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Avot Reconsidered: Rethinking Rabbinic Judaism

ADIEL SCHREMER

THE OPENING PASSAGE of tractate *Avot* is undoubtedly one of the most, if not the most, famous rabbinic texts in the entire classical rabbinic corpus. “Moses received Torah from Sinai,” claims m*Avot* 1.1, a Torah that he handed on to Joshua, “and Joshua [handed it on] to the Elders, and the Elders [handed it on] to the prophets and the prophets [handed it on] to the people of the Great Assembly,” the last “remnant” of whom was Simeon the Righteous, who handed on that Torah to his “successors.” According to the following passages in that famous mishnah, Antigonos of Sokho “received” from Simeon the Righteous, Yosse ben Yoezer and Yosse ben Yohanan “received” from “him,”¹ Joshua ben Perahiah and Mattai² the Arbelite “received” from “them,” Judah ben Tabbar and Simeon ben Shatah “received” from “them,” Shemaiah and Abtalion “received” from “them,” and Hillel and Shammai “received” from “them.”³ As noted by Martin Jaffee, this unit is “the best-known example of the claim that all rabbinic teaching stems from a Mosaic source.”⁴

So pivotal are these lines for our thinking about rabbinic Judaism that

I would like to thank Ishay Rosen-Zvi, Daniel R. Schwartz, and Aharon Shemesh, as well as the anonymous readers for this journal, who commented on earlier drafts of this essay.

1. So MS Kaufman (Budapest A50), and many other reliable manuscripts. See Shimon Sharvit, *Tractate Avot through the Ages: A Critical Edition, Prolegomena and Appendices* (Hebrew; Jerusalem, 2004), 66. Other witnesses read: “from them,” which is obviously difficult, because one expects “from him” (that is, from Antigonos). For the purposes of the present discussion, however, this textual difficulty is immaterial.

2. This is the reading of MS Kaufman and other good witnesses. See Sharvit, *ibid.*, 69.

3. m*Avot* 1.1–15.

4. Martin S. Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE–400 CE* (Oxford, 2001), 84.

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when Jacob Neusner, for example, attempted a "Definition of Rabbinic Judaism," his starting point was basically a recapitulation of that passage:

The central conception of rabbinic Judaism is the belief that the ancient Scriptures constituted divine revelation, but only a part of it. At Sinai, God had handed down a dual revelation: the written part known to one and all, but also the oral part preserved by the great scriptural heroes, passed on by prophets to various ancestors in the obscure past, finally and most openly handed down to the rabbis who created the Palestinian and Babylonian Talmuds.⁵

Although Neusner did not furnish any reference to support this view, it is clear from the vocabulary he used that his major source was the famous beginning of tractate *Avot* in the Mishnah, which he views as encapsulating "the central conception of rabbinic Judaism."

David Weiss-Halivni, too, views "the oldest layer" of *Avot*, the "chain of tradition from Moses to the five disciples of R. Yochanan ben Zakkai," as a text of crucial importance for the emerging rabbinic tradition that shifted its main course of study from "midrash" to "mishnah."⁶ According to Halivni, the text was "composed by these five disciples (or by their disciples) around the first quarter of the second century for the purpose of strengthening their authority, showing themselves to be direct successors of Moses, who received the Torah from Sinai."⁷ Or, as Jaffee puts it, this "chain of tradition" is an "effective apologia defending the continuity of rabbinic teachings with the teaching of Israel's greatest prophet."⁸

These and similar statements all place much weight on tractate *Avot* as the manifesto of rabbinic Judaism. In this essay I seek to challenge this widespread view. My point of departure is m*Avot* 2.8ff., which I propose reading as a locus of political polemic among Palestinian rabbis over the question of relationship to Rabban Yohanan ben Zakkai and hence to

5. Jacob Neusner, "The Formation of Rabbinic Judaism: Yavneh (Jamnia) from A.D. 70 to 100," *Aufstieg und Niedergang der römischen Welt*, II.19.2 (Berlin, 1979): 17. For similar statements, see, for example: Neusner, *The Rabbinic Traditions about the Pharisees before 70* (Leiden, 1971), 3:143; William D. Davies, "Reflections on Tradition: Abot Revisited," in his *Jewish and Pauline Studies* (London, 1984), 27; Günter Stemberger, "Sages, Scribes, and Seers in Rabbinic Judaism," in *Scribes, Sages, and Seers: The Sage in the Eastern Mediterranean World*, ed. L. G. Perdue (Göttingen, 2008), 301.

6. David Weiss-Halivni, *Mishnah, Midrash, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, Mass., 1990), 47.

7. Ibid.

8. Jaffee, *Torah in the Mouth*, 84.

halakhic authority.⁹ This suggestion will lead me to argue that tractate *Avot* stems from one circle of rabbinic Judaism, and it reflects the ideology of that group, an ideology that was, in fact, rejected by “mainstream” rabbinic circles—the rabbinic circles that produced the Mishnah.¹⁰

THE VOICE OF THE MARGINALIZED

Mishnah *Avot* 2.8 is the last passage in the chain of tradition with which tractate *Avot* begins (m*Avot* 1.1–15). It uses the same terminology of that chain, claiming that Rabban Yohanan ben Zakkai (RYBZ) “received” (קבל) from Hillel and Shammai, who are the last pair mentioned in chapter 1.¹¹ At the same time it presents a novel development and a point of

9. In treating the rabbinic text as a site of political strife, I am inspired by Albert Baumgarten’s “The Akiban Opposition,” *Hebrew Union College Annual* 50 (1979): 179–97. In that essay Baumgarten approached a story in the Palestinian Talmud (y*Hag* 3.1), which on its surface bears no sign of polemic, as a site of political struggle. As a result he was able to offer a contribution to the political history of the rabbinic world of late antique Palestine. Similar politicized readings of ancient texts occur frequently in the writings of Baumgarten’s mentor, Morton Smith. For an excellent example, see Smith’s “The Account of Simon Magus in Acts 8,” in *Harry Austryn Wolfson Jubilee Volume*, vol. 2 (English section), ed. S. Lieberman (Jerusalem, 1965), 735–49, as well as the various chapters in his *Palestinian Parties and Politics That Shaped the Old Testament* (2nd ed.; London, 1987). This essay is indebted to this model.

10. The Mishnah (and to a lesser degree the Tosefta) is a patriarchal work, founded primarily on the teachings of the school of R. Akiva and his disciples. Because it was a product of the house of the patriarch, from a social-political perspective it cannot be seen as representing merely one group or perspective among others of equal political standing. Rather, it must be considered as representing the dominant voice among Palestinian rabbis of the second and early third centuries C.E. This is not a claim about the *theological* or *ideological* value of the assertions of that group but only a claim concerning its political power. In this sense I refer to it as representing the “mainstream” among Palestinian rabbis of the tannaitic era.

11. The break between 1.15 and 2.8 is an interpolation, which has long been recognized as stemming from the “house of the Patriarch.” See Menahem Kister, *Studies in Avot de-Rabbi Nathan: Text, Redaction and Interpretation* (Hebrew; Jerusalem, 1998), 117–23, and the references therein; Amram Tropper, *Wisdom, Politics, and Historiography: Tractate Avot in the Context of the Graeco-Roman Near East* (Oxford, 2004), 107–16. The question remains, however, whether 2.8 is part of the old source, as its terminology and opening phrase (“received”) seem to indicate, or whether the original chain of tradition ended with Hillel and Shammai at 1.15, while 2.8 was stylized in a similar manner only to create a sense of connection. The former seems to be the majority’s opinion, and I too tend to view things in this manner. See, for example, Jacob N. Epstein, *Introduction to Tannaitic Literature: Mishna, Tosefta and Halakhic Midrashim* (Hebrew; Jerusalem, 1957), 233; Halivni, *Mishnah, Midrash and Gemara*, 47; Steven D. Fraade, *From Tradition to*

transition in the rabbinic world, in that RYBZ is said to have had students, unlike any of his predecessors. After claiming that RYBZ “received” from Hillel and Shammai, and quoting his own aphorism, the mishnah records RYBZ’s praise for each of his students and adds a concluding comment of evaluation:

- [A] Rabban Yohanan ben Zakkai received from Hillel and Shammai.
 [B] He would say: If you did¹² much Torah, do not take credit for yourself, for it is for this that you have been created.

Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy (Albany, N.Y., 1991), 70; Daniel Boyarin, “The Diadoche of the Rabbis; Or, Judah the Patriarch at Yavneh,” in *Jewish Culture and Society under the Christian Empire*, ed. R. Kalmin and S. Schwartz (Leuven, 2003), 304–5, n. 51; Amram Tropper, “Tractate Avot and Early Christian Succession Lists,” in *The Ways That Never Parted*, ed. A. H. Becker and A. Y. Reed (Tübingen, 2003), 161–62. However, some scholars prefer the latter option. Kister (*Studies in Avot de-Rabbi Nathan*, 121–22) even goes a step further and raises (with caution, to be sure) the possibility that the very mention of RYBZ in 2.8 is not original, and that the present opening of that mishnah is a later addition to a source that opened, in fact, with RYBZ’s disciples, without mentioning the master’s relation to Hillel and Shammai. Indeed, one could argue that the mishnah’s repetition of RYBZ’s name when introducing his disciples (“five disciples Rabban Yohanan ben Zakkai had”), rather than using a pronoun (“*he* had five disciples”), supports such a conjecture. For had this sentence been a natural continuation of the one preceding, the pronoun would have sufficed. The mishnah’s style, in other words, could be taken as evidence indicating that the sentence “Rabban Yohanan ben Zakkai had five disciples” marks a different source. In the body of MS Kaufman (Budapest A 50) of the Mishnah, however, no mention of RYBZ’s name appears in that sentence. Rather, the reading there is חמשה תלמידים היו לר', and only in the margin there are two glosses: (1) לו, to be inserted after היו, and (2) וזכיי ואילו הן, to be inserted after לר'. The text, after the emendations, reads therefore חמשה תלמידים היו לר' וזכיי ואילו הן [לן] לר' [יוחנן בן זכיי ואילו הן] (see Sharvit, *Tractate Avot*, 94), but according to the text before its “correction” our mishnah says חמשה תלמידים היו לו (read חמשה תלמידים היו לו), that is, “he had five students,” without repeating RYBZ’s name. Thus, we are left with no evidence in the text of the mishnah itself leading in a direction of suspecting the authenticity of the mention of RYBZ and his connection with Hillel and Shammai at the head of mAvot 2.8.

12. So MS Kaufman and most other witnesses (אם עשית). See Sharvit, *Tractate Avot*, 94. The reading אם למדת (if you studied), found in some secondary witnesses, reflects an emendation based on difficulty understanding the use of the verb “do” (עשה) with respect to the Torah. However, this is not really a problem; the expression “do Torah” is well attested. See the references listed by Yaakov Sussmann, “The History of the Halakha and the Dead Sea Scrolls: Preliminary Observations on *Miqat Ma'ase Ha-Torah* (4QMMT)” (Hebrew), *Tarbiz* 59 (1990): 25, n. 62.

- [C] He (RYBZ) had five disciples:¹³ [Rabbi] Eliezer ben Hyrcanus, Rabbi Yehoshua ben Hananya, Rabbi Yossef [ha-Kohen], and (!) Rabbi Shimon ben Nethanel, Rabbi Elazar ben Arakh.
- [D] He would recount their praises: Eliezer ben Hyrcanus is a plastered cistern that loses not a drop; Yehoshua ben Hananya—fortunate is she who gave birth to him; Yosef ha-Kohen—a pious [man]; Shimon ben Nethanel—sin fearer; Elazar ben Arakh—a gushing spring.
- [E] He used to say: If all the sages of Israel were to be in one pan of a balance-scale, and Eliezer ben Hyrcanus were in the other, he would outweigh them all.¹⁴

Despite the innocent appearance of this mishnah, the truth is that it is politically dramatic: it astonishingly praises, in [E], R. Eliezer ben Hyrcanus as RYBZ's most important disciple, although R. Eliezer and his teachings were rejected by the mainstream of rabbinic circles in Palestine of the tannaitic age.¹⁵ The mishnah knows very well that among RYBZ's disciples was also R. Yehoshua, who was the most important sage for the "mainstream,"¹⁶ but nevertheless it claims that the ousted R. Eliezer was the most important of RYBZ's students. Evidently, therefore, this mishnah cannot have stemmed from mainstream rabbinic circles. It most probably emanates from circles close to R. Eliezer or his followers.¹⁷

13. See n. 11.

14. mAvot 2.8–9, according to MS Kaufman. For variant readings, see Sharvit, *Tractate Avot*, 93–97.

15. See Menahem Kahana, "On the Fashioning and Aims of the Mishnaic Controversy" (Hebrew), *Tarbiz* 73 (2003): 51–81. The famous post-tannaitic "oven of Ḥḥnai" story describes the excommunication of R. Eliezer (see yMK 3.1, 81c–d; bBM 59b). Although the historicity of this amoraic text cannot be confirmed, it is clear from the *suḡya* in the Palestinian Talmud (ibid.) that third-century Palestinian rabbis took it for granted that R. Eliezer was indeed excommunicated. See also Yitzhak D. Gilat, *R. Eliezer ben Hyrcanus: A Scholar Outcast* (Ramat-Gan, 1984), 479–91. Compare Daniel R. Schwartz, "Hillel and Scripture: From Authority to Exegesis," in *Hillel and Jesus: Comparisons of Two Major Religious Leaders*, ed. J. H. Charlesworth and L. L. Johns (Minneapolis, Minn., 1997), 361.

16. On the prominence of R. Yehoshua in the literature of the "mainstream," including his textual role as *the* representative of the School of Hillel, see Israel Ben-Shalom, "Events and Ideology of the Yavneh Period as Indirect Causes of the Bar-Kokhva Revolt," in *The Bar-Kokhva Revolt: A New Approach*, ed. A. Oppenheimer and U. Rappaport (Hebrew; Jerusalem, 1984), 4–5.

17. In opposition to Hoffmann's and Epstein's unsubstantiated assertion that this mishnah reflects R. Akiva's tradition. See David Zvi Hoffmann, *The First*

Apparently, from the same circles stems the tannaitic tradition, found in Sifre Deuteronomy, that encourages one to use the judicial services offered by the courts of RYBZ and R. Eliezer as the best way to fulfill the commandment to seek justice in Dt 16.20: “‘Justice, justice you shall pursue’—follow a court whose decision [procedure?] is commendable. Follow the court of Rabban Yohanan ben Zakkai, follow the court of R. Eliezer.”¹⁸ The fact that of all of RYBZ’s disciples only R. Eliezer is named indicates that this tradition views him as the only one worthy of mention.

The audacity of that tradition’s refusal to mention any of RYBZ’s disciples other than R. Eliezer is clarified and amplified by contrast with the much more developed parallel in bSan 32b, where various rabbinic figures are mentioned:

Our rabbis taught: “Justice, justice you shall pursue” (Dt 16.20)—this means: follow the scholars to their academies. Follow Rabbi Eliezer to Lydda, Rabban Yohanan ben Zakkai to Beror Hail, Rabbi Yehoshua to Peki’in, Rabban Gamliel to Yavneh, Rabbi Akiva to Bene Berak, Rabbi Mathia to Rome, Rabbi Hanania ben Teradion to Sikhni, Rabbi Jose to Sepphoris, Rabbi Judah ben Bathyra to Nisibis, Rabbi Yehoshua to the exile, Rabbi to Beth She‘arim, and the sages to the chamber of hewn stones.¹⁹

In contrast to this more developed later tradition that mentions many sages, the tannaitic source mentions R. Eliezer alone alongside RYBZ, indicating that the Sifre tradition stems from rabbinic circles tied to R. Eliezer and his followers.²⁰

Rabbi Yehoshua, in contrast, is not presented by mAvot 2.8 as an especially important student of RYBZ. He *is* presented as RYBZ’s most intimate student in tHag 2.2, a text attributed to R. Yossi ben Yehuda

Mishnah and the Controversies of the Tannaim, trans. P. Forchheimer (New York, 1977), 49; Epstein, *Introduction to Tannaitic Literature*, 233.

18. SifreDt §144 (ed. L. Finkelstein [New York, 1969], 200).

19. bSan 32b. Minor variant readings need not distract us here. See R. N. N. Rabinowitz, *Dikduke sofrim* ad loc.

20. One should not dismiss out of hand the possibility that the tradition as preserved in the Sifre is a very early one, formulated in the days of RYBZ and R. Eliezer themselves. For after their death their courts did not continue to function and there would have been no sense in encouraging people to use their legal services when these did not exist. However, for the purposes of the current discussion this hypothetical possibility makes no difference, and its rejection by no means affects the argument of this essay.

(late 2nd c.), which may be seen as another chain of rabbinic tradition: “Rabbi Yehoshua presented before Rabban Yohanan ben Zakkai, Rabbi Akiva presented before Rabbi Yehoshua, Hananiah ben Hinai presented before Rabbi Akiva.”²¹ Although related to esoteric knowledge, this tradition claims that the line of transmission of rabbinic teaching was from RYBZ to R. Yehoshua, who therefore must be seen as RYBZ’s most important student. In mAvot 2.8–9, by contrast, nothing points in this direction.

