The Synoptic Problem in Rabbinic Literature

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Chapter 4
Halakhah le-Moshe mi-Sinai in Rabbinic Sources: A Methodological Case Study

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Introduction

In this paper I examine the use and meaning of the term halakhah le-Moshe mi-Sinai ("a law to Moses at Sinai") in the Mishnah, Tosefta, and Palestinian and Babylonian Talmudim (Yerushalmi and Bavli) in order to explore certain methodological issues currently debated in talmudic scholarship. Specifically, I argue that source critical and synchronic approaches to the study of talmudic texts need not be mutually exclusive; indeed, there is much to be gained from a judicious combination of the two.

The most recent work of Jacob Neusner¹ can be characterized as synchronic due to its assumption that individual rabbinic documents (Mish-
nahu, Tosefta, Yerushalmi and Bavli) constitute wholes that should be studied independently. Although Neusner acknowledges the existence of diverse sources within the talmudic text, he focuses on the level of the complete redacted work as the primary level about which positivistic statements can be made. My critique of this synchronic, or documentary, approach focuses on two of its main assumptions. First, the synchronic scholar maintains that the diverse source materials of the Talmud were so thoroughly reworked and recontextualized by the talmudic redactors as to neutralize their ability to provide information about the circles in which they originated—a claim that clearly has implications for our ability to use these texts for the purposes of historical or cultural reconstruction. Second, the synchronic scholar speaks of each rabbinic work, including the Talmudim, as a single unit, as though each were produced by a single (though corporate) authorship, giving testimony to a single community. In short, each rabbinic work is considered at the redacted level to be an authored text, shaped according to the ideology or philosophy of the final authors or redactors and bearing witness to the ideology of the period of redaction alone.

But, we may ask, do rabbinic documents in fact constitute integral wholes exhibiting the kind of editorial or thematic unity that Neusner proposes? The claim has a strong intuitive appeal, but is it borne out by the evidence? Does it make sense to privilege the period of the text’s redaction as the only period “represented” by the text and thus the only period whose history is retrievable from it? In my recent book, I argued that such an approach ignores textual details that signal the texts’ susceptibility to source critical analysis (and thus historical analysis) and employs models of authorship and redaction that are inappropriate for rabbinic texts or irrelevant for those engaged in historical study.

Rabbinic documents signal their compositional complexity in many ways. In a recent book, Richard Kalmin concluded that “the Bavli attests to a variety of rhetorical, terminological, institutional and attitudinal differences between early and later, Palestinian and Babylonian, and attributed and anonymous sources.” Kalmin argues persuasively that the presence of these differences attests to the existence of diverse sources within the talmudic text and a lack of editorial homogenization. Similarly,
David Goodblatt's study of rabbinic instruction in Babylonia reveals that third-century and fourth- to fifth-century sages do not mention the same academic institutions. Goodblatt argues convincingly that the most likely explanation is that the terminology of the third-century sources has been accurately preserved, and that, generally speaking, the language of earlier amoraic generations has not been homogenized by the Bavli's editors. Such evidence of chronological and geographical complexity calls into question the suitability of an exclusively or primarily synchronic approach to rabbinic literature. Indeed, source critical analysis of rabbinic texts would appear to be not precluded but mandated by the very nature of those texts.

The designation of the redactors/editors of various rabbinic documents as authors—a feature of the synchronic, or documentarian, approach—is also subject to question. Comparing rabbinic redactors to authors obscures the important differences between their respective activities, for it suggests a creative autonomy. In fact, the redactors of rabbinic texts were not creating texts ex nihilo, but were shaping and weaving an enormous corpus of inherited traditional materials. Of course they exercised freedom in recombining, recontextualizing, glossing and otherwise manipulating earlier traditions. However, they were also constrained by the raw materials they received, by the agenda set in earlier combinations and contextualizations of traditions, by the community within which they worked and even by the genre of the work being produced. Furthermore, it must not be assumed that a reworked text loses its historical usefulness. As Richard Kalmin has argued, a set of sources may be heavily reworked, paraphrased and embellished and yet still faithfully convey historical information about, for example, the ideology or attitudes of an earlier period, while something only slightly reworked may in fact be less faithful. It is only with the aid of usable historical information regarding the centuries prior to its final editing" (ibid., xiii).

7 David Goodblatt, "Towards the Rehabilitation of Talmudic History" in History of Judaism: The Next Ten Years, ed. Baruch M. Bokser (BJS 21; Chico, Calif.: Scholars Press, 1980), 31-44.


9 Kalmin, Sages, chapter 3. Kalmin examines a passage from the Bavli in which several traditions paralleled in Palestinian sources concerning a Palestinian tanna
comparative study that we can assess the degree to which redaction has or has not affected the historical usefulness of its source materials.

Finally, the notion that each rabbinic document is a single unit authored by a single “authorship” entails the notion that each text has a unitary ideology which can be discerned through analysis. In several works, Neusner strives to discern the specific ideology or agenda of various rabbinic texts, the philosophy expressed by the redactional program of each document. However, this documentarian project is dependent upon a specific notion of what it is to be an editor or redactor, a notion that may not be appropriate for rabbinic texts. Neusner assumes that redaction entails the imposition of a uniform ideology upon a text’s source materials. But there is no prima facie reason to accept such a definition and in the case of rabbinic literature it would appear that a different notion of editing/redaction is operative. In rabbinic literature we simply do not see a uniform and universal homogenization of earlier sources or a consistent attempt to replace the polyphony of the sources with the univocality of a single authorship.\textsuperscript{10} We can only conclude that rabbinic notions of the role of a redactor or editor are different from those proposed by contemporary documentarians. Rabbinic editors were apparently concerned to preserve, not obliterate, distinctive layers within the text, to preserve heterogeneity.\textsuperscript{11} A synchronic approach that ignores that heterogeneity and eschews source critical anal-

are woven together into a single narrative unit. The traditions are clearly heavily reworked and edited (see ibid., 64 for details), yet the basic portrait of a Palestinian dream interpreter as interpreting the symbolic dreams of non-rabbis is consistent with the portrait of dream interpreters found in the Yerushalmi and in Palestinian midrashic literature (and not with that found in materials of Babylonian origin). Thus, the editorial reworking of earlier material does not necessarily destroy the latter’s historical usefulness.

\textsuperscript{10} This is not to say that individual sugyot do not feature editorial shaping that is at times ideologically transparent. Shamma Friedman’s analyses of sugyot from Ye'vamot and Bava Metzia (see the works cited in n. 8, above) identify the ideological interventions of the stammaitic layer of the Bavli. Nevertheless, such interventions do not necessarily entail homogenization, or the complete eclipse of an earlier polyphony; nor is it a universal or consistently pursued editorial practice. Further, I am not persuaded by Neusner’s distinction between the “superficial contentiousness” of rabbinic documents and the deeper consensus it masks. In any event, the historian is concerned not with the “philosophical consensus” Neusner claims to discover within the text, but with the “superficial contentiousness” of the text, because it is precisely there that cultural and historical information will be found. Thus, the documentarian notion of “authorship” may be said to be not only inappropriate for rabbinic texts but irrelevant to the pursuits of the historian.

\textsuperscript{11} Of course, often they do not. There are places where we can see a homogenizing trend, but this is by no means the overriding feature of talmudic redaction. Each case must be judged on its own merits.
ysis and historical reconstruction is reductionist. Despite the fact that source materials are subject to some process of redaction, several linguistic and literary features of rabbinic literature render implausible the notion of authored, synchronically leveled texts. These features indicate that some relatively reliable source critical and, ultimately, cultural-historical analysis of rabbinic texts beyond the level of redaction is possible.

Nevertheless, it is true that the composition and redaction of rabbinic works form an important determinant of each work’s substance so that a work can be said to be more than the sum of its sources; and it is also true that the traditional sources are shaped by literary, rhetorical, and other concerns. These claims are supported by numerous comparative studies that examine what various rabbinic documents do differently with the material that is common to them. Different treatments (indeed, even similar treatments) of shared source materials (whether a mishnah, a beraita or a midrashic unit) or a shared term or legal concept can tell us something about the groups or communities that produced the documents being compared. The information gleaned may be linguistic, exegetical, cultural, or ideological.

We are left with one ineluctable and seemingly paradoxical conclusion. On the one hand, rabbinic texts are comprised of a variety of identifiable sources. On the other hand they are redacted works that exhibit editorial features. In some sense, then, they are integral wholes—even if rabbinic models of redaction and editing do not entail the kind of editorial or thematic unity advanced by modern-day documentarians. The nature of rabbinic documents as redacted works that at times efface and at time preserve the heterogeneity of their source materials justifies the judicious combination of both synchronic and source critical approaches in talmudic studies. The following study of the term halakhah le-Moshe mi-Sinai (henceforth HLMM) in the Mishnah, Tosefta, Yerushalmi and Bavli is intended to demonstrate the advantages of just such a combined approach.

In the first part of this study I will demonstrate the usefulness of a source critical approach by analyzing the use and conception of the term HLMM in the various sources contained in the Mishnah, Tosefta, Yerushalmi and Bavli. Within each rabbinic document we will observe distinctions between early and late, Palestinian and Babylonian, and attributed and anonymous sources. These chronological and geographical distinctions reinforce the claim that redactional homogenization in rabbinic literature is less than is sometimes claimed.

In the second part of this study I will demonstrate the usefulness of a synchronic approach by comparing the respective uses and conceptions of the term HLMM in each Talmud taken as a redacted whole. Our characterization of each document’s use and conception of the term HLMM will be necessarily complex because of the diverse sources comprising these docu-
ments. Nevertheless, some distinctions between the two Talmudim, when characterized as wholes, indicate a shift in the use and meaning of the term HLMM between the two documents and, by extension, the two communities of scholars that produced these documents.

It is to be hoped that attention to the tandem operation of source critical (chronological and geographical) and synchronic factors in the composition of rabbinic texts, will lend greater precision and reliability to our historical conclusions. Source critical and synchronic approaches to rabbinic texts need not be viewed as mutually exclusive, but can operate simultaneously to unearth the full range of cultural, historical, and ideological data available within these texts.

* * *

The term HLMM is generally defined in a manner that reflects its post-talmudic usage. In the post-talmudic period, it became standard to view certain terms as equivalent to, and therefore designating, HLMM: e.g., gemir, hilkheta, hilkheta gemiri lah, gemara gemiri lah, halakhah, halakhot and neemeru le-Moshe ba-Sinai (some of these will be discussed below). As a consequence, the conception of HLMM that emerged in this period was based on a consideration of all passages in the classical sources that contained any of these terms, and was defined as a law given to Moses at Sinai that cannot be derived from Scripture, but can be traced through a line of transmission back to Moses who received it directly from God. HLMM and Torah law are mutually exclusive categories, so that verses adduced for a HLMM must be viewed as mere asmakhtot. A HLMM requires no logical justification (taam), and there is a strong tendency to view HLMM as authoritative and not subject to dispute. Deviations from these general principles that may appear in the classical sources are generally dismissed as metaphorical rather than literal uses of the term HLMM. Halakhic commentators are divided on the question of a HLMM’s authority (as equal to Torah law, rabbinic law or sui generis). Not all HLMMs were preserved; some were forgotten and, of these, some were later reestablished by rabbinic courts.12

The post-talmudic use and conception of the term HLMM just described does not correspond in every respect to the use and conception of the term in classical rabbinic literature. The assumption that terms such as gemir, hilkheta, hilkheta gemiri lah, gemara gemiri lah, halakhah, halakhot and neemeru le-Moshe ba-Sinai are equivalent to the term HLMM in classical rabbinic sources and the retrojection of post-talmudic definitions of a HLMM

are obstacles in the way of an objective evaluation of these sources. The present study is confined to an examination of passages in Mishnah, Tosefta, Yerushalmi and Bavli that explicitly employ the term HLMM (the phrase *neemeru le-Moshe ba-Sinai* will be considered separately; see below, pp. 111–114) and proceeds inductively to a general characterization of HLMM with an eye to chronological and geographical difference within texts and synchronic differences across texts. We begin with Mishnah and Tosefta before turning to the two Talmudim.

* * *

The term HLMM occurs in only three mishnaic texts: M. Peah 2.6, M. Yadayim 4.3 (‖ T. Yadayim 2.7) and M. Eduyyot 8.7.13 These three sources exhibit important similarities and differences in their use of the term HLMM.

13 The term HLMM appears in tannaitic midrash only once—Sifra Tsav 11.6 (Weiss ed., 34d–35a). The passage is cited in B. Men 89a and B. Nid 72b and will be discussed below. In “Reflections on Classical Jewish Hermeneutics,” *PAAJR* 62 (1996): 21–127, David Weiss Halivni points out that in contrast to the amoraim (particularly in Palestine), the tannaim make almost no use of the concept of HLMM (51). He adduces examples of laws described by amoraim as HLMM but derived exegetically by tannaim. For example, in Y. Shev 1.7 33b ‖ Y. Suk 4.1 54b the amora R. Yohanan asserts that the willow and water libation rites are HLMM, although the tanna Abba Shaul provides a biblical derivation for the first, and the tanna R. Akiva provides a biblical derivation for the second; in B. MQ 3a R. Yohanan states that the law of the ten saplings (discussed below) is a HLMM while R. Akiva derives it from Scripture. See further B. Yoma 80a. But note the exception in Y. Meg 1.11 71d; Halivni, op. cit., p. 61).

Shmuel Safrai, “Halakhah le-Moshe mi-Sinai: Historyah o Teologyah?” in *Mehqerei Talmud*, ed. Y. Sussman and D. Rozental (Jerusalem: Magnes, 1993), 1:11–38, attributes the scarcity of HLMM in tannaitic literature to genre. The halakhic midrashim are by definition concerned with the derivation of law from Scripture (11) and thus it is not surprising that there is only one reference to HLMM in this entire corpus. Likewise, one could argue that the Mishnah is in general not concerned with the source (whether biblical, rabbinic, or HLMM) of its rulings. Halivni, however, explains the scarcity of the term HLMM in tannaitic sources as part of the trend away from reliance on oral tradition and towards exegesis in the tannaitic period, and the increased use of the term in amoraic sources as part of the subsequent shift away from exegesis. According to Halivni, pre-tannaitic religious authority relied on oral tradition to overcome the imperfections and discrepancies in Scripture that were the result of its composite nature. Tannaitic authorities later abandoned this reliance on oral tradition in favor of exegetical solutions (“Reflections,” 89); with the canonization of Scripture, theological notions of the latter’s perfect and all-encompassing nature developed, with the result that laws taught purely as oral instruction given to Moses at Sinai were derived exegetically from the Scriptural text (49). Exegetes maintained that Scripture itself could yield all that
M. Peah 2.6

2.5 He who sows his field with one kind of seed, though he makes up of it two threshing-floors, need give only one peah. If he sows it of two kinds, then even if he makes up of it only one threshing-floor, he must give two peot. He who sows his field with two species of wheat and makes up of it one threshing-floor, gives one peah; but if two threshing-floors, he gives two peot.

2.6 It once happened that R. Simeon of Mizpah sowed [his field with two species of wheat and the case came] before Rabban Gamliel. They went up to the Chamber of Hewn Stone and inquired [as to the law]. Nahum the Scribe said: “I have received a tradition from R. Measa, who received it from Abba, who received it from the Pairs, who received it from the prophets, a halakhah le-Moshe mi-Sinai that a man who sows his field with two species of wheat and makes up of it one threshing-floor, gives only one peah, but if two threshing-floors, he gives two peot.” [=2.5]

M. Peah 2.5 contains a tripartite law concerning the obligation of peah. A field sown with one kind of seed requires one peah, with two kinds of seed requires two peot—regardless of the number of threshing-floors (i.e., quantity of grain produced). The third clause constitutes an exception to the general principle that prevails in the two preceding clauses. If a field is sown with two species of wheat, the number of peot for which one is obligated is determined by quantity. Thus, while quantity is not generally a factor in the obligation of peah, in this exceptional case it is. Mishnah 2.6 contains an incident in which R. Shimeon of Mizpah asks about precisely such an exceptional case. The answer of Nahum the Scribe (1st c. CE) is reported as a HLMM transmitted from tradent to tradent until reaching Nahum the Scribe from his own teacher (R. Measa who received it from Abba who received it from the Pairs, who received it from the prophets, a HLMM). This HLMM mirrors the wording of the anonymous third clause of the previous mishnah.

Once had been viewed strictly as oral law (41). According to Halivni, exegesis reached its apex in the halakhic midrashim of the tannaim (89). The amorac period, however, witnessed an erosion of confidence in exegesis, attested to by the fact that after the Talmud no new laws were derived directly from Scripture. Instead, in the amorac and post-talmudic period there was a trend toward HLMM, and by the Middle Ages there was a renewed belief in divine oral instruction revealed alongside the Written Torah (ibid.). We will return to some of these ideas—particularly the erosion of confidence in exegesis—in the course of this study.
The following observations about the term HLMM can be made on the basis of this text. First, in the view of the mishnah’s editors a HLMM can be posited as the source of an anonymous clause of the Mishnah. In other words, that a law appears in the Mishnah does not preclude the possibility that it is held to be a HLMM. Second, the clause that is declared to be a HLMM constitutes an exception to a general rule. For now, we may hypothesize that it is precisely the exceptional and anonymous nature of the law that leads to its identification as a HLMM, in order to lend it greater authority (this hypothesis will be explored further below). Third, we see that a HLMM concerns a detail of a Torah law, i.e., it provides specific and practical information as to how a Torah law is to be carried out. A fourth observation concerns the literary features of the passage. We see that a declaration that law X is a HLMM is accompanied by a chain (albeit gapped) of transmission featuring tradents, stretching back to Moses. The term *mequbbal* is used to describe the process of transmission from tradent to tradent. The presence of a chain of transmission and the term *mequbbal* implies a fairly literal understanding of the term HLMM. In other words, Nahum the Scribe appears to be saying that this halakhah was received by Moses orally and handed down orally until reaching Nahum himself.

M. Yadayim 4.3 (cf. T. Yadayim 2.7)

On that day they said: “What is the law for Ammon and Moab in the seventh year?”

R. Tarfon decreed poor tithe and R. Elazar b. Azariah decreed second tithe ... (Each side advances various logical arguments in support of its view.) The votes were counted and they decided that Ammon and Moab should give poor tithe in the seventh year.

When R. Yose b. Durmasqit visited R. Eliezer in Lod he said to him: “What new thing occurred in the house of study today?”

He said to him: “They voted and decided that Ammon and Moab must give poor tithe in the seventh year.”

