
Between the
BABYLONIAN
and
PALESTINIAN
TALMUDS

*Accounting for
Halakhic Difference
in Selected Sugyot from
Tractate Avodah Zarah*

CHRISTINE ELIZABETH HAYES

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Christine Elizabeth Hayes

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*This work is lovingly dedicated
to my parents,
Marjorie and Victor C. Hayes*

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Manuscripts and Early Editions

Unless otherwise indicated, citations of Mishnah follow the first printed edition, citations of Tosefta follow Zuckerman's edition, citations of Yerushalmi follow the Venice edition, and citations of Bavli follow the standard Vilna-Romm printed edition. Significant variants based on the manuscripts (especially Kaufmann, Parma, and Lowe manuscripts of the Mishnah; Jewish Theological Seminary, Paris, and Munich manuscripts of the Bavli; Leiden manuscript of the Yerushalmi) and early editions are provided in the notes. Relevant variants from Geniza fragments of all works are also contained in the notes.

Mishnah

Ms. Kaufmann. Hungarian Academy of Sciences, Budapest, Ms. A 50, from the library of Prof. D. Kaufmann. Facsimile edition by Dr. George Beer, The Hague, 1929; reprinted in smaller format, Jerusalem: n.p. 1968.

Ms. Parma (de Rossi 138). Parma, Bibliotheca Palatina no. 3173 (J. B. de Rossi, *Mss. codices hebraici*, Parma 1803, no. 138). Facsimile edition entitled *Mishna Codex Parma (de Rossi 138)*, Jerusalem: Kedem Publishing, 1970.

Ms. Cambridge (Lowe). Cambridge, University Library Addington 470 (II). Published by W. R. Lowe as *The Mishnah on Which the Palestinian Talmud Rests*. Cambridge: Cambridge University Press, 1883.

Temani New York = Rab. 30/31 of the Jewish Theological Seminary in New York. Five orders (lacking Nashim). Unpublished.

Mishnah, Pesaro edition = an early edition of the Mishnah, date and place unknown but possibly Pesaro or Constantinople in the early sixteenth century. Housed in the National Library in Jerusalem.

Mishnah, Naples edition = the first printed edition of the Mishnah, Naples, 1492, with Hebrew version of Maimonides' commentary. Facsimile edition, with introduction by A. M. Haberman, Jerusalem: Makor Publishing, 1970.

Mishnah with Maimonides' Commentary

Autograph. Mss. Sassoon nos. 72 and 73 (now in the National Library in Jerusalem) and Oxford, Bodleian Library (poc. 295, Uri 182, cat. no. 404). Facsimile edition by D. Sassoon, *Maimonidis Commentarius in Mishna* 1–3, Copenhagen, 1956–1966. Referred to here as Rambam Sassoon.

Paris, Bibliothèque Nationale cat. no. 330. Mishnah with the commentary of Moses ben Maimon in Hebrew translation (from Pes. 5:5).

Tosefta

Two manuscripts contain Tosefta Avodah Zarah. Ms. Vienna Heb. 20, a complete thirteenth-century manuscript of Spanish origin. Ms. Erfurt (now Berlin, Preussischer Kulturbesitz), probably twelfth century, either Italian or German (breaks off after Zevahim chapter 1).

First edition, an appendix to Alfasi's compendium to the Talmud, Venice, 1521–1522.

Zuckerman, M. S. *Tosefta Based on the Erfurt and Vienna Codices*. Jerusalem: Wahrman Books, 1970.

Yerushalmi

Ms. Leiden, Scaliger no. 3. Facsimile edition with introduction by Saul Lieberman, Jerusalem: Kedem Publishing, 1971.

First printed edition by Daniel Bomberg in Venice (1522–1523) based upon the Leiden ms. Reprinted in facsimile in Berlin: Sefarim-Verlag, 1925.

Bavli

Ms. Munich, Bayerische Staatsbibliothek Cod. Heb. 95. Facsimile edition by Strack, Leiden 1912; reprinted in Jerusalem by Makor Publishing, 1970.

Ms. New York JTS (Jewish Theological Seminary) 44830, Avodah Zarah. Facsimile published by Shraga Abramson, New York: JTSA, 1957.

Ms. Paris, Bibliothèque Nationale, 1337. Tractates Bava Batra, Avodah Zarah and Horayot. Unpublished.

First complete edition of the Babylonian Talmud, by Daniel Bomberg in Venice, 1520–1523. Facsimile edition entitled *The Babylonian Talmud, First Edition, Venice 1520–1523 (Bombergi)*, Jerusalem: Makor Publishing, 1968–1972.

