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IN TRADITIONAL Jewish self-understanding, the Torah, the basis of Judaism, is actually comprised of two Torahs, one written, the other oral. This fundamental claim represents the basis of rabbinic Judaism. The history of Jewish thought, however, is replete with attempts to determine precisely what this means. One strand of thought insists that together with the written revelation—that which God communicated to Moses, and the latter committed to writing, or that which God himself actually wrote—God communicated to Moses further amplifications and explanations. The latter, in turn, transmitted them to Joshua who transmitted them to the elders, and so on, down to the first centuries of the Christian era when they began to be committed to writing, or at least to emerge as a series of definitive texts. In this version, the claim that there was an oral torah is a clear historical statement, claiming that most of the material comprising oral Torah came into existence at one time, more than a millen-
nium before the Christian era; such a claim is inherently subject to the scrutiny of historical verification.

Another strand sees the oral Torah, for the most part, as the result of a process of authoritative exegesis, emerging over time, through the application of authorized exegetical techniques by learned sages. This claim is also historical, but is of a very different quality. It acknowledges human participation, not merely in the development of secondary ordinances, but in the very creation of the oral Torah. It claims that what we know as oral Torah emerged over many centuries, but may be dated by the names of sages, and biblical figures, associated with its given provisions. This version is prepared to allow for a much longer period of development of the rabbinic tradition.

As one would expect, the two strands are ideal constructs, with neither existing in total separation from the other. The first strand is the far more frequently articulated position, particularly in works of Jewish “philosophy” and history, while the second strand dominates actual halakhic discourse.¹ Fundamental to both strands, however, is the notion that the completed product is Torah, an articulation of God’s will, and in that sense transcends whatever historical circumstance may have occasioned its emergence. Further fundamental to both strands is the centrality of tradition, whether it be a tradition defined by its content (first strand) or by its method and results (second strand). Both presuppose that “rabbinism,” whether defined by content or method, extends far back into antiquity, perhaps as far back as the revelation at Sinai, and it has successfully transmitted its content throughout the ages. Both presuppose that there is a basic, organic continuity that
obtains in the relationship between the two Torahs, as they each, in one way or another, derive from "one shepherd." Rabbinic Judaism rests on this set of fundamental assumptions.

Throughout the ages, the claim that rabbinic Jews were in possession of a unique, authentic and reliable tradition was the object of vigorous challenge. For Josephus, the very distinction between Pharisees and Sadducees revolved around this issue; thus, over two millennia ago, the possession of a tradition and the denial of such possession were crucial issues to the Jews of that day.²

The nature of the Karaite challenge to the rabbinic tradition is better known and more readily verified. Karaites, who in fact developed a rather extensive legal system based on exegetical techniques similar to rabbinic ones, dismissed rabbinic laws as commandments created by men, rather than as the product of any set of traditions deriving ultimately from God or God’s word. Similarly, in Marrano communities and in other times and places as well, there emerged what Shalom Rosenberg has called a Jewish Protestantism, in which once again the authenticity of the rabbinic tradition came under attack. Rabbinic interpretations and practices were dismissed as the product of humans and in no way reflective of the divine will.³

Karaism in particular, and “Jewish Protestantism” generally, posed strong challenges to rabbinic Judaism, and Karaites succeeded in creating a rival community that survived with vigor into this century. On an ideological level, however, neither the Karaites, nor the other “Protestant” groups succeeded in creating a sufficient historical hermeneutic to make
their rejection of rabbinic tradition overwhelm the rabbinite communities. The many defenders of rabbinism felt that a detailed restatement of the chain of tradition was sufficient to counter the Karaite challenge. In more or less detailed restatements of the chain recounted in the first mishnah in tractate Avot, these defenders filled in the centuries between Moses and Simon the Just (for more on him, see below) in broad strokes, with no sense that the lack of historical evidence was a problem. The whole matter became one of conflicting authority, with devotees of each position passionately affirming or denying but rarely convincing.

Simultaneously, the Karaite challenge also occasioned a legal-philosophical argument, pertaining to the nature of the Torah as a legal source. Championed by many, most forcefully by Yehudah Halevi, the argument maintained that given the numerous legal lacunae in the Torah, it is inconceivable that God could have communicated this document to Moses without further explanation. Exodus 12:2, for example, traditionally believed to contain the first commandment, commands the Israelites to observe “this month” as the first month. Such a statement would be meaningless without some further information regarding the calendrical system the commandment envisions. Thus, claims Halevi, it is clear that God must have provided Moses with the information that the system envisioned was not the Egyptian or Chaldean system, but rather the mixed lunar/solar system that prevails in Jewish law to this day. 4

To be sure, Karaism represented a strong stimulus to rabbinic historical reflection—indeed, the history of rabbinic tradition dominates Jewish historiography up to the modern
period—and certainly the repeated efforts to combat it suggest that Karaism and Jewish Protestantism represented significant cultural challenges to the authority of the rabbinic tradition. Yet, for the most part, the center of the rabbinic universe was able to hold. While halakhists and kabbalists in different locations and times developed varying preferences and hermeneutics in their interpretation, the sacred documents of the rabbinic canon remained essential sources of praxis and thought. Jewish life and thought continued to revolve around them and their message(s).

In the late eighteenth century, and continuing into the nineteenth, there emerged among Jews a kind of enlightened Protestantism that was qualitatively distinct from the earlier forms of protest that agitated Jewish culture. Both the historical and legal-philosophical arguments came under severe challenge. By the late 1820s, it was a commonplace of much Jewish historiography that biblical and rabbinic religion were two distinct religious orientations with little if any direct connection between them. This protest against the authenticity of rabbinic tradition was not based on competing scriptural hermeneutics that recognized scripture as Scripture, that is the direct word of God, nor was it based directly on a competing claim to communal authority. Rather, this new protest employed the results and methods of early Bible criticism, legal history (Rechtsgeschichte) and Religionsgeschichte in its reconstruction of early rabbinic history.

To a very large extent, the success of the defense of rabbinic tradition depended on the credibility of the chain of tradition in the mishnah tractate Avot. To medieval historians, its credibility was beyond question. Indeed, as Abraham ibn
Daud asserts in a different but related context, the traditions of the Mishnah and Talmud must be deemed authentic when they conflict with gentile historians for the rabbinic traditions "did not distort anything." The near total reliance of other "historians" of rabbinic tradition on this source suggests that they all agreed on this point.

In the modern period, the reliability of this tradition was dealt a powerful blow by Lazarus Bendavid's essay, "Über geschriebenes und mündliches Gesetz." Bendavid (1762–1832), one of the most outspoken of the maskilim of the post-Mendelssohn era, published this essay in the Zeitschrift für die Wissenschaft des Judenthums ([1823], p. 473) a short-lived but important journal that was the publication of the Verein für Cultur und Wissenschaft der Juden. Here Bendavid outlines his understanding of the concepts of a written law and an oral one.

Bendavid begins his essay with the assertion that it is necessary to define what the terms written and oral law mean since this has not yet been done, and without an exact understanding of these terms one cannot know what comprises the essence of the Jewish religion (ibid., p. 474). He argues that one who does not wish to scorn the credibility of all history must admit that Moses left behind some written laws. Nevertheless, the current document of Mosaic law owes its present form to a much later time. For beyond all doubt, what was written by Moses was lost prior to the time of Samuel, the prophet. The Mosaic law was first recovered by the priest Chilkiahu, some fifty years before the Babylonian exile, during the reign of Josiah (c. 630 B.C.E.). From this Bendavid concludes that the "Mosaic teaching was cultivated only orally
in the 460 years between Samuel and Josiah, that is for virtually the entire duration of the First Temple" (ibid.). Thus, the proper understanding of the concept of an oral tradition is that the Mosaic law itself was transmitted orally, throughout the First Temple period, and only later became known in its written form, with many additions. Thus, "written" and "oral" tradition do not refer to two distinct bodies of material, but rather to the sequential development of the same material.

Incredibly, Bendavid finds support for this radical claim in the first mishnah in the tractate Avot:

In fact, if one understands the sense of that which the Tannaim, the authors of the Mishnah, have imparted to us in an impartial way, not only does it confirm our assertion, but even seems to entirely deny any written law deriving from Moses. [This mishnah] seems to be of the opinion that the priest Chilkiahu fashioned the book, which he allegedly found, from an oral tradition known to him. They say as much: "Moses received the Torah on Sinai, and transmitted it to Joshua . . ." (Ibid.)

Bendavid asserts that this mishnah could not be referring to the written law because the Tannaim were very exact in their use of language, and the word used is "masar" (überliefern), and not "natan" (übergaben), and only the spoken word can be thus transmitted ("nur das Geistige, das gesprochene Wort, überliefert man").

Of course, Bendavid is well aware that his understanding of the terms written and oral law is not consistent with the traditional conception of these terms. According to Jewish tradition, as Bendavid understands it, the written law refers
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to the Pentateuch, while the oral law includes those laws that were transmitted by Moses orally, which do not appear in the Pentateuch; those laws that are derived through one of the accepted hermeneutical rules; those laws not derived from the Bible but considered necessary by the Sanhedrin for the proper observance of the law and the well-ordering of society; and those laws that serve to prevent transgression against the laws. Bendavid argues the inadmissibility (Unstattbafe) of this understanding. First of all, it takes no account of the 400-year loss of the original document, and assumes Chilkiahu genuinely found the document he produced, rather than having created it on the basis of the tradition. This, it will be recalled, contradicts the statement of the mishnah, as Bendavid understands it. Secondly, the traditional view is based on the arbitrary and historically unprovable assertion that Moses imparted explanations to Joshua orally, a claim the medievals had no difficulty digesting, but which required some verification before a modern historian could affirm it. Finally, the mishnah in Avot teaches that with the men of the great synagogue the oral tradition became superfluous, because the law, which had previously existed only in oral form, had been written down. Thus, the language shifts from “masar” (überliefern) to “qibel” (empfing), indicating the onset of a break. That this meaning of the text was not recognized prior to Bendavid’s time was due to later rabbinic ignorance, and lust for respect and power (Unkunde, Ehr- Hab- und Herrschsucht).

The oral law became the written law many centuries before the emergence of the rabbinic tradition. Thus, what was produced by the rabbis was not part of any tradition and
represented a gross misuse of the notion of an oral law. What the rabbis produced was designed to enhance their own power, not to faithfully impart an ancient oral tradition. What made Bendavid’s argument different from Karaite diatribes against rabbinic authority was the interesting adaptation of recent biblical scholarship to the history of rabbinism. If, in fact, the Torah in its entirety was not known throughout the First Temple period; if its content emerged over these many centuries and first became generally known in the late seventh century; if it did not achieve final, fixed form until the time of the Great Assembly, then it is clear that the Torah itself is the product of an oral development over time. Thus, the history of the text and its interpretation could not possibly be as traditional rabbinic historical thinking insists. In good Enlightenment anticlerical fashion, one can then understand rabbinic historical claims only in terms of authority and power.

A similar claim is to be found in the work in Isaak Markus Jost, the author of the first comprehensive history of the Jews of the modern era, to whose Geschichte der Israeliten Krochmal refers (Guide, p. 126). Ismar Schorsch has written of the “antireligious animus” which permeated this work and the “extent to which Jost had internalized the negative critique of Judaism leveled by the Enlightenment.” 9 Schorsch discusses the extremely negative approach of Jost to rabbinism, and his claims that rabbinism rested on deceit and manipulation. 10 Indeed, for Jost, the primary goal of the rabbinic scholars flourishing after the destruction of the Temple was not to realize the word of God, but rather to “discern the means through which the people could find consolation for their suffering, and hope in the destruction.” 11
distant from the people to the point that "they comprised a
guild, into which could enter only those who gave proof of
their scholarship." Religious sensitivity was meaningless in
this world. Only the ability to engage in casuistic rabbinic
study mattered.

For Jost, rabbinic Judaism was nothing more than a way of
institutionalizing certain power structures in favor of the scholars
and to the detriment of the other members of society, regard-
less of the virtue of the latter. Jost tends to see rabbinic
Judaism almost entirely from the perspective of the need for
self-aggrandizement on the part of the rabbis, a need that
exacted a heavy price from the Jewish people.

Given this point of view, it is not surprising that Jost
accepts as a matter of course that there is no connection
between early biblical religion and the religion that was to
emerge after the exile. Further, he takes for granted that there
is little connection between rabbinic Judaism and any reli-
gion; for him rabbinic Judaism represents nothing more than
the ideology of a guild intent on gaining power at the expense
of the people. This they were able to do so long as they
fulfilled the needs of the populous for consolation and hope,
as we saw. Combined with the political power invested in the
office of the patriarch, and the ambitious use of this power by
the patriarchs, Judah ha-Nasi in particular, the rabbis became
a most oppressive force in the lives of the Jews.