R. Eliezer wept and said: “The counsel of the Lord is with those who fear him and his covenant, to make them know it” (Psalms 25:14). Go and tell them: Do not be
Christine Hayes

anxious about your vote. I received a tradition from R. Yohanan b. Zakkai who heard it from his teacher, and his teacher from his teacher, and so back to a HLMM, that Ammon and Moab must give poor tithe in the seventh year.”

In this passage tannaim debate the tithing law that applies to Ammon and Moab in the seventh year. Are these regions to give poor tithe or second tithe? A number of logical arguments (omitted here) are presented by first-century CE tannaim on both sides of the debate and when a vote is taken, it is determined that Ammon and Moab are to render poor tithe in the seventh year. R. Yose b. Durmaskit reports this legal innovation to R. Eliezer who weeps in relief and declares that the rabbis need not be apprehensive about their ruling since he has it on tradition as a HLMM that Ammon and Moab give poor tithe in the seventh year.

The following observations about the term HLMM can be made on the basis of this text. First, we have already hypothesized that HLMM may be a device for conferring authority upon a law of unstable authority (the exceptional third clause in M. Peah 2.6). That hypothesis appears to be supported by M. Yadayim 4.3, in which the authority of a hotly disputed rabbinic legal innovation is confirmed by R. Eliezer’s report of a corresponding HLMM. The text is explicit on this point: the assertion that the rabbis’ ruling accords with a HLMM is intended to allay anxiety about, and strengthen confidence in, the rabbinic ruling in question.14 Second, it appears that a HLMM may be forgotten and subsequently arrived at independently through the argumentative give-and-take of later rabbinic authorities. Thus it is possible for a rabbinic legal innovation to be at one and the same time a HLMM, although the ancient origin of the law may be lost to human memory completely (in this case, it was known only to R. Eliezer). Third, this passage strongly implies that a HLMM does not require logical justification. If it had been generally known that there was a HLMM regarding the legal issue in question then the lengthy arguments and logical deductions from other cases and principles would not have been necessary. In addition, R. Eliezer’s assertion that the law is in fact a HLMM is clearly intended to establish the law as correct, indisputable and incontrovertible. Thus, this passage strongly implies that the authority of a HLMM is absolute—it requires no justification and is not subject to dispute. Fourth, unlike M. Peah 2.6, where a HLMM provides specific and practical information concerning the observance of a Torah law, M. Yadayim 4.3 fea-

14 For a discussion of rabbinic and non-rabbinic evidence that sabbatical year observance outside the land of Israel was difficult to uphold see Safrai, “Halachah,” 24 n. 54, and Shmuel Safrai, “Mitsvat Shevi’it bi-Metsi’ut she-le-ahar Hurban Bayit ha-Sheni,” Tarbits 36 (1966-67): 304-306.
tures a HLMM which corresponds to a rabbinic legal innovation.¹⁵ Finally, M. Yadayim 4.3 shares notable literary features with M. Peah 2.6. R. Eliezer’s declaration that law X is a HLMM is accompanied by a chain of transmission (R. Eliezer received the tradition from R. Yohanan b. Zakkai, who received it from his teacher, and so back to a HLMM) and employs the terms *megubbal* and, in this case, *shama mi-* to describe the transmission from tradent to tradent. Here again, the presence of a chain of transmission—however vague or imprecise—and the terms *megubbal* and *shama mi-* implies a fairly literal understanding of the term HLMM.¹⁶

M. Eduyyot 8.7

R. Joshua said: “I have received a tradition from R. Yohanan b. Zakkai, who heard it from his teacher, and his teacher from his teacher, a HLMM that Elijah will not come to pronounce impure or pure, to put away or to bring near, but to put away those brought near by force and to bring near those put away by force” . . .

R. Judah says: “To bring near, but not to put away.”

R. Shimon says: “To reconcile disputes.”

And the sages say: “Neither to put away nor to bring near, but to make peace in the world, for it is said, Behold, I send to you Elijah the prophet . . . and

¹⁵ This seemingly paradoxical declaration that a rabbinic legal innovation is a HLMM leads some scholars to state that the term HLMM is not intended literally in this passage since, so it is assumed, a law cannot be both a HLMM and a rabbinic ruling (see Safrai, “Halakhah,” 16–17, 22–23). Thus, R. Eliezer means to say only that the law is *as clear and certain* as a HLMM. While such metaphorical usages do occur, primarily in the Yerushalmi, there is little internal evidence that the term HLMM in M. Yad 4.3 is purely metaphorical. Rather, the text appears to claim that a HLMM can be lost to human memory, but through divine providence (hence R. Eliezer’s citation of Ps 25:14) or rabbinic ingenuity reinstated as a law of the rabbinic court. It must be conceded however, that the term HLMM may be a purely literary device for conferring authority on a rabbinic law that was subject to dispute, much like the literary deployment of a *bat kol* (Heavenly voice) in several rabbinic texts to settle a legal question or to signal the “correct” side of a debate. See the discussion of this issue below.

¹⁶ But see the previous note.
he shall turn the heart of the fathers to the children and the heart of the children to their fathers (Malachi 3:23-24)."

R. Joshua (2nd-generation tanna) reports a tradition he has received as a HLMM to the effect that Elijah will come to put away those brought near by force and to bring near those put away by force (i.e., he will rectify certain unjust and arbitrary genealogical rulings). R. Joshua’s statement is disputed by R. Judah, R. Shimon (3rd-generation tannaim) and finally by the sages, all of whom present different conceptions of Elijah’s intended activity.

This passage has some points of contact with the two mishnaic passages already examined but also differs from them in significant ways. First, the HLMM in M. Eduyyot 8.7 does not convey information pertaining to the performance of a Torah law. Nor does it confirm an independently established rabbinic law. On the contrary, it conveys a purely aggadic tradition regarding Elijah.17 Second, R. Joshua’s assertion that the tradition he presents is a HLMM does not establish that tradition as correct, indisputable and incontrovertible (as was the case in M. Yadayim 4.3), and three alternative views are advanced. According to this text, the authority of a HLMM is not necessarily absolute, nor are its contents immune to dispute.18 Third, the sages support their opposing view with a passage from Malachi, implying that the authority of a HLMM is inferior to (or certainly no greater than) that of a prophetic text,19 and that a HLMM can be set aside or rejected. Finally, M. Eduyyot 8.7 exhibits the literary features seen in the Peah and Yadayim texts: the claim that a tradition is a HLMM is accompanied by a chain of transmission and the terms mequbbal and shama mi-. As in the previous cases these features imply a fairly literal understanding of the term HLMM.

The term HLMM occurs in two tosefta texts.20 T. Yadayim 2.7 is a compressed version of M. Yadayim 4.3, and is for our purposes sufficiently par-

17 Insofar as such traditions are purely speculative, we have a third example of HLMM being used to lend authority to a teaching whose authority is weak for one reason or another.

18 This may be a function of the aggadic rather than halakhic nature of the tradition reported here. On the other hand, it may be that R. Joshua’s tradition is disputed because later tradents/the stam reject his claim that the tradition is a HLMM. Were they convinced that his teaching was a HLMM they may not have disputed it. However, the text is most easily construed as one in which the notion of a HLMM as absolutely authoritative is simply lacking.

19 The authority of a HLMM relative to that of the biblical text and biblical exegesis will be considered in our discussion of the amoraic material.

20 T. Hal 1.6 employs the related phrase “matters said from Mount Horeb,” equivalent to “matters said [to Moses] at Sinai” (e.g. T. Peah 3.2), which will be discussed below.
allel to the latter text as to render unnecessary any separate analysis. The other text is T. Sukkah 3.2:

The willow ritual is a HLMM.
Abba Shaul says: "[It is] from the Torah, as it is written, And willows of the brook (Leviticus 23:40)—which means two: a willow for the lulav and a willow for the altar."

The stam asserts here that the willow ritual performed on Sukkot is a HLMM. This is immediately followed by Abba Shaul’s assertion that the willow ritual is derived from the Torah. It is most likely that these two views are presented as alternatives, in opposition to one another, rather than as mutually supportive claims. Nevertheless, the larger context suggests that the stam’s assertion and Abba Shaul’s tradition are not directed at one another so much as they are directed at a third position—that of the Boethusians, who rejected the willow-ritual altogether as described in the immediately preceding passage.

The following observations can be made on the basis of T. Sukkah 3.2. First, the stam’s assertion that the willow ritual is a HLMM is clearly an attempt to confer authority on a practice whose observance is rejected by sectarians. Thus, this passage is yet another example of HLMM as a device for bolstering the authority of a law, belief or practice whose authority is disputed or unstable for one reason or another. Second, although the stam’s assertion and Abba Shaul’s teaching are directed primarily against the Boethusian rejection of the willow ritual, their conjunction here suggests that biblical exegesis and HLMM are at least alternative, if not mutually exclusive, sources of law (i.e., if something is HLMM it is not derived from Scripture and vice versa). Third, it is clear from this passage that the source of a particular law (whether biblical, HLMM, or rabbinic) can be subject to dispute. Finally, this text deviates from the literary pattern common to the three mishnaic texts. The stam’s declaration that the willow ritual is a HLMM is not accompanied by a chain of transmission or by terms implying transmission from tradent to tradent (mequbbal, shama mi-). This raises a question: Does the term HLMM bear a literal connotation (as is likely in the three mishnaic cases), or is it primarily rhetorical and metaphorical, intended only to designate a tradition of great antiquity?

* * *

21 T. Peah 3.2 employs the term she-neemeru le-Moshe ba-Sinai ("which were said to Moses at Sinai," henceforth NLMB), which will be discussed below, pp. 111–114.
22 Certainly the amoraim in both the Yerushalmi and the Bavli see these as conflicting claims.
Christine Hayes

The preceding analysis of Mishnah and Tosefta identified the following, at times contradictory, characteristics of HLMM (numbers 4 and 5 are contradictory as are numbers 7 and 8):

1. A HLMM may be posited as the source of a law, belief or practice whose authority is unstable because that law, belief or practice is exceptional (M. Peah 2.6) or disputed by other rabbis (M. Yadayim 4.3 || T. Yadayim 2.7; M. Eduyyot 8.7) or by sectarian (T. Sukkah 3.2).23

2. A HLMM may be forgotten and subsequently arrived at independently through the argumentative give-and-take of later rabbinic authorities who may be unaware of the ancient origin of the law (M. Yadayim 4.3 || T. Yadayim 2.7). This raises the possibility that any rabbinic law or anonymous mishnaic ruling may correspond to a HLMM.

3. A HLMM may convey a ruling detailing the proper way to observe a Torah law (M. Peah 2.6); (b) may be identical to a rabbinic legal innovation (M. Yadayim 4.3); or (c) may convey an aggadic rather than a strictly halakhic tradition (M. Eduyyot 8.7).

4. A HLMM is absolutely authoritative: it requires no logical justification, is not open to dispute and cannot be set aside or overturned (M. Yadayim 4.3 || T. Yadayim 2.7 and, implicitly, M. Peah 2.6).

5. A HLMM is *not* absolutely authoritative: it is open to dispute and can be set aside or overruled (M. Eduyyot 8.7). (Note that number 5 contradicts number 4.)

6. A HLMM is distinct from Scripture as a source of law. If a law is said to be a HLMM it is not derived from Scripture and vice versa (implied by T. Sukkah 3.2).

7. The claim that a law, belief, or practice is a HLMM may be accompanied by a chain of transmission (however gapped or vague) leading back to Moses at Sinai and by terms indicative of the process of transmission (*mequbbal, shama mi-*). This implies a fairly literal understanding of the term HLMM (M. Peah 2.6, M. Yadayim 4.3 || T. Yadayim 2.7). It must be conceded, however, that even in these cases the term may be primarily metaphorical, indicating that a law is certain, correct, or ancient.

23 Safrai rejects the idea (advanced by Geiger) that HLMM arose as a strategy invoked to bolster the authority of laws disputed by sectarians (particularly the oral law of the Pharisees disputed by the Sadducees). He argues that there are many laws in tannaitic literature that lack a scriptural basis and would appear to require support, yet receive none ("Halakhah" [n. 13, above], 17–18). Safrai is certainly correct—there are many disputed rabbinic traditions that are not designated as HLMM. Nevertheless, I am less concerned to pinpoint the occasion for the rise of the term HLMM than I am to describe its function as perceived by the amoraim who built upon tannaitic precedent. Thus, my assertion that the category HLMM may be invoked to bolster the authority of a law, belief, or practice whose authority is unstable is not a genetic claim but a purely descriptive one.
(8) The claim that a law, belief, or practice is a HLMM may be simply asserted without a chain of transmission or terms indicative of the process of transmission (T. Sukkah 3.2). It may be that in such cases the term is not intended literally, but metaphorically designates a tradition of great antiquity (T. Sukkah 3.2). (Note that number 8 contradicts number 7.)

This last point requires further discussion. Whether HLMM is employed literally or metaphorically by the tannaim is disputed by scholars. Halivni views M. Peah 2.6 as the only case in which HLMM is certainly a literal reference to a historical Mosaic tradition. He maintains that the other two mishnaic passages employ HLMM hyperbolically to mean reliable or old, "as if" a HLMM. However, this conclusion is partly driven by the re-trojection of post-talmudic conceptions of a HLMM, and thus begs the question. That tannaitic usage of the term HLMM does not conform to post-talmudic assumptions regarding HLMM (e.g., undisputed, absolutely authoritative, non-biblical and non-rabbinic, halakhic rather than aggadic, etc.) does not necessarily mean that the term HLMM is used metaphorically in the tannaitic sources. It is more likely that the discrepancies between the tannaitic usage of the term HLMM and post-talmudic characterizations of HLMM are due to the fact that the tannaitic conception of a HLMM differs from the post-talmudic conception. For this reason, I have tried to identify the characteristic features of a HLMM as found in the tannaitic sources, without attempting to harmonize the discrepancies that occur among the sources themselves or between these sources and later talmudic and post-talmudic conceptions of HLMM.

Safrai is aware that modern scholars troubled by the designation of a Second Temple or rabbinic law as HLMM interpret the term metaphorically: it is as if this law were a HLMM. Safrai rejects the metaphorical interpretation of M. Yad 4.3 (in which HLMM indicates only that the law is certain or ancient) in favor of a literal interpretation. However, Safrai then argues that the rabbinic concept of HLMM was not historical so much as theological and was intended to express the idea of a single continuous revelation encompassing both the legal innovations of the rabbis and the revelation to Moses at Sinai. For the rabbis, HLMM is an ideological assertion that the Oral Torah draws from, has its roots in, and is nourished

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24 Halivni, "Reflections" (n. 13, above), 53.
25 That this is the more likely explanation is supported by the fact that the term HLMM clearly evolved over time, as Halivni himself observes (ibid., 69).
26 As in M. Peah 2.6 and M. Yad 4.3, respectively.
27 Safrai, "Halakhah," 16-17. Safrai believes there is no way to determine whether M. Peah 2.6 uses the term literally or metaphorically. According to Safrai, the term HLMM in M. Eduy 8.7 is not meant literally because the tradition in question is open to dispute—but this is also a retrojection of later definitions of HLMM upon the tannaitic sources.
by the Written Torah (35). Even disputes over details of the law can be said to belong to that which was revealed to Moses (see T. Peah 3.2 and M. Hal- lah 1.6), while trident chains are simply expressions of the continuity of learning rather than historical records of transmission.\textsuperscript{28} Paradoxically, in order to make the case that HLMM should be understood literally as designating a law that is Sinaitic, Safrai redefines the rabbinic notion of "Sinaitic" in a metaphorical manner: "Sinaitic" does not refer, Safrai suggests, to a law that was actually, historically revealed to Moses at Sinai and handed down orally. Rather, it refers to a law that has "its roots" in the Sinaitic revelation. But a theological or ideological linguistic usage of this type is by definition metaphorical, not literal. Thus, despite his assertion that tannaitic texts employ the term HLMM literally, Safrai advances a description of the tannaitic usage of the term that is strongly metaphorical.

Summary: The tannaitic sources, despite their small number, present an extraordinarily complex portrait of the term HLMM. In just four texts, the term HLMM is used in a variety of ways that conflict not only with later (i.e., post-talmudic) usage, but with one another. It should further be noted that the fundamental heterogeneity of the three mishnaic sources was preserved in the process of the Mishnah's redaction, suggesting that the process of redaction was not one that imposed ideological unity or that flattened or destroyed the distinctive elements of the various traditions serving as sources for the text in its final form.

Palestinian and Babylonian amoraim inherited this small but conflicted tannaitic corpus regarding HLMM. In the following analysis of the talmudic deployment of the term HLMM we will see that the amoraic sources contain very little that cannot be traced—even if only in embryonic form—to the tannaitic sources. In other words, taken together the tannaitic sources contain the seeds of nearly everything that will emerge in the amoraic material. Nevertheless, the two Talmudim subject the material they inherited in common, to different treatments. Analyzing the texts from both a source critical and synchronic perspective will reveal chronological and geographical distinctions within each Talmud as well as distinctions between

\textsuperscript{28} Safrai supports his argument with aggadic texts (some quite late) that feature what Halivni would call the maximalist position—that all of the Written and Oral Torah derives from the Sinaitic revelation. However, while aggadic texts can inform our interpretation of halakhic texts, they are not determinative, particularly when they date to a much later period. Very often halakhic and aggadic texts respond to the same cultural issue or problem, but in very different ways, as we shall see below. Thus, aggadic notions of a continuous revelation do not necessarily represent the halakhic usage of the term HLMM in tannaitic texts. Further, the use of technical terms of transmission (\textit{mequbbal} and \textit{shama mi-}) strongly implies a literal understanding of the phrase HLMM as indicating a law revealed to Moses and handed down orally.
the two Talmudim. It is hoped that this exercise will show the merit of both source critical and synchronic approaches to the study of the talmudic material.

I. Source Critical Analysis of the Talmudim

The term HLMM appears in 11 distinct sugyot of the Yerushalmi, and in 26 distinct sugyot of the Bavli. Translations of Yerushalmi are based on the text of the first printed edition (Venice). Significant variants, particularly from the Leiden ms., are noted. Translations of the Bavli are based on the standard printed edition, occasionally emended in light of manuscript or other evidence. Significant variant readings are cited in the notes.