Furthermore, RYBZ’s praise for R. Yehoshua in mAvot 2.8–9 (fortunate is she who gave birth to him) feels faint.²² Unlike all other students of RYBZ who are praised because of some positive characteristic or virtue, of R. Yehoshua *himself* RYBZ has virtually nothing to say. It is not a coincidence that the much later tradition of Avot de-Rabbi Nathan A (ARNA) attempted to correct this unpleasant impression by putting in RYBZ’s mouth praise of R. Yehoshua as “a threefold cord . . . not quickly broken (Eccl 4.12).”²³ Yet the fact that the earlier version of that work (ARNB) is identical with the Mishnah at this point indicates that version A represents here a very late reworking of the original tradition, which seems to withhold praise from R. Yehoshua. It would seem that our mishnah attempted not only to elevate R. Eliezer’s status but also to lower R. Yehoshua’s. It could not, therefore, have stemmed from mainstream tannaitic circles.

To be fair, right after the passage marked [E] the mishnah brings a contesting tradition (in the name of Abba Shaul), according to which RYBZ considered R. Elazar ben Arakh the most important of all of Israel’s sages, and not R. Eliezer: “Abba Shaul says in his [RYBZ’s] name: If all the sages of Israel were to be in one cup of a balance-scale, and Eliezer ben Hyrcanus with them, and Elazar ben Arakh were in the other, he would outweigh them all.”²⁴ And the mishnah continues:

21. See tHag 2.2 (ed. S. Lieberman [New York, 1962], 380).

22. This praise is found also in the story about R. Elazar ben Arakh presenting his esoteric knowledge of the Chariot before RYBZ, as found in Mekhilta de-Rashbi on Ex 21.1 (ed. Epstein-Melamed [Jerusalem, 1957], 158–59): “fortunate is she who gave birth to you; fortunate are you, Abraham our father, that this is he who is your descendant.” However, this is not an independent tradition (which could have testified to the importance of that praise), but rather an obvious conflation of the manner in which RYBZ praises R. Elazar in tHag 2.1 and the praise of R. Yehoshua in mAvot 2.8. The former praise is given also to R. Akiva in SifreNum §75 (ed. H. S. Horowitz [Leipzig, 1911], 70), but to the best of my knowledge the latter is not found elsewhere in tannaitic literature.

23. See ARNA 14 (ed. S. Schechter, 58).

24. mAvot 2.9. See the elaborated tradition in ARNA 14.

He said to them: Go and see what is the straight path to which one should adhere. Rabbi Eliezer says: a generous spirit. Rabbi Yehoshua says: a good friend. Rabbi Yosse says: A good neighbor. Rabbi Shimon says: foresight. Rabbi Elazar says: Good heart. He said to them: I prefer the opinion of Rabbi Elazar ben Arakh, because in what he says is included everything you say.²⁵

This clearly follows Abba Shaul's tradition, for it claims that R. Elazar ben Arakh indeed was RYBZ's leading student. However, even Abba Shaul's tradition is depicted as familiar with the former one, [E], as it is clear from the words "and R. Eliezer ben Hyrcanus with them." This seems to indicate that the citation of Abba Shaul's tradition is a secondary response to the main tradition, [E], which focused on R. Eliezer.²⁶

Be their disagreement as it may, both traditions claim that RYBZ's most important disciple was a rabbi who seems to have been rejected by the mainstream.²⁷ The readiness of this mishnah to praise such figures is

25. mAvot 2.9.

26. If we could rely on the tradition in *ARNA* 14—which I am far from being sure about—it could be noted that Abba Shaul is transmitting here a saying of R. Akiva. This would indicate that the mainstream attempted to interfere with the "Eliezeran" tradition by inserting a contesting tradition, one that prioritizes the ability for innovation over the ability to memorize. See Alon Goshen-Gottstein, "Rabbi Elazar ben Arakh: Symbol and Reality," in *Jews and Judaism in the Second Temple, Mishna and Talmud Period: Studies in Honor of Shmuel Safrai*, ed. I. Gafni, A. Oppenheimer, and M. Stern (Hebrew; Jerusalem, 1993), 173–97; Goshen-Gottstein, *The Sinner and the Amnesiac* (Stanford, Calif., 1998), 233–65.

27. That R. Elazar ben Arakh too was "ousted" seems to me clear from the very fact that he is nowhere mentioned as the author/source of any halakhic saying in the Mishnah or Tosefta. Most of the few references to him in other places in early rabbinic literature were discussed by Goshen-Gottstein, *Sinner and the Amnesiac*, and one may add Mekhilta de-Rashbi on Ex 3.8 (ed. Hoffmann, 2; ed. Epstein-Melamed, 2); SifreDt §160 (ed. Finkelstein, 211); and Midrash tannaim on Dt 17.18 (ed. Hoffmann, 105). The story of his departure to Emmaus (*ARNB*, chap. 29 [ed. Schechter, 30a]) attempts to "mask" an unpleasant fact by offering an "explanation" for his disappearance from rabbinic circles, there blaming his preference for bodily pleasure over the study of Torah. This is clearly a cover-up meant to hide the real reason, which we do not know. It cannot, however, mask the fact that he somehow left the confines of the rabbinic world. The positive tannaitic tradition about R. Elazar ben Arakh, in tḤag 2.1 depicting him as an intimate student of RYBZ, is rare and unique. Immediately following it is a statement attributed to R. Yossi ben Judah that the "true" chain of transmission stretches from RYBZ to R. Yehoshua (and from him to R. Akiva). It should be admitted, though, that the latter statement, too, is atypical in its own assertions that R. Akiva's most important student was Ḥananiah ben Ḥinai (tḤag 2.1), who surely would not have been considered as such by the mainstream. In Mishnah

an impressive indication that it originated in circles other than those who produced the Mishnah.

Indeed, tractate *Avot* preserves the sayings of another two rejected rabbinic figures: Akavia ben Mahallalel (mAvot 3.1) and Elisha ben Abuya (mAvot 4.20). Of the former we are told in m'Eduy 5.6 the following:

Akavia ben Mahallalel gave testimony in four matters. They said to him: Akavia, retract the four things that you have said and we shall make you a head (lit. father) of court for Israel. He said to them: it is better for me to be called a fool my whole life but not to be deemed a wicked person before the Omnipresent for even a single moment, so that people should not say: because [he desired] high office he retracted . . . And they excommunicated him, and he died while in the state of being excommunicated, and the court stoned his coffin.²⁸

This is a rare case of excommunication in tannaitic literature.²⁹ It is therefore unsurprising that, in that same mishnah, R. Judah denies the fact, claiming instead that the excommunicated man was one Eliezer ben

and Tosefta circles, R. Akiva's most important student would be R. Shimon bar Yohai or R. Meir, not Ḥananiah.

28. m'Eduy 5.6, on which, see Anthony J. Saldarini, "The Adoption of a Dissident: Akabya ben Mahallalel in Rabbinic Tradition," *Journal of Jewish Studies* 33 (1982): 547–56. Daniel Boyarin suggested reading that mishnah as "evidence for the parallel development of rabbinic and Christian heresiology," but he too did not deny that Akavia "was excommunicated because he did not accept the view of the majority over his own tradition with regard to a *halakhic* matter," not with regard to doctrine or belief. Daniel Boyarin, *Border Lines: The Partition of Judaeo-Christianity* (Philadelphia, 2004), 64–65 (emphasis added). The significance of this distinction is discussed at some length in Adiel Schremer, "Wayward Jews: *Minim* in Early Rabbinic Literature," *Journal of Jewish Studies* 64 (2013): 242–63.

29. I emphasize *tannaitic* literature, because in amoraic literature we do find several stories of excommunication: that of R. Eliezer (see above); that of R. Meir (yMK 3.1), and perhaps a few others. See Gideon Libson, "Determining Factors in Herem and Nidui (Ban and Excommunication) during the Tannaitic and Amoraic Periods" (Hebrew), *Shenaton ha-mishpat ha-'Ivri* 2 (1975): 292–342. One should also be cautious not to confuse attempts to silence an opinion with an act of actual excommunication, although the two may be seen on a continuum. See, for example, Arthur Marmorstein, *The Old Rabbinic Doctrine of God, II: Essays in Anthropomorphism* (London, 1937), 43; Daniel Boyarin, "Two Powers in Heaven; Or, the Making of a Heresy," in *The Idea of Biblical Interpretation: Essays in Honor of James L. Kugel*, ed. H. Najman and J. H. Newman (Leiden, 2004), 361–69; Adiel Schremer, "'Behold, the Man Has Become Like One of Us': Polemic, Silencing, and Self-Restraint in Early Rabbinic Midrash" (Hebrew), *Tarbiz* 78 (2009): 345–69.

