

**THE READER'S GUIDE
TO THE TALMUD**

Jacob Neusner

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THE READER'S GUIDE TO THE TALMUD

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BY

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PREFACE

The Bavli, or Talmud of Babylonia, the foundation-document of Judaism, now finds its place in the high culture of the English-speaking world. Numerous translations and introductions make the work accessible, and considerable response in the market-place of culture indicates an interest in what the Talmud has to teach. That is as it should be. For the Talmud offers a compelling possibility of culture: the rational reconsideration of the givens of the social order. It shows the way to the systematic translation of high ideals of social and personal conduct into the humble realities of the workaday world. Those high ideals are set forth in Scripture, which the Talmud frames into the rules of the reasoned conduct. Its rigorous and systematic, argumentative and uncompromisingly rational inquiry sets forth the moral and civil consequences of Scripture's laws and narratives. This the Bavli does in vast detail, the rigorous inquiry of criticism extending into the smallest matters. So the Talmud sets forth an orderly world, resting on reason and tested by rationality, all in accord with consistent principles. To the cultural chaos of our own day the Talmud shows a way of rationality to a world in quest of reason and order.

A commentary to the Mishnah, a philosophical law-code made up of sixty-two topical expositions or tractates compiled in the Roman-ruled Land of Israel by ca. 200 C.E., the Bavli, produced at about 600 C.E. in the Iranian satrapy of Babylonia, in the vicinity of present-day Baghdad, takes up the Hebrew Scriptures (a.k.a., the Old Testament). The Talmud translates Pentateuchal narratives and laws into a systematic account of its "Israel's" entire social order. In its thirty-seven topical presentations of Mishnah-tractates, the Talmud portrays not so much how people are supposed to live—this the Mishnah does—as how they ought to think, the right way of analyzing circumstance and tradition alike. That is what makes encounter with the Bavli urgent for the contemporary situation. To a world such as ours, engaged as it is, at the dawn of a new century by standard reckoning, in a massive enterprise of reconstruction after history's most destructive century, old systems having given way, new ones yet to show their merit and their mettle, the Talmud presents a considerable resource.

The Bavli shows not only a way of reform, but, more valuable still, a way of thinking and talking and rationally arguing about reform. When we follow not only what the sages of the Talmud say, but how they express themselves, their modes of critical thought and—above all—rigorous argument, we encounter a massive, concrete instance of the power of intellect to purify and refine. For the sages of the Talmud, alongside the great masters of Greek philosophy and their Christian and Muslim continuators, exercise the power of rational and systematic inquiry, tenacious criticism, the exchange of not only opinion but reason for opinion, argument and evidence. They provide a model of how intellectuals take up the tasks of social criticism and pursue the disciplines of the mind in the service of the social order. And that, I think, is what has attracted the widespread interest in the Talmud as shown by repeated translations of, and introductions to, that protean document. Not an antiquarian interest in a long-ago society, nor an ethnic concern with heritage and tradition, but a vivid and contemporary search for plausible examples of the rational world order, animate the unprecedented interest of the world of culture in the character (and also the contents) of the Bavli. That is the premise of this *Reader's Guide* to the Talmud, that to which, I think, people wish to gain access.

The Talmud embodies applied reason and practical logic in quest of the holy society. That model of criticism and reason in the encounter with social reform of which I spoke is unique. The kind of writing that the Talmud represents has serviceable analogues but no known counterpart in the literature of world history and philosophy, theology, religion, and law. That is because the Talmud sets forth not only decisions and other wise and valuable information, but the choices that face reasonable persons and the bases for deciding matters in one way rather than in some other. And the Talmud records the argument, the constant, contentious, uncompromising argument, that endows with vitality the otherwise merely informative corpus of useful insight. “Let logic pierce the mountain”—that is what sages say. Not many have attained the purity of intellect characteristic of this writing. With the back-and-forth argument, the Talmud enlightens and engages. How so? The Talmud sets forth not so much a record of what was said as a set of notes that permit the engaged reader to reconstruct thought and recapitulate reason and criticism. Indeed, the Talmud treats coming generations the way composers treat unborn musicians: they provide the notes for the

musicians to reconstruct the music. In the Talmudic framework, then everything is in the moving, or dialectical argument, the give and take of unsparing rationality, which, through our own capacity to reason, we are expected to reconstitute: the issues, the argument, the prevailing rationality. The Bavli makes enormous demands upon its future. It pays a massive compliment to its heirs.

In that aspect, the Talmud recalls the great philosophical dialogues of ancient and medieval times. Readers familiar with the dialogues of Socrates as set forth by Plato—those wonderful exchanges concerning abstractions such as truth and beauty, goodness and justice, will find familiar the notion of dialectical argument, with its unfolding, on-going give-and take. But in the concrete statement of the Talmud they will be puzzled by the chaos of the Talmudic dialectic, its meandering and open-ended character. And they will miss the formal elegance, the perfection of exposition, that characterize Plato's writings. So too, the Talmud's presentation of contrary positions and exposition of the strengths and weaknesses of each will hardly surprise legists. But the inclusion of the model of extensive exposition of debate surprises. Decisions ordinarily record the main points, but not the successive steps in argument and counter-argument, such as we find here. And, more to the point, we expect decisions, while much of the Talmud's discourse proves open-ended.

The very character and the style of the Talmud's presentation certainly demand a kind of reading not ordinarily required of us. What we are given are notes, which we are expected to know how to use in the reconstruction of the issues under discussion, the arguments under exposition. That means we must make ourselves active partners in the thought-processes that animate the document. Not only is the argument open-ended, so too the bounds of participation know no limits. Indeed, it is the very reticence of the Talmud to tell us everything we need to know, the remarkable confidence of its compilers that generations over time will join in the argument they precipitate, grasp the principles they embody in concrete cases, find compelling the issues they deem urgent—it is that remarkable faith in the human intellect of age succeeding age that lifts the document above time and circumstance and renders it immortal. In transcending circumstances of time and place and condition, the Talmud attains a place in the philosophical, not merely historical, curriculum of culture. That is why every generation of its heirs and continuators found itself a partner in the on-going reconstruction of

reasoned thought, each adding its commentary to the ever-welcoming text.

Now, in the premise that persons of high cultural aspiration would like to find their way into the Talmud, where should we begin? This *Reader's Guide* responds with the answers to the basic questions of definition and description that we all ask when we take up a strange but important, classical text of human culture. I offer a set of generalizations that describe the whole at any point in its parts. With these rules in hand, I hope, a reader, having learned the lessons set forth here, may open any topical exposition of the Talmud, any tractate at any chapter at the start of any systematic exposition of a law set forth by the Mishnah, and understand precisely what is going on. All that readers will then require is knowledge of the facts of the matter at hand, such as any competent translation into English ought to supply. So I have tried to give guidance that will serve no matter where one starts Talmud-study by clarifying the traits of the document throughout. For the Talmud, for all its topical variety, covering as it does thirty-seven large topics of law of the sixty-two topics that the Mishnah expounds in its own way, says the same thing about many things. Its framers speak with a single, uniform voice. If we can make sense of any passage, therefore, and are able to follow a discussion, recognizing the signals that guide us to the intent and meaning of the passage's compilers, we can follow every other passage in the writing overall. If we know the rules of thought that govern here, we will find our way everywhere else. So there are these matters that constitute a reliable guide to the document, opening up each passage to our inquiry: how the Talmud speaks, how the Talmud thinks, how the Talmud is organized, what the Talmud says, and where the Talmud comes from, a question of culture, not of history. Those key-traits of form and intellect and analysis govern throughout, so if readers bring to a passage a clear picture of how matters play themselves out in general, they will find the unfamiliar accessible and illuminating.

With the generalizations that are set forth here, readers should find it possible to study any particular tractate or chapter, bringing to the work a general theory of what sort of writing they take up, and what rules of reading and interpretation are there to be discerned. Without a general theory of the Talmud, by contrast, students find themselves prisoners of the particular passage that they study. They moreover depend wholly on their teachers for whatever sense of

context and purpose they are going to derive from their work on any given passage. In these pages, I mean to offer a set of propositions about the writing viewed whole that ought to guide the intensive study of particular parts. The principal thesis that governs here is simple: the Talmud is not merely a compilation of miscellaneous sayings and discussions. On the contrary, it is systematic and orderly, once properly decoded. It is, indeed, so well crafted, with so many signals of intent and the character of the construction at hand, that we ought always to know precisely where we are in the unfolding of an exposition of a topic and the successive components of an argument.

Readers will begin with one warning: there is no such thing as “reading,” but only sustained, detailed study. Indeed, the Talmud in its classical venue is not read nor even declaimed but sung. It establishes a presence and a voice of its own, contained in the repeated phrase of learning, “The Talmud says...,” as a participant in the here and now. That explains our starting point and the logic of this *Guide’s* program of exposition. I follow the standard program of literary analysis, dealing with the document’s rhetoric, logic, and topic. I want to know how the writers deliver their message, the rhetorical foundations of their writing. Then I turn to the issue of logical cogency, the principles of right thinking that guide thought and argument, what imparts coherence to the vast and continuous exposition before us. Finally I ask about the topical program overall: can we characterize the Talmud’s “Judaism,” that is to say, its single coherent message. I have chosen two absolutely fundamental issues for my exposition. First, since the Talmud is often described as part of the Torah, meaning, God’s revelation to Moses at Sinai, I ask about the relationship of the Talmud to the Torah defined narrowly as the Five Books of Moses (“Pentateuch”). And in that same context, at the end, I raise the critical question of culture that the Talmud addresses, the question of tradition. “Judaism” built on Scripture and the Talmud and other Rabbinic writings commonly is characterized as a traditional religion, and the Talmud is represented as a document that participates in a chain of tradition from Sinai. (In secular circles that same Judaism is called not “traditional,” a term of theological apologetics, but rather “historical,” but it comes down to the same thing.) So I ask, does the Talmud exhibit the traits of a traditional writing, cumulative and agglutinative, or does it show itself to be original in the exact sense of the word: does it originate the system that, in the aggregate, it sets forth?

We commence, in Part One, with how the Talmud speaks, the traits of its voice. I show that the Talmud speaks in a uniform voice, start to finish. Then I turn to the bilingual character of the writing and examine the way in which language itself serves as a medium for conveying intent and meaning. Since I insist that the Talmud is exquisitely well organized and proportioned, Chapter Three addresses the difficult topic of how the Talmud is organized, with special attention to the building blocks that the framers utilize in the composition of their presentation (“discourse”).

We proceed to the logical next question, Part Two, which is how the Talmud—that is, the entire collegium of its writers and compilers—thinks: the traits of mind and modes of thought characteristic of the Talmud as a whole, uniformly through the parts. Here we pay attention to how the Talmud is intellectually coherent. This matter is taken up in two parts, first, in Chapter Four, the Talmud’s intellectual traits, and, second, the Talmud’s particular and distinctive characteristic, the presentation of not only the results but the modes of argument. In an elementary way, here I spell out Talmudic dialectics in the context of philosophical dialectics more generally.

Then, in Part Three, I deal with the question of the Talmud’s context in history and tradition. Specifically, Chapter Six asks about the sources of the Talmud, beginning with Scripture and tradition: the relationship of the Talmud to the Torah revealed by God to Moses at Sinai, the Pentateuch and Scripture overall. Is the Talmud essentially a commentary upon, and subordinate to, Scripture? If it is, then it must be classified as a traditional writing, and the religion that it portrays as a historical and traditional religion. If not, then the Talmud must be heard as an autonomous statement, and the Judaism it sets forth as not a recapitulation but a reworking of a received heritage. Accordingly, Chapter Seven, finally, argues that the Talmud is a systematic, not a traditional document.

In order to establish that the Talmud of Babylonia stands on its own and speaks for itself, I have appended a systematic discussion of the relationship between the Talmud of Babylonia and its predecessor, the Talmud of the Land of Israel. Both Talmuds address the same Mishnah and draw upon a shared corpus of legal formulations as well. I compare the analytical program and powers of the one with the other. What I show, in a somewhat technical discussion, is that the second Talmud is wholly autonomous of the first—and a far superior intellectual achievement, superior by criteria I spell out and

then am able to meet in what I deem to be definitive examples. So what I have said about the formidable claim upon contemporary intellectual life that is set forth by the Bavli pertains only to that Talmud and not to its predecessor. Here too the view set forth in these pages competes with its opposite; dissertations at the Hebrew University of Jerusalem treat the two Talmuds as interchangeable. With the evidence in hand, readers may judge for themselves.

In each topical exposition as well as in the Appendix I present a variety of exemplary texts. These provide ample occasion to encounter the document in its own language, but in English. The bibliography lists those monographs and translations of mine that are recapitulated in these pages.

To whom do I address this work? To everyone who thinks, therefore who maintains intellect makes a difference, ideas contend, people decide on the basis of reason, and rationality governs. And, in the academic setting of the Enlightenment, I maintain, reason eradicates the accidents of difference, for our day transcending boundaries of gender, culture, ethnic and religious specificities. These I regard as impertinent to the life of mind, such as is embodied—I think, wholly realized—by the Bavli. So I write for those—men and women, Jews and gentiles alike—who aspire to study the document and seek keys to unlock its treasures of mind. They locate themselves in the world of general culture, in the academic world, in centers of the study and practice of Judaism, and in the English-speaking part of the yeshiva-world that privileges the Talmud and its commentaries as a principal focus of learning.

That first focus, the world of general culture, is a new one for this document. Until our own times and the advent of our own language-world, that of American English, with its vast outreach and broad interests and sympathies and aspirations, gentiles have only very rarely taken an interest in this remarkable writing. And women, even Jewish women, were seldom afforded the opportunity. Today, the prominence of books about, and drawing upon, the Talmud, in the study of religion, philosophy, history and culture, works both descriptive and analytical, and also normative and prescriptive, has secured for the Bavli a hearing far beyond the limits of Jewry. And, as is clear, these books find their readers, and they are very many and remarkably diverse. It is a new age for the Talmud.

The qualifications of this particular guide are spelled out in the Bibliography of those works of mine that pertain to the present task.

In that wide world to which, for forty years, I have worked to make sense of the Talmud and Rabbinic Judaism in its formative, classical statement, it is no secret that there are other views besides mine, other perspectives on the Talmud in particular. Through my monographs I claim to have deciphered the code of the document; others deny that claim in favor of views that differ from mine. Specifically, in these pages I propose to guide readers on an orderly exploration of the traits of what I conceive to constitute a coherent and well-composed document. One scholar's order is another scholar's chaos.

To illustrate that every line of this book takes up a position on a matter of debate—indeed, carries echoes of debates I have precipitated—I give a single issue, animating the first and third parts of this book. That animating issue is, is the Talmud a well-crafted and organized piece of writing, therefore the work of some few minds at some one time, or does it exhibit the marks of a sedimentary process, of agglutination and accumulation over time and through many generations? In language just now introduced, is it systematic or traditional? Among the contemporary masters of the Talmud, whether in universities or in yeshivas, are not a few who describe the Talmud as disorganized and chaotic and most would insist on its traditionality. One recent and properly prominent exponent of the view is Adin Steinsaltz, who says, “One of the principal difficulties in studying the Talmud is that it is not written in a systematic fashion; it does not move from simple to weighty material, from the definition of terms to their use. In almost every passage of the Talmud, discussion is based on ideas that have been discussed elsewhere, and on terms that are not necessarily defined on the page where they appear.”¹ He further states, “Viewed superficially, the Talmud seems to lack inner order. ...The arrangement of the Talmud is not systematic, nor does it follow familiar didactic principles. It does not

¹ Adin Steinsaltz, *The Talmud. The Steinsaltz Edition. A Reference Guide* (N. Y., 1989: Random House), p. vii. The more I study Steinsaltz's conception of the Talmud as set forth in his general introductions to his “Steinsaltz edition,” the more I am persuaded that he does not have a clear grasp of the character of the document at all. That is so, even though his re-presentation of matters, in the graphics of the Romm edition of the Bavli, certainly has much to recommend it. But like all products of a yeshiva-education, with its atomistic focus, his strength lies in the explanation of words and phrases, not in the characterization of the document or in the grasp of its structure and coherence. Whether his explanation of words and phrases bears the marks of more than paraphrastic erudition is for specialists in Rabbinic philology and exegesis to indicate; my impression, based on the close study of some chapters as he presents them, is that it does not. It is little more than paraphrase and lucid presentation of what is already in hand in the received tradition.

proceed from the simple to the complex, or from the general to the particular...It has no formal external order, but is bound by a strong inner connection between its many diverse subjects. The structure of the Talmud is associative. The material of the Talmud was memorized and transmitted orally for centuries, its ideas are joined to each other by inner links, and the order often reflects the needs of memorization. Talmudic discourse shifts from one subject to a related subject, or to a second that brings the first to mind in an associative way.”² Steinsaltz recapitulates a broadly-held impression of matters. The burden of proof that that view is wrong is on me. And only the reader can judge the issue.

In this *Reader's Guide* I mean to persuade that the Bavli is cogent, so that, if we master one passage, another composition, on a different subject and problem, becomes all the more accessible. That forms the basis of my claim that the Bavli demands a hearing in the realm of high culture for the lessons it teaches on how applied reason and practical knowledge reform and renew the social order. But the contrary view, held not only in secular universities but in synagogues and yeshivas where the Talmud is taught, competes. For some present the document as a mere source of information, bearing whether or ethnic or religious value. Then my claim that we see how reason and rationality function in concrete ways cannot stand up. As between the two views presently competing, I mean to explain step by step, text by text, why that other presentation misconstrues the character of the document. To teach the Talmud by looking up scattered and diverse treatments of a common theme or topic as people do these days in place of rigorous Talmud-learning betrays the very goal that the Talmud's sages mean their writing to accomplish.

The issue demands attention in its own terms, or the choices represented in these pages may not register as alternatives confronting an alert reader. What is the way I have not taken, and how otherwise do people present the Talmud and guide reading in it? The answer is, through anthologies of a topical order. Let me specify the principal, and, alas, not uncommon, approach that I maintain leads students away from, and not toward, the Talmud's own meaning. In the world that values the Talmud and assigns to it the highest priority, it is not only common to represent the Talmud as a massive compilation, not as a purposive statement of law and theology,

² *ibid.*, p. 7.

a large system embodied in countless coherent details. The way the Talmud is studied in circles that hold such a view confirms that very position. For it is also, these days, not unusual for the Talmud to be broken up into topical units, and for the units to be studied consecutively as miniature encyclopaedia articles, presentations of information that happen to make their appearance in diverse passages and over a variety of tractates. So the work of those who crafted the Talmud as we know it—a systematic, methodical exposition of many topics in a single manner—is set aside.

We take up the results, in these pages, of a highly systematic, rigorous, and orderly intellect, governing writing of a formally-coherent character, thinking that is logical and unsparing, a program of inquiry that is highly intellectual in its indicative traits. That is how I see the writing, that is how I present it, and that is how, in my judgment, the Talmud has defined the religious community that privileged the Talmud along with the Torah as God's revelation. Rabbinic Judaism met, and meets, God through reason, in the Torah, as mediated by the rationality of the Talmud. That explains why the framers of the document organized matters to make their point, selected information and situated it where they did to serve their purpose, always guided by a large and encompassing, orderly theory of what is at stake in any given exposition. But that is not the paramount approach these days. Rather, topical study, following a given subject hither and yon, in the bits and pieces where it occurs in various contexts, violates the integrity of the Talmudic page. That is to say, stringing together free-standing compositions on a common topic, out of all logical context, dismisses the logical and orderly analytical inquiry, served also by topical units of one kind or another, and deprives the Talmud of its continuity, the momentum of its sustained analysis of its problems in its way, the profound inquiry into the inner logic of things that, as we now have it, the Talmudic *sugya*, or systematic exposition that the sages have composed for us, means to expose.

What is at stake in the debate briefly summarized here? I should claim, the authenticity of the Judaism built upon the Torah of Moses our Rabbi, that is, Rabbinic Judaism. What is to be deplored is not only loss of access to the intellect of the Talmud's own framers, who wrote this way, not that, and with brilliant success, in order to invite future generations to participate in the on-going discourse of logic and reason and tradition. It is also the misrepresentation of the authentic character of one of the greatest achievements of human-

ity's intellect, which is what the Talmud is. The topical study of the Talmud in dismissing the continuity of exposition and argument treats the document as a compilation of information, not as a sustained and coherent statement, one that is capable indeed of shaping our minds and changing us through its compelling and forceful logic. This retrograde reform of the yeshiva-approach to Talmud-study, affecting also Talmud-study at earlier age-levels as well as in other-than-Orthodox settings and even introductions for readers outside of Judaic circles altogether, deprives Judaism's greatest writing of its authority and power.

That approach enjoys the sponsorship of scholars of considerable prestige and authority within the yeshiva-world, Steinsaltz exemplifying the lot of them, and in the primary and secondary levels finds acceptance as the better way of gaining access to the document than the Talmud's own approach. I hope that by showing that the Talmud is not disorganized, not confused, not haphazard, but exquisitely composed and crafted, lucid and nearly always clear as to its purpose, above all, consistent, orderly, and systematic, I may strengthen the received and authentic way. Obviously, in showing how I believe I have decoded principal messages that embody the Talmud and impart to it its character, I have not solved all critical problems. But I think I have answered questions of system, purpose, and method that require attention if we are to learn how to hear the Talmud's serene voice and sublime message. The stakes are very high: the intellectual vitality of Judaism is at issue.

Since I guide readers to the heart of matters, which focus upon modes of rationality, thought, and criticism, I do treat as peripheral a range of other questions. I do not provide a bibliography of all that is available, nor do I catalogue all other introductions to Rabbinic literature and what they deem worth introducing, or nor do I supply selections of Talmudic texts except as required by the argument of this book. The reason is, first, mine is an intellectual therapy of a directive character: I say what I think and try to persuade the reader to concur. Second, much good work by others deserves a reading too. We have excellent bibliographies, introductions, and anthologies in abundance. Selecting among them, I call attention to current and choice items.

For bibliography about the Talmud, a large, up-to-date and reliable work is at hand, Günter Stemberger, *Introduction to the Talmud and Midrash*.³ This work has no competition.

³ Translated by Markus Bockmuehl. Second Edition. Minneapolis, 1996: For-

For selections, systematically presented, a number of pedagogically engaging anthologies offer themselves, including Judith Hauptmann, David Kraemer, and this writer's *Invitation to the Talmud. A Teaching Book*.⁴ For a view of the Talmud in its literary context in the Rabbinic literature of late antiquity, the first six centuries C.E., this writer's *Introduction to Rabbinic Literature*⁵ serves.

Over time, in making my translations, I have consulted a broad range of the received exegetical literature. Everyone working today owes the same debt to the principals of that literature. My special debt is to my predecessors in the translation into English of Rabbinic classics, who had the difficult task of discovering or inventing appropriate counterpart-words for matters of an essentially technical character in the original Hebrew and Aramaic. For the Mishnah, the pioneer was Herbert H. Danby, who transformed the Mishnah into a work of literature; my own translation, aimed at conveying the formal and rhetorical character—the crabbed poetry—of the document, shows his influence in word-choice on every page. For the Bavli, the pioneers were the great British-Jewish Orthodox rabbis who, from the 1930s forward, rendered into English a document that, as readers will anticipate, hardly offers itself as a candidate for translation at all, being elliptical, hermetic, and constantly referential. In the *Babylonian Talmud* (London, 1948: Soncino Press), the British translators aimed at the same goal that Danby achieved: render an ancient document into literary form. My *American Translation* and the later *Academic Commentary* accomplish other goals altogether. But whenever I found difficult the selection of a counterpart in English to a Hebrew or Aramaic passage, the Soncino translator offered his possibility, and at many points, I adopted it. Not only so, but I found the notes helpful in clarifying the basic sense of many passages; in these pages, a name in square brackets signifies that I

press Press. This work is periodically updated and is the only systematic and complete account of the state of the question in any language. When the work is translated into other languages, moreover, Stemberger updates it as well, so the most valuable edition is now the Czech. Whenever I want to know where to begin in investigating any problem, I turn to Stemberger.

⁴ N.Y., 1973: Harper & Row. Second printing, 1974. Paperback edition, 1975. Reprinted: 1982. Second edition, completely revised, San Francisco, 1984: Harper & Row. Paperback edition: 1988. Second printing, in paperback, of the second edition: Atlanta, 1998: Scholars Press for South Florida Studies in the History of Judaism.

⁵ N.Y., 1994: Doubleday. The Doubleday Anchor Reference Library.

have drawn on the Soncino translator's comment on a given passage. Readers will see ample basis for my admiration of their work.

What I propose to contribute here, my theory of what a reader's guide requires, then is simple. To any vast intellectual exercise such as this one, we surely have the right to address a variety of questions of purpose, system, and order. In these pages, therefore, I propose to generalize on the basis of massive volumes of data. In identifying many of the document's uniformities and governing rules of thought and expression, I undertake to decode the writing and to decipher the intellectual glyphs of which it is comprised. To do so I answer simple questions that we bring to any document of this kind, an anonymous, massive, collective, and communal work, with its own way of imparting its messages and signalling its procedures. Not only so, but since I maintain the Talmud is so written as to invite us to join its discussion, this guide means to open the doors for readers to participate in the debates that an ancient and protean document sustains even today. So, as we enter the twenty-first century of the Common Era, fourteen centuries after this document reached closure, we may find our minds shaped by this writing, as they are shaped by the encounter with mathematics and music, Socrates, Plato, Aristotle, and Scripture—but not much else out of the eternity of the past. So not many documents, even a mere half-millennium-old, may reach across the ages and lay claim to such acute contemporaneity as that!

Since the writer of this guide takes the route of an introduction that is at once literary and cultural, religious, philosophical and theological, not the better-trodden historical or philological or narrowly exegetical ones, it explores a generally unfamiliar path. So let me introduce myself, the guide, and briefly place the work into the context of my own most current intellectual biography. Having spent twenty years, 1972-1992, analyzing the distinctive traits—rhetorical, logical, and topical—of the various documents, including the Talmud, about seven years ago I took up the logical next question: how do these diverse documents form a common, coherent statement? What do they say when we take up their contents, viewed whole? Any religion carries us from analysis of the parts to synthesis of the whole. So I went in search of the coherent set of ideas that animate all the writings and transcend the boundaries of the documentary components of the canon.

To begin with I started down the wrong road: find the final, definitive statement and work back from there. I chose what I thought

was the one document, the Talmud of Babylonia, ca. 600 C.E., that at the conclusion of the formative age of Rabbinic Judaism set forth, out of all the prior writings, the final and comprehensive formulation. But that produced precisely the results I had been finding. I found that my systematic monographs one after another were yielding the description of a document and its system in particular. That was not what I was seeking, which was and is, the answer to the question, what transcends documentary lines? But the systematic study of the Talmud's system yielded the monographs on which this *Reader's Guide* is based, most of which are catalogued in the bibliography. So this work results from an extension of a sustained scholarly inquiry of about a quarter of a century.

To complete the story, then I turned to analyze different phenomena altogether from the literary ones. In leaving the secure harbor of documents viewed one by one and in groups, I charted what was for me an unfamiliar course. Specifically, for my evidence of the system that animates the whole body of writing, I chose the problem of language: theology is to religion as language is to experience. I asked, Does a single structure of language animate the whole, so that if I can describe how that language works, I can identify the main beams of structure and order of the whole? In my three volume *Theological Grammar of the Oral Torah (Vocabulary, Grammar, Syntax)*.⁶ I spread out the results. Then I took the next step, one wholly outside of the entire body of writing: can I, on my own, identify—fabricate—an integrating problematic, compose a theory of the system viewed whole, and find out whether, in fact, that theory matches the evidence? I chose the obvious: monotheism and its problem of God's justice. This yielded *The Theology of the Oral Torah: Revealing the Justice of God* and *The Theology of the Halakhah*, the one on the writings of a narrative, exegetical, and theological character—norms of belief (aggadah)—and the other on writings of a legal character (halakhah)—norms of behavior. This division between the two types of norms in writing matches the native categories of ancient classical Judaism: law vs. exegesis and narrative. That work has just reached its conclusion in the two *Theologies*, and directs me toward the logically necessary next question. That concerns how these two native categories—so carefully differentiated from one another—work together to make a coherent statement. So, the upshot is, the system-

⁶ The bibliography lists this and the other works mentioned here.

atic study of the Bavli viewed whole came about by reason of a mistake in the execution of an experiment focused on an entirely different problem from the one at hand.

All of the research epitomized here was carried on at the University of South Florida and Bard College, in the years from my appointment in 1990-2000 at USF and in 1994 to the present at Bard College to the present. Both centers of higher learning provide generous research grants, and, more important, through the professorships that I hold, they afford on-going support, so that I am able to do this work. Since 1989, when I left my former place of employment, I have taken up problems of a far more demanding and weighty character than I was able to consider in the twenty-one years prior. I am inclined to credit my colleagues at USF and Bard for the shift. Their rigorous challenge, their sustained interest in the response to their questions, and their cordial collegiality have made a huge difference in my intellectual life, one that has been all to the good.

JACOB NEUSNER
BARD COLLEGE

BIBLIOGRAPHY

Each chapter of this book is based on one or more monographs of mine, summarized and drastically condensed. And a number of monographs not represented here takes up other questions of general interest. Readers who wish to see the full exposition, with complete texts, on which each point is based may refer to the items listed here.

THE TORAH IN THE TALMUD

The Torah in the Talmud. A Taxonomy of the Uses of Scripture in the Talmuds. Tractate Qiddushin in the Talmud of Babylonia and the Talmud of the Land of Israel. I. Bavli Qiddushin Chapter One. Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

The Torah in the Talmud. A Taxonomy of the Uses of Scripture in the Talmuds. Tractate Qiddushin in the Talmud of Babylonia and the Talmud of the Land of Israel. II. Yerushalmi Qiddushin Chapter One. And a Comparison of the Uses of Scripture by the Two Talmuds. Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

THE QUESTION OF TRADITION

Sources and Traditions. Types of Composition in the Talmud of Babylonia. Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

The Bavli and its Sources: The Question of Tradition in the Case of Tractate Sukkah. Atlanta, 1987: Scholars Press for Brown Judaic Studies.

WHERE THE TALMUD DOES NOT COME FROM

Where the Talmud Comes From: A Talmudic Phenomenology. Identifying the Free-Standing Building Blocks of Talmudic Discourse. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism.

The Bavli That Might Have Been: The Tosefta's Theory of Mishnah-Commentary Compared with That of the Babylonian Talmud. Atlanta, 1990: Scholars Press for South Florida Studies in the History of Judaism.

TRADITION AND SELECTIVITY

Tradition as Selectivity: Scripture, Mishnah, Tosefta, and Midrash in the Talmud of Babylonia. The Case of Tractate Arakhin. Atlanta, 1990: Scholars Press for South Florida Studies in the History of Judaism.

The Initial Phases of the Talmud's Judaism. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism. i. *Exegesis of Scripture.*

The Initial Phases of the Talmud's Judaism. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism. ii. *Exemplary Virtue.*

The Initial Phases of the Talmud's Judaism. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism. iii. *Social Ethics.*

The Initial Phases of the Talmud's Judaism. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism. iv. *Theology.*

THE TALMUD'S INTELLECTUAL CHARACTER

The Bavli's Intellectual Character. The Generative Problematic in Bavli Baba Qamma Chapter One and Bavli Shabbat Chapter One. Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

Decoding the Talmud's Exegetical Program: From Detail to Principle in the Bavli's Quest for Generalization. Tractate Shabbat. Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

TALMUDIC DIALECTICS

Talmudic Dialectics: Types and Forms. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism. I. *Introduction. Tractate Berakhot and the Divisions of Appointed Times and Women.*

Talmudic Dialectics: Types and Forms. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism. II. *The Divisions of Damages and Holy Things and Tractate Niddah.*

THE TALMUD'S STRUCTURE AND ITS RATIONALITY

Rationality and Structure: The Bavli's Anomalous Juxtapositions. Atlanta, 1997: Scholars Press for South Florida Studies in the History of Judaism.

The Theological Grammar of the Oral Torah. Binghamton, 1998: Dowling College Press/Global Publications of Binghamton University [SUNY]. II. *Syntax: Connections and Constructions*

THE LANGUAGES OF THE BAVLI

Language as Taxonomy. The Rules for Using Hebrew and Aramaic in the Babylonian Talmud. Atlanta, 1990: Scholars Press for South Florida Studies in the History of Judaism.

THE BAVLI'S ONE VOICE

The Bavli's One Voice: Types and Forms of Analytical Discourse and their Fixed Order of Appearance. Atlanta, 1991: Scholars Press for South Florida Studies in the History of Judaism.

THE BAVLI'S UNIQUE VOICE

The Bavli's Unique Voice. A Systematic Comparison of the Talmud of Babylonia and the Talmud of the Land of Israel. Volume One. Bavli and Yerushalmi Qiddushin Chapter One Compared and Contrasted. Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

The Bavli's Unique Voice. A Systematic Comparison of the Talmud of Babylonia and the Talmud of the Land of Israel. Volume Two. Yerushalmi's, Bavli's, and Other Canonical Documents' Treatment of the Program of Mishnah-Tractate Sukkah Chapters One, Two, and Four Compared and Contrasted. A Reprise and Revision of The Bavli and its Sources. Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

The Bavli's Unique Voice. A Systematic Comparison of the Talmud of Babylonia and the Talmud of the Land of Israel. Volume Three. Bavli and Yerushalmi to Selected Mishnah-Chapters in the Division of Moed. Erubin Chapter One, and Moed Qatan Chapter Three. Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

The Bavli's Unique Voice. A Systematic Comparison of the Talmud of Babylonia and the Talmud of the Land of Israel. Volume Four. Bavli and Yerushalmi to Selected Mishnah-Chapters in the Division of Nashim. Gittin Chapter Five and Nedarim Chapter One. And Niddah

Chapter One. Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

The Bavli's Unique Voice. A Systematic Comparison of the Talmud of Babylonia and the Talmud of the Land of Israel. Volume Five. *Bavli and Yerushalmi to Selected Mishnah-Chapters in the Division of Neziqin. Baba Mesia Chapter One and Makkot Chapters One and Two.* Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

The Bavli's Unique Voice. A Systematic Comparison of the Talmud of Babylonia and the Talmud of the Land of Israel. Volume Six. *Bavli and Yerushalmi to a Miscellany of Mishnah-Chapters. Gittin Chapter One, Qiddushin Chapter Two, and Hagigah Chapter Three.* Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

The Bavli's Unique Voice. Volume Seven. *What Is Unique about the Bavli in Context? An Answer Based on Inductive Description, Analysis, and Comparison.* Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism.

For a discussion of the contrary view, which sees pericopes of the two Talmuds as essentially interchangeable, see the following:

Are the Talmuds Interchangeable? Christine Hayes's Blunder. Atlanta, 1996: Scholars Press for South Florida Studies on the History of Judaism.

The Documentary Foundation of Rabbinic Culture. Mopping Up after Debates with Gerald L. Bruns, S. J. D. Cohen, Arnold Maria Goldberg, Susan Handelman, Christine Hayes, James Kugel, Peter Schaefer, Eliezer Segal, E. P. Sanders, and Lawrence H. Schiffman. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism.

HOW THE BAVLI IS ORGANIZED

The Rules of Composition of the Talmud of Babylonia. The Cogency of the Bavli's Composite. Atlanta, 1991: Scholars Press for South Florida Studies in the History of Judaism.

The Principal Parts of the Bavli's Discourse: A Final Taxonomy. Mishnah-Commentary, Sources, Traditions, and Agglutinative Miscellanies. Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

THE COMPOSITION AND THE COMPOSITE

How the Bavli Shaped Rabbinic Discourse. Atlanta, 1991: Scholars Press for South Florida Studies in the History of Judaism.

THE BAVLI'S MASSIVE MISCELLANIES

The Bavli's Massive Miscellanies. The Problem of Agglutinative Discourse in the Talmud of Babylonia. Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

THE TALMUD'S ONE STATEMENT

The Bavli's One Statement. The Metapropositional Program of Babylonian Talmud Tractate Žebahim Chapters One and Five. Atlanta, 1991: Scholars Press for South Florida Studies in the History of Judaism.

THE TALMUD'S EXEGETICAL PROGRAM

The Bavli's Primary Discourse. Mishnah Commentary, its Rhetorical Paradigms and their

Theological Implications in the Talmud of Babylonia Tractate Moed Qatan. Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

THE TALMUD'S ESSENTIAL DISCOURSE: THE LAW BEHIND THE LAWS

The Law Behind the Laws. The Bavli's Essential Discourse. Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

This is not the first reprise of diverse research-projects that I have published. I may also note that I produced a volume of summaries at the end of some sustained research half a decade ago, in the following:

How to Study the Bavli: The Languages, Literatures, and Lessons of the Talmud of Babylonia. Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

I have tried also to publish in article-form reprises of a number of works, the sheer volume of which creates difficulties for those interested in following my solutions to some of the principal problems of the Rabbinic literature.

My translations, outlines, and academic commentaries of both Talmuds are as follows:

The Talmud of Babylonia. An Academic Commentary. Atlanta, 1994-6: Scholars Press for USF Academic Commentary Series.

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| I. | <i>Bavli Tractate Berakhot</i> |
| II.A | <i>Bavli Tractate Shabbat. Chapters One through Twelve</i> |
| II.B | <i>Bavli Tractate Shabbat. Chapters Thirteen through Twenty-Four</i> |
| III.A | <i>Bavli Tractate Erubin. Chapters One through Five</i> |
| III.B | <i>Bavli Tractate Erubin. Chapters Six through Eleven</i> |
| IV.A | <i>Bavli Tractate Pesahim. Chapters One through Seven.</i> |
| IV.B | <i>Bavli Tractate Pesahim. Chapters Eight through Eleven.</i> |
| V. | <i>Bavli Tractate Yoma</i> |
| VI. | <i>Bavli Tractate Sukkah</i> |
| VII. | <i>Bavli Tractate Besah</i> |
| VIII. | <i>Bavli Tractate Rosh Hashanah</i> |
| IX. | <i>Bavli Tractate Taanit [1999]</i> |
| X. | <i>Bavli Tractate Megillah</i> |
| XI. | <i>Bavli Tractate Moed Qatan</i> |
| XII. | <i>Bavli Tractate Hagigah</i> |
| XIII.A | <i>Bavli Tractate Yebamot. Chapters One through Eight</i> |
| XIII.B | <i>Bavli Tractate Yebamot. Chapters Nine through Seventeen</i> |
| XIV.A | <i>Bavli Tractate Ketubot. Chapters One through Six</i> |
| XIV.B | <i>Bavli Tractate Ketubot. Chapters Seven through Fourteen</i> |
| XV. | <i>Bavli Tractate Nedarim</i> |
| XVI. | <i>Bavli Tractate Nazir [1999]</i> |
| XVII. | <i>Bavli Tractate Sotah</i> |
| XVIII. | <i>Bavli Tractate Gittin</i> |
| XIX. | <i>Bavli Tractate Qiddushin</i> |
| XX. | <i>Bavli Tractate Baba Qamma</i> |
| XXI.A | <i>Bavli Tractate Baba Mesia. Chapters One through Six</i> |
| XXI.B | <i>Bavli Tractate Baba Mesia. Chapters Seven through Eleven</i> |
| XXII.A | <i>Bavli Tractate Baba Batra. Chapters One through Six</i> |
| XXII.B | <i>Bavli Tractate Baba Batra. Chapters Seven through Eleven</i> |
| XXIII.A | <i>Bavli Tractate Sanhedrin. Chapters One through Seven</i> |
| XXIII.B | <i>Bavli Tractate Sanhedrin. Chapters Eight through Twelve</i> |

- XXIV. *Bavli Tractate Makkot*
 XXV. *Bavli Tractate Abodah Zarah*
 XXVI. *Bavli Tractate Horayot*
 XXVII. *Bavli Tractate Shebuot*
 XXVIII.A *Bavli Tractate Zebahim. Chapters One through Seven*
 XXVIII.B *Bavli Tractate Zebahim. Chapters Eight through Fifteen*
 XXIX.A *Bavli Tractate Menahot. Chapters One through Six*
 XXIX.B *Bavli Tractate Menahot. Chapters Seven through Fourteen*
 XXX. *Bavli Tractate Hullin*
 XXXI. *Bavli Tractate Bekhorot*
 XXXII. *Bavli Tractate Arakhin*
 XXXIII *Bavli Tractate Temurah*
 XXXIV. *Bavli Tractate Keritot*
 XXXV. *Bavli Tractate Meilah and Tamid*
 XXXVI. *Bavli Tractate Niddah*

The Talmud of Babylonia. A Complete Outline. Atlanta, 1995-6: Scholars Press for USF Academic Commentary Series.

- I.A. *Tractate Berakhot and the Division of Appointed Times. Berakhot, Shabbat, and Erubin.*
 I.B. *Tractate Berakhot and the Division of Appointed Times. Pesahim through Hagigah.*
 II.A. *The Division of Women. Yebamot through Ketubot*
 II.B. *The Division of Women. Nedarim through Qiddushin*
 III.A *The Division of Damages. Baba Qamma through Baba Batra*
 III.B *The Division of Damages. Sanhedrin through Horayot*
 IV.A *The Division of Holy Things and Tractate Niddah. Zebahim through Hullin*
 IV.B *The Division of Holy Things and Tractate Niddah. Bekhorot through Niddah*

The Talmud of the Land of Israel. An Academic Commentary to the Second, Third, and Fourth Divisions. Atlanta, 1998-9: Scholars Press for USF Academic Commentary Series.

- I. *Yerushalmi Tractate Berakhot*
 II.A *Yerushalmi Tractate Shabbat. Chapters One through Ten*
 II.B *Yerushalmi Tractate Shabbat. Chapters Eleven through Twenty-Four. And the Structure of Yerushalmi Shabbat*
 III. *Yerushalmi Tractate Erubin*
 IV. *Yerushalmi Tractate Yoma*
 V.A *Yerushalmi Tractate Pesahim. Chapters One through Six.*
 V.B *Yerushalmi Tractate Pesahim. Chapters Seven through Ten. And the Structure of Yerushalmi Pesahim*
 VI. *Yerushalmi Tractate Sukkah*
 VII. *Yerushalmi Tractate Besah*
 VIII. *Yerushalmi Tractate Taanit*
 IX. *Yerushalmi Tractate Megillah*
 X. *Yerushalmi Tractate Rosh Hashanah*
 XI. *Yerushalmi Tractate Hagigah*
 XII. *Yerushalmi Tractate Moed Qatan*
 XIII.A. *Yerushalmi Tractate Yebamot. Chapters One through Ten*
 XIII.B *Yerushalmi Tractate Yebamot. Chapters Eleven through Seventeen. And the Structure of Yerushalmi Yebamot*

- XIV. *Yerushalmi Tractate Ketubot*
 XV. *Yerushalmi Tractate Nedarim*
 XVI. *Yerushalmi Tractate Nazir*
 XVII. *Yerushalmi Tractate Gittin*
 XVIII. *Yerushalmi Tractate Qiddushin*
 XIX. *Yerushalmi Tractate Sotah*
 XX. *Yerushalmi Tractate Baba Qamma*
 XXI. *Yerushalmi Tractate Baba Mesia*
 XXII. *Yerushalmi Tractate Baba Batra*
 XXIII. *Yerushalmi Tractate Sanhedrin*
 XXIV. *Yerushalmi Tractate Makkot*
 XXV. *Yerushalmi Tractate Shebuot*
 XXVI. *Yerushalmi Tractate Abodah Zarah*
 XXVII. *Yerushalmi Tractate Horayot*
 XXVIII. *Yerushalmi Tractate Niddah*

The Talmud of The Land of Israel.. An Outline of the Second, Third, and Fourth Divisions. Atlanta, 1995-6: Scholars Press for for USF Academic Commentary Series.

- IA *Tractate Berakhot and the Division of Appointed Times. Berakhot and Shabbat*
 IB *Tractate Berakhot and the Division of Appointed Times. Erubin, Yoma, and Besah*
 IC *Tractate Berakhot and the Division of Appointed Times. Pesahim and Sukkah*
 ID *Tractate Berakhot and the Division of Appointed Times. Taanit, Megillah, Rosh Hashanah, Hagigah, and Moed Qatan*
 II.A *The Division of Women. Yebamot to Nedarim*
 II.B *The Division of Women. Nazir to Sotah*
 III.A *The Division of Damages and Tractate Niddah. Baba Qamma, Baba Mesia, Baba Batra, Horayot, and Niddah*
 III.B *The Division of Damages and Tractate Niddah. Sanhedrin, Makkot, Shebuot, and Abodah Zarah*

The Two Talmuds Compared. Atlanta, 1995-6: Scholars Press for USF Academic Commentary Series.

- IA *Tractate Berakhot and the Division of Appointed Times in the Talmud of the Land of Israel and the Talmud of Babylonia. Yerushalmi Tractate Berakhot*
 IB *Tractate Berakhot and the Division of Appointed Times in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractate Shabbat.*
 IC *Tractate Berakhot and the Division of Appointed Times in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractate Erubin*
 ID *Tractate Berakhot and the Division of Appointed Times in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractates Yoma and Sukkah*
 IE *Tractate Berakhot and the Division of Appointed Times in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractate Pesahim*
 IF *Tractate Berakhot and the Division of Appointed Times in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractates Besah, Taanit, and Megillah*
 IG *Tractate Berakhot and the Division of Appointed Times in the Talmud of*

- the Land of Israel and the Talmud of Babylonia. Tractates Rosh Hanah, Hagigah, and Moed Qatan*
- II.A *The Division of Women in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractates Yebamot and Ketubot.*
- II.B *The Division of Women in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractates Nedarim, Nazir, and Sotah.*
- II.C *The Division of Women in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractates Qiddushin and Gittin.*
- III.A *The Division of Damages and Tractate Niddah in the Talmud of the Land of Israel and the Talmud of Babylonia. Tractates Baba Qamma and Baba Mesia*
- III.B *The Division of Damages and Tractate Niddah in the Talmud of the Land of Israel and the Talmud of Babylonia. Baba Batra and Niddah.*
- III.C *The Division of Damages and Tractate Niddah. Sanhedrin and Makkot.*
- III.D *The Division of Damages and Tractate Niddah. Shebuot, Abodah Zarah, and Horayot.*

My counterpart academic commentary and systematic outline of the Midrash compilations of formative Judaism follow:

- The Components of the Rabbinic Documents: From the Whole to the Parts. Volume I. Sifra.* Atlanta, 1997: Scholars Press for USF Academic Commentary Series.
- Part i. *Introduction. And Parts One through Three, Chapters One through Ninety-Eight*
- Part ii. *Parts Four through Nine. Chapters Ninety-Nine through One Hundred Ninety-Four*
- Part iii. *Parts Ten through Thirteen. Chapters One Hundred Ninety-Five through Two Hundred Seventy-Seven*
- Part iv. *A Topical and Methodical Outline of Sifra*
- The Components of the Rabbinic Documents: From the Whole to the Parts. Volume II. Esther Rabbah I.* Atlanta, 1997: Scholars Press for USF Academic Commentary Series.
- The Components of the Rabbinic Documents: From the Whole to the Parts. Volume III. Ruth Rabbah.* Atlanta, 1997: Scholars Press for USF Academic Commentary Series.
- The Components of the Rabbinic Documents: From the Whole to the Parts. Volume IV. Lamentations Rabbati.* Atlanta, 1997: Scholars Press for USF Academic Commentary Series.
- The Components of the Rabbinic Documents: From the Whole to the Parts. Volume V. Song of Songs Rabbah.* Atlanta, 1997: Scholars Press for USF Academic Commentary Series.
- Part i. *Introduction. And Parashiyyot One through Four*
- Part ii. *Parashiyyot Five through Eight. And a Topical and Methodical Outline of Song of Songs Rabbah*
- The Components of the Rabbinic Documents: From the Whole to the Parts. VI. The Fathers Attributed to Rabbi Nathan.* Atlanta, 1997: Scholars Press for USF Academic Commentary Series.
- The Components of the Rabbinic Documents: From the Whole to the Parts. VII. Sifré to Deuteronomy.* Atlanta, 1997: Scholars Press for USF Academic Commentary Series.
- Part i. *Introduction. And Parts One through Four*
- Part ii. *Parts Five through Ten*

- Part iii. *A Topical and Methodical Outline of Sifré to Deuteronomy*
The Components of the Rabbinic Documents: From the Whole to the Parts. VIII. Mekhilta
Attributed to R. Ishmael. Atlanta, 1997: Scholars Press for USF Academic Commentary Series.
- Part i. *Introduction. Pisha, Beshallah and Shirata*
 Part ii. *Vayassa, Amalek, Bahodesh, Neziqin, Kaspá and Shabbata*
 Part iii. *A Topical and Methodical Outline of Mekhilta Attributed to R. Ishmael.*
The Components of the Rabbinic Documents: From the Whole to the Parts. IX. Genesis Rabbah. Atlanta, 1998: Scholars Press for USF Academic Commentary Series.
- Part i. *Introduction. Genesis Rabbah Chapters One through Twenty-One*
 Part ii. *Genesis Rabbah Chapters Twenty-Two through Forty-Eight*
 Part iii. *Genesis Rabbah Chapters Forty-Nine through Seventy-Three*
 Part iv. *Genesis Rabbah Chapters Seventy-Four through One Hundred*
 Part v. *A Topical and Methodical Outline of Genesis Rabbah. Bereshit through Vaere, Chapters One through Fifty-Seven*
 Part vi. *A Topical and Methodical Outline of Genesis Rabbah. Hayye Sarah through Miqqes. Chapters Fifty-Eight through One Hundred*
The Components of the Rabbinic Documents: From the Whole to the Parts. X. Leviticus Rabbah. Atlanta, 1998: Scholars Press for USF Academic Commentary Series.
- Part i. *Introduction. Leviticus Rabbah Parashiyot One through Seventeen*
 Part ii. *Leviticus Rabbah Parashiyot Eighteen through Thirty-Seven*
 Part iii. *Leviticus Rabbah. A Topical and Methodical Outline*
The Components of the Rabbinic Documents: From the Whole to the Parts. XI. Pesiqta deRab Kahana. Atlanta, 1998: Scholars Press for for USF Academic Commentary Series.
- Part i. *Introduction. Pesiqta deRab Kahana Pisqaot One through Eleven*
 Part ii. *Pesiqta deRab Kahana Pisqaot Twelve through Twenty-Eight*
 Part iii. *Pesiqta deRab Kahana. A Topical and Methodical Outline*
The Components of the Rabbinic Documents: From the Whole to the Parts. XII. Sifré to Numbers. Atlanta, 1998: Scholars Press for USF Academic Commentary Series.
- Part i. *Introduction. Pisqaot One through Eighty-Four*
 Part ii. *Pisqaot Eighty-Five through One Hundred Twenty-Two*
 Part iii. *Pisqaot One Hundred Twenty-Three through One Hundred Sixty-One*
 Part iv. *Sifré to Numbers. A Topical and Methodical Outline*

In addition, my general introduction to the entire subject of Rabbinic literature is contained in the following:

Introduction to Rabbinic Literature. N.Y., 1994: Doubleday. The Doubleday Anchor Reference Library. Religious Book Club Selection, 1994.

Finally, I call attention to the counterpart of the present work, where I present my main results concerning the history of the religion of Rabbinic Judaism in its formative age:

The Mind of Classical Judaism. I. The Philosophy and Political Economy of Formative Judaism. The Mishnah's System of the Social Order. Atlanta, 1997: Scholars Press for South Florida Studies in the History of Judaism.

The Mind of Classical Judaism. II. Modes of Thought: Making Connections and Drawing Conclusions. Atlanta, 1997: Scholars Press for South Florida Studies in the History of Judaism.

- The Mind of Classical Judaism. III. From Philosophy to Religion.* Atlanta, 1997: Scholars Press for South Florida Studies in the History of Judaism.
- The Mind of Classical Judaism. IV. What is "Israel"? Social Thought in the Formative Age.* Atlanta, 1997: Scholars Press for South Florida Studies in the History of Judaism.
- The theological project mentioned in the Preface is as follows:
- The Theological Grammar of the Oral Torah.* Binghamton, 1998: Dowling College Press/Global Publications of Binghamton University [SUNY]. I. *Vocabulary: Native Categories*
- The Theological Grammar of the Oral Torah.* Binghamton, 1998: Dowling College Press/Global Publications of Binghamton University [SUNY]. II. *Syntax: Connections and Constructions*
- The Theological Grammar of the Oral Torah.* Binghamton 1998: Dowling College Press/Global Publications of Binghamton University [SUNY]. III. *Semantics: Models of Analysis, Explanation and Anticipation*
- The Theology of the Oral Torah. Revealing the Justice of God.* Kingston and Montreal, 1998: McGill-Queens University Press.
- Recovering Judaism: The Universal Dimension of Jewish Religion.* Minneapolis, 2000: Fortress Press.
- Scripture and the Generative Premises of the Halakhah. A Systematic Inquiry. I.. Halakhah Based Principally on Scripture and Halakhic Categories Autonomous of Scripture.* Atlanta, 1999: Scholars Press for South Florida Studies in the History of Judaism.
- Scripture and the Generative Premises of the Halakhah. A Systematic Inquiry. II. Scripture's Topics Derivatively Amplified in the Halakhah.* Atlanta, 1999: Scholars Press for South Florida Studies in the History of Judaism.
- Scripture and the Generative Premises of the Halakhah. A Systematic Inquiry. III. Scripture's Topics Independently Developed in the Halakhah. From the Babas through Miquaot.* Atlanta, 1999: Scholars Press for South Florida Studies in the History of Judaism.
- Scripture and the Generative Premises of the Halakhah. A Systematic Inquiry. IV. Scripture's Topics Independently Developed in the Halakhah. From Moed Qatan through Zebahim.* Atlanta, 1999: Scholars Press for South Florida Studies in the History of Judaism.
- The Four Stages of Rabbinic Judaism.* London, 2000: Routledge.
- How the Rabbis Liberated Women.* Atlanta, 1999: Scholars Press for South Florida Studies in the History of Judaism.
- From Scripture to 70. The Pre-Rabbinic Beginnings of the Halakhah.* Atlanta, 1999: Scholars Press for South Florida Studies in the History of Judaism.
- What, Exactly, Did the Rabbinic Sages Mean by "the Oral Torah"? An Inductive Answer to the Question of Rabbinic Judaism.* Atlanta, 2000: Scholars Press for South Florida Studies in the History of Judaism.
- The Theology of the Halakhah.* Leiden, 2001: Brill. Brill Reference Library of Ancient Judaism.

PART ONE

THE TALMUD'S FORMAL QUALITIES

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CHAPTER ONE

THE BAVLI'S ONE VOICE

I. *What Does It Mean to Allege that the Bavli Speaks in One Voice?*

The Talmud of Babylonia speaks in one voice. In the context of the canon of Judaism, it is a unique voice, for there is no other like it in the history of Judaism. The Bavli's one voice yields a uniform document, beginning to end. A single determinate set of rhetoric devices, a single program of inquiry is brought to bear on many and diverse passages of the two inherited documents, the Mishnah and Scripture, that are privileged in its pages. The voice is one and single because it is a voice that everywhere expresses the same limited set of sounds. It is singular because these notes are arranged in one and the same way throughout, a logical way at that.

The Bavli's one voice, sounding through all tractates, is the voice of exegetes of the Mishnah. The document is organized around the Mishnah, and that order is not a merely formal, but substantive. At *every* point in the Bavli if the framers have chosen a passage of Mishnah-exegesis, that passage will stand at the head of all further discussion. *Every* turning point in every sustained composition and even in a large composite of compositions brings the editors back to the Mishnah, *always* read in its own order and *invariably* arranged in its own sequence. So the Bavli's speaks in a single way about some few things. It follows that well-crafted and orderly rules governed the character of the sustained discourse that the writing in the Bavli sets forth. All framers of composites and editors of sequences of composites found guidance in the same limited repertoire of rules of analytical rhetoric: some few questions or procedures, directed always toward one and the same prior writing. Not only so, but a fixed order of discourse dictated that a composition of one sort, A, always come prior to a composite of another type, B. A simple logic instructed framers of composites, who sometimes also were authors of compositions, and who sometimes drew upon available compositions in the making of their cogent composites. So we have now to

see the Bavli as entirely of a piece, cogent and coherent, made up of well-composed large-scale constructions.

Now let me define the components that all together comprise the Bavli's one voice, using as my illustrative case Bavli-tractate Temurah. We follow the Talmud's treatment of a single set of Mishnah-passages, then see whether the types of analysis and the order of those types predominates in a large sample of the Talmud. In this way we test the thesis of this first step in meeting the Talmud on its own grounds.

II. *Exegesis of the Mishnah*

By exegesis of the Mishnah, I mean that a passage takes shape around the requirement of explaining the language or meaning of a statement of the Mishnah. A sustained composition (encompassing available materials to be sure) can have taken shape only in response to the challenge of explaining a Mishnah-paragraph. A good example is at the beginning of the tractate Temurah, from which all examples are drawn. The opening passage of the Mishnah-tractate Temurah states:

1:1

- A. All effect an act of substitution [of a beast for one they have first designated as a sacrifice]
- B. all the same are men and women.
- C. Not that a man is permitted to effect a substitution.
- D. But if one has effected a substitution, it [that which is designated instead of the beast already consecrated] is deemed a substitute [and also consecrated].

The law at hand derives from Lev. 27:10, which forbids substituting for a beast that has been consecrated for the altar any other beast, whether of superior or inferior quality; the same verse declares that such an act of substitution is not only forbidden, but produces the effect of sanctifying the beast offered as a substitution in addition to the beast that already has been designated as sacred for the altar. Now the Talmud undertakes its form of Mishnah-exegesis, which is beautifully acute; I give the citation of the Mishnah's language in bold face type, the use of Aramaic in italics, the use of Hebrew within

the Talmud in regular type. In a later chapter I explain what the utilization of each of the Talmud's two languages, Hebrew and Aramaic, is meant to signal. Let us now turn directly to our passage, which closely analyzes the Mishnah's formulation:

I.1

- A. *The very statement of the Mishnah's rule contains an internal contradiction. You first say, **All effect a valid substitution**, which means, to begin with. But then you go on, **But if one has effected a substitution, it [that which is designated instead of the beast already consecrated] is deemed a substitute [and also consecrated]**, and that means, only after the fact!*
- B. *But do you think that **All effect a valid substitution**, means, to begin with? [If that is your reading, then] instead of raising your problem to the formulation of our Mishnah-passage, address it to the formulation of Scripture, for it is written, "[If it is an animal such as men offer as an offering to the Lord, all of such that any man gives to the Lord is holy.] He shall not substitute anything for it or exchange it, a good for a bad or a bad for a good; and if he makes any exchange of beast for beast, then both it and that for which it is exchanged shall be holy" (Lev. 27:9-10).*
- C. *Rather, said R. Judah, "This is the sense of the Mishnah-passage: **All can be involved so as to effect a valid substitution [substitute a beast for one they have first designated as a sacrifice for that the second beast enters the status of the originally-consecrated one]—all the same are men and women. Not that a man is permitted to effect a substitution. But if one has effected a substitution, it [that which is designated instead of the beast already consecrated] is deemed a substitute [and also consecrated]. And the man [who does so] incurs the penalty of forty stripes.***

The purpose of the discussion is transparent: the clarification of the meaning of the passage before us. A composition that is classified as Mishnah-exegesis is one that makes sense only within the framework of a Mishnah-paragraph, one that cannot have been composed without the immediate presence of a sentence of the Mishnah. The next composition follows suit.

2.

- A. **All effect:**
- B. *What does the language, "all," serve to encompass?*

- C. *It serves to encompass the heir* [who effects a substitution while the father is still alive. He does not yet own the beast, and only the owner of a beast can designate it as holy. But he is presumed to be heir and therefore future owner of the beast. The legal effect of his presumptive ownership then is at issue.]

We now test that allegation by introducing a contrary view of matters, asking what the Mishnah-paragraph can possibly mean in the setting of another theory of the law:

- D. *That is not in accord with the position of R. Judah. For it has been taught on Tannaite authority:*
- E. “The heir of the owner of a beast may lay on hands, and the heir of the owner of a beast may effect a valid substitution,” the words of R. Meir.
- F. And R. Judah says, “The heir of the owner of a beast may not lay on hands, and the heir of the owner of a beast may not effect a valid substitution.”
- G. *What is the reasoning behind the position of R. Judah?*
- H. *It is that R. Judah draws an analogy from the end of the act of consecration for the beginning of the act of consecration. Just as, in the final act, the presumptive heir of a beast cannot lay on hands [but only the actual owner of the beast does so], so at the beginning of the act of consecration, the presumptive heir cannot effect a valid substitution.*

No. 2 likewise begins with an interest in explaining the language of the Mishnah. But, it is clear, Mishnah-exegesis is not limited to minor problems of word-explanation, since we forthwith compare what our Mishnah says about a given problem with a contrary position on the same problem, D. The example of course does not exhaust the entire range of compositions and composites (such as what is before us) devoted to, or precipitated by the requirements of, Mishnah-exegesis.

III. *Exegesis of the Mishnah's Law*

By exegesis of the Mishnah's law, I mean the composition of a discussion that focuses upon not glossing or amplifying or paraphrasing or defending the rule of the Mishnah as formulated, but rather, investigating the principle or premise that underlies a given passage of the Mishnah. At issue in a composite of this kind is not only words

or phrases of the Mishnah, but the sense, premise, and implications of the Mishnah's rule. The discussion will then concentrate on the premise, with the result that by reference to a shared premise—or the opposed premise—two distinct rules, each on a situation not replicated by the other, will be shown to intersect. Then the two or more cases worked out in the context of particular laws will be brought into alignment with the law before us. Since the present classification of discourses is somewhat subtle, let me give a sizable sample of what I conceive to be abstract theorizing in response to, but not as a commentary upon, the Mishnah-paragraph. This seems to me a fair example:

MISHNAH-TRACTATE TAMID 2:3 II.1

- A. **R. Eleazar says, “A beast that is crossbred and a terefah and one born from the side, a beast lacking in clear-cut sexual characteristics and one which bears both male and female characteristics are not made holy and do not impart [to a substitute] the status of holiness:”**
- B. Said Samuel, “[Since only the value, but not the body, of these beasts can be consecrated, it follows that] in respect to making an exchange, they are not deemed consecrated, and they do not confer consecration on another beast in an exchange with others.”
- C. *It has been taught on Tannaite authority:*
- D. Said R. Meir, “Since they are themselves not holy, how in any event can they confer consecration on other beasts? So you find a possible case only when one has consecrated a beast and it afterward became terefah, or one consecrated an embryo in the mother's womb and it was born through a caesarean section. But with respect to the cases of a beast lacking in clear-cut sexual characteristics and one which bears both male and female characteristics, you find these cases only with regard to embryos of dedicated beasts [Miller: which were consecrated in virtue of their mother before pregnancy. They are then obviously holy, like a limb of the mother. In these cases the Mishnah informs us that they do not effect an exchange.]”
- E. And this accords with the position of R. Judah, who has said, “The offspring of a beast that is consecrated can effect an exchange [with other offspring of consecrated beasts].” [The Mishnah then tells us with reference to these classes of beasts that although they are holy through their mother, they cannot effect an exchange, in spite of the fact that Judah elsewhere maintains that the offspring of a dedicated animal effects an exchange (Miller)].

I indent a secondary development of the foregoing analysis of the principles behind rulings. This shows that the sequence is logical: what is primary comes first, what is secondary, afterward, as in any well-organized exposition.

2. A. *Said Raba, "What is the reasoning of R. Eliezer? They are comparable to an unclean beast. Just as an unclean beast is not actually offered, nor does consecration ever affects its body, so these too are not offered, and consecration never affects their bodies."*
- B. *Said R. Pappa to Raba, "But surely there is the case of a blemished beast, which is not offered, but the body of which is affected by consecration?"*
- C. *He said to him, "True enough, but the species of the blemished beast will be offered [even though this beast will not]."*
- D. *"If so, then a terefah-beast also belongs to a species that will be offered."*
- E. *Rather, said Raba, "They are comparable to an unclean beast in the following way: just as an unclean beast is invalid in its very body, so whatever is unfit as to its body is subject to the same rule, which excludes the blemished beast which is disqualified by reason of a [Miller:] mere deficiency [but not the condition of the whole body]."*
- F. *Said R. Ada to Raba, "But what about 'anything too long or too short' (Lev. 22:23), mentioned in the scriptural passage? These are disqualifications that affect the whole body."*
- G. *Rather, said Raba, "They are comparable to an unclean beast in the following way: just as in the case of an unclean beast, there is none in its classification that is offered [and the law of exchange does not pertain], so in the case of all beasts in which none in its classification is offered, [the law of exchange does not pertain], excluding then the case of the blemished beast, for in its classification others are offered. Now what will you say to this? The case of the terefah-beast, for in its classification others are offered? There is no parallel to the case of a blemished animal. An unclean animal cannot be eaten, and a terefah-animal cannot be eaten, which excludes a blemished animal, which can be eaten."*

Nearly all speculation on the premises or principles of the law will turn out to commence with a particular Mishnah-paragraph and its concrete rule. I found in my sample of ten tractates no evidence that legal speculation vastly overstepped the boundaries of the program of the Mishnah itself; this was a surprising finding to me. I had anticipated that a great deal of speculative thought on law in general, e.g., rules that transcend any one Mishnah-paragraph, would take shape in the Talmud, but that turns out not to have been the case. Where we find speculative thought, it is nearly always precip-

itated by the character of a particular Mishnah-paragraph's rule. What that means, so it seems to me, is that down to the conclusion of the Bavli, intellectual agenda of the law of Judaism found definition in the Mishnah and only there. No new topics, no new problems, no new abstract and theoretical inquiries, appear to have derived from any other source: the Mishnah dictated everything through the end of the Bavli. That is what the present taxonomy seems to me to indicate; I must confess I find that result not only surprising but implausible, and I am inclined to wonder whether my classification process has worked sufficiently well to differentiate between the two categories—amplification of the premises of the law of the Mishnah, abstract legal speculation—that I have invented here and in the following chapter (and then followed in Lists Two and Three to follow). So I offer this result with considerable doubt as to its plausibility, but it is what the data seem to me to be saying.

IV. *Speculation and Abstract Thought on Law*

Speculation on the law not in the context of Mishnah-commentary or amplification at all is exemplified by the asking of a question of theory that the explanation of the Mishnah does not require, and that the analysis of the law of the Mishnah may not even have precipitated. While speculative or abstract thought on law may involve the citation of a Mishnah-passage (very frequently, even the Mishnah-passage at hand), the speculative issue defines the cogent point that is under discussion, and that is what holds the discussion together. The composition (rarely a composite) can therefore have been composed without citation of the Mishnah-passage under discussion. Very frequently, compositions that set forth speculative or abstract thought on law, e.g., fabricated cases that permit us to identify operative principles and show how they work at interstitial situations, are subordinated to Mishnah-exegesis. But it is clear that, while depending upon a principle already established in connection with a statement in a Mishnah-paragraph, these abstract and speculative compositions, and the composites they comprise, should be read as distinct and free-standing. The reason is that the Mishnah-paragraph can have been adequately set forth without consideration of the speculative problem. So they are not essential to Mishnah-exegesis—even though, in context, the results of Mishnah-exegesis, which is to say,

established principles of law, are essential to them. That is a somewhat subtle distinction, but it serves to allow us to identify and catalogue a distinct type of writing. A good example of such a speculative issue, which makes use of a Mishnah-passage but which holds together entirely within the framework of the issue at hand, is as follows:

1:1.I.3.

- A. *Rammi bar Hama raised the question, "What is the law as to a minor's effecting a valid act of substitution?"*
- B. *What circumstances are contemplated by this question? If we say that we deal with a minor who has not reached the age at which he may validly make a vow, then there should be no problem for you, since he cannot effect a consecration, shall I then maintain that he can effect a valid act of substitution?*
- C. *Rather, when the question is raised, it concerns a minor who has reached the age of making vows. Do we maintain that since—a master has said, "[Scripture could have stated, 'when a man shall take a vow of persons.'] Why does Scripture say, 'If a man shall clearly take a vow...'? It serves to encompass a person who is not fully defined as to status, who is close to being a man,—indicating that an act of consecration on his part is valid, and, since he is capable of making a valid act of consecration, I should say that he also is able to make a valid act of substitution? Or perhaps, such a minor is not subject to sanctions, he also cannot get involved in making a valid act of exchange [for which a specific sanction is specified]?*
- D. *And if you take the position that a minor can make a valid act of substitution, since he will eventually reach the status of being subject to the sanctions of the Torah, what is the law as to a gentile's effecting a valid act of substitution? Should one say that, since he can validly effect an act of consecration,—since it has been taught on Tannaite authority, "A man, a man [of the house of Israel]" (Lev. 17:8)—why does Scripture repeat the word "a man"? It serves to encompass gentiles, who, consequently, take vows and pledge thank-offerings like an Israelite—so too I should say that gentiles also may make a valid act of consecration? Or perhaps, since gentiles never enter the category of those who are subject to sanctions, if a gentile should make an act of substitution, he has not effected the consecration of the substituted beast?*
- E. *Said Raba, "Come and take note of a case. For it has been taught on Tannaite authority."*
- F. *"As to things declared holy by gentiles, people are not to derive secular benefit from those things, but the laws of sacrilege do not apply to them, and on account of the meat of such beasts, people are not liable for violating the laws of improper intention on the part of the officiating priest to eat his portion of the beast at the*

- wrong time or in the wrong place, leaving over sacrificial meat beyond the proper time, and protecting the meat from cultic contamination. Gentiles also cannot effect a substitution, and they do not bring drink offerings, but drink-offerings are required with their offerings,” the words of R. Simeon.
- G. R. Yosé said, “In all instances I prefer to impose the more strict rule.”
- H. [The statement at F] pertains only to Holy Things that are designated for the altar, but as to Holy Things that are designated to the upkeep of the Temple house, the laws of sacrilege do apply.
- I. [Raba continues,] “*Now, in any event, the Tannaite authority has stated explicitly, “Gentiles also cannot effect a substitution.”*”
- J. *And [what does] Rammi b. Hama [who asked the question to begin with, in the face of an explicit statement] on Tannaite authority [have to say for himself]?*
- K. “*What I asked concerned the case not of a gentile who consecrated a beast for making atonement for himself, [since in such a case a gentile cannot effect a substitution, for he will never come into the category of sanctions], but rather, a case in which a gentile consecrated a beast so that an Israelite may gain atonement by the sacrifice? Do we adopt as our criterion the status of the person who makes the act of consecration [the gentile] or the person who is beneficiary of the atonement that the animal will effect [the Israelite]?*”
- L. *Solve the problem by reference to what R. Abbuha said.*
- M. For R. Abbuha said R. Yohanan said, “He who consecrates [something for the Temple and then proposes to pay the value of the object and redeem it from the Temple] must add a fifth to the actual value of the object when he redeems it, and one for whom atonement is made is the one who can effect a valid act of substitution for the beast designated for his atonement, and one who designates a portion of the crop for the priestly ration out of his own **[3A]** grain in behalf of untithed grain belonging to someone else—the power of designating what priest gets the specified part of the crop belongs to him who did the act of separation.”
- N. *And Rammi b. Hama [who here too faces an explicit answer long available to a question he thinks he has invented for the occasion]?*
- O. *He will say to you, “In the case to which reference has just been made, the dedication was brought about by the act of an Israelite, so we follow the status of the one for whom atonement is made, and that is the case both at the beginning and at the end of the process [that is, the consecration of the animal, the sacrificing of the animal for atonement]. But here, this is what I am asking: do you impose the requirement that both the beginning and the end of the process of consecration and sacrifice long in the hand of the one who can validly effect an act of substitution or is that not the case? [It was a gentile who con-*

secrated the beast, an Israelite who got the atoning benefit of the blood, so the exchange may or may not be holy.]”

P. *That question stands.*

The question is not required by the Mishnah-passage before us. To the contrary, it is abstract and can pertain to a variety of Mishnah-paragraphs.

V. *Scripture*

A composition or composite built upon a verse or a set of verses of Scripture will ordinarily ask of that passage of Scripture a set of exegetical or speculative questions, such as we find formed with reference to the Mishnah. Such a composition can have been put together entirely without reference to the Mishnah-paragraph at hand; it holds together by appeal to the verse or verses of Scripture that are subjected to analysis. Where an even-sizable composition focused upon Scripture in fact responds to the Mishnah’s paragraph’s law, e.g., proving such a law or delimiting it by appeal to Scripture, I treat that composition or composite as subordinate to Mishnah-exegesis. Catalogued here are only those compositions or composites that cannot have been held together without the scriptural mainframe. Here is an example of such a composition in our tractate:

20.A. The master has said, “If it is that one should not slaughter such beasts, lo, that has already been stated elsewhere.” Where has that been stated?

We now consider a proof attributed to Tannaite authority, that is, to exegetes who enjoy the standing of teachers of the Mishnah:

- B. *It is in line with that which has been stated on Tannaite authority:*
- C. “Blind or broken or maimed you shall not offer unto the Lord” (Lev. 22:22)—
- D. What is the sense of Scripture here? If it is that such animals are not to be consecrated to begin with, lo, this has already been stated earlier [at Lev. 22:20].
- E. Then what is the meaning of Scripture when it says, “you shall not offer unto the Lord” (Lev. 22:22)? It means you shall not slaughter such a beast as a sacrifice.

- F. “nor make an offering of them” [meaning, of blemished animals for the altar, Lev. 22:20]—this refers to offerings made by fire on the altar.
- G. I know only that that is the rule for the whole of the beast. How do I know the rule for only part of the beast? Scripture says, “of them.”
- H. How do I know the rule covering the sprinkling of the blood [of blemished animals]?
- I. Scripture states, “on the altar.”
- J. “Unto the Lord” serves to encompass the case of the scapegoat. [One who consecrates a blemished beast to serve as scapegoat violates the prohibition at hand.]
- K. And does “unto the Lord” include something more?
- L. *And has it not been taught on Tannaite authority:*
- M. If you provide an exegesis for the word “offering,” shall I understand the word to encompass the case of animals consecrated for the upkeep of the Temple house, for these are subsumed under the classification of “offering,” when for example Scripture states, “We have therefore brought the offering of the Lord” Num. 31:50)?
- N. The verse states, “and has not brought it to the door of the tent of meeting” (Lev. 17:4), and that means, that which is suitable to be brought to the door of the tent of meeting is that on account of which people are liable on the count of slaughtering holy things outside of the designated place, and that which is not suitable to be brought to the door of the tent of meeting is that on account of which people are not liable on the count of slaughtering holy things outside of the designated place. Then shall I exclude these, but not the red cow that is burned for the making of purification-water, and the goat that is sent forth, for these are suitable to be brought to the door of the tent of meeting? Scripture says, “for the Lord,” meaning, that which is in particular for the Lord, excluding these, which are not particularly designated for the Lord.”
- O. *Said Raba, “In the one passage we follow the sense of the context. Since the verse concerning slaughtering outside the Temple court, ‘to the door of the tent of meeting’ serves to encompass [all unblemished animals, slaughtering any of which outside brings sanction], so the text ‘unto the Lord’ in that connection excludes [the cases of the scapegoat and the red cow, and these are to be slaughtered outside of the temple]. Here, the verse, ‘by fire,’ excludes [only in respect to an offering that is burned is there liability for dedicating a blem-*

- ished animal, but an offering that is not burned but dedicated in its blemished state will not bring in its wake a sanction. But what about the scapegoat?* [As to the scapegoat], ‘unto the Lord’ used in that connection excludes [the scapegoat; if one dedicates it in its blemished condition he violates the law, ‘You shall not offer...].”
- P. *So the reason that the blemished animal may not be brought is that Scripture says, “unto the Lord.” But if Scripture had not covered that case by the specific statement, “unto the Lord,” I might have concluded that it is permitted to present a blemished animal as a scapegoat. But take note: it is only casting the lot that designates the beast that is fit to be offered for the Lord. [For the rite of the Day of Atonement, two animals must be available, and these must be unblemished. The reason is that at the outset we do not know which one will be the scapegoat “for Azazel,” so both must be suitable “for the Lord.” Only the casting of the lot determines the classification of the beast. That reason, and not Scripture, should have sufficed.]*
- Q. *Said R. Joseph, “Whom does this exegesis represent? It is Hanan the Egyptian, who has said, ‘Even if there was already blood in the cup [deriving from the goat designated for the Lord, the goat having been slaughtered, but the blood had not yet been tossed on the altar, and the scapegoat was lost or blemished,] one still can bring another goat [for a scapegoat] to pair with [the goat that has been slaughtered, and that is done without casting lots, since the animal for the Lord has already been slaughtered.]”*
- R. *Granted that one can assign such a view to Hanan the Egyptian, who holds that there can be no rejection [even though the goat for the Lord has already been slaughtered, we can select another animal for the scapegoat. But the contrary position is that the blood is discarded, since the rite has been interrupted], does that mean that it is not necessary to cast lots? Perhaps he brings another set of goats and casts lots?*
- S. *Rather, said R. Joseph, “Whom does this exegesis represent? It is R. Simeon. For it has been taught on Tannaite authority as follows:”*
- T. *If one of the goats died, one brings the other without casting lots [Miller: I might have thought since lots are not required, there is no need that the scapegoat should be unblemished. The verse, ‘unto the Lord’ teaches us that that is not so].”*
- U. *Raba said, “The verse, ‘unto the Lord,’ is required only to cover the case in which the scapegoat became blemished on that day [after the lots had been cast], and one had redeemed the beast for another animal. [7A] You might have thought that to begin with, we do not know which one of them is going to be designated ‘for the Lord,’ while here, since the animal that is designated ‘for the Lord’*

has already been discerned, there is no question of a flogging [for violating the law, 'you shall not offer,' if the scapegoat is dedicated in a blemished condition]. The words, 'for the Lord' tells us that that is not the case [and even here there is a penalty for violating the law and bringing a blemished beast]."

No. 20 works on the meaning of several verses and explains what meaning is to be derived from those verses. The composition holds together by appeal to the verses under discussion; without those verses, we have nothing.

VI. *The Fixed Order of the Bavli's Types of Discourse*

How are the several types of forms ordered? Mishnah-exegesis nearly always comes first, abstract legal speculation, last. Mishnah-exegesis includes inquiry into the scriptural foundations for the Mishnah's rule. Since the obvious hypothesis is that Mishnah-exegesis takes priority over abstract legal theorizing, we shall begin with a list of the large-scale composites, treating a given paragraph of the Mishnah, in which the exegesis of the Mishnah comes first, then those in which the exegesis of the Mishnah's law takes priority, then those in which the discussion of abstract law comes first, finally those in which Scripture-exegesis supplies the principle of cogency and the purpose of inquiry. In the second, third, and fourth instances, we shall further point to cases in which Mishnah-exegesis is included second or third or even fourth in order. Where a second major composite follows an introductory item, e.g., Mishnah-exegesis followed by exegesis of the Mishnah's law, abstract legal theorizing, then Scripture-exegesis as a free-standing entry, I specify the sequence. Where the introductory item predominates and no other type of discourse proves paramount, or none follows, I do not consider the unfolding of a composite. The chart summarizes the traits of Bavli Temurah.

1. MISHNAH-EXEGESIS COMES FIRST, OFTEN-TIMES FOLLOWED BY EXEGESIS OF THE MISHNAH'S LAW

1:1A-E.I.1-21

1:2A-G.I.1-4 (Scriptural basis for Mishnah's rule)

1:2H-J.I.1-6 (First comes scriptural basis for the Mishnah, then abstract speculation.)

- 1:4-5.I.1, II.1, III.1, IV.1, V.1, VI.1 Who is the Tannaite authority behind the rule?
- 1:4-5.VII.1, VIII.1, IX.1: Scriptural basis
- 1:6.I.1, 2 Scriptural basis for the Mishnah's rule.
- 1:6.II.1-3 As above.
- 2:1.I.1
- 2:1.II.1
- 2:1.III.1-2(+3: scriptural composition tacked on)
- 2:2.I.1
- 2:2.II-III
- 2:3.I.1-2
- 3:1A-E.I.1-10
- 3:1F-N.I.1, II.1, III.1
- 3:2A-D I.1
- 3:3G-N, 3:4 I.1-3
- 3:5.II.1
- 4:1 I.1-2+3 Explanation of the formulation of the Mishnah's rule.
This is followed, 4:1.I.3-6, by an abstract, theoretical problem that draws upon the Mishnah-paragraph in pursuit of a free-standing issue.
- 4:2-4 I.1+2-7
- 4:2-4 II.1
- 5:1-2.II.1
- 5:1-2.III.1, IV.1, 2
- 5:3 II.1
- 5:4 I.1-2
- 5:5 I.1-2
- 5:6 I.1
- 5:6 II.1
- 6:1 I.1-2
- 6:1 I.3
- 6:1 1.4-6+7
- 6:1 II.1, 2
- 6:1 III.1
- 6:2.I.1, 2+3-4
- 6:2.I.5
- 6:2 II.1
- 6:3 I.1
- 6:3 II.1
- 6:3 III.1
- 6:3 IV.1-3

6:4-5 I.1-2
 6:4-5 II.1
 6:4-5 III.1
 6:4-5 IV.1
 6:4-5 V.1
 6:4-5 VI.1
 7:1-2 I.1
 7:1-2 II.1
 7:1-2 III.1
 7:1-2 IV.1
 7:1-2 V.1
 7:4-6 I.1
 7:4-6 II.1
 7:4-6 III.1
 7:4-6 IV.1
 7:4-6 V.1

2. EXEGESIS OF THE PRINCIPLES IMPLIED BY THE MISHNAH'S LAW COMES FIRST

2:3.II.1-3
 3:2E-H, 3:3A-C I.1
 3:3D-F I.1-2. II.1-2+3
 5:1-2.I.1
 5:3 I.1-3
 5:5 II.1-2
 7:3 I.1-3
 7:3 II.1-8

3. ABSTRACT LEGAL THEORIZING COMES FIRST

1.1F-O.I.1-3
 1:3.I.1
 3:5 I.1

4. SCRIPTURE COMES FIRST

None.

VII. *From Mishnah-Exegesis to Legal Speculation.*
A Hypothesis and a Null Hypothesis

A HYPOTHESIS: The hypothesis is in two complementary parts. First, the paramount classification of types of discourse is Mishnah-exegesis, pure and simple. Second, where that type of exegesis occurs, it invariably forms the inaugural discussion of a Mishnah-paragraph, and other-than-exegetical types of discourse follow afterward. So a simple principle of composition governed throughout: first explain the Mishnah (if the Mishnah-paragraph is deemed to require explanation), and then introduce any other type of discourse that is deemed productive.

Among the four types of forms proposed at the outset, two predominate, first, exegetical, second, discursive. The former focus upon the Mishnah, the latter, upon the law set forth in the Mishnah and its broader implications. The distinction between “the exegesis of the Mishnah’s law” and “speculation and abstract thought on law” proves unproductive. It is generated by the formal consideration of redaction—signalled by my observation, “the question is not required by the Mishnah passage before us”—but not by the character of intellection. Scriptural composites in our sample turn out to be few, but, of greater consequence, inconsequential. Among the compositions and composites counted as distinct entries in tractate Temurah, we see the following proportions:

	Number	Proportion of the whole
Exegesis of the Mishnah	58	75%
Exegesis of Mishnah-law	8	10%
Abstract thought on law	8	10%
Scripture	<u>3</u>	4%
	77	

We may say very simply that among the four types of composites or large-scale compositions, exegesis of the Mishnah and its law encompasses 85%, abstract thought on law, 10%, and systematic exercises formed around the exegesis of Scripture in its own terms (that is, in this context, out of relationship to the Mishnah), a negligible proportion, perhaps 3-4%. So, it follows, the Bavli’s authors, compil-

ers, and framers—its authorship—formed a document meant to serve as a systematic and orderly commentary to the tractates of the Mishnah that they selected for analysis. Whatever materials they inherited, among the four types catalogued earlier, they reworked, through either rewriting or (merely) editing in a process of making composites, for that one purpose.

The order in which the four types of forms are set forth is simply stated. Mishnah-exegesis, narrowly construed, comes first most of the time:

	Number	Proportion of the whole
Exegesis of the Mishnah comes first	56	84%
Exegesis of Mishnah-law comes first	8	12%
Abstract thought on law comes first	3	4%
Scripture-composites come first	<u>0</u>	—
	67	

Exegesis or glossing of the Mishnah's language takes first position in the discussion of 84% of all composites, exegesis of the Mishnah's law, another 12%. So in making up composites, the fixed rule was: the Mishnah first, then everything else.

A NULL-HYPOTHESIS: So much for the thesis and the evidence that sustains it. But would about trying to prove the opposite of the thesis, and to find evidence in behalf of such a null-hypothesis? In order to state a null-hypothesis, I have the alternatives of, first, inventing one of my own, and, second, setting forth an opposed theory to mine, one that, as I showed in the Preface, now circulates very widely. The results set forth on the basis of Bavli-tractate Temurah prove so one-sided that a fabricated null-hypothesis can take only one form: the Bavli is a quite orderly document, but my account of the principles of order errs; I have identified false indicators and missed more telling ones, therefore classifying the wrong data and ignoring more pertinent ones. A real null-hypothesis, by contrast, will state opinion contrary to my own, not merely a thesis of my own fabrication. Making up a null-hypothesis formed within the premise I propose to prove—that the Bavli is orderly, and that the rules of formulation and composition, including the making of composites, govern

throughout—merely recasts the details, but does not address the main point. That of course begs the question. And not only so, but readers may suspect that I have fabricated an opponent, my results being so one-sided as to call into question anyone's ever maintaining any other view. So a fabricated null-hypothesis, while more to the point at issue, will prove less persuasive than stating as a null-hypothesis a ready-made position, one broadly held.

My claim to have discovered the types of forms and the order in which they are generally set forth that comprise the Bavli will prove more plausible if I can test it against a contrary claim, which is that the Bavli exhibits no order at all, neither in its types of discourses nor in the order in which those types of discourses ordinarily are arranged. And that view is the one that presently prevails. In point of fact, many accounts of the character of the Talmud as a piece of writing describe the document as unsystematic. Some describe the document as disorganized, others as exhibiting no well-established program that accounts for why a given passage appears where it does and not somewhere else. The regnant theory of the document, along these lines, holds that it developed through a sedimentary process of agglutination and conglomeration. The document conforms to no single program for the formulation of types of discourse, and no uniform schedule dictated what type of discourse would stand at the head of any given composite. My hypothesis, setting forth four types of discourse and claiming to identify the type that comes first (accounting, by implication, for the order of subsequent types of discourses as well), is then contradicted by the hypothesis that no hypothesis concerning form and order is possible. To test it, we conduct a systematic survey.