One will readily recognize the rather unsophisticated at-
tachment to Enlightenment anticlericalism here; yet as the
first comprehensive history of the Jews produced in over a
century, Jost's work was read, and taken quite seriously, by
many Jewish scholars. In any event, there is, in addition,
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another side to Jost’s work, directly related to our issue, that indeed deserved, and deserves, to be taken seriously.

Appended to volume 4 of the Geschichte is a very intelligent and judicious excursus (quoted with approbation by the abbé Chiarini, by the way),¹⁴ in which Jost addresses the extent to which one can use the Talmud as a historical source. He concludes that the Talmud is an important historical document, but it cannot serve as a historical source. The distinction is that a document communicates important information about its framers and their times to us; from this information we can then reconstruct “history.” A source, on the other hand, would itself be a history of earlier events that we can reliably draw on in creating our own historical picture. The practical distinction is that while late rabbinic writings may include useful historical information, in no way do rabbinic documents tell us anything reliable about pre-rabbinic historical realities. He writes:

The book has only historical value, and depicts the customs of the Jews at the time of its composition, and its content can perhaps authenticate the contemporaneous progress of Jewish scholars in the various branches of scholarship; but for the previous period {Vorzeit} it remains insignificant, a shallow piece of tradition, in which even the “tradition” itself is dubious, and the question overtly remains, whether the allegedly tradited thing should not be considered as recent scholastic speculation. (Vol. 4, p. 272; emphasis added)

With this excursus Jost brought to the Jewish world the source-critical skepticism that characterized the revolutionary Bible scholarship of W. M. L. de Wette. The latter took for granted that later generations sought legitimacy by retroject-
ing their ideas into their own antiquity. It was this awareness that allowed him to identify the book of Deuteronomy as distinct from the rest of the Pentateuch, and to view the books of Chronicles as anachronistic retrojections of post-exilic conditions. However, Jost's skepticism does not lead him to conclude that the only thing reflected in the Talmud is the customs of the period of the documents' final redaction, primarily because a number of fourth-century Christian sources affirm the existence of a rabbinic "tradition." Thus, the Talmud, completed in the fifth century, must comprise a two-hundred year-old tradition beginning in the third century, rather than being strictly a product of the fifth century. The events recorded in the Talmud are reliable for the time in which its component parts were first given expression—that is, somewhere between the third and fifth centuries. Jost's crucial claim is that one cannot, on the basis of Talmudic statements, reconstruct pre-Talmudic, that is, pre-third-century, history.

Given this historical position, there is no way to ground rabbinic Judaism in antiquity; all claims to such antiquity in rabbinic documents must be considered legends and fables. There is then no (pre-third-century) rabbinic "tradition," but rather the deceptive claim to such a tradition by power-hungry politicians and lawyers. Once again, it is the impetus of biblical scholarship—here the method more than the results—that casts the central claim of rabbinic Judaism into disrepute.

Another important contributor to the shift in Jewish understanding of rabbinism was Eduard Gans, whom we met in chapter 3. It will be recalled that Gans, a founder of the
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Verein, stated that one of its main objectives was the destruction of rabbinism.\textsuperscript{16} This attitude of Gans’s was essentially programmatic; he wished for the elimination of the influence of the Talmud on the lives of contemporary Jews. At the same time, Gans was a student of law and its history, and as such wrote pieces on the development of Jewish law and its relationship to Roman law, with which Krochmal was familiar, and to which he responded in the \textit{Guide}.\textsuperscript{17}

Gans’s attitude toward rabbinism is also reflected in this scholarly work. In his important multivolume history of inheritance law, Gans devotes a chapter to Jewish, that is, rabbinic law. In this piece he argues that Jewish law is not to be seen in the context of Mosaic law \textit{at all};\textsuperscript{18} rather, rabbinic law, or at least what is of value in it, represents substantial borrowing from Roman legal institutions.\textsuperscript{19} I do not read this chapter, as Ismar Schorsch does, as an attempt by Gans to show the advanced nature of rabbinic law in that it incorporates Western elements. In my view, it is designed to demonstrate the totally moribund state of Jewish jurisprudence, and the recognition on the part of the rabbis themselves of the superiority of Roman, and, thus Western, law.\textsuperscript{20}

This reading dovetails nicely with Gans’s introduction to the work, in which he makes clear that the history of jurisprudence cannot be divorced from the history of \textit{Ideen}, the march of spirit through world history. For Gans, in its path through the ages, world spirit passed Jews by and next came to rest in the Greco-Roman world. It stands to reason that the supersession of Judaism would be reflected in its legal system. Thus, in presenting Jewish marriage and inheritance law as derivative, Gans is supporting his programmatic commitment to rabbinism’s elimination from contemporary religious life.

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The treatment of Gans as an important contributor to the discussion requires some justification. After all, he was scarcely a figure of major importance in the world of jüdische Wissenschaft. However, Gans made one particularly important contribution to this Wissenschaft in his essay on Jewish inheritance law. It was he who first chose to deal with rabbinism in the context not of Religionsgeschichte or biblical study, but rather in the context of Rechtswissenschaft. It was he who claimed that rabbinism was an essentially legal culture and therefore must be seen within the context of historical legal study. He was likewise the first to attempt to deal with rabbinic law within the context of a broad-based, comparative study of human legal systems. While his conclusions appealed to a limited audience, the area of academic study he introduced was to reemerge in the work of Krochmal, and Zechariah Fränkel as well, as each, quite self-consciously, attempted to respond to his claims. In his turn to Rechtswissenschaft Gans provided more conservative elements of the Wissenschaft movement, Krochmal included, with an academic field in which to operate. In his own version of legal history, however, the premises of the discipline once again consign rabbinic Judaism to the margins of religious history, and once again demonstrate the distinction between biblical and rabbinic institutions.

Each of these historical positions attempts to directly dismantle the historical argument of the ancients and medievals. The results of historical research, the historical hermeneutics that dominated one academic discipline, and the content of rabbinic legal materials all served to indicate that rabbinic Judaism could not be seen as the product of an unbroken tradition deriving from long before the Roman era. Of course,
along the way the traditional legal-philosophical argument is deflected as well, since none of these positions actually envisions the emergence of the Bible in a traditional manner—a sine qua non for maintaining this line of Jewish thought.

The legal-philosophical argument was not to be spared a direct assault, however. Michael Creizenach (1789–1842), operating with traditional assumptions regarding biblical origins, attacked the argument directly, as he attempted to mitigate the effects of rabbinism on contemporary Jewish life.

Creizenach, a significant figure in the early Reform movement, attacked this position in his four-volume Schulchan Aruch, and more succinctly in an essay entitled “Beiträge zur Beurtheilung des Thalmuds,” published in Geiger’s Wissenschaftliche Zeitschrift für jüdische Theologie. Creizenach acknowledges that the Torah is filled with lacunae and incomplete information. Yet, he asks whether the admitted lack of definitions, and the ambiguities of the Torah render its laws beyond observance without an orally transmitted explanation, or even whether “such an explanation is suitable to remedy the defect in the composition of the text.” Responding directly to Halevi’s argument regarding the calculation of the months and the absence of specificity pertaining to the calendar, Creizenach acknowledges that the text does not provide important information, but this is not sufficient to mandate a divinely revealed oral tradition because

It would be most natural here to assume that when this commandment was imparted, a system of reckoning time already existed among the Israelites . . . and that this commandment presupposed the retention of this system. . . . The customary system of reckoning time did not need to be communicated in the text of the Pentateuch, for it was well-known to the people.
Creizenach acknowledges there must have been some details too trivial to be written with the laws, and, since the written word never suffices in a legal code anyway, these must have circulated in an oral form. But this is hardly worthy of the title "oral tradition."

Creizenach’s reading insists on seeing the Torah as emerging in a specific historical setting—albeit a traditional one—rather than attending to the putatively intended timelessness of the text envisioned by the medieval (and modern) traditional thinkers. Viewed this way, the lacunae in the text simply presuppose information that is common coin, and do not necessitate the communication of any further information by the divine lawgiver. Thus, much of rabbinic tradition, far from representing an oral Torah, or a historically justifiable exegesis of the biblical text, in fact represents an increasingly severe distortion of the text that, more than anything else, positively necessitates reform. The point of the reform would be to restore the observances of Judaism to their pre-rabbinic grandeur, when they still conformed to the divine intent.25

In the face of all this the world that we would today call Orthodox was ill-equipped to respond in a relevant way. Heated restatements of the authenticity of the rabbinic tradition abounded, reminiscent of the Middle Ages. Yet, while the Orthodox recognized the stakes and that a significant shift had taken place, they were not sufficiently attuned to modern historical thinking to offer a relevant response. One interesting attempt, though, is a short work by Solomon Pressner of Breslau, who straddled the fence separating the traditionally committed maskil from the old-style rabbinic world. The work, first published in Breslau in 1826, carried the Hebrew title Edut l’Yisrael and the German title Wort zu seiner Zeit oder
die Autorität der jüdischen Traditionslehre, als des mündlichen Gesetzes: Sendschreiben an seine Glaubensgenossen. The main body of the short book was a translation of gentile sources supportive of the rabbinic tradition from Latin to German, with a separate section in which these materials were excerpted and translated into Hebrew. Plessner bemoans the fact that so many Jews have come to doubt the authenticity of the rabbinic tradition and thus to abandon its precepts.

Their doubts may be assuaged not only by reference to internal Jewish sources, but also by recourse to gentile sources. While the latter are replete with antirabbinic pronouncements, these may be dismissed as religious polemic, whereas the prorabbinic statements had greater legitimacy, as they could scarcely advance the interests of the authors. Thus we are treated to citations from the works of Jerome, the two Buxtorfs, Johannes Meyer, John Selden (1584–1654), Cartwright, Heinrich Reizius and Wilhelm Surenhusius (1669–1729), all of which in one way or another, support the Talmud as an indispensable source of Hebraic knowledge, and/or as the repository of important and authentic ancient traditions. The German section closes with the hope that this work will strengthen the faith of Jews, and that, as a result of reading this work, they will be more convinced of the divine origin of “our tradition” (p. 34). The Hebrew section closes even more forcefully, bemoaning the fact that contemporary Jews despise the Talmud, and contrasting such Jews to gentiles who, according to Plessner, loved it (Hebr. section, p. 23).

Perhaps more interesting than the existence of this work is the reaction to it of Rabbi Akiba Eger of Posen, one of the
leading rabbinic figures in Europe at the time. While acknowledging that the work is superfluous for people like himself, he proclaimed that nevertheless it may lead to greater respect for the Talmud, and may enhance the importance of Talmud study. This became particularly important in light of attempts on the part of maskilim to implement educational reforms that would limit the amount of time devoted to Talmud study. In his battle against this reform, Eger thought Plessner’s book would pave the way for the acceptance of his view, and requested that he send him twenty more copies which he would try to sell in Posen. Thus, in a stunning admission that gentile approval of the Talmud would likely exercise more influence on a portion of his community than his own exhortations, Eger acknowledged that he was ill-equipped to address the modernizing elements in a language they could understand. Indeed, he was right in this; for most of the nineteenth century intellectually sophisticated modern arguments for the authenticity of the rabbinic tradition would not emerge from Orthodox circles, but from traditionally inclined modern scholars such as Nachman Krochmal. For, ultimately, a work such as Plessner’s, for all its erudition, could not stem the tide, for it merely collected interesting references, but made no attempt to see them in their appropriate historical context. Jost too was aware of what Jerome had to say; his treatment of it as a piece of historical evidence, however, was far more sophisticated, and Jost was prepared to grant it far more limited weight.