Hanach—an otherwise unknown figure, who does not seem even to have been a “rabbi.”³⁰ Saldarini underscores that “at some point, possibly the late second century, someone felt the need to deny the shocking excommunication of Akavia and modified the story with Judah’s comment.”³¹ As “Rabbi Judah” in the Mishnah is usually R. Judah ben Ilai, who was a close disciple of R. Eliezer,³² one may wish to consider the possibility that R. Judah’s denial of Akavia’s excommunication is somehow related to his “Eliezeran” association.³³ If so, perhaps the willingness of tractate *Avot* to cite Akavia’s teaching is also related to its source in Eliezeran circles. Such a suggestion cannot be made with respect to *Avot*’s citation of Elisha ben Abuya’s saying (m*Avot* 4.20), for nothing in our sources suggests a connection between him and R. Eliezer. However, the very fact that the chief heretic of classical rabbinic tradition—whose name was obliterated and replaced by the opaque “aḥer”³⁴—is found in tractate *Avot* without any special comment, is in itself remarkable.³⁵

Between Akavia’s moral teaching and Elisha ben Abuya’s we find the sayings of many rabbinic figures who are rarely (if at all) mentioned in the Mishnah and the Tosefta: R. Hannaniah ben Teradyon (3.2); R. Hannaniah ben Hakhinai (3.4);³⁶ R. Nehuniya ben Hakanah (3.5); R. Halafta

30. m’Eduy 5.6.: “Said R. Judah: God forbid that Akavia was excommunicated, for the inner court of the temple may be closed before any person from Israel, but not before Akavia ben Mahallalel . . .” Eliezer ben Hanokh is not mentioned elsewhere in early rabbinic literature, and nothing about him is known.

31. See Saldarini, “Adoption of a Dissident,” 552.

32. See especially t*Zev* 2.17 (ed. Zuckerman, 483); b*Men* 18a.

33. On R. Judah’s association with the teachings of R. Eliezer (which, needless to say, did not remove him from the “mainstream,” for he was a close disciple of R. Tarphon and R. Akiva), see Epstein, *Introduction to Tannaitic Literature*, 106–7. True, in SifreNum §105 (ed. Horowitz, 103), the denial of Akavia’s excommunication is attributed to R. Judah ben Batyra, but this sage too was a close disciple of R. Eliezer. See m*Neg* 9.3; 11.7.

34. See Goshen-Gottstein, *Sinner and the Amnesiac*, 62–69.

35. There is an additional reference to Elisha in *ARNA*, chap. 40 (ed. Schechter, 128); *ARNB*, chap. 46 (ed. Schechter, 65a), according to which one who sees him in a dream should worry about calamity. As correctly observed by Goshen-Gottstein (*Sinner and the Amnesiac*, 37–39), this tradition does not refer to Elisha in a derogatory manner. On the contrary: a plain reading of that text leaves the reader with the impression that perhaps Elisha died a martyr. This tradition, too, must have originated from rabbinic circles that were not hostile to Elisha. One of the sages who may have belonged to these circles was R. Meir, if we are to believe the later, post-tannaitic narratives in y*Ḥag* 2.1 and b*Ḥag* 15a–b.

36. Cf. Menahem I. Kahana, *Sifre Zutta on Deuteronomy: Citations from a New Tannaitic Midrash* (Hebrew; Jerusalem, 2002), 66.

of Kefar Hannaniah (3.6); R. Elazar ben Yehuda of Bartotah (3.7); R. Yaakov (3.7, according to the reading of most manuscripts); R. Dostai bar Yannai (3.8); R. Haninah ben Dosa (3.9); R. Elazar ha-Moda'i (3.11); R. Levitas of Yavneh (4.4); R. Ishmael, the son of R. Yossi (4.7); R. Yonatan (4.9); R. Yohanan ha-Sandlar (4.11); R. Nehorai (4.14); R. Yannai (4.15); R. Mattia ben Harash (4.15); Shmuel ha-Katan (4.19); R. Yossi bar Yehuda of Kefar ha-Bavli (4.20); R. Elazar ha-Kapar (4.21). Again, some of these sages are not mentioned in the Mishnah or in the Tosefta even once.³⁷ Their sayings are presented naturally, without any sign of being pronounced by problematic figures and without giving us any indication that any one of these mentioned masters was ever condemned by rabbinic tradition. This, too, is a strong indication that tractate *Avot* does not stem from those rabbinic circles that are represented in the Mishnah.

To be sure, among the forty-two named rabbis whose aphorisms are quoted in chapters 3 and 4 of *Avot* are also some of the most prominent sages of the Mishnah, such as R. Akiva (3.12); R. Ishmael (3.13); R. Elazar ben Azariah (3.17); Ben Zomma (4.1); Ben Azzai (4.2); R. Yohanan ben Beroka (4.4); R. Zaddok (4.5); R. Yossi (4.6); R. Meir (4.10); R. Eliezer ben Yaakov (4.11); R. Elazar (4.12); R. Yehuda (4.13); and R. Shimon (4.13). But the number of the “rare” rabbis in these two chapters is so large that the unusual character of these chapters is difficult to deny.³⁸

MOSES RECEIVED TORAH FROM SINAI

If a substantial part of tractate *Avot* does not stem from the rabbinic circles in Palestine who produced the Mishnah, but rather reflects the teachings of a different school that was most probably associated with R. Eliezer, what about its opening? Would it not be reasonable to assume

37. Some of these “rare” sages (e.g., R. Elazar ha-Moda'i and R. Yonatan) occupy a prominent place in the so-called halakhic midrashim stemming from the so-called school of R. Ishmael (primarily the Mekhilta de-Rabbi Ishmael on Exodus and the Sifre on Numbers).

38. Note that none of the famous rabbis of the Mishnah who flourished in late second century and were contemporaries of R. Judah the Patriarch (such as R. Yossi ben Yehuda; R. Elazar ben Shimon; R. Shimon ben Elazar, etc.) is mentioned in these two chapters of *Avot*. This generation of sages, who fill the Mishnah and the Tosefta, is simply not represented in our text. Should this fact be taken as a clue for its original date of composition? Compare Günter Stemberger, “Mischna Avot: Frühe Weisheitsschrift, pharisäisches Erbe, oder spätrabbinische Bildung?” *Zeitschrift für die Neutestamentliche Wissenschaft* 96 (2005): 243–58, and Tropper's lengthy note in his “Tractate Avot,” 161, n. 3.

that the opening lines of *Avot*, too—the “chain of tradition” and its underlying ideological claim that the Torah of the rabbis stems, ultimately, from Moses at Sinai—reflect specifically the ideology of that other school?

That *Avot*’s chain of tradition passage is unique, unparalleled by any other early rabbinic document, has long been recognized.³⁹ The striking absence of the “House of Shammai” and the “House of Hillel” from that list makes its aberration even greater. These two branches of Torah scholarship of late Second Temple period are so prominent in tannaitic literature that *Avot*’s failure to mention them cannot be considered mere accident. The chain of tradition of tractate *Avot* presupposes that the phenomenon of a sage who has a circle of students is a historical novum that first appeared with RYBZ. Hence, there is no place for the houses of Hillel and Shammai in its historical scheme. By contrast, according to a famous statement of R. Yossi in tHag 2.9 (= tSan 7.1), “Since the students of Shammai and Hillel multiplied, the Torah became like two Torahs.” That is, Hillel and Shammai already had many students.⁴⁰ How far this is from the historical picture constructed by *Avot*’s genealogy! It seems quite clear, then, that not only does mAvot 2.8 and forward derive from circles different from the Mishnah’s mainstream, but mAvot 1.1–15 does too.⁴¹

But are these circles one and the same? Do these ideologies reflect the same “dissenting” school? I have already noted that mAvot 2.8 is not detached from the chain but is rather an integral part of it, serving as its concluding passage.⁴² Yet I wish to go a step further: Louis Finkelstein

39. Günter Stemberger has shown that mAvot 1.1’s use of the verb “received” with respect to the Torah is unique and unparalleled in other tannaitic literature. See Stemberger, “‘Moses Received Torah . . .’ (*M. Avot* 1,1): Rabbinic Conceptions of Revelation,” in *Jerusalem, Alexandria, Rome: Studies in Ancient Cultural Interaction in Honour of A. Hilhorst*, ed. F. G. Martínez and G. P. Luttikhuisen (Leiden, 2003), 285–99. The theological implication of the representation of Moses as intermediary between God and Israel in this matter is of much significance.

40. Post-tannaitic traditions refer to eighty pairs of students that Hillel had (see *ARNB*, chap. 28; yNed, 5.6), but unfortunately nothing to confirm these figures is found in tannaitic literature.

41. Jacob Neusner has noted that none of the sayings quoted in *Avot*’s chain of tradition are referred to by any other tannaitic text; he explained this fact by suggesting that it was not composed before the third century. See Jacob Neusner, *The Rabbinic Traditions about the Pharisees* (Leiden, 1971), 3:185–86. However, an alternative explanation is that the chain of tradition stems from a different school from that which is presented by the Mishnah. See also Bickerman’s comment, contra Neusner, in his *Studies in Jewish and Christian History: A New Edition in English Including The God of the Maccabees*, ed. A. Tropper (Leiden, 2007), 1:541, n. 65.