VIII. *Results of a Survey of Eleven Tractates*

The Bavli's one voice speaks in only a few, well-modulated tones: a scale of not many notes at all, yielding only a few, rather monotonous, melodies. When we classify more than three thousand composites, spread over eleven tractates, that I have probed, we find that nearly 90% of the whole comprises Mishnah-commentary of various kinds. Not only so, but the variety of the types of Mishnah-commentary is limited. Cogent composites are further devoted to Scripture or to topics of a moral or theological character not closely tied to

the exegesis of verses of Scripture; these form in the aggregate approximately 10% of the whole number of composites, but, of tracts to begin with not concerned with scriptural or theological topics, they make up scarcely 3% of the whole.¹ So the Bavli has one voice, and it is the voice of a person or persons who propose to speak about one document and to do so in some few ways. Let me spell out precisely what I mean. The results of the survey of eleven tracts and classification of all of the composites of each one of them yields firm and one-sided results.

First, we are able to classify *all* composites (among the more than three thousand that I examined) in three principal categories, and the categories themselves are specific and narrowly defined: [1] exegesis and amplification of the law of the Mishnah; [2] exegesis and exposition of verses of, or topics in, Scripture; [3] free-standing composites devoted to topics other than those defined by the Mishnah or Scripture. These classifications were not forced or subtle; the grounds for making them were consistent; appeal throughout was to gross and merely formal characteristics, not to subjective judgments of what unstipulated consideration might underlie, or define the intention of the framer of, a passage.

Second, with that classification in place, it is a matter of simple fact that much more than four-fifths of all composites of the Bavli address the Mishnah and systematically expound that document. These composites are subject to sub-classification in two ways: Mishnah-exegesis and speculation and abstract theorizing about the implications of the Mishnah's statements. The former type of composite, further, is to be classified in a few and simple taxa, for example, composites organized around [1] clarification of the statements of the Mishnah, [2] identification of the authority behind an anonymous statement in the Mishnah, [3] scriptural foundation for the Mishnah's rules; [4] citation and not seldom systematic exposition of the Tosefta's amplification of the Mishnah. That means that most of the Bavli is a systematic exposition of the Mishnah.

Third, the other fifth (or still less) of a given tractate will comprise composites that take shape around [1] Scripture or [2] themes or topics of a generally theological or moral character. Distinguishing the latter from the former, of course, is merely formal; very often a scriptural topic will be set forth in a theological or moral frame-

¹ In our sample these are Sanhedrin and Berakhot.

work, and very seldom does a composite on a topic omit all reference to the amplification of a verse or topic of Scripture. The proportion of a given tractate devoted to other-than-Mishnah-exegesis and amplification is generally not more than 10%. The upshot is that a rather inconsequential proportion of most tractates, and a small proportion of the whole, of the Bavli, is devoted to the systematic exposition of either verses of Scripture or topics of a theological or moral character.

Let us now consider in detail the eleven tractates' proportions of types of composites, to see the foundation for these generalizations.²

1. TEMURAH

	Number	Percent
1. Exegesis of the Mishnah	58	75%
2. Exegesis of Mishnah-law	8	10%
3. Speculation and Abstract Thought on Law	8	10%
4. Scripture	3	4%
5. Free-standing Composites	Not calculated	
6. Miscellanies	0	—
	<hr/> 77	

2. SUKKAH

1. Exegesis of the Mishnah	141	89%
2. Exegesis of the Mishnah's Law	8	5%
3. Speculation and Abstract Thought on Law	4	2%
4. Scripture	1	—%
5. Miscellanies	5	3%
	<hr/> 159	

² The figures derive from *The Bavli's One Voice*, where I analyze and classify all composites of the named, eleven tractates, and explain the reasons for the classification; I further am able to show a fixed order of types of composites, signalled by the order in which my classifications are given here. Where a composite includes an exegesis of the Mishnah, it will always commence with that exegesis; where it includes an exegesis of the Mishnah's law, that is the point at which it will invariably start; and so too throughout. Very commonly, to be sure, exegesis of the Mishnah's law will address the question of the scriptural foundations for the Mishnah's rule. But this is classified only as Mishnah- and not Scripture-exegesis, for obvious reasons.

3. KERITOT

1. Exegesis of the Mishnah	80	94%
2. Exegesis of the Mishnah's Law	4	4%
3. Speculation and Abstract Thought on Law	0	—
4. Scripture	1	1%
5. Free-standing Composites	0	—
6. Miscellanies	<u>0</u>	—
	85	

4. ARAKHIN

1. Exegesis of the Mishnah	127	91%
2. Exegesis of the Mishnah's Law	8	6%
3. Speculation and Abstract Thought on Law	2	1.5%
4. Scripture	0	—
5. Free-standing Composites	2	1.5%
6. Miscellanies	<u>0</u>	—
	139	

The importance of the free-standing composites is not reflected by the count, since both items are enormous and the first of the two serves as the prologue to the tractate as a whole.

5. NIDDAH

1. Exegesis of the Mishnah	290	97%
2. Exegesis of the Mishnah's Law	6	2%
3. Speculation and Abstract Thought on Law	0	—
4. Scripture	0	—
5. Free-standing Composites	3	1%
6. Miscellanies	<u>0</u>	—
	299	

6. ABODAH ZARAH

1. Exegesis of the Mishnah	244	85%
2. Exegesis of the Mishnah's Law	3	1%
3. Speculation and Abstract Thought on Law	0	

4. Scripture	28	10%
5. Free-standing Composites	12	4%
6. Miscellanies	<u>0</u>	287
	287	

7. SOTAH

1. Exegesis of the Mishnah	193	91%
2. Exegesis of the Mishnah's Law	0	—
3. Speculation and Abstract Thought on Law	0	—
4. Scripture	10	5%
5. Free-standing Composites	8	4%
6. Miscellanies	<u>1</u>	0.5%.
	212	

8. BABA MESIA

1. Exegesis of the Mishnah	334	86%
2. Exegesis of the Mishnah's Law	42	11%
3. Speculation and Abstract Thought on Law	0	—
4. Scripture	2	0.5%
5. Free-standing Composites	10	3%
6. Miscellanies	<u>0</u>	388
	388	

9. BEKHOROT

1. Exegesis of the Mishnah	281	98%
2. Exegesis of the Mishnah's Law	2	1%
3. Speculation and Abstract Thought on Law	—	—
4. Scripture	—	—
5. Free-standing Composites	2	1%
6. Miscellanies	<u>—</u>	
	285	

10. BERAKHOT

1. Exegesis of the Mishnah	330	59%
2. Exegesis of the Mishnah's Law	3	0.5%
3. Speculation and Abstract Thought on Law	0	—

4. Scripture	34	6%
5. Free-standing Composites	187	34%
6. Miscellanies	<u>2</u>	0.4%
	556	

11. SANHEDRIN

1. Exegesis of the Mishnah	313	45%
2. Exegesis of the Mishnah's Law	6	0.8%
3. Speculation and Abstract Thought on Law	6	0.8%
4. Scripture	163	23%
5. Free-standing Composites	214	30%
6. Miscellanies	<u>0</u>	—
	702	

Seen in the aggregate, 83% of the eleven tractates is devoted solely to Mishnah-exegesis. If we omit reference to the two clearly-anomalous tractates, *Berakhot* and *Sanhedrin*, the proportion of Mishnah-exegesis rises to 89.5%. If, then, we combine exegesis of the Mishnah and exegesis of the broader implications of the Mishnah's law—and in the process of classification, it was not always easy to keep these items apart in a consistent way—we see a still more striking result. More than 86% of the whole of our tractates is devoted to the exegesis of the Mishnah and the amplification of the implications of its law; without the anomalous tractates, the proportion is close to 94-95%.³

Composites devoted to Scripture, not the Mishnah, are calculated in two ways. In the first nine tractates, I counted each composite as one entry, just as, overall, I counted each composite devoted to the Mishnah as one entry. On the surface such a mode of counting understated the proportions of the anomalous tractates that are devoted to Scripture-exegesis, or to topics drawn from Scripture. Overall, we should expect to find something on the order of 4% of

³ I early on dismissed as a taxon that did not serve any useful purpose the one that was supposed to identify "speculation and abstract thought on law." As a matter of fact, nearly all speculative or abstract thought on law, measured by the number of composites devoted to that purpose, treats the Mishnah's concrete laws; nearly all speculation is precipitated by an inquiry into the premises of those laws. There is virtually no abstract thought on law that does not aim at the clarification of the Mishnah's laws in particular. That simply unanticipated result is as stunning as the foregoing.

a given tractate made up of Scripture-composites. If we eliminate the two anomalous tractates, the anticipated proportion would be 2%. Free-standing composites, formed in general around themes, rather than passages of the Mishnah or sequences of verses of Scripture or topics provided by Scripture, average 10% for eight tractates (omitted: Temurah, Sukkah, Keritot, where I found none), and, without the anomalous ones, 1.5-3%. The latter figure seems to me more probable than the former. So it is simply the fact that the Talmud speaks through one voice, that voice of logic that with vast assurance reaches into our own minds and by asking the logical and urgent next question tells us what we should be thinking. Fixing our attention upon the Mishnah, the Talmud's rhetoric seduces us into joining its analytical inquiry, always raising precisely the question that should trouble us (and that would trouble us if we knew all of the pertinent details as well as the Talmud does).

The upshot is simple and demands heavy emphasis: *the Bavli speaks about the Mishnah in essentially a single voice, about fundamentally few things.* Its mode of speech as much as of thought is uniform throughout. Diverse topics produce slight differentiation in modes of analysis. The same sorts of questions phrased in the same rhetoric—a moving, or dialectical, argument, composed of questions and answers—turn out to pertain equally well to every subject and problem. The Talmud's discourse forms a closed system, in which people say the same thing about everything. The fact that the Talmud speaks in a single voice supplies striking evidence (1) that the Talmud does speak in particular for the age in which its units of discourse took shape, and (2) that that work was done toward the end of that long period of Mishnah-reception that began at the end of the second century and came to an end at the conclusion of the sixth century.

When I speak of the Bavli's one voice, as now is clear, I mean to say it everywhere speaks uniformly, consistently, and predictably. The voice is the voice of a book. The message is one deriving from a community, the collectivity of sages for whom and to whom the book speaks. The document seems, in the main, to intend to provide notes, an abbreviated script which anyone may use to reconstruct and reenact formal discussions of problems: about this, one says that. Curt and often arcane, these notes can be translated only with immense bodies of inserted explanation. All of this script of information is public and undifferentiated, not individual and idiosyncratic. We must assume people took for granted that, out of the signs of speech, it

would be possible for anyone to reconstruct speech, doing so in accurate and fully conventional ways. So the literary traits of the document presuppose a uniform code of communication: a single voice.

IX. *The Cogency of the Bavli*

Why do I claim that the document may be read as a single coherent statement? The reason is that the document as a whole is cogent, doing some few things over and over again; it conforms to a few simple rules of rhetoric, including choice of languages for discrete purposes, and that fact attests to the coherent viewpoint of the authorship at the end—the people who put it all together as we have it—because it speaks, over all, in a single way, in a uniform voice. It is not merely an encyclopaedia of information, but a sustained, remarkably protracted, uniform inquiry into the logical traits of passages of the Mishnah or of Scripture. Most of the Talmud deals with the exegesis and amplification of the Mishnah's rules or of passages of Scripture. Wherever we turn, that labor of exegesis and amplification, without differentiation in topics or tractates, conforms to a few simple rules in inquiry, repeatedly phrased, implicitly or explicitly, in a few simple rhetorical forms or patterns.

We therefore have very good reason to suppose that the text as we have it speaks about the limited context of the period of the actual framing of the text's principal building blocks. These building blocks give evidence of having been put together in a moment of deliberation, in accordance with a plan of exposition, and in response to a finite problem of logical analysis. The units of discourse in no way appear to have taken shape slowly, over a long period of time, in a process governed by the order in which sayings were framed, now and here, then and there, later and anywhere else (so to speak). Before us is the result of considered redaction, not protracted accretion, mindful construction, not sedimentary accretion. And, as I said at the outset, the traits of the bulk of the Talmud Babylonia may be explained in one of only two ways. One way is this: the very heirs of the Mishnah, in the opening generation, ca. 200-250 C.E., whether in the Land of Israel or Babylonia, agreed upon conventions not merely of speech and rhetorical formulation, but also of thought and modes of analysis. They further imposed these conventions on all

subsequent generations, wherever they lived, whenever they did their work. Accordingly, at the outset the decision was made to do the work precisely in the way in which, four hundred years later—the same span of time that separates us from the founding of New England, twice the span of time that has passed since our country became an independent nation!—the work turns out to have been done.

The alternative view is that, some time late in the formation of diverse materials in response to the Mishnah (and to various other considerations), some people got together and made a decision to rework whatever was in hand into a single, stunningly cogent document, the Talmud as we know it in the bulk of its units of discourse. Whether this work took a day or a half-century, it was the work of sages who knew precisely what they wished to do and who did it over and over again. This second view is the one that I take. The Talmud exhibits a viewpoint. It is portrayed in what I have called “the Talmud’s one voice.” In claiming that we deal not only with uniform rhetoric, but with a single cogent viewpoint, we must take full account of the contrary claim of the Talmud’s framers themselves. This claim they lay down through the constant citations of sayings in the names of specific authorities. It must follow that differentiation by chronology—the periods in which the several sages cited actually flourished—is possible. To be sure, the original purpose of citing named authorities was not to set forth chronological lines, but to establish the authority behind a given view of the law. But the history of viewpoints should be possible.

True, if we could show, on the basis of evidence external to the Talmud itself, that the Talmud’s own claim in attributing statements to specific people is subject to verification or falsification, such a history can be undertaken; but it will not lead us into a deeper understanding of the document before us, not at all. All it will tell us is what this one thought then, and what that one thought later on; the document before us has put these things together in its way, for its purposes, and knowing that Rabbi X really said what is assigned to him in no way tells us the something we otherwise do not know about that way and those purposes. In any case, the organizing principle of discourse (even in anthologies) never derives from the order in which authorities lived. And that is the main point. The logical requirements of the analysis at hand determine the limits of applied and practical reason framed by the sustained discourses of which the Talmud is composed.⁴

The Bavli's one voice governs throughout, about a considerable repertoire of topics speaking within a single restricted rhetorical vocabulary. "The Bavli's one voice" refers to a remarkably limited set of intellectual initiatives, only this and that, initiatives that moreover always adhere to a single sequence or order: this first, then that—but never the other thing. I can identify the Bavli's authorships' rules of composition. These are not many. Not only so, but the order of types of compositions (written in accord with a determinate set of rules) itself follows a fixed pattern, so that a composition written in obedience to a given rule as to form will always appear in the same point in a sequence of compositions that are written in obedience to two or more rules: type A first, type B next, in fixed sequence. The Talmud's one voice then represents the outcome of the work of the following:

[1] an author preparing a composition for inclusion in the Bavli would conform to one of a very few rules of thought and expression; and, more to the point,

[2] a framer of a cogent composite, often encompassing a set of compositions, for presentation as the Bavli would follow a fixed order in selecting and arranging the types of consequential forms that authors had made available for his use.

The author and the compiler have created a document of remarkably uniform rhetoric, appropriately matching the cogency of the statement that they wished to set forth, as we shall see in due course. That is what I mean by speaking of "the Bavli's one voice."

⁴ Units of discourse organized not in accordance with the requirements of cogent and dialectical argument exhibit one of two qualities. (1) They present an anthology of sayings on a single topic, without reworking these sayings into a coherent argument. (2) They present a sequence of related, short-term statements, zigzagging from point to point without evidence of an overall plan or purpose: this, then that. Stories, tales, and fables, by contrast, do exhibit the traits of unity and purpose so striking in the generality of units of discourse devoted to analysis of law. So the point of differentiation is not subject matter—law as against lore. Rather, it is the literary and conceptual history of the unit of discourse at hand. Now it may well be the case that sayings not reworked into the structure of a larger argument really do derive from the authority to whom they are ascribed. But if the discrete opinions at hand then do not provide us with a logical and analytical proposition, they also do not give us much else that is very interesting. They constitute isolated data, lacking all pattern, making no clear point. The fact that Rabbi X held opinion A, while Rabbi Y maintained position Q, is without sense, unless A and Q together say more than they tell us separately. This they do not, as a review of the odd bits of opinion on what constitutes a danger to health will make amply clear.

CHAPTER TWO

THE BAVLI'S TWO LANGUAGES

I. The Problem of a Multi-Lingual Document

The Talmud speaks in a single voice but in at least two languages, Hebrew and Aramaic. And the use of one language rather than another signals the character of what is said. Hebrew serves citation of an authoritative tradition, and Aramaic is the language used for systematic analytical discussion of what is cited. The ubiquitous prevalence of a few, simple rules governing the choice of language proves that the entire document, the whole Bavli, is the work of authors who uniformly followed one set of rules and so constitutes a unitary writing.

The Bavli acknowledges its sources, showing itself to be a corpus of writing that carefully delineates one document from another, e.g., the Talmud from the Mishnah, the Mishnah (encompassing the Tosefta and the corpus of Tannaite traditions assigned the status of rules of the Mishnah and Tosefta, the baraita-corpus, all in Mishnaic Hebrew), from Scripture. It follows that the Bavli uses two main types of Hebrew, Biblical and Mishnaic, as well as Aramaic. But for its own discourse, the choice of language bears important signals on the purpose and position of what is expressed in that language. But there is no doubt as to the principal language. For when the authors of the document speak in their own name, they use Babylonian (Eastern) Aramaic, and use of that language ordinarily indicates that, at this point, the Talmud is speaking for itself.

In this way, the authors of the document carefully delineate their sources from themselves. The importance separating one's own statements from those of one's predecessors is a mark of not the traditional but the systematic writer; the traditionalist looks for authority in received writings, the system-builder seeks reliable information. The careful boundaries drawn between the writer and received authority characteristic of the rabbinic writers is defined by William Scott Green in these words, "...in rabbinic Judaism the writing and

discourse of scripture had to be inherently separable from, and could be neither merged nor confused with, the commentary upon them...The rabbinic tendency to identify antecedent materials is not limited to scripture...the adjectives 'allusive' and 'intertextual' are analytically useless for a critical description of rabbinic hermeneutics...rabbinic literature displays its sources."¹

Not only by routinely and ubiquitously using such language as "as it is said," or "as it is written," did the authorities of the Talmud of Babylonia separate their statements from those of Scripture. Also by their choice of the very language in which they would express what they wished to say on their own account they differentiated themselves from their antecedents. When it came to citations from prior, non-scriptural authorities, they used one formation of the Hebrew language, specifically, Middle, or Mishnaic, Hebrew; when it came to the conduct of their own analytical process, they used one formation of the Aramaic language, Eastern or Talmudic Aramaic. They never alluded to authoritative facts, they always cited them in so many words; but the indication of citation—in a writing in which the modern sigla of quotation marks and footnotes were simply unavailable—came to expression in the choice of language. Green's rejection of "allusive" and "intertextual" as adjectives for the characterization of rabbinic hermeneutics is here enriched by the demonstration that the Talmud of Babylonia not only was not intertextual, but was, as we shall see, uniformly and wholly intratextual.

In point of fact, the Talmud of Babylonia or Bavli is in one language, not two or four, and that language is Aramaic. The infrastructure of the document, its entire repertoire of editorial conventions and sigla—all are in Aramaic. When a saying is assigned to a named authority, the saying may be in Hebrew or in Aramaic, and the same named authority may be given sayings in both languages—even within the same sentence. But the editorial and conceptual infrastructure of the document comes to expression only in Aramaic, and when no name is attached to a statement, that statement is always in Aramaic, unless it forms part of a larger, autonomous Hebrew composition, cited by, or parachuted down into, "the Talmud." Rightly have the Talmudic masters in the Yeshiva-world hy-

¹ See his "Writing with Scripture: The Rabbinic Uses of the Hebrew Bible," in Jacob Neusner with William Scott Green, *Writing with Scripture. The Authority and Uses of the Hebrew Bible in the Torah of Formative Judaism* (Minneapolis, 1989: Fortress Press), p. 17.

postitized the Talmud in such language as, “the Gemara [or, the Talmud] says....,” because the Talmud speaks in a single voice, forms a unitary discourse, beginning, middle, and end, and constitutes one wholly coherent and cogent document, everywhere asking questions drawn from a single determinate and limited repertoire of intellectual initiatives—and always framing those questions, pursuing those inquiries, in Aramaic.

And yet, as everybody knows, the Talmud also is full of Hebrew. So we must ask where and why framers of this writing utilize the Hebrew language, and when we may expect to find that they speak—rather, “the Talmud speaks”—in Aramaic. Specifically, what signal is given, what purpose is served by the bi- or multi-lingualism of the Talmud what do we know without further ado, when we are given a composition or a component of a composition in Hebrew, and what is the implicit meaning of making a statement in Aramaic? The answer is that the choice of language signals a taxonomic meaning, and in this chapter I show how language serves as a medium for the classification of discourse, hence, *language as taxonomy*. In a writing that utilizes two languages,² the choice of one over the other conformed to rules of communication and marked what was said as one type of statement rather than another. If we know which language is used, we also know where we stand in the expression of thought, and the very language in which a statement is made therefore forms part of the method of thought and even the message of discourse of the document.

² Really, four, biblical and Middle or Mishnaic Hebrew, Eastern Aramaic in the Talmud of Babylonia, Palestinian Aramaic in the Talmud of the Land of Israel. But in this precis of the larger work, I am interested only in gross taxonomic traits, hence merely “Hebrew” and “Aramaic.” In point of fact, the preservation of citations of the Hebrew Scriptures in biblical Hebrew, rather than their translation into Aramaic, and the formulation of a given part of the document in Eastern rather than Palestinian Aramaic, such as was used in the Talmud of the Land of Israel, also represent important decisions on the part of writers. But my interest here is limited to the gross taxonomic function served by the principal language-groups, rather than their subdivisions as well. A study of the relationship between the Talmud of the Land of Israel and the Talmud of Babylonia, particular of how the latter receives and reworks what it receives from the former, will pay attention to the two kinds of Aramaic that were available to our writers. That is not my problem here.

II. *Language as Taxonomy*

Authors of compositions, framers of composites, and, it surely was assumed, those who would hear or read the document later on, all took for granted knowledge of both languages. The linguistic differences were not merely matters of word choice, e.g., a Hebrew phrase or technical term introduced into an Aramaic sentence, or a Hebrew sentence of a legal, formulary character parachuted down into an Aramaic paragraph, though both phenomena prove common. Rather, one type of discussion, serving one purpose, would appear in Aramaic, and another, quite different type of statement, serving (in this context) a quite different purpose, would appear in Hebrew. The pattern is consistent throughout, which allows us, by simple observation and induction, to conclude that quite simple rules instructed the writer of a composition for the Talmud of Babylonia which language to use for a given purpose. Using Aramaic ordinarily signalled one type of writing, using Hebrew, another; Aramaic rarely, if ever, is used for the purpose served by Hebrew, and Hebrew, by Aramaic.

The rules at hand govern uniformly, without distinction on the location of a speaker or the "historical" position, earlier, middle, or later, in the unfolding of the writing. Therefore we account for difference by appeal to rules of classification, rather than historical sequence ("biography") let alone authentic reproduction of things actually said ("ipsissima verba") will prove well justified. Since the same figures, assumed to have lived between ca. 200 and ca. 500, are quoted in both Hebrew and Aramaic, "historical"³ explanations

³ Such explanations really are not historical at all, since they take for granted that the authority to whom a saying is attributed really said what is assigned to him, and that unproven premise yields not history but merely a gullible paraphrase of the data themselves. One rather primitive conception of historical explanation claims that third century figures commonly speak Hebrew, fifth, Aramaic. But we shall find third century figures, Rab, Samuel, Judah, fluent in Aramaic as well as in Hebrew, and where fifth-century figures, Ashi, Rabina, Mar Zutra, wish to make a statement of a certain classification, they make it in Hebrew, not Aramaic. So if we are to believe that attributions tell us what a given historical figure really said at the time at which (we think) he lived, then the temporal distinctions proposed to account for language "preference" collapse of their own weight, and another type of distinction, one that does not appeal to rather dubious facts alleged in the form of attributions of sayings to named authorities, demands attention and sustained demonstration, such as I give here.

(“Hebrew, early; Aramaic, late”) by themselves turn out impertinent, irrelevant to the data.

Exactly what do I mean by claiming that the choice of language serves a taxonomic purpose? A document that utilizes two or more languages but is addressed to a single audience conveys to its readers information not only through what is said but also through the language in which a message is set forth. In the Talmud of Babylonia the choice of language carried in particular a message, one of classification. A reader or listener⁴ who read or heard Aramaic immediately knew what kind of discourse was underway, and when Hebrew was used, the reader or listener forthwith understood the status and purpose of the discourse that was then subject to representation. The selection of one language over another gave the signal that sayings, and, more to the point, whole paragraphs and even long and sustained passages, in one language were to be classified in one way, sayings or entire compositions in another, in a different way. And that taxonomic function served by the choice of language bore no relationship to the circumstance of time, place, personality, let alone the original words that were said; the same named speakers are given statements in two languages, depending upon the purpose served by a given statement within the unfolding of discourse.

In the Talmud of Babylonia what is said in Hebrew is represented as authoritative and formulates a normative thought or rule. What is said in Aramaic is analytical and commonly signals an argument and formulates a process of inquiry and criticism. That is how language serves a taxonomic purpose: Hebrew is the language of the result, Aramaic, of the way by which the result is achieved; Hebrew is the formulation of the decision, Aramaic, of the work of deliberation. Each language serves to classify what is said in that language, and we always know where we stand, in a given process of thought and the exposition of thought, by reference to the language that is used at that particular place in the sustained discourse to which we are witness. That fixed rule, utilizing language for the purpose of

⁴ The distinction is a valid one but forms no part of the argument here. It is clear that a great many things were memorized within the process of formulating and transmitting the Bavli; it is equally clear that, at a given point, things were written down. I am not sure where or why what was formulated orally was written down. My impression is that the document was written down very early in the process of its composition, and that people who formulated composites drew upon materials that came to them through the memories of official memorizers. But that problem of the literary history of the Bavli is not under study in these pages.

classifying what is said in that language, characterizes only one document in the canon of Judaism, and that is, the Talmud.⁵ All other canonical documents are monolingual, ordinarily in Hebrew,⁶ so that, where Aramaic occurs, it is generally a brief allusion to something deemed external to what the author wishes to say in his own behalf, e.g., a citation of everyday speech, invariably assumed to be in Aramaic.

Now to make the matter quite concrete: the Talmud of Babylonia contains passages written in two kinds of Hebrew, Biblical and Mishnaic (or Middle), and also Aramaic of various classifications. When someone sat down to produce a composition for inclusion in that document, how did he know which language to use? If that writer had received from earlier generations a piece of writing, such as the Hebrew Scriptures (“Old Testament,” “Written Torah”) or the Mishnah, or a teaching formulated in the name of a prior authority or school, what rules told that writer which language to use for what purpose? When I speak of “a language,” I mean not word-choice or fixed formulations that may flow from one language to another, e.g., an Aramaism in a Hebrew sentence or a Hebrew formula in an Aramaic one. By language I mean the governing framework in which words and sentences find cogency and make sense: convey meaning. “Language”—Hebrew or Aramaic—here refers to the basic sentences and paragraphs in which a whole thought is expressed. These invariably obey the rules of syntax and grammar, follow the rhetorical rules, of one language and not some other.

If Aramaic is the paramount language, then even though Hebrew occurs, it will always bear marks that it is being quoted for a purpose dictated by the discourse that is in Aramaic: Hebrew will be illustrative, Aramaic, determinative. If the language of a passage is Hebrew, then the occurrence of an Aramaic phrase, e.g., a sentence that is represented as a quotation of what someone says in everyday parlance, will not affect the grammar and syntax (not to mention the word choices) of the whole. Ordinarily, therefore, the smallest

⁵ I refer of course to the Talmud of Babylonia; as to the other Talmud, a counterpart study is required.

⁶ Obviously within the canon of the Judaism of the dual Torah some of the translations of the Hebrew Scriptures into Aramaic, or Targumim, are canonical; others are not. The standing of other Aramaic writings, such as *Sefer Harazim* or *Megillat Taanit*, remains to be worked out. But if they are canonical within the Judaism of the dual Torah, then they too are monolingual. That fact makes all the more striking the bilingual character of the Bavli (and Yerushalmi).

rhetorical signals will wholly conform to the conventions of one language, and when the other language occurs, it is by way of quotation, on the one side, or utilization of technical terms, on the other. For example, a sentence wholly written in Aramaic may quote a verse of Scripture in biblical Hebrew, or a sentence of the Mishnah in Middle Hebrew. But the structure of that sentence will be in Aramaic. That is not an example of bi- or multi-lingual writing at all, any more than using *terminus technicus*, rather than technical term, would have made the penultimate sentence a mixture of Latin and American. It is a sentence in American, using a Latin word.

There are very few mysteries, as a matter of fact, in the ways in which discourse is advanced through the choice of one or another of the languages that come into play here. Where we find Hebrew, the language of quotation, it will commonly signal one of three facts, which, through the very choice of language, our author wishes to tell us:

1. a passage is from the Hebrew Scriptures
2. a passage is from the Mishnah or the Tosefta (or from a corpus of sayings out of which the Tosefta as we have it was selected; for our purposes that is a distinction that makes no difference);
3. a statement is authoritative and forms a normative formulation, a rule to be generalized and obeyed even where not from the Mishnah or Scripture, but from a named or anonymous authority of the time of the document itself.

While biblical Hebrew differs from Middle or Mishnaic Hebrew, the use, in the Bavli, of either kind of Hebrew invariably is the same. It is to set forth a normative statement. The fact that sayings of sages will be (re)formulated into the same Hebrew as the Mishnah's conveys the further claim, of course, that those sayings enjoy the same standing and authority as what is in Scripture or the Mishnah, and that allegation clearly is signaled by the choice of Hebrew for, e.g., something said by Samuel, Rab, or Yohanan. That the issue is one of authority and standing of what is said is furthermore demonstrated by a rhetorical signal, which assigns to the authority of a professional memorizer of traditions, or Tannaite master, a given formulation. Whenever we find that signal in any of its variations, all of them formed out of the same Hebrew letters, T and N, with a Y or an A (aleph), *what follows invariably is in (Middle) Hebrew*.

And that is the fact, whether the authority to whom the saying

then is assigned is a figure known, also, in the pages of the Mishnah, or a named figure who flourished long after the closure of the Mishnah, such as Rab, Samuel, or Yohanan. As a matter of fact, authorities of our document generally supposed to have flourished fairly late in the formative history of the writing, such as Ashi or Kahana, will not uncommonly instruct the Tannaite colleague of their own time and place to formulate matters in one way rather than in some other, and when that is done, what follows, once more, always is marked TNY and always is in Middle Hebrew. The upshot is that Hebrew is used to signal that a thought forms a normative, authoritative statement.

III. *A Concrete Sample of the Taxonomic Use of Language*

These remarks have now to be made concrete, and, for that purpose, I give a single passage that conforms—as all Bavli passages do—to the simple rules that I have announced. The Mishnah-paragraph is given in bold-face type, Aramaic in italics, Hebrew outside of the Mishnah and the Tosefta in regular type. And the rest follows. The first is the simplest. The point of the composition, towards which the author is aiming, is in Aramaic. The sustaining voice, asking, answering, probing, speaks in Aramaic. The facts that are under discussion are in Hebrew; these facts are identified as to source, e.g., Mishnah, Tosefta, Scripture, being set off, as Green insists, from the document's authors' utilization of them; our authors do not allude to a shared corpus of facts or truths, though they obviously take for granted the omnipresence of such a corpus; they explicitly and articulately cite items out of that corpus, and, as we shall now see, when they shift language, it serves the purpose of quotation-marks or footnotes (media for signification not available to the authors who either formulated and transmitted their composition or composite orally, or who wrote things down, or who found some intermediary medium for the fixed preservation of their thought, and the distinctions make no difference so far as the taxonomic power of language is concerned). My example derives from Bavli Bekhorot 4:1-4:

MISHNAH-TRACTATE BEKHOROT 4:1-2

- A. **How long are Israelites liable to tend to the firstling [before handing it over to the priest]?**
- B. **In the case of a small beast, for thirty days.**
- C. **And in the case of a large beast, for fifty days.**
S. R. Yosé says, “In the case of a small one, three months.”
- E. **[If] the priest said to him during this period, “Give it to me,” lo, this one does not give it to him.**
- F. **If it was blemished, [if] he said to him, “Give it to me that I might eat it,” it is permitted.**
- G. **And in the time of the Temple, if it was perfect, [if] he said to him, “Give it to me that I may offer it up,” it is permitted.**
- H. **The firstling is eaten within a year, whether it is unblemished or blemished,**
- I. **since it is said, “Before the Lord your God will you eat it year by year” (Deut. 15:20).**

M. 4:1

- A. **[If] a blemish appeared in it during its first year, it is permitted to keep it for the whole twelve months.**
- B. **[If a blemish appeared in it] after its first year, it is permitted to keep it only for thirty days.**

M. 4:2

I.1

- A. *How on the basis of Scripture do we know [that **Israelites are liable to tend to the firstling [before handing it over to the priest in the case of a small beast, for thirty days]**?*
- B. Said R. Kahana, “The firstborn of your sons you shall give to me; likewise you shall do with your sheep. You shall not delay to offer of the fullness of your harvest and of the outflow of your presses. Likewise you shall do with your oxen and with your sheep; seven days it shall be with its dam; on the eighth day you shall give it to me” (Ex. 22:29-31). [Miller & Simon: just as in the case of a first-born son redemption is necessary after thirty days, so in the case of a firstling of small cattle the Israelite must keep the animal for thirty days.]
- C. *And why not reverse this [and draw the analogy to “likewise you shall do with your oxen,” so that the firstling of large cattle have to be tended for only thirty days]?*
- D. *It is reasonable to draw an analogy from the part of the first that is prior to the part of the consequent verse that is prior, and from the part of the verse that*

is posterior to the part of the verse that is posterior.

- E. *To the contrary! Draw an analogy from what is near to what is near?*
- F. Rather, said Raba, "Scripture has said, 'you shall do' [Likewise you shall do with your oxen and with your sheep']. It adds another mode of 'doing,' namely, in connection with 'your oxen.'"
- G. *Then should I say that sixty days are required?*
- H. Scripture has handed you over only to sages [who interpret Scripture authoritatively; idle speculation is null].
- 2. A. *So too it has been taught on Tannaite authority:*
 - B. "The firstborn of your sons you shall give to me; likewise you shall do with your sheep. [You shall not delay to offer of the fullness of your harvest and of the outflow of your presses. Likewise you shall do with your oxen and with your sheep; seven days it shall be with its dam; on the eighth day you shall give it to me]" (Ex. 22:29-31):
 - C. Might I suppose that the same rule applies to "your oxen" [as to the first born of your sons, that is, the thirty-day-rule]?
 - D. Scripture says, "likewise you shall do..."—adding another mode of "doing," on connection with an ox, and, further, Scripture has handed you over only to sages [who interpret Scripture authoritatively; idle speculation is null].
 - E. On the strength of this reading, sages have said: **How long are Israelites liable to tend to the firstling [before handing it over to the priest]? In the case of a small beast, for thirty days. And in the case of a large beast, for fifty days. R. Yosé says, "In the case of a small one, three months because it tending it is onerous" [T. Bekh. 3:1A-E].**
 - F. *A Tannaite authority stated,* "Because its teeth are small [and only after three months can it eat without the mother's help.]"

II.1

- A. **[If] the priest said to him during this period, "Give it to me," lo, this one does not give it to him:**
- B. *What is the operative consideration?*
- C. Said R. Sheshet, "Because he appears to be [an avaricious] priest, who comes to help out at the harvest [so as to collect the priestly gifts, thus receiving the priestly dues in exchange for services, and that is forbidden; if the firstling is blemished and the priest asked for it, it is in the category of a gift]."
- 2. A. *Our rabbis have taught on Tannaite authority:*
 - B. **Priests, Levites, and the poor who were helping out in the household of shepherds, at the threshing floors, or in the slaughter house—they do not give them heave-offering and**

tithes as wages. And if they gave heave offering and tithes as their wages, behold, these are deemed merely unconsecrated produce, as it is said, Scripture says, “You have corrupted the covenant of Levi, says the Lord of hosts” (Mal. 2:8).

- C. **And Scripture further says, “And you shall profane the holy things of the people of Israel that you not die” (Num. 18:32). The heave offering and tithes are already unconsecrated produce [retrospectively deemed never to have been consecrated produce].**
- D. *Why “and Scripture further says”?*
- E. *Might you suppose that there is no liability to death? Come and take note: “And you shall profane the holy things of the people of Israel that you not die” (Num. 18:32).*
- F. **[T. adds:] Additionally, sages have said, “Their heave-offering is not heave-offering, and their tithes are not tithes.”**
- E. **Moreover, sages wished to fine the owners of the produce, so that their produce requires the designation of heave-offering once more.**
- F. *But why did they not do so? Lest people designate the tithes from what is already exempt for what is yet liable. [Tosefta’s version continues: **And concerning them Scripture says, “Its heads give judgment for a bribe, its priests teach for hire, its prophets divine for money” (Mic. 3:11), therefore God brought upon them three punishments, corresponding to these three transgressions: “Therefore because of you shall Zion be plowed as a field; Jerusalem shall become a heap of ruins, and the mountain of the house a wooded height” (Mic. 3:12) [T. Dem. 5:20A-N].***
3. A. And in all the cases just now noted, the owners [27A] enjoy the return of putting the other under obligation.
- B. How so?
- C. An Israelite who has designated a portion of his pile of gain as heave-offering [priestly rations], and another Israelite came upon him and said to him, “Here is a sela, and give what you have designated to my daughter’s son, who is a priest”—that arrangement is permitted.
- D. If it was an arrangement by which one priest approached the man in behalf of another priest, that is forbidden.
- E. *And what is the reason that the Tannaite framer of the passage does not make mention of the gifts that are owing to the priest [out of slaughtered animals, the shoulder and the maw as well]?*

- F. *He will say to you, "Heave-offering, which is sanctified in and of itself, since it cannot be redeemed, one will not come to make a mistake in dealing with it [for everyone knows that produce designated as heave offering cannot cease to be holy, and the priest who gets it will not treat it as unconsecrated food, but will preserve it in cultic cleanness], but these other items, since they represent consecration only as to their value, the priest who receives them may turn out to treat them as unconsecrated, supposing that the sanctification attaching to them is redeemed for the exchange of four zuz [a sela], and so he will turn out to treat them as unconsecrated."*
4. A. Said Raba, "Produce designated as heave-offering that has grown abroad is not subject to the rule of the priest who helps out at the threshing floor."
 B. *R. Hama handed it over to his attendant.*
5. A. Said Samuel, "Produce designated as heave-offering that has grown abroad is neutralized in a larger part of unconsecrated produce."
 B. Rabbah would treat it as nullified in a mixture with a larger part of unconsecrated produce and would eat it when he was unclean.
 C. *R. Huna b. R. Joshua, when he would have in hand wine that was designated as heave-offering produced abroad would mix two fourths of a log of unconsecrated wine with one fourth of a log of heave-offering, and then he would add another fourth of a log and remove one.*
6. A. And said Samuel, "Produce designated as heave-offering that has grown abroad—one may proceed to eat the produce and leave for the end the actual separation of the portion that is heave-offering."
7. A. And said Samuel, "Produce designated as heave-offering that has grown abroad is forbidden only for someone the source of whose uncleanness is a bodily excretion."
 B. *And that ruling pertains only to eating it, but as to touching it, there is no objection even there."*
8. A. Said Rabina, "Therefore a menstruating woman may cut off dough offering and a priest who is a minor may eat it."
 B. *If there is no priest who is a minor, she may take it on the point of the shovel and toss it into the oven; then she separates other dough-offering, so that the law requiring the separation of dough offering may not be forgotten; and a mature priest eats it."*
9. A. *R. Nahman and R. Amram and Rami b. Hama were traveling on a ship. R. Amram went away to defecate. A woman came along and asked them, "Is it permitted that someone who has suffered corpse-uncleanness bathe and eat heave-offering that has been separated from produce outside of the Holy Land?"*
 B. *Said R. Nahman to Rami b. Hama, [27B] "But these days is there a rite of sprinkling and so purifying people of corpse uncleanness anyhow?"*

- C. *Said to him Rami b. Hama, "Shouldn't we take account of the viewpoint of the elder?"*
- D. *Meanwhile R. Amram came back. He said to them, "This is what Rab said, 'Someone who has suffered corpse-uncleanness bathes and eats heave-offering that has been separated from produce outside of the Holy Land.'"*
- E. *But the decided law does not accord with his view, for said Mar Zutra in the name of R. Sheshet, "One made unclean by a dead creeping thing immerses and may eat heave offering separated from produce grown outside of the Holy Land," but the decided law does not accord with his view.*

III.1

- A. **The firstling is eaten within a year, whether it is unblemished or blemished, since it is said, "Before the Lord your God will you eat it year by year" (Deut. 15:20):**
- B. *Since the Mishnah states, [If] a blemish appeared in it during its first year, it follows that we count according to the year from the birth of the beast [Miller & Simon: so that if it was born in Nisan, he may keep it until the following Nisan; we do not consider that a new year for this purpose commences in Tishré].*
- C. *What is the scriptural basis for this ruling?*
- D. *Said R. Judah said Rab, "Said Scripture, 'You shall eat it before the Lord your God year by year' (Dt. 15:20)—now what is a year that enters another year? One must say, it is the year of the firstling [which extends through the New Year that commences in Tishré]."*
- E. *The Tannaite authority of the household of Rab [stated], "'year by year' (Dt. 15:20)—means, one day in this year and one day in the next, which means that a firstling may be eaten over a period of two days and the intervening night [so if one slaughters it on the last day of its first year, he may eat the meat through the first day of the second year]."*
- F. *And how does the household of Rab know this [that the firstling's year is counted from its birthdate]?*
- G. *They derive that fact from Holy Things [the age of which are reckoned by the year of their birth, not by the year beginning in Tishré].*
- H. *And as to Holy Things themselves, how do we know this?*
- I. *Said R. Aha b. Jacob, "Said Scripture, 'A lamb of its first year' (Lev. 12:6),—its first year, and not the year as reckoned from the creation of the world [in Tishré]."*
- J. *And how does Rab derive the rule that a firstling may be eaten over a*

period of two days and the intervening night [so if one slaughters it on the last day of its first year, he may eat the meat through the first day of the second year]?

- K. "And the flesh of them shall be yours as the breast that is waved and the right thigh" (Num. 18:18, speaking of a firstling—Scripture thus draws a comparison between the firstling and the breast that is waved and the right thigh of peace-offerings, indicating that, just as in that case, they may be eaten for two days and the intervening night, so here the beast may be eaten for two days and the intervening night.
- L. **[28A]** *And the other party?*
- M. *Were the proof to derive from that verse, one might suppose that it refers to the breast that is waved and the right thigh of a thanksgiving offering [which is eaten for only a day and a night].*
- N. *And the other party?*
- O. Scripture has said, "...shall be yours," thus adding another "be" in connection with the first born [meaning, it is eaten for two days and a night].
- P. *And the other party?*
- Q. *If the proof derived from that source, one might suppose that the purpose of the language, "...shall be yours," is to teach concerning a firstling that is blemished, that one gives it to the priest, for we do not find this explicitly stated in the whole of the Torah.*
- R. *And the other party?*
- S. Scripture has said, "And the flesh of them," meaning, unblemished as well as blemished, may be eaten.
- T. *And the other party?*
- U. "And the flesh of them" refers to the firstlings of all Israelites.

IV.1

- A. **[If] a blemish appeared in it during its first year, it is permitted to keep it for the whole twelve months. [If a blemish appeared in it] after its first year, it is permitted to keep it only for thirty days:**
- B. *The question was raised: What is the sense of this passage? When it says, [If] a blemish appeared in it during its first year, it is permitted to keep it for the whole twelve months, does it mean, and an additional thirty days as well? Or perhaps the sense is, [If] a blemish appeared in it during its first year, it is permitted to keep it for the whole twelve months—but no longer, and [If a blemish appeared in it] after its first year, it is permitted to keep it only for thirty days?*

- C. *Come and take note, for it has been taught on Tannaite authority:*
- D. **At this time [after the destruction of the Temple] a firstling, so long as it is not fit to show to a sage [that is, before there is a blemish on it, to be shown to the sage for a decision on whether it is transient or permanent], may be kept two or three years. Once it is fit to be shown to a stage, if a blemish appeared on it during the first year, he may keep it the entire twelve months. If it was after its first year, he is not allowed to keep it even a single day, even a single hour, but on grounds of restoring what is lost to the owner, rabbis have said that he is permitted to keep the animal for thirty days [T. Bekh. 3:2A-C] [So the thirty days to which the Mishnah refers apply to a blemish that appears in the first year.]**
- E. *And still the question is to be raised: does this mean, thirty days after the first year [in that the blemish appeared after the first year (Miller & Simon)], or does it mean thirty days before its first year is over [in that the blemish appeared before the end of the first year, so the farmer keeps the animal for thirty days after the first year]?*
- F. *Come and take note: if a blemish appeared on the beast on the fifteenth day within its first year, we complete it for fifteen days after its first year [Miller & Simon: we give the animal thirty days from the time that the blemish appears on it, and if a blemish appeared after the year or a little while before the expiration of the year, we give it thirty days from the time of the blemish for the Israelite to keep it; we also infer that if the blemish appeared a month or three months in its first year, the Israelite waits until the end of its year].*
- G. *That proves the matter.*
- H. *It further supports the position of R. Eleazar, for R. Eleazar has said, "They assign to the animal thirty days from the moment at which the blemish appeared on the beast."*
- I. *There are those who say, said R. Eleazar, "How do we know in the case of a firstling that if a blemish appeared in its first year, we assign to it thirty days after its year? 'You shall eat it before the Lord your God year by year' (Dt. 15:20) [but not in the year in which its blemish has appeared]. Now what is the span of days that is reckoned as a year? You have to say it is thirty days."*
- J. *An objection was raised: if a blemish appeared on the beast on the fifteenth day within its first year, we complete it for fifteen days after its first year. That indicates, then, that we complete the thirty days, but we do not give it thirty full days after the first year, and that would appear to refute the position of R. Eleazar!*
- K. *It does indeed refute his position.*

The entire exchange at I.1.A, B, appears to be in Hebrew except for the introductory clause. But of course that sets the issue and accounts for the joining of two otherwise unrelated phrases, the Mishnah's (not articulated at all) and Scripture's. So while on the surface we have an exchange in Hebrew, in fact the coherence of the two sentences derives from a single Aramaic word. Then C, D, E set forth an argument, and Raba's solution, F, cites Scripture and his paraphrase remains in Hebrew. G immediately shifts to Aramaic, and H's response, in Hebrew, cites a principle that is not original but given as a case-making cliché. The whole of No. 2 then consists of a reprise of statements, all in Hebrew, that serve as "proof-texts," in that each constitutes a free-standing rule; the whole finds purpose and coherence only by reference to No. 1, and we have to regard the composition as a kind of appendix to the foregoing. I see no surprises at II.1, 2. No. 3 presents its facts in Hebrew, its analysis in Aramaic, A-D, E-F, respectively. 4.A, B present an interesting contrast, the former, the rule, in Hebrew, the latter, the illustrative or exemplary case, in Aramaic. By this theory, 5.A, C pose no problem, but I should have preferred to see 5.B in Aramaic. But most of the words of B invoke the language of the rule, simply adding his name to a "narrative" reformulation of the rule. That seems to me a dubious solution, but a possible one. The Aramaic qualification at 7.B is as much a ready-made formula as the numerous Hebrew formulations within rules. My insistence that the single voice of the document speaks Aramaic and only Aramaic derives no important substantiation from an example such as that. 8.A gives us a late authority speaking fine Mishnaic Hebrew. Then B shifts into Aramaic qualifies the foregoing, serving as a gloss; and glosses will be in Aramaic to distinguished a received rule from a freshly-formulated amplification or extension or revision. Cases involving figures not identified with the siglum TN' always occur in Aramaic, as at No. 9. I find nothing remarkable at III.1. The exchange of Aramaic, C, and Hebrew, D, and within E, is readily explained: in Aramaic our authorship speaks for itself, in Hebrew it cites received statements or statements assigned the authority of "tradition:" data that are to be analyzed for their premises and consequences, but not challenged for their facticity. IV.1 likewise shows us how Aramaic sustains the continuity of thought, Hebrew presenting the data for deliberation.

IV. *The Languages of the Bavli and their Diverse Tasks*

As I suggested in the setting of first example, one may well argue that using Hebrew in citations of Scripture or the Mishnah or related materials is simply a medium for preserving what is cited in the original, not part of the system of signals that the authors at hand utilized for the purpose of communicating with their readers. Admittedly, since the rabbinic literature in general is highly differentiated, so that what derives from a received, canonical writing such as the written Torah or Scripture is always differentiated from what is assigned to a later figure, e.g., by saying “as it is written” or “as it is said,” and what derives from the Mishnah likewise is marked off in a similarly intratextualist and profoundly anti-intertextualist manner, that is hardly a source of surprise. But Hebrew is used, the very same Hebrew of the Mishnah, when a statement is made that is not Mishnaic or derived from an associated source or authority. A master generally assumed to have lived in the fifth or sixth century will instruct the Tannaite memorizer of his household or school or court to state matters in one way rather than in some other. His instructions always will be presented in Hebrew: say “this,” not “that,” and both “this” and “that” are in Hebrew. The use of Hebrew therefore forms part of the conventional substrate of the document, conveying a claim and a meaning, and what it signals is not merely “quoting from the original source,” though that is, as a matter of fact, part of the message of facticity, the classification of a statement as a datum, that the use of Hebrew is meant to convey.

What about Aramaic? That too signals not where or when a saying was formulated but the classification of the saying. Where we find Aramaic, the language of sustained discourse, of continuity, cogency, and coherence, it will commonly tell us, through the very choice of language:

1. a passage formulates an analytical or critical problem and is engaged in solving it;
2. a passage is particular and episodic, e.g., commonly case-reports about things decided in courts of the time of the document are set forth in Aramaic, or stories about things authorities have done, will be told in Aramaic; these invariably are asked to exemplify a point beyond themselves.

These two purposes for which Aramaic is used on the surface do not entirely cohere. The first is abstract, the second, concrete; the first pursues a problem of theory and calls upon evidence in the service of the sustained process of applied reason and practical logic; the second signals the presence of thought that is singular and concrete. So if we find a passage in Aramaic, we may stand in two quite unrelated points in the unfolding re-presentation of thought. But, in point of fact, the second way in which Aramaic may be used invariably finds its place within the framework of a discussion formulated as a sustained process of critical analysis, so the choice of Aramaic for what is episodic turns out not surprising, when we realize that the episode is presented specifically so as to be transformed from an anecdote into a medium of demonstration and proof. The case forms part of an argument; evidence flows into argument; and all argument then is in the same language, the Aramaic that forms the language of the document when the framers of the document speak for themselves and within the process of their own thought. When they shift to Hebrew, it will signal either the upshot of analysis, or *mutatis mutandis*, the precipitating occasion for analysis.

That language serves a taxonomic purpose, should not be taken for granted, since simply choosing a given language in a bi- or multi-lingual document does not invariably serve the purpose of classification. A variety of signals can be given through the use of one language, as against some other, in a bi- or multi-lingual writing. For instance, if everybody spoke Aramaic but an ancient text, in Hebrew, is cited, and then some figure from that same period is given further statements, the choice of the Hebrew of that early document may serve to endow with the authority of antiquity the statement given in that language. (That never happens in the Bavli, but it does happen, e.g., in the Dead Sea Scrolls.) Along these same lines, the antiquity of a passage that utilizes a language no longer spoken; the authority of a passage that is written in a language different from the one that predominates; the different choices characteristic of authorities whose words are preserved at hand—all of these represent signals that may be conveyed by shifting from one to another language in writing addressed to a single set of readers or listeners.

The upshot is that if a document forms a conglomerate of diverse sources, originally written in a variety of languages, then the framer who utilizes passages chosen from those sources will tell us, by preserving the sources in their original language, not only that he as-

sumes we can read and understand those other languages, but that he wants us to know that his writing is authentic to those sources. The range of possible interpretations for the use of more than a single language in a piece of writing hardly runs its course with these few proposals. I mean only to point out that the utilization of more than a single language in a piece of writing may bear a variety of messages, and that the possible conventions dictating the choice of language are many.

Among them, two stand out. One possibility of accounting for the presence of more than a single language directs our attention to the sources that have contributed to the writing. If these sources are in several languages, and if the author of our writing has chosen to preserve his sources in the original, then the multi-lingual character of his writing attests to the diversity of his sources and his theory of how he wanted his writing to be received. But then, we must ask ourselves, why has he used the Hebrew of his principal source when formulating the words of authorities who do not occur in that source, e.g., figures of a clearly later period? The issue of preserving what was originally said in the language in which it was said cannot exhaust the repertoire of explanations. A second possibility of accounting for the use of more than a single language—not ruled out by the first—is that the use of more than a single language formed an integral part of the author's (or authors') medium for communicating their message. Sentences in one language then bore one set of meanings, those in another, a different set; or sentences in one language functioned in one way within the larger framework of discourse, those in another language then fulfilled a quite different function. And that other convention, it is clear, is the one that, in my view, dictated when one language would be used, when the other. One language in general would stand for fact, another, for analysis of fact. Using one language therefore established one frame of reference, the other, a different, and complementary frame of reference.

The reason that this second theory is not eliminated by the first is that a language used for the re-presentation of givens may well derive from a source that supplies those data. But the second theory does eliminate the first, since if rules intrinsic to the mode and intentionality of discourse govern, then these same rules will tell authors how all the materials that they use, whether early or late, are to be set forth: *which language*. And then any appeal to a long process of agglutination and conglomeration, in which the original words

were preserved in the original language, will contradict the fact that, at any point in that allegedly long, historical process, precisely the same rules will have dictated precisely the same choices as to the use of one language or another. If the rules for choosing one language for one purpose and another for a different purpose prove to emerge from an inductive study, then, we shall find it difficult to concur that, over a long period, a great variety of writers found themselves bound to these same rules in the formulation of their thoughts into words to be preserved and handed on. The difficulty will derive from the particularity of the rules to the document that yields them: this writing follows these rules, and no other (extant) writing follows those same rules. On the face of it that fact will point away from the first, and toward the second, possibility just now set forth.⁷

The upshot is that the linguistic traits of the Bavli demonstrate a pervasive unity and uniformity of discourse. We see the recurrence of a few fixed forms and formulas, a few rules govern throughout, and, over all, the rather monotonous and even tedious character of the writing at hand attests to its authorship's adherence to a few rules characteristic of this writing and determinative of its traits, beginning to end. The document exhibits remarkable integrity; the limits of the document clearly are delineated, and when other documents are introduced in evidence, they too are marked in the manner in which, in this period and within the technical limitations operative then, people were able to cite or place in quotations or footnote materials borrowed from other sources. This is a writing that does not (merely) allude or hint at something found somewhere else, it articulately cites, it explicitly quotes. Within the limits of the Bavli, the document defines its own infrastructure in both rhetoric and logic.

What we see in the Bavli is that *context*—this setting, this specific, documentary discourse—in fact is determinative and probative of meaning. The linguistic rules that everywhere are followed will show us how carefully the authors of our document have distinguished

⁷ Theories that take at face value the veracity of attributions, assuming that a given authority really said what is assigned to him, and that we know exactly when he lived, rest on gullibility and need not be seriously entertained. But a taxonomic theory is required in any event, even within such theories, by the fact that Hebrew serves the same authority who speaks, also, in Aramaic, and hence we want to know how he knew which language to use, if he really said what he is supposed to have said.

between themselves and all other writings, that is, have presented a writing that is intra- and not inter-textual at its foundations. That language-choice follows rules shows us that the document at hand possesses integrity. That is in three definitive dimensions. First, the Bavli's discrete components follow a cogent outline and an intelligible principle of organization. Second, its discrete components conform, in their large aggregates, to a limited and discernible rhetorical plan. Third, the discrete components also contribute to the demonstration of propositions that recur through the document, indeed that the authorship of the document clearly wishes to make. And fourth, that means that the document takes priority over its details, and that the initial discourse of the document takes place within the documentary setting, viewed whole and within a broad perspective of balance, order, and proportion—there, and not solely, or primarily, within the smallest whole units of discourse of which the document is made up, of which the authorship has made use in proving its broader propositions.

So the framers of the Bavli invariably differentiate their own voice from the voices of those whom they introduce as sources of fact and evidence. Obviously, Scripture is invariably identified as such, and this is in two aspects. First of all, when a verse of Scripture is cited, it is labeled as such with the language of “as it is said...,” or “as it is written,” or with circumlocutions of various sorts. Second, Scripture's language is always distinct from that of the Mishnah and of the sages in general. So there is no possibility of describing the relationship of the document—the Bavli—and Scripture as “intertextual.” It is to the contrary, intratextual: each document is preserved in all its autonomy. But the intratextuality of the Bavli emerges with still greater clarity in the care with which different languages are utilized for distinct purposes: citation of a source of facts in Mishnaic Hebrew, discussion of the facts for the purposes of proposition and argument in Aramaic. Since that is the case not merely in general but consistently throughout, the taxonomic power of language shows us how our authorship has wished carefully to preserve the distinctions between not only Scripture and the Bavli, but the Mishnah and related authoritative materials of undisputed fact and the Bavli.

To conclude: what this fact proves is that the Talmud of Babylonia is an accessible document, a systematic piece of writing, not

agglutinative but crafted. The fact is that its authors followed rules, which we can discern and employ in our reading of this writing. The rule of linguistic preference is that where Hebrew is used, it is ordinarily for the purpose of setting forth facts, deriving from authoritative writings, on the one side, or authoritative figures, on the other. Where Aramaic is used, it is ordinarily for the purpose of analyzing facts, though it may serve, also, to set forth cases that invariably are subordinated to the analytical task. The simple fact that in the pages of the Bavli the same figures “speak” in both Hebrew and Aramaic proves that at stake is not merely “how people said things,” let alone *ipsissima verba*; if Yohanan in the Land of Israel or Samuel and Rab in Babylonia are sometimes represented as speaking in Hebrew and other times in Aramaic, the function served by using the two languages, respectively, must form the point of inquiry into how and why these languages are used where and when they make their appearance. The choice of language clearly conveys part of the message that the authorship means to set forth, signalling to the reader precisely what is happening at any given point. Along these same lines, a story, told in Aramaic, yields a formulation of a general rule or conclusion, presented in (Middle) Hebrew. Once more, the function of the language that is chosen, within the same sustained unit of thought, clearly is to make one thought in one way, another thought in a different way.

What bearing do these facts have upon the question of the very character of the Bavli, systematic or traditional, that predominates here? One fundamental problem is whether a document of this kind derives from a long agglutinative process, as the sediment of the ages accumulates into a hard tradition, or whether heirs of diverse materials reshape and restate the whole in a single formulation of their own. What is at stake in solving that problem is knowledge of how foundation-documents emerge: over time, through tradition, or all at once, through the intellection of some few persons working together in one specific context? If the former, then in the formative history of the writing, we trace what we may rightly call tradition—a historical study. If the later, then in the analytical deconstruction and reconstitution of the tradition the framers set before us a single cogent vision, formulated into words at some one moment, a system, whole and complete—a philosophical study. The uniformity of language-rules strongly points to a systemic, not a traditional document. The Bavli forms a coherent document.

CHAPTER THREE

THE BAVLI'S CONSTITUENT ELEMENTS: COMPOSITIONS AND COMPOSITES

I. Defining the Composition and the Composite

For his completed units of thought and exposition, the compiler of a tractate utilized two main types of building blocks: [1] the cogent composition, [2] the complex composite; and the composite falls into two types, [A] the kind that unfolds in an exposition of a proposition concerning a topic, and [B] the sort that simply collects statements, two or more sentences each, relevant to a given topic. Let us begin with some theoretical definitions and then see how they help us to pick our way through a Talmudic discourse of considerable dimensions, a complex and complicated construction, which I shall show adheres to rational and accessible rules of coherence and cogency.

- [1] The composition may be compared to a systematic and expository essay. It is made of a systematic exposition of a proposition, such as we set forth in a paragraph and in sets of paragraphs. The completed units of thought in the Bavli begin with the sentence, e.g., the free-standing saying, which in some instances may be completely and thoroughly understood in its own terms. They proceed to the composition, a fully-articulated set of sentences that all together establish a proposition, a coherent thought, a cogent statement. These sentences cannot be properly understood one by one, but only as a coherent sequence of logical thoughts. As in our expository writing, a composition has a beginning, a middle, an end; it starts somewhere and heads toward a rational goal.
- [2] The composite is comparable to a selection of discrete statements, e.g., a scrapbook on a common topic, which all together do not make a single point, but which serve as a compilation of facts deemed somehow to coalesce. These large-scale composites that exhibit a certain miscellaneous quality. The composite will draw together compositions, utilizing them for purposes not implicit in the coherent sentences of the compositions, e.g., as proof of a point distinct from the point made in the composition. Here a sequence of paragraphs does not then form

into an essay, a purposive sequence of paragraphs, but constitutes, rather, a miscellaneous treatment of a common topic, not a purposive argument concerning a single proposition. A composite commonly draws upon [1] available information, made available in part by prior and completed compositions and even ready-made composites, e.g., Scripture, the Mishnah, the Tosefta, and in part by [2] compositions worked out entirely within their own limits, which we might compare with a paragraph of a chapter; or a free-standing composition of a few lines.

We distinguish, then, writing that coheres in its own terms and framework, from writing that collects diverse components and puts them together to make a point beyond those set forth in some or most of the selected components. The composition sets forth a whole that exceeds the sum of the parts. The composite tells us facts that rarely make a point beyond themselves. When the Bavli sets forth a passage of the Mishnah and explains its scriptural basis, interprets its language, and expounds its law, that yields a coherent composition—nothing extraneous, everything important. But when the Bavli collects free-standing statements (even small, whole compositions) and seems to wander hither and yon, introducing and developing one point after another without a clear and cogent connection between one composition and another, then we have a composite. That is to say, the composition is ordinarily tight and well-organized, the composite, loose and diffuse; the one is brief and efficient and economical, the other extravagant and tedious, coherent topically, or merely run-on.

By “rules of composition” I mean the laws that dictated to the framers of a cogent and coherent composites—such as I allege comprise the whole of the Talmud of Babylonia—precisely how to put together whatever they wished to say, together with the supporting evidence as well as argument, in the composition that they proposed to write. Here, then, “rules of composition” govern how people form composites. Rules of composition define the correct rhetoric for the expression of a thought in proper syntax and grammar and formal structure and the useful logic. They guarantee that a reader or listener will grasp the cogency of what is said in appropriate logic govern how people write cogent thought. They are not limited to only how the compilers or writers draw together diverse available writings within a larger statement.

Composites within the present definition would not find a warm welcome in our own time; that sort of writing would be deemed

disorganized and confusing. For they function in such a way as to insert the footnotes into the text, the appendix into the chapter that it both supplements and disrupts. That ambiguity—composing cogent thought vs. compiling data somehow pertinent to a topic—does not affect the rules of composition in contemporary writing, for we have technical means of doing what in antiquity authors could not accomplish. A composition may constitute a composite, in that available materials are quoted; relevant data cited in its own context; pertinent, secondary facts and evidence included in a properly signified setting. That is to say, we state our point, in footnotes present sources and points of clarification, and in appendices include also pertinent data that, in the text itself, would impede the argument.

But the framers of the Talmud of Babylonia did not have access to the technical means that we have for clarifying a sustained thought, without inserting right in their text itself their footnotes and appendices, necessary to what is said but disruptive of the flow of argument. What we subordinate visually at the bottom of a page, or situate out of the way, for reference, not continuous reading, in an appendix, they could only insert whole within the body of their composite. When I speak of a “composite,” then it is in the context of a text that bears the burden of footnotes and appendices right within the text itself, and what imparts the character of a composite, sometimes a tediously augmented and heavily run-on, composite, to what we see is a perfectly clear and simple composition, is the technical limitations of that age. So while I explain the rules of making composites, what I really set forth is precisely those same rules of composition that tell us, in our own day and age, the range of possibilities of intellectual initiative, on the one side, and the correct media for realizing those possibilities in a coherent and cogent statement—a composition—on the other.

When we know the rules of composition of thought, the issues that would arise in response to any topic that would be treated, the analytical questions that would be addressed without regard to subject-matter, the premises of all inquiry—the fixed limns of all intellect—we know how thought was framed, formulated, and conveyed. And when we understand the rules of composition defined in this way, we also can move from detail to main point, holding together within a single descriptive framework the myriad of details that served the Bavli’s authors and framers in making the few fundamental points that they wished to make. For identifying and cataloguing the rules

of composition make possible the precise definition of the repertoire of thought—recurrent types of questions, repeated methods of answering those question, yielding the premises of all inquiry, reflection, thought, and discourse—of the Talmud of Babylonia, and that is why discovering those rules of composition is important. These rules of composition in the Talmud of Babylonia, a remarkably uniform and conceptually simple writing, were few, readily learned, and easily discerned. When we know them, we always can make sense of where we are in the unfolding of an exposition. One who knows the rules of expression—and anyone who has studied a sufficient volume of the document knows the rules intuitively, even though he or she may not grasp every detail of their application to an articulated case—always is able to define the analytical context, say what is at stake, define an appropriate solution to a properly-framed problem, answer a question to the point and grasp both the point and what is at stake in the question.

II. *Distinguishing the Composition from the Composite*

The Talmud of Babylonia in contemporary terms would be presented heavily laden with footnotes and appendices. That is, in our mode of setting forth our ideas and the documentation for them, we include in our text the main points of proposition, evidence, and argument; we relegate to footnotes the sources upon which we draw; we place in appendices substantial bodies of secondary material, relevant to the main body of our text only tangentially, yet required for a full presentation of what we wish to say. Now I provide a systematic example of the way in which the authorship of the Talmud of Babylonia accomplishes, within the technical limitations that governed its formulation of its proposition, evidence, and argument, what we work out through footnotes and appendices. Much of the materials subordinated to the proposition, evidence, and argument, derives from finished pieces of writing, worked out for use in a document we do not now have (and cannot even imagine!), now providing useful, if not essential, documentation for the document that we do have. I maintain that in classifying a piece of writing, a composition within a composite that constitutes a complete and fully articulated discourse, I must and should include within my scheme the entire mass of not only proposition, evidence, and argument, but

also footnotes and appendices. The whole then is treated as what has been classified, even though only parts form that active and determinative discussion. And, it will follow, and readers will see beyond any doubt, when I do include within a given act of classification not only what is relevant to the flow and thrust of discourse, but also the associated documentation, meaning, everything upon which the framers drew, then the whole of the Talmud under discussion will be seen fully to fall into place in accord with the proposed rules of composition. What follows fully sets forth a case and shows in a graphic way why I insist that a protracted passage, which seems—and is—run-on, when properly set forth, forms a cogent and coherent statement: proposition, evidence, arguments, fully exposed, but, alas, glossed and amplified and extended through footnotes and appendices as only intellectuals who also are scholars can gloss, amplify, and extend their remarks.

Only when we grasp how a variety of materials, some of them already completed compositions, some developments of a proposition that governs the exposition at hand, are drawn together into a single sustained and comprehensive statement, we shall understand the work of the compiler. The Bavli is a work of purposive compilation, and when we understand the rules of composition in the twin-sense—the writing of compositions, the formation of composites—we shall have a clear picture of what the framers of the Bavli did. The indentations and other formal signals tell the story.¹

What we shall now see with great clarity is how the entirety of the vast, run-on and continuous passage in fact forms a single entity, a composite made up of available compositions in part. Because each composition is linked to the others, fore and aft, we must classify the whole—**I.1** with its footnote at **I.2**, and then with that footnotes extended notes, glosses, appendices and the like, through to I.32—as a single, sustained composite, to be classified whole and all together. And in point of fact, even attention to the subject-matter—the theme and recurrent propositions—justifies treating all thirty-two compositions as a single cogent composite. For the whole

¹ My American Commentaries to, and outlines of, the two Talmuds, and their counterparts for the Midrash-compilations, listed in the bibliography, provide for the classics of Rabbinic Judaism a complete statement of what is primary and what is subordinate, a systematic picture of the components of the documents and how they are put together.

of the composite when seen all together addresses only the single issue introduced by the Mishnah and addressed in the exercise of text-criticism of I.1: gentile idolatry, Israelite service of God but also Israelite sin, and the punishment to be exacted on some one day—the day of judgment—from the gentiles for their idolatry, and from Israel for its perfidy. Then we recognize how a single, sustained program or problem, which we can readily identify, has guided the compositor in writing up his complete statement—footnotes, appendices, and all.

But—as I shall show in a graphic way through indentations of what is secondary or free-standing—most of what is before us comprises footnotes and appendices, secondary developments, expansions and clarifications, information fully spelled out to which, in a prior statement, allusion is made—a pedantic exercise of high consequence, in which everything we require is provided, and perhaps rather more than by our tastes we might have inserted. Each composition, as I explained, is inserted whole and complete, but given a (to the framers, natural and logical) position well integrated into a single running discussion. True, the whole looks run-on—all the more reason to treat all thirty-two compositions as a single composite and to classify that composite in some one way: a main point (and its enormous accretion of secondary material) on the problem, Mishnah-text-criticism. Later on we shall examine a massive composite that is not comprised of footnotes and appendices but free-standing compositions, joined together with sound reason for a purpose entirely unrelated to the larger context in which they make their appearance. That type of composite forms a different problem from the initial one we shall consider.

Both in the context of the several subdivisions of the whole and also after we have reviewed the complete composite, I shall explain why I maintain that the segment, then the whole passage, running (in this somewhat unusual case) for several folios, in fact forms a single example of a single classification. So I now mean to show how one rule of composition has told the framer of the composite how to put things together—what to include, what to cover, after his fashion, as footnotes, what to tack on, again after his fashion, as appendices. In light of this explanation of the constitutive rules of composition—composition meaning, the making of cogent and coherent composites!—my claim that I know the rules of composition and can specify what they are may be evaluated. As I said, the graphic way in

which I show what I conceive to be a footnote is to indent a discussion that seems to me secondary, e.g., filling out what is stated in a prior matter. As I proceed I shall explain why I represent matters as I do, and then at the end is a summary of the whole. In this way I show that a composite in fact forms a single, continuous, and, properly read, coherent and cogent, even economical statement.

MISHNAH/BAVLI TRACTATE ABODAH ZARAH 1:1

- A. [2A] **Before the festivals of gentiles for three days it is forbidden to do business with them.**
- B. **(1) to lend anything to them or to borrow anything from them.**
- C. **(2) to lend money to them or to borrow money from them.**
- D. **(3) to repay them or to be repaid by them.**
- E. **R. Judah says, "They accept repayment from them, because it is distressing to him."**
- F. **They said to him, "Even though it is distressing to him now, he will be happy about it later."**

1:1.I.1

- A. [2A] Rab and Samuel [in dealing with the reading of the key-word of the Mishnah, translated festival, the letters of which are 'aleph daled, rather than 'ayin daled, which means, calamity]:
- B. *one repeated the formulation of the Mishnah as, "their festivals."*
- C. *And the other repeated the formulation of the Mishnah as "their calamities."*
- D. *The one who repeated the formulation of the Mishnah as "their festivals" made no mistake, and the one who repeated the formulation of the Mishnah as "their calamities" made no mistake.*
- E. *For it is written, "For the day of their calamity is at hand" (Dt. 32:15).*
- F. *The one who repeated the formulation of the Mishnah as "their festivals" made no mistake, for it is written, "Let them bring their testimonies that they may be justified" (Is. 43:9).*
- G. *And as to the position of him who repeats the formulation of the Mishnah as "their festivals," on what account does he not repeat the formulation of the Mishnah to yield, "their calamities"?*
- H. *He will say to you, "Calamity" is preferable [as the word choice when speaking of idolatry]."*
- I. *And as to the position of whom who repeats the formulation of the Mishnah as "their calamities," on what account does he not repeat the formulation of the Mishnah to yield "their festivals"?*

- J. *He will say to you, "What causes the calamity that befalls them if not their testimony, so testimony is preferable!"*
- K. *And as to the verse, "Let them bring their testimonies that they may be justified" (Is. 43:9), is this written with reference to gentiles? Lo, it is written in regard to Israel.*
- L. For said R. Joshua b. Levi, "All of the religious duties that Israelites carry out in this world come and give testimony in their behalf in the world to come: 'Let them bring their witnesses that they may be justified' (Is. 43:9), that is, Israel; 'and let them hear and say, It is truth' (Is. 43:9)—this refers to gentiles."
- M. Rather, said R. Huna b. R. Joshua, "He who formulates the Mishnah to refer to their calamities derives the reading from this verse: 'They that fashion a graven image are all of them vanity, and their delectable things shall not profit, and their own witnesses see not nor know' (Is. 44:9)."

The foregoing, we see clearly, presents a beautifully balanced dispute-form, and the form is used to provide a medium for presenting Mishnah-text criticism: how are we to read the text of the paragraph before us. That classification presents no problems. We must now enter a much more difficult question because I maintain that, along with the classification of I.1, everything that is attached to I.1 in a continuous and ongoing manner goes along as a single composite, the whole put together in its own terms, but then utilized by the framer of the Talmud before us—folios 2A-5B—as a continuous (if in our perspective rather run-on) statement. It is obviously a composite. But I classify the entire composite all together and all at once, because it is more than a composite: it also is a composition. And the reason I see it as a coherent and cogent composition is that every item fits together with its predecessor and leads us without interruption to its successor, from the starting lines of **I.1** to the concluding ones of **I.32**. When I have made that claim stick, I shall have justified my insistence on seeing the whole as a coherent composition, to be classified in its entirety in a single entry, within a single rubric. And that is what is at stake in this long and detailed examination of four folios, eight pages, of the Talmud.

No. 1 has referred us to gentile idolatry and Israelite loyalty to the religious duties assigned to them by God. We now have a long exposition of the theme of gentile idolatry and perfidy. Everything that follows in **I.2** serves as a play on the theme of **I.1.L-M!** The unity of the whole of I.2 will be readily apparent because of the insets

of gloss and expansion, and the further insets of the appendices to the gloss and expansion.

I.2

- A. R. Hanina bar Pappa, and some say, R. Simlai, gave the following exposition [of the verse, "They that fashion a graven image are all of them vanity, and their delectable things shall not profit, and their own witnesses see not nor know" (Is. 44:9)]: "In the age to come the Holy One, blessed be he, will bring a scroll of the Torah and hold it in his bosom and say, 'Let him who has kept himself busy with it come and take his reward.' Then all the gentiles will crowd together: 'All of the nations are gathered together' (Is. 43:9). The Holy One, blessed be he, will say to them, 'Do not crowd together before me in a mob. But let each nation enter together with **[2B]** its scribes, 'and let the peoples be gathered together' (Is. 43:9), and the word 'people' means 'kingdom:' 'and one kingdom shall be stronger than the other' (Gen. 25:23)."
- B. *But can there be a mob-scene before the Holy One, blessed be he? Rather, it is so that from their perspective they not form a mob, so that they will be able to hear what he says to them.*
- C. [Resuming the narrative of A:] "The kingdom of Rome comes in first."
- D. *How come? Because they are the most important. How do we know on the basis of Scripture they are the most important? Because it is written, "And he shall devour the whole earth and shall tread it down and break it into pieces" (Gen. 25:23), and said R. Yohanan, "This Rome is answerable, for its definition [of matters] has gone forth to the entire world [Mishcon: 'this refers to Rome, whose power is known to the whole world']."*
- E. *And how do we know that the one who is most important comes in first? It is in accord with that which R. Hisda said.*
- F. For said R. Hisda, "When the king and the community [await judgment], the king enters in first for judgment: 'That he maintain the case of his servant [Solomon] and [then] the cause of his people Israel' (1 Kgs. 8:59)."
- G. *And how come? If you wish, I shall say it is not appropriate to keep the king sitting outside. And if you wish, I shall say that [the king is allowed to plea his case] before the anger of the Holy One is aroused."*
- H. [Resuming the narrative of C:] "The Holy One, blessed be he, will say to them, 'How have defined your chief occupation?'
- I. "They will say before him, 'Lord of the world, a vast number of marketplaces have we set up, a vast number of bath houses we have

- made, a vast among of silver and gold have we accumulated. And all of these things we have done only in behalf of Israel, so that they may define as their chief occupation the study of the Torah.'
- J. "The Holy One, blessed be he, will say to them, 'You complete idiots! Whatever you have done has been for your own convenience. You have set up a vast number of marketplaces to be sure, but that was so as to set up whore-houses in them. The bath-houses were for your own pleasure. Silver and gold belong to me anyhow: "Mine is the silver and mine is the gold, says the Lord of hosts" (Hag. 2:8). Are there any among you who have been telling of "this," and "this" is only the Torah: "And this is the Torah that Moses set before the children of Israel' (Dt. 4:44)." So they will make their exit, humiliated.
- K. "When the kingdom of Rome has made its exit, the kingdom of Persia enters afterward."
- L. *How come? Because they are second in importance. And how do we know it on the basis of Scripture? Because it is written, "And behold, another beast, a second, like a bear" (Dan. 7:5), and in this connection R. Joseph repeated as a Tannaite formulation, "This refers to the Persians, who eat and drink like a bear, are obese like a bear, are shaggy like a bear, and are restless like a bear."*
- M. "The Holy One, blessed be he, will say to them, 'How have defined your chief occupation?'
- N. "They will say before him, 'Lord of the world, We have thrown up a vast number of bridges, we have conquered a vast number of towns, we have made a vast number of wars, and all of them we did only for Israel, so that they may define as their chief occupation the study of the Torah.'
- O. "The Holy One, blessed be he, will say to them, 'Whatever you have done has been for your own convenience. You have thrown up a vast number of bridges, to collect tolls, you have conquered a vast number of towns, to collect the corvée, and, as to making a vast number of wars, I am the one who makes wars: "The Lord is a man of war" (Ex. 19:17). Are there any among you who have been telling of "this," and "this" is only the Torah: "And this is the Torah that Moses set before the children of Israel' (Dt. 4:44).' So they will make their exit, humiliated.
- P. *But if the kingdom of Persia has seen that such a claim issued by the kingdom of Rome did no good whatsoever, how come they go in at all?*
- Q. *They will say to themselves, "These are the ones who destroyed the house of the sanctuary, but we are the ones who built it."*
- R. "And so it will go with each and every nation."
- S. *But if each one of them has seen that such a claim issued by the others did no good whatsoever, how come they go in at all?*

- T. *They will say to themselves, “Those two subjugated Israel, but we never subjugated Israel.”*
- U. *And how come the two conquering nations are singled out as important and the others are not?*
- V. *It is because the rule of these will continue until the Messiah comes.*
- W. “They will say to him, ‘Lord of the world, in point of fact, did you actually give it to us and we did not accept it?’”
- X. *But how can they present such an argument, since it is written, “The Lord came from Sinai and rose from Seir to them, he shined forth from Mount Paran” (Dt. 33:2), and further, “God comes from Teman” (Hab. 3:3). Now what in the world did he want in Seir, and what was he looking for in Paran? Said R. Yohanan, “This teaches that the Holy One, blessed be he, made the rounds of each and every nation and language and none accepted it, until he came to Israel, and they accepted it.”*
- Y. *Rather, this is what they say, “Did we accept it but then not carry it out?”*
- Z. *But to this the rejoinder must be, “Why did you not accept it anyhow!”*
- AA. Rather, “this is what they say before him, ‘Lord of the world, Did you hold a mountain over us like a cask and then we refused to accept it as you did to Israel, as it is written, “And they stood beneath the mountain” (Ex. 19:17).”
- BB. And [in connection with the verse, “And they stood beneath the mountain” (Ex. 19:17),] said R. Dimi bar Hama, “This teaches that the Holy One, blessed be he, held the mountain over Israel like a cask and said to them, ‘If you accept the Torah, well and good, and if not, then there is where your grave will be.’”
- CC. “Then the Holy One, blessed be he, will say to them, ‘Let us make known what happened first: “Let them announce to us former things” (Is. 43:9). As to the seven religious duties that you did accept, where have you actually carried them out?’”
- DD. *And how do we know on the basis of Scripture that they did not carry them out? R. Joseph formulated as a Tannaite statement, ““He stands and shakes the earth, he sees and makes the nations tremble” (Hab. 3:6): what did he see? He saw the seven religious duties that the children of Noah accepted upon themselves as obligations but never actually carried them out. Since they did not carry out those obligations, he went and remitted their obligation.”*
- EE. *But then they benefited—so it pays to sin!*
- FF. Said Mar b. Rabina, **[3A]** “What this really proves is that even they they carry out those religious duties, they get no reward on that account.”

- GG. *And they don't, don't they? But has it not been taught on Tannaite authority:* R. Meir would say, "How on the basis of Scripture do we know that, even if it is a gentile, if he goes and takes up the study of the Torah as his occupation, he is equivalent to the high priest? Scripture states, 'You shall therefore keep my statutes and my ordinances, which, if a human being does them, one shall gain life through them' (Lev. 18:5). What is written is not 'priests' or 'Levites' or 'Israelites,' but rather, 'a human being.' So you have learned the fact that, even if it is a gentile, if he goes and takes up the study of the Torah as his occupation, he is equivalent to the high priest."
- HH. Rather, what you learn from this [DD] is that they will not receive that reward that is coming to those who are commanded to do them and who carry them out, but rather, the reward that they receive will be like that coming to the one who is not commanded to do them and who carries them out anyhow.
- II. For said R. Hanina, "Greater is the one who is commanded and who carries out the religious obligations than the one who is not commanded but nonetheless carries out religious obligations."
- JJ. [Reverting to AA:] "this is what the gentiles say before him, 'Lord of the world, Israel, who accepted it—where in the world have they actually carried it out?'"
- KK. "The Holy One, blessed be he, will say to them, 'I shall bear witness concerning them, that they have carried out the whole of the Torah!'"
- LL. "They will say before him, 'Lord of the world, is there a father who is permitted to give testimony concerning his son? For it is written, "Israel is my son, my firstborn" (Ex. 4:22).'"
- MM. "The Holy One, blessed be he, will say to them, 'The heaven and the earth will give testimony in their behalf that they have carried out the entirety of the Torah.'
- NN. "They will say before him, 'Lord of the world, The heaven and earth have a selfish interest in the testimony that they give: 'If not for my covenant with day and with night, I should not have appointed the ordinances of heaven and earth' (Jer. 33:25).'"
- OO. *For said R. Simeon b. Laqish,* "What is the meaning of the verse of Scripture, 'And there was evening, and there was morning, the sixth day' (Gen. 1:31)? This teaches that the Holy One, blessed be he, made a stipulation with all of the works of creation, saying to them, 'If Israel accepts my Torah, well and good,

but if not, I shall return you to chaos and void.’ *That is in line with what is written:* ‘You did cause sentence to be heard from heaven, the earth trembled and was still’ (Ps. 76:9). If ‘trembling’ then where is the stillness, and if stillness, then where is the trembling? Rather, to begin with, trembling, but at the end, stillness.”

- PP. [Reverting to MM-NN:] “The Holy One, blessed be he, will say to them, ‘Some of them may well come and give testimony concerning Israel that they have observed the entirety of the Torah. Let Nimrod come and give testimony in behalf of Abraham that he never worshipped idols. Let Laban come and give testimony in behalf of Jacob, that he never was suspect of thievery. Let the wife of Potiphar come and give testimony in behalf of Joseph, that he was never suspect of ‘sin.’ Let Nebuchadnezzar come and give testimony in behalf of Hananiah, Mishael, and Azariah, that they never bowed down to the idol. Let Darius come and give testimony in behalf of Daniel, that he did not neglect even the optional prayers. Let Bildad the Shuhite and Zophar the Naamatite and Eliphaz the Temanite and Elihu son of Barachel the Buzite come and testify in behalf of Israel that they have observed the entirety of the Torah: “Let the nations bring their own witnesses, that they may be justified” (Is. 43:9).’
- PP. “They will say before him, ‘Lord of the world, Give it to us to begin with, and let us carry it out.’
- QQ. “The Holy One, blessed be he, will say to them, ‘World-class idiots! He who took the trouble to prepare on the eve of the Sabbath [Friday] will eat on the Sabbath, but he who took no trouble on the even of the Sabbath—what in the world is he going to eat on the Sabbath! Still, [I’ll give you another chance.] I have a rather simple religious duty, which is called “the tabernacle.” Go and do that one.”
- RR. *But can you say any such thing? Lo, R. Joshua b. Levi has said, “What is the meaning of the verse of Scripture, “The ordinances that I command you this day to do them’ (Dt. 7:11)? Today is the day to do them, but not tomorrow; they are not to be done tomorrow; today is the day to do them, but not the day on which to receive a reward for doing them.”*
- SS. Rather, it is that the Holy One, blessed be he, does not exercise tyranny over his creatures.
- TT. *And why does he refer to it as a simple religious duty? Because it does not involve enormous expense [to carry out that religious duty].*
- UU. “Forthwith every one of them will take up the task and go and make a tabernacle on his roof. But then the Holy, One, blessed be he,

- will come and make the sun blaze over them as at the summer solstice, and every one of them will knock down his tabernacle and go his way: 'Let us break their bands asunder and cast away their cords from us' (Ps. 23:3)."
- VV. But lo, you have just said, "it is that the Holy One, blessed be he, does not exercise tyranny over his creatures"!
- WW. *It is because the Israelites too—sometimes [3B] the summer solstice goes on to the Festival of Tabernacles, and therefore they are bothered by the heat!*
- XX. But has not Raba stated, "One who is bothered [by the heat] is exempt from the obligation of dwelling in the tabernacle"?
- YY. *Granting that one may be exempt from the duty, is he going to go and tear the thing down?*
- zz. [Continuing from UU:] "Then the Holy One, blessed be he, goes into session and laughs at them: 'He who sits in heaven laughs' (Ps. 2:4)."
- AAA. Said R. Isaac, "Laughter before the Holy One, blessed be he, takes place only on that day alone."
- BBB. *There are those who repeat as a Tannaite version this statement of R. Isaac in respect to that which has been taught on Tannaite authority:*
- CCC. R. Yosé says, "In the coming age gentiles will come and convert."
- DDD. *But will they be accepted? Has it not been taught on Tannaite authority:* Converts will not be accepted in the days of the Messiah, just as they did not accept proselytes either in the time of David or in the time of Solomon?
- EEE. Rather, "they will make themselves converts, and they will put on phylacteries on their heads and arms and fringes on their garments and a mezuzah on their doors. But when they witness the war of Gog and Magog, he will say to them, 'How come you have come?' They will say, "'Against the Lord and against his Messiah.'" For so it is said, 'Why are the nations in an uproar and why do the peoples mutter in vain' (Ps. 2:1). Then each one of them will rid himself of his religious duty and go his way: 'Let us break their bands asunder' (Ps. 2:3). Then the Holy One, blessed be he, goes into session and laughs at them: 'He who sits in heaven laughs' (Ps. 2:4)."
- FFF. Said R. Isaac, "Laughter before the Holy One, blessed be he, takes place only on that day alone."
- GGG. But is this really so? And has not R. Judah said Rab said, "The day is made up of twelve hours.