Abbreviations

<i>Antiq.</i>	Josephus' <i>Jewish Antiquities</i>
AZ	Avodah Zarah
b.	Babylonian Talmud (Bavli)
Ber	Berakhot
BM	Bava Metsia
BQ	Bava Qamma
BSOR	<i>Bulletin of the School of Oriental Studies</i>
Dt. Rab.	Deuteronomy Rabbah
Git	Gittin
<i>Hist. Aug.</i>	<i>Scriptores Historiae Augustus</i>
HUCA	<i>Hebrew Union College Annual</i>
Hull	Hullin
JAAR	<i>Journal of the American Academy of Religion</i>
JAGNES	<i>Journal of the Association of Graduates in Near Eastern Studies</i>
JAOS	<i>Journal of the American Oriental Society</i>
JBL	<i>Journal of Biblical Literature</i>
JJS	<i>Journal of Jewish Studies</i>
JSOT	<i>Journal for the Study of the Old Testament</i>
Ker	Keritot
Ket	Ketubbot
LCL	Loeb Classical Library
LXX	Septuagint
m.	Mishnah
Meg	Megillah
Men	Menahot
MGWJ	<i>Monatschrift für Geschichte und Wissenschaft des Judentums</i>
MMT	Miqsat Maaseh Torah
ms.	manuscript
Ned	Nedarim

p.	Palestinian Talmud (Yerushalmi)
p.e.	printed edition
Pes	Pesaḥim
PW	<i>Paulys Realencyclopädie der Classischen Altertumswissenschaft</i> , Wissowa edition
Qidd	Qiddushin
RH	Rosh Ha-Shanah
Sanh	Sanhedrin
Shab	Shabbat
Shev	Shevi'it
t.	Tosefta
Tanḥ	Tanḥuma
Tj.	Palestinian Talmud
Tos.	Tosafot
var.	variant
Zev	Zevaḥim

Transliteration System

The transliteration of Hebrew and Aramaic is based on the following system:

ʾ/- = א	h = ח	' = ע
v = ו	t = ט	f = פ
b = ב	y = י	p = פ
g = ג	kh = כ	ts = צ
d = ד	k = כ	q = ק
h = ה	l = ל	r = ר
v = ו	m = מ	s = ש
u = ו	n = נ	sh = שׁ
z = ז	s = ס	t = ת

However, in the case of commonly used Hebrew and Aramaic terms or names (e.g., Joshua, Judah, tserika, amoraim, tannaim) conventional spelling and Roman type are generally employed. Glottal stop (א) is not indicated if the phoneme is sufficiently represented by an English vowel (e.g., amina). Dagesh forte is represented by reduplication (e.g., qiddushin).

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Between the Babylonian and Palestinian Talmuds

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Introduction

This book explores the degree to which and the manner in which legal differences between the two Talmuds may be utilized for the purposes of historical reconstruction of talmudic culture. The vast complex of Jewish religious and civil law at the close of late antiquity is contained in two great collective works: the Babylonian Talmud (the Bavli) and its smaller, more concise counterpart, the Palestinian Talmud (the Yerushalmi). At the base of the two Talmuds stands the Mishnah, a legal compendium edited, it is thought, by Rabbi Judah ha-Nasi around 220 C.E. and containing the traditions of Palestinian sages (tannaim; sing. = tanna) who flourished after the destruction of the temple until the early third century. The Mishnah is one of the earliest formulations of what came to be known as the Oral Torah¹ and was studied and transmitted as the accompaniment to and (in a very broad sense) interpretation of the Written Torah, or Hebrew Bible. In the amoraic period, which followed upon the close of the Mishnah, rabbinic sages (amoraim; sing. = amora) in both Palestine and Babylonia devoted themselves to the study and interpretation of this authoritative body of religious and civil law. The traditions generated by these sages were ultimately woven together into the superstructures of commentary and argument (gemara) found in the Palestinian and Babylonian Talmuds (Mishnah + gemara commentary = Talmud). Since scholars traveled between the two centers, traditions and teachings of Palestinian sages were transmitted to Babylonia and are found on nearly every page of the Babylonian Talmud, while Babylonian teachings were transmitted to Palestine and are to be found in the Palestinian Talmud. Yet, perhaps not surprisingly, despite their common point of departure (the Mishnah) and the exchange of legal traditions, the Palestinian and Babylonian Talmuds feature many differences in their discussion and interpretation of Jewish religious and civil law (halakhah). How are these differences to be explained?

This question has generally been phrased and answered (either explicitly or implicitly) in binary terms. In other words, the question is generally conceptualized as follows: Are the halakhic (legal) divergences between the two Talmuds the consequence of *internal* (textual, exegetical/hermeneutical, dialectical, redactorial) pro-

4 Introduction

cesses, the natural evolution of a complex and fertile core tradition; or are they the result of *external* (cultural, regional, historical) factors?²

The question is of great importance to scholars of talmudic history and culture. Insofar as halakhic differences between the two Talmuds may be generated by the divergent historical circumstances of their respective communities, these differences may provide the modern scholar with valuable information concerning those communities. Thus, determining the nature and genesis of halakhic difference is a desideratum for the talmudic historian.

However, the analysis of halakhic difference is a complex task. The primary objective of this work is to correct a tendency in some talmudic scholarship to posit historical and extratextual reasons for halakhic differences between the two Talmuds without first attending to a whole series of internal reasons for difference. This kind of reductive historical approach often stems from a reading of talmudic sources that ignores the textual, hermeneutical, and dialectical characteristics of the sources in question, resulting in the production of tendentious historiographical claims. Countering a reductive historical approach in the manner to be detailed shortly, we stand to gain more reliable methodologies for the study of talmudic texts, talmudic history, and talmudic culture. This book comprises a series of case studies of selected passages from Bavli and Yerushalmi tractates Avodah Zarah that is intended to serve as a methodological model for those who would avoid a reductive historicism while utilizing halakhic differences for historical reconstructions of talmudic culture.