42. See n. 11, above.

hypothesized a half century ago that the chain of tradition emanates from the school of Shammai,⁴³ and, as is well known, early rabbinic tradition frequently associates R. Eliezer with that school.⁴⁴ This supports the assumption that the chain of tradition indeed emanates from Eliezeran circles. True, Finkelstein's hypothesis rests on indecisive arguments,⁴⁵ and the view of R. Eliezer as a Shammaite is not as firm as some make it out to be.⁴⁶ However, as has been shown by various scholars, a central facet of the image of R. Eliezer was his "traditionalist" stance⁴⁷—that is, his claim that the halakhic views he espoused were first and foremost a matter of tradition that he received from his teacher, who himself had received it from his teacher up to Moses at Sinai.⁴⁸ It is probably not a coincidence that of R. Eliezer we are specifically told that he had never said anything that he had not heard from his master.⁴⁹ There is good reason to speculate, therefore, that tractate *Avot*, including the "chain of

43. See Louis Finkelstein, *Mabo' le-masektot Avot ve-Avot d'Rabbi Natan* (New York, 1950), 15–17.

44. Cf. Gilat, *R. Eliezer*, 462–73, and the references in Vered Noam, "Traces of Sectarian Halakhah," in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls: Proceedings of the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 7–9 January, 2003*, ed. S. D. Fraade, A. Shemesh, and R. A. Clements (Leiden, 2006), 69, n. 4.

45. Finkelstein's hypothesis concerning the Shammaite origin of the chain of tradition is based on the fact that Shammai is mentioned before Hillel, which indicates, in Finkelstein's opinion, that the list viewed Shammai as superior to Hillel. This argument, however, is far from convincing: the mention of Shammai before Hillel may be a result of the Hillelites' habit of mentioning the Shammaites' views before their own, as noted already by R. Judah ben Pazzi in ySuk 2.8, 53b. Cf. Haim Shapira and Menachem Fisch, "The Debates between the Houses of Shammai and Hillel: The Meta-Halakhic Issue" (Hebrew), *Tel-Aviv University Law Review* 22 (1999): 494.

46. See Gilat, *R. Eliezer*, 462–73.

47. See Gilat, *ibid.*, 23; Shapira and Fisch, "Debates between the Houses," 469–70. See also Aharon Shemesh, *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* (Berkeley, Calif., 2009), 58–61. Compare the important corrective of Eliezer S. Rosenthal, "Tradition and Innovation in the Halakha of the Sages" (Hebrew), *Tarbiz* 63 (1994): 331–34.

48. This image of R. Eliezer's stance is frequently related to his statement in mYad 4.4, that he "received [a halakhic opinion] from RYBZ, who heard it from his master, and his master from his master up to a halakhah to Moses at Sinai." It must be admitted, however, that the same phraseology is put in the mouth of R. Yehoshua (see m'Eduy 8.7), and therefore we should be cautious in viewing it as an expression of a specifically Eliezeran stance.

49. tYev 3.4 (ed. Lieberman, 9); bYoma 66b; bSuk 27b–28a. Cf. Saul Lieberman, *Tosefta ki-fshutah: A Comprehensive Commentary on the Tosefta, Part VI: Order Nashim* (Hebrew; New York, 1967), 22–24.

tradition" at its head, is a document stemming from the school of R. Eliezer and reflects his ideological investment in the Sinaitic status of rabbinic tradition.

III. "WHEN THE SAGES GATHERED AT THE VINEYARD IN YAVNEH"

In his effort to characterize the halakhic ideology of R. Eliezer, the late Yitzhak D. Gilat emphasized a fundamental quality of prerabbinic halakhic thought, to which he contrasted the halakhic revolution of the rabbis:

One of the characteristic features of the ancient *halakhab* is the absence of any distinction between the teaching of the Pentateuch and the oral tradition which originated in the exegesis and doctrine of the sages. The earliest authorities set equal value on all the teachings they had received and regarded the tradition which they had inherited from their ancestors as a single whole. Hence the extreme punctilious attention paid equally to matters treated by the later *halakhab* as trivial and to those of greater weight. The differentiation between the teaching of the written Torah and that of the "scribes" (= sages) and between Pentateuchal and rabbinical enactments is itself a product of the tannaitic period, which began in the last generations preceding the destruction of the Temple. This differentiation was developed in the schools as a result of the close study of the Torah; it led to the classification and arrangement of the various *halakhot* and to the formation of general, abstract concepts and definitions . . . By reducing the scope of prohibitions, by defining some of them as rabbinic prohibitions and by relegating these to a level lower than that of the Torah-laws the sages opened up possibilities for relaxation and leniency under certain conditions.⁵⁰

According to Gilat, in the so-called ancient halakhah (or, as some prefer to call it, "sectarian halakhah") both scriptural and exegetical or oral laws had the same status, because *all* the laws claimed divine origin. Or, as Aharon Shemesh has recently put it: "The unity of the halakhah in sectarian thinking is of a dual aspect: all its details are of the same heavenly origins and have the same binding status."⁵¹ According to this outlook, the heart of the halakhic revolution introduced by the rabbis was the very *creation of difference* (hence: hierarchy) within the halakhic system, and

50. Gilat, *R. Eliezer*, 60–61.

51. Shemesh, *Halakhab in the Making*, 71.

the recognition of the human, earthly, nondivine element therein. To use Shemesh's words again: "One of the central characteristics of rabbinic halakhah is the creation of a set of categories that distinguish between different authoritative statuses of the law or between different rulings that apply in different circumstances."⁵² By defining some of the halakhic prohibitions as rabbinic the sages opened up possibilities for manipulation and relaxation under certain conditions.

As has been suggested by various scholars, "a certain similarity existed between the approach of Bet Shammai and that of sectarian halakhah."⁵³ Vered Noam, who demonstrated "the affinity between Qumranic views and certain halakhic positions [of] . . . R. Eliezer b. Hyrcanus, a disciple of Beit Shammai," has raised the possibility that "this resemblance may have been the factor that decided the fate of the house of Shammai's views, relegating them to the sidelines of Pharisaic discourse."⁵⁴ According to Noam, the similarity is evident not only in details but also in that "both appear to share an early, stringent halakhic outlook, based more on tradition and authority, and less on contemporary human exegetical creativity; both seem to adhere to the more literal meaning of Scripture, tending toward stringency and uniformity, in abstract principles as well as in everyday life."⁵⁵ Following Gilat and Shemesh, however, it may be suggested that the affinity between the approach of the school of Shammai and R. Eliezer, on the one hand, and that of sectarian halakhah, on the other, is related to an even deeper aspect of their view of the revelation of the law to Moses at Sinai.

In light of these observations I would like turn now to the famous opening passage of the Tosefta, tractate *ʿEduyot*, and to suggest that it be read as an inner rabbinic polemic against the claim of *Avot*'s "chain of tradition":

[A] When the sages gathered in the vineyard at Yavneh they said: The time is coming at which a person will go looking for a word of Torah and will not find it, for a word of scribes and will not find it.

52. Ibid., 70. See also Shemesh, "Thou Shalt Not Rabbinize the Qumran Sectarians: On the Inflexibility of the Halakha in the Dead Sea Scrolls" (forthcoming).

53. Noam, "Traces of Sectarian Halakhah," 67–68, and the references cited therein, at nn. 2–3.

54. Noam, *ibid.*, 67. I would obviously prefer to speak of "rabbinic," rather than "pharisaic," discourse as the historical process to which Noam refers is entirely rabbinic, and no pharisaic text is truly known to us. However, this issue should not distract us here.

55. Ibid.

- [B] As it is said: “Behold, the days are coming, says the Lord [*šic*], when I will send a famine on the land etc. [not a famine of bread, nor a thirst for water, but of hearing the word of the Lord. They shall wander from sea to sea and from north to east they shall run to and fro] to seek the word of the Lord but they shall not find it” (Amos 8.11–12).
- [B*] “The word of the Lord”—this refers to prophecy. “The word of the Lord”—this refers to the eschaton. “The word of the Lord”—this refers to one who seeks a word of Torah that is similar to another.
- [C] They said: Let us begin: what are of the School of Shammai and what is of the School of Hillel? The School of Shammai says . . . the School of Hillel says . . .⁵⁶

This text has been treated on numerous occasions in scholarly literature,⁵⁷ but to the best of my knowledge its surprising disagreement with the

56. t'Eduy 1.1 (ed. Zuckerman, 454), according to the reading of MS Vienna, the Austrian National Library, Cod. Hebr. 20. MS Erfurt of the Tosefta (Berlin, Staatsbibliothek 159, Or. Fol. 1220) presents two major variant readings: (1) Instead of *זה מבקש דבר מדברי תורה דומה לחבירו* it reads: *שלא יהא דבר מדברי תורה אמרו נתחיל מה לבית שמאי ומה לבית הלל? בית שמאי או? . . . בית הלל או? . . .* (2) Instead of *בית . . .* it reads: *אמר . . . והלל או? . . .* In both cases the reading of the editio princeps (Venice 1521) supports the reading of MS Erfurt. However, the first variant is probably due to the influence of the parallel text in the Babylonian Talmud (bShab 138b), which is one of the characteristics of MS Erfurt, as noted in numerous places by Saul Lieberman and, following him, by many other scholars. See Yaakov Sussmann, “The Ashkenazi *Yerushalmi* MS—‘Sefer Yerushalmi’” (Hebrew), *Tarbiz* 65 (1995): 61–63, n. 166; Shamma Friedman, *Tosefta Atiqta Pesah Rishon: Synoptic Parallels of Mishna and Tosefta Analyzed with a Methodological Introduction* (Hebrew; Ramat Gan, 2002), 79–86 (but compare Adiel Schremer, “The Text-Tradition of the Tosefta: A Preliminary Study in the Footsteps of Saul Lieberman” [Hebrew], *Jewish Studies Internet Journal* 1 [2002]: 11–43). The second variant seems to me to reflect an emendation of the text, which attempted to align it with that of m'Eduy 1.1. For these reasons my analysis follows the reading of MS Vienna.