In the first three the Holy One, blessed be he, goes into session and engages in study of the Torah; in the second he goes into session and judges the entire world. When he realizes that the world is liable to annihilation, he arises from the throne of justice and takes up a seat on the throne of mercy. In the third period he goes into session and nourishes the whole world from the horned buffalo to the brood of vermin. During the fourth quarter he laughs [and plays] with leviathan: "There is leviathan, whom you have formed to play with" (Ps. 104:26)." [This proves that God does laugh more than on that one day alone.]

HHH. Said R. Nahman bar Isaac, "With his creatures he laughs [everyday], but at his creatures he laughs only on that day alone."

That the whole of the foregoing constitutes a single, well-crafted essay is readily apparent. When the continuing discussion set forth by Hanina bar Pappa or Simlai is interrupted with a gloss, that is obvious. To show how that glossing process in our terms would form a footnote, I indent what I conceive to be footnotes. The interesting point comes at BBB, where we have an appendix to AAA. That is to say, the footnote, AAA, completes the foregoing statement, ZZ. Then the additional information is added not to the basic text but to the gloss; it is not filler, the information is valued. But the insertion clearly adds nothing to the basic text—hence it is relegated to an appendix, which, in our technical age, we should simply place at the end of a book. But then GGG forms a footnote to an appendix, therefore is indented still further.

The next passages, to the end of this entire composition, go their own way. In order to justify my decision to classify the entirety of **I.2**—which is to say, **I.2-I.32**, in a single way, I have to show that the entire composite is connected to I.2, and that the whole forms a secondary formation, brought together for the purpose of giving a full and complete exposition of the statement of I.2 and of the materials included within that statement. Time and again in what follows we shall see clear-cut reference, to something stated in I.2, not merely allusion to a theme or some other aspect of "intertextuality." The initial composition, I.2, is quoted, not merely referred to, and the entirety of what follows then serves that initial passage.

Since I conceive everything that follows to form either a footnote to I.2 or an appendix to a footnote to I.2, I have set the whole into wider margins than the foregoing. This underlines the fact that the whole augments a principal and primary statement.

3. A. Said R. Aha to R. Nahman bar Isaac, "From the day on which the house of the sanctuary, the Holy One blessed be he has had no laughter.
- B. *"And how on the basis of Scripture do we know that he has had none? If we say that it is because it is written, 'And on that day did the Lord, the god of hosts, call to weeping and lamentation' (Is. 22:12), that verse refers to that day in particular. Shall we then say that that fact derives from the verse, 'If I forget you, Jerusalem, let my right hand forget her cunning, let my tongue cleave to the roof of my mouth if I do not remember you' (Ps. 137:5-6)? That refers to forgetfulness, not laughter. Rather, the fact derives from this verse: 'I have long held my peace, I have been still, I have kept in, now I will cry' (Is. 42:14)."*

The reference to God's laughing at FFF accounts for the addition of No. 3. Then we proceed to No. 4, a further reference to an item at No. 2. Nos. 5, 6 address the general theme of Torah-study. Because these compositions introduce the theme of this world and the world to come, punishment now, reward then, or recompense then for evil deeds done now, we find secondary developments on these themes at Nos. 7, 8, 9, 10, 11, 12, 13, 14.

4. A. [Referring to the statement that during the fourth quarter he laughs [and plays] with leviathan,] *[nowadays] what does he do in the fourth quarter of the day?*
- B. He sits and teaches Torah to kindergarten students: "Whom shall one teach knowledge, and whom shall one make understand the message? Those who are weaned from the milk? (Is. 28:19).
- C. *And to begin with [prior to the destruction of the Temple, which ended his spending his time playing with leviathan], who taught them?*
- D. *If you wish, I shall say it was Metatron, and if you wish, I shall say that he did both [but now does only one].*
- E. And at night what does he do?
- F. *If you wish, I shall say that it is the sort of thing he does by day;*
- G. *and if you wish, I shall say, he rides his light cherub and floats through eighteen thousand worlds: "The chariots of God are myriads, even thousands and thousands [shinan] (Ps. 68:48).*

Read the letters translated as thousands, shinan, as though they were written, she-enan, meaning, that are not [thus: “the chariots are twice ten thousand less two thousand, eighteen thousand (Mishcon)].

- H. *And if you wish, I shall say*, he sits and listens to the song of the Living Creatures [hayyot]: “By the day the Lord will command his loving kindness and in the night his song shall be with me” (Ps. 42:9).
5. A. Said R. Levi, “To whoever stops studying the words of the Torah and instead takes up words of mere chatter they feed glowing coals of juniper: ‘They pluck salt-wort with wormwood and the roots of juniper are their food’ (Job 30:4).”
- B. Said R. Simeon b. Laqish, “For whoever engages in study of the Torah by night—the Holy One, blessed be he, draws out the thread of grace by day: ‘By day the Lord will command his loving kindness, and in the night his song shall be with me’ (Ps. 42:9). Why is it that ‘By day the Lord will command his loving kindness’? Because ‘in the night his song shall be with me.’”
- C. *Some say*, said R. Simeon b. Laqish, “For whoever engages in study of the Torah in this world, which is like the night,—the Holy One, blessed be he, draws out the thread of grace in the world to come, which is like the day: ‘By day the Lord will command his loving kindness, and in the night his song shall be with me’ (Ps. 42:9). [Supply: Why is it that ‘By day the Lord will command his loving kindness’? Because ‘in the night his song shall be with me.’]”
6. A. Said R. Judah said Samuel, “*What is the meaning of the verse of Scripture*, ‘And you make man as the fish of the sea and as the creeping things, that have no ruler over them’ (Hab. 1:14)? Why are human beings compared to fish of the sea? To tell you, just as fish in the sea, when they come up on dry land, forthwith begin to die, so with human beings, when they take their leave of teachings of the Torah and religious deeds, forthwith they begin to die.
- B. “Another matter: just as the fish of the sea, as soon as dried by the sun, die, so human beings, when struck by the sun, die.”
- C. *If you want, this refers to this world, and if you want, this refers to the world to come.*
- D. *If you want, this refers to this world,, in line with that which R. Hanina*

[*said*], for said R. Hanina, "Everything is in the hands of Heaven except cold and heat: 'colds and heat boils are in the way of the froward, he who keeps his soul holds himself far from them' (Prov. 22:5)."

- E. *and if you want, this refers to the world to come, in accord with that which was stated by R. Simeon b. Laqish.* For said R. Simeon b. Laqish, "In the world to come, there is no Gehenna, but rather, the Holy One, blessed be he, brings the sun out of its sheathe and he heats the wicked but heals the righteous through it. The wicked are brought to judgment by **[4A]** it: 'For behold, the days comes, it burns as a furnace, and all the proud and all who do wicked things shall be stubble, and the day that comes shall set them ablaze, says the Lord of hosts, that it shall leave them neither root nor branch' (Mal. 3:19).
- F. "it shall leave them neither root'—in this world; 'nor branch'—in the world to come.
- G. "but heals the righteous through it:' 'But to you that fear my name shall the sun of righteousness arise with healing in its wings' (Mal. 3:19). They will revel in it: 'And you shall go forth and gambol as calves of the stall' (Mal. 3:20)."
- H. [Continuing C, above:] "Another matter: just with as the fish of the sea, whoever is bigger than his fellow swallows his fellow, so in the case of human beings, were it not for fear of the government, whoever is bigger than his fellow would swallow his fellow."
- I. *That is in line with what we have learned in the Mishnah: R. Hananiah, Prefect of the Priests, says, "Pray for the welfare of the government. For if it were not for fear of it, one man would swallow his fellow alive" [M. Abot 3:2A-B].*

7. A. *R. Hinena bar Pappa contrasted verses of Scripture: "It is written, 'As to the almighty, we do not find him exercising plenteous power' (Job 37:23), but by contrast, 'Great is our Lord and of abundant power' (Ps. 147:5), and further, 'Your right hand, Lord, is glorious in power' (Ex. 15:6).*
- B. "But there is no contradiction between the first and second and third statements, for the former speaks of the time of judgment [when justice is tempered with mercy, so God does not do what he could] and the latter two statements refer to a time of war [of God against his enemies]."

8. A. *R. Hama bar Hanina contrasted verses of Scripture: “it is written, ‘Fury is not in me’ (Is. 27:4) but also ‘The Lord revenges and is furious’ (Nah. 1:2).*
 B. *“But there is no contradiction between the first and second statements, for the former speaks of Israel, the latter of the gentiles.”*
 C. *R. Hinena bar Pappa said, “‘Fury is not in me’ (Is. 54:9), for I have already taken an oath: ‘would that I had not so vowed, then as the briars and thorns in flame would I with one step burn it altogether’ (Is. 54:9).”*
9. A. *That is in line with what R. Alexandri said, “What is the meaning of the verse, ‘And it shall come to pass on that day that I will seek to destroy all the nations’ (Zech. 12:9)—*
 B. *“‘seek’—seek permission from whom?”*
 C. *“Said the Holy One, blessed be he, ‘I shall seek in the records that deal with them, to see whether there is a cause of merit, on account of which I shall redeem them, but if not, I shall destroy them.’”*
10. A. *That is in line with what Raba said, “What is the meaning of the verse, ‘Howbeit he will not stretch out a hand for a ruinous neap though they cry in his destruction’ (Job 30:24)?*
 B. *“Said the Holy One, blessed be he, to Israel, ‘When I judge Israel, I shall not judge them as I do the gentiles, for it is written, “I will overturn, overturn, overturn it” (Ez. 21:32), rather, I shall exact punishment from them as a hen pecks.’*
 C. *“Another matter: ‘Even if the Israelites do not carry out a religious duty before me more than a hen pecking at a rubbish heap, I shall join together [all the little pecks] into a great sum: “although they pick little they are saved” (Job 30:24).’*
 D. *“Another matter: ‘As a reward for their crying out to me, I shall help them’ (Job 30:24).”*
11. A. *That is in line with what R. Abba said, “What is the meaning of the verse, ‘Though I would redeem them, yet they have spoken lies against me’ (Hos. 7:23)? ‘I said that I would redeem them through [inflicting a penalty] on their property in this world, so that they might have the merit of enjoying the world to come, “yet they have spoken lies against me” (Hos. 7:23).”*

12. A. *That is in line with what R. Pappi in the name of Raba said, "What is the meaning of the verse, 'Though I have trained [and] strengthened their arms, yet they imagine mischief against me' (Hos. 7:15)?*
- B. *Said the Holy One, blessed be he, I thought that I would punish them with suffering in this world, so that their arm might be strengthened in the world to come, "yet they have spoken lies against me" (Hos. 7:23)."*
13. A. *R. Abbahu praised R. Safra to the minim [in context: Christian authorities of Caesarea], saying that he was a highly accomplished authority. They therefore remitted his taxes for thirteen years.*
- B. *One day they came upon him and said to him, "It is written, 'You only have I known among all the families of the earth; therefore I will visit upon you all your iniquities' (Amos 3:2). If one is angry, does he vent it on someone he loves?"*
- C. *He fell silent and said nothing at all. They wrapped a scarf around his neck and tortured him. R. Abbahu came along and found them. He said to them, "Why are you torturing him?"*
- D. *They said to him, "Didn't you tell us that he is a highly accomplished authority, but he does not know how to explain this verse!"*
- E. *He said to them, "True enough, I told you that he was a master of Tannaite statements, but did I say anything at all to you about his knowledge of Scripture?"*
- F. *They said to him, "So how come you know?"*
- G. *He said to them, "Since we, for our part, spend a lot of time with you, we have taken the task of studying it thoroughly, while others [in Babylonia, Safra's place of origin] do not study [Scripture] that carefully."*
- H. *They said to him, "So tell us."*
- I. *He said to them, "I shall tell you a parable. To what is the matter comparable? To the case of a man who lent money to two people, one a friend, the other an enemy. From the friend he collects the money little by little, from the enemy he collects all at once."*
14. A. *Said R. Abba bar Kahana, "What is the meaning of the following verse of Scripture: 'Far be it from you to do after this manner, to slay the righteous with the wicked' (Gen. 18:25).*
- B. *"Said Abraham before the Holy One, blessed be he, 'Lord of the world! It is a profanation to act in such a*

- way [a play on the Hebrew letters, shared by the words ‘far be it’ and ‘profanation’], ‘to slay the righteous with the wicked’ (Gen. 18:25).”
- C. But is it not [so that God might do just that]? And is it not written, “And I will cut off from you the righteous and the wicked” (Ez. 21:8)?
 - D. That speaks of one who is not completely righteous, but not of one who is completely righteous.
 - E. And will he not do so to one who is completely righteous? And is it not written, “And begin the slaughter with my sanctuary” (Ez. 9:6), in which connection R. Joseph repeated as a Tannaite version, “Read not ‘with my sanctuary’ but rather, ‘with those who are holy to me,’ namely, the ones who carried out the Torah beginning to end.”
 - F. *There too*, since they had the power to protest against the wickedness of the others and did not do so, they were not regarded as completely righteous at all.

The preceding composite, made up of connected compositions, has made reference to God’s forgiveness but also God’s anger. So we now address, as a tertiary augmentation, the issue of God’s anger: when it happens, how it affects judgment, why it is important to avoid God’s wrath and the like. The whole is an appendix to an appendix, a strung-together set of compositions, all of them related fore and aft, so that, in following the chain from the end to the beginning, we can always account for why a given composition has been made part of the composite before us. So we can account for the movement from one to the next, beginning at No. 15:

15.
 - A. *R. Pappa contrasted verses of Scripture*: “It is written, ‘God is angry every day’ (Ps. 7:12) but also ‘who could stand before his anger’ (Nah. 1:6).
 - B. “*But there is no contradiction between the first and second statements*, for the former speaks of the individual, the latter of the community.”
16.
 - A. *Our rabbis have taught on Tannaite authority*:
 - B. “God is angry every day” (Ps. 7:12), and how long is his anger? It is for a moment. And how long is a moment? The portion 1/53,848th of an hour is a moment.
 - C. And no creature can determine that moment, except for Balaam that wicked man, of whom it

- is written, **[5A]** “who knew the knowledge of the Most High” (Num. 24:16).
- D. How can it be that a man who did not know the mind of his animal could have known the mind of the Most High?
17. A. *And what is the meaning of the statement that he did not know the mind of his animal?*
- B. *When they saw him riding on his ass, they said to him, “How come you’re not riding on a horse?”*
- C. *He said to them, “I sent it to the meadow.”*
- D. Forthwith: “The ass said, Am I not your ass” (Num. 22:30).
- E. *He said to it, “Just as a beast of burden in general.”*
- F. *She said to him, “Upon whom you have ridden” (Num. 22:30).*
- G. *He said to it, “Only from time to time.”*
- H. *She said to him, “ever since I was yours {Num. 22:30}. And not only so, but I serve you for riding by day and fucking by night.”*
- I. For here the word “I was wont” is used, and the same letters bear the meaning of bed mate: “...and she served him as a bed-mate” (1 Kings 1:2).
18. A. *And what is the meaning of the statement that he could have known the mind of the Most High?*
- B. For he knew precisely that moment at which the Holy One, blessed be he, was angry.
- C. *That is in line with what the prophet had said to them, “O my people, remember now what Balak king of Moab consulted and what Balaam son of Beor answered him from Shittim to Gilgal, that you may know the righteousness of the Lord” (Mic. 6:5).*
19. A. [“O my people, remember now what Balak king of Moab consulted and what Balaam son of Beor answered him from Shittim to Gilgal, that you may know the righteousness of the Lord” (Mic 6:5)]:
- B. Said R. Eleazar, “Said R. Eleazar, “Said the Holy one blessed be he to Israel, ‘My people, see how many acts of righteousness I carried out with you,

for I did not grow angry with you during all those [perilous] days, for if I had grown angry with you, there would not have remained from Israel a remnant or a survivor.’

- C. “And that is in line with what Balaam says: ‘How can I curse seeing that God does not curse, and how can I be wrathful, seeing that the Lord has not been wrathful’ (Num. 23:8).”
20. A. And how long is his wrath? It is for a moment. And how long is a moment? The portion 1/53,848th of an hour is a moment.
- B. And how long is a moment?
- C. Said Amemar—others say, Rabina—“So long as it takes to say the word ‘moment.’”
- D. *And how on the basis of Scripture do we know that his wrath lasts for only a moment?*
- E. *As it is written*, “For his anger is for a moment, his favor is for a lifetime” (Ps. 30:6).
- F. *If you prefer*: “Hide yourself for a brief moment, until the wrath be past” (Is. 26:20).
21. A. *When is he angry?*
- B. *Said Abayye*, “In the first three hours of the day, when the comb of the cock is white.”
- C. *Isn’t it white all the rest of the day?*
- D. *At other times it has red streaks, but then it has none.*
22. A. *R. Joshua b. Levi—a certain min would bother him about verses of Scripture. Once he took a chicken and put it between the legs of the bed and watched it. He reasoned, “When that hour comes, I shall curse him.”*
- B. *But when that hour came, he was dozing. He said, “What you learn from this experience is that it is not correct to act in such a way: ‘His tender mercies are over all his works’ (Ps. 145:9), ‘Neither is it good for the righteous to inflict punishment’ (Prov. 17:26).”*
23. A. *It was taught as a Tannaite version in the name of R. Meir, “[That time at which God gets angry comes] when the kings put on their crowns on their heads and prostrate themselves to the sun. Forthwith the Holy One, blessed be he, grows angry.”*
24. A. *Said R. Joseph, “A person should not recite the Prayer of the Additional Service for the first day of the New Year [the Day of Judgment] during the first three hours of the day or in private, lest, since that is the time of judgment, his deeds may be examined, and his prayer rejected.”*

- B. *If so, then the prayer of the community also should not be recited at that time?*
- C. *The merit [accruing to the community as a whole] is greater.*
- D. *If so, then that of the Morning Service also should not be recited in private?*
- E. *Since at that time the community also will be engaged in reciting the Morning Prayer, the individual's recitation of the Prayer will not be rejected.*
- F. *But have you not said, "In the first three the Holy One, blessed be he, goes into session and engages in study of the Torah; in the second he goes into session and judges the entire world"?*
- G. *Reverse the order.*
- H. *Or, if you prefer, actually do not reverse the order. For when God is occupied with study of the Torah, called by Scripture "truth" as in "buy the truth and do not sell it" (Prov. 23:23), the Holy One, blessed be he, in any event will not violate the strict rule of justice. But when engaged in judgment, which is not called "truth" by Scripture, the Holy One, blessed be he, may step across the line of strict justice [towards mercy].*

The long process of glossing the glosses has come to an end, so we now refer back to another statement of No. 2, which we shall develop. That covers Nos. 25, -27:

- 25.
 - A. Reverting to the body of the prior text:
 - B. *R. Joshua b. Levi has said, "What is the meaning of the verse of Scripture, 'The ordinances that I command you this day to do them' (Dt. 7:11)? Today is the day to do them, but not tomorrow; they are not to be done tomorrow; today is the day to do them, but today is not the day on which to receive a reward for doing them:"*
 - C. *Said R. Joshua b. Levi, "All the religious duties that Israelites do in this world come and give evidence in their behalf in the world to come: 'Let them bring their witnesses that they may be justified, let them hear and say it is truth.'*
 - D. *"Let them bring their witnesses that they may be justified:" this is Israel.*
 - E. *"let them hear and say it is truth:" this refers to the gentiles.*

- F. And said R. Joshua b. Levi, "All the religious duties that Israelites do in this world come and flap about the faces of gentiles in the world to come: 'Keep therefore and do them, for this, your wisdom and understanding, will be in the eyes of the peoples' (Dt. 4:6).
- G. "What is stated here is not 'in the presence of the peoples' but 'in the eyes of the peoples,' which teaches you that they will come and flap about the faces of gentiles in the world to come."
- H. And said R. Joshua b. Levi, "The Israelites made the golden calf only to give an opening to penitents: 'O that they had such a heart as this always, to fear me and keep my commandments' (Dt. 5:26)."
26. A. That is in line with what R. Yohanan said in the name of R. Simeon b. Yohai: "David was really not so unfit as to do such a deed [as he did with Beth Sheva]: 'My heart is slain within me' (Ps. 109:22) [Mishcon: David's inclinations had been completely conquered by himself]. And the Israelites were hardly the kind of people to commit such an act: "O that they had such a heart as this always, to fear me and keep my commandments' (Dt. 5:26). So why did they do it?"
- B. "[5A] It was to show you that if an individual has sinned, they say to him, 'Go to the individual [such as David, and follow his example], and if the community as a whole has sinned, they say to them, 'Go to the community [such as Israel].'
- C. *And it was necessary to give both examples. For had we been given the rule governing the individual, that might have been supposed to be because his personal sins were not broadly known, but in the case of the community, the sins of which will be broadly known, I might have said that that is not the case.*
- D. *And if we had been given the rule governing the community, that might have been supposed to be the case because they enjoy greater mercy, but an individual, who has not got such powerful zekhut, might have been thought not subject to the rule.*
- E. *So both cases had to be made explicit.*
27. A. That is in line with what R. Samuel bar. Nahmani said R. Jonathan said, "What is the meaning of the verse of Scripture, 'The saying of David, son of Jesse, and the saying of the man raised on high' (2 Sam. 23:1)?
- B. "It means, 'The saying of David, son of Jesse, the man who raised up the yoke of repentance.'"

Now that the expansion of the passage at No. 2 has been completed, we proceed to the extension of that expansion. The reward for the religious duty, the punishment for the sin—these themes are developed at No. 28, which makes the point, critical in No. 2 as well, that our accomplishment of religious duties is acknowledged, so too, what sins we have done.

28. A. Said R. Samuel bar Nahmani said R. Jonathan, “Whoever does a religious duty in this world—that deed goes before him to the world to come, as it is said, ‘And your righteousness shall go before you’ (Is. 58:8).”
- B. “‘And whoever commits a transgression in this world—that act turns aside from him and goes before him on the Day of Judgment, as it is said, ‘The paths of their way are turned aside, they go up into the waste and perish’ (Job 6:18).”
- C. R. Eliezer says, “It attaches to him like a dog, as it is said, ‘He did not listen to her to lie by her or to be with her’ (Gen. 39:10).”
- D. “‘To lie by her’ in this world
- E. “‘Or to be with her’ in the world to come.”

No. 29 forms a gloss to No. 28, though, obviously, it also is free-standing and makes its own autonomous point. What we now are given is an account of the result of sin, which, in this world, is death, a sustained and well-argued proposition, the whole an appendix to the general theme of No. 2 but to the particular statements of No. 28: sin and punishment, on the day of judgment.

29. A. Said R. Simeon b. Laqish, “Come and let us express our gratitude to our ancestors, for if it were not for their having sinned, we for our part should never have been able to come into the world: ‘I said you are gods and all of you sons of the Most High’ (Ps. 82:6). Now that you have ruined things by what you have done: ‘you shall indeed die like mortals’ (Ps. 82:6).”
- B. *Does that statement then bear the implication, therefore, that if they had not sinned, they would not have propagated? But has it not been written, “And you, be fruitful and multiply” (Gen. 9:7)?*
- C. *That applies up to Sinai.*
- D. *But in connection with Sinai it also is written, “Go say*

to them, Go back to your tents” (Ex. 19:15), meaning, to marital relationships. *And is it not also written*, “that it might be well with them and with their children” (Dt. 5:26)?

- E. That speaks only to those who were actually present at Mount Sinai.
- F. *But has not R. Simeon b. Laqish stated*, “*What is the meaning of that which is written*: ‘This is the book of the generations of Adam’ (Gen. 5:1)? Now did the first Adam have a book? The statement, rather, teaches that the Holy One, blessed be he, showed to the first Adam each generation and its authoritative expositors, each generations and its sages, each generation and those that administered its affairs. When he came to the generation of R. Aqiba, he rejoiced in the master’s Torah but he was saddened by the master’s death.
- G. “He said, ‘How precious are your thoughts to me, O God’ (Ps. 139:17).”
- H. And said R. Yosé, “The son of David will come only when all of the souls that are stored up in the body will be used up: ‘For I will not contend for ever, neither will I be always angry, for the spirit should fall before me and the spirits which I have made’ (Is. 57:16).” [Mishcon: in the face of the foregoing teachings, how could it be stated that had it not been for the sin of the golden calf, we should not have come into the world?]
- I. *Do not, therefore, imagine that the sense of the statement is*, we should have not come into the world [if our ancestors had not sinned], *but rather*, it would have been as though we had not come into the world.
- J. *Does that then bear the implication that, if they had not sinned, they would never have died? But not been written the passages that deal with the deceased childless brother’s widow and the chapters about inheritances [which take for granted that people die]?*
- K. These passages are written conditionally [meaning, if people sin and so die, then the rules take effect, but it is not necessary that they take effect unless that stipulation is fulfilled].
- L. *And are there then any verses of Scripture that are stated conditionally?*

- M. *Indeed so, for said R. Simeon b. Laqish, "What is the meaning of that which has been written, 'And it was evening and it was morning, the sixth day' (Gen. 1:31)? This teaches that the Holy One, blessed be he, made a stipulation with the works of creation and said, 'If the Israelites accept the Torah, well and good, but if not, I shall send you back to the condition of formlessness and void.'"*
- N. *An objection was raised: "O that they had such a heart as this always, to fear me and keep my commandments, that it may be well with them and their children" (Dt. 5:26): it is not possible to maintain that the meaning here is that he would take away the angel of death from them, for the decree had already been made. It means that the Israelites accepted the Torah only so that no nation or tongue would rule over them: "that it might be well with them and their children after them" [Mishcon: how could R. Simeon b. Laqish hold that but for the golden calf worship Israel would have enjoyed physical deathlessness?]*
- O. *[R. Simeon b. Laqish] made his statement in accord with the position of this Tannaite authority, for it has been taught on Tannaite authority:*
- P. *R. Yosé says, "The Israelites accepted the Torah only so that the angel of death should not have power over them: 'I said you are gods and all of you sons of the Most High. Now that you have ruined things by what you have done 'you shall indeed die like mortals' (Ps. 82:6)."*
- Q. *But to R. Yosé also must be addressed the question, has it not been written, "O that they had such a heart as this always, to fear me and keep my commandments, that it may be well with them and their children" (Dt. 5:26)? Goodness is what is promised, but there still will be death!*
- R. *R. Yosé will say to you, "If there is no death, what greater goodness can there ever be?"*
- S. *And the other Tannaite authority—how does he read the phrase, "You shall indeed die"?*
- T. *The sense of "death" here is "poverty," for a master has said, "Four classifications of persons are equivalent to corpses, and these are they: the poor*

man, the blind man, the person afflicted with the skin disease [of Lev. 13], and the person who has no children.

- U. “The poor man, as it is written: ‘for all the men are dead who sought your life’ (Ex. 4:129). *Now who were they? This refers to Dathan and Abiram, and they were certainly not then dead, they had only lost all their money.*
- V. “The blind man, as it is written: ‘He has made me dwell in darkness as those that have been long dead’ (Lam. 3:6).
- W. “The person afflicted with the skin disease, as it is written: ‘Let her, I pray you, not be as one who is dead’ (Num. 12:12).
- X. “And the person who has no children, as it is written: ‘Give me children or else I die’ (Gen. 30:1).”

What follows, at Nos. 30, , is an appendix to the foregoing. I see no tight bonds that link No. 30 to No. 29, though Nos. 30, 31, 32, and 33 present a continuous discussion of their own. I treat the whole as an appendix, therefore, tacked on to a prior appendix. No. 32 clearly glosses No. 31.

30.

- A. *Our rabbis have taught on Tannaite authority:*
- B. “If you walk in my statutes” (Lev. 26:3)—the word “if” is used in the sense of supplication, as in the verse, O that my people would hearken to me, that Israel would walk in my ways...I should soon subdue their enemies” (Ps. 81:14-15); “O that you had listened to my commandments, then my peace would have been as a river, your seed also would have been as the sand” (Is. 48:18).

31.

- A. *Our rabbis have taught on Tannaite authority:*
- B. “O that they had such a heart as this always, to fear me and keep my commandments, that it may be well with them and their children” (Dt. 5:26)
- C. Said Moses to the Israelites, “You are a bunch of ingrates, children of ingrates. When the Holy One, blessed be he, said to you, ‘O that they had such a heart as this always, to fear me and keep my commandments, that

it may be well with them and their children' (Dt. 5:26), they should have said, 'You give it.'

- D. "They were ingrates, since it is written, 'Our soul loathes **[5B]** this light bread' (Num. 21:5).
- E. "...the children of ingrates: 'The woman whom you gave to be with me, she gave me of the fruit of the tree and I ate it' (Gen. 3:12).
- F. "So our rabbi, Moses, gave an indication of that fact to the Israelites only after forty years: 'And I have led you forty years in the wilderness...but the Lord has not give you a heart to know and eyes to see and ears to hear unto this day' (Dt. 29:3, 4)."

32.

- A. ["And I have led you forty years in the wilderness...but the Lord has not given you a heart to know and eyes to see and ears to hear unto this day" (Dt. 29:3, 4):]
- B. Said Raba, "This proves that a person will fully grasp the mind of his master only after forty years have passed."

If I were responsible to choose a suitable conclusion to this mass of material, one that would both say something fresh but also present a reprise of the entire thematic conglomerate that has gone before, I doubt I could make a better choice than the following, which we must, therefore, see as a deliberate sign that we have come to the end of an enormous, but continuous and sustained, discussion of the general theme of Israel's loyalty and gentiles' idolatry. I center the passage to signal its function, which is, to write the word *fmis*.

33.

- A. *Said R. Yohanán in the name of R. Benaah, "What is the meaning of the verse of Scripture, 'Happy are you who sow beside all waters, that send forth the feet of the ox and the ass' (Is. 32:20)? 'Happy are you, O Israel, when you are devoted to the Torah and to doing deeds of grace, then their inclination to do evil is handed over to them, and they are not handed over into the power of their inclination to do evil.*
- B. "For it is said, 'Happy are you who sow beside all waters.' For what does the word 'sowing' mean, if not 'doing deeds of grace,' in line with

the use of the word in this verse: ‘Sow for yourselves in righteousness, reap according to mercy’ (Hos. 10:12), and what is the meaning of ‘water’ if not Torah: ‘Oh you who are thirsty, come to the water’ (Is. 55:1).”

- C. As to the phrase, “that send forth the feet of the ox and the ass:”
- D. it has been taught by the Tannaite authority of the household of Elijah:
- E. “A person should always place upon himself the work of studying the Torah as an ox accepts the yoke, and as an ass, its burden.”

Let me now summarize what we have before us. **I.1** begins with a systematic inquiry into the correct reading of the Mishnah’s word-choices. The dispute is fully articulated in balance, beginning to end. **I.2** then forms a footnote to No. 1. No. 3 then provides a footnote to the leitmotif of No. 2, the conception of God’s not laughing, and No. 4 returns us to the exposition of No. 2, at III. Nos. 5, 6 are tacked on—a Torah-study anthology—because they continue the general theme of Torah-study every day, which formed the main motif of No. 2—the gentiles did not accept the Torah, study it, or carry it out. So that theme accounts for the accumulation of sayings on Torah-study in general, a kind of appendix on the theme. Then—so far as I can see, because of the reference to God’s power—No. 7 begins with a complement to 6.I. The compositions, Nos. 7, 8, then are strung together because of a point that is deemed to link each to its predecessor. No. 7 is linked to the foregoing because of the theme of God’s power; but it also intersects with 2.III and complements that reference; the entire sequence beyond No. 2 then in one way or another relates to either No. 2, theme or proposition, or to an item that is tacked on to No. 2 as a complement. Thus No. 8 is joined to No. 7 because of the shared method of contrasting verses. Then No. 9 is tacked on because it continues the proposition of No. 8. No. 10 continues the foregoing. No. 11 is tacked on to No. 10 for the reason made explicit: it continues what has gone before. The same is so for No. 12. No. 13 continues the theme, but not the form or the proposition, of the prior compositions, namely, punishment little by little, e.g., in this world, in exchange for a great reward later on.

The established theme then is divine punishment and how it is

inflicted: gently to Israel, harshly to the gentiles; the preferred form is the contrast among two verses. That overall principle of conglomeration—form & theme—explains the inclusion of Nos. 14, 15+16, which is tacked on to 15. But then the introduction of Balaam, taken as the prototype for the min, accounts for the inclusion of a variety of further sayings on the same theme, specifically, No. 17, a gloss on the foregoing; No. 18, a continuation of the foregoing process of glossing, No. 19, an amplification on the now-dominant theme; No. 20, a reversion to No. 16; No. 21, a story on the theme of how difficult it is to define precisely the matter dealt with in the foregoing. No. 21, 22, 23 complete the discussion of that particular time at which God is angry, a brief moment but one that is marked by a just cause. No. 23 then introduces the theme of choosing the right time—that is not the moment of divine wrath—for prayer. This seems to me a rather miscellaneous item, and it marks the conclusion of the systematic expansion begun much earlier. That that is the fact is shown by the character of No. 24, which cites 2.HHH, and by No. 25, which explicitly reverts to 2.RR, which justifies my insistence that the entire corpus of materials that follow No. 2 simply amplify and augment No. 2, and that is done in a very systematic way. Some of the sets, as we have seen, were formed into conglomerates prior to insertion here, but once we recognize that all of the sets serve the single task at hand, we see the coherence of what on the surface appears to be run on and miscellaneous. So these materials serve No. 2, some as footnotes, some as appendices, and some as footnotes or appendices to footnotes or appendices. No. 26 is a fine case in point. It complements 25.H, and is tacked on for that reason. Then No. 27 complements No. 26's statements concerning David. Bearing a formal tie to No. 27, with the same authority, No. 28 fits in also because it reverts to the theme of No. 25, the power of the religious duties that one carries out. No. 29 continues the theme of No. 28, that is, death and the day of judgment. Simeon's statement defines the center of gravity of the passage, which obviously was complete prior to its inclusion here. The reason it has been added is its general congruence to the discussions of sin, penitence, death and forgiveness. No. 30 is attached to No. 31, and No. 31 is tacked on because it refers to the proof-text in the prior composition. No. 32 takes up the proof-text of No. 31. No. 33 writes a solid conclusion to the whole, addressing as it does the basic theme that Israel's actions define their fate, and that study of the Torah is what determines

everything else. That is a thematic conclusion to a composite largely devoted, one way or another, to that one theme.

Lest we lose sight of the purpose of this rather protracted analysis of the connections between and among compositions, connections that make well-knit composites out of a selection of compositions, I remind the reader of what is at stake. It is not merely to show that a composite of compositions in fact forms a single literary entity, a complete and whole and within the conventions of these authors, cogent and coherent statement. It is to justify my classifying the whole as a single unit, for purposes of setting forth the rules of composition: of making composites, of writing whole and complete statements, both. I maintain, as I said in the opening lines, that the whole of **I.1-32** form a single, continuous and uninterrupted statement, the entirety of which is to be classified within a single rubric. It is a massive composite, continuous and coherent in a linear way, start to finish.

Now the reader may wish to argue that the opening pages of a tractate may prove to be exceptional. It is, after all, well-known that at some very late stage in the formation of the document, a special effort was devoted to presenting protracted and beautifully-sustained expositions at the outset of tractates in general. So let me give two further presentations of the working of the Talmudic footnote. First I show by a second, hardly so run-on, example that what we have is nothing other than a principle of forming composites: the point, then all necessary amplification, and finally, an appendix of further, pertinent materials, the whole set forth within a single undifferentiated text. For that purpose I present the complete treatment of Mishnah-tractate Abodah Zarah paragraph 1:2. Here again, I give the main point, and then show that everything that follows is connected, in a relationship of footnote and appendix.

MISHNAH/BAVLI TRACTATE ABODAH ZARAH 1:2

- A. **R. Ishmael says, "Three days before them and three days after them it is prohibited."**
- B. **And sages say, "Before their festivals it is prohibited, but after their festivals it is permitted."**

I.1

- A. Said R. Tahalipa bar Abdimi said Samuel, "In the opinion of R. Ishmael Sunday should always be a day that is forbidden [for doing business with gentiles]." [Mishcon: each Sunday, which is a festival day, with the three preceding and three following days, would rule out the whole week.]

Here we have nothing more than a minor gloss, commenting on the implications of the rule. Now we proceed to make the important point that Mishnah-paragraphs do not repeat what is stated elsewhere. That is a principal concern of the Bavli's Mishnah-exegesis.

II.1

- A. **And sages say, "Before their festivals it is prohibited, but after their festivals it is permitted:"**
- B. Is not the opinion of sages the same as that of the initial Tannaite authority [at M. 1:1A, who has said, **Before the festivals of gentiles for three days it is forbidden to do business with them**]?
- C. *Whether or not the festival days themselves are excluded is at issue between them. The initial Tannaite authority maintains that those three days, prior to the festivals, exclusive of the festival days themselves, are prohibited, and the rabbis who follow take the view that both they and the festival days themselves as well are encompassed within the count of three days.*
- D. *If you prefer, I shall say that at issue between them is the status of business transactions that have been carried out, with the initial Tannaite authority taking the view that the proceeds of such transactions are allowed, and the latter rabbis maintaining that the proceeds of such transactions are after the fact prohibited.*
- E. *And if you prefer, I shall maintain that at issue is the ruling of Samuel, for Samuel has said, "In the Exile, it is prohibited to do business with them only on the festival day alone [but not for three prior days]." The initial Tannaite authority accepts the view of Samuel, and the later rabbis reject the view of Samuel.*
- F. *And if you prefer, I shall maintain that at issue is the statement of Nahum the Mede, as has been taught on Tannaite authority: **Nahum the Mede says, "One day in the Exilic communities before their festival it is prohibited [to do business with gentiles]" [T. 1:1A].** The initial Tannaite authority rejects the view of Samuel, and the later rabbis accept the view of Nahum the Mede.*

Now commences not a footnote but an appendix to the foregoing. First of all, we take up a passage given in a different context and treat it on its own. This is indented so as to show that it is an appendix.

2. A. *To revert to the body of the prior discussion: Nahum the Mede says, “One day in the Exilic communities before their festival it is prohibited [to do business with gentiles]” [T. 1:1A].*
 - B. They said to him, “This statement has been set aside and not stated [as a formulated rule].”
 - C. *But do not the later rabbis in point of fact affirm the view of Nahum the Mede?*
 - D. *Who are the unidentified rabbis? They are Nahum the Mede himself!*

What follows is tacked on, simply because there is a set of further passages in which “This statement has been set aside...,” occurs. These passages have nothing to do with the foregoing, except that they exhibit a single shared trait. They form, then, appendices to the appendix just now given.

3. A. *It has further been taught on Tannaite authority:*
 - B. Nahum the Mede says, “[Israelites] in time of war may sell to [gentiles] a male horse or a superannuated one.”
 - C. They said to him, “This statement has been set aside and not stated [as a formulated rule].”
 - D. *But is there not Ben Betera, who stands with him? For we have learned in the Mishnah: [In a place in which they are accustomed to sell small cattle to gentiles, they sell them. In a place in which they are accustomed not to sell [small cattle] to them, they do not sell them. And in every locale they do not sell them large cattle, calves, or foals, whether whole or lame. R. Judah permits in the case of lame ones.] And Ben Beterah permits in the case of a horse [M. 1:6A-E].*
 - E. *Ben Beterah makes no distinction between male and female horses, while he makes such a distinction between male and female horses, in accord with the view of rabbis [in that same Mishnah-passage]. But according to rabbis, [who make no such distinction], “This statement has been set aside and not stated [as a formulated rule].”*
4. A. *It has further been taught on Tannaite authority:*
 - B. Nahum the Mede says, “As to dill, it is subject to tithe whether in the form of seed, leaf, or pod [since in all such forms, they are used as food].”
 - C. They said to him, “This statement has been set aside and not stated [as a formulated rule].”
 - D. *But lo, there is R. Eliezer, who maintains the same position, for we have learned in the Mishnah: R. Eliezer says, “Dill is sub-*

ject to the law of tithes [in regard to its] seeds, leaves and pods.” But Sages say, “Nothing is subject to the law of tithes [in regard to both its] seeds and leaves save cress and field rocket alone” [M. Maaserot 4:5G-H].

- E. What he means is, the garden variety.

Now comes a gloss to the final appendix.

5. A. *Said R. Aha bar Minyumi to Abayye, “A major authority is coming from our locale. In response to everything that he says, they say to him, ‘This statement has been set aside and not stated [as a formulated rule].’”*
- B. *He said, “There is one such case in which we do act in accord with his opinion. For it has been taught on Tannaite authority: “Nahum the Mede says, ‘A person may ask for his needs in the paragraph of the Prayer that ends, ‘...who hears prayer.’”*
- D. *He said, “Besides that ruling, for it rests depends on mighty ropes. For it has been taught on Tannaite authority:*

What follows is the most important component in the present context. We shall now see an enormous extension of this final matter, an appendix to a gloss to an appendix. I shall further indent components that serve as footnotes to that appendix.

- E. “R. Eliezer says, ‘A person asks for his own needs and then says the Prayer, as it is said, “A prayer for the afflicted when he is overwhelmed, then, he pours forth his meditation before the Lord” (Ps. 102:1). And “meditation” means the Prayer, as it is said, “And Isaac went out to meditate in the field at the evening” (Gen. 24:63).’
- F. “R. Joshua says, ‘One first of all should recite the Prayer and then ask for his own needs, as it is said, “I pour out my meditation before him, then declare my own affliction before him” (Ps. 142:3).’”
- G. *But from the perspective of R. Eliezer too, is it not written, “I pour out my meditation before him, then declare my own affliction before him” (Ps. 142:3)?*
- H. *This is the sense of the verse: “I pour out my meditation before him after I have already declared my own affliction.”*

- I. *And as to R. Joshua, how does he understand the verse, "A prayer for the afflicted when he is overwhelmed, then, he pours forth his meditation before the Lord" (Ps. 102:1)?*
- J. *This is the sense of the verse: "When is the private prayer for the afflicted' to be offered? 'When he has poured forth his meditation before the Lord.'"*
- K. *Since the cited verses when read closely conform to the opinion neither of the one master nor of the other, what can be the principle at issue in their dispute?*
- L. *It is in accord with that which has been expounded by R. Simlai.*
 - M. For R. Simlai expounded as follows: "A person should always lay out the praise that is owing to the Omnipresent and only then recite the Prayer. *How do we know that fact?* It comes to us from our master, Moses: 'O Lord God, you have begun to show your servant your greatness..., and only then, 'Let me go over, I ask, and see the good land' (Dt. 3:24, 25)."
- N. **[8A]** *R. Joshua maintains that we draw an analogy from the example of Moses, and R. Eliezer takes the view that we do not draw an analogy from the example of Moses, for Moses is an exceptional case, for he was exceptionally mighty.*
- O. But sages maintain neither in accord with the opinion of this authority nor in accord with the position of that authority, but a man should ask for what he needs at the blessing that ends with "who hears prayer."

Now follows an appendix to the whole of the foregoing, in which the general theme that has been introduced in the prior appendix is treated by materials formulated in their own terms, but on the same proposition. I treat these as a gloss to the prior appendix.

6.
 - A. Said R. Judah said Rab, "The decided law is that a man should ask for what he needs at the blessing that ends with 'who hears prayer.'"
 - B. Said R. Judah b. R. Samuel bar Shilat in the name of Rab, "Even though they have said, 'a man should ask for what he needs at the blessing that ends with "who hears prayer,"' still, if

he happens to state [his personal meditation] at the end of each and every benediction, along the lines of what is relevant to that particular benediction, that is entirely acceptable.”

- C. Said R. Hiyya bar Ashi said Rab, “Even though they have said, ‘a man should ask for what he needs at the blessing that ends with “who hears prayer,”’ still, if he has someone sick in his household, he may say what he wishes in the blessing concerning the sick; and if he is in need of support, he says so in the blessing concerning the years.”
- D. Said R. Joshua b. Levi, “Even though they have said, ‘a man should ask for what he needs at the blessing that ends with “who hears prayer,”’ still, if he happens to wish to offer some sort of further supplication after reciting the Prayer, even to the extent of the whole Service for the Day of Atonement, he has every right to do so.”

To review, **I.1** in this context forms a gloss on the Mishnah’s rule, clarifying its implications. **II.1** asks whether or not the Mishnah repeats itself and shows that it does not. Then No. 2 proceeds to compose what we should now call an appendix, that is to say, a considerable analysis of an item in the text, amplifying what is not required for the progress of discourse commenced within the text itself. Nos. 3, 4, 5+6 are tacked on for obvious reasons. And we now see that the exemplary case is not a singleton, but shows us a principal means of forming composites: the rule that governs.

The reader must now wonder whether I mean to suggest that huge composites, such as those we have considered, have no formative history prior to their agglutination within the Talmud as we know it. I have further given the impression that I think composites ordinarily formed around the obvious purpose of explaining the Mishnah-paragraph or scriptural voice subject to analysis. Nothing could be further from my mind. We have composites that took shape around themes, and in behalf of propositions, in no way defined by the Mishnah or by Scripture, and, further, these composites, nicely formed and (in context) entirely coherent, in no way were made up, to begin with, for purposes now to be discerned in the Talmud of Babylonia. These too I classify within a single rubric, all the while noting that that rubric finds its taxonomic indicators within the Bavli

and its compositors' purposes, and not within the context of the framers of some other document altogether—even the type of document that can have been well served by the composite at hand! The composite we shall now consider would have served in at least two types of compilations different from the Bavli, with its twin-foci of Mishnah- and Scripture-exegesis. One type of document would have been collections of stories about sages; another, propositions on proper conduct of sages illustrated by exemplary stories. And these do not exhaust the possibilities.

It is perfectly clear, as a matter of fact, that when people addressed compositions and considered how these might be formed into larger composites, more than a single purpose—the purpose dictated by the making of the Talmud—instructed them on what to choose and on how to join this to that. In what follows, I provide a sustained example of how two or more quite distinct principles of conglomeration guided the work, and how only at the end an enormous and quite diverse composite took shape, to be inserted whole into our Talmud. What we shall now see is not merely the presence of footnotes and appendices, but something quite different. It is a massive formation for some purpose quite different from that of forming the Talmud. At the end we shall identify the purpose for which the bulk of the compositions were formed into a coherent composite. To clarify what belongs, and what does not belong, to the principal composite—which is not the one that serves as our Talmud—I set off the composite under discussion from what clearly forms the Talmud for our Mishnah-paragraph. These materials begin at No. 2.

MISHNAH/BAVLI ABODAH ZARAH 1:7

- A. **They do not sell them (1) bears or (2) lions, or (3) anything which is a public danger.**
- B. **They do not build with them (1) a basilica, (2) scaffold, (3) stadium, or (4) judges' tribunal.**

II.1.

- A. **They do not build with them (1) a basilica, (2) scaffold, (3) stadium, or (4) judges' tribunal:**
- B. Said Rabbah b. Bar Hanna said R. Yohanan, "There are three classifications of basilicas: those belonging to gentile kings, those belonging to bath houses, and those belonging to store houses."

- C. Said Raba, "Two of those are permitted, the third forbidden [for Israelite workers to build], and your mnemonic is 'to bind their kings with chains' (Ps. 149:8).
- D. And there are those who say, said Raba, "All of them are permitted [for Israelite workers to build]."
- E. *But have we not learned in the Mishnah: They do not build with them (1) a basilica, (2) scaffold, (3) stadium, or (4) judges' tribunal?*
- F. *Say that that rule applies in particular to a basilica to which is attached an executioner's scaffold, a stadium, or a judge's tribunal.*

II.1 accomplishes the same purpose, of harmonizing opinions. Because of **II.1**, **II.2** is tacked on, and the entire mass of material on rabbis' martyrdoms, already in place, was kept together with the illustration of the tribune and why Israelite workers should not join in building such a thing. To appreciate how a large composite takes shape, let us now review all that follows and identify the compositions that have been joined together and why they serve as they do. As before, I indent what I classify as compositions that serve as footnotes, and I further indent what I deem to be appendices.

- 2. A. *Our rabbis taught on Tannaite authority:*
- B. **When R. Eliezer was arrested on charges of *minut* [being a Christian], they brought him up to the judge's tribunal to be judged. The hegemon said to him, "Should a sage such as yourself get involved in such nonsense as this?"**
- C. **He said to him, "I acknowledge the Judge."**
- D. **The hegemon supposed that he was referring to him, but he referred only to his father who is in heaven. He said to him, "Since I have been accepted by you as an honorable judge, *demos!* You are acquitted."**
- E. **When he got to his household, his disciples came to him to console him, but he did not accept consolation. Said to him R. Aqiba, "My lord, will you let me say something to you from among the things that you have taught me?"**
- F. **He said to him, "Speak."**
- G. **said to him, "Perhaps some matter pertaining to *minut* has come into your domain [17A] and given you some sort of satisfaction, and on that account you were arrested?"**
- H. **He said to him, "Aqiba, you remind me! Once I was going in the upper market of Sepphoris, and I found**

a certain person, named Jacob of Kefar Sakhnayya, who said to me, ‘It is written in your Torah, “You shall not bring the hire of a harlot..into the house of the Lord your God” (Dt. 23:19). What is the law as to building with such funds a privy for the high priest?’” Now I did not say a thing to me.

I. “So he said to me, “This is what I have been taught [by Jesus of Nazareth], “For the hire of a harlot has she gathered them, and to the hire of a harlot they shall return” (Prov. 5:8). They have come from a filthy place and to a filthy place they may return.’ And that statement gave me a good bit of pleasure, and on that account I was arrested on the charge of being a Christian, so I violated what is written in the Torah: “Remove your way far from her”—this refers to minut; “and do not come near to the door of her house” (Prov. 5:8)—this refers to the government.”

3. A. There are those who refer “Remove your way far from her,” to Christianity and to the ruling power, and the part of the verse, “and do not come near to the door of her house” (Prov. 5:8)] they refer to a whore.
4. A. And how far is one to keep away?
B. Said R. Hisda, “Four cubits.”
5. A. And how do rabbis [who do not concur with Jacob] interpret the verse, “You shall not bring the hire of a harlot..into the house of the Lord your God” (Dt. 23:19)?
B. *They interpret it in accord with R. Hisda, for* said R. Hisda, “In the end every whore who hires herself out will hire out a man, as it is said, ‘And in that you pay a hire and no hire is given to you, thus you are reversed’ (Ez. 16:34).”
6. A. [*Referring to 4.B*] *that measurement differs from the opinion of R. Pedat, for* said R. Pedat, “The Torah has declared forbidden close approach only in the case of incest: ‘None of you shall approach to any that is near of kin to him to uncover their nakedness’ (Lev. 18:6).”
7. A. *When Ulla would come home from the household of the master, he would kiss his sisters on their hand.*
B. *Some say, “On their breast.”*
C. *He then contradicts what he himself has said, for said*

- Ulla, "Even merely coming near is forbidden, as we say to the Nazirite, 'Go, go around about, but do not even come near the vineyard.'"*
8. A. *When Ulla would come home from the household of the master, he would kiss his sisters on their hand.*
 B. *Some say, "On their breast."*
 C. *He then contradicts what he himself has said, for said Ulla, "Even merely coming near is forbidden, as we say to the Nazirite, 'Go, go around about, but do not even come near the vineyard.'"*
9. A. *"The horse leech has two daughters: Give, give" (Prov. 30:15)—*
 B. *What is the meaning of "Give, give"?*
 C. *Said Mar Uqba, "It is the voice of the two daughters who cry out from Gehenna, saying to this world, 'Bring, bring.' And who are they? They are Minut and the government."*
 D. *There are those who say, said R. Hisda said Mar Uqba, "It is the voice of Gehenna that is crying out, saying, 'Bring me the two daughters who cry out from Gehenna, saying to this world, 'Bring, bring.'"*
10. A. *"None who to to her return, nor do they attain the paths of life" (Prov. 2:19):*
 B. *Now since they never return, how are they going to attain the paths of life anyhow?*
 C. *This is the sense of the passage, "But if they return, they will not attain the paths of life."*
 D. *Does that then bear the implication that whoever departs from Minut dies? And lo, there is the case of a certain woman who came before R. Hisda and said to him, "The lightest sin that she ever committed was that her younger son is the child of her older son."*
 E. *And R. Hisda said to her, "So get busy and prepare shrouds."*
 F. *But she did not die. Now since she had said that her lightest sin was that her younger son is the child of her older son, it must follow that she had also gone over to Minut [but she didn't die].*
 G. *That one did not entirely revert, so that is why she did not die [in this world, leaving her to suffer in the world to come].*

- H. *There are those who say, is it only from Minut that one dies if one repents, but not from any other sin? And lo, there is the case of a certain woman who came before R. Hisda, who said to her, "So get busy and prepare shrouds." And she died.*
- I. *Since she said that that was the lightest of her sons, it follows that she was guilty also of minut.*
11. A. *And if one renounces sins other than minut, does one not die? And has it not been taught on Tannaite authority:*
- B. *They say concerning R. Eleazar b. Dordia that he did not neglect a single whore in the world with whom he did not have sexual relations. One time he heard that there was a certain whore in one of the overseas towns, and she charged as her fee a whole bag of denars. He took a bag of denars and went and for her sake crossed seven rivers. At the time that he was with her, she farted, saying, "Just as this fart will never return to its place, so Eleazar b. Dordia will never be accepted in repentance."*
- C. *He went and sat himself down between two high mountains and said, "Mountains and hills, seek mercy in my behalf."*
- D. *They said to him, "Before we seek mercy for you, we have to seek mercy for ourselves: 'For the mountains shall depart and the hills be removed' (Is. 54:10)."*
- E. *He said, "Heaven and earth, seek mercy for you."*
- F. *They said to him, "Before we seek mercy for you, we have to seek mercy for ourselves: 'the heavens shall vanish away like smoke, and the earth shall wax old like a garment' (Is. 51:6)."*
- G. *He said, "Sun and moon, seek mercy for me."*
- H. *They said to him, "Before we seek mercy for you, we have to seek mercy for ourselves: 'Then the moon shall be confound-*

- ed and the sun ashamed' (Is. 24:23)."
- I. He said, "Stars and constellations, seek mercy for me."
 - J. They said to him, "Before we seek mercy for you, we have to seek mercy for ourselves: 'All the hosts of heaven shall moulder away' (Is. 34:4)."
 - K. He said, "The matter depends only on me." He put his head between his knees and he wept a mighty weeping until his soul expired. An echo came forth and said, "R. Eleazar b. Dordia is destined for the life of the world to come."
 - L. *Now here was a case of a sin [other than minut] and yet he did die.*
 - M. *There too, since he was so much given over to that sin, it was as bad as Minut.*
 - N. [Upon hearing this story] Rabbi wept and said, "There is he who acquires his world in a single moment, and there is he who acquires his world in so many years."
 - O. And said Rabbi, "It is not sufficient for penitents to be received, they even they are called 'rabbi.'"
- 12.
- A. *R. Hanina and R. Jonathan were going along the way and came to a crossroads, with one road that led by the door of a temple of idol worship, the other by a whore house. Said one to the other, "Let's go by the road that passes the door of the temple of idol worship, [17B] for in any case the impulse that leads to that in our case has been annihilated."*
 - B. The other said to him, "Let's go by the road that passes the door of the whore house and overcome our impulse, and so gain a reward."
 - C. *[That is what they did.] When they came near the whore house, they saw the whores draw back at their presence. The other then said to him, "How did you know that this would happen?"*
 - D. He said to him, "'She shall watch over you against lewdness, discernment shall guard you' (Prov. 2:11)."

13. A. [As to the verse, “She shall watch over you against lewdness, discernment shall guard you’ (Prov. 2:11),] said rabbis to Raba, “What is the meaning of the word translated ‘lewdness’? Shall it be ‘the Torah,’ since the word translated lewdness in the Aramaic translation is rendered, ‘it is a counsel of the wicked’ and Scripture has the phrase, ‘wonderful is his counsel and great is his wisdom’ (Is. 28:29)?”
- B. “Then the word should have been written so as to yield ‘lewdness.’ Rather, this is the sense of the verse: ‘against things of lewdness, discernment, the torah, shall watch over you.’”
14. A. *Our rabbis have taught on Tannaite authority:*
- B. When R. Eleazar b. Parta and R. Hanina b. Teradion were arrested, R. Eleazar b. Parta said to R. Hanina b. Teradion, “You are fortunate, for you have been arrested on only one count. Woe is me, that I have been arrested on five counts.”
- C. Said to him R. Hanina, “You are fortunate, for you have been arrested on five counts but you will be saved, while woe is me, for although I have been arrested on only one count, I will not be rescued. For you have devoted yourself to the study of the Torah and also acts of beneficence, while I devoted myself only to the study of the Torah alone.”
- D. *And that accords with R. Huna, for* said R. Huna, “Whoever devotes himself only to the study of Torah alone is like one who has no God, as it is said, ‘Now for long seasons Israel was without the true God’ (2 Chr. 15:3). What is the meaning of ‘without the true God’? It means that whoever devotes himself only to the study of Torah alone is like one who has no God.”
- E. But did he not engage in acts of beneficence as well? *And has it not been taught on Tannaite authority:*
- F. R. Eliezer b. Jacob says, “A person should not hand over his money to the charity-box unless it is under the supervision of a disciple of sages such as R. Hanina b. Teradion.”
- G. *While people did place their trust in him, he did not, in fact, carry out acts of beneficence.*
- H. But has it not been taught on Tannaite authority, [R. Han-

ina b. Teradion, who was in charge of the community fund] said to [R. Yosé b. Qisma], "Money set aside for the celebration of Purim got confused for me with money set aside for charity, and I divided it all up for the poor [including my own funds]"?

- I. *Well, while he did carry out acts of beneficence, he did not do so much as he was supposed to have done.*
- J. *They brought R. Eleazar b. Parta and said to him, "How come you have repeated Mishnah-traditions and how come you have been a thief?"*
- K. *He said to them, "If a thief, then not a scribe, and if a scribe, then not a thief, and as I am not the one, so I am not the other."*
- L. *"Then how come they call you 'rabbi'?"*
- M. *"I am the rabbi of the weavers."*
- N. *They brought him two coils of wool and asked, "Which is the warp and which is the woof?"*
- O. *A miracle happened, and a she-bee came and sat on the warp and a he-bee came and sat on the woof, so he said, "This is the warp and that is the woof."*
- P. *They said to him, "And how come you didn't come to the temple [literally: 'house of destruction']?"*
- Q. *said to them, "I am an elder, and I was afraid that people would trample me under their feet."*
- R. *"And up to now how many old people have been trampled?"*
- S. *A miracle happened, and on that very day an old man was trampled.*
- T. *"And how come you freed your slave?"*
- U. *He said to them, "No such thing took place."*
- V. *One of them was about to get up to give testimony against him, when Elijah came and appeared to him in the form of one of the important lords of the government and said to that man, "Just as miracles were done for him in all other matters, a miracle is going to happen in this one, and you will turn out to be a common scold."*
- W. *But he paid no attention to him and got up to address them, and a letter from important members of the government had to be sent to the Caesar, and it was through that man that it was sent; on the road Elijah came and threw him four hundred parasangs, so he went and never came back.*
- X. *They brought R. Hanina b. Teradion and said to them, "How come you devoted yourself to the Torah?"*
- Y. *He said to them, "It was as the Lord my God has commanded me."*
- Z. *Forthwith they made the decree that he was to be put to death by burning, his wife to be killed, and his daughter to be assigned to a whorehouse.*
- AA. *He was sentenced to be burned to death, for he [18A] had*

pronounced the divine name as it is spelled out.

- BB. *But how could he have done such a thing, and have we not learned in the Mishnah: **All Israelites have a share in the world to come, as it is said, Your people also shall be all righteous, they shall inherit the land forever; the branch of my planting, the work of my hands, that I may be glorified (Is. 60:21). And these are the ones who have no portion in the world to come: (1) He who says, the resurrection of the dead is a teaching which does not derive from the Torah, (2) and the Torah does not come from Heaven; and (3) an Epicurean. R. Aqiba says, "Also: He who reads in heretical books, and he who whispers over a wound and says, I will put none of the diseases upon you which I have put on the Egyptians, for I am the Lord who heals you (Ex. 15 :26)." Abba Saul says, "Also: he who pronounces the divine Name as it is spelled out" [M. San. 10:1A-G]!***
- CC. He did it for practice. *For so it has been taught on Tannaite authority:*
- DD. "You shall not learn to do after the abominations of those nations" (Dt. 18:9)—but you may learn about them so as to understand and to teach what they are.
- EE. *Then why was he subjected to punishment?*
- FF. It was because he repeated the Divine Name in Public.
- GG. And why was his wife sentenced to be put to death?
- HH. *Because she did not stop him.*
- II. On that account they have said: Whoever has the power to prevent someone from sinning and does not do so is punished on account of the other.
- JJ. And why was his daughter sentenced to a whorehouse?
- KK. For said R. Yohanan, "One time his daughter was walking before the great authorities of Rome. They said, 'How beautiful are the steps of this maiden,' and she forthwith became meticulous about her walk.
- LL. *And that is in line with what R. Simeon b. Laqish said, "What is the meaning of that which is written, 'The iniquity of my heel compasses me about' (Ps. 49:6)? The sins that a person treads under heel in this world surround him on the day of judgment."*
- MM. When three of them went out, they accepted the divine decree. He said, "The rock, his work is perfect, for all his ways are justice" (Dt. 32:4).
- OO. His wife said, "A God of faithfulness and without iniquity, just and right is he" (Dt. 32:4).

- PP. His daughter said, "Great in counsel and mighty in deed, whose eyes are open on all the ways of the sons of men, to give everyone according to his ways and according to the fruit of his deeds" (Jer. 32:19).
- QQ. Said Rabbi, "How great are these righteous. For it was for their sake that these verses, which justify God's judgment, were made ready for the moment of the acceptance of God's judgment."
15. A. *Our rabbis have taught on Tannaite authority:*
- B. When R. Yosé b. Qisma fell ill, R. Hanina b. Teradion went to visit him. He said to him, "Hanina, my brother, don't you know that from Heaven have they endowed this nation [Rome] with dominion? For [Rome] has destroyed his house, burned his Temple, slain his pious ones, and annihilated his very best—and yet endures! And yet I have heard about you that you go into session and devote yourself to the Torah and even call assemblies in public, with a scroll lying before you in your bosom."
- C. He said to him, "May mercy be shown from heaven."
- D. He said to him, "I am telling you sensible things, and you say to me, 'May mercy be shown from heaven!' I should be surprised if they do not burn up in fire both you and the scroll of the Torah."
- E. He said to him, "My lord, what is my destiny as to the life of the age to come?"
- F. He said to him, "Has some particular act come to hand [that leads you to concern]?"
- G. He said to him, "Money set aside for the celebration of Purim got confused for me with money set aside for charity, and I divided it all up for the poor [including my own funds]."
- H. He said to him, "If so, out of the portion that is coming to you may be the portion that is coming to me, and may my portion come from your portion."
- I. They say: the days were no more than a few before R. Yosé b. Qisma died and all of the leading Romans went to bury him and they provided for him a splendid eulogy. And when they returned, they found R. Hanina b. Teradion in session and devoted to the Torah, having called assemblies in public, with a scroll lying before you in your bosom. So they brought him and wrapped him in a scroll of the Torah and surrounded him with bundles of branches and set them on fire. But they brought tufts of wool, soaked in water, and put

them on his chest, so that he would not die quickly.

- J. Said to him his daughter, "Father, how can I see you this way?"
- K. He said to her, "If I were being burned all by myself, it would be a hard thing for me to bear. But now that I am being burned with a scroll of the Torah with me, he who will exact punishment for the humiliation brought on the scroll of the Torah is the one who will seek vengeance for the humiliation brought on me."
- L. Said to him his disciples, "My lord, what do you see?"
- M. He said to them, "The parchment is burned, but the letters fly upward."
- N. "You too—open your mouth and let the fire in [so that you will die quickly]."
- O. He said to them, "It is better that the one who gave [life] take it away, but let a person not do injury to himself."
- P. The executioner said to him, "My lord, if I make the flames stronger and remove the tufts of wool from your chest, will you bring me into the life of the world to come?"
- Q. He said to him, "Yes."
- R. He said to him, "Will you take an oath to me?"
- S. He took an oath to him. Forthwith he made the flames stronger and removed the tufts of wool from his chest, so his soul rapidly departed. Then the other leapt into the flames. An echo came forth and said, "R. Hanina b. Teradion and the executioner are selected for the life of the world to come."
- T. Rabbi wept and said, "There is he who acquires his world in a single moment, and there is he who acquires his world in so many years."
16. A. *Beruriah, the wife of R. Meir, was the daughter of R. Hanina b. Teradion. She said to him, "It is humiliating for me that my sister should be put into a whorehouse."*
- B. *He took a tarqab full of denars and went. He said, "If a prohibited act has not been done to her, then a miracle will happen, and if she has done something prohibited, no miracle will happen to her."*
- C. *He went and took on the guise of a horseman. He said, "Submit to me."*
- D. *She said to him, "I am menstruating."*
- E. *He said to her, "I'll wait."*
- F. *She said to him, "There are plenty of girls here who are prettier than I am."*
- G. *He said, "That means the woman has not done anything prohibited, that's what she says to everybody."*

- H. *He went to her guard and said to him, "Give her to me."*
- I. *He said to him, "I'm afraid of the government."*
- J. *He said to him, "Take this tarqab of denars, half as a bribe, the other half for you."*
- K. *He said to him, "What shall I do when these are used up?"*
- L. *"Just say, 'Let the God of Meir answer me,' and you'll be saved."*
- M. *He said to him, [18B] "And who will tell me that that's so?"*
- N. *He said to him, "You'll now see." There were these dogs, who would bite people. He took a stone and threw it at them, and when they were going to bite him, he said, "God of Meir, answer me," and they left him alone.*
- O. *So he handed her over to him. But eventually the matter became known at government house, and when the guard was brought and taken to the gallows, he exclaimed, "God of Meir, answer me."*
- P. *They took him down from the gallows and asked him, "What's going on?"*
- Q. *He told him, "This is what happened."*
- R. *They then incised the likeness of R. Meir at the gate of Rome, saying, "Whoever sees this face, bring him here."*
- S. *One day they saw him and pursued him. He ran from them and went into a whore house. Some say he just happened then to see food cooked by gentiles and dipped in one finger and then sucked another [pretending he was a gentile]. Others say that Elijah the prophet appeared to them as a harlot and embraced him (God forbid). So they said, "If this were R. Meir, he would never have done such a thing."*
- T. *He went and fled to Babylonia. Some say, it was because of that incident that he fled to Babylonia, others, it was because of the incident with Beruria [who committed adultery with one of his disciples].*

No. 3, 4, 5, 6 form footnotes to No. 2 or to one another. No. 7 is a footnote to No. 6. No. 8 then reverts to the general theme of the interplay of the government and *minut*. No. 9 then continues the theme of No. 8, which is the return of those who have gone over to *Minut* and ended up in Gehenna. No. 11 goes forward along the same theme, though with a fresh composition. The issue once more is whether or not one may atone and so die and enter the world to come for the sin of *Minut*, or whether one has to live out his years and then go to Gehenna. This forms part of a large-scale set of compositions on the common theme at hand. No. 12 proceeds along the line of the established theme: the sin of idolatry compared with other sins. No. 13 is a footnote to No. 12. The general theme of rabbis' arrests by the Romans explains why the next composition has been

included; this brings us back to the interest of No. 2 and marks the end of the secondary expansion of the story about Eliezer. So each large-scale composite that forms a subdivision of the whole commences with a Tannaite formation, followed by a collection of secondary expansions of various kinds. The inclusion of No. 14 then makes sense within the framework of discourse established by No. 2. Nos. 15, 16 provide yet other stories involving Hanina b. Teradion and belong to the same prepared sequence of stories about him.

Here is then a splendid example of the forming of a composite for one clearly-indicated purpose, and its utilization—quite tangentially—for another. II.2 forms the beginning of a large and beautifully crafted set of materials on a general theme, bearing a specific proposition. The general theme is the relationship of sages to the Roman government. The specific proposition is that there are two sources of danger to one's immortal soul: dealing with *Minut* (not defined, but in this context, certainly some Christianity or other), dealing with the Government. The first part of the composite deals with the former, the second, the latter. There is no mixing the one with the other, but, of course, dealing with *Minut* involves government sanctions, as much as rebellion against the government itself. No. 2, carrying in its wake Nos. 3, 4, 5, as glosses and extensions, and bearing as footnotes Nos. 6, 7, form one cogent subdivision. No. 9 then provides a transition to the next, which will draw our attention to the dangers involved in dealing with the government. Is there a unifying theme throughout? Of course there is, and it involves the proposition that dealing with *Minut* endangers one's soul, while, if one violates the policy of the government, one may lose his life, but thereby, in any event, gains the life of the world to come. No. 11 shows us a fully-articulated composition, obviously completed in its own terms and for its author's own purpose, which has been inserted, with good reason. Nos. 14, 15, and 16, another obviously-well crafted set of stories, each made up in its own terms, but all of them working together in common cause, then form the conclusion, balancing the opening units.

Now do I maintain that all of these materials have been made up merely to amplify a reference to the judge's tribunal? Obviously not. We have here a variety of compositions, some of them bearing their own burden of secondary expansion, clarification, and complement, others not. If we were to ask, have these compositions been made up for the purposes of a composite of such materials? the obvious

answer is, probably yes, but not for this composite in particular! The probability is that authors wrote up stories for collections meant to make a given point, serve a given purpose. To say that these formed “biographical collections,” or “biographies” seems to me to make a rather banal statement, but probably a wrong one too, since there is hardly an interest in a sustained life of a sage. To the contrary, the types of story here serve not biography but a different purpose altogether, which is, a handbook of lessons to be learned if one is to live the life of a sage within the model of the sage: how to deal with the government, how to avoid the temptations of *Minut*, and the like. But if people were working on such compilations of exemplary stories, serving to make points important in the education of the sage—a handbook for the disciple of the sage in particular, in the way in which tractate Abot is a handbook for the disciple of the sage—then the work led nowhere. For we have massive compilations of such compositions, but—as shown in the Bavli before us—no free-standing composites that gain entry into the Bavli to serve the particular purpose for which such composites were originally made up. A process of composition and compilation of compositions into composites yielded what is before us. But the whole has found its location here only because of the adventitious point of intersection with what is of interest to the Bavli’s framers, which is, the exposition (here) of a detail of the Mishnah: what is the judge’s tribunal!

III. *The Bavli’s Counterpart to Footnotes and Appendices*

What we have seen is that the Bavli not only presents a commentary to the Mishnah. It also contains ample secondary expansion of that commentary. But, as any student of the document quickly learns, the Bavli proceeds to move off in directions not indicated by the requirement of Mishnah-commentary and amplification. Indeed, it is not seldom difficult to understand why the framers of the passage lay matters out as they do, since they seem to wander and to lose their way, forgetting whence they started or where they are going. Now, however, I have shown in a very simple and graphic way, when we understand a technical problem that the framers of the Bavli confronted, we can fully explain the run-on, meandering, and occasionally even tedious character of their writing. It is the simple fact that the framers of the Bavli quite reasonably wished to annotate

their statements, adding information important in context but not pertinent to the argument at hand. When we wish to do that kind of secondary expansion and explanation, we use footnotes to present one kind of information, appendices, another.

Footnotes, specifically, provide sources, add brief, pertinent explanation; appendices present sizable free-standing statements, relevant to a given subject but not required in the context of the treatment of that subject. Now, as a matter of fact, the possibilities of footnotes and appendices did not exist in the time of the Bavli's composition. As a result, the framers of the document inserted into the text materials we should today treat as footnotes or appendices. But when we identify that type of addition and set it off from the main body of the text, the Bavli emerges as a quite cogent and economical statement, not at all run-on. In order to distinguish what is primary from what is secondary, I simply indent, and re-indent, what follows, and, when I do, readers immediately see how footnotes and appendices, set off from the text that conveys the message of a given statement, fit in to the larger flow of argument and analysis.

What is at stake in identifying the rules of composition? It is the demonstration of the well-crafted and orderly character of the sustained discourse that the writing sets forth. Specifically, I show that all authors found guidance in the same limited repertoire of rules of composition. Not only so, but a fixed order of discourse—a composition of one sort, A, always comes prior to a composite of another type, B. A simple logic instructed framers of composites, who sometimes also were authors of compositions, and who sometimes drew upon available compositions in the making of their cogent composites. When we understand that logic, which accounts for what for a very long time has impressed students of the Talmud as the document's run-on, formless, and meandering character, we shall see the writing as cogent and well-crafted, always addressing a point that, within the hegemony of this logic, and not some other, was deemed closely linked to what had gone before and what was to follow.

And on that basis we see as entirety of a piece, cogent and coherent, large-scale constructions, not brief compositions of a few lines, which therefore become subject to classification whole and complete. So the work of uncovering the laws of composition involve our identifying the entirety of a piece of coherent writing and classifying that writing—not pulling out of context and classifying only the compo-

sitions that, in some measure, form constituents of a larger whole. Were we to classify only the compositions, we should gain some knowledge of types of writing accomplished by authors, but none concerning types of writing that comprise our Talmud.

So we should know only how authors within this textual community did their work, not how authoritative framers of a document of ultimate authority accomplished theirs. But the latter, not the former, is at issue in the history of Judaism—as distinct from the literary study of writings of a given textual community. The Bavli is a document of remarkable integrity, repeatedly insisting upon the harmony of the parts within a whole and unitary structure of belief and behavior. Dismantling (“deconstructing”) its components and identifying them, perhaps even describing the kinds of compilations that the authors of those components can have had in mind in writing their compositions—these activities of literary criticism yield no insight into the religious system that guided the document’s framers. But the Talmud of Babylonia recapitulates, in grand and acute detail, a religious system, and the generative problematic of that writing directs our attention not to the aesthetics of writing as literature, but to the religion of writing as a document of faith in the formation of the social order. That accounts for my insistence upon seeing the document whole, and its principal building blocks as cogent; and that explains my inquiry into the rules that governed the formation of composites of the largest scale.

IV. *How to Study the Bavli*

Recognizing the plan and program of the Bavli, we not only discern a coherent and elegantly crafted, well-organized piece of writing. We also realize the error that leads a great many people who have studied the Talmud, whether in the original Hebrew and Aramaic or in English or German, to conclude that the document is disorganized and proceeds by free-association. It is that when people undertake to study the Talmud, they begin with the first line of the first page and proceed sentence by sentence, with little or no preliminary examination of the character of the writing and its requirements of readers or “learners” (as is more appropriate, since anyone who merely “reads” the Talmud cannot hope to understand its sense or

meaning). But the Talmud cannot be entered only or principally through its parts, one by one in order. It is a document that was organized whole and then articulated into its parts—that is the burden of my guidance to readers, over and over again. The Talmud executes a plan and adheres to its rules. With knowledge of the plan and its rules, we may expect to know the context of any given text and to make sense of any passage in its larger framework. Without that knowledge, we are left with bits and pieces of incoherent information and conclude that the source of that information is incoherent as well.

Now that the document has been decoded and its traits shown to adhere to an intelligible pattern, the right way is to start whole and work inward: identify the pattern and mark off its lines of structure and order, pick out the components and see how they relate, primary, secondary, principal, subordinate, and so on. To do that, three steps are required. First, the entire unit, from the Mishnah-paragraphs to the end of their exposition, must be read rapidly. Then the unit must be outlined, primary and subordinate entries noted. Then the parts of the outlined unit are to be examined for their context, that is, their relationship with one another. These three steps establish the context of discourse, demonstrating the coherence and rationality of the Talmud's exposition of the Mishnah-paragraph, the likely reason for its secondary expansions, possible digressions, amplifications and extensions of a subject, and the like. I state flatly that, properly understood, the Talmud *never* digresses, not within the definition of digression supplied by its own rules of organization. If we judge that the Talmud digresses, that means we do not understand the document. That is not to suggest we shall understand every composite, start to finish or find it possible to explain every composition within every composite. It is only to lay down a criterion for testing ourselves and our grasp of this elegant piece of writing. The human intellect has received only a few worthy compliments, those accorded to our minds by the Greek philosophers and by the mathematicians, for instance. Among those true compliments, the Talmud certainly takes its place in the front rank, for its framers take for granted we are capable of intense concentration and profound reflection about matters stated concretely but endowed with contents of high abstraction.

So, in concrete terms, how should the Bavli be studied? What is

required is a progression from the whole to the parts, rather than from the parts to the whole. It demands quickly surveying a complete passage, that is, a systematic exposition of a Mishnah-paragraph, start to finish, identifying its principal building blocks and their place in the construction of the whole. Then it requires picking out the footnotes, the appendices, and the other obstacles to a systematic reading, start to finish, and marking them off, so that the main lines of exposition may be discerned. Third, the disciple of the sages of the Talmud ought to examine the Mishnah-paragraph in its own terms and in the framework of the Mishnah's exposition of that chapter within the larger topical-propositional program of the Mishnah-tractate. That acquaints the disciple with the principles of law, the large issues, that inhere; it further orients him or her to the issues with which the Talmud is going to have to grapple, the likely points of query beyond the routine program of source and language and reading (Scriptural basis for a rule, meanings of odd words, variant wordings, respectively). Then begin, and having begun, digress, too. In the realm governed by the Talmud's applied reason and practical logic, there is no such thing, really, as (mere) digression, for everything is connected.

PART TWO

HOW THE TALMUD THINKS

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CHAPTER FOUR

THE BAVLI'S INTELLECTUAL CHARACTER

I. What Defines the Intellectual Character of a Piece of Writing?

By “the intellectual character” of a document, I mean the program of thought and inquiry that brings about the writing of that document. The Bavli constitutes a purposive, argumentative document, not merely an informative one.¹ The intellectual program of the document, replicated in countless details but everywhere uniform, can be identified and defined. Also—as the distinction between composition and composite has already shown us—a merely informative document, sizable, if inert, parts of the Bavli set forth information and explanation. But because it is a highly intellectual piece of writing, important parts of the Bavli also identify problems and solve them; more to the point, they use information as a medium for the investigation of propositions that vastly transcend those concrete data. The Bavli is both concrete—everywhere, all the time, always very concrete—but it is also abstract; it is practical but also speculative; it is detailed but, in many ways (though not everywhere) also cogent. The description of the Bavli’s intellectual character requires me to spell out this claim for abstraction and intellectual vigor and transcendence: why do I contend that the Bavli makes a statement, not merely provides a compilation of information?

The Bavli is a richly argumentative document. It not only presents facts. It solves problems. Then how do the framers of the Bavli’s large-scale composites know a problem from a fact, and what tells them that a problem requires attention? By that I mean, what constitutes the problematic of the document, its philosophical hermeneutic? My answer will require considerable exposition, but in briefest possible form: the Mishnah presents lists that yield facts, the Bavli takes those lists and turns them into series that yield generalizations.

¹ The comparison with the Yerushalmi allows that claim to register; the Appendix effects the exercise.

If we may use the analogy of chess, the framers of the Bavli take the two-dimensional chess of the Mishnah and transform it into a three-dimensional game: changing the game from chess on a flat board to cubic chess defines the generative problematic of the Bavli. The rest of this chapter spells out that simple but opaque sentence and its analogy. I mean to show that the Bavli says the same thing about many things.

II. *Defining a Generative Problematic*

When I address any topic whatever, is there something I want to know about that topic that is pretty much the same as what I want to know about any and every topic? In the Mishnah and in the Bavli, the answer to that question is affirmative. If I bring to bear a problem that provokes inquiry and focuses my attention on one thing, rather than some other, then that is what generates my work: makes me curious, requires me to answer a question (particularly of an analytical, not merely descriptive) character. By “problem” we may mean a variety of things, but by “problematic” only one: what persistently provokes curiosity and demands inquiry. The “generative problematic” then is that abstract problem that over and over again, in a variety of concrete settings, tells me what I want to know about this, that, and the other thing: which, for there to be a generative problematic, must always be the same thing.

Not only the Mishnah but also various Midrash-compilations repeatedly ask a single question or make a single point or focus on a single issue. Other documents do not do so. The former emerge as cogent, powerful illustration and advocacy of a single sustained proposition. The latter appear to be miscellaneous, informative but not argumentative. In the former, facts are active, in the latter, inert; in the former, topics are made to serve a larger purpose, in the latter, they serve themselves. Those writings that ask a single question over and over again may be characterized as documents formed in response to a single, recurrent issue, hence, shaped around a generative problematic. Those that do not often appear to be scrapbooks, mere collections. Among the former kind of documents in the Judaic canon, two strike me as the best evidence of how a single recurrent issue, transcending the data of discussion at any given point but

present throughout the document as a whole, generates the problem to which the document over all is devoted.²

The Mishnah concentrates on the correct classification of things. The Bavli takes up the issue of the relationships between and among what has been classified, adding to a simple classification-system of the Mishnah other, fitting classificatory grids (hence: 'mixed grids'). The Mishnah's mode of thought therefore is static, the Bavli's, dynamic; the Mishnah addresses a world at rest, the Bavli, calls that same world into motion. In a variety of entirely unrelated topics, when the framers of the Bavli move beyond the labor of Mishnah-exegesis and amplification, they address a single question over and over again. This they do at a great many points. Two will suffice to state my proposal.

The question that occupies the authors of analytical compositions and composite concerns the interplay of classifications of things that form the same thing, which is to say, in taxonomic terms, of the species of a genus. A given genus is made up of various species. Each of these species, by definition, exhibits distinctive traits. When brought into relationship with other species of the same genus, how the various species interrelate, by reason of the distinctive taxonomic traits characteristic of each, allows us to compare like to like and identify points of unlikeness; or to compare unlike to unlike and discover points of commonality. In so doing, we probe deeper into the concrete laws that govern each of the species of a common genus. So this labor of dialectical comparison and contrast aims at moving ever more profoundly into the depths of the law. We see how laws form law, but also, how law generates laws: the unity of the law in its diversity, the power of diversity, too, to emerge out of unity.

Now these are exceedingly abstract formulations, and to make them stick, I have to show how diverse, concrete compositions and especially composites in acute detail illustrate them. If I can show that for a number of important passages in the Bavli, what is in play at the surface realizes what sets in the deep structure of thought, I can establish the *prima facie* plausibility of these readings of what makes the Bavli work.

So what I propose is that at the most profound and abstract layer

² The first is the Mishnah, the second, Sifra. Among the latter documents, the outstanding example is *Mekhilta* Attributed to R. Ishmael, though one can argue that some, though by no means all, Midrash-compilations compile rather than shape data into propositions.

of discourse, what gives the Bavli its dynamic and power of dialectic is this question of how to sort out the diverse ways in which different things form the same thing. That is not what occupies the framers of the Mishnah and shapes the character of their inquiry into any given topic, but it is a question that depends upon their work and forms the logically consequent inquiry. So while what generates inquiry and shapes analysis of things in the Mishnah is the taxonomic question, what does the same for the heirs of the Mishnah in the Bavli is the result of that taxonomy. A single process unfolds, but in clearly differentiated steps—just as the very presentation of the Bavli as a commentary and secondary amplification of the Mishnah is meant to indicate even in visual form. A simple analogy, drawn from music, will show what is at stake. The Mishnah may be compared to Ravel's *Bolero*, saying the same thing over and over again, pretty much in the same way, varying only the subject-matter (in this, the analogy fails, being unfair to the brilliance of the Mishnah-authorship, for Ravel says the same thing in the same way and never changes the musical counterpart to his subject-matter). The Bavli then may be compared to a Beethoven or a Bruckner symphony, in which the same simple idea is reworked in countless variations, so that the whole exhibits both a rich complexity and also an essential simplicity.

The meaning of “generative problematic” then is very simple. When I address any topic whatever, is there something I want to know about that topic that is pretty much the same as what I want to know about any and every topic? In the Mishnah and in the Bavli, the answer to that question is affirmative. If I bring to bear a problem that provokes inquiry and focuses my attention on one thing, rather than some other, then that is what generates my work: makes me curious, requires me to answer a question (particularly of an analytical, not merely descriptive) character. By “problem” we may mean a variety of things, but by “problematic” only one: what persistently provokes curiosity and demands inquiry. The “generative problematic” then is that abstract problem that over and over again, in a variety of concrete settings, tells me what I want to know about this, that, and the other thing: which, for there to be a generative problematic, must always be the same thing.

Some documents in the canon of Judaism (as it had taken shape by the end of late antiquity) repeatedly ask a single question or make a single point or focus on a single issue. Other documents do not

do so. The former emerge as cogent, powerful illustration and advocacy of a single sustained proposition. The latter appear to be miscellaneous, informative but not argumentative. In the former, facts are active, in the latter, inert; in the former, topics are made to serve a larger purpose, in the latter, they serve themselves. Those writings that ask a single question over and over again may be characterized as documents formed in response to a single, recurrent issue, hence, shaped around a generative problematic. Those that do not often appear to be scrapbooks, mere collections. Among the former kind of documents in the Judaic canon, two strike me as the best evidence of how a single recurrent issue, transcending the data of discussion at any given point but present throughout the document as a whole, generates the problem to which the document over all is devoted.

