence of the period demonstrates the ubiquitous Greek influence on cultural production from pottery to coinage to sculpture.[57] This helps explain how the structure of the rabbis' primary cultural activity—scholarship—was a Jewish facsimile of Greek scholastic culture.

One of the profound transformations wrought by Hellenism within Greek culture was the transition from the centrality of the city to the centrality of education.[58] That form of education was referred to as *paideia*, a term that meant both education and culture.[59] Where once one would want a child brought up as a warrior in service of city, now one aspired to educate a child through (or to) paideia into the leadership class. Paideia instruction was divided into three tiers: teachers of letters, grammar, and rhetoric, respectively. The elite student was one who could rise to the third tier and excel in its rhetorical exercises.

Similarly, the rabbinic educational movement was part of a transformation from the centrality of city (Jerusalem) to the centrality of education (rabbinic learning). A Jewish child would be trained by a teacher of letters before moving on to a teacher of biblical reading and comprehension.[60] The role of the Bible was like the role of classical literature, which was the subject of instruction in the Greek system. Only advanced learners would progress to study rabbinic basic texts and be trained in the specific skills of argumentation and dialogue that contribute so much to the production of the Talmud. Like the Greeks, who understood paideia as a meritocratic way for lower classes to elevate their position in society, the rabbis understood their social practice of Torah study as a meritocratic enterprise open to all strata of society. Some of the most compelling rabbinic legends are rags-to-riches stories of men who start out ignorant, poor, and powerless before becoming wise, wealthy, and powerful through the vehicle of Torah education.[61]

The legend of Rabban Yohanan ben Zakkai and Vespasian testifies to the idea that the rabbis invented something new that replaced the Temple-based Judaism that had been rendered impossible by Jerusalem's destruction. At the same time, critical examination of the legend's limitations as history allows one to see that the rabbis both continued the legacy of the sects that thrived in the late Second Temple period, and drew upon a Hellenistic intellectual educational model.

### Theology: Torah as Abstract Ideal

Legends are not the only types of texts in which the rabbis produced their own origin stories, and the rabbis did not always connect their origins with the destruction of

Jerusalem. At times, the rabbis indeed told their story as an uninterrupted continuation of prior religious realities. *Ethics of the Fathers*, a *sui generis* tractate of the Mishnah that is a compilation of proverbs and ethical teachings, opens with a chain of transmission that connects rabbinic literature with God's revelation at Sinai:

> Moses received the Torah from Sinai and transmitted it to Joshua;
> and Joshua to the elders;
> and the elders to the prophets;
> and the prophets transmitted it to the men of the Great Assembly . . .
> Simeon the righteous one was one of the remaining members of the men of the Great Assembly . . .
> (*Mishnah Avot* 1:1–2)

Within a few words, the text moves from revelation on Mount Sinai to the late Second Temple period. The text's continuation is a bit more complicated, but a few additional generational links reach the period of the *tannaim*, the rabbis who were active before the oral publication of the Mishnah around the year 200 CE.

In the opening line of this chain, Torah is the entity that Moses receives and transmits to the rabbinic present. The chain of transmission is a genre employed in the Greek writings of near contemporary Stoic philosophers.[62] While the Stoics were interested in philosophical *truth*, the rabbis were interested in *Torah*. "Torah" literally means teaching, but the type of lesson implied by the word Torah led Egyptian Jews to translate the term into



Greek as "*nomos*" or law. "Torah" is the teaching of a religious way of being in the world.

The text describes Moses as receiving Torah "from" Sinai. The sentence makes Sinai (rather than God) the object of the preposition "from"—the *mountain* is the source of this teaching. This displacement of God is not incidental; it reflects a broader rabbinic substitution of the abstract value of Torah for the concrete God whose tangible home in Jerusalem no longer exists.[63]

The theology of the rabbis is often characterized as a doctrine of two Torahs: a written Torah produced with ink on parchment, and an oral Torah produced in an unwritten ether of transmission from teacher to student, that encapsulates ideas of Judaism not contained within the verses of the written Torah's text. This helpful characterization of rabbinic theology ends up producing the oral Torah as an analog to the written—one could imagine the oral Torah as a virtual text containing all the traditions missing from the written Torah. In the opening to *Ethics of the Fathers*, in contrast, Torah is not a text but an abstract concept. Moses is not receiving a second (oral) book.[64] Moses receives an idea of Torah more powerful than any tangible book.

Throughout their writings, the rabbis display a profound commitment to Torah that transcends its function as an educational book or a ritual object. Torah is the rabbinic *raison d'être*. Life derives meaning from its association with the exercise of learning and living Torah. Though the rabbis value biblical laws and understand the Bible's mandates as the specific commands of a divine

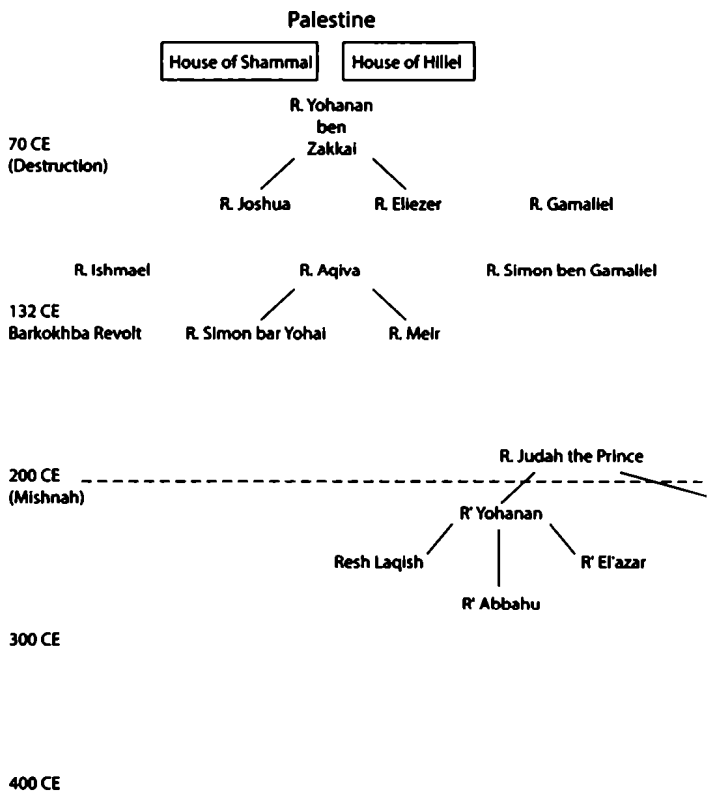
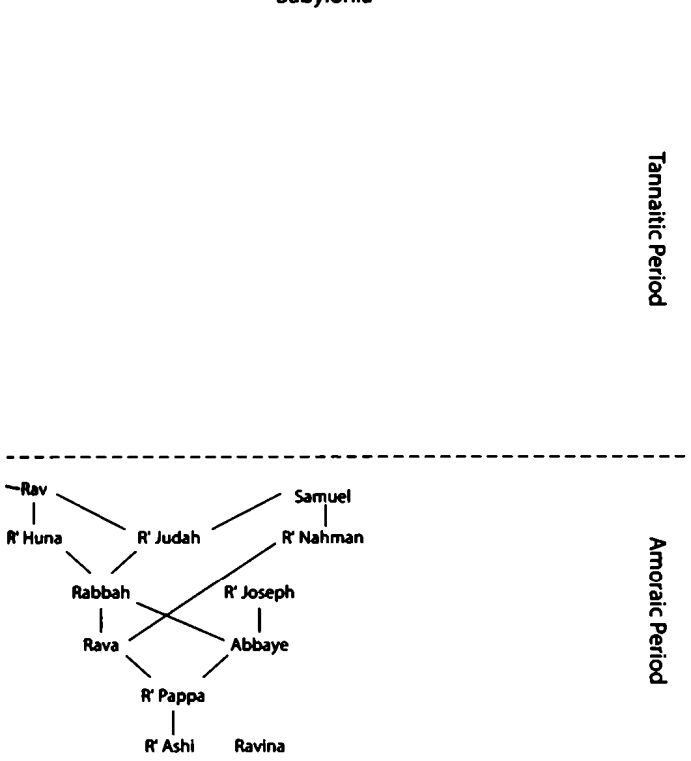



FIGURE 1.1. Selective Genealogy of the Rabbis

commander, commitment to Torah study supersedes. While the rabbis do not advocate a monastic disappearance from the world, Torah study challenges material needs, and Torah relationships challenge those of flesh and blood.[65] Scholastic pursuit of Torah-as-ideal epitomizes religious commitment. Along the way, the






prioritization of Torah and the scholastic way of life that commits fully to its acquisition, threatens the religious primacy of God, ritual, liturgy, and all other cultic aspects of Judaism. And this prioritization is profoundly important to the biography of the Talmud for two reasons. First, because the Talmud is the result of this scholastic

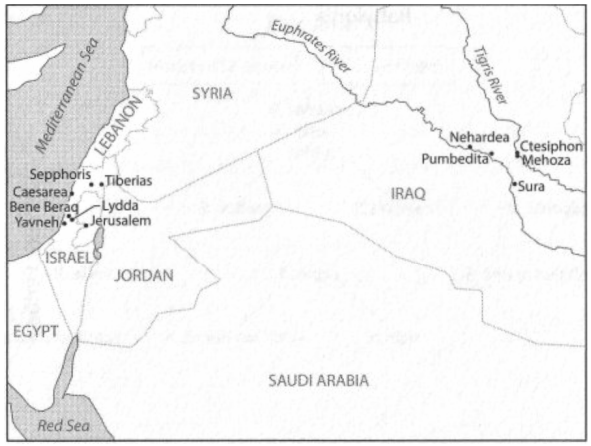



FIGURE 1.2. Map of Palestine/Babylonia

prioritization—it was produced as part of this new cultural commitment to Torah above all. Second, because it is the cause of this increased prioritization—its discourse of reception made it into the central piece of a religion built around scholasticism as religious devotion. *Within a religious production that has rewritten its story and changed its lead from God to Torah, the part of Torah has been played for over a millennium by the Babylonian Talmud.*

## How the Talmud Was Made

The early rabbis engaged in scholastic activity in small *ad hoc* disciple circles; each consisted of a charismatic rabbi surrounded by a handful of students.[66] In the period



immediately surrounding the destruction of the Second Temple and for the next hundred years, the rabbis engaged in two pedagogical practices—one primarily interpretive and the other primarily a mode of organizing the interpreted material. The interpretive method of study was called midrash while the organizational articulation was called mishnah.[67]

### Midrash

During the Second Temple period, the Hebrew Bible was becoming both increasingly central and more solidly fixed. The early rabbis studied their Bible in ways that contributed both to the nature of canonical authority (what it means for there to be a canon) and to the contours of the canon (what is included and what excluded).[68] They read their Bible in almost absurdly punctilious ways. In the hands of these rabbis, the Hebrew Bible became a cryptic code in need of deciphering. Every nonessential component of syntax (and even spelling) came to be understood as an opportunity for producing new meanings, whether legal, narrative, or theological. Biblical stories were expanded in plot, characterization, and drama; the nature of all things theological (God, heavens, Torah, angels, etc.) became richer; legal statutes were made both more specific and principled. At the same time, the rabbis developed a technique of resolving issues in one book of the Hebrew Bible through recourse to another passage of the Hebrew Bible.[69] This, even though the Hebrew Bible is an

anthology of works in different genres written by different authors at different times. Whether self-consciously or not, the rabbis read verses in the book of Genesis, for example, in light of some in the Song of Songs and vice versa. This reading practice both reflected the rabbis' understanding of the boundaries of the biblical canon and solidified those boundaries by broadcasting which books were to be included as part of the hermeneutic corpus.

### Mishnah

Even as the rabbis devoted significant backward glances at the Bible, they also engaged in a form of study that produced something new. This pedagogical process involved formulating their religious culture in statutory form as law. The ritual requirements of prayer, the calendrical requirements of the holidays, the particulars of sacraments and sacrifices; all of these were formulated as religious statutes. This procedure produced clarity within a cultural environment in which both inherited practices and interpretive polysemy could produce confusion about everything from basic requirements to smaller details. Organization was a major purpose of this form of pedagogy. The anthological makeup of the Hebrew Bible contributed a basic lack of substantive organization to the Hebrew Bible; the exegetical practice of reading across the corpus further undermined even local coverage of a religious subject. If the exegetical practices allowed the creative free work associated with the right



side of the brain, the statutory formulation organized the material as might the left side of the brain.

Over the course of the post-Temple period, the two pedagogical practices of midrash and mishnah influenced each other but remained separate. During the second century CE, various rabbinic disciple circles developed their own approaches and produced varying versions of similar works. Within the world of midrash, Rabbi Aqiva and Rabbi Ishmael (both active in the first half of the second century) developed slightly different, consistent philosophies.[70] On a hermeneutic (rather than ideological) level, Ishmael was restrained and Aqiva creative.[71] What Aqiva interpreted as an extraneous feature (worthy of interpretation), Ishmael considered a regular feature of language. These philosophical differences led to the production of two midrashic oral traditions covering four Pentateuchal books (Exodus, Leviticus, Numbers, and Deuteronomy).[72]

Among the rabbis who constituted the Aqiva school of midrash, a standard practice developed to produce works of legal statutes covering all the topics of Judaism. This pedagogical process continued until the end of the second century, when a political figure and scholar, Rabbi Judah the Prince, gathered the different mishnah traditions, edited, and redacted them into the definitive Mishnah ("the Mishnah"). The Mishnah consists of sixty tractates that are organized into six orders. The Mishnah contains three levels of organization: there is a rationale for individual orders (e.g., Moed includes tractates related to holidays and the calendar), for individual

tractates (e.g., Sukkot has its own tractate within Moed) and for individual chapters (e.g., the rules regarding the gathering of the four species on Sukkot are delineated in their own chapter in tractate Sukkah).[73]

Production of the Mishnah had a major effect on the rabbis. Over time, the Mishnah became so authoritative that it produced a chronological dividing line for the rabbis: those rabbis who lived early enough to be included in the Mishnah were called tannaim, and those rabbis active after the Mishnah's proliferation were called amoraim. It would eventually come to be understood within the rabbinic community that an *amora* could not directly contest the opinion of a *tanna*. The arrival of the Mishnah also affected the way in which the rabbis studied. Where tannaim bifurcated their study time into mishnah-style and midrash-style conversations, amoraim developed talmud-style conversations by formally structuring their study around the Mishnah but including midrash in those conversations.

## Talmud

As midrash was a freestyle conversation surrounding Bible, talmud was a freestyle conversation surrounding the Mishnah. A mishnaic text is usually a statute which states a requirement or prohibition clearly without authoritative source or rationale. Talmudic discussions often begin by asking, "how do we know this?" about a mishnaic rule. The answer to the question is typically a midrashic explication of a biblical verse. In this way, the



Talmudic discussion opens the Mishnah to the rich lode of rationales and verse interpretations of midrash. Several generations of rabbis (Figure 1.1) in both Palestine and Babylonia conducted talmud conversations. Through these conversations, the Palestinian and Babylonian amoraim produced new midrashic interpretations of the Bible, new mishnah-style statements of law and new interpretations of the Mishnah's laws. The amoraim often disagreed with one another about these types of text. These distinct types of text (midrashic interpretations, mishnah statements, amoraic arguments about prior texts, etc.) are all captured within the two extant Talmuds, the Palestinian and Babylonian.

The Palestinian and Babylonian Talmuds are similar in form and content, but have significant differences. The Palestinian Talmud attributes ideas to rabbis who lived until the middle of the fourth century CE, while the Babylonian Talmud attributes ideas to rabbis who lived until the end of the fourth century CE. This additional gestation period is accompanied in the Babylonian Talmud by a comparatively richer layer of anonymous editorial text. These unattributed words function as signposts that alert the reader to turns within the text. A reader well-schooled in the Babylonian Talmud can have trouble reading the Palestinian because it comparatively lacks these internal textual aids.

Despite the nearly equivalent number of tractates (thirty-three for the Babylonian and thirty-six for the Palestinian) in the respective Talmuds, the Babylonian is considerably longer than its Palestinian counterpart in

both length of individual conversations and the number of such conversations per mishnaic legal subject. [74] The Palestinian Talmud also often replicates identical passages in multiple tractates; when this phenomenon is taken into account, the Palestinian Talmud shrinks in size by a third.[75] The conversational style of the Talmud and its origins in a social educational practice led most traditional readers to the presumption that the Talmuds are a transcription of actual rabbinic conversations. This is not the case. The insufficiency of this paradigm is evident when one looks closely at the Talmud's multi-generational character. Since the Talmud's conversations span across centuries, the Talmud's literary conversations are evidently manufactured. The standard stylistic uniformity in the presentation of debates also indicates an editor's framing of controversy. In the past four decades, scholars have demonstrated that the anonymous editorial layer of the Bavli (Babylonian Talmud) routinely reflects a chronologically later voice that goes beyond framing the earlier debates and produces itself as the evolutionarily final approach to matters of law or theology.[76]

The final editors of the Talmud (sometimes referred to in the singular as the *Stam*—meaning anonymous, or in the plural as the *Stammaim*), are responsible for altering and framing the inherited traditions that are embedded in a Talmudic passage. The words of the Stam are the clearest site for identifying a conscious editing of the text.

The rabbis were active in two regions: Palestine and Babylonia (Figure 1.2). The rabbis of Palestine produced more than twenty works that survived the vagaries of



oral, handwritten, and print transmission and are available for readers today.[77] *The rabbis of Babylonia produced only one surviving work, the Babylonian Talmud*! The Babylonians left no independent works of mishnah or midrash.[78] They used the Talmud to collect the opinions and interpretations of Babylonian rabbis from the second through the sixth centuries and perhaps even later. It is possible that the Babylonian rabbis produced many works, but none of them survived. It is also possible that the Babylonian rabbis produced only one *magnum opus*, the Babylonian Talmud, and used it as a repository for every scholastic idea. Either the Bavli overwhelmed all competition such that it did not survive or no other works were created. A single work produced over the longest duration of any rabbinic text, the Bavli encapsulates all rabbinic creativity and organization.

Multiplicity (the existence of more than one authorized statement on a topic) and polysemy (openness to multiple interpretations) are two hallmarks of rabbinic literature. Multiplicity emerged incidentally out of the editorial decision to incorporate multiple mishnaic traditions within a single definitive text.[79] The Mishnah registers differences by simple attribution (e.g., "Rabbi X said" or "these are the words of Rabbi Y"), without hand wringing or soul searching about the availability of multiple legal possibilities; frequently the Mishnah authorizes both one position and its binary opposite.

Polysemy is a byproduct of midrashic creativity.[80] The exercise of freely producing meaning out of material perceived to be extraneous is a creative process that invites

multiple outcomes. Even as there are restrictions on midrashic creativity, midrash can be characterized as an exercise in producing fuller and more detailed understandings of texts in a mode that builds off the possibility of multiple interpretations. The Talmuds build on both multiplicity and polysemy by producing new generational layers of mishnah-style statutory rule and debate; this process involves registering several generations of rabbinic interpretation of scripture, Mishnah, or midrash, and allows such interpretation to grow with minimal restraint and with new and explicit justifications. Though neither multiplicity nor polysemy originated as determined ideological stances, later rabbinic texts came to understand these phenomena as such. A retrospective rabbinic judgment found in the Mishnah touts multiplicity as a boon to judicial fairness and the possibility of change.[81] The Talmud's late anonymous voice explicitly embraces both multiplicity and polysemy in theological terms as representing a divinely authorized pluralism.[82]

The Babylonian Talmud is the largest collection of rabbinic ideas, interpretations, or stories. Its lengthy period of gestation allowed it to evolve the most advanced explicit theorizations of pluralism and to develop the most sophisticated conceptualizations of abstract legal concepts. By combining the earlier rabbinic genres of mishnah and midrash into a meta-genre, and incorporating insights from seven centuries of rabbis in two distinct, robust regions of operation, the Babylonian Talmud was able to produce the most thorough and comprehensive version of rabbinic Judaism.

CHAPTER THREE

# Jewish Towns and Neighborhoods in Roman Palestine and Persian Babylonia

*Mika Ahuvia*

## Introduction

Though they were a minority in antiquity, Jews have left traces of their existence throughout the Mediterranean world, from the Italian peninsula to North Africa to Asia Minor as well as into Syria and Babylonia (modern day Iran and Iraq). Attempting to follow the footsteps of ancient Jews to their dwelling places in antiquity requires treading on a fine line between research and speculation. While archaeologists, historians, and talmudists have made great strides in recent years, much territory remains uncharted or unchartable. Our most substantial source, rabbinic literature, addresses geographical questions only incidentally, as the rabbis pursue answers to legal questions, and mostly in urban settings where the rabbis resided after the second century CE (Cohen 1992, reprint 2010; Lapin 2012). Although research on Jewish life in antiquity has been dominated by studies of rabbinic literature, particularly in cities, most Jews were not part of the rabbinic movement and did not reside in urban settings. Moreover, recent research suggests that non-rabbinic Jews may have had different practices and emphasized different aspects of the biblical heritage in everyday life. Indeed, ancient Jews were a diverse and geographically diffuse population who resided mostly in rural towns and villages. Broadening our scope to include neglected non-rabbinic and/or non-urban Jews enlivens and destabilizes the normative picture of pre-medieval Jews living under rabbinic authority in densely populated quarters. A fuller and more dynamic view of the past allows us to see Jews dwelling in a variety of settings and drawing on a wider range of resources than rabbinic literature alone.

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Samson point to a regional interest in biblical heroes and messianic expectations not discussed in the Talmud (Magness et al. 2014, p. 351) (see Figure 8.1). In cases such as this, neglected Palestinian compositions like liturgical poetry or non-canonical texts like *Sefer Zerubabel* may help deepen our understanding of non-rabbinic Jewish preoccupations in late antiquity like messianism (Himmelfarb 2017). Such findings also remind us not to be overly urban-centric, assuming all religious innovation originated in cities. Jews living in villages in the Galilee, Negev, or Mesopotamia may have been just as creative as their urban counterparts in Sepphoris or Mahoza.

To the list of neglected sources, we might add so-called magical or ritual objects like amulets and incantation bowls (Naveh and Shaked 1987, 1993). Amulets are mentioned only in passing in rabbinic literature, but many Jewish amulets have been found in excavations in Palestine (or on the antiquities market without provenance), attesting to Jewish engagement with ritual practices. Foregoing the loaded baggage of a term like magic, we can better understand how Jewish ritual practices and ritual practitioners figured in the late antique landscape, both in cities and villages. Amulets discovered in synagogue genizahs are especially important as they locate ritual objects that might be marginalized in the heart of accepted Jewish houses of prayer. Moreover, they attest to a belief among some Jews in angelic guardianship (Ahuvia 2014). Jewish Aramaic incantation bowls from Nippur also attest to a Babylonian Jewish ritual strategy to combat demons (see Mokhtarian, Chapter 9, and Ronis, Chapter 24). Historians have mentioned in passing that the world of Jews was full of demons and angels (Schwartz 2001), but Peter Brown's description of ancient Christian belief in an "invisible world" that "was magnificently sociable," and "a 'great city' crowded with angelic spirits" may well have held true for some Jews as well (Brown 1988, p. 171; Ahuvia 2021). Seeing the full picture of Jewish life in towns and villages requires making space for this other-worldly realm as well.

To understand Jewish life in ancient places, surviving evidence must be studied in its regional and multicultural context, be it Hellenistic Egypt, Byzantine Palestine, or Persian Babylonia (Hezser 2010). There was no "pure," isolated, monolithic Jewish culture or Jewish place in antiquity. This means that even in the predominantly Jewish towns in Roman Palestine like Sepphoris or Tiberias, we ought not to be surprised by Jewish attendance at Roman entertainment venues, the prevalence of Roman statues and sculptures that Jews would have encountered when they walked about town (Eliav 2002), and the likelihood that Jewish craftsmen and builders would be influenced by monumental church architecture when they constructed synagogues. In Jewish Babylonia, Jews worked with, disputed with, and even married their Sasanian Persian counterparts, which the rabbis there both accepted and criticized (Secunda 2014). That the rabbis participated in their regional milieu is accepted (Kalmin 2006; Lapin 2012), but similar acknowledgment that non-rabbinic Jews adapted others' practices while remaining Jewish still lags behind. As Hezser states, "[a]ncient Jews used and amalgamated customs and habits from the surrounding cultures, and this very amalgamation was Jewish, even if non-rabbinic" (2010).

The importance of interdisciplinary research is well known, and the input of sociologists, anthropologists, ethnographers, and cultural historians may help to fill the gaps, but inferences must also be acknowledged and interrogated (Hezser 2010, p. 20). Letting tensions stand to create a more open-ended description of ancient history may prove to be more

productive as the following survey of Jewish dwellings aims to demonstrate. I begin with Jewish dwellings in villages, towns, and cities of Roman Palestine and then turn to sites of Jewish habitation in Syria and Babylonia.

## Roman and Byzantine Palestine

The Levant was one of the most urbanized regions of the Mediterranean world in antiquity, but the Hellenistic period brought significant and enduring architectural expectations to bear on inhabitants of cities and towns everywhere. Herod famously fulfilled such expectations, laying the foundation upon which later inhabitants of Roman Palestine was built. Monumental architecture like colonnaded streets, marketplaces (*agora* or forums), aqueducts, bathhouses, theaters, hippodromes, and stadia formed the urban background that Jews and others in Roman Palestine shared (Zangenberg and van de Zande 2010). Although the historiography has been dominated by studies of urban centers, scholars have pointed out that most people in antiquity lived in villages, not towns or cities (summarized in Meyers 1999). Following the failed revolts, it is generally agreed that the Jewish population that remained in Palestine shifted northward to the Galilee, Golan Heights, and the coast (although some moved south of Jerusalem as well). Thanks to the emperor Constantine and his descendants, many places in Palestine became visibly Christian in public architecture, starting in the fourth century. After a period of crisis in the third to fourth century, the eastern Roman Empire experienced relative prosperity and population growth in the fifth and sixth centuries. In Palestine, this manifested as stabilization and resettlement (Leibner 2009) (see Figure 3.1).

Surveys in recent decades have uncovered hundreds of villages throughout late antique Syro-Palestine, some separated only by a stream or valley and some by a mile or more (Schwartz 2001; Bar 2004; Leibner 2009). As previously mentioned, villages could range in size from a few farmhouses to five hectares and revolved around agricultural production and household crafts (Killebrew 2010) (see Mandsager, Chapter 30). Rural houses were built around courtyards, which served as the locus of activity, and as families grew and married, additional domestic units would be added on to houses so that they became multi-generational compounds that might be lived in for centuries (Killebrew 2010). Villages generally included a central public space, where the synagogue was the only monumental structure and served multiple functions (e.g., place of gathering, learning, and adjudicating). If a tradition preserved in the Palestinian Talmud is to be believed, villagers sought communal leaders who could serve multiple functions in such synagogues: giving homilies, judging cases, teaching Torah and Mishnah, and doing whatever else was needed by the community (cf. people of Simonias in *y. Yeb.* 12:7, 13a; cf. *y. Shev.* 6:1, 36d). Lapin suggests that villagers would turn to local towns and urban patrons to find such "trained ritual experts" (Lapin 1998, p. 60).

The plateau of the Golan, circumscribed by the Jordan River and Sea of Galilee to the west and the Huron River to the east, measures about 1800 square kilometers and was home to many Jewish and later Christian communities in Late Antiquity. Aside from the Greco-Roman city of Hippos-Sussita, located opposite Tiberias on the hills to the east of the Sea of the Galilee, the rest of the Golan was rural in its settlement pattern. The Galilee and the Golan display a shared material culture and appear to have been mostly inhabited by Jews until the Byzantine period when more Christian communities appeared on the





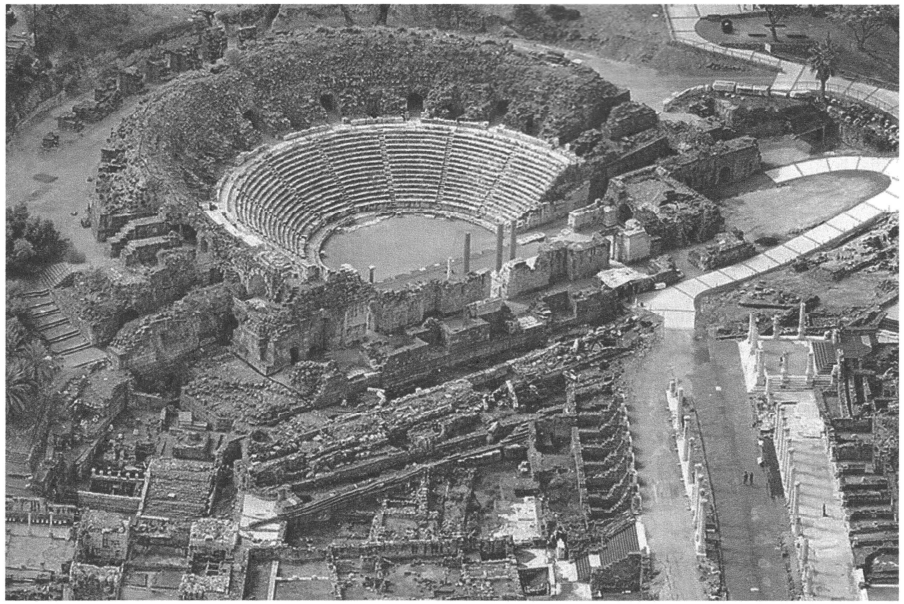

**Figure 3.1** Overview of Beit Shean. Roman Theater Beit She'an, 1 March 2013. Source: Avraham Graicer. https://commons.wikimedia.org/wiki/File:ROMAN_THEATER_BEIT_SHE%27AN.JPG. Licensed under CC BY-SA 4.0.

scene (Meyers 1999). The rabbis have little to say about the inhabitants of the Golan so archaeologists must rely on material evidence to reconstruct a picture of generally harmonious symbiosis between the villages of Aramaic-speaking Jews and Greek-speaking Christians in that region (Meyers 1999). The remains of 25 synagogues from the late antique Golan region attest to the flourishing of Jews there in the late antique period.

The ancient Jewish village of Qasrin may be seen as exemplary. Located in the heart of the Golan, Qasrin's first synagogue and its associated residential areas were probably built in the late-third to mid-fourth century CE (Hachlili 2013, p. 110). The synagogue of Qasrin, one of the best preserved in the Golan, shows a distinctive local style not found outside the Golan, especially in its column decoration (Hachlili 2013). In Qasrin, residential and commercial buildings could be found immediately adjacent to the synagogue. The residential buildings "encompassed several individual domestic units that were joined over time to create a large multi-family complex" (Betlyon and Killebrew 2016, p. 36). Though rural, Qasrin was hardly isolated: a Roman military station was established nearby in Bostra and the ancient King's Highway "crossed the Golan Heights, connecting villages like Qasrin to Damascus and Mesopotamia" (Betlyon and Killebrew 2016, p. 39). This might explain why the third largest coin hoard ever found in the region (9000 coins, many of them of military issue, dating to the reigns of Constantine's sons) was found in the courtyard of a house there, buried in a pit (Betlyon and Killebrew 2016). Coin hoards of this

type were not unusual in the Roman-Byzantine Empire, whose monetary policies sometimes led to inflation and economic instability. Though on the periphery of the empire, Qasrin was not immune to the impact of imperial policies (see Figure 3.2).

The Palestinian Talmud mentions that Judah HaNasi, the famous patriarch and redactor of the Mishnah, had estates in the Golan, gifted to him by a Roman emperor (*y. Shev.* 6: 1, 36d). In this connection it is worth mentioning that the only extant archaeological evidence for the existence of a study house connected to a rabbi was found in a village north of Qasrin named Dabura; a fourth-century CE basalt lintel found there has two stylized birds holding a wreath with the inscription "this is the ***beit midrash*** study house of Rabbi Eliezer ha-kappar" (Lapin 2011, p. 334). This inscription is not easily correlated with named rabbis known from the Talmud. While the inscription suggests some rabbinic study was taking place in the Golan (in a permanently marked, if not monumental, building), it is ironic that no rabbinic traditions can confirm it.

From an ancient village south of Qasrin, just to the northeast of the Sea of Galilee and now known as Horvat Kanaf, an additional interesting object has survived. Dating to the sixth or early seventh century, an amulet written in Hebrew and Aramaic commands demons not to "cause pain to Rabbi Eleazar the son of Esther, the servant of the God of Heaven" and goes on to enlist numerous angels to protect him from evil spirits and cure him from fever (Naveh and Shaked 1987, p. 51). The language of the amulet, "in every place where this amulet will be seen, you should not detain Eleazar the son of Esther," suggests that not only was the amulet a visible accessory but also that the person who wore it expected encounters with an other-worldly realm filled with malicious and benevolent spirits. It is not possible to determine whether this Eleazar was a member of the rabbinic movement or if the title was being used honorifically. In any case, the fact that such an individual needed such an amulet suggests that peaceful connotations we have about village life may not have matched up to

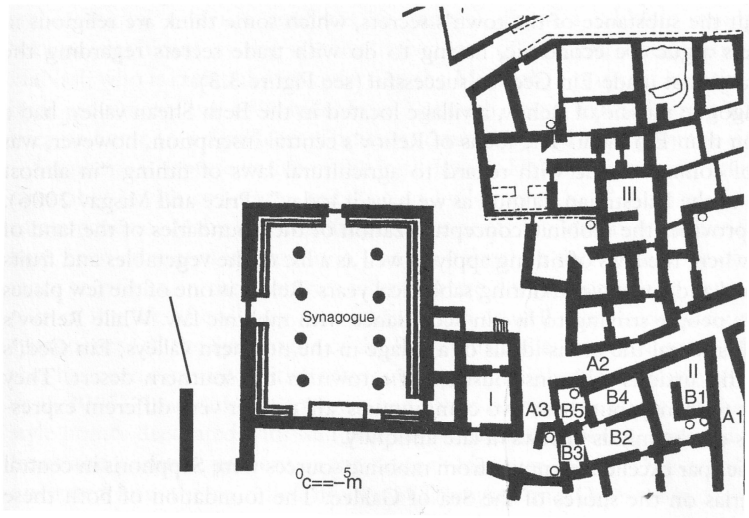


**Figure 3.2** Map of Qasrin. Source: Killebrew, Grantham and Fine (2003, p. 60).





a late ancient person's experience of such places. Lest one think this amulet was an anomaly, similar amulets have been discovered in many excavations all over Palestine, including 19 Aramaic and Hebrew bronze amulets discovered in the apse of a synagogue in Maon-Nirim in the northwest Negev, which similarly attack demons and call on God and angels for assistance (Naveh and Shaked 1987). Although we can identify Jewish villages in the Golan, the Dabura inscription and this amulet (alongside many more amulets without provenance) remind us of the remaining gaps in our knowledge about the past.

Shifting from villages on the shores of the Sea of Galilee to a town on the shore of the Dead Sea, we come to Ein Gedi. Although the fourth-century CE Christian bishop Eusebius refers to Ein Gedi as a "very large village of the Jews," by scholarly standards, Ein Gedi can be classified as a town, located in the Judaean desert on the central-western banks of the Dead Sea (*Onomasticon* 86.18; Killebrew 2010). Ein Gedi possessed not just a central synagogue with residential dwellings but also a street of shops, agricultural and water installations, and even a bathhouse (Hirschfeld 2007). The Ein Gedi community has been called conservative because its synagogue mosaics avoid the figural depictions so well known from synagogues in Sepphoris and elsewhere in the Galilee. Instead of artistic representation of a zodiac, for example, a long inscription located in the aisle of Ein Gedi's synagogue listed the zodiac signs as well as the calendar months and even biblical genealogies before conveying a strong warning to all members (Levine 2005, p. 386):

> He who causes dissension within the community, or speaks slanderously about his friend to the Gentiles, or steals something from his friend, or reveals the secret of the community to the Gentiles—He, whose eyes observe the entire world and who sees hidden things, will turn His face to this fellow and his offspring and will uproot them from under the heavens. And all the people said: Amen, Amen, Selah.

This text displays a strong sense of insider–outsider relations and has generated much speculation about the substance of the town's secrets, which some think are religious in nature and others argue are economic, having to do with trade secrets regarding the production of dates that made Ein Gedi so successful (see Figure 3.3).

Only the synagogue mosaic of Rehov, a village located in the Beth Shean valley, had a longer inscription than Ein Gedi. The focus of Rehov's central inscription, however, was the regulation of communal life with regard to agricultural laws of tithing "in almost direct quotation of the Palestinian Talmud as we have it today" (Price and Misgav 2006). The inscription provides the rabbinic conceptualization of the boundaries of the land of Israel, detailing where the laws of tithing apply as well as a list of the vegetables and fruits that must be tithed and/or avoided during sabbatical years. Rehov is one of the few places where we can see people striving to live in accordance with rabbinic law. While Rehov's synagogue mosaics reveal the pious ideals of a village in the northern valleys, Ein Gedi's mosaics convey the anxious self-consciousness of a town in the southern desert. They share an aniconic tendency, but these two communities still proffer very different expressions of what was on the minds of Jews in late antiquity.

The Jewish cities par excellence known from rabbinic sources were Sepphoris in central Galilee and Tiberias on the shores of the Sea of Galilee. The foundation of both these cities was decidedly Roman and Jewish. Herod Antipas, the son of Herod the Great, renovated the Hasmonean-era town of Sepphoris to make it "the ornament of all Galilee"

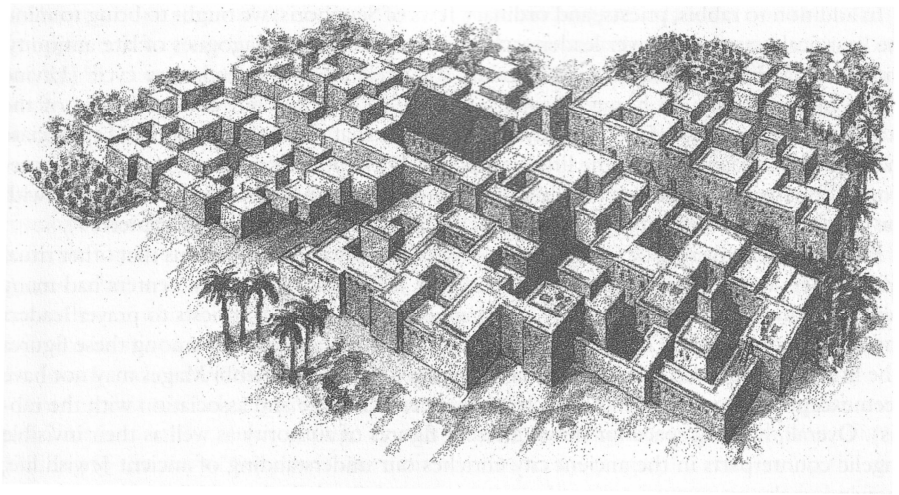

**Figure 3.3** Ein Gedi, reconstruction of the town. Source: Hirschfield (2007, p. 641).

and also founded Tiberias as a new capital, naming it for the emperor Tiberius, much like his father had built Caesarea in honor of Augustus Caesar (Josephus, *Ant.* 18: 27; Magness 2012). Only Jewish revolts brought imperial attention to these otherwise relatively unimportant Roman cities. The emperor Nero intervened in local politics to make Sepphoris (instead of Tiberias) the capital of the Galilee just before the outbreak of the first rebellion; in the second century CE, the emperor Hadrian renamed Sepphoris Diocaesarea; and, finally, in the mid-fourth century these two cities along with Diospolis (Lydda) were reportedly punished for participating in a regional rebellion (Jerome *Chronicon* 282; no archaeological evidence confirms his report). From a rabbinic standpoint, Sepphoris became significant as the administrative seat of the patriarchs, most famously Judah HaNasi, who is credited with redacting the Mishnah, a text that is at the heart of the rabbinic movement. Just a few miles from Nazareth, Jesus' reputed birthplace, Sepphoris also became home to a significant Christian community and bishop by the sixth century.

Sepphoris is representative of the local Jewish-Hellenistic cultural milieu, boasting recognizably Jewish structures and Roman buildings as well as places that transcend such categorization. Many *miqva'ot* (immersion pools for Jewish ritual purification purposes) have been excavated in Sepphoris, and though while they were once of particular importance to priests, in the centuries following the destruction of the Temple they became a part of the life of ordinary men and women as well. Sepphoris likely also had multiple synagogues (cf. the Synagogue of the Babylonians discussed below) in addition to the one that has been excavated with its famous mosaic of Helios in the zodiac (Miller 2004; Weiss et al. 2005). In addition, Sepphoris had paved roads, a theater, a bathhouse, and Roman-style homes decorated with wall paintings and lavish mosaics, arranged with shops at the front and peristyle gardens at the center (Magness 2012). One scholar has even demonstrated how the so-called houses of Dionysos and Orpheus in Sepphoris illuminate discussions of rabbis in the Mishnah and Tosefta, suggesting that these homes or ones like them may have been owned by rabbis (Klein 2012).





In addition to rabbis, priests, and ordinary Jews of Sepphoris, we ought to bring to mind the liturgical poets and prayer leaders, who performed in the synagogues of late antiquity, embellishing the fixed prayer with dramatic song related to the lectionary cycle (Levine 2005; Lieber 2010). As home to some of the most wealthy and educated Jews of the province, Sepphoris and Tiberias likely had audiences that could understand and appreciate the rich Hebrew language of the liturgical poets. These poetic compositions are also noteworthy for their emphasis on angels and other divine creatures, singing in harmony with the congregation when it prays to God (Lieber 2010) (see also Lieber, Chapter 29).

Finally, the uncovering of amulets in Sepphoris, as elsewhere, reminds us that other ritual practitioners were on the scene as well, and that Jews in ancient urban centers had many mediating authorities to whom they could appeal: from rabbis to priests to prayer leaders and ritual practitioners. There may have been competition and overlap among these figures (the liturgical poet who signed his name Shimeon haCohen beiRebbi Mages may not have been exceptional in identifying himself by his priestly lineage and association with the rabbis). Overall, holding space for these different figures of authority as well as their invisible angelic counterparts in the ancient city enriches our understanding of ancient Jewish life, showing us the many ways ancient Jews put into practice their shared biblical heritage.

As previously mentioned, Tiberias was founded as a capital by Herod Antipas, but later lost its status to Sepphoris. Tiberias is less well excavated than Sepphoris, but a few comments about this Jewish town are worth noting. Ancient Tiberias, just south of modern Tiberias, stretched "1,200 meters along the shore of the Sea of Galileee and reach[ed] some 250 meters inland on average" (Broshi 1999, reprint 2008, p. 20). Today tourists visit the sites just south of the ancient town on the sea of Galilee, where archaeologists uncovered a bathhouse complex that took advantage of local hot springs (*hammat* Tiberias; see Figure 29.2) and a well-preserved synagogue mosaic of a personified Helios holding a globe and a whip (Magness 2012). Like Sepphoris, ancient Tiberias was a Roman-Jewish town with monumental buildings like palaces, basilicas, a stadium, a hippodrome, bathhouses, main streets that led to an *agora*, as well as a synagogue. In antiquity, the town was fortified with walls and gates with round towers.

From a rabbinic perspective, ancient Tiberias displaced Sepphoris in prominence in Late Antiquity, becoming the setting for the school of Rabbi Yohanan in the third century and later, and for the redaction of the Palestinian Talmud. Scholars have observed that amoraic traditions reflect details of rabbinic life for the most part in urbanized settings like Sepphoris and Tiberias. One story from the Palestinian Talmud illustrates this observation, mentioning these two cities while inquiring into what distance a person ought to have walked in new shoes in order to make them permissible for wear on the Sabbath (*y. Shab.* 6 [8a]) = *y. Sanh.* 10: 1, 28a). Rather than providing a standard unit of measure, the answers are based on local landmarks:

> The sons of the daughter of bar Kappara say: "From the study house of Bar Kappara to the study house of R. Hoshaya."
>
> The Sepphoreans say: "From the synagogue of the Babylonians to the dwelling of R. Hama b. Hanina."
>
> The Tiberians say: "From the large colonnade to the store of R. Hoshaya."

Three groups respond to the legal query: first, the sons of a daughter of a scholar (a description that reminds us of women's mediated presence in ancient sources), and second and thirdly, the residents of Sepphoris and Tiberias. The first group takes for granted that hearers of this tradition would know where these study houses were located, but scholars disagree: Hayim Lapin places both in the southern city of Lydda, associated in talmudic sources with post-revolt generations of rabbis and a geographically significant urban center throughout history; Lee Levine asserts the study houses were located in Caesarea, the most cosmopolitan city in Roman Palestine where the earliest part of the Talmud was edited (see more on Caesarea below); others, like Joseph Naveh and R.C. Gregg think the two study houses relate to the inscription found in the Golan mentioned above (Lapin 1998). Regardless of who is right, the fact that scholars can amass evidence for each of these very different locations reflects how difficult it is to locate ancient Jews, even the rabbis, who are the Jews for whom we have the most extant literary evidence from Late Antiquity.

Leaving that scholarly disagreement aside, the second and third answers from Sepphoreans and Tiberians in the above passage reveals more interesting information as well. Those dwelling in the city of Sepphoris cite their own local city geography, referencing the distance from the synagogue of the Babylonians to the home of a particular scholar. The appellation "of the Babylonians" in Sepphoris reminds us of the ongoing relationship between the Jews of Palestine and the Jews of Babylonia: the Jews of Babylonia, who traced their presence in Mesopotamia back to the destruction of the First Temple in 586 BCE, were proud of their heritage, and their rabbis placed themselves on par with, if not higher than, the rabbis of Palestine. This synagogue name may suggest that they maintained a sense of distinction even when dwelling and praying among co-religionists in Palestine (see Burns, Chapter 14).

Finally, we may note that the residents of Tiberias use a local Hellenistic architectural landmark, a colonnade, composed of Greek-style columns that served as fronts for temples, palaces, or other civic purposes. The Tiberians measure distance from the large colonnade to a place of commerce, a store operated by R. Hoshaya, which may have been in the marketplace or may have been at his home, as much economic activity in the ancient world operated from household courtyards (see Warren, Chapter 25). Another tradition in the Babylonian Talmud mentions Rabbi Hoshaya and Rabbi Hanina plying their trade as cobblers in the market of the prostitutes. If this tradition is accurate, then the market of the prostitutes was also in Tiberias and it was well known that Rabbi Hoshaya worked as a cobbler there. Such a story reminds us of the rabbis' embeddedness in the realities of late antique provincial urban life (*b. Pes.* 113b; Schwartz 2006).

An arterial road connected Tiberias with cities to the east, crossing the Jordan River to reach Gadara and thence Bostra in Arabia (Isaac 2010). While going west, this road passed Sepphoris-Diocaesarea and continued on to the Roman port-city of Ptolemais (Akko in Hebrew, ancient Acre in Greek) on the Mediterranean Sea (Avi-Yonah, et al. 2007). Refounded as a Roman colony during the first Jewish War, Ptolemais boasted two harbors. Although Caesarea Maritima would become the more prosperous port, Ptolemais was still convenient for travelers from the Galilee, and hence it is mentioned in passing in several rabbinic traditions (*y. Abod. Zar.* 1 :4 39d, *y. Hal.* 4: 12, 39b; *y. Shev.* 6: 1, 36c) and serves as the setting for the famous story of Rabbi Gamaliel visiting a bath dedicated to Aphrodite (*m. Abod. Zar.* 3: 4). From a rabbinic perspective, Akko was located at the border of the





Holy Land (*m. Git.* 1: 2; Avi-Yonah 2007), yet this seems not to have affected Jewish settlement in this predominantly Roman city.

An ancient visitor to the province of Judaea heading toward central Judaea or Jerusalem may well have arrived by sea at Caesarea Maritima, a city founded in honor of Caesar Augustus by Herod the Great, and which soon became the designated seat of the Roman provincial administration. Josephus vividly describes Caesarea as a place rife with tensions between Jews and non-Jews, intensified by close living quarters, as well as synagogues located next to gentile dwellings (Josephus, *J.W.* 2.284). Built on a grid-like pattern in so far as possible given the uneven terrain, Caesarea boasted a stadium, an amphitheater, many Greco-Roman temples, synagogues, aqueducts, and other monumental architecture, whose archaeological remains draw visitors to this day (Zangenberg and van de Zande 2010). In rabbinic sources, Caesarea is also described as a site of Jewish and non-Jewish confrontation, but mainly in the discursive realm: Rabbi Abahu explains to so-called *minim* (lit. heretics, a term reserved for non-Jews, whether apostates or Christians or others) that the Palestinian rabbis, unlike their Babylonian counterparts, are daily in conversation with others and so they invest more in learning biblical exegesis (*b. Abod. Zar.* 4a). Another story from the Palestinian Talmud shows Rabbi Abahu adjudicating cases in a synagogue in Caesarea by himself to the wonderment of his students. When his students ask if he is not in violation of the rabbinic principle that one should not judge alone, he replies that if people seek him out, they evidently accept his authority upon their case, thus implying that there might not have been a developed rabbinic institutional framework in existence in Caesarea (*y. Sanh.* 1: 1 [18a]; Lapin 1998, p. 64). Despite these conditions, some argue that the most ancient parts of the Palestinian Talmud (those sections commenting on the first three tractates of *Nezikin*, Damages) were edited in Caesarea by the mid-fourth century (Goldberg 1987).

In summary, the combination of archaeological and literary evidence from Palestine is not as clear as we might like, and it may present some surprises. Most Jews in Late Antiquity inhabited rural villages in the Galilee and Golan while some dwelled in settlements in the desert. Their rural location does not indicate they were out of the Roman or rabbinic orbit necessarily: Jews in Qasrin had the same fiscal issues as people elsewhere in the empire while Jews in Dabura may have been able to learn at a rabbinic study house. The relationship of the Jewish population to the rabbinic movement cannot be taken for granted but must be evaluated on a site-by-site basis. Some Jews in Huqoq had messianic expectations that the rabbis discouraged, but Jews in some villages like Rehov strove to live by rabbinic interpretation of biblical law. Only a couple of cities had a Jewish majority while many Jews lived as minorities in the larger cities of Palestine (like Caesarea). Jews, both rural and urban, both rabbinic and non-rabbinic, sought out amulets and were aware of an otherworldly realm of angels and demons. All of these details do not amount to a map of Jewish life, but they hint at the urban and rural texture of ancient Jewish life and the complexity of attempting to trace the steps of ancient Jews.

## Persian Babylonia

Although Jews dwelled in Babylonia (a region now spanning eastern Syria, Iraq, and Iran) from the sixth century BCE until the present, suspiciously little archaeology of Jewish life has come to light from that region. The sensational discovery of a synagogue in the border

town of Dura-Europos (modern Syria) and Aramaic incantation bowls in the late antique town of Nippur in the early twentieth century are the last sites of ancient Jewish habitation to have generated significant research (Kaiser 2016; Montgomery 1913). Since artefacts like Aramaic incantation bowls continue to enter the antiquities market in a steady stream, it is not for lack of knowledge of where to look for Jewish habitation, but perhaps an indication of suppression of evidence (Ilan 2011). While no archaeological evidence is available for the Jewish towns known from the Babylonian Talmud, talmudic scholars have carefully mined the literary sources for information about daily life from the perspective of the rabbis, taking into account transmission errors and editorial interventions (Elman 2007; Gafni 2006; Goodblatt 2006; Secunda 2014). Additionally, a few studies of the material culture of Sasanian Persia provide some context for practices described in rabbinic texts (Simpson 2015) (see more in Mokhtarian, Chapter 9). For Babylonia, unlike Palestine, we can only gain an impression of rabbinic Jewish life in various places, an account not nearly as detailed and concrete as we can obtain for Palestine. Moreover, without epigraphic evidence, the impression is far more weighted toward the rabbinic perspective.

Despite 500 years of silence, it is likely that Jews in Mesopotamia maintained a relationship with the Jews of the land of Israel from the biblical Persian period (522–333 BCE) through the Sasanian Persian period (starting in 224 CE), but it is only from the third century onward that the Babylonian Talmud, Middle-Persian, and Syriac texts provide sources for these Jewish communities and their interactions (Secunda 2014). Educated speculation estimates the population of Jews in Babylonia to have been about one million, "possibly exceeding the number of Jews in Roman Byzantine Palestine" (Gafni 2006, p. 833). As in Palestine, there were towns in Babylonia with Jewish majorities as well as more mixed populations (see Oppenheimer, Isaac, and Leiker 1983 for a survey of all the Jewish sites known from the Talmud as well as this Companion's maps). Jews living in the Persian-Zoroastrian Empire benefited from intensive imperial investment in the cultivation of agricultural land as well as a generally more neutral religious policy, leaving them to live among Persians, Buddhists, Christians, Manichaeans, Arabs, and others in relative (though not perfect) prosperity and peace (Gafni 2006). Jews are known to have inhabited northern Mesopotamia where the city of Nisibis was a central node and lands east of the Tigris River like Media and Elam, but we know the most about the rabbinic Jews who lived near the confluence of the Tigris and Euphrates rivers, in the area where canals criss-crossed the fertile plains (Gafni 2006). The rabbis of the Babylonian Talmud refer to this region as the "area of pure lineage," dismissing Jews who lived elsewhere to the north, east, and south in Mesene (e.g., where Nippur was located; *b. Qidd.* 72a).

Many routes connected the Jews of Byzantine Palestine to the Jews of Sasanian Babylonia, but a popular one likely stretched from the coast to Damascus, across the desert to Palmyra, and on to the frontier town of Dura-Europos on the Euphrates and thence downriver to towns later known for their rabbinic *yeshivot* like Pumbedita, Nehardea, and Sura (Cohen 2015, p. 211). A canal branched off the Euphrates just south of Pumbedita and crossed the plain to the Tigris River, passing another town famous for rabbinic residents, Mahoza, on its way to the conurbation of Ctesiphon. Following along this route, each place of Jewish habitation will be discussed in turn.

Situated between East and West, the town of Dura-Europos on the Middle Euphrates began as the Hellenistic colony of Europos on the Dura plateau, later became a strategic





Parthian outpost (ca. 120 BCE–165 CE), and then thrived as a Roman frontier stronghold until 256 CE when a prolonged siege by the Sasanian Persian forces brought about its destruction and abandonment (Kaiser 2016). Dura-Europos holds a special place in Jewish history because it is home to the earliest surviving synagogue, one that just happened to be preserved with sensationally vivid frescoes of biblical scenes and even a ceiling with myriad creatures, women's faces, the evil eye, and more (Stern 2010). These scenes transported visitors from the frontier to a biblical world: at its visual center was the Torah, surrounded by three depictions: the Jerusalem temple, the menorah and other cultic objects, and the sacrifice of Isaac. Elijah and Esther feature prominently as well, signaling a range of Jewish attitudes toward other peoples (Sommer 2016) (see Figure 3.4). To give a sense of the town's religious diversity, we should note that this synagogue was located in a house across the street from a temple of Adonis, two blocks from the earliest preserved Christian church and on the same street as a Roman mithraeum. Graffiti in several languages found within the synagogue suggest it was open to outsiders as well (Stern 2012 and 2018). Though one cannot speak of a Jewish neighborhood per se, inscriptions attest to a Jewish community open to a variety of visitors, with proselytes named as donors, and

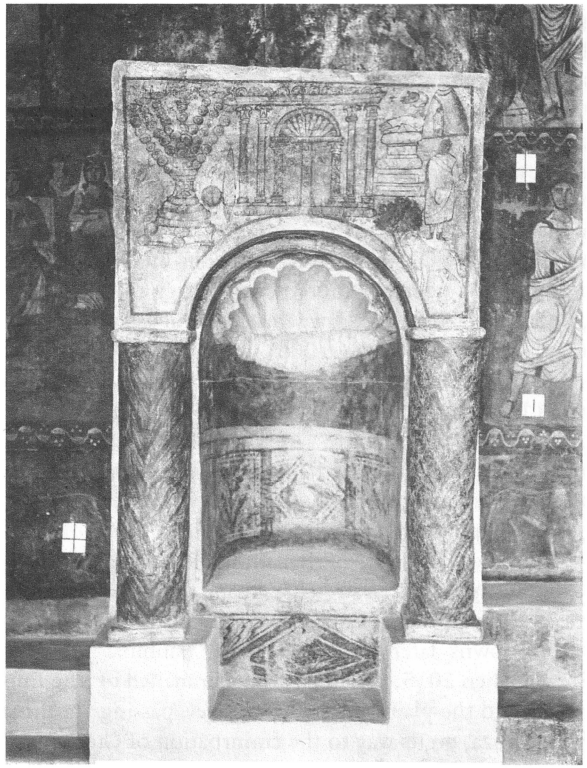

**Figure 3.4** Dura-Europos Synagogue, west wall. Source: Yale University Gallery.

reference to regular Sabbath prayer (Stern 2010, p. 481). As its end indicates, Dura-Europos was located in a contested region between the Roman and Persian empires. More enduring Jewish and rabbinic settlements could be found downriver in southern Mesopotamia.

Leaving Dura-Europos and heading downriver, an ancient traveler seeking Jewish dwelling places might go to one of several locations next. From the third century CE onward, the Babylonian Talmud attests to four major rabbinic centers in Mesopotamia: Nehardea, Pumbedita, Sura, and Mahoza (Elman 2007). Perhaps even more than in Palestine, Jews in Babylonia took pride in their respective home towns and tended to disparage other towns (e.g., *b. Hul.* 127a). A Sasanian poll tax required registering for residency in a town, and such registration could establish one's genealogical pedigree as well (*b. Qidd.* 71a; Gafni 2006). Rabbinic legal rulings from different towns might differ and even come into conflict (cf. *b. Ketub.* 54a; Gafni 2006).

According to the ninth century letter of Rav Sherirah Gaon, Nehardea was destroyed by Palmyrans in 259 CE, at which time Rav Yehuda is said to have founded a study circle in Pumbedita, located near modern day Fallujah (from Syriac *p-l-g*), where the Euphrates River divided and irrigated the land (Oppenheimer, Isaac, and Leiker 1983). Pumbedita is thought to be one of several towns in Babylonia with a Jewish majority (*b. B. Mezia* 24b; Secunda 2014, p. 164) and was home to the influential Rav Abaye. Although the *yeshivot* of Sura and Pumbedita are remembered as the most prestigious places of learning and are often juxtaposed in rabbinic sources, it is the towns of Pumbedita and Mahoza that receive the greatest amount of social commentary from the Babylonian sages (Elman 2007). Sages of great wealth and property lived in both towns, alongside craftsman, winemakers, and others. Elman makes the case that the sages of Pumbedita were more traditional (or less receptive to Persian mores) than those of Mahoza (Elman 2007, p. 172).

Across the fertile plain from Pumbedita, Mahoza was a suburb of the city of Ctesiphon (35 miles south of modern Baghdad), the Persian capital, where the headquarters of the Jewish exilarch were also located. The capital was notable for its heterogeneous population, where Jews were a minority and lived among Persians in close quarters. A culture of religious disputation prevailed in the capital, where Zoroastrian traditions and rabbinic traditions were brought into confrontation in public disputations, ones the rabbis preferred to avoid (*b. Shab.* 116a). Mahoza was known for its wealth, cosmopolitan character, sizable proselyte population (*b. Qidd.* 73a), and Christian community. Two important sages dwelled there: R. Nahman, a sage often accused of accommodating to Persian society, who apparently spoke in an Aramaic peppered with Persian loanwords and adopted more lax (Persian) attitudes toward the mingling of the sexes. Second, R. Nahman's student Rava dwelled in Mahoza and was known for his practicality in urban legal matters (Elman 2007, p. 189). Archaeological excavations from ancient Ctesiphon revealed "[h]ouses within the residential quarters [that] appear to have been accessed via an irregular network of narrow alleys or passages," confirming Talmudic portrayals of household entrances located on alleyways, which might be blocked or complicated by an uncooperative neighbor (Simpson 2015, p. 12).

The sages also mention areas of Jewish Babylonia that they considered to be home to Jews of suspect lineage Herman 2018 and Paz 2018. We do not have sources on what those suspect Jews might have thought about the sages, but incantation bowls suggest that the rabbis were not the only mediating authorities to whom ancient Jews might have





turned (see Figure 9.4). Ritual experts were on the scene as well to invoke divine powers on behalf of people in need. The incantation bowls discovered in residential houses of Nippur also reflect a milieu where people spoke Jewish Aramaic, Syriac, and Mandaean, lived in close proximity to each other in mud-brick houses, and worried about demonic attack, illness, business, and marital trouble. On the problem of demons, the rabbis and these other Jews were in agreement: the other-worldly realm required policing and circumscription by mortal inhabitants, Jews among them. Although the Judaism of the Babylonian Sages ultimately became normative for Jewish communities ranging from Iran to Spain, this outlook on the other-worldly realm finally succumbed to enlightenment tendencies in the last century.

## Suggestions for Future Developments

Ancient Jews conceptualized their immediate geography and their place in the world in ways that might be foreign to people today. It is the task of informed readers to use all available evidence to reorient themselves to this ancient landscape, where cities may not have been the main points of reference, but instead the nearest village and its marketplace was topographically most significant (cf. a popular refrain in Babylonian amulets with regional variants; Hunter 2002; Secunda 2014). Alleyways were not a feature of urban life only, but also of smaller settlements with their multi-generational residential compounds, familiar places that could bring just as many fraught encounters as we might imagine a dense city square provoking. Attuned to the nearest marketplaces amidst the fields and mountains, rural and urban Jews were also aware of the nearest synagogues, temples, or churches, likely the most identifiable buildings in the ancient landscape. Thinking about how extant texts originated or were performed in these different settings may lead to new questions and interpretations.

No doubt new archaeological excavations will continue to enrich our understanding of Jewish dwelling places around the Mediterranean as well, even as publication of neglected sources will also contribute much to our understanding of ancient Jews within and without the rabbinic movement. Certainly, the foray of scholars into Syriac and Middle Persian texts continues to enrich our understanding of Jewish contact with Christians and others. Scholars will benefit from examining the literary and archaeological evidence in tandem, avoiding privileging one over the other, and without pre-conceptions about normative Jewish behavior in antiquity. The cultural milieu, whether Roman Palestine or Persian Babylonia, was certainly important in the formation of Jewish identities in antiquity, but it was also just one dimension among many determining Jewish self-expression in antiquity. Particular local communal religious emphases seemed to have played a much larger role in determining Jewish practice than previously recognized. Hopefully, forthcoming research will continue to shed light on the diversity and dynamism of Jewish communities in late antiquity.

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# Rabbinic Tales of Destruction

## *Gender, Sex, and Disability in the Ruins of Jerusalem*

JULIA WATTS BELSER

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# *Introduction*

THE DESTRUCTION OF the Jerusalem Temple by the Romans in 70 CE is arguably the most over-narrated event in pre-modern Jewish history. A watershed moment for the early Jewish community, the destruction radically reoriented Jewish religious life and ushered in a new era of Roman political dominance over Judea. Seth Schwartz gives a provocative assessment of the impact of the destruction. In the face of theological and political cataclysm, he asserts, Judaism "shattered."[1] While rabbinic Judaism eventually rises from the ashes of political defeat to refashion Jewish identity and culture, the destruction of the temple remains a foundational catastrophe in the Jewish religious imagination. Frequently elided with the Babylonian destruction of the Solomonic temple half a century before, these two disasters have long been imagined as the formative tragedies of the Jewish people, a primal wound that both recalls and anticipates the storied misfortunes of the Jewish experience. In Jewish religious practice, the loss of the temple encodes the ache of exile, an absence and estrangement that shapes the contours of Jewish prayer and piety. Yet if the destruction stands as a potent means of narrating the past, it also serves as an evocative articulation of catastrophe and resilience in the Jewish present. A powerful interpretive hermeneutic for grappling with formative events of twentieth-century Jewish experience—the cataclysm of the Holocaust, the advent of Zionism, and the emergence of the modern state of Israel—the destruction has been used to seam together myriad

1. Seth Schwartz, *Imperialism and Jewish Society, 200 B.C.E. to 640 C.E.* (Princeton: Princeton University Press, 2001). Schwartz's work has prompted substantial discussion in the literature; for a substantial and important response, see Fergus Millar, "Transformations of Judaism under Graeco-Roman Rule: Responses to Seth Schwartz's 'Imperialism and Jewish Society,'" *Journal of Jewish Studies* 57, no. 1 (Spring 2006): 139–158. Schwartz's own retrospective reflection on his work has been particularly important for my thinking. Seth Schwartz, "Was There a 'Common Judaism' after the Destruction?," in *Envisioning Judaism: Studies in Honor of Peter Schäfer on the Occasion of His Seventieth Birthday*, ed. Ra'anan S. Boustan, Klaus Herrmann, Reimund Leicht, Annette Y. Reed, and Giuseppe Veltri, with the collaboration of Alex Ramos, vol. 1 (Tubingen: Mohr Siebeck, 2003).





stories of Jewish grief and Jewish survivals. It is a narrative inextricably entangled with the politics of loss and longing, a tale already overburdened with memory.

Why then another book about the destruction of the temple? This book makes two primary interventions. First, I center attention on the material and corporeal dimensions of rabbinic disaster narratives, to showcase catastrophe as a crisis of the flesh. *Rabbinic Tales of Destruction* offers a literary and cultural analysis of Bavli Gittin 55b–58a, the Babylonian Talmud's longest sustained account of the Roman conquest of Jerusalem. The Talmud's account begins with the famous story of Qamtsa and Bar Qamtsa, a tale that attributes the fall of the Second Temple to an act of grievous inhospitality at an ill-fated banquet and that culminates in Rabbi Yoḥanan ben Zakkai's daring escape from besieged Jerusalem. The passage has exercised a powerful hold on the Jewish imagination for centuries. While that cluster of stories has been the subject of considerable scholarly attention, the rest of Bavli Gittin's narrative has received scant critical attention.[2] I focus on this neglected corpus. In this book, I read Bavli Gittin's account of Roman conquest from the perspective of the wounded body and the scarred land. Bavli Gittin's stories are saturated with sexual violence, slavery, and the brutal corporeal costs of Roman imperial ambition. In these accounts, Roman dominance is etched on Jewish flesh and inscribed in rabbinic memory as an assault on the body and a violation of the land.

Our literary paradigms for thinking through the destruction have not yet grappled sufficiently with the consequences disaster has for ancient Jewish bodies. In this book, I analyze the effect of the brutal body costs of Roman domination—the material realities of sexual violence, enslavement, and disability—on rabbinic

2. In his influential treatment of the first portion of this complex story cycle, Jeffrey Rubenstein emphasizes that these tales were the subject of intricate, intentional redaction as a literary unit—and notes that "a comprehensive literary analysis" of the entire narrative remains "a desideratum." Jeffrey Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: Johns Hopkins University Press, 1999), 140. The literature on Bavli Gittin 55b–56b is vast. See Jacob Neusner, *Development of a Legend: Studies on the Traditions Concerning Yohanan ben Zakkai* (Binghamton: Global Publications, 1960); Jacob Neusner, *A Life of Rabban Yohanan Ben Zakkai, ca. 1–80 CE* (Leiden: Brill, 1962); Anthony J. Saldarini, "Johanan ben Zakkai's Escape from Jerusalem: Origin and Development of a Rabbinic Story," *Journal for the Study of Judaism* 6 (1975): 189–220; Gedalia Alon, "Rabban Joḥanan B. Zakkai's Removal to Jabneh," in *Jews, Judaism, and the Classical World*, trans. Israel Abrahams (Jerusalem: Magnes Press, 1977), 269–313; Peter Schäfer, "Die Flucht Yoḥanan b. Zakkais aus Jerusalem und die Gründung des 'Lehrhauses' in Jabne," *Aufstieg und Niedergang der römischen Welt* 2.19.2 (1979): 43–101; David Kraemer, *Responses to Suffering in Classical Rabbinic Literature* (New York: Oxford University Press, 1995), 179–183; Anat Yisraeli-Taran, *Aggadot ha-Ḥurban* (Tel Aviv: Hakibbutz Hame'uḥad, 1997); Amram Tropper, "Yohanan ben Zakkai, *Amicus Caesaris:* A Jewish Hero in Rabbinic Eyes," *Jewish Studies, an Internet Journal* 4 (2005): 133–149; Sonja K. Pilz, *Food and Fear: Metaphors of Bodies and Spaces in the Stories of Destruction* (Würzburg: Ergon Verlag, 2016).

consciousness and rabbinic texts. In addition to the physical impact of catastrophe on tangible human bodies, I argue that corporeal risk profoundly shapes rabbinic narrative. To understand the material impact of destruction on rabbinic culture, I draw upon the rich theoretical resources of disability studies, gender and sexuality studies, as well as new materialist ecological criticism. Through such approaches, I illuminate the complex gender and sexual politics expressed in Bavli Gittin's accounts of rape and sexual captivity, its narratives of beautiful Jewish men and women assailed and desired by the powerful and decadent empire. I parse the Bavli's accounts of Jewish bodies undone by Roman violence, of the dismembered corpses that haunt the ruined places of Judea, of the blood and flesh that linger in its memories of the land. Catastrophe, I argue, textures the intimate interconnections rabbinic narratives draw between land and body, between bone and blood, river and stone. And when Bavli Gittin imagines God's ultimate triumph over imperial Rome? Here too, I show, divine power emerges victorious over the bodies of the enemy in strikingly corporeal terms. Through images of bodily rupture and physical suffering, the imperial body is revealed as porous and permeable: a body open to divine incursion, subject to torture and transformation.

Alongside this renewed attention to the material dimensions of catastrophe, I also make a second intervention. I argue that the theological frame we most frequently use to explain the meaning of destruction for ancient Jews does not accurately represent the full diversity of rabbinic responses to disaster.[3] Ancient Jewish writers commonly explain catastrophe in covenantal terms. According to this framework, disaster is inextricably linked with disobedience. Destruction and exile are the result of Jewish sin, and God will chastise a wayward Jewish community with the harsh rod of foreign domination, before ultimately restoring

3. On rabbinic responses to the destruction, see Jacob Neusner, "Judaism in a Time of Crisis: Four Responses to the Destruction of the Second Temple," *Judaism* 21 (1972): 313–327; Michael Stone, "Reactions to Destructions of the Second Temple," *Journal for the Study of Judaism* 12 (1981): 195–204; Anthony J. Saldarini, "Varieties of Rabbinic Response to the Destruction of the Temple," *Society of Biblical Literature Seminar Papers* 21 (1982): 437–458; Shaye J. D. Cohen, "The Destruction: From Scripture to Midrash," *Prooftexts* 2, no. 1 (1982): 18–39; Norman J. Cohen, "'Shekhinta ba-Galuta': A Midrashic Response to Destruction and Persecution," *Journal for the Study of Judaism* 13 (1982): 147–159; Robert Goldenberg, "Early Rabbinic Explanations of the Destruction of Jerusalem," *Journal of Jewish Studies* 33 (1982): 517–525; Baruch Bokser, "Rabbinic Responses to Catastrophe: From Continuity to Discontinuity," *Proceedings of the American Academy for Jewish Research* 50 (1983): 37–61; Robert Kirschner, "Apocalyptic and Rabbinic Responses to the Destruction of 70," *Harvard Theological Review* 78, no. 1–2 (1985): 27–46; David Kraemer, *Responses to Suffering in Rabbinic Literature*; Galit Hasan-Roken, *Web of Life: Folklore and Midrash in Rabbinic Literature* (Stanford: Stanford University Press, 2000); Kenneth R. Jones, *Jewish Reactions to the Destruction of Jerusalem in A.D. 70: Apocalypses and Related Pseudepigrapha* (Leiden: Brill, 2011).



their fortunes and turning back to them with love. These narratives offer an account of pathos steeped in the poetics of self-recrimination, articulating a theology of communal culpability that has been rejected by virtually all Jewish thinkers writing in the post-Holocaust era. Yet as Alan Mintz and Jonathan Klawans have argued, this idea had powerful theological utility in late antiquity.[4] It affirms Jewish trust that the covenant remains intact, that sin can be expiated, that their return to God's favor will come in God's own time. Such claims have a long history in Jewish thought. Articulated already in the prophetic books of Isaiah and Jeremiah, this frame for reading catastrophe shapes the writings of the first-century Jewish historian Josephus.[5] It drives the theological discourse of the Palestinian midrash collection Lamentations Rabbah, as well as the destruction of Jerusalem and Judea in Yerushalmi Taʿanit.[6] It appears in Babylonian sources as well, perhaps most famously in Bavli Yoma's claim that the temple was destroyed on account of baseless hatred (*sinat ḥinam*).[7]

Yet something different happens in the fifth chapter of Bavli Gittin, the Babylonian Talmud's longest account of the destruction of the Jerusalem Temple and the devastation of Judea. Bavli Gittin has very little to say about Jewish sin. While parallel narratives in the Palestinian sources emphasize collective transgression, Bavli Gittin's telling gives little voice to the trope of communal wrongdoing. Its few stories that feature Jewish sin focus on the aberrant behavior of individuals, not the community as a whole. It also studiously avoids framing the destruction as an act of divine chastisement. While Bavli Gittin does, at times, imagine God as the ultimate architect of Jewish catastrophe, its portrayal of the destruction does not highlight divine anger, but instead emphasizes God's self-sacrificial empathy for individual Jews who have been wronged. Building on David Kraemer's trenchant insight that Bavli Gittin's destruction narrative offers

4. Jonathan Klawans, "Josephus, the Rabbis, and Responses to Catastrophes Ancient and Modern," *Jewish Quarterly Review* 100, no. 2 (Spring 2010): 278–309; Alan Mintz, *Ḥurban: Responses to Catastrophe in Hebrew Literature* (New York: Columbia University Press, 1984).

5. Jonathan Klawans, *Josephus and the Theologies of Ancient Judaism* (New York: Oxford University Press, 2012).

6. On the reasons for destruction in Lamentations Rabbah, see S. Cohen, "The Destruction." On the difference in emphasis between Bavli Gittin and Lamentations Rabbah, see Kraemer, *Responses to Suffering in Rabbinic Literature*, 140–143, 179–183. On the role of complaint against divine (in)justice in Lamentations Rabbah, see David Stern, *Parables in Midrash: Narrative and Exegesis in Rabbinic Literature* (Cambridge: Harvard University Press, 1991), 134.

7. Bavli Yoma 9b.

"a strikingly naturalistic account of catastrophe,"[8] I argue that this theological reorientation offers an important and understudied voice amidst the diversity of rabbinic Jewish responses to the destruction. While Bavli Gittin ultimately affirms God's capacity to bring judgment upon the empire and reaffirms God's role as the ultimate architect of Jewish catastrophe, the bulk of the narrative focuses not on divine power, but on Roman might. Rome replaces God as the force to be reckoned with, the agent and arbiter of Jewish suffering.

At first glance, these two interests might strike the reader as distinct. But in this book, I argue that Bavli Gittin's corporeal and theological interests operate in tandem. Its stories are profoundly concerned with suffering, with the imprint that Roman violence leaves upon skin and soil and bone, with the loss of bodily sovereignty, with enslavement, with rape, with dismemberment, with pain. Bavli Gittin's alternative assessment of God's relationship to catastrophe—its avoidance of the trope of sin and punishment, its reticence to lay out strong claims about communal transgression of the covenant, its framing of sexual violation as the consequence but not the cause of destruction—go hand in hand with its narrative attention to Roman violence, its interest in the bodies that bear the impact of Roman imperial dominance. The rabbis, I argue, grapple with theology in and through the flesh. The victimized, vulnerable body becomes the ground out of which Bavli Gittin articulates an alternative theology of destruction, a theology in which God's presence is aligned not with the ascendant bodies of the victorious Roman conquerors, but with suffering Jewish flesh.

## *Rabbis, Romans, and Sassanians: Reading the Bavli between Empires*

Rabbinic Judaism is a culture that emerges in the shadow of imperial power.[9] While scholars have increasingly come to agree that grappling with the impact

8. Kraemer, *Responses to Suffering in Rabbinic Literature*, 181.

9. In thinking about the relationship between the ancient and modern uses of the terms empire, imperialism, and colonialism, I am indebted to Mattingly's assessment of the Roman empire as an enterprise that shares many key characteristics with the empires of the nineteenth century and the present day, while also differing in certain significant respects from these modern and postmodern colonial practices. Following Mattingly's definitions, I use "imperialism" to refer to the cultural attitudes and geopolitical practices that allow a state to extend its reach beyond its own core territory, to exercise power and suasion over the populations of peripheral territories. "Colonialism" I take to refer to the system of rule by which a state exercises sovereignty over another people at a distance, often through the installation of settlements or other apparatuses of power within a conquered territory. David J. Mattingly, *Imperialism, Power, and Identity: Experiencing the Roman Empire* (Princeton: Princeton University Press, 2011), 5–10.



of the Roman Empire is foundational for understanding late antique Jewish culture, we can nonetheless note key differences in the way scholars approach the rabbis' relationship to Rome. Seth Schwartz has famously argued that the rabbis were a marginal force in the context of Roman society, positioning them as a largely closed group on the fringes of the Roman city.[10] More recently, Hayim Lapin has urged us to read the Palestinian rabbis as Roman provincials, as sub-elites who were not only profoundly affected by Romanization, but who engaged and deployed Roman norms of law and governance to create a place for themselves within the Roman political economy and the Roman provincial system.[11] My own work treats both paradigms as valuable frames for illuminating different dimensions of rabbinic culture, which I view as simultaneously marked by the experience of political and cultural marginality, as well as by accommodation and embrace. Such a dual perspective, I maintain, can help illuminate the ways in which rabbinic culture adopts a self-conscious posture of distinction and difference even as the rabbis are themselves embedded within Roman (and Sassanian) cultures. It allows us to better reckon with the multivalent nature of rabbinic agency: the way the rabbis operate under the constraints of empire, even as they actively craft a place for themselves within it. Such a frame highlights the complexity of rabbinic power, recognizing the rabbis as subject to imperial power, even as they engage in crafting a legal-cultural system that affords them elite status over their own marginalized others.

Consider my parenthetical insertion of Sassanian, another invitation to further complicate the imperial politics of rabbinic culture. While the relationship between rabbis and Romans has long been recognized as an important dimension of Jewish culture in late antiquity, scholars have only recently begun to consider the dynamic interplay between Babylonian rabbinic and Sassanian cultures, including the significant parallels that exist between rabbinic literature

10. Schwartz, *Imperialism and Jewish Society*.

11. Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 CE* (New York: Oxford University Press, 2012). Bernie Hodkin argues that Lapin's view does not fully take into account "the conscious ideological resistance of the rabbis . . . One is reminded of Homi Bhabha's argument that to be Anglicized is definitively not to be English; as such, to be Romanized is definitely not to be Roman." Bernie Hodkin, "Repression and Romanization: Postcolonial Studies in Ancient Judaism," *Ancient Jew Review*, November 26, 2014. For an assessment of Lapin's claims about Romanization, see Ishay Rosen-Zvi, "In What Sense Were the Rabbis Roman?," *Marginalia*, August 13, 2015. On mimicry and identity in colonial contexts, see Homi K. Bhabha, *The Location of Culture* (New York: Routledge, 1994), 85–92.

and Pahlavi sources.[12] In this book, I do not aim to make a definitive claim that the Bavli's Persian context plays a determinative role in shaping Bavli Gittin's portrayal of Rome. Such a reading, it seems to me, risks reducing complex cultural narratives to a simplistic interpretation of historical context. Yet, at various points, I will speculate about the ways in which the Bavli's cultural context may shape its narrative interests or its political aims. In considering this question, let me be clear: I do not pursue the question of whether Pahlavi sources influenced Bavli Gittin's portrayal of the destruction. Scholars have often framed the question of cultural influence in terms of concrete textual effects, using parallel sources to trace the significant impact that Zoroastrian religio-legal concepts have upon the development of rabbinic law and narrative.[13] The cumulative effect of such research has had a profound impact on my thinking about rabbinic culture, underscoring the degree to which Babylonian rabbinic literature is deeply embedded within Sassanian culture. My own work, however, approaches the question from a different tack. Rather than seek out narrative parallels, I wonder, instead, how the cultural and political position of Babylonian rabbinic Jews within the Sassanian Empire shapes rabbinic portrayals of Rome. In this way, I suggest, recognizing Babylonian rabbinic Jews as subjects of Rome's great imperial rival might inform our analysis of the cultural and political effects of rabbinic narrative.

Babylonian rabbinic Jewish culture emerges in a complex and contested borderland between the Sassanian and Roman empires. Rather than imagining a distinct boundary between these cultural regions, my own thinking is indebted to approaches that recognize the porous, fluid nature of cultural exchange. Richard Kalmin and Daniel Boyarin both situate rabbinic Babylonia within a shared cultural world that draws upon the intellectual currents of Roman Hellenism, Syriac Christianity, and Sassanian Zoroastrianism.[14] Kalmin argues that Roman

12. For an important discussion of legal parallels, see Yaakov Elman, "'Up to the Ears' in Horses' Necks (B.M. 108a): On Sasanian Agricultural Policy and Private 'Eminent Domain,'" *Jewish Studies, an Internet Journal* 3 (2004): 95–149. On recontextualizing the Bavli in the context of the Sassanian empire, see Shai Secunda, *The Iranian Talmud: Reading the Bavli in Its Sasanian Context* (Philadelphia: University of Pennsylvania Press, 2013) and Jason Sion Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests: The Culture of the Talmud in Ancient Iran* (Berkeley: University of California Press, 2015).

13. Yaakov Elman has pioneered critical research on the relationship between early Iranian legal texts and rabbinic tradition. For a helpful introduction, see Elman, "Middle Persian Culture and Babylonian Sages: Accommodation and Resistance in the Shaping of Rabbinic Legal Tradition," in *Cambridge Companion to Rabbinic Literature*, ed. Charlotte Elisheva Fonrobert and Martin S. Jaffe (New York: Cambridge University Press, 2007), 165–197.

14. Daniel Boyarin, "Hellenism in Jewish Babylonia," in *Cambridge Companion to The Talmud and Rabbinic Literature*, ed. Charlotte E. Fonrobert and Martin S. Jaffee





culture had a significant reach within the eastern parts of the Sassanian Empire. Palestinian influences, he claims, shaped Babylonian rabbinic thought in the fourth century and beyond.[15] Syriac Christianity also has a significant impact on the development of Babylonian rabbinic culture, as Michal Bar-Asher Siegal has shown.[16] Following Bar-Asher Siegal, I agree that the interaction between Syriac Christianity and rabbinic Judaism should not solely be framed through the lens of polemic. Let us hold open an imaginative space to consider a wide range of interactions between and among these communities. Yet we must also recognize that the medium of cultural mixity in late antiquity was often intertwined with war and conquest, with the corporeal costs of imperial ambitions. During the centuries of the Bavli's composition and redaction, the two rival empires engaged in significant military conflict. After a series of victories along the border, the Sassanian king Shapur I (r. 239/240–272) made several advances into the eastern Roman Empire in which he captured and deported large numbers of people and resettled them within western Persian border provinces. A mainstay of Sassanian military practice, wartime population transfer brought a significant influx of Roman culture and learning into the Sassanian Empire, helping to fuel the development of Syriac Christianity and the Christian school at Nisibis.[17]

When we read Bavli Gittin's destruction narratives, we must consider the political salience of telling these tales in Sassanian Babylonia. In such a context, I suggest, rabbinic repudiation of Rome has a complex, multivalent significance. It surely reinforces a familiar articulation of Jewish difference that imagines the rabbinic in contrast to the Roman, a well-known trope that runs throughout late antique Jewish literature. Of course, the Bavli's vehemence against Rome may well function as a veiled polemic of Sassanian power. But I wonder: Might

(Cambridge: Cambridge University Press, 2007), 336–363; Daniel Boyarin, *Socrates and the Fat Rabbis* (Chicago: University of Chicago Press, 2009); and Richard Kalmin, *Jewish Babylonia between Persia and Roman Palestine* (New York: Oxford University Press, 2006).

15. Emphasizing that Palestinian traditions had long circulated in Babylonia, Kalmin argues that the fourth century marks an increase and intensification of the amount of Palestinian influence. Kalmin, *Jewish Babylonia*, 3–8, 174.

16. Michal Bar-Asher Siegal, *Early Christian Monastic Literature and the Babylonian Talmud* (New York: Cambridge University Press, 2013).

17. Erich Kettenhofen, "Deportations," *Encyclopedia Iranica* 7, no. 3 (2014): 297–312; Richard Frye, *History of Ancient Iran* (Munich: Beck, 1984), 296–303; Matthew P. Canepa, *The Two Eyes of the Earth: Art and Ritual of Kinship between Rome and Sasanian Iran* (Berkeley: University of California Press, 2009), 27–29; and Josef Wiesehöfer, *Ancient Persia from 550 BC to 650 AD* (London: Tauris, 1996), 201. On the School of Nisibis, see Adam Becker, *Fear of God and the Beginning of Wisdom: The School of Nisibis and Christian Scholastic Culture in Late Antique Mesopotamia* (Philadelphia: University of Pennsylvania Press, 2006).

the Bavli's anti-Roman posture also serve as a positive means of affiliation, a way through which rabbinic Jews might align themselves with Sassanian imperial ambition? Might these stories offer a means of signaling Jewish allegiance to the Sassanian political project, a way of articulating Jewish resistance to Rome as a quasi-"patriotic" gesture? Such a frame affords us a different lens through which to consider the significance of the Bavli's claims vis-à-vis Christianity. When the Bavli gives voice to anti-Christian polemic, those narratives need not be read only as expressions of "religious" difference, narrowly construed. In a context where Christianity is increasingly intertwined with the politics of the Roman Empire, rabbinic expressions of anti-Christian sentiment may well lodge a protest against Christian imperium, a protest that rejects and mocks the great rival of the Sassanian Empire. While this book leaves such questions of authorial intent ultimately unresolved, I hope that in gesturing toward these possibilities, my work opens up alternative modes of conceptualizing the cultural and political salience of rabbinic narrative.

## *Reconsidering Resistance: Subversion and Surrender in Rabbinic Literature*

Postcolonial analysis of rabbinic literature has been deeply influenced by James C. Scott's idea of the "hidden transcript," the discourse of a subjugated people that exists beyond the gaze of the dominant power. While subordinate groups often collude with colonial powers in public, Scott argues that they simultaneously cultivate spaces for articulating alternative responses to dominant power. Meant to remain outside the view of the dominant gaze, such hidden transcripts offer marginalized communities a shared, subterranean means of mocking and subverting the claims of their rulers.[18] Scholars of rabbinics have made frequent use of Scott's theory. Daniel Boyarin has underscored the ways in which rabbinic narratives of gender and sexuality, martyrdom and heresy reveal a complex interplay of accommodation and resistance to Roman power.[19] Beth Berkowitz shows

18. James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990). For an assessment of the significance of Scott's work for late antiquity, albeit focusing particularly on early Christianity, see Richard Horsley, ed., *Hidden Transcripts and the Arts of Resistance: Applying the Work of James C. Scott to Jesus and Paul* (Atlanta: Society of Biblical Literature, 2004).

19. Daniel Boyarin, *Dying for God: Martyrdom and the Making of Christianity and Judaism* (Stanford: Stanford University Press, 1999), 46–49; Daniel Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Man* (Berkeley: University of California Press, 1997), 240–241. Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993), 16–18.



how substantially rabbinic rituals of capital punishment have been inflected by the rabbis' experience as colonial subjects. Rabbinic portrayals of execution, she argues, utilize Roman norms in order to bolster rabbinic authority—and reappropriate them to critique Roman power and assert the primacy of Torah.[20] Raʿanan Boustan has also argued that rabbinic narratives of post-mortem punishment of the wicked and divine revenge upon Roman emperors become a means of resisting Christian Roman imperial claims, a perspective which will be particularly important for this study.[21]

When I began this book project, the twin motifs of resistance and subversion were my primary hermeneutical tools for grappling with these stories, for making meaning out of rabbinic accounts of conquest and catastrophe. Such frameworks offer a compelling way to highlight rabbinic agency, revealing the capacity of story to speak back to the grammar of empire, to snatch victory from the midst of political and somatic defeat. I still find Scott's theory an illuminating means of drawing forth a particular form of rabbinic response to Roman imperium, particularly the ways in which the Bavli flips the script of imperial power. Yet I also want to mark my own discomfort with this frame, my increasing distrust of the way I have, at times, used resistance to avoid a stark grappling with defeat, with the imprint that loss and incursion leave upon rabbinic narrative. Thinking with Ilana Szobel, who argues that American and Israeli interpreters have too often framed narratives of trauma and woundedness in terms of "recovery," I have grown skeptical of my own desire to find within these narratives a story of resilience and redemption.[22] In a retrospective response to critics of *Imperialism and Jewish Society*, Seth Schwartz asks similar questions. Considering the widespread opposition to his claim that the Jews who survived successive Roman assaults "simply exhausted their capacity to resist," Schwartz suggests that his conclusion was challenged in part because of its "apparent

20. Beth Berkowitz, *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (New York: Oxford University Press, 2006), 154.

21. Raʿanan Boustan, "Immolating Emperors: Spectacles of Imperial Suffering and the Making of a Jewish Minority Culture in Late Antiquity," *Biblical Interpretation* 17 (2009): 207–238. My thinking has also been shaped by the work of Peter Schäfer, *Jesus in the Talmud* (Princeton: Princeton University Press, 2007) and Israel Yuval, *Two Nations in Your Womb: Perceptions of Jews and Christians in Late Antiquity and the Middle Ages* (Berkeley: University of California Press, 2008).

22. I am indebted to Ilana Szobel for an early conversation about this work that helped me articulate the importance of focusing on victimhood and counter-redemptive narrative. See Ilana Szobel, *A Poetics of Trauma: The Work of Dahlia Ravikovitch* (Waltham: Brandeis University Press, 2013).

antiromanticism," its refusal to imagine ancient Jews through the lens of heroic resistance.[23]

In this book, I take seriously both possibilities. I highlight moments in which Bavli Gittin's destruction narratives express resistance to Roman regimes, the way in which the Bavli's discourse mocks and subverts Roman power. But I also pause to interrogate my own readings, to ask how my desire to read resistance within rabbinic texts might obscure other dimensions of these tales: defeat, incursion, loss, and conquest. Thus, I aim to read in two directions: revealing rabbinic subversion, even as I also show how rabbinic story acquiesces to empire, how it surrenders to the material and metaphysical realities of Roman dominance. Such an act is both a literary and an ethical intervention. "Whatever else happened in the wake of the Destruction and the Bar Kokhba Revolt," Schwartz cautions, "the fact that great numbers of people were killed and enslaved must not be elided. Disasters are disasters, and there are no silver linings for their victims."[24] As readers, I believe, we must deepen our capacity to witness catastrophe. In his reading of Lamentations, Tod Linafelt observes that classical and contemporary readers of the biblical book have often sought to recuperate the raw emotions of the text, lifting up the rare expressions of comfort and professing these to be "the theological core" of the text.[25] Such an act, it seems to me, is its own kind of violence. Bavli Gittin's text is not oriented toward triumph or redemption; its tales give vivid voice to brutality, to violation, to death. Following Linafelt's counsel, I will ask us to linger with the fact of human suffering, with the dead and the dismembered. I tarry with pain, refusing the temptation to alchemize it into comfort and consolation. Even in narratives that articulate God's eventual triumph over Roman imperium, I argue, the visceral reality of physical pain and bodily rupture makes redemption a thing of guts and blood, an eschatology in extremis.

## *Rabbinics and New Materialism: Thinking Disaster Through Flesh, Blood, and Dirt*

*Rabbinic Tales of Destruction: Gender, Sex, and Disability in the Ruins of Jerusalem* probes the literary remains of catastrophe, approaching these texts from a decidedly materialist bent. I examine the intertwined effects of Roman conquest on rabbinic accounts of body and land, asking how the rabbinic narrative grapples

23. Schwartz, "'Common Judaism' After the Destruction," 16.

24. Schwartz, "'Common Judaism' After the Destruction," 4.

25. Tod Linafelt, *Surviving Lamentations: Catastrophe, Lament, and Protest in the Afterlife of a Biblical Book.* (Chicago: University of Chicago Press, 2000), 2–4.



with the history of imperial violence, how the text wrestles with a past that is littered with the remains of ruined flesh. To do so, I turn to new materialist feminist theorist Stacy Alaimo's conception of transcorporeality, which tracks "the interconnections, interchanges, and transits between human bodies and nonhuman natures."[26] It is hardly a significant innovation to observe that war and conquest pose a crisis for the body and for the land. Yet, as Alaimo argues, modern notions of the self as a sovereign subject have often led us to imagine the body as separate from its environment, sealed off from meaningful encounter with its non-human surroundings. Such a tidy distinction is belied by Bavli Gittin's account of catastrophe, in which brutalized bodies bleed over into the soil, run into the rivers, and seep into the sea. A transcorporeal reading of rabbinic disaster narratives can help us better attend to the relationship between these two dimensions of material experience, to understand the visceral imprint empire leaves on the porous boundaries between blood, flesh, and stone. Through such striking interconnections, the land itself becomes a repository for the materiality of rabbinic memory, retaining the tangible remains of a catastrophe that has bled into the very earth.

But if land matters in these rabbinic destruction narratives, we must also account for the Bavli's distance from the epicenter of Roman conquest, its remove from the physical terrain of Judea. In this book, I draw upon postcolonial environmental theorists to shift the way we think about the impact of conquest and destruction, in order to better account for its diffuse temporal and geographic effects. Following Ann Laura Stoler's trenchant call, I aim to trace "the toxic corrosions and violent accruals of colonial aftermaths," focusing on way imperial violence shapes flesh, mind, earth, and memory.[27] Rabbinic Babylonia, I argue, is a fruitful site through which to grapple with Roman conquest precisely because it foregrounds the question of distance, because it challenges our tendency to circumscribe colonial effects by confining them to a narrowly bounded historical moment and geographical place. Violence lingers. Its effects persist, long after and long farther than such frames allow. Tracing the long arc of environmental and colonial devastation, Rob Nixon argues that conventional notions of violence most frequently focus on spectacle, registering primarily the immediate, direct impact of conquest and catastrophe. Such a frame obscures what he calls "slow violence," the incremental and diffuse effects that war and conquest have upon bodies, minds, and lands, the way violence continues to play out over

26. Stacy Alaimo, *Bodily Natures: Science, Environment, and the Material Self* (Bloomington: Indiana University Press, 2010), 2.

27. Ann Laura Stoler, ed., introduction to *Imperial Debris: On Ruins and Ruination* (Durham: Duke University Press, 2013), 2.

centuries. Nixon draws our attention to "attritional catastrophes that overspill clear boundaries in time and space," catastrophes that are "marked above all by displacements—temporal, geographical, rhetorical."[28] If we recognize the Roman conquest of Judea as an attritional catastrophe, a catastrophe shaped by temporal and geographical displacements, we become more attuned to the complex significance that Rome has within the Babylonian rabbinic imagination. As Stoler observes, colonial power is not "bounded by the formal legalities of imperial sovereignty over persons, places, and things."[29] Imperial presence extends beyond the formal jurisdiction of Roman law and legal authority, stretching past the specific confines of time and territory, shaping the terrain of rabbinic mind and body and memory even beyond the boundaries of empire.

## *Sex, Slavery, and Violence: Rabbinic Gender Politics and Colonial Conquest*

While imperial presence surely has many consequences for rabbinic culture and consciousness, this book foregrounds the impact of conquest on rabbinic notions of gender and sexuality. In an illuminating postcolonial analysis of early Christian discourse, Davina Lopez argues that Roman imperial conquest was suffused with the imagery of sexual dominance, that the Romans conceptualized military victory as the rape and subjugation of nubile, feminized nations.[30] Building upon Lopez's claim that Paul's writings resist this imagery of Roman victory as sexual dominance, I argue that Bavli Gittin likewise subverts these gendered power ideologies and resists Roman triumphalism. While these discursive dimensions of violence are critical for parsing the gender and sexual politics of rabbinic disaster narratives, I emphasize that the impact of sexual violence extends beyond metaphor. Bavli Gittin's narratives expose the sexual risk and bodily vulnerability that Jewish men and women faced during Roman conquest, particularly in situations of forced prostitution and enslavement. My thinking about the intersection of sexual violence and slavery is indebted to the work of Bernadette Brooten, who emphasizes the profound role that slavery plays in shaping Jewish, Christian, and Muslim conceptions of gender, body, and personhood.[31]

28. Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge: Harvard University Press, 2011), 7.

29. Stoler, *Imperial Debris*, 2.

30. Davina Lopez, *Apostle to the Conquered: Reimagining Paul's Mission* (Minneapolis: Fortress Press, 2008).

31. Bernadette Brooten, ed., *Beyond Slavery: Overcoming Its Religious and Sexual Legacies* (New York: Palgrave Macmillan, 2010).



In *Rabbinic Tales of Destruction*, I argue that enslavement contours the rabbis' responses to conquest and catastrophe. Scholarship on slavery in rabbinic texts has focused primarily on the treatment of enslaved persons under rabbinic law. Catherine Hezser's pioneering study of Jewish slavery in late antiquity focuses almost entirely on ancient Jews as slaveholders.[32] Gail Labovitz's recent work on slavery and gender in rabbinic texts reveals the way in which the rabbis' sexual access to enslaved women threatens to undo their masculine virtue and destabilize the sexual morality of the rabbinic household.[33] My approach shifts our attention toward different questions. In Bavli Gittin, tales of conquest and its aftermath give voice to Jewish experiences of enslavement, portraying Jews as vulnerable to corporeal degradation and the sexual advances of their Roman masters. In ancient Rome, as Kyle Harper has shown, slavery was suffused with sex.[34] In an important study, Jennifer Glancy has argued that the material realities of slavery shape and constrain gender, body, and personhood in early Christian religious thought and social practice.[35] Similarly, I ask how enslavement as a real or remembered risk shapes the rabbis' own self-understanding, how the threat of enslavement bleeds into narrative, how it contours the afterimages of destruction.

What consequence does conquest have for the rabbis' understanding of sex and gender? Daniel Boyarin has famously argued that Roman conquest profoundly shapes rabbinic masculinity, that while Roman culture celebrated the valorized virility of the Roman warrior as a model of ideal manhood, rabbinic culture affirmed a softer, more feminized man—the "sissy-boy" of the study house.[36] In a still influential assessment, Boyarin presented rabbinic masculinity

32. Catherine Hezser, *Jewish Slavery in Antiquity* (New York: Oxford University Press, 2006).

33. Gail Labovitz, "More Slave Women, More Lewdness: Freedom and Honor in Rabbinic Constructions of Female Sexuality," *Journal of Feminist Studies in Religion* 28 (2012): 69–87; Gail Labovitz, "The Purchase of His Money: Slavery and the Ethics of Jewish Marriage," in Brooten, *Beyond Slavery*, 91–106. My thinking on the way systems of enslavement shape late antique experiences of corporeality, gender, and sexuality within household space has also been influenced by Chris de Wet, *Preaching Bondage: John Chrysostom and the Discourse of Slavery in Early Christianity* (Berkeley: University of California Press, 2015).

34. Kyle Harper, *Slavery in the Late Roman World, AD 275–425* (Cambridge: Cambridge University Press, 2011); see also Craig Arthur Williams, *Roman Homosexuality: Ideologies of Masculinity in Classical Antiquity* (New York: Oxford University Press, 1999).

35. Jennifer Glancy, *Slavery in Early Christianity* (Minneapolis: Fortress Press, 2006).

36. On the gender implications of imperial power and colonial dominance in rabbinic contexts, see D. Boyarin, *Unheroic Conduct*; D. Boyarin, *Dying for God*; and Jonathan and Daniel Boyarin, *Powers of Diaspora: Two Essays on the Relevance of Jewish Culture* (Minneapolis: University of Minnesota Press, 2002).

as the countertype of Roman social norms, the inverse and opposite of Roman masculinity. As Ishay Rosen-Zvi has observed, rabbinic conceptions of masculinity are surely more complex than such a sharp dichotomy allows.[37] Rather than encoding a straightforward resistance to Roman gender norms, rabbinic culture also marks masculine virility through the register of combat within the agonistic world of the study house, a space that Jeffrey Rubenstein has shown to be suffused with the metaphors (and perhaps also embodied expressions) of violence.[38] More recently, Boyarin has moved away from the idea of a sharp dichotomy between the rabbinic and the Roman, recognizing instead the degree to which rabbinic culture is always already conditioned by the Roman and Sassanian cultures in which it is embedded.[39]

In my own work, I build upon Boyarin's insight that Roman conquest matters for rabbinic masculinity, without aiming to articulate an essential difference between rabbinic and Roman manhood. Where Boyarin has primarily focused attention on the ways in which the rabbis' status as colonial subjects shapes their experience of masculinity, I ask about the significance of Roman conquest for the rabbis' portrayal of Jewish women. I argue that the rabbis' experience on the underside of Roman imperium shapes their gender politics in significant ways. Foundational feminist scholarship focused on the rabbis as authoritative jurists, parsing the gender implications of rabbinic responses to sexual violence. Scholarship by Judith Hauptman, Rachel Biale, Ronit Irshai, and Aviva Richman has shed critical light on the complex ways rabbinic legal texts address sexual violence.[40] Such approaches have, understandably, treated the rabbis as legal authorities who *respond* to sexual violence. My work, by contrast, considers rabbinic vulnerability to sexual threat. By focusing particularly on narratives that make explicit reference to Roman conquest, I foreground the

37. Ishay Rosen-Zvi, "The Rise and Fall of Rabbinic Masculinity," *Jewish Studies, an Internet Journal* 12 (2013): 1–22.

38. Jeffrey Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: Johns Hopkins University Press, 2003), 54–66.

39. Daniel Boyarin, "Friends Without Benefits: Or, Academic Love," in *Sex in Antiquity: Exploring Gender and Sexuality in the Ancient World*, ed. Mark Masterson, Nancy Sorkin Rabinwitz, and James Robson (New York: Routledge, 2015), 517–535.

40. Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources* (New York: Schocken Books, 1984); Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder: Westview Press, 1988); Ronit Irshai, "Rape in Jewish Law," paper presented at the Society for Jewish Ethics Annual Meeting, Washington, DC, January 7, 2012; Aviva Richman, "Sexual Coercion and Consent and the Development of Legal Subjectivity in Rabbinic Literature" paper presented at the Society for Jewish Ethics Annual Meeting, Toronto, January 8, 2016.



ways in which imperial violence forces the rabbis to grapple with men's sexual vulnerability and bodily risk. In these contexts, Bavli Gittin's narratives reveal a striking sensitivity to women's sexual risk. Where conventional rabbinic texts frequently portray women's beauty as an incitement to male sexual desire in ways that make women responsible for men's sexual interest, Bavli Gittin's stories make plain the way that Jewish women and men alike are vulnerable to the lust and avarice of the conqueror. These narratives recognize the sexual culpability of the aggressor, reconfiguring conventional rabbinic notions of beauty and danger.

Bavli Gittin's tales also depart from familiar tropes of women's sexual sin as an explanation for catastrophe. Within the Hebrew Bible, the prophets commonly deploy female infidelity as an explanatory metaphor for the national defeat of Israel and Judah. Prophetic rhetoric frames the Israelites' betrayal of the covenant as a sexual transgression that provokes divine violence. These metaphors of female infidelity are particularly prominent in prophetic narratives that respond to national catastrophe; exile becomes understood as a consequence of the feminized nation's sexual sin. Biblical scholars have documented how prophetic religious critique commonly uses pornographic portrayals of the female body to signal punishment and revulsion, figuring whoredom as justification for divine violence and abandonment. In the Bavli's narratives of destruction, however, sexual violence occupies a different rhetorical place. Furthering Michael Satlow's insight that Babylonian rabbinic culture often expresses discomfort with the prophetic "marriage metaphor," I argue that Bavli Gittin's destruction narratives avoid evoking the prophetic motif of national and religious catastrophe as divine response to women's sexual sin.[41] Instead, images of woman as whore are figured in these narratives *as the consequence, but not the cause* of destruction. In striking contrast to the prophetic image of the wayward wife, several Bavli narratives situate *male* sexual and ethical transgression as a key cause of destruction. In keeping with Ishay Rosen-Zvi's insight that the Bavli is often particularly interested in accentuating the sexual responsibility of rabbinic men, Bavli Gittin's stories also suggest that masculine virtue might persevere in the midst of disaster—and become an antidote to the violence and violation experienced by the Jewish body, the Jewish land, and the Jewish God.[42]

41. Michael Satlow, *Jewish Marriage in Antiquity* (Princeton: Princeton University Press, 2001), 56.

42. Ishay Rosen-Zvi, *Demonic Desires: "Yetzer Hara" and the Problem of Evil in Late Antiquity* (Philadelphia: University of Pennsylvania Press, 2011).

## *Disability Studies and Rabbinic Destruction Narratives*

In tandem with my critical interest in sexuality and gender, I also apply disability studies theory to rabbinic literature, probing the cultural significance of disability and impairment in rabbinic law and narrative.[43] For religious studies scholars, disability studies offers a theoretical framework for interrogating the way in which religious texts and cultural systems construct ideals of bodily perfection and demarcate certain kinds of bodies as different or deviant. Disability studies "denaturalizes" disability. It treats disability as a social fact, not a straightforward bio-physical condition. Disability studies theorists stress that disability is produced through stigma and other social processes: stares and lingering looks that single out bodies that deviate from society's expectations, architectural and technological choices that privilege certain kinds of moving and being in the world, and conceptions of rationality and behavior that permit narrow expressions of appropriate cognition and emotion.[44] Rosemarie Garland-Thomson has coined the term "normate" to politicize the notion of a normal body and to call attention to its inverse—"the figure outlined by the array of deviant others whose marked bodies shore up the normate's boundaries."[45] Probing the cultural construction of these categories affords us critical insight into the way a given culture structures normalcy and deviance, the way it idealizes certain body forms, as well as the way it polices the boundaries of the human. As Candida Moss has argued, when

43. See Julia Watts Belser, "Reading Talmudic Bodies: Disability, Narrative, and the Gaze in Rabbinic Judaism," in *Disability in Judaism, Christianity and Islam: Sacred Texts, Historical Traditions and Social Analysis*, ed. Darla Schumm and Michael Stolzfus (New York: Palgrave Macmillan, 2011), 5–28; Julia Watts Belser, "Brides and Blemishes: Queering Women's Disability in Rabbinic Marriage Law," *Journal of the American Academy of Religion* 84, no. 2 (2016): 401–429; Julia Watts Belser, "Disability, Animality, and Enslavement in Rabbinic Narratives of Bodily Restoration and Resurrection" *Journal of Late Antiquity* 8, no. 2 (2015): 288–305.

44. For foundational discussion of the "social" model of disability, see Lennard Davis, *Enforcing Normalcy: Disability, Deafness, and the Body* (New York: Verso, 1995). My thinking on these issues has been particularly shaped by scholars working at the intersection of disability studies and feminist and queer theory, including Rosemarie Garland-Thomson, "Integrating Disability, Transforming Feminist Theory," *National Women's Studies Association Journal* 14, no. 3 (2002): 1–32; Alison Kafer, *Feminist, Crip, Queer* (Bloomington: Indiana University Press, 2013) and Robert McRuer, *Crip Theory: Cultural Signs of Queerness and Disability* (New York: New York University Press, 2006).

45. Rosemarie Garland-Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997), 8.





historians and scholars of religion take disability for granted, we miss something vital about ancient perceptions of embodiment.[46]

How shall we define disability? Because the notion of disability is inseparably intertwined with culture, the category itself has no fixed, stable meaning. Neither biblical nor rabbinic texts have a single term that encompasses the modern concept of disability. Perhaps the closest term is *mum* (blemish), which biblical and rabbinic authors use to categorize a variety of physical and sensory impairments. In its biblical context, however, the term *mum* includes certain physical characteristics (such as a broken arm) that most moderns do not consider a disability, while excluding others (such as deafness) that are commonly included in modern definitions. Despite the differences between the biblical category of the *mum* and contemporary concepts of impairment, I find the modern scholarly conception of disability to be a useful frame for analyzing corporeal difference in rabbinic contexts. Rather than using the term disability to designate a stable, unified category of somatic or mental impairments, I use the terminology of disability to signal the way diverse bodily conditions operate within a given culture to generate a marked, stigmatized difference. Rabbinic sources do use certain disabilities as identity categories, most notably singling out individuals who are blind (*ʿiwwer*), lame (*piseaḥ*), deaf-mute (*ḥeresh*), and mentally disabled (*shoteh*); they also use a common triad of "the deaf-mute, the mentally disabled, and the young person" to identify individuals who are exempt from the performance of certain religious obligation. Such categories, I argue, evoke an implicit category of disability, a recognized and stigmatized identity constructed through a perceived physical or sensory impairment.[47]

In *Rabbinic Tales of Destruction*, I probe the significance of disability within rabbinic narrative, aiming to parse the meanings scripted onto disabled bodies, as well as the way that disability affords the rabbis a symbolic discourse with which to think through the ruin of Jerusalem. My work rests on the recognition that literary representations of disability perform potent cultural work. Disability studies scholars David Mitchell and Sharon Snyder have coined the term "narrative prosthesis" to describe literature's "perpetual discursive dependency upon

46. Candida R. Moss, "Heavenly Healing: Eschatological Cleansing and the Resurrection of the Dead in the Early Church," *Journal of the American Academy of Religion* 79. no. 4 (2011): 991–1017.

47. See Julia Watts Belser, "Judaism and Disability," in *World Religions and Disability,* ed. Darla Schumm and Michael Stolzfus (Waco: Baylor University Press, 2016), 93–113; Julia Watts Belser and Lennart Lehmhaus, "Disability in Rabbinic Judaism," in *Disability in Antiquity*, ed. Christian Laes (New York: Routledge University Press, 2016), 434–452.

disability."[48] Within the Western literary canon, they argue, disability is a "contrivance upon which so many of our cultural and literary narratives rely."[49] Disability imagery is not primarily about the physicality of particular bodies. Instead, literary evocations of disability are freighted with symbolic significance. Authors commonly make instrumental use of disability to convey character, express metaphor, and propel plot. Biblical narrative, Jeremy Schipper has shown, evinces a similar dependence on disability, using disability imagery to express, condense, and convey complex ideas about bodies and beauty, suffering and meaning, valor and heroism.[50] In his foundational work on disability in the accounts of the Davidic monarchy, Schipper argues that biblical writers use disability imagery to express complex and at times contradicting ideological positions related to national identity and Davidic kingship.[51]

My work also considers the role that disability plays in narrating national identity. In the cultural grammar of conquest, I argue, defeat disables the nation. While scholars increasingly recognize the effect that Roman conquest has on social experiences of gender and sexuality, the relationship between imperialism and disability has received less attention.[52] Alongside my interest in parsing the effects of imperial conquest on the social experience of gender and sexuality, I argue that the symbolic discourse of defeat at the hands of Rome shapes rabbinic perceptions of ability and capacity. In this book, I approach the project of reading for disability in two ways. First, I examine narratives that feature characters who might register "as disabled" according to either rabbinic or modern schemas of disablement. Such tales are obvious candidates for disability studies analysis. But I maintain that the tools of disability studies need not be confined to narratives that feature conventionally disabled characters. Instead, I apply a disability studies lens more broadly to tales of conquest and resilience, interrogating the ways

48. David T. Mitchell and Sharon L. Snyder, *Narrative Prosthesis: Disability and the Dependencies of Discourse* (Ann Arbor: University of Michigan Press, 2000), 47.

49. Mitchell and Synder, *Narrative Prosthesis*, 51.

50. Jeremy Schipper, *Disability and Isaiah's Suffering Servant* (New York: Oxford University Press, 2011); Jeremy Schipper, *Disability Studies and the Hebrew Bible: Figuring Mephibosheth in the David Story* (New York: T & T Clark, 2006).

51. Schipper, *Disability Studies and the Hebrew Bible*.

52. On the relationship between disabled bodies and Roman imperial conquest in early Christian narrative, see Warren Carter, "'The blind, lame and paralyzed' (John 5:3): John's Gospel, Disability Studies, and Postcolonial Perspectives," in *Disability Studies and Biblical Literature*, ed. Candida R. Moss and Jeremy Schipper (New York: Palgrave Macmillan, 2011), 129–150, and Sharon V. Betcher, *Spirit and the Politics of Disablement* (Minneapolis: Fortress Press, 2007), 128.





these narratives figure the relationship between physical capacity and corporeal power, as well as the narrative significance they afford to bodily integrity and rupture.

The disabled body, I suggest, frequently functions as a powerful, expressive symbol of disaster.[53] Using disabled bodies to stand in for conquered Jerusalem affords certain rabbinic narratives a powerful symbolic discourse for expressing the visceral incursions of imperial power. Disability studies theorists have, however, emphasized the importance of critiquing cultural discourses that tie disability inexorably with tragedy and suffering.[54] Even as I parse the way in which disablement expresses trauma and violation, I also probe for ways in which disabled figures flip the conventional script of loss and vulnerability. At the same time that subjugated bodies bear the material costs of opposition to the imperial project, these very bodies can also become potent sites of resistance, sites through which communities can critique Roman power and dominance—and also articulate the subversive potency of the unruly, dissident body that refuses to perform as desired beneath the imperial regime.

## *Structure of the Book*

I have chosen to organize *Rabbinic Tales of Destruction* thematically, rather than following the narrative sequence of Bavli Gittin's text. Within individual chapters, my readings of specific sections of Bavli Gittin aim to preserve the flow and sequence of the original narrative, but the book itself does not move sequentially through the talmudic text. Each chapter examines key literary motifs and cultural dynamics of Bavli Gittin's narratives in comparison with parallel rabbinic accounts of the destruction, primarily drawn from Lamentations Rabbah and Yerushalmi Taʿanit. I frequently return to narratives I have already discussed, situating them anew in a different analytical context, inviting the reader to encounter them again. Such choices may startle readers expecting a more conventional literary analysis, in which character development, plot, and moral meaning unfold and deepen over the course of narrative's arc. Yet Bavli Gittin's account of the destruction does not take the form of a singular, over-arching narrative. A few

53. Julia Watts Belser, "Disability and the Social Politics of 'Natural' Disaster: Toward A Jewish Feminist Ethics of Disaster Tales," *Worldviews: Global Religions, Culture, and Ecology* 19, no. 1 (2015): 51–68.

54. This critique is foundational in disability studies scholarship; I cite here two recent works that have been particularly influential for my thinking: Alison Kafer, *Feminist, Queer, Crip*; Rosemarie Garland-Thomson, "The Case for Conserving Disability," *Journal of Bioethical Inquiry* 9, no. 3 (September 2012): 339–355.

sections of Bavli Gittin's text have been carefully crafted as literary units. In his masterful analysis of the opening tale sequence in Bavli Gittin 55b–56b, Jeffrey Rubenstein has demonstrated that the redactors integrated disparate elements into a unified story, imposing an intentional temporal sequence on the narrative and underscoring key themes through recurring motifs and repeated words that link the individual stories together.[55] Other passages, such as Bavli Gittin's account of Titus's destruction of the temple and God's eventual recompense, show similar signs of literary craft. Yet taken as a whole, Bavli Gittin's account of the destruction has a largely anthological character.[56] Eli Yassif coined the term "story cycle" to describe this unit, which is composed of twenty-seven stories about the destruction.[57] In order to most cogently illuminate these tales, I eschew examining them in strict narrative sequence, focusing instead on recurring themes in order to best illuminate the distinctive dimensions of Bavli Gittin's portrayal of the destruction and probe its cultural significance.

The first chapter examines the nexus of gender, sex, and sin in early Jewish narrative, arguing that Bavli Gittin's account of catastrophe reveals a strikingly different portrayal of sexual sin. I begin by examining the motif of women's sexual transgression as a source of national danger in the Hebrew Prophets and in Palestinian rabbinic traditions. Biblical narrative frequently uses graphic portrayals of the female body to convey God's punishment of Israel, figuring women's "whoredom" as justification for divine violence and abandonment. The Palestinian midrash collection Lamentations Rabbah amplifies and intensifies such dynamics, coupling the motif of women's sexual infidelity with the notion of women's sexual treachery to produce a narrative account of Jerusalem's fall that figures sexual violation and bodily brutality as the fitting consequence of women's brazenness. Bavli Gittin, by contrast, studiously avoids associating destruction with women's sexual sin. Instead, its tales emphasize the consequences of men's

55. Rubenstein, *Talmudic Stories*, 144–147.

56. On the creative dimensions of the anthology as a genre, see David Stern, ed. *The Anthology in Jewish Literature* (New York: Oxford University Press, 2004). Eliezer Segal suggests that much of the Talmud should be understood in anthological terms; he also stresses the dynamic and constructive elements of the redactors' role in crafting an anthology. Eliezer Segal, "Anthological Dimensions of the Babylonian Talmud," in Stern, ed., *Anthology in Jewish Literature*, 84.

57. Eli Yassif, "The Cycle of Tales in Rabbinic Literature [Hebrew]," *Jerusalem Studies in Hebrew Literature* 12 (1990): 103–146; Eli Yassif, *The Hebrew Folktale: History, Genre, Meaning* (Bloomington: Indiana University Press, 1999), 209–244. Abraham Weiss calls these tales "the aggadot of destruction" and considers them a self-contained source inserted into the Bavli with only minor editing. Abraham Weiss, *Studies in the Literature of the Amoraim* [Hebrew] (New York: Horeb, 1962), 261–263.





sexual transgressions. But even as its narratives draw attention to male sexual sin, Bavli Gittin also portrays conquered men's compromised bodies as stunning sites of sexual virtue, suggesting that men's sexual piety might serve as an antidote to the violence and violation of the Jewish body amidst Roman conquest.

The second chapter examines the theological significance of sexual violence in the aftermath of Roman conquest. Rabbinic accounts of sexual violence, enslavement, and forced prostitution intertwine theological lament with the brutal body costs of Roman domination. Talmudic narratives mimic pervasive Roman symbolism of imperial dominance as a form of "sexual conquest," using that symbolism to express rabbinic lament and violation at the hands of Rome. These stories articulate of rabbinic resistance to imperial violence, emphasizing Jewish resilience even in the midst of intense suffering. In contrast to the biblical motif of women's whoredom as provoking divine punishment, the rabbinic narratives instead position God and woman alike as violated by Rome. While the move to align Jewish and divine suffering reveals an important cultural shift, I argue that these stories make instrumental use of rape as a way to give voice to divine woundedness and rabbinic lament. Ultimately, the symbolic and theological significance afforded to rape largely reinscribes the vulnerability of women and enslaved people—and draws attention away from the embodied experience of those most likely to bear the brunt of sexual violence.

The third chapter examines a particular feature of the Bavli's tales of men and women taken captive by Rome: their focus on the spectacular beauty of the captured Jewish body. In these stories, I contend, beauty performs potent cultural work, highlighting both the vulnerability of Jewish flesh and the covetousness of the conqueror. Through sexualized narratives that portray the captive Jew as victim of Roman greed, Bavli Gittin makes use of a common Roman moral trope: concern for *luxuria*, an insatiable desire for luxury that is also expressed in lust and licentiousness. The Bavli's beauty tales forge a potent critique of elite Roman decadence and moral degradation. Perhaps even more significantly, I argue, these tales reveal a striking departure from the conventional beauty politics of rabbinic culture. The Babylonian Talmud frequently figures women's beauty as a source of spiritual danger to rabbinic men and imposes limits on women's visibility and voice to curb the threat that beauty poses. By contrast, these narratives offer a strikingly different assessment. They portray the beautiful woman as a victim, not a threat. Amidst situations of overt Roman violence, Bavli Gittin affirms the moral innocence of violated men and women who are subjected to the conqueror's lust. In this respect, Bavli Gittin's stories articulate a strikingly egalitarian response to sexual danger. Beauty becomes a shared risk, a body burden borne by women and men alike.

The fourth chapter uses disability studies theory to analyze the political and cultural significations of the body amidst Roman conquest. Extending the insights of scholars who have examined how Roman colonial dominance reshapes Jewish gender discourse, this chapter argues that imperial violence similarly restructures the way rabbinic narrative portrays the body. My analysis centers on the figure of Rabbi Tsadok, a celebrated priest who fasted for forty years in an attempt to avert the destruction of Jerusalem. Examining the Rabbi Tsadok tales in Bavli Gittin and Lamentations Rabbah, I argue that Rabbi Tsadok's body is used to mark the visceral impact of Roman conquest—and to stage the possibility of rabbinic resistance to Roman domination. In contrast to Bavli Gittin's beauty tales, the Rabbi Tsadok traditions in Lamentations Rabbah chronicle the enduring scar that catastrophe leaves upon the flesh. Yet even as these stories use disability to make visible the tremendous loss that destruction brings, they also resignify the cultural logic of imperial victory, emphasizing the subversive power of disabled Jewish flesh.

The fifth chapter reads Bavli Gittin's destruction narratives through the lens of ecological materialist criticism, tracing the trail of blood and other fleshy residues of the body that run through Bavli Gittin's account of the devastation of Betar. Where the third chapter emphasized the beauty and integrity of the captive Jewish body, these tales imagine the body dismembered, undone by the conqueror's violence. Filled with transcorporeal images of blood and brain seeping into the land, these tales blur the boundaries between human bodies and the rest of the material world. The rocks and rivers of Judea bear the blood and viscera of murdered thousands, retaining some physical trace of the nameless dead. But even as Bavli Gittin's narratives mark and memorialize the lingering presence of body and blood in the land, the tales betray an anxious instability: the tangible remains of Jewish death are all too easily washed away, rendered ephemeral. In this chapter, I trace tensions over materiality and memory, permanence and erasure, heroism and defeat in the tales of the boiling blood of the slain prophet Zechariah and the martyrdom of the mother of seven sons, parsing the Bavli's complex discourse of ruin and redemption.

The sixth chapter grapples with rabbinic fantasies of revenge and recompense, focusing primarily on the lengthy rabbinic tale of Titus's downfall after his destruction of the temple. I analyze the Titus narrative through the framework of rabbinic eschatology, demonstrating how the tale critiques the arrogance and hubris of the conqueror, imagines the downfall of the wicked, and undercuts the triumphalist assertions of Roman imperial power. I argue that these rabbinic eschatological fantasies are expressed in striking corporeal terms: through images of bodily rupture and physical pain, as well as the humiliation and degradation of flesh that accompany the unmaking of the imperial body. Through striking images of

JEWISH STUDIES IN THE 21ST CENTURY

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# Early Judaism

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23 See *m. Qiddushin* 1:7 and *t. Qiddushin* 1:11.
24 See Alexander, *Gender and Timebound Commandments*, 178–210.
25 *T. Soṭah* 2:7–9; *t. Bikkurim* 2:3–7; *m. Qiddushin* 1:7–8.
26 For example, see Rachel Adler, "In Your Blood, Live: Re-visions of a Theology of Purity," *Tikkun* 8.1 (January 1993): 38–41.
27 For example, see Blu Greenberg, *On Women and Judaism: A View from Tradition* (Philadelphia: Jewish Publication Society of America, 1981), pp. 105–124.
28 Charlotte Elisheva Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford, CA: Stanford University Press, 2000), especially p. 16.
29 See the discussion in ibid., pp. 40–67; also Gail Susan Labovitz, *Marriage and Metaphor: Constructions of Gender in Rabbinic Literature* (Lanham, MD: Lexington, 2009), pp. 122–128.
30 Translation following Fonrobert, *Menstrual Purity*, p. 50.
31 Translation following ibid.
32 *B. Ketubot* 10a, discussed in Fonrobert, *Menstrual Purity*, pp. 59–60; see also discussion in Labovitz, *Marriage and Metaphor*, pp. 125–128.
33 See Fonrobert, *Menstrual Purity*, pp. 102–127.
34 Translation following ibid., p. 106.
35 Ibid., pp. 68–102.
36 *B. Niddah* 57a.
37 The following discussion is based on Cynthia M. Baker, *Rebuilding the House of Israel: Architectures of Gender in Jewish Antiquity* (Stanford, CA: Stanford University Press, 2002), pp. 1–76.
38 Ibid., p. 36.
39 Yizhar Hirschfeld, *The Palestinian Dwelling in the Roman-Byzantine Period* (Jerusalem: Franciscan Printing Press and Israel Exploration Society, 1995), p. 99; cited in Baker, *Rebuilding the House of Israel*, p. 40.
40 Baker, *Rebuilding the House of Israel*, p. 38.
41 Ibid., p. 43.
42 Ibid., p. 44.
43 *M. Ketubot* 5:8.
44 *T. Soṭah* 5:9; see also *t. Ketubot* 7:6 and *m. Ketubot* 7:6.
45 Lit. "My wife I called 'my house'" (*b. Shabbat* 118b). For a complete list of sources that equate wife with "house," see Labovitz, *Marriage and Metaphor*, pp. 115–122.
46 See the discussion of this phrase in Labovitz, *Marriage and Metaphor*, pp. 132–138.
47 See Lee I. Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity* (Jerusalem: Yad Izhak Ben-Zvi, 1989); and Seth Schwartz, *Imperialism and Jewish Society, 200 B.C.E. to 640 C.E.* (Princeton, NJ: Princeton University Press, 2001).



9

# Inventing Rabbis

CHRISTINE HAYES

As we have seen, Second Temple Judaism was very diverse. It was the rabbis who were responsible for the forms that are familiar today. This chapter explores the origins of rabbinic Judaism, which crystallized in the centuries following the destruction of the Second Temple in 70 CE and reached its full and classical formulation by the early seventh century CE.

In so doing, it is important to recognize the partial nature of our sources—partial in the sense that they are incomplete and partial in the sense that they represent and favor a particular point of view. This understanding is important if we hope to distinguish rhetoric from reality. Much of our information about this period comes from texts composed by the rabbis themselves and from later medieval works defending rabbinic Judaism from Karaite attack. The stories the rabbis tell about their own emergence and significance (stories echoed by their medieval defenders and apologists) are understandably rabbino-centric. Moreover, because "who we are" is often assumed to be a function of "where we came from," the rabbis' reflections on their past represent an attempt to invent their present and secure their place in Jewish society.

This chapter examines the "myth of origins" by which the rabbis invented themselves in their own day and asks whether it is possible to uncover the rather messy reality beyond the rhetoric. The evidence of nonrabbinic sources from antiquity is important, but only insofar as it is realized that such sources, too, are partial, both in the sense of being incomplete and also in the sense of representing and favoring a particular point of view.

Complicating our task is the fact that the activity of "inventing the rabbis" is engaged in not only by the ancient rabbis themselves but also by modern scholars. Over the course of the last century, modern schol-

ars have invented and reinvented both the rabbis and rabbinic Judaism in various ways—some negative and some positive. This chapter also reviews the shifting representations of rabbinic Judaism in modern scholarship and asks again whether it is possible to uncover the complicated reality beyond the rhetoric.

## From Biblical Israel to Rabbinic Judaism

It is helpful to begin with some facts. What do we know? We know that by the early seventh century CE there existed a cultural formation that is now designated "rabbinic Judaism" and that this cultural formation differed from biblical Israel in radical ways. How did biblical Israel become seventh-century rabbinic Judaism?

The people of Israel underwent enormous changes across the nearly two millennia that constitute the biblical, Second Temple, and rabbinic periods (approx. 1300 BCE–700 CE). The six hundred years of Jewish history referred to as the Second Temple period (520 BCE–70 CE) saw dramatic changes in the politics, society, culture, and religion of Judea and the Jewish communities of the diaspora. Certainly, as Shaye J. D. Cohen notes, biblical Israel to the time of the Restoration and rebuilding of the Second Temple (late sixth century BCE) and Second Temple–period Judaism (520 BCE–70 CE) shared many commonalities—the belief in a creator God who chose and entered into a covenant with Israel; an attachment to the land of Israel, the city of Jerusalem and the Temple; observance of a sacred calendar; and various ritual and legal practices.[1] Nevertheless, as Cohen also points out, the two were markedly different. Biblical Israel was a tribal society led by kings and prophets, dwelling on its ancestral land. Membership in this society was determined largely by birth or a simple process of "naturalization," often through intermarriage. Biblical-period Israelites engaged in communal sacrifices and worship of Yahweh at a Temple controlled by priests. The principal institutions of this period were the priesthood, the monarchy, the Temple, and the land of Israel itself. Most important, in biblical times there was no Bible.

By contrast, the tribal structure had all but disappeared in the Second Temple period; those Judeans who returned from the Babylonian exile were organized by clans. Many Judeans did not live in the ancestral land





at all but dwelled in diaspora communities such as Alexandria. During this period, Judaism came to be defined in religious rather than national terms. As Cohen rightly notes, intermarriage with non-Jews became prohibited in Second Temple times; nevertheless, a process of conversion was created, enabling foreigners to gain membership in the community. There were other discontinuities: the sacred writings that would form the Hebrew Bible were being assembled and gaining authority—not all at once, but in stages and alongside many other important texts that would ultimately be excluded from the central national-religious corpus we refer to today as the Hebrew Bible; while the Temple and its sacrificial service continued alongside prayer and the recitation of scripture, Torah study became increasingly important. Additionally, the community was no longer headed by kings; instead priests held power and, in the time of the Maccabees, even claimed the title of king despite a lack of Davidic lineage. Prophets were less prominent in Second Temple Jewish society, although apocalyptic visionaries and charismatic healers were active. Persons skilled in the transmission and interpretation of sacred writings (scribes) began to emerge. Finally, new ideas and beliefs began to find expression in Second Temple Jewish texts. Some of these texts show the influence of platonic dualism, some adopt a belief in a multitude of angels and other intermediaries, and some espouse the idea of reward and punishment after death or contain eschatological visions of an end-time resurrection of the dead and restoration of the nation under an anointed king or messiah.

Most important, Jewish society in the Second Temple period was riven by various sects, the most well known of which were the Pharisees, the Sadducees, and the Essenes. Our ancient sources differ from one another in their identification of the issues dividing Jews in the Second Temple period. Cohen notes that the evidence in rabbinic sources suggests that the central foci of sectarian polemics were the Temple, law, and scripture. The legitimacy of the Second Temple and of the priests officiating there was a contentious matter.[2] As descendants of Zadok, a priest under David, the Sadducees believed they held exclusive claim to the high priesthood. They likely formed as an opposition to the non-Zadokite Hasmoneans who appointed themselves high priests in the second century BCE.[3] The Essenes' rejection of what they believed was an illegitimate and profane Temple and priesthood led them to with-

draw from society to live in small communities according to a rigorous discipline that emphasized ritual purity and religious purification, including—many scholars maintain—a desert community at Qumran near the Dead Sea. Legal matters were a second source of contention that encouraged the formation of sects in ancient Jewish society. The Pharisees, comprising laity and priests skilled in law and jurisprudence, possessed ancestral traditions that they viewed as binding. These Pharisees, who by the early first century CE appear to have divided into two schools of thought, referred to as the House (i.e., students) of Hillel and the House (i.e., students) of Shammai, emphasized laws of purity, tithing, Sabbath, and marriage. Rabbinic sources depict them as engaging in legal disputes with Sadducees; moreover, writings associated with the (probably Essene) community living at Qumran reveal legal positions at odds with positions attributed to Pharisees. These Dead Sea Scrolls also contain works of biblical exegesis in accordance with the ideology of the sect, suggesting that interpretation of scripture was a third area of contention that fueled sectarian division.[4] To the evidence from rabbinic sources we must add the evidence of Josephus, according to whom the major sects were distinguished from one another by philosophy, social standing, politics, and general way of life.[5] Philosophically, they disagreed on such topics as fate, immortality of the soul, and resurrection. Socially, the Sadducees were aristocratic and valued hereditary privilege and the authority of priests; the Pharisees were popular with the masses and valued leadership based on learning, knowledge, and wisdom; and the Essenes were religious virtuosi separate from the community.[6] There were still other groups that added to the ferment of Jewish society in the Second Temple period—zealots, apocalyptic visionaries, *sicarii* (lit. "dagger men," a reference to some kind of violent rebel), and Christians.

The differences between biblical Israel and Second Temple Judaism outlined here are difference enough, but if we shift our gaze to the classical rabbinic period (second–seventh centuries CE) we stand at an even greater distance from biblical Israel. In the rabbinic period, there was no longer a Temple or sacrificial service and priests no longer played a central role, or anything more than a purely ceremonial role, in the life of the community. Prayer and the study of Torah took center stage in the religious lives of both the community and individuals. Indeed,





piety on the whole became more individualistic, and study of Torah became the supreme religious deed. Prophets and kings had disappeared as well as the sects known from the Second Temple period, and by the late third century rabbis had emerged as the new leaders of the community, headed by a Patriarch (a rabbinic scholar recognized as political head of the Jewish community in Roman Palestine) who, to be sure, claimed descent from the house of David (as did the exilarch, the lay head of the Jewish community in Babylonia). The authority of the rabbis was not based on heredity (like that of priests and kings) or divine charisma (like that of prophets) but on their mastery of the sacred scriptures and the ancestral tradition. Instead of the Temple, the synagogue and the *beit midrash* (study house) were the central institutions for the transmission of religious culture. Scripture was still important, but it shared its central position with another text—the Mishnah, a set of legal traditions and disputes produced and studied by the rabbis and declared to be the Oral Torah given at Sinai. In short, in the rabbinic period there was no Temple, no sacrificial system, no functioning priesthood, prophecy, or monarchy—all staple features of biblical Israel. The Israelite heritage had turned in a new direction.

## Rabbis Inventing Rabbis

How did rabbinic Judaism emerge from both biblical Israel and the Second Temple Judaism that preceded it? Is this a story of continuity and natural evolution or a story of discontinuity and rupture?

We begin by asking how the rabbis themselves answered the question. How did they present the story of their emergence and their relationship to Israel's past? When examining the rabbinic evidence, it is important to remember that the question of origins is deeply implicated in the question of identity. In view of the popular belief that the past leads inevitably to the present, a group's construction of its past is simultaneously an attempt at constructing its present. When the rabbis told stories about their origins, they were not merely seeking to *understand* or *explain* themselves; they were in fact *inventing* themselves. Moreover, they were justifying a certain role for themselves in Jewish society of the first six centuries of the Common Era.

The following selections from chapters 1 and 2 of Mishnah *Avot* draw a direct line of cultural transmission from the biblical past to the rabbinic present:

Moses received the Torah at Sinai and handed it down to Joshua, and Joshua to the elders, and the elders to the prophets, and the prophets to the men of the great assembly.

The latter used to say three things: "Be deliberate in judgment, raise up many disciples, and make a (protective) fence around the Torah."

Simeon the Righteous was one of the last of the Men of the Great Assembly.

He used to say, "The world is based upon three things: The Torah, divine service and acts of loving kindness."

Antigonus of Sokho received from Simeon the Righteous.

He used to say, "Do not be like servants who serve the master in the expectation of receiving a reward, but be like servants who serve the master without the expectation of receiving a reward, and let the fear of heaven be upon you."

Yosi b. Yo'ezer of Zeredah and Yosi b. Yoḥanan of Jerusalem received from them [Simeon the Righteous and Antigonus of Sokho].

Yosi b. Yo'ezer used to say: Let your house be a meeting house for the sages and let yourself be covered by the dust of their feet and drink in their words with thirst.

Yosi b. Yoḥanan of Jerusalem used to say . . .

Joshua b. Peraḥiah and Nittai the Arbelite received from them [the foregoing pair].

Joshua b. Peraḥiah used to say . . .

Nittai the Arbelite used to say . . .

Judah b. Tabbai and Shimeon b. Shetaḥ received from them [the foregoing pair].

Judah b. Tabbai used to say . . .

Shimeon b. Shetaḥ used to say . . .

Shemayah and Avtalion received from them [the foregoing pair].

Shemayah used to say . . .

Avtalion used to say . . .

Hillel and Shammai received from them [the foregoing pair].





Hillel used to say, "Be one of the disciples of Aaron, loving peace and pursuing peace, loving one's fellow beings and bringing them near to Torah . . ." .

. . . He also used to say, "If I am not for myself, who is for me; but if I am for myself alone, what am I; and if not now, when? . . ."

Shammai used to say, "Make your Torah [study] a regular habit. Speak little but do much, and receive all men with a pleasant countenance."

Hillel also used to say . . .

R. Yoḥanan b. Zakkai received from Hillel and Shammai.

He used to say, "If you have learned much Torah, do not claim credit for yourself, because it was for this purpose that you were created."

R. Yoḥanan b. Zakkai had five disciples and they were these R. Eliezer b. Hyrcanus, R. Joshua b. Ḥananiah, R. Yosi the priest, R. Simeon b. Netana'el, and R. Eleazar b. Arakh . . .

They each said three things . . .

Tractate *Avot*, one of the sixty-three tractates of the third-century rabbinic compilation known as the Mishnah, thus opens with a clear assertion of continuity across the centuries.[7] The text states that Moses received Torah at Sinai and transmitted it to Joshua, beginning a sequence of reception and transmission that continued through the Elders to the Prophets, to the men of the Great Assembly (in the time of Ezra), among whom was Simeon the Righteous (third century CE). The transmission continued from Simeon the Righteous and his disciple Antigonus of Sokho through five pairs of teachers—the last being the famous pair Hillel and Shammai. Hillel and Shammai transmitted Torah to R. Yoḥanan b. Zakkai, who lived at the time of the destruction of the Second Temple (70 CE) and who, in turn, transmitted Torah to five disciples.

Each "link" in this chain of transmission is reported to have said three things—generally pithy aphorisms, which are then cited (though omitted here for brevity). Additional teachings are reported in some instances, and the teachings of R. Yoḥanan's five disciples (first to second century CE) as well as those of later sages (second century CE) continue in the ensuing paragraphs. It is not only the Written Torah but also additional oral teachings that are transmitted from master to disciple.

In this text, the rabbis position themselves as the sole legitimate recipients and guardians of the nation's ancient heritage. Their Oral Torah—a massive collection of teachings, traditions, and laws that elaborate and interpret the Written Torah—is represented as continuous with God's revelation to Moses at Sinai. Other rabbinic texts make the same claim in different ways. According to a few accounts, the Oral Torah—Mishnah, Talmuds, and midrash—was revealed in full at Sinai and relayed orally alongside the Written Torah.[8] Other rabbinic texts represent the Oral Torah as immanent within the Written Torah and developing gradually from it over the course of centuries, particularly through the application of divinely revealed interpretative rules.[9] Despite local differences, these rabbinic accounts of the origin of the Oral Torah agree on two points: first, the Oral Torah is rooted directly or indirectly in God's revelation to Moses at Sinai; second, because the Oral Torah develops and completes the Written Torah it is essential to a full and proper understanding of God's will as expressed in the Written Torah.

The paradoxical idea that the Torah revealed at Sinai is both divine and yet completed through human elaboration and interpretation is expressed by the following pair of rabbinic assertions: on the one hand "the Torah is from heaven," but on the other hand it is "not in heaven" any longer.[10] In other words, because the Torah is from heaven, it expresses the divine will; but because it is no longer in heaven, the task of interpreting the Torah and elaborating the divine will is an ongoing task that has been given over to humankind or, to be specific, to the rabbis.

The rabbis maintain that the task of accessing and articulating God's will for Israel falls to them because prophecy has ceased: "R. Abdimi from Haifa said: Since the day when the Temple was destroyed, prophecy has been taken from the prophets and given to the wise."[11] In the biblical past and in the Second Temple period, they asserted, God sent prophets to announce His will to Israel, but no more. Since the destruction of the Second Temple, God's will for His people is revealed through interpretation of the Written Torah revealed at Sinai, and interpretation is the task of scribes and sages—the rabbis themselves. Seeking to secure their position as the authoritative interpreters of God's written revelation, the rabbis read themselves into Deuteronomy 17's procedure for adjudicating difficult legal cases. Deuteronomy 17:8–13 states that





when a case is too difficult to decide it is to be presented to the Levitical priests or the judge (*shofeṭ*) in charge at the time, and the verdict is to be followed scrupulously. The rabbis understood themselves to be the "judge" in charge at the time. Not only, however, did Deuteronomy 17 provide scriptural warrant for the rabbis to serve as authoritative judges and interpreters of God's will for their community in their view, but it also served to disable any recourse to charismatic figures who might claim oracular or prophetic knowledge of the divine will. There was one legitimate path to knowledge of God's will, and that path passed through the rabbis.

This rabbino-centric construction of the means by which God communicates His will to Israel is matched by a rabbino-centric account of the Jewish community's recovery following the destruction in 70 CE. Many late rabbinic stories depict the rabbis (or sages) as playing a central leadership role in the immediate postdestruction period. According to these stories, it was *they*, under the leadership of R. Yoḥanan ben Zakkai, who busied themselves with the reconstruction of Jewish life in the nation's darkest hour. According to a rather fantastic rabbinic legend, R. Yoḥanan anticipated the destruction of Jerusalem. He escaped the Roman siege by having himself smuggled out of Jerusalem in a coffin and, after impressing the Roman emperor Vespasian, obtaining the latter's permission to assemble a group of sages and disciples at Yavneh (near modern-day Tel Aviv).[12] Rabbinic tradition credits the sages of Yavneh with beginning the process of transforming Temple-centered biblical Israel into Torah-centered rabbinic Judaism by collecting and sorting traditional teachings that might otherwise have been confused or forgotten.[13]

R. Yoḥanan ben Zakkai is portrayed in rabbinic sources as forward-looking, refusing to dwell on the grief engendered by the destruction. In *Avot deRabbi Natan*, as R. Joshua weeps over the Temple ruins because Israel has lost its means of atonement, R. Yoḥanan b. Zakkai comforts him with the following words: "My son, be not grieved. We have another atonement as effective as this. And what is it? It is acts of mercy, as it is said, 'For I desire mercy and not sacrifice' (Hos 6:6)."[14] This legend encapsulates the rabbinic message: Jews are no less capable of obtaining atonement for their sins, of attracting and maintaining the divine presence, in the absence of the Temple than they were when the Temple

stood. Reconstructing a life of Torah means developing practices, concepts, and institutions that could nourish Jewish life without a temple and in the midst of communal devastation. R. Yoḥanan b. Zakkai's pupil R. Joshua learns this lesson well. In a story from the Babylonian Talmud, R. Joshua encounters a group of ascetics who refuse to eat meat or drink wine after the destruction of the Temple. But R. Joshua counters that one must not give in to nihilism despite the recent national trauma.[15] This tale conveys the message that fixating on destruction paralyzes the community and brings life to a halt. Life goes on, and one must move forward—remembering *without* despairing.

These and other stories redacted in rabbinic works of a later date (fourth to seventh centuries) portray the rise of rabbinic Judaism as the work of noble (though not flawless) and determined sages acting with foresight and purpose on a large scale to renew and sustain Jewish life in the immediate postdestruction period (late first century CE). Thus, the sources describe Yoḥanan ben Zakkai and later Gamliel II as reconstituting the Sanhedrin and undertaking a series of *taqqanot* (rabbinic enactments) that transformed and preserved Judaism as a post-Temple, nonpriestly creation.[16] These *tannaim* (a term that refers to sages up to approximately 220 CE) are credited with drawing together the legal traditions and teachings of preceding generations and establishing normative practice (or *halakhah*) in accordance with the Pharisaic school of Hillel.[17] While early rabbinic sources suggest an emphasis in the postwar period on laws of purity, tithing, and calendar-setting, later texts credit the Yavneh generation with composing obligatory daily prayers in commemoration of the daily sacrifices in the Temple as well as prayers and blessings for a variety of occasions and adapting or transferring to the home and/or synagogue certain Temple observances—especially the ceremonies associated with the pilgrimage festivals.[18] Thus, even though the Passover lamb could no longer be sacrificed, a family observance of the Passover was possible, and the non-Temple elements of the ceremony—the eating of unleavened bread and of bitter herbs—took on a heightened importance. The basic framework of the Passover *haggadah* (the liturgy accompanying the Passover meal in the home) is believed to have been composed in the early rabbinic period. These "reconstruction" texts, with their depiction of the rabbis as innovators who met the challenges of a new era, stand in tension with Mishnah





*Avot* 1 and its depiction of the rabbis as adding their own teachings to an unchanging core tradition.

An important aspect of the rabbis' self-fashioning was their rejection of the zealotry that exacted so high a price in the war with Rome and the Bar Kokhba revolt (132–135 CE). Although it is clear from rabbinic sources that the rabbis had no great love for Rome, they did not seek to inflame zealous nationalism or rebellion against the hated regime. In the eyes of the rabbis, the disastrous Bar Kokhba revolt and the persecutions that followed in its wake only confirmed the dangers of political messianism and nationalism.[19] The rabbinic program was one that focused inward on the quest for piety and sanctity in the belief that God will bring an end to the dominion of the idolaters when He sees fit. God's hand cannot be forced. The Jews will be restored, the Temple will be rebuilt—but in God's own time. The task of the community until that time is dedication to God's Torah, which offers a blueprint for the life of *imitatio dei*. Torah was seen as the source of life, and to abandon it was to live without divine protection and blessing.[20]

The idealized and streamlined picture of a chain of tradition as well as the rabbinic role in reconstruction after 70 found in some rabbinic texts was magnified in post-talmudic accounts of the origin of rabbinic Judaism. Enormously influential in this regard was the *Iggeret*, or letter, of Rav Sherira Gaon. Written in 987 by the head of the Pumbeditha *yeshiva* in Babylonia to Jacob ben Nissim of Kairouan (in Tunisia), the letter addresses a series of questions concerning the history of the Oral Law and the formation and compilation of the Mishnah, Talmuds, and other works of rabbinic literature. The community in Kairouan was troubled by the charges and attacks of Karaites, an antirabbinic group that rejected the authority of the Oral Law as reflected in talmudic tradition. The Karaites cited the presence of controversy and multiple opinions as proof that the Oral Law was not a faithful transmission of divinely revealed teaching but a human invention. Against this, Sherira asserts the unity of the content of the Oral Torah and the unbroken chain of transmission from the time of Moses to its formulation in the Mishnah that was edited by Rabbi Judah ha-Nasi.[21] Relying on Mishnah *Avot* and an array of talmudic texts—many clearly legendary in character—Sherira provides an idealized history of the Oral Law and the rabbinic movement that emphasizes the unity and reliability of the former and

the integrity and authority of the latter. The early sages were brilliant, knew the tradition by memory, and taught the law, though each in his own way. Despite differences in formulation, the content and explanation of the Oral Law were known to all sages. Eventually, R. Judah ha-Nasi gathered earlier traditions, formulated them in a fixed language, and produced the authoritative Mishnah, which was immediately and universally accepted.[22]

## Dissonant Voices

While it is true that by the fourth century CE the main contours of rabbinic Judaism were in place and the rabbis, backed by the patriarch, were found in local communities serving as adjudicators, teachers, and advisors, the process of their emergence was not as smoothly continuous and unified as some rabbinic and early medieval sources would suggest. Indeed, a closer look at Mishnah *Avot* itself hints at discontinuities and disjunctions.

We noted earlier that the themes of uniformity, stability, and continuity are front and center in Mishnah *Avot*; and yet, if one scratches beneath the surface, these themes are quickly destabilized by markers of difference and discontinuity. First, the content of the tradition that is transmitted is not constant, but grows continually through the addition of new teachings. Second, the chain of transmission of Torah presented in this mishnah omits the one group biblically appointed to teach Torah to Israel—the priestly class (Lev 10:11)—and includes another group, the rabbis, who appear nowhere in biblical tradition. These features raise the suspicion that the text's portrait of a seamless transmission of a stable tradition masks a radical discontinuity. This suspicion is strengthened by thematic and textual elements that resonate with the text's Greco-Roman milieu as distinct from its biblical past. Specifically, the pedagogical ideal of oral transmission from master to disciple is consonant with the master-disciple relationship at the heart of Greco-Roman *paideia* (education). In addition, the list of sages may be compared to the *diadoche* texts of Greco-Roman philosophical schools—succession lists of recognized teachers of a particular school beginning with its founder. Such succession lists were also composed by early Christian writers





from the second century CE on (e.g., Justin, Irenaeus, and Athanasius) as an authority-conferring strategy.

Thus, while the theme of continuity is predominant in Mishnah *Avot*, markers of discontinuity are not entirely effaced. Discontinuity comes to the fore in another very famous passage from the Babylonian Talmud—a multigenerational rabbinic compilation that reached completion in the sixth or early seventh century CE. In this fanciful story, a rabbinic author imagines a time-travel encounter between Moses and the second-century CE rabbinic master R. Akiva and conveys a sense of tremendous distance and difference from the world of biblical Israel:

> Rav Judah said in the name of Rav: "When Moses ascended to heaven [to receive the Torah] he found the Holy One, blessed be He, engaged in affixing [decorative] crownlets to the letters." Moses said, "Lord of the Universe, why do you bother with this?" He answered, "There will arise a man at the end of many generations, Akiva b. Joseph by name, who will expound upon each crownlet heaps and heaps of laws." "Lord of the Universe," said Moses, "allow me to see him." He replied, "Turn around." Moses went and sat down behind eight rows [and listened to the discussions]. Not being able to follow their arguments, he was depressed; but when they came to a certain topic and the disciples said to the master, "Whence do you know it?" and the latter [R. Akiva] replied, "It is a law given unto Moses at Sinai," Moses was comforted. Thereupon he returned to the Holy One, blessed be He, and said, "Lord of the Universe, You have such a man, and You give your Torah by me!" He replied, "Be silent, for such is My decree." Then Moses said, "Lord of the Universe, You have shown me his Torah, now show me his reward." "Turn around," said He, and Moses turned around and saw them weighing out his flesh at the market-stalls. "Lord of the Universe," cried Moses, "such Torah, and such a reward!" He replied, "Be silent, for such is My decree." (*b. Menaḥot* 29b)

According to the story, Moses ascends to heaven to bring the Torah to Israel and finds God attaching final calligraphic flourishes to the text. When God explains that a man will later derive numerous laws from these seemingly meaningless squiggles, Moses asks to see the man. Transported to the second-century CE schoolhouse of R. Akiva, he sits

in the back with the least skilled students where he is at a complete loss to understand the proceedings. Moses, the very one to whom God entrusted His Torah and the first to teach Torah to Israel, does not recognize that Torah in the hands of a rabbinic sage, a midrashic virtuoso, some 1,500 years later. The story signals a rabbinic awareness of the yawning gulf that separates the rabbis' world from the Torah of Moses and the world of biblical Israel. That this discontinuity is a cause of some anxiety is reflected in the sense of alienation and depression experienced by Moses, relieved only when R. Akiva comes upon a law he is unable to derive by means of his complex exegesis of scripture. The law must be accepted, independent of scriptural authority, as a law stretching back to Moses at Sinai, a fact that comforts Moses. Despite an overwhelming impression of radical discontinuity, the story assures the reader of some degree of continuity, however attenuated. And yet the tragic fate that meets R. Akiva, who was martyred by the Romans during the Bar Kokhba revolt, raises the possibility that the rabbinic enterprise, even if divinely underwritten, is a dangerous one.[23]

The theme of discontinuity is openly acknowledged in some rabbinic sources (as in *b. Menaḥot* 29b) and denied in others. Open acknowledgment may be seen in Mishnah *Ḥagigah* 1:8, which likens certain rabbinically elaborated laws to mountains hanging by a thread (because they are voluminous but have little scriptural support) while others simply float in the air and have no scriptural support whatsoever. By contrast, there are entire works of *halakhic* midrash (legal exegesis) that seek to show the biblical basis for rabbinic laws. In other words, rabbinic literature see-saws between *disclosing* the discontinuous and innovative character of rabbinic law and *concealing* it.

This very tension highlights the extent to which the rabbis' account of their own origins requires critical investigation. This investigation, carried out by modern scholars for nearly two centuries, has resulted in a radically different account of the origins of rabbinic Judaism from that found in the classical sources.

## Modern Scholarship: Inventions and Reinventions

The ancient rabbis were not the only ones to engage in the activity of "inventing the origins of rabbinic Judaism." Modern scholars have also





labored to reconstruct the origins of rabbinic Judaism, with widely varying results. As we investigate the invention and reinvention of rabbinic Judaism in the modern period, we will consider whether it is possible to uncover the complicated reality beyond rabbinic rhetoric, which is the task that modern scholarship often sets for itself. To the extent that such a thing is possible (and there are those who would deny that it is ever possible), it would seem to require a comparative methodology.

One of the characteristic features of modern scholarly inventions of rabbinic Judaism is the comparative method. Nonrabbinic sources of various kinds are brought into conversation with rabbinic sources to serve as a kind of check. If a number of nonrabbinic sources make an assertion that corresponds to something in rabbinic materials, then there is a good chance that we have uncovered some kind of historical reality, even if it is only a shared ideology or perception. However, nonrabbinic sources, no less than rabbinic sources, have their biases and problems, making the work of comparison particularly challenging.

We see this plainly in the work of scholars in the nineteenth and early twentieth centuries who sought to understand the origins and nature of rabbinic Judaism in the light of New Testament and Christian sources. E. P. Sanders has pointed out that much of the New Testament scholarship has been marred by distorted views of Judaism that have taken at face value the polemical representations of First and Second Temple Judaism found in the Gospels and the writings of Paul.[24] The New Testament contains polemical descriptions of Pharisaism as a legalistic works-righteousness or equally degenerate form of religion, which Ferdinand Wilhelm Weber described as one in which "one must earn salvation by compiling more good works ('merits') whether on his own or from the excess of someone else, than he has transgressions."[25] Influenced by Weber's views and equating the distorted image of first-century Pharisaism with rabbinic Judaism and rabbinic Judaism with Judaism writ large, New Testament scholars portrayed ancient Judaism in the first centuries CE and beyond as at best an inadequate and nonfunctional religion, with regrettable elements of nationalism, and, at worst, one that destroys any hope of forgiveness or a proper relationship between God and man.[26] New Testament scholars referred to Judaism in this time as "late Judaism," implying that it was approaching its natural end and would soon relinquish the stage to Christianity. Sanders sums up: "The supposed

legalistic Judaism of scholars . . . serves a very obvious function. It acts as the foil against which superior forms of religion are described. It permits . . . the writing of theology as if it were history."[27]

The negative portrayal of ancient Judaism by New Testament scholars prompted responses by scholars of Judaica, who tried to paint a different portrait of rabbinic Judaism. These apologetic offerings were often based on a selective reading of rabbinic sources and were romantic and idealized. The modern scholarly invention of rabbinic Judaism in the middle of the twentieth century was caught, it would seem, between polemics and apologetics.

## Breaking the Impasse

In the 1980s, two historians, Isaiah Gafni and Shaye J. D. Cohen, produced accounts of the rise of rabbinic Judaism that attempted to steer a middle course by adopting two simple strategies. First, they strove to understand ancient Judaism and rabbinic Judaism *on their own terms* and not as a foil (whether negative or positive) for Christianity. To this end, they avoided a common methodological problem found in much New Testament scholarship: the tendency to extract from rabbinic sources information about topics important to the study of the New Testament but of marginal or no interest to the authors of rabbinic texts and, conversely, to ignore the issues of primary importance in rabbinic texts. The result of these tendencies was seen as a distorted picture of rabbinic Judaism. Gafni and Cohen approached rabbinic sources with a greater awareness of their unique character and concerns as well as the special challenge they pose for the historian.[28] Because rabbinic texts are anthologies of often-conflicting traditions of various genres produced over the course of centuries, a comprehensive assessment of the available sources on a given topic is a desideratum. This assessment must be attentive to differences of time and place, but sorting out what is early and what is late, what represents an individual teaching or a broader consensus, is a difficult matter. Moreover, rabbinic sources are almost uniformly uninterested in historiography, and the historical reflections they contain serve ideological purposes. The historian must proceed cautiously.

Second, to varying degrees, these scholars like others in the latter part of the twentieth century, sought to understand rabbinic Judaism





*in its proper context*. Much prior scholarship, especially New Testament scholarship, had assumed that rabbinic Judaism and ancient Judaism were one and the same thing, but this assumption faded as evidence of nonrabbinic forms of Judaism came to light. In the latter part of the twentieth century, scholars acknowledged the great complexity of ancient Jewish society and arrived at radically new conclusions regarding the rabbis' place within Jewish society of the first three centuries of the Common Era. Ironically, it was precisely as the rabbis were decentered and marginalized that they came into sharper focus.

In an effort to understand the origins of the rabbis, Gafni and Cohen focused on identifying the rabbis' predecessors in the Second Temple period and on determining how and why a class of rabbi-sages should have crystallized in the wake of the destruction. What relationship did this new class have to the various groups or sects in existence on the eve of the destruction? Or did the rabbis emerge from a coalition of surviving groups? Why is it that after the destruction we do not hear of Sadducees, Pharisees, and Essenes, but only sages and the disciples of the sages? Did the rabbis emerge from one group because that group alone survived and the others did not?

In an essay entitled "The Historical Background of Rabbinic Literature," Isaiah Gafni set himself the task of testing the reasonableness of the rabbinic account of the rabbis' emergence and role in Jewish society against what we know about Roman-period Palestine both socially and politically.[29] He acknowledged the difficulty of identifying the Second Temple forerunners of the later rabbinic movement because of the rabbinic tendency to rabbinize earlier Jewish history; nevertheless, he cited evidence of a fairly linear progression from the Pharisaic movement of the Second Temple period to the rabbinic circles of the second and third centuries. Certainly, rabbinic sources seem to know little about their ancestors other than Hillel and Shammai; in addition, they do not refer to themselves as Pharisees. Nevertheless there are some clear affinities between the rabbis and the earlier Pharisees as described in Josephus, the New Testament, and rabbinic sources themselves. For example, important rabbinic leaders are from the house of Gamliel, and Gamliel is identified as a Pharisee in the New Testament. Thus, Gafni, like many other scholars, assumed some kind of connection, though not necessarily identity, between Second Temple Pharisees and later rabbis.

Weighing the traditional rabbinic account against our knowledge of the social and political realities of Roman Palestine, Gafni sketched the following picture. (1) Hillel was likely an important sage, though the designation of him as a *nasi* (patriarch) and the assertion of a Hillelite dynasty are anachronistic. We may, however, accept the claim that Hillel was responsible for a number of ordinances and a new system of exegesis that produced new biblical interpretations and *halakhic* solutions. (2) The Gamalielides had a revered status but no official bureaucratically recognized role. (3) Jewish society in the predestruction period was quite variegated, with groups adhering to Pharisaic ideas but behaving differently. (4) In the postdestruction period the Essenes and Sadducees disappear. (5) Although the rabbinic accounts of Yavneh are shrouded in legend, it is reasonable to attribute to R. Yoḥanan b. Zakkai and the sages of Yavneh a clear policy of rebuilding the religious foundations of the community. (6) The project of R. Yoḥanan b. Zakkai was carried on by R. Gamliel II, who established a religious framework for Jewish life and an authority structure, including a new Sanhedrin at Yavneh, understood to be a continuation of the Jerusalem Sanhedrin. (7) The sages slowly took on more formal roles and became a definite social class that created a normative type of Judaism. (8) A giant of the generation after R. Gamliel was R. Akiva, who features prominently with his disciples in the period leading up to the final redaction of the Mishnah by R. Judah ha-Nasi (180–220). (9) When the patriarchate reached a peak under Judah ha-Nasi, the rabbinic movement was centered in Sepphoris and Tiberias. (10) R. Judah ha-Nasi was quite wealthy, attracted messianic speculation, enjoyed imperial support, and, at the time of his death, was recognized as the Jewish leader. (11) An ideological rift developed, however, between the patriarchs and the rabbis, and the patriarch's prestige was enhanced by the support of diaspora Jewish communities.

In constructing this account, Gafni moved cautiously and acknowledged evidence to the contrary. While recognizing that one cannot posit a direct line from scribes to Hasidim to Pharisees without qualification, he connected Second Temple Pharisees to the early rabbis in a fairly linear way, with other groups fading from the scene. He created a strong and purposeful Yavneh and rabbis with clear policies and (eventually) the power to actualize them. All of this is consistent with his clearly articulated and modest goal: not to describe Judaism writ large (he recognized that Jewish society contained elements other than the rabbis), but simply to assess the reasonableness of the rabbis' account of themselves in light of what our knowledge of the era tells us was possible.



Gafni broke with the traditional account of the emergence of rabbinic Judaism as exemplified in the *Iggeret* of Rav Sherira Gaon, which posited a single uniform tradition transmitted from Sinai to the sages. According to this traditional medieval account, the destruction of the Second Temple effected a rupture, a break that led to a loss of knowledge and the rise of legal controversy. However, the rabbis undertook a rescue effort, beginning at Yavneh and leading eventually to a unified and authoritative formulation of the tradition—the Mishnah of R. Judah ha-Nasi. Gafni's account, like many modern accounts, pushed against this older narrative by positing a *lack* of unity prior to the Second Temple period and a later invention of unity—what would eventually become normative Judaism—by rabbis following the destruction. But how were the rabbis able to create a unified tradition after the destruction? This is where Shaye Cohen made a significant contribution.

For Cohen, Yavneh was not a site of Pharisaic triumphalism and of the formation of a uniform orthodoxy that expelled non-Pharisees, Christians, and other heretics and purged the canon of nonorthodox writings. In his 1984 article "The Significance of Yavneh: Pharisees, Rabbis and the End of Jewish Sectarianism," Cohen objected to representations of Yavneh as a Jewish version of the fourth-century council of Nicaea in which one party triumphed and defined Christian orthodoxy and the Christian canon and expelled heretics.[30] This model is simplistic and ignores the fact that the rabbis refused to describe themselves as Pharisees. The rabbis' lack of a sectarian consciousness was deliberate, said Cohen. The sages who gathered in Yavneh renounced sectarianism and exclusivism and absorbed many elements of Second Temple Jewish society within their ranks. The Temple had been a focal point of sectarian dispute, and its destruction provided the impetus for the creation of a pluralistic society in which all groups were welcome, and dispute and controversy were tolerated. Rather than the work of a sect triumphant, Yavneh was a grand coalition characterized not by uniformity and monism but by diversity and pluralism and the recognition that truth is many, not one. According to Cohen, only those who insisted on a sectarian identity were excluded—Christians and *minim* (heretics of vari-

ous descriptions). Thus, the Pharisaic leadership that emerged after the destruction was an amalgam of elements drawn from the many groups in Jewish society—from the priests, an emphasis on the sacred though expanded now well beyond the Temple; from the sages, a commitment to the study of Torah and its application to community life; from the zealots, apocalyptic visionaries and messianic separatists, the idea that Israel has a unique destiny of cosmic significance.

Cohen's invention of rabbinic Judaism reversed the classical and medieval rabbinic account entirely. That account posited a basic predestruction unity that was disrupted by the destruction and only eventually reestablished with the publication of the Mishnah. It is a model of unity, followed by diversity, followed by a restored and relatively monistic unity. By contrast, Cohen posited a basic predestruction disunity and sectarianism that was brought to an end by the destruction and replaced by a "big-tent" coalition that absorbed diverse elements to create a pluralistic but unified rabbinic Judaism. It is a model of diversity followed by relatively pluralistic unity.

Cohen's invention of Yavneh and the rabbinic Judaism drew a response from Daniel Boyarin in his 2000 article "A Tale of Two Synods: Nicaea, Yavneh, and Rabbinic Ecclesiology."[31] Boyarin accepted Cohen's claim that a certain sectarianism centered on the Temple disappeared after 70 and yet, following Martin Goodman, he maintained that there is evidence for the view that Second Temple sectarianism gave way to Jewish orthodoxy as one group achieved hegemony and found it possible to plausibly portray itself as Judaism writ large.[32]

So which is it? Are we to imagine with Boyarin that Yavneh was like Nicaea and saw the establishment of orthodoxy by a triumphant sect that filled a power vacuum following the destruction and secured its authority by adopting a policy of exclusion and monism rather than inclusion and pluralism? Or are we to imagine with Cohen that Yavneh was unlike Nicaea and saw the formation of a kind of nonexclusive, pluralistic, big-tent coalition of diverse groups?

Boyarin himself notes that rabbinic literature contains both views of Yavneh—an exclusivist Yavneh that rejects difference and an inclusivist Yavneh that valorizes difference and sanctifies controversy. He resolves the tension between these two contradictory portraits by emplotting them chronologically. The inclusivist Yavneh in which both disputants





in a controversy may be said to be advancing the words of the living God is a product of later talmudic myth making.[33] By contrast, the earlier traditions of Yavneh do not represent it as a grand coalition. It was not until the fourth or fifth century that rabbinic culture saw a shift in the status of dissent and the Talmud began to perceive and to portray Yavneh as a kind of ecumenical council, transmitting the continually evolving and pluriform Oral Torah.

For Boyarin, Yavneh is a foundation legend, or more precisely a sequence of two foundation legends—an earlier exclusivist version and a second inclusivist revision—by which the rabbis were able to invent themselves and their distinctive textual and literary culture. Comparison with the council of Nicaea is particularly apt because this foundation legend of orthodox Christianity also underwent revision, from an earlier more inclusivist version to a later version emphasizing an exclusivist orthodoxy. The direction of the revision is reversed, however, because the myth of the gathering at Yavneh was revised from an earlier version of exclusivism to a later version emphasizing divinely sanctioned heterodoxy and pluralism. Thus, the rabbis and the church fathers invent themselves through foundation legends, but these legends pull in opposite directions to explain each of these very different cultural systems.

An entirely different invention of rabbinic Judaism may be found in Seth Schwartz's 2001 volume *Imperialism and Jewish Society, 200 BCE to 640 CE*.[34] The fundamental tenet of Schwartz's revisionist account is that Second Temple Judaism was not in fact fragmented by sectarianism but was fundamentally a cohesive entity prior to the destruction. Histories of the period have focused on the diverse elements constituting Jewish society in the Second Temple period and have lost sight of the fact that Jewish society was actually an integrated society with an overarching centralizing ideology. According to Schwartz, imperial support for the Temple and the Torah established them as the chief symbols of Jewish corporate identity. Jewish society was certainly loosely centralized and ideologically complex, but the various sects that have garnered so much scholarly attention did not play a central role in Jewish society. Schwartz endorses Albert Baumgarten's claim that the sects were an essentially unitary and mainstream phenomenon that valued Torah and the proper conduct of the Temple cult.[35] Their disagreements were disagreements over a core integrating ideology.

The destruction in 70 and the Bar Kokhba revolt in 132–135 CE shattered this integrated society; Jewish society was all but destroyed. Schwartz rejects accounts that posit a continuity between pre- and postwar Jewish society, such as the claim that leadership passed from the Pharisees before the war to their spiritual descendants, the rabbis, after the war. Roman annexation after the war entailed the concentration of all legal and political power in the hands of the Roman governor and local city councils. No rabbi or patriarch would have possessed official status, and the rabbis would have been powerless to compete with the Roman courts and the Jewish landowners and councilors who followed the legal, religious, cultural, and social norms of Greco-Roman elites. Life in Palestine was pervaded by pagan norms as indicated by archaeological remains. Judaism was a vestigial identity; most Jews incorporated themselves into an essentially Greco-Roman and pagan cultural system.

The intermediaries of Torah—the rabbis—lost all authority and status. Utterly marginal, with little residual prestige and few supporters, they turned inward. The account of rabbinic origins found in rabbinic sources in its minimalist version is, according to Schwartz, unobjectionable as a description of this small group—that is, as an account of rabbinic Judaism and rabbinic history—but not as a history of the general Jewish community. The story of the general Jewish community in the period following the destruction is one in which the rabbis played virtually no part according to Schwartz. In the face of an influential, authoritative, and religiously compelling Greco-Roman cultural norm, most Jews chose to participate in the pagan public life of the city and to maintain a minimal sense of their identity as Jews, if they maintained it at all. Thus, the movement of former Pharisaic and/or priestly scribes, judges, and teachers that took shape after 70 CE around R. Yoḥanan b. Zakkai and R. Gamliel and especially after 135 had the cohesion and internal focus of a sect. Only in the third century CE did the rabbis gain some prestige and visibility as a result of preaching, legal advising, and even miracle working and healing; but they did not control anything in rural Palestine, including the synagogues. Existing on the margins, the rabbis preserved an altered but recognizable version of Judaism. Into the fourth century they still had only a small number of followers and very limited and informal authority; and yet in this century, probably in





response to the spread and increasing success of Christianity, Judaism underwent something of a revival centered on Torah and synagogue that spread to villages. Judaism in this period experienced an explosion of literary production and synagogue construction.

In some respects, Schwartz's invention of rabbinic Judaism revives the classical and medieval account reversed by Cohen. That account posited a basic predestruction unity that was disrupted by the destruction and only eventually reestablished with the publication of the Mishnah: unity, diversity, restored unity. Similarly, Schwartz posits a basic predestruction unity that was brought to a crashing halt by the destruction of the Second Temple. The integrating and unifying ideology, Judaism, was revived in modified form only in the fourth century.

Schwartz's work was important in distinguishing the history of rabbinic Judaism from the history of Judaism generally. In addition, his insistence on the utter marginality of the rabbis did more than force scholars to revise their assessment of the rabbis' role and influence in the postwar period; it changed the very nature of scholarly research into the period. Earlier scholarly effort had often been devoted to the task of confirming or falsifying the main contours of the rabbinic account. As we have seen, this account described the heroic restoration of Jewish life in the wake of the destruction led by forward-thinking rabbis widely recognized as authoritative leaders and commanding the loyalty of the masses. Scholars wanted to know how much of this account was supported by ancient sources and by our knowledge of Roman provincial society. For Schwartz, the stories the rabbis told about themselves are more rhetorical than real, the product of a small and insular group of religious virtuosi with little influence and few supporters. Renouncing the effort to confirm the various elements of these stories, contemporary scholars now focus attention on understanding more precisely the nature of this small and insular movement.

Hayim Lapin, for example, insists that the small rabbinic movement is best understood as a product of the provincial context of Roman Palestine rather than a natural development of Jewish national practices. He describes the rabbinic movement as "an association of religious experts claiming ancestral knowledge, employing a rhetoric of self-representation with affinities to Greco-Roman associations and especially to philosophical schools, and capable of using wider cul-

tural motifs to their own ends."[36] As such, he writes, their development tracked the transformation of the Palestinian provincial landscape.

* * *

Over the last one hundred years, modern scholars have invented and reinvented the origins of rabbinic Judaism in opposing ways: rabbinic Judaism was continuous with Second Temple Judaism or it was discontinuous; the rabbis were central to Jewish society after the destruction or they were utterly marginal; the rabbis enjoyed legal authority and the loyalty of the masses, enabling them to reconstruct Jewish life after the destruction, or they were powerless and practically invisible; Yavneh saw the rabbinic imposition of orthodoxy and uniformity or a celebration of heterodoxy and difference. The fact is, like the texts with which we began, rabbinic sources in general pull in opposite directions.

Taking note of the conflicting evidence in the sources, Catherine Heszer asserts that they are all authentic reflections of a complex reality.[37] She argues that throughout the tannaitic (first–early third centuries CE) and amoraic (third–fifth centuries CE) periods the rabbis did not form a unified organization—they were socially fragmented and lacked formal institutions for legal discussion. Their contacts were informal and episodic, and most rabbis had direct contacts with a very limited number of colleagues. The rabbinic estate was thus not an organized corporate group but a loose network, making it impossible to fix the *halakhah* or achieve a majority opinion on any matter. To the extent that they might consult the rabbis as legal advisors, some individuals would follow the advice of one rabbi and others would follow the advice of another. The later editors of rabbinic tradition employed two distinct strategies to cope with the existing diversity. On the one hand they created anonymous views to fix the *halakhah* and delegitimize dissenting views; on the other hand they accepted disputes and controversy and legitimated them with a theory of Torah as containing multiple possible meanings and interpretations (polysemy). Both the effort to establish unity and the effort to legitimate diversity, she argues, are textual fictions operating simultaneously in response to a fundamental social fragmentation. This, we might say, is the reality behind the rhetoric.

The erosion of rabbino-centrism in twentieth-century research on ancient Judaism led to a scholarly emphasis on the discontinuity





that exists between rabbinic Judaism and other expressions of ancient Judaism—both earlier (a vertical discontinuity) and contemporary (a horizontal discontinuity). Increasingly, scholars came to view the rabbinic movement as small, fractured, and insular in the late first century. It was increasingly argued that it would be some time before rabbinic Judaism would acquire a sizable degree of prestige and authority among the general Jewish populace and even more time before a normative Judaism centered on the synagogue and the Torah would arise, largely in response to the Christianization of the empire.

The invention and reinvention of the rabbis and rabbinic Judaism have not ended, and the reassertion of a greater continuity between Second Temple and rabbinic Judaism as well as a more central role for the rabbis in Palestinian Jewish society in the early centuries CE are likely, as evidenced by the papers delivered at a recent symposium entitled "In the Wake of the Destruction: Was Rabbinic Judaism Normative?"[38] On the other hand, other recent scholarship relying on archaeological evidence points to a continuity between Second Temple Judaism and postdestruction Judaism *as distinct from rabbinic Judaism.*[39] The collected papers in the 2014 volume *Was 70 CE a Watershed in Jewish History: On Jews and Judaism before and after the Destruction of the Second Temple* add nuance to the question by recognizing that different aspects of Second Temple Judaism ceased, continued, or were transformed for different segments of the population, providing insight into the transition from diverse "Judaisms" and the rise of rabbinic Judaism.[40] We conclude then with the observation of Hillel Newman who, after considering scholarly claims and counterclaims regarding rabbinic Judaism, noted that "revisionism is a salutary process, which inevitably proceeds dialectically and in which overstatement and excess are to be expected. These excesses should not be canonized into a new fundamentalism."[41]

NOTES

1 See Shaye J. D. Cohen, *From the Maccabees to the Mishnah*, 3rd ed. (Louisville, KY: Westminster John Knox Press, 2014), chapter 1.

2 *B. Pesaḥim* 57a.

3 *B. Qiddushin 66a.*

4 For more on the philosophical issues dividing ancient Jewish sects, see Jonathan Klawans, *Josephus and the Theologies of Ancient Judaism* (New York: Oxford University Press, 2012).

5 Cohen, *From the Maccabees to the Mishnah*, pp. 142–146.
6 *B. Yoma* 71b. Rabbinic sources increasingly speak of knowledge of Torah as the true crown (i.e., basis for authority) in an attempt to legitimize their own claim to authority over considerations of lineage (*Midrash Psalms* on Ps 146:8; *Sifre Numbers*; *Korah* 119; *m. 'Avot* 6:6; *b. Ta'anit* 7a).
7 For a discussion of the date and structure of tractate *Avot*, see Amram Tropper, *Wisdom, Politics, and Historiography: Tractate Avot in the Context of the Graeco-Roman Near East* (Oxford: Oxford University Press, 2004), chapter 3 and references provided there.
8 *Y. Ḥagigah* 1, 76d; *b. Berakhot* 5a.
9 *Sifre* Deuteronomy 313; *m. 'Avot* 5:22; *b. Megillah* 19b.
10 *B. Sanhedrin* 99a; *B. B. Meṣi'a* 59b.
11 *B. B. Batra* 12a.
12 *'Avot R. Natan* 4.
13 *T. 'Eduyot* 1'.
14 *Avot R. Natan* 4.
15 *B. B. Batra* 60b.
16 See, for example, *m. Rosh Hashanah* 4:1–4; *m. Pesaḥim* 10:5; *t. Shevi'it* 1:1; *b. Berakhot* 48b; *b. Soṭah* 40a, 47a; *b. Keritot* 9a.
17 *B. 'Eruvin* 13b.
18 *B. Megillah* 17b–18a; *b. Berakhot* 28b; *M. Rosh Hashanah* 4:1–4.
19 Rabbinic literature contains derogatory references to Bar Kokhba as well as graphic descriptions of the terrors and tortures of the revolt; see *y. Ta'anit* 4:5, 24a; *b. Giṭṭin* 57a–b; *b. Berakhot* 61b; *Lamentations Rabbah* ii. 2 and 5.
20 See *b. Berakhot* 61b.
21 For a discussion of the elaboration of the "chain of tradition" theme in early medieval sources such as *Seder Tannaim ve-Amoraim*, the *Iggeret*, and *Sefer ha-Qabbalah*, see Fred Astren, *Karaite Judaism and Historical Understanding* (Columbia: University of South Carolina Press, 2004), chapter 1 and especially pp. 57–60.
22 Varying accounts are provided by Rav Saadya Gaon, R. Shimshon of Sens, and others; but despite differences in detail and emphasis, the underlying purpose of these medieval writers is apologetic and the perspective is rabbino-centric. For a summary of several medieval accounts of the history of the Oral Law, see Ḥanokh Albeck, *Mavo la-Mishnah* (Jerusalem: Bialik Institute, 1966–1967), chapter 4 (Hebrew).
23 Though the author makes it clear that R. Akiva's death is not a punishment for any sin.
24 E. P. Sanders, *Paul and Palestinian Judaism* (Philadelphia: Fortress Press, 1977), p. 4 and passim.
25 Ibid., p. 38.
26 Sanders attributes these views to Wilhelm Bousset, Justus Köberle, and R. H. Charles (in ibid., pp. 38–41).





27 Ibid., p. 57.
28 Mention must be made of Jacob Neusner, a vocal proponent of the view that, as selective compositions shaped by the ideologies of their tradents and redactors, rabbinic texts are of limited use to the historian. According to Seth Schwartz in *Imperialism and Jewish Society, 200 BCE to 640 CE* (Princeton, NJ: Princeton University Press, 2001), Neusner effected a revolution in the study of ancient Judaism in his insistence on understanding rabbinic literature as a historical artifact of a society in which the rabbis themselves were marginal (p. 8). However, as Schwartz himself notes (ibid.), beginning in the 1980s, Neusner went on to adopt extreme and counterintuitive views regarding the unreliability of rabbinic attributions and the insusceptibility of rabbinic texts to analysis beyond the level of redaction.
29 Published in *The Literature of the Sages*, section 2, vol. 3 of *Compendia Rerum Iudaicarum Ad Novum Testamentum*, ed. Samuel Safrai (Assen, Netherlands / Philadelphia: Van Gorcum / Fortress Press, 1987), pp. 1–34.
30 *Hebrew Union College Annual* 55 (1984): 27–53. Many of the insights from this article are incorporated in Cohen's later work, *From the Maccabees to the Mishnah*.
31 *Exemplaria* 12 (2000): 21–62.
32 Martin Goodman, "The Function of Minim in Early Rabbinic Judaism," in *Geschichte-Tradition-Reflexion: Festschrift für Martin Hengel zum 70. Geburtstag*, ed. H. Cancik, H. Lichtenberger, and P. Schäfer (Tübingen: Mohr Siebeck, 1996), vol. 1, pp. 501–519.
33 *B. 'Eruvin* 13b.
34 Schwartz, *Imperialism and Jewish Society*.
35 Ibid., p. 91.
36 Hayim Lapin, "The Origins and Development of the Rabbinic Movement in the Land of Israel," in *The Cambridge History of Judaism*, ed. Steven T. Katz (Cambridge: Cambridge University Press, 2006), vol. 4, p. 225. These ideas find full development and exposition in Lapin's recent excellent book, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 C.E.* (New York: Oxford University Press, 2012).
37 Catherine Heszer, "Social Fragmentation, Plurality of Opinion, and Nonobservance of Halacha: Rabbis and Community in Late Roman Palestine," *Jewish Studies Quarterly* 1 (1993–1994): 234–251.
38 The proceedings were published in *Jewish Identities in Antiquity: Studies in Memory of Menahem Stern*, ed. Lee I. Levine and Daniel R. Schwartz (Tübingen: Mohr Siebeck, 2009), pp. 163–266.
39 See, for example, Joshua Schwartz, "Yavneh Revisited: Jewish 'Survival' in the Wake of the War of Destruction," in *Jews and Christians in the First and Second Centuries: How to Write Their History*, ed. Peter J. Tomson and Joshua Schwartz (Leiden: Brill, 2014), pp. 238–252. In addition, papers employing a wide range of methodologies to investigate Yavneh as both a historical reality and a concept

will be included in the conference volume *Yavne Revisited: The Historical Rabbis and the Rabbis of History*, ed. Peter J. Tomson and Joshua Schwartz (Leiden: Brill, forthcoming).

40 Edited by Daniel R. Schwartz and Zeev Weiss, in collaboration with Ruth A. Clements (Leiden: Brill, 2014).

41 Hillel Newman, "The Normativity of Rabbinic Judaism," in Levine and Schwartz, *Jewish Identities in Antiquity*, p. 171.



# Conclusion

## *"In My Beginning Is My End"*

ROBERT GOLDENBERG

This volume has focused on early Judaism, but it is interesting to note that there is no chapter devoted to the Bible, a book in which the earliest form of Judaism can seemingly be located. There is a reason for this, other than the merely practical consideration that a previous volume in this series was entirely devoted to the Hebrew scriptures. The more important reason is that the Jews, and for that matter Judaism as well, are essentially postbiblical phenomena. The Bible gave rise to the Jews and to Judaism, but neither is to be found there in any simple way.[1]

The Bible speaks of a nation called the Children of Israel, one subdivision of which (a tribe, they would have said) was called Judah. Judah was only one part of this larger whole and for a long time was politically split off from the larger portion of it; it would be meaningless to speak of "the Jews" as a clearly defined entity as long as that was the case. Then, by sheer historical chance as it were, the rest was swept away and only Judah was left. The people of Judah were now heirs to the heritage of the Children of Israel.

As heirs will do, they conceived of this prehistory as though it had been leading up to them the whole time. It is the rump Kingdom of Judah, not the larger and apparently wealthier Kingdom of Israel, that has the biblical authors' attention overall. Of the twelve sons of the eponymous Jacob, it is Judah who rescues the family from unspeakable tragedy, and it is from his putative descendants that the only successful kings of united Israel, namely David and Solomon, emerged.

Later a reconstituted remnant of the conquered rump kingdom returned to the old homeland. They rebuilt the national shrine in the old capital of Jerusalem and tried to construct a way of life that restored

Catherine Hezser

# Mobility, Flexibility, and the Diasporization of Palestinian Judaism after 70 C.E.

Günter Stemberger and other scholars have already argued that the destruction of the Second Temple in 70 C.E. constituted a significant turning-point in ancient Judaism.[1] A priestly, sacrificed-based Judaism focused on the Temple and Jerusalem, which had functioned in much the same way for more than a thousand years, eventually gave way to a new knowledge-based way of life that required the application and expansion of Torah law to a multiplicity of circumstances encountered in daily life. The conceptual and practical novelty of the rabbinic movement has already been stressed by Shaye J. D. Cohen who argued that post-70 rabbis formed a "grand coalition" that distinguished itself from pre-70 sectarianism and tolerated pluralism in its own circles.[2] Günter Stemberger and Peter Schäfer have problematized the traditional assumption of a seamless continuity between Pharisees and rabbis through a critical analysis of the evidence.[3] By examining the development of Passover practices Baruch M. Bokser has traced the transformation of a communal ritual into a family-meal.[4] Other scholars have stressed late antique changes in the perception of the holy and a turn from holy places to holy men.[5] These religious developments occurred in Roman and early Byzantine times, a context which Lapin considers crucial for the development of the rabbinic movement.[6] It was a time when the quasi-autonomous rule of a Jewish leader (whether Hasmonean or Herodian) and a high priest (in late Hasmonean times they could be one and the same) had ended for good.

This paper argues that post-70 rabbinic Judaism constituted a radically new approach to religiosity which was generated by and geared to the new circumstances in which Palestinian Jews found themselves after the Temple's destruction. The more personalized and individualized access to holiness and advice in leading a religious life provided by late antique sages and "holy men" was linked to decentralization and mobility (of both rabbis and their students and "clients"). In post-70 times the rather static and centralized Temple service conducted by priests was replaced by a decentralized, individualized and case-based approach to holiness represented by rabbis.[7] This novel approach permitted the constant adaptation of religious practice to new circumstances and facilitated the continuity of Judaism in a diasporized Land of Israel in late antiquity and in the Jewish Diaspora (first in Babylonia and later also elsewhere) from the Middle Ages onwards.[8]

After the destruction of the Second Temple in 70 C.E. rabbinic sages seem to have gradually replaced the Jerusalem Temple as locations of the holy.[9] Unlike the Temple as a fixed and central holy place, rabbis as personal repositories of the holy were located at a number of different places and formed a decentral-

1 Günter Stemberger, "Die Umformung des palästinischen Judentums nach 70: Der Aufstieg der Rabbinen," in *Judaica Minora*, vol. II, *Geschichte und Literatur des rabbinischen Judentums* (Tübingen: Mohr Siebeck, 2010), 172–186. See also the articles in the recent volume edited by Daniel R. Schwartz and Zeev Weiss, *Was 70 CE a Watershed in Jewish History? On Jews and Judaism before and after the Destruction of the Second Temple* (Leiden and Boston: Brill, 2012). Most of the papers address issues of archaeology and Second Temple Judaism, though. There is hardly any discussion of rabbinic Judaism as a new post-70 phenomenon in this volume.

2 See Shaye J. D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis, and the End of Jewish Sectarianism," *Hebrew Union College Annual* 55 (1984): 27–53, esp. 45–50.

3 Stemberger, "Umformung," 174–179; Peter Schäfer, "Der vorrabbinische Pharisäismus," in *Paulus und das antike Judentum*, ed. Martin Hengel and Ulrich Heckel (Tübingen: Mohr Siebeck, 1991), 125–172.

4 Baruch M. Bokser, *The Origins of the Seder: The Passover Rite and Early Rabbinic Judaism* (Berkeley: University of California Press, 1984), 10–12. See also Bokser, "Rabbinic Responses to Catastrophe: From Continuity to Discontinuity," *Proceedings of the American Association of Jewish Research* 50 (1983): 37–61.

5 See Peter Brown, "The Rise and Function of the Holy Man in Late Antiquity," in *Society and the Holy in Late Antiquity* (Berkeley, Los Angeles: University of California Press, 1982), 103–152; Robert Kirschner, "The Vocation of Holiness in Late Antiquity," *Vigiliae Christianae* 38 (1984): 1051–1124; Graham Anderson, *Sage, Saint, and Sophist: Holy Men and Their Associates in the Early Roman Empire* (London: Routledge, 1994).

6 Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 CE* (Oxford, New York: Oxford University Press, 2012).

7 Rachel Neis has already noted that access to the holy in the Jerusalem Temple was highly regulated, see Neis, *The Sense of Sight in Rabbinic Culture: Jewish Ways of Seeing in Late Antiquity* (Cambridge: Cambridge University Press, 2013), 84.

8 The term "diasporized" has already been used by Daniel Boyarin in Daniel Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Man* (Berkeley, Los Angeles: University of California Press, 1997), 139, n. 32, where he distinguishes between "the 'totally' diasporized Babylonian rabbinic community and the only partially diasporized Palestinian community in relation to the issue of masculinity and power."

9 On rabbis' relationship to the Temple see now especially Naftali S. Cohn, *The Making of the Temple and the Making of the Rabbis* (Philadelphia: University of Pennsylvania Press, 2013). See also Günter Stemberger, "Das allgemeine Priestertum im rabbinischen Denken," in *Judaica Minora*, vol. I, *Biblische Traditionen im rabbinischen Judentum* (Tübingen: Mohr Siebeck, 2010), 302–315; Stemberger, "Das Priestertum Israels nach 70 n. Chr.," in *Judaica Minora*, vol. I, 316–330: the treatment of priestly issues in *Mishnah* and *Tosefta* suggests that in tannaitic times there was still a certain overlap between rabbinic and priestly interests; the fact that the Talmud Yerushalmi does not provide commentary on the order of Tohorot may indicate that by late antiquity this interest in the Temple had waned.

ized movement.[10] Those who sought advice from sages would not always have had local rabbis available or preferred to contact more eminent sages at more or less distant locations. They would therefore have had to travel to the sage themselves. Similarly, students travelled from their hometowns and -villages, even between Palestine and Babylonia, to study with prominent sages. This phenomenon can be compared with Graeco-Roman and Christian travel to consult "holy men" in late antiquity.[11]

## 1 A New Perception of the Holy

During First and Second Temple times, that is, for approximately one thousand years, the holy was believed to be located in one particular space, the so-called Holy of Holies within the Jerusalem Temple, to which only the high priest had access. Certain doubts about the exclusivity of the Temple to contain the holy are already expressed in the Hebrew Bible in connection with the building of Solomon's Temple: "Does God really dwell with men on the earth? Even the heavens to their uttermost reaches cannot contain You; how much less this House that I have built!" (2 Chr 6:18).[12] Other Jewish temples existed elsewhere, of which those of Elephantine, Leontopolis, and Mount Garizim may have been examples only.[13] Yet the official ideology propagated by Josiah and the Deuteronomistic movement insisted on the centralization of the cult in the Jerusalem Temple and declared the Jerusalem high priests the sole legitimate intermediaries between the thus confined holy and the community of Israelites. The Jerusalem

**10** On the decentralization of the rabbinic movement see Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tübingen: Mohr Siebeck, 1997), 171–184.

**11** On Christian travel to monasteries and consultations with "holy men" see especially Maribel Dietz, *Wandering Monks, Virgins, and Pilgrims: Ascetic Travel in the Mediterranean World, A.D. 300–800* (University Park, PA: Pennsylvania State University Press, 2005), 1–10, and the examples discussed in the rest of the book. See also the articles in Jaś Elsner and Ian Rutherford, eds., *Pilgrimage in Graeco-Roman & Early Christian Antiquity: Seeing the Gods* (New York and Oxford: Oxford University Press, 2005).

**12** The translation of this and other biblical passages follows *The Jewish Study Bible: Jewish Publication Society Tanakh Translation* (Oxford and New York: Oxford University Press, 2004).