57. See, among many others, Epstein, *Introduction to Tannaitic Literature*, 425–27; Hanoch Albeck, *Introduction to the Mishna* (Hebrew; Jerusalem, 1959), 82–83; Ephraim E. Urbach, “Class-Status and Leadership in the World of the Palestinian Sages,” *Proceedings of the Israel Academy of Sciences and Humanities* 2.4 (Jerusalem, 1966), 18–19; Shmuel Safrai, “The Decision According to the School of Hillel in Yavneh,” *Proceedings of the Seventh World Congress of Jewish Studies: Studies in the Talmud, Halacha and Midrash* (Hebrew; Jerusalem, 1981), 27–28; Halivni, *Mishnah, Midrash, and Gemara*, 43–47; Avraham Aderet, *From Destruction to Restoration: The Mode of Yavneh in Re-Establishment of the Jewish People* (Hebrew; Jerusalem, 1997), 503–17; Shlomo Naeh, “The Art of Memory, Structures of Memory,

“chain of tradition” of tractate *Avot* has never been noticed. According to the Tosefta, in order to overcome (or to prevent) a foreseen difficulty—that is, that one would seek a word of Torah, or a word of scribes, but would not find it [A]—the sages of Yavneh decided to begin with the teachings of the school of Shammai and the school of Hillel [C]. The precise meaning of their act is a matter of much controversy,⁵⁸ but the fact remains that they did *not* decide to begin with the teachings of the people of the great assembly, nor with those of Simeon the Righteous or Antigonus of Sokho, nor even with the early pairs. Rather, they began with the teachings of the schools of Hillel and Shammai. This is in itself quite amazing, for had it been true (as it is frequently claimed) that a fundamental premise of rabbinic ideology was that “Moses received a Torah from Sinai,” which was handed down to the people of the great assembly, from whom the pairs “received” it, how is it possible that the sages who gathered at Yavneh decided to “begin” only with the teachings of the schools of Hillel and Shammai? Were the teachings of earlier sages not considered worthy of memorization?

The Yavnean sages’ decision to begin with the schools of Hillel and Shammai, as told by t’Eduy 1.1, must be seen, therefore, as a bold statement. “Our Torah,” so these sages seem to have claimed, *does not begin at Sinai*. It does not begin even with the early pairs. It begins with Hillel and Shammai, the true founders of rabbinic tradition. Already this implied claim places t’Eduy 1.1 in sharp tension with mAvot 1.1–15.⁵⁹ But the contrast may be deeper still, for it may relate to the ideological implication of the Tosefta’s denial of the “chain of tradition.”

and Forms of Text in Rabbinic Literature,” in *Mehqerei Talmud III, Part 2: Talmudic Studies Dedicated to the Memory of Professor Ephraim E. Urbach*, ed. Y. Sussmann and D. Rosenthal (Hebrew; Jerusalem, 2005), 582–86; and Steven D. Fraade, “Rabbinic Polysemy and Pluralism Revisited: Between Praxis and Themmatization,” *AJS Review* 31 (2007): 446–51.

58. See the references in Naeh, “Art of Memory,” 584, n. 189.

59. Compare, for this matter, the periodization implied by the statement of tBK 8.13 (ed. Lieberman, 39): “All the great men that arose for Israel from the death of Moses until Yossi ben Yoezer of Seredah and Yossi ben Yohanan of Jerusalem it is impossible to attribute to them any blemish. Since the death of Yossi ben Yoezer of Seredah and Yossi ben Yohanan of Jerusalem and until Rabbi Judah ben Baba, it is possible to ascribe to them a blemish.” True, this tradition emphasizes pietism, and the quality it focuses on is not scholarship but rather religious piety (see the story about R. Judah ben Baba, attached to the above statement in the Tosefta). Yet it is clear that it views Yossi ben Yoezer and Yossi ben Yohanan as marking a turning point in pharisaic/rabbinic history. t’Eduy 1.1 clearly has a different view.

Conventional wisdom regards t'Eduy 1.1 as a text meant to address a fear of the loss of halakhic tradition. This anxiety was explained by a variety of factors, among them the calamities of the destruction of Jerusalem and the Second Temple; the ensuing political changes; the lack of institutional backing; and perhaps also the expansion of rabbinic teaching, the new scale of which threatened the ability of the sage to memorize it all. For this reason they decided to collect and organize their traditions, so as to secure their survival.⁶⁰

This view is deeply influenced (although probably unconsciously so) by a much later parallel from bShab 138b,⁶¹ in which a baraita opens: "When our rabbis gathered in the vineyard at Yavneh they said: *The Torah is destined to be forgotten in Israel.*" This formulation, however, simply reiterates a saying of the Babylonian amora Rav that is quoted in that sugya just two lines earlier: "Said Rav: The Torah is destined to be forgotten in Israel." There is good reason to suspect, therefore, that the text of the baraita as it appears in the Babylonian Talmud is the result of a late Babylonian reworking of the early tannaitic text.⁶² Reading the former into the latter is thus methodologically problematic.

60. This view was given expression already by Rav Sherira Gaon in his famous Epistle. See Benjamin M. Lewin, ed., *Igeret Rav Sherira Gaon* (Jerusalem, 1972), 12. Along the same lines, Rav Sherira explains R. Judah the Patriarch's decision to compose the Mishnah. See *ibid.*, 20–23. Since Rav Sherira this view has been adopted by many others. See Naeh, "Art of Memory," 584, n. 192. Naeh himself suggested a profoundly different interpretation of the problem the Yavnean rabbis were envisioning: "The sages in these sources were not afraid that the Torah will be lost from Israel, but rather [they were afraid] of the disappearance of the keys to the growing amount of [rabbinic] material" (*ibid.*). A similar view was expressed (in a less definite manner) by Sussmann, "History of the Halakha and the Dead Sea Scrolls," 73, n. 238, s.v. המעבר. As much as this suggestion is different from the conventional one, it shares with it the fundamental view that the Yavnean sages were concerned because they feared a future reality in which the rabbinic tradition will, for whatever reason, be inaccessible and hence, in a deep sense, "lost."

61. As is the case in many other examples. See Adiel Schremer, "Stammaitic Historiography," in *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggadah*, ed. J. L. Rubenstein (Tübingen, 2005): 219–35.

62. As Shamma Friedman has shown, this is typical of baraitot in the Babylonian Talmud. See Shamma Friedman, "The Baraitot in the Babylonian Talmud and Their Relationship with the Tosefta," in *Atara L'Haim: Studies in the Talmud and Medieval Rabbinic Literature in Honor of Professor Haim Zalman Dimitrovski*, ed. D. Boyarin et al. (Hebrew; Jerusalem, 2000), 163–201. Because of this now widely accepted view, many students of Palestinian Judaism of the tannaitic era deliberately avoid relying on so-called tannaitic materials found in the Babylonian Talmud. See Martin Goodman, *State and Society in Roman Galilee, A.D. 132–212*

No doubt it is easy to slip into the traditional assumption, based on the formulation of the text in the Babylonian Talmud, that the Yavnean rabbis' concern was the danger of forgetting. On this assumption, it is perfectly natural to view their act as relating to collection of material and its organization for the sake of its preservation. And indeed, when read *on its own* the phrase "Let us begin: which teaching belongs to the school of Shammai and which teaching belongs to the school of Hillel" (or, following the reading of MS Erfurt, "Let us begin from Shammai and Hillel") may be understood as describing an act of collection and organization. At first sight, then, there is no reason not to think that the Yavnean sages' act was aimed at preserving rabbinic material. However, although this interpretation is possible, nothing makes it necessary, and nothing in this phrase requires its understanding in this manner. The need to classify traditions may be motivated by various concerns, not exclusively by a concern to avoid their loss. For example, one may wish to classify rabbinic teachings so as to be able to use them for halakhic purposes, or because the halakhic stances of certain groups, or individuals, were rejected and contained opinions that one should not follow. The mere act of collecting says nothing about its motivation.