III. *When Is A List a Series?*

Here is a simple definition of one important component of the Bavli's intellectual program: when the Bavli's framers look at a passage of the Mishnah, a fundamental problem that will engage their attention is how the taxa of the Mishnah-passages intersect with other taxa altogether. If the Mishnah-paragraph (or chapter or tractate) classifies data within a given grid, the authors of the Bavli's sustained response to that paragraph will ask about other grids, proposing to place one grid atop the other, or, more accurately, to see how the two grids—the Mishnah's, then another grid altogether—fit together. When the exegesis of words and phrases, sources and authorities, comes to an end, then what sustains the Bavli's framers' interest in their work is a fascinating intellectual problem: turning two dimensional into three dimensional chess. That simple, but abstract, definition of matters demands a concrete example, and we turn forthwith to that task.

Our exercise brings us to a clear, taxonomic statement: four generative classifications of causes of damages and their subdivisions. The Mishnah-paragraph invites a secondary exercise in taxonomy, which is why I present it as my case. Since I maintain that what has prompted the framer of the composite before us to ask the questions we address, rather than some other, is a sustained and systematic interest in how various classes of things relate to one another. This

leads to the inquiry into how considerations extrinsic to these classes of things turn out to affect the definition and relationship of the classes of things onto which they are brought to bear. Now in order to show how vast a part of the whole, in sheer volume, derives from the issue I maintain has defined the questions our exegetes wish to answer, has made urgent the problems they wish to solve, I indent the materials that address questions other than the taxonomic ones I claim define the urgent issues addressed by our exegetes. In that way we see clearly that the Mishnah-paragraph before us interests our authors principally as a problem of primary and secondary taxonomy.

We deal with Mishnah- and Bavli-tractate *Baba Qamma* Chapter One. I present the Mishnah's and Tosefta's statements in bold-face type, Hebrew in regular type, Aramaic in italics. I give only the parts of the passage that pertain to the problem at hand.

MISHNAH-TRACTATE *BABA QAMMA* 1:1

- A. **[There are] four generative classifications of causes of damages: (1) ox [Ex. 21:35-36], (2) pit [Ex. 21:33], (3) crop-destroying beast [Ex. 22:4], and (4) conflagration [Ex. 22:5].**
- B. **[The indicative characteristic] of the ox is not equivalent to that of the crop-destroying beast;**
- C. **nor is that of the crop-destroying beast equivalent to that of the ox;**
- D. **nor are this one and that one, which are animate, equivalent to fire, which is not animate;**
- E. **nor are this one and that one, which usually [get up and] go and do damage, equivalent to a pit, which does not usually [get up and] go and do damage.**
- F. **What they have in common is that they customarily do damage and taking care of them is your responsibility.**
- G. **And when one [of them] has caused damage, the [owner] of that which causes the damage is liable to pay compensation for damage out of the best of his land [Ex. 22:4].**

The first statement alerts us to the exegetical program of the Bavli's authorship at hand: are there secondary causes of damages? And, if there are, how do the damages of the secondary or derivative class compare to those the primary or generative one: a clearly exercise in secondary taxonomy.

I.1

- A. **four generative causes of damages:**
- B. *Since the framer of the passages makes reference to **generative causes**, it is to be inferred that there are derivative ones as well. Are the derivative causes equivalent [in effect] to the generative causes or are they not equivalent to them in effect?*
- C. *We have learned with reference to the Sabbath: **The generative categories of acts of labor [prohibited on the Sabbath] are forty less one [M. Shab. 7:2A].** Since the framer of the passages makes reference to **generative categories**, it is to be inferred that there are derivative ones as well. Are the derivative categories equivalent to the generative categories or are they not equivalent to them?*
- D. *Well, there is no difference between one's inadvertently carrying out an act of labor that falls into a generative category, in which case he is liable to present a sin-offering, and one's inadvertently carrying out an act of labor that falls into a derivative category of labor, in which case he is also liable to present a sin-offering. There is no difference between one's deliberately carrying out an act of labor that falls into a generative category, in which case he is liable to the death penalty through stoning, and one's deliberately carrying out an act of labor that falls into a derivative category of labor, in which case he is also liable to the death penalty through stoning.*
- E. *So then what's the difference between an act that falls into the generative category and one that falls into the derivative category?*
- F. *The upshot is that if one simultaneous carried out two actions that fall into the class of generative acts of labor, or two actions that fall into the classification of a derivative category, he is liable for each such action, while, if he had performed simultaneously both a generative act of labor and also a derivative of that same generative action, he is liable on only one count.*
- G. *And from the perspective of R. Eliezer, who imposes liability for a derivative action even when one is simultaneously liable on account of carrying out an act in the generative category, on what basis does one classify one action as generative and another as derivative [if it makes no practical difference]?*
- H. *Those actions that are carried out [even on the Sabbath] in the building of the tabernacle are reckoned as generative actions, and those that were not carried out on the Sabbath in the building of the tabernacle are classified as derivative.*

Clearly, the starting point of the reading of this Mishnah-paragraph is precisely what I have claimed; we shall not find surprising the secondary development of the same point, specifically, a survey of other cases in which we have primary or generative and secondary or derivative taxa, and how the latter relate to the former.

2. A. *With reference to uncleanness we have learned in the Mishnah: **The generative causes of uncleanness [are] (1) the creeping thing, and (2) semen [of an adult Israelite], [2B] and (3) one who has contracted corpse uncleanness, [and (4) the leper in the days of his counting, and (5) sin offering water of insufficient quantity to be sprinkled. Lo, these render man and vessels unclean by contact, and earthenware vessels by [presence within the vessels' contained] airspace. But they do not render unclean by carrying] [M. Kel. 1:1].*** And their derivatives are not equivalent to them, for while a generative cause of uncleanness imparts uncleanness to a human being and utensils, a derivative source of uncleanness imparts uncleanness to food and drink but not to a human being or utensils.

What follows is secondary expansion on these primary initiatives. We ask the theoretical questions, e.g., what difference the distinction makes? what verse of Scripture yields the question at hand? In this example, I present the entire discussion. In further entries, we shall limit ourselves to the main point, which is, as we now see, that a variety of grids are here brought into juxtaposition.

3. A. *Here what is the upshot of the distinction at hand?*
 B. Said R. Pappa, “There are some derivatives that are equivalent in effect to the generative cause, and there are some that are not equivalent in effect to the generative cause.”
4. A. *Our rabbis have taught on Tannaite authority:*
 B. Three [of the four] generative causes of damage are stated with respect to the ox: horn, tooth, and foot.
5. A. How on the basis of Scripture do we know the case of the horn?
 B. *It is in line with that which our rabbis have taught on Tannaite authority:*
 C. “If it will gore...” (Ex. 21:28)—and goring is done only with the horn, as it is said, “And Zedekiah, son of Chenaanah, made him horns of iron and said, Thus saith the Lord, with these shall you gore the Aramaeans” (1 Kgs. 22:11);
 D. and it is further said, “His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn; with them he shall gore the people together” (Dt. 33:17).
 E. *What’s the point of “and it is further said”?*
 F. *Should you say that teachings on the strength of the Torah are not to be derived from teachings that derive from prophetic tradition, then come and take note: “His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn; with them he shall gore the people together” (Dt. 33:17).*
- G. *Yeah, well, is this really a deduction out of a scriptural proof text? To me it*

looks more like a mere elucidation, showing that "goring" is something that is done by a horn.

- H. *What might you otherwise have supposed? That where Scripture makes an important distinction between an ox that was not known to gore and one that is a certified danger, that concerns a horn that is cut off [as in the case of the first of the two examples, that of 1 Kgs. 22:11], but as to one that is actually attached to the beast, all goring is classified as done by an ox that is an attested danger. Then come and take note: "His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn; with them he shall gore the people together" (Dt. 33:17).*

Once the secondary taxonomic process gets underway, we shall unpack each item in succession: what are the derivatives, how they relate, the difference it makes when we recognize these derivatives, and how Scripture yields them.

6. A. *What are the derivatives of the horn?*
 B. *Butting, biting, falling, and kicking.*
 C. *How come goring is called a generative cause of damages? Because it is stated explicitly, "If it will gore..." (Ex. 21:28). But then in reference to butting, it also is written, "If it butts" (Ex. 21:35).*
 D. *That reference to butting refers in fact to goring, as has been taught on Tannaite authority: Scripture opens with a reference to butting [Ex. 21:35] and concludes with a reference to goring [Ex. 21:16] to tell you that in this context "butting" means "goring."*
7. A. *What, when the Scripture refers to injury to a human being, does it say, "If it will gore" (Ex. 21:28), while when Scripture refers to an ox's injuring an animal, it uses the language, "if it will butt" (Ex. 21:35)?*
 B. *In connection with a human being, who is subject to a star [planetary influence], will be injured only by [Kirzner: willful] goring, but an animal, who is not subject to a star, is injured by mere accidental butting.*
 C. *And by the way, Scripture tangentially informs us of another matter, namely, an animal that is an attested danger for a human being is an attested danger for other beasts, but an animal that is an attested danger for beasts is not necessarily an attested danger for injuring a human being.*

What is important here is the comparison of derivative classes, human and animal in this case; this question emerges only from the prior, and primary interest in showing how the Mishnah's classes yield further ones. This same work now proceeds at a secondary level of complication.

8. A. *Biting: does this not fall into the classification of a derivative of Tooth?*
 B. *Not at all, for what characterizes injury under the classification of "tooth" is that there is pleasure that comes from doing the damage, but biting is not char-*

acterized by giving pleasure in the doing of the damage.

9. A. falling, and kicking: *do these not fall into the classification of derivatives of Foot?*
- B. *Not at all, for what characterizes injury under the classification of “foot” is that it is quite common, while damage done by these is not so common.*

What is important in what follows is the introduction of altogether fresh considerations, that is to say, things that affect the taxa now defined, but that at the same time complicate our original taxonomy. Specifically, we want to know how the issue of intentionality interrelates with the generative classifications we have in hand: does this form a further, autonomous point of differentiation? Since questions of the scriptural origin of taxa are integral to the generative problematic, I do not indent compositions or composites on that subject, regarding them as part of the sustained exposition at hand.

10. A. *Now, then, as to those derivatives that are not equivalent to the generative causes [from which the derives come], to which R. Pappa made reference, what might they be? Should we say that he makes reference to these? Then how are they different from the generative cause? Just as Horn is a classification that involves damage done with intent, one’s own property, and one’s responsibility for adequate guardianship, so these too form classifications that involve damage done with intent, one’s own property, and one’s responsibility for adequate guardianship. So it must follow that the derivatives of Horn are equivalent to the principal, the Horn, and R. Pappa must then refer to tooth and foot.*
11. A. *Where in Scripture is reference made to tooth and foot? It is taught on Tannaite authority: “And he shall send forth” (Ex. 22:4)—this refers to the foot, and so Scripture says, “That send forth the feet of the ox and the ass” (Is. 32:20). “And it shall consume” (Ex. 22:4)—this refers to the tooth, in line with this usage: “As the tooth consumes [3A] to entirety” (1 Kgs. 14:10).*
- 12.A. *The master has said: “‘And he shall send forth’ (Ex. 22:4)—this refers to the foot, and so Scripture says, ‘That send forth the feet of the ox and the ass’ (Is. 32:20).”*
- B. *So the operative consideration is that Scripture has said, “That send forth the feet of the ox and the ass.” Lo, if Scripture had not so stated, how else would you have interpreted the phrase, “And he shall send forth” (Ex. 22:4)? It could hardly refer to horn, which is written elsewhere, nor could it mean tooth, since this too is referred to elsewhere.*
- C. *No, the proof nonetheless was required, for it might have entered your mind to suppose that “send forth” and “consume” refers to tooth, in the one case where there is destruction of the principal, in the other where there is no destruction of the principal, so we are informed that that is not so.*

- D. *Now that you have established that the cited verse refers to foot in particular, then how on the basis of Scripture do we know that there is liable for damage done by the tooth in a case in which the principal has not been destroyed?*
- E. *It would follow by analogy from the case of damage done by the foot. Just as in the case of damage done by the foot, there is no distinction to be drawn between a case in which the principal has been destroyed and one in which the principal has not been destroyed, so in the case of damage done by the tooth, there is no distinction to be drawn between a case in which the principal has been destroyed and one in which the principal has not been destroyed.*
- 13.A. The master has said, “‘And it shall consume’ (Ex. 22:4)—this refers to the tooth, in line with this usage: ‘As the tooth consumes to entirety’ (1 Kgs. 14:10).”
- B. *So the operative consideration is that Scripture has said, “As the tooth consumes to entirety.” Lo, were it not for that statement, how might we have interpreted the phrase anyhow? It could hardly have been a reference to horn, for that is stated explicitly in Scripture, and it also could not have been a reference to foot for the same reason.*
- C. *No, it was necessary to make that point in any event. For it might otherwise have entered your mind to suppose that both phrases speak of foot, the one referred to a case in which the beast was going along on its own, the other when the owner sent it to do damage, and so we are informed that that is not the case. [So we are informed that that is not the case.]*
- D. *If then we have identified the matter with tooth, then how could we know that one is liable under the category of Foot when the cattle went and did damage on its own?*
- E. *The matter is treated by analogy to damage done in the category of tooth. Just as in the case of tooth we draw no distinction between a case in which the owner sent the beast out and it did damage and one in which the beast went along on its own, so in the case of foot, there is no distinction between a case in which the owner sent the beast out and one in which the beast went out on its own.*
- 14.A. *Then let the Scripture make reference to “And he shall send forth” (Ex. 22:4) and omit “And it shall consume,” which would cover the classifications of both foot and tooth? It would cover foot in line with this verse: “That send forth the feet of the ox and the ass,” and it would cover tooth, in line with this verse, “And the teeth of beasts will I send upon them” (Dt. 32:24).*
- B. *Were it not for this apparently redundant statement, I might have imagined that the intent was either the one or the other, either foot, since damage done by the foot is commonplace, or tooth, since damage done by the tooth gives pleasure.*
- C. *Well, we still have to include them both, since, after all, which one would you exclude anyhow [in favor of the other], their being equally balanced?*
- D. *The additional clarification still is required, for you might otherwise have supposed that the liability pertains only where the damage is intentional, excluding*

a case in which the cattle went on its own; so we are informed that that is not the case.

- 15.A. *What is the derivative of the generative category of tooth?*
- B. *If for its own pleasure the cow rubbed itself against a wall and broke it, or spoiled produce by rolling around in it.*
- C. *What distinguishes damage done by the tooth [as a generative category] is that it is a form of damage that gives pleasure to the one that does it, it derives from what is your own property, and you are responsible to take care of it? Well, in these cases too, one may say the same thing, namely, here we have a form of damage that gives pleasure to the one that does it, it derives from what is your own property, and you are responsible to take care of it.*
- D. *It must follow that the derivative classes of the generative category of tooth are equivalent to the generative category itself, and when R. Pappa made his statement, he must have referred to the generative category of foot.*
- 16.A. *What is the derivative of the generative category of foot?*
- B. *If the beast while moving did damage with its body or hair or with a load on it or with a bit in its mouth or with a bell around its neck.*
- C. *What distinguishes damage done by the foot [as a generative category] is that it is a form of damage that is very common, it derives from what is your own property, and you are responsible to take care of it. Well, in these cases too, one may say the same thing, namely, here we have a form of damage that is very common, it derives from what is your own property, and you are responsible to take care of it.*
- D. *It must follow that the derivative classes of the generative category of foot are equivalent to the generative category itself, and when R. Pappa made his statement, he must have referred to the generative category of pit.*
- 17.A. *Then what would be derivatives of the generative category of pit?*
- B. *Should I say that the generative category is a pit ten handbreadths deep, but a derivative is one nine handbreadths deep, Scripture does not make explicit reference to either one ten handbreadths deep nor to one nine handbreadths deep!*
- C. *In point of fact that is not a problem, since the All-Merciful has said, "And the dead beast shall be his" (Ex. 21:34). And, for their part, rabbis established that a pit ten handbreadths deep will cause death, one only nine handbreadths deep will cause only injury, but will not cause death.*
- D. *So what difference does that make? The one is a generative classification of pit when it comes to yielding death, the other an equally generative classification yielding injury.*
- E. *So R. Pappa's statement must speak of a stone, knife, or luggage, left in the public domain, that did damage.*
- F. *How then can we imagine damage of this kind? If they were declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit. [3B] And if they were not declared ownerless and abandoned in the public domain, then from the perspec-*

tive of Samuel, who has said, "All public nuisances are derived by analogy to the generative classification of pit," they fall into the classification of pit, and from the perspective of Rab, who has held, "All of them do we derive by analogy to ox," they fall under the classification of ox.

- G. *What is it that characterizes the pit? It is that to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. So of these too it may be said, to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. It therefore follows that the derivatives of pit are the same as the pit itself, and when R. Pappa made his statement, it was with reference to the derivatives of the crop-destroying beast.*
- 18.A. *So what can these derivatives of the crop-destroying beast be anyhow? From the perspective of Samuel, who has said, "The crop destroying beast is the same as tooth [that is, trespassing cattle]," lo, the derivative of tooth is in the same classification as tooth [as we have already shown], and from the perspective of Rab, who has said, "The crop-destroying beast is in fact the human being," then what generative categories and what derivatives therefrom are to be identified with a human being! Should you allege that a human being when awake is the generative classification, and the human being when asleep is a derivative, have we not learned in the Mishnah: **Man is perpetually an attested danger [M. B.Q. 2:6A]**— whether awake or asleep!*
- B. *So when R. Pappa made his statement, he must have referred to a human being's phlegm or snot.*
- C. *Yeah, well, then, under what conditions? If the damage was done while in motion, it comes about through man's direct action, and if it does its damage after it comes to rest, then, whether from Rab's or Samuel's perspective, it falls into the classification of pit. And, it must follow, the offspring of the crop-destroying beast is in the same classification as the crop destroying beast, so when R. Pappa made his statement, he must have been talking about the derivatives of fire.*
- 19.A. *So what are derivatives of fire? Shall we say that such would be a stone, knife, or luggage, that one left on one's roof and were blown off by an ordinary wind and caused damage? Then here too, under what conditions? If the damage was done while in motion, then they fall into the category of fire itself. For what characterizes fire is that it derives from an external force, is your property, and is yours to guard, and these too are to be described in the same way, since each derives from an external force, is your property, and is yours to guard. And, it must follow, the offspring of fire are in the same classification as fire, so when R. Pappa made his statement, he must have been talking about the derivatives of foot.*
- 20.A. *Foot? Surely you're joking! Have we not already established the fact that the derivative of foot is in the same classification as the generative classification of foot itself.*

- B. *At issue is the payment of half damages done by pebbles kicked by an animal's foot, which we have learned by tradition.*
- C. *And why is such damage classified as a derivative of foot?*
- D. *So that compensation should be paid only from property of the highest class possessed by the defendant.*
- E. *But did not Raba raised the question on this very matter? For Raba raised this question, "Is the half-damage to be paid for damage caused by pebbles to be paid only from the body of the beast itself or from the beast property of the owner of the beast?"*
- F. *Well, that was a problem for Raba, but R. Pappa was quite positive about the matter.*
- G. *Well, if it's a problem to Raba, then from his perspective, why would pebbles kicked by an animal's foot be classified as a derivative of foot?*
- H. *So that the owner in such a case may be exempted from having to pay compensation where the damage was done in the public domain [just as damage caused by the generative category, foot, is not to be compensated if it was done in the public domain].*

We revert to our Mishnah-exegesis, now defining yet another taxon and reckoning with its relationships to those already worked out.

II.1

- A. **crop-destroying beast, and conflagration:**
- B. *What is the meaning of "the crop-destroying beast"?*
- C. Rab said, "The crop-destroying beast is in fact the human being."
- D. And Samuel said, "The crop destroying beast is the same as tooth [that is, trespassing cattle]."
- E. Rab said, "The crop-destroying beast is in fact the human being," as it is written, "The watchman said, The morning comes, and also the night, if you will ask, then ask" (Is. 21:12) [where the letters used in the word for crop destroying beast occur].
- F. And Samuel said, "The crop destroying beast is the same as tooth [that is, trespassing cattle]," as it is written, "How is Esau searched out, how are his hidden places sought out" (Ob. 1:6) [where the letters used in the word for crop destroying beast occur].
- G. *And how does that verse yield the interpretation given by Samuel?*
- H. *It is in line with the translation into Aramaic given by R. Joseph, "[Kürzner:] how was Esau ransacked? how were his hidden treasures exposed?" [Kürzner: tooth is naturally hidden but becomes exposed in grazing.]*
- I. *And how come Rab did not accept the proof of Samuel?*
- J. *He objects: "Does the Mishnah use the letters formed into the passive [which would then refer to anything that is exposed]?"*

- K. *And how come Samuel does not go along with Rab?*
- L. *He objects, "Does the Mishnah use the letters in a form that would denote mere action?"* [Kirzner: the form that is used is causative, hence with reference to tooth, which the animal exposes in grazing].
- M. *Well, let's face the fact that the scriptural verses do not decisively settle the question either in favor of the position of this master or in favor of the position of that one, so why really did Rab not concur with Samuel?*
- N. *When the Mishnah-paragraph refers to ox, it covers all classifications of damage done by the ox.*
- O. *Then from Samuel's perspective, has not the Tannaite authority already covered "ox"?*

Now we come to a fine instance in which the definition of the taxa also presents an opportunity to introduce a variety of indicative traits, instead of just a few: to redefine taxa in terms of issues not present in the Mishnah-statement's original list. Here, for example, we ask about whether the one that does the damage benefits from doing it, and that will form a point of distinction between one taxon and another. In what follows, that issue is joined to the issue of intent to inflict injury.

- P. Said R. Judah, "When the Tannaite authority of the Mishnah-paragraph referred to 'ox,' it was to the horn, and when he referred to crop-destroying beast, it was with reference to tooth, *and this is the sense of his statement*: the indicative traits of the horn, in which instance doing damage does not give pleasure to the one who does the damage, are not the same as the indicative traits of the tooth, in which case there is pleasure to the one who does the damage, [4A] and the indicative traits of tooth, in which the intent of the beast that does the damage is not in fact to do damage, are not the same as the indicative traits of the horn, in which case the one who does the damage really does intend to do the damage he has done."
- Q. Well, this point can then be derived on the strength of an argument a fortiori, as follows: if one bears responsibility for damages in the classification of tooth, in which case there is no intent to inflict injury, then in the case of damages in the classification of horn, in which case there is every intent to inflict injury, is it not an argument a fortiori that one should bear responsibility for injuries done in that way?
- R. *No, it was necessary for Scripture to make explicit reference to damages done by the horn, for you might otherwise have taken for granted that one is immune for damages in the classification of the horn by analogy to the matter of damages done by one's male and female slaves. Just as a male or a female slave, though bearing every intent to do injury, do not bring upon their master liability for*

damages that they do, so I might have otherwise thought that the law would be the same in the case of the horn.

- S. Said R. Ashi, “But isn’t it the fact that an overriding consideration comes into play in the matter of the male and female slave, specifically, we take account of the possibility that the master will punish the slave, and the slave may then go and burn up the standing grain of his neighbor, so from day to day this one will turn out to impose upon his master a fine of a hundred maneh? Rather, this is the way in which the challenge is to be framed: the indicative traits of the horn, in which case the one who does the damage really does intend to do the damage he has done, to the indicative traits of damages in the classification of tooth, in which case the damages are not done deliberately, nor are the indicative traits of tooth, in which case the one that does the damage gains benefit from the damage done, to be compared to the indicative traits of the damages in the classification of horn, in which case the one that does the damage gets no benefit from them [Kirzner: so neither horn nor tooth could be derived from each other].”
- T. *How come foot is left out of the catalogue?*
- U. The rule that whenever damage has been done, the one who has done it is liable to pay damages *encompasses the foot*.
- V. *So why not so formulate the Tannaite rule as to say that in so many words?*
- W. Well, said Raba, “The Tannaite formulation refers to the **ox**, encompassing the foot, and the **crop-destroying beast**, encompassing the tooth, and this is the sense of the statement: the indicative traits of the foot, damages in the classification of which are commonplace, like the indicative traits of the tooth, damages in the classification of which are not commonplace; nor are the indicative traits of damages in the classification of tooth, which benefit the one who does the damage, like the indicative traits of damages in the classification of the foot, in which case there is no benefit to the one that does the damage.”
- X. *How come horn is left out of the catalogue?*
- Y. The rule that whenever damage has been done, the one who has done it is liable to pay damages *encompasses the horn*.
- Z. *So why not so formulate the Tannaite rule as to say that in so many words?*
- AA. *The Mishnah-rule addresses classifications of causes of damage for which beasts to begin with are deemed habitually capable, while the Mishnah-rule does not address classifications of causes of damage for which beasts to begin with are deemed innocent, but only at the end habitually capable.*
2. A. *So why doesn’t Samuel state matters as does Rab [in explaining the meaning of **crop-destroying beast** / Rab said, “The crop-destroying beast is in fact the human being”]?*

- B. *He will say to you, "If it should enter your mind that this refers to man, lo, the passage states further on: **and an ox which causes damage in the domain of the one who is injured; and (5) man [M. 1:4F-G]!**"*
- C. *But why not include man in the initial clause anyhow?*
- D. *The opening clause addresses cases of damages done by one's chattels, and it does not address the case of damages done by oneself.*
3. A. *And so far as Rab is concerned, does not the passage state further on: **and an ox which causes damage in the domain of the one who is injured; and (5) man [M. 1:4F-G]?***
- B. *Rab will say to you, "That serves the purpose of including man among those that are considered attested dangers."*
- C. *Then what is the sense of the language, **[The indicative characteristic] of the ox is not equivalent to that of the crop-destroying beast...?***
- D. *This is the sense of that language: The indicative characteristic of the ox, which if it kills a man imposes on the owner the necessity of paying a ransom the same as the indicative trait of man, who does not impose [e.g., on the owner of the slave] the obligation of paying a ransom, nor is the indicative trait of a man, who is liable to pay damages on four distinct counts, equivalent to the indicative traits of the ox, who is not liable to pay damages on four distinct counts. **What they have in common is that they customarily do damage.***
- E. *So is it customary for the ox [horn] to do damage?*
- F. *Reference is made here to an ox that is an attested danger.*
- G. *Well, is an ox that is an attested danger going customarily to do damage?*
- H. *Well, yes, since it has been declared an attested danger, it is assumed customarily to do damage!*
- I. *Well, is it customary for man to do damage?*
- J. *When he is sleeping.*
- K. *Are you saying that when man is asleep, he customarily does damage?*
- L. *Since he stretches out his legs or curls them up, he really does customarily do damage in such a way.*
- M. **and taking care of them is your responsibility:** *Is not the care of a human being exclusively his or her own responsibility? [How can we say, **taking care of them is your responsibility?** How can this refer to man, as Rab maintains?]*
- N. *In accord with your contrary view, lo, Qarna has repeated as his Tannaite formulation: **[There are] four generative causes of damages, and Man is one of them.** But is not the care of a human*

being exclusively his or her own responsibility?

- O. *Rather, it is in accord with the manner in which R. Abbahu instructed the Tannaite authority to frame matters: "Taking care of a human being [not to inflict damage] is his or her responsibility," [4B] and here too, taking care of a human being [not to inflict damage] is his or her responsibility.*
4. A. *Objected R. Mari, "But maybe **crop-destroying beast** really refers to water that does damage, in line with the verse: 'As when the melting fire burns, fire causes water to bubble' (Is. 54:1) [in which the consonants used in crop-destroying beast recur]."*
- B. *Does the verse say, "Water bubbles"? What says is, "fire causes bubbling."*
- C. *Objected R. Zebid, "But maybe **crop-destroying beast** really refers to fire, since fire is the referent of the cited verse?"*
- D. *If that's were so, how would you deal with the repeating, **crop-destroying beast and fire**?! If you should propose that "fire" stands in apposition to "crop destroying beast," then instead of four classifications of generative causes, there would be only three, and if you suggest that ox stands for two distinct classifications, then what will be the sense of the statement, **nor are this one and that one, which are animate**? How is fire animate?! And what will be the sense of the concluding part of the same clause, **equivalent to fire**?*

Having completed our work on the four classes, we now ask whether there are not a great many more, thirteen in all. But there is a shift in meaning here, since what we now understand by "generative cause of damage" shades over into, "categories of compensation," that is, compensation under a number of counts; and that represents a considerable move beyond the matter of categories of causes of damages. Once that taxonomic process has gotten under way, we are not limited to our original basis for differentiation at all.

5. A. *R. Oshaia repeated as a Tannaite formulation: There are thirteen generative causes of damages, including unpaid bailee, borrower, paid bailee, one who rents; compensation paid for depreciation, pain, healing, loss of time, humiliation; and the four enumerated in our Mishnah-paragraph. That makes up thirteen. Now how come the Tannaite authority of our paragraph listed four and not the others?*
- B. *From Samuel's perspective there is no problem in answering that question, since the Mishnah speaks only of damage committed by one's chattel, not that committed by one's person, but as to Rab, [who has held that the crop-destroying beast refers to man], why not include these items?*

- C. *By speaking of man, the framer of the passage has encompassed every kind of damage done by man.*
- D. *Yeah, well, then how come R. Oshaia's version does not make reference to man?*
- E. *There is a distinction to be drawn between types of damage that man does, one is damage done by man to man, the other, damage done by man to chattel [and these latter are specified, e.g., pain, healing, and so on].*
- F. *If so, then why not draw the same distinction among damages done by ox, one is damage done by an ox to chattel, the other, damage done by an ox to a human being?*
- G. *How are these parallel? There is no problem in explaining how the distinction pertains to man, since if a man damages chattel, he pays for depreciation but not the other four kinds of classes of damages, but if he does damage to a human being, he has to pay the other four types of compensation, but how can an ox be treated in this way, since damage done by it to either man or chattel is the same and involves only one kind of damage [namely, depreciation]?*
- H. *Well what about unpaid bailee, borrower, paid bailee, one who rents? These all are in the framework of a man who does damage to chattel, and yet they are included in R. Oshaia's reckoning?*
- I. *Damage done by a person directly and damage done indirectly are kept distinct by him.*
6. A. *R. Hiyya taught as his Tannaite version of the passage before us: There are twenty-four generative causes of damages, including double payment [for theft], fourfold or fivefold payment, theft, robbery, a conspiracy to give false evidence, rape, seduction, slander, one who imparts uncleanness to someone else's property, one who renders someone else's property doubtfully tithed produce, and one who renders someone else's wine into libation-wine [in all three cases diminishing their value], and the thirteen enumerated by R. Oshaia, twenty-four in all.*
- B. *How come R. Oshaia did not reckon these others?*
- C. *He addressed classifications of damages involving civil liability but not with extrajudicial penalties.*
- D. *So why not include theft and robbery, which also form civil liabilities?*
- E. *They fall under the classifications of unpaid bailee and borrower.*
- F. *Well, why didn't R. Hiyya include them in those classifications?*
- G. *He dealt with each on its own, since in the one case possession of the chattel comes into one's hands lawfully, in the other [theft, robbery], it is in violation of a prohibition.*
- H. **[5A]** *Well, a conspiracy to give false evidence is classified as a civil liability, so why not [have Oshaia] include that item?*
- I. *He concurs with R. Aqiba, who said, "A conspiracy of witnesses is not required to pay compensation on the basis of their own testimony." [Kirzner: "liability for false evidence is penal in nature and cannot consequently be created by confession."]*

- J. *If he concurs with R. Aqiba, then why not distinguish in the classification of ox and identify two distinct classifications of damage, the damage done by an ox to chattel, and the damage done by an ox to a human being, for have we not learned in the Mishnah R. Aqiba says, “Also: An ox deemed harmless [which injured] a man—[the owner] pays full damages for the excess” [M. B.Q. 3:8K]?*
- K. *As a matter of fact, R. Aqiba himself has himself vitiated the force of that distinction, for it has been taught on Tannaite authority: R. Aqiba says, “Might one suppose that even a beast deemed harmless who did injury to a human being—the owner should have to pay compensation from land of the highest quality? Scripture states, ‘This judgment shall be done to it’ (Ex. 21:31), meaning that the liability to damages should be limited to the value of the corpus of the beast that is formerly deemed harmless, and not out of any other source.”*
- L. *What about rape, seduction, and slander, which also fall under the classification of civil liabilities, why should R. Oshaia not include these as well?*
- M. *What can you mean? If it was to liability for depreciation, he’s got that on his list, and if it’s for liability to suffering, he has that in the classification of pain, and if it is humiliation, he’s got that in the classification of degradation; and if it’s for deterioration, he’s got that under depreciation. So what can you have in mind?*
- N. *The extrajudicial penalty involved in these items.*
- O. *[Oshaia] was not reckoning with extrajudicial penalties.*
- P. *[And how come Oshaia omitted from his list] one who imparts uncleanness to someone else’s property, one who renders someone else’s property doubtfully tithed produce, and one who renders someone else’s wine into libation-wine [in all three cases diminishing their value]? These too involve a civil liability!*
- Q. *Well, what do you think about injury that is intangible? If you classify it as injury, then he has included in his list the classification of depreciation; and if you maintain that it is not classified as civil damage, then any liability would fall into the classification of an extrajudicial penalty, with which, as we saw, R. Oshaia is not dealing here.*
- R. *Shall we then maintain that R. Hiyya takes the position that intangible injury is not classified as depreciation and a matter of civil liability? For if he maintained that such was classified as a civil liability, lo, he has specified in his list depreciation?*
- S. *What he did was specify in his Tannaite formulation tangible damages and then he went on and specified intangible damages as well.*
7. A. *Now we can well understand why our Tannaite authority has specified the number of classification of generative causes of damages, since it was to include the number of classifications reckoned by R. Oshaia, and, of course, R. Oshaia specified as his Tannaite formulation the number of damages, so as to include the must*

larger number conceived by R. Hiyya. But what is accomplished by the exclusive number reckoned by R. Hiyya?

- B. *That serves to exclude the cases of one who squeals [to the government, and so causes loss to an Israelite] and one who by his improper intentionality spoils the offering of someone and renders it null.*
- C. *Well, why not include them?*
- D. *Well, there is no problem in explaining why he has not counted in his classifications the matter of the priest who by his improper intentionality spoils someone's offering, since our Tannaite compilation is not dealing with Holy Things anyhow. But what reason can there be for omitted reference to one who squeals?*
- E. *That matter is exceptional, since it involves a mere verbal assault, and he is not dealing with verbal assaults?*
- F. *Well, if he's not dealing with verbal assaults, then what about the matter of slander, which is nothing other than a verbal assault, and he has included it in his Tannaite formulation!*
- G. *That is a verbal assault involving a concrete action.*
- H. *Well, then, what about the conspiracy to give false testimony? Here too we have a verbal assault without any concrete action, and yet he has included on his list!*
- I. *Well, in that case, you are dealing with something that may not involve a concrete action, but Scripture itself has classified it as a concrete action, in the language: "You shall do to him as he proposed to do to his brother" (Dt. 19:19).*
- 8. A. *Now there is no problem in understanding why our Tannaite authority has specified generative categories, since he maintains that there are also derivative ones. But from the perspectives of R. Hiyya and R. Oshaia, if we speak of generative categories, bearing the implication that there might be derivative ones, then what might these be?*
- B. *Said R. Abbahu, "So far as the requirement that damages be paid out of the best of one's real estate, all of them are classified as generative classifications. How come? We treat as a verbal analogy references in common to 'instead,' 'compensation,' 'payment,' and 'money'" [Ex. 21:36, Ex. 21:32, Ex. 22:8, and Ex. 21:34, respectively: one of these four terms occurs with each of the four categories of damage specified in the Mishnah, and likewise with each of the kinds of damage enumerated by Oshaia and Hiyya, thus teaching uniformity in regard to the mode of payment in them all].*

What follows is routine and narrowly-exegetical, and so it gives us a good insight into how the process is shaped when large-scale issues are not at stake. All we want to know is what a sentence means; the answer is worked out in terms of how one class of things relates to some other, that is, can we deduce the rule of one class of things from the rule governing another, analogous one?

III.1

- A. **[The indicative characteristic] of the ox is not equivalent to that of the crop-destroying beast:**
- B. *What is the sense of this statement?*
- C. *Said R. Zebid in the name of Raba, “This is the sense of the statement: if someone should maintain, ‘let Scripture explicitly make reference to only one kind of damage, and you may deduce the liability for the other,’ the answer is given, ‘the rule governing one kind of damage cannot be deduced from any other.’”*

Here is yet another example in which we make sense of a statement by appeal to our primary concern. What we wish to know we find out by appeal to our generative question. To put it differently, before we ask a question, we know why we are asking it, what we wish to discover, and how we shall know that we are right when we do find the answer—all of this in less than a hundred words!

IV.1

- A. **nor are this one and that one, which are animate, equivalent to fire, which is not animate:**
 - B. *What is the sense of this statement?*
 - C. *Said R. Mesharshayya in the name of Raba, “This is the sense of the statement: [5B] if someone should say, ‘let Scripture explicitly make reference to only two of the three kinds of damage [ox and crop-destroying beast], and you may deduce the liability for the remaining one,’ the answer is given, [**nor are this one and that one, which are animate, equivalent to fire, which is not animate**], so even from two kinds of damage we cannot deduce the rule governing a third.”*
2. A. *Said Raba, “If you include Pit but any one other classification of damage, all the others will then be derived by analogy [via the feature common to Pit and any other classification of damage], except for the case of horn. Horn is exceptional, in that all the other kinds of damage are classified as attested dangers to begin with [except for damage done by a goring ox, where the distinction between an attested danger and an ox deemed harmless is drawn].*
- B. *“But within the view that damage done by the horn is a weightier matter since in that case the beast had every intention to do damage, then even the classification of horn could be deduced. And, in that case, for what definitive purpose did Scripture find it necessary to make explicit reference to each such classification?”*

What follows is a fine example of introducing further points of taxonomic differentiation into what is up to now a fairly simple, sin-

gle-dimensional grid. Now we want to know about such distinctions as Scripture's between a beast deemed harmless and one that is an attested danger; public and private domain; animate and inanimate objects (or sources of damage); classifications of damages defined by the counts under which compensation is made, rather than the counts under which damages may be distinguished from one another. What is interesting is that the Mishnah has made a set of distinctions, e.g., get up and go do damage vs. not doing so, that the Bavli has absorbed, but then proposed to augment. How far we have moved, now, from the simple point that the various taxa have in common: What they have in common is that they customarily do damage and taking care of them is your responsibility! Instead, we find other points in common, but also other points of distinction.

- C. [1] horn: to make the distinction between the beast deemed harmless and that one that is an attested danger;
- D. [2] tooth and foot: to exempt the owner from damage that was done within these classifications in public domain.
- E. [3] pit: to exempt the owner from damage done to inanimate objects;
- F. and from the perspective of R. Judah, who takes the view that one is liable for damage done to inanimate objects by a pit one has dug, it is to exempt one from liability to death caused by it to man;
- G. [4] man: to impose upon him the four additional classifications of compensation to be paid for damage done by a human being to another human being;
- H. fire: to make one immune for damage done to objects that were hidden away [and not known by the person who kindled the fire] by a fire one has kindled;
- I. *and according to R. Judah, who maintains that one is liable to damage done by fire to hidden objects, what purpose is served?*
- J. **[6A]** *it is to encompass under the rule damage done by fire lapping his neighbor's ploughed field and grazing his stones.*

The Mishnah-sentence now proceeds to compare and contrast our several generative categories, and this is accomplished time and again by introducing what one might call subordinate considerations, but what I have called a distinct set of grids: other taxic indicators besides the main ones. In this way we subdivide our categories.

V.1

- A. **What they have in common is that they customarily do damage and taking care of them is your responsibility:**

- B. *So what is encompassed by this generalization?*
- C. *Said Abbayye, "It is to encompass the stone, knife, bundle that one left on his rooftop, which fell by the action of a seasonal breeze and did injury."*
- D. *Under what conditions? If the damage was done while in motion, then they fall into the category of fire itself. For what characterizes fire is that it derives from an external force, is your property, and is yours to guard, and these too are to be described in the same way, since each derives from an external force, is your property, and is yours to guard. So it must follow that the damage was done after these things came to rest.*
- E. *Well, if the damage was done after they came to rest, then how then can we imagine damage of this kind? If they were declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit.*
- F. *What is it that characterizes the pit? It is that to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. So of these too it may be said, to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. It therefore follows that they were not declared ownerless and abandoned in the public domain.*
- G. *But then from the perspective of Samuel, who has said, "All public nuisances are derived by analogy to the generative classification of pit," they fall into the classification of pit, [and from the perspective of Rab, who has held, "All of them do we derive by analogy to ox," they fall under the classification of ox.]*
- H. *In point of fact, they have not been declared ownerless property, but they still are not to be classified along with the pit. For the indicative traits of the pit are that no external force is involved with it, and you must say in the case of these that an external force is involved in it. [The stone, knife, and luggage are indeed to be characterized in that way.]*
- I. *But then fire [carried by an external force, the wind, but nonetheless imposes liability for compensation is a refutation for that reasoning.*
- J. *The indicative trait of fire is that it is routine for it to go along and do damage.*
- K. *A pit will prove the contrary, and we have come full circle.*
2. A. **[What they have in common is that they customarily do damage and taking care of them is your responsibility: so what is encompassed by this generalization:]** *Raba said, "Encompassed is a pit [Kirzner: a nuisance] that is moved around by the feet of man or beast."*
- B. *If it was declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit.*

- C. *What is it that characterizes the pit? It is that to begin with it is made as a possible cause of damage, it is your property, and your are responsible to watch out for it. So of these too it may be said, to begin with it is made as a possible cause of damage, it is your property, and your are responsible to watch out for it. It therefore follows that they were not declared ownerless and abandoned in the public domain.*
- D. *But then from the perspective of Samuel, who has said, "All public nuisances are derived by analogy to the generative classification of pit," they fall into the classification of pit, [and from the perspective of Rab, who has held, "All of them do we derive by analogy to ox," they fall under the classification of ox.]*
- E. *In point of fact, they have been declared ownerless property, but they still are not to be classified along with the pit. For the indicative trait of the pit are that the sole cause of damage is that one has made the pit. But how can you say the same in the case of this nuisance, making the nuisance by itself is not the direct cause of the damage [but the man or beast who moved it from place to place is the cause]?*
- F. The classification of ox then proves the contrary.
- G. The distinctive trait of the ox is that it routinely goes along and causes damage [which does not apply here].
- H. The pit proves the contrary.
- I. We have come full circle. The indicative trait of the one is not the same thing as the indicative trait of the other.

The foregoing is a fine example, among many, in which polythetic classification replaces monothetic classification. If we have traits characteristic of two items, may we then impute them to the third of the same class, even if all three items are not entirely uniform in their definitive traits.

- 3. A. *R. Adda bar Ahba said, "It serves to encompass that which has been taught in the following Tannaite formulation: all those of whom they have spoken, who open up their gutters or sweep out the dust of their cellars into the public domain, in the dry season have no right to do so, but in the rainy season, have every right to do so. But even though they do so with every right, nonetheless, if what they have done causes damage, they are liable to pay compensation."*
- B. *Well, how can we imagine such a case? If these things do damage as he goes along and sweeps them, then the damage that they do is a direct result of his own action. So it must be after they have come to rest, but in that case, how can we imagine the case? If it was declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit.*
- C. *What is it that characterizes the pit? It is that to begin with it is made as*

a possible cause of damage, it is your property, and you are responsible to watch out for it. *So of these too it may be said*, to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. *It therefore follows that they were not declared ownerless and abandoned in the public domain.*

- D. *But then from the perspective of Samuel, who has said, “All public nuisances are derived by analogy to the generative classification of pit,” they fall into the classification of pit, [and from the perspective of Rab, who has held, “All of them do we derive by analogy to ox,” they fall under the classification of ox.]*
- E. *In point of fact, they have been declared ownerless property, but they still are not to be classified along with the pit.* For the indicative trait of the pit are that one makes it without the right to do so. *But how can you say the same in the case of this nuisance, since the one who made it had every right to do so.*
- F. **[6B]** The classification of ox then proves the contrary.
- G. The distinctive trait of the ox is that it routinely goes along and causes damage [which does not apply here].
- H. The pit proves the contrary.
- I. We have come full circle. The indicative trait of the one is not the same thing as the indicative trait of the other. [Kirzner: and liability can be deduced only from the common aspects.]
4. A. *Rabina said, “It serves to encompass that which has been taught in the following Tannaite formulation: **The wall or the tree which fell down into public domain and inflicted injury—[the owner] is exempt from having to pay compensation. [If] they gave him time to cut down the tree or to tear down the wall, and they fell down during that interval, [the owner] is exempt. [If they fell down] after that time, [the owner] is liable [M. B.M. 10:4F-K].**”*
- B. *Well, how can we imagine such a case? If these things do damage as he goes along and sweeps them, then the damage that they do is a direct result of his own action. So it must be after they have come to rest, but in that case, how can we imagine the case? If it was declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit.*
- C. *What is it that characterizes the pit? It is that it commonly does damage, it is your property, and you are responsible to watch out for it. So of these too it may be said, it commonly does damage, it is your property, and you are responsible to watch out for it. it commonly does damage, it is your property, and you are responsible to watch out for it.*
- D. *But if they were not declared ownerless and abandoned in the public domain, then from the perspective of Samuel, who has said, “All public nuisances*

are derived by analogy to the generative classification of pit," *they fall into the classification of pit, [and from the perspective of Rab, who has held, "All of them do we derive by analogy to ox," they fall under the classification of ox.]*

- E. *In point of fact, they have been declared ownerless property, but they still are not to be classified along with the pit. For the indicative trait of the pit to begin with making it serves as a cause of injury. But how can you say the same in the case of those things that, from the moment they are made, are causes of injury?*
- F. The classification of ox then proves the contrary.
- G. The distinctive trait of the ox is that it routinely goes along and causes damage [which does not apply here].
- H. The pit proves the contrary.
- I. We have come full circle. The indicative trait of the one is not the same thing as the indicative trait of the other. [Kirzner: and liability can be deduced only from the common aspects.]

What is important for the present purpose requires only a brief restatement. Nearly the entire long and sustained composite, which holds together remarkably well, is devoted to the task of showing the relationships between a number of distinct sets of categories, that is, one set, A, B, C, D, located in relationship to another, 1, 2, 3, 4, and yet a third, * # β and \acute{O} . Even in that limited framework of three intersecting grids, we see how the 64 possible classifications are formulated in a single expansive grid, that is to say, that three dimensional chess match to which I alluded.

Let me briefly review what we have seen. We open with a sizable exercise in explaining the language of our Mishnah-paragraph, in line with the same usage in other Mishnah-paragraphs, I.1-3. No. 4 then turns to the amplification of the Mishnah's statement by appeal to other Tannaite materials; we start with a complement that locates in Scripture the generative categories that are before us. This complement forms an integral part in the exposition of No. 3, and the entire composite goes from No. 3 through No. 20. That the whole is a continuous, beautifully crafted composite, shaped into a single coherent and unfolding statement, is beyond all doubt. II.1-4 gloss the Mishnah's word-choices. This leads into a first-rate exercise in Mishnah-criticism, dealing both with the formulation and the underlying logic. Then, in the continuing analysis of the problem introduced at II.1, we have other versions of the opening statement of the Mishnah-tractate, those of Oshaia and Hiyya, Nos. 5-6, further expounded at Nos. 7-8. III.1, IV.1 go through the same pro-

cess of Mishnah-exegesis, explaining the implication of the Mishnah's formulation. No. 2 continues the foregoing. V.1-4 once more address the exegesis of the language of the Mishnah, asking a familiar question; each entry follows a single, well-crafted form.

Our Mishnah-paragraph will now set forth two grids. The first has to do with my responsibility for damages. If I am liable for damages done by my property, I am liable to make compensation in various ways and through various media of payment. The second has to do with the location in which the damages have taken place, e.g., property that belongs to a Heaven, to an Israelite, and to gentiles; property that is not owned at all; and so on. The Mishnah-paragraph itself demands that these two grids be formed into an interstitial construct. No wonder, then, that the Bavli's framers pursue the question in ever more complex and subtle ways, making distinction after distinction, or, in my language, imposing grid upon grid.

MISHNAH-TRACTATE BABA QAMMA 1:2

- A. In the case of anything of which I am liable to take care, I am deemed to render possible whatever damage it may do.**
- B. [If] I am deemed to have rendered possible part of the damage it may do,**
- C. I am liable for compensation as if [I have] made possible all of the damage it may do.**
- D. (1) Property which is not subject to the law of Sacrilege, (2) property belonging to members of the covenant [Israelites], (3) property that is held in ownership,**
- E. and that is located in any place other than in the domain which is in the ownership of the one who has caused the damage,**
- F or in the domain which is shared by the one who suffers injury and the one who causes injury—**
- G. when one has caused damage [under any of the aforelisted circumstances] ,**
- H. [the owner of] that one which has caused the damage is liable to pay compensation for damage out of the best of his land.**

I.1

- A. *Our rabbis have taught on Tannaite authority:*

- B. **In the case of anything of which I am liable to take care, I am deemed to render possible whatever damage it may do.**
- C. How so?

My first distinction is between a person assumed to bear responsibility and one not, to whom I assign my responsibilities. Immediately I am required to introduce distinctions already established, e.g., my several generative categories of damages. Now what that means is simple. The fact that M. 1:1 has introduced those categories defines for the Bavli-exegete what he wishes to know at M. 1:2, which is how the categories of M. 1:1 intersect with those of M. 1:2, or, once more, the mixing of grids.

- D. In the case of an ox or a pit that one has handed over to a deaf mute, an insane person, or a minor, which did damage, one is liable to pay compensation, which is not the case with fire.
- E. *With what sort of case do we deal? If it is the case of an ox that was chained or a pit that was tied up, corresponding to the case of fire in a hot coal, then what distinguishes the one from the other? So we must be dealing with a case of an ox that was not tied up and a pit that was not covered up. But, then, this is comparable to the case of a flaming fire. Then the language, which is not the case with fire, would mean that one is not liable to pay compensation. But lo, said R. Simeon b. Laqish in the name of Hezekiah, "They have declared one is exempt from having to pay compensation only if he handed over to a deaf mute, insane person, or minor, a coal, which the guard has then blown upon [making it a flame, which then kindled other things]. But if he handed over what was an already-glowing flame, there is full liability, since the danger was clear and present.*
- F. In point of fact, we deal with an ox that was tied up or a pit that was covered up. And as to the statement, "corresponding to the case of fire in a hot coal, then what distinguishes the one from the other?" here is the answer: *it would be quite usual for an ox to loosen itself, and for a pit to get uncovered, but as to a hot coal, the longer you leave it alone, the cooler it gets.*
- G. *And from the perspective of R. Yohanan, who has said, "Even when a flaming fire has been handed over to him, one is still exempt, here too, the ox could have been untied and the pit uncovered, so why should we differentiate the one from the other?"*
- H. *In the case of the fire, it is how the deaf mute handles the fire that makes damage, while in the case of the ox and the pit, nothing that the deaf mute does is going to cause the damage.*

As if the foregoing did not make my point with power, what follows shows again how skilled are our exegetes of the law (whether fram-

ers of Tannaite statements or analysts thereof) in bringing together a variety of differentiated categories. Now we deal with the comparison of generative categories, on the one side, of ox and pit, with the comparison of types of compensation, on the other side.

2. A. *Our rabbis have taught on Tannaite authority:*
 - B. A more stringent rule pertains to the ox than to the pit, and a more stringent rule pertains to the pit than to the ox.
 - C. A more stringent rule pertains to the ox than to the pit, in that on account of an ox's killing a man, the owner has to pay a ransom and is liable to paying thirty shekels if the ox kills a slave. When the case against the ox has been completed, the ox may no longer be used in any beneficial manner. It is routine for the ox to move about and cause damage. none of this pertains to the pit.
 - D. and a more stringent rule pertains to the pit than to the ox, in that to begin with, the pit is made to do damage; it is to begin with an attested danger, which is not the case of an ox.
 - E. **[10A]** A more stringent rule pertains to the ox than to fire, and a more stringent rule pertains to fire than to the ox.
 - F. A more stringent rule pertains to the ox than to fire, in that on account of an ox's killing a man, the owner has to pay a ransom and is liable to paying thirty shekels if the ox kills a slave. When the case against the ox has been completed, the ox may no longer be used in any beneficial manner. If one handed it over to a deaf mute, an insane person, or a minor, one is liable, which is not the case for fire.
 - G. and a more stringent rule pertains to fire than to the ox, in that in that fire is an attested danger to begin with, which is not the case for the ox.
 - H. A more stringent rule applies to fore than to the pit, and a more stringent rule applies to the pit than to fire.
 - I. A more stringent rule applies to the pit than to fire, for to begin with it is made to cause damage. If one handed it over to the guardianship of a deaf mute, insane person, or minor, he is liable for the damage that may be caused, which is not the case with fire.
 - J. A more stringent rule applies to fire than to the pit, for it is the way of fire to go along and do damage, and it is an attested danger to consume both what is suitable for it and what is not suitable for it, which is not the case with a pit.
3. A. *Why not include in the Tannaite formulation:* A more strict rule applies to the ox than to the pit, for the owner of the ox is liable for damage done to utensils [inanimate objects], which is not the case with the pit?
 - B. *Lo, who is the authority behind this anonymous rule? It is R. Judah, who declares*

the owner liable for damages done to utensils in the case of a pit.

- C. *If you really think it is R. Judah, then let me cite the concluding statement to you: A more stringent rule applies to fire than to the pit, for it is the way of fire to go along and do damage, and it is an attested danger to consume both what is suitable for it and what is not suitable for it, which is not the case with a pit! Now what might fall into the classification of what is suitable for it? Wood. And what might fall into the classification of what is not suitable for it? Utensils—which is not the case with a pit! Now if this really is R. Judah, lo, you have maintained that R. Judah holds one responsible for the pit's damages to utensils. So in hand must be the position of rabbis, and the Tannaite framer of the passage set matters forth but omitted reference to some items.*
- D. *Well, then, what else has he left out, if he has left out this item?*
- E. He omitted reference to one's liability to pay for damages done by one's fire to goods that are hidden.
- F. *If you prefer, I shall say that in point of fact the passage does set forth the view of R. Judah, and what might fall into the classification of what is not suitable for it? It is not to encompass under the rule utensils, but rather, to encompass a case in which the fire did damage by lapping at the neighbor's ploughed furrow and grazing the stones.*
- G. *Objected R. Ashi, "Well then why not formulate the Tannaite statement in this way: A more strict rule applies to the ox than to the pit, for in the case of an ox the owner is liable for damage done to consecrated animals that were not fit for the altar, and that is not the case for the pit? Now if you maintain that before us is the position of rabbis, there is no problem, for having omitted one possible entry, they will also have omitted this other. But if you maintain that before us is the position of R. Judah, then what else has he left out, along with the item at hand?"*
- H. He has left out the case of one's ox's trampling newly broken land [which a pit cannot do].
- I. *If you maintain that the further omission is the case of one's ox's trampling newly broken land, that is not a good example of an omission, for this is covered when the framer says in so many words, for it is the way of fire to go along and do damage!*

II.1

- A. **[If] I am deemed to have rendered possible part of the damage it may do, I am liable for compensation as if [I have] made possible all of the damage it may do:**
- B. *Our rabbis have taught on Tannaite authority:*

Here comes a new grid: how deep the pit, on the one side, the dif-

ferentiation of responsibility, on the other. Specifically, what if I have not done all the damage; what if my act on its own would have caused none, but joined to someone else's, causes damage? That is, once more, a distinction that raises a set of questions the initial statement hardly demands, opening new paths of inquiry altogether: the mixed grid of whole versus partial responsibility; direct versus only proximate responsibility, and the like, or, in terms Greco-Roman philosophy developed, the issue of causation.

- C. **[If I am deemed to have rendered possible part of the damage it may do, I am liable for compensation as if I have] made possible all of the damage it may do:** how so?
- D. he who digs a pit nine cubits deep, and someone else comes along and finishes it to ten—the latter is liable [having completed the pit so that it can kill someone].
- E. *That does not accord with the position of Rabbi, for it has been taught on Tannaite authority:* He who digs a pit nine cubits deep, and someone else comes along and finishes it to ten—the latter is liable.
- F. Rabbi says, “We go after the latter in the case of death, but after both of them in the case of damages.”
- G. R. Pappa said, “The passage before us refers to death and represents the view of all parties.”
- H. *There are those who set matters forth as follows: may one say that this does not accord with the position of Rabbi?*
- I. Said R. Pappa, “The passage before us refers to death and represents the view of all parties.”
- J. *Objected R. Zira, “Well, aren’t there any other examples? Lo, there is the case of one’s handing over one’s ox to five persons, one of whom was careless, so that the ox did damage—that one bears the liability. Now how can we imagine such a case? If it is a case in which, were it not for that one man, the ox would not have been cared for at all, then it’s self-evident that that is the one who is responsible for damages! So it is a case in which, even without that one, the ox would have been subject to control. But, then, what has that man done to warrant having to pay damages all by himself?”*
- K. *Objected R. Sheshet, “Lo, there is the case of someone who adds twigs to a fire.”*
- L. **[10B]** *Well, what sort of a case can be in mind? If it were a case in which, without him, the fire would not have spread, then obviously he is entirely culpable. If without his cooperation the fire would have spread, then what has he done anyhow to deserve culpability?*
- M. *Objected R. Pappa, “Lo, there is that which has been taught on Tannaite authority:* If there were five people sitting on a bench and they did not break it, but someone else came along and sat down on it with them and they broke it, only the last person is liable—*assuming he*

was as fat as Pappa bar Abba. Now what sort of case can be in mind? If we should say that if without him the bench would not have broken, then that statement is obvious. So it has to be a case in which without that man the bench would have broken anyhow. So what did he do to warrant being held liable?"

- N. *One way or the other how in the world can this Tannaite formulation be worked out?*
- O. *It is necessary to cover a case in which, without the newcomer, the bench would have broken after a couple of hours, while now it broke after only one. So the other five sitting on the bench may say to him, "If it weren't for you, we could have sat a bit more on the bench and then gotten up."*
- P. *So why can't he say to him, "If it weren't for you, the bench would never have broken on my account at all"?*
- Q. *The rule is necessary to cover a case in which he never actually sat down on the bench but only leaned on the people sitting there, and the bench broke.*
- R. *So obviously he's liable! What else is new?*
- S. *Well, you might have supposed that the damage done by someone's secondary effects is not the same as that done by the person himself. So we are informed that one is responsible for what happens through secondary effects as much as for what he himself does, for whoever one personally causes damage, his secondary effects are involved.*
- 2.A. *Are there no other examples? Lo, there is that which has been taught on Tannaite authority: If ten people hit someone with ten sticks, whether simultaneously or sequentially, and the man died, all of them are exempt. R. Judah b. Betera says, "If they did it sequentially, then the last one is liable, since he [Kirzner:] was the immediate cause of the death."*
- B. *We're not dealing here with murder cases.*
- C. *Or, if you prefer, we're not dealing with laws that are subject to dispute.*
- D. *Oh we're not, aren't we? Then didn't we just establish the fact that the passage does not accord with Rabbi?*
- E. *As a matter of fact, while we are prepared to establish that the Mishnah-paragraph is not in accord with Rabbi but is in accord with rabbis, we are not prepared to establish that it is in accord with R. Judah b. Betera and not in accord with rabbis [since we prefer to assign the Mishnah's rules to the majority of sages' opinion].*

III.1

- A. **I am liable for compensation as if [I have] made possible all of the damage it may do:**
- B. *The language that is used is not, I am liable for making up the damage, but, **I am liable for compensation.** That has been set forth as a Tannaite rule, for our rabbis have taught on Tannaite authority: **I am liable for compensation—this teaches that the own-***

er has to take care of the disposition of the carcass [receiving the proceeds as part payment] [T. B.Q. 1:1E-F].

- C. *What is the scriptural basis for this ruling?*
- D. Said R. Ammi, “Said Scripture, ‘He who kills a beast shall make it good’ (Lev. 24:18)—the letters of the word ‘shall make it good’ can be read’ he shall complete its deficiency.”
- E. R. Kahana said, “From here: ‘If it be born in pieces, let him bring compensation up to the value of the carcass; he shall not make good that which was torn’ (Ex. 22:12)—‘up to’ the value of the carcass he pays, but for the carcass itself he does not have to pay.”
- F. Hezekiah said, “From here: ‘And the dead shall be his own’ (Ex. 21:36)—referring to the owner of the beast.”
- G. And so the Tannaite authority of the household of Hezekiah: “‘And the dead shall be his own’ (Ex. 21:36)—referring to the owner of the beast. You say that it is to the injured party, but perhaps it refers to the party responsible for the injury? You may state, ‘that is not the case.’”
- H. *What is the meaning of “that is not the case”?*
- I. *Said Abbayye, “If it should enter your mind that the carcass is going to belong to the party responsible for the injury, then why didn’t the Merciful stop when it had finished saying, ‘He shall surely pay ox for ox’ (Ex. 21:36)? What is the point of adding, ‘And the dead shall be his own’ (Ex. 21:36)? This shows that the Scripture speaks [when it says, his own’], of the injured party.”*

We appeal to the grid of distinctions before us to account for the requirement of a variety of proofs of propositions; one proof could not serve all propositions, for the reasons now given. This is beyond any reasonable doubt an exercise deriving solely from the prior interest in differentiation of sets of data, then multiple grounds for differentiation of those same sets of data.

- 2. A. *And the various verses of Scripture that have been cited all are necessary. For had Scripture stated only, “He who kills a beast shall make it good’ (Lev. 24:18), I might have supposed that the reason for the ruling was that it is an unusual event [for someone to kill a beast intending to cause his neighbor harm], but if an animal was torn to pieces by a wild beast, which is pretty common, I might have taken the opposite view [Kirzner: in the interest of the plaintiff].*
- B. *And if Scripture had made reference only to that which is torn [“If it be born in pieces, let him bring compensation up to the value of the carcass; he shall not make good that which was torn” (Ex. 22:12)], I might have supposed that the operative consideration is that the damage was done not by the bailee but by an indirect cause, but if a man killed the beast,*

where the damage was done by a direct agency, I might have taken the opposite view.

- C. *And if Scripture had made reference to both of these cases, I might have supposed that the one is special because it is infrequent, and the other is exceptional because it deals with indirect agency. But the damage to which the language, "And the dead shall be his own" (Ex. 21:36), refers, being both frequent and the result of direct action, would be subject to an opposite rule.*
- D. *And if Scripture had given us only, "And the dead shall be his own" (Ex. 21:36), I might have appealed to the explanation that the damage has been done only by the man's own possession, while if the damage was done by the man's own person [as is the case at Lev. 24:18 and Ex. 22:12], I might have supposed otherwise. So all of the verses of Scripture are required.*
2. A. *Said R. Kahana to Rab[a], "So the operative consideration is that Scripture has said, 'And the dead shall be his own' (Ex. 21:36). Lo, if it were not for that statement, I would have thought that the carcass should belong to the party responsible for the damage. Then it must follow that, if there were in the hands of the person responsible for the damage a number of such carcasses, he has the right to pay the injured party with them, for the master has said, "He shall return" (Ex. 21:34)—even payment in kind, even bran,' so what question can there be about doing so with the carcass of his own animal!"*
- B. *The verse is required to cover a case in which the carcass has decreased in value [and the injured party is going to suffer that loss, since from the moment the beast was gored, the carcass is assigned to him.*
3. A. *May we say that at issue between the following Tannaite authorities is the question of the decrease in the value of the carcass? For it has been taught on Tannaite authority: "If it be torn in pieces, let him bring it for testimony" (Ex. 22:12)—[11A] "let him bring it for testimony" that it was born by accident and so exempt himself from having to pay damages. Abba Saul says, "Let him bring the torn animal to court." Is this not what is at issue, namely: one authority takes the view that the decreased value of the carcass is assigned to the injured party, and the other party maintains that it is assigned to the party responsible for the injury?*
- B. *Not at all. All parties take the position that it is assigned to the injured party, but what is at issue here is the responsibility for bringing up the carcass from the pit, in line with that which has been taught on Tannaite authority: Others say, "How on the basis of Scripture do we know that the owner of the pit is responsible to raise up the ox from his pit? Scripture says, 'Money shall he return to the owner, and the dead beast...' (Ex. 21:34) [that is, he shall return both money and the dead beast, which he is then responsible to recover]."*
- C. *Said Abbayye to Raba, "So as to the trouble of dealing with the carcass, what are we talking about? If the value of the carcass in the pit is a zuz, and if it is on the bank of the pit it is worth four zuz, then is he not taking the trouble*

of bringing up the carcass only in his own interest anyhow?”

- D. *He said to him, “The rule is required to cover a case in which when in the pit the carcass is worth a zuz, and on the banks it is also worth a zuz.”*
- E. *Is such case possible?*
- F. *It certainly is, for people say, “A beam in town is worth a zuz, and a beam in the field is worth a zuz.”*
4. A. Said Samuel, “They do not make an estimate in the case of a thief or a robber [the guilty party having to pay in full for the original value of the damaged article] but they do so for compensation for damages [the carcass going back to the injured party]. And I say that the same is the case for borrowing, and Abba [Rab] agrees with me.”
- B. *The question was raised: Is this the sense of what he said, ‘So too, in the case of borrowing, they make an estimate, and Abba agrees with me’? Or perhaps this is the sense of what he said: ‘And I say, even in the case of a borrower they do not make an estimate, and Abba agrees with me’?*”
- C. *Come and take note: there was the case of someone who borrowed an axe from his neighbor and broke it. The case came before Rab. He said to him, “Go pay him for the originally sound axe.” Does this not show that the law of assessment does not apply to borrowing [since the responsible party does not get to deduct the value of the shreds of the ax]?*
- D. *To the contrary, since R. Kahana and R. Assi said to Rab, “Is this the rule?” and Rab shut up, it must follow that they did in fact make an assessment [of the remnants of the axe, and they deducted their value from the compensation to be paid].*
5. A. *It has been stated:*
- B. Said Ulla said R. Eleazar, “They make an estimate [of the value of the remnant of a stolen object] in the case of a thief or a robber [who then pays compensation for the rest of the loss, deducting the value of the remnant of the stolen object, which the original owner gets back as part of his compensation].”
- C. R. Pappa said, “They do not make such an estimate.”
- D. And the decided law is that they do not make such an estimate in the case of a thief or a robber, but in the case of a borrower they do make such an estimate, in accord with the position of R. Kahana and R. Assi.
6. A. And said Ulla said R. Eleazar, “In a case in which the placenta emerges partly on one day, partly on the next, they count the days of uncleanness [decreed at Lev. 12:1ff.] from the first day.”
- B. *Said to him, “Now what are you thinking? That this yields a stringent ruling? Well, it’s a stringent ruling that yields a lenient one, because you have not only declared her unclean as of the first day, but you have declared her clean also as of the first day.”*

- C. *Rather, said Raba, "We take account of the possibility that the first day [is unclean], but the actual counting begins on the second day."*
- D. *What's your point? That there is no placenta that does not contain part of the foetus? That we have already learned as a Tannaite statement: **An after-birth, part of which emerged, is prohibited to be eaten. It is a token of [the birth of] an offspring in a woman, and the token of [the birth of] an offspring in a beast [M. Hul. 4:7E-F].***
- E. *Had I had to derive the rule only from the Mishnah-paragraph, I might have supposed [11B] that it is entirely conceivable that there can be a placenta that does not contain part of the foetus, but that sages made a decree concerning a case in which part of the placenta came forth because of the case in which the whole of it came forth. So we are informed that that consideration is not in play.*
7. A. And said Ulla said R. Eleazar, "A firstborn that perished within the first thirty days of birth—they do not redeem him."
- B. And so taught Rammi bar Hama as a Tannaite statement: "'you shall surely redeem' (Num. 18:15)—might one think that is the case even if he perished within the first thirty days of birth? Scripture says, '...but...', as exclusionary language."

What follows shows how questions are provoked by distinctions and the relationship between or among what is distinguished. No. 8 raises the distinction between big and small beasts, on the one side, and modes of acquisition, on the other. No. 9 distinguishes between heirs of an estate and their clothing, on the one side, and their heirs and their clothing, on the other. No. 10 asks about the distinction between a paid and an unpaid bailee. How these several compositions fit into the larger talmud before us is not an issue; what is important for my argument is only that each distinction is shown to make a difference, all differences shown to yield new distinctions, and it is through that on-going, dialectical process that the analytical program holding the whole together unfolds. I wonder whether Greco-Roman philosophical writing yields a counterpart of sustained, practical reason and applied logic.

8. A. And said Ulla said R. Eleazar, "A large beast is acquired through the act of drawing."
- B. *But we have learned in the Mishnah that that is through an act of delivery!*
- C. He made that statement in accord with the position of the Tannaite authority of the following: And sages say, "This and that [large, small beasts alike] are acquired through drawing." R. Simeon says,

“This and that are acquired through lifting up the beast.”

9. A. And said Ulla said R. Eleazar, “Brothers who divide an estate among themselves—whatever they are wearing is assessed in the value of the estate, but what is worn by their sons and daughters is not assessed as part of the estate.”
- B. Said R. Pappa, “Sometimes even what they are wearing is not assessed in the value of the estate. *You would find such a case in the instance of the eldest of the sons, [who is spared this degrading procedure] since the rest of them would concur that what he says should be treated with respect.*”
- 10.A. And said Ulla said R. Eleazar, “A bailee who handed over the bailment to another bailee is exempt from further liability. *Now that is beyond question when it comes to the case of an unpaid bailee who handed over his bailment to a paid bailee, for in that case, the quality of the guardianship of the bailment is improved. But even if a paid bailee hands over the bailment to an unpaid one, where the quality of guardianship diminishes, he is still not liable, for he has transferred the bailment in any event to a responsible party.*”
- B. Raba said, “A bailee who entrusted [the bailment] to another bailee is liable. *There is no issue in respect to a paid bailee who handed the bailment over to an unpaid bailee, in which case he has diminished the standard of care of the bailment. But even in the case of an unpaid bailee who handed the beast over to a paid bailee, in which case he has improved the conditions of the bailment, he remains liable. What is the reason? He may say to him, ‘You are credible to me when you take an oath, but the other party is not credible to me when he takes an oath.’*”

One of the category-formations that a legal system for a slave holding society generates is the distinction between realty and personalty, that is, what we would call real estate and property for which we have no name at all, namely, human beings. Here, as we see as No. 11 shades into No. 12, we see that the relationship between the categories of wealth, real and personal, leads to a set of comparisons and contrasts.

- 11.A. And said Ulla said R. Eleazar, “The decided law is that to collect a debt the creditor may attach the slaves of the debtor.”
- B. Said R. Nahman to Ulla, “Did R. Eleazar make this statement even with reference to attaching the slaves of an estate?”
- C. “No, only from him.”
- D. “Well if it was only with reference to him, then one can collect a debt even by seizing the cloak on his back! [So why bother to make such a statement anyhow?]”
- E. “Here with what case do we deal? It is one in which the slave was mortgaged for the debt, in line with what Raba said. For said Raba, ‘If one mortgaged one’s slave and then sold him, the creditor can collect by

attaching the slave. If he mortgaged his ox and sold it, the creditor cannot collect from it. *What's the difference? In the one case, the matter is publicly known, but in the other, the matter is not going to be publicly known [so the creditor has no way of knowing what has happened].*"

- F. **[12A]** *After [Nahman] left, Ulla said to them, "This is what R. Eleazar said, '...even with reference to attaching the slaves of an estate.'"*
- G. *[Hearing about this reversion,] said R. Nahman, "Ulla spoke disingenuously."*
- H. *There was a case in Nehardea, and the judges of Nehardea attached the slaves in the hands of the heirs to pay a debt of the deceased.*
- I. *There was a case in Pumbedita and R. Hana bar Bizna attached the slaves in the hands of the heirs to pay a debt of the deceased.*
- J. *Said to them R. Nahman, "Go, retract your rulings, and if not, then we are going to attach your houses [to compensate the parties whom your incorrect rulings have damaged]."*
- K. *Said Raba to R. Nahman, "And lo, there is Ulla, there is R. Eleazar, there are the judges of Nehardea, there is R. Hana bar Bizna. So what authorities do you claim to evoke in support of your position?"*
- L. *He said to him, "Well, as a matter of fact, we know a Tannaite formulation, for Abimi stated as a Tannaite formulation: 'A prosbol [nullifying the remission of debts in the Sabbatical Year] applies to real estate but it does not apply to slaves. Movables are acquired along with real estate but are not acquired along with slaves.'" [So slaves are in a different category from real estate, just as I have said.]"*
- 12.A. *May we say that the same issue is what is under debate in the following Tannaite dispute: If one party sold to another slaves and real estate, if the purchaser has acquired possession of the slaves, he has not acquired possession of the real estate. If he acquired possession of the real estate, he has not acquired possessions of the slaves. If the sale involved real estate and movables, if he acquired possession of the real estate, he has acquired possession of the movables. If he has acquired possessions of the movables, he has not acquired possession of the real estate. If the sale involved slaves and movables, if he acquired possession of the slaves, he has not acquired possession of the movables. If he acquired possession of the movables, he has acquired possession of the slaves. And lo, it has been taught on Tannaite authority: if he has acquired possession of the slaves, he also has acquired possession of the movables. Now is this not what is at issue between the two formulations of the rule, namely: one authority takes the view that slaves are in the classification of real estate, and the other authority maintains that slaves are in the classification of movables?*
- B. *Said R. Iqa b. R. Ammi, "All parties concur that slaves are in the classification of real estate. When the latter formulation tells us that, if he has ac-*

quired possession of the slaves, he also has acquired possession of the movables, *that poses no problem. But when the other, prior formulation states that there has been no valid act of acquisition, that is because the kind of real estate that we require is what bears the same indicative traits as the walled cities of Judah, which are utterly immovable. For we have learned in the Mishnah: Property for which there is security is acquired through money, writ and usucaption. And that for which there is no security is acquired only by an act of drawing [from one place to another]. Property for which there is no security is acquired along with property for which there is security through money, writ, and usucaption. And property for which there is no security imposes the need for an oath on property for which there is security [M. Qid. 1:5].*”

- C. *What is the scriptural basis for this ruling?*
- D. Said Hezekiah, “Said Scripture, ‘And their father gave them great gifts of silver and of gold and of precious things with fortified cities in Judah’ (2 Chr. 21:3).”
- E. *There are those who say, said R. Iqa b. R. Ammi, “All parties concur that slaves are in the classification of movables. When the latter formulation tells us that, if he has not acquired possession, that poses no problem. But when the other, prior formulation states that there has been a valid act of acquisition, that is because the movables that were acquired were actually worn by the slave.”*
- F. *But even if they were actually worn by him, what difference does that make? What he is is just a walking courtyard, and a walking courtyard does not effect ownership [of its contents for the person who acquires it]. And if you say that the rule refers to a case in which he is standing still, lo, said Raba, “In any case in which, if something were in motion, it would not effect transfer of ownership, if the same thing is standing still or sitting down, it also does not effect transfer of ownership.”*
- G. *The law refers to a case in which the slave was in stocks.*
- H. *But has it not been taught in the cited Tannaite formulation: if one acquired ownership of the land, he has acquired ownership of the slaves?*
- I. *That speaks of a case in which the slaves were standing within the limits of the real estate.*
- J. *Is there then the inference that the reason that acquisition has not been effected is a case in which the slaves were not standing within the limits of the real estate that was acquired? Then that poses no problem to this formulation of the view of R. Iqa b. R. Ammi that slaves are classified as movables. That explains why, if they are standing in the property, the transfer is effected for them as well as for the real estate, but if not, then it is not effected. But in line with the formulation, “Slaves are classified as real estate,” what difference does it make to me whether they were standing in the real estate when it was acquired,*

or whether they were not there? Lo, said Samuel, "If one has sold to someone ten fields in two states, once one has made acquisition of one of them, he has acquired them all"!

- K. *Well, in accord with your version of matters, namely, "Slaves are classified as real estate," then what difference does it make to me whether the slaves were standing within the property or not?! [12B] Lo, we have as established fact that we do not require the slaves to be gathered on the land anyhow? So what is there to be said? It is only that there is a distinction to be drawn between movables that are in fact in motion and movables that in fact cannot be moved about. And here too we maintain that there is a distinction to be drawn between immovables that are in fact in motion and immovables that in fact cannot be moved about. Specifically, slaves are now conceived to be in the classification of real estate that is movable, while the ten fields, the land is conceived to be one integrated plot.*

We revert to the Mishnah-paragraph's own taxic structure, explained above; we proceed to expound another component of it and how that square of the grid relates to other squares of the same grid; only then do we turn to the superimposition of another grid altogether.

IV.1

- A. **Property which is not subject to the law of Sacrilege:**
- B. *It is specifically property that is not at that moment subject to the law of sacrilege that is excluded from the rule at hand, lo, if it is property that has been consecrated [but is not yet subject to the law of sacrilege] is not exempt from the rule at hand. So who is the Tannaite authority behind that position?*
- C. *Said R. Yohanan, "In the case of Lesser Holy Things, it is the view of R. Yosé the Galilean, who has said that they are classified as the property of the owner. For so it has been taught on Tannaite authority: "If a soul sin and commit an act of sacrilege against the Lord and lie to his neighbor" (Lev. 5:21)—this extends the law to Lesser Holy Things, which are classified as the property of the neighbor,' the words of R. Yosé the Galilean." [Kirzner: e.g., peace offerings belong partly to the Lord and partly to the neighbor, parts burnt on the altar, parts consumed.]*
- D. *But lo, we have learned in the Mishnah: **He [who was a priest] who betroths a woman with his share [of the priestly gifts], whether they were Most Holy Things or Lesser Holy Things—she is not betrothed [M. Qid. 2:8A-B].** Now do we have to say that that rule does not accord with the position of R. Yosé the Galilean?*
- E. *Well, you may even maintain that that does accord with the position of R. Yosé*

- the Galilean. When R. Yosé the Galilean made his ruling, it concerned animals that had been consecrated but were still alive, but in the cases of Holy Things that had been slaughtered, even R. Yosé the Galilean concurs that when those who have a right to eat the flesh acquire that right, it is from the table of the Most High that they have acquired that right.*
- F. *Well, then, when the beast is alive, does he actually take the view that the consecrated beast in the case of Lesser Holy Things is private property? Lo, we have learned in the Mishnah: [As to] the firstling [the first calves of the year's herd]: (1) they [the priests] sell it [when the animal is] unblemished [and] alive; (2) and [when the animal is] blemished, [whether it is] alive or slaughtered. (3) And they give it as a token of betrothal to women. They do not deconsecrate [produce in the status of] second tithe with (1) a poorly minted coin nor with (2) coin that is not [currently] circulating, nor with (3) money that is not in one's possession [M. M.S. 1:2]. And said R. Nahman said Rabbah bar Abbuha, "This rule pertains only to a firstling at this time [after the destruction of the Temple], for, since it is not suitable to be offered up, the priests have a right of ownership in it; but in the time that the sanctuary was standing, when the beast was suitable for an offering, that was not the case" [Kirzner: the priests would not have had in it a proprietary right nor have been able to use it for the betrothal of a woman]. And objected Raba to R. Nahman, "'If a soul sin and commit an act of sacrilege against the Lord and lie to his neighbor" (Lev. 5:21)—this extends the law to Lesser Holy Things, which are classified as the property of the neighbor,' the words of R. Yosé the Galilean." And Rabina replied, "[They are considered private property] only in the case of a firstling born outside of the Land, along the lines of the position of R. Simeon, who has said, 'If firstlings were brought, unblemished, from abroad, they may be offered up.'" So that is the case only if they actually had been brought to the country, but if they were not brought there, there was no requirement to bring them there to begin with for that purpose [so they are merely the private property of the priests]. Now if it really is the position of R. Yosé the Galilean that they are private property when they are alive, [13A] then why did Rabina not simply say, "This represents the position of R. Yosé the Galilean, the other, the position of rabbis"?* [Yosé would then maintain that the firstling is the private property of the priests; Nahman's statement that a firstling is not private property represents the position of his opposition].
- G. *Do you make reference to the priestly gifts? The priestly gifts are exceptional [even Yosé regards them in no way as the private property of the priest, and all rabbis concur on the same point, which is why Rabina could not appeal to the distinction between Yosé's and rabbis'*

opinions on the matter]], *for, when people gain their entitlement to them, it is from the table of the Most High that they gain that entitlement* [Kirzner: even while the firstling is still alive].

We proceed to the definition of the Mishnah's taxa.

V.1

- A. **property belonging to members of the covenant [Israelites]:**
- B. *What is excluded by this qualification? If it is to exclude a gentile, lo, that is later on made explicit: **An ox belonging to an Israelite which gored an ox belonging to a gentile—[the Israelite owner] is exempt [M. 4:3A-B].***
- C. *The Tannaite authority here lays out the principle and there articulates it.*

VI.1

- A. **property that is held in ownership:**
- B. *What is excluded by this qualification*
- C. *Said R. Judah, "It is to exclude a case in which [there are two defendants, and] one says, 'Your ox did the damage,' and the other says, 'You ox did the damage.'"*
- D. *Well, is this not explicitly stated below: If there were two oxen pursuing a third, and this party claims, "Your ox did the damage," and that party claims, "You ox did the damage," both parties are exempt from having to pay compensation?*
- E. *The Tannaite authority here lays out the principle and there articulates it.*
- 2. A. *In a Tannaite formulation it has been stated: What is excluded is ownerless property.*
- B. *How shall we imagine such a situation? If we say that an ox belonging to us has gored an ownerless ox, against whom is there to lay claim? And if it is an ownerless ox that gored an ox belonging to one of us, then why not just go and seize the ownerless ox that has done the damage?*
- C. *The rule speaks of a case in which someone else went and acquired the ownerless beast [and in line with the Mishnah's qualification, the injured party gets nothing].*
- 3. A. *Rabina said, "The phrase is meant to exclude this case: an ox gored, and then the owner sanctified it, or the ox gored, and then the owner declared it free for all."*
- B. *So too it has been taught on Tannaite authority:*
- C. *Furthermore said R. Judah, "Even if an ox gored and afterward the owner declared it sanctified, or it gored and afterward the owner declared it free for all, the owner is exempt, in line with this verse:*

‘And it has been testified to his owner, and he has not kept it in, but it has killed a man or a woman the ox shall be stoned’ (Ex. 21:29). That is the case only where the conditions that prevail at the time of the killing are the same as those that prevail at the time of the court appearance [that is, the beast must be private property throughout the process].”

- D. *Well, would we not then require that the same conditions prevail at the time of the final verdict? Lo, the verse itself, saying, “The ox shall be stoned” speaks of the time of the final verdict!*
- E. *Formulate the matter in this way:* That is the case only where the conditions that prevail at the time of the killing are the same as those that prevail at the time of the court appearance and at the time of the final verdict.

VII.1

- A. **and that is located in any place other than in the domain which is in the ownership of the one who has caused the damage:**
- B. *That is because the defendant may argue against the plaintiff, “What are your oxen doing on my property.”*

VIII.1

- A. **or in the domain which is shared by the one who suffers injury and the one who causes injury:**

The following in just a few sentences draws together these grids:

1. a courtyard owned by partners other than the person responsible for the damages vs. one in which the defendant is an owner [“any situation in which the injured party has domain and the party responsible for the injury does not have domain”]
2. the classifications of tooth and foot
3. a paid bailee and a borrower, an unpaid bailee or a hirer,
4. negligence as against deliberate action

Now to proceed to the problem at hand:

- B. Said R. Hisda said Abimi, “In the case of a courtyard owned by partners, liability is incurred for damages caused under the generative classifications of tooth and foot, *and this is the sense of the Mishnah’s statement: and that is located in any place other than in the domain which is in the ownership of the one who has caused the damage*, in which case the defendant is exempt;

but **in the domain which is shared by the one who suffers injury and the one who causes injury, ...[the owner of] that one which has caused the damage is liable to pay compensation for damage.**"

- C. But R. Eleazar said, "No liability is incurred for damages caused under the generative classifications of tooth and foot, *and this is the sense of the Mishnah's statement: ...except for that is located in any place other than in the domain which is in the ownership of the one who has caused the damage, or in the domain which is shared by the one who suffers injury and the one who causes injury*—where there is also an exception. But **when one has otherwise caused damage, [the owner of] that one which has caused the damage is liable to pay compensation.**"
- D. *That statement encompasses damage in the classification of the generative category of horn* [Kirzner: for which there is liability even in public domain].
- E. *That position poses no problems to Samuel, but from the perspective of Rab, who has said, "The Tannaite authority has made reference to ox with the intention of encompassing all kinds of damage that an ox may do, what is encompassed by the clause, when one has otherwise caused damage, [the owner of] that one which has caused the damage is liable to pay compensation.*"
- F. *It was meant to encompass that concerning which our rabbis have taught on Tannaite authority: ...when one has otherwise caused damage, [the owner of] that one which has caused the damage is liable to pay compensation* is meant to encompass liability for a paid bailee and a borrower, an unpaid bailee or a hirer, in the case in which any one of these has an animal as a bailment that did damage; then the ox that was presumed innocent pays half damages, and the ox that was an attested danger pays damages. But if a wall broken open at night or robbers took the beast by force, and then it went out and did damages, they are exempt.
2. A. The master has said: "**when one has otherwise caused damage, [the owner of] that one which has caused the damage is liable to pay compensation** is meant to encompass liability for a paid bailee and a borrower, an unpaid bailee or a hirer, in the case in which any one of these has an animal as a bailment that did damage; then the ox that was presumed innocent pays half damages, and the ox that was an attested danger pays damages...."
- B. *Now how are we to imagine such a case? if we should say that the ox belonging to the lender did injury to the ox that belonged to the borrower, why cannot the lender say to the borrower, "If my ox had done damage to someone else's, you would have had to pay compensation" [since the borrower is responsible*

for any damage an ox he has borrowed may do], so now that my ox has done damage to your ox, how can you claim compensation from me?" And if the ox of the borrower did injury to the ox of the lender, why cannot the lender say to the borrower, "If my ox had been injured by anybody else's, you would have had to compensate me for the full value of my ox. Now that your ox has done the damage, how can you pay me half damages?"