**13** See Doron Mendels, *The Land of Israel as a Political Concept in Hasmonean Literature: Recourse to History in Second Century B.C. Claims to the Holy Land* (Tübingen: Mohr Siebeck, 1987), 33. See also Jörg Frey, "Temple and Rival Temple: The Cases of Elephantine, Mt. Gerizim, and Leontopolis," in *Gemeinde ohne Tempel*; *Community Without Temple*, ed. Beate Ego et al. (Tübingen: Mohr Siebeck, 1999), 171–203; Albert L.A. Hogeterp, "Jewish Attitudes to the Temple of Jerusalem from the Maccabees to Paul's Time," in *Paul's and God's Temple: A Historical Interpretation of Cultic Imagery in the Corinthian Correspondence* (Leuven: Peeters Publishers, 2006), 27–74.





Temple as the sole space in which the Israelite God dwelled was legitimized by reference to his choice of this location: "I... have chosen this place as my House of sacrifice" (2 Chr 7:12). As Hannah K. Harrington has pointed out, "The fiery holiness... was formally mediated to Israel via a carefully prescribed system of holy space, personnel, and ritual".[14] Strict ritual guidelines existed for the mediation of the holy, which was clearly distinguished from the profane world surrounding it.[15]

Such spatial confinement of the holy bestowed a special value to Jerusalem as the center of the Israelite monarchy. According to Rainer Albertz, "the centralization of political authority... set in motion a centralization of the main Israelite cult... it led to a close institutional fusion of political power and the cult; the main cult at the central sanctuary was to a large degree a matter of state".[16] The institution of the pilgrimage ritual required male Israelites to travel to the Jerusalem Temple for the three pilgrimage holidays. This movement from the periphery to the religious and political center would have consolidated the power of the Israelite ruler both spiritually and economically.[17] The close link between political and religious, Temple-based power was especially evident during Hasmonean rule, when the Hasmonean ruler (e.g., John Hyrcanus, 154–134 B.C.E.) combined the functions of both political leader and high priest.[18] Popular opposition against the Hasmoneans coincided with the Roman conquest of Palestine and Herod's rise to power.[19] The Herodian period can be seen as a transitional stage between more or less limited self-rule and the Romanization and Diasporization of the Land of Israel culminating in late antiquity.

**14** Hannah K. Harrington, *Holiness: Rabbinic Judaism and the Graeco-Roman World* (London, New York: Routledge, 2001), 46.

**15** See Harrington, *Holiness*, 46.

**16** Rainer Albertz, *A History of Israelite Religion in the Old Testament Period*, vol. 1: *From the Beginnings to the End of the Monarchy* (Louisville, KY: Westminster John Knox Press, 1994), 128.

**17** This has already been argued by Richard H. Lowery, *The Reforming Kings: Cults and Society in First Temple Judah* (Sheffield: Sheffield Academic Press, 1991), 167.

**18** On this time period see Jonathan A. Goldstein, "The Hasmonean Revolt and the Hasmonean Dynasty," in *The Cambridge History of Judaism*, vol. 2: *The Hellenistic Age*, ed. W. D. Davies and Louis Finkelstein, 2nd ed. (Cambridge: Cambridge University Press, 2003), esp. 321–324. On the Hasmonean title "Priest of the Supreme God" see Joseph A. Baumgarten, "The Heavenly Tribunal and the Personification of Sedeq in Jewish Apocalyptic," in *Aufstieg und Niedergang der römischen Welt*, vol. II.19.1, Religion *(Judentum: Allgemeines, Palästinisches Judentum),* ed. Wolfgang Haase (Berlin, New York: De Gruyter, 1979), 238.

**19** See Daniel R. Schwartz, *Studies in the Jewish Background of Christianity* (Tübingen: Mohr Siebeck, 1992), 53.

The destruction of the Temple and the end of the priestly sacrifice-based form of Judaism may have been only incidental occurrences in this development: new attitudes toward the holy, independent of political power and a central space and therefore more suitable for life under foreign dominion, emerged in the form of Pharisaic Judaism before 70 C.E. already. One may assume that, even if the Temple had not been destroyed, the centralized cult, which received its legitimation from the monarchy and was carried out for an Israelite collectivity, would not have survived for long under the Roman and Byzantine rulers.[20] It would have been ill-suited for the new circumstances of life in a Roman province, with Caesarea as its capital and Galilee as the main area of Jewish settlement. A decentralized, individualized, adaptable, and movable form of Judaism was required that would enable the survival of Jewish identity in a diasporized Land of Israel and in the Babylonian Diaspora in Sasanian times.

The text-based Judaism of the Pharisees and rabbis must be considered generically different from the space-based Judaism of the Temple priests. Although our knowledge about popular perceptions of the Temple is limited, Mircea Eliade has argued that sacred spaces served as earthly abodes of the transcendental and thereby linked the divine to the world.[21] The divine was thought to be contained in an earthly building, at home in the world but entirely different from it. The centralization of the cult in Jerusalem made the divine immovable and fixed on the horizontal scale: only the vertical line between heaven and earth, community and God, with the high priest as the sole mediator, remained. The result of this fixation of the holy must have been wide-spread religious apathy complemented by ritual professionalism, a situation which becomes evident with the rise of sectarianism in the late Second Temple period.[22]

What did Pharisees and rabbis offer instead? Their access to the holy was knowledge-based. For them, the holy was not so much contained in a particular space or associated with a specific object (such as the Temple utensils) but consisted of traditional knowledge (stories, legal rules, popular wisdom) that had been transmitted from one generation to the next and would eventually be preserved in writing. This knowledge, which was considered divinely inspired, was mostly transmitted and discussed orally.[23] Rabbis continued this tradition of transmitting, discussing, and augmenting sacred knowledge. What is crucial is that knowledge of and about the divine could be expressed in many different ways by many different sages at many different locations: "These and these are words of the living God" (bEr 13b). This multiplicity and adaptability of the holy was independent of a particular place, political system, and ritual hierarchy. It was therefore well suited for Jews who lived under foreign dominion, whether in Roman Palestine, Babylonia, or other Diaspora locations in the Middle Ages.

In late Roman and early Byzantine times the notion of a holy space seems to have been attached to the synagogue by (some of) its visitors, perhaps on the basis of the Torah scrolls stored there, which some people considered holy objects.[24] The very fact that Chrysostom considered it necessary to declare synagogues non-sacred indicates that some of his fellow-Christians were of the opposite opinion.[25] Unlike the Temple, synagogues were found at many different places in late antiquity. Like rabbinic traditions, they are evidence of the multiplicity and variety of what was perceived as holy. The static centrality of the Temple had given way to the dynamic dispersion of holiness that was no longer confined to one place, form, and intermediary.

## 2 Decentralization and Mobility

Societies whose major institutions are located at one particular place solicit a centripetal force to that location. The center attracts the political, economic, and intellectual elites and with them their wealth, education, and knowledge.[26] People from outside either relocate to the center and increase its population or

**20** This argument is based on the so-called counterfactual or virtual history approach which asks "What if?" questions, see Niall Ferguson, ed., *Virtual History: Alternatives and Counterfactuals* (New York: Basic Books, 1999).

**21** Mircea Eliade, *The Sacred and the Profane: The Nature of Religion* (Orlando, FL: Harcourt Inc., 1959), 58–59. On Eliade see Jonathan Z. Smith, *Map is Not Territory: Studies in the History of Religions* (Chicago: University of Chicago Press, 1993), 94–95.

**22** The establishment of alternative holy places was probably only a partial solution to this problem, since other temples would have been administered by cultic professionals too, providing few options for individual participation. Allen Kerkeslager, "Jewish Pilgrimage and Jewish Identity in Hellenistic and Early Roman Egypt," in *Pilgrimage and Holy Space in Late Antique Egypt*, ed. David Frankfurter (Leiden: Brill, 1998), 106–107, argues that local Egyptian pilgrimage traditions to local shrines developed in late Second Temple times.

**23** On holiness based on sacred words see Harrington, *Holiness*, 130–134.

**24** On this topic see esp. Joan R. Brenham, "Vicarious Sacrality: Temple Space in Ancient Synagogues," in *Ancient Synagogues: Historical Analysis and Archaeological Discovery*, ed. Dan Urman and Paul V. M. McCracken Flesher (Leiden: Brill, 1998), 319–345.

**25** Chrysostom, *Adv. Jud.* 1.6 (PG 48.851–852). See also Michael L. Satlow, "Giving For a Return: Jewish Votive Offerings in Late Antiquity," in *Religion and the Self in Antiquity*, ed. David Brakke et al. (Bloomington, IN: Indiana University Press, 2005), 99–100.

**26** For modern societies see Sebastian Galiani and Sukkoo Kim, "Political Centralization and Urban Primacy: Evidence From National and Provincial Capitals in the Americas," in *Understanding Long-Run Economic Growth: Geography, Institutions, and the Knowledge Economy*, ed. Dora L. Costa and Naomi R. Lamoreaux (Chicago: University of Chicago Press, 2011), 125.

they travel to the center more or less frequently to access its resources. The frequency of travel to the center depends on these individual's needs (e. g., business relations), socio-economic status (due to the travel costs involved), and attitudes (attraction to or reversion against institutions located at the center). Pre-70 Jewish society was centralized politically, economically, and religiously. People would have travelled to Jerusalem for a variety of reasons of which pilgrimage three times a year was only one.[27] The New Testament stories about Jesus' entrance into Jerusalem are a good example of Jerusalem's significance in first-century Judaism: a religious teacher with adherents in Galilee could be seen as a prominent figure only if he was associated with Jerusalem as well (see, e. g., Mk 10:32–33; Mk 11:11, 15; Mt 16:21; Mt 20:17–18; Mt 21:10).[28] It seems that for the early Christian authors, even his rejection by the capital's religious authorities (high priest, Pharisees, and scribes) was preferable to their lack of acknowledgment of him.

In a decentralized social system important institutions (e. g., courts, educational facilities) are present at a number of different places, usually in the major cities, which attract the population of the surrounding areas and for particular purposes (e. g., visits to festivals and spas) also those who live further afield. Sociologists and political scientists have pointed to the connection between decentralization and democratization in modern societies.[29] The spread of (political, economic, social, religious) power structures at various locations leads to a horizontal distribution of authority in contrast to the vertical hierarchical power structure of centralized systems.[30]

**27** Martin Goodman has argued that pilgrimage to Jerusalem increased in Herodian times when the city developed a "pilgrimage economy," see Goodman, "The Pilgrimage Economy of Jerusalem in the Second Temple Period," in *Jerusalem: Its Sanctity and Centrality to Judaism, Christianity, and Islam*, ed. Lee I. Levine (New York: Continuum, 1999), 69–76.

**28** On the centripetal geographical movement in the gospels and the New Testament see Charles B. Puskas and David Crump, *An Introduction to the Gospels and Acts* (Grand Rapids, MI: Eerdmans, 2008), 121–123, with Chart 5.1, 123. On the significance of Jerusalem in the gospels see esp. Peter W. L. Walker, *Jesus and the Holy City: New Testament Perspectives on Jerusalem* (Grand Rapids, MI: Eerdmans, 1996).

**29** See, e. g., Merilee S. Grindle, *Going Local: Decentralization, Democratization, and the Promise of Good Governance* (Princeton: Princeton University Press, 2007), who argues that decentralization and the introduction of local governance led to the democratization of political processes in Mexico in the last two decades of the twentieth century. On (largely rural) Mexico as an example see also Andrew Selee, *Decentralization, Democratization, and Informal Power in Mexico* (University Park, PA: The Pennsylvania State University, 2011).

**30** See, e. g., Ken Kollman, *Perils of Centralization: Lessons from Church, State, and Corporation* (New York: Cambridge University Press, 2013), 73–74.





After the loss of Jerusalem and the Temple Palestinian Jewish society was decentralized, with a number of urban centers gaining significance in the second to fourth centuries. Rabbis, who saw themselves as embodiments of traditional knowledge, would have been present at a variety of locations, some of them villages and – from the third century onwards – also increasingly cities.[31] Since the number of rabbis was limited and a rabbi was not present at each and every location, those who wanted to consult a particular sage or study with him had to cover more or less long distances. Travel to the Jerusalem Temple seems to have been replaced by travel to sages in late antiquity. In both cases, this travel was undertaken to gain access to the holy through its intermediaries and representatives. If "pilgrimage" is understood in a broader sense to encompass any kind of travel for cultic, religious, and spiritual reasons, travel to rabbis can be called "pilgrimage" which can be compared with Christian and pagan "pilgrimage" to holy men in late antique and early Byzantine times.[32]

Elsner and Rutherford have suggested using the term "pilgrimage" to include travel to philosophical teachers and Christian ascetics as well as visits to religiously or culturally significant sites.[33] The motivations for travel – seeking advice, healing, religious education or spiritual guidance –, and the travel destinations – a holy man, place, or site – could vary, depending on the traveller's religious conviction and needs. In all of these cases travel was undertaken to approach the holy, whether embodied in a "holy man" or associated with a holy place. Travel toward the holy (site or man) must be seen as an expression of a particular religious or philosophical identity.[34] Only those Christians or pagans who venerated a specific holy man would undertake a more or less arduous jour-

**31** On the so-called urbanization of the rabbinic movement see esp. Hayim Lapin, "Rabbis and Cities in Later Roman Palestine: The Literary Evidence," *Journal of Jewish Studies* 50 (1999): 187–207; Lapin, "Rabbis and Cities: Some Aspects of the Rabbinic Movement in its Graeco-Roman Environment," in *The Talmud Yerushalmi and Graeco-Roman Culture*, ed. Peter Schäfer and Catherine Hezser, vol. 2 (Tübingen: Mohr Siebeck, 2000), 51–80.

**32** On "pilgrimage" in Graeco-Roman and ancient Christian society see Catherine Hezser, *Jewish Travel in Antiquity* (Tübingen: Mohr Siebeck, 2011), 365–374.

**33** See Jaś Elsner and Ian Rutherford, Introduction to *Pilgrimage in Graeco-Roman & Early Christian Antiquity: Seeing the Gods*, ed. Jaś Elsner and Ian Rutherford (New York, Oxford: Oxford University Press, 2005), 24–30.

**34** Barbara Kowalzig, "Mapping Out *Communitas:* Performances of *Theoria* in Their Sacred and Political Context," in *Pilgrimage in Graeco-Roman & Early Christian Antiquity: Seeing the Gods*, ed. Jaś Elsner and Ian Rutherford (New York, Oxford: Oxford University Press, 2005), 42–43, has pointed to the creation of group identity in connection with the Graeco-Roman custom of *theoria*, city delegates' travel to other cities' festivals.

ney to meet him; only those who were keen on studying with a particular rabbi or philosopher would leave their families and hometowns to live with him.

Whereas pilgrimage to the Jerusalem Temple was an expression of mainstream sacrifice-based Judaism before 70 C.E. and generally united the Jewish populace (even members of specific groups such as Pharisees and Sadducees were not opposed to the Temple cult), post-70 travel to rabbis would have been much more individual and personal: those who affiliated with a particular rabbi were not necessarily adherents of all rabbis or "rabbinic Judaism" as such. Similarly, in early Christianity, some were adherents of Paul, others of Peter, Apollos or other missionaries.[35] Each of these leaders represented a specific and highly personalized version of Judaism or early Christianity. The collective, vertically-oriented Temple cult had been replaced by a horizontal network based on one's personal affiliation with a specific representative of the holy whose relationship to other representatives was ambiguous and competitive.

The variety of personal expressions of the holy required the individual practitioner and believer to make a choice and to approach his chosen teacher and advisor on his own accord. After the destruction of the Temple, approaching the holy was no longer a fixed ritual ideally carried out three times a year. Travel to a rabbi was not a communal experience but an individual undertaking or a project carried out by representatives of a particular settlement if advice on a local issue was sought. One may assume that a particular rabbi's prominence, based on rumors and hear-say, would have been the basis of acquiring sympathizers and lay people's and students' travel to him.[36]

## 2.1 Lay People Approaching Rabbis

Especially noteworthy in the Talmud Yerushalmi are traditions which feature a group of people from a particular locality who are said to have travelled to a sage to ask him for advice or listen to his discourse. For example, according to yTaan 1.6 (64c), people from Magdala Suba'aya came to ask R. Chaninah

**35** Cf. 1 Cor 1:12. See Nicolas H. Taylor, *Paul, Antioch and Jerusalem: A Study in Relationships and Authority in Earliest Christianity* (Sheffield: Sheffield Academic Press, 1992), 192–193.
**36** The Egyptian desert monks, who were visited by lay people and asked for advice, can be seen as an analogy. On these monastic communities and their contacts with the outside world see Peter H. Görg, *The Desert Fathers: Saint Anthony and the Beginnings of Monasticism* (San Francisco: Ignatius Press, 2011), 39–41 (Anthony). It should be noted, however, that unlike rabbis the desert monks were notorious not only on account of their advice but also because of their healing powers.





whether they could use the wood of acacia trees (for secular purposes, since this type of wood was used in the construction of the Ark of the Covenant). According to yAZ 1.3 (39c), "people of Girda asked R. Ammi: [On] the day of a feast of gentiles, what is the law [about doing business with them]?" People of Simonia are said to have approached the patriarch, Rabbi Yehudah ha-Nasi, and asked him to send them someone who could preach, judge, and teach, that is, fulfill a variety of communal functions (yYeb 12.6 [13a]). yBer 1.1 (3a) relates that people from the village of Tebi brought a basket with human bones to Lydda to have them inspected by Thodros the physician (a scholar?) and his colleagues with regard to the (im)purity of the space in which they were found.

In all of these traditions people from villages or small towns are assumed to have undertaken a journey to a rabbi (who probably lived or sojourned in a city) to request his support. How many people were involved and whether they were appointed representatives of their communities is not stated. Besides leading to discussions about the halakhic issues involved, the narratives were probably meant to show that in amoraic times rabbis' halakhic advice and communal functions (preaching, teaching, judging) were in demand by lay people. Although the stories as such are not historically reliable, it is likely that in late antiquity sympathizers of rabbis from places without resident sages would visit renowned scholars in cities that were relatively close or to which they had to travel for other reasons anyway.

In general, travel was mostly undertaken for business purposes in antiquity.[37] Without public transport, street lights, and safe accommodation travel would have been both dangerous and expensive. People therefore travelled only for specific purposes, to purchase and sell goods, meet business partners, visit their land holdings, inspect vineyards, or collect goods from harbors. It is highly unlikely that people would have travelled for the sole purpose of solving a specific halakhic problem. If people from more or less distant villages visited and consulted rabbis away from their hometowns, they would have done so on journeys they undertook for more pragmatic purposes. If they had to go to Caesarea or Sepphoris for business reasons or to visit relatives, people might have used this opportunity to approach rabbis and ask them for advice in matters that concerned themselves and their coreligionists back home.

**37** See, e. g., the account of the journey undertaken by Theophanes in John Matthews, *The Journey of Theophanes: Travel, Business, and Daily Life in the Roman East* (New Haven, CT: Yale University Press, 2006).

## 2.2 Disciples' Travel to Masters

Besides lay people, prospective students are said to have travelled to study with rabbis. Tannaitic traditions tend to emphasize the hardships they undertook to reach their goals. The *Tosefta* mentions the possibility that a man may take a considerable amount of money from an inherited fund, shared with his brothers, to go and study Torah with a rabbi (tBB 10.4).

*Sifre Deuteronomy* and *Avot de Rabbi Nathan* are most outspoken about disciples' travels and provide lengthy discussions on this issue. SifDev 48.2 provides different rabbinic interpretations of the biblical verse, "Drink water out of your own cistern and running water out of your own well. Let your springs be dispersed abroad and courses of water in the streets" (Prov 5:15–16). Based on this verse R. Shimon b. Yochai allegedly suggested, "Study with someone who is with you in town and afterwards depart to any place," giving precedence to local teachers ("own cistern") to be supplemented by more distant masters ("dispersed abroad"). The focus is on the student's choice of a rabbinic master here. According to R. Aqiva, on the other hand, "just as a well distills living [i.e., running] water from all sides [directions], so disciples come and study from us." Here the focus is on the rabbi himself, who ideally attracts students from various locations. He is imagined as the center, drawing students to himself just as the Jerusalem Temple drew pilgrims. While a student was supposed to study with different masters and travel to them for that purpose, an individual teacher was expected to be approached by students from many different places. He is supposed to have functioned like a magnet attracting adherents who sought his wisdom.

Another tradition transmitted further on (SifDev 48.2) suggests that sacred knowledge is hidden and difficult to discover. The student is compared to an adventurer who travels to distant places to find a hidden gem. According to Amos 8:12, "And they shall wander from sea to sea, and from the North even to the East, they shall run to and fro to seek the word of the Lord and shall not find it." The midrash explains: "Our rabbis permitted them [disciples] to go from town to town and from district to district to find out the rule concerning a dead creeping thing that has come into contact with a loaf of bread, whether it is the first or the second remove of uncleanness." To find the solution to a specific halakhic problem, rabbinic disciples were required to travel to and ask various masters and then report back to their teacher who sent them. Each rabbi would have been a specialist in particular areas of halakhah rather than knowing the answer to every problem. Furthermore, rabbis might provide variant solutions of which not all would have been agreeable. The text suggests that the very nature of halakhic discourse required mobility to find solutions and solve problems. The situation is aptly expressed in the following statement attributed





to R. Shimon b. Yochai: "Mr. So-and-so prohibits, Mr. So-and-so permits, Mr. So-and-so declares unclean, Mr. So-and-so declares clean, and they shall not find a clear thing" (ibid.).

Some traditions transmitted in *Avot de Rabbi Nathan*, a document which focuses on issues of rabbinic study, seem to suggest that not all rabbis were keen on accepting students who had travelled to their town: "And wallow in the dust of their feat, how so? At the time when a disciple of sages enters the town, do not say: I do not need him, but go to him..." (ARN A 6.3). Elsewhere Prov 8:34 is quoted to emphasize the pleasure obtained by being sought out by students: "Happy is the one who listens to me, watching daily at my gates, waiting at the posts of my doors" (quoted in ARN A 3.4). Students are advised to choose their master carefully: "R. Meir says: If you have studied from one master, do not say: Enough. Rather, go to another sage and study Torah. But do not go to any. Rather, to one who is close to you from the beginning, for it is said: 'Drink water out of your own cistern and running water out of your own well' (Prov 5:15, cf. SifDev 48.2 above). It remains unclear whether "close" is meant in a geographical or intellectual sense here. R. Meir might advise students to first study with rabbis close to their hometowns or to seek those with whom they feel an intellectual affiliation. Since the first sentence urges students to venture further afield, the latter possibility seems more likely.

ARN A 6.6 presents the example of R. Eliezer b. Hyrcanus who left his agricultural work and his family to study with R. Yochanan b. Zakkai in Jerusalem (the story is set before the destruction of the Temple). He is said to have left his home despite the opposition of his father who threatened to disinherit him. The story suggests that he had to walk a long way from the countryside to Jerusalem, staying at a hostel overnight. His eagerness and endurance is emphasized by reference to the hunger he suffered by not eating until he had reached his destination. The high value of study with a prominent master is highlighted here.

According to Hayim Lapin, "Travel to visit masters seems to be a more prominent motif in tannaitic corpora and of traditions of first- and second-century Rabbis than of later generations and corpora."[38] This assumption is not entirely correct, however. The *Tosefta*, and especially *Avot de Rabbi Nathan*, in which the above mentioned traditions appear, seem to have been edited in amoraic times and may contain amoraic rather than tannaitic formulations, even if based on earlier (oral?) material.[39] From the social historical point of view, rabbis' greater

**38** Lapin, *Rabbis as Romans*, 78.

**39** On the probably late redaction of Avot de Rabbi Nathan see especially Menachem Kister, *Avot de Rabbi Nathan: Studies in Text, Redaction, and Interpretation*, PhD thesis, Hebrew Univer-

prominence in the cities from the third century onwards[40] is likely to have elicited more travel toward them. On the other hand, one might argue that the greater local availability of rabbis might have decreased the need for travel in search of a master, at least as far as potential students in places such as Caesarea, Tiberias, and Sepphoris are concerned.[41]

## 2.3 Babylonian Disciples of Palestinian Masters

An important feature of amoraic sources is the study of Babylonian students with Palestinian rabbis. Most references to travel in Palestinian rabbinic documents refer to travel within Roman Palestine. Babylonia is the only Diaspora location from which rabbinic students are said to have travelled to Palestine for educational reasons in late antiquity. For most of the First and Second Temple period, pilgrimage to the Jerusalem Temple seems to have also been a local affair, with most pilgrims travelling to Jerusalem from within the Land of Israel. Only in Herodian times, when a dedicated pilgrimage economy existed, foreign visitors seem to have been attracted as well.[42] There seems to have always been a geographically based division between Judaism in the Eastern Mediterranean and in the West (especially as far as Roman Italy is concerned), not only after the destruction of the Temple, as Edrei and Mendels have argued.[43]

Whereas Babylonian students are featured as studying with Palestinian sages, their actual travel from Babylonia to Palestine is not described in the sources, probably because such "trivial" details were not considered worthy of transmission to later generations unless halakhic issues were involved. Not all Palestinian sages would have attracted Babylonian students, who had to undertake a long and arduous journey to study with them. As I have shown elsewhere, certain particularly prominent Palestinian rabbis of the first and second generations of amoraim stand out in the Yerushalmi with regard to attracting Babylonian students, that is, they formed the nodal points of network connections between Palestine and

sity Jerusalem, 1993 (Hebr.); Jacob Neusner, *Judaism and Story: The Evidence of the Fathers According to Rabbi Nathan* (Chicago: University of Chicago Press, 1992).

**40** See Lapin, "Rabbis and Cities" (1999) and (2000).

**41** See also the discussion in Hezser, *Jewish Travel*, 273–237.

**42** See especially Shmuel Safrai, *Die Wallfahrt im Zeitalter des Zweiten Tempels* (Neukirchen-Vluyn: Neukirchener Verlag, 1981), 7–8; Goodman, "Pilgrimage Economy," 69–76.

**43** See Aryeh Edrei and Doron Mendels, *Zweierlei Diaspora: Zur Spaltung der antiken jüdischen Welt* (Göttingen: Vandenhoek & Ruprecht, 2009).





Babylonia.[44] Especially Rabbi, the first patriarch, is associated with Babylonians (yBer 5.2 [9b] par. yTaan 1.1 [63d]; yPes 4.1 [30d]; BerR 33.3) and attracted Babylonian students such as R. Chiyya (yKet 12.3 [35a]) and Rav (yAZ 2.8 [41d]; bPes 4a; bBer 45b; bShab 29a). In the second generation of amoraim, the Palestinian rabbis R. Yochanan (yShab 6.9 [8c]; yQid 3.10 [64b]; bBer 45b) and R. Shimon b. Laqish (yShab 6.9 [8c]; yKet 12.3 [35a]) seem to have had Babylonian connections. In the Babylonian Talmud the second-generation Babylonians R. Chiyya b. Joseph (bGit 39a; bHul 54a) and R. Kahana (bMen 23b) are linked to them. Various third-generation Babylonians, such as R. Eleazar b. Pedat (cf. ySan 1.2 [18c]; yBer 2.1 [4b]), R. Chiyya b. Abba, R. Assi (bQid 31b), R. Abba (bBets 38a), and R. Shimon b. Ba (yShab 6.2 [7d]) are said to have studied with R. Yochanan.

In all likelihood then, and a few exceptions notwithstanding, contacts between Palestinian and Babylonian sages were carried out primarily amongst particular clusters – students associated with particular Palestinian masters and rabbinic colleague-friends – within the rabbinic network as a whole. On both sides some of the most prominent sages served as the central nodal points for inter-regional contacts. After the patriarch R. Yehudah ha-Nasi, especially R. Yochanan stands out as a central nodal point, as Aharon Oppenheimer has already noticed on the basis of the frequency with which his opinions are transmitted in the Babylonian Talmud.[45] R. Yochanan is said to have had a number of Babylonian disciples who studied with him in Palestine and transmitted his opinions to Babylonia when they returned.

The cases of Rabbi, R. Yochanan, and R. Shimon b. Laqish also seem to indicate that only the most prominent Palestinian rabbis attracted students from a distant Diaspora region. These rabbis would have been the ones whose views circulated most in Babylonia, that is, who became most influential there. Their local prominence and influence in Palestine would have been matched by the distance their views travelled. Babylonians who studied with these prominent sages, such as R. Chiyya and Rav, who studied with Rabbi and R. Chiyya b. Josef, R. Kahana and R. Assi who studied with R. Yochanan and/or Resh Laqish, would become prominent rabbis in their own right who maintained connections between the two centers of scholarship.

Whether in the Land of Israel or, from the third century onwards, also from Babylonia, and in the fourth and fifth centuries within Babylonia itself, the most prominent rabbis of their generation seem to have attracted students who later

**44** See Catherine Hezser, "Crossing Enemy Lines: Network Connections Between Palestinian and Babylonian Sages in Late Antiquity," *Journal for the Study of Judaism* 46 (2015) 224–50.

**45** Aharon Oppenheimer, *Between Rome and Babylon: Studies in Jewish Leadership and Society*, ed. Nili Oppenheimer (Tübingen: Mohr Siebeck, 2005), 418.

became prominent in their own right and were sought out by students themselves. Since students were supposed to teach only at a certain distance from their teacher (cf. yShevi 61 [32c], where a distance of twelve *mil* is mentioned), one can imagine that by late antiquity a partly interlinked network of rabbinic scholarship would have covered certain areas of Palestine and Babylonia, a network which would have been in constant movement and transformation, more dense in areas such as Caesarea and the Galilee and more sparse in certain parts of Judaea and the Bet Shean valley, if rabbinic sources can be considered trustworthy in this regard.[46]

## 3 Individualism, Innovation, and Adaptation

As already pointed out above, decentralization often leads to a democratization of power structures and to the emergence of informal leadership roles. The individualization of services, in which a variety of local leadership figures are responsible for making their own decisions, can lead to innovative solutions: "The individual solution may not appear complete, coherent, or comprehensive, but these 'timely, more limited solutions... address key issues while laying an organizational foundation for more long-term efforts'..."[47] Such a process of individualization and innovation can be observed in the change from Temple-based to rabbinic Judaism.

Whereas the Jerusalem Temple service was carried out by priests on behalf of the entire community of Israelites, rabbinic halakhah, created by individual rabbis, was based on specific circumstances. The Temple stood for tradition and permanence, whereas rabbinic rules were innovative, diverse, and adaptable to a variety of situations. Not the entire Jewish community but the family constituted the basis of rabbinic decision making. This revolutionary change was eventually brought about by the destruction of the Second Temple but had been in the making since the last two centuries B.C.E. Viewed within the larger context of Graeco-Roman society, Hellenism with its emphasis on individual morality, sage consciousness,

**46** In reality, the network may have been larger and connections between Palestinian and Babylonian sages more widespread. The editors of the respective rabbinic documents may have chosen to transmit the traditions of the most prominent rabbis and/or those they were friends with.

**47** Thomas B. Lawrence, Graham Dover, and Bryan Gallagher, "Managing Social Innovation," in *The Oxford Handbook of Innovation Management*, ed. Mark Dodgson et al. (Oxford: Oxford University Press, 2014), 321, with reference to Michael D. Mumford, "Social Innovation: Ten Cases From Benjamin Franklin," *Creativity Research Journal* 14 (2002): 258.





and innovative adaptation of the classical tradition seems to have constituted the seeding ground from which Pharisaic and rabbinic Judaism emerged.

As Jerome Jordan Pollitt has pointed out with regard to Hellenistic art, "As life in the Hellenistic Age became less intensely identified with, and less controlled by, small ancestral communities, men and women began to look elsewhere for a sense of belonging and for standards by which to guide their lives. ... In the Hellenistic world, no standard of society, ... was more important than what the individual did, thought, and experienced."[48] Rabbinic focus on the family, family relations and practices would have constituted a middle ground between Hellenistic individualism and the biblical and Temple-based communal orientation. The transformation of the Passover sacrifice into a family meal is an example of this development.[49]

Hellenistic individualism was also expressed in the philosophical schools' veneration of sages and the propagation of individual striving for wisdom. Certain philosophical teachers and schools became prominent and attracted students from distant regions.[50] Certain segments of the population considered following a particular way of life, suggested by Stoic, Cynic, or Epicurean philosophers, preferable to worshipping the gods at the various temples. Just as Pharisees (and later rabbis) did not criticise the Jerusalem Temple (in fact, some tractates and portions of the *Mishnah* continue to discuss Temple related issues in great detail),[51] Stoics did not outlaw traditional polytheistic worship.[52] At the same time, both Hellenistic and Jewish sages' emphasis was very different from traditional Temple rituals: they propagated the accumulation of wisdom and a wisdom-based lifestyle, that is, a practice which each individual had to adopt him- or herself, in contrast to rituals which priests carried out on one's behalf.

**48** Jerome Jordan Pollitt, *Art in the Hellenistic Age* (Cambridge: Cambridge University Press, 1986), 7.

**49** Bokser, *Origins, xiii,* has pointed to the continuity in the meal aspect of the Passover offering: "Already in the Bible, as in Exodus 12, the Passover evening celebration is described as a decentralized celebration organized in the home. Apparently, even when the cult became centralized in Jerusalem, the family meal continued. Thus, the evening celebration provided a prototype for later rabbinic rituals and observances indicating how one could be religiously involved without being in the temple."

**50** See Giovanni Ruffini, "Late Antique Pagan Networks from Athens to the Tebaid," in *Ancient Alexandria Between Egypt and Greece*, ed. W. V. Harris and G. Ruffini (Leiden: Brill, 2004), 241.

**51** See Cohn, *Making of the Temple*, 116.

**52** See Christoph Jedan, *Stoic Virtues: Chrysippus and the Religious Character of Stoic Ethics* (London: Continuum International Publishing, 2009), 9: "From the time of Zeno, the Phoenician founder of the Stoic school, a favorable attitude toward conventional polytheistic religion was part of the Stoic world-view."

Naftali Cohn has argued that post-70 rabbis appropriated the Temple for their own purposes.[53] The rabbis of the *Mishnah* discussed Temple-related issues to validate the authority of their own halakhic rules. One could continue this argument and say that, according to rabbis, the sacredness of halakhah now superseded the sacredness of the Temple, which became its subject. After 70 "rabbis claimed to be the authentic purveyors of Judaean tradition and the traditional Judaean way of life"; they "seized on the Temple to argue for their own importance within society ..."[54] In contrast to the physical aspects of Temple ritual, rabbinic halakhah was primarily an intellectual endeavor which could incorporate Temple-related subjects in the absence of an actual building. In the centuries after its destruction the Temple had become a virtual reality. Rabbis played with this imaginary reality and used it for their own purposes.

It is unlikely that late antique rabbis would have wished for the building of a third Temple in Jerusalem, even if some of their Jewish contemporaries may have welcomed such a project. As Günter Stemberger has noticed on the basis of the Talmud Yerushalmi, rabbis of the fourth and fifth centuries do not seem to have reckoned with the imminent rebuilding of the Temple.[55] Rabbinic literature is conspicuously silent about Julian's (361–363 C.E.) failed attempt to rebuild the Temple to anger Christians in the fourth century C.E.[56] With Hagith Sivan one may argue that such a new Jewish Temple was primarily meant as an affront to the church of the Holy Sepulchre, built under Constantine, shifting power back to a non-Christian sanctuary in the by then Christian "holy city."[57] A new Temple might also have constituted a serious competition to rabbinic power and influence, since rabbis' coreligionists might have reverted to Temple rituals and priestly authority. Sivan points out that Julian "conceived the idea of reviving the Jewish temple as an 'international' center of sacrifices for Jews throughout the Empire."[58] Pilgrimage to the Temple both from within Roman Palestine and from the Diaspora would have been revived. Whereas rabbinic Judaism was a Middle Eastern phenomenon, a new Temple would have had wider repercussions throughout the Jewish world.

**53** See Cohn, *The Making of the Temple*, 3.

**54** Cohn, *The Making of the Temple*, 3–4.

**55** Günter Stemberger, "Reaktionen auf die Tempelzerstörung in der rabbinischen Literatur," in *Judaica Minora*, vol. II, *Geschichte und Literatur des rabbinischen Judentums* (Tübingen: Mohr Siebeck, 2010), 634.

**56** On this attempt see Lawrence H. Schiffman, *Understanding Second Temple and Rabbinic Judaism* (Jersey City, NJ: KTAV Publishing House, 2003), 334–335.

**57** Hagith Sivan, *Palestine in Late Antiquity* (Oxford: Oxford University Press, 2008), 208.

**58** Ibid. 205.





At the same time, one might doubt whether such a central Jewish holy place would have been successful at a time of foreign imperial rule, when the Diasporization of Jews in Byzantine Palestine and abroad was already at an advanced stage and more suitable forms of Jewish religious life, namely, Torah study and synagogue liturgy, were well established. It is unlikely that rabbis would have welcomed the reestablishment of priestly authority and mediatorship. A third Temple would have shifted the religious focus away from rabbis and synagogues toward Jerusalem and its priests.[59] The decentralized access to the holy, represented by rabbis and Torah study (and by a multiplicity of synagogues from the fourth century onwards) would have given way to a central focus on the Temple with its Holy of Holies. Such a religious centralization, spatial confinement, and ritual rigidity might have been considered a regression after rabbinic Judaism's expansion (to Jewish Babylonia in Sasanian times), flexibility, and adaptability. Especially since the cult centralization would not have been accompanied by centralized Jewish political rule, a third Temple would probably have served Julian's political goals rather than Jewish cultic revival.[60]

During the centuries after the Second Temple's destruction rabbis had transformed the Temple-centered pilgrimage festivals (Passover, Sukkot, Shavuot) into family observances with their own ritual objects and ceremonies. The festivals had become local affairs and travel to Jerusalem or elsewhere was no longer necessary.[61] Things reminiscent of the Temple were now consumed at home (e.g., meat of the Passover lamb) or used in the synagogue (e.g., the *lulav* and *etrog* on Sukkot). The multiplicity of places of religious practice (homes, synagogues) would have been accompanied by a multiplicity of forms of worship. Although rabbis aspired to control the performance of religious rituals, in all likelihood people would have followed their local customs. Rabbis therefore had to – more or less – respect local customs, as the *Mishnah* already indicates.[62] Locally diverse family and community customs would have replaced the priestly controlled centralized Temple service.

**59** In the fictional *Julian Romance* the Jewish priests are imagined as having succumbed to pagan worship in their eagerness to be reinvested in a Jerusalem Temple. On this text see Jan Willem Drijvers, *Cyril of Jerusalem: Bishop and City* (Leiden: Brill, 2004),150–151.

**60** See also Glen Warren Bowersock, *Julian the Apostate* (Cambridge, MA: Harvard University Press, 1997), 89–90.

**61** See also Simon Goldhill, *The Temple of Jerusalem* (London: Profile Books Ltd., 2006), 87–88.

**62** On this see Daniel Boyarin, *Socrates and the Fat Rabbis* (Chicago: The University of Chicago Press, 2009), 168–171.

## 4 Conclusion: Rabbinic Judaism As a Diasporized Judaism

Rabbis tried to maintain a Jewish identity in a diasporized Land of Israel.[63] The flexible, diverse, mobile, personal, and case-centered type of Judaism which rabbis developed was particularly suitable for Jews who lived under foreign rule and lacked central political and religious authority. The situation of Jews in Roman-Byzantine Palestine was different from the situation of Byzantine Christians united under Constantine and his successors. Constantine made Constantinople his capital and his reforms "were characterized by establishment of a strict centralization of power, introduction of a vast bureaucracy, and definite separation of civil and military power."[64] By contrast, a central Jewish holy place with fixed rituals carried out by the high priest and his retinue would have been ill suited to a situation in which the Land of Israel resembled the Jewish Diaspora in its lack of political and administrative independence.

Sages as mobile incorporations of the holy were best suited to post-70 C.E. circumstances. Jacob Neusner has already argued that in the Bavli God is represented as a rabbinic sage: "That representation emerges in a variety of ways and proves the single most important mode of incarnation of God."[65] Similarly, Eliezer Diamond has pointed out that "a number of individuals and groups are designated in rabbinic sources as *qedôshîm*, most notably Rabbi Judah the Patriarch ..."[66] Like other late antique "holy men," at least some rabbis seem to have been "on the move" and made their knowledge and advice available to whomever they encountered on the road or at the places they visited.[67]

**63** For the need to rethink the concept of Diaspora see Ra'anan Boustan, Oren Kosansky, and Marina Rustow, "Introduction: Anthropology, History, and the Remaking of Jewish Studies," in *Jewish Studies at the Crossroads of Anthropology and History*, ed. Raʿanan Boustan, Oren Kosansky, and Marina Rustow (Philadelphia: University of Pennsylvania Press, 2011), 9–14.

**64** Alexander A. Vasiliev, *History of the Byzantine Empire*, vol. 1 (Madison, WI: University of Wisconsin Press, 1980), 60.

**65** Jacob Neusner, *The Incarnation of God: The Character of Divinity in Formative Judaism* (Philadelphia: Fortress Press, 1988), 188.

**66** Eliezer Diamond, *Holy Men and Hunger Artists: Fasting and Asceticism in Rabbinic Culture* (Oxford, New York: Oxford University Press, 2003), 82. Cf. Günter Stemberger, "'*Rabbenu ha-qadosh*': Wie wird Jehuda ha-Nasi zum 'Heiligen'?" In *Heilige, Heiliges und Heiligkeit in spätantiken Religionskulturen*, ed. Peter Gemeinhardt and Katharina Heyden (Berlin, Boston: De Gruyter, 2012), 167–178.

**67** On non-Jewish travelling holy men see Anderson, *Sage*, chapter 10: "Travel: Holy Men On the Move." On the literary representation of rabbinic travel see Hezser, *Jewish Travel*, 213–262.





With their adaptable, flexible, and diverse halakhic advice they provided religious guidance in the particular circumstances their fellow-Jews found themselves in.

As Günter Stemberger and other scholars have already pointed out, rabbinic Judaism was born out of the encounter with Graeco-Roman culture and nourished by both contact and collision with it.[68] The very phenomenon of the sage, who incorporated traditional knowledge, had Hellenistic precedents.[69] Rabbis' and their followers' mobility was enabled by the Roman road system and rabbis' increased significance by urbanization.[70] The move from a spatially oriented religiosity toward a personally oriented religious way of life and the coexistence of multiple "holy men" and "holy places", whether Jewish, Christian, or pagan, needs to be seen within the broader context of this late antique and early Byzantine development.[71]

**68** Günter Stemberger, "The Impact of Paganism and Christianity," in *The Oxford Handbook of Jewish Daily Life in Roman Palestine*, ed. Catherine Hezser (Oxford: Oxford University Press, 2010), 503–520; Seth Schwartz, "Gamaliel in Aphrodite's Bath: Palestinian Judaism and Urban Culture in the Third and Fourth Centuries," in *The Talmud Yerushalmi and Graeco-Roman Culture*, vol. 1, ed. Peter Schäfer (Tübingen: Mohr Siebeck, 1998), 203–217.

**69** See Hezser, *Social Structure*, 130–137.

**70** On the road system see Hezser, *Jewish Travel*, 54–88.

**71** For the fifth and sixth centuries C.E. see Brown, "Rise and Function," 103–152.

# 9
# Revolt and Restoration

The destruction of the Second Temple in 70 C.E. was the culmination of some seven decades of Jewish unrest and anti-Roman agitation. Certain families had a continuous tradition of opposition to Roman rule which can be traced from the earliest years of the Herodian dynasty through the period of the procurators. The constant efforts of various groups seeking an end to Roman domination and persecution eventually led to the full-scale revolt of 66–73 C.E.

The opposition to Rome was fueled by a number of factors. First, many Palestinian Jews, from the Maccabean Revolt on, had steadfastly fought against foreign domination. For these predecessors of the later revolutionaries, this was not a question of religious liberty; the issue was not whether a foreign power would allow the Jews to follow the Torah but rather a question of national pride and the ideal of complete freedom and independence. Indeed both the prophets of old and the visionaries of Second Temple times looked forward to an independent Jewish nation. Moreover, many of those who took part in the Great Revolt of 66–73 C.E. were motivated by messianic expectations, and some of the leaders of the factions involved in the revolt had messianic aspirations.

Throughout the Second Temple period, the concept of messianism was central to many of the groups whose surviving writings we know from the apocrypha, the pseudepigrapha, and the Dead Sea Scrolls. Stimulated by the biblical hope for the restoration of the Davidic monarchy and the destruction of the wicked on the Day of the Lord, numerous authors elaborated







the idea of messianic redemption. By the first century C.E. it was widely agreed that at some future date the Jews could expect a renewal of the Davidic dynasty's rule over the Land of Israel, a purification of religious life, and freedom from foreign domination. While some groups expected this redemption to evolve naturally, others believed that the new order would be born out of a series of great messianic battles and catastrophes.

The two motivating forces, the heritage of the Maccabean uprising and messianism, were set in motion in an atmosphere of rule by Roman procurators who were increasingly capricious and cruel. The procurators paid little or no attention to the needs or sensitivities of the Jews of Palestine during the years leading up to the revolt. Rome would eventually reap the results of this callous approach.

## THE GREAT REVOLT

The revolt, as we have already observed, can be said to have been going on from the day the Romans first set foot in the Land of Israel. The previous chapter traced the growing discontent and resistence of segments of the Jewish people in the Herodian period and in the time of the procurators. Yet full-scale revolt did not break out until 66 C.E.

The proximate cause was a series of acts by the procurator Gessius Florus (64–66 C.E.) which displayed disrespect for Jewish religious sensibilities. Widespread strife broke out in Jerusalem, and, as a consequence, some of the priests decided to suspend the offering on behalf of the emperor, an action tantamount to declaring open revolt. The efforts of King Agrippa II, the leading priests, and some of the Pharisees to stem the incipient revolt failed. Jerusalem was soon in the hands of the rebels. This led, in turn, to uprisings throughout the country, where Jews battled their non-Jewish neighbors for the upper hand. Cestius Gallus, the governor of Syria, attempted to put down the revolt, but his forces were routed by the Jews.

Military commanders were now assigned to the entire country, to prepare for the expected Roman attack. Among them was the future historian Josephus, who commanded Jewish forces in the Galilee. Judging from his experiences, duly ap-

## DESTRUCTION AND ITS AFTERMATH

(all dates are C.E.)

| | |
|---|---|
| 66–73 | Great Revolt |
| 67 | Roman conquest of Galilee |
| 68 | Destruction of Qumran |
| 70 | Destruction of the Temple |
| 73 | Capture of Masada |
| 75–79 | *Jewish War* written by Josephus |
| ca. 80 | Sanhedrin at Yavneh |
| 93 or 94 | Josephus's *Antiquities* completed |
| ca. 100 | Death of Josephus |
| 115–117 | Diaspora revolt |
| 132–135 | Bar Kokhba revolt |
| 135–138 | Hadrianic persecutions |
| ca. 140 | Sanhedrin at Usha |
| ca. 170 | Sanhedrin at Beth Shearim |
| ca. 200 | Sanhedrin at Sepphoris |
| ca. 200 | Redaction of the Mishnah |

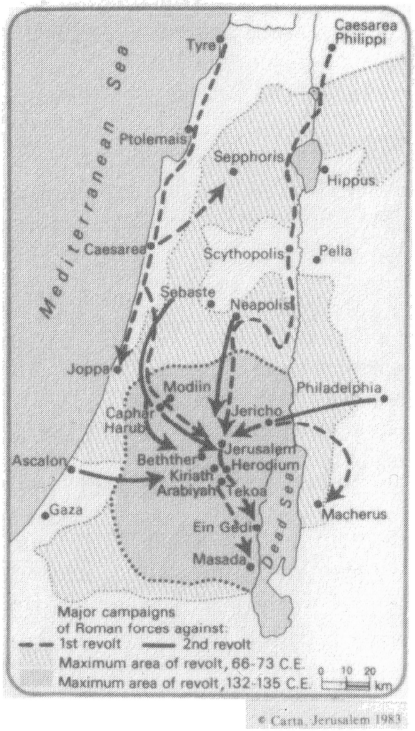
pointed commanders had to contend with competition from a variety of popular, even semi-messianic, leaders. As this illustrates, the rebels did not constitute a uniform group. Many different forces were involved in the revolt. Among them were the Sicarii, known in the years before the war for having assassinated collaborators with the Romans with short daggers (Latin *sica*) which they kept hidden under their garments. The followers of Simeon bar Giora regarded their leader as a messianic figure, and in his name seem to have committed violent acts not only against the Romans but against other groups of rebels. The Zealots may have had their origins in the groups that had continuously struggled against Rome since the beginning of Roman rule in Palestine, but according to many scholars they only became an organized faction at the start of the revolt. The inability of the various rebel forces to work together was one of the major reasons why the revolt did not succeed. At the same time, it must be recognized that ultimately, even if united, the Jews could not have stood up to Rome's superior military forces and unlimited resources.

The Roman emperor Nero (54–68 C.E.) appointed the experi-





**Revolt Against the Romans (1st-2nd cent. C.E.)**




enced general Vespasian to lead the attack on Judea. With the help of his son Titus, Vespasian assembled three legions and several contingents of auxiliary forces totaling some sixty thousand men. By the end of 67 C.E., Vespasian had taken Galilee. Josephus himself surrendered to the Romans at Jotapata.

When the Galilee was lost, some of the rebel groups led by popular messianic figures moved south to join the forces defending Jerusalem. They soon took a leading role there, displacing the aristocratic leaders whose policies had led to the loss of Galilee. Before long, however, civil strife broke out among the various factions in Jerusalem. Meanwhile, Vespasian was busily subjugating the rest of the country. In 68/69 there was a brief

respite while Vespasian awaited the outcome of the death of the emperor Nero and the struggle for succession which then took place. In 69 C.E. the Roman legions of the East decided to declare Vespasian emperor. Soon afterwards he was accepted at Rome as well. He returned there and left his son Titus to prosecute the war in Palestine. All the while, those besieged within Jerusalem continued to undercut their own position by their inability to join together.

By Passover of 70 C.E. Titus had massed a large force around Jerusalem while Jewish factions inside the city were killing one another. As Titus's battering rams began to strike, the factions finally came together. One by one the Romans breached the walls of the city, gaining control of the entire city except for the Temple area. By building siege ramparts, Titus was finally able to take the Temple Mount itself. According to Josephus, Titus planned to spare the Temple from destruction, but it was nonetheless engulfed in a conflagration and could not be saved. The ensuing slaughter of men, women, and children and the leveling of the city which followed dealt a lasting blow to Jewish life in the Land of Israel.

This was not the end of the war. While the Temple treasures and the rebel leaders were paraded in Rome, the Romans still had to mop up small bands of Jewish fighters who had taken refuge in other areas of the city, and to take several fortresses scattered through the land where rebel forces were holding out. With the capture of Masada in 73 C.E., the last resistance to Rome was crushed. As the Roman commemorative coins stated, "Judea had been captured."

## DESTRUCTION AND ITS AFTERMATH

If anything is remarkable in the events and developments we have been surveying here, it is the resilience of the Jewish people and the Land of Israel in the face of the catastrophic outcome of the revolt. Despite the destruction of the Temple and the city of Jerusalem, and the near devastation of the land, including the agrarian basis of the economy, it was not long before Jews were again flourishing in Palestine. Although the tendencies toward liberty and independence were strong, and





to a great extent messianic in motivation, the traditional Jewish sense of pragmatism reigned supreme, even in the face of defeat and desperation. The Jews and their civilization adapted to the new circumstances and tried to live normally under the Romans in a restored and rebuilt land. Yet their messianic hopes would not die and ultimately reemerged in the Bar Kokhba revolt (132–135 C.E.) only a few generations later.

It is important that the spiritual consequences of the destruction of Jerusalem and its Temple be put into proper perspective. As was the case in the era leading up to the destruction of the First Temple in 586 B.C.E., most Jews apparently had thought that the Temple was impregnable. They saw it as a sign of God's presence and accessibility among them and could not believe that the sanctuary might at any time fall and be taken from them. Its destruction must have precipitated a major spiritual crisis. Indeed, in view of the tragedy's magnitude, the sources from the early tannaitic period are extremely reticent about the destruction, just as Jewry was reticent for the first thirty years after the Holocaust in modern Europe. The silence in Late Antiquity stemmed from several factors. Among them were a lack of preparation for a tragedy of such dimensions, as well as an inability to accept the inevitable traditional explanation for all such suffering—that it was due to the transgressions of the people. It is often stated that there was no reaction at all, but this is not true; it was merely delayed. Numerous midrashim later refer to the tragedy and there are many areas in which halakhah, Jewish law, adapted itself to the new circumstances. Further, a reaction is also observable in pseudepigraphical works like 2 Baruch (preserved in Syriac), which bemoans the destruction.

In the rabbinic tradition, it is in the area of halakhah that expressions of fundamental thought processes occur. For this reason, although there are few direct references to the impact of the destruction in tannaitic sources, many changes occurred in the area of Jewish law and practice. In some cases, Temple-oriented rituals were transferred to the home or synagogue. In other instances, it had to be decided how to deal with rituals that simply had no place but the Temple. The problem was so complicated that there is evidence of uncertainty and transition

at first. By the mid-second century, however, many of these questions had been decided, although some were not settled until the time of Rabbi Judah the Prince, with the editing of the Mishnah at the beginning of the third century.

The problem of how to observe holidays and festive occasions in the absence of a Temple must have existed even before the destruction. Many Jews in the Diaspora and even in the Land of Israel did not journey to Jerusalem for festivals like Passover but still celebrated them to the extent possible. Their ritual practices provided some precedent for the transformations that had to take place once the Temple was destroyed.

In the case of Passover, since the paschal sacrifice was no longer possible, the ritual was transformed into a festive Seder meal to take place in the home. For Sukkot (Tabernacles) the requirement to dwell in a booth (sukkah) still applied, but the procession with lulav and etrog (palm branch and citron), originally conducted outside of the Temple on the first day of the festival only, became a week-long ritual (omitted on the Sabbath, however) as a replacement for the Temple observance. Moreover, the procession with the willow branches, a mainstay of the ritual in the Temple, was now transferred to the emerging synagogue, where instead of the willow branches, the lulav and etrog were carried, a practice still central to the celebration of Sukkot.

The problem presented by the priestly dues and tithes, the offerings the people contributed for the support of the priests and the Levites, was most complex. For a short period the people still set aside the full dues and tithes, but left them unused. Later, symbolic amounts were set aside. This compromise was meant to ensure the sanctity of the land and its produce by not consuming that which could rightly be used only for holy purposes, now that it could no longer be eaten in the manner required by the law.

According to tannaitic sources, some Jews in this period, believing that the destruction meant that the spiritual connection between Israel and its God had been permanently interrupted, engaged in mourning practices of various kinds, such as abstention from wine and meat and the elimination of joy from wedding festivities. The tannaim were opposed to such excesses.





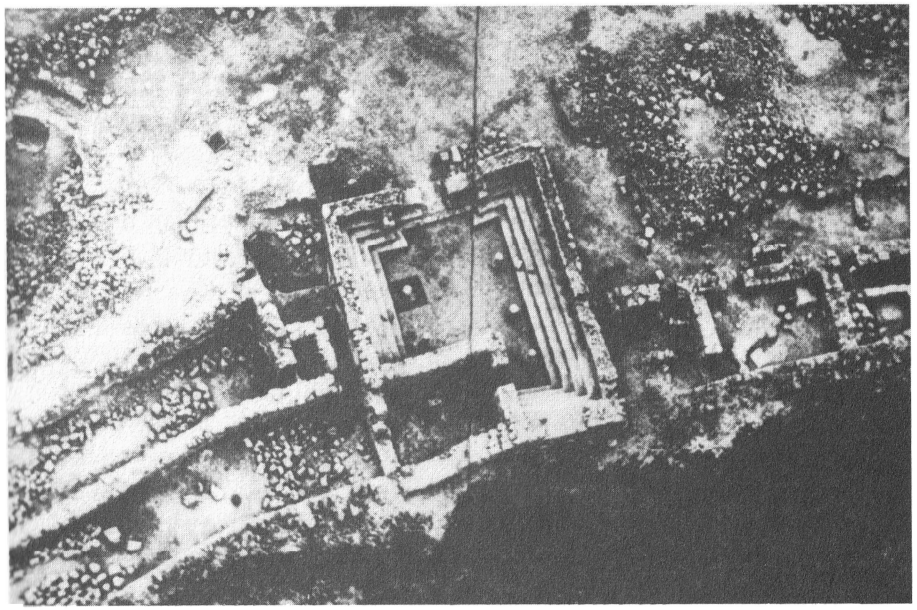
By and large they succeeded in taming these tendencies, but some circles maintained such practices until well into the Middle Ages, and the Karaite movement eventually inherited them.

The tannaim succeeded in suppressing such behavior because they provided a ritual for commemorating and mourning the Temple which, like the rabbinic rituals for mourning after the death of a loved one, were designed to allow the mourner to live with the loss and move back to normal life. The fast-day cycle of the tenth of Ṭevet, the seventeenth of Tammuz, the ninth of Av, and the Fast of Gedaliah served the rabbis as an opportunity to commemorate the losses of both the First and the Second Temples. These days were already observed as remembrances of the destruction of the First Temple, and it was natural to add the tragedy of the Second Temple to the commemoration. In tannaitic times the liturgy, laws, and regulations of the fast-days were fixed. These rituals gave the tannaim a means of expressing grief for the destruction of the Temple and the cessation of its sacrificial service within the context of the ritual calendar of Rabbinic Judaism.

## FROM TEMPLE TO SYNAGOGUE

The most central aspect of the transition from pre-destruction to post-destruction times was the change of the center of worship from Temple to synagogue. This change must be fully understood to grasp the essence of Rabbinic Judaism. In Temple times, the Jerusalem Temple was understood to be a place where the Divine Presence could always be approached. In other words, it was the locus of God's abiding in Israel, in fulfillment of the biblical statement, "I will dwell among them" (Exod. 25:8). The sudden disappearance of this avenue of communing with God was a tragedy of awesome dimensions.

The question of the discontinuance of animal sacrifice is more complex. In the years leading up to the revolt and the destruction, animal sacrifice was certainly regarded as the highest form of worship. Yet it was not the only form. Evidence of various kinds, including that of the Dead Sea Scrolls, demonstrates that the role of prayer was constantly increasing in Second Temple times. In the last years of the Second Commonwealth, prayer



SYNAGOGUE AT MASADA. Only three synagogues have been identified from first century C.E. Palestine, at Masada, Herodion and Gamla. This aerial photograph shows the synagogue at Masada with the bleacher-type seating which typifies these early synagogues. This synagogue was adapted by the defenders of Masada from a preexisting building in the northeast wall of the fortress built by Herod. In these early synagogues the congregation sat higher than the cantor who was said to "go down before the reader's desk." No Torah ark existed and the scrolls were brought from an adjoining room for public reading. *Courtesy of the Institute of Archaeology of the Hebrew University.*





had so extensively found its way into the Temple service that it was assigned a special place, or *proseuche* (Greek for "prayer room"), in the Jerusalem Temple.

We should not be surprised at the development of the synagogue at this time. There is no evidence for the synagogue as an institution in Palestine before the first century C.E. The *synagoge* mentioned in Greek inscriptions in the Diaspora from Hellenistic times was not a prayer area (*proseuche*) but, rather, the organization that managed the affairs of the local Jewish community. Synagogues in the sense of a place for prayer may first be observed in Palestine in the first century C.E. (Masada, Herodion, and Gamla), and probably somewhat earlier in the Diaspora. From then on we can trace the development of the synagogue up through the end of the talmudic period.

Where did Jews pray before the rise of synagogue buildings? We cannot be sure. Many scholars theorize that the synagogue had its origins in the Babylonian exile when the Jews first had to adapt to the lack of a Temple and animal sacrifice. Yet there is absolutely no evidence, literary or archaeological, for this theory. On the other hand, the history of postbiblical prayer begins early in the Hellenistic period, and perhaps even before. There must have been places for prayer, maybe in the town squares, but this is simply speculation.

Clearly, however, the concomitant development of the synagogue as an institution, along with the gradual ascendancy of prayer over sacrifice as a means of worship, prepared Judaism for the new situation brought about by the destruction of the Temple. By the time the Temple was taken away, its replacement had already been created. From that time on the daily prayers would serve in place of sacrifice, and the synagogue, the "Temple in miniature," would replace the central sanctuary in Jerusalem. Jews would look forward to the rebuilding of the Temple and the restoration of its system of worship. But the Jewish people was equipped with a portable system of worship which it could carry throughout its wanderings, and which would preserve the closeness to God that had once been symbolized and embodied in the Jerusalem Temple.

## RESTORATION OF AUTONOMY: THE AUTHORITY OF THE RABBIS

In the aftermath of the Great Revolt of 66–73 C.E., a total realignment of Jewish political and religious groups took place. It must be remembered that the constellation of approaches known from Second Temple times was radically affected by the events of the Roman conquest.

The Sadducees lost their power base when the Temple was destroyed. While some of their traditions probably survived among non-rabbinic Jews and may have influenced the medieval Karaite movement, the Sadducees ceased to be a factor in Palestinian life after the revolt. They may even have been perceived as in some way responsible for the debacle. Some of the high priests had been close to the Romans, and other priests had actually started the open revolt by refusing to offer the sacrifices provided by the emperor. Accordingly, they incurred the wrath of both pro- and anti-Roman forces. Further, some Jews may have taken the destruction of the Temple as indicative of divine impatience with the way in which the sacrificial worship had been conducted. In any event, the Sadducees exited the stage of history.

The Essenes and the various sects allied to or similar to them also disappeared. The Essenes themselves were leaders in the failed military revolt, according to Josephus, and were decimated by the Romans. Qumran, the center of the Dead Sea sect, was attacked and destroyed in 68 C.E. as part of Roman operations in the Judean Desert. Groups like the Essenes may have contributed to the streams of tradition leading to the medieval Karaite opposition to Talmudic Judaism. Indeed, the parallels between Karaism and the Dead Sea materials are quite striking. With this exception, sectarian groups of the Essene type became insignificant, although in certain ways they seem to have influenced the development of Rabbinic Judaism.

The more extreme and messianically inspired revolutionaries were in the main wiped out. Yet their traditions and approach reemerged again in the Bar Kokhba Revolt sixty years later. From the political point of view, however, these groups were not





a factor in Jewish life in Palestine after the war. The victorious Romans saw little reason to make common cause with defeated enemies, especially with enemies who had wreaked so much havoc on the Roman armies sent to destroy them. Accordingly, they had no interest in deals with the remnants of the rebel groups.

The only serious factor left in Palestinian Judaism in the aftermath of the war was the Pharisaic, rabbinic group. This group had survived the war relatively intact. Some of the Pharisaic leaders, perhaps including Rabbi Simeon ben Gamaliel (I), had taken an active part in the revolt. Yet other rabbis, as would also be the case in the time of Bar Kokhba, had opposed the revolt and advocated a negotiated settlement with the Romans. The striking difference in Pharisaic attitudes reflected the long-standing debate over the question of whether Judaism demanded national independence or simply freedom of religion, an issue which may also have been the basis of the disagreement between Judah Maccabee and the high priest Alcimus. In any case, the Romans saw at least some of the rabbis, most notably Yoḥanan ben Zakkai, as leaders with whom they could deal.

Nonetheless, the Roman decision to regard the Pharisaic rabbis as representative of the Jewish nation cannot be explained simply as a proclivity to deal with those whom they perceived to be more sympathetic. The Romans came to see the tannaim as ideally suited to be the country's internal leaders. Several factors contributed to this decision, most notably the popularity of the Pharisees and the fact that elements of this group had preached accommodation with the Romans. The Romans therefore decided to countenance the establishment of the patriarchate as Palestinian Jewry's internal self-governing body. In this way they hoped to solve the problems that had led to the large-scale revolt against procuratorial government.

Large segments of the Jewish people came to accept this arrangement, not only for "civil" matters, but for matters of religion as well. The few sources that we have indicate that the approach and personalities of the Pharisees were most appealing to the *'am ha-'ares*, literally "the people of the land," the common people, who increasingly followed their lead in matters of religious practice. In view of the ease with which the rabbinic

tradition established itself after the destruction, the tannaim must indeed have captured the hearts of many of the populace. Tannaitic Judaism provided the best means for the adaptation of tradition to the new reality without Temple and without sacrifice. This ability to adapt to the circumstances was made possible by the rabbis' unique approach to Jewish law, the notion of an oral law given at Sinai along with the written. The interpretation and reinterpretation of the Torah which their approach allowed brought about the unique combination of tradition and change which characterized tannaitic Judaism.

The establishment of tannaitic, rabbinic authority did not take place immediately or without difficulty. The earliest attempts to assert control seem to have occurred in the immediate aftermath of the war, when the sages gathered together at Yavneh under the leadership of Yoḥanan ben Zakkai. His claim to authority was based only on learning and respect. Soon, however, the Hillelite patriarchal house came back into power after Rabban Gamaliel II reasserted his authority at Yavneh around 80 C.E. Rabban Gamliel traced his descent to Hillel, the prominent Pharisaic sage of the end of the first century B.C.E. and beginning of the first century C.E. At Yavneh, under Rabban Gamliel's direction, the rabbis engaged in standardizing, recording, and gathering traditions. This process, and its extension to the entire Jewish people, would take centuries to complete. In addition, Rabban Gamliel undertook, perhaps with specific Roman authority, to establish the patriarchate as the system of self-government for the Jews of Palestine. He acted out of a sense that this measure was the only way to bring about the Jewish people's economic and political restoration in their own land and to unite the whole nation under the authority of one Judaism, tannaitic Judaism.

Rabban Gamaliel's efforts in this direction went too far at times, and he was almost removed from office by his colleagues. Yet his overzealousness was part and parcel of the effort to establish his authority on a firm basis. Had that authority not been established, and the tannaim, in consequence, not been able to play their crucial leadership role, it is doubtful that the Jewish people would have been adequately prepared for future





catastrophes and for the vicissitudes of medieval life in the Near East and in Europe.

## JOSEPHUS: HISTORIAN OF THE GREAT REVOLT

Most of what we know about Jewish history in the era of the revolt and the Hasmonean dynasty is known from the works of the historian Josephus. He was born in 37/38 C.E. to a priestly family. After acquiring an excellent education in Jerusalem, he tells us, he studied in the schools of the Pharisees, Sadducees, and Essenes, and then with a desert hermit named Bannus. When he returned to Jerusalem at nineteen, he took up the approach of the Pharisees. In 64 C.E. he was sent to Rome to secure the release of certain priests imprisoned by the procurator. During the war against Rome he served as commander of the Galilee, where he was unsuccessful, either because he only half-heartedly supported the revolt or for objective military reasons. After his surrender he took the side of the Romans, later claiming that he had believed that only some form of accommodation could end the ill-advised war and save the nation and its Temple from destruction. When the war ended he went to Rome. There he received from Vespasian a place to live, Roman citizenship, a pension, and lands in Judea. He must have died around 100 C.E.

There are some important things to keep in mind about Josephus as a historian. First, he did not in fact author most of what his works preserve. The great bulk of it comes from various sources, including Jewish materials, documentary evidence (some forged), and some of the best-known historians of Antiquity, which he compiled, sometimes even slavishly, ignoring contradictions with his own words or with his other sources. Second, he had a specific ax to grind. He sought to demonstrate to the Jews that life under Rome was not so bad as long as religious freedom was guaranteed. He also wanted to show the Romans that the war had been brought about by a minority of the Jews and had not reflected the attitude of the people at large. This was certainly one of the main functions of his *Jewish War*, written toward the end of Vespasian's reign, between 75 and 79 C.E. He also attempted to relate the story of the war as

if he had not been among those to blame for its failure. This is especially evident in his *Life*, a work which cannot be precisely dated. His *Antiquities of the Jews*, completed in 93 or 94 C.E., is a history of the Jews from earliest times to the end of the first century C.E. This work also has a purpose, to show the hoary antiquity and, hence, legitimacy of the Jews and Judaism within the Greco-Roman world. In his *Against Apion*, written after *Antiquities*, the purpose is to respond to anti-Semitic propaganda and to maintain that Jews had not set themselves apart from the human race by their religion, as their enemies alleged, and did not believe the ridiculous things often attributed to them.

Josephus's works, written in Greek (one may originally have been composed in Hebrew or Aramaic) served to educate both Greek-speaking Jews and non-Jews about the nature and history of the Jews and Judaism. These books were quickly lost to the Jewish people, as assimilation and conversion to Christianity led to the decline of the Greek-speaking Jewish community whose members would have read Josephus's works. In the Middle Ages some of his writings circulated again in the form of the book of *Josippon*, a medieval Hebrew translation of a Latin adaptation. Without Josephus, the entire Herodian period and the story of the Great Revolt would be, historically speaking, virtually unknown.

## THE BAR KOKHBA REVOLT

The debacle of the first revolt against Rome was followed by a period of relative calm. Yet during the years of rule by the autonomous Hillelite patriarchs and the leaders of the tannaitic academies, problems were brewing, both inside and outside the Land of Israel. These developments took place despite the separation of Judea from the province of Syria and the appointment of higher-level Roman governors of senatorial rank. In particular, the need to pay a capitation tax to the Temple of Jupiter in Rome must have made the Jews very unhappy.

It was not until the reign of the Roman emperor Trajan (98–117 C.E.) that the problems came to the surface. In 115–117 C.E., while Trajan was occupied in Mesopotamia, Jews throughout the Diaspora rose up against their non-Jewish neighbors in a violent confrontation. Before long pitched battles were being fought in Egypt. The Jews of Cyrene (in North Africa) were said to have massacred their neighbors. Similar disturbances followed in Cyprus and Mesopotamia. The Roman general Lucius Quietus, ferocious in putting down the Mesopotamian revolt, was rewarded with the governorship of Palestine. When Hadrian became emperor in 117 C.E. he had to spend his first year mopping up the last of the rebels. The Land of Israel seems to have been involved in these battles only to a limited extent.



### THE ROMAN EMPERORS

| | |
|---|---|
| 44 B.C.E. | Assassination of Julius Caesar |
| 27 B.C.E.–14 C.E. | Augustus |
| 37–41 | Caligula |
| 41–54 | Claudius |
| 54–68 | Nero |
| 69 | Galba, Otho, Vitellius |
| 69–79 | Vespasian |
| 79–81 | Titus |
| 81–96 | Domitian |
| 96–98 | Nerva |
| 98–117 | Trajan |
| 117–138 | Hadrian |
| 138–161 | Antoninus Pius |
| 161–180 | Marcus Aurelius |
| 193–211 | Septimus Severus |
| 222–235 | Alexander Severus |
| 284–305 | Diocletian |

What is especially significant in these disturbances is the evidence that they were fueled by the very same messianic yearnings that had helped to fan the flames of the Great Revolt and would soon lead to the Bar Kokhba Revolt. To be sure, other social, economic, and political causes were at work, especially a general decline in relations between Jews and their neighbors in the Hellenistic world, but when these finally led to the outbreak of a rebellion, it was the belief in a messianic future that made possible the leap of faith to the belief that the revolt might succeed.

Early in the time of Hadrian there was an abortive attempt to rebuild the Jerusalem Temple, believed by some scholars to have had Hadrian's support. The failure of this effort was another great disappointment for the Jewish community of Palestine. Soon after, Hadrian founded a city of his own in Jerusalem called Aelia Capitolina, where he erected a temple to Zeus. It is also probable that Hadrian prohibited circumcision even before the Bar Kokhba Revolt, although some see the outlawing of circumcision as a measure enacted after the uprising had begun, much like the persecutions of Antiochus IV. It was in this context, as well as on the basis of the strong messianic yearnings we have observed already, that some elements in the Jewish population of Palestine began preparing for revolt in the 120's.

The revolt did not begin until it had found its leader. From letters and documents unearthed in the Judean Desert we know the real name of the leader to have been Simeon bar Kosiba. The sobriquet Bar Kokhba, "Son of a Star," was given to him in accord with Num. 24:17 ("A star shall go forth from Jacob"), taken to refer to the messiah. The tannaim were divided, some supporting his rebellion, others not. Those who supported him saw him as a messianic figure.

The war began as a guerilla struggle against Rome in 132 C.E. Within a short time it had spread throughout the country, and the rebels took Jerusalem, which had not been heavily fortified by the Romans. It is possible that sacrifices were now reinstituted and that work was begun on rebuilding the sanctuary. From the coins Bar Kokhba struck we know of his high priest, Eleazar, who must have taken the lead in efforts to reestablish sacrificial worship. Here we see a reflection of the ancient concept of two messiahs, a lay and a priestly figure, prominent in the Testaments of the Twelve Patriarchs and in certain Qumran scrolls.

We know from the documents that the country was organized into administrative districts, that taxes were collected, and that governmental operations were carried out by Bar Kokhba's supporters. Bar Kokhba observed Jewish law, and it may be stated that the documents confirm the close relationship between this "messiah" and tannaitic Judaism. Parenthetically,



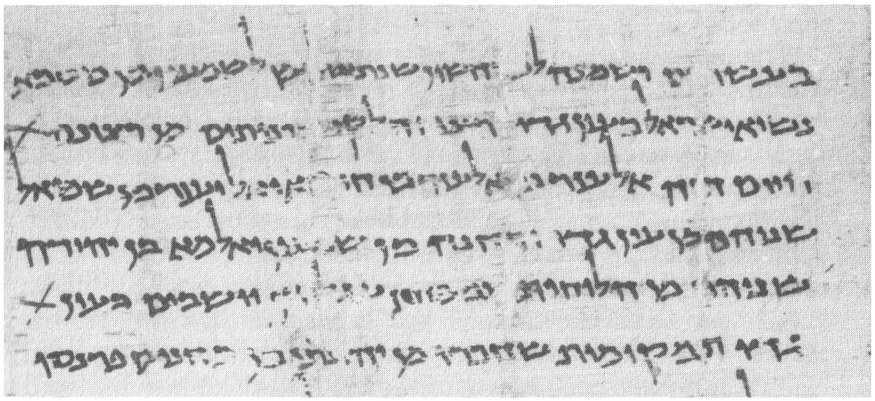


the texts also show that Hebrew was very much a living language at this time, and that, along with Aramaic and Greek, it served a large segment of the population.

Little is known of the actual course of the revolt and of Rome's successful attempt to regain control. Hadrian sent one of his finest generals, and he succeeded in turning the tide by means of a series of sieges, starving out the rebels in their strongholds and places of refuge. Jerusalem was retaken and future Jewish settlement there was prohibited by Hadrian. The last fortress to fall was Betar, not far to the southwest of Jerusalem, which was captured by the Romans during the summer of 135 C.E. By the end of the war many Jews had been massacred, the land had been devastated again, and distinguished rabbis had been martyred. Indeed, the execution of these rabbis, together with the biblical story of the binding of Isaac, would serve as a paradigm for Jewish martyrdom (termed *qiddush ha-shem*, "sanctification of God's name") in the medieval and modern periods. Once again a Jewish attempt to defeat the Romans and to bring the messianic era had failed.

## REBUILDING FOR THE FUTURE

As if history were repeating itself, recovery and the reinstitution of Jewish self-government ensued once again. With the accession of the emperor Antoninus Pius (138–161 C.E.), virtually all of Hadrian's decrees were rescinded. The patriarchate and the high court were reconstituted at Usha, in the Galilee. Indeed, the two revolts contributed greatly to encouraging the Jewish population of Palestine to move from Judea to the north, settling primarily in the Galilee. Under Rabban Simeon ben Gamaliel II, (first half of the second century C.E.) and later under Rabbi Judah the Prince (latter half of the second and beginning of the third century C.E.), the editor of the Mishnah, the patriarchate and the other institutions of the Jewish community reached their height. Taxes poured into the patriarchal coffers even from the Diaspora, where the emissaries of the rabbis of Palestine attempted to foster the spread of tannaitic Judaism. With the exception of two restrictions, the ban on proselytism and the ban on Jews living in Jerusalem, Jewish life



CONTRACT FROM THE THIRD YEAR OF BAR KOKHBA. From the years of the Bar Kokhba Revolt against Rome, 132–135 C.E., numerous contracts survived in the caves of the Judean Desert. Above is part of a Hebrew contract, found at Naḥal Ḥever, from Bar Kokhba's third year, dividing land which had been leased jointly. In the first line the letter preserves the name Simeon ben Kosiba (called here "Prince of Israel"), the actual name of Bar Kokhba who was given the name "son of a star" (Bar Kokhba) based on the messianic interpretation of Num. 24:17. *Courtesy of the Shrine of the Book of the Israel Museum.*





in this period was virtually unfettered. The latter restriction seems to have been often compromised. Under the Severan dynasty (193–225 C.E.) Jewish fortunes improved with the granting of a variety of legal privileges culminating in full Roman citizenship for Jews. The enjoyment of these privileges and the peace which Jewry enjoyed in the Roman Empire were interrupted only by the invasions by the barbarians in the West and the instability and economic decline they caused throughout the empire, and by the Parthian incursions against Roman territories in the East.

The latter years of Roman rule, in the aftermath of the Bar Kokhba Revolt and on the verge of the Christianization of the empire, were extremely fertile ones for the development of Judaism. It was in this period that tannaitic Judaism came to its final stages, and that the work of gathering its intellectual heritage, the Mishnah, into a redacted collection began. All the suffering and the fervent yearnings for redemption had culminated not in a messianic state, but in a collection of traditions which set forth the dreams and aspirations for the perfect holiness that state was to engender. As prayer had replaced sacrifice, Torah, in the form of the Mishnah, had now replaced messianism. A different kind of redemption was now at hand.

## SUMMARY

The Roman period in Palestine brought a series of disappointments for the Jews. Two attempts to throw off the yoke of Roman rule and to return the nation to independent statehood were doomed to failure by Rome's superior military might. The first revolt, that of 66–73 C.E., was seriously undermined by the inability of the various groups of rebels to stand together. To some extent, these differences may have reflected the still unresolved conflicts of Second Temple times. At the same time, the failure of both revolts led to further advances in rabbinic influence. The necessary conditions were created for the profound development of the religious tradition that was eventually enshrined in the great corpus of rabbinic literature.

# 10
# Mishnah: The New Scripture

The period beginning with the destruction (or rather, with the restoration in approximately 80 C.E.) saw a fundamental change in Jewish study and learning. This was the era in which the Mishnah was being compiled and in which many other tannaitic traditions were taking shape. The fundamental change was that the oral Torah gradually evolved into a fixed corpus of its own which eventually replaced the written Torah as the main object of Jewish study and guide for religious practice, at least for rabbinic Jews. This process may be seen as the culmination of the attempts of the tannaim (the teachers of the Mishnah) to make their traditions the way of the future. The redaction (collection and editing) of the Mishnah, and the subsequent tannaitic and amoraic compositions, ultimately made possible the expansion of Rabbinic Judaism to virtually all of the world's Jews in the early Middle Ages.

## FROM PHARISEES TO RABBIS

Inherent in the later traditions, and indeed, in most modern scholarly treatments, is the assumption that the Pharisees bequeathed their traditions to the tannaim. The terms "Pharisees" and "tannaim" overlap chronologically. We speak of Pharisaic Judaism as emerging in the early Hasmonean period, around 150 B.C.E., and continuing up to the destruction of the Temple in 70 C.E., when it was succeeded by tannaitic Judaism. Yet the transition was not an immediate, sudden break. In order to understand how the development from Pharisees to tannaim





took place, we must ask what typified the Pharisee and what typified the tanna. In what ways were they the same, and in what ways were they different?

The Pharisees were lay sages of the Torah who were only informally organized. Even before the days of the preeminent sages Hillel and Shammai, the Pharisees had made the transition from being a political force in the Hasmonean coalition to being a group of religious leaders, loosely joined together by the same interpretation of Judaism, who sought to teach their approach to the people at large. They did not see the collection, arrangement, or passing on of traditions as their function, nor were they an organized bureaucracy.

The tannaim, on the other hand, involved themselves in the systematic collection and transmission of traditions, and their efforts eventually culminated in the redaction of the Mishnah. (The very name *tanna* is Aramaic for a memorizer and reciter of traditions.) The tannaim belonged to schools (sometimes called academies) that were more formalized than those of the earlier Pharisees, and they sought to expand and to organize them.

A final, fundamental difference has to do with the concept of an oral law. Pharisaism traced its nonbiblical legal and exegetical traditions to the "tradition of the fathers" or "unwritten laws." Yet nowhere do we find the Pharisees asserting that these traditions came from Sinai. The tannaim, as we will soon see, asserted that their extrabiblical traditions, many of them inherited from the Pharisees, were part of the oral law, a second Torah given by God to Moses at Sinai along with the written law.

The evolution from the era of the Pharisees to that of the tannaim, like the later transition from tannaim to amoraim (the teachers of the Talmud [Gemara], ca. 200–500 C.E.), required time to allow for the necessary innovations as well as for organic development. Various external causes helped to foster the change. The desire to gather traditions and standardize Judaism was brought about by the Great Revolt of 66–73 C.E. and by the notion that the defeat was partly the result of the sectarian strife that had plagued the Jewish people in the years leading up to the revolt and even during the war. The tendency toward

more organized schools replacing the informal circles of Pharisaic times was encouraged to some extent by the new status which the tannaitic academy was granted by the Roman overlords. The rise of a bureaucracy and the role of tannaim as judges throughout the land resulted from the new political situation. Finally, the desire to collect and preserve traditions is always strengthened in periods after wars and catastrophes, a pattern which can be observed repeatedly in the ancient Near East.

## WRITTEN AND ORAL TORAH

One of the basic premises on which the tradition of the tannaim was based was the concept of the two Torahs, oral and written, which, the rabbis believed, had been given by God to Moses on Sinai. According to the rabbinic view, the two Torahs were complementary. The oral Torah provided the interpretations and explanations which made possible the application of the written Torah as a way of life. Therefore, the two Torahs were of equal status and authority with one another. Further, the accuracy of the transmission of the teachings of both Torahs was seen to depend not only on the correctness of the contents, but also upon the mode of transmission. The tannaim make clear that to be considered authentic, a tradition must be transmitted in the same way it was given at Sinai. Therefore, the written Torah had to be taught from a scroll, and the oral law had to be recited orally by a tanna.

The history of the oral law concept is complex. Its earliest attestation is found in Josephus. He asserts that the Pharisees possessed ancient traditions which they had inherited from past generations. These traditions, combined with ancient customary law as well as with the emerging midrashic exegesis which was developing in the Second Temple period, provided the basic content of what the rabbis later called the oral law. At some point between the late first century B.C.E. and the first century C.E., the notion began to be expressed that the oral law, along with the written, had been given at Sinai. This development has been explained by some modern scholars as the result of a





### THE TANNAIM
(all dates are C.E.)

*First Generation, ca. 10–90 C.E.*

| | |
|---|---|
| School of Hillel | Simeon ben Gamaliel I |
| School of Shammai | Yoḥanan ben Zakkai |
| Akaviah ben Mahalalel | Ḥanina ben Dosa |
| Gamaliel I | Eliezer ben Jacob I |
| | Neḥuniah ben Ha-Kana |

*Second Generation, ca. 90–130 C.E.*

| | |
|---|---|
| Gamaliel II | Ṭarfon |
| Eliezer ben Hyrcanus | Yose the Galilean |
| Joshua ben Ḥananiah | Ḥananiah ben Teradion |
| Eleazar ben Zadok I | Judah ben Batyra |
| Ishmael | Ben Azzai |
| Akiva ben Joseph | Ben Zoma |
| Eleazar ben Azariah | |

*Third Generation, ca. 120–140 C.E.*

| | |
|---|---|
| Meir | Nehemiah |
| Simeon ben Yoḥai | Eleazar ben Shammua |
| Yose ben Ḥalafta | Simeon ben Gamaliel II |
| Judah ben Ilai | Eliezer ben Yose |
| Eliezer ben Jacob II | Joshua ben Qarḥa |
| Yoḥanan Ha-Sandlar | Eleazar ben Zadok II |

*Fourth Generation, ca. 140–200 C.E.*

| | |
|---|---|
| Judah the Prince | Ishmael ben Yose |
| Symmachus | Simeon ben Eleazar |
| Eleazar ben Simeon | Nathan |
| Yose ben Judah | Eleazar Ha-Kappar |

*Fifth Generation, ca. 200–225*

| | |
|---|---|
| Gamaliel III | Simeon ben Ḥalafta |
| Ḥiyya the Elder | Levi bar Sisi |
| Bar Kappara | Huna |

desire on the part of the Yavnean rabbinic authorities to solidify their authority by claiming divine origin for their own traditions. Actually, however, such ideas were developing naturally as the various approaches to Judaism in the Second Temple period strove to provide the written law with an appropriate supplement to make it possible for the Torah to serve as a genuine way of life in the Greco-Roman period. In Pharisaic-Rabbinic Judaism, this was accomplished by the oral law.

This idea allowed Pharisaic Judaism, and, later, the rabbinic tradition, to develop organically. It provided the basis for the assertion of continuity in Talmudic Judaism, an assertion maintained even in the face of numerous adaptations and adjustments, for in the view of the rabbis there had been no changes—all later developments had already been commanded as part of the Sinaitic revelation.

Talmudic tradition has always assumed that the notion that two Torahs were given on Sinai went all the way back in time. Modern scholars have come to question this assumption. In any case, firm evidence shows that the concept was fully developed by the aftermath of the revolt. By that time, appeals to the Sinaitic origin of laws were made, although the notion of a dual Torah and dual revelation was not nearly as evident as one might expect. Clearly, then, the idea was developing in Pharisaic times, and the unwritten laws of the fathers were an earlier stage in its development. The concept became more important in the period leading up to the destruction. In the difficult years after the revolt, when the support of the people at large (the *'am ha-'areṣ*) was so important, the rabbis, in order to guarantee the authority of their teachings, occasionally appealed to the divine origin and nature of the oral law. It was only in amoraic times, however, that the full midrashic basis for these ideas was worked out, with the rabbis asserting that the oral Torah and its authority were mentioned in the written law. In this case, though, the transition cannot be understood as the result of external political influences. It resulted from an organic trend in Judaism which developed in a manner consistent with the needs of the times. Indeed, this is the manner of most developments and changes in Judaism, the unique contribution of the Pharisaic heritage.





## THE TANNAITIC ACADEMIES

In order to understand how this transition took place, and how the tannaitic corpus developed, some explanation of the history and function of the tannaitic academies is necessary. Yet we must caution that the term "academies" may be anachronistic. It conjures up an image of institutions in which there is an academic bureaucracy, a system of funding, and physical premises of some kind, but we cannot be sure that the tannaim always worked under such ideal conditions. Although the patriarchate sponsored the high court (Sanhedrin), it is not totally certain how the academies were organized and who funded them. It is also not clear whether they had specific premises. They may have met in synagogues or other facilities. At the same time, it should be noted that tannaitic sources mention houses of study along with the synagogues. This tends to support the claim that specific buildings and more organized institutions existed in the mishnaic period. Among the duties of the patriarch (*nasi'*) was the maintenance of the academies; and he designated an *'av bet din*, "head of the court," to lead them. The power of the two officials was not constant, however, and there is occasional evidence of disagreement and even strife between them.

A generational scheme has traditionally been used since the Middle Ages to classify the tannaim and trace their history. The actual tannaim were preceded by a series of Pharisaic sages known as pairs (Hebrew *zugot*), one of whom, in each instance, is reported to have served as patriarch (*nasi'*), and the other as head of the court (*'av bet din*), during the Hasmonean and Herodian periods. These culminate in Hillel and Shammai, said to be the last pair.

The last of the *zugot* were followed by the first generation of tannaim, consisting of the Houses of Hillel and Shammai, the two major schools, which were made up of the followers of these two great sages. The figures of the first generation were prominent immediately before and after the Great Revolt, and among the most notable were Rabban Gamaliel I, mentioned in the New Testament, Simeon ben Gamaliel I, who probably died in the revolt, and Rabban Yoḥanan ben Zakkai, credited with organizing the academy at Yavneh after the destruction of Jerusalem.

The second generation functioned after the revolt, from about 90 to 130 C.E., at Yavneh. Among these sages were Rabban Gamaliel II, who led the academy at Yavneh after Yoḥanan ben Zakkai, Rabbi Eliezer ben Hyrcanus, and the slightly younger Rabbi Akiva and Rabbi Ishmael. The second generation took the lead in reconstituting Jewish life in Palestine and in gathering together the traditions of their pre–70 C.E. Pharisaic and tannaitic forebears.

The third generation spanned the Bar Kokhba period and its aftermath, functioning from about 130 to 160 C.E. They were primarily the students of Rabbis Akiva and Ishmael of the previous generation. Prominent before the Bar Kokhba Revolt were Rabbi Meir, Rabbi Simeon ben Yoḥai, and Rabbi Judah ben Ilai. It is probable that Rabbi Meir began the editing of the Mishnah based on subject divisions he had learned from Rabbi Akiva. The leading rabbinic figure in the restoration of Jewish life after the Bar Kokhba Revolt was Rabban Simeon ben Gamaliel II, the patriarch. These scholars functioned primarily at Usha, in the Galilee, to which the patriarchal court had moved after the Bar Kokhba Revolt of 132–135 C.E.

The fourth generation covered the period of from about 160 to 200 C.E. This was the generation of Rabbi Judah the Prince (Hebrew *nasi'* = prince, i.e. patriarch), the majestic patriarch who edited the Mishnah. His court was at Beth Shearim in the Galilee, and among his contemporaries were Rabbi Eleazar ben Rabbi Simeon (ben Yoḥai), Rabbi Simeon ben Eleazar, and Rabbi Nathan.

The members of the fifth generation, from about 200 to 225 C.E., are said to be semi-tannaim, as they were primarily younger contemporaries of Rabbi Judah the Prince, who continued their work after the Mishnah was redacted. Among them were Rabban Gamaliel III, the son of Rabbi Judah the Prince and himself also a patriarch, Rabbi Ḥiyya the Elder, and Bar Kappara. By this time, the center of the patriarchate and the court had shifted to the Galilean city of Sepphoris, the economic and social climate of which made it an ideal home for the sages of the Sanhedrin.

While the system of generations provides a useful chronological framework for the development of tannaitic Judaism, it does





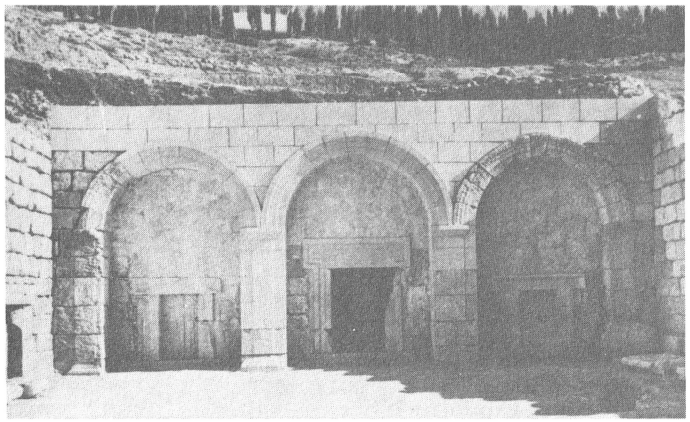
not adequately portray the great diversity of the tannaitic teachers, the complex, interlocking student-master relationships, or the geographic diversity. Yet these are the very factors which made for the richness of the tannaitic legacy. Generational schemes are ultimately based on a linear view of history, an approach considered normative in the Middle Ages, but outmoded in modern times. Modern scholarship is only now in the process of building up a more complete picture that will take these other factors into account, and it is certain to enrich greatly our understanding of this period and its literature.

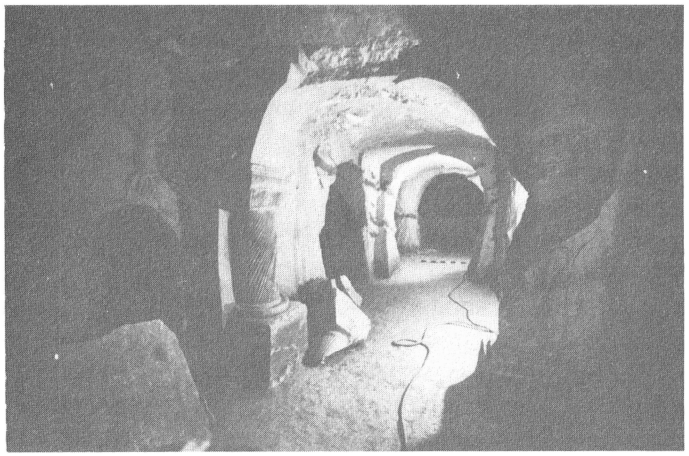
## MIDRASH AND MISHNAH

There were two forms of study in the tannaitic period, respectively termed mishnah and midrash. There is a long-standing and important debate about which method of study came first. Mishnah is the study of abstract, apodictic principles of law (apodictic laws are unconditional legal prescriptions unaccompanied by reasons or biblical sources) which only later were organized into collections according to either literary form, attribution (the name of the sage reported to have said it), or subject. Ultimately, the method of organization by subject became most prominent and led to the organization of the text known as the Mishnah. Some remnants of earlier systems of organization are still visible in the Mishnah, however. In the mishnaic method, scholars are assumed to have stated their legal principles and the decisions of their predecessors without making reference to their scriptural or traditional basis or explaining, in most cases, the reasons behind them.

The midrashic method is a technique of scriptural exposition. It concentrated primarily on the Torah, which was the supreme authority for the midrashic method and was studied as the basic text. Scholars and students explained how specific laws derived from biblical verses or words and how the laws were to be applied.

Can we determine which of these methods actually came first? There is evidence from the very end of the biblical period, i.e., the Persian period (Ezra, Nehemiah, and Chronicles), that midrashic exegesis for legal purposes (*midrash halakhah*) was





CATACOMBS OF BETH SHEARIM. In the second century C.E. the patriarchal family and many aristocratic families from Palestine and the Diaspora were buried in the catacombs of Beth Shearim, south-east of Haifa. Among those buried there were Rabbi Judah the Prince and members of his court. Photo A shows the entrance to the burial place of the patriarchal family. Inside the catacombs (photo B) were found numerous sarcophagi decorated with Greco-Roman motifs and inscriptions in Hebrew, Aramaic and Greek. *Courtesy of the Institute of Archaeology of the Hebrew University.*





already becoming popular and being used for arriving at legal decisions. Non-rabbinic sources, including material from the Qumran sect and some other groups, give evidence that scriptural interpretation was used as the basis for law in the Second Temple period. Finally, while it is possible to suggest a logical progression from the midrashic method to the mishnaic, no sufficient explanation can be offered for how the reverse would have occurred. For all these reasons, the view that originally the study of the Bible was the primary method and then, secondarily, the method of mishnaic, apodictic formulation developed, is most likely to be historically correct.

The history of these methods of study may be traced as follows. After the close of the biblical period, the midrashic approach found in the later biblical books was taken over by the Pharisees. Other Second Temple groups used similar methods of biblical exegesis, as we know from the Dead Sea Scrolls. As the midrashic approach developed in Pharisaic circles, the amount of material supplementary to the Bible itself became greater and greater until at some point the laws themselves were formulated independently and concisely. These mishnah-like, apodictic laws began to be studied as a separate subject side by side with midrashim as the tradition developed. By the time Pharisaism gave way to tannaitic Judaism, the two were coexistent, and the tannaim practiced both methods.

Both methods of study were utilized in the tannaitic academies, and, hence, the materials which emerged from the academies all bear a common mark, that of accretion over a long period of time. Each generation of scholars began with the work of its predecessors and augmented and modified it. The amalgamation of the old tradition with the new was then passed down, so that constant development was taking place. Further, as the generations continued this chain, midrashic and mishnaic materials intermixed so that one influenced the other, and each sometimes quoted the other. Later mishnaic formulations emerged from continued study of the Bible, and even in the Mishnah one finds midrashic expansion.

Often, instead of the original pattern in which the midrashic method yielded laws or at least legal statements, entire midrashic sections of our texts are sometimes built retrospectively

on mishnaic selections. With time, each corpus was filled out by the other, until they began to conform to a common, consistent tradition. By the close of the redaction of the tannaitic texts, the midrashic and mishnaic collections were, therefore, largely in agreement. Whereas mishnaic tradition was eventually distilled and redacted by the end of the second century C.E. by Rabbi Judah the Prince, the results of midrashic inquiry were not collected until much later, in fifth-century Palestine.

## HALAKHAH AND AGGADAH

In tannaitic literature, two terms are employed which signified two aspects of the emerging tradition, halakhah and aggadah. The word *halakhah* was used to denote Jewish law as it was understood and determined by the tannaim and later by the amoraim. This term has been explained in two ways. Many have seen it as emerging from the root *hlk*, "to go," metaphorically suggesting the concept "a way of life." Another view derives the word *halakhah* from an ancient Mesopotamian tax on land called *ilku* in Akkadian, and *halakh* in biblical Aramaic.

In contrast, the second category, aggadah, known also as haggadah (a term later used to denote the Passover Seder text) is that part of rabbinic teaching not considered obligatory. Aggadah, derived from the verb *higgid* (from the root *ngd*), meaning "to tell," consists of interpretations, stories, and legends, all of which are designed to attract followers to Rabbinic Judaism and to explicate its teachings and principles. Since in many areas the aggadah provides differing positions on the same issues, no one position can be obligatory. Originally, this was also the case with halakhah, but a long process of decision-making eventually resulted in a normative set of laws by the Middle Ages. The practical aspects of the need to determine the authoritative ruling led more and more toward standardization. Such a process never occurred in regard to the non-legal aspects of rabbinic tradition, the aggadah. Hence, aggadah continued to demonstrate greater variety than did halakhah.

These two aspects of talmudic tradition demonstrate the creative tension in Rabbinic Judaism between the fixed and the flexible. The fixed body of law and practice is offset by the more



open and nonobligatory teachings regarding which the rabbinic Jew is free to disagree. This characteristic is an important principle in the later development of traditional Judaism, since it allowed the eventual standardization of most of the halakhic norms while leaving open to debate the theological underpinnings, all within certain limits which emerged from the rabbinic consensus at the end of the talmudic period.

## THE REDACTION OF THE MISHNAH

Scholars have long debated the exact nature and history of the process that led to the redaction, arrangement, and selection of the Mishnah, the first major document to emerge from and to represent the tannaitic tradition. The Mishnah was the only major text to be redacted in the tannaitic period, although other texts, edited afterwards in the amoraic period (200–500 C.E.), depended heavily on tannaitic materials. The Mishnah became the formative document in the shaping of Talmudic Judaism. The redaction of the Mishnah by Rabbi Judah the Prince (ca. 200 C.E.) represented the end of a process, although the extent of his contribution should not be minimized.

Most modern scholars agree that the Mishnah originated in discrete statements, some attached to specific named authorities. Only a small part of the mishnaic material is attributed to the period before the Roman conquest of Palestine in 63 B.C.E. Between then and the period leading up to the Great Revolt of 66–73 C.E. are attributed materials relating to Hillel and Shammai and to the Houses of Hillel and Shammai, the schools of tannaim consisting of the students of these two preeminent sages. Yet it must be recognized that the material preserved in the earliest strata of tannaitic literature was originally in forms different from those in which the material is preserved from the post-destruction period.

### THE PERIODIZATION OF THE ORAL LAW

| | |
|---|---|
| ca. 150 B.C.E.–ca. 70 C.E. | Pharisees |
| ca. 50 B.C.E.–ca. 200 C.E. | Tannaim (note overlap) |
| ca. 200 C.E.–ca. 500 C.E. | Amoraim |
| ca. 500 C.E.–ca. 700 C.E. | Savoraim (Babylonia only) |

With the destruction of the Temple and the shifting of the activity of the tannaim to Yavneh, Usha, Beth Shearim, and Sepphoris, profound changes occurred in the manner by which tannaitic material was transmitted. A process began of bringing together divergent views on issues into disputes and shaping the statements so as to reflect the divergence of opinion. Further, mnemonic formulations became more common, as students and teachers were expected to be familiar with an increasingly large body of oral material.

It is difficult to determine at what point in the history of the mishnaic material the process of redaction began. By redaction, we mean the bringing together of diverse materials into blocks of material, assembled from disparate sources by a compiler. Among the earliest principles for the assembling of such materials, usually no larger than a chapter of the present Mishnah, were either the recurrence of a general formulary, such as "There is no difference between X and Y except Z," or attribution to a particular sage. There is evidence in the existing Mishnah text of earlier arrangements of small corpora of material which were ordered in this manner, rather than according to the dominant system of subject classification.

## ORDERS AND TRACTATES OF THE MISHNAH, TOSEFTA, AND TALMUDS

| | |
|---|---|
| *Zera'im* | *Agricultural Laws* |
| Berakhot | Benedictions |
| Pe'ah | Gleanings of the Field |
| Demai | Doubtfully Tithed Produce |
| Kilayim | Forbidden Mixtures |
| Shevi'it | Sabbatical Year |
| Terumot | Priestly Portions |
| Ma'serot | Tithes for Levites and the Poor |
| Ma'aser Sheni | Tithe to Be Eaten in Jerusalem |
| Hallah | Dough Offering |
| Orlah | Fruit of Young Trees |
| Bikkurim | First Fruits |
| | |
| *Mo'ed* | *Holy Occasions, Festivals* |
| Shabbat | Sabbath |
| Eruvin | Extension of Sabbath Limits |



| | |
|---|---|
| Pesaḥim | Passover |
| Sheqalim | Half-Shekel Offering |
| Yoma | Day of Atonement |
| Sukkah | Festival of Sukkot |
| Beṣah | Festival Laws |
| Rosh Ha-Shanah | New Year |
| Ta'anit | Fast-Days |
| Megillah | Purim and Tora Reading |
| Mo'ed Qaṭan | Intermediate Days of Festivals |
| Ḥagigah | Festival Sacrifices |
| | |
| *Nashim* | *Women, Marriage Law* |
| Yevamot | Levirate Marriage |
| Ketubot | Marriage Contracts |
| Nedarim | Vows |
| Nazir | Nazirites |
| Soṭah | Suspected Adulteress |
| Giṭṭin | Divorce |
| Qiddushin | Marriage |
| | |
| *Neziqin* | *Damages and Civil Law* |
| Bava Qamma | Damages |
| Bava Meṣia | Civil Law |
| Bava Batra | Property Law |
| Sanhedrin | Courts and Penalties |
| Makkot | Flagellation |
| Shevu'ot | Oaths |
| Eduyot | Legal Traditions |
| Avodah Zarah | Idolatry |
| Avot | Ethics of the Fathers |
| Horayot | Erroneous Court Decisions |
| | |
| *Qodashim* | *Sacrifices* |
| Zevaḥim | Animal Offerings |
| Menaḥot | Meal Offerings |
| Ḥullin | Slaughter of Food Animals |
| Bekhorot | Firstborn Animals |
| Arakhin | Vows of Valuation |
| Temurah | Substitution of Offerings |
| Keritot | Penalty of Excision |
| Me'ilah | Misappropriation of Offerings |

| | |
|---|---|
| Tamid | Daily Sacrifices |
| Middot | Dimensions of the Temple |
| Kinim | Bird Offerings |
| | |
| *Ṭahorot* | *Purification Rituals* |
| Kelim | Impurity of Vessels |
| Ohalot | Impurity Through Overshadowing |
| Nega'im | Skin Diseases |
| Parah | Red Heifer |
| Ṭahorot | Ritual Purification |
| Miqva'ot | Ritual Baths |
| Niddah | Menstrual Impurity |
| Makhshirim | Liquids Rendering Food Susceptible to Impurity |
| Zavim | Bodily Fluxes |
| Ṭevul Yom | Ritual Impurity Between Immersion and Sunset |
| Yadayim | Impurity of the Hands |
| Uqṣin | Impurity of Parts of Plants |

Sometime after the destruction, the approach of organizing the materials by subject became prominent. This opened the way to the development of large-scale "essays" on topics of law. Later tradition and many modern scholars ascribe the basic subject classification into orders (Hebrew *sedarim*) and tractates (*massekhtot*) to Rabbi Akiva, who flourished at the Yavneh academy around 80–132 C.E. Whether he was responsible for this concept is impossible to determine with precision. Yet the large number of highly developed treatises which remain embedded in, or which even constitute, mishnaic tractates from the period between the Great Revolt (66–73 C.E.) and the Bar Kokhba Revolt (132–135 C.E.) proves that this approach, at least on the level of individual tractates, was evolving in his day. It was left for those who came after Rabbi Akiva at the academy at Usha to bring many tractates to a well-developed state.

After the Bar Kokhba Revolt, the process continued with renewed vigor. Attempts were made to gather together traditions, as often happens after a tragedy of great proportions. Thus, many more tractates began to move toward completion while halakhic concepts developed over the years served as the basis for new organizational and redactional approaches. By the time Rabbi Judah the Prince began his work of final redaction,



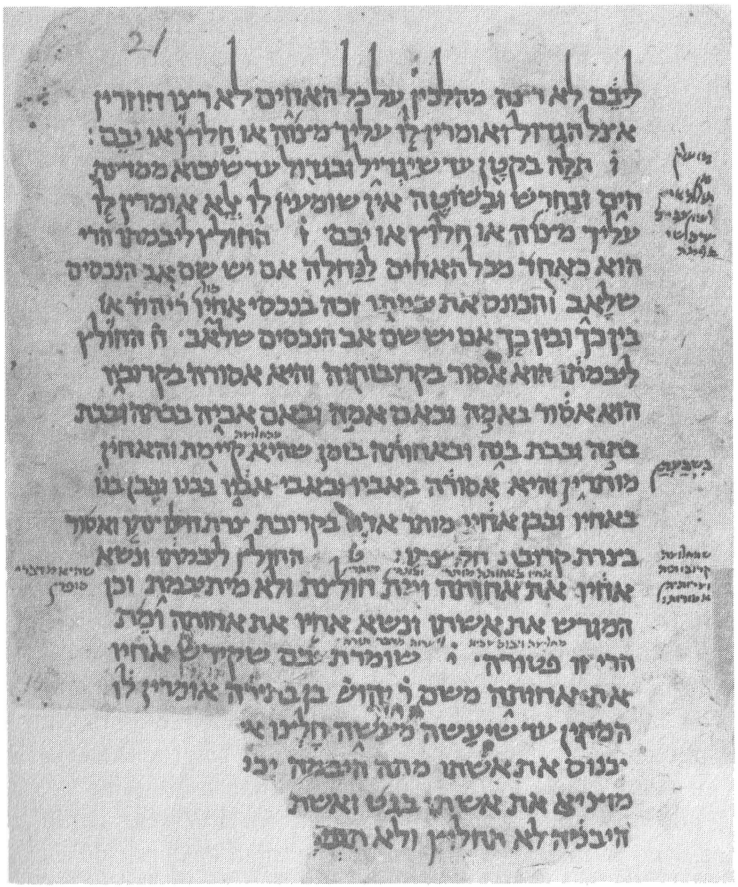


he had most probably inherited many almost completed tractates and a basic system of classification by orders. He completed the compilation of the individual tractates and placed them in the appropriate orders.

Rabbi Judah the Prince, known often as "Rabbi" in the Mishnah, the rabbi par excellence, did not seek to create an authoritative code of law. Had he, we would have to judge his work a failure. After all, the amoraim, the teachers of the Talmud (Gemara), set aside or modified so many of his rulings. He provided variant rulings on many subjects, explaining that his purpose was to keep options open for later courts of greater authority and wisdom. He intended to create a curriculum for the study of Jewish law. Yet he sought to point out which rulings he favored by providing information on majority and minority status of rulings, and by indicating the greater or lesser authority of individual tradents (transmitters of tradition) and decisors whose statements he included. He even placed materials in his text anonymously, though he was well aware of the tradents, in order to indicate that the ruling was (in his view) to be followed. These views, by and large, he reproduced anonymously, or with the label "the opinion of the sages," where there was an individual who dissented.

The material was organized into six orders: Zera'im (Agricultural Laws), Mo'ed (Holy Occasions, Festivals), Nashim (Women, Marriage Law), Neziqin (Damages and Civil Law), Qodashim (Sacrifices), and Ṭahorot (Purification Rituals). Each order comprised several tractates. Today, these tractates are arranged roughly in size order within each order, at least in Mishnah texts. The same order was later used for the Tosefta, and for the Babylonian and Palestinian Talmuds. Within the six orders there are a total of sixty-three tractates.

Zera'im begins with a discussion of prayers and benedictions (anomalous in this order) and then deals with produce given as charity to the poor, tithing, priestly dues, Sabbatical years, and first fruits. Mo'ed deals with the Sabbath and festivals, as well as fast-days and other special occasions. In most tractates emphasis is clearly on the aspects of Temple ritual associated with the holiday. Nashim discusses marriage, divorce, adultery, and vows. Neziqin prescribes the composition of the court and



MISHNAH FRAGMENT FROM THE CAIRO GENIZAH. The Ben Ezra Synagogue in Fustat, Old Cairo, served as a depository for old Hebrew manuscripts throughout the Middle Ages. When these texts began to come to light around the turn of the century, they led to profound developments in the study of Jewish literature and history. Among them were fragments of early manuscripts of the Mishnah. Above is an example of such a manuscript of Tractate Yevamot. *Courtesy of the Library of the Jewish Theological Seminary of America.*





then deals with criminal sanctions, damage law, idolatry, and incorrect rulings by the courts. The tractate Avot (known as Pirqe Avot, or Ethics of the Fathers) comes near the close of this order. It includes ethical teachings aimed at the rabbinic class. Qodashim deals with animal sacrifices, meal offerings, ritual slaughter, violations of sancta, daily sacrifice, and the structure of the Temple precincts. Ṭahorot discusses laws of purification pertaining to vessels for food, the impurity of the dead, the skin diseases described in Leviticus, menstrual and other impurities, and the construction of ritual baths for purification.

If there is anything to be learned from this survey it is that the Mishnah reflects the full variety of the Torah's laws, and that it is firmly anchored in a Temple-centered reality in which priests, sacrifices, and purity remain as important as Sabbath and festivals, civil law, marriage, and family. This does not mean that the Mishnah was created in the days of the Temple. Rather, it was edited in an atmosphere in which the restoration of a Temple-centered reality was still a living hope, and in which the conception of sanctity still flowed from that reality, even in its absence.

We have already noted that the tannaim believed the oral law to have been revealed to Moses by God at Sinai, alongside the written law. This should have required that the oral law be transmitted orally, and, indeed, so it was in the tannaitic period. At the same time, evidence indicates that individual tannaim kept notebooks in which they listed certain oral traditions. There was a debate throughout the medieval period on the question of when the Mishnah was written down. Some believed that Rabbi Judah the Prince himself had recorded the Mishnah in writing, while others believed that it had been written down in Babylonia at the end of the talmudic period, when the threat of an Islamic invasion led to fears that the oral traditions might be lost. The problem is best solved by realizing that the oral law concept required that the publication of the Mishnah, its teaching, and its exegesis all be carried on in oral form. For this reason, formal study in amoraic circles was based on oral tradition. While individual amoraim had written texts of various parts of the Mishnah, the formal transition to the use of a

written Mishnah as an object of teaching, study, and exegesis took place only at the end of the amoraic period or later. Rabbi Judah the Prince, however, promulgated his Mishnah in oral form. To the rabbis, what God had given orally had to be transmitted orally, and so it was with the Mishnah, the consummate summary of the oral law.

## OTHER TANNAITIC TEXTS

The corpus of materials assembled in the Mishnah did not exhaust the oral traditions of the tannaitic period. Other traditions were intentionally excluded by Rabbi Judah the Prince, and some were simply not known to him. At the same time, the "tannaitic" tradition continued to develop in early amoraic times, so that materials continued to be collected and even transformed as they were handed down and taught. These teachings eventually were collected in a number of different collections.

### *Tosefta*

Tosefta, meaning literally "the addition," is a collection of *baraitot*, "external traditions," which are not found in the Mishnah but are attributed to tannaim. This collection is designed to serve as a supplement to and commentary on the Mishnah, following its arrangement of orders and tractates, and even, for the most part, the sequence of the chapters. Only a few tractates of the Mishnah have no parallel in the Tosefta, which represents the earliest sustained exegesis of the Mishnah as the canonical collection of oral law.

The material in the Tosefta relates to that in the Mishnah in a variety of ways. Some passages are exact parallels, or even quotations, of material in the Mishnah. Others are restatements of the very same views in different form or using different terminology. Many statements in the Tosefta are actually supplements to the Mishnah and cannot be understood independently at all. Often, Tosefta passages contain traditions which provide material germane to the subject matter under discussion in the Mishnah but which are in no way directly parallel. Finally, there is material in the Tosefta which is at best tangentially related to the corresponding sections of the Mishnah.



Although talmudic tradition attributes the redaction of a Tosefta to students of Rabbi Judah the Prince, it is certain that the Tosefta that has come down to us was not redacted so soon after the completion of the Mishnah. Careful comparison of *baraitot* in the Tosefta and the Talmuds of Babylonia and Palestine indicates that the Tosefta was most probably not redacted until the end of the fourth century C.E. or later. This explains why it was not available in its present form to the amoraim.

The dating of the individual traditions in the Tosefta is a matter of greater complexity. We have already noted that "tannaitic" activity continued into the amoraic period, and this is in evidence in the continued development and redaction of Tosefta traditions. At the same time, for many statements, careful comparison of Tosefta material with mishnaic material shows us that the Tosefta versions are earlier than those in the Mishnah. This is sometimes the case where the Tosefta preserves a tradition with an attribution and the Mishnah does not. In many cases, this is because the redactor of the Mishnah removed the attribution to present the statement as halakhah, whereas the Tosefta preserved the original version. Elsewhere, divergent opinions were reformulated as disputes in the Mishnah, whereas the original formulations, as separate opinions, are preserved in the Tosefta.

On the other hand, there are clearly many passages in which the reverse process has occurred. In such instances statements from the tannaitic period have been reworked in order to serve as interpretations of the Mishnah or have been used as the basis for entirely new, post-mishnaic formulations, designed to explain the Mishnah. Where such views assume rulings not determined until the redaction of the Mishnah, they are evidence of the continuation of tannaitic activity beyond the redaction of the Mishnah into the amoraic period.

Thus, the relationship of the Tosefta to the Mishnah is a complex one, and, in fact, different situations prevail in regard to different tractates. In general, however, we can say that the Tosefta, as the earliest commentary on the Mishnah, preserves evidence of tannaitic material not included in the Mishnah, on the one hand, and, on the other, of materials which evolved after

the redaction of the Mishnah and are clearly dependent on a redacted Mishnah similar to the text in our possession today.

*Tannaitic Midrashim*

Dating to the same period as the Tosefta are the so-called "tannaitic" Midrashim. These midrashic expositions of Scripture were in reality redacted in the amoraic period, probably at the end of the fourth century and the beginning of the fifth, in Palestine. At this time, the same tendencies which led the redactors of the Tosefta to collect their material, namely, a desire to preserve the heritage of the tannaitic period and a need to assert that the authority of the mishnaic rulings was subject to challenge, also led those who collected the Midrashim to bring them to final form. Because they preserve much more halakhic material than do the later expositional Midrashim from the amoraic period and early Middle Ages, these Midrashim are also called halakhic Midrashim. This designation has the advantage of avoiding the anachronistic term "tannaitic" (up to 200 C.E.) for texts clearly redacted in the amoraic period (ca. 200–500 C.E.), but it has the disadvantage of veiling the fact that some of these texts are primarily aggadic. Scholarly convention has, therefore, chosen to use the term "tannaitic Midrashim," while remaining aware of its limitations.

The midrashic method of teaching had been in use since the time of Ezra and Nehemiah. It lost prominence to some degree in the tannaitic period as the mishnaic, apodictic method of teaching became more popular. The redaction of the Mishnah and the establishment of its authority was for the Midrashim a

**TANNAITIC (HALAKHIC) MIDRASHIM**

| | *Type A* (Akiban School) | *Type B* (Ishmael School) |
|---|---|---|
| Exodus | *Mekhilta of Rabbi Ishmael* | *Mekhilta of Rabbi Simeon ben Yoḥai* |
| Leviticus | | *Sifra* |
| Numbers | *Sifre on Numbers* | *Sifre Zuṭa* |
| Deuteronomy | *Midrash Tannaim* | *Sifre on Deuteronomy* |





two-edged sword. On the one hand, it established for the rest of Jewish history the superior status of the apodictic law and in this way eclipsed, to some extent, the study of midrashic interpretation. On the other hand, the very existence of an apodictic code made it necessary for the code itself, its authority, and its regulations to be justified in light of the commandments of the Torah.

Put otherwise, the existence of this digest of oral law led to a renewed need to demonstrate the nexus of the oral and written laws. There was now a need to show that the two were in reality one, and this indeed was the main agenda of the tannaitic Midrashim. Thus they present much of the same halakhic material that is found in the Mishnah and Tosefta, but arranged in the order of the Torah. Whenever possible, the Midrashim seek to tie each particular halakhah directly to its scriptural basis, or to what the redactors argue is its scriptural basis.

The tannaitic Midrashim comprise five texts of central importance and a number of smaller texts which will not be detailed here. The major texts are the *Mekhilta of Rabbi Ishmael* and the *Mekhilta of Rabbi Simeon ben Yoḥai* to Exodus, the *Sifra* to Leviticus, the *Sifre to Numbers* and the *Sifre to Deuteronomy*. These titles themselves need to be explained. *Mekhilta* is an elusive term for a set of hermeneutical (exegetical) rules, or a body of tradition. *Sifra* means "the book," as Leviticus was, in priestly circles, the central book of the curriculum of study. *Sifre*, meaning "the books," is most probably an abbreviation for "the rest of the books of the house of study," a designation for the Midrashim on Numbers and Deuteronomy (meaning those other than Leviticus and Exodus, which are interpreted in the *Sifra* and *Mekhilta* texts, respectively).

These books are sometimes classified into schools, some said to stem from the school of Rabbi Akiva and some from that of Rabbi Ishmael. This theory claims that the literary products of each school, as they are now preserved, exhibit characteristic exegetical and redactional traits. Assigned to the school of Rabbi Ishmael are the *Mekhilta of Rabbi Ishmael*, the *Sifre to Numbers*, and some other texts. To the school of Rabbi Akiva are attributed the *Mekhilta of Rabbi Simeon ben Yoḥai*, *Sifra*, *Sifre Zuṭa* (to Numbers), and *Sifre to Deuteronomy*. This dis-

tinction has often been called into question, however, and its usefulness is extremely limited. In fact, despite the parallels that have been cited, the two groups of texts do not evidence uniform redactional traits, to say the least.

The form of these works may hark back to the techniques of scriptural study practiced in the tannaitic academies. The Torah, as well as relevant laws, some aggadic homilies, and a variety of related topics were discussed together. It was this method which provided the form for the post-tannaitic redactors of these materials. Yet here again, as is the case in the Tosefta, we are confronted with a mix of material. Some is clearly of tannaitic origin but not preserved in the other corpora. Other materials are constructed out of a continuation of "tannaitic" activity and tradition by later scholars in the amoraic period. Only careful literary and textual analysis allows the separation of the literary strata in these works. In fact, the *Sifra* adheres most closely to the Mishnah, and its neatly set out redaction is based heavily on the Mishnah. Yet even here much earlier material has been incorporated, including preredactional versions of mishnaic material. *Sifre to Deuteronomy* is somewhat less heavily mishnaic than *Sifra* but is still strongly influenced by the redacted mishnaic tradition. Much more earlier material is found in the two *Mekhilta* texts and in the *Sifre to Numbers*, which in general are looser agglomerations of material collected over a much longer period of time.

These Midrashim were intended to convey certain specific messages by those who labored to redact them. Essentially, in varying degrees, these texts argue strongly for the unity of the written and oral laws. In an age when mishnaic, apodictic law had become supreme, these texts sought to remind those who studied them of the inseparable link between the two Torahs, the oral and the written. Therefore, they derive many of the laws found in the Mishnah from Scripture, claiming biblical exegesis as their basis. At the same time, in many cases, these texts preserve the logical and exegetical argumentation which was indeed the source for the determination of the halakhah by the tannaim. In texts like the *Sifra* and *Sifre to Deuteronomy*, in which the Bible is followed closely, the point is made over and over that there is nothing superfluous in Scripture, and that





each feature of the text, each apparent duplication, is designed to reveal the will of God. On the other hand, the *Mekhilta* texts tend to move much further away from these limited purposes, collecting many aggadot and often dealing with side issues. Nevertheless, the basic notion that Scripture and tradition are intimately linked is carried through all these works.

Many of the traditions included in the Tosefta and the tannaitic Midrashim found their way, in parallel versions, into the Palestinian and Babylonian Talmuds. Such traditions are termed *baraitot* ("external traditions"). While the process by which they were incorporated in amoraic collections will be taken up later, it should be noted that the versions of the traditions found there are often different from those in the collections surveyed here. This confirms the view that these collections were not available to the rabbis of the Talmuds in their present, edited form. Rather, the Talmuds drew their versions of the traditions from the same unedited and unredacted sources as did the so-called tannaitic Midrashim and the Tosefta. To a great extent medieval Judaism inherited a similar situation. For the tannaitic Midrashim were destined to be stepchildren in the family of rabbinic texts. Their contents were to be known largely from parallels in the Babylonian Talmud.

## SUMMARY

The development of the tannaitic corpus of learning and its eventual redaction in the Mishnah, the Tosefta, and the "tannaitic" Midrashim, placed Rabbinic Judaism on a firm literary grounding. These texts, orally formulated and orally transmitted and taught, set forth the basic principles of the oral law and argued for the integrity of the Torah, written and oral. These documents served as the basis for the later development of Judaism and, in the case of the Mishnah, set the agenda for all future study of Jewish law. With the close of the tannaitic period, and the production of its main classic, the Mishnah, we can genuinely speak of the coming of age of Rabbinic Judaism. It was left for the amoraim to interpret this document, redact its sister tannaitic texts, and adapt this Judaism to the new historical circumstances of the Byzantine period in Palestine and the Sassanian period in Babylonia.

# LANGUAGE, POWER AND IDENTITY IN ANCIENT PALESTINE*

## I
## INTRODUCTION

In this age of the nation-state, conventional views about group identity are still profoundly influenced by the assumptions of romantic nationalism. One such assumption concerns the importance of shared language in the construction of national or ethnic identity. In this paper I discuss how the Hebrew language functioned in the group ideology of the ancient Jews, and propose that its function there does not correspond to post-romantic expectations.

I argue that there were three stages in the social history of Hebrew. In the first, which lasted until *c.* 300 B.C.E., Hebrew was commonly spoken by Israelites/Jews in Palestine,[1] but this fact played a negligible role in their construction of their group identity. In this respect they were probably typical of the small nations living around the eastern Mediterranean, and unlike the Greeks, who began to consider shared language an essential element in their corporate identity no later (and possibly much earlier) than the fifth century B.C.E.

In the second stage, from 300 B.C.E. to 70 C.E., Hebrew was no longer commonly spoken, having been replaced by Aramaic. Hebrew, however, remained important because it was still the language of the Jerusalem temple and of the Pentateuch. In part because of consistent imperial patronage, these institutions gradually became the central symbols of Jewish corporate identity in the three or four centuries after their respective foundation (*c.* 500

* Primitive versions of this paper were read at the church history seminar in Heidelberg, the ancient history seminar at Cambridge, and the ancient Judaism and Christianity seminar at Wolfson College, Oxford; my thanks to the organizers and participants. Later versions were read and made still less primitive by Keith Hopkins, Juliet Fleming, William Horbury and Paul Cartledge. I am especially indebted to Andrew Garrett for his extensive comments on linguistic matters. Remaining inadequacies are my responsibility alone.

[1] It is conventional, and justified, to apply the word "Jew" to inhabitants of Judaea and their co-religionists elsewhere only *after* the fall of the Babylonian empire (539 B.C.E.).





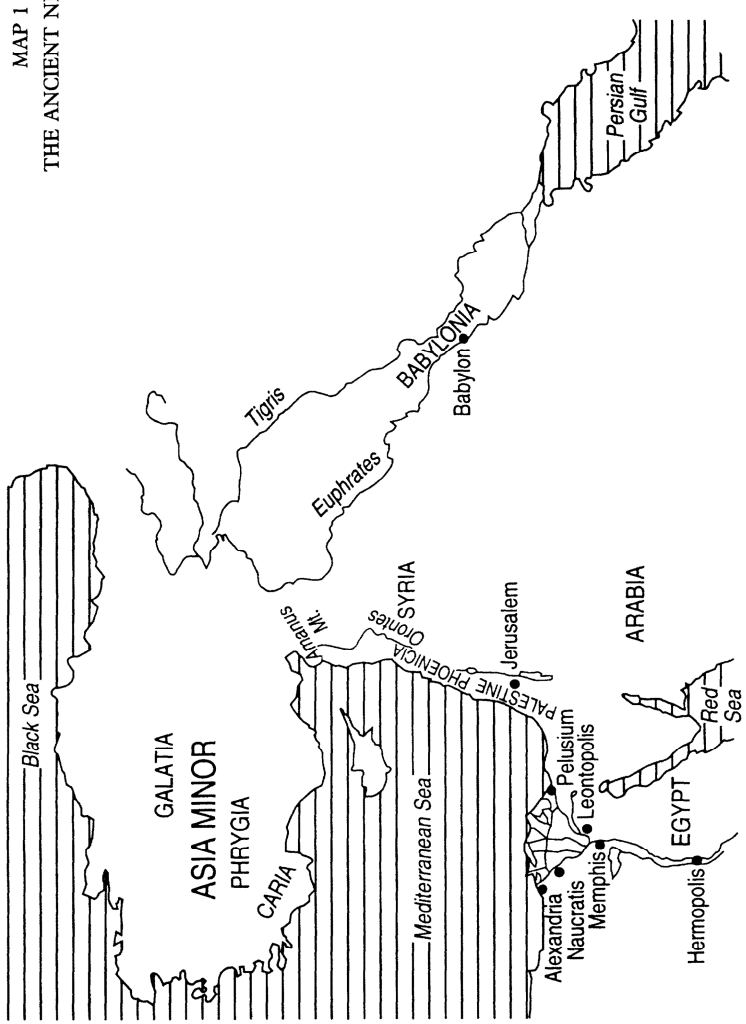
B.C.E.) and compilation (*c.* 400 B.C.E.). By the third century B.C.E., Hebrew began to be used on coins and the like in a way which may have been intended to evoke these symbols, and thus Jewish identity. But the temple and the Torah also became real repositories of power, so that there developed around both of them closely related classes of curators. These men used Hebrew to distinguish themselves from the rest of the population, and since curatorship of the Torah was in theory open to all males, mastery of Hebrew was also a path to prestige, and study of it was widespread in certain circles. In this second stage then, Hebrew, no longer commonly spoken, became a *commodity*, consciously manipulated by the leaders of the Jews to evoke the Jews' distinctness from their neighbours, and the leaders' own distinctness from their social inferiors.

The third stage began with the destruction of the temple in 70 C.E. and petered out after the Christianization of the Roman Empire in the fourth century. In this period, the temple and the Torah retained their symbolic centrality, but lost their political importance. As a result, Hebrew retained its evocative power but, in the absence of a strong curatorial class, lost much of its practical significance. A similar set of conditions prevailed in the Jewish Diaspora — had in fact prevailed there even before 70 C.E. — with similar results: here Hebrew was of marginal importance, even more so than in post-destruction Palestine, because the Diaspora lacked a strong, temple-based, curatorial tradition.

My argument about Hebrew and its changing function is logically secondary to an argument about the structure of ancient Jewish society and how *it* changed, in part in response to changing patterns of imperial domination. I thus propose a relatively complex analytic scheme, because I would like to show how only a presentation of Hebrew as a component of larger social and political structures and transformations can begin to make sense of the complexities of the evidence — complexities which conventional empiricist, quasi-ethnographic, accounts of the history of the language have failed to explain.

But such an analytic scheme has a rather different sort of advantage, too. Of all the national, ethnic and tribal groups living in the Mediterranean world and the Near East under Achaemenid (539-332 B.C.E.), Hellenistic (332-31 B.C.E.) and Roman rule (31 B.C.E.-312 C.E., for the purposes of this paper), only the Jews

MAP 1
THE ANCIENT NEAR EAST








produced a large body of literary writing significant parts of which have survived to the present. (The case of Greek writing is more complicated because though the Greeks, too, were dominated, at least by the Romans, the Greek style was adopted and promoted by the Romans themselves in the East.) But the opportunity to utilize this material to examine the cultural effects of domination by the ancient empires has largely been missed. This is in part because the specialized knowledge required to master these ancient texts has tended to inhibit comparison and generalization. But historians have also been held back by the sense, rarely acknowledged or admitted, that the Jews were incomparable. One purpose of my analytic scheme, then, is to suggest a way in which evidence about the Jews might be used to make more general points about the cultural effects of imperial domination in antiquity.

## II

### PALESTINE BEFORE ALEXANDER

The observation that different nations speak different languages, attested in a few scattered near eastern texts of the Bronze Age, becomes commonplace in texts of the Iron Age. A familiar example is the catalogue of Trojan allies in the *Iliad* (in which, however, only one group, the Carians, is distinguished by language, as *barbarophonos*);[2] collections have been made of comparable Egyptian and Akkadian texts,[3] in which language, side by side with physical appearance and behaviour, appears as a feature of national differentiation much more prominently than in Homer.

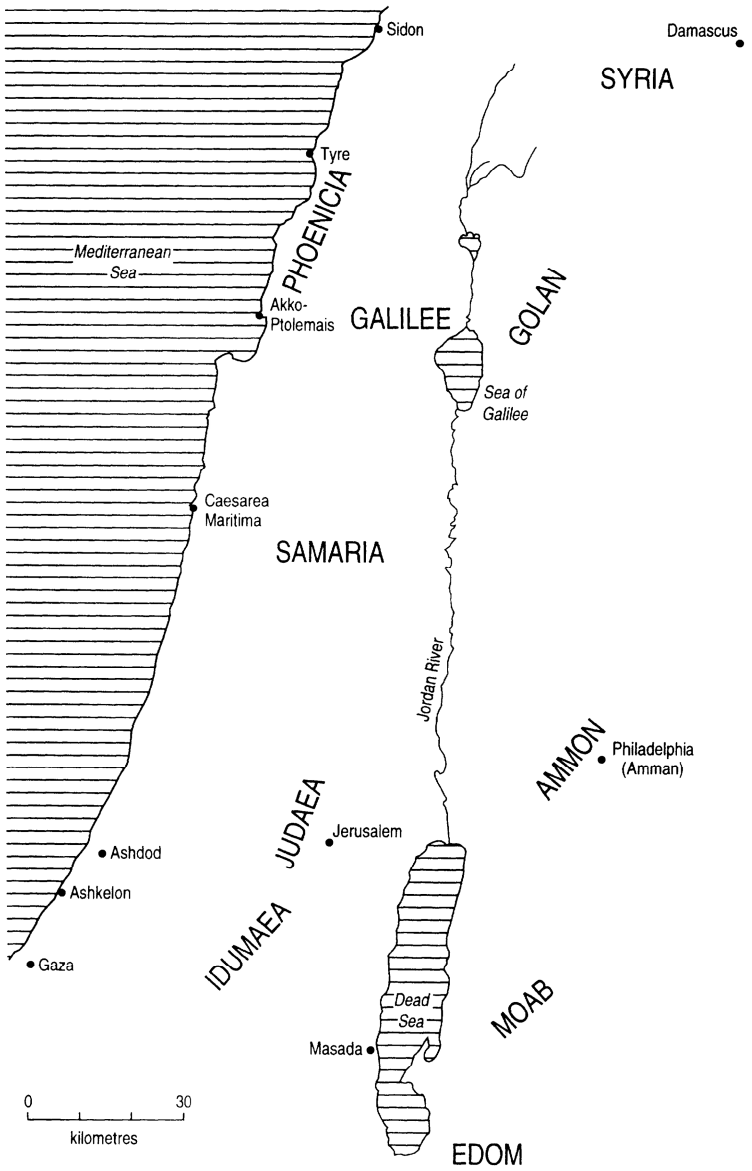
In Mesopotamian and Egyptian texts (and iconography), these "ethnographic" catalogues tend to serve an imperialist function — emphasizing the diversity, strangeness and ferocity of enemies overcome and reduced to tribute (in Akkadian the same word, *nakru*, means both enemy and foreigner).[4] But the tribute-

[2] Homer, *Iliad*, ii.816-77, at l. 867.

[3] To which I am indebted for some of the observations that follow: see S. Sauneron, "La différentiation des langages d'après la tradition égyptienne", *Bulletin de l'Institut Français d'Archéologie Orientale*, lx (1960), pp. 31-41; C. Zaccagnini, "The Enemy in the Neo-Assyrian Royal Inscriptions: The 'Ethnographic' Description", in H.-J. Nissen and J. Renger (eds.), *Mesopotamien und seine Nachbarn: 25e rencontre assyriologique internationale*, 2 vols. (Berlin, 1982), ii, pp. 409-24.

[4] Zaccagnini, "Enemy in the Neo-Assyrian Royal Inscriptions", pp. 410-11, p. 411 n. 10.

MAP 2
ANCIENT PALESTINE AND ADJACENT REGIONS








bearing nations too, among them the Israelites, had observed that language could be a feature of national difference: this is at most implicit in the Tower of Babel story in Genesis 11. This story is not, of course, an empire-glorifying list of subject nations but, at least in its original form, a myth about how the creator god imposed linguistic diversity on humanity. No similar myths are preserved from elsewhere in the Near East, but they may be assumed to have existed in Egypt, where Iron Age and later liturgical texts commonly praise various creator gods for diversifying human speech.

But recognition of linguistic diversity and the occasional mocking of foreign, especially Egyptian, speech[5] do not imply any particular self-consciousness about a national language. Indeed, the Pentateuch (in its present form *c.*400 B.C.E.), which is concerned to promote the separateness of the Israelites/Jews, has (apart from the Babel story) little to say about language at all. Certainly it does not, as some later texts do, praise Hebrew as God's language, or prescribe its use in public cult or private prayer: Hebrew is never even mentioned. There is in the entire Hebrew Bible a single passage in which Hebrew — now for the first time identified as a language separate from its neighbours ("Judahite") — is definitely associated with Israelite identity (Neh. 13:23-30):[6]

> In those days too I [Nehemiah] saw that the Judahites had taken Ashdodite, Ammonite and Moabite wives. And their sons spoke half Ashdodite [or, "their sons, half spoke Ashdodite"] . . . and could not speak Judahite. And I fought with them and cursed them and beat some of them and pulled out their hair, and I made them swear by God: "You shall not give your daughters to their sons nor marry your sons or yourselves to their daughters. Did not Solomon king of Israel sin on account of such (women)? And among the many nations there was no king like him, and he was beloved of his God, and God made him king of all Israel, yet even him did foreign wives cause to sin. Shall we then listen to you and do all this great evil,[7] to commit a trespass against our God by marrying foreign wives?" And one of the sons of Yoyada' son of 'Elyashib the high priest was son-in-law of Sanballat the Horonite,[8] and I put him to flight.

[5] Cf. Ps. 119:1; Ezek. 3:5-6; Ps. 81:6.

[6] For translations of and commentaries on this difficult passage, see H. G. M. Williamson, *Ezra, Nehemiah* (Word Biblical Commentary, xvi, Waco, 1985), pp. 391-402; J. Blenkinsopp, *Ezra-Nehemiah* (London, 1988), pp. 361-6. More problematic is Isa. 19:18: "On that day there will be five towns in the land of Egypt speaking the language of Canaan and swearing by Yahweh-of-Hosts".

[7] Or, "As for you, ought it not be something unheard of to do . . .".

[8] The Achaemenid governor of Samaria, of unknown ethnicity, but in all likelihood Israelite.

> Remember them, O God, for having defiled the priesthood and the covenant of the priests and Levites. For I purified them [the priesthood] of every foreign thing.

Even here, the function of the statement that the children of mixed marriages could not speak Judahite is not clear; it does not figure in Nehemiah's actual argument with the perpetrators, where he denounces mixed marriage as a violation of the Law, a trespass against God and a source of impurity, but not as a linguistic crime.[9]

Why was Hebrew apparently not central to the self-understanding of the Israelites? I would suggest, in brief, and as a partial explanation only, that the extreme political fragmentation of the eastern Mediterranean — a consequence of topography and of the political practice of most of the imperial powers who ruled the area — was not accompanied by a corresponding linguistic diversity. We should imagine the entire region from the Amanus to Pelusium and from the desert to the sea as a linguistic continuum in which each group could understand its neighbours' languages — languages which were hardly more diverse than the dialects of Greek. In the book of Ruth, for example, it is assumed that Judahites and their Moabite neighbours spoke mutually comprehensible languages.[10] Yet, despite the occasional "international" alliances between kings or aristocratic families, there was a powerful tendency towards particularism confirmed and exploited by the policies of Assyrians, Chaldeans and Achaemenids, who ruled the area from the ninth to the fourth centuries. So, you loathed your neighbours — but spoke their language.

The case of the Israelites and their neighbours may then serve as a warning against the common assumption, usually tacit and untheorized, derived from modern nationalist ideology and confirmed for classicists and ancient historians by the example of the Greeks (meaning especially the classical Athenians), that shared language is necessarily a significant component of national identity — from the actors' perspective. The Israelites of the Iron Age shared a language but apparently attached little importance to this fact, for they shared it also with their neighbours; later, the Jews did not share a language but still often thought of themselves as a nation.

[9] Blenkinsopp's and Williamson's failure (*ad loc.*) to notice the uniqueness and isolation of this verse is typical.

[10] See E. Ullendorf, "The Knowledge of Languages in the Old Testament", *Bull. John Rylands Lib.*, xliv (1961-2), pp. 462-3. For an account of the relationship between Hebrew and its "Canaanite" neighbours Phoenician, Ammonite, Moabite and Edomite, see A. Sáenz-Badillos, *A History of the Hebrew Language* (Cambridge, 1993), pp. 38-44; for north-west Semitic (which consists of the Canaanite and Aramaic families) as a continuum, see *ibid.*, p. 36.



There are two substantial surviving corpora of writing from the Mediterranean world of the Iron Age (say 700 to 300 B.C.E.) which we would recognize as "literary", the Greek and the Israelite. Comparison of these corpora is the best way of determining what is peculiar about Israelite writing; without attempting to present a rigorous argument, I would like to suggest that some of these peculiarities have *some* relation to the non-coincidence among the Israelites of language and national self-definition. I give two examples.

First, the absence of an elaborate metalanguage to describe different types of written (and spoken?) discourse. There are words for different genres, "psalm", "song", "dirge" and "prophetic speech", but no words for the stylistic components of these genres (as in the Greek iambs, dactyls, cola and so on) nor, for that matter, for "poetry" or "prose", though we would say that the genres mentioned are generally speaking written in poetry. Even within genres, there is a remarkable stylistic lability: poetry gives way to prose, and prose is studded with poetry — often not marked, but simply slipped into. The absence of terminology, and the lability, imply (but only imply) an absence of linguistic self-consciousness which in turn has important social-historical implications: literate (or articulate) Iron Age Israelites did not think about language in the same way as Greeks of the same period did; to the extent that Israelites were conscious of "style", it was not for them disembedded from its social function. Hence there was no use for a word for "poetry", which describes so many different types of expression as to be socially meaningless. Nor was there any use for words describing units smaller than the generic: a prophet apparently learned how to speak "prophecy", and a psalmist to sing "psalms".[11]

Greek (especially, but not only, Athenian) practice was obviously utterly different. Use of an elaborate prosodic terminology was accompanied by the sense that certain forms were appropriate for certain occasions, but also, at least by the end of the Archaic

[11] My discussion here is indebted to J. Kugel, *The Idea of Biblical Poetry* (New Haven, 1981), esp. pp. 59-95.

period, that the conventions were only that: they could be stretched, manipulated, selectively violated.[12] Hence, to take just one example, Greeks, starting with Aristophanes's *Acharnians* at the latest, wrote parody, the most self-conscious of literary styles, while Israelites, who were perfectly capable of expressing themselves satirically, did not.[13] I would suggest that these opposite characteristics of Iron Age Hebrew and Greek writing reflect utterly different attitudes to the desirability of sophistication and elaborateness in the manipulation of language. This is not to say that there was no Israelite eloquence or "high style", only that genres remained embedded in the social contexts which generated them.[14]

Secondly, the Israelites' attitude toward their language may also help explain the tendency of some Israelite/Jewish texts of the later part of this period to slip back and forth not only between styles, but also between languages. Ezra-Nehemiah (*c.*350 B.C.E.) and Daniel (compiled *c.*165 B.C.E., but containing, especially in the first half of the book, material perhaps a hundred and fifty years older) notoriously begin in Hebrew, shift into Aramaic (in one case to quote an alleged Achaemenid document, in the other to quote a speech), and then "get stuck" in Aramaic, continuing the narrative in that language. Only later do they return to Hebrew.[15] Such a phenomenon, whatever other explanations there might be for it, is possible only in a context, perhaps primarily scribal, which is not only thoroughly bilingual,

[12] For the gradual emergence of language as an important criterion of identity among the Greeks (or at least some of them), see most recently E. Hall, *Inventing the Barbarian* (Oxford, 1989), pp. 6-13; G. Nagy, "On the Death of Sarpedon", in C. Rubino and C. Shelmerdine (eds.), *Approaches to Homer* (Austin, 1983), pp. 189-91; G. Nagy, *Best of the Achaeans* (Baltimore, 1979), pp. 115-17.

[13] Aside from the well-known satires of pagan religious practice and belief in 1 Kings, Deutero-Isaiah (that is, Isa. 40-55) and various psalms, it has been attractively suggested that the book of Jonah satirizes (N.B., not parodies) Yahwist prophecy: see M. Smith, *Palestinian Parties and Politics that Shaped the Old Testament*, 2nd edn (London, 1987), p. 123. Others see Jonah (the fictional character, not the book) as a deliberate parody of the prophet (not the book of) Jeremiah: H. Bloom, *Ruin the Sacred Truths* (Cambridge, Mass., 1989), pp. 22-4.

[14] T. Cole, *The Origins of Rhetoric in Ancient Greece* (Baltimore, 1991), distinguishes eloquence from rhetoric (in a Greek context) in part on the basis of the latter's self-consciousness; but his restriction of this characteristic to post-Platonic writing has been widely criticized: see reviews by R. Martin, *Classical Philology*, lxxxviii (1993), pp. 77-84; D. A. Russell, *Jl Hellenic Studies*, cxii (1992), pp. 185-6.

[15] There are brief surveys of the language problem in J. J. Collins, *The Apocalyptic Vision of the Book of Daniel* (Ann Arbor, 1977), pp. 15-21; P. R. Davies, *Daniel* (Sheffield, 1985), pp. 35-9.





but also unselfconscious about what language it happens to be using.[16]

In sum, the Israelites shared a language but tended not to consider it an essential component of their corporate identity. In this respect it was the Israelites, not the Greeks, who approximated to the norm in the eastern Mediterranean of the Iron Age. This view of language lies at the root of some of those characteristics of Israelite writing which are most striking for the western reader: the apparent absence of literary self-consciousness, the poverty of Hebrew literary and prosodic terminology, the incomplete differentiation of poetry and prose, and the unproblematized bilingualism of some of the works.

## III

### THE LANGUAGES OF PALESTINE 300-70 C.E.

The bilingualism of such texts as Ezra-Nehemiah and Daniel hints at one of the most significant and least examined cultural developments in the history of the ancient Near East: the changing use of Aramaic. Before *c.*800 B.C.E., Aramaic was the language of several nomadic tribes living at the edge of the Syrian desert; subsequently, until 332 B.C.E., it was used as an administrative language in the Assyrian and Achaemenid Empires, and in this latter period it gradually replaced, almost completely, a large number of spoken languages in the eastern Mediterranean. Apparently no one compelled people to stop speaking their native languages; nor are there likely to have been Aramaic schools in every village comparable to the Qur'ānic schools which slightly over a millennium later helped bring about the replacement of Aramaic, Coptic and Greek by Arabic. Yet by 300 B.C.E. or slightly later, a whole host of local languages, Hebrew, Ammonite,

[16] Achaemenid scribes, even modest ones, needed a high level of bilingualism, since from the time of Darius I all public documents were customarily written in Aramaic; the scribe was expected to be able to compose an Aramaic text from dictation in a different language and, conversely, to read out such a text in the language of his audience. Significantly, the Book of Nehemiah itself reports this practice: Ezra, a scribe by profession, had his associates read out the "Law of Moses" *mephorash*, that is, a Hebrew text was read in Aramaic — or vice versa: Neh. 8:1-8. Like Ezra himself, many Jewish writers (and readers?) of the fifth-fourth centuries B.C.E. must have come from such circles. See M. Dandamaev and V. Lukonin, *The Culture and Social Institutions of Iran* (Cambridge, 1989), pp. 113-16; J. Naveh and J. C. Greenfield, "Hebrew and Aramaic in the Persian Period", in *The Cambridge History of Judaism*, i, ed. W. D. Davies and L. Finkelstein (Cambridge, 1984), pp. 115-16.

Moabite, Edomite, the unknown languages of the Lebanese, Syrian and south-eastern Turkish hinterland (some of which may in fact have been dialects of Aramaic, while others may not have been Semitic at all), and in many places possibly Phoenician[17] — not to mention the various dialects of Akkadian, too — had lost currency and were spoken, if at all, only by a small number of people.[18] It is true that Aramaic is fairly closely related to the Canaanite (but not Akkadian) languages, including Hebrew, which it replaced; but a comparable situation would be to imagine the Greeks simply giving up Greek and switching to Thracian.

I cannot explain the mechanics of the Aramaization of the Eastern Mediterranean, though the Assyrian and Chaldaean practice of large-scale transfer of populations surely played a role in the Aramaization of Mesopotamia, and it would be reasonable to suppose it to have been a factor in Syria-Palestine, too.[19] However it happened, I would suggest that it tends to confirm one of the conclusions of the previous section, namely that national and tribal groups in the Near East generally did not consider language an essential component of their group identity.

But how thorough was the Aramaization of Palestine? The language of common speech is of course irrecoverable, and evidence for the written language is poor; moreover, the written material is obviously difficult to use as evidence for spoken language, since in some cases writing may reflect no more than scribal practice. And in all cases writing is necessarily related to speech in highly complex and sometimes highly attenuated ways. Besides, literacy was presumably limited along social lines, and ancient Palestinian society was rigidly stratified according to class and status, so that we can scarcely do more than guess at the language(s) used by the lower levels of society.

[17] The Aramaization of Phoenicia may have been slower and less thorough than that of Palestine, Syria and Mesopotamia: see E. Lipiński, "Géographie linguistique de la Transeuphratène à l'époque Achémenide", *Transeuphratène*, iii (1990), pp. 105-6.

[18] For a good recent survey, see J. C. Greenfield, "Aramaic in the Achaemenian Empire", in *The Cambridge History of Iran*, 7 vols. (Cambridge, 1968-91), ii, ed. I. Gershevitch, pp. 698-713.

[19] See H. Tadmor, "The Aramaization of Assyria: Aspects of Western Impact", in Nissen and Renger (eds.), *Mesopotamien und seine Nachbarn*, ii, pp. 449-70. In Mesopotamia, though, the Assyrian and Babylonian kings had settled vast numbers of "Aramaeans" and other western Semites, whereas many settlers in Syria-Palestine must have been of East Semitic and Iranian-speaking background: see B. Oded, *Deportations and Deportees in the Neo-Assyrian Empire* (Wiesbaden, 1979), pp. 26-32.





There have in fact been several different such guesses. Until the middle of this century, the common view about the relative importance of Hebrew and Aramaic was roughly as follows: by the third century B.C.E., Hebrew had given way to Aramaic, certainly for common speech, and probably for most other purposes, too. The language of later Hebrew literature is artificial — the result of efforts by native speakers of Aramaic and/or Greek to write in a dead classical language. This consensus was challenged early in the century by the semiticist M. H. Segal, who argued that the language of the Mishnah, the earliest compilation of rabbinic law, published (in some sense) *c.*200 C.E., was written not, as had previously been thought, in an Aramaic-calque language (that is, in a version of Hebrew whose peculiarities stemmed from mechanical translation from Aramaic), but in a formalized version of the Hebrew vernacular commonly spoken in Judaea until the Bar Kokhba Revolt (132-5 C.E.), and still used by the children of Judaean emigrants to Aramaic-speaking Galilee, among them the Rabbis, in the late second century.[20]

Initially, Segal's argument convinced few outside a circle of Zionistically inclined Hebraists, and it soon required modification when it became clear from fragments of early manuscripts of the Mishnah found in the Cairo Genizah that its language was far more heavily Aramaized than Segal, who worked from late manuscripts and printed texts, had supposed. Nevertheless, the discovery of the Dead Sea Scrolls at Qumran in 1947, which included many documents written in the third-first centuries B.C.E. in a Hebrew sharing features with the language of both the Pentateuch and the Mishnah, convinced many that Segal had basically been right: it was now possible to trace a more or less steady evolution in written Hebrew, from early biblical to late biblical (e.g., Chronicles, Ezra-Nehemiah, Ecclesiastes) to Qumranic and finally rabbinic. This evolution could not be explained solely as a consequence of the progressive influence of spoken Aramaic and

[20] For surveys of the question, see N. Waldman, *The Recent Study of Hebrew* (Cincinnati, 1989), pp. 91-8; J. Barr, "Hebrew, Aramaic and Greek in the Hellenistic Age", in *The Cambridge History of Judaism*, ii, ed. W. D. Davies and L. Finkelstein (Cambridge, 1989), pp. 79-114; *New Documents Illustrating Early Christianity*, ed. G. H. R. Horsley, 5 vols. (North Ryde, 1981-9), v, pp. 19-26; E. Schürer, *The History of the Jewish People in the Age of Jesus Christ*, rev. and ed. G. Vermes *et al.*, 3 vols. (Edinburgh, 1973-87), ii, pp. 20-8. M. H. Segal's most accessible statement of his position is to be found in his *A Grammar of Mishnaic Hebrew* (Oxford, 1927), pp. 1-20.

Greek on a classical literary language. It seemed more reasonable to suppose that the language of these texts reflected and was influenced by a Hebrew vernacular still reasonably vigorous. Most have agreed with Segal that this vernacular disappeared a few generations after the Bar Kokhba Revolt, which put an end to large-scale Jewish settlement in Judaea, though it has very recently been argued, none too compellingly, that Jews in northern Palestine spoke Hebrew into the Middle Ages.[21]

As a historian, I may challenge this consensus of semiticists and sociolinguists only with diffidence; and it must be admitted that the arguments from Hebrew literary writing seem compelling, at least to the non-professional. Yet the consensual view seems to me to require major revision, if not complete reversal, for the following reasons.

First, the consensus breaks down when it comes to determining who exactly the speakers of colloquial Hebrew could have been. The evidence for Hebrew in non-literary — epigraphical and documentary — writing is slender, though not entirely non-existent. In the great corpora of non-literary writing from pre-70 C.E. Judaea — the hundreds of inscribed ossuaries from first-century Jerusalem and the vast collection of ostraca used at the southern Judaean fortress of Masada in 66-74 C.E. — Aramaic and Greek are used almost to the exclusion of Hebrew.[22] The greatest authority on the languages of Palestine, and the most

[21] See S. Fraade, "Rabbinic Views on the Practice of Targum, and Multilingualism in the Jewish Galilee of the Third-Sixth Centuries", in L. Levine (ed.), *The Galilee in Late Antiquity* (Cambridge, Mass., 1992), pp. 253-84; for a balanced account of the emergence of the post-Dead Sea Scrolls consensus, see J. Barr, "Which Language Did Jesus Speak?", *Bull. John Rylands Lib.*, l (1970-1), pp. 9-29.

[22] Of the hundreds of ostraca from Masada, the Hebrew prepositive article appears six times in epithets and nicknames, and Hebrew forms appear eleven times in indications of filiation: see J. Naveh, *Masada*, i: *The Aramaic and Hebrew Ostraca and Jar Inscriptions* (Jerusalem, 1989), pp. 8-9. I discuss the Hebrew jar inscriptions at pp. 33-4 below. Of the 177 Jerusalem ossuary inscriptions found in *Corpus inscriptionum judaicarum*, ed. J.-B. Frey, 2 vols. (Rome, 1936-52), ii, nos. 1210-1387, 24 use Hebrew forms; a similar proportion is also found in the "Dominus Flevit" ossuaries, published after the appearance of Frey's corpus: *Gli Scavi del Dominus Flevit*, ed. B. Bagatti and J. T. Milik, i (Pubblicazioni dello Studium Biblicum Franciscanum, xiii, Jerusalem, 1958), pp. 70-109. In all cases this is, as in the Masada texts, a matter of prepositive articles in epithets, and use of the Hebrew forms *ben* (son of), *bat* (daughter of), or *'eshet* (wife of) instead of the Aramaic *bar*, *berat*, *'atat*. Longer texts, both in Jerusalem and at Masada, are, with the sole exception of the Masada jar inscriptions, in Aramaic (especially at Masada) or Greek (especially in Jerusalem). There *may* be some justice to Naveh's argument that precisely such small matters as onomastic habits reflect spoken language more accurately than do longer texts, but it is not self-evident that this is so.





moderate and nuanced of the Hebrew "survivalists", E. Y. Kutscher, concluded from the ossuary inscriptions that Aramaic — originally a language of administration and trade — was predominant in Jerusalem, the multi-ethnic administrative, commercial and religious capital of Judaea, while Hebrew prevailed in the countryside (though in Kutscher's view some Hebrew was spoken in Jerusalem and some Aramaic in the countryside).[23] But this view cannot be maintained — and not only because it is so transparently motivated by a romantic desire to attribute Hebrew speech to the Judaean "folk". In a suggestive observation, Kutscher himself had noted the use of Aramaic in place-names in the Judaean countryside, presumably dating from the post-exilic period (i.e., after 500 B.C.E.); and the ostraca from Masada, published long after his death, seem to demonstrate the primary use of Aramaic by the Judaean rebels who occupied the site. There is no compelling reason to think that they were all, or even mostly, of Jerusalemite origin.

Secondly, the sociological models presupposed by scholars of socio-linguistic inclination in trying to smooth out the complexities and contradictions of the fragmentary evidence have generally been overly simple. The influential characterization of Jewish Palestine as "diglossic", i.e., using two languages, one for formal and the other for informal communication (the "high" and "low" or "home" language, respectively) as applied to any pre-modern, more or less rigidly stratified society, necessarily implies a social distinction: the élites mostly use the high language, perhaps even in informal circumstances (with appropriate distinctions in register), and peasants, artisans and so on, know and use only the low language.[24] But which language was which in Jewish Palestine? Kutscher had after all recognized the frequency of Aramaic and

[23] E. Y. Kutscher, *The Language and Linguistic Background of the Isaiah Scroll (1 Q Isa$^a$)* (Studies on the Texts of the Deserts of Judah, vi, Leiden, 1974), pp. 8-15, 89-95.

[24] That is, the situation is unlikely to have been diglossic in the strict sense, for diglossia involves the use in certain public situations of a language which is not actually spoken as a "home" language by anyone, though the two languages are closely related and the high language may be widely understood: see C. A. Ferguson, "Diglossia", *Word*, xv (1959), pp. 336-7. It was, however, certainly diglossic in the looser sense common in post-Ferguson discussion, in that it was characterized by the use of two or more languages — or dialects, or registers of one language — in various contexts. For discussion, see A. Hudson, "Diglossia: A Bibliographic Review", *Language in Society*, xxi (1992), pp. 617-18. The utility of so broad a conception of the phenomenon as a principle of social classification is not obvious, for diglossia in this sense is a feature of all but the simplest societies.

Greek — "low" languages in most schemes — in the funerary inscriptions of well-to-do Jerusalemites (not to mention Judaean literary writing); but Hebrew, in various registers, both "classical" and "vernacular", was a significant vehicle of literary expression — presumably also an élite activity; and the "vernacular" register of Hebrew was allegedly the language of the Judaean peasantry. The strict "diglossia" model thus fails to explain the ancient Palestinian evidence, because it was developed to describe the linguistic situation in certain more or less industrialized developing nation-states. Such entities are generally characterized by relatively permeable social boundaries, wide dissemination of education, prominence of the media and so on, so that many individuals are proficient in both a common language, learned and spoken at home, and a high language, which is learned in school and used for some purposes by the media.[25] Jewish Palestine, by contrast, had a mixed élite of temple staff and large landowners, who interacted with each other, with the country's foreign rulers, and with the general populace in various and complex ways — a patchwork of competing ethnic and religious groups, and a profound yet often bridged division between city and country. Normal as this may have been for the ancient Mediterranean world, it was quite different from the societies from which sociolinguists generate their models; in Jewish Palestine the preconditions for diglossia in the strict sense did not exist.[26]

[25] My characterization of the emerging nation-state is indebted to E. Gellner, *Nations and Nationalism* (Oxford, 1983), pp. 19-38. See Ferguson, "Diglossia", p. 331, on the importance of schools in spreading the high language. Ferguson's own description of the conditions in which diglossia occurs is quite mistaken: *ibid.*, p. 338. Fishman provides a more satisfactory account: J. Fishman, "Bilingualism With and Without Diglossia; Diglossia With and Without Bilingualism", *Jl Social Issues*, xxiii (1967), pp. 29-38.

[26] The multilingual model, which often complements the diglossic model, supposes that many or most Judaeans could get by in two or even three spoken languages: see, for example, B. Spolsky, "Jewish Multilingualism in the First Century", in J. Fishman (ed.), *Readings in the Sociology of Languages* (Leiden, 1985), pp. 35-50. No doubt among some male members of the upper class trilingualism of a limited sort (in Greek, Aramaic and Hebrew) was not uncommon, and certainly there are no grounds for excluding the possibility of widespread multilingualism *a priori*. It is a well-attested phenomenon in other societies; note, for example, the case of the Indians of the Vaupés, in Colombia, who are reported all to speak at least three languages fluently: J. Jackson, "Language Identity of the Vaupés Indians", in R. Bauman and J. Sherzer (eds.), *Explorations in the Ethnography of Speaking*, 2nd edn (Cambridge, 1989), pp. 55-6. But there is no good reason to think that most Jews in ancient Palestine were multilingual.





A third failure of the consensual view is its unwareness of ideological factors in the use of languages. There are no doubt many reasons for this blindness: the tendency among some linguists (as also among many social scientists) to privilege observation over explanation; the tendency of positivist historians to treat writing as unmediated "evidence" and so pay little attention to content, context, social function and other inconveniences; a related scholasticism, which causes confusion between the beliefs expressed in a classical literary corpus and those actually held in a society; and the ideological position of some Zionist scholars, whose zeal to establish Hebrew as the Jewish national language ironically prevented them from acknowledging the ideological uses to which the same language may have been put in the past.[27]

However generated, this blindness to ideology seems to me critical, for it is precisely from the third century B.C.E. onwards that the Hebrew language began to be ideologized, so that its use was no longer a matter of indifference, but came to acquire symbolic weight and social importance. The literary works, coins, documents and so forth in which Hebrew is used cannot be considered simply as "evidence" of a linguistic situation: what they are in fact evidence of is the ideological function of the Hebrew language in ancient Jewish society, and it is as such that I will consider them in what follows. There I will assume that although Hebrew may have been a spoken language in some circles of Palestinian Jewish society in the third century B.C.E. and following, there is no reason to think that these circles included large numbers of the Judaean "folk". All of the suppositions underlying the belief that Judaean villagers preserved the Hebrew language for centuries after the fall of the kingdom of Judah in 586 B.C.E. — their isolation, their cultivation of "purity", and their ferocious resistance to foreign influence, even

[27] Though not invariably; Rabin, Rosén and Yadin, to mention only the most important, at least acknowledged the role of Hebrew in the ideology of the various Judaean revolts: C. Rabin, "Hebrew and Aramaic in the First Century", in S. Safrai and M. Stern (eds.), *The Jewish People in the First Century*, 2 vols. (Compendium rerum iudaicarum ad Novum Testamentum, i, Assen, 1974-6), ii, pp. 1007-39; H. B. Rosén, "Die Sprachsituation im römischen Palästina", in *Die Sprachen im römischen Reich der Kaiserzeit* (Beihefte der Bonner Jahrbücher, xl, Cologne, 1980), pp. 215-39; Y. Yadin, *Bar Kokhba* (London, 1971), p. 124; and see pp. 27-8 below. But none of these scholars ever attempted to work out the less obvious *implications* of Hebrew's significance in revolutionary propaganda. James Barr's consistent denial of the obvious may be mentioned as an extreme example of the neglect (in this case wilful) of ideological factors: Barr, "Hebrew, Aramaic and Greek in the Hellenistic Age".

apart from conventional assumptions about the importance of language for national identity — are questionable. Indeed, the real story of rural Judaea is demonstrably one of flux and stasis, contact and withdrawal, accommodation and resistance, and obviously has far more complex linguistic implications.

In sum, the evidence from Palestine in the sixth to the third centuries B.C.E. is consistent with the view that the Jews, like almost all other national and tribal groups in the Levant and Mesopotamia, generally came to adopt Aramaic as their normal means of communication. The contrary view is based on a simplistic reading of the evidence, characterized by insensitivity to its content and context, and correspondingly to the social and political functions of languages in pre-modern societies. In what follows I will provide a different account of the uses of Hebrew in Hellenistic and Roman Palestine.

Despite the ascendancy of Aramaic and, later, of Greek throughout the Near East, the survival of Hebrew after 300 B.C.E. was not a unique phenomenon. New texts continued to be composed in Akkadian, Old Egyptian and Phoenician down to the end of the Hellenistic period (31 B.C.E.), and in the case of Old Egyptian well beyond this date.[28] If we can trust a hostile testimony quoted in a papyrus of the third century C.E., Idumaeans in Egypt continued to use their ancestral language in their temples almost four centuries after their homeland had been conquered by the Judaeans.[29] Akkadian, hieroglyphic and Phoenician writing, too, are found especially, though not exclusively, in temples. It seems likely that the liturgy of the Jerusalem temple was performed in Hebrew, despite the fact that (like the other languages just mentioned) it was no longer commonly spoken. Some psalms included in the canonical Psalter, which was probably used in the temple liturgy, were composed in the third century B.C.E. or even later, and sectarian groups continued to compose

[28] For Akkadian, see the discussion in S. Sherwin-White and A. Kuhrt, *From Samarkhand to Sardis: A New Approach to the Seleucid Empire* (London, 1993), pp. 149-61; for Egyptian, see the texts collected in M. Lichtheim, *Ancient Egyptian Literature*, 3 vols. (Berkeley, 1975-80), iii; for Phoenician, see F. Millar, "The Phoenician Cities: A Case Study in Hellenisation", *Proc. Cambridge Philol. Soc.*, xxix (1983), pp. 55-71, esp. pp. 60-3 (isolated Phoenician words and letters on coins to the end of the second century C.E.).

[29] See *Griechische Papyri im Museum des Oberhessischen Geschichtsvereins zu Giessen*, i, ed. E. Kornemann and P. Meyer (Leipzig and Berlin, 1910-12), no. 99; F. Zucker, *Doppelinschrift spätptolemäischer Zeit aus der Garnison von Hermopolis Magna* (Berlin, 1938), p. 13.





Hebrew psalms for their own liturgical use — which may have reflected that of the Jerusalem temple — into the first century C.E.[30] But while little is known about the non-liturgical use of the pre-Aramaic languages of the Near East, perhaps because of the fragmentary character of the evidence,[31] we do possess, as indicated above, a significant and wide-ranging body of Hebrew (in addition to Aramaic and Greek) writing produced in Hellenistic and Roman Palestine. It would thus be a mistake to think of Hebrew in this period as a purely liturgical language, like the archaic Latin of the revived Arval Brethren in early Imperial Rome, or Old Slavonic and Syriac in modern oriental churches. How then can we account for the language's position?

A brief discussion of the policies of the Achaemenid emperors is a good starting-point. The Achaemenids, as suggested earlier, promoted Aramaic; whether this promotion consisted of its explicit establishment by Darius I as the official language of administration, or the mere encouragement of a language which was already in widespread scribal use, will scarcely have affected the cultural consequences of the promotion, which were considerable and may in a general way be compared to those of the *non-exclusive* use of Greek for administrative purposes in Hellenistic and Roman Egypt.[32] Among the specific consequences of Aramaization was the rise of an international aristocratic Aramaic literary culture in Mesopotamia, Syria, Asia Minor and, to a lesser extent, Egypt. This culture was distinct from its cuneiform predecessor in that scribes copied Aramaic literary texts on papyrus and leather, not on clay and wax tablets, and did so not purely for their own training, but apparently to satisfy the needs of a market of readers.[33] Aramaic thus came to compete with earlier

[30] For a survey, see S. Cohen, *From the Maccabees to the Mishnah* (Chicago, 1987), pp. 64-5; for more detail, see Schürer, *History of the Jewish People*, rev. and ed. Vermes *et al.*, iii, pt 1, pp. 187-96; *ibid.*, pp. 452-5 (on the Qumran "Thanksgiving Hymns").

[31] The Hellenistic Akkadian administrative documents, discussed by Sherwin-White and Kuhrt, *From Samarkhand to Sardis*, pp. 149-61, which demonstrate that in the Seleucid Empire it took *at least* a century for Greek to be established as the exclusive language of administration, may at least hint at what is missing.

[32] See Dandamaev and Lukonin, *Culture and Social Institutions of Iran*, pp. 112-13; Greenfield, "Aramaic in the Achaemenian Empire", p. 698; K. Hopkins, "Conquest by Book", in *Literacy in the Roman World* (*Jl Roman Archaeology*, suppl. iii, Ann Arbor, 1991), pp. 133-58.

[33] See A. L. Oppenheim, *Letters from Mesopotamia* (Chicago, 1967), pp. 42-53; the important remarks of E. J. Bickerman(n), *The Jews in the Greek Age* (Cambridge, Mass., 1988), pp. 51-65; S. Brock, "Three Thousand Years of Aramaic Literature",

(cont. on p. 21)

languages on all levels: it became the language not merely of all sorts of government business and public life, but also of common speech and upper-class literary expression; and the end of Achaemenid rule, and so of government patronage of Aramaic, did not lead to any discernible resurgence of the pre-Aramaic languages, for Aramaic was already established as a language of speech and high culture, and was in any case partly replaced by a new international language, Greek.

But other Achaemenid policies functioned to *preserve* the pre-Aramaic languages. The emperors liked to be thought patrons of native temples where, as suggested above, the old languages were often still used. For example, Cyrus had come to Babylon in 539 B.C.E. as restorer of the temple of Marduk following the alleged depredations of Nabonidus,[34] and the Achaemenids are also known to have authorized the collection and promulgation of the laws of subject nations; the Demotic Chronicle provides a report of the codification of Egyptian law at the initiative of Darius I.[35] In Judah too, the central temple in Jerusalem — in which the Hebrew language was used — was rebuilt with government support, which it received to the exclusion of other traditional holy places; and the so-called "Law of Moses", more or less our Pentateuch, was — whatever the age of its sources — now finally compiled in the Hebrew language (and also in an Aramaic recension, like the Egyptian code?), and imposed on the Judahites with Achaemenid support.[36]

These developments had complex and ramified effects on language, some of which I will now try to untangle. The temple, and especially the Law, came to be the central symbols of Jewish

*(n. 33 cont.)*
*Aram*, i (1989), pp. 17-18. On the association of Aramaic with papyrus and leather, see Greenfield, "Aramaic in the Achaemenian Empire", p. 698.

[34] For discussion and literature, see P. Briant, "The Seleucid Kingdom and the Achaemenid Empire", in P. Bilde *et al.* (eds.), *Religion and Religious Practice in the Seleucid Kingdom* (Studies in Hellenistic Civilization, i, Aarhus, 1990), pp. 53-4, 58-60.

[35] For the text and translation of this account, see *Die sogenannte demotische Chronik des Pap. 215 der Bibliothèque Nationale zu Paris*, ed. W. Spiegelberg (Leipzig, 1915), pp. 30-2; Dandamaev and Lukonin, *Culture and Social Institutions of Iran*, p. 125. The laws were officially published in Demotic, for the use of native judges, and in Aramaic ("the writing of Ashur"), for Persian officials.

[36] That construction of the temple and imposition of the Law were not uncontested is demonstrated by the partisan accounts in the books of Ezra and Nehemiah. On the connection between the Demotic law and the Law of Moses, see Bickerman(n), *Jews in the Greek Age*, pp. 29-32; for a discussion of the Achaemenid context of the Pentateuch, see J. Blenkinsopp, *The Pentateuch* (London, 1992), pp. 239-42.





nationhood — so potent that, if we can believe Josephus, at the time of the Jewish revolt against Rome in 67 C.E. the mere public display of a scroll of the Law was enough to make men take up arms.[37] These two symbols were closely associated too, for the Law itself expected the priests of the temple to be among its authoritative interpreters and the executors of its imposition on the people of Judaea;[38] as far as we can determine, the priests did play an especially important role, at least before the destruction of the temple in 70 C.E., and the high priest was recognized as the final legal authority.[39] The transformation of the temple and the Law of Moses from institutions of real but limited importance into the central items in the symbolic language of ancient Judaism must not be thought self-explanatory — after all, the Egyptian law, also codified at imperial initiative and invested with imperial support, seems never to have played a role comparable to that of the Torah in Judaea.[40] Yet we know too little about the history of Palestine from 400 to 200 B.C.E. — a period crucial to the emergence of the temple and the Torah as ideologically central — to be able to suggest a complete explanation. I will indicate only a few factors which I consider to have been important for this development.

First, from Cyrus to Nero, almost every imperial ruler of Palestine supported the temple and the Law.[41] This consistent support (probably absent in Egypt)[42] for these centralizing insti-

[37] Josephus, *Autobiography*, 134-5.

[38] See, for example, Deut. 17:8-13.

[39] See S. Schwartz, *Josephus and Judaean Politics* (Leiden, 1990), pp. 69-70; E. J. Bickerman(n), *Studies in Jewish and Christian History*, 3 vols. (Leiden, 1976-86), ii, pp. 69-74; Bickerman(n), *Jews in the Greek Age*, pp. 140-7.

[40] Though various versions of Darius's law-code *may*, if it is somehow related to a Demotic law-code of the third century B.C.E. found in Hermopolis, have survived into the high Roman Empire, and *may* have functioned in some circles as a kind of national symbol. On the "Hermopolis code", see G. Mattha, *The Demotic Legal Code of Hermopolis West* (Cairo, 1975); a fragment of a Greek translation of this code, probably made in the third century B.C.E. but copied in the late second century C.E., is published in *The Oxyrhynchus Papyri*, xlvi, ed. J. R. Rea (London, 1978), no. 3285; the suggestion about the ideological function of the text in the Roman period is made by J. Mélèze-Modrzejewski, *Les Juifs d'Egypte* (Paris, 1991), pp. 89-91.

[41] The only certain exception is the Seleucid emperor Antiochus IV, who suspended the Law between 167 and 164 B.C.E. The emperors Ptolemy II, III and IV, who ruled in Palestine 285-200 B.C.E., may have done nothing either to support or to undermine the native institutions of Judaea.

[42] On the Ptolemies and Egyptian law, see H. J. Wolff, "Law in Ptolemaic Egypt", in A. E. Samuel (ed.), *Essays in Honor of C. B. Welles* (Amer. Studies in Papyrology, i, New Haven, 1966), pp. 67-77. In the third century B.C.E., the Ptolemies empowered Egyptian priests to judge according to Egyptian laws, but gave neither the priests nor

*(cont. on p. 23)*

tutions allowed their curators to impose their values and practices on the Judaeans without serious competition from radical dissenters, who either left the country, withdrew to the desert, or behaved very discreetly. It so functioned by empowering the central authorities to establish administrative, judicial and other networks throughout the country, embodying views and practices that (however roughly) approximated to their own, in part because small-town strong men, who necessarily wielded the real power on the local level, were (ideologically speaking) forced to meet the authorities half-way.[43]

The uniqueness of the temple and the Law gave them a peculiar force as centralizers of ideology — even though it was a uniqueness more theoretical than real. Several shrines outside Jerusalem dedicated to the worship of Yahweh maintained a shadowy existence for centuries after the construction of the Jerusalem temple in the late sixth century B.C.E.,[44] and the Law as actually practised in the Judaean countryside, and even in Jerusalem, was varied and often strikingly different from that laid down in the Pentateuch.[45] Yet the non-Jerusalemite shrines were all, or almost all, located outside Judaea — that is, outside the jurisdiction of the high priest. And in the official ideology, local, non-Pentateuchal varieties of the Law were nevertheless part of a larger conception of the Law, provided that their practice could somehow be reconciled with Pentateuchal prescriptions: the ideological uniqueness of the Law was thus preserved by co-optation.[46]

Surprisingly, the emergence of temple and Torah as the central

*(n. 42 cont.)*
the laws exclusive jurisdiction over any inhabitant of Egypt: the Egyptian law was voluntary, an imperial concession intended to spare the feelings of native subjects. In the second century B.C.E., the system collapsed.

[43] For an account of this process, see Smith, *Palestinian Parties and Politics*, pp. 121-4.

[44] For a brief survey, see *ibid.*, pp. 68-70.

[45] For an example, see T. Ilan, "Premarital Cohabitation in Ancient Judaea: The Evidence of the Babatha Archive and the Mishnah (Ketubbot 1.4)", *Harvard Theol. Rev.*, lxxxvi (1993), pp. 247-64.

[46] See Smith, *Palestinian Parties and Politics*, pp. 130-43. Alternatively, "the Law" may be thought of as a large and unsystematic body of practice, customary and prescribed, including both the Pentateuch and other normative *corpora* — a body in which at some point, perhaps not much earlier than 250 or 200 B.C.E. (and even then not for all Jews), the Pentateuch came to dominate: see J. Blenkinsopp, *Wisdom and Law in the Old Testament* (Oxford, 1983), pp. 74-5. Such a formulation is admirably complex but seems to me to downplay, perhaps wrongly, the role of the Achaemenid emperors.





symbols of Judaism cannot be adequately explained, or even traced. That said, it seems obvious that the "Antiochan persecution" (starting in 167 B.C.E.) — in which the Seleucid emperor prohibited observance of Jewish Law and handed over the Jerusalem temple to a group of reformist priests who abolished the distinctively Judaean elements of the cult — and the subsequent, and ultimately successful, Judaean revolt (167-152 B.C.E.) did much to simplify and consolidate the symbolic system of the Jews.[47] It may be significant that the earliest story to presuppose that the Torah-scroll itself possesses symbolic importance is in the account of the persecution in 1 Macc. 1:56-7, composed perhaps forty years after the events it describes: in the course of the persecution, Torah scrolls were not confiscated and discarded, but ripped to shreds and burnt — something not easily done to parchment. The absence of this information in the parallel account in 2 Maccabees casts doubt on the episode's historicity, but not on the significance of the claim as an indicator of the ideological position of its post-revolt, pro-Maccabean author.

The emergence of the temple as ideologically central is somewhat easier to trace, since admiration for it and its staff is the theme of a long series of ancient Jewish literary works, from Chronicles (*c.*350 B.C.E.) to 2 Maccabees (*c.*100 B.C.E.) to Josephus's *Jewish War* (*c.*80 C.E.), and is reflected also in works of pagan writers, from Hecataeus of Abdera (*fl.* 300 B.C.E.) onwards.[48] That this centrality was not simply the fantasy of a small group of authors themselves of priestly background is demonstrated by a series of events from the feuds of the late sixth and fifth centuries B.C.E. (both among the Judaeans and between them and their neighbours) over access to and control of the temple, to the widespread enthusiasm generated by the emperor Julian's plan, in 361 C.E., to rebuild it; and it is further confirmed by the fact that the post-Hasmonean temple, at least, was a massive economic "black hole", sucking in and consigning to

[47] See 1 Macc. 1:41-64; 2 Macc. 6. The most important single work on the background of the persecution and revolt is still E. J. Bickerman(n), *Der Gott der Makkabäer* (Berlin, 1937); more recent literature is clearly and briefly discussed in D. Harrington, *The Maccabean Revolt: Anatomy of a Biblical Revolution* (Wilmington, 1988). For the effect of the persecution and revolt on Judaism, see S. Cohen, "Religion, Ethnicity and 'Hellenism' in the Emergence of Jewish Identity in Maccabean Palestine", in Bilde *et al.* (eds.), *Religion and Religious Practice in the Seleucid Kingdom*, pp. 204-23.

[48] See M. Stern, *Greek and Latin Authors on Jews and Judaism*, 3 vols. (Jerusalem, 1974-84), i, *passim.*

oblivion (often in fact to the strong-boxes of rapacious Macedonian and Roman generals) vast quantities of surplus Jewish silver — not all of it, we must suppose, given under duress.[49]

For my purposes, these developments are important because the Hebrew language was closely associated with these two central symbols, Torah and temple, and so came itself to have a certain symbolic force: it became not the national language of the Jews, but the language whose representation symbolized Jewish nationhood. The earliest indication of this development may date back to the middle or later fourth century B.C.E. Most documentary writing from Achaemenid Judaea — inscriptions on coins, seals, *bullae* (stamped pieces of clay used to seal papyrus or parchment documents) and so on — is Aramaic, though some probably quite early *bullae*, made at a time when Hebrew was still commonly spoken, bear Hebrew inscriptions in Aramaic script. All Achaemenid Judaean coins give the name of the province in its Aramaic form and in Aramaic script, but the latest type of Achaemenid coin features two examples bearing inscriptions in Hebrew and in Palaeo-Hebrew script, one of which, interestingly, gives the name of the high priest, and the other, that of a governor who may also have been high priest.[50] By the early third century B.C.E., though, Hebrew alone is used in inscriptions on the coins, written in Palaeo-Hebrew script; and the name of the province now has its old Hebrew form. Official

[49] There is, surprisingly, no good single treatment of the history of the temple; for a general survey, see Schürer, *History of the Jewish People*, rev. and ed. Vermes *et al.*, ii, pp. 227-313. The temple as an economic "black hole" is well discussed by M. Goodman, *The Ruling Class of Judaea* (Cambridge, 1987), pp. 51-75.

[50] On the coins, see Y. Meshorer, *Ancient Jewish Coinage*, 2 vols. (New York, 1982), i, pp. 14-17; L. Mildenberg, "*Yəhūd*-Münzen", in H. Weippert, *Palästina in vorhellenistischer Zeit* (Munich, 1988), pp. 721-8; D. Barag, "A Silver Coin of Yohanan the High Priest and the Coinage of Judaea in the Fourth Century B.C.E.", *Israel Numismatic Jl*, ix (1986-7), pp. 4-21. On the seals, *bullae*, etc., see the survey in E. Stern, *Material Culture in the Land of the Bible in the Persian Period* (Warminster, 1982), pp. 202-13.

"Palaeo-Hebrew" is the script, closely related to Phoenician, used for Hebrew during the Israelite and Judahite monarchies. Starting in the sixth century B.C.E., Aramaic script began to replace Palaeo-Hebrew for Hebrew texts, though scattered use of the old script continued to the first century C.E. among Judaeans; Samaritans still use Palaeo-Hebrew script. The best and most intelligent discussion of late Palaeo-Hebrew and its significance — and one of the best general discussions of the language situation in ancient Palestine — is in a Hebrew book: J. Naveh, '*Al Heres Vegome*': *Ketovot 'Aramiyot Ve'ivriyot Mitequfat Bayit Sheni, Mishnah Vetalmud* [On Sherd and Papyrus: Aramaic and Hebrew Inscriptions from the Second Temple, Mishnaic and Talmudic Periods] (Jerusalem, 1992), pp. 11-36.





stamps of Hellenistic Judaea, of either the early third or early second centuries B.C.E., likewise use the old Hebrew script. However, it is difficult to know how these inscriptions functioned; it may be worth pointing out that the iconography of the coins is not terribly distinctive — under the Achaemenids it consisted of a repertoire of motifs borrowed in part from Athenian coinage and then, under Ptolemy, imitations of Alexandrian issues. Both sets of coins feature a large number of anomalous types which are difficult to interpret but not distinctively "Judaean", at least not in any obvious way.

The interpretation of the coinage of the Hasmoneans is characterized by a different set of complexities. The Hasmoneans were the family who led the revolt against the Seleucids starting in 167 B.C.E., ruled in Palestine 152-37 B.C.E., and revived autonomous coinage in the 120s or 110s B.C.E., about one hundred and fifty years after it had been abolished. As I suggested above, the revolt which was the dynasty's *raison d'être* had tended to magnify the symbolic centrality of the Law and the temple; this was perhaps accompanied by the first explicit and unambiguous uses of Hebrew as a national symbol — at least, such a use of the language was retrospectively attributed to the rebels. The quasi-official chronicle of the revolt and the rise of the Hasmonean family, 1 Maccabees, was composed in archaizing Hebrew;[51] the author of 2 Maccabees (an account of the revolt composed in Greek and unconnected with 1 Maccabees) emphasized, with an uncertain degree of accuracy, that revolutionaries and martyrs of the persecution used Hebrew in some circumstances.[52] The attribution of symbolic importance to Hebrew — whether by the rebels themselves or by their successors — may help explain why the earliest Hasmonean coins, minted under John Hyrcanus I (reigned 134-104 B.C.E.), bore legends exclusively in the Hebrew language and in the presumably increasingly incomprehensible Palaeo-Hebrew script, accompanied by a distinctive iconography no longer simply imitated from Hellenistic royal issues and Greek city coins.[53] Yet John's son Alexander (reigned 103-76 B.C.E.)

[51] See J. Goldstein, *I Maccabees* (Garden City, 1976), p. 14.

[52] See 2 Macc. 7, 12:37.

[53] The fullest collection is to be found in Meshorer, *Ancient Jewish Coinage*, i. He dates the first Hasmonean coinage to Alexander's reign, but recent archaeological discoveries have made it overwhelmingly likely that John was the first to mint: see D. Barag, "Jewish Coins in Hellenistic and Roman Time", in T. Hackens *et al.* (eds.),

(cont. on p. 27)

minted coins with inscriptions in three languages: Hebrew (in Palaeo-Hebrew script), Aramaic and Greek, with no concomitant variation in iconography. What might this mean?[54]

The role of Hebrew in the two Judaean revolts against Rome is less ambiguous. The silver coins of both the Great Revolt (66-74 C.E.) and the Bar Kokhba Revolt bear inscriptions exclusively in Hebrew and in Palaeo-Hebrew script, at a time when ability to read this script must have been very rare indeed, even among those literate in Hebrew;[55] the inscriptions are accompanied by appropriate images, usually connected to the temple cult. There seems little doubt that the language functions on these coins practically as a talisman — an important element in the iconography of these powerful and ubiquitous expressions of Judaean national defiance.[56]

I suppose, then, that for most of the Jews of Palestine, Hebrew was important mainly as an item in a complex of symbols — a fact to which Judaean revolutionaries gave a fairly unambiguous material expression but which was, if less conspicuous, no less true in more peaceful times. These symbols no doubt shaped the Jews' consciousness in various unknowable ways and created among them the feeling that Hebrew was somehow "their" lan-

*(n. 53 cont.)*
*A Survey of Numismatic Research, 1985-1990*, 2 vols. (Int. Soc. Professional Numismatists, special pubns, xii, Brussels, 1991), i, p. 106. Hasmonean coins were all small-denomination bronze, intended only for local use. Seleucid royal and municipal silver coins continued to circulate extensively in Hasmonean Palestine.

[54] I will refrain from speculation here, and simply point out that the coins of the Hasmoneans' successor, Herod, were inscribed exclusively in Greek, with a gradual return, especially under his successors, to "normal" (i.e., Greek-style) iconography, including portraits of monarchs.

[55] The survival of one or two Judaean texts from the first century C.E. in the old script, and the use of a few Palaeo-Hebrew letters as stone-cutters' marks and on food-rationing tags from Masada no more demonstrates general literacy in Palaeo-Hebrew than the use of Greek letters by mathematicians proves general literacy in Greek nowadays: see Naveh, *'Al Heres Vegome'*, pp. 11-23. On the difficulties the engravers of the coins of both revolts had with the Palaeo-Hebrew legends, see L. Mildenberg, *The Coinage of the Bar Kokhba War* (Aarau, 1984), p. 22.

The standard collections of the revolutionary coins are the outdated, but not yet replaced, work by L. Kadman, *The Coins of the Jewish War of 66-73 C.E.* (Tel Aviv, 1960) — see especially his comments on the symbols on the coins, pp. 83-95; Mildenberg, *Coinage of the Bar Kokhba War*.

[56] There is some evidence that Bar Kokhba insisted on the use of Hebrew in his revolutionary administration: see the discussion in Schürer, *History of the Jewish People*, rev. and ed. Vermes *et al.*, ii, pp. 27-8. In contrast, the documents produced by the rebels of the Great Revolt encamped at Masada are overwhelmingly Aramaic: see n. 22 above. On the language of the Bar Kokhba coins, see Mildenberg, *Coinage of the Bar Kokhba War*, pp. 69-72.





guage, but in practice Hebrew impinged on their lives rather little. This is because those contexts in which Hebrew was used were remote from most people's regular experience: a passage in Josephus's *Jewish War* creates the impression that copies of the Pentateuch could not usually be found in Judaean villages[57] — not surprisingly, given the undoubted expense of parchment scrolls.[58] This implies that there was in most villages no regular time or place for reading the Law, at least until after 70 C.E., when synagogues — where, it must be assumed, a portion of the Law was usually read weekly — became common in rural Palestine.[59] It is also unlikely that, at least before 70 C.E., elementary education in the Law (and so in the Hebrew language) was provided for most boys, though it was certainly common in some circles; the late rabbinic tales about the establishment of a "state" school system in the first century are probably idealizations.[60] Whatever the typical Judaean peasant knew of the contents of the Pentateuch, he knew from oral report, presumably in Aramaic.

[57] Josephus, *Jewish War*, ii.228-31.

[58] This is not the only possible interpretation of the passage, and it may be worth remembering that substantial collections of books could be found in some Egyptian villages; however, Greek books in Egypt were written on (relatively inexpensive) papyrus while, if we may extrapolate from the Dead Sea Scrolls, Jewish holy books, as early as the second and first centuries B.C.E., were written on parchment: cf. Mishnah, *Yadayim*, iv.5 and *Megillah*, ii.1. See M. Goodman, "Sacred Scripture and 'Defiling the Hands'", *Jl Theol. Studies*, new ser., xli (1990), p. 105; M. Haran, "Book-Scrolls at the Beginning of the Second Temple Period: The Transition from Papyrus to Skins", *Hebrew Union Coll. Annual*, liv (1983), pp. 111-33. Nevertheless, the implication of Josephus's *Against Apion*, ii.175, that Torah scrolls could normally be found in Jewish settlements, if it is not pure idealization, may reflect conditions in the Diaspora, not Palestine: Schwartz, *Josephus and Judaean Politics*, p. 23.

[59] Before 70 C.E., archaeological evidence is all from fortresses, and literary evidence mostly concerns cities. It is not clear how seriously one should take the references to synagogues in the villages of Nazareth and Capernaum in the Gospels (Mark 6:2 and parallels; Mark 1:21 and parallels), composed after 70 C.E. in diasporic environments. John, the only Gospel possibly composed in Palestine, mentions *synagogai* far less frequently than the others, and the word may mean "assemblies" or "gatherings", not "synagogues" (e.g., John 18:20): see W. Schrage, "*Synagoge*", in G. Kittel and G. Friedrich (eds.), *Theological Dictionary of the New Testament*, trans. G. W. Bromiley, 10 vols. (Grand Rapids, 1964-77), vii, pp. 830-2. On the synagogue in general, see Cohen, *From the Maccabees to the Mishnah*, pp. 111-15; L. Levine, "The Second Temple Synagogue", in L. Levine (ed.), *The Synagogue in Late Antiquity* (Philadelphia, 1987), pp. 7-31. Even the Mishnah, compiled *c.*200 C.E., apparently supposes that villagers would have to travel to the nearest market town to hear the reading of the Scroll of Esther on the festival of Purim: *Megillah*, i.1, with the comments of Rashi *ad loc.*

[60] For a brief discussion, see Cohen, *From the Maccabees to the Mishnah*, pp. 120-3.

The transformation of the Law and the temple into important symbols may be supposed to have enhanced their practical significance as, respectively, the civic and religious constitution of the Jews and the place where (among other things) it was authoritatively interpreted. The Pentateuch was unique among ancient law-codes, national epics and the like, in that it required general acquaintance with itself (a fact whose significance was much exaggerated by ancient Jewish apologists) and was in theory, unlike the temple, not the exclusive province of a class restricted by birth.[61] In practice, this meant that most Jews knew something of the Law as applied in daily life. But despite the non-esoteric character of the Law, its practical importance, its complexity, and the technical impossibility of widespread mastery of it in the conditions of an agrarian subsistence economy, combined to generate a powerful, though loosely organized and to some extent fragmented, curatorial class, responsible for preserving and interpreting it. The priests, or the curators of the temple — a hereditary class of high status in its own right — were, as suggested above, given by the Law itself a special role in its own interpretation and execution. But the public character of the Jewish Law — as opposed to Egyptian or Babylonian — meant that access to curatorship of it was not restricted to priests, but was open to all — all, that is, with enough wealth to finance study. Village scribes, local arbitrators, and so on — probably for most Jews the most conspicuous representatives of the class — were not overwhelmingly likely to have been priests. Thus, knowledge of the Law, even when not accompanied by priestly birth and political connections, was a path to prestige. Even in the absence of evidence we would have to suppose that among some Judaeans knowledge of the Law was zealously cultivated. Hebrew, as the language of the priestly curators of the temple and of the mixed (priestly and lay) curators of the Law became, in short, a language whose use both distinguished a class and determined admission to it — a class whose legitimacy was in turn presumably confirmed by the language's symbolic power.