The total number of Yerushalmi sugyot containing the term HLMM is actually 12, due to a parallel sugya. A complete list follows: Y. Ber 5.1 8d; Kil 2.2 27d; Shev 1.7 33b || Suk 4.1 54b; Ter 2.1 41b; Or 3.8 63b; Shab 1.6 3b, 10.4 12c; Meg 1.11 71d, 4.9 75c; Hag 1.2 76b; Naz 7.3 56c. For compilations of HLMM see Halivni, "Reflections" (n. 13, above), 51 n. 47, and Safrai, "Halakhah" (n. 13, above), 14. It should be noted that these lists vary and often include laws not explicitly labeled HLMM by the talmudic sources themselves. This study is confined to texts that explicitly refer to a HLMM, or employ the term HLMM or an equivalent (e.g., some cases of NLMB indicate a HLMM).

As for the Bavli, the total number of sugyot is actually 27, due to a parallel sugya. The complete list follows: B. Shab 28b, 62a, 79b; Eruv 4a || Suk 5b; Eruv 97a; Pes 110b; Yoma 80a; Suk 34a, 44a; Taan 3a; Meg 19b, 24b; MQ 3b; Ned 37b; Naz 56b; Qid 38b–39a; BB 12b; Mak 11a; AZ 36b; Zev 110b; Men 29b, 32a–b, 35a–b, 89a; Nid 45a, 72b.

In this study, I follow Richard Kalmin's definition of Palestinian and Babylonian sources, presented most recently in The Sage in Jewish Society of Late Antiquity (London and New York: Routledge, 1999). Kalmin writes: "The term 'Palestinian sources' refers to statements attributed to, as well as stories involving, Palestinian rabbis, preserved in the various rabbinic compilations of late antiquity: the Bavli, Yerushalmi, and midrashic collections. The term 'Babylonian sources' refers to statements by, and stories involving, Babylonian sages found in the same rabbinic compilations." (28). I employ the term "early" to describe tannaim, Palestinian amoraïm of the first two or three generations, and Babylonian amoraïm of the first three generations. I employ the term "late" to describe Palestinian amoraïm from the fourth and fifth generations (and occasionally the third, which functions as something of a transition between early and late) and Babylonian amoraïm from the fourth generation on. I assume, following Shamma Friedman in "Yevamot X" (n. 8, above), that the stammaitic layer of the Talmud is late, or post-amoraic (see Friedman's discussion, 293–301). This assumption finds support in the strong correspondence between stammaitic and later amoraic views. In general, the stammaitic layer appears to be the work of the sugya's redactor(s).
small number of sources. At times a particular phenomenon will be observed in just one or two cases. This would constitute very weak evidence of shifts over time. However, it is to be hoped that the cumulative weight of several differences among various sources is a powerful argument for chronological and geographical difference within the gemaras.

Early and late, Palestinian and Babylonian sources differ as to the status and authority of a HLMM. By status, I mean the position of HLMM in relation to Scripture: Is HLMM identical to or distinct from the written revelation recorded in Scripture? By authority, I mean the authority of HLMM relative to the authority of Scripture: Is the authority of HLMM greater than, lesser than, or equal to the authority of Scripture? As regards status, Babylonian sources—whether early or late, attributed or stam—are consistently presented in both Talmudim as drawing a distinction between HLMM and Scripture as mutually exclusive sources of law. By contrast, later Palestinian sages do not draw this distinction. (The mixed view of the stam of the Yerushalmi will be addressed below.) As regards authority, early Palestinian (and possibly early Babylonian) sources draw a distinction between Scripture and HLMM. According to the evidence of both Talmudim, later Palestinian and Babylonian sources and the stam of both Talmudim assign a high level of authority to HLMM, identical in certain important respects to the authority of Scripture.

Y. Sheviit 1.7 33b || Y. Sukkah 4.1 54b attributes two statements to an early Palestinian amora, R. Yohanan (PA 2).31 In the first instance we read, “R. Zeira (PA 3) in the name of R. La (PA 3), R. Yissa (PA 3) in the name of R. Yohanan: The willow ritual is a HLMM.”32 This statement is immediately followed by the observation, “And this is not in accordance with Abba Shaul (tanna), for Abba Shaul said, ‘The willow ritual is a devar Torah (a scriptural law; plural: divrei Torah)”’—derived exegetically from Leviticus 23:40. Likewise, in the second instance we read, “R. Ba (PA 4), R. Hiyya (PA 3) in the name of R. Yohanan: The willow ritual and the water libation (on Sukkot) are HLMM.” This statement is immediately followed by the statement, “And this is not in accordance with R. Akiva (tanna), for R. Akiva said, ‘The water libation is a devar Torah’”—derived exegetically from Numbers 29:19, 31, and 33. These passages clearly set in opposition the categories HLMM and devar Torah as distinct and mutually exclusive sources of law. R. Yohanan, a relatively early Palestinian amora, is said to hold that the willow ritual and the water libation ritual are HLMM, in op-

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31 PA=Palestinian Amora, BA=Babylonian Amora, and the number following these designations indicates the sage’s generation.
32 Leiden ms. omits “in the name of.”
33 This teaching is presented stam in T. Suk 3.2.
position to older tannaitic traditions (cf. T. Sukkah 3.2) that assert a biblical source for these practices.

Admittedly, the distinction between HLMM and Scripture is only explicitly signalled by the anonymous redactor. Can we assume, then, that the statement attributed to R. Yohanan expresses this distinction independent of its redactional context? The assumption is not unreasonable, since elsewhere R. Yohanan is said to draw a distinction between HLMM and Scripture as sources of law. In Y. Orlah 3.8 63b, he is represented as viewing HLMM and Scripture as distinct sources of law. The mishnah to which the gemara is attached deals with the application of certain agricultural rules outside the land of Israel and states: “The prohibition of new produce applies everywhere min ha-Torah (according to Scripture); [the application of the prohibition of] orlah [outside Israel] is a halakhah, and [the application of the prohibition of] kilayim [outside Israel] is rabbinic (mi-diorei soferim).” In the gemara, R. Yohanan is cited as saying that the term halakhah employed by the mishnah means HLMM. Thus, whatever the mishnah’s intended meaning, it appears that in the statement attributed to R. Yohanan, Scripture, HLMM and rabbinic authority are seen as three distinct sources of law.

This depiction of R. Yohanan and other early Palestinian authorities appears also in the Bavli. B. Qiddushin 38b–39a, like its Yerushalmi parallel in Y. Orlah 3.8 63b, presents R. Yohanan as viewing HLMM and Scripture as distinct sources of law in connection with the mishnah’s identification of three agricultural laws as deriving from Scripture, halakhah, and rabbinic authority, respectively. Further, the Bavli contains two aggadic traditions in which tannaitic authorities are depicted as maintaining a distinction between HLMM and Scripture. In the famous story of R. Akiva’s schoolhouse (B. Menahot 29b, discussed below, pp. 98–100) R. Akiva does not offer a biblical derivation for a particular law, asserting instead that the law is a HLMM. Similarly, B. Menahot 89a || B. Niddah 72b, also discussed below (p. 101), couples R. Elazar b. Azariah’s rejection of R. Akiva’s exegetical gymnastics with the assertion that the law in question is a HLMM. While these traditions are likely reworked by Babylonian tradents and editors, their depiction of a (very) early Palestinian view of the status of HLMM is consistent with the depiction of the early amora, R. Yohanan, that appears in the Yerushalmi.

By contrast, two other texts suggest that later Palestinian authorities viewed HLMM and Scripture as equivalent rather than distinct and mutually exclusive categories. M. Hagigah 1.2 describes a dispute between the house of Hillel and the house of Shammasi over the minimum amount required to fulfill the obligation of the festal offering and the pilgrimage offering, the former maintaining that one maah of silver fulfills the obligation of the pilgrimage offering and two pieces of silver (=two maot) that of the
festal offering. In the gemara (Y. Hagigah 1.2 76b), R. Yohanan states that this view (one maah/two maot) is devar Torah. R. Yose (PA 3) teaches before R. Yohanan that any amount is permitted according to Scripture, but the sages established a minimum of one maah/two maot. To this point, the sugya is consistent with what we have seen previously. R. Yohanan and R. Yose, both early sages, are represented as viewing Scripture, HLMM and rabbinic authority as distinct and mutually exclusive sources of law. Immediately following, a late Palestinian amora, R. Yose b. R. Bun (PA 5), points to two teachings by R. Yohanan that might appear to be in conflict. Here, R. Yohanan declares the prescribed minima of one maah/two maot to be biblical in origin, while elsewhere he has stated that prescribed minima in general are HLMM. R. Yose b. R. Bun asserts that these statements are not contradictory because HLMM and Scripture are equivalent, or essentially indistinct, as sources of law. Thus, according to this 5th generation amora, R. Yohanan can in all consistency maintain (a) that prescribed minima in general are HLMM and (b) that the minima for these two offerings are biblical. The two designations—biblical and HLMM—amount to the same thing.34 R. Yose b. R. Bun ascribes the equation of HLMM and Scripture to R. Yohanan, even though (a) in earlier strata of this very sugya and in other sugyot35 it is evident that these terms refer to distinct sources of law; and (b) R. Yohanan himself is represented as maintaining that distinction in the two texts discussed above.

A second example, this time involving the stam, may be found in Y. Nazir 7.3 56c regarding the anonymous and exceptional mishnaic ruling that the days of impurity as a gonorrhceic and the days of sequestration for scale-disease do not diminish a nazirite’s term of naziriteship (unlike the days of impurity while contaminated by a corpse). The gemara opens with a statement by R. Elazar b. Pedat (PA 3) that this ruling is a HLMM.36 This statement is followed by a stamaitic passage that puts forward biblical passages from which the law in question is said to derive. There is no suggestion that the derivation of this law from Scripture in any way challenges R. Elazar’s claim that the law is a HLMM, suggesting that in the eyes of the stam, HLMM and Scripture are not mutually exclusive categories.37

34 The precise nature of this equivalence is not clear from the discussion in the sugya.
35 See Y. Shev 1.7 33b; Y. Suk 4.1 54b; and Y. Or 3.8 63b, which uses min ha-Torah instead of devar Torah.
36 We shall return to a more detailed discussion of R. Elazar b. Pedat’s statement below.
37 It is not certain, however, that the stam’s silence should be construed as approval. It may be that a third example appears in Y. Meg 1.11 71d. In this sugya, the stam cites Exod 13:9 as a source for the law that only the hide of a pure animal may be used for a Torah scroll. This law appears as one of a number of laws, many of
In these seven sources from the Yerushalmi and Bavli, early Palestinian authorities (tannaim, R. Yohanan and R. Yosi) maintain a distinction between HLMM and Scripture as sources of law, a distinction that is not upheld by a later Palestinian sage or source—R. Yose b. R. Bun in one case and the stam in another. The stam’s position, however, is rather mixed. In Y. Nazir 7.3 56c the stam appears to equate a HLMM with Scripture, but in Y. Sheviit 1.7 33b || Y. Sukkah 4.1 54b and Y. Orlah 3.8 63b the stam faithfully preserves the view of early Palestinian sages that the two are distinct sources of law. It is possible that the stam conflates HLMM and Scripture as sources of law (as in Y. Nazir 7.3 56c), and the latter two exceptional cases are simply examples of the redactional preservation of early sources, even when those sources do not align with the view of the redactor.

The Babylonian evidence is entirely consistent on this issue. Although we lack any relevant attributed sources, the stam of the Bavli always distinguishes HLMM and Scripture as distinct and mutually exclusive sources of law. In some cases, the stam imposes this distinction on tannaitic and amoraic sources not directly concerned with this question. For example, several beraitot in B. Sukkah 34a (|| Y. Sheviit 1.7 33b and Y. Sukkah 4.1 54b) expound Leviticus 23:40 in various ways, but since none derives the willow ritual of Sukkot from this verse the stam assumes that the general view of the rabbis must be that the law is a HLMM. A related case is B. Taanit 3a, which focuses on the water libation ritual of Sukkot. When no biblical authority can be found for determining the duration of the ritual, the stam finally asserts that the performance of the water libation throughout the seven days of the festival is founded on a tradition (hilkheta). This claim is then supported by the tradition of R. Yohanan, that the water libation ritual is a HLMM. B. MQ 3b features R. Yohanan’s teaching in a different context, where again the stam constructs the discussion around Scripture, HLMM and rabbinic authority as mutually exclusive categories. In B. Yoma 80a, the assumption that HLMM and Scripture are distinct sources of law leads the stam to emend a tradition attributed to R. Yohanan. Finally, in B. Eruvin which are explicitly labelled HLMM, leading traditional commentators to assume that all the laws listed in the sugya are HLMM (e.g., Rambam). If we accept this assumption, we might conclude that in the eyes of the stam, HLMM and Scripture are not distinct and mutually exclusive sources of law, since the stam cites a biblical source for the law. However, it is not clear that the law is in fact a HLMM.

38 One possible exception is discussed in n. 39.
4a (cf. B. Sukkah 5b), the stammaitic redaction organizes its source materials around the distinct categories of Scripture and HLMM. The stam discusses the claim that certain laws are HLMM and argues that since biblical exegesis yields some of these laws, then only that which is not biblically derived is HLMM.\textsuperscript{39}

The combined evidence of the two Talmudim paints a consistent portrait: The Bavli’s redactional voice coincides with early Palestinian sources (tannaitic and early amoraic) that would maintain a distinction between HLMM and Scripture as mutually exclusive sources of law. The conflation of HLMM and Scripture as sources of law occurs only among later Palestinian sources.\textsuperscript{40} The picture changes when we consider the perceived authority of a HLMM. Only early sources differentiate the authority of HLMM and Scripture. By contrast, late sources—both Palestinian and Babylonian, attributed and stammaitic—tend to equate the authority of HLMM and Scripture. In these sources HLMM is perceived to be equal to Scripture in one of four key ways: (a) HLMM is not open to change or abolition, (b) HLMM can serve as a basis for legal analogies, (c) HLMM has no logical justification, and (d) HLMM is decided stringently in cases of doubt.

(a) Early and late sources differ on whether a HLMM, like Scripture, is open to change or abolition. For example, Y. Hagigah 1.2 76b features a debate over the status of the minima prescribed for various laws. R. Yohanan (PA 2) holds that prescribed minima are HLMM while R. Yose (PA 3), R. Yonah (PA 4) and R. Hoshiaiah (PA 3) hold that prescribed minima are rabbinic. R. Yosi b. R. Bun (PA 5) explains the view of R. Hoshiaiah: R. Hoshiaiah believes prescribed minima to be rabbinic and not HLMM precisely because they are open to change by rabbinic courts. Thus, the passage attests to the view among transitional and later Palestinian authorities that a HLMM, like Scripture, is not open to change by rabbinic authorities and that any law subject to change is by definition a rabbinic law rather than a HLMM. In an interesting postscript the stam notes that in the view

\textsuperscript{39} In the course of its discussion, the stam cites a tradition attributed to R. Isaac (PA 3) according to which a particular law is a \textit{devar Torah}. R. Isaac’s tradition is cited in support of the stam’s view that the law is a HLMM, suggesting that here \textit{devar Torah} and HLMM are taken by the stam of the Bavli as equivalent terms. This would seem to undermine my claim that only later Palestinian sages and the Yerusalmi stam equate HLMM and Scripture. However, the tradent who applies the term \textit{devar Torah} to the law discussed in this sugya is a 3rd generation Palestinian authority (transitional generation, not strictly early or late). It may be that this sugya signals the Bavli’s faithful preservation of a Palestinian source according to which HLMM and Scripture are not distinct sources of law. The language of the tradition was not modified in line with Babylonian usage.

\textsuperscript{40} The third generation of Palestinian sages is transitional and includes representatives of the early view (R. Yose) and the late view (R. Isaac).
of some, R. Yohanan retracted but R. Yonah and R. Yonatan say he did not, and bring evidence to this effect. In short, even when the problem of alteration by rabbinic authorities is explicitly raised an early authority still did not see fit to equate HLMM and Scripture.

It may be significant that the three Palestinian amoraim allied against R. Yohanan in this passage (R. Yosi, R. Yonah and R. Hoshaia), are all of Babylonian origin. Babylonian sources from at least the third generation on (we lack clear evidence for earlier Babylonian sages) also espouse the view that prescribed minima must be rabbinic, rather than scriptural or HLMM, apparently because they are subject to change by rabbinic authorities.

In B. Yoma 80a, a discussion of prescribed minima opens with a tradition attributed to R. Elazar (another Babylonian who eventually emigrated to Palestine, where he is counted among the third generation of Palestinian amoraim), according to which prescribed minima are open to change by rabbinic courts (cf. the tradition attributed to R. Hoshaia in Y. Hagigah 1.2 76b cited above). The implication of this tradition is that prescribed minima are rabbinic rather than HLMM. Later in the sugya R. Yohanan is said to hold that prescribed minima and penalties are HLMM. The addition of penalties to the view attributed to R. Yohanan elsewhere (Y. Hagigah 1.2 76b; B. Eruvin 4a) is significant because it prompts the stammatic objection, "but penalties are biblical!" followed by the proposed emendation of R. Yohanan’s statement: “Rather, read 'R. Yohanan said: the prescribed minima for penalties' are HLMM; it was also taught thus [in a beraita]: 'the minima required for penalties are HLMM.'” As Epstein already noted, Bavli beraitot that lack a Palestinian parallel, and that repeat an amoraic statement that has been generated through emendation or inference by the stam, are not, in all likelihood, genuine. In this case, it is likely that the ideological tendenz of the stam and the dialectical needs of the sugya have led to this revision of R. Yohanan’s statement and the creation of the beraita

41 It is not clear whether later Palestinian authorities first viewed HLMM to be unalterable and communicated this new view to Babylonian sages from whence it came to dominate Babylonian thinking on the subject, or whether Babylonian sages held this view and communicated it to Palestinian sages who spent time in Babylonia. For this reason I will merely point out the correspondence between late Palestinian and Babylonian views without indicating influence in one direction or the other.

42 On this reading (attested in most mss. and editions), the emendation of R. Yohanan’s tradition is introduced by the stam. JTS ms. 0218 reads: “Rabbi Yudan said.” On this reading, the emendation of R. Yohanan’s tradition is introduced by a late Palestinian sage (Rabbi Yudan=PA 4). However, R. Yudan is not mentioned again in the Talmud, suggesting that this reading is unlikely (see R. Rabbinovicz, Diqduqi Soferim [1959 reprint of Munich: Huber, 1867–97; henceforth DS], 5:259 n. ayin).

that supports that revision. The revision brings R. Yohanan's statement into line with the later Palestinian and Babylonian view that prescribed minima, being subject to change, cannot be HLMM. R. Yohanan is here made to say that only prescribed minima for penalties are HLMM, leaving open the possibility that all other prescribed minima are rabbinic. R. Yohanan as remade by the stam of the Bavli maintains that a HLMM is like Scripture in its being insusceptible to alteration by a rabbinic court.