- C. In point of fact, we deal with a case in which the ox of the lender did injury to the ox of the borrower. But here with what sort of a case do we deal? it is one in which the borrower had taken upon himself responsibility for the body of the ox [14A] but not for any damage that the ox may do to a third party.
- D. Yeah—well what about the rest of the story: But if a wall broken open at night or robbers took the beast by force, and then it went out and did damages, they are exempt? Then if it happened by day, he would have been responsible! Yet you just said that he did not take responsibility for any damage that the ox might do to a third party.
- E. This is the sense of the statement: But if he accepted responsibility for damage that it might do, he would be liable to pay compensation. But if a wall broke open at night or robbers took the beast by force, and then it went out and did damages, they are exempt.
3. A. [But R. Eleazar said, "No liability is incurred for damages caused under the generative classifications of tooth and foot":] *Is that so? But did not R. Joseph teach as a Tannaite statement: "In the case of a jointly owned courtyard or an inn, there is liability for damages that fall into the classification or tooth and foot." Does this not refute R. Eleazar's position?*
- B. R. Eleazar may say to you, "But do you really think that no one dissents from that Tannaite formulation? But has it not been taught on Tannaite authority: **Four general principles did R. Simeon b. Eleazar state in connection with damages: In any situation in which the injured party has domain and the party responsible for the injury does not have domain, the party responsible for the injury is liable to pay the full damages for injury he has caused. If the party responsible for the injury has domain and the injured party does not, the former is exempt from all obligation for compensation for damages. If this one and that one both enjoy rights of domain, for instance, a courtyard belonging to partners, or a valley, as to damage done by tooth or leg, the party responsible for the injury is exempt. As to damage done by goring, pushing biting, lying down, or kicking, a beast that is an attested danger imposes upon the owner the obligation to pay full damages, and one that had been deemed harmless imposes upon the owner the obligation to pay**

half damages. In any situation in which neither this party nor that party has domain, for instance, a courtyard that belongs to neither party, for damage done by tooth or leg, the owner pays full damages; and as to damage done by goring, pushing, biting, lying down, or kicking, a beast that is an attested danger imposes upon the owner the obligation to pay full damages, and one that had been deemed harmless imposes upon the owner the obligation to pay half damages” [T. B.Q. 1:9]. *So in any event, the passage is explicit: If this one and that one both enjoy rights of domain, for instance, a courtyard belonging to partners, or a valley, as to damage done by tooth or leg, the party responsible for the injury is exempt!* *So the passages in the names of Tannaite authorities do contradict one another.”*

- C. *When that latter formulation was set forth, it was meant to make exclusive reference to a courtyard that was designated for the plaintiff and the defendant whether for use for storing produce or for tying up oxen. The formulation cited by R. Joseph, by contrast, referred to a courtyard that was designated for use for storing produce, but not for tying up oxen. So with respect to damage done by tooth, the premises were regarded in effect as the domain of the plaintiff along [there being no right to tie up cattle there]. You may find in the language of the formulation support for that view, for here we find a reference that is explicit:...an inn. In the other formulation, by contrast, the comparison is drawn to ...a jointly owned valley.”*
- D. *That's decisive proof.*
- E. *Objected R. Zira, “While, if the courtyard is designated for the produce of both parties, lo, we require that the condition be met, ‘...and it feed in another man's field’ (Ex. 22:4), which condition has not been met in this case!”*
- F. *Said to him Abbaye, “Since it is not designated for use for oxen, it falls into the category of a field belonging to a third party.”*
- G. *Said R. Aha of Difti to Rabina, “May we then say that since the Tannaite formulations do not differ on this matter, so too the Amoraic formulations also do not differ?” [Kirzner: Hisda deals with a case where the keeping of cattle has not been permitted, Eleazar with one in which the premises may be used for that purpose also.]*
- H. *He said to him, “Quite so.”*
- I. *But if you prefer to think that they do differ, then what is at issue between them is the question raised by R. Zira and the solution proposed by Abbaye [Kirzner: Hisda concurs with Abbaye, Eleazar concurs with Zira].*
4. A. *Reverting to the body of the foregoing: **Four general principles did R. Simeon b. Eleazar state in connection with damages: In any situation in which the injured party has domain and the party responsible for the injury does not have***

domain, the party responsible for the injury is liable in all.

- B. *Now the language that is used is not “for all [kinds of damages]” but “liable in all”—meaning, for the whole of the damage. Now is this not in accord with R. Tarfon, who takes the view, “Damage varying from the norm that is done by horn in the premises of the injured party will be compensated in full”?*
- C. *But then what about what comes later on: **In any situation in which neither this party nor that party has domain, for instance, a courtyard that belongs to neither party, there is liability for damage done by tooth or foot!** Now what can be the meaning of **neither this party nor that party has domain?** If we say that **neither this party nor that party has domain**, but someone else does, for there has to be compliance with the condition, “and it feed in another man’s field” (Ex. 22:4) [the field must belong to the plaintiff], and that condition has not been met here. So it is obvious that the sense of **neither this party nor that party has domain** is, it is owned only by the plaintiff. And yet it states at the end, **a beast that is an attested danger imposes upon the owner the obligation to pay full damages, and one that had been deemed harmless imposes upon the owner the obligation to pay half damages.** Now that accords with the view of rabbis, who maintain, “Damage varying from the norm that is done by horn in the premises of the injured party will be compensated only by half-damages.” So are we going to end up in the position of having the opening clause accord with the view of R. Tarfon and the closing one with rabbis?*
- D. *Yes indeed. For lo, Samuel said to R. Judah, “Sharp-wit! Ignore the Tannaite formulation and accept my position that the opening clause accords with the view of R. Tarfon and the closing one with rabbis.”*
- E. *Rabina in the name of Raba said, “The whole really represents the position of R. Tarfon. And what is the meaning of the language, **neither this party nor that party has domain?** **Neither this party nor that party has domain** with respect to storing produce, but all the same are this party and that party with respect to tying up oxen. So with reference to damage done by the tooth, the produce belongs to the injured party, but with regard to damages done by the horn, it is regarded as public domain.”*
- F. *Well, if that’s the case, then how can you say that there are four classifications, when there are only three? [Kirzner: in principle they are only three in number, exclusively the plaintiff’s premises, exclusively the defendants, and partnership premises.]*
- G. *Said R. Nahman bar Isaac, [14B] “There are three comprehensive principles, applying to four distinct situations [Kirzner: partnership premises may be subdivided into two, where both have the*

right to keep produce and cattle and where the right to keep produce is exclusively the plaintiffs].

The entire exposition finds cogency in a single thought-problem, which is, how distinct grids interrelate. The sizable, yet rather derivative unit at the end, in which four distinct grids are introduced, three of them of considerable generative force in the composite, shows us a routine example of the process. Let me now briefly summarize what we have seen. I.1 commences with a Tannaite complement to the Mishnah's rule. After a talmudic reading of that passage, we proceed, at No. 2, to a second Tannaite complement, this one too accorded its own, considerable talmud, at No. 3. II.1-2 complement the Mishnah's statement with a concrete case, illustrating the principle of the Mishnah and investigating its implications and logic. We end up with a very good example illustrating the rather subtle rule of the Mishnah. III.1 finds the scriptural authority behind the Mishnah's ruling. Nos. 2, 3 provide a talmud to No. 1. Nos. 4-5 continue the inquiry into how damages are assessed in the present matter, all thus extending the Mishnah's rule and amplifying it. Nos. 6-11+12 are tacked on to No. 5 because they form a composite made up of materials that share the same named authorities. IV.1 finds the authority behind the Mishnah's rule, a common mode of Mishnah-exegesis. Nos. 2-3 provide an appendix to the foregoing. No. 4 provides another amplification of the language of the Mishnah. At Nos. 5, 6 we have a secondary problem in amplification of the Mishnah's rule. V.1, VI.1-3 ask the same question of Mishnah-exegesis. VII.1 then explains the reasoning behind the Mishnah's rule. VIII.1, with its talmud at Nos. 2, 3 (for 1.C), and its appendix at No. 4, a talmud for 3.B, provides an important qualification for the Mishnah's rule.

III. *The Bavli's Power of Abstraction*

By the Bavli's intellectual character is meant what gives the Bavli traits of abstraction, such that it tells us more than this and that about many things, but some one thing about everything. That is, by asking about the intellectual character of the writing—how it defines problems, how it solves problems—I presuppose that the writing in fact exhibits a character of an intellectual sort. The Bavli indeed com-

prises much more than a compilation of facts, that is sets forth an argument, a proposition, a method that transcends data and governs the formation of thought. At important points, the Bavli sets forth information and that alone or mainly, having none of that intellectual character that, at other points, makes the writing remarkably engaging and challenging. In the chapter of the Bavli, part of which we have addressed, I have identified an exceedingly important aspect of the character of the document as a whole, so far as the Bavli commands respect for its intellectual vigor, not merely for its religious interest. The many centuries from the seventh to our own times, in which the best intellects of eternal Israel have engaged with the Bavli, provide probative evidence of the definition, and character, of this writing: a work of intellect, imparting to facts importance beyond themselves; a work of applied reason and practical logic, capable of turning concrete things into exemplifications of abstractions of remarkably universal pertinence.

CHAPTER FIVE

THE BAVLI'S DIALECTICS

I. What is a Dialectical Argument in The Talmud

The Talmud's distinctive trait is its particular mode of argument, the dialectical one. Rather than define the dialectical argument in abstract terms, we start with a concrete case, from which all else will take on meaning. For the moment it suffices to define a dialectical argument as a give and take in which parties to the argument counter one another's arguments in a progression of exchanges (often, in what seems like an infinite progress to an indeterminate conclusion). That definition will be refined in due course. The passage that we consider occurs at the Babylonian Talmud Baba Mesia 5B-6A, which is to say, Talmud to Mishnah Baba Mesia. 1:1-2. Our interest is in the twists and turns of the argument, on which my comments focus:

BABYLONIAN TALMUD BABA MESIA 5B-6A

[5B] IV.1.

- A. This one takes an oath that he possesses no less a share of it than half, [and that one takes an oath that he possesses no less a share of it than half, and they divide it up]:

The rule of the Mishnah, which is cited at the head of the sustained discussion, concerns the case of two persons who find a garment. We settle their conflicting claim by requiring each to take an oath that he or she owns title to no less than half of the garment, and then we split the garment between them.

Now how does the Talmud undertake its sustained analysis of this matter? Our first question is one of text-criticism: analysis of the Mishnah-paragraph's word choice. We say that the oath concerns the portion that the claimant alleges he possesses. But the oath really affects the portion that he does not have in hand at all:

- B. *Is it concerning the portion that he claims he possesses that he takes the oath, or concerning the portion that he does not claim to possess?* [Daiches: “The implication is that the terms of the oath are ambiguous. By swearing that his share in it is not “less than half,” the claimant might mean that it is not even a third or a fourth (which is ‘less than half’), and the negative way of putting it would justify such an interpretation. He could therefore take this oath even if he knew that he had no share in the garment at all, while he would be swearing falsely if he really had a share in the garment that is less than half, however small that share might be].
- C. *Said R. Huna, “It is that he says, ‘By an oath! I possess in it a portion, and I possess in it a portion that is no more than half a share of it.’”* [The claimant swears that his share is at least half (Daiches, *Baba Mesia, ad loc.*)].

Having asked and answered the question, we now find ourselves in an extension of the argument; the principal trait of the dialectical argument is now before us in three key-words:

- [1] but!
 [2] maybe the contrary is the case, so—
 [3] what about?

The argument then is conducted by the setting aside of a proposition in favor of its opposite. Here we come to the definitive trait of the dialectic argument: its insistence on challenging every proposal with the claim, “maybe it’s the opposite?” This pestering question forces us back upon our sense of self-evidence; it makes us consider the contrary of each position we propose to set forth. It makes thought happen. True, the Talmud’s voice’s “but”—the whole of the dialectic in one word!—presents a formidable nuisance. But so does all criticism, and only the mature mind will welcome criticism. Dialectics is not for children, politicians, propagandists, or egoists. Genuine curiosity about the truth shown by rigorous logic forms the counterpart to musical virtuosity. So the objection proceeds:

- C. *Then let him say, “By an oath! The whole of it is mine!”*

Why claim half when the alleged finder may as well demand the whole cloak?

- D. *But are we going to give him the whole of it?* [Obviously not, there is another claimant, also taking an oath.]

The question contradicts the facts of the case: two parties claim the cloak, so the outcome can never be that one will get the whole thing.

E. *Then let him say, "By an oath! Half of it is mine!"*

Then—by the same reasoning—why claim “no less than half,” rather than simply, half.

F. *That would damage his own claim* [which was that he owned the whole of the cloak, not only half of it].

The claimant does claim the whole cloak, so the proposed language does not serve to replicate his actual claim. That accounts for the language that is specified.

G. *But here too is it not the fact that, in the oath that he is taking, he impairs his own claim?* [After all, he here makes explicit the fact that he owns at least half of it. What happened to the other half?]

The solution merely compounds the problem.

H. *[Not at all.] For he has said, "The whole of it is mine!"* [And, he further proceeds.] “And as to your contrary view, By an oath, I do have a share in it, and that share is no less than half!”

We solve the problem by positing a different solution from the one we suggested at the outset. Why not start where we have concluded? Because if we had done so, we should have ignored a variety of intervening considerations and so should have expounded less than the entire range of possibilities. The power of the dialectical argument now is clear: it forces us to address not the problem and the solution alone, but the problem and the various ways by which a solution may be reached; then, when we do come to a final solution to the question at hand, we have reviewed all of the possibilities. We have seen how everything flows together, nothing is left unattended.

What we have here is not a set-piece of two positions, with an analysis of each, such as the formal dialogue exposes with elegance; it is, rather, an unfolding analytical argument, explaining why this, not that, then why not that but rather this; and onward to the other thing and the thing beyond that—a linear argument in constant forward motion. When we speak of a moving argument, this is what we mean: what is not static and merely expository, but what is dynamic and always contentious. It is not an endless argument, an argument for the sake of arguing, or evidence that important to the Talmud and other writings that use the dialectics as a principal mode of dynamic argument is process but not position. To the contrary,

the passage is resolved with a decisive conclusion, not permitted to run on.

But the dialectical composition proceeds—continuous and coherent from point to point, even as it zigs and zags. That is because the key to everything is give and take. We proceed to the second cogent proposition in the analysis of the cited Mishnah-passage, which asks a fresh question: why an oath at all?

2. A. [It is envisioned that each party is holding on to a corner of the cloak, so the question is raised:] Now, since this one is possessed of the cloak and standing right there, and that one is possessed of the cloak and is standing right there, why in the world do I require this oath?

Until now we have assumed as fact the premise of the Mishnah's rule, which is that an oath is there to be taken. But why assume so? Surely each party now has what he is going to get. So what defines the point and effect of the oath?

- B. Said R. Yohanan, "This oath [to which our Mishnah-passage refers] happens to be an ordinance imposed only by rabbis,
 C. "so that people should not go around grabbing the cloaks of other people and saying, 'It's mine!'" [But, as a matter of fact, the oath that is imposed in our Mishnah-passage is not legitimate by the law of the Torah. It is an act taken by sages to maintain the social order.]

We do not administer oaths to liars; we do not impose an oath in a case in which one of the claimants would take an oath for something he knew to be untrue, since one party really does own the cloak, the other really has grabbed it. The proposition solves the problem—but hardly is going to settle the question. On the contrary, Yohanan raises more problems than he solves. So we ask how we can agree to an oath in this case at all?

- D. *But why then not advance the following argument: since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*

Yohanan places himself into the position of believing in respect to the oath what we will not believe in respect to the claim on the cloak, for, after all, one of the parties before us must be lying! Why sustain such a contradiction: gullible and suspicious at one and the same time?

- E. *In point of fact, we do not advance the argument: since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking, for if you do not concede that fact, then how is it possible that the All-Merciful has ruled, "One who has conceded part of a claim against himself must take an oath as to the remainder of what is subject to claim"?*

If someone claims that another party holds property belonging to him or her, and the one to whom the bailment has been handed over for safe-keeping, called the bailee, concedes part of the claim, the bailee must then take an oath in respect to the rest of the claimed property, that is, the part that the bailee maintains does not belong to the claimant at all. So the law itself—the Torah, in fact—has sustained the same contradiction. That fine solution, of course, is going to be challenged:

- F. *Why not simply maintain, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- G. *In that other case, [the reason for the denial of part of the claim and the admission of part is not the intent to commit fraud, but rather,] the defendant is just trying to put off the claim for a spell.*

We could stop at this point without losing a single important point of interest; everything is before us. One of the striking traits of the large-scale dialectical composition is its composite-character. Starting at the beginning, without any loss of meaning or sense, we may well stop at the end of any given paragraph of thought. But the dialectics insists on moving forward, exploring, pursuing, insisting; and were we to remove a paragraph in the middle of a dialectical composite, then all that follows would become incomprehensible. That is a mark of the dialectical argument: sustained, continuous, and coherent—yet perpetually in control and capable of resolving matters at any single point. For those of us who consume, but do not produce, arguments of such dynamism and complexity, the task is to discern the continuity, that is to say, not to lose sight of where we stand in the whole movement.

Now, having fully exposed the topic, its problem, and its principles, we take a tangent indicated by the character of the principle before us: when a person will or will not lie or take a false oath. We have a theory on the matter; what we now do is expound the theory, with special reference to the formulation of that theory in explicit terms by a named authority:

- H. This concurs with the position of Rabbah. [For Rabbah has said, “On what account has the Torah imposed the requirement of an oath on one who confesses to only part of a claim against him? It is by reason of the presumption that a person will not insolently deny the truth about the whole of a loan in the very presence of the creditor and so entirely deny the debt. He will admit to part of the debt and deny part of it. Hence we invoke an oath in a case in which one does so, to coax out the truth of the matter.”]
- I. For you may know, [in support of the foregoing], that R. Idi bar Abin said R. Hisda [said]: “He who [falsely] denies owing money on a loan nonetheless is suitable to give testimony, but he who denies that he holds a bailment for another party cannot give testimony.”

The proposition is now fully exposed. A named authority is introduced, who will concur in the proposed theoretical distinction. He sets forth an extra-logical consideration, which of course the law always will welcome: the rational goal of finding the truth overrides the technicalities of the law governing the oath.

Predictably, we cannot allow matters to stand without challenge, and the challenge comes at a fundamental level, with the predictable give-and-take to follow:

- J. But what about that which R. Ammi bar. Hama repeated on Tannaite authority: “[If they are to be subjected to an oath,] four sorts of bailees have to have denied part of the bailment and conceded part of the bailment, namely, the unpaid bailee, the borrower, the paid bailee, and the one who rents.”
- K. *Why not simply maintain, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- L. *In that case as well, [the reason for the denial of part of the claim and the admission of part is not the intent to commit fraud, but rather,] the defendant is just trying to put off the claim for a spell.*
- M. *He reasons as follows: “I’m going to find the thief and arrest him.” Or: “I’ll find [the beast] in the field and return it to the owner.”*

Once more, “if that is the case” provokes yet another analysis; we introduce a different reading of the basic case before us, another reason that we should not impose an oath:

- N. *If that is the case, then why should one who denies holding a bailment ever be unsuitable to give testimony? Why don’t we just maintain that the defendant is just trying to put off the claim for a spell. He reasons as follows: “I’m going to look for the thing and find it.”*

- O. *When in point of fact we do rule, He who denies holding a bailment is unfit to give testimony, it is in a case in which witnesses come and give testimony against him that at that very moment, the bailment is located in the bailee's domain, and he fully is informed of that fact, or, alternatively, he has the object in his possession at that very moment.*

The solution to the problem at hand also provides the starting point for yet another step in the unfolding exposition. Huna has given us a different resolution of matters. That accounts for No. 3, and No. 4 is also predictable:

3. A. *But as to that which R. Huna has said [when we have a bailee who offers to pay compensation for a lost bailment rather than swear it has been lost, since he wishes to appropriate the article by paying for it, (Daiches)], "They impose upon him the oath that the bailment is not in his possession at all,"*
 B. *why not in that case invoke the principle, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
 C. *In that case also, he may rule in his own behalf, I'll give him the money.*
 4. A. *Said R. Aha of Difti to Rabina, "But then the man clearly transgresses the negative commandment: "You shall not covet.""*
 B. *"You shall not covet" is generally understood by people to pertain to something for which one is not ready to pay.*

Yet another authority's position now is invoked, and it draws us back to our starting point: the issue of why we think an oath is suitable in a case in which we ought to assume lying is going on; so we are returned to our starting point, but via a circuitous route:

5. A. **[6A]** *But as to that which R. Nahman said, "They impose upon him [who denies the whole of a claim] an oath of inducement," why not in that case invoke the principle, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
 B. *And furthermore, there is that which R. Hiyya taught on Tannaite authority: "Both parties [employee, supposed to have been paid out of an account set up by the employer at a local store, and store-keeper] take an oath and collect what each claims from the employer," why not in that case invoke the principle, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
 C. *And furthermore, there is that which R. Sheshet said, "We impose upon an unpaid bailee [who claims that the animal has been lost] three distinct oaths: first, an oath that I have not deliberately caused the loss, that I did not put a hand on it, and that it is not in my*

domain at all," *why not in that case invoke the principle, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*

We now settle the matter:

- D. *It must follow that we do not invoke the principle at all, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*

What is interesting is why walk so far to end up where we started: do we invoke said principle? No, we do not.

What we have accomplished on our wanderings is a survey of opinion on a theme, to be sure, but opinion that intersects at our particular problem as well. The moving argument serves to carry us hither and yon; its power is to demonstrate that all considerations are raised, all challenges met, all possibilities explored. This is not merely a set-piece argument, where we have proposition, evidence, analysis, conclusion; it is a different sort of thinking altogether, purposive and coherent, but also comprehensive and compelling for its admission of possibilities and attention to alternatives. What we shall see, time and again, is that the dialectical argument is the Talmud's medium of generalization from case to principle and extension from principle to new cases. That is to say, just as we followed the Bavli's intellectual program in Chapter Four, now we identify the way in which the Talmud realizes that program.

II. *Philosophical Dialectics in General*

Dialectical argument—now defined as the give and take of question asking, sustained through sequences of issues—generally characterizes the Talmud. Many find that mode of argument to mark the Talmud's distinctive quality of mind. Dialectical argument serves the quest for truth through controversy, in the theory that two opposed positions cannot both be right, so each requires criticism on the part of the other. Both Classical philosophy and Talmudic analysis of daily affairs greatly valued argument, the one as a test of knowledge, the other as a sure guide to deep inquiry into truth. And argument demanded not merely set-piece presentation of propositions, pro and con, but challenge and response, analytical reasoning on the spot. Well-reasoned demonstration did not suffice, only rigorous dispute

between responsive, reasonable players. And, as we shall see, all parties deemed contention in quest of truth to form the path to a well-considered position.

Let us begin our definition by moving from the case to the larger philosophical context, hence with an account of dialectics as defined by Aristotle and by Classical philosophy more generally, then turn to cases that set forth the Talmud's version of the same mode of argument. As we shall see, the classification of a certain type of Talmudic argument as dialectical in the conventional sense will prove entirely appropriate. Robin Smith provides the following:

Generally speaking, the practice of arguing with others on the basis of their own opinions and securing premises by asking questions may be described as 'dialectical argument. ...I would propose...as a definition of dialectical argument in its most general sense, *argument directed at another person which proceeds by asking questions*.¹

Certain very specific types of Talmudic arguments readily conform to that definition, though not all Talmudic arguments qualify as dialectical ones. Smith elaborates on this matter in the following language:

The word "dialectical" comes from a verb, *dialogesthai*, which means, 'argue.' Arguments are verbal disputes in which each party attacks and defends positions, arguments can be won and lost. Here we already have an important distinction from demonstrations, in which attack and defense play no part. Dialectical argument differs from demonstrative reasoning in that it is intrinsically a kind of exchange between participants acting in some way as opponents.... Socrates took his philosophical mission in life to be a kind of testing or examining of the beliefs of others through questioning.....The majority of [Plato's] written works take the form of dialogues in which Socrates questions various interlocutors. These depictions of dialectical exchanges are more than a device of presentation for Plato; he gives the name 'dialectic' to the method of philosophy itself... [Dialectical argument] differs from demonstration, which must deduce from first principles and not from what people think...²

Finally, let us ask what a dialectical method should allow us to accomplish. In Smith's terms, it is

¹ Robin Smith, "Logic," in Barnes, *Cambridge Companion to Aristotle*, p. 60.

² Smith, pp. 58-60.

...to make us able to deduce the conclusion we want from premises conceded by the opponent we are faced with. That can be accomplished if we can find premises that have two properties: [1] the desired conclusion follows from them, and [2] the answerer will concede them...³

Now let us broaden our brief examination of the matter to include a variety of definitions that work together, all being necessary, none sufficient, to the task.

Dialectical argument—the movement of thought through contentious challenge and passionate response, initiative and counter-ploy—characterizes the Talmud of Babylonia in particular, and finds a limited place, also, in only two other Rabbinic documents.⁴ “Dialectical” means, moving, and for the Talmud a dialectical argument is a systematic exposition, through give and take, moving from point to point; the argument is the thing, since the dialectical argument strays from its original, precipitating point and therefore does not ordinarily undertake the demonstration, but rather the exploration, of a fixed proposition. Argument moves along, developing an idea through questions and answers, sometimes implicit, but more commonly explicit. That mode of analysis through media of question-answer and contentious argument imparts to the Talmud its distinctive, and I should claim, unique characteristics of thought.⁵ Called

³ Smith, pp. 60-61.

⁴ The outstanding case is Sifra, which sets forth a vast repertoire of dialectical arguments, as adumbrated in the preceding chapter. Besides Sifra and the Yerushalmi, however, I do not know any other Rabbinic compilation that sustainedly utilizes the dialectical argument—or does so at all. The Tosefta contains nothing of consequence. The dialectical argument does not appear in any Midrash-compilation (besides Sifra), e.g., Genesis Rabbah, Leviticus Rabbah, Pesiqta de Rab Kahana, Mekhilta, or the late Midrash-compilations; or in *The Fathers*, or in *The Fathers According to Rabbi Nathan*. People who reject out of hand the documentary hypothesis in the description of the Rabbinic writings do not pay attention to the powerful signals of differentiation of one from another, of which the use or neglect of dialectics forms only one; the entire question of language-rules that apply here but not there, that distinguish the Yerushalmi from the Bavli, is not raised.

⁵ For an equivalent exercise of hermeneutics of a contentious order, we look in vain among the other law codes and commentaries of antiquity, which tend to a certain blandness. For the Zoroastrian counterpart, see my *Judaism and Zoroastrianism at the Dusk of Late Antiquity. How Two Ancient Faiths Wrote Down Their Great Traditions*. Atlanta, 1993: Scholars Press for South Florida Studies in the History of Judaism. In medieval times the situation would change and systematic argument would enter in, as shown by James Brundage, *Canon Law* (1994); see especially his chapter on Gratian.

in the language of the Talmud *shaqla vetarya*, give and take, dialectics requires definition in neutral terms.

What, exactly, do I mean by a “moving argument”? It is one that transcends the juxtaposition of propositions, arguments, and evidence. This it does by treating propositions, arguments, and evidence to a process of interchange and challenge, composing out of the pronouncement of differences of opinion an ongoing, unfolding argument, one in which one point is countered by another, so that, what then follows is not a recapitulation of what has been said, but an interchange of reason and argument. Then because the players listen thoughtfully to one another and respond to the point, the “moving argument” may, and should, change course. This is always in response to the arguments that are set forth, the obstacles placed in the original path of thought. The purpose of the dialectical argument is not to advocate but to explore, not to demonstrate truth but to discover truth out of a process of contention and confrontation. The successful argument formed dialectically will deal with all possibilities and reach not a climax but a laconic conclusion: all things having been said, we end up here, rather than somewhere else.

The Rabbinic dialectical argument—the protracted, sometimes meandering, always moving flow of contentious thought—raises a question and answers it, then raises a question about the answer, and, having raised another question, it then gives an answer to that question and continues in the same fashion until a variety of issues has been sorted out. So it moves hither and yon; it is always one and coherent, but it is never the same, and it flows across the surface of the document at hand. The dialectical character derives not from the mere rhetorical device of question and answer, but from the pursuit of an argument, in a single line, but in many and diverse directions: not the form but the substantive continuity defines the criterion. And the power of the dialectical argument flows from that continuity. We find the source of continuity in the author’s capacity to show connections through the momentum of rigorous analysis, on the one side, and free-ranging curiosity, on the other.

Those second and third and fourth turnings therefore differentiate a dialectical from a static argument, much as the bubbles tell the difference between still and sparkling wine. The always-sparkling dialectical argument is one principal means by which the Talmud or some other Rabbinic writing accomplishes its goal of showing the connections between this and that, ultimately demonstrating the unity

of many “thises and thats.” These efforts at describing the argument serve precisely as well as program notes to a piece of music: they tell us what we are going to hear; they cannot play the music. What “moves” therefore is the flow of argument and thought, and that is—by definition—from problem to problem. The movement is generated specifically by the raising of contrary questions and theses. What characterizes the dialectical argument in Rabbinic literature is its meandering, its moving hither and yon. It is not a direct or straight-line movement, e.g., the dialectical argument with which we are familiar in the modern West, thesis, antithesis, synthesis. It also does not correspond to any propositional or syllogistic argument, even though such arguments may take place in three or more steps, inclusive of counter-arguments.

For Classical philosophy dialectics is a philosophical mode of analysis through the rhetoric of question-answer, within the framework of intellectual dialogue, brought to fruition by Plato’s Socrates and Aristotle. The Oxford English Dictionary provides a first-rate account of the definition of the word “dialectics:”

...the investigation of truth by discussion...logical argument or disputation...Originally the art of reasoning or disputation by question and answer...scientifically developed by Plato, by whom the term *dialektiké* was used in two senses: the art of definition of discrimination of ideas, the science which views the interrelationship of ideas by a single principle⁶

For the purpose of description, the dynamic character of dialectics requires emphasis as well: a dialectical argument is an exchange of conflicting opinion that moves from point to point, not remaining bound to the initial proposition but pursuing the consequences of practical reason and applied logic wherever they direct the flow of argument.

In the Classical philosophical context, the simplest definition of dialectics once more stresses its formal, not its logical traits, in the following language:

⁶ *The Compact Edition of the Oxford English Dictionary* (Oxford, 1971: Oxford University Press), p. 310. The use of the term in modern philosophy need not detain us, though Hegel’s utilization of dialectics as a description of “the process of thought by which...contradictions are seen to merge themselves in a higher truth that comprehends them” provides fruitful perspective on the outcome of Talmudic dialectics.

dialectic is the practice of sorting things into their kinds by taking counsel with each other. The theory which Xenophon here imputes to Socrates would be roughly along these lines: to *dialegesthai* is to engage in the sort of conversation that is courteous, serious and concerned with the truth. When men are thus seriously conversing, each trying to learn from the other, they are sorting things for themselves, and roughly the only way in which a man can sort things for himself is to expose his ideas in this way to another's criticism.⁷

That definition certainly leaves ample space for Talmudic dialectics, for the Talmud lays out its arguments through brief statements, clearly representing distinct voices: a conversation. And the Talmud's arguments are nothing if not courteous, serious, and concerned with truth—and mutual criticism.

But even now, the proposition emerges that, in order to accomplish their tasks of presenting a perfect law for the Torah, the sages required a mode of analytical argument that would enable them to deal with contention and conflict. And dialectics in the Classical philosophical definition constituted that instrument of rationality. For reasons now fully set forth, the sages propose to take seriously all received opinion. It was their task to do precisely that. The mass of normative rules labeled TNY defined the work at hand: test this against that, the reason for this against the reason for that. That conviction conforms to the view of Aristotle, who holds that what is generally believed is likely to have some truth in it, and that the views of the wise are also not likely to be entirely wrong...So a close survey of "opinions" will both throw up problems and provide much material for solving them. The solution will preserve whatever was true in the various conflicting views, while filtering away what was unclear, exaggerated or erroneous...Sometimes a distinction will be drawn, or an ambiguity brought to light, with the consequence that we can accept both of two apparently opposed views, provided that they are suitably interpreted.⁸

Defining dialectics in the framework of Classical philosophy leaves us on familiar ground in the Mishnah, Sifra, and Talmud. For so far as the Mishnah and Sifra propose to define, e.g., what is similar and what is identical,⁹ theirs is a labor that Classical philosophy will

⁷ I. M. Crombie, *An Examination of Plato's Doctrines*. II. *Plato on Knowledge and Reality*, p. 563.

⁸ Ackrill, p. 112.

⁹ Therein lies Sifra's critique of the Mishnah's taxonomic method.

have recognized. For in the setting of philosophy it is through dialectics that the work of clarification goes forward, for that is how we find out what is like, or unlike, that to which it is compared. Ryle is explicit on this point:

...Plato and Aristotle agree that the dialectician's concern is with what is 'common' to, that is, shared by and neutral between the various special branches of knowledge. He is concerned with those concepts which are ubiquitous or trans-departmental; or with those truths which are in some way presupposed by all alike of the proprietary truths of the special sciences. The concepts of existence, non-existence, identity, difference, similarity, dissimilarity, unity and plurality are such 'common' or ubiquitous concepts. ...So Plato and Aristotle both credit dialectic with the task of discovering some very important trans-departmental principles which hinge on the ubiquitous, non-specialist or 'common' concepts....¹⁰

This work goes forward through formulating lists of things that belong together ("ladders of kinds"¹¹ and that presupposes a labor of distinction-making, comparison producing contrast, or, in the classical language, "division." It is that observation that leads Ryle to the point cited just now, concerning "a chain of summa."

"Division" refers to "separating what you are defining from everything else"¹² Here is what is required: "A man who cannot give a determinate account of the Idea of the Good, separating it from everything else, and battling through all the scrutinies of it, being eager to scrutinize it by reference not to opinion but to its real being, and who cannot in all these scrutinies come through with his account unscathed, will you say that a man like that knows neither the Good nor any other good thing...?"¹³ A still clearer formulation of the work of "setting out in a systematic form the definitions which were the answers to Socrates' questions," is as follows: "This form came later to be called *definitio per genus et differentiam*;" in order to say what something is, one has first to give its genus, assigning it to the class of things into which one has collected everything that resembles it generically, and then divide up the genus into species, saying what

¹⁰ *op. cit.*, p. 133-4

¹¹ Ryle, p. 136.

¹² R. M. Hare, "Plato," in Hare, Barnes, and Chadwick, *Founders of Thought*, p. 50.

¹³ Republic, 534 b, c, Hare, p. 50.

differentiates each, including the thing in question.”¹⁴ I can imagine no more precise a definition of Talmudic logic than that sentence.¹⁵

But for the Talmud of the Talmud of Babylonia, dialectics finds its definition not in the task alone, but in the way in which the task is carried out, and that is through the question-answer of dialogue. True, rhetoric of that sort defines only the form. But, for reasons now spelled out, the form takes its part in the definition of substantive logic. Socratic method is not merely asking leading questions.¹⁶ The value of questions is different. It is to include as active players the proponents of two or more positions. Socrates' interlocutors are invited to join him in the pursuit of wisdom, rather than to be passively 'instructed' in whatever Socrates has already learned himself.¹⁷ Nor can we say that a single type of argument exhausts Socrates' definition of dialectics:

...Socrates uses arguments of nearly every form. First, he constructs a great number of inductive arguments; some of these are inductive arguments from analogy, which we shall call inductive analogues; others are inductive arguments to a generalization, which we shall call inductive generalizations. He also constructs a great number of deductive arguments...most of Socrates' most significant and most controversial arguments are *reductio ad absurdum* arguments.¹⁸

This he calls dialectical method, in the language of Richard Robinson:

The particular method which Plato discusses and recommends is called by him “the dialectical method” or “the power of conversing” or “the art concerning discussions” or “the procedure of discussion.”¹⁹

Robinson further states:

The fact is that the word “dialectic” had a strong tendency in Plato

¹⁴ Hare, p. 50.

¹⁵ That is the argument of my *Judaism as Philosophy. The Method and Message of the Mishnah*. Columbia, 1991: University of South Carolina Press. Paperback edition: Baltimore, 1999: The Johns Hopkins University Press, and also *Jerusalem and Athens: The Congruity of Talmudic and Classical Philosophy*. Leiden, 1997: E. J. Brill. *Supplements to the Journal for the Study of Judaism*.

¹⁶ Brickhouse and Smith, *Plato's Socrates*, p. 3.

¹⁷ Brickhouse and Smith, p. 4.

¹⁸ Gerasimos Xenophon Santas, *Socrates. Philosophy in Plato's Early Dialogues*, p. 137.

¹⁹ Robinson, *Plato's Earlier Dialectic*, p. 69.

to mean “the ideal method, whatever that may be.” ...The meaning of the word “dialectic” undergoes a substantial alteration in the course of the dialogues. Thus in the *Phaedo*, the “resort to discussion” which is equivalent to dialectic is identified with the hypothetical method. In the *Republic* on the other hand dialectic is supposed to consist solely of whatever that “upward path” is which is there offered as superseding the hypothetical method of mathematics. In the *Philebus*, again, dialectic is represented as consisting solely of synthesis and division.... Although dialectics can be used to advantage in many and various spheres, its subject-matter is in one sense always the same...It is always the search for “what each thing is.” That is to say, it seeks the “essence” of each thing, the formal and abiding element in the thing. It regards “what neither comes into being nor passes away but is always identically the same.” Thus it presupposes that things have unchanging essences; and if anyone denies this, he absolutely destroys the power of dialectic.²⁰

...the dialectical conversation had two other aims, each of which might conflict with the answerer’s saying what he really thought. In the first place, consistency was required. The answerer’s opinions must agree with each other...The other aim which might conflict with the answerer’s saying what he really thought was that there should be complete agreement between the speakers...There can be no ‘agreeing to differ.’ The leader’s questions are usually invitations to assent to a certain proposition, and if the answerer declines to assent, the leader cannot overlook the fact. He must reinstate agreement either by abandoning the proposition or by going back and obtaining the answerer’s assent by showing that the proposition follows from others to which he assents.²¹

Robinson here makes the definition of dialectic difficult, since by “ideal method,” many things may be meant.

Much that defines dialectics in the Classical philosophical setting proves so particular to that setting as to permit little movement beyond. But when used by Aristotle, dialectics is a means for dealing with contraries, that is, with points of conflict. That is why the sole valid form is the question-answer exchange, and why dialogue proves essential. Dialectical reasoning works with opinions “that are generally accepted, though not recognized definitely by the reasoner as truth on the strength of their own proper evidence.”²²

²⁰ Robinson, pp. 70-71.

²¹ Robinson, p. 78.

²² *ibid.*, p. 304.

Though the dialectic itself does not yield knowledge in the full sense of the term, it is of the utmost importance for the acquisition of knowledge and for meeting other people on their own ground...dialectic may be said to contain the path to the first principles of all the sciences. Hence arises its indispensable function in relation to the ultimate bases of the principles used in the several sciences. For it is impossible to discuss them at all from the principles proper to the particular science in hand, seeing that the principles are the *a priori* of everything else; it is through the opinions generally held on the particular points that these have to be discussed, and this task belongs, properly, or most appropriately, to dialectic: for dialectic is a proof of criticism wherein lies the path to the principles of all inquiries."²³

Dialectical procedure yields not knowledge but the quest for knowledge. Aristotle's interest is in "thinking processes" that make possible various types of dialectic. When Aristotle pursues the dialectical approach to knowledge, like sages in the Mishnah, he deals with the physical world. Again Owens:

That universe is a plurality. It consists of substance and accidents. Sensible substance itself is found to be a plurality. Change is seen as a process from one contrary to another....contraries do not constitute the substance of anything. they are accidents and so should require a substrate.²⁴

Here we see the work of comparison and contrast, but of course the subject-matter is hardly congruent with that taken up by the Mishnah's authorship. Yet do we distinguish, in the Mishnah, accidents from essential qualities? And do we recognize the plurality of data and the parlous character of our taxonomic labor with it? I can open any page of the Mishnah for examples of precisely those distinctions and recognitions. What is at stake in dialectic is stated by Allan as follows:

"Dialectic will find some common foundation for those unproved assumptions upon which all scientific reasoning is based, and, in general, will make our fragmentary experience part of one coherent system., not by assembling the fragments and piecing them together, but by an intuitive grasp of a central necessary truth...from which all partial truth can be deduced without risk of error."²⁵

²³ Owens, p. 305, citing Aristotle, as indicated in his notes.

²⁴ *ibid.*

²⁵ Allan, *op. cit.*, p. 145.

In the Mishnah and Talmud we find ourselves at home with a philosophy that aims at imparting coherence to knowledge and experience. Let us now turn to see precisely how the Talmud in particular accomplishes that aim of finding the norm through systematic contention. For, as with Classical philosophy, the authors of the Talmud's dialectical composites took as their premise that out of rigorous and unyielding conflict concerning truth, truth emerges.

III. *Why Dialectics in the Talmud in Particular?*

No prior Judaic document, Rabbinic or otherwise, utilizes dialectical arguments to accomplish its goals. How can we account for the Talmud's resort to dialectics, which had no precedent whatsoever in prior Israelite writing of any kind? Much of the Talmud accomplishes its goals without resort to contentious argument, let alone to the asking and answering of questions, so the work of Mishnah-commentary can have been accomplished without dialectics. But the Talmud's single indicative trait, even though not a paramount or ubiquitous one, is its dialectics, and we have every reason to ask why—and why here, not there?²⁶

Because they inherited a corpus of conflict, a heritage of contending statements of norms and laws, the heirs of the Mishnah, proposing to continue the work of the Mishnah, found in dialectics the appropriate medium of expression and thought for accomplishing their task of confronting contention and resolving disharmony. Through dialectics the sages would both demonstrate the perfection of the Mishnah, the transcription of the oral Torah of Sinai, and also remove the imperfections of the law that the Torah handed on to Israel.

To understand what identified dialectical inquiry as the medium of choice for accomplishing the goals of the framers of the Talmud's composites and authors of its compositions, we have to review the Talmud's own tasks. Organized around the Mishnah in the form of a commentary to that document, the Talmud that together with the

²⁶ For the definition of dialectics in the Talmudic context, with the important distinction between authentic dialectics and the merely-formal framing of matters in question-and-answer style, see my *Talmudic Dialectics: Types and Forms*. Atlanta, 1995: Scholars Press for South Florida Studies in the History of Judaism. I-II.

Mishnah comprises the Talmud of Babylonia, a.k.a., the Bavli, accords privileged standing to the Mishnah. The form of the Talmud, its principles of organization and its systematic program, all accord priority to the Mishnah. But that is misleading. For, bearing secondary developments and also sizable topical appendices, as well as free-standing composites of Scripture-commentary, the Talmud of the Bavli vastly exceeds the requirements of a Mishnah commentary. Not only so, but when we understand the actual task of the compilers of the Talmud and authors of its compositions—not only the formal requirements they adopted for themselves—we shall see why dialectics solved a considerable intellectual problem that they addressed.

The Talmud created in Babylonia joins together a variety of composites of cogent compositions.²⁷ By no means do all of these composites take the task of Mishnah-commentary and propose only to explain or amplify the law of the Mishnah, or its language, or its Scriptural bases. These composites divide into various types, each with its own rhetorical protocol and exegetical or expository and argumentative task. All but one type bear in common the purpose of compiling bodies of information, e.g., exegesis of verses of Scripture, lower-critical comments upon the sense and meaning of passages of the Mishnah, and the like. All express viewpoints, some contain disputes. The one type of composition (sometimes built into a composite) that conducts a sustained argument concerning an important thesis, sets forth a highly argumentative kind of writing. That writing takes the form of question-answer, aiming at dialogue, which is called the dialectical argument.

Not by any measure the paramount type of composite in the Talmud,²⁸ the dialectical argument imparts flavor to the whole Talmud by imposing tension and supplying movement, focus and purpose. By its movement, from question to answer, point to point,

²⁷ For the definition of “composition” and “composite” and the critical part in my analysis of the document that those literary categories play, see my *The Rules of Composition of the Talmud of Babylonia. The Cogency of the Bavli's Composite*. Atlanta, 1991: Scholars Press for South Florida Studies in the History of Judaism.

²⁸ See my *Talmudic Dialectics: Types and Forms*, which graphically shows how small a proportion of the tractates of the Bavli is devoted to dialectical arguments, carefully defined. As I shall explain, question-answer-form by itself does not signify dialectics; that is a mere rhetorical device. Where the questions and answers govern the direction of argument, shifting its course and imposing an intellectual program of challenge and response, there we have a dialectical argument, as I shall explain in detail.

problem to problem, case to case, the dialectical argument also gives the Talmud the quality of dynamism. The rigor required to participate in a challenging exchange defines the intellectual quality of the whole document, even though most of the sustained discussions prove merely illuminating, not contentious. For its part the dialectical argument asks for not merely information but analysis, not merely acute reading of existing language but formulation of new points of interest altogether.

What makes me insist that dialectics defined the ideal method for the Mishnah-analysis undertaken by the Talmud? The character of the Mishnah defined the challenge that was met by the selection and utilization²⁹ of the dialectical argument, which, in all writings of all Judaisms from the beginnings to the third century C. E., has no precedent. Nor does the dialectical argument appear elsewhere than in the two Talmuds. And, truth be told, dialectics predominates only in the final compilation of the Rabbinic canon, the Talmud of Babylonia. A large-scale structure of lists, the Mishnah's generalizations (e.g., the king ranks higher in the political hierarchy than the high priest) rarely come to articulation; the mass of detail invited close study and analysis. The general had to emerge out of the concrete and specific, and generalizations valid at one point had to be tested against those emergent elsewhere; implications of generalizations for encompassing principles here required comparison and contrast with those that formed the foundations of a legal unit on an unrelated topic elsewhere. All of this work of construction would turn the Mishnah's details into large-scale compositions of encompassing significance.

But the Mishnah by itself did not exhaust the resources of normative rulings that formed the heritage of its time and sages. And the Talmud, for its part, though organized around the Mishnah, in fact took as its problem the law of the Mishnah, along with other law not found in the Mishnah. The privileging of the Mishnah did not extend to the laws that it set forth. If the framers of the Mishnah hoped to bring order out of chaos by giving the authoritative selection of the law—not merely a collection of their preferences and

²⁹ In this context, obviously, not the invention. But I have no idea where or how our sages learned about such types of argument, though, in the age of Neo-Platonism in which they thrived, we may hardly find surprising that they formulated a dialectics of their own, corresponding in its main formal and logical traits to the dialectics of Plato and Aristotle.

choices among laws—they were to find only disappointment. Repudiating the privileging of the Mishnah, reducing the document to a mere framework for the organization of something greater, the writers of the Talmud's compositions and compilers of its composites redefined matters and assigned to themselves a far more important task than merely glossing a fixed code.

That choice formed their response to a simple fact: the Mishnah collected only a small portion of the law that had come into being in the first and second centuries. A sizable corpus of opinion, rulings, cases and disputes, circulated from the period in which the Mishnah emerged but found (or was given) no place within the Mishnah. Some of these materials came to rest in the compilation of supplements to the Mishnah called the Tosefta. Corresponding to the Mishnah in its topical organization and program, the Tosefta exceeded the Mishnah in sheer volume by at least four times—perhaps more. Other laws were formulated along with attributions to the same authorities, called Tannaite sages, who occur in the Mishnah. These laws scarcely differentiated themselves from those in the Mishnah, except in contents. Still more laws circulated, whether or not attributed to the names of authorities who occur also in the Mishnah, bearing the mark TNY—yielding “it was formulated as a Tannaite rule”³⁰—and these too enjoyed the same standing and authority as Tannaite sayings collected in the Mishnah or the Tosefta.

If therefore, a coherent and uniform, principled system of norms was to reach full articulation, the laws, and not the Mishnah, would form the arena for systematic study. That is to say, if a cogent system was to emerge out of the heritage of normative rulings out of Tannaite sponsorship, the entire mass of normative rulings would require analysis; points of contradiction would have to be sorted out;

³⁰ In the Talmud of Babylonia, statements bearing the signal, TNY, in its various forms, ordinarily bear the names of authorities who occur, also, in the Mishnah; or who are credited with the compilation of Mishnah-sayings, e.g., a Tosefta, such as Hiyya or Bar Qappara. But in the Talmud of the Land of Israel, the same convention does not prevail, and TNY-sayings may routinely occur in the names of authorities who elsewhere figure only with figures much later than the time of the closure of the Mishnah. Whatever the intent of TNY in the Bavli, therefore, in the Yerushalmi the meaning of the signal cannot be the same. It is generally supposed that TNY in the Bavli means, a teaching out of Tannaite times. But indifference to chronology, indicated by name-associations, in the Yerushalmi then bears a different meaning. There, it follows, TNY signals a status as to authority, not as to origin. And I suspect closer study of the Bavli, without the prevailing assumption as to the sense of TNY, will yield a comparable result.

harmony between and among diverse laws would have to be established. To accomplish the task of analysis of sayings, formulation and testing of generalizations, above all, the discovery of the principles embedded in the normative rules governing discrete cases, the Talmud resorted to the dialectal argument.³¹ That would make possible the transformation of the Mishnah's lists, limited by their nature to data of a single kind, into the starting-points for series capable of infinite extension across data of diverse kinds, as we shall soon see.

The implications of the character of the heritage of norms that the sages addressed with the Mishnah in hand prove self-evident. Specifically, had the sages received only the Mishnah, the character of that document would have imposed a labor of mere amplification of a well-crafted document and application of a uniform law. That is not only because of the exquisite quality of the craftsmanship exhibited in the Mishnah's composition, but also because of the pristine clarity of its laws themselves. Where there is a difference of opinion, it is labeled by assigning to the minority view a name, with the majority, and normative, position given anonymously. So was schism signaled clearly if tacitly. Hence applying the law would have imposed no formidable burdens.³² And had the Babylonian sages of the third through seventh centuries received only a mass of laws, deriving from hither and yon, the primary work of selection and organization, not analysis and theoretical synthesis, would have occupied their best energies. But that is not how matters worked out. The Mishnah imposed structure and order. The boundaries of dis-

³¹ As I shall argue in a later part of this chapter, the upshot was to turn a list into a series. But how this was to be done—how the Mishnah (in formal terms) was to be made to yield law beyond itself and for topics outside of the closed system of its framers—remains to be examined in due course. The greatest single dialectical argument in the Talmud, that in Bavli-tractate Zebahim Chapter Five, will be examined in detail, and there we shall see the manner in which dialectics transformed law into jurisprudence, norms into principles, and, as I said, lists into series capable of indefinite expansion.

³² Proof for this supposition lies in the character of the Mishnah-commentaries, beginning with the master, Maimonides. Commenting on the Mishnah solely in its own framework, not on the Mishnah's law in the setting of laws deriving from a variety of sources, Maimonides obviated the necessity of addressing the Talmud and its protracted debates—and that was his announced intention. So in claiming that the character of the legacy received by our sages in the Gemara—the privileged Mishnah, competing with other authoritative laws, all viewed as equal candidates for normative standing—dictated the choice of dialectics as the preferred mode of analysis by reason of its capacity to address contention, I appeal to facts created by an alternative choice of Mishnah-reception and commentary.

course therefore were laid out. But the Mishnah's selectivity defined the exegetical problematics for further inquiry. Accordingly, the sages addressed a dual challenge,

- [1] both subjecting a well-crafted document to exegesis, amplification, and theoretical inquiry,
- [2] but also sorting out conflicting data on the same matters that said document took up.

To amplify this point: the intellectual tasks confronting the heirs of the Mishnah were made complicated by the conflict between the status of the Mishnah and the sizable legacy of authoritative data transmitted along with the Mishnah. The Mishnah enjoyed privileged status. All other compositions and composites received the form of commentary to the Mishnah. But the exegesis of the Mishnah did not then define the sole intellectual labor at hand. For the privileging of the Mishnah proved incomplete, with a huge corpus of other rulings on the same agenda compiled in the Tosefta, with other corpora of rulings on elements of the same agenda compiled alongside the Tosefta, and with still other free-floating sayings endowed with Tannaite status to cope with as well. Mishnah-exegesis—words, phrases, sources in Scripture—then would ordinarily enjoy pride of position, at the head of any sustained composite. But, following that work, next in line would come the challenge of conflicting opinion on the Mishnah's topics and rulings. Not only so, but the privileging of the Mishnah would remain a mere formality, without a direct confrontation with the conflicting opinions preserved along with the Mishnah. The Mishnah had to be shown perfect in form, harmonious in contents, dominant in norm-setting, if that initial act of privileging were to signal long-term status as the authoritative statement.³³

The Mishnah's character as a mass of petty rulings defined a third task, one that was natural to the rigorous intellects who comprised the cadre of the sages. That was to require the quest for not only harmony but also generalization, the encompassing principle, the

³³ That task would always be left by the framers of a law code to the heirs, who would defend the code by encompassing within its framework precisely the norms that the codifiers deemed superfluous! In the case of the Mishnah, the Tosefta accommodated a vast corpus of supplementary or complementary materials, organized as an amplification and extended development of the Mishnah. But that then left the TNY-sayings, formed into compositions and occasionally even into composites. So the Tosefta solved no problems, and no one today suspects it was meant to.

prevailing rule emerging from concrete data. For intellectuals of sages' sort sought not only information about details, but guidance on the main lines of thought. Not only so, but, engaged as they were in the administration of the life of the Jewish communities of Babylonia, theirs proved to be a practical reason and applied logic. They had not only to rule on cases covered by the Mishnah—and laws of its standing in addition—but also on cases not envisaged at all within the framework of the Mishnah. These cases of new kinds altogether, involving not only application of the law but penetration into the principles behind the law that could be made to cover new cases, demanded the formation of an analytical logic capable of generating principles to produce new laws.

And that is where dialectics entered in, for both practical and theoretical reasons. Theoretical considerations come first. Crafted to begin with to produce clarity of definition, the mode of dialectical argument of Classical philosophy defined a reliable method to secure compelling definitions of important principles. To deal with conflicting opinion on definition, two or more rulings on the same problem had to be set side by side and given each its hearing. Perhaps the conflict could be resolved through making a distinction; in that case let one party challenge the other, with a harmonizing opinion then registering. Perhaps the conflict revealed principles that were at odds. These required articulation, analysis, juxtaposition and then, if possible, harmonization, if possible, reformulation at a higher level of abstraction.³⁴ Perhaps rulings on one topic rested on a principle that affected, also, rulings on another topic altogether. Then the principle expressed by rulings on that unrelated topic had to be made articulate and brought into relationship with the underlying principle operative elsewhere. And again, a given set of rulings served to illustrate a single point in common, and that point in common was to be formulated as a hypothesis of general intelligibility and applicability. rulings on one topic rested on a principle that affected, also, rulings on another topic altogether. Then the principle expressed by rulings on that unrelated topic had to be made articulate and brought into relationship with the underlying principle operative elsewhere.

³⁴ The mode of argument in the pattern of thesis, antithesis, and synthesis would be long in coming, and I see no precursors in the Gemara. The Talmud's movement follows other lines than thesis, antithesis, and synthesis, and tends to run not in predictable lines.

And again, a given set of rulings served to illustrate a single point in common, and that point in common was to be formulated as a hypothesis of general intelligibility and applicability. How better to test a hypothesis than in a dialogue between proponents and opponents, the latter raising contrary cases, the former overcoming contradiction, the former amplifying and extending their hypothesis, the latter proposing to limit it. The upshot is, the very character of the corpus of law received by the sages in Babylonia insured that a vast repertoire of conflict and contention would define the work of those responsible for the orderly application of the law—the Mishnah's law but not that alone—to the everyday affairs of the community of holy Israel. Given the range of data to be addressed, the mode of question-answer, challenge out of conflicting data and response through resolution of conflict, served as the principal medium of thought. The very character of the corpus of norms generated the kind of conflict best resolved through the challenge and response embodied in question-answer rhetoric of dialectics. The specific purpose of our sages' reading of the norms—the formulation of an internally coherent, proportionate, and harmonious statement—coincided with the promise of dialectic, which is to expose conflict and find ways through reason of resolving it. But if theory made dialectics the method of choice, politics reenforced the theoretical usefulness of that method of thought and expression.

Practical considerations, both intellectual and political in character, moreover underscored the usefulness of dialectics. Framed in a rhetoric aimed at effecting agreement out of conflict, preserving civility and rationality in confrontation of opinion, received tradition, or ideas, dialectics moreover took a form exceedingly suitable to the situation of the sages. All of them proud, accomplished, certain of their knowledge, and opinionated, sages required a medium of thought that would accord recognition and respect to all participants. Simply announcing opinions—solutions to problems, rulings on cases, theories for analytical consideration—accomplished little, when the participants to public discourse addressed one another as equals and laid a heavy claim upon a full hearing for their respective views.

And even had the sages proved men of limited intellect, politics pointed toward dialogue and argued in favor of a rhetoric of dialectics. None possessed access to coercive force,³⁵ other than that of

³⁵ A single exception proves the rule. A few sages were employed by the Jew-

intellectual power and moral authority. For, lacking an efficient administration capable of imposing order, they could hope to accomplish their goals through persuasion, not coercion. Denied the services of a police force or army, effective principally through public opinion and persuasion (relying heavily, for instance, upon ostracism as a social penalty), the sages could best impose their will by means of powerful argument. The power of rationality, moreover, proved singularly congruent to sages' circumstance, since none of them enjoyed political sponsorship sufficient to compel the rest to conform, and all of the more influential ones jealously guarded their standing and prerogatives.³⁶

The mode of argument made possible through dialectics—two or more positions fully exposed, with arguments pro and con, a complete repertoire of positions and possibilities, laid out in the form of an exchange between and among equals, with point-by-point *Auseinandersetzen*, allowing for the full articulation of generalizations, exceptions based on cases, counter-arguments, and competing generalizations—that mode of argument alone could prove congruent to the politics of powerful intellects lacking worldly position to sustain their hypotheses.³⁷ Accordingly, the sages chose wisely when they

ish civil administration of Babylonia, a state-recognized agency called the exilarchate. The exilarchate is represented in the Rabbinic sources as an independent authority over the Jews, and not as a corporate body of sages themselves. A few sages, however, are represented as employed by (part of the “household” of) the exilarch. But stories about those few, while acknowledging their political standing, never represent the exilarch's sages as employing power rather than persuasion of a reasoned sort. The pertinent stories are collected in my *History of the Jews in Babylonia* (Leiden, 1965-1970: E. J. Brill) I-V. Chapter Two of each of the volumes, II-V, is devoted to the exilarchate.

³⁶ In my *Jews of Babylonia*, I collect most of the stories on the ways in which the laws were enforced, on the one side, and the manners of sages in dealing with one another, on the other side. These brief remarks summarize a huge corpus of tales, all of them telling the same story of an institutionally-inchoate body of powerful teachers-judges-administrators. Chapters Three and beyond of each of the volumes, II-V, are devoted to stories about the sages as administrators of the law, as holy men, and in other public capacities.

³⁷ Such a claim requires comparison between the selected mode of analytical argument as the medium of commentary and other, available media of response to received texts. If we begin with the Scriptural codes, e.g., the Holiness Code, the codes of JE, and so on, and proceed to the representations of law in Elephantine, Qumran, and elsewhere, we find no proximate counterpart, not only in detail but in main purpose, for what our sages undertook in a variety of settings, whether in the Mishnah or the Tosefta or Sifra or in the Gemaras of the Yerushalmi and the Bavli. So our allegation that we deal with the best possible analytical mode, given the task at hand, rests on comparisons, but, alas, comparisons only within

determined that argument in dialogic form, within dialectical logic, defined the best possible instrument with which to accomplish their task of explanation, analysis, and amplification of the law that they had received not only from the Mishnah but from other sources of the same status or origin.

Even though it occurs in only a few documents, and even there, in only a limited proportion, the dialectical, or moving, argument is important because, in the sustained conflict provoked by the testing of proposition in contention, argument turns fact into truth. Making a point forms of data important propositions. The exchanges of propositions and arguments, objects and ripostes, hold together, however protracted.

The dialectical argument opens the possibility of reaching out from one thing to something else, not because people have lost sight of their starting point or their goal in the end, but because they want to encompass, in the analytical argument as it gets underway, as broad and comprehensive a range of cases and rules as they possibly can. The movement from point to point in reference to a single point that accurately describes the dialectical argument reaches upward toward a goal of proximate abstraction, leaving behind the specificities of not only cases but laws, carrying us upward to the law that governs many cases, the premises that undergird many rules, and still higher to the principles that infuse diverse premises; then the principles that generate other, unrelated premises, which, in turn, come to expression in other, still-less intersecting cases. The meandering course of argument comes to an end when we have shown how things cohere. Or, sometimes, the argument simply stops, leaving open possibilities for coming generations to take up.

IV. *The Uses of the Dialectical Argument*

What then is at stake in the dialectical argument? I see three complementary results. All of them, in my view, prove commensurate to the effort required to follow these protracted, sometimes tedious disquisitions.

the same system. Some day someone will want to compare Talmudic dialectics with the presentation of canon law in Gratian's writings and afterward—that is where the Aristotelian dialectics once more surfaces in the context of norm-setting.

First, we test every allegation by a counter-proposition, so serving the cause of truth through challenge and constant checking for flaws in an argument.

Second, we survey the entire range of possibilities, which leaves no doubts about the cogency of our conclusion. And that means, we move out of our original case, guided by its generative principle to new cases altogether.

Third, quite to the point, by the give and take of argument, we ourselves are enabled to go through the thought processes set forth in the subtle markings that yield our reconstruction of the argument. We not only review what people say, but how they think: the processes of reasoning that have yielded a given conclusion. Sages and disciples become party to the modes of thought; in the dialectical argument, they are required to replicate the thought-processes themselves.

Let me give a single example of the power of the dialectical argument to expose the steps in thinking that lead from one end to another: principle to ruling, or ruling to principle. In the present instance, the only one we require to see a perfectly routine and obvious procedure, we mean to prove the point that if people are permitted to obstruct the public way, if damage was done by them, they are liable to pay compensation. First, we are going to prove that general point on the basis of a single case. Then we shall proceed to show how a variety of authorities, dealing with diverse cases, sustain the same principle.

TALMUD BABA MESIA 10:5/O-X

- O. He who brings out his manure to the public domain—
- P. while one party pitches it out, the other party must be bringing it in to manure his field.
- Q. They do not soak clay in the public domain,
- R. and they do not make bricks.
- S. And they knead clay in the public way,
- T. but not bricks.
- U. He who builds in the public way—
- V. while one party brings stones, the builder must make use of them in the public way.
- W. And if one has inflicted injury, he must pay for the damages he has caused.
- X. Rabban Simeon b. Gamaliel says, “Also: He may prepare for doing

his work [on site in the public way] for thirty days [before the actual work of building].”

We begin with the comparison of the rule before us with another Tannaite position on the same issue, asking whether an unattributed, therefore authoritative, rule stands for or opposes the position of a given authority; we should hope to prove that the named authority concurs. So one fundamental initiative in showing how many cases express a single principle—the concrete demonstration of the unity of the law—is to find out whether diverse, important authorities concur on the principle, each ruling in a distinctive case; or whether a single authority is consistent in ruling in accord with the principle at hand, as in what follows:

I.1

- A. *May we say that our Mishnah-paragraph does not accord with the view of R. Judah? For it has been taught on Tannaite authority:*
- B. **R. Judah says, “At the time of fertilizing the fields, a man may take out his manure and pile it up at the door of his house in the public way so that it will be pulverized by the feet of man and beast, for a period of thirty days. For it was on that very stipulation that Joshua caused the Israelites to inherit the land” [T. B.M. 11:8E-H].**
- C. You may even maintain that he concurs with the Mishnah’s rule [that **while one party pitches it out, the other party must be bringing it in to manure his field**]. R. Judah concedes that if one has caused damage, he is liable to pay compensation.

In line with the position just now proposed, then Judah will turn out to rule every which way on the same matter. And that is not an acceptable upshot.

- D. *But has it not been taught in the Mishnah: If the store-keeper had left his lamp outside the store-keeper is liable [if the flame caused a fire]. R. Judah said, “In the case of a lamp for Hanukkah, he is exempt” [M. B. Q. 6:6E-F],* because he has acted under authority. *Now surely that must mean, under the authority of the court [and that shows that one is not responsible for damage caused by his property in the public domain if it was there under the authority of the court]!*

The dialectic now intervenes. We have made a proposal. Isn’t it a

good one? Of course not, were we to give up so quickly, we should gain nothing:

E. *No, what it means is, on the authority of carrying out one's religious obligations.*

By now, the reader is able to predict the next step: "but isn't the contrary more reasonable?" Here is how we raise the objection.

F. *But has it not been taught on Tannaite authority:*

G. in the case of all those concerning whom they have said, "They are permitted to obstruct the public way," if there was damage done, one is liable to pay compensation. But R. Judah declares one exempt from having to pay compensation.

H. *So it is better to take the view that our Mishnah-paragraph does not concur with the position of R. Judah.*

The point of interest has been introduced: whether those permitted to obstruct the public way must pay compensation for damages they may cause in so doing. Here is where we find a variety of cases that yield a single principle:

2. A. *Said Abayye, "R. Judah, Rabban Simeon b. Gamaliel, and R. Simeon all take the position that in the case of all those concerning whom they have said, 'They are permitted to obstruct the public way,' if there was damage done, one is liable to pay compensation.*

B. *"As to R. Judah, the matter is just as we have now stated it.*

Simeon b. Gamaliel and Simeon now draw us to unrelated cases:

C. *"As to Rabban Simeon b. Gamaliel, we have learned in the Mishnah: **Rabban Simeon b. Gamaliel says, 'Also: He may prepare for doing his work [on site in the public way] for thirty days [before the actual work of building].'***

D. *"As to R. Simeon, we have learned in the Mishnah: **A person should not set up an oven in a room unless there is a space of four cubits above it. If he was setting it up in the upper story, there has to be a layer of plaster under it three handbreadths thick, and in the case of a stove, a handbreadth thick. And if it did damage, the owner of the oven has to pay for the damage. R. Simeon says, 'All of these measures have been stated only so that if the object did damage, the owner is exempt from paying compensation if the stated measures have been observed' [M. B.B. 2:2A-F]."***

We see then that the demonstration of the unity of the law and the issue of who stands, or does not stand, behind a given rule, go to-

gether. When we ask about who does or does not stand behind a rule, we ask about the principle of a case, which leads us downward to a premise, and we forthwith point to how that same premise underlies a different principle yielding a case—so how can X hold the view he does, if that is his premise, since at a different case he makes a point with a principle that rests on a contradictory premise. The Mishnah and the Talmud are comparable to the moraine left by the last ice age, fields studded with boulders. For the Talmud, reference is made to those many disputes that litter the pages and impede progress. That explains why much of the Talmud is taken up with not only sorting out disputes, but also showing their rationality, meaning, reasonable people have perfectly valid reasons for disagreeing about a given point, since both parties share the same premises but apply them differently; or they really do not differ at all, since one party deals with one set of circumstances, the other with a different set of circumstances.

V. *The Law Behind the Laws*

Dialectics then supplies the medium for thinking philosophically about the workaday world, the mode of applied reason and practical logic that makes the Talmud work. That is, dialectics facilitates the search for the prevailing rule behind diverse cases, the logic that governs the cases we have not yet addressed. When we speak of philosophy in everyday life, we mean, the quest for the rationality and order—the reason for things—in the here and now. In the context of norms, we refer to the transformation of law into jurisprudence, in the setting of natural science, we mean the movement from observation to natural history. The dialectical argument proves the ideal medium for the assertion, through sustained demonstration alone, of the union of laws in law. Specifically, if all we know is laws, then we want to find out what is at stake in them? Accordingly, the true issues of the law emerge from the detailed rulings of the laws. Generalization takes a variety of forms, some yielding a broader framework into which to locate a case, others a proposition of consequence. Let me give an obvious and familiar instance of what is to be done. Here is an example of a case that yields a principle:

TALMUD BABA MESIA TO 9:11

- A. (1) **A day worker collects his wage any time of the night.**
- B. (2) **And a night worker collects his wage any time of the day.**
- C. (3) **A worker by the hour collects his wage any time of the night or day.**

I.1

- A. *Our rabbis have taught on Tannaite authority:*
- B. How on the basis of Scripture do we know, **A day worker collects his wage any time of the night?**
- C. “[You shall not oppress your neighbor or rob him.] The wages of a hired servant shall not remain with you all night until the morning” (Lev. 19:13).
- D. And how on the basis of Scripture do we know, **and a night worker collects his wage any time of the day?**
- E. “[You shall not oppress a hired servant who is poor and needy]...you shall give him his hire on the day on which he earns it, before the sun goes down” (Dt. 23:14-15).
- F. *Might I say that the reverse is the case [the night worker must be paid during the night that he does the work, in line with Lev. 19:13, and the day worker by day, in line with Dt. 23:15]?*
- G. Wages are to be paid only at the end of the work [so the fee is not payable until the work has been done].

What do we learn from this passage? Specifically, two points.

- [1] Scripture yields the rule at hand;
- [2] Scripture also imposes limits on the formation of the law; but one generalization, that the law of the Mishnah derives from the source of Scripture.

And, if we take a small step beyond, of course, we learn that the two parts of the Torah are one. The hermeneutics instructs us to ask, how on the basis of Scripture do we know...? Its premise then is that Scripture forms the basis for rules not expressed with verses of the written Torah. The theological principle conveyed in the hermeneutics expressed in the case is that the Torah is one and encompasses both the oral and the written parts; the oral part derives its truths from the written part.

Now if I had to identify the single most important theological point that the Talmud and other writings that use dialectics sets forth, it is that the laws yield law, the truth exhibits integrity, all of the parts—

the details, principles, and premises—holding together in a coherent manner. To understand how generalizations are attained, however, we cannot deal only with generalizations. So we turn to a specific problem of category-formation, namely, in the transfer of property, whether or not we distinguish between a sale and a gift. That is, in both instances property is transferred. But the conditions of transfer clearly differ; in the one case there is a *quid pro quo*, in the other, not. Now does that distinction make a difference? The answer to that question will have implications for a variety of concrete cases, e.g., transfers of property in a dowry, divisions of inheritances and estates, the required documents and procedures for effecting transfer of title, and the like. If, then, we know the correct category-formation—the same or not the same category—we form a generalization that will draw together numerous otherwise unrelated cases and (more to the point) rules.

One way to accomplish the goal is to identify the issue behind a dispute, which leads us from the dispute to the principle that is established and confirmed by a dispute on details, e.g., whether or not the principle applies, and, if it does, how it does. In this way we affirm the unity of the law by establishing that all parties to a dispute really agree on the same point; then the dispute itself underlines the law's coherence:

TALMUD BABA BATRA 1:3

- A. He whose [land] surrounds that of his fellow on three sides,
- B. and who made a fence on the first, second, and third sides—
- C. they do not require [the other party to share in the expense of building the walls].
- D. R. Yosé says, "If he built a fence on the fourth side, they assign to him [his share in the case of] all [three other fences]."

In the following dispute, we ask what is subject to dispute between the two named authorities, B-C.

- 2. A. *It has been stated:*
- B. R. Huna said, "All is proportional to the actual cost of building the fence [Simon: which will vary according to the materials used by the one who builds the fence]."
- C. Hiyya bar Rab said, "All is proportionate to the cost of a cheap fence made of sticks [since that is all that is absolutely necessary]."

To find the issue, we revert to our Mishnah-rule. The opinions therein guide the disputing parties. Each then has to account for what is subject to dispute in the Mishnah-paragraph. Then the point is, the Mishnah's dispute is not only rational, but it also rests upon a shared premise, affirmed by all parties. That is the power of D.

- D. *We have learned in the Mishnah: He whose [land] surrounds that of his fellow on three sides, and who made a fence on the first, second, and third sides—they do not require [the other party to share in the expense of building the walls].* Lo, if he fences the fourth side too, he must contribute to the cost of the entire fence. *But then note what follows: R. Yosé says, “If he built a fence on the fourth side, they assign to him [his share in the case of] all [three other fences].”* Now there is no problem from the perspective of R. Huna, who has said, “All is proportional to the actual cost of building the fence [Simon: which will vary according to the materials used by the one who builds the fence].” Then we can identify what is at issue between the first authority and R. Yosé. Specifically, the initial authority takes the view that we proportion the costs to what they would be if a cheap fence of sticks was built, but not to what the fence-builder actually spent, and R. Yosé maintains that under all circumstances, the division is proportional to actual costs. But from the perspective of Hiyya bar Rab, who has said, “All is proportionate to the cost of a cheap fence made of sticks [since that is all that is absolutely necessary],” what can be the difference between the ruling of the initial Tannaite authority and that of R. Yosé? If, after all, he does not pay him even the cost of building a cheap fence, what in the world is he supposed to pay off as his share?

We now revert to the dialectics, but a different kind. Here we raise a variety of possibilities, not as challenges and responses in a sequence, but as freestanding choices; the same goal is at hand, the opportunity to examine every possibility. But the result is different: not a final solution but four suitable ones, yielding the notion that a single principle governs a variety of cases. That explains why we now have a set of four answers, all of them converging on the same principle:

- E. *If you want, I shall say that what is at issue between them is the fee to be paid for a watchman. The initial authority holds that he pays the cost of a watchman, not the charge of building a cheap fence, and R. Yosé says that he has to pay the cost of building a cheap fence.*
- F. *But if you prefer, I may say that at issue between them is the first, second, and third sides, in which instance the initial Tannaite authority has the other pay*

only the cost of fencing the fourth side, not the first three, and R. Yosé maintains he has to pay his share of the cost of fencing the first three sides too.

- G. *And if you prefer, I shall maintain that at issue between them is whether the fence has to be built by the owner of the surrounding fields or the owner of the enclosed field if the latter pays the cost of the whole. The initial Tannaite authority says that the consideration that leads the owner of the enclosed field to have to contribute at all is that he went ahead and built the fourth fence, so he has to pay his share of the cost of the whole; but if the owner of the surrounding fields is the one who went ahead and did it, the other has to pay only the share of the fourth fence. For his part, R. Yosé takes the position that there is no distinction between who took the initiative in building the fourth fence, whether the owner of the enclosed field or the owner of the surrounding field. In either case the former has to pay the latter his share of the whole.*
- H. *There are those who say, in respect to this last statement, that at issue between them is whether the fourth fence has to be built by the owner of the enclosed field or the surrounding fields so that the former has to contribute his share. The initial Tannaite authority holds that, even if the owner of the surrounding fields makes the fourth fence, the other has to contribute to the cost, and R. Yosé maintains that if the owner of the enclosed field takes it on himself to build the fourth fence, he has to pay his share of the cost of the whole, because through his action he has shown that he wants the fence, but if the owner of the surrounding fields builds the fourth side, the other pays not a penny [since he can say he never wanted a fence to begin with].*

The premise of E is that the owner of the land on the inside has a choice as to the means of guarding his field; but he of course bears responsibility for the matter. F agrees that he bears responsibility for his side, but adds that he also is responsible for the sides from which he enjoys benefit. And of course G concurs that the owner of the inner field is responsible to protect his own property. H takes the same view. What we have accomplished is, first, to lay a foundation in rationality for the dispute of the Mishnah-paragraph, and, further, demonstrate that all parties to the dispute affirm the responsibility to pay one's share of that from which one benefits. Justice means, no free lunch.

VI. *The Unity of the Law*

In what follows, the unity of the law extends from agreements behind disputes to a more fundamental matter: identifying the single principle behind many and diverse cases. What do diverse cases have

in common? Along these same lines, that same hermeneutics wants us to show how diverse authorities concur on the same principle, dealing with diverse cases; how where there is a dispute, the dispute represents schism vs. consensus, with the weight of argument and evidence favoring consensus; where we have a choice between interpreting an opinion as schismatic and as coherent with established rule, we try to show it is not schismatic; and so on and so forth. All of these commonplace activities pursue a single goal, which is to limit the range of schism and expand the range of consensus, both in political, personal terms of authority, and, more to the point, in the framework of case and principle. If I had to identify a single hermeneutical principle that governs throughout, it is, the quest for harmony, consensus, unity, and above all, the rationality of dispute: reasonable disagreement about the pertinence or relevance of established, universally-affirmed principles.

Here is a fine instance of the working of the hermeneutics that tells us to read the texts as a single coherent statement, episodic and unrelated cases as statements of a single principle. The principle is: it is forbidden for someone to derive uncompensated benefit from somebody else's property. That self-evidently valid principle of equity—"thou shalt not steal" writ small—then emerges from a variety of cases; the cases are read as illustrative. The upshot of demonstrating that fact is to prove a much-desired goal. The law of the Torah—here, the written Torah, one of the ten commandments no less!—contains within itself the laws of everyday life. So one thing yields many things; the law is coherence in God's mind, and retains that coherence as it expands to encompass the here and the now of the social order. The details as always are picayune, the logic practical, the reasoning concrete and applied; but the stakes prove cosmic in a very exact sense of the word.

The problem involves a two-story house, owned by the resident of the lower story. The house has fallen down. The tenant, upstairs, has no where to live. The landlord, downstairs, does not rebuild the house. The tenant has the right to rebuild the downstairs part of the house and to live there as long as the landlord does not complete the rebuilding of the house and also refund to the tenant the cost of rebuilding the part that the tenant has reconstructed for himself. Judah rejects this ruling, and, in doing so, invokes a general principle, by no means limited to the case at hand. Then the Bavli will wish to show how this governing principle pertains elsewhere.

MISHNAH-TRACTATE BABA MESIA 10:3 AND TALMUD BABA MESIA 117A-B:

- A. A house and an upper story belonging to two people which fell down—
- B. [if] the resident of the upper story told the householder [of the lower story] to rebuild,
- C. but he does not want to rebuild,
- D. lo, the resident of the upper story rebuilds the lower story and lives there,
- E. until the other party compensates him for what he has spent.
- F. R. Judah says, "Also: [if so,] this one is [then] living in his fellow's [housing]. [So in the end] he will have to pay him rent.
- G. "But the resident of the upper story builds both the house and the upper room,
- H. "and he puts a roof on the upper story,
- I. "and he lives in the lower story,
- J. "until the other party compensates him for what he has spent."

At issue is a principle, which settles the case at hand. It is whether or not one may gratuitously derive benefit from someone else's property. We shall now show that Judah repeatedly takes that position in a variety of diverse cases:

I.1

- A. [117B] Said R. Yohanan, "In three passages R. Judah has repeated for us the rule that it is forbidden for someone to derive benefit from somebody else's property. *The first is in the Mishnah passage at hand. The next is in that which we have learned in the Mishnah.*"

The case that is now introduced involves an error in dyeing wool. The premise of the rulings is that dyeing always enhances the value of the wool, whether it is dyed of one color or some other. On that basis, the following is quite clear:

- B. **He who gave wool to a dyer to dye it red, and he dyed it black, or to dye it black, and he dyed it red—**
- C. **R. Meir says, "The dyer pays him back the value of his wool."**
- D. **And R. Judah says, "If the increase in value is greater than the outlay for the process of dyeing, the owner pays him back for the outlay for the process of dyeing. And if the outlay for the process of dyeing is greater than the increase in the value of the wool, the owner pays him [the dyer] only the increase in the value of the wool" [M. B.Q. 9:4G-K].**
- E. *And what is the third? It is as we have learned in the Mishnah:*

- F. **He who paid part of a debt that he owed and deposited the bond that has been written as evidence covering the remaining sum with a third party, and said to him, “If I have not given you what I still owe the lender between now and such-and-such a date, give the creditor his bond of indebtedness,” if the time came and he has not paid,**
- G. **R. Yosé says, “He should hand it over.”**
- H. **And R. Judah says, “He should not hand it over” [M. B.B. 10:5A-E]**
- I. *Why [does it follow that Judah holds that it is forbidden for someone to derive benefit from somebody’s else’s property]? Perhaps when R. Judah takes the position that he does here, it is only because there is blackening of the walls.*
- J. [Freedman: the new house loses its newness because the tenant is living there, so the house owner is sustaining a loss, and that is why the tenant has to pay rent];
- K. as to the case of the dyer who was supposed to dye the wool red but dyed it black, *the reason is that he has violated his instructions, and we have learned in the Mishnah:*
- L. **Whoever changes [the original terms of the agreement]—his hand is on the bottom [M. B.M. 6:2E-F].** [That is to say, the decision must favor the other party, the claim of the one who has changed the original terms being subordinated.]
- M. *And as to the third case, the one who has paid part of his debt, here we deal with an enticement, and we infer from this case that R. Judah takes the position that in the case of a come-on, there is no transfer of title.*

Yohanan’s observation serves the purpose of showing how several unrelated cases of the Mishnah really make the same point: you shall not steal. The voice of the Talmud—that is to say, the dialectics itself—then contributes an objection and its resolution, making Yohanan’s statement plausible and compelling, not merely an observation that may or may not be so.

An ideal way of demonstrating the unity of the law is to expose the abstract premise of a concrete rule, and that without regard to the number of discrete cases that establish the same rule. Here is a case in which the theological principle, a stipulation made not be made contrary to what is written in the Torah, is shown to form the premise of a concrete case; then the case once more merely illustrates the principle of the Torah, which delivers its messages in just this way, through exemplary cases. Item 2A commences with a common attributive formula, said x...said y.... This bears the meaning, said x in the name of y (and on his authority). Judah is then the tradent of the opinion or ruling, and Samuel the original source. Such

an attributive formula may encompass three or more names and is common in both Talmuds.

2. A. And said R. Judah said Samuel, "He who says to his fellow, '...on the stipulation that the advent of the Seventh Year will not abrogate the debts'—the Seventh Year nonetheless abrogates those debts."
- B. *May one then propose that Samuel takes the view that that stipulation represents an agreement made contrary to what is written in the Torah, and, as we know, any stipulation contrary to what is written in the Torah is a null stipulation? But lo, it has been stated:*
- C. He who says to his fellow, "[I make this sale to you] on the stipulation that you may not lay claim of fraud [by reason of variation from true value] against me" —
- D. Rab said, "He nonetheless may lay claim of fraud [by reason of variation from true value] against him."
- E. Samuel said, "He may not lay claim of fraud [by reason of variation from true value] against him."
- F. *Lo, it has been stated in that connection: said R. Anan, "The matter has been explained to me such that Samuel said, 'He who says to his fellow, "[I make this sale to you] on the stipulation that you may not lay claim of fraud [by reason of variation from true value] against me"—he has no claim of fraud against him. [If he said,] "...on the stipulation that in the transaction itself, there is no aspect of fraud," lo, he has a claim of fraud against him."*
- G. Here too, the same distinction pertains. If the stipulation was, "on condition that you do not abrogate the debt to me in the Sabbatical Year," then the Sabbatical Year does not abrogate the debt. But if the language was, "on condition that the Sabbatical Year itself does not abrogate the debt, the Sabbatical Year does abrogate the debt."

TALMUD TO MAKKOT 1:1L-N, 1:2, 1:3/I.2

What is at stake in this issue is of course not only jurisprudential principles but theological truth, concerning the power of language. In the Torah, language is enchanted; it serves, after all, for the principal medium of the divine self-manifestation: in words, sentences, paragraphs, a book: the Torah. So what one says forms the foundation of effective reality: it makes things happen, not only records what has happened.

But what happens if one makes a statement that ordinarily would prove effective, but the contents of the statement contradict the law

of the Torah? Then such a stipulation is null. Why? Because the Torah is what makes language work, and if the Torah is contradicted, then the language is no more effective—changing the world to which it refers, the rules or conditions or order of existence—than it would be if the rules of grammar were violated. Just as, in such a case, the sentence would be gibberish and not convey meaning, so in the case at hand, the sentence is senseless and null.

VII. *Dialectics and the Intellectual Dynamics of the Talmud*

The main consequence for the Talmud of formation through dialectical arguments is simply stated. It is the power of that mode of the representation of thought to show us—as no other mode of writing (without abstract symbols) can show—not only the result but the *workings* of the logical mind. By following dialectical arguments, we ourselves enter into those same thought processes, and our minds then are formed in the model of rigorous and sustained, systematic argument. The reason is simply stated. When we follow a proposal and its refutation, the consequence thereof, and the result of that, we ourselves form partners to the logical tensions and their resolutions; we are given an opening into the discourse that lies before us. As soon as matters turn not upon tradition, to which we may or may not have access, but reason, specifically, challenge and response, proposal and counter-proposal, “maybe matters are just the opposite?” we find an open door before us.

For these are not matters of fact but of reasoned judgment, and the answer, “well, that’s my opinion,” in its “traditional form,” namely, that is what Rabbi X has said so that must be so, finds no hearing. Moving from facts to reasoning, propositions to the process of counter-argument, the challenge resting on the mind’s own movement, its power of manipulating facts one way rather than some other and of identifying the governing logic of a fact—that process invites the reader’s or the listener’s participation. The author of a dialectical composite presents a problem with its internal tensions in logic and offers a solution to the problem and a resolution of the logical conflicts.

What is at stake in the capacity of the framer of a composite, or even the author of a composition, to move this way and that, always in a continuous path, but often in a crooked one? The dialectical argument opens the possibility of reaching out from one thing to

something else, and the path's wandering is part of the reason. It is not because people have lost sight of their starting point or their goal in the end, but because they want to encompass, in the analytical argument as it gets underway, as broad and comprehensive a range of cases and rules as they can. The movement from point to point in reference to a single point that accurately describes the dialectical argument reaches a goal of abstraction. At the point at which we leave behind the specificities of not only cases but laws, sages carry the argument upward to the law that governs many cases, the premises that undergird many rules, and still higher to the principles that infuse diverse premises; then the principles that generate other, unrelated premises, which, in turn, come to expression in other, still-less intersecting cases. The meandering course of argument comes to an end when we have shown how things cohere that we did not even imagine were contiguous at all.

The dialectical argument forms the means to an end. The distinctive character of the Talmud's particular kind of dialectical argument is dictated by the purpose for which dialectics is invoked. Specifically, the goal of all argument is to show in discrete detail the ultimate unity, harmony, proportion, and perfection of the law—not of the Mishnah as a document but of all the law of the same standing as that presented by the Mishnah. The hermeneutics of dialectics aims at making manifest how to read the laws in such a way as to discern that many things really say one thing. The variations on the theme then take the form of detailed expositions of this and that. Then our task is to move backward from result to the reasoning process that has yielded said result: through regression from stage to stage to identify within the case not only the principles of law that produce that result, but the processes of reasoning that link the principles to the case at hand. And, when we accomplish our infinite regression, we move from the workings of literature to its religious character and theological goal: it is to know God in heaven, represented, on earth, by the unity of the law, the integrity of the Torah. And that observation carries us to the third and final problem of this *Reader's Guide*: the Talmud and Judaism.