The function of Hebrew in the ideology of the curatorial class is well illustrated by a passage from the *Book of Jubilees*, an imitation and expansion of the book of Genesis allegedly narrated by an "angel of the (divine) Presence", composed in Hebrew in

[61] See A. Baumgarten, "The Torah as a Public Document in Judaism", *Studies in Religion*, xv (1985), pp. 17-24.





the second century B.C.E. (it survives now in full only in a translation into Ge'ez, or Old Ethiopic):

> And the Lord God said to me [the angel], "Open [Abraham's] mouth and his ears so that he might hear and speak with his mouth in the language which is revealed because it ceased from the mouth of all the sons of men from the day of the fall [of Babel?]". And I opened his mouth and his ears and his lips and I began to speak to him in Hebrew, in the tongue of creation. And he took his father's books — and they were written in Hebrew — and he copied them. And he began studying them thereafter. And I caused him to know everything which he was unable to understand. And he studied them in the six months of rain.[62]

It would be tiresome, and is in any case impossible here, to trace the effects of this development in the masses of literature produced by this class from the third century B.C.E. to the third century C.E.[63] But some observations may be made. Almost all surviving Palestinian writing from this period (not all of which, by the way, was originally composed in Hebrew) is informed by familiarity with the Pentateuch, and much of it actually imitates the Pentateuch and the other biblical books: *Jubilees* imitates Genesis, *Ben Sira* Proverbs, the *Temple Scroll* Deuteronomy, 1 Maccabees the Deuteronomic histories, and so on. That is to say, one of the consequences of the centrality of the Pentateuch and the concomitant rise of a curatorial class — for which the literature just mentioned is important evidence — is the pervasiveness of literary classicism, that is, the tendency to emulate a more or less discrete body of writing which has come to be thought uniquely valuable and significant.[64] The self-consciousness which classicism implies is, in fact, a novel and defining characteristic of Judaean literature from the third century B.C.E. onwards; it also conforms with the growing importance of Hebrew in the same period as a symbolic commodity and is, like it, an aspect of the ideologization of the language which I have previously discussed.

Imitation is only one possible response to the development of a classical literature; in the Jewish case, as in the Greek, it was

[62] *Book of Jubilees*, xii.25-7.

[63] A good survey may be found in Schürer, *History of the Jewish People*, rev. and ed. Vermes *et al.*, iii. The standard collections of the material are *Apocrypha and Pseudepigrapha of the Old Testament*, ed. R. H. Charles, 2 vols. (Oxford, 1913); *Old Testament Pseudepigrapha*, ed. J. H. Charlesworth, 2 vols. (Garden City, 1983-5). For the Dead Sea Scrolls, see G. Vermes, *The Dead Sea Scrolls in English*, 4th edn (London, 1995).

[64] See Cohen, *From the Maccabees to the Mishnah*, p. 192.

accompanied by the rise of detailed study, explication and commentary — in short, scholasticism. *Jubilees*, for example, contains elements of both classicism and scholasticism, since it is simultaneously an imitation and expansion of Genesis, and an attempt to work out the details of biblical chronology. In the first century B.C.E., if not earlier, the sectaries of Qumran produced commentaries on biblical books, a genre later taken up by Philo, the Rabbis and the Church Fathers. In some cases, Jewish classicism and scholasticism functioned not only as an expression of the ideology of the curatorial class, but probably also as a reaction to *Greek* classicism and scholasticism: for example, the insistence of Ben Sira, writing *c.*190 B.C.E., that the Law is the source of all wisdom has been plausibly supposed to address the growing popularity of Greek education among well-to-do Jerusalemites, while such works as Eupolemus's *History of the Kings of Judaea*, written in Greek a generation after Ben Sira by a member of his class, may be a different manifestation of a similar impulse.[65]

## IV

### THE HEBREW LANGUAGE AFTER THE DESTRUCTION OF JERUSALEM (70 C.E.)

The curatorial class did not disappear after the two Judaean revolts, but was reconstituted along different lines; the most obvious contrast with the pre-70 C.E. curatorial class is the reduced importance of the priesthood in the new, rabbinic, class that replaced it.[66] The literature produced by the Rabbis is correspondingly different from its antecedents. It is totally inner-directed: it barely acknowledges that there is a world outside that marked by attention to rabbinic concerns; all trace of classicism is absent here, replaced by scholasticism, presumably reflecting the attribution of a higher degree, or at any rate a different sort, of sanctity to the classical literature. But these formal differences between rabbinic and pre-rabbinic literature should not be allowed to obscure the fact that the Rabbis saw themselves as continuators of the old pre-destruction curatorial class. One way

[65] See M. Hengel, *Judaism and Hellenism*, 2 vols. (London, 1974), pp. 138-54 (who characteristically goes too far); on Eupolemus, see Schürer, *History of the Jewish People*, rev. and ed. Vermes *et al.*, iii, pt 1, pp. 517-21.

[66] The most successful account of rabbinic curatorial ideology is S. Cohen, *The Three Crowns: Structures of Communal Politics in Early Rabbinic Jewry* (Cambridge, 1990).





in which they expressed this continuity was by using, and promoting the use of, Hebrew, in some contexts even for speech, though it is normally supposed that in the third century, Aramaic began to replace Hebrew as the main language of rabbinic instruction.[67] It is possible (though not unquestionably legitimate) to construct from scattered comments in the rabbinic literature a full-blown ideology of Hebrew, some of whose details are continuous with, and expand, hints found in pre-rabbinic writing.[68] Thus, some rabbinic texts describe Hebrew as the language of creation, and so of God and the angels,[69] and thus of prayer and study, and to some extent of speech;[70] in some circles, such as those of the author of the *Sefer Yeẓirah*, the knowledge that the universe was created by means of the Hebrew language led to elaborate and complex speculations about the relationship between the Hebrew language and physical reality, and such speculations may in turn be connected with the facts that late antique Jewish magical texts,

[67] Though what may be rabbinic tombstones continued to be inscribed in Hebrew after 200 C.E. See N. Avigad's comments in B. Mazar *et al.*, *Beth Shearim*, 3 vols. (New Brunswick, 1971), iii, pp. 52-65; Naveh, *'Al Heres Vegome'*, p. 25.

[68] Though, as usual in rabbinic literature, contradictory opinions are expressed too — e.g., that the angels understand only *Aramaic*: Babylonian Talmud, *Shabbat*, 12b. Surveys of rabbinic comments about Hebrew may be found in K. Treu, "Die Bedeutung des griechischen für die Juden im römischen Reich", *Kairos*, xv (1973), pp. 132-4; Fraade, "Rabbinic Views on the Practice of Targum". For an attempt to construct a rabbinic theory of language, mainly from the late antique midrash *Genesis Rabbah*, see H. Eilberg-Schwartz, "Who's Kidding Whom? A Serious Reading of Rabbinic Word Plays", *Jl Amer. Acad. Religion*, lv (1987), pp. 765-88. In many of the passages, Hebrew is expressly promoted at the expense of Aramaic. Furthermore, the later rabbinic documents, in which the comments *about* Hebrew are mostly found, themselves move between Hebrew and Aramaic with an unconcern comparable to that of the compilers of Ezra-Nehemiah, though to what extent this editorial insouciance reflects actual rabbinic practice I have not tried to determine. It may be worth noting that by late antiquity, when the rabbinic texts were redacted, distinctively Jewish dialects of Aramaic had emerged which their speakers may have thought as suitable as Hebrew for expressions of Jewish identity. Also striking and difficult to evaluate is that midrashic texts often provide Greek "etymologies" for biblical Hebrew words — admittedly, an exegetical strategy. In any case, it is probable that Jewish self-consciousness about Hebrew never in antiquity produced the same sorts of results as the Greek (for example, systematic grammar and prosody). These developed only in the Middle Ages.

[69] *Genesis Rabbah*, 18; *Palestinian Targum*, *ad* Gen. 11:1. Hebrew also appears as the language of creation in the passage from the *Book of Jubilees* quoted at p. 30 above. For discussion, see L. Ginzberg, *Legends of the Jews*, 7 vols. (Philadelphia, 1968), v, pp. 205-6; it seems a straightforward inference from the Genesis account, in which God creates the universe by speaking in Hebrew (Gen. 1:2). Two ancient Jewish works composed in Greek take it for granted that Greek was the language of creation: see *Sibylline Oracle*, iii.24-6; *2 Enoch*, xxx.13.

[70] Babylonian Talmud, *Sotah*, 49b; Palestinian Talmud, *Megillah*, i.11, 71b.

like the Hekhalot books and the *Sefer Harazim*, tended to be composed in Hebrew rather than Aramaic (in the case of the *Sefer Harazim*, in elegant classicizing Hebrew), and that Hebrew words and phrases can be found in Greek and Coptic magical texts of the same period.[71]

A striking aspect of the rabbinic ideology of Hebrew is that rabbinic texts most often use a previously rare expression to refer to the language: *leshon haqodesh*.[72] Though commonly translated "holy tongue", the expression probably originally meant "temple language".[73] It is likely that at some point in the history of the rabbinic movement, its original meaning was forgotten, though the Rabbis can never have been wholly unaware of such linguistic parallels as *sheqel haqodesh*, whose reference to the temple was unmistakable. Be this as it may, it is equally likely that when the term came into use, the Rabbis were aware of its meaning. They themselves thus associated Hebrew with the temple, one of the two main *loci* of its use by the curatorial class before 70 C.E. Their designation of Hebrew as the *leshon haqodesh* may furthermore reflect awareness that their Hebrew differed to some extent from biblical Hebrew — an awareness for which there is some

[71] Most of these texts are now available in translation: for *Sefer Harazim*, see *Sepher HaRazim: The Book of Mysteries*, trans. M. Morgan (Chico, 1983); the Hekhalot books are now being translated into German under the supervision of P. Schäfer: *Übersetzung der Hekhalot-Literatur*, ii-iv (Texte und Studien zum antiken Judentum, xvii, xxii, xxix, Tübingen, 1987-91); for the magical papyri, see *Greek Magical Papyri in Translation, including the Demotic Spells*, trans. H. D. Betz (Chicago, 1986). Isolated words and phrases of unquestionably Hebrew origin are common, and some long strings of so-called *nomina barbara* may be garbled transcriptions of Hebrew: G. Scholem, *Jewish Gnosticism, Merkabah Mysticism and Talmudic Tradition* (New York, 1960), pp. 94-100. My characterization of *Sefer Yeẓirah* as linguistic speculation is indebted to a public lecture by Professor J. Dan of Jerusalem given at Cambridge in winter 1993.

[72] The only pre-rabbinic attestation of the term is in a recently published Dead Sea Scroll fragment officially designated 4Q 464. This text is dated by its editors to the first century C.E., but its character is unclear: see E. Eshel and M. Stone, "Leshon Haqodesh Be'aḥarit Hayamim Le'or Qeta' Miqumran" [*Leshon haqodesh* in the End of Days in the Light of a Fragment from Qumran], *Tarbiẓ*, lxii (1993), pp. 169-77.

[73] It is formed on the paradigm of such biblical phrases as "*sheqel* [a weight of silver] *haqodesh*", "*hin* [a liquid measure] *qodesh*" ("*sheqel* / *hin* according to the temple standard"): see J. Greenfield, "Languages of Palestine, 200 B.C.E.-200 C.E.", in H. Paper (ed.), *Jewish Languages: Theme and Variations* (Cambridge, Mass., 1978), p. 149. Shinan's suggestion that *leshon haqodesh* and its occasional Aramaic equivalent *lishan bet qudsha'* mean "synagogue language" seems to fall on the fact that in no extant source is the synagogue called *haqodesh* or *bet qudsha'*: A. Shinan, "'Lishan Bet Qudsha'' Betargumim Ha'aramiyim Latorah" [*Lishan bet qudsha'* in the Aramaic Targums to the Torah], *Bet Miqra*, lxvi (1976), pp. 472-4.





additional evidence.[74] There is good reason to think that the Rabbis' name for their language was accurate. Of the hundreds of Semitic texts discovered on Masada, the only ones written in Hebrew are tags indicating that certain goods had been set aside as gifts to the temple; their editor observed that their language is strikingly similar to that of the rabbinic texts.[75] It seems fair to conclude, then, that the decision to compose the Mishnah (the earliest rabbinic document, *c.*200 C.E.) in Hebrew — and in a type of Hebrew which was especially associated with the temple, as the Rabbis themselves knew — constituted an act of appropriation, an assertion of rabbinic control over what was symbolically central in Judaism.

Despite these elements of self-conscious continuity in rabbinic ideology, the transition from priest to Rabbi was accompanied by significant changes. The temple now existed exclusively as a symbol, and the Pentateuch was no longer, strictly speaking, the constitution of the Jewish nation; at least no government recognized it as such. Admittedly, the values of the curatorial class had to some extent been internalized by 70 C.E. — hence the frequency of temple and Torah iconography in post-70 C.E. funerary and synagogal art,[76] and the apparent importance of the synagogue, which probably involved the practice of public reading of the Pentateuch. Indeed, the text of the Pentateuch, whether in Hebrew or in close Aramaic or Greek translation, was probably somewhat better known in rural Palestine in the third and fourth centuries C.E. than it had been in the first. Significant as this was, the absence of institutional support for the Law fragmented and marginalized its curators. Some familiarity with the text of the Torah may now have been hard to avoid, but expertise conferred little clear advantage, and formal education in it may have been less common than before 70 C.E., though there is no way to be sure.

Hence, the Rabbis were so zealous about appropriating symbols precisely because they lacked real authority over them. Nor was any other group of self-appointed "curators" in any stronger position. The two failed revolts against Rome shattered the symbolic world of Palestinian Judaism. The shards, including

[74] See, for example, various passages in the Babylonian Talmud: *Qiddushin*, 2b; *Avodah Zarah*, 58b; *Hullin*, 137b.

[75] See Naveh, *Masada*, i, nos. 441-61, with comments *ad loc.*; Naveh, *'Al Heres Vegome'*, p. 24.

[76] See n. 94 below.

Hebrew, were still extant, but displaced. As for Hebrew, it is uncommon in Palestinian epigraphy of the Roman Imperial period; even in synagogues, where one would most expect to find it, inscriptions are overwhelmingly in Aramaic and Greek.[77] Indeed, in the synagogue-based Judaism of the second to the fourth centuries, Hebrew had little role to play. Even if the Pentateuch was read and the prayers recited in the language, which is not attested, competence in such tasks provided little prestige. The leaders of the synagogues were their patrons, who had little need of learning, and the patrons of the patrons were the Patriarchs, who after 70 C.E. had originally been close to the Rabbis, but gradually pulled away; by the middle of the fourth century C.E., the sons of the Patriarchs studied Greek rhetoric, not Jewish Law.[78] This situation changed, in circumstances completely unknown to us, only after the Christianization of the Empire, when gradually the Rabbis joined the patrons as leaders of the Jews, and Hebrew's importance revived.

## V

### HEBREW IN THE DIASPORA

Though the relevance of the linguistic situation of the diasporic Jews to that in Palestine is undeniable, conditions in the Diaspora were sufficiently different from those in Palestine as to require a separate treatment here. Before considering the position of Hebrew in the Jewish Diaspora, a few general points need to be made. Though it is probable that those Jews living in Palestine always constituted only a minority of the Jewish people, it is

[77] An interesting exception to this rule, perhaps related to Hebrew's status as "cosmic" language, as exemplified in such works as *Sefer Harazim*, are the inscriptions labelling the signs of the zodiac on the synagogue floor mosaics of Byzantine Palestine, collected in B. Lifshitz, *Donateurs et fondateurs dans les synagogues juives* (Paris, 1967); J. Naveh, *'Al Psefas Va'even: Haketovot Ha'aramiyot Veha'ivriyot Mibbatei Keneset Ha'atiqim* [On Stone and Mosaic: Aramaic and Hebrew Inscriptions from Ancient Synagogues] (Jerusalem, 1978). Many of the inscriptions in the latter probably date from the fifth to seventh centuries C.E., or even later, though their dating is problematic: *ibid.*, pp. 4-6. An additional zodiac mosaic has recently been found at Sepphoris.

[78] See M. Stern, *Greek and Latin Authors on Jews and Judaism*, ii, p. 596. A recent account, concentrating on the rather different (?) conditions of the third century, is M. Goodman, "The Roman State and the Jewish Patriarch in the Third Century", in Levine (ed.), *Galilee in Late Antiquity*, pp. 127-42; see also S. Cohen, "The Place of the Rabbi in Jewish Society of the Second Century", *ibid.*, pp. 157-73 and, especially, L. Levine, "The Sages and the Synagogue in Late Antiquity", *ibid.*, pp. 201-22, where the relations between Rabbi and synagogue are characterized much as here.



usually thought that by the first century B.C.E. there were *many* more Jews living outside Palestine than in it; they were especially heavily concentrated in Egypt and the Fertile Crescent, and could be found in large numbers throughout Asia Minor (including remote and basically unurbanized regions like Phrygia and Galatia), in smaller numbers in Greece and the adjacent regions and, starting in the first century B.C.E., in ever-increasing numbers in Rome and other cities of Italy and of North Africa. About some of these Jewish settlements we know next to nothing. We are, for instance, almost entirely in the dark about the apparently vast Jewish community of Babylonia between *c.*400 B.C.E., when cuneiform documents mentioning Judaeans peter out, and *c.*250 C.E., the period when the Babylonian Talmud may begin to convey some trustworthy information. About most of the remaining Diaspora settlements our ignorance is profound, and what little we do know is often strikingly anomalous.

In attempting to understand both the great size of the diasporic Jewish population, and the anomalousness of much of the surviving evidence about it, it is necessary to bear in mind the circumstances of the development of Diaspora Judaism: it was not just the result of emigration from Judaea and natural increase. Such a supposition would be, in ancient conditions, a demographic absurdity. The basic facts are simple, and in rough outline generally agreed: until around 100 B.C.E. the Jewish population of Palestine cannot have exceeded 100,000 (and this assumes an implausibly high population density for Judaea), while it is likely that by the turn of the era there were no fewer than 2,000,000-3,000,000 Jews in the Diaspora. Much of the demographic bulk of the Diaspora can only have been the result of the spread of the Israelite religion (which was not identical with Judaism), and later of Judaism, among large numbers of pagans — initially by small numbers of Israelite mercenaries, traders, emigrants and so on. The communities which resulted from this dissemination gradually and haltingly assimilated to Judaism as the Jerusalem temple and its staff became influential, and contacts between Jerusalem and the Diaspora more frequent. Local peculiarities of course persisted, and new ones developed, but an examination of the one relatively well-attested Diaspora community, Egypt, makes the general trajectory of the development clear.[79]

[79] My understanding of the rise of the Diaspora is derived from Smith, *Palestinian Parties and Politics*, pp. 70-2. There is little evidence for this outside Egypt, but the demographic problem makes Smith's hypothesis (or something like it) inevitable.

All this is by way of explaining that the Jewish Diaspora cannot be discussed as if it were a single entity, and some parts of it cannot be discussed at all. But the considerations listed above also suggest that by the period of Roman rule, for which we are best informed about the Diaspora (excluding Babylonia), some common features had developed and can be detected, at least in the larger and better attested places, like Alexandria, Rome and the cities of Syria and Asia Minor.

For my purposes, the most significant of these common features are the following. By the first century B.C.E., *most* diasporic Jews worshipped the God of Israel in prayer-houses, synagogues or some other sort of gathering. What went on in these is generally unknown, but it apparently did not include sacrifice. There was thus in most Diaspora communities no cult and no functioning priesthood, though there may have been individuals of priestly descent: most diasporic Jews sacrificed only when they visited Jerusalem.

Another common feature is that larger Jewish communities were often allowed by the Macedonian or Roman rulers some trappings of autonomy, usually including permission to refrain from participation in the municipal cult, to avoid liturgies and other public duties on the Sabbath, and perhaps to have their own courts, which presumably were expected to judge according to Jewish Law (it ought to be said, however, that municipal authorities did not always recognize these privileges). It must be emphasized that these communities were not autonomous in the sense that medieval Jewish communities, or pre-70 C.E. Judaea, were. The ancient communities were apparently completely voluntary organizations, and the communal leaders had no actual jurisdiction over their constituents.[80]

We should thus expect the major Diaspora communities to resemble structurally the Jewish villages of post-destruction Palestine, with the added complication that the Diaspora communities were located in overwhelmingly Greek-speaking, and later in the West Latin-speaking, environments (I continue to exclude Babylonia from the discussion). That is, we should expect there

[80] For a summary, see Cohen, *From the Maccabees to the Mishnah*, pp. 108-11 (where the extent of communal autonomy is exaggerated); on the absence of the *Personalitätsprinzip* in ancient kingdoms and the essentially patronal character of the government's concession of some trappings of autonomy to non-citizen communities, see n. 42 above.





to have been a fragmented and marginal curatorial class mostly subordinate to the actual, patronal, heads of the communities. Therefore, we should also expect Hebrew to have played, apart from the talismanic and evocative, only a small role in the lives of the diasporic Jews. In practice, our expectations are confirmed, but only in part: Hebrew did often function talismanically, but rather surprisingly, it played an even smaller role in the Diaspora than in Roman Palestine. The curators of the Law, who preserved the language in Palestine after 70 C.E., largely gave it up in the Diaspora at a very early date.

The Jews of the Diaspora usually spoke the languages of their environment, as far as we can tell. The surviving epigraphic evidence for the use of Aramaic by the Jewish community in Alexandria — a handful of epitaphs and one or two post-Alexander ostraca mentioning Jews — all date from *c.*300 B.C.E.: that is, at the very beginning of the history of the community.[81] In fact, the vast Jewish community of Alexandria was not entirely typical in respect to language. Down to the Great Revolt the city was the main target of Palestinian immigration, so Aramaic, and perhaps Hebrew too, never entirely disappeared from the city. But evidence for their use is so limited that it is fair to conclude that the prevailing linguistic pattern among Alexandrian Jews is comparable to that common among modern immigrant groups in the U.S.A. and Europe: within two generations, the ancestral language disappeared from use almost completely.[82] It is worth remembering that the most learned Alexandrian Jew known to us, Philo, seems not to have known Hebrew, and furthermore

[81] See *Jewish Inscriptions of Graeco-Roman Egypt*, ed. W. Horbury and D. Noy (Cambridge, 1992), nos. 3-5. The other Jewish inscriptions from the same Alexandrian necropolis are in Greek. For the ostraca, see P. Grelot, *Documents araméens d'Egypte* (Paris, 1972), nos. 12-13.

[82] Similarly, Thompson concludes from the onomastic evidence that the Idumaean settlers at Memphis were "hellenized" (i.e., had come to use Greek for most purposes) in three generations: D. Thompson, *Memphis under the Ptolemies* (Princeton, 1988), p. 100. For the continued use of Semitic languages for some purposes by Judaean immigrants no demonstration is necessary; but it probably explains the Nash Papyrus, a Hebrew manuscript containing several biblical verses, allegedly written in the second century B.C.E.: see W. Albright, "A Biblical Fragment from the Maccabean Age: The Nash Papyrus", *Jl Biblical Lit.*, lvi (1937), pp. 145-76. It may also explain a story recorded by Philo in *Against Flaccus*, 39: when the Jewish king, Agrippa I, visited Alexandria in 38 C.E., the pagan "mob" dressed a fool as the king and acclaimed him mockingly as *marin* — *faux*-Aramaic for "our lord". They were perhaps imitating Alexandrian Jews, though this is not Philo's understanding of the incident. On the question of the linguistic assimilation of the Egyptian Jews, see Mélèze-Modrzejewski, *Juifs d'Egypte*, pp. 64-71.

was not always careful in his writings to distinguish between Hebrew and Aramaic, both of which he called "Chaldaean".[83] Other Diaspora communities are less well known, but the nearly exclusive use of Greek (and Latin) in their epigraphic remains before the fifth century C.E. suggests that linguistically they resembled the Alexandrian Jews except that they were more linguistically uniform (to the extent that they were not goals of immigration from the east).[84]

Such linguistic assimilation may be a familiar phenomenon in modern times, but in antiquity, foreign ethnic corporations often retained their languages for generations; this was an especially common pattern in pre-Hellenistic times. The Greeks of Naucratis and Memphis,[85] and the Boeotian community Alexander the Great discovered near Babylon,[86] are the best-known examples (non-Greek examples are, significantly, harder to find). Several factors are responsible for Jewish linguistic assimilation. Given the origins of Diaspora Judaism, the fact that the Jews spoke Greek was in many cases not strictly speaking the result of linguistic assimilation; rather, it was the result of the *religious* assimilation of pagan adherents of Yahweh to Judaism. The general use of Greek and Latin in the communities of Alexandria and Rome, where many or most Jews were descendants of Palestinians, probably indicates, first, that Jews living in

[83] Note that the *Letter of Aristeas*, par. 11, warns against this confusion, suggesting that it was common in Alexandria. For a discussion of the consensus on Philo's knowledge of Hebrew, see L. Grabbe, *Etymology in Early Jewish Interpretation: The Hebrew Names in Philo* (Atlanta, 1988), p. 63. Josephus also occasionally conflates Hebrew and Aramaic, calling both "Hebrew". Both Philo and Josephus could, however, distinguish the two languages. James Barr takes Josephus's confusion as evidence that the Jewish Aramaic vernacular was heavily Hebraized and thus a distinctively "Jewish" language: Barr, "Which Language Did Jesus Speak?", pp. 25-9.

[84] The main collection of this material, incomplete and now out of date, is *Corpus inscriptionum judaicarum*, ed. Frey; the first volume has been reprinted with an important introduction by B. Lifshitz (New York, 1975). For Roman inscriptions, Frey is now superseded by H. J. Leon, *The Jews of Ancient Rome* (Philadelphia, 1960), and by U. Fasola, "Le due catacombe ebraiche di Villa Torlonia", *Rivista di archeologia cristiana*, lii (1976), pp. 7-62; for Egypt, by *Jewish Inscriptions of Graeco-Roman Egypt*, ed. Horbury and Noy; for Cyrene, by *Corpus jüdischer Zeugnisse aus der Cyrenaika*, ed. G. Lüderitz (Wiesbaden, 1983); for the western Roman Empire, excluding the city of Rome, by *Jewish Inscriptions of Western Europe*, ed. D. Noy (Cambridge, 1993).

[85] Hellenomemphites (descendants of Archaic Greek settlers in Memphis) were still using Greek in the fourth century B.C.E., having arrived in the late sixth century, though they were in various ways Egyptianized and presumably in many cases bilingual: Thompson, *Memphis under the Ptolemies*, pp. 95-7.

[86] Diodorus Siculus, *Library of History*, xvii.110.4-5; cf. Herodotus, *Histories*, vi.119.





Palestine and their descendants living abroad displayed identical unconcern for language as a marker of identity, apart from the fact that many immigrants probably arrived already speaking Greek as a first language; and secondly, that general social and political patterns had changed. The classical city and its near eastern counterparts did not assimilate foreigners (witness the case of the Greeks of Naucratis and Memphis), while the Hellenistic city at least made the possibility available to some categories of foreigners. Linguistic assimilation, a prerequisite for broader integration, was now the norm.

But in important ways Diaspora Jews deviated from normal patterns. Though most foreign ethnic communities in Hellenistic Greek cities adopted Greek, they often retained their native languages for cultic and some other public communal purposes: Phoenician communities in the third century B.C.E. — a time when Tyre and Sidon themselves were ostensibly thoroughly Greek-speaking — occasionally honoured prominent members with inscriptions in Phoenician.[87] Especially striking is a case already mentioned — the apparent survival of the Edomite (or Aramaic) language *c.*200 C.E. among the priests of Apollo-Qos in Hermopolis, Egypt, three hundred years after the temple's foundation, by a community which even in the first century B.C.E. seemed to be losing its Idumaean character. Yet the Jews in the Greek-speaking Diaspora made little or no use of Hebrew for liturgical purposes and the Pentateuch itself was commonly read only in Greek translation (and not, as sometimes in Palestine, in Hebrew and in translation).[88]

The proper place to begin discussion of this peculiarity is with the question of the translation of the Pentateuch into Greek, normally thought to have occurred in Alexandria in the third century B.C.E.[89] The earliest and fullest account of the traditional tale about this translation is found in the so-called *Letter of Aristeas*, probably composed *c.*130 B.C.E.[90] Ptolemy II Philadelphus wanted to complete his Library, so he decided to get a translated copy of the Law of the Judaeans. Since none was

[87] See Millar, "Phoenician Cities".

[88] See V. Colorni, "L'uso del greco nella liturgia del giudaismo ellenistico e la novella 146 di Giustiniano", *Annali di storia del diritto*, viii (1964), pp. 18-80.

[89] For a survey of modern views on the origins of the Septuagint, see S. Jellicoe, *The Septuagint and Modern Study* (Oxford, 1968), pp. 59-73.

[90] See E. J. Bickerman(n), "Zur Datierung des Pseudo-Aristeas", in his *Studies in Jewish and Christian History*, i, pp. 123-36.

extant, he invited to Alexandria seventy-two of the most learned Judaeans, six from each tribe [*sic*!],[91] presided over by their high priest, to prepare a translation from the most accurate copy of the Hebrew text. They miraculously completed it in precisely seventy-two days, handed over a copy to the king and another to the local Jews, who invoked a curse against anyone who would alter even a single letter. For ever after the Alexandrian Jews celebrated this day as a festival.

This story, clearly the mythical *aition* of the Jewish festival which celebrated both the second giving of the Law and the Jews' alliance with the Ptolemies, has been rejected by almost all modern scholars and replaced by a different story: the Alexandrian Jews, having forgotten Hebrew, sensibly decided to translate the Pentateuch so that it could be read and understood by those attending the synagogues. I would argue that this modern story is no less an aetiological myth than the ancient one, though a rationalist one, reflecting and intending to justify the use of the vernacular in both Protestant churches and Reform synagogues of the nineteenth and twentieth centuries. The advantage of the ancient fiction over the modern one is that the former acknowledges the problematic character of the translation, representing it not simply as the sensible thing to do under the circumstances, but as a difficult and abnormal act — indeed, a second giving of the Law.[92]

But the fact remains that it happened; and it was a highly consequential development, in that it opened the synagogues and the Jewish *sacra* to outsiders and so played a critical role in the rise of the *theosebeis* — pagan adherents of Jewish practices — and so in the spread of Christianity, thought to have begun

[91] "Aristeas" seems strangely unaware that ten of the twelve tribes had disappeared in the eighth century B.C.E.; the reference to twelve tribes is odd even in a work of fiction.

[92] The miraculous nature of the translation is played up in later Jewish and Christian literature, but is already present in Aristeas: see the list of post-Aristeas accounts in H. B. Swete, *An Introduction to the Old Testament in Greek* (Cambridge, 1914), pp. 12-14. For a recent attempt partially to rehabilitate the traditional account, see Mélèze-Modrzejewski, *Juifs d'Egypte*, pp. 84-90. But the traditional account is problematic because it fails to account for the widespread acceptance of the Septuagint as a substitute for the Hebrew text. The continuing insistence on the miraculous and perfect nature of the translation suggests that the Septuagint long remained controversial among the Jews, as it is known to have later become among Christians: see S. Rebenich, "Jerome: The 'vir trilinguis' and the 'Hebraica veritas'", *Vigiliae Christianae*, xlvii (1993), pp. 50-77.





precisely in these margins of the Diaspora Jewish communities.[93] Why did it happen?

The temple and the Torah were not without symbolic importance for the Diaspora Jews. Their funerary iconography, which is remarkably uniform throughout the Roman Empire, is filled with evocations of them: the menorah, the incense-shovel, the ark opened to reveal the scrolls within are the most common images in both Jewish catacombs and synagogue mosaics.[94] As long as the symbolic world of the Diaspora Jews overlapped in this way with that of the Jews of Palestine, the Hebrew language, as a subsidiary symbol, retained a talismanic function: some Italian and Egyptian Jews ended their relatives' epitaphs with the single word *shalom*, often misspelt and clumsily carved, sometimes written in Greek letters, though others may have used Aramaic words and "biblical" Greek tags for the same purpose.[95] Philo, ignorant as he was of Hebrew, acknowledged its symbolic importance by repeatedly invoking Hebrew ("Chaldaean") etymologies; that these etymologies were often mistaken was presumably unknown to his audience and did not detract from the power of the rhetorical gesture.

Yet the actual life of the Diaspora communities, even before 70 C.E., was comparable in many ways with that of the Palestinian villages in the second to the fourth centuries C.E. As suggested above, the communities were voluntary organizations, usually tolerated but not supported by the government. Unlike other ethnic communities, they centred not on temples (maintained in some cases by taxation and government gifts, and run by priestly guardians of the ancestral laws) but on synagogues, that is, informal prayer-houses maintained and run by those who could afford to do so and who were capable of maintaining friendly relations with local authorities — in short, well-to-do patrons. While curatorial classes did exist in the largest communities, they were, as in Palestine after 70 C.E., of secondary importance;

[93] See Cohen, *From the Maccabees to the Mishnah*, pp. 55-9.

[94] The fullest repertoire of material is E. R. Goodenough, *Jewish Symbols in the Greco-Roman Period*, 13 vols. (New York, 1953-68), esp. vols. ii-iii; but see the comments and corrections of M. Smith, "Goodenough's *Jewish Symbols* in Retrospect", *Jl Biblical Lit.*, lxxxvi (1967), pp. 53-68.

[95] I owe this last observation to William Horbury. Some Jewish communities in the Latin-speaking West may have retained Greek as a liturgical language, though it is impossible to be certain: Colorni, "Uso del greco nella liturgia del giudaismo ellenistico".

unlike the later Palestinian curators, they seem generally not to have felt themselves closely connected with the priesthood of the Jerusalem temple (though some Diaspora curators may have been of priestly descent) or with the pre-70 C.E. Palestinian legal authorities — which is not to say that they were never in contact with or influenced by them (and vice versa). They were a home-grown class, who were experts, not in the Hebrew Bible of the Jerusalem temple, but in their own, Greek, Bible of the Diaspora synagogues and law-courts, and whose classicizing and scholastic writing was also mainly Greek.[96] Thus, while *archontes* (rulers), *archisynagogoi* (rulers of the congregation) and other titles masking wealthy patrons are commonly found in Roman-Jewish inscriptions, *nomodidaskaloi* (teachers of the Law) and *mathetai sophon* (pupils of the wise, i.e., scholars of the Torah) are very rare.[97] To the extent that they existed at all, they were subordinate to the leaders, functionaries rather than authorities. This diasporic realignment of the relations between the curatorial and patronal classes may help explain the position of Hebrew there. To explain its subsequent revival is, as in Palestine, more difficult, and I will not attempt it.

## VI

### CONCLUSION

Let me now summarize my main arguments. The Israelites and Jews never considered the ability to speak Hebrew to be a central element of their corporate identity. Their literature was thus, before *c.*300 B.C.E., characterized by unselfconsciousness about language. Furthermore they, like most other national and tribal groups in the Near East, responded to new conditions created by the policies of the Assyrian, Neo-Babylonian and Achaemenid empires by gradually adopting Aramaic for common speech — a process presumably more or less complete by the end of

[96] I refrain from going into greater detail because it is often difficult to tell whether a given piece of ancient Jewish literature was composed in Palestine or the Diaspora. It is certain, as suggested at p. 30 above, that Palestinians wrote in Greek, and possible that Semitic books were written by Jews of the Greek-speaking Diaspora, though it is impossible to specify which.

[97] The patronal control of the Diaspora communities is observed by Cohen, *From the Maccabees to the Mishnah*, pp. 111-15; for more detailed discussion, see T. Rajak, "The Jewish Community and its Boundaries", in J. Lieu, J. North and T. Rajak (eds.), *The Jews among Pagans and Christians in the Roman Empire* (London, 1992), pp. 9-28.





Achaemenid rule. Yet the policies of the Achaemenids, and of most of their successors, also favoured the *survival* of the native languages of the Near East. For the Jews, imperial support for the Jerusalem temple and the Pentateuch, in conjunction with other factors now impossible to trace, worked to transform these institutions, with both of which Hebrew was closely associated, into the central symbols of Jewish corporate identity. The Jews thus came to regard Hebrew as a subsidiary national symbol, capable of evoking the central ones — a fact which has left physical traces in the form of inscriptions on autonomous Judaean coins, seals and *bullae*.

But the temple, as the institution which guaranteed Yahweh's protection of his people, and the Torah, as the officially recognized constitution of that people, also had immense practical importance, so that there developed around them overlapping and closely related curatorial classes. For these, Hebrew functioned as a social marker, a means of distinguishing themselves from the rest of the population. The effects of this linguistic self-consciousness are still discernible in the voluminous literature which this class produced, which in this respect resembles contemporary Greek literature more than that of the Iron Age Israelites. The openness of the curatorial class meant that mastery of Hebrew was not only a social marker, but also an important path to prestige. Study of Hebrew and the Law were thus presumably widespread among certain classes of Judaeans.

The Judaean revolts against Rome resulted in the destruction of the temple and the removal of the Law from its position as the constitution of the Judaean nation. But their symbolic centrality had by now been thoroughly internalized, so that in the second century C.E. a curatorial class of a rather different sort emerged — the Rabbis, who in many respects, including their attitude to Hebrew, were self-conscious continuators of pre-70 C.E. curatorial ideology. However, the Rabbis were marginal; knowledge of Hebrew conferred little advantage. So Hebrew retained for the most part a purely talismanic function: representation of it served to evoke Jewishness.

This was also true, though in a rather attenuated way, in the Diaspora, where the Jewish communities even before 70 C.E. also had a basically patronal structure. There, however, even the curatorial classes for the most part failed to preserve Hebrew; and though the language could sometimes serve as a talisman of

Jewishness, so also could other languages, especially Aramaic and "biblical" Greek.

In this account of the social and political history of the Hebrew language I have emphasized the position of Hebrew in the structure of ancient Jewish society. Emphasis on structure requires schematic presentation, which in its turn requires simplification. I have excluded from the discussion such anomalous and poorly attested varieties of what may have been Judaism in the Diaspora as the guild of worshippers of the Most High God in (of all places) Hellenized south Russia,[98] or the most obscure of the many sectarian organizations which grew up in first-century C.E. Palestine itself. These groups often fail to fit the patterns I have described in this paper, in that for many of them there is no evidence that they defined themselves mainly in terms of the symbolic complex of temple and Torah. For my purposes then, if more were known of them they would be useful as counter-examples — of how Hebrew functioned among Jews for whom the language's association with the temple and the Torah was of little interest.

In practice, though, there are only two such groups about which we can say anything at all. One is the military settlers of Leontopolis, Egypt. This community seems originally to have consisted of the legitimate Judaean high priest, Onias IV, and his associates, who fled Jerusalem in the 160s B.C.E. as a result of events surrounding the Maccabean Revolt. The Ptolemaic rulers of Egypt gave Onias land in the Nile Delta and allowed him to establish a temple and military settlement; in this temple, run by the legitimate Jerusalemite high priestly family, the pre-Maccabean ritual of the Jerusalem temple was apparently carefully preserved.[99] Yet the material evidence for the settlement — a number of tombstones dating from a hundred and fifty years after its foundation — seems to show that by then the temple played little role in the life of the community. The epitaphs are all composed in Greek but, more strikingly, employ the conceptual language of Hellenistic popular morality and religion — apart from the fact that no Greek god but Hades is mentioned. There is no mention of identifiably Jewish institutions, no allusions to the Law or Jewish ritual, no painting or carving of the standard

[98] See *Corpus papyrorum judaicarum*, ed. V. Tcherikover, 3 vols. (Cambridge, Mass., 1957-64), i, pp. 94-6.

[99] Josephus, *Jewish Antiquities*, xiii.62-73.





*shofar* (ram's horn) or *lulav* (palm-frond), and significantly (I would claim) not a single word of Hebrew.[100]

The other case, that of the earliest Christians, is far more complex, because no Christian writing comes from the (very brief) time when Christianity was an exclusively Jewish sect, and it is notoriously dangerous to work backwards from the Gospels, composed between 70 and 100 C.E., or even the Pauline Epistles, composed in the 50s C.E. Furthermore, not everyone would agree that the earliest Christians defined themselves *not* around unique legal interpretations and cultic practices (as did other, better-known, Jewish sects, like the Pharisees or Essenes), but around a myth of salvation, and this is not the place to argue the point. It is sufficient for the present purpose to observe that there is no evidence that Hebrew played any role at all in the life or self-definition of the earliest Christians, and that the Semitic statements attributed to Jesus in the Gospels are, to the extent that their language can be determined, in Aramaic, not Hebrew. These cases are at least consistent with my argument that Hebrew was part of an ideological package, because they seem to show that Jewish communities which had not adopted the two main parts of the package, the temple and the Torah, had no use for Hebrew either.

If the essential validity of my schematization is therefore tentatively confirmed, what does it show? That we should not take for granted a simple relationship between language and national identity, and that imperial domination had complex and varied effects on the symbolic worlds, on the self-definition, of the ruled. The Jews, for example, were created in large part by the administrative practices of the Persian and Macedonian rulers of the Near East: the rulers' decision to mediate their power through the Jerusalem temple and the Jewish Law played a crucial role in the consolidation of concepts and symbols which constituted Judaism.[101]

Furthermore, the case of the Jews might be helpful in making sense of the much less abundant evidence for the other dominated national, ethnic and tribal groups of the ancient eastern Mediterranean and Near East. It might, for example, help us account for the completely unexpected survival of Canaanite

[100] *Jewish Inscriptions of Graeco-Roman Egypt*, ed. Horbury and Noy, nos. 29-105.

[101] Admittedly, this claim is reductionist but, I think, justified not only *per se*, but also as a corrective to the inflationary rhetoric of most discussions of the subject.

mythological lore in the *Phoenician History* of Philo of Byblos, a Greek writer of the second century C.E., or the durability of literary creativity in hieroglyphics in Egypt until the rise of Christianity.[102] In sum, it may help us to understand aspects of the native cultures of the Hellenistic and Roman Near East from the inside — cultures for the most part hidden from us beneath the shimmering, misleadingly uniform surface created by the conjunction of Greek urbanity and Roman might.

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[102] On Philo of Byblos, see H. W. Attridge and R. A. Oden, Jr, *Philo of Byblos: The Phoenician History* (*Catholic Biblical Quart.*, monograph ser., ix, Washington, D.C., 1981), esp. pp. 3-9; on hieroglyphics, see Lichtheim, *Ancient Egyptian Literature*, iii.

# Rational Rabbis

*Science and Talmudic Culture*

Menachem Fisch

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> Also He has set the mystery
> of the world in their heart so
> that no man can find out the
> work which God has made
> from the beginning to the
> end.
> —*Qohelet*, 3:11

The comparison I wish to explore between the philosophies that ground science and Torah-study is not a straightforward one. While science seeks to construct empirically adequate and logically consistent representations of external reality,[1] Torah-study, as practiced and preached by the Jewish sages of late antiquity, involved much more. Many of their midrashic writings—that is to say, texts and portions of texts devoted primarily to the interpretation and elaboration of Scripture—exhibit a keen concern for representational accuracy, analogous to science. In these texts the rabbis endeavor faithfully to represent and to interpret the given text of the Written Torah in much the same way as scientific theories endeavor faithfully to represent and to interpret the similarly given phenomena that they study. The well-known and widely exploited analogy, favored by many seventeenth- and eighteenth-century apologists, between the study of God's Book of Words and His Book of Works,[2] presupposes this type of affinity between the two enterprises. But not all talmudic discourse reflects so readily this sort of interpretive or representational concern. Most conspicuously divergent in this respect is the vast and multifarious body of essentially nonmidrashic, *halakhic* writings, in which their authors' main objectives are clearly to expose, construct, and develop a comprehensive and consistent system of law—an undertaking seldom conceived of or presented by the rabbis, at least not in its details, as an interpretative effort at all. Here, the analogy to science, if it exists at all, is far less obvious and cannot be easily established by direct comparison.

Rather than simply compare scientific and talmudic discourse, I wish first to view them, each in its own terms—science in the making, Torah-study in its talmudic reconstruction—as prized manifestations of deeper and more general theories of rational human endeavor, as prem-

ising, in other words, general convictions regarding the nature of humanly attainable achievement. The talmudic texts hardly speak in one voice about anything, and the epistemological grounding of *talmud-Torah* is no exception. What I intend to show is that central to, and to an extent formative of, this second-order polyphony is a major and explicit talmudic voice that proves not only comparable, but surprisingly similar to the view of human accomplishment on which, I believe, science and similar undertakings are grounded. In order to describe their similarities, however, we shall have to discuss each of them separately, and, in an important sense, differently.

## The Problem

The second-order, philosophical appraisal of science is as old as science itself. The particular theory of the growth of scientific knowledge argued for in the following pages pertains to recent developments in this ongoing philosophical debate. It is not, therefore, an attempt to articulate how scientists of the past had in fact accounted for the nature of their undertakings. It is not an interpretation of the way science was conceived of by its practitioners. Rather, it is a latter-day philosopher's view of what science and similar undertakings can, in principle, be said to accomplish.

Science is regarded by many as a paradigm of rational and progressive endeavor. Indeed, it is further claimed, science prospers and progresses precisely because it is conducted so rationally. With the exception of purely accidental discoveries that allegedly crop up from time to time—Pasteur's discovery is frequently cited as a prime example—the success and prosperity of science is widely attributed to the no-nonsense rational manner in which scientists are believed to go about their business. But what is exactly meant by "the no-nonsense rational manner" in which scientists are said go about their business turns out to be notoriously unclear. Are we to attribute the rationality of science to the sort of goals scientists characteristically set themselves, or is it perhaps that scientific rationality has less to do with the goals so much as with the methods of attaining them that scientists typically seem to follow? Or is it their logic or their manner of reasoning, or perhaps their seemingly steadfast adherence to the bare facts, that should be deemed the crux of scientific rationality? Perhaps it is their willingness to theorize or, conversely, their willingness to refrain from theorizing too freely that makes the difference? Or, perhaps, in the last analysis, the very idea of seeking to articulate so general a standard in relation to an activity so generalized is misconceived? These questions, always at the core of attempts to understand science, became particularly pressing at the start of this century.[3]



The overthrow of Newtonian physics during the first two decades of the twentieth century generated a philosophical crisis of the first magnitude. Accounts of the growth and grounding of scientific knowledge that issued from enlightenment attitudes to science had to face up to the fact that their prime model of scientific rationality and progress had been discarded and replaced. The scientific worldview could no longer be simply described as the outcome of an accumulative process by which the great cathedral of knowledge is, as it were, gradually erected by joining one solid, well-confirmed brick to another. Yet almost every enlightenment depiction of science envisioned it in these or very similar terms. And all quite naturally took Newtonian physics as their prime example.

But the problem was more than that of losing one's pet example. The crisis was profoundly philosophical and went to the heart of these accounts. For one thing, philosophers at the turn of the century were required for the first time ever to account for a large body of knowledge which, on the one hand, was undoubtedly exemplary science yet at the same time was quite obviously untrue. In limited circumstances classical physics was, and still is, regarded approximately adequate. But classical physics can no longer be considered true in any but the most extremely pragmatist sense of the term.[4] In view of the relatively small velocities involved, the flightpaths of all of the National Aeronautics and Space Administration's (NASA's) space probes, for instance, are calculated on the basis of classical mechanics. This is done not because classical mechanics is *true* of such flightpaths, but because the margin of error it generates in these cases is considered negligible. In addition to having to come to terms with this new and seemingly oxymoronic category of disproved yet excellent scientific knowledge, philosophers were now also faced by major conceptual, epistemic, and ontological difficulties emanating from the new two theories that came in its stead. The physical sciences were undergoing a fundamental and all-embracing revolution that was shaking them to their very conceptual roots. Basic classical notions such as space, time, causality, and matter were being thoroughly modified to the point that the theories of relativity and quantum mechanics could not even be described as a developments of their Newtonian predecessor by any existing accumulative standard.

In contrast to the way earlier scientific upheavals were described in their time, this new revolution in physics could not be described as the simple replacement of a flawed theory by better grounded ones. Formerly, superseded theories, as prominent even as Ptolemaic astronomy,

Descartes' vortices, Newton's corpuscular theory of light, phlogiston theory, or Lamarckian evolution, had been Whiggishly dismissed as bad science—the unfortunate and allegedly avoidable consequences of methodological shortsightedness. But to describe Newtonian gravitation theory or classical electromagnetism in these terms was unthinkable. In one important respect classical physics was indispensable for the two new theories that replaced them. Although relativity theory and quantum mechanics could not be portrayed as developments of, or as logically entailing classical physics—since they clearly contradicted it—only in the context of a body of theory similar to classical physics could the problems be formulated to which the two new theories were presented as solutions. The motivation to innovate and rethink old beliefs depends on how pressing the problems that they give rise to are felt to be, which in turn depends on how compelling and fruitful they were thought to have been in the first place. In this respect classical physics was an outstanding scientific achievement even from the vantage point of the theories that eventually replaced it. However, to appreciate it as such, a totally new approach to the philosophy of science was called for, one that could account for the dynamics of such transformations.

Philosophers of science, who had so far concentrated on describing and extrapolating from what they took to be well-formed finished science, were caught quite unprepared for these developments. Einstein and his colleagues had rendered modern science an essentially historical entity whose progressive nature could no longer be accounted for in accumulative or derivative terms, or attested to simply by the example of illustrious past achievement. Science could no longer be explained and understood merely by analyzing its prized end products; it was swiftly being seen primarily as a process, as an essentially dynamic historical phenomenon.

More specifically, the rejection of classical physics in favor of relativity theory and quantum mechanics posed two new problems for the somewhat humbled philosophers of science at the start of this century: one concerning the rationality, and the other, the progressiveness of science. If scientists are unable to ever vouch for the truth of their conjectures, in what sense can their quest for truth be justified as a rational endeavor? And if they are unable ever to state whether one theory is more true than another, in what sense can scientific knowledge be said to grow or the quality of the picture science paints of the world improved in the course of their replacing old theories for new? In what sense can science be said to progress?

For a short while it was thought that the new developments in physics could be accommodated philosophically by the twentieth-century out-



growth of nineteenth-century instrumentalism known as 'logical positivism'.[5] The rise and inevitable fall of this short-lived philosophical program is an interesting story in itself, but of little consequence to our present concerns. For one thing the logical positivists had little if anything to offer regarding the two problems mentioned above. They concerned themselves exclusively with the scientific end product and utterly ignored the most pressing problem for philosophy of science: the problem of scientific change.

Logical positivists maintained that all knowledge claims must take one of two possible forms. They may either be claims to empirical knowledge that can be directly verified or falsified through experience or statements of purely formal character, like those of logic or mathematics. In their view, for a scientific knowledge claim to be considered meaningful it must be of the first sort. The second sort, comprising logic and mathematics, because it is entirely analytical[6] and, therefore, independent of the facts, renders no more than a series of tautologies (that is to say, analytical uninformative truths) that can never generate new scientific knowledge but at most assist in organizing the old. Science was thus identified with a subset of the class of meaningful cum verifiable propositions, namely, those that were actually verified by experience and logically structured by mathematical tautologies. Subsequently, all metaphysical musings, including statements about space, time, causality, and the like, were declared, to an extent self-refutingly, pure meaningless nonsense. Science progresses, on such a showing, either when new data are collected, or when old data are reorganized by means of new mathematical structures. Ideally speaking, the scientific lexicon, then, need not contain any terms other than those describing direct experience and those included in the vocabularies of formal logic and mathematics. Scientific theories, thus construed, are, in principle, purely descriptive devices incapable of explaining anything.

At first it had seemed that logical positivism had no trouble explaining the scientific revolution at the start of the century. When science, old and new, is appropriately stripped of all its superfluous 'metaphysical' accouterments, the shift from classical to modern physics, they argued, could be described satisfactorily as the expansion of the pool of empirical findings combined with its reorganization using mathematical structures quite different from those employed in classical physics. So described, the advent of relativity theory and quantum mechanics seemed not only not to challenge, but to actually illustrate their philosophy of science.

It was not long, however, before this form of positivism was severely criticized both for internal inadequacies and its incorrect interpretation of relativity and quantum theory. It will take us too far afield to take

issue with the second criticism here; Michael Friedman, for one, forcefully debunks the positivist mythology about the supposedly formal vacuity of relativity's space-time geometry in his *Foundations of Space-Time Theories*.[7] This is not merely a question of historical accuracy. If Einstein's revolution consisted of more than a formal redressing of verified empirical findings, classical physics would have to be deemed empirically refuted. And if that is the case, logical positivism can no longer rank it as bona fide science.

One basic condition of adequacy or viability for any account of science as a dynamic entity in flux, philosophical or other, is that it provide both retrospective criteria for the scientificality and quality of the superseded theories of yesterday and prospective criteria for scientific planning toward those of tomorrow. If science is exclusively identified with the theories of today, it is deemed either accumulative or static—which, in the present context, adds up to much the same thing. And if science can no longer be considered accumulative, the criterion for being 'scientific' cannot be truth or truth-likeness. This is why, following the refutation of Newtonian physics, the problem of meaningfully demarcating the scientific and the non- or pseudo-scientific became so central. By equating the scientific and the verifiable, logical positivism declared its failure to even appreciate the problem of the day. And by focusing on demarcation in terms of static and supposedly objective meaning and logical form, it proved it!

The most important of the directly philosophical criticisms of logical positivism was a criticism of the notion of verification itself. This criticism, though not new, was contained most forcefully at the time in the philosophy of science proposed by Karl Popper. The contention that empirical data could in any way inductively render certified knowledge was based on a simple logical fallacy, claimed Popper in an argument famously associated with his name. Contrary to the widely accepted, so-called hypothetico-deductive models of inductive support,[8] he argued, the fact that theory *T* logically entails the occurrence of an event *E*, coupled with the fact that *E* is in fact found to occur, does not, and can not teach us anything about the truth value of *T*. This is because although *E* may follow logically from *T*, *E*'s actual occurrence could have been due to any number of causes other than those suggested by *T*! Thus, for example, although Kepler's laws of planetary motion are entailed with certain reservations by Newton's laws of motion and theory of gravitation, the fact that they are found approximately to hold true cannot in the least be regarded as confirmation of Newton's theories, exactly because something very different than the inverse square law might be responsible for their occurrence. Kepler himself, for instance, attributed them to a parallel push, rather than to a perpendicular pull, exerted on the planets by the sun, while general relativity denies the existence of a gravitational force altogether, attributing all "gravitational" phenomena, including the elliptic trajectories of the planets, to irregularities in the space-time manifold itself caused by the presence of the masses in question. In other words, argued Popper, much to the chagrin of the logical positivists of his day, the very notion of empirical confirmation, let alone verification, of any general hypothesis is in principle worryingly unfounded.



The disturbing implication of this important observation was that, despite what generations of scientists believed science could have, and at times actually had, achieved, science, in principle, would never be able to claim with confidence that any of its theories were true or even highly probable. This being the case, the two problems mentioned previously are seemingly rendered all the more glaring. If science is not the continued accumulation of true or at least well-confirmed knowledge, in what sense can it be said to progress? And if the discovery of truth cannot, in principle, be regarded as the business of science, what then is the business of science? And how can it go about its business if it cannot verify, or at least confirm, the hypotheses it generates? We shall have a chance to examine Popper's answers to these questions shortly. For our present purpose, however, the context in which this should be done is that of science studies today, rather than that of the logical positivism of the 1930s and 1940s in response to which they were originally formulated.

## Heracliteans and Parmenideans

Owing to the enormous success of the Newtonian program during the eighteenth and nineteenth centuries, philosophers of science, as noted above, naturally took it as their task at the time to unearth the ontological and epistemological assumptions that inform classical physics and to elucidate the methods of research best suited to its further development. The subject matter of their studies was a fully developed body of what they took to be exemplar scientific knowledge. Their objective was philosophically to mine and analyze it for the sake of advancing lesser developed areas of scientific inquiry. It was an essentially descriptive enterprise directed nonetheless toward a normative goal, justified by the thought that it was supposedly founded upon a description of the best! The overthrow and eventual replacement of classical physics rendered this philosophical task to a great extent obsolete. All at once the pressing problem for philosophy became that of explaining scientific change. Philosophy of science

could no longer regard science, even exemplary science, as a static entity identified merely by the immanent logical and conceptual structure of its finest theories and arguments. Philosophers were called upon to treat science as never before: as a historical, dynamic, and ever-changing process of inquiry, characterized not by the structure of its paradigms so much as by the nature of its paradigm shifts. Undoubtedly, the painful failure of logical positivism, that had all but ignored the question of scientific change, contributed much to this important refocusing of philosophic awareness.

Post-positivist studies of science that began to flourish in the late 1950s witnessed the emergence of two different approaches to the question of scientific change, approaches that may be usefully classified as Heraclitean and Parmenidean. In its fully developed, latter-day form, the Heraclitean or relativist approach literally denies philosophy the role of explaining science. Science, they declare, like any other form of organized human activity, is a culturally generated, socially and politically determined group undertaking. The social, institutional, and communal aspects of science are, therefore, best treated by trained social scientists, its epistemological and methodological aspects by evolutionists, decision theorists, and cognitive psychologists. Such is the inevitable fate of philosophy, insinuated the members of the self-proclaimed "Strong Programme in the Sociology of Science": to undertake initially speculative and thoroughly philosophical inquiries and to surrender them as soon as possible to the empirical methods of science proper. Science is philosophy come-of-age, and philosophy of science, it was argued, had now come of age. Had that been all the relativists had to offer, philosophers of science could well have ignored their attack. Few would deny that science is to an extent a culturally, if not politically, determined communal activity and that a comprehensive understanding of science requires a close study of its communal, institutional, social, and political life. Philosophy of science, so the argument would have gone, never claimed exclusivity in the study of all aspects of science. At the same time, however, major issues concerning the products and practices of scientific life remain primarily philosophical: theory structure, standards of facticity, the role of mathematics in science, the logic of scientific prediction and explanation, criteria for the acceptance and rejection of scientific theories, let alone metaphysical meditations about major scientific concepts such as space, time, causality, life, or truth. But latter-day relativists insistently denied philosophers even this. Taking their cue from the works of Michael Polanyi and Thomas Kuhn, they challenged the very legitimacy of any such undertaking. It is in principle pointless, they argued, to discuss any standard of human endeavor, scientific or other, in a manner unrelated to the



specific cultural, social, and political context in which it is exercised. Criteria for rationality and progress, standards of reliable theorizing, competent test procedures, adequate patterns of explanation, guidelines for the acceptance and rejection of theories, even prerequisites for facticity are, according to this view, all social and political 'constructs', forever the mere contingencies of their particular place and time. It is, therefore, quite pointless to discuss them 'objectively', as philosophers supposedly do, independently of their particular contexts.

At the level of abstract doctrine philosophers responded with a measure of success. If all theoretical musing is so thoroughly context dependent, then, by the very same token, so is the doctrine of relativism itself. When stated in all generality, they urged, the Strong Programme is itself self-defeatingly reduced to a Heraclitean nonstarter by it own admission.[9] The real issue, however, has little to do with the second-order philosophical debate about the inner coherence of modern or postmodern relativism. The real challenge to traditional philosophy of science issues rather from the growing body of insightful first-order historical studies of science inspired by the Strong Programme. The philosophies of science proposed during the early seventeenth century by Francis Bacon and Rene Descartes were both radical, each calling upon science to begin de novo. But today, with regard to science, the days of philosophical radicalism are long past. For the past three hundred years or so, philosophers of science have directed their efforts, at least in the first instance, to the attainment of interpretative rather than constitutive goals, their task being primarily to make sense of science as they found it rather than, as Bacon and Descartes had suggested, to cast all existing science aside in order to establish it anew. In other words, as normative as it may view its undertaking, modern philosophy of science has as its object of research an existing, developing, essentially historical phenomenon. And even the staunchest absolutist can no longer ignore the convincing attempts by modern Heraclitean historians of science to contextualize almost every aspect of it. It is perhaps impossible to deter philosophers of science by arguing for relativism abstractly, but the type of history of science inspired by such arguments has certainly rendered their task exceedingly problematic.

While relativists see science adrift and unmoored, slapped this way or that by the ebb and flow of social, cultural, and political tides, Parmenideans or foundationalists seek to characterize science in ways that arguably transcend the contingencies of specific places and times. Scientists, they claim, typically adhere, if tacitly, to general and objective standards of progress and rational endeavor pertaining to some all-pervading, transcultural features of science that are manifestly immune to Heraclitean contextualizations. Until the turn of the century the truth or

truth-likeness of scientific knowledge was considered the perfect candidate. The claims of scientific theories were either true or untrue regardless of the social, cultural, or political circumstances of their production or acceptance. If rationality could be equated with, or in some way reduced to, a person's capacity to attain certified knowledge, and progress with its accumulation, science could be convincingly portrayed as possessing a solid Parmenidean uncontextualizable, or supracontextual hard core. Latter-day Parmenideans, however, have been denied this option. Scientists simply have no such capacity, if only for the conclusive argument commonly attributed to Popper to the effect that the truth of scientific hypotheses is in principle humanly unrecognizable. A person may *believe* or *assume* that a certain theory is true, but, as we now realize, there exist no objective criteria for ever proving him or her right. And mere belief, argues the relativist, is forever conditioned by context. But if truth or truth-likeness can no longer be considered an achievable scientific goal, what other aspect of science is capable of sustaining a Parmenidean account?

As noted above, with the exception of logical positivism, twentieth-century philosophy of science was compelled to shift the focal point of its analyses from the product to the process of science, from what characterizes exemplar theories to what characterizes exemplar theory-choice. Philosophies of science were supported and appraised less for the type of scientific theories they commended than for the procedures they prescribed for the adoption, modification, or rejection of hypotheses. Appalled by what was described as Kuhn and his followers' attribution of scientific change to "mob psychology" and of scientific progress to a "bandwagon effect," philosophers of a Parmenidean leaning naturally attempted to locate the permanent transcontextual touchstone of their philosophical accounts in the scientific method. The most influential latter-day attempt of this kind was proposed during the late 1960s by Popper's former student, Imre Lakatos.

"Philosophy of science without history of science is empty," declared Lakatos, paraphrasing Kant, and "history of science without philosophy of science is blind."[10] Philosophy of science, he argued, provides the historian of science with a rationale; history of science, on the other hand, serves, in turn, to adjudicate between competing philosophies. He envisaged history of science as seeking to provide a "rational reconstruction" of the scientific past generated by the particular philosophy of science endorsed by the historian. At present, he submitted, aspiring historians of science have four such philosophical systems at their disposal: inductivism, instrumentalism, falsificationism (i.e., Popper's methodology, to be discussed below) and Lakatos's own theory entitled "The Methodology



of Scientific Research Programmes", the details of which need not concern us here.[11] The four rival philosophies of science, he argued, entail rival "normative methodologies," each advocating different "sets of rules for the appraisal of ready, articulated theories." Historians, committed to different philosophies of science, will, therefore, subsequently carve up the historical record differently into two mutually exclusive groups of scientific episodes: those whose outcomes conform and those whose outcomes fail to conform to their preferred methodologies. Lakatos dubbed the two classes of historical episodes "internal" and "external" histories of science respectively. The idea is that while "internal history" represents scientific decisions that are well taken from the historian's point of view, and are, therefore, in no need of further explanation, the episodes comprising "external history," in deviating from the course that the historian believes science *should* have taken, require "external" explanation—namely, their arguable attribution to psychological, social, political, or religious causes. In Lakatos's opinion, internal history of science alone furnishes "a rational explanation of the growth of objective knowledge"—from the historian's particular philosophical point of view.[12]

Had Lakatos limited the lessons that he insisted could be drawn from this type of history to appraisals of scientific *progress*, his position may have been considered viable. Progress is, in principle, a category of retrospective evaluation and pertains primarily to the normative standards of its assessor. One may, of course, be interested in determining how past scientists assessed their own work, in which case their, rather than the historian's, preferred methodology should be made the standard of evaluation. On the other hand, it makes perfect sense to attempt to ponder the value of their decisions "objectively," as it were, from the point of view of one's own methodology. And there seems nothing fundamentally wrong in assuming that different "normative methodologies" may entail different accounts of the lasting value of particular scientific decisions. While Lagrange's analytical mechanics, for example, might be considered a substantial step forward from an instrumentalist's point of view,[13] it may, at the same time, seem quite inconsequential from an inductivist's perspective.

Lakatos's ambitious historicophilosophical project for science, however, aimed at more than providing tools for the assessment of scientific progress. "Internal history of science," he claimed, constitutes the *rational* part of science. Whenever a past scientist's decision to endorse or to reject a hypothesis is found to comply with the dictates of the historian's pet methodology when applied to the same data and background knowledge, it is considered by Lakatos to have been not only a step forward but to have been the rational thing to do. The four above-mentioned method-

ologies double for Lakatos as theories of scientific rationality, and the "internal histories" they generate, as "rational reconstructions of the history of science."[14]

In this, I submit, Lakatos went a gratuitous step too far. To equate the rationality of a scientist with the reconstructability by hindsight of his or her conclusions in the light of some latter-day methodology, unwarrantedly renders judgments of scientific rationality at once both wholly retrospective and dependent upon standards of procedure of which, in many cases, the scientist in question could not in principle have been aware. As a number of critics have pointed out,[15] in order to be ranked rational, a scientist who happened to have worked prior to the formulation of the historian's favored methodology is required by Lakatos to have been a canny *sleepwalker*—thoughtlessly arriving at what only hindsight will eventually judge to have been an appropriate decision—a view which seems to me to run counter to the very notion of rationality.[16] To act rationally, one would like to think, is first and foremost something a person is capable of *choosing* to do. Rationality should thus be construed as a *prospective*, rather than a merely retrospective, category of human endeavor, unrelated, in principle, to its successfulness or to the quality of its eventual results. It is also reasonable to insist that a necessary, though by no means sufficient, condition for any action to be considered rational is that it be performed consciously and intentionally. To rate thoughtless activity rational merely on the grounds of its meritorious outcomes would require us, absurdly in my opinion, to classify such praiseworthy feats as breathing in one's sleep, digesting one's food, or the beating of one's heart as bona fide rational activity.

But to insist that judgments of rationality are to turn on and pertain to the local and invariably context-dependent sensibilities, intentions, objectives, methodological guidelines, and background knowledge of the agent in question (rather than to those of the latter-day historian-philosopher) would seem to play straight back into the hands of total relativism. If neither the alleged truth or truth-likeness of scientific pronouncements nor the tacit method by which scientists allegedly operate can be viably considered supracontextual Parmenidean touchstones for theories of scientific rationality and progress, what can? How is it at all possible to elucidate the notions of rationality and progress with respect to science in a manner that avoids both the relativists' Strong Program and the type of blatant ahistorical hindsight preached by Lakatos and his followers? Put differently, to what extent is a general and consistent philosophical account of scientific accomplishment and scientific rationality possible which also does justice to the history of science as we now understand it? In what follows I shall argue that the writings of Karl Popper



contain the foundation for a philosophical framework for answering these questions satisfactorily.

## Science as Hypothesis

Although they acquire unprecedented centrality and are brought home with unprecedented force in Popper's writings, the arguments against induction, so widely associated with his name, were hardly original. Versions of these claims can be found long before 1934 in the writings of a broad variety of philosophers such as David Hume, William Whewell, Charles Sanders Peirce, and John Dewey, to mention but the most prominent. The novelty and crucial importance of Popper's philosophy of science lies far more in the solution he proposed than in the problem he raised. To appreciate this we need to look briefly at the philosophical discussion of modern skepticism beyond the pale of science proper.

Setting the tone for the discussion of skepticism to this day, Hume reasoned that wholesale, total doubt cannot be overcome to anyone's philosophical satisfaction. I call such skepticism wholesale because doubt is cast sweepingly and simultaneously on all we aspire to know at any given moment. If the skeptic's claims are admitted, and in Hume's opinion they are impossible to resist, the result is devastating, amounting to an epistemic meltdown[17] as it were, in which all epistemic holding on reality evaporates and to which any conceivable counterargument inevitably falls prey. However, submitted Hume, such wholesale, crippling reflexivity remains confined to the philosopher's study, and can have little effect beyond its door. Our psychological makeup is such that in everyday life wholesale skepticism is safely ignored. Outside their studies even the most skeptical of philosophers join the rest of humankind and generalize and project on the basis of past experience, assume that their memories are in general trustworthy, and rely without further ado on their senses, on their cognitive abilities, as well as on whole stocks of unquestioned belief. Michael Williams, in a recent book, appropriately dubs Hume's somewhat schizophrenic approach to wholesale skepticism 'biperspectivalism'.[18] He also shows quite convincingly that Hume's twofold contextualization is widely accepted by most parties to the latter-day debate.

Naturally, it has been the philosophical, study-bound part of Hume's twofold solution that has exercised most philosophers most keenly. Responses vary. There are those, such as Thomas Nagel, who agree with Hume that wholesale skepticism is in principle unanswerable.[19] Others attempt variably to show that the wholesale skeptic's challenge is provably

incoherent. Stanley Cavell, for example, submits that the skeptic can be shown not to be able to mean what he seems to mean.[20] Williams himself argues interestingly that it is possible to expose and, at a tolerable cost, reject some of the theoretical assumptions the wholesale skeptic can be shown to premise. The problem is that while these options—the acceptance, refutation, proof of incoherence, or development of theoretical alternatives to Humean wholesale skepticism—are hotly debated, Hume's observations regarding human behavior outside the philosopher's study are largely accepted. Without underestimating the philosophical importance of, and urgency in, attending to wholesale skepticism and without disputing the claim that much of what we think and do reduces to unreflective, almost knee-jerk habit, it is quite wrong, in my opinion, to suppose that the only philosophical problem we face from skeptical quarters is that of the wholesale variety.

Well beyond the confines of the Humean study lies an enormous range of reflective, middle-range human activity that can hardly qualify as habitual and that urgently requires a retail rather than a wholesale response to the uncertainty that surrounds it. And it is here, rather than in Hume's philosopher's armchair, that science looms largest. The skeptical challenge to our construction of science issuing from the groundlessness of all inductive reasoning has nothing in principle to do with such wholesale, study-bound skepticism as doubting one's memory, pondering the reality of the world, questioning the soundness of one's senses or cognitive abilities, or, to take Hillary Putnam's well-known example, seriously contemplating the possibility that we may really be mere brains in a vat. On the contrary, the more confident we are that such wholesale doubt is in some way unfounded or safely cordoned off, the more our memory, senses, and reasoning capacities are deemed reliable, so the fact that science can be shown to be incapable of ever warranting the truth of its theories is rendered all the more perplexing! Even if, indeed especially if, wholesale skepticism is met satisfactorily, the problem of accounting for the rationality and advancement of science becomes all the more worrysome. For what we are dealing with are not merely *doubts* about our ability to empirically prove scientific theories, but alleged *proof* of our inability in principle to do so. It is not as though we had good arguments for believing that science could divine the truth and were worrying whether our eyes and minds were fooling us into believing them. On the contrary, it is *because of* our utmost confidence in our eyes and minds that we are able to *argue to our satisfaction* that we lack the ability to vouch for the truth of any scientific theory.

Heraclitean accounts of the rationality and advancement of science tend, one could say, to treat the problem as one of wholesale skepticism.



These accounts resemble elaborate applications of Humean biperspectivalism, in the course of which the skeptical side of the equation is met by accusations of incoherence. First they argue that it is meaningless to speak of the truth, rationality, or progress of science without reference to a specific contextual framework, and second, that within such frameworks the true, the rational, and the progressive are determined contextually and can therefore not be challenged from without. Scientists perform all kinds of discursive moves, some of them inductive, in accord with the culturally and socially determined rules of the particular language game they play. And these, they maintain, can only be challenged from within.

Parmenideans object to contextualizing the problem away. Hence, one can either accept or attempt to disprove the arguments against induction. I have not discussed the latter option in the present study and do not intend to do so. While there are still several analytical philosophers who are determined adequately to explicate the notion of inductive support—by grounding it on probability calculus for example—it is my clear contention that these attempts are futile and that the refutation of induction associated with Popper is sound and compelling.[21] Popper's own Parmenidean approach to science paves the way for a satisfactory account of rationality and progress while, at the same time, firmly denying all general claims of science to truth or truthlikeness. In recent years this type of approach has come to be known as critical rationalism. I myself prefer the label 'constructive skepticism' (as opposed to destructive skepticism) because the term 'rationalism' normally means something different.

Popper's theory of science develops from the following argument: although it is impossible to empirically determine the truth or truth-likeness of any general scientific hypothesis, by prudently criticizing, rather than seeking to verify our efforts, we are sometimes capable of ascertaining that we were wrong. If the occurrence of an event $E$ is logically entailed by a conjectured theory $T$, we have already seen that the fact that $E$ is found to obtain is logically inconsequential to our knowledge of the truth of $T$. However, if $E$ turns out convincingly *not* to be the case, logic permits us to conclude that in certain respects $T$ is false. (Owing to the argument schema known as *modus tollens*: if $P$ entails $Q$, and if it is the case that not-$Q$, it follows that it is the case that not-$P$.) Scientific hypotheses cannot be verified empirically, but they can, it seems, be empirically refuted. Even this, of course, is not as simple as it seems. All a failed prediction can prove is that there is something seriously amiss with at least one of our premises. And the premises presupposed in scientific predictions commonly comprise much more than a conjectured theory

and an immediate perception. The amount of auxiliary and background knowledge at stake can be enormous in these cases. Still, whenever an empirical prediction is unsuccessful, we do know for certain that something is amiss with our prior assumptions.

But how can such an *epistemologia negativa* inform a theory of epistemic *accomplishment*? In what sense can scientific knowledge be thought to grow, or the objectives of scientific inquiry be considered better attained, if all we can ever confidently claim to learn from experience is that we have been mistaken? To this the Popperian answers that although no amount of empirical evidence is capable of verifying or even confirming a general scientific hypothesis, the outcomes of prudent empirical tests enable us, in an important sense, to rate the worth of a hypothesis in comparison to its allegedly problematic predecessors and rivals. Even if we are unable ever meaningfully to assert that today's theories are better confirmed or steer closer to the truth than those they replaced, we are sometimes capable of ensuring that, to the best of our knowledge, they are in a meaningful sense *less problematic* than, and at least as equally comprehensive as, those of yesterday.[22] Although it is impossible to confirm Thomas Young and Augustine Fresnel's wave, or undulatory, theory of light for example (notwithstanding the fact that at the time it was widely regarded as fully verified), the fact that it had convincingly withstood empirical tests that earlier emission theories of light had flatly failed attests to its relative superiority. The decision, therefore, to replace particle optics, during the early nineteenth century, with Young and Fresnel's new theory represents for the Popperian both a substantial and rational step forward—an assessment that remains unimpaired by the fact that at the turn of the present century new problems were discovered that prompted physicists to reconsider their earlier dismissal of particle optics and to formulate a formerly unthinkable, though now equally accepted, combination of the two.

Viewed thus, the advancement of science can be meaningfully elucidated in terms of the dynamics of the problem seeking and problem solving of day-to-day scientific research. One is thus able to chart and evaluate scientific advance with sole reference to the "interrogative logic" of scientific trial and error, without having to relate it to an arguably objective metric of truth-likeness. It remains to be shown, however, if and how such an approach is indeed capable of viably meeting the relativist's challenge. To do so we need to take a closer look at Popper's proposals.

Popper himself is an outspoken realist.[23] He regards scientific theories as means to a specific, if in principle unattainable, end: the construction of true explanatory accounts of whatever is thought to require an explanation. Lacking the ability ever to prove or even confirm its conjectures,



science, he argues, typically proceeds by deliberate and contrived *troubleshooting*. Summarizing his methodology repeatedly by means of the following schema:

$$P_1 \rightarrow TT \rightarrow EE \rightarrow P_2$$

Popper observed that scientific inquiries are sparked as a rule not by the accumulation of data—as inductivists would have it—nor by speculating upon our ideas—as would idealists, but rather by the coming to light of a Problem ($P_1$), by noticing that, or better, by contriving to discover that, the theory at hand is problematic, seemingly at variance with what are thought to be relevant facts. As a result, *T*entative alternative *T*heories (*TT*) are put forward with a view (a) to adequately explaining the apparent failure of their predecessor, (b) to accounting equally well for all phenomena successfully accommodated by their predecessor, and (c) to succeeding where their predecessor had allegedly failed. By seeking both to explain *and* solve $P_1$, the candidate hypotheses are guaranteed to be potentially less problematic than their predecessor. Each of the *TT*s is then in turn subjected to as thorough tests as possible (Error *E*limination), until, one hopes, a better-suited successor is selected for the time being. In time, and as a result of further testing, the new hypothesis will presumably give rise to new problems ($P_2$), and the process will be repeated. Science thus progresses by repeated cycles, or rather spirals, of imaginative conjecture and keen refutation. From such a perspective, the distinctive mark of scientific rationality is not the power of science to secure and amass true or even well-confirmed knowledge. On the contrary, science is ideally rational exactly when it elects to treat each and every item of general knowledge as a tentative and potentially refutable conjecture, attempting persistently to lay bare its apparent deficiencies, and willing at all times to modify or replace even its most cherished convictions.

Science, in short, is perceived by the constructive skeptic as the ordered combination of a prudent and creative effort to expose the inadequacies that beset each of its theories, followed, when successful, by an equally creative effort to modify or replace them by better-suited alternatives. Scientific research is ideally conducted on the assumption that its desired goal—truth—is in principle unrecognizable and should therefore be regarded as no more than a regulative objective. It follows that science is most productive when consciously conducted in the light of a working metahypothesis that states that its current conclusions are in all probability mistaken and that all scientific knowledge is conjecture, including even the outcomes of successful refutations.

As noted previously, even when a given prediction is convincingly refuted by a laboratory finding, determining where to lay the blame will

always remain an open question. The theory being tested could be mistaken but, by the same token, so could the refuting data themselves. All facts are theory laden, Popper frequently reminds us, and the conjecture at fault could very well be the theory or theories invested in constructing the measuring devices or interpreting its readings. It could even be the case that both theory and data are correct and that their apparent incongruity owes to an unknown external factor. The existence of the formerly unknown planet Neptune, for instance, was conjectured in this manner in order to compensate for the apparent discrepancies between the observed and calculated trajectories of Uranus. All that an apparent refutation can attest to is that something is seriously amiss, that a particular body of scientific knowledge is flawed as it stands. A contradiction found to obtain between a theory and the data it is intended to explain is undoubtedly a clear indication that a scientific problem is afloat, but it can contribute little if anything toward the correct diagnosis or prognosis of the nature of the malady. The analysis of a problem and of the appropriate ways to treat it is, for the constructive skeptic, as conjectural as any other assessment of the situation. In most cases, of course, certain of the hypotheses involved will have formerly survived more thorough tests than others, and will be naturally regarded as perhaps less likely to be mistaken. In such cases it would be reasonable in the first instance to mistrust the newcomers, particularly the very theory being tested. But that again is pure conjecture and is itself as liable to be refuted as any other. For the prudent Popperian no part of the scientific system of ideas under consideration is taken for granted, no part of it is guaranteed in advance, none of it is held immune to criticism.

Outside the scientific system of ideas in question, much, of course, that the Humean wholesale skeptic systematically calls into question *is* taken for granted by the Popperian. Constructive skeptics do not cast wholesale doubt on everything that can in principle be doubted. They are not motivated by doubting their existence, their sanity, or the existence of a world out there—all of which they take for granted. What they doubt systematically is the quality of the job they are doing. And because their skepticism is so limited as to exclude the possibility that they are hallucinating or being persistently misled by malicious demons, their wary and quizzical attitude to their own suggestions is all the more keen. Most importantly, whatever is spared systematic doubt does not encroach upon their specific scientific projects. It follows that according to this approach, all talk of Lakatosian "hard cores" and Kuhnian paradigms should be dispensed with.[24] Even in the case of a striking refutation, all science can claim to know remains, for the Popperian, blatantly conjectural.

In this manner, unlike all forms of traditional skepticism, the deep



mistrust that is thus premised with regard to all general scientific knowledge-claims is not destructive or dismissive of the scientific enterprise itself. On the contrary, by flatly rejecting the traditional equation of science with truth, the constructive skeptic is able to equate scientific rationality with systematic criticism, and to present a constructive and inspiring vision of scientific advance and accomplishment grounded upon no more than the logic of scientific trial and error.

But science cannot lay an exclusive claim on rationality any more than Popper's theory of the way science *should* be understood and pursued can lay an exclusive claim on how all scientists past and present have in fact perceived and performed their work. For Popper, the only viable, if regulative, aim of science is truth, and subsequently, the only real problems encountered en route are empirical refutations and logical inconsistencies. This is too narrow a basis for a general account of rationality and progress for at least three reasons. First, it is incapable of accounting for the work of scientists who, either unknowing of or in knowing disagreement with Popper's philosophy, have self-consciously directed their efforts to the disclosure and solution of very different problems than those Popper is willing to recognize as scientific. There are any number of examples of scientists who wittingly constructed, questioned, and modified their theories to the attainment of such 'non-Popperian' goals as simplicity, conciseness, mere effective predictive power, or sheer elegance. And in order to avoid the type of criticism previously leveled against Lakatos, any viable theory of rationality has to be sufficiently general, regardless of our own preferences, to enable an assessment of the efforts of such non- or anti-Popperian researchers in relation to the goals they set themselves.

Second, if the discussion of rationality is rendered subordinate to one's metaphysical or metascientific convictions—as in Popper's case it is made subservient to his realism—how are we to discuss and decide *them* rationally? The notion of rational activity in general, it seems to me, is basic and should be discussed as far as possible prior to and independently of metaphysics or ethics, unless we agree a priori to treat our metaphysical or ethical commitments as mere fancy or as unaccountable acts of faith. Popper himself comes uncomfortably close to this in his candid admissions of the irrefutable nature of his scientific realism.[25]

Third, following from the last point and most importantly to the concerns of the present study is the need to consider the wide variety of decidedly nonscientific realms of discourse and activity. Even if one insists on regarding all non-Popperian science as not only ill conceived but irrational as such, it would still be preposterous to demand that *all* potentially rational and advancing endeavors meet strict Popperian specifica-

tions. Only a fraction of our enterprising activity is undertaken with a view to devising feasible representations of external reality. If my car breaks down, or if my German turns out not to be good enough to ask for directions in Berlin, we are dealing with malfunctions that have little to do with representation, empirical refutation, or logical inconsistency. My car and my meager German are not intended to represent anything. Since they are not propositional by nature, they cannot be said to be true or false, and hence cannot ever be considered refuted or contradicted to begin with. On the other hand, they can very well be said to harbor problems. They may be found deficient or lacking respective of their intended functions, and as such could well be considered capable of improvement, upgrading, or rectification. In such cases the way Popperians conceive of scientific problems seems inadequately narrow. A general theory of rationality, capable of accommodating all manner of conscious human activity, requires us, therefore, to go a significant step beyond Popper. In order for his approach to apply beyond the confinements of his particular understanding of the empirical sciences, the very notions of problem and solution need to be generalized far more than he ever attempted.

## Problems and Progress

A general appreciation of problems and problem solving, capable of accommodating the entire range of malfunctions, defects, inadequacies, and imperfections sought and negotiated by enterprising humans, may be obtained by turning from the limited realm of scientific theories to consider, in as general a manner as possible, any structure, theoretical, institutional, or material, consciously designed or adopted by human agents as means to specific ends. Let us term such devices *goal-directed systems*.[26] Scientific theories designed to accomplish any of the above-mentioned objectives, my car, and my faulty German are all goal-directed systems.[27]

In the broadest possible sense of the word, we may describe a problem, any problem, as the apparent failure of any such system to achieve its intended goals: a discrepancy, that is to say, between what a particular goal-directed system accomplishes, or is capable of accomplishing, and what it is meant, desired, or expected to accomplish. The teleological aspect of the matter is unavoidable simply because I fail to conceive of anything we would be prepared to view as a problem other than in relation to (the frustration of) some desired goal.

A problem is thus construed as a real feature of a goal-directed system, rather than as an epistemological category, a fact of the matter, rather than a cognitive state of perplexity or a part of speech.[28] A system may be problematic without anyone having been aware of the fact. Problems can therefore be discovered, guessed at, misconceived, or overlooked like any other property of a given system. Bertrand Russell, it seems reasonable to claim, discovered (rather than created) the inconsistency that had plagued set theory long before he formulated the famous paradox associated with his name. Defects and malfunctions do not spring into existence by being noticed, but rather need first to exist *in order* to be noticed! What I am arguing for, in other words, is for a realist position if only with regard to the goal-directed systems with which we elect to operate and their ability to perform their intended functions. Even the staunchest antirealist must allow his or her antirealist theory itself a measure of ontological autonomy if he or she wishes to present it as susceptible to critical appraisal and capable of improvement.



All this might sound excessively Platonic but in truth it is not. To maintain that the potential pros and cons of a given system—intellectual or other—exist independently of human awareness is by no means to grant the systems themselves or any of their features the status of timeless immutable Platonic forms. The game of chess, set theory, or common algebra need not be regarded as timeless entities any more than my car or my German. One may easily consider each of them as a human construct, created ex nihilo at a particular moment in the course of human history for one reason or another. However, *once created* their features, dispositions, and potential virtues and defects spring into existence independently of them being known at the time, to the effect that some of them may not be noticed until later, while others may very well never come to light at all.

What, we may now ask, gives rise to problems, and subsequently what is it to resolve a problem?

A goal-directed system may be born problematic, incapable of fully fulfilling its promise from the very start. Alternatively, an initially unproblematic system may be rendered problematic in time as a result of either a deterioration in its performance, a revision of the goals it was meant to achieve, or a change of external circumstances (or, of course, any combination of the three). But since we shall be concerned throughout this book primarily with systems of knowledge (representational and interpretational schemes of propositions, systems of law, etc.) that cannot be said to deteriorate of their own accord (like the aging of an appliance or an organism), I shall pursue that type of problem genesis no further.

Problems of the latter kind arise when the circumstances of a system change. And, again, one may differentiate between two types of situation. In either case the circumstantial or environmental changes requiring a

revision of the system's goals will be due to external factors. However, the changes themselves may be introduced intentionally or unintentionally. A social institution, fully capable of doing its job, may be rendered problematic in the event of unforeseen demographic or political changes. Similarly, a formerly successful scientific theory may be rendered problematic by the coming to light of unpredicted new data within its initially intended domain of application. However, systems may be rendered problematic when applied deliberately outside their formerly envisioned domains, as when appliances are intentionally applied to tasks they were not initially designed to perform or when scientific theories are deliberately applied to phenomena of a kind different from those they were originally meant to accommodate. Such a distinction has no bearing on the analysis of problems or problem solving as such. However, since I shall be arguing for a theory of rational action as action in the face of problems, cases of the latter kind, where action seems to be deliberately taken with a view to raise rather than to resolve problems, will demand special attention.

If, as proposed, problems are taken as discrepancies between whatever a particular goal-directed system is capable of achieving and what it is meant or supposed to achieve, a problem will be said to have been (fully or partially) *resolved* exactly if the discrepancy is (fully or partially) obliterated. Not every resolution of a problem, however, may be regarded as a *solution* of it. Problems, in the sense proposed, may be resolved by either improving the system's performance or by appropriately modifying its goals. But a problem will be said to have been *solved* only when resolved in the former sense, when by suitable modification the system in question is rendered better capable of achieving its objectives. Subsequently, a problem may be said to have been partly solved if, by modifying the system, the discrepancy between its achievements and goals is to an extent diminished. When, on the other hand, the discrepancy is lessened or made to vanish by an ad hoc reformulation of the system's goals, the problem may be said to have been (fully or partly) *dissolved* or *mitigated*, but by no means solved. A scientific theory found incapable of accommodating the full range of phenomena to which it was originally meant to apply may be rendered less problematic or even unproblematic by an appropriate restriction of its domain of application. But we would not consider this a solution of the problem of accounting for the kinds of phenomena excluded by such a move. When, for example, the representation of the sun, planets, and moons by mass-points was replaced in Newtonian astrophysics by solid spheres that approximated their true dimensions, certain of the problems that beset the original theory were solved. But when, following the advent of relativity theory, classical mechanics was



restricted to inertial systems moving relative to each other at low velocities, it was rendered unproblematic without solving any of the problems it was known to harbor. When standards are lowered, systems are rendered less problematic, but their initial standards are thereby not rendered more readily attainable. A medication may be rendered less problematic by restricting its prescription to those populations in which it was proved effective, but in doing so the goal of effectively combating the malady for which it was originally designed is on no count better achieved.

At times, problems are found to have been but apparent, as when in the face of danger, an organism (if one is willing to consider an organism a goal-directed system) discovers that it is capable of running faster or jumping higher than it was accustomed to. In the case of scientific theories Thomas Kuhn has termed this type of pseudo problem solving "normal science." Here again, one cannot say that a real problem was *solved*, but only that an apparent problem was found not to have been a problem in the first place. Discrepancies, as in Kuhnian "normal science," between what *are thought to be* a system's goals and capabilities, are at best indicative of problems relating to second-order systems of knowledge, designed not to attain the goals of the system in question, but to describe or to understand it. (This reinforces my insistence on the need to differentiate clearly between problems and their proposed representations, namely, questions.)

We are now in a position to define progress. A goal-directed system, I suggest, will be said to have *progressed* or to have been *ameliorated* from state *A* to state *B* exactly if problems it harbored in *A* are wholly or partly solved in *B*. Conversely, a system will be said to have *deteriorated* or *regressed* in moving from state *A* to state *B* exactly if it is more problematic in *B* than it was in *A*. Notice that in order to progress from *A* to *B* it is not enough for a system merely to be less problematic in *B* than in *A* since we require that progress involve the solution not merely the resolution of problems. The solutions to problems and by implication the measure of progress achieved as a result are thus regarded, like the problems themselves, as objective features of goal-directed systems. A problem is a property of a *static* system frozen in time as it were—the discrepancy, at a given moment, between what it can and what it is meant to achieve. A solution to a problem is a particular *change* in a system as a result of which its original goals are rendered more readily attainable. Problems are contextualized with reference to specific goal-directed systems fixed in time; solutions, and hence progress, are contextualized to specific systems that are modified in time with reference to fixed goals. And all three, of course, may go unnoticed or be mistakenly construed.

Matters are complicated, of course, when progress with respect to one

set of objectives necessarily entails regress with respect to another. Modifications of a system designed to solve one set of problems may at the same time inevitably give rise to others. For example, certain mutations, while increasing an organism's gene distribution, could be found to render it more vulnerable to predators. In biology—if again one is at all willing to regard organisms as goal-directed systems—the problem seldom arises since evolutionary amelioration is normally evaluated with reference to a single goal, namely, gene distribution. But systems may be, and usually are, designed simultaneously to achieve a variety of goals with respect to which modifications may very well be at cross-purposes. Problems of this kind arise all the time. In some cases they are resolved by appeal to a hierarchy of goals determined in advance as part of a higher-level system. Scientific theories, for example, are supposed, among other things, to be both simple and comprehensive, but simplicity is usually sacrificed readily for the sake of comprehensiveness. However, more often than not such dilemmas do not resolve themselves so readily, as, for example, when meeting a deadline, lowering the cost, and guaranteeing the adequate performance of a product are at cross-purposes. What seems to be called for in such cases are quantitative rather than qualitative criteria of progress—that is, ways of somehow weighing the progress achieved with reference to one set of objectives against the necessary regress it involves with reference to others. But it is difficult to see a way of going about such a project in a general manner. Such a weighing of the pros and cons of a move is conducted as a matter of course with reference to considerations external to the system in question, usually with reference to the goals of another, perhaps more fundamental system.

Such an account of problems and problem solving with regard to goal-directed systems in general thus allows us to retain a Popperian rendition of progress without having to limit ourselves to Popper's particular view of the aim of science and the nature of scientific problems. It also enables us to speak equally generally of rationality, as we shall see shortly. But before moving on to rationality, I would like to stress the following two points. First, although such a construal enables one to speak of problems, of problem seeking and solving, and to appraise progress in an objective and general fashion, they have not been decontextualized. Problems, solutions, and the measure of progress thereby achieved remain, by definition, wholly related to specific, context-dependent, goal-directed systems. They may be analyzed and evaluated with reference to the way the system in question was conceived by its initial developers or users, free of the type of anachronism built into Lakatos's approach, for instance, by considering the goals the developers originally set for it, and by assessing



*their* solutions to the problems *they* thought it harbored with reference to the prevailing attitudes, knowledge, and tools that *they* had had at their disposal. On the other hand, a person is free, if he or she so wishes, to assess another person's work on a given system from his or her own latter-day perspective, in which case the system in question, its apparent deficiencies, and its proposed modifications will be analyzed and evaluated with reference to the (equally context-dependent) attitudes, knowledge, and tools available to their latter-day assessor. And yet the standards and criteria that govern any such assessment remain univocally grounded in the objective, transcultural logic of problems and problem solving.

Second, such a theory of system amelioration renders all assessments of a system's progress value-neutral. Progress is said to have been achieved if and when a goal-directed system is found, as the result of modification, to be better suited to accomplish its intended objectives *whatever they may be*—and not, as commonly construed, when it is rendered better suited to accomplish only what are thought to be commendable, virtuous, or fitting objectives. This, of course, is what enables discussion of the measure of progress achieved independently of our own preferences. This feature of the proposed theory reinforces the former point, for had assessments of progress been made to turn chauvinistically on what *we* happen to value as meritorious objectives, the theory would be rendered justly vulnerable to relativistic objection. The grounding of all judgmental appraisals of progress upon the value-neutral, means-end logic of problem solving serves effectively to meet such criticism. But it is more than merely a tactical maneuver. The fact that a person working on a system apparently took notice of certain problems and deliberately undertook to solve them is a clear indication of the value he or she ascribed to the goals he or she intended it to achieve. In such cases of deliberate troubleshooting, our construal of progress fully retains (if tacitly) the value judgments of the designer or user of the system under consideration. What *have* been rendered value-neutral are the historian or philosopher's second-order erotetic assessments of the measure of progress thereby accomplished. These, we have seen, premise no more than the abstract logic of problem solving. Progress assessment does not, of course, *necessarily* premise prior intent. Problems are frequently solved accidentally and may well go unnoticed, as when a loose cog is jolted back into place by a bump on the road. Automatic cybernetic devices, to take another example, detect and right malfunctions as a matter of course wholly devoid of human intervention or awareness. Nonetheless, any retrospective depiction of such accomplishments will invariably involve *someone's* particular context-dependent perspective—be it that of the original designer-user, or

that of a latter-day narrator. And in all such cases the logic of assessment will remain the same.

Such a construal of the types of problems that goal-directed systems are liable to harbor, the ways in which they can be solved or dissolved, and the notion of progress it entails is so general that it is hard to imagine what form an effective relativist counterargument could take. Can one seriously envisage circumstances in which a person would *not* consider problematic the apparent failure of a system to achieve its intended goals? And if not, in what way could a concept of progress based exclusively on the successful solution of such problems ever be deemed a mere context-dependent product of historical circumstance? If the answers to these two questions remains negative, as I believe they have to, we may claim with a measure of confidence to have articulated a general Parmenidean explication of progress which cannot be said to do violence to history, and we may now turn to a similar construal of rationality.

## The Rationality of Goal-Directed Criticism

Any general discussion of rationality seems to be faced with the following problem, eloquently stated by John Kekes: "If rationality is given a rational defense it is question begging, and if it is not defended rationally, it is arbitrary."[29] However, in order to take issue with Kekes's dilemma, we must first make clear what rationality is a category *of*.

In the vast philosophical literature on rationality this crucial preliminary question is seldom raised. On the other hand, one finds endless talk of rational theories, concepts, beliefs, and standards, even discussions of the 'rational relationship' obtaining between theory and fact.[30] Now, if, as I believe, the notion of rationality is expected minimally to involve a conscious and deliberate use of one's brains, a theory, belief, or concept cannot in itself be deemed any more rational than a table or a chair. One may rationally or irrationally accept, deploy, invoke, or reject a concept or a theory, just as one may rationally or irrationally decide to employ an appliance or make use of an institution. But there seems to be no sense at all in rating theories, appliances, or institutions as immanently rational in themselves. Rationality, as I have been careful to use the term in previous sections, is *exclusively* an evaluative category of human conduct, not of its products, be they appliances, institutions, concepts, or theories. Hence, it becomes important to differentiate clearly between a statement or a group of statements, for instance, and the acceptance, deployment, application, or reliance upon statements in particular circumstances. The



latter, and only the latter, it seems to me, in being actions, are in principle susceptible to assessments of rationality.

But if theories themselves are not expected to be rational, neither should theories of rationality! The *acceptance* of a theory of rationality should be rational by its own standards, but to require this is no more question-begging, arbitrary, or viciously circular than to require a treatise on good English to be written in (what it claims is) good English, or that a paper on logic should be argued through logically. What, in the last analysis, compels one to accept one theory rather than another is not the fact that it complies consistently with its own standards (although this should perhaps be required as a necessary condition for acceptance), but that it seems arguably to provide better means than its rival to whatever end it was proposed. This, I suggest, is not only a criteria of adequacy for the adoption of theories (theories of rationality included), but makes for the very essence of rationality itself.

As an evaluative category of human endeavor, assessments of rationality must necessarily relate to goals. There is no sense whatsoever in judging a person's conduct without reference to the ends he or she might have had in mind. Even the most outlandish behavior may prove, in certain circumstances, to have been the most effective way to achieve a goal, just as the most seemingly levelheaded behavior may at times be totally misplaced. Hence, the domain of rationality is the now familiar realm of goal-directed systems and is primarily concerned with the selection, evaluation, application, and improvement of particular means to particular ends. This, however, is still not to say very much. At most we have selected the types of conduct to which judgments of rationality should apply. But how, and on the basis of what, are such judgments to be made?

Without taking too much for granted, it seems reasonable to require at the outset that the type of conduct we would be prepared to rate as rational should be performed consciously and deliberately and require an appeal to one's reasoning faculties. In this way we eliminate the obviously irrational, such as the unconscious, unintended, or purely accidental eventuation of desired goals.[31] It would be wrong, however, to conclude thereby that any conscious deliberation invoked in the pursuit of goals is rational as such. For one thing, as Polanyi has convincingly argued, the performance of any task necessarily requires that a measure of tacit knowledge remain tacit.

> Subsidiary awareness and focal awareness are mutually exclusive. If a pianist shifts his attention from the piece he is playing to the observation of what he is doing with his fingers while playing it, he gets confused and may have to stop. This happens generally if we switch our focal attention

to particulars of which we had previously been aware only in their subsidiary role.[32]

In other words, there are times, clearly, when such a conscious and deliberate shift of attention, however well intended, will necessarily result in the frustration of one's objectives. I suggest therefore to further limit the notion of rationality to situations in which the pursuit of a goal actually *requires* a conscious appeal to reason. Typically, these will be cases in which either more than one seemingly satisfactory line of pursuit is available or when the one selected proves insufficient. In the former case the agent will be required to assess, compare, and subsequently choose between alternative lines of approach, in the latter, to deal with an evidently problematic one. In both cases the pursuit of a goal requires one to use one's brains. It goes, I think, without saying that in the former case to act rationally is primarily to undertake to select the least problematic means available, and in the latter, in the absence of alternatives, to undertake to determine, assess, and solve the problem. The domain of rationality is hence further narrowed to that of *problematic* goal-directed systems.

*To act rationally, I propose, is to act upon problematic goal-directed systems by applying consciously and deliberately one's brains to the exposure and/or to the solution of the problems they harbor.*[33]

To reiterate, I suggested that we view problems as discrepancies between the intended and actual achievements of goal-directed systems and view solutions to problems as changes introduced into systems whereby they are rendered less problematic. Ideally, then, a rational agent aspiring to accomplish an objective *G* by means of a system *S* will strive prudently (a) to expose whatever problems exist in *S* with respect to *G*, (b) to understand and if possible to explain *S*'s failure to fully eventuate *G*, and (c) to introduce such changes in *S* as to render *G* more readily attainable. To act rationally, in other words, is *to contrive deliberately to effect progress.*

As noted above, problems may be solved, and progress achieved unintentionally—as, for example, by automatic mechanical or organic feedback devices, so that not every successful step forward is a sufficient indication of rationality. Moreover, success cannot even be regarded as a necessary indication of the workings of a rational agent. First of all, problems may turn out to be insoluble. The fact that attempts to rectify a system eventually prove futile is not to say that they were therefore irrational or even ill conceived to begin with. Indeed, the mere fact that we now know that they were futile is itself a step forward.



More importantly, a theory of rationality must allow for mistakes. To be rational cannot mean being infallible. The history of science is, in a sense, the history of the most splendid mistakes, yet it is also the history of perhaps the most rational of human undertakings. Rational agents should be allowed not only to fail but to err. I insist on this not merely in order that the theory of rationality here proposed take in as much of the history of science as possible[34] but on the grounds of the philosophical observation that we hardly ever know anything for sure. And if rational action is to be categorized as action taken on the assumption that the goal-directed systems we employ might be flawed, it would be absurd to insist that a rational reformer should even think of himself as flawless, let alone be required to be so. Second, and again contrary to Lakatos, we expect judgments of rationality to be essentially *prospective*. The actual solution of problems, and hence progress, can only be assessed by hindsight. Only time and further testing can assure us that a problem has, to the best of our knowledge, indeed been solved and progress in fact achieved. But we should be able to ascertain the rationality of a move before its completion and regardless of its outcome. To act rationally, we would like to think, is something an agent can decide to do rather than something we can be wise of only after the event. Hence, judgments of rationality should depend on what goes into them, rather than on what comes out. If not, if judgments of rationality are to depend on what we can only know tomorrow, there seems to be no sense in requiring rational agents to be consciously aware of what they are doing.[35] Hence, one should be allowed to fail or err and still be regarded as having acted rationally.

But how liberal are we prepared to be? To what extent can one's criticisms be off the mark, one's understanding of a system wrong headed, and one's suggestions for reform misplaced, yet still be considered rational? Are merely the good intentions of a reformer enough to rate as rational whatever he or she decides to do? And if not, what further criteria may we apply without invoking hindsight?

Let us take a closer look at the ideal case. Ideally, a rational reformer will first seek critically to expose the shortcomings of the system he or she is working on. This will require studying the system thoroughly, not merely as a competent user, but for the sake of testing it as rigorously as possible. Now, the difference between a competent driver and a test-driver, for example, is that unlike the former, the latter is required to be well acquainted with the *theory* thought to govern the system. If not, he or she will be testing randomly. To test a system rationally, I propose, is prudently to investigate its performance *in circumstances in which, to the best of our knowledge, it is most likely to fail.*[36] The difference between an arbitrary and rationally contrived test of a system, be it a theory, utensil,

appliance, or institution, is that the latter is typically set up on the basis of an available second-order explanation of the past successes of the system and systems similar to it. If, as the result of such a test, the system is found problematic, a rational reformer will seek to put it right. And again, rather than aimlessly cast around for possible remedies by blind trial and error, he or she will contrive to *explain* the system's failure by seeking possible flaws in the initial theory that might have been overlooked by the designers of the system This is true of any problematic goal-directed system. When an appliance, a social institution, or a scientific theory is found in certain circumstances not to live up to expectations, the rational reformer will first ask why. Perhaps the theory governing the system was wrong to start with and should be replaced or modified, as was, for example, Torricelli's suggestion that in view of the puzzling fact that standard vacuum pumps failed to "pull" liquids higher than certain levels, the accepted explanation of how they worked (by a pull exerted on the liquid by the vacuum) should be replaced by another (i.e., the push of atmospheric pressure). Or he or she might propose that the theory is basically correct but that some of the boundary conditions had been overlooked or miscalculated, giving rise to problems in the system. In this manner, as we have seen, the existence of Uranus and Neptune was conjectured and confirmed. In both cases, the rational reformer will then be in a position to suggest and argue for such modifications of the system that might put it right.

The sign of rational reform is, in short, a learned and deliberate appeal to some form of second-order knowledge of the system in question. But again, how liberal are we prepared to be with regard to a reformer's second-order reasoning? Are we to accept explanations of the failure of a system that make reference to the intervention of demons, ghosts, or witches? How are we to draw the line between learned and rational guesses and mere superstition? Can such a line be drawn other than by mere convention?

I believe that it can. What should be demanded of rational reformers, I propose, is not that they limit their deliberations to strategies regarded as solid and acceptable by the community, but that their attitude toward them be as rational as their attitude toward the problematic system they are working on. Namely, that they should, in all honesty, regard whatever second-order explanations they appeal to, be they even demons and witches for that matter,[37] as potentially open to criticism and reform as the system they are attempting to improve.

For the sake of simplicity, consider again a nontheoretical goal-directed system $S$ such as a tool, scientific instrument, or social institution, designed to achieve a goal $G$. Seeking to test and subsequently to improve



$S$, a rational agent will need explicitly to make reference to two levels of theory. In the first instance he or she will devise tests of $S$ on the grounds of what may be referred to as the designer's theory $T_D$, a theory that is intended to explain why, when, and how $S$ is capable of eventuating $G$. $T_D$ is itself a goal-directed system whose goal, though, is not $G$, but rather *the explanation of the achievement of G by S*. Notice that if $S$ fails such a test and is found problematic (i.e., incapable of fully achieving the desired $G$), $T_D$ is also necessarily rendered problematic.[38] The rational reformer will hence be faced with two different yet connected problems: one practical and one theoretical, corresponding respectively to the discrepancies between the achievements and goals of $S$ and $T_D$, the solution of the latter being a prerequisite for the rational solution of the former. Having discovered a problem, the rational reformer will then propose ways of modifying $S$ so as to render it better capable of eventuating $G$. But to do so rationally, I have argued, requires the employment of an even higher-level "reformer's theory" $T_R$, a third goal-directed system, introduced with the intention of both replacing $T_D$ as an explanation of the eventuation of $G$ and of explaining its failure.

Rational action thus comprises ideally the exposure of problems in $S$ by explicit appeal to designer theory $T_D$ and an attempt to solve them on the grounds of a higher-level reformer theory $T_R$. Three different goal-directed systems are hence involved in the reformatory process: $S$, the primary target for reform, designed initially to achieve $G$; $T_D$, the designer's theory, designed initially to explain $S$'s achievement of $G$; and $T_R$, the reformer's theory, introduced in order to both replace $T_D$ and to explain its apparent deficiencies.

When $S$ is itself a theory rather than an appliance, the situation will be very much the same although $T_D$ will normally be presented as a part of $S$ and $T_R$ as part of the modified version of $S$, $S_M$. In this case, teasing the two levels of explanation apart would have seemed less natural perhaps than in the case of an appliance or institution.

Rational reform thus mediates, as it were, between two successive states of affairs. The first comprises a system $S$ thought effectively to achieve goal $G$ by virtue of theory $T_D$; the second comprises a modified version of $S$, $S_M$, thought effectively to achieve $G$ by virtue of $T_R$. The rational reformer's ultimate objective is, of course, to achieve progress on both levels, to be able to demonstrate that the problems found in $S$ and $T_D$ are at least partly solved in $S_M$ and $T_R$, respectively. The rational grounds for this expectation is that $T_R$ supposedly explains not only why $S_M$ should achieve $G$, but why $T_D$ failed to do so with regard to $S$ in the first place.[39]

To return to the initial problem of safeguarding rational reform from

the introduction of irrational strategies, the problem is now seen to narrow down to $T_R$, since both $S$ and $T_D$ are treated rationally in that they are both "troubleshot" and modified in the process. $T_R$, however, is not. $T_R$ will be either an available theory or one introduced for the sake of solving the problem. In either case it seems sufficient to require that, in order to be considered rational, the reformer regard $T_R$ as potentially refutable and modifiable as $S$ and $T_D$, even though he or she is not engaged in the actual testing or improving of $T_R$.

We have, then, something like a tripartite 'recursive' theory of rational action as intentional reformatory action ideally comprising the following:

1. A deliberately critical study of a particular goal-directed system with a view prudently to expose and explain it problems,
2. an undertaking to solve whatever problems come to light, and
3. a willingness to do so on the grounds of second-order theories that are themselves, considered in principle, subjectable to (1) and (2).

Since $T_R$ is itself not required to be subjected to tests in the process of reforming $S$, the above definition does not generate an infinite regress. It is not required of a rational agent that he or she first secure the second order theory before applying it but only that he or she hold it in principle open to criticism.[40]

So much for ideal reformers. Their efforts may prove futile—in which case $T_R$ would normally be called into question—without detracting from the rationality of their move. Similarly, they may err considerably yet still be regarded rational. There seems to be no contradiction in terms between being mistaken, even stupidly mistaken, and being rational in the above sense. Rationality is thus construed, as required, as a wholly prospective category of exclusively human action—free of any appeal to hindsight and necessarily involving second-order reasoning; the latter is, as far as we can tell, peculiar to humankind.

The linkage the proposed theory establishes between rationality and progress—the former construed as action taken with the intention of achieving the latter—guarantees that assessments of rationality do not privilege particular goals. Rationality is certainly an evaluative category, but it is not, and in my opinion neither should it be, an ethical one. The rationality of an action, as I see it, should not be sanctioned by the *type* of goal desired but only by the manner in which it is pursued. Rationality, I have argued, turns not on the value, worthwhileness, or moral standard we ascribe to an agent's objectives, but on the ways in which their eventuation is critically assessed and improved. To be rational should not necessarily imply being good. One could correctly be thought of as rationally



selecting the best ways to rob a bank or to perform a sexual assault. To act rationally wicked, I insist, is not a contradiction of terms. In such cases acting rationally is perhaps a measure of greater evil! Assessments of rationality are no more and no less than assessments of the extent to which an agent consciously strives to perfect the attainment of a given goal in the face of problems.[41]

Nonetheless, many might still insist that although assessments of rationality should not be subordinated to one's ethical judgments, there still exists a body of beliefs that rational agents should all be expected to hold, to the extent that any action allegedly taken in defiance of them be deemed irrational as such. Martin Hollis, for example, insists that it is necessary "to place an *a priori* constraint on what a rational man can believe about this world," that "there has to be [a] massive central core of human thinking *which has no history* [!] and [that] it has to be one which embodies the only kind of rational thinking there can be." To be able to talk of rationality, concludes Hollis, "[t]here has to be an epistemological unity of mankind."[42] Quentin Skinner has pointedly criticized this neo-Kantian "image of a rational bedrock," as he puts it, on the seemingly relativistic grounds that,

> even in the face of the clearest observational evidence, it will always be reckless to assert that there are any beliefs we are certain to form, any judgments we are bound to make, simply as a consequence of inspecting the allegedly brute facts. The beliefs we form, the judgments we make, will always be mediated by the concepts available to us for describing what we observed. And to employ a concept is always to appraise and classify our experience from a particular perspective and in a particular way.[43]

Contrary to Hollis, Skinner seeks to relativize "the idea of 'holding true' a given belief," deeming certain beliefs rational in certain cultures, even if they no longer strike us a "rationally acceptable."[44] Further down, however, he is forced to admit that "[w]e must be able to assume, in advance of our historical inquiries, that our ancestors shared at least some of our beliefs about the importance of consistency and coherence," among which he counts "the principle that, if one affirms the truth of a given proposition, then one cannot at the same time affirm the truth of the denial of the proposition," together with certain other assumptions about the inferential processes of using our existing beliefs to arrive at others.[45] As it turns out, Skinner's disagreement with Hollis is hence more a matter of degree than of principle. Reluctant to wholly relativize the notion of rationality, both writers seek to avert total relativism by salvaging a minimal "hard core" of arguably ahistorical, supracontextual beliefs allegedly shared by all human actors. Skinner insists that the hard core should only

include second-order beliefs—i.e., beliefs about appropriate belief formation. However, the theory of rational action developed in the present study renders such a move superfluous. It is possible, we have seen, to relativize *all* belief and still retain a normative, supracontextual modus operandi for the assessment of rationality grounded upon an articulation of the logic of troubleshooting of which the actors themselves need not be aware. For human agents to be considered to have acted rationally all that needs to be shown is that they were prompted to action as the result of a felt frustration of their objectives. On such a showing, the entire question of the 'objective', supracontextual soundness of their beliefs is wholly beside the point.

However, Skinner's concessions to Hollis, I would further insist, are not merely unnecessary[46] but to a large extent misconceived. For one thing, I seriously doubt that all thoughtful forming of propositions can arguably be said a priori to premise even the minimal set of logical presumptions enumerated by Skinner. In Hegelian dialectics and in any number of mystical texts, one frequently encounters knowing dismissals of even the most basic canons of logical discourse. And regardless of the historian's own discursive standards, it would be impertinent to dismiss them as the upshot of sheer irrational caprice. Some of these texts were undoubtedly worked upon, modified, and improved by their authors cool headedly and reflectively, in accord, at times, with discursive and argumentative rules and strictures decidedly different from our own. To analyze them as such, our theory allows us to read them as the outcomes of troubleshooting exercised from the admittedly exotic vantage point of the aims and discursive standards of their authors, which, of course, may be extremely difficult to reconstruct—a feat Skinner and certainly Hollis seem incapable of performing.

But the trouble I have with the notion of 'rational belief' is far more basic and, in an important respect, relevant to the concerns of the present study. I have insisted at the outset that for an action to be considered susceptible to judgments of rationality, it must be voluntary. There seems to me no sense at all in deeming involuntary mental or bodily functions as rational regardless of their value or worth. The question is whether the *act* of believing (as opposed to belief-content) can at all be considered voluntary. Can one intentionally *form* a belief as Skinner's and Hollis's texts seem at times to imply? We may, of course, treat our beliefs rationally. We may question them or willingly expose them to the criticism of our colleagues. We may also consciously desire to believe certain knowledge claims we find convincing. But, and this is the crucial point, we cannot, it seems to me, *decide* to believe or disbelieve an assertion any more than we can decide to fall in love. The very act of adding an assertion to or



removing one from the body of our held beliefs, I submit, is as involuntary as that of digesting our food. The process of digestion is a good example. We can affect and control it indirectly, to a large extent, by attending to our eating habits or conversely by ignoring our doctor's advice. In fact, we can intentionally improve or damage the process dramatically. Nonetheless it would be absurd to rank the digestive process itself a rational activity. The same, I believe, goes for belief formation. By testing propositions, by seeking out and paying attention to arguments for and against them, and by acting on them—all of which are bona fide rational activities—we are capable of partially determining what we will end up believing or disbelieving. Nonetheless, we do not, in my opinion, directly control the very act of belief or disbelief. We simply awake to it, again, like the act of falling in or out of love. We may rationally court, attempt to entice, charm, or, conversely, do our best to discourage a partner—all of which, again, are potentially rational actions. But whether or not we end up loving or ceasing to love the person in question is not something we can arguably claim to have *done*. It simply happens to us. One may rationally examine one's feelings, just as one should rationally examine one's beliefs from time to time. But loving, and more importantly, believing, I concede, cannot themselves be considered feats of rational endeavor.[47] If this is granted, the entire question of 'rational belief' is rendered a non-issue. Assuming, then, that beliefs are given and are not themselves susceptible to judgments of rationality, we can only speak of assessing the rationality of deliberate actions determined, prompted, constrained, or motivated by beliefs—which, of course, almost all human activity is! Such an endeavor, I submit, may be judged to have been rational or irrational solely on the basis of its being or not being the outcome of critical reflection. But neither the content of the beliefs it premises, nor the process by which they were initially formed should, in principle, enter our judgments.

To summarize, I have suggested, following Popper's lead, that we equate rationality with systematic criticism, with a profound awareness of the limits of knowledge, and that to act rationally on a humanly designed or humanly applied goal-directed system is first and foremost to prudently consider it as potentially imperfect regardless of past successes. It is imperative, therefore, that all who are capable, especially persons directly responsible for its design, maintenance, and further development, test it continuously and as thoroughly as possible in relation to its intended objectives and constantly pit it against alternative systems, being willing at all times to modify or replace it as the case requires. To a great extent, modern science is indeed a model of rational inquiry. Scientific knowledge is passed on from one generation of researchers to the next,

# PART 2

## THE JEWISH COVENANT OF LEARNING

I have so far described and argued for a view of knowledge and how it advances that is implicit in the way that scientists, and with them all self-doubting endeavoring persons, rationally act to achieve their goals. The same notion of rational action, I shall argue in upcoming chapters, is not only implicit in the modus operandi of the rabbis whose disputes and deliberations are reported in the talmudic texts, but can be shown to have been explicitly and self-consciously adhered to by many of the framers of these documents. To some of my readers this claim may seem at first surprising and to others even absurd. If the study of Torah is construed, as it frequently is, as rote treatment of a body of scriptural exegesis and especially halakhic rulings handed down to Moses at Sinai, then it indeed leaves little room for the type of self-doubting troubleshooting I have been describing. But although these texts are often regarded as formative of a culture uncritically bound by its traditions, I wish to show that they are framed to a significant extent as long and sustained arguments against blindly following tradition. My aim in what follows is to locate and retrieve this undogmatic, reflective, self-doubting voice of talmudic culture.

*Antitraditionalism* is the (lamentably inelegant) label I have reserved for the position for which this voice speaks. Antitraditionalists take the teachings of their forebears in utmost seriousness, but do so, contrary to their traditionalist adversaries, with a view not to following them indiscriminately, so much as to seriously putting them to the test. The antitraditionalist voice is, in other words, the voice of a rabbinic elite aspiring to teach future rabbinic elites to reason rationally about the content of their legacies in the same way open-minded and self-doubting agents were shown, in the previous section, to act rationally, when striving knowingly to improve upon the systems on which they work.

But to repeat a point mentioned earlier: the affinity between the theory of rationality developed in Part 1 and the rabbinic view of Torah-study I shall expose in upcoming chapters is *not* the result of applying the former to the latter. There is an all-important difference between what I have said about science in previous chapters and what I shall be saying about talmudic discourse in those that come. The former builds upon a construction of science that is advanced and developed by a contemporary school of philosophy to which I subscribe, while the latter is an attempt to retrieve the way in which an important group of late antique Jewish

:onstructed *their* world of learning. And although the two construc- urn out to be surprisingly similar, they truly represent the conclu- of two quite different and independent research efforts motivated, ' part, by two quite different and independent sets of questions. It s, therefore, that one may agree with one without necessarily hav- agree with the other.[1]

/ing said that, however, I cannot deny that my interest in this par- : voice of talmudic culture owes much to my own moral and philo- :al identifications. To paraphrase Daniel Boyarin (upon whose con- intellectual self-reflection this work is consciously modeled[2]), the 'ing pages are, in this respect, openly tendentious. They seek to /e, isolate, and amplify one voice in a talmudic polyphony, a po- ny that readily extends to the rabbis' second-order attempts at self- standing, in which the part of it that bears upon matters of epis- ogy is central.

l, I shall not ignore other talmudic voices, especially those diamet- ' opposed to antitraditionalism. Interestingly, it is especially here, : opponents they are constructed to combat, that the theory of ra- ity I have proposed and the antitraditionalism contained in the tal- : texts differ most greatly. While the former is forged today in de- : of the relativistic abandonment of standards frequently associated postmodernity,[3] the latter's natural opponent, then as today, is, by ast, a steadfast, reactionary traditionalism that preaches rigid and atic adherence to a set of inherited norms for no more reason than hey are inherited. In a sense, they can thus be said to combine to y a philosophically viable and potent middle ground between two ly dangerous extremities of uncritical discourse: at the one extreme, ype of unchecked, standardless free-for-all one frequently experi- in contemporary Western modes of thought, and, at the other, the f equally unchecked dogmatism that characterizes the way many dox Jews have come to construct their religious world views. Need- o say, uncritical tolerance is no more exclusively postmodern and ern than uncritical intolerance is a uniquely orthodox Jewish way inking. Suitably generalized, they mark the outer boundaries be- n which and in contrast to which constructive skeptics in general n their systems of thought. But this book is less about constructive icism as such than it is about the particular brand of constructive icism found in the talmudic literature. The fact that it suggestively iates with a position developed by latter-day thinkers for entirely dif- t reasons is interesting, though this in itself explains very little about abbis' mind-set. To appreciate their way of thinking, we are required t aside the comparative aspects of this study, to leave latter-day philo-





sophical deliberation behind, and to enter as far as possible their world of discourse.

The case I aspire to make about this world of discourse is admittedly tendentious. But it is not essentialist. This book does not pretend to be about the unique spirit, the one mind, the logic, or any supposedly characterizing feature of the Jewish texts of late antiquity. It is about the epistemological discourse and deliberation contained in and evidenced by these writings. In studying these deliberations, it emphasizes and amplifies one of several voices, a voice that is, in the humble opinion of its author, unique and historically intriguing. It is also a voice that seems to me to possess both a special relevance and an urgency for contemporary Jewish orthodoxy, but that, of course, is beside the point.

In at least one major tannaitic corpus, antitraditionalism, we shall see, is not merely presented as one viable option among many but is dramatically confronted with the opposing view and hailed victorious in the most explicit terms. Still, even that is not to say anything about talmudic culture as a whole. The rabbis did not speak in one voice about anything. But speak they did, and one of the voices they spoke in—the antitraditionalist—this book will argue is a voice that is central to any understanding of how the founder-fathers of Torah Judaism conceived of themselves and of their great intellectual undertaking.

But crucial as the antitraditionalist voice is to talmudic culture, it turns out also to be curiously toned down by the framers of the very texts in which one would have expected it to be the most audible. At one primordial foundational level of the rabbis' writings, it is a voice that is valorized and one that speaks loudly and openly, only to be rendered, seemingly for no apparent reason, almost inaudible at the more advanced level of their discursive practices. This point, dealt with in considerable detail in what follows, is one worthy of some elaboration even at this early stage.

The talmudic writings present themselves as comprising two chronologically ordered literatures, generated by two clearly distinguished groups of sages—tannaitic and amoraic. The tannaitic era is the era of the tannaitic sages, the *tannaim*, who flourished prior to the redaction of the Mishna, traditionally ascribed to the *tanna* R. Yehuda "the Patriarch" early in the third century C.E. The amoraic period is that of the amoraic sages, the *amoraim* who flourished during the post-mishnaic era until the generation of R. Ashi who is traditionally deemed responsible for the "signing" of the Bavli early in the sixth century C.E. Roughly speaking, there are four generations of *tannaim* and seven of *amoraim*. Each of the two eras produced a substantive literature of its own. But while the two bodies of texts, the tannaitic and amoraic, possess much in common, they

differ considerably in one important respect. Only the latter presents systematic reactions and responses to earlier, authoritative rabbinic material. The two great amoraic compilations, the Talmud of the Land of Israel, the Yerushalmi, and the Babylonian Talmud, the Bavli, are framed as systematic responses to the great tannaitic halakhic compilation, the Mishna. They are presented as commentaries on the Mishna, but make reference to much additional tannaitic material in the course of discussion. However, it is at the tannaitic level, where the question of the proper attitude toward the teachings of one's forebears hardly affects the redactory and narratory level of the text, that the antitraditionalist voice can be heard most audibly, while in amoraic treatments of tannaitic writings, where one would expect the antitraditionalist approach to be felt most conspicuously, it is present, but curiously and vexingly muted—especially in the Bavli. For this reason, we must first learn to listen for, and recognize, the voice of antitraditionalism before turning to the amoraic texts and attempting to witness it in action.

We shall approach the amoraic texts indirectly at first, working our way up in pseudodiachronic fashion from what they themselves set forth as their foundational, tannaitic, second-order grounding. I say pseudodiachronic because I do not intend for the terms *tannaitic texts, tannaitic view,* or *tannaitic level,* as I shall use them in what follows, to be taken as necessarily making historical claims. By *tannaitic* I shall be referring to that which is *presented by the rabbis as tannaitic* even when modern scholarship can prove that it is of amoraic origin. Many of the alleged quotations of tannaitic sources in later documents and a lot of the ascription of halakhic positions to tannaitic authorities, especially in the Bavli, were edited and modified to suit the objectives of their latter-day amoraic discussants and conveyors. My aim is not to set the historical or philological record straight so much as to enter the world of discourse intended and constructed by the latter-day framers of the documents we read. Hence, throughout this book, such terms such as *tannaitic text, the Jabne debate, the disputes between the Houses* and so on—even the names of particular sages—are intended, unless indicated otherwise, as stand-ins for the more cumbersome: "tannaitic text according to the framers of the Bavli's the literary conventions," "the Jabne debate as depicted by the talmudic corpus of Jabne stories," and so forth. The foundational tannaitic texts I shall be dealing with will be privileged not because I believe they were foundational, but because they are set forth by their later amoraic and savoraic redactors as such. These tannaitic texts comprise mostly metahalakhic and legendary material which will prepare the ground more fully for the close examination of the discursive amoraic texts in subsequent chapters. But beforehand, a brief introduction to the theological background and context of the rabbis' enterprise.



Time after time "the tablets of stone, and the Torah, and the commandments" (Exod. 24:12) are referred to in the Hebrew Scriptures as constituting a covenant.

> And the Lord said to Moshe, write thou these words: for after the tenor of these words I have made a covenant with thee and with Yisra'el. ( . . . ) And he wrote upon the tablets the words of the covenant, the ten Words.[4]

Unlike the Calvinist Covenant of Grace, talmudic culture constructs the Hebrew covenant primarily as a Covenant of Works,[5] a matter of righteousness related to action, of practical performance and reward. And for the rabbis *talmud-Torah*—Torah-study—was deemed the very highest of works, an obligation to the Almighty comparable to all other religious obligations put together. In being a prerequisite to all deeds, Torah-study, they state, outweighs all deeds.[6] In the canonical texts of Judaism, Torah-study undoubtedly came to form a class of its own among humankind's obligations and responsibilities, constituting a covenant in its own right—a Covenant of Learning.

It appears, however, that the rabbis themselves might have viewed this as not always having been the case and to have considered the unparalleled pre-eminence that had come to be ascribed to Torah-study as the outcome of historical development. The reception of the Torah at Sinai was undoubtedly a climactic point in the Exodus story. Still, the way it is related in Deuteronomy 1:6–7, and especially the manner in which this passage was rendered by the rabbis, suggests that in their view the reception and study of the Torah might have been originally regarded as but an intermediate step en route to a higher purpose:

> The Lord our God spoke to us in Horev, saying, You have dwelt long enough in this mountain: turn, and take your journey, and go to the mountain of the Emori, and to all the places near it, in the plain, in the hills, and in the lowland, and in the Negev, and by the sea side, to the land of the Kena'ani, and the Levanon, as far as the great river Perat.

Having just received the Torah at Sinai (Horev), the Children Israel are reprimanded: "You have dwelt enough in this mountain: turn, and take your journey" away from Sinai to the prime task at hand: the possession of the land. And the *Sifri*[7] pointedly interprets verse 7 as denoting more than a mere geographical description of the promised land. "and the Levanon," the *Sifri* elaborates, "He said unto them, when you enter the land

thou shalt appoint thyselves a monarch and build the Temple."[8] This particular midrashic reading would imply that the reception of the Torah was thus originally regarded as but a stage, albeit an important one, in the larger process geared to the establishment of a sovereign political entity in the Land of Israel.[9] In contrast to the *Sifri*'s rendition of the Bible's implied ordering of the nation's duties and responsibilities, Mishna, *Abot* 6:5 states explicitly: "Greater is Torah than both the Priesthood and than the Monarchy."[10]

The reasons for this significant re-ordering of religious priorities are debatable. It is tempting to explain it historically, as a simple and understandable response to the harsh political reality at the eve of the tannaitic period. Close to the destruction of the Second Temple, the prospects of political and religious independence for the Jews of Palestine had become extremely bleak. Under the prolonged Roman occupation the monarchy was swiftly losing its political standing and had long lost its original religious significance; and after Herod it was virtually abolished. Although we have little firsthand evidence of rabbinic attitude and opinion at the time, one may assume that few would have considered the idea of reestablishing Israel as a politically sovereign "kingdom of priests and a holy nation" (Exod. 19:6) in the conceivable future as less than pure fantasy. It is tempting, therefore, to interpret the rabbis' decision to extol Torah-study, to the (transitory?) devaluation of political independence and the Temple cult, as an essentially pragmatic move designed to set the people an achievable religious goal in view of the circumstances.

There is much in the talmudic literature to suggest, however, that this move might have been taken, or at least viewed so in later years, far less reluctantly than such an historical explanation would imply.[11] R. Yehuda *Ha-Nasi*, the Patriarch, the leading authority during the last generation of *tannaim* and traditionally named as the moving force behind the final compilation of the Mishna, is a case in point. R. Yehuda's patriarchy is justly regarded by historians as the golden age of Jewish life in Palestine during the mishnaic and talmudic periods. During his term in office the Jews of Palestine enjoyed an unprecedented period of prosperity and near independence. The bilateral relationship between the Jewish community and the Roman administration flourished at the time to the extent that the local courts were authorized by the Romans, for example, to administer capital punishment—a right seldom granted to the Provinces.[12] And to judge from their fantastic legendary accounts of R. Yehuda's close personal relationship with Emperor Antoninus Caracallus[13] (Marcus Aurelius, emperor from 211 to 217), the rabbis evidently thought so too. And yet their writings contain no suggestion that the legendary or real R. Yehuda ever considered taking advantage of the situation and requesting



the restoration of the Temple—a request that the mythical emperor of their legends might well have granted. On the contrary, not only is he nowhere reported as having sought to restore the Temple cult, but, according to an opinion cited in both *talmudim*, he is reputed to have actually recommended that the fast of the ninth of *Ab* be abolished.[14] It is possible, therefore, that the halakhic discussions and the legends recorded by the talmudic literature attest to the fact that at least some of the rabbis may have regarded, if even in retrospect, the shifting of the prime focus of religious performance from the Temple to the academy, from the altar to the synagogue, as a welcome development, as a step forward more than as a necessary evil.[15]

In all events, whether as a sorry result of the circumstances or as in part a matter of ideology, with the fall of Jerusalem rabbinic Judaism of late antiquity was in fact significantly transformed from a largely ritualistic religion dominated and regulated by the Temple rituals to a "community of learners" whose religious life was both structured and informed by the talmudic academy. The sage had come to fully replace both the monarch and the priest at the culmination point of the social pyramid, and the intellectual challenges and objectives of Torah-study and the meticulous rituals associated with the Temple as the focal point of religious performance.[16]

The high point of the talmudic revolution, if one may call it so, was undoubtedly the establishment of the Jabne center, the first great talmudic academy, by Rabban Yoḥanan b. Zakai and his disciples in 70 A.D. With the establishment of the great Babylonian academies during the third and fourth centuries A.D.,[17] talmudic Judaism was further rendered a community of learners for which even the Holy Land can be seen to have gradually surrendered its centrality.

In the course of these revolutionary developments, the texts comprising the talmudic canon were written, collated, anthologized, and edited. This massive intellectual undertaking, which stands as living proof of the rabbis' ruling that "*talmud torah* is superior to all," is the subject matter of the following chapters.

The fascinating story of the revolution itself, arguably set in motion by Ezra the Scribe[18] and culminating, as noted, in the great Babylonian academies of Nehardea, Sura, Pumbedita, and Meḥuza, lies beyond the modest scope of the present study and the limited expertise of its author. The interests of this study lie primarily in characterizing philosophically rather than historically the epistemological presuppositions that arguably inform the rabbis' self-image(s) of their learning as evidenced by their writings.

We shall focus attention in the first instance on the rabbis' own de-

scription, in the form of a series of tannaitic texts, of one crucial moment in the course of one crucial phase of the process. The crucial phase begins with the destruction of the Second Temple and the foundation of the new center of Jewish life and learning at Jabne. The establishment of Jabne marks the beginning of the tannaitic era that will eventually produce the Mishna, Tosefta, and the tannaitic *midrashei halakha*—the body of writing that will later be taken to serve as the inherited subject matter and point of departure for the two amoraic *talmudim*—the Bavli and Yerushalmi. From this point on, according to talmudic lore, hampered no longer by the Sadducees and Boethusians, who had virtually vanished after losing their Jerusalem Temple-centered power base, the rabbis set about in earnest to define and deliberate the order of the day among themselves.[19] This essentially in-house Jabne debate is said to have developed into a dramatic and dramatically resolved controversy that centered, as one might expect, on the very notion of *talmud-Torah*—its goals, sources, methods, and modes of resolution. This foundational dispute will be shown to constitute the literary-philosophical focal point of at least three important corpora of tannaitic material. Chapter 1 is an attempt to retrieve the initial theological and epistemological points of contention by examining two of these corpora in some detail, in particular the interrelated group of legendary accounts known as the Jabne stories.



mislead the obviously unwary. By the unwary I mean those who are most liable to take one for one's word, and by the obviously unwary, those who are almost certain to do so. In the case of the Bavli these would comprise two main readerships: trusting beginners and committed-in-advance traditionalists. Whatever its purpose, wherever the Bavli's doublespeak is indeed deliberate, those responsible had to realize that in so doing they were contributing extremely little to recruiting their less experienced readers to the antitraditionalist cause and doing even less to win over their more seasoned traditionalist adversaries. This is no way at all to do battle with the opposition. It might be a way to hide one's real intentions from one's opponents. But if the antitraditionalists among the framers of the Bavli were actively *campaigning* for their position, then one should assume that it would have been these two audiences that they would have sought most effectively to address. We may safely assume, therefore, that the Bavli's traditionalist rhetoric was not intended as a *polemic* device.[1]

Given the resoluteness with which the dispute between traditionalists and antitraditionalists is pursued in the tannaitic texts, it is curious that those responsible for the antitraditionalist voice of the Bavli would have thus given up the fight in advance. The reason for this could, in principle, be one of three. One possible explanation might be that the deliberate toning down and masking of the Bavli's antitraditionalist voice was due to traditionalist repression. On such a showing the Bavli's traditionalist language would be seen as a defense, a camouflage, a shield. Direct confrontation is avoided, perhaps because it is perceived as hopeless. There is little to support such an explanation. For one thing, there is more to the Bavli's antitraditionalist voice than its muffled presence in transgenerational negotiations. Had the composition of the Bavli been dominated by traditionalists to the extent of actually stifling the opposition, we would not expect it to include such corpora as the outspokenly antitraditionalist Jabne stories or the many disputes between the Houses with its firm amoraic resolution in favor of the antitraditionalist Hillelites. The Bavli also includes several legends of amoraic origin that seem as clearly and self-consciously as the Jabne stories to side with antitraditionalism. We shall have the chance to examine two of these stories in some detail below.

A second possible explanation of the Bavli's apparent reluctance to openly combat traditionalism in its first-order halakhic negotiations might be to view it as an expression of contempt, as the type of spurious, affected indifference that *is* a polemical move. Though somewhat more plausible than the first explanation—owing to the rabbis' tendency to ignore or snub those contenders who, like the Sadducees, are perceived not to belong within the boundaries of legitimate dispute—such an interpre-

tation, I suggest, should also be repudiated. First, it seems quite ridiculous for one to express indifference to a position by doing one's best to sound as if one has accepted it! More seriously, traditionalists as such are not considered heretics and are nowhere treated with the kind of contempt reserved for the Sadducees and their like. The Bavli, as I have argued above, seems to me to be far too dedicated to *teaching* Torah-study to simply ignore an entire school of thought. If its framers wrote self-consciously from an antitraditionalist perspective, it is hard to imagine why they would have decided not to address the opposition openly. Unless, of course, and this is the third possible explanation, there was no real opposition to speak of.

The idea that the great dispute, made so much of in the tannaitic literature, had been largely resolved, or perceived to have been largely resolved, by the time the Bavli had reached the final and decisive stages of its composition, strikes me as the most plausible option. The amoraic literature—by which I mean the literature composed by *amoraim* about *amoraim*—does not contain legends that speak of bitter conflict between the two schools of thought as do the Jabne stories or the Houses' disputes. The amoraic literature contains several dramatic, legendary passages that vividly announce and advertise a clear antitraditionalist point of view. But, as we shall see, these accounts hardly acknowledge the existence of a traditionalist opposition. They proudly present a philosophy, characteristically couched in story form, at times in very bold terms, but, unlike their tannaitic counterparts, they do not seem at all to be *fighting* for it. These legends appear to expose and elaborate, not to dispute. It is not surprising perhaps that there exists no amoraic version of an ongoing metahalakhic controversy between two well-defined "Houses" or schools of thought. There is no amoraic parallel to the tannaitic House of Shammai, and no amoraic counterpart to the archtraditionalist tanna R. Eliezer b. Hyrqanus. The texts contain, of course, the occasional traditionalist statement and, as we have seen with regard to the legend of the young Hillel and *b'nei Beteira*, evidence of editors and compilers of traditionalist leaning. But by and large, the amoraic portions of the Bavli that do address these questions openly strike one quite clearly as being the product of a culture in which the great controversy is perhaps still remembered, but in which it is no longer being fought. All of which fares well with the conclusion of the preceding section in which we noted that by the end of the day *Berakhot* 19b reads more like an emphatic, if whispered, explanation of what *in fact* is at stake in transgenerational negotiations than a hostile exposition of what *ought* to be at stake in such units of discourse.

But if the antitraditionalist framers of the Bavli can be said to have



plied their trade in a culture virtually free of traditionalist dissent, or at least to have conceived of it as such, then their apparent decision to hide their real views on *talmud Torah* behind a traditionalist facade remains all the more puzzling! To repeat, one inevitable consequence of such a decision is that the trusting beginner is almost certain to be kept in the dark. The type of doublespeak practiced by the Bavli all but ensures that inexperienced novices will be misled to think that they are indeed being introduced to, and partaking in, a traditionalist exercise. This is certainly an inevitable *outcome* of the Bavli's policy, but could it also have been its *objective*? Can the Bavli's double-talk be *explained* by its hoodwinking effect on an assumed readership of beginners?

## Problem Two: Discerning a Role for the Mishna

Before answering this question let us first consider another—one that has not yet been raised. Namely, what sort of impact might the Bavli's concealment of its antitraditionalism have on its assumed readership of *non*-beginners—that is to say, the Bavli's imagined seasoned reader who is assumed to somehow know in advance that its traditionalist rhetoric *is* indeed merely rhetoric. The answer, I suggest, depends on how this advanced reader is thought to perceive the aims of the facade. It should have no visible effect on seasoned students who perceive it as a device introduced by the *s'tam* for *the benefit of the novice* (for reasons to be described shortly). But for those who perceive the Bavli's rhetoric as also addressing them, the message they will inevitably receive is that although *talmud-Torah* is an essentially antitraditionalist undertaking, although senior members of the learning elite are supposed and expected to criticize all former authoritative documents, *one should never say so openly*—not merely for the benefit of the novices, but as a matter of principle! Those who are capable of hearing the Bavli's two voices, but who do not see them as addressing two separate readerships, will take the double-talk to convey a double standard, regardless of the intentions of its framers.

In keeping with the aims of the present study, the main question I wish to discuss is not that of the *possible* effects the Bavli's double-talk might have had on its *potential* readerships—at least not primarily—and it is certainly not that of the effects that it turned out *in fact* to have had on its *actual* readerships. Rather, I wish to ask what the antitraditionalist framers of the Bavli might have possibly thought to achieve by their employment of double-talk. As we have seen, beginners should be expected

to be mislead by the surface rhetoric almost as a matter of necessity. It is inconceivable that the framers of the Bavli would not have taken that into consideration. So the question boils down to their possible intentions with regard to their more sophisticated readers. Broadly speaking, the two options are these:

> (i) That the framers of the Bavli intended their seasoned readers to see through and past the hollow traditionalist idiom employed in their writings, to understand that its function is purely didactic, and to go on eventually to pursue their own halakhic enterprises in good, simple, and openly antitraditionalist fashion.

Or, conversely:

> (ii) That the framers of the Bavli intended their seasoned readers to realize that the subtle masking of their antitraditionalism was meant to serve as an example and model for all future studies. That they believed that maintaining the sort of affected, almost entirely formal traditionalism practiced throughout the Bavli is essential for the perpetuation and proliferation of talmudic culture for reasons that transcend pedagogy.

Let me say at the outset, that I do not consider myself qualified to decide the issue even to my own satisfaction. In what follows I shall try to elaborate somewhat on the two alternatives and shall try to show that the former, the more modest proposal of the two, perhaps explains more. Though I should admit that I have so far failed to convince many of my colleagues and friends that it is even a viable option. The latter, certainly the more intriguing of the two, seems to many of those I have talked to, to be the obvious and natural choice.[2] They, in turn, have so far failed to convince me, however. But I do agree that (ii) presents attractive possibilities. Let us start with (ii) and work back to (i).

What would a culture have to gain by jealously preserving a vacuous and almost wholly formal traditionalist idiom even among those of its members who have long realized that it *is* merely formal? What can a community of learners, who perceive progress and the growth of knowledge as products of creative troubleshooting, be said to achieve by refusing to talk openly about it? What is to be gained by scrupulously preserving all former authoritative documents while granting to subsequent generations limitless freedom to reinterpret them as they see fit? What is the point of adhering willingly to the most advanced, novel, latter-day



opinions, while doing one's utmost to harmonize them at almost all costs with those of yesterday?

One thing that can be achieved in this way is a form of canonization that is undogmatic and almost wholly unrestrictive. In his forthcoming *People of the Book: Canon, Meaning, and Authority*, Moshe Halbertal distinguishes between two types of canonical texts. On the one hand, there are texts that become "central for a profession or a culture." He calls them "central texts." Such texts "might affect directions and knowledge and shape the future of the field." They are the classics, the "Great Books" of a culture. They set standards, constitute paradigms, and serve as milestones for historians and educators. Central texts constitute the great steps forward, the pivotal events in the development of a field, landmarks with reference to which later progress is measured. Such are the works of Isaac Newton and James Clerk Maxwell for physics, William Shakespeare and George Bernard Shaw for literature, Johann Sebastian Bach and Gustav Mahler for music. But in text-centered communities and enterprises, such as talmudic or kabbalistic Judaism or certain systems of law, one also encounters a different kind of canonical work. Halbertal calls them "formative texts"—perhaps not the most successful choice of phrase because "central texts" may also be formative in a variety of ways. A "formative text," he writes, is a text such that progress in the field is made *via its interpretation*. "A text-centered culture that has formative texts proceeds in that mode; its achievements are interpretative."[3] Newton's *Principia* obviously figures prominently as a canonical work of Western science, but no one would claim that progress in physics is achieved by discovering new ways of reading Newton. If anything is formative of physics in this sense, it is the *phenomena* physicists investigate. This is true of any community of inquirers. The phenomena that function as the subject-matter of investigation, are, by definition, formative of the field, or the culture, in Halbertal's sense of "formative." In text-centered cultures, certain canonized texts will serve as the objects of constant reflection and interpretation. They constitute the "formative canon" of such cultures and are analogous to the persisting subject matters of scientific fields of inquiry.

There is no question that the fundamental distinction between the Written and the Oral Torah, as described above, fares well with Halbertal's analysis of the function of a formative canon within a text-centered culture. The all-inclusive canonization of the Written Torah, the bare, as-of-yet unread text of the Hebrew Scriptures, is axiomatic in talmudic culture. At the level of the bare "text-in-itself" so to speak, the twenty-four books of the Bible are sacred. They form an object of study that is itself untouchable, transcendental. As the rabbis put it, the Written Torah constitutes for talmudic Judaism a primordial Given imposed upon its inter-

preters "as a mountain pressed down upon their heads." As noted earlier, there exists no halakhic procedure by which to change a single letter of the sacred Text. But according to all but the most extreme traditionalists—so extreme, we now realize, as to be little more than mythical exaggerations—the Oral Torah is in fact an ongoing, open, and progressive project. In the realm of halakha, the less extreme traditionalist views the Oral Torah as an ever-growing, accumulating stock of authoritative rulings, while for the antitraditionalist, it is the frequently revised product of persistent troubleshooting.

Under the heading "The Concept of 'Torah' in 'Talmud Torah,' " Halbertal analyzes, among other things, the formative function (in his sense of "formative") that the Written Torah played for the talmudic Sages and that played by the Bavli and the Zohar for posttalmudic Judaism.[4] He does not apply these insights to the possible role that the tannaitic texts, especially the Mishna, might have been meant to play by and for the framers of the Bavli. Employing Halbertal's terminology we could restate the deliberation between (i) and (ii) by asking whether in their treatments of the tannaitic texts the framers of the Bavli sought to establish them as texts that were meant to be *central* or texts that were meant to be *formative* to talmudic culture. This is because a text that is central to a culture will be revised but seldom reinterpreted, while formative texts, while liable to be reinterpreted are expected always to be preserved.

One good reason for preferring the latter option—that the Bavli treats the tannaitic texts as a formative canon—is that the former, of itself, does not explain the Bavli's double-talk, while the latter, as we shall see immediately, does so nicely. For a text to be made central to a culture, in the sense in which Newton's *Principia* is central to physics, no aspect of it needs to be preserved and worked into the culture's current, day-by-day give and take. But when a text is considered formative for a realm of activity it will be preserved and constantly referred to by all involved. It is tempting, therefore, to explain the Bavli's seeming ambivalence toward the tannaitic literature by viewing it as part of a contrived effort on behalf of its framers to establish that literature as a formative canon. On such a showing what we have been calling the Bavli's traditionalist facade and traditionalist surface rhetoric would no longer be considered a facade or surface rhetoric at all but a genuine expression of traditionalism toward the bare, uninterpreted tannaitic text.

According to this a view, the aim of the Bavli was to preserve the tannaitic texts at all costs *in order for them to serve as the permanent objects of ongoing halakhic reflection and interpretation*. The framers of the Bavli will be viewed as partaking in the very enterprise they seek to establish: never contesting the tannaitic texts, only interpretations of them; constantly



seeking new, creative readings of them which are arguably less problematic. Thus construed, the Bavli's traditionalism is directed exclusively to the form of the tannaitic document, to its wording, to the text itself—never to its content. The Bavli's antitraditionalism, by contrast, asserts itself only in relation to *interpretations* of these texts—never questioning the texts themselves. In this manner, the Bavli's so-called halakhic double-talk is rendered wholly analogous to the culture's differentiation between the words of the Bible and their meaning, between the Written and the Oral Torah.

But we have so far been reasoning hypothetically. All we have said is that *had* the framers of the Bavli intended to make the tannaitic texts part of the culture's formative canon, *then* their apparent indecision with regard to the traditionalist/antitraditionalist dispute in their treatments of the tannaitic literature would be explained. But we have first to ask *why* they would have sought in the first place to expand the corpus of their formative texts in this fashion beyond the "Torah from Heaven."

One very good reason for them *not* to have done so is precisely that. Unlike the tannaitic literature, they held the Written Torah to be "from Heaven"—*min ha-shamaim*. By contrast, the tannaitic halakhic literature is, on all accounts—*especially from the point of view of the Bavli's antitraditionalists*!—viewed by the rabbis as the work of human authors. The rabbis' distinction between the word and meaning of the Bible is predicated and in a sense entailed by the unquestioned Divine origin of the former. There would seem to be no analogous theological motive for granting the tannaitic texts the same sort of status. If they are not the actual *words* of the Almighty, and no one claimed that they were, what is there to justify their transcendence in the eyes of their amoraic heirs? But then, they might have been granted formative status for a quite different reason.

One must not forget that Torah-study, as understood and pursued by the rabbis, was geared to and motivated by two closely related yet very different objectives: on the one hand, the essentially midrashic, interpretative task of scriptural exegesis, and the essentially halakhic, judicial task of establishing and developing the system of Jewish law, on the other. *Midrashei ha-halakha*, the largely exegetical, largely tannaitic literature devoted to educing the Torah's halakhic import, serves to a great extent to amalgamate the two great rabbinic undertakings. But it is impossible to combine them fully. No amount of creative exegetical work is capable of producing a systematic, comprehensive, consistent body of halakha, just as no amount of creative legislation is capable of producing a systematic, comprehensive, and consistent reading of Scripture.[5] The two undertakings are motivated by and develop in the course of constantly reacting to

two categorically different sorts of question. In terms of Halbertal's distinctions, the Written Torah may be said to provide rabbinic culture with a set of texts that is formative *only with regard to the interpretative, exegetical of the two projects*. For although it contains numerous halakhic and even metahalakhic passages, the Torah itself cannot be said to provide its learners with even the rudimentary elements of a systematic body of halakha. As much as one might want them to, the Hebrew Scriptures are incapable of functioning as formative texts for the task of halakhic system building. In other words, insofar as talmudic culture may be said to have been in need of a formative text for the sake of grounding its halakhic discourse, the Mishna would have been the perfect candidate.

## The Mishna as a Formative Code

Needless to say, many (some of my colleagues say all) legal systems take form, function, and develop with reference to constitutive, formative canons. In many legal systems, acts of legislation are considered acts of interpretation of the system's formative documents or at least as elaborations thereof.[6] Codified systems are, of course, the paradigmatic example. I doubt, however, that this is true of every known legal system. To my limited understanding, constitutional systems and systems founded on common law are not text centered in the same sense. They do not necessarily premise a text of which each act of legislation is considered an interpretation. But even if it were true that *as a matter of fact* all legal systems are known to premise such formative texts, as some of my colleagues insist,[7] that would still not be sufficient reason to assume that the framers of the Bavli thought so too. Since only few would be willing to claim that there is something inherent to legal systems as such to *necessitate* their grounding in formative texts, no amount of theorizing about such systems is capable of deciding whether or not the Mishna is treated by the Bavli as a text formative of the halakhic world of discourse it reconstructs. On this the Bavli will have to speak as it were for itself.

In order to answer this question in the affirmative, to claim that the antitraditionalist framers of the Bavli do *not* treat the Mishna as a central canonical text but as a formative one, one needs to show that the Mishna is *not* treated by the Bavli as an elaborate first shot at the ideal, full-blooded halakhic system, that it does *not* make the Mishna the object of intense troubleshooting, and does *not* treat the Mishna as a point of departure for attempted improvement. To maintain that the Mishna is upheld by the Bavli as a formative halakhic text requires one to show that it is not revised by the Bavli but made to serve as what students of the law call a Continental-like authoritative code—Continental-like in the sense of it being all-encompassing as are thought to be the great French and German civil codes; authoritative in the sense of it being final and fully obligating.[8] Most Western European systems—the United Kingdom being the most conspicuous exception—have adopted one of two great codes; legal codes that are formative exactly in the sense that acts of new legislation, judiciary and institutional, are considered acts of application—interpretative, deductive, or analogical—of the code's relevant general ruling. The important point for the present discussion is that, as a rule, where such systems obtain, the code itself is not troubleshot or amended by the official legislative bodies but is only expounded upon by a variety of interpretative and explicative devices. Such codes are formative of and for the legal system in Halbertal's sense of the word. Halakhic reasoning today premises such authoritative codifications. Maimonides's twelfth-century *Mishne Torah* and R. Yosef Karo's sixteenth-century *Shulḥan Arukh* function in current halakhic discourse very much as formative texts of this kind, although they were hard disputed in their time.[9] But there are good reasons to think that a major and constitutive voice of the Bavli treats the Mishna very differently.



Take for example the amoraic discussion of Mishna, *Berakhot* 6:3. The Mishna's general concern in this chapter is to define precisely which of the various benedictions is appropriate to the which kinds of foods. Before eating the fruit of the trees one says: "(Blessed art Thou, O Lord our God, King of the universe) Who creates the fruit of the tree," for wine, "( . . . ) Who creates the fruit of the vine," for vegetables ("fruits of the earth") one says: "( . . . ) Who creates the fruit of the ground," and so on. Mishna 6:3 states:

> Over anything whose growth is not from the earth, one says: "( . . . ) By Whose words all things exist." Over vinegar, fruit which falls unripe from the tree, and locusts, one says "( . . . ) By Whose words all things exist."

The *s'tam* begins by quoting another tannaitic source, a *beraita*, that enlarges upon the ruling of the Mishna:

> Our Rabbis have taught: Over anything whose growth is not from the earth, such as: the flesh of cattle, beasts, birds, and fish, one says "( . . . ) By Whose word all things exist." Over milk, eggs, and cheeses, one (also) says "( . . . ) By Whose word." Over bread which has become moldy,[10] and wine which has filmed over,[11] and cooked food which "has lost its form"

> (i.e., gone bad), one (also) says "( . . . ) By Whose word." Over salt, brine, truffles, and mushrooms, one (also) says "( . . . ) By Whose word."

From which follows, continues the *s'tam*, that mushrooms and truffles are considered not to grow from the earth. However, a second tannaitic source clearly seems to imply the opposite.

> But we are taught: He who vows not to eat the fruits of the earth is forbidden to eat [fruit or vegetables] but is allowed to eat mushrooms and truffles. However, if he declares: "All that grows from the earth is forbidden to me!" he is also prohibited from eating mushrooms and truffles.

In other words, this *beraita* implies quite clearly that mushrooms and truffles *are* considered to grow from the earth. At this point the *s'tam* cites the fourth-century *amora* Abaye who pointed out that although mushrooms and truffles indeed grow from the earth, they do not extract their nutriment from the earth. But of what assistance can that be, he asks, for the Mishna explicitly states that in order for anything to qualify for "( . . . ) By Whose word" it has not to grow from the earth, and yet mushrooms and truffles apparently do qualify for this benediction despite the fact that the halakha casts them specifically among things grown from the earth![12] The solution proposed by the *s'tam* is to amend the Mishna: instead of the original text, the criterion by which to qualify for "( . . . ) By Whose word" should be changed in accord with Abaye's botanical observation—or as the *s'tam* puts it: from now on "read instead: 'Anything which does not derive nutriment from the earth'!"[13]

This is not the dissenting view of a first-generation amora like Rav, nor is it a suggestion to reinterpret the Mishna. It is the view of an anonymous framer of the Bavli writing more than three hundred years after the Mishna was finalized and sealed, proposing, as the solution to a pressing halakhic problem, to *rewrite it* by appeal to the opinion of a fourth-generation amora.[14] The *s'tam* is not offering a new *reading* of the Mishna. He is not suggesting that when the Mishna refers to "growth from the earth," it really means something else. On the contrary, growth from the earth is a halakhic category that is employed in other matters.[15] Nor is it implied in any way that the *s'tam* is suggesting that the text of the Mishna might have been corrupted and that by replacing the phrase "anything whose growth is not from the earth" with the phrase "anything whose nutriments are not derived from the earth" we shall be *restoring* the original text. It is a simple amendment of the law—of the *word* of the law, not of one of its interpretations!—prompted by a legal problem, which does not involve reinterpreting the Mishna or any other canonical document and is not presented as such. It is also quite a common move in the



Bavli's treatment of the Mishna.[16] This is not the way a formative text is supposed to function or is expected to be treated. On the contrary, it seems typical of the way an antitraditionalist community would treat a central canonical text: taking it extremely seriously as a significant step towards the ideal, desired system, troubleshooting it with a vengeance for any conceivable type of flaw or shortcoming, and not hesitating to putting it right when necessary.

Not all sugyot of this kind are as well defined. In many cases in which more than one solution is proposed to a problem—cases in which the *s'tam* presents different views attributed to individual, named authorities—one frequently encounters the suggestion of a second-order, metahalakhic dispute in this respect between the various discussants. The Bavli's discussion of Mishna, *Sanhedrin* 7:1, provides a good and, again, quite typical example. Unlike most systems of law, the halakha requires that certain criteria of adequacy be met before a testimony is considered testifiable in court. These are the so-called "seven inquiries and examinations" designed to make sure that testimonies are refutable—namely, that witnesses do not merely report what they heard or saw, but that their testimonies also include clear and refutable statements of the precise time and place in which their sighting occurred.[17] Mishna, *Sanhedrin* 7:1, rules categorically that the same criteria of adequacy apply to all types of legal testimony. "Both civil and capital cases," it states, "demand inquiry and examination (of the witnesses), as it is written: 'You shall have one manner of law' (Lev. 24:22)." "Do civil suits really need inquiry and examination (of witnesses)," asks the Gemara,[18]

> Indeed, this (Mishna) opposes the following (*beraita*):[19] If a bond is dated the first of Nissan (even if it is the Nissan) of the *Shemita* (seventh sabbatical year),[20] and (other) witnesses come forward saying: "How can you have witnessed this bond, were you not with us on that day in such-and-such a place at that time?" (Still) The bond is valid, and its signatories remain competent (witnesses). (How can that be? The reason is that) we presume that they might merely have postponed writing it.[21] But if you suppose that inquiry and examination are requisite (even in civil suits), how come it is allowed to be witnessed with a later date in mind?[22]

The Mishna and *beraita* are clearly in conflict.[23] Inquiry and examination are required, by Jewish law, in order to ensure that testimonies are refutable. "An irrefutable testimony" (one that does not explicitly state its precise time for instance), states the Bavli, "is no testimony at all."[24] The "inquiry and examination" in question consists of seven questions placed to each of the witnesses in order for each of them to state the exact week,

day, hour, month, date, year, and place in which whatever they saw or heard occurred. But if the date on a bond is allowed to diverge from that of its actual signing, its signatories cannot be contested by other witnesses. Three different solutions, attributed to three different Sages, are cited in response.

The solution to the problem of Mishna, *Sanhedrin* 7:1, proposed by the first-generation Palestinian amora R. Ḥanina implies that he treats the mishnaic system of law not as a formative halakhic text occasionally requiring reinterpretation but as a text liable to be modified in view of new problems and changing circumstances.

> R. Ḥanina said: By the law of the Torah, (witnesses in) both monetary and capital cases require inquiry and examination, as it is written: "You shall have one manner of law" (Lev. 24:22). Why then were civil cases exempted from this procedure? In order not to lock the door against them in need of a loan.[25]

R. Ḥanina's line of reasoning is commonplace and is employed time and again throughout the Bavli. Normally, however, it is done in order to explain why later authorities decided to go a stringent step further and impose additional restrictions that go *beyond* those of the Torah.[26] In cases such as these the original ruling of old is preserved basically intact and is simply supplemented. Moreover, the further restriction is explicitly presented as motivated by care for, and as a means of *bolstering*, the existing system.[27]

The case in hand, as explained by R. Ḥanina is different, however. Here a law of the Torah, presented by the Mishna as part and parcel of its halakhic system, is described, by R. Ḥanina, as having proved problematic in ways the Sages had not or perhaps could not have foreseen at the time the Mishna was written. The *beraita*, R. Ḥanina argues, represents a step forward in the development of the halakha away from that original legislation. The mishnaic system, representing that of the Torah in this instance, does not remain intact and is certainly not bolstered in the process. The earlier restriction, despite being "true of the Torah," is repudiated.[28] The move is not presented by R. Ḥanina as a new *reading* of the halakhic system it aspires to put right or as an attempt to retrieve the original intentions of his predecessors. It is a modification pure and simple and is duly presented as such. For R. Ḥanina, the Mishna does not seem to function as a formative canonical text.[29]

The other two solutions to the problem are quite different. The fourth-generation Babylonian amora Rava suggests that from the start the Mishna's ruling that "both civil and capital cases demand inquiry and



examination" was not intended to apply to *all* cases of property law. The Mishna, he submits, relates only to criminal law, including such 'property' aspects of it as fines. The *beraita*, on the other hand, addresses civil suits proper such as contracts and bonds. The fifth-generation Babylonian amora R. Papa disagrees with Rava and suggests that the Mishna and *beraita* both apply to civil cases proper. The reason that they rule differently is not because they address different areas of the law, as Rava proposed, but because they address different types of case. The less stringent *beraita* refers, according to R. Papa, to civil cases in which no foul play is suspected, while the Mishna is about cases suspected of fraud. Unlike R. Ḥanina, Rava and R. Papa prefer to explain the discrepancy between the Mishna and *beraita* not by viewing them as representatives of different stages in the critical and dynamic process of halakhic development, but by interpreting them as representatives of different areas of a static, undeveloping halakhic reality. (The great medieval codifications remain interestingly divided in their treatment of this amoraic debate, but that is beside the point.)[30]

This is not to say, of course, that by attempting to harmonize the *beraita* with the Mishna in this way, Rava and R. Papa necessarily cast themselves with the definitive opposition to R. Ḥanina. There is nothing inherently inconsistent for an amora to treat the tannaitic literature he has received, like R. Ḥanina, as a preliminary system liable to be modified if and when found wanting and to argue locally that two specific, seemingly contradicting tannaitic rulings may not have addressed the same issue. The same, however, does not apply to R. Ḥanina. Specific and local as it may be, his suggestion to view the *beraita* as evidence of the annulment and amendment of a former decree of the Mishna is, in principle, irreconcilable with the view of the Mishna as a formative text in Halbertal's sense of the term.

Generally speaking, to view the tannaitic literature as a canon formative for the halakhic enterprise of the Bavli is to maintain that as a rule, with the rare exception of genuine lacunae, the Bavli's treatment of the general principles laid down by the Mishna will be *applicatory*. At the most basic, uncritical level, such principles will serve amoraic halakhists as premises for simple deductive inferences to lower-level generalizations and particular single cases. In the event of apparent contradictions within the system of the Mishna or of new questions apparently not covered by it, general rulings of the Mishna thought relevant to the question at hand will be reinterpreted—their initially thought scope of application stretched or contracted as the case requires. Such reinterpretation can be radical. The rule in question may acquire a totally new meaning in the

process, or, as we have seen, may even be supplemented. But if the system is truly considered formative, a general principle will seldom, if ever, be withdrawn, openly modified, or replaced. As Ferdinand Fairfax Stone writes, a major feature of a system of law that is regarded as a code is that it be "considered ( . . . ) and in all ways dealt with as a single fabric." Such systems have many advantages, but their main shortcomings, writes Stone, are those of the human agents who construct them.

> Man has consistently tried to build a frame for the universe and to squeeze it into that frame however much it may bulge over the sides or pinch in the corners. Always there are the bulges, the parts left over ( . . . ) So too when man essays to imprison the law into a single, homogeneous fabric, or when he tries to encompass the whole of man's legal personality in a single set of articles, either he spells out the particulars in such detail, providing for every conceived eventuality, that man is lost in the forest, or else he retreats into generalities so vague that man shrugs them off as too indefinite to constitute notice.[31]

In order for a code to avoid both undesirable extremes and to remain, as far as possible, capable of performing its formative role for future generations of jurists and legislators, its rulings will have to be general but not to the point of vacuity. More importantly, the concepts and definitions with which they are formulated will have to be flexible enough to accommodate the unavoidable bulging and pinching of changing circumstances and human sensibilities.

We have encountered amoraic considerations of certain general rulings that were found inadequate to the point of actual revision. The revisions, however, had been local. The general criterion for reciting the benediction "( . . . ) By Whose word all things exist" was revised, according to the *s'tam*, in the light of new botanical data; that of the laws of evidence in civil suits, according to R. Hanina, in the light of changing realities in the money market. But the Bavli contains a critical discussion of a general ruling that does not lead to a revision, but to a clear and forceful declaration that the general principles contained in the Mishna should, *as a rule, never be inferred from*. To cast it in terms of the present section, such a declaration adds up to no less than a most significant call for refraining in general from canonizing the Mishna as a formative code. The occasion is provided by the well-known ruling of Mishna, *Kidushin* 1:7:

> All affirmative precepts (commandments to do, as opposed to prohibitions) limited to (a specific) time,[32] men are liable and women are exempt. But all affirmative precepts not limited to time are binding upon both men and women.



The amoraic discussion of this passage of the Mishna begins innocently enough by citing a *beraita* in which the notions of affirmative precepts that are and are not limited to specific times are exemplified.[33]

> Our Rabbis taught: Which are affirmative precepts limited to (a specific) time? (Precepts such as dwelling in a) *Suka* and (taking a) *Lulav* (during the Festival of Booths, blowing the) *Shofar* (on *Rosh Ha-Shana*, wearing) *Tzitzit* (fringes on one's four-cornered garments) and (putting on) *Tefillin* (during the hours of the day).[34] And what are affirmative precepts not limited to time? (Those such as fixing a) *Mezuza* (to one's door posts, the requirement to make a) Parapet (to one's roof), returning lost property, and "the dismissal of the nest" (the requirement to drive away the mother-bird before removing the eggs).

Is the rule stated by the Mishna supposed to be a general halakhic principle, asks an exasperated *s'tam*?

> But then (eating) *Matzo* (on the first night of Passover), rejoicing (during the pilgrimage festivals, participating in the) *Hak'hel* (the Great Assembly that is called during the first feast of tabernacles of the shemita cycle) are all affirmative precepts that are limited to time, and yet they are all incumbent upon women! Furthermore, *talmud-Torah*, procreation, and redemption of the (firstborn) son are affirmative precepts that are not limited to time, and yet women are exempt from them all!

This is not a simple incongruity between two contemporary tannaitic sources. All the counter examples are such that no *tanna* would deny. No attempt is made here to solve the problem by distinguishing, for example, one type of time-dependent precept from another, or by suggesting that the apparent deviations from the rule laid down by the Mishna owe their origins to some later development. In fact no attempt is made to solve the problem at all. The two generalizations stated by the Mishna, asserts R. Yohanan, are, qua generalizations, pure and simply false! Astonishingly, rather than attempt to somehow salvage the two faulty generalizations, *their fault is generalized* to all manner of such general principles! General principles stated by the Mishna, declares R. Yohanan, *all* general principles stated by the Mishna, not merely these two, should never be taken to apply to what they claim to apply—even when they explicitly state their own exceptions!

> Says R. Yohanan: we cannot learn (infer) from (tannaitic) general principles, even where exceptions are stated. For we have learned:[35] "An *Eruv* and a partnership[36] may be made with all comestibles—excepting water and salt." And are there no other exceptions (i.e., other foodstuffs that also fail to qualify for an *Eruv* or partnership)? Lo, there are mushrooms and

truffles! Hence, we cannot learn from general principles, even where exceptions are (explicitly) stated.

The *s'tam* goes on to inquire from where could the *tannaim* have learned the two supposedly general rules in the first place. The details of this inquiry do not concern us here, for it does not in any way challenge R. Yohanan's bold conclusion, which seems not only to have been wholly adopted, but actually applied to other cases. Not surprisingly the issue is raised again in the Bavli's discussion of the above-cited Mishna, *Eruvin* 3:1.[37] Here R. Yohanan's principle (about learning from general principles!) is shown to apply to yet another, previously unmentioned case and is subsequently hailed by the *s'tam* as a general principle in its own right—not merely as an ad hoc explanation of the two problematic *mishnayot*.

R. Yohanan's stunning conclusion and its apparent acceptance by later authorities,[38] including, so it seems, the *s'tam* himself, is of utmost significance to our present discussion. Needless to say, those who accepted it would have clearly opposed the idea that the tannaitic halakhic system could serve as a formative code for their own halakhic enterprises. It is one thing to claim along with R. Hanina that certain general mishnaic principles, such as the one concerning testimonies in civil suits, were initially not only enacted in all seriousness but were even fully justified in their time. However, it is another thing entirely to claim that the general principles stated by the Mishna are suspect of inaccuracy on their authors' own admission! If R. Yohanan is right—and as we have seen, there are several *amoraim* who evidently thought he was—it is doubtful that the Mishna could have even served as a central text, let alone a formative one!

The Yerushalmi does not attribute such a position to R. Yohanan, but on three occasions relates a similar declaration to the fourth-generation amora R. Yona, who likewise does not mince his words in claiming that "(tannaitic) generalizations do not (truly) amount to (or aspire to be) general principles."[39] On the other hand, the Yerushalmi has on record R. Zeira citing the first-generation amora Shmuel who formulates a position that is even more extreme: "We cannot learn (infer) from the *halakhot* (of the Mishna, of our predecessors?), or the *aggadot*, or from the *tosafot* (Tosefta?)—but only from the talmud!"[40] In other words, each case must to be worked out for itself in accord with the most recent, up-to-date opinion. Important as it may be, implies Shmuel, the corpus of a latter-day halakhist's inherited literature must not be allowed to dictate or direct his day-by-day halakhic deliberations. Whatever function this literature was meant to serve according R. Yohanan, Shmuel, R. Hanina, and



their many followers, it was certainly not that of a formative halakhic code.

## Rational Rabbis, or The Mishna as Textbook

In other words, for a major, if not the most prominent voice of the Bavli, the Bavli's double-talk remains unexplained. If the tannaitic literature was considered at most to be a central halakhic text, in the technical, above-mentioned sense of the word, to be preserved as a landmark, as the object of troubleshooting, but not as a text formative of the Bavli's halakhic enterprise, what is gained by pretending differently? To this I would like to join a second question. If the Mishna was not meant to be taken as a code, why is its code-like structure preserved? Let me say immediately, this question is not posed to the framers of the Mishna, so much as to the framers of the Bavli. The Bavli deals with areas of tannaitic writing that extend far beyond the Mishna. But while it treats all other tannaitic material sporadically, citing the short passages it sees fit to discuss in accord with its own agenda, system, and program, it subordinates itself to those of the Mishna. The Bavli allows the Mishna to preserve its code-like structure and to dictate to it its framework, order, and agenda. Why?

In order to answer both questions let us return for a moment to the closing paragraphs of Part 1 and allow the line of thought I have sought to develop in this study to come full circle. I argued there for an approach to rational endeavor—constructive skepticism—according to which to act rationally is to prudently consider the goal-directed systems on which one works as potentially imperfect regardless of their past successes; that it is imperative, therefore, that they be tested as relentlessly and thoroughly as possible, and that those involved be willing at all times to revise or replace them as the case requires. Modern science, I claimed, is, on such a showing, a model of rational inquiry. According to this Popperian model, scientists seek truth but are aware that they lack the means to recognize it. They see science, therefore, as an enterprise geared to ameliorating the scientific end product by persistent troubleshooting—an enterprise whose short-term objectives are forever to discover the shortcomings of current theories with a view to replacing them with supposedly less problematic alternatives. The task of establishing and maintaining an *ongoing* tradition of rational scientific inquiry, I argued there, is never an easy one. It requires the delicate and balanced transmission, from each generation to the next, of two different yet complimentary messages or

lessons. For the next generation of inquirers ever to be in a position to effectively continue the task of troubleshooting the theories of today, they must be well versed in state-of-the-art versions of those very theories. And in order for this knowledge not to be received dogmatically but to indeed be made the object of keen troubleshooting, it is equally pertinent for a second tradition—a critical tradition—to be nurtured and promulgated. The balance is not an easy one. The two traditions of learning that nourish the logic of rational discourse are required to combine in such a way as to toe the delicate line between dogma and mere fancy. Scientific theories need to be taught as tentative though not frivolous; to be taken in all seriousness yet not as infallible; as the very best we have though not as the best possible.

These two central and complementary concerns of the scientific learning process—indeed of the learning process of any genuinely rational endeavor—find their expression in both the scientific curriculum and the scientific library. Concerning the former, undergraduates are normally set the task of studying, plainly and quite uncritically, the theories, techniques, tools, and methods that will only later be made the objects of reflection and revision. Only at the graduate or postgraduate levels do students normally begin the process of critically reflecting upon the knowledge they had formerly acquired. To a great extent the seriousness and effectiveness of this second stage of their studies will depend on the seriousness and singlemindedness with which the first phase was pursued. In most institutions of higher education the scientific curriculum reflects this ordered, antithetical two-phase structure.

And the same can be said for the scientific library. Here the dividing line manifests itself in the difference between the two basic sorts of publication that typically adorn the scientific bookshelf: the scientific textbook and the scientific logbook or research report. Together they combine to document the two halves of a complete scientific cycle. While the former, the textbook, constitutes the main instrument for passing scientific knowledge on from one generation to the next, the latter, the logbook or research paper, documents the processes of trial and revision *of* the knowledge thus received, as part of the debate that will in turn motivate the framing of the textbooks of tomorrow. In an ideal community of learners, one in which the rules of the game are known and understood, there will be little need for the textbooks to teach them. An ideal textbook, designed to initiate the new generation of an ideal community of learners, will be mostly devoted to its main purpose—namely, that of handing down a body of knowledge as effectively and efficiently as possible. But in such a community, the main purpose of learning the achievements of one's predecessors is for the sake of subjecting them as soon and



as effectively as possible to the keenest possible trials. Textbooks will therefore be purposefully framed to hand down knowledge that is organized and systematized *with a view to making its future testing the easiest and most effectual.*

There will always be a difference between texts that are designed to serve as vehicles of the truth and those designed to hand down intelligent guesses at the truth for the sake of further testing. Only the former will seek to *convince* their readers! Textbooks of the latter kind will ideally not aspire to foster agreement, rally support, create consensus. One expects such textbooks to sin deliberately on the side of simplicity and systemization, to strive for clean, symmetrical, and concise formulations even at the price of rounding some of the corners and ignoring some of the bulges. Such texts organize and systematize their materials in neat, hierarchical, and nested structures. And all this is done even at the risk of inaccuracy. The ideal textbook will typically concentrate on general principles to the partial neglect of their exceptions.[41] Geared to effectively exposing the system's premises, fundamental ideas, and basic principles, this sort of exposition will tend to oversimplify, idealize, and oversystematize. Because they aim to opening the system they describe to question, to setting it up efficiently as the object of systematic troubleshooting, textbooks such as these will normally not take themselves with utmost seriousness—other than as teaching aids of course. Their generalizations cry out to be questioned rather than to be endorsed; they will be almost self-challenging in their artificial simplicity, cleanliness, and symmetry.

Legal codes also strive to achieve simplicity, systematization, and a logical, hierarchical structure and to frame the law by means of principles sufficiently general to be fruitful and sufficiently detailed not to be vacuous. But unlike the sort of textbook we have described, legal codes do take themselves with utmost seriousness. They are not written in order to attract criticism. On the contrary, they present themselves and are treated by others as the last, definitive, and comprehensive word on the subject. A legal code cannot afford not to be accurate, not to appear as catering in advance for every conceivable eventuality. A legal code found to harbor the kinds of problems found to plague the three mishnaic rulings considered above would be considered defective. The sort of textbook we have been describing would not.

I have maintained throughout this study that the Bavli be considered a work centrally motivated by didactic concerns. I suggested that over and above their wish to summarize the *fruits* of their learning, the framers of the Bavli sought to document the *process* by which they learned with the intention of teaching their future readerships how to study Torah as they did. One reason I offered for favoring this conclusion was the way

in which the Bavli resembles a protocol rather than a summary—in the light of our present discussion, perhaps a logbook is a better analogy. I was also puzzled at the time about why the framers of the Mishna apparently preferred to present the issues it deals with in the form of a code rather than in the form of a protocol, and why the Bavli decided to preserve this structure of the Mishna unlike any other tannaitic compilation it cites. But in view of our previous discussion one might answer this question by proposing that the framers of the Bavli contrived to present their future readerships not only with countless true-to-life reconstructions of study sessions but with paradigmatic examples of the two types of text that constitute the full learning cycle. Straddling the Talmud's great generational divide, the Mishna is presented as what they took to be a paradigmatic example of the way the conclusions of one generation of learners should be handed down to the next, and the Gemara as a paradigm of the manner in which knowledge thus received should be treated thereon: the Mishna as the model textbook, the Gemara as the model logbook.

The conjecture is a bold one, but it explains much. It explains why the Mishna resembles a code but is not treated as one. Textbooks of the sort described exhibit code-like features but are not meant to be reinterpreted when found wanting. The textbooks of an ideal community of learners are *born* wanting in every applicatory respect. They are not meant to be used as manuals or handbooks. Engineers do not use physics and chemistry textbooks for their work. A textbook of this kind *must not be used* as a vade mecum or a guide. Textbooks should be concerned with the gist of the field, with its basic structures and ceteris paribus conditionals, far less with its details. They are teaching aids and are intended for little more.

Viewed thus, the Mishna's code-like structure ceases to be puzzling, and R. Yohanan's warning against using the Mishna as a handbook for practical halakha is rendered no longer surprising. Even such gross and obviously false mishnaic generalizations, such as the one concerning the exemption of women from time-dependent affirmative precepts[42] that apparently prompted R. Yohanan's remark, no longer seem so strange. Good textbooks are simply not supposed to duplicate the systems they aspire to teach, especially if they are as vast and complex as Jewish law, but to capture and convey the essentials of their spirit and substance. But if that is case, the Mishna should *not* be viewed as the halakhic system that is actually troubleshot by the Gemara but only as a textbook exposition of that system. On such a showing, the tannaitic system troubleshot by the Bavli achieves its full elaboration in a whole series of supplementary tannaitic sources—most of them truly oral. Viewed thus the Mishna is not



the system that is central to Bavli's halakhic undertaking but the one designed to teach it.

The suggestion to view the Mishna's role for the antitraditionalist voice of the Bavli primarily as a textbook would also explain its name, which apparently derives from the Hebrew word for learning by repetition and which some take to have actually meant "textbook."[43] More importantly, viewing the Mishna as a text designed to teach the halakhic system that is subsequently troubleshot and revised in the course of the extended process documented by the Bavli would explain two rather peculiar features of the amoraic phase of the cycle: why, on the one hand, the Bavli never finished the job so to speak, why it only treats thirty-seven of the Mishna's sixty-three tractates, and why, on the other hand, the amoraic Sages, after completing their revision of the tannaitic system, did not compose a Mishna of their own (as Maimonides would do for their writings six centuries later). The answer to both questions is that if the Bavli was primarily intended to teach future generations how to teach and how to learn, how the Oral Torah is at any one moment best transmitted and how it should be received, the sort of text that teachers should aim at producing and the type of process to which their teachings should be then subjected, if this is what the Bavli aimed at accomplishing, there would have been no need for its framers to start a second cycle by formulating a new textbook. Nor would it have been necessary to treat the entire system in order to explain the nature of the undertaking. Few would care to deny that during the period of three hundred years or so during which they functioned antitraditionalist amoraic centers of study continuously discussed, debated, troubleshot, and revised the entire system of tannaitic halakha. The point is that in order for the framers of the Bavli to *teach* future generations their view of the nature of their undertaking, there would have been no need at all for them to document the entire process. All of this fares well with the Bavli in its finished form. It also renders the Bavli's antitraditionalist voice dominant and formative in and of the entire enterprise. But it still does not answer our question.

The idea to view the Bavli as an attempt to teach *talmud-Torah* by combining a model textbook and model logbook explains much but does not answer our initial question: why the double-talk? It is still not clear why a text, intentionally composed in order to teach a decidedly antitraditionalist vision of Torah-study, would invest so much effort to conceal its main message. Indeed, insofar as the Bavli's antitraditionalism looms larger, the question is rendered all the more glaring. Why the double-talk? The answer to this question lies, I believe, in what was previously said about the typical scientific curriculum. Even in as excessively critical and undogmatic a culture as the world of antitraditionalist talmudic discourse,

it is quite unproductive, if not impossible to reverse the order of the learning process. One cannot develop a healthy skepticism without first having something to be skeptical *about*. Effective troubleshooting is a creative art that requires training, preparation, and encouragement. One cannot learn it in theory. Troubleshooting can only be learned and experienced on real goal-directed systems, preferably on those to which it is meant to apply and on those closest to heart. To this end the relevant systems themselves have to be studied first.

The difference between a real logbook and a text contrived to act as a *model* logbook is that the latter is inevitably a textbook of sorts. And I believe that the Bavli was to a significant degree framed self-consciously as a textbook of sorts, with a view to teaching *talmud-Torah* by extended example. However, rather than cater separately for the beginners, as do the textbooks of most institutions of learning—including the actual academies that functioned in talmudic Palestine and Babylonia![44]—the "virtual" academy constructed by the Bavli, the course of "studies by correspondence" as it were that it aspires to provide, *consists of one extensive text that is addressed simultaneously to students of all levels*. This, I submit, may very well have been the reason for the Bavli's persistent double-talk. It is also the best explanation I have to offer at this stage.

From a purely pedagogical perspective, it is of utmost importance for beginners, setting out to train themselves as future halakhists, to acquaint themselves thoroughly with the tannaitic halakhic system before they can be introduced to the full force of its critical review and revision in the hands of its amoraic commentators and discussants. The Mishna needs no disguise, although it occasionally requires explanation. The Gemara does need disguising and is, therefore, superficially presented as if it were no more than an extensive, searching, but largely uncritical exposition of the system taught by the Mishna. The technique, as we have seen, especially when compared to the Yerushalmi's far less nuanced narrative, is ingenious. Great revisions are achieved in the guise of exposing the tannaitic system's allegedly real intentions. Transgenerational incongruities—potentially the most conspicuous telltale evidence of amoraic revision and reform but in fact the most thoroughly muffled—are elegantly harmonized out of existence in ways through which only the most advanced student could be expected to see. I believe that the more seasoned students were not intended to be misled by the Bavli's surface rhetoric any more than graduate students in science are expected to be incapacitated by the textbooks of their undergraduate days.

The more I study the Bavli the more I am convinced that this was the plan and strategy of a great many of its framers and subsequently of much of the text as we have it. It was brilliantly conceived and is ingeniously



executed. Unfortunately, it was also to a great extent unsuccessful. The Bavli succeeded in establishing a remarkably resilient community of Torah-learners that flourishes to this very day without showing any signs of weakening. But by and large the community's attitude to halakha is, and has been, largely traditionalist. As noted above, one of my critics wisely pointed out that even those of the Bavli's readers who succeed in seeing through to the antitraditionalist heart of *Berakhot* 19b will still have learned from the *s'tam* that one is not supposed to make one's true attitude known. But even that hardly ever happens. The Bavli has been almost equally ineffective in establishing a tradition of covert antitraditionalism. Habitually almost, the vast majority of its students, even the most clever and advanced, simply take its facade at face value. Throughout the ages there have been many rabbinic exceptions, some of them very impressive,[45] but they have had little effect on the way the vast majority of religiously motivated Jews have studied the talmudic literature. The great eleventh-century commentator Rashi, to take one example, never wrote a treatise on the Bavli, but, as we have seen above,[46] scattered throughout his illuminating and unique commentary to the text one does encounter remarks that suggest that he did not always take the Bavli's traditionalism for its word.

By contrast, and closer to the present time, the writings of the late-nineteenth-century R. Naftali Tzvi Yehuda Berlin, known as the NaTZYB (pronounced *Natziv*) of Volozhin, offer an intriguing example of the extent to which, with regard to halakha, even the boldest thinker remains basically traditionalist. In the preface to his commentary on the Pentateuch he explains his undertaking of such a work.

> Just as it is not possible for the wise student of nature ever to boast knowledge of all of nature's secrets ( . . . ), and just as there is no guarantee that what he has accomplished in his investigations will not be invalidated by colleagues in this generation or the next who elect to study the same things differently, so it is not possible for the student of the Torah to claim that he has attended to each and every point that claims attention, and even that which he does explain—there is never proof that he has ascertained the truth of the Torah!

Berlin's bold statement would seem at first blush to anticipate major themes of the present work—an analogy between science and Torah-study as two truth-seeking endeavors that in principle lack the means ever to confirm their findings. Both enterprises, argues the legendary head of the great Volozhin Yeshiva, are forever beset by *two* persisting doubts: *first*, that there is probably more than meets the eye, and *second*,

that whatever one might think *has* been accomplished could well turn out to be mistaken. The NaTZYB's preface was first published during the 1860s, long before the upheavals in physics that would lead to the Popperian turn in philosophy of science. His description of the advancement of science in revolutionary rather than accumulative terms is, therefore, extremely interesting. His description of Torah-study in the same terms would be equally, if not more surprising, if it could be said to include the development of halakha. But apparently Berlin's revolutionary model was reserved exclusively to the nonhalakhic aspects of Torah-study. When he does talk specifically about the advancement of halakhic knowledge, the second of the two doubts associated with science and biblical exegesis vanishes. In his commentaries to Exod. 34:1, 27 and Lev. 18:5, his preliminary remarks to Deuteronomy, and most importantly his lengthy introductory essay to the *She'iltot de-Rav Aḥai Gaon*, entitled "The Way of Torah," he describes the development of halakha as a creative, innovative enterprise that is governed by strict, God-given rules of inference—such as the thirteen *midot*—by which new conclusions are derived from old. One generation of halakhists is capable of halakhic innovation only within, and by building upon, the existing system, much as progress is commonly described in mathematics: creative, innovative, but by no means revolutionary. In other words, despite his instructive, suggestively antitraditionalist comparison between science and biblical exegesis, the NaTZYB's vision of halakhic development as the accumulation of valid halakhic conclusions remains overly traditionalist.

Rabbi Berlin's understanding of the process of halakhic development, especially as it is recorded by the Bavli,[47] is commonplace. It also differs greatly from the conclusions of the present study. Insofar as the framers of the Bavli sought to convey and promote an antitraditionalist approach to halakhic discourse, they can hardly be said to have succeeded. But then, however well intended and however well executed, one has to admit that their plan was almost bound to fail. If there is any truth to the suggestions made and the guesses hazarded in the present chapter, the Bavli, at least substantial portions of it, acquired its final form with a view to relegating the inevitable two phases of the learning process to two separate levels of reading of the same text, rather than, as is normally the case, to one level of reading of two separate texts. Such a solution is probably fine for beginners, who will easily be fooled to think that Torah-study is traditionalist, but it is far too sophisticated for the more advanced who will hardly know what to expect—unless, of course, they are guided by teachers to whom all of this is clear to begin with. However, since today's teachers are yesterday's students, lacking a clear, systematic, and unambiguous statement of antitraditionalist intent, I suspect that confusion swiftly bred more confusion to the point of largely obscuring the Bavli's real, but too well-hidden agenda.



If the tannaitic portions of the talmudic corpus[48] attest to an open, vital, and very much alive dispute between dedicated traditionalists and antitraditionalists, one that manifests itself, as we have seen, in halakhic, metahalakhic, and legendary corpora, the strictly amoraic texts, as I remarked earlier, no longer bear witness to a controversy of this kind. As I put it above, the amoraic writings strike one as being the product of a culture in which the great debate is perhaps still remembered, but one in which it is no longer being fought. It follows from this that the Bavli's traditionalist idiom was in all probability *not* introduced as a concession to the opposition. I doubt that, by the time the composition of the Bavli was entering its final stages, there was an opposition to talk of. It was introduced, I have argued, as a didactic device designed to facilitate the initial stages of a learning process geared in the long run to producing a cadre of keen antitraditionalist troubleshooters. Paradoxically, the plan backfired, and the Bavli's traditionalist idiom appears to have contributed instead to the wholly unintended revival and reinstitution of a major traditionalist school of thought that would later come to dominate posttalmudic culture.

## "Turn Thee Around" (Bavli, *Menaḥot* 29b), or Back to the Future

For the reasons we have discussed it is perhaps less puzzling now why the framers of the Bavli elected not to make a clear statement of their antitraditionalist point of departure within the actual framework of halakhic debate. The tannaitic literature, as we have seen, does contain such statements in both Mishna, *Sanhedrin* and *Eduyot*—as opposed to the parallel Tosefta—and somewhat less explicitly in the discursive practices attributed to the Hillelites in their debates with the Shammaites. Still the amoraic literature does contain legendary material that seems centrally and intentionally geared to proclaiming a definite antitraditionalist ideology. To repeat, unlike the tannaitic Jabne stories, these amoraic legends seem not to be written with a view to dramatizing, personifying, or even scoring points in a metahalakhic *controversy*. Again, they appear to have been designed to serve pedagogical and didactic rather than polemical purposes. And yet some of them are striking. Hence, instead of summarizing this book by recapitulating its arguments and claims yet again, I

shall bring it to conclusion by presenting and briefly discussing two such legends. They are both quite well known and will be familiar to many of my readers. But in light of what we have said so far I think they acquire a significance and a focus rather different from what they are normally granted. The first is about the prospects, pitfalls, and overall goal of day-by-day halakhic negotiation. The second offers a unique and rare glimpse of the way the *amoraim* conceived of their project in a dramatically dynamic, historical context.

The first legend, related in Bavli, *Bava Metzia* 84a, tells the story of the commencement and tragic ending of the extraordinary relationship between the two great first-generation Palestinian *amoraim*: R. Yoḥanan and Resh (R. Simeon b.) Lakish.

> One day, as R. Yoḥanan was swimming in the Jordan, he was spotted by Resh Lakish who jumped in and joined him in the water. Your powers befit (the study of) Torah, said R. Yoḥanan.[49] Your beauty, replied Resh Lakish, befits women! Should you repent and study, he answered, I shall give to you my sister who is even more beautiful than I. Resh Lakish agreed. But when he tried to leap back across the river to retrieve his clothes, he found he was unable to do so.[50] R. Yoḥanan taught him Scripture and Mishna and [Resh Lakish] rose to greatness. One day, at the bet midrash they were debating the following question: (we know that) the sword, knife, dagger, spear, shear, and scythe are liable to 'receive' ritual impurity from the moment the process of their production is completed[51]—but when exactly is that? R. Yoḥanan says: from the moment they forged in the fire; Resh Lakish said: only after they are polished in the water.

The question is a classic and the two answers typical, if, apparently, new. R. Yoḥanan opined that metal instruments of this kind become what they are the minute they acquire their final form. In Resh Lakish's view an instrument becomes what it is only from the moment it can be put to its intended use. A red hot piece of metal may look like a sword in all respects, but it cannot yet be used as one. It is significant perhaps, especially from an antitraditionalist perspective, that the debate between the two *amoraim* ignores the fact that the Mishna would seem to have decided the issue differently.[52] As we shall see, a far stronger and explicit claim is made in the story against having halakhic positions prove their mettle merely by indicating tannaitic precedent. In all events, the discrepancy between the two answers and the Mishna, if there ever was one, is not raised in the story or by its narrator.