By the 1830s then, traditional but intellectually aware Jews were facing a crisis of confidence in the historical veracity of their tradition. It was this perplexing loss of confidence that
Krochmal sought to address. In doing so, he acknowledged the difficulties outlined above in broad terms, and conceded that there were yet more problems. For, in addition to all the novel, modern challenges to the authenticity of the rabbinic tradition discussed above, Krochmal alludes to one age-old difficulty that lingered on, and in fact became yet more troublesome in the modern age. The problem is that the legal status of rabbinic materials was not always clearly determined. Krochmal hints at this problem when he mentions the famous dispute between Maimonides and Nahmanides regarding the legal status of those laws that are derived from the Torah using the accepted hermeneutical principles.29

The dispute arose because there is no clear statement in the sources regarding the status of these laws.30 Maimonides is quite emphatic in arguing that all laws derived from the basic hermeneutic principles are to be considered rabbinic, unless specifically designated otherwise. Nahmanides is equally emphatic in rejecting this claim, and insists that the Talmud considered all such laws to be Torahitic. Throughout the generations, a number of apologists for Maimonides have tried to defend the master’s position, by arguing that the term, used by Maimonides, that I have translated “rabbinic” does not in fact mean that at all. That is, their legal status is the same as all Torahitic laws, but because they are derived from the biblical text are not to be included in the enumeration.31 It is obvious that they actually agreed with Nahmanides, and were merely trying to defend the reputation of Maimonides. It is equally clear that Krochmal did not accept this line of argument, and indeed it has been definitively rejected.32

This dispute should not be viewed as some minor, esoteric debate. Rather, this disagreement strikes at the very core of
the rabbinic system. For the modern and skeptical mind it is crucial that the system of classification be clearly determined. Otherwise, the ability of the tradition to derive the practical law is impaired. Perhaps of even greater importance, this dispute reflects doubts on the part of the adherents of the rabbinic tradition as to the exact nature of the system, and provides grist for the mill of the skeptic who would maintain that the rabbis really made it all up as they went along. The rabbis themselves seem not to know what is actually part of the Torah, in the legal sense, and what is not; nor do they know for certain what is the relationship between the oral tradition and the written law—what is the product of the human mind and what is encompassed within the divine revelation. Krochmal considered the resolution of this confusion to be one of his primary goals.

Finally, Krochmal acknowledges that the rabbinic histories are not sufficiently critical in their use of talmudic materials. While he would not support the position of Jost, who would insist that virtually all rabbinic pronouncements regarding pre-rabbinic times are historically valueless, he would insist that many of the "historical" claims of the Talmud were never intended to be taken seriously as history. For example, the Talmud attributes to biblical figures the institution of various halakhot; the traditional historians have taken such pronouncements as historically accurate. Yet, Krochmal claims, these attributions are obviously false; they are to be treated as aggadot, designed for some heuristic purpose. He states:

It never dawned on the rabbis that such stories, taught for homiletical purposes, were to be accepted as true. The great destroyer of faith is the integration of that which is very dubious with that which is totally clear, and perhaps even falsehood with truth. There
is nothing more damaging than to confuse the times and events so that there is no distinction among them. This would open to everyone who disagrees [with a particular point] a wide gate to deny everything.35

Thus, Krochmal is driven to a new approach because the earlier histories were not critical at all, while the new ones were hypercritical. Krochmal seeks an approach that will incorporate the indisputable findings of recent historical scholarship, that will properly categorize the legal materials of the rabbinic corpus, and that will use the critical historical method to affirm the basic integrity of the rabbinic tradition.

The Guide

In seeking to create this portrait of rabbinic Judaism, Krochmal turned first to the discipline of Rechtswissenschaft, which, at the time, was acrimoniously divided between two schools, the so-called Idealist school (of which Gans was a member) and the so-called Historical school, led by Friedrich Karl von Savigny. The latter more conservative school was to serve Krochmal and Zechariah Fränkel in their historical reconstructions of the emergence of the rabbinic tradition. It is ironic that the academic model adopted by traditionalists to respond to the vision of a superseded Judaism was developed by Friedrich Karl von Savigny, one of the more vociferous of anti-Semites in the nineteenth century. Although a full discussion of this irony is beyond the scope of this work, one aspect demands discussion here.

Fundamental to Savigny's rejection of the Hegelian model of legal development was his rejection of the belief in sus-
tained albeit dialectical progress that was the heart and soul of Hegelian philosophy of history. Explaining his rejection of the plan, developed at the beginning of the restoration, to create a general code for all of Germany that would fully adumbrate universal rational principles, Savigny writes:

It is connected with many plans and experiments of the kind since the middle of the eighteenth century. During this period the whole of Europe was actuated by a blind rage for improvement. All sense and feeling of the greatness by which other times were characterized, as also of the natural development of communities and institutions, all, consequently that is wholesome and profitable in history was lost. Its place was supplied by the most extravagant anticipations of the present age, which was believed to be destined to nothing less than to being a picture of absolute perfection. . . . Men longed for new codes, which by their completeness, should insure a mechanically precise administration of justice; insomuch that the judge, freed from the exercise of private opinion, should be confined to the mere literal application; at the same time, they were to be divested of all historical associations, and in pure abstraction, be equally adapted to all nations and all times.36

In this rejection of progress and the romantic insistence on the unique development of individual peoples, we find the roots of Savigny's anti-Semitism—his rejection of the Jew as alien—and, somewhat paradoxically, we find his appeal to the more conservative voices in the scholarly Jewish community, who also rejected the notion of historical progress, which stood at odds with any meaningful understanding of tradition.

The specific contribution of Savigny that shaped the way Jews thought about the rabbinic tradition was his discussion of the origins of positive law in his famous polemic "On the
Vocation of our Age for Legislation and Jurisprudence.” Here Savigny developed the notion that law develops organically, over time, “supplied by rules communicated by writing and word of mouth” (p. 26). Of course, the law must change as the people to which it is organically linked change. As a result, law necessarily becomes more complex; thus, a new class of people—jurists and lawyers—comes into existence. The sum of this theory is that “all law is originally formed in the manner, in which, in ordinary but not quite correct language customary law is said to have been formed: i.e. that it is first developed by custom and popular faith, next by jurisprudence—everywhere, therefore, by internal silently operating powers, not by the arbitrary will of a law-giver” (p. 30). This organically growing law will come in time to necessitate the legislation of its experts, since particular rules may be doubtful or poorly defined, while administration of the law requires precise definition. “Here a kind of legislation may be introduced, which comes to the aid of custom, removes these doubts and uncertainties, and thus brings to the light and keeps pure the real law, the proper will of the people” (p. 33). This legislation, then, does not come to change law, but to define it and render it useful. Certainly, one cannot create a code in the hope that it will contain all necessary legal provisions, for there are “positively no limits to the varieties of actual combinations of circumstances” (p. 38). Indeed, for a living legal system, “no code was discovered to be necessary, not even at the time when circumstances were most favorable to it” (p. 50).

Savigny’s view of the slow, organic process by which law is produced proved most useful to traditionalists in the Jewish
community because it provided a model that not only justified the notion of a lengthy oral tradition—it necessitated it. Thus, despite Krochmal's attraction to Hegel's metaphysics and to the critical techniques in modern Bible study, we find him turning to Rechtswissenschaft in reconstructing the emergence of the rabbinic tradition. He opens his discussion with a paraphrase of Savigny's notion that legal materials must undergo a lengthy organic process of emergence, only following which legal experts will emerge. For him this came to mean that from the giving of the Torah, which outlined the basic contours of the legal system, until the coming of the scribes and then the tannaim, the teachers of the Mishnah, the halakhah must necessarily have undergone development, rooted in the needs and desires of a living community.

Thus, the notion of an oral tradition is not a piece of rabbinic propaganda, but is a requirement of every legal system. When that legal system is a religious one as well, the imperative to preserve its material is viewed as that much greater. Further, now working backward as it were, the existence of rabbinic legal documents itself belies the notion that rabbinic Judaism is a fossilized culture, for the very presence of rabbinic jurists is proof of a living and developing legal system. Let us turn to the specific details of Krochmal's reconstruction, in order to discern more fully the issues of the day, and how he approached them.

Krochmal begins his treatment of the rabbinic tradition with a theoretical justification of the notion of an oral tradition. He claims that logic dictates that the biblical legal system be accompanied by an oral tradition. This is so because all written codes—when they do exist—cannot be totally
self-contained or else would not be able to move through time. Reason demands that every law that is designed for a community, in its entirety and its constituent parts, cannot possibly be promulgated in the necessary detail, because contingencies are almost limitless. It is therefore necessary that a code include general principles, under which the various particulars that will arise in the future can be subsumed. This is particularly true if the code is a written one from its inception. For, in such a case, the code must relate to the specific circumstances of the community for which it is promulgated, and must also contain within it the potential to accommodate changing historical circumstances. Furthermore, logic dictates that whereas the written code should be publicized as much as possible, and copies be available to all who live within that legal system, the interpretive extractions be oral, and vouchedsafed to the leaders of the community, presumably to avoid anarchy. They will thus be maintained among the people as customary practices not yet given official promulgation.  

With the expansion of the need to extract particulars from the general principles, scholars, primarily linguists and lawyers, become necessary. It is their role to help the leaders maintain the legal system. As circumstances and language develop further, and the need for interpretation increases, individual scholars give way to groups of scholars. It is their role to interpret based on the exegetical norms previously established. They must use legal reasoning and comparative linguistics (to discern the meanings of the words in the original code which may be obsolete and unintelligible to the average speaker of the language); they must compare the general rules and the particular circumstances, and know how
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to make allowances for the changes in historical conditions (Guide, p. 190).

To Krochmal it was a universal truth that every politically oriented legal system—including those that did not change greatly, those that were intended for a limited time frame, and those that did not require punctilious observance—requires an "oral tradition," or a body of customs that maintained the integrity of the legal system, exactly as Savigny had claimed. Clearly, the divine law, which is designed to be eternal and comprehensive, and to create a bond between God and humans requires an oral tradition of interpretation and exegetical norms in order to function (ibid.). Krochmal states:

It is one of the cornerstones of our faith that the Torah which we possess in written form was accompanied by an oral tradition, which is equal in value, and which is also Torah. The primary principles of this tradition were communicated to Moses at Sinai, and were transmitted by him to Joshua, and after him to the elders . . . until the time of the scholars of the Mishnah and Talmud who lived during the time of the second Temple and up to four-hundred years after its destruction. The main part of this tradition and its offshoots, as well as all things that were innovated by and agreed to by the premier scholars of the generations during this time of more than 1800 years, all of this is given by our sages the general name of "Torah shebe'al peh" [oral Torah]. (Ibid.)

Thus, here Krochmal is arguing that indeed Jewish traditional claims correspond perfectly to the way a legal system must be, particularly a divine legal system. The central claim is drawn—at times almost verbatim—from Savigny's understanding of the movement of legal materials through time,
although, unlike Savigny, who skips the first step, Krochmal begins with an existing code that is in turn the object of customary development, culminating in the production of jurisprudential materials. Given the particular historical and religious circumstances of these two scholars, this distinction is obviously necessary and requires no comment. The important point is that Krochmal adapted Savigny’s line of reasoning to a Jewish context in a way that justifies the notion of an oral Torah, albeit one that emerges gradually over centuries, that is rooted in the spirit of the people.

Krochmal, of course, is here addressing the same point as Halevi, but the shift between Krochmal’s argument and that of Halevi is subtle and important. Halevi argued that because the Torah was not self-contained there must be an authentic oral tradition as well. This argument was sufficient for Halevi’s purpose, since he was combating the claims of the Karaites, who acknowledged the authority of the Torah, but denied the authenticity of the tradition. This, however, is not the case with Krochmal. For him the argument that the Torah is not self-contained could be seen as a defect in that document, but could not, by itself, support the need for an oral tradition. Rather, Krochmal must first demonstrate that it is the nature of all legal systems to be fluid, to develop fully over time and to do so orally. It would therefore be natural for the Torah to follow this pattern. Thus, an oral tradition is mandated by the nature of legal systems. The advantage of this argument from Krochmal’s perspective is its universality and rationality.

Even in this preliminary statement Krochmal can be seen as responding to the claims of Bendavid and Gans. Implicit in the claim that the Torah must, by the very nature of
things, have been accompanied by an oral tradition means that the Bible cannot be considered the exclusive source for an understanding of Israelite religion; all comparisons of rabbinic and biblical Judaism based on the assumption that it can could thus be dismissed as ill-informed. Further, since Krochmal had no doubt that the rabbinic writings are the authentic repository of this tradition, the entire distinction between the biblical religion and rabbinic Judaism could be seen as formal, external but not essential. In addition, in this opening statement Krochmal sidesteps the issue raised by Creizenach; while not denying that the term “month” would have been clear to the first generation of Israelites, he would claim that future generations would have had to perpetuate this understanding within an oral tradition. Otherwise, as the nation became aware of different calendrical systems and removed in time from the establishment of the ancient one, the term would have been subject to controversy.