Susceptibility to alteration is the topic of a further set of sources in which the same distinction between early and late, Palestinian and Babylonian sources is apparent. Y. Shevii 1.7 33b || Y. Sukkah 4.1 54b discusses an exceptional law presented in M. Shevii 1.6: If ten saplings are spread out evenly within a certain area, it is permitted to plow the entire space for their sake in a pre-Sabbatical year right up until the New Year. Normally such plowing is prohibited (lest the plowing appear to benefit the growth of the produce of the seventh year, when certain agricultural labors are prohibited). Although this exceptional law is not labeled a HLMM, its juxtaposition to a discussion of two laws (the willow ritual and the water libation ritual of Sukkot) explicitly labeled HLMM implies that the law of the ten saplings is also understood to be a HLMM (this is certainly the assumption of the remainder of the sugya). A Babylonian-born émigré, R. Hiyya b. Abba (PA 3), is said to have asked R. Yohanan (PA 2) how it is that the law

44 Like the Palestinian sources, Babylonian sources can be differentiated chronologically. In B. Eruv 4a, R. Hiyya b. Ashi (BA 2) is said to have stated in the name of Rav that prescribed minima and certain other matters are HLMM. The Bavli stam objects, Aren't they biblical? and then cites a tradition by R. Hanan (PA 3) in support of the derivation of prescribed minima from Scripture. The stam itself answers the objection: prescribed minima are not, in fact, Scripture. They are hilkheta and the biblical verses adduced here are only asmakhtoätz. It is not clear if hilkheta here means HLMM or rabbinic law (see Rashi), but the idea of biblical verses serving as props or mnemonics for laws strongly suggests that the term hilkheta here refers to rabbinic law. Thus, despite an early Babylonian tradition that prescribed minima are HLMM (and a Palestinian tradition ascribing them to Scripture) the Bavli stam maintains that prescribed minima are only rabbinic. Unfortunately, however, there is no indication that the early Babylonian sages R. Hiyya b. Ashi and Rav held their view despite the fact that prescribed minima are subject to change by rabbinic courts. Thus, we cannot state with confidence that this text attests to an early Babylonian view that HLMM is not equal to Scripture, and that HLMM is subject to alteration while scriptural law is not.

45 Third- and fourth-generation Palestinian authorities report R. Yohanan's designation of the willow ritual and water libation ritual of Sukkot as HLMM. It bears emphasizing that this tradition is reported by late Palestinians, even though it is not, in general, consistent with late Palestinian views. The preservation of early opinions by later tradents, even when these opinions contradict later opinion, is an argument for the preservation of source materials by the Talmudim.
of the ten saplings is ignored in contemporary practice so that even fields without saplings are plowed late in the pre-Sabbatical year. In other words, a later Palestinian sage, perhaps influenced by Babylonian traditions, assumes that, like Scripture, a HLMM should not be open to alteration by rabbinic authorities.46

The sugya presents two solutions to the objection raised by R. Hiyya b. Abba, one a harmonizing modification of R. Yohanan’s original statement according to which the HLMM contained its own “amendment clause” as circumstances might require. In a second solution, R. Bara Zavda (PA 3) cites a tradition by the late tanna/early amora, R. Honia of Bet Hauran (=R. Nehuniah of Bet Hauran in the Bavli), that declares all three rituals—the willow ritual, the water libation ritual and the ten saplings law—to be prophetic in origin (and thus classed with rabbinic rather than scriptural law).47 In keeping with this declaration, the stam suggests that the designation HLMM (assigned by R. Yohanan) is metaphorical, rather than literal (see below, pp. 105–106, for a detailed discussion of this solution).

The foregoing analysis of Y. Shevii 1.7 33b || Y. Sukkah 4.154b provides the following data: Early Palestinian authorities may have considered the exceptional law regarding ten saplings to be a HLMM. Later Palestinian authorities, with extensive Babylonian connections, argue that the susceptibility of this law to alteration indicates that it cannot be a HLMM because a HLMM, like Scripture, is not open to alteration by rabbinic authorities.

46 Y. Shev 1.1 33a cites a beraita (see T. Shev 1.1) indicating that R. Gamliel lifted the prohibition against plowing prior to the start of new year.

47 It is surprising to find such an early Palestinian sage (R. Honia) subscribing to the view that these laws are prophetic/rabbinic. Early (i.e., tannaitic) Palestinian views of the water libation ritual and the willow ritual claim either that they are biblical or that they are HLMM. Indeed, according to T. Suk 3.2, rejection of these rituals as biblical or HLMM was characteristic of sectarians. R. Akiva and Abba Saul ground these two rituals in Scripture while the stam of the Tosefta asserts that they are HLMM. Only in this sugya of the Yerushalmi is it claimed that R. Honia viewed these laws as prophetic. See, however, the Vatican printed edition in which R. Bara Zavda states in the name of R. Honia that the willow ritual and water libation ritual are HLMM and only the law of the ten saplings is an institution of the prophets. This reading is more consistent with Palestinian tradition as attested in other sugyot. Nevertheless, it is in all likelihood a correction based on the Bavli. In the Bavli’s version of the tradition of R. Honia (B. Suk 44a) all three rituals are said to be HLMM. The Bavli’s version is itself best understood as a conflation of distinct Palestinian traditions, for which see below, pp. 105–106. It bears emphasizing that the amora reporting R. Honia’s tradition in the Yerushalmi is R. Ba bar Zavda, a Palestinian who spent time in Babylonia learning with Babylonian sages. His version of R. Honia’s teaching corresponds to and supports the Babylonian conviction (evident in a sugya to be discussed below) that these laws are neither biblical nor HLMM.
They conclude that the law is of prophetic origin (i.e., it is "rabbinic" rather than "Scriptural" law) and harmonize earlier Palestinian sources to this view.\textsuperscript{48}

These distinctions among early and late, Palestinian and Babylonian sources appear also in a Babylonian sugya that parallels Y. Sheviti 1.7 33b. B. Moed Qatan 3b differs in detail from the Palestinian sugya just discussed, but in certain important respects it is similar. First, Palestinian sages report that the laws concerning the ploughing of fields in the pre-Sabbatical year were abrogated by R. Gamliliel and his court. Second, the stam points out that according to R. Assi reporting in the name of R. Yohanan in the name of R. Nehuniah of Bet Hauran, these laws (along with the water libation ritual and willow ritual) were a HLMM.\textsuperscript{49} The stam clearly assumes that this is a problem—a HLMM cannot be abrogated or modified by a rabbinic court. After some further dialectical twists and turns, involving the citation of a wide range of early Palestinian sources, Rav Ashi proposes the following resolution: R. Gamliliel viewed the laws of ploughing as a halakhah (meaning here, HLMM) but understood such halakhot to be valid only while the temple stood, and not subsequently. In this sugya, as in its Palestinian parallel, later Palestinian and Babylonian sages and the stam of the Bavli maintain that a HLMM is not open to change by rabbinic authorities and employ various techniques to legitimate what appears to be just such a change.\textsuperscript{50}

(b) Early and late sources may differ over whether a HLMM can serve as a basis for legal analogies, but our sources are so few that it is difficult to make strong claims of certainty. B. Makkot 11a cites a tannaitic dispute over analogies that involve a HLMM. Both tannaim maintain that since Exodus 13:9 juxtaposes the Torah scroll and tefillin, it is permitted to draw an analogy from the one to the other. They differ, however, over the anal-

\textsuperscript{48} The parallel sugya of the Bavli (B. Suk 44a) will be discussed below (pp. 104–106). The Babylonian sugya features the same revision of earlier Palestinian sources, but the motivation there is not explicit. For that reason, I do not include it here as evidence for the view that early and late authorities differ over a HLMM's susceptibility to change by rabbinic authorities.

\textsuperscript{49} Cf. Y. Shev 1.7 33b \parallel Y. Suk 4.1 54b where the same sage says these three rulings are prophetic.

\textsuperscript{50} This is, I have claimed, in contrast to early Palestinian sages who would not maintain that a HLMM is immune to change or abrogation. Just such a view is attributed to a Palestinian sage in B. Mak 11a. It is asserted there that sewing tefillin with gutstring is a HLMM. Rav reports that his uncle R. Hiyya (a fifth-generation tanna) sewed his tefillin with flaxen thread but the halakhah is not in accord with his practice. Assuming that R. Hiyya believed the gutstring requirement to be a HLMM, we may have evidence that among some early Palestinians, a HLMM was not incontrovertible.
ogy that may be drawn. According to one tanna, the analogy includes HLMMs. Thus, since it is a HLMM to use gut-string to sew up tefillin, one should also use gutstring to sew together a Torah scroll.

In Y. Peah 2.6 17a (|| Y. Hagigah 1.8 76d) an analogy drawn from a HLMM is revised in light of the assertion by Shmuel (BA 1) as cited by R. Zera (PA 3) that analogies are not made on the basis of “halakhot.” Despite this early tradition, the stam goes on to draw an analogy on the basis of this very HLMM, suggesting that what was disputed in tannaitic and even early amoraiic times was no longer questioned in later, or stamaitic times: a HLMM is equivalent to the Torah in so far as analogical inferences are concerned.

(c) Sources differ on whether a HLMM, like Scripture, ever has a logical justification (taam). In Y. Shabbat 1.6 3b, R. Elazar b. Pedat (PA 3) identifies the exceptional ruling in the Mishnah as a HLMM (see pp. 93–94, below). A taam for this ruling is then provided in a beraita. Similarly, in Y. Shabbat 10.4 12c R. Elazar b. Pedat again identifies an exceptional ruling in the Mishnah as a HLMM, despite the fact that a taam is provided by the mishnah itself. In neither case does the stam comment on the provision of a logical justification for a law identified as a HLMM. Is this silence to be construed as the stam’s implicit approval, or merely as its faithful preservation of earlier sources even though they run counter to the view of the redactor? It is difficult to know, but Y. Megillah 1.11 71d suggests that the stam does not in general maintain that a HLMM has a taam. In the latter text, five laws are explicitly said to be HLMM. In the midst of this list R. Ba b. R. Hiyya bar Ba and R. Hiyya (both PA 3) in the name of R. Yohanan, report that a particular technique for sewing parchments into a Torah scroll, enjoined so that the scroll not tear, is a halakhah. We may assume, on the basis of the general context as one in which HLMMs are being discussed, that halakhah here does indeed mean “HLMM.” In what appears to be an insertion by the stam, the tradent is said to correct himself (literally, he struck himself on the head), saying: “If it is a halakhah, then why the justification ‘that it not tear,’ and if it is for the reason that the scroll not tear, then why say it is a halakhah?!” In other words, the designation HLMM and the presence of a logical justification are incompatible. In this regard, then, HLMM is like Scripture—neither has a logical justification. If we assume this to be the position of the stam, then in all likelihood, Y. Shabbat 1.6 3b and Y. Shabbat 10.4 12c should be understood as simply preserving.

51 In view of the assertion (found also in Y. Peah 2.6 17a) that analogies cannot be drawn from special dispensations or personal deeds (i.e., from exceptional and individual cases), it may be that the early sages objected to drawing analogies from a HLMM because they perceived HLMM to cover exceptional or special cases (in keeping with tannaitic usage of HLMM). It may be that later amoraim did not perceive HLMM as indicating exceptional or special case laws.
but not endorsing, the views of earlier sources (see discussion below, pp. 93–95).

The incompatibility of HLMM and logical justification is apparent in Babylonian sources. B. Megillah 19b parallels Y. Megillah 1.11 71d, just discussed. This time a Babylonian amora Rav Hiyya bar Ashi (BA 2) reports R. Yohanan’s tradition of a HLMM that prescribes sewing a Torah scroll in a manner that will prevent tearing. He, too, according to the stam, reconsiders and apparently retracts in light of the fact that a taam is provided for the law. Thus, an early Babylonian amora who gives a logical justification for a HLMM is “corrected” by the stam. Likewise, in B. Pesahim 38b a tannaitic tradition is reinterpreted by the stam because of the latter’s assumption that a HLMM has no logical justification. This tradition is not subject to the same reinterpretation in its Palestinian contexts (T. Hallah 1.6; cf. T. Peah 3.2).52 Thus, we find that tannaitic, transitional Palestinian and early Babylonian sages do not deem HLMM and logical justification to be mutually exclusive (as are Scripture and logical justification). By contrast, the stam of the Bavli does see them as incompatible. While the stam of the Yerushalmi holds the same view in at least one sugya, it is not clear that it holds this view consistently.

(d) Early and late, Palestinian and Babylonian sources differ over whether HLMM is decided stringently in cases of doubt. M. Orlah 3.7 states that doubtful cases involving orlah fruit are decided stringently in the land of Israel and leniently in Syria. The Mishnah adds that the prohibition of orlah outside the land of Israel is a halakhah (as opposed to a scriptural ruling). This explains the leniency in doubtful cases, since only doubtful cases of scriptural law are decided stringently. The Yerushalmi (Y. Orlah 3.8 63b) records diverging opinions (Babylonian vs. Palestinian) over the meaning of the term halakhah in the Mishnah. Shmuel (BA 1) states that halakhah here means a voluntary provincial legal practice while R. Yohanan (PA 2) states that halakhah here means HLMM. That R. Yohanan designates this law a HLMM despite the fact that doubtful cases are decided leniently implies that R. Yohanan differentiates HLMMs from Scripture, since doubtful cases of scriptural law are always decided stringently. A later Palestinian sage (R. Yose, PA 3) objects to R. Yohanan: How can this law be a HLMM when doubtful cases are decided leniently? Clearly, this slightly later Palestinian sage (a Babylonian émigré) does not differentiate HLMM and Scripture, and maintains that doubtful cases of a HLMM, like doubtful cases of scriptural law, are to be decided stringently.53

52 We may speculate that one factor accounting for the Bavli’s failure to explicitly identify the laws in M. Shab 1.6 and 10.4 as HLMM is that logical justifications were known for both.

53 R. Yohanan is represented as responding that this particular HLMM was
The same chronological and geographical distinctions are attested in the Bavli’s parallel to this sugya, at B. Qiddushin 38b–39a. Indeed, the same opening dispute appears in the Bavli, but now with Babylonian tradents. Thus, Rav Judah (BA 2) says in the name of Shmuel (BA 1) that the term halakha in M. Orlah 3.8 refers to a voluntary provincial practice, while Ulla (BA 3) states in the name of R. Yohanan (PA 2) that it refers to a HLMM. In the subsequent dialectic, various Babylonian authorities assert in rather strong terms that there is no mandatory orlah prohibition outside Israel. Levi (a Palestinian émigré to Babylonia contemporaneous with Shmuel) tells Shmuel that he would eat doubtful orlah outside Israel, and R. Awia (BA 4) and Rabbah bar bar Hanah (BA 3) are said to have supplied each other with doubtful orlah. The keen scholars of Pumbeditha are reported to have said that there is no orlah prohibition in the diaspora. When Rav Judah informs the Palestinian R. Yohanan of the views of these scholars, Yohanan curses their offspring. The stam of the Bavli defends the scholars of Pumbeditha by asserting that early tannaim also taught that there is no orlah in the diaspora (the view is traced back to R. Elazar the Great). When a tradition is cited in which R. Elazar does not in fact hold such a view, the stam simply emends the problematic teaching! The Bavli then concludes just as the parallel sugya in the Yerushalmi concluded:

R. Assi said in R. Yohanan’s name: “[The prohibition of] orlah in the diaspora is a HLMM.”

R. Zera said to R. Assi: “But we learned, ‘Doubtful orlah is forbidden in the land [of Israel] but permitted in Syria.’”

He was astonished for a moment, then he answered him: “Perhaps it (the HLMM) was given thus: ‘Doubtful [orlah] is permitted in the diaspora, certain [orlah] is forbidden.’”

When R. Assi (PA 3) reports R. Yohanan’s view it is challenged by R. Zera (PA 3)—how can the prohibition of orlah in the diaspora be a HLMM when doubtful cases are decided leniently?! HLMMs are comparable to Scripture, and doubtful cases should be decided stringently! R. Assi is taken aback at first, but then responds that this particular HLMM specified that doubtful cases should be decided leniently, even though leniency is not generally the rule for doubtful HLMMs. With this answer, R. Yohanan’s view is brought into line with the later Palestinian and Babylonian view of HLMM as equivalent to Scripture.

Both Talmudim attest to the same phenomenon: an early Palestinian amora distinguishes HLMM from Scripture in regard to the rules for re-

given with the specification that doubtful cases would be decided leniently, and R. Yose praises the brilliance of this response. It is likely that this response is not original to R. Yohanan.

In the Yerushalmi parallel discussed above it is R. Assi (=R. Yose) who poses the challenge to R. Yohanan, and R. Yohanan who answers.
solving doubtful cases. Babylonian sources (as it happens, primarily the stam) equate HLMM with Scripture in this regard, as do Palestinian sages of a transitional generation (R. Zera and R. Yose). The stam of both Talmudim (particularly the Bavli) organizes its sources in such a way as to bring early Palestinian tradition into line with later Palestinian and Babylonian views.

In summary: our source critical analysis of sugyot featuring HLMM reveals a chronological tendency to conflate and equate the authority of HLMM and Scripture. In Palestinian sources this shift in authority coincides with a shift in status: early Palestinian sources view Scripture and HLMM as distinct sources of law and do not equate their authority. Unlike scriptural laws, HLMMs are open to change by rabbinic authorities, are excluded from analogies, may have logical justifications and are decided leniently in cases of doubt. Later Palestinian sources appear to conflate Scripture and HLMM as sources of law. This change in status may account for the elevation of the authority of HLMM in later Palestinian sources. Like scriptural laws, HLMMs are not open to change by rabbinic authorities, are included in analogies, do not have logical justifications, and are decided stringently in cases of doubt. The third generation of Palestinian amora'im represents something of a transition between these two conceptions of HLMM, with some tradent's adopting the earlier position and others adopting the later position.