At this point, we are told, R. Yoḥanan, perhaps unwittingly, managed to gravely insult Resh Lakish in the heat of the argument. He said to him: "a robber would know his weapons wouldn't he?!"[53] Resh Lakish was shattered. "What good has following you done to me?" he grieved, it is



as if nothing had changed, "here (among the rabbis) they call me Master and there (among the thieves) they call me Master—I thought, at least for you, there was a difference!" "I did you a favor in bringing you under the wings of the Almighty," R. Yoḥanan retorted crossly, apparently unaware of how deeply he had offended his colleague. He had lost his judgment, we are told, and became more and more insensitive to his brother-in-law's plight. Resh Lakish, on the other hand, fell gravely ill.

> Pray for him, pleaded his sister, that my sons not be orphaned. It is written, "Leave thy fatherless children, I will preserve them alive" (Jer. 49:11) he preached her. Do it for me then, lest I be widowed, she begged. "And let thy widows trust in me" (*ibid.*), he went on quoting (heartlessly). And thus Resh Lakish passed away, and R. Yoḥanan (who had now come to realize what he had done) knew no end to his grief. The rabbis said who should be the one to revive his sanity? Let R. Elazar b. Pedat approach him, whose halakhic mind is the sharpest.[54] He went and sat before him, and for every opinion that R. Yoḥanan would utter, he would provide him with confirming tannaitic sources. He said to him: are you supposed to replace Resh Lakish?! For every thing I opined Resh Lakish would put to me four and twenty questions to which I would have to seek four and twenty answers! In this way the halakha was ameliorated.[55] And you, you say 'here are tannaitic sayings that agree with you'! Do I not know that my views are feasible?! And he walked away, and tearing at his clothes he wept: where art thou son of Lakish, where art thou son of Lakish?! And he screamed so until he lost his mind, and the rabbis prayed that he be pitied, and so he (too) passed away.

This powerful, and, if I may say so, very Popperian, tale contains almost all an antitraditionalist could wish for. The doors of the academy are open to all who sincerely wish to join it regardless of their background or former employment. Halakhic discourse is itself genuinely open: it does not merely tolerate different positions, but is truly pluralistic. Even a great and knowledgeable Sage as R. Yoḥanan is well aware that even he is incapable of effectively putting his own views to the test. For this one needs a friend, a study companion whose views he opposes. In the realm of Torah-study, confirmation is useless. Finding that one's views happen to fare well with those of former generations can teach nothing from which the halakhic system can be said to profit. Keen, prudent, relentless troubleshooting is the only way to improve the system. And this can be adequately achieved only by group effort, and only by groups sufficiently heterogeneous and sufficiently divided in their opinions to allow real debate. It is not truth that one can ever hope to achieve only progress, improvement, amelioration. The halakhic system can and should be constantly

enhanced by trial and error. The story does not speak merely of going beyond the existing system and building upon it. There is nothing of the traditionalist, accumulative model of halakhic development in the way the tormented Sage pooh-poohs corroboration from tannaitic quarters in favor of new and unexpected challenges to his well-versed conjectures. His young and inexperienced study companion does not even offer corroborating *arguments* only corroborating evidence. His yes-manship is distinctly of the traditionalist kind. And it is flatly rejected.

But the story tells us more. We also learn just how delicate the dividing line is between keen and constructive criticism and arguing ad hominem; how easy it is, even for the closest of friends, for a heated, well-intended, critical exchange to deteriorate into a bitter feud; how sensitive one must be to the feelings of one's colleagues, especially in a culture that lays such value on criticism. The story is a true celebration of antitraditionalism, but at the same time it issues a serious warning against the two main perils that such a culture will always face. A truly antitraditionalist discourse is fragile, the story forcefully implies. On the one hand it is easily misunderstood. On the other hand, it is extremely difficult to teach and maintain. It can easily self-detonate when tempers flair and feelings are hurt. And it can equally easily deteriorate into smug acceptance of the ways of old. In view of the hesitant conclusions of the present section, this is perhaps the most telling aspect of the story: the fact that when a new study partner was sought for R. Yoḥanan, it turns out that, to the Master's anger and dismay, even the brightest and most well-versed graduate of the academy had not begun to grasp the very basics of the school's antitraditionalist philosophy!

Read thus, this quite amazing story emerges as a highly significant, constructive criticism of antitraditionalism itself. There is nothing smug, boastful, or moralizing about it. It is not a celebration, but an extremely sober and wary examination of constructive skepticism. It is an antitraditionalist attending reflectively to the fundamentals of his own position as he would have any other system attended to: with a view to exposing its perils and problems rather than to singing its praise. And yet its criticism is not destructive. Nothing in the story would indicate that it is aimed at discrediting R. Yoḥanan's constructive skepticism in favor of the opposition. It is keenly critical of antitraditionalism but not hostile toward it. And in its criticism the story, it seems to me, anticipates two of the main problems that talmudic culture will face in the wake of the Bavli: a perpetual difficulty, on the one hand, to accommodate genuine halakhic pluralism within stable communities, with differences of opinion frequently leading to fragmentation. And, on the other hand, the type of difficulty already encountered in the Bavli of effectively perpetuating the very culture of halakhic antitraditionalism. As some stories do, this one forcefully raises the problems but has no solution to offer.



The second and final legend I shall discuss is, in a sense, far more daring, if somewhat less explicit. Appropriately enough, it is attributed in Bavli, *Menaḥot* 29b, to the second-generation Babylonian amora R. Yehuda relating it in the name of his great teacher Rav.

> Said R. Yehuda in the name of Rav: when Moshe ascended on the High (to receive the Torah for the second time)[56] he found the Almighty (still) busy affixing coronets to the letters.[57] "Who is delaying you Lord of the Universe?" inquired (the puzzled) Moshe.

Moshe is asked politely to be patient. These unfinished subtleties of the Text, he is told, are intended for someone else. Notice also how the Almighty's answer is made to play havoc with historical time:

> He said: There *is* a man, who *will arise* at the end of many generations, Akiva son of Joseph *is* his name, who *will* expound upon each coronet heaps and heaps of laws. Lord of the Universe, Moshe requested, show him to me. Turn thee around, the Almighty replied, whereupon Moshe (was transported into the future, and) found himself sitting at the end of the eighth row (of R. Akiva's academy).

We shall return to the curious phrase "turn thee around" shortly.[58] Its meaning in and for the story is clear enough, however: Moshe is invited to enter the time machine as it were, travel into the future, and peruse the great Akiva at work. Had the story been told by a traditionalist, the main point of having a great Sage of the likes of R. Akiva have the good fortune of Moshe, the lawgiver himself, miraculously appear in his classroom, would have undoubtedly been for Moshe to demonstrate how much halakha had been lost en route and to assist Akiva and his students in filling the gaps and mending the flaws that would have inevitably accumulated since the Torah was first handed down. But not here. This particular legend is anything but traditionalist in this respect. Not only does Moshe have nothing to contribute to the discussion at Akiva's academy, but he sat there, we are told, failing to understand a single word that was said. So great was his shock and confusion that he weakened at the knees.[59] Until, at one point, the Sage, offering his opinion on a certain issue, was asked by a student "Whence, Master, do you know that?" Whereby Akiva answered: "That (particular law) is a law given to Moshe on Sinai." Hearing this, though apparently still not understanding a word,[60] Moshe, we are told, regained his wits and was comforted.

But why was Moshe comforted? If we are meant to believe that the

initial cause for his uneasiness had merely been his personal failure to comprehend what was going on, then being informed that what was being said was in fact something he was supposed to have heard at Sinai the first time around would have only made things worse! If the reason for his recovery, as the story seems clearly to indicate, was his being assured that the strange things he had heard, and could still not grasp, had indeed originated at Sinai, then we must conclude that his initial breakdown was not brought about by the thought that he might be losing his cognitive abilities, but by the thought that the future Sage might be teaching something different than the Torah he was about to receive. Upon learning that Akiva perceived a direct link between the Torah he knew and the issues under discussion, Moshe recovered, realizing, to his immense relief, that the Torah had not been replaced, and that his failure to comprehend the proceedings attested to no more than to his apparently inferior understanding of these matters. This also explains his reaction upon returning to his former place and time. "Lord of the Universe," he said, "Thou hast such a man as Akiva and Thou giveth the Torah by me"?! The Almighty's reply is extraordinarily harsh by talmudic standards. "*Shtok*!" (be silent, or even stronger: shut up!), replied the Lord, "for such is my decree!"[61] The story could well have ended here, but its author takes the extraordinary exchange a seemingly unrelated step further:

> Lord of the Universe, he went on to say, you have shown me his learning (his Torah) show me his reward. Turn thee around, He said. And he turned to his behind and saw [Akiva's] flesh being weighed as if by a butcher.[62] He said to Him: is this Torah and this its reward?! Be silent, He replied, for such is my decree!

This extra twist to the story would seem to be quite uncalled for. The only obvious relevance it has to bear on what comes before it is to imply that the Almighty's decision as to who is the person most worthy to receive the Torah is as incomprehensible to humans as His moral judgments. This would be true, though still not very helpful, only if the cause for God's exasperation could indeed be said to have simply been Moshe's exaggerated low self-esteem. But this does not at all seem to be the point of the story. (Indeed, Moshe is praised by the Bible for his great modesty.) I believe that the sudden shift from the difficulties he experienced when attempting to comprehend a future phase of halakhic development (and the story *is* expressly about halakhic development) and those he experienced in attempting to comprehend a divine future decision provides a key to the origin, meaning, and significance of this unique tale.[63]

Moshe is on record more than once for requesting of the Almighty



privileged, inside information regarding the future. And each time his requests are politely, if firmly denied. At the burning bush he is appointed the future task of confronting his brethren with the news of their impending salvation. Not satisfied with knowledge of the Almighty's past identification—"I am the God of thy father, the God of Avraham, the God of Yizhaq, and the God of Ya'aqov" (Exod. 3:6)—Moshe demands to know in advance the identity he should expect *at the time of his future mission*: "Behold, when I come to the children of Yisra'el, and shall say to them, the God of your fathers has sent me to you; and they shall say to me, What *is* his name? What shall I say to them?" (Ibid. 3:13). The Almighty's enigmatic answer is "*Eheye asher eheye*"—I shall be what I shall be![64]

The second time that Moshe is said to have similarly inquired into the future occurs immediately after the Torah informs us of the extraordinarily intimate relationship that had developed between him and the Almighty after the affair of the golden calf: "And the Lord spoke to Moshe face to face, as a man speaks to his friend" (Exod. 33: 11). Apparently shaken by not having anticipated either the intensity of the people's desire for a concrete, tangible Deity or the ferocity of the Almighty's reaction to it, and encouraged by his obviously successful damage control, Moshe, as Rashi nicely puts, decided to take advantage of the situation.

> And Moshe said to the Lord, See thou sayst to me, Bring up this people: and thou hast not let me know whom (what) thou wilt send with me.[65] Yet thou hast said, I know thee by name, and thou hast also found favour in my sight. Now therefore, I pray thee, if I have found favour in thy sight, show me *now* thy way, that I may know thee ( . . . )

The Almighty's answer (to a great extent lost on the available English translations) is a polite refusal: I cannot grant you such knowledge of my future plans and ways. You will have to make do with knowing, as all humans inevitably do, only after the event: *Panai yelekhu va-haniḥoti lakh*—"My face (front) shall go (forward) and I shall thus give you direction." But Moshe is not deterred, and he persists: "I pray thee show me thy glory." This time, however, he is given a detailed answer, which according the interpretation suggested here would loosely translate as follows: Even if I should present to you the entire picture and should inform you even of my decisions to whom I have decided to be gracious, to whom merciful, you will be incapable of comprehending my actions prospectively—for no living person is capable of seeing me "from the front." However, there is a place by me here upon the rock, and I shall put you in a cleft of that rock, and my glory shall pass before you, and I shall shelter your eyes with my palm, and only when it passes shall I

remove it, and you shall see me from behind but my front shall not be seen (referring to Exod. 33: 19–23).[66] In other words, Moshe is firmly informed of humankind's inability, in principle, of adequately comprehending anything prospectively. We can only learn by hindsight. There is no sense at all, he is told, of even providing you with the data. No living person could make heads or tails of it.

The story related by Bavli, *Menaḥot* 29b, I propose, originated from a midrashic reading of Exod. 33: 13–23 along the lines suggested above. However, while the original dialogue between Moshe and the Almighty is about the nature of God's moral management of the world and future plans for His people, R. Yehuda in the name of Rav relocates it with stunning force in the realm of halakhic development. In the hands of Rav and R. Yehuda, halakhic discourse is rendered an essentially historical entity the future trajectory of which is humanly unpredictable. But the story says much more. Even if a great halakhist, as great even as Moshe himself, were to be transported miraculously to an academy functioning several generations into the future, there is little chance he would have understood what they were discussing. Not only are humans incapable of knowing the future, in certain areas—the development of halakha being one—they would be incapable of comprehending future developments even if they were miraculously made known to them! Even if foresight were made humanly possible, prospective *understanding* would not.

Such a notion of halakhic development as that strongly implied by this story goes against all brands of traditionalism. If halakha is considered a body of knowledge that accumulates by the recursive application of a fixed and accepted set of rules to the conclusions of former applications, then Moshe should not have had any difficulty in understanding what went on. Only in areas in which development is liable to involve the *revision* of formerly accepted conclusions, areas in which knowledge does not necessarily accumulate, but is frequently modified or replaced, only in areas of discourse in which revolutions are possible, would one expect the founding fathers to be truly perplexed by future developments—and the further into the future they travel, the greater the perplexity.

Our understanding of the theological, metaphysical, and especially the legal meaning of the Written Torah, implies R. Yehuda in the name of Rav, will necessarily shift and turn in time. As historical circumstances change, as new and unforeseen problems come to light, responsible Torah-study will necessarily yield new and unpredictable insights. In this respect, and in sheer contradiction to the traditionalist point of view, Akiva, privileged by the historical hindsight of his time and place, is infinitely better positioned than was even Moshe to carry the day at his academy. Akiva was looking back into the past and learning from the



mistakes and the inappropriateness of his predecessors' teachings, planned for the present and near future. Moshe, unable to appreciate the difference, begged to be given the opportunity of traveling to the future in order to look back and plan for his own present. "Turn thee around" he is ordered with the view that he will learn his lesson the hard way. Instead of "looking" forward to the future from his present vantage point in time, Moshe is given the opportunity of "turning around" and gazing back at his present from R. Akiva's vantage point. What he fails to understand is that it is nevertheless his inevitably historically situated self that is transported in time. It is a self whose experience, outlook, vocabulary, background knowledge, and common sense are inevitably the product of *its* past and rooted in *its* present. Moshe is rendered by R. Yehuda and Rav a talmudic Rip van Winkle as it were, who by miraculously relocating in Akiva's academy had not gained any new knowledge. What causes the Almighty to lose His temper is Moshe's apparent inability to comprehend all this. Incapable of learning the lesson he is being taught, Moshe is ordered to be quiet and to accept the situation as an arbitrary divine decree.

For a halakhic ruling to be considered one "given to Moshe at Sinai," the story implies, it does not necessarily have to be one that had been passed down whole and intact from the days of Moshe to the present time. Suffice it to be a ruling such that the process of troubleshooting and revision can be traced back to the time of Moshe. Akiva, in his time, is capable of recognizing some rulings as such—although from the necessarily prospective point of view of Moshe himself they will be incomprehensible. And by the same token, implies R. Yehuda, in the name of the founding father of the amoraic era Rav, writing over a hundred years after Akiva, had Akiva miraculously happened upon *our* academy today, he would probably not have understood much and not have agreed to much either.

them in sixteenth-century Europe, see Quentin Skinner, "A Reply to My Critics," in James Tully, *Meaning and Context: Quentin Skinner and his Critics* (Oxford: Polity Press, 1988), pp.242–46.

38. The relationship, however, is not commutative. If $S$ is problematic, it follows necessarily that $T_D$ is problematic. But the fact that $T_D$ is found problematic does not necessarily imply that $S$ is incapable of eventuating $G$.

39. It should not be concluded from the above that rational reform is limited to troubleshooting, that is to say to situations in which $S$ is tested to ensure that it effectively eventuates $G$. Rational 'Research and Development' pertains to exactly the same schema. In these cases an otherwise unproblematic system $S$ will typically be tested with respect to some new goal $G'$; as, for example, when a drug, known to be effective in its prescribed domain, is tested for ailments different from those for which it was originally developed, or when an otherwise successful scientific theory is applied to phenomena different from those it was originally meant to accommodate. Again, in the first instance $T_D$, which will normally not predict the desired results, will be all the researcher will have to go on. If the outcome of the tests is positive, and the drug or theory proves to be equally adequate in the new cases, $T_D$ will be rendered problematic for failing to predict and explain the new results and will require modification. If, however, $S$ fails the new tests, both $S$ and $T_D$ may need to be rethought in order to achieve their new desired objective. In other words, the initial problem in S may itself be conjectural.

40. Popper makes this point forcefully: "[W]hat distinguishes the attitude of rationality is simply openness to criticism ( . . . ) But the criticisms ( . . . ) offered in my approach are in *no* sense ultimate; *they too are open to criticism*; they are conjectural. One can continue to examine them infinitely; they are infinitely open to reexamination and reconsideration. Yet no *infinite regress* is generated: for there is no question of proving or justifying or establishing anything; ( . . . ) It is only the demand for proof justification that generates an infinite regress. ( . . . ) This is the heart of the difference between justification and criticism." Popper, *Realism and the Aim of Science*, pp. 27–29.

41. An agent's initial choice of a goal is, of course, an action in itself—though one quite different from that of attaining it—the rationality of which may be determined only with reference to the goals of some higher-level system. For example, it is one thing to assess the manner in which researchers approach the development of a specific appliance, but quite another to assess the directors of the firm's decision to produce that type of appliance rather than another.

42. Martin Hollis, "The Social Destruction of Reality," in Martin Hollis and Stephen Lukes, *Rationality and Relativism* (Cambridge, Mass.: MIT Press, 1986), pp. 67–86, pp. 83–84 (quotation; my italics).

43. Skinner, "A Reply to my Critics," pp. 248–55, p. 249 (quotation).

44. Ibid., p. 255.

45. Ibid., pp. 257–58.

46. Unnecessary even from Skinner's own perspective in view of his explicit adherence to Collingwood's erotetic historiography. To Collingwood, writes Skinner, "indeed, I am directly indebted for what remains my fundamental assumption as an intellectual historian: *that the history of thought should be viewed not as a series of attempts to answer a canonical set of questions, but as a sequence of episodes in which the questions as well as the answers have frequently changed.*" Ibid., p. 234, my italics.



47. There is, therefore, an important distinction to be made between knowing that a proposition is true and believing it. Had we had at our disposal a foolproof procedure for ensuring truth, knowing and believing would be less distinguishable. But we don't. I have argued along Popperian lines that in science the recognition of truth may be simply dispensed with. In other areas, such as technological standards committees and courts of law, where rulings as to the truth of certain assertions must be made, certain publicly upheld criteria are adopted to ensure credibility "beyond reasonable doubt." Hence, one could easily conceive of a jurist who agrees that in view of the evidence, a point has been proven beyond reasonable doubt, *and yet wholly disbelieves it*. This gives rise to the intriguing question whether a juror or judge is required to rule on the basis of what he or she *knows* or on the basis of what they believe! L. Jonathan Cohen discusses this question in detail in *An Essay on Belief and Acceptance* (Oxford: Clarendon Press, 1992). For those acquainted with his book, my debt to him will be apparent.

48. Popper, *Conjectures and Refutations*, chap. 4. "Towards a Rational Theory of Tradition."

## Part 2: The Jewish Covenant of Learning

1. There are obviously many committed Jews who would have little difficulty in accepting my view of scientific rationality, but who would strongly oppose the idea that anything resembling it was ever entertained by a talmudic sage with regard to halakhic development. The opposite is rare. Still, I can testify to at least one eminent man of science who in public debate wholeheartedly accepted the latter while vehemently opposing the former.

2. Boyarin makes this point in several places, but elaborates upon it most fully in the introduction to *Carnal Israel*. The paragraph I paraphrase is in Daniel Boyarin, "Homotopia: the *Fem*inized Jewish Man and the Lives of Women in Late Antiquity," *d i f f e r e n c e s: A Journal of Feminist Cultural Studies*, 7 (1995), pp.41–81, p. 44 (quotation).

3. I state my own latter-day motivations for adopting the theory proposed fully aware that Popper's original motivations were, to the best of my knowledge, very different. The set of oppositions in defiance of which Popper originally formulated his philosophy were (in chronological order, not in order of gravity) the academic school of logical positivism that prompted the formulation his theory of science during the 1920s and 1930s and the ruthless dogmatism of both the Nazi and Communist regimes that provoked his social and political writing during the 1940s and 1950s. For the latter, see esp. Karl R. Popper, *The Open Society and Its Enemies, 2 vols. (London: Routledge and Sons, 1945)*.

4. Exod. 34:27–28. See also, Exod. 19:5; Lev. 26:15; Num. 10:33; Deut. 4:13, 23, 5:2, 3, 9:10, 11, 15, 17:2, 28:69, 31:9, 26, and 33:9. Unless indicated otherwise biblical quotations are drawn from Harold Fisch, ed., *The Holy Scriptures* Jerusalem: Koren Publishers Jerusalem, 1969). Quotations from rabbinic sources are translated by the author.

5. See, for example, Harold Fisch, *Jerusalem and Albion* (London: Routledge & Kegan Paul, 1964), pp. 96 ff.

6. See Mishna, *Peah* 1:1, and Bavli, *Shabbat* 127a-b, where Torah-study is deemed superior to all deeds "the fruit of which a person may enjoy in this world and still their capital is invested in the next" (which in turn, are superior to those whose capital is not similarly preserved). Maimonides, following Bavli, *Kidushin*

40b, rules that: "No commandment equals that of Torah study, rather Torah study is comparable to all other commandments put together, since study leads to deeds, and therefore has precedence over deeds everywhere" (*Mishne Torah, hilkhot talmud Torah*, iii, 3), to which he adds: "and deeds do not lead to study." Ibid., i, 4.

7. A third-century tannaitic commentary to Numbers and Deuteronomy.

8. *Sifri*, Deut. 6, in *Sifre to Deuteronomy*, ed. Saul Harowitz and Louis Finkelstein (New York: Jewish Theological Seminary of America, 1969, p. 14. Herafter cited as Finkelstein ed. Throughout the midrashic literature the word "*levanon*" is taken by the rabbis consistently to designate the Temple rather than a geographic location, as suggestive of the cedars imported from Lebanon by King Solomon for building the First Temple. See for example: *Mekhilta* to Exod. 17:14; *Sifri* to Num. 27:12; Deut. 3:25 and 34:1; *Gen. Raba* to Gen. 2:8 and 11; Bavli, *Yoma* 39b, *Ketubot* 62a, *Gitin* 56b; Yerushalmi, *Yoma* iv, 41d and vi, 43c; *Ketubot* v, 30b.

9. The *Sifri*'s attitude here reflects the book's basic exegetical strategy toward the opening chapters of Deuteronomy. The first verse of Deuteronomy states that "These are *the* words which Moshe spoke to all of Israel ( . . . )." How can one book of the Torah be described as *the* words he spoke, asks the *Sifri*, certainly he spoke all five!? The *Sifri*, therefore, abandons the literal meaning of "the," and scanning the Bible for other cases in which but a portion of an author's words are described as *the* words he spoke (e.g., Jer. 30:4; 2 Sam. 23:1; Amos 1:1), concludes that in all such cases the "the" designates rebuke (*Sifri*, Deut. 1, Finkelstein ed., pp. 1–3). Moshe's entire opening speech is accordingly interpreted as conveying a series of reprimands—verse 7 included.

10. The biblical subordination of the Sinai covenant to political objectives, is stated perhaps most explicitly in Exod. 19:3–6:

> And Moshe went up to God, and the Lord called to him out of the mountain, saying, Thus shalt thou say to the house of Ya'aqov, and tell the children of Yisra'el; You have seen what I did to Mizrayim, and how I bore you on eagle's wings, and brought you to myself. Now therefore, *if* you will obey my voice indeed, and keep my covenant, *then* you shall be my own treasure from among all peoples: for all the earth is mine: and you shall be to me a kingdom of priests, and a holy nation.

To the best of my knowledge, nowhere in the talmudic literature do the rabbis ascribe a literal political meaning to the last phrase.

11. This is, at present, the widely accepted interpretation of the Talmud's account of Rabban Yohanan b. Zakai's decision to abandon and surrender the besieged Jerusalem on condition that Jabne, its sages, and the dynasty of Rabban Gamliel be saved (e.g. Bavli, *Gitin* 56b). Gedaliahu Alon, *The Jews in their Land in the Talmudic Age*, vol. 1 (Jerusalem: Magnes Press, 1980), pp. 107–18, argues in considerable detail that Rabban Yohanan's regulations and reforms all represent an attempt to salvage as much as possible of the Temple cult in order to minimize the trauma of the fall of Jerusalem. But not all agree with Alon's assessment. His contenders argue that the move from the Temple to the synagogue inaugurated by Rabban Yohanan's reforms was perhaps not altogether reluctant (see following paragraph), and that his new regulations represented a contrived and deliberate attempt to reform Judaism. Shmuel Safrai, "*Behinot Hadashot le-Ba'ayat Ma'amado u-Ma'asav shel [Rabban Yohanan] le-Ahar ha-Hurban*," in Menahem Dorman, et al., eds., *In Memory of Gedaliahu Alon: Essays in Jewish History and Philology* (Tel Aviv: Hakibbutz Hameuchad, 1970), pp. 203–26, argues, contrary to Alon (and quite convincingly in my opinion), that while many of the Temple rituals could have been preserved after the destruction, Rabban Yohanan appears to have decided not to do so. According to Safrai, there existed historical and halakhic precedents that would have allowed him not to discontinue many of the animal sacrifices for instance. From the fact that Rabban Yohanan apparently chose not to do so, Safrai concludes that the move out of the Temple and into the synagogue was regulated by him with a deliberate view to partly discontinue the Temple cult.



12. For a detailed account of R. Yehuda's patriarchy and the relevant bibliography, see Aharon Oppenheimer, *Galilee in the Mishnaic Period* (in Hebrew) (Jerusalem: Zalman Shazar Center, 1991), pp. 60–78.

13. See for example Bavli, *Avoda Zara* 10b, and Yerushalmi, *Megila* iii, 74a.

14. The ninth of *Ab* is the Jewish day of mourning in commemoration of the destruction of the two Temples. For R. Yehuda's suggestion, see Bavli, *Megila* 5a-b; Yerushalmi, *Ta'anit* iv, 69c; *Megila* i, 70c; *Yevamot* vi, 7d. His opinion was rejected, however, as premature.

15. A fuller discussion of this obviously controversial issue lies beyond the scope of the present study. Notwithstanding the suggestive legendary material of the sort I have mentioned—from which so much can be learned of a culture's self image—it is equally instructive to scan the rabbis' halakhic writings for the kind of Temple-related material one would expect them to have contained, yet omit to mention. Thus, while they elaborate in minute detail the laws and regulations related to the sacrifices themselves, there is hardly mention and certainly no attempt to establish a systematic body of halakha devoted to the proper running and maintaining of the Temple. Had a fully-fledged functioning Temple been regarded, even theoretically, as a genuinely desired religious reality, one would have expected the Mishna, for example, to include an entire Order laying down the law regarding such issues with tractates devoted to the training and employment of personnel, the treasury, supplies and suppliers, the maintenance of the implements and the buildings, etc. The talmudic sages seem to have made no serious attempt to preserve the Temple within the system of halakha they established, as the type of functioning institution it would have to be.

16. For a detailed analysis of the role played by the canonization of the Hebrew Scriptures in the replacement of the priest by the sage as the principal religious authority, see Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, Mass.: Harvard University Press, forthcoming), Part 1.

17. The epoch of Babylonian Jewish learning is marked by the return to Babylonia in 219 A.D. of R. Yehuda *Ha-Nasi*'s important student Abba Arikha, afterwards known simply as Rav. Leaving the existing academy in Nehardea to his friend Shmuel, Rav founded a new academy in Sura. Nehardea was destroyed by Odenathus in 259 A.D., and its place was taken by the neighboring town of Pumbedita where R. Yehuda b. Yehezqel, a pupil of both Rav and Shmuel, founded a new school. The Pumbedita academy was transplanted a century later by Rabba to his home town of Mehuza. The original academies of Nehardea and Pumbedita were both restored shortly after their initial closure.

18. David Weiss Halivni, *Peshat and Derash: Plain and applied Meaning in Rabbinic Exegesis* (New York: Oxford University Press, 1991), pp. 123–25 and 134–35.

19. On the possible epistemological significance of the way the talmudic literature describes the Sadducees' dissent from the teachings of the Pharisees, see

Harold Fisch, "Teach Us to Count Our Days—a Note on Sefirat Ha-Omer," in Jacob Neusner, et al., eds., *From Ancient Israel to Modern Judaism: Intellect in Quest of Understanding—Essays in Honor of Marvin Fox*, Brown Judaic Studies, vol. 159 (Atlanta: Scholars Press, 1989), vol. 1, chap. 12, § 2, and Menachem Fisch, *To Know Wisdom: Science, Rationality and Torah Study* (in Hebrew) (Tel Aviv: Hakibbutz Hameuchad, 1994), pp. 45–59.

### 1. The Great Tannaitic Dispute: The Jabne Legends and Their Context

1. For details of the structure and the content of the Mishna and two Talmuds see n. 2 of the following section.

2. Such halakhic codifications as that of Maimonides in the twelfth century and of R. Yosef Karo in the sixteenth century encountered fierce opposition in their day. In both cases critics accused their authors of violating the essential open-endedness of the Bavli's approach to halakhic deliberation. For detailed surveys of both debates and of the relevant secondary literature, see Menahem Elon's monumental *Ha-Mishpat Ha-ivri: Toldotav, Mekorotav, Ekronotav*, (Jerusalem: Magnes Press, 1973), vol. 2, part. iii, chaps. 34 and 37, and Halbertal, *People of the Book*, part 2.

3. For an illuminating discussion of the difference between learning how to do something mimetically, by being shown, and learning how to do it from written instructions in the context of contemporary halakhic Jewry, see Haim Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *Tradition*, 28, no. 4 (1994), pp. 64–130, esp. p. 72.

4. *Genesis Rabbah* 31:12 and 34:7, ed. Theodor Albeck, *Midrash Bereshil Rabbah me-et Yehudah Teodor ve-Hanokh Albek* (Jerusalem: Vahrman, 1965), pp. 286 and 316. All citations refer to this edition.

5. Ibid., 35:1, p. 328. To the best of my knowledge, nowhere else in the talmudic literature does one find a clear and unambiguous declaration in favor of monastic abstinence comparable to that of R. Nehemiah. In this sense the homily before us is unique. But in the way it abstains from ruling on even the most fundamental extrahalakhic question, it is commonplace.

6. Bavli, *Avoda Zara* 2b.

7. *Genesis Rabbah* 1:4, p. 6.

8. For a different, anti-Platonic rendering of this midrash, see Ephraim E. Urbach, *The Sages, Their Concepts and Beliefs* (Jerusalem: Magnes Press, 1969), pp. 176–77.

9. *Genesis Rabbah, op. cit.*, 1:1, p. 2.

10. See for example Bavli, *Gittin* 6b; *Bava Metzia* 86a.

11. In several instances, however, the rabbis' midrashic renderings of Scripture would appear in fact to infringe upon the Bible's purely syntactical stratum. Two examples will suffice to make the point. Bavli, *Berakhot* 32a, relates the following: "R. Elazar said: Moses addressed the Heavens insolently, for it is said: '[And the people cried out to Moshe; but] Moshe prayed to the Lord [and the fire was quenched]' (Num. 11:2). Do not read 'to (*el*) the Lord' but rather 'on (or against, *al*) the Lord'—for the school of R. Eliezer b. Yaakov (frequently) read (interchange) *alephs* instead of (for) *ayins* and *ayins* instead of (for) *alephs*." This particular school of exegesis is apparently reported to have taken the liberty of tampering with the text itself. In similar fashion, though for entirely different reasons, Bavli, *Berakhot* 57a, and *Pesahim* 49b urge us to read Deut. 33:4: "Moshe com-



off a person's inappropriate attire, or contradicting one's master's rulings, but not to be a zealot about it—to think twice, consider alternatives, and to always take a second look.

103. *Eruvin* 63a tells of Ravina, disciple of R. Ashi, who, in the presence of his teacher, noticed a person publicly violate a rabbinic injunction (by tying his ass to the trunk of a palm on the Sabbath). Rather than wait for his master to respond, Ravina is said to have shouted to the man, and getting no reaction from him declared him excommunicated. "In doing so was I acting disrespectfully to you?" he asked R. Ashi. No, answered his teacher, in these cases we say: " 'There is no wisdom nor understanding nor counsel against the Lord'; wherever a profanation of God's name is involved no respect is paid (even) to a teacher." Interestingly, according to *Berakhot* 19b Rav's principle would *not* be expected to apply in the case of rabbinic prohibitions. See also Bavli, *Moed Katan* 17a.

104. On the citation of the incident concerning the Passover feast introduced by Todos of Rome, the *s'tam* remarks that R. Yehoshua referred specifically to "our Mishna," and this particular incident is related only in a *beraita*. "Are there no such cases in the Mishna itself," he asks, clearly implying the greater significance of the Mishna in comparison to other tannaitic sources. In view of the fact that a page later the Gemara will tacitly discriminate again between the Mishna and *beraitot*, allowing the former to be contradicted by Rav while fastidiously harmonizing Rav with the latter, I find this remark highly significant.

105. See Cohen's translation and commentary to Tractate *Berakhot* (n. 95 above), p. 125, n. 3. It is not uncommon for the rabbis to refer to, or to liken the Almighty to, a *rav*—Master. A relatively common turn of phrase used by the Bavli exclusively to indicate that in the cases of apparent discrepancy between the teachings of the Torah and those of a local authority one should abide by the former is: "When the words of the teacher and those of the pupil [are contradictory], whose words should be hearkened to; surely the teacher's!" This argument, states Bavli, *Sanhedrin* 29a, could have been marshaled by the serpent against the accusation of seducing Eve. See also Bavli, *Kidushin* 42b, *Bava Kama* 56a, *Temura* 25a. The Yerushalmi, on the other hand, uses the phrase but once and with reference to human teacher and pupil—Yerushalmi, *Nida* ii, 49d.

106. The case of R. Eliezer's banishment is seemingly clearer in this respect than that of Akavia. At one point in the story, Akavia is indeed accused of speaking disrespectfully of Shema'aya and Avtalyon. Not surprisingly perhaps this is the only part of the story reproduced here. The full story, related in Mishna, *Eduyot*, and dealt with in the previous chapter, does not give itself so easily to such a reading.

107. The case alluded to here only by catchword is the Yerushalmi's version of an incident mentioned briefly in Mishna, *Rosh Ha-Shana* 1:6. After forty sects of eyewitnesses had testified before the *Bet din* that they had sighted the new moon, R. Akiva is said to have held them back (because one sect suffices for the *Bet din* to declare the new month). Raban Gamliel sent him a message saying: "if you hold the community back (from carrying out a religious duty), you will cause them to fail in the future," meaning that those who are turned back are liable not to come forward at all in the future. To this the Yerushalmi adds (*Rosh Ha-Shana* i 57b): "and whoever holds the community back from carrying out a religious duty is to be excommunicated." Compare, however, Bavli, *Rosh Ha-Shana* 22a.

108. King Yerov'am is described throughout the talmudic literature as *the* ex-

ample of a person who knowingly led the nation in the ways of sin. See, for instance, Mishna, *Abot* 5:18; Tosefta, *Sanhedrin* 13:5; Yerushalmi, *Avoda Zara* i, 39a; Minor Tractate *Semahot* 8:13; Bavli, *Berakhot* 35b; *Rosh Ha-Shana* 17a; and esp. *Sanhedrin* 101a–102b.

109. See above n. 2.

110. Tractate *Uktzin* of Order *Tahorot* is notorious for its complexity, as are the disputations between Rav and Shmuel, R. Yehuda's teachers. For the former, see Bavli, *Horayot* 13b.

111. This refers not to *Uktzin* but to Mishna *Tahorot* 2:1, also of Order *Tahorot*.

112. Mishna, *Uktzin* 2:1.

113. Or by thirteen different methods. The implication is the same: our command of the world of learning is far superior to that of the generation of R. Yehuda.

114. On occasions of mourning and public and private fasting one always removes one's shoes. At times of drought R. Yehuda, then, despite his inferior learning, would only have to make the fist sign of self-humiliation for his plea to answered.

115. The entire exchange appears almost verbatim in Bavli, *Ta'anit* 24b and *Sanhedrin* 106b.

### 3. Understanding the Bavli

1. Except, of course, for a *sugya* like *Berakhot* 19b which seems to be geared deliberately to exploding its traditionalist facade and giving the game away. But even here, the object of the exercise strikes one as having been more subtly instructional than brusquely polemic.

2. I would like to register special thanks at this juncture to three friends and colleagues, philosopher Avi Sagi, historian and philosopher of science Gideon Fruedenthal, and philosopher of law Hanina Ben-Menahem, for forcefully presenting variants of this option in our long and hard discussions of several of the themes presented in this book.

3. Halbertal develops these distinctions in the beginning of part 3 of *People of the Book*, entitled "Canon and Curriculum."

4. In *Interpretive Revolutions*, Halbertal explores the difference between reading in and reading out of a formative text. A document may function as formative text without it necessarily having to serve as the *source* of the true or the good. As Halbertal shows, this is often the case in tannaitic *midrash halakha* where value judgments are used by the rabbis to adjudicate between rival readings of a verse.

5. "(The *halakhot* concerning) the dissolution of Vows hover in the air and have nought to rest on," states Mishna, *Hagiga* 1:8, colorfully, "and the *halakhot* concerning the Sabbath, Festal-Offerings, acts of trespass, are as mountains hanging by a hair—with scant scriptural basis but many *halakhot*." See also Tosefta, *Eruvin* 8:23, *Hagiga* 1:9, and Bavli, *Nazir* 62a and *Hagiga* 10a–11a.

6. This is a matter rather different from the type of interpretative activity that accompanies every act of adjudication. Problems pertaining to the interpretation of the law arise each time the law is officially *applied*. The law at any time is of course a formative text of, and for, a variety of adjucative activities inside and outside the courts. Here, however, I am interested in the type of text that is formative of the law itself (as opposed to its application). Texts, the interpretation



of which ground and govern the world of legislative discourse. (Where legislative is taken in the broadest possible sense of the term to include both institutional and judicial legislation. To recall, in Jewish law, the Sanhedrin, the Great *Bet din*, functions as the High Judicial Court *and* the authoritative legislative institution.) I am aware that the distinction I am making is rudimentary, and that it is impossibe to differentiate fully between the two undertakings. For a major criticism along these lines see, for example, Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, Belknap Press, 1986), chap. 1.

7. Proof of which some of them find in the tendency of late to codify all Common Law systems. Hans Kelsen is perhaps the most prominent legal theorist to insist that every system of law must assume some kind of *grundnorm*, or Basic Norm as he calls it. The question, however, is not the presence of such a fundamental grounding of the system as its openness in principle to revision. For Kelsen's views, see Hans Kelsen, *Introduction to the Problems of Legal Theory* (Oxford: Clarendon Press, 1992), esp. chap. 5.

8. The French Code Civil, later known as the Code Napoléon, was enacted in 1804. It was followed by a Code de Procédure Civile (1806), a Code Commercial and Code d'Instruction Criminelle (1808), a Code Pénal (1810), and a Code Forestier (1827). The German Civil Code (the Bürgerliches Gesetzbuch or BGB) was enacted in 1896 and came into force on January 1, 1900. For an insightful summary and critique of the general idea of codification see Ferdinand Fairfax Stone's centennial essay, "A Primer on Codification," *Tulane Law Review*, 29 (1955), pp. 303–10. For the French and German codes, see Andrew West, Yvon Dedevises, Alain Fenet, Dominique Gaurier, and Marie-Clet Heussaff, *The French Legal System: An Introduction* (London: Fourmat, 1992), and Ernst Joseph Cohn and Wolfgang Zdziebelo, eds., *Manual of German Law*, vol. 1 (London: British Institute of International and Comparative Law, 1968). Needless to say, the manner in which the great existing codes are treated in real life legislative situations is somewhat more complex than described here. For analyses of the function of continental codes see, for example, Chaim Perelman, *Logique juridique: Nouvelle rhetorique*, trans. Orah Gringard (in Hebrew) (Jerusalem: Magnes Press, 1984), part 1, chap. 3.

9. See above part 2, section 1, n. 1.

10. Over which one would normally say: "Who bringest forth bread from the earth."

11. Over which one would normally say: "Who creates the fruits of the vine."

12. This is a good example of a purely halakhic problem that pertains to legal definitions and criteria, suggesting that the system fails to cohere with respect to the halakhic status of this sort of fungi. It is a problem that has nothing to do with biblical exegesis.

13. The entire discussion is reproduced in a slightly different order but with the same conclusion in Bavli, *Nedarim* 55b.

14. The problem raised and solved by the *s'tam* does not at all pertain to a transgenerational tension. The legal incongruity involved obtains wholly within the limits of the tannaitic corpus.

15. See, for instance, Mishna, *Bava Metzia* 7:2; Bavli, *Bava Metzia* 89a, and *Hulin* 115b.

16. For other employments of precisely the same formula see, for example, Bavli, *Shabbat* 5a; *Nedarim* 9b; *Bava Batra* 144b; *Sanhedrin* 10b; *Bekhorot* 2b; *Nida* 5a.

17. See, for example, Bavli, *Pesaḥim* 12a. For a testimony to be considered refuted, it is not enough that other witnesses testify to the contrary. That would be a case of contradiction on which the court will be required to decide. A testimony is considered refuted by the halakha only when a second sect of witnesses testifies that "at the exact time that you claim to have been in place A and to have seen what you saw, you were really with us in place B." It is up to the court to ensure that testimonies are *refutable* by interrogating each member of a sect separately as to the precise date, time, and place of the occurrence. The very idea that evidence is considered viable only if it is refutable, and acquires credibility from the fact that it is not actually refuted, is itself refreshingly Popperian. On this peculiar aspect of the Jewish laws of evidence, see Y. Ben-Menahem and H. Ben-Menahem, "Popper's Criterion of Refutability in the Legal Context" in Aleksander Peczenik, Lars Lindhal and Bert van Roermund, eds. *Theory of Legal Science: Proceedings of the Conference on Legal Theory and the Philosophy of Science, Lund, Sweden December,* 1983, Synthese Library, vol. 176 (Dordrecht: D. Reidel, 1984), pp. 425–35.

18. Bavli, *Sanhedrin* 32a–b.

19. The *beraita* is Tosefta, *Makot* 1:2.

20. As the *s'tam* explains further down, the explicit mention of the sabbatical year is to indicate that such bonds are considered valid even if their dates are highly suspect. It would be very unlikely for a loan to be signed toward the end of the sabbatical year when a moratorium is declared on all standing debts that are not defended by a special contract (Hillel's well-known *Pruzbul*).

21. The Tosefta reads: "Their testimony (signature) is valid and the bond is valid, because we say perhaps they put off its date when writing (it)." The Bavli version of the *beraita* omits the explanatory clause and is stated in the form of a question. Here the answer—namely, that it is not unusual for the date on which a bond was actually witnessed and signed and that of its coming into force, not to coincide—is provided by the *s'tam* in Aramaic.

22. A bond legally comes into effect at the time that it states that it was signed. Apparently it was not uncommon for the officially stated date of the bond not to reflect the actual date of the signing and witnessing, if, for example, the persons involved would not be available for signing on the day the bond was meant to take effect. The problem is that such a testimony would never be able to withstand normal 'inquiry and examination'.

23. In fact, notes the *s'tam*, not only is the ruling of this Mishna in conflict with the Tosefta, it is also contradicted by another Mishna—*Shevi'it* 10:5—that rules that antedated bonds are in general valid while postdated ones are not. See also Bavli, *Rosh Ha-Shana* 2a and 8a, *Bava Metzia* 17a and 72a, *Bava Batra* 157b and 171b.

24. Bavli, *Pesaḥim* 12a; *Bava Kama* 75b; *Sanhedrin* 41a and 75a.

25. The idea being that if bonds were rendered too vulnerable to challenges of this sort, people would tend to avoid issuing loans for fear of losing their money.

26. There are close to seventy instances of rabbinic decrees that are presented in exactly this way. See, for example, Bavli, *Bekhorot* 51b; *Ḥulin* 122a; *Bava Batra* 48a; *Nedarim* 45a; *Ketubot* 57b and 102a; *Eruvin* 4b; *Shabbat* 145a and 146a and, of course, *Berakhot* 19b.

27. As for example the rabbinic restriction regarding coffins that we encountered in *Berakhot 19b: "Raba said: It is a rule of the Torah (devar Torah)* that a 'tent' which has a hollow space of a handbreadth (between its outside and what it contains) forms a partition against uncleanness, but if it has not a hollow space of a handbreadth it forms no partition against uncleanness. Now most coffins do have a space of a handbreadth, but [the rabbis] decreed that those which had such a space [should form no partition] for fear that they should be confused with those which had no space."



28. For R. Ḥanina's move, see also Bavli, *Yevamot* 122b, and *Sanhedrin* 2b. For similar repudiations of tannaitic restrictions that use the same argument schema, see Bavli, *Gitin* 53a and 55a, *Bava Kama* 8a, and *Bava Batra* 175b.

29. R. Ḥanina's proposal is rejected, however. Limiting the *Bet din's* ability to challenge bonds and to oversee the money market to that extent, argues the *s'tam*, would only have made matters worse. Under such circumstances, potential loaners, wary of fraud in the absence of court control, would be even less willing to lend to the needy.

30. Maimonides, in *Mishna Torah, hilkhot Sanhedrin* xii, 3 and *hilkhot edut* iii, 1, clearly ignores the Bavli's refutation of R. Ḥanina's suggestion and adopts his view. Although 'inquiry and examination' were originally meant to apply to all manner of legal testimony, he writes, the rabbis exempted property law from this restriction in order "not to shut the door in the face of" those in need of a loan. However, he adds (*hilkhot edut*, iii 2), the exemption applies only to contracts and bonds. Maimonides, on this point, clearly follows R. Ḥanina's view of the Mishna as a system liable to be rendered problematic and in need of revision, although he interprets the changes that were in fact introduced along the narrower lines proposed by Rava. The two other great codifications, the *Tur, Ḥoshen Mishpat* 30, and *Shulḥan Arukh* 30:1, both ignore R. Ḥanina's view altogether and state simply that in civil law inquiry and examination are not required unless foul play is envisaged—a combination of the opinions of Rava and R. Papa.

31. Stone, "A Primer on Codification," pp. 305, 308.

32. That is to say, commandments the observance of which depends upon a certain point of time—lit. "caused by time."

33. For the amoraic discussion see Bavli, *Kidushin* 33b-34a. The *beraita* in question is an interestingly modified version of Tosefta, *Kidushin* 1:10.

34. One intriguing difference between the *beraita* and Tosefta is that the latter counts *Tzitzit*, fringes, as an affirmative precept that is *not* limited to a specific time and, therefore, as one incumbent upon women.

35. Mishna, *Eruvin* 3:1 and 7:10.

36. It is forbidden on a holy day to walk in any direction beyond a certain distance or to move objects beyond four cubits in any domain other than a private one. If it is desired to walk a greater distance, or if objects are to be moved in a courtyard belonging to more than one tenant, or in an alley into which more than one courtyard opens, it is required to 'make' an *Eruv* (lit. a mixture or fusion). To put it simply, an *Eruv* is a symbolic meshing of domains. It consists of a specified quantity of foodstuffs deposited in a specified place and contributed by, or on behalf of, the people concerned. Different abodes are by this means regarded amalgamated or fused into one.

37. Bavli, *Eruvin* 27a. R. Yoḥanan's principle is cited and applied once more in Bavli, *Eruvin* 29a.

38. In *Eruvin* 27a the amoraic authorities named in connection with the application of R. Yoḥanan's principle of principles are the fourth-generation Abaye, the third- to fourth-generation R. Yirmiya, the sixth-generation Ravina, and the second- to third-generation R. Naḥman.

39. See Yerushalmi, *Terumot* i 40c; *Hagiga* i 74a; *Yevamot* ix 10a.

40. Yerushalmi, *Peah* ii 17a. Compare Bavli, *Bava Batra* 130b. I understand the word "learn" here to refer specifically to the process of making halakhic rulings on the basis of former rulings, and not to the learning process itself. Also, I understand the term "talmud" to denote the activity of *talmud-Torah* and not the name of a compilation.

41. Nancy Cartwright's keen analysis of Miles V. Klein's textbook on optics is a good example of the inconsistencies a good textbook will inevitably be found to harbor if one ignores its didactic function. Cartwright reads Klein's text as a failed attempt to approximate the truth on every page, rather than as a typically good attempt to introduce the reader to modern optical theory step by step. See Miles V. Klein, *Optics* (New York: John Wiley and Sons, 1970), and Nancy Cartwright, *How the Laws of Physics Lie* (Oxford: Clarendon Press, 1983), pp. 46–50.

42. That particular mishnaic passage—Mishna, *Kidushin* 1:7—consists of several general principles of this kind. Thus, for example, it states that all the duties of parents toward their children fall on the father and the mother is exempt, while male and female children are equally obligated towards their parents. For a fascinating discussion of how the Mishna's desire for economy "affects the vocabulary of halakha to the point of imprecision" and several illuminating examples of this tendency (including evidence of the Gemara being aware of it), see Jose Faur, *Golden Doves with Silver Dots*, pp. 89–96.

43. See for example Chanoch Albeck, *Introduction to the Mishna* (in Hebrew) (Jerusalem: Mossad Bialik, 1979), pp. 1–2, and Faur, *Golden Doves and Silver Dots*, pp. 52–53.

44. Of the great value laid by talmudic culture on perfect memorization of the halakhic system and evidence of the memorization drills that characterized the early stages of a novice's discipleship at the time, see Faur, *Golden Doves and Silver Dots*, pp. 89–90, and the bibliography cited therein.

45. I refer the reader again to Avi Sagi's important study and survey of post-talmudic Jewish attitudes to halakhic disagreement, pluralism and truth: *Elu va-Elu: A Study on the Meaning of Halakhic Discourse*.

46. See above section 1, n. 115.

47. In his commentary to Exod. 34:1, Berlin claims that the second set of tablets received by Moshe was different from the ones that were previously broken, in that they established a very different process of Torah-study than did the ones they replaced. The first reception of the Torah was meant to be complete, requiring no further development of the halakhic system (he says nothing of the other aspects of discerning the Word of God) except for simple analogy. The second, by contrast, comprised a set of foundational rulings and rules of inference (jointly called *hukim*—the laws) from which new rulings (*mishpatim*—propositions, theorems?) are inferred in the course of lively *pilpul* and debate. The difference between the first and second sets of tablets, he adds, is to an extent preserved in the different attitudes of the Yerushalmi and the Bavli.

48. By which I mean, again, the portions of the texts that are presented as tannaitic. As stated at the outset, this study negotiates the amoraic/tannaitic divide *as the framers of texts construct it for us*. We are interested here in the ways in which the amoraic redactors sought to define themselves in relation to their predecessors and not in discerning the true historical facts of the matter.

49. Before changing his ways and joining R. Yohanan's academy, Resh Lakish



is reputed to have kept company with criminals. In recent years this story has been read, to quote Boyarin, for "the anxiety about gender and the boundaries of gendered performance" that inhabits it, as the paradigmatic story "of Jewish male subjectivity . . . that is figured as at . . . the margins of the Roman cultural Empire." Boyarin's "Homotopia: The *Fem*inized Jewish Man and the Lives of Women in Late Antiquity," pp. 41–81, presents a most powerful and compelling reading along these lines. What follows is not meant to encroach upon or to contest this aspect of the story, but to add to it an epistemological dimension that is equally evident in the text and to an even greater degree intentional.

50. This strange metaphor probably bespeaks either the total commitment required of those who dedicate themselves to Torah or the fact that once such a commitment is made, there is no return.

51. As we noted in connection with the oven of *Akhnai*, only fully-fledged utensils, *kelim*, are liable to "receive" impurity—*tum'at kelim*. It is, therefore, crucial to determine at precisely what moment something ceases to be raw materials and becomes a utensil.

52. Mishna, *Kelim* 14:5, rules that swords are susceptible to ritual impurity only after they are filed, and knives only after they are sharpened. Many of the post-talmudic commentators have tried to harmonize the two sources by claiming that the Mishna (probably echoing Tosefta, *Kelim* [*Bava Metzia*] 3:10) deals only with swords and knives that have rusted over. These, they claim, can no longer be considered fully fledged utensils until their rust has been filed away. Maimonides, however, rules that the criterion for utensilhood in general follows the Mishna in both case, which in his opinion, seems not to have anything to do with rust. See Tosafot to Bavli, *Bava Metzia* 84a, Maimonides, *Mishna Torah, Hilkhot Kelim* 8:2.

53. The exact wording is: "in matters of robbery, a robber understands." Resh Lakish's shady past appears to be common knowledge in the Bavli, but there seems to be some disagreement regarding its precise nature. Here the term *listim*—robber—is used. In Bavli, *Gitin* 47a, he is reputed to have hired himself out as a gladiator.

54. The exact wording is: "Let R. Elazar b. Pedat go, whose *halakhot* are sharp."

55. Here the original phrase is: *u-mimeyla ravha shema'ata*, that is to say: "and so the halakha profits or prospers."

56. As I shall explain shortly, it is my contention that the story was originally written as a midrashic rendition of Exod. 33:13–23, in which case it is about Moshe's second ascent to Sinai to receive the Torah with which he was already well acquainted.

57. The ritual scroll of the Torah consists of a text lacking punctuation and cantilation marks as well as vowel dots. The letters, however, are affixed with coronets. To the best of my knowledge, the coronets themselves are decorative and nowhere enter midrashic or halakhic considerations. They serve in the story to create two of its central images: that of Moshe arriving 'on the High' and finding the Written Torah not yet ready to be given, and that of midrashically inferring a multitude of halakhic rulings from the minute nuances of the written text—for which R. Akiva was renowned.

58. The precise phrase is "turn thee (or return) to behind of thee."

59. The phrase is *tashash koho*—"he lost his strength"—the term is used by the Bavli to indicate severe loss of control.

60. An explanation for Moshe's inability to comprehend Akiva's teachings,

commonplace among traditional commentators, is to point out that at the time, according to the story, he had not yet received the Torah and therefore was in no position to know what Akiva was talking about. (See, for example, Rashi to Menahot 29b.) The problem is that if that was all R. Yehuda in the name of Rav was trying to tell their readers, the story would have been utterly pointless. On the other hand, the story specifically states that the events took place prior to Moshe's the reception of the Torah. My suggestion below to associate the story with Exod. 33:13–23 will conveniently situate it after the reception and eventual breaking of the first tablets and immediately before his receiving of the second. On such a showing Moshe would have already known the Torah he was about to receive for the second time.

61. The Hebrew wording is *kakh alta be-mahashava le-fanai* "thus it arose in (my) thought before (or, in front of) me." I stress this because of the way the author of the legend plays with the terms "in front" and "behind." Moshe is asked to "turn to his behind," failed to understand what he perceived there, and is informed by the Almighty, quite abruptly, to be quiet and to accept the thoughts or decisions related to what was "before" Him.

62. According to talmudic lore R. Akiva was cruelly executed by the Romans for violating the prohibition issued against Torah-study. See Yerushalmi, *Berakhot* ix 14b, *Sotta* v 20c, but esp. Bavli, *Berakhot* 61b.

63. The idea that the story originated as a midrashic reading of Exod. 33:13–23 was first suggested to me in private conversation by Dr. Y. Licht.

64. For an intriguing reading of the burning bush encounter along these lines see Gabriel Motzkin, " 'Eheye' and the Future: 'God' and Heideger's Concept of 'Becoming' Compared," in Aharon R. E. Agus and Jan Assmann, eds., *Ocular Desire: Sehnsucht des Auges* (Berlin: Akademie Verlag, 1994), pp. 173–82.

65. Notice his clear allusion to the burning bush encounter and to the fact that his request for privileged foresight was then turned down.

66. The English translations miss much of this, which is more apparent in the Hebrew. Harold Fisch translates these verses thus: "And he said, I will make all my goodness (morality) pass before thee, and I will proclaim the name of the Lord before thee; and will be gracious to whom I will be gracious, and will show mercy on whom I will show mercy. . . . Thou canst not see my face; for no man shall see me, and live. And the Lord said, Behold, there is a place by me, and thou shalt stand upon a rock: and . . . while my glory passes by, that I will put thee in a cleft of the rock, and will cover thee with my hand while I pass by: and I will take away my hand and thou shalt see my back: but my face shall not be seen." The entire passage plays on the difference between seeing the Almighty's face and seeing His back, seeing forwards and seeing backwards. But the verb "to see," *ra'o* in Biblical Hebrew, invariably means to perceive, to comprehend, to understand. By substituting knowing or comprehending for seeing and setting the Almighty's reply in the context of Moshe's other requests of this kind, we arrive at the reading I have proposed.

MOSHE HALBERTAL

# *People of the Book*

## *Canon, Meaning, and Authority*

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## *Introduction*

### Canonical Text and Text-Centered Community

Years ago a teacher of mine introduced me to a new concept of heaven and hell. "Don't think that hell is where people are consumed by fire for their sins or that heaven is where they are rewarded with pleasures for their piety. What really happens is that God gathers everybody in one large hall. Then He gives them the Talmud and commands them to start studying. For the wicked, studying Talmud is hell. For the pious, it's heaven." Clearly, the role of the sacred text in Jewish life is so profound that even the afterlife cannot be imagined without it.

The two main axes of this book are the canonical text and the text-centered community. In particular, I seek to understand the Jewish tradition as a text-centered tradition, not in its ideas about life after death but as this centrality affects life on earth. Rather than searching for the essence of Judaism in shared beliefs and practices that remain constant though they take superficially diverse forms, I have chosen to focus on the shared commitment to certain texts and their role in shaping many aspects of Jewish life and endowing the tradition with coherence.

In the Jewish tradition the centrality of the text takes the place of theological consistency. Jews have had diverse and sometimes opposing ideas about God: the anthropomorphic God of the Midrash, the Aristotelian unmoved mover of Maimonides and his school, the Kabbalah's image of God as a dynamic organism manifested in the complexity of

his varied aspects, the *sefirot*. These conceptions of God have little in common and they are specifically Jewish only insofar as each is a genuine interpretation of Jewish canonical texts.

Not only does the text provide a common background for various ideas and practices; text-centeredness itself has deeper implications. Some of the major developments in Jewish tradition can be understood through the community's notions of its relation to text, of what text is, and how text functions in its midst. Text is thus more than a shared matrix for a diverse tradition—it is one of the tradition's central operative concepts, like "God" or "Israel."

The general classification of Judaism as a "book religion" is well known to students of comparative religion.[1] As in many other religions, among them Islam and Christianity, Scripture is at its center,[2] but the function, development, and implications of the centrality of text for the shape of Judaism are yet to be investigated. As I hope to show, focusing on text-centeredness will highlight the main distinctions between rabbinic Judaism and biblical religion. What made the Torah the main source of religious authority—the locus of religious experience and divine presence and the object of ongoing reflection—is what gave Judaism the form that persists to this day.

This book is not a full historical and chronologically ordered account of canonization within the Jewish tradition. My discussion is organized thematically, referring to different historical moments and to the various canons as they relate to the theme at hand. The first chapter discusses relationships between canon and meaning. The second treats tensions and competing ideas about the notion of authority of texts and interpreters, while the problem of the value of text and curriculum is discussed in the third chapter. Each chapter deals with a different canon within the Jewish tradition: the first focuses on the canonization of the Bible and its effects on Jewish trends in its interpretation; the second analyzes the canonization of the Mishnah and subsequent codes in the Jewish tradition as they relate to the problem of authority and controversy; and the third deals with the struggle accompanying the rise of the Talmud as the main text in the Jewish curriculum from the Middle Ages onward. Although the intense production of different Jewish canons over such a long time span does not receive a systematic historical treatment, the accumulated total does serve as a continuous resource for dealing with problems of canons and their relation to meaning, authority, and value within the Jewish tradition. The conceptual approach to issues of canonization within the Jewish tradition can also be of value to other fields of research such as law and literature, in which similar problems concerning canons arise. It is essential therefore to clarify the two principal concepts: canonical texts and text-centered communities. They are described in the sections below.



## KINDS OF CANONS

"Canonical" as an adjective describing a text refers to the text's special status, one that can have many guises. Texts form a *normative* canon; they are obeyed and followed, as, for example, are Scriptures and legal codes. They can also be canonical as a constitutive part of a curriculum; such texts are not followed in the strict sense but are taught, read, transmitted, and interpreted. These texts establish a *formative* canon, and they provide a society or a profession with a shared vocabulary. The importance of this kind of canonization is manifest in text-centered societies or institutions in which familiarity with certain texts is a precondition for membership. In yet another sense of the word, which will not be discussed in this book, canonical texts serve as paradigmatic examples of aesthetic value and achievement: models for imitation which set the criteria for what is regarded as a higher form of art. These constitute an *exemplary* canon. In a much narrower sense of canonization, texts can become exemplars of schools and trends; they highlight the characteristics of the genre lucidly and forcefully, though they do not necessarily represent the best of that genre but rather what most typifies it.

Different kinds of canonization occasionally converge in a single text. For example, the Talmud in Jewish tradition fulfills two canonical functions: it establishes the norms of behavior in many aspects of life and serves a formative function as the fundamental text in the traditional Jewish curriculum, the focus of endless interpretations and debates. (As we shall see, this dual nature of the canonicity of the Talmud was sometimes challenged by Jewish mystics and philosophers who maintained that the Talmud is authoritative in all matters of the law but is not a text worthy of exclusive, ongoing reflection and study).

Not all canonical texts enjoy equal status. Legal tracts are meant to be obeyed but do not form a central part of the curriculum—they are not regarded as "cultural assets." The Talmud, although it is canonical

in these two senses—it is meant to be obeyed and studied—is not paradigmatic and did not set a standard for the formation of future texts. Few interpreters of the Talmud tried to imitate it; they did not write more Talmud; they just wrote about the Talmud.[3] Texts can therefore exert influence in many realms: they are followed and obeyed, studied and read; they are imitated and revered; and they set a standard and bestow value. They control action, thought, and creativity. It is this whole range of the power and function of texts that we wish to capture with the term "canonization." The distinction among these functions is of special importance to the discussion in the third chapter of the book.

The political dimension of the study of canonization is related to the question of status. Texts issue binding norms, and in many cases expertise in a canonical text underlies a claim to political authority and power. Reference to it is a source of legal and moral justification. The establishment of a curriculum and the definition of values involve strong acts of censorship. Canons are both exclusive and inclusive. They create monopolies and define who is worthy of being heard and who is not. In some situations, disagreement about what is included in the canon can divide a community. The connection between canon and censorship and canonization and crisis, as well as issues of authority and the authoritative interpreter, will be discussed in the second chapter.

Canonization fulfills a demarcating function, as in the example of the fixing of the Christian canon in the second century. The historical background of the canonization of the New Testament is still debated. Some scholars tend to see the process as mainly connected to internal developments in the early Church, others understand it as a powerful reaction to Marcion, a second-century Gnostic.[4] Marcion claimed that the Old Testament and the Gospels alike distorted the true teaching of Christ. These books were too "Jewish," he said, and he excluded them from the authoritative body of Christian teachings. In his view, holy Scripture contained only the Paulinian material of the New Testament and some parts of the Gospels. At the other extreme, the Jerusalem Church, which adhered at least partially to the Old Testament law, accepted the Gospels and challenged Paul's authority because of his rejection of the law.

The Christian Church, not yet fully defined, was torn between radically different religious outlooks which expressed the inner tension of



its own message. Out of the existing sacred material a fixed canon was formed in response to both the Marcionites' challenge and to the challenge from the more traditional branch in Jerusalem. The establishment of a fixed Christian canon demarcated believers from heretics and erected boundaries between Christians and Gnostics. The logic of fixing a canon as an act of creating boundaries requires the existence of groups that it excludes; canon and heresy are twins.[5]

Since canonical texts have many functions, various arguments are advanced concerning their authority. A text can be authoritative because it claims origin from a unique source such as God, the king, or an expert in the field. Sometimes the authority of texts may be independent of the superior will that instituted them. For H. L. A. Hart the law is authoritative because legal norms were constructed according to the appropriate procedure. This procedure is defined by the legal system itself through a set of high-order rules which dictate that laws should be formed through the Parliament and the like.[6] The authority of a text can also derive from its unique intrinsic merit, like that of a great book. These claims to authority can be challenged on several grounds.

If a text is authoritative, then the issue of who may interpret it is of enormous importance. It is then necessary to explain what justifies the authority of the text and who is authorized to interpret it. These issues are connected to the broader question of what sort of text becomes canonized and for what reason. Is it the text as a potential source of meanings, a specific reading of the text, or is it an institution that defines the meaning of the text? For example, when the Constitution of the United States was made authoritative, was it the specific intention of the writers of the Constitution that was canonized, that is, one particular reading of the text, or was it future readings, that is, any reading that can be justified as a "reading" of the text, so we can say that the text "as such" was canonized? A third option is that only readings produced in the proper institution constitute the true canon. In the case of the Constitution, the Supreme Court's reading is the canonized meaning. Much of the debate about constitutional law revolves around this issue, reflecting internal tensions in the canon's authority.[7]

Since the meanings of texts are sometimes undetermined, variant interpretations may be used to undermine the practices, beliefs, and institutions that are grounded by reference to canonical texts. Thus canonical texts can easily become subversive texts. Consequently, they

have often been kept safe and out of sight of the very people over whom the texts assert authority. For example, the early writings of Marx were not available in Communist regimes. Likewise, before the Reformation, the Church often argued that the public should learn Scripture from pictures, usually on the walls of the local church, while the texts themselves should be kept from the community.[8] Cardinal Newman defends the Catholic preference of traditional over nontraditional interpretation of Scripture as follows: "being withdrawn from public view [the tradition] could not be subjected to the degradation of a comparison [with the text of the New Testament], on the part of inquirers and half-Christians."[9] The apostolic tradition was protected from the public eye in an effort to keep it pure and uncontaminated, unlike the New Testament in the hands of the Protestants. In the history of many religious traditions the sacred texts have proved to be as much sources of heresy as sources of faith. "No heretic without a text" is a proverb Spinoza quotes in his *Treatise* as he describes the widespread sectarianism of the seventeenth century.[10] The canonical text with all of its prestige and authority—precisely because of that prestige and authority—must be protected; its readers should be screened and its meanings controlled.

## ❧ TEXT-CENTEREDNESS

Various aspects of the relationship between the Jewish community and its canonized texts are indicative of text-centered communities in general. First, expertise in the text is a source of power and prestige, both religious and political. Religious authority need not rest on expertise in the text; it can be derived from an individual's exclusively ordained role in ritual (priesthood), or from his unique charisma (prophecy). The idea that expertise in the text is a source of authority—an idea that gives rise to the centrality of the scholar in the Jewish hierarchy—defines an important feature of text-centeredness. Such expertise may become the main source of authority, and then priests and prophets are replaced by scholars. The leading role of the scholar constituted a revolutionary, postbiblical conception of religious authority within Judaism, challenging other conceptions.[11]

A second feature of text-centeredness in the Jewish tradition is that Torah study is considered a foremost religious ideal, indeed a commandment obligating all members of the community. Such a commandment makes membership in the community conditional upon familiarity with the text, and it makes the Torah an ongoing focus of attention. In radical versions of this idea, the Torah is the only focus of attention and thought. The text is an object of reflection, to be explored in depth so that its hidden meanings may be discovered. For when the text moves to the center of attention, it expands its meanings and dimensions.



Both aspects of text-centeredness—the relationship between expertise and authority and the centrality of study—raise questions of access to the text, and whether knowledge of the text is equally distributed among members of the community.

Knowledge of and access to the text are affected by many factors. Literacy can be restricted, as can knowledge of the language in which the text is written. Monopolistic control over the power derived from familiarity with the text can thus be achieved at the basic level of linguistic differentiation,[12] as was the case with Roman Catholicism: the clergy knew Latin and the laity mostly did not. When there is a gap between the language of the text and that of the community, the rules controlling the translation of the text become crucial. However, in the absence of linguistic barriers, access to the text may be controlled by other measures, such as restrictions on dissemination of the text, restrictions on teaching it, or institutional control of education.

In the case of the Torah, making it public knowledge is emphasized as an obligation in the text itself; the laws are supposed to be read in a public ceremony and made known to the community at large.[13] While some first-century rabbinic authorities advocated limiting the teaching of Torah to the sons of "good families," the main trend was democratic and the study of Torah was restricted by neither wealth nor lineage.[14]

Popular participation in the text was a crucial aspect of the emergence of the text-centered community. Access to knowledge was limited to men, however. According to an opinion that became dominant, Torah may not be taught to women.[15] Since Jewish culture evolved through the interpretation of the canon, and authority was attached to knowledge of the Torah, this discrimination against women had far-reaching effects. The unequal distribution of knowledge deprived women of the opportunity to gain the power and influence resulting from engagement with the text. Women hardly participated in shaping the culture, and their voices were unrecorded. In text-centered com-

munities, policies of distribution and access to the text are therefore crucial.

A third aspect of text-centeredness is that the text itself becomes a locus of religious experience. The text serves not only to report sacred events like the Exodus, in which God revealed himself in history, but the very reading of the text becomes a religious drama in and of itself. God is present in the sacred text and studying is thus tantamount to meeting God; it is a moment of great religious intimacy. The Torah becomes a portable Temple, the sacred territory of scholars. The earliest formulation of such an approach to the Torah appears in one of the late Psalms (119:19):"I am a stranger on the earth: do not hide thy commandments from me." The second half of the verse employs a common formula—"do not hide your face from me"—usually used in reference to God in the Psalms, to address the Torah.[16] God and Torah become interchangeable in this Psalm, and this phenomenon marks the beginning of the great rabbinic idea of the text as the center of religious drama.

A fourth aspect of text-centeredness is that agreement on a common text defines the boundaries of the community and makes it cohesive. The shared text may be a source of conflicting beliefs and practices, but the community recognizes that it alone must be used to justify them all. While members of the community may disagree about specific beliefs and practices, they do agree about what is the proper way of justifying them. It is a procedural agreement that all practices, beliefs, or institutions, whatever they may be, are to be justified in reference to the text, as an interpretation of the text. In a text-centered community such as the Jewish one, along with other forms of justification such as local traditions and customs, court enactments, and rulings based on reasoning independent of interpretation, interpretation becomes the main and central form of justification. Legal practice is similarly bounded by such procedural agreement. Courts can produce radically opposing rulings; what binds them together is agreement about the text that is the ground for the rulings.

A shared text is binding under various circumstances. In one case there may be agreement about an interpretation, an agreement which is more than procedural. In cases where concrete interpretations differ, we look for a procedural agreement, that is, we would agree that in order to come to a decision we have to interpret a common text. On the procedural level, one can imagine a case in which there is agreement on the text to be interpreted, but still a disagreement about the interpretive procedure. Hence we should distinguish between two kinds of procedural agreements: agreement about what counts as interpretation, even if there is disagreement about the interpretation itself; agreement only about the text that should be interpreted, but disagreement even on what counts as interpretation. In the legal sphere, judges occasionally argue about what should be interpreted in the text. One party claims that the intention of the legislator should be the object of interpretation, while others search for something else; for example, the best case that can be made out of the text. This is an instance of loose procedural agreement to interpret the same text, but not agreement about what counts as the procedure called "interpretation."



The unifying role of a text in the legal system appears in text-centered communities in stronger and weaker versions. The split between Karaites and Rabbinites in the eighth century had to do with the establishment of the Talmud as the text of reference. The Karaites, who did not accept the Talmud, formed a separate community, unraveling the common bond of text even in its loose form. Although both communities were bound by a common text—the Bible—the canonization of the Oral Law transmitted in the Mishnah and the Talmud as the proper reading of the Bible narrowed the inclusiveness of the community, making the schism between the Karaites and Rabbinites inevitable.[17]

After its canonization the Talmud functioned as the binding text, and we can well suppose that canonizing a future interpretation of the Talmud would create another split. When the loss of the common text is compensated by an appeal to other forms of unity that bind communities together, the community stops being text-centered. Until the "emancipation," the Jewish community—with its radical linguistic and geographical diversity, and a certain plurality of practices and beliefs—was a text-centered community united by at least procedural agreement concerning a shared text. The rise of a modern national Jewish identity, stressing other elements of commonality, is in many ways a sign of the loss of the centrality of the text as the binding force.

The Jews became the "people of the book" after a long history that defined the relationship of the community toward the canonized texts and established the diverse functions of texts. What turned the Jews into a text-centered community, with all the repercussions mentioned

above, was a deeply rooted revolution that began at the start of the Second Temple period.[18] During this period text-centeredness manifested itself more forcefully and affected the nature of authority, the basic institutions of society, and spiritual life as a whole. This transformation, as we will see in the pages that follow, is related to the process and understanding of canonization within the rabbinic tradition.

## CHAPTER 3

# *Canon and Curriculum*

### FORMATIVE TEXT

The previous discussion of the normative canon focused on the text as a source of behavioral norms, examining the complex notions of authority that are attached to the normative function of the text in the Jewish canon. Taking this discussion one step further, the formative canon is not only obeyed but also serves other functions: it is studied, taught, transmitted, rehearsed, performed, and reflected upon. It affects and influences many domains, including attitudes, beliefs, judgments, sensitivities, aspirations, ideals, language, self-identity, and so on. Among the various domains the most fundamental formative level is the one that contains beliefs, attitudes, and narratives that shape the framework for future discourse within a community and constitute its terms. Borrowing Wittgenstein's concept of framework, this fundamental text will be called the "framework text."

Wittgenstein developed the idea of framework while examining some assertions that have the power of generality and certainty, such as "the world existed before I was born," or "there is an external world." He claimed that although these sentences sound like empirical propositions, they actually have a constitutive role in language. If they are verified at all, they are not verified the way we verify empirical propositions, and if taught, they are not taught in the same manner. The relationship between these statements and other statements and prac-

tices is complicated. On the one hand, the assertion that the world existed before us is an intrinsic condition of much of our discourse and practice. On the other hand, this belief, which appears to be a condition for much of our discourse, is supported by that very discourse itself. Though we are never taught that there is an external world, our language, practices, and way of living continuously exhibit and support such an assertion. For Wittgenstein, taking these framework propositions to be straightforward empirical propositions engenders deep confusion, which lies at the heart of many philosophical pseudo-problems such as skepticism.[1] (When someone is asked: "How do you know that there is a chair in the room?" he can answer: "I was told so by someone I trust," or "I saw the chair an hour ago." Unlike doubt regarding knowledge of the presence of a chair, doubt concerning the framework leads us to question the very means available for verifying anything. Such a doubt appears to have no meaning, since it is not clear what type of answer is expected.) The epistemological role of framework assertions is not our subject. The idea of a matrix that serves as the constitutive framework of a discourse may be useful, however, in elucidating the fundamental role of certain texts.

In text-centered societies the framework shared by a community is intimately connected to a canonical text, which in its turn may be a framework narrative, one that members of a society identify as their own. Framework narratives usually concern the events that constituted the community, and their protagonists are founding fathers, characters larger then life who shaped the society when things were still fluid, like the gods in creation myths who formed the cosmos out of chaos. The American Revolution, the French Revolution, the Exodus from Egypt are but three examples of framework narratives. However, these narratives are not tied to a single canonical text unless the society itself is text-centered. The story of the American Revolution is not connected to any canonical text; it is an event that is taught, told, and commemorated through a variety of texts (though a canonical history of the American Revolution may exist within academic circles). In text-centered societies, by contrast, the framework narrative is intimately connected to a specific text. Allegiance and identity with a narrative are mediated through allegiance to a text. Belief in the Exodus and belief in the Book of Exodus are basically indistinguishable. In effect, belief in the Torah and belief in what is reported in the Torah are so nearly identical that it would be difficult to describe their relationship



as mutually dependent. In oral traditions the founding narrative is typically connected not to a text but to a version of the narrative memorized, cherished, and revered by members of the community. The Homeric epics, for instance, are described by certain scholars as the tribal encyclopedia of the Greeks which played an all-encompassing didactic role. These oral narratives informed people of public and private law, taught them the basic skills of life, such as navigating and hunting, and constituted the ethical guidelines.[2] The function of the Homeric texts in shaping Greek values is similar. These values are conveyed by a cherished text (or to put it more precisely, a cherished, transmitted version of the oral poetry), and the text is cherished both for itself and also because it embodies values that are cherished independently.[3]

The dominant mode of intellectual creativity in a text-centered community is interpretative. This is true of many aspects of Jewish culture. Much of Kabbalah and talmudic learning takes the form of interpretation of underlying canonical texts. Even achievements in philosophy are interpretative, though one might expect philosophy to be discussed in a conceptual, noninterpretative mode. Maimonides' *Guide of the Perplexed* is mainly an interpretation of the Torah, and the same is true of other philosophically oriented texts. Interpretation is not only a mode of representation; it reflects and shapes a way of thinking with antisystematic tendencies. The Talmud, an interpretative text, does not discuss questions such as "What is justice?" and search for a definition. The talmudic concept of justice (if there is one) is articulated through intricate interpretations of the Mishnah and presented through distinctions among cases.

Another aspect of text-centeredness is that intimate knowledge of shared texts exists at least among the learned, and references to them are used as a medium of exchange. The language of the letters written by medieval rabbis is saturated with the formative texts, so that the untrained reader needs a complicated apparatus of references to explain the textual allusions. In modern Hebrew literature S. Agnon is the last of the text-centered writers in this sense. His work makes constant reference to earlier texts, and although one can understand the plot without knowledge of these texts, much of the subtle meaning is lost. By contrast, the works of Amos Oz do not require such intimate knowledge of earlier canonical texts. In this sense, Oz and most contemporary Israeli writers illustrate the loss of the shared former text. Inti-

mate knowledge of a chain of formative texts can no longer be taken for granted.

This is not, of course, to claim that a text can be all-pervasive in shaping every corner of human life and thought of a text-centered society. Local customs certainly develop independently of the central text;[4] ideas external to the text often influence world views; and the text is situated in the midst of changing historical circumstances far beyond its control. All these factors affect even the most text-centered community imaginable, weakening the formative role of the text. But in text-centered societies, even if the text is neither a direct nor an indirect source of customs and ideas, they become linked to it to a varying degree. Some are validated directly through the text; others have a less immediate connection to it but are articulated in terms of the text and accommodate to its language. In any event, these ideas or practices must enter into a relationship of exchange with the text. Moreover, much of their success will depend on their ability to shed new light on the formative texts and to infuse them with new energies.

This notion of formative texts may be expressed in a yet more paradoxical manner. If the new ideas or customs are not criticized or compromised while confronting the formative text, they will eventually change the way the text is read and perceived. Rather than being modified to accommodate to the text, they come to modify the interpretation of the text so that it will accommodate them. In any case, in the text-centered community domains initially independent of texts are destined to enter into a dialectical relationship with them.

On occasion, ideas that originated outside and were later articulated in terms of the existing formative text themselves become part of the formative stock of the culture. Among Jewish formative texts the Zohar is an example of this phenomenon. Written at the end of the thirteenth century as an interpretation of the Torah, it subsequently became an integral part of the canon for many Jews. After almost two hundred years in which the Zohar was known only to an exclusive group of kabbalists, it became the canonic text of Kabbalah. Its influence and prestige grew when it acquired a normative status, and in the sixteenth century R. Joseph Karo in his *Beit Yosef* used it as an authoritative book for halakhic ruling. The Zohar became a formative text in the sense we described above, for in large measure further developments in Kabbalah originated as interpretation of that sacred book.[5]

In a text-centered culture, outside ideas are either articulated in



terms of the canonical text or change the way the text is read. If those ideas are powerful enough, the internal logic of text-centeredness will soon make them part of the formative texts. Now a *formative* text must be distinguished from a *central* text. While the latter might affect the direction, knowledge, and future shape of a given field of inquiry, a formative text is one in which progress in the field is made through interpretation of the text itself. A text-centered culture that has formative texts proceeds in that mode; its achievements are interpretative. In a text-centered culture the choice of texts that become objects of constant reflection and interpretation, and the extent of their self-containment and self-sufficiency are of great consequence. Let us turn now to the discussion of this problem in the Jewish curriculum.

## THE CONCEPT OF TORAH IN "TALMUD TORAH" (TORAH LEARNING)

The transformation of the study of Torah into a major religious ideal is one of the distinct innovations of the rabbinic period. In the Bible itself the study of Torah serves a primarily didactic role: to guarantee the continuity of memory and tradition. Scholars are not presented as ideal biblical figures, and the study of Torah is not central to religious life as a spiritual mode of achieving intimacy with God. In the rabbinic period, in contrast, the Torah becomes an object of ongoing reflection, and the ideal of learning comes to be considered a major religious obligation, equal if not superior to other religious obligations such as the practice of the *mitzvot* and prayer.[6] The Talmud states: "The study of Torah is greater than the daily sacrifices of the Temple."[7] Elsewhere Raba maintains that "anyone who studies Torah needs neither the burnt offering nor the atonement sacrifice nor the guilt offering."[8] Along with the shift of authority from priest and prophet to scholar, a change essential in the formation of a text-centered community, the Torah came to be portrayed as the locus of God's presence. "Even for one who studies the Torah alone, the Shechinah is with him."[9] Study of the Torah is thus conceived as an intimate form of communication with God.

Schematically, we could describe three approaches to the sacred; that of the priest, the prophet, and the scholar. In the priestly conception of the sacred, God is manifest in a sacred geography; He has a territorial presence in the Temple. For the prophet, history serves as the stage

for the divine drama, and God is revealed in sacred events. The scholar conceives the text as the medium for the sacred; it is in the Torah itself that God is found. This triad of space, history, and text is a schematic representation because the positions overlap, and in reality they do not form mutually exclusive clusters. Ezekiel was a priest-prophet and the rabbis revered sacred events as well. But despite all reservations and the necessary caution against generalizations of this kind, a new weight and emphasis undeniably appears in relation to the text as the center of divine presence. Bereft of sacred territory after the destruction of the Second Temple and alienated from divine history in their exile, Jews found comfort in the Torah, their portable temple.[10] The brilliance of this religious ideal is owed, in part, to the infinite possibilities it opens. New layers discovered in the text and the multiplicity of its interpretations are potentially identical with the infinity of divine presence. No wonder then that Jewish scholars entered every possible fissure in the text, followed every subtle allusion within it, and probed its depth with so many imaginative interpretative strategies.

The rise of this intellectual-religious ideal generated conflicts that became central from the Tannaitic period onward. Action and learning clashed on two levels. First, the obligation of constant Torah study was difficult to reconcile with the burden of earning a living. Does the ideal of Talmud Torah presuppose a miraculous order in which scholars who are totally devoted to the study of Torah are freed from the burdens of ordinary life and supported by the help of heaven? Or, to rephrase the question: do scholars, like priests, form a distinct class which must be supported by the rest of the community or must they rely on their own means? This issue was debated continually from the early rabbinic period until the Middle Ages and even later.[11] The second level of the conflict between study and action was more internal, involving the relationship between study and other religious obligations, among them prayer and other commandments such as charity. Is study only a means for learning correct practices, and if more than that, should it take precedence over other religious obligations? The Talmud proposes a variety of rules to settle such points, but the tensions between spiritual fulfillment through intellectual endeavor and other kinds of religious excellence were never resolved in principle within the Jewish tradition. Those tensions provoked later developments critical of the culture of study, such as the hasidic movement beginning in the eighteenth century, and the Musar movement of the nineteenth century.[12]



Attention will be focused here on the second level of tensions, those that are internal to the ideal of study. To begin with there is the question of precisely what ought to be studied in the Torah. In the context of Jewish curriculum the criterion for choice is not aesthetic superiority or educational merit but the type of reflection that enhances the religious perfection of the soul. The issue of what should be learned is central both because of the primary role of learning intrinsic to the ideal of Talmud Torah and also because the selection of texts and subject matter reflects the deepest religious sensitivities. The question of which texts are religiously worthy of intellectual endeavor became acute in response to the tendency to regard the Talmud as the exclusive, all-consuming object of reflection. But before entering the debate, let us consider the Talmud and its place in the curriculum.

Following its sealing the Talmud, through the work of the Geonim, had become commonly accepted as canonical, the normative text from which Halakhah can be prescribed.[13] Although the Talmud was not originally composed as a source of the law but rather as record of innumerable discussions and debates, it is possible to infer halakhic rulings from it, guided by certain principles (for example, in all disagreements between Rav and Samuel concerning monetary matters the law is in accordance with Samuel). In time the Talmud became central not only in the normative realm, to reach halakhic decisions, but also as the major text to be studied, in the sense that learning is its own reward. Talmudic learning and scholarship in the period immediately after the formation of the Babylonian Talmud was not widespread. Expertise in Talmud was concentrated among the Geonim and their yeshivot in Babylon. The dynastic structure of the yeshiva at that time gave a de facto monopoly on the study of the Talmud to a few families that served as legal authorities for the rest of the community, for which it was a normative text but not yet a formative one. During this period learned Jews who were not affiliated with the yeshiva saw the Talmud as a subject for legal experts and not as a formative canon for the learned. There was a clear division of labor between the yeshivot of Babylon and the community at large.[14]

Talmudism in the full sense flourished later, after the Geonic period, with the emergence of centers of study in Germany and France from the eleventh century onward. Rabbi Shlomo Yitzkhaki, known by the acronym Rashi, was a product of these schools and produced a running commentary on the Talmud which is both subtle and clear. Its clarity

made the text available to a wider audience and contributed to the spread of Talmud, and its subtlety was a source of ongoing discussion that marked the work of the next generations of Franco-German scholars known as the Tosafists. As Chaim Soloveitchik described it, the Tosafists problematized every line in the Talmud and engaged in an overall project of talmudic dialectics that aimed at discovering contradictions between one section and another and then reconciling them by making distinctions between the cases. The work of the Tosafists was the culmination of the burst of talmudism in France and Germany, both in scope and depth.[15]

In Spain the situation was somewhat different. Although we know of important figures of talmudic learning in Spain such as Isaac Alfasi and Joseph Ibn Migash, talmudic study in the eleventh and twelfth centuries was not as widespread as in France and Germany.[16] Maimonides, a product of the Spanish school, painted a gloomy picture of talmudic study in Spain, a situation that served as one impetus for his codification of the Talmud in the *Mishneh Torah.*[17] Through the second half of the thirteenth century in Spain talmudic study and creativity flourished around the school of Nachmanides and his disciple R. Shlomo Ibn Adret, known as Rashba. The Spanish school integrated some of the Tosafists' achievements but emphasized conceptual work rather than the harmonizing dialectics of the Tosafists. In addition to France and Spain a thriving school of talmudic learning developed in Provence, and toward the end of the twelfth century Provence was considered by Maimonides the future center of talmudic learning.[18]

Thus it was between the eleventh and the thirteenth centuries, not immediately after its production, that the Talmud was fashioned into what we know of it today: a text to struggle with, a fountain of originality and subtlety that has captured countless minds for generations. The emergence of the Talmud in the early Middle Ages as a text of study and reflection, and the interpretations that were produced in Spain, Provence, France, Italy, and Germany from the eleventh century onward were achievements at least equal if not superior in importance to those the kabbalists and the philosophers reached in the same period.

A major consequence of the rise of Talmud and its predominant role especially in Ashkenaz is the subordinate status of the study of Bible in the curriculum. The Talmud itself recommends dividing the time of study into three: one third Bible, one third Mishnah, and one third Talmud.[19] (The "Talmud" recommended here does not refer to the text



of the Talmud, but, as many medieval commentators understood, it means gaining understanding and reasoning about the Mishnah and the ability to deduce laws from the previous material. "Talmud" therefore includes various types of legal reasoning.)[20] The Talmud's own balanced definition of "Talmud Torah," or Torah-learning, combines all the elements of study: the written Law, the Mishnah, and the Talmud. The reaction of Rabbi Jacob ben Meir (Tam), the greatest Tosafist, to this talmudic statement reflects a situation in which the Talmud was studied predominantly, while the Bible and Mishnah were relegated to a marginal position in the curriculum. R. Tam defended the practice of studying Talmud exclusively by claiming that the Babylonian Talmud in fact includes all three components. According to R. Jacob ben Meir, the name Talmud Babli [Babylonian Talmud] derives from the Hebrew root *balal* (mixed), and that means that it contains both the text of the Mishnah and passages from the Bible.[21] Consequently, there is no need for independent study of the Bible and the Mishnah outside of the Talmud. According to this view, the Talmud becomes a full mediator for the other elements and, most remarkably, for the Bible itself.[22]

The history of Bible study in the Jewish curriculum is complicated and fraught with tension. What follows is merely a general sketch of the role of Bible in the curriculum, concentrating on statements relevant to our line of inquiry. The medieval tendency to marginalize the study of the Bible was condemned by various writers and scholars. In the late fifteenth century, for example, Isaac Abravanel commented on the mishnaic Tractate *Avot*'s prescription to study the Bible until age five as follows: "He [the author of the Mishnah] did not say that until age five one should study Bible and no more, the way the Ashkenazim are practicing today."[23] Abravanel condemns the Ashkenazi practice because he believes that age five is the appropriate time for beginning study of the Bible, not ending it and neglecting Bible study from then on. Abravanel's comment on "the Ashkenazim" points to a difference in the place of Bible study between the curriculum in France and Germany and that of Spain. The situation described by Abravanel had its roots in the difference between Ashkenaz and the Spanish tradition three centuries earlier. In Ashkenaz, the rise of talmudic study and the impact of the Tosafists caused a decline in Bible studies. Yehudah, the son of the Rosh, who grew up in Germany and moved to Spain with his father at the beginning of the fourteenth century, wrote to his sons

in his will: "Make regular times to study the verses [of the Bible] with precision and commentary. Since I did not study the verse [Scripture] in my childhood because they are not used to study the verses in Ashkenaz, I could not study it here [in Spain]."[24] In the late fourteenth century Isaac Profirat Duran the Efodi was sharply critical of Ashkenazic practice: "and they [in Ashkenaz] consider a fool one who spends his time in Bible study, because the Talmud is [considered by them] the principal thing *(ikar)*. This malady is very strong in France and Ashkenaz."[25] This practice continued into the sixteenth and seventeenth centuries, however, although an impressive attempt at an overall reform of the curriculum, including a return to Bible studies, did take place, initiated by R. Yehudah ben Bezalel (the Maharal) and his circle in the sixteenth century, but it met with little success.[26]

While these descriptions may be somewhat exaggerated, we do find explicit disparagement of Bible study. A sixteenth-century rabbi, Aharon Land, said: "No Jew should learn anything but the Talmud. All other books, including 'Meiras books' and even the twenty-four books [the Bible, which consists of twenty-four books]—no Jew has to learn much of it."[27] The Bible is mentioned among texts superfluous to the curriculum in the same breath as the "books of Meiras," a traditional reference to heretical works. A more elaborate and fascinating justification for this policy appears in another opinion expressed in the sixteenth century: "The coming redemption will happen only because the merit of the study of the Talmud, which is not the case with the study of other subjects, even Bible. Bible study does not cause anyone to be pious, because we cannot understand the foundations of our sacred Torah which is the written Torah, except through the oral Torah which is its interpretation. And even a little Talmud is enough to bring more fear of God than much learning of other subjects."[28] Since direct access to the foundational text does not enhance piety, it is better to read the Talmud exclusively.

This sixteenth-century attitude toward Bible studies echoes earlier and astonishing interpretations of the talmudic injunction to "prevent your sons from the *higayon*."[29] Zemach ben Paltoy, one of the Geonim, understood "higayon" to mean Bible study and said: "prevent your sons from reflecting upon the biblical verses that lean towards heresy."[30] According to this interpretation, the Talmud itself warns against unmediated study of the Bible. The need to guard the canon because of its subversive potential is manifest in the design of a curriculum



that emphasizes the study of interpretation and minimizes the study of the canonical text itself. An unmediated reading of the Bible might lead to problematic conclusions, hence it is better not to study the Bible but rather to study its traditional commentaries. In this school of thought the centrality of the Talmud in the curriculum is not at all accidental. It results both from the distance between the foundational text and the actual tradition and from the potential danger of unmediated access to the sacred text.

Once the Talmud became the principal formative text in Jewish life, it came to determine not only what people should do but how to think, how to see the world, and what objects to choose to meditate upon. The Talmud thus exerted a tremendous influence on Jewish life. In the Middle Ages it was surrounded by creative interpreters whose work itself became part of the Talmud, endowing the text with prestige and depth and offering a variety of approaches to it. This development did not pass unchallenged.

## THE CHALLENGERS OF TALMUDISM

A distinction may be drawn within the category of the formative canon between weak and strong canon. By "strong" canon I mean that the canonical text becomes the sole text to be studied. In certain halakhic schools, before the Talmud was completed, the Torah acquired the status of the exclusive canonical text allowed as the subject of study. That is, not only was "Talmud Torah" an obligation, but the study of all other texts not part of Torah was forbidden. In the Babylonian Talmud's Tractate *Menachot* the following story is recounted:

> Ben Damah, the son of R. Ishmael's sister, once asked R. Ishmael, "May one such as I, who have studied the whole of the Torah, learn Greek wisdom?" He thereupon read to him the following verse: " 'This book of the law shall not depart out of thy mouth but thou shall meditate therein day and night' (Jos. 1:8). Go then and find a time that is neither day nor night, and learn then Greek wisdom."[31]

In other words, the study of sources other than the Torah is not allowed. The exclusive canonization of the Torah as the sole text worthy of study, along with the prohibition of everything external to it, represents a crucial decision in the spiritual history of the traditional Jewish com-

munity. Had the spiritual energy and intellectual effort expended in the Talmud been directed to another text, that would have created a completely different tradition.

A more moderate view has always coexisted with the view that perceived the Torah as the exclusive text of study. To the moderates the canonization of the Torah marked it as a text demanding study, yet this obligation did not forbid study of other texts. In opposition to the position cited above, it was maintained that the recitation of the Shema in the morning and evening could be thought of as "meditating therein day and night" and was thus a fulfillment of the obligation of Talmud Torah.[32] The question of the Torah's canonical status did not concern it in the normative sense, for both factions agreed on its normative role; it concerned the Torah in the sense of a text demanding study and whether that study must be exclusive. This question has been among the important issues debated by the generations to this day.

Beyond this debate another, more acute and radical dispute was waged within the traditional camp over the Talmud's canonical status in the curriculum. This is one of the most interesting and important debates in the history of canonization in Jewish tradition, and in investigating it I will build upon Isadore Twersky's view that challenges to exclusive talmudism came from two directions: Jewish philosophers and Jewish mystics.[33] The most extreme and least common position goes so far as to question whether the Talmud is a text worthy of reflection, to be part of the formative program of Jewish studies, or is simply a normative text, a legal tract. Joseph Ibn Kaspi and others were critical of the function of the Talmud even in its weaker formative version. In their view, the Talmud should not be supplemented but rather replaced in the curriculum. They tried to restrict Talmud study to legal specialists alone and challenged the spiritual value of learning the Talmud.[34] Another Provençal Jew and one of the most prominent Maimonideans of the thirteenth century, Jacob Anatoli, reported a hostile encounter with a talmudist. This unusual story reveals the way the Talmud (and also the Kabbalah) were perceived by some philosophical circles, and it is worth quoting:

> It is clear that our rabbis were versed in the study of wisdoms [meaning science and metaphysics]. They said that "the least among the eighty students of Hillel did not leave out anything that he did not study, neither a great thing nor a small thing." The Sages explained that Ma'aseh Merkabah is the great thing, and that all wisdoms are directed towards it and are introductions to it. Because only in it is there a great and perfect advantage, since through it a man can approach the King. The Sages say of the discussions of Abaye and Raba [the Talmud] that they are a small thing. This is because the Mishnah and the rest of the codified rules of Halakhah are sufficient for those seeking wisdom; this is the opinion of our Rabbis of blessed memory. However, a "great thing" today—in the eyes of our scholars the talmudists—is the study of the deliberations of Talmud. Not the study of the actual rulings that are derived from them [the rules of Halakhah], but the study of the questions and answers [talmudic deliberations]. The "small thing" in their eyes is Ma'aseh Merkabah, which is the science of the Divine. It is not a small thing among the good things, in their eyes, but an evil and bitter one. The condemnation of this wisdom (philosophy) caused them to go astray and call Ma'aseh Merkabah the empty names which they invented in their heart—those heartless people. God will forgive this since it is the opinion of most of our scholars, the rabbis. In accordance with this mistaken opinion, it happened to me—Jacob the son of Rabbi Aba Mari the son of Rabbi Shimon the son of Rabbi Anatoli—that one of the rabbis of my generation reproached me a number of times for occasionally studying in Arabic bits of Hokhmah Limudit [preparatory sciences] under the great scholar my father-in-law, Rabbi Shmuel the son of the scholar Rabbi Yehudah Ibn-Tibon. And when he disturbed me with his ongoing reproach and compelled me against my wish, I answered him by the same token: do not treat my study as you would treat someone taking a walk or playing the dice. (Introduction to *Malmad ha-Talmidim*)



The Talmud itself mentions Ma'aseh Merkabah as the "great thing" and, following the Maimonidean tradition, this subject was identified by Jacob Anatoli as metaphysics. Talmudic deliberations, in contrast, are described by the Talmud itself as a "small thing." Moreover, in Jacob Anatoli's view, for those who seek wisdom it is enough to study the Mishnah and the rulings derived from the Talmud, and it is unnecessary to study talmudic deliberations. The study of Talmud is not a worthy aim in itself, and the rabbis of his generation erred gravely in attributing so much importance to the study of the discussions of Abaye and Raba. While Ibn Kaspi wanted to limit talmudic study to legal experts alone, Jacob Anatoli sought to restrict it to the derivation of the Halakhah and as an introduction to the study of wisdom.[35] It is clear that these philosophers challenge the exclusive canonization of the Talmud as a formative text. Other, more influential and moderate critics were also critical of the Talmud in the stronger version of its

formative function. They wished to supplement talmudic learning with additional texts, either in philosophy or Kabbalah. Although these men did recognize the value of talmudic study, they were disturbed by the Talmud's exclusive role in the curriculum and wished to add to it without, however, replacing it. These critics propose various formulations of the internal hierarchy between the Talmud and other material. Some saw the supplements as superior in value while others saw them as equal to the Talmud, but all insisted that the Talmud should not be the only subject of study.

This sort of moderate criticism was the position of many kabbalists and philosophers who had credentials as talmudists and wished to combine other intellectual interests with Talmud study. The formulation of their criticism is supported by Talmud's own references to the esoteric subject matter of Ma'aseh Merkabah, and, following Maimonides, the critics will usually identify the necessary companion to the Talmud as Ma'aseh Merkabah. The esoteric tradition does not serve only as an important supplement, however; it supplies the key to the understanding of the Talmud itself. Without the background of Ma'aseh Merkabah, the secrets within the Talmud cannot be uncovered.

It is important to stress again that neither moderate and radical critics ever challenged the normative status of the Talmud. They agreed that the Talmud is canonical in regard to norms; at issue was how formative the Talmud should be. Typically, these critics did not try to weaken the strong sense of the canonicity of the Torah so to allow study of secular matters or non-Torah texts. Rather, both kabbalists and philosophers strove to enlarge the concept of Torah so to include other matters and texts far beyond and more important than the Talmud.

It is not possible here to go into the fascinating history of Jewish curriculum, an endeavor that would be far beyond the scope of this work. Rather, I will present examples from each camp—philosophers and kabbalists—and discuss their approaches to the problem of Jewish formative texts. Through them I hope to examine what is involved in the concept of formative canon.

## ❧ CODIFICATION AND DECANONIZATION

Maimonides, one of the greatest talmudists of all time, codified the discussions and compiled them in volumes of decisions arranged by



subject. The thick forest of talmudic debates, many of which are conducted through association and intertwined in a complicated series of negotiations, was clearly and definitively reformulated in Maimonides' impressive work, the *Mishneh Torah*. In his introduction Maimonides writes: "And therefore I called this book *Mishneh Torah* since a person reads the written Torah first and then reads this book; and knows from it the whole of the Oral Torah and needs no other book besides them." This statement can be understood in two ways. The first and the more radical reading is that since Maimonides' work was meant to be an exhaustive summary of all the laws decided in the Talmud, he had produced a code that would replace the Talmud as an object of study. It would still have the status of a normative and binding text, for it dictated Maimonides' presentation of the law, but the clear organization and comprehensible language of *Mishneh Torah* rendered direct study of the Talmud itself unnecessary.

Maimonides' codification of the Talmud casts a potentially sophisticated effect upon the canon. It has the power to alter the canonical status of the Talmud; formerly both a normative text and the object of continual study, the Talmud could now revert to being just a normative text again. Paradoxically, anchoring the Talmud with an orderly and decisive code like the *Mishneh Torah* opens the way for its decline as a text to be studied.

Another, more moderate interpretation is that Maimonides did not in fact wish to replace the study of Talmud with the study of his code; rather, he aimed to summarize the Talmud for those who were incapable of studying the primary text.[36] Maimonides' own explicit statements about his intentions are contradictory. In a letter to Pinchas ha-Dayan, who criticized Maimonides for aiming to replace the Talmud, Maimonides denies such intentions, claiming that he meant to facilitate the study of Talmud and not to replace it.[37] But on other, less defensive occasions, he seems to take another position. To one of his students he recommends a thorough study of the *Mishneh Torah*, since "The aims of the Talmud and the like were fulfilled with the *Mishneh Torah*." And after this statements he condemns those who see talmudic dialectics as a goal in and of itself.[38] When *Mishneh Torah* arrived in Baghdad and was criticized by the local rabbis, one of Maimonides' students wrote to him with a great deal of anxiety. In a comforting response, Maimonides predicts that after the jealousy of other scholars fades, "all the Sons of Israel will be satisfied with the *Mishneh Torah*

alone, and every other book will be surely abandoned."[39] In the same letter he claims not only that his work is a successful and comprehensive summary of the Talmud, but that the study of Talmud after his work is a waste of time: "And if you spend your time in interpretation and the interpretation of the Talmud's dialectics, and those matters to which we gave rest from their labor [by writing the *Mishneh Torah*], this will be a waste of time and of very little use."[40]

Even if Maimonides did not intend to create a full replacement for the Talmud with the *Mishneh Torah*, it is clear that he did aim to reduce the need for extensive talmudic dialectics.[41] He believed that canonization, which made the Talmud the only text worthy of study, was a serious spiritual error. Any investment of time and thought in the Talmud for ends other than knowledge of Halakhah was an effort unjustifiable in a spiritual sense. Maimonides believed that physics and metaphysics were the most suitable objects of study as a path to understanding God, which is the highest aspiration of intellectual religious effort. The Talmud, of course, does not deal systematically with metaphysics or theology; it is full of legal arguments on issues of partnership, damages, laws of evidence, contracts, and transactions but quite lacking in natural and supernatural science. The codification of the Talmud, which facilitated the halakhic decision-making process by sparing its students the work of untangling talmudic discussions, freed them to spend more time on other subjects worthy of reflection. Maimonides' opinion of people who ignored philosophy and studied only Talmud is clearly expressed in the parable of the palace in the *Guide of the Perplexed.* He compares the degrees of intimacy between various spiritual groups and God to the intimacy that various subjects share with the king in his palace. Some have never even seen the walls of the palace courtyard; those who have only studied Talmud without philosophy have reached the courtyard but have never entered the palace itself.[42] Maimonides did not conceal his preference for the study of physics and metaphysics over Talmud study, and he codified his view in the *Mishneh Torah* in a passage that aroused the anger of some of his expositors. It comes after four chapters at the beginning of the "Laws Concerning the Basic Principles of the Torah," in which Maimonides presents the essence of Aristotelian physics and metaphysics:

> The topics connected with these five precepts, treated in the above four chapters, are what our wise men called "Pardes," as in the passage "Four



> went into Pardes" (T.B., *Hagigah* 14). And although these four were great men of Israel and great sages, they did not all possess the capacity to know and grasp these subjects clearly. Therefore, I say that it is not proper to dally in Pardes until one has first filled oneself with bread and meat, by which I mean knowledge of what is permitted and what forbidden, and similar distinctions in other classes of precepts. Although these subjects were called by the sages "a small thing" (when they say "A great thing Ma'aseh Merkabah; a small thing the discussion of Abaye and Raba"), still this should have precedence. For the knowledge of these things gives primarily composure to the mind. They are the precious boon bestowed by God to promote social well-being on earth, and enable men to obtain bliss in the life hereafter. Moreover, the knowledge of them is within the reach of all, young and old, men and women; those gifted with great intellectual capacity as well as those whose intelligence is limited.[43]

Though the Talmud prescribes the acts of divine service in minute detail, it never describes the object of worship—God Himself. Perhaps for that reason, Maimonides thought, many halakhic experts had some mistaken impressions, for instance, that God was corporeal. Their worship was thus defective despite their extensive knowledge and attention to every detail of the Talmud. The most important object of study in the long run is He who must be served. Compared to metaphysical ideas, traditional Talmud Torah is seen as "a small thing," even though it should be approached before metaphysics. According to this reading, one of the implications of codification was to demote the canonical status of the Talmud from a text that is studied as a formative canon to a text whose main role is normative. Such a change is central to the philosophical culture Maimonides wished to cultivate, at least among the elite.

Four Maimonideans in thirteenth- and fourteenth-century Spain and Provence, Jacob Anatoli, Shem Tov ben Joseph Falaquera, Yehudah ben Shmuel Ibn Abass, and Joseph Ibn Kaspi, all share the philosophical attitude to Talmud study and express that view explicitly. In the words of Falaquera,

> At first one should study the written law and then its interpretation, the oral law. Nowadays it is sufficient for a man to read the *halakhot* of Rabbi Alfasi of blessed memory, and along with them the books of our Rabbi Moses of blessed memory, which are called *Mishneh Torah*, for they are

> truthful. [Maimonides'] commentary to the Mishnah is also a very useful book and sufficient for whoever wishes to comprehend the halakhic norm. And should he have leisure, it is good to study Mishnah and its commentary the Gemara, so as to exercise the mind and sharpen it for this is necessary for study . . . But I will tell you something [namely], that one ought not spend all one's days in problems and refutations as many do who tire themselves all night in comprehending one *halakhah* and in the morning, if asked anything about it, have no answer.[44]

Yehudah ben Shmuel Ibn Abass outlined a curriculum with a heavy philosophical program in which he suggested that the student should avoid studying the Tosafists,

> since their discussions are a waste of man's time. They are futilities, a pursuit of wind, superfluous and of no value for the goal that is intended by the Talmud: the interpretation of the *mitzvot* and the rulings of Halakhah. One should make the effort to study so as to acquire the knowledge which would enable one to derive the Halakhah independently and correctly . . . One should always have before him those books which follow forth from the Talmud, specifically the book *Mishneh Torah*, authored by the great light, the genius of the exile of Ariel, the powerful hammer, whose name is greater than any rabbi, the Rambam blessed be his memory, who will not be valued by gold and crystal . . . It is the choicest of books written on the Talmud from the days of the Tannaites, i.e., the time of our holy rabbi [Yehudah the Prince], up to and including today.

These statements reveal a shared outlook concerning the aim and value of Talmud study. The first point is that Talmud study is mainly instrumental to the derivation of the law and is not an aim in itself with intrinsic religious significance. As Ibn Abass put it, "the goal intended by the Talmud [is] the interpretation of the *mitzvot* and the ruling of Halakhah." Falaquera recommends the study of halakhic codes, and Anatoli claims that "the Mishnah and the rest of the codified rules of Halakhah are sufficient for those who seek wisdom!" Second, Talmud study is inferior—a "small thing"—in comparison to the study of metaphysics, Ma'aseh Merkabah—the "big thing." Thus Talmud study or, more correctly, the derivation of norms is a preparatory stage for the study of wisdom. Third, talmudic scholars are in great spiritual error when they regard the probing of talmudic intricacies as the highest spiritual achievement. Ibn Abass attacked those who deal with talmudic deliberations for their own sake and described the work of Tosafists—the crown of talmudic subtlety—as pursuit of wind and superfluous. Anatoli dismisses those who study talmudic deliberations and consider them to be a "big thing." Falaquera warns against indulging oneself in talmudic problems and refutations, and Ibn Kaspi asks rhetorically: "Is not the faculty of expounding the existence and unity of God as important as familiarity with the rule concerning a small milk spoon?" Fourth, a natural conclusion from these three assumptions is that the *Mishneh Torah* ought to play the major role in talmudic curriculum. In one way or another all four reach this conclusion. This shared though differently nuanced outlook echoed something deep in Maimonides' own intellectual program, which was expressed in his *Mishneh Torah*.



Although a school of Maimonideans was active in the thirteenth century, Maimonides' campaign to decanonize the *Mishneh Torah* did not meet with success. In fact, the cunning of history caused the reverse of his wishes to be realized: rather than diminishing traditional Jewish involvement in Talmud and its commentators, Maimonides' work served to increase it. His own book became the focus of endless dialectics and debates over halakhic problems—on what sources Maimonides based his decision, on how he interpreted a *sugiya*, whether he interpreted it correctly, and so on. Immediately after the work appeared it was annotated by one of the generation's greatest scholars, Rabad of Provence, and drew various expositors who offered challenges and responses. Indeed, Maimonides was so successful in his codification of talmudic law that his book became a fundamental instrument of halakhic decision-making. However, most scholars of his generation and the next did not consider it the sole text worthy of study on these issues but thought it was an important text, itself a sort of commentary on the Talmud. Hence it was not seen as a substitute for the Talmud and its commentators. Thus Maimonides, who wanted his codification to put out the age-old fires of debate over minute details of Halakhah, merely poured oil on the flames.

For Maimonides, philosophy had a central religious role in the curriculum since it is a means to knowledge of God, which is equated with the love of God. "A person does not love God but with the knowledge that he knows of Him, and according to his knowledge will there be love, if little then little and if much then much. Therefore, one must

dedicate himself to understanding and comprehending the wisdoms that teach him about his creator as much as man is capable of understanding and comprehending"[45] (*Teshubah* 10:6). Philosophy is also crucial in creating the appropriate image of God in the worshiper's eyes; it is the safeguard against anthropomorphism, which is worse than idolatry. The perception of God that is shaped solely by the Bible and the Talmud might lead to this sort of idolatrous belief. Thus a talmudic education, which provides all the information about the proper way to worship God yet lacks rigorous philosophical training, does not convey the proper image of the God who must be worshiped.[46] Philosophy also provides the code by which the apparent anthropomorphism of Scripture may be surmounted; it directs the reader to the hidden meaning of Scripture. Philosophy is not an added corrective to the traditional texts, but it probes the innermost meaning of the tradition itself. Maimonides, moreover, equates the eternity of the soul with the acquisition of eternal truths. What remains in the afterlife is the impersonal body of knowledge a person gained in his life on earth; in Aristotelian terminology, what remains is the person's active intellect.[47] The radical consequence of such an approach is that the traditional talmudist has no afterlife.

Weighty issues are therefore at stake in the problem of curriculum and the role of philosophy in curriculum, among them the proper nonanthropomorphic conception of God, the notion of the afterlife, and the network of concepts that provide the interpretive key to the Torah's true meaning.[48] This Maimonidean curriculum and its supporters came under attack in one of the most interesting debates on curriculum in Jewish history, which took place in the early fourteenth century in Provence. The story deserves some detail because of its intricacies and its importance in determining the formative canon and the exclusive place of the Talmud within it.

## ESOTERICISM AND CENSORSHIP

Among the three main centers of Jewish learning in the late thirteenth century—France-Germany, Spain and Provence—the Andalusian tradition of studying philosophy as a major part of the curriculum was kept alive mainly in Provence. In the late twelfth and early thirteenth centuries Provençal Jewry was rapidly affected by Maimonidean philosophy, and the northern and southern parts of France became culturally more and more differentiated. The Jews of Provence identified with the Andalusian tradition and distinguished themselves from their northern neighbors, the "Tsarfatim," or French Jews. R. Shlomo of Lunel, a typical representative of Provençal Jewish culture in the early fourteenth century, described the French Jews in this terms: "Our brethren in France, those whose soul hates the wisdom of nature and philosophy and loves the Torah alone."[49]



While the influence of philosophical culture throughout the thirteenth century accelerated in Provence, in Spain itself the tradition of philosophy was on the decline. One of the opponents of philosophy and a great talmudic authority of the first half of the fourteenth century, Asher ben Yehiel, known as the Rosh, spent time in the three principal centers of study. He was educated in Germany, and early on became an authoritative figure there. He then moved southward to Provence, where he encountered the philosophical culture of the Provençal Jews, describing his experience as follows:

> I entered the land of Provence and I saw a good land, and the people in that land according to what I saw were people of excellent virtues, fluent in language, with clear minds, and possessed of wisdom. And I gave praise to the Lord of my life who had brought me there. But when I entered the chambers of their hearts expecting to find them white, I found them black, and I found only two or three people whose hearts God had touched to strengthen in His Torah and separate themselves from the multitude who stray after lies.[50]

The Rosh then moved to Spain and served as the Rabbi of Toledo, which was described by another opponent of philosophy as "the city that was once full of the wisdom of nature and philosophy and now, thank God, has become fine flour."[51]

The rise of Maimonidean influence in Provence did not pass unchallenged. In the fourth decade of the thirteenth century a debate about Maimonides' writings erupted there, rapidly turning from a local argument into an intercommunal one.[52] The opponents of Maimonides turned to the French rabbis for support, and his disciples appealed to the Spanish side. The inability of the Provençals to enlist total support among the Spanish elite for their Maimonidean position evinces the cultural shift that began in the first decades of the thirteenth century.

Provence had become the Maimonides bastion while Spanish Jewry moved away from the Maimonidean trend. After the bitter struggle ended, a relative equilibrium was achieved. A policy of noninterference was accepted, and in Provence the Maimonidean culture retained the upper hand. Seventy years later the peace was shattered, and at the beginning of the fourteenth century the place of philosophy in the curriculum became the central issue of a heated debate between Spanish and Provençal Jewry.

A Provençal rabbi from Montpelier, Aba Mari, was struck by the radical allegorization of Scripture practiced in the region and alarmed that this mode of interpretation had penetrated the public sermons in the synagogue. In the collection of letters entitled *Minhat Kenaot* (offering of jealousy) he gathered as a record of his struggle, Aba Mari mentions a wedding at which he himself was present, where the speaker claimed that Abraham and Sarah were allegories of form and matter.[53] This instance was one of many in which allegory, a tool permissible in dealing with difficult talmudic passages and accepted by Aba Mari himself, became a component of scriptural interpretation and was applied to narratives from Genesis.[54] In the process the figures of the biblical narrative lost their historicity and were seen as representing Aristotelian concepts. The four kings (Gen. 14:1) represented the four elements, the twelve tribes, the twelve stars of the zodiac, and so on.[55]

Shocked by this phenomenon, the rabbi began a campaign against such public sermons. After a short time, realizing that support for philosophical culture in Provence was overwhelming, Aba Mari and his sympathizers turned to an outside authority to intervene in what had hitherto been an internal regional matter. This authority, R. Shlomo Ibn Adret from Barcelona (Rashba), was the most important figure of Spanish Jewry at the time. Aba Mari assumed that with the support of the Rashba, who was respected in Provence as the greatest rabbinic authority of the generation, the opposition would collapse. The Rashba gave his full support to Aba Mari, condemning the allegorical interpretations and forcefully attacking the extensive philosophical teaching of the youth. The antinomian potential of allegorical interpretation was stressed in a polemical letter Rashba sent from Barcelona. If allegorization of the biblical narrative was thought to be necessary to elevate the meaningless, trivial, and particular details of the Genesis narrative to the conceptual and universal realm, the same logic would apply to the commandments. "Their [the allegorists] true



poses for the pious. The postponement of philosophical study could also be justified within the Provençal tradition itself. If, following Maimonides, philosophy were defined as Pardes or Ma'aseh Merkabah, the tradition itself manifestly warned against widespread exposure to such wisdom and its obvious dangers. Had Maimonides himself not warned against the teaching of philosophy to the uninitiated?[62]

Rashba's ban was therefore presented not as a direct attack on philosophy but as a pedagogical move to protect the young from its dangerous effects. First let them immerse themselves in Talmud, so that later they can safely overcome the dangers of philosophy. To restrict the study of philosophy, which the Rashba and his allies considered totally heretical and alien, they made subtle use of the traditional constraints regarding the teaching of esoteric matters. To avoid the appearance of attacking the Provençal tradition and its legacy, the ban explicitly exempts the writings of Maimonides. The Rashba's allies did that also for another reason: because they feared an analogy would be drawn between their struggle against philosophy and the failed, traumatic, and unsuccessful campaign against Maimonides' writings that had taken place in Provence seventy years earlier. Thus, while they spoke with little respect for philosophy, they expressed great veneration for Maimonides, an attitude which the Rashba went out of his way to demonstrate.[63] Further, contemporary masters of philosophical learning in Provence such as Jacob Anatoli or Ibn Tibon were never explicitly attacked. The complaints were usually lodged against two or three anonymous figures who had dared indulge in philosophical allegory in public or denied the possibility of miracles.

In Provence the ban was understood as an outright assault on the local tradition and its prominent figures.[64] In retaliation they promulgated a countervailing ban ostracizing those who would not teach their sons philosophy. In public defiance of the original ban, the Provençal community in Montpelier gathered in the synagogue on the Sabbath and studied Anatoli's philosophically oriented text, *Malmad ha-Talmidim.* Aba Mari's circle immediately issued a ban against that group, and the community became embroiled in a painful barrage of bans and counterbans.

The majority of the Provençal elite regarded Aba Mari's appeal to the Spanish community as an act of betrayal. In their view, by illegitimately inviting outside intervention, Aba Mari had put their entire tradition under the cloud of suspected heresy. Menahem ha-Meiri, one

of the principal representatives of the Maimonidean tradition in Provence (Perpignan) and an important talmudic authority, expressed the philosophers' attitude in a powerful and bitter letter personally addressed to Aba Mari. The letter was stolen from the addressee and fell into the hands of his opponents in Montpelier. Seeking to inflict a painful blow to Aba Mari's party by using Meiri's prestige, they did everything in their power to publicize the letter. It was quickly copied and widely distributed in the city and was read in the synagogue on the Sabbath.[65] "With all due respect to the Rashba," wrote Meiri to Aba Mari, "were you unaware of the deep division between us and the Barcelonians concerning philosophy? They [in Barcelona] follow the Kabbalah and consider philosophy harmful!"[66]

As long as Aba Mari was only conducting a local campaign against making extravagant philosophical allegories in public, he apparently enjoyed Meiri's support. But the appeal to the Rashba changed the nature and the scope of the issue, for it was understood by Meiri as a violation of the Provençal cultural autonomy and an attack on basic spiritual convictions. If the whole issue were public allegorical sermons, he asked, why should we ban the teaching of philosophy? If one person errs, does that mean that the gates of Pardes should be barred to the whole community? Is philosophy not essential for establishing proof of God's incorporeality and unity? Are those who know God intellectually not preferable to mere believers? How can the opposition claim that philosophy corrupts piety when in Provence there were pious figures who combined Talmud and philosophy, and even those philosophers who were not talmudists were known for their piety?[67]

To expose the real attack masked by the compromising language of the ban, the Meiri pointed out the inconsistency of prohibiting the study of philosophy while allowing the study of the *Guide of the Perplexed.* How can anyone understand the *Guide* without vast philosophical training? Although the ban specifically excluded Maimonides from the prohibition, the Meiri drew an analogy with the debate over Maimonides' writings of seventy years earlier. From the Meiri's perspective the similarity between the two debates was undeniable, and Aba Mari's attempt to distinguish between them seemed totally artificial. Then as now, the cultural autonomy of Provence was being violated by external interference that had been illegitimately summoned. The failure of the first campaign and its traumatic effects should have taught Aba Mari a lesson.[68] The fight was over the value of wisdom itself, not



over the mere restriction of its study based on the admitted dangers inherent in the subject matter. The attack on the marginal figures who had allegorized the Genesis stories publicly was understood by the Meiri and others as casting the shadow of heresy over the entire Provençal tradition. Under cover of guarding against certain dangers of philosophy, the aim of the Rashba and Aba Mari was "to abolish wisdom and to expel her completely from dwelling in our land."[69]

Most of the material documenting the struggle over philosophy and its place in the curriculum has reached us from Aba Mari and his circle rather than from the proponents of philosophy. Similarly, the Meiri's letter is known only from quotations in *Hoshen Mishpat*, a long polemical epistle addressed to the Meiri in reply to his allegations against Aba Mari. *Hoshen Mishpat* was written by one of Aba Mari's supporters and students, Shimon Ben Yosef, who was probably a former student of the Meiri and therefore a natural candidate to respond to his allegations, and it offers us an inkling of the way the circle around Aba Mari understood the problem.

Three claims were raised in response to the Meiri's accusations. First, expressing great praise for wisdom, Shimon ben Yosef argued that the ban was not against philosophy per se but against its popular misuse. Thus the true aim of the ban was to reestablish philosophy as an esoteric tradition.[70] Second, the people under attack were not the representatives of Provençal Jewry. Shimon ben Yosef went to great lengths to honor even the members of the Tibonite family, who were not notable talmudists. The attack was directed against the extreme allegorizers (a fascinating account of the nature of their allegories follows in this response to the Meiri).[71] Third, this campaign is radically different from the former struggle against Maimonides in Provence. Instead of opposing Maimonidism the campaign sought to restore the self-imposed restraints of Maimonidean culture in Provence.[72] In sum, according to Shimon ben Yosef, the Meiri had been deceived by the opposition. Aba Mari's struggle was in full accord with Provençal mainstream culture, and the Meiri should have joined the ranks of the ban's supporters instead of praising the opposition. He should have identified Aba Mari's party as the true heir of the Provençal tradition; by misjudging them, he had done them much harm.

Were these arguments a result of self-deception, or, even worse, a conscious deception? Probably not. These were the genuine feelings and claims of Aba Mari and his Provençal circle, though the Meiri did

not take them to be so, especially after the matter mushroomed into an intercommunal controversy.[73] The Rosh, who lived in Toledo, more distant from Provence than Barcelona and thus free from the constraints of proximity, told Aba Mari in his letter: "You know that I signed your ban against my will. How should I sign that students should not study philosophy till twenty-five, implying that I allow the study of philosophy after twenty-five?! In my view, in this generation, the study of philosophy is prohibited throughout one's whole life."[74] To avoid the appearance of attacking Maimonides directly, the Rosh qualifies his statement with the words "in this generation." His reaction allows us to understand why the French rabbis were not invited to join the ban against philosophy, as they had in the first debate over Maimonides' writings. The Tosafists, who were independent of the Spanish tradition, acknowledge no obligation to Maimonides, not even the slight deference shown by the Rosh and certainly not the respect that the rabbis of Barcelona had for the philosopher. Had the issue been placed before them, open war would have been declared, and Provençal Jews would have reacted with even greater extremism in the defense of their culture. Aba Mari thought the Rashba was close enough to be a legitimate partner in this internal debate. But, as often happens in political maneuvers, the Rashba was searching for a center, amenable to compromise, that did not exist. The French Tosafists would not accept the implied permission to study philosophy after the age of twenty-five, and the Provençal Jews would not agree to limit the study of philosophy only from twenty-five onwards. An effort was made to reach a compromise between these two extremes by applying the restrictions of esotericism to the study of philosophy, thus avoiding the denunciation of philosophy while diminishing its influence, but this was a failure. For its extreme opponents, philosophy was a heresy that did not deserve the status of Pardes—the esoteric teaching of Judaism. Provençal Jewry, however, regarded it as a basic component of the education of their youth and would not allow it to be stifled behind the veil of esotericism.

The ban was therefore understood in three different ways by the three parties involved. For the Meiri and the Provençal opponents of the ban, it meant an overall assault on their culture. Aba Mari's circle, however, understood the ban as restoring the esoteric status of philosophy, a move which was in agreement with the mainstream of Provençal tradition. The Rashba, who resented philosophy in any case, intended



the ban as a way of repressing such studies by again restricting philosophy to the esoteric realm.

The different understandings of the ban and its purpose reveal deep tensions in the relations between esotericism and canon. On the one hand, widespread access is not necessarily to be identified with importance. With esoteric texts there is often an inverse relation between access and importance. Since the text is too important to be easily accessible, restrictions are imposed on study. Preparation and initiation are demanded before approaching the text. The more remote the canon, the more potent and sacred it becomes. However, esotericism may also be a form of censorship, usually for texts which cannot be completely rejected. Restrictions are imposed mainly during the formative years of education in order to minimize the impact of the text. Thus two different and opposing agendas can converge in the demand for esotericism.

A similar paradoxical convergence occurred in a totally different historical context, during the debate over the printing of the Zohar in sixteenth-century Italy. Opposition to printing the Zohar came from two different camps: one considered the Zohar to be a heretical text presenting a mythical and antimonotheistic conception of God; the other perceived it as a sacred text which ought to be accessible only to the elite. Printing it would devaluate its canonical status, as the printed text would fall in the hands of those who have no understanding or appreciation of its importance or true meaning.[75] Interestingly, with this kind of convergence, what one group considers heretical and dangerous and the other regards as the most important and revered religious knowledge is subject to the same treatment.

Although the Meiri called the Rashba's circle "kabbalists," throughout the entire debate the Rashba avoided the mention of the Kabbalah as the true Pardes and the substitute for philosophy. Loyal to the strictly esoteric tradition of Nachmanides' school of Kabbalah, the Rashba did not recommend the study of Kabbalah as supplement to talmudic studies. From his perspective, it would be sufficient to adhere to the curriculum of Talmud study alone, following the pious Rashi and Rabeinu Tam of Ashkenaz.[76] The debate concerned the coexistence of Talmud and philosophy and not of Kabbalah and philosophy. The Rashba urged one of his admirers in Provence, Samuel ha-Salmi, to shun any further study of philosophy. Arguing against Maimonides' claim that philosophy is a condition for meriting life in

the hereafter, the Rashba asked Samuel: "Are the pious men of Israel without philosophy not worthy of an afterlife?"[77] The Rashba posed the controversy in terms of exclusive talmudism and the arrogant challenge of philosophy. Kabbalah is an esoteric matter, and he did not promulgate the study of Kabbalah. Had the philosophers of Provence been as strictly esoteric about philosophy as was the Rashba about Kabbalah, the crisis might have been avoided. The open challenge of Kabbalah to the exclusive role of the Talmud in the curriculum came from other kabbalists, who were less strict than Nachmanides' school in their esotericism.

## KABBALISTS AND THE TALMUDIC CURRICULUM

The battle over the formative canonical status of the Talmud was not waged by Maimonides and the philosophical school alone. Criticism of exclusive study of the Talmud was also voiced by the kabbalists. After the publication of the Zohar near the end of the thirteen century, the restraints of kabbalistic esotericism were relaxed, and we find its adherents calling for supplementing the study of Talmud with Kabbalah. Significant differences exist among kabbalists regarding both the value they ascribe to the unsupplemented study of Talmud and the recommended balance between the study of Kabbalah and of Talmud. Some extremists declared that the study of Talmud without the knowledge of Kabbalah was empty, because only Kabbalah provided access to the inner meaning of the Talmud. The anonymous author of *Sefer ha-Kannah ve ha-Plia'ah* held such a view. Another sixteenth-century kabbalist, Meir Ibn Gabai, wrote: "He who deals only with the garment and the body of Torah and claims that there is nothing but these, expels the soul and denies the essence of the Torah . . . and it would have been better for him had he never been created."[78] The author of *Rabayah Meimanah* used metaphors drawn from Israel's enslavement to Egypt to describe the heavy burden of the exclusive study of Talmud.[79] More moderate kabbalists recommended the study of Kabbalah only to those who were well-versed in Talmud and insisted on continuing Talmud study while studying Kabbalah.[80] Jacob Katz has mapped the different approaches to the tension among kabbalists, and I shall attempt to clarify some of the issues involved in the debate over the curriculum.[81]

A review of the two main trends in Kabbalah described by Moshe



Idel—the ecstatic and the theurgic—will clarify the type of criticism that was raised against exclusive talmudism.[82] According to Idel's phenomenological account, for the ecstatic school the goal of the mystical life is to achieve *devekut*, a state of unity with God, through mystical techniques such as breathing exercises, visualizing colors, and so on. Talmud study could not help one attain the mystical goal of *devekut*, for the demand for constant attention to intellectual detail conflicts with self-negation. If a person aspires to negate his own ego and immerse himself in God, how can he achieve such a state when his mind is troubled with the legal distinction between a harmless bull and a gorer? Moreover, with his subtle dialectics the talmudist is also adding ever more distinctions and debates to the Torah, contrary to the mystic's innermost aspiration. Rather than elevating the particularized Torah to its origins in the undifferentiated realm of God, the talmudist augments the Torah's particularization. In neo-Platonic terminology, the talmudist is on the way down while he should be on the way up. These objections were also raised by spokesmen of hasidism, who agreed with the view of *devekut* as the prime moment of religious life. Rabbi Dov Baer of Mezirech, an outstanding figure of the first generation of hasidim, advised the scholar to cease his learning periodically in order to engage in *devekut*. The story is told that when the Ba'al Shem Tov, the founding father of eighteenth-century hasidism, studied Talmud, he learned the white space between the letters rather than the black print.[83]

The criticism voiced by the ecstatic stream of Kabbalah was at times radical in tone because, as Idel points out, some of the practitioners of ecstatic Kabbalah came from outside the rabbinic establishment and lacked credentials as talmudists. Abraham Abulafia, a thirteenth-century kabbalist and mystic, himself not versed as a talmudist, distinguished three groups with specific views concerning curriculum.[84] The first, the talmudists, he called incurable because they find no spiritual excellence beyond the fulfillment of the Halakhah and the study of Talmud. Therefore they reject any possible supplement which, in Abulafia's view, is necessary to perfection. The second group, the philosophers, are desperately ill but still curable since, like the true mystics, they understand that something beyond Talmud is necessary for spiritual perfection. Philosophers and kabbalists share the idea that in order to achieve spiritual perfection the Talmud must be supplemented; hence the philosopher is in a better position than the talmudist. The

third group is the kabbalists, who have deserted philosophy but have not yet achieved full knowledge of God's Name and its functions. They are easily curable because, like the philosophers, they are unsatisfied with the exclusivity of the Talmud, yet unlike them they are on the right track in their search for the supplement within mystical tradition. Abulafia promises to provide the unwritten secret of spiritual perfection, which is the achievement of mystical perfection through the knowledge and use of the divine Name. This subject, of course, has little to do with the concerns of the talmudists.[85]

The second trend in Kabbalah, in Idel's terminology, is the theurgic. According to this school the divine realm is not a "simple unity" but a complex organism with many aspects—the *sefirot*. The *sefirot*, which emanate from within the Godhead, form a delicate hierarchy of balance and tension, such as between *Din*, which is the principle of judgment and limit, and *Hesed*, which is the principle of abundance and love. This structure is always in danger of disintegrating, and man's task is to secure the unity of the divine realm through the performance of the commandments, which affect the Godhead. The role of the mystic is primarily theurgic. In fulfilling the law he preserves God's internal cohesion, thus maintaining the divine abundance both within the Godhead itself and within the world. The theurgic mystics' criticism of exclusive Talmud study usually concerned the talmudists' ignorance of the esoteric and inherently more important meaning of the Halakhah. Unaware of the secrets of the divine world and the cosmic effect of the fulfillment of Torah commandments, the exclusive talmudists are blind to the essence of being. The theurgic school invested the minutiae of the law with great cosmic and symbolic significance: every act makes a cosmic difference. Paradoxically, the talmudists, although masters of the legal minutiae, are indifferent to this great effect.

According to the theurgic branch of Kabbalah, the divinity is self-emanated, and the Torah serves as one of the major symbols of its emanation. Like the Godhead, the Torah and its different strata are also a product of the process of emanation, a process finalized in the articulation of the Torah's final and exoteric form.[86] The inner meaning of the Torah uncovered by the mystics is therefore connected to an ontology in the Godhead superior to the talmudists' exoteric reading, since it correlates with a higher realm in the process of emanation. This view of the Torah as a product of emanation anchors the importance of the study of Kabbalah, over and above any other subject matter, in



the very essence of the divine realm. The most extreme formulation stemming from this hierarchical view is expressed by the *Tikunei Zohar:*

> Alas for those fools whose minds are closed and whose eyes are shut, of whom it is said (Psalm 115:5) "They have eyes but they do not see" the light of the Torah. They are animals, who do not see or know anything except the straw of the Torah, which is the outer husk or the chaff, of which it is said: "Chaff and straw are exempt from the tithe." The sages of the Torah, the mystics, throw away the straw and chaff which are without, and eat the wheat of Torah which is within.

In most cases, the hierarchical view of Torah was presented in a less extreme manner. The external meaning of the text was included in a continuum with the internal meaning and not contrasted to it. But even in those more moderate and ordinary approaches, the superiority of the study of Kabbalah was anchored in the ontology of the divine realm.

Since the achievement of the theurgic effect depends on the fulfillment of Halakhah and the study of Torah and not on the performance of mystical techniques common in the ecstatic school, many kabbalists of the theurgic school, including Nachmanides, the Rashba, and many others, were in fact great talmudists as well. But another and more important difference between the theurgic and ecstatic branches came up during one of the most interesting debates on talmudism in the nineteenth century, that between the formidable talmudist Rabbi Chaim of Volozhin and the critics of strict talmudism among the Hasidim. As noted, the rise of the ideal of *devekut* in Hasidism conflicted directly with the traditional value of Talmud Torah. R. Chaim of Volozhin, the guardian of the intellectual Lithuanian tradition of Talmud Torah, wrote a book called *Nefesh ha-Hayim* in defense of the value of talmudic dialectic against its spiritual critics. He defended talmudism without rejecting the outlook of the Kabbalah and reiterating that nothing should be added to the Talmud. Instead, he used the theurgic ideal of Kabbalah to support his position, which enabled him to integrate his own background as a kabbalist and his loyalty to the highest value of Lithuanian culture, Talmud Torah.

According to R. Chaim, the importance of Talmud study lies in its theurgic effect on the Godhead, but this effect can be engendered through the traditional forms of learning. That is because the subtle

dialectics of the yeshivah is of cosmic importance, talmudic studies are actually grounded in the kabbalistic outlook, and the theurgic effect can thus be achieved even without detailed knowledge of the causal chain provided by the Kabbalah.[87] A talmudist not versed in esoterica achieves those effects by his complete devotion to study as well as the kabbalist who claims to understand divine secrets. According to this view, nothing should be added or deleted from the talmudic curriculum. The Kabbalah serves not to revolutionize the curriculum but to imbue it with enormous importance. Although R. Chaim emphasizes the theurgic effect of the study of Torah in *Nefesh ha-Hayim*, he mentions *devekut* as well. He attempts to integrate that ideal with the study of Torah without changing the scholar's consciousness while he learns. Since God and the Torah are one, "while studying and reflecting on the Torah it is clear that there is no need for the matter of the *devekut* at all, since with contemplation and study alone he cleaves to God's will and speech, for God, His will and His speech, are one."[88]

Interestingly, a very similar version of *devekut* was recommended in the sixteenth century by R. Joseph Karo, a great halakhist and mystic. In his *Magid Mesharim* he equates *devekut* with the scholarly study of Torah. The mystical moment is therefore not opposed to the traditional way of meditating on the Law. In fact, to interrupt the study of the Law is to fall away from the mystical state: "Be careful not to interrupt the *dibbuq* [*devekut*] between you and your Creator . . . for the study of Torah strengthens the communion, and grace is infused into him from heaven to strengthen the communion further."[89] Such a sophisticated defense is unacceptable to mystics, who claim that mystical achievement is a personal experience of self-negation and *devekut*. To achieve this state a different mindset is needed. The mode of intellectual specification in talmudic legal argumentation must be overcome. One common hasidic technique for achieving this state was through cleaving to the essence of the letters of the Torah. In an act of inner concentration, the mystic penetrates the materiality of the letter, attaching himself to its divine essence, and through that meditative activity achieves a state of *devekut* with God. In such a state, the letters of the texts no longer convey linguistic meaning; they become material carriers of divine essence, and their ordinary linguistic function is annihilated. Such a technique, placing emphasis on the mystical power of pronunciation of the letters, is described by the great Magid: "The Blessed One concentrated Himself into the Torah; therefore, when someone speaks on issues of Torah or prayer, let him do it with all his power, since by it he unites himself with Him may He be blessed, since all his power is in the pronounced letter, and He, may He be blessed, dwells in the pronounced letter."[90] This technique conflicts directly with the talmudist's mindset and threatens its ideals. As a theurgic kabbalist, Rabbi Chaim allowed the preservation of the talmudic mindset and endowed it with magnificent weight. The hasidim, with their strong inclination toward ecstatic Kabbalah, rejected such harmonization. A different orientation was needed for the achievement of their mystical ideal. In more radical hasidic formulations, the traditional talmudism defended by R. Chaim was seen as representing yet another step away from God.[91]



Neither camp—kabbalist or philosopher—was content with merely supplementing the curriculum or, in more extreme versions, replacing it. They claimed that the supplement they proposed affected the reading of the shared textual material; that it was the hidden meaning of the traditional text, its allegorical interpretation, or its profound symbolic layer. This attitude expands the scope of the issue, for now it concerns not only the question of what, if anything, should supplement the Talmud, but also how to read the Talmud itself. Are the homiletic passages of the Talmud treasures of mystical hidden allusions, to be read according to esoteric allegorical codes? Or should they be understood straightforwardly the way the talmudists read them? The debate between talmudists and philosophers also raises the question whether a shared "rational" cultural discourse can exist between Jews and non-Jews.

## STRONG CANONICITY AND SHARED DISCOURSE

Strong canonization of the Talmud may be expected to have an impact on the relationship between the Jewish and the surrounding Gentile cultures. "Strong canonization" implies that the Talmud is not merely the most important text in the curriculum but the only one. The study of other texts is prohibited either because of the danger they pose to the tradition (they are denounced as "Greek wisdom"), or because of the pervasive obligation of uninterrupted reflection on the Torah. A wall is thus erected between the Torah community and the non-Torah community, influencing not only practice but also modes of thought

and the objects of reflection. The second aspect of the exclusivity of the canon is the prohibition of teaching Torah to Gentiles. The Talmud states that a Gentile who studies the Torah deserves death. The metaphor used to explain this rigorous prohibition is illuminating. The Torah is likened to Israel's wife; the non-Jew who studies Torah is compared to a man committing adultery. This simile is grounded on a play on the words of a verse in Deuteronomy, which describes the Torah as Israel's *morasha*—inheritance. The Talmud revises the verse: "Do not read '*morasha*' but '*meorasa*,' " meaning betrothed. The Torah, according to this reading, is more than Israel's inheritance; it is Israel's bride.[92] The Torah is claimed to be Israel's exclusively and, as in marriage, it cannot be shared. It is "cultural capital" available only to members of the community. Following the same line of exclusivity, another *midrash* asks why God gave two Torahs to Israel—the Oral and the Written. The answer is that since the Gentiles will translate the Torah and claim it for their own, God gave Israel an unwritten Torah as Israel's own hidden treasure.[93] The translation of the Written Torah into Greek and Latin made it a common property of Gentiles and Jews. The possession of a secret and unwritten Torah which is never shared guarantees Israel's exclusivity.

This double prohibition of denying Jews access to non-Jewish texts and also denying Gentiles access to Jewish texts creates two communities that share no common discourse. The interdiction against teaching Torah to non-Jews and the midrashic response to translation have their roots in the Jewish polemic against Christianity. In the context of the Church's claim of being the new Israel, disinheriting the Jews, the translation of the Bible was perceived by them as an act of appropriation rather than an act of communication. The problem of translation is acute because ownership of the canon is one of the signs of being elect. Thus the notion of the exclusivity of the Oral Torah developed as a response to the Christian act of appropriation.[94]

When the argument is presented in these terms, it is hard to imagine a space where shared discourse could occur. Thus the Jews who supported supplementing talmudic studies with the study of philosophy did more than add to an existing curriculum. They broke a barrier by creating a shared space in which discourse between Jews and the world could occur. This would not mean anything like the notion of a Judeo-Christian culture or a Judeo-Islamic culture, for such cultural constructs were unknown to medieval thinkers. Rather, philosophers appealed to



a shared discourse of rationality that has its roots in Aristotelian philosophy.

The philosophers offered an interesting justification from the tradition. It is based upon a verse in Deuteronomy (4:6) that describes the Torah and its laws as Israel's wisdom in the eyes of the nations. The Torah itself thus states explicitly that it shares a basis for rational discourse with the world and can be recognized as a wise legal system even by outsiders who are not committed to the internal premises of the tradition. It comes as no surprise that this verse is quoted by Maimonides in the *Guide of the Perplexed* in support of the claim that the laws of the Torah are founded on a rational basis. The Meiri quotes the same verse in defense of Provençal philosophical culture.[95] For the Maimonidean tradition, this domain of shared discourse is not a marginal aspect of spiritual life but the very heart of Ma'aseh Merkabah and the proper notion of God. It is the process by which intimacy with God is achieved through knowledge, and it provides the active intellect with the content that defies death.

The debate between talmudists and philosophers over the curriculum therefore revolves around the major question of how self-contained is the tradition. Or, to rephrase it, the argument is about the extent to which the tradition might be exposed, interpreted, and justified in terms of a discourse beyond itself. The debate concerns not only whether the curriculum should consist of any text which is not the Talmud or an interpretation of the Talmud, but also whether any text which is not the Talmud or the interpretation of the Talmud may be instrumental in understanding the Talmud. The opponents of philosophy in the curriculum maintained that tradition is self-contained, and they rejected the view that philosophy may have an essential role in understanding the tradition. For example, in fourteenth-century Toledo the Rosh wrote a responsum condemning the use of philosophy in halakhic ruling:

> For the wisdom of philosophy and the wisdom of Torah are not of the same mode. The wisdom of the Torah is a tradition from Moses at Sinai, and the wise will interpret the Torah using rules with which the Torah can be interpreted, and will make an analogy between case and case. Even if those legal inferences are not according to the wisdom of nature we rule according to tradition . . . and do not think of comparing these two, Torah and Philosophy, and of bringing a proof from one to another

> because that will pervert judgment. Since they [Torah and Philosophy] are two opposites, they are mutual enemies and will not dwell in one place.[96]

No outside forms of reasoning should be involved in talmudic interpretation. The Talmud contains rules of interpretation and derivation; it supplies the code for its own evolution. The shared space of discourse created by the curriculum of the philosophers is both dangerous and unnecessary. Against the attempt to create a common discourse, the Rosh raised the claim of total incommensurability.

Three central problems of curriculum emerge from the debates on the strong canonization of the Talmud as an object of constant reflection. The first is the relationship between the tradition and the foundational text. In some formulations and practices concerning the curriculum, strong canonization of the Talmud minimized Bible study. The critics of that position condemned it as alienating the community from its sacred text. Scholars well versed in every intricacy of talmudic discussion were accused of ignorance of God's own word. The defenders of exclusive talmudism, on the other hand, pointed to the danger of an unmediated approach to the sacred text. They contended that the Bible approached without the aid of the Oral Law had subversive potential. Thus tension prevails between the need to anchor the authority of the Bible through study and the danger of exposing the foundational text to direct scrutiny unmediated by the prism of traditional interpretation. This tension is at the heart of the debate about the strong formative canonicity of the Talmud vis à vis the Bible, a debate, it must be stressed, that concerns the place of the Talmud in the curriculum and not its normative authority. Hence we can describe this debate as taking place within a single tradition in which both sides agree about the normative role of the Talmud.

The second important point concerns the relations between Talmud, Kabbalah, and philosophy, and the implications of that triangle on the problem of values. The kabbalists and philosophers reexamined the text of the Talmud within a new context of metaphysical outlook and spiritual ideals. The Aristotelians among the Jews conceived of human perfection as the attainment of the knowledge of God; to that end, the study of metaphysics seemed more useful than talmudic learning. The



kabbalists introduced the ideal of *devekut*—the cleaving of the self to God. The mindset of the mystic in contemplation, on the path toward self-negation, stands in conflict with the acute analytical awareness of the scholar. The exclusive value of the study of Talmud was therefore also threatened by this ideal. The theurgic trend of Kabbalah introduced the esoteric cosmic meaning of the Law and its theurgic effects. Higher wisdom became identified with the secrets of the divine realm and with laying bare the strata hidden in the depths of the text, far beneath the surface scratched by the talmudist.

These new approaches modified the role of the Talmud as the exclusive item in the curriculum to varying degrees. In most cases the Talmud was supplemented, and in some instances it was replaced. The value of a text is related to its place in the greater picture. In the case of the Talmud, its value was relative to metaphysical outlooks and ideals of perfection. The worth of the text as an object of reflection is not derived solely from its internal quality, for evaluations of this feature may differ according to the function of those judging it and their general outlook.

The third important point of the debate on the exclusive role of Talmud concerns the problem of self-containment or shared discourse. A curriculum can be designed to create a self-sufficient internal discourse. In this version of the text-centered community, the text marks the exclusive boundaries of reflection. Every text which is not canonical is prohibited. The debate between talmudists and philosophers specifically concerned the issue of the exclusivity defined by the text and its realm.

# *Conclusion*

The movement toward text-centeredness has been conceptualized as the primary feature of rabbinic innovation and self-perception. Three changes characterize this movement: (1) the scholar rises to become the main authority figure, thereby linking authority to textual expertise; (2) the Torah becomes the object of ongoing reflection and a locus of religious presence and experience; and (3) the boundaries of the community are shaped in relation to loyalty to a shared canon. Such a text-centered community can only evolve through reinterpretation of the canonical text. Major shifts within the tradition were accompanied by the emergence of new and bold conceptions of Torah and language; they provided hermeneutical strategies which integrated radically different world views into the tradition. The emergence of both Kabbalah and philosophy as esoteric readings of the canon in the Middle Ages became possible through innovative conceptions of the canon and its language. In turn, the possibility of redescribing the canon made it open to reading with greater flexibility. Further, the legitimation of controversy between certain rabbinic schools through the detachment of authoritative meaning from authorial intention gave rise to new interpretative possibilities, portraying the text as open-ended and the interpreter as constituting its meaning.

Despite upheavals and changes in Jewish life, the rabbinic revolution lasted until the eighteenth century and succeeded in making the





canon, to a definition based on characteristics typical of national groups such as shared history, language, and territory. The second issue is related to the effect of Jewish nationalism on the characterization of an ideal type. This ideal type was founded, as were those of many other nineteenth-century national movements, on the tales of the ancient epics. In the Jewish case, the reversal of the curriculum from Talmud to Bible represents a major shift in political awareness and identity, alongside the weakening of the text-centered nature of the community. We recall that in the Middle Ages there was an attempt to decanonize the Talmud as a formative text while keeping its normative authority intact. For many modern Jews, the situation is reversed. The Talmud has lost its normative status; the question now is whether it can still serve a formative role and become an integral part of the language, associations, concerns, and mode of thought of present-day Jewish culture.

APPENDIX

NOTES

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# *Appendix: The Sovereign and the Canon*

Although contemporary interest in the *Leviathan*[1] ignores Hobbes's use of biblical interpretation in his treatment of politics, in fact he devoted major parts of the treatise to this subject. So did Spinoza; though he wrote only two works on politics—the *Political Theological Treatise*, and *A Political Treatise*—he dedicated most of the former to an ambitious attempt to develop a general interpretative methodology and exegesis of the Bible. These works are essentially political polemics, and their arguments are marshaled in reference to the authoritative text of the canon. The point relevant to our discussion is their views on the authority of the canon and the authoritative interpreter.

Both Hobbes and Spinoza reach the same conclusion: the authoritative interpreter of Scripture is the civil sovereign. This appears to be somewhat unlikely claim, for nothing seems to qualify the sovereign to interpret a sacred text. He is neither a prophet nor a scholar, nor does he have any other unique qualifications as an interpreter. Hobbes and Spinoza's attempt to prove to their readers that Scripture itself advocates their view makes the argument even more interesting: direct appeal is made to Scripture to undermine its own independent authority and to subordinate it to the civil sovereign.

Both philosophers are concerned with the biblical threat to their political program, and their extensive interpretative campaign is

designed to neutralize that threat. Hobbes's concern is that political use of the Bible might split the sovereignty of the state between king and priest. Spinoza's agenda is tolerance, freedom of thought and speech. Through biblical exegesis Spinoza strives to prove that the state has no interest in legislating true beliefs or a specific uniform religious way of life. Only a minimum of religious belief, in Providence and divine retribution, for example, is necessary for maintaining social order. The rest should be left to the free reflection of the philosopher. Both Hobbes and Spinoza try to contain the political claim of the canon, but in the service of two radically different political programs. Hobbes writes in the service of the Leviathan, the absolute unified sovereign, while Spinoza does so in the service of a relatively pluralistic state, where issues of truth and falsehood are divorced from the state's coercive powers.

Hobbes addresses the problem of the canon as a political one. In his view, authority is the main political issue, and that category is the axis of his discussion on Scripture. He raises two questions: what is the source of the authority of the canon? and who is the authoritative interpreter of the canon? Before embarking upon a long stretch of biblical exegesis, Hobbes phrases the problem with utmost clarity. In the section entitled "The Question of the Authority of the Scriptures Stated," Hobbes rejects other formulations of the problem. The first to be rejected is "from whence the Scriptures derive their Authority," and the second is "how we know them to be the Word of God or why we believe them to be so." Hobbes claims that only those who heard the words of God directly are obligated by them; since none of the others had a direct experience of revelation, they cannot be certain of the existence of such revelation and therefore have no obligation to follow it. People believe in Scripture without direct evidence, but belief, Hobbes claims, is dependent on subjective feelings and therefore cannot provide the proper foundation. Hobbes redefines the question in this manner: "By what authority they [Scripture] are made Law." He then asks who is the authoritative interpreter of Scripture as Law. Hobbes's answer to both questions is decisive and absolute: it is the Civic Sovereign of the State. Scripture cannot be made law by someone's claim that it is revealed by God. For those who did not personally witness the revelation, such a claim cannot be a source of obligation. Each individual must decide whether the so-called revelation originated from a true prophet or a false one. Nobody can justifiably be coerced to obey



the canon until the sovereign makes Scripture the law of the state. According to Hobbes, the sovereign has absolute control of the canon. It is he who endows Scripture with authority, and he is the only legitimate interpreter of the canon. The sovereign has the power granted him by the Bible to distinguish between a false prophet and a true one. Hobbes argues that those two aspects of control are internally connected: "For, whosoever hath a lawful power over any Writing, to make it Law, hath the power also to approve or disapprove the interpretation of the same."[2] In Hobbes's view, the modern separation of powers—between the legislator who authorizes the law and the courts which are its authorized interpreters—seems to break the unity of the sovereign's control of the canon.

Hobbes's approach is fascinating because he argues his point from Scripture itself, making the canon admit that its authority is entirely derived from the sovereignty of the Leviathan. To sharpen the totally derivative nature of the canon's authority, Hobbes introduces a distinction between two kinds of canon:

> There be two senses, wherein a Writing may be said to be Canonical; for Canon, signifieth a Rule; and a Rule is a Precept, by which a man is guided and directed in any action whatsoever. Such precepts, though given by a Teacher to his Disciple or a Counsellor to his friend without power to compel him to observe them are nevertheless canons; because they are Rules: but when they are given by one who he that receiveth them is bound to obey them are those Canons, not onely Rules but Laws: The question therfore here, is of the Power to make the Scriptures (which are the Rules of Christian Faith) Laws.

Hobbes thus distinguishes between canonical rules that are offered as advice or guidance, and a canon of rules which are enforced by the sovereign. Only the latter can properly be called law. Prior to the authorization of the Scripture by the sovereign of a state, its status is merely advisory. The teachings of Saint Paul, for instance, were not considered by Paul himself to be laws, nor did their author consider himself an authorized interpreter of Scripture. Like Paul, the clergy has no authority regarding Scripture; rather, they are teachers who try to offer convincing interpretations that will be authorized by the sovereign. "For to Interpret the Laws, is part of the Administration of a present Kingdome; which the Apostles had not."[3]

The laws of the Old Testament became canonical only when Israel accepted Moses as the sovereign of the commonwealth and not when the Scriptures were announced as God's revelation. "But Moses and Aaron, and the succeeding High Priests were the Civill Soveraigns. Therefore hitherto the Canonizing, or making of the Scripture Law, belonged to the Civill Soveraigne."[4] And again: "Therefore hitherto the Power of making Scripture Canonicall, was in the Civill Soveraign."[5] As with Moses, so with Abraham: Abraham's descendants were obligated to keep the commandments, which were revealed only to him, because he was the civil sovereign. As such, Abraham is the exclusive judge and interpreter of the divine word.[6]

The sole basis of the authority to command, claims Hobbes, rests on the social pact according to which people transfer their rights to the sovereign. Hobbes attempts to reduce the authority of the canon to this conception of political authority. In contrast to the view that the authority of Scripture is independent of the political authority of the sovereign, Hobbes introduces an intermediary between the people and their obligation to the canon: the civil sovereign who canonizes Scripture as law. The reduction is as follows: Moses and Abraham received the commandments from God, but that is not sufficient justification for imposing the authority of Scripture upon the people. As mere prophets, they could not claim anyone's allegiance. It was the contract between the people and Moses or Abraham and his followers that gave them authority as civil sovereigns, and as such they authorized Scripture. The people are obligated to follow Scripture only because they were subject to Moses' and Abraham's rule independently of Scripture. The authority of the canon is derived from social contracts and therefore rests upon the political conception of the sovereign's authority.

Nowhere in the text of the Scriptures, however, is there mention of a contract between Moses and the people, the contract that ostensibly made Moses the social sovereign. True, Moses is a mediator between two contracting sides—Israel and God—but when was he made the civil sovereign by the people through an independent pact which, according to Hobbes, is the source of the canon's authority? We do have a covenant between God and Abraham, but nothing that designates Abraham a civil sovereign. This is a crucial gap in Hobbes's interpretative project, and the way he forces the text to fit his own scheme of authority reveals the depth of his commitment to his political



agenda. Hobbes appeals to direct interpretation of the Scripture in order to undermine its claim for independent authority. In this peculiar reading, Abraham and Moses are made civil sovereigns because, from the Hobbesian perspective, the sovereign monopolizes not only the use of power but also all claims to authority.

Hobbes is a master of subversive reading, circumscribing and appropriating the canon through its supposedly simple meaning. Spinoza follows Hobbes in the art of the political use of interpretation; in his case, the limitation of the canon promotes a different political program. In his *Theological and Political Treatise* Spinoza tries to convince the reader of the desirability of some separation between church and state, so as to create a relatively pluralistic society. Spinoza was convinced that religious groups trying to use the machinery of the state to impose particular beliefs caused much disorder and chaos in politics. He strove to show that the Scriptures have no interest in legislating truth and falsity; rather their concern is solely obedience and piety, simple justice and the love for one's neighbor. The prophets were not philosophers and did not concern themselves with issues of truth; the laws of the Bible are laws for the Hebrew state. These laws do not obligate everyone and do not even obligate the Jews after the destruction of their state.

Spinoza's interpretative slogan is "back to the text."He argues against three conceptions of the authoritative interpreter. The first favors the interpreter who is endowed with supernatural capabilities; the second regards tradition as the source of authoritative interpretation; and the third authorizes the philosopher to interpret the text. Spinoza's conclusion rejects all three:

> For as the highest power of Scriptural interpretation belongs to every man, the rule for such interpretation should be nothing but the natural light of reason which is common to all—not any supernatural light nor any external authority; moreover such a rule ought not to be so difficult that it can only be applied by very skillful philosophers, but should be adapted to the natural and ordinary faculties of mankind.[7]

If the prophets spoke to the common people, then we do not need supernatural capabilities to understand them today. If Scripture reveals the secrets of the universe and the philosopher therefore claims to be its authoritative interpreter, why does it contain so many metaphys-

ical contradictions and errors? Scripture should be interpreted from Scripture itself, by the natural light of reason which is within everyone's reach. Although the court proclaimed Spinoza a heretic dissenter, he never denied the sacredness of the Bible. His interpretative methodology, which is to read the text in its historical and literal contexts, is not intended to undermine its sacredness. Such a denial could have worked against Spinoza's interest, which was to mobilize the prestige and power of the biblical text for his political program. He intended to convince the reader that he is an authentic, unbiased reader of the text. For Spinoza's project as a political propagandist depends on preserving the authority of the canon and then using this authority for his purposes.

In the earlier discussion about charitable reading we contrasted two opposing intuitions, that of Maimonides and that of Yehudah Elfakar.In the Maimonidean approach the canon deserves infinite charity: all its statements are adapted to the highest standard of truth. Yehudah Elfakar thought this approach was outrageous and contended that the meaning of Scripture should guide the reader's conception of truth rather then the opposite. No charity need be granted to Scriptures because they constitute the very terms of charity. The reader should alter his metaphysical views to what he reads in the Scripture rather than reread the Scripture according to his views. Spinoza takes a third approach to the subject, that of compartmentalization. Scripture is not subordinate to reason nor is reason subordinate to Scripture; the two simply deal with separate realms. Both Maimonides and Elfakar, in Spinoza's eyes, are wrong. The issue of truth and falsity should not be determined through the exercise of biblical interpretation:

> We may therefore, put this theory [Elfakar's], as well as that of Maimonides, entirely out of court; and we must take it for indisputable that theology is not bound to serve reason, nor reason theology, but that each has her own domain. The sphere of reason is, as we have said, truth and wisdom; the sphere of theology is piety and obedience. The power of reason does not extend so far as to determine for us that men may be blessed through simple obedience, without understanding. Theology commands nothing save obedience, and has neither the will nor the power to oppose reason.[8]

Because Scripture is self-contained, the clash between reason and piety is avoided. Each is reduced to its own domain, with no need for mutual adaptation.



Spinoza's main target was Maimonides, who in effect serves as a strawman representing all the political ambitions of the Church. Much of Spinoza's technique may be defined as scapegoating, and his scapegoating of the Jews in the *Treatise* has a double effect. First, by attacking the "Pharisees" Spinoza masks a direct attack on the Church, and second, this attack creates a bond between Spinoza and his readers by making clear they share a common enemy. But what was so troubling about Maimonides, a figure to whom Spinoza owed such a great intellectual debt? In Maimonides' account, the prophet has the political skills of the legislator and the theoretical achievements of the philosopher. Thus a prophet legislates perfect law. This law concerns not only social order but the perfection of the soul and true and false beliefs. According to Maimonides, Moses is the perfect legislator, the philosopher king. In a political program that aims to detach the realm of politics from that of the correct conception of the universe, the prophet as Maimonides portrays him is the prime target. Spinoza's Moses, who was a legislator rather than teacher, cannot be a philosopher, whereas Jesus is for Spinoza what Moses is for Maimonides—a perfect philosopher. Jesus is granted perfect knowledge because he is solely a teacher and not a statesman.[9]

The effort to separate prophecy from knowledge is commensurate with the effort to distinguish between the law and the truth. The Scriptures convey the beliefs necessary for the stability of the state, not the true picture of the world. Although Spinoza's quarrels with Maimonides ostensibly concerned the method of biblical exegesis, we should not be misled. The underlying issue remains the status of the canon and its role as a political text. The conclusion Spinoza draws from his so-called scientific investigation of the Bible—that the Bible teaches us simple piety and love of the neighbor and no more—is as far from a simple reading of the text as is Maimonides' Aristotelian reading. At the end of the treatise Spinoza reaches the same conclusion as Hobbes: the sovereign is the authority of biblical interpretation. Since justice and civic order are the sole subject of the Bible, and since what is just and what is necessary for social peace is the concern of the sovereign and his domain of authority, it is up to the sovereign to decide the meaning of Scripture. The long interpretative struggle, the goal of which is to undermine tradition and theology in the name of any person's reasonable reading, ends with the political assertion of the sovereign's dominion over interpretation.

Hobbes and Spinoza share the strategy of free and scientific investigation of the text. The slogan "back to the text" and direct appeals to the canon may serve varied political ends. The Karaites used such a direct appeal to undermine the mediating power of tradition. The Protestants used it to break the institutional control of the Church. Hobbes returned to the text in order to subordinate it to the absolute sovereign, and Spinoza, armed with the aura of scientific reading of the text unbiased by the traditional distortions, tried to contain the political ambitions of the canon.

# *Notes*

## *Introduction*

1. On the concept of book religion and its historical development see J. Leipoldt and S. Morenz, *Heilige Schiften Betrachtungen zur Religions-geschichte der antiken Mittelmeerwelt* (Leipzig: Otto Harrassowitz, 1953); and S. W. Wilford, "Scripture as Form and Concept: Their Emergence for the Western World," in *Rethinking Scripture*, M. Levering, ed. (New York: SUNY Press, 1987).

2. On the radical variety of views concerning the importance of Scripture among different Christian movements see H. Y. Gamble, "Christianity: Scripture and Canon" in *The Holy Book in Comparative Perspective*, F. Denny and R. L. Taylor, eds. (Columbia: University of South Carolina Press, 1985). On the difference between Islam and Christianity concerning the centrality of Scripture see W. C. Smith, "Some Similarities and Differences between Christianity and Islam," in *The World of Islam Studies in Honor of Philip K. Hitti*, James Kritzeck and R. B. Winder, eds. (London: Macmillan, 1959), pp. 56–58.

3. Some of the most important medieval commentators of the Talmud—the Tosafists of the twelfth and thirteenth centuries—took it as a model. As Efraim Urbach pointed out in his work on the Tosafists, their commentary could be inserted in the text without it being noticed, since it follows both the style and the internal logic of the talmudic discussion itself. See E. E. Urbach, *Ba'alei ha-Tosafot* (Jerusalem: Mosad Bialik, 1980), p. 22; see also J. Zusman, "Mifa'lo ha-Mada'i shel Professor Efraim Elimelech Urbach," in *Efraim Elimelech Urbach Bio-Bibliyographia Mechkarit, Musaf Mada'i ha-Yahadut* 1 (1993) pp. 18–19.

4. On the canonization of the New Testament and its relationship to Marcion see H. von Campenhausen, *The Formation of the Christian Bible* (London: A and C. Black, 1972) p. 246. For a different opinion see F. F. Bruce, *The Canon of Scripture* (Downers Grove, Ill.: InterVarsity Press, 1988), p. 144. For a general discussion of Marcion and his canon see Campenhausen, pp. 134–144.

For an alternative understanding on the canonization of the New Testament, emphasizing internal developments within the Church, see W. G. Kummel, *Einleitung in das Neue Testament* (Heidelberg: Quelle and Meyer, 1973). For an extensive discussion on the subject see B. M. Metzger, *The Canon of the New Testament: Its Origin, Development, and Significance* (Oxford: Clarendon, 1987). Gedaliahu Stroumsa made an interesting observation concerning the possible connection between the canonization of the Mishnah at the end of the second century and the canonization of the New Testament in the same period. Stroumsa explains this simultaneous occurrence by the historical need of both Jewish and Christian communities to assert their identities in the face of severe crisis and particularly as a result of the struggle between the early Church's interpretation of the Bible and the Jewish interpretation. See G. Stroumsa, "The Body of Truth and Its Measures: New Testament Canonization in Context," in *Gnosis Forschung und Religions-Geschichte: Festschrift Kurt Rudolph*, H. Preissler and H. Seiwert, eds. (Marburg: Diagonal, 1994).

Menachem Haran offered an important distinction between the canonization of the Old Testament and that of the New Testament. According to him, the canonization of the Old Testament did not involve an act of selection between competing texts. Old Testament canonization was not intimately connected to censorship but was rather an attempt to preserve all the material that belonged to a mythical past. See M. Haran, *Ha-Asufah ha-Mikrait* (Jerusalem: Magnes Press, 1996), pp. 23–78. Haran is aware as well that at the end of the gradual process of canonization of the Old Testament, few texts (mainly those from the apocalyptic literature that were ascribed to ancient authors) were rejected from the canon (see pp. 93–102).

5. The close connection between canon and exclusion is manifested in the early use of the term. In its original use *kanon* designates a measuring rule. Irenaeus is the first Christian writer to use this term in his *Adversus Haereses* to mean a rule of faith (*Adv. Haer.* I. 8. 1; in A. Rousseau and L. Doutreleau, trans. and ed. (Paris: Cerf, 1979), vol. 2, pp. 112–17). *Kanon* is thus originally something which measures and fixes boundaries. For a detailed discussion of the term see B. M. Metzger, *The Canon of the New Testament*, pp. 289–93. For an extensive discussion of *kanon* in classical sources see H. Oppel, "Kanon," *Philologus*, suppl. 30 (Leipzig, 1937).

6. H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961).

7. For a similar typology and a fruitful comparison between some of the issues of the canonization of the Constitution and Scripture see S. Levinson, *Constitutional Faith* (Princeton: Princeton University Press, 1988), pp. 9–45.

8. For an example of such restriction of access see the decisions of the Dominican Council of Toulouse: "Lay people shall not have books of Scripture, except the psalter and the divine office: and they shall not have these books in the vulgar tongue. Moreover we prohibit that lay people should be permitted to have books of the Old or New Testament, except perchance any should wish from devotion to have a psalter, or a breviary for the divine office, or the hours of the blessed Virgin: but we most strictly prohibit their having even the aforesaid books translated into the vulgar tongue" (Canons of Toulouse no. 14; J. D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, vol. 23 (Venice, 1768).



For a discussion on the connection between literacy and heresy in the eleventh and twelfth century and for an interesting analysis of textual communities see B. Stock, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton: Princeton University Press, 1983), pp. 88–240. See also R. Landes, "Literacy and the Origins of Inquisitorial Christianity: The Exegetical Battle Between Hierarchy and Community in the Christian Empire (300–500 C.E.)," in *Social History and Issues in Human Consciousness: Some Interdisciplinary Connections*, A. E. Banes and P. N. Stearns, eds. (New York: New York University Press, 1989) pp. 137–70. See also n. 7.

9. J. H. Newman, *The Arians of the Fourth Century*, 3d ed. (London: E. Lumley, 1871), pp. 148–49.

10. Benedict Spinoza, *A Theologico-Political Treatise*, trans. R. H. M. Elwes (New York: Dover, 1951), p. 182.

11. See Chapter 1 below, pp. 20–23.

12. For an interesting discussion of linguistic differentiation, the canon, and access to knowledge see J. Guillory, "Canonical and Non-Canonical: A Critique of the Current Debate," *ELH* 54 (Fall 1987), pp. 483–527; P. Bourdieu and C. Passeron, *Reproduction in Education, Society and Culture*, trans. R. Nice (London: Sage, 1977).

13. Deuteronomy 31:10–13.

14. See *Avot de-Rabbi Natan*, first version 1:3 and second version 2:4. (There is a difference between these two versions as to whether wealth was also a criterion for restriction.) See also Babylonian Talmud, *Berakhot* 28a. For a discussion of the social background of the rabbis in first and second centuries and their relationship to the rest of the community see E. E. Urbach, "Ma'amad ve-Hanahagah be-Olamam shel Chachmei Eretz Israel," in *Meolamam shel Chakhamim* (Jerusalem: Magnes Press, 1988), pp. 306–29. See also M. Beer, "Banav shel Moshe be-Agadat Haza'l," *Bar Ilan* 13 (1976), pp. 144–57, and "Banav shel Eli be-Agadat Haza'l," *Bar Ilan* 14–15 (1977–1978), pp. 79–93. The democratic tendency came into conflict with other factors of lineage preference, even among the Sages. See G. Elon, *Mechkarim be-Toldot Israel* II (Tel Aviv: Ha-Kibbutz ha-Meuchad, 1958), pp. 58–72. In the Talmudic period there were differences between the Sages of the Land of Israel and those of Babylonia concerning matters of inheritance. In Israel the sons of Sages played a greater role as Sages themselves and as a privileged class than did their counterparts in Babylonia. See I. Gafni, "Shevet u-Mechokek—al Defusei Manhigut Hadashim be-Tekufat ha-Talmud," in

*Kehunah u-Meluchah*, I. Gafni and G. Mozkin, eds. (Jerusalem: Zalman Shazar Center, 1987), pp. 62–79. Starting in the eighth century the principle of rabbinic leadership in Babylonia shifts to heredity. See A. Grosman, "Yerushat Avot ba-anhagah ha-Ruchanit shel Kehilot Israel bi-Yemei ha-Benaim ha-Mukdamim," *Zion* 50 (1985), pp. 189 ff. See also Chapter 1 below, nn. 20, 21.

There were demands for esotericism to regulate highly selective transmission of knowledge of certain divine matters; see Mishnah, *Hagigah* 2:1. For a more extensive discussion on esotericism and curriculum see Chapter 3 below. One other important issue is the set of restrictions imposed by the institutional procedure of authorization. The question is how much the authority of the rabbi was derived from an institutional ordination and how much from his expertise independent of any institutional authorization. A full answer is beyond the scope of this work, but it is clear that the weight of institutional authorization varied from place to place and changed over time. According to the Talmudic sources, *smichah* (ordination) allowed a rabbi to judge in matters that nonordained scholars were not allowed to judge in. This kind of ordination was practiced in Israel, not in Babylonia. Once it was discontinued, rabbinic authority was restricted. While teachers continued to ordain students, ordination meant only that a student was allowed to make rulings during his teacher's lifetime, as without such ordination students were forbidden to rule before their teachers. Ordination therefore became a matter that concerned the relationship between a teacher and a student rather than an official sort of licensing. In fourteenth-century Ashkenaz ordination began to resemble institutional licensing, a development that raised the objections of Sefardic scholars. They claimed that expertise is a sufficient condition to authorize a halakhic ruling; official licensing would add nothing to a qualified individual, and in the case of ordination of an unqualified individual the official licensing would be null and void. For a fuller discussion of the subject and the historical perspective of the problem see J. Katz, "Rabbinic Authority and Authorization in the Middle Ages," in *Studies in Medieval History and Literature*, I. Twersky, ed. (Cambridge, Mass.: Harvard University Press, 1979), pp. 41–59; M. Breuer, "Ha-Smikhah ha-Ashkenazit," *Zion* 33 (1968), pp. 16–46. For a detailed description of the later development and professionalization of the rabbinate in the fifteenth century see J. I. Yuval, *Chakhamim ber-Doram* (Jerusalem: Magnes Press, 1989), pp. 332–428.

15. On the prohibition of teaching Torah to women see Babylonian Talmud, *Sotah* 20a-b; Maimonides, *Mishneh Torah*, Laws of Talmud Torah 1:13. In modern Halakhah there is a shift and some rabbinic authorities permitted the teaching of Torah to women to a certain extent. See for example Hafetz Hayim, *Likutei Halakhot le-Sotah* (Jerusalem, 1970), pp. 11–12. On the teaching of Torah to Gentiles see below, Chapter 3.

16. This example was pointed out to me by Yochanan Muffs. See also M. Fishbane, *The Garments of Torah: Essays in Biblical Hermeneutics* (Indianapolis: Indiana University Press, 1989), p. 66.

17. For a fuller discussion on the Karaites see Chapter 2 below.



Eilinburg's see R. Chaim Yosef David Azulai, *Sha'ar Yosef* (Livorno, 1747), pp. 10–11. For a contrary view see R. Elchanan Wasserman, *Kuntres Divrei Sofrim* (Tel Aviv, 1963), pp. 107–08. Chaim ben Atar offers another view to reconcile the problem in his *Chefetz ha-Shem* (Amsterdam, 1768), p. 82, whereby an expert in the law is obligated to follow his own opinion when disobeying the court will prevent an active transgression. For other efforts to reconcile the contradiction between the *Sifrei* and *Horayot* see R. Chaim Falag'i, *He-Chafetz Chaim* (Izmir, 1863), sec. 76. For a general extensive discussion of the scope and source of the court's authority see A. Sagi, "Models of Authority and the Duty of Obedience in Halakhic Literature," *Association of Jewish Studies Review* 20 no.1 (1995), p. 1.

70. Nachmanides' Commentary on Deuteronomy 17:11.

71. One of the most prominent authorities of Halakhah in this century advanced the same argument concerning the source of the authority of the Mishnah and the Talmud. See Hazon Ish, *Kovetz Igrot* (Bnei Brak, 1957), pp. 42–43.

72. The understanding of the court's privilege as procedural seems to be the explanation for why the Mishnah says that the passage in Deuteronomy prohibits the elder from ruling against the court's decision but still allows him to teach his opinion publicly. The court therefore has a priority in defining what should be done but not in determining the truth of the matter. The elder may object to the opinion of the court on a theoretical level as long as he does not rule or act against the opinion of the court. For the distinction between ruling and teaching see Mishnah *Sanhedrin* 11:2. See also *Tosafot Shantz*, *Eduyot* 1:5.

73. *Sefer ha-Chinuch*, *Mitzvah* 508. For other medieval thinkers who believed in the procedural priority of the court see Hisdai Crescas, *Or ha-Shem* (Jerusalem: Makor, 1983), Ma'amar 3, 5:2; R. Yosef Albo, *Sefer ha-Ikarim* (Tel Aviv: Ha-Menorah, 1981), 3:23. Nissim Gerondi expresses a similar view: " 'Even if he tells you that right is left and left is right,' meaning even if it is clear to you that the truth is not in accord with the rulings of the court, you ought to listen to them. This is God's commandment that we should follow the court in regard to Torah and its commandments whether they agree with the truth or not." For an extensive discussion of this debate see Y. Silman, "Torah Elohit she'Lo ba-Shamaim —Beirur Tipologi," pp. 274–79.

74. For the distinction between being in authority and being an authority on see R. S. Peters, "Authority," in *Proceedings of the Aristotelian Society* (1958), vol. 32, pp. 207–24.

75. Nachmanides, *Commentary on Deuteronomy* 17:11.

76. See O. W. Holmes, "The Path of the Law," in *Collected Legal Papers* 173 (New York: Harcourt Brace, 1920).

77. For a thorough criticism of Holmes's position see H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961).

78. Mishnah Tractate *Rosh ha-Shanah*. For discussion of the struggle for monopoly over the calendar in that period see Gedalia Allon, *The Jews in Their Land in the Talmudic Age* (Jerusalem: Magnes Press, 1984), vol. 1, pp. 237–48.

79. Abravanel claims that the court is privileged to rule against the general

rules of the Halakhah since particular cases do not always fit general rules. See also Yizhak Arama, *Akedat Yizhak*, J. Polak, ed. (Pressburg, 1849), Shemot chap. 43. For an extensive discussion on the treatment of this problem by medieval Jewish authors see S. Rosenberg, "Od al-Derekh ha-Rov," *Manhigut Ruchanit be-Israel*, E. Belfer, ed., pp. 103 ff., and I. Englard, "The Problem of Equity in Maimonides," *Israel Law Review* 3–4 (1986), pp. 296–332.

### 3. *Canon and Curriculum*

1. See L. Wittgenstein, *On Certainty* (Oxford: Blackwell, 1974).

2. See E. A. Havelock, *Preface to Plato* (Cambridge, Mass.: Harvard University Press, 1963), chaps. 3–5.

3. The centrality of shared narrative varies from one society to another. People can share a national narrative and yet have different religious or secular narratives. In societies whose heterogeneity is pronounced, the constitutive narrative may reflect a tension between two or more elements in the society. The War of Independence is thus a constitutive narrative for the Jewish citizens of Israel, but it is a narrative of defeat and humiliation for its Arab citizens.

4. On the effects of communal customs on Talmudic interpretation in Ashkenaz, see C. Soloveitchik, "Religious Law and Change: The Medieval Ashkenazic Example," *AJS Review* 12:2 (Fall 1987), pp. 205–21. Soloveitchik points to the difference between the Ashkenazic halakhists and those of Spain and Provence concerning the weight of a community's customs. For the Ashkenazic rabbinic authorities the will of God is manifest in both the canonized text of the Talmud and in the practice of the holy community. An interesting example on the effect of custom on halakhic interpretation is J. Katz, *Halakhah ve-Kabbalah* (Jerusalem: Magnes Press, 1984), pp. 175–201. For a general discussion on Ashkenaz and the effect of custom see I. Ta-Shma, *Minhag Ashkenaz ha-Kadmon* (Jerusalem: Magnes Press, 1992), pp. 13–108. He makes an interesting point about the effect of customs not only in rereading the text but also in rewriting it. The text was not considered to be fully closed or sealed in Ashkenaz. Hence it was adapted to harmonize with custom. In Spain, however, custom was not considered a reliable source for justifying textual change. This is one of the major reasons for the superiority of Sefardic manuscripts over the Ashkenazic ones. For an important discussion concerning text and tradition in modern day ultra-orthodox practice, see C. Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *Tradition* 28:4 (1994), pp. 64–130.

5. On the canonization of the Zohar see G. Scholem, *Major Trends in Jewish Mysticism* (New York: Schocken Books, 1974), pp. 156–243, and Y. Tishbi, *The Wisdom of the Zohar*, trans. D. Goldstein (Oxford: Oxford University Press, 1989). For the date in which the Zohar became canonical see Scholem, ibid. p. 156. On the normative status of the Zohar as a source for Halakhah see J. Katz, *Halakhah ve-Kabbalah* (Jerusalem: Magnes Press, 1986), pp. 52–70; M. Halamish, "Kabbalah ba-Psikah shel R. Yosef Karo," *Da'at* 21 (1988), pp. 85–102; I. Ta-Shma, "Rabbi Yosef Karo Bein Ashkenaz le-Sfarad le-Cheker Hitpashtut Sefer ha-Zoar," *Tarbiz* 59 (1990), pp. 153–70. See also B. Huss, "Sefer ha-Zohar as a Canonical, Sacred, and Holy Text," *Journal of Jewish Thought and Philosophy* (forthcoming).



6. On the biblical idea of the study of Torah see Chapter 1 above.

7. Babylonian Talmud, *Megillah* 3b.

8. Babylonian Talmud, *Menachot* 110a and also *Sifrei Devarim* 41, Finkelstein, ed., p. 87.

9. See Mishnah, *Avot* 3:2.

10. See for example the detailed analogy between the temple and the Torah in Isaac Duran (Efodi), *Ma'aseh Efod* (Vienna, 1865), pp. 11–12.

11. See for example the debate in the Babylonian Talmud, *Berachot* 25a, and *Mekhilta de-Rabi Ishmael Beshalach*. For a detailed discussion see E. E. Urbach, *The Sages: Their Concepts and Beliefs*, trans. I. Abrahms (Jerusalem: Magnes Press, 1975), pp. 593–603. M. Baer, "Talmud Torah ve-Derekh Eretz," *Bar Ilan Annual* 2 (1964). On later debates concerning earning money from the study of Torah see Maimonides, *Perush ha-Mishnah Avot* 4:7. He condemns harshly the prevailing opinion that a scholar is allowed to be supported by the community and may even make a claim on the community to support him. See also his *Mishneh Torah*, Laws of Talmud Torah 3:10–11, and Yosef Karo's detailed arguments against Maimonides' position in *Kesef Mishneh*, Laws of Talmud Torah 3:10. Besides the issue of whether scholars should earn money from Torah, there are other questions related to the privileges of the scholar class, such as exemption from payment of taxes. The Talmud mentions such a privilege in Tractate *Baba Batra* 7b-8a, but the scope of this privilege and its actual enforcement were subjects of perennial debate centering on the question of who is a scholar: someone who devotes himself totally to the study of Torah with no other occupation (the income for taxation being inheritance or the support he receives for his scholarship), or someone who has other occupations besides the study of Torah, if these are restricted to providing his livelihood and not to the accumulation of wealth? On the definition of a scholar see the statement of Yosef Ibn Migash, *Baba Batra* 8a, and *Teshubot ha-Rosh* (New York, 1992), 15:8–9. The second subject that was debated was the scope of the exemption. Does it include only taxes that are set on the whole community, or does it extend to any kind of tax, even levies on individual property or person? For an example of such debate see Maimonides, *Mishneh Torah*, Laws of Talmud Torah 6:10, and Nachmanides in *Hidushei ha-Ramban*, *Baba Batra* 8a. On the distance between the privilege and its actual application see M. Baer, "Le-She'elat Shichruram shel Amoraei Bavel me-Tashlum Misim u-Meches," *Tarbiz* 33 (1965), pp. 247–58. For the different traditions in Spain and Ashkenaz concerning the taxation of scholars see I. Ta-Shma, "Al Petur Talmidei Chakhamim me-Misim be-Yimei ha-Benaim," in *Iyunim be-Sifrut Hazal be-Mikrah ube-Toldot Israel Mukdash le-Professor Ezrah Zion Melamed* (Ramat Gan: Bar Ilan University Press, 1982) pp. 312–22, and Y. Haker, "Petur Chakhamim me-Misim ba-Meah ha-Shesh Esreh," pt. 4 (Jerusalem: Yad Ben-Zvi, 1984), pp. 63–113.

12. On this tension between study and action see Mishnah, *Peah* 1:1; *Sifrei Devarim* 41, Finkelstein, ed., pp. 84–86; Babylonian Talmud, *Kiddushin* 40b; *Ketubot* 17a; Jerusalem Talmud, *Hagigah* 1:7; Babylonian Talmud, *Moed Katan* 9b; *Shabbat* 11a; and Jerusalem Talmud, *Shabbat* 1:2. For a general discussion see E. E. Urbach, *The Sages*, pp. 603–20.

13. On the authority of the Talmud see above ch. 2 note 49.

14. This point is emphasized by A. Grossman, "Ha-Zikah bein ha Mivneh ha-Chevrati la-Yezirah ha-Ruchanit be-Kehilot Israel be-Tekufat ha-Geonim," *Zion* 53 (1988), pp. 259–72. See also A. Grossman, *Chakhmei Zarfat ha-Rishonim* (Jerusalem: Magnes Press, 1995), pp. 427–39.

15. On the Tosafists and their enormous impact see E. E. Urbach, *Ba'alei ha-Tosafot* (Jerusalem: Bialik, 1968), chaps. 1, 13. Chaim Soloveichik described powerfully the impact of the innovations of the Tosafists on Ashkenazic culture and the pietistic response to it in "Three Themes in Sefer Hasidim," *AJS Review* 1 (1976), pp. 311–61, and also I. Ta-Shma, "Mitzvat Talmud Torah be Sefer Hasidim," *Bar Ilan Annual* 14:15 (1977), pp. 98 ff.

16. See I. Ta-Shma, "Shiput Ivri u-Mishpat Ivri ba-Mehot ha-11 veha-12 be-Sfarad (Lidiat Mazav Limud ha-Torah al-pi Shu't ha-Ri'f)," *Shenaton ha-Mishpat ha-Ivri* 1 (1974), pp. 353–72. See also the remarks of H. Z. Dimitrovsky in *Mechkarim be-Madaei ha-Yahadut*, M. Bar-Asher, ed. (Jerusalem, 1986), pp. 262–65. For a different opinion concerning the study of Torah in Spain at that period see *Sefer ha-Kabbalah le-Rabbi Abraham Ibn Daud*, G. Cohen, ed. (Philadelphia, 1967), p. 135. For an interesting description of curriculum and teaching methods in the tenth and eleventh centuries see S. D. Goiten, *Sidrei Hinuch* (Jerusalem, 1962), pp. 143–69.

17. For Maimonides' remarks on the situation of the study of Halakhah in Spain see introduction to the *Mishneh Torah*, and Maimonides' letter to Yonatan ha-Cohen and his colleagues in *Igrot ha-Rambam*, I. Sheilat, ed. (Jerusalem: Ma'aliyot, 1987), vol. 2, pp. 558–59.

18. The growth and depth of the study of Talmud in Provence in the twelfth century is described vividly in Maimonides' letter to Lunel. See B. Benedict, "Le Toldotav shel Merkaz ha-Torah be-Provence," *Tarbiz* 22 (1951), pp. 85–109; I. Twersky, "Aspects of the Social and Cultural History of ProvenÁal Jewry," *Journal of World History* 11 (1968), pp. 185–207.

19. See Babylonian Talmud, *Kiddushin* 30a and *Avodah Zarah* 19b. For other formulations of the relationship between different elements in the curriculum see also Babylonian Talmud, *Hagigah* 10a, and *Baba Mezia* 33ab.

20. See Rashi, *Hagigah* 10a (me-Talmud le-Mishnah).

21. See *Tosafot*, *Kiddushin* 30a (Lo zrikha le-yomei); and *Tosafot*, *Sanhedrin* 24a, Belulah. See also a similar approach in *Machzor Vitri*, S. H. Horovitz, ed. (Nitenberg, 1925), p. 26. *Shibolei ha-Leket*, S. Minshi, ed. (Jerusalem: Sura Publishers, 1966), sec. 44.

22. For Maimonides' formulation see n. 41 below.

23. See Abravanel's *Nachalat Avot* (New York, 1953). See also an opposite



interpretation of the Mishnah by R. Yosef Hayun cited by S. Assaf, *Mekorot le-Toldot ha-Chinukh be-Israel* (Tel Aviv: Devir, 1941), vol. 2, p. 87

24. Yehudah ben Asher's will is printed in *Beit Talmud*, (Berlin, 1891), vol. 4, p. 344.

25. See *Ma'aseh Efod* (Vienna, 1873), p. 41. Abraham Grossman shows that Efodi's criticism is not relevant to earlier periods in Ashkenaz and argues that the criticism is exaggerated even for Efodi's own time. See A. Grossman, *Chakhmei Zarfat ha-Rishonim*, p. 463 n. 14. For earlier criticism of the neglect of Bible study see Abraham Ibn Ezra, *Yesod Mora* (N.J.: Jason Aronson, 1995), chap. 1, and *Shirei Ibn-Ezra*, Kahana, ed. (Academiya ha-Leumit ha-Israelit le Madaim, 1975), pp. 25–27.

26. On Maharal's reform see "Derush al ha-Torah" in *Sefer Derashot Maharal me-Prag* (Jerusalem, 1981), pp. 3–50. For an extensive discussion on Maharal's educational approach see A. Kleinberg, *Ha-Machabbah ha-Pedagogit shel ha-Maharal mi-Prag* (Jerusalem, 1962). On the historical context of these reforms see A. Kulkah, "Ha-Reka ha-Histori shel Mishnato ha-Leumit ve-ha-Chinukhit shel ha-Maharal mi-Prag," *Zion* 50 (1985), pp. 277–320; and E. Reiner, "Temurot be Yeshivot Polin ve-Ashkenaz ba-Meot ha 15 ve ha 16," in *Ke-Minhag Ashkenaz u-Polin: Sefer ha-Yovel le-Chone Shmeruk* (Jerusalem: Merkaz Shazar, 1993), pp. 60–68. For other members of Maharal's circle see R. Ephraim Luntshits, *Amude Shesh* (Prague, 1618) (conclusion); R. Yeshahyahu Horwitz, *Shlah*, Masechet Shavuot, and his son S. Sheftel, *Vavei ha-Amudim* Amud ha-Torah (Jerusalem, 1963), ch. 5. For the attempt to model this reform on the Sefardi practice see S. Assaf, *Mekorot le-Toldot ha-Chinukh be-Israel*, vol. 1, pp. 20–22.

27. Quoted by J. Elboim, *Petichut ve-Histagrut* (Jerusalem: Magnes Press, 1990), p. 160.

28. See R. Shlomoh ben Mordechai, *Mizbach ha-Zahav* (Basel, 1604), 12a. For a discussion of the attitude to the study of Bible in sixteenth-century Poland see J. Elboim, *Petichut*, pp. 93–95. For an attack on R. Land and his father-in-law, R. Yosef Ashkenazi, see S. Assaf, *Mekorot*, pp. 189–190.

29. The Talmudic statement appears in the Babylonian Talmud, *Berachot* 28b. In some versions a similar statement appears in Babylonian Talmud, *Sanhedrin* 96a.

30. The statement of Zemach Platoi is quoted in R. Abraham Zakut, *Yohasin ha-Shalem* (London, 1857), p. 124. A similar interpretation appears in Rabbi Natan's *Arukh Erekh* (hak). The author claims that the Talmud warns against interpreting the verse according to its literal meaning. See also *Teshubot ha-Geonim*, Harkabi, ed. (Berlin, 1897), p. 144. In the Geonic period the term *higayon* began to take on a new meaning of logic. In accordance with this new use, the statement was understood by some opponents of the study of philosophy as a warning against it. For a thorough discussion of the history of the interpretations of this Talmudic statement and its implications see M. Breuer, "Min'u Bneikhem Min ha-Higayon," in *Mikhtam le-David: Sefer Zichron ha-Rav David Oks* (Ramat Gan: Bar Ilan University Press, 1978), pp. 242–61.