Having dealt with the larger theoretical issues, Krochmal turns to the actual historical unfolding of the rabbinic tradition. It is here that we can see both his desire to write critical history and his naive credulity; each is apparent in his claim that he wishes to rationally explain the tradition by discerning its laws and boundaries, and that this is achieved by “studying the writings of, and observing the evidence available to, the ancient scholars, with greater authority granted to the earlier authorities than to the later ones, as is fitting given the nature of our quest” (Guide, p. 191). The notion that early authorities are ipso facto more reliable in transmitting the data of the tradition than later ones is naive, in that there is no recognition that the particular source in question may have had an
agenda that did not entail the transmission of historical truth. To be sure, Krochmal is aware that in ancient times it was regarded as beneficial to date biblical books as early as possible; he also realizes that the tradition attributes certain ordinances to an unacceptably early date. We would therefore expect him to treat claims to chronological priority with a grain of salt. However, Krochmal's work is primarily contrapuntal. He is not really interested in writing a dispassionate account of the oral tradition; his is a highly partisan presentation. Thus, his suspicions are aroused only when the claim does not correspond to the results of philological and historical research or reason, for here he had little choice but to question its veracity. For Krochmal all rabbinic historical claims are considered true until "proven" false; this was, he apparently believed, the best way to counter the historical presentations of rabbinism that were leading many of his coreligionists astray.

The sources that Krochmal uses to write his history are almost exclusively derived from the rabbinic literature itself. What the Talmud, particularly the Babylonian, reports regarding the lives of the sages, the history of a tractate, or the composition of the Tosefta is the primary evidence used. In addition, Krochmal seems to have drawn rather heavily from the so-called French version of the "Epistle of R. Sherira Gaon," and from other traditional histories such as the introduction to Maimonides' *Mishneh Torah*. Josephus's works are cited for background information.
Krochmal begins his analysis of rabbinism's history in earnest with the period of the so-called "Soferim" or scribes. Although he claims there are already traces of the interpretive tradition to be found in the Pentateuch itself, and certainly in the prophets, the history of the tradition in the First Commonwealth remains too obscure for scholarly discussion. Nevertheless, the few traces that survive are sufficient to establish the authenticity and antiquity of the oral tradition, which is, in fact, the point of the chapter as a whole. It is, however, in the period of the Soferim that the interpretive activity of which we can speak with some confidence begins. For Krochmal this period begins with Ezra (fifth century B.C.E.), and the function of the Soferim (literally, scribes; the word also seems to be etymologically related to the Hebrew word for "to count") was to write Torah scrolls for the nation, and to undertake the job of counting, defining and interpreting the laws "on the basis of the tradition and the intensive study of the Scriptures" (Guide, p. 194).

To be more precise, the function of the Soferim was to clarify everything in the Torah that was not immediately clear. Krochmal argues that they were uniquely qualified to do this in that they lived, chronologically and qualitatively, close to the prophets, and thus had a thorough understanding of the language of the Bible. The proof that the Soferim engaged in clarifying and defining the words of the Torah is adduced, quite dubiously, from the fact that the rabbis, authentic bearers of the authentic tradition, ascribed a number of laws to them; these laws are described as divrei soferim (the
words of the Soferim). Perhaps more important, a logical and rational analysis of rabbinic sources demands that the Soferim be seen as having engaged in this clarifying enterprise, as the Mishnah, in a number of places, seems to make certain assumptions that demand a previously accepted explanation of a given verse.  

In addition to these interpretations of the Soferim, which are to be considered as scriptural injunctions, the Soferim also ordained "enactments." These are decrees, and preventive measures that the Soferim instituted to meet the specific needs of the community. Their legal status is equivalent to rabbinic laws.

Beyond the various allusions to Soferic activity preserved in rabbinic literature, Krochmal claims the Soferim left behind their own literary legacy. For as writers of Torah scrolls, the Soferim determined the spelling, pronunciation and positioning of words in the biblical text. It was in making these determinations that the Soferim were able to combine their roles as writers of Torah scrolls and as interpreters, for they often provided hints of their interpretations in the written form of the biblical text.

This was accomplished, inter alia, through the use of the "qeri" and "ketiv" (although written one way, the word[s] should be read another way, which does not affect the external text at all), and defective and plene spellings of words. These devices, Krochmal claimed, enabled the Soferim to encode the proper interpretation within the verse's graphic representation. Most of Krochmal's examples are quite technical, and, at times, quite ingenious. What is important for our purposes is his proposal that the canonical text of the
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Bible, whose antiquity was acknowledged by almost all, actually reflects important interpretive activity that may be considered oral law. In this way the antiquity of the oral law is definitively established. Thus, the notion that the oral law is some kind of self-aggrandizing myth created by the rabbis is rendered unacceptable.

We may learn much regarding Krochmal's motives by the characteristic apologia he appends to this discussion. Recognizing that his proposal regarding the activities of the Soferim is quite bold and venturesome, Krochmal addresses his reader:

But this reader must remember that in all that we have suggested here there are no practical legal consequences, and that we are not dealing here with the laws or the midrash on which they are based, nor with the sayings and disputes of the Talmud, but rather with the traditions of the early Soferim and its basis, and here we may conjecture . . . and thus, if to any reader our thoughts are deemed unworthy, or entirely without foundation . . . so be it. But he must not accuse the author, or in any way suspect him, and repay the intended good with evil, when our only intention in this work, and particularly in this chapter, is to give honor to our sages and their memory, to make peace between the two Torahs and reason, and to discover the root and the source of these things that are the objects of overwhelming scorn on the part of the nations of the world and the foolish among our own people. (Guide, p. 202; emphasis added)

Thus Krochmal sees his presentation as enhancing the credibility of the traditional belief in an oral law. His approach to the Soferim was to try to understand their activity—establishing the biblical text—in such a way as to render harmless the scorn of Jews and gentiles alike. This was particularly necessary in regard to the role of the Soferim as many saw the
changes and discrepancies on the text as evidence of the unreliability of the Jews as caretakers of this text.\textsuperscript{49} To counter this attitude Krochmal imputes sacred concerns to the Soferim, and claims that their work in no way affects the authenticity of the Torah as the true revelation of God’s word, for in its content and essential spiritual message the Torah text remains unaltered.\textsuperscript{50}

For Krochmal the period of the Soferim was one of great activity in the transmission of the oral tradition. The Soferim interpreted the Torah, wherever it was necessary, and often provided hints of these interpretations in the textual traditions which they established. This discussion of the Soferim became one of Krochmal’s great “discoveries,” and he was followed in his conclusions by Zechariah Fränkel,\textsuperscript{51} and Isaac Hirsh Weiss, among others. Yehezkel Kaufmann has shown, however, that the claims of Krochmal and the others regarding a period of the Soferim are without foundation.\textsuperscript{52} Still, while they tell us little regarding the Second Temple period that remains of value, the construct, and the discomfort that led to it, tell us much concerning what was perplexing Jews in the nineteenth century.

\textit{The Period of the Tannaim and the Nature of Oral Torah}

Once the task of the Soferim was completed, and all the necessary definitions were supplied, Krochmal asserts that a new period began; that of the learners (or repeaters) of halakhot, or tannaim, which began approximately in the year 210 B.C.E. His description of this period is actually a partial
phenomenology of rabbinic learning, dedicated as it is to defining categories and modes of learning and putting them in historical perspective. It is unfortunate that Krochmal was so motivated by resolving the challenging elements in modern understandings of rabbinics that he did not devote his considerable philosophical skills to a complete phenomenology, but rather chose to address only those issues that were acutely problematic.

Unlike the Soferim, whose task was primarily to define terms and write scrolls, often including allusions to their definitions and limitations in the scrolls themselves, the tannaim began to examine the logic of the Torah. Thus, while the authority of the Soferim derives from their linguistic skills, due in large measure to their chronological proximity to the use of biblical Hebrew and their position as heirs of the prophets, the authority of the tannaim derives from their skill as logicians and their position as heirs of the Soferim. The truth of the tannaitic interpretations is based on the fact that they represent logical, rational extensions of the principles of the Torah; the latter already encompassed, for them, the definitions and interpretations of the Soferim. The tannaim, then, continue the chain of tradition, while at the same time changing its form. We should not underestimate the importance of Krochmal’s claim that the tannaim’s authority derives from the logical extension of the words of the Torah, for, as we shall see, it is central to his resolution of the problems referred to at the beginning of this chapter.

The tannaim’s logical interpretation of the Torah means that they created new laws and limitations which did not correspond to the simple meaning of the scriptural text. Rather,
they were derived on the basis of reasoning from the text, or, on the basis of one of the accepted hermeneutic principles, themselves thoroughly in accord with reason (Guide, pp. 204–5). Specifically, their interpretive activity involved comparing the meaning of words in different contexts, the extrapolation of particulars from general formulations, subcategories from categories, as well as the independent use of reason (which, for Krochmal, will not result in arbitrary enactments, but rather in truth). Regarding the latter, Krochmal acknowledges that some of these laws, derived independently of Scripture, are based on Roman Civil Law, as well as a sense of equity, but even here authority derives from Scripture, and the interpretations are based on scriptural imperatives.53

The classical formulation of the tannaitic interpretations was a short sentence divorced from the scriptural context; they began as three- and four-word sentences, and were eventually expanded (ibid., p. 208). This form was necessitated by the oral nature of the tradition; the Tannaim could not repeat the verse, the Soferic commentary on it, and their own innovation. They therefore simply stated the innovation, with the scriptural and Soferic contexts assumed. Thus, for Krochmal, the “halakhic form” preceded the “midrashic form” (the former being just the law, the latter beginning with a verse, which is then followed by the derived halakhah).

It would, however, be an egregious error to conclude on the basis of the Mishnah’s form that the halakhic system of the Tannaim was developed independently of Scripture. For, while the halakhic form preceded the midrashic form historically, the midrash always preceded the halakhah theoretically. That is, the halakhah was always based on a derivation from Scripture, except for certain civil laws.54
Krochmal's discussion of the different forms leads to his interesting reflections on the relationship among the Mishnah (halakhah), Midreshei Halakhamh and the Gemara (Talmud):

And given that the halakhah in and of itself is quite abbreviated in its language and form, the midrash, which is its source and foundation, complements it; midrash is in turn complemented by: the argumentation involving conflicting midrashim and the choice between them; the decision regarding the similarities and differences between one law and another; everything that pertains to clarifying the given issue in all possible ways; this is given the Aramaic name Gemara, and it means completion, for it complements the halakhah and its midrash with respect to the practical requirements. And given that this is so, the halakhah, its midrash and its gemara are in truth chronologically equal, for all halakhot, or, at least, the overwhelming majority, were arrived at in this manner—that is, they were derived on the basis of midrash from Scripture and their clarification was achieved through argumentation. But, in their establishment in language and form they differ chronologically greatly. For there are many clear proofs that the halakhot were the earliest in respect of a fixed form, and afterwards their midrash, and finally, the Gemara, which did not achieve a fixed form until very late. (Guide, p. 206)

The statement that the halakhot, their midrash and gemara are chronologically equal (shavim b’z’am), means that they are qualitatively equal. That is, they are three different moments of one intellectual process, and thus, although the midrash and gemara texts crystallized later, they are nevertheless true reflections of the basis and extensions, respectively, of the halakkhah. This is an important example of Krochmal’s attempt to historicize without concomitantly relativizing. He grants that the texts have a history in respect of one another
—indeed, with the Mishnah and Gemara, at least, one could hardly deny it—but argues that despite this textual history the intellectual process of Torah is in no way historical. Rather, this process represents the rational extension of the divine word to a totally developed and articulated form. The textual history merely reflects the formalization of this process over time. The historical process does not, however, grant qualitative superiority to any of the three moments, for they are all equal participants, as it were, in the same intellectual process. The formulation is reminiscent of Hegel’s notion of the Idea, itself beyond history, but actualized through history, and to be sure, this is not accidental.

Perhaps the strongest challenge to the picture that Krochmal presents is the existence of unresolved disputes, which were “canonized” by their inclusion in the Mishnah. For the existence of such disputes weakens the claim that the rabbinic literature reflects the authentic tradition passed on from the Soferim, and the rational extensions of Scripture. For the possession of a tradition negates the possibility of dispute (assuming the heirs respect the tradition, which we must assume here, or else the claim of possessing the tradition becomes irrelevant), while before the bar of reason there is but one right answer. Thus, the disputes seem to indicate that, in fact, the rabbis are not the legitimate heirs of the oral tradition, nor are they expert logicians, capable of discerning the true scriptural approach to a given question. Rather, they would seem to be no different from any other group of legislators, at times insightful and wise, at times arbitrary and capricious.

The traditional sources themselves show awareness of the
problem, and the Mishnah records a question regarding the transmission of rejected opinions. But this mishnah only deals with part of the problem. For there are many disputes recorded in the Mishnah that are not accompanied by a decision, and are not resolvable on the basis of the rule “in a dispute between the individual and many, the law follows the opinion of the many.” Later generations generally did develop means of deciding these disputes, but the basic problem remains. Also recorded in the traditional sources is the idea that in such a dispute both opinions are the word of the living God; whatever the intent of this phrase, it too does not really address the problem. Either rabbinic writings contain the true word of God, or else the means to extract it. In either case, disputes have no place.