PART THREE

THE TALMUD AND JUDAISM

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CHAPTER SIX

THE TALMUD AND THE TORAH

I. Is the Talmud Contingent or Autonomous?

At issue in assessing the character of the Judaic religious system put forth by the Talmud is a simple question: does the Talmud stand on its own or does it situate itself as a subordinated and dependent commentary to a prior and authoritative revelation? In simple language: Is the Talmud mainly a commentary to the (written) Torah, a tradition deriving from and intertwined with that Torah? In that case, the Talmud comes at the end of a long process of receiving and handing on a tradition that gains its cogency at the outset, with the written Torah itself. Or is the Bavli a free-standing, autonomous, self-sustaining system of its own, drawing upon received writings and traditions in order to make its own, original statement of matters? In that case, the Talmud speaks for its own generation's view of the received heritage of revelation, it is the work of its final authorship.

This carries us to the question, what is the role of Scripture, the (written part of the) Torah, in the Talmud? At stake is evidence on whether the framers of the Talmud exercised autonomous judgment or took as their task the elucidation of a received tradition. The somewhat complex result of our inquiry will show how the sages of the Talmud printed the mark of their own intellect upon the intellectual heritage of Scripture, picking and choosing what pertained to their own problems and purposes.

The pages of the Talmud of Babylonia are studded with citations of verses of Scripture. I want to know why and how the Hebrew Scriptures or "written Torah" serve in the writing of that Talmud. So by "the Torah in the Talmud" I refer to the uses of Scripture, or the written Torah, in the Bavli, the principal document of the oral Torah. Though the ramifications are many, the inquiry is simple. It is to classify the kinds of compositions and composites in the Talmud that contain verses of Scripture ("the written Torah"), in each case asking a few simple questions about the form and purpose

of the composition. When I find a clear citation of a verse or clause of Scripture, I want to know why that citation is introduced, what it is assumed to demonstrate, and how it serves the plan of the framer of the composition in which it occurs. Sample questions include these: is a verse of Scripture determinative of the structure of a passage or is it instrumental and subordinate? Does a clause of Scripture undergo sustained, consistent analysis, in the way in which a clause of the Mishnah does, or is it treated in a casual way, e.g., as a mere illustration or a touch of literary artifice? Are coherent analytical-hermeneutical principles brought to bear upon the reading of Scripture in the context of the Talmudic inquiry, or are readings haphazard and episodic? These and similar questions have not yet been answered. And yet, they seem to me critical to an understanding of both the document and the category-formation upon which it rests (a matter that will engage us when data are in hand).

What we shall see is that Scripture plays an active and a passive role; it dictates the shape of inquiry and its logic, and it merely contributes inert facts to an inquiry framed in other terms altogether. Consider, furthermore: Scripture forms the principal locus of discourse and takes up a merely tangential position. Verses of Scripture are accorded probative value and may be manipulated in an essentially formal manner. Make sense, if you can, of the fact that disputes may take shape on the principles by which a verse is to be read and its evidence as to fact to be uncovered, and verses may be read as if we all know precisely how to read them and what, of course, everyone knows they mean. Scripture determines the structure and program of a composition and even of large composites, and Scripture plays scarcely any more than an illustrative, formal role, in a great many others. Passages of Mishnah-exegesis claim that what the Mishnah says derives from Scripture, alongside passages of Mishnah-exegesis that make no such pretense. In some contexts the issue proves urgent, in others, the same question attracts slight interest. That body of contradictory evidence, when fully appreciated by the reader, will explain why what we all know, which is, Scripture forms a principal component of the Talmud, raises more questions than it settles. We really do not know whether it is true that Scripture forms a principal component of this document, and, if it does, how it does and why: is Scripture read in the same way in which the Mishnah is, in other ways, or perhaps, is Scripture read at all?

All of these questions flow in the wake of our simple question: how does the Torah makes its way into the Talmud.

This catalogue of questions and puzzles is not meant to intimidate the reader, but only to explain why our task is to ask whether what everybody knows is true is true. For the one sure result is that, by whatever criterion of analysis we introduce, we find in the Talmud everything and its opposite. That simple fact turns the issue of the Torah in the Talmud into a question of more than routine and commonplace interest—much more. What we shall see, indeed, is that in the Talmud the Torah plays a role as formative, determinative, and definitive, as does the Mishnah. But it does so in its own way, which is different from that of the way of the Mishnah; it is the simple fact that the Mishnah defines the main frame of the Talmud, and not Scripture; and where Scripture dictates the structure of a composition or even of a composite, it does so in a position well subordinated to the task of Mishnah-exegesis and amplification that, for this Talmud, defines the task at hand.

II. *The Uses of Scripture*

Let us start back, now with an elementary question: what do we mean by “the uses of Scripture.” The very meaning of “use” of course is rich, the appeal to Scripture ubiquitous and compelling, in the Talmud. Clearly, the framers of the Talmud acknowledge the inerrant and verbal accuracy of the written Torah: God’s dictated, word for word message to Moses, our lord, at Mount Sinai. But that uniform conviction, which governs throughout, encompasses more than a single dimension of discourse, but propels us through many and profound layers of meaning. But how are we to discern in allusions to verses of the Torah the third and fourth and fifth dimensions of discourse, and in what way are we to uncover the successive layers of meaning and intent? Let me set forth one of the questions that helps us respond to the challenge.

When the author of an analytical passage appeals to Scripture, at what point in the argument he is framing, and for what compelling purpose, does he invoke a verse of the Torah? Why here, not there? What is Scripture asked to contribute to discourse—a fact? a principle? a precedent? How does Scripture settle questions, and what questions does Scripture not settle? Where does Scripture form the

main frame of argument, and when is a verse of Scripture tangential and merely formal? We find in the Talmud rich and sustained, indeed rather overwhelming, discussions of how components of a given verse are to be read to mean one thing, rather than some other; are left open to prove this, rather than that; or are so preoccupied in proving this that they cannot prove that. So Scripture is divided, as the Mishnah is, into its component parts, and each part is given a presence and a probative value of its own—so all are deprived of that original meaning that they had in the verse in which they stood together to say some one thing. Just how does this sleight of hand work, so as to recast Scripture into words and phrases and clauses, standing on their own, saying each what it wishes to say out of all relationship with all other words or phrases or clauses or even particles of words. To ask, then, about “the uses of Scripture” therefore is to introduce a complex set of questions, which I think may be restated in one sizable one: precisely what happens to Scripture, and to verses, of Scripture, and to parts of those verses, down to the words, down to the letters—what happens to the Torah in the Talmud? And, more urgent still, precisely how does the Torah impart shape and structure to the Talmud, as does the Mishnah?

These questions prove schematic and at best suggestive. In fact, without analyzing a sizable corpus of data, we cannot ask a well-crafted question. So, if somewhat clumsily, having framed the question in all its diversity, I of course leave myself no option on how to proceed. We have to turn to a detailed analysis of a sustained and sizable body of writing, for there alone answers will be found—always, and only, in the details, sifted with great care and accuracy, beginning to end. For, as is now clear, to answer questions such as these, it is not enough merely to know that the author of a composition or framer of a composite deems Scripture, the written Torah, to convey God’s will in God’s exact wording. That fact stands only at the threshold of inquiry; it in no way serves to differentiate data or to clarify what is at stake, or what various stakes may be at hand, when a verse or clause or word or particle of Scripture is adduced in evidence or in argument. We want also to know how a verse of Scripture accomplishes his purpose, why one verse rather than another is invoked, and how a repertoire of Scriptures has dictated the form and flow of his argument—if it does—or how that available store of verses has proved incidental to that argument, if it has. Not only so, but we ask, what formal or verbal signals accompany one

function served by the citation of Scripture, and how do authors tell us the probative purpose—within a range of such purposes—that citing a verse of Scripture in one way, rather than in some other, is meant to accomplish.

In this context, it must be obvious, the question of how Scripture is used addresses not the technology of exegesis at all. Some find acute interest in uncovering in a given verse of Scripture the peculiar detail, e.g., in wording or in context, that led an exegete to reach one conclusion rather than some other. The premise of that inquiry, of course, reveals its own apologetic: what the sages say is what Scripture “really” meant; and that is beyond argument—to them. But that apologetic program, sometimes disguised in literary-critical language, conveys no analytical insight; we know no more about the uses of the Torah in the Talmud after, than we did before, we have been assured that the Torah was used by the Talmud in a manner wholly in accord with the Torah’s intent. Nor do we require further proof of what everybody rightly knows, which is that the sages knew how to read Scripture and quote it for their own purposes.

The range of questions I raised just now underline that I have a different question in mind altogether. What I want to know is how framers of compositions and composites in the Bavli turned to Scripture, at what point in the writing, for what purpose, with what result—both for their writing and for Scripture: what happens to the Torah, and what happens to the Talmud, when the two meet and fuse. The traits of Scripture in this context are of no interest at all, the traits of Talmudic thought and argument, of critical concern. For verses of Scripture, as we shall see, served a sizable repertoire of purposes, would be introduced with a range of verbal or formal signals, would dictate a choice of secondary analytical procedures. Scripture was there to be used, to be sure, but the sages knew how to use verses of Scripture because a variety of rules told them precisely what to expect in Scripture and what to do with Scripture. So I want to know what those rules were, what choices they identified for themselves, how they knew they were to do one thing, rather than some other, with this verse, rather than that one,— the answers to these questions form an account of the Torah in the Talmud. Since the uses and authority of Scripture prove various, each defined use, each specific mode of authority, proves particular to its context until proven otherwise.

In this sustained exercise, which for the present purpose I have

severely abbreviated, we sift the data of a long and important tractate, identifying the types of uses of Scripture—the forms those uses take, the place in an unfolding argument accorded to them, the result, for analysis and argument, of the introduction of a verse of Scripture. My goal, therefore, is to differentiate among the numerous instances in which the Talmud appeals to the (written) Torah, to find out what various purposes Scripture is asked to serve, how appeals to Scripture are given a particular form, and what kinds of sustained dialectical arguments are framed around the Torah in the Talmud. It is this third type of discourse involving Scripture that strikes me as the most complex and that demands the greatest attention. I present a systematic taxonomy of the ways in which Scripture occurs in the tractate at hand, and which also shows what happens to Scripture in that tractate: the results of that fusion that turned Scripture into a component of a distinct discourse, just as much as the Talmud turned the Mishnah into a component of a discourse entirely different from that defined by the Mishnah's own statement. The way in which, out of Scripture and the Mishnah, the Talmud made its own state—wrote with Scripture, wrote with the Mishnah—is set forth through the details analyzed here.

As is my way, I choose a sample text and work my way through its elements. I know no more reliable way of answering questions than systematically, in dialogue with a sustained and representative part of the document under study. In this way I find pertinent data and form of them a single coherent theory of matters. I have chosen Mishnah-tractate *Qiddushin*, as it is expounded in the Talmud of Babylonia because that tractate is rich, interesting, and a mixture of scripturally-generated facts and free-standing issues and problems. A Mishnah-tractate such as *Yoma*, wholly dependent on Leviticus Chapter Sixteen for its program, seemed to me less suggestive than one that incorporates a variety of topics and issues, many of them autonomous of verses of Scripture. But a Mishnah-tractate such as *Baba Batra*, with its vast conceptual and factual heritage but paltry corpus of verses of Scripture, would not serve our purpose, since the data vastly overspreads our particular problem. *Qiddushin* strikes me as a middling document, not too close to, nor too far from, a scriptural foundation.

III. A SYSTEMATIC TEXT-STUDY

Before us is the opening statement of a long and complex chapter of the Talmud of Babylonia. I give only samples; readers are invited to consult the complete monograph for a full account of matters. In a later unit of this chapter, I survey the entire result, so what is offered here is only an example of how that result is reached. In the present exercise, I use bold face type to signal compositions that devote themselves to Scriptural interpretation and elucidation. To differentiate the Mishnah-passage in this case, I utilize bold-face small caps.

1:1

- A. A woman is acquired [as a wife] in three ways, and acquires [freedom for] herself [to be a free agent] in two ways.
- B. She is acquired through money, a writ, or sexual intercourse.
- C. Through money:
- D. The House of Shammai say, "For a denar or what is worth a denar"
- E. And the House of Hillel say, "For a perutah or what is worth a perutah."
- F. And how much is a perutah?
- G. One eighth of an Italian issar
- H. And she acquires herself through a writ of divorce or through the husband's death.
- I. The deceased childless brother's widow is acquired through an act of sexual relations.
- J. And acquires [freedom for] herself through a rite of removing the shoe or through the levir's death.

I.1

- A. A woman is acquired [as a wife]:
- B. *What differentiates the present passage, in which case the Tannaite formula commences, **A woman is acquired [as a wife]**, from the passage to come, in which case the Tannaite formula uses the language, **A man effects betrothal [lit.: consecrates] on his own or through his agent [M. 2:1A]**? [Why not say, a woman is betrothed, rather than, is acquired?]*
- C. ***Since the Tannaite framer of the Mishnah-passage planned to introduce the matter of acquiring through money [he used language appropriate to a monetary***

*transaction]. For how do we know that a monetary token serves to effect betrothal? The fact derives from the verbal analogy established by the use of the word “purchase” [or take] with reference to the field of Ephron. Here we have, “if any man take a wife” (Dt. 22:13), and there, “I will give you money for the field, take it from me” (Gen. 23:13). [Freedman: just as ‘take’ in the latter verse refers to money, so in the former too, the wife is taken, betrothed, by money.] And “taking” is referred to as acquisition, in line with the verse, “The field that Abraham acquired” (Gen. 49:30). Or, also, “Men shall acquire fields for money” (Jer. 32:44). Therefore the framer of the Mishnah-passage has used the word-choice: **A woman is acquired [as a wife].***

- D. *Well, then, why not use the same word choice in that other passage [at M. 2:1A], namely, A man acquires...?...*
2. A. *And how come the Tannaite framer of the passage uses the feminine form of the word three, rather than the masculine form?*
- B. *The reason is that he will use the word way, which is feminine too, in the following verse of Scripture: “And you shall show them the way wherein they must walk” (Ex. 18:20).*
- C. *Well, what about that which is taught on Tannaite authority, where the word three is used in the masculine form: **In seven ways do they examine the Zab before he is confirmed as to flux [M. Zab. 2:2A]?** Why not use the feminine form?...*
- D. ***The reason is that he proposes to speak of way, which appears in the masculine form in the following verse: “They shall come out against you in one way and flee before you in seven ways” (Dt. 28:27).***
- E. ***Well, then, the two verses prove contradictory, and the Mishnah-passages are likewise contradictory!***
- F. ***The two verses are not contradictory. Where we find the feminine form, the reference-point is the Torah, which is feminine in the verse, “The torah of the Lord is perfect, restoring the soul” (Ps. 19:8), and hence the feminine form is employed. There, the reference is to war making, which men, not women, do, so the masculine form is used. The Mishnah-passages are not contradictory: since the reference here is to a woman, the word is given the feminine form; the reference in the intersecting passage is to a man, for a man is examined, but a woman isn’t;***

a woman contracts that form of uncleanness even though there is no external cause [so no examination is necessary]. Hence the masculine form is used.

Scripture, along with the Mishnah, provides a fact that requires adjudication. The citation-form presents no surprises.

3. A. ***Well, then, the Tannaite formulation uses three? It is because the word “ways” is to be used in the feminine? Then let the Tannaite formulation make reference to “things,” which is a masculine noun, and use the masculine form of the word for three?***
- B. ***The reason is that the framer of the passage wanted to formulate the Tannaite rule with reference to sexual relations, and sexual relations is called “way,” in the verse, “And the way of a man with a maid...such is the way of an adulterous woman” (Prov. 30:19-20).***
4. A. *So there is no problems with respect to betrothal through sexual relations. What is to be said about betrothal through a monetary token or a document of betrothal?*
- B. *They are formulated as they are in conjunction with the formulation on sexual relations.*
- C. *And will two items be so formulated because of one?*
- D. *These too are preliminaries to the sex act.*
- E. *And if you like, I shall say, who is the authority behind the unattributed passage? It is R. Simeon, as has been taught on Tannaite authority:*
- F. ***R. Simeon says, “How come the Torah has said, ‘If a man take a wife’ (Dt. 22:13), and not, ‘when a woman is taken by a man’? It is because it is the way of a man to go looking for a woman, but it is not the way of a woman to go looking for a man. The matter may be compared to the case of someone who has lost something: who looks for whom? The owner of the lost object looks for what he has lost.”***

Scripture is assumed to formulate its points by making choices in wording, framing matters as it does to make a point beyond its surface-allegation, responding to the facts of the world by imposing its word-choice on them, or otherwise conducting discourse at more than a single level of thought and communication. Here too, as we shall now see, Scripture is simply a source of facts right alongside the Mishnah, assumed to use language in a manner consistent with the usage of the Mishnah.

- G. *Well, then, we have learned in the Mishnah: In seven ways do they examine the Zab before he is confirmed as to flux [M. Zab. 2:2A]. Why not use the language, things there?*
- H. *In using the language they do there, we are informed that it is the way of gluttony to cause a flux, and it is the way of drunkenness to cause a flux.*
- I. *But lo, we have learned in the Mishnah: A citron [tree] is like a tree in three ways, and like a vegetable in one way [M. Bik. 2:6A]. Why not use the language, things, there?*
- J. *It is because he wants to go onward, and like a vegetable in one way.*
- K. *Big deal—so use the language, things, there too!*
- L. **[3A]** *There we are informed that it is the ways of a citron to be like that of vegetables. Specifically, just as it is the way of vegetables to grow through any sort of water [even artificial irrigation, which cannot be done for wheat and vines], and when it is picked it is to be tithed, so it is the way of the citron to grow through any sort of water [even artificial irrigation, which cannot be done for wheat and vines], and when it is picked it is to be tithed.*
- M. *And lo, as we have learned in the Mishnah [using the word way rather than thing or aspect]: A KOY [A BEAST THAT FALLS INTO THE TAXON OF A WILD BEAST AND ALSO INTO THAT OF A DOMESTICATED BEAST—THERE ARE WAYS IN WHICH IT IS LIKE A WILD ANIMAL, AND THERE ARE WAYS IN WHICH IT IS LIKE A DOMESTICATED ANIMAL; AND THERE ARE WAYS IN WHICH IT IS LIKE [BOTH] A DOMESTICATED ANIMAL AND A WILD ANIMAL; AND THERE ARE WAYS IN WHICH IT IS LIKE NEITHER A DOMESTICATED ANIMAL NOR A WILD ANIMAL [M. Bik. 2:8]. Why not use the word “thing” here too? And furthermore we have learned in the Mishnah [using the word way rather than thing or aspect]: THIS IS ONE OF THE WAYS IN WHICH WRITS OF DIVORCE FOR WOMEN AND WRITS [M. Git. 1:4C]. Why not use the word “thing” here too? Rather, in any passage in which there is a point of differentiation, the word ways is used as the Tannaite formulation, and in any passage in which there is no point of differentiation, the word things is used. The formulation of the Mishnah, closely examined, sustained that view: R. ELIEZER SAYS, “IT IS LIKE A TREE IN EVERY THING” [M. Bik. 2:6E].*
5. A. *What exclusionary purpose—three, no more—is served by specifying the number at the opening clause and at the consequent one?*
- B. *The exclusionary purpose of specifying the number at the opening clause serves to eliminate as a means of betrothal the marriage-canopy [and its rite of consummating the marriage] itself.*
- C. *Well, then, from the perspective of R. Huna, who has said, “The marriage-canopy effects acquisition of title to the woman, on the strength of an argument a fortiori,” what is eliminated by the specification of the number of modes of betrothal?*

- D. *It serves to exclude the possibility of barter [trading the betrothal of a woman in exchange for an object]. It might have entered your mind to say, since we have derived the use of the word “take” from the use of the word “take” in connection with the field of Ephron, just as the title of a field may be acquired through barter, so title to a woman may be acquired through barter. Thus we are informed that that is not the case.*
- E. *Yeah, so maybe it is the case?*
- F. *There is the possibility of an act of barter of something worth less than a penny, but through something worth less than a penny [3B] a woman cannot be acquired.*
6. A. *The exclusionary purpose of specifying the number at the concluding clause serves to eliminate the rite of removing the shoe. For it might have entered your mind to suppose that the possibility of the rite of removing the shoe should derive by an argument a fortiori from the case of the levirate wife. If a levirate wife, who is not freed by a divorce, is freed by the rite of removing the shoe, than this one [the levirate wife] who is freed by divorce surely should be freed by a rite of removing the shoe. Thus we are informed that that is not the case.*
- B. *Yeah, so maybe it is the case?*
- C. **Scripture is explicit: “Then he shall writ her a writ of divorce” (Dt. 24:1)—through a writ he divorces her, but he doesn’t divorce her in any other way.**

The exegesis of the verse of Scripture yields an important fact for the Talmud’s reading of the Mishnah. The principle of reading is simple: the verse is assumed to be exclusive, so when it says, it is done one way, it is assumed to mean, this way, not that way: exclusive and comprehensive.

What follows is the single most important type of Scripture-usage in the Talmud; it is long and systematic, and when we identify the traits of thought of the following, we shall have a model by which to classify a vast proportion of the Scripture-compositions and composite of the Talmud. Let us examine the way in which the argument unfolds step by step.

II.1

- A. She is acquired through money:
- B. *What is the scriptural source of this rule?*
- C. And furthermore, we have learned in the Mishnah: The father retains control of his daughter [younger than twelve and a half] as to effecting any of the tokens of betrothal: money, document, or

sexual intercourse [M. Ket. 4:4A]—*how on the basis of Scripture do we know that fact?*

The premise is that the rule of the Mishnah does not stand on its own but depends upon a statement of the Torah.

B. Said R. Judah said Rab, “Said Scripture, ‘Then shall she [the Hebrew slave-girl] go out for nothing, without money’ (Ex. 21:11). No money is paid to this master, but money is paid to another master, and who would that be? It is the father.”

Once more, we read Scripture as both exclusive and comprehensive: this, not that; this, not any other possible that.

C. *But might one say that it goes to her?*

D. *But how can you suppose so? Since the father has the power to contract her betrothal, as it is written, “I gave my daughter to this man” (Dt. 22:16), can she collect the money? [Obviously she cannot, so the father gets the money.]*

There is another possibility, not considered in our initial proof. Our this, not that, has left an opening, which has now to be closed. It is closed by pointing out that Scripture cannot possibly have entered the alternative possibility, since the facts of the case prevent it.

E. *But maybe that is the case only for a minor, who has no domain [“hand,” with which to effect acquisition], but in the case of a girl, who has a domain for the stated purpose, she may contract the betrothal and also get the money paid for the betrothal?*

F. *Said Scripture, “Being in her youth, in her father’s house” (Num. 30:17)—every advantage accruing to her in your youth belongs to her father.*

Testing our proposed exclusive reading, we appeal to another scriptural proof to preclude a possibility we have eliminated; and Scripture obliges. But there is another reading of that same matter, and this too has to be addressed.

G. *Then what about what R. Huna said Rab said, “How on the basis of Scripture do we know that the proceeds of a daughter’s labor go to the father? ‘And if a man sell his daughter to be a maidservant’ (Ex. 21:7)—just as the proceeds of the labor of a maidservant go to the master, so the proceeds of the labor of a daughter go to the fa-*

ther”? *What need to I have for such a proof, when the same proposition may be deduced from the phrase, “Being in her youth, in her father’s house” (Num. 30:17)?*

- H. *Rather, that verse refers to releasing her vows [and not to the matter at hand, as the context at Num. 30:17 makes clear].*

Thus far, we have simply assumed that the correct reading of Scripture on its own solves our problem. But we have now to introduce the issue, is our case appropriately addressed to the verses of Scripture we have chosen? Are there not other verses of Scripture that can have solved our problem. The issue is framed in terms of the corpus of verses that cover a different matter altogether, namely, rules on financial transactions, rather than (as we have assumed to this point) rules on the rights of the father to the property accruing to the daughter.

- I. *And, furthermore, should you say, so let us derive the rule covering money from the rule covering other propositions, in fact, we do not ever derive the rule covering money from the rule covering other propositions!*
- J. *And, furthermore, should you propose, so let us derive the rule governing the disposition of monetary payments from the rule governing fines, it is the simple fact that the rule governing monetary payments is not to be derived from the rule governing the disposition of fines.*

The argument proposed just now has been dismissed out of hand; the rules of taxonomy are invoked, and we compare like to like, but not like to unlike. A more compelling consideration is now introduced, particular to the category under discussion, namely, the father’s power. So that category having been defined as governing,, we can exclude other categories, that do not apply.

- K. *Then here is the reason that compensation for humiliation and damages is assigned to the father: [add: if he wanted, he could hand her over [for marriage] to an ugly man or to a man afflicted with boils]. [Since he himself could subject her to indignity and benefit from it, he gets the compensation from someone who does that to her (Slotki).]*
- L. *Rather, it is more reasonable that, when the All-Merciful excluded another “exodus” [from the household], [4A] it was meant to be like the original. [Slotki: as in the orig-*

inal, it is the master, not the slave girl, who would have received the money for her redemption, but a specific texts states to the contrary, so in the implication it must be the father, corresponding to the master, who gets the money when she leaves his control at betrothal.]

- M. *Yes, but the one “exodus” or not really comparable to the other. For in the case of the master, the slave girl entirely exits from his control, while in the exodus from the domain of the father, the exit to the bridal canopy has not yet been completed.*
- N. *Nonetheless, so far as it concerns his power to remit her vows, she does entirely exit his domain, for we have learned in the Mishnah: A betrothed girl—her father and her husband annul her vows [M. Ned. 10:1A-B].*

We have now completed our demonstration and turn to secondary issues, left open for the purposes of argument. The first concerns our reading of a key verse, and we now want to know whether that verse must pertain to our problem; it may be read in a different context altogether. This consideration has already gained our attention: are we sure that the verse is relevant to our problem? If it is, then it solves that problem; if not, then we are at a loss. So the next initiative tests our use of evidence from Scripture.

2. A. *But does the verse, “She shall go out for nothing” serve the present purpose? Surely it is required in line with that which is taught on Tannaite authority, as follows:*
- B. *“And she shall go out for nothing”—this refers to the days of her puberty; “without money” refers to the days of just prior to puberty. [Freedman: thus the verse merely teaches that something else, not money, frees her, but implies no other conclusion.]*

The option is now before us: can the verse not be asked to speak to another matter altogether? The answer is, it can, but it does not do so, because the wording of Scripture points toward our problem, and not that to which another reading wishes to direct the verse.

- C. *Said Rabina, “If so, Scripture ought to have said, ‘no money.’ Why formulate matters as ‘without money’? It is to indicate, ‘No money is paid to this master, but money is paid to another master, and who would that be? It is the father.’”*

The principle of exegesis has now to be articulated and defended. That principle is, this, not that, and, this, but not any other that. In this case, when Scripture uses a phrase that can have been omitted without a loss of meaning, that usage captures our attention and is deemed to be exclusionary, as I said, this, not that. But we have also to know, this, but not any other that, thus: how do I know that it is this, not that, when it can be, this, but not the third thing. In what follows, the model of the exegesis is shown to pertain to other data, so we are assured that our reading is not particular to our case.

- D. *And on what basis do we perform such an exegesis? It is as has been taught on Tannaite authority:*
- E. **“And have no children” (Lev. 22:13)—I know only that that pertains to her own child, what about her grandchild? Scripture says, “And have no child,” meaning, any child whatsoever.**

As I said, what we now so far is, this, not that. But we do not know, this but not any other that. That is what now follows.

- F. **So far I know that that is the case only of a valid offspring, what about an invalid one?**
- G. **Scripture says, “And have no child,” meaning, “hold an inquiry concerning her.”**

We have now backtracked and encompassed another that, with no loss to our argument, so we have, this, not that or any thing else. But does not the verse at hand yield an exclusion, not an extension? That is what now follows, a problem readily solved by appeal to established facts.

- H. *But lo, that clause has yielded the deduction concerning the grandchild!*
- I. *In point of fact it is not necessary to present a verse of Scripture to prove that grandchildren are in the status of children. Where a verse of Scripture is required is to deal with invalid offspring.*
- J. *And how does the Tannaite authority himself know that such an exegesis is undertaken?*

We do not need a verse of Scripture to make the proposed point, since it is an established fact, beyond the necessity of scriptural demonstration. But how do we know that the exegesis is plausible? The answer lies in a detail of not sense but form. Scripture writes a word one way, rather than in another possible way, and that choice

represents a decision of an exegetical character. That is to say, by the writing of a word with (or without) a letter that may be omitted (or included), Scripture accords to us the possibility of drawing a conclusion about the sense of the verse—the conclusion having no relationship to the formal characteristic that has invited us to reexamine the sense of the verse. Here we cross the line from exegesis of sense to exegesis of formal trait and back to the exegesis of sense.

K. Say: It is written, “Balaam refuses” and “my husband’s brother refuses” (Num. 22:14, Dt. 25:7). In these instances, the words are written without the Y that they could have had. Now here in the verses treated above, the Y is used, which proves that the Y, which is dispensable, is included for exegetical purposes.

The proof, as I said, is dialectical, moving from form to sense. The formal character of the spelling tells us that the verse can have a meaning other than that that lies on the surface. But the meaning we choose to impute is not dictated by the formal accident of orthography. The premise, then, is that the verse conducts its discourse on two levels, the one formal, calling attention to a peculiarity implicit in the verse, the other, substantive, dictating what that particular meaning must be. But the form has no bearing on the substance, and that is what I call “dialectical.” Our sages perceive a movement that we should never have identified without their guidance; and they moreover impute to that movement—orthography to implicit sense—a sense that only they, in the context of their thought and inquiry, can have identified. I find this remarkable and subtle, even if I cannot account for all the stages of thought that are represented before us.

It remains to observe that we have asked Scripture to prove two related propositions. Why cannot one proof suffice, with the other proposition derived from the established, scripturally founded one? That is the final, logical question at hand.

3. A. And it was necessary to provide a verse of Scripture to indicate that the minor daughter’s token of betrothal is assigned to her father, and it also was necessary to find a verse of Scripture to indicate that her wages are assigned to her father. For if the All-Merciful had made reference to the assignment of the token of betrothal to her father, I might have supposed that that was because she has not labored for that item, but as to her wages, for which she has labored, I might have said that they are assigned to

her. And if we had been informed of the matter of her wages, in which matter, after all, she is provided for by him, [I might have supposed that since he supports her, she gets her wages], but as to the matter of tokens of betrothal given to her from a third party, I might have supposed that these go to her. So both proofs were required.

The argument is now concluded, a systematic and orderly exposition, beginning to end; with no loose ends I can discern.

What follows forms an appendix to the foregoing, picking up a detail of the exegetical composition and expanding on it. The premise of the question, once more, is that Scripture does not repeat itself or say what does not have to be said. Here our problem is that Scripture tells us something that logical inquiry into another point Scripture makes will have yielded in any event. And the answer is, the one makes sense of, clarifies the other. What is important is the interest in the explanation of Scripture in its own terms, not only in the framework of an inquiry into the law, on the one side, or the sources of the Mishnah and their exegesis, on the other. The following, then, is free-standing in its intellectual dimension, and the form underlines that fact, for we open with a verse of Scripture, standing at the head of all that will follow.

4. A. ***Reverting to the body of the foregoing: “And she shall go out for nothing”—this refers to the days of her puberty; “without money” refers to the prepubescent time [days just prior to puberty].***
- B. ***But why should the All-Merciful simply make reference to the prepubescent time [days just prior to puberty], and it would not have been necessary to make reference to the time of her puberty?***

Why does Scripture have to tell me something that, on my own, I can have figured out. There are two possible answers, first, because a fresh point is at hand, second, because the intersecting passages shed light on one another; we take the second route.

- C. ***Said Rabbah, “The one comes along to impart meaning to the other. It may be comparable to the case of the words, a sojourner or a hired servant [Lev. 22:10: toshab, sakir,] as has been taught on Tannaite authority:***
- D. ***“One word refers to a Hebrew slave acquired permanently, the other to one purchased for six years [at Lev. 22:10: “a slave purchased in perpetuity belonging to a priest or***

a slave purchased for six years shall not eat of the Holy Thing”]. If Scripture had referred to the former and not the latter, I would reason, if a slave acquired permanently may not eat Holy Things, how much more so is one acquired only for six years forbidden to do so! And if that were so, I would say, the former word refers to a slave purchased for a limited period, but one acquired in perpetuity may eat. So the word that refers to the slave purchased for a period of six years comes along and illuminates the meaning of the word for the one purchased in perpetuity, by contrast to the one purchased for a period of six years—and neither one may eat.”

How better counter that argument than challenge the comparability of what has been compared? Once we distinguish the two classes, we open the way to a new approach to the solution of the problem, which is to deal with a case that indeed is comparable, but that also exhibits its own distinctive traits; hence the comparable cases require exposition, each in its own terms, since the one will not have yielded the other.

- E. *Said to him Abbayye, “But are the cases truly parallel? In that case, they are two distinct classes of persons, so that, even if Scripture had made explicit reference to a sojourner whose ear had been pierced’s not eating, and then made explicit reference to the other, then the hired hand might have been derived by an argument a fortiori. Such matters Scripture does take the trouble to spell out. But here, by contrast, the maidservant is one and the same person. Once she has left the prepubescent period, what business does she have to do with him when she becomes pubescent?”*
- F. *Rather, said Abbayye, “It was necessary to make this point only to deal with the case of a woman who exhibits no signs of puberty even after she has reached the age of twenty years. It might have entered your mind to suppose that when she reaches pubescence, she goes free, but not merely by reaching her majority. So we are informed to the contrary.”*

In a sustained, moving exposition, the same challenge raised will be repeated to the one who raised it. We still can have learned the entire matter from one statement and did not require a repetition thereof.

- G. *Objected Mar bar R. Ashi to this proposition: "But is this not attainable through an argument a fortiori? If the appearance of puberty signs, which do not remove the girl from the domain of the father, do remove the girl from the domain of the master, reaching maturity, which does remove her from the domain of the father, surely should remove her from the domain of the master!"*
- H. *Rather, said Mar bar R. Ashi, "The proof is required only to deal with the matter of the sale of a barren woman [Freedman: a minor who shows symptoms of constitutional barrenness]. It might have entered your mind to suppose that with one who will later on produce puberty-signs, the sale is valid, but with one who won't, the sale is null. [4B] So we are informed by the verse, 'and she shall go out for nothing' that that is not the case."*

The process will now be repeated once more, with the same effect. But then the entire premise of the composition is called into question. Scripture will indeed state in so many words a proposition that may be gained through an argument a fortiori.

- I. *But to Mar bar R. Ashi, who has said, "But is this not attainable through an argument a fortiori?," haven't we established the fact that something that can be proved through an argument a fortiori Scripture will nonetheless trouble to make explicit?*

True, Scripture will do that—but we can concede the possibility only under duress, and so the exposition draws to a close, perhaps as perfect a composition as we can imagine for this genre.

- J. *Well, that's true enough where there is no other possible reply, but if there is, we give that possible reply [making the verse pertain to some other matter than the one under discussion].*

Here is another exposition of the meaning of a verse of Scripture, in which the issue once more is whether or not Scripture repeats itself.

5. A. *[That she is acquired through money] is derived by the following Tannaite authority on a different basis, as has been taught on Tannaite authority:*
- B. *"When a man takes a wife and has sexual relations with her, then it shall be, if she find no favor in his eyes, because he has found some unseemly thing in her" (Dt. 24:1)—the sense of "take" refers only to acquisition*

through a payment of money, in line with the verse, “I will give the money for the field take it from me” (Gen. 23:13).

- C. **But cannot the same be proven by an argument a fortiori: if a Hebrew slave-girl, who cannot be acquired by an act of sexual relations, can be acquired by money, a wife, who may be acquired in marriage by an act of sexual relations, surely can be acquired by money!**

What follows is a logical point in no way particular to Scripture-exegesis or argument. It is the simple demonstration that two categories we thought comparable, with the result that the traits of the one may be imputed to the other, do not yield the result we imputed to the result of that comparison, because there is a third class of persons that is comparable, but that does not produce the same result. This kind of argument on the rules of category-formation and comparison appeals to logic, not to the form or sense of Scripture (or of the Mishnah, for that matter); for this Talmud it is an exegetical initiative common to the reading of both documents.

- D. **A levirate wife proves the contrary, since she may be acquired by sexual relations but not by a money payment.**
- E. **But what distinguishes the levirate wife is that she cannot be acquired by a deed, and can you say the same of an ordinary wife, who can be acquired by a deed? So it is necessary for Scripture to teach, “When a man takes a wife and has sexual relations with her, then it shall be, if she find no favor in his eyes, because he has found some unseemly thing in her” (Dt. 24:1)—the sense of “take” refers only to acquisition through a payment of money, in line with the verse, “I will give the money for the field take it from me” (Gen. 23:13) [Sifré Dt. 268:1.1].**
- F. **But what need to I have for a verse of Scripture, since it has been yielded by the argument a fortiori [the case of the levirate wife having been refuted]?**
- G. **Said R. Ashi, “It is because one may raise the following disqualifying argument to begin with: whence have you derived proof for the matter? From the case of the Hebrew slave-girl? But what distinguishes the Hebrew slave-girl is that she goes out from bondage with a money payment. Will you say the same in this case, in which she does not go forth through a money payment? So it is necessary for Scripture to teach, ‘When a man takes a wife and has sexual relations with her, then it shall be, if she find no**

favor in his eyes, because he has found some unseemly thing in her' (Dt. 24:1)—the sense of 'take' refers only to acquisition through a payment of money, in line with the verse, 'I will give the money for the field take it from me' (Gen. 23:13)."

- H. *And it was necessary for Scripture to deal with the case, "and she shall go out for nothing" and also "when a man takes." For had Scripture made reference to "when a man takes," I might have thought, the token of betrothal that the husband gives to her is her own; therefore Scripture states, "and she shall go out for nothing." And if Scripture had said only, "and she shall go out for nothing," I might have supposed, if the wife gives him the money and betroths him, it is a valid act of betrothal. Therefore Scripture stated, "when a man takes," but not, "when a woman takes."*

The polemic that follows forms an integral part of a sustained argument that correct category-formation proceeds only from Scripture; the traits of things, by themselves, do not provide reliable classification of things. The argument is as follows. Scripture teaches a rule about a given classification of persons, in this case, a woman and how she is acquired as a wife. Scripture alone is pertinent in the demonstration of that rule. Reason, uncorrected by revelation, will have yielded a different, and wrong conclusion. We now show how reason will have erred.¹

6. A. **"...and possesses her [has sexual relations with her]:"**
 B. **This teaches that a woman is acquired through an act of sexual relations.**
 C. **One might have reasoned as follows:**
 D. **If a deceased childless brother's widow, who may not be acquired through a money payment, may be acquired through an act of sexual relations, a woman, who may be acquired through a money payment, logically should be available for acquisition through an act of sexual relations.**

Reason ungoverned by Scripture errs, because we can find a further, comparable classification, which does not yield the same characteristic:

- E. **But a Hebrew slave-girl will prove the contrary, for she may be acquired through a money payment, but she is not acquired through an act of sexual relations. [On that**

account, you should not find it surprising for an ordinary woman, who, even though she may be acquired through a money payment, may not be acquired through an act of sexual relations] [Sifré Dt. 268:1.2].

- F. What characterizes the Hebrew slave-girl is that she is not acquired for a wife. But will you say the same in this case, in which the woman is acquired for a wife?
- G. So Scripture states, "...and possesses her [has sexual relations with her]/"
- H. But then why do I need a verse of Scripture [in light of F]? *Lo, the matter has been proven without it!*
- I. *Said R. Ashi, "Because there is the possibility of stating that at the foundations of the logical argument there is a flaw, namely, from whence do you derive the case? From the deceased childless brother's widow. But what characterizes the levirate widow is that she is already subject to a relationship to the levir, but can you say the same in this instance, where the woman hardly is subject to any relationship whatever to this unrelated man? So it is necessary to state: '...and possesses her [has sexual relations with her]'—This teaches that a woman is acquired through an act of sexual relations."*

The next composition goes over the same program as the foregoing, an interest in the necessity of appealing to the Torah for a proper basis of comparing classes of things.

III.1

- A. **[5A] And how on the basis of Scripture do we know that a woman may be acquired by a deed?**
- B. **It is a matter of logic.**
- C. **If a payment of money, which does not serve to remove a woman from a man's domain [as does a writ of divorce[, lo, it has the power of effecting acquisition,**
- D. **a deed [namely, a writ of marriage or a marriage-contract], which does [in the form of a writ of divorce[have the power to remove a woman from the domain of a man,**

¹ This demonstration follows self-evident formal rules; it is not particular to the Talmud, but it is the foundation of Sifra, as I have shown in *Uniting the Dual Torah: Sifra and the Problem of the Mishnah*. Cambridge and New York, 1989: Cambridge University Press.

surely should have the power of effecting acquisition.

- E. No, if you have made that statement concerning the payment of money, which does have the power of effecting acquisition of things that have been designated as Holy and of produce in the status of second tithe [there being an exchange of money for such objects, by which the objects become secular and the money becomes consecrated], will you make the same statement concerning a writ, which does not have the power of effecting acquisitions of Holy Things and produce in the status of second tithe, for it is written, “:and if he who sanctifies the field will in any manner redeem it, then he shall add the fifth part of the money of your estimation, and it shall be assigned to him” (Lev. 27:19)?
 - F. Scripture says, “and he writes her a bill of divorcement, hands it to her, and sends her away from his house; she leaves his household and becomes the wife of another man”.
 - G. Her relationship to the latter is comparable to her leaving the former. Just as her leaving the former is effected through a writ, so her becoming wife to the latter may be effected through a writ [Sifrē Dt. 268:1.3].
 - H. *Well, why not draw the comparison in the opposite direction, namely, the going forth from the marriage to the establishment of the marriage: just as the establishment of the marriage is through money, so the going forth from the marriage is through money?*
 - I. Said Abbayye, “People will say, money brings the woman into the marriage and money takes her out of it? Then will the defense attorney turn into the prosecutor?”
 - J. *If we accept that argument, then the deed of betrothal likewise will be subject to the saying, a writ removes her from the marriage, and a writ brings her into it? So will the prosecutor turn into the defense attorney?*
 - K. *Yes, but the substance of this document is distinct from the substance of that document.*
 - L. *Yeah, well, then, the purpose of this money payment is different from the purpose of that money payment!*
 - M. *Nonetheless, all coins have the same mint mark! [So who knows the difference? But the documents contain different wordings.]*
2. A. Raba said, “Said Scripture, ‘And he shall write for her’ (Dt. 24:1)—through what is in writing a woman is di-

vorced, and she is not divorced through a money payment.”

- B. *Why not say: through writing a woman is divorced, but she is not betrothed through what is in writing?*
- C. Lo, it is written, “And when she goes forth, then she may marry” so comparing divorce to marriage.
- D. Why choose that reading rather than the contrary one [excluding money for divorce and but accept a deed for marriage? why not reverse it?]
- E. *It stands to reason that when we deal with divorce, we exclude a conceivable means for effecting divorce; when dealing with divorce should we exclude what is a means of effecting a betrothal?*
- F. *Now how, for his part, does R. Yosé the Galilean attain that same principle, [since he interprets the language of the verse at hand for another purpose], how does he know that a woman is not divorced through a money payment?*
- G. *He derives that lesson from the language, “a writ of divorce,” meaning, “A writ is what cuts the relationship, and no other consideration cuts the relationship.*
- H. *And rabbis—how do they deal with the language, “a writ of divorce”?*
- I. *That formulation is required to indicate that the relationship is broken off through something that effectively severs the tie between him and her. For it has been taught on Tannaite authority: [If the husband said], “Lo, here is your writ of divorce, on the condition that you not drink wine, that you not go to your father’s house for ever,” this is not an act of totally severing the relationship. [If he said,] “... for thirty days...,” lo, this is an act of severing the relationship. [The husband cannot impose a permanent condition, for if he could do so, then the relationship will not have been completely and finally severed.]*
- J. *And R. Yosé?*
- K. *He derives the same lesson from the use of the language, “total cutting off” as against merely “cutting off.”*
- L. *And rabbis?*
- M. *The rabbis do not derive any lesson from the variation in the language at hand.*

At the end I shall incorporate what we have just seen into a systematic account of the entire chapter. For one further sample, we turn to the concluding unit of the same chapter.

1:8

- A. [The cultic rites of] laying on of hands, waving, drawing near, taking the handful, burning the fat, breaking the neck of a bird, sprinkling, and receiving [the blood] apply to men and not to women,
- B. except in the case of a meal offering of an accused wife and of a Nazirite girl, which they wave.

I.1

- A. laying on of hands:
- B. *For it is written*, "Speak to the sons of Israel...and he shall lay his hand upon the head of the burnt offering" (Lev. 7:29-30)—
- C. the sons of Israel, not the daughters of Israel do it.

II.1

- A. waving:
- B. *For it is written*, "Speak to the sons of Israel...the fat...may be waved" (Lev. 6:7).
- C. the sons of Israel, not the daughters of Israel do it.

III.1

- A. drawing near:
- B. *For it is written*, "And this is the law of the meal offering: the sons of Aaron shall offer it:—
- C. the sons of Aaron, not the daughters of Aaron do it.

IV.1

- A. taking the handful:
- B. *For it is written*, "And he shall bring it to Aaron's sons, the priests, and he shall take out of it his handful of the fine flour" (Lev. 2:2) —
- C. the sons of Aaron, not the daughters of Aaron do it.

V.1

- A. burning the fat:
- B. *For it is written*, "And Aaron's sons shall burn it" (Lev. 2:2)

- C. **the sons of Aaron, not the daughters of Aaron do it.**

VI.1

- A. **breaking the neck of a bird, sprinkling:**
 B. *For it is written*, “**And he shall wring off his head and burn it on the altar**” —
 C. *treating as comparable wringing the neck and burning the fat.*

VII.1

- A. **and receiving [the blood]:**
 B. *For it is written*, “**And the priests, the sons of Aaron,**” and a master has said, [36B] “**“And they shall bring”** refers to receiving the blood.”

VIII.1

- A. **sprinkling:**
 B. *Sprinkling what? If it is the blood of the row cow, “Eleazar” [the priest] is written in that connection. And if it is the blood that is sprinkled in the inner sanctum of the Temple [e.g., on the veil and golden altar], then the anointed priest is required for that [e.g., Lev. 4:5].*
 C. *It is the sprinkling of the blood of fowl, deriving a fortiori from the case of the beast: if an animal, for slaughter of which a priest is not specified, has to have a priest for sprinkling its blood, then fowl, for the wringing of the neck of which a priest is required, surely should have to have a priest for sprinkling the blood.*

IX.1

- A. except in the case of a meal offering of an accused wife and of a Nazirite girl, which they wave:
 B. *Said R. Eleazar to R. Josiah, his contemporary, “You may not take your seat until you explain the following matter: How do we know that the meal-offering of the accused wife had to be waved?”*
 C. *[He replied,] “How do we know indeed! It is written, ‘And he shall wave’ (Num. 5:25)!”*
 D. *[No, the question is,] “How do we know that it must be done by the owner [explaining why the priest puts the woman’s hand on*

the utensil of service, along with his own, so that she may wave the offering as he does]?”

- E. “The proof derives from the appearance of the word ‘hand’ both in the present context and in the setting of the peace-offerings. *Here it is written*, ‘And the priest will take from the hand of the woman’ (Num. 5:25) *and in that other connection it is written*, ‘His own hands shall bring...’ (Lev. 7:30). Just as, in the present instance, it is the priest who does the waving, so, in that other instance, it is the priest who does the waving. Just as, in that other context, the owner joins in, so here, too, the owner joins in. How so? The priest puts his hand under the hand of the owner and waves [the meal-offering] [M. Sot. 3:1B].”
- F. *So we have found the case of the accused wife. How about the Nazirite woman?*
- G. We derive the sense of “palm” from the meaning in connection with the accused wife.**

I.1-VII provide scriptural foundations for the Mishnah’s details. **VIII.1** clarifies the rule of the Mishnah. **IX.1** reverts to the established inquiry.

1:9

- A. Every commandment which is dependent upon the Land applies only in the Land,**
- B. and which does not depend upon the Land applies both in the Land and outside the Land,**
- C. [37A] except for orlah [produce of a fruit tree in the first three years of its growth] and mixed seeds [Lev. 19:23, 19:19].**
- D. R. Eliezer says, “Also: Except for [the prohibition against eating] new [produce before the omer is waved on the sixteenth of Nisan] [Lev. 23:14].”**

I.1

- A. *What is the meaning of, which is dependent upon, and what is the meaning of, which does not depend upon? If I say that the sense of pertains where the language, which is dependent upon “entering the land” is used, and the sense of which does not depend upon pertains where the language, “entering the land” is not used, then what about the matters of phylacteries and the disposition of the firstling of an ass, which pertain both in the Land of Israel and abroad, even though the language “entering the land” is used in their connection?*
- B. *Said R. Judah, “This is the sense of the statement: Every religious duty that is an obligation of the person applies whether in the Land or abroad, but*

if it is an obligation that is incumbent upon the soil, it applies only in the land.”

2. A. *What is the scriptural basis for that rule?*
- B. *It is in line with what our rabbis have taught on Tannaite authority:*
- C. [“These are the laws and rules that you must carefully observe to do in the land that the Lord, God of your fathers, is giving you to possess, as long as you live on earth. You must destroy all the sites at which the nations you are to dispossess worshiped their gods, whether on lofty mountains and on hills or under any luxuriant tree. Tear down their altars, smash their pillars, put their sacred posts to the fire, and cut down the images of their gods, obliterating their name from that site” (Dt. 12:1-3)]:
 - D. “These are the laws:”
 - E. this refers to the midrash-exegeses.
 - F. “and rules:”
 - G. these are the laws.
 - H. “...that you must carefully observe:”
 - I. this refers to studying.
 - J. “...to do:”
 - K. this refers to doing the deeds.
 - L. “...in the land [that the Lord, God of your fathers, is giving you to possess, as long as you live on earth]:”
 - M. might one suppose that all of the religious duties without exception pertain abroad?
 - N. Scripture says, “to do in the land.”
 - O. Might one suppose that all of the religious duties without exception pertain solely in the land [and not abroad]?
 - P. Scripture says, “...as long as you live on earth.”
 - Q. After Scripture has stated matters in encompassing language, Scripture has further stated matters in limiting matters, on which account we learn from the stated context.
 - R. In context, it is stated, “You must destroy all the sites at which the nations you are to dispossess worshiped their gods.”
 - S. Just as the matter of idolatry is singular in that it is a religious duty pertaining to one’s person and not dependent upon one’s being situated in the land, thus pertaining both in the land and also abroad, so all religious duties that are incumbent upon the person and do not depend upon one’s being located in the land apply both in the land and abroad [Sifré Dt. LIX:I.1-2].

II.1

- A. except for orlah [produce of a fruit tree in the first three years of its growth] and mixed seeds [Lev. 19:23, 19:19]. R. Eliezer says,

- “Also: Except for [the prohibition against eating] new [produce before the omer is waved on the sixteenth of Nisan] [Lev. 23:14:]”
- B. *The question was raised: is the dissenting opinion of R. Eliezer meant to yield a lenient ruling or a strict ruling?*
 - C. *It is meant to yield a strict ruling, and this is the sense of the passage: the initial authority says, except for orlah and mixed seeds, these deriving from a traditional law; that is so, even though one might argue, to the contrary, these represent an obligation that is connected with the soil, but the consideration of the use of new produce only after the waving of the barley-sheaf is practiced only in the land but not overseas. How come? “Dwelling” means, after taking possession and settling down [Lev. 23:14: it shall be a statute throughout your generations in all your dwellings,” and that might mean, even outside of the Land; but even in the Land this rule came into force only after the Israelites had settled down, not while they were fighting for and dividing up the country]. And then R. Eliezer comes along to say: also the consideration of the use of new produce only after the waving of the barley-sheaf is practiced both in the land but not overseas. How come? “Dwelling” means, anywhere where you dwell.*
 - D. *Well, maybe his ruling is meant to yield a lenient ruling, and this is the sense of the passage: the initial authority says, except for orlah and mixed seeds, these deriving from a traditional law—and all the more so does the rule governing not eating new produce prior to the waving of the barley sheaf of new grain, for the sense of the word “dwelling” is, anywhere where you dwell. And then R. Eliezer comes along to say: also the consideration of the use of new produce only after the waving of the barley-sheaf is practiced only in the land but not overseas. How come? “Dwelling” refers to the situation that prevailed only after the Israelites had settled down, not while they were fighting for and dividing up the country.*
 - E. *And what is the reference-point of also here [in this theory of matters]?*
 - F. *It refers to the first clause only [the consideration of not eating new grain before the waving of the sheaf of barley is included in the general principle that all precepts and so on].*
 - G. *Come and take note, for said Abbayye, “Who is the Tannaite authority who differs from R. Eliezer? It is R. Ishmael, for it has been taught on Tannaite authority:*
 - H. *[“When you come into the land of your dwellings, which I give to you, and will make an offering burnt by fire to the Lord, then shall he who offers offer a meal offering and libations” (Num. 15:2ff.:) “This serves to teach you that wherever the word ‘dwelling’ appears, it refers only to the period after taking possession and settling down in the land,” the words of R. Ishmael.*
 - I. *Said to him R. Aqiba, “Lo, there is the matter of the Sabbath, concerning which ‘dwellings’ occurs, and that applies both in the Land and abroad.”*

- J. He said to him, “The matter of the Sabbath derives from an argument a fortiori: if there are less important religious duties that apply both in the Land and abroad, the Sabbath, which is a weighty commandment, all the more so.”
- K. *Well, now, since said Abbayye, “Who is the Tannaite authority who differs from R. Eliezer? It is R. Ishmael,” it must follow that R. Eliezer’s dissenting opinion is meant to yield a strict ruling.*
- L. *It certainly does prove the point.*
- M. *Well, to what does R. Ishmael make reference? It is to libations. But in connection with libations, [37B] the language “coming into the land” and also “dwelling” are used. [Freedman: maybe only “dwelling” extends the law to all places only when it stands alone, but here, used along with “coming,” it limits the applicability of the law to the Land of Israel.]*
- N. *This is the sense of the statement: “This serves to teach you that wherever the words ‘coming’ and ‘dwelling’ appear, Scripture refers only to the period after the inheritance and settlement of the Land,” the words of R. Ishmael.*
- O. *If so, then the language we have is inappropriate, namely: Said to him R. Aqiba, “Lo, there is the matter of the Sabbath, concerning which ‘dwellings’ occurs, and that applies both in the Land and abroad.” He said to him, “The matter of the Sabbath derives from an argument a fortiori: if there are less important religious duties that apply both in the Land and abroad, the Sabbath, which is a weighty commandment, all the more so.” Rather, what should be said is this: “I was referring to ‘coming’ and ‘dwelling’”!*
- P. *The force of his statement was, first—and furthermore, namely: “I was referring to ‘coming’ and ‘dwelling,’” and, furthermore, as to your statement, “Lo, there is the matter of the Sabbath, concerning which ‘dwellings’ occurs,”—The matter of the Sabbath derives from an argument a fortiori.*

In a strict sense, the following is not a Scripture-composition, since it does not cite verses and explain their meaning or adduce them in evidence for the validity of a given proposition. But the theme is profoundly scriptural, beginning to end.

2. A. *What is at issue between them?*
- B. *Whether or not they offered libations in the wilderness. R. Ishmael takes the view that they didn’t offer libations in the wilderness, and R. Aqiba maintains that they did offer libations in the wilderness.*
- C. *Said Abbayye, This Tannaite authority of the household of R. Ishmael differs from another Tannaite authority of the household of R. Ishmael, for a Tannaite authority of the household of R. Ishmael [stated], ‘Since there are*

unspecified 'comings' stated in the Torah, but Scripture also has qualified the meaning of one of them, indicating that it refers to the time after the land was inherited and the people settled down, so all other references are to the period after inheriting and settling down in the land."

- D. *And as to the other Tannaite authority?*
- E. *It is because the rules governing the king and the presentation of firstfruits represent two verses of Scripture that go over the same matter, and wherever there are two verses of Scripture that go over the same matter, they do not generate an analogy governing other matters [but the rule is limited to the case].*
- F. *And as to the other Tannaite authority?*
- G. *Both verses are required to make the same point. For if the All-Merciful had made reference only to the king but not to firstfruits, I would have supposed, since in the case of firstfruits, the obligation is immediate [upon entry into the land, prior to settling down], for there is immediate enjoyment of the crop. [So the rule is special to the case.] But if the case of the firstfruits were stated and not that of the king, I might have supposed, since the king's nature is to go out and conquer, he has to be appointed immediately on entering the land, but the obligation to present firstfruits comes only when the people will have settled down.*
- H. *And as to the other Tannaite authority?*
- I. *Let Scripture specify the case of the king and it would be needless to give the rule for firstfruits, for I would have reasoned as follows: if a king, who by nature goes out and conquered, is appointed only after inheriting and settling down in the land, then how much are firstfruits obligatory only when people have inherited and settled down in the land.*
- J. *And as to the other Tannaite authority?*
- K. *Had Scripture laid that matter out in such a way, I would have thought that firstfruits are governed by the analogy supplied by the dough offering [which was obligatory as soon as they had entered the land]. So we are told that that is not the case.*
3. A. *Now that you have taken the position, Every religious duty that is an obligation of the person applies whether in the Land or abroad, [but if it is an obligation that is incumbent upon the soil, it applies only in the land,] then what is the point of "dwelling" that the All-Merciful spelled out in connection with the Sabbath?*
- B. *It was indeed required. For it might have entered your mind to maintain, since it is written in connection with the passage on festivals, therefore it requires an act of sanctification as do the festivals [which require an act of sanctification of the new month of the month in which they occur, and that is done by a sanhedrin]. So we are informed to the contrary.*
4. A. *And what is the point of "dwelling" that the All-Merciful spelled out in connection with the forbidden fat and blood [at Lev. 3:17]?*

- B. *It was indeed required. For it might have entered your mind to maintain, since it is written in connection with the passage on sacrifices, then, so long as sacrifices are carried out, the forbidden fat and blood are not to be used, but since the sacrifices are not carried out, there is no further prohibition. So we are informed to the contrary.*
5. A. *And what is the point of “dwelling” that the All-Merciful spelled out in connection with unleavened bread and bitter herbs for Passover [at Ex. 12:20]?*
- B. *It was indeed required. For it might have entered your mind to maintain, since it is written, “They shall eat the Paschal Lamb with unleavened bread and bitter herbs” (Num. 9:11), that pertains only where the Passover sacrifice is offered, not otherwise. So we are informed to the contrary.*
6. A. *And what is the point of “dwelling” that the All-Merciful spelled out in connection with the phylacteries and the firstling of an ass [which are not limited to the Land of Israel]?*
- B. *That is required in connection with that which a Tannaite authority of the household of R. Ishmael [stated]: “Carry out this religious duty, on account of which you will enter the land.”*
7. A. *Now from the viewpoint that “dwelling” means, wherever you live, there are no problems; that is in line with the statement, “And they ate of the new produce of the land on the day after the Passover” (Josh. 5:11). They ate on the day after Passover, but not before, and that proves [38A] that the sheaf of first barley was offered and then they ate. But from the perspective of him who maintains that “dwelling” means, after the inheritance and settling down on the land, why did they not eat the new produce forthwith?*
- B. *Well, as a matter of fact, they didn’t need to, for it is written, “And the children of Israel ate the manna forty years, until they came to a land inhabited; they ate the manna until they came to the borders of the land of Canaan” (Ex. 16:35). It is not possible to take literally the statement, “until they came into the land inhabited,” since it is said, “until they came to the borders of the land of Canaan.” And it is not possible to take literally the language, “unto the borders of the land of Canaan,” since it is said, “until they came to a land inhabited.” So how hold the two together? Moses died on the seventh of Adar, the manna stopped coming down, but they used what they had in hand until the sixteenth of Nisan [Freedman: so ‘until they came to a land inhabited’ refers to the actual period of eating it, but it descended only ‘until they came to the border,’ where Moses died].*

We come now to a different kind of Scripture-composition, namely, an explanation of the sense of a statement of Scripture:

8. A. *It has further been taught on Tannaite authority:*

- B. **“And the children of Israel ate the manna forty years, until they came to a land inhabited; they ate the manna until they came to the borders of the land of Canaan” (Ex. 16:35):**
- C. **Well, did they really eat it for forty years? Didn’t they eat it for forty years less thirty days?**
- D. **But this is to teach you that they could taste the taste of manna even in the cakes that they had brought with them from the land of Egypt.**

The next is similarly free-standing, different from the foregoing. Now we ask Scripture to demonstrate a fact.

- 9. A. ***It has further been taught on Tannaite authority:***
 - B. **“On the seventh of Adar, Moses died, and on the seventh of Adar, he was born.**
 - C. **How do we know that on the seventh of Adar, Moses died? “So Moses the servant of the Lord died there” (Dt. 34:5); “and the children of Israel wept for Moses in the plains of Moab thirty days” (Dt. 34:8); “Moses my servant is dead, now therefore arise, go over this Jordan” (Josh. 1:2); “Pass through the midst of the camp and command the people saying, Prepare you food for within three days you are to pass over this Jordan” (Josh. 1:11); “and the people came up out of the Jordan on the tenth day of the first months” [Nisan]. Deduct from the tenth of Nisan the prior thirty-three days, and you learn that on the seventh of Adar, Moses died.**
 - D. **How do we know that on the seventh of Adar, he was born?**
 - E. **“And he said to them, I am a hundred and twenty years old this day, I can’t go out and come in” (Dt. 31:2)—‘this day’ is hardly required, so why does Scripture say it? It is to teach you that the Holy One, blessed be he, goes into session and fills out the years of the righteous from day to day and month to month: “The number of your days I will fulfil” (Ex. 23:26) [so he was exactly a hundred and twenty years old when he died, so he was born on that day too].**

IV. *A Survey of the Principal Results*

Let us survey the entire chapter before us, not only the segment reproduced just now, to find out whether we may generalize about

how Scripture serves the framers of this Talmud. A few simple questions, repeated throughout, will give us our answer: does a verse of Scripture provoke the formation of a composition? That is to say, if the author of a composition has identified in Scripture in particular the problem that concerns him and leads him to set forth his syllogism and evidence and argument, then Scripture has taken an active role in the formation of his composition. He has opened Scripture and written his composition. If, on the other hand, Scripture proves inert, simply providing a piece of information in a discussion framed in terms otherwise autonomous of the Torah, then we shall conclude that Scripture serves only episodically, instrumentally, not generatively, not autonomously, not independently. In the former case, Scripture forms an independent source of thought and argument, flowing into the pages of the Talmud as a mighty source of inquiry. In the latter, Scripture subordinates itself to a program of thought that is shaped elsewhere than in its pages. Not only so, but we must not ignore the question of where Scripture plays no role at all and ask, if a composition does not make reference to the Torah, then why is that the case? So in this review, we have two complementary questions in mind: why, but also, why not:? And, of course, so what?

Rather than specify a variety of questions flowing from that basic one, let me turn to our review of Bavli Qiddushin Chapter One's Scripture-compositions and composites.

1:1.I.1-4, 6 What is important here is that Scripture does not define the first concern of the framer of our Talmud. One fundamental question will be, what is the (scriptural) source of this statement? The question is asked only when the answer can, and will, be, "As it is said...." Scriptural is assumed to be the sole source of facts that the Mishnah invokes but does not generate on its own. Now the one question is, does Scripture's source for the Mishnah-facts take pride of place, and the answer is, sometimes, sometimes not. Why not here? Because the framer of the passage has another issue in mind, with no relevance to the source of the facts at hand. And yet, we see immediately, at I.1.C, Scripture is a ubiquitous presence, always at hand. Here, we take for granted that the usage of Scripture governs word-choices in the Mishnah. Has Scripture generated this passage? Of course not. Scripture is not ignored, but it also is hardly a principal player in our composition. The same judgment pertains to 1:1.I.2D. And that results in a secondary development of the

composition at No. 2, since we have contradictory usages of words in Scripture, and these have to be sorted out. The interest in the same matter accounts for the contribution of Scripture at Nos. 3, 4. Here again, we need to make some sense out of how Scripture uses certain words. The upshot is, Scripture serves as a source of incontrovertible linguistic facts. The later stages in the composition of No. 4 show that the Mishnah serves in precisely the same way and is subjected to the same survey and analysis; there is no meaningful difference in the reading accorded to the two documents.

The same comments seem to me to apply without much variation to the following: 1:1 III.33.C; 1:1 IV.3; 1:1 V.1; 1:1 V.3G, J; 1:1 6.3; 1:1 IX.1-X.1 (in this case there is a substantial secondary expansion of the simple form, how do we know + a verse of Scripture); 1:2 I.1-6 (an entire talmud flowing from the simple form); 1:2 I.7-10; 1:2 II.1; 1:2 III.1; 1:2 IV.1; 1:2 V.5.1-2 (a matched set of the least complex variety); 1:2 VI.2B; 1:2 VI.3-4; 1:2 VI.6-13; 1:2 VI.15-17; 1:2 VI.18F-L; 1:2 VI. 19; 1:2 VI.21; 1:2 VI. 24-25; 1:2 VI.27 (note the contrast to No. 26); 1:2 VI.37-39; 1:2 VI. 40 (if...how do we know...as it is said..., a familiar variation on the normal form); 1:2 VI.41; 1:2 VI.43; 1:2 VI.45C; 1:2 VII.1, VIII.1-3 (I know only that...how do I know...); 1:2 VIII.5; 1:2 VIII.8-17 (No. 15 shows that, as with the Mishnah, so with Scripture, there is no redundancy); 1:3 I.1 (how on the basis of Scripture do we know...); 1:3 IV.4; 1:3 IV.9-10; 1:3 IV.15U-X; 1:5 I.1-VI.1; 1:7 I.3-4; 1:7 I.6, 7, 8; 1:7 I.17 (dispute on the meaning of a cited verse yields two distinct versions of the simple form at hand); 1:7 I.18, 19, 20 (variations on the simple exegetical form); 1:7 I.26; 1:7 I.27-28; 1:7 I. 29-30; 1:7 II.1C; 1:7 II.7, 8; 1:7 II.28B, D; 1:7 II.29; 1:7 II.30-34+35, 36, 37 (Scripture says...might one say...Scripture says...—a complex composition repeating a simple form); 1:7 V.1; 1:7 VI.1; 1:7 VI.2; 1:8 I.1-VII.1; 1:8 IX.1; 1:9 I.2; 1:9 II.1-7; 1:8 II.8, 9; 1:8 II.12; 1:8 II.18; 1:10A-D I.5 (verse + for example); 1:10A-D I.7-10, 12. In all of these cases, the governing form involves citation of a verse followed by the imputation of a sense to that verse, e.g., a paraphrase or an eisegesis of some other sort. The list at hand does not convey the impression that a survey of the document establishes, which is that these kinds of demonstrations form a principal component of our Talmud's repertoire, as a glance at the enormous composition at 1:2 I.1-6, 7-10 shows. Here we are dealing with the mainstay of an entire Talmud.

1:1 II.1-6 Here we find the classic form used when Scripture is asked to serve as a source of facts in the Mishnah. What I find important here is a subordinate unit, namely, II.1.C (and its numerous equivalents). There we see a process of analytical-exegetical reasoning that in no important way differs from the processes of reading the Mishnah and analyzing its evidence and propositions. We propose a possibility, but then ask whether other possibilities may prove more plausible—a standard analytical initiative in the Talmud: you say this, but what about that—the opposite? That approach to a proposition governs, pertaining here to the interpretation of Scripture as much as in other passages it pertains to the interpretation of the Mishnah or the analysis of a given proposition. Scripture's paramount role here derives from the simple fact that its evidence is required, in context, for the solution to the problem at hand. The identity of hermeneutical principles pertaining to the Mishnah, Scripture, and authoritative legal sayings in general is proven beyond reasonable doubt at No. 3, a standard demonstration that a variety of facts had to be specified, since none of them can have been adduced from any of the others. Scripture does not repeat itself; neither does the Mishnah. In general, two categories we thought comparable prove otherwise, on which account Scripture, or the Mishnah, or a Tannaite formulation of law, has to make explicit the rule governing each.

1:1 III.1-5 The polemic that Scripture alone defines valid taxa is carried on here. This is not particular to the Bavli, of course, but characterizes all of Sifra and occurs also in the two Sifrés. Compositions of this classification make the same point in many ways, which is that Scripture alone supplies reliable taxa for comparison and contrast. While the discussion is specific to its case, the polemic is general; Scripture is viewed in detail, but the point is always the same general one. The secondary expansion, denying that polythetic taxonomy solves the problem of classification, and maintaining that only Scripture guides us to valid category-formations for comparison and contrast, underlines the main point. The point is not that Scripture is perceived as autonomous of the Mishnah; it is that in a conflict between two principles of taxonomy, Scripture's is sustained. The one principle is that we classify things by reference to intrinsic traits, e.g., as in natural history; the other is that we classify things by appeal to the categories defined by Scripture. Argument focuses upon the latter; but the argument then is not an exegetical one, let alone a claim that the Mishnah rests on Scripture. It is an argument about

taxonomy, and the point pertains as much to the Mishnah as to Scripture, namely, the Torah, and not nature, dictates the classification of things. So to see this composition as an argument that the Mishnah rests on Scripture, not on the nature of things, as I have maintained, is to state matters in a way that now appears slightly awry. The issue is not the Mishnah's classification of things as against Scripture's, it is the Torah's classification of things as against nature's.

1:1 III.12 Scripture does not generate this composition, it serves to provide a fact required for the solution of its problem. We draw information from current usage of the language and also from Scripture; the latter is privileged, but not determinative.

1:1 III.29 Let us play close attention to this classic exegetical composition, since it defines one of the paramount ways in which the Torah enters into the Talmud. The form is simple and recurs time and again:

“If there be yet many years, according to them he shall give back the price of his redemption out of the money with which he was acquired’ (Lev. 25:51)—he may be acquired by money, not by produce or utensils.

That is to say, we have a simple citation of a verse, followed by a paraphrase in which we say in our own words what we think the verse means. Compositions of this kind, simple or elaborate, define one principal way in which the Torah makes its way into the Talmud. What they contribute is information, facts upon which the framer of a composition or even a composite of the Talmud proposes to draw in attaining his goal. A passage of this kind rarely defines the issue or direction of a composition, but commonly exemplifies a point or validates one. Does the Talmud build sequences of such citations and glosses of verses of Scripture? Not frequently, and rarely without a purpose defined by a context other than the (mere) exposition of a verse or sequences of verses. Hence, when a verse of Scripture is subjected to analysis (e.g., citation and paraphrase), it is seldom because of a free-standing interest in that verse and its meaning, but it is often because of a contingent purpose. That purpose is known to the framer of the composition (or composite) responsible for the citation of the passage.

Now that point, which readers will introduce for themselves time and again, contradicts the form of the composition. The composition is framed to highlight the verse of Scripture and to lay stress on the autonomous character of its sense and meaning: this verse

means that, without regard to the issues set for us by any context that transcends the one-dimensional, exegetical task, pure and simple. So whoever made up the passage—verse, [this means:] ...—treated the task as primary, but whoever called upon the same passage regarded it as subordinate and instrumental. What this means for our larger question is, for a piece of scriptural information—verse and its paraphrase or interpretation—makes its way into a Talmud-composition or composite, it has to gain admission by appeal to a purpose other than the exposition of Scripture in its own terms. So the composition on its own—this modest item, 1:1 III.29.B—presents us with a somewhat complicated literary phenomenon. In its own terms, it is a Scripture-commentary; it has been written to cite and explain the meaning of a verse. It is, however, not preserved for us by the Talmud as part of a sustained commentary, e.g., on Lev. 25. It has been taken over and used by the Talmud for a purpose quite distinct from the one served by its original formulation. It is the simple fact that the Torah finds its way into the Talmud on terms defined by the Talmud. But it is also a fact that the Torah has generated an exegetical process of its own, not subordinated to the purpose of Mishnah-exegesis (for example). Where and how that process produced its results we cannot now say; all we have is the selection, among those results, made by those who formulated Talmud-compositions and composites.

1:1 IV.1 Here the usage of Scripture is analyzed, in a manner entirely routine to the analysis of a usage of the Mishnah or a usage of everyday speech. What makes the passage noteworthy is the conclusion that rabbis sometimes do not derive from Scripture-exegesis solid and incontrovertible evidence of their position, but impute to Scripture something very like the position that they wish to find there. So strict evidentiary standards govern, and facile solutions are unwelcome, in the reading of Scripture.

1:1 IV.4 A different appeal to Scripture involves finding out how advocates of conflicting positions read the relevant verses. Here we engage in not an exegesis, e.g., a paraphrase of what we think Scripture says, but an analysis of Scripture's usages. Scripture treats matters as comparable, so the conditions that pertain to the one pertain to the other. Then the dispute involves the identification of what is truly subject to comparison. A similar reference to facts of Scripture, not to verses subject to exegesis, is at 1:1 VI.1F; 2B;

1:1 VII.10 Scripture is quoted for illustrative purposes, to endow

a sentiment with authority and illustration, in the way in which people may cite a phrase of Shakespeare or a verse of Scripture today. Here the cited verse plays no role at all in the proposition of the composition. But the exposition of the illustrative verse then defines the main lines of interest of the composition.

1:1 VII:11 Time and again, the Torah is present even when a particular verse is not quoted. This item is of interest because of its playing out the theme of the law of the Torah as against the law decreed by scribes, sages, or rabbis (the terms are interchangeable in this context). The distinction is important, here as in so many other places, because a classification deemed to derive from the Torah is accorded weightier status than one not; here, if the classification of debt derives from the Torah, then certain other considerations come into play.

1:1 VIII.1 Once the Torah has defined a category, here, with a particular verse in hand, then reasoning permits us to extend or subdivide that category or to form another congruent to it. In this instance the exposition of the derivative category requires constant recourse to the mixture of Scripture and reason. If Scripture makes a given point, then that may be deemed exclusive, permitting a variety of other relationships. Where a verse of Scripture comes into play, moreover, the reading of that verse—one way rather than some other—dictates the outcome of an analytical problem.

1:1 XI.2 An inquiry into the foundations of the Mishnah's categories calls upon the logic of hierarchical classification (e.g., an argument *a fortiori*) or a verse of Scripture, and the analysis differs not at all. Here we point out that logic can have yielded a false conclusion, and Scripture corrects it. What is of special interest is that a variety of propositions comes under examination, so that our principle of reading Scripture in the particular case at hand is tested and shown to be uniform for other cases as well. In this way what we show is the perfect consistency of not only Scripture or the Mishnah, but, of our exegetical principles in the reading of Scripture and the Mishnah. Part of perfection is avoidance of redundancy, and that too is demonstrated; if Scripture makes a statement, it is because that statement must be made; it makes a unique point; Scripture never repeats itself but always makes its point.

1:2 VI.26 Here the meaning of a verse of Scripture is subordinated to the problem that draws our attention to that verse. When Scripture uses a phrase, the possibilities of its meaning have to be

investigated, each on its own. This requires us to compare usages in other verses of Scripture. We note that the exegesis does not define the course of argument but merely supplies facts required in context.

1:2 VI.35 The issue is whether the proposal at hand derives from Scripture or may be attained by logical deduction, in this case, an argument of hierarchical classification based on a fortiori reasoning. That proves not to be the case.

1:2 VI.46 Deriving facts from Scripture requires more than citing a verse; we have to know the rules that govern the reading of a verse, which tell us how in a consistent and objective way we may establish the facts. Scripture on its own is while authoritative essentially inert, and we have to know how to enter into its discipline. In the present case the issue is precisely how we establish the correct verbal analogy that will tell us the meaning of a word, hence the message of a rule. In this case there is a choice: read the verse as a statement, this, not that; or read the components of the verse in light of their meanings elsewhere. Scripture then raises questions, as much as it resolves them.

1:2 VIII.1-3 The same issue recurs. We have two distinct principles that operate, expressed as follows:

- C. “You shall take” is an encompassing rule; “an awl” is an exclusionary particularization; “through his ear into the door” reverts and gives an encompassing rule. So where you have an encompassing rule, an exclusionary particularization, and another encompassing rule, you cover under the encompassing rule only what bears the traits of the exclusionary particularization; just as the exclusionary particularization states explicitly that the object must be of metal, so must anything used for the purpose be of metal.
- D. *R. Yosé b. R. Judah interprets the categories of scriptural evidences of inclusionary and exclusionary usages:*
- E. “You shall take” is inclusionary; “an awl” is exclusionary; “through his ear into the door” reverts and forms an inclusionary statement. Where you have an inclusionary, an exclusionary, and an inclusionary statement, the upshot is to encompass all things.

The dispute, then, is generated by the issue of which exegetical principle governs here, and the phenomena of Scripture will be adduced in evidence for both positions at hand.

1:2 VIII.6, 7 What is interesting here is that Scripture provides an allusion, which suffices in its own terms to make a point. As is

commonly the case, just because a verse is not cited in so many words, that does not mean that Scripture is not in evidence. Scripture is always in evidence, and the only issue is, is Scripture at center stage or merely the backdrop. Here it is the backdrop—but also forms the defining center. The same is to be said of No. 7. We allude to Scripture, we take its facts for granted, and proceed from there to our problem.

1:2 VIII.18 Here we allude to the contents of Scripture, without a close reading of the verse at hand. How come Scripture stresses A (rather than B)—and a lesson follows. The traits of the thing about which Scripture speaks, rather than the wording of Scripture, here form the center of thought.

1:3 III.2 We derive a verbal analogy and then assign to the traits of the one the characteristics of the other. Here our reading concerns not the wording of the verse but the verse but the use of language, with Scripture as a principal corpus of evidence of the meaning of language.

1:3 IV.1H The verse here governs: the exegetical mode is, this, not that.

1:3 IV.2 Scripture is explicit on two categories; how do we know that two others fall into the same classification? We proceed to examine the traits of the categories, not the word of Scripture. The analysis shades off into an inquiry into hermeneutical principles, i.e., in any case in which you have an encompassing generalization followed by a particularization, covered by the generalization is only what is contained in the particularization. So there is no boundary that distinguishes one type of inquiry into Scripture—one in which the traits of things, rather than the qualities of Scripture's wording, governs—from some other. We move easily back and forth; Scripture in no way governs the manner in which Scripture will be read, introduced, utilized, or, for that matter, ignored.

1:3 IV.15 "What is the scriptural basis..." gives way to a conflict over the governing analogy, here again shading over from exegesis to philosophy.

1:7 I.1 In interpreting a passage of the Mishnah, we propose a hypothesis and then test it against evidence deriving from various sources, including Scripture; Scripture is privileged here only because it has self-evidently valid facts to contribute:

What is the meaning of For every commandment concerning the son to which the father is subject...? Should we say,

from every religious duty that the son is required to do for the father, women are exempt? But hasn't it been taught on Tannaite authority: "Every man his mother and his father you shall fear" (Lev. 19:27)—I know only that that applies to the man. How do I know that it applies to the woman? When Scripture says, "his mother and his father you shall fear," lo, both of them are included.

Without its facts beyond argument, Scripture would play no role; it does not form the foundation of the composition, only an incidental component to the solution of its problem.

1:7 I.21-25+26 The way in which words are spelled in Scripture is analyzed, with attention to the formal traits of the document, e.g., its divisions, its midpoints, the spelling of its words, the number of verses here and there, and the like. This reading of Scripture is academic, and its purpose is to expound Scripture in the context of its own formal traits.

1:7 II.2 Scripture's usage forms the basis for a syllogistic argument. In stating matters in such a way, Scripture thereby establishes an analogy, and on the strength of that analogy, we are able to draw further consequences. In this way, Scripture is turned into a laboratory for the discovery of new truth.

1:7 II.10 Here the formation of Scripture yields a story with a point of its own, a "midrash" in one commonplace sense of the word. The wording of Scripture raises a question, and the question is formulated in a drama, in which opponents seize upon the wording to advance a criticism. Then the criticism is resolved by further citation of Scripture—a sequence of verses given dramatic form and controversial meaning.

1:7 II.15C Here we have a mere allusion to something in Scripture; this is hardly a scriptural composition.

1:7 II.44 This is a dispute about the sense of a verse of Scripture, not a propositional composition utilizing a verse in behalf of a given point. Here, the verse forms the basis for the composition, much as a dispute may form around the interpretation of a clause of the Mishnah; the form of course would be identical.

1:7 IV.1H, 2-3 Scripture here forms a source of decisive facts, which have to be dealt with if a proposition is to stand. A sequence of verses has to be read to test a proposition. The entire, sustained and important composition depends on how Scripture is to be read, also on facts supplied by Scripture, also on the exegesis of various

verses—the entire repertoire of the Talmud's analysis, in fact, responds to Scripture's entire legacy: specific statements, general themes, modes of wording, and the like.

1:8 II.16D This is just a routine allusion to a clause of a verse of Scripture.

1:10A-D I.2 The sense of a clause of a verse is imputed on the basis of observations of the world at large. The verse plays no paramount role in the passage.

1:10E-G I.1, 3F, II.3 The use of Scripture is strictly illustrative; the theological discourse proceeds along its own lines. In none of these compositions does Scripture play a determinative part.

V. *Generalizations?*

Does Scripture define the program of the Talmud? No, except when it does.

Does Scripture supply essential facts to the Talmud? Yes, except when it doesn't.

Does Scripture form the main beam of a literary structure, or only a supporting post, or occasionally a minor detail?

All of the above.

In fact, we cannot generalize about the Torah in the Talmud. We find that the Torah defines the main lines of a composition, but only occasionally; it contributes important data, sometimes; and it forms the background of a discussion both everywhere and also only rarely. If I had to choose the single most characteristic appeal to the Torah, it is in the numerous compositions and composites, some brief, others quite formidable, that cite a verse of Scripture and paraphrase its sense so as to establish a fact. One such common form is, "how on the basis of Scripture do we know...," and another is, "Such and such is the case, as it is said...." But in these compositions, the Torah always forms a subordinated component, never defining the purpose of discourse.

A second mark that the Torah finds its way into the Talmud via the Mishnah (or other Tannaite formulations) derives from a complementary fact. Where a verse of the Torah is read, it is read in much the same way as a sentence of the Mishnah is analyzed. A single process of analytical thought—practical criticism, applied reason—governs throughout. It is rare to find analysis of a verse of Scripture

that has no counterpart in analysis of a sentence of the Mishnah. The same considerations of balance, order, and formal equilibrium characteristic of the talmudic dialectical analysis of a Mishnah-passage or a legal problem govern. And what I take that fact to mean is that the Talmud reads the Torah by the same rules that dictate its reading of the Mishnah and associated statements. True, a sentence of the Torah is always set off, distinguished from the rest of its context, by citation-language, e.g., “as it is written” or “as it is said.” But that is so when a Mishnah-sentence is cited as well, e.g., as we have learned in the Mishnah (TNN), or equivalent signals for other Tannaite formulations. But in the center of analytical thought, a single process functions throughout—the Talmud’s. And that is so even when the exegetical media prove particular to the reading of Scripture, e.g., the contrast between encompassing rule, exclusionary particularization, and encompassing rule, as against other ways of classifying precisely the same wording of a verse. The attitude of mind and the governing logic prove ubiquitous; only in details will a hermeneutic particular to Scripture, on the one side, as against one singularly relevant to the Mishnah, on the other, dictate thought.

That is not to suggest that materials upon which our framers draw, e.g., compositions and even sizable composites prepared for some purpose other than that now served in the pages of the Talmud, do not focus upon Scripture and appeal to Scripture for the main beams of order and structure. On the contrary, a variety of compositions and composites of a narrowly-exegetical character, focused upon Scripture, does make its appearance. We have sustained exercises proving that Scripture alone provides solid taxonomic guidance, the traits of things in themselves proving ambiguous. We note passages that take as their primary question the sense and implication of Scripture. But when these occur in the Talmud, they find their way in on the Talmud’s sufferance, for the Talmud’s purpose. Not only so, but most of the compositions and even some of the composites that do take Scripture for their focus find a more natural location in documents that center upon Scripture, e.g., Sifra for proof of the priority of the Torah in the taxonomic process, Genesis Rabbah or Sifré to Deuteronomy for sustained treatments of sequential verses (of which few have passed our way in the present sample). In such instances the hypothesis presents itself that the compositions centered on a verse of Scripture, other than those that paraphrase the verse to provide information required for a talmudic exposition, e.g., of a

Mishnah-rule or of a law in general, or for the elaboration of an argument of the same classification, were worked out for documents other than this one.

The upshot is that the Torah's principal contribution to the Talmud comprises information, not inquiry of an abstract and speculative character, such as characterizes the type of compositions and composites in the Talmud that find no counterpart in any other rabbinic writing. When the Torah is primary, therefore, it demands a document organized around Scripture, not the Mishnah; where the Torah contributes, it contributes on terms defined outside of its own framework. And yet, that literary judgment, concerning the forms of discourse, contradicts the theological judgment, which has repeatedly come to the fore: the Talmud everywhere stands four-square on the Torah. Its authors say this in countless ways, but most eloquently when they do not say so at all.

So our result is puzzling. To repeat what I announced at the outset: in the Talmud the Torah plays an active and a passive role; it dictates the shape of inquiry and its logic, and it merely contributes inert facts to an inquiry framed in other terms altogether. In the Talmud the Torah forms the principal locus of discourse and takes up a merely tangential position. Verses of Scripture are accorded probative value and may be manipulated in an essentially formal manner. But if, as we have now seen, the Torah both determines the structure and program of a composition and even of large composites, and also plays scarcely any more than an illustrative, formal role, in a great many others, then we have to ask whether the Torah forms a valid taxic indicator in the Talmud at all. By that I mean, if a given classification of data proves to be everything and its opposite, then something is wrong with that classification. Stated simply: we appear to have asked the wrong question. If we want to know about the Torah in the Talmud, the Talmud will not tell us. Why not?