31. Babylonian Talmud, *Menachot* 96b. The argument refers to the obligation of an ongoing study of Torah and not to the inherent danger of "Greek wisdom." Other sources seem to address the problem of "Greek wisdom" itself. The Babylonian Talmud, *Sotah* 49b, says: "Cursed is the man who will teach his son Greek Wisdom." See also Mishnah, the end of Tractate *Sota; Tosefta, Avoda Zarah* 1:20; and *Tosefta, Sota* 15:8. Saul Lieberman tries to narrow the prohibition of the study of Greek wisdom in these sources to the prohibition against fathers teaching Greek wisdom to their young children. See S. Lieberman, *Hellenism in Jewish Palestine* (New York: Jewish Theological Seminary, 1950), pp. 100–05. For earlier attempts to minimize the prohibition see Maimonides, *Perush ha-Mishnah, Sotah* 4:14; Meiri, *Beit ha-Behirah, Baba Kamah* 83a. Yitzhak ben Sheshet (Ribash) continues this line of interpretation. He does not identify philosophy with Greek wisdom but forbids the study of philosophy on other grounds. *Responsa Ribash* (Jerusalem, 1975), p. 45.

32. For talmudic sources which claim that the obligation to study the Torah day and night can be fulfilled by reciting the Shema once in the morning and once at night, see Babylonian Talmud, *Menachot* 99b, and Midrash, *Shocher Tov Tehilim*, chap. 1.

33. I. Twersky, "Talmudists, Philosophers, Kabbalists: The Quest for Spirituality in the Sixteenth Century," in B. Cooperman, ed., *Jewish Thought in the Sixteenth Century* (Cambridge, Mass.: Harvard University Press, 1983), pp. 431–59.

34. See I. Abrahams, *Hebrew Ethical Wills* (Philadelphia: Jewish Publication Society, 1926), vol. 1, pp. 138–39; On Joseph Ibn Kaspi's attitude to Talmud study see I. Twersky, "Joseph Ibn Kaspi: Portrait of a Medieval Jewish Intellectual, in *Studies in Medieval Jewish History and Literature*, I. Twersky, ed. (Cambridge, Mass.: Harvard University Press, 1979), pp. 243 ff.; B. Herring, *Joseph Ibn Kaspi's Gevia' Kesef* (New York: Ktav, 1982), pp. 64–65.

35. For a more detailed analysis see the section on "Codification and Decanonization" below.

36. It is clear that affecting the curriculum was not Maimonides' only purpose in codifying the Halakhah. For a presentation of Maimonides' complex motivations and a survey of opinions concerning these motivations see I. Twersky, "Sefer Mishneh Torah la-Rambam—Megamato ve-Tafkido," *Dibrei ha-Akademiah ha-Leumit ha-Israelit le-Madaim* 5 (1972). Twersky tends to minimize the effect of the code on the curriculum.

37. See letter to Pinchas ha-Dayan, in *Igrot ha-Rambam*, Y. Sheilat, ed. (Jerusalem: M'aliyot, 1987), vol. 1, pp. 438–39. See also pp. 502–03.

38. Ibid., letter to R. Joseph, pp. 257–59.

39. Ibid., letter to R. Joseph ben Yehudah, p. 302.

40. Ibid., pp. 312–13. See also the interesting testimony of Maimonides' son Abraham, quoted by one of his students. In answer to some student's query, Maimonides replied: "If our aim in writing this book was to interpret the Talmud we would have not written this book." See *Tarbiz* 25, p. 424.

41. In fact Maimonides himself reinterprets the Talmudic statement concerning the threefold division of the curriculum. He considers that the threefold division is only for beginners, and those who are already learned should devote their time to the study of Talmud. But the Talmud is redefined as legal reasoning (and not the text of Talmud). Maimonides maintains that "The subjects styled Pardes are included in Talmud" (Laws of Talmud Torah 1:12). The study of philosophy is therefore integrated in the curriculum through the reinterpretation of the threefold division and the concept of Talmud. The *Mishneh Torah* itself is mainly for beginners, since Maimonides defines the *Mishneh Torah* as the summary of all the Oral Law, and devoting equal time to the study of the Oral Law and the Written Law which is not the Talmud is only for beginners. On Maimonides' ruling see I. Twersky, *Introduction to the Mishneh Torah of Maimonides* (New Haven: Yale University Press, 1977), ch. 6.



It seems that Maimonides' radical ambition was to have the *Mishneh Torah* achieve authority as a code, not only because it was recognized as the best summary of the Halakhah, but because all of Israel would accept the *Mishneh Torah* as their norm. In this respect the *Mishneh Torah* would have the same ground of authority as the Talmud itself, since the Talmud's own authority, according to Maimonides, is derived from its being widely disseminated and accepted by all Jews. In the introduction to the *Mishneh Torah* Maimonides claims that unlike the Talmud, which is binding upon all the communities of Israel since it was accepted by all Israel, the rulings of the post-Talmudic Sages bind only their own communities since the rulings were accepted only locally. Maimonides mourns that situation and seems to imply that the *Mishneh Torah* will unify the diverse halakhic rulings that developed after the Talmud was accepted and sealed. The rationale for the authority of the Talmud that Maimonides provides in his introduction is the same as that for the authority of his own code, the *Mishneh Torah*.

42. See *Guide of the Perplexed*, III, 51.

43. Maimonides, *Mishneh Torah, Yesodei ha-Torah* 4:13. Maimonides identifies Ma'aseh Merkabah with philosophy and the discussions of Abaye and Raba with the Talmud; thus he claims that philosophy is a great thing and the Talmud a small one. This infuriated various commentators whose relationship to philosophy was more complicated. See, for example, *Hidushei ha-Ritba, Sukah* 28a, and Yosef Karo in the *Kesef Mishneh, Yesodei ha-Torah* 4:13. Karo claims that although the subject matter of Talmud is small, the reward for its study is great, and the text is more important than Ma'aseh Merkabah. For a similar approach see Shlomo Luria, *Yam shel Shlomoh, Sukah* 28a. Other commentators suggested that the disputes of Abaye and Raba do not refer to the Talmud since Talmudic discussions could not be called "small things." See R. Meir Aldabi, *Shbilei Emunah* (Lebob, 1823), p. 99b; Yehoshua Ibn Shueib, *Derashot al ha-Torah* (Jerusalem, 1969), pp. 39a–39b. An interesting interpretation that glorifies small things was offered by R. Chaim ben Bezalel, in *Sefer ha-Haim 'Sefer Zekhuyot'* (p. 5b). According to R. Chaim the talmudist is like a servant who serves the king with attention to the small details of the palace and is greater than the servant who praises the king only concerning the great matters.

44. *Sefer ha-Mevakesh* (Warsaw, 1884), p. 102. Falaquera describes a philosophically oriented scholar and a pietist as follows: "The one was a pietist who meditated day and night on the Law, who engaged always in the study of Scripture, who negotiated in the disputes of Abaye and Rabba and made a path in the mighty waters of these difficulties. . . The second was a scholar, who at times engaged in the study of the Law and at times in the study of science, who divided his time between reading about what is forbidden and permitted and reading the books of the scholars who endeavored to investigate the secrets of wisdom and who looked into the philosophical books." *Epistle of the Debate*, trans. by S. Harvey (Cambridge, Mass.: Harvard University Press, 1987), p. 16. Besides the obvious point that the scholar and pietist differ in their attitude to philosophy, their study of the Law is described by Falaquera in different terms. The pietist delved in the disputes of Abaye and Rabba, i.e., talmudic deliberations; in contrast, the scholar read only the rules prescribing what is forbidden and permitted (the specific law). For earlier criticisms of the exclusive place of Talmud in the curriculum in the philosophical tradition see Bachya Ibn Pakudah, *Hobot ha-Lebabot* (Kapach edition), pp. 24, 28–29; Abraham Ibn Daud, *Sefer ha-Emunah ha-Ramah*, trans. S. Weil (Jerusalem, 1967), pp. 45–46; and Abraham Ibn Ezra, *Yesod Mora* (introduction). For the connection to Islamic philosophy see J. Gutmann, *Die Religions Philosophie des Abrahm Ibn Daud aus Toledo* (Gottingen, 1879), p. 117 n. 1, and U. Simon, *Arb'a Gishot le-Sefer Tehilim* (Ramat Gan: Bar Ilan University Press, 1982), pp. 182–83.

45. *Mishneh Torah*, Laws of Teshubah 10:6; *Yesodei ha-Torah* 4:12.

46. See *Mishneh Torah*, Laws of Teshubah 3:7.

47. For Maimonides' formulation of the afterlife as the eternity of the active intellect see ibid., 8:2–3.

48. Maimonides is continuing a tradition that stressed the importance of philosophy for religious perfection. See Bachya Ibn Pakudah, *Hobot ha-Lebabot* (introduction); Abraham Ibn Ezra, *Yesod Mora*, introduction and ch. 1. For a general analysis of this subject see H. A. Davidson, "The Study of Philosophy as a Religious Obligation," *Religion in a Religious Age*, S. D. Goiten, ed. (Cambridge, Mass.: Harvard University Press, 1974), pp. 52–68.

49. *Minhat Kenaot*, in *Teshuvot ha-Rashba*, H. Dimitrovsky, ed. (Jerusalem: Mossad ha-Rav Kook, 1990), p. 473. This stereotype of the Zarfatim as backward is quite common among the Spanish elite. See E. E. Urbach's discussion, "What's a Frenchman Doing in the House of Poetry," in *Ba'alei ha-Tosafot*, p. 94. See also the satirical poem on R. Moses the Frenchman in Schirman, *Ha-Shirah ha-Ivrit be-Sfarad ube-Provance* (Jerusalem: Bialik, 1957), vol. 2, p. 440. For an interesting discussion on Provençal Jews' perception of the Jews of northern France see B. Septimus, *Hispano-Jewish Culture in Transition* (Cambridge, Mass.: Harvard University Press, 1982), p. 64.

50. *Minhat Kenaot*, p. 596.

51. Ibid., pp. 479, 467.

52. On the Maimonidean debate in the thirteenth century see B. Septimus, *Hispano-Jewish Culture in Transition*, ch. 4. For the vast literature on the subject see ibid., p. 147 n.1.



53. For a detailed account of the events and negotiations that led to the clash see Y. Baer, *A History of the Jews in Christian Spain* (Philadelphia, 1961), pp. 289 ff. Baer explains that the underlying problem for the conflict in Provence and Shlomo Ibn Adret's involvement in it was the widespread study of philosophy in Spain. It has also been argued that philosophy was actually declining in Spain and the real problem was the popularity of philosophy in Provence. See C. Touati, "La Controverse de 1303–1306 autour d'études philosophiques et scientifiques," *REJ* 127 (1968), p. 34. See also J. Schatzmiller, "Bein Aba Mari la-Rashba—ha-Masa u-Matan sh-Kadam la-Herem be-Barzelonah," in *Mechkarim be-Toldot Am Israel ve-Eretz Israel*, B. Oded, ed. (Haifa, 1975), pp. 121–37; "In Search of the Book of Figures: Medicine and Astrology in Montpellier at the Turn of the Fourteenth Century," *AJS Review* 7:8 (1982–83), pp. 387–407; "Zurat Aryeh le-Klayot veha-Machloket al Limudei ha-Chokhmot be-Reshit ha-Meah ha-14," in *Sefer ha-Yobel le-Shlomo Pines Bimlot lo Shmonim Shanah*, Mechkerei Yerushalaim be-Machshevet Israel, vol. 9 (1990), pp. 397–408. For an analysis of Meiri's philosophical background and the debate over philosophy see M. Halbertal, "R. Menachem ha-Meiri, Bein Torah le-Chokhmah," *Tarbiz* 73 (1994), pp. 63–118, and G. Stern, "Menachem ha-Meiri and the Second Controversy over Philosophy" (Ph.D. diss., Harvard University, 1995).

54. Allegory was also used by commentators who were not philosophers, even by the Rashba. Thus the issue was not allegorical interpretation as such, but the extent of its use and the weight given to the direct meaning of the biblical story and to the communal tradition.The Rashba did apply the allegorical method when the simple meaning of the verse was unclear. For example, anthropomorphic descriptions of God must be understood allegorically. But he rejected allegorical interpretation that attempted to downplay the miraculous elements of biblical stories and to minimize direct intervention of God in nature. With respect to miracles, the Rashba thought that readers should give priority to the accepted tradition of Israel rather than to the reasoned argument of the philosophers. For his allegorical method see *Hidushei ha-Rashba Perushei ha-Hagadot*, L. A. Feldman, ed. (Jerusalem: Mossad ha-Rav Kook, 1991), pp. 102–10. On the use of allegory even in nonphilosophical circles see A. H. Halkin, "Yedaiah Bedershi's Apology," in A. Altman, ed., *Jewish Medieval and Renaissance Studies* (Cambridge, Mass.: Harvard University Press, 1967), pp. 165–84.

55. For a detailed description of the allegories that were practiced see *Hoshen Mishpat* in *Zunz Jubelschrift* (Berlin, 1894), pp. 158–59. One of the important questions Halkin raises is whether the allegories of the philosophers suppress the simple meaning of the text or simply add a layer of meaning to the conventional, ordinary meaning of the text. When the philosophers of Provence defended their allegorical readings, they insisted that they never intended to suppress the simple meanings of the biblical stories. See the arguments of Yedaiah Bedershi in *Teshubot ha-Rashba* 419:67a-75b and of Yaacob ben Machir in *Minhat Kenaot*, p. 511.

56. *Minhat Kenaot*, p. 412. There is no clear evidence that the spread of phi-

losophy caused any laxity in the observance of Halakhah. The supporters of philosophical learning in Provence pointed to extreme piety prevalent there and to the advantages of the study of philosophy for religious perfection. The attacks on the supposedly corrupting role of philosophy on the observance of Halakhah culminated in the accusation made by some fifteenth- and sixteenth-century authors that Jews in Spain converted to Christianity because of the impact of philosophy on Spanish Jewry. Philosophy was already in decline in Spain in the fourteenth and fifteenth centuries, however. On the accusations see Shlomo Ela'mi, *Igeret Musar*, A. M. Haberman, ed. (Jerusalem, 1946), pp. 41–43; Isaac A'ramah, *Hazut Kashah*, chaps. 8, 9; Yosef Ya'vetz, *Or ha-Chaim*, introduction and chaps. 3–10. On the discrepancy between the attacks on philosophy and the decline of philosophy, see H. H. Ben Sasson, *Retzef u-Temurah* (Tel Aviv: Am Oved, 1984), pp. 198–238. Concerning the place of philosophy in fifteenth-century Spain see also Y. Haker, "Mekomo shel R. Abraham Biba'g ba-Machloket al Limud ha-Philosophiah u-Ma'madah bi-Sfarad ba-Meah ha-15," in *Divrei ha-Kongress ha-Olami ha-Chamishi le-Mada'ei ha-Yahdut* (Jerusalem, 1969), 3:157–51. For a recent attempt to identify neo-Platonists active in fourteenth-century Spain who were the targets of the polemic against philosophy, see D. Schwartz, "Ha-Yeridah ha-Ruchanit-Datit shel ha-Kehilah ha-Yehudit bi-Sfarad be-Sof ha-Meah ha-14," in *Pea'mim* 46:7 (1991), pp. 92–114.

57. *Minhat Kenaot*, p. 412.

58. Ibid., pp. 414–419.

59. Ibid., p. 473.

60. Ibid., p. 440.

61. Ibid., pp. 515, 542.

62. Ibid., pp. 480, 515. On Maimonides' own position that the study of philosophy is not suitable for the young see the *Guide of the Perplexed* I, 34. The prohibition against teaching is therefore accepted in philosophical circles and has its roots in that tradition. Ironically, among those who recommended the limitation of study was Levi ben Hayim, one of the targets of the Rashba's struggle. On this subject see M. Idel, " Le-Toldot ha-Isur Lilmod Kabbalah," *AJS Review* 5 (1980), pp. 1–20, and nn. 25, 26. One of the interesting claims Idel makes is that the Rashba himself strictly prohibited the teaching of Kabbalah before the age of forty, which legitimated the extension of the restriction to philosophy.

63. *Minhat Kenaot*, p. 479.

64. Ibid., p. 509.

65. *Hoshen Mishpat*, pp. 145, 151.

66. Ibid., p. 151.

67. Ibid., p. 162.

68. Ibid., p. 172.

69. Ibid., p. 156. Meiri pointed out that the ban was formulated so as to allow the study of the philosophical sermons of the Tibonites and Anatoli but to prohibit study of the philosophical corpus itself. This formulation made no sense to him if the ban was aimed not against philosophy but against its popularization.

70. *Hoshen Mishpat*, p. 170.



71. Ibid., pp. 163–64.

72. Ibid., pp. 168–69.

73. Aba Mari's own world view is deeply influenced by Maimonidean ideas. See for example *Minhat Kenaot*, pp. 237–48.

74. Ibid., p. 835.

75. On the debate concerning the printing of the *Zohar* see I. Tishbi, "Ha-Pulmus al Sefer ha-Zohar ba-Meah ha-Shes Esreh be-Italyah," *P'raqim* 1 (1967–68), pp. 131–182.

76. See Rashba's reference to those figures as strict Talmudists in *Minhat Kenaot*, pp. 478, 384. For an extreme formulation of esotericism concerning Kabbalah see *Teshubot ha-Rashba* I, 94. Concerning esotericism in the Kabbalah of the Rashba's teacher, Nachmanides, see M. Idel, "We Have No Kabbalistic Tradition on This," in I. Twersky, ed., *Rabbi Moses Nahmanides: Explorations in His Religious and Literary Virtuosity* (Cambridge, Mass.: Harvard University Press, 1983).

77. *Minhat Kenaot*, p. 387. Samuel the Sulami sheltered the scholar Levi ben Hayim, who was suspected of heretical philosophical teachings. There is nothing particularly heretical in his book, *Livyat Chen*, however, so some scholars wonder why this individual was persecuted by the Rashba. The Rashba urged Samuel to expel Levi from his house, to abstain from further study of philosophy, and to concentrate on Talmud alone. In this context the Rashba mentioned the Narbonne tradition of the study of Kabbalah but did not recommend the study of Kabbalah as an alternative to philosophy.

78. *Sefer ha-Kanah* (Cracow, 1854), pp. 7b–8a. *Sefer ha-Pliah Karetz* (1744), p. 4a. See J. Katz, "Halakhah ve-Kabbalah ke-Nosei Limud Mitcharim," in his *Halakhah ve-Kabbalah* (Jerusalem: Magnes Press, 1984), pp. 82–83.

79. See Zohar III, 153a. For other examples see also *Tikunei Zohar* 73b and *Zohar Hadash* 93b. The complicated nature of the criticism of talmudism in the *Tikunei Zohar* and *Rahayah Meimanah* is debated among scholars. The perplexity arises from the author's contradictory statements concerning Halakhah and its value. Scholem thought that his antinomianism was utopian, meaning that in the messianic era the present Halakhah will be abolished. Tishbi, however, claimed that his antinomianism was, to a small degree, present-oriented. See G. Scholem, *On the Kabbalah and Its Symbolism*, trans. D. Manheim (New York: Schocken Books, 1965), pp. 77–80, and Y. Tishbi, *The Wisdom of the Zohar*, trans. D. Goldstein (Oxford: Oxford University Press, 1989), vol. 3, pp. 1089–112. For a more moderate view see E. Gotlib, *Mechkarim be-Sifrut ha-Kabbalah* (Tel Aviv: Tel Aviv University Press, 1976), pp. 545–50.

80. For such formulations see Shlomo Cordovero, *Or Ne'erav* I, ch. 1–5; Yeshayahu Horowitz, *Shnei Luchot ha-Berit* (Jerusalem, 1963), Mashecht Shbuot 31b; Maamar Rishon 30b. For a more extreme formulation that permits a person to study Kabbalah even if he is unable to master the traditional talmudic curriculum see Chaim Vital, *Etz Chaim*, introduction. On these authors see J. Katz, *Halakhah ve-Kabbalah*, pp. 89–92, 94–96, 97–99.

81. See J. Katz, "Halakhah ve-Kabbalah ke-Nosei Limud Mitcharim," in *Halakhah ve-Kabbalah*, pp. 70–101. For additional sources on the subject see

J. Elboim, *Petichut ve-Histagrut*, pp. 183, 208–22. See also M. Idel, " 'Echad me-I'r u-Shnayim me-Mishpachah'—I'yun Mechadash be-Bea'yat Tefutzatah shel Kabaalat haari ve-ha-Shabtaut," *Pea'mim* 44 (1990), p. 12 n. 30.

82. See M. Idel, *Kabbalah: New Perspectives* (New Haven: Yale University Press, 1988).

83. On the mystical meaning of Talmud Torah in the first generation of Hasidut see Y. Weiss, "Talmud Torah le-Shitat R. Israel Ba'al Shem Tov," in *Tiferet Israel Lichvod ha-Rav ha-Rashi ha-Rav Israel Brody* (London, 1963), pp. 151–69. (See Dov Baer of Mezirech, *Zava'at ha-Rivash*, pp. 29, 41, 54, 117.) For a detailed technique of study see *Magid Dvarav le-Ya'acov*, R. Shatz Upenheimer, ed. (Jerusalem: Magnes Press, 1976) sec. 66, 177, and especially 192. On the importance of the shape of the white spaces within a Torah scroll and the identification of the Torah with God's own body see M. Idel, "Hearot Rishonyot al ha-Parshanut ha-Kabalit le-Sugeiyah," in *Sefer ha-Yovel la-Rav Mordechai Broier* (Jerusalem: Akademon Press, 1992), pp. 773–83.

84. On Abraham Abulafia see M. Idel, *The Mystical Experience in Abraham Abulafia* (New York: SUNY Press, 1988).

85. See A. Jellinek, *Philosophie und Kabbalah* (Leipzig, 1854), pp. 33–38.

86. On the concept of Torah in Kabbalah see G. Scholem, *On the Kabbalah and Its Symbolism*, pp. 32–86; M. Idel, "Tfisat ha-Torah be-Sifrut ha-Heiochalot ve-Gilguleiah ba-Kabbalah," *Mechkarei Yerushalaim be-Machshevet Israel* 1 (1981), pp. 23–84.

87. On Chaim of Volozhin's understanding of Torah study and his integration of the traditional form of study into a kabbalistic conception see E. Etkes, "Shitato u-Po'olo shel R. Hayim me-Volozhin ke-Tkuvaht ha-Chevrah ha-'Mitnagdit' la-Chasidut," *PAAJR* (1972), pp. 21–31; N. Lamm, *Torah Lishmah in the Works of Rabbi Hayyim of Volozhin and His Contemporaries* (Hoboken, N.J.: Ktav, 1989).

88. *Nefesh ha-Haim*, 4:10.

89. *Magid Mesharim* 40a.i (Amsterdam, 1708). See R. J. Z. Werblowsky, *Joseph Karo, Lawyer and Mystic* (Philadelphia: Jewish Publication Society, 1977), pp. 157–60.

90. *Or ha-Emet*, pp. 15b–17a.

91. On the technique of *devekut* among the hasidim and its implications on the linguistic function of the Torah see M. Idel, *Hasidism Between Ecstasy and Magic* (New York: SUNY Press, 1995), pp. 171–88.

92. Babylonian Talmud, *Sanhedrin* 59a.

93. *Psikta Rabbati* 5.

94. See M. Hirschman, *A Rivalry of Genius*, trans. B. Stein (Albany: SUNY Press, 1996), pp. 17–18.

95. Maimonides, *Guide of the Perplexed* III, and Meiri, *Hashem Mishpat*, p. 162. For a discussion of this aspect of Maimonides' thought see D. Hartman, *Maimonides: Torah and Philosophical Quest* (Philadelphia: Jewish Publication Society, 1976).

96. The Rosh's responsum appears in *Shelot u-Teshubot ha-Rosh*, 55:3. For a



detailed analysis see I. Ta-Shma, "Shikulim Philosophyim be-Achra'at halakhah," *Sefunot* 16 (1985) pp. 99–110. The responsum was quoted in a sixteenth-century version of the earlier medieval debates over the study of Maimonides and the study of philosophy, in which the theme of the legitimacy of philosophy against the self-contained canon resurfaced. The dispute erupted between the two distinguished rabbis of sixteenth-century Poland: R. Moshe Isserles, known as the Rama, and R. Shlomo Luria, known as Maharshal. In one of his halakhic exchanges with the Maharshal, the Rama supported a legal opinion with a quote from Aristotle (*She'elot u-Teshubot ha-Rama* 7:8). This enraged Maharshal, who claimed that philosophers' opinions are irrelevant to halakhic discussion and proceeded to attack the study of Aristotle. The Rama answered that his study of philosophy was legitimate and offered three arguments: first, even the Rashba permitted it, provided it was undertaken after age twenty-five. Second, what is dangerous in Aristotelianism is the metaphysics, and Rama cited the physics. Third, his Aristotelianism is totally derived from the reading of Jewish authors, mainly Maimonides, and this was never prohibited. According to the Rama's testimony, he had never read Aristotle. In an attempt to shift the burden to Maharshal, Rama questioned whether the study of Kabbalah did not prove even more problematic than philosophy. Kabbalah, in the Rama's eyes, was more dangerous to the unprepared student. What is important for the purpose of our discussion is Maharshal's insistence that the study of Talmud cannot be supported or clarified through Greek wisdom. On this debate see J. Elboim, *Petichut ve-Histagrut*, pp. 156–65.

### *Conclusion*

1. Some features of text-centeredness were challenged among the Jews before the end of the eighteenth century. For example, the hasidic movement challenged the connection between scholarship and authority, and the hasidic *zaddik* arose as an authority figure already at the beginning of the eighteenth century. Nevertheless this was not a complete shift in the nature of the community as text-centered.

2. See M. Mendelssohn, *Jerusalem*, trans. A. Arkush (Hanover, N.H.: University Press of New England, 1983).

3. See N. H. Wessely, *Divrei Shalom ve-Emet*, First Letter, chaps. 3, 5, and 7 (Berlin, 1782; Warsaw, 1886).

4. B. Mossinson, "Ha-Tanach be-Beit ha-Sefer," *Ha-Chinuch* 1 (1910), p. 118. See also J. Schoneveld, *The Bible in Israeli Education* (Assan: Van Gorcum, 1976), pp. 27–33.

5. Ah'ad Ha'am, "Ha-Gimnasiah ha-Ivrit be-Yaffo," *Kol Kitbei Ah'ad Ha'am* (Tel Aviv, 1965), p. 420. See also Schoneveld, p. 33–38.

6. See, for example, E. Schweid, "Horaat Miktzoot ha-Yahadut be-Beit ha-Sefer ha-Tikhon be-Medinat Israel," *Petachim* 3 (1972), pp. 6–18, and also B. Kurzweil, "Mahutah u-Mekoroteiah shel Tenua'at ha-I'vrim ha-Tzei'rim ('Kena'anim')," *Luach ha-Aretz* 12 (1953), pp. 107–29.

# THE MIND OF THE TALMUD

## *An Intellectual History of the Bavli*

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# 5

# The Meaning of Argumentation

> The very nature of deliberation and argumentation is opposed to necessity and self-evidence, since no one deliberates where the solution is necessary or argues against what is self-evident. The domain of argumentation is that of the credible, the plausible, the probable, to the degree that the latter eludes the certainty of calculations.
>
> Chaim Perelman and L. Olbrechts-Tyteca
> *The New Rhetoric: A Treatise on Argumentation*, p. 1

### A Philosophical Analysis: The Indeterminability of Truth

IN THIS CHAPTER we seek to understand the meaning of the Bavli's argumentational form. We consider, as we did for the amoraic tradition in an earlier chapter, what the literary form reveals about the ideologies of the Bavli's authors. What was their relationship to earlier tradition? What are the assumptions of the new tradition that they created? Before we begin, it is essential that the subject of this analysis and the nature of the likely explanations be delineated precisely.

First, the form that is our subject here, as spelled out in chapter 4, is argumentation and deliberation. By argumentation I mean extended deliberation on a given topic, either narrow or broad, that involves questions, objections, responses, and various forms of dialogue. Argumentation is not to be confused with what has been called, in the work of Neusner and others, the dispute-form. The dispute-form juxtaposes two disparate opinions: "Rabbi X says A, Rabbi Y says −A." It includes no reactive element and it suggests no necessary active engagement of the two parties. Argumentation, in contrast, always suggests active involvement (even

if fictional). It is to be found, in its simplest form, in what Neusner calls debates.[1] But debates, though present in tannaitic documents, typify none of these documents. Only the dispute-form is common in early rabbinic texts; debates or argumentation is rare in such texts and is found commonly only in the Yerushalmi and, to an even greater extent, the Bavli.

This does not mean that what we find about argumentation in the Bavli will not be relevant also to the dispute-form. From time to time it will. For example, the presence in argumentation of several concurrent opinions is a central characteristic of this form. My explanation of that feature might also pertain to the parallel phenomenon in the dispute-form. Obviously, much of what I say regarding argumentation in the Bavli will also be relevant to the less elaborate argumentation of the Yerushalmi. Still, as we have seen, the form of the Bavli is in some ways unique, and so my analysis will on the whole be specific to the Bavli.

The Talmud's argumentational form is also to be distinguished from the dialectical form of Plato's dialogues. To be sure, both forms employ directed questions and answers to arrive (or not to arrive) at a particular end. But the nature of the deliberation found in each is obviously distinct from the other. To begin with, Platonic dialogue is comparatively verbose; Talmudic argumentation, in contrast, is relatively concise, even elliptical. If Platonic dialogue is highly discursive, the Talmudic argument can almost be described as terse (again, comparatively). In addition, the Talmud makes frequent use of sources, often distinguished by the fact that they appear in a language different from that of the gemara itself. Plato employs no such sources, at least not formally or with any frequency, and his exposition is all, of course, in the same tongue. Finally, the argumentation of the Talmud is everywhere imprinted with formal conventions. Plato's dialogues, in contrast, are creatively diverse, exhibiting great "poetic" flexibility.[2] Nevertheless, here too what is common to the two forms would permit us to extend some of what is suggested in this chapter in connection with Talmudic argumentation to the dialectical form; in particular, my proposal that argumentational dialogue is posited on the ultimate indeterminability of a single, definable truth has its adherents among modern interpreters of Plato.[3]

Second, as already suggested, we are seeking here the meaning of a *literary* form, now in the strict sense of that term. For reasons that I will spell out later, it is reasonable to assume that, at the stage of its composition, the Bavli was a *written* work. In contrast, amoraic traditions, like the Mishnah before them, were oral. Undoubtedly this transition from an oral to a written medium facilitated the analytic approach of the gemara.





But this factor, by itself, does not explain the meaning of the Bavli's precise choice. Having assumed a written form, the Bavli could still have gone in many different directions. The question here is the meaning of its particular form of expression.

Finally, in explaining the Bavli's argumentational–deliberative approach, it will not be sufficient to claim that its methods are "mere" conventions. It is true that the frequency with which many of the Bavli's specific forms are repeated derives from their conventional status. But we have no evidence that these conventions were borrowed from elsewhere. Rather, such conventions in the Bavli are the creations of the Bavli and it is precisely the meaning of these conventions that we wish to explain. We therefore return to the original question: What is the meaning of the Bavli's form?

Argumentational discourse has been studied at length and in detail in the work of Chaim Perelman and L. Olbrechts-Tyteca. Their study entitled *The New Rhetoric: A Treatise on Argumentation* examines the theoretical underpinnings of deliberative or argumentational expression and elaborates the variety of ways that such texts relate to truth and authority. They do not actually examine the argumentational "form" as defined here. Rather, in their study argumentation is defined as "discursive techniques allowing us *to induce or to increase the mind's adherence to the theses presented for its assent,*"[4] regardless of the precise form of such techniques. Nevertheless, their analysis is relevant to our study of the Bavli's argumentation on two levels. First, as I have discussed elsewhere,[5] the Bavli is a rhetorical text in the sense that it wishes to convince. It attempts throughout to increase *our* minds' adherence to *its* theses. Second, in part the way the Bavli seeks to achieve this goal is by creating argumentational dialogues that ask us to take the position of each respective advocate in turn. In such dialogues there are at least two sides of the argumentational exchange, each of which seeks to persuade us of its correctness. On both these levels, the form and function of the Bavli is within the realm of concern of Perelman and Olbrechts-Tyteca's study. Furthermore, many of the forms of argumentational discourse that they address are found in the Bavli and, though much of their work is irrelevant in a study of the Bavli, few of the forms that characterize the Bavli are ignored wholly in their analysis. For this reason, and because of the general comprehensiveness of their presentation, no purpose is to be served by analyzing afresh material that they have already covered without reference to their work. Rather, it is for us to review the proposals that they have made, to assess their claims, and to consider how their observations

might be applied to the Talmudic form in particular.[6] On the basis of this inquiry, we will be able to evaluate the meaning of the Talmudic form.

Let us begin with the introductory remarks quoted at the beginning of this chapter. Perelman and Olbrechts-Tyteca claim that deliberation/argumentation is, as a form, opposed to self-evidence and confident assertion of a single truth (where truth means "the way things really are").[7] If truth were readily evident, then no reasonable person would argue against that truth. Assuming that the deliberations we are discussing involve reasonable and not irrational parties, we must conclude that their willingness to engage in argumentation is evidence of their recognition that the answer to a given question or problem is not necessary or self-evident. To the contrary, if they are willing to debate the issue, they must agree that there are at least two possible answers or solutions.

We will reach the same conclusion if we examine argumentation from a second perspective, trying to understand its emergence. As Perelman and Olbrechts-Tyteca observe, "Recourse to argumentation is unavoidable whenever . . . proofs are questioned by one of the parties, when there is no agreement on their scope or interpretation, on their value or on their relation to the problems debated" (TNR, p. 8). If a proof is clear or certain, if there is a total agreement on the interpretation of the text or source being quoted in proof, then there is no reason, again, to engage in argumentation. Where, on the other hand, there is no agreement on the relevance of a given proof or on its interpretation, then argumentation will inevitably follow. The presence of argumentation therefore implies the absence of agreement. Again, it is evidence of the fact that we do not begin with self-evident proofs or interpretations.

Any student of the Bavli will recognize the correctness of this analysis with relation to argumentation in that document. The following selection will serve as an illustration.

### *Berakhot 13a*

a. Our rabbis have taught: The Shema should be recited as it is written [in Hebrew; these are] the words of Rabbi [Judah Hanasi]; and the sages say: In any language.
b. What is Rabbi's reason?
c. Scripture said: "And they shall be (Deut. 6:6)," [meaning] as they are they should be [= in Hebrew].
d. And the sages, what is their reason?
e. Scripture said: "Hear (Deut. 6:4)," [meaning] in any language that you hear [= understand].





f. And for Rabbi, is it not also written "Hear"?
g. He requires that [scriptural term to teach the law:] make heard to your ears what you bring out from your mouth.
h. And the sages hold [the same opinion] as the one who says "if he did not make it heard to his ears, he has [nevertheless] fulfilled his obligation."
i. And for the sages, is it not also written "And they shall be"?
j. They require that [scriptural term to teach] that he should not read it out of order.
k. And Rabbi, [the ruling] that he should not read it out of order, where does he derive it from?
l. From [the difference between the word] "words (vs. 6)" [which scripture might have used, and] "the words" [which scripture did choose to use. The additional designation can be the source for derivation].
m. And the sages do not interpret . . . [this phenomenon].

Note the many differences that this gemara points out. Rabbi and the sages differ with respect to the law. This difference, the gemara suggests (this is *all* the suggestion of the anonymous gemara concerning the source of their differences), is the consequence of their disagreement over which proof text is relevant to the given question and how that proof text is to be interpreted. The sages associate "Hear" with the law of the language of recitation; Rabbi thinks that the term relevant to this particular law is "And they shall be." Rabbi thinks "Hear" teaches something about the volume of recitation; the sages think "And they shall be" teaches something about the order of recitation. Rabbi agrees with the sages with respect to the law of the order of recitation but derives that law from another proof; the sages think the same proof is in fact proof of nothing at all.

Here, we can see, there is no agreement on the relevance of different proofs or on the interpretation of any given proof. The argumentation is explicit in stating this absence of agreement. But we should not think that this recognition needs to be explicit. Obviously argumentation begins with differences of interpretation or other such differences; this must always be so. It is because a single, identifiable truth is not immediately available that it is worthwhile to engage in argumentation in the first place.

But argumentation—certainly as a comprehensive, unyielding form of expression—also implies that clear, undisputed truth is (at least often) unavailable at the end. If a given argumentation yielded "truth," that is, necessary and self-evident interpretations or conclusions, then this truth

would effectively wipe out the argumentation that produced it. This is because truth, once identified, should speak with perfect clarity; it should be, if only retroactively, completely obvious. Once it has emerged, therefore, the process that produced it should be less important. Unless we are speaking of mathematical demonstrations (and even there axioms, once demonstrated, are usually employed unencumbered by their proofs), where the process may be of interest for its own sake, truths should speak for themselves, without accompanying support. The obvious valuation of argumentation in the gemara thus reveals that, in its view, "truth" is not at all self-evident. If proofs as such continue to be central, conclusions must be relatively less secure.

This relation of argumentation and truth is also inherent in another of the gemara's methods, that is, in its ever-present use of authority claims. Perelman and Olbrechts-Tyteca write:

> The argument from authority has been attacked in the name of truth. And indeed, insofar as any proposition is considered to be true or false, the argument from authority no longer holds a legitimate place in our intellectual arsenal. But is this always the case, and can all the legal problems, for instance, be reduced to scientific problems where only truth is involved? . . . [T]he quest for justice and the maintenance of an equitable order, of social trust, cannot neglect considerations based on the existence of a legal tradition. . . . Recourse to argument from authority is inescapable if the existence of such a tradition is to be attested. (TNR, p. 306)

This latter observation obviously pertains to the Bavli: the Bavli seeks to root itself in a tradition, and so it must argue on the basis of that tradition. But it is the former observations that are of particular interest here. The claim—which the authors do not wish to deny but only to gain some perspective on—is that questions of authority should be irrelevant in the presence of truth. If an opinion or interpretation is true, then, to state it bluntly, who cares who said it? What matters is only that it is true. On the other hand, where references to various authorities become important, truth as such becomes less so. What legitimates claims in a system that considers references to authority to be crucial is the tradition that that authority speaks for. If the system were concerned with philosophical purity, however, reference to authority would be far less crucial.

Theoretically, this analysis seems attractive. But it would appear that caution is warranted before applying it to arguments in the Bavli. "Truth" and authority stand in opposition in a system that posits a rational truth,





for if the human mind is the source of illumination or clarification, then the authority of the individual within whom the mind resides should be irrelevant. All that should matter is the value of his or her claim, judged on its own terms. But in a system that posits other sources of truth—scripture, for example, or the authority inherited by rabbinic masters—this opposition is not at all necessary.

Obviously, the Bavli is a system that recognizes scripture as a source of truth, scripture presumably being an expression of the divine will. For the authors of the Bavli, therefore, "one must not look to nature for the ultimate reality, but to the divine creative word."[8] On a different level, Mishnaic canon might also represent an alternative source of truth. In analyzing the Talmudic argument, it would appear necessary, therefore, to consider the nature of the specific authority. With respect to arguments from amoraic authority, we must admit the validity of Perelman and Olbrechts-Tyteca's analysis. In such instances, the reference to authority indeed reveals that it is not the essence of an opinion that matters most but the support of an authoritative tradition. But in the case of Mishnaic and biblical proofs, the analysis they suggest might have no place, because in cases of this sort authority and truth might reside in the same entity.

However, although this caution is well taken, a more considered analysis of the place of authoritative sources in the Bavli will reveal that, even in such cases, the analysis of Perelman and Olbrechts-Tyteca is largely correct, for whatever the nature of its sources in a given argument, the Bavli often does not support single opinions or interpretations by reference to single sources or even by reference to several mutually supportive sources. On the contrary, as the previously quoted text from Berakhot illustrates, the Bavli's approach is typified by the support of multiple opinions and interpretations through reference to many, often contradictory sources. And, again speaking generally, where such a multiplicity of opinions exists, the Bavli will more often content itself with a successful defense of all competing opinions than it will decide in favor of one or the other. In such a context, reference to authoritative sources speaks not to a single divine truth but to the fundamental elusiveness of truth. It says, in effect, that the truth of scripture cannot be determined because its possible interpretations are many, and an authoritative source for this opinion or that can almost always be found.

In some sense, the validity of these observations can be demonstrated by comparing the Bavli to the Mishnah. The Mishnah, with rare exception, at most calls upon the authority of those few rabbinic sages to whom

it attributes opinions. On those occasions when it quotes scripture, it generally quotes a single text to support a single view. But more often it simply states its opinion in its own voice and on its own terms, requiring for authority only the "truth" of its own opinions, that is, self-validating truths enunciated within the rabbinic system.[9] The Bavli, on the other hand, explicitly constructs arguments within the context of a tradition, where the claims of earlier authorities become crucial and where the interpretations of given authoritative traditions are generally multiple and are rarely self-evident. Again, what this reflects is the gemara's compromised relationship to "truth." Its very form declares that truth is subject to question and that, in the end, truth is impossible to determine.

An ironic testimony to the correctness of these characterizations of the Talmudic form may be found in the lyrical polemic of the Karaite author Salmon ben Jeroḥam, against Saadiah. Ben Jeroḥam writes:

> . . . [I]f the Talmud originated with our master Moses,
> What profit is there for us in "another view,"
> And what can a third and fourth view teach us,
> When they tell us first that the interpretation of this problem in law is thus-and-so, and then proceed to explain it with "another view"?
> *The truth stands upon one view only,*
> For this is so in the wisdom of all mankind,
> And *right counsel cannot be based upon two contradictory things* . . .[10]

To be sure, ben Jeroḥam was an enemy of the rabbis and their Talmud. Nevertheless, his words are to the point: *the* truth can be embodied in one view only. Complete truth cannot be present in two different or even contradictory views. And yet it is these different views that stand at the foundation of Talmudic argumentation and that the argumentation, as noted, frequently does not resolve. It is not unreasonable to conclude, therefore, that the rabbis of the Talmud cannot rightfully claim to possess *"the* truth." The very form by which they chose to express themselves constitutes recognition of that same fact.

Returning to the matter of authority claims and authoritative traditions, I should add that, just as reference to such traditions attenuates the position of "truth" in argumentational dialogues, so too does the deliberation on such traditions compromise the very authority from which they speak. To use the words of Perelman and Olbrechts-Tyteca, "Mere questioning of a statement is . . . sufficient to destroy its privileged status" (TNR, p. 68). If the statement were truly privileged, if its authority alone were sufficient, then there would be no room to question it. The fact that one can address it with a question is evidence enough that its authority is not absolutely respected.



Reference to authoritative traditions, therefore, has a dual, even contradictory effect. On the one hand, the use of authority claims in deliberation shows that "truth" must compete with tradition; in this manner such claims erode the position of the "truths" that they accompany. But as authoritative sources are used in such contexts, their authority is itself eroded by the application of reason. Neither authority nor reason stands unaffected by the other.

This is particularly so in a text like the gemara, where authoritative traditions almost never stand on their own; they always are quoted in a particular context, generally shaped by the gemara itself. What is the effect of such quotation in context? Perelman and Olbrechts-Tyteca remark: "The words of other people, when repeated by a speaker, have changed their meaning, for in the process of repetition he always adopts toward them a position that is in some way new, even if only in the degree of importance he attaches to them. *This applies to statements made in arguments from authority"* (TNR, p. 317; emphasis added). Quotation of an authoritative tradition by a later individual always affects the tradition being quoted, if even in imperceptible ways. Either the context into which he sets it or the comments that he makes upon it will cause the earlier remarks to be viewed through the lens of his understanding. Thus, although the fact that he quotes an earlier statement demonstrates that he deems it to be important—if he thought the statement to have no authority or importance, there would be no good reason for him to quote it—the mere act of his quoting it diminishes its independent authority and makes its impact dependent on his own interpretation. Using authority to support his own opinion, he compromises that authority by making it accord with his opinion.

Clearly, this process of quoting authoritative traditions characterizes nearly all of the Bavli. How such quotation in context affects the gemara's traditions has been widely demonstrated in recent scholarship, and there is little difficulty confirming the proper application of the preceding insights to the Bavli as a whole. The work of Shamma Friedman on the tenth chapter of tractate Yevamot, for instance, provides one illustration of how the meaning of sources is shifted when quoted in the later Talmudic context.

### *Yevamot 87b–88b*

MISHNAH:

A woman whose husband went abroad, and [witnesses] came and said to her "Your husband has died," and she [went ahead and] married [another], and afterward her [first] husband returned, she should go out [by divorce] from this [first husband] and from this [latter husband]. . . .

GEMARA:

a. . . . Rav said: They taught this [law] only when she [re]married by the testimony of one witness, but if she [re]married by the testimony of two witnesses, she does not [need to] go out.
b. They mocked him in the West [= Palestine]: The man has come and stands [before us] and you say she should not go out?!
c. This [teaching] is required only for [a case where] we do not recognize him.
d. But if we do not recognize him, why must she go out [even] if there was [only] one witness [originally]?
e. This [teaching] is required only for [a case where] two witnesses came and said "we were with him from the time that he left until now, and it is [only] you who do not recognize him. . . ."
f. But in any case, there is a [dubious] case of two [witnesses testifying one thing] and two [testifying another], and [in such a dubious case] the one who has sex with her should [only] be obligated to bring [an appropriate sacrifice].
g. R. Sheshet said: [No sacrifice is mentioned] because she married one of her [original] witnesses [and that witness, presumably, was confident of his testimony. The sacrifice is to be brought only when there is doubt].
h. But she herself should bring the sacrifice [since she shouldn't be as certain as the witness].
i. [We are talking of a case] where she said "it is clear to me."
j. . . . Rava objects [quoting a baraita]: How do we know that if [a priest] didn't want [to hallow himself by separating himself from impurities and from prohibited marriages] then we force him? Scripture says "and you shall hallow him (Lev. 21:8)," [meaning, even] against his will.
k. How is this to be understood?
l. If you say that she did not marry one of her witnesses and did not say "it is clear to me," would it be necessary to say [under such dubious conditions] that you force him?





m. Rather, no, [we are talking, in the baraita, about a case] where she married one of her witnesses [= the priest with whom the baraita is concerned] and said "it is clear to me. . . ."

Friedman clarifies several source traditions that are read into this text, their meaning being changed thereby. To begin with, the statement of Rav (a), with which this whole deliberation begins, must be understood in a way that defies its simple meaning because of the gemara's initial, independent interpretation of the Mishnah, not quoted here. The gemara earlier claimed that this part of the Mishnah is, by definition, talking about the testimony of only one witness. If that were so clear, as the gemara wants to claim, then Rav's clarification (more correctly, limitation) would be unnecessary. Second, according to Friedman's analysis, the interpretation of R. Sheshet (g) is borrowed for this text from another, more original context. The details of Sheshet's comments are appropriate here, and their meaning is not effectively changed. But having inserted his words into a longer deliberation, the gemara has made it appear as though Sheshet actually participated in this exchange. In that way, it has contributed a new shading to Sheshet's activity.

Finally, most striking is the effect that the quotation of Rava's objection from the baraita (j) has had on the meaning of his objection. This is perhaps best understood by asking oneself, as one begins to read the gemara's amplification of his objection (k–m), "What does this have to do with the content of the text that Rava quotes?" Originally, Friedman suggests, Rava's objection was addressed directly to the opinion of Rav, without any intervening steps. But quoted in the context of the gemara, the baraita is made to assume a meaning that is in no way suggested by its words. The baraita says nothing about a priest who is confronted by the difficult case, the supposed concern of this larger deliberation; it merely discusses the need for a priest to separate himself from impurity and prohibited marriages. But the gemara's "clarification" of the baraita (k–m) assumes that the baraita addresses our specific case, that is, the case as defined by the gemara itself in the previous several steps (e–i). Placed into this context, the earlier tradition assumes a meaning for which there is no internal support at all. Again, its quotation demands that we read it through the lens that the gemara has provided, and while it is clearly meant to be a source of authority (in this case, an authoritative objection), in fact it has more profoundly been molded by the interpretive authority that the gemara has asserted. (See the appendix to this chapter.)

Moderation of authority claims, and of claims for truth in general, is

also a consequence of several other elements of the gemara's precise deliberative approach. For example, the need to propose justifications demonstrates that authority claims are not by themselves sufficient. Duprèel is certainly correct in declaring that "every justification is essentially a moderating act" (quoted in TNR, p. 55). People who are unreasonable might demand that they be heeded for no reason at all; moderate, reasonable people understand the need to justify themselves. In fact, the gemara's incessant searching for justifications and reasons suggests that it consciously invites the "challenge" of authority (i.e., at least of rabbinic authority; because Talmudic justifications are so often found in scripture it would be unfair to suggest that this commonly extends to its authority as well). The Bavli was not unaware of the difference between letting traditions speak from their own authority and offering reasons for the same rulings; note the tradition at Avodah Zarah 35a: "When they issue a decree in the West [Palestine] they do not reveal its reason for twelve months lest there be a person who doesn't agree [with the reason] and come to deal lightly with it." In this document of the East (Babylonia), of course, it is reasons that are most often sought. The very act of seeking reasons, we see, invites someone to disagree. Authority may have some claim, therefore, but its power is consciously compromised by the recognition that other justifications—be they other sources of authority (such as scripture) or logical analysis—are also required.

The play of alternatives in the gemara—alternative interpretations, alternative rulings, alternative sources—is also a sign of moderation. The reader is constantly being asked to consider new perspectives. The very availability of alternatives often highlights the ambiguity of a situation (see TNR, p. 122). Even when the play of alternative interpretations gives preference to some over others, those that are denied will not be forgotten. The reader is always left with the impression that alternatives *were* available and that someone thought those alternatives to be reasoned and intelligent. Their echoes will always be a reminder that the conclusions, even when accepted, are not self-evident.

But with all of the ambiguity that argumentation might suggest, it would be improper to conclude that alternatives are endless, for argumentation, by its very nature, *must* take place in community. As Perelman and Olbrechts-Tyteca remark, "For argumentaion to exist, an effective community of minds must be realized at a given moment. There must first of all be agreement, in principle, on the formation of this intellectual community" (TNR, p. 14). We have all had, at one time or another, the experience of "arguing past" someone, realizing at the end that even the most basic assumptions were not shared. Without those shared assumptions, real deliberation cannot take place. Consider, as an illustration, the difficulty of those who try to study Talmud for the first time; not only is the vocabulary unfamiliar, but so too are the rules of procedure and other basic assumptions. The argumentation of the gemara assumes a rabbinic community. The theoretical multitude of its alternatives, as noted previously, is in practical terms constrained by the conventions of the community in which it operates.



Argumentation therefore may be taken to represent the ambiguity of truth and of authority claims within a defined community. But if argumentation begins with essential ambiguity, then what function does it serve in its particular community? To put it simply, when considered as a social act (for this is the perspective of community), what is the purpose of argumentation? The answer of Perelman and Olbrechts-Tyteca is: *"All argumentation aims at gaining the adherence of minds"* (TNR, p. 14; their emphasis). One argues with another in order, obviously, to persuade him or her. If authority is not absolute, if truth is not self-evident, and if force is not an option, then it will be necessary to persuade the other. Such persuasion is the aim of argumentation.

In other words, argumentation is an inherently rhetorical form, for only by means of rhetoric can it gain the adherence of which Perelman and Olbrechts-Tyteca speak. The frequent presence in the Bavli of common rhetorical devices is evidence of the close connection between argumentation and rhetoric and is testimony to the correctness of the proposed characterization with relation to the Bavli.

Consider what may be called "rhetorical objections." "Everything that furnishes an argument against the thesis being defended by the speaker, including objections to his own hypotheses, becomes an indication of sincerity and straightforwardness and increases the hearers' confidence" (TNR, p. 457). The gemara, as "speaker," often proceeds in this manner, suggesting an interpretation or opinion and then straightaway providing an objection. This might be an anticipated objection, in which case what it suggests will not bear great weight, or a genuine objection. It should be recalled that it is the anonymous gemara itself (as opposed to individual amoraim) which most frequently brings the objection; its doing so should be understood not only as an objection to the opinion being considered, but as a defense. The more objections against which the gemara successfully defends the opinion of rabbi so-and-so, the more secure his view will appear. There will be no doubt, moreover, that, following these objections, the opinion that has survived will not be considered

capricious or baseless. If the gemara has "sincerely" tested the opinion, the reader will be convinced of its viability.

Persuasion, through "guided discussion," is also evident in the gemara's frequent proposal of theoretical answers that will obviously be quickly put aside. This is an expression of the rhetorical figure known as "suspension," which is described by Perelman and Olbrechts-Tyteca in this way: "The speaker asks a question, to which he gives an immediate answer, but this answer is simply a hypothesis which, more often than not, he will himself reject" (TNR, p. 493). In the gemara, this approach often begins with the question "What is X?" and is followed by an answer introduced with the words "If you say" or "If it be said" *('i tema* or *'i lema)*. As any student of the Bavli knows, any answer proposed in this manner will ultimately be rejected. The proposed answer must, at first glance, be a reasonable alternative; otherwise there would be no reason to consider it in the first place. However, the gemara at such times is really asking the reader to reject the given alternative. It is seeking to guide his thinking in other directions and to win his consent for other views.

More examples could also be presented, but the point has already been made. The Bavli, as an argumentational text, is rhetorical, that is, it seeks to persuade.[11] It does so within the context of community (the rabbinic community), and by doing so it seeks to strengthen that community. This is the nature of its approach because it begins with certain assumptions: (1) that it may not, finally, coerce the minds that it addresses; (2) that authority, by itself, is insufficient; and (3) that truth, finally, is ambiguous, and alternatives are always available.

The questions, then, are these: Why is this the form in which the rabbinic authors of the Bavli chose to express themselves? What, in their universe of experience—historical or intellectual—led them to prefer this approach?

## Historical Underpinnings

To seek answers for these questions, we will begin where Perelman and Olbrechts-Tyteca end, that is, with their concluding remarks on the argumentational form, its meaning, and its purpose. Their words are meant as a defense of argumentation in a world that values, to an almost mystical extent, scientific and mathematical proofs and their conclusions:



> The increased confidence . . . brought about in the procedures and results of the mathematical and natural sciences went hand in hand with the casting aside of all the other means of proof, which were considered devoid of scientific value. Now this attitude was quite justifiable as long as there was hope of finding a scientifically defensible solution to all actual human problems. . . . But if *essential problems involving questions of a moral, social, political, philosophical, or religious order by their very nature elude the methods of the mathematical and natural sciences,* it does not seem reasonable to scorn and reject all the techniques of reasoning characteristic of deliberation and discussion—in a word, of argumentation. . . . The assertion that whatever is not objectively and indisputably valid belongs to the realm of the arbitary and subjective creates an unbridgeable gulf between *theoretical knowledge, which alone is rational, and action, for which motivations would be wholly irrational.* . . .
>
> *Only the existence of an argumentation that is neither compelling nor arbitrary can give meaning to human freedom, a state in which a reasonable choice can be exercised.* . . . If the exercise of freedom were not based on reasons, every choice would be irrational and would be reduced to an arbitrary decision operating in an intellectual void. It is because of the possibility of argumentation which provides reasons, but not compelling reasons, that it is possible to escape this dilemma: adherence to an objectively and universally valid truth, or recourse to suggestion and violence to secure acceptance for our opinions and decisions. The theory of argumentation will help to develop . . . the justification of *the possibility of a human community in the sphere of action when this justification cannot be based on a reality or objective truth.* (TNR, pp. 512 and 514; emphasis added)

The reasons for argumentation, as proposed in this masterful conclusion, are both theoretical and practical. To begin with, moral, social, political, philosophical, and religious problems cannot be resolved by scientific or mathematical demonstrations (though some philosophers might take issue with the inclusion of their discipline in this company).[12] Such problems are most effectively addressed through reasoned deliberation and argumentational persuasion. Since these categories describe precisely the nature of the problem the gemara is concerned with, *if there is concern with justification of opinions at all* (as in the gemara there clearly is), it is natural that this is the form those justifications will (and did) assume.

Moreover, these categories are not only theoretical. Moral, political, social, and religious problems are also matters of practice. Being thus concerned with practice, the gemara's argumentational form is appro-

priate to one of its fundamental purposes. Why so? As the authors explain, only theoretical knowledge can be purely rational. Only such a realm, untainted by the necessary human element (again, only in theory), can remain thoroughly rational. But action does not share this luxury, for human actions are motivated by numerous factors, and as a consequence such actions are assuredly not purely rational. Argumentation, in its persuasive character, seeks to create motivations and to affect actions, and so again, if the concern of the gemara is, on one level, human practice and action, then argumentation is the mode by which it can most effectively address that concern.

Argumentation also provides a means of assuring human freedom. It makes no claims to pure, final truth, and it always recalls the presence of alternatives. In so doing, it presents the listener (reader) with options, and it bids the listener to make a choice. It seeks to persuade the reader, but it leaves open the option of refusal or denial. In this regard, argumentation is a manifestation of a basic principle of the rabbinic system which at its foundation is a system of free choice. This is R. Aqiba's claim in Avot: despite God's omniscience, "free will is granted" (Avot 3:15). This principle is so important that it may be understood to be, in part, the reason for Maimonides's rejection of Aristotle's prime cause: the world had to be created in a purposeful way by a purposeful God. Only if things are not the way they are by necessity does it make sense to command, and to reward and punish. Reward and punishment may be deemed just only if the commanded being is not the way he or she is by necessity and retains freedom of choice. By making the choices evident even within the system, the Bavli's approach enunciates this commitment clearly and eloquently.

Although all of these reasons can explain the gemara's choice of form (at least in part), none explains why it was the Bavli that for the first time employed argumentation to this profound extent. After all, the concerns and assumptions discussed earlier were all presumably shared by the authors of the Mishnah, Tosefta, and Yerushalmi. These documents, too, presumably sought to shape and strengthen the rabbinic community and they also were essentially concerned with religious practice. Furthermore, the commitment to freedom of will was expressed already in Avot, and it too was shared by the communities of these other documents. Why, then, did the Yerushalmi not go to the same lengths as the Bavli, and why did the Mishnah or Tosefta not use this form at all? Why the Bavli's uniqueness?

First, it must be stated that conventional historical factors will not be





able to answer these questions. Part of the problem is that we do not know precisely when the Bavli was composed. Present scholarship puts its writing (as a complete literary document) between the late fifth and early seventh centuries.[13] Furthermore, even if we could pinpoint its composition, we in any case can say very little about historical factors that might have precipitated such an undertaking. There is evidence of persecution of Jews in Babylonia in the mid fifth century, but its degree is not known and a precise reconstruction is impossible.[14] Legend speaks of a Jewish insurrection under the leadership of the exilarch in the early sixth century, but the evidence is mostly incredible and, if there is truth behind the legend, it is probably modest and insignificant.[15] Alternatively, the possible influence of some event like the literary composition of the Avesta is difficult to ascertain, because there too there is considerable scholarly debate concerning dating.[16] Given the nature of the evidence, therefore, we must look in other directions for the explanations we seek.

One development that was very likely a factor in giving birth to the Bavli's form was a shift in rabbinic circles from oral to written composition. Tannaitic and amoraic traditions had been composed and preserved (in their authoritative form, at least) orally, as noted in an earlier chapter. But internal evidence suggests that the Bavli was a written composition. This conclusion is supported, first, by the sequential, analytic quality of the Talmudic deliberation. Analysis of this sort is facilitated by written exposition and is not to be found in strictly oral cultures.[17] Second, the fact that the gemara leaves so much unexplained, requiring that the reader retrieve essential pieces of earlier information, strongly suggests that it was written. The oral experience requires, if anything, that too much be articulated, often in the form of repetition, for only in that way can the effectiveness of a message be ensured. In oral presentation, only the speaker—but *not* the listener—has the capability to review what he did not catch the first time. In contrast, the reader can always return to an earlier point in a text, and so a written composition alone has the luxury of expecting the reader to fill in the gaps.[18]

Nor should the obvious mnemonic features present in the gemara—repetition, three-step progressions, and so on—be thought to contradict this conclusion. As Walter Ong remarks:

> Manuscript cultures remained largely oral–aural even in retrieval of material preserved in texts. Manuscripts were not easy to read . . . and what readers found in manuscripts they tended to commit at least somewhat to

memory. Relocating material in a manuscript was not always easy. Memorization was encouraged and facilitated also by the fact that *in highly oral manuscript cultures, the verbalization one encountered even in written texts often continued the oral mnemonic patterning that made for ready recall.*[19]

This description obviously pertains to Babylonian rabbinic culture. Written documents within such a culture—as, I have suggested, the Bavli was—nevertheless retained powerful "oral residues." For this reason, written texts, in many of their features, *looked* oral.

Ong's analysis also explains why the claim that "people today even know the gemara by heart" proves nothing. Manuscripts were rare and precious and so manuscript compositions, though written, sought to facilitate subsequent memorization. The question, however, is not whether the gemara can be memorized but whether it was *composed* in that form. As I have said, the nature of its analysis and deliberation suggests emphatically that its origins, instead, were written. That condition is the first factor that explains why the Bavli, unlike the Mishnah and Tosefta (which were oral compositions), took the form that it did.

Second, the Bavli, unlike the tannaitic texts, already had an extensive documentary foundation on which to build. The Mishnah had a first-order task, that is, to articulate essential basic definitions for the early rabbinic community. The Tosefta supplemented these definitions, and the halakhic midrashim tied them to scripture.

The Bavli, in contrast, already had this extensive foundation, and its presence facilitated (perhaps even encouraged) the directed analysis that, in the pages of the Bavli, would extend from it. Because, for the Babylonian sages, the foundation was already secure, they could afford, with ever-increasing creativity, to speculate on both the practical and theoretical consequences of the law which they discussed.

The presence of the Mishnah, in particular, as a foundation document for the Bavli also explains its development in other ways. To begin with, the Mishnah was a document in which the land played a central role. Many of its agricultural regulations had no force in Babylonia, and its regulations as a whole placed heavy emphasis on land-based institutions (including the temple). The rabbis in Babylonia thus could not simply absorb the Mishnah and incorporate its strategies unchanged. Rather, they would have to decide the precise shape of rabbinic Jewish practice in that particular community, and since their decisions could not merely replicate earlier models—adaptation, at the very least, was necessary—they would have to justify their decisions. This, in part, may explain why so much of the gemara is justificatory. It takes interpretations and rulings that adapt





Mishnah regulations to a Babylonian context and justifies those traditions. The mere fact of changed conditions is one explanation of the Bavli's expository direction.[20]

Even more important than this, I think, is the Bavli's response to what Neusner terms "the crisis precipitated by the Mishnah."[21] The Mishnah, though it did respond to change, did not explicitly justify its response. For this reason, Neusner is correct in claiming, the Mishnah is inherently lacking. As eloquent as it may be, the Mishnah did not perform its full task, which, given the novelty of much of what it prescribed, would have required justification. It is to remedy this that so many of the interpretive statements of the amoraim are intended. The very silence of the Mishnah on these matters generated large parts of the subsequent tradition, and the task that it left undone was so vast that it took the Babylonian sages three centuries or more to finish the job to their satisfaction.[22] The amoraim responded to this challenge on one level; the gemara, in its lengthy justificatory deliberations, did so on another.

In sum, one of the main reasons that the Bavli does not look like the Mishnah is because the Bavli already *had* the *Mishnah*. The Mishnah, not only because of what it provided but also because of what it did not, supplied much of the generative energy for the later tradition, and the agenda of the Bavli can in part be understood, as described here, by appreciating this reactive aspect of its development.

Unlike the earlier documents, the Bavli also had the amoraic tradition on which to build. In the presence of the rulings and interpretations of the amoraim, the gemara was free to speculate on the meanings and relationships of these various elements of the tradition. Thus amoraic interpretation gave way to the even more liberal interpretive enterprise of the Bavli itself.

Also offering a foundation for the subsequent development of the Bavli was the birth during the amoraic era of the notion of Oral Torah. As has been documented by Neusner and others,[23] the oral tradition of the rabbis was not yet known as "Torah"[24] in the Mishnah or Tosefta or even, unambiguously, in Avot. The first such designations appear, rather, in the Midrashei Halakha and in the Yerushalmi.

The reference to the two Torahs in the Sifra (Behuqotai, 8:12) and Sifrei (Deut., par. 351) places the notion in what is purportedly a tannaitic context. The attribution to tannaim, however, is difficult to accept. Neusner's comment in connection to a similar attribution to Hillel in the Bavli (Shab. 31a) is relevant here: "The lack of evidence in the Mishnaic sector of the canon that people knew about the myth of two Torahs hardly enhances the credibility of [these attributions]."[25] Rather, it seems likely

that the opinions expressed in these texts may be dated with confidence only to the time of their redactions (post-Mishnaic) and, in any case, there is certainly no evidence of the widespread acceptance of this notion during the earlier rabbinic period.

The record of the Yerushalmi, in combination with its Bavli parallel, is more conclusive. The Yerushalmi (at Peah 2:6, 17a; Hag. 1:7, 76d; and, in part, Meg. 4:1, 74d) attributes the view that there are two Torahs, written and oral, to, among others, R. Eleazar and R. Yoḥanan. Highly similar traditions—quoting the same verse, in the case of R. Eleazar, and emphasizing the dependence of the covenant on the Oral Torah, in the case of R. Yoḥanan—are recorded in the Bavli (Git. 60b). Because the Bavli, the later of the two documents, did not know the Yerushalmi (see pp. 22–23), the presence of what are essentially the same traditions in these two documents must be accounted for on the basis of a common third source. That source is the circle of disciples of these named authorities.[26] The notion that the oral tradition represented an Oral Torah was espoused by certain rabbinic groups, therefore, in the mid to late third century.

The view that rabbinic tradition constitutes a part of Torah in the opinion of late third-century amoraim is corroborated by the fact that it is during these same generations that study of this tradition begins to require the recitation of a formal blessing for Torah study (see pp. 159–61). Being part of "Torah," rabbinic study as such became the focus of inquiry and exposition, opening the option of properly "Talmudic" discourse. The *value* of rabbinic–Torah study, first articulated fully by these amoraim, came to be embodied in practice in the deliberative forms of the Talmud's authors.

Furthermore, specific amoraic models were also crucial in suggesting new directions to the later authors. This was particularly true with respect to the middle amoraic generations, whose concern for argumentation and theoretical interpretation opened the door for the gemara's vast theoretical argumentation and suggested to the later authors the possibility—which we will see exemplified in the next chapter—of Torah study as a pure and unconditional pursuit. In the absence of these models, the precise directions taken in the Bavli surely would have been more difficult to realize.

This latter factor—unlike those that precede it—begins to explain the differences between the Bavli and the Yerushalmi. Most of what we have seen to this point distinguishes not only the Bavli from earlier documents, but also the Yerushalmi from those same documents. We should find it



assuring, therefore, that the Yerushalmi is distinguished stylistically from those documents in ways that are similar to the Bavli. But I have argued that there are also important differences between the Bavli and Yerushalmi, differences that similarly require explanation. If the middle amoraic model in Babylonia was crucial to suggesting specific directions to the authors of the Bavli, as I have proposed, this would in part explain why the Yerushalmi's choices were not precisely the same. The tradition of these amoraim, particularly as attributed to Abbaye and Rava, was generally unavailable to the authors of the Yerushalmi, or so the rarity of reference to their traditions as a whole would suggest.[27] Its influence, therefore may be found in the Bavli but not in the Yerushalmi.

A final factor that may explain the development of the Bavli in contrast to other rabbinic documents, including the Yerushalmi, is the nature of the Jewish community within which it developed. The Bavli, first, was composed centuries after the Mishnah and Tosefta (and perhaps as many as two centuries after the Yerushalmi) in a territory far removed from the world of those other documents. This factor, in particular, had a profound effect on the nature of the rabbinic movement in Babylonia, requiring (or permitting) numerous changes and adaptations from earlier rabbinic customs. Such changes showed up not only in specific matters of practice but also in approaches to the sacred and in overall attitudes.[28] These developments are reflected in the Bavli's unique personality.

Furthermore, the rabbinic movement in Palestine had been a relatively confined, relatively centralized community, reflecting the concentration of the Jewish community at large in the Galilee during the Talmudic period. Not so the rabbinic community in Babylonia, which was geographically far more diverse and which coexisted with a larger Jewish community that continued, as far as we can tell, to be incompletely assimilated into the rabbinic form of Judaism.[29] This condition is important for two reasons. First, the decentralized rabbinic community is an obvious influence in determining the plurality of practices and opinions that the Bavli records. Its variety is formed in the image of the community that was its home. Second, the rabbinic estate, which aspired to lead the Babylonian Jewish community as a whole, knew well how difficult an aspiration that was to realize. Though rabbinic power in Babylonia continued to increase after the third century, it is evident that the rabbis' power to coerce other Jews remained limited. To be sure, the rabbis claimed to have had a special relationship with the exilarch and claimed, as well, to have controlled the Jewish court system. But even if their claims are accurate (as they may be, at least in part), this power was one

that the rabbis had to win, and once they succeeded, it is likely that the government placed significant restrictions on this power.[30] Whatever the precise extent of their power, it was certainly necessary for the rabbis to secure their position by gaining the voluntary support of the Jewish community at large.

For this reason, the rabbis must have understood the need for, and the power of, a persuasive presentation of their views. In connection with this factor, as well, the picture preserved in the Bavli reflects social conditions at large. The rabbinic station in Babylonian Jewish society preconditioned the rabbis to think in terms of justification and persuasion and caused them to recognize that such an approach was preferable to apodictic declaration.

## Theological Underpinnings

It is more difficult, at least at first blush, to claim—as I did earlier in this chapter—that the rabbis thought "universally valid truths" to be inaccessible. After all, they possessed the written word of God, enhanced by an authoritative oral tradition. How then could they believe that truth was not fully available to them?

As difficult as this conclusion might seem, I suggest that it is precisely this recognition that is embodied in the Talmudic form, as I have argued from the beginning of this chapter. How, in light of the presence of "Torah," both written and oral, can this conclusion be justified?

We must begin with a rabbinic view that apparently gained ascendency long before the Bavli, namely, the opinion that prophecy, or direct communication from God in any biblically known form, was no longer present.[31] The Mishnah, first, records this view: "When the earlier prophets died, the Urim and Tumim were annulled" (Sot. 9:12). The Urim and Tumim were a means by which the High Priest could ascertain God's will; they would record God's response to specific inquiries (see Num. 27:21 and 1 Sam. 28:6). Their loss of power meant that communication with the Divine, originating on the human plane but expecting explicit divine response, was no longer available. The Tosefta adds: "When Ḥaggai, Zechariah and Malachi, the latter prophets, died, the Holy Spirit ceased in Israel, but even so they [= the Divine] would notify them [= Israel] by means of a Heavenly voice" (Tos. Sot. 13:2). Prophecy, being direct communication of the Divine with humanity, had therefore also ended. So-called heavenly voices (more literally, "echoes") remained,





but these were not biblical. They were clearly inferior to prophecy itself, and, as we learn in later rabbinic literature, the rabbis considered it legitimate to ignore these voices (see b. B.M. 59b); the same course of action could never have been justified in the face of actual prophecy. Considered in combination, these texts make it clear that the divine will could no longer be known through its unambiguous emergence into this world. The rabbis, unlike their biblical predecessors, were largely cut off from active revelation of God's will.

However, the rabbis did, of course, preserve a record of divine will in scripture. The problem was this: if divine will was available only in a text, then that divine will could be known only through interpretation. God's part of the revelation was essentially complete; the human contribution to the divine record would now begin in earnest. But—and here is the difficulty—interpretation was (and remains) a profoundly *human* activity, human in all of its aspects. Hence interpretations would always be multiple because each human being reads a text in a different way, and each interpretation would always, in some degree, be incomplete. Humans are, by definition, imperfect; it is this that distinguishes them from God. Human interpretations must also, therefore, be imperfect, and even, on frequent occasions perhaps, wrong. Where the divine message ceases to be active and becomes dependent on human interpretation, it must always, in some sense, remain unavailable.

On a mythic level, the rabbis may have wanted to deny this conclusion (see Tos. Sot. 14:9: "When the students of Shammai and Hillel who did not serve [their masters] adequately increased, disputes multiplied in Israel and two Torahs were created"). But the very system that they constructed, in its broad willingness to include multiple opinions and interpretations, confirms that they recognized the meaning of the situation that they faced. This recognition was not complete, however, at the earliest stages of rabbinism. The Mishnah, though it does often record alternative opinions, also often does not. The overwhelming insistence on alternatives in interpretation would await the Bavli, and it was at the time of its composition that the full implications of the position described earlier would be recognized and affirmed. It should be no surprise, moreover, that the fullest extension of this recognition would wait so long. It is radical to deny that a single divine truth is available. This fact, at the earliest stages, had to be spoken softly. It could be fully realized only slowly and cautiously, and its comprehensive application had to wait until much later.

If divine truth could be approached (though never fully realized) only

through human endeavor, then human reason, and the process by which it is applied, had to become central; the human effort, even when in error, had to be affirmed.[32] This latter point is extremely important. If one wants to claim, as the rabbis did, that the divine message could be reached only through human interpretation, then one has to legitimate the outcome of that interpretation. That outcome, being human, would also, from time to time, be wrong. Nevertheless, error must be legitimated. The alternative—to deny error—would mean the downfall of such a system, since any interpretation would by definition be more or less incomplete. Accordingly, the rabbinic system had to affirm the consequences of the human contribution, even if those consequences were "clearly" incorrect.

This affirmation is stated explicitly in the well-known story of "the oven of Akhnai" (y. M.K. 81c–d, 3:1 and b. B.M. 59b). Briefly, the story relates a dispute between R. Eliezer (ben Hyrcanus, a tannaitic sage of the early second century) and R. Joshua and other colleagues. R. Eliezer tries to prove that the halakha should follow his opinion by invoking miracles like the uprooting of a carob tree by his command. Finally, a heavenly voice declares that the halakha should follow Eliezer, but R. Joshua responds and says (quoting Deut. 30:12) "it is not in heaven!" The opinion of heaven is irrelevant in these matters; the decision is to be made by the sages.[33]

Of course, we must assume that if the heavenly voice supported R. Eliezer's view, his view must have been closer to the "truth." Nevertheless, his truth is rejected, and the view of the sages, though objectively in error, is affirmed. What justifies this position? Both the Yerushalmi and the Bavli agree that its source is scripture ["it is not in heaven" and "incline after the majority" (Exod. 23:2)], scripture that is read out of context and in patent disregard of its simple meaning. Yet such interpretations are clearly considered legitimate, and in this context they explicitly affirm the triumph of the view of the sages, however erroneous that view might be. Again, both documents agree: because God's will has been written (this point is noted explicitly in both texts) it is now available to interpretation by the human mind.

The agreement described thus far should have been expected, given the openness of both documents to multiple interpretations. The point that emerges from the "Talmudic" form common to the Yerushalmi and the Bavli is the same: the most important concern may not be truth, but the process by which that truth is approached. Yet despite their obvious similarities, there are also important differences, differences that also manifest themselves in their respective versions of this story.



The most obvious difference is their presentation of the ban of R. Eliezer. In the Yerushalmi, the dispute between R. Eliezer and his colleagues is provoked by their having previously banned him. We are not told the reason behind the ban. In the Bavli, on the other hand, the ban is a consequence of Eliezer's refusal to heed his colleagues' decision and his insistence on calling for miraculous intervention to buttress his position. For the Bavli, in other words, the stubborn insistence on "truth" is to be condemned, even to the extent of banning the individual who exhibits such stubbornness. The patently human aspect of the system is to be affirmed absolutely, and the person who doesn't appreciate that the system requires this affirmation must be restricted from participation therein.

The second important difference between the two versions is the response (or absence thereof) to the conclusion "it is not in Heaven." The Yerushalmi concludes its discussion of this matter with that quotation. The Bavli, in contrast, wants to know what God's response to his denial of divine intervention might be. Its suggestion, placed in the mouth of the prophet Elijah, is that God's response is to laugh.[34] God positively rejoices that divine truth had been disregarded in favor of human endeavor.

This particular view is appropriate for the Bavli, for it is the Bavli (and not the Yerushalmi) that pursues the human process, and the alternatives of interpretation, with such complete exuberance. If God would rejoice at God's own "defeat," then God would certainly rejoice at the deliberation of the Bavli, which pursues, to such joyful length, the human contribution to "revelation." The system unquestionably endorses the human endeavor, recognizing that, despite its shortcomings, it is the only option we now have.

This recognition, of course, is precisely what we saw take place in the Bavli. Concern for the process began, as far as the record shows, in the middle (third–fourth) generations of amoraim. By the time of the anonymous gemara, the process became virtually the sole concern. Since it was in this process that alternative approaches to truth were presented, it was the process, finally, which had to become the focus of inquiry.

The consequences of this recognition cannot be overestimated. Pursuit of God's truth is, of course, a pious act. But the rabbinic system claimed that the full truth, buried in the words of scripture, can never fully be

uncovered. The best we can do is to seek the truth, to approach the truth. Since here, in the process, is where truth now resides, the process itself, *and the study of that process,* must become the ultimate act of piety. The process, known as *talmud torah,* is an independent value and therefore should be pursued for its own sake. The ultimate consequence of the admission that we no longer have prophecy is that talmud torah, the interface of divine word and human reason, becomes a meritorious act on its own terms, in service of nothing but itself.

It is for this reason that the Bavli insists on talmud torah. The Bavli does not merely record talmud torah but insists that the reader participate in it. That is the function of its "imaginary direct speech" (see TNR, p. 176). The text engages the reader personally in a dialogue, saying "and if you should say . . . ," "what might you say . . . ," "this comes to teach us . . . ," and so forth. By addressing you in this way, the Bavli demands that you speak to it. In addition, the Bavli is, despite its length, often extremely terse, requiring that you fill in the gaps. In this way, too, its voice is often only one side of a dialogue. You, the reader, must be its study partner.

It is also because of its sense of the independent value of talmud torah that the Bavli increases objections and responses at such length. Why, scholars have wanted to know, does the Bavli not go to the strongest objection or to the obvious answer first? Why does it repeat objections that are virtually identical? Why does it bring objections for which answers are already obviously available? The broad answer, again, is the same: all of these serve to increase talmud torah. Similarly, the variety of approaches that the Bavli records and the length to which individual inquiries sometimes go accomplish the same purpose. All embody the exuberant pursuit of talmud torah for its own sake.

Two examples will illustrate how central this "pursuit for its own sake" has become in the Bavli. The first is found at Beẓah 36a (Shab. 43a):

a. . . . R. Isaac said: A utensil may not be handled [on shabbat] except for purposes of a thing that [itself] may be handled on shabbat. . . .
b. Come and hear [a possible objection]: A mat may be spread over a beehive on shabbat, in the summer because of the sun and in the winter because of the rains, but on the condition that he not intend to capture [the bees. Now, a beehive may not be handled, so how, if R. Isaac is correct, could the mat be moved for this purpose?]
c. There too [we are speaking of a case where] there is honey [which, being food, may be handled].





d. R. Ukba from Meshan said to R. Ashi: This [answer] is fine in the summer, when there is honey [in the hive], but what can be said about the winter [when there is no honey]? . . .

David Halivni[35] suggests the following analysis of this text:

> It appears as though R. Ukba from Meshan [d] comes to refute the answer of the anonymous gemara [c]. . . .
>
> But why should someone imagine that the beehive in the baraita has no honey, and object from it to R. Isaac [a], and then force the respondent to say that it is not the case [that there is no honey], but rather "there too there is honey"?
>
> It therefore appears more likely that the initial supposition [b] (that the beehive has no honey) and the response "there too there is honey" are rhetorical, and do not represent bona fide opinions. Originally R. Ukba from Meshan himself objected from the baraita . . . and originally objected from the [condition that would pertain in the] winter, but the author of the anonymous gemara interrupted him in the middle . . . in order to explain why R. Ukba from Meshan objected only from [the condition that would pertain in] the winter.

In other words, the initial objection and response, as recorded in this gemara, are in their present form the artificial creations of the gemara's author. Obviously a beehive would have honey in the summer, and so again, obviously, the only part of this baraita that would present any problem to R. Isaac is that part which permits this action even in the winter. Unless all three steps of this exchange (b–d) were originally only one, the first objection and response make no logical sense.

Halivni suggests that the author created this artificial exchange (b–c) to explain, emphatically, why the objection was being brought only from the condition of the hive in the winter. But Halivni himself admits that such an explanation was not really necessary. Another factor must be at play here, therefore. That factor, I would suggest, is the mere love of increasing argumentation. The question and answer are "rhetorical" because it is the give and take of talmud torah for its own sake that the Bavli most highly values. The exchange, even if less than necessary, is meritorious on its own terms.

The same is true at Kiddushin 29b. There the gemara records the following tradition and brief deliberation:

a. R. Huna . . . said: If a man is twenty years old and has not taken a wife, all his days are [spent] in sin.
b. Would you think [actually] "in sin"?!

c. Rather, I will say "all his days are [spent] in thought of sin."

In evaluating this exchange, the question we must ask is whether it is reasonable to read R. Huna's tradition (a) as suggesting literally that such a man would spend all his days in sin (where "sin" means sexual impropriety). Would we, in the absence of (b–c), have understood it literally, or would we, in any case, have understood it to be an exaggeration? I see no way to avoid the latter conclusion and, if so, then (b–c) is telling us something, more specifically perhaps, that we already know. Again, it seems that there is no real problem with the meaning of the original tradition, and the brief exchange that accompanies it is suggested by this text's author only to increase the objection and response format that the Bavli prefers. Here the text speaks for us, voicing our natural interpretation, and defines precisely the steps for evaluating such a tradition that in our own minds might not have been apparent at all. The system flourishes, though, on making explicit the applications of reason that we would never, in the absence of such amplification, have seen fit to value so.

To recapitulate, the argumentational form of the Bavli represents a moderation of truth claims and an admission that divine truth is available only in the multifarious play of reasoning and interpretation, and even then, finally, only imperfectly. The words of scripture may embody truth, but because we can explore that record only through the application of our own reasoned judgment, in interpretive acts that are acutely human, in the end the full truth must elude us. Because any single interpretation (by definition) grasps only part of the truth, alternative interpretations are always called for. Because any interpretation may embody a kernel of the truth, even views that are for practical reasons rejected should be preserved and studied for their own unique wisdom.

All of this, as noted previously, is not without limits. The system of deliberation that the Bavli describes assumes a particular (rabbinic) community with particular norms and, presumably, with particular boundaries. It is clear, from the perspective of this community, that certain interpretations are to be rejected. For example, the destruction of the Temple cannot mean that God has rejected the Jews for failing to accept Jesus. Such a view, though not inherently less reasonable than rabbinic interpretations of the same event, are nevertheless outside the community. But, even given the boundaries assumed by the rabbinic community, the legitimate alternatives remain theoretically infinite and the room for dissent remains vast.[36]





For example, suffering may be the consequence of sin (see Ber. 5a), but then again it may not be (Shab. 55b). God may be responsible for the death of individuals, but others may die by sheer accident (Hag. 4b–5a). Something as basic (or so Jews have come to believe) as the recitation of the Shema, declaring the unity of God, may or may not be required by the Torah (Ber. 21a). And even the Torah itself, the source of the truth that the rabbis seek, may have been given in individual scrolls and combined at the end of the forty years in the desert or it may have been given in a "sealed" form and memorized by Moses, in whole or in part, until the last of it was revealed to Moses at the end of the forty-year sojourn in Sinai (see Git. 60a). It is true, on the one hand, that there are limits in the alternatives that talmud torah might admit; on the other hand, one ought to be extremely cautious with respect to what those limits might be.

I have argued, in this chapter, that the form of the Bavli itself carries with it the meanings and positions described here. If I am correct in these precise conclusions, there should be other, more "explicit" evidence of the views suggested here. The oven of Akhnai story, mentioned previously, is one example of such explicit evidence. Other examples, of a variety of sorts, are also available. In the next chapter we will examine such cases, expanding upon and refining the preceding analyses.

## Appendix: The Erosion of Authority in the Bavli's Sources

I claim in this chapter that the Bavli's form, in its very nature, compromises or erodes the authority of the texts upon which it comments and of the sources that it employs. This claim will be difficult for some students of the Bavli and so, in addition to the theoretical analysis of this chapter, I will here justify the claim through detailed analysis of several illustrative texts.[37]

I begin with two brief, explicit examples.

### *I. Yevamot 46a–b*

a. 1. Our sages taught: A [potential] convert who was circumcised but did not immerse, R. Eliezer says "Behold, he is a convert, for so we have found that our fathers [standing at Mt. Sinai] were circumcised but did not immerse."

2. [If he] immersed but was not circumcised, R. Joshua says "Behold, he is a convert, for so we have found that our mothers [at Mt. Sinai] immersed but were not circumcised.
3. And the sages say, "[if he] immersed but was not circumcised [or] was circumcised but did not immerse, he is not a convert until he [both] is circumcised and immerses.

b. [Several steps of deliberation follow, including case III below.]
c. R. Ḥiyya b. Abba said R. Yoḥanan said, "He is certainly not a convert until he [both] is circumcised and immerses."
d. Obviously! [If there is the opinion of] an individual and [of] a majority, the halakha is like the majority [and above, in (a.3), it was the sages—a majority—against R. Eliezer and R. Joshua, who expressed the opinion that R. Yoḥanan now confirms. Why is it necessary for Yoḥanan to do so, given that we could have arrived at the same conclusion ourselves?]
e. Who is "the sages" [of (a.3)]?
f. R. Yose, for it is taught [in a baraita]. . . . [Since what is called "the sages" in the original baraita (a) is now claimed to be, in fact, the opinion of an individual, it is necessary for R. Yoḥanan to confirm that opinion.]

The compromise of the authority of the source in this interpretive exercise is unambiguous. The opinion in the baraita that ought to be accepted, for reasons of halakhic procedure, is that of the sages (a.3). This turns out, in fact, to be the case; the gemara does not change the baraita's ruling. It does, however, change the baraita's authority. Because R. Yoḥanan (c) tells us something that we should already know ("Obviously!") the gemara concludes that the baraita does not speak for a majority at all, only for R. Yose. For this reason, what appeared to have unimpeachable tannaitic authority now requires the support of amoraic authority. The assent of the amoraic master, R. Yoḥanan, does not strengthen but instead weakens the authority of the source to which it is addressed. The amoraic tradition, in turn, is also weakened, for, though Yoḥanan's statement is no longer redundant, it is now aligned with an opinion that is not that of the majority but only of an individual.

A short sequence at 47a approaches its source in a manner similar to this first case. The precise nature by which it weakens the authority of that source is different, though, and in some ways more provocative.





### *II. Yevamot 46b–47a*

a. 1. Our sages taught: If someone came and said "I am a convert," is it possible that we should accept him? Scripture says "with you" (Lev. 19:33), [meaning] someone who is confirmed to you.
2. If he comes and his witnesses are with him, from where [do I know that he is believed]? Scripture says "And if a convert dwells with you in your land" (ibid.).[38]
3. I know this only with regard to [the convert] in the land; for [the convert] outside the land, from where [do I know it]? Scripture says "with you" (ibid.), [meaning] in any place where he is with you.
4. If so, why does scripture say "in the land"? In the land he must bring proof, outside the land he needn't bring proof, [these are] the words of R. Judah.
5. And the sages say, "whether in the land or outside the land he must bring proof."

b. [several steps not relevant to our analysis follow]
c. R. Ḥiyya b. Abba said R. Yoḥanan said: The halakha is, whether in the land or outside the land he must bring proof.
d. Obviously! [If there is the opinion of] an individual and [of] a majority, the halakha is like the majority!
e. What might you have said? R. Judah's opinion makes sense, for scripture supports him.
f. [The tradition of Ḥiyya b. Abba in the name of R. Yoḥanan] comes to teach us [that Judah's opinion, nevertheless, is not the law].

Again, a tradition attributed to R. Yoḥanan (c) merely states that the halakha follows the majority opinion (a.5) expressed in a baraita. Since this should obviously be the law in any case, the gemara is troubled with R. Yoḥanan's ruling; it is unnecessary. To justify Yoḥanan's statement, then, the gemara argues that it *is* necessary because one might think that, despite a contrary majority opinion, the law should follow R. Judah since his opinion is supported by scripture. R. Yoḥanan must therefore teach us that, whatever the thrust of scripture, the halakha follows the sages.

As in the previous example, the support of R. Yoḥanan here weakens the opinion it comes to affirm, for to justify Yoḥanan's contribution we are forced to conclude that scripture supports a contrary opinion. We therefore see that, according to the gemara's thesis, scripture and halakha do not here align. Furthermore, the gemara's proposal for the function of

Yoḥanan's statement here (to declare halakha where scripture is not supportive) suggests that in other contexts, where rulings such as that of R. Yoḥanan are not present, it is legitimate to question the opinion of the majority on the basis of the sense of scripture. If such a suggestion were truly adhered to, the authority of the earlier system would be severely threatened, because rules of decision making (majority–minority) would now be secondary to fresh rereadings of scripture. It is difficult to imagine the rabbinic system actually sustaining such a compromise.

It would be easy enough to add many illustrations to these. But if, as I have claimed, this process is inherent in the very form and method of the Bavli, it would be of greater interest to inquire whether the Bavli's authors were sensitive to the effects of what they were doing. Did those who composed the Bavli understand that their deliberation on authoritative sources would inevitably erode the authority of those sources? The answer to this question is crucial because, if the answer is affirmative, then we will be forced to conclude that the authors of the Bavli were in a significant sense "untraditional."[39] If, on the other hand, the answer is negative, then we will view them as mere unwitting facilitators of a highly innovative, but not consciously untraditional, redefinition of Judaism.

One way to answer this question would be to accumulate cases of the sort examined earlier,[40] assuming that the greater the number of such instances the more likely it is that the authors of these texts understood their effect. But, in the end, this exercise would be of only limited value because one could still argue that it is only in cases that employ these and similar terms that the erosion of authority was recognized by the Bavli's authors. We will gain more by examining cases where the compromise of authority is embedded in larger deliberative structures. If we could show a trend toward the erosion of authority in extended, carefully wrought compositions, then we would be able, with greater confidence, to suggest that the consequences discussed previously were not unintended. If the author, in a variety of instances, orchestrates his sources to highlight the weakening of authority, then we should assume that such a consequence is a conscious outcome of the Bavli's overall approach.

Limitations of space restrict our examination to two texts that exhibit evidence of conscious weakening of authority.

The first text, taken from the same context as the preceding examples, follows the first baraita (I.a) with several comments on the opinions of R. Eliezer and R. Joshua. The immediate question is from where does



R. Joshua—who, in the opinion of the gemara, insists on immersion for all conversions—learn the law?

### *III. Yevamot 46b*

a. From where does he learn it?
b. If you say, since it is written "Go to the people and hallow them today and tomorrow and launder their garments" (Exod. 19:10), and what if in a place where laundering is not required [such as when a man has had an emission of semen] immersion is required, in a place where laundering is required, doesn't it follow that immersion is required?!
c. But maybe [in that case the laundering was required] for cleanliness in general.
d. Rather, from here: "And Moses took the blood and cast it upon the people" (Exod. 24:8), and we learn [in oral tradition] that there is no sprinkling [of blood] without immersion.
e. Whence do we learn it for the mothers [meaning, for the women at Sinai]?
f. It is logic, for if not [for immersion], with what did they enter beneath the wings of the Divine Presence [= become partners to the covenant, or convert]?

This deliberation, seeking a source for the requirement that converts, both men and women, immerse in a ritual bath is remarkable for the way it attenuates the authority of its purported source. It begins by asking the source for the practice among men, and its first proposal, despite the gemara's explicit objection (c), is in many ways its strongest.[41] It points us to scripture—to the text that describes the preparations for the revelation at Sinai—and suggests that by means of a simple *qal vaḥomer* (a fortiori, reasoning from lesser to greater) we could derive the requirement for immersion (after the model of the people of Israel at Sinai, the first "converts"). It denies the viability of that source, though, and concludes that the correct source is, instead, a combination of scripture and authoritative oral tradition. For women, finally, the source is said to be logic.

To be noted here, first, is the sequence: scripture–tradition–logic. The first proposed source of the practice (b) is scripture "itself." Something derived from scripture by *qal vaḥomer* is thought, in the method of the rabbis, to be inherent in scripture, so much so that when a certain lesson

can be derived from scripture in this manner, it is deemed unnecessary for scripture or for some later authority to state it explicitly (it would be "Obvious!"). The second derivation (d), though it employs scripture, is in fact dependent on oral tradition, for there is nothing in this scripture, in the absence of the tradition, to suggest this particular practice. With relation to the first proposal, therefore, this proposed source, though conclusive, is inherently less authoritative. Finally, the derivation for women (f) is unrelated to scripture, and logic alone is recognized in the Bavli to be the least authoritative possible source.[42]

It is not merely this progression that weakens the ultimate source of the immersion requirement. Rhetorically, the text fashions its arguments to create difficulties and inconsistencies that will support the same point. To begin with, it is curious that the first proposed derivation requires the assistance of the *qal vaḥomer* at all. The word that I translated (b) as "hallow" means, according to the *Hebrew and English Lexicon of the Old Testament,*[43] to hallow "by washing" (= immersion), and it is parallel in the same verse to "laundering." Moreover, this root still had the sense of "washing" in rabbinic usage (see, e.g., m. Yom. 3:6). To be sure, far more creative derivations than the one this would have required are known in rabbinic interpretation, and so, if the possibility of using this verse as a direct, unadorned source for the immersion requirement existed, the question of why this was not the case remains. The addition of the *qal vaḥomer* removes scripture one minute step from being the direct source of the practice in question, and this should be seen, therefore, as part of the gemara's overall attempt to remove scripture, the most authoritative source, as the possible direct source in this context.

This same impact is achieved by a second oddity in the gemara's argument. The source that the gemara deems conclusive for men should also have been sufficient for women (for this reason we read the two together, though they are seemingly two separate questions in the gemara).[44] The source for men [quoted in (d)] speaks of "the people," not of "the men" or "the children (presumably male) of Israel." Though there is room to argue that the biblical text did not include women in "the people"—at Exodus 19:13 "the people" are told not to approach women—this gemara, beginning with the baraita, obviously considers women to be included in the population that the term "people" describes in Exodus chapters 19 and 24. In any case, given the ambiguity of the term, it is at least noteworthy that women are explicitly relegated to another category at this point in the deliberation, and in a way that demands



that the source for their immersion practice be further diminished in authority.

The direction of this progression is therefore from more to less authoritative. The way this diminution in authority is accomplished is twofold: first in the literal progression of suggested sources and second in the careful manipulations (the *qal vaḥomer,* the displacement of women from "people") that emphasize the distancing from scripture that is taking place. The thesis of this gemara is that the people of Israel at Sinai serve as the model for all future converts because they, for the first time, accepted Torah. What they did, therefore, future converts should also do. But when the text then seeks the sources for the conversion rituals that it obviously means to defend it winds up admitting that the sources are dubious indeed. As in the earlier brief examples, the halakha remains firm, but the sources for that halakha become ever less secure.

The second case that we will examine at greater length is in certain respects like the first, seeking a source in scripture for a particular practice (burial of the dead) and proceeding to weaken its case. The precise manner by which it compromises its source is more elaborate and demanding, and it requires detailed analysis.

### *IV. Mishnah Sanhedrin 6:4–5, Bavli Sanhedrin 46b*

MISHNAH:

a. We remove him (the executed convict) [from his hanging position] immediately
b. and if he remains overnight, this is a transgression of a negative commandment, as it says "do not leave his body overnight on the tree, for you shall surely bury him . . ." (Deut. 21:23)
c. . . . and not only that, but anyone who leaves his dead [unburied] overnight transgresses a negative commandment. . . .

GEMARA:

a. R. Yoḥanan said in the name of R. Shimon b. Yoḥai: From where [do we learn] that if someone leaves his dead [unburied] overnight he transgresses a negative commandment?
b. Scripture says "for you shall surely bury him." From here [we learn] that if someone leaves his dead overnight that he transgresses a negative commandment.

c. There are those who say [that this is the correct version of the tradition]:[45]
d. R. Yoḥanan said in the name of R. Shimon b. Yoḥai: From where [do we learn] a hint for [the practice of] burial from the Torah?
e. Scripture says "for you shall surely bury him." From here [we learn] a hint for burial from the Torah.
f. Shapur the king said to R. Ḥama: Where [do we learn] burial from the Torah?
g. He was silent and said nothing to him.
h. R. Aḥa b. Jacob said: The world is given into the hand of fools, for he should have said "for you shall bury."
i. [But this can be taken to mean] that he should make him a coffin.
j. "Surely" [can instead be used as the source!]
k. He (Shapur) doesn't take this [repetition of the verbal root, translated here by the emphatic "surely"] to be meaningful.
l. And say [that it is required] since the righteous [biblical figures] are buried.
m. It is merely the custom of the world.
n. [Say that it is required] since the Holy One, blessed be He, buried Moses.
o. [God did so] in order not to change the custom.
p. Come and learn [an answer from this verse]: "And all of Israel shall mourn him and bury him" (1 Kings 14:13).
q. In order not to change from custom.
r. "They shall not be mourned nor buried, but they shall be as dung on the face of the earth" (Jer. 16:4).
s. In order to change from custom [as punishment for the evil].
t. They asked: Is burial because of shame or because of atonement?
u. What difference does it make?
v. [It makes a difference] if he said "I do not want them to bury that man (= himself).
w. If you say that it is because of shame [to the living who survive him, then] he hasn't the power [to do this],
x. but if you say that it is because of atonement [to himself], well, he said that he doesn't want atonement [and that he has the power to do].
y. Come and learn from [the fact] that the righteous [in the Bible] are buried, and if you should say that it is because of atonement, do the righteous require atonement?



z. Yes, for it is written "there is no just man on earth who does good and does not sin." (Eccles. 7:20)
aa. Come and learn: "And all of Israel shall mourn him and bury him" (1 Kings 14:13), and if you say that [burial] is in order that he have atonement the other [males of the house of Jeroboam, who are to be denied burial] should also be buried in order that they have atonement.
bb. This one who is righteous should have atonement, the others should not have atonement.
cc. Come and learn: "They shall not be mourned nor buried, but they shall be as dung on the face of the earth" (Jer. 16:4) [suggesting that burial is not for atonement, for the wicked too should be atoned].
dd. [Burial is denied here] that they not have atonement.[46]

This text first suggests a definitive source in scripture for burial of the dead (or for the prohibition of leaving unburied overnight) (a–b). An alternative version then suggests that there is no definitive source, but only a "hint" at the practice (c–e). Following, an exchange involving, among others, Shapur the king, reveals that the derivation is, for non-rabbis at least, dubious (f–k) and concludes that the most that scripture will indubitably yield is the fact that burial is required by custom (l–s). Finally, the gemara asks why burial is required (t–x) and, after several failed attempts at determining a solution, leaves the matter without conclusion (y–dd).

Again, a description of the potential sources considered in the several attempts to find a source or reason for this practice is revealing. The sequence traversed in the gemara is this: scripture–"hint"–custom–logic. As in the Yevamot text, the first attempt is strongest and each following attempt rests on reasons of lesser authority. Moreover, each successive step undermines the authority proposed in the steps that preceded.

The first attempt (a–b) suggests a simple midrash halakha, one that is in no way more difficult than other rabbinic "derivations from Torah." Nevertheless, the reformulation of the Yoḥanan tradition (c–e) reveals that the first attempt is, in the minds of some, flawed, and the best that can be said of this verse is that it hints at the practice of burial. The following exchange (f–k) points to the same fact—that the initial derivation is flawed—and in a way that is more precise. The gemara admits here that Shapur would remain unconvinced, leaving us with the distinct impression that the proposed scriptural source is, in fact, unconvincing.

Seeking, then, other sources from scripture (l–s), the gemara admits that none is definitive and that they may, at best, be reflecting accepted custom. Last, the gemara asks the reason for burial, and its very doing so reflects its assessment that no answer has yet been given—the answer is not, in other words, "because scripture says so." The initial thrust of each of the proposed answers is that burial is to avoid shame to the living (each seeks to show why the answer could not be "atonement"), but even this remains unresolved, and the very absence of resolution serves to comment on the status of the enterprise as a whole.

The exchange with Shapur is a puzzling one. Why would the gemara want to step outside the rabbinic system (though it persists in claiming that Shapur shares certain concerns with that system) to show the weakness of the proposed rabbinic derivation? To be sure, the gemara is not addressed to Persians but to rabbis, and it is here bidding the rabbinic student to put himself in Shapur's place and similarly challenge the proposed derivation. For this reason other attempts at discovering a source are necessary. The first possible source is unequal to the task of proving what requires proof.

The final sequence (t–dd) is the most corrosive to the authority of any proposed source. By asking for a reason, the gemara suggests that reasons are as yet not definitive and thereby weakens the institution as a whole. In connection with this point the gemara is explicit: if the reason for burial is atonement, then it is possible, in certain circumstances, that burial would not be required at all (even *despite* the Mishnah which claims that "anyone who leave his dead [unburied] overnight transgresses a negative commandment). Maimonides is sensitive to the effect of the gemara's question here when he writes "if a person commanded that he should not be buried we do not listen to him, for burial is a commandment, as it says 'for you shall surely bury him' " (Laws of Mourning, 12:1). If it is possible to refuse burial, in other words, then it must obviously not be a commandment from the Torah, and despite Maimonides's subsequent opposition, this is clearly a possibility that the gemara considers seriously.[47] Appearing, as it does, as the final step in the deliberation on burial, this question–answer sequence leaves the matter of burial and its source unresolved and denies definitively the availability of an undisputed supportive authority.

So, like the preceding Yevamot example, the gemara here is straightforward in its attempt to weaken the authority of the institution that it treats. Moreover, since the immediate source of this institution is the Mishnah itself, the gemara's deliberation also compromises the authority





of that text. In truth, the gemara's purpose here is to question the source of the Mishnah's ruling (why does it say that "anyone who leaves their dead unburied is transgressing"?) and, carefully fashioning a stalemate, the gemara declares that the Mishnah is in fact without an authoritative source.

Why do these texts weaken the authority of the institutions for which they seek sources and of the texts upon which they comment? What do they accomplish by leading us further and further from scripture?

First, they self-consciously make evident the consequences of the gemara's method. They reveal an awareness of the fact that deliberation is a claim to one's own (the gemara's own) authority. By questioning an earlier authority, even if that question purportedly seeks a support or a defense, the result is an inevitable shift in authority to the questioner and a compromise of the power of the earlier authority. As the halakha itself states explicitly: "What is fear [of one's father]? . . . [One] should not support him [in a dispute]" (b. Kid. 31b). Commenting on the opinion of one's "father," even in support, extends him no honor; it implies that he needs such support, and all that does is weaken his authority. The texts examined illustrate the gemara's recognition that its method has this effect on its "father" texts and they apparently reflect its desire to affirm this consequence. Moreover, such examples show that the gemara is unapologetic in this regard; if its commentary compromises the authority of the earlier tradition, displacing the authority to its own masters, then so be it.

Second, if these examples are representative, it seems reasonable to conclude that the gemara here is saying something about its relationship to scripture. Despite the widespread effort in the gemara to seek scriptural sources, these texts seem to suggest that the consequence of that effort is not always a drawing-near to scripture. On the contrary, even when such sources are sought, the ultimate judgment concerning their viability is the gemara's alone. The gemara might admit a particular derivation or, as in these cases, it might deny a derivation and claim that the authority for a given practice resides elsewhere. In either case, there is in all instances a certain distance from scripture, because the gemara itself will dictate its relationship to scripture (as well as to all of the earlier tradition), not vice versa.

I have suggested in these final paragraphs that the gemara was aware of the consequences of its method. I have done so because the examples discussed, given their meticulous composition, reveal, in my reading, the

conscious intent of the gemara's author to treat his subjects with assertive, self-confident authority. The fact that the erosion which was mentioned takes place, in these texts, not in individual steps but in the deliberation as a whole suggests to me that the manipulation is not naive but mindful.

Reading other Bavli texts with a sensitivity to these possibilities will yield additional examples of this phenomenon. For example, in his analysis of the first gemara in the tenth chapter of Yevamot, Shamma Friedman notes that the gemara considers three possible sources for the law that one witness might be believed in certain circumstances, those sources being, in order, the Torah, logic, and an enactment of the sages (which is not, however, necessarily "logical").[48] In light of our discussion, we should now consider this to be evidence of the same trend.

Though I have not conducted the research to identify other similar instances, I am confident that they can be found. Be that as it may, the cases outlined here should be sufficient evidence of at least the more modest claim regarding the gemara's form or method and its consequences: the gemara, in its reference to various sources and authorities, compromises their authority and makes their voice essentially secondary to its own.

# RECONSTRUCTING THE TALMUD

## AN INTRODUCTION TO THE ACADEMIC STUDY OF RABBINIC LITERATURE

JOSHUA KULP AND JASON ROGOFF

Hadar Press

# FOREWORD

The study of Talmud was long regarded as an elite pursuit. Consider the following passage from Leviticus Rabbah:

| | |
|---|---|
| ויקרא רבה פרשה ב | **Leviticus Rabbah Chapter 2** |
| ...בנוהג שבעולם אלף בני | ...It is the way of the world that a thousand people |
| אדם נכנסין למקרא, יוצאין | enter the study of the Bible, and one hundred of |
| מהן מאה. מאה למשנה, | them complete it. One hundred enter the study |
| יוצאין מהן עשרה. עשרה | of Mishnah, and ten of them complete it. Ten |
| לתלמוד יוצא מהן אחד. | enter the study of talmud and one completes |
| הה"ד אדם אחד מאלף | it. This is the meaning of the verse: *I have found* |
| מצאתי...(קהלת ז, כח). | *one out of one thousand...* (Ecclesiastes 7:28) |

The picture here is clear: All Jews are expected to have literacy in the Bible, though only a small percentage of them achieve fluency. Of the biblically fluent who begin serious study of the Mishnah, a similarly small percentage attain mastery of the backbone of the Oral Torah. Those masters alone engage with *talmud*, here referring to the process of analytical and analogic reasoning that rests on a foundation of sweeping knowledge of the biblical and rabbinic canon. Similar patterns held for the later understanding of the term talmud—namely, the Babylonian Talmud—which remained the province of a rarified few; historically, only a tiny percentage of all students of Torah have attained mastery of this higher level of learning in any form.

In recent decades all of that has changed. On August 1, 2012, hundreds of thousands of Jews gathered all over the world to celebrate the end of the twelfth cycle of Daf Yomi, the daily schedule of Talmud learning designed

to take any person through the entire Babylonian Talmud in seven-and-a-half years. Works by Rabbi Adin Steinsaltz and Artscroll Publications have democratized the Talmud, making its give-and-take accessible to all, including those without fluency in the Hebrew and Aramaic original. What was once a mark of elite achievement has now become, in some circles, a standard of more basic literacy. Various authors and publishers have risen to the challenge by providing tools and support for this growing population to follow the give-and-take of the Babylonian Talmud, to understand its logical structure, and to decode its rich legal and theological lexicon.

This popular embrace of the Babylonian Talmud has also been accompanied by a dramatic rise in the percentage of Jews who have passed through the portals of higher education. In many parts of the English-speaking Jewish world, holding at least one university degree is the norm. As a result, most Jews, especially those with a strong predilection for text learning, have been extensively trained in critical thinking and reading. The university's assumptions regarding historicity, literary criticism, feminism, and anthropology have similarly penetrated the consciousness of most Jews who turn to learn Talmud today. Moreover, for Jews who have learned intensively in a Western mode prior to learning Talmud in depth, the mode of Talmudic discourse can seem foreign and strange, based on assumptions and logical leaps that can seem tendentious and unfounded.

In order to address these issues, other tools are necessary: tools for understanding the culture and practices that gave rise to the words on the printed page; tools for explaining how the Talmud came together as a document, first orally and only later in written form; tools for explaining the literary goals of a Talmudic passage, goals that can sometimes get in the way of—and even trump—its surface-level striving for truth and logical coherence; tools for comparing the different parts of rabbinic literature and for contrasting the major centers of Eretz Yisrael and Babylonia. Only tools such as these can truly quench the thirst of the learner who seeks full understanding of and identification with the Talmudic text as we have it.

Fortunately, these sorts of tools have been around for as long as Talmud has been studied. They have been developed more systematically over the last 150 years in various centers of Jewish learning, both in yeshivot and in universities. Historically-sensitive and academic-Talmudic scholarship began to flourish in Central Europe in the middle of the nineteenth century, spreading to the rest of the Continent and then to other prominent centers in the United States and Israel. Like the study of Talmud itself, this was originally (and has largely remained) an elite enterprise, attractive to a relatively small group of scholars who had mastery of the Talmudic corpus, but who wanted to understand it more fully and to appreciate the brilliance of its creators and redactors.



The time has now come for those tools to be democratized in ways that match the democratization of the body of literature they were designed to study. This volume is a first effort to bring the fruits of critical Talmud scholarship to a broader audience of learners and teachers: those who will not pursue a doctorate in rabbinic literature, but who desire and require guidance to understand what the Talmud is and how it works. The tools of critical Talmud scholarship can make powerful sense of an otherwise perplexing text and give learners a sense of the craft that underlies the Talmud and its creation, above and beyond its basic surface meaning.

For some, this book will function as a textbook and primer in the context of academic learning, making worlds of deeper scholarship accessible through concrete examples. For others, it will serve as a teaching guide, a way of helping students grasp key dynamics in Talmudic passages and rabbinic literature. More broadly, we hope this book will have religious impact, as well; deeper understanding of a text is a necessary prerequisite for identifying with it and allowing oneself to be guided and shaped by its distinctive voice and agenda.

Mechon Hadar is proud to bring this volume to the general public. Our work is committed to erasing the divide between rigorous intellectual inquiry and spiritual seeking. The Talmud sits at the nexus of those two pursuits: it is a foundation stone for all subsequent Jewish religious practice even as it is one of the Jewish people's most impressive intellectual and scholarly achievements. The scholarship modeled in this book is first-rate; we hope and believe it will deepen appreciation and affinity for the Talmud and the brilliant and inventive personalities who created and shaped it.

**Rabbi Ethan Tucker**
Rosh Yeshiva, Mechon Hadar

# INTRODUCTION

Over a thousand years ago, the eleventh century Babylonian rabbi Sherira Gaon eloquently captured in his terse and poetic manner the process by which the Babylonian Talmud was compiled: "Thus generation after generation (*dara batar dara*) the Talmud was gathered together." All classic rabbinic works—the Mishnah, Tosefta, the Midrashim and the two Talmuds—contain the words and voices of multiple generations of sages, but none contain the teachings of as many generations as the Babylonian Talmud, the most majestic and grandiose of all rabbinic compilations. The Bavli, as the Babylonian Talmud is commonly called, is a tapestry of hundreds of voices from diverse places and time periods. It contains legal rulings, biblical interpretations, folklore, and rabbinic legends that developed over the course of many centuries. While each voice was originally issued in a distinct generation, they were "captured" and frozen in time as a single work by editors who lived between the fifth and seventh centuries C.E. The purpose of this book is to guide the modern reader of the Talmud towards a deeper understanding of this extraordinary text by examining its historical development "*dara batar dara*," generation after generation. We sort the historical layers contained in the Bavli, reading each statement closely and understanding it within its particular cultural and historical context. We also compare the Bavli with earlier rabbinic literature, revealing a dynamic world of change, debate, and halakhic diversity far richer and more nuanced than that which is evident when one focuses on the static text found in the printed edition today.

The heart of this book is a critical commentary on nine passages from the Bavli using the techniques developed by critical Talmudic scholars of the last century. This book takes the reader step-by-step through the process necessary





to analyze the Bavli's text critically, highlighting the various methodologies and techniques employed by modern academic scholars.

Our commentary aims to bring academic Talmudic scholarship down from the towers (be they of ivory or Jerusalem stone) of academia and make it available to a broader audience. In addition, our goal is to bring this discipline and its findings to an English-speaking audience, one that might not be comfortable reading advanced scholarship in Hebrew. *Reconstructing the Talmud* is an attempt to introduce English readers to the world of Talmudic research and thereby open new avenues of exploring and understanding one of the world's great literary treasures.

## The Builder and the Archaeologist: What is Critical Talmudic Commentary?

We will try to illustrate the contrast between traditional Talmudic commentary and modern critical scholarship by analogizing the difference between them to the difference between a builder and an archaeologist. The traditional commentator can be likened to a builder, seeking to make the text most comfortable and convenient to inhabit. In a sense, he[1] is building a house in which he (or another person) might live. A traditional commentator is not especially concerned with determining the relationship between the early stages of the text and the later ones, or even with asking whether such stages exist. Rather, he seeks to understand the logic of each part of the text and how it contributes to the overall structure and flow of the passage. The traditional commentator wishes to harmonize the separate parts of the text, regardless of where these parts are found or where they originated. As a consequence, such a commentator often ends up "reconciling" points within a given sugya that do not easily accord with one another. He ends up harmonizing statements and even entire sugyot that seem to contradict each other. When statements or sugyot are extraordinarily difficult to interpret, the commentator will offer

[1] For the sake of convenience and due to the constraints of the English language we have used the pronoun "he" throughout this introduction. Of course traditional Talmudic commentators were all male. This is in no way meant to imply on our part that modern Talmudic study should be the sole province of men.

a strained explanation, one that "makes sense" even if it does not accord particularly well with the source he is interpreting. This harmonization is necessary because the Bavli has served and continues to serve as the foundation for normative halakhic practice. To return to our metaphor, it is less important to the traditional commentator how this house was built in the past; rather he wishes to strengthen the house so that it will continue to stand strong in the future, both for him and for others who wish to dwell within it.

To the academic Talmudic critic who stands "outside" the text, the first goal is to uncover how and when each of the individual components were built and assembled. Like an archaeologist whose interests are not limited to the building or city as it existed in its final form, a Talmudic critic wishes to understand when the cornerstone was laid, how each generation built upon it, and what each layer can reveal to us about the people who gave it shape and dwelled within its walls. The academic Talmudic scholar wishes to reconstruct the form of the text, be it an oral text or written one, as it existed in each and every generation, from its inception to its final concretization. This is not merely an end unto itself, nor is it solely an intellectual exercise. Rather, the Talmudic critic believes that uncovering each historical layer of the text will contribute both to our understanding of that specific layer and to our appreciation of the final edifice. The Talmud contains the voices of many generations of sages and editors, each with its own perspective and assumptions. To the Talmudic critic, understanding the Talmud as a whole depends on differentiating among these layers and appreciating each individually. The critical Talmud scholar recognizes distinct stages of historical development. The Mishnah originally meant one thing, an amora intentionally changed the law that stemmed from the Mishnah, and the Bavli's editors eventually modified the amoraic halakhah/interpretation as well. In contrast, traditional interpreters usually understood the Mishnah solely in accordance with the latest layer of interpretation. When the assumptions and literary sources that were available to any given sage—tanna, amora or anonymous editor—are uncovered, the intentions, values, beliefs and the overall contribution of this sage to the continuously accruing process of the creation of the oral Torah will be better appreciated.

Another hallmark of the Talmudic critic which distinguishes him from the traditional Talmudic commentator is that if at the end of his research the critic fails to understand how a sugya was put together, or what the original, intended meaning of a passage or a portion of a passage was, he should refrain





from offering a strained interpretation. A Talmudic critic searches for the original meaning of statements and passages as best as it can be ascertained. When mysteries and puzzles remain, the critic is neither obligated nor expected to offer a strained resolution. The critic does not strive to create harmony in a place where it does not exist. His desire is simply to explain in as objective of a manner as possible the full text and its component parts.

This type of critical research is important for all of rabbinic literature, but it is especially fruitful and effective when the object of inquiry is the Babylonian Talmud. The Bavli is a work that was composed over a period of hundreds of years. Its final editing did not conceal its internal signs of development and the independent sources embedded in it, but it did blur them to a great extent. This requires especially careful and thorough research, but it is research that is possible to undertake. On the one hand, the editors of the Bavli use technical terms to indicate when they are quoting tannaitic and amoraic statements. It seems to have been important to the editors to retain a sense of dialogue and dialectic between earlier and later generations. Indeed, the typical Babylonian sugya progresses chronologically from tannaitic to early amoraic and then to later amoraic sources. Unlike the Mishnah, the Bavli is inherently a stratified text. On the other hand, Babylonian editors did not always quote their sources word for word or preserve them in their original formulation. Rather, they frequently reworded earlier sources, changed their attributions and placed them in new contexts. They also adapted them to their own halakhic and literary needs. In sum, what makes the Bavli so interesting and such a rich source for analysis is its tendency to preserve the boundaries of earlier sources and to blur them at the same time.

## Critical Techniques

In this introduction we outline the critical techniques we employ throughout the book, techniques which we believe should be used in any modern critical commentary on the Bavli. Our hope is that this introduction to critical Talmudic commentary and the examples that comprise the chapters of this book will serve as a model for the reader who wishes to apply these techniques to whatever passage he may be learning. This book is not merely

a commentary; it is, we hope, an educational paradigm for how to learn the Bavli in a modern and critical manner.

Throughout this introduction we have cited brief examples in which a critical approach can be applied to better understand how a given text developed or what it means. These examples are discussed only briefly and are brought here just to illustrate succinctly the type of analysis in which we are engaging. They are meant more to answer the question of how does a critical Talmudic scholar analyze the Bavli than to provide comprehensive analysis of these passages. For many of these examples, more than one of these techniques must be employed in order to actually understand how the text or its components were conceived and how they developed over time. For simplicity's sake, we have focused on only one technique for each example, though most of these examples have been discussed more fully by other scholars. At the conclusion of each section is a reference to scholarly literature in English devoted to these subjects. These mini-bibliographies are far from comprehensive, but they will provide a starting point for the reader wishing to further his studies.

We begin this introduction by clarifying certain terms used throughout the book. We then offer brief chronological comparisons of distinct compositions: (1) the comparison of the tannaitic compositions, especially the Mishnah and Tosefta; (2) the comparison of the baraitot in the Bavli with their parallels in earlier compositions; (3) the comparison of the Yerushalmi and the Bavli. Next, we discuss the chronology within the Babylonian text itself, explaining the stratification of the Bavli's sugyot and the relationship between sugyot. Lastly, we present some non-comparative critical techniques, namely textual criticism, lexicography, realia, comparisons with non-rabbinic Jewish texts, and literary analysis.

## A Clarification of Terms: Stam, Editor, Redactor

In considering the various historical strata of the Bavli, it is helpful to begin by defining a few key terms. First is the "stam," short for the *"stam hatalmud"* or *"stamma degemara,"* a reference to the anonymous voice in the Bavli that frequently creates the discourse between sages, transitions between one source or sugya and another, and interprets the meaning of earlier sources. The term "stam" may be translated as "anonymous," for this voice in the Talmud speaks





without revealing its identity. The Bavli may be divided into an "amoraic" layer and a "stammaitic" layer, as we will discuss below.

Next, the term "editor" refers to the Babylonian transmitters who edited the sources they received, be they earlier sources from Babylonia or sources that originated in Eretz Yisrael. We assume that this process of "editing" occurred continuously as rabbinic texts were transmitted, and that each generation of rabbis occasionally passed on their traditions word for word but frequently reworded and revised them.

The term "redactor" refers to those rabbinic sages who were responsible for the organization of the Talmud, deciding which story or statement would be placed into the context of which mishnah. For instance, an earlier sage may have made a statement in one context concerning one topic; a redactor might then transfer the statement to a new context.

These three terms are meant to facilitate the understanding of the various ways in which rabbinic literature developed over the centuries. They do not necessarily refer to activities that occurred in three different time periods or that were performed by three different individuals. Rather, they refer to three different types of literary creativity. The same anonymous sage may take a statement made in one context and move it to another context (as redactor), then modify the words of the statement (as editor) and add some additional words of framework to help it fit its new context (as stam hatalmud). These three processes may occur in different periods, or they may occur simultaneously. What is important to us is that when studying a passage from rabbinic literature, the critical student must always ask whether one of these three processes occurred: Has the statement been edited? Has it been moved from its original context to another? Has discourse been added?

## A Word of Caution

We probably should provide a word of caution before presenting the examples found in this introduction. In this type of analysis no single interpretation can be asserted with one hundred percent certainty. We can suggest what statements and concepts originally meant and how sugyot developed over time. But as with material archaeology, textual analysis aims not at certainty but at plausibility. We are reaching nearly two thousand years into the past, trying

to reconstruct what the words of the rabbis meant to those who stated them, to those who heard them and to those who edited them. This is an exciting adventure, a chance to recreate the past, to see the Talmudic dialogue as it unfolded in each generation. We hope our suggestions are convincing and that they are historically accurate. But we realize that there will always be room for disagreement and for the existence of other interpretive possibilities. Such has always been the nature of Talmudic commentary, and in this respect critical commentary does not differ from traditional commentary. Nevertheless, the speculative character of this type of inquiry has not prevented us from offering bold suggestions as to the history and the meaning of the material at hand.

## Chronological Analysis: A Comparison of Early and Later Literature

One of the hallmarks of critical Talmudic analysis is the search for chronological development in rabbinic literature, its ideas and its laws. While traditional Talmudic commentators did not deny that halakhah and literature developed over time, they did not consistently search for such development. Traditional commentators regularly imposed ideas created in later stages of rabbinic development upon sages who lived in earlier generations. In contrast, critical analysis stresses that an idea or halakhah should not be assumed to have existed before we can be reasonably sure that it did. Thus, for instance, an idea attributed to a late amora may have been known to a tanna, but we cannot assume that it was.

Of course this raises the question of how to determine chronological layers. This is one of the most complicated questions that critical Talmudic analysis faces. We will outline here a few salient rules of thumb. First of all, as stated, an idea can be presumed to exist only upon its first concrete mention. We should note, however, that occasionally principles or halakhot are named in later generations, but are reflective of the thinking of earlier generations.

Occasionally changes in language assist in dating sources. As we discuss below, this aids especially in separating amoraic statements issued in Hebrew from the stammaitic explanations of those statements which were transmitted in Aramaic. On other occasions we can even trace development within the Hebrew language. However, such occasions are rare.





If the above two criteria were relatively objective, the main techniques for determining chronological development are far more subjective. Legal literature tends to develop in certain ways—from simpler halakhot to more complex ones; from opaque phrases to more explicated ones. Rabbinic literature in particular often seems to have developed from halakhot attached to biblical verses to independent legal formulations. Other techniques for determining chronological development will be explained in the examples that follow.

### A. The Relationship between Tannaitic Texts: Mishnah and Tosefta

The tannaim, the sages who lived before the Mishnah was codified around the year 220 C.E., composed two halakhic compositions and a series of halakhic midrashim on four of the five books of the Torah (not on Genesis). We will deal mostly with the two halakhic compositions, the Mishnah and the Tosefta, and the relationship between them.

The Mishnah and the Tosefta are similar to each other in significant ways. They are both organized topically into almost the same tractates.[2] Each tractate is dedicated primarily to a single subject, although digressions are not infrequent. This distinguishes these texts from midrashim, which are organized by the order of biblical verses. Unlike midrashim, the halakhot in the Mishnah and Tosefta usually can be read and understood independently of the biblical verses on which they are based.

For the most part the same sages appear in both compositions such that it is obvious that these two compositions originated among the same rabbinic circles. Furthermore, while we can often speak of a halakhah in one corpus which disagrees with a halakhah in another, the two are fundamentally part of the same halakhic and religious system. Finally, the language of the Mishnah and Tosefta is very similar, and only a trained expert can note salient differences between the two. Thus the similarities between the two far outweigh the differences.

The relationship between these two compositions has been a source of scholarly debate for over a hundred years. Indeed, without much exaggeration, one could say that the question of their relationship is among the most

[2] There is no Tosefta for Tractate Avot.

difficult and contentious issues in the academic study of rabbinic texts. The two main positions can be explained as two different ways of understanding the meaning of the word Tosefta.

Tosefta can mean "additional," in which case the Tosefta is a corpus of halakhot which supplements the Mishnah. It forms a sort of early commentary on the Mishnah, and has been even called the first "talmud" on the Mishnah. Those who subscribe to this theory will usually try to understand how the Tosefta comments on, expands upon, disagrees with or simply relates to the Mishnah in general.

The second position understands the word Tosefta as a "gathering" of material, gathered together in order to supplement the material found in the Mishnah. The editor of the Tosefta was familiar with material that was not included in and at times predated the Mishnah. He gathered and organized this material to parallel the Mishnah. Scholars who subscribe to this theory of the Tosefta strive to locate material in the Tosefta that was created earlier than the material in the Mishnah. As evidence, they point to halakhot found in our Mishnah which appear to be edited versions of the earlier material found in the Tosefta. An even more radical assertion of this position is that the Tosefta, *as we know it* (*i.e. as a composed work*), predates the Mishnah.

Our methodology generally follows that of Shamma Friedman, who holds that individual halakhot in the Tosefta are often earlier versions of the parallels in the Mishnah. In addition, Friedman agrees with most scholars who hold that the Tosefta also contains supplements that were added after the composition of the Mishnah. In other words, the Tosefta is a collection of halakhot, some of which were known by the editors of the Mishnah and were redacted into the Mishnah; but the Tosefta as a whole was composed as a supplement to the Mishnah. As such, the Tosefta at times assumes that one knows the material in the Mishnah.

Most importantly, we believe that however one understands the relationship between these two foundational texts, it is incumbent upon one who wishes to learn the development of any given sugya first to study the material as found in the Mishnah and in the Tosefta. Both tannaitic compositions must be studied on their own, without a priori assumptions informed by their interpretation in the Bavli. To put this more simply: when you open a sugya in the Bavli, the first thing you must do is understand the Mishnah on its own, and any relevant material from the Tosefta on its own. Only then is it





possible to delineate the various halakhic or other developments that have taken place with regard to the issue at hand.

The tannaim also composed a series of midrashic expositions on Exodus, Leviticus, Numbers and Deuteronomy. There are two midrashic collections on Exodus and Numbers and three on Deuteronomy, a phenomenon which causes us to ask how each midrashic collection is related to one another, as well as their relationship to the Mishnah and Tosefta.[3] We will consider this question when we encounter halakhic midrashim in our commentary on the Bavli. For now we should note that just as understanding a passage in the Bavli requires examination of any parallel material found in the Tosefta and Mishnah, so, too, it requires examination of any parallels in the halakhic midrashim.

## Example

**תוספתא פסחים ג:יב**
מיכן אתה אומר ההולך לשחוט את פסחו ולמול את בנו ולוכל סעודת אירוסין בבית חמיו ונזכר שיש לו חמץ בתוך ביתו אם יש לו שהות כדי שיחזור חוזר ואם לאו אין חוזר.

**Tosefta Pesahim 3:12**
From here you say: He who is on his way to slaughter his Pesah sacrifice or to circumcise his son or to dine at a betrothal feast at the house of his father-in-law, and remembers that he has hametz at home: if he has time to go back, he must go back [and remove it].
But if not, he does not go back.

**משנה פסחים ג:ז**
ההולך לשחוט את פסחו ולמול את בנו ולאכול סעודת אירוסין בבית חמיו ונזכר שיש לו חמץ בתוך ביתו אם יכול לחזור ולבער ולחזור למצותו יחזור ויבער ואם לאו מבטלו בלבו.

**Mishnah Pesahim 3:7**
He who is on his way to slaughter his Pesah sacrifice or to circumcise his son or to dine at a betrothal feast at the house of his father-in-law, and remembers that he has hametz at home: if he is able to go back, remove [it], and [then] return to his religious duty, he must go back and remove [it].
But if not, he annuls it in his heart.

[3] For a comprehensive introduction to the tannaitic midrashim see Menahem Kahana, "The Halakhic Midrashim," *The Literature of the Sages: Second Part*, ed. Shmuel Safrai, et al. (Assen: Royal Van Gorcum and Fortress Press, 2006), 3–106.

Both of these halakhot refer to a situation in which a person was on his way to perform a mitzvah right before Pesah and then remembered that he left hametz in his home. Both texts instruct him to return home and destroy the hametz only if he will have enough time to make it back in time to perform his mitzvah. The two passages are nearly identical, but there are two significant differences, both of which demonstrate that this particular passage of the Tosefta predates its mishnaic parallel. First, the Tosefta passage begins abruptly with the technical phrase "from here you say," which is not found elsewhere in the Tosefta.[4] This is a technical term which attaches an apodictic halakhah to a midrash which precedes it. The editor of the Tosefta had before him a source which included the midrash that served as the basis for the teaching (perhaps related to Mekhilta De-Rabbi Shimon b. Yohai 13:7), but he omitted it from the Tosefta and left the independent halakhah concerning hametz. This linguistic difficulty indicates that the version in the Tosefta is earlier because the opposite possibility, that the Tosefta would have added this difficult and abrupt phrase to the Mishnah, is extremely unlikely.

Second, the Tosefta does not mention the concept that one who cannot physically remove or destroy his hametz may "nullify it in his heart." The Tosefta rules that if one does not have enough time to return home, destroy his hametz and still perform the mitzvah he set out to perform (slaughter the Pesah, circumcise his son or participate in a betrothal celebration), he does not return. The Tosefta does not provide a solution to such a problem; the text simply rules that the individual does not return home because the performance of these positive commandments outweigh the obligation to burn the hametz. The author of this mishnah was troubled by the lack of a solution to this problematic situation—either he does not perform the mitzvah he set out to perform and will forever lose the opportunity to perform it, or he leaves hametz in his house on Pesah and thereby transgresses the prohibition that "leaven shall not be found in your house" (Exodus 12:19). To offer some sort of solution the Mishnah "invents" the notion of "nullifying in one's heart." Clearly the authors of the Tosefta were not familiar with this halakhah. Had they known of it, they would not have left the person on his way to perform a mitzvah with hametz still in his possession. The inclusion of this clause in the Mishnah is a sign of halakhic development

[4] The scribe of the Erfurt manuscript deletes the phrase because he believes it to be a mistake.





from the earlier toseftan source which does not contain a solution, to the later source in the Mishnah which has one to offer.[5] The Mishnah creatively solves the dilemma of observance of a positive commandment at the cost of transgressing the consequential negative commandment of owning hametz on Pesah. Had the Tosefta disagreed with this solution it would have likely explicitly ruled out the possibility of nullifying hametz in one's heart.

We should conclude this example by noting that this type of development is emblematic of developments from early to later versions of statements and passages. An earlier passage concludes in a somewhat unsatisfactory manner (i.e. he just leaves his hametz there). Later sages/authors offer creative resolutions. By comparing these texts we can uncover the dynamic process through which rabbinic literature and halakhah were created.

## Further Reading

Elman, Yaakov. *Authority and Tradition: Toseftan Baraitot in Talmudic Babylonia.* Hoboken: Ktav Publishing, 1994.

Friedman, Shamma. "The Primacy of Mishnah to Tosefta in Synoptic Parallels." In *Introducing Tosefta: Textual, Intratextual, and Intertextual Studies.* Edited by H. Fox et al., Hoboken: Ktav Publishing, pp. 99–121.

Hauptman, Judith. *Rereading the Mishnah: A New Approach to Ancient Jewish Texts.* Tübingen: Mohr Siebeck, 2005.

Walfish, Avraham. "Approaching the Text and Approaching God: The Redaction of Mishnah/Tosefta Berakhot." *Jewish Studies* 43 (2005–2006), 21–79.

## B. The Baraitot in the Bavli

The Bavli and Yerushalmi both cite extensively from the Tosefta and the halakhic midrashim. When embedded in one of the two talmuds, these sources are called 'baraitot," which is Aramaic for "external"—these are tannaitic sources external to the Mishnah. This term was first used by fourth-generation Babylonian

[5] Shamma Friedman, "The Primacy of Mishnah to Tosefta in Synoptic Parallels," *Introducing Tosefta,* ed. Harry Fox et al. (Hoboken: Ktav Publishing, 1999), 113–114.

amoraim and indicates the growing acceptance of the authority of the Mishnah.[6] However, the language and content of these sources as found in the two Talmuds is frequently not identical to that found in the tannaitic corpus itself. That is to say, the Bavli will quote a baraita which clearly is parallel to a halakhah found in the Tosefta, yet the language of the two sources, and sometimes the content of the halakhah, will differ. In such cases, our assumption is that since the Tosefta as a corpus is earlier than the Bavli, so, too, the individual halakhah is found in the Tosefta in an earlier and thus more original form.

This assumption provides a critically valuable technique in analyzing the development of ideas and laws. At times we can see that later editors modify tannaitic sources to match their later assumptions. At other times, they modified these sources in an attempt to harmonize the discrepancies found within tannaitic halakhah.

Some baraitot in the two Talmuds do not have parallels in the tannaitic collections. These baraitot pose a serious problem to the critical commentator, for it is unclear whether they were invented in post-tannaitic times, perhaps even in Babylonia, or whether they are authentic tannaitic teachings external to both the Mishnah and the Tosefta. We believe that the Bavli does contain authentic tannaitic teachings which were not, for whatever reason, included in the tannaitic compositions themselves. However, we also believe that some sources ascribed to tannaim in the Bavli were created in Babylonia after the close of the tannaitic period. Thus a baraita that appears in the Bavli and nowhere else could be an authentic tannaitic creation reflective of second-century Eretz Yisrael, but it could also be a much later amoraic creation that was attributed to tannaim for a variety of reasons. Hence each of these sources must be analyzed carefully for clues regarding its provenance.

**Example 1: Change In Language And Content**

| **בבלי פסחים קטז ע"א** | **תוספתא פסחים י:י** |
| --- | --- |
| אמר רבי אלעזר ברבי צדוק: כך היו אומרים תגרי חרך שבירושלים: בואו וטלו לכם תבלין למצוה. | מעשה ואמר להם ר' לעזר בר' [צדוק] לתגרי לוד: בואו וטלו לכם תבלי מצוה. |

[6] Neil Danzig, "Lehitpathut Hamunah Baraita," *Sinai* 89,5/6 (1981), 240–247.





| **Bavli Pesahim 116a** | **Tosefta Pesahim 10:10** |
| --- | --- |
| R. Elazar b. R. Tzadok said: The spice merchants of Jerusalem would say: Come and take for yourselves the spices for the mitzvah. | It happened that R. Eliezer b. R. Tzadok said to the merchants of Lod: Come and take for yourselves the spices for the mitzvah. |

The Tosefta relates a story in which R. Elazar b. R. Zadok went out into the market and encouraged the merchants of Lod to buy the spices necessary for making haroset. This story contains several clues as to the nature of its provenance. First, the fact that this story takes place in Lod and not in Jerusalem indicates that the story occurs after the destruction. Second, haroset was a post-Temple addition to the Pesah meal—the Torah mandates only the Pesah sacrifice, matzah and marror. Third, we know from elsewhere that R. Elazar b. R. Zadok did spend Pesah in Lod at least on one occasion (Tosefta Pesahim 3:11). Thus in the Tosefta R. Eliezer b. R. Zadok is pressing others to adopt what he believes should be used to supplement the foods eaten at the meal.

The Bavli's baraita is clearly parallel to this Toseftan source, but it includes significant changes which furnish the story with a new context. In the Bavli, R. Elazar b. Zadok does not participate in the incident—he relates the story. The incident itself takes place in Jerusalem and instead of the rabbi urging the merchants to buy spices, it is the merchants themselves who call out encouraging their customers to purchase spices for haroset.[7] This deliberate change has two important outcomes. First, the move from Lod to Jerusalem implies that the incident took place when the Temple was still standing, thus intimating that haroset was consumed in the Temple with the Pesah sacrifice. Second, the merchants' call to buy the spices to make haroset would indicate that this was already a widespread and accepted practice. An additional sign that this baraita was reworked in Babylonia and does not appear in its original tannaitic formulation is the addition of the word חרך, spice.[8] This word has its origins in Syriac, a dialect of Aramaic, which was widely spoken in the region beginning only in the fourth century. Due to the relatively late origin

[7] The same change is found in Yerushalmi Pesahim 10:3, 37d.

[8] The root ח.ר.ך means charred, referring to the manner in which the spices were prepared. See Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic*, (Ramat Gan: Bar Ilan University Press, 2002), 483.

of the word, it would be impossible for the word to have been original to the Tosefta, which was completed by the early third century.[9] Influenced by Babylonian Aramaic, the Bavli added the word into the tannaitic source.[10] Aside from demonstrating how the Bavli reworks an earlier source, this is an important example of how textual studies are an essential component of historical studies and how linguistic studies are an essential component of textual studies. A historian wishing to discover when haroset was added into the Pesah feast should rely on the evidence found in the Tosefta, not in the Bavli.

### Example 2: Babylonian Additions To Toseftan Baraitot

Occasionally the Bavli preserves the original baraita from an earlier source but augments it in a way that clearly reflects a Babylonian reality.

An example of this phenomenon appears in the following baraita concerning a man who offers the following stipulation when betrothing a woman:

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| **תוספתא קידושין ג:ט** | **Tosefta Kiddushin 3:9** |
| על מנת שאני תלמיד | On condition that I am a "disciple of the sages"— |
| חכם אין אומרים לא | we do not say that [he must be] like Shimon ben |
| כשמעון בן עזיי ולא | Azzai or Shimon ben Zoma. Rather anyone whose |
| כשמעון בן זומא אלא כל | townspeople treat him [as a disciple of the sages]. |
| שבני עירו נוהגין כן. | |

Tosefta interprets "disciple of the sages" to be someone who is regarded as such in his city. Thus the man is betrothed only if he is in fact regarded as a "disciple of the sages" in his city. The Bavli adds on to this baraita:

[9] For more on the history and development of Aramaic see Eduard Yecheskel Kutscher, "Aramaic," *Encyclopaedia Judaica*, ed. Michael Berenbaum and Fred Skolnik. 2nd ed. Vol. 2 (Detroit: Macmillan Reference USA, 2007), 342–359.

[10] Shamma Friedman, "Uncovering Literary Dependencies in the Talmudic Corpus," *The Synoptic Problem in Rabbinic Literature*, ed. Shaye Cohen (Providence: Brown University Press, 2000), 41–42.





| | |
|---|---|
| **בבלי קידושין מט ע"ב** | **Bavli Kiddushin 49b** |
| על מנת שאני תלמיד - אין | On condition that I am a "disciple of the |
| אומרים כשמעון בן עזאי | sages"—we do not say that [he must be] like |
| וכשמעון בן זומא, אלא כל | Shimon ben Azzai or Shimon ben Zoma. Rather |
| ששואלין אותו בכל מקום | anyone whom they ask anywhere concerning |
| דבר אחד בלימודו ואומרו, | one thing from his learning and he can respond, |
| ואפילו במסכתא דכלה. | and even from the "tractate of the *kallah*." |

Our concern here is not with the emendations to the baraita, such as the change from "anyone whose townspeople treated him [as a disciple of the sages]" to "anyone whom they ask anywhere concerning one thing from his learning and he can respond," but rather with the addition at the end. The "tractate of the *kallah*" was the tractate that was being learned in the Babylonian yeshivot during the month of the "*kallah*"—the biannual gatherings to teach Torah to the masses in Nissan or Elul. The term "*kallah*" seems to denote this biannual gathering. Thus the Bavli adds in that to be a "*talmid*" one need not be able to answer questions from anywhere in the rabbinic tradition, but just from the tractate being learned at that time. The "*kallah*" and the "tractate of the *kallah*" are Babylonian innovations. There is no evidence that this institution existed in Eretz Yisrael and it is never mentioned in Eretz Yisraeli literature.[11]

### Example 3: Babylonian Baraitot

Occasionally the Bavli's editors create a baraita, one which does not merely update or modify an original tannaitic teaching, but actually invents one. We term these baraitot "Babylonian baraitot." The following example is from Bavli Sanhedrin 56b. It is found in a sugya concerning which prohibitions must be observed by a "Noahide"—one who is bound by the covenant with Noah, i.e. a non-Jew.

[11] See Isaiah Gafni, *Yehudei Bavel Bitekufat Hatalmud* (Jersualem: Zalman Shazar Center, 1990), 213–225, esp. 216–218.

| | |
|---|---|
| בעבודה זרה: דברים שבית דין של ישראל ממיתין עליהן - בן נח מוזהר עליהן, אין בית דין של ישראל ממיתין עליהן - אין בן נח מוזהר עליהן. | With regard to idol worship: Acts for which an Israelite court executes, a Noahide is warned (prohibited from doing); [acts for which] an Israelite court does not execute, a Noahide is not warned. |

There is no parallel for this baraita in tannaitic literature. However, the language is paralleled by the language used in Tosefta Avodah Zarah 8:4 to explain the prohibition on fornication:

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|---|---|
| על גילוי עריות כיצד? כל ערוה שבית דין של ישראל ממיתין עליה בני נח מוזהרין עליה דברי ר' מאיר. | [They are prohibited from] fornication. How so? Any incestuous relationship that an Israelite court would execute for, a Noahide is warned against—these are the words of R. Meir. |

There are two possible ways to explain the existence of the baraita in the Bavli concerning Noahide idol worship. The first, and more likely explanation is that a later editor created this baraita to fill a gap in the Tosefta. He patterned his baraita after the baraita concerning fornication. Since Rava, a fourth-generation amora, comments on this baraita in the Bavli, it must predate him. The less likely possibility is that the Tosefta or some other tannaitic collection originally contained this baraita and it was subsequently lost. The Tosefta as we know it does explain the prohibition on idol worship, but the explanation is completely different from that found in the baraita in the Bavli. The following version is from the Vienna manuscript:

| | |
|---|---|
| על עבודה זרה ועל ברכת השם כיצד? גוי שעבד עבודה זרה וברך את השם לא ניתנה מיתה לבני נח אלא בסייף בלבד. | [A Noahide is liable] for idolatry and for blaspheming God. How so? A gentile who worshiped idols or cursed God [is to be put to the sword because] execution was given to Noahides only by the sword. |

The fact that there is a section in the Tosefta that does explain something about the prohibition of idolatry, specifically how a Noahide idolater is to be executed,





makes it exceedingly unlikely that the baraita in the Bavli, which concerns itself with the subject of which idolatrous actions committed by a Noahide are punishable, was originally part of the Tosefta and somehow was lost from that text. It is also unlikely that both baraitot were originally part of the Tosefta because the question "how so?" (כיצד) is answered with one halakhah and not two.

Furthermore, we should note a certain difference between the clause concerning fornication in Tosefta Avodah Zarah and the clause concerning idol worship in the Bavli. When R. Meir in the Tosefta refers to illicit relations for which Israelites are executed, this is a clear reference to distinctions made in Leviticus 20 between those forms of incest punished by death and those punished by *karet*. The reference point for R. Meir's distinctions is the Torah. In contrast, the list of idolatrous actions punishable by death and those which are merely forbidden appears for the first time in rabbinic literature.[12] That is to say, the reference point for the Babylonian baraita is another rabbinic source. Thus the truly tannaitic text refers to the Torah whereas the later Babylonian text, created to look tannaitic, refers to the Mishnah. This is another sign that the Bavli's baraita is a later development and is not an authentically tannaitic source.

## Further Reading

Elman, Yaakov. "Babylonian Baraitot in Tosefta and the 'Dialectology' of Middle Hebrew," *AJS Review* 16:1–2 (1991), 1–29.

Friedman, Shamma. "Uncovering Literary Dependencies in the Talmudic Corpus." In *The Synoptic Problem in Rabbinic Literature*. Edited by S. Cohen. Providence: Brown University Press, pp. 35–60.

## C. The Yerushalmi and the Bavli

The two Talmuds—the Yerushalmi and the Bavli—serve as commentaries and expansions of the Mishnah. The former was composed in the Land of Israel, and the latter was composed in Babylonia. The relationship between these two monumental compositions is one of the most fruitful fields of inquiry

[12] Mishnah Sanhedrin 7:7; Tosefta Sanhedrin 10:3.

in modern critical Talmudic scholarship, as we demonstrate in nearly every sugya analyzed in this book. However, we first need to clarify our assumptions concerning the relationship between these two texts.

When analyzing any parallel between these two compositions, our a priori assumption is that the literary format of the material in the Yerushalmi predates that of the Bavli. This is true even if the statements are attributed to Babylonian rabbis. Thus, for instance, the words of Rav will be preserved in a more original form in the Yerushalmi, even though Rav is a Babylonian amora. There are two main reasons that this is the case. First, the Yerushalmi was completed and redacted at least several generations before the Bavli. The latest amoraim in the Yerushalmi lived around the end of the fourth century C.E. In contrast, the latest amoraim in the Bavli lived between 100 and 200 years later, and it is likely that the Bavli continued to undergo editing for a long period of time after the death of the last named amoraim. Thus, the Yerushalmi in its totality is an earlier Talmud, one in which we can reasonably expect to find parallel material to exist in a less developed, more original form. Since the Bavli is later than the Yerushalmi, it seems to have been familiar with much of this Eretz Yisraeli material, although not necessarily with the Talmud Yerushalmi itself. The Bavli uses this material for its own halakhic, midrashic and literary purposes.

The second main reason is a corollary to the first—the Bavli underwent an editing process that was far more comprehensive and intensive than did the Yerushalmi. This is evident when we compare the constituent components of sugyot, i.e. baraitot (tannaitic statements) and memrot (amoraic statements) as well as the overall editing of the sugyot themselves. The anonymous voice of the stam is far more present and dominant in the Bavli, shaping the dialectical structure to a significant extent. In contrast, while there is an anonymous voice in the Yerushalmi as well, this voice is less dominant and seems to have intervened less in the structure and wording of the amoraic layer of the Yerushalmi's sugyot. For instance, Yerushalmi sugyot finish without a resolution far more often than do those in the Bavli. They consist primarily of baraitot and memrot, with less discourse about these sources than we find in the sugyot in the Bavli. These are all signs of an earlier Talmud.

For a variety of reasons, the Yerushalmi is often difficult to understand. First, the lack of stammaitic discourse makes the argumentation harder to follow. Second, the text is often corrupt because copyists made numerous errors





which went uncorrected. Third, the Yerushalmi was not subjected to the same extensive history of interpretation as the Bavli. By the time commentators began to occupy themselves intensively with the elucidation of the Yerushalmi, the Bavli had been established as the core text in the rabbinic curriculum for centuries. The dominance of the Bavli generally led commentators to explain the Yerushalmi according to words and assumptions found only in the Bavli. Frequently, traditional commentators even emended the Yerushalmi so that its content would correspond to the parallel Bavli sugya. Academic scholars have tried to correct this trend, and in this book we will try to do so as well.

Below are three examples of how comparative studies of the Bavli and Yerushalmi can inform critical analysis.

## Example 1: Stam In The Yerushalmi, Amora In The Bavli

Comparative studies of the Bavli and Yerushalmi demonstrate that there are cases in which the Bavli creates a memra—an amoraic statement—from words that exist as anonymous comments on amoraic statements in the Yerushalmi. The following is an example addressed by Shamma Friedman:[13]

| ירושלמי פסחים י:א (לו, ג) | בבלי פסחים קיד ע"ב |
|---|---|
| חבריא בשם רבי יוחנן צריך לטבל בחזרת שני פעמים. רבי זעורה בשם ר' יוחנן אינו צריך לטבל בחזרת שני פעמים. רבי שמעון בן לקיש אמר אם לא טבל פעם ראשונה צריך לטבל פעם שנייה... מתניתא פליגא על רבי יוחנן: יוצאין במצה בין שכיוון בין שלא כיוון. | אמר ריש לקיש: זאת אומרת מצות צריכות כוונה. כיון דלא בעידן חיובא דמרור הוא דאכיל ליה - בבורא פרי האדמה הוא דאכיל ליה, ודילמא לא איכוון למרור - הלכך בעי למהדר לאטבולי לשם מרור. דאי סלקא דעתך מצוה לא בעיא כוונה - למה לך תרי טיבולי? והא טביל ליה חדא זימנא! |

[13] Shamma Frideman, *Tosefta Atiqta: Pesah Rishon* (Ramat Gan: Bar Ilan University Press, 2002), 434–435, n. 52.

**Bavli Pesahim 114b**
Resh Lakish said: This [the mishnah] proves that commandments require intention, [for] since he does not eat it at the stage when bitter herbs are compulsory, he eats it with [the blessing,] 'Creator of the fruit of the ground,' and perhaps he did not intend [to fulfill the obligation of] bitter herbs; therefore he must dip it again with the express purpose of [eating] bitter herbs. For if you should think [that] commandments do not require intention, why two dippings: surely he has [already] dipped it once?

**Yerushalmi Pesahim 10:3 (37c)**
Havraya in the name of R. Yohanan say: He must dip lettuce twice.
R. Zeora in the name of R. Yohanan says: He need not dip lettuce twice.
R. Shimon ben Lakish says: If he did not dip the first time he must dip the second time.
A baraita disagrees with R. Yohanan: They fulfill their obligation with matzah whether they had intention or not.

Mishnah Pesahim 10:3 describes eating lettuce twice at the seder. In the tannaitic period, the first dipping was an appetizer course which included lettuce, while the second dipping consisted of lettuce in fulfillment of the commandment to eat bitter herbs (according to Mishnah Pesahim 2:6, lettuce is the preferred form of marror). In the amoraic period, the sages were unaware of certain Greco-Roman eating habits and they began to ask whether it was really necessary to eat lettuce twice. The first opinion, attributed to R. Yohanan in the Yerushalmi, states that one must still dip twice with lettuce. R. Zeora disagrees and says that lettuce need only be dipped once because as soon as it has been consumed one has fulfilled the obligation to eat marror, even if it was in the beginning of the meal. R. Shimon b. Lakish agrees in principle with R. Zeora and explains that dipping is required only later in the meal if it was not done at the earlier stage. The last section of the Yerushalmi quoted here raises a challenge to the first version of R. Yohanan's statement. The reason, according to this explanation of R. Yohanan, to eat lettuce twice is because the first time it is eaten, it is not eaten with the intention of fulfilling a mitzvah. Rather, it is eaten as an appetizer. But there is a baraita that explicitly states, at least with regard to matzah, that one can fulfill one's obligation even without intention. In light of this difficulty, one could conclude that





the opinion which requires two dippings of lettuce holds that these mitzvot (matzah and marror) must be fulfilled with the proper intention, whereas the one who holds that the first dipping is sufficient holds that intention is not required.

In the Bavli, the statement from the Yerushalmi that one is or is not required to dip twice has been transformed into a broadly applied abstract concept—"[all] commandments require intention." In addition, the attribution has been switched. In the Yerushalmi, Resh Lakish states that one need not dip twice, whereas in the Bavli he requires two dippings of lettuce. This reversal of attributions between the Bavli and Yerushalmi is a common phenomenon. In any case, these words, "[all] commandments require intention," attributed to the amora Resh Lakish, are actually the words of a Babylonian editor; they are not those of an early Eretz-Yisraeli amora. The abstract concept "commandments require intention" appears four times in the Bavli, each a stammaitic categorization of an earlier amoraic statement. This comparison helps us trace the development of abstract thought in halakhah. Early amoraim issued concrete rulings (one must dip lettuce twice/one need not dip twice) which were extrapolated by later authorities into broadly applying abstract rules (all commandments require intention).

## Example 2: Reading The Bavli Into The Yerushalmi

The following passage is an excellent example in which despite nearly identical language, the Yerushalmi and Bavli are in actuality discussing different matters. Mishnah Bava Batra 1:4 states:

| | |
|---|---|
| כותל חצר שנפל | If the wall in a [jointly-owned] courtyard should |
| מחייבין אותו לבנותו | fall down, they [the residents] can force the other |
| עד ארבע אמות. | [resident] to rebuild it up to four cubits high. |

This mishnah teaches that residents of a jointly owned courtyard can force the other residents to share in the costs of rebuilding one of the walls of the courtyard that has fallen. Each resident must share in the costs of rebuilding the wall up to a height of four cubits.

Yerushalmi Bava Batra 1:3, 12d, comments on this Mishnah as follows:

| | |
|---|---|
| כותל חצר שנפל כולו: | The wall in a courtyard that fell down: |
| רב חונה אמר: ובלבד | R. Huna said: As long as it is at the cost |
| כשעה שבנה עכשיו. | [of material] in which he built it now. |
| דאין הוה בני דכיפין | [It is clear] that if it was built of |
| בני לה דכיפין. | stones he rebuilds it from stones. |
| ברם אין הוה בני דכיפין | But what if it was built of stones and |
| ובנתיה בליבנין? | now he rebuilds it with bricks? |
| גבי ליה כיפין וכל | He collects [as if] it were stones and when- |
| שעה דנפיל בני לה. | ever it should fall, he must rebuild it. |

Shlomo Naeh[14] interprets R. Huna as commenting on the mishnah quoted above. The neighbor must repay the one who rebuilt the wall according to the cost of the rebuilt wall, and not according to the value of the wall when it fell down. The continuation of the passage is from the anonymous voice of the Yerushalmi, as can be seen from the switch in language from Hebrew to Aramaic. It is not common for amoraim to use two languages in such circumstances. This is an important criterion (see below) for separating amoraic statements from their later anonymous interpretations. This explanation asserts that if the wall was built of stones and he rebuilds it of the same material, then obviously the other neighbor must repay the value of the stones. But what if it was originally built with stones—the more expensive and stable material—and now he rebuilds it with bricks? The other neighbor should be able to demand that the wall be built with stones, so why should he pay for the bricks at all? After all, he could claim that the inferior material is not to his liking. The Yerushalmi answers that the other neighbor pays as if it had been rebuilt with stones and that the neighbor who rebuilt with bricks must now accept full responsibility to rebuild the wall should it fall again. This is a small modification of R. Huna's rule that he repays according to what was rebuilt.

In contrast to Naeh's explanation, traditional commentators on the Yerushalmi interpreted R. Huna's words as referring to an entirely different mishnah, mishnah three, which reads:

[14] Shlomo Naeh, "Behezkat Shelo Natan," *Atarah L'Haim*, ed. Daniel Boyarin, et al. (Jerusalem: Hebrew University Magnes Press, 2000), 151–152.





| | |
|---|---|
| **משנה בבא בתרא א:ג** | **Mishnah Bava Batra 1:3** |
| המקיף את חבירו משלש | One whose [property] surrounds another person's |
| רוחותיו וגדר את הראשונה | property in three directions, and he builds a fence |
| ואת השניה ואת השלישית | on one side, and on the second side and on the |
| אין מחייבין אותו. | third side, he is not obligated to share in the costs. |
| רבי יוסי אומר: אם | R. Yose says: if he builds a fence on the fourth |
| עמד וגדר את הרביעית | side, he must share in all of the costs. |
| מגלגלין עליו את הכל. | |

The Ramban, writing in the thirteenth century, was the first to attach R. Huna's statement to this mishnah. To simplify the translation we have used the following transliterations—*nikaf*—the one whose property is surrounded; *makif*—the one whose property surrounds the other person's property.

| | |
|---|---|
| **חידושי הרמב"ן בבא בתרא ד ע"ב** | **Hiddushei HaRamban, Bava Batra 4b** |
| נראה שכך פירושו: שאם | It seems that this is the meaning [of R. Hu- |
| עמד ניקף וגדר את | na's statement]. That if the nikaf fences the |
| הרביעית בכיפין והמקיף | fourth side with stones and the makif fences |
| גדר שלש בכיפין גלי ניקף | three sides with stones, the nikaf has shown |
| דעתיה דניחא ליה בבנין | that he was satisfied with this type of wall. |
| זה וגבי ליה דכיפין. | |
| ברם אין הוא הניקף בני | But if the nikaf built with stones and the |
| דכיפין, והמקיף בנתיה | makif built with bricks which are of less- |
| דליבנין שהוא בנין פחות, | er quality, the nikaf can say to him: If I pay |
| יכול ניקף לומר לו אם אני | you for bricks the fence will fall down to- |
| נותן עכשיו דמי לבנים | morrow and I'll need to build it again. |
| למחר נופל ואני צריך | |
| לבנותו פעם אחרת. | |

According to the Ramban, the *nikaf* can refuse to pay for the three walls made of bricks because the *makif* used material that is inferior to his fourth wall made of stone. Ramban's interpretation was adopted not only by traditional commentators, but even by Saul Lieberman, in his commentary on

the Yerushalmi. However, Shlomo Naeh has shown that this interpretation is very implausible. First, the words in the Yerushalmi, "if it was built," relate to a wall that was already in existence, as in mishnah four, and not to an entirely new wall as in mishnah three. Second, the root בנ"ה, used in the Yerushalmi, is the same root used in mishnah four, whereas mishnah three uses the root גד"ר to describe erecting a fence. Third, the first mishnah of the tractate distinguishes between courtyard walls built of bricks and those built of stones. Clearly, the terms in the Yerushalmi show that R. Huna was referring to mishnah four and not to mishnah three.

Why then did these commentators, including Lieberman, explain the Yerushalmi as referring to mishnah three—building a fence around a property? Lieberman himself reveals the motivation for his own interpretation and that of the Ramban:[15]

| | |
|---|---|
| ודברי רב חונא כאן הם כדבריו בבבלי כאן: הכל לפי מה שגדר. | R. Huna's words here are like his words in the Bavli (Bava Batra 4b): It all goes according to how he built the fence. |

R. Huna in the Bavli states, "it all goes according to how he built the fence." This statement is clearly referring to mishnah three, the mishnah concerning fences around the field, for the Bavli uses the root גד"ר. But due to the similarity between his statement in the Bavli and his statement in the Yerushalmi, commentators were drawn to interpreting the two statements as referring to the same mishnah. However, such a reading does not make sense based on the Yerushalmi alone.

It is necessary to understand the Yerushalmi in its own context before considering how it relates to the Bavli. R. Huna may have made two different statements with one preserved in each of the Talmuds, or perhaps the Babylonian editors intentionally reworked the original version of R. Huna's statement. In either case, we cannot even begin to compare the two Talmuds critically until we establish the correct interpretation of the Yerushalmi, one free from Babylonian influence. Otherwise, we will fall into the trap of reading the Bavli into the Yerushalmi, rather than reading the Yerushalmi on its own terms.

[15] Saul Lieberman, *Yerushalmi Nezikin* (Jerusalem: The Israel Academy of Sciences and Humanities, 1983), 175.





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## The Stratification of the Bavli into Historical Layers

When examining the historical development of ideas or halakhot within the Bavli, the first step is to compare the sources in the Bavli with earlier texts. We must ask how the sugya in the Bavli compares with that in the Yerushalmi and how the baraitot in the Bavli compare with those in tannaitic sources. The next step is the separation of the Babylonian sugya into its historical layers: tannaitic, amoraic (and within the amoraic period) and editorial or stammaitic. But there is little value in separating the Bavli into historical levels until the Bavli itself has been compared with Eretz Yisraeli literature.

In this section we will consider how the Babylonian sugya is separated into its component historical layers. This technique has proven especially fruitful in analysis of the Bavli for three reasons. First of all, as stated above, the Bavli is the last of the classical rabbinic creations, and therefore it incorporates sources that were authored at various points throughout the rabbinic period (roughly from the end of the first century C.E. through around 500 C.E.). Second, whereas in Eretz Yisrael the rabbis created multiple compilations and preserved the borders between them (Mishnah, Tosefta, the many halakhic midrashim, Yerushalmi, Genesis Rabbah, Leviticus Rabbah and other aggadic midrashim), in Babylonia all rabbinic statements, passages, and genres were combined into one massive corpus. This resulted in a Talmud that contains

many texts that developed over multiple centuries. Finally, the stammaim, the editors and the redactors of the Bavli were both interventionist in their nature and yet at the same time careful to preserve the borders between their words and those of their predecessors. They expanded upon, rewrote, and reorganized some of their sources, and they created new frameworks in which to cast earlier material. But they did not rewrite all of their received material, as did, for instance, Maimonides, who essentially rewrote all of rabbinic halakhah using his own language in the Mishneh Torah. Nearly every page of the Bavli bears clear evidence of multiple historical levels, including passages where amoraim comment on baraitot and where later amoraim comment on the words of early amoraim. Indeed, the Bavli's editors were extraordinarily careful to preserve the chronology of the material they received; rarely does an early amora appear to be commenting on the words of a later amora.

We have divided this section into two parts. In the first we discuss separating the Bavli into two layers, the amoraic and the stammaitic. In the second we discuss the analysis of material that appears in multiple places within the Bavli and how such material may have moved from its original context to secondary and even tertiary contexts.

## A. Amoraim and the Stam

For at least a generation, critical Talmud scholars have relied on two fundamental assumptions when analyzing a sugya. The first is that the anonymous voice in the Bavli, the stam, is later than the amoraim. The second is that the stam reinterprets and reorganizes earlier material and even invents statements and then attributes them to earlier rabbis. Critical Talmudic scholars today are trained from the outset to separate a sugya into several layers, the last of which is usually called stammaitic. One of the simplest methods to distinguish these layers from one another is by identifying a change in language.[16]

[16] Shamma Friedman compiled a list of fourteen different indicators of stammaitic additions to the text of the Bavli. The list has since been translated from Hebrew into English by Jeffrey Rubenstein. See Rubenstein, "Criteria of Stammaitic Intervention in Aggada," *Creation and Composition*, ed. J. Rubenstein (Tübingen: Mohr Siebeck, 2005), 417–440.





Tannaitic and amoraic statements are almost entirely composed in Hebrew while the stammaitic layer of the text is usually in Aramaic.[17]

The separation of amoraic material and stammaitic material is a particularly fruitful analytic tool, but it is one that must be wielded with caution. The primary complication is that later editors did not merely add their own comments and voices to the sugya. They also reworded the earlier material, such that one must constantly analyze amoraic and even tannaitic material to see if it is authentically early, or if it too has been molded or even invented by the late Babylonian editors. This is accomplished by comparing the Bavli with the Yerushalmi and with other earlier texts, as discussed above, to check for the authenticity and accuracy of the amoraic and tannaitic material in the Bavli. However, many baraitot and memrot are found only in the Bavli and thus cannot be compared with other material. We cannot know for certain whether these sources have been emended or even invented by the stam. Sometimes, but not often, we are aided by lexicographical and linguistic clues. In most cases, we recommend trusting the authenticity of the Bavli's sources, but doing so warily. When we find a statement that is attributed to an amora and found nowhere else in rabbinic literature we assume until proven otherwise that the attribution is accurate—i.e. that the amora actually stated those words or at least gave voice to the idea they express.

### Example 1: Contextualization Of Amoraic Statement By The Stam

The following is an example in which the simple meaning of the Mishnah has been reinterpreted by the amoraim and then reinterpreted again by the stam. The example reveals the distinct stages of historical development of a law. As described above, this reading stands in stark contrast to traditional interpreters who understood the Mishnah solely in accordance with the later stammaitic interpretation. Mishnah Ketubot 7:1 states:

[17] Hyman Klein was the first to use changes between languages as a basic principle for differentiating between the layers of the text. See Klein, "Gemara and Sebara," *The Jewish Quarterly Review* 38:1 (1947), 67–91, esp. 75–77.

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| המדיר את אשתו מליהנות לו: עד שלשים יום יעמיד פרנס. יתר מכן יוציא ויתן כתובה. | One who vows that his wife may not derive any benefit from him: For thirty days he provides for her through an agent. More than that, he must divorce her and pay her ketubah. |

The mishnah describes a situation in which a man makes a vow, perhaps out of spite or anger, prohibiting his wife from deriving any benefit from his property. A woman subject to such a vow would seemingly not be able to eat any food belonging to her husband or use his money to purchase necessary items such as clothing. Such vows which one person takes to prohibit another from using his property are mentioned throughout the Mishnah and other ancient Jewish literature.[18] In this case, the vow is problematic because a husband has an obligation to provide for his wife (based on Exodus 21:10). How then can a husband take a vow to shirk his own responsibility? This is exactly the question asked by the Bavli (Ketubot 70a): "Since he is obligated to her, how can he prohibit her by vow? Does he have the power to cast off his own obligation?" Nevertheless, despite this difficulty, it is clear that the simple meaning of the mishnah is just that—sometimes vows do have the ability to prevent a person from fulfilling an obligation. Indeed, a distinctly similar law is found in the New Testament (Mark 7:9–13 and Matthew 15:3–6). The following quote is from Mark:

> And he [Jesus] said to them, "You have a fine way of rejecting the commandment of God in order to establish your tradition! For Moses said, 'Honor your father and your mother;' and, 'Whoever reviles father or mother must surely die.' But you say, 'If a man tells his father or his mother, "Whatever you would have gained from me is korban"' (that is, given to God)—then you no longer permit him to do anything for his father or mother, thus making void the word of God by your tradition that you have handed down. And many such things you do."

Jesus rebukes the Pharisees who allow an individual to take a vow that would prohibit his parents from benefitting from him, a direct transgression of the fifth

[18] See Moshe Benovitz, *Kol Nidre: Studies in the Development of Rabbinic Votive Institutions* (Atlanta: Scholars Press, 1998), 9–40.





commandment. This is parallel to the Mishnah, in which a husband takes a vow to prevent his wife from deriving benefit from him, despite his obligation to her.

Rav Ashi, a late Babylonian amora, cannot accept that a person could use a vow to shirk his legal responsibility so blatantly. Therefore, he offers a solution that limits the scope of the mishnah:

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| **בבלי כתובות ע ע"ב** אמר ר' אשי: במספקת לדברים גדולים, ואינה מספקת לדברים קטנים. | **Bavli Ketubot 70b** R. Ashi: [The mishnah] refers to a case where she [earns enough] to provide for her major needs, but she does not provide enough for her minor needs. |

According to R. Ashi, the mishnah refers to a case where the wife's handiwork was sufficient to provide her major needs. Thus if a man takes a vow not to provide for his wife and his wife earns enough to basically provide for herself, the vow can stand, at least for thirty days. We can see how R. Ashi radically limits the ability of a husband to take such an oath in the first place. The only case where such an oath would be effective is where his wife did not really rely on her husband for sustenance. If she did depend on him for sustenance, such an oath would have no effect whatsoever.

However, the stam is not satisfied even with this. After all, if she is used to those "little things" and now her husband will not provide them for her, he is still abrogating her rights. In order to resolve this difficulty the stam (whose words are in Aramaic, whereas Rav Ashi's words were in Hebrew) now offers an exceedingly difficult contextualization:

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| הני דברים קטנים היכי דמי? אי דרגילה בהו, הא רגילה בהו ואי לא רגילה בהו, פרנס למה להו? לא צריכא, דרגילה בבית נשא וקא מגלגלא בהדיה, דאמרה ליה: עד האידנא דלא אדרתן גלגילנא בהדך, השתא דאדרתן לא מצינא דאיגלגל בהדך. | What is the exact case of these 'minor needs'? If she is used to receiving them, she is used to receiving them. And if she is not used to receiving them, why does an agent provide her with them? This law is necessary for a case where she was used to these things in her father's house and she accepted forfeiting them when moving into her husband's house. [When he takes the vow] she says to him: Up until now when you did not prohibit me by vow, I put up with it. Now that you prohibited me by vow, I cannot accept it any longer. |

One can easily see how the broad halakhah in the mishnah—a husband can take such a vow and let it stand for thirty days—has been limited in scope, first by R. Ashi and then by the stam. Bothered by the implications of this vow (just as Jesus was bothered by the implications of the son's vow denying benefit to his parents), R. Ashi and the anonymous editors of the Bavli placed severe limitations on the husband. He can take this vow only if: (1) she earns enough money to provide for all her major needs; (2) she has already forfeited any other luxuries upon moving into his house. Indeed, in such a case, as the stam points out, she will receive more luxuries after the vow (by the provisions of the agent) than she was receiving before her husband took the vow. Most importantly, if the vow in any way impinges on the provisions that she was accustomed to receiving in her husband's home, it is rendered ineffective. This halakhah, far removed from the mishnaic law, is an invention of the stam, influenced by R. Ashi.

### Example 2: Aramaic Words Added To Hebrew Statement

Many amoraic statements include words added by the stam. In some cases these words change the meaning of the original statement significantly. The following example discussed by Shamma Friedman demonstrates such a phenomenon.[19]

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| **בבלי בבא מציעא כה ע"ב** | **Bavli Bava Metzia 25b** |
| מתני': מצא אחר הגפה או אחר הגדר גחלות מקושרים, או בשבילין שבשדות - הרי זה לא יגע בהן. | Mishnah: If one found pigeons tied together behind a fence or hedge or on footpaths in the fields, he may not touch them. |
| גמ': מאי טעמא? דאמרינן: הני אינש אצנעינהו, ואי שקיל להו - ליכא למרייהו סימנא בגווייהו, הלכך לשבקינהו עד דאתי מרייהו ושקיל להו. | Gemara: What is the reasoning? We say, maybe a person put them there and if he takes them, the owners will not have any sign by which to identify them. Therefore, he should leave them there until someone comes and takes them. |

[19] See Friedman, "Al Derekh Heker Hasugya," *Texts and Studies Vol. I*, ed. H.Z. Dimitrovsky (New York: Jewish Theological Seminary of America, 1977), 302.





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|---|---|
| ואמאי? ליהוי קשר סימנא | But why? Let the knot serve as a sign! |
| אמר רבי אבא בר זבדא אמר רב: במקושרין בכנפיהן, דכולי עלמא הכי מקטרי להו. | R. Abba bar Zavda said in the name of Rav: When they are tied by their wings [he must leave them there], for that is the way that everyone ties them. |

According to the mishnah, if one finds pigeons tied up behind a fence or a hedge he should leave them there. When read in the traditional manner, with the stammaitic interpretation including R. Abba bar Zavda's statement, the sugya is interpreted as follows: The assumption is that a person may have left the pigeons there expecting to find them upon his return. The stam then asks why the knot could not serve as an identifying sign should the owner come searching for his birds. That is, the owner could prove that the birds are rightfully his by describing the nature of the knot. Why then should the finder not take them? R. Abba bar Zavda answers that the birds were tied by their wings, which is the way that everyone ties up their pigeons. Such a knot, used so commonly, cannot serve as an identifying sign. The implication is that had the pigeons been tied up in some more unusual way that could serve as a sign, the finder could then take them and attempt to return them to the rightful owner.

However, when we read the sugya critically we can note that R. Abba bar Zavda's statement originally meant something different from the later stammaitic interpretation. To understand the sugya in this way, we need to first separate the Hebrew statement, "when they are tied by their wings" from the Aramaic explanation, "for that is the way that everyone ties them," since these represent two distinct chronological layers. Secondly, we can interpret R. Abba bar Zavda as referring directly to the mishnah and not as responding to the anonymous Aramaic question created by the stam. According to this reading, R. Abba bar Zavda simply explains that if the person found the birds tied up in such a way that it is unlikely that they will move, i.e. tied by their wings, he should not take them—even if they have an identifying mark. In such a case it is preferable to leave the birds where they are so that the owner will be able to find them when he returns. Since they are tied by their wings, there is no chance that they will fly away.

We can prove that the Aramaic words are in fact a later addition to the Hebrew statement because in Yerushalmi Bava Metzia 2:4, 8c, the same He-

brew statement (with a different attribution[20]) appears without the Aramaic addition, suggesting that statement had a prior independent life of its own during the amoraic period, before the stam added its Aramaic explanation.

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| רב יהודה אמר: ובלבד גוזלות מקושרין בכנפיהן. | R. Judah said: As long as they are pigeons tied by their wings. |

Thus the amoraim emphasized that the finder should leave the birds there only if they are tied down and will not be able to fly away. Later the stammaim shifted the concern from the potential that the birds might fly away to the lack of an identifying sign. The implication would be that if there is an identifying mark, the finder should take them and then try to return them, even if the birds would not have been able to fly away. To achieve this interpretation, the stam added a framing question before R. Abba bar Zavda's statement as well as an addendum to the statement itself.

## Further Reading


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[20] In the continuation of the Yerushalmi, R. Abba bar Zavda finds a wine jug in a small bag and he takes it. Rav rebukes him for doing so, telling him that he should have left it there so that when the owner returned he would not despair at having lost it. Thus the Bavli took the name of R. Abba bar Zavda from the story and attached it to the amoraic statement itself.





## B. Transfer of Material within the Bavli

Often we find that amoraic statements or even entire sugyot appear in multiple contexts within the Bavli, though they differ in language, interpretation, and halakhah. This transfer of material from one context to another is an activity which should be attributed to post-amoraic editors. A critical Talmudic scholar should be wary of the supposition that an amora, for instance, issued the same statement on multiple occasions. While this is of course a possibility, it is equally possible if not more plausible that an editor familiar with an amoraic statement or other such material moved it from its original context and placed it in a new setting.

### Example 1: Transfer Of Amoraic Statement

In the following example we will see a statement made by an amora in one context that is moved to a second and then a third context. As we shall see, while it made abundant sense in its original context, it makes little sense in the secondary location and is utterly out of place in the third.

In Bavli Shabbat 22a, we read the following:

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| בעו מיניה מרבי יהושע בן לוי: מהו להסתפק מנויי סוכה כל שבעה? | They asked R. Yehoshua ben Levi: Can one use the decorations of the Sukkah during the seven days [of the festival]? |
| אמר להו: הרי אמרו אסור להרצות מעות כנגד נר חנוכה. | He said to them: Behold they said: It is forbidden to count coins by use of the Hannukah lamp. |
| אמר רב יוסף: מריה דאברהם! תלי תניא בדלא תניא. | R. Yosef said: Master of Abraham! He made that which is taught [in a baraita] dependent on that which has not been taught [in a baraita]. |

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| סוכה תניא חנוכה לא תניא. דתניא סככה כהלכתה ועיטרה...אסור להסתפק מהן עד מוצאי יום טוב האחרון של חג... | Sukkah has been taught, Hannukah has not been taught. As it was taught, "If he put up valid *skhakh* and decorated it...he may not make use of them [the decorations] until the end of the last day of the festival..." |

R. Yosef's complaint in this sugya is easy to understand—R. Yehoshua ben Levi was asked a question about the sukkah for which there is an explicit answer in a baraita. Instead of quoting the tannatic source which would have provided the answer, R. Yehoshua ben Levi answered with an amoraic statement—a source which is not introduced with "*tanya*," a technical term reserved for tannaitic material. That is, although the answer was taught in a baraita, he answered based on a source that was not taught in a baraita.

The phrase "Master of Abraham" is an imprecation, presumably invoked to express R. Yosef's incredulity and outrage. It makes sense in this context, since the answer indeed appears in a baraita and thus there was no need to invoke an amoraic source instead. But the full phrase is found in two other contexts, Ketubot 2a and Bava Batra 134b, where it makes less sense and cannot be taken literally. In Bava Batra we read:

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| (1) אמר רב יוסף אמר רב יהודה אמר שמואל: מפני מה אמרו זה בני נאמן? הואיל ובעל שאמר גרשתי את אשתי נאמן. | (1) R. Yosef said in the name of R. Yehudah in the name of Shmuel: Why did they say that one who says, "this is my son" is believed? Because a husband who says, "I divorced my wife" is believed. |
| (2) אמר ר' יוסף: מריה דאברהם! תלי תניא בדלא תניא! | (2) R. Yosef said: Master of Abraham! He made that which is taught [in a baraita] dependent on that which has not been taught [in a baraita]. |
| (3) אלא אי אתמר הכי איתמר אמר ר' יהודה אמר שמואל: מפני מה אמרו זה בני נאמן? הואיל וביד לגרשה. | (3) Rather, if it was said, this is how it was said: R. Yehudah said in the name of Shmuel: Why did they say that one who says, "this is my son" is believed? Because he has the ability to divorce her. |





In his opening statement R. Yosef explains in the name of Shmuel that a man who identifies someone as his child is believed. This would exempt his wife—should she ever become widowed—from the need to perform levirate marriage, since only a widow whose husband has left no offspring must marry her husband's brother. According to Shmuel, the reason that the man's statement is accepted is that a husband is believed when he says that he divorced his wife, and divorce would also exempt her from requiring levirate marriage should he die without children. Since he is believed with regard to divorce, he is believed with regard to his child. R. Yosef then raises a difficulty, using the same language he invoked in Shabbat 22a. However, here not only is it strange for an amora to raise a challenge to a statement that he himself transmitted, but the difficulty itself makes no sense. The original statement did not concern a case in which an amora made a halakhah taught in a baraita dependent on one that was not taught in a baraita. Furthermore, R. Yosef does not rectify this problem in section three. This section is no more a baraita than was section one; they are both amoraic statements! It is clear that section two was transferred here from Shabbat 22a in order to serve as a transition from the reasoning in section one to the slightly different reasoning in section three.

The statement was also moved to Ketubot 2a, where its use is even less appropriate:

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| אמר רב יוסף אמר רב יהודה אמר שמואל: מפני מה אמרו בתולה נישאת ליום הרביעי? לפי ששנינו הגיע זמן ולא נשאו אוכלת משלו ואוכלת בתרומה, יכול הגיע זמן באחד בשבת יהא מעלה לה מזונות, לכך שנינו בתולה נישאת ליום הרביעי. | R. Yosef said in the name of R. Yehudah in the name of Shmuel: Why did they say a virgin is wedded on Wednesday? Because they taught, "if the time [for marriage] has come and they weren't married, she eats his food and she eats terumah." It is possible that if the time had come on Sunday he would [immediately] have to provide her with food. That is why it is taught, 'a virgin is wedded on Wednesday." |
| אמר רב יוסף: מריה דאברהם! תלי תניא בדלא תניא. | R. Yosef said: Master of Abraham! He made that which is taught [in a tannaitic source] dependent on that which has not been taught [in a tannaitic source]. |

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| הי תניא והי לא תניא?<br>הא תניא והא תניא. | Which was taught [in a tannaitic source] and which was not taught? They were both taught [in a tannaitic source]. |
| אלא תלי תניא דמפרש טעמא בדתניא דלא מפרש טעמא. | Rather, he made a baraita whose reasoning had been explained dependent on a baraita whose reasoning had not been explained. |

In this case, R. Yosef explained the first mishnah in Ketubot (about the day on which a virgin is married) by referencing Mishnah Ketubot 5:3 (about when he must begin to provide food for her and when, if married to a kohen, she begins to eat terumah). For a reason which we will not get into here, the editors of the Bavli are not satisfied with his statement. In order to raise an objection, they bring the same statement attributed to R. Yosef in two other contexts, "Master of Abraham! He made that which is taught [in a baraita] dependent on that which has not been taught [in a baraita]." However, in Ketubot this statement is utterly out of place, as even the stam notes. Both halves of R. Yosef's statement are taught in tannaitic sources. Clearly R. Yosef did not issue this statement in this context. Rather, the Babylonian redactors imported this statement from another context.

**Example 2: Transfer of Stammaitic Discourse**

The redactor will at times transfer a selection of stammaitic discourse from one passage in the Talmud to another. He does so in order to supplement a sugya which may be lacking in Talmudic debate. We can at times identify the original location of the discourse because it does not fit perfectly into its new context.

| **בבלי חולין פז ע"ב** | **בבלי בבא בתרא צז ע"א** |
|---|---|
| אמר רב יהודה אמר שמואל:<br>כל מראה אדמומית - מכפרין,<br>ומכשירין, וחייבין בכסוי... | א"ר יוחנן משום ר"ש בן יהוצדק:<br>כדרך שאמרו לענין איסורן,<br>כך אמרו לענין הכשירן. |
| מכשירין איצטריכא ליה,<br>מכשירין נמי, | הכשירן דמאי? |





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| אי דם - אכשורי מכשר, אי מיא - אכשורי מכשרי! | **Bavli Hullin 87b**<br>Rav Yehudah said in the name of Shmuel: As long as it is of a reddish color, it makes atonement, it renders susceptible to uncleanness, and it must be covered up... |
| לא צריכא, שתמדו במי גשמים; | It was only necessary to teach that it renders susceptible to uncleanness. |
| מי גשמים נמי, כיון דשקיל ורמי - אחשבינהו! | But even that statement [is unnecessary], for if it is blood it already renders susceptible to uncleanness, and if it is water it already renders susceptible to uncleanness! |
| לא צריכא - שנתמדו מאליהן. | It was only necessary in the case where it was made into *timad* with rain water. But even in the case of rain water, since he picked it up and poured it into the vessel [containing the lees], he [surely] intended them [for use]. |
| אי דמיא - אכשורי מכשרי, אי דחמרא - אכשורי מכשרי! | **Bavli Bava Batra 97a**<br>R. Yohanan said in the name of R. Shimon ben Yehozadak: The same [laws] that have been said [to apply] with regard to prohibitions have similarly been said [to apply] with respect to their rendering objects susceptible to uncleanness. |
| לא צריכא, שתמדו במי גשמים. | What [kind] of rendering susceptible [is meant]? |
| וכיון דקא שקיל ורמי להו למנא - אחשבינהו! | If it is water, it already renders susceptible; [and] if [it is regarded as] wine it [already] renders susceptible. |
| לא צריכא, שנתמד מאליו. | It was only necessary in the case where it was made into *timad* with rain water. But since he picked up [the rain water] and poured it into the vessel [containing the lees], he [surely] intended them [for use]. |

| | |
|---|---|
| It is required [in the case] where the *tĕmad* was made without the aid of human effort. | It is required [in the case] where the *tĕmad* was made without the aid of human effort. |

In order to understand this sugya, some background is necessary. According to rabbinic law, produce is not susceptible to impurity until it has come into contact with certain liquids, including water and wine. The Bava Batra sugya discusses *tĕmad*, a weak wine drink made by passing water through the lees of wine. R. Yohanan says that the first two times that one passes water through the lees, the *tĕmad* will cause produce to be susceptible to impurity. The stam questions why this statement is necessary, for both elements of *tĕmad*, wine and water, consist of liquids that make produce susceptible to impurity, and therefore it should be obvious that *tĕmad* will render produce susceptible as well. The end of the sugya solves this problem by specifying that the *tĕmad* was made without any human intervention; rainwater fell directly onto the lees of wine. Rainwater does not cause susceptibility to impurity until it has been moved by human hands. The first two times that this happens to the lees the *tĕmad* will have the status of wine and will cause susceptibility. Subsequently, it will become so diluted that it will have the status of uncollected water and will not cause susceptibility. While the resolution of the necessity for R. Yohanan's statement is strained, it nevertheless makes sense.

The sugya in Hullin deals with a mixture of blood and water. Blood is another liquid that renders produce susceptible to impurity. R. Yehudah says that if blood is mixed with water it renders produce susceptible as long as the mixture is reddish in color. The stam asks the same question that appeared in Bava Batra: why is this necessary? After all, both blood and water render produce susceptible. Until this point, the sugya is parallel to Bava Batra but it makes sense in its Hullin context. However, the resolution to this question mentions *tĕmad*, the water passed over the lees of the wine, which is irrelevant to this discussion. Clearly, then, the last part of the sugya was transferred directly from the end of the sugya in Bava Batra, where these statements were originally taught. A person reading the sugya in Hullin would be puzzled by the mention of *tĕmad*. This can be resolved only by analyzing the sugya in light of Bava Batra. Such a comparative anaylsis reveals that the redactor of this sugya, rather than rewriting his material to fit its new context, simply cut these lines from Bava Batra and pasted them here in Hullin.





In an attempt to make sense of why *tĕmad* is mentioned out of context, traditional commentators reinterpret the word *tĕmad* as any substance mixed with water. But for critical commentators who compare the source in Hullin with that in Bava Batra, it is obvious that the word "תמדו" or "נתמדו" does not refer to any substance "mixed with water," as the traditional commentators construe them. The word only means "to make *tĕmad*," as explained above. But when imported to a new context, a new meaning was forced upon it. [21]

### Further Reading

Halivni, David Weiss. *The Formation of the Babylonian Talmud.* Translated, edited and introduced by Jeffrey L. Rubenstein. New York: Oxford University Press, 2013, pp. 168–183.

## Critical Techniques

All of the above techniques were comparative in nature. They involved comparing rabbinic statements or passages from one composition with those in another composition, or the separation and subsequent comparison of the various historical layers within the Bavli itself. In employing these techniques, the critical scholar considers how both the style and content of rabbinic literature developed from its origins in the tannaitic period through its final composition in the post-amoraic period. There are additional critical techniques, however, which do not rest on comparative methods. We turn our attention now to the first of these techniques, philology.

### I. Philology

Before engaging in what is known as "higher criticism" which analyzes the development of texts and ideas, scholars must first establish the authentic

[21] David Halivni, *The Formation of the Babylonian Talmud* (New York: Oxford University Press, 2013), 178.

original form and meaning of a text. This discipline, which has come to be known as philology, includes both textual criticism and linguistics. We will give brief examples of both.

## A. Textual Criticism

In the Mishnaic and Talmudic periods rabbinic statements and compositions were transmitted and studied orally. For reasons that have been the source of much speculation by contemporary scholars, the rabbis prohibited the writing of oral Torah.[27] However, beginning in the eighth century, the transmission of the Babylonian Talmud shifted to the written page. The move to writing was a slow process which began with the recording of single chapters and tractates; it took centuries for rabbinic literature to be written down in its entirety.

While the writing of rabbinic literature rendered it accessible to a broader audience, one that transcended the walls of the academy, it also made the text more susceptible to errors in transmission. A copyist might erroneously delete words, skip lines or misread a text when copying from one book to another. The most common error of this type is referred to as a homeoteleuton, derived from the Greek word meaning "like ending." In such a case the scribe's eyes skip from one word to the same word on another line, inadvertently omitting the text between the two words. Occasionally the reverse might happen—the scribe's eye skips backwards and he repeats the same line twice. This cannot happen in oral transmission. In addition, scribes may deliberately emend what they deem to be errors in the text, thereby serving as editors as well. Fortunately, there is a wealth of extant ancient manuscripts of rabbinic texts at our disposal, some available in their entirety and some only in fragments. These include European and Yemenite manuscripts and the Cairo Genizah fragments. Additional evidence can be found in quotes by medieval commentators. Collectively, manuscripts and quotes from medieval commentators are referred to as "textual witnesses." Such manuscripts and

[27] Shanks Alexander, "The Orality of Rabbinic Writing," *The Cambridge Companion to Talmud and Rabbinic Literature*, ed. Charlotte Fonrobert and Martin Jaffee (New York: Cambridge University Press, 2007), 38–57; Martin Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism* (New York: Oxford University Press, 2001).





fragments are useful to critical scholars in recovering the most reliable and error free version of the Bavli (or other text) that is possible. They also aid in distinguishing between differences in texts which are a result of human error and those which are the result of intentional emendation.

In quoting from the Bavli throughout this book, we use the text that appears in the Vilna printed edition. When relevant, we will cite variants found in manuscripts in our commentary.

### Example 1: Attribution Of Amoraic Statement

There is an important debate in Pesahim concerning the recitation at the Pesah seder. We learn in Mishnah Pesahim 10:4 that one who recites the Pesah seder "begins with disgrace and ends with praise." All agree that praise refers to the recitation of Hallel at the end of the seder. But what text is recited as words of disgrace? On Bavli Pesahim 116a, two suggestions are offered:

| | |
|---|---|
| מאי בגנות? רב אמר: מתחלה עובדי עבודת גלולים היו אבותינו. [ושמואל] אמר: עבדים היינו. | What is "disgrace"? Rav says: In the beginning our forefathers were idol worshippers. [And Shmuel] says: "We were slaves." |

The printed edition of the Talmud attributes this debate to Rav and Shmuel, two third-century Babylonian amoraim who frequently debate one another throughout the Talmud. However, this attribution appears only very rarely in manuscripts and in the medieval commentators known as the rishonim. The following is a partial chart of the various extant readings:

| Manuscript or edition | "Our forefathers were idol worshippers" | "We were slaves" |
|---|---|---|
| JTS ENA 1608 | Rav | Rabin |
| JTS EMC 1623 | Rav | Rabbah |

| | | |
|---|---|---|
| Vatican 134, Munich 6, Columbia X 893, Ritba, R. Judah b. Yakar, R. Isaiah of Terrani | Rav | Rava |
| Vatican 109, Rif (printed edition), Ittur, Shibolei Haleket, Rosh, Vilna printed edition | Rav | Shmuel |
| Rav Netronai Geon, Seder Rav Amram Geon | Rav | ? |
| Oxford 366, Abudarham | Abaye | Rava |
| Rabbenu Hananel | Rava | Rav Yosef |
| Munich 95 | Anonymous | Rav |
| Venice printed edition | Anonymous | Rava |

Clearly we can see that only one manuscript and a few printed editions of rishonim attribute "we were slaves" to Shmuel, whereas the reading "Rava" (or Rabbah, Rabin, Rav, which are graphically close to Rava) dominates.[23] The attribution to Shmuel was probably an intentional emendation made by copyists due to the prevalence of disputes between Rav and Shmuel and the scarcity of disputes between Rav and Rava. This tendency to change the ascription can also be found in the two textual witnesses that ascribe the dispute to Abaye and Rava, also contemporaries.

### Example 2: Error In Printed Edition Of The Yerushalmi

While the use of manuscripts to establish the correct version of texts is important in the Bavli, it is probably even more critical in establishing the correct version of texts that were historically less focused upon such as the Yerushalmi. The version of the Yerushalmi that appears in the printed edition

[23] For more on the ramifications of this attribution see Joshua Kulp, "We Were Slaves: Rava's Babylonian Haggadah," *Conservative Judaism* 60, 3 (2008), 59–75.





is riddled with errors. Further complicating the matter is that there are very few textual witnesses to the Yerushalmi: only one full manuscript, some partial manuscripts, Genizah fragments, and some quotes from rishonim. This makes reconstruction of the correct version often difficult if not downright impossible. This is the case, too, for some of the midrashim and the Tosefta, although there are more manuscripts for these works. Finally, since critical understanding of the Bavli is so frequently based on analysis of the texts that preceded it, engaging in textual criticism of the Mishnah, Tosefta, Yerushalmi, and midrashim is of utmost importance even when the ultimate goal is to comment on the Bavli.