Krochmal begins his treatment of this problem on the basis of a quotation from a baraita. The baraita states “in the beginning there were no disputes in Israel.” Krochmal interjects his comments: “in the beginning [of the time when the halakhot were achieving fixed form] there were no disputes [sustained and fixed for generations] in Israel” (Guide, p. 206). For Krochmal, the point of this baraita is not that there were no differences of opinion in Israel at all, but rather that these differences were not of a lasting nature, and did not find their way into the Mishnah. This is because in the early tannaitic period, there existed the means of resolving these disputes; they were brought before the Sanhedrin, if need be, which consisted of the experts in the field, and the matter would be decided. In all cases the decision would be based on the position of the majority. Krochmal’s assumption here seems to be that the majority decision of the premier scholars
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and logicians of the day was sufficient to establish the rational and true meaning of the Torah.  

The apologia continues, as the Jewish nation experienced strife both from within—the political struggles and the Pharisee/Sadducee schism—and without—the wars and persecutions at the hands of Rome—the Jewish scholarly world was split, and, particularly after the generation of Hillel and Shammai, Jewish learning took place in individual yeshivot; the Sanhedrin, and all other authoritative conventions of scholars, became a thing of the past.  

As such, the authoritative, universally acknowledged mechanism for resolving disputes correctly and rationally within the rabbinic system was no longer available. Nevertheless, contingent historical circumstance cannot detract from the intrinsic, metahistorical, integrity of the system. Thus, so long as the existence of continuing disputes in rabbinic sources can be explained by recourse to historical contingency, the system remains unshaken. Disputes thus do not undermine the integrity of the system's self-understanding; they merely represent a flaw in the historical unfolding of this authentic system.

We have seen that Krochmal identified the beginning of the formulation of halakhot with the beginning of the tannaitic period. He is aware that this is not at all in accord with the traditional understanding, and that he may be attacked for his position. The rabbis had claimed that some halakhot are very early; some were already forgotten during the mourning period after Moses' death (Guide, p. 209). Nevertheless, according to Krochmal, the evidence demands that the existence of halakhot in a fixed form cannot be dated earlier than the tannaitic period. In articulating this position, Krochmal
is undoubtedly guided by what he considers the needs of his own day, given the prevailing attitude to the rabbinic tradition:

And know, my friend, . . . that our intention in this chapter, and in the work as whole, is to refine and clarify our articles of faith from a rational perspective, within the boundaries of scholarly investigation, on the basis of trustworthy evidence, and thereby determine the facts against the skeptics, challengers and deniers, and against all who stray from the truth excessively in any direction, for this is the great need of our generation. And we have already repeated that our goal here is the same as that of Maimonides' in his Guide for this generation. . . . And thus here our desire is to determine definitively the latest time in which one can claim that the halakhot began [to be fixed, and transmitted in this fixed form]. (Guide, p. 209)

The formulation of the halakhot must be considered later than the tradition claims for two reasons. The first is that the term halakhah is an Aramaic word, and, in a piece of dubious reasoning, Krochmal claims halakhot, as fixed formulated norms, could not precede the emergence of their name. Secondly, formulated norms must postdate the beginning of the public reading of the Torah and the accompanying explanations of the Soferim on which the halakhot are based. These considerations indicate that the halakhot could not predate Ezra, when Aramaic became prevalent in Judea, and the Torah, according to tradition, was read regularly in public. Furthermore, the language of the halakhot contained in the Mishnah is not the language of the Bible, but is rather a later Hebrew, unique to the Mishnah, and thus, the halakhot found in the Mishnah could not have been formulated prior to
the Second Commonwealth period. As for the traditional attributions of certain halakhot to First Commonwealth figures, these were in all likelihood stated as aggadot, and the "aggadic stories cannot by themselves confirm anything unless it is already confirmed elsewhere" (ibid., p. 210).

In dating the formulation of halakhot as he does, Krochmal challenged a fundamental methodological assumption of previous traditional historians, but has not succumbed to the— to him—irresponsible dating of recent historians. He has explained the attributions of certain halakhot to ancient figures as being mere aggadot, serving an honest, heuristic purpose. But this problem is relatively minor. There are other issues he feels he must deal with before his task is complete. Whole categories of laws that ostensibly emerged prior to the tannaitic period abound in rabbinic literature. These categories are too central to be dismissed as mere aggadot, yet the historical structure established by the tradition cannot be maintained.

Particularly troublesome was the category of "early" halakhot known as the halakhah l'Moshe mi-sinai (the law of Moses from Sinai). It cannot be claimed that the attribution of these laws to Moses at Sinai was not meant to be taken seriously; it is clear that such halakhot were accorded special status due to their attribution to Moses. It can also not be claimed, for the same reasons detailed above, that these laws actually derive from Moses at Sinai. As much out of desperation as anything else, Krochmal claims that this title was given to those laws that were lost during the tumultuous period toward the end of the Second Commonwealth. After a time some of them were rediscovered incidentally, while their midrashic
source remained lost, so that the scriptural sources which the law undoubtedly had was unknown. They nevertheless retain special status as they were never subject to disputes; further, the necessity of these provisions for the observance of the scriptural laws was acknowledged by all.

Therefore they called laws like these, sometimes quite exactly, and sometimes altogether metaphorically, *halakhah l’Moshe mi’sinai*; that is, it is a halakhah that is not included in the comments of the Soferim, has no midrash attached to it, and is ancient in its establishment, with a chain of tradition going back to the “pairs” or to an unknown time in antiquity. It is universally accepted and never disputed; . . . from the perspective of its value and necessity, it is equal to the comments and definitions of the Soferim. Therefore, such a halakhah is from Sinai, or as if it were from Sinai, not subject to investigation, examination, dispute, judgment on the basis of majority opinion or a tradition from one’s teacher as is the case with all other halakhot. (Emphasis in original)

Thus the title “halakhah l’Moshe mi’sinai” is not the product of any attempt at deception on the part of the rabbis, nor is it the product of rabbinic ignorance of historical reality; the term should be understood as a functional description rather than as a historical one. That is, the laws so designated functioned as if they were imparted by Moses from Sinai, in that the observance of the Torah without them is inconceivable.

Krochmal concludes his discussion of the early attributions with a general statement that whenever one comes across historical claims in rabbinic literature that seem to be impossible, one must examine them carefully for the essential message, it being understood that one cannot accept such claims.
at face value. This in turn leads him to a philosophical discussion of the core of rabbinic self-understanding. He turns to the famous rabbinic dictum, "everything which a diligent student shall innovate in the future was already communicated to Moses at Sinai" (PT Pe'ah 2:4). Obviously, the simple meaning of such a saying must be rejected; yet there is something quite deep here as well. The key for understanding the meaning are the words "diligent" (\textit{wattiq}) and "innovate" (\textit{l'hadesh}). For these words indicate to Krochmal that the innovation was done on the basis of rational examination and comparison. Thus,

the speaker felt that it is the nature of the Spirit, [being] total unity and complete intelligence, to encompass all the offshoots that are united within it, from it they came and to it they shall return, just as the simple idea of the circle . . . already includes all the concepts and properties that were explained by the geometricians. . . . Everything was included in the simple definition of the circle, such that one who defined it already mandated all the wondrous definitions and properties that are known to us today, and which shall be discovered in the future. All the time that they have not been elucidated they are contained within the idea of the circle in potentia only, and when one discovers them through investigation they become, for him, part of the idea of circle in actu. From here there is a source for the saying above, both in relation to the finite recipient [i.e., Israel], although only in potentia, and in relation to the giver, may He be blessed, in actu as well, as for him there is no distinction between potentiality and actuality. (Guide, pp. 215–16)

Krochmal here argues that it is natural for the word of God to include within it all that will eventually be derived from it—provided that the derivations are achieved in accordance with
reason—and it is therefore legitimate to say that everything that will be innovated, through reason, was already included in the original revelation. Until, however, this innovation is actually brought forth, it is included in the revelation, for human beings, only in potentialia, and therefore it is equally legitimate to say that it was the diligent student who actually taught the innovation, since he was the one who transferred it from potentiality to actuality.

Krochmal here returns to the theme that he developed earlier, in discussing the relationship of halakhot, midrash and gemara, but in a more philosophical form, and with one important addition. Here, it is not merely the various genres of the oral tradition that must be seen as intellectually simultaneous and historically developed, but the entire Torah, written and oral, is to be seen as an intellectual monument, encompassing everything that can be derived from it rationally. The movement of the derivations from potentiality to actuality takes place within history, but the process itself is beyond history; thus, again, the facts of history, undeniable though they be, do not relativize the tradition, or any aspect of it. For that which is elucidated later is every bit as much a part of Torah as that which preceded it into actuality. The Torah is the Idea, brought to light through history, but qualitatively un tarnished by it.69

Thus does Krochmal challenge Bendavid’s and Gans’s claims that Judaism must be seen as a religion distinct from that of the Israelites—by showing the qualitative irrelevance of history in the sphere of the absolute. That is, halakhot may be late in form; their formulation, however, merely makes manifest what had been latent all along. They are thus part of
Torah, no less than are the laws of Exodus and Leviticus. To claim otherwise is to succumb to a philosophically immature historicism—one that fails to take account of the inner workings of cultures as they develop over time.

A more mature understanding of the development of cultures—one that knows to take account of the unfolding of latent potentialities—and a learned appreciation of the absolute nature of Jewish spirituality leads Krochmal's perplexed inexorably to the conclusion that Jewish culture is one lengthy unified process of actualizing the latent teachings of Torah. In his discussion of the early halakhot, Krochmal contributes the philosophical justification of this essentially traditional position, in the hope that it would become more palatable in the modern age. In this endeavor, the philosophy of Hegel served him in good stead.

The Formation of the Mishnah

Having dealt with all the theoretical issues that concern him, Krochmal proceeds to a discussion of the formation of the Mishnah. The specific details are at times quite technical, and need not detain us here. However, here, as elsewhere, we are interested in discerning the general historiographic concern that led to the inclusion of this discussion in a guide of the perplexed of the nineteenth century. The problem, after all, would seem to be more in the realm of theory, namely, the nature of the oral tradition, than in the specifics of Mishnaic history. Here again, as elsewhere, the answer to our question can be discerned in Krochmal's treatment of the subject. For Krochmal's history of the Mishnah is designed to support the
overall claim of the antiquity of, and the continuity within, the oral tradition. In Krochmal’s version, the central figure of the Mishnah is not Yehudah ha-Nasi, its anthologizer, who is, at best, the third most significant figure, but rather Hillel, who died more than a century and a half prior to the completion of the Mishnah. Indeed, for him, even Hillel’s work was largely organizational, the bulk of the material having preceded him.

It will be recalled that according to Krochmal the learning of halakhot in fixed form begins with the tannaitic period; Shimon ha-Zadik, a transitional figure between the Soferim and the tannaim,71 was the first to begin the teaching of the halakhot in fixed form. Thus, the learning of halakhot begins at the very end of the third century B.C.E. (approximately 210), while Hillel flourished two to two and a half centuries later. By Hillel’s time, therefore, hundreds of halakhot had been formulated. In addition, there already existed some principles of organization; halakhot were grouped together based on some structural or linguistic similarity. Each grouping of halakhot was known as a masekhet, or an “interweaving.” Thus, the rabbinic claim that prior to Hillel there were six or seven hundred orders of mishnah (an order = numerous masekhtot [plural of masekhet], or tractates) attests to the fact that there were very loose principles of organization prior to Hillel, although the numbers are undoubtedly exaggerated.72

It was Hillel who established the six orders that are found in the Mishnah, and it was he who assigned each tractate to an order, divided each tractate into chapters, and the chapters into individual halakhot. Within each order, however, the tractates were not fixed; their order was determined by Rabbi
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(= Yehudah ha-Nasi). As established by Hillel, the original tractates were filled with laws that were cited anonymously, and without disputes. 73 This is the general schema; however, not all of the tractates were established by Hillel. There are a number of tractates that were established by other scholars, such as "Middot," which was established as a separate tractate by R. Eliezer b. Jacob, as reported by the Babylonian Talmud. 74

For Krochmal, the great challenge to this dating of the Mishnah is the fact that large portions of the Mishnaic material are attributed to second-century (c.E.) scholars. How then can it be maintained that most of the material is far older? Once again Krochmal seeks refuge in his deus ex machina, external historical circumstance beyond the control of the framers of the system. Here he explains that with the stormy political conditions that prevailed in Palestine in the first and second centuries (c.E.), and the destruction of the Temple came the second great "forgetting" of the halakhot. 75 Not all the laws were lost, for "God in his mercy provided the cure prior to the disease in that a firm and unwavering foundation was laid for the halakhot and the learning of them in the one-hundred years between Hillel, the establisher of most of the tractates, and the destruction" (Guide, p. 227).