The same chronological distinction obtains in Babylonian sources. The few early sources we have do not equate the authority of HLMM and Scripture as regards analogies or logical justification. But late Babylonian sources, like later Palestinian sources, do equate the authority of HLMM and Scripture. It is interesting to note, however, that the Bavli equates the authority of HLMM and Scripture, even though it reverts to the older Palestinian perception of HLMM and Scripture as distinct sources of law. This suggests that Oral Torah had acquired in Babylonia an elevated status in its own right. Finally, the chronological and geographical distinctions isolated here support the proposition that the Talmud is a variegated "thick" document that preserves a range of source materials accessible to the critical scholar, in contrast to the "thin" relatively undifferentiated document hypothesized by documentarians.55

55 Cf. Kalmin, Sages, 214. Source critical analysis of the Bavli also reveals a difference between attributed and stamaitic sources in the area of terminology. The attributed sources use the term HLMM almost exclusively, while stamaitic sources within the same sugya will refer to one and the same law as a halakhah or hilkheta. The following texts attest to this difference:

1. B. Suk 5b. "According to R. Judah [the minimum height of the sukkah] is learned as a traditional law (hilkheta gemiri lah, henceforth HGL), for R. Hiyya b. Ashi (BA2) stated in the name of Rav: [The laws relating to] prescribed minima, in-
Halakhah le-Moshe mi-Sinai in Rabbinic Sources

II. Synchronic Analysis of the Talmudim

Source critical analysis of the Palestinian and Babylonian talmudic materials regarding HLMM reveals the preservation of distinctive sources, interpositions and partitions are HLMM.‘’ (Cf. the parallel in B. Eruv 4a, which employs hilkheta in a similar manner.)

2. B. Suk 34a (cf. B. Suk 44a). ‘‘Whence do the rabbis derive [the law of the willow ritual] for the sanctuary? They learned it as a traditional law (HGL), for R. Assi (PA 3) said R. Yohanan (PA 2) said in the name of R. Nehunia from the Plain of Bet Hauran: ‘The law of the ten saplings, the willow ritual and the water libation are HLMM.’’ (Cf. the parallel in B. Taan 3a, where R. Ami conveys R. Yohanan’s tradition, and gemara gemiri lah appears as a ms. variant.)

3. B. Nid 72b. ‘‘R. Elazar b. Azariah said to R. Akiva . . . ‘The prescribed minima of half a log of oil for a thank offering, a quarter log of wine for a nazirite and the eleven days between one menstrual period and the next are HLMM.’’ The stam subsequently asks: ‘‘But are these traditional laws (halakhot)?! Are they not in fact Scripture? For it was taught . . . ’’ After a lengthy midrASHic exposition the stam concludes: ‘‘According to R. Akiva they are derived from Scripture (geraei ninhu) but according to R. Elazar b. Azariah they are traditional laws (hilkhota).’’

4. B. Mak 11a. The stam states that one party to a tannaitic dispute draws an analogy from a verse in Exodus in which Torah is mentioned alongside tefillin: ‘‘Just as in the case of tefillin there is a HLMM to the effect that gut-string is used for sewing them, so the entire Torah (i.e., a Torah scroll) may be sewn with gut-string.’’ The other party to the dispute is said by the stam to reject this analogy, on the principle that ‘‘analogies do not extend to hilkhotav (traditional laws).’’ Here the stam uses both HLMM and halakhot in its reconstruction of tannaitic views.

In all of these cases the stam voice employs halakhah/hilkheta while the named tradents cited by the stam use HLMM. Less clear is the following case:

5. B. Men 32a–b. Conflicting traditions regarding the mezuzah are reported: ‘‘R. Minyomi b. Hilkiah on his own authority said that [writing] the mezuzah on ruled lines is a HLMM. Tannaim differ on this, for it is taught: R. Jeremiah says in the name of Rabbi: ‘Tefillin and mezuzot may be written from memory, and ruled lines are not necessary.’ The halakha (hilkheta) is that tefillin need not be written on ruled lines, the mezuzah must be written on ruled lines, and both may be written from memory.’ It is possible that the stam’s hilkheta refers to the HLMM of R. Minyomi b. Hilkiah (so Rashi), which is being ‘‘corrected’’ or at least integrated with the tradition attributed to R. Jeremiah. The idea of correcting a report of a HLMM may have disturbed later scribes and may account for the insertion of the phrase ‘‘on his own authority’’ after R. Minyomi’s name (lacking in Munich 95), to indicate that he did not have a reliable tradition as to the HLMM. However, it is equally possible that hilkheta here simply means ‘‘law’’ and the stam is spelling out what the law is.

There are only two instances in which the stam employs the phrase HLMM. In B. AZ 36b we read, ‘‘But [the prohibition against] an Israelite man having intercourse with a non-Israelite woman is a HLMM, for a master has said: If [an Israelite] has intercourse with a heathen woman, zealots may attack him.’’ It may be that the lack of a clear reference to HLMM in the tannaitic source in the passage necessi-
underscoring the heterogeneity of rabbinic texts and militating against the documentarian notion of a redactional voice that flattens source materials and results in documents that are not susceptible to historical analysis and reconstruction beyond the level of redaction. Nevertheless, it may be said that rabbinic texts are more than the sum of their parts, that each text can be viewed as a whole, albeit a complex whole that cannot be characterized without reference to the place and function of its disparate and diverse component parts. Synchronic characterizations of rabbinic texts enable us to compare entire texts with one another so as to reveal distinctions among the communities of scholars who produced these texts. What follows is a synchronic analysis and comparison of Yerushalmi and Bavli materials concerning HLMM designed to demonstrate the possibilities and limitations of analysis and comparison of these texts as redacted wholes. This discussion will be organized around the characteristics of HLMM isolated

tated the stam's use of the term in this case. A second exception occurs in B. MQ 3b, in which the pattern just described (HLMM in attributed amoraiic sources and some form of halakhah in the stammaic sources) is disturbed. Here the stam does employ the term hilkheta three times in reference to a HLMM, but also uses HLMM ("was it not a HLMM, as in fact R. Assi said . . . etc."); cf. case 2, above, where the same attributed tradition is introduced by the stam as HGL). Further, terms like hilkheta and hilkheta gemiri lah, characteristic of the stam, are found in some attributed sources in this same sugya: R. Yitzhak (PA 3) once, R. Nahman b. Isaac (BA 4) once and R. Ashi (BA 6) four times. The latter two sages are relatively late Babylonian tradents. It may be, therefore, that hilkheta and hilkheta gemiri lah represent not just normal stammaic usage but also later amoraiic usage. In any event, the stam's preference for HGL as opposed to HLMM is not seriously undermined by these exceptional sugyot. We are dealing here with tendencies, not strict dichotomies.

In an appendix to "Reflections" (n. 13, above), Halivni discusses the terms halakhot, halakhah, hilkheta, gemiri, gemara gemiri and hilkheta gemiri and concludes that (1) the stammaim interpreted halakhah as a HLMM, though the amoraim do not; (2) the stammaim are inclined to interpret all instances of hilkheta as references to Sinai (though on occasion amoraim do also); and (3) gemiri, gemara gemiri and hilkheta gemiri can refer to a HLMM (but do not always). Halivni includes within the scope of his study passages in which the term HLMM does not appear explicitly, but may be implied if we assume that post-talmudic conceptions of HLMM are fully operative in the talmudic text. Although the present analysis does not make this assumption and is strictly confined to sugyot in which the designation HLMM is explicit, there is nevertheless a strong correspondence between Halivni's conclusions and the conclusions presented here.

The diachronic differences in terminology isolated here further support the view that documentarian theories of the Talmudim as reflecting a single, late editorial voice simply do not account for the data as well as does the theory that diversity is the result of genuine historical processes.
in the tannaitic sources (see above, pp. 74-75), thus allowing for a three-way comparison of Mishnah, Yerushalmi and Bavli.

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(1) In tannaitic sources a HLMM may be posited as the source of a law, belief, or practice whose authority is unstable because that law, belief, or practice is exceptional (M. Peah 2.6) or disputed by other sages (M. Yadayim 4.3 || T. Yadayim 2.7; M. Eduyyot 8.2) or sectarian (T. Sukkah 3.2).

**Yerushalmi:** Palestinian sages were apparently sensitive to the fact that in the tannaitic sources the term HLMM was used to shore up the authority of a law, belief, or practice whose authority was unstable for one reason or another. In at least two-thirds of the eleven sugyot featuring HLMM in the Yerushalmi the term is invoked in precisely this manner.56

*Exceptional and disputed mishnayot.* On five occasions the following general principle attributed to R. Elazar b. Pedat (PA 3, Babylonian-born émigré, disciple of R. Yohanan) is cited: “Every time they teach (variant: we learn) be-emet in the mishnah, [the ruling that follows] is a HLMM.” *Be-emet* occurs seven times in the Mishnah,57 and in regard to five of these the Yerushalmi cites this tradition attributed to R. Elazar.58 The force of R. Elazar b. Pedat’s principle becomes clear when we examine the be-emet clauses of the five mishnayot to which his tradition attaches. In each case, the term be-emet introduces an exceptional ruling, a special case that deviates from the general rule set out earlier in the Mishnah. The correct translation of be-emet in these cases is “nevertheless, however.” For example:

- **Y. Shabbat 1.6 3b.** The mishnah states: “A tailor may not go out with his needle near nightfall [of the Sabbath] lest he forget and [be guilty of] carrying out [on the Sabbath]; nor a scribe with his pen. And one may not search his garment [for vermin], nor read by the light of the lamp. Nevertheless (be-emet) it was said that the hazzan may see [by lamplight]

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56 Compare Halivni, “Reflections” (n. 13, above), 60–61 and 67. Halivni argues that the “increasing inclination toward ascribing all oral tradition to Halakhah le-Moshe mi-Sinai on the part of the early Palestinian Amoraim was motivated by the desire of the students of R. Judah the Prince to enhance the authority of the Mishnah . . . support for the Mishnah’s authority was provided by the concept of Halakhah le-Moshe mi-Sinai” (60). According to Halivni, because Rabbi’s Mishnah encountered greater opposition in Palestine, the need to defend and justify the Mishnah was greater than it was in Babylonia where it was accepted without resistance—accounting for the greater tendency toward HLMM in the Yerushalmi than in the Bavli (67). I am not here making a global claim about the authority of the Mishnah as a whole, but rather about the authority of individual laws that were weak for one reason or another.

57 M. Kil 2.2, Ter 2.1, Shab 1.3, 10.4, Naz 7.3, BM 4.11, BB 2.3.

58 All but M. BM 4.11 and BB 2.3.
where the children are reading, though he himself must not read . . . ” The gemara reads: “R. Elazar said: ‘Every time we learn be-emet (nevertheless), [the ruling that follows is] a HLMM.’”

The rule regarding the hazzan, introduced by be-emet constitutes a specific exception to the general rule of the mishnah. Exceptional cases and special exemptions require some degree of legitimization. R. Elazar b. Pedat’s principle provides this legitimization by asserting that exceptional cases like this one are to be understood as HLMMs. R. Elazar is apparently familiar with the tannaitic precedent of invoking the term HLMM in order to bolster the authority of exceptional cases, and sufficiently well-versed in mishnaic idiom to know that be-emet signals an exceptional case. As a result he proposes that every be-emet clause (i.e., every clearly labelled exception) is a HLMM and is therefore legitimate and authoritative despite its exceptional status.

The other four sugyot that cite R. Elazar’s general principle are:

• Y. Kilayim 2.2 27d, regarding the minimum amount of diverse seed to create liability under the law of kilayim. The mishnah indicates that 1/4 qab of diverse seed in every seah of seed is the minimum for liability, and then states an exception to this rule: “Nevertheless (be-emet), garden seeds which are not eaten combine [to create liability when they are] 1/24 of the volume] sown in a space of 50 cubits square.”

• Y. Terumot 2.1 41b. Separating terumah from ritually pure produce on behalf of that which is ritually impure is prohibited ab initio. However, the mishnah indicates certain exceptional cases, introduced by be-emet, in which this prohibition does not apply (a circle of pressed figs, a bunch of greens and a heap of produce).

• Y. Nazir 7.3 56c. The days of defilement of a gonnorheic and the days of quarantine for scale-disease do not diminish a nazirite’s term of naziriteship, a deviation from the rule that applies in cases of certain and even doubtful corpse impurity.

• Y. Shabbat 10.4 12c. The mishnah contains a general rule to the effect that if one intends to carry out an object on the Sabbath either in front of him or behind him and the article works its way around to the other side, one is not culpable for violating the Sabbath laws against carrying. Nevertheless (be-emet), a woman wearing an apron is liable.

In all of these cases be-emet introduces an exceptional law in the Mishnah, whose authority is bolstered by R. Elazar’s assertion in the Yerushalmi that each is a HLMM. It should also be noted that in two further cases an exceptional ruling in the Mishnah is said in the gemara to be a HLMM, even though these rulings are not introduced by the term be-emet. Y. Sheviit 1.7 33b | Y. Sukkah 4.1 54b discusses a mishnaic exception found in M. Sheviit 1.4–6. As we have seen, the Mishnah establishes that one may not plough an orchard of mature trees right up to the end of the 6th year.
This determination is followed by an exception: in the case of ten saplings spread evenly over a space of 50 cubits square, the entire area may be ploughed for the sake of the saplings, right up to the new year. In the gemara this law is considered in conjunction with two other laws that are said to be HLMM. Y. Orlah 3.8.63b deals with a mishnaic list of agricultural rules that are exceptional because they apply outside the land of Israel. R. Yohanan in the gemara identifies one of these rules as HLMM.

These last two cases, in combination with the five be-emet cases, indicate that the Yerushalmi adopts and continues the strategy attested in tannaitic sources of deploying the term HLMM in order to lend authority to an exceptional ruling. In addition, the Yerushalmi follows tannaitic precedent in using HLMM to bolster the authority of contested or disputed practices. The Yerushalmi to M. Megillah 4.9 consists of one line: “R. Yose b. Bibai (Venice printed ed. = Bibi = R. Yose b. R. Bun [PA 5]) taught: ‘That tefillin should be square and black is a HLMM.’” The mishnah to which this statement attaches discusses deviant or sectarian practices regarding the tefillin: “He who makes his tefillin round, it is dangerous and does not fulfill the religious obligation; if he put it on his forehead or on the palm of his hand, that is the way of heresy (minut). If he covered it with gold or put it on his sleeve, that is the way of outsiders (hitsonim).” The tradition of R. Yose b. R. Bun, itself a conflation of older Palestinian traditions, can be understood as an effort to legitimize rabbinic practices regarding tefillin in the face of deviant and sectarian practices.

Thus, in a full eight out of eleven sugyot featuring the term HLMM the Yerushalmi follows the tannaitic precedent of legitimizing an exceptional mishnaic ruling or disputed practice. This phenomenon is further illuminated by the lengthy sugya that attaches to M. Peah 2.6—one of the three mishnaic passages to employ the term HLMM and to do so in regard to an anonymous and exceptional ruling. The gemara opens as follows (Y. Peah 2.6.17a): “R. Zeira [PA 3] in the name of R. Yohanan: ‘If a halakha comes to you and you do not know its nature, don’t be quick to dismiss it, for many laws were transmitted to Moses on Sinai (NLMB) and all of them are

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60 Halivni, “Reflections” (n. 13, above), notes that the observance of the law of tefillin is known to have been lax in talmudic times (55). That the rabbinic laws pertaining to tefillin may have been a subject of rebellion is suggested by M. Sanh 11.3 (93). Halivni suggests that designating the laws of tefillin as HLMM may have been intended to elevate their importance and draw adherents to the custom (55).
61 It can even be argued that in the three remaining sugyot, HLMM legitimizes a rabbinic ruling that lacks a Scriptural basis and is therefore of unstable authority: in Y. Ber 5.1.8d the rule of eleven days between one menstrual period and the next; in Y. Meg 1.11.71d various rules regarding the preparation of tefillin and Torah scrolls (see below); and Y. Hag 1.2.76b concerning prescribed minima.
embedded in the Mishnah." This statement is followed by R. Avin's (PA 3)\textsuperscript{62} observation that were it not for Nahum the Scribe's explanation that the exceptional ruling in M. Peah 2.6 was a HLMM we would not have known that it was a HLMM. The subsequent aggadic passage glorifies the Oral Torah, describing it as more precious or beloved than the Written Torah. This sugya also contains the hyperbolic midrashic exposition attributed to R. Joshua b. Levi (cf. Y. Megillah 4.1 74d) to the effect that Scripture, Mishnah, Talmud, Aggada, even what an experienced student will teach before his teacher, were already said to Moses at Sinai (NLMB). The passage betrays a rabbinic anxiety over the authority of anonymous mishnaic rulings—particularly those of an exceptional nature. Lacking both an attribution and a clear Scriptural basis, such rulings are weak and easily questioned. This sugya asserts that just as the anonymous, exceptional ruling regarding the \textit{peah} requirement for a field sown with two species of wheat is a HLMM, so too many anonymous statements of the Mishnah are HLMM.\textsuperscript{63} Consequently, mishnaic statements whose nature (perhaps: source, authority, rationale) is unknown should not be quickly dismissed or controverted, for these very statements may be oral HLMM, and the Oral Law is in some sense more precious and beloved than the Written. The sugya employs hyperbolic rhetoric in praise of the Oral Law in order to establish this claim and instil a measure of respect for the authority of oral tradition. Significantly, this very sugya appears also in Y. Hagigah 1.8 76d in connection with the famous mishnah that describes certain laws as hovering in the air, lacking all Scriptural support, others as mountains hanging by a hair (i.e., many laws and only slight Scriptural basis) and others as having strong Scriptural support. The mishnah's description of laws hovering in the air and lacking Scriptural support—however honest—was surely anxiety-producing. The Yerushalmi's assertion that many such laws are HLMM and that oral tradition is more beloved than written revelation can be seen as directly addressing that anxiety by urging respect for and observance of those elements of tradition lacking clear Scriptural warrant (cf. Y. Megillah 1.7 70d and Y. Megillah 4.1 74d, discussed below).

**Bavli:** In contrast to the Yerushalmi, the Bavli minimizes the use of HLMM as a strategy to confer authority upon a specific law, tradition, or practice of unstable authority. Instead, the Bavli uses the term in aggadic passages that explore and legitimize the \textit{general} authority of the rabbis themselves.

\textsuperscript{62} Probably R. Avin (=Avun or Bun) bar Kahana; see Albeck, \textit{Mavo}, 219.

\textsuperscript{63} The text literally says NLMB, but since it is commenting directly on M. Peah 2.6's HLMM it is clear that here at least NLMB = HLMM. Elsewhere, however, the equivalence of the two terms cannot be assumed, as will be seen below.
First, the *be-emet* tradition, when it does appear in the Bavli, appears in a somewhat modified form. In the printed edition of B. Shabbat 92b the gemara comments on the exceptional *be-emet* clause in M. Shabbat 10.4 and contains this single statement: “It was taught: Every *be-emet* is the halakhah,” which may of course simply mean “the established law” rather than HLMM. Further, it must be noted that this statement is not found in mss. and early editions.\(^6^4\)

The Bavli makes no comment on the term *be-emet* in any other sugya. Indeed, in the case of M. Nazir 7.3 (see B. Nazir 56b) there is no identification of the exceptional clause as a HLMM; rather, the law’s derivation from Scripture is shown. It would appear, then, that the identification of exceptional mishnaic rulings as HLMM is not generally adopted in the Bavli. Whether this use of the term featured in the Mishnah and Yerushalmi was simply overlooked, passively ignored or actively rejected, we cannot determine.