Saul Lieberman identified the following example as one of the types of errors found in the printed edition of the Yerushalmi.[24] The first printed edition, Venice 1523, is based almost entirely on the 1334 Leiden manuscript. Before this printing, the manuscript underwent extensive editing by several editors. In this case, the editor did not properly identify a scribal note in the manuscript and removed it from the passage.

ירושלמי פסחים ה:א (לא, ד) - כ"י ליידן
רבי יושוע בן לוי אמר תפילות מאבות
למדו גרש עד אעפ"כ לא הורידו אותו
מגדלותו אלא מינו אותו אב בית דין.

**Yerushalmi Pesahim 5:1 (31d), Leiden Manuscript**
R. Yehoshua b. Levi said: Tefillot (the Amidah prayers) were learned from the forefathers...*garas*...They did not depose him from his greatness but rather appointed him Av Bet Din.

ירושלמי פסחים ה:א - גרסת הדפוס
רבי יושוע בן לוי אמר תפילות
מאבות למדו אב בית דין.

**Yerushalmi Pesahim 5:1, Printed Edition**
R. Yehoshua b. Levi said: Tefillot (the Amidah prayers) were learned from the forefathers, Av Bet Din.

The word "*garas*," (lit. "continuation"), found in the Leiden manuscript of Yerushalmi Pesahim, is a technical term used by scribes to indicate that a portion from another part of the Yerushalmi is meant to be inserted in the sugya. Instead of recopying the entire passage, a scribe begins with the

[24] Saul Lieberman, *Al Hayerushalmi* (Jerusalem: Darom, 1929), 22.

first words, writes the word גרש, and then indicates the end of the passage that is to be copied. The term is found not only in the Leiden manuscript of the Yerushalmi, it is also found in Genizah fragments of this text and in other Eretz Yisraeli manuscripts such as the Rome manuscript of Genesis Rabbah. In the case above, the scribe is referring to a passage in Yerushalmi Berakhot 4:1, 7a–c, spanning four columns, which was meant to be inserted at this point in the text. But the later editor who was reviewing the Pesahim passage in the Leiden manuscript erased the scribal note (one can actually see it crossed out in the manuscript). When the printers used this manuscript as the basis for the Vienna printed edition, the result was the nonsensical passage we find in the printed edition of the Yerushalmi, lacking the entire interpolation.[25]

## Further Reading

Brody, Robert. "The Talmud in the Geonic Period." In *Printing the Talmud: From Bomberg to Schottenstein*. Edited by S. Mintz and G. Goldstein. New York: Yeshiva University Museum, 2005, pp. 29–35.

Krupp, Michael. "Manuscripts of the Babylonian Talmud." In *The Literature of the Sages Part One*. Edited by Shmuel Safrai. Philadelphia: Fortress Press, 1987, pp. 346–366.

## B. Linguistics

There are many examples in the Bavli in which traditional commentators misinterpreted words because they did not have access to the lexicographical and philological techniques that have been developed over the past century. The following are a few examples.

[25] The P'nei Moshe, one of the traditional commentators on the Yerushalmi, struggles to decode the passage and comes up with the creative explanation that the words "Av Bet Din" are a convoluted acronym which connects the forefathers to the three prayer services!





### Example 1: Unfamiliar Word

Mishnah Sanhedrin 3:3 prohibits various types of gamblers from serving as witnesses; among those mentioned are pigeon trainers. On Sanhedrin 25a the Bavli provides two definitions for the term pigeon trainers in an effort to understand why these individuals are invalid witnesses:

| | |
|---|---|
| מאי מפריחי יונים? | What are pigeon trainers? Here (in Babylonia) |
| הכא תרגומה: אי | it has been interpreted, [one who says to anoth- |
| תקדמיה יונך ליון, | er], "if your pigeon passes mine [you win]." |
| | |
| רבי חמא בר אושעיא | R. Hama b. Oshaya said: It means |
| אמר: ארא. | [one who employs] *arra*. |

The first interpretation describes an individual who races pigeons for prize money. R. Hama b. Oshaya disagrees and suggests that the mishnah refers to *arra*. Traditional commentators were unfamiliar with this foreign word and suggest that *arra* connotes either a pigeon hunter or a snare. Modern scholars have shown that the word actually derives from the Akkadian *arru*, which refers to a decoy-bird used to attract birds away from their dovecote so that they could be captured by the hunter.[26]

We should note here that in the past two decades Talmudic scholarship has been greatly enriched by two Aramaic-English dictionaries by Michael Sokoloff, one of Palestinian Aramaic and the other of Babylonian Aramaic. Scholars in the field are increasingly well-schooled in those languages from which rabbinic literature borrows, including Greek, Latin and Persian. Throughout this book, we rely on this scholarship whenever we encounter such a word or phrase.

### Example 2: Dating A Source By Its Language

The critical use of lexicography does not end with deciphering the foreign words in a Hebrew/Aramaic text. At times one can date a text by analyzing

[26] David Weisberg, "Late Babylonian Texts and Rabbinic Literature," *HUCA* 39 (1968), 76–77.

its Hebrew vocabulary. Shamma Friedman points this out in his analysis of a well-known source found only in the Bavli (Shabbat 21b) dealing with how many candles a person must light on Hannukah:

| | |
|---|---|
| תנו רבנן: מצות חנוכה נר איש וביתו. | Our rabbis taught: The mitzvah of Hannukah is one candle for a man and his household. |
| והמהדרין - נר לכל אחד ואחד. והמהדרין מן המהדרין: | And for the *"mehadrin"*—one candle for each and every person. And for the *"mehadrin* of the *mehadrin"*: |
| בית שמאי אומרים: יום ראשון מדליק שמנה, מכאן ואילך פוחת והולך. | Bet Shammai says: the first day he lights eight and each day he reduces their number. |
| ובית הלל אומרים: יום ראשון מדליק אחת, מכאן ואילך מוסיף והולך. | And Bet Hillel says: The first day he lights one and each day he increases their number. |

Friedman has demonstrated that the original layer of this baraita is the debate between Bet Shammai and Bet Hillel found in the concluding lines. There are many criteria upon which Friedman based this assertion, but among them is his lexigraphical analysis. The word *"mehadrin"* as used in this baraita is a Hebraicized word borrowed from the Aramaic. Traditional commentators understand the word to be related to the Hebrew root הד"ר, meaning beauty, such that this word means "to beautify a mitzvah" as in the phrase *hiddur mitzvah*. There is no corroborating evidence, however, that the tannaim used the word in this manner and the latter phrase, *hiddur mitzvah*, was actually coined by the stam in Bava Kamma 9b.[27] Rather, as Friedman demonstrated, this word in Bavli Shabbat is from the Aramaic root הד"ר which means to "chase after." The *"mehadrin"* are not those who "adorn" or "beautify" the mitzvot. They are those who chase after a better way in which to perform them.[28]

[27] For an extensive analysis of the root in tannaitic literature see Shamma Friedman, "Mehadrin min haMehadrin," *Leshonenu* 67 (2005): 153–160.
[28] Friedman, "Literary Dependencies," 53–55.





This analysis contributes significantly to our understanding of the development of the laws of Hannukah, for it helps to demonstrate that the opening section of the baraita (from the beginning until the Bet Shammai/Bet Hillel dispute) is a Babylonian addition. The word *"mehadrin"* as it is used in the baraita did not exist in tannaitic Hebrew. The original halakhah/practice was to light eight candles; the houses of Shammai and Hillel argued over how this was done. Generations later, in Babylonia, it seems they decided to reduce the mandated number of Hanukah candles from eight to just one.

## Further Reading

Sokoloff, Michael. *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period.* Ramat Gan: Bar Ilan University Press, 1990.

—. *A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Periods.* Ramat Gan: Bar Ilan University Press, 2002.

## II. Realia

Traditional commentators on rabbinic literature were usually not familiar with the historical, material, cultural and legal contexts of rabbinic literature, referred to collectively by the term realia. The Bavli and every rabbinic composition are, after all, the creations of specific generations of rabbis who lived in a certain geographical place at a certain historical time. For instance, the literature created in the land of Israel (Mishnah, Tosefta, Yerushalmi and midrashim) was under the sphere of influence of the Greco-Roman world, particularly the eastern part of the Roman Empire. The Bavli, on the other hand, was created in Persia, where Sassanian, Iranian and Zoroastrian influence abounded. There is no doubt that they were influenced by their surrounding culture. And so frequently a sugya can be better understood when the external background to certain artifacts and institutions referenced in the sugya have been uncovered.

**Example**

One of the most fascinating examples of realia enriching the understanding of a Talmudic text is a baraita found in Bavli Berakhot 3a. This baraita teaches that the night is divided into three watches, each of which is accompanied by a sign found in the natural world:

| | |
|---|---|
| דתניא: רבי אליעזר אומר: | It has been taught: R. Eliezer says: The night |
| שלש משמרות הוי הלילה | has three watches, and at each watch the |
| ועל כל משמר ומשמר יושב | Holy One, blessed be He, sits and roars like |
| הקדוש ברוך הוא ושואג כאריה, | a lion. For it is written: *The Lord roars from* |
| שנאמר ממרום ישאג וממעון | *on high, He makes his voice heard from His* |
| קדשו יתן קולו שאוג ישאג | *holy dwelling; He roars aloud over His [earth-* |
| על נוהו (ירמיהו כה:ל), וסימן | *ly] abode* (Jeremiah 25:30). And the signs |
| לדבר: משמרה ראשונה - חמור | are: In the first watch, the donkey brays; in |
| נוער, שניה - כלבים צועקים, | the second, the dogs bark; in the third, the |
| שלישית - תינוק יונק משדי | child nurses from the breast of his moth- |
| אמו ואשה מספרת עם בעלה. | er, and the wife talks with her husband. |

According to R. Eliezer's opinion in the first mishnah of Berakhot, one must recite the Shema before the end of the first watch. This baraita creates the impression that a person would have to listen for donkeys braying in order to ascertain when this watch was over. Commentators struggled to understand how this could be possible. In the real world, these sounds would not be heard at the same time every night. How could R. Eliezer possibly have expected anyone to identify the end of the first watch, signifying the last time an individual could recite the Shema, by a sound that could not have appeared with regularity?

Moshe Benovitz has offered a convincing solution to this conundrum by demonstrating that the signs found in the baraita correspond to constellations and not to earthly creatures and sounds. The donkey in the baraita refers to Ursa Major (referred to by the rabbis as *eglah*, "wagon," which is related to the Akkadian *Agalu*, "donkey"), the dogs refer to Hercules (*Kalbu* in Akkadian, cognate to the Hebrew *kelev*), and the woman is a reference to Cassiopeia, who nurses her daughter Andromeda while speaking to her husband Cepheus. The movement of these constellations through the evening sky served as an





indication of the passage of time, thereby providing a reliable means of determining the final hour for the evening recitation of Shema.[29]

## Further Reading

Elman, Yaakov. "Middle Persian Culture and Babylonian Sages: Accommodation and Resistance in the Shaping of Rabbinic Legal Tradition." In: *The Cambridge Companion to the Talmud and Rabbinic Literature*. Edited by Charlotte Fonrobert and Martin Jaffee. Cambridge: Cambridge University Press, 2007, pp. 165–197.

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## III. Comparisons with Non-Rabbinic Texts

Traditional Talmudic commentators have tended to interpret rabbinic literature only in light of other rabbinic sources. That is to say, rabbinic interpretations, laws and exegeses existed mostly in a Jewish vacuum. Of course, commentators have always known that the Pharisees competed with the Sadducees during the Second Temple period, for these disputes are mentioned explicitly in classic rabbinic literature. There are also certain heretics, known as *"minim,"* mentioned throughout rabbinic literature and even a hint, here and there, of the competition with Christianity. But for the most part traditional Talmudic commentators read these other cultures exclusively through the lens of those texts that were quoted by the rabbis themselves.

[29] Moshe Benovitz, *Talmud Ha-Igud: BT Berakhot Chapter I* (Jerusalem: The Society for the Interpretation of the Talmud, 2006), 65–79.

A critical scholar, in contrast, views rabbinic texts in light of other ancient laws, exegeses and philosophies. The most prominent of these competing systems and the most fruitful for comparison with rabbinic literature are the writings of the sect that lived in Qumran during the Second Temple period—the Dead Sea Scrolls—and the early Christians who became increasingly prominent during the first centuries C.E. It has now become quite commonplace to discuss rabbinic literature, the Dead Sea Scrolls and Christianity in light of one another. Further enriching our knowledge of the period are the extensive writings of Philo, who lived in the early part of the first century in Alexandria and wrote in Greek, and Josephus, who lived during the second half of the first century first in Eretz Yisrael and then in Rome. Our understanding of the exegetical choices made by the rabbis is often illuminated by comparing them with the choices made by other groups. At times, we can sense that the rabbis are polemicizing against other laws, other midrashim and other ways of understanding God, the Bible, and the world. Thus, throughout this book when such an opportunity arises, we shall compare rabbinic interpretation and halakhah with competing views ascribed to other Jews, including the early Christians who themselves arose from a Jewish background. Indeed, early Christians and Jews of the rabbinic period often identified themselves as part of the same religion with competing claims of interpretation of ritual, belief and practice.

Before we cite two examples, we should again note that we must proceed with caution when engaging in such analysis. First of all, these groups were not all contemporaneous. The Dead Sea sect probably ceased to exist before the rabbis began composing the literature that made up the Mishnah. The rabbis never explicitly refer to and were almost certainly not at all familiar with any of the sectarian writings found in Qumran. And while the rabbis clearly knew something about the rise of Christianity, how much they knew, when they knew it and how much competition they felt with early Christians is the subject of fierce scholarly debate. There is a tendency to assume that sects competed with one another simply because they were contemporaneous. But that does not necessarily mean that they knew of each other. Finally, we should avoid the tendency to assume that every rabbinic dicta and story is polemical. Nevertheless, despite these words of caution, comparing rabbinic literature with other religious systems offers, at times, a rich background to our source material.





## Example 1: The Dead Sea Sect

In several places in rabbinic literature we find the rabbis urging men to marry their nieces. For instance, Tosefta Kiddushin 1:2 states: "A man should not marry a woman until the daughter of his sister has grown up." Before getting married a man should wait for his niece to reach marriageable age, so that he could possibly marry her. A baraita found in Bavli Yevamot 62b–63a conveys a similar message:

האוהב את שכיניו, והמקרב את קרוביו, והנושא את בת אחותו,והמלוה סלע לעני בשעת דחקו, עליו הכתוב אומר: אז תקרא וה' יענה תשוע ויאמר הנני (ישעיהו נח:ט).

One who loves his neighbors, or draws his relatives near or marries the daughter of his sister or who loans to a poor person at the time of his need, about him the verse says: *Then when you cry the Lord will answer. When you cry, He will say: Here I am* (Isaiah 58:9).

Thus the rabbis seem to be endorsing and even urging men to marry their nieces, and more specifically, their sisters' daughters.

Scholars have long noted that marriage between an uncle and niece was prohibited by the Dead Sea sect. *The Covenant of Damascus,* one of the most famous of the sectarian writings (despite the fact that it was actually found in the Cairo Genizah) reads (column 5:6–11):

וגם מטמאים הם את המקדש אשר אין הם מבדיל כתורה...ולוקחים איש את בת אחיהם [ו] את בת אחותו. [vacat] ומשה אמר אל אחות אמך לא תקרב שאר אמך היא ומשפט העריות לזכרים הוא כתוב וכהם הנשים ואם תגלה בת האח את ערות אחי אביה הוא שאר.

And they also defiled the Temple, for they did not keep apart in accordance with the law... And they marry each one his brother's daughter or sister's daughter. [*Vacat*].[30] But, Moses said: To your mother's sister you may not draw near. For she is your mother's relation.' *Now the precept of incest is written from the point of view of males, but the same (law) applies to women, so if a brother's daughter uncovers the nakedness of a brother of her father, she is (forbidden) a close relationship* (Leviticus 18:13).[31]

In the above passage of this "sectarian" document, the author rails against men who marry their niece. He classifies the practice as a forbidden union which "defiles the Temple" (a reference to the defilement mentioned at the end of Leviticus 18). Clearly, the Dead Sea sect was polemicizing against other Jews who espoused a rabbinic position. This debate is a dispute concerning the proper interpretation of Leviticus 18:13, and may offer window to a larger debate concerning the proper interpretation of Scripture in general.[32] The Torah prohibits a man from marrying his mother's sister, but the text does not explicitly prohibit a woman (the niece) from marrying her uncle. The author of the scroll explains that although the Torah is addressed to the male (the nephew), the prohibition against a man marrying his mother's sister implies the prohibition for a woman to marry her parent's brother (the uncle). In contrast, the rabbinic reading limits the prohibition to that mentioned explicitly in the Torah (nephew/aunt) and therefore permits uncle/niece marriage.[33] This issue was fiercely debated by ancient Jews, certainly by those who composed the Dead Sea Sect. With this background in mind, we might possibly understand at least one of the reasons that the rabbis emphasized the value of marrying one's niece—it was a polemic against the practices or more precisely the prohibitions of other Jews with whom they vehemently disagreed.

## Example 2: Rabbinic Literature And The New Testament

There are numerous examples of how passages in the New Testament and passages in rabbinic literature can illuminate one another. This is true, too, of other early Christian texts from the first through fourth and even fifth and sixth centuries. Much scholarly literature has been devoted to such issues,

[30] This notation refers to an empty space left by the scribe to indicate a division in the text.

[31] Translation from Aharon Shemesh, *Halakhah in the Making* (Berkeley: University of California Press, 2009), 80-81.

[32] See Daniel Schwartz, "Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law," *The Dead Sea Scrolls: Forty Years of Research*, ed. Devorah Dimant and Uriel Rappaport (Leiden: E.J. Brill, 1992), 229–240.

[33] For more see Aharon Shemesh, *Halakhah in the Making*, 80–95.





including the Jewish background of Christianity, the Christian influence on Judaism, and the rabbinic response to Christianity.

It is important to note that in reading rabbinic texts in light of early Christian sources, we are not positing a direct response from one group to the other. Proving that rabbis argued against the followers of Jesus or that Christians were familiar with the rabbis of the Mishnaic and Talmudic period is notoriously difficult (although at times possible). Our point is far more limited but allows for a broader scope of comparison. A student of rabbinic literature can deepen his understanding of a particular issue by examining the New Testament and other Christian literature which engage with the same questions.

The issue we will explore here is the washing of hands before eating ritually pure food. According to rabbinic law, a person must wash his hands before eating, even if the body has already been purified. Unwashed hands defile food, causing them to have second-degree impurity. This would impact only food that has special status, i.e. *terumah* or sanctified produce, but would have no effect on ordinary produce (*hullin*).

In Mishnah Eduyot 5:6, we learn that there was (at least) one rabbi who did not agree that hands could be purified as if they were separate from the body (text based on Kaufman manuscript):

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| ואת מי נדו? אליעזר בן הנד שפקפק בטהרת ידים. | And who did they excommunicate? Eliezer ben Hanad[34] who doubted the purification of hands. |

This Mishnah suggests that the requirement to wash one's hands before eating was a charged issue. Rarely do we hear of someone being excommunicated for disagreeing with the majority opinion. But doubting the efficacy or necessity of washing hands was an offense worthy of excommunication.

A passage in the New Testament demonstrates that this issue was already contentious in an earlier period. The following passage is from Mark 7 (there is a parallel in Matthew 15:1–20):

> Now when the Pharisees gathered to him, with some of the scribes who had come from Jerusalem, they saw that some of his disciples ate

[34] The printed edition mistakenly reads the name as the more common Hanokh, which is graphically similar to Hanad.

> with hands that were defiled, that is, unwashed. For the Pharisees and all the Jews do not eat unless they wash their hands properly, holding to the tradition of the elders, and when they come from the marketplace, they do not eat unless they wash... And the Pharisees and the scribes asked him, "Why do your disciples not walk according to the tradition of the elders, but eat with defiled hands?"...
> And he called the people to him again and said to them, "Hear me, all of you, and understand: There is nothing outside a person that by going into him can defile him, but the things that come out of a person are what defile him."

Since the inception of Christianity, there have been disputes concerning the meaning of Jesus's statement, "There is nothing outside a person that by going into him can defile him." Indeed of all of Jesus's "halakhic" statements this has probably been the most contentious and potentially significant. Was Jesus denying all of the Jewish dietary laws, including the distinction between animals that may be eaten and those that may not? Was he denying the purity laws? What exactly was his argument with the Pharisees?

Recently, Yair Furstenberg wrote an insightful article arguing that the meaning of the first half of Jesus's statement should be understood in light of a rabbinic innovation that the body could be defiled by eating impure food.[35] This notion is not found anywhere in the Bible, and Jesus was certainly correct when he stated that, at least in the Bible, "There is nothing outside a person that by going into him can defile him." This was a rabbinic innovation, one which is debated in Mishnah Tahorot 2:2:

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| רבי אליעזר אומר: האוכל אוכל ראשון ראשון אוכל שני שני אוכל שלישי שלישי. | R. Eliezer says: He who eats food with first-degree uncleanness contracts first decree uncleanness. [He who eats food with] second-[degree uncleanness contracts] second-[degree uncleanness]. With third-[degree uncleanness contracts] third-[degree uncleanness]. |

[35] Yair Furstenburg, "Defilement Penetrating the Body: A New Understanding of Contamination in Mark 7:15," *New Testament Studies*, 54 (2008), 176–200.





| | |
|---|---|
| רבי יהושע אומר: האוכל אוכל ראשון ואוכל שני שני. שלישי, שני לקדש ולא שני לתרומה. | R. Yehoshua says: He who eats food with first-[degree] or with second-[degree uncleanness contracts] second-[degree uncleanness]. With third-[degree uncleanness, he contracts] second-[degree uncleanness] in regard to holy things but not in regard to terumah. |

The particulars of this mishnah do not really concern us here. What is significant is that both rabbis agree that a person who eats impure food will be defiled. This is exactly the viewpoint against which Jesus argued, and it aids in understanding why the argument is connected in the Gospels to hand-washing. According to the rabbis, by not washing one's hands, one will defile any food touched. Such food will enter and defile the body. Jesus, on the other hand, argued that hand-washing was unnecessary because impure food cannot defile the body.

These three texts all help us understand one other. The text from Mishnah Eduyot about excommunication should be viewed in light of the argument against handwashing from the Gospels which itself is only comprehensible in light of the debate in Mishnah Tahorot (and other texts which show that the body can be defiled by eating impure food, such as Mishnah Zavim 5:9). Taken together these texts reflect a fundamental dispute concerning the purity laws—is the body defiled by the consumption of impure foods? Does one need to wash one's hands before eating in order to prevent the defilement of the body? Jesus's statement in the Gospels of Mark and Matthew teaches us that Eliezer ben Hanad was denying a major principle in the rabbinic purity laws, one which defined the Pharisaic custom already in the first century. It is not surprising that denial of such a central tenet would have made this rabbi worthy of excommunication. And Rabbi Eliezer and Rabbi Yehoshua's argument in Mishnah Tahorot solve the riddle of just what Jesus was arguing against when he claimed that the body cannot be defiled by what the mouth consumes.

## Further Reading

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Hirshman, Marc. *A Rivalry of Genius: Jewish and Christian Biblical*

*Interpretation in Late Antiquity*. Albany: S.U.N.Y. Press, 1996.
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Shemesh, Aharon. *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis*. Berkeley: University of California Press, 2009.
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## IV. Literary Reading of Aggadot

The final critical technique we shall consider is the literary reading of rabbinic aggadot, stories by and about the rabbis.[36] Traditional commentators generally believed that these stories were reliable descriptions of the rabbis' lives. Indeed, this at least partially explains why rishonim very rarely comment on aggadot. They assumed that these were historical accounts to which they had little to add, beyond clarifying terms or details.

The earliest critical scholars rightfully rejected this point of view, but clung to the possibility that there was nonetheless a "historical kernel" to the text. While these earlier scholars were aware that aggadot tended to develop over time as subsequent generations embellished and exaggerated them, they believed that at the heart of the stories there usually, if not always, lay a historical core. They maintained that the task of the academic scholar was to strip away the layers of embellishment and thereby reveal what actually happened. They understood that these stories did not occur as we encounter them. For instance, R. Yehudah Hanasi did not actually engage in the conversations with the Roman emperor that the aggadah recounts (Avodah Zara 10b). But they assumed that R. Yehudah Hanasi must have had dealings with the Roman government. Similarly, they understood that R. Akiva probably did not have such a vast number of students who died from the plague (Yevamot 62b), but he must have had at least some students who were among the death toll.

[36] We do not address here the literary reading of biblical/midrashic aggadot that reconstruct and augment the stories of the Tanakh.





A rejection of this "historical" approach was spearheaded a generation ago by Yonah Fraenkel. Fraenkel demanded that these stories be analyzed not for their political or historical context, but for their literary craftsmanship. Frankel asked the types of question that scholars of literature were accustomed to ask of the stories which they analyzed. How does the storyteller shape his story? How do the characters develop from the beginning to the end of the story? What is the author's point of view? How are literary devices, such as repetition, foreshadowing, and wordplay employed? Are there allusions to other stories? What is the overall theme of the story? There are many such questions one can ask, and to some extent this type of analysis is more subjective than some of the more "technical" critical techniques listed above. Nevertheless, we believe that this type of analysis can enhance our understanding of rabbinic aggadot.

We should also note that such analysis can and should be combined with source analysis. Shamma Friedman, who has analyzed a number of Babylonian aggadot, summarized this approach by stating that instead of searching for the historical kernel, one should search for the literary kernel.[37] That is to say, the first thing to do when analyzing a Babylonian aggada is to check whether the Babylonian editors have used themes found in Eretz Yisraeli literature or even in other earlier texts embedded elsewhere in the Bavli. Jeffrey Rubenstein has been especially prolific and insightful in his literary and source-critical analysis of Babylonian aggadot. Especially noteworthy is his theory that the rabbinic activity in these aggadot, many of which describe tannaim, is actually reflective of the rabbinic academy as it existed in the time of the aggadah's composers. While a scholar may not be able to use these late aggadot to draw conclusions about the lives of the tannaim being portrayed, scholars might, in the end, be able to use them to uncover the concerns and anxieties of the anonymous sages living at the end of the amoraic period, i.e. the men who composed these stories. In other words, these stories reveal more about their authors than about the figures they purport to depict.

Finally, such analysis also entails comparisons with literary and thematic techniques found in other cultures, especially those contemporary with the rabbis. The type of literature composed by the rabbis was not created in a

[37] Shamma Friedman, "Literary Development and Historicity in the Aggadic Narrative of the Babylonian Talmud: A Study based upon B.M. 83b–86a," *Community and Culture*, ed. Nahum Waldman (Philadelphia: Gratz College, 1987), 67–80.

vacuum. It can be assumed that the methods of storytelling used by rabbis were to a certain extent common to their culture. Cross-cultural analysis, when possible, enriches our understanding of rabbinic literature, for notions concerning various themes such as magic, suffering, birth, death, luck, etc. were at times shared by the rabbis with their neighbors and at other times debated.

## Example

The following brief aggadah is from Bavli Kiddushin 29b. We have included the baraita that precedes it so that we can analyze the aggadah in context.

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| תנו רבנן: הוא ללמוד<br>ובנו ללמוד - הוא קודם<br>לבנו; ר' יהודה אומר: אם<br>בנו זריז וממולח ותלמודו<br>מתקיים בידו - בנו קודמו. | Our rabbis taught: He [the father] needs to learn [Torah] and the son needs to learn—he takes precedence over his son. R. Yehudah says: if his son is quick to learn and sharp and he can remember his studies, his son takes precedence. |
| כי הא דרב יעקב בריה דרב<br>אחא בר יעקב שדריה אבוה<br>לקמיה דאביי, כי אתא חזייה<br>דלא הוה מיחדדין שמעתיה,<br>אמר ליה: אנא עדיפא<br>מינך, תוב את דאיזיל אנא.<br>שמע אביי דקא הוה אתי. | Like R. Yaakov son of R. Aha bar Yaakov, whose father sent him to learn with Abaye. When he [R. Yaakov] came back [his father] saw that his traditions were not so well honed. He said to him: I'm better than you; you stay here for I am going to learn. Abaye heard that he [R. Aha bar Yaakov] was coming. |
| הוה ההוא מזיק בי רבנן<br>דאביי, דכי הוו עיילי<br>בתרין אפילו ביממא הוו<br>מיתוקי, אמר להו: לא<br>ליתיב ליה אינש אושפיזא,<br>אפשר דמתרחיש ניסא.<br>על, בת בההוא בי רבנן,<br>אידמי ליה כתנינא דשבעה<br>רישוותיה, כל כריעה<br>דכרע נתר חד רישיה. | There was a demon in Abaye's academy, that would cause harm even when two people would come in during the day. He [Abaye] said to the members of the study house: No one should let him be a guest in their house, for maybe a miracle will occur. He [R. Aha bar Yaakov] entered and slept in that study house. The demon appeared to him as a seven-headed monster. Each time R. Aha would bend his knees [in supplication] one of the monster's heads would fall off. |





| | |
|---|---|
| אמר להו למחר: אי לא<br>איתרחיש ניסא, סכינתין. | He [R. Aha] said to them: If a miracle had not occurred, you would have put me in danger. |

Rather than offering a lengthy analysis of this rich and suggestive aggadah, we wish to point out some of the issues and themes that lend themselves to literary analysis. The main character in this story is clearly R. Aha bar Yaakov. The central irony seems to be that this extremely learned rabbi has a son whose "traditions are not well honed." This is the same tension addressed by the opening baraita, about whether a father or son takes precedence when it comes to learning Torah. The story problematizes the situation by showing just how dangerous and fraught such a situation would be.

A literary analysis of the story would address such questions as: How does the storyteller portray R. Aha bar Yaakov as dealing with this problem? Is his decision meant to elicit the reader's outrage or sympathy? How does our perspective shift during the story? We might separate the story into scenes to see how the characters relationship to one another changes from scene to scene. What is the meaning of the presence of a demon in the academy? Is the academy a dangerous place? Why is Abaye presented as using R. Aha to deal with this dangerous situation? Is Abaye's action a response to R. Aha's telling his son to stay home while he goes out to learn? How does the Talmudic context of the story influence its meaning? One can sense that the answers to these questions will be relatively subjective. But this should not deter the critical reader from asking and attempting to answer them.

Source analysis might involve investigating whether the seven-headed monster is found elsewhere in the Bavli. We might expand this search to see how demons are portrayed in the Bavli. If there are any parallels to the story (there are none that we know of), we would consider how the context of the Bavli may have influenced the events of the story itself.

Finally, cross-cultural analysis might examine contemporary tales to see if non-Jewish contemporaries of the rabbis used the image of this particular demon in their legends. What beliefs were current in the milieu in which the rabbis crafted their tales?

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## The Organization of this Book

Each chapter of this book is dedicated to a single Talmudic sugya, which is studied by employing the critical methodologies discussed in this introduction. Every chapter stands on its own and can be read and studied independent of the others. Furthermore, the chapters can generally be read in any order, although there are occasional cross-references.

Chapter One, focusing on the opening sugya in Tractate Sukkah, is the most programmatic chapter in the book, in the sense that it is the clearest example of how a modern talmudic scholar can apply academic analysis to a sugya in the Bavli. The specific topic addressed in this sugya (Sukkah 2a–3a) is the maximum height of a sukkah, and the interplay between the justification for a height limit and the conditions under which the limit may be waived.

The Chapters Two and Three are both examples of how Greco-Roman laws and customs were reinterpreted and sometimes misinterpreted in later stages of rabbinic literature. Chapter Two deals with how the tannaitic prohibition of having an afikoman at the conclusion of the Pesah seder was eventually transformed into the custom of eating a piece of matzah at the end of the meal (Pesahim 119b–120a). Chapter Three focuses on how the rabbis adapted the Greek legal document known as a prosbul into Jewish law and





then transformed it into a way to avoid the consequences of loan remission in the sabbatical year. The chapter also explores the fascinating Talmudic discussion (Gittin 36a–36b) concerning the authority of rabbis to legislate laws that seem to contradict those in the Torah.

Chapter Four, authored by Ethan Tucker, highlights how the stammaitic editors adapted sources from early generations and used them to fashion literarily cohesive passages, discourse in which the argument flows from one section to the next. Most importantly, while the fashioning of these passages was primarily undertaken with a literary or aesthetic goal in mind, the end result had a deep impact on halakhic development. The specific case analyzed here is taken from Pesahim 102a–103a and is concerned with the question of whether two different rituals (such as birkat hamazon and kiddush) can be recited over a single cup of wine.

In Chapter Five we turn our attention to a more social/historical issue, the role of women in rabbinic thought and halakhah. Specifically we focus on women's participation in formal meals and their obligation to recite birkat hamazon (Berakhot 20b). At the end of this chapter there is an appendix authored by Alieza Salzberg, in which she broadens the lens to a general discussion of how modern scholars analyze issues of gender in rabbinic literature.

Chapter Six focuses on the comparison of Eretz Yisraeli literature with Babylonian literature, specifically with regard to the topic of interrupting mourning customs for a festival (Moed Katan 20a). The first half of the chapter is textually oriented, demonstrating that the earlier halakhah found in the Mishnah, Tosefta and Yerushalmi was indeed transformed in the Bavli. The second half of the chapter is written by Shai Secunda, who discusses the possibility that this specific halakhah was changed in Babylonia due to Zoroastrian influence.

Whereas most of the previous chapters focused on either a specific halakhah or talmudic passage, chapter seven concentrates on a principle, namely that a mitzvah cannot be performed through a transgression. In Tractate Sukkah 29b–30a this principle is applied to the case of a stolen lulav but it has broader implications as well. In this chapter we not only trace how the literature expressing this principle was created and developed, but how its creation and expansion influenced late and post-Talmudic rabbinic ideas.

Academic study of rabbinic texts is usually strongly associated with the use of manuscripts to determine, as best as possible, the most authentic

version of any given text. In chapter eight we deal with a passage from Bavli Berakhot 11b that simply cannot be understood without resort to manuscripts. This passage deals with the blessings recited over the study of Torah: The first half contains an amoraic debate over which texts must be preceded by a blessing, and the second half presents several suggested versions of these blessings.

Finally, we conclude the book by analyzing an extended aggadic passage, the story of R. Pinchas b. Yair and his famous donkey (Bavli Hullin 7a–b). In contrast to traditional commentators who tended to ignore the non-halakhic sections of the Talmud, modern commentators have greatly enriched our appreciation for these stories as literary/cultural creations, reflective of rabbinic concerns. We show how the Babylonian storytellers modified their sources to create a richer, more focused tale, and how in this case they used the tale to explore the place of magicians and miracle workers in a monotheistic world. In an appendix to the chapter, Avigail Manekin-Bamberger discusses some of the ways modern scholars have created a revolution in our understanding of the role that magic played in the Jewish and more specifically rabbinic world.





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# *The Culture of The Babylonian Talmud*

Jeffrey L. Rubenstein

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## *Introduction*

The Babylonian Talmud or Bavli, the great compilation of rabbinic tradition edited in Sasanid Mesopotamia in the fifth through seventh centuries C.E., is arguably the most important Jewish text. While Judaism frequently is designated "the religion of the book"—and by "book" the Bible is meant—the Bavli occupied pride of place in rabbinic tradition.[1] Medieval and modern rabbinic academies based their curriculum almost exclusively upon the Bavli and its derivitive literature of commentaries, legal codes, and responsa. Not every Jew, of course, received the education and training necessary for Talmud study. Yet, from their rabbis, generations of Jews were schooled upon the laws, traditions, ethics, scriptural interpretations, and ideals of the Bavli. The culture of the Bavli is therefore crucial to understanding both the primary influence on the culture of rabbinic academies throughout medieval and modern times as well as important forces that impacted many general Jewish beliefs and practices.

This book argues that the Bavli's dominant culture is the product of its anonymous redactors (editors), known as "Stammaim," who lived 450–650 C.E. Their culture differed in significant respects from the culture of their predecessors, the sages named in the Talmud and known as Amoraim (200–450 C.E.), due to the development of a new form of social organization: the rabbinic academy. In Amoraic times small groups of sages studied with an individual master in disciple circles. By the fifth and sixth centuries C.E. permanent academic institutions had been organized, the precursors of the great rabbinic academies of the Islamic era. Bavli sources, especially stories about sages and other aggadic traditions, often tell of the issues and tensions of academic life and thereby provide a crucial window into the world of the academy.

The picture presented by Bavli traditions looks something like this: The

rabbinic academy is an insular space. Sages leave their wives and homes for many years, take up residence at the academy, and spend all disposable time in passionate study of the beloved Torah. Their esteem for Torah as the ultimate good is accompanied by a contempt for outsiders and a devaluation of all other pursuits — sometimes even ostensibly praiseworthy spiritual activities such as prayer and the commandments — as inferior undertakings. A rigid hierarchy, perhaps even a tendency to dynastic succession, characterizes the organization of the academy. Leading positions are reserved for outstanding scholars who boast noble lineage, although whether knowledge or pedigree provides the primary claim to leadership is contested.

A highly competitive, even combative ethos prevails within the academy. The sages attempt to excel in dialectic argumentation, in the constant probing of traditions by propounding objections and providing solutions. Through such debates — many of which are hypothetical and artificial — the sages explore every aspect of Torah, creating new lines of analysis and expanding the ever-growing body of tradition. Debate is simultaneously the means to greater status and even rank. A sage gains respect and a higher position within the academic hierarchy by raising unimpeachable objections against his disputant's claims while successfully parrying objections against his opinions. This verbal sparring sometimes takes an unfortunate turn from healthy, competitive debate to insults and hostility, which can make the academy feel like a violent arena. A sage's constant fear is that he will be unable to answer attacks upon his position and suffer public humiliation. This is a grave danger, for the sages experience shame as a type of social death, and the failure to perform may also jeopardize their positions within the hierarchy. Yet, inasmuch as the victim suffers from being shamed, so the perpetrator risks divine punishment for shaming a fellow sage. To achieve academic success is therefore an extremely delicate task. Sages try to demonstrate their prowess in debate through brilliant arguments while simultaneously neither opening themselves to refutation nor offending their colleagues. This new emphasis on dialectical argumentation was critical to the process of redaction of earlier traditions and creation of the Babylonian Talmud as we know it.

## The Stammaitic Innovation

To understand how and why Bavli culture differs from the previous rabbinic cultures it is helpful to compare the corresponding Talmud compiled in the Land of Israel, the Palestinian Talmud or Yerushalmi. Anyone who has studied even a small amount of Talmud is well aware of the striking differences



between the Bavli and the Yerushalmi. The legal discussions of the Bavli are typically intricate, highly developed, and multitiered; those of the Yerushalmi tend to be brief and elliptical. The Bavli's argumentation is frequently sustained, an entire folio or more devoted to one topic; that of the Yerushalmi is generally terse, rarely continuing for more than a paragraph or two. Bavli *sugyot* (literary units; singular: *sugya*) often evince well-defined, precise structures; Yerushalmi *sugyot* are usually crude and unstructured.

Bavli argumentation, far more than that of the Yerushalmi, focuses on minority opinions, which have no bearing on practical law. Extended dialectical discussions probe different Amoraic opinions, testing, hypothesizing, and investigating various possibilities, and then conclude much where they start, often failing to arrive at any resolution whatsoever. The Bavli features contrived arguments that satisfy the structural needs of the *sugya* but add little substance to the discussion. We find spurious questions and forced answers as literary devices to emphasize aspects of the debate. Sections of the give-and-take may be repeated verbatim for rhetorical or pedagogical purposes. In many cases rhetoric and style, more than substantive law or final conclusions, motivated the construction of argumentation. Rarely are these phenomena found in the Yerushalmi.

It is tempting to attribute these differences between the Bavli and the Yerushalmi to chronological disparity. The last sages named in the Yerushalmi lived in the mid fourth century C.E., and most scholars assume that the redaction took place shortly thereafter (360–370 C.E.).[2] The last sages of the Bavli are usually identified with the sixth generation of Amoraim, who lived from about 380–420 C.E. However, sages of the seventh and eighth generations (c. 420–480) are mentioned sporadically, as are occasionally even later sages. Perhaps the latest authority named is Rav Revai of Rov, who died about 550, according to Geonic traditions.[3] The redaction of the Bavli therefore continued well into the sixth century C.E., and probably into the seventh. This puts at least two centuries (400–600), perhaps as many as three (350–650), between the completion of the two Talmuds. Such a vast time span clearly would allow for material to accrete and the complexity to increase as generation after generation made their contribution.[4]

Yet chronological disparity can provide but a partial explanation. The differences between the Bavli and Yerushalmi are as much qualitative as quantitative. The Bavli is not simply a lengthier version of the Yerushalmi containing more traditions and additional voices in the discussions. The texture of the Bavli's argumentation, the style of its discourse, the character of its literary units, the flow of the text — all differ markedly from its Palestinian counterpart. A span of 200–300 years, however, is ample time for styles,

interests, and values to change along with shifting social, political, economic, and cultural circumstances. To the extent that we look to the relative chronology as an explanation, it is that the intervening centuries gave rise to new intellectual trends. Innovation, more than accretion, gave the Bavli its distinct character. The question then becomes, When did that innovation take place?

A closer look at the two Talmuds reveals that the major differences are concentrated in one of the Bavli's layers. The Bavli contains two distinct literary strata: traditions attributed to named sages, that is, statements of the Amoraim (*memrot*), on the one hand, and unattributed or anonymous material (*stam*), on the other. Attributed statements in the Bavli and Yerushalmi are very similar in style. Most are brief, apodictic statements of law or comments to the Mishna. It is in the anonymous material of the two Talmuds, which generally provides analysis of, and context for, the Amoraic traditions, where the major disparity is found. That of the Bavli exhibits the complex argumentation and rhetorical features described above. That of the Yerushalmi does not differ much from the terse style of the Amoraic stratum. The anonymous stratum comprises about half the text of the Bavli. That of the Yerushalmi is extremely thin, amounting to about one-tenth of the text.[5] If one removes the anonymous stratum of the Bavli and compares the Amoraic material with the Yerushalmi, the styles of the texts are quite similar.[6]

Talmudic scholars have determined that the anonymous layer of the Bavli postdates the Amoraic stratum.[7] This layer is the legacy of a later group of sages, whom David Weiss Halivni called "Stammaim," after the term for the "anonymous Talmud" (*stam hatalmud*). The Stammaim were redactors insofar as they created *sugyot* that included the Amoraic traditions they inherited. But they can simultaneously be considered the "authors" of the Bavli (to the extent that the concept of authorship applies) in that they placed those Amoraic traditions in a sustained superstructure of their own composition.

From the fact that the Stammaitic stratum contains most of the Talmud's argumentation, Halivni concluded that a shift in values took place between the Amoraic and Stammaitic periods. Whereas the Amoraim valued practical law and the conclusions of legal discussions, the Stammaim placed higher value on the argumentation itself. The Amoraim preserved only conclusions of their debates, which they formulated as brief traditions to be memorized and passed on to succeeding generations. Because Talmudic tradition was oral and had to be committed to memory, verbal economy was necessary. The essential tradition, the conclusion alone, was preserved and transmitted during Amoraic times. The Stammaim, however, attempted to



reconstruct the argumentation that produced the conclusions and to preserve it for posterity.[8]

Fundamental differences between the Bavli and the Yerushalmi therefore should be attributed to the Stammaim. The innovative argumentation of the Bavli and the intellectual shift it represents likewise should be identified with the transition from the Amoraic to Stammaitic periods. The Stammaim subjected Amoraic traditions to an extended and heavy-handed redactional process that created a *talmud* substantially different from that which had existed before, a process to which Palestinian traditions were not subjected. The Bavli's distinct character, its sequences of logical argumentation, its highly structured literary units, its style and rhetoric—all are products of this group of author-redactors. Around the beginning of the fifth century C.E. there was a significant break with the past and the beginning of an independent cultural period characterized by new values and expressive styles.

Choosing to express themselves anonymously, the Stammaim left no overt testimony to this intellectual shift, to their penchant for debate and love of argumentation, much less to their identities or existence. But they did leave one acknowledgement of historical change in the Talmud. A brief anecdote relates that Shmuel found a tradition recorded in the "Book of Primordial Adam," apparently a compendium of esoteric lore, that "Ravina and Rav Ashi are the end of instruction" (*sof horaa;* bBM 86a). Ravina and Rav Ashi were the leading sages of the sixth and seventh generations of Babylonian Amoraim, and "instruction" (*horaa*) is a technical term for Amoraic rulings.[9] The "end of instruction" means that these sages, representing other sages of their time, were the last to have the authority to legislate in this way. In other words, they were the last to possess the status of Amoraim. Now, major intellectual and cultural changes, even abrupt ones, do not happen over night, and the breaks are rarely as neat as presented by schematic periodization; so we find a few traditions attributed to sages of later generations, as mentioned above. Nevertheless, from the retrospective view of the Stammaim, a watershed took place after the sixth and seventh Amoraic generations. The Amoraic period ended then, and a new, postclassical age began. Unfortunately, beyond this vague allusion to the "end of instruction," the Stammaim tell us nothing explicit of their values, ideas, conflicts, and cultural situation.

There is one available window into the culture of the Stammaim. Recent Talmudic research has shown that the Stammaim made a parallel contribution to the aggadic portions of the Talmud.[10] Their influence was not confined to *halakha,* to the explanation and justification of legal debates, but extended to exegetical and narrative traditions. Many Bavli stories, especially

the longer and more literarily developed ones, evince marked disparities when compared to the parallel versions preserved in the Yerushalmi and in Palestinian midrashim. Detailed comparison reveals that the earlier versions were reworked with techniques similar to those with which legal traditions were revised to form the complex Bavli *sugyot*.[11] Often these stories contain motifs, issues, and language unprecedented in the Yerushalmi but found in late Bavli legal passages. Certain descriptions and details cohere with those found in post-Talmudic Geonic traditions, pointing again to a late provenance. In other words, the Bavli storytellers and homilists, in many cases, were the Stammaim.[12]

That stories and other aggadic traditions should bear evidence of Stammaitic concerns is plausible also because of the nature of the genre. In antiquity biographical anecdotes, historical accounts, and other narratives were not preserved out of a dispassionate interest in history or biography. By modern standards these ancient narrative types should be classified as didactic fiction.[13] Authors wrote, and storytellers told, stories in order to instruct their audience, to teach morals, to stake claims, and to provide positive and negative models. Stories accordingly had to be relevant to the audience and the audience's situation, values, conflicts, and struggles or they would not be transmitted or preserved. Oral narrative, in particular, is generally far more malleable than stories transmitted in writing. As storytellers retell stories they update them so as to make them comprehensible and pertinent to their audience. They tend to jettison older terms that would be poorly understood, transform anachronistic situations, and replace obsolete issues with contemporary concerns. Moreover, in an oral milieu a storyteller typically receives, memorizes, and transmits only the skeletal outline of the story. When he performs it in front of an audience, however, he embellishes the core plot with vivid descriptions, additional twists and turns, character development, and other improvised details in order to spark the audience's interest. Those enhancements typically are taken from his or her experience.

As the Stammaim retold the stories they received from Palestinian sources and the Babylonian Amoraim, they refracted them through the prism of their experience. Many changes occurred unintentionally or subconsciously as transmitters replaced outmoded ideas with those more familiar to them. However, recent studies have shown that numerous changes resulted from a process of deliberate, intentional reworking.[14] We must keep in mind that aggadic traditions carried much less authority than halakhic dicta.[15] The Stammaim were reluctant to meddle with the legal statements of the Amoraim but had less compunction about "modifying" exegetical or narrative elements. In my opinion the reworking of stories also provided the



Stammaim with an indispensable way to address leading tensions of their times. Because they chose to function anonymously and no longer to formulate authoritative dicta, they had little opportunity to grapple with contemporary concerns in an explicit manner. To retell stories of earlier sages, casting them in their own image and reworking the plots, provided the Stammaim a means to express themselves while preserving the veneer of anonymity. In all these ways stories and homiletical traditions absorbed elements of Stammaitic culture. By carefully attending to these traditions and the differences from Palestinian sources, we catch glimpses of the culture of the Stammaim.

This book attempts to describe aspects of Stammaitic culture by studying the motifs, themes and issues that repeatedly appear in late narrative and midrashic traditions. The window to that culture, to be sure, is narrow, and methodological problems impede the view. But the reward is proportionately great. For the culture of the Stammaim pervades the Bavli. By studying the origins and dynamics of fundamental elements of Bavli culture, we can understand the forces that shaped important streams of Jewish intellectual history and influenced the culture of rabbinic academies until the present day.

## Methodological Considerations

The main methodological challenge for this type of study is that of distinguishing Stammaitic from Amoraic material.[16] Unfortunately, not every tradition can be definitively assigned to one of the two strata. The different formal and stylistic characteristics of the Amoraic and Stammaitic strata outlined above are found frequently in halakhic material but less often in aggadic traditions. While recent studies have identified characteristics of the processes of Stammaitic reworking of aggadic traditions, in some cases the extent of that reworking is difficult to establish. As a consequence, while some aggadic traditions can be assigned to the Stammaim based on defined characteristics and other considerations, in other cases it is difficult to determine whether the tradition has been reworked and now reflects Stammaitic concerns or was not reworked and expresses authentic Amoraic ideas.

What can be shown with more confidence is that a particular motif is Babylonian, not Palestinian, despite the fact that the Bavli attributes statements containing the motif to Palestinian sages. The optimal evidence of a distinctly Babylonian issue derives from comparisons between parallel versions of sources found in the Bavli and in Palestinian works such as the Yerushalmi. Because the Palestinian versions generally predate those of the Bavli, and in many cases were the sources of those Bavli versions, the differ-

ences most likely result from the different interests of the Babylonian sages.[17] This obtains even if the tradition is attributed to a Palestinian sage in the Bavli or appears in a source that resembles a ***baraita***.[18] It is extremely implausible that a second Palestinian version, though not preserved in Palestinian works, made its way to Babylonia and was transmitted in pristine condition. Let us briefly look at one example to illustrate this strategy. A tradition found in both the Yerushalmi and the Bavli relates R. Eleazar's response to a difficult question posed to him:

| *yBik 1:8, 64d* | *bBB 81a–b* |
| --- | --- |
| R. Eleazar said to him: "You ask about a matter which the sages of the assembly-house still need [to explain]." | He [R. Eleazar] said to him, "Do you ask me in the study-house about a matter which former scholars did not explain in order to shame me?" |

In the Yerushalmi R. Eleazar simply explains why he does not know the answer: it is a very difficult issue that the sages as a group have not resolved. In the Bavli, however, R. Eleazar responds with annoyance, protesting that the inquirer is liable to embarrass him by exposing his inability to answer before the other sages present in the study-house. I take this difference as evidence that shame, especially the danger of being shamed in the study-house or academy, is a Babylonian concern. As we shall see in chapter 4, the theme of public humiliation appears in many other Babylonian sources.

Second, some themes consistently appear in numerous traditions in the Bavli, including many attributed to Palestinians, but are never found in Palestinian compilations. Yet we lack parallel Palestinian versions with which we can directly compare the traditions to pinpoint the Babylonian coloring. In such cases too it is most likely that Babylonian tradents have reworked earlier Palestinian traditions. That a theme is authentically Palestinian but somehow escaped all mention in the Palestinian works themselves is very unlikely. The Bavli, for example, contains a number of extremely negative traditions concerning the ***am ha'arets***, the nonlearned or nonrabbinic Jew, including the dispensation to tear him apart "like a fish."[19] These traditions are attributed to Palestinian sages, and some appear in purported ***baraitot***, yet not one of these traditions has a parallel in the Yerushalmi or in other Palestinian documents. Genuine Palestinian sources describe the ***am ha'arets*** in a different way and have a much more benign view. In all likelihood the negative traditions reflect an elitist Babylonian attitude and have been retrojected to earlier Palestinian sages.



These two types of evidence of Babylonian provenance will be combined with documentation of characteristic signs of Stammaitic reworking wherever possible. The evidence includes the formal and stylistic markers of the Stammaitic halakhic stratum, linguistic peculiarities, parallels in other late texts, syntactic difficulties that point to a gloss, dependence on earlier traditions, lack of attestation among the dicta of Babylonian Amoraim, manuscript variants, and content.

Thus, I present a hypothesis and data, and argue that the data are best explained by the hypothesis. The data are that certain motifs and themes appear exclusively in the Bavli, sometimes attributed to Palestinian sages, but never in Palestinian sources themselves. The hypothesis is that these concerns result from Stammaitic redaction, from the reworking of Amoraic traditions, and hence shed light on Stammaitic culture. The alternative hypothesis, that Babylonian Amoraim revised the Palestinian material, is less likely. First, there is little evidence that Amoraim reworked traditions in the same way as did the Stammaim.[20] That is, we know that the Stammaim substantially revised earlier traditions, hence the presumption should be that they, not the Amoraim, are responsible for these reworkings too. Second, in many cases the motifs do not appear in any Babylonian Amoraic dicta but only in narratives and traditions attributed to Palestinians.[21] If the Babylonian Amoraim revised the Palestinian sources we would expect to find the motifs occasionally attested in their legal dicta too. Third, the shift from the Amoraic to Stammaitic periods constitutes a break with the past. As suggested above, it was probably the rise of rabbinic academies that was responsible for the cultural shift. Uniquely Babylonian concerns that cannot be connected to the direct influence of the ambient cultures are best explained as products of the new culture of the Stammaitic academy.[22] Finally, since some traditions can be assigned with confidence to the Stammaitic stratum based on specific considerations, it stands to reason that similar traditions that cannot be dated with certainty should be assigned a similar provenance.

Let me emphasize that I am not arguing for a radical discontinuity between Amoraic and Stammaitic times, despite speaking of a break with the past. The later generations of Babylonian Amoraim had more in common with the Stammaim than earlier generations did. Where differences between the Bavli and Yerushalmi can be coordinated with known differences between Greco-Roman and Sasanian cultures, we should consider the cultural element to be Amoraic, not specifically Stammaitic. Chapter 5, for example, assesses an issue of this type. In most other cases discussed here, however, I see little evidence of the direct influence of the ambient cultures.[23] These

cases tend to deal with the internal concerns, institutions, and relationships of the rabbis, and the differences more profitably can be attributed to a new social setting and self-conception.

In taking an approach that neither ignores attributions nor accepts them completely I am trying to avoid the pitfalls of two methods that enjoy some currency among scholars today. The first, associated primarily with Jacob Neusner and known as the "documentary approach," focuses almost exclusively on the final form of the Bavli.[24] Neusner holds that the final redactors exercised complete control over antecedent sources, reworking them at will, such that the attempt to discern earlier layers is futile and misguided. Everything within the Bavli represents the Bavli at its final stage of redaction. This method treats attributions and early traditions skeptically, arguing that there is no way to verify that particular sages made the statements — or anything remotely like them — which the Bavli places in their mouths. It also rejects the possibilities of distinguishing Babylonian from Palestinian traditions within the Bavli and of separating Amoraic from Stammaitic sources.

The second approach accepts attributions as reliable indicators of earlier traditions.[25] While proponents of this method do not necessarily believe that the sage articulated the exact words attributed to him, they claim that the tradition probably represents his basic views. Some errors such as the interchange of two similar names or the confusion of a student's statement with that of his master occasionally occur, but these exceptions do not impugn the overall presumptive reliability of attributions. This method considers traditions attributed to Palestinian sages in the Bavli as accurately representing Palestinian views. Similarly, ***baraitot*** are considered authentic Palestinian sources even if they are found only in the Bavli and not in the Tosefta and other Palestinian compilations.

Neither approach is completely satisfactory, as both are contradicted by empirical evidence. If one compares Amoraic statements in the Yerushalmi with their parallels in the Bavli, one finds considerable variation in the accuracy of transmission. In some cases the Bavli transmits exactly the same words, in some cases the Bavli version expresses an equivalent idea in a paraphrase, and in other cases the Bavli's version differs markedly or completely contradicts the Palestinian original.[26] Similar variations appear when *baraitot* are compared.[27] Some appear in almost exactly the same form in the Bavli; others have been changed substantially. Still others are completely fabricated.[28] Although the cases of exact duplication still do not prove that sages actually articulated the words attributed to them, they demonstrate that in some cases the Bavli redactors preserved traditions exactly as they received them.[29] While there is no external repository of Babylonian Amoraic traditions with which to compare those found in the Bavli, we can expect that these traditions received similar treatment. Thus, one can neither accept all attributions as reliable indicators of Amoraic tradition nor reject them ***in toto***.



Both approaches, moreover, are based on false assumptions concerning the powers and policies of tradents and redactors. The first assumes that transmitters and redactors exercised complete control over antecedent traditions, reworking them without constraint to suit their own needs and purposes. Later sages, however, considered earlier traditions holy and saw themselves primarily as conduits.[30] A widely known and authoritative tradition could not be easily changed, no matter how distressing to later sensibilities. Such traditions were reinterpreted, recontextualized, and glossed, but in most cases they were not totally fabricated. The second assumes that transmitters and redactors possessed almost photographic memories and never made mistakes. But unintentional errors in transmission inevitably occur, as do subconscious changes. Traditions received in corrupted or confused form would be reconstructed to the best of the redactors' abilities but might not accurately represent the original form. And as we have said, aggadic traditions and stories were not vested with the same authority as legal sources; here later tradents sometimes intentionally modified traditions in light of their situations.[31] This odd blend of pious conservatism and innovation is difficult for us moderns to understand. As with so many other cases, it is a puzzling, but characteristic, aspect of the ancient mentality.

If these methodological considerations seem messy, it is because the nature of the evidence — the attribution, transmission, and redaction of rabbinic traditions — is indeed messy. For those who reject my methodology, this study still has value in demonstrating general differences between the rabbinic cultures of Babylonia and Palestine, although not specifically Stammaitic culture. They will have to find other explanations for the differences — another hypothesis to explain the data. As noted above, some of these differences indeed have roots in the Amoraic period. In other cases, when we look at consistent tendencies found in numerous sources, distinctions between the Stammaim and their Amoraic predecessors appear. Those differences comprise the essence of the Stammaitic contribution to rabbinic culture.

Finally, a brief word on my use of the term "culture" is apposite. I am clearly not using the term to refer to anthropological field work or ethnography, but in the more general sense of a society and its way of life. Neither the material culture of the Talmudic rabbis nor other documentary evidence survives. Yet the Talmud is itself a literary artifact of significant proportion,

and one that contains a variety of genres — law, narrative, exegesis, homily, maxims, and so forth. Reading and interpretation of these genres therefore provide some access to elements of the web of rabbinic beliefs and practices. Clifford Geertz compares the approach of the ethnographer analyzing culture to that of a literary critic analyzing a text, "sorting out the structures of signification . . . and determining their social ground and import. . . . Doing ethnography is like trying to read (in the sense of 'construct a reading of') a manuscript."[32] For the study of rabbinic culture, we might say that doing ethnography *is exactly* analyzing a text to uncover those structures of signification. The diversity of sources, the different literary strata, and the voices of sages over the course of four hundred years render the Bavli an excellent candidate for a type of literary ethnographic study.

My choice of the term "culture" also indicates an attempt to go beyond a straightforward enterprise of literary criticism to achieve a broader vision of the nature of rabbinic society. To some extent I am trying to explicate the ideology of the Stammaim, and certain chapters are oriented towards describing attitudes and dispositions.[33] Yet my main goal is to understand the institutional framework in which the sages operated and how this contributed to their beliefs and practices. In other words, I mean to "observe" the sages and their way of life within the rabbinic academy, that is, observe the traces that the academy and academic life left within the Bavli.

This difficulty of reconstructing culture from literary texts confronts scholars of paganism and Christianity in late antiquity, not only scholars of rabbinic Judaism. To take a comparable example, consider the copious work spawned by Peter Brown's seminal research, on the late antique Christian "Holy Man," a social type some scholars suggest was analogous to the rabbinic sage.[34] Besides the hagiographical lives, the scholar enjoys all the sources available to classicists: historical writings; ecclesiastical records; inscriptions; archaeological remains of churches, monasteries, and mosaics; and so forth. Yet when it comes to understanding the Holy Man's actual role in Byzantine culture — his social function, relations with Church officials and peasants, religious practices — the only substantive resource is those accounts of the individual men's lives. Here the scholar encounters the same obstacle as the scholar of rabbinics, the problem of interpreting literature. Claims about culture based on texts are interpretative judgments open to question.[35]

Granted that literary texts are not transparent reflections of the rabbinic culture that produced them, they nevertheless both express and help create the wider set of ideas and patterns of behavior that constitute culture. Moreover, since the Bavli is largely dialogical in structure, presenting opinions



and arguing them back and forth, significant cultural tensions are rarely suppressed.[36] They tend to be exaggerated, as two opposing sides contest issues as if conducting a heated debate. In this way study of Bavli traditions, their literary strata, internal tensions, and differences from Palestinian versions, illuminate aspects of Stammaitic culture.

## Outline

The first part of the book describes aspects of the academic life represented in late Bavli stories, which I believe reflect the situation of the Stammaim. Chapter 1 discusses a number of sources that portray a highly structured and densely populated rabbinic academy. These depictions differ from both Palestinian sources and accounts of the Babylonian Amoraim, which describe gatherings of a much smaller scale. It appears that rabbinic institutions of higher learning (*yeshivot*) first developed in the Stammaitic period. This organizational innovation helps explain both the different concerns and values found in the Stammaitic stratum as well as the general shift from the Amoraic to Stammaitic eras. The formation of large-scale rabbinic academies created a sense of discontinuity with the past and a new self-conception. When we study the culture of the Bavli we study the culture of the Stammaitic academy.

Chapters 2–4 focus on prominent narrative motifs that point to the leading concerns of Stammaitic academic life. The same complex of stories that describes the rabbinic academy contains illustrations of the extensive dialectical abilities of the protagonists (Chap. 2). Leading sages engage successfully in the "give-and-take" of debate, propounding objections and solutions at will. In contrast to Palestinian sources, late Bavli traditions consider dialectical skill to be the acme of academic ability. Now, the bulk of the Stammaitic stratum of halakhic material is devoted precisely to dialectical argumentation. Thus, we see a close correlation between the halakhic literary production of the Stammaim and the aggadic descriptions of academic excellence. This correspondence provides further support for assigning these stories to the Stammaim.

Chapter 3 analyzes the thematization of violence. Many stories and midrashic traditions portray the academy as a hostile and dangerous place. Military imagery is frequently employed: sages battle for their opinions to prevail, attack opposing claims, and defend their rulings from verbal assaults. It seems that in the heat of debate some sages assailed their colleagues, rather than their colleagues' rulings, so that insults and verbal jabs were not uncommon. The violent character is probably a product of the emphasis on

dialectical argumentation. If sages displayed their acumen and even gained status by propounding irrefutable objections against their peers, then the academy would have been experienced as an intensely competitive and combative arena. Portrayals of the academy or school-house as a violent forum are rare in Palestinian sources.

Chapter 4 takes up the motif of shame. While all rabbinic compilations warn that humiliating another person is a particularly serious sin, only the Bavli tells stories about sages who shamed others or experienced shame within the academy. The presence of numerous sages, which rendered the academy a public place, together with the importance of debate created the potential for humiliation. A sage who could not respond to an objection directed against his opinion experienced a loss of face and felt ashamed. That sages constantly risked public humiliation, and perhaps experienced it periodically, contributed to the conception of the academy as a dangerous place. We see here the close connections among the themes addressed in the first four chapters: the large-scale academy, the emphasis on argumentation, verbal violence, and the danger of shame.

The second part of the book turns to issues at the intersection of the academy and the world beyond. Chapter 5 explores the Bavli's surprising preoccupation with matters of lineage and kinship. Judaism had always esteemed lineage (*yihus*), especially priestly and Davidic descent. This historical legacy combined with the significance of pure pedigree in the ambient Persian culture to exert a powerful influence on the sages. Bavli stories present lineage as an important factor in contracting desirable marriages. Most importantly, it appears that noble lineage influenced academic status and even constituted a prerequisite to attaining the leading positions in the academic hierarchy. This influence, however, was contested by other sages, who evidently believed that authority should be vested in those most proficient in Torah. Stories that express this tension shed some light on the structure of the Stammaitic academy.

Chapter 6 examines tensions between Torah study and marital obligations. Both important rabbinic values, the conflict between the two is an inherent systemic tension of rabbinic Judaism, and we find it expressed from time to time in Palestinian sources. The tension seems to have been experienced more acutely, however, by the Stammaim, perhaps because the practice of leaving home for extended periods of study became more common among them. Bavli stories also describe Torah in erotic terms and as in competition with the wife for a sage's passions.

Attitudes of contempt for the *amei ha'arets,* Jews ignorant of Torah and who may have rejected rabbinic authority, are the subject of Chapter 7. The



hostility depicted in Stammaitic traditions goes far beyond anything found in Palestinian sources. This elitist mentality probably resulted from a sense of distance or alienation from nonrabbis produced by the scholastic pursuits and academic life of the Stammaim.

The concluding chapter discusses the legacy of the Stammaim. Here I trace in subsequent Jewish history the main topics covered in the seven chapters of the book, charting lines of continuity and change. Through their contribution to the Bavli, the Stammaim played a formative role in many aspects of post-Talmudic rabbinic cultures.

Chapter 8

# Conclusion: The Legacy of the Stammaim

The legacy of the Stammaim was the Bavli: they created a document that became the basis of the rabbinic curriculum, the foundation of Jewish law, and a source of biblical interpretation, customs, theology, and ethics. The following pages briefly discuss how the themes explored in the chapters of this book left their imprint in succeeding centuries. The treatment is cursory rather than comprehensive. My goal is to point out some of the main lines of development in which the legacy of the Stammaim can be perceived and to note a few areas of significant change.[1]

## The Academy

The academy became the dominant form of rabbinic study and education and remains so to the present day. The immediate descendants of the Stammaitic academies were the great Geonic academies of the Islamic era. After the Islamic conquest, at some point in the ninth century, the academies of the Stammaim, initially located in the cities of Sura and Pumbedita, relocated to Baghdad, the seat of the Abassid Caliphate.[2] For the next three hundred years they exerted tremendous influence on the Jewish communities throughout the Mediterranean basin, answering legal queries, sending out emissaries, playing a role in community politics, and collecting contributions to support their scholars. During this time a rabbinic academy formed in the Land of Israel and attracted a sphere of influence of its own. The efforts of the Geonim to disseminate the Babylonian Talmud spawned the organization of rabbinic academies in North Africa and Spain in the ninth and tenth centuries, and slightly later in Egypt. In the eleventh through thirteenth



centuries academies were founded in German regions, such as Mainz, Speyer and Worms; in southern France (Provence), in Narbonne, Lunel, and Carcasonne; and in various cities in northern France.

Rabbinic academies perhaps attained their acme of cultural prominence in Poland and Lithuania during the sixteenth through nineteenth centuries, despite the Chmielnicki massacres of 1648–49. The academy of this period can no longer be considered the province of an intellectual and spiritual elite. Such a high value was placed on Talmud study that almost every male spent several years, if not more, studying in an academy. Communities extended a great deal of financial support to the local academy and took great pride in the stature of its scholars. Many of the great eastern European academies relocated to Israel and North America after the Holocaust. Study in the academy remains a cultural ideal for most of Orthodox and Hasidic Judaism today.

## Dialectics

The dialectical questioning thematized in Stammaitic narratives appears to be related to reports of the dialectical methods with which the assembly of scholars studied in the Geonic academies. Nathan the Babylonian describes the manner of answering responsa as follows:

> And this was their custom regarding responsa to questions: on each day of Adar he [the head of the academy] brings out to them all the questions which have arrived and gives them permission to respond (*sheyashivu teshuva*). . . . Then each one speaks according to his understanding and wisdom, and they raise objections and solve them and discuss each matter (*maqshin umefarkin venasim venotnim*) and analyze it thoroughly. And the head of the academy listens to their words and understands everything that they say and that they object one to another.[3]

Here the dialectic has a practical function, namely to answer the legal query through analysis of the different sides of the issue. The Talmudic sources suggest a more hypothetical exercise not necessarily related to practical law, but the procedure and terminology are identical. In one of his letters, Sherira Gaon refers to a related manner of instructing students: "Also our young man Hayya is diligent in teaching them and putting (the texts) in their mouths; and whoever does not know how to ask, he teaches him the method of objection (*derekh qushya*) and endears this method to him."[4] Training for even elementary students, those who do "not know how to ask," involved di-

alectics. That Sherira refers to a "method" of objections suggests a formalized practice and indicates that such ability was expected of all sages at this time.

Written Geonic commentaries and responsa, however, generally do not evince a dialectical structure, nor do they expand lines of Talmudic argumentation to any great extent. In the High Middle Ages the Tosafists returned to dialectics as a mode of creative intellectual and spiritual expression. Beginning in the Franco-German academies in the twelfth century, the Tosafistic commentorial tradition spread throughout the Sephardic world to Spain, Egypt, and North Africa. The Tosafists were primarily dialecticians. They typically pointed out a contradiction (or a purported contradiction) that emerged from the juxtaposition of two Talmudic passages and solved the problem by drawing a distinction. The rhetorical form of the Tosafot is dialogical, replicating the questions and answers of an oral debate: "If you should say. . . . I will answer . . . and it could also be objected . . . but I would respond." These series of questions and answers are sometimes multiplied at great length, nested with subquestions and answers, and spawn digressions and tangents.

In many ways the Tosafists complete the unfinished project of the Stammaim. The Stammaim frequently juxtaposed two potentially conflicting Tannaitic sources or Amoraic dicta and resolved the apparent contradiction. In some cases, however, the Stammaim either failed to point out the conflict or did not perceive there to be a conflict. The Tosafists routinely took up these cases and resolved the contradiction with many of the techniques commonly used by the Stammaim. There are also a number of *sugyot* that stand in tension with one another in that they make different legal assumptions or arrive at conflicting decisions. The Tosafists identified these contradictions and attempted to reconcile them. Where the Stammaim attempt to harmonize contradictory Tannaitic and Amoraic opinions, the Tosafists took it upon themselves to harmonize the entire Talmud, including contradictions in the Stammaitic layer of disparate passages. They extended, completed, and developed the contribution of the Stammaim. Thus Ephraim Urbach comments: "Rabenu Tam and the other Tosafot added new issues to the Talmud, continuing in its path and completing it. This is evident from the many passages of the Tosafot which could be inserted into the body of the Talmudic *sugya*, such that one would not know that they entered its midst, nor could one detect that they can be separated from it."[5] The Tosafists, for example, will ask why "the Talmud" (we would say the Stammaim) does not pursue a line of questioning in a certain passage that it advances elsewhere. Often they also formulate the potential argumentation and provide theoretical



answers. While the Tosafists' motivation was to make the Talmud consistent, their efforts resulted in a proliferation of questions and answers. Like the Stammaim, the Tosafot address theoretical issues and minority opinions which have no connection to practical law.[6]

The result of the three centuries of Tosafistic activity (12th–14th centuries) was a tremendous increase in rabbinic halakha and, in a more general sense, in Torah. Haym Soloveitchik compares the nondialectical codification of Maimonides, the *Mishneh torah* or *Yad*, with the dialectical labors of the Tosafists:

> Anyone who comes to the *Yad* from studying a *sugya* with the writings of the Tosafists, with their vast collection of data, their discovery of hidden problems and proffer of multiple solutions, will find Maimonides' presentation thin and simplistic. Valid, at best, but far from the final word. On a practical level, moreover, the *Yad* had ceased to sum up the state of Halakhic affairs. By dint of the Tosafist method thousands of inferences were being drawn from the Talmud of which Maimonides (and the Geonim) had never dreamt. How skeletal and inadequate a code the *Yad* had become by the first quarter of the thirteenth century can be seen by comparing the several laws regulating the purging of vessels (*Hag'alat kelim*) given by Maimonides in *hilkhot hames u-masah* (V:21–26) with the extensive section 464 in the *Rabyah*. Or compare what is probably the most comprehensive set of rules in the *Yad, hilkhot malveh ve-loveh*, with the massive *Sefer ha-Terumot* of R. Samuel Ha-Sardi, the joint product of French, Provençal and Spanish thought around the year 1255.[7]

This comparison incidentally sheds light on the appeal of dialectical approaches, the possibilities of deriving new insights and creating new Torah. It helps us understand R. Yohanan's lament at the replacement of his study-partner Resh Laqish, with whom he had engaged in dialectics such that their "discussions expanded," by R. Eleazar b. Pedat, who simply supported his conclusions.[8]

*Pilpul*, another dialectical method of study, developed in the fifteenth and sixteenth centuries in Ashkenazic academies.[9] This designation, as we have seen, derives from Bavli passages that glorify sharpness and erudition.[10] Medieval *pilpul* subjected the Talmudic text to rigorous casuistic analysis, making extremely fine distinctions to resolve tensions and apparent conflicts. "Pilpulists" assumed that no Talmudic phrase could be redundant or devoid of significance, so they teased meaning out of almost every single word by subtle differentiations. The purpose of *pilpul*, to some extent, was didactic, to train students' minds through complex arguments and applications of

logic. In the sixteenth and seventeenth centuries the mark of an outstanding rabbinic student was to excel in pilpulistic disputation.

Dialectical approaches to Talmud study were by no means an inevitable or natural development. The Geonim did not write explanations or responsa in a dialectical manner. Rashi's commentary is largely free of dialectics. Before the Tosafist method spread to the Sephardic world, Spanish and North African scholars generally did not engage in dialectical analysis or extending the argumentative portions of the Talmud. They focused on determining practical law and explicating the extant text. Even in Ashkenaz the Tosafists faced opposition and criticism in their time, especially from Pietist circles (***hasidim***).[11] As pilpulistic discourses became increasingly convoluted, hypothetical, and pretentious, a means by which scholars showed off their erudition, a backlash developed that bestowed on the term ***pilpul*** a pejorative sense.

From the late Middle Ages until the present day, study of the Tosafot has become an intrinsic component of the study of the Bavli. For this reason the printers of the Talmud decided to flank the text with the commentaries of Rashi and Tosafists. The Tosafistic tradition and other modes of dialectical study are among the most enduring legacies of the Stammaim.

## Violence and Shame

The prevalence of verbal "violence" and shame in the medieval academies is difficult to assess in post-Talmudic times. We generally lack literature that reflects the conditions of medieval or even early modern rabbinic academies in the same way that the Talmud depicts the Stammaitic academies.[12] Stories analogous to Talmudic tales of the conflicts of sages within the academy, the richest source of insight into academic life, are rare. Post-Talmudic commentaries, codes, and responsa mostly explicate the Talmud, not the situation of the authors. Our main sources of descriptions of life within the academies are personal memoirs and journals, which are scarce in premodern times. Even where such memoirs are available, we must take into account that an individual sage writing his own text is a vastly different social setting for the production of literature than a group memorizing traditions and transmitting them orally.

The few extant descriptions suggest that an "agonistic" ethos akin to that of Talmudic times characterized many medieval and early modern academies. R. Yehuda HaHasid (d. 1217) contrasts those who are motivated by the "fear of heaven" to understand "the objections and solutions" of Talmudic debate with those who "learn for the sake of victory" and cautions, "if two



argue in order to defeat one another, do not teach them."[13] These students apparently seek dialectical expertise so as to triumph in debate and outshine their rivals. R. Isaac Profiat Duran (d. 1410) likewise notes the relationship between dialectics and competition for status: "Many of them [students] aim at understanding the depth of the give-and-take, at making objections and solving solutions in thousands and myriads, not for the purpose of understanding the laws of the Torah that emerge from the ***sugyot,*** but to exalt themselves over one another."[14]

A few centuries later R. Yaakov b. Yehezqel Zlatovi protests against this type of mean-spirited competition because of its deplorable consequences:

> When engaging in Torah study they spar like rams, one against the other, to swallow each other. They lord themselves over one another with insults: "You are an ox, not a man; a jackass, worth nothing." Each wants to be superior, as if [to say], "I am the best one, and there is none besides me." Is this type of ***pilpul*** agreeable to God? What benefit and pleasure does our Father in Heaven obtain from this Torah? They will not separate from one another until they tear the Torah to shreds.[15]

Here we have a rare account of the actual insults articulated to demean a fellow student and explicit testimony regarding the motivation, namely to be perceived as the most erudite. The author again links the propensity for verbal violence to the dialectical mode of study (***pilpul***) that foments competition.

Such insults, as we might expect, resulted in feelings of shame. R. Zelig Margoliot (late 17th century) reports the following:

> A certain scholar bitterly told me what another scholar had done to him. Once he taught a "distinction" before the sages and scholars, and the scholars were very pleased with his words and with his novellae. When the other scholar heard this, he sent for him to tell him what he had taught. . . . When he told him the "distinction," he began to rebuke him with vain and trivial words, with forced explanations, and to humiliate him. Jealousy had entered his heart because he had also stated a "distinction" on that same law, lest others say that his colleague was as learned as he.[16]

A "distinction" (***hiluq***) is a standard Tosafistic technique that explains why two apparently similar entities differ and should be subject to different laws. The rival felt jealous of the status attained by the first scholar by virtue of the "distinction" and wished to demonstrate his own, superior, ability. He objected to the teaching so as to manifest its weaknesses and establish his su-

perior prowess. The first scholar, to be sure, dismissed the quality of these objections, but the fact that he felt ashamed suggests that he was unable to parry them and therefore lost status in the eyes of the other sages. In this way, competition for prestige breeds feelings of jealousy and ill-will. Note again that the embarrassment results in part from the fact that status is achieved through dialectical skill. As in the Talmudic sources, the ability to object and respond both confers and undermines status.

Two anecdotes attributed to R. Isaac Luria provide a rare medieval parallel to the Talmudic stories about shame within the academy:

> Once a certain sage acted this way toward his colleague — that one day a certain member of their fellowship stated a certain discourse of Torah. When he came to a certain word, this sage knew that he would make a mistake. He said to the entire fellowship, "Be quiet, do not say anything." Because the colleagues kept quiet, he made a mistake with that word and was ashamed. Later that sage who shamed his colleague died. He stood at the entrance of the Garden of Eden, but the Cherubim held him back and would not let him enter there. . . . He (Luria) also reported the case of a child who would embarrass his teacher with objections and received a severe punishment.[17]

The crucial datum that the offending sage was denied posthumous reward of course marks the story as fictional, but there is every reason to believe the scenario draws on contemporary academic experience. A spiteful sage essentially ambushed a colleague, creating the conditions that caused him to be embarrassed. Had the sage not cautioned his colleagues to remain silent they presumably would have helped the speaker through the difficult matter before his ineptitude became clear. The account actually bears some affinities to the Talmudic story of R. Meir and R. Natan planning to ask Rabban Shimon b. Gamaliel to teach a subject he did not know, fully aware that his failure would cause him to be shamed.[18] Similarly, the brief anecdote about the child echoes the Talmudic warnings that questions should be suppressed if the master will not be able to answer, lest he feel ashamed.[19]

Responsa literature also bears signs of the competitive and violent climate of Talmud study. To "fight in the war of Torah" becomes a stock accolade praising the virtue of another rabbi. Thus Shmuel b. Moshe de Medina (d. 1589) describes a colleague as "a mighty man, a soldier in the war of Torah, who debates in Mishna and Gemara, learned and wise in Sifre and Sifra."[20] The editor of Aharon b. Joseph Sasson's (d. 1626) responsa extols the rabbi as "a lion in our camp, who fights in the war of Torah, an everflowing spring."[21] Abraham Gombiner (author of the *Magen avraham*) is described



as "uprooting mountains and grinding them with his sharpness (*pilpulo*), his hands strive for him with power and might in the war of Torah."[22] Yehezqel Landau (d. 1793) addresses his interlocutor as a man "great and powerful, clothed with weapons in the war of Torah."[23] It is also significant that Nahmanides called his work responding to R. Zerahia Halevi's criticisms against the *Halakhot* of R. Yitzhaq Alfasi the "Book of Wars of the Lord" (*Sefer milhamot hashem*) and that the commentators to Maimonides's *Mishneh torah* are known as his "armor bearers."

Authors of responsa frequently use military imagery when asked to settle complicated issues about which other rabbis disagree. R. Yaakov Berab (d. 1546) writes that he has heard of "quarrels in the gates, war in the camp of the Hebrews, the sound of the war of Torah to bring this law to light."[24] R. Levi ibn Haviv (16th century) notes, "I have seen lions roaring at each other, each clings to his fellow, they array themselves — behold they are the mighty warriors, who wage battles in the war of Torah."[25] R. Moses b. Yosef of Trani (d. 1580) resolves to try to adjudicate a disputed law because, "I have seen scholars goring each other, fighting the war of Torah, and pitting army against army."[26] Israel Isserlein remonstrates that he cannot address a certain case: "you have troubled me at an inappropriate time to enter the war of Torah when I lack my weapons," explaining that the books at his disposal are insufficient.[27] The imagery of books as weapons underscores the difference between the situation of the Stammaim, where oral arguments constituted the mode of war, and that of post-Talmudic times, when such "battles" were conducted by consulting sources and writing.[28]

Despite the indirectness of the medium of writing vis-à-vis the face-to-face confrontations of oral debate, some responsa and medieval halakhic writings indicate that the authors felt acutely insulted by the way other rabbis objected to their rulings. A spectacular example is the aptly titled "Matters of Controversy" (*Divrei harivot*), an exchange of seven letters between R. Zerahia Halevi and R. Avraham b. David of Posquieres.[29] In these letters the two great twelfth-century jurists debate a minor point of civil law. The tone of the first two letters is relatively cordial, with numerous stock phrases of honor and admiration mixed with a smattering of harsh locutions of exasperation at the other's obstinacy. R. Zerahia concludes the third letter with a complaint against R. Avraham's insults, and the subsequent letters become increasingly acrimonious. R. Avraham responds in the fourth letter that in fact he is the aggrieved party:

> I did not deserve the heavy blows with which you struck me with your words. You humiliated me, you embarrassed me, you cursed me. You made me out to be a

> heretic, one who disrespects the Torah, and one who disparages his teachers. You called me a fox who thinks himself to be wise. Worse than that, you made me out to be a woman, as if I were exempt from reciting the Shema, and [exempt] from study of Torah, as if I were unable to speak. And as to the matter of the disparaging insults that you think I was wrong [to direct at you], and that you think I engaged in more than you did – I swear that I would have forgiven them and I would have attributed them all to the custom of the Spanish sages (*sephardim*) and their way of speaking harshly, were it not that you portrayed me as an angry sinner, and that you thought I was your enemy, and you said that you would wipe out the friendly name from my book which I wrote. Therefore I knew that your heart comes from the roots of the dead, and that you vented your strong anger, and that you opened your mouth wide against me to destroy me.[30]

The anger and insults in this passage pretty much speak for themselves. This text is unusual in that we possess the entire series of letters and can trace the debate as it unfolds. In the course of an argument comprised of objections and responses focused for the most part on the legal issue, an occasional harsh word was answered in kind, then misconstrued, then directed at the author rather than his claims, then interpreted as an insult, and then escalated into a full-blown attack. One can imagine that were the two debating face to face their animosity and the mutual sense of insult would only be magnified.

R. Avraham's allusion to the custom of Spanish sages to use harsh expressions in their disputes is suggestive, even though R. Zerahia professes in his next letter that he does not know to what R. Abraham refers.[31] The comment indicates a perception that violent rhetoric characterized certain rabbinic cultures while the rabbis of Provence generally adopted a more friendly and respectful tone. This perspective is reminiscent of the Bavli tradition that the sages of the Land of Israel are "pleasant to one another" in legal debate, whereas the Babylonians "damage one another" in their competitive encounters.[32] In medieval times we see the same awareness that some rabbis routinely engage in harsh exchanges, although here R. Abraham feels that R. Zerahia overstepped the bounds of this expressive style.

## Lineage

Because the significance of noble lineage (*yihus*) in rabbinic culture is an extremely vast topic, I will focus here on lineage and dynastic succession as factors in appointment to leadership positions. In this respect we noted several instances of continuity between Stammaitic and Geonic times: the concentration of the Babylonian Gaonate in a few aristocratic families, claims of priestly descent, and the inheritance of positions within the academic hierarchy.[33] While the Arab conquests and spread of Islam placed the Geonim in a cultural climate different from the Sasanian environment of the Stammaim, Islamic society also prized noble lineage, especially Mohammedean descent.[34] Thus the same combination of traditional Jewish esteem for pure pedigree and respect for noble birth in the ambient society operated in both periods.



A remark by Sherira Gaon in his Epistle nicely illuminates the role of lineage in the Gaon's self conception: "Our ancestors were from the family of the Exilarchs, but they abandoned the ways of the Exilarchate and joined the sages of the academy, preferring meekness and humility. But we are not from the descendants of Bustanay; rather, before that our ancestors joined the sages of the academy."[35] By asserting Exilarchate ancestry Sherira simultaneously claims Davidic descent, as the Exilarch's authority rested exclusively on this basis. Sherira takes pains to point out that he does not descend from Bustanay, the Exilarch who married a Persian princess but failed to convert her before she bore his children, at least according to rabbinic polemics. As a result, all descendants of Bustanay have tainted genealogies. In this way Sherira asserts that the lineage of the Geonim surpasses even that of the Exilarch. Sherira's pedigree combines Davidic descent, outstanding character (meekness and humility), and the wisdom of the academy. This combination resembles the mix of knowledge and lineage idealized in late Bavli sources.

By the ninth century, the earliest time for which information is available, the Palestinian Gaonate, then in an Islamic rather than Byzantine cultural sphere, had also become a dynastic institution. The leading positions in the academy were controlled by three families, two of which claimed priestly descent.[36]

Avraham Grossman argues that lineage was of paramount importance in the selection of heads of academies and other positions of religious authority in medieval Italy, Germany, and France until the end of eleventh century. Most of the heads of academies came from a few leading families, and the office often passed from father to son as if by a principle of dynastic succession. In Ashkenazic communities noble lineage continued to be an advantage in attaining religious leadership well into the fourteenth century.[37] While in Spain and North Africa the position of head of the academy generally did not pass directly from father to son, it was frequently occupied by members of a few leading families.[38] Grossman considers the role of lineage in the medieval academies to be a deviation from the Talmudic period, related to the specific character of the Ashkenazic communities and paralleled by the pres-

tige of noble blood throughout Europe at this time. However, if we understand the stories discussed in Chapter 5 as pointing to the Babylonian, rather than Palestinian, situation, then we should conclude that this trend began in Stammaitic times.

The trend toward dynastic succession received a more formal grounding in medieval law codes. In the *Mishneh torah* Maimonides formulates the principle thus: "Not only the monarchy, but all positions of authority and all appointments in Israel are passed on by inheritance to the son and the grandson forever. This is the case when the son fulfills the place of his ancestors in wisdom and in fear of God."[39] The scope of "positions of authority" and "appointments" is admittedly vague and need not necessarily include the head of academy or a rabbinate. Nonetheless, many subsequent authors of responsa interpreted Maimonides to refer to these offices. In his glosses to Yosef Caro's *Shulhan arukh,* R. Moses Isserles is more explicit: "A rabbi who has attained a position in a city, even if he attained it by virtue of his own merit, is not to be relieved of his office, even if a rabbi greater than he comes to that place. Even his son and descendants take precedence over others, as long as they fulfill the place of their ancestors in fear of God and are somewhat knowledgeable."[40] Note that both jurists add the proviso that the candidate must "fulfill the place" of his ancestors. They adopt this language from the Bavli's story of R. Yehuda HaNasi's testament, namely the Talmud's explanation of why the dying sage appointed his son Rabban Gamaliel to be Nasi even though his other son, Shimon, was more knowledgeable.[41]

Late medieval and early modern responsa take up in greater detail the issue addressed by Isserles's ruling, especially whether a rabbi may "inherit" the post of his father. As the rabbinate became professionalized, cities and villages appointed rabbis to be the religious and spiritual authority for the entire community, which in many cases involved heading the local academy as well. This structural change reduced the importance of lineage to some extent, as the community in theory retained the privilege of appointing whomever it pleased. In practice, however, sons or sons-in-law often put in a claim to succeed their fathers, a claim sometimes opposed by other factions. When the community turned to other rabbis to help settle the dispute, authors of responsa frequently ruled that the son should inherit his father's office even if his rival was more knowledgeable. The responsa regularly invoke as precedents the late Bavli stories we have discussed: that R. Yehuda HaNasi appointed his son Gamaliel to be Nasi despite the fact that his other son was wiser (bKet 103b), that R. Eleazar b. Azariah was appointed to replace Rabban Gamaliel by virtue of his "ancestral merit" despite the fact that R. Akiba was his superior in Torah (bBer 27b–28a), that Rabban Shimon b.



Gamaliel retained his position as head of the academy despite the fact that R. Meir and R. Natan were more knowledgeable (bHor 13b–14a).[42]

Particularly prominent use of a Talmudic precedent is made by Raphael Shmuel Laniado (d. 1793), who was involved in a bitter battle when he tried to bequeath his rabbinic office as head of the Aleppo community to his son.[43] In a lengthy responsum Laniado cites the entire story of R. Meir and R. Natan, focusing on Rabban Shimon b. Gamaliel's statement to R. Natan that "the belt of your father benefited you in making you the Head of the Court."[44] This explanation demonstrates, for Laniado, that R. Natan merited the office "solely on account of his father," which provides "absolute proof" that his son should inherit his office. He also points out that R. Meir and R. Natan were "greater in knowledge than R. Shimon b. Gamaliel, and even so R. Shimon b. Gamaliel was the Nasi because he had inherited the crown from his father Rabban Gamaliel." These gestures toward dynastic succession resulted from the circumstances and pressures of the times, not from the direct influence of the Bavli. Yet, given the general understanding of the rabbinate as a meritocracy—a point repeatedly emphasized by these same responsa—the Stammaitic narratives served as important precedents. One wonders whether without these sources the jurists would have approved of a less knowledgeable rabbi, his ties of kinship notwithstanding.

Dynastic succession of course resurfaced in a new way in Hasidism and to a certain extent in modern non-Hasidic orthodoxy.[45]

## Wives

The proliferation of academies in medieval times seems to have attenuated the problem of students' leaving home for many years to pursue their studies. Still, not every scholar lived in a location that hosted an academy, while the best scholars endeavored to travel to the largest and most prestigious academies. Elijah Capsalli (d. 1555) reports of academic life in Venice that twice each year, during the months of Nisan (for Passover) and Tishrei (for Rosh Hashana and Yom Kippur), "a few of the rabbis and students who came from distant lands on account of the academy, and who left their wives and children—for the holidays they would march their feet, make a pilgrimage with their steps, and return to their lands, to their tongues, to their peoples, to rejoice in their homes with their children and wives."[46]

Opposition to these absences by wives seems to have been rare—or at least rarely reported in the extant literature. One example appears in a responsum of Jacob b. Moses Moellin (MaHarIL; d. 1427) concerning a wife who refused to give her husband permission to leave home to study Torah

elsewhere.[47] She argued that an academy was located in their vicinity, adding that her husband was "neither sharp nor astute." Moellin nevertheless rules that the aspiring student may depart without her permission for up to eighteen months, adducing the opinion of the sages in bKet 62b.[48] He dismisses her objections on the grounds that the Talmudic sages journeyed great distances to study where and with whom they believed they would make the best progress, and that the intelligence of a student does not reduce the value of Torah study.[49]

Erotic representations of Torah study, also discussed in Chapter 6, become an explicit and important dimension of Kabbalistic mysticism, as has been described in detail by Elliot Wolfson.[50] The Zohar presents Torah study as a means of uniting with the feminine elements of God:

> Similarly, when scholars are separated from their wives on weekdays in order to study Torah, celestial intercourse is granted them and does not desert them, so that male and female may exist together. . . . Similarly, when a man's wife has her menstrual period and he has proper respect for her, celestial intercourse is granted him during those days, so that male and female may exist together. When his wife has become purified he must give his wife the joy of the commandment, exalted joy.[51]

According to the Talmudic tradition cited in Chapter 6, the conjugal duty of sages is once a week on the Sabbath.[52] The Zohar claims that although a sage abstains from physical intercourse during the week, he engages in "celestial" intercourse with the *Shekhinah,* namely the mystical experience of "cleaving" to or uniting with God.[53] Likewise, when he refrains from sex with his wife due to her ritual impurity, he is compensated by celestial intercourse achieved through passionate Torah study. Torah study and marital sex are presented as complementary and even interdependent activities in that celestial intercourse is a reward for satisfying the wife's sexual needs at the proper time. This interpretation is ultimately grounded on the mystical view of marital sex, like other commandments and rituals, as a symbolic act that influences the life of divine potencies. But that Torah study is analogized to intercourse rather than some other ritual underscores the eroticism of the experience.

The parallel erotic experience of the intellectual and physical emerges even more clearly in the following Zoharic passage that discusses the sanctity of midnight:

> The comrades who are engaged in [study of] Torah join the community of Israel in praising the holy King as they are occupied with the Torah. For the rest of the [Jewish] males this is the acceptable time to be sanctified in the sanctity of the Holy One, blessed be he, and to direct their intention to be conjoined to him. With respect to the comrades who are engaged in [study of] Torah, the time for their sexual intercourse is the time that another intercourse takes place, and this is on the eve of Sabbath.[54]



Wolfson's analysis of the passage is worth quoting in full:

> The mystics rise at midnight to study Torah at precisely the time that other Jewish males should ideally engage in sexual intercourse. The hermeneutical activity of the kabbalist is viewed as distinct from yet isomorphic to the conjugal sex of the layman: Just as the latter is conjoined to God through the proper intention in sexual intercourse, so the former attains the state of conjunction by means of textual exegesis. The phenomenological structure of the two experiences is identical: by uniting with the female (in the case of the ordinary male his wife and in the case of the mystic the *Shekhinah*) the male gains access to the masculine potency of the divine.[55]

Wolfson also notes that in a later Kabbalistic ethical work, Elijah de Vidas (16th century) describes Torah study of sages as "spiritual intercourse" (*zivug ruhani*) that corresponds to the "physical intercourse" (*zivug gashmi*) of laymen.[56]

Hasidic writings continue to present Torah study in erotic terms. For Moses Hayyim Ephraim of Sudlikov (c. 1737–1800), study functions as a means of uniting with the (feminine) Torah herself: "When a person is occupied with Torah for its own sake . . . He and the Torah become one in unity and perfect oneness like the unification of a man and his wife . . . if with respect to physical unification [it says] "And they will be of one flesh" (Gen. 2:24), *a fortiori* with respect to spiritual matters he becomes a perfect unity with the Torah."[57] Clearly the notion of uniting with the Torah must be understood metaphorically. That the author analogizes this unification to sexual unity again points to the erotic nature of study.

To be sure, Kabbalistic mysticism is a religious system that differs from classical rabbinic Judaism in significant ways. Yet the influence of the Bavli can be seen in that many of these passages from Kabbalistic and Hasidic texts quote the Talmudic midrash from bPes 49b cited in Chapter 6 that plays on Deut 33:4, reading "inheritance" (*morasha*) as "betrothed" (*meorasa*).[58] Here, as in many cases, the Kabbalistic developments can be seen in part as a midrashic interpretation of earlier rabbinic sources.

## The *am ha'arets*

Geonic sources adopt an apologetic attitude toward the passages contemptuous of the ***am ha'arets***. Rav Sherira Gaon, for example, limits the tradition permitting one to kill an ***am ha'arets*** even on a Sabbath that falls on Yom Kippur to the case in which an ***am ha'arets*** pursues another man in order to murder him or pursues a betrothed maiden so as to rape her.[59] Of course one may also kill a sage in such circumstances, so Sherira explains why the tradition singles out an ***am ha'arets*** as follows: ***because*** an ***am ha'arets*** has not studied the law, he does not realize that anyone can kill him when he attempts to murder another, and may therefore suffer a horrid death such as being split apart like a fish. Sherira also insists that the Talmudic tradition cannot be taken at face value, as it contradicts such rabbinic norms as the need for a trial, witnesses, and standard judicial protocols. This apologetic perspective is exactly what we would expect given the shift in the tradition's audience. When the Talmud became a written text and was disseminated throughout the Jewish world, the potential audience came to include rabbis and nonrabbis alike. Moreover, as the Geonim promoted the Bavli as the authoritative source of law, it gained a wide following. The ***am ha'arets*** traditions were no longer the private discourse of the sages but public statements. Sherira's apologetic interpretations are intended to neutralize any normative or legal impact.

Kabbalistic texts, on the other hand, take up the negative ***am ha'arets*** traditions and adapt them in service of aspects of mystical theology. In several places the Zohar equates sages with human beings and the ***amei ha'arets*** with subhumans, such as this portrait of messianic times: "But they [***amei ha'arets***] will be despised by scholars, like darkness before light, for the mixed multitude, the ***amei ha'arets,*** are darkened. And they are not called "Israel," but slaves sold to Israel, since they are like beasts, and they have already explained this, while Israel are called 'human.' "[60] "They have already explained this" refers to the Bavli traditions from bPes 49b that compare the ***amei ha'arets*** to animals. Because the ***amei ha'arets*** do not study Torah, the Zohar deprives them of the status of "Israel," meaning that they are not fully Jewish, and consequently not fully human.[61] The Zohar assigns them second-class status as slaves of the scholars, and the continuation of the passage relates that those who do not accept their status will be killed. In this way the Zohar perpetuates the Bavli's debasement of the ***amei ha'arets*** and projects it to the eschaton: those who do not study Torah have no right to exist except insofar as they serve the sages.



Similarly, the Zohar essentially endorses the Talmudic tradition advocating violence against the ***amei ha'arets***: "It is true that the world really consists of none but the companions who study the Torah and understand its mysteries. The companions rightly issued decrees against the ***amei ha'arets,*** who corrupt their ways and cannot distinguish between right and left, for they are like beasts, who deserve to be punished, even on Yom Kippur. Concerning their children it is said: 'They are children of harlotry' (Hosea 2:6)—real harlotry."[62] The subhuman nature of the ***amei ha'arets*** deprives them of any claim to be a part of the world, reading them out of the Jewish people. And because they (and their parents) do not possess mystical knowledge of sexual law, they have sex at the wrong times, causing their children to have the status of those conceived from sinful unions. The "decrees" alludes to Talmudic traditions disqualifying ***amei ha'arets*** from testifying in court and suchlike.[63] While the Zohar somewhat ameliorates the tradition granting a dispensation to slay ***amei ha'arets*** by the formulation that they "deserve to be punished," the attitude remains contemptuous. Most important for our purposes is that the Zohar incorporates these Talmudic traditions into its worldview rather than reinterpreting or repudiating them, as do the Geonic sources. This contrast tends to support the understanding of the Talmudic traditions as the inner discourse of the academy intended only for an audience of likeminded sages. Mystical literature, also intended for an elite and limited audience, embraces the negative traditions, whereas the Geonim, engaged in the project of disseminating the Bavli and establishing it as the authoritative source of law, neutralize them.

## Epilogue: The Triumph of the Bavli

The story of the Bavli's dissemination outside of Babylonia and its establishment as the authoritative source of law belongs to the post-Talmudic era. These processes were part of the campaign of the Babylonian Geonim to promote themselves as the legal authorities for the entire Jewish world, consequently to champion the Bavli—of which they were the expert interpreters—as the foundational halakhic text. Their ultimate success was due primarily to political and economic factors, including the move of the academies of Sura and Pumbedita to Baghdad, the seat of the Abassid Caliphate and center of the Islamic empire, which enhanced their prestige and ability to influence distant Jewish communities. At the same time, the characteristics of the Bavli should not be discounted. As the Babylonian academies were eclipsed by other centers of learning, and as the authority of the Geonim was supplanted by that of other scholars, nothing guaranteed that the Bavli

should retain its centrality. Part of the Bavli's enduring power should be attributed to the nature of the text itself. The depth of the Bavli's argumentation, the intricately textured *sugyot,* the richness of its dialectical debate, and the complexity of its narratives captured the imaginations of succeeding generations of sages.[64] The *sugyot* of the Yerushalmi, by contrast, are for the most part terse and poorly developed. As noted in the Introduction, this difference is due to the Stammaim, who wove earlier apodictic traditions into complex *sugyot,* adding layers of argumentation and debate.

The leading competitors of the Babylonian Geonim were their Palestinian counterparts.[65] Besides possessing the rival Talmud Yerushalmi, the Palestinian Geonim based strong claims to authority on their location within the Holy Land and their continuity with early rabbinic tradition. To justify the primacy of the Bavli and Babylonian halakhic tradition over the Yerushalmi and Palestinian tradition the Babylonian Geonim and their intellectual descendants advanced two polemical arguments. A ninth-century tract authored by a certain Pirqoy b. Baboy addressed to Jewish communities of North Africa and Spain claimed that persecutions in the Byzantine era had disrupted the continuity of Palestinian tradition and corrupted its halakha.[66] Pirqoy charges that Palestinian practices are "the customs of persecution" (*minhag shemad*), the results of the inability of communities to observe the law properly. Babylonian tradition, on the other hand, was passed down without interruption or discontinuity. When Babylonian and Palestinian practices conflict, one should follow the pure, unadulterated Babylonian tradition. A second influential argument, advanced by R. Yitzhaq Alfasi (1013–1103) in his *Halakhot,* one of the first comprehensive legal codes, is that the sages in Babylonia had access to the Yerushalmi and took its rulings into account.[67] The Bavli is the posterior, more complete statement of Jewish law. Therefore, when the Bavli and Yerushalmi conflict, the law should follow the Bavli. While the Bavli certainly postdates the Yerushalmi, modern scholars almost universally reject Alfasi's claim.[68] Nevertheless, it served as a compelling legal justification for subsequent jurists to accept the Bavli as canonical.[69]

The *Tanhuma,* a post-Talmudic midrash, offers a variation of this ideology, promoting Babylonian tradition by retrojecting the academies (*yeshivot*) to the time of the first temple:

> Therefore the Holy One, blessed be He, established two *yeshivot* for Israel, so that they would be discussing Torah day and night, and would come together from all their localities twice a year — in Adar and Elul — and engage in the "wars of Torah" until they determine the correct law. . . . Those two *yeshivot* have seen neither captivity nor persecution nor despoilment. Neither Greece nor Edom [Rome] has ruled over them. For twelve years before the destruction of Jerusalem [by the Babylonians] the Holy One, blessed be He, removed them from Jerusalem with their Torah and learning. . . . [He] acted righteously with Israel in that He had the exile of Yekhonyah precede the exile of Sidqiyah — in order that the Oral Torah not be forgotten by them. And they [the *yeshivot*] have dwelt in Babylonia with their Torah from that time until now; neither Greece nor Edom has ruled over them, nor have they been persecuted. And they will not even suffer "the pangs of the Messiah."[70]



The midrash locates the founding of the academies in the "exile of Yekhonyah" (Jehoiachin) who became king during his father's rebellion against Nebuchadnezzar and was taken in chains to Babylonia in 597 B.C.E. (2 Kgs 24:8–17). Their founding antedates by about ten years the exile of the bulk of the people following Zedekiah's failed revolt in 587/6 B.C.E. (2 Kgs 25:1–7). The traditions of the Babylonian academies, that is, the Bavli, therefore stand in direct continuity with the biblical transmitters of Oral Torah. The insistence that the academies suffered neither persecution under the Greeks or Romans nor despoilment nor captivity, rehearses Pirqoy b. Baboy's polemic that the Palestinian tradition was corrupted. Ancient security is complemented by a guarantee of future protection. Paraphrasing a tradition found in the Bavli, the midrash asserts that the academies will remain undamaged by eschatological upheavals.[71] Although this account makes no explicit comparison to the Palestinian situation, the message is clear: Babylonian tradition is more ancient, original, reliable, and secure than that of Palestine.

The struggle by Babylonian Geonim for supremacy over the Palestinian sages has roots in the Stammaitic period, if not before.[72] We have mentioned two manifestations of the conflict. Both Talmuds contain a story in which the Babylonians attempt to usurp the Palestinian prerogative to determine the calendar.[73] In both versions the Babylonians claim that they are superior in knowledge of Torah and consequently should possess calendrical authority, but they ultimately yield to Palestinian pressure. The Bavli account, however, contains a brief but significant dialogue not paralleled in the Yerushalmi account, as has been noted by I. Gafni.[74] When first confronted by the Palestinian delegation, the Babylonian sage Hananiah adduces a precedent for his actions, "Did not Akiba b. Yosef intercalate years and determine new moons outside of Israel?"[75] To this the Palestinians reply, "Leave aside R. Akiba, as he left behind no equal [in knowledge] in the Land of Israel." The Palestinian sages essentially concede that Akiba justifiably intercalated the year in the diaspora. They argue, however, that at the present time their knowledge of Torah is superior, or at least equal, to that of Hananiah. This

interchange, which the Yerushalmi version lacks, leaves open the possibility that at such a time when the Babylonians surpass the Palestinians in knowledge, they may justifiably assume this traditional Palestinian prerogative, just as Akiba did. Legal authority, the storyteller suggests, devolves on those most proficient in Torah. In the early tenth century this issue resurfaced when the Babylonians challenged the calendar proclaimed by the Palestinian authorities. A furious conflict erupted and for three years Jewish communities observed the festivals on different days.[76] While we do not know the specific contours of the debate, it seems reasonable to assume that the Babylonians believed their knowledge of Torah in general, and their mastery of the laws of intercalation in particular, to be superior to that of the Palestinian sages, and may well have found a precedent in the Talmudic story.

A second source by which Babylonians claim superior knowledge is the story of Rav Kahana's travel to the Land of Israel and encounter with R. Yohanan, discussed in Chapters 1 and 2 (bBQ 117a–b). This story portrays the Babylonian sage as vastly superior to his Palestinian colleague in dialectical ability.[77] At the end of the story, after inadvertently causing Rav Kahana's death, R. Yohanan goes to his burial cave but is refused admission until he petitions, "Let the student approach his teacher." R. Yohanan thereupon resurrects Rav Kahana and for thirty days asks every legal question on which he has doubts. After Rav Kahana resolves them all, R. Yohanan — in a scene that would have made any Palestinian cringe — admits: "What I thought was yours, was actually theirs," that is, "I thought that expertise in Torah was yours, O Palestinians; but now I see that it belongs to the Babylonians."[78] The story claims not only that the prowess of a Babylonian sage far outstripped that of the greatest Palestinians, but that the Palestinians learned authoritative law from the Babylonians.

This claim to have been the source of the Palestinian Torah comprises a reversal of one marker of Palestinian prestige: continuity with the earliest rabbinic masters. Rabbinic tradition in fact arose in Palestine; it was exported to Babylonia when the first generation Amoraim Rav and Shmuel brought R. Yehuda HaNasi's Mishna to Babylonian communities and campaigned to establish it as the basis for Jewish law. While proficiency need not in theory align with point of origin, to the ancient mind sources and foundations carried enormous prestige. It could only enhance the status of the Babylonians to allege that Palestinian tradition derived from their own. Indeed, the Babylonians presented themselves as a constant fount of Palestinian Torah from earliest times: "When Torah was first forgotten from Israel, Ezra came up from Babylonia and reestablished it. Again it was forgotten — Hillel the Babylonian came up and reestablished it. Again it was



forgotten — R. Hiyya and his sons came up and reestablished it (bSuk 20a)."[79] The biblical hero Ezra, a Babylonian sage of priestly descent, becomes the model for successive waves of Babylonians who restored Torah to their Palestinian brethren. Palestinian sages therefore owe what knowledge of Torah they possess to the far more proficient Babylonians. This charge that "Torah was forgotten in Israel" seems to lurk in the background of the *Tanhuma*'s concern that "the Oral Torah not be forgotten by them." The Babylonians, unlike the Palestinians, preserved their tradition without interruption and therefore were able to restore Torah to the Palestinians when needed. We thus find Stammaitic traditions adumbrating the post-Talmudic polemics: Babylonian tradition is superior, more exact, continuous, and complete, while that of the Palestinians is discontinuous, dependent, and indebted to the Babylonian academies.

That the Stammaim chose to express themselves in an anonymous voice is an interesting historical irony. They saw themselves as living in a post-classical age, as being inferior to their predecessors, the Amoraim. They set about justifying and explicating inherited traditions, not producing new legislation or legal innovations. Yet through their halakhic practice of dialectical argumentation, to which they subjected those previous traditions, and through reworking narrative traditions, where their voice came through more prominently, they stamped the Bavli with the values, worldview, and ethos of their own culture. The Bavli having become the foundational rabbinic text, these anonymous sages have made an enduring contribution to Jewish societies in succeeding centuries even to the present day.

# Notes

## *Introduction*

1. On the neglect of study of Scripture in favor of study of Talmud, see Frank Talmage, "Keep Your Sons from Scripture: The Bible in Medieval Jewish Scholarship and Spirituality," *Understanding Scripture,* ed. C. Thoma and M. Wyschogrod (Mahwah, N.J.: Paulist Press, 1987), 81–101; Mordechai Breuer, "Keep Your Children from *Higgayon,*" *Religion in a Religious Age,* ed. S. D. Goitein (Cambridge, Mass.: Association for Jewish Studies, 1974), 247–61 (Hebrew).

2. Yaakov Sussmann, "Veshuv lirushalmi neziqin," *Mehqerei talmud I,* ed. Y. Sussmann and D. Rosenthal (Jerusalem: Magnes, 1990), 132–33 n. 187.

3. bSanh 43a, according to the reading of Sherira Gaon and R. Hananel. See *Iggeret rav sherira gaon,* ed. B. M. Lewin (Berlin, 1921), 70–71.

4. See Leib Moscovitz, *From Casuistics to Conceptualization* (Leiden: Brill, 2002), on the difference in legal science (abstraction, generalization, conceptualization) between the two Talmuds.

5. See Yaakov Elman, "Orality and the Redaction of the Babylonian Talmud," *Oral Tradition* 14/1 (1999), 70, for these estimates.

6. Sussmann, "Veshuv lirushalmi neziqin," 98–99.

7. David Weiss Halivni and Shamma Friedman reached this conclusion independently. See Halivni, *Meqorot umesorot,* 5 vols. (Tel-Aviv: Devir, and Jerusalem: Jewish Theological Seminary, 1968–94), 3:5–27, 5:7–21; Friedman, "Pereq ha'isha rabba babavli," *Mehqarim umeqorot,* ed. H. Dimitrovksi (New York: Jewish Theological Seminary, 1977), 283–321. Halivni summarizes his views in his English book, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge: Harvard University Press, 1986), 76–104.

8. Note that the Stammaitic policy is the exception, not the rule. The founding fathers of America, for example, preserved the Constitution, the results of the lengthy



debates of the Constitutional Convention, but not the debates themselves. The various opinions, arguments, and discussions that led up to the final document were not considered of sufficient importance to record for posterity.

9. There were actually two Ravinas: one lived during the fifth generation, one at the end of the sixth and into the seventh. The latter Ravina is intended here. According to Sherira Gaon, Ravina died in 499 C.E., Rav Ashi in 427 C.E.. On the matter of Ravina, see now Avinoam Cohen, *Ravina and Contemporary Sages* (Ramat-Gan: Bar Ilan University Press, 2001), 256–74 (Hebrew).

10. See Jeffrey L. Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: Johns Hopkins University Press, 1999), 48–60, 255–67. See too Shamma Friedman, "La'aggada hahistorit batalmud habavli," *Saul Lieberman Memorial Volume,* ed. Shamma Friedman (New York: Jewish Theological Seminary, 1993), 119–63; Louis Jacobs, *Structure and Form in the Babylonian Talmud* (Cambridge: Cambridge University Press, 1991), 100–106; Sussmann, "Veshuv lirushalmi neziqin," 100–101 n. 186.

11. See Rubenstein, *Talmudic Stories,* 48–60, 255–67.

12. See Jacobs, *Structure and Form,* 105: "In the light of our investigation, it is necessary to go much further than Halivni to see the Stammaim as far more than mere editors of earlier material. They were, in fact, creative authors who shaped the material they had to provide the new literary form evident in the passages we have examined and, indeed, on practically every page of the Babylonian Talmud."

13. See Rubenstein, *Talmudic Stories,* 3–8, for a review of the scholarly literature.

14. See nn. 10–12.

15. See Yaakov Elman's judicious discussion "How Should a Talmudic Intellectual History be Written? A Response to David Kraemer's *Responses,*" *JQR* 89 (1999), 361–86.

16. The discussion of methodology is rather detailed and is intended primarily for specialists. It can be skipped or skimmed without loss.

17. The Bavli did not necessarily receive the *exact* versions now extant in Palestinian documents but versions similar to those that circulated in Palestine. See Rubenstein, *Talmudic Stories,* 244, 255–67.

18. A *baraita* (plural: *baraitot*) is a Tannaitic source that is not found in the Mishna.

19. bPes 49b; for full discussion, see Chap. 7.

20. Shraga Abramson, "Min peh lefeh," *Mehqerei lashon* 2–3 (1987), 23–50, shows that Amoraim occasionally incorporate phrases from Tannaitic sources and earlier Amoraic dicta into their statements. But these quotations never amount to the type of transference and adaptation that characterize Stammaitic reworking.

21. I consider stories about Babylonian Amoraim to be distinct from Amoraic dicta. Within stories, all sages function as fictional characters. At issue are traditions attributed to Amoraim.

22. This point is discussed in Chap. 1.

23. Although I assume that the ambient culture had some impact in all cases. Sasanian culture presumably influenced the rise of the rabbinic academy in some way, if only such that the general climate made the development of the institution a possibility in that time and place. I address this issue in Chap. 1, under "The Christian Academy at Nisibis." But for this and most other topics, it is hard to point to clear and direct influences (granted that this is a slippery distinction.)

24. Jacob Neusner, *The Bavli and Its Sources: The Question of Tradition in the Case of Tractate Sukkah* (Atlanta: Scholars Press, 1987); *Judaism: The Classic Statement: The Evidence of the Bavli* (Chicago: University of Chicago Press, 1986); *The Documentary Foundation of Rabbinic Culture* (Atlanta: Scholars Press, 1995), etc.

25. See most recently Richard Kalmin, *The Sage in Jewish Society of Late Antiquity* (London: Routledge, 1999).

26. See Shamma Freidman, *Talmud arukh: pereq hasokher et ha'omanin* (Jerusalem: Jewish Theological Seminary, 1990–96), 2:8–23. See too David Kraemer, "On the Reliability of Attributions in the Babylonian Talmud," *HUCA* 60 (1989), 175–90.

27. In recent studies, Shamma Friedman has shown that Babylonian redactors reworked *baraitot* to a significant extent. See Friedman, "Uncovering Literary Dependencies in the Talmudic Corpus," *The Synoptic Problem in Rabbinic Literature,* ed. Shaye J. D. Cohen (Providence: Brown Judaica Series, 2000), 35–57, for additional literature see p. 43 n. 34. See too Friedman, "Habaraitot shebatalmud habavli veyihasan latosefta" (forthcoming), and Yaakov Elman, *Authority and Tradition: Toseftan Baraitot in Talmudic Babylonia* (Hoboken, N.J.: Ktav, 1994), 44–46, 145–64.

28. See Rubenstein, *Talmudic Stories,* 261–62.

29. For criticism of Neusner's method, see too Daniel Boyarin, "On the Status of the Tannaitic Midrashim," *Journal of the American Oriental Society* 112 (1993), 455–64; Eliezer Segal, "Anthological Dimensions of the Babylonian Talmud," *Prooftexts* 17 (1997), 35–37; Robert Goldenberg, "Is 'The Talmud' a Document?" *The Synoptic Problem in Rabbinic Literature,* ed. Shaye J. D. Cohen (Providence: Brown Judaica Series, 2000), 3–10.

30. See the previous note.

31. See Rubenstein, *Talmudic Stories,* 255–67. And see Chap. 5, n. 66, for a case of fabrication. Occasionally even halakhic statements were fictionalized: see Menahem Kahane, "Intimation of Intention and Compulsion of Divorce: Towards the Transmission of Contradictory Traditions in Late Talmudic Passages," *Tarbiz* 62 (1993), 230–31, 248–50, 260–62 (Hebrew); Jay Rovner, "Pseudepigraphic Invention and Diachronic Stratification in the Stammaitic Component of the Bavli: The case of Sukka 28," *HUCA* 68 (1997), 11–62.

32. Clifford Geertz, "Thick Description: Towards an Interpretive Theory of Culture," *The Interpretation of Cultures* (New York: Basic Books, 1973), 4–5.



33. The rabbinic attitude to the *am ha'arets,* I will argue in Chap. 7, does not tell us much about real social relations.

34. Peter Brown, "The Rise and Function of the Holy Man in Late Antiquity," *Journal of Roman Studies* 61 (1971), 80–101; reprinted with other of Brown's articles in *Society and the Holy in Late Antiquity* (Berkeley: University of Califronia Press, 1989). On the impact of Brown's work, see J. Howard-Johnston, "Introduction," *The Cult of Saints in Late Antiquity and the Middle Ages,* ed. J. Howard-Johnston and P. A. Hayward (Oxford: Oxford University Press, 1999), 1–27.

35. See the critical assessment of Brown's conclusions by Averil Cameron in "On Defining the Holy Man" and by Phillip Rousseau in "Ascetics as Mediators and as Teachers," both in *The Cult of Saints in Late Antiquity and the Middle Ages,* ed. J. Howard-Johnston and P. A. Hayward (Oxford: Oxford University Press, 1999), 27–43 and 45–62. Cameron writes: "But I still believe that Byzantinists, like scholars of early Christianity, should be trying to understand discourse, the rhetorical strategies which combine to produce sets of ideas and practices, which in turn determine the nature of culture. This is the element which I find most wanting in the otherwise enormously stimulating work of Peter Brown" (p. 42). Rousseau observes concerning one of Brown's claims: "It is difficult to know how we might know that. In spite of the phrase 'in reality', the 'spiritual landscape' is also in the text. Indeed, Brown later admitted that it was *the function of the literature* to make things seem less complicated; 'to bring order to a supernatural world shot through with acute ambiguity'. Texts are now behaving in the argument as holy men did in its previous stages. Where are we left, then, when we read that 'holy men themselves were frequently less tidy, in practice, in their choice of explanatory systems than were their biographers, in retrospect'? What evidence is being appealed to?" (pp. 50–51).

36. See Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993), 13–16.

## Chapter 1. *The Rabbinic Academy*

1. David Goodblatt, *Rabbinic Instruction in Sasanian Babylonia* (Leiden: Brill, 1975).

2. Goodblatt, *Rabbinic Instruction,* 267, defines an academy as: "an institution which transcends its principles. It has a staff, a curriculum, and, most important, a life of its own, a corporate identity. Students come and go, teachers leave and are replaced, the head of the school dies and a new one is appointed – the institution goes on."

3. For manuscript variants see *Diqduqei Sofrim Hashalem: The Babylonian Talmud with Variant Readings. Tractates Yebamot, Ketubot, Nedarim, Sotah,* ed. M. Hershler and A. Liss (Jerusalem: Institute for the Complete Israeli Talmud, 1977–91), ad loc., and I. Gafni, *The Jews of Babylonia in the Talmudic Era: A Social and Cultural History* (Jerusalem: Shazar Center, 1990), 221. Some mss add "R. Hiyya b. Abba said, 'I am

yAZ 3:13, 43c; *LevR* 24:3 (553); bEruv 54b. For additional sources, see A. Büchler, "Learning and Teaching in the Open Air in Palestine," *JQR* 4 (1913–14), 485–91; and Krauss, "Outdoor Teaching in Talmudic Times," 82–84; Hezser, *Social Structure,* 213.

58. See e.g. bShab 127a, bEruv 34b, bHor 12a. The articles mentioned in the previous note discuss Palestine, but many of the sources cited by the authors come from the Bavli and probably reflect Babylonian reality. Abaye and Rava are quoted several times as saying "I am like Ben Azai in the marketplace of Tiberias," although they refer to his intellectual abilities, not the locus of his study (bEruv 29a, bSot 45a).

59. The exegesis of Song 7:2 appears in bSuk 49b in a different context (cited in Chap. 6, under "The Erotic Torah"). The redactors may have adapted the exegesis to provide a reason for Rabbi's decree.

60. See Fraenkel, *Iyyunim,* 86–87.

61. See the analysis of Steinmetz, "Must the Patriarch Know *'Uqtzin*?," 163–90. Ben-Shalom, in "Torah Study for All," 106–13, recognized the uniquely Babylonian additions. Meir, *Rabbi Judah,* 362 n. 64, has noted the connection between this Bavli story and the story of Rabbi Yehudah HaNasi's ban on teaching in the marketplace.

62. See Steinmetz, "Must the Patriarch know *'Uqtzin*?," 173–76.

63. Scholars have noted that the locution, "But it is not so" (*velo hi*), often introduces late, redactional material. For references see Friedman, "Pereq ha'isha rabba babavli," 286 n. 14. The phrase "any student whose inside is not like his outside" was borrowed by the redactors from a statement of Rava at bYom 72b. See Ben-Shalom, "Torah Study for All," 113–15.

64. Fraenkel, *Iyyunim,* 66, has noted that this is the only source in all of rabbinic literature describing fees for entry to the study-house. So the fee should probably be seen as a fiction invented to teach the story's moral that no one can plead that poverty prevented study, as no one was as poor as Hillel. Still, it is possible that the guard reflects some real phenomenon. Ben-Shalom, "Torah Study for All," 114–15, refers to medieval traditions that explain that the Babylonian synagogues and academies were located at some distance from towns, hence watchmen were hired to stand guard at night. And see bBM 24a and Rashi, ad loc., s.v. *kenesiot.*

65. Goodblatt, "The Story of the Plot," 358–60, first pointed out that this is a Babylonian motif.

66. See Chap. 5, under "Lineage and the Academic Hierarchy." For evidence of the late date, see Rubenstein, *Talmudic Stories,* 194–97, 206–211. In the Yerushalmi's much briefer version of the story, R. Meir leaves of his own accord (yBik 3:3, 65c).

67. bBB 23b. mBB 2:6 rules that a pigeon found within fifty cubits of the cote belongs to the owner but beyond fifty cubits belongs to the finder. R. Yirmiah asked about a case in which the bird had one foot within fifty cubits and one without. bBB 165b relates that R. Yirmiah was readmitted.

68. Lee I. Levine, for example, in *The Rabbinic Class of Roman Palestine in Late Antiquity* (Jerusalem: Yad Izhak Ben-Zvi; New York: Jewish Theological Seminary, 1985), attempts to reach conclusions about social relations between sages and *amei ha'arets* based on these traditions, though he seems to be confused as to whether the traditions reflect the situation in Palestine or in Babylonia or both. See p. 112 n. 62 ("the degree of animosity and its intensity towards the *'am ha-aretz* were unique and reflect deep social and religious rifts") and p. 117 n. 93 ("Alternately, the fact that the Babylonian Talmud includes this material may indicate that animosity between the rabbis and certain segments of the population continued to be a problem in Babylonia.") And see Kalmin, *The Sage in Jewish Society,* 45–46. Kalmin too tends to consider these to be authentic Palestinian traditions (though he also notes the suspicious fact that they appear only in the Bavli), and he is therefore forced to explain why they contradict his own general conclusion that Palestinian sages have more cordial relations with nonsages than do the Babylonian sages.



69. In a tradition found at bBB 168a, Abaye recommends that a sage take an *am ha'arets* along with him when going to betroth a woman, lest another be substituted for the designated bride. (A sage is not used to looking at women and can be easily fooled.) Of course it is hard to make much of this tradition, but it is unlikely that an Amora would recommend depending on an *am ha'arets* were social relationships not common.

70. There may be a humorous aspect to these traditions. R. Eleazar's response to his students' entreaty to say "slaughter" instead of "stab"—that "the one (slaughtering) requires a blessing" and "the other (stabbing) does not require a blessing"—is probably meant to be funny, although I am aware of the problem of judging what would have been considered humorous in a distant culture.

## Chapter 8. *Conclusion*

1. See Halivni, *Midrash, Mishnah, and Gemara,* 105–19, on aspects of the intellectual legacy of the Stammaim.

2. Brody, *Geonim,* 36–37.

3. Neubauer, *Mediaeval Jewish Chronicles,* 2:88; translation in part from Brody, *Geonim,* 61. On Nathan the Babylonian, see Chap 1.

4. Translation from Brody, *Geonim,* 55. Text published in Solomon Schechter, *Saadyana* (Cambridge: Deighton and Bell, 1903), 118.

5. Ephraim Urbach, *Baalei hatosafot,* 4th ed. (Tel-Aviv: Bialik, 1980), 22.

6. On parallels between the Tosafot and Talmudic dialectic see Haym Soloveitchik, "Rabad of Posquieres: A Programmatic Essay," *Studies in the History of Jewish Society in the Middle Ages and in the Modern Period,* ed. I. Etkes and Y. Salmon (Jerusalem: Magnes, 1980), 19. This is not to deny the influence of medieval intellectual trends, especially scholasticism, on the Tosafot. See Urbach, *Baalei hatosafot,* 17–21.

7. Soloveitchik, "Rabad of Posquieres," 19–20.

8. bBM 84a; see Chap. 2, under "Objections and Solutions."

9. On *pilpul* see Dov Rappel, *The Debate over the Pilpul* (Tel-Aviv: Devir, 1979) (Hebrew).

10. See Chap. 2, under "*Pilpul.*"

11. Urbach, *Baalei hatosafot,* 25–26.

12. On the lack of information concerning the internal situation of academies, see M. Breuer, "Toldot hayeshiva ke'aspaklaria shel toldot yisrael," *Hinukh vehistoria,* ed. R. Feldhay and I. Etkes (Jerusalem: Shazar Center, 1999), 181–83. A number of descriptions are collected in Simha Assaf, *Meqorot letoldot hahinukh beyisrael* (Tel-Aviv: Devir, 1925–42). See too the sources collected by M. Breuer, "Toward the Investigation of the Typology of Western *Yeshivot* in the Middle Ages" (Hebrew), *Studies in the History of Jewish Society in the Middle Ages and in the Modern Period,* eds. I. Etkes and Y. Salmon (Jerusalem: Magnes, 1980), 44–46, many of which include violent imagery.

13. *Sefer hasidim* §752, ed. J. Wistinetzki (Berlin: Itzkowski, 1891), 191.

14. From his book *Maaseh ephod.* Cited in Simha Assaf, *Meqorot letoldot hahinukh beyisrael,* ed. Shmuel Glick ([1925–42]; New York: Jewish Theological Seminary, 2001), 2:94–95. Here Duran explains why many students no longer study Bible but focus all their time and energy on the Bavli.

15. R. Yaakov b. Yehezqel Zlatovi, *Shem Yaakov* (Frankfurt de Oder: Mikhel Gotshalk, 1716), 23; cited in Rappel, *The Debate over the Pilpul,* 24.

16. R. Zelig Margoliot, *Hiburei liqutim* (Venice, 1715), 2–3; cited in Rappel, *The Debate over the Pilpul,* 124.

17. The anecdotes are cited by R. Shmuel b. R. Moshe Haide (d. 1685) in his "Sifra ziquqin denura uviurin de'esha," a commentary to *Tanna devei eliyahu* (Warsaw, 1880; reprint, Jerusalem: A. Vider, 1969), *petihta,* p. 28. Haide repeatedly rebukes students for embarrassing others and for rejoicing when their fellow students falter. That a man who shames others will be punished by angels probably draws on Tractate Kallah 1:8.

18. bHor 13b–14a. See Chap. 4, under "Shame and the Late Babylonian Academy."

19. The text continues by quoting the Talmudic passage from bHul 6a, cited in Chap. 4, under "Shame and the Late Babylonian Academy."

20. Shmuel b. Moshe de Medina, *Responsa of MaHaRSHDaM, Hoshen mishpat* #361.

21. Aharon b. Joseph Sasson, *Responsa Torat emet,* #148.

22. Avraham b. Mordekhai Halevi (17th century), *Responsa Ginat veradim, Yoreh deah* #1:20.

23. Yehezqel Landau, *Responsa Noda bihuda, Even ha'ezer, Mahadura tinyana,* #27.

24. Yaakov Berab, *Responsa MaHaRI berav,* #59.

25. Levi ibn Haviv, *Responsa of MaHaRLBaH,* #1.



26. Moses b. Yosef of Trani, *Responsa of MaBiT,* part 1, #280.

27. Israel Isserlein, *Responsa Terumat hadeshen,* part 2, #138.

28. Cf. Ovadiah Yosef, *Responsa Yabia omer, Orah hayyim,* part 1, #1:12: "This is the meaning of [the Mishna], *Let your house be a meeting place for sages, and cover yourself* (mitabeq) *with the dust of their feet (Avot 1:4).* This [word] derives from the same root as, *And a man struggled* (vayeaveq) *with him (Gen 32:25),* which pertains to struggling in war, because it is a holy war. So too are we with respect to our holy rabbis, those who have died but whose souls are in the heavens, the famous authors whose books are with us: since their books are in our houses, our houses become a meeting place of sages, and we are enjoined, indeed we are given permission, to struggle and to fight with their words, and not to be partial in judgment, but only to love the truth."

29. *Divrei harivot,* ed. Dov Drakhman (New York: Rachlin, 1907).

30. Ibid., pp. 31–32. The translation is somewhat uncertain. See the editor's notes there and the Introduction, p. xxi.

31. Ibid., p. 47: "The customs of Spain that you mention — I have never seen them nor heard of them."

32. Cited in Chap. 3, under "The Violence of Debate." R. Avraham invokes as precedent the Bavli tradition from bQid 30b, cited in Chap. 3, "The Wars of Torah," that teachers and disciples who study Torah together start out as enemies but eventually become friends.

33. See Chap. 5, under "Dynastic Succession in the Geonic Era."

34. Grossman, "From Father to Son," 199–201; Franklin, *Shoots of David,* 25–26; 53–54.

35. *Iggeret rav sherira gaon,* ed. Lewin, 92.

36. Brody, *Geonim,* 102–103; Grossman, "From Father to Son," 191–93.

37. Grossman, "From Father to Son," 207–14. See too idem, "Yihus mishpaha umeqomo behevra hayehudit be'ashkenaz haqeduma," *Studies in the History of Jewish Society in the Middle Ages and in the Modern Period,* eds. I. Etkes and Y. Salmon (Jerusalem: Magnes, 1980), 7–41.

38. Grossman, "From Father to Son," 214–15.

39. *Mishneh torah,* Laws of Kings 1:7.

40. *Yore deah* 245:22.

41. bKet 103b; see Chap. 5, under "Lineage and the Academic Hierarchy."

42. For bKet 103b, see Isaac b. Sheshet, *Responsa of RIBaSH,* #271; Moses Isserles, *Responsa of RaMA,* #133; Yaakov b. Yekutiel Bardugo, *Responsa Shufrei deyaakov,* part 1, #48. For bBer 27b–28a, see Moses Sofer, *Responsa Hatam sofer,* part 5, #21; Malkiel Tenenbaum, *Responsa Divrei malkiel,* part 4, #82. For bHor 13b–14a, see Yosef Hazan, *Responsa Heqrei lev, Yoreh deah,* part 3, #100; Ovadiah Yosef, *Responsa Yabia omer,* part 4, *Yoreh deah* #18:5.

43. See Yaron Harel, "The Controversy over Rabbi Ephraim Laniado's Inheri-

tance of the Rabbinate in Aleppo," *Jewish History* 13 (1999), 83–101. The controversy involved other issues as well.

44. Raphael Shlomo Laniado, *Responsa Kise shlomo* (Jerusalem: Zuckerman, 1900), #1.

45. See Shaul Stampfer, "Inheritance of the Rabbinate in Eastern Europe in the Modern Period: Causes, Factors and Development over Time," *Jewish History* 13 (1999), 36: "Inheritance of rabbinical posts is almost taken for granted in contemporary orthodox or ultra-orthodox Jewish communities. This is true not only in hassidic groups, where inheritance is an integral element of the dynastic system, but in yeshivot and orthodox communities as well."

46. From his book *Divrei hayamim*. Cited in Assaf, *Meqorot letoldot hahinukh*, 2:189.

47. Jacob b. Moses Moellin, *Responsa of MaHaRIL hahadashot*, #187.

48. See Chap. 6. In bKet 62b the sages rule that a scholar may depart for "two or three years" without permission. Moellin attributes the eighteen months to a later rabbinic edict.

49. For the standard codes and some discussion, see Maimonides, *Mishneh torah*, Laws of Marriage 14:2; *Shulhan arukh* and *Tur, Even ha'ezer* §76.

50. Elliot Wolfson, "Female Imaging of the Torah: From Literary Metaphor to Religious Symbol," *Circle in the Square* (Albany: State University of New York Press, 1995), 1–28; idem, "Eunuchs Who Keep the Sabbath: Becoming Male and the Ascetic Ideal in Thirteenth-Century Jewish Mysticism," *Becoming Male in the Middle Ages*, ed. J. J. Cohen and B. Wheeler (New York: Garland Publishing, 1997), 151–85. See too Yehuda Liebes, *Studies in the Zohar*, trans. A. Schwartz et al. (Albany: State University of New York Press, 1993), 67–74.

51. *Zohar* 1:49b-50a, cited from Isaiah Tishby, *The Wisdom of the Zohar*, trans. D. Goldstein (Oxford: Oxford University Press, 1989), 1398. On this passage see Liebes, *Studies in the Zohar*, 15.

52. bKet 62b; see Chap. 6, under "Torah and Wives," section 2A.

53. Cf. *Zohar* 3:36a: "All those engaged in the [study of] Torah cleave to the Holy One, blessed be He, and are crowned in the crowns of Torah . . . how much the more so those who are engaged in the [study of] Torah also during the night . . . for they are joined to the *Shekhinah* and they are united as one." Translation from Wolfson, "Female Imaging of the Torah," 18.

54. *Zohar* 3:49b, cited by Wolfson, "Eunuchs who Keep the Sabbath," 160.

55. Wolfson, "Eunuchs who Keep the Sabbath," 160–61.

56. Ibid.

57. Moses Hayyim Ephraim of Sudlikov, *Degel mahaneh efrayim* 52a, cited in Wolfson, "Female Imaging of the Torah," 24. See too Moshe Idel, *Hasidism: Between Ecstasy and Magic* (Albany: State University of New York Press, 1995), 181.



58. See Wolfson, "Female Imaging of the Torah," 10, 23, 25.

59. Sherira's opinion appears in both responsa and citations of medieval jurists. See *OG, Pesahim*, Responsa, §168, pp. 67–68.

60. *Zohar* 3:125a. Translation from Tishby, *Wisdom of the Zohar*, 1151.

61. See too *Zohar* 2:119a, 3:153b, 3:277b.

62. *Zohar* 2:89b. Translation from Tishby, *Wisdom of the Zohar*, 1393.

63. Also at bPes 49b. An *am ha'arets* may neither give nor receive testimony, may neither be appointed a guardian for orphans nor a supervisor for charity funds, and may not be entrusted with a secret.

64. See too Jacob Neusner, *Judaism, the Classical Statement: The Evidence of the Bavli* (Chicago: University of Chicago Press, 1986). Neusner attributes the Bavli's success to certain literary aspects.

65. That is, the leading competitors for authority among rabbinite Jews. The Geonim waged a different battle for the authority of the oral tradition against the Karaites.

66. Pirqoy b. Baboy apparently was a student in the academy of Rav Yehudai Gaon, leader of the Sura academy from 757 to 761 C.E. See Shalom Spiegel, "Le-farashat hapolmos shel pirqoi ben baboi," *Harry Austryn Wolfson Jubilee Volume*, ed. S. Lieberman et al. (Jerusalem: American Academy for Jewish Research, 1965), 243–74; Brody, *Geonim*, 113.

67. This claim is found near the end of Alfasi's *Halakhot* of Tractate Eruvin. See too Jonathan HaKohen of Lunel (b. 1135) cited in *Shita mequbetset* to bBM 12b: "We do not concern ourselves with the Yerushalmi, because those very sages who edited the Bavli included therein the traditions (from the Yerushalmi) that are in accord with the law . . . and they left in the Yerushalmi that which they saw was not in accord with the law." See the sources collected in Isadore Twersky, *Rabad of Posquieres* (Cambridge: Harvard University Press, 1962), 207–9.

68. This consensus recently has been challenged by Alyssa Gray, *A Talmud in Exile: The Influence of PT Avodah Zarah on the Formation of BT Avodah Zarah* (Ph.D. diss., Jewish Theological Seminary, 2001).

69. See C. Tchernowitz, *Toldot haposqim* (New York: Jubilee Committee, 1946), 1:141.

70. *Midrash Tanhuma, Noah*, §3 (New York and Berlin: Horev, 1926), 15a–b. Translation from Goodblatt, *Rabbinic Instruction*, 13–14.

71. bKet 111a: "Abaye said: We hold that Babylonia will not experience the travails of the messianic age."

72. I. Gafni has devoted several studies to this topic. See *Land, Center and Diaspora*; "Expressions and Types of 'Local Patriotism'"; and "Talmudic Babylonia and the Land of Israel: Between Subservience and Assertiveness," *Teuda* 12 (1996), 97–109.

73. bBer 63a; ySanh 1:2, 19a. See Chap. 1, under "The Academic Setting."

74. Gafni, *Land, Center and Diaspora,* 110.

75. This precedent is probably based on mYev 16:7: "R. Akiba said: When I went down to Nehardea to intercalate the year . . ."

76. See Brody, *Geonim,* 118–20.

77. See the discussion of this story in Chap. 1, where arguments for the late dating are summarized.

78. So Rashi, bBQ 117b, s.v. *a"l dilchon*. See Sperber, "On the Unfortunate Adventures of Rav Kahana," 86. Sperber argues that the story is a Saboraic polemic against Palestinian tradition.

79. This tradition is (pseudepigraphically) imputed to Resh Laqish. It may be a Babylonian adaptation of *SifDeut* §48 (112), which explains why the Torah was given to all of Israel, not just to elders, prophets, priests, and Levites: "And so it says, *You stand this day, all of you, before the Lord, your God (Deut 29:9)*. Had not this one stood up and established Torah in Israel, the Torah would have been forgotten. Had not Shafan in his time, Ezra in his time, R. Akiba in his time [established Torah in Israel], Torah would have been forgotten." Here the point is not that Babylonians preserved the Torah, but that various laymen did so.

# The Formation of the Babylonian Talmud

DAVID WEISS HALIVNI

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# *Translator's Introduction*

BY JEFFREY L. RUBENSTEIN

THE FORMATION OF *the Babylonian Talmud* is a monumental achievement. The summation of a lifetime of study and scholarship, it is the only comprehensive account of the processes that produced the Babylonian Talmud (= Bavli) written in nearly a century and probably the most inclusive and complete ever. Even a brief glance at the Contents provides a sense of the tremendous scope of this undertaking. It describes the transmission of traditions throughout the generations of sages; assesses the explanation and interpretation of earlier traditions by later masters and of later masters by still later authorities; accounts for the various forms of rabbinic tradition (apodictic statements, brief explanations, dialectical argumentation); provides dates and institutional contexts for the different phases of compilation; delineates the nature, stages, and processes of editing; and explores the roles of all sages who participated in these processes: Tannaim (until 200 CE), Amoraim (200–550 CE), Stammaim (550–750 CE), Saboraim (700–750 CE), Reciters, Compilers, and Transposers. These and other aspects of the formation of the Bavli are illustrated through the penetrating analysis of scores of Talmudic passages. The evidence supporting all of these claims is presented methodically and systematically to set forth a complete account of the Talmud's history and development.

Yet the horizons of *The Formation of the Babylonian Talmud* extend beyond the Bavli itself and include substantive analysis of aspects of the Mishnah, the Jerusalem Talmud (= Yerushalmi), and the halakhic and aggadic midrashim. Not only do these texts supply historical and cultural context but they also set in sharp relief the Bavli's distinctive features and shed light on how and in what ways the Bavli departed from previous rabbinic compilations. The editor of the Mishnah, for example, operated with different purposes and constraints, and therefore treated his sources





differently than did the Bavli's editors. The analysis and illustration of these techniques, also accompanied by copious examples, significantly advance our understanding of the nature of the editing of the Mishnah. The Yerushalmi too contains dialectical argumentation, but it differs quantitatively and qualitatively from that of the Bavli. Halivni also provides a methodology for approaching the text critically, detailing the stages through which the student should progress in learning a passage, discerning difficulties, formulating questions, and resolving the problems. We have then not only a major contribution to the development of the Bavli but to rabbinic tradition and literature in general.

A work of this scope and breadth stands out against the trends in rabbinic scholarship over the past forty years. Scholars have shifted away from both general histories covering vast periods of the development of rabbinic Judaism and from inquiries concerning some fundamental questions—such as the date of the editing of the Talmud—on which the evidence is sparse. This is not to minimize the rich and explosive growth in the field, which has flourished with the publication of newly found texts including the full corpus of the Qumran scrolls, the fragments and manuscript leaves recovered from the Cairo Geniza, and additional manuscripts of rabbinic works discovered in libraries around the world. The field of rabbinics has also benefited from significant advances in methodology, both improvements in familiar methods, such as the production of critical editions and textual reconstruction, and the infusion of numerous methods from other disciplines, including literary criticism, anthropology, gender studies, and comparative religion. Yet for all these strides forward the focus of Talmudic scholars has inclined toward more limited and discrete topics: the history of particular laws, the elucidation of problematic passages, the development of a certain theological idea.[1] Even the publication of critical commentaries to chapters of Talmud and tractates of Mishnah, a salutary enterprise of fundamental importance to the future advancement of the discipline, is an endeavor with a relatively restricted scope. In a retrospective assessment of Ephraim Urbach's monumental *The Sages: Their Concepts and Beliefs*, a comprehensive work on rabbinic thought and theology, Yaakov Sussman has observed that after its publication in 1969 "scholarship in this field has disappointed . . . and nothing important and fundamental has been written since."[2] The same might be said for comprehensive accounts of the development and history of the Bavli.

The reluctance to attempt vast and synthetic histories of the Bavli is certainly understandable in view of the formidable challenges entailed. To

do so requires proficiency in the "sea of Talmud" in all its length and breadth, its thousands of folios, the variant manuscript traditions, the interrelationships and intertextual connections between its myriads of passages. One must possess exhaustive knowledge of parallel and related passages in the Mishnah, Tosefta, Yerushalmi, halakhic and aggadic midrashim, and in the complete corpus of rabbinic literature with which to compare Bavli traditions so as to reconstruct their development and metamorphoses. A scholar must command the entire post-Talmudic tradition in all its branches and genres, the halakhic codes of the Geonim, responsa, the medieval and early modern commentaries, and historiographical writings across the generations. And one needs the intellectual acumen to master the complexities of the Bavli's dialectical argumentation, to discern the incongruities and inconsistencies in the intricate sequences of nested objections and responses that constitute the signs of development and editing.

For these reasons Halivni's "debate partners" are less contemporary scholars than those of previous generations, especially Isaak Halevy (1847–1914), Jacob Nahum Epstein (1878–1952), and Hanoch Albeck (1890–1972). These giants of the past authored comprehensive and sweeping accounts of rabbinic tradition, the type of grand theories eschewed by more recent scholars. They did not hesitate to make claims about the dating of the Bavli and other rabbinic works, the identity of the editors, the processes and methods of compilation, the relationship of the Bavli to its sources, and other such complex topics. Although their ideas often no longer reflect the scholarly consensus, and while many of their specific proposals have been abandoned, modified, or updated, they remain to some extent the "last word" on the major issues regarding the development of Talmudic tradition. Halevy's *Generations of the Former Sages* (*Dorot harishonim*), in particular, receives close attention, as it covers much of the same territory but reaches significantly different conclusions, and Halivni painstakingly explains why the rival claims should be rejected.[3] The abundant attention directed toward Halevy and his successors, however, does not come at the expense of more recent studies; Halivni builds on the fruits of academic research over the past decades and goes beyond it to produce a comprehensive account of the Talmud's origins and development.

*The Formation of the Babylonian Talmud* offers a bold synthesis of the history of the Bavli with the supporting evidence for each claim. To be sure, many of the conclusions result from the most subtle and delicate



inferences, and from teasing out the implications of slight textual anomalies, irregularities, and inconsistencies. There is a paucity of direct evidence about the major questions of the Talmud's textual development and editing, and sometimes indirect evidence is lacking too. Certainly some of the conclusions must remain in the realm of conjecture or speculation. At the same time, the many thousands of traditions dispersed throughout the over 2,700 Bavli folios contain a wealth of data about the processes by which they were constituted. An outline of the basic stages of development from the articulation of dicta by the Amoraim to the production of the Talmud by its final editors and compilers is actually straightforward: traditions of Amoraic masters were transmitted by students and Reciters from generation to generation, and sometimes combined into dispute-forms with other such traditions; explanatory comments were added by later sages; smaller units of tradition were combined with other units to create more extensive passages (sugyot); sections of tradition were sometimes transposed from one passage to another; the sugyot were contextualized in a tractate in connection with a certain mishnah; and in many cases further transposition of material and glossing took place. This much is clear from the final product, the Talmud as we now find it before us. A much greater challenge is to delineate the details of these stages—how they occurred, the precise dating, the sages involved, the institutional settings, the intellectual parameters, the theological assumptions—and to identify the evidence grounding each point. Through consummate mastery of the Talmud in its entirety together with all of rabbinic literature, and by considering the intertextual relationships among all relevant passages, Halivni ventures to answer these questions that have proved intractable for generations of scholars.

## *Forced Explanations*

The point of departure for Halivni's theory is the issue of "forced explanations." Throughout the Talmud one finds that sources are interpreted in ways opposed to their simple meanings. An Amora often explains a mishnah against the straightforward sense of its language, claiming that it says what it does not seem to say. Later Amoraim in turn offer forced understandings of the traditions of earlier Amoraim, and the anonymous Talmud supplies forced explanations of the traditions of even the latest Amoraim. In addition, the flow of the Talmudic discourse often does not read smoothly, exhibiting gaps and incongruities between questions and

their answers or comments and their referents such that the sequence of statements must be read in a "forced" way in order to be understood. Halivni's first volume of Talmud commentary, published in 1969 and entitled *Sources and Traditions* (*Meqorot umesorot*), focused on this problem. Texts were often changed in the course of oral transmission, due to the frailties of human memory, unconscious alterations, and even deliberate emendations, which caused disparities between the "Sources" and their subsequent forms or "Traditions," between the original texts and the way they were received in later times. (There is a double entendre in the Hebrew title, as *maqor* means both "source" and "origin," hence the title contrasts both "sources" and "origins" with later "traditions.") Reconstructing the original sources often solved the problem of the forced explanation: an Amora's explanation of a mishnah, for example, may have been based on a reading that differs from that presented in the Talmud. The Amora's explanation makes perfectly good sense when based on that reconstructed version and only appears forced when juxtaposed with the text as given in the Talmud or in a given manuscript of the Mishnah. Other forced explanations resulted as sources were truncated or abbreviated in the course of transmission, or when their original contexts were lost. In these cases, later sages themselves lacked the requisite information adequately to interpret the source, and the best they could do was to offer a forced explanation to make sense of the version they received. At this time Halivni had not yet realized the implications of this theory regarding the formation and editing of the Talmud as a whole, and he rarely addressed these larger topics. The commentary was dedicated to specific passages and to making better sense of forced explanations scattered throughout the pages of Talmud. But the seeds of a revolutionary understanding had been planted, and more radical conclusions were already entailed in this fundamental insight.

Halivni articulated that "paradigm shift" in his Introduction to the second volume of *Meqorot umesorot*, published in 1975.[4] The Talmud contains two primary layers, two main literary strata, one comprised of attributed statements of the Amoraim, the other of unattributed or anonymous discussion of those Amoraic dicta, hence known as the "anonymous Talmud" (*setam hatalmud*). These strata differ in form and style: Amoraic dicta (*meimrot*) are brief and "apodictic"—a term Halivni borrows from biblical studies, and by which he means both terse and categorical. They typically consist of pronouncements of legal rulings or succinct explanations of an earlier source. The anonymous Talmud, by contrast, is verbose,



expansive, and contains the Talmud's intricate and complex dialectical argumentation. It may include series of objections and solutions, rhetorical questions, and contrived and spurious propositions, sometimes extending over a full folio or more. Most important, the anonymous stratum exhibits a high density of forced explanations of the Amoraic dicta upon which it is based. Why? While forced explanations are found among the Amoraim too, the extent and quantity of forced explanations in the anonymous layer—even when predicated on traditions of the latest Amoraim—is striking. These considerations led Halivni to reject the traditional understanding that the two layers are contemporaneous with the attribution or lack thereof indicating individual or communal "authorship": statements were formulated anonymously when they were not associated with any individual sage but emerged from the general discussion of students debating the issue, from "all the members of the academy." He concluded that the anonymous stratum is not contemporaneous with the Amoraic stratum but postdates it. This stratum was not produced by the Amoraim but by later—anonymous—sages whom Halivni called "Stammaim" after the term for the anonymous "*setam*" Talmud. They endeavored to explicate the Amoraic traditions they received but in many cases could not do so satisfactorily and provided forced explanations as the best effort to make sense of traditions from the distant past. The Stammaitic stratum amounts to more than half of the Talmud, as many Talmudic sugyot contain relatively lengthy explanations of the briefer Amoraic dicta or sustained argumentation between two disputing opinions. Halivni had therefore proposed a new theory of the provenance of much of the Talmudic text, and essentially even of the Talmud's composition or "authorship." No longer should the Talmud be attributed to the final Amoraim, the last of the named sages in the Talmud, but to anonymous author-editors who postdated the Amoraic age.[5]

Halivni continued to develop and refine his theory in the Introductions to subsequent volumes of *Meqorot umesorot* (1975, 1982, 1993, 2003), and in his English book, *Midrash, Mishnah, and Gemara* (1986). In these writings he advanced a second major theoretical contribution that pertains to the understanding of the Bavli's dialectical argumentation. The forced explanations found in the anonymous stratum typically appear within the dialectical analysis of an Amoraic dictum, in the course of which interpretations are proposed and rejected, alternatives suggested, and further debate engaged before a conclusion is reached. Why should dialectical analysis be so characteristic of the anonymous stratum and found so rarely

among Amoraic dicta? As long as the anonymous stratum was considered contemporaneous with Amoraic dicta, this observation presented no difficulties: debates were typically conducted with many participants, by "all the members of the academy," and consequently formulated without attributions. If the anonymous stratum postdates the Amoraic dicta, however, this difference in form becomes problematic and calls for explanation.

The answer relates to the process of transmission of tradition throughout Talmudic times and to the agents of transmission, the "Reciters" (*tannaim*). They were professional memorizers, men with prodigious memories, who committed earlier traditions to memory and were called upon to recite them before the Amoraim. The Amoraim in turn formulated their own traditions for memorization and entrusted them to the Reciters to be preserved for future generations. Detailed information about these Reciters is frustratingly sparse; some were sages themselves, though most were not; with a few exceptions we do not even know their names. But the fact that Amoraic dicta are marked by such terseness indicates that only the conclusions of their deliberations, the final rulings and explanations of sources, were preserved and memorized by Reciters. The dicta were formulated as briefly and economically as possible to facilitate memorization and accurate transmission. This is not to say that the Amoraim did not engage in dialectical argumentation. Like their predecessors, the sages of the Mishnah, the Amoraim engaged in debate and subjected the traditions they received to dialectical analysis. For the Amoraim, however, dialectical argumentation was a means to an end, a method, a tool used to arrive at the correct understanding of a source, but was not an end in and of itself. And this is indeed typical of law and legal drafting in general. Among Halivni's favorite examples is the United States Constitution, which was debated for months in the Constitutional Convention as the disparate parties argued, deliberated, quarreled, and wrangled over each and every point. In the end they transmitted to posterity the Constitution alone, the conclusion of those debates, and not transcripts of the debates themselves. In other words, the "official transmission," throughout Amoraic times, the corpus of traditions memorized and passed down to the next generation, did not include dialectical argumentation, but only the conclusions of the sages' analysis.

A shift in values involving a change in attitude to dialectical argumentation transpired between the time of the Amoraim and the Stammaim. The Stammaim evidently considered themselves to be living in a post-classical age and to lack the authority of their Amoraic predecessors.



For this reason they ceased formulating traditions with attributions, ceased preserving the names of sages, and began to transmit their traditions in anonymous fashion as a mark of their post-Amoraic provenance and inferior authority. (What precipitated this sense of belatedness is not completely clear; Halivni points to persecutions in the second half of the sixth century.) The Stammaim accordingly dedicated themselves to the analysis and explication of Amoraic traditions. They came to consider dialectical argumentation as an end in itself, an independent value even when not connected to practical law, and also worthy of preservation and transmission. They consequently gave equal attention to minority and discredited opinions, subjecting them too to justification and analysis.

The Stammaim, then, were engaged in a massive project of restitution and reconstruction. Alas, because dialectical argumentation had not been passed down in the "official transmission" of the Reciters, most of it had been lost by Stammaitic times. Fragments of the Amoraic argumentation were remembered by individual sages, but these "survivals" were less reliable than Amoraic dicta as they were not part of the official transmission. We might say that dialectical argumentation was not "canonized," not subject to an authorized and supervised process that guaranteed its accuracy. Each student formulated dialectical argumentation in his own words and later transmitted it to his disciples in his own way. The portions of dialectical argumentation that happened to be preserved therefore contained great variation and many errors. It is this dimension of the transmission process that accounts for the prevalence of forced explanations in the Talmud's anonymous stratum.

This revolutionary understanding of the Talmudic text has become the foundation for all modern critical Talmud study.[6] The first task of the critical scholar attempting to make sense of a Talmudic passage is to distinguish these two literary strata, to separate the Amoraic from the anonymous or Stammaitic layer. But it is important to note that this initial distinction—so appealing and straightforward because of the clear formal markers, the presence or absence of the name of a sage—is only a first step. Halivni's theory devolves primarily from a problem in interpretation—the forced explanation, the lack of a smooth fit between sections of a Talmudic passage—and not from form-critical or literary observations, that is, that some traditions are attributed and others anonymous, or that some are brief and legislative while others are lengthy and interpretive. And the focus on the forced explanation is what distinguishes Halivni's method from that of some earlier critical scholars who began to distinguish the

anonymous from attributed layers of the Talmud based on such literary and formal criteria, or due to differences in terminology, notably Julius Kaplan, Hyman Klein, and Avraham Weiss.[7] Indeed, in Halivni's view the Talmud contains not two, but multiple literary strata, as forced explanations are found within the anonymous stratum itself, and not only where anonymous explanations relate to Amoraic dicta. Later Stammaim were confronted with the same problem when interpreting the traditions of earlier Stammaim, and they too resorted to forced explanations when lacking complete information. Thus the primary distinction between the attributed and anonymous strata should not obscure the fact that, for Halivni, each layer comprises numerous sources that can be discerned, distinguished, and dated (at least on a relative basis).[8] The Talmud's many literary strata and their diverse sources testify to a long process of compilation and editing, and a full account of the Talmud's formation must reckon with this evidence.

## *The Tyranny of "Rav Ashi and Ravina—the end of hora'ah"*

The realization that the Talmud's anonymous stratum postdates the Amoraic age and that the dialectical argumentation was reconstructed by later sages led Halivni to a revolutionary conclusion concerning the date of the Talmud's editing. The controversy over this dating derives in large part from what I call the "tyranny" of a brief Talmudic tradition found in BM 86a: "Rav Ashi and Ravina—the end of *hora'ah*." The Talmud contains nothing explicit about its own editing or authorship. This vexing lack of information about the editors of the Talmud, the authoritative source of Jewish law, was clearly a matter of great anxiety that led the medieval commentaries to seize upon this tradition about two of the latter sages as a statement about the Talmud's editors. Rashi comments as follows:

> The end of *hora'ah*—the end of the Amoraim. Until their days the Talmud (*gemara*) had no set order, but when a question was asked in the house of study as to the explanation of a mishnah, or a question about an incident that occurred regarding monetary or ritual law, each and every [sage] stated his explanation. And Rav Ashi and Ravina ordered [*sidru*] the traditions of the Amoraim who preceded them, and arranged [*qavu*] them according to the order [*seder*] of tractates, each and every one with the mishnah that was fitting for it and with



> which it was taught. And they propounded the objections that ought to have been raised [*sheyesh lehashiv*] and the responses that were fitting to answer—they and the Amoraim who were with them—and they arranged [*qavu*] everything in the Talmud [*gemara*].

Rashi clearly interprets this tradition in terms of an editing procedure. Prior to Rav Ashi and Ravina there was essentially no text of the Talmud nor any compilation of Amoraic tradition in any form other than the collective memory of the sages as a whole. In the oral milieu of the house of study, each sage articulated from his memory the reasons and justifications that explained a mishnah and that grounded matters of practical law and judicial precedent. Rav Ashi and Ravina (and their colleagues) compiled these traditions, setting them in "order" and "arranging" them according to the tractates of the Mishnah, contextualizing each Amoraic tradition in the appropriate location. In other words, they were the Talmud's compilers and editors. Rashi mentions a second dimension of the activity of Rav Ashi and Ravina, that they "propounded the objections that should have been raised and the responses that were fitting to answer," which refers to the Talmud's anonymous stratum, the unattributed objections and solutions relating to Amoraic dicta. Not only did Rav Ashi and Ravina edit the traditions articulated by their predecessors, the explanations of "each and every" sage, they also produced the dialectical argumentation not specifically attributed to a named master.

Rashi's understanding was shared by other medieval authorities and became the foundation of the traditional view of the Talmud's editing. It has exerted a tyrannical influence on traditional Judaism—still accepted today in the Orthodox and "Yeshivah" worlds—and even upon academic scholarship of the past century. And this despite fatal problems, all discussed at length by Halivni.[9] For one, *hora'ah* means "legislation" or "instruction," and has nothing to do with editing or compilation. Second, the identity of Ravina is problematic. There were two Ravinas, one a junior contemporary of Rav Ashi, the other, known as the "second Ravina," among the latest Amoraim.[10] If Ravina here is the latter Ravina, who died c. 500, why is he mentioned together with Rav Ashi, who died c. 427? (These dates, and almost all basic data concerning the chronology of Talmudic and post-Talmudic sages, derive from Sherira Gaon, c. 900–c. 1000, Head of the Pumbedita Academy.) If it is the contemporary of Rav Ashi, how does one account for the fact that many sages who postdated Rav Ashi are mentioned throughout the Talmud, albeit less often than earlier

Amoraim? Moreover, the Talmud sometimes rejects Rav Ashi's opinions, and occasionally expresses uncertainty as to exactly what he said—which would seem very odd if Rav Ashi himself edited the Talmud. And finally, what is the authority of this tradition itself, and what guarantees its historicity?

Halivni's main reason for rejecting the traditional view of the Talmud's editing, however, is not based on these difficulties but again comes back to the issue of forced explanations. Why did the Stammaim not simply ask the Amoraim about the reasons and explanations for their dicta? Why offer a forced explanation and not appeal to the sage who articulated the statement, or even to his students, for clarification? It must be that the Stammaim lived long after the Amoraic age in a much later historical era such that they had no recourse to the authors of the dicta themselves. The forced interpretations within the Stammaitic stratum itself, passages where later Stammaim provide forced interpretations of the traditions of earlier Stammaim, points to an even later historical age. The formation of the Talmud, its compilation and editing, must be seen as a lengthy and protracted process that continued long after the Amoraic age.

How long? On this question Halivni's thinking has changed over the years. In his first writings on the topic, in *Meqorot umesorot: seder mo'ed* (1975) and *Midrash, Mishnah, and Gemara* (1986), Halivni dated the Stammaim to the era between 427 and 501 or 520, at which point began the era of the Saboraim, the sages mentioned in post-Talmudic sources who lived after the Amoraim and before the Geonim.[11] This dating, interestingly enough, seems to still reflect the influence of the BM 86a tradition, as these dates are those of the deaths of the sages mentioned (as given by Sherira Gaon), the uncertainty of 501 or 520 reflecting the uncertainty as to which Rav Ashi and Ravina are intended.[12] Halivni revised this dating in the Introduction to *Meqorot umesorot: bava metsia* (2003), having concluded that the tradition of "the end of *hora'ah*" should not be seen as a reliable statement of history but rather as an expression of "the adulation of a student who thought that the death of his celebrated master brought an end to *hora'ah*."[13] Emancipated from a dating linked to these sages,[14] and also rejecting Geonic traditions, especially the claims of Sherira Gaon, about the dating of the Saboraic age, Halivni deferred the beginning of the Stammaitic era to c. 550 and its end until c. 600.[15] He also changed his thinking about the Saboraim, now considering them to be Stammaim who lived at the end of the Stammaitic era (600–750). The Stammaitic era could therefore be divided into two: the Stammaitic era proper when the



bulk of the dialectical argumentation was produced, and a latter part of the era, the age of the Saboraim, when glosses and minor additions were composed. In the present volume Halivni extends the Stammaitic age until almost the end of the eighth century, until the era when the Geonim begin to compose independent books attributed to individual authors. He also posits a much lengthier Stammaitic era proper (550–700), which necessitates a reduction in the length of the period of the Saboraim, now viewed as the last part of the Stammaitic era (700–750). Only at that point or a little thereafter, c. 770, did sages cease to add their comments within the Talmud and begin to compose "outside" of it. This marks what Halivni calls the "closing" of the Talmud, the final date of redaction or editing. Yet we must understand "closed" (*nehtam*) in a loose sense, as the Talmud was not closed by the decision or agency of any individual or group, nor ever absolutely closed, as glosses and brief additions continued well into the Middle Ages and the era from which our manuscripts date.

Within the lengthy Stammaitic era Halivni delineates several stages of editing and corresponding subperiods. Apart from the Saboraim, who flourished 700–750, there were Compilers (*me'asfim*), those editors who collected sugyot and set them in the present order within the tractates of Talmud, and who also lived toward the end of this era. This late dating of the main part of the Talmud's composition to the late sixth and early seventh centuries, and the final closing to the late eighth century, are among Halivni's most daring and revolutionary claims. A summary of Halivni's views of the chronology of the Talmud's formation, which he presents in different passages throughout his text, is shown in Table I.1

Note that the Compilers are technically Stammaim, as they too are anonymous, so in some respects the Stammaitic/Saboraic period continues until 770. These dates should be taken as approximate, as best guesses, but give a general sense of the various stages of the formation of the Talmud.

Halivni has continually rethought and revised his views on the formation of the Talmud with the publication of successive volumes of *Meqorot umesorot*. We can probably look forward to further minor revisions, even as the main contours of the theory are now firmly established.[16] Let me briefly note here a few areas that deserve some further investigation. Halivni provides comprehensive analysis of the Stammaitic contribution to the halakhic portions of the Talmud but says little about their role in the aggadic sections. Yet aggadah constitutes perhaps one third of the Bavli, and much of it is unattributed. How extensive was the contribution of the

**Table I.1 Chronology of the Stages of the Formation of the Talmud**

| until 200 CE | Era of the Tannaim |
|---|---|
| 200 | Editing of the Mishnah |
| 200–450 | Main Amoraic period |
| 450–500 | Persian persecutions,* decline of Amoraim |
| 500–550 | Later Amoraic period, "dwindling" of Amoraim |
| 550 | Death of Revai of Rov, the last Amora; end of Amoraic era |
| 550–600 | Persian persecutions, beginnings of Stammaitic era |
| 600–700 | Main Stammaitic era, composition of sugyot, formation of proto-Talmud |
| 700–750 | Later Stammaitic era = Saboraic era: glossing and editing of proto-Talmud; no addition of Amoraic material |
| 730–770 | Compilers |
| 770 | Closing of Talmud |

* Halivni does not mention these persecutions explicitly in his account (except in the Introduction, n. 1). He intends the "years of persecution and sufferings" mentioned in *Epistle of Rav Sherira Gaon*, ed. Lewin, 99, "at the end of the rule of the Persians," which corresponds to 550–589, judging by the context in Sherira's narrative. Sherira states that the sages of Pumbedita came to the "outskirts of Nehardea, to the city of Peroz-Shapur" at this time, which might also imply that the Pumbedita academy was destroyed.

Stammaim to Bavli aggadah, and how can their aggadic traditions be identified?[17] The importance of the ambient Zoroastrian religion and Sasanian (Persian) culture to the understanding of the Bavli has received increased attention in recent years but is hardly mentioned in Halivni's work.[18] Specific legal and cultural influences in such domains as purity law, family structure and lineage aside, did the interpretation, composition, and editing of texts in the Persian world have any impact on the same processes of the Bavli? Did the Arab conquest of the Sasanian empire in c. 630–650 and the gradual penetration of Islam, which occurred during the heyday of the Stammaitic era, influence these processes? Halivni is very cognizant of the oral matrix of the rabbis and the fact that the Talmud remained oral until the ninth century.[19] His emphasis on the critical role of the Reciters in the transmission of tradition and the impact on dialectical argumentation derives in part from this awareness. Yet there has been a great deal of interest lately on the complexities of oral cultures, interfaces of orality and literacy, and mechanisms of textual production and editing in conditions of orality.[20] Some of this work can potentially sharpen our understanding of the formation of the Bavli and the similar dynamics within rabbinic culture.



Another field that has seen great advances in recent years is the collection and collation of textual variants, with the photo-digitization of Talmud manuscripts and their availability through various websites, the "Lieberman Institute's Sol and Evelyn Henkind Talmud Text Databank" which assembles all primary witnesses and early printed editions of the Bavli, and now the publication of the *Thesaurus of Talmud Manuscripts*, a catalog of all known manuscripts and geniza fragments of the Bavli and other rabbinic works.[21] These tools should help determine with greater certainty the correct readings of important Talmudic passages where textual variants make it difficult to reach secure conclusions.[22]

Halivni's contributions to rabbinic scholarship have yet to be fully assessed, and we hope the full English translation will help achieve this desideratum. Certainly all would agree that *The Formation of the Babylonian Talmud* is the most complete presentation of the history and development of Talmudic tradition. The comprehensive theory of the formation of the Talmudic text is accompanied by a corresponding method for analysis, a systematic approach to distinguishing earlier from later sources and reconstructing the development of Talmudic passages.[23] Future scholars undoubtedly will build on Halivni's work to provide a more complete understanding of the many aspects he delineates—the substantial progress in scholarship on rabbinic literature over the past few decades suggests that the field is still in a fertile period of growth. At the same time, it is safe to say that for the foreseeable future *The Formation of the Babylonian Talmud* will be the definitive account of the Bavli and the foundation for all critical study.

# TRADITION AND THE FORMATION OF THE TALMUD

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## INTRODUCTION

The Babylonian Talmud (or Bavli), which was produced in the Jewish academies of sixth- and seventh-century Mesopotamia, is a composite document that proceeds by reproducing earlier literary traditions and placing them within anonymous discursive frameworks.[1] This book concerns the relationship between the creators of the Talmud and these traditions.

For a long time, the Talmud was seen as a conservative storehouse of its traditions, but in the past few decades scholars have recognized the creativity that went into its compilation. Still, even recent accounts of the Talmud's formation understand this creativity in terms of continuity with tradition. The scholars who shaped the Talmud, according to these accounts, creatively revised or interpreted traditions to fit new ideas and contexts, but they did so precisely because they made no distinctions between themselves and the material they received; alternatively, these scholars were aware that their interpretation of tradition was innovative, but saw in it the restoration or recovery of lost meaning. In contrast with these accounts, this book argues that a discontinuity with tradition and the past is central to the Talmud's literary design and to the self-conception of its creators.

The "tradition" in the title of this book refers to the body of received literary material—dicta, teachings, exegetical comments, etc.—which is

1 On the dating of the Talmud, see Richard Kalmin, "The Formation and Character of the Babylonian Talmud," in *The Cambridge History of Judaism IV: The Late Roman-Rabbinic Period* (ed. S. T. Katz; Cambridge: Cambridge University Press, 2006), 840–76 (840). On the last stages of the development, see in particular Yaacov Sussmann, "Ve-shuv li-yerushalmi nezIqin," in *Talmudic Studies I* (ed. Y. Sussmann and D. Rosenthal; Jerusalem: Magnes, 1990), 55–134 (101–3 and 106–11). On the academic context, see David Goodblatt, "The History of the Babylonian Academies," in *The Cambridge History of Judaism IV: The Late Roman-Rabbinic Period*, 821–39; Jeffrey Rubenstein, "The Rise of the Babylonian Rabbinic Academy: A Reexamination of the Talmudic Evidence," *Jewish Studies: an Internet Journal* 1 (2002), 55–68.

identified and represented in the Talmud as received material. There are, to be sure, other ways in which we can speak of tradition in the Talmud: in its literary practice, the Talmud continues a tradition of composition that is evident in earlier rabbinic documents; the Talmud's imagery and ideas are drawn from a broad Jewish tradition that goes back many centuries; some traditional textual material—especially terms, formulations, and structures—had a considerable role in shaping the Talmud, but the Talmud's creators embed this material in their composition rather than quote it, not marking it as received from other sources. One cannot speak of the Talmud's literary formation without touching on these matters, but they are not the subject of this book.

My discussion of tradition here centers on the ways in which the designation of something as "traditional" can be used to invoke discontinuity. We can say, for example, of a certain style that it is "traditional" in order to contrast it with "contemporary," and whether we use this contrast to praise or condemn, we indicate with it that the "traditional" style is no longer "contemporary," that there is a difference between that which belongs strictly to the present and that which we received from the past. A similar function of marking something as "traditional" occurs in some religious, legal, and philosophical traditions that distinguish between different kinds of justifications and commitments: in some Talmudic passages, for example, justification that appeals to tradition is distinguished from justification that appeals to reason or logical deduction. This use of "tradition" contrasts what our own reason guides us to do or think with what tradition guides us to do or think. In both of these contrasts, the one between the past and the present and the one between reason and tradition, we posit a gap between us and what is termed "tradition": this is "traditional" rather than "contemporary" because our style has changed; this is based on "tradition" and not on "reason" because we would have acted differently if it were not for tradition.

The first part of this book proposes that this alterity of tradition is central to the Bavli's literary design. The Talmud's creators employ a variety of compositional techniques to create a distance between themselves and the traditions they quote, highlight the contrast between themselves and these traditions, and present these traditions as the product of personal motives of past authorities. While they remain authoritative and binding, these traditions' claim to enduring validity is significantly undermined; they are fossilized and contained in the past, estranged from the Talmud's audience. The second part of the book argues that the Talmud's creators defined themselves in opposition to those who focused on the transmission of tradition, and that the opposition and hierarchy they created between scholars and transmitters allows us both to understand better the way they conceived of their project as well as to see this project as



part of a debate about sacred texts within the Jewish community and more broadly in late ancient Mesopotamia.

## THE CURRENT VIEW OF THE TALMUD'S AUTHORSHIP AND ITS INTELLECTUAL ORIGINS[2]

Scholarship from the second half of the twentieth century on has concentrated on the literary artifice of the Talmud's redactors or creators, replacing the model by which the Talmud was seen as a thesaurus faithfully conserving the traditions of the Tannaitic and Amoraic periods.[3] A variety of formative literary activities was now attributed to the sages living toward the end of what we call the Talmudic period, whether scholars chose to identify these sages with the last generations of the Amoraic period,[4] with the enigmatic *savora'im* known from traditional rabbinic chronologies,[5] or with the modern construct Stammaim ("those of the

2 I focus here only on developments in recent decades, without an attempt to offer a comprehensive history of critical scholarship; earlier theories are mentioned occasionally, especially in the footnotes. For doxographies of earlier studies on the Talmud's formation, see Mordechai Tenenblatt, *The Formation of the Babylonian Talmud* (Heb.; Tel Aviv: Dvir, 1972), and Jacob Neusner (ed.), *The Formation of the Babylonian Talmud: Studies in the Achievements of Late Nineteenth and Twentieth Century Historical and Literary-Critical Research* (Leiden: Brill, 1970).

3 Earlier studies that were particularly determinative of this development include Nehemia Brüll, "Die Entstehungsgeschichte des Babylonischen Talmud als Schriftwerkes," in idem, *Jahrbücher für Jüdische Geschichte und Literatur II* (Frankfurt: W. Erras, 1876), 1–123 (see, e.g., the famous line on p. 20, "R. Abina hat . . . die Tradition in Literatur verwandelte"); Israel Lewy's introduction to his *Interpretation des I.–VI. Abschnittes des pälast. Talmud-Traktats Nesikin* (Heb. and Ger.; Breslau, 1895–1914; repr. Jerusalem: Kedem, 1970), 1–23; Julius Kaplan, *The Redaction of the Babylonian Talmud* (New York: Bloch, 1933); and Abraham Weiss's works, e.g., *The Talmud in its Development* (Heb.; New York: Feldheim, 1954).

4 In early studies that did focus on literary activity, that was the prevailing view. See, e.g., Brüll, "Entstehungsgeschichte"; in contemporary scholarship, see Robert Brody, "The Anonymous Talmud and the Words of the Amoraim" (Heb.), in *Iggud: Selected Essays in Jewish Studies: Volume 1* (Heb.; ed. B. J. Schwartz, A. Shemesh, and A. Melamed; Jerusalem: Magnes, 2009), 213–32 (226–27).

5 See, e.g., Kaplan, *Redaction*; for later studies, see Richard Kalmin, *The Redaction of the Babylonian Talmud: Amoraic or Saboraic* (Cincinnati: Hebrew Union College Press, 1989), though "Saboraic" there seems to mean mostly "post-Amoraic." The main reason not to identify the redaction of the Talmud with these sages is that the activities attributed to them in Geonic-period literature are mostly additions to what seems to be an already crystallized text, whereas the creators of the Talmud as we know them now have done much more than that; see, e.g., David Halivni, *Sources and Traditions: A Source Critical Commentary on the Talmud: Tractate Baba Bathra* (Heb.; Jerusalem: Magnes, 2007), 10–11. One wonders, however, whether the Geonim saw it that way.

anonymous voice" or "anonymous ones"), or use generic terms such as *aḥaronim* ("later ones").[6]

The literary activities that scholars now attribute to these later sages include the composition of the *stam*—the anonymous, discursive, interpretive layer of the Talmud; the shaping of the *sugyot* (sing. *sugya*)—the "discourses" or "essays" that constitute the Talmud; the adaptation and transformation of various Tannaitic and Amoraic sources embedded in the Talmud; and, in some cases, the composition of Talmudic stories.

While the image of the Talmud's creators that emerged from these studies was of great innovators of striking originality, scholars have explained this creativity in terms of continuity with tradition. According to David Weiss Halivni, the Talmud's authors, or Stammaim (as he calls them), received their traditions in "apodictic" form, without reasoning or justification. They then reproduced what they received faithfully, and composed the anonymous layer in order to justify these traditions. Their enterprise is thus innovative in the sense that for the first time the reasoning of tradition was put into literary form, but it is essentially a reconstructive enterprise, whereby the later generation recovers lost meaning and justifies its heritage.[7]

Shamma Friedman sees the Bavli's authors as "creative transmitters": they do not reproduce the earlier traditions verbatim, but rather constantly adapt, appropriate, and reformulate these traditions in order to "improve" them (Friedman's term) and harmonize them with new literary, legal, and ideological contexts.[8] Here the Bavli's creators are innovating through the changes that they introduce to tradition, but the continuity between them and their sources is even more pronounced than it is in Halivni's model. These creators express their voice through the modification of their sources, by retrojecting their words or opinions into traditions attributed to past authorities, often unconsciously. They sense such a continuity between themselves and their literary heritage that they simply reconstruct it in their own image.



Yaakov Sussmann similarly presents the post-Amoraic stage as the stage in which the Talmud became the Talmud, attributing the structuring, final formulation, and organization of *sugyot* to the later generations. But Sussmann, too, presents this composition as an unconscious process that blurs the lines between tradition and interpretation, between early and late, between the Talmud and the traditions it utilizes.[9]

Jacob Neusner's account differs from those of Halivni, Friedman, and Sussmann in the consciousness, purpose, and confidence that he attributes to what he terms "the Bavli's authorship," but his model also posits a continuity with tradition. Neusner argues that through a process of selection, reformulation, and systematization, the Bavli's creators form a single, unified voice with a coherent message to which tradition is subjugated or adapted.[10]

These studies, then, locate Talmudic creativity in the attribution of new concepts, ideas, and interpretations to earlier sources, through either the composition of commentary on earlier traditions, the revision of these traditions, or the composition of new traditions that are then attributed to earlier sages. These activities themselves are often construed as unconscious (thus Sussmann and Friedman—as well as Jeffrey Rubenstein and Daniel Boyarin),[11] and even when consciousness exists, it is described in terms of restoration and recovery (Halivni), of a sense of continuity that allows for creative transmission (Friedman), or of a homogenizing authorship that constructs a unified system from received

6 See, e.g., Sussmann, "Yerushalmi," 109 n. 204.

7 Halivni developed his theory of the Talmud's formation in the introductions to the volumes of his *Sources and Traditions*; the most recent account is in *MM BB*, 1–148. A much shorter version of this introduction appeared in English as "Aspects of the Formation of the Talmud" (trans. and ed. J. Rubenstein), in *Creation and Composition* (ed. J. Rubenstein; Tübingen: Mohr Siebeck, 2005), 339–60. While this introduction is comprehensive, it is naturally more concerned with new developments in Halivni's approach as well as responses to various criticisms; for a more general account of his theory, see David Halivni, *Midrash, Mishnah and Gemara: The Jewish Predilection for Justified Law* (Cambridge, MA: Harvard University Press, 1986), 76–92.

8 Friedman's classical statement on the Talmud's formation is "A Critical Study of Yevamot X with a Methodological Introduction" (Heb.), in *Texts and Studies: Analecta Judaica I* (Heb.; ed. H. Z. Dimitrovsky; New York: Jewish Theological Seminary of America, 1977), 275–441 (especially 283–301). He developed his notion of "creative transmission" to explain variation in the manuscripts of the Talmud (see idem, "On the Formation of Textual Variation in the Bavli" [Heb.], *Sidra* 7 [1991], 67–102), and then subsequently applied it to rabbinic literary production in general, and to the Bavli's treatment of its sources in particular; see idem, "Ha-baraitot ba-talmud ha-bavli ve-yaḥasan le-maqbiloteihen sheba-tosefta," in *Atara L'ḥaim: Studies in the Talmud and Medieval Rabbinic Literature in Honor of Professor Haim Zalman Dimitrovsky* (Heb.; ed. D. Boyarin et al.; Jerusalem: Magnes, 2000), 163–201 (191–92). This note refers to the original publications for historical purpose; references from here on are to the versions reprinted in Friedman's collected studies.

9 Sussmann, "Yerushalmi"; see especially 108–11 and nn. as well as 105 and n. 196.

10 See Neusner's summary of his studies on the Bavli in Jacob Neusner, *The Bavli's One Voice: Types and Forms of Analytical Discourse and their Fixed Order of Appearance* (Atlanta: Scholars Press, 1991), xvii–xxix. For a more recent recapitulation and conclusion of his ideas on the Bavli, see idem, *The Reader's Guide to the Talmud* (Leiden: Brill, 2001), especially 3–29 and 259–93.

11 Jeffrey Rubenstein, *The Culture of The Babylonian Talmud* (Baltimore: Johns Hopkins University Press, 2003), 6–7; Daniel Boyarin, *Border Lines: The Partition of Judaeo-Christianity* (Philadelphia: University of Pennsylvania Press, 2004), 66 and 154; idem, "Hellenism in Jewish Babylonia," in *The Cambridge Companion to the Talmud and Rabbinic Literature* (ed. C. E. Fonrobert and M. S. Jaffee; Cambridge: Cambridge University Press, 2007), 336-63 (342).

material (Neusner). The Talmud's creators, in these images, do not claim an identity or voice of their own, distinct from that of their traditions.

This image of Talmudic creativity is tied with specific images of tradition and authorship that derive in part from the rabbinic texts themselves and in part from modern theories of religion and literature. Rabbinic texts sometimes portray their own creativity as part of an almost timeless continuum that begins with the revelation at Mount Sinai and then unfolds through the ages; one famous teaching asserts that "Scripture, Mishnah, Talmud, Aggadah, and even what an advanced disciple will teach in the future before his teacher was already said to Moses on Sinai" (*y. Pe'ah* 2:6 17a and parallels).

One of the most influential modern accounts of this view is Gershom Scholem's essay, "Revelation and Tradition as Religious Categories in Judaism." Scholem not only explicates this idea but also connects it with the nature of rabbinic literary production:

> What this claim amounted to was that all this [rabbinic teaching] was somehow part of revelation itself—and more: not only was it given along with revelation, but it was given in a special, *timeless* sphere of revelation in which all generations were gathered together.... The achievement of every generation, its contribution to tradition, was projected back into the *eternal present* of the revelation at Sinai.... The exploring scholar... develops and explains that which was transmitted on Sinai, no matter whether it was always known or whether it was forgotten and had to be discovered. The effort of the seeker after truth consists not in having new ideas but rather in *subordinating himself to the continuity of tradition* of the divine word and in laying open what he receives from it in the context of his time.... *this is a most important principle indeed for the kind of productivity we encounter in Jewish literature.*[12]

This passage illustrates well the various accounts of Talmudic composition surveyed above: the Bavli's creators freely mold the traditions they received in their own image, attribute to the earlier sages their own ideas or even compositions, or see in their activity the rediscovery or recovery of lost, eternal meaning.[13]

12 Gershom Scholem, "Revelation and Tradition as Religious Categories in Judaism" (trans. H. Schwarzschild and M. A. Meyer), in idem, *The Messianic Idea in Judaism* (New York: Schocken, 1971), 282–303 (288–89); emphases added.

13 A connection between statements like the one in *y. Pe'ah* and the act of the Talmud's composition is made in Sacha Stern, "Attribution and Authorship in the Babylonian Talmud," *JJS* 45 (1994), 28–51 (49–50), and idem, "The Concept of Authorship in the Babylonian Talmud," *JJS* 46 (1995), 183–95 (193–95). Stern recognizes that the Bavli also includes statements of the opposite kind—see "Attribution," 50, and especially "Concept," 186–89 and 195, where he discusses the "Bavli's dialectical oscillation between creativity and tradition, individual authorship and collective anonymity," but when he discusses the compositional practice itself, he only appeals to "tradition" and "collective anonymity."



This focus on traditional continuity extends beyond the study of Judaism and it can be illustrated with two modern developments in the study of society and literature. The first development, common in sociologies and histories of religion, is suspicious of this sort of continuity claim and understands tradition as a form of power legitimation. Max Weber, for example, views tradition as a type of authority and understands claims to tradition as attempts to legitimize control over habits and practices by tracing this control, as well as a desired form of these habits and practices, to "the eternal yesterday."[14]

The other development, celebratory rather than suspicious of traditional continuity, is evident in a variety of theories of interpretation, specifically Hans-Georg Gadamer's. For Gadamer, the continuity of tradition functions not as a legitimation of domination but as a necessary, always-present condition for certain or even all kinds of interpretation: "the horizon of the present cannot be formed without the past... understanding is always the fusion of these horizons... in a tradition this process of fusion is continually going on, for there old and new are always combining into something of living value, without either being explicitly foregrounded from the other."[15]

Modern accounts of tradition in rabbinic literature do not derive directly from these theories and do not follow them in their specific details,[16] but both kinds of explanations for tradition—either as a form of legitimation or as a characteristic of interpretation—appear in Scholem's essay as well as in accounts of Talmudic composition. The Talmud's retrojection of new ideas, institutions, and interpretations to the past is explained as an ideologically driven way to legitimize them; the attribution of new literary creation to previous generations is explained as an exercise of claiming more authority for new literary material, similar to the

14 The classical division of types of authority appears in Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (ed. G. Roth and C. Wittich; 2 vols.; Berkeley: University of California Press, 1968), 1.215. Weber uses the expression "the authority of 'the eternal yesterday' " in another account of this division in his essay "Politics as a Vocation"; see *From Max Weber: Essays in Sociology* [2nd ed.] (ed. and trans. H. H. Gerth and C. Wright Mills; London: Routledge, 1991), 78–79.

15 Hans-Georg Gadamer, *Truth and Method* [2nd ed.] (trans. J. Weinsheimer and D. G. Marshall; London: Continuum, 2004), 305.

16 Gadamer's hermeneutic theory was applied to the analysis of rabbinic sources, though not to the process of composition but rather to their practices of biblical exegesis. See Moshe Halbertal, *Values in Interpretation* (Heb.; Jerusalem: Magnes, 1998), 193–95.

practice of pseudepigraphy in the Second Temple period.[17] Often at the same time, the Talmud's creative transmission of legal traditions and its retelling of narratives are described as the "fusion" that occurs in the process of traditional interpretation.

The emphasis in current models of Talmudic composition on revision and adaptation as the locus of literary creativity was determined in part by a turn away, in the study of rabbinic literature, from the traditional Western notion of authorship. This development is grounded in the observation of central features of rabbinic literature as well as explicit rabbinic statements: all classical rabbinic texts, including the Talmud, are anonymous; their transmitters, in some cases up until the advent of print, approached them as open texts to one degree or another, and they were subject to changes first by oral performers and then by scribes;[18] many rabbinic texts are inconsistent and betray multiple authors with multiple concerns and styles; some rabbinic statements, such as the statement we have seen earlier from *y. Pe'ah*, devalue individual creativity and understand it in continuous, collective terms. Scholars have also used the work of Roland Barthes and Michel Foucault, which emphasized the historical particularity of our notion of authorship, to argue for the inapplicability of this notion to the analysis of rabbinic literature.[19] The rising recognition in the second half of the twentieth century that many rabbinic texts, including the Talmud, were composed and transmitted orally, also contributed to this development, and rabbinic literary creativity in late antiquity was now seen as the performative, fluid inflection of tradition typical of oral cultures.[20]

While these images of tradition, authorship, and literary production were often developed with the entirety of the classical rabbinic corpus in mind, here we are only concerned with their applicability to the Babylonian Talmud; and with respect to this Talmud, I argue, these views offer only a partial picture.

17 The connection is made explicitly in Shamma Friedman, *Talmudic Studies: Investigating the Sugya, Variant Readings and Aggada* (Heb.; New York and Jerusalem: Jewish Theological Seminary, 2010), 61.

18 See Peter Schäfer, "Research into Rabbinic Literature: An Attempt to Define the *Status Quaestionis*," *JJS* 37 (1986), 139–52, and on the Bavli in particular, Friedman, *Talmudic Studies*, 163–64.

19 For a recent formulation of this view of rabbinic authorship in general, see Martin Jaffee, "Rabbinic Authorship as a Collective Enterprise," in *The Cambridge Companion to the Talmud* (ed. C. E. Fonrobert and M. S. Jaffee; Cambridge: Cambridge University Press, 2007), 17–37 (and the discussion of literary theory, 19–20 and 35 n. 2); see also Stern, "Attribution" (and the discussion of Barthes, 48–59) and "Concept," though by "authorship in the Bavli" Stern does not mean the self-conception and practices of the Bavli's creators but rather the way the document portrays the literary activity of the rabbis cited in it.

20 See, e.g., Sussmann, "Yerushalmi," 110 and n. 207, 108 n. 203; Boyarin, *Border Lines*, 66 and 154; Jaffee, "Rabbinic Authorship," 33–34.



## THE TALMUDIC VEIL

We will have the chance in the next couple of chapters to rehearse in more detail some of the theories of the Talmud's formation. Here, I would like to discuss briefly how the purpose of the studies in which these theories were developed influenced their image of Talmudic literary creativity. As we have seen, one of the most common images of Talmudic authorship in these studies is the adaptation and modification of tradition, the retrojection of later words and ideas into received material through reformulation and contextualization. The choice to focus on these acts of composition rather than others derives, in part, from the interest of earlier scholarship not in the Talmud itself, but in the earlier Tannaitic and Amoraic traditions that it preserves, and more generally in its reliability as a witness for the periods prior to its composition.

This interest can be observed in several of the foundational documents of Talmudic scholarship in the past decades, which often portray the literary structure created by the Talmud's authors as a layer from which we have to excavate the Amoraic material that is really worthy of investigation. Friedman identifies the purpose of his method of Talmudic study in a key paragraph in the essay that has shaped the consensus among American scholars:

> The collation of Amoraic formulations *apart from* the words of the anonymous layer of the Talmud shall place before scholars of Talmudic law, Jewish history and rabbinic language a *reliable corpus* of traditions, as opposed to the anonymous layer of the Talmud, in which many of the formulations, being the "give and take," are necessarily rejections and conjectures.[21]

E. S. Rosenthal, one of the most influential Israeli scholars, dedicated much of his research to the reconstruction of a "*genuine* Amoraic Talmud,"[22] and opened his much-cited study of *b. Pesaḥim* with an impressive reconstruction of such an "early Talmud": an arrangement of Tannaitic and Amoraic traditions not yet embedded in the dialectical

21 Friedman, *Talmudic Studies*, 30. These words, published in 1977, were somewhat retracted in an article published in 2010—see ibid., 60.