In fact, the widespread assumption that the work of collection and classification of the teachings of the School of Shammai and the School of Hillel at Yavneh was an act of preservation, is itself not as simple as it appears. For a proper interpretation of the Tosefta is required to explain how the Yavnean sages' act was meant to impede the danger that one will be looking for "a word of Torah" or "a word of scribes" without being able to find it. Even if one is willing to consider the two schools as "scribal," such an act cannot be seen as answering the other half of the concern—words of *Torah*. The standard reading, in other words, fails to explain how the collection and classification of *rabbinic* material enabled (or was meant to enable) the prevention of the danger stated at the beginning of the text, that is, that neither "a word of Torah" nor "a word of scribes" will be found.

(Totowa, N.J., 1983), 8–9; Shaye J. D. Cohen, "The Place of the Rabbi in Jewish Society of the Second Century," in *The Galilee in Late Antiquity*, ed. L. I. Levine (New York, 1992), 157–73; S. J. D. Cohen, "The Rabbi in Second-Century Jewish Society," in *The Cambridge History of Judaism, III: The Early Roman Period*, ed. W. Horbury, W. D. Davies, and J. Sturdy (Cambridge, 1998), 922–90; Schremer, "Stammaitic Historiography," 235, n. 53; Schremer, "Midrash and History: God's Power, the Roman Empire, and Hopes of Redemption in Tannaitic Literature" (Hebrew), *Zion* 72 (2007): 8; Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 CE* (Oxford, 2012), 39–45.

Beyond this interpretive consideration there is yet another fundamental difficulty: the teachings attributed to Hillel and Shammai and their schools in the entire rabbinic corpus, are not so large as to justify any fear that they are too difficult to memorize and hence might be lost.⁶³ It turns out, in sum, that the conventional interpretation of t'Eduy as motivated primarily by fear of loss of halakhah requires reconsideration.

Indeed, setting aside the later tradition from bShab 138b (*The Torah is destined to be forgotten in Israel*), it can hardly be acceptable as a reading of the Tosefta passage at all. Besides its silence on motive, no interpretation that I know satisfactorily or precisely explains the two phrases "words of Torah" and "words of scribes."⁶⁴ Traditionally, the phrase "words of Torah" is understood loosely to denote rabbinic wisdom in the most general sense.⁶⁵ Accordingly, the Tosefta is understood to express the fear that people would seek rabbinic teaching, but for some reason they would not be able to find it.

However, if the meaning of "words of Torah" is indeed "rabbinic teaching" in the broad sense, why did the Tosefta need to mention "words of scribes"? We should presume that their division indicates their usage here as terms of art—relating to different kinds of halakhic teaching, not to "rabbinic learning" in general. The juxtaposition of the two types of words helps us to discern their precise meaning in t'Eduy 1.1. The phrase "words of scribes" can be found in numerous places in tannaitic literature to designate a halakhic teaching known to be of *rabbinic* origin.⁶⁶ As such,

63. As noted above, Sussmann and Naeh understand the difficulty that the Yavnean sages were envisioning as related to the growing amount of rabbinic teaching. But this cannot be said with respect to tractate 'Eduyot as is found in the Mishnah or in the Tosefta. This tractate is relatively small, and of such a text one can hardly say that it was too difficult to "manage" and to memorize. See also Halivni, *Mishnah, Midrash and Gemara*, 46.

64. Steven Fraade was sensitive to the precise formulation of the text here, but he considered it as a "slippage." See Fraade, "Rabbinic Polysemy," 19, n. 56. Fraade is correct, of course, that a shift from God's word to rabbinic teaching can be seen in various places in early rabbinic literature (*ibid.*, 13, n. 35). However, I find this suggestion difficult to accept in the present case, for reasons to be explicated below.

65. See, for example, Fraade, *ibid.*, 14; 16; 18–19.

66. See Ephraim E. Urbach, "The Drasha as a Basis of the Halakhah and the Problem of the *Soferim*" (Hebrew), *Tarbiz* 27 (1958): 166–82 (= *idem*, *The World of the Sages* [Jerusalem, 1988], 56–66). Urbach notes that "in early sources the term 'words of Scribes' still has the meaning of '[law derived by means of] midrash'" (*World of the Sages*, 61). Should this understanding be applied to t'Eduy 1.1, it would mean that the text makes a distinction between halakhic rules that are purely "from the Torah" and those that are derived from the Torah by means

it appears in various tannaitic texts in contrast to a halakhic teaching considered to be of *biblical* origin.⁶⁷ In context, then, “a word of Torah” necessarily means a *biblical precept*. It does not entail the loose meaning of “rabbinic, traditional teaching,” as we frequently use this expression in contemporary parlance. Rather it means precisely what its literal meaning is: a halakhic ruling of biblical origin.

The Yavnean sages’ fear, on this reading, was not that “rabbinic wisdom” (in the broadest sense) will be lost but rather that one will be unable to find *either* biblical law *or* rabbinic teaching. This point, which is virtually always overlooked by readers of the Tosefta, may turn out to be of much significance. For as the formulation of the text clearly indicates, the sages who gathered at Yavneh began a process of *identification*: “They said: Let us begin: which teaching belongs to the School of Shammai, and which teaching belongs to the School of Hillel.” How was such an endeavor expected to ensure the prevention of the anticipated situation, in which one will be unable to find either a ruling of biblical origin or a ruling of rabbinic origin?⁶⁸ We need to assume that the problem they

of its interpretation. Only the former are truly “biblical”; the latter, although closely connected with the Torah, are nevertheless not “biblical” but rather of rabbinic origins. As is well known, this is the heart of a famous dispute between Nahmanides and Maimonides, and the focal point of the former’s critique of the latter’s first two principles of enumerating the commandments, as presented in his introduction to his *Book of the Commandments*. See Gerald J. Blidstein, “Maimonides on ‘Oral Law,’” *Jewish Law Annual* 1 (1978): 108–22; Moshe Halbertal, “*Sefer Ha-Mizvot* of Maimonides—His Architecture of *Halakha* and Theory of Interpretation” (Hebrew), *Tarbiz* 59 (1990): 457–80; Mordechai Z. Cohen, *Opening the Gates of Interpretation: Maimonides’ Biblical Hermeneutics in Light of His Geonic-Andalusian Heritage and Muslim Milieu* (Leiden, 2011), 257–82. A saying of the third-century Palestinian Amora, R. Yohanan, in yBer 2.4, 4c, may indeed be understood as claiming that the very effort of halakhic authorities to derive laws by means of midrash indicates that these laws are *not* of biblical origin. Cf. Howard I. Levine, *Studies in Talmudic Literature and Halakhic Midrashim* (Hebrew; Ramat Gan, 1987), 13–25.

67. See especially m’Orla 3.9; mSan 11.3; mPar 11.6; mYad 3.2; tTa’an 2.6; t’Eduy 1.5; tTevY 1.10; Sifra, *Shmini* 8.8; SifreDt §115; §154; Midrash tannaim on Dt 12.22 (compare SifreDt, ad loc., §75). The term is mentioned, of course, in numerous other places.

68. The attentive reader will notice that my description is based on the fundamental understanding that the sages’ suggestion, “Let us begin” etc. [C], should be seen as a remedy for the anticipated problem (“The time is coming” etc. [A]). That [C] is not directly connected to the homiletical part of the tosefta that immediately precedes it, [B*] has been noted by Halivni, *Mishnah, Midrash and Gemara*, 45, as well as by Naeh, “Art of Memory,” 583, n. 188. Yet the conventional reading of the Tosefta views that homiletical sentence [B*] as an explanation of

anticipated and attempted to avert by properly ascribing each halakhic ruling to a specific rabbinic authority had to do with an inability to *identify* “words of Torah” and to *distinguish* between them and “words of scribes.” They feared a situation in which people might consider the halakhah as one seamless corpus of legal teachings of the same value and authority, without giving each ruling its proper weight in the normative system. Their project, then, was not merely one of collection and organization but one of classification. The first step toward such a project was the attempt to *identify* the “owner” of each teaching. By proclaiming that a given saying belongs to a specific sage it became clear that it is not of biblical origin; that it is *not* “a word of Torah.”