In only three instances does the Bavli cite a tradition employing the term HLMM to confer authority upon a specific law, tradition, or practice, and in one case—B. Qiddushin 38b–39a (cf. Y. Orlah 3.8 63b)—R. Yohanan’s identification of a particular mishnaic exception as a HLMM is countered by various Babylonian authorities. In the other two cases—B. Nedarim 37b and B. Avodah Zarah 36b—it may be supposed that the term HLMM is proposed in order to bolster the authority of a weak or unstable rabbinic ruling. B. Nedarim 37b cites R. Isaac (PA 3) to the effect that certain scribal traditions regarding the phrasing and recitation of Torah (*migra soferim*) are HLMM, while B. Avodah Zarah 36b contains the stammaitic assertion that the prohibition of public non-marital intercourse between an Israelite male and a non-Israelite female is a HLMM. However, the instability of these traditions is not indicated in the relevant sugyot themselves.

Thus, the Bavli’s use of the term HLMM to ground the authority of specific laws or practices is minimal. However, we do find the term in three aggadic passages devoted to a general legitimization of the rabbis’

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\(^{6^4}\) See Halivni, ”Reflections” (n. 13, above), 62 n. 67, and Safrai, ”Halakhah” (n. 13, above), 13 n. 11. In B. BM 60a we find the following tradition as part of the gemara commenting on an exceptional mishnaic ruling introduced by *be-emet*: “R. Elazar said: ‘From this it may be concluded that wherever *be-emet* is stated, that is the halakhah.’” Although the general principle is ascribed to R. Elazar as in the Yerushalmi, its formulation and substance have been modified. As in B. Shab 92b, R. Elazar is represented as asserting not that the exceptional mishnaic ruling is a HLMM but that it is the halakhah—the established law (so Rashi; see Halivni, ibid., 62). However, here also, the tradition does not appear in some mss. and early editions (Safrai, ibid.).
authority to interpret Torah for all Israel. The first of these passages is B. Bava Batra 12b:

R. Avdimi from Haifa (PA 3) said: “Since the day when the Temple was destroyed, prophecy has been taken from the prophets and given to the wise.”

Is then a wise man not also a prophet? What he meant was this: although it has been taken from the prophets, it has not been taken from the wise.

Amemar (BA 5–6) said: “A wise man is even superior to a prophet [followed by a biblical proof] . . .”

Rav Ashi (BA 6) said: “The proof is that a great man makes a statement and then it is found that the same rule was a HLMM.”

Here the rabbis stake their claim to authority: a Palestinian tradition describing the sages as the successors to the prophets is elaborated by Babylonian rabbis who assert that sages are superior to the prophets. Proof of the sages’ excellence is the occasional correspondence between a great rabbi’s statement and a HLMM. The term HLMM is used heuristically, as a benchmark of authenticity and correctness against which the authority of the rabbis is to be measured.

Two further passages—early Palestinian sources adopted by the Bavli’s redactors—exploit the reputation of R. Akiva as a zealous midrashist in an effort to allay anxiety over the midrashic enterprise. As I have argued elsewhere, 65 the rabbis were sensitive to the fact that midrashic exegesis inspired resistance and rebellion because of its generation of interpretations far removed from, if not antithetical to, the contextual meaning of a biblical passage. Some talmudic texts express simple anxiety over midrashic excess and the ridicule it arouses in non-rabbis; but in other texts, anxiety gives way to exuberance as the rabbis confront the vision of their own strangeness, only to embrace and even celebrate it.

The classic example of rabbinic self-acceptance in the face of radical doubt is the amorai tradition of B. Menahot 29b in which Moses listens befuddled and uncomprehending to R. Akiva’s complex midrashic expositions of Torah:

Rav Judah said in the name of Rav: “When Moses ascended on high he found the Holy One, blessed be He, engaged in attaching crownlets [decorative squiggles] to the letters [of the Torah]. He said to Him, ‘Lord of the Universe, why should you bother with this!’ 66 He answered, ‘There is a man who is destined to arise at the end of many generations, named Akiva b. Joseph, and to expound upon each squiggle heaps and heaps of laws.’ [Moses] said to him, ‘Lord of the Universe, show him to me.’ He replied, ‘Turn around.’ Moses went and sat down behind eight rows [in R. Akiva’s


66 Lit., “Who constrains your hand [to do such a trivial and unnecessary task]?”
schoolhouse, with the least skilled students], but he could not understand what they were saying. His strength left him.\(^67\) But when they came to a certain topic and the disciples said to him [R. Akiva], 'Rabbi, whence do you know it?' he replied to them, 'It is a law given to Moses at Sinai!' And Moses was comforted.\(^68\)

Thereupon he returned to the Holy One, blessed be He, and said to Him, 'Lord of the Universe, You have such a man and You are giving the Torah by me?!' He replied, 'Be silent, for such is my decree.'\(^69\)

[Moses] said to him, 'Lord of the Universe, You have shown me his Torah, now show me his reward.' He replied to him, 'Turn around.' And Moses saw them weighing out R. Akiva's flesh in the marketplace.\(^70\) Moses said to Him, 'Lord of the Universe, that was his Torah and this is his reward!' And He replied, 'Be silent, for such is my decree.'\(^71\)

This story, at once humorous and tragic, enables the rabbis brilliantly to voice their simultaneous admiration for and anxiety over the midrashic virtuosity of earlier greats, of which R. Akiva is the premier example. The opening lines sound one of the primary themes of the story: the derivation of mounds of laws from the slimmest biblical details (cf. M. Hagigah 1.8). God's participation in this project—by encoding the text in such a manner that the complex exegesis of the rabbis can proceed—implies his endorsement of it. God tells Moses that R. Akiva will expound these minute calligraphic details so as to yield heaps of laws. Incredulous, Moses asks God to show him R. Akiva at work. Granted a vision of R. Akiva's schoolhouse where the biblical text is expounded to yield these heaps of law, Moses is at a complete loss to understand. Moses, the very one to whom God entrusted his Torah and the first to teach Torah to Israel does not recognize that Torah in the hands of a master exegete some 1500 years later. Moses' non-recognition—a figure for the rabbis' own aching suspicion that midrashic techniques have rendered the Torah unrecognizable—depresses him, until R. Akiva comes to a certain topic. When the students ask R. Akiva the source of this particular law he does not supply a tortuous derivation from Scripture. This law, he says, is a law given to Moses at Sinai and does not emerge from exegesis of Scripture. In other words, there are some things that even a R. Akiva would not attempt to derive from Scripture, and at this Moses heaves a sigh of relief. It is following R. Akiva's refusal to expound that Moses praises the latter's great wisdom. The story therefore expresses great ambivalence about extreme methods of midrashic exegesis.\(^72\)

\(^{67}\) An expression used to indicate despair or depression.
\(^{68}\) Or: "his mind was set at ease."
\(^{69}\) Or: "so it has occurred to me to do."
\(^{70}\) A reference to his martyrdom at the hands of the Romans.
\(^{71}\) See n. 69.
\(^{72}\) Thus, in all likelihood the story originates in circles opposed to the exegetical pyrotechnics traditionally associated with R. Akiva and his school.
These methods may be part of a divine plan, but the truly wise man knows when to refrain from creating tortured scriptural derivations by means of them (and we can all breathe easier when he does!).

Moses never does understand the proceedings of the schoolhouse, the complex exegetical processes by which a vast structure of laws and teachings had come to rest upon at times "insignificant" calligraphic details in the biblical text. Indeed, R. Akiva's midrashic virtuosity makes Moses quite nervous—and in this respect Moses surely reflects the anxiety of the rabbinic author(s) of the story. On the other hand, the depiction of God as partner to R. Akiva's midrashic excesses suggests that the authors' anxiety is not absolute. Portraying God as R. Akiva's partner betokens at least a desire on the part of the author(s) to believe that despite the yawning gulf that appears to separate the teachings of the rabbis from the divine Torah of ancient Israel, there is an organic unity between them. Midrashic exegesis may engender an agonizing sense of distance and difference between the Torah and rabbinic halakhah, but midrash is also the bridge that connects the two, and in Moses' mouth are placed words of praise and approbation for R. Akiva. In this story, the amorai rabbi assert their faith in the power and creative possibilities inherent in the midrashic method despite—or rather because of—their equally explicit anxiety over the often odd and unintuitive nature of its results.73

This text betrays an exegetical self-consciousness, an awareness that the rabbis' own methods of interpretation involve unintuitive and non-contextual readings that can provoke ridicule, resistance and ultimately rejection of their authority. However, in these texts the rabbis grapple with their anxiety and emerge victorious, overcoming their radical doubt with grandiose assertions of divine approval of the midrashic method and the complex of law and lore resulting from it: the Oral Torah. The term HLMM stands in opposition to the excessive and convoluted biblical exegesis (concerning which the rabbis felt no slight anxiety) and designates laws for which no Scriptural basis can be found.74

73 Compare Yaakov Elman, "It is No Empty Thing: Nahmanides and the Search for Omnisignificance," The Torah U-Madda Journal 4 (1993): 1-83 at 3 for an interpretation that highlights another aspect of the conflicted nature of this passage.

74 Halivni's description of the erosion of confidence in exegesis throughout the amorai period and beyond ("Reflections" [n. 13, above], 29, 83, 89) is consonant with the argument advanced here and elsewhere (see n. 65, above): midrashic excess generated anxiety in the amorai period and led to (1) a decline in exegetical activity as the source of new law; (2) hyperbolic assertions of the exegetical authority of the rabbis in theory, despite the more conservative exercise of rabbinic authority in practice; and (3) the composition of rhetorical passages that extol and praise the Oral Torah as more beloved and precious than the Written Torah and that which is derived from it (again, despite the more conservative exercise of rabbinic
Similarly, in B. Menahot 89a (|| B. Niddah 72b) the assertion that a particular law is a HLMM is intended to counter the midrashic zeal of R. Akiva. The sugya opens with a beraita in which R. Akiva attempts to derive from Scripture the half log of oil required for a thank offering. The derivation is complex and convoluted, and revolves around the repetition of the phrase “with oil” in the biblical text. R. Elazar b. Azariah is said to respond to this display of midrashic virtuosity with the contemptuous remark: “Akiva, even if you repeat the words ‘with oil’ the whole day long I shall not listen to you; rather, the half log of oil of the thank offering, the quarter log of oil of the nazirite and the eleven days between menstrual periods are HLMM.” R. Elazar b. Azariah simultaneously articulates and responds to the same anxiety evident in B. Menahot 29b—one can carry midrashic exegesis too far and so undermine rabbinic authority and prestige. At a certain point one must renounce the effort to derive everything from Scripture. Such a renunciation is symbolized by the simple assertion that a particular law is a HLMM, not to be found in the Written Torah. Here again, HLMM is an abstract category that functions as a literary device, a counter or foil to the portrait of the overzealous sage producing contrived and counterintuitive interpretations of Scripture.

The Yerushalmi and Bavli differ markedly in their employment of HLMM to confer authority upon specific laws, traditions, or practices whose authority is unstable in some way. Nearly 80% of the laws identified in the Yerushalmi as HLMM are laws or traditions whose authority is unstable. By contrast, only 40% of the sugyot featuring HLMM in the Bavli employ the term to identify specific laws of possibly unstable authority, and the majority of these (12 of 16) involve just two cases: tefillin and the water libation/willow ritual. Two other identifications of exceptional laws as HLMM are presented in the name of Palestinian tradents. In short, the Bavli relies heavily on Palestinian precedent when it does identify exceptional laws as HLMM. In general, the Bavli’s redactors tend to reduce the use of HLMM as a label for a specific exceptional law. For example, the Bavli’s redactor modifies or excludes altogether R. Elazar b. Pedat’s identification of certain exceptional rulings as HLMM.

Clearly, the close association of HLMM with assertions of authority was known to the Bavli’s redactors. Even if they did not use the term to bolster the authority of specific exceptional laws as frequently as did the redactors of the Yerushalmi, they did incorporate into the Bavli early authority in developing and extending the Oral Torah). In short, anxiety over rabbinic authority, particularly in regard to exegesis of Scripture, led to an increase in the hyperbolic praise for and assertion of that authority in theory, but a reduction in its actual use. See further below (p. 116), and see Halivni, ibid., pp. 59–60 for the view that Palestinian traditions that extol the Oral Law are connected with the greater amoraic reliance on HLMM rather than on exegesis.
agadic traditions that employ the term "HLMM" in an exploration and legitimation of rabbinic authority generally. These traditions about early tannaim were not selected for inclusion in the Yerushalmi by that text's redactors (though this may be a function of genre: the Bavli in general contains a good deal more aggadah than does the Yerushalmi). Thus, in both Talmudim, HLMM is connected with assertions of authority, but the specific nature of the connection differs markedly. The Yerushalmi's use is concrete and halakhic while the Bavli's use is rhetorical and aggadic, and often raises as much anxiety as it allays. A similar conclusion emerges from a comparative analysis of the forgotten/reestablished strategy in the Bavli and Yerushalmi, to which we now turn.

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(2) A HLMM may be forgotten and subsequently arrived at independently through the argumentative give-and-take of later rabbinic authorities who may be unaware of the ancient origin of the law.

Yerushalmi: The Yerushalmi employs a forgotten/reestablished strategy on five occasions in order to reconcile conflicting traditions regarding the source of a particular law, but in a manner that differs from the tannaitic precedent in M. Yadayim 4.3 in which a law established by the rabbis is identified as a HLMM that had been forgotten. In the Mishnah, the phrase "HLMM" is used literally: the law in question was given as a HLMM, later forgotten and then reestablished through the give-and-take of scholarly debate. However, in the Yerushalmi the reestablished law is not always explicitly identified as a HLMM in a literal sense—as is the case in the tannaitic precedent—but is said to be precious and to endure like that which was said to Moses at Sinai (=NLMB). For example, in Y. Peah 1.115b R. Gamliel reports the view that one should give no more than one-fifth of his possessions in charity. The stam wonders how R. Gamliel can report on a ruling that was instituted only later, at Usha. We then read:

R. Yose b. R. Bun in the name of R. Levi: "That was the halakhah as they received it, but they forgot it and later authorities arose and agreed with the earlier [authorities], in order to teach you that any matter to which a court devotes itself will endure as if it were said to Moses at Sinai (בְּכֵן מְצַא יָוָן לְפָנָיו לְמָשָׁה בְּסִינָא)." This is in agreement with what R. Mana said: "For it is no trifle for you [but it is your life]" (Deuteronomy 33:27). If it is a trifle for you then it is because you did not labor in it. When is it your life? When you labor in it.

The tradition attributed to R. Levi (PA 3) and reported by R. Yose b. R. Bun (PA 5) is introduced in order to explain the fact that pre-Ushan R. Gamliel cited a tradition attributed to the Ushan court. R. Levi's solution is to assert that this law was in fact a pre-Ushan halakhah (not necessarily a HLMM), but it was forgotten and (re)established later by the Ushan sages. In such
cases the ruling survives because it is as precious as that which was said to Moses at Sinai (NLMB).75

The forgotten/reestablished strategy employed in the Yerushalmi reconciles contradictory claims as to the source of the law—even when none of these claims actually identifies the law as a HLMM. The passage just cited (up to the exegesis of R. Mana [PA 5]) is found in two more sugyot concerned with reconciling conflicting claims as to the source of a particular law. In the first, Y. Shabbat 1.7 3d (|| Y. Ketubbot 8.11 32a), neither party to the dispute claims that the law is a HLMM. Here, the forgotten/reestablished strategy of R. Yose b. R. Bun in the name of R. Levi resolves conflicting claims regarding the law of the impurity of Gentile lands: does this law emanate from R. Yose b. Yoezer and R. Yose b. Yohanan, or from the house of Hillel and the house of Shammai? In Y. Shavuet 1.7 33b || Y. Sukkah 4.1 54b the strategy is applied to the laws of the willow ritual, the water libation ritual, and the ten saplings. These laws are said by R. Yohanan (PA 2) to be HLMM (though the law of the ten saplings is only implicitly identified as a HLMM by the stam), but R. Hunia (=Nehuniah) of Bet Hauran (cited by R. Bab bar Zavda) holds them to be “rulings of the prophets.” In each case, the later reestablishment of a law known earlier but forgotten prompts the stam’s invocation of R. Levi’s tradition: the dedication of the court ensures that the law endures as if it were said to Moses at Sinai (NLMB).

The phrase “as if it were said to Moses at Sinai (�能 מזמ רל אש ד)” is not equivalent to a declaration that the law is a HLMM. It has a purely metaphorical meaning in these cases and indicates that a tradition is so precious (as precious as that which was revealed to Moses at Sinai) that it ultimately survived, even though it was temporarily forgotten. It may be that the original context of the tradition of R. Levi cited by R. Yose b. R. Bun involved a law which was held by some to be a HLMM, and by others to be a later ruling (e.g. the case in Y. Orlah). On this point we can only speculate, however. Whatever the origin of the tradition, it was apparently applied to other cases featuring conflicting claims over the source of a law—whether

75 The latter part of this same sugya provides biblical examples of persons who managed to arrive at and fulfill certain laws or instructions as given to Moses at Sinai, despite their having no knowledge that they had been said to Moses at Sinai. Both Bezalel and Joshua are said to have done “all that the Lord had commanded Moses.” The verse is interpreted to mean that God told Moses, and not Bezalel and Joshua, what was expected of the latter two. Nevertheless, even though Bezalel and Joshua never heard these instructions from God or Moses, each arrived independently at the content of God’s speech as reported to Moses at Sinai. Unlike the first part of the sugya, the second part employs the phrase NLMB in an entirely literal sense. Even if ignorant of the words said to Moses at Sinai, a diligent person can hit upon the actual content of revelation. Indeed, a final midrash indicates that God ensures lack of error in such cases.
HLMM or not. Thus, in two respects, the Yerushalmi’s use of the forgotten/reestablished strategy differs from that of the Mishnah in M. Yadayim 4.3 (cf T. Yadayim 2.7). First, in the Yerushalmi the strategy is not confined to cases involving a HLMM (or what is eventually declared to be a HLMM). Second, the law in question is not identified literally as a HLMM; rather, its reestablishment after being forgotten indicates that, like the revelation to Moses at Sinai, the law was precious and thus able to endure.