22 The expression itself appears in Ellezer S. Rosenthal, "Rav ben aḥi rabbi ḥiyyah gam ben aḥoto?" in *Henoch Yalon: Jubilee Volume* (Heb.; ed. S. Lieberman et al.; Jerusalem: Kiryat Sepher, 1963), 281–337 (322 n. 94); emphasis added.

construction that would characterize the developed *sugya*.[23] Sussmann concludes his influential essay on *Yerushalmi Neziqin* with the statement that the "essence" of the critical study of the Bavli is "the separation of the Amoraic nucleus and its various components from the late Babylonian *sugya*."[24] It is significant that in this programmatic statement, Sussmann does not make the additional distinction between the words of the Talmud's creators and even later interpretations, interpolations, and formulations, a distinction that he does make elsewhere:[25] when he thinks of the "essence" of Talmudic scholarship, the study of all post-Amoraic developments is ancillary. Halivni writes in his recent work about the purpose of his lifetime project: "we have dedicated much study to the time and enterprise of the Stammaim not because of their historical importance *per se*, but mostly because of their contribution to the contrived questions and the forced solutions in the Talmud."[26] Even the study most dedicated to the Talmud's authors sees in their enterprise a contrived interpretive layer that needs to be removed if we are to appreciate correctly the traditions it presents. As Halivni writes elsewhere: "between us and the Amoraim stand the Stammaim."[27]

This exclusive focus on the Amoraic period was driven by a variety of concerns, some of which have their roots in the medieval and early modern commentary tradition.[28] In the studies noted above, the anonymous layer was portrayed as mere literary artifice of contrived objections and solutions, as opposed to "reliable tradition," a contrast that was given different meanings when used in a traditional context (we want to know the law, we have no interest in the rhetorical structure)[29] or a historical context (we want to know the Amoraic opinion, not some later interpretation of unknown origin).[30] To this was added a modern aesthetic sensibility that preferred the succinct Amoraic dicta over the "tralatitious" and "meandering" *sugyot*.[31]

Contemporary scholarship has increasingly focused on the Talmud as an object of study in its own right. To give just two pioneering examples,

23 Eliezer S. Rosenthal, "Le-'arikhat masekhet pesaḥ rishon: bavli" (Ph.D. dissertation, Hebrew University of Jerusalem, 1959), 1–5.

24 Sussmann, "Yerushalmi," 113.

25 Sussmann, "Yerushalmi," 109 n. 205.

26 Halivni, *MM BB*, 1.

27 Halivni, *Midrash*, 77.

28 See Friedman, *Talmudic Studies*, 12–15, and see more in the Conclusion of this book.

29 On this approach in medieval literature, see Yedidya Dinari, "The Attitude to the Talmudic 'shinuya' in the Rabbinical Literature" (Heb.), *Bar Ilan* 12 (1974), 108–17.

30 See, e.g., the statements by Sussmann and Friedman cited above.

31 See Rosenthal's description of Babylonian literary development in "Redaction," 6.



Rubenstein's *Culture of the Babylonian Talmud* reconstructs the cultural values of the Bavli's creators,[32] while Leib Moscovitz's *Talmudic Reasoning* gives these creators the same attention it gives Tannaitic and Amoraic sages, and reveals their determinative contribution to the history of legal abstraction in rabbinic literature.[33] Still, the former interest in the Amoraic material has shaped our rules of attention in a way that is evident even today. We have gotten so used to approaching the enterprise of the Talmud's creators as the veil through which we must look in order to see the real objects of our interest that even as we turn to that enterprise itself we continue to focus on its veiling functions, only now the veil itself has become our interest. The focus in so much of contemporary scholarship on adaptation, reformulation, and retrojection is thus continuous with the interests and methods developed by scholars who were not interested in the Talmud itself.

This focus has certainly produced great results for the study of the Bavli, and it is impossible to analyze a Babylonian *sugya* without encountering activities such as reformulation, adaptation, and interpolation. When this focus is exclusive, however, it can create a misleading image of the self-consciousness and purpose of the Bavli's creators. If we think of the Talmud's creators mostly as introducing unconscious modifications, as hiding themselves behind their traditions and retrojecting their own words and ideas into them,[34] as adapting tradition to new contexts and "improving" it,[35] it is because we have focused on these specific activities and not others. The Bavli's creators themselves are not hiding: they are there in almost every *sugya*, structuring the discussion and leading the reader (or listener) through the sources, expressing their voice in the anonymous discussion that organizes most of the Talmud. While their choice of anonymity in itself might be seen as an act of deference toward their predecessors, their literary practice betrays a different set of priorities. As Rosenthal writes, perhaps resentfully, of the dialectical move that characterizes the late, developed *sugya*:

> This dialectical "move" overshadows the sources themselves (Mishnaic traditions, external traditions, Amoraic traditions), which are cited only, as it were, to be used as weapons in the war of Torah: a point of departure and "a proposition" to be disputed; a counter-proof; a supporting proof. *And the war is principal, and the weapon is merely auxiliary.*[36]

32 Rubenstein, *Culture*.

33 Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Tübingen: Mohr Siebeck, 2002); see especially the conclusion, 350–51.

34 Boyarin, "Hellenism," 342.

35 Friedman, "Baraitot," 191.

36 Rosenthal, "Redaction," 5; emphasis added.

Jacob Neusner's image of the Bavli's relationship with its traditions might also derive from his early interest in the reliability of the Bavli as a source for historical reconstruction; but more important is the fact that Neusner developed his account of the Bavli as part of a broader effort to establish his "Documentary Hypothesis." The "hypothesis" can be roughly summarized as suggesting that rabbinic texts (or "documents") present a coherent, systematic program, that each of them is to be read as a whole, that they subject each of their sources to a revision that imposes coherency, that they are not "compilations of this and that."[37]

For Neusner, the Bavli is the jewel in the "documentary" crown: the Bavli "is not the product of a servility to the past . . . but of an exceptionally critical, autonomous rationalism."[38] It is the most documentary of documents, in that its authors created an absolutely systematic, homogenous text: "when reason governs, it reigns supreme and alone, revising the received materials and, through its powerful and rigorous logic, restating into a compelling statement the entirety of the prior heritage of information and thought."[39]

Neusner's approach has been subjected to systematic criticism by a number of scholars;[40] the critical argument most relevant to our purposes here is that the Bavli, in the end, is far from a homogenous document: not only does it contain many redactional layers that contradict one another or respond to one another,[41] but it also contains many sources that seem not to have been revised and do not conform to the rhetorical plan, message, or even idiom of the Bavli's creators.[42] Some scholars have taken these unrevised sources as evidence for the absence of a guiding, deliberative authorial hand, not to mention Neusner's "autonomous rationalism."[43] In my discussions of Talmudic passages, I hope to show that it is precisely in the lack of revision that a critical authorship may be found; but it is the kind of critical authorship that transcends Neusner's dichotomy between "servility to the past" and "exceptional criticism."

37 Neusner summarizes his general position in Jacob Neusner, *Are the Talmuds Interchangeable?* (Atlanta: Scholars Press, 1995), ix–xiii.

38 Jacob Neusner, *Extra- and Non-Documentary Writing in the Canon of Formative Judaism: Volume 3: Peripatetic Parallels* (Binghamton: Binghamton University Global Publications, 2001), 44.

39 Neusner, *Reader's Guide*, 260.

40 See Schäfer, "Research," 146–50, and Robert Goldenberg, "Is 'The Talmud' a Document?" in *The Synoptic Problem in Rabbinic Literature* (ed. S. J. D. Cohen; Providence: Brown Judaic Studies, 2000), 3–12; see also the other articles in that volume by Christine Hayes, Richard Kalmin, and Hans-Jürgen Becker, as well as Cohen's introduction.

41 On the various kinds of layering that one can find within the redactional layer, see, e.g., David Rosenthal, "'Arikhot qedumot ha-meshuqa'ot ba-talmud ha-bavli," in *Talmudic Studies I* (ed. Y. Sussmann and D. Rosenthal; Jerusalem: Magnes, 1990), 155–204; Halivni, *MM BB*, 29–33 and 56-64; Friedman, *Talmudic Studies*, 55.

42 See Kalmin, "Formation," 844–45.

43 See, e.g., Jaffee, "Rabbinic Authorship," 31–32.



## OVERVIEW

This book examines compositional practices, historical developments, and passages revealing of the way the Talmud's creators conceived themselves in order to draw a different portrait of them. This portrait adds a different set of characteristics to those already recognized by current models. It complements the continuous creative revision with a freezing of tradition and its containment in a way that produces discontinuity; it complements the fusing of horizons with a literary design that *does* foreground one horizon from another; it shows that we find in the Talmud not only appeals to the "eternal present" or "eternal yesterday" but also pervasive literary techniques that thrive on the dialectic and distinction between the present and the past. While Talmudic composition certainly lacks some of the determinative features of Greco-Roman or modern authorial practice, it does, it will be argued, use an "author's voice," and it can distinguish this voice from that of its sources.

Part I of this book explores the Talmud's literary practice through a close analysis of selected passages, or *sugyot*.[44] My claim is not that these *sugyot* are more representative of Talmudic composition than the *sugyot* that have informed previous theories, or that the strategies observed in them are closer to some conjectured essence of this composition. Rather, my analyses of these *sugyot* seek to modify the way we see other Talmudic texts and compositional practices in two ways. First, since the literary strategies observed here expand our thesaurus of what the Talmud *can* do, they problematize accounts that explain the other types of practices by appeal to innate or universal characteristics; they warn us against assumptions about the textual practices of rabbinic, oral, pre-modern, or religious cultures. Second, and more important, these *sugyot* make explicit and visible aspects and potentialities of certain features of Talmudic composition that are less discernible, but still present, in other texts. These features include the division between the anonymous layer and the

44 On the *sugyot* and their development as the literary unit constituting the Talmud, see Abraham Weiss, *Studies in the Literature of the Amoraim* (Heb.; New York: Horeb Yeshiva University Press, 1972), 1–23; see also Louis Jacobs, "The Talmudic *Sugya* as a Literary Unit," *JJS* 24 (1974), 119–26. For an alternative account of the *sugya* that prefers "organic development" to "literary creation," see Robert Brody, "Sifrut ha-ge'onim vehaḥeqeq ha-talmudi," in *Talmudic Studies I* (ed. Y. Sussmann and D. Rosenthal; Jerusalem: Magnes, 1990), 237–303 (252–55).

traditions it cites, as well as juxtaposition, sequence, attribution, and narration.

Chapter 1 centers on a *sugya* which, it will be argued, is designed to emphasize the distance between the approach expressed by the *stam* (the creators' anonymous layer) and the approach expressed by the Amoraic dictum that it cites. The creators of the Talmud do not revise the tradition to fit their own agenda or even reinterpret it; nor is the tradition justified: on the contrary, its validation in the conclusion of the *sugya* is presented as arbitrary and explicitly contrasted with the Talmud's own long, exhaustive, and theoretically sophisticated reasoning. Far from "hiding" themselves behind tradition or voicing their agenda through it, the authors of the *stam* become a presence in their own creation.

Chapter 2 addresses the historical development of the anonymous layer. It aims to complicate the notion that the division in style and function between the *stam* and the traditions reflects a difference in provenance between two corpora, instead arguing that the Bavli's creators produced both the anonymous layer and the cited traditions, or better, the division between them. This division is not simply a reflection of the different dating of these elements; it was, rather, constructed and imposed by the Bavli on earlier structures and sources. Following a brief discussion of theories about the *stam*'s date, the discussion goes on to compare a *sugya* preserved in the Palestinian Talmud as well as in the Babylonian Talmud. In the earlier, Palestinian version, attributed traditions are employed both for interpretive, narrating functions and for apodictic rulings and brief exegetical comments. The Bavli reorganizes the *sugya* to create a distinction in function, dividing the material between two layers: a narrating, interpretive, discursive anonymous layer, and a layer of brief, non-discursive, attributed rulings.

It is this reorganization that *transforms the traditions into quotations*, that distinguishes between the Talmud's own voice and the voice of the sources it cites. The gap that we observe in almost every Talmudic *sugya* is, then, not just the result of the passage of time between the production of Tannaitic and Amoraic traditions and the production of the Talmud: this gap, as we observe it in texts like the one studied in Chapter 1, is itself a compositional strategy of the Talmud's creators.

One of the most compelling accounts of this ability of quotation to signify a break rather than continuity, alienation rather than identification, is Giorgio Agamben's exposition of Walter Benjamin's notion of quotation. Agamben writes:

> The particular power of quotations arises, according to Benjamin, not from their ability to transmit that past and allow the reader to relive it but, on the contrary, from their capacity . . . to destroy. Alienating by force a fragment of the past from its historical context, the quotation at once makes it lose its character of authentic testimony and invests it with an alienating power that constitutes its unmistakable aggressive force.[45]



The emphasis in Agamben's passage on the original context of the material that is quoted is less applicable for the function of quotation in the Talmud: we do not know the nature of the literary context in which rabbinic traditions circulated, and at least in the example examined in Chapter 2, the quotation is achieved not by reproducing a tradition from one context in another, but by revising the original context of the tradition, the earlier *sugya*.[46] The important element that Agamben emphasizes in his discussion of quotation as well as of art collection is the capacity of these activities to create a dialectical, objectifying relation to the past; quotation is "destructive" and "aggressive" in the sense that it destroys continuity. Applied to the Talmud, the transformation of tradition into quotation disrupts the chain of tradition.

The *stam*, I argue, is where this problem of the past found its solution. By rendering traditions archaic, fixed Hebrew "quotations" and "artifacts" subordinated to a live, all-knowing Aramaic narrating layer, it enabled the scholars who presented *sugyot* in the academy to create a space for their own self-expression and to justify their necessity. The division between the layers answered what Walter Ong has identified as a challenge particular to oral culture: the distinction between the transmitter and the transmitted.[47] It was an expression of, and a solution to, an "anxiety of influence." We will see this anxiety expressed in one of the *sugyot* studied in Chapter 4, in which members of the Jewish community criticize the rabbis' traditionality, asking, "of what use are the rabbis for us?"

Chapter 3 argues that a similar distanciation is at work even where the anonymous voice is relatively silent. It focuses on a thematic series of *sugyot* that concern the genealogical division of the Jewish people, and argues that the Bavli trains its audience to view the production of genealogical knowledge, and the traditions in which it is transmitted, as manipulated and personally motivated—in other words, that the Talmud

45 Giorgio Agamben, *The Man Without Content* (trans. Georgia Albert; Stanford, CA: Stanford University Press, 1999), 104.

46 Alexander Samely, *Forms of Rabbinic Literature and Thought: An Introduction* (Oxford: Oxford University Press, 2007), 169–71, argues that the quotation of *memrot* and *baraitot* outside of their original literary context effectively "Scripturalizes" the Mishnah; but Samely himself acknowledges that *sugyot* often treat Mishnaic quotations in the same way, and we still do not know whether all *sugyot* were initially intended as commentaries on the Mishnah.

47 Walter Ong, *Orality and Literacy: The Technologizing of the Word* (London and New York: Routledge, 1989), 45–46.

situates and historicizes these traditions. When genealogical traditions are then reproduced and juxtaposed with stories or laws that tell us of such manipulation, we are highly suspicious of these traditions, even though they are not explicitly contested or revised by the Talmud. The Talmud's creators thus achieve a critical distance without relying on the division between the layers, but merely through juxtaposition and arrangement.

These *sugyot* challenge us to go beyond the common dichotomy between an uncritical compilation that does not revise or select tradition and the critical authorship that only produces traditions it agrees with and revises all the sources it produces according to its own agenda. The lack of revision or appropriation, as well as the lack of "redaction" in the sense of omitting sources that stand in clear tension with the Talmud's creators' agenda, can play a role in a critique. Revision and selection are, in a sense, measures of identification; the withdrawal from revision and the production of sources that stand in tension with the values of the Talmud's creators are measures of distanciation.

In the sense that our *sugyot* combine a commitment to tradition with an effort to distance it, on some level, they confront the same problem confronted by rabbinic biblical interpretation: the difference between the values of the interpreter and the values expressed in the text to which the interpreter is committed.[48] In biblical interpretation, the rabbis' most common solution was to interpret Scripture according to their values, a solution that is in part premised on the divine authorship of Scripture: since God is the author of the text, the text can never be wrong, and must therefore reflect the worldview of the interpreter.[49] The *sugyot* discussed in Chapter 3 present a solution that is based on the humanity of rabbinic traditions. Instead of endowing the canonical texts with new meaning generated by new values, the representation of these traditions as contingent on human interests allows the Talmud's creators to maintain their commitment to these traditions without endorsing the values encoded in them.

Part II of this book turns from the Talmud's creators' compositional practices to their rhetoric of self-presentation and self-definition. Building on the work of Ginzberg, Rosenthal, Boyarin, and Rubenstein, who demonstrated that the Bavli places a high value on dialectic and analysis at the expense of tradition and memorization, Chapter 4 analyzes three passages to demonstrate the centrality of this preference to the self-

48 On this problem in rabbinic biblical interpretation, see Halbertal, *Values in Interpretation*, passim.

49 For an analysis of this position, see Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, MA: Harvard University Press, 1997), 23–33.



perception of the Talmud's creators as well as situate it within a polemical conversation among Jews in late ancient Mesopotamia.

These passages are all premised on a dichotomy between the "received" knowledge of Scripture and oral tradition, on the one hand, and the innovative, creative aspects of study on the other. The first passage, I argue, is designed to claim rabbinic identity for these creative aspects of study, depriving of rabbinic identity those who occupy themselves with Scripture or with oral tradition; the latter, in particular, are presented as enemies of the rabbis. The second passage condemns members of the Jewish community who criticize the rabbis for being too conservative and occupying themselves only with received knowledge, Scripture, and tradition; while it is difficult to know whether there were really Jews outside rabbinic circles who held these views, compositional elements of the *sugya* indicate that the Talmud shares the values on which this criticism is premised.

The third *sugya* concerns the *tanna'im* (sing. *tanna*)—the "repeaters" or "reciters" of tradition—known from other sources as those entrusted with the memorization, transmission, and recitation of rabbinic traditions. The *sugya* includes these reciters in the list of the rabbis' classical opponents; it warns its audience not to "intermingle" with them, and says that they act as the destroyers of the world when they offer legal instruction, an activity reserved for the sages themselves. The rabbis are exhorted not to cross the social borderline between themselves and the reciters, while the reciters are condemned for crossing this line.

The Talmud's insistence on this boundary suggests that in reality it was not that sharp: rabbis did intermingle with reciters, reciters did give legal instruction. This is further corroborated by the occasional references to interpretive, scholarly activities of reciters scattered throughout the Bavli itself. The Talmud's attack on these scholars—whether the reciters or those who intermingle with them—includes two elements that cohere with the other passages studied in this chapter: it constructs a sharp distinction between scholarship and transmission, and it creates a clear hierarchy that values the former and devalues the latter.

These passages, I argue, allow us to posit a contrast between two approaches to tradition. Those targeted in these passages saw memorization, retention, and recitation as primary ways for approaching rabbinic tradition; they saw scholarship as continuous with, but not necessarily central to, these activities. This approach stands in contrast with the Bavli's compositional practices studied in Part I of this book. If the Talmud externalizes and distances tradition, recitation internalizes and embodies tradition; it interprets and revises texts through identification with them. More important, recitation might not have been simply an aid to scholarship but a ritual on its own. The Bavli's portrayal of the reciters correlates

with its treatment of tradition itself: just as it fossilizes tradition in non-discursive dicta, it divorces recitation from scholarship and portrays the reciters—in this *sugya* and other passages—as "mindless" performers.

In their effort to construct borderlines and shape rabbinic identity in a particular way, these passages show us that the Bavli's approach cannot be understood as representative of Babylonian Jewry or even the rabbinic academy: both the reciters and the rabbis who "intermingle" with them were, at least in some sense, members of the academic community, and the latter were part of the Bavli's own audience. This complicates previous accounts of the Bavli's vision of Jewish intellectual life, which have identified this vision with academicization or understood it in terms of the contrast between Babylonian and Palestinian Jewish culture. The worldview we see in these passages was one voice in a conversation that took place within rabbinic culture in Babylonia about the appropriate way to approach Torah.

This conversation extends beyond Judaism. In one of the passages on the reciters, the Talmud quotes a comparison between the Jewish reciter and the Zoroastrian magus: both recite and do not understand what they are reciting. Chapter 5 takes this statement as a point of departure to examine discourses about recitation in Zoroastrian and Christian literature. The first section explores a Zoroastrian distinction similar to the one the Talmud makes between the reciter and the scholar. The second section looks at a Christian author who is also using a negative portrayal of Zoroastrian recitation, and argues that in both the Talmud and the Christian text the representation of Zoroastrian practice is used to promote particular visions of Judaism and Christianity and dehabilitate others. Both texts contrast the performative, embodying practice of recitation with the scholarly approach that they promote, and by associating that recitation with Zoroastrian ritual they seek to mark it as foreign, as non-Jewish or non-Christian.

The recitation of sacred text was an important element in the Western cultures from which the Jewish and Christian cultures of the Sasanian Empire developed; but, I suggest here, it is possible that the encounter with Zoroastrian culture, in which recitation took a central role as a main component of ritual and as the exclusive interface to sanctified traditions, increased the importance of recitation for some Mesopotamian Jews and Christians. In this context, the Jewish and Christian polemic against recitation can be seen as an attempt both to fortify the boundaries of Jewish and Christian identities as well as to claim these identities for the particular vision of the two "scholastic" groups of these cultures—the East-Syrian school movement and the leadership of the rabbinic academy.

The problem with reconstructing the conversation that is evident in the Bavli's polemical passage is that we usually only have the Talmud's



side of such debates. Chapter 6 argues that the opposing side might be found in a few texts preserved in the tradition of Hekhalot literature. This chapter argues that the *Sar ha-Torah* narrative presents a parody of the ethos of the Babylonian academies and an effort to shift the gravity of Jewish culture away from the kind of Torah study practiced in these academies toward an engagement with Torah that emphasizes retention and recitation. Other Hekhalot traditions present memorization as a type of visionary experience and recitation as a transformative ritual. The chapter proceeds to suggest, based on the fact that the Hekhalot texts enter Jewish history as texts transmitted by Babylonian reciters, as well as on other connections between these *tanna'im* and Hekhalot texts, that the Babylonian reciters took active part in the shaping of Hekhalot traditions. If that is correct, then the Hekhalot texts analyzed in this chapter preserve a response to the Babylonian polemic discussed in the previous chapters.

The period that saw the formation of the Babylonian Talmud was also a period in which the traditions of the rabbis gained unprecedented prestige and following. It saw transformations in the religious life of the Jews that led to the introduction of these traditions to larger, more diverse publics, and it saw the rise of the rabbinic academy, which offered an unprecedented institutional setting for the study of these traditions.[50] Rabbinic traditions were no longer encountered by students and scholars in the intimate circles of Tannaitic and Amoraic Palestine and Babylonia, but in contexts increasingly removed from the ones in which they were produced: in lectures both academic and public, in inscriptions, and even in weekly readings in the synagogue. This process—the creation, in Agamben's words, of "the gap between the act of transmission and the thing to be transmitted," contributed both to the increased ritualization of rabbinic tradition in the mouths of the *tanna'im* and to the objectification and distanciation of this tradition in Talmudic *sugyot*. In this sense, this process offered tradition a renewed vitality; "contrary to what one might think at first, the breaking of tradition does not at all mean the loss or devaluation of the past: it is, rather, likely that only now the past can reveal itself with a weight and an influence it never had before."[51]

50 Seth Schwartz, "Rabbinization in the Sixth Century," in *The Talmud Yerushalmi and Graeco-Roman Culture III* (ed. P. Schäfer; Tübingen: Mohr Siebeck, 2002), 55–69.

51 Agamben, *The Man Without Content*, 107–8.

## Chapter Four

# SCHOLARS, TRANSMITTERS, AND THE MAKING OF *TALMUD*

The first part of this book offered an interpretation of the literary practice of the Talmud's creators, deriving their approach to tradition by examining the literary strategies through which tradition is produced in the Talmud. This second part of the book focuses on how the creators of the Talmud themselves understood the project with which they were engaged, on the place of the transmission of tradition in this self-conception, and on the way this self-conception was informed by a debate with other elements in these creators' environment.

Scholarship on the Bavli's ideology of Torah study has demonstrated that, in contrast with other rabbinic works, the Bavli prioritizes analysis and innovation over memorization and transmission. In passages that distinguish between two kinds of Torah scholars, the one who is able to retain tradition by repeated recitation and memorization, and the one who is able to arrive at new insights through the analysis of received tradition, the Bavli tends to favor the latter.[1] The passages studied in this chapter

1 One of the most influential earlier treatments is Louis Ginzberg, *A Commentary on the Palestinian Talmud IV* (Heb.; arranged and edited posthumously by D. Hallvni; New York: Jewish Theological Seminary, 1961), 19–31. More recent treatments include David Rosenthal, "The Transformation of Eretz Israel Traditions in Babylonia" (Heb.), *Cathedra* 92 (1999), 7–48 (30–36); Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: Johns Hopkins University Press, 2003), 39–53; Daniel Boyarin, *Border Lines: The Partition of Judeo-Christianity* (Philadelphia: University of Pennsylvania Press, 2004), 151–201; idem, "Hellenism in Jewish Babylonia," in *The Cambridge Companion to the Talmud and Rabbinic Literature* (ed. C. E. Fonrobert and M. S. Jaffee; Cambridge: Cambridge University Press, 2007), 336–63 (343–56). Also related is Sussmann's argument, that in Palestine the Mishnah was studied on its own whereas in Babylonia it was studied as part of "Talmudic study" (even before "The Talmud," as a text, was completed). See Yaacov Sussmann, "Manuscripts and Text Traditions of the Mishnah" (Heb.), *Proceedings of the Seventh World Congress of Jewish Studies: Volume 3: Studies in the Talmud, Halacha*





can be read as employing a particular variation of this distinction. They associate with the "conservative," transmission-oriented aspects of Torah study the occupation with the two bodies of knowledge that the rabbis received: the Written Torah (Scripture) and the Oral Torah (rabbinic tradition). Many passages in the rabbinic corpus, including some of the Palestinian sources reworked by the *sugyot* studied here, see in the reading of Scripture and the recitation and memorization of rabbinic tradition the totality of rabbinic knowledge. Such passages are mostly concerned with those who have mastered the former but not the latter, those who have Scripture but not tradition—no doubt a concern motivated by the rabbis' emphasis on their own authority. The passages studied in this chapter, in contrast, present these two kinds of study as insufficient. In the first passage we will examine, both the reading of Scripture and the recitation of tradition are construed as inferior to *talmud*, understood here as the "creative," analysis-oriented kind of Torah study.

This chapter argues that this dichotomy between the transmission of texts and the creation of new knowledge was central to the way the creators of the Talmud understood themselves, to the way they wanted to be perceived, and to the way they distinguished themselves from others. One of the passages studied in this chapter harshly condemns those who do not recognize the rabbis' originality. It insists on a public image of the rabbis as innovators, showing us how they resisted prominent members of the Babylonian Jewish community who portrayed them as mere transmitters of Scripture and oral tradition. The same passage is also concerned with the image of the rabbis within the rabbinic academy, criticizing a student who does not recognize the innovation of his master.

At the heart of this book stands a tension within the rabbinic community which, I argue, informed this self-conception of the rabbis who created the Talmud. Our passages wholly identify with those who occupy themselves with the creative and analytical study—the "masters of *talmud*" (*ba'ale talmud*). More important, they exclude those who do not engage in *talmud* from their definition of "the sages" and equate them with some of the rabbis' classical opponents. This exclusion applies to the "masters of Scripture" (*ba'ale miqra*) as well as to the persons who only "read [Scripture] and recited [tradition]"; but, we shall see, these passages focus particularly on those who were engaged in the transmission of rabbinic tradition: the "masters of tradition" (*ba'ale mishnah*) or the *tanna'im*, the "repeaters" or "reciters" who were in charge of the memorization of rabbinic tradition and its deployment through constant recitation. The creators of our passages present these transmitters as "haters"

*and Midrash* (Jerusalem: Perry Foundation; World Union of Jewish Studies, 1981), 215–50 (236–41).

or enemies of the rabbis, say that they are "the destroyers of the world," and admonish the Talmud's audience not to associate with them. The creators of our passages, I argue, construct these "masters of tradition" and reciters as their "others" in order to portray the scholar as the opposite of the transmitter. In other words, when the creators of the Talmud thought of what made them the "masters of *talmud*," they thought of themselves in opposition to those who focused on transmission.

Some of the types that are criticized by the Talmud here do not represent distinct ideological or social groups—they seem to be stereotypes of bad conduct or personifications of different specializations in the rabbinic world. But the deliberate drawing of boundaries we see in these passages, their polemical tone, and the existence of rabbinic texts that are at odds with our passages make it likely that the Bavli here is staking a position in a real conversation with other ideological positions and perhaps also other groups within the academy.

Previous accounts of the Bavli's celebration of dialectic and marginalization of memorization have explained it either in temporal terms—as a stage in the development of rabbinic thought and institutions, or in geographical terms—as one of the differences between the two rabbinic centers in Palestine and Babylonia. It is true that we can understand the Bavli's position better by comparing it with earlier Palestinian texts; but the urgency of these passages indicates that the issues are still very much alive, and there is nothing in them to suggest that the division between Palestine and Babylonia is at stake for their creators. If our *sugyot* needed to assert their ideology of Torah study against the reciters of the academy or those who focused on the transmission of rabbinic traditions, the Bavli's ideology was not the only possibility in the time and place in which it was formed; the Talmud is staking a contested position that had rivals even within the academy itself (even if not in its leadership), as part of a conversation on the appropriate place and nature of the transmission of tradition.

The reconstruction of this conversation can illuminate the literary characteristics studied in the first part of the book. If the "masters of *talmud*" defined themselves and their practices in opposition to the "masters of *mishnah*" and the reciters, and if these other groups had their own ideology or position concerning the nature of Torah study, then we can posit a sharper and richer opposition between *talmud* and recitation as literary practices reflecting different approaches to the interface between Jews and their tradition: one that distanced tradition and separated analysis from transmission in order to highlight innovation, and one that internalized tradition through memorization and focused on transmission. This chapter examines the Bavli's side of this debate; the following chapter seeks to shed light on both sides by comparing this opposition with



the Jewish community with similar oppositions in the Christian and Zoroastrian communities of late ancient Mesopotamia; the final chapter examines Hekhalot traditions which, I will argue, may have been shaped by the Bavli's opponents.

## "WISDOM—BUT NOT *MISHNAH*"

Our first *sugya*, at *b. B. M.* 33a–b, confronts the question of rabbinic identity explicitly, from its beginning. The Mishnah states that if a person is simultaneously required to attend to property lost by his father and property lost by his rabbi, his rabbi's property takes priority over his father's. The reason given in the Mishnah is that a person's father is responsible for his existence in this world, but a person's rabbi (i.e., teacher), "who taught him wisdom," is responsible for his existence in the world to come (*m. B. M.* 2:11).[2] The Talmud then raises the question of who counts as one's rabbi. The discussion opens with a *baraita* citing different answers to this question:

> Our rabbis taught: "The 'rabbi' they mention here is the rabbi who taught him wisdom and not the rabbi who taught him Scripture and *mishnah*"—[these are] the words of R. Meir. R. Yehuda says: [The rabbi referred to in the law is] any rabbi from whom [he derived] most of his wisdom. R. Yosi says: Even if he only opened his eyes regarding a single tradition, he counts as his rabbi." (*b. B. M.* 33a)

R. Meir's words are presented here as a gloss on the Mishnah's definition of the rabbi as the "rabbi who taught him wisdom" (even though he may have referred to an earlier version of the Mishnah that did not include this definition).[3] He explains that in using the word "wisdom," the Mishnah seeks to exclude from the law rabbis who taught the person Scripture and *mishnah*, meaning, not the text we know by this name, but rabbinic

2 Similar ideas appear in other ancient texts. See, e.g., the argument attributed to Isocrates in the *Exercises* of Theon: "Honor teachers ahead of parents. For the latter have been only the cause of the living but teachers are the cause of living well." George A. Kennedy, *Progymnasmata: Greek Textbooks of Prose Composition and Rhetoric* (Leiden: Brill, 2003), 18.

3 See Ginzberg, *Commentary IV*, 24, and his useful explanation of the development of the tradition in the Tannaitic period. See also David Halivni, *Sources and Traditions: A Source Critical Commentary on the Talmud: Tractate Baba Metzia* (Heb.; Jerusalem: Magnes, 2003), 111 n. 2, who makes the same argument (without reference to Ginzberg) in order to solve the contradiction the *stam* points in R. Yohanan's ruling; but Halivni himself (ibid., 113) concedes that this is unnecessary. Both are preceded by Joseph Hirsch Dünner, *Ḥidushei ha-riṣad* (4 vols.; Jerusalem: Mosad Ha-Rav, 1981–99), 150.

oral tradition in its entirety.[4] The parallel of this *baraita* in the Tosefta, and in a partial parallel in the Yerushalmi that is not attributed to R. Meir, the comment reads, "the rabbi who taught him wisdom, and not the rabbi who taught him Scripture," without reference to *mishnah* or tradition at all.[5] The Bavli's version, then, adds the teaching of tradition to what *does not* qualify a teacher to be a person's rabbi.

The meaning of this opposition between "wisdom" on the one hand and "Scripture and tradition" on the other is explained only indirectly, after a brief discussion of the *baraita*, when the Talmud quotes another Tannaitic source:

> Our rabbis taught: Those who occupy themselves with Scripture—this is a merit and not a merit; [those who occupy themselves] with *mishnah* [i.e., oral tradition]—this is a merit, and they receive reward on its account; [those who occupy themselves with] *talmud*—there is no greater merit. But always run to the Mishnah more than to the *talmud*. (ibid.)

This teaching mentions Scripture and tradition, the two elements of study that were contrasted above with wisdom, but it also introduces a new term that we have not heard yet in this discussion: *talmud*,[6] which stands above the first two in a three-part hierarchy. The clear implication of the

4 See, e.g., Wilhelm Bacher, *Die Exegetische Terminologie der Jüdischen Traditionsliteratur* (Leipzig: J. C. Hinrichs, 1905), 1.122: "Bezeichnung der mündlichen Lehre und ihres Studiums." Similarly the word *miqra*, translated here as "Scripture," is better interpreted as "the study of the written Torah" (see, e.g., Bacher, *Terminologie*, 1.117), but since the gap between this sense and the translation "Scripture" is narrower than in the case of *mishnah*, I use "Scripture" for the sake of fluency.

5 See *t. B. M.* 2:30 and *y. Hor.* 3:7 48b. Later in the same *sugya* in the Yerushalmi, there is a fuller parallel of our *baraita*, which appears also in *y. M. Q.* 3:7 83b and *y. B. M.* 2:11 8d, which lacks the interpretive gloss attributed here to R. Meir altogether, instead attributing to him the anonymous Toseftan opinion that the rabbi in question is the rabbi who taught the student first. On the Yerushalmi there, see Lieberman's comments in Eliezer S. Rosenthal and Saul Lieberman, *Yerushalmi Neziqin* (Heb.; Jerusalem: Israel Academy of Sciences and Humanities, 1983), 138–39, and Louis Ginzberg, *Yerushalmi Fragments from the Genizah* (New York: Jewish Theological Seminary, 1909; repr. Hildesheim: Georg Olms, 1970), 202.

A parallel in tractate *Kallah*, §24 (for which see David Brodsky, *A Bride Without a Blessing: A Study in the Redaction and Content of Massekhet Kallah and its Gemara* [Tübingen: Mohr Siebeck Siebeck, 2006], 28–31), ascribes to R. Meir essentially the same opinion as the Tosefta, reading: "his rabbi . . . taught him *mishnah* and *talmud*, but not Scripture."

6 Many of the manuscripts read *gemara* instead of *talmud*, and this is also the version in several of the texts of Rashi's interpretation of our *sugya*; but this is the result of censorship (self-imposed or otherwise); see on our *sugya* and others, Chen Merchavia, *The Church Versus Talmud and Midrashic Literature* (Heb.; Jerusalem: Bialik Institute, 1970), 325–26.



Bavli, then, is that the term "wisdom" encountered in the first *baraita* is equivalent to the term *talmud* in this *baraita*.

As with the first two terms—*miqra*, or the study of Scripture, and *mishnah*, or the study of oral tradition—*talmud* is a stage[7] or a type of Torah study. The specific meaning of this term changed during the rabbinic period. In the Tannaitic and early Amoraic periods, *talmud*, in the sense of a discipline of Torah study, denoted scriptural exegesis, specifically legal exegesis of the Torah, what we now call *midrash halakhah*.[8] If this *baraita* is indeed a Tannaitic source—and as we shall see, this is not at all certain—its original sense might have been that *talmud* supersedes both *mishnah* and Scripture because *midrash halakhah* exegetically links both Scripture and tradition and presupposes knowledge of both.

By the time we reach the Bavli, the term *talmud* has come to refer to the analytical, dialectical kind of Torah study, the examination of the reasoning behind both Scripture and tradition.[9] This shift gives the teaching a meaning similar to that of other teachings in rabbinic literature that privilege analytical and dialectical study over memorization.[10] Read back into the beginning of the *sugya*, the import of this teaching is that only

7 While the *baraita*—at least as it is deployed in the *sugya*—treats these as kinds of study with which people are identified rather than stages, other passages describe the study of Scripture and the study of *mishnah* as successive stages, and some of them also add *talmud* as an additional stage. The most famous source for that is the *baraita* that was appended to *m. Avot* in the Geonic period: "A five-year-old (is initiated) in Scripture; a ten-year-old, in *mishnah*; a thirteen-year-old, in the commandments; a fifteen-year-old in *talmud*" (on this *baraita*, its attribution, and its late inclusion in tractate *Avot*, see Yitzhak Gilat, "Ben shelosh 'esre le-mitzvot?" in *Talmudic Studies I* [ed. Y. Sussmann and D. Rosenthal: Jerusalem: Magnes, 1990], 39–53 [39-41]) and Shimon Sharvit, *Language and Style of Tractate Avoth Through the Ages* [Heb.; Beer-Sheva: Ben Gurion University of the Negev Press, 2006], 121–22). The division of the curriculum into three stages parallels the division in the Greco-Roman educational system, which also divides the instructing body into three types of teachers and scholars, and also presents a progression from memorization and recitation of texts to creative use of language in rhetoric. See Henri-Irénée Marrou, *Histoire de l'éducation dans l'antiquité* [6th ed.] (Paris: Éditions du Seuil, 1965), 243, and see the warning against perceiving this division as rigid in Robert Kaster, "Notes on 'Primary' and 'Secondary' Schools in Late Antiquity," *Transactions of the American Philological Association* 113 (1983), 323–46. Kaster's demonstration of the versatility of the grammarian offers an interesting parallel to the versatility of the *tanna* explored later in the chapter.

8 Bacher, *Terminologie*, 1.201: "Der 'Talmud' in diesem engeren Sinne hat die Schriftauslegung und . . . die halachische Schriftauslegung zum hauptsächlichen Inhalte." On our *baraita*, see Jacob Epstein, *Introduction to the Mishnaic Text* [3rd ed.] (Heb.; 2 vols.; Jerusalem: Magnes, 2000), 2.750–51.

9 See Chanoch Albeck, *Introduction to the Talmud, Babli and Yerushalmi* (Heb.; Tel Aviv: Dvir, 1969), 3–7.

10 Thus, Louis Ginzberg, *A Commentary on the Palestinian Talmud I* (Heb.; New York: Ktav, 1971), 139. Ginzberg applies this interpretation to the *baraita*'s supposed Tannaitic meaning as well as its occurrence in the Yerushalmi, but, even if the "full" *baraita* indeed

the rabbi who initiates one in this creative kind of study (*talmud*, or "wisdom"), in contrast with the one who teaches oral tradition (*mishnah*), counts as one's rabbi.

The *baraita* appears in several rabbinic texts and may have had a complicated composition history. Aaron Amit has recently argued that, rather than a Tannaitic-era teaching, the Bavli's *baraita* is a late Amoraic-era creation that presupposes the Yerushalmi's *sugya*. The composers of this tradition, Amit argues, paraphrased and combined a number of Tannaitic and Amoraic statements found in *y. Hor.* 3:8 into a single, ostensibly Tannaitic teaching. The original *baraita*, according to Amit, contrasted the non-exegetical study of Scripture with the study of rabbinic tradition; the parts of it concerning *talmud* were formulated by later scholars based on traditions that appear in the Yerushalmi.[11] It should be noted though that at least some of the scholars who contributed to the development of our *sugya* in the Bavli saw the *baraita* as a single unit, and therefore the composition of the *baraita* pre-dates at least some of the *sugya*'s formation.[12]

The Yerushalmi's discussion (*y. Hor.* 3:8 48c) is important for our understanding of the Bavli whether or not it was the source of the *baraita* quoted by the latter. In the Yerushalmi, as in the Bavli, the question is the hierarchy between the two different kinds of scholars: the *sodran* (the arranger or memorizer of traditions) and the *pilpelan* (the analytic, dialectic, creative scholar). It is in this context that the Yerushalmi quotes either the *baraita* we know from the Talmud in truncated form or the brief Tannaitic teaching that transformed into that *baraita*. Yet if both Talmuds are similar with respect to the question, they differ with respect to the answer: the Yerushalmi is much less sympathetic to *talmud* or to the "masters of *talmud*" than the Bavli. The Yerushalmi begins with a Tannaitic teaching that declares the superiority of the memorizer, which is

occurs in the Yerushalmi, this interpretation seems only to be applicable to its occurrence in *y. Hor.*

11 Aaron Amit, "The Homilies on Mishnah and Talmud Study at the Close of *Bavli Bava' Metsi'a'* 2 and *Yerushalmi Horayot* 3: Their Origin and Development," *JQR* 102 (2012), 163–89 (170–82). I find most of Amit's analysis persuasive, but I leave here open the option that the *baraita* is genuine. The "full" *baraita* does appear in *y. Shab.* 16:1 15c (Amit, ibid., 175 n. 31, argues that it was was mistakenly copied there from the late tractate *Soferim* but does not elaborate), and the fact that in other contexts in the Yerushalmi only part of what is the Bavli's *baraita* is quoted and the fact that a part of the *baraita* appears in the Yerushalmi without a citation term both apply to authentic Tannaitic *baraitot* in the Yerushalmi. The discussion *here* keeps the main argument applicable to both scenarios.

12 Otherwise, the *stam* would not have been able to object, *ha gufa qashya!*—"this teaching contradicts itself!" Amit, "Homilies," 178, attributes the composition of the *baraita* to "a Babylonian editor," but admits that it might as well have been the work of Palestinian scholars.



essentially affirmed throughout the *sugya*; the only teaching that stands out in the Yerushalmi is Rabbi Yohanan's statement that "*talmud* precedes *mishnah* [in importance]," a statement which, we shall see, is tempered by the rest of the Yerushalmi's discussion.

As the Bavli itself notes, the *baraita* is self-contradictory: on the one hand, it states that the study of *talmud* is the most excellent merit, while, on the other hand, it recommends that the student "always run more to *mishnah* rather than to *talmud*." According to Amit, this contradiction reflects the *baraita*'s composite nature. These statements were not originally part of a single teaching: the statement that Talmud is the most excellent kind of study is a paraphrase of R. Yohanan's teaching in the Yerushalmi, mentioned above, whereas the recommendation to study *mishnah* is an anonymous statement there. Be that as it may, R. Yosi b. R. Bun offers a harmonization of these statements, whether he saw them as two parts of a single *baraita* or as two separate Amoraic statements:

> Said R. Yosi b. R. Bun, "What you say [i.e., "always run to *mishnah*," was only valid] as long as Rabbi [Yehuda the Patriarch] did not embed in it [i.e., in *talmud*] many Tannaitic traditions [*mishnayot*]. But from the time Rabbi [Yehuda the Patriarch] did embed in it many traditions, run always to *talmud* more than to *mishnah*. (*y. Hor.* 3:8 48c, adding R. Yosi's name from the parallel in *y. Shab.* 16:1 16c).

R. Yosi b. R. Bun explains that the last statement ("always run . . .") was true when *talmud* did not include many oral traditions, but now, since such traditions are embedded in *talmud*, there is no reason to study *mishnah* by itself anymore.[13] It is not clear how the Patriarch's action—presumably the redaction of the Mishnah—has caused *talmud* to be replete with Tannaitic traditions,[14] or even whether *talmud* here means a kind of study or some kind of work of *midrash halakhah* or Mishnaic interpretation.[15] For our purpose, however, what is crucial is that even when a

13 Following Lewy, "Vorwort," 19 n. 3, and Ginzberg, *Commentary I*, 140.

14 Saul Lieberman, *Hayerushalmi Kiphshuto* [2nd ed.] (ed. M. Katz; New York; Jerusalem: Jewish Theological Seminary, 2008), 193–94, suggests (citing an interpretation he had "seen, but forgotten where") that because R. Yehuda selected the most important Tannaitic materials for inclusion in the Mishnah, the rest were now studied through *talmud* (It is not clear how Lieberman understands the term). Ginzberg (*Commentary I*, 140) amends here "Rabbi" to "rabbis" based on some versions in tractate *Soferim*. Amit reads "in it" as referring to the Mishnah rather than to *talmud*. According to him, R. Yosi means that the redaction of the Mishnah made the study of *mishnah* less urgent. I find this interpretation less convincing, but at any event according to this interpretation too the Yerushalmi will only acknowledge the greater importance of *talmud* only if the study of *mishnah* is secured.

15 See the suggestion by Amit, "Homilies," 178.

rabbi in the Yerushalmi's *sugya* defends the superiority of *talmud*, he does so with the argument that *talmud* already includes *mishnah*, not by pointing to the preferability of analysis to transmission.

The Bavli's discussion is very different:

> This [*baraita*] is self-contradictory! You say "in *talmud*—no greater merit," and then you say "and always run to *mishnah* more than to *talmud*"?!
>
> Said R. Yohanan: "This tradition was taught in the time of Rabbi [Yehuda the Patriarch]." Everyone abandoned the Mishnah and pursued *talmud*. As a result, he expounded to them, "always run to *mishnah* more than to *talmud*." (*b. B. M.* 33a–b)

What follows the question is a Hebrew answer attributed to R. Yohanan as well as an Aramaic explanation of this answer.[16] The Hebrew component is different in important ways from R. Yosi b. R. Bun's answer to the similar question in the Yerushalmi,[17] but, standing on its own, it may be interpreted as saying essentially the same thing: the recommendation to study *mishnah* is now obsolete and only applied to the period of R. Yehuda the Patriarch.

The explanation of this answer by the *stam* takes it into a completely different direction. First, while in the Yerushalmi it is uncertain whether R. Yosi b. R. Bun understands the recommendation to study *mishnah* or the Mishnah, here it is clearly the latter: when the *stam* tells us "everyone left the Mishnah" it uses neither the Hebrew word employed by the *baraita* earlier, *mishnah*, nor its Aramaic equivalent, *matnita*, but rather the word *matnitin*, "our Mishnah," the ubiquitous term in the Bavli for *the* Mishnah. More important, while in the Yerushalmi the recommendation to study *mishnah* was said to *apply* to the time of the Patriarch, here the teaching is attributed to the Patriarch himself. It is the Patriarch who spoke the words, "but always run to the Mishnah more than to the Talmud."

The fact that it is *the* Mishnah that is at stake explains why the Patriarch defends it; after all, it is *his* Mishnah.[18] The recommendation to

16 I have placed the Aramaic outside of the quotation marks. The original reads: אמר ר' יוחנן: בימי רבי נשנית משנה זו. שבקו כולא עלמא מתניתין ואזלו בתר תלמודא. הדר דרש להו, ולעולם הני רץ למשנה יותר מן התלמוד.

17 To begin with, it refers to the teaching under study as *mishnah*, which assumes it is a *baraita*; it says that the teaching is "taught" in a certain period rather than that it applies in a certain period; and it says that it is *in the days* of Rabbi rather than *before* Rabbi's literary activities. The last two changes could be seen as connected with the interpretation of the *stam*, but again on their own I do not think they necessitate it.

18 For the attribution of the completion of the Mishnah to Rabbi Yehuda in both Talmuds, see Chanoch Albeck, *Introduction to the Mishna* (Heb.; Jerusalem: Bialik Institute and Tel Aviv: Dvir, 1959), 99.



study the Mishnah is thus explained by the Bavli as the Patriarch's defense of his own unpopular creation despite the inherent superiority of *talmud*. In the Yerushalmi, the general assumption is that *mishnah* is more important than *talmud*, and even R. Yohanan's teaching, which argues that *talmud* is more important than *mishnah*, is defended by R. Yosi only because now *talmud* includes *mishnah*. In the Bavli, the superiority of the Talmud is never questioned, and the recommendation to study the Mishnah is understood as a self-serving teaching by the Mishnah's compiler.

This interpretation of the Bavli might sound too light-hearted, but it is supported by the fact that when the Bavli explains what the Patriarch said to convince people to come back to the Mishnah, it puts in his mouth a warning, even a threat, rather than a reason:

> What did he[19] expound [so that everyone returns to the Mishnah]? As R. Yehuda b. R. Ilay expounded: What is [the meaning of] that which is written, *Announce to my people their crime, to the house of Jacob their sin* (Isa. 58:1)? *Announce to my people their crime*—these are the sages, in whose case unintentional transgressions count as intentional crimes; *and to the house of Jacob their sin*—these are the common people (*'am ha-'areṣ*), in whose case intentional transgressions count as unintentional sins.
>
> And this [conforms with] what we study [in the Mishnah, *m. Avot* 4:13], R. Yehuda b. Ilay says: Be careful in *talmud*, for an unintentional error in *talmud* counts as an intentional transgression. (*b. B. M.* 33b)

R. Yehuda b. R. Ilay's *derashah* maps the dichotomy between the "sages" and the *'am ha-'areṣ*—the "common people," or non-sages—onto a verse from Isaiah. What enables this mapping is that if we apply to this verse the routine Midrashic understanding of biblical parallelism, in which each of the parallel parts has its own meaning, the verse is making a distinction between two groups: "my people" and "the house of Jacob." Since the "house of Jacob" denotes Israel, and since the other group is called "my people" by God, the latter must be a group within Israel that is even closer to God. The *derashah* then identifies the select group as the rabbis, and the rest of the people as their "others" par excellence, the *'am ha-'areṣ*.

19 Thus ("what did he expound," third-person singular past: דרש) in Mss. Hamburg, Florence; Ms. Vatican 115 and the printed edition use the plural: "what did they expound?" (מאי דרוש). Since this question clearly refers to R. Yehuda the Patriarch's action immediately preceding it, the first version is preferable; the second version might be influenced by Rashi's interpretation that the question refers to the anonymous *baraita*'s first part, hence the common impersonal expression "what did they expound" (see below, n. 21).

The *derashah* further observes that the verse uses different nouns to describe the transgressions of each group: "crime" (*pesha'*) for the first group and "sin" (*ḥaṭat*) for the second. Since the latter term is the name of the sacrifice that is offered in the case of unintentional transgressions (see, e.g., Lev. 4:27–29), the *derashah* reasons that the difference in nouns correlates with the difference in status, under the common biblical logic that the more select group is dealt with more harshly. Immediately following this *derashah* the Talmud quotes R. Yehuda's teaching from *Avot*, which says that an "unintentional error in study [*talmud*] counts as an intentional transgression" (*m. Avot* 4:13).

The connection between the two sources, the *derashah* and the teaching from *m. Avot*, might be genealogical; the *derashah*, which is also attributed to R. Yehuda, might be a later construction, making his warning a scripturally sanctioned rule that distinguishes sages from non-sages. On the other hand, the relatively moderate approach this *derashah* takes to the *'am ha-'areṣ* might indicate that it is not reworked by the late *stam*, as passages that were reworked or composed by late Babylonian sages use harsh language and describe a much sharper divide between sages and "commoners."[20]

Whether the *derashah* is R. Yehuda's or a later Midrashic elaboration on his teaching, it is clear that both sources are put by the Bavli to a purpose very far from their original ones. The teaching in *Avot* warns its audience, fellow sages, that Torah study is such a holy task that even erring unintentionally in it carries the punishment of intentional crimes; the *derashah* fortifies the status of the sages as God's people within God's people, while also protecting the *'am ha-'areṣ* by implying that God takes a lenient line with their crimes.

In the Bavli, both the *derashah* and teaching appear as a reconstruction of how Rabbi Yehuda the Patriarch tried to convince the sages, who were all running to *talmud*, to come back to his Mishnah.[21] This new function builds on the specific wordings of these sources. R. Yehuda b. Ilay's teaching from *Avot* uses the word *talmud* for Torah study. While there is no reason to believe that *talmud* in his teaching is anything but an abbreviation of *talmud torah*, the common, generic term for Torah study, the juxtaposition of this teaching with the distinction between *mishnah* and *talmud* gives it a specific meaning: the teaching's warning is made valid only for the part of Torah study termed *talmud*. What R. Yehuda the Patriarch tells the sages running to the Talmud is that they should come back to *mishnah*, where errors will be dealt with more leniently. In *talmud*, their unintentional errors will count as intentional ones. The boundary the *derashah* draws between sages and non-sages is now mapped onto the distinction between the different kinds of sages. The source is all but implying that if the sages would heed R. Yehuda and return to *mishnah*, they would count as outsiders, non-sages, equal in status to *'am ha-'areṣ*.

20 See Stephen G. Wald, *BT Pesahim III: Critical Edition with Comprehensive Commentary* (Heb.; New York and Jerusalem: Jewish Theological Seminary, 2000), 211–39; Rubenstein, *Culture*, 123–42; Stuart Miller, *Sages and Commoners: A Philological Inquiry into Local Traditions in Talmud Yerushalmi* (Tübingen: Mohr Siebeck, 2006), 314–27.

21 Rashi maintains that the question "What did he expound?" goes back to the beginning of the *baraita*, and specifically to the statement that *talmud* study is better than *mishnah* study. Under this interpretation, R. Yehuda b. Ilay's *derashah* presents a scriptural grounding for this *baraita*. This seems to me unlikely. The verb used in the question, "expounded," *darash*, clearly goes back a few words to the *stam*'s explanation that R. Yehuda expounded (*darash*) to the people that they should "always be running" to the Mishnah.



The move the Bavli makes here is outrageous. First, it interprets the last part of the *baraita*, which recommends *mishnah* study over *talmud* study, as a self-serving teaching of the Mishnah's "author"; second, it creates an expectation that R. Yehuda b. Ilay's teaching from *Avot* and his *derashah* will support the merit of the study of *mishnah*, but in fact harnesses these sources to do the opposite, presenting *mishnah* as a less dangerous but also less important occupation; and most important, for our purpose, it redraws the boundaries of rabbinic identity, claiming this identity for one type of study—*talmud*, and one type of sage—the master of Talmud.

This redefinition of rabbinic identity becomes all but explicit at the conclusion of the *sugya*, with another *derashah* attributed to R. Yehuda b. R. Ilay:

> R. Yehuda b. R. Ilay expounded: What is [the meaning of] that which is written, *Hear the word of the Lord, you who tremble at his word said your brothers, those who hate you and those who reject you in my name, "Let the Lord be glorified and we shall see your joy." But it is they who shall be ashamed?* (Isa. 66:5) *You who tremble at his word* (Ibid.)—These are the sages; *said your brothers* (ibid.)—these are masters of Scripture (*ba'ale miqra*); *those who hate you* (ibid.)—these are masters of *mishnah* (*ba'ale mishnah*); *those who reject you*—these are the common people (*'am ha-'areṣ*). Lest you say they have no hope and their chances are null, the teaching says: *and we shall see your joy* (ibid.). Lest you say Israel shall be ashamed, the teaching says:[22] *and they shall*

22 A large number of good manuscripts (e.g., Ms. Munich, Ms. Florence, Ms. Vatican 115, Ms. Hamburg) omit the words: "Lest you say Israel shall be ashamed, the teaching says." The version reproduced *here*, found in Ms. Vatican 117 and the printed edition (and also seems to be at the basis of Ms. Escorial), presents two rejected readings of the verse. The first possible reading is that the groups who are not the sages will not be redeemed ("they have no hope and their chances are null"), which is rejected by the verse's use of the first-person plural pronoun "we": since this implies that these groups will be

*ashamed*—the gentiles will be ashamed and Israel will be joyous. (*b. B. M.* 33b)

Like the previous *derashah*, this one also concerns a verse that can imply a division among God's people. On the one hand, it is addressed to those who tremble at God's word; on other hand, those who are opposed to these people who fear God want to cast them off in God's name, so they cannot be gentiles. God is understood by the *derashah* to be addressing the sages, "those who tremble at his word." Unlike the previous *derashah*, which was only connected to the hierarchy between the different kind of sages by its context in the Talmud, this *derashah* does explicitly mention two of the three kinds of scholars we encountered: those who occupy themselves with Scripture and those who occupy themselves with *mishnah*; it also mentions another group we encountered, *'am ha-'areṣ*, or the non-sages. It is clear why this *derashah* describes the latter, *'am ha-'areṣ*, as those who reject the sages: the enmity between them and the scholars appears in several rabbinic sources, and in the Bavli in particular.

It is less clear, and more surprising, that the *derashah* would identify those who hate the sages with those who occupy themselves with rabbinic tradition. In part, this identification is premised on a pun between the participle for hate, *son'e* (שונא), used here by the verse, and the participle for reciting or "repeating" tradition, *shoneh* (שונה, from the same root as *mishnah*).We will return to the enmity this *derashah* posits between the sages and those who occupy themselves with *mishnah*. For now I would just note that if this *derashah* is more positive toward the "masters of Scripture" (they are the sages' brothers) than toward the "masters of tradition," it stands in contrast with the *baraita* that opened this section of the *sugya*, which puts scriptural study below the study of tradition.

More important is the absence of "those who occupy themselves with Talmud," and the clear implication of this absence in the context of the *sugya*—especially given the previous *derashah*—is that that group is completely identified with the sages. This is a dramatic move: the term for sages here, *talmidei ḥakhamim*, is the designation of rabbinic identity par excellence throughout the rabbinic corpus; its identification in the Bavli with scholars of Talmud—that is, those scholars who focus on the analytical, innovative aspect of study, effectively denies rabbinic identity to

there to witness the sages' joy, it means they will not perish during the Messianic era. The second reading is that while these groups will be there, they—who constitute most of Israel—will be ashamed at their inadequacy, which is rejected by the verse's use of the third-person pronoun "they" for those who shall be ashamed. The other version does not distinguish between these two readings and two rejections.



all other types of scholars, who stand here in distinction with the sages just like *'am ha-'areṣ*.[23]

This *derashah* is not preserved in any other of the classical rabbinic works, and as it serves the Bavli's agenda so well I think it is likely to have been composed by the Bavli's creators. A version of the *derashah* is preserved in some post-Talmudic compilations, the most famous of which is the *Seder Eliyahu Zutta*:

> *Hear the word of the Lord, you who tremble at his word* (Isa. 66:5). They said, greater is the hatred which the *'am ha-'areṣ* feel toward the sages, than the hatred felt toward us by the nations. For it was said *Hear the word of the Lord, you who tremble at his word*—"despise his word" is not said, but "tremble at his word." *Said your brethren, those who hate you and those who cast you off. Your brethren*—these are masters of Scripture, who hate masters of *mishnah*; those *who hate you*—these are masters of *mishnah* who hate masters of *talmud*; *those who cast you off*—these are teachers of young children, who read [Scripture] but do not recite [tradition], and if they do read and recite they have no knowledge; and they may not be respected, and the one who respects them inherits hell for himself. (*Seder Eliyahu Zutta* 16)[24]

While this version might still imply that the "masters of *talmud*" are at the top of the hierarchy, it does not identify them with the *talmidei ḥakhamim*, or the sages par excellence. Furthermore, the final accusation against the "teachers of young children" (or in other versions, *minim*) is that they "read but do not recite," that is, they have Scripture but not tradition;[25] this stands in contrast with the Bavli's version, which puts those who

23 The distinction between *talmid ḥakham* on the one hand, and Scripture or *mishnah* specialists (*tanna* and *qara*) on the other, is also evident in other texts in the Bavli—see *b. Qidd.* 49a–b and also *b. Meg.* 28b, in Rav Ashi's answer to Rav Aha (אי צורבא מרבנן הוא לימא הלכתא ואי תנא הוא לימא מתני' ואי קרא הוא לימא פסוקא), and though those passages are about *tanna'im* (for which see below) rather than *ba'ale mishnah*, as we shall see the Bavli treats these categories similarly. While those passages present the categories of scholars in a casual, by-the-way matter, our *sugya* shows us their construction in action, as well as the polemical context of this construction. Finally, the only other *sugya* that I know in the Bavli that compares *ba'ale mishnah* to *'ame ha-'areṣ*—is *b. Sot.* 22a (קרא ולא שנה הרי זה עם הארץ; also *Derekh Eretz Zutta* 10:4)—this text is discussed below in the section titled "The Destroyers of the World."

24 See Meir Friedmann, *Pseudo-Seder Eliahu Zuta* (Heb.; Vienna: Ahl'asaf, 1904), 5. See also the parallel versions discussed in Saul Lieberman, *Yemenite Midrashim* (Heb.; Jerusalem: Bamberger and Wahrman, 1940), 27–30; in some versions, the last section is directed against *minim* rather than the teachers of children—see, e.g., Michael Higger, *Masekhtot ze'irot* (Heb.; New York: Bloch, 1929), 69.

25 See, however, Lieberman, *Yemenite Midrashim*, who believes that this version is a scribal error, and that the group coupled with "those who cast you off" is the *minim*; the teachers of young children are the subject of the following section, and the scribes con-

focus only on Scripture in a better position than those who focus on tradition. In this aspect, this version in *Seder Eliyahu* is similar to the many hostile references in rabbinic literature to those who value the Written Torah, but discount rabbinic tradition or the Oral Torah.

The messy reality of later *midrashim* does not allow us to pin down a provenance for this version. The date and place of the *Seder Eliyahu* are still under dispute,[26] though we can say that it was compiled before the ninth century.[27] Urbach's study of the first chapter of *Seder Eliyahu* demonstrated that variations in passages found both in this work and in "classical" rabbinic works, such as the Talmuds, are best explained as adaptations of the material from the latter works by the author of *Seder Eliyahu*, rather than seen as independent parallels stemming from different textual sources.[28] Another problem is that our passage appears in a chapter that Meir Friedmann deemed not an authentic part of the work; rather, Friedmann argues, this chapter and two other chapters usually transmitted in *Seder Eliyahu Zutta*, are a compilation from the kind of material included in the *Derekh Eretz* tractates.[29]

As cautious as we ought to be given the state of the scholarship on this document, I would like to suggest that the *derashah* from *Seder Eliyahu Zutta* (or *Pseudo-Seder Eliyahu Zutta*, as Friedmann would call it) is a *Babylonian* adaptation of the Bavli's version or of a version similar to the Bavli's. The *derashah* is introduced in the *Seder* as a proof that the *'am ha-'areṣ* hate the sages more than the gentiles hate Israel. This is a paraphrase of a source cited as a *baraita* in the Bavli (*b. Pes.* 49b) but which is either Babylonian in origin or heavily reworked by the Bavli's creators, as Wald has shown.[30] Given that the *derashah* in *Seder Eliyahu* does not refer to *'am ha-'areṣ*, this introduction makes sense only if it originally did refer to that group, like the version in the Bavli. Already from the beginning of the unit, then, we can see both that this version is familiar with Babylonian material and that it is dependent on the Bavli's version of the *derashah*. Another suggestive piece of evidence comes from the body of the

flated and abbreviated these two units. On the place of the teachers of young children in the rabbis' hierarchy, see *b. Pes.* 49b.

26 See W. G. Braude and I. J. Kapstein, *Tanna debe Eliyyahu: The Lore of the School of Elijah* (Philadelphia: Jewish Publication Society, 1981), 3–15, and Albeck's literature survey in his translation of Leopold Zunz, *Die Gottesdienstlichen Vorträge der Juden Historisch Entwickelt* [2nd ed.] (Heb.; trans. and ed. Ch. Albeck; Jerusalem: Bialik Institute, 1974), 292–98.

27 See Albeck's comments, *Die Gottesdienstlichen Vorträge*, 55–57.

28 Ephraim E. Urbach, "Li-she'elat leshono u-meqorotav shel sefer 'seder eliyahu,' " *Leshonenu* 21 (1957), 183–97 (197).

29 See Friedmann, *Pseudo-Seder Eliahu*, 1; but see also the criticism in Max Kadushin, *Theology of Seder Eliahu* (New York: Bloch, 1932), 15–16.

30 See Wald, *BT Pesahim III*, 238; see also the other studies cited above, n. 20.



*derashah*. As we have seen, the hook that allows the *derashah* to identify the "masters of tradition" with the "haters" in the verse is the similarity between the word for "reciters of tradition" and "haters." In the version in *Seder Eliyahu*, the "masters of tradition" are still identified as the "haters," but so are the "masters of Scripture." The logic of the *derashah* in the Bavli, then, is more specifically tied with the verse, which makes it more likely to be the original version. More generally, there is evidence that *Seder Eliyahu* was compiled in Babylonia[31] though most of it comes from parts other than those chapters Friedmann attributes to the *Derekh Eretz* tradition.[32]

If this conjecture is correct, we have here two versions, *both* rabbinic and *both* Babylonian, with different views of the place of the "masters of *talmud*" in the rabbinic hierarchy: the version of *Seder Eliyahu* might imply that they are at the top of this hierarchy, but only the version in the Talmud gives them a monopoly on rabbinic identity and excludes the "masters of tradition" from that identity. This suggests that the view we find in the Bavli here does not represent "Babylonian Judaism" or even "Babylonian rabbinic Judaism," but only the Bavli itself, a point to which I will return again in this part of the book. Even if this conjecture is wrong, however, the version in *Seder Eliyahu* is still useful to us in accentuating the particular agenda of the creators of our passage in the Talmud.[33]

Another difference between the two versions of the *derashah* can help us see the coherence of the Talmud's move as a whole. In *Seder Eliyahu*, the *derashah* is anonymous; in the Bavli, the *derashah* is attributed to R. Yehuda b. R. Ilay. Omissions or changes in attributions are routine in

31 Jacob Mann, "Changes in the Divine Service of the Synagogue Due to Religious Persecutions," *HUCA* 4 (1927), 241–310 (249–51 and the appendix dedicated to *Seder Eliyahu* on pp. 302–10), surveys the evidence for *Seder Eliyahu Rabbah* and *Zutta*, defined narrowly as the material Friedmann deemed authentic; Kadushin, *Seder Eliahu*, 12, adds evidence from the other part of the *Pseudo-Seder Eliyahu Zutta*, the Rabbi Eliezer chapters.

32 Still such evidence is found even within the *Derekh Eretz* chapters. See, e.g., the statement in *PSEZ* 16 (Friedmann, 13) on the genealogical boundaries of Babylonia, which, while textually corrupt, is given in its Babylonian version (see *b. Qidd.* 72a) rather than its Palestinian version (*y. Qidd.* 4:1 65c); the very inclusion of this teaching, which is not immediately relevant to the author's discussion there, may betray Babylonian interests.

33 Another option is that this version, if indeed it can be included in *Seder Eliyahu Zutta*, reflects that composition's more "democratic" approach to the study of Torah—which, Adiel Kadari argued, was developed in response to the Karaite schism. See Adiel Kadari, "'Talmud Torah' in Seder Eliyahu: The Ideological Doctrine in its Socio-Historical Context" (Heb.), *Daat* 50–52 (2003), 35–59 (44–46). See also Lennart Lehmhaus, "'Were not understanding and knowledge given to you from Heaven?': Minimal Judaism and the Unlearned 'Other' in Seder Eliyahu Zuta," *JSQ* 19 (2012), 230–58.

intra-rabbinic parallels. However, especially given the likely possibility that the version in *Seder Eliyahu* is dependent on the Bavli's, this difference invites us to think about the function of this attribution of both of the *derashot* on Isaiah in our *sugya* to R. Yehuda b. R. Ilay. One function, as we have seen, is the reinterpretation of R. Yehuda's teaching in *Avot*. Another, more important function is to link the second part of the *sugya*, the discussion of the three disciplines of Torah and their hierarchy, with the first part, the discussion of the law of lost possession. This Rabbi Yehuda b. R. Ilay is the same Rabbi Yehuda who, in the first *baraita* cited in the *sugya*, said that the law is applicable to "any rabbi from whom he [the student] derived most of his wisdom." In its discussion of this *baraita*, the Bavli quotes two contradicting opinions from Rabbi Yohanan: the first is that the law is according to Rabbi Yehuda's opinion, and the second is that the law is according to the anonymous opinion in the Mishnah. The Bavli notes the contradiction: after all, Rabbi Yehuda stipulated a condition, that it would be the rabbi who taught the student *most* of his wisdom, which the Mishnah, saying "the rabbi who taught him wisdom," did not. How can Rabbi Yohanan say that the law is both?[34] To solve this contradiction, the Bavli reinterprets the Mishnah as if it already implies the stipulation of Rabbi Yehuda. The attribution of the *derashot* at the end of the *sugya* to the same rabbi whose opinion was linked to the Mishnah itself not only achieves coherence throughout the *sugya* but also gives these *derashot* an authority they would not otherwise have.

Our *sugya* opens with the question of "who counts as one's rabbi," and while it seems to travel a long way, it also concludes with an answer to this question. Already in the first *baraita*, which discusses lost property, the Bavli began the process of identifying "wisdom" with "*talmud*" by adding the word *mishnah* to R. Meir's definition of what does not count as "wisdom." Since the name for rabbis or sages, *ḥakhamim*, is derived from the same root as wisdom, *ḥokhma*, the definition of the former, achieved by middle of the *sugya*, obviously prepares the definition of the latter.

The creators of our *sugya* clearly identify with the "masters of *talmud*"; they present them not only as superior but as the "real rabbis," the only ones worthy of the name "sages." Those occupied with other kinds of Torah study are not only excluded from this category but are equated with non-rabbinic Jews. The text seems to be particularly interested in the difference between the "masters of *talmud*" and the "masters of *mishnah*": it is the latter rather than the "masters of Scripture" that draws its rhetorical energies from the very beginning, through the discussion of the Patriarch's defense of the Mishnah, until the presentation of the enmity these "masters of tradition" supposedly feel for the Talmudists. We will return to this enmity later in this chapter.

34 On this question see Epstein, *Introduction to the Mishnaic Text*, 1.243–44; Halivni, *MM BM*, 112–13.



## "OF WHAT USE ARE THE RABBIS TO US?"

We are used to seeing the rabbis defending or legitimizing their innovations; in the *sugya* studied in this section, however, we find members of the Jewish community accusing the rabbis of not being innovative enough. The topic of the discussion is the meaning of the category *apikoros*, "an Epicurean," which is listed in *m. San.* 10:1 among the kinds of persons who do not take part in the world to come.[35] The Talmud quotes several teachings identifying the sort of conduct that makes one an Epicurean, all of which involve irreverence toward the sages.[36] Since the sages are in a sense the embodiment of Torah, the Talmud must also distinguish between the Epicurean, who compromises their honor, from another, more offensive type of person: the one who compromises the honor of the Torah itself, the one "bares [his] face to the Torah."[37] After

35 On the *apikoros* in rabbinic literature, see Jenny R. Labendz, "'Know What to Answer the Epicurean': A Diachronic Study of the 'Apiqoros in Rabbinic Literature," *HUCA* 74 (2003), 175–214. I thank Azzan Yadin-Israel for pointing me to this article.

36 Relying on the similarity between Epicurus's name and the Aramaic word for irreverence, אפיקורסא, which appears explicitly on the following page in the Talmud. The interpretation of Epicurean as irreverence toward the sages is already evident in *y. San.* 10:1 27d, which has parallels in our *sugya*. See Labendz, "Epicurean."

37 This term first appears in Tannaitic literature (*Mekhilta d. R. Yishmael, pisḥa*, §5, Horowitz-Rabin 15; *Sifre to Numbers, shalaḥ*, §112, on Num. 15:30, ed. Kahana *13–14, and Num. 15:31, ibid., 121, which gives an exegetical reasoning for a tradition also cited in *m. Avot* 3:11) and its precise meaning was debated by *amora'im*. In the Yerushalmi's discussion of *m. San.* 10:1, this category of people is added to the Mishnah's list of those who take no part in the world to come. At first, the Yerushalmi cites a tradition equating it with the denial of the Torah's divine origin, but after it is objected that that offense was already mentioned by the Mishnah itself, another tradition is cited that interprets the term as a reference to public transgression of the Torah's words. The Bavli provides several interpretations. One explains that it is to act like Menashe b. Hezekiah, probably referring to what is said earlier in the *sugya*, that Menashe "was sitting and expounding queer legends" (*b. San.* 99b), i.e., biblical stories that are embarrassing (or made embarrassing by the interpretation). This interpretation led to an understanding of the term that understands the exposed face to refer to the Torah's face rather than the person's, rendering the term "he who reveals aspects of the Torah." This puzzled readers—what could be wrong with revealing aspects of the Torah?—leading to an addition in most versions of the Mishnah and of the Talmud in our *sugya*: "exposing faces [i.e., aspects] of *torah not in accordance with the law*" (מגלה פנים בתורה שלא כהלכה). This interpretation was accepted by many scholars (see, e.g., Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs* [Heb.; Jerusalem: Magnes Press, 1969], 23–24, 263–64); but the original meaning of the term, in all classical rabbinic sources, is to act impudently (or "barefacedly") toward the Torah; see Sharvit, *Language and Style*, 84–86.

a certain suggestion is rejected, the Bavli follows with a series of possibilities for what it would mean to dishonor the rabbis:

1. An Epicurean—such as whom?
2. Said Rav Yosef: Such as those who say, "How do the rabbis benefit us? They read [Scripture] for themselves and recite [traditions] for themselves!"
3. Abaye said to him: But this can also [be entered under the category] of one who bares his face to the Torah; for it is written, *Thus says the Lord: if it were not for my covenant studied*[38] *day and night, I would not have placed the ordinances of the heaven and the earth.* (Jer. 33:25). R. Nahman b. Yitzhak says: you may also derive it from here, where it says, *I will forgive the whole place for their sake* (Gen. 18:26).
4. Rather, such as one sitting in front of his master, and a tradition occurs to him in a different place [than the one in which the tradition was originally said], and [quoting this tradition,] he says, "This is what we said there," and does not say, "this is what the master said."
5. Rava said: Such as those of the house of Benjamin the Physician, who say, "How have the rabbis benefited us? They did not permit the raven nor did they prohibit the dove."
6. Rava, whenever they would bring before him a defective animal of Benjamin's house, if he saw a reason to permit it he would say to them, "behold as I permit you a raven!" and if he saw a reason to prohibit it, he would say to them, "behold as I prohibit for you a dove!" (*b. San.* 99b)

The Talmud supplies three examples of irreverence here, and while each of them might have its own meaning, they all also concern a lack of recognition, on the part of the Epicurean, for rabbinic innovation. Rav Yossef gives the example of those who say that the rabbis are useless as they only read Scripture and memorize tradition for their own sake (§2). Part of this charge is that the rabbis' study of written and oral sources has no public benefit, and it is this aspect to which the answers from Abaye and Rav Nahman (§2a) relate.[39] But the accusation also targets the *kind* of

38 The NRSV reads: "Thus says the Lord: Only if I had not established my covenant with day and night and the ordinances of heaven and earth"; I have changed the translation to fit the rabbinic interpretation, which understands "covenant" here as Torah and, probably taking "day and night" as an allusion to Josh. 1:8 ("This book of the law shall not depart out of your mouth; you shall meditate on it day and night"), takes the verse to be implying the dependence of the order of the world on Torah study.

39 Both Abaye and Rav Nahman use verses that argue for the benefit of Torah study to the world or the community (Rav Nahman's is a bit more obvious; for Abaye, see previous note). The implication in the Talmud seems to be that because the rabbis' benefit is



study, not just its utility. The verbs here, "study" and "recite," are familiar to us from the hierarchy of study examined in the previous section as the two less-favorable, less-productive kinds of study. The irreverent accusers, then, are in accord with Talmudic ideology: simply reading Scripture and reciting tradition are unproductive; innovation is necessary.

The accusation of the rabbis by the family of Benjamin the Physician (§4) is similar. Again the utility of the rabbis is in question, and again it is their lack of innovation: what is already prohibited will stay prohibited, and what is already permitted will stay permitted, regardless of the rabbis' actions. Rava counters this accusation by boasting before this family of his power to prohibit and permit according to his own "reasons" (§4b). Yaakov Elman argued that this passage pits the "written Torah" against the "oral Torah," "Biblical authority" vs. "rabbinic authority."[40] But Benjamin's family accepts rabbinic authority; otherwise they would not have brought their defective animals before Rava to see if they are fit to eat, and their accusation does not contain any reference to the dichotomy between Oral Torah and Scripture. Furthermore, Rava does not cite any rabbinic tradition when he prohibits or permits the animal, but rather appeals to a "reason" (*ta'ama*), which can refer to the sage's own exegesis or reasoning. The context of the passage also does not support Elman's interpretation, as the accusation in §2 refers to the study both of Scripture and of rabbinic tradition. It is doubtful therefore that the distinction between them is at stake here. In both of these definitions, then, the alleged Epicuri accuse the rabbis of traditionalism: they read whatever is written and repeat whatever is transmitted; they prohibit the prohibited and permit the permitted.

The example of irreverence that the Talmud supplies between these two (§3) seems different at first. The interpretation offered by most commentators (see, e.g., Ramah ad loc.) is that the student is irreverent because he compromises the honor of his master by taking partial credit for a teaching he had heard from him, ascribing the teaching to "us" rather than to the master. Read with the two other definitions in our passage, however, I think the student is said to be irreverent for the same reason the non-rabbinic accusers are: he does not recognize rabbinic creativity.

acknowledged in Scripture (and in one instance in the Torah proper), then doubting it in this way is to dishonor the Torah itself. But there is a certain tension between this claim and the claim in the anonymous discussion prior to the examples that implies that dishonoring the sages is dishonoring the Torah by definition, not only when the dishonoring in question also happens to contradict Scripture.

40 Yaakov Elman, "Middle Persian Culture and Babylonian Sages: Accommodation and Resistance in the Shaping of Rabbinic Legal Tradition," in *The Cambridge Companion to the Talmud* (ed. C. E. Fonrobert and M. S. Jaffee; Cambridge: Cambridge University Press, 2007), 165–97 (176–77).

The student introduces the teaching by saying, "we say there"—as if this teaching has always existed and is in consensus, not recognizing that this teaching was his rabbi's innovation. Traditionalism figures here again, but it is not a characteristic ascribed to the rabbis by outsiders but rather a condemned characteristic of an insider, a rabbinic student.

The fact that this student's conduct is condemned here by the *stam* (§3 is the only example that the Talmud supplies itself), along with the use in the first charge of the Talmud's own hierarchy of study, indicates that while the accusers are condemned as examples of irreverence, the Talmud in a sense sympathizes with the charges. In other words, the Talmud's criticism of the accusers is not ideological (the accusers do not understand, or value, what their rabbis are supposed to be doing) but factual (the accusers correctly understand that the rabbis ought to innovate and value this innovation, but they are incorrect that this innovation is not happening).

Do the charges we see here present us with real voices from outside the rabbinic establishment, or do they reflect internal rabbinic anxieties, attributed to outsiders precisely because they challenge the very legitimacy of the rabbis?[41] I do not think we can answer this question in full, but it is possible to estimate whether these sources were reworked by the *sugya*'s creators. Both charges share a core that is identical except for the tense of the verb ("How do the rabbis benefit us?" in §2; "How have the rabbis benefited us?" in §4). The first charge is not attributed to a specific group, and the second part of it, beyond the shared core, employs rabbinic technical terms for ideological effect, as we have seen above. The second accusation is ascribed to a relatively unfamiliar family—which appears only once more in the Talmud[42]—and it employs imagery that is used by the Talmud elsewhere but is not part of the technical terminology of the rabbinic academy.[43] While the first example, then, could have been constructed at a late time (perhaps even using the second charge as a source), I think it is likely that the second charge, and at least part of its narrative setting, were already extant before the creators of our *sugya*. Since these creators were probably not suspicious of the story's historicity, they "knew" that there was criticism from the community of the rabbis' traditionalism; but they encountered this outside criticism, whatever its origin, in a story transmitted and adapted by rabbinic storytellers. The creators of our passage combine criticism from the outside of rabbinic traditionalism (whether real, perceived, or imagined) with their own criticism of traditionalism within the rabbinic community by employing the terms "read" and "recite" and by juxtaposing the two similar charges with the critique of the student in §3.

41 On this problem in general, see Christine E. Hayes, "Displaced Self-Perceptions: The Deployment of 'minim' and Romans in b. Sanhedrin 90b–91a," in *Religious and Ethnic Communities in Later Roman Palestine* (ed. H. Lapin; Bethesda: University Press of Maryland, 1998), 249–89.

42 See *b. Shab.* 133b, also in a story with Rava, but with another variant of the name (בני מנימי אסיא); see Epstein, *Introduction to the Mishnaic Text*, 2.1333, and Rabbinovicz, *Variae*, on *b. Shab.* 133b.

43 For "raven" and "dove" as symbols for permitted and prohibited, see *b. Qid.* 70b, discussed above in Chapter 3.



This passage equates rabbinic honor with rabbinic creativity: to dishonor the rabbis is to underestimate their originality, to think of them as teaching only received knowledge or instructing only established laws. Like our previous *sugya*, this passage is about who the rabbis are, and like that *sugya*, it rejects the conception of the rabbis as transmitters who merely read what is already in Scripture and recite what is already in tradition. The fact that this self-conception is presented here in part as a response to claims made from outside the rabbinic community may suggest a certain context for that *sugya*'s insistence that the "sages" are *not* those who focus on Scripture or *mishnah*; but it is difficult, as we have seen, to determine whether these claims are projections of the rabbis' own concerns or whether they represent concerns of members of the community whom the rabbis were trying to impress. Our next passage, I think, suggests more clearly a social context for understanding this rabbinic self-conception.

## "THE DESTROYERS OF THE WORLD"

Like the previous passage, our final text is concerned with offering examples of a certain type of person. In the Mishnah (*m. Sot.* 3:4), R. Yehoshua offers a list of types of people who are "destroyers of the world."[44] One of these types is a person who is "evil and cunning." The Talmud then quotes seven rabbinic traditions that identify types of behavior that count as "evil and cunning":

1. R. Yohanan said: He who makes his case to the judge before the other party to the lawsuit arrives.
2. R. Abbahu says: He who gives a *denar* to a poor person, to round him up to two hundred *zuz*. For we have learned [in *m. Pe'ah* 8:8], "Anyone who has two hundred *zuz* may not partake in gleanings, abandoned sheaves, the corner [produce], and the poor tithe; but should he have two

44 On the variant in the Hebrew of the Mishnah here, see Eduard Kutscher, "Marginal Notes to the Article of Mrs. Japhet" (Heb.), *Leshonenu* 31 (1967), 280–82 (282).

hundred *zuz* minus one *denar* even if a thousand [people] give him [these charities] at once, he may take [it]."

3. R. Asi said in the name of R. Yohanan: He who advises [male orphans] to sell [their] small [inherited] estate. For Rabbi Asi said in the name of R. Yohanan: male orphans who sold [their] small estate [before the orphaned daughters had the chance to claim the small estate, to which they have a right according to *m. B. B.* 9:1], the deal is valid.
4. Abaye said: He who advises to sell property [using the opinion of] Rabban Shimeon b. Gamaliel. For it was taught, ["If a person said, 'I give] my property to you and after you to so-and-so,' and the first [buyer] sold [the property] and ate up [the proceeds], the second person can claim restitution from the purchasers—these are Rabbi's words. Rabban Shimeon ben Gamaliel says, the second person only has whatever was left by the first [a *baraita* also cited in *b. B. B.* 137a].
5. R. Yosef b. Mama said in the name of R. Sheshet: He who induces others to follow in his ways.
6. Rabbi Zerika said in the name of Rav Huna: He who is lenient with himself and strict with others.
7. Ulla said: He who read [Scripture] and recited [*mishnah*] but did not attend to the sages. (*b. Sot.* 21b–22a)

Most of the conducts condemned in this list necessitate a thorough knowledge, on account of the "evil and cunning" person, of rabbinic law. Two of the three that do not specifically refer to rabbinic traditions—the person lenient on himself and strict on others and the person convincing others to walk in his ways—are clearly models of bad rabbinic behavior; to a lesser extent, this can be applied also to the person who manipulates the legal system.

One function of this list is pedagogical—it tells the audience of the Talmud, which consists of sages or aspiring sages, how not to take advantage of their knowledge and position, and teaches them a few rabbinic traditions on charity, inheritance, and business. But it also offers a particular interpretation of the Mishnah: the "cunning and evil" person is someone who has mastered significant amounts of Torah knowledge (therefore, he is "cunning" or "wise"), but abuses this knowledge or otherwise conducts himself badly (therefore, he is evil). The Bavli also makes the point that we, rabbis, should look for the "evil" close to home. In these aspects, the Bavli's treatment of the Mishnah generally resembles the Yerushalmi's (see *y. Sot.* 3:4 19a).

The final element in the list is Ulla's identification of the "cunning and evil" person with someone who "read [Scripture] and recited [tradition] but did not attend to the sages." This phrase, also found in other contexts,



juxtaposes a person's intellectual achievement—by reading and reciting he has mastered both the written and oral elements of Torah—with his lack of service to the sages. This conduct fits the previous items in the list: knowledge of Torah, on the one hand, and lack of piety or bad behavior on the other. But there is a sense in which this item is different. As Martin Jaffee has shown, rabbinic ideology makes a strong connection between Torah, rabbinic authority, and discipleship; the sages are the Torah's exclusive mediators and therefore true mastery of Torah can only be achieved through constant interaction with, observation of, and service to them.[45] Unlike the other "cunning and evil" people on the list, whose misconduct does not necessarily affect their knowledge of Torah, here the lack of service to the sages must also decrease the extent of that person's Torah learning. Such an interpretation of the phrase is explicit in one of its other occurrences:

> If a person read [Scripture] and did not recite [tradition], he still stands outside. If he recited [tradition] but did not read [Scripture], he still stands outside. [But even if] he read [Scripture] and recited [tradition], and [yet] he did not attend to the sages, he is like someone from whom the mysteries of Torah are withheld. (*Seder Eliyahu Rabbah,* 6; ed. Friedmann 37)

This passage appears in the printed editions of the early Palestinian work *Leviticus Rabbah*, but it was in fact appended to that work from *Seder Eliyahu Rabbah.*[46] It comes after a string of interpretations of the biblical phrase, "the maidens love you" (Song 1:3). The *derashah* builds on the similarity between the word for maidens, *'alamot*, and the root for mysterious things, *'l.m.*,[47] to imply that the love of God must go through the mysteries of Torah. It first tells us that focusing exclusively on Scripture or tradition will leave one "outside" the Torah. It goes on to say that even reading and reciting, if not complemented by serving the sages, will still leave one without the "mysteries" of Torah. Scripture and tradition might be accessible—the first in written form, the second in oral form—without interaction with the sages; but to know the mysteries of Torah one must have attended to the rabbis. The social and political import of this tradition is clear.

45 Martin Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism 200 BCE–400 CE* (Oxford: Oxford University Press, 2001), 126–52.

46 See Mordechai Margulies, *Midrash Wayyikra Rabbah: A Critical Edition Based on Manuscripts and Genizah Fragments with Variants and Notes* (Heb.; 5 vols.; Jerusalem: Ministry of Education and the Epstein Fund of the American Academy of Jewish Research, 1953–60), 1.72. On the general phenomenon of addition to Lev. Rab. from *Seder Eliyahu*, see ibid, 1.32.

47 See Margulies, *Midrash Wayyikra Rabbah*, 1.74.

The verb "attend" (*shimesh*) here may have a range of meanings, including "serving" and "obeying"; but nothing in the expression itself, nor in its deployment in Ulla's statement or in *Seder Eliyahu Rabbah*, prepares us for Rashi's explanation on its use in the Talmud: "And he did not attend to the sages: to study the logical deductions (*sevara*) of the Talmud concerning the reasons of the Mishnah." Rashi is reading into this expression the tripartite division of Torah study that we have encountered earlier. Since the person is reported to have engaged in the first two disciplines of Torah study, having read Scripture and recited tradition, the problem must be that he neglected the third discipline, *talmud*.

While Rashi's interpretation might be far from the original sense of the phrase as Ulla used it, it certainly prepares its readers for the direction in which the *sugya* is heading.[48] The Bavli will indeed go on to imply that there is something missing in simply "reading and reciting," that is, in mere transmission. This becomes clear at the next stage of the *sugya*:

> It was said: "He read and recited and did not attend to the sages."
>
> R. Eleazar says: He is an *'am ha-'areṣ*.
>
> R. Shmuel b. Nahmani says: He is uncultivated [*bur*].[49]
>
> R. Yanai says: He is a Cuthean.[50]
>
> R. Aha b. Yaakov says: He is a magus.
>
> Rav Nahman said: It seems reasonable that it is like Rav Aha b. Yaakov's opinion. As they say: "The magus mumbles but he does not know what he is mumbling," the *tanna* recites and does not know what he is reciting.[51] (*b. Sot.* 22a)

48 The Bavli itself, in a different but thematically related *sugya*, certainly understands the service rendered to sages as personal service. In *b. Meg.* 28b the Bavli contrasts the opinions of Resh Lakish and (our) Ulla on whether a sage can accept service (*le-hishtamesh*) from someone "who recites traditions." Resh Lakish objects to such use, and a story is quoted to illustrate his opinion: Reish Lakish was walking in a road and arrived at a pool of water. A certain person came, put him up on his shoulder, and was taking him across. Reish Lakish asked him, "Did you read [Scripture]?" He said, "I have read." "Did you recite [tradition]?" "I have recited the four orders of the Mishnah." He told him: "You have hewn for yourself four mountains, [and yet] you carried the son of Lakish [me] on your shoulder?!" Clearly, all three actions referred to in the expression "he read and recited but did not serve the sages" appear here too: Resh Lakish asked whether he has read and recited, and the service is in the form of the person giving the rabbi a ride on his shoulders.

49 On *bur*, see Saul Lieberman, *Tosefta Ki-fshuta* (Heb.; 10 vols.; New York: Jewish Theological Seminary, 1955–88), 1.121.

50 Heb. שמ, the normal rabbinic term for Samaritan, often used in rabbinic literature as a generic term for a foreigner, and sometimes replacing, as an act of censorship (either self-imposed or not), terms for *minim* or gentiles. As far as I know, there is no study about this term in the Bavli; for the Yerushalmi, see Andreas Lehnardt, "The Samaritans (Kutim) in the Talmud Yerushalmi," in *The Talmud Yerushalmi and Graeco-Roman Culture III* (ed. P. Schäfer; Tübingen: Mohr Siebeck, 2002) 139–60, and the bibliography noted there, 140, on studies covering all of the rabbinic period.



This list is different from the list with which the *sugya* opened. That first list takes a negative category, "evil and cunning," and ties it to specific examples of bad conduct. The list here does the opposite: it takes a specific conduct—knowledge of Scripture and tradition without service to the sages—and ties it to various negative categories.

The point of these suggestions is that the Torah knowledge of our non-servant does not save him from counting as an outsider. He is counted either among those parts of Israel different from the rabbis (*'am ha-'areṣ* or *bur*) or a foreigner altogether (Cuthean). The last suggestion, R. Aha's, is in the same vein: it uses a group hostile to the rabbis, the Zoroastrian magi, to say that this kind of a person is an outsider or an enemy to us, the sages.

The Bavli takes an additional, crucial step with this last identification. Rav Nahman quotes a popular saying[52] to link the magus to a Jewish title, the *tanna* or the reciter of traditions, a title used from the Amoraic period on to designate those who, in the absence of written texts, were in charge of memorizing rabbinic oral traditions and deploying them through recitation in scholarly, and perhaps also liturgical, contexts.[53] In a story that appears elsewhere in the Talmud, the same Rav Nahman is asked to deliver a eulogy for such a scholar who excelled in the recitation or memorization of traditions. He refuses to do so, saying that the best thing he could say about him is that he was a "bag full of books" (*b. Meg.* 28b). Here Rav Nahman expresses a similar view: these *tanna'im* are merely "reciters" or "repeaters" (the primary meaning of the root *t. n. y.*); they know how to memorize tradition but they do not understand it. The Zoroastrian magi, as we shall see in the following chapter, also practiced the recitation of traditions, and since that recitation was mostly of Avestan material in a time when Avestan was no longer understood, and since this recitation did not necessitate analytical inquiry, Rav Nahman can

51 Translation follows the version in Ms. Oxford. Other versions have "does not know what he is saying" instead of "does not know what he is mumbling" and "does not know what he is reciting."

52 On a possible Manichean parallel to this saying, see below, Chapter 5, n. 3.

53 See Yaakov Sussmann, "Torah shebe-'al peh—peshuṭah ke-mashma'ah," *Talmudic Studies III* (2 vols.; ed. Y. Sussmann and D. Rosenthal; Jerusalem: Magnes, 2005), 209–384 (238–45, and the rich bibliography in 240 n. 51); on the Geonic period, Neil Danzig, "From Oral Talmud to Written Talmud: On the Methods of Transmission of the Babylonian Talmud and its Study in the Middle Ages," *Bar Ilan* 30–31 (2006), 49–112 (85–94). In addition to the references in these essays, see also the comprehensive list of Talmudic sources in Abraham S. Meir, *Institutions and Titles in the Talmudic Literature* (Heb.; Jerusalem: Mosad Ha-Rav, 1977), 38–63.

compare them to the Jewish *tanna'im*: both recite material that they do not necessarily understand.[54]

Through the comparison between the *tanna* and the magus the Bavli affects a dramatic change of meaning of the "read and recited" phrase. It might not be necessary, as Rashi does, to understand the phrase as "read [Scripture] and recited [tradition] but did not engage himself in *talmud* [the analytical study]"—but that interpretation now does not seem as far off as it did before this point in the *sugya*. At the very least, Rav Nahman's teaching takes advantage of the fact that the phrase mentions only the transmission-oriented kinds of Torah study to say that there is something lacking in mere transmission. As opposed to the original sense of the phrase and its other occurrences,[55] our *sugya* does not use it to contrast good knowledge of the Torah (mastering both written and oral components) with bad conduct—rather, our text says that knowledge of Torah that is constituted only by reading and recitation is in itself insufficient, and the one who practices might as well be a foreigner.

The Bavli attributes to Rav Nahman not only the comparison between the *tanna* and the magus but also the connection of this comparison to Rav Aha's teaching about the person who read, recited, and did not serve. It seems more likely, though, that this connection was made by the creators of our *sugya*. First, the connection is based on a significant reappropriation of Rav Aha's teaching. In its context in the list, that teaching is meant as a general condemnation (what *x* counts as) whereas Rav Nahman supports it with a specific identification (what counts as *x*). It is unlikely that Rav Nahman, Rav Aha's contemporary, recontextualized his teaching so thoroughly. More important, this connection serves too well the ideological and structural line of the rest of our *sugya*.

54 On the comparison itself, see Jonas C. Greenfield, "רסין מגושא" (Eng.), in *Joshua Finkel Festschrift* (ed. S. B. Hoenig and L. D. Stitskin; New York: Yeshiva University Press, 1974), 63–69, and Eliezer S. Rosenthal, "For the Talmudic Dictionary—Talmudica Iranica," *Irano Judaica* 1 (1982), Hebrew section 38–134 (72–73), and see Chapter 5 in detail.

55 The other appearance in the Bavli may be somewhat similar to ours, at least according to one of its versions. A passage in *b. Ber.* 47b deals with the law that an *am ha-'areṣ* may not count for a *zimmun*. One definition given for the *'am ha-'areṣ* there is: "Others say: even if he read and recited and did not serve the sages he is an *'am ha-'areṣ*." A story follows: "Rami bar Hama did not count for a *zimmun* R. Menashia b. Tahalifa, who recited *Sifra* and *Sifre* and *Hilkheta*." When Rava says that Rami b. Hama's premature death was only due to his conduct with R. Menashia, the *stam* protests that he was simply acting according with the opinion that the one who read and recited equals *'am ha-'areṣ*. The description of R. Menashia b. Tahalifa as someone who has mastered a large body of Tannaitic teaching, as expected of a reciter or a master of *mishnah*, and the Talmud's understanding that he is a person who "read and recited and did not serve the sages," are similar to our *sugya*'s connection between that category and the *tanna*. But this characterization of Menashia is missing in Mss. Munich and Paris (though it is present in good manuscripts as well as a Genizah fragment), and since there is no immediate reason to omit the phrase it may present a secondary interpretation of this *sugya* in light of our *sugya* and the *sugya* from *b. Meg.* 28b.



This line continues, after two passages that consider the *'am ha-'areṣ* and various combinations of Torah knowledge (reading but not reciting; reciting but not reading; neither reading nor reciting), when the Bavli quotes a *derashah* on the reciters:

> *My child, fear the Lord and the King, and do not intermingle with the* shonim ["those who differ," "the different ones"; also: "those who recite" or "reciters"] (Prov. 24:21). R. Yitzhak said: [The verse refers to] those who recite traditions [*shonei halakhot*].[56] But [why even teach that? Is not] this [the] simple [sense of the verse]?
>
> What [else] could you say? That they repeat their sins, and [the verse could be teaching something] like Rav Huna's [teaching], for Rav Huna said, "Because a person committed a transgression and repeated it, it feels permitted for him." This teaches us [that it is indeed those who recite traditions]. (*b. Sot.* 22a)

This *derashah* shares much with the *derashah* attributed to R. Yehuda b. R. Ilay in *b. B. M.* discussed earlier in this chapter. Both *derashot* are premised on the similarity or identity of the Hebrew word *shonim*—of which *tanna'im* is an Aramaic equivalent—to a word in their respective verses. Both *derashot* interpret a verse that distinguishes between an "in group" and an "out group"—here the addressees of the verse are the in group and those with which they are warned not to intermingle with are the out group—and both put those associated with tradition in the out group. Finally, both *derashot* are found only in the Babylonian Talmud (it is telling that late Palestinian works interpret this verse to fight their own "others," directing it against "those who say that there are two powers in the heaven").[57]

What makes this *derashah* even more striking than Rabbi Yehuda's *derashah* is that while the latter presented us with a static picture of the four different groups, this *derashah* indicates that the boundary between the addressees and the reciters of traditions is not so stable; apparently, the addressees of this verse—presumably, the sages—must be warned not to mingle with these reciters.

56 According to most manuscripts. Ms. Vatican 110 has "simple traditions" (*halakhot peshutot*), which could imply that this only refers to reciters who deal with particular kinds of tradition. But this version is most certainly a misunderstanding of the following clause in the Talmud, "simple," which was probably abbreviated in the version this scribe received and then expanded erroneously.

57 See *Tanḥuma* (Buber) 16, *Deut. Rab.* 2, and *Ex. Rab.* 15.

We usually think of the *tanna'im* as clearly distinguishable from the sages: they have a different function in the academy, they are of much lower rank and they command no respect, their engagement in Torah study is limited and superficial. Here, however, we can see that the Talmud is constructing a boundary that apparently was not that clear in reality. Is it possible that the two types of scholars, the analytical Talmudic sage and the "living book" who cannot understand what he repeats, are merely "ideal types" imagined by some Talmudic authors? The next passage in the *sugya* raises this question even more sharply:

> It was recited [*tanna*]: The reciters [*tanna'im*] are the destroyers of the world.
>
> Does it [really] occur to you that they are the destroyers of the world!?
>
> Ravina said: Because they offer legal instruction from their tradition.
>
> And this was also recited [*tanya nami hakhi*]: Rabbi Yehoshua said, "And are they the destroyers of the world? Do not they populate the world? For it was said, *the ways (halikhot) of the world are for him* (Hab. 3:6)—do not read *halikhot* but *halakhot*.[58] Rather [they are thus called] since they offer legal instruction from their tradition." (*b. Sot.* 22b)

A great irony of this passage's design is that these two sources against reciters are presented as recited sources. Given that these *baraitot* do not appear in compilations from the Tannaitic period itself,[59] it is possible that this attribution is deliberately ironic. Even if this attribution represents the real or perceived Tannaitic provenance of these sources, the irony could not have been lost on the audience of the *sugya*.

The condemnation of the *tanna'im* here as the "destroyers of the world" goes back to the Mishnah on which our *sugya* is appended, which contains a list of such "destroyers." It might also be related to the previous unit, the *derashah* on Proverbs 24, as Proverbs there refers to ruin and disaster.[60] The statement is so harsh that Ravina needs to explain that the *tanna'im* are destroyers not by definition, but because they instruct the

58 The crux of the Midrashic argument here ("do not read . . .") is missing in the printed editions and added here according to Ms. Oxford.

59 Even Epstein, *Introduction to the Mishnaic Text*, 2.673, classifies the first *baraita* as "Babylonian."

60 The following verse reads: "For disaster comes from them suddenly, and who knows the ruin that both can bring" (Prov. 24:22) where "both" probably refers to God and the king mentioned in the previous verse: the ruin and the disaster they bring is a punishment for associating with those who differ from or rebel against them. The Talmudic reading of the verse might again employ a pun, taking the word "both" (שניהם) to refer to "reciters" (שונים). Thus Prov. 24:21–22 would read: "Fear God, my son, and the king, and do not intermingle with the reciters; for disaster comes from them suddenly, and who knows the ruin that the reciters can bring."



law based on their recited traditions (more on this below). The second *baraita* (§3) is attributed to R. Yehoshua because the list of the "destroyers" in the Mishnah is attributed to him as well;[61] thus this late *baraita* is seen as continuous with the Mishnah that it expands. A similar *derashah* to the one appearing in the *baraita* appears in another purportedly Tannaitic source in the Bavli, where it is put in praise rather in condemnation of recitation:

> *Tanna de-vei Eliyahu*: Anyone who recites traditions [*halakhot*], it is promised to him that he takes part in the world to come. For it was said: *Eternal ways [halikhot olam] are for him* (Hab. 3:6). Do not read *halikhot* but rather *halakhot*. (*b. Sot.* 28b)

It seems likely that the *baraita* in our *sugya* in *b. Sot.* 22a is a later construction based on this *baraita* in *b. Sot.* 28b. The first *baraita* is suspect because it is formulated to reject an assertion (that the reciters are the destroyers of the world) which has has no parallel in rabbinic literature, and, more important, because what it adds to the *derashah* is paralleled word for word in a statement made by a very late sage (Ravina). The second *baraita* expresses a sentiment common in early rabbinic literature about the importance of memorizing *halakhot*, and it is not subordinated to an expansion of a Mishnaic list. This *baraita* is identified here as *tanna de-vei Eliyahu*, and in fact appears in *Seder Eliyahu Zutta*, where its form suggests an earlier date than that document's compilation.[62] Our *sugya* then takes this *derashah* in praise of recitation and reappropriates it into a text designed to criticize reciters.[63]

What is most striking about this text is that it shows us further the artificial nature of the boundaries that the Bavli is drawing here. If the previous unit, the *derashah* on Prov. 24:21, warned the sages not to intermingle with the *tanna'im*, this unit gives us the other side of the equation

61 Though this attribution seems to have been introduced late—all manuscripts have R. Shimeon instead of R. Yehoshua.

62 The version in *Seder Eliyahu Zutta* 2 is: "And it also says, *Eternal ways are for him* (Hab. 3:6): from here they said that 'anyone who recites *Halakhot* is promised a part in the world to come' " (ed. Friedmann, 173). That is, at least according to this version, the *derashah* was added as a prooftext to an already existing tradition. See Meir Friedmann's comment in his introduction, *Seder Eliahu Rabba und Seder Eliahu Zuta* (Heb.; Vienna: Ahi'asaf, 1902), 45, and the sources he cites there. While the interpretation of *halikhot* as *halakhot* is already in *y. Meg.* 1:4 70d, that reading there says nothing about the *tanna'im*, and thus it is likely that our two *derashot* in *b. Meg.* and *b. Sot.* are related to each other and not to this Palestinian original.

63 It is also interesting that the rejected possibility, that the *tanna'im* in fact populate or colonize the world, is comparable with what is said about the sages in *b. Shab.* 114b, "these are the sages, who are occupied with building the world their entire lives."

by condemning the *tanna'im* for overstepping their boundaries, for becoming too much like the sages: they dare to instruct the law.[64] The Bavli then is speaking here of two kinds of transgressions: scholars who associate with reciters, and reciters who act like scholars. Thus while the Talmud often presents us with a clear boundary between "sages" and "reciters," between "masters of *talmud*" and "masters of *mishnah*," between *halakhic* authorities and "living books"—we can see here that that boundary was at least partially the result of construction and deliberate separation.

## CONCLUSION: TALMUDISTS AND RECITERS

The efforts we find in the Bavli to oppose sages with the "masters of *mishnah*," or the reciters, raise questions not only about the utility of this opposition for the composers of our passages but also about the identity of those whom these composers portray as their "haters." Who were the reciters, and why did they become such important "others" for the "masters of *talmud*"?

To a large and surprising degree, the Talmud's presentation of the reciters as mindless bags of books has been adopted by modern scholarship. The most recent treatment of the subject simply quotes Rav Nahman's statements on the reciters (from *b. Sot.* and *b. Meg.*) to support the claim that the *tanna'im* "were not great scholars but professional reciters who offered the traditions without interpreting them."[65] This image is problematic not only because it relies on texts with an obvious polemical tone, but also because it does not conform with much of the evidence about these *tanna'im*. Even if we limit ourselves to the Babylonian Talmud, the primary source for this negative image, we find the *tanna'im*

64 I think it is clear from the context, with the juxtaposition of this statement with the *derashah* on Proverbs 24, that what the Talmud has in mind here is the crossing of the boundaries between two identities, the scholar and the *tanna*. Ephraim E. Urbach, *The Halakhah: Its Sources and Development* (trans. R. Posner; Tel Aviv: Massada, 1986), 126–27, reads this statement in the context of the prohibition to teach the law based on texts or theoretical study. This might well have been the original meaning of this statement, and it may be observed in the version of the *baraita* in *PSEZ*: "and the *tanna'im* [emending the text that reads תנאו] are the destroyers of the world. And do not they sustain the world? Rather, *anyone* who teaches from his *mishnah*, he is the destroyer of the world" (*PSEZ* 16, Friedmann 8). The Bavli, however, clearly uses it to contrast the sages with the *tanna'im*, rather than to discuss generally the ability of "anyone" to instruct law based on tradition. The Bavli also prohibits basing legal instructions on *talmud* (see *b. B. B.* 130b, according to manuscripts) and yet we would never imagine it saying that *ba'ale talmud* are the destroyers of the world.

65 Danzig, "Oral Talmud," 85.



engaged in a range of scholarly activities that go beyond memorization and recitation: they juxtapose traditions, offer their own emendations, interpret these traditions, and expand on them; and yes, there is some indication that, despite the objections of our *sugya*, they offered legal rulings.[66] The distinction between the reciter and the scholar, one on which our *sugyot* insist, was not always clear.[67]

Geonic literature complicates matters further. On the one hand, the *tanna* is a distinct office or position in the Geonic academy, clearly differentiated from the positions of scholars and students—a development that may be explained by the further institutionalization of the academy. On the other hand, several Geonic sources portray the *tanna'im* as central and respected members of the academic community, whose range of activities show interpretive capability and include much more than a simple reproduction of texts in aid of study.[68] Neil Danzig has recently argued that because we know from the Talmud that the *tanna'im* were not scholars and that their scope was limited to non-intellectual memorization, these sources must refer to different kinds of individuals. The title *tanna*, Danzig concludes, applied both to the office of the reciter and to "real scholars" (*ḥakhamim muvhaqim*) who were engaged in permanent study in the academy.[69]

While it is possible that the term *tanna'im* was used to refer to a wide range of individuals, it seems to me that the polemical nature of our *sugyot* should make us suspicious of their hostile or belittling relation to these reciters. The fact that even the Talmud, in non-polemical passages, can portray these reciters as capable and ambitious, may tell us that the

66 See the sources cited in Epstein, *Introduction to the Mishnaic Text*, 2.677–88. See also the sources in Amir, *Titles*, 44–53.

67 To this one can add that many sages are said in the Talmuds to recite traditions, and several are characterized with the sort of memorizing abilities associated with the *tanna'im* – see Amit, *Titles*, 44–45. It seems misleading to me, however, to say as Amit does that famous sages functioned in the Amoraic period as reciters of traditions—rather, as sages, they were also expected to recite traditions and memorize them, and it is only from the perspective of the Babylonian separation between "scholarship" and "transmission" that this would relegate them to a different function.

68 See the sources noted by Danzig, "Oral Talmud," and especially the sources published by Simcha Emanuel, "New Responsa of R. Hai Ga'on" (Heb.), *Tarbiẓ* 69 (2000), 105–26 (111–13). Several of these Geonic texts portray *tanna'im* as involved, respected, central to the activities of the academy, contributing much more than recitation of tradition: they participate in court discussions, contribute to the organization of the liturgy, and are consulted in the appointment of the exilarch; they also receive a stipend from the academy and seem to be well regarded by its leadership. Emanuel also reinterprets, in light of new textual evidence, one of the Geonic sources that was previously understood to draw a sharp distinction between the kind of study practiced by the sages and the one practiced by the *tanna'im*, with the dichotomy much less pronounced.

69 Danzig, "Oral Talmud," 85–87.

difference between the harsh statements in our *sugyot* and the more positive and diverse portrayal in Geonic sources has more to do with changes in the rabbis' ideology than with a transformation in the nature of the *tanna'im* themselves.[70] The image of the "mindless reciter" is, to a great degree, a polemical and ideologically driven misrepresentation.

Our *sugyot* insist on the separation of scholars from reciters not because that separation was clear to everyone; rather, the Bavli is engaged here in a discussion on what counts as scholarship, arguing that only those involved in the analytical and innovative kind of Torah study, *talmud*, are worthy of the name. Those who focus on the transmission of rabbinic tradition are portrayed as enemies of the rabbis and as equal in status to the rabbis' classical opponents. Even if we grant that such polemical texts are often characterized by hyperbole, the lengths to which our *sugyot* go to create this boundary are striking.

These texts do not, of course, object to recitation as such. For the "masters of *talmud*," the reciters had a clear and important role in the rabbinic academies: in the absence of written books, they were the primary sources of the traditions that could then be the subject of analysis in the sessions of *talmud*. What the composers of our *sugyot* insist on is the separation of scholars from transmitters and scholarship from transmission. They object to scholars who associate with reciters and to reciters who act like scholars; they project an enmity between "masters of *mishnah*" and "masters of *talmud*" and present the reciters as "bags full of books" because they did not want to think of them as anything more than mere transmitters.

This connection between a particular ideology of Torah study and the way the "masters of *talmud*" defined themselves gives us a context for the literary practices analyzed in the first part of this book. They show us that a determinative factor in the self-conception of these rabbis was not just the ability to innovate but more specifically the separation between transmission and innovation, a separation which, I argue, was central to the formation of the layered structure. The insistence of our *sugya* in *b. San.* that the rabbis are innovators supports the interpretation of the *stam* as a form of showcasing analytical virtuosity. The representation of the reciters may further correlate with this literary practice in the sense that they provided for the Talmudists another way of externalizing tradition: much like quotations served to confine traditions in Hebrew dicta waiting to be interpreted by the *stam*, the reliance on mindless transmitters confined tradition in living books who were waiting to be read by "real" scholars. The fact that, for the most part, the maneuvers we have seen in

70 On the more positive relation toward memorization in the Geonic period, see the discussion in the Conclusion of this book.



this chapter belong to the redactional layer, suggest that we can connect their approach with the scholars who shaped the Bavli.

These *sugyot* also illuminate the Talmud's position by showing us its specificity and its contested nature. Their insistence on drawing the boundaries between transmission and scholarship, especially when juxtaposed with other types of evidence, betrays a reality different from the one the Talmud wishes to impose. They invite us to consider that outside the circles of the "masters of *talmud*," but still in Babylonia and within the confines of the rabbinic academy, transmission was not seen as inferior to and distinct from scholarship, but as continuous with it.

The ideological background of the Talmud's approach to the reciters and the evidence that suggests that they were engaged in more than mindless repetition raise the question of the reciters' own self-conception and approach to tradition. Here we have to be careful: we have no text that explicitly provides us with the reciters' perspective. When we consider that some Jews in late antiquity dedicated their lives to this demanding memorization and recitation of rabbinic tradition, the presentation of this recitation as mere aid to study becomes less satisfactory.

I suggest that as in other cultures, recitation of oral traditions in Judaism was a ritual in its own right.[71] This function of recitation may already be evident in the way it is described by Rav Nahman: the reciter may not understand what he is reciting, but that is not, as Rav Nahman himself says elsewhere, because he is an unintellectual "bag full of books," but rather because understanding the text was not the primary goal of its recitation.[72] Analytical activities such as emendations and interpretations were not separate from this activity; but they were not central to it either. Recitation of rabbinic tradition does become a ritual outside the study house later on—by the early Geonic period, both the *tanna'im* and recitation play a part in the liturgy of the synagogue; but there is no evidence that can tell us whether this was the case while the Talmud was forming.[73]

71 For this ritual, as opposed to scholarly, approach to sacred texts, see William A. Graham, *Beyond the Written Word: Oral Aspects of Scripture in the History of Religion* (Cambridge: Cambridge University Press, 1987); Barbara A. Holdrege, *Veda and Torah: Transcending the Textuality of Scripture* (Albany: State University of New York Press, 1995), 343–47, and see also the sources and studies quoted in Chapter 5 below for recitation as ritual in contexts closer to the Bavli.

72 In fact, if we separate Rav Nahman's statement from the *sugya* that presents the reciters as "cunning and evil," "destroyers of the world," or akin to the magi—they can be read more as a description and less as a criticism.

73 On the recitation of rabbinic texts as part of the Geonic-era liturgy, see Adiel Kadari, "Between Scholars and the General Public in the Synagogue during the Gaonic Period: On the Historical Development of Torah Reading and Scholarly Customs Associated with Public Prayer" (Heb.), *Sidra* 19 (2004), 135–58; on *tanna'im* in the synagogues,

If we understand the recitation of rabbinic tradition as a ritual with its own end, it may be posited as the opposite of the practice of *talmud*. Where the latter distances tradition and objectifies it for the purpose of intellectual analysis, the former internalizes it, literally embodying it by repeated memorization and recitation, uniting the sage and the sacred text. The following two chapters are dedicated to exploring the possibility of recitation as a ritual opposing the Bavli's scholastic practice, shedding light on this opposition from evidence outside the Talmud itself.

The texts studied in this chapter show us that their creators defined their intellectual activities by a particular relationship with tradition, one that not only emphasized analysis but also separated analysis from transmission. This is true of these texts even if we do not consider them against the possibility that ideological alternatives to the Talmud's approach existed in its immediate surroundings. But these passages do, I argue, suggest such alternatives, and the consideration of these alternatives offers us not only a certain social context for the development of the practice of *talmud*, but also a better appreciation of what *talmud* meant to the scholars who shaped it.

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see also the texts noted by Danzig, "Oral Talmud," 85–87. It is possible, though unlikely, that the *deuterosis* and *deuterotai* that appear in some church fathers and in Justinian's Novella 146 may place *tanna'im* and *mishnayot* in Palestinian synagogues of late antiquity, but the identification of these Greek terms with the rabbinic terms is very problematic—see Seth Schwartz, "Rabbinization in the Sixth Century," in *The Talmud Yerushalmi and Graeco-Roman Culture III* (ed. P. Schäfer; Tübingen: Mohr Siebeck, 2002), 55–69 (especially 65–68). I do find suggestive that the chain of functions in Lev Rab 30:1, קרי ותני ומשנה, lists the reader of Scripture and the reciter of tradition along with liturgical functionaries (the *paytan* and the *qarov*). But even if rabbinic traditions did play a role in the liturgy in such an early period, it was more likely as part of ritualized study rather than collective recitation—see Kadari, ibid., and see more in Chapter 6 below.

# Not in Heaven

## The Nature and Function of Jewish Law

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*With a foreword by*

Joseph Isaac Lifshitz

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CHAPTER ONE

# The Nature and Function of Jewish Law

The Torah is all-inclusive. It embraces the entire life of the Jewish people. Halacha, therefore, has to interpret the intention of the Torah for all areas of Jewish existence: the spiritual, the ethical, the economic, the social. It also has to define the functions and powers of the teaching and implementing authority envisaged by the Torah. In what follows, I will examine three important ways in which the halacha translates the intention of the Torah into application in the real-life situation: (i) As guided by common sense, or *sevara*; (ii) as the wisdom of the feasible, according to which the law must maintain its applicability in practice; and (iii) as the priority of the ethical, according to which it is understood as furthering the larger moral principles embodied in the Torah. In the concluding section, I will explore in detail the ways in which these principles are put into practice, as shown in the example of marriage and divorce laws.

## COMMON SENSE

All interpretation is first of all an activity of the intellect. It is important to note the degree of authority that the Talmud ascribes to logical thinking, to the insights of common sense, which the rabbis refer to as *sevara*. In a number of talmudic passages it is taken for granted that the *sevara* is no less authoritative than the biblical text itself. Often, when one of the rabbis attempts to justify an opinion by basing it on a verse in the Torah, the question follows: "What need is there for a verse? It is a *sevara*—that is, the opinion may be based on reasoning alone.[1] The meaning of the question is: Since the opinion under discussion may be established by common sense, the text used for its validation seems superfluous. But since there can be nothing superfluous in the Torah, the text quoted must be teaching something else.

The principle of the *sevara* is effective in every area of talmudic law. We shall consider several examples. Two rabbis of the Talmud discuss the legal form of acquiring movable property. According to Resh Lakish, one has actually to take possession of the object by pulling it, lifting it from the ground, or causing it to move. He bases his opinion on a verse in the Bible. R. Yohanan, on the other hand, maintains that possession is taken when the purchase money is handed over to the seller. However, he cites no biblical proof for his view. Writing in the fourteenth century, the commentator R. Yosef bar Habiba explained: "R. Yohanan does not derive his opinion from a biblical text. He bases it on *sevara*. For most property is actually acquired by means of money."[2] It is significant, however, that



while R. Yohanan has no biblical proof for his view, he considers it sufficient to state that "it is the word of the Torah"—that is, it is by the authority of the Torah that money is the legal means of acquiring movable property.

In another context we learn that if a woman, of whose marital status nothing is known, appears before a court and asserts that she had been married but is now divorced, she is believed; she may remarry without providing any further proof that she is divorced. The ruling is based on the principle that "the mouth that bound her [as a married woman] is also the mouth that releases her [by also stating that she is now divorced]." One of the rabbis in the Talmud, R. Asi, attempts to justify the principle by pointing to a verse in the Bible that supports it. This justification, however, is rejected, for "what need is there for a biblical proof? It is a *sevara*—the same mouth that bound her also releases her."[3] If you trust her statement that she was married, you also have to trust her statement that she was divorced. The principle is applied in numerous other areas.

The authority of the *sevara* emerges clearly from two other examples. Since the commandments of the Torah were given to us that we may live by them, the rule is that if a Jew is forced to violate any commandment under threat to his life, he should transgress rather than die. However, there are three exceptions to the rule. They are idolatry, sexual prohibitions such as adultery and incest, and murder. One must accept death rather than commit any of these three sins. Whereas the rule in the first two cases is derived from the Torah, in the case of murder one relies on a *sevara*. It is told that once a person came to Rabba and told him that the ruler of the city had ordered him to kill someone; if he disobeyed, he himself would be killed. What was he

supposed to do? Rabba answered him succinctly: "What makes you think your blood is redder than that of your fellow man?" Maimonides offers the following interpretation: Reason tells us that one may not destroy a life in order to save another. It is remarkable, therefore, that this rule in the case of sexual prohibitions is derived from the rule concerning murder; according to talmudic understanding, the Bible compares the seriousness of a sexual attack on a married woman to that of an attack upon the life of a person. Just as one should die rather than commit murder, so should one refuse to violate the sexual laws, even under threat to one's life.[4] The Talmud bases the ruling in one case on a comparison to the ruling in another—but to one that is nowhere mentioned in any biblical text and whose authority is assumed to be known on the strength of its reasonableness.

In another case, the power of the *sevara* is affirmed even more boldly. According to biblical law, if a woman remarries after a divorce, and the second husband then divorces her or dies, she may not return to her first husband. The Talmud discusses the question of whether this law applies only when the marriage to the second husband had been consummated or even when the woman was only formally betrothed to him.[5] The majority view holds that even if only the legal betrothal had taken place, the woman, once divorced from her second husband, may not remarry the first.

This view, however, presents us with a hermeneutical problem. The biblical text tells us the reason for the prohibition of remarriage to her first husband: "Since she had been defiled."[6] How does this apply to a woman who was only engaged to another man but did not live with him? The rabbis explain that this reason applies only to the case of an adulteress, whose





husband is barred from remarrying her. This, of course, contradicts the plain meaning of the text. The Bible speaks in general terms that apply to every case in which a divorced woman remarries and after a second marriage wishes to return to her first husband. To limit the ruling to the case of an adulteress renders the text unintelligible. Moreover, we have a rule that in no interpretation may the plain meaning of the text be disregarded. One of the most authoritative commentaries on the Talmud, that of the Tosafot, explains that in this case, the plain meaning of the verse was suppressed because it did not seem to be right to say that a woman who married another man was "defiled" by that marriage. Her second marriage was legal and completely moral.[7] Only an adulteress may be described in such language. In this case, on the strength of a *sevara*, a new meaning was forced upon the biblical text, violating its simple meaning.

Occasionally, even a new law that departs from a prevailing rule may be created by a *sevara*. According to a well-established principle, the Torah frees a person from responsibility for the results of external compulsion, any "act of God," any normally unexpected event or unforeseen circumstance (*ones rahmana patrei*). Nevertheless, Rava, one of the great talmudic authorities, declared that this rule does not apply to cases of divorce: If, for instance, a man hands his wife a writ of divorce on condition that the divorce will take effect only if a certain event takes place, he cannot later deny the divorce by arguing that the event took place unexpectedly, against his will, outside the normal course of possibility. In other words, a woman who would have remained married according to the generally recognized biblical rule, since the conditions of her divorce would have not been considered fulfilled, is judged to be a divorced woman, free to marry again, according to the new ruling of Rava.

How may this exception to the rule be justified? Rava ruled on the basis of his own *sevara*. He was saying: Let us consider the likely consequences of the general rule. Assume that a man gave his wife a writ of divorce with the explicit condition that the divorce would take effect only if he did not return from an upcoming trip to a foreign country within twelve months. If he then does not return, there are two possibilities: Either he does not wish to return, in which case the divorce is effective; or he does wish to return but because of some "act of God" is prevented from returning, in which case, in accordance with the general rule, the writ is not valid and his wife is not divorced. Assuming that there is no possibility of communication between the husband and wife, what might be the consequences in such a situation? The more conscientious woman will in most cases assume that if her husband has not returned at the end of the given period, he is probably unable to return due to circumstances beyond his control. She will consider herself still married and possibly remain an *aguna* for the rest of her life.[8] Another woman, less conscientious in matters of marital fidelity, will readily be inclined to believe that her husband has not returned because he does not wish to; therefore, the condition of the divorce has been met, and she is a divorced woman, free to look for another mate. Both, of course, may be wrong. In actual practice such a situation would be intolerable. Therefore, the general rule governing external compulsion cannot function in the area of divorce. If a divorce is given conditionally, the husband and wife are to be informed that once the condition is fulfilled, no matter for what reason, the divorce becomes valid.[9]

We have seen, then, that:



(i) Principles deriving from a *sevara*, from common sense or logic, have the validity of a biblical statement;

(ii) The Torah itself makes reference to a ruling by a *sevara*, assumes it to be known, and by comparison to it establishes its own ruling in a case in which the *sevara* on its own would not have been able to give the biblically required decision;

(iii) A *sevara* may be so convincing that it may compel one's conscience to suppress the plain meaning of a biblical injunction and force upon a verse in the Bible a meaning that it can hardly bear textually;

(iv) A *sevara* may show that in certain areas the consequences of a generally prevailing law would be unacceptable and, therefore, that those cases must be exempted from the authority of that law.

The importance of the *sevara* also throws light on another aspect of halachic legislation. In case of disagreement between rabbinical opinions in the Talmud, the rule is, in accordance with the biblical verse, to follow the majority opinion. Yet on numerous occasions this principle was not followed; the opinion of an individual was accepted against that of the rest of his colleagues.[10] In most of these cases, no reason is given for the deviation from this biblically based rule, but occasionally one may derive from the talmudic discussion what it was that guided the teachers of halacha in this matter. R. Yose maintains that one may not grant power of attorney to another person by sending him word via a messenger. The majority of the rabbis disagreed with him. Yet Shmuel taught that the halacha was according to

R. Yose. When the son of R. Yehuda Hanasi remonstrated with him about this, Shmuel answered him: "Be quiet, my son, be quiet. Had you known R. Yose personally, you would realize that he always had his reason for his opinion."[11] In another case, R. Elazar, the son of R. Shimon, disagreed with the view of his colleagues. One of the rabbis ruled that the halacha was not according to R. Elazar. The Talmud asks: "That is obvious! [There is no need for saying so, since the rule is that] when an individual goes against the many, the halacha is according to the majority." The Talmud answers that in this case, it was necessary to state explicitly that the rule was not according to the minority, because otherwise one might determine that the minority opinion was correctly reasoned, and, therefore, one would have to decide against the majority; it was stated in order to prevent that mistake.[12] In the case of R. Yose, we accept the minority opinion because it is more convincing than that of the majority; in that of R. Elazar, one has to warn against the minority opinion because the reasoning behind it might be seen as convincing. Other examples of this nature appear in the Talmud. On one occasion an opinion of Shmuel is contradicted by an authoritative earlier source. The verdict presented on Shmuel's view is *tyuvta*, which normally means defeat in talmudic discussions. But despite this, the halacha follows the teaching of Shmuel, because his reasoning is sound.[13] Sound reasoning overrules an authoritative text.

Thus we have gained an insight into the functioning of the majority rule. That an opinion is held by the majority of scholars is no proof that it is true. A majority may be no less mistaken than a minority. Therefore, follow the opinion that is based on logically valid reasoning. If the *sevara* of the minority, even if it





be a minority comprising a single person, is convincing, accept it. When there is no reason to prefer the minority view to that of the majority, when logically the two are equally compelling, only then follow the majority. The majority rule is not a logical principle but a pragmatic one. Thus, the rabbis were able to say that the minority opinions have been preserved in the talmudic sources, and not just those of the majority, so that if a rabbinical court at a later time should for some reason of its own agree with the minority, it would have the right to invalidate a previous ruling according to the majority. And it could do so even if the first ruling was handed down by a rabbinical court greater in learning as well as in number than was the second.[14]

## THE WISDOM OF THE FEASIBLE

Especially since the time of Immanuel Kant, a distinction has been made between two kinds of reason. One is theoretical, dealing with the categories of logical reasoning; the other is "practical," and its subject matter is the laws of ethical reasoning. Correspondingly, in halacha, theoretical reason found its application in the "Thirteen Rules" in midrashic and talmudic literature that the rabbis used in interpreting the biblical text. A comprehensive study of the Thirteen Rules would give us a treatise on talmudic logic. Our concern, however, is chiefly with the "practical" reason of halacha. We use the term in a twofold sense: Halacha facing the practical needs of human existence, and halacha teaching the application of ethical principles in the midst of the daily life of the Jewish people.

That the Torah was not given to the ministering angels of the Almighty is self-evident. A number of halachic rulings were based on this insight. But if so, the Torah must pay attention to human nature, to the human condition, to human needs. That this is indeed so, the rabbis found confirmed in an important biblical injunction.

In order to humanize the conduct of soldiers engaged in a war, the Jews were commanded:

> When you go forth to battle against your enemies, and the Eternal your God delivers them into your hands, and you carry them away captive, and see among the captives a woman of goodly form, and you have a desire for her, and would take her to you for a wife, then you shall bring her home to your house; and she shall shave her head, and pare her nails, and she shall remove the raiment of her captivity from off her, and shall remain in your house, and mourn her father and her mother a full month; and after that you may go unto her, and be her husband, and she shall be your wife.[15]

Considering the barbarous behavior toward women in conquered territories in time of war prevailing even in our own day, this law of the Bible was revolutionary. According to rabbinic interpretation, one could take a captive woman only for a wife, and one had to treat her as a wife. Notwithstanding its ethically innovative nature, the rabbis of the Talmud thought that the law needed further justification. The Bible obviously condemned the lawlessness and cruelty with which conquered people, and especially women, were treated by victorious armies. Why did it not forbid the taking of captured women against their will



altogether? The explanation given is that this law was given with a view to the "evil inclination" (*yetzer hara*), which is part of human nature.[16] In light of the force of the sexual instinct in man, in the prevailing conditions it would have been useless to command its complete suppression. By ordering the soldier who desired a female captive to take her for a wife, the Torah was educating people toward humane behavior, toward an understanding of the injustice done to the captive woman.

This interpretation reflects the talmudic understanding that the Torah does not command anything that man, because of his intrinsic nature or the prevailing conditions, would not be able to do. This realization is the basis of a ramified series of halachot. According to the Torah, one must not marry the divorced wife or the widow of a brother. But if a man dies without offspring, it is a biblical commandment for his brother to marry the widow, so that through the building of a new family the name of the deceased brother may be preserved. This is known as *yibum*, or levirate marriage. If, however, the brother refuses to marry the widow, the ceremony of *halitza* is necessary, by which the woman is freed to marry whomever she pleases. According to this rule, the levirate marriage takes precedence over the *halitza* separation.

Nevertheless, during the mishnaic period, the rabbis reversed the order, arguing that *halitza* is preferred.[17] What was the reason for this? The explanation given is as follows: As a rule, a man must not marry the former wife of his brother; an exception, however, was made in the case of a brother who died without leaving children. In such a case, one fulfills a divine commandment by marrying the widow, in order to raise a family that will be considered as if it were that of the deceased brother. However,

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it was found that most people who would marry the widow would not do so for the sake of the *mitzva*, in order to preserve the name of a brother. People usually marry for personal reasons, because of attraction or other personal interests. Given human nature as the rabbis knew it, the biblical commandment was not realizable. Therefore, according to some commentaries, the levirate marriage was forbidden; according to others, it was only discouraged. According to the one, a biblical law was abolished; according to the other, it was greatly reduced in meaning and importance.

To understand this, it is important to recall a talmudic principle: "Where it is possible, it is possible; where it is not possible, it is not possible."[18] Let us look at some of the examples given. Assume an elderly or sick man lives away from his wife in a "land across the sea," a faraway country without the possibility of communication. He might be a man without children. If he should die, his wife will not be free to remarry whomever she wants, for the man has a brother, who may want to fulfill the commandment of the levirate marriage, or else will have to release her through the *halitza* ceremony. The husband wishes to relieve his wife from such dependence on a brother; therefore he sends her a writ of divorce. It takes some time before the messenger arrives. In the meantime the husband dies because of illness or old age. In such a case, the divorce ought to be invalid, for a divorce cannot take place after the husband's death. Nevertheless, the Mishna states that the messenger should hand the woman the writ under the assumption that the husband is still alive. This accords with the halachic principle of *hazaka*, or presumption, according to which a condition, once established, is legally assumed to continue unchanged until the opposite has become known.



In another authoritative source, however, it is taught that if a *kohen*, a member of the priestly caste, gives a writ of divorce to his wife on the condition that it will take effect just before his death, his wife must immediately refrain from eating food that is *teruma* (the share that was given to a priest from the yield of the land). In this case, the wife is of Israelite parentage; as long as she is married to a priest, she may benefit from *teruma* on account of her husband. But once she is divorced, she returns to her Israelite status; like any other Israelite, she is barred from deriving any benefit from the priests' share. In this case, as soon as she receives the writ of divorce, even though it becomes valid only immediately prior to her husband's death, she is already considered an Israelite woman. This is due to the possibility that her husband may die at any moment, in which case she would already be divorced now.

The two sources seem to contradict one another. In the case of the divorce document sent from a faraway country, the husband is presumed alive as long as we do not receive information to the contrary; in the case of a woman married to a *kohen*, we do not make that assumption, and instead take into consideration the possibility of his death. In attempting to resolve the contradiction, the Talmud offers: "You are comparing *teruma* to divorce? *Teruma* is possible; divorce is impossible."[19] The meaning is: For the woman married to a priest, it is relatively easy to make arrangements to live on food that does not have the sanctity of *teruma*. But the consequences of assuming the death of the husband in the first case would be much more serious. The faraway husband, knowing that a writ of divorce sent by a messenger would have no validity, would refrain from sending one. As a result, his wife would become an *aguna*, neither married in fact nor able to remarry, since her husband might still be alive.

The "principle of the possible" is expressed in another, even more striking case, again concerning the levirate marriage and the *halitza* ceremony. According to biblical law, if the wife had given birth to a child before her husband died, the levirate marriage does not apply. This is true even if the child died immediately after birth. The rabbis, however, held that if the child was born prematurely, the birth is considered sufficient to disqualify the levirate marriage only if the newborn was fit for life. As to the question of what constitutes fitness for life, the Talmud offers two differing opinions. According to R. Shimon ben Gamliel, if the child lived for at least thirty days, we are certain that it was fully developed. But if it died within that period, there is a possibility that it was not quite fully developed. The rest of the rabbis, on the other hand, maintain that there is no need for a thirty-day period.

Assuming now that the widow remarried even though her child did not live thirty days, R. Shimon ben Gamliel would rule that because of the doubt regarding the child, she would still have to go through the *halitza* ceremony in order to be free of her ties to her former husband's brother. This may lead to unpleasant consequences, for there is a rule that a priest may not marry a woman "rejected" by means of *halitza*. Therefore it was decided that in case of a remarriage to an Israelite, we assume that the child was not viable, and therefore the woman must go through the ceremony. If she married a *kohen*, we assume that the child was completely developed; the mother is free to marry whomever she wants. In one instance we follow the opinion of R. Shimon ben Gamliel, in the other that of the other rabbis. How so? If she is married to an Israelite, the Talmud argues, "it is possible"; if she is married to a *kohen*, "it is not possible."





An Israelite may marry a woman who performed *halitza*; therefore, *halitza* is "possible." A priest is forbidden to marry such a woman; therefore, to require *halitza* is not "possible."[20]

In these examples the principle of the possible is explicitly used. In other cases it is not mentioned, but it is clearly the guiding consideration. On the Sabbath, for example, one is prohibited from leaving his city or community and walking in an undeveloped area beyond a distance of two thousand cubits. However, there are a number of exceptions to the rule. For instance, a midwife who is called to a delivery, a person needed to help fight a dangerous fire or to save people from a flood or from pirates, and so on—such are not only permitted but required to go wherever they are needed. However, a problem arises after they have completed the task to which they were called. According to the law, one who journeyed beyond the two-thousand-cubit limit must remain where he is until the end of the Sabbath. It is true that in our case the person was permitted to go beyond the Sabbath limit, but that was because of the emergency. Now that the emergency is over, is one tied down to the spot where he finds himself after the event? R. Gamliel the Elder, the head of the Sanhedrin, ruled that people who are allowed to travel for the sake of an emergency are to be considered as inhabitants of the city to which they have gone in order to help; like the latter, they too may move a distance of two thousand cubits in all directions. His reason was that if they were to be immobilized until the end of the Sabbath at the spot where they rendered help, they would not leave their homes to help in the first place. Thus, "the end was permitted on account of the beginning" is the talmudic formulation in this case.[21]

Similar considerations of the possible were obviously decisive in the formulation of two other principles. The halachic authorities have the power to restrict certain practices, out of a concern that they may lead to the violation of biblical commandments. However, no edicts of this kind may be issued if the majority of the people may not be able to obey them. Such edicts, if issued, lose their validity automatically.[22] Similarly, it was taught that if people engage in certain practices contrary to the obligations between man and God (the "ritual" commandments), and if there is reason to assume that reproving them will influence them to change their ways, one should do so. But if it cannot be assumed that they will change their ways if told that what they are doing is in violation of the law, then, says the Talmud, "Leave Israel alone; it is better that they should transgress out of ignorance than that they should do so intentionally." In one talmudic passage, it is said that this principle applies only to violations of rabbinic interdicts, but not in matters that the Bible itself forbids. A second passage, however, shows that it is valid even for biblical commandments.[23]

A careful examination of the examples discussed will show that in the application of the principle of the possible, the impossible is not the objectively impossible, but that which is not feasible. The category of the possible (*efshar*) represents that which, in view of human nature and with proper attention to human needs, is practically or morally feasible. Illustrations of pragmatic and moral feasibility are found in certain rules observed in the calculation of the annual calendar. Because of the difference between the solar and lunar years, it is necessary, at certain points within a multiyear cycle, to add an additional month, a second Adar, to the Jewish year. Apart from this,





occasionally the second Adar was inserted for purely practical reasons that had nothing to do with the planetary order. And so it was taught:

> One introduces the additional month because of the roads, because of the bridges, because of the ovens for roasting the paschal lamb, and because of Jews who left their homes in exile [with the intention of going to Jerusalem to celebrate Passover there] but have not arrived yet.[24]

Because of the winter rains, the roads to Jerusalem were washed out, bridges were carried away by floods, ovens were damaged. It was, of course, a practical necessity to postpone the celebration of Passover by one month, so that the necessary repairs might be made. Most significant, however, is that it was postponed even in order not to disappoint travelers from Babylon who were on their way to celebrate the festival in Jerusalem but had been delayed, for whatever reason. The second Adar was added to the annual cycle of that year in order to enable them to arrive in time. The entire sequence of the year's holy days was thus moved by one month out of consideration for their feelings. To do anything else would have been "impossible," because it would not have been morally feasible.

The principle of moral feasibility is recognizable in other halachic decisions as well. Two examples are among the boldest. Guards of gardens and orchards are not obligated to fulfill the commandment of building a succah for the holiday of Succot. The discussion in the Talmud seems at first to assume that the reason for this is that since the orchards are usually outside the built-up areas, there are no festival booths available for the

guards. Thus, the objection is raised: "Well, let them build their succah in the place where they keep watch." Upon which the answer is given: "The Bible says, 'you shall dwell in Succot': 'To dwell' means to live in them as one lives in one's home." But what does this mean? Explains Rashi: To dwell as one lives in one's home would require that the guards move into their festival booth in the orchard a great deal of their normal household—including beds, bedding, and other implements. It would put them to too much trouble. For this reason, they are freed from the obligation of dwelling in a succah.[25] The other ruling that attracts our attention deals with a specific aspect of the Yom Kippur observance. One of the five forms of abstinence that a Jew undergoes on the Day of Atonement pertains to washing. Apart from a minimum of cleaning the hands and eyes, among other pleasures one also forgoes on that day that of washing and bathing. According to some of the halachic authorities, this is a biblical command. However, one of the exceptions to the rule is a bride during the thirty days after her marriage. She may wash herself on Yom Kippur so that she should be beloved to her husband.[26] In both these cases, the morally feasible was the deciding factor.

Feasibility is clearly the main consideration in talmudic regulations in the economic field. A number of problems arose from the implementation of the biblical commandments regarding the sabbatical year. Every seventh year, no agricultural work was to be done in the fields and the gardens, and all debts were canceled. The cancellation of debts had serious economic consequences. As the seventh year approached, people would refuse to lend money to their fellows. Thus, the situation developed against which the Torah had warned:



> Beware that there be not a base thought in your heart, saying: "The seventh year, the year of release, is at hand"; and your eye be evil against your needy brother, and you give him nothing; and he cry unto the Eternal against you, and it be counted as a sin against you.[27]

Hillel saw that the entire purpose of the biblical injunction regarding the release of all debtors from their debts had been foiled. He therefore introduced the regulation of *prozbul*, according to which, as the seventh year approached, a creditor could hand over the promissory notes in his possession to a rabbinical court, declaring that he himself would not demand payment on them.[28] In this way, private debts in a sense became public ones. Unlike the private creditor, the court did have the right to demand payment, which it could then transfer to the lender. As the Talmud explains, this regulation had a twofold purpose, serving both the rich and the poor: The rich did not lose their money; the poor, in need of a loan, were able to find people who were willing to lend it to them.

The sabbatical year also caused other problems for the poor. In other years, there was usually something for them from the crops. They could go gleaning in the fields; any sheaf forgotten was theirs by law. In addition, every farmer was obliged to leave the corners of his field unharvested as the share of the poor. All this was lost to them every seventh year. More serious was the issue of unemployment. In a normal year they could hire themselves out for work with the farmers. In the sabbatical year, there was no work for them in an agricultural society. This was a serious problem already at the time of the return of the Jews from Babylon. As a solution, numerous areas that had previously been Jewish land were excluded from the "sanctity" of the land of

Israel. Thus, in the sabbatical year, the poor would find work, as well as reaping the other benefits due them from the yield of the fields, in those districts.[29]

The problems caused by the sabbatical year pertained not only to the poor, but to society in general. Thus, the month that occasionally had to be added to the calendar was never introduced in a sabbatical year, but usually in the year immediately preceding it. On these occasions, astronomical calculations were disregarded. The reason was economic: Had the seventh year been thirteen months long, the period during which the land had to lie fallow would have been lengthened. This was to be avoided. But it was useful to lengthen the preceding year by one month, thereby allowing the farmers additional time to complete all their work in the fields.[30]

The Talmud relates that R. Yanai said to the people: "Go and sow in the seventh year because of the *arnona*," that is, the land tax that had to be paid to the non-Jewish authorities.[31] Had they not worked their land, they would not have been able to pay the tax. The commentaries endeavor to explain how R. Yanai could tell the people to violate a biblical commandment. Rashi maintains that R. Yanai must have believed that since the dispersion of the Jewish people, the sabbatical year had lost its status as a biblical commandment and was now only a rabbinical institution—a matter about which there is disagreement among the mishnaic teachers. Because of that, in times of need, it could be disregarded. The Tosafot, on the other hand, maintain that even if one is of the opinion that the sabbatical year still has biblical authority behind it, R. Yanai's message to the people may nevertheless be justified, for had they been unable to pay the required tax, they would have been imprisoned and might



have been killed. It is, however, rather difficult to accept this explanation. The problem was not that of an individual but that of an entire community, and it is unlikely that they would all have been thrown into prison. More likely they would have been fined; perhaps part of their land would have been taken from them. All this might have created serious economic problems for the people. There is no proof at all of what R. Yanai's view was regarding the nature of the seventh-year observance. It need not surprise us that because of the grave economic consequences, he allowed the people to work their land in the sabbatical year, even if the commandment had retained its biblical authority over the course of time.

A number of other halachic arrangements were, in fact, amendments of biblical laws in response to economic needs. According to biblical law, the imposition of an oath on a litigant can only free him from payment. On the strength of an oath one can never gain payment for a claim. However, a modification of the rule was introduced in the case of a wage dispute. If a laborer claims that he did not receive his wages, and his claim is denied by the employer, in the absence of proof on either side, the laborer swears and receives his wages. The decision is based on two reasons. First, the wages are essential for the laborer's livelihood. Second, the laborer's claim is less likely to be mistaken than that of his employer. The laborer has only one employer, one wage to look forward to, whereas the employer often has many workers and is more occupied with his affairs than with each of his workers.[32]

Another modification of a rule concerning an oath is the following. If a person against whom a claim is made for payment of a loan admits to part of the claim, he has to take an oath that

he does not owe the part that he denies, even when there is no evidence against him. But once again, an exception was allowed. What if someone finds a lost object and returns it to his owner, and the owner then claims that only a part of it was returned, and he demands full return? The finder need not take an oath to affirm his statement, even if he does admit to part of the claim against him. For if an oath were placed on the finder, people would not return lost objects.[33]

Let two more examples show how halachic innovations were introduced out of concern for the effective functioning of the "market." One example is actually called a "market regulation" (*takanat hashuk*).

> If one recognizes his implements or books in the possession of another, and it is known that they have been stolen from him, the one who bought the objects declares by oath how much he paid for them, and against payment the original owner receives his property back.[34]

It is, of course, assumed that the buyer was unaware that he had bought stolen goods. The goods were always the legal property of their original owner. Nevertheless, he has to buy them back. This was a regulation in order to protect the normal functioning of business transactions. As Rashi put it: "Since the buyer bought in the open market [without knowing that the goods were stolen], if the original owner would not return the price he paid, no one would dare buy anything for fear that it was stolen. Thus, all business would come to a standstill."[35]

A regulation regarding collateral was also formulated with a similar view to safeguarding the normal functioning of credit



arrangements. It states that any loan issued on the basis of a promissory note automatically becomes a mortgage on the landed property of the borrower. In case of nonpayment, the creditor can collect the debt from the mortgaged property. This is true even if the property was sold to someone else in the interim; the buyer then has a claim against the original owner. However, if the loan was arranged orally, it does not become a mortgage on the borrower's property. In case of nonpayment, the creditor may not collect from any landed property that the borrower might have sold in the meantime.

This, however, is not the biblical law. There are two opinions recorded in the Talmud as to what the original biblical rule was in these matters. Ula is of the opinion that according to the Torah, all loans, whether in writing or by oral agreement, became mortgages on immobilia. Such a regulation, however, was commercially infeasible, for under the circumstances prevailing in talmudic times, only loans against an IOU, signed by two witnesses, became public knowledge. Therefore, anyone who bought any of the borrower's property would know of the existence of the loan and would be able to protect himself against the risk he was taking. But loans by oral agreement were completely private affairs, publicly unknown. However, since they, too, would mortgage property, a potential buyer would never know what chances he was taking. The result would destroy the realty market. For this reason, the halacha determined that only loans that became public knowledge, according to the circumstances of the times, became mortgages, but not the private ones granted by oral agreement only. Rabba, on the other hand, maintains that biblical law does not recognize that any kind of loan becomes a mortgage. But in that case, a creditor

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has no security for the money he lends. That would mean that people in need of credit would not be able to get it. This would greatly disorganize the economy. It was, therefore, decided that the creditor could receive a guarantee of repayment by insisting that he be given a duly executed promissory note, by which all landed property of the borrower became mortgaged to the creditor up to the amount of the loan.[36]

These halachic rulings to safeguard the efficient functioning of the economy correspond to a principle, derived from a biblical text, that "the Torah treats the money of Israel protectively." The talmudic rabbi Rava often made use of this principle in order to reach halachic decisions. In at least two cases he applied it as one of the arguments to rule in a question of food forbidden or permitted to be eaten.[37] In a similar discussion, R. Akiva called to his interlocutor: "How long will you waste the money of Israel?"[38] In a number of rulings, the course of leniency was chosen out of consideration of the financial damage that might accrue from an opposing view.[39]

All these rulings based on feasibility are not to be separated from moral considerations. The idea found its classical expression in a comment by R. Shimon concerning the festivals. As he explained it, the festivals of Passover and Succot last seven and eight days, respectively, but the festival of Shavuot lasts only one day. Why? In the spring, when Passover falls, as well as around Succot, after the harvest, there is little work in the fields; therefore, let them celebrate for eight days. But Shavuot falls in the busiest work season of the year. One day of festival will suffice. According to R. Shimon, in a spirit similar to that of the Torah's concern for the property of the people, this too teaches us that the Torah is protective toward Israel.[40] Concern about





the material welfare of society is not materialism, but an expression of moral responsibility for the life of the people.

To illustrate the point further, it is worth concluding with an example from the Mishna. According to the Bible, a woman who gave birth brought a sacrifice to the Temple after the period of purification. If she could afford it, the sacrifice was a lamb "as a burnt offering" and a turtledove or pigeon "as a sin offering"; if she was poor, she brought another dove or pigeon in place of the lamb.[41] Now, if the woman failed to do this and went through a number of other births, she had to make offerings for each birth. For instance, after five births, she had to bring five such sacrifices. However, she did not have to bring them all at once. After the first sacrifice, she would be considered ritually pure again (meaning that she was permitted to partake of the meat of animals offered in the Temple). Now, apparently women often neglected to offer the prescribed sacrifice after every birth, so their sacrificial obligations accumulated. Women owed three, four, five, or more such sacrifices. In accordance with the law of supply and demand, the price of pigeons usually went up. As the Mishna tells it:

> It happened once that the price for two such pigeons went up to a golden dinar. R. Shimon ben Gamliel, the head of the Sanhedrin, then took an oath and said: "I shall not go to bed tonight until the price goes down to a silver dinar." He went into the study house and taught: "A woman, even if she gives birth five times, brings only one sacrifice; the rest are no obligation upon her." Soon after, the price of the pigeons came down to half a silver dinar.[42]

Some of the commentaries are aghast. How could R. Shimon rule against the law? Rashi explains that even though R. Shimon was treating a biblical commandment lightly, it was an occasion "to act for the sake of God."[43] For if the prices did not go down, women would not bring even one sacrifice but would, nevertheless, eat of sacrificial meals in their ritual impurity. This was, indeed, one of these cases when one rules against the law for the sake of the law. But even Rashi, the great classical commentator on the plain meaning of all biblical and talmudic texts, was hesitant to accept the ruling of R. Shimon, as one may see from the fact that he had to give it a ritual justification—a reason for which there is not the slightest suggestion in the text. We are inclined to follow the view of Maimonides, who cites R. Shimon's declaration without any further comment.[44] In this case, we have before us a perfect combination of economic and moral feasibility. Preventing the exploitation of the poor was indeed acting for the sake of God.

## THE PRIORITY OF THE ETHICAL

We have seen how interrelated pragmatic and moral considerations are in the halacha. In this section we will address the power of the ethical in the halacha. In his *Kuzari*, Judah Halevi writes: "God forbid that anything in the Torah should contradict reason." The rabbis in the Talmud were guided by the insight: God forbid that any application of the Torah to life should contradict the principles of ethics. What are those principles? They are Torah principles, such as: "And you shall do that which is right



and good in the sight of the Eternal";[45] "Its ways are ways of pleasantness, and all its paths are peace" (according to talmudic teaching, this refers to the ways and the paths of the Torah);[46] or "That you may walk in the way of good people, and guard the paths of the righteous."[47]

In summation of such principles, the Talmud would say: "The Torah in its entirety exists for the sake of the ways of peace."[48] Quite clearly, these principles, and such an understanding of the meaning of the Torah, give priority to the ethical demand. In what follows I hope to show how this priority influences biblical interpretation, how it reaches out beyond strict legality, and how it even renders explicit biblical commandments inapplicable.

The festival of Succot is celebrated with the combination of the "Four Species." Two among them are the palm branch (*lulav*) and the myrtle boughs (*hadasim*). The Talmud, however, wishes to know why only the palm, and why only the myrtle? There are two other plants that would meet the exact meaning of the original Hebrew text of the Bible. In place of the palm, one could use the plant called *kufra*, and in place of the myrtle, another called *hirduf*. Answers Abaye: Neither of these plants could be meant, for it is written: "Its ways are ways of pleasantness." Explains Rashi: "*Kufra* is a thorny plant. Its many thorns would hurt the hands." The same applies to the *hirduf*. The ends of its leaves are sharp as needles; it would be difficult to handle it without being stuck by them. The Torah could not have meant those two plants, for it would not be in keeping with "ways of pleasantness." For the exclusion of the *hirduf*, Rava has another

explanation: "The Bible could not have meant that plant, for it is written: 'You shall love truth and peace.'" Explains Rashi: "The *hirduf* is a plant from whose sap a lethal poison is distilled. The use to which this plant is put contradicts the idea of 'truth and peace.'"[49]

On the Sabbath one must not carry any kind of burden in a public domain. Thus the Mishna teaches: "A man should not walk out with a sword, bow and arrow, shield, spear, or lance." R. Eliezer disagreed. He was of the opinion that those weapons were an ornament for a man, and one may carry ornaments attached to the body on the Sabbath. The halacha was decided according to the other rabbis, who retorted to R. Eliezer: "Those weapons are nothing but a shame to man, for did not Isaiah prophesy that a time would come that 'the nations shall beat their swords into plowshares and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war anymore'?"[50] If that is the ultimate ideal of universal history, the rabbis ask, how may weapons have any ornamental significance?

However, much more significant is the dominance of these principles in interpersonal relationships. Once again we refer to the laws governing the levirate marriage. It was the rule that a widow who had given birth to a child would marry outside the family of her former husband. If the child should die after her remarriage, even though there were no other offspring of her late husband, she need not go through the *halitza* ceremony in order to be released from her levirate bonds. From the point of view of talmudic reasoning, this was not at all obvious. A rule of talmudic deduction[51] is employed to argue that really the woman ought to perform *halitza*. But all logical reasoning is pushed



aside by the statement that such could not be a law of the Torah, for it is said of the Torah: "Its ways are ways of pleasantness." In other words, it is inconceivable that the Torah would in this case require *halitza*. The woman is already married. To subject her to such a ceremony would be humiliating for her vis-à-vis her present husband.[52]

The reference to the overruling ethical principle is not always explicit in halachic decisions. It is, however, obvious that it plays a decisive role in the final conclusion. People ignorant of Judaism quote "an eye for an eye, a tooth for a tooth" as a principle of Judaic justice. Apart from the fact that the translation itself is questionable, the halachic interpretation as early as the mishnaic period (ending around 200 C.E.) concluded that the Bible was referring to monetary compensation. The effort made to justify this interpretation is most impressive. Almost all the arguments are of an ethical nature. For instance, if you take "an eye for an eye" literally, then the law itself becomes inapplicable: Surely, "an eye for an eye," but not an eye for an eye and a life. But occasionally, by taking a man's eye one may be taking much more than that, depending on the success of the operation or on the state of health of the person involved; it may even cost him his life. Therefore, the Bible can mean only monetary compensation for an eye or a tooth. Whatever the logical validity of the arguments, the halachic decision was not literally an eye for an eye, but payment of damages for the eye lost.[53]

A similar reinterpretation of the plain, literal meaning of the biblical text is given in another connection. The Bible says that if an ox was "wont to gore in the past, and warning has been given to its owner, and he has not kept it in, but it has killed a man or a woman; the ox shall be stoned and its owner also shall be

put to death."[54] Once again the halachic teachers, with the help of other relevant biblical passages, ruled that monetary damages to be paid to the family were meant, for "one puts a person to death if he himself kills, but not if his ox kills."[55] It is quite obvious that independently of all adduced "corroborative" biblical material, the halachic conscience could not accept the idea that a man, though not guiltless (he had after all been warned about the wildness of his animal), should be put to death for the goring of his ox.

The halachic humanization of the textual regulations governing the punishment of flogging, prescribed for certain transgressions, is illuminating. First of all, it was decided that flogging was to be carried out with a strap made from the skin of a calf, which is much softer than one made from the skin of a full-grown animal. Second, it was shown that the forty stripes that the Bible prescribes were really only thirty-nine. This is important, because it was further shown that the flogging was not to be administered to one part of the body, but had to be divided into three parts: one part to the front of the body, and two parts to be divided between each of the shoulders.

The consequences of this tripartite division could be rather significant. Prior to punishment, the condemned person would be examined in order to decide how many lashes his body could endure without harming his health. If the experts determined that he could endure no more than twenty, he would be given only eighteen (because twenty is not divisible into three parts), to be distributed equally among three sections of the body. The officers who administered the punishment had to be physically weak but of keen intelligence. They needed to be able to discern, as they proceeded, whether the ordered number of lashes was too much for the health of the transgressor.





Finally, there was also a law that if the original judgment was for thirty-nine stripes, but in the course of flogging it was noticed that the person could not tolerate more than twenty, the flogging had to stop. On the other hand, if he was condemned to twenty lashes, and as the punishment was given it became evident that he could very well endure the full measure of thirty-nine, the punishment had to stop nonetheless in accordance with the original estimate. Rashi explains: "Once a person has received a flogging, even if not the prescribed number of lashes, he has been humiliated for his transgression. That is enough." The idea has its basis in a strange biblical formulation that states, at the end of the description of the punishment, "and your brother shall be dishonored before your eyes."[56] The word "dishonored" in Hebrew (*nikleh*) strongly suggests another word that has the same letters and with a slight change in the order of the letters means "be beaten" (*nilkeh*). The rabbis took the hint and interpreted: "Once he has been humiliated [for his transgression], he again becomes your brother."[57]

All the above rulings are somehow based on textual interpretation. But quite clearly, it is the halachic conscience that creates the interpretation.

The halacha was not very comfortable with the idea of corporal punishment. There was an element of insult in it to the dignity of man. And the concern for respect for the individual (*kevod habriot*) is an authentic halachic principle. Its corrective implication in matters of biblical law is derived from the Bible itself. The Torah orders that if an animal, even one belonging to one's enemy, collapses under the weight of its burden, one is obligated

to help the owner lift the goods from its back. By the midrashic method of interpretation, it is concluded that an old man or a scholar for whom it is not befitting to engage in such menial efforts is exempted from this obligation. The exemption is then formulated as a halachic principle: "Great is the importance of a person's honor, for it overrides a biblical commandment."[58]

The same principle is applied in an entirely different case. According to biblical law, a member of the priestly caste, for reasons of ritual purity, must not have any contact with a dead body (except that of a close relative). However, when a corpse is found and there is no one to attend to its burial other than a priest, he is obligated to bury the dead. The reason is the same: "Great is the importance of a person's honor, for it overrides a biblical commandment." Only this time, the honor is the respect due to the dead. Nonetheless, the dignity of man is being protected. In the Babylonian Talmud, the general validity of the overriding power of this principle is limited to monetary regulations. (The case of the *met mitzva*, the person who dies and has no one to take care of his burial, is considered an exception.) In all other matters, only rabbinical laws may be superseded by consideration for respect for the individual. The Jerusalem Talmud makes much greater use of this principle. Occasionally, it overrides there even biblical commandments in non-monetary matters.[59]

In cases where there was no question that the written word might impinge on the human dignity of a person, the halacha was mindful not to allow practices that would shame the ignorant and, especially, the poor. The Bible prescribes the reading of an appropriate text at the annual offering of the first fruits at the Temple in Jerusalem. Originally, those who could read would read the verses themselves. Someone else would read on behalf





of those who could not. However, this practice shamed the illiterate, and they refused to come. Thus, a new regulation was introduced: An official of the Temple had to read the prescribed text on behalf of everyone without distinction.[60]

A more significant example: During the Temple period, a great many laws of ritual purity were in effect. At the same time, it was known that an *am ha'aretz*, a Jew ignorant of the Torah (a rather incomplete description of the type, but sufficient for our purpose), was not too careful in observing the laws of purity. Therefore, a scholarly observant Jew would not eat food or drink wine touched by an *am ha'aretz*. However, an exception was made during the three annual pilgrimage festivals. During the festival period, all Jews were treated as if they were scholars. This meant that the foods and wines in the stores, which were, of course, handled by the many pilgrims, including numerous ignorant ones, were all deemed "pure," permissible to be used by a scholar. Were the reasons for the exemption economic? Rashi explains that discrimination against the ignorant on those occasions would have been a public insult to them—meaning that one would have had to declare publicly to beware of all food touched by an *am ha'aretz*, or, perhaps, special stores for them would have had to be established.[61]

A number of regulations regarding customs of mourning and burial were guided by considerations of respect for the feelings of the poor. The rabbis taught:

> Originally, the food [traditionally brought to the house of the mourner after the funeral] was brought to the rich in silver and gold baskets, and to the poor in baskets made of stripped willow twigs. The poor were ashamed. Because of the honor of the poor, it was ordered that one would have

to come to all homes with twig baskets. Originally, in the houses of the rich the drinks would be offered to the mourners in costly white glass; for the poor, they would use cheap, colored glass. The poor were ashamed. Because of the honor of the poor, it was ordered that in all homes only colored glass was to be used.

Originally, the faces of the dead of the rich would be uncovered [for the funeral]. The faces of the poor would be covered, however, because they often showed the signs of starvation. The poor were ashamed. Because of the honor of the poor, it was ordered that at all funerals the face of the dead was to be covered. Originally, the dead of the rich would be carried to their burial on couches; but of the poor in cheap, wooden boxes. The poor were ashamed. Because of the honor of the poor, it was ordered that all dead were to be carried in boxes.

Originally, the apparel in which the dead were clothed for the funeral was so expensive that the poor could not afford it, so that [it was said] it was harder for them to raise the money than even to bear their sorrow for the dead. They would leave the body and run away. Until R. Gamliel, the head of the Sanhedrin, ordered "irreverent" treatment of himself, that he be carried out in a cheap, cotton shroud. After that, the people followed his example, and they too used cheap shrouds made from cotton.[62]

On happy occasions, too, social behavior was guided by sensitivity toward the poor. It is told that there were no holidays in Israel like the fifteenth of Av and Yom Kippur. It seems that on those two days, a popular festival took place that enabled the daughters of Israel to go out and look for suitable husbands in



all modesty. The happy mood of the festival was due to the fact that girls did not go out in fashionable clothes according to the financial status of the family. They all had to dress in borrowed, white garments, including the daughters of the king. Everyone had to borrow from someone lower on the social and financial scale than oneself. This was the rule, in order "not to embarrass those who did not have any" nice clothing.[63]

Often, in the area of interpersonal relationships, corrective innovation had to be employed with respect to the law. This correction was necessary because the law is always general. Its very generality, however, is at times unable to do justice to the particular or specific. For example, certain laws determine the formal requirements for the legal transfer of property. One form of acquisition is by way of one's yard: Any object placed in a yard with the intention of transferring it into the possession of the yard's owner is legally acquired. This form of acquisition was extended to include the case of any ownerless object or valuable that lies in (certain) areas within a radius of four cubits from where one is standing. The regulation was introduced that whatever is found within that space becomes the property of the person standing there. This was done in order to eliminate quarrels between people. If a more technical form of taking possession were required in such cases, it would very often lead to quarrels, for instance. If one person was bending down to take hold of an object lying in front of him, and someone else anticipated him by a quick movement. In order to reduce such cases to a minimum, the rabbinical regulation (*takana*) was introduced.[64]

Other innovations were instituted in order to prevent hatred between people. We shall cite only one example among many. According to R. Yehuda Hanasi, the editor of the authoritative version of the Mishna, a person could legally betroth a married woman on the condition that she become his wife after the death of her husband. Similarly, since according to biblical law (even in times of polygamy) one was not permitted to marry his wife's sister, he could conclude a marriage contract with a woman on the condition that she become his wife after the death of her sister, the present wife. In general, such agreements had, according to R. Yehuda Hanasi, full legal force. According to the law, therefore, in case of the death of the sister, the marriage thus concluded would take effect automatically. Yet the rabbis ruled that in these cases the general law did not apply. Marriage arrangements of this nature would lead to enmity between husband and wife, between sister and sister, between one man and another. This consideration invalidated a marriage contract that was legally binding according to biblical law.[65]

A great many regulations were introduced because of the "ways of peace." Some of them deal with relationships to non-Jews. "The rabbis taught: Because of the ways of peace, one is obligated to support the Gentile poor together with the Jewish poor; to visit the Gentile sick as one visits the Jewish sick; to bury the non-Jewish dead as one buries the dead among Jews." In another passage it was added that one should comfort Gentile mourners, as demanded by the "ways of peace."

Another group of regulations instituted because of the "ways of peace" are actual deviations from the generality of the law. Animals, birds, and fish that are caught in traps and nets do not become legally acquired property as long as they remain in the



traps or nets. One can acquire property by placing it in any container, but neither a trap nor a net is considered a receptacle that holds objects as a container. Nevertheless, it was ruled that for a stranger to remove the catch from them would be equal to robbery. A similar case: Children and the mentally ill are not legally authorized to acquire property. If they found a lost object, it would not pass into their possession, and anyone could come and take it away from them. However, it was ruled that to do so would be robbery. In these examples, the rabbis went against the law or beyond it because of the importance of the "ways of peace." In fact, it was in the context of all such regulations that the statement was made that the entire Torah is "for the sake of the ways of peace."[66]

In cases that are not directly related to social peace, the halacha urges the Jew to forgo certain advantages that he might gain from a strict adherence to the law. In interpersonal relationships, this is known as "the deed that they should do." Leniency and generosity toward fellow human beings are urged upon the Jew by the rabbinical interpretation of certain passages in the Torah.

Earlier in this chapter, we saw that out of respect for their honored status, old men and scholars are not obligated to help raise an animal that has collapsed under its burden. Yet at the same time, these respected people are urged not to make use of the exception and to act in accordance with the law that is generally binding for all, but to remain "within the line of the law" (*lifnim mishurat hadin*), even though legally they could go further. This regulation applies to all situations in which, because of special circumstances, one is freed from obligations toward another person that normally would be binding. Thus, the same

Torah that grants the exemption also urges the Jew not to take advantage of it.[67]

In other cases, the halacha not only urges a person not to insist on rights which are his by law, but obligates him to forgo them. According to the law, a person may sell his property to whomever he wishes, and so anyone has the right to buy any property that is for sale. Yet this right was limited by the "law of bordering property" (*dina devar metzra*). When someone wishes to sell a tract of land, the owner of the property bordering on that land has the prerogative of buying it. If it was not offered to him first but was sold to someone else, the buyer has to return the land to the neighbor, who reimburses the buyer according to the price he paid for it. The reason given is that the Torah says: "And you shall do that which is right and good in the sight of the Eternal."[68] To appreciate the significance of what we have called creative interpretation, it is worth recalling the context in which these words occur:

> You shall diligently keep the commandments of the Eternal your God, and the testimonies and statutes which he has commanded you. And you shall do that which is right and good in the sight of the Eternal...[69]

The teachers of the halacha did not read these verses as having only one meaning: Do the right and the good by keeping my commandments. The words "you shall do that which is right and good" were understood as an additional commandment. In addition to observing the laws of the Torah, also do that which is right and good. This could mean that it is sometimes necessary to go beyond the law, which in itself is right and good, in order to do what is right and good.





A case that caused some confusion among the talmudic commentators in these matters is the following. Some workers hired by Rabba bar Bar Hana dropped a barrel of wine and caused him considerable damage. According to the laws of damages, the workers were responsible and obligated to pay. Rabba bar Bar Hana took away some of their clothing, either to ensure payment or in lieu of it. They turned to Rav for help. He ordered that their clothes be returned to them. Rabba bar Bar Hana asked: "Is this the law?" Rav answered: "Yes, for it is written: 'That you may walk in the way of good people.'" He returned their clothes but did not pay their wages. Once again they turned to Rav, saying: "We are poor people. We have toiled all day. We are hungry and have nothing"—upon which Rav ordered Rabba bar Bar Hana to pay their wages. Once again he asked: "Is this the law?" and was answered: "Yes, for it is written [in the second part of the same verse]: 'And guard the paths of the righteous.'"[70]

The commentators struggle with the question of whether this was indeed the law or only a form of moral admonishment addressed by Rav to Rabba bar Bar Hana. Rashi and others accept the latter opinion; but there are also halachic authorities who maintain that Rav gave a legally enforceable ruling. A comparison with a similar story in the Jerusalem Talmud may help us to appreciate better the significance of the story as told in the Babylonian one. There we read that R. Nehemia the potter handed some of his pots to a worker, who then broke them; R. Nehemia took the man's clothing as a deposit against payment. The man took the case to R. Yose bar Hanina. He advised him to go back to R. Nehemia and tell him: "That you may walk in the way of good people." When R. Nehemia heard this,

he gave back the clothes. But he did not pay the man's wages. So R. Yose told him: "Go back and quote him the second half of the verse: 'And guard the paths of the righteous.'" When R. Nehemia heard this, he paid the man his wages.[71]

This is clearly not the same case history told differently in the Babylonian Talmud. Such occurrences obviously happened quite often. The differences in style between the two narratives are considerable. R. Yose does not give instruction directly to R. Nehemia but advises the laborer how to appeal to him. R. Nehemia could have refused to be moved by the plea. Not so in the story in the Babylonian Talmud. There, Rav does not give advice; he pronounces law. There is a direct encounter between himself and the employer, upon whose challenge Rav insists: Yes, this is the law. Quite clearly, there is a difference here between the Jerusalem view and the Babylonian view. According to the former, to "walk in the way of good people and guard the paths of the righteous" is a moral injunction that contradicts the law of damages and is not enforceable. The Babylonian view, however, is that with all due respect to the law of damages, there are cases when it is overruled by a superior ethical principle that, in those cases, becomes itself the overriding law.

In the foregoing example, the law in its generality was sustained, and only its application in exceptional cases was limited. Occasionally, however, the ethical conscience of halacha weakened the very purpose of the law and even declared it to be inoperative. One of these laws concerns the status of the "bastard" (*mamzer*). According to the Bible, "A bastard shall not enter into the congregation of the Eternal."[72] This means that a bastard can marry





only another bastard. He is not permitted into the family community of the Jewish people. It is important to understand that the bastard referred to in the Bible is not the illegitimate child of Western civilization. A child born to an unmarried woman is, according to the halacha, fully legitimate. Rather, a bastard (*mamzer*) is the offspring of a biblically forbidden union, such as adultery or incest.

The law intended to discourage such unions, to cause the parties to think of the very severe consequences for the child born of them. But those very consequences for the innocent child caused the rabbis a great deal of ethical discomfort. They expressed their moral reservations in the form of a midrashic interpretation of a verse in Ecclesiastes. This is the biblical text:

> So I returned and considered all the oppressions that are done under the sun. And behold the tears of the oppressed, and they had no comforter. And on the side of their oppressors there was power, but they had no comforter.[73]

The midrash asks who is meant by "the oppressed." All kinds of answers are given. In the end we hear the interpretation of Daniel the tailor. He maintains that the author has the bastards in mind.

> "Behold the tears of the oppressed." Their fathers sinned, but what has it to do with these insulted ones? The father of this one went to a woman forbidden to him, but how did the child sin, and how does it concern him? They "had no comforter," but "on the side of their oppressors there was power." Those are the hands of the Great Sanhedrin, which move against them with the authority of the Torah

> and remove them from the community, because it is written: "A bastard shall not enter into the congregation of the Eternal." "And they had no comforter." Therefore, says the Holy One: "It is upon me to comfort them." In this world there are those among them who are unworthy; but regarding the messianic era, Zechariah prophesied: "Behold I see them all like pure gold"; for this is symbolized by his vision: "I saw, and behold, it was an oil lamp of pure gold."[74]

With greater simplicity, it is said in the Talmud in the name of R. Yose, whose opinion is accepted, that "in the days of the Messiah, bastards... will be pure."[75]

One follows with astonishment the boldness of these rabbis, who certainly believed that the law of the Torah was divine and yet criticized it in the name of God, as it were. In their words, God himself realizes that this law has to be changed. The "bastards" too will be declared pure. God himself will comfort them. We ought to see, however, that the criticism is also based on the Bible, for the Bible deplores the injustice done to the oppressed, whose tears are disregarded, and who are surrendered into the hands of the established authorities. On the other hand, what is the Great Sanhedrin to do? They function by the power entrusted to them by the Torah.

This is one of those situations in which the halacha is called in to function. There is a law whose purpose is a positive one; namely, to protect the moral health of the family. But there is also a biblical view of the seriousness of the injustice done to innocent people in general. And in this specific case innocent people suffer because of the valid concern and care for the





ethical foundations of the community. It is as if the happiness of the bastard were sacrificed to a greater good. It was unquestionably an injustice done to an innocent human being.

The halachic way out of the dilemma was a very circumspect application of the law of the illegitimate child. First, there is the ruling of R. Yitzhak that in the case of a family in which a bastard has "submerged" (that is, his status as such is not publicly known), we let him be submerged—one does not make investigations to discover who is a bastard and who is not (as Rashi mentions, in any case in the end all families will be declared pure). On the basis of this ruling, R. Yohanan, one of the leading sages of the Jerusalem Talmud (often quoted also in the Babylonian one), took an oath that he could easily prove the presence of bastards in some families in the land of Israel. "But," said he, "what can I do? Some of the great men of this generation are among them." Again, the same situation emerges: The application of the law concerning bastards could not be the only consideration. The law was not applied because of weightier considerations. Finally, while the law giving expression to an idea that was in itself meaningful was acknowledged, it was also decided that it was forbidden for anyone to reveal that someone is an illegitimate child.[76]

Much more far-reaching were the results of the halachic conscience in some other conflicts with the written law. One example was the case of the "stubborn and rebellious son" who was "a glutton and a drunkard" and did not listen to the voice of his parents. If his father and mother together agreed that there was no other recourse for them but to hand him over to the "elders of the city," then, says the Bible, he should be put to death. "So shall you put away the evil from your midst; and all Israel shall hear and fear."[77]

One may judge such a law rather cruel. From the beginning it required justification. It was said that the "stubborn and rebellious son" was put to death because of his threatening end. The Torah understood where his ways were leading him. He would consume the property of his father. Finally, not finding the means to satisfy his addictions, he would become a highway robber. Said the Torah: Let him die while he is still innocent, rather than later, when he is guilty.

The regulations attached to the law by the teachers of the halacha were so numerous and so meticulous that even if one had followed the biblical injunction, in practice the law would have been implemented only very seldom. In fact, R. Shimon, one of the halachic authorities of the mishnaic period, declared that a case of the "stubborn and rebellious son" never happened and would never happen. The reason he gave had nothing to do with halacha. For "because this son ate meat equal to the value of a *tartemor* [an ancient Greek coin] and drank half a *log* [a large liquid measure] of fine Italian wine, his parents would hand him over to be stoned to death?" Such things do not happen. The law may say what it pleases; it has no application in human experience.

Another mishnaic teacher, R. Yehuda, went even further. He "interpreted" the biblical text in such a manner as to show that if you followed its literal meaning, it would hardly be possible to make any use of this law. According to the text, the parents have to appear before the elders and declare: "This our son is stubborn and rebellious; he does not hearken to our voice; he is a glutton and a drunkard." Commented R. Yehuda:

> "Does not hearken to our voice," says the Bible. "Voice" is in the singular. Now, a father and mother may agree on this matter and speak as if with one voice, but in actual fact they each have a voice of their own. But the Bible says, "our voice"; it can mean only that their voices are alike also in the physical sense. But if their voices must be indistinguishable, then it means that the parents also have to be alike physically in appearance and height. All these conditions, of course, can never be met. Therefore, it never happened, nor will it ever happen.



And now follows the most surprising conclusion of this entire discussion. "If so," R. Yehuda asks, "why was it written?" The answer is: "To interpret it [showing that it was not meant to be implemented] and to receive divine reward for its study."[78] It is as if it were a test of the intelligence and the conscience of the student and the teacher.

A similar "interpretation" was given to another law of the Torah. The Bible decreed that if an entire city was led astray to idol worship by some of its inhabitants, it was to be destroyed, including its inhabitants and all their property. The law expressed Judaism's desperate struggle against polytheism. Faith in the one God was the *raison d'être* of Jewish existence. Without monotheism there could be no Jewish people. Yet to destroy an entire city was not an easy matter. Thus we hear that this law was never enacted. "The case of the 'city led astray'—it never was, nor will it ever be." How so? The answer given is that the Bible commands: "And you shall gather all its spoil into its broad place, and shall burn the city with fire...."[79] Now it is impossible that at least one of the doorposts in the condemned city should not have a *mezuza* (a parchment scroll containing verses of the Bible) attached to it. But since it contains the name of God, a *mezuza*

must not be burned. The commandment says: "And you shall gather *all* its spoil" and burn it. This law cannot be fulfilled. Part of the "spoil" would be *mezuzot*, and they cannot be burned. Therefore, this commandment was given "in order to be 'interpreted' and to be rewarded" for an interpretation that shows that the law was never meant to be applied.[80]

One might say that in all these cases—the "bastard," the "stubborn and rebellious son," and the "city led astray"—the law intends mainly to impress the importance of an idea upon the consciousness of the Jewish people. There are, however, many other examples of rulings that are meant either to limit or even to frustrate completely the implementation of the law in actual life situations.

The halachic authorities were extremely hesitant about imposing the death penalty, even though it is provided for in biblical law. Thus, the Mishna rules: "A Sanhedrin that condemned even just one person to death in seven years was called a killer court." This tradition was corrected by a mishnaic teacher to read, "once in seventy years." Finally we hear the words of R. Yishmael and R. Akiva, who said: "Had we been there [i.e., had we been members of the Sanhedrin], no one would ever have been put to death."[81] (They lived after the legislative authority of the Sanhedrin had already lapsed.) The Talmud explains that they would have found reasons to show why the death penalty could not be imposed. Once again we find a tension between the written law and the living conscience. The law is not to be abolished. It is the law of the Torah. And, indeed, there are crimes and sins for which one may well deserve the death penalty. But whether to put a human being to death by human hands is another matter. When R. Yishmael and R. Akiva declared that they would not



have done it, their decision was also based on the teachings of the Torah. For halachic reasons, based on the Torah, this biblical law, valid in itself, would not be put into practice.

## THE EXAMPLE OF MARRIAGE AND DIVORCE LAW

It is doubtful whether the halachic conscience is anywhere more strongly in evidence than in the area of the marriage and divorce laws. In these matters we find a full understanding of the legal weakness of the status of the woman. As is the way of the halacha, great efforts are made to retain the meaning of the legal principle and yet to find solutions to the daily problems arising from the confrontation between the written word and the moral demands of the concrete situation.

Some of the halachic rulings deal with the laws of marriage (*kidushin*); most of them deal with those of divorce (*gitin*). According to the law, a man may enter into marriage by authorizing another person to betroth a woman on his behalf by the prescribed ceremony. But Rav, the most respected halachic authority in Babylon, forbade marrying a woman by proxy. His reason was that when the man meets his wife, he might find her disagreeable. But the Torah commanded: "You shall love your neighbor as yourself."[82] One who marries by proxy exposes himself to a situation in which he will not be able to fulfill the commandment of loving his wife as himself.[83] A similar ruling of Rav (or, according to another opinion, of R. Elazar) concerned the marriage of minors. For social reasons, in conditions that no longer prevail, the Bible authorized a father to marry off

a daughter who is a minor to whomever he pleased. According to the later ruling, the practice of this law was forbidden. The halachic authorities ruled that a father may marry off a minor only if she explicitly declares that she is willing to marry the person her father chooses for her.[84]

Neither were the rabbis satisfied with the legal situation of the married woman. Biblical law mentions a threefold obligation of the husband toward his wife. He must provide her with food and clothing and must respect her conjugal rights. In the rabbis' view, this was inadequate. Thus, they introduced the formal marriage contract, or *ketuba*, in which the mutual obligations of the marriage partners are set out, among them a sum of money that the husband has to pay his wife should he divorce her. With the introduction of the marriage contract, all kinds of conditions were routinely included in writing: For instance, the husband's obligation to pay for medical treatment in case of the wife's illness, to pay ransom should she be kidnapped, to pay for all burial expenses, and to arrange for her to be maintained by his estate as long as she remained a widow.[85] All these were revolutionary innovations introduced no later than the mishnaic period.

The most significant aspect of the introduction of the marriage contract was that it established the halachic possibility of including all kinds of other conditions in the marriage agreed upon by the parties. The payment to the wife in case of divorce, provided for in the set formula of the contract, could be increased as a condition of the marriage. In times and places of polygamous practices, the bride could demand that the contract contain the condition that the groom obligate himself not to take another wife. It could also be clearly stated what the consequences would





be if the husband broke the agreement. The marriage contract was meant to strengthen the status of the woman and to see to it that it should not be easy for the husband to divorce her. R. Meir declared that it was forbidden to marry without a contract. The conditions introduced by the halachic authorities as the minimal norm for every marriage were assumed to be automatically implied in every marriage contract and were binding upon both partners even if they were not explicitly set out in the *ketuba*.[86]

There is at least one case in which the halacha denies a husband his right to divorce his wife: When the woman is insane. This was a complete departure from biblical law. Legally a husband may divorce his insane wife as long as she understands the meaning of the divorce. This was interpreted to mean that after she is handed the writ of divorce, she does not return to the house of her husband. Now, it may occur that such a woman is capable of understanding what a divorce is but is completely incompetent to look after herself. In talmudic language, she can keep her writ but cannot keep herself. The rabbis ruled that such a woman must not be divorced, that she may not become treated as one abandoned. She remains a married woman, and her husband must take care of her.[87]

One area in which the woman was most severely disabled was that of divorce. There she was completely in the power of her husband. Whereas the husband could divorce his wife at any time at will, she could not divorce him. The matter was further complicated by the fact that a writ of divorce, or *get*, given by the husband under duress was invalid. Often this law is morally

intolerable. The Mishna suggests a way out: "These are the husbands whom we compel to divorce their wives: A person with severe boils, one suffering from a bad odor from the nose, the worker whose task it is to collect the excrement of dogs, a copper miner, and a tanner."

Apart from the first, in all these cases the reason is that a bad odor is attached to the people who suffer from those illnesses or earn their livelihood in such a manner. It was assumed that one may not compel the wife to stay with her husband in those circumstances. R. Meir is of the opinion that the wife may insist upon a divorce even if she knew prior to the marriage of the condition of her husband or his work and agreed explicitly to enter into the marriage with him in spite of it. She may plead: "I thought I could endure it; now I see that I cannot." While the majority opinion did not take R. Meir's view, there is general agreement among the talmudic teachers that one compels the husband to divorce his wife if the circumstances of his bodily state were not known to her prior to the marriage. The commentators understood that "to compel" here means even by physical punishment.[88] (In our day it would probably mean imprisonment.)

But does not biblical law state that the *get* has to be handed to the wife of the husband's free will? A way out of this dilemma was found by the surprisingly original idea that since it is right and proper that a husband divorce his wife in such a case, if he refuses to do so, "we compel him until he declares: Yes, I do wish to divorce her." This, of course, requires explanation. In his code, Maimonides cites the ruling as follows:

> Whenever the law requires that a husband be ordered to divorce his wife, and he refuses to do so, the Jewish court in any place and at all times imposes corporal punishment on him until he says, "I am willing"; he writes the *get*, and it is valid. Similarly, if he is thus compelled by a non-Jewish court that orders him to act as demanded by the rabbinical court, and the Jews are pressuring him through Gentile hands until he divorces his wife, the divorce is valid. And why does such a divorce not become invalid? After all, he is forced to act against his will, regardless of whether it is by the rabbinical or the non-Jewish court. [The answer is] that we consider compulsion only if one is forced to do something that the Torah does not obligate him to do.... But one who is driven by his evil inclination to nullify a positive commandment or to commit a sin and is then compelled until he agrees to do what he is obligated to do... is not considered to have been forced. It is he who forced himself by his evil intent.[89]



The first impression one may gain from this "explanation" is that Maimonides is of the opinion that the punishment frees the husband from the clutches of his evil inclination, so that he may be free to act as he really wants. The idea becomes somewhat more sympathetic in its concluding elaboration. This is how Maimonides sums it up:

> Therefore this man who does want to divorce his wife, since he does want to be a Jew and does want to fulfill all the commandments and avoid all sins, and since it is his evil urge that overwhelmed him at the moment, if as the result of his punishment his urge has been weakened, and he is therefore able to say, "I am willing," he then divorces his wife out of his own will.[90]

Assuming that we are dealing with a person who lives according to Torah law, and therefore approves in principle of the halacha that orders husbands to divorce their wives in certain situations, it does make sense to say that this husband who refuses to obey the rules of the Torah because it affects him personally is indeed his own prisoner.

In somewhat more general terms, one might say that as long as a person is a member of a society and does not leave it, *eo ipso* he obligates himself to adhere to its laws. He freely surrenders his freedom in all matters in which the law imposes its discipline. Occasionally, coercion is needed to remind him of the terms of his membership. In less legalistic language and closer to contemporary ideas about the truth that "man is to freedom condemned," one might also say that a human being is always confronted with choices. He may rebel against the laws of his society, in which case he chooses to face the consequences of his rebellion. If the society then punishes him as the law provides, that was his choice. If, on the other hand, he decides to give up his rebellion and because of the pressure of the punishment obeys the law, that too was his choice. He acts as he does now because he has chosen obedience over rebellion. Be that as it may, the important thing here is that there were situations in which one could not expect a woman to continue in marriage. A way was found to dissolve that marriage, a way not originally provided for in the law.

There are a number of other cases in which the husband is to be urged, or even compelled, to divorce his wife freely. We shall discuss only two more examples here, that of the "rebellious husband" and that of the "rebellious wife." On the basis of the corresponding talmudic sources, the *Shulhan Aruch* rules as follows:



> If a husband rebels against his wife and says, "I will provide for her sustenance, but I refuse conjugal relationship with her because I hate her," then [at first] one adds weekly... to her *ketuba* [i.e., to the sum the husband has to pay her in case of divorce], and she may continue living with him so long as she desires. But although the value of her *ketuba* increases continually, the husband is still violating a biblical commandment [by denying her conjugal rights].... Thus, if she wishes, one compels him immediately to divorce her and pay her *ketuba*.[91]

Even more significant is the halachic ruling in the case of the "rebellious wife." Here it is the woman who refuses to have conjugal relations with her husband. The talmudic statement on the subject is ambiguous; it allows two interpretations. Among the classical commentators, some are of the opinion that in such a case one compels the husband to grant his wife a divorce. The most sympathetic view in this matter seems to be that of Maimonides. He cites the law as he understands the relevant statement in the Talmud and adds to it his own personal reason for the law, one not mentioned explicitly in the talmudic sources:

> A woman who refuses conjugal contact with her husband is called "rebellious." One has to ask her why she rebels. If she says: "I dislike him and cannot have intercourse with him," one compels her husband to divorce her. She is not like a captive woman [the reference is to the law regarding the enemy woman captured in a war, discussed earlier], that she should submit to one she dislikes.[92]

Some of the leading halachic authorities agree with the decision of Maimonides. Others who interpret the relevant talmudic text differently disagree with him. The discussion shows that the vehement disagreement with Maimonides is based not so much on the talmudic source material as on personal apprehension of the conditions to which the view of Maimonides may lead. If a husband can be coerced to divorce a "rebellious wife," then any woman who "set her eyes on another man" could claim that she could not endure her husband and would thus get a divorce.[93] Obviously this is no solution to the problem. The argument against Maimonides perceives an easy way out for the *prutza*, the dissolute woman, if his opinion were adopted. Of course, the real problem exists not for the *prutza* but, on the contrary, for the honest woman. The more honest she is, the less is she able to continue living with a husband with whom she is incompatible.

Much greater understanding for the plight of the "rebellious wife" is shown by a halachic authority whom one of the medieval commentators calls "the rabbi," without mentioning his name. The rabbi does not fully share the view of Maimonides, but neither does he accept the opinion of his opponents. Whereas it is generally assumed that the rebellious wife, if she is divorced, loses the monetary compensation set out in the marriage contract, the rabbi writes as follows:

> If she says she dislikes him, one does not compel her to stay with him by warning her about the loss of the value of her *ketuba*. One leaves her to her attitude [toward her husband]. Since her husband is displeasing to her, she is like one coerced in the matter. She cannot help herself. Even a good and pious woman cannot submit to a husband whom she rejects... even if no faults are visible in him. Such things happen quite often. This is not unlike the case of a person who is unable to eat a certain kind of food that is detestable to him. There is no way here to coerce her. One should rather intercede with her, to influence her to accept him. Furthermore, if we were sure that what she says was true, that he is indeed repulsive to her and she did not just "set her eyes on another man," we would compel the husband to divorce her as in the other cases in the Mishna regarding the "husbands whom we compel to divorce their wives," for similar reasons.... In this case, we happen to doubt the honesty of her statement, because we do not find in her husband those faults that she claims.... Therefore, we cannot compel the husband to divorce her; but neither dare we punish her with the loss of the monetary value of her *ketuba*. Maybe she does speak the truth, for [it is written]: "The heart knows its own bitterness."[94]



There seems to be little doubt that in cases where the rabbinical court would find a basis for the pleading of the wife, the anonymous rabbi would agree with the decision of Maimonides, and those others who think as he does, that one compels the husband to divorce his wife, because she is not his captive.

To what extent the opposition of some authorities was due to personal attitudes rather than solid halachic foundations one may judge by the following. Among those whose interpretations of the talmudic source differ from that of Maimonides is R. Isaac Alfasi. After having stated his view that according to the Talmud, in the case of the "rebellious wife" one does not compel the husband to divorce her, he continues: "This is the talmudic

law. However, nowadays in the rabbinical courts of the yeshivot, this is how we rule in these cases: When a woman comes and says, 'I do not want this man; I want him to give me a *get*,' she should be given the writ of divorce immediately...." This is also reported by Rabbenu Gershon, one of the great halachic authorities of the medieval period. In the name of R. Hai Gaon, it is cited that such was the practice for over three hundred years in the Babylonian schools of the gaonic period. And yet, the great Spanish medieval commentator R. Solomon Aderet (Rashba), opposes it sharply, dismissing the gaonic practice by saying that "maybe" they meant it only as an emergency measure, a temporary arrangement that no longer has any authority behind it.

Most surprising about the attitude of Aderet is the fact that his suggestion to dismiss the gaonic practice had already been rebutted a generation earlier by Nahmanides, who is considered his teacher. Nahmanides went to the defense of Alfasi against the criticism of R. Zerachiah Halevi (known as Ba'al Hama'or), who long before Aderet also asserted that there was no gaonic practice in the matter, for the deviation from the Talmud was only a temporary measure meant for a specific time and situation. This is how Nahmanides rejected the suggestion:

> He [Alfasi] was more familiar with the rulings of the Geonim than anyone else. Undoubtedly, he means to say that they ruled for the future too. The words of the Ba'al Hama'or are another way of saying that he disagrees with the Geonim and maintains that in this matter we have to follow the talmudic law, but he says it in polite language. The truth, however, is that they introduced their ruling for generations to come. In the days of our master [i.e., Alfasi] this had been the firmly established practice for five hundred years. This is known from their [the Geonim's] responsa.... It is also found in the works of the early as well as the later authorities. And they knew well how it was intended.