During the Hadrianic persecutions (132–135 c.E.) the third "forgetting" took place. In addition to the loss of the Mishnaic material, the "learners of halakhot" were divided into various schools and factions; this division was responsible for the spreading of disputes, as we have seen. All these events led to a situation in which certain halakhot were learned in one center, but were unknown in another; halakhot were
taught as the accepted opinion, when they were actually the minority opinion; additions to halakhot were made in one location that were not known elsewhere, and so forth. Often, therefore, the names attached to a given halakhah indicate that the halakhah was taught by the particular tanna, meaning that it was preserved by him and his school, but not that he was necessarily the originator of the halakhah.

The role of Rabbi in the formation of the Mishnah was to sift through the enormous mass of material handed down through the various schools. By his time there were many orders of Mishnah; there were those that correspond to the divisions instituted by Hillel, and those that did not. Some of the collections were ordered on the basis of the biblical sequence of their midrashic foundations. That is, laws derived from verses in Exodus preceded those derived from Leviticus, and the same method was maintained within the biblical books as well (ibid.). Rabbi retained the method devised by Hillel, but there were many additions to Hillel's Mishnah, particularly by the school of R. Akiva, that had to be represented in the Mishnah. Thus, Rabbi chose the Mishnah of R. Meir, a student of R. Akiva, as his main source in compiling his Mishnah.76

Krochmal completes his discussion of the formation of the Mishnah with an explanation of the redundancies, inconsistencies, the sometimes stilted language and the non sequiturs found in the Mishnah:

And know that were it within the power of Rabbi and his assistants to totally abandon the order, context, and ambiguities that preceded him in the Mishnah collections, in order to melt down and dissolve all the halakhic material into parts and pour out a new
arrangement in consistent and clear language, even if it included the distinction between what is universally accepted and that which remains controversial, *as is done in all other areas of scholarship*, and as was done by Maimonides in his code, it would have been much easier for them, given the group of scholars and their wide-ranging knowledge, and from one perspective there would have been a great benefit in it. But, for a number of reasons this was undesirable to these scholars, and indeed, they could not have done it. The main reason was the great need in the oral Torah, which includes ancient traditions, that it be unique, treasured and extraordinary—not only in the preservation of the names of the transmitters of the traditions, but even more in the preservation of the style, language and manner of its transmission from antiquity. For all of these are prominent indications that, in its foundation it is an unbroken tradition from generation to generation. Thus, in their fashioning of a comprehensive Mishnah, these scholars chose to retain the context, intellectual and linguistic, of those that preceded them, and to impose as much unity, consistency, clarity and order *as was possible*. But they were perforce left with contradictions, as well as difficult and unintelligible passages; they left them to later generations to complete and close the work, as we shall explain. And they were satisfied with the remedies and benefits that were achieved through their activity, in accord with the needs of their times. Blessed is He who chose them and their Mishnah. And know this and understand it. (*Guide*, p. 232; first emphasis added)\textsuperscript{77}

This passage is quite remarkable from a number of perspectives. We shall focus on the claim that the rabbis could have produced a document in accord with accepted modern scholarly standards, but deliberately chose not to do so, in order to preserve the pristine forms of their tradition. Thus, the peculiar nature of the Mishnah in no way indicates lack of sophis-

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tication on the part of the rabbis, but rather, a deep-seated and laudable respect for history. Establishing the plausibility of this argument is the primary motivation of Krochmal's treatment of the Mishnah. While not denying that the document seems undisciplined and chaotic by modern standards, Krochmal turns this feature into a virtue, a virtue that indicates the framers' honesty and religious sensitivity and their reverence for tradition and the past. Further, it is this chaotic nature that supports the antiquity of the document's contents. A more active redactor, creating and reformulating material at will, would never have produced such a document. Thus, qualities that made the Mishnah the object of Jost's scorn, became for Krochmal and—he hoped—his readers, a source of renewed confidence in the authenticity of this central religious document.

In Krochmal's treatment of rabbinism, viewed against the backdrop of his time and place, we see once again the extent to which the Guide must be seen as an apologetic and polemical work, designed to combat both the negative approach of modern scholarship to Judaism, and the intellectual cowardice of the dogmatists. In the thirteenth chapter of the Guide we are not presented with detached historiography, but rather, a bold defense of traditional claims on the basis of modern scholarly standards, as Krochmal understood them. This meant that no negative claim could remain unchallenged. Yet the response had to conform to the perceived needs of the time. Dating the halakhot too early, as the tradition had done, had deleterious effects, for it branded rabbinic claims as nonsense; too late, as modern scholarship tried to do, challenged the very notion of a tradition.
The only way that rabbinic Judaism could be maintained, and the authenticity and antiquity of its tradition acknowledged, was to tread the middle path, described in Krochmal's fourth chapter; this is the path that searches for answers through scholarly investigation, and seeks to determine the true nature of phenomena by examining their origins and history. Here, that path demands that we evaluate traditional claims critically, but also sympathetically; otherwise we cannot hope to discern their meaning and purpose.

To place Krochmal's work within the context of earlier Jewish thought on this subject, it may be said that he radically restates the second strand identified above, while almost wholly rejecting the first strand, except in one rhetorical flourish. For him, oral Torah is rooted in the religious consciousness and sensitivity of a spiritual collective led by its talented religious virtuosi. It is the expression of the bearers of absolute spirit, and derives its religious value from this fact. It is the creation of a religiously highly charged human community logically and rationally reflecting on the revealed divine message.

Its antiquity, the mark of its authenticity, is established by the rechtgeschichtliche model, selectively drawn from the work of Savigny, by the few references found in the Torah itself and the more frequent occurrences in which the Soferim encoded their interpretations within the graphemes of the text. Historical studies that show rabbinic texts and ordinances emerging over time are no problem, for correct as such studies often are, they cannot undermine the essence of the system, which remains outside history, even as it is touched by it at every step. Neither disputes nor Roman ordinances diminish the essential grandeur of the rabbinic accomplishment.
THE RABBINIC TRADITION

When we combine the results of Krochmal's study of rabbinism with those of his biblical studies, we see that all attempts to distinguish between biblical and rabbinic religion are doomed to fail. Such attempts fail on historical grounds, for the latest portions of the Bible, the Hasmonaean Psalms, emerge half a century after the onset of the period of the tannaim. More important, many of the books of the Bible were either written or achieved fixed form in the period of the Great Assembly, the same period that saw the historically verifiable onset of oral Torah. Thus, the attempt to drive a wedge between these two cultures is historically unacceptable. The movement from biblical to rabbinic religion represents not a break or essential shift, but the creative unfolding of a single cultural monument. Understanding this would lead, Krochmal hoped, to a renewed commitment to this absolute religious edifice, and would relieve the perplexities of those who came to doubt the authenticity and genius of the rabbinic achievement.

NOTES

1. With this latter statement I mean to point to the centrality of scriptural exegesis—midrash—in early halakhic discourse, and the application of similar exegetical techniques to rabbinic texts in later halakhic discourse. That is, in response to question, “Whence does he know this,” a question repeated thousands of times in the two Talmuds, the initial response is virtually always a verse; should the exegesis of the verse be shown to be inadequate the Talmud may on rare occasions state that the sage in question knows the stated law by virtue of it being simply a halakhah. Already third-century rabbinic sages are quoted in disagreement over what this means, with R. Yohanan stating that this means it is a tradition from Moses, while Samuel states that it is a customary law. Similarly Rashi takes the
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term halakhab, or the Aramaic equivalent, hilkheta, to mean a tradition from Moses, while Maimonides apparently did not understand the term this way. (See the discussion in the Havrot yair of R. Yair Bacharach [d. 1702], responsum 192.) The point is that in the actual dynamic of halakhic discussion, recourse to traditions from Moses play a small role, whereas creative exegesis plays a fundamental role. In this sense, the first strand, while frequently articulated, plays a much greater role in Jewish apologetic than in the actual working out of the halakhic tradition.

2. Josephus's construct is inherently suspect, as it is not confirmed by other sources. This, of course, can be said for most all statements pertaining to ancient Jewish sectarianism. In any event, Josephus's construct has become classic, and even if not an accurate portrayal of what divided the Phariscees and Sadducees, it does suggest that the pharisaic claim to be the guardians of the tradition was challenged.


4. Kuzari, 3:35 (Even-Shmuel edition, (Tel Aviv: Dvir, 1972), p. 125). He continues there with other examples of this kind. This argument is not, to my knowledge, explicitly used by Maimonides, but would seem to be implicit in his remarks in the introduction to Commentary on the Mishnah, 3 vols., Y. Kafih, ed. and trans. Jerusalem; Mossad Haravkook, 1976, pp. 1-9. There Maimonides claims that God gave every written law together with its explanation, thus acknowledging that the very nature of the Torah as a legal source requires oral amplification.

5. We have already seen, in chapter 3, that this was a commonplace of gentile historiography.


7. To be sure, many chroniclers of tradition attempted to fill in the
lacunae in the mishnah's chain, from Maimonides to Zadok ha-Cohen of Lublin in this century. All work within the framework established by the mishnah in *Avot*, however.

8. For discussion of other maskilim on this issue, see the conflicting views of Isaac Eisenstein-Barzilay, “The Treatment of the Jewish Religion in the Literature of the Berlin Haskalah,” in *PAAJR*, vol. 24 (1955), and Moshe Pelli, “The Attitude of the First Maskilim in Germany towards the Talmud,” in *LBIY*, vol. 27 (1982). While I would not dispute Pelli's claims regarding the maskilim’s respect for the Talmud as a source of scientific and historical knowledge, it seems to me that Barzilay is still correct that there was little appreciation for the Talmud as a religious document, and a general denial of the Talmud as the embodiment of the oral law.


10. Ibid.

11. Isaak Marcus Jost, *Geschichte der Israeliten*, vol. 3 (Berlin: 1822), p. 120.

12. Ibid., p. 123.

13. See his vol. 4, pp. 133ff., for his attacks on the person of Yehudah ha-Nasi for his concern with personal respect and honor. Also, vol. 3, p. 123 for his condemnation of rabbinic Ehrgeiz and Herrschucht (a term used by Bendavid, as we saw above).

14. For more on him, see below, chapter 6, and the literature cited there.


17. Among the correspondence between Krochmal's family and Zunz there is a letter from Abraham Krochmal to Zunz which included his father's discussion of the similarities between Jewish and Roman law. In this letter, Krochmal specifically refers to Gans's work. (See Schorsch, “Production of a Classic” pp. 287, 304.) This letter was included by Zunz in a note in the *Guide* (p. 205 in Rawdowicz), with the sentence in which Gans's name appears quoted verbatim except for the refer-
ence to Gans. Why Zunz deleted the reference to Gans is a matter of speculation. Certainly, the latter's conversion created a rift between the two erstwhile colleagues; Zunz may have considered it inappropriate to publicize Gans's existence. I cannot help but wonder what other references were deleted by Zunz. See Zunz's "The Publisher's Introduction" included in the Rawidowicz edition, pp. 2, 3 (bet, gimel).

18. Some of the specifics of Gans's argument are as follows: In discussing the means of entering the state of marriage, Gans states "dass der Gedanke der Eingehungsweise der Ehe, mit der Mosaischen Grundlage nur noch scheinbar in Berührung gebracht, ein vollkommen Anderer geworden ist" "(Die Grundzüge des mosaisch-talmudischen Erbrechts" (ZWJ, pp. 434-35). Later he claims that the rabbis erred in interpreting Deuteronomy 24:2 as indicating that intercourse is the definitive biblical way of effecting marriage (ibid., p. 439). This challenge is potentially devastating. If the rabbis cannot be relied upon to discern the simple meaning of the text, the entire edifice of rabbinic Judaism cannot stand. Further, the relationship between the talmudic laws of inheritance and their purported biblical foundation is also explicitly denied, resulting in the same challenge (ibid., pp. 453ff.). Thus, for Gans, Mosaic religion and Judaism are two distinct phenomena. Indeed, Gans begins his article with the rather matter-of-fact claim that the Hebrews "der mosaischen Urkunden" were a "ganz verschiedenartiges Volk" from the Jews, and supports this claim with a reference to Zunz's article in the same Zeitschrift (ibid., p. 419). There Zunz also describes the Jews as a new people who, while descended from the ancient Hebrews, are quite different in most respects (ibid., p. 114). Zunz enumerates Sprache, Sitten, Tendenzen and Meinungen as areas of difference.