**Bavli:** The Bavli’s use of this strategy is minimal at best, occurring in only two sugyot. In B. Yoma 80a and B. Sukkah 44a the strategy appears in the most skeletal form, and in the latter case it is explicitly rejected. Following the stam’s fictive claim that minima prescribed for penalties were given as a HLMM, B. Yoma 80a features the anonymous (“others say”) and contradictory claim that these minima were fixed by the court of Jabetz. The stam objects on the basis of Leviticus 27:34 that Scripture prohibits the introduction of any new law after Sinai. The stam resolves this problem with the simple line: “Rather, they were forgotten and then they established them anew.” Unlike the Yerushalmi sugyot examined above, this sugya employs a forgotten/reestablished strategy in a most literal sense, and thus closely resembles the mishnaic precedent in M. Yadayim 4.3: the prescribed minima for penalties were given as a HLMM but were forgotten and subsequently reestablished by the court of Jabetz. Entirely lacking is the Yerushalmi’s shift into metaphor, i.e., whatever a diligent court labors to (re)establish is as precious and enduring as that which was said to Moses at Sinai.

The only other Bavli sugya to feature the forgotten/reestablished strategy—B. Sukkah 44a—ultimately rejects it. B. Sukkah 44a opens with Rav Zevid (BA 5) stating in the name of Rabbah that the willow ritual is rabbinic. This Babylonian amoraic tradition sets the theme for the entire sugya, and all contrary sources will be harmonized to this claim in some way. First, the stam points out contradictory traditions (Abba Saul’s claim that the willow ritual is scriptural and R. Assi’s statement in the name of R. Yohanan that the ten saplings law, the willow ritual and the water libation ritual are HLMM). The contradiction is resolved by **oqimta:** Rabbah meant

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76 Following DS 6:135 n. tsadde, a correction from “Rava.” On this reading, it is an early Babylonian amora who states that the willow ritual is rabbinic.

77 R. Assi states in the name of R. Yohanan who had it from R. Nehuniah of the Plain of Bet Hauran: “The laws of the ten saplings, the willow ritual and the water libation ritual are HLMM.” Only in the Bavli does this tradition add the law of the ten saplings to the willow ritual and the water libation ritual (B. Suk 34a, 44a; Taan 3a; MQ 3b; Zev 110b [not all of these cite R. Nehuniah]). In the Yerushalmi, only the willow ritual and water libation ritual are explicitly designated HLMM by R. Yohanan. That R. Yohanan holds the ten saplings law to be a HLMM is strongly implied by Y. Shev 1.7 33b, as we have seen. Babylonian tradents, aware of the juxta-
Halakhah le-Moshe mi-Sinai in Rabbinic Sources

that the performance of the willow ritual inside the sanctuary is Pentateuchal while the performance of the ritual outside the sanctuary is rabbinic. There is an implicit equation of Scripture and HLMM here since this one oqimta answers the objection raised by the traditions of both Abba Saul and R. Yohanan. Shortly after this section, we read:

You may conclude that it was R. Yohanan who said that it [the willow ritual] is one of the institutions of the prophets, since R. Abbahu said in the name of R. Yohanan, “The willow rite is one of the institutions of the prophets.” You may conclude it.

R. Zera said to R. Abbahu: “Did then R. Yohanan say so? Did not R. Yohanan in fact state in the name of R. Nehuniah of the Plain of Bet Hauran that the ten saplings law, the willow ritual and the water libation were HLMM?”

The other was dumbfounded for a while (cf. Daniel 4:16) and then he answered: “They were forgotten and the prophets reinstated them.”

But could R. Yohanan say so? Did not R. Yohanan in fact state: “What I said was yours were in fact theirs”?80

Rather, this is no difficulty since one statement refers to the sanctuary [HLMM] and the other to the provinces [institution of the prophets].

The stam infers that R. Yohanan himself actually believed the willow ritual to be an institution of the prophets (i.e., rabbinic in the sense of non-Pentateuchal, and therefore open to alteration). This inference is supported by the stam’s citation of R. Abbahu’s (PA 3) statement in the name of R. Yohanan: The willow ritual is an institution of the prophets. To this R. Zera (PA 3) is said to object: “Did then R. Yohanan say so? Did not R. Yohanan in fact state in the name of R. Nehuniah of Bet Hauran that ‘the law of the ten saplings, the willow ritual and the water libation ritual were HLMM’?”

The Bavli’s version of R. Yohanan’s statement appears to be a conflation of Palestinian traditions. In Y. Sheviit 1.7 33b || Y. Sukkah 4.2 54b, R. Honia/R. Nehuniah of Bet Hauran declares that all three rituals—the willow ritual, the water libation ritual and the ten saplings law—are prophetic in origin.81

In the same sugya, R. Yohanan declares the willow ritual and the water

position of these topics and traditions among Palestinians, drew their conclusions and made the implicit explicit. See below, pp. 105–106, for a discussion of the development of this tradition.

78 Munich ms. reads here, “Did not R. Assi say that R. Yohanan in fact stated in the name of . . .”; DS 6:135, n. gimmel.

79 Munich ms. omits this phrase.

80 The meaning of this phrase is obscure (witness the varied suggestions of Rashi, R. Hananel and Tosafot), but it is probably intended as a retraction of one claim or the other (e.g., what I said was a HLMM was in fact a prophetic institution, or vice versa).

81 But see n. 47, above, for the reading of the Vatican printed edition according to which the first two are HLMM.
libation ritual to be HLMM. These traditions are combined in the Bavli, where R. Assi (or R. Ammi) says that R. Yohanan said in the name of R. Nehuniah of Bet Hauran that all three rituals are HLMM.

The first proposed solution for R. Yohanan's self-contradiction is the forgotten/reestablished strategy—the strategy adopted in the Yerushalmi parallel: These three laws were HLMM, but they were forgotten and later reestablished by the prophets. This solution is rejected, and ultimately the two views here attributed to R. Yohanan are reconciled by the *oqimta* employed earlier in the sugya: R. Yohanan held that the willow ritual inside the sanctuary was a HLMM while the willow ritual outside the sanctuary was an institution of the prophets. Through this *oqimta*, early Palestinian traditions are brought into line with the Babylonian view that the willow ritual must be prophetic (i.e., rabbinic) rather than scriptural or HLMM.

Divergent redactional attitudes towards the forgotten/reestablished strategy are apparent in these parallel sugyot. The Bavli and the Yerushalmi share the same redactional goal: the conversion of the willow ritual from a HLMM to a rabbinic law. In order to achieve this goal, both must "unseat" the Palestinian tradition attributed to R. Yohanan that the rite is a HLMM. Both Talmudim cite a contradictory tradition to the effect that the willow rite is an institution of the prophets (i.e., it is rabbinic). In both Talmudim this tradition prevails, and R. Yohanan's contrary tradition is harmonized to it by one or another means. The Yerushalmi employs its version of a forgotten/reestablished strategy: these laws are only metaphorically HLMM. The Bavli considers and rejects such a strategy, adopting an *oqimta* instead.

We see from these examples that the Bavli's use of the forgotten/reestablished strategy more closely resembles the Mishnah's than the Yerushalmi's. It reconciles conflicting claims about the source of the law, one of which is that the law is a HLMM, and it employs the term HLMM in a literal sense. However, the Bavli's use of the strategy is extremely minimal—it appears in only two passages that feature a HLMM, and in one of those the strategy is rejected outright in favor of an *oqimta*. Further, in another two of the five cases in which the Yerushalmi invokes the forgotten/reestablished strategy, the Bavli employs an *oqimta* without even considering the forgotten/reestablished strategy. In B. Shabbat 15a–b (¶ Y. Shabbat 1.7 3d) regarding the impurity of heathen lands, conflicting claims as to the source of the law are reconciled by an *oqimta* painstakingly negotiated by the stam:

They (R. Yose b. Yoezer and R. Yose b. Yohanan) came and decreed suspension [for terumah that contacted] a clod of earth [from Gentile land], and nothing at all [for terumah that contacted] the atmosphere [of Gentile land]; then the rabbis of the eighty years [i.e., of the generation 80 years prior to the destruction] came and decreed suspension in both cases; then at Usha
Halakha h le-Mosh e mi-Sina i in Rabbinic Sources

they came and decreed burning in regard to a clod of earth, and as for the atmosphere they left the law as it was.

In B. Moed Qat an 3b (|| Y. Sheviit 1.7 33b) the laws of ploughing before the sabbatical year (including the law of the ten saplings) are attributed to the house of Shammai and the house of Hillel and are said to be HLMMs. The conflict is resolved by oqimta (viz., the HLMM was a thirty-day restriction while the law as issued by the house of Hillel and the house of Shammai was for a longer period). Furthermore, the Bavli does not employ the forgotten/reestablished strategy in connection with the other three laws that feature this strategy in the Yerushalmi.82

Thus, while the Yerushalmi adopts the forgotten/reestablished strategy and transforms it into metaphor, the Bavli all but ignores and rejects it. This is all the more remarkable in view of two facts: (1) the motif of forgetting laws is found frequently in the Bavli. There are passages that feature a sage who forgets or fears he will forget a specific halakha, prooftext or even all of his learning; or the people Israel as a whole forgetting Torah; or a law being forgotten in Israel were it not for the efforts of a particular individual;83 (2) the forgotten/reestablished strategy is found elsewhere in the Bavli but in primarily aggadic or hyperbolic contexts (unlike the Yerushalmi where it does not appear outside the halakhic contexts discussed here), and never in connection with the term or concept of HLMM. For example, in two passages the forgotten/reestablished strategy is part of the polemical artillery of Babylonians trumpeting their superiority over their Palestinian counterparts. In B. Sukkah 20a we read:

What is marzuble?—R. Abba said, “Bags filled with foliage.” R. Simeon b. Lakish said, “Reed matting.” And Resh Lakish is consistent [in this view], since Resh Lakish said, “May I be an expiation for R. Hiyya and his sons.84 For in ancient times when the Torah was forgotten from Israel, Ezra came up from Babylon and established it. [Some of] it was again forgotten and Hillel the Babylonian came up and established it. Yet again [some of] it was forgotten, and R. Hiyya and his sons came up and established it. And thus said R. Hiyya and his sons: ‘R. Dosa and the Sages did not dispute about the reed-mats of Usha, that they are susceptible to [ritual] uncleanness, or of

82 B. Ket 50a (|| Y. Peah 1.1 15b) regarding the maximum amount of one’s possessions that may be distributed for charitable purposes, B. Shab 14b (|| Y. Ket 8.11 32a) regarding the impurity of heathen glassware, and B. Naz 56b (|| Y. Peah 2.6 17a) regarding the two species of wheat, do not record contradictory traditions over the source of the law at all, and thus no solution is required or proposed.

83 B. Pes 66a, 69a, 106b; Suk 20a; Ned 41a; BB 9b, 21a; Ket 22a; Qid 57a; Sanh 82a, 96a; AZ 52b; Zev 59a, 70b; Men 7a, 99a; Hul 82a, 103b, 107b.

84 In other words, “May I make atonement for, and so relieve them of, any punishments awaiting them after death”—an expression of respect and admiration; cf. B. Qid 71b.
Tiberias that they are not susceptible. About what do they dispute? About those of other places."

Likewise, in B. Pesahim 66a the people of Bathyrā (in northern Palestine) forget whether or not slaughtering the Paschal lamb overrides the Sabbath. Hillel the Babylonian establishes the law through argumentative give-and-take and rebukes the people of Bathyrā for their indolence which caused the law to be forgotten. The Bavli's use of the strategy here conforms to tannaitic precedent in certain respects: a forgotten law is reestablished by virtue of the argumentation and deliberation of the sages. The same idea appears in B. Ketubbot 103b || B. Bava Metzia 85b where R. Hanina boasts to R. Hyya, "Were the Torah, God forbid, to be forgotten in Israel, I would restore it by means of my dialectical arguments." Even in the clearly hyperbolic claim in B. Temurah 16a that 1700 kal vehomer and gezerah shavah arguments and scribal specifications were forgotten during the period of mourning for Moses, we find the idea that rabbinic dialectic can make good the loss: "R. Abbahu said, 'Nevertheless, Othniel son of Kenaz restored them as a result of his dialectics'" (cf. B. Yoma 80a).

These examples suggest that the Bavli employs a forgotten/reestablished strategy for primarily rhetorical purposes that include grandiose claims on behalf of rabbinic authority or in praise of a particular sage or Babylonian sages generally. Unlike the Yerushalmi, the Bavli rarely employs the forgotten/reestablished strategy (with or without the term HLMM) in a strictly halakhic context.

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(3) A HLMM (a) may convey a ruling detailing the proper way to observe a Torah law (M. Peah 2.6); (b) may be identical to a rabbinic innovation (M. Yadayim 4.3); or (c) may convey an aggadic rather than a strictly halakhic tradition (M. Eduyyot 8.2).

In general, the Yerushalmi and Bavli conform to tannaitic precedent in this regard, identifying as HLMM rulings concerning Torah laws as well as certain clearly post-biblical or rabbinic innovations.⁸⁵ Both Talmudim contain traditions citing the general principle that prescribed minima for the observance of Torah laws are HLMM,⁸⁶ though this principle is subject to dispute and revision. Both Talmudim contain traditions that identify details of the preparation of tefillin, mezuzot and Torah scrolls as HLMM,⁸⁷ although a comparison of Palestinian and Babylonian traditions regarding

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⁸⁵ In the latter case, of course, the post-biblical or rabbinic origin of the law in question is implicitly denied by the declaration that it is a HLMM.

⁸⁶ B. Eruv 4a || B. Suk 5b, cf. Y. Hag 1.2 76b.

⁸⁷ Y. Meg 1.11 71d, and 4.9 75c; B. Shevu 28b; B. Shab 62a, 79b; B. Eruv 97a; B. Meg 19b, 24b; B. Ned 37b; B. Men 35a–b.
tefillin highlights the "creativity" of the latter. Tannaitic sources describe the square shape of tefillin as a HLMM, while a late Palestinian amora (R. Yosi b. R. Bun, PA 5) states that the rule that tefillin are square and black is a HLMM. The Bavli cites the Palestinian traditions describing the shape and color of tefillin as HLMM, but in addition includes Babylonian traditions describing other details as HLMM. For example, B. Eruvin 97a: "Rav Judah son of Rav Shmuel b. Shilat (BA 3; but in Munich and Oxford mss., just R. Judah, BA 2) said in the name of Rav: 'The shape of the knot of the tefillin is a HLMM.'" This tradition is expanded in B. Shabbat 62a:

Abbaye (BA 4) said, "The shin of tefillin [stamped out of the leather side of the capsule] is a HLMM." Abbaye also said, "The dalet of tefillin [formed by the knot in the strap of the head phylactery] is a HLMM." Abbaye also said, "The yod of tefillin [formed by the knot in the strap of the hand phylactery] is a HLMM."\[88\]

Finally, with the exception of B. Pesahim 110b, in which a Palestinian tradition recommending avoidance of things that occur in pairs is said to be a HLMM, neither Talmud identifies aggadic teachings as HLMM.

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(4) In tannaitic sources, a HLMM is absolutely authoritative: it requires no logical justification, is not open to dispute and cannot be set aside or overturned (M. Yadayim 4.3 || T. Yadayim 2.7 and, implicitly, M. Peah 2.6), versus

(5) In tannaitic sources, a HLMM is not absolutely authoritative: it may be disputed and can be set aside or overruled (M. Eduyyot 8.7).

As we saw above (p. 90), the tendency in both the Yerushalmi and the Bavli is towards a strengthening of the authority of HLMM, and the equation of that authority with the authority of Scripture in certain respects. Although both Talmudim preserve sources that attest to a shift in attitudes over time, the final redactors of both texts tout the authority of HLMM. The passage in Y. Peah 2.6 17a || Y. Megillah 4.1 74d || Y. Hagigah 1.8 76d which extols that which was said to Moses at Sinai (NLMB) as more beloved and precious than Written Torah may be understood in this light. In the Bavli, a story involving tannaitic protagonists employs the term HLMM to express the very idea of incontrovertibility: In B. Niddah 45a, R. Akiva’s students are astonished to hear him give a ruling contrary to the accepted halakhah, but learn that unless a law is a HLMM it is subject to reversal based on logi-

\[88\] It must be noted, however, that in the Munich ms. the third of Abbaye’s traditions is absent and the second appears in brackets. The Tosafot debate both of the final two traditions, which suggests that the creative Babylonian tendency to multiply HLMMs in connection with tefillin may have extended into the manuscript traditions. For a discussion of this phenomenon in connection with the manuscripts of Bava Metzia, see Sh. Friedman, Talmud Arukh, 1:26.
cal and legal considerations.\textsuperscript{89} Thus, the term HLMM here connotes that which cannot be overturned or contradicted but enjoys absolute authority.

Practices contrary to a HLMM are not tolerated in B. Shabbat 79b || B. Menahot 32a–b and B. Menahot 35a–b, and are explained away. In the former text, R. Meir is said to write the mezuzah upon one kind of parchment despite a HLMM to the effect that a mezuzah should be written upon a different kind of parchment. The gemara’s explanation—that in this case the HLMM sets out only the preferred, not the mandatory, way of doing things—is clearly based on the stam’s assumption that practices contrary to a HLMM are in general not allowed. In B. Menahot 35a–b, R. Isaac (PA 3) states that the straps of the tefillin must be black, in keeping with a HLMM. This is followed by reports of a conflicting tradition (the straps may be green, black, or white, but not red) and conflicting practices (the tefillin straps of various rabbis are said to be various colors). The variant practices are explained away easily enough and the conflicting tradition is resolved by \textit{oqinita} (the HLMM refers to the outside of the strap only and the conflicting tradition concerns the inside of the strap)—an indication that a HLMM cannot be overturned or set aside. The only exception to the picture of HLMM as authoritative and incontrovertible is a brief notation in B. Makkot 11a. After discussing the HLMM that tefillin must be sewn together with gut-string, Rav remarks: “We saw the phylacteries in the household of my beloved [uncle, R. Hiyya], and they were sewn with flaxen thread. But the halakhah is not in accordance with his practice.” Although the passage contains a report of non-observance of a HLMM by a Palestinian sage, it does not endorse the behavior reported.

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(6) In tannaitic sources, a HLMM is distinct from Scripture as a source of law. If a law is said to be a HLMM it cannot be derived from Scripture, and vice versa (implied by T. Sukkah 3.2).