Support for the understanding of the envisioned danger as related to the mixed and unsorted state of halakhic tradition (and not to the mere difficulty of memorizing it) may be found in the parallel midrash on Amos 8.12, as it appears in the SifreDt §48 (on Dt 11.22):

Behold it says: “They shall run to and fro to seek the word of the Lord but they shall not find it” (Amos 8.12) . . . R. Shimon ben Yohai says: Does this teach that the Torah is destined to be forgotten from Israel?! But it has already been said: “For it will not be forgotten from the mouth of their descendants” (Dt 31.21)! Rather, [it refers to a reality in which] so-and-so prohibits and so-and-so permits; so-and-so declares “impure” and so-and-so declares “pure,” and they will not find a clear teaching.⁶⁹

the danger noted in [A] (see, for example, Urbach, “Class-Status and Leadership,” 18), so that not being able to find a word of Torah is equivalent to no word of Torah being “similar to another” (Urbach, *ibid.*; Naeh, “Art of Memory,” 584). However, not only is the latter expression ambiguous and at odds with the rest of the midrash (where “the word of the Lord” is identified with a specific noun: “This refers to prophecy . . . this refers to the eschaton”), but far more: it cannot truly be understood as explaining the opening problem because, as we have seen, the expression “a word of Torah” in the latter bears the meaning of a specifically biblical precept, while in the midrash it most probably refers to “rabbinic teaching.” This is clear from the parallel in SifreDt §48 (ed. Finkelstein, 112–13), in which Amos 8.12 is interpreted as referring to the existence of halakhic disagreements *between the rabbis* (on the connection between the Tosefta’s midrash and the Sifre, see Naeh, “Art of Memory,” 584 and n. 190 there). If [B*] cannot be read as an explanation of the anticipated danger, it appears to be secondary: presumably, the tosefta was originally comprised of the anticipated danger [A] and its remedy [C] (and whether or not it included a biblical proof-text is immaterial). [B] may therefore be extracted, and this surgery enables us to offer the following alternative explanation of the danger the Yavnean sages were envisioning.

69. Ed. Finkelstein, 112–13.

R. Shimon denies an understanding of Amos 8.12 as prophesying that the Torah is destined to be forgotten by the Jewish people, because in Dt 31.21 God had promised that the Torah will never be lost from Israel. Rather, R. Shimon maintains, Amos's prophecy (that "the word of the Lord" will not be found) refers to a situation in which one will not be able to find "a clear teaching." When halakhic teachings are not "clear" but rather are "mixed up,"⁷⁰ one is unable to find "the word of the *Lord*." The Torah, thus, is not forgotten, but *God's* word cannot be found therein, because the halakhic tradition is mixed up of different and contradicting opinions ("so-and-so prohibits and so-and-so permits; so-and-so declares 'impure' and so-and-so declares 'pure'").⁷¹

To be sure, the anxiety expressed by this midrash is not identical with the one expressed by the Tosefta. In the Sifre the problem stems from the existence of opposing halakhic opinions, and it aspires (implicitly, of course) to halakhic unanimity among the rabbis. This difficulty cannot be read into the Tosefta, because the measures that it says that the Yavnean

70. The meaning of "clear" (ברור) in R. Shimon's midrash is not "easy to understand" but rather "distinguishable," the opposite (in mishnaic Hebrew) of "mixed up" (בלול). See Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (London, 1903), 191; Naeh, "Art of Memory," 564. As correctly observed by Naeh, the homilies in the Sifre are concerned with the learning activity of the rabbinic student, who is required not only to absorb and internalize his master's teachings but also to *sort* them. He suggests that the classification of halakhic teachings was necessary for their memorization. See Naeh, *ibid.*, 564–65.

71. This is the plain meaning of the text, that is, it refers to the very existence of halakhic disagreement as a source of confusion with respect to "the word of the Lord." See also Fraade, "Rabbinic Polysemy," 14; Azzan Yadin-Israel, "Rabbinic Polysemy: A Response to Steven Fraade," *AJS Review* 38 (2014): 133. A similar concern is given voice in tSot 7.9–12 (ed. Lieberman, 193–95): "Should one say: Since the School of Shammai declare 'unclean' and the School of Hillel declare 'clean,' so-and-so prohibits and so-and-so permits, for what purpose do I study Torah?" Here, too, the source of one's anxiety is the very existence of halakhic disagreement, which casts doubt on the very validity of the material. Naeh's interpretation, that the concern attributed to the student in this text relates to his difficulty to memorize the different opinions, is influenced by the formulation of this sentence as it is found in the much later parallel in the Babylonian Talmud (bHag 3b): "How *can* I study Torah," as Naeh himself notes ("Art of Memory," 574), whereas the Tosefta's formulation leads in a different direction, as correctly noted by Fraade, "Rabbinic Polysemy," 34–35. For the sake of fairness, however, it should be noted that Naeh's understanding of the concern expressed in this sentence is related to his brilliant analysis of the passage in the Tosefta as a whole ("Art of Memory," 571–82), to which I hope to return on another occasion. For the time being, see Fraade, "Rabbinic Polysemy," 31–36.

sages took to overcome the threat they were envisioning—that is, their project of identifying the “owner” of each halakhic ruling—does not eliminate the existence of halakhic disagreements, and it does not preclude the situation of “so-and-so prohibits and so-and-so permits; so-and-so declares ‘impure’ and so-and-so declares ‘pure.’” Despite these differences, the two texts do share a somewhat similar concern relating to the state of the halakhic tradition current in their authors’ days: namely, that “mixed materials” create a problem. And both texts claim that when the halakhic tradition is not “clear” but rather made up of different kinds of teachings, “the word of the Lord” and the “words of Torah” are in danger of being lost.

Would it not be possible to suggest, therefore, that this was the issue that the sages who gathered at Yavneh were concerned about? While some rabbis maintained that all of the halakhic tradition is rooted in the revelation to Moses at Sinai and therefore has a status equal to words of Torah, the sages who gathered in the vineyard at Yavneh rejected this ideological stance by making a fundamental distinction and emphasizing the human origin of rabbinic teachings.

CONCLUSION

In this essay I have attempted to challenge a widespread view that the idea of the Sinaitic origin of all rabbinic tradition is the conceptual foundation upon which rabbinic Judaism rests, and its ideological manifesto. The most famous expression of this manifesto in rabbinic literature is in tractate *Avot*. This view is problematic for a number of reasons that I have attempted to lay out. First, this document, I suggest, does not speak for all rabbinic circles but rather emanates from the school of R. Eliezer ben Hyrcanus (or his followers), a sage who was not followed by the group we know to represent the mainstream of Palestinian rabbis of the tannaitic era. Second, I demonstrated that the opening passage of *t’Eduy* may be read as a polemic against the ideology of the school presented by *mAvot*. While the latter attributes divine status to all of rabbinic teaching, the former considers this view dangerous, and it calls instead for a sharp distinction between “words of Torah” and “words of scribes.”

The ideological claim that rabbinic halakhah is of Sinaitic origin and therefore has a divine status is defensive in its nature. It attempts to “guard” rabbinic teaching from a polemical attack, which purports to debunk its authority by emphasizing its human origin. Such attacks played a pivotal role in the anti-pharisaic polemic of various sectarian

groups of the Second Temple period.⁷² However, that ideology not only lost its necessity in postdestruction, postsectarian times, but, far worse, it became a burden. For if all of the halakhic tradition stems from Moses, its status is similar to that of “words of Torah,” which humans cannot manipulate and change. The Yavnean sages therefore needed to reject the Eliezeran claim that all of the halakhah has the status of “Torah,” in order to pursue their grand project of adjusting both the law and the “tradition of the fathers” to the new circumstances in which they lived. They accomplished this by declaring the authorship of each rabbinic teaching, so as to make its human origin as clear as possible.

The discursive attempt at rejecting a deeply ingrained ideological stance can never fully accomplish its goal so long as the challenges that stance purports to address still exist. The polemical horizon of the pharisaic age lived on in attenuated form in the tannaitic age. For this reason, one can find in early rabbinic literature the claims: “just as the laws of the sabbatical year, its rules and their details, were said at Sinai, so too all [of the laws]—their rules and their details—were said at Sinai,”⁷³ and “even that which a faithful student is destined to rule before his master has already been said to Moses at Sinai.”⁷⁴ This and other similar assertions continued to exist within rabbinic tradition, side by side with the fundamental understanding of the human nature of rabbinic halakhah. The tension and conflict between these two vectors is one of the powerful forces that shaped rabbinic halakhah for generations.

72. See Adiel Schremer, “[T]he[y] Did Not Read in the Sealed Book:’ Qumran Halakhic Revolution and the Emergence of Torah Study in Second Temple Judaism,” in *Historical Perspectives: From the Maccabees to Bar Kokhba in Light of the Dead Sea Scrolls*, ed. D. Goodblatt, A. Pinnick, and D. R. Schwartz (Leiden, 2001), 105–26.

73. Sifra, *Be-Har Sinai*, 1.1.1 (ed. Weiss, 105a). Compare Sifra, *Be-Hukotai*, 6.12; bBer 5a.

74. yPe’ah 2.6, 16d. For many other early rabbinic texts echoing this stance, see Yochanan D. Silman, *The Voice Heard at Sinai: Once or Ongoing?* (Hebrew; Jerusalem, 1999), 24–38.