This is clear and convincing enough. Yet in conclusion Nahmanides wrote: "However, if someone wishes to be strict and not compel a husband to divorce [a 'rebellious wife'], as is the law in the Talmud, he has lost nothing; and may he be blessed."[95] One remains astounded at such words. To be "strict" in matters of divorce and overlook the happiness of the woman may often be extreme leniency in the implementation of the not-insignificant biblical commandment "And you shall love your neighbor as yourself."

In a later period other problems arose. There was the case of the husband who mistreated his wife by quarrels, anger, or beatings. The husband who repeatedly forced his wife out of the house was compelled to give her a divorce. But in the case of wife beating, one opinion is that it is a sin, and that this fact should be impressed upon the husband. One might be in greater sympathy with the other opinion, also quoted in the *Shulhan Aruch*, that if the man does not listen to "one or two warnings" by the rabbinical court, he should be compelled to divorce.[96]

We shall consider a case that is discussed in the thirteenth-century responsa of R. Samson ben Tzadok. He was asked what the law was to be for a woman whose husband caused her such continuous suffering that she despised him. "It is well known that he is a very hard man. She cannot endure him because of the continual quarrels. He also lets her starve. She has come to hate life itself." In his response, R. Samson discusses the problem from a number of angles, quoting the talmudic saying that

one cannot expect anyone "to live with a snake in the same basket." Finally, he quotes the Mishna that lists the cases in which one compels a husband to divorce his wife, among them that of a man who has chronic bad breath, and concludes: "If one forces him for the odor of the mouth, how much more so for unceasing suffering that is worse than death." Most significant is the concluding comment in his responsum, which employs several talmudic sayings to make his point: "Even though I know that one finds in the works of great latter-day authorities that in such a case one does not compel the husband at all, but neither are we 'mere reed-cutters along a pond,' and in matters that depend on common sense, 'the judge has to rule by what his own eyes see.'"[97]

Problems similar to that of the "rebellious wife" take on a more serious dimension with respect to the biblical laws regarding the levirate marriage, which demanded that if a man died without leaving any children, one of his brothers had to marry his widow. Once again, we shall look at the Mishna that is introduced with the words: "And these are the husbands whom we compel to divorce their wives." We saw above that R. Meir was of the opinion that even if the woman explicitly agreed to marry the man in spite of his physical condition or profession, she might refuse to live with him after the marriage by explaining: "I thought I could endure it; now I see that I cannot." The other sages disagreed with him in this case. At the same time, the Mishna continues: "It happened that one man, a tanner, died leaving no children. He had a brother who was also a tanner. Declared the sages: In this case, the woman has the right to say: 'I was willing to accept your brother; I cannot accept you.'"





In such a case even the rabbis who disagreed with R. Meir accepted his opinion that one compels the brother-in-law to perform the *halitza* ceremony, by which the widow is freed to marry whomever she pleases.[98] But what happens when the refusal of the widow is not connected with the bodily odor of the brother-in-law inseparable from his occupation, but is of a purely personal nature, for instance, when the widow and her brother-in-law are not suited for each other? Such possibilities are discussed in the Talmud. Assuming the age difference is too great to favor a successful marriage: "If he is a mere youth and she is an old woman, or he is an old man and she a child, they say to him: 'Why would you want to marry someone so much younger than you, someone so much older than you? Go, seek someone like yourself, and do not bring quarrel into your home.'" This advice that must be given to him is based on the biblical verse: "And the elders of his city should call him and talk to him." In the case of an "unsuitable" brother-in-law, one must urge *halitza* rather than levirate marriage. In the Talmud itself there is no definition of suitability, but the following story is provided to illustrate the point: The brother-in-law wanted to marry his sister-in-law, but it was obvious that his only intention was to acquire her money. The man was tricked into freeing the widow by *halitza*. He was promised a sum of money if he performed the ceremony, and after the ceremony the wife reneged; still, the *halitza* was considered valid. Thus, in order to deal with the problem of the "unfitting" brother-in-law, the principle was laid down that a *halitza* ceremony executed under a false assumption on the part of the brother-in-law is nevertheless valid.[99]

This was, however, only a partial solution to the problem. What was to be done if the unfitting brother-in-law did not

allow himself to be misled? The question was attacked more fundamentally with the case of the widow who refused to marry her brother-in-law, not because of any shortcoming of his, but simply because she had no desire to marry him. This is not the place to present the entire discussion of the subject by the halachic authorities. Needless to say, all those authorities who ruled that the woman who refused to continue a marriage must be given the desired divorce would also rule that the brother-in-law must submit to *halitza*. But even the halachic authorities who would not allow an enforced divorce in the case of a marriage are inclined toward leniency in order to free a widow from her levirate bonds.

Among the authorities who disagreed with Maimonides' ruling in the case of the "rebellious wife" was R. Asher ben Yehiel (Rosh), who lived in Germany and Spain in the late thirteenth and early fourteenth centuries. Yet in the case of a brother-in-law whom the widow refused to marry because he was young and ignorant, he ruled that one compels the brother-in-law to agree to *halitza*.[100] Once again it was R. Samson ben Tzadok who asserted that if the widow, for reasons of her own, refuses to marry her brother-in-law, he has to be forced to free her through the *halitza* ceremony. He fortified his decision with the statement that even those who disagree with Maimonides' opinion in the case of the "rebellious wife" respect the plea of the widow to be freed by compelling the brother-in-law in this case. His argument was that "the teachers in the Talmud were stricter in matters of divorce than in those of *halitza*." Actually there is a clear talmudic statement that one "must not suppress the pleas of the widow" (i.e., who refuses to marry a brother-in-law).[101] While this may be understood in various ways, the



interpretation that the widow has the right to refuse to enter into the levirate marriage is accepted by the classical commentator of the Talmud, Rashi, and is expressed in one of the earliest and most authoritative halachic codes, the ninth-century *Halachot Gedolot*.

A number of other innovative regulations were introduced by the talmudic teachers in order to remedy the legally weak status of the married woman. One of their major concerns in this regard was to protect the wife against becoming an *aguna*, a woman whose husband for whatever reason cannot be reached for purposes of a divorce. She is legally married, but she has no husband and yet cannot remarry. (The Hebrew word *ogen* means "anchor"; the woman is "anchored," tied to a situation from which there seems to be no release.)

Various laws that generally apply were declared inoperative in divorce proceedings in order to reduce the likelihood of a woman becoming an *aguna*. For instance, a messenger who brought a writ of divorce, or *get*, sent by a husband to his wife, from Babylon to the land of Israel, had to testify that the divorce document was written as required by the Torah, "in his name and in her name and for the purpose of divorce." (According to the law, if a *get* is written on behalf of one man to divorce his wife, and after its completion it is handed to another man whose name and whose wife's name are identical with those that appear in the document, it is invalid; so is a *get* written for the sake of writing practice.) Normally, two witnesses are required to testify. In this case, however, it was ruled that the testimony of the messenger alone was sufficient. The reason for this had to

do with the conditions of the time. There were not many travelers between Babylon and the land of Israel. Had one insisted on two witnesses, considerable delays might have occurred in the sending of a writ of divorce; in numerous cases, the writ would never have been sent, and the woman would have become an *aguna*. In order to prevent this from happening, "the rabbis were lenient."[102]

Another example: A *get* required the signatures of two witnesses. Assuming now that the witnesses who were available could not sign their names, what was to be done? The decision was that the signatures were prefigured in the document in such a manner that the witnesses had only to fill in the ink. This was the only document where such a practice was permissible. Said R. Elazar: "This was done so that the daughters of Israel not become *agunot*."[103]

In this case the deviation from the norm was not from biblical but only from rabbinical laws: Since the majority of the Babylonian scribes were familiar with the rules of writing *gitin*, the demand for testimony was only a rabbinical requirement. Similarly, the filling in of a prefigured signature by a witness was not against biblical law. However, we find that even when the problem presented concerned a biblical injunction, the rabbis found a way, outside the generally valid norm, to save a woman from the status of an *aguna*. This was the case of the wife whose husband went to "a land beyond the sea," a faraway country with which there was no possibility of normal communication. One witness arrived from that land and testified that the man had died. According to the Bible, facts are to be established in court on the strength of the testimony of two witnesses. Nevertheless, the rabbis of the Talmud allowed the woman to remarry.





They went even further. According to biblical law, one may testify only from direct personal knowledge, but not on the basis of knowledge learned from another person's testimony. Neither is the testimony of a woman or a slave admitted. But in this case, it was ruled not only that the testimony of one witness was sufficient, but that the witness may testify on the basis of hearsay, and that the witness may be a woman or even a slave.

Why was all this permitted? The Talmud explains it as follows: Should the husband still be alive and eventually return after his wife's remarriage, the consequences for her would be extremely serious, for even though she was still married, she had entered into another, illegal marriage. According to the law, she would have to leave her second "husband," but she could not return to her original husband. She would be adjudged an adulteress. Her children by her second, legally invalid marriage would be considered illegitimate. She would also have forfeited any compensation due her from the first marriage contract in case of divorce. Because of the very serious consequences of mistaken testimony, it was assumed that the woman would be most careful. Before entering into another marriage, she would consider the entire situation, investigate herself, and make sure that the testimony was reliable. "Because of the dire consequences [in case of error] at the end, one was lenient at the beginning." The final words in the discussion of the subject are: "Because of the danger of her becoming an *aguna*, one made it easier for her."[104]

One of the boldest halachic innovations was the annulment of marriage in certain situations. Since a divorce could be effected

only by the husband handing a *get* to his wife, the husband also had the power to cancel the writ of divorce before it reached her. He could send the document by a messenger, and before the messenger had time to deliver it, the husband could appear before a rabbinical court and declare that he had invalidated the writ, in which case the divorce did not take place. Without a writ there could be no divorce, and this *get*, having been canceled, became a mere piece of paper. Legally, the husband could cancel the validity of the divorce document even without notifying his wife or his messenger. This could lead to the unfortunate situation of a woman receiving such a document and believing that she was now divorced. If she then entered into a new marriage, she had technically committed adultery, with all the disastrous consequences involved. In order to remedy the situation, R. Gamliel the Elder, who lived in the first century C.E. and was one of the most respected heads of the Sanhedrin, instituted an ordinance "that one should not cancel a *get* in the absence of his messenger or his wife," that is, without their knowledge. One should not do it "for the sake of the correction of the world" (*tikun olam*).

But what happened if a person disregarded the edict of R. Gamliel the Elder? A later generation of mishnaic teachers, R. Yehuda Hanasi and his son R. Gamliel, debated the issue. Both were descendants of R. Gamliel the Elder. R. Yehuda Hanasi was of the opinion that if a husband, defying the ordinance of R. Gamliel the Elder, did cancel a writ of divorce, the document became invalid. For indeed, according to biblical law, the husband does have that right. His son R. Gamliel, however, ruled that after the edict of R. Gamliel the Elder any cancellation of a *get* without the knowledge of the wife or the messenger





is ineffective. The writ remains valid, and the divorce does take place. "Otherwise," he argued, "of what worth is the authority of the court of law?" A powerful attack was mounted in the Talmud against his view: "Is there such a thing as a divorce that is invalid according to biblical law, and merely because 'of what worth is the authority of the court of law?' we free a married woman to marry whomever she pleases?" The Talmud's answer: "Indeed so: He who marries a woman does so with the understanding that the legal basis of the marriage is the law as perceived by the rabbis [Rashi's explanation: In the formula the groom says to the bride, 'You are sanctified to me in accordance with the law of Moses and Israel']. They retroactively annulled this marriage."[105]

The principle of the annulment of marriage is applied in the Talmud in a number of different situations. Earlier we discussed the ruling of Rava that in matters of divorce, the generally valid principle of *ones rahmana patrei*—that a person is not responsible for an action that takes place due to unexpected circumstances beyond his control—was inoperative. Accordingly, he ruled that a divorce given with the condition that it should take effect only if the husband did not return after a specified absence is valid, and the woman is considered duly divorced, even if the husband desired to return but was prevented from doing so by the unforeseen intervention of some superior force or circumstance. His reason was twofold. First, the loyal wives would become *agunot*, for even when a husband refused to return, they would assume that he was prevented from doing so against his will and would thus consider themselves still married. Second, the less loyal wives, on the contrary, would only too easily conclude that the husband intentionally did not return and would consider

themselves divorced, even though the husband was prevented from returning because of unexpected circumstances and, therefore, they were really not divorced. Here, too, the question was raised: According to the biblically valid principle of *ones*, that writ was not valid and, therefore, there was no divorce. Rava, because of his personal consideration of the possible consequences of a biblical law, nonetheless declared women who are married according to biblical law to be divorced. Again, the act was justified by reasoning that since all marriages are concluded on the basis of the halacha as understood by the rabbis, they also have the authority to annul them retroactively.[106]

An even more striking example of the function of this principle may be understood from the following example: According to biblical law, a father can arrange a marriage for a daughter who is a minor. (We saw earlier that already in the second century the rabbis in the Talmud attempted to curb this in practice.) The death of the father could cause serious social problems. In such a case, often there was no one to look after the minor. The rabbis of the Talmud decreed that the mother or the brothers of the minor could also conclude a marriage on her behalf. However, such a marriage was a rabbinical one; it had no biblical basis. According to biblical law, the young girl was not married to the husband to whom she had been given in marriage by her family. According to one opinion, when such a child-wife came of age, another marriage ceremony had to be performed. In the discussion of this theme the story is told: Once, when such a child came of age, the "husband" led her to the marriage canopy in order to marry her again in accordance with biblical law. As they were preparing for the ceremony, another man came, grabbed the bride, escaped with her, and formally married her.



In this case, according to biblical law she was married to the second man. Yet the talmudic teachers invalidated this marriage. To the question of how they could annul a marriage concluded in accordance with biblical law, the answer is given: "He acted improperly, so they dealt with him 'improperly' and annulled his marriage." Once again explains Rashi: Since marriages are concluded in accordance with the rules of the rabbis, they have the authority to invalidate a marriage concluded by improper means.[107]

It is quite obvious that the rabbis were fully aware of the legally disadvantaged status of the woman. They were disturbed by it and endeavored to correct the situation through innovative rulings and rabbinical regulations. The process continued for centuries after the conclusion of the Talmud in the fifth century. Among the best-known post-talmudic regulations are the tenth-century bans of Rabbenu Gershon against polygamy (a ruling foreshadowed already in the Talmud) and against the husband who divorces his wife against her will. The ban of Rabbenu Gershon implied the exclusion of the violator from the community. R. Asher ben Yehiel, father of the author of the *Arba'a Turim*, the code upon which the structure of R. Joseph Karo's *Shulhan Aruch* was based, in one of his responsa remarked that the purpose of Rabbenu Gershon in requiring the wife's consent to a divorce was "to equalize the power of the woman to that of the man: As he divorces only by his free will, so can she not be divorced either except if she freely agrees to a divorce."[108]

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DEPUTY PRESIDENT, SUPREME COURT OF ISRAEL

# JEWISH LAW

## HISTORY, SOURCES, PRINCIPLES

*Ha-Mishpat Ha-Ivri* VOLUME II

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## I. DEFINITION OF LEGAL REASONING AS A LEGAL SOURCE

An important creative source of Jewish law is the legal reasoning (*sevarah*) employed by the halakhic authorities. Legal reasoning as a creative source of halakhic rules involves a deep and discerning probe into the essence of halakhic and legal principles, an appreciation of the characteristics of human beings in their social relationships, and a careful study of the real world and its manifestations.

In discussing legal reasoning as a legal source, it is necessary to review once again what "legal source" means. As previously defined,[1] a legal source of Jewish law is that channel recognized by the Jewish legal system as a route through which a rule becomes accepted as part of the system's *corpus juris*. A legal source is thus a direct source for the acceptance of a legal rule into the Jewish legal system, as distinguished from a historical source, which operates indirectly as the source of the rule in point of historical fact. It should therefore be noted that the discussion up to this point has already often dealt with legal reasoning as a historical source of Jewish

1. *See supra* pp. 229–230, 236–239.

law, since logic and reasoning in fact served indirectly as both source and impetus for all of the other legal sources previously discussed.

Clearly, any interpretation, whether explanatory, logical, or analogical, must be preceded by reasoning that leads and guides the interpreter. The same is true for legislation: legislative enactments are the result of certain needs dictated by logic and experience. Even custom, the covert legislation of the people as a whole, in the final analysis arises out of various logical and experiential needs perceived by the public or by some segment of the people. Certainly, *ma'aseh*—both as judicial decision and as conduct of a halakhic authority—is fashioned by the individual logic and reasoning of the authority involved.[2] The halakhic authorities stressed the importance of the role of logic and reasoning particularly in the civil-law areas of the *Halakhah*.[3]

In the case of all of these legal sources, however, logic and reasoning operate only indirectly and peripherally: the direct legal source through which the rule enters the halakhic system is not logic and reasoning but interpretation, legislation, custom, or *ma'aseh*. On the other hand, when legal reasoning is referred to as a legal source of Jewish law, the reference is to those instances where legal reasoning is the direct source for the particular rule, *i.e.*, the rule entered into the halakhic system directly by virtue of logic and reasoning alone, with no admixture of interpretation, legislation, custom, or *ma'aseh*. Here, legal reasoning itself is the instrument directly creating the legal rule.

Jewish law assigns to legal reasoning an important and honored place as a source for the creation of legal norms in all areas of the law, whether concerning the relationship between people and God or relationships in human society, and whether the issue is one of *issur* or *mamon*. Not only do a substantial number of laws have legal reasoning as their source, but these laws also have a special quality and status within the halakhic system. A rule for which the source is legislation or custom is classified as "rabbinic" (*de-rabbanan*), *i.e.*, created by the halakhic authorities,[4] whereas a law for which the source is the logic and reasoning of the halakhic authorities is

2. In this "factual" sense, legal reasoning is an indispensable prerequisite for studying and understanding the *Halakhah*. *See* TB Gittin 6b: "Does one's ignorance of this rule . . . mean that he cannot be considered a great scholar? If it [the rule] is dependent on *sevarah*, that would be so." *See also* TB Shabbat 63a; Sukkah 29a; Sotah 39b; Kiddushin 9b; and Rashi, Berakhot 47b, s.v. She-lo shimmesh talmid ḥakham, Sukkah 28a, s.v. Gemara (in ms. Munich and others the reading is "Talmud"; *see Dikdukei Soferim, ad loc.*), and Sukkah 28b, s.v. U-meshannen ba-sukkah.

3. For a more detailed discussion of legal reasoning as the major creative source of law in the civil-law areas of the *Halakhah*, *see supra* pp. 137–141.

4. *See supra* pp. 208–212, 477–478, 881–882.

generally classified as "Biblical" (*de-oraita*).[5] Rules based on legal reasoning have this special status by virtue of the principle underlying the entire structure of the legal sources of Jewish law, namely, that the Torah was entrusted to the halakhic authorities.[6]

When the halakhic authorities make use of their legislative prerogative on the basis of this fundamental principle, they must specifically declare, as was pointed out in the previous discussion of legislation,[7] that they are not operating in the area of primary legislation on the level of Biblical law but in the area of secondary legislation on the level of rabbinic law. There is no such declaration, however, when the halakhic authorities, on the basis of the very same principle, directly create rules by legal reasoning; every rule that has its origin in the legal reasoning of the halakhic authorities is considered to flow from the Torah itself and to be suffused by the Torah's spirit

5. As to inferences based on the preponderance of probabilities ("majority"), and as to legal presumptions and related subjects, as well as to the rule that "a half-measure is Biblically prohibited," *see infra* pp. 995–999. *See also* TB Bava Mezi'a 47b: "R. Johanan said: 'According to Biblical law, the payment of money acquires'" [*i.e.*, passes ownership of chattels, and *meshikhah* ("pulling," or taking possession) is a requirement of rabbinic law]. The Talmud asks for the source of Resh Lakish's contrary opinion that Biblical law recognizes only *meshikhah* as an effective mode of acquisition, and a Scriptural verse is cited as the source; but the Talmud does not ask for the Biblical source of R. Johanan's rule that the payment of money transfers ownership of chattels. To explain this, *Shittah Mekubbezet, ad loc.*, s.v. Devar torah ma'ot konot, states:

> He [R. Johanan] said it on the basis of *sevarah*, because most acquisitions are effected with money, which is why the question is not raised here as to the basis of R. Johanan's view as it is with regard to the view of Resh Lakish; R. Johanan did not base his view on an *a fortiori* inference [from a verse] or on the exposition of a verse, but simply concluded [on the basis of legal reasoning] that an ordinary acquisition is effected with money.

*Nimmukei Yosef* to Alfasi, *ad loc.* (printed eds., fol. 28b), states:

> He [R. Johanan] did not derive it from Scripture but on the basis of *sevarah*, because it is logical that the payment of money should pass ownership, since most acquisitions are effected with money.

This explanation by *Shittah Mekubbezet* and *Nimmukei Yosef* for the failure of the Talmud to ask for the Biblical source for R. Johanan's view rests on the principle that the mere fact that the source for a rule is legal reasoning is sufficient to classify the rule as Biblical, and it is not necessary to base the rule on a Scriptural verse. *See also* Z.H. Chajes, *The Student's Guide through the Talmud*, p. 29:

> But there are still many cases in the unwritten law which belong to none of the . . . categories mentioned. Their basis is simply human reasoning. Yet such *halachoth* [*halakhot*] have the same authority as those which are supported by the written text. . . . Biblical texts and logical reasoning are of equal weight. . . . Any ruling which is based upon ordinary human reasoning is as authoritative as if it were deduced from Scripture, for the Talmud would not have questioned the necessity of Scriptural evidence . . . if reasoning alone did not suffice.

*See also infra* p. 992 n. 18 and accompanying text and pp. 998–1004..

6. *See supra* pp. 243–247.

7. *See supra* pp. 499–502.

and purpose. In this respect, legal reasoning has the same quality as interpretation—both of them extract from the Torah some hitherto unperceived content. The difference between interpretation and legal reasoning is that interpretation extracts this latent meaning by explaining and interpreting the Biblical text, whereas legal reasoning derives the latent content of the Torah without any ancillary aids; the legal reasoning of the halakhic authorities—directly reflecting the purpose, spirit, and true meaning of the Torah—merges, as it were, with the logic of the Torah.

The important role and value of legal reasoning as a legal source has been recognized by Jewish law throughout its history. The *amoraim* particularly emphasized the force and status of legal reasoning in the halakhic system. Sometimes legal reasoning operates to create new legal rules, and sometimes it creates general legal principles that underlie many different rules.

## II. LEGAL REASONING AS THE CREATIVE SOURCE OF VARIOUS LEGAL RULES; THE RULE "BE KILLED RATHER THAN TRANSGRESS" IN THE LAW OF MURDER

The Talmud states:[8]

> R. Johanan said in the name of R. Simeon b. Jehozadak: "It was counted and resolved [a vote was taken and a decision reached] in [a room in] the upper story of the house of Nitzah in Lydda that if a man is commanded to 'transgress and you will not be killed,' he may transgress any prohibition of the Torah in order to escape death, except [the prohibitions against] idolatry, incest, and murder."

As a general rule, if a person is threatened with death unless he transgresses a prohibition, he should transgress the prohibition and save his life, because, as the Talmud states, a fundamental principle of the Torah is: "'By the pursuit of . . . [My laws] man shall live' [lit. 'One shall live by them'][9]—and not die because of them."[10] There are, however, three prohibitions that are exceptions to this rule: if a person is threatened with death unless he practices idolatry, commits incest, or murders another person, he must al-

8. TB Sanhedrin 74a; *see also infra* n. 11.

9. Leviticus 18:5.

10. *See, e.g.*, TB Yoma 85b as to the violation of the sabbath to save a life that may possibly be endangered. According to Maimonides (*MT*, Yesodei ha-Torah 5:1), "If a person dies rather than transgress, he himself bears the guilt for his death (*mitḥayyev be-nafsho*)." Other *rishonim* hold that the rule "transgress rather than be killed" is not mandatory but only permissive. *See Tosafot*, Avodah Zarah 27b, s.v. Yakhol afillu.

low himself to be killed rather than commit any of these transgressions.[11] The requirement that one "be killed rather than transgress" the prohibitions against idolatry and incest is derived in the Talmud[12] through interpretation of Biblical verses. But no interpretation was found as a source with regard to murder, and the Talmud asks in the same passage: "How do we know this with regard to murder?" The Talmud then answers:

> It stands to reason [lit. "It is *sevarah*"], as shown by the incident when someone came before Rava and said to him:[13] "Mari Dorai[14] [the non-Jewish ruler of the town[15]] has ordered me: 'Go and kill So-and-so; if not, I will kill you.'" He [Rava] answered him: "Let him kill you, and do not commit murder. Who can say that your blood is redder? Perhaps his blood is redder."[16]

This fundamental principle of Judaism, that one is forbidden to kill another human being even on pain of being killed himself, is based on *sevarah*—moral and intellectual reason and logic. Rashi explained the reasoning as follows:[17]

> It stands to reason that his fellow should not be killed, because two things are involved [in such homicide]—the loss of a life and the commission of a transgression. If only he is killed, only one thing is involved—loss of a life—but no transgression is committed [by him]. God commanded us to transgress the prohibitions [where life is in danger]; He commanded: "You shall live by them," because every Jewish person is precious to Him. In this case, with regard to murder, since there will inevitably be loss of a life, why should it be permitted to transgress? Who knows that his own soul is dearer to his Maker than the soul of his fellow man? Therefore, there is no basis for suspending God's command [prohibiting murder].

11. The application of "be killed rather than transgress" to murder is discussed in TB Sanhedrin 74a; in TB Pesaḥim 25b and in Yoma 82a it is also stated in a *baraita* in the name of R. Judah Ha-Nasi. With regard to idolatry, *see* TB Avodah Zarah 27b for the distinctions made by R. Ishmael. For details, *see* Maimonides, *MT*, Yesodei ha-Torah 5:2 *et seq.*

12. TB Sanhedrin 74a.

13. Our quotation to this point follows ms. Munich; *see Dikdukei Soferim, ad loc.*

14. "Dodai" in ms. Munich.

15. This is Rashi's explanation, *ad loc. See also* Levy, Wörterbuch, s.vv. Do'ar, Davvar, defines "Dorai" as the title of the head of the non-Jewish court.

16. Ms. Munich and Rashi, *ad loc.*, instead of "Who can say . . . ?" have "How can you perceive . . . ?"

17. Rashi, *ad loc.*, s.v. Sevara hu. *See also* Maimonides, *MT*, Yesodei ha-Torah 5:7. In connection with the use of legal reasoning to conclude that the principle "be killed rather than transgress" applies to murder, Z.H. Chajes (*supra* n. 5 at 125) stated:

> Both principles where based on common reason had the same authority as Biblical law, provided both had been voted on and decided regularly, for they were *halachah* which had been decided by a majority vote and could not be annulled.

*See also infra* n. 18.

## III. LEGAL REASONING AS THE CREATIVE SOURCE OF GENERAL LEGAL PRINCIPLES

Legal reasoning operates as a legal source of law particularly in creating and developing general legal principles. In Jewish law, as in every legal system, there are a considerable number of general legal principles operating in and nurturing all areas of the system; without these principles, no part of the system could function. Among such general principles are: "the burden of proof is on the claimant" and "the majority governs," as well as certain legal presumptions. These principles operate in all areas of Jewish law: in civil and criminal law, in matters of *mamon* as well as *issur;* and their status in the hierarchy of legal norms is that of Biblical law. The source of these general principles is *sevarah*—legal reasoning that penetrates into the essence of things and reflects a profound understanding of human nature.[18] The halakhic authorities have explicitly identified legal reasoning as the source of some of these principles; this identification throws light not only on the particular principles but also on the entire category of such principles.

### A. "The Burden of Proof Is on the Claimant"

The Talmud states:[19]

> R. Samuel b. Naḥmani said: "How do we know that the burden of proof is on the claimant? Scripture states: 'Let anyone who has a legal matter approach (*yiggash*) them'—*i.e.*, let him bring (*yaggish*) proof to them."[20]

18. *See* the instructive comments of Z.H. Chajes, *supra* n. 5 at 120–125:
> Many of the presumptions established by the Rabbis as basic principles in their legal decisions originated in the fact that they had observed the nature of man and his endeavours and habits in human society . . . and came to understand the laws of nature. . . . Also in connection with some other legal restrictions or relaxations the Rabbis relied on such presumptions, for, not having scriptural support for them, it was purely on the basis of their knowledge of the nature of things and the nature of men, of the circumstances of each . . . that they established such legal principles. . . . All these principles are rooted deeply in the ground of common reasoning alone; there is no basis for them either in Scripture or in oral tradition; but as we have already explained above, rulings derived from common reason are equal in authority to those derived directly from the Torah. . . . Although there was no Biblical support to be found for these assumptions of the "majority" and "presumption" rules, yet they were applied as recognized principles. It is true that the Rabbis sought a Biblical basis. . . . Yet although they found no Scriptural basis for such, they followed these fundamental guiding principles in their rulings, since they regarded a view based on factual experience as being equally authoritative with one derived from the hermeneutical rules.

*See also supra* nn. 3, 5, and 17.

19. TB Bava Kamma 46b.

20. Exodus 24:12–13 relates how Moses ascended the Mountain of the Lord in order to receive the tablets of stone, the Torah, and the commandments from God. Verse 14 states

> R. Ashi objected: "Why do we need Scripture [to tell us this]? It is common sense that if a man has a pain, he goes to a physician."

Why, R. Ashi asked, is there need to search for Biblical support for the principle that the burden of proof is on the claimant, when this principle can be deduced through logical reasoning? A person in pain goes to a doctor and tells the doctor his symptoms; the doctor does not run about looking for sick people. So, too, a person who has a claim against another must prove his claim, and the defendant need not prove nonliability.

R. Ashi thus based the principle that the burden of proof is on the claimant solely on logic and reasoning, and he saw no need to support this principle with a Biblical verse. Apparently, R. Samuel b. Naḥmani also believed that the source of the principle was logic, and his purpose in seeking to connect it with a Biblical verse was merely to give it additional support, by way of integrative, as distinguished from creative, interpretation.[21]

## B. "The Mouth That Has Prohibited Is the Mouth That Has Permitted"

Among the principles of evidence in Jewish law is: "The mouth that has prohibited is the mouth that has permitted." Two examples will explain this principle.

The Mishnah states:[22]

> R. Joshua admits that if one [A] says to another [B], "This field belonged to your father and I bought it from him," he [A] is believed, for the mouth that has prohibited is the mouth that has permitted [*i.e.*, the same person who raised a doubt as to his right to the field has resolved the doubt in his own favor]; but if there are witnesses that it belonged to his [B's] father and he [A] says, "I bought it from him," he [A] is not believed.

This *mishnah* deals with a case where A tells B that the field now in A's possession was previously owned by B's father, but that he, A, bought it from B's father. At first glance, it appears plausible for B to argue that A

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that before ascending the mountain Moses said to the elders: "Wait here for us until we return to you. You have Aaron and Hur with you; let anyone who has a legal matter approach them." Moses thus established that any legal matters that might arise while he was away should be brought before Aaron and Hur. R. Samuel b. Naḥmani interpreted this verse to support the principle that the claimant, who must "approach" the judges, Aaron and Hur, with his claim, must present proof of his claim to them.

21. As to creative and integrative interpretation, *see supra* pp. 283–286. *See also supra* pp. 384–387, noting the decline in the use of midrash—even of the integrative kind—in the amoraic period.

22: M Ketubbot 2:2.

should be believed only to the extent of his admission that the field belonged to B's father (because the admission by a party of a fact adverse to his own interest is "the equivalent of a hundred witnesses"), but A should not be believed in regard to the self-serving part of his statement that he bought the field from B's father. Thus, B's argument runs, inasmuch as the field clearly belonged to B's father, A cannot prevail unless he proves through witnesses or a deed that he really did buy the field from B's father.

At this point, however, the principle in the Mishnah—"the mouth that has prohibited is the mouth that has permitted"—comes into play and prescribes that A is to be believed when he says that he bought it from B's father, even if his statement is uncorroborated. The reason is that it was A's statement that originally established that the field belonged to B's father.

A is the one who "prohibited," *i.e.*, established a fact raising a doubt about his ownership of the field; except for A's statement, B would have no possible claim to the field, since he has no witnesses to prove that the field ever belonged to his father. Consequently, the same "mouth" (A) is believed when it "has permitted," *i.e.*, has made a statement that A bought the field from its previous owner. Understandably, if B's right did not depend on A's statement, but B had witnesses that the field belonged to his father, then A's bare statement that he bought the field from B's father would be insufficient to prove his entitlement to the field; and he would have to produce other proof (such as witnesses or a deed) of his purchase from B's father.

This principle that testimony is to be credited when "the mouth that has prohibited is the mouth that has permitted" applies not only in the civil law but also in matters of *issur*. Thus, the Mishnah further states:[23]

> A woman who says, "I was married but now I am divorced," is believed [as to the divorce even though she presently has no *get* (bill of divorcement) in her possession], as the mouth that has prohibited is the mouth that has permitted [there are no witnesses to her marriage nor was she known to have been married, but it is her own statement that prohibited her, as a married woman, from remarrying; and therefore she is believed when she declares that she was divorced, and she is thus free to remarry]; but if there are witnesses that she was married, and she says, "I am divorced," she is not believed [because when witnesses establish her marriage, the only way the effect of their testimony can be overcome is by other witnesses who testify that she was divorced, or by her producing a *get*].

The source for this principle is discussed in the Talmud:[24]

23. *Id.* 2:5.
24. TB Ketubbot 22a.

> R. Assi asked: "How do we know that [the principle that] 'the mouth that has prohibited is the mouth that has permitted' is from the Torah?"[25]

He responded by referring to a Biblical verse as a possible support,[26] but the question then was raised:

> Why is a Scriptural verse necessary? It stands to reason! He prohibited her [from marrying], and he permitted her [to marry].

The source of this principle lies in the logic of the matter, and there is no need to seek support for it in Scripture. It is logical that if the sole basis for concluding that a woman has been married or that a field was owned by someone else is an oral statement, the maker of that statement is believed when he adds that what had earlier been prohibited later became permissible or that the right that once existed in someone else now no longer exists.[27]

## C. Legal Presumptions; Reliance on a Majority

The legal source of the two principles discussed above ("the burden of proof is on the claimant" and "the mouth that has prohibited is the mouth that has permitted") was specifically identified by the *amoraim* as being *sevarah.* Many other rules and principles, however, also appear to have their origin in the logic and legal reasoning of the halakhic authorities. One example is the concept of the legal presumption (*ḥazakah; praesumptio juris*). There are different types of such presumptions: the presumption of the continued existence of a fact or condition, such as the presumption that a person is still

25. This principle of credibility must have the force of Biblical law; otherwise, it could not be a basis for permitting the woman to remarry, since it is Biblical law that prohibits a woman, while married to one man, from marrying anyone else.

26. Deuteronomy 22:16: "'I gave my daughter to this man [in Hebrew the word order is reversed: "to man this"] to wife.' [When he said] 'to [a] man,' he prohibited her [to all, but when he specified] 'this,' he permitted her [to this man]." *See supra* pp. 385–387.

27. In the amoraic period, the principle "the mouth that has prohibited is the mouth that has permitted" was expanded into a principle called *migo* (Aramaic for "since"), which in TJ is called *me-aḥar* (Hebrew for "since"). The principle is also known as *mah lo leshakker* (why should he lie?) The theory is that "since" the party, if he wanted to lie, could have stated a better claim, which would have been accepted, the weaker claim that he actually made should also be believed. The principle applies even where the assertion of the right or prohibition is made by someone other than the party himself, so long as there are no witnesses to provide direct evidence as to the merits of the claim or the prohibition. The rules of *migo* constitute a significant portion of the Jewish law of evidence and pleading. *See* Gulak, *Yesodei,* IV, pp. 101–108.

alive;[28] the presumption of propriety (*ḥezkat kashrut*);[29] the presumptions relating to bodily condition;[30] etc. Sometimes, a presumption has a particular psychological-legal basis, such as the presumption that an agent carries out his charge,[31] the presumption that a *ḥaver* (person meticulous about tithing) does not allow anything untithed to leave his hands,[32] the presumption that a debtor does not pay his debt before the due date,[33] etc.

28. *See, e.g.*, M Gittin 3:3:

> If one [an agent] has brought a bill of divorcement, and he had left the husband aged or sick, he may deliver it to her [the wife] on the presumption that he [the husband] is still living. [We are not concerned that the husband may have died in the interim and that the divorce is therefore invalid, with the possible result that if he died without children the wife would be subject to the law of levirate marriage.] If the daughter of an Israelite was married to a priest and her husband went to a foreign country, she may eat of the *terumah* [which may not be consumed or enjoyed by anyone other than a priest or his family] on the presumption that he is still alive. If one sent his sin-offering from a foreign country, it is offered up as a sacrifice on the presumption that he is still living.

This *mishnah* thus presents three laws, all in the area of religious law, and all based on the presumption of the continuation of an existing state or condition. The husband, the priest, or the person who sent the sin-offering is presumed to be still alive until the opposite is proved, even though the sickness or advanced age of the divorcing husband and the great distance to the place where the priest or the donor of the sin-offering has traveled give grounds to believe that he may have died, and even though the actual facts are difficult to ascertain.

29. TB Bava Batra 31b. *Sifra*, Behar 8:8, presents an interesting derivation from Leviticus 25:53: "He [one who, because of poverty, sells himself into servitude] shall be under his [the master's] authority as a laborer hired by the year; he [the master] shall not rule ruthlessly over him [the bondman] in your sight."

> The *Sifra* states:
>
> "He shall not rule ruthlessly over him." You might think that one may enter his [the master's] home to investigate how he [the master] is treating him [the bondman]; therefore, Scripture says, "in your sight": You are commanded [to intervene] only as to what is [done] in your sight.

A. Ehrlich, *Mikra ki-Feshuto*, I, p. 241, comments on this passage of *Sifra* as follows:

> . . . for this is the plain meaning of the verse. And if this rule applies to a [master who is a] resident alien [of whom the verse speaks], then how much more so does it apply to your brother [*i.e.*, a Hebrew master]. From here we can learn that every person is presumed to be acting properly until the contrary is established and that a person who snoops and eavesdrops to catch his fellow in misconduct is acting contrary to the Torah.

However, it appears that this presumption that a person is behaving correctly also originated in *sevarah* and was merely connected to the Biblical verse. *Cf.* the presumption of innocence in Anglo-American criminal law, and the Latin maxim *omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium* [all things are presumed to have been rightly and duly performed until the contrary is proved].

30. M Ketubbot 7:8; TB Ketubbot 75b.

31. TB Eruvin 31b, 32a; Gittin 64a; Nazir 12a.

32. TB Avodah Zarah 41b; Eruvin 32a.

33. TB Bava Batra 5a/b.

Another example is the principle of reliance on a majority. The Torah states the rule that one should "follow the majority"[34] when there is an actual majority (in the Talmudic formulation, "a majority present before us"), such as the majority of the judges hearing a case.[35] But Jewish law also recognizes "a majority that is not before us," which is the kind of "majority" involved in a considerable portion of the law in which the concept of "majority" plays a role.[36] This latter type of "majority"—an inference on the basis of the probabilities in light of what occurs in "the majority" of instances—has the same effect as direct proof of a particular fact.

Although the halakhic authorities connected some presumptions[37] and rules concerning a "majority"[38] to various laws in the Torah, these presumptions and rules were originally established by the halakhic authorities on the basis of legal reasoning, taking into account their observations of the circumstances, conditions, and experiences of life. These presumptions and rules apply in all areas of the law, both civil and religious, and operate in every context, on matters of Biblical as well as rabbinic law, because "rulings derived from common reason are equal in authority to those derived directly from the Torah . . . since they [the halakhic authorities] regarded a

34. Exodus 23:2. The 1985 JPS *Tanakh* has "mighty," or, alternatively, "multitude" for *rabbim* ("majority") and gives a generally different meaning to the verse.

35. TB Ḥullin 11a.

36. *See id.* regarding the rule (M Yevamot 13:12) that if a *levir* who is a minor has sexual relations with the decedent's widow when she is also a minor, they may live together until they are of age, *i.e.*, neither has capacity to divorce while still a minor; and there is no concern that it may turn out later that one or both of them may be one of the relatively few people unable to have children (and having children is the purpose of levirate marriage), since the legal rule is fashioned to fit the majority of cases. The following law presents a further example:

> R. Taḥalifa of the West [*i.e.*, of the Land of Israel, which is west of Babylonia] taught in the presence of R. Abbahu: "Although a woman has committed adultery, her children are legitimate [*i.e.*, not *mamzerim*]; most acts of intercourse are with the husband" (TB Sotah 27a).

According to law, a child born of a married woman by a man other than her husband is a *mamzer;* R. Taḥalifa ruled that the child is presumed to be by the husband because of the probabilities, based on the perception that most ("the majority") of her acts of intercourse are with the husband, and thus the child is not a *mamzer. Tosefta* Yevamot 12:8 even prescribes that such children should perform levirate marriage (should the need arise), since they are in all respects legitimate brothers of their mother's husband's sons. "[Even] if a woman has acquired a bad reputation, her children are 'legitimate,' because they are presumed to be by her husband."

"A majority not present before us" is, in effect, a presumption; and the proposition that "most acts of intercourse are with the husband" is indeed explicitly labeled as a presumption in the *Tosefta. See further* Maimonides, *MT,* Issurei Bi'ah 15:20; Sh. Ar. EH 4:15; S. Lieberman, *Tosefta ki-Feshutah,* Yevamot, p. 129.

37. TB Ḥullin 10b.

38. *Id.* 11a–12a.

view based on factual experience as being equally authoritative with one derived from the hermeneutical rules."[39]

## IV. LEGAL REASONING IN THE AMORAIC PERIOD

Many of the rules and principles created through legal reasoning originated in an early period of Jewish law; and it is a reasonable inference that a considerable portion (such as the principle that "the burden of proof is on the claimant," the rules relating to legal presumptions, and the rules relating to "majority") are very ancient, inasmuch as they are indispensable for determining and settling the law in most areas of the *Halakhah*. It also appears from Talmudic sources that *sevarah* was especially employed in the amoraic period as a recognized legal source of law. The general approach of the *amoraim* to laying down principles, based on reason, concerning the sources of the *Halakhah*, and to the way the *Halakhah* should be ascertained,[40] naturally resulted in attributing considerable importance to legal reasoning, in all of its aspects, as a legal source. As already pointed out, the *amoraim* often identified *sevarah* as the original source of various rules;[41] this becomes even clearer from an examination of some additional examples.

### A. "A Half-Measure Is Biblically Prohibited"

The Talmud[42] records a disagreement between R. Johanan and Resh Lakish with regard to the prohibition of eating "a half-measure." When eating or drinking certain substances is forbidden, there is, as a general rule, a minimum amount that must be consumed before one can be considered to have

39. Chajes, *supra* n. 5 at 124–125, quoted *supra* n. 18. *See also id.* for additional examples of presumptions and rules relating to majority as well as for other rules, such as those relating to judicial discretion, which are also based on legal reasoning. *See also supra* p. 364, regarding proselytes from nations whose members it is forbidden to accept into the Jewish people but who are nevertheless permitted to be so accepted on the ground that those nations have been intermingled with all the other nations and "that which comes out, comes out of the majority." M Yadayim 4:4; *Tosefta* Yadayim 2:17–18; TB Berakhot 28a; Maimonides, *MT*, Issurei Bi'ah 12:25; Sh. Ar. EH 4:10. *See also* M. Elon, EJ, VII, pp. 1521–1522, s.v. Ḥazakah (reprinted in *Principles*, p. 595).

40. *See supra* pp. 505ff. and *infra* pp. 1090–1091.

41. *E.g.*, "the burden of proof is on the claimant" and "the mouth that has prohibited is the mouth that has permitted."

42. TB Yoma 74a.

43. As in regard to the eating of hard fat or suet, which is prohibited in Leviticus 7:23—"Speak to the Israelite people thus: You shall eat no fat of ox or sheep or goat"—*see* Maimonides, *MT*, Ma'akhalot Asurot 7:1.

eaten or drunk. This measure is often an olive-size,[43] but sometimes a different measure is established. Thus, with regard to fasting on the Day of Atonement, the measure for "eating" is a full-sized date with its pit, *i.e.*, a little less than the size of an egg; and the measure for "drinking" is a mouthful of liquid, *i.e.*, the full amount that a person takes into his mouth for a single swallow.[44]

Under the law, the divine punishment of *karet* (extirpation, lit. "being cut off" at the hands of Heaven) that is prescribed in the Torah applies only to one who has eaten at least the minimum amount. R. Johanan and Resh Lakish disagreed as to the law applicable to one who eats less than the specified measure:

> Concerning a half-measure [*i.e.*, less than the minimum that entails *karet*], R. Johanan said: "It is forbidden by the Torah" [*i.e.*, although there is no divine punishment of *karet* for consuming less than the specified measure, it is still forbidden by the Torah]. Resh Lakish said: "It is permitted by the Torah." [*I.e.*, Biblical law does not prohibit the consumption of less than the specified measure; such consumption is prohibited only by rabbinic law.]

The Talmud then explains the dispute between R. Johanan and Resh Lakish:

> R. Johanan said: "It is forbidden by the Torah," since they could be combined, and it is therefore forbidden food that is eaten [since one half-measure may combine with another half-measure to constitute a full measure]. Resh Lakish said: "It is permitted by the Torah," for the Torah speaks of "eating," and this is not eating. [*I.e.*, the Torah prohibited the act of eating, and the consumption of less than the specified measure is not considered eating.]

Both R. Johanan and Resh Lakish agreed that consumption of less than the amount that incurs *karet* is not in itself considered as eating, and therefore both agreed that there is no divine punishment for consuming less than that amount. Resh Lakish added that, in his opinion, since the consumption of less than the prescribed measure is not itself considered to be eating, it does not fall within the Torah's prohibition. However, R. Johanan took the view, relying on the logical reasoning of "they could be combined," that the Torah prohibits consuming even less than the amount that entails the punishment of *karet*. R. Johanan thus derived his view from this reasoning and, on that basis, ruled that the prohibition of "a half-measure" is Biblical.[45]

44. M Yoma 8:2; Maimonides, *MT*, Shevitat Asor 2:1; Sh. Ar. OḤ 612:9.

45. Later in the Talmudic discussion, a *baraita* is quoted in which the prohibition of a half-measure—as applied to prohibited animal fat—is derived from the Scriptural words "no fat" [*kol ḥelev*, lit. "all fat"; *see supra* n. 43], which implies that any amount of fat, even

## B. Parallel Rationales: Biblical Verse and Legal Reasoning

The regard of the *amoraim* for *sevarah* as a legal source often motivated them to explain a particular halakhic norm—whether of *mamon* or *issur*—and to base it on two alternative sources, namely, Biblical exegesis and logical reasoning. This method of explanation is introduced by the formula: "If you wish, I will cite a Scriptural verse; if you wish, I will explain it on the basis of *sevarah*." The following two examples are illustrative.

### 1. THE LAW PERTAINING TO WITNESSES

The Talmud quotes the following *baraita:*[46]

> It has been taught: Testimony [the *Tosefta* adds: "of witnesses"] cannot be combined [the *Tosefta* states: "cannot be admitted"] unless they have simultaneously seen [what they testify to—Rashi; the *Tosefta* states: "unless they saw each other"]. R. Joshua b. Korḥa says: "The testimony is valid even if they witnessed it consecutively" [the *Tosefta* states: "even if they did not see each other"].
>
> Their testimony is not admissible in court [to serve as the basis for a judgment—Rashi] unless they both testify together. R. Nathan says: "The testimony of one witness may be heard one day, and when the other witness appears on the next day, his testimony may be heard." [The *Tosefta* states: "The testimony of witnesses cannot be admitted unless they are together; R. Simeon says: 'The testimony of one witness may be heard one day, and when the other witness appears the next day, his testimony may be heard.'"]

The first part of the *baraita* lays down a rule with regard to the manner of witnessing the event about which the witnesses are to testify; the second part deals with the manner in which the witnesses testify in court.

The Talmud[47] asks, with regard to the two parts of the *baraita:* "On what do they differ?" *I.e.,* what is the basis of the dispute between the first *tanna* and R. Joshua b. Korḥa in the first part of the *baraita,* and of the

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less than the minimum quantity, is prohibited. However, the Talmud prefers to explain R. Johanan's view concerning the prohibition of a half-measure as being based on *sevarah* rather than on Scriptural exegesis, just as it does with regard to the principles that "the burden of proof is on the claimant" and "the mouth that has prohibited is the mouth that has permitted," as previously noted and as will be further discussed *infra. See Tosafot,* Yoma 74a, s.v. Keivan de-ḥazei le-iztarufei issura ka akhil, asking why the rule is based on *sevarah* when the exegesis of the verse stating "no fat" is available. The answer given is that without the *sevarah,* the exegesis would be considered a mere *asmakhta,* and thus a half-measure would be forbidden by rabbinic law only; the *sevarah* strengthens the exegesis and renders a half-measure forbidden by Biblical law.

46. TB Sanhedrin 30a, and, similarly, *Tosefta* Sanhedrin 5:5.

47. TB Sanhedrin 30a.

dispute between the first *tanna* and R. Nathan (according to the *Tosefta*, R. Simeon) in the latter part?

With regard to the first part of the *baraita*, which deals with the witnessing of the event, the response in the Talmud is as follows:

> If you wish, I will cite a Scriptural verse; if you wish, I will explain it on the basis of *sevarah*.
>
> As a matter of *sevarah*, the *maneh* [a coin] to which the first witness testifies is not the one to which the second witness testifies; and the *maneh* to which the second witness testifies is not the *maneh* to which the first witness testifies [*i.e.*, the first *tanna* takes the view that if each witness sees an event at a different time, their testimony cannot be combined to form a single unit of testimony by two witnesses, since each witness testifies to a different *maneh*]; the other [R. Joshua b. Korḥa] takes the view that in any event both witnesses testify to a *maneh*.[48]
>
> And, if you wish, I will cite a Scriptural verse, as it is said: ". . . [he is] able to testify as one who has either seen or learned of the matter."[49]

The discussion continues by explaining that each *tanna* interprets this verse as proof of his own view.

The Talmud responds in the same vein in connection with the disagreement between the first *tanna* and R. Nathan in the latter part of the *baraita* with regard to the witnesses' testimony in court:

> If you wish, I will explain it on the basis of *sevarah;* if you wish, I will cite a Scriptural verse.
>
> As a matter of *sevarah*, one master [the first *tanna*] argues: "A single witness may impose an obligation to take an oath but may not establish liability." [*I.e.*, the Torah states:[50] "A single witness may not validate against a person any guilt or blame for any offense that may be committed; a case can be valid only on the testimony of two witnesses or more." Testimony of a single witness is thus not sufficient to impose liability to pay money; the only effect such testimony has is that the defendant is required to take an oath that his version of the facts is true, and upon doing so he is free of liability. The result is that when each witness testifies separately, there is no testimony that is sufficient to impose liability; while there are two witnesses testifying, each one merely requires the defendant to take an oath, and the combined effect of the witnesses is no greater than to require the oath.]
>
> The other master [R. Nathan] argues: "Even when they come together, do they testify with one mouth? Nevertheless, they are combined; so here, too, we may combine them." [*I.e.*, R. Nathan argues that we may view the

48. For a further explanation of this view, *see* Maimonides, *MT*, Edut 4:2–3; Sh. Ar. ḤM 30:6–8.

49. Leviticus 5:1.

50. Deuteronomy 19:15.

two separate acts of giving testimony by each of the witnesses as the combined testimony of two witnesses establishing liability, since, after all, even if two witnesses testify together, they do not testify with one mouth, but the judges hear one witness and then the second witness, and combine the two statements into a single unit of testimony. Just as this combination establishes the two statements of the witnesses as a single unit of testimony, so, too, joining the statements by two witnesses when each one testifies on a different day combines their testimony in the same way and with the same effect.][51]

And, if you wish, I will cite a Scriptural verse: ". . . he does not give information, so that he is subject to punishment."[52]

Here, too, each *tanna* interprets this verse as proof for his own view. The *amoraim* thus establish two possibilities, equal in status and weight, for the original source of two rules pertaining to witnesses: one that the rules were created by *sevarah*, and the other that the basis for the rules was Biblical exegesis.

### 2. THE LAW OF *ḤALIẒAH*

The amoraic approach of putting forward two alternative sources of equal weight for a particular rule was not confined to civil law; it was equally accepted in matters of *issur*.

The Talmud discusses the following situation:[53] A *levir* participated in the ceremony of *ḥaliẓah* (release from the obligation of levirate marriage) with the widow. Thereafter, it was discovered that she was pregnant by her husband at the time of the *ḥaliẓah*, but she later miscarried; and since she miscarried, her husband left no living children, so that either a levirate marriage or *ḥaliẓah* is required.[54] The question is whether the *ḥaliẓah* that took place while she was pregnant was valid and sufficient to render a second *ḥaliẓah* unnecessary to free her for remarriage to another, or was invalid because it was performed at a time when it was not mandated, since there was a possibility that the widow would give birth to a living child by her deceased husband. The Talmud states:

51. A closer examination of the dispute between R. Nathan and the first *tanna* produces this explanation: R. Nathan held that the testimony of even a single witness is legally sufficient to create liability in civil matters. However, the law provides that the defendant can avoid the liability by taking an oath. Thus, when two witnesses testify, even if separately, they establish liability; and in such a case the defendant's option of an oath is not available. The first *tanna*, however, held that a single witness creates no liability of payment at all, but only an obligation to take an oath. Thus, if two separate testimonies are combined, all they create is a twofold liability to take an oath, but no liability to pay.

52. Leviticus 5:1.

53. TB Yevamot 35b.

54. Deuteronomy 25:5–10.

If a *levir* participated in *ḥalizah* with a pregnant woman who subsequently miscarried, R. Johanan said: "She need not undergo *ḥalizah* with the brothers." Resh Lakish said: "She must undergo *ḥalizah* with the brothers."

R. Johanan said: "She need not undergo *ḥalizah* with the brothers; the *ḥalizah* of a pregnant woman is a proper *ḥalizah*, and [levirate] marriage with a pregnant woman is a proper [levirate] marriage."

Resh Lakish said: "She must undergo *ḥalizah* with the brothers; *ḥalizah* with a pregnant woman is not a proper *ḥalizah*, nor do marital relations with a pregnant woman effect a proper [levirate] marriage."

Here, too, just as in regard to the issue of civil law discussed above, the Talmud continues:

On what do they differ? If you wish, I will cite a Scriptural verse; if you wish, I will explain it on the basis of *sevarah*.

As a matter of *sevarah*, R. Johanan's argument is as follows: If Elijah [the prophet] had appeared and declared that the woman would miscarry, would she not have been subject to *ḥalizah* or levirate marriage? In our case, too, the fact is established retrospectively. [*I.e.*, if we had known at the time of the *ḥalizah* that she would definitely miscarry, there is no doubt that the *ḥalizah* would be valid, since it would have been clear that there would be no living children, and the widow would require *ḥalizah*. This being so, even if at the time of the *ḥalizah* the facts are not known but it later becomes apparent that no living child was born from this pregnancy, we now say, after the miscarriage, that the facts have been established retrospectively: the pregnancy did not result in the birth of a living child, and therefore the *ḥalizah* was valid and effective.]

Resh Lakish's argument is as follows: We do not accept that a fact can be established retrospectively. [*I.e.*, the circumstance that it was established retrospectively that the pregnancy would not result in the birth of a living child cannot validate the *ḥalizah*, since, at the time of the *ḥalizah*, the facts were not known; and it was possible that a living child would be born, so that the *ḥalizah* was not mandated when it was performed and it was therefore ineffective.]

And, if you wish, I will cite a Scriptural verse. R. Johanan reasons: Scripture states: "[When brothers dwell together and one of them dies] and leaves no son" [lit. "and he has no son"], and in fact [in the present case] he has none. [*I.e.*, the Torah states that the requirement for levirate marriage or *ḥalizah* exists when the deceased "has no son," which is interpreted in the Talmud to mean "has no offspring"—male or female. R. Johanan interprets the verse to mean that if the husband has no child at the time of his death, the requirement of levirate marriage or *ḥalizah* then attaches; and even if the widow is pregnant, in fact she has no living children at the time of the husband's death, and in any event she subsequently had a miscarriage.][55]

55. *See Tosafot*, Yevamot 35b, s.v. Ve-ha leit leih.

> Resh Lakish reasons: ". . . and he has no son"—hold an inquiry concerning him. [The Talmudic text according to *Sefer he-Arukh* is: "Establish that there is no kind of child."][56] [*I.e.*, Resh Lakish interprets the verse to mean that only if no possibility of surviving children exists at the time of death is there a requirement for levirate marriage or *ḥalizah*. Therefore, if the widow is pregnant and may give birth to a living child, she need not then undergo levirate marriage or *ḥalizah*. Consequently, the *ḥalizah* that she did undergo is ineffective.]

This example demonstrates that even when the question was clearly a matter of *issur*—the release of a widow from levirate marriage by means of *ḥalizah*—the Babylonian *amoraim* explained the view of Resh Lakish, who held the *ḥalizah* invalid, and that of R. Johanan, who held that the *ḥalizah* is valid, in terms of both logical reasoning and Biblical exegesis. The logical force of the proposition that "the facts have been established retrospectively" is sufficient to create the rule that the *ḥalizah* of a pregnant woman who subsequently miscarries is valid and, consequently, no further *ḥalizah* is required after the miscarriage.[57]

## V. LEGAL REASONING IN THE POST-TALMUDIC ERA

Legal reasoning contined to be a creative source of Jewish law in the teachings and decisions of the post-Talmudic halakhic authorities. This mode of creating law, like the other methods for the ongoing development of the *Halakhah*, is entrusted to the halakhic authorities of every generation, to whom the Torah was committed and who are chosen to oversee its interpretation and continued creativity. It is no simple matter to search out instances where legal reasoning was the legal source creating particular legal rules in the post-Talmudic period; the task requires comprehensive examination and research of the vast material in all the different types of post-Talmudic halakhic literature.[58]

56. For the text according to *Sefer he-Arukh, see Masoret ha-Shas*, Yevamot 22b.

57. Another example of parallel rationales based on legal reasoning and exegesis, respectively, may be found in TB Shevu'ot 22b. *See also Tosafot, ad loc.*, s.v. Iba'it eima kera:

> One may ask: "Since there is a *sevarah*, why is a Scriptural verse necessary?" This question is asked in ch. 2 of Ketubbot [22a] . . . : "How do we know that [the principle that] 'the mouth that has prohibited is the mouth that has permitted' is from the Torah?" [The Talmud responds:] "Why is a Scriptural verse necessary? It stands to reason! He prohibited her [from marrying], and he permitted her [to marry]!" However, one may draw a distinction, because not every *sevarah* is so obvious, and we need the verse to suggest the *sevarah* to us.

*See also supra* n. 45.

58. In certain cases, a particular principle may have become part of the corpus of Jewish law by way of legal reasoning but the halakhic authority did not emphasize that fact

Sometimes, a particular principle was established by means of one of the other sources of Jewish law, such as interpretation, but the logic of the circumstances and the nature of the matter were pointed to as the major impetus for the legal conclusion. For example, on the basis of Biblical interpretation, Asheri ruled that a majority of a community may adopt an enactment binding on a dissenting minority:[59]

> As to matters involving the public, the Torah states: "Follow the majority." The majority governs in all matters of public enactment; and the minority must abide by all that is agreed to by the majority. . . .[60]

However, the determining factor in the establishment of this principle was the force of necessity dictated by the logic of the circumstances. As Asheri stated later in his discussion: "Otherwise, if a few individuals could veto the enactment, the community would never be able to legislate." He emphasized the same point elsewhere:[61] "For if you do not say this, there could never be a communal enactment, for when would a community ever agree unanimously on anything?"[62] In this instance, legal reasoning was

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in his commentary or responsum. Similarly, a particular principle may have been created by legal reasoning, but the halakhic authority did not explicitly use the term *"sevarah,"* preferring another term connoting the use of reason based on the objective facts and the logic of the circumstances. *See Resp. Ribash* #399, quoted *infra* p. 1006, for such an instance.

59. *Resp. Asheri* 6:5.

60. This constitutes an expansive interpretation of the verse, "Follow the majority." According to the interpretation in the Talmud, this verse means that the decision of a case by the majority of the judges is the decision of the court. The verse also refers to the making of an inference based on "majority"—the preponderance of probabilities. This verse was never used in the Talmud to support the principle that an enactment adopted by the majority of a community is binding on the minority. *See supra* p. 683 n. 16.

61. *Resp. Asheri* 6:7.

62. *See supra* p. 718. *Sevarah* also has been used in various other contexts. *See, e.g., Resp. Radbaz* #1052, holding that there is no legal obligation on anyone to allow one of his limbs to be amputated—even where the amputation poses no danger to life—in order to save another person from death (although there is no prohibition against such amputation). Radbaz stated:

> It is written: "Her ways are pleasant ways" [Proverbs 3:17. This means that] the laws of our Torah must accord with reason and logic, and how can we suggest that a person should allow his eye to be blinded or his arm or leg amputated in order that someone else not be killed? Therefore, I do not see such an act as a legal obligation, but as one of pious behavior (*middat ḥasidut*). Happy is the lot of anyone who can bring himself to do such a thing.

Halakhic authorities frequently make the point that a particular conclusion is "totally unthinkable" (*Resp. Tashbeẓ*, I, #61) or "unreasonable" (*id.* #81), or they make such comments as, "How can one even consider that the opinion of one individual should outweigh that of the community and compel the majority to obey enactments against their will? . . . . This would make the community subject to the individual and would prevent a majority from adopting an enactment that is contrary to the strict law. Such a proposition is simply

indeed the primary impetus for the creation of the principle of majority rule. However, legal reasoning was not the legal source of the principle; the direct legal source that made this principle part of the corpus of Jewish law was interpretation, *i.e.*, the interpretation of the verse "Follow the majority" as applying to "matters involving the public."

In other instances, legal reasoning is not only the primary impetus but also the direct legal source for the creation of a rule. For example, we have previously considered the problem of how to establish the binding force of communal enactments on minors, persons yet unborn, and others who, under the principles of private law, do not have the capacity to become party to a legal transaction.[63] With regard to minors, Ribash solved the problem by using legal reasoning as a legal source:[64]

> Minors are also included within their *takkanah* when they become of age; otherwise, when the townspeople fix market prices, weights and measures, and laborers' wages, and they impose penalties for violations, they would be required to reenact their *takkanah* daily, because of the minors who daily become of age, and this would make no sense. Rather, all the townspeople are included within their *takkanah*.

Ribash cited no halakhic source beyond the practical reason founded on the logic and circumstances of the matter, namely, that "otherwise . . . the townspeople . . . would be required to reenact their *takkanah* daily . . . , and this would make no sense." Thus, legal reasoning was the source for the creation of the rule that communal enactments apply to minors.[65]

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amazing!" (*id.* #123). Similarly, Maimonides, *MT*, Malveh ve-Loveh 15:2 stated in connection with a determination as to which of two possible readings of a Talmud text is correct: "Furthermore, what I have said finds support in reason." This passage is more fully quoted *infra* p. 1189. *See also Resp. Tashbeẓ*, III, #106.

All these examples stress the role of legal reasoning in determining the law, even when it is not the legal source of the law. Thus *Resp. Maharashdam*, ḤM, #99 states:

> In my humble opinion, there is no doubt that even without the proofs I have adduced, [they are] compelled by the force of reason to hold these merchants liable to fulfill their sworn obligation, because otherwise who will ever be prepared to take the trouble to rescue valuable assets if he [the other party] can annul his vow and keep the fee he committed himself to pay? That being so, our ruling is valid in all respects.

*See also Resp. Divrei Rivot* #292.

63. *See supra* pp. 731–735.

64. *Resp. Ribash* #399.

65. As to the applicability of legislation to persons not yet born when the legislation was enacted, Ribash, following Rashba, relied on an analogy to such acts as vows, which bind even future generations, *see supra* pp. 732–734. However, with regard to minors, Ribash did not rely on any legal source except reason: it would "make no sense" for the enactment not to apply to them. The rationale given by Ribash for the applicability of the enactment to

## VI. SEARCH BY THE HALAKHIC AUTHORITIES FOR THE LEGAL SOURCE OF PARTICULAR RULES

The previous discussion of the various legal sources of Jewish law has noted that the halakhic authorities, especially the *amoraim*, often searched for the precise legal source of particular rules.[66] A number of instances have been cited where the halakhic authorities regarded legal reasoning as the source for particular rules. In the following example, the *amoraim* sought to attribute the origin of a particular rule to various legal sources, until they finally concluded that the source necessarily had to be legal reasoning.

The third chapter of Tractate *Bava Batra*, chapter *Ḥezkat ha-Battim*,[67] deals for the most part with the subject of possession (*ḥazakah*),[68] specifically the rule that possession for a number of years (*ḥezkat shanim*) may serve as proof of ownership. For example, if A is in possession of real property, B claims ownership of the property and proves by means of witnesses or a deed that he had been the owner (the "first owner"), and A contends that he purchased the property from B or received it from him as a gift but the deed of purchase or gift was lost, then the law is that if A produces witnesses who testify that he has been in unchallenged possession of the property for at least three years, A's contention that he bought the property or received it as a gift must be credited. The possession of that property for a period of three years serves as proof, in place of the lost deed, that the

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the unborn is not valid for minors, since, as far as minors are concerned, the legal problem is: How is it possible to bind one who is not legally competent? Even if we assume that the enactment will apply to those born later, it is possible that it will apply to them only from the time they reach majority and not before.

*Resp. Maharashdam*, ḤM, #327 presents another instructive example of *sevarah* as a direct legal source in a ruling that all transactions previously entered into by Marranos were valid even after the Marranos returned openly to the Jewish faith. Maharashdam reasoned that "otherwise, life for the Marranos will be unbearable. . . . [If the previous transactions are held invalid,] they will all now come to reclaim from one another the real and personal rights that were created not in accordance with Jewish law but in accordance with the practice of their place. This is simply unthinkable. . . ." *See* M. Elon, EJ, V, p. 885, s.v. Conflict of laws (reprinted in *Principles*, p. 718).

Still another interesting example involved the question of the validity of a will made by a Marrano in Majorca. Ribash (*Resp. Ribash* #46–52) and Rashbeẓ (*Resp. Tashbeẓ*, I, #58–61) differed on this question; and the view of Ribash was based entirely on legal reasoning. For details, *see* Elon, *supra* at 889–890 (reprinted in *Principles*, pp. 722–723).

For a detailed discussion of the use of legal reasoning in the development of Jewish public law in the post-Talmudic period, *see* Elon, *Samkhut ve-Oẓmah*, pp. 25–27; *id.*, "Darkhei ha-Yeẓirah ha-Hilkhatit be-Fitronan Shel Ba'ayot Ḥevrah u-Mishpat ba-Kehillah" [The Methodology of Halakhic Creativity in Solving Social and Legal Problems in the Jewish Community], *Yitzhak Baer Memorial Volume*, *Zion*, XLIV (1979), pp. 250–264.

66. *See, e.g., supra* pp. 298–299, 886–890.

67. TB Bava Batra 28a *et seq.*

68. For the various legal meanings of the term *ḥazakah*, *see supra* pp. 79–80.

property does belong to A and came into his possession legally.[69] This rule is stated as follows in the Mishnah:[70]

> [The period of] possession [needed to prove ownership] of: houses; pits, ditches, and caves [used as receptacles for water]; dovecotes; bathhouses; olive presses; irrigated fields [fields that are irrigated by hand and produce crops several times a year]; slaves [whose legal incidents are analogized to the law of real property]; and anything that is continually productive [*i.e.*, not just once a year]—is three years from day to day [*i.e.*, possession by the occupier for three complete years is sufficient to constitute proof that the property belongs to him]. In the case of a field not under irrigation [a field that uses only rainwater and therefore produces crops only once a year], [the period of] possession is three years, which need not be from day to day [*i.e.*, although the field must be occupied for three years, it need not be worked for the entire year since it produces crops only once a year].[71]

The Talmud contains a comprehensive discussion as to the original legal source of the rule that possession for three years is sufficient to constitute proof of ownership:[72]

> R. Johanan said: "I have heard from those who went to Usha[73] as follows: 'What is the source of the rule that possession [of real property to prove ownership] must be for three years? It is the goring ox: just as the goring ox, after goring three times, ceases to have the status of an ordinary animal and acquires the status of a habitual gorer, so too after one has eaten from a field for three years it ceases to be owned by the seller [the "first owner"] and

69. The rules relating to possession for three years are thus a part of procedural rather than substantive law. Maimonides therefore included them in *MT*, To'en ve-Nit'an [The Laws of Plaintiff and Defendant].

70. M Bava Batra 3:1; *see also* 3:3. For this law in *MT*, *Tur*, and Sh. Ar., *see infra* pp. 1331–1335.

71. This is the interpretation of Rashba (Novellae to Bava Batra 28a, s.v. Sedeh ha-ba'al *et seq.*; *Shittah Mekubbezet*, *ad loc.*, s.v. Sedeh ha-ba'al) and Ritba (Novellae to Bava Batra 28b, s.v. Le-rabbanan mai, and to Bava Batra 36a, s.v. Matnitin), *i.e.*, that the field must be occupied for three years although it need not be worked for the full three years. According to Rashi (*ad loc.*, s.v. Sedeh bet ha-ba'al), however, "which need not be from day to day" is interpreted as meaning that the field need not be occupied or worked for three years but only for three crops—either eighteen or fourteen months.

72. TB Bava Batra 28a–29a.

73. "Those who went to Usha" (*holkhei Usha*) refers to R. Meir, R. Judah, and the other disciples of R. Akiva who followed the Sanhedrin to its place of exile in Usha, in the middle of the second century C.E. *Cf.* M Avot 5:14: "There are four types among those who go to the House of Study (*holkhei le-vet ha-midrash*)." The text presents a difficulty, since R. Johanan lived in the middle of the third century C.E. and could not possible "have heard" from the disciples of R. Akiva. TJ Bava Batra 3:1, 7b (3:1, 13d) reads: "R. Johanan said: 'We have heard . . .'" in the plural, which means "we have a tradition" and not that he personally heard from them. *See* Epstein, *Amoraim*, p. 251.

acquires a new status as the property of the buyer [the present occupant who claims to have bought it].'"

The law of the goring ox is as follows:[74] If an ox has gored once, twice, or three times, its owner does not pay for the entire damage caused by its goring, but only for half of the damage. The reason is that with the first and second goring, the ox still has the status of an ordinary ox that is not a habitual gorer. Since an ox is a domesticated animal that does not normally gore, its owner need not have foreseen that it would gore, and he is therefore not guilty of negligence in failing to restrain the ox. The purpose of imposing liability for half the damage is to motivate the owner to exceed the minimum standard of care in protecting against harm caused by the ox.[75]

However, once an ox has gored three times, it no longer has the status of an ordinary animal, but has become a "goring ox"; this imposes on the owner a duty to take special care, since he has been forewarned that the ox will gore and cause damage. Therefore, if it gores a fourth time, the owner must pay for the entire damage.

The Sages at Usha sought to deduce by way of analogy from the law of the goring ox the rule relating to three years' possession of real property. Just as the Torah established the principle that goring three times changes the status of an ox from an ordinary ox to a goring ox, so three years' possession of real property changes the status of the property: it no longer belongs to the "first owner," but to the occupier, who claims to have acquired it.

The Talmud then examines the force and quality of this analogy and concludes that the analogy is indeed valid with regard to the establishment of the basic principle that a threefold repetition may be sufficient to change a status. However, how do we know that the threefold recurrence with regard to possession must be a period of three years? May not three months be sufficient when three complete crops can be produced in three months? For instance, the Talmud asks, when one occupies a field that produces clover, which has a period of growth of one month, so that it is possible in the normal course to gather three crops in three months, why should three months not be a sufficient period of possession? Indeed, a view is expressed that possession for three years is unnecessary, and that three crops are sufficient, even if they are produced in less than three years; and this view may certainly be derived just as plausibly by analogy from the threefold goring by an ox. What then is the source for the requirement of possession of at

74. Exodus 21:35–36.
75. TB Bava Kamma 15a.

least three years,[76] which is held to be necessary by the first *tanna* in the *mishnah* quoted above, as well as by other Sages?[77]

When it was determined that the method of analogy—*i.e.*, interpretation—could not be considered the source of the rule of three years' possession, the Sages turned to another legal source—tradition or ancient custom:

> R. Joseph said: "It is derived from the Scriptural verse: 'Fields shall be purchased, and deeds written and sealed,'[78] for the prophet is speaking in the tenth year and warns of the eleventh year."

Chapter 32 of the Book of Jeremiah states that in "the tenth year of King Zedekiah of Judah," the prophet cautioned the people that when they buy a field they should write a deed and have witnesses sign it. The reason was that in the eleventh year of Zedekiah's reign they would be exiled to Babylonia after occupying the field for less than three years; and without a deed, they would not be able at the appropriate time to prove ownership. They would not be able to prove ownership by possession, because the minimum period for proof by possession is three years, and only about two

76. According to the original version of R. Johanan's statement, there is no basis for this question. That version is in TJ Bava Batra 3:1, 7b (3:1, 13d):

> What is the source of the rule concerning possession [of real property as proving ownership] (*minayin le-ḥazakah*)? R. Johanan said: "We have heard from those who went to Usha that they derived it from the goring ox."

In this version, the number of years is not mentioned at all; the reference is to a cycle of three with regard to possession. However, the Babylonian *amoraim* added and explained: "Just as the goring ox . . . ceases to have the status of an ordinary animal . . . so too after one has eaten from a field for three years . . ." (TB Bava Batra 28a; it should be noted that this addition is in Aramaic), and this turned the discussion into one regarding the requirement of three years. This is also the view of *Tosafot*, Bava Batra 28b, s.v. Ella me-atah ḥazakah she-ein imah ta'anah: ". . . Those who went to Usha said only that we analogize from the goring ox and nothing more."

Some texts of TJ (*see* ed. Venice, and *Penei Moshe, ad loc.*, whose commentary to this begins: "*Minayin le-ḥazakot*") read: "*Minayin le-ḥazakot*" ("What is the source of the law relating to *ḥazakot* [in the plural]?") This might very well not be a reference to the possession of real property as proving ownership at all, but rather to *ḥazakah* as meaning a legal presumption, which is derived from the goring ox, to the effect that, when a new quality repeatedly manifests itself, it is presumed to be permanent. This is the central notion of various presumptions, such as the presumption that a person is still alive, the presumption of propriety, and the like. The matter requires further study. *See supra* pp. 79–80 for the various meanings of *ḥazakah*.

77. *See* TB Bava Batra 36b: "The Sages say: 'There must be possession for three years from day to day. . . .' The Sages say: 'Until he harvests three crops of dates, grapes, or olives.'" *See also* Rashbam, *ad loc.*, s.v. De-amar Rav Yehudah amar Shemuel zo divrei R. Yishmael ve-R. Akiva; Rashi, Bava Batra 28b, s.v. Le-rabbanan mai, and Ritba, *ad loc.*, s.v. Le-rabbanan mai.

78. Jeremiah 32:44.

years remained before the impending exile.[79] According to R. Joseph, we may deduce from this passage that in Jeremiah's time the practice of proving ownership by possession for three years was already in existence and had its source in an ancient tradition.

However, the Talmud rejects this conclusion as well: "Abbaye said to him [R. Joseph]: 'Perhaps all that this means is that he was giving good advice.'" That is to say, how do we know that the prophet is saying that if they did not have a deed, they would be unable to prove their ownership by means of possession? Perhaps under the law at that time they could have proved their ownership through possession; perhaps possession for only one year would have sufficed, and Jeremiah was advising the buyers of the fields that it would be preferable, out of abundance of caution, to have a deed because it might be difficult for them to find witnesses after the exile to prove their occupancy for one year. Perhaps the prophet was not speaking of the legal impossibility of establishing ownership by proof of possession, but of the practical difficulty of proving possession, and for this reason, and for this reason alone, he advised them to obtain a deed. The Talmud then demonstrated that this indeed was the intent of the prophet:

> For if you say otherwise, what is the intent of the verse, "Build houses and live in them, plant gardens and eat their fruit"?[80] Just as in that verse the prophet was merely giving good advice, so here too he was also giving good advice.

The Talmud points to the fact that the prophet had previously turned to "the priests, the prophets, the rest of the elders of the exile community, and to all the people"[81] exiled to Babylonia during the reign of Jeconiah eleven years before the exile of Zedekiah and told them that in their exile in Babylonia they should build houses and plant gardens because the exile would last for seventy years[82] and they would still have time to eat the fruit of their labors. He also warned them to pay no heed to the false prophets who were assuring them that they would return from their exile before that time. This message certainly contains no legal rules; it was simply good

79. *See* Ritba, Novellae to Bava Batra 28b, s.v. U-mihu kasheh, explaining that R. Joseph agreed that the "cycle of three" is derived from the goring ox, and that what we learn from Jeremiah 32:44 is that the unit of which a minimum of three is required cannot be days or months—since nearly two years remained until the exile. Thus, the minimum period must be three full years. *See also* Rabbenu Hananel in *Tosafot, ad loc.*, s.v. Ve-dilma ezah tovah ka mashma lan; *Yad Ramah*, Bava Batra 28b, s.v. Ve-daikinan le-rabbanan mai, #20; Maharsha, *ad loc.*, s.v. Be-oto dibbur ve-od.

80. Jeremiah 29:5.

81. *Id.* 29:1.

82. *Id.* 29:10.

advice, and since that is all it was, so too his message to the people of Jerusalem with regard to the writing of deeds of acquisition was only meant as good advice, to make it easier for them to prove their ownership.

The Talmud adduces additional proof that this was what the prophet really meant: "The proof is that it states 'put them into an earthen jar, so that they may last a long time.'"[83] Thus, in that very same message to the people of Jerusalem that contains the prophet's advice to write deeds and have them properly witnessed, the prophet went on to advise that those deeds should be put into earthenware vessels for long-term protection against the ravages of time until the return from exile. There is certainly no legal duty to keep deeds in an earthen vessel. The prophecy as a whole thus indicates that all of the prophet's admonitions with regard to the purchase of fields were intended only as good advice, and no legal rule with regard to three years' possession can be deduced from them.

After the verse in Jeremiah was also rejected as a legal source, the Sages turned to legal reasoning, anchored in the observations of actual conditions, as the legal source for the rule of three years' possession. It was Rava who took this approach. At first, he sought to base the rule on the likely conduct and characteristics of the "first owner" of property occupied by someone else. For the first and second years, a person will waive his rights if someone else is enjoying the benefit of his property; but an owner will not waive his rights to the extent of permitting someone else to take the produce from his property for as long as three years. Therefore, the passage of three years is proof that the property no longer belongs to the "first owner," but belongs to the occupier as a result of either purchase or gift.

As an alternative, it could be reasoned that even though during the first and second years an owner will not waive his rights so as to allow someone else to benefit from his property, he may not be diligent about enforcing his rights against such a person for a relatively short period, but he will not look on indifferently for as long as three years while another takes the produce of his property. Therefore, occupancy by another for three years is proof that the property no longer belongs to the "first owner" and that the occupier obtained it legally either through purchase or gift.

These two explanations were also rejected by the Talmud because the conclusions that flowed from them were not consistent with various accepted rules of the law of three years' possession. Therefore, Rava concluded that if indeed the original source of the rule is legal reasoning, the rule is grounded not on the conduct of the "first owner" but on the logic of

83. *Id.* 32:14.

how the occupier, a reasonable buyer, conducts himself in relation to his property:

> Rather, Rava said: "For the first year a person takes care of his deed, and he takes care for two and three years, but beyond that, he does not take care."

That is to say, reason grounded in observation of actual conduct tells us that a person who buys property is careful and preserves his deed for three years in order to be able to prove his purchase if anyone challenges his ownership. However, after three years pass without any challenge to his legal right to the property, he is no longer careful to preserve the evidentiary material in his possession, since he is confident in his ownership and does not anticipate a future challenge to it.

This reasoning with regard to the limitation of the time for preserving evidentiary material—a principle that serves as one of the decisive rationales in the law of limitation of actions in various legal systems[84]—was accepted in the Talmud as the source for the rule that if a person occupies property for three years, this possession is sufficient to prove that he obtained the property legally even if he does not have a deed or other proof.[85]

This discussion in the Talmud is instructive as to the way the Sages, especially the *amoraim*, searched for the original source of halakhic rules. At first, they sought to analogize from a law of the Torah itself; they next turned to tradition—ancient custom. When it became clear that neither of these two could have been the original source, the actual source was found to have been legal reasoning grounded in the observation of actual conduct.[86] The discussion also demonstrates the great importance and re-

84. *See* M. Elon, "Al Hityashenut ba-Din ha-Ivri" [On Limitation of Actions in Jewish Law], *Ha-Praklit*, XIV (1958), pp. 179–189, 243–279; M. Elon, EJ, XI, pp. 251–254, s.v. Limitation of actions (reprinted in *Principles*, pp. 596–599).

85. According to R. Judah in M Bava Batra 3:2, the rationale of the three-year period is to provide for the case when the "first owner" is away in "Aspamia" (Spain). This is to allow the time for the land to be occupied for one year; during the second year the "first owner" will hear of it, and a third year will give him time to return to evict the occupier. *See also* TJ Bava Batra 3:1, 7b (3:1, 13d). *Cf.* Code of Hammurabi, secs. 30–31, which also establishes a three-year period for possession of another's property. Under Hammurabi's Code, the three-year period does more than evidence ownership—it creates ownership even where the possession was not under claim of right. *See* D.H. Müller, "Die Gesetze Hammurabis und die Mosaische Gesetzgebung" [Hammurabi's Laws and Mosaic Legislation], *Jahresbericht der Israelitisch-Theologischen Lehranstalt* [Jewish Theological Seminary Annual], Vienna, X, pp. 16–17, 92.

86. The law as to possession for three years may have originated in an enactment based on the premise that people preserve their documents for three years. If so, the legal source for this rule is legislation and not legal reasoning. However, Talmudic sources nowhere present the law as a rabbinical enactment, and we are therefore bound to conclude that the Sages saw legal reasoning as the direct legal source of the law. *See further infra* n. 87.

spected position the Sages accorded to legal reasoning as the original source for a rule of broad and significant scope.

In short, *sevarah*, the legal reasoning of the halakhic authorities based on their observations of the life and processes of society, was an important and respected legal source for the creation of Jewish law. Legal reasoning was the legal source of various specific rules in matters of both *mamon* and *issur*. It played an important role especially in the creation and development of general legal principles that guide and determine the character of the halakhic system as a whole. These rules and principles based on legal reasoning were, as a general rule, accorded the status of Biblical law because their source was the reasoning of the halakhic authorities, and the Torah was entrusted to them and their power of reason.[87]

87. To conclude the discussion of the legal sources of Jewish law, it is important to stress that it is entirely possible that the laws concerning certain subjects may have had more than one legal source. An interesting example is the large body of laws concerning the *agunah*. The primary legal source of these laws was legislation (*see supra* pp. 552–530), but interpretation and *ma'aseh* also played an important role. As to interpretation, *see supra* p. 402; as to *ma'aseh*, *see supra* pp. 528–529. M Yevamot 16:4, 6 discusses a number of laws on this subject for which the legal source is *ma'aseh*.

Some rules have two legal sources, *e.g.*, the rule in M Yevamot 16:7 that a single witness to a man's death is sufficient to permit his widow to remarry. The sources of this rule are both legislation and *ma'aseh* (*see supra* pp. 525–526). It is impossible to ascertain definitively whether the *ma'aseh* occurred first and served as the basis for the legislation (in which case two separate legal sources would have operated sequentially) or whether the legislation came first and the *ma'aseh* constituted merely the application of the legislation. (The case in TB Yevamot 116b, discussed *supra* pp. 523–524, did not involve a ruling on this point, since it was found that the woman's claim was factually correct. That case is therefore irrelevant to our present discussion.)

In some instances, different legal sources operated in different historical periods in the various stages of the development of a legal principle. Imprisonment for debt is an interesting example. The law on that subject originated as custom. Later there were communal enactments, and still later there was interpretation (by Ribash) designed to refine and complete the development to accord with the spirit and general principles of Jewish law. For details, *see* Elon, *Herut*, pp. 140–148, 262; *supra* pp. 709–710.

Finally, it should also be pointed out that any attempt to determine the legal source of a given law requires research necessarily limited to extant material. This means that even where, as far as we can ascertain, *ma'aseh* is the legal source, the *ma'aseh* may very well have been preceded by a custom of which there may presently be no record. The opposite may also be true: a law, the legal source of which we see as custom, may very well have first entered Jewish law through legislation, through *ma'aseh*, or otherwise. For various views on this question, *see supra* pp. 880ff.

The foregoing discussion has attempted to discover the direct legal sources of the laws as indicated by the extant materials. Even as so limited, the task calls for the most penetrating and painstaking investigation. Tracing the chain of legal sources culminating in a particular law is even more difficult and requires the utmost caution to avoid unjustified conclusions reached on the basis of unsupported conjecture.

# THE WRITTEN AND ORAL TORAH

## A Comprehensive Introduction

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The polarity of ideas found in the Talmud is the very proof of the vitality of the Torah, just as the polarity within nature is its grandest aspect. Modern physics has its complementary principles, as seen in the wave theory and the corpuscular theory of light. We can profitably view light as consisting of either waves or particles, even though the terms are contradictory. Similarly, the arguments in the Talmud are simultaneously true. "Through the constant tension they create, they guarantee the equilibrium of the Torah and the universe" (ibid.). As the Mishnah states: "There will be no end to conflicts of opinion until the Messiah comes" (*Eduyot* 8:7).

kabbalists see the messianic age as spanning many stages—initially the readings of the school of Shammai will be adopted, and then the transformation of the text will occur.



# THE RULES OF INTERPRETATION

## *Sevarah*

Wherever the oral interpretation was forgotten or new halachic rulings were necessary, the sages of the Sanhedrin made use of two methods: *sevarah* (logical deduction) and *drash* (the hermeneutical principles, or deductive method).

Both methods were revealed to Moshe as authentic means of uncovering the message of the Torah. By utilizing them properly, the sages of the later generations could confidently reestablish the *halachah* and interpretations obscured over time, or rule on new matters.

When the logic of *sevarah* appears insufficient, the Talmud adduces scriptural proof. If this, too, yields no results, the hermeneutical principles are applied.[1] The order of method is highly significant: logical reasoning precedes actual scriptural proof. And if there are no objections to a *sevarah*, it is sufficient and no further proof is required. Hence the Talmudical statement: "Why should I require scriptural proof? *Sevarah hi*—it is logical!"[2]

1. See, for example, *Kiddushin* 13b.
2. See, for example, *Ketubot* 22a.

There is a very profound belief behind this: human reasoning, when practiced by the sages, is as authoritative as the Torah. This is even true in matters of life and death:

> How do we know that one should allow himself to be killed rather than commit murder? It is a *sevarah*: A man once came to Rava and said: "The ruler of the city ordered me to kill a certain person or I myself would be killed." Rava replied: "Let yourself be killed rather than killing him, for who is to say that your blood is redder than his?"
>
> (*Sanhedrin* 74a)

Moreover, when the Talmud ad loc. concludes that one should likewise forfeit his life rather than commit adultery, it bases itself on a scriptural analogy to the case of murder: ". . . for just as when a man rises up against his neighbor and kills him, even so is this matter" (*Devarim* 22:26). Thus, although the Torah does not explicitly state that one should sacrifice his life rather than murder, it considers this law so self-evident that Scripture alludes to it to clarify the ban on adultery![3]

Many other cases are decided by *sevarah*, such as those involving monetary and ritual laws; consequently, they have scriptural force. For instance, *Bava Metzia* 46b states that according to the Torah, monetary payment effects the transfer of title. There is no scriptural support for this assertion, but it stands to reason.[4]

Some forms of analogy, often utilized by the Talmud, are

3. R. Z. H. Chajes, *Mevo LaTalmud*, chapter 4.

4. Ibid.; *Nimukei Yosef* on *Bava Metzia* 46b. There is, however, some disagreement among the authorities concerning this matter. For an example of ritual law, see *Yoma* 14a, *Tosafot* and Ran ad loc.



also founded on *sevarah*. For example, in *Kiddushin* 13b, a widow's right to remarry is held analogous to the abrogation of the consecrated state of sacrificial animals.[5] Similarly, in *Shabbat* 59b, problems of Shabbat observance are compared to cases of ritual impurity.

In truth, the entire Talmud is dependent on *sevarah*. As Rashi comments (*Berachot* 47b): ". . . they used to expound the logic of the Mishnah, and gather together and engage in it. This is the format of the Gemara arranged by the *Amoraim*."

Thus, it is quite understandable that a sage is culpable not for being unaware of a tradition, but for being unable to properly use *sevarah*.[6] It is not surprising that the Torah was given on the authority of the sages since every rule founded on their logical reasoning originates from the Torah itself. In the introduction to *Ketzot Hachoshen*, his famous commentary on *Shulchan Aruch*, *Choshen Mishpat*, R. Aryeh Leib b. Yosef Hakohen Heller (1745–1813) states this explicitly:

> The Torah was given not to the angels, but to man, who possesses human intelligence. . . . The Torah was given to be determined by his intelligence even if he errs . . . and the truth is established by agreement of the sages. . . .

### *Chazakah*

One form of *sevarah* deals not with the interpretation of the Torah but with the application of *halachah*, by verify-

5. See Ritva on *Yoma* 14a, who clearly shows the factor common to both.

6. See *Berachot* 47b and *Gittin* 6b.

ing human characteristics and normative behavior. It is rooted deeply in common sense alone. There is no basis for it either in Torah or in the oral tradition, but as explained above, rulings derived from common sense are equal in authority to those derived directly from the Torah.[7]

One of the most common forms of this type of *sevarah* is the principle of *chazakah*—legal presumption.

The fact that *chazakah* may be used to establish a ruling is derived from a verse,[8] but the criteria for *chazakah* are determined by the logical observations of the sages (i.e., by *sevarah*).

*Chazakah* is established in the following cases:

1. Status quo—i.e., we presume that a situation remains unchanged until there is evidence to the contrary.[9] For example:

   a. If a messenger delivering a bill of divorce from a different city testifies that the husband was alive when he left, we assume that he is still alive and the document is therefore valid, though the husband may have been ill when the agent departed (*Gittin* 28a). This has tremendous legal ramifications, for if the husband died before the bill of divorce was presented, his wife is a widow and may be subject to levirate marriage.[10]

   b. Two parties might lay claim to an object, one

7. See *Mevo LaTalmud*, chapter 1.
8. *Chullin* 10b.
9. See R. M. L. Wagenaar, *Algemene Talmoedische Pricipien* (Dutch), Amsterdam.
10. See *Devarim* 25:5–6.



maintaining that its former owner pledged it to him on his deathbed, and the other countering that this owner was healthy at the time—in which case his verbal declaration was insufficient to transfer ownership. Unable to prove either claim, we presume that the owner was in the same physical condition then as he is now (*Bava Batra* 153b).

2. Normative behavior as indicating certain conditions. For instance:

   a. We presume that a woman is the mother of a child if we observe the child clinging to her (*Kiddushin* 80a). Thus, if the woman and child engaged in sexual relations, the fact that we had observed him clinging to her (for an extended period) would be sufficient to establish the relationship as incestuous and no further corroborating evidence would be necessary.
   b. If a person lived or worked on a plot of land for three years and the former owner never protested his presence, we assume that he legally acquired the property. Thus, after three years, the person need not produce title to the land; the lack of protest is sufficient proof that it is his (*Bava Batra* 28a).[11]
   c. No one is entitled to keep what he finds, unless the loser has abandoned hope of recovering it. Since people are constantly examining the contents of

11. Unable to produce scriptural support for this law, the Talmud ultimately bases it on common sense (Chajes, chapter 15). Others understand this to be a *takkanah*.

their pockets, we presume that whoever loses money is aware of his loss and has given up hope. Therefore, anyone finding money in the street may keep it (*Bava Metzia* 21b).

3. Recurring events involving the same causes and individuals. For instance, if a mother's first two sons die because of circumcision, her subsequent sons are not to be circumcised, for we presume that their lives are endangered by circumcision (*Yevamot* 64b). Although such presumptions are usually adopted after a three-time occurrence, we make the assumption in this case after death occurs twice, as an extra precaution.

### *Miggo*

Another rule deeply rooted in common sense is *miggo* (literally, "because"). *Miggo* could be described as follows: A person is presumed to be telling the truth, for had he wished to lie, he could have advanced a better plea, enabling himself to win the case.[12]

### *Rov*

Jewish law also employs the principle of *rov*, majority rule. Like *chazakah*, *rov* is essentially a means of making an assumption based on statistical probability. But unlike it, *rov* relies on neither the status quo nor psychological motives. The Talmud (*Niddah* 18b) rules that when *rov*

12. See Shach on *Shulchan Aruch, Choshen Mishpat* 82. The principle of *miggo* has many limitations.





and *chazakah* lead to contradictory rulings, we follow the principle of *rov*, which is rooted[13] in *Halachah LeMoshe MiSinai*.

There are two types of *rov*:

1. "A majority that is before us" (*ruba d'ita kaman*), i.e., a definite number (observable) in reality or hypothetically. For example:

   a. A vote of the Sanhedrin. Here the Torah rules that one must follow the majority.[14]
   b. Assuming that a specific item is similar to the majority of other such items. Thus, if there are ten butcher shops in an area, nine of which stock kosher meat and one non-kosher meat, we can assume that a piece of meat found in the street came from a kosher butcher shop. For any item is considered to have originally been part of the majority of similar items. This applies to the status of people as well (*Pesachim* 9b, *Kiddushin* 73a).

2. "A majority that is not before us" (*ruba d'leta kaman*), i.e., an indefinite number that precludes exact numerical proof but allows us to make an assumption based on observations. For example: We assume that most men engaging in ritual slaughtering (*shechitah*) are competent (*Chullin* 3b). Where the *shochet* is not available for examination, we rely on this assumption.

13. See *Chullin* 12a; Rashi ad loc., s.v. *"Pesach"*; Chajes, chapter 15.
14. See Rashi on *Shemot* 23:2.

### *Kavua*

The principle of *rov* is invalidated by that of *kavua* (literally, "fixed"), which is rooted in Scripture[15] rather than in *sevarah*.[16] For instance, in the case of the butcher shop, *rov* allowed us to assume that the meat found in the street was kosher since the majority of the shops stocked kosher meat. However, if one purchased meat directly from a butcher shop without knowing whether it was one of the kosher establishments, we cannot rely on *rov* because the meat was not separated from its fixed place—the shop. Instead, we proceed as though there were an equal number of kosher and non-kosher shops, which leaves the status of the meat in doubt.

In such a case, when all the aforementioned principles are inoperable, we invoke the axiom of *safek deoraita lechumrah*—a doubt concerning a Torah law, such as the *kashrut* of meat, is resolved stringently. Therefore, the meat may not be eaten. Similarly, if two authorities of equal stature differ on a matter of Torah law, we are obligated to follow whoever rules more stringently (*Avodah Zarah* 7a). The early Talmudic commentators debated whether this obligation is itself biblical[17] or rabbinical.[18]

On the other hand, if the matter in doubt is a rabbinical precept, the guiding principle is *safek derabbanan lekulah*—in doubts concerning rabbinical law the more lenient view is followed.

15. *Ketubot* 15a; *Tosafot* ad loc., s.v. *"Perat."*
16. See, however, R. Shimon Shkop, *Shaarei Yosher* 2:1.
17. See Rashi on *Kiddushin* 72b; Rashba, *Torat Habayit Ha'aruch*, 4:1; *Hasagot HaRamban* on Rambam's *Sefer Hamitzvot*, Principle 1.
18. See Rambam, *Mishneh Torah, Hilchot Issurei Biah* 18:17.





Even though doubts concerning Torah laws are resolved stringently, where the doubt is compounded, we rule leniently. For example:

> A learned, meticulously observant man died and left a storeroom full of produce[19] and we are not sure if he tithed it.[20] However, even if he did not, it is doubtful whether this produce needed to be tithed in the first place.[21]
>
> (*Avodah Zarah* 41b)

This is referred to as a *sfek sfeka* (double doubt): The doubt as to whether this produce needed tithing is the first *safek*, while the possibility that it was indeed tithed constitutes the second *safek*.

The subject of *sfek sfeka* is quite complicated and beyond the scope of this work. Suffice it to say that it has been discussed in halachic literature for generations.

## *Drash*

The second method employed to reconstruct the forgotten portion of the orally transmitted Torah (or to create new halachic rulings) involves the hermeneutical principles. These rules are actually means of *drash*, or more formally, *Midrash halachah*, which can be translated as

19. See *Vayikra* 27:30.
20. The time of tithing varies for different kinds of produce.
21. The biblical obligation to tithe applies only to grain that is winnowed before being brought into the storeroom (*Bava Metzia* 88a). Rabbinically, however, grain must be tithed even if it is winnowed only later.

"deduced *halachah*." *Drash* is an investigation into the inner, logical, intended and true meaning of a particular text and the inter-relationship of its words, based on specific rules of interpretation. Thus, we find:

> "These are the rules that you [Moshe] shall set before them" [*Shemot* 21:1]. R. Yishmael says: "These are the thirteen rules through which the written Torah shall be interpreted, which were handed down to Moshe at Sinai."
>
> (*Midrash Hagadol, Shemot*, p. 459)

Although these rules are popularly attributed to R. Yishmael, it is clear from the Midrash that they were already known to Moshe. R. Yishmael served as their compiler, organizing them into thirteen categories. The number of *drashot* by means of which the sages expounded the Torah so as to deduce *halachot* totals many thousands, yet they are all reducible to the framework of the thirteen hermeneutical principles.[22] Similarly, while certain types of *drash* are not strictly part of these rules,[23] the classical methods of interpreting the Torah and reconstructing exegesis generally fall into one of these categories.

Although we have differentiated between *drash* and logical reconstruction through the use of *sevarah*, the former method is also dependent upon logic. However, *drash* differs from *sevarah* in that it relies upon guiding principles and often is only applicable if there is a tradition that a specific derivation was made.

22. R. Moshe Avigdor Amiel, *Hamidot Lecheker Hahalachah* (Tel Aviv, 1938), introduction, chapter 6.

23. Ra'avad on *Sifra*, introduction, regarding the *baraita* of R. Yishmael.





The use of *drash* is analogous to the mathematical formula of the scientist. To the layman, the formula is meaningless. But to the scientist, it is both comprehensible and logical. Similarly, the rules of *drash* may seem to be illogical word games. Yet the sages, through their familiarity with the Torah and its intentions, were able to utilize *drash* to reestablish that which had been forgotten, or to find a source for new *halachot* within the words of the written Torah. The derivations produced through *drash* are not new. Rather, they give expression to fundamental truths that would have remained hidden had they not been formulated.

As we have observed, *drash* also provides scriptural basis for many well-known *halachot* and facilitates the memorization of the orally transmitted Torah.[24] It is the mechanism employed to ensure continuity in *halachah* (i.e., through its use we can be certain that the precepts we observe are the same as those given at Sinai).

The process of interpreting the Torah began immediately after it was given. According to *Temurah* 16a many laws were also forgotten when Moshe died. Thus, we find that ". . . Ezra dedicated himself to interpreting the Torah and to fulfilling [it], to teach within Israel statutes and justice" (Ezra 7:10).

The Talmud (*Pesachim* 70b) refers to Shemayah and Avtalyon—two of the earliest *Tannaim*—as "great sages and great *darshanim*—interpreters." Yet the first time rules of interpretation are mentioned is in connection with Hillel, who enumerated seven categories.[25] Again, he did

24. See p. 100, "Explanations Received and Transmitted by Moshe."

25. See *Sifra*, introduction, regarding the *baraita* of R. Yishmael; *Tosefta, Sanhedrin* 7:11.

not invent these rules—he formulated them in a manner that could be used by others.

Towards the end of the first century C.E., two students of R. Yochanan b. Zakkai—R. Nechunya b. Hakanah and R. Nachum of Gamzu—formulated two additional rules of interpretation. These rules reveal two approaches to Torah exegesis, which found expression in the schools of R. Yishmael and R. Akiva.

R. Yishmael—a disciple of R. Nechunya b. Hakanah—based his interpretations on the principle that "the Torah speaks in the language of man" (*Sanhedrin* 64b) (i.e., not every word of the text is there to teach new *halachot*, for the Torah might repeat something for stylistic reasons).[26] On the other hand, R. Akiva maintained that each verse and word was open to interpretation, as were the crowns on the letters. He even interpreted all the "and"s in the Torah (*Yevamot* 68b). R. Yishmael's exegesis was primarily concerned with clarifying the meaning of the text as a whole, whereas R. Akiva's focused more on interpreting each part.

Generally, the two schools disagreed not about the actual *halachah* but about how to derive it from the text. For example, both R. Yishmael and R. Akiva agree that placing a bill of divorce in a woman's domain is tantamount to handing it to her. They differ, however, on the scriptural basis for this law. R. Yishmael asserts that when the Torah states that a bill of divorce should be placed "in her hand" (*Devarim* 24:1), the term "hand" should be taken not literally, but as a reference to domain, as in Bamidbar *21:26* ". . . and he took all his land out of his

26. See *Menachot* 29b.





hand, even up to Arnon." R. Akiva maintains that the Torah repeats the phrase two verses later to broaden the concept of "hand" to include domain as well.[27]

Although R. Yishmael's approach was generally accepted by the majority of sages, important works of halachic exegesis by both schools are extant. It was R. Yishmael who expanded the seven rules of Hillel into the thirteen hermeneutical principles. Indeed, both R. Yishmael's and R. Akiva's methods should be viewed as "the words of the living God."[28]

## Other Rules of Interpretation

Aside from the specific rules of R. Yishmael and R. Akiva, the Talmud is replete with other examples of halachic exegesis based on textual analysis. Thus, the Mishnah (*Berachot* 1:3) records a dispute between the schools of Shammai and Hillel regarding the obligation to recite the *Shema*. *Devarim* 6:7 states: "You shall speak of them [these words] when you are sitting in your home and when you travel on your way, when you lie down and when you rise up." The school of Shammai maintains that the verse must be understood literally. Therefore, one must recite the Shema at night when lying down and in the morning while standing up. The school of Hillel, on the other hand, contends that the verse obligates us to recite the Shema at the times when people generally lie down and arise.

27. See Jerusalem Talmud, *Gittin* 8:11.

28. See R. Naftali Tzvi Yehudah Berlin, *Ha'amek Davar*, introduction.

Similarly, R. Yoshiah and R. Yonatan offered conflicting elucidations based on the Torah's use of conjunctives. *Sanhedrin* 66a relates:

> What does the term *ish ish*—every man—teach us in the verse "For every man who curses his father and mother shall surely be put to death: his father and mother he has cursed; his blood is upon him" [*Devarim* 20:9]? It comes to include a daughter, a person of indeterminate sex, and a hermaphrodite [i.e., they, too, are subject to the death penalty]. The phrase ". . . who curses his father and mother" only teaches us that the law applies to one who curses both his father and mother. How do we know that it also applies to one who curses either his father or his mother? Because the verse states, ". . . who curses his father and mother . . . [and then adds] his father and mother he has cursed. . . ." The term "curse" is juxtaposed to both "father" and "mother," implying that the law applies to one who curses either parent. This is the view of R. Yoshiah. R. Yonatan says: "The first half of the verse implicates one who curses either parent . . . since it does not state "his father and mother together." The second half teaches a different lesson."

Unlike the schools of Hillel and Shammai, both R. Yoshiah and R. Yonatan agreed on the *halachah*. Their only disagreement concerned the manner in which it could be deduced from the text.

Another form of halachic deduction prevalent in the Talmud is called *Midrash hahigayon*—logical exegesis. This differs from *sevarah* for it is a method of interpreting the text, not of indicating unstated *halachot*. For example, *Devarim* 24:6 charges: "No man shall take the lower or upper millstone as a security, for it is [the debtor's] livelihood that he takes." In *Bava Metzia* 9:13, the sages expanded this principle to include not just millstones but any item used for food preparation, for the Torah declares, ". . . it is [the debtor's] livelihood that he takes."



The rabbis made this type of logical deduction whenever the text suggested it. For instance, *Shemot* 12:6 states: ". . . and the entire congregation of Israel shall slaughter [the Pesach offering]. . . ." The Talmud poses the obvious question:

> Does the entire congregation slaughter this offering? Surely only one person slaughters it [on behalf of the others]! Thus, we see that one's agent's actions are equivalent to one's own.
>
> (*Kiddushin* 41b)

Finally, halachic exegesis can serve to restrict the application of a law rather than expand it. Thus, the Torah states: "A [male] Ammonite or Moabite shall not enter the assembly of God [i.e., may not marry a Jew] . . . for they did not meet you with bread and water when you left Egypt . . ." (*Devarim* 23:4–5). The sages inferred that female Ammonites and Moabites *could* marry into the Jewish people, however, since the male noun form is used in the verse and since men were expected to meet and greet visitors but women weren't (*Yevamot* 77a).

## Rabbi Yishmael's Hermeneutic Rules

The thirteen rules of Rabbi Yishmael may be divided into two parts:

*Midrash Hamekish*—Analogical interpretation, that is, drawing conclusions from one matter to the other.
*Midrash Hamevaer*—Elucidative interpretation, that is, explanation and elucidation of the Torah text.

## *Rule 1*

*Kal Vachomer:* An inference from a minor to a major. (*a minori ad majus*) or from a major to minor (*a majori ad minus*).

The basis of the rule is found in the Torah (*Bereshit* 44:8, *Devarim* 31:27) and the Sages found ten such *kallin vechomarim* in *Tanach* (*Bereshit Rabbah* 92:7).

Generally, the rule looks simple: If A has x, how much more B must have X?[29]

## Example

From major to minor:

The laws concerning the prohibition of *melacha* ("work") on *Shabbat* are more strict than those concerning work on the Festivals, since on *Shabbat* one is not allowed to cook anything, while on the festivals this is, to a certain extent, permitted.

29. This rule does not find a parallel in the famous Aristotelian syllogism: All men are mortal; Socrates is a man; therefore, Socrates is mortal. First of all, the element of "how much more" is not present; secondly, in the *Kal Vachomer*, the major does not belong to the class of the minor, but that which is true about the minor surely must be true of this major.



Therefore, if something is permitted on *Shabbat*, how much more is it permitted on a Yom Tov (festival) (*Betzah* 20b).

From minor to major:

The opposite is also true. If something is definitely forbidden on the festivals, and nowhere is it mentioned that it is forbidden on *Shabbat*, we say: Since it is forbidden on the festivals, how much more it must be forbidden on the *Shabbat*. (See also *Bava Metzia 95a.*)[30]

## Restrictions

1. Although "every person may apply the *Kal Vachomer* according to his reasoning" (i.e., without having received such a tradition from the Sages), obviously such a person must be acquainted with all the *halachot* concerning the minor and the major, since it is possible that what appears to be a major is, in fact, a minor (or the reverse), after which the *Kal Vachomer* can no longer be applied.

2. A second important halachic condition is the principle: *Dajo Lavo Min Hadin—Lihyot Ka-niddon* ("It suffices that the derived inference is equal in stringency to the premise from which it is derived"), but not more so, nor even when it might be argued that logically the inference should be even more stringent than the premises from which it is derived (*Bava Kamma* 2:5). (If A has x, B cannot have x and y.)

30. Some examples: *Bava Kamma* 24b, *Hullin* 24a.

3. The *Kal Vachomer* can only be applied in Torah (*De-oraita*) but not in rabbinic law.[31]

The rabbis may have built "a fence around the Torah" in one case of minor importance, while they did not see any need for such a fence in a major case (or the reverse).

4. Nor is it applied to in cases of *Halacha LeMoshe MiSinai*,[32] a Torah law not mentioned in the text itself, but purely an "Oral Law."

5. *Ein Onshin Min Hadin*: We do not impose a penalty on those who have transgressed a prohibition that was derived by *Kal Vachomer* (*Sanhedrin* 54a).[33] (We cannot impose a penalty by using the *Kal Vachomer* reasoning.)

6. *Ein Mazhirim Min Hadin*: We do not use a *Kal Vachomer* to deduce a prohibition otherwise not stated (*Pesachim* 24a).

The *Mishnah* or Talmud do not always introduce the *Kal Vachomer* by using this term. They sometimes use the following phrases as well:

*Hen* (at the beginning of a sentence)—Indeed
*Ve-ech*—How (much more)
*Ve-af ki*—And if already
*U-ma*—And what if
*Hashta-u-ma*—Now and what if
*Eno din?*—Is it not even true?

31. *Yadaim* 3:2.
32. P. 101.
33. To this view Rabbi Akiva takes exception (Jerusalem Talmud, *Hagiga* 11:1; see also Rashi, *Hagiga* 11a).



*Lo kol sheken?*—How much more so
*Al achat kamma ve-kamma*—all the more so
*Mibaye?*—Is it necessary?
*Tsericha Le-memar?*—Need it be said?

## *Rule 2*

*Gezerah Shavah:* An inference from the analogy of words (literally, "a comparison with the equal").

When two words are identical, even when they are stated in completely different contexts, the laws of both passages are subject to the same regulations and applications.

This rule is an atypical example of a case in which *derash* reveals a completely new halachic fact by way of a simple rule.

A maximum of knowledge is derived from a minimum of words. In such a case the layman will not be capable of understanding its logic, since he misses the complicated foundations. The words must not only be similar, but also superfluous (*mufneh*) so that it appears that they were placed there for the purpose of indicating a *Gezerah Shavah* (*Shabbat* 64a).[34]

Rabbi Akiva's school, however, seems to disagree with the requirement of *mufneh* (Jerusalem Talmud, *Yoma* 8:3, 45a).

There exist two types of *Gezerah Shavah*:

1. A *Gezerah Shavah* that clarifies the text of the Torah;
2. A *Gezerah Shavah* that reconstructs a completely new *halachah*, not mentioned in the text.

34. See also *Niddah* 22b.

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## Example 1

In a case of betrothal, it is stated (*Devarim* 22:13): "When a man takes [*yikkach*] a wife," while in the story of Avraham buying the Cave of Machpelah, the patriarch says to Efron, the Hittite: "I have given the money for the field, take [kach] from me" (*Bereshit* 23:13).

Hence, *kicha* refers to acquisition by way of money. Consequently, a man has the possibility of marrying his wife by giving her an object of value.[35]

## Example 2

Concerning the Passover offering, it is stated: "On the fourteenth day of this month between the two darkenings shall you make it, *Bemo'ada* [at its appointed time] in accordance with all its laws . . ." (*Bamidbar* 9:3).

In *Bamidbar* (28:12) we read concerning the *tamid*, the daily burnt offering, "You shall guard to bring it unto me *bemo'ada* [at its appointed time] . . , which includes even the *Shabbat*.

By means of a *Gezerah Shavah*, the Sages concluded that since the word *bemo'ado* in the second verse requires man

35. This does not mean that a husband "buys" his wife, after which he considers her his "object"; it means that by giving the object of value to *her* (and not to the "seller," her father), her legal status has changed. Until now, she has been permitted to marry everybody; from now on, she can only be married to her husband. (See M. Meiselman, *Jewish Woman in Jewish Law* [New York: Ktav, 1992], p. 96. See also Rabbi S. R. Hirsch's commentary on *Bereshit* 23:19, showing how the Sages interpreted this *Gezerah Shavah*, comparing both cases.)





to bring the *tamid* on *Shabbat* as well, so, too, may the Passover be brought up on *Shabbat*, although this activity would normally be forbidden on *Shabbat* (*Pesachim* 66a).

An important limitation on this rule is that "no one may deduce a *Gezerah Shavah* on his own authority" (Jerusalem Talmud, *Pesachim* 6:11). The reason for this is stated by Nachmanides: "Since the *middah* of *Gezerah Shavah* is an instrument that could be employed all day by someone to refute all the laws of the Torah, since words are repeated many times in the Torah. It is impossible for a large book never to use the same words again" (on *Sefer Hamitsvot* of Maimonides, *Shoresh* 11).

Only the Sages knew, by way of tradition, where an analogous word or sentence could be interpreted as such.

Secondly, both passages must occur in the Torah.

Finally, it must be noted that there cannot exist a "half" *Gezerah Shavah*, meaning that it is impossible to deduce a law from one passage to the other passage and not vice versa (see *Zevachim* 48a).

Another rule, similar to *Gezerah Shavah*, but not explicitly mentioned within the thirteen *middot* of Rabbi Yismael, is called *Hekkesh* ("juxtaposition"), sometimes called *Hekkesh Hakatuv* or *Hishvah Hakatuv* ("comparison of Scripture").

*Hekkesh* refers to the presence of two laws in the same verse from which it may be inferred that whatever is true of one is also true of the other.

The difference between *Gezerah Shavah* and *Hekkesh* is that the former is constructed from an analogy of words, while the latter is a comparison of cases. Secondly, in a *Gezerah Shavah* the Sages draw the comparison by way of analogy while *Hekkesh* represents an analogy that is drawn

by the Torah itself. In fact, it is the basis for reasoning by way of analogy to draw halachic conclusions.[36]

A classic example of *Hekkesh* is found in *Devarim* 22:26, in which the Torah discusses the case of a *na'arah meorasah*, a betrothed maiden, who, by force majeure, was "taken" by a man. Though the man is liable for the death penalty, the girl, despite being betrothed, is exempt from any punishment: "But unto the damsel thou shalt do nothing; there is in the damsel no sin worthy of death, for as a man rises against his neighbor and slays him, even so is this matter."

It is clear that the Torah itself draws that analogy between the case of murder and this case of rape, after which the Sages derived different *halachot* one from the other (*Sanhedrin* 74a).[37]

It is therefore understandable that the Sages preferred a *Hekkesh* over a *Gezerah Shavah* (*Zevachim* 48a).[38] [39]

Another rule similar to *Gezerah Shavah* is *Semuchim* ("juxtaposition") of subjects. It refers to a case in which one verse follows another, after which we conclude that that which is true about one is also true about the other. However, unlike the case of *Gezerah Shavah* and *Hekkesh*, there is neither an analogy of words nor a comparison made by the text itself.

An indication of this rule is found in the *Tehillim* (3:8): "*Semuchim* are truth and justice; faultless are all its precepts."[40]

36. See also *Niddah* 19b.
37. Other examples: *Kiddushin* 35a, *Pesachim* 43b.
38. See, however, *Tosafot*, ad loc.
39. Not all authorities are of the opinion that *Hekkesh* is incorporated into *Gezerah Shavah*, but rather into rule 12 (see p. xx).
40. *Yevamot* 4a.





## Example

"Thou shalt not suffer a sorceress to live; whoever lies with a beast shall be put to death" (*Shemoth* 22:17–18).

The Talmud derives by way of this juxtaposition that just as somebody who lies with a beast is put to death by stoning, so is the sorceress (*Berachoth* 21b). R. Yehudah rejects this inference and is of the opinion that such a juxtaposition may only be used in *Devarim* (ibid).[41]

## *Rule 3*

*Binyan Av:* An inference from a biblical text.

This principle is divided into two parts:

1. *Binyan Av Mikatuv Echad*: An inference from a single verse;
2. *Binyan Av Mishne Ketuvim*: An inference from *two* verses.

This *middah* is a construction (*binyan*), in which the text or two texts act(s) as a father (or fathers) (*av*) to the conclusion drawn from it (them).

41. This may be the reason why this rule is not incorporated into the rules of Rabbi Yishmael, since these rules should apply to the whole of the Torah. (See Avraham Kurman: *Mavo LaTorah she Beal Peh*, p. 303).

## Example 1 (one verse)

"One witness [*ed echad*] shall not rise up against a man for any iniquity or for any sin, in any sin that he sins; by the mouth of two witnesses, shall a matter be established [in court]" (*Devarim* 19:15).

From the word "witness" (*ed*), we may already conclude that the Torah refers to one witness. Consequently, what is the reason for the word "one," *echad*? This seems to be superfluous. The Talmud, however, concludes that we must infer from this that there was an explicit reason to state "one witness," which indicates that the word *ed* ("witness"), mentioned anywhere in the Torah without the word *echad* ("one"), means "more than one."

The construction (*binyan*), in which the text (one witness) acts as father (*av*), teaches us the conclusion that "witness" (without *echad*) means at least two[42] (*Sotah* 2a).

## Example 2 (two verses)

A farm laborer, when working in the field of his employer, is allowed to eat from the grapes of this field, and from the standing grain:

> When you come into your neighbor's vineyard, then you may eat grapes until you have enough at your own pleasure, but you shall not put any in your vessel.
>
> When you come into your neighbor's standing grain, then you may pluck ears with your hand, but you shall not move a sickle unto your neighbor's standing corn. (*Devarim* 23:25–26)

42. Other examples: *Yevamoth* 4b; *Shabbat* 22a.



Question: Is he allowed to eat from other things growing in the field of his neighbor?

It is not possible to derive this from the case of the vineyard, since the owner is obliged to leave the gleanings to the poor (*Vayikra* 19:10), and this could be the reason that he is obliged to allow his employee to eat from his field. Nor is it possible to derive any answer from the second verse, discussing the case of the standing grain, since the employer is obliged to give *challah* (a certain portion of the dough) to the priest (*Bamidbar* 15:17–21), which could be the reason for this permission. Secondly, the law of gleanings does not apply to the case of the standing grain, nor does the law of *challah* apply to the case of the vineyard.

So, the only common factor (*av*) is that both are plants (*gedulei karka*), from which we may derive (*binyan*) that the law applies to all plants (*Bava Metzia* 87b).[43]

It would neither have been possible, however, for the text to state "all plants," since "grapes" and "standing grain," as well as the other specifics, stand for other halachic deductions.[44] It appears that the application of this rule could even be extended to derivation of a principle from three verses (*Sifre, Bamidbar* 160) and even from four verses (*Bava Kamma* 1:1).

Sometimes the rule is called *Mah matsinu*[45] ("And what have we found . . .") and in other cases *Chada Mechada*[46] ("One from one"), in the case of a single verse, but not all scholars agree that these are forms of *Binyan Av*.

43. Other examples: *Bava Kamma* 6a.

44. See *Torah Temimah* of Rabbi Baruch Halevi Epstein, ad loc.

45. See *Shabbat* 26b (Rashi, *Uferat lecha*).

46. See Avraham Kurman, op. cit., p. 303, and *Encyclopedia Talmudit*, vol. 4, p. 3.

## Restriction

The deduction from two verses is only applicable when both texts are required in order to reconstruct a new halachic fact. However, when the second text only repeats what was taught in the first, no *Binyan Av* can be constructed and no general rule may be deduced.

## Elucidative interpretation: *Kelal-U-ferat*

This section contains examples of the general and the particular, rules 4–7.

The central problem dealt with in the following three rules may be stated as follows:

When a law lays down a certain directive, which such law renders operative both in particular and in general (which includes the particular), must the directive be held to apply to the particular expressly mentioned and the general be interpreted as including only such a particular and no more, or must it be held that the directive applies to everything embraced by the general and that the particular is quoted only in illustration of the general and not in exhaustion of it?

The fourth rule deals with the case in which the general and the particular serve neither to amplify nor to limit, but the one is merely an elucidation of the other.[47]

## *Rule 4*

> *Kelal* and *Perat:* A general proposition followed by a particular (literally, "the general and the particular").

47. Menachem Elon, ed., *The Principles of Jewish Law*, p. 64.



If a law is stated in general terms and followed by particular instances, the law only applies to the specific instances mentioned.

## Examples

"If any man of you would bring an offering near unto God from cattle; from the herd and from the flock shall you bring your offering" (*Vayikra* 1:2).[48]

Cattle [*behemah*] is a general term; "herd" and "flock" are particulars. Since the general term (*kelal*) "cattle" includes the "nondomesticated animals" as well, the Torah excludes by way of the particular those types of animals and only allows sacrifices to be brought from the (domesticated) "herd" and the "flock."

We may ask: If so, why did the text start with the supposedly superfluous words "from cattle"? Wouldn't it have been easier to write: "If any man of you would bring an offering, from the herd; from the herd and from the flock shall you bring your offering"?

The answer is that phrase *min habehemah* ("from the cattle") excludes the use of all animals that have been used for bestial, sexual immorality as offerings in the Temple (*Temurah* 28a), a fact that would otherwise not have been known.[49]

Secondly, if the verse would not have started with a general rule, it would not have been possible to apply the rule of *Kelal-U-Ferat*, but rather one of the other *middoth*

48. Other examples: *Vayikra* 17:13.

49. See S. R. Hirsch, *Commentary on Vayikra* 1:2.

of Rabbi Yishmael (like *Binyan Av*), after which it would have been possible to *include* some additions to the "particulars"[50] (which are excluded by the rule of *Kelal-U-Ferat*).

## *Rule 5*

*Perat-U-Kelal:* A particular followed by a general proposition (literally, "the particular and the general").

If the particular instances (*peratim*) are stated first and are afterwards extended by a general term (*kelal*), then others, besides the particular mentioned, are included as well.

### Example

> You shall not see your brother's ox or his sheep driven away, and hide yourself from them, you shall surely bring them back unto your brother . . . And so shall you do with his ass, and so shall you do with his garment, and shall you do with every lost thing of your brother's. . . . (*Devarim* 22:1–3)

"Ox," "sheep," "ass," and "garment" are particulars. "And so shall you do with every lost thing of your brother's" is the general term.

Since the particulars are stated first, which would limit the duty to restore a lost article to these alone, therefore,

50. See Avraham Kurman (p. 304), quoting Rabbi Samson Ben Isaac Chinon, *Bate Midot* 5.



the text continues with a general rule to include all lost items (*Nazir* 35b).

Again, we may ask why the Torah needed to state the particular first, instead of starting immediately with the general rule. The answer, as stated before, is that otherwise another of these rules of *derash* could have been used, after which different *halachot* would have been deduced, not warranted by the text.[51]

## *Rule 6*

*Kelal-u-ferat-u-kelal, i atta dan ella ke-en Haperat:* A general law limited by specific instances and then again referred to in a general term; in this instance, one may derive only facts similar to the specifics (literally, "general and particular and general, you may derive only similar to the particular").

### Example

> If a man delivers unto his neighbor money or stuff to keep, and it is stolen out of the man's house, if the thief be found, he shall pay double. If the thief be not found, then the master of the house shall come near to God [i.e., to the judges] to take an oath, to see whether he has not put his hand unto his neighbor's goods.
>
> For every matter of trespass, whether it be for ox, for ass, for sheep, for raiment, or for any matter of lost thing, whereof one says: This is it [the thing lost], the word of both parties shall come before God. (*Shemot* 22:6–8)

51. See *Tosafot*, ad loc.

"Every matter" is a general term. "Ox—ass—sheep—raiment" are particulars. "Any matter of lost thing" is again a general term.

The general term "every matter" is followed by some specifics (ox, ass, sheep, raiment) and these again are followed by a general term, "any matter of lost thing."

We now need to look at the common factor of the specifics. This consists of two facts: they are all movable objects, and they have monetary value. This excludes immovable property and documents such as checks, et cetera, which are only drafts for value but have no intrinsic value themselves.

In the last case, no oath can be imposed[52] since this is excluded by the rule of *Kelal-U-ferat U-kelal.*[53]

The differences between the two earlier rules (*Kelal-U-Ferat* and *Perat-U-Kelal*) and this rule are:

*Kelal-U-Ferat* excludes everything else besides what is explicitly mentioned in the specific;
*Perat-U-Kelal* includes everything, even those matters that are not all mentioned in the specific;
and *Kelal-Ferat U-Kelal* chooses the middle path, including those matters that are similar to the specifics.

The reverse (*Perat-U-Kelal-U-Ferat*) deduces *halachot* on the same basis as *Kelal-U-Ferat U-Kelal* (*Nazir* 34b) and subsequently belongs to the rule under discussion.

52. For the meaning of this, see Rabbi S. R. Hirsch's commentary on *Shemot*, ad loc., p. 356.

53. *Shevuoth* 42b; other examples include *Eruvin* 27b.





## *Rule 7*

*Kelal Shehu Tzarich Li-ferat U-ferat Tzarich Lichelal:* The general rule requires a specific, or the reverse, to complement each other, being mutually interdependent (literally, "the general requires the particular, and the particular requires the general").

In this case, the general and the particular serve neither to amplify nor to limit, but the one is merely an elucidation of the other.

### Example

"Sanctify unto Me all firstborn, whatsoever opens the womb among the children of Israel, both of man and beast . . ." (*Shemot* 13:2).

"Every firstling that is born amongst your herd and your flock, the males shall you sanctify unto God . . ." (*Devarim* 15:19).

"Sanctify unto Me all firstborn" is the general rule. "Every firstling . . . the males" is the specific.

1. From the words "all firstborn," we may conclude this also means the females. However, the word "males" excludes the females.

2. From the word "males" we could, however, derive every "firstborn male," even after a female has already been born. This again is excluded by "whatsoever opens the womb" (for the first time).

3. From the words "whatsoever opens the womb," we would not have excluded one born after a previous caesarean birth. Hence, the general term: "all firstborn" (*Bechorot* 19a).

In this case, the meaning of the general rule would remain obscure without the specifics (see Rashi on *Bechorot* 19a).

## *Rules 8–11*

> *Davar She-hayah Bi-chelal Veyatza min Hakelal:* The particular stated separately after forming a part of the general rule.

The problem dealt with is to provide an answer to the following question: "When there are two separate directives referring to the same subject (and not a simple directive with a generality and a specific instance, as in the previous group)—the one a general and the other a special directive—what is the relationship between the two classes of directives and for what reason has the special directive been stated separately from the general one?"[54]

## *Rule 8*

> *Davar She -hayah Be-kelal ve yatza Min Hakelal Le-lamed, Lo Le-Lamed Al Atzmo Yatza Ella Le-lammed Al Hakelal Kullo Yatza:* If a particular has already been included in a general rule and is afterwards repeated by way of an exception, then the exception is not applicable only to its own case but also to the instances embraced by the general rule (literally, "If a matter mentioned in a general rule is singled out to be applied, then it is not only to be applied to itself, but it is singled out for everything included in the general rule").

54. Menachem Elon, ed., *The Principles of Jewish Law*, p. 69.





### Example

"But the seventh day is a *Shabbat* unto God, your God, on it you shall not do any *melacha* [work]" (*Shemot* 20:10).

"You shall kindle no fire throughout your habitations upon the *Shabbat* day" (*Shemot* 35:3).

In the first verse ("You shall not do any *melacha*"), the second verse, ("You shall not kindle any fire") is included (being a particular of the general prohibition of "doing any *melacha*").

We may ask: Why was that which was included at first, stated separately afterwards? It is not possible to state that this is done with respect to its own context, since it would not teach us anything new. The answer must be that it follows in order to tell us something that we would otherwise not know.

In our case the answer is clear: Kindling fire is one of the thirty-nine basic forms of *melacha* forbidden on the *Shabbat*.[55] It is mentioned separately, by itself, as the classic example for all the other forms of *melacha*.[56] It is taken out

55. *Shabbat* 7:2.

56. See *Shabbat* 70a for an explanation of why the example of kindling fire is used instead of another form of *melacha*.

of the collective idea in which it was included to teach us that each type of *melacha* constitutes a separate desecration of the *Shabbat* and needs to be atoned for separately (by bringing a sacrifice, if done unintentionally) (*Shabbat* 70a).[57]

## *Rule 9*

> *Davar She-hayah Bi-chelal Veyatza Liton To'an Echad She-hu Ke-inyano, yatza Lehakel Ve-lo Lehachmir:* When something is first included in a general rule and then it is mentioned specifically, in order to give information concerning it, then one should apply relaxations to this rule and not the restrictions (literally, "A matter that was first stated in the general rule, and [then] is excluded to require a matter in accordance with this fact, is excluded to alleviate and not to aggravate).

### Example

"He that smites a man, so that he dies, shall surely be put to death" (*Shemot* 21:12).

"As when a man goes into a forest with his neighbor to hew wood and his arm is swung with the ax to fell the tree, and the head drops off from the handle and lights upon his neighbor and he dies, he has to flee to one of these cities and remain living" (*Devarim* 19:5).

57. Another example: *Sanhedrin* 67b.



The general rule, "He that smites a man so that he dies shall surely be put to death," does not make any distinction between intentional or unintentional murder. All forms of homicide are included in "He that smites." In the specific, an exception is made in the case of unintentional murder so that this committer of homicide could flee to one of the cities of refuge and would not be liable for capital punishment.[58]

In other circumstances, depending on the nature of the text, we find the need to aggravate and not alleviate (*Mechilta, Shemot* 21:38).

This rule differs from the previously cited one, in that it does not limit the entire principle, but rather limits the specific example and excludes it from what is true of the general rule.

## *Rule 10*

> *Kol Davar She-hayah Bichelal Veyatza lit'on To'an Acher She-lo Ke-inyano, Yatza Lehakel Ulehachmir:* When something is first included in the general rule and is then specified in detail, dissimilar from those cases included in the general rule, then such specifying alleviates in some respects and aggravates in other aspects (literally, "A matter that was stated in the general rule and [then] is excluded to require a matter not in accordance with that fact, [then] it is excluded to alleviate and to aggravate").

58. See: *Sifra*, Introduction (including other examples).

## Example

In Chapter 13 of *Vayikra*, verses 1–3, the different laws concerning *tsara'at* (a type of leprosy), an illness caused by certain moral misdeeds, are discussed, after which a person is declared "impure" in case the priest finds (under certain circumstances) a "white hair on the flesh or the skin" (general rule).

In verses 29–37, the same law is discussed in the case of such a plague on the head under the hair or beard (specific): "And behold, its color is deeper white than the skin and there is short golden [yellow] hair on it, then the priest shall pronounce him 'impure'" (*Vayikra* 13:30).

Now, it is clear that the case of the hair and the beard are included in the previously mentioned plague on the skin and the flesh (general rule). The "specific" of the hair and the beard, however, shows a dissimilarity with the general rule, that is, the golden (yellow) hair, since, in the case of the skin and the flesh, a "white" hair (and not a yellow one) is a sign of impurity.

Instead of saying that the white hair *and* the golden (yellow) hair are signs of impurity, we say of the above-mentioned rule that: (1) the white hair is *not* a sign of impurity in the case of the hair and the beard (alleviation), while it *is* in the case of the skin and flesh; (2) the golden (yellow) hair *is* a sign of impurity in the case of the hair and the beard (aggravation), though it is not a sign of impurity in the case of flesh and skin (*Sifra* 1:3).[59]

59. Other examples include *Shemot* 21:7; *Vayikra* 25:15–26:30.



## *Rule 11*

*Davar She-hayah Bi-chelal Veyatza lidon Bedavar Chadash, i-attah Yachol Lahachziro likelalo Ad She-yachazirenu Ha-Katuv Likelalo Beferush:* When something is first included in the general rule and is then specified to determine a completely new matter, the details of this general rule may not be applied to this instance unless this is expressly done by the text itself (literally, "A matter that was stated in the general rule and [then] is excluded to require a new matter, you are not allowed to restore [this matter] to its general rule, until the text itself specifically restores it to its general rule").

## Example

In the case of the guilt offering of the leper, the Torah states:

> And he [the priest] shall slaughter the he-lamb in the place where they kill the sin-offering and the burnt-offering, in the place of the sanctuary; for as the sin-offering is the priest's, so is the guilt offering. . . .
>
> And the priest shall take of the blood of the guilt offering, and the priest shall put it upon the tip of the right ear of him that is to be cleansed, and upon the thumb of his right hand, and upon the great toe of his right foot. (*Vayikra* 14:13–14)

The general rule of the guilt offering (in cases other than that of the leper) is that the sprinkling of the altar is required (*Vayikra* 7:2), as it is in a sin-offering, from which

we may presume that this is true of the case of the leper as well.

The question then arises, Why is there any need to state, "So is the guilt offering [of the leper]," a phrase that seems to be superfluous? The answer is that since, in the specific case of the leper, a "new matter" is introduced (the placing of the blood on the ear, thumb, and toe), it is unclear whether this specific rule of the leper still forms a part of the general rule of guilt offerings (sprinkling the blood on the altar) or not.

By stating "as the sin offering . . . so is the guilt offering" (of the leper), the text informs us that this is indeed the case; the text itself brings the specific case back to its general rule, specifically (*Yevamot* 7a, b).[60]

The difference between this rule and the previous one is that the former rule discusses a case in which the "specific" contradicts the general rule, which in our case the specific does not contradict the general rule.

## *Rule 12*

> *Davar Halomed Me'inyano, Vedavar Halomed Mi-sofo:* (1) An interpretation deduced from its context, (2) an interpretation deduced from subsequent terms of the text (literally, "from its end").

### Example

In the Decalogue,[61] it is stated: "You shall not steal" (*Shemot* 20:13). From the text alone, it is unclear whether

60. Other examples: *Bamidbar* 6:14–15, 15:1–16.
61. See page 46.



this only concerns the stealing of objects or instances of kidnapping as well, which is a capital offense.

However, since it is stated in this context: "You shall not murder" and "You shall not commit adultery," both of which are capital offenses, we must deduce that our verse includes kidnapping as well (*Sanhedrin* 86a).

### Example

"I put the plague of leprosy in a house of the land of your possession" (*Vayikra* 14:34).

We may ask, does this apply to every type of house (after which it becomes impure), or not? The answer is deduced from a later reference concerning this plague: "And the priest shall break down the house, the stones of it, and the timber thereof, and all the mortar of the house . . ." (ibid., 45), teaching us that our verse only refers to a house made of "stones *and* timber *and* mortar" (*Sifra*, ad loc.).

This rule shows great similarity to *Semuchim* ("juxtaposition"), mentioned earlier.[62] The difference, however, is that in the case of *semuchim*, we deduce a completely new law by way of a juxtaposition. In our case, no new law is introduced, but instead the meaning of an obscure statement is clarified.[63]

## *Rule 13*

> *Shene Ketuvim Ha-machhishim zeh et zeh ad Sheyavo hakatuv Hashelishi Veyachria Benehem:*

62. See page 144.
63. See Avraham Kurman, op. cit., p. 308.

When two verses contradict each other, they are reconciled by a third verse (literally, "Two verses that contradict each other, until there comes a third verse, which decides between them").

This rule is applied to two verses dealing with the same subject, either in two different chapters,[64] or in the same chapter.[65] This also applies to two parts of one verse.[66]

## Example

"In the beginning God created the heaven and the earth" (*Bereshit* 1:1).

"In the day that the Lord made earth and heaven" (*Bereshit* 2:4).

There is an obvious contradiction between the two verses. The first implies that the creation of heaven preceded the creation of earth; the second verse seems to state the reverse.

A later verse in *Tanach*, however, reconciles both: "My hand also has laid the foundation of the earth, and My right hand has spread out the heavens; I call unto them, they stand up together" (*Jesjaja* 48:13–14).

Rashi, ad loc., remarks: "Like a craftsman who is working with both hands at two handicrafts at the same time."[67]

64. *Bava Metzia* 110b.
65. *Mechilta Mishpatim* 20.
66. *Mechilta Mishpatim* 7.
67. This is not a halachic issue, proving that these rules are not only used in legal matters, but also in *Aggadah*. See Kurman, op. cit., p. 309.



## The Rules of Rabbi Akiva

As mentioned before, Rabbi Akiva's approach to Torah exegesis is based on the concept that in the language of the Torah nothing is mere form, but everything is essence. There are no superfluous words, or syllables, or even a letter. Everything incorporates a deeper meaning.[68]

Rabbi Akiva formulated, among other things, some important rules:

1. *Ribui Umiut*—Extension and limitation. This is a variation of the rule of *kelal* and *perat* of Rabbi Yishmael[69] (*Bava Kamma, Shevu'oth* 26a).

2. *Ribui*—Inclusion or amplification. The words *af*, ("even"), *gam* ("also"), and *et* (a word that introduces a direct object) amplify the halachic meaning of the text.[70]

3. *Mi-ut*—Exclusion or limitation. The words *ach* ("however"), *rak* ("but," or "only"), and *min* ("from") limit the halachic meaning of the text.

4. *Yesh em Lemikra*—There is a preference to the way in which the text is pronounced, that is, the way in which the text is sounded determines the *halachah* (literally, "*Mikra* has a mother").

According to Rabbi Akiva, the traditional vocalization of a word in the Torah, even when it could be read in

68. See page 20, concerning the crowns on the Hebrew letters.
69. See *Shevu'oth* 4b (Rashi).
70. The word *kol* ("all") is also included in *Ribui* (*Berachot* 1:5).

different ways, is well-founded, and, consequently, we may deduce *halachah* from it. This rule had already been formulated by Rabbi Judah ben Roetz. Rabbi Yishmael, however, in opposition to Rabbi Akiva, is of the opinion that *Yesh em Lemasoret*. There is a preference for the traditional text, that is, the text as it was written is authoritive. Sometimes this approach is called *Keri U Ketiv*, ("read and written").[71]

## Example

"Speak unto the children of Israel, saying: When a woman had given birth to . . . a male child, then shall she be in an impure condition for two weeks [*shevu'ayim*] as in her time of separation . . ." (*Vayikra* 12:2–5).

Since the text is written without vowels, the word *SH-Y-M* could be read as *Shivim* ("seventy"), implying that the Torah requires seventy days of impurity. Tradition, however, tells us that it should be read as *Shevuayim* ("two weeks"), which, however, should have been spelled differently: *SH-VU-IM*,[72] in its full consonantal form. In other words, the *Keri* reads *Shevuayim* ("two weeks"); the *Ketiv* is written *Shiv'im* ("seventy").

In this case Rabbi Akiva, like Rabbi Judah ben Roetz, decided the *halachah* according to the Keri, while it seems that Rabbi Yishmael reached this same conclusion by logical deduction (*Sanhedrin* 4a).

71. The *Keri* and *Ketiv* are almost a matter of *Masorah* (see page 22) and incorporate much more than halachic issues.

72. The *U* is a *waw*, a consonant. The *ii* are two *yods*, also consonants.



These and other rules (such as the cases of repetition or redundancy) play a major role in Rabbi Akiva's school of halachic interpretation.

It must be emphasized that Rabbi Akiva and his school had an enormous influence on *Drash*. Nearly all famous scholars since his day are greatly indebted to this halachic interpretation: "The author of an anonymous *mishnah* is Rabbi Meir; an anonymous *Tosefta*, Rabbi Nehemiah; an anonymous [statement] of the *Sifra*, Rabbi Judah; of the *Sifre*, Rabbi Shimon; and all taught according to the views of Rabbi Akiva" (*Sanhedrin* 86a).

*Marvin J. Heller*

The author has published *Printing the Talmud: A History of the Earliest Printed Editions of the Talmud.*

# DESIGNING THE TALMUD: THE ORIGINS OF THE PRINTED TALMUDIC PAGE

The Talmud is indisputably the most important and influential non-biblical Jewish work.[1] Its redaction was completed at the beginning of the fifth century and the most important commentaries were written in the middle ages. Studied without interruption for a millennium and a half, it is surprising just how significant an effect the invention of printing, a relatively late occurrence, had upon the Talmud.

The ramifications of Gutenberg's invention are well known. One of the consequences not foreseen by the early practitioners of the "Holy Work" and commonly associated with the Industrial Revolution, was the introduction of standardization. The spread of printing meant that distinct scribal styles became generic fonts, erratic spellings became uniform and sequential numbering of pages became standard.

The first printed books (incunabula) were typeset copies of manuscripts, lacking pagination and often not uniform. As a result, incunabula share many characteristics with manuscripts, such as leaving a blank space for the first letter or word to be embellished with an ornamental woodcut, a colophon at the end of the work rather than a title page, and the use of signatures but no pagination.[2] The Gutenberg Bibles, for example, were printed with blank spaces to be completed by calligraphers, accounting for the varying appearance of the surviving Bibles. Hebrew books, too, shared many features with manuscripts; A. M. Habermann writes that "Conat's type-faces were cast after his own handwriting . . . this is immediately obvious when his type-faces are compared to his manuscript writings."[3]

Codices with a common text are, unless the scribe consciously intended otherwise, manifestly unique. Among the features that distinguish manuscripts from printed books is the absence of pagination, which is defined as "a: the numbers or marks used to indicate the sequence of pages (as of a book) b: the number and arrangement of pages or an indicator of these."[4] Sequential numbering is used to permit multiple readers of a common work to reference their location



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within that work. Pagination is absent from codices, and, indeed, if present would be superfluous, because the very uniqueness of each codex renders such a reference system, based on the uniform physical construction of a book, meaningless. Instead, cross referencing is accomplished by referring to text markers, such as chapters and subheadings.

These features are also true of the Talmud. What makes the Talmud unique, however, among both Hebrew and Latin titles, is neither the existence of these conditions among codices and incunabula, nor the subsequent application of modern standards and methodologies to printed editions of the Talmud, but the adoption of a fixed pagination from which current editions may not deviate. Every student of the Talmud knows that the Talmud has fixed pagination, each tractate beginning at 2a, and an established page composition *(tzurat ha-daf)*. This was not always the case. Well after the adoption of standards, variances occurred, with greater frequency and by more printers than might have been expected.

Scribes were not constrained by the need to adhere to either preset pagination or page composition. The physical placement of identical text is inconsistent, so that the same passage in two codices of a tractate could, and more often than not did, have a different number of lines to a page and words to a line, with the text beginning and ending at different positions on the page, resulting in varying numbers of leaves for two copies of the same tractate. Furthermore, the organization of the text varied,with all of the *Mishnayot* for a chapter sometimes placed at the beginning rather than distributed throughout the chapter. Where *Mishnayot* are distributed in a codex, they often are in a different order from the current sequence.

Codices of the Talmud were customarily written without any commentaries, those being separate books, although later manuscripts frequently include *Rashi*. The Talmud, unlike many works which are little changed in their printed forms from their manuscript predecessors, was physically transformed by printing.

The first dated Hebrew book to be printed was Rashi's commentary on the Torah, completed on 10 Adar, 5235 (February 18, 1475) in Reggio di Calabria by Abraham ben Garton ben Isaac. Within a decade, the first tractate, *Berakhot*, had been printed in the year G'MRA (1483/84) by Joshua Solomon Soncino, in the northern Italian town of Soncino. *Berakhot* was quickly followed by *Betza*, and, in the ensuing decades, additional tractates were issued from the presses of Joshua Solomon and, in even greater number, his nephew, Gershom Soncino. These incunabula and post-incunabula tractates are remarkable, apart

from the quality of their text and physical attractiveness, because of the commentaries the Soncinos included with the text and their arrangement of those commentaries.

The text, *Rashi,* and *Tosafot* are printed together on the same page, with the text in the middle of the page, *Rashi* on the inner margin towards the binding, and *Tosafot* along the outer margin of the page. Throughout the volume, *Rashi* and *Tosafot* begin at the top of the page, and four lines below begins the text. The text is printed in square letters, while *Rashi* and *Tosafot* are in semi-cursive script. With rare exceptions, subsequent additions of the Talmud have adhered to the arrangement, selection of commentaries, and structure initiated by Joshua Solomon Soncino. While there are instances where *Rashi* and *Tosafot* intermittently occupy more than four lines above the text in individual Soncino and occasional Bomberg tractates (first edition only), this arrangement has become part of the standard rules of composition of the Talmud (except where it is not possible due to the absence or limitedness of a commentary for a particular text).

Of greater significance, however, is the selection of *Tosafot* to be printed with the text. On the title page of the *Mikhlol Yofi* (Constantinople, 1532-34) Gershom Soncino recounts how, many years earlier, he had travelled throughout "France, Chambéry and Geneva" seeking the *Tosafot* of Touques, from whom he was descended. Many commentators have observed that what are now considered "our *Tosafot,*" as opposed to those *Tosafot* printed apart from the Talmudic text or still in manuscript, results from the selection of *Tosafot* by the Soncinos to be printed with the text.[5]

Soncino tractates lacked a title page. In its place, the first treatises, in the same manner as other incunabula, were bound with a blank leaf, which was counted as the first page in the numeration of the signatures. The following page, the second page in the volume and the first text page, is therefore the second page of the quire. When Gershom Soncino printed *Yevamot* in 1509, the first tractate with a title page (he also printed the first Hebrew book with a title page, the *Sefer ha-Roke'ah,* in Fano, 1505), he counted the title page as the first signature. This numeration was continued in the subsequent Pesaro treatises; it is responsible for the practice, which carries over to the pagination in the Bomberg Talmud, of the title page being counted as not only the first leaf in the signature, but also the first page in the enumeration of the pagination, with the result that the first text page of a tractate is numbered 2a.

In 1519/20 Daniel Bomberg, the most prominent Hebrew printer

in Venice, the international center of printing in the sixteenth century, with Hiyya Meir bar David as his editor, began printing the first complete Talmud, the *editio princeps*, utilizing the layout introduced by the Soncinos. This Talmud is of considerable importance in the development of standards for future Talmud editions. The text organization and pagination of Bomberg's *editio princeps* are the model and touchstone for subsequent editions of the Talmud. Only *Berakhot* follows the second Bomberg Talmud (sixty four pages for the text) rather than the first Bomberg *Berakhot* (sixty eight pages for the text). Two tractates from the last Bomberg Talmud, *Eruvin* and *Keritot,* have an innovation that was not repeated, a letter marker to cross-reference the text and *Tosafot.*

Two additional editions of the Talmud were printed in Italy. The first, a complete Talmud published by Marco Antonio Giustiniani from 1546-51, is a beautiful and influential edition, which contributed the indices *Torah Or*, *Ein Mishpat Ner Mitzvah*, and *Mesorat ha-Talmud* (now referred to as *Mesorat ha-Shas*), prepared by the editor, Joshua ben Simon Baruch Boaz.

The final Italian printing occurred in 1554 at the Sabbioneta press of Tobias ben Eliezer Foa. One tractate only, *Kiddushin*, is extant, if indeed more were ever printed. Here too, the editor was Joshua Boaz. He appended to the margins of the now standard page with indices the commentaries of R. Yom Tov ibn Abraham (Ritba) and the *Tosafot* of Isaiah di Trani. Accents were added to the letters in the Mishna, and references to the Mishna in the Talmud text were printed in large letters. Rabbinovicz described this edition of *Kiddushin* as "most becoming and beautiful. . . . It would have been the glory and most beautiful jewel of Israel. All the editions before and after would not have compared to it."[6]

Hebrew printing in Italy, excluding undated books attributed to a press in Rome ca. 1470, antedates the appearance of Hebrew titles in the Iberian peninsula by one year only, the first Iberian work known with surety being, as in Italy, *Rashi* on the Torah, printed in Guadalajara and dated 16 Elul, 5236 (September 5, 1476). During the brief period left to the Jews of Spain prior to their expulsion from that land, Hebrew-Iberian presses issued many fine imprints, among them talmudic tractates, which were contemporaneous to and may even have preceded the first Soncino imprints.

Among the imprints from an unidentified press is an edition of *Hullin*, remarkable for its lack of any commentaries. An early date is ascribed to this edition due to its similarity to codex tractates.

The Guadalajara press of Solomon ben Moses haLevi Alkabetz, the eponymous grandfather of the author of *Lekha Dodi,* issued a num-

ber of tractates. Printed with *Rashi* but not *Tosafot*, these tractates are representative of the Sephardic tradition of learning *Rashi* and the novellae of R. Moses ben Nahman (Ramban) rather than *Tosafot*. Here too, the text is in square letters, and *Rashi* is in a distinctive Sephardic cursive script. In what is assumed to be the first Guadalajara tractate, *Berakhot*, *Rashi* is printed on the left side of the page, dividing the text. In subsequent tractates, *Rashi* is positioned along the outer margin, so that it surrounds the text.[7] There is no pagination in these treatises.

Hebrew printing in Portugal, introduced into that country in 1486-87 from Spain, precedes Latin and vernacular printing, which begin in 1494 and 1495, respectively. Two treatises, *Berakhot* and *Gittin*, were printed in Faro by Don Samuel Gacon and Don Samuel Porteira, and *Shevuot* and *Bava Metzia* at an unidentified printing-house. Both the text and *Rashi* are printed in square letters, distinguishable by the smaller fonts used for *Rashi*. At one time, it was believed that these treatises had all been issued by the same press. Distinctions such as the use of different size fonts, catchwords, and the representation of the tetragrammaton have caused a reevaluation of that position. The placement of Mishnayot in both the Guadalajara and Portuguese tractates varies from the current order. These tractates, as well as other Sephardic treatises, are significant for textual variations from standard Talmud editions.

The expulsion of the Jews from Spain and Portugal resulted in the establishment of Hebrew presses in many lands with no prior history of printing, and in many cases no subsequent history of printing in the vernacular for many years (Hebrew printing in Constantinople antedates Turkish printing by more than two centuries.) In three locations, the Jewish refugees from the Iberian peninsula printed volumes from the Talmud notable for our purposes for their departure from the Venetian standard. These centers are Fez, Salonika, and Constantinople.

Samuel ben Isaac Nedivot founded a Hebrew printing-house in Fez in ca. 1516. Among the titles issued by his press are several tractates, the most interesting being *Rosh haShana*, in which both the text and *Rashi* are printed entirely with semi-cursive ("Rashi") letters. It is assumed that this was done because of insufficient square letters to set the text. Although all the tractates attributed to the Nedivot press lack *Tosafot* and are clearly Sephardic imprints, the layout of a later tractate, *Hullin*, reflects the influence of the Soncino and Pesaro treatises.[8] After issuing seven to fifteen titles in Fez, Nedivot ceased to print, primarily due to a Spanish prohibition on the sale of paper to the press.

The first tractates printed in Salonika by Don Judah Gedaliah con-

tinue the Sephardic tradition described above. By the time Joseph Jabez began to print tractates in 1563, *Tosafot* were included together with *Rashi* on the page of the Talmud. Joseph Jabez did not, however, initially adopt the accepted pagination. The first three treatises printed by Jabez, *Kiddushin*, *Ketubbot*, and *Bava Metzia*, do not conform to the standard pagination. By the time the fourth tractate, *Bava Kamma*, was printed, Jabez had become aware of the advantages of standard pagination, and that tractate, as well as the remaining treatises printed by Joseph Jabez in Salonika, were printed in conformity with the standard introduced by Daniel Bomberg. This was not done without some expense, as smaller *Rashi* fonts were needed to have his pages agree with the 'Venetian' pagination.[9]

Subsequent Salonika Talmud imprints, issued as individual tractates by small presses for local use, did not always adhere to the now accepted standard. *Berakhot* and *Gittin*, printed by David Azubib in 1580, reflect the influence of Joseph Jabez's first tractates, *Berakhot* having 76 pages and *Gittin* 106, in contrast to the respective accepted pagination of 64 and 90 pages. A later press, that of the brothers Solomon and Moses Shimon, printed a small number of treatises from 1610-20, again not in conformity with the accepted pagination. The Hebrew press of Abraham haGer printed three tractates between 1651 and 1655, while the press of Abraham ben Yedidah Gabbai printed at least five tractates between 1705 and 1707. None of these tractates adhere to the standard pagination. In 1758 and 1767/68, respectively, *Betza* and *Berakhot* were printed without *Tosafot* and with non-standard pagination (*Betza* has 36 pages and *Berakhot* has 101 pages) for the local Talmud Torah. Finally, *Ketubbot* and *Bava Metzia* are known to have been printed for the local Talmud Torah by Raphael Judah Kalai and Mordecai Nahman between 1774 and 1781. These treatises, too, vary from accepted norms.[10]

The widespread adoption of printing *Tosafot* as well as *Rashi* is reflected in the earliest known Constantinople imprints, dated to the first decade of the sixteenth century. These tractates, although designed primarily for a Sephardic audience, reflect the Ashkenazic tradition of printing *Tosafot*, motivated by market considerations. In 1583, the Jabez brothers, Joseph and Solomon, began to print the Talmud in Constantinople, using the first Bomberg Talmud as their model. This is clear from a comparison of those two editions with later treatises. The Constantinople Talmud varies from editions printed afterwards, as does the first Bomberg Talmud, in such instances as the number of lines of *Rashi* or *Tosafot* at the top of the page. The Jabez brothers employed a

type that was larger than the fonts used by Bomberg. As a result, they found it necessary to compensate for the additional space required by their type by cramping the text and using abbreviations to ensure that their pagination remained consistent with the accepted standard.[11]

Acknowledgment of the 'Venetian' standard is evident in all of the Talmud imprints from the Hebrew printing-houses of Lublin and Cracow. Acknowledgment is not the same, however, as compliance. The first printing of the Talmud in Poland is the Lublin edition of 1559-77. The title page states:

> The pages are marked in accordance with the great edition printed previously in Venice: In order to be able also to find the pages in this edition we have marked the [Venetian] pagination in our edition on the side of the page in large square letters as in the great edition. That is, where an *aleph* is found on the side of the page, there begins *daf aleph* from the great edition and so with *bet,* etc.[12]

Although a smaller format was used for these tractates, a full size font was employed. As a result, the pagination does not conform to the *editio princeps.* To compensate, the standard pagination is noted, although not consistently, twice on a page, on the top of the page and along the outer margin where a new leaf *(daf)* begins according to accepted usage. Only the leaf is noted, but not the page *(amud).*

The acceptance of the great 'Venetian' standard is also evident from the first Cracow tractates, *Avoda Zara* and *Ketubbot,* printed in 1578-79 in accordance with the first Bomberg Talmud. *Avoda Zara* was printed to complete the Basel Talmud which, under the guidance of the censor, omitted the entire tractate from that Talmud. Although the next Cracow Talmud, issued by Isaac Prostitz from 1602-05, also conformed to accepted practice, the following Prostitz edition deviated in several particulars.

The 1616-20 Talmud edition was printed by Aaron and Mordecai ben Isaac Prostitz as a small (20 cm.) portable edition. The title page of *Berakhot,* one of the few tractates printed with a title page, states:

> Therefore, our purpose is to print the Talmud with *Rashi*'s commentary, small in size but of great quality. We have omitted *Tosafot,* and in its place added the *Arukh*'s commentary throughout the Talmud. . . . With references on the page to the great edition . . .[13]

*Tosafot,* as stated on the title page, is indeed absent. The *Arukh*'s explanation of terms, however, appears only intermittently throughout

this Talmud. The standard pagination is noted by large square letters throughout *Seder Mo'ed,* but is absent from most of the later tractates. The most unusual tractate in this edition, one that differs markedly from the other treatises, is *Bava Metzia.* That tractate was printed with the text only, lacking both *Rashi* and *Tosafot. Bava Metzia* too has its own pagination, noting the 'Venetian' pagination within the text in parenthesis.[14]

The last printing of a talmudic treatise in Poland prior to the catastrophic Chmielnicki massacres of 1648-49 was begun but not completed in Lublin. Unlike the 1617-39 Lublin Talmud, which conforms to the accepted standard, *Bava Kamma*, begun in that city in 1646, does not adhere to that pagination, and includes the same statement on the title page as to cross-referencing to "the great edition printed previously in Venice" as does the first Lublin Talmud. Before the tractate could be completed, however, a fire destroyed the Jaffe Hebrew printing house, forcing the famed press to close. Sixteen quires of *Bava Kamma* which had already been printed were saved and sold to the Cracow printer Nahum Meisels, who completed the tractate at his press.

In the remainder of the tractate, Meisels printed all biblical verses in the text with vowels. He must have anticipated opposition to this innovation, for Meisels began the seventeenth quire, his first, with a long defense of his innovation. Although Meisels hoped to print a complete Talmud, the suffering and impoverishment of Polish Jewry also affected the Hebrew printing houses, and no further tractates were issued.

By the beginning of the eighteenth century, the layout of the talmudic page and its pagination appeared to be settled. All printers of new editions of the Talmud and individual tractates had to either adhere to accepted standards or structure their modifications so that their imprints were, in some manner, consistent with the now accepted pagination. The constraints of an established standard, however, became evident at the beginning of that century.

In 1697-99, the Talmud was printed in Frankfurt on the Oder at the press of Michael Gottshalk, under sponsorship of Issachar haLevi Bermann. This was the first Talmud to be issued with approbations, one which specifically forbade the publication of rival editions, including individual tractates. The prohibition encompasses printing the Talmud in any form, as one approbation states:

> . . . whether in its entirety or in part, even for one tractate only, whether for oneself or for others, and it is not to be done by means of guile or ruse.

Rabbinovicz notes the chilling effect of these licenses, which, although well intentioned, caused serious disputes and resulted in the Talmud's being printed less frequently.[15] In this case, the civil authorities, elector Friedreich Augustus and Kaiser Leopold, granted a license for twelve years, while the rabbinic authorities issued approbations for twenty years.[16]

Although the prohibition extended to individual tractates, 'yeshiva' editions continued to be issued. Approximately one hundred individual tractates were issued during the first half of the eighteenth century alone. These ostensibly prohibited individual tractates satisfied the clear and obvious need of students or less affluent individuals who could not afford an entire Talmud.

In many cases, the prohibition appears to have simply been ignored. In 1721, the Offenbach printer of tractate *Sanhedrin* was granted permission by R. Jacob haKohen, *Av Bet Din* (head of the rabbinical court) at Frankfort on the Main, to print the tractate for the reasons noted above. The formal basis of the exemption, however, was that by omitting commentaries normally appended to tractates, that is, *Piskei haRosh* and Rambam's Mishnayot commentary, this edition would not be called a tractate but a *kunteres* (pamphlet). Nahum Rakover writes, however, that in fact the excluded commentaries were printed.[17] The copy I examined did not include either of the excluded works.

Another way of circumventing the prohibition on printing individual treatises was to print tractates in a smaller format. Approximately fifty percent of the individual treatises issued during the first half of the eighteenth century were either small format quarto or octavo editions, rather than the folio size volumes associated with complete Talmud editions, with a standard page *(amud)* often covering two pages (double pages). The numeration of the pages remained unchanged, the top of the page repeating the leaf number and page number, thus retaining the accepted pagination. These small tractates generally measured between 16-21 cm., frequently towards the lower end of this range.[18]

The rationale behind these small tractates was expressed in an approbation to the 1770 edition of *Nidda,* printed by Moses May in Metz, which states that although the approbations and excommunications issued extended to the printing of individual tractates, in reality "it was not their [the rabbinical authorities] intent to prevent the printing of these small volumes which were not part of complete editions."

In at least two locations, the standard pagination was abandoned, reverting to the practice described earlier of only noting that numera-

tion in the text. This occurred at the printing-houses of Zevi Hirsch ben Hayyim, who printed in Wilhermsdorf from 1712 to 1739 and afterwards in Fuerth until 1753. Zevi Hirsch issued both folio and small format tractates, eschewing, in the latter instances, the use of double pages, noting instead the standard pagination at the top of the page and in the text where the new page begins. In tractate *Sanhedrin* (Feurth, 1739) the volume ends on 264b, in contrast to 113b in the standard pagination.[19]

Another innovation in these small tractates is the addition of the halakhic novellae of R. Samuel Edels (Maharsha) to the text page. This commentary was printed in many of the smaller volumes into the nineteenth century, and even appears with the text of some folio tractates.

The most unusual tractate issued in the eighteenth century is a small edition of *Sukka*—it fits comfortably into the palm of one's hand—which measures approximately 9 cm. The title page of this palm-sized edition of *Sukka* states:

> Done as a small volume in order that a person should be able to carry it in his bosom, so that it should be fluent in the mouth of all Israel, to keep and to make a *sukka* as is the law:[20]

Apart from its small size, the tractate is notable for the absence of any commentaries. Standard pagination is noted at the top of the recto of a leaf (*amud* a) and in the text, in which case the page (*amud*) is also noted. Dated 1722, it lacks the place of printing and the name of the printer. Bibliographers have assigned it to different printing-houses, but most describe it as a Frankfurt on the Oder and/or Berlin imprint.[21] The only important exception is Rabbinovicz, who suggests a Halle origin, but this seems improbable.[22]

In the nineteenth century, new marginal annotations were appended to the text in a number of Talmud editions. It was not until the 1880-86 'Vilna *Shas*,' however, printed at the press of the Widow and the Brothers Romm, under the direction of Samuel Shraga Feigensohn, that significant additions were made to both the tractate volume and the now traditional Talmud page. Numerous commentaries were added for each treatise, among them *Rav Alfas,* which had previously been printed as a large separate work, and the margins of the page were filled with important glosses. A complete Talmud here consists of twenty oversized volumes, in contrast to the Bomberg and most subsequent Talmud editions, which were bound in twelve volumes. This Talmud is

now the accepted standard. Nevertheless, the accepted Talmud page remains essentially unchanged from Talmud editions printed in Italy in the first half of the sixteenth century.

The face of the Talmud was established in Italy beginning with Joshua Solomon's edition of *Berakhot*, continued by Gershom Soncino in his many Pesaro tractates and Daniel Bomberg in the *editio princeps*, and completed with the Giustiniani edition. Although additional commentaries and annotative material were added, the form, structure, basic commentaries, and pagination were all in place. Alternative structures and pagination were considered, but, with rare exceptions, by the seventeenth century, even these non-normative editions had to acknowledge the existence of the 'Venetian standard' for Talmud imprints.

There is no necessity in the composition of the contemporary talmudic page, which was first composed in the late fifteenth century. Its acceptance may be attributed to the influence of the Soncinos, the adoption of their layout by Daniel Bomberg, and the failure of alternate models to be widely accepted, partially due to the unfortunate circumstances of the Jews in the Iberian peninsula. The acceptance of this format, however, must also be attributed to the aesthetic and functional qualities of the talmudic page introduced by Joshua Solomon Soncino in 1483/4 in the small Italian town of Soncino, a format that utilized the potential of the printing press to modify the manuscript talmudic page, and thereby benefitted countless generations of Jews.

## NOTES

1. All talmudic references are to the Babylonian Talmud. Although the invention of printing also affected the Jerusalem Talmud, the history of that work is not addressed by this paper.
2. D. C. Greentham, *Textual Scholarship. An Introduction* (New York and London, 1992), pp. 225-26.
3. Abraham M. Habermann, "The Jewish Art of the Printed Book," in *Jewish Art. An Illustrated History* (Tel Aviv, 1961), p. 456. For a discussion of the relationship between Hebrew manuscripts and printed books, as well as a dissenting opinion from Habermann's conclusion, ref. Malachi Beit-Arie, "The Relationship Between Early Hebrew Printing and Handwritten Books: Attachment or Detachment," in *The Makings of the Medieval Book* (Jerusalem, 1993), pp. 251-77.
4. *Webster's New Collegiate Dictionary.* (Springfield, Mass. 1973), p. 817.
5. Marvin J. Heller, *Printing the Talmud: A History of the Earliest Printed Editions of the Talmud* (Brooklyn, 1992), pp. 102-103, 132.
6. Raphael Nathan Nuta Rabbinovicz. *Ma'amar al Hadpasat haTalmud with additions* (Hebrew). ed. A. M. Habermann (Jerusalem, 1952), p. 59.

7. Haim Dimitrovsky, *S'ridei Bavli: An Historical and Bibliographical Introduction* (Hebrew) (New York, 1979), p. 71.
8. Dimitrovsky, pp. 68-70.
9. Israel Mehlman, "Hebrew Printing Houses in Salonika," in *Genuzot Sefarim* (Hebrew) (Jerusalem, 1976), p. 48.
10. Mehlman, pp. 48-53.
11. Rabbinovicz, p. 73.
12. Heller, p. 329.
13. Quoted in Heller, pp. 381-82.
14. Heller, pp. 381-88.
15. Rabbinovicz, pp. 100 and 155-56.
16. The rabbinic authorities were R. Naftali ha-Cohen, Av Bet Din of Pozna, R. Joseph Samuel of Cracow, Av Bet Din of Frankfurt on the Main, R. David Oppenheim, Av Bet Din of Nikolsburg, and R. Moses Judah ha-Cohen and R. Jacob Sasportas of Amsterdam.
17. Nahum Rakover, *Copyright in Jewish Law* (Hebrew) (Jerusalem, 1991), pp. 220-21.
18. Marvin J. Heller, *Printing the Talmud: A History of the Individual Treatises Printed from 1700 to 1750* (in progress).
19. Heller, *Individual Treatises.*
20. Quoted in Heller, *Individual Treatises.*
21. A. E. Cowley, *Concise Catalogue of Hebrew Printed Books in the Bodleian Library* (Oxford, 1971), p. 683; Ch. B. Friedberg, *Bet Eked Sefarim* (Hebrew) (Tel Aviv, 1951), *Tav* 1342; Isaac Metz (Hebrew) and Eliezer Emden (Latin), *Kohelet David* (Hamburg, 1826), p. 56.; Isaac Seligman Berend Salomon (Izak Cohen), *Reshimat Tama* (Hamburg, 1782), pp. 676-677; Moritz Steinschneider, *Catalogus Liborium Hebraeorum in Bibliotheca Bodleiana,* (Berlin, 1852-60), col. 272 no. 1909; Yeshayahu Vinograd, *Thesaurus of the Hebrew Book Part II, Places of print sorted by Hebrew names of places where printed including author, subject, place, and year printed, name of printer, number of pages and format, with annotations and bibliographical references* (Hebrew) (Jerusalem, 1993), p. 113 no. 92 and p. 153 no. 25.; Joseph Zedner, *Catalogue of the Hebrew Books in the British Museum* (London, 1964), p. 743.
22. Rabbinovicz, p. 101.

# TOOLS FOR TOSAFOS

Haim Perlmutter

TARGUM/FELDHEIM

# Introduction

## What Is Tosafos?

Tosafos is a collection of the interpretations and explanations of the Gemara by the group of sages known as "*baalei haTosafos*," i.e., the Tosafos masters. The *baalei haTosafos* (also known as "Tosafists") were sages of the Jewish communities in France and Germany (with a few in other European countries) in the twelfth and thirteenth centuries. Some of them officiated as the halachic leaders of the community and functioned as representatives to the gentile authorities. Some ran yeshivos, where disciples would devote all their time to studying Torah.

The *baalei haTosafos* lived in a time that is regarded in Jewish history as the period of the Rishonim. "Rishonim" (literally "first") is the collective term given to the sages who lived in Europe and North Africa after the time of the Geonim (who lived in Babylon). This period extended until the Tur or R' Yosef Karo (who compiled the *Shulchan Aruch*), after which the period of the Acharonim began.

Not all the sages who lived in these areas during this time period are called Tosafists, however. The term "Tosafist" applies to those who learned the Gemara in a certain way. The way the *baalei haTosafos* learned is, in effect, the focus of this work.

At this point, we can say that a sage who constantly compared and attempted to consolidate differences in the Talmudic text, and who wrote his commentary in a dialectic form, would be termed a Tosafist.

A deeper observation is that, in essence, Tosafos is an extension of the Talmud itself. Tosafos, when analyzing the Talmudic discourse, uses the same methods the Talmud does when analyzing a Mishna or a statement of an Amora. The questions and answers Tosafos asks are of the same style as found in the Gemara. Tosafos's discourse is mainly in Aramaic, which is the language of the Gemara. In essence, Tosafos picks up a topic where the Talmud left off. Sometimes Tosafos picks up where Rashi's commentary left off. This means that if one can study Gemara and Rashi, one should also be able to study Tosafos.

The major early *baalei haTosafos* did not leave us organized edited material containing their ideas. Most of the material in Tosafos was written by disciples who took notes during the lectures given by the *baalei haTosafos*; they wrote them on the margins of the Gemara and sometimes on pieces of paper or notebooks. These quotes of the major *baalei haTosafos* were collected by later sages, who arranged them according to the tractates in the Talmud. A few great later *baalei haTosafos*, such as R' Shimshon of Sens, wrote collections of their Tosafos themselves.

The original printers of the Talmud took some of these collections and arranged them on the outside column of the page of the Talmud. This is reminiscent of the way the actual notes were written on the margins of the Talmud. Tosafos appears in this form in the earliest known printed editions of the Talmud, as well as in the first complete printed Talmud.*

* This edition is known as the Bomberg edition, printed in Venecia, Italy, 1520–1523.



Since then, most printings of the Talmud have contained Tosafos's commentary. The famous Warsaw and Vilna editions contain Tosafos printed as described above and are the basis for the vast majority of contemporary editions of the Talmud.*

## Why the Name "Tosafos"?

The origin of the name "Tosafos" for the commentary on the Gemara by the French and German rabbis is unclear. We know that within the lifetimes of the *baalei haTosafos* themselves they referred to each other's notes as "Tosafos." There are accounts that the later generations of the *baalei haTosafos* also related to their notes of their teacher's lectures as such.**

"Tosafos" is literally translated as "additions." The tradition I heard from my rabbis is that they called their commentaries by this name to mean a supplement to the Talmud. This name was chosen out of modesty. They saw their work as secondary to the Talmud itself and only supplementing or adding to it. However, some think that the Tosafists called their work "Tosafos" because they saw their commentary as an extension of Rashi's commentary. Wherever Rashi did not comment or

* For more information about different editions of the Talmud with and without Tosafos, see R. Rabinowitz, *Ma'amar Al Hadpasas HaTalmud* (Jerusalem: Mossad HaRav Kook, 5712).

** See the sources brought in E. E. Auerbach, *Baalei HaTosafos* (Jerusalem: Mossad Bialik, 5715), chapter 1, comments 25–33. Especially important is the fact that Ri, in the Tosafos for tractate *Avodah Zarah* 57b, refers to the "Tosafos" (or "Tosefta") of the students that were learning in front of Rabbeinu Tam. We see that Ri, who was one of the early great *baalei haTosafos*, was already using the term "Tosafos" (or "Tosefta") when referring to the notes of the disciples of another *baal haTosafos*. In comment 33 there is another source, in which Rabbeinu Tam refers to the Tosafos of Riva using the term "Tosafos."

where he commented briefly or, in the *baal haTosafos*'s opinion, inaccurately, Tosafos adds to his commentary. This opinion also maintains that the *baalei haTosafos* gave their commentary this name out of modesty — not presuming to compare their commentary to Rashi's, just to add to it.

From the extensive way the *baalei haTosafos* quote Rashi, we can see that they did not know that Rashi's commentary and their Tosafos would be printed on the same page. They also do not assume that the reader of their commentary is familiar with Rashi's commentary. How, then, would they call their commentary Tosafos to Rashi? With all the honor they had for Rashi, they did not hesitate to disagree with him. This indicates a certain amount of independence from Rashi. I prefer the opinion that they saw their commentary as a modest addition to the Gemara, perhaps indicating that they felt their commentary was humble compared to Rashi's commentary, which commented on the Talmud line for line.*

## "Our" Tosafos and Other Tosafos

The commentators refer to the Tosafos printed next to the Talmud text as "our" Tosafos. There are different collections of Tosafos as well. Most well known are the "*Tosafos Yeshanim*"

* According to Auerbach, page 19, the name is a result of the close affiliation the *baalei haTosafos* felt to Rashi's commentary, that they saw their work as additions to Rashi. His proof is not explicit or conclusive. It consists of expressions of awe that Rashi's disciples have regarding his commentary. These expressions have nothing to do with the Tosafos, nor do we find them written in Tosafos. In a recent book, *Early Sages of France* ([Jerusalem: Magnes Press, 1995], pp. 439–454), A. Grossman brings additional proof contradicting Auerbach's claim. He shows how sages wrote in the Tosafos style in the time of Rashi!





(old Tosafos), which are often printed in the margins outside our Tosafos. The term "old" (*yeshanim*) was probably given to these pieces by the printers, who believed that these manuscripts were of a more ancient source than those they printed on the page. They are usually shorter than the regular Tosafos.

Other collections of Tosafos are printed in separate books: *Tosafos Rash MiShantz*, *Tosafos Chachmei Anglia*, and others. Their common denominator is that they relate the teachings of the Talmud scholars in Western Europe who lived between 1105 (Rashi's death) and the end of the thirteenth century, and who learned the Gemara in the distinct style of the *baalei haTosafos*.

## "Tosafos" — Singular or Plural?

The word "Tosafos" is used to refer to the entire Tosafos commentary. "Tosafos" is also used to refer to a specific paragraph or comment within the larger work. Even though it was written by a group of sages, I have chosen to refer to the authors of Tosafos in the singular ("he" rather than "they"). This is because there was only one sage who physically wrote the Tosafos on each portion of the Talmud.

Also, although the word "Tosafos" in Hebrew is plural, I have chosen to refer to the entire work as "it." It is true that Tosafos is composed of many individual comments, but later generations view it as a single, integrated work.

In general, these were arbitrary decisions made because of the need to have a standard view of the word "Tosafos" as either singular or plural.

## What Does Tosafos Do for the Talmud?

### *Comparing, Contrasting, and Consolidating Texts*

Rashi explains the Talmud's text so that one can understand the language and the development of the *sugya* (the discussion in the Talmud surrounding one topic). Tosafos reexamines the Talmudic texts, discovers inconsistencies and contradictions, and resolves them, thus making the Talmud into a perfect work fit to be the basis for all Jewish law. The inconsistencies are found where one line seems to contradict another in a particular discussion; the contradictions are between statements and rulings in two altogether different tractates. Tosafos also points out problems when a halachic ruling on a certain case contradicts a ruling brought in another.

Although the consolidation of differences and contradictions in the Talmudic text is not the only interest of Tosafos, as we will see, nevertheless it is the bulk of Tosafos's discussion, and it is what this commentary is known for. However, because Tosafos reexamines the text of the Talmud in a critical fashion, his commentary deals with many other issues that confront the student.

### *Choosing the Correct Wording*

Tosafos works at deciding the correct wording of a text, choosing the wording of one manuscript over another. Tosafos may disagree with Rashi or other sages over the proper wording of the text. The wording must fit into the flow of the local *sugya* and be consistent with information derived from other *sugyos* as well. Although Rashi also deals with the correct wording of the *sugya*, Tosafos reassesses Rashi's conclusions based on additional sources and proof from the Talmud itself.



### *Deciding Halachah*

Tosafos does not make it a rule to discuss the halachic conclusion of every *sugya* commented on. Nevertheless, in some cases where there is disagreement, Tosafos is also interested in deciding the halachah. Furthermore, when dealing with issues that were of practical significance for the Jews of that time, Tosafos may expound on the topic and not only discuss how to conclude the halachah of the issue debated in the Gemara, but address adjacent halachic issues as well.

### *Identifying Talmudic Personalities*

Tosafos also identifies the Tannaim and Amoraim referred to in a certain discussion if there is difficulty ascertaining precisely whom the Gemara is referring to. Precise identification helps Tosafos resolve difficulties and contradictions in the data concerning this specific sage.

### *Rationalizing the Order of the Tractates and Chapters*

Tosafos seeks the reason the tractates were placed in their specific order, usually by exposing a connection between the end of the previous tractate and the beginning of the next. At times, Tosafos is interested in the order of chapters within the tractate as well.*

### *Questions of Logic*

Tosafos also raises questions on the logic behind what the Talmud is saying, but only rarely (perhaps when the logical problem with the statement of the Gemara is crystal clear). Tosafos does not usually ask questions on the Gemara based on his own logic, but rather he uses discrepancies in the text

* In his introduction to the Mishna, the Rambam explains the order of the tractates in the Mishna based on the subjects they discuss as a whole.

to introduce special conditions to the problematic statement that will eliminate the logical difficulty. However, the *baalei haTosafos* do use logical arguments when evaluating other commentaries on the Talmud, as will be explained. The Sephardic sages, on the other hand, did ask and answer their own logic questions about the Gemara relatively freely; the Ramban, Rashba, Ran, and Ritva are good examples.

Another central topic of Tosafos's commentary is the careful scrutinization and criticism of the work of earlier commentators (principally Rashi) if their commentaries cause inconsistency and contradiction in the local *sugya* or if there is a difficulty in a commentary's logic. Also, Tosafos may dismiss Rashi's commentary based on proof from another *sugya*, the Jerusalem Talmud, or the *Tosefta*.* Tosafos will disagree with Rashi if according to his commentary the Talmudic statement seems illogical, and another way of explaining the statement makes more sense. Tosafos does not give early commentators the immunity from criticism that he gives the Talmud itself. The *baalei haTosafos* argue even with sources from the period of the Geonim, and certainly with the commentaries of Rashi and Rashbam, whom some early Tosafists saw in their lifetimes. When dismissing Rashi's commentary, Tosafos sometimes brings in another early commentary he agrees with, such as Rach (Rabbeinu Chananel) or the *Aruch*, or presents the opinion of one of the *baalei haTosafos* who explains the issue differently than Rashi. Tosafos may then proceed to explain a whole *sugya* and a host of entries from different tractates based on the new interpretation he has presented.

* The *Tosefta* is a collection of material from the time of the Tannaim. One version of it is printed in the back of the Vilna and Warsaw printings of the Talmud.





## Filling in Gaps in Rashi's Commentary

Tosafos also fills in gaps in the commentaries of Rashi (and Rashbam). If they don't explain something in the *sugya*, whether it is a question, an answer, or another stage of the discussion, Tosafos often fills in the void. Tosafos also gets involved in word translation; when Rashi doesn't translate, Tosafos will do so. Often Tosafos will bring different opinions for translations to prove which translation is better.

## This Work

This work is an attempt to explain the basic components of Tosafos's discourse to the beginner, and to organize and arrange the knowledge of the intermediate learner. Even though Tosafos seems to use many different forms and phrases, there are certain themes and expressions that recur throughout his entire commentary. I will introduce these themes and expressions to the student, thus creating "landmarks" in the text of the Tosafos. When the student meets these landmarks in his study, he will then "feel at home." By using these landmarks to give him the basic structure of the Tosafos, the student will understand the Tosafos better.

I have divided the book into chapters, each discussing one aspect of Tosafos's discourse. Besides introducing recurring themes and phrases, the book addresses the objectives Tosafos had in mind when writing his commentary and also gives an analysis of Tosafos's language and syntax, as well as strategies for the study of Tosafos for both the beginner and the intermediate student. Also included in this work is a dictionary of key words Tosafos uses in his discourse and a dictionary of abbreviations. Biographies of some of the more well-known

*baalei haTosafos* are also given.

This information is meant to give the student as many tools as possible to help him study Tosafos in any tractate in the Talmud, and it will help him to feel more confident in approaching Tosafos.

I am not presuming to solve all the readers' problems regarding learning Tosafos. The complexity, diverse style, and richness of expression that appear in Tosafos is impossible to encompass in the scope of this book. I merely hope to introduce Tosafos to the beginner, giving the basic background information he needs and sharing tools for analyzing Tosafos, which I have received from my rabbis as an oral tradition. For the intermediate student, this book will serve as a reference and reminder of those rules for learning Tosafos that he learned from his own rabbis.

## How to Use this Book

This book is user-friendly for the beginner, but it also supplies interesting insights and ideas to any reader. In italics are paragraphs that deal with more advanced material directly associated with the topic discussed, which will offer a more complete picture of the topic. In the footnotes, I have included my sources as well as some speculative and theoretical material that will interest even the advanced student of Tosafos.

For each chapter I have included a summary, which can be used for a concise review of the chapter. Additionally, for a quick overview of the book, one can first read the summaries, and then go to the relevant chapters to explore in depth those points that are of interest to the reader.

This book can be used as a textbook, guide, reference book,





or simply for the dictionary. A systematic and diligent student can make his first steps in Tosafos by reading this book cover to cover and then studying Tosafos on the Gemara using the tools he picks up here as his landmarks for his study. When studying the Tosafos and coming across something needing to be defined and explained, one can open to the relevant chapter (with the assistance of the table of contents or the cross-reference [page 111]) and find the information needed. One can also simply use the dictionary for words in Tosafos that need to be translated.

* * *

Studying Tosafos greatly enhances a student's aptitude for learning Gemara, widens his horizons of knowledge, and deepens his understanding, putting him in a completely different class in his studies. I wish the learner lots of success and enjoyment from *Toras Hashem*.

Conclusion: Deciphering Tosafos requires a good command of the Gemara being discussed and a lot of patience. It is a slow process and requires work, but it can be very satisfying if executed successfully.

* * *

## SUMMARY OF CHAPTER 2: Tosafos's Language and Syntax

a. The base of Tosafos's language is the Aramaic of the Talmud.
b. Tosafos mixes some Hebrew words into the Aramaic discourse.
c. There are Aramaic forms Tosafos is fond of that are rarely used in the Talmud.
d. Aramaic prefixes are used by Tosafos extensively, even with Hebrew words.
e. The syntax in Tosafos is different than that of the Gemara. It is helpful to know key words that help to recognize beginnings of sentences.
f. Tosafos freely uses words and concepts from the local *sugya* in his discourse and mixes them with his discussion.
g. Tosafos assumes a familiarity with concepts from the Talmud in general.

## SUMMARY OF CHAPTER 3:

### Tosafos's Objectives

a. Our first assumption when beginning to learn a Tosafos should be that Tosafos will be raising and dealing with a difficulty concerning a Gemara, since this is his primary interest.

b. The next most common interest of Tosafos is pointing out the difficulties regarding another commentator's explanation of the Gemara.

c. When there is no evidence of a question being raised by Tosafos, he may be interested in achieving one of his other objectives: reading the Gemara's text correctly, explaining the text, reaching a halachic conclusion, or inducing or deducing from the text.

d. Even when the Tosafos begins with a non-argumentative objective, this is commonly a prelude to difficulties raised by that introduction.

*e. Sometimes, even a question and an answer are laying the groundwork for the following question and answer.*

*f. Sometimes, a whole Tosafos is part of a web that Tosafos spins in order to prove a single point.*

# Chapter 13:
# *Tips and Strategies for the Beginner*

When we take our first steps in the study of Tosafos or when we instruct others who are doing so, the following strategies are recommended. (The advice given here starts with advice for the most inexperienced and proceeds to advice for the more advanced.)

## Tip 1: Know the Gemara and Rashi Well

Before attempting to study Tosafos, it is necessary to know well the Gemara Tosafos is discussing and the Rashi on that Gemara. Therefore, it is recommended to not start learning Tosafos until we have gained a solid textual understanding of our Gemara and Rashi. Many times, we misunderstand a Tosafos because of a mistake in our understanding of the Gemara.

## Tip 2: Approach Tosafos Gradually

When we are first starting to learn Tosafos, we do not need to immediately begin studying every single Tosafos on the page or finish every Tosafos we start. Here is a proposed program for the parts of Tosafos that can be omitted by the beginner.

1. Start by learning only those Tosafos that explain the *sugya* or pertain to its halachic conclusion.
2. It is not necessary to finish every Tosafos at first. In the beginning, it is sufficient to learn one question and answer, or one idea, and then to proceed with the study of the Gemara.
3. When Tosafos brings several questions on a certain topic, it is possible to learn only the question most connected to our Gemara and go straight to the answer. From there, it is possible to continue with the rest of the Tosafos or the next Tosafos, or to continue with the Gemara (see Chapter 5, page 44).
4. The beginner should start by learning only those Tosafos or parts of Tosafos that deal with our Gemara and do not introduce a quote from another one.
5. When there is a ואין לומר, the beginner may go straight to the answer, skipping the ואין לומר (see Chapter 7, page 56).
6. Once one is learning quotes from other Gemaras, one may choose to skip sections where Tosafos begins addressing difficulties primarily affecting the other Gemara and not ours.

## Tip 3: Helpful Literature

In recent years, two series of books, *Mei Menuchos** and *Shaarei Tosafos*,* have been printed that translate Tosafos into Hebrew and explain the commentary (in Hebrew). These books also give any background material that may be necessary, and explain the content and context of the sources Tosafos quotes. These books are written on some chapters of the Gemara, especially ones that are studied in high schools. These books can be very helpful when there is an especially difficult Tosafos or when we lack the background information necessary to understand a specific Tosafos. However, students who rely on these books alone for their Tosafos study will learn the information in Tosafos but will not learn how to "learn" Tosafos.

I believe that by combining the study of Tosafos with the help of these books, and by using this volume to help gain the "tools" for the study of Tosafos, it is also possible to achieve the goal of easing and expediting the study of Tosafos and, in addition, to learn how to approach the Tosafos directly. However, most teachers recommend using books that translate and explain Tosafos only when students' attempts to understand the Tosafos by themselves have failed.

* Nachman Kahana (Jerusalem: Machon Mei Menuchos, 5732). Thirty-three volumes already exist.



## Tip 4: Assistance from Classical Talmudic Commentaries

When Tosafos's question or answer does not make sense to us, it is often helpful to study the words of another commentator who may ask the same question in different words, thus helping us to understand what Tosafos intends to ask.

The *Tosafos HaRosh* is a source parallel to Tosafos, commenting on the same issues Tosafos deals with. The *Tosafos HaRosh*

* David HaKohen Oxenberg (Jerusalem: Hotza'at Machon Tam, 5750). Nine volumes are already in existence in this series.

were compiled either by the Rosh himself or by his disciples and therefore differ from our Tosafos in the style of writing, and sometimes even in content. We will often find the same question asked there under the same opening quote as in our Tosafos. Since the wording may be different, this comparison may shed light on our understanding of Tosafos.*

Also helpful for this purpose are the *Chiddushei HaRitva*. The Ritva often asks Tosafos's question and even mentions that Tosafos asks it. He often brings Tosafos's answer and discusses it. The difference in style between Tosafos and the Ritva and the Ritva's comments on Tosafos's answers can help us a great deal.**

Rabbi Uziel Moshe Rothstein, *zt"l*, wrote up his *shiurim* on a number of tractates in a series of books called *Nachalas Moshe*.*** In his *shiurim*, he comments extensively on Tosafos, sometimes simply explaining Tosafos's intentions. His language is easy and flowing, and his questions on Tosafos are often questions that we ourselves would ask.

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* Rabbi Y. S. Langa (in his edition of the *Tosafos HaRosh* on tractate *Shabbos*, p. 7), says that *Tosafos HaRosh* is a collection of Tosafos made by the Rosh or his disciples. Rav Nebenzahl, *shlita*, adds that the *Tosafos HaRosh* is the collection of Tosafos that the Rosh brought with him when he immigrated from France to Spain. Rav Nebenzahl's source is a letter written by the Rosh's son.

** The Ritva was a Spanish sage. He was the disciple and successor of the Rashba. He mentions Tosafos by name more often than any other Spanish commentator.

*** Jerusalem: Published by the author from 5735–5748.

# Appendix 3:

# *Glossary*

ACHARON(IM) — commentator(s) who lived after the TUR or BEIS YOSEF (sixteenth century to the present).

ACHSANIA SHEL TORAH — meeting-place for study.

AL KIDDUSH HASHEM — lit., on the sanctity of God's name; when a Jew chooses to die rather than defy his religion.

AMORA(IM) — sage(s) who lived in the time of the Talmud (third through sixth centuries).

BAALEI HATOSAFOS — lit., the masters of the Tosafos; the authors of Tosafos; also known as Tosafists.

BARAYSA — a unit of the words of Tannaim that R' Yehuda HaNasi, the author of the Mishna, did not include in his Mishna. Also known as an "external Mishna."

BEIS MEDRASH — house of study (and prayer).

BEIS YOSEF — commentary on the TUR, written by R' Yosef Karo in the sixteenth century.

CHAVRUSA — study partner.

CHILLUK — differentiation; distinguishing between two cases.





DERASHAH — a discourse on a text from the Torah using traditional ways of interpretation.

DIBBUR HAMASCHIL — the word or words that begin a paragraph in a book of commentary.

GAON/GEONIM — head(s) of one of the two major Babylonian yeshivos; from approximately 589 C.E. until the death of R' Hai Gaon in 1038 C.E.

HAGAHOS — Corrections of text, sometimes including short comments.

HALACHAH (adj. HALACHIC) — Jewish religious law.

MASORES HASHAS — marginal notes printed in standard Gemaras; cites parallel sources for our Gemara.

OPENING QUOTE — the quote from the Gemara that begins every individual TOSAFOS.

PILPUL — a method of learning Gemara by primarily raising and answering apparent contradictions.

POSEK (POSKIM) — a HALACHIC authority.

PESHAT — the simple understanding of a text.

RABBEINU — our rabbi.

RISHON(IM) — sage(s) from the period after the Geonim and before the TUR or BEIS YOSEF (eleventh through sixteenth centuries).

SHIURIM — classes given by sages.

SHULCHAN ARUCH — code of Jewish law written by R' Yosef Karo.

SUGYA (SUGYOS) — portion(s) of Talmud that deal with one topic.

TALMID(IM) — disciple(s).

TANNA(IM) — sage(s) who lived at the time of the Mishna; approximately 37 C.E. (Hillel) to 219 C.E.

TORAS HASHEM — the Torah of God.

TOSAFOS — commentary on the Talmud compiled by a group of western-European sages during the twelfth and thirteenth centuries; a section of this commentary.

TOSAFOS CHACHMEI ANGLIA — Tosafos compiled by sages who lived in England.

TOSAFOS YESHANIM — a collection of Tosafos thought to be older than our Tosafos. They are printed in between the "regular" Tosafos with the notation תו"י, or they are printed in the margin of the Gemara.

TOSAFOS HARASH MISHANTZ — Tosafos compiled by R' Shimshon of Sens.

TOSEFTA — a specific collection of BARAYSAS that was given this name. One version of the *Tosefta* is printed in the back of the Vilna and Warsaw editions of the Talmud.

TUR — code of Jewish law written by R' Yaacov son of the Rosh in the early fourteenth century.