The evidence of the Yerushalmi is mixed, as we saw above (pp. 78–80). Two sources (Y. Sheviit 1.7 33b || Y. Sukkah 4.1 54b and Y. Orlah 3.8 63b) depict relatively early Palestinian authorities as maintaining a distinction between HLMM and Scripture as sources of law. By contrast, two further sources (Y. Hagigah 1.2 76b and Y. Nazir 7.3 56c) suggest that at a later period HLMM and Scripture were viewed as equivalent rather than distinct and mutually exclusive categories.

The Bavli, however, clearly assumes with early Palestinian sources that HLMM and Scripture are distinct and mutually exclusive sources of law.

\textsuperscript{89} See the text critical comments and interpretation in Halivni, “Reflections” (n. 13, above), 54.
This distinct status does not prevent the Bavli from equating HLMM and Scripture in terms of authority, as we saw above (p. 90).

(7) In tannaitic sources, the claim that a law, belief, or practice is a HLMM may be accompanied by a chain of transmission (however gapped or vague) leading back to Moses at Sinai and by terms indicative of the process of transmission. This implies a fairly literal understanding of the term HLMM (M. Peah 2.6, M. Yadayim 4.3 || T. Yadayim 2.7), versus

(8) The claim that a law, belief, or practice is a HLMM may be simply asserted without a chain of transmission or terms indicative of the process of transmission (T. Sukkah 3.2).

In neither Talmud is the declaration that a particular law is a HLMM ever accompanied by a chain of transmission or terms indicative of the process of transmission; the claim that a law, belief, or practice is a HLMM is simply asserted. Are we to suppose, then, that the amoraic notion of HLMM is less literal, and more metaphorical than that of tannaitic sources?

In most cases it is not possible to determine if the conception of a HLMM is literal or metaphorical, but on occasion there are details in the surrounding context that provide helpful clues. Turning first to the Yerushalmi, a literal conception of HLMM is apparent in Y. Peah 2.6 17a (|| Y. Hagigah 1.8 76d). The mishnah has identified one of its rulings as a HLMM. In the gemara, R. Zeira (PA 3) says in the name of R. Yohanan: “If a halakha comes to you and you do not know its nature, do not dismiss it, for many matters of law were transmitted to Moses on Sinai (NLMB) and all of them are embedded in the Mishnah.” In effect, this tradition defines a HLMM as a matter of law transmitted to Moses on Sinai (NLMB)—a very literal conception indeed.\(^90\) In other sugyot, however, NLMB is probably not intended literally. As we have seen (pp. 102–104, above), the Yerushalmi on several occasions employs a tradition attributed to R. Levi and reported by R. Yose b. R. Bun (BA 5) according to which any matter forgotten and later reestablished by the diligence of rabbinic authorities will endure as if it were said to Moses at Sinai (NLMB).\(^91\) In these cases, the term

\(^90\) A literal conception of the related phrase NLMB can be found in Y. Meg 1.7 70d, in which the establishment of a new law (the observance of Purim) by Esther and Mordechai appears to contradict Torah verses that indicate that no new law shall appear after the Mosaic revelation. One solution to this problem is to propose that even the book of Esther was said to Moses at Sinai. Since it is clear that this solution is intended to attribute the law of Purim observance to Moses himself, we must construe the phrase NLMB quite literally.

\(^91\) Y. Shev 1.7 33b || Y. Suk 4.1 54b; Y. Peah 1.1 15b; Y. Shab 1.7 3d || Y. Ket 8.11 32a.
NLMB connotes something as precious and therefore enduring as that which actually was said to Moses at Sinai (NLMB).

The Bavli too contains only simple assertions that a particular law or tradition is a HLMM (i.e., no tradent chains or terms of transmission) and, again, in most cases there is no way to determine on the basis of function or context whether the attribution is a literal or metaphorical one. In four sugyot, however, there are contextual clues that indicate that the term HLMM is used literally. In B. Yoma 80a the claim that prescribed minima are a HLMM is understood by the stam to mean that they preceded the court of Jabetz—thus HLMM most likely refers literally to a law spoken to Moses. In B. Nazir 56b, Nahum the Scribe’s tradent chain for the HLMM reported in M. Peah 2.6 is cited by Rav Nahman bar Isaac (BA 4) as proof that intermediate names in chains of transmission—in this case Joshua and Caleb—may be omitted. Clearly, this fourth-generation Babylonian amorah takes literally the notion of a law given to Moses at Sinai and handed down from tradent to tradent. In B. Avodah Zarah 36b the prohibition of public non-marital intercourse between an Israelite male and a Gentile female is cited by the stam as a HLMM. From the continuation of the sugya it is clear that the motivation for this statement is the justification of the zealous act of Phinehas in Numbers 25, in the lifetime of Moses. Thus, the term HLMM is likely intended literally here too, as it is in the stam of B. Sukkah 44a (see the discussion of this text above, pp. 104–106). In all four of these cases, the literal understanding of HLMM is held by a late Babylonian amorah or the stam.

By way of comparison, the use of NLMB in the Bavli differs entirely from its use in the Yerushalmi. This can be seen in the following examples featuring early Babylonian and Palestinian (especially tannaitic) sages:

- B. Rosh ha-Shanah 32a (cf. B. Megilla 21b): “To what do these ten kingship verses correspond? . . . R. Joseph said: ‘To the Ten Commandments that were NLMB.’”

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92 It is likely that the tradition of R. Joshua b. Levi found in Y. Peah 2.6 17a || Y. Hag 1.8 76d and Y. Meg 4.1 74d to the effect that Scripture, Mishnah, Talmud and Aggadah were already all said to Moses at Sinai (NLMB), should also be understood as a hyperbolic metaphor, occurring as it does in passages concerned with grounding the authority of an unstable law or tradition. Both Halivni (“Reflections” [n. 13, above]) and Safrai (“Halakhah” [n. 13, above]) assume a basic equivalence of HLMM and NLMB, and their discussions of HLMM draw upon sources that contain either of the two phrases. Although they are clearly related, however, the two terms are not always equivalent, as will become apparent in the discussion to follow. For this reason, I do not conflate the terms but treat them separately.

93 The only clearly non-literal understanding of HLMM to appear in the Bavli is held by early Palestinian authorities. For example, in a beraita featuring R. Akiva and his students in B. Nid 45a, the term probably means only “incontrovertible.”
Halakhah le-Moshe mi-Sina'i in Rabbinic Sources

- B. Sanhedrin 99a: “Even as the school of Ishmael taught: Because he has despised the word of the Lord (Numbers 15:31)—this applies to one who despises the words spoken to Moses at Sinai (NLMB), namely, I am the Lord thy God . . . , etc. (i.e., the Ten Commandments).”

In these cases, NLMB reports a concrete fact of the biblical revelation as recorded in the biblical text, not as preserved by oral tradition (its meaning in the Yerushalmi). According to the biblical narrative itself, the Ten Commandments were spoken to Moses at Sinai. The Bavli’s use of NLMB is consistent: it refers to the revelation at Sinai, the contents of which are explicitly or implicitly indicated in Scripture. Thus, every occurrence of NLMB in the Bavli is accompanied by a biblical prooftext or allusion, demonstrating that the law or tradition in question was actually said to Moses at Sinai. For example, in B. Shabbat 70a the tanna R. Nathan identifies the verse that intimates the 39 categories of labor prohibited on the Sabbath and said to Moses at Sinai (NLMB). The claim that God communicated the 39 categories of labor to Moses simply reports a “fact” of the biblical narrative. B. Hullin 42a cites a tannaitic tradition from the school of R. Ishmael identifying the verse that intimates the 18 defects that render an animal terefaḥ and that were NLMB. In B. Makkot 32b R. Simlai’s (PA 2) assertion that 613 precepts were NLMB is proven by gematriyah of Scripture, and in B. Keritot 6b a lengthy midrash introduced by Rav Hunya (BA 2) is cited in support of R. Yohanan’s (PA 2) claim that 11 kinds of spices were NLMB.94

It is apparent from these examples that the Bavli and Yerushalmi differ markedly in their deployment of the term NLMB. In the Yerushalmi, the term can overlap with HLMM, but is most often employed metaphorically

94 B. Pes 38b is an exception that proves the rule. This passage features a “Babylonian beraita” (for a discussion of this phenomenon see Shamma Friedman, “The Baraitot in the Babylonian Talmud and the Parallels in the Tosefta,” in Atara l’Haim: Studies in the Talmud and Medieval Rabbinic Literature in Honor of Professor Haim Zalman Dimitrovsky, ed. D. Boyarin et al. [Jerusalem: Magnes, 2000], 163–201), in which R. Eliezer reacts to a particular rabbinic ruling by declaring “By the covenant! These are the very words which were said to Moses at Sinai (NMLB).” No scriptural verse is cited and the most likely explanation of R. Eliezer’s words is that the ruling arrived at by the rabbis was also believed to have been given to Moses at Sinai as an oral tradition. This is the only time the Bavli “cites” a source in which NLMB refers to an oral tradition that does not appear in the written record of the revelation at Sinai. It is not surprising then, that the passage is immediately followed by the stamaitic suggestion that R. Eliezer’s statement was actually a rhetorical question: “By the covenant! Are these the very words which were said to Moses at Sinai?” Of course not, is the implied response, and R. Eliezer never intended to say that this law was NLMB, as can be proven by the fact that the law has a logical justification. Thus, the one time the Bavli cites a source in which NLMB is employed in a manner that violates the Bavli’s understanding of the term, the stam promptly reinterprets the source and eliminates the contradiction.
(it is introduced by kemah or found in hyperbolic contexts). In the Bavli, NLMB is not at all equivalent to HLMM. HLMM always signals a law or tradition not intimated in the biblical text, while NLMB always signals a law or tradition that is intimated (or even explicit) in the biblical text. NLMB is never metaphorical, but refers precisely to the contents of revelation as documented in Scripture. It is interesting that this understanding of NLMB is held primarily by early Palestinian authorities, especially tannaim; yet, despite its Palestinian provenance, this use of NLMB to refer to the actual contents of the revelation at Sinai as explicitly recorded or intimated in Scripture does not appear in the Yerushalmi, which instead adopts the metaphorical understanding of NLMB espoused in later Palestinian sources. Rather, the early Palestinian understanding of NLMB noted here is espoused by some Babylonian authorities (Rav Joseph, Rav Huna), and is ultimately adopted by and preserved in the Bavli. Here then is another instance of a correspondence between early Palestinian and Babylonian sources, as distinct from late Palestinian sources (cf. above, p. 82).

Summary

My synchronic analysis of the two Talmudim reveals that there is not a single, uniform relationship between Mishnah/Tosefta and the Talmudim. At times, there is a strong correspondence between the tannaitic documents and both Talmudim, at other times a correspondence between the tannaitic documents and only one or the other Talmud. In the case of HLMM, synchronic analysis enables the following comparative observations:

1. The Yerushalmi follows tannaitic precedent as found in the Mishnah and Tosefta in its use of HLMM to bolster the authority of exceptional or disputed halakhot and contains the observation that many HLMMs are embedded in the Mishnah. In the Bavli, HLMM is less often used to bolster the authority of a specific exceptional or disputed halakhah, though it appears in aggadic passages that seek to bolster rabbinic authority generally. In these texts featuring tannaim, the abstract category HLMM serves as a counterbalance to the kind of tortured biblical exegesis that undermined confidence in rabbinic leadership—among rabbis and non-rabbis alike. HLMM is a way to claim authority for the Oral Law generally without resort to the midrashic pyrotechnics of earlier generations. In short, unlike the Palestinian texts the Bavli shies away from the practice of grounding the authority of unstable laws in either HLMM or complex midrashic exegesis—perhaps because both strain credulity—although it does allow itself to employ the concept of HLMM for broad-based claims of rabbinic authority. These findings are consistent with my findings in two recent studies, both of which uncover, particularly in the Bavli, some kind of amoraic
ambivalence towards—i.e., a simultaneous rabbinic acceptance of and resistance to—an earlier rabbinic idea, strategy, or technique.95

2. There is in general, a greater correspondence between Mishnah/Tosefta and Bavli than there is between Mishnah/Tosefta and Yerushalmi. Although the Bavli’s use of the forgotten/reestablished strategy is minimal, it nevertheless closely mimics tannaitic usage (which is literal) rather

95 The two studies to which I refer identify amorai discomfort with and reduced exercise of some aspect of rabbinic authority, coupled with hyperbolic and rhetorical assertions of that very authority. In a paper entitled “The Abrogation of Torah Law: Rabbinic Taqqanah and Praetorian Edict,” in The Talmud Yerushalmi in Graeco-Roman Culture, ed. P. Schäfer (Tübingen: Mohr, 1998), 643–674, I look at tannaitic rulings (later termed taqqanot) that contradict or overture Torah law—obviously a bold exercise of rabbinic authority. I show that in several instances the amoraim go on to neutralize or deny the innovative or contradictory nature of these tannaitic taqqanot. The amoraic neutralization or denial of rabbinic enactments that contradict biblical law is less pronounced in the Yerushalmi than in the Bavli. The Bavli adopts various strategies in order to redescribe all of the taqqanot that it identifies as ostensibly contradicting Torah law, as not in fact contradicting Torah law. By contrast, the Yerushalmi is quite prepared to admit that at least some taqqanot are indeed innovations that contradict provisions of biblical law. In matters of practical halakhah, then, the Bavli exhibits a more conservative attitude towards the exercise of rabbinic authority, despite grandiose assertions in hyperbolic and highly rhetorical passages of the power of the rabbis and their Oral Torah over the Written Torah.

In a second paper, entitled “Displaced Self-Perceptions: The Deployment of Minim and Romans in Bavli Sanhedrin 90b–91a” (see n. 65, above), I analyze an aggadic passage from the Bavli in order to make the claim that rabbis of late antiquity felt a deep ambivalence towards non-contextual or extreme midrashic methods of exegesis. I argue that the rabbis are indeed aware of a distinction between contextual and non-contextual methods of interpretation, that self-consciousness about, and discomfort with, extreme midrashic techniques are not only a post-talmudic phenomenon, as has been argued by others, but can be found already in the talmudic period, and that rabbinic authors introduce or exploit the presence of minim and Romans in certain traditions in order to voice and thus grapple with their own ambivalence and radical doubt concerning non-contextual methods of exegesis. I conclude that the reactions to non-contextual exegesis attributed to these non-rabbis are displaced expressions of radical doubt and anxiety on the part of the rabbis themselves. Nevertheless, rabbinic expressions of doubt go hand-in-hand with hyperbolic praise of the great midrashic masters of the past and their extreme methods—indicating a basic rabbinic ambivalence. The amoraim simultaneously accepted and resisted extreme midrashic methods, as evidenced by two types of texts: those that focus on the dangers inherent in a non-contextual program of exegesis (characterized by expressions of anxiety, embarrassment, or general discomfort) and others that focus on the creative possibilities inherent in such a program (characterized by expressions of exuberance and confidence that overcome this anxiety).
than the Yerushalmi’s usage (which is metaphorical). Like Mishnah/Tosefta, the Bavli views HLMM and Scripture as distinct sources of law—a view that is not consistently represented in the Yerushalmi and not espoused by the stam.

Finally, both Talmudim employ the term HLMM in a literal fashion at times, and in this both resemble Mishnah/Tosefta. Nevertheless, the Bavli’s use of the related term NLMB is always literal, while the Yerushalmi’s is overwhelmingly metaphorical. In this respect too the Bavli more closely resembles Mishnah/Tosefta, and it is probably no accident that the NLMB traditions cited by the Bavli are primarily tannaitic.

The present study, in combination with the two studies cited in n. 95, suggests a general cultural difference between the communities of rabbis who produced the Yerushalmi and the Bavli. The Bavli exhibits a pronounced anxiety over rabbinic authority and eschews techniques and strategies that threaten to undermine confidence in rabbinic authority or credibility, such as the use of HLMM to bolster specific unstable laws, extreme forms of exegesis of Scripture, and the issuance of legislation contrary to Torah law. This anxiety had two results: an increase in the hyperbolic praise for and assertion of oral tradition and rabbinic authority in theory, but a reduction in the actual exercise of that authority (in the use of HLMM, the issuance of innovative rabbinic decrees and the midrashic derivation of new laws).

Conclusion

This study has uncovered a chronological shift in the Palestinian conception of HLMM. Early Palestinian sources tend to distinguish HLMM and Scripture as sources of law and employ the term HLMM (and the related term NLMB) in a literal fashion. Later Palestinian sources and the stam of the Yerushalmi tend to conflate HLMM and Scripture as sources of law and to employ the term HLMM (and the related term NLMB) in a metaphorical fashion. In general, when early and late Palestinian views diverge, the stam of the Yerushalmi favors the later view with the result that these views tend to characterize the Yerushalmi as a whole.

By contrast, Babylonian sources and the Bavli as a redacted document betray a clear and strong preference for the early Palestinian conception of HLMM. When early and late Palestinian views diverge, attributed Babylonian sources and the stam of the Bavli tend to adopt the earlier view, with the result that these views tend to characterize the Bavli as a whole. This pattern of general conservatism accounts for some significant differences

It should be remembered that there are some important and broad continuities between early and late Palestinian sources—such as the use of HLMM to legitimate exceptional, disputed or unstable laws.
between the Yerushalmi and the Bavli on the question of HLMM. Unlike the Yerushalmi, the Bavli distinguishes HLMM and Scripture as sources of law and employs the term HLMM (and the related term NLMB) in a literal fashion.

But in one important respect the Bavli abandons its usual pattern of conservatism. As regards the authority of HLMM, the Bavli does not adopt the early Palestinian view as it does in every other instance of difference between early and late Palestinian views. Instead the Bavli adopts the view of the later Palestinian sources endorsed by the stam of the Yerushalmi, and conflates the authority of HLMM and Scripture in several ways (a HLMM is not open to alteration by rabbinic authorities, logical justification, or analogical reasoning, and is decided stringently in cases of doubt). Despite the elevation of a HLMM's authority, however, the Bavli rarely employs HLMM to bolster the authority of exceptional, disputed or unstable traditions—and here also the Bavli breaks with Palestinian precedent, this time both early and late.

This aberration in the Bavli's relation to Palestinian precedent (i.e., its preference for later rather than earlier Palestinian sources as regards the authority of HLMM and its reduced use of HLMM to bestow authority on unstable laws or institutions) is likely symptomatic of an increasing Babylonian anxiety over authority claims that are not based directly on Scripture, as I have argued above and elsewhere. At all events, it is only through the judicious combination of source critical and synchronic approaches that the full complexity of the redacted documents of rabbinic literature can be brought to the attention of, and utilized by, the historian.