19. For a critique of this position, see the remarks of Juster quoted in Boaz Cohen's Jewish and Roman Law (New York: Jewish Theological Seminary, 1966), vol. 1, p. 348.

20. This interpretation is supported by Immanuel Hegel's notes on Gans's lectures on "Naturrecht" and "Universalgeschichte." Here, rabbinic law is treated as a not very significant commentary on "mosaisches Recht," which, while contributing many ordinances to Western law, was superseded long ago. The lecture on Roman law makes clear that, for Gans, Roman law reached the pinnacle of legal development in

21. See the introduction to volume 4 of his *Schulchan Aruch* (Frankfurt am Main: 1840) p. v. There he clearly affirms the revelation of the Torah at Sinai.

22. I will cite from the article, which more briefly rehearses some of the arguments contained in the third volume of *Schulchan Aruch*. This article is immediately followed by one of Rapoport’s contributions to this journal, and was, therefore, almost undoubtedly known to Krochmal.


24. Ibid.

25. As we have seen and will yet see, the programmatic nature of scholarship pertaining to rabbinism in the nineteenth century was ubiquitous. This is no less true of gentile scholarship. The main works produced by gentiles challenging the authenticity of the rabbinic tradition were overtly reformist and missionary, respectively, in their intent. I refer to Luigi Chiarini’s *Theorie du Judaïsme*, which was clearly reformist, and with which Krochmal was certainly familiar (see next chapter) and Alexander McCaul’s *Old Paths*, with which Krochmal was almost certainly not familiar, which was overtly missionary in purpose. The book appeared in English in 1837, after having been serialized in a weekly over the previous two years. It was translated into Hebrew (!) and German in 1839, a year before Krochmal’s death. Here McCaul reviews various Jewish superstitions that figure prominently in rabbinic literature, and whose importance in rabbinic culture is confirmed by their appearance in the liturgy, for the purpose of showing that such superstitions could not be the product of an authentic tradition originating from God. In addition, one finds here the usual complaints regarding rabbinic exegesis and its obvious distortion of the meaning of the biblical text. McCaul’s work created quite a stir, and was the focus of several Jewish responses, perhaps most important being Isaac Baer Levinson’s *Zerubabel*. Given the year in which the translations into languages Krochmal could read appeared, it is most unlikely that this work exercised any

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influence on Krochmal's sense of urgency in dealing with the question. Still, such influence is not impossible; in any event, the existence of this work remains important to our understanding of the stakes and issues that dominated Jewish historiography from the 1830s on.

26. The first edition of this work appeared in 1826; a second edition was published in Breslau in 1850. Only the second edition was available to me, and references are to this second edition.

27. Father and son, each named Johannes; their dates are 1564–1629 and 1599–1664. Each served as a professor of Hebrew at the University of Basle.

28. Also interesting, incidentally, is the request by Eger that Plessner consider translating the *Hizzuk Emunah* of Isaac Troki into German and seeing to it that it be reissued in Hebrew; his hope was to make it available to “women and the masses.” Eger seems to have been unaware that Troki was a Karaite. See Shlomo Sofer, ed., *Igrot Soferim*, section one, letters 19 and 20, pp. 23–27. According to a Plessner family tradition, reported in the notes to letter 19, the *Edut l’Yisrael* was actually commissioned by Akiba Eger to use as a weapon in his fight before the Prussian king against the educational reforms. The content of the letters themselves do not support this claim, and the absence of a *haskamah* by Eger (given that he in fact wrote so many) renders it that much more dubious. Nevertheless, there can be little doubt that Eger regarded the publication of this work as an exciting turn of events that could only redound to the benefit of Orthodoxy.

29. Many of Judaism’s laws are presented as being derived from the Bible by means of various hermeneutic principles. These establish standards for acceptable logical inferences, for resolution of textual anomalies (repetitions and the like), for appropriate generalization from particulars, etc. For further discussion, consult virtually any introduction to rabbinic literature.

30. This lacuna becomes particularly glaring in the “enumeration of the laws” literature. That is, in the Babylonian Talmud (Makkot 23b) we find the statement, attributed to R. Simlai, “613 precepts were communicated to Moses, etc.” In Gaonic times there developed various enumerations of these 613 precepts. The variations occurred because there was some doubt as to whether this number included
only Torahitic laws or also some rabbinic ordinances. It was the contention of Maimonides that rabbinic laws were not to be included in this count, and he was rather critical of Simon Qayyara, author of *Halakhot G'dolot*, who had, in fact, included a number of rabbinically ordained observances in his enumeration. While Nahmanides defends Qayyara at some length, he, in the end, agrees with the Maimonidean position. The whole question made the determination of legal status that much more pressing. For further discussion, see the introduction of Yeruham Fischel Perla to his *Sefer ha-Miswot I'Rabbeinu Saadia Gaon* (Jerusalem: Keren S'forim Toraniim, 5733), pp. 5–62.

31. See the commentaries *zohar be-Raki'a* and *Megillat Ester* on the second principle of Maimonides in his *Sefer ha-Misvot*, and, in general, Ye-ucketiel (Ya'akov) Neubauer, *Ha-Rambam al Divrei Soferim* (Jerusalem: Mossad Harav Kook, 1954).

32. See the article of Yosef Kafih, "mi-Divrei Soff'rim," in Y. D. Gilat et al. eds., *Studies in Rabbinic Literature, and Jewish History* (Hebrew), dedicated to E. Z. Melamed, (Ramat Gan: Bar Ilan Press, 1982), pp. 248–55. See also Ferdinand Rosenthal, "Die Kritik des maimonidischen 'Buches der Gesetze' durch Nachmanides," in Wilhelm Bacher et al., eds., *Moses ben Maimon: Sein Leben, seine Werke und sein Einfluss*, repr. (Hildesheim: George Olms Verlag, 1971), vol. 1, pp. 475–95. For further clarification of Maimonides' position, see especially pp. 482ff. There Rosenthal provides the various distinctions introduced by Maimonides, which are not of concern here, and discusses the relationship between the second principle in the *Sefer ha-Misvot* and the introduction to the Mishnah commentary.

33. It should be pointed out that the classification of the laws has practical consequences in cases of doubt. That is, should a doubt arise regarding a Torahitic law, the more severe position is taken, while should a similar doubt arise regarding a rabbinic law, the more lenient position is adopted. Thus, the practical operation of the system, as well as its theoretical underpinnings, depend on the ability to identify which laws are rabbinic and which Torahitic.

34. Nor should this dispute be regarded as originating in the Middle Ages. It seems far older. For example, already the tannaite midrashim raise the issue of "onshin min ha-din" or "ein onshin min ha-din"—whether punishment can be administered on the basis of an argument a fortiori, which is one of the basic hermeneutical principles—which
Epstein claims is actually a dispute between the schools of R. Ishmael and R. Akiva (see his Mavo’ot l’Sifrut hai-Tannaim (Jerusalem: Magnes Press 1957), pp. 525–27. It would seem that this dispute reflects different attitudes regarding laws derived from logical principles; the position attributed to R. Ishamel seems to consider such laws rabbinic, while the ostensibly Aqiban position considers them Torahitic.

(My own view, which I hope to develop elsewhere, is that the phrase “ein onshin min ha-din” actually did not reflect this issue in the tannaitic literature, although it did come to reflect the issue in the later talmudic materials.) For a discussion of the differing views of these two scholars regarding biblical exegesis, see Abraham Joshua Heschel’s Torah min ha-Shamaim b’Aspakiaria shel ha-Dorot (London: Soncino, 1962), throughout, and esp. vol. 1, pp. 3–23 and 199–219. (More recent scholarship in this area has come to question the sharp dichotomy between schools and methodologies. This tendency seems wholly justified to me. However, for my purposes, here it matters little whether we are confronted with different schools, or simply two different opinions; the point is that the system itself seems to contain some undefined principles.)

There are also some talmudic passages that seem to reflect indecision regarding the status of certain laws. One such law is monetary betrothal. See, e.g., BT Qiddushin 9b, where the question is raised how the betrothed maiden who is put to death for her infidelity could possibly exist. There is no need to get involved in the details of this passage; suffice it to say that the question, and the response, seem to presuppose that monetary betrothal is not Torahitically sanctioned (but see the comments of Nahmanides in his stricture to the second principle of Maimonides in his Sefer ha-Misvot). Also the question of Ravina regarding the annulment of betrothal on the part of the rabbis (Ketubot 3a, Gittin 33a, Yevamot 110a, which seems to be the source of the question, and others) seems to suggest that he did not regard monetary betrothal as Torahitic (but see the comments of Rashi, Gittin 33a and those of the Ritba on Ketubot 3a). Other talmudic passages seem to reflect the opposite view. This could be because the gezarah shawa from which monetary betrothal is “derived” is actually quite late, and was not known to the Amoraim. For a discussion of the consequences of this confusion in Maimonides’ work, see Kafih, pp. 250–52.

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35. Guide, p. 211. Krochmal is discussing claims that it was Samuel the prophet who taught that the prohibition against marrying an Ammonite or Moabite applied only to the males and not the females of these nations (BT Yevamot, 77a) and that there were laws ordained by Haggai, Zechariah and Malachi (BT Hullin, 137b). It is worth noting here that Krochmal's stated concern is with faith and not with an independent interest in historical knowledge.


38. The formulation here is quite traditional; the justification for this traditional stance is, given its time, place and polemical purpose, quite novel. There is a certain amount of tension between what Krochmal claims here and his reconstruction of Jewish history in the Second Temple period. Given the further reconstruction that is to come, we can say that Krochmal is here posturing a bit.

39. Compare Savigny, pp. 28–30 and Guide, pp. 189–90. The major difference is that for Krochmal the many details and developments are vouchsafed to an elite, although they are political leaders; students of jurisprudence emerge later. Once again he has adapted Savigny to the facts of Jewish history as he understood them.

40. This former element is consistent with the second strand of Jewish apologetic identified above, whereas the latter is an innovation of conservative Jewish scholarship. As we shall see in greater detail below, antiquity and rootedness in the spiritual greatness of the people become the justifying characteristics of rabbinism to Krochmal and the conservative scholars who followed in his footsteps.

41. See Guide, pp. 5 and 214, and the discussion in chapter 4 above.

42. They are used almost exclusively in chapters 9 and 10, in which Krochmal presents the political and historical background of the rabbinic period.

43. Guide, pp. 191–94. Krochmal cites a number of examples in which the Bible itself reflects the need for an oral tradition. For, already in biblical times there was a need to extract specific laws from the general principles contained in the original legal code, or to appeal to
God for answers. Among these are the laws of inheritance in a case in which a man dies leaving no male offspring; the laws pertaining to the case in which one is prevented from offering the Passover sacrifice at the appointed time; the law of the wood gatherer on the Sabbath.

Examples of the interpretive tradition in the Prophets and Writings include the question of Haggai to the priests regarding contact with sanctified flesh, the exact nature of which is obscure, and the laws of sales and mourning among others. There are not many traces of interpretation in the prophetic books because the prophets never had legislative authority. For a recent discussion of "tradition" within the Bible that deals with a number of Krochmal's examples, see Michael Fishbane, Biblical Interpretation in Ancient Israel (New York: Oxford University Press, 1985).

44. Perhaps the best known instance is the first mishnah in the tractate Berakhot, which begins with the question, "From what time may one recite the Shema prayer in the evening?" This mishnah already assumes that the prayer must be recited, and that one knows the content of the prayer. Logic demands that this law is based on an ancient definition of the biblical phrase "when you lie down and when you rise up," and that there was a tradition that determined which biblical verses were to be included in the prayer. The BT, ad loc., notes this peculiarity, and explains that the tanna is referring to the verse which mandates the prayer (Deuteronomy 6:7). Krochmal, of course, knew this talmudic explanation (p. 196) but claims that this answer can only be maintained if the Soferic interpretation is already presupposed. That is, the verse merely maintains that one must "teach [these words] diligently to your children and shall talk of them when you sit in your house, and when you walk by the way, and when you lie down, and when you rise" (RSV). In order to maintain that the tanna is referring to this verse, one must assume that he already knew that the "words" mentioned in this verse are identical with the Shema prayer. This must mean that the equation of the biblical words with the Shema prayer predates the tanna, i.e., dates from the period of the Soferim. Similarly, the Mishnaic treatment of the law prohibiting the carrying of objects on the Sabbath presupposes the "Soferic" interpretation of a biblical verse.

45. That is, all cases of doubt are decided in favor of the severe alternative, and corporal or capital punishment may be imposed. Thus, one
who carries on the Sabbath has violated a biblical commandment, and may be so punished. Similarly, the fact that the tefilin contain four biblical portions is a Soferic commentary, but once established, carries the weight of a biblical commandment.