VI. *Not "The Torah in the Talmud" but "One Torah—Which Is the Talmud"*

When we speak about the Torah in the Talmud, we violate the language-rules of the Talmud, and that is why our inquiry has produced hopelessly contradictory results. The framers of the Talmud did not use the word "Torah" only or mainly when they wished to refer to the Hebrew Scriptures. The word Torah bore a variety of

valid meanings. And it is only in the context of that larger corpus of meanings that we shall grasp the implications of the evidence that we produce when we ask about the Torah in the Talmud. When we speak of torah, in rabbinical literature of late antiquity, we no longer denote a particular book, on the one side, or the contents of such a book, on the other. That simple fact explains why we find no evidence that the Hebrew Scriptures enjoy a privileged position in the formulation and formation of the Talmud—except as to the facts that they supply. But the one thing that the Talmud finds of only modest consequence are mere facts, out of the context of a sustained analytical argument or a complex exercise at problem-solving. So far as the Torah provides facts, the document is inert, not active in the formation of the Talmud—and therefore, we have to conclude, the Torah is not active but inert in this writing. But the opposite is the case: the Torah is ubiquitous, present as often when it is not cited as when it is.

When we understand the category, “Torah,” we shall find the necessary framework in which to interpret the facts at hand. For, it is clear, by “Torah,” or “the Torah,” the framers of the Talmud simply do not understand “the Hebrew Scripture” (a.k.a., Old Testament). They assign a privileged position to those writings, but they do not regard those writings as distinct, free-standing, autonomous. Those privileged writings—the source of the completion of all “as it is said”- and “as it is written”-sayings—form part of the Torah, the written part, the available part, the authoritative part, hence “as it is written,” which only prefaces a verse of Scripture, or “as it is said,” which is followed, uniquely, by a verse of Scripture. The reason the phrase, “the Torah in the Talmud” violates the language-rules of the Talmud is that what we mean by “the Torah” forms part of the Torah. Hence to say “the Torah in the Talmud” is to say “the Torah in the Torah,” and that is senseless. That fact underscores the absurdity of the results I have collected: top and bottom, beginning and end, fore and after, everything and its opposite. My category was wrong; there is no rule that emerges when we collect all the citations of or allusions to the Hebrew Scriptures in the Talmud, because those citations and allusions, on their own, derive from a source that is differentiated as to status but not distinct as to its structure: important in a system, but not autonomous of that system.

Let me briefly survey what we say when we use the word “Torah” in the Talmud. By that word, we connote a broad range of

clearly distinct categories of noun and verb, concrete fact and abstract relationship alike. "Torah" stands for a kind of human being. It connotes a social status and a sort of social group. It refers to a type of social relationship. It further denotes a legal status and differentiates among legal norms. As symbolic abstraction, the word encompasses things and persons, actions and status, points of social differentiation and legal and normative standing, as well as "revealed truth." In all, the main points of insistence of the whole of Israel's life and history come to full symbolic expression in that single word. If people wanted to explain how they would be saved, they would use the word Torah. If they wished to sort out their parlous relationships with gentiles, they would use the word Torah. Torah stood for salvation and accounted for Israel's this-worldly condition and the hope, for both individual and national alike, of life in the world to come. For the kind of Judaism under discussion, therefore, the word Torah stood for everything. The Torah symbolized the whole, at once and entire. When, therefore, we wish to describe the unfolding of the definitive doctrine of Judaism in its formative period, the first exercise consists in paying close attention to the meanings imputed to a single word.

Every detail of the religious system at hand exhibits essentially the same point of insistence, captured in the simple notion of the Torah as the generative symbol, the total, exhaustive expression of the system as a whole. That is why the definitive ritual of the Judaism under study consisted in studying the Torah as the generative symbol, the total, exhaustive expression of the system as a whole. That is why the definitive myth explained that one who studied Torah would become holy, like Moses "our rabbi," and like God, in whose image humanity was made and whose Torah provided the plan and the model for what God wanted of a humanity created in his image. The framers of the system of Judaism at hand found in the Torah that image of God to which Israel should aspire, and to which the sage in fact conformed.

The meaning of the several meanings of the Torah should require only brief explanation. When the Torah refers to a particular thing, it is to a scroll containing divinely revealed words. The Torah may further refer to revelation, not as an object but as a corpus of doctrine. When one "does Torah" the disciple "studies" or "learns," and the master "teaches," Torah. Hence while the word Torah never appears as a verb, it does refer to an act. The word also bears a quite

separate sense, torah as category or classification or corpus of rules, e.g., “the torah of driving a car” is a usage entirely acceptable to some documents. This generic usage of the word does occur. The word Torah very commonly refers to a status, distinct from and above another status, as “teachings of Torah” as against “teachings of scribes.” For the two Talmuds that distinction is absolutely critical to the entire hermeneutic enterprise. But it is important even in the Mishnah. Finally, the word Torah refers to a source of salvation, often fully worked out in stories about how the individual and the nation will be saved through Torah. In general, the sense of the word “salvation” is not complicated. It is simply salvation in the way in which Deuteronomy and the Deuteronomic historians understand it: kings who do what God wants win battles, those who do not, lose. So too here, people who study and do Torah are saved from sickness and death, and the way Israel can save itself from its condition of degradation also is through Torah. In a word, “Torah” in the Talmud stands for “Judaism” in our language. The history of the symbolization of the Torah proceeds from its removal from the framework of material objects, even from the limitations of its own contents, to its transformation into something quite different and abstract, quite distinct from the document and its teachings.

With these facts in mind, we may state very simply that the Torah forms an important component of the Torah, or, to relinquish nonsense-language, the Hebrew Scriptures in the Talmud are not “the Torah,” distinct and autonomous, but a corpus of authoritative sayings, just as the Mishnah is a corpus of authoritative sayings. Then how in writing can I identify the Torah? It is, in the here and the now of the Talmud, those verses of Scripture, along with those sentences (or tractates) of the Mishnah—in neither case, the entirety of the document beginning to end—that the Talmud has selected and recast into its own statement: its Torah. It is within that framework that we make sense of the nonsense at hand. If the Talmud has formulated its (statement of) the Torah, then, quite naturally, it will draw upon received components of the Torah of Moses, according to each its proper place. Then the Torah received from Sinai in writing, a privileged corpus, will make a massive contribution of facts, settle numerous controverted questions, form a major focus of analysis. But it remains a source for this (statement of) the Torah, and not a free-standing, and autonomous document, e.g., The Torah, The Written Torah, or, even “the Old Testament” for that matter.

The written component, privileged though it is, forms a mere source, utilized in one way or another, as the frames of this (statement of) the Torah wish. The written component may well on occasion define the main beam of a literary structure, but that structure, whole and complete, will find a place for itself where the framers of this (statement of) the Torah choose, and no where else; for their purpose, and for no other purpose.

The simple fact is that the framers of the Talmud choose the verses of the Torah that they wish to utilize for their purpose, just as they choose the tractates of the Mishnah that they choose to analyze, and, within them, the sentences that they propose to identify as the mean beams of their construction. The Torah (Hebrew Scriptures, “the Old Testament”) makes its way into the Talmud not whole and complete but by bits and pieces, because, so far as the framers of the Talmud are concerned, that Scripture that serves their purposes, and that part alone, is welcome, because it is useful. Otherwise, the Hebrew Scriptures bear no autonomous standing in their system and structure, and, consequently, also in their canon. The conception of a free-standing compilation, “the Holy Scriptures,” or even “the written Torah” for that matter, is alien to our document. Nothing in our survey suggests that anyone accords to “the written Torah” the status of a complete and integral book or compilation, distinct from some other complete and integral books or compilations (e.g., the Mishnah). The Christians knew that the Old Testament was distinct from, but related to, the New Testament. The framers of the Talmud knew no such thing. To them, “the Old Testament” was the written (part of) the one whole Torah of Moses our rabbi, distinguished by its medium of formulation and transmission, privileged by its authority, but in no way recognized, by reason of distinction and privilege, as other than yet another source of the Torah. But, for their part, they proposed to state that Torah. For that purpose, Scripture formed a mighty and formidable source—useful, to be sure, as the framers of the Talmud would dictate. But theirs would be the Torah: the statement of those parts of the received documents, all of them parts of the Torah in one medium or another, that they would choose to make. Privileged, paramount, preeminent in all the ways but the one that counted, in the Talmud, the Torah would emerge as contingent, instrumental, and merely useful: to be used as a dependent variable in a writing that formed an independent variable: the statement at the end.

VII. *Conclusion*

In the detailed appeal to a verse of Scripture for validation of a rule of the Mishnah, Scripture clearly exercises authority above the Mishnah or other sources of truth or validation. But then, it is that verse of Scripture, that statement of the Mishnah (or of some other legal source). Then the correct question concerning Scripture is, what aspect of a verse of Scripture is taken to be authoritative, what is it about this aspect of Scripture that makes it authoritative, what sort of logical force is ascribed to the verse of Scripture to which appeal is made, how is the verse of Scripture that is cited brought to bear on a proposal such as to validate that proposal?²

But these form merely exegetical questions, no longer interesting beyond themselves. For we refer to one passage or another, but not to Scripture as a corpus of writing distinct from the Mishnah, or as a source of truth distinct from the logical or hierarchical classification, comparison and contrast, let alone as a representation of tradition that is free-standing and not bound to a particular piece of writing (and that by definition). But authority and standing form not merely cases concerning verses and Mishnah-rules; these speak of the position of a document as a whole, that is, in the context of this Judaism, a component of the Torah.

We have, then, to recast the question. We want to know about the authority and standing not of verses of Scripture, but of Scripture itself: how does Scripture exercise authority in the Judaism represented by the two Talmuds? The answer is ready at hand: Scripture certainly occupies a privileged position. When we want to know the source of a rule in the Mishnah, we commonly turn to the written Torah. Every single question framed as “how do we know...?” followed by “as it is said” or “as it is written” (these two terms seem to me synonymous) ends with a verse of Scripture—every one! And it is very rare for the Talmuds to ask for a source and find appropriate an answer other than “as it is said” or “as it is written.” Consequently, Scripture serves as a principal source of validation for Mishnah- and other Tannaite rules. That is what I mean by the phrase, “according to Scripture a privileged position.” But that authority assigned to Scripture is relative, not absolute: Scripture is not the sole authority of this Judaism, nor the highest authority, nor

² I paraphrase David H. Kelsey, *The Uses of Scripture in Recent Theology* (Philadelphia, 1975: Fortress Press), pp. 2-3.

authoritative in a way, or for a purpose, that other writings (or other sources of truth) are not authoritative. To the contrary, Scripture is one authority among several: privileged but not unique.

For that position accorded to Scripture, for one thing, certainly is no higher than the one of the Mishnah, which also is privileged by the framers of the two Talmuds. As a matter of fact, it is the Mishnah, not Scripture, that is made by both Talmuds into the main-beams of structure and order for their systemic statement. Both Talmuds present whatever their framers wish to say in the form of commentary to the Mishnah, and it is the Mishnah, not Scripture, that enjoys the truly privileged position in these writings: dictating the agenda of inquiry. By comparison to the Mishnah, Scripture takes a decidedly subordinate role, and that is so even though, when it comes to answering certain questions of Mishnah-exegesis, Scripture indeed does occupy a privileged position.

Nor does Scripture stand in lofty isolation from tradition, on the one side, and reason, on the other. For a rule that is received as true may be assigned to the authority of Moses at Sinai, or it may be demonstrated as valid by appeal to arguments from reason, e.g., comparison and contrast with another, already established law. While Scripture forms a principal source of answers to the question, "how do we know," it is not the only source. And, even in our samples, we have noted that it is not a source lacking ambiguities or rich in certainties. Scripture serves conflicting viewpoints and sustains contradictory positions; authorities always can prove what they wish out of Scripture, and the Talmuds excel in illustrating that fact, even beyond all necessity. And then, matters are left in suspense, so, for all its authority, Scripture in the end does not settle truly controverted questions, nor does it silence propositions in behalf of which determined authorities contend.

It follows, therefore, that the authority of a rule of the Mishnah may derive, after all, not only from Scripture but also from an argument, e.g., the presentation of a valid analogy, or even from a tradition assigned to Moses at Sinai. So while privileged, Scripture on its own competes unsuccessfully with the Mishnah in the formation of the two Talmuds' fundamental structure and competes only on somewhat better than even terms with other sources of divine authority, tradition and reason being paramount if not privileged.

So it is only with considerable qualification may we speak of the authority of Scripture in the Judaism represented by these writings. It is true that Scripture exercises a determinative power, but not

alone, not uniquely, and not invariably. That is hardly surprising, since, as we have noticed, to speak of “the Torah in the Talmud” not only violates the language-rules of Judaism, for which both “the Torah” (a.k.a. written Torah, Hebrew Scriptures, Old Testament) and “the Talmud” (a.k.a., the Talmud of the Land of Israel, the Talmud of Babylonia) equally constitute Torah. The alien category also obscures the kind of discourse that the rabbinic writings of exegesis, both Mishnah-exegesis and Scripture-exegesis, sustained. To repeat: Scripture enjoyed a privileged position, but not unique one; reason competed; traditions competed; authority competed. Not only so, but the characterization of the appeal to Scripture as a quest for proof-texts diverts attention from a far more original and sustained mode of discourse. In constant interchange with Scripture, sages in the Talmud and Midrash-compilations alike found ways of delivering their own message, in their own idiom, and in diverse ways.

Verses of Scripture therefore served not merely to prove but to instruct. Israelite Scripture constituted not merely a source of validation but a powerful instrument of profound inquiry. We noted that fact when we realized that a talmud could take shape as much around verses of Scripture as sentences of the Mishnah. So the propositions that could be proposed, the statements that could be made, prove diverse. Scripture served as a kind of syntax, limiting the arrangement of words but making possible an infinity of statements. The upshot is that the received Scriptures formed an instrumentality for the expression of an authorship responsible for a writing bearing its own integrity and cogency, an authorship appealing to its own conventions of intelligibility, and, above all, making its own points.

The authors of compositions and composites in the two Talmuds, along with the compilers of Midrash-compilations, as we recognize, did not write *about* Scripture, creating, e.g., a literature of commentary and exegesis essentially within the program of Scripture. Rather, they wrote *with* Scripture. An authorship that writes with Scripture delivers a particular message and viewpoint by appeal to the rules of thought and syntax of reflection defined by its interest in Scripture. Such an authorship selects rhetoric and logic that serve its purpose. An authorship that does not write with Scripture composes a repository for diverse materials of Scripture, and such an authorship has no need to select rhetoric and logic to serve its documentary program. Our survey of the two Talmuds leaves no doubt that the framers of the compositions and composites in which vers-

es of Scripture figure have formulated a limited rhetorical repertoire for the presentation of their writing, a repertoire that, in each of its examples, accomplishes the same consistent goal. They wrote with Scripture, as they wrote with much else, to produce what they wanted, which was, their own statement: the Talmud itself.

Does Scripture serve as an authority? Yes, as do other sources of truth. But these other sources are not only literary, since tradition is a source of truth, and that (from our sages' perspective) was oral. Reason is a source of truth, and that derives its power from a different sort of compelling force altogether. Is Scripture the authority? For the Talmuds, far from it. Scripture (in mythic language once more, the written Torah) makes its contribution, along with other contributions, to the record of the Torah: God's will revealed to Moses at Sinai. That record is written by Scripture, but also by the Mishnah, by tradition from Sinai, and from reason. So while Scripture is privileged, there are other sources of validation of statements of the law or of theology, and in other contexts, these other sources work precisely as does Scripture. And that is as it should be, if all of these sources, taken all together, form the Torah. But then the real question is, precisely how does the Torah make its statement, since, we now realize, the written Torah (Scripture) and the oral Torah (the Mishnah) merely contribute, each its proportionate share, to the Torah? The framers of the Bavli answer that question by setting forth their Talmud, the Talmud. If, therefore, we wish to know about the Torah in the Talmud, we have to read the Talmud as the Torah.

CHAPTER SEVEN

THE QUESTION OF TRADITION

I. From Religion to Theology

From the case of the relationship of the Talmud to the Torah, we turn to the broader question embodied by that case: Does the Talmud come from “tradition”? And more broadly phrased: what is the foundation for the authority of the Bavli—tradition or compelling rationality? I argue in this concluding chapter that in the Bavli we confront a document that transforms revealed truth into rational insight and that claims authority by reason of logic and orderly inquiry—religion in the formulation of philosophy, in the garb of myth, and in the realization of concrete deed.

A variety of writings containing statements attributed to sages have formed for Judaism not only a literary corpus, exhibiting traits in common, but—so these writings are represented and episodically portray themselves—also a theological and legal tradition formed out of prior sources, making a cogent and authoritative statement in common and forming a continuous set of writings. That tradition formed out of prior sources, moreover, is understood to derive from a continuous process of tradition, with sayings handed on from an earlier generation to a later on until a complete and final statement came to full expression in the Bavli. Hence the Bavli is supposed to stand in relationship to prior writings as a summary statement stands to the sources that are summarized. It is supposed to respond to a received program and to restate a vast corpus of already-circulating and traditional materials.

The issue is whether in literary terms a tradition can live with, and within, a system: a cogent and coherent and proportionate statement of matters. We deal in particular with the dual Torah of Judaism, which is made up not of sources transformed into a single source, e.g., in the Talmud of Babylonia, but of an essentially independent construction and system, one that stands upon its own ground and takes its own position, framed in a balance and propor-

tion of its own, and so issues its own distinctive statement. The Judaic system of the dual Torah—so we shall see—recognizes a corpus of authoritative writings, but that corpus does not form a tradition, a “tradition formed out of prior sources.” The Bavli does not fall into the classification formed by books that take over from the predecessors’ materials to be handed on to continuators, materials that therefore are continuous with one another. The Bavli is not part of a traditional literature, each of the documents of which stand in close relationship with its neighbors, fore and after, each borrowing from its predecessor, handing on to its successor, a nourishing tradition.

To show the issue graphically, let me begin with an analogy drawn from the stars. All stars shine as suns of their respective systems. But each star, our sun for example, also gives light as part of a larger galaxy or congeries. And these themselves constitute components of still larger ones: the milky way for instance, and so, toward infinity, onward in the distant reaches of imagination to the entirety of matter. Seen near at hand, our sun is not merely and only a star, but the light in the firmament, so it appears by day. But at night when we see the skies, we realize that ours is not the only light, the sole sun, but a star like other stars. And, penetrating into deep space, we understand that the whole—our solar system, our galaxy—finds its place in an infinity of space and matter beyond all measure.

The dual Torah that sages held was revealed by God to Moses, our rabbi, at Sinai, which we call Judaism, is that infinity. So it is with the documents of Judaism. Each gives light on its own. All comprise part of a larger constellation. But they together constitute the one whole Torah of Moses, our rabbi, or, in secular language, Judaism. How then do individual stars of the firmament of Judaism form a galaxy? I hope, specifically, to map the heavens—that is, the Torah, or Judaism—to chart how the particular documents of the Judaism of the dual Torah form that single, one whole Torah of Moses, our rabbi. I frame the matter in concrete and literary terms, these state the physics. But the issue encompasses the fundamental structure and system of Judaism: that galaxy of all the stars of Sinai, the astronomy, even the cosmology and ultimately the cosmogony.

But back to the engineering that turns physics into facts of hardware capable of escaping our gravity. Hard as it is to come to grips with the whole, seen all at once, so difficult it is to reckon with the textual commonalities that form of a community of texts the textual

community of Judaism. And who can chart—let alone navigate—the heavens imagined in the Judaism of the dual Torah! What force, what gravity, magnetism, mass of matter and anti-matter, holds the whole together? How to know how texts deemed to form a tradition formed out of prior sources transcend their respective boundaries and so reach outward to the farthest limits of the textual community. For by definition these are not indicated by the covers of a book or even the sides of a book shelf.

II. *The Bavli as Tradition or System*

Can a system of applied reason and sustained, rigorous rational inquiry can coexist with a process of tradition? I argue that it cannot. So far as a process of tradition takes over the formation of a cogent and sustained statement, considerations extraneous to rational inquiry, decided, not demonstrated facts—these take over and divert the inexorable processes of applied reason from their natural and logically necessary course. And the opposite is also the case. Where a cogent statement forms the object of discourse, syllogistic argument and the syntax of sustained thought dominate, obliterating the marks of a sedimentary order of formation in favor of the single and final, systematic one. So far as an authorship proposes to present an account of a system, it will pay slight attention to preserving the indicators of the origins of the detritus of historical tradition, of which, as a matter of fact, the systemic statement itself may well be composed.

The threads of the tapestry serve the artist's vision; the artist does not weave so that the threads show up one by one. The weavers of a tractate of the Bavli, as we shall see, make ample use of available yarn. But they weave their own tapestry of thought. And it is their vision and not the character of the threads in hand that dictate the proportions and message of the tapestry. In that same way, so far as processes of thought of a sustained and rigorous character yield writing that makes a single, cogent statement, tradition and system cannot form a compatible unit. I shall show in a small sample of a vast literature that where reason governs, it reigns supreme and alone, revising the received materials and, through its own powerful and rigorous logic, restating into a compelling statement the entirety of the prior heritage of information and thought.

I therefore contrast thought received as truth transmitted through a process of tradition against thought derived from active rationality by asking a simple question: does what is the most rigorously rational and compelling statement of applied reason known to me, the Talmud of Babylonia or Bavli, constitute a tradition and derive from a process of traditional formulation and transmission of an intellectual heritage, facts and thought alike? Or does that document make a statement of its own, cogent and defined within the requirements of an inner logic, proportion, and structure, imposing that essentially autonomous vision upon whatever materials its authorship has received from the past? We shall know the answer through a sequence of simple tests, which concern the framing of the program of inquiry and the character of the sustained discourse of the Bavli. Specifically, if I can show that in literary terms the Bavli is not traditional, formed out of the increment of received materials, the form of the reception of which governs, but—in the sense now implied—systemic, that is, again in literary terms orderly, systematic, laid out in a proportion and order dictated by the inner logic of a topic or generative problem and—and therefore—authoritative by reason of its own rigorous judgment of issues of rationality and compelling logic, then I can offer a reasonable hypothesis resting on facts of literature. Specifically I can contribute a considerable example to the debate on whether tradition may coexist with the practical and applied reason of utter, uncompromising logical rationality and compelling, autonomous order.

Since, quite clearly, I use tradition in a literary sense, as referring to a process by which writings of one kind and not another take shape, let me then define what I mean by tradition and place into the context of Judaism the issue I have framed, to begin with, in such general terms. For if any noun follows the adjective, “Rabbinic,” it is not “Judaism” but “tradition.” And by “tradition” people mean two contradictory things.

First, when people speak of “tradition,” they refer to the formative history of a piece of writing, specifically, an incremental and linear process that step by step transmits out of the past an essential and unchanging fundament of truth *preserved in writing*, by stages, with what one generation has contributed covered by the increment of the next in a sedimentary process, producing a literature that, because of its traditional history as the outcome of a linear and stage by stage process, exercises authority over future generations and

therefore is nurtured for the future. In that sense, tradition is supposed to describe a *process* or a chain of transmission of received materials, refined and corrected but handed on not only unimpaired, but essentially intact. The opening sentence of tractate Abot, “Moses received Torah from Sinai and handed it on to Joshua,” bears the implication of such a literary process, though, self-evidently, the remainder of that chapter hardly illustrates the type of process alleged at the outset.

The second meaning of tradition bears not upon process but upon content and structure. People sometimes use the word tradition to mean a fixed and unchanging essence deriving from an indeterminate past, a truth bearing its own stigmata of authority, e.g., from God at Sinai.

These two meanings of the same word coexist. But they are incompatible. For the first of the two places a document within an ongoing, determinate historical process, the latter speaks of a single statement at the end of an indeterminate and undefined process, which can encompass revelation of a one-time sort. I use only the first of the two meanings. When, therefore, I ask whether or not the Bavli is a traditional document, I want to know whether the present literary character of the Bavli suggests to us that the document emerges from a sedimentary process of tradition in the sense just now specified: an incremental, linear development, step by step, of law and theology from one generation to the next, coming to expression in documents arrayed in sequence, first to last. The alternative is that the Bavli originates as a cogent and proportioned statement through a process we may compare—continuing our geological metaphor—to the way in which igneous rock takes shape: through a grand eruption, all at once, then coalescence and solidification essentially forthwith. Either the Bavli will emerge in a series of layers, or it will appear to have formed suddenly, in a work of supererogatory and imposed rationality, all at once, perfect in its ultimate logic and structure.

That inquiry frames not a theological but a literary question. When I maintain that the Bavli is not a traditional document, I issue a judgment as to its character viewed as literature in relationship to prior extant writings. Everyone of course must concur that, in a theological sense, the Bavli is a profoundly traditional document, laying forth in its authorship’s terms and language the nature of the Judaic tradition, that is, Judaism, as that authorship wishes to read

the tradition and have it read. But this second sense will not recur in the pages that follow.

Now to the issue at hand. When I ask whether or not the documents of the Judaism of the dual Torah exhibit shared traits of logic, rhetoric, or topic that justify imputing to them not merely points of intersection or connection but continuities and commonalities, I do not ask an invented question. It is a position maintained by a sizable sector of those who revere the Torah and interpret it today. I shall show that, as a statement of the continuities of a traditional character, deriving from a long and incremental process of handing on materials from generation to generation and—more to the point—document to document—that position contradicts the evidence of the Bavli, which, we must remember, constitutes the single most authoritative canonical writing of Judaism. What I claim is a simple proposition.

The Judaism of the dual Torah knows not traditions to be recited and reviewed but merely sources, to be honored always but to be used only when pertinent to a quite independent program of thought.

That is to say, to go over the first definition of tradition, the one with which I commenced, the components of the Torah of that Judaism do not contribute equally and jointly to a single comprehensive statement, handed on from generation to generation *and from book to book*, all of them sources forming a tradition that constitutes the Torah. Each has a particular message and make a distinctive statement. Obviously, all fit together into a common statement, the Torah or Judaism. That fundamental theological conviction defines Judaism and cannot—and should not—give way before the mere testimony of literary evidence. But it is the fact that whatever traits join the whole of the rabbinic corpus together into the single Torah of Moses our Rabbi, revealed by God to Moses at Sinai, they are not literary traits of tradition.

In literary terms, the various rabbinic documents commonly (and, from a theological perspective, quite correctly) are commonly represented as not merely autonomous and individual statements, or even connected here and there through shared passages, but in fact as continuous and interrelated developments, one out of its predecessor, in a long line of canonical writings (to Sinai). The Talmud of Babylonia, or Bavli, takes pride of place—in this picture of “the rabbinic tradition”—as the final and complete statement of that incremental, linear tradition, and so is ubiquitously described as “*the*

tradition," par excellence. In this concluding monograph I shall demonstrate that, vis-à-vis its sources, the Bavli represents an essentially autonomous, fresh, and original statement of its own. How so?

Its authorship does not take over, rework, and repeat what it has received out of prior writings but makes its own statement, on its own program, in its own terms, and for its own purposes.

Every test I can devise for describing the relationship between the authorship of the Bavli and the prior and extant writings of the movement of which that authorship forms the climax and conclusion yields a single result. The authorship at hand does not pursue anyone else's program, except only that of the Mishnah. It does not receive and refine writings concluded elsewhere. It takes over a substantial heritage and reworks the whole into its own sustained and internally cogent statement—and that forms not the outcome of a process of sedimentary tradition but the opposite: systematic statement of a cogent and logical order, made up in its authorship's rhetoric, attaining comprehensibility through the syntax of its authorship's logic, reviewing a received topical program in terms of the problematic and interests defined by its authorship's larger purposes and proposed message. The samples of the Bavli constitute either composites of sustained, essentially syllogistic discourse, in which case they form the whole and comprehensive statement of a system, or increments of exegetical accumulation, in which case they constitute restatements, with minor improvements, of a continuous tradition. In the Talmud we deal with sustained, directed, purposive syllogistic discourse, not wandering and essentially agglutinative collections of observations on this and that, made we know not when, for a purpose we cannot say, to an audience we can scarcely imagine, so as to deliver a message that, all together and in the aggregate, we cannot begin to recapitulate.

True, the authorship of the Bavli drew upon a sizable corpus of materials indeterminate character and substance, which we assuredly do classify as traditions handed on from their predecessors. Hence the authorship of the Bavli made use of both sources, completed documents, and also traditions, transmitted sayings and stories, ordinarily of modest proportions, not subjected to ultimate redaction. But the authorship of the Bavli did whatever it wished with these materials to carry out its own program and to make its own prevailing statement. These received materials, undeniably formulated and transmitted in a process of tradition, have been so

reworked and revised by the penultimate and ultimate authorship that their original character does not define the syntax of argument and the processes of syllogistic discourse, except by way of supplying facts for someone else's case. Whether or not we can still discern traces of received statements, even in wordings that point to an origin other than with or authorship, is beside the point. Proof of my case does not derive from the failure or success of scholars to identify the passages of the Bavli that antedate the penultimate or ultimate work of composition.

In its final, literary context defined by the documents or sources we can identify, the Bavli emerges as anything but the seal of "tradition" in the familiar sense. For it is not based on distinct and completed sources handed on from time immemorial, subserviently cited and glossed by its own authorship, and it does not focus upon the systematic representation of the materials of prior documents, faithfully copied and rehearsed and represented. We have, of course, to exclude the Mishnah, but this fundamental document is treated by the authorship of the Bavli in a wholly independent spirit. The upshot is that the Bavli does not derive from a process of tradition. Viewed as literature, the Bavli is not a traditional document at all. It is not the result of an incremental and linear process; it does not review and restate what others have already said; its authorship does not regard itself as bound to the program and issues received from prior ages. The Bavli constitutes a systemic and not a traditional statement.

III. *The Bavli and its Sources in the Case of Tractate Sukkah Chapter One*

Let us now turn to a specific text, given in severely abbreviated form to be sure. Tradition is supposed to describe a process or a chain of transmission of received materials, refined and corrected but handed on not only unimpaired, but essentially intact. A traditional exegesis of the Mishnah will therefore cite a passage and gloss it, then another and gloss that. Secondary consideration of issues of principle, speculation on larger principles—these will not serve as primary vehicles of exegesis. A systemic reading of the Mishnah-paragraph, by contrast, will bring to bear upon the Mishnah a sustained and cogent program. The Mishnah will dictate topic, but the generative problematic of discourse will derive from the system that

prevails and—merely by the way—attends, also, to the Mishnah-paragraph at hand. That choice will guide us in our reading of this brief verbatim samples of our tractate, one which shows us how the authorship of the Bavli reads a given Mishnah-paragraph.

I have introduced brief observations, to show the reader why I maintain we deal with well-composed, sustained and cogent propositions, syllogistic discourse with a beginning, middle, and end, following a clear program of inquiry. That program has told the authorship before us how not merely to put together diverse sayings, deriving from various times and persons, into a reasonably coherent statement. On the contrary, we have not a composite but a composition, with sayings all placed so as to serve the larger interests of argument or polemic of the single—and therefore, final—authorship. Beyond the observations on the opening units, I have not continued that mode of commentary, because there is no need to repeat a single, to me self-evident, point. Either we deal with the compositions of authorships capable of making diverse materials over into a single unfolding statement and argument, or we have in hand composites of discrete materials, patched together into a single continuous, but not really coherent and cogent, repertoire. I take the view that, in the aggregate, the Bavli's large scale discourse constitute not composites but compositions, and that in the Bavli we have not a scrapbook but a set of sizable statements of substantial integrity and cogency.

The Mishnah-passage is given in italics. Then I use bold-face type to indicate that a passage occurs in an earlier compilation. I do not pay attention to the appearance of a passage in another tractate of the Bavli, in the theory that all of the Bavli's thirty-seven tractates came to their present state in more or less the same period of time. It would follow that the appearance of a passage in more than one tractate will tell us nothing about how the same general authorship has made use of materials produced in a prior period. My comments on each passage are limited to some redactional issues and addressed mainly to the question at hand.

BAVLI SUKKAH 1:1 A-F

- A. *A sukkah which is taller than twenty cubits is invalid.*
- B. *R. Judah declares it valid.*
- C. *And one which is not ten handbreadths high,*

- D. *one which does not have three walls,*
- E. *or one, the light of which is greater than its shade,*
- F. *is invalid.*

I.

- A. We have learned in the Mishnah at another passage: *The crossbeam above an alley-entry which is higher than twenty cubits [is invalid, and one therefore] should diminish it [making it lower]. R. Judah says, "It is not necessary to do so" [M. Er. 1:1A-B].*
- B. What differentiates the case of the sukkah, in which instance the rule is formulated in the language of unfitness [without remedy], from the case of the alley-way, in which instance the framer of the Mishnah has specified the remedy [for an improper arrangement]?
- C. Since [the religious requirement of building] a sukkah derives [from the authority] of the Torah, the framer of the passage uses the language, "unfit," while, since the arrangement creating an artificial alley-way derives from the authority of rabbis, the framer of the passage has taught the remedy [namely, diminishing the height of the crossbar].
- D. If you prefer, I shall propose a different solution:
- E. Even in matters deriving from the authority of the Torah one may well teach the required remedy. But in the case of the sukkah, with its numerous rules, the framer of the passage has simply framed matters in terms of unfitness. In the case of the alley-way, without numerous rules and regulations, the framer of the passage taught the remedy [for an improper arrangement].

The issue derives from the Mishnah-passage as it intersects with a counterpart rule elsewhere. No one suggests that the issue at hand derives from a prior tradition, even one of interpretation. The basic proposition at hand maintains that all components of the law join together to make a few utterly cogent and harmonious statements—a premise of exegesis particularly critical to a systemic hermeneutic, but not urgent, I should imagine, for a traditional one. But that proposal surely is subject to argument.

II.

- A. What is the scriptural source for the rule [that the sukkah may not be taller than twenty cubits]?
- B. Said Rabbah, "It is because [Scripture] has stated, 'So that your coming generations may know that I made the children of Israel dwell in sukkot' (Lev. 23:43).

- C. “[If the roof is] up to twenty cubits, someone will know that he is dwelling in a sukkah. If it is higher than twenty cubits, one will not know that he is dwelling in a sukkah, because [the roof] will be out of [the ordinary line of] sight.”
- D. R. Zira said, “The proof derives from here: ‘And there shall be a booth [sukkah] for a shadow in the daytime from the heat’ (Is. 4:6).
- E. “[If the roof is] up to twenty cubits, someone will sit in the shadow of the [roof of the] sukkah. If it is higher than twenty cubits, one will not sit in the shadow of the [roof of the] sukkah [since the shadow will be cast by the walls entirely], but rather, in the shadow of the walls.”
- F. Said to him Abayye, “But if someone made his sukkah in a glen between two hills [where there is no sun], would you maintain that in such a case it is not a valid sukkah? [Surely not!]”
- G. He said to him, “In that case, if one removes the two mountains there will be shade deriving from the roof of the sukkah, but here, if you remove the walls of the sukkah, there will not be any shadow cast by the sukkah at all.”
- H. And Raba said, “The proof derives from here: ‘You shall dwell in sukkot for seven days’ (Lev. 23:42), is what the Torah has said. For all seven days, go out of your permanent dwelling and stay in a temporary dwelling.
- I. “Now [if the roof is] twenty cubits high, someone will make the sukkah a merely temporary dwelling. If it is higher than that, someone will not make the sukkah a temporary dwelling but a permanent one.” [Slotki, p. 2, n. 13: Such a high structure requires firm foundations and walls, and these give it the characteristic of a permanent abode.]
- J. Said to him Abayye, “But if so, if one has made the walls of his sukkah out of iron and then made a sukkah-roofing on them, would it be the case that this would not be a valid sukkah? [It certainly is a valid sukkah.]”
- K. He said to him, “This is what I was saying to you: If the roof is up to twenty cubits in height, which is the sort of house that a person makes his temporary dwelling, if he makes it his permanent dwelling, he [nevertheless] carries out his obligation. But if the roof is higher than twenty cubits, which is the sort of house a man makes a permanent dwelling, if one makes it a temporary dwelling, he has not carried out his obligation.”
- L. [2B] [We now review the proofs of Rabbah, Zira, and Raba, and ask what is at fault that all parties do not concur on any one of the three proposed proof-texts.] All parties do not concur with the proof of Rabbah, for his proof-text depends upon the knowledge of the coming generations.
- M. All parties do not concur with the proof-text of R. Zira, for the proof-text he cites refers to the days of the Messiah.

- N. But R. Zira [would respond], "If so, the verse should make use of the language of a canopy: 'A canopy will serve for a shade in the daytime.' Why does the verse say, 'A sukkah shall serve for a shade in the daytime'? It serves to make two points [one concerning the proper height of a sukkah, the other concerning matters in the messianic age]."
- O. Likewise as to the proof-text adduced by Raba, all parties do not concur, on account of the question raised by Abayye.

The syllogism that underlines the case is that the rules of the Mishnah derive from Scripture. The power of the proof-text then is logically and systematically to link a particular rule to a general, and scriptural, rule. Here too the systemic focus is clear. For I maintain that the issue is not one of mere authority, that is, tradition, but as is clear at L, something more: the cogency of all proof-texts—once again, not a traditional but a systemic question. For a traditional statement can suffice with whatever proof-text comes to hand and has no need to sort out diverse possibilities. A systemic statement must link all the data into a single cogent composition, as is surely accomplished here.

III.

- A. [The specification of the cited authorities, III A, C, E, on the minimum requirements of the sukkah, now comes under discussion in its own terms.] The following objection was raised:
- B. **A sukkah which is taller than twenty cubits is invalid.**
- C. **R. Judah declares it valid [M. 1:1A-B], even up to forty or fifty cubits.**
- D. **Said R. Judah, "M'SH B: The sukkah of Helene in Lud was twenty cubits tall, and sages went in and out, when visiting her, and not one of them said a thing."**
- E. **They said to him, "It was because she is a woman, and a woman is not liable to keep the commandment of sitting in a sukkah."**
- F. **He said to them, "Now did she not have seven sons [who are disciples of sages, and all of them were dwelling in that same sukkah!"] [T. Suk. 1:1A-E].**
- G. "And furthermore, everything she ever did was done in accord with the instruction of sages."
- H. Now what need do I have for this additional reason: "Furthermore, everything she ever did was done in accord with the instructions of sages"?

- I. This is the sense of what he said to them: “Now, if you say that the sons were minors, and minors are exempt from the religious duty of dwelling in the sukkah, since she had seven sons, it is not possible that among them was not a single one who no longer needed his mother’s tending [and so would be required to dwell on his own in the sukkah].”
- J. “And if, further, you should maintain that a minor who no longer needs his mother’s tending is subject to the law only on the authority of rabbis, and that woman paid no attention to rules that rested only on the authority of the rabbis, come and note the following: ‘And furthermore, everything she ever did was done in accord with the instructions of sages.’”
- K. [We now revert to the issue with which we began, namely, the comparison of the story at hand to the reasons adduced by the authorities at unit III:] Now with references to one who said, the dispute applies to a case in which the walls of the sukkah do not touch the sukkah-roofing, would a queen dwell in a sukkah, the walls of which do not touch the sukkah-roofing?
- L. [3A] [Indeed so! The reason is that] the space makes possible good ventilation.
- M. But in the view of the one who has said that the dispute pertains to a small sukkah, would a queen ever dwell in a small sukkah?
- N. Said Rabbah bar R. Ada, “At issue in the dispute is solely a case of a sukkah which is made with many small cubbies.”
- O. But would a queen take up residence in a sukkah that was subdivided into many small cubbies?
- P. Said R. Ashi, “At issue is only [a large sukkah which had] such recesses.
- Q. “Rabbis take the view that the queen’s sons were dwelling in a sukkah of absolutely valid traits, while she dwelled in the recesses on account of modesty [i.e., not showing her face among the men], and it was on that account that rabbis said nothing to her [about her dwelling in what was, in fact, an invalid part of the sukkah].
- R. “And R. Judah maintains the position that her sons were dwelling along with her [in the cubbyholes of the sukkah], and even so, the rabbis did not criticize what she was doing [which proves that the small cubbies of the sukkah were valid].”

The unfolding of this discourse shows us the larger traits of our document. The case is not introduced for the sake of preservation or even exemplification of the law. It is subjected to an analysis in terms of the larger program of the framer of the complete discussion. That is a mark of the systemic program, which draws into a

single, sustained and on-going discourse the entirety of the received materials chosen for analysis.

Let us first review the program of the Talmud-passage at hand, then return to the particular questions that engage us. To save space I have given only a sample, but the following discussion encompasses the entire passage.

The protracted Talmud serving M. 1:1A-F not only works its way through the Mishnah-paragraph but systematically expands the law applicable to that paragraph by seeking out pertinent principles in parallel or contrasting cases of law. When a unit of discourse abandons the theme or principle connected to the Mishnah-paragraph, it is to take up a secondary matter introduced by a unit of discourse that has focused on that theme or principle. Unit I begins with an analysis of the word-choice at hand. At the same time it introduces an important point, namely, the comparison between the sukkah and a contraption erected also on a temporary basis and for symbolic purposes. That is a symbolic gateway, that transforms an alley-entry into a gateway for a courtyard and so alters the status of the alley and the courtyards that open on to it and turns them into a single domain. As one domain, they are open for carrying on the Sabbath, at which time people may not carry objects from one domain, e.g., private, to another, e.g., public. That comparison is repeatedly invoked. Units II and III then move from language to scriptural sources for the law. Unit IV then stands in the same relationship to unit III, and so too unit V. Unit VI reverts to an issue of unit V. So the entire discussion—II-VI—flows out of the exegetical requirements of the opening lines of the Mishnah-paragraph. But the designated unit-divisions seem to me to mark of discussions that can have stood originally by themselves.

Unit VII then reverts to the original topic, the requisite height of the sukkah. It deals with a fresh problem, namely, artificially diminishing or increasing the height of the sukkah by alterations to the inside of the hut. One may raise the floor to diminish the height or lower the floor to increase it. Unit VIII pursues the same interest. It further introduces principles distinct from the Mishnah's rules but imposed upon the interpretation of those rules or the amplification of pertinent cases. This important exercise in secondary expansion of a rather simple rule through the introduction of fresh and rather engaging principles—"curved wall," fictional extension of walls upward of downward and the like—then proceeds in its own terms.

Unit IX is continuous in its thematic interest with unit VIII. Unit X reverts to the Mishnah-paragraph, now M. 1:1C, and asks the question usually raised at the outset about the scriptural authority behind the Mishnah's rule. This leads us into a rather sizable digression on scriptural exegesis, with special interest in establishing the analogy between utensils in the Temple and dimensions pertinent to the sukkah. The underlying conception, that what the Israelite does on cultic occasions in the home responds to what is done in the cult in the Temple, is familiar. Units XI and XII pursue the same line of thought. Then unit XIII reverts once more to the Mishnah's rule, M. 1:1D. Now we take up the issue of the walls of the sukkah. These must be three, in rabbis' view, and four in Simeon's. Each party concedes that one of the requisite walls may be merely symbolic. The biblical source for the required number of walls forms the first object of inquiry. Unit XIV then takes up the symbolic wall.

Unit XV reverts to a statement on Tannaite authority given in unit XIII. Subject to close study is a somewhat complicated notion. There are diverse kinds of sukkah-buildings. One, we know, is a sukkah erected to carry out the religious duty of the Festival. But a person may build a sukkah, also, to extend the enclosed and private area of his home. If he places such a sukkah by the door, the area in which it is permitted to carry objects—private domain—covers not only the space of the house but also the space of the sukkah. That sukkah, erected in connection with Sabbath-observance, is compared to the sukkah erected for purposes of keeping the Festival. The issue is appropriate here, since the matter concerns the character of the walls of the sukkah built for Sabbath-observance. Unit XVI then returns to the Mishnah-paragraph. Unit XVIII moves back from the Mishnah's statements and deals with the general principle, taken by some parties, that the sukkah must bear the qualities of a permanent dwelling. That issue intersects with our Mishnah paragraph in connection with Judah's and Simeon's views on the requirement that there be a roof of a certain height and four walls. But the construction as a whole stands independent of the Mishnah-paragraph and clearly was put together in its own terms. XVIII takes up XVII M. The mathematics at hand derive from Slotki's notes, as indicated. Units XIX and XX evidently are miscellaneous—the only such units of discourse in the entire massive construction.

Now to return to our questions, a bit of a text having been examined, a larger portion having been described. In sum, I cannot

point to a more thorough or satisfying sequence of Talmudic units of discourse, in which the Mishnah's statements are amplified, then the amplifications themselves worked out on their own. The whole is thorough, beautifully articulated, and cogent until the very end. Let us in conclusion consider the questions just as we originally asked them.

1. *The topical program* of prior writings on the subject as compared to the topical program of the Bavli on the same subject, with attention to questions such as these: does the Bavli follow the response to the Mishnah characteristic of the authorship of the Tosefta? Not systematically, only episodically. As to the Sifra, Sifré to Numbers or Sifré to Deuteronomy, these documents have little in common with ours. Does the Bavli follow the response to relevant passages of Scripture that have caught the attention of compilers of Midrash-exegeses in Genesis Rabbah, Leviticus Rabbah, Pesiqta de Rab Kahana, and other documents generally thought to have come to closure prior to the Bavli? Quite to the contrary, apart from the Yerushalmi and other authorships within the Bavli itself, our authorship turns out to define unique and uncommon points of interest in verses treated both in the Bavli and in some other document.

2. *The Bavli's use or neglect of the available treatments ("sources") in the prior literature:* if the Bavli does make use of available materials, does it impose its own issues upon those materials or does it reproduce those materials as they occur elsewhere? The answer to these questions for the present sample is negative. The Bavli does not make extensive use of available materials. Most of what we have reviewed turns out to be unique to the Bavli. Where there are materials that occur both here and in other documents, they provide mere facts, not a point of generative discourse. Has the authorship of the Bavli carried forward issues important in prior writings, or has it simply announced and effected its own program of inquiry into the topic at hand? Our authorship has made its own statement in its own way.

3. *The traits of the Bavli's canonical statement, that is, derivative and summary at the end, or essentially fresh and imputed retrospectively?* In consequence of the detailed examination of the Bavli's authorship's use of and response to available sources, for the sample at hand we may characterize the statement of the Bavli as a whole in comparison to prior statements as original, fresh, and self-defined. And, since that statement is canonical by the definition of the entire history of Judaism, we ask about the upshot: the shape and character of a canonical

statement on a given subject. The answer, for the sample we have considered, yields a negative finding: the canonical statement does not aim at drawing together available materials and restating a long-term and (assessed in terms of the extent writings) broadly-circulated consensus. Data that constitute evidence for documentary traditionality do not appear to the naked eye—or even to a vision educated to discern literary traits and concerns. Quite to the contrary, the pages of plain type, not the bold face indicative of a passage deriving from a prior compilation, testify to the plain truth that our document does not cite or quote or attempt to summarize and recast available materials, reaching a later authorship out of an earlier and on-going process of tradition. True, individual sayings may have circulated and may have undergone a process of continuous tradition. But the Bavli as we have it, the work of its penultimate and ultimate authorship, makes its own statement in its own way on its own agenda. It gives us not a tradition out of a remote past but a system of its own, composed, quite obviously, in substantial measure from received materials and in accord with received conventions, but, in all and in essence, a singular, autonomous, and, by its nature, unprecedented statement: a system.

IV. *The Literary Context of Judaic Tradition*

The Talmud of Babylonia draws upon prior materials, Scripture, the Mishnah, the Tosefta, Sifra, and so on. The document in no way was not made up out of whole cloth by its penultimate and ultimate authorship, the generations that drew the whole together and placed it into the form in which it has come down from the seventh century to the present day. The Bavli's authorship both received out of the past a corpus of *sources*, and also stood in a line of *traditions* of sayings and stories, that is, fixed wordings of thought the formulation and transmission of which took place not in completed documents but in ad hoc and brief sentences or little narratives. These materials, deriving from an indeterminate past through a now-inaccessible process of literary history, constitute traditions in the sense defined in the preface: an incremental and linear process that step by step transmits out of the past an essential and unchanging fundament of truth and writing.

Traditions: some of these prior materials never reached redaction

in a distinct document and come down as sherds and remnants within the Bavli itself. These are the ones that may be called traditions, in the sense of materials formulated and transmitted from one generation to the next, but not given a place in a document of their own.

Sources: others had themselves reached closure prior to the work on the Bavli and are readily identified as autonomous writings. Scripture, to take an obvious example, the Mishnah, tractate Abot (the Fathers), the Tosefta (so we commonly suppose), Sifra, Sifré to Numbers, Sifré to Deuteronomy, Genesis Rabbah, Leviticus Rabbah, the Fathers according to Rabbi Nathan, Pesiqta deRab Kahana, Pesiqta Rabbati, possibly Lamentations Rabbah, not to mention the Siddur and Mahzor (order of daily and holy day prayer, respectively), and various other writings had assuredly concluded their processes of formation before the Bavli's authorship accomplished their work. These we call *sources*—more or less completed writings.

V. *Sources or Tradition? The Literary Criteria*

Many maintain that the literary documents of Judaism constitute an on-going corpus or truth spun out in a continuous process and handed on from generation to generation. But is that the fact, and can we demonstrate it? To conduct an experiment on that question, I choose the authoritative, theologically-canonical statement of the Judaism of the dual Torah, the Talmud of Babylonia or the Bavli. The Bavli is everywhere represented as a traditional document. Its (ultimate) authorship is portrayed as mainly taking up materials from prior sources and reworking them into a systematic and canonical statement for generations to come. The Bavli, therefore, is portrayed as essentially traditional, that is, a document that heavily draws upon sources, enjoys standing and authority because of its representation of what is in those sources, and stands in an on-going traditional relationship with those sources. It follows that the Judaic system presented by the Bavli also falls into the classification of traditional. What in particular makes the Bavli traditional, it is argued, is its relationship to the prior writings of the system of which it constitutes the authoritative statement. Hence the Bavli comprises a statement of sources that form "the tradition," hence may be classified as a traditional document.

The Bavli supposedly draws upon and reshapes available ideas and

reworks them into a definitive statement, hence turns sources into a tradition. To test that claim I have devised a simple experiment. If the authorship at hand resorts to prior writings and presents us with what is at its foundations a systematic and comprehensive summary and restatement of them, then the Bavli will take up an honorable position at the end of a long process of tradition.

But if we find that the authorship of the Bavli follows an essentially independent and fresh program of its own, then the Bavli will prove to have inaugurated a tradition but not to have received and transmitted one. It will follow that, for the Judaism of the dual Torah, holy scripture, authoritative sources whether preserved orally or in writing, as such play no categorical role whatsoever. The Bavli will then constitute an independent and fresh statement of its own authorship, not a restatement of what its authorship has received from prior generations, and assuredly not a statement of a cumulative and incremental tradition. The Bavli, rather, will come forth as a statement that in time to come, beyond its redaction, would *become* traditional, but for reasons not related to its own literary let alone theological and legal traits. That set of choices explains the interest and importance of determining the relationship between the Bavli and the extant sources of the Judaism of the dual Torah that reached closure prior to the Bavli.

The Bavli is mostly the work of its own authorship, acting independently on its singular program of Mishnah-exegesis and amplification, alongside its distinctive program of Scripture-exegesis and amplification, both programs demonstrably unique to that authorship alone so far as extant sources and documents indicate for our sample. In the Bavli-sample at hand we look in vain for large tracts or even sizable units of discourse that refer to, or depend upon, the plan and program of prior documents. When, moreover, we shall survey how earlier authorships dealt with the same materials—[1] the Mishnah-chapter severely abbreviated to be sure, and [2] an important set of verses of Scripture pertinent to the theme of the tractate—we come up with a single and uniform result.

What earlier authorships wished to investigate in the Mishnah, the points they wished to prove by reference to verses of Scripture important in our tractate—these have little or nothing in common with the points of special concern systematically worked out by the authorship of the Bavli. The Bavli's authorship at ca. 600 approaches Mishnah-exegesis with a program distinct from that of the Yerushalmi's authorship of ca. 400, and the Bavli's authorship reads a

critical verse of Scripture within a set of considerations entirely separate from those of interest to the authorships of Leviticus Rabbah and Pesiqta deRab Kahana of ca. 450 and 500. Any notion that the Bavli's authorship has taken as its principal task the restatement of received ideas on the Mishnah-topics and Scripture-verses at hand derives no support to speak of from the sample we shall examine.

That finding, alas, will contradict familiar and much-cherished convictions concerning the character of the Bavli, and of Judaism, that is to say, the larger canonical corpus of which it forms a principal representative. Reaching the world of commonly held opinions in the the Broadway pop-song, *Tradition*, that conviction leads us to expect the principal document of Judaism to say pretty much what had been said before, and, many would add, beginning at Sinai. That corpus is held to form a continuous statement, beginning in an earlier writing, standing behind, generating, and therefore continuing in a later one. Consequently, the corpus is called "traditional," in the sense that one document leads to the next, and all of the documents come to their climax and conclusion in the final one of late antiquity. To the documents of the Torah—oral and written—is imputed not only the status of tradition in the sense just now defined but also a relationship of continuity which we may call imputed canonicity, so that, we are told, we may freely cite a passage from one document alongside a counterpart from another, treating them as part of a single—hence, continuous statement, and, in theological terms, one might say, canonical one, though our issue is not to be confused with canonical research. And that claim for the Bavli and the literature prior to it of *traditionality* bears with it not merely theological, but literary implications about the nature of the documents and the correct way of reading them. Because of those implications as to literature we can test the claim at hand and ask whether it indeed so describes the documents as to find substantiation in literary facts.

It is, therefore, legitimate to ask whether the Torah—that is, the tradition formed out of prior sources of Judaism—constitutes a cumulative tradition. And it is correct to answer that question by assessing the traits of continuity that join document to document—so it is alleged—in a single textual community, one formed out of a long process of formulation and transmission in a continuous relationship of tradition, hence, in an exact sense, a traditional literature.

VI. *Tradition and the Bavli in Particular*

I wish now to broaden the framing of the issue at hand, which is, on what basis traditional status is imputed to the writings that antedate the Bavli and therefore also to the Bavli at the end. I wonder whether and how—on literary grounds alone—the principal documents of the Judaism of the dual Torah can be shown to exhibit continuities from one to the next. If they do, then, *on literary grounds alone*, we may claim that the writings constitute sources that all together form a tradition, a set of documents making a single unitary, continuous, and, therefore, also cogent, statement. If they do not, then we shall have to seek other than documentary evidence for the traditional status and character imputed to these same writings by the theology and law of formative Judaism.

Again to state with emphasis: *I therefore want to know whether and how—again, in concrete, literary terms—a document makes its part of such a traditional statement, speaking, for its particular subject, in behalf of the entirety of the antecedent writings of the Judaic system at hand and standing in a relationship of continuity—not merely connection—with other such writings.*

How, in other words, does the authorship of a corpus of writings that unfold on after another take up sources and turn them from traditions into a systematic and cogent statement. I ask the question in the case of a given topic. To answer the question, for obvious reasons I turn to the document universally assigned canonical and official status in Judaism from antiquity to the present day, the Talmud of Babylonia. In the centuries beyond the closure of the Bavli in ca. C.E. 600, people would universally turn to the Bavli as the starting point for all inquiry into any given topic, and rightly so. Since the Bavli made the first and enduringly definitive statement, we impute to the Bavli canonical status. If, therefore, we wish to ask about how a variety of sources turned into a tradition, that is to say, about the status as statements of a continuous tradition of documents of the formative age of the Judaism of the dual Torah, that is where we turn.

We shall inquire into the standing of a Bavli-tractate as testimony on its subject within the larger continuous system of which it is reputed to form a principal part. What we want to know about that testimony therefore is how the Bavli relates to prior documents. The reason is that we want to know whether or not the Bavli constitutes a statement of a set of such antecedent sources, therefore a step in

an unfolding tradition, so Judaism constitutes a traditional religion, the result of a long sedimentary process. As is clear, the alternative and complementary issue is whether or not the Bavli makes its own statement and hence inaugurates a “new tradition” altogether (in that theological sense of tradition I introduced in the preface). In this case the Judaism defined by the Bavli is not traditional and the result of a sedimentary process but the very opposite: fresh, inventive, responsive to age succeeding age.

On any given topic a tractate of the Bavli presents the final and authoritative statement that would emerge from the formative period of the Judaism of the dual Torah. That statement constituted not only an authoritative, but also an encompassing and complete account. That is what I mean by the making of a traditional statement on a subject: transforming in particular the received materials—whatever lay at hand—into a not-merely cogent but fixed and authoritative statement. What I wish to find out is the canonical status of the Bavli, insofar as the authorship of the Bavli transformed its antecedents, its sources, into traditions: the way things had been, are and must continue to be, in any given aspect of the life and world view of Israel, the Jewish people, as the Bavli’s authorship understood the composition of that Israel. Accordingly, I mean to investigate how a principal authorship in Judaism has taken up whatever sources it had in hand and transformed them into the tradition of Judaism: the canonical statement, on a given subject, that would endure.

VII. *The Literary Corpus and its Cogency*

Let me set forth the issue of cogency as a principal criterion for *traditionality* as I here frame that issue in literary terms. Do we have a collection of books that happen to make, each its own particular statement? Or do the books form a cogent and whole statement all together? If the former, then “the tradition”—so to speak—*begins* with each book and its authorship. If the latter, then we may speak of sources which do accumulate, in a continuous process of transmission, and which do comprise and constitute an incremental and linear tradition. That is, we may really claim to discover, describe, analyze and interpret “the (ancient, on-going, linear) tradition.” That is why I identify as a principal criterion for traditionality the matter

of cogency from book to book—attested not through mere collusion of conceptions but concrete intersection of specific formulations, the material and verbally demonstrable interplay of unfolding conceptions formulated in the same language. That criterion marks an important way to test the hypothesis of traditionality imputed to the writings of the rabbinic corpus. In this context, one may even invoke the notion of canon, in the sense of a theologically-recognized body of writings deemed (if only after the fact) to make a single, correct statement. But not canonicity but rather traditionality in the literary sense now fully spelled out, is the issue here.

Since all inquiry—however aimed at a theoretical result—begins with some one document and its material traits, I conduct a simple, empirical experiment. The specific research problem of this book—to come down to earth—is how the Bavli (the Talmud of Babylonia), as exemplified in one tractate, relates to its sources, by which I mean, materials it shares with other and (by definition) earlier-redacted documents. The question that defines the problem is how the Bavli has formed of available writings (redacted in documents now in hand) a single, cogent, and coherent statement presented by the Bavli's authorship as summary and authoritative: a canonical statement on a given subject. In what ways does a Bavli-tractate frame such a (theologically-canonical) statement out of what (as attested in extant writings) its authorship has in hand?

The result of pursuing these questions should yield the answer to yet another: can we discern within the Bavli's treatment of a subject documentary traits of *traditionality*, that is, laying down a summary, final and experienced judgment for all time? And can we see within the Bavli elements of a program to turn sources into a single tradition, on a given topic? When I can answer that program of questions, I can form a hypothesis, resting on literary facts, concerning the literary and doctrinal traditionality of a sample item within the rabbinic corpus of late antiquity. That is to say, I can frame a theory on—to state with emphasis—*how the Judaism of the dual Torah speaking through the Bavli in conclusion constituted of its received materials a whole and proportioned system—way of life, world-view, addressed to a defined Israel—and turned into a systemic statement, that is, a statement of the tradition handed down in and formed out of prior sources, a variety of available writings on any given subject.*

VIII. *How Documents Relate*

The question before us arises from the fact that that Judaic system—the Judaism of the dual Torah, as authoritatively stated by the Bavli—encompassed also extant and prior documents, making of these diverse writings now more than a mere collection of books, but a *tradition formed out of prior sources*, that is (from the system's perspective) a single, whole, homogeneous, cogent and (therefore) authoritative statement. So a still more wide-ranging theoretical statement is in order. The matter may be expressed in a simple way. I discern three dimensions by which any document of that Judaism may be measured: autonomy, connection, continuity. As to *autonomy*: a book in the tradition formed out of prior sources at hand stands by itself, within its own covers. But, as to *connection*, that same book also relates to other books of the same tradition formed out of prior sources through specific connections, indicated by intrinsic traits of rhetoric, topic, and logic or by shared materials, common to a number of documents. And, as to *continuity*, it also forms part of an undifferentiated tradition formed out of prior sources, that is, the Torah, or (a) Judaism, through the dimension of complete continuity.

Hence among those three dimensions, autonomy, connection, continuity, we now address the third. It follows that the Judaism of the dual Torah transformed a variety of writings from a literary *corpus* into a systemic theological-legal *tradition formed out of prior sources*. The problem of this book therefore is to take the first step toward the description of that Judaism. We begin by turning to the authoritative literature and asking where and how that literature exhibits internal traits of traditionality, I mean, coherence to a broad, systemic composition.

The three dimensions by which we take the measure of a document, autonomy, connection, and continuity, have now to be briefly described. Documents—cogent compositions made up of a number of complete units of thought—by definition exist on their own. That is to say, by invoking as part of our definition the trait of cogency of individual units as well as of the entire composite, we complete a definition of what a document is and is not. A document is a cogent composite of cogent statements. But, also by definition, none of these statements is read all by itself. A document forms an artifact of a social culture, and that in diverse dimensions. Cogency depends on shared rhetoric, logic of intelligible discourse, topic and program—

all of these traits of mind, of culture. Someone writes a document, someone buys it, an entire society sustains the labor of literature. Hence we place any document into its culture and society. That social context of documents forms a necessary, but not sufficient, condition of the traditionality of a set of documents. What suffices, beyond the social setting, is the consensus of the group upon a given documentary statement, and to discover the basis of that consensus is to uncover what holds the social group together, its inner agreement on matters the group can scarcely articulate: points of self-evidence, matters of implicit certainty.

We move still further afield as we introduce social considerations into literary analysis. But it is a fact that each document exists both in a textual, literary context, and also in a social dimension of culture and even of politics. As to the former, documents may form a community whose limits are delineated by shared conventions of thought and expression. Those exhibiting distinctive, even definitive traits, fall within the community, those that do not, remain without. These direct the author to one mode of topic, logic, and rhetoric, and not to some other. So much for intrinsic and literary traits. As to the extrinsic ones, readers—that is, the members of the faith, who constitute in this context the textual community, which chooses and therefore recognizes canonical writings and rejects others, therefore knowing at least implicitly why this, not that—bring to documents diverse instruments of intelligibility, knowledge of the grammar of not only language but also thought.

These social endowments prove decisive. For they explain why people can read one document and not some other. One relationship therefore derives from a literary culture, which forms the authorship of a document, and the other relationship from a social culture. The literary bond links document to document, but it is only the essentially social bond that links reader to document—and also document (through the authorship, individual or collective) to reader. The one relationship is exhibited through intrinsic traits of language and style, logic, rhetoric, and topic, and the other through extrinsic traits of curiosity, acceptance and authority. While documents find their place in their own literary world and also in a larger social one, the two aspects have to remain distinct, the one textual, the other contextual. Moving from the literary characteristics and contents to the social context draws us upward into that structure and system, that Judaism, to which the tradition formed out of

prior sources testifies, and which has—by the way—formed, among many other systemic components, the tradition formed out of prior sources too.

It follows that relationships between and among documents also matter for two distinct reasons. The *intrinsic* relationships, which are formal, guide us to traits of intelligibility, teaching us through our encounter with one document how to read some other of its type or class. If we know how to read a document of one type, we may venture to read another of the same type, but not—without instruction—one of some other type altogether. The *extrinsic* relationships, which derive from context and are relative to community, direct us to how to understand a document as an artifact of culture and society. Traits not of documents but of doctrines affecting a broad range of documents come into play. The document, whatever its contents, therefore becomes an instrument of social culture, e.g., theology and politics, a community's public policy. A community then expresses itself through its choice of documents, the community's tradition formed out of prior sources forming a principal mode of such self-definition.

So, as I said, through intrinsic traits a document places itself within a larger community of texts. Extrinsic traits, imputed to a document by not its authorship but its audience, selects the document as canonical and make of the document a mode of social definition. The community through its mode of defining itself by its canonical choices forms a textual community—as community expressed through the books it reads and values. These theoretical considerations place into its large context the inquiry before us. But there is one quite practical outcome to be introduced at the very outset, the matter of hermeneutics. How are we supposed to read and interpret, by a set of general rules, any particular rabbinic writing? What rules of intellectual syntax tell us the order, proportion, sense, of sentences?

One principal issue worked out in establishing a community of texts is hermeneutical, the chief outcome of defining a textual community, social and cultural. The former teaches us how to read the texts on their own. The latter tells us how to interpret texts in context. When we define and classify the relationships between texts, we learn how to read the components—words, cogent thoughts formed of phrases, sentences, paragraphs—of those texts in the broader context defined by shared conventions of intellect: rhetoric, logic, topic. More concretely, hermeneutical principles tell me how, in

light of like documents I have seen many times, to approach a document I have never before seen at all. Hermeneutics teaches me the grammar and syntax of thought.

But here at the outset the issue is not hermeneutical. At issue is not the reading and interpretation of texts but their social utility, their status as cultural indicators. When I know the choices a community has made for its tradition formed out of prior sources and can explain and interpret the traditionality—the exegesis of exegesis that defines the tradition formed out of prior sources expressed by the question, why this, not that?—I can find my way deep into the shared viewpoint of that community, moving from the contents of the texts to the contexts in which those texts bear meaning. And that brings us back to the basic matter: a text exists in diverse contexts, on its own, among other texts, and as part of a much larger social tradition formed out of prior sources, e.g., a library or a court of appeal for authoritative judgments such as proof-texts supply. A text testifies to more than its contents, but also to relationships extrinsic to it, and in situating a text in relationship to its larger context—including the literary context—we gain entry into that textual community, that canonical world, that in describing the Judaism of the dual Torah as a whole, we must enter. It is important now to help us sort out the most basic matters for discussion.

IX. *The Bavli in Particular*

The Bavli has formed of the received and available writings (attested by documents now in hand) a single, cogent, authoritative and sufficient—hence, by the way, canonical—statement on a given subject. In what ways does a Bavli-tractate frame an authoritative statement out of what its authorship had in hand?

Let me spell out the information I seek and how I propose to find it. On any given topic a tractate of the Bavli presents the final and authoritative statement that emerged from the formative period of the Judaism of the dual Torah. That judgment of Judaism from the formation of the Bavli to the present day justifies our asking the Bavli to tell us whether or not the Bavli's statement is traditional or essentially constructed fresh. If the Bavli's statement constituted not only the authoritative, but also encompassing and complete account, then we deal with a traditional statement and, it follows, Judaism as

the Bavli defines the system is a traditional religion. If the Bavli's statement appears to be made up by its own authorship in terms of its own interests and program, then the Judaism of the Bavli emerges as not a traditional religion but a systemically constructed and created one, the work of a generation capable of speaking far beyond its time through a system framed to begin with for an occasion. If, therefore, we wish to ask about the traditionality of a document of the formative age of the Judaism of the dual Torah, we shall inquire into the relationship of a Bavli-tractate to its already-available and autonomous, distinct sources. Obviously, the layers of discourse that took shape within which the Bavli itself attest to a process of formation too. No one maintains that the Bavli was made up, as we now have it, all at once; everyone recognizes that the Bavli refers to prior materials, beginning, after all, with the two documents upon which all else rests, the Mishnah and Scripture, the oral and written Torahs.

But the Bavli as we know it represents the work of its penultimate and ultimate framers and redactors; no evidence now suggests that a long, slow process of sedimentary formation—to appeal for an analogy now to geology—accounts for the state and condition of the Bavli as we know it. Rather, a labor of agglutination and conglomeration of pretty-much finished materials—sayings and stories, complete units of discourse—has yielded the Bavli that we know. That labor then testifies to the character and conscience of the laborers: tradents of received materials, lovingly preserved, engaged minds reworking this, that, and the other thing into an essentially fresh and fundamentally cogent creation. The reader will immediately see that the Bavli is made up of clearly-identifiable components, units of discourse with a beginning, middle, and end. The reader will furthermore observe that these units of discourse have been put together in accord with a plan we may discern. A process of editing already composed materials has given us the document. An equally well-crafted and carefully planned set of literary-rhetorical and logical-syllogistic conventions has dictated the principles of rhetoric and logic that govern the composition of the several constituents. As between sedimentary—hence traditional—or agglutinative and conglomerative—hence inventive and creative—processes, we make our choice on the basis of evidence. But what evidence will tell us how to choose?

If I want to know criteria for authority and sufficiency, I have to ask about the relationship between a document and prior treatments

of the topic of said document. For one critical criterion of continuity—of forming a tradition out of available sources—is the capacity to take in, hold together, and rework the entirety of a prior corpus of information, writing, on a given subject. The literary test of traditionality is whether or not the canonical statement has drawn together and reworked in a cogent way whatever lay to hand in prior writings. If the test proves affirmative, then we may propose as one substantial and necessary criterion for traditionality a particular relationship to the entirety of prior writing. If it proves negative, then the entire literary dimension of the problem of traditionality turns out to weigh the wind, measure what has no weight. A different approach to the criteria by which the entirety of the literature of Judaism forms a single canonical statement will require invention and exploration.

My particular concern is the Bavli's relationship to prior treatments of a given subject, with special interest in how the authorship of the Bavli has made use of what it had in hand, and how in its sorting out of available materials it has defined the task of making a full and authoritative statement. In assessing the stance of the Bavli, in making its final statement, vis-à-vis prior writings on a given topic, I can uncover the rules that guide an authorship in its work of summary and systematization: of systemic statement of the whole, all together and all at once, on a given subject. I can conceive of no better way of uncovering how people make a statement we now realize was canonical from the beginning, than situation those people in the setting of what had gone before—and had not attained the canonical status that the Bavli's authorship achieved for their document. So far as traditionality constitutes a literary question concerning rules of how one writes a canonical document, giving the signals to the community that one's writing constitutes a final, authoritative statement, through inductive inquiry into relationships I should be able to answer that question and describe those rules: why this not that. That interest requires answers to questions deriving from these comparative inquiries:

1. *The topical program* of prior writings on the subject as compared to the topical program of the Bavli on the same subject, with attention to questions such as these: does the Bavli follow the response to the Mishnah characteristic of the authorship of the Tosefta? the Sifra (or Sifré to Numbers or Sifré to Deuteronomy, where relevant) Does the Bavli follow the response to relevant passages of Scripture

that have caught the attention of compilers of Midrash-exegeses in Genesis Rabbah, Leviticus Rabbah, Pesiqta deRab Kahana, and other documents generally thought to have come to closure prior to the Bavli?

2. *The Bavli's use or neglect of the available treatments ("sources") in the prior literature:* if the Bavli does make use of available materials, does it impose its own issues upon those materials or does it reproduce those materials as they occur elsewhere? Has the authorship of the Bavli carried forward issues important in prior writings, or has it simply announced and effected its own program of inquiry into the topic at hand?

3. *The traits of the Bavli's statement, that is, derivative and summary at the end, or essentially fresh and imputed retrospectively?* In consequence of the detailed examination of the Bavli's authorship's use of and response to available sources, how may we characterize the statement of the Bavli as a whole in comparison to prior statements? And, since that statement is canonical by the definition of the entire history of Judaism, we ask about the upshot: the shape and character of a canonical statement on a given subject.

Readers familiar with probability-theory and statistics will find no difficulty with my sample for the Bavli as a whole. The document, as we have now seen at some length, is rhetorically and logically uniform; the important differences from tractate to tractate are only in topic. Since the propensity to draw upon available materials—given the vast range available, encompassing, after all, complete exegeses of the important books of scriptural law as well as the entire Mishnah—can serve any tractate equally, my requirement for a tractate for a sample was simple. I needed on which covers a topic treated in Scripture, to make sure that an available scriptural exegetical compilation would serve as a testimony to extent compositions.

Each document in the corpus of the rabbinic writings of late antiquity bears points in common with others. In their ultimate condition, they did form a tradition, understood in that sense of tradition as a fixed and unchanging essence deriving from an indeterminate past, a truth bearing its own stigmata of authority, e.g., from God at Sinai. Each document in proportion and measure constitutes a partial statement of that complete tradition. But, as we now understand, we have first of all to know whether and how all—or at least some—of them constitute a tradition in that other sense, that

is a tradition derived from and formed out of prior sources. This sense of “tradition,” as I said in the preface, refers to the matter of process, specifically, an incremental and linear process that step by step transmits out of the past statements and wordings that bear authority and are subject to study, refinement, preservation and transmission. In that sense, tradition is supposed to describe a process.

The case has been set forth, in briefest possible form. The relevance of the relationships of connection and continuity has now to be made clear. The authorship of a document that stands in a relationship of connection to prior writings will make use of their materials essentially in its own way. The authorship of a document that works in essential continuity with prior writings will cite and quote and refine those received writings but will ordinarily not undertake a fundamentally original statement of its own framed in terms of its own and on a set of issues defined separately from the received writings or formulations. The Bavli proves connected with earlier documents and also with some received sayings not written down in a systematic way in prior compilations. But the connections appear episodic and haphazard, not systematic, except in respect to the Mishnah.

The Bavli cannot be shown systematically and generally to continue the program and inquiry of predecessors. Therefore with the Bavli a new tradition got underway, but the Bavli does not derive from, and state, a prior tradition in the sense just now spelled out. For in few ways does the Bavli give evidence of taking its place within such a process of tradition, and we cannot appeal to the document to demonstrate that the authorship of the Bavli represented itself as traditional and its work as authoritative *on that account?* The appeal of the authorship of the Bavli is to the ineluctable verity of well-applied logic, practical reason tested and retested against the facts, whether deriving from prior authorities, or emerging from examples and decisions of leading contemporary authorities. In a sketchy way to be sure, we have now tested the hypothesis that the Bavli forms an essentially traditional document, and the further claim that the reason for the Bavli’s traditional—and, by the way, canonical—status lies in its success in completing work begun by the predecessors of the document. If we can demonstrate a systematic exercise of refinement, completion, summary, we may propose the hypothesis that one definitive trait of a canonical statement is its position at the end of a sustained and continuous process of thought.

True enough, the Bavli contains ample selections from available writings. The authorship of the Bavli leaves no doubt that it makes extensive use of extant materials, sayings and stories. Readers who review the sizable sample before us will see numerous indications—much like footnotes and references—of that fact. For example, the authorship of the Bavli invokes verses of Scripture. It further takes as its task the elucidation of the received code, the Mishnah. More to the point, frequent citations of materials now found in the Tosefta as well as allusions to sayings framed in Tannaite Hebrew and attributed to Tannaite authority—marked, for instance, by TN’—time and again alert us to extensive reference, by our authorship, to a prior corpus of materials. Not only so, but contemporary scholarship has closely read both brief sayings and also extended discourses in light of two or three or more versions and come to the conclusion that a later generation has taken up and made use of available materials.

Most strikingly of all, our authorship claims in virtually every line to come at the end of a chain of tradition, since the bulk of the generative sayings—those that form the foundation for sustained inquiry and dialectical discourse—is assigned to named authorities clearly understood to stand prior to the work of the ultimate redactors. Even if we preserve a certain reluctance to take at face value all of these attributions to prior authorities, we have to take full account of the authorship’s insistence upon its own traditionality. In all of these ways, the authorship of the Bavli assuredly stands in a line of tradition, taking over and reworking received materials, restating viewpoints that originate in prior ages. And that fact makes all the more striking the fundamental autonomy of discourse displayed by the document at the end. So let us serve as interlocutors for the great authorship at hand and present some pointed questions.

Were we therefore to enter into conversation with the penultimate and ultimate authorship of the Bavli, the first thing we should want to know is simple: what have you made up? And what have you simply repeated out of a long-continuing heritage of formulation and transmission? And why should we believe you? The authorship then would be hard put to demonstrate in detail that its fundamental work of literary selection and ordering, its basic choices on sustained and logical discourse, its essential statement upon the topics it has selected—that anything important in their document derives from long generations past.

Should they say, “Look at the treatment of the Mishnah,” we should answer, “But did you continue the Yerushalmi’s program or did you make up your own?” And in the total candor we rightly impute to that remarkable authorship, the Bavli’s compositors would say, “It is our own—demonstrably so.”

And if we were to say, “To what completed documents have you resorted for a ready-made program?” our *soi-disant* traditionalists would direct our attention to Tosefta, their obvious (and sole) candidate. And, if they were to do so, we should open the Tosefta’s treatment of, or counterpart to, a given chapter of the Mishnah and look in vain for a systematic, orderly, and encompassing discourse, dictated by the order and plan of the Tosefta, out of which our authorship has composed a sizable and sustained statement.

True, we readily recognize that the Tosefta’s materials play their role. But seeing the Tosefta in its terms, noting how slight a portion of a given Tosefta chapter the Mishnah’s authorship has found accessible and urgent, we should dismiss out of hand any claim that the Bavli’s fundamental structure and plan encompasses systematic and orderly exposition of the Tosefta’s structure and plan for a given Mishnah-chapter. The opposite is the case. Tosefta makes its contribution unsystematically and episodically, where and when the authorship of the Bavli, for its reasons (not always obvious to us) has permitted the Tosefta to do so. That is hardly the mark of traditionality, subservience to a received text, such as the counterpart treatment of the Mishnah by the Bavli’s authorship—a treatment that is orderly, routine, complete, and systematic—indicates.

And when, finally, we ask our authorship to state its policy in regard to Scripture and inquire whether or not a sustained and ongoing tradition of exegesis of Scripture has framed discourse, the reply will prove quite simple. “We looked for what we wanted to seek, and we found it.”

These four loci at which boundaries may have merged, and intersections turned into commonalities, therefore mark walled and sealed borders. A received heritage of sayings and stories may have joined our authorship to its teachers and their teachers—but not to that larger community of sustained learning that stands behind the entirety of the writings received as authoritative, or even a sizable proportion of those writings. The presence, in the ultimate statement of the Bavli, of sayings imputed to prior figures—back to Scripture, back to Sinai—testifies only to the workings of a canon of taste and

judgment to begin with defined and accepted as definitive by those who defined it: the authorship at hand itself. The availability, to our authorship, of a systematic exegesis of the same Mishnah-chapter has not made self-evident to our authorship the work of continuation and completion of a prior approach.

On the contrary, we deal with an authorship of amazingly independent mind, working independently and in an essentially original way on materials on which others have handed on a quite persuasive and cogent statement. Tosefta on the one side, Scripture and a heritage of conventional reading thereof on the other—neither has defined the program of our document or determined the terms in which it would make its statement, though both, in a subordinated position and in a paltry limited measure, are given some sort of a say. The Bavli is connected to a variety of prior writings but continuous with none of them.

X. *From Documents to Doctrines: Bavli as new Tradition*

The Bavli in relationship to its sources is simply not a traditional document, in the plain sense that most of what it says in a cogent and coherent way expresses the well-crafted statement and viewpoint of its authorship. Excluding, of course, the Mishnah, to which the Bavli devotes its sustained and systematic attention, little of what our authorship says derives cogency and force from a received statement, and most does not. But that is only beginning the question: no one (outside the circles of the believers) ever said that the Bavli's authorship has slavishly taken its message merely from the Mishnah, in which its authorship picks and chooses as much as it does in Scripture, first of all deciding to deal with thirty-nine tractates and to ignore twenty-three.

The premise of all learning of an independent order is that the Bavli's authorship has imputed to the Mishnah those meanings that that authorship, on the foundations of its own critical judgment and formidable power of logical reasoning in a dialectical movement, itself chose to impute. That reading of the Mishnah became the substance and center of tradition, that is, the ultimate statement, out of late antiquity, of the Judaism of the dual Torah. We do not know that that reading triumphed because of the persuasive power of applied reason, rationality, cogent discourse resting on acute reasoning that

together comprise the hermeneutics of the Bavli. But in an ideal world, that purely intellectual achievement would have accounted for its success.

In any event, the Bavli's authorship's cogent, rigorously rational reading of the received heritage has demonstrably emerged *not* from a long process of formulation and transmission of received traditions, in each generation lovingly tended, refined and polished, and handed on essentially as received. I should doubt that it could have, for the literary evidence we have examined hardly suggests that a system of applied reason and sustained, rigorously rational inquiry can coexist with a process of tradition. The thought-processes of tradition and those of system-building scarcely cohere. Where applied reason prevails, the one—tradition—feeds the other—the system—materials for sustained reconstruction.

How things are in theory I cannot say. But in fact, as we see here, the Bavli's statement has given us such tradition as the Bavli's penultimate and ultimate authorship has chosen and has worked out. This statement we now receive according to the choices dictated by that authorship's sense of order and proportion, priority and importance, and it is generated by the problematic found by that authorship to be acute and urgent and compelling. When confronting the exegesis of the Mishnah, which is its indicative trait and definitive task, the authorship of the Bavli does not continue and complete the work of antecedents. Quite to the contrary, that authorship made its statement essentially independent of its counterpart and earlier document. We revert to the decisive observation, which forms the thesis of this study.

The system comes first. In the present context, that means that the logic and principle of orderly inquiry take precedence over the preservation and repetition of received materials, however holy. The mode of thought defined, the work of applied reason and practical rationality may get underway.

To state matters in more general terms, first in place is the system that the Bavli as a whole expresses and serves in stupefying detail to define. Only then comes that selection, out of the received materials of the past, of topics and even concrete judgments, facts that serve the Bavli's authorship in the articulation of its system. Nothing out of the past can be shown to have dictated the Bavli's program, which is essentially the work of its authorship. In this context, the Mishnah forms no exception, for the work of the Bavli's authorship began with the selection of tractates to study and designation

of those to ignore. I cannot think of a more innovative or decisive—reforming—judgment than one simply to bypass fully a third of what is allegedly to be “the Tradition.” No one to our knowledge rejected the ignored tractates; but everyone concurred on ignoring them.

So Judaism—the Judaism of the dual Torah that appeals for its ultimate encyclopaedic statement of law and theology to the Bavli—really is the making of the authorship of the Bavli, not principally the accumulation, in the Bavli, of the sifted-over detritus of prior authorships. The upshot as to theory may be stated very simply, and in a way to be tested in the study of the history of other religions as well:

The system begins exactly where and when it ends.

In the example of the Judaism of the dual Torah come to full expression in the Bavli, such tradition as the authorship at hand has received ends when the system that receives that tradition begins. So I conclude that where reason reigns, its inexorable logic and order, proportion and syllogistic reasoning govern supreme and alone, revising the received materials and restating into a compelling statement, in reason’s own encompassing, powerful and rigorous logic, the entirety of the prior heritage of information and thought. That restatement is the Bavli.

APPENDIX

THE BAVLI'S UNIQUE VOICE

I. The Bavli's Unique Character in the Context of the Oral Torah

The chapters of the shank of this book have guided the reader to see the Talmud in a very particular way. Specifically, the Bavli forms a singular, cogent, systematic, systemic statement: it speaks for itself, for its authorship, for all those who, over a long period of time, followed a determinate set of rules and wrote up materials used in it, and its message is contained in the ways in which the received materials were turned from inert to active components in that systemic statement. The fact is, in relationship to prior compilations the Bavli stands entirely on its own, pursuing its own program, through its own modes of thought and inquiry.

This assertion of the unique character of the Bavli intersects with a contradictory fact. There is another, prior commentary to the Mishnah, the Talmud of the Land of Israel, a.k.a., the Yerushalmi (ca. 400 C.E.) With the Yerushalmi the Bavli speaks of the same Mishnah and draws upon the same Scripture; it may use episodic sayings or even stories and other brief compositions that make their way into the other Talmud. Then how can the Bavli be represented as unique? The Bavli does not stand in a relationship of dependence to the Yerushalmi. It rarely intersects with the Yerushalmi as a redacted document, though it draws upon free-floating sayings upon which the Yerushalmi's framers also call. But—and this is the heart of the matter—the Bavli is intellectually a far superior statement.

The differences between the two Talmuds are so ubiquitous, so profound, that one may well wonder, at the end, why they should be compared at all. The Bavli may be compared with the Yerushalmi because it looks like the Yerushalmi, forming a commentary to the same Mishnah, drawing upon the same written Torah (Scripture, "Old Testament"), appealing at points to the same circulating sayings. But the Bavli does with its inheritance, shared with the Yerushalmi, precisely what its authors, framers, and authorships wish to do, rarely if ever taking up and revising a received composition, never, so far as I can see, borrowing a received composite. In its proportions, in its intellectual morphology (a term explained in due course), in its structure, program, points of stress and emphasis, the Bavli makes its own statement, in its own language, using

its own forms, for its own purposes. And that statement is independent of the Yerushalmi's statement, forms, and (so far as the framers of the Yerushalmi's compositions and composites may be said to have done their work purposefully), intellectual purpose.

In other words, at its most profound level, following their intellectual program outlined earlier in this *Reader's Guide*, the Bavli's exegetes of the Mishnah transform the Mishnah's cases into laws, the laws into premises, the premises into principles that permit us to show how many cases cohere in a single, cogent statement, one of utter abstraction. The Yerushalmi, by contrast, explains laws, clarifies, harmonizes, demonstrates coherence. Where the Bavli presents abstract thought, the Yerushalmi provides illumination. That is why the Bavli forms a systemic statement—just like the Mishnah in everything but outcome.

II. *Comparing the Bavli to the Yerushalmi on the Same Mishnah-Rule*

We turn to a Mishnah-rule on the matter of validating an entry-way, by providing it with a gateway symbolizing the shared domain closed off thereby, for the purposes of permitting carrying from one private domain in the alley-way to other private domains in the same alley-way. Of what must this gateway consist, a fully articulated market, sidepost and cross-beam, or a merely symbolic one, a sidepost or a cross-beam? The Mishnah records a dispute on the matter, and the Talmuds then analyze the dispute.

MISHNAH-TRACTATE ERUBIN 1:2

1:2

- A. The validation of an alley entry [for carrying of objects on the Sabbath]—**
- B. the House of Shammai say, “[h must have] a sidepost and a cross-beam.”**
- C. And the House of Hillel say, “A sidepost or a crossbeam.”**
- D. R. Eliezer says, “Two sideposts.”**
- E. In the name of R. Ishmael said a certain disciple before R. Aqiba, “The House of Shammai and the House of Hillel did not dispute concerning an alley entry which is less than four cubits wide, that it [is validated] either by a sidepost or by a crossbeam.**
- F. “Concerning what did they dispute?”**
- G. “Concerning one which is broader than four cubits, up to ten cubits.**
- H. “For: The House of Shammai say, ‘A sidepost and a crossbeam.’”**

- I. “And the House of Hillel say, ‘A sidepost or a crossbeam.’”**
J. Said R. Aqiba, “Concerning both this case and that case did they dispute.”