46. One should not infer from this that Krochmal assigned to the Soferim any role in determining the content of the Torah. This preceded them by centuries. Nevertheless, while the Torah was spared tampering that affected its meaning, he claims that one cannot deny that certain changes have taken place regarding the external form of the text. Rabbinic sources themselves report that a shift in script took place in the time of Ezra; further, there are various places in which the text is written one way, but is, according to Jewish tradition, to be read another way. In addition, there are those passages that the rabbis refer to as “the embellishments of the Soferim.” To Krochmal, these facts indicate that there were changes imposed on the text of the Bible, but one should not assume from this conclusion that the biblical text came about as the natural result of the historical process, affected by the contingencies of history. Rather, these changes were, first of all, strictly external and in no way detracted from the meaning of the text, and, second, were not implemented haphazardly, but rather represent the efforts of a group of scholars, the Soferim, inspired by the Holy Spirit, to meet the needs imposed by the long history of the text. See text below.

47. In Hebrew, certain consonantal letters, particularly the “vav” function occasionally as vowels. However, no Hebrew word requires the presence of the consonant to achieve the vowel sound. A Hebrew writer has a choice of indicating the vowel through the use of the “vav” (= plene), or he may choose to write it without the “vav” (= defective). It is generally assumed that such choices represent personal or scholastic preference and are not allusive. Krochmal challenges that notion as we shall see presently.

48. For our purposes, one example will suffice. The Hebrew word mashvo-teikhem (your dwellings) sometimes occurs in the Bible with a plene spelling (with a “waw” after the “mem”) and sometimes with a defective spelling. There is some doubt, reflected in a dispute in the Talmud (Qiddushin 37), whether this term means “all your dwellings,” in which case all laws that are said to be valid in all your dwellings are valid everywhere, and for all generations; or whether it
refers to the period after the process of inhabiting the land of Israel, in which case the laws valid in all moshvoteikhem are restricted to the land after the conquest of the native populations, but are not applicable elsewhere. Krochmal suggests that the word, in fact, sometimes means the one and sometimes the other; the key to understanding which, in a given situation, is to determine whether the spelling is plene or defective. For the Soferim already provide the means to determine which law applies through their spelling of the word. Thus, when the word appears with a defective spelling, it indicates that the normal understanding of the term "dwelling" is intended, and that the law is applicable in all places. When it is spelled plene, the law is applicable only in the land. There are, however, five places in which the spelling is plene, and the law is applicable everywhere. Krochmal provides various reasons why exceptions were made in these cases; the theory, as a whole, is maintained.

49. Spinoza and Chiariani, in particular, mock the "q’ri" and "k’tiv" technique and the "embellishments of the Soferim"; see Spinoza, Treatise, pp. 139-44 and Chiarini, vol. 1, pp. 59-61.

50. Guide, pp. 199-200. Of course, to be convincing to his audience Krochmal’s presentation must be (or at least seem to be) "wissenschaftlich." Here he discusses the development of language in general, and states that in all primitive orthographic systems vowels are absent; they therefore need silent letters, to partially fulfill the function of vowels. One example, taken from the Hebrew, is the word isb, which contains the silent letter yod to differentiate it from the word eish, something that becomes unnecessary once vowel points are introduced. Thus, words may be spelled with a defective spelling without in any way affecting the integrity of the text. This argument, based on supposedly universal linguistic principles, applicable to European languages as well, is designed to show the truly external nature of discrepant spellings, as they pertain to the authenticity of the text. At the same time the Soferim were free to make use of their authority to establish the orthographic form of the text to encode traditional interpretations within it.

51. Frankel certainly knew of Krochmal’s work prior to the publication of his own Darkhei ha-Mishnah, as it was reviewed in his Monatsschrift in 1851.

52. Yehezkel Kaufmann; Toledot ha-Emanah ha-Yisraelit (Jerusalem and

54. Krochmal does not explain why the midrashic texts developed at all, although one can assume that, for him, it was because the connections between the halakhah, which was always based on a midrash, and its midrashic basis were being forgotten.

55. The process is not totally beyond the vicissitudes of history. The existence of lasting disputes is due to historical circumstances. On this see the text below.

56. Krochmal will return to this theme later, where a fuller discussion can be found. See the text below.

57. Mishnah Eduyot 1:4–6. We know the opinions are to be rejected because they involve the position of the one against the many; in such a situation, the majority prevails. The mishnah explains that even though the minority opinion is to be rejected for practical purposes, another (perhaps later?) court may choose to rely on the rejected opinion. There is a great deal of disagreement as to what these mishnah passages actually mean, and a great deal of ink was devoted to this subject throughout the historiography of the nineteenth century.

58. See the reaction of Chiarini, vol. 1, pp. 20–21.

59. For a definition of this term, see above, chapter 4, n. 15.

60. In a number of places the Talmud seems to reject the notion that the decision of the majority ensures correctness. Rather, the decision in favor of the majority is a necessary procedural device, whose authority is legal, but not necessarily philosophical, and does not relate to correctness of the given positions. See, e.g., BT Baba Mesia 59b, the famous “oven of Aknai” incident. The “facts” seem to be that it is R. Eliezer who is correct, since God himself endorses his position; nevertheless, the majority has voted otherwise, and therefore prevails, even though they are not correct. Krochmal seems to have considered the rabbis more proficient logicians and analysts than they considered themselves (or than the author of the story considered them, at least).

61. This dating is in accord with the previously cited baraita.

62. BT Temurah 16a.

63. That the term halakhah is of Aramaic origin was first suggested, to
the best of my knowledge, by Binyamin Musaifa in his addenda to the Arukh. He cites the Targum of Onkelos, which translates the Hebrew term mishpat as “hilkhut,” as does Krochmal. As far as I am aware, Krochmal arrived at his historical conclusions—that the Aramaic origin of the term halakhah means that halakhot emerged after Aramaic took root in the country—Independently. For a recent discussion of the origins of the term halakhah, and its possible Aramaic provenance, see Saul Lieberman’s Hellenism in Jewish Palestine (New York: Jewish Theological Seminary, 1962), p. 83, n. 3.

64. This can be seen, inter alia, from the treatment of such halakhot by Maimonides in the introduction to his Commentary on the Mishnah, Kafih ed., vol. 1, pp. 9ff.

65. Guide, p. 213 emphasis added. Krochmal’s position here is not totally unprecedented. A number of traditional commentators have explained the use of the phrase halakhah l’Moshe mi-sinai in mishnah Yadain 4:3, as meaning “like a halakhah l’Moshe mi-sinai.” See, ad loc., the comments of Samson of Sens, Asher b. Yehiel, Ovadiah of Bertinoro. For Maimonides’ differing view on this subject, see Commentary, vol. 1, pp. 9ff.

66. It is interesting to note that these remarks, as far as I know, stirred no controversy whatsoever. Zechariah Fränkel’s publication of similar views eight years later created quite a stir. Perhaps the fact that Fränkel was very much alive and thus a living influence on the Jews of his day accounts for some of the difference in reaction. Further, Fränkel’s religious allegiances were suspect in the traditional world, whereas there was no doubt about Krochmal’s punctilious observance. I should add that Krochmal’s “historical” reconstruction of how these laws emerged is totally unsubstantiated; as a functional definition of the halakhah l’Moshe mi-sinai in rabbinic literature it has much to recommend it.

67. Another category of early halakhah which Krochmal must explain is that of the tikkim or ordinances, which Krochmal distinguishes from the etymologically related category of takkanot. The latter category is designed to remedy a problem induced by the halakhah. The former refer to ordinances that are enacted because of their inherent benefit. It is, claims Krochmal, the tikkim which are often attributed to figures from antiquity. These attributions are not to be dismissed as mere rabbinic fancy, but rather the rabbis, for heuristic
purposes, deliberately retrojected them to the time at which they could first have been applicable. Thus, for example, the rabbis attributed to Moses the establishment of the first blessing of the grace after meals, because Scripture requires a blessing after eating, and it is therefore reasonable to assume that a blessing was established in the time of Moses. To be sure, the blessing as we now have it could not possibly have derived from the time of Moses, as there are a number of “late Hebrew” words in it (Guide, p. 214).

68. Ibid., p. 215. Krochmal, apparently quoting from memory, uses the word “innovate” (I'hadesh), although the text reads “teach” or “instruct,” and I have translated accordingly. Apparently, Krochmal conflated this text from PT with one from BT (Megillah 19b) in which it is claimed that God showed Moses, inter alia, “the future innovations of the Soferim.”

69. It is with this theory of the immanence of Torah that, I believe, Krochmal implies a reconciliation of the conflicting positions of Maimonides and Nachmanides. It will be recalled that this conflict was cited as one of the problems with the traditional understanding of rabbinic history, but Krochmal, having stated that he can reconcile these positions, never explicitly returns to the issue. Yet, it seems, based on what we have just seen, that for Krochmal the difference between the two is one of perspective and not substance. Maimonides emphasizes the historical aspect of the actualization of that which is incorporated within the Torah. Thus, since the innovation was made by a given student, albeit using one of the hermeneutic principles and thus in accord with reason, it must, in most circumstances, be considered historically indistinguishable from what we call rabbinic. Nahmanides emphasizes the qualitative aspect of the derivation, and from this perspective it must be considered Torahitic, in that the Torah encompasses the derived law. While the question of how to count the 613 commandments remains intact, since clearly only a portion of all the laws can be included, the more important theoretical question is dissolved. For there remains no qualitative difference between laws that are classified as Torahitic and those that are derived from the hermeneutical principles, however they are to be classified. As far as the legal distinctions go, Krochmal seems to have agreed with Nachmanides that the legal status of the derivations is Torahitic, while agreeing with Maimonides that one cannot consider them as
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actually being from Sinai, except in the specific philosophical sense, outlined in the quotation above. In this instance his agreement with Nachmanides is to be expected, for if there were legal distinctions between the derivations and those laws explicitly stated in Scripture, Krochmal's construct would be strongly challenged, for it would suggest that there is a qualitative distinction to be drawn after all. As it is, for Krochmal there are no legal or qualitative distinctions between these two types of laws, only historical ones, which must be acknowledged, but are irrelevant to the system.

70. At this point Krochmal's general discussion of the oral tradition is almost concluded. For the sake of completeness, I should add that before moving on to the examination of how the Mishnah came into being, he distinguishes two other categories of laws included within the oral tradition. In addition to the major categories of derivations on the basis of the accepted hermeneutical principles and the laws of Moses from Sinai, Krochmal mentions the "established laws," which are enacted rationally and with equitable concerns, are in total accord with the laws of the Torah, and are occasionally supported by verses from the Torah. The second category consists of the laws imposed on the Jews by the various empires that had authority over them during the period of "learning halakhot" and which were retained by them. These are never against the laws of the Torah, although they are rabbinic laws and Roman ones is historically meaningful but irrelevant to an understanding of the essence of the rabbinic tradition. These laws originate in historical circumstances beyond the control of the Jews, but they are integrated within the system in accord with its basic values. Furthermore, the existence of such laws does not affect the dating of the rabbinic legal system, since they represent mere appendages tacked on at a later date. For a critique, see Samuel Bialoblocki, in Knesset I'Zekher Bialik (1941), pp. 361-63.


72. We can see here an application of Krochmal's position that every rabbinic claim or saying has some significance; they are never to be totally dismissed, even if their literal meaning cannot be maintained.

73. For Krochmal, anonymity is generally considered a sign of antiquity, for reasons that are clear given his approach. For him, laws taught prior to Hillel were "recorded" anonymously; it is only after Hillel,
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and the development of different, and competing schools, that halakhot were repeated with the names of the scholar who formulated them, or in whose school they were preserved, and, perhaps, added to. See Krochmal's discussion of the age of Tamid, Guide, p. 224.

74. Ibid., p. 221. BT Yoma 16a. Krochmal discusses and defends this claim in light of apparently conflicting evidence.

75. Guide, p. 227. The first great ‘forgetting’ in this period occurred sometime between Pompey and Herod. It is not of concern to us here.

76. This claim is in accord with the position that an anonymous mishnah follows the view of R. Meir. See BT Sanhedrin 86a.

77. Rawidowicz, in his introduction (pp. 141–42), quotes the first half of this passage, and comments that it indicates the extent to which Krochmal was prepared to criticize Rabbi for being ‘enslaved to the material that was before him.’ He claims that Krochmal chastises Rabbi for not being creative in the construction of the Mishnah. I think that the passage as a whole indicates that the thrust of Krochmal’s thinking is precisely in the other direction. This is a good example of Rawidowicz’s tendency to see Krochmal as far less traditional than he was.