When the Talmuds intersect, we describe and compare the interests of each, the frame and character of mind and imagination that produce, in each Talmud, a characteristic type of discussion. The Yerushalmi presents (enlightening) information, the Bavli, systematic and penetrating argument. Even where the Talmuds want to tell us the same things, the former informs, the latter analyzes; the Yerushalmi presents information, the Bavli constructs a systematic and sustained, extended dialectical argument. In the case before us, the Yerushalmi turns to the sense of Eliezer's statement, in relationship to the position of Yosé; it further wants to know the decided law. The exegetical program behind these inquiries involves clarification of statements in the Mishnah and a conclusion on the Mishnah's dispute. The Bavli's first inquiry is into the authority behind the unattributed rule, meaning, the premise of matters. We further ask for the implications of positions taken in the Mishnah, that is, undertaking a secondary and speculative inquiry into what is said in the Mishnah, II, III. Bavli's fourth unit asks about the meaning of Eliezer's statement, and that draws us into union with Yerushalmi:

- [I.A] [With regard to M. 1: 2D, Eliezer's statement,] what is the meaning of two *side posts*? Does it mean, “a side post and a crossbeam,” in accord with the position of the House of Shammai, or, “two side posts and no crossbeam,” in accord with the view of the House of Hillel?
- [B] And does it involve a crossbeam of three handbreadths, in accord with the view of R. Yosé [at M. 1: 6C], or of any breadth at all, in accord with the position of rabbis?
- [C] Let us derive the answer from the following line T.'s version: **There was the precedent, in which R.**
- IV.1 A. R. Eliezer says, “Two side posts”:**
- B. *The question was raised: does R. Eliezer refer to two side posts and also a beam, or does he mean, two side posts without a beam at all?*
- C. **Come and take note: there was a precedent in which R. Eliezer went to R. Yosé b. Perida, his disciple, [12A] in Ublin. He found him living in an alley that had only one side post. He said to him, “My son, make another side post.” He said to him, “Do I have to close it up?” He said to him, “So close it up, and what**

Eliezer went to Joseph b. Peredah in Ublin.

- [D] And he saw that he had an alley entry with only a single side post.
- [E] [19a] He said to him, “Make a second for it.”
- [F] **He said to him, “Do you instruct me to close it up?”**
- [G] He said to him, “Let it be closed up. On what basis did you decide to spend the Sabbath in such wise [with an alley entry having only a single side post]!” [T. Shab. 1:2].
- [H] That *story then* implies that he was of the view that it must be three hand-breadths, in accord with the view of R. Yosé. ~or if it were a matter of a beam of any size at all, as is the view of rabbis, then he might as well have destroyed only any small part of it [instead of the whole thing, as the story indicates].

difference does it make?” [T. Erub. 1:2].

- D. Said Rabban Simeon b. Gamaliel, “The House of Shammai and the House of Hillel did not differ concerning an alley-way that was less than four cubits wide, that it requires nothing. Concerning what did they differ? One that was wider than four but narrower than ten. The House of Shammai say, ‘It has to have a side post and a crossbeam.’ The House of Hillel say, “Either a side post or a crossbeam.”
- E. *Now, in any event, the Tannaite formulation includes the statement, **Do I have to close it up**. Now if you take the view that both side posts and a crossbeam are necessary from Eliezer’s perspective, then we can understand why the disciple said, **Do I have to close it u** [for these would form a valid partition]. But if you say that side posts without a crossbeam suffice, then what could have possibly have meant by, **Do I have to close it up?***
- F. *This is the sense of his statement: **Do I have to close it up** with side posts?*

The question in both Talmuds is identical, but the working out of the question is not. The Yerushalmi asks about Eliezer’s position vis à vis prior authorities. It then invokes the precedent, and that answers the question. Bavli wants to know the rule at hand, invoking the same source to answer

the question. But then the second Talmud parts company, and it does so in a way that is indicative. For the Yerushalmi facts are informative but inert; once we have them, we know what we need to know. For the Bavli, facts bear consequences, an inner logic requiring analysis. That is why we utilize the evidence in an argument. The contrast comes with Yerushalmi at H, There, the language, *the story then implies that he was of the view that it must be three handbreadths, in accord with the view of R. Yosé. or if it were a matter of a beam of any size at all, as is the view of rabbis, then he might as well have destroyed only any small part of it*, stands in stark contrast with Bavli at E: *Now, in any event, the Tannaite formulation includes the statement, **Do I have to close it up**. Now if you take the view that both side posts and a crossbeam are necessary from Eliezer's perspective, then we can understand why the disciple said, **Do I have to close it up** [for these would form a valid partition]. But if you say that side posts without a crossbeam suffice, then what could have possibly have meant by....* What does this contrast yield? The Yerushalmi has introduced its evidence, which is taken to solve the problem without further ado. The Bavli poses alternatives and then shows the absurdity that one of the options yields. At F, the demonstration is set apart by a rereading of the initial statement. How then does the Bavli differ? Where the Yerushalmi appeals to evidence, the Bavli wants to compose an argument. The one document is interested in the facts of the law, the other, in the abstractions of theoretical argument, in all their rich complexity.

When we wish to explain the differences between the Talmuds when they discuss the same Mishnah-paragraph and make the same point, it is because the Bavli's framers think differently. The difference is somewhat complex, but in general, we may say: while the Yerushalmi's framers occasionally undertake a syllogistic discourse, the Bavli's authors ordinarily do so. I realize that the qualifying adverbs diminish the power of that observation; but they do account for the character of the evidence. In due course we shall move beneath the epiphenomena of modes of argument and thought into the deeper structures of the morphology of intellect. But first, we have to continue our patient sifting of the evidence that lies at the very surface of things.

III. *The Static versus the Dialectical, or Moving, Argument*

At M. Erub. 1:3-5 Yerushalmi 1:3 IV goes over the same ground as Bavli 1:3.II.3, namely, the shared Tannaite rule. This gives us a fine chance to compare how the two sets of authors meet the same challenge, the one through a set-piece exchange of positions, the other through the formation of an unfolding argument, composed of proposition and counter, thrust and parry, evidence, argument, counter-argument—a dialectical, or moving argument, covering all possibilities, giving all sides a fair hearing:

- [IV.A] As to a beam which protrudes from one wall but does not reach the other,
- [B] **or a case in which there were two beams, opposite one another but not touching directly**—
- [C] **if the space between the one and the other is three handbreadths [or more] one has to set a crossbeam to close off the top of the alleyway], and if not, it is not necessary to set a crossbeam there [cf. T. Erub. 1: 6A-D].**
- [D] There is a Tannaite authority who teaches [at C], “four,” [instead of three].
- [E] He who formulates the tradition using the number of three handbreadths reckons with sufficient space for a human being to pass through.
- [F] He who formulates the tradition using the number of four handbreadths reckons with space sufficient to be taken into account [under ordinary circumstances].
- II.3** A. *Our rabbis have taught on Tannaite authority:*
- B. **A beam which projects from one wall and does not reach the other wall, and so, too, in the case of two beams, one which projects from one wall and the other which projects from the other wall but do not reach one another, if the distance between them is less than three handbreadths, one does not have to bring another beam [and place it on top of them to complete a fictive doorway], but if it is three handbreadths, one has to bring another beam and place it on top of them to complete the covering].**
- C. Rabban Simeon b. Gamaliel says, “If it is less than four handbreadths, it is not necessary to provide another crossbeam; if it was a gap of four handbreadths, it is necessary to provide another crossbeam.
- D. So, too, two parallel crossbeams, neither of which was wide enough to hold a half brick—it is not necessary to provide another crossbeam, if the two of them together can hold the

width of one handbreadth of a half brick; otherwise, it is necessary to provide another crossbeam.

- E. Rabban Simeon b. Gamaliel says, "If it can hold a half break three handbreadths long, it is not necessary to provide another crossbeam. Otherwise, it is necessary to do so.

F. If they were fixed one higher than the other [but together can hold a half brick], R. Yosé b. R. Judah says, "They regard the upper one as if it were lower, and the lower one as if it were higher, on condition that the higher one was no higher than twenty cubits and the lower no lower than ten" [cf. T. Erub. 1:6].

- II.4 A. *Said Abbaye, "R. Yosé b. R. Judah holds the theory of his father in one matter and differs from him in another. He holds the theory of his father in one matter, for he adopts the principle, they regard. He differs from him in another, for while R. Judah maintains that a crossbeam may be higher than twenty cubits, R. Yosé son of R. Judah holds that it is valid only if it is within twenty cubits from the ground, no higher than that."*

III.1A. **R. Judah says, "[It should be] wide**

enough [to hold a half-brick] even though it is not sufficiently strong [to hold a half-brick]”:

- B. *R. Judah repeated as the Tannaite formulation to Hiyya bar Rab in the presence of Rab, “wide enough [to hold a half-brick] even though it is not sufficiently strong [to hold a half-brick].”*
- C. *He said to him, “Repeat it in the language, wide enough [to hold a half-brick] and sufficiently strong [to hold a half-brick].”*
- D. *“But didn’t R. Ilai say Rab said, ‘If it is four handbreadths wide, it is valid, even though it is not strong?’”*
- E. *“One that is four handbreadths wide is different” [from one that is less than the prescribed width (Slotki)].*

IV.1 A. [If] it was of straw or reeds, they regard it as if it were made of metal:

- B. *What’s the point? That we adopt the principle, they regard it? But that’s exactly what has been said before [one that was made of straw is obviously not strong (Slotki)].*
- C. *What might you otherwise have supposed? If it is of the same kind [a frail beam of wood] as the other [the strong beam of wood], we invoke that principle,*

but where it is not of the same kind, we do not. So we are taught that we invoke that same principle even with respect to any kind of material.

V.1 A. If it was curved, they regard it as if it were straight:

- B. *So what else is new!*
- C. *So we are informed of a ruling in accord with that of R. Zira, for said R. Zira, "If the crossbeam was within the alley-way and the curve outside of it, or if it was below twenty cubits and the curve was above twenty cubits, or if it was above ten cubits but the curve was below ten cubits, in any case in which, if the curve were removed, between the two parts of the beam at which the curve begins there is no gap more than three handbreadths, it is not necessary to provide another crossbeam."*
- D. *So that's obvious too.*
- E. *If was necessary to formulate the rule to cover the case in which the the beam is inside the alley-way and the curve outside of it. What might you have imagined? We should take account of the possibility that the people may be misguided by it and use part of the public domain as though it was in the alley? So we are informed that we do not take account of such a possibility.*

VI.1 A. If it was round, they regard it as if it were square:

B. *What, again!?*

C. *It was necessary to state this rule because of the attached formula: **Whatever is three handbreadths in circumference is a one handbreadth in width***

VI.2 A. *What is the source in Scripture of that fact?*

B. Said R. Yohanan, “Said Scripture, ‘And he made the molten sea of ten cubits from brim to brim, round in compass, and the height thereof was five cubits, and a line of thirty cubits did compass it round about’ (1 Kgs. 7:23).” [Slotki: as the molten sea which had a diameter of ten cubits was thirty cubits in circumference, the ratio of a diameter to a circumference must consequently be $10:30 = 1:3$].”

C. *But what about the thickness of the brim?* [Slotki: that increased the diameter to more than ten cubits, so the ratio between diameter and circumference was 1 plus:3.]

D. Said R. Pappa, “The brim was as thin as the lily blossom: ‘And it was a handbreadth thick, and the brim thereof was wrought like the brim of a cup, like the

flower of a lily, it held two thousand baths' (1 Kgs. 7:26)."

- E. *Nonetheless, it had some slight thickness!*
- F. *When the measure was made, it was of the inner circumference [exactly ten cubits].*

Now what has Y. done with this cited Tannaite statement? First, we examine the formulation, then we explain the basis for a difference in that matter. The Bavli's difference from the Yerushalmi's is fixed and recurrent. We undertake a phrase by phrase reading of the Tannaite rule, just as we should do the same with a Mishnah-rule. That is to say, we construct a Talmud to the Tannaite rule, not just a few light glosses, such as the Yerushalmi has given. This is striking at IV.1, where we ask what point is made by an obvious statement, so too at V.1. Likewise, VI.1 produces the same inquiry.

IV. *The Rule versus the Reason*

How the two Talmuds treat the same Mishnah-paragraph shows a more profound contrast, the earlier Talmud supplying the rule, the later, the reason that animates the rule:

MISHNAH-TRACTATE MOED QATAN 3:1-2

3:1

- A. These cut their hair on the intermediate days of a festival:**
- B. (1) he who comes from overseas or from captivity;**
- C. (2) and he who goes forth from prison;**
- D. (3) and he whose excommunication has been lifted by sages.**
- E. (4) And so too: he who sought absolution from a sage [for release from a vow not to get a haircut] and was released;**
- F. and the Nazirite [Num. 6:5] or mesora [Lev. 14:8-9] who emerges from his state of uncleanness to his state of cleanness.**

3:2

- A. And these may wash their clothes on the intermediate days of a festival:**
- B. (1) he who comes from overseas or from captivity;**

- C. (2) and he who goes forth from prison;**
D. (3) and he whose excommunication has been lifted by sages.
E. (4) And so too: he who sought absolution from a sage [for release from a vow not to wash clothes] and was released.
F. (1) Hand towels, (2) barber's towels, and (3) bath towels [may be washed].
G. (1) Male and (2) female Zabs, (3) women in their menstrual period, (4) women after childbirth, and all who go up from a state of uncleanness to cleanness,
H. lo, these are permitted [to wash their clothes].
I. But all other people are prohibited.

If I wanted a single example to show how, in general, the Talmuds differ in not only form but the substance of the prevailing attitude of mind, it would be at M. M.Q. 3:1-2, Y. 3:1.I in contrast to B. 3:1-2 I.1. Here, the Talmuds commence with precisely the same question and answer—and there the Yerushalmi falls silent, and the Bavli finds a great deal more to say—and that supererogatory discourse bears the full message of the meaning of the Talmuds' profound points of difference. It is at the level of the very structure of intellect that the Bavli differs: the framers' intellectual morphology, their ways of thinking, of defining what they wish to know and the right way of finding out.

- [I.A] Lo, all other persons [apart from those listed at M. 3 :1] are forbidden to get haircuts.
- [B] Said R. Simon, "They made such a decree for them so that people should not enter the festal season in an unkempt appearance."
- [C] There we have learned: **The members of the priestly course and the members of their counterpart [the ma'amad] are forbidden to get a haircut and to wash their clothing. On Thursday they are permitted to do so, because of the honor owing to the Sabbath [M. Ta. 2: 7].**
- I.1 A.** *What is the reason that all other classifications of persons are forbidden to do so?*
- B. *It is in line with that which we have learned in the Mishnah: **Members of the priestly watch and members of the public delegation [presence] are prohibited to get a haircut and to wash their clothes. But on Thursday they are permitted to do so, because of the honor owing to the Sabbath [M. Ta. 2:7B-C].***

- [D] Lo, on all other days they are prohibited to get a haircut and to wash their clothes.
- [E] R. Yosé, R. Abbahu in the name of R. Yohanan, R. Abun in the name of Hezekiah: "They made such a decree for them so that they should not enter upon the Sabbath in an unkempt appearance."

C. *And said Rabbah bar bar Hanna said R. Eleazar, "What is the operative consideration that allows them to do on Thursday? It is so that they should not enter in a condition of slovenliness their membership on the priestly watch. Here too, the operative consideration is that they not enter the festival in a slovenly condition."*

- I.2** A. *R. Zira raised this question: "If someone lost something on the eve of a festival, [what is the law about getting a haircut or washing clothes on the intermediate days of the festival]? Since it was under constraint that he could not have done so prior to the festival, he may get a haircut or wash clothes on the festival? Or perhaps, since the reason is not compelling, he may not do so?"*
- B. Said Abbayye, "Well, people would say, 'While all Syrian loaves are forbidden, Syrian loaves of Boethus are permitted' [so we'd better not discriminate, lest people get the wrong idea]."
- C. *Yeah, well, from your reasoning, lo,* said R. Assi said R. Yohanan, "Anyone who has only a single garment may wash it during the festival week"—there, too, won't people say, "While all Syrian loaves are forbidden,

Syrian loaves of Boethus are permitted”?

D. *Well, in fact it has been stated in this connection: said Mar bar R. Ashi, “The man’s loin cloth shows the facts of the matter [that is, that’s all he’s got].”*

I.3 A. *R. Ashi repeated the same matter in this way: “R. Zira raised this question: ‘If a craftsman lost something on the eve of the festival, do we say that, since he is a craftsman, the reason that, on the festival, he is permitted to get a haircut or wash his clothes is self-evident, or since the reason is not going to be so self-evident as in the cases mentioned in the Mishnah, he may not get a haircut or wash his clothes during the intermediate days of the festival?’”*

B. *In that form, the question must stand.*

What is the difference between the Land of Israel and Babylonia? In the Land of Israel, we want the rule and the reason. In Babylonia, we apply the reason to new circumstances. In the former case our purpose is to clarify and explain; in the latter, it is to extend knowledge. The mode of inquiry in the former is to seek information, in the latter, to use information in quest of a deeper understanding. We may reasonably invoke the analogy of syllogistic reasoning: both the sages of the Land of Israel and those of Babylonia have the facts, A, B. But the Babylonians proceed to the question, if A, B, then what about C?

The next point of comment is at Y. II=B. II, both of which address the citation of Tosefta’s version of Judah’s view. The comparison is scarcely appropriate:

- [II.A] It has been taught in the name of **R. Judah: "Those who come home from overseas are forbidden to get a haircut and to wash their clothing"** [vs. M. 3: 1B].
- [B] R. Judah is consistent in his opinions, for R. Judah said, "It is forbidden to take a journey on the Great Sea."
- [C] If so, then if a priest goes abroad, since he has gone forth from the Land not with the approval of sages, he should be forbidden to get a haircut [when he comes home].
- [D] A priest came to R. Hanina. He said to him, "What is the law as to going to Tyre to carry out a religious duty, namely, to perform the rite of *halisah* or to enter into levirate marriage?"
- [E] He said to him, "Your brother went abroad. Blessed is the Omnipresent, who has smitten him. And now you want to do the same thing?"
- [F] There is he who wishes to say that this is what he said to him, "Your brother left the bosom of his mother and embraced the bosom of a gentile woman, and blessed is he who smote him! And now you wish to do the same thing?"
- [G] Simeon bar Ba came to R. Hanina. He said to me, "Write a letter of recom-
- II.1 A. Who are they who may get a haircut on the intermediate days of a festival? (1) he who comes from overseas or from captivity...:**
- B. *Our Mishnah paragraph's rule is not in accord with the position of R. Judah. For it has been taught on Tannaite authority: R. Judah says, "One who comes home from overseas may not get haircuts during the intermediate days of the festival, because he went abroad at such a season without the permission of sages [who would have told him to go after the festival, so as to avoid this situation]" [T. Moed 2:2G].*
- C. Said Raba, "If he went out merely to sightsee, all parties concur that he is forbidden. If he went out to make a living, all parties concur that he is permitted. They differ only if he made the trip just to make money. *One authority invokes the analogy of going sightseeing, the other, of going to make a living.*"
- D. An objection was raised: **Said Rabbi, "The opinion of R. Judah makes more sense to me in a case in which one has not gotten permission**

mendation for me, since I am going abroad to make a living. He said to him, "Tomorrow I'm going to your ancestors, and they are going to say to me, 'That single planting [that gave us] pleasure which we had in the Land of Israel have you permitted to go abroad!'"

from sages to go abroad, and that of sages makes more sense in a case in which he has gotten permission from sages to go abroad" [T. Moed 2:2I]. *Now what does in which one has not gotten permission from sages mean? If I should say that it means to go sightseeing, have you not said, all parties concur that he is forbidden? And could it then mean to make a living? But have you not said, all parties concur that he is permitted? So it is obvious that it means just to make money.*

- E. *But then I invoke the concluding clause: and that of sages makes more sense in a case in which he has gotten permission from sages to go abroad! Now what could "with permission" mean here? If I should say that it means to make a living, have you not said, all parties concur that he is permitted? And might it be just to make money? But have you not said, The opinion of R. Judah makes more sense to me in a case in which one has not gotten permission from sages to go abroad?*
- F. *This is the sense of the statement at hand: The opinion of R.*

Judah makes more sense than that of rabbis when he went forth without permission, *and what circumstance might that involve? It is for sightseeing. For sages only differed from R. Judah when it comes to making money. But as to merely sightseeing, they concur with R. Judah.* And the opinion of rabbis seems to make more sense than R. Judah's when he went forth with permission, *and what might that involve? It would be for making a living, for even R. Judah differed with rabbis only when it was to make money. But as to going abroad to make a living, he concurs with them.*

The Yerushalmi has a simple observation, II.A-B, with a conclusion drawn at C that is out of phase with the foregoing. Then, D-G, all we have is a case and its disposition, continuing C; had I done a proper division of Y., C-G would have formed a distinct unit. B., by contrast, proceeds with the conflict with Judah, followed by Raba's hypothesis, in which we distinguish between two motives for leaving home, one under duress, the other, optional. This leads to a testing of the hypothesis against other evidence; then an analysis of the language at hand, and then a reshaping of the reading of the received language. Here, the contrast is between an essentially inert, and a fundamentally vital mentality.

V. *Competence versus Genius*

In my view the Yerushalmi presents a competent exegesis of the law of the Mishnah. The Bavli's framers time and again compose an essay that we must admire as a statement of sheer genius. Let me give a single case in behalf of that generalization.

A woman contracts uncleanness during her period, so Lev. 15. The period commences with the first flow of blood. At the moment that the woman perceives the flow, she knows she is unclean. But how long has she been unclean prior to her discovering the flow? And what is the sta-

tus of objects she has touched during that span of time? Shammai maintains that the woman is confirmed in the presumption of her being clean until the moment at which solid evidence indicates she is not. Hillel says she is unclean retroactively, to the last moment at which she has examined herself and found no blood, thus was assuredly clean. The sages mediate: she is unclean during the preceding twenty-four hours if that is a shorter period than the span of time from her last examination, and so the opposite:

MISHNAH-TRACTATE NIDDAH 1:1

1:1

- A. Shammai says, “[For] all women [it is] sufficient for them [to reckon uncleanness from] their time [of discovering a flow] .”**
- B. Hillel says, “[They are deemed unclean retroactively] from the [time of examination, at which the flow of blood was discovered] to the [last] examination [she made beforehand].**
- C. “And even for many days.”**
- D. And sages say not in accord with the opinion of this one nor in accord with the opinion of that one, but:**
- E. [the woman is held to have been unclean only] during [the preceding] twenty-four hours [when] this lessens the period from the examination to the [last] examination,**
- F. [and she is held to have been unclean only] during the period from examination to examination [when] this lessens the period of twenty-four hours.**

Now how do the Talmuds deal with this dispute?

The Mishnah-pericopes at the head of Mishnah-tractate Niddah in the two Talmuds provide the basis for one of the Bavli’s great theoretical composites, a searching inquiry into the principles for the resolution of doubt. The Bavli-composite before us articulates the principles, then tests them against the cases, for a sustained discussion of many pages; nearly the whole of B. I.1-8 centers on the exposition of that matter. All the Yerushalmi can offer as a counterpart is a systematic glossing of the Mishnah-rule. Setting side by side the two Talmuds treatment of M. 1:1 shows us the difference between competence and genius, what suffices and what excels, above all, meeting the standard and surpassing it. In the end, not only do ideas count, but the power of intellect behind them counts for still more: for everything in fact. Now we deal with the resolution of cases of doubt.

- [I.A] What is the meaning of the phrase, “It is sufficient [to reckon menstrual uncleanness from] their time [of discovering a flow]?”**
- [B] [Such women] do not retroactively impart uncleanness to food subject to the laws of cleanness.**
- [II.A] And sages rule not in accord with the opinion of this one nor in accord with the opinion of that one.*
- [B] Not in accord with the opinion of Shammai, who placed no limit to his view of the matter [in entirely dismissing the possibility of retroactive uncleanness.**
- [C] Nor in accord with the opinion of Hillel, who took an extreme position.**
- [III.A] But [the woman is held to have been unclean only] during [the preceding] twenty-four hours [when] this lessens the period [of uncleanness demarcated by the span] from examination to examination, and [she is held to have been unclean only during the period from [one] examination to [the preceding] examination [when] this lessens the period of twenty-four hours of retroactive uncleanness].*
- [B] How does a period of twenty-four hours diminish the period from one examination to the next examination?**
- [C] [If] a woman examined**
- I.1 A.** *What is the operative consideration for the position of Shammai [for all women it is sufficient for them to reckon uncleanness from their time of discovering a flow]?*
- B.** He takes the view that one should confirm the woman's status quo, and a woman's status quo is clean [not subject to her menstrual period].
- C.** And Hillel?
- D.** *When we invoke the principle that we should confirm something within its status quo, that principle applies only when the negative condition does not derive from the body of the thing itself. But as to a woman, [2A] since the negative condition that affects her derives from her body itself, we do not say that one should confirm her status quo.*
- E.** *But what is the difference between this and the case of the immersion-pool, as we have learned in the Mishnah: **An immersion pool that was measured and found lacking the requisite volume of water—all things requiring cleanness that were prepared depending upon it—retroactively—whether involving private or public domain—are unclean [M.. Miq. 2:2].***
- F.** *From the viewpoint of Sham-*

herself on Monday [finding no evidence of the advent of her menstrual period], and produced menstrual blood on Thursday, the [retroactive] contamination applies only back to the hour, on Wednesday, twenty-four hours [before the time at which, on Thursday, the woman discovered the menstrual blood].

[D] **How** does the period from one examination to the next examination diminish the period of twenty-four hours?

[E] **[If] a woman examined herself in the morning [finding no evidence of the advent of her menstrual period], and produced menstrual blood at dusk, the [retroactive] contamination applies only back to the morning [and not for the antecedent twenty-four hours].**

[IV.A] There have we learned the Tannaitic teaching: **A dead creeping thing that was found in an alleyway imparts uncleanness retroactively [M. Nid. 7:2].**

[B] R. Ammi asked [whether] the cited passage of the Mishnah might not be contrary to the position of Shammai.

[C] Said R. Yosé, "If it is not

mai, there is a problem with the reference to retroactive contamination [since he would have the contamination applicable only from the point at which the insufficiency was discovered].

G. *From the viewpoint of Hillel, there is a problem with the certainty [that everything is unclean], for with respect to the status of the objects that the woman has touched for the preceding twenty-four hours in the case of the menstruating woman, the status of those objects is held in suspect; people do not eat the food nor burn it, while in the present case, as a matter of fact, we have an unconditional declaration of uncleanness.*

H. *The operative consideration there is that one has the occasion to rule, preserve that which is unclean in its status quo, and I maintain that the unclean person has not validly immersed.*

I. *To the contrary, preserve the immersion pool in its status quo, and I maintain that it has not been lacking [prior to the moment that the deficiency was uncovered].*

J. *Lo, in your very presence it is lacking!*

K. *Here too, the blood is right there before you.*

L. *But it is only now that she sees it.*

M. *Here too, it is only now that the*

in accord with the position of Shammai [who rejects the possibility of retroactive contamination entirely], then [the cited passage of the Mishnah also] is not even in accord with the position of Hillel.

[D] “For does Hillel not concur in the case of an alleyway that is [daily] swept out, and through which a water-course runs, that it is deemed clean [retroactively, in case a dead creeping thing is found therein]?”

[E] Shammai maintains this: In the case of a woman, because she customarily examines herself when she urinates, sages have treated her as comparable to an alleyway that is swept out from day to day and through which a water-course runs, so that it is deemed clean [under normal conditions, until proven otherwise].

deficiency has taken effect.

N. *But what's the problem? Perhaps the water was gradually diminishing, but here can you say that only now she was gradually observing the flow of blood?*

O. *In that case, [the immersion pool] there are two considerations that negatively affect the status of the immersion pool, while here there is only one negative consideration that affects the woman's status [which is that she just now has seen the blood, but she was formerly confirmed to have been clean, so we assume that the flow has just begun].*

P. *And how does this case differ from the case of the keg of wine, concerning which we have learned in the Mishnah: **If one was checking a keg of wine from time to time in order to use it as heave offering for other wine which came into his possession, and it was found to be vinegar, as to wine for which this keg was to serve as heave offering that had been designated as such for the preceding three days it is certain that it had already become vinegar; from this time and retroactively, there is a doubt as to whether or not the wine had already become vinegar [T. Ter.***

4:8H-J]. *Now this presents a contradiction to the principle of Shammai [that menstruants are not deemed to have been unclean for any length of time retrospectively, but reckon their flow only from the moment they found a drop of menstrual blood].*

Q. *The ruling is as it is there because there is the possibility of ruling, preserve the status quo of the certainly-untithed produce, and I may claim that it has not been properly tithed.*

AA. *Said R. Hanina of Sura, “Who is the Tannaite authority behind the case of the keg? It is R. Simeon, who with reference to the immersion pool also maintains that the upshot is to declare in doubt matters affected by that pool. For it has been taught on Tannaite authority: **An immersion pool that was measured and found lacking the requisite volume of water—all things requiring cleanliness that were prepared depending upon it—retroactively—whether involving private or public domain—are unclean.** R. Simeon says, ‘Objects that derive from public domain are deemed clean. Those that derive from private domain are held in suspense.’*

BB. **[3A]** “And both parties

derived their positions only from the case of the wife accused of adultery. Rabbinis take the view that the case [of the immersion pool] is comparable to the one of the wife accused of adultery. Just as in the case of the wife accused of adultery, the woman is subject to doubt but the matter is treated as though it were a certainty [so she has to prove her innocence, rather than her guilt], here too, it is a matter of doubt but sages have treated it as one of certainty [so everything is treated as unclean until proven clean].”

CC. If the analogy is drawn from the wife accused of adultery, then I may say that, just as in the case of the wife accused of adultery, if the offense is supposed to have taken place in public domain [where there is no privacy], she is assumed to have been clean, here too, matters involving public domain are to be assumed to be clean.

DD. *How now! There, with reference to the wife accused of adultery, the operative consideration is privacy [the wife being accused of going off into private with another man], and privacy is not possible in the public domain. Here the operative consideration is the deficiency of valid water,*

and what difference does it make to me whether the deficiency takes place in public domain or in private domain? And should you say, well, any matter of doubt concerning uncleanness in public domain is resolved as clean, since, in this case, there are two negative considerations, it is tantamount to a certainty that uncleanness is present.

EE. And R. Simeon likewise invokes the analogy of the wife accused of adultery. Just as in the case of the wife accused of adultery, if the accusation concerns the public domain, she is deemed clean, so here too, matters involving public domain are deemed to be clean.

FF. *If the analogy is drawn from the wife accused of adultery, then I may say that, just as in the case of the wife accused of adultery, if the offense is supposed to have taken place in private domain, she is certainly assumed to be unclean, here too, matters involving private domain are to be assumed to be unclean.*

GG. *How now! In that case [involving the wife accused of adultery], there is a basis for the ruling, for lo, the husband expressed jealousy to her but she nonetheless went into private with another man, but here, what foundations are there for the matter?*

HH. *If you prefer, I shall state the following:*

II. *this is the operative consideration for the position of R. Simeon that cases involving doubt in the public domain are resolved as clean: he derives the rule governing the conclusion of a spell of uncleanness [through the immersion in an immersion-pool] from the rule governing the commencement of a spell of uncleanness [through contact with a source of uncleanness]: just as, at the beginning of a spell of uncleanness, if it is a matter of doubt whether one has touched a source of uncleanness or has not touched a source of uncleanness, if the doubt involves the public domain, he is clean, so is the rule governing the conclusion of the spell of uncleanness in the immersion pool. If there is a matter of doubt whether one has immersed or has not immersed, if the doubt involves the public domain, he is ruled to be clean.*

JJ. *And rabbis?*

KK. *How now! In that case [involving the beginning of a spell of uncleanness], since a man is presumed to be clean, by reason of doubt we do not assign him to the classification of uncleanness, but here, the man is assumed to be unclean, and by*

reason of doubt we do not remove him from the classification of uncleanness.

2. A. *And how does the ruling in our Mishnah differ from that applied in the case of the alleyway, concerning which we have learned in the Mishnah: **The creeping thing which is found in the alleyway imparts uncleanness retroactively, until one will state “I inspected this alleyway and there was no creeping thing in it,” or until the time that it [last] was cleaned [M. Nid. 7:2A-C].** [Slotki: the sweeping is equivalent to an examination. Only objects in the alley prior to the sweeping are clean, while those that were there afterward, since a dead creeping thing may have fallen into the alley as soon as the sweeping was over, are unclean. Uncleanness in a doubtful case is brought about retrospectively, so why does Shammai restrict the period of uncleanness to the time of the discovery of the drop of blood alone?]*
- B. *There too, since there are the dead creeping things that derive from the alley itself and also those that derive from points unknown, the case is parallel to one in which there are two negative factors.*
- C. *And if you wish, I shall say,*

this is the operative consideration of Shammai: since a woman feels when she suffers a flux [she will know the exact point at which the blood came out].

- D. And Hillel?
- E. She will be thinking that what she is sensing is urine [not blood of the menstrual kind].
- F. *And as to the position of Shammai, lo, there is the case of the woman who is sleeping?*
- G. *If a woman is asleep, she still would feel a certain discomfort, as is so where one feels a discharge of urine.*
- H. *And lo, there is the case of the woman not of sound senses?*
- I. Shammai concedes the case of the woman not of sound senses.
- J. *But lo, the language that is used is, “[For] all women [it is] sufficient for them [to reckon uncleanness from] their time [of discovering a flow].”*
- K. *The use of “women” serves only to exclude the position of R. Eliezer.*
- L. For R. Eliezer has said, **“Four women [fall into the category of those for whom the] time [of first seeing blood] suffices”** and no more than that.
- M. So [Shammai] indicates that the criterion pertains to all women.
3. A. And lo, there is the case of

stains [M. 7:2D-H: **And so: a stain which is found on a garment imparts uncleanness retroactively, until one will state, "I inspected this garment, and there was no blood-stain on it," or until such time as it was [last] washed. And it imparts uncleanness whether wet or dry. R. Simeon says, "The dry imparts uncleanness retroactively, and the wet imparts uncleanness only so long as it can have been wet."**

These stains of menstrual blood cause uncleanness retrospectively, though prior to the moment of discharge the woman cannot have been aware of any flow.]

- B. *May one say that the Mishnah-passage concerning stains does not accord with the position of Shammai?*
- C. Said Abayye, "Shammai concedes in the case of stains [that uncleanness is retroactive]. What is his operative consideration? Since she was not involved in handling a slaughtered fowl nor has she walked through the butchers' market, *where did this blood come from? And if you prefer, this is the operative consideration for Shammai's concession here: if it*

were the fact that the blood was present, it would have flowed earlier [so we assume the blood flowed the moment it was found].”

- D. And Hillel?
 - E. The walls of the womb held the blood back.
 - F. And Shammai?
 - G. The walls of the womb do not hold back blood.
4. A. And as to the woman who uses a diaphragm when having sexual relations, *what is there for Shammai to say* [since the diaphragm would absorb the menstrual blood, so there would be no proof that the blood did not make its appearance prior to when it was discovered. So how could Shammai maintain that the menstrual uncleanness commences only at the moment that the blood is discovered?]
- B. Said Abayye, “Shammai concedes the case of the woman who uses a diaphragm when having sexual relations.”
 - C. Raba said, “A diaphragm poses no problem to Shammai, since perspiration causes it to shrink [and blood will get by, if it is present].”
 - D. And Raba concedes the case of a diaphragm that is a tightly-packed absorbent.
5. A. *And what is the difference between the one explanation and*

- the other [that a woman feels the blood, or that the blood would have flowed out earlier]?*
- B. **[3B]** *At issue between the two explanations is the pertinence of the comparison with the cases of the keg of wine and the immersion pool and the alleyway. According to the formulation [that a woman is confirmed in her status as being clean], there is an incongruity in adducing those cases as parallel, while if we invoke the explanation that a woman feels the drop or that the blood would have flowed out earlier, there is no incongruity among the several cases.*
- C. *And what is the practical difference between the two approaches to explaining the ruling?*
- D. *In the view of Abayye, it is the case of the diaphragm,*
- E. *and in the view of Raba, it is the case of the diaphragm that is tightly packed.*
6. A. *It has been taught on Tannaite authority in accord with the operative consideration that if there were any blood, it would have flowed from the beginning:*
- B. Said Hillel to Shammai, “Do you not concede in the case of a basket, one corner of which has served for cultically clean foods, in which, in another corner, a dead creeping thing is found, that foods that were cultically clean to begin with now are deemed ret-

respectively unclean [Slotki: because it is possible that the creeping thing was in the basket before the clean foods were removed, and it imparted uncleanness to the basket, which made the foods unclean. If the creeping thing had been found in the same corner as the clean foods previously kept there, there would be no issue that the food that has been removed is deemed clean, since it certainly would have been removed before the creeping thing had fallen into the basket, for if the dead creeping thing had been there earlier, it would have been discovered when the objects were removed.]”

- C. He said to him, “True.”
- D. “And what is the difference between the one case and the other [that uncleanness is retrospective in the case of the basket but not in the case of the menstruating woman]?”
- E. “The one has a bottom, the other has no bottom.” [The basket has a bottom where the dead creeping thing can have stayed unnoticed, but the menstruant has no bottom, and if any blood were in the antechamber, it would have flowed out.]

7. A. *Raba said, “The operative con-*

sideration of Shammai concerns the suspension of procreation [and if people were worried about retrospective uncleanness, they would not have sexual relations].”

- B. *And so too has it been taught on Tannaite authority:*
- C. *Shammai said to Hillel, “If so, you will keep the daughters of Israel from having sexual relations.”*
- D. *And according to him [Raba] who provided this explanation of Shammai’s reason, lo, has it not been taught on Tannaite authority in accord with the prior explanation, “if the blood were there, it would have flowed out”?*
- E. *There it was Hillel who erred. He supposed that the consideration important to Shammai was that “if the blood were there, it would have flowed out,” and he therefore addressed to him the problem concerning the case of the basket. But Shammai replied to him, “My reason, in point of fact, is the concern for the cessation of sexual relations. And in respect to the error you have made in assuming that I had some other consideration in mind, on account of which you object on the basis of the case of the basket, the appropriate reply remains that the basket has a bottom but the vagina has none.”*
- F. *And as to the person who presented the first explanation [if there were any blood in the va-*

gina, it would have flowed out earlier], lo, has it not been taught on Tannaite authority in accord with the explanation that Shammai's concern was for continued sexual relations?

- G. *This is what Hillel said to Shammai, "If the operative consideration is the one that you have said, namely, if the blood had been present, to begin with it would have flowed, then you have to place a limit on your ruling. For why should this law be different from all the rest of the laws in the Torah for which a limit has been set?"*
- H. He said to him, "If so, you will prevent the daughters of Israel from having sexual relations."
- I. And Hillel?
- J. *"Did I say anything about sexual relations? What I was talking about was food prepared in a state of cultic cleanness!"*
- K. And Shammai?
- L. *"No restrictions should pertain even to food prepared in cultic cleanness, sine otherwise the person's heart will prompt neglecting sexual relations altogether."*

What makes me see as not only not invidious but entirely legitimate the contrast of mere competence and true genius? It comes in the answer to the question, Are the framers of the Yerushalmi's composite ignorant of the theoretical problem that the Mishnah-pericope introduces? On the contrary, at Y. 1:1 IV, they introduce the issue articulately. But contrast the sustained, active, vigorous development of the Bavli's composite with the perfunctory attention paid by the author of the Yerushalmi's brief composition to the same opportunity. When, at an earlier point, I noted that even where the two Talmuds say the same thing about the same thing and in the same words, the Bavli presents as argument what the Yerushalmi

gives as information, I understated the difference; nor does it suffice to say that the Yerushalmi states as law what the Bavli reproduces as argument, though that too accounts for differences. In the present context, I go a step forward and say very simply, the Yerushalmi's is a passive, near-inert intellect, by contrast to the Bavli's active, vital one. And the reason is not, as has been alleged, that the Bavli focuses upon argument, not outcome. That is an epiphenomenon, a rather superficial way of describing a profound trait. The Bavli's authors and compilers focus upon argument because of the nature of their intellect, and that has to be investigated in its own framework.

It is the simple fact that the Bavli has its own mode of thought and analysis. Its traits are these: first, an interest in a cogent document overall, so that composites hang together and (where plausible) relate to the Mishnah; second, a systematic analysis of statements and premises, arguments and evidence, at each point challenging an assertion with a contrary possibility; third, a reprise of the standard repertoire of logical arguments, made available by philosophy, e.g., the argument from absurdity; fourth, a concern for the scriptural foundations of positions, and the imposition of the rules that govern deriving from Scripture various propositions of a secondary or derivative character. Here, as is very commonly the case in Bavli, no scriptural proof for one side is allowed to proceed without a counterpart and opposite from the other, and each side is asked to ask its toughest questions to the proof of the other.

The Yerushalmi seeks to expound the meanings of the laws. The Bavli wants to discover the law behind the laws. That difference derives not from modes of thought, still less from a hermeneutical *a priori*. Nor do we deal with one or two brilliant minds, an Abbaye, a Rabbah, for example; the sages of the Land of Israel, after all, could point to their Simeon b. Laqish and their Yohanan. And it is not a difference in the mere writing down of thought; what we have examined concerns neither literary style nor modes of argument, nor still rules of thought and analytical conventions and procedures. There are differences between the two Talmuds at each of these characteristic traits, to be sure. But all of them in detail express a single difference of a single order, once that overspreads the whole of each document and permits us to differentiate the latter from the former at nearly every point, beginning to end, at which, to begin with, the Talmuds will sustain comparison with one another. It is a difference at the very foundations of intellection, at the very shape and structure of mind.

VI. *The Intellectual Hegemony of the Bavli*

Why did the Bavli gain priority, indeed utter hegemony? And, since the Bavli is one of two Talmuds—authoritative presentations of the Mishnah,

which is the first and premier document of the oral Torah, the question obviously means, why did the Bavli succeed in the place of the Yerushalmi? For it seems to me that the principal document had to be one or the other of the two Talmuds—and not Scripture by itself, nor compilations of Midrash-exegeses either, so long as the theory of the dual Torah, written and oral, with Scripture in writing, the Mishnah in oral formulation and oral transmission as a document of memory, was going to prevail. So the comparison of the Bavli and the Yerushalmi has to address not only the question of how the Bavli differed, but why the Bavli was deemed superior. To some, the Bavli enjoyed hegemony because Jews of Babylonia, later Iraq, sat at the confluence of trade routes, so enjoyed superior media of communication; to others, the Bavli enjoyed priority by default, because of the decline of the Jewish community of the Land of Israel.

These appeals to a class of causes of an other-than intellectual character dismiss the compelling power of the intrinsic qualities of the document, treating as null the authority of intellect, on the one side, and the force of persuasive ideas, on the other. Such arguments glide lightly over differences between the two Talmuds, which are reduced to the accidents of taste and judgment, e.g., one custom over another. Along these lines, a writing resting on the culture of beer, sesame, and barley, was more suited to the taste of Jews than one that founded itself on the culture of wine, olive oil, and wheat. Then the contents of the writing mattered less than what people ate for supper.

The Bavli and the Yerushalmi in the end simply do not sustain comparison, because the Bavli is in quality and character different from the Yerushalmi, so different that the two Talmuds are incomparable. The one talks in details, the other in large truths based on systematic analysis of details; the Yerushalmi tells us what the Mishnah says, the Bavli, what it means, which is to say, how its laws form law, the way in which its rules attest to the ontological unity of truth, a term that will presently become clear in the context of the reading of the Bavli against the backdrop of the Mishnah. The distinction between the documents, so I have claimed, lies in the intellectual morphology that characterizes each. But the true difference between them derives from not intellection but outcome (to be sure, the product of intellection). The Bavli thinks more deeply about deep things, and, in the end, its authors think about different things from those that occupy the writers of the Yerushalmi. Now to a specific case to show how these generalizations pertain.

MISHNAH-TRACTATE GITTIN 1:1

1:1 I

- A. He who delivers a writ of divorce from overseas must state, “In my presence it was written, and in my presence it was signed.”**
- B. Rabban Gamaliel says, “Also: He who delivers [a writ of divorce] from Reqem or from Heger [must make a similar declaration].”**
- C. R. Eliezer says, “Even from Kefar Ludim to Lud.”**
- D. And sages say, “He must state, ‘In my presence it was written, and in my presence it was signed,’ only in the case of him who delivers a writ of divorce from overseas,**
- E. “and him who takes [one abroad].”**
- F. And he who delivers [a writ of divorce] from one overseas province to another must state, “In my presence it was written, and in my presence it was signed.”**
- G. Rabban Simeon b. Gamaliel says, “Even [if he brings one] from one jurisdiction to another [in the same town].”**

At their reading of M. Gittin 1:1, where the Talmuds intersect but diverge in the reading of the Mishnah-paragraph, we are able to identify what is at issue. Here is an occasion on which we can see the differences between the Yerushalmi’s and the Bavli’s representation of a conflict of principles contained within a Mishnah-ruling. The Yerushalmi maintains that at issue is the inexperience of overseas courts vs. a lenient ruling to avoid the situation of the abandoned wife; the Bavli, inexperience of overseas courts vs. paucity of witnesses. How these diverse accounts differ in intellectual character and also program is hardly revealed by that brief precis. That explains why I indulge my admiration for the Bavli by giving the greater part of its massive and brilliant discussion. Let us really see, for once, what differentiates the two Talmuds by allowing the Bavli its full voice. Only then will my insistence on the real difference, the Talmuds’ fundamental difference in the intellectual morphology and structure that form the substrate of each writing, emerge in all its clarity. When readers have seen how the two Talmuds respond to the same question, they will find compelling my insistence that the Bavli is different from the Yerushalmi not in detail but in very character; that despite commonalities of form, which validate comparison, the two Talmuds in fact are utterly unlike pieces of writing, and that the second of the two Talmuds makes its own statement not merely because it very often says different things from the Bavli, or because it says different things in different ways (though both are the case).

It stands on its own not only because its framers think differently; nor merely because their modes of thought and analysis in no way correspond to those of the Yerushalmi. The governing reason is that, for the framers of the Bavli, what is at stake in thought is different from the upshot of thought as conceived by the authors of the Yerushalmi's compositions and compilers of its composites. Specifically, for the sages who produced the Bavli, the ultimate compilers and redactors of the document, what at issue is not laws but law: how things hold together at the level of high abstraction. After we have compared the Talmuds at this crucial point, I shall point to the evidence that sustains that theory of the document.

- [I.A] Now here is a problem. In the case of one who brings a deed of gift from overseas, does he have to state, "Before me it was written and before me it was signed"? [Why is the rule more strict for writs of divorce?]
- [B] R. Joshua b. Levi said, "The case [of writs of divorce] is different, for [overseas] they are not expert in the details of preparing writs of divorce [properly]."
- [C] Said R. Yohanan, "It is a lenient ruling which [sages] have provided for her, that she should not sit an abandoned wife [unable to remarry]."
- [D] And is this a lenient ruling? It is only a stringent one, for if the messenger did not testify, "In my presence it was written, and in my presence it was signed," you are not indeed going to permit the woman to remarry [at all], [so what sort of a lenient ruling do we have here?]
- [E] Said R. Yosé, "The strict
- I.1 A.** What is the operative consideration here?
- B. Said Rabbah, **[2B]** "Because [Israelites overseas] are inexpert in the requirement that the writ be prepared for the particular person for whom it is intended."
- C. Raba said, "Because valid witnesses are not readily found to confirm the signatures [and the declaration of the agent serves to authenticate the signatures of the witnesses]."
- D. *So what is at issue between these two explanations?*
- E. *At issue between them is a case in which two persons brought the writ of divorce [in which case Raba's consideration is null], or a case in which a writ of divorce was brought from one province to another in the Land of Israel [in which case the consideration of Rabbah is null], or from one place to another in the same overseas province.*

requirement which you have imposed on the matter at the outset, requiring the messenger to testify, 'Before me it was written and before me it was signed,' turns out to be a lenient ruling which you have set for the case at the end. For if the husband later on should come and call into question the validity of the document, his cavil will be null."

- [F] [As to the denial of credibility to the husband's challenge to the validity of the writ of divorce,] R. Mana contemplated ruling, "That applies to a complaint dealing with matters external to the body of the document itself."
- [G] But as to a complaint as to the body of the document itself [do we believe him]? [Surely we take seriously his claim that the document is a forgery.]
- [H] And as to a complaint [against the writ] which has no substance [one may not take the husband's cavil seriously].
- [I] And even in the case of a cavil which has substance [should he not be believed]? [Surely he should be believed.]

I.2A. *And from the perspective of Rabbah, who has said, "Because [Israelites overseas] are inexperienced in the requirement that the writ be prepared for the particular person for whom it is intended," there should still be a requirement that the writ of divorce is brought by two persons, such as is the requirement in respect to all acts of testimony that are spelled out in the Torah [in line with Deut. 19:15]!*

- B. An individual witness is believed where the question has to do with a prohibition [for example, as to personal status, but not monetary matters].
- C. *Well, I might well concede that we do hold, an individual witness is believed where the question has to do with a prohibition, for example, in the case of a piece of fat, which may be forbidden fat or may be permitted fat, in which instance the status of a prohibition has not yet been assumed. But here, with regard to the case at hand, where the presence of a prohibition is assumed, namely, that the woman is married, it amounts to a matter involving prohibited sexual relations, and a matter involving sexual relations is settled by no fewer than two witnesses.*
- D. Most overseas Israelites are expert in the rule that the document has to be written for the expressed purpose of divorcing this particular woman.

- [J] Said R. Yosé b. R. Bun, “[No, the original statement stands in all these cases]. [That is to say,] since you have said that the reason you have applied in the case a more stringent requirement at the outset, that the messenger must declare, ‘Before me it was [written, and before me it was] signed,’ you have imposed a lenient ruling at the end, for if the husband later on should come and call into question the validity of the document, his cavil will be null, and we must conclude that there is no difference at all whether the complaint against the validity of the document pertains to matters external to the body of the document or to matters internal to the body of the document, nor is there any difference whether the complaint deals with matters of no substance or matters of substance. [Once the necessary formula is recited by the messenger, the document has been validated against all future doubts.]”
- [K] And yet should one not take account that invalid witnesses may have signed the document?
- [L] Said R. Abun, “The husband is not suspect of disrupting [the wife’s future marriage] in a matter
- E. *And even R. Meir, who takes account of not only the condition of the majority but even that of the minority [in this case, people not expert in that rule], concedes the ordinary scribe of a court knows the law full well, and it was rabbis who imposed the requirement. But here [3A] so as to prevent the woman from entering the status of a deserted wife [unable to remarry], they made the rule lenient.*
- F. *Is this really a lenient ruling? It is in fact a strict ruling, since, if you require that the writ of divorce be brought by two messengers, there is no possibility of the husband’s coming and challenging its validity and having it invalidated, but if only one person brings the document, he can still do so!*
- G. Since the master has said, “As to how many persons must be present when the messenger hands over the writ of divorce to the wife, there is a dispute between R. Yohanan and R. Hanina. One party maintains it must be at least two, the other three.” *Now, since that is the fact, the messenger will clarify the husband’s intentions to begin with, and the husband under such circumstances is not going to come and try to invalidate the writ and so get himself into trouble later on.*

which is in the hands of Heaven, [but is suspect of doing so only in a matter which lies before a court]. [Hence we do not take account of the husband's issuing such a complaint as is entered at G.]

[M] "In a court proceeding he is suspect of disrupting the wife's [future marriage]. For since he knows full well that if he should come and register a complaint against the validity of the document, his complaint will be deemed null, even he sees to it [when he prepares the writ] that it is signed by valid witnesses."

- I.3** A. *Now from the perspective of Raba, who said that the operative consideration is, "Because valid witnesses are not readily found to confirm the signatures [and the declaration of the agent serves to authenticate the signatures of the witnesses]," there should still be a requirement that the writ of divorce is brought by two persons, such as is the requirement in respect to all acts of confirming the validity of documents in general!*
- B. An individual witness is believed where the question has to do with a prohibition [for example, as to personal status, but not monetary matters].
- C. *Well, I might well concede that we do hold, an individual witness is believed where the question has to do with a prohibition, for example, in the case of a piece of fat, which may be forbidden fat or may be permitted fat, in which instance the status of a prohibition has not yet been assumed. But here, with regard to the case at hand, where the presence of a prohibition is assumed, namely, that the woman is married, it amounts to a matter involving prohibited sexual relations, and a matter involving sexual relations is settled by no fewer than two witnesses.*
- D. *Well, in strict law, there should*

be no requirement that witnesses confirm the signature on other documents either, in line with what R. Simeon b. Laqish said, for said R. Simeon b. Laqish, "Witnesses who have signed a document are treated as equivalent to those who have been cross-examined in court." It was rabbis who imposed the requirement. But here so as to prevent the woman from entering the status of a deserted wife [unable to remarry], they made the rule lenient.

- E. *Is this really a lenient ruling? It is in fact a strict ruling, since, if you require that the writ of divorce be brought by two messengers, there is no possibility of the husband's coming and challenging its validity and having it invalidated, but if only one person brings the document, he can still do so!*
- F. *Since the master has said, "As to how many persons must be present when the messenger hands over the writ of divorce to the wife, there is a dispute between R. Yohanan and R. Hanina. One party maintains it must be at least two, the other three." Now, since that is the fact, the messenger will clarify the husband's intentions to begin with, and the husband under such circumstances is not going to come and try to invalidate the writ and so get himself into trouble later on.*

- I.4 A. *So how come Raba didn't give the operative consideration that Rabbah did?*
- B. *He will say to you, "Does the Tannaite rule state, **In my presence it was written** for the purpose of divorcing this woman in particular, **and in my presence it was signed** for the purpose of divorcing this woman in particular?"*
- C. *And Rabbah?*
- D. *Strictly speaking, it should have been formulated for Tannaite purposes in that way. But if you get verbose, the bearer may omit something that is required.*
- E. *Yeah, well, even as it is, the bearer may omit something that is required!*
- F. *One out of three phrases he may leave out, but one out of two phrases he's not going to leave out.*
- G. *So how come Rabbah didn't give the operative consideration that Raba did?*
- H. *He will say to you, "If so, the Tannaite formulate should be, **In my presence it was signed**—and nothing more! What need do I have for the language, **In my presence it was written**? That is to indicate that we require that the writ be prepared for the sole purpose of divorcing this particular woman.*
- I. *And Raba?*
- J. *Strictly speaking, it should have been formulated for Tannaite purposes in that way. But if it*

were done that way, people might come to confuse the matter of the confirmation of documents in general and hold that only a single witness is required for that purpose.

K. And Rabbah?

L. *But is the parallel all that close? There the required language is, "We know that this is Mr. So-and-so's signature," while here it is, "In my presence...." In that case, a woman is not believed to testify, in this case, a woman is believed to testify. In that case, an interested party cannot testify, here an interested party can testify.*

M. And Raba?

N. *He will say to you, "Here, too, if the agent says, 'I know....,' he is believed, and since that is the fact, there really is the consideration [if he says only, 'In my presence it was signed' (Simon)], people might come to confuse the matter of the confirmation of documents in general and hold that only a single witness is required for that purpose."*

I.5 A. *From the perspective of Rabbah, who has said, "Because [Israelites overseas] are inexperienced in the requirement that the writ be prepared for the particular person for whom it is intended," who is the authority that requires that the writ of divorce be both written for the particular person for*

whom it is intended *and also requires* **[3B]** that it be signed for the particular person for whom it is intended? *It obviously isn't R. Meir, for he requires the correct declaration as to the signing of the document, but not as to the writing of the document, for we have learned in the Mishnah:* **They do not write [a writ of divorce] on something which is attached to the ground. [If] one wrote it on something attached to the ground, then plucked it up, signed it, and gave it to her, it is valid [M. 2:4A-B].** [The anonymous rule, assumed to stand for Meir, holds that what matters is the signing, not the writing, of the document.] *It also cannot be R. Eleazar, who maintains that the writing be done properly [with correct intentionality as to the preparation of the document for the particular woman to whom it is to be given as a writ of divorce], but as to the signing, he imposes no such requirement. And, further, should you say that, in point of fact, it really is R. Eleazar, and as to his not requiring correct procedure as to the signing of the document with proper specificity [with correct intentionality as to the preparation of the docu-*

ment for the particular woman to whom it is to be given as a writ of divorce], *that is on the strength of the authority of the Torah, but as to the position of rabbis, he would concur that that requirement must be met—if that is your claim, lo, there are three kinds of writs of divorce that rabbis have declared invalid [but the Torah has not invalidated], and among them, R. Eleazar does not include one that has not been signed with appropriate intentionality for that particular woman, as we see in the following Mishnah: **There are three writs of divorce which are invalid, but if the wife [subsequently] remarried [on the strength of those documents], the offspring [nonetheless] is valid: [If] he wrote it in his own handwriting, but there are no witnesses on it; there are witnesses on it, but it is not dated; it is dated, but there is only a single witness—lo, these are three kinds of invalid writs of divorce, but if the wife [subsequently] remarried, the offspring is valid. R. Eleazar says, “Even though there are no witnesses on it [the document itself], but he handed it over***

to her in the presence of witnesses, it is valid. And she collects [her marriage contract] from mortgaged property. For witnesses sign the writ of divorce only for the good order of the world” [M. Git. 9:4].

- B. *Well, then, it must be R. Meir, and so far as he is concerned, as to his not requiring correct procedure as to the signing of the document with proper specificity [with correct intentionality as to the preparation of the document for the particular woman to whom it is to be given as a writ of divorce], that is on the strength of the authority of the Torah, but as to the position of rabbis, he would concur that that requirement must be met.*
- C. Yes, but said R. Nahman, “R. Meir would rule, ‘Even if one found it in the garbage [4A] and had it properly signed and handed it over to her, it is a valid writ of divorce’”! *And, as a matter of fact, this ruling is to say, “valid so far as the Torah is concerned,” then the language that R. Nahman should have used is not, R. Meir would rule, but rather, The rule of the Torah is....*
- D. *Rather, the position before us represents the view of R. Eleazar, and the case in which R. Eleazar does not require a sig-*

nature incised for the sake of the particular woman for whom the document is prepared, that is a case in which there are no witnesses at all. But in a case in which there are witnesses, he does impose that requirement. For said R. Abba, “R. Eleazar concurs in the case of a writ disqualified on the base of its own character that it is invalid [and here we have invalid witnesses].”

- E. *R. Ashi said, “Lo, who is the authority at hand? It is R. Judah, for we have learned in the Mishnah: **R. Judah declares it invalid, so long as writing it and signing it are [not] on something which is plucked up from the ground.**”*
- F. *So to begin with why didn't we assign the passage to R. Judah?*
- G. *We first of all reverted to R. Meir, for an otherwise unattributed statement in the Mishnah belongs to R. Meir. We reverted to R. Eleazar, because it is an established fact for us that in matters of writs of divorce, the decided law is in accord with his position.*
- I.6 A. *We have learned in the Mishnah: **Rabban Gamaliel says, “Also: He who delivers [a writ of divorce] from Reqem or from Heger [must make a similar decla-***

ration].” R. Eliezer says, “Even from Kefar Ludim to Lud”:

- B. *And said Abbayye, “We deal with towns that are near the Land of Israel and those that are entirely surrounded by the Land of Israel.”*
- C. *And said Rabbah bar bar Hannah, “I myself have seen that place, and the distance is the same as that between Be Kube and Pumbedita.”*

- I.7** A. *Does it then follow that the initial Tannaite authority before us takes the view that when bringing a writ of divorce from the places named here, one need not make the stated declaration? Then is not this what is under dispute between the two authorities: The one authority takes the view that the operative consideration is, because [Israelites overseas] are inexpert in the requirement that the writ be prepared for the particular person for whom it is intended, and the residents of these areas have learned what to do; and the other authority holds that the operative consideration is, because valid witnesses are not readily found to confirm the signatures [and the declaration of the agent serves to authenticate the signatures of the witnesses], and in these places, too, witnesses are not readily found.*

- B. *Not at all. Rabbah can work matters out in accord with his theory, and Raba can work matters out in accord with his theory.*
- C. *Rabbah can work matters out in accord with his theory: All parties concur that the reason for the required declaration is that [Israelites overseas] are inexperienced in the requirement that the writ be prepared for the particular person for whom it is intended, and here, what is at issue is, the initial authority holds that since these are located near the Land of Israel, they learn what is required; then Rabban Gamaliel comes along to say that those located in areas surrounded by the Land of Israel have learned the rules, while those nearby have not, then R. Eliezer comes along to indicate that those located in areas surrounded by the Land of Israel also are not exempt, so as not to make a distinction among territories all assigned to the category of "overseas."*
- D. *Raba can work matters out in accord with his theory: All parties concur that the reason for the required declaration is that valid witnesses are not readily found to confirm the signatures. The initial Tannaite authority takes the view that these locales, since they are located near the border, will produce witnesses; Rabban Gam-*

aliel comes along to say that in the areas surrounded by the Land of Israel, witnesses are going to be readily turned up, while in the areas near the Land, that is not the case; then R. Eliezer comes along to say that also in the areas surrounded by the Land of Israel, that is not the case, so as not to make a distinction among territories all assigned to the category of "overseas."

- I.8 A. *We have learned in the Mishnah: **And sages say, "He must state, 'In my presence it was written, and in my presence it was signed,' only in the case of him who delivers a writ of divorce from overseas, and him who takes [one abroad]":***
- B. *Does it then follow that the initial Tannaite authority before us takes the view that one who takes a writ of divorce overseas is not required to make the stated declaration? Then is not this what is at issue? The one authority maintains that the operative consideration is, because [Israelites overseas] are in-expert in the requirement that the writ be prepared for the particular person for whom it is intended, **[4B]** and the residents of these areas have learned what to do; and the other authority holds that the operative consideration*

is, because valid witnesses are not readily found to confirm the signatures [and the declaration of the agent serves to authenticate the signatures of the witnesses], and in these places, too, witnesses are not readily found.

- C. *Rabbah can work matters out in accord with his theory, and Raba can work matters out in accord with his theory.*
- D. *Rabbah can work matters out in accord with his theory: All parties concur that the reason for the required declaration is that [Israelites overseas] are inexperienced in the requirement that the writ be prepared for the particular person for whom it is intended, and here, what is at issue is, whether we make a decree extending the obligation that applies to one who brings a writ from overseas to the Land of Israel to the person who takes a writ from the Land of Israel overseas, and the rabbis cited below maintain that we do make a decree covering one who takes such a writ overseas on account of the decree covering bringing such a decree to the Land of Israel.*
- E. *Raba can work matters out in accord with his theory: All parties concur that the reason for the required declaration is that valid witnesses are not readily found to confirm the signatures. The rabbis cited later*

on propose to explain the reasoning behind the position of the initial authority.

- I.9 A. *We have learned in the Mishnah: **And he who delivers [a writ of divorce] from one overseas province to another must state, “In my presence it was written, and in my presence it was signed.”***
- B. *Lo, if he takes it from one place to another in the same overseas province, he does not have to make the required declaration. Now that poses no problem to Raba [who can explain why], but it does present a conflict with the position of Rabbah!*
- C. *Do not draw the conclusion that if he takes it from one place to another in the same overseas province, he does not have to make the required declaration. Rather, draw the conclusion that if he brings it from one province to another in the Land of Israel, he does not have to make that declaration.*
- D. *But that position is spelled out explicitly in the Mishnah paragraph itself: **He who delivers a writ of divorce in the Land of Israel does not have to state, “In my presence it was written, and in my presence it was signed”!***

- E. *If I had only that statement to go by, I should have concluded that that is the case only after the fact, but to begin with, that is not the rule. So we are informed to the contrary.*
- F. *There are those who set up the objection in the following language: [And he who delivers [a writ of divorce] from one overseas province to another must state, "In my presence it was written, and in my presence it was signed":] Lo, if he takes it from one place to another in the same overseas province, he does not have to make the required declaration. Now that poses no problem to Rabbah [who can explain why], but it does present a conflict with the position of Raba!*
- G. *Do not draw the conclusion that if he takes it from one province to another in the Land of Israel he does not have to make the declaration, but say: Lo, if it is within the same province overseas, he does not have to make that declaration, but if it is from one province to another in the Land of Israel, what is the law? He has to make the declaration.*
- H. *Then the Tannaite formulation ought to be: **And he who***

- delivers [a writ of divorce]** without further articulation.
- I. In point of fact, even if one brings a writ of divorce from one province to another in the Land of Israel, *he also does not have to make the declaration, for, since there are pilgrims, witnesses will always be available.*
- J. *That poses no problem for the period at which the house of the sanctuary is standing, but for the period in which the house of the sanctuary is not standing, what is to be said?*
- K. *Since courts are well established, there still will be plenty of witnesses.*
- I.10 A. *We have learned in the Mishnah: **Rabban Simeon b. Gamaliel says, “Even [if he brings one] from one jurisdiction to another [in the same town]”:***
- B. And said R. Isaac, “There was a town in the Land of Israel called Assasiot, in which were two governors, jealous of one another. Therefore it was necessary to refer also to the case of bringing a writ **from one jurisdiction to another [in the same town].**”
- C. *Now to Raba that poses no problems, but to Rabbah it presents a question!*
- D. *Not at all, Rabbah for his part*

also accepts the consideration important to Raba.

E. *Then what is at stake between them?*

F. *At stake between them is a case in which two persons brought the writ, or if it was brought from one locale to another in the same province overseas.*

I.11 A. *We have learned in the Mishnah: **He who delivers a writ of divorce from overseas and cannot say, "In my presence it was written, and in my presence it was signed," if there are witnesses [inscribed] on it—it is to be confirmed by its signatures [M. 1:3C-E].** Now in reflecting on that matter, [we said], what is the meaning of the language, **and cannot say?** [5A] *If we say, it refers to a deaf-mute, can a deaf-mute come along and raise an objection and invalidate the decree? And lo, we have learned in the Mishnah: **All are valid for delivering a writ of divorce, except for a deaf-mute, an idiot, and a minor, a blind man, and a gentile [M. 2:5E-G].** And said R. Joseph, "Here with what case do we deal? A case in which he gave it to her when he was of sound senses, but he did not have time to say, 'Before me it was written and**

before me it was signed,' before he was struck dumb." *To Raba that poses no problems, but to Rabbah it is a challenge!*

- B. *Here with what situation do we deal? It was after the requirement of intentionality had been widely learned.*
- C. *If so, then one may indeed invoke the conception, we have to take precaution lest the matter revert to its former chaos.*
- D. *If so, then the same rule should pertain even if the bearer cannot make such a statement?*
- E. *A case in which one had sound senses but then was struck dumb is not commonplace, and for matters that are not commonplace rabbis did not make precautionary decrees.*
- F. *Well, the matter of a woman's bringing the writ of divorce is uncommon, and yet we have learned in the Mishnah: **A woman herself delivers her writ of divorce [from abroad], on condition that she must state, "In my presence it was written, and in my presence it was signed" [M. 2:7E-F].***
- G. *It is to avoid making distinctions among classifications of bearers.*
- H. *If that is the case, then the husband, too, should be subject to the law of declaration, so how come it has been taught on*

Tannaite authority: He himself who brought his own writ of divorce does not have to say, "Before me it has been written, and before me it has been signed"?

- I. *Well, exactly why did rabbis say, "It is necessary to declare, 'Before me it was written and before me it was signed'"? It is because the husband may come along and challenge the writ of divorce and invalidate it. But in this case, the man is holding it in his own hands, so is he going to raise questions about its validity?*

- I.12 A.** *Come and take note of what Samuel asked R. Huna: "As to two persons who brought a writ of divorce from overseas, do they have to say, 'Before us it was written and before us it was signed,' or do they not have to say that?"*
- B. He said to him, "They do not have to say that. *For if they had said in our presence, 'He has divorced her,' would they not be believed?*"
- C. *That poses no problem to Raba, but it is a problem for Rabbah!*
- D. *Here with what situation do we deal? It was after the requirement of intentionality had been widely learned.*
- E. *If so, then one may indeed invoke the conception, we have to take precaution lest the*

- matter revert to its former chaos.
- F. *If so, then the same rule should pertain even if two persons brought the writ.*
- G. *Two persons bringing a writ of divorce is uncommon, and for matters that are not commonplace rabbis did not make precautionary decrees.*
- H. *Well, the matter of a woman's bringing the writ of divorce is uncommon, and yet we have learned in the Mishnah: **A woman herself delivers her writ of divorce [from abroad], on condition that she must state, "In my presence it was written, and in my presence it was signed" [M. 2:7E-F].***
- I. It is to avoid making distinctions among classifications of bearers.
- J. *If that is the case, then the husband, too, should be subject to the law of declaration, so how come it has been taught on Tannaite authority: He himself who brought his own writ of divorce does not have to say, "Before me it has been written, and before me it has been signed"?*
- K. *Well, exactly why did rabbis say, "It is necessary to declare, 'Before me it was written and before me it was signed'"? It is because the husband may come along and*

challenge the writ of divorce and invalidate it. But in this case, the man is holding it in his own hands, so is he going to raise questions about its validity?

- I.13 A.** *Come and take note:* He who brings a writ of divorce from overseas and gave it to the woman but did not say to her, “Before me it was written and before me it was signed,” if the writ can be confirmed through its signatures, it is valid, and if not, it is invalid. It must follow that the requirement of saying, “Before me it was written and before me it was signed,” has been imposed not to treat the wife’s situation in accord with a strict rule but rather in accord with a lenient rule.
- B. *That poses no problem to Raba, but it is a problem for Rabbah!*
- C. *Here with what situation do we deal? It was after the requirement of intentionality had been widely learned.*
- D. *If so, then one may indeed invoke the conception,* we have to take precaution lest the matter revert to its former chaos.
- E. Here it is a case in which the woman has remarried.
- F. *If so, then how can you say,* the requirement of saying, “Before me it was written and before me it was signed,” has been imposed

- not to treat the wife's situation in accord with a strict rule but rather in accord with a lenient rule! *Is the reason that we allow the writ to be confirmed through the signatures because she has remarried?*
- G. *This is the sense of the statement: [The writ can be confirmed through its signatures], and should you say, we should impose a strict rule on her and force [the husband] to divorce her, lo, it is the intent in requiring the statement, "Before us it was written and before us it was signed," not to treat the wife's situation in accord with a strict rule but rather in accord with a lenient rule! Now [5B] what is the operative consideration? Perhaps the husband may come and challenge the writ of divorce and invalidate it? Since here the original husband is not raising any objection, are we going to go and raise problems?*

Readers will stipulate that Bavli at I.14 proceeds in the same fair and balanced manner to expose the dispute of Yohanan and Joshua b. Levi. But enough has been given to provide a full grasp of the Bavli's intellectual morphology. Here the Yerushalmi, as much as the Bavli, presents a sustained argument, not just a snippet of self-evidently informative information, as at its reading of M. B.M. 1:1. So we now examine a fully exposed argument in the Yerushalmi as against its counterpart in the Bavli.

The Yerushalmi presents two theses, A-C, then challenges the second of the two, D-E. This produces a secondary inspection of the facts of the matter, F-I, and a resolution of the issues raised, J; then another secondary issue, K-M. Is there an *Auseinandersetzung* between the two conflicting parties, Joshua b. Levi and Yohanan? Not at all. There is, in fact, no

exchange at all. Instead of a dialogue, formed into an on-going set of challenges, we have the voice of the Talmud intervening, “and is this a lenient ruling at all?” There is no pretense that Joshua asks a question to Yohanan, or Yohanan to Joshua. The controlling voice is that of the Talmud itself, which sets up pieces of information and manipulates them. B. I.5, by contrast, presents us with one of the Bavli’s many superb representations of issues, and we see that the goal of contention is not argument for its own sake, nor is the medium the message, as some have imagined.

Here is an instance of what I maintain characterizes the Bavli and not the Yerushalmi: the search for the unitary foundations of the diverse laws, through an inquiry into the premises of discrete rules, the comparison and contrast of those premises, the statement of the emergent principles, and the comparison and contrast of those principles with the ones that derive from other cases and their premises—a process, an inquiry, without end into the law behind the laws. What the Bavli wants, beyond its presentation of the positions at hand, is to draw attention to the premises of those positions, the reasoning behind them, the evidence that supports them, the argument that transforms evidence into demonstration, and even the authority, among those who settle questions by expressing opinions, who can hold the combination of principles or premises that underpin a given position.

B. at I.1 states the contrary explanations and identifies the issues between them. Then one position is examined, challenged, defended—fully exposed. The second position is given equal attention, also challenged, also defended, in all, fully exposed. The two positions having been fairly stated and amply argued, we proceed to the nub of the matter: if X is so right, then why has Y not adopted his position? And if Y, then why not X? This second level of exchange allows each position to be re-defended, re-explained, re-exposed—all on fresh grounds. Now at this point, we have identified two or more principles that have been combined to yield a position before us, so the question arises, what authority, among those who stand behind the law, holds these positions, which, while not contradictory, also are not commonly combined in a single theory of the law? I.5 then exposes the several possibilities—three major authorities, each with his several positions to be spelled out and tested against the allegations at hand.

Now, when we observe that one Talmud is longer than the other, or one Talmud gives a fuller account than the other, we realize that such an observation is trivial. The real difference between the Talmuds emerges from this—and I state with emphasis: *the Bavli’s completely different theory of what it wishes to investigate*. And that difference derives not from intellectual morphology, but generative purpose: why the framers of the Bavli’s compositions and composites did the work to begin with. The outlines of the

intellectual character of the work flow from the purpose of the project, not the reverse; and thence, the modes of thought, the specifics of analytical initiative—all these are secondary to intellectual morphology. So first comes the motivation for thought, then the morphology of thought, then the media of thought, in that order.

The difference between the Yerushalmi and the Bavli is the difference between jurisprudence and philosophy; the one is a work of exegesis in search of jurisprudential system, the other, of analysis in quest of philosophical truth. To state matters simply, the Yerushalmi presents the laws, the rule for this, the rule for that—pure and simple; “law” bears its conventional meaning of jurisprudence. The Bavli presents the law, now in the philosophical sense of, the abstract issues of theory, the principles at play far beneath the surface of detailed discussion, the law behind the laws. And that, we see, is not really “law,” in any ordinary sense of jurisprudence; it is law in a deeply philosophical sense: the rules that govern the way things are, that define what is proportionate and orderly and properly composed.

The reason that the Bavli does commonly what the Yerushalmi does seldom and then rather clumsily—the balancing of arguments, the careful formation of a counterpoint of reasons, the excessively fair representation of contradictory positions (why doesn’t X take the position of Y? why doesn’t Y take the position of X? Indeed!)—is not that the Bavli’s framers are uninterested in conclusions and outcome. It is that for them, the deep structure of reason is the goal, and the only way to penetrate into how things are at their foundations is to investigate how conflicting positions rest on principles to be exposed and juxtaposed, balanced, and, if possible, negotiated, if necessary, left in the balance.

The Yerushalmi is an eighteenth century fugue, the Bavli, a twentieth century symphonic metamorphosis: not merely more complicated, but rather, a different conception altogether of what music is—and can do. And while, in the end, neither kind of music is the only valid kind, taste and judgment come into play; while we value and enjoy the simplicities of the baroque, the profundities, the inventiveness, the abstraction of our own day’s music speak to us and reshape our hearing. So too, while anyone can appreciate the direct and open clarity of the Yerushalmi (in those vast spaces of the text that are clear and accessible), no one can avoid the compelling, insistent, scrupulously fair but unrelenting command of the Bavli: see to the center of things, the core of mind, the workings of intellect in its own right.

VII. *The Bavli's Version of the Integrity of Truth: The Cogency of (Jurisprudential) Laws in (Philosophical) Law*

Having shown that diverse topics of the Mishnah are so represented as to make a single set of cogent points about hierarchical classification, I turn directly to the problem of the Bavli: can the same claim be made of the Mishnah's greatest single commentary, that it too says one thing about many things? The answer to the "can" lies in rhetoric: do the people talk in the same way about many subjects? The answer is that they do. Then what is it that our sages say time and again? In the following case, I find a fine articulation of the answer to that question, which is, as I have already iterated, cases rest on premises, which point toward principles; principles carry us to other premises, that yield other cases; and diverse cases, their premises and their principles, then can be shown to coalesce in, if not harmonious statements, then statements of fixed and few differences at the level of high abstraction. We then reduce the range of diversity to a few differences; demonstrate the harmony of discrete rules; show the operation of some few laws, so moving jurisprudence upward to the level of philosophy. In the context defined by the Mishnah, the proposition of the Mishnah about the ontological unity of being is matched by the persistent results of the process of thought instantiated throughout the Bavli, demonstrating the intellectual unity of thought. I forthwith turn to a case in point.

M. QIDDUSHIN 2:2

- A. "Be betrothed to me for this cup of wine," and it turns out to be honey —**
B. ". . . of honey," and it turns out to be of wine,
C. ". . . with this silver denar," and it turns out to be gold,
D. ". . . with this gold one," and it turns out to be silver—
E. ". . . on condition that I am rich," and he turns out to be poor,
F. ". . . on condition that I am poor," and he turns out to be rich—she is not betrothed.
G. R. Simeon says, "If he deceived her to [her] advantage, she is betrothed."

Now for the exegesis of Simeon's view, G.

- [II.A] R. Simeon says, "If he deceived her to her ad-**

vantage, she is betrothed" [M. 2: 2H].

II.1 A. **R. Simeon says, "If he deceived her to [her] advantage, she is betrothed:"**

- B. *But doesn't R. Simeon accept the following: wine, and it turned out to be vinegar, vinegar, and it turned out to be wine, —both parties have the power to retract [M. B.B. 5:6K-L]? Therefore, there are people who are perfectly happy with wine, others with vinegar; so here too, some are happy with silver and not with gold at all.*
- C. *Said R. Shimi bar Ashi, "I bumped into Abbaye, who was in session and explaining this matter to his son: here with what case do we deal? It is one in which a man said to his agent, 'Go, lend me a silver denar, and with it betroth Miss So-and-so in my behalf,' and the agent went and lent him a gold denar. One authority maintains that the man was meticulous about the instructions, and the other, that all he was doing was giving him good advice on how to proceed ['showing him the place']."*
- D. *If it is true that the Mishnah speaks of an agent, then the language should be not, **Be betrothed to me**, but rather, **Be betrothed to him!** And so too, not **If he deceived her to [her] advantage**, but rather, **If he***

deceived him to [his] **ad-
vantage!**

- E. *But to begin with it was of gold* [Freedman: the agent knew full well that he was giving a gold denar].
- F. *Rather, said Raba, "I am the lion of the group explain it—and who might that be? It is R. Hiyya bar Abin: here with what case do we deal? One in which she said to her agent, 'go and receive for my my token of betrothal from Mr. So-and-so, who said to me, "be betrothed to me with a denar of silver,"" and he went and the other gave him a denar of gold. One authority maintains that the woman was meticulous about the instructions, and the other, that all she was doing was giving him good advice on how to proceed ['showing him the place']."*
- G. *And what is the meaning of the language, **and it turns out to be?***
- H. *It was wrapped up in a cloth [and only when the women got it did she know what it was].*
2. A. *Said Abbayye, "R. Simeon, Rabban Simeon b. Gamaliel, and R. Eleazar, all take the view that, in a case such as this, in giving these instructions, all he was doing was giving him good advice on how to proceed ['showing him the place']."*
- B. *R. Simeon: as we have just now said.*
- C. *R. Simeon, Rabban Simeon b.*

Gamaliel: as we have learned in the Mishnah: [49A] An unfolded document [has] the signatures within [at the bottom of a single page of writing]. And one which is folded has the signatures behind [each fold]. An unfolded document, on which its witnesses signed at the back, or a folded document, on which its witnesses signed on the inside—both of them are invalid. R. Hananiah b. Gamaliel says, “One which is folded, on the inside of which its witnesses signed their names, is valid, because one can unfold it.” Rabban Simeon b. Gamaliel says, “Everything is in accord with local custom” [M. B.B. 10:1].

*Now in reflecting on this matter [we said], well, doesn't the first authority concur, **Everything is in accord with local custom?** And said R. Ashi, “This refers to a place in which a plain one was customary, and a folded one was made, or a place in which a folded one was customary, and a plain one was made. All parties concur that the one who gave instructions was meticulous about the matter. Where is the point of dispute? Where both forms are*

acceptable, and the husband said to the scribe, 'Make a plain one,' but the scribe went and made a folded one. One authority maintains that the husband was meticulous about the instructions, and the other, that all he was doing was giving him good advice on how to proceed ['showing him the place']."

D. *R. Eleazar: as we have learned in the Mishnah:*

E. The woman who said, "Receive my writ of divorce for me in such-and-such a place," and he [the messenger] received it for her in some other place—

F. it is invalid.

G. R. Eliezer declares it valid [M. Git. 6:3K-M].

H. *Therefore* all he was doing was giving him good advice on how to proceed ['showing him the place']."

[B] R. Yohanan said, "R. Simeon concurs that if he deceived her about an advantage as to genealogy, she is not betrothed."

[C] Said R. Yosé, "The Mishnah itself has made the same point: **'On condition that I am a priest, and he turns out to be a Levite [etc.] [M. 2:21].**

[D] Now there is no *problem* in the case in which he claimed to be **a priest and turns out**

3. A. Said Ulla, "The Mishnah's controversy concerns only a monetary advantage, but as to a genealogical advantage, all parties concur that she is not betrothed. *How come? 'I really don't want a shoe that is bigger than my foot.'*"

B. *So too it has been taught on Tannaite authority: R. Simeon concedes that if he deceived her to her advantage in a matter of*

to be a Levite, [that she is not betrothed].

- [E] [But if he claimed to be] a Levite and he turned out to be a priest, [there too she is not betrothed, for] she has the right to say, "I do not want his superior airs to lord it over me."

genealogy, she is not betrothed [T. Qid. 2:5I].

- C. *Said R. Ashi, "A close reading of our Mishnah-paragraph yields the same conclusion, for the Tannaite formulation is as follows:*
- D. **"... on condition that I am a priest,' and he turns out to be a Levite,**
- E. **"... on condition that I am a Levite,' and he turns out to be a priest,**
- F. **"... a Netin,' and he turns out to be a mamzer,**
- G. **"... a mamzer,' and he turns out to be a Netin [M. 2:3A-D].**
- H. *"And in these matters, R. Simeon does not take issue."*
- I. *Objected Mar bar R. Ashi, "Well, note the further Tannaite formulation:*
- J. **"... on condition that I have a daughter or a slave girl who is an adult [alt.: a hairdresser],' and he has none,**
- K. **"... on condition that I have none,' and he has one—**
- L. *"and these represent monetary advantages, and yet here too R. Simeon does not take issue! Rather, he differs in the first clause, and likewise in the second, and here too, he differs in the first clause, and here too!"*
- M. *But how are the matters comparable? In that case, both items*

represent a monetary advantage, so he differs in the first clause, and the same in the second. But here, where it is a matter of a genealogical advantages, if he did differ, it should have been made explicit in the Tannaite formulation.

- N. *And if you prefer, I shall say, here too genealogical advantage is what is at issue. Do you imagine that **an adult** is meant literally? It means, of superior standing, for the betrothed woman can say, "It is not acceptable to me that she should take my words from me and go and tell them around the neighborhood."*

The Yerushalmi's composition wants to make the point that Simeon will go along with an advantageous claim as to genealogy, a point that the Mishnah-rule itself is shown to register. And that concludes the Yerushalmi's message.

The Bavli covers the same ground, but much more, and in a more complex manner. First, we address the generalization, not a particular detail. And we frame the issue in another context altogether, that of a transaction in wine. So the Bavli accomplishes its principal purpose of moving always toward the general, transcending the details of a case in favor of its principle, moving beneath the surface of a particular toward its abstract premise. And that is accomplished not in so many words but implicitly, in the simple statement before us. Not only so, but, if this did not accomplish the purpose, II.2 states matters in general terms all over again—but the terms now shift to another matter altogether. How do we interpret instructions that a person gives an agent? Now, it is clear, that issue inheres in a variety of cases, which we review; it can be shown to inhere in ours as well. But Abbayye's statement, II.2.B does not go back into our case in detail; it suffices to allude to II.1.F. Then we go into another matter altogether, Simeon b. Gamaliel's ruling on the rules covering the preparation of documents; then yet another item, the receipt of a writ of divorce.

Now all these cases have in common is the premise that we have articulated, and it is the glory of the Bavli to demonstrate that fact, time and

again. Does that mean the Bavli's Mishnah-exegesis falls below the standard of clarity attained in the Yerushalmi? Not at all, for at II.3 we state explicitly the exegetical proposition that the Yerushalmi has established. But here too, we present that proposition in a remarkably fresh way. Ashi sustains the proposed proposition (on which Y. concurs), but then his son, Mar, takes issue with that reading; once more, a proposition is transformed into a point of contention, a thesis is offered that requires us to read the Mishnah-paragraph in a contrary way, and that thesis is grounded on a close and careful reading of the formulation of the language of the Mishnah itself.

VIII. *The One Whole Torah of Moses, Our Rabbi*

The outcome of the contrast between the Yerushalmi and the Bavli, yielding this account of the Bavli's unique voice, then, is not merely the difference that the Yerushalmi is brief and laconic while the Bavli speaks in fully spelled out ways. Nor is it the difference that, in general, the Yerushalmi's presentations are not dialectical, and the Bavli's are, for even though that difference may in general prove fixed, on occasion the Yerushalmi will expand an argument through question and answer, parry and counter-thrust, and the analogy of a duel will apply to the Yerushalmi, if not consistently. The difference is intellectual: the Bavli's composites' framers consistently treat as a question to be investigated the exegetical hypotheses that the Yerushalmi's compositions' authors happily accept as conclusive. All of the secondary devices of testing an allegation—a close reading of the formulation of the Mishnah, an appeal to the false conclusion such a close reading, absent a given formulation, might have yielded, to take the examples before us—serve that primary goal.

The second recurrent difference is that the Bavli's framers find themselves constantly drawn toward questions of generalization and abstraction, moving from case to principle to new case to new principle, then asking whether the substrate of principles forms a single, tight fabric. The Yerushalmi's authors rarely, if ever, pursue that quest for unity. But what gives the Bavli its compelling, ineluctable power to persuade, the source of the Bavli's intellectual force is that thrust for abstraction, through generalization (and in that order, generalization, toward abstraction). To spell out in very simple terms what I conceive to be at issue: the way that the integrity of the law emerges is, first, generalization of a case into a principle, then, the recasting of the principle into an abstraction encompassing a variety of otherwise free-standing principles.

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