Reductive Historical Analysis of Rabbinic Texts

In order to illustrate the often reductive nature of the external or historical approach to halakhic texts *generally* (and not just to the specific question of legal difference between the Talmuds, for which see the next section), I would like to consider a historical analysis of a set of prohibitions found in Mishnah Avodah Zarah.

The first two chapters of Mishnah Avodah Zarah contain a series of prohibitions regulating transactions between Jews and non-Jews. Business dealings with non-Jews are prohibited during the three-day period prior to an idolatrous festival. These include buying and selling, lending and borrowing objects or money, and repaying or collecting a repayment of a debt (1:1). Also prohibited are the sale to non-Jews of large domesticated animals (1:6), the sale of items used in idolatrous rituals (2:5), and the sale or lease of fields and even houses in the land of Israel (1:9).

Reasons for these various halakhot are found not in the terse Mishnah but in the extensive discussions of the Talmuds. The ban on business dealings prior to a festival is to avoid providing the non-Jew with any cause for giving thanks before his idol, or to avoid supplying him with the items needed for the celebration of his festival. The ban on selling land is in fulfillment of the biblical verse, as interpreted by the rabbis, לֹא תָחִיבם (Dt 7:2): “grant them no quarter” in the land of Israel. The ban on selling houses and even leasing fields is explained as an additional protective measure in this regard. The ban on selling large animals is connected to the biblical commandment of Sabbath rest even for labor animals.

Historians, however, typically describe the reasons for these halakhot in entirely different terms. Louis Ginzberg paints the following historical portrait:

In the year 70, as a result of the war, a considerable part of Palestine came into the possession of the gentile population, and since the Jews could not rescue it from them by force, they sought by means of a strict boycott to make the pagans' stay in their midst as unpleasant as possible. The Tannaim forbade the selling or renting of houses and fields to gentiles, and every kind of business dealing with them was forbidden on certain days. In addition, one might not sell them anything that might be expected to be used by them for idol-worship. Now since the soil cannot be cultivated without large cattle, the old prohibition of selling animals to gentiles [lest they be used in idolatrous sacrifice] was maintained. (1976:77)

Ginzberg locates the motivation for these rulings in the drastically changed situation of the postdestruction period. This portrait is not so different from the view of Krüger, who, in his 1907 edition of *Avodah Zarah* regarded these rulings as the outcome of deep Jewish hatred of the Romans. Elmslie quotes him as follows: "They are the reflection of embittered political warfare" (1911:4).³

Of particular interest, however, is the discussion of these halakhot by Gedaliah Alon. Alon develops the notion that the reason for these regulations was the struggle to prevent alienation of Jewish property in the postdestruction era. Alon recognizes, however, that the Talmuds provide quite different explanations for these halakhot and he addresses this difference directly:

The traditional explanation offered for these several restrictions is usually a religious one. Bondmen owned by Jews were taught to observe the mitzvot; how could they continue to do so if they were sold to gentiles? Beasts of burden would be put to work on the Sabbath, contrary to the fourth commandment. As for the sale of land, one does to be sure find a national-economic reason for outlawing it: the words *lo tehanem* in Deuteronomy (8:2) [*sic*] are interpreted to mean "thou shalt not give them *hanayah baqarqa*—a foothold on the soil." But even in this case, a religious reason is also given—to keep the land subject to tithing. Nevertheless, we may conclude that the underlying motivation for all these prohibitions was the desire to forestall the permanent settlement of foreigners in the Land of Israel, by preventing them from acquiring land and other *economically important* property. (1989:286)

Alon at least notes the glaring contrast between the historian's understanding of these laws and the tradition of interpretation that is recorded in the Talmuds. But his solution to this contrasting set of explanations is to set up a dichotomy of the real and the illusory: The *real* reasons for the halakhot are those that are economic, political, national, and social; the illusory reasons are those that are ideological, or what Alon calls "religious." This is a convenient division. The interpretations of these laws, found in the extensive and detailed discussions of the Talmuds, can in effect be summarily dismissed as so much pious rationalization, stemming from an attempt by later generations to superimpose religious ideology on the earlier laws of the Mishnah. The interpretations of the Talmud need not seriously occupy the historian who knows that people act and formulate laws in response to *real* things such as war, demographic shifts, invasions, and deprivation of property. The laws of the Mishnah find their sufficient cause in these concrete forces in the real world outside the text.

The primary problem with Alon's analysis is its false and anachronistic dichotomy between the religious/ideological,⁴ on the one hand, and the socioeconomic or national-economic, on the other.

Clearly, this bifurcation is inappropriate. The religious blueprint of the Bible is one that covers every aspect of life—social, economic, agricultural, as well as those areas that moderns tend to associate with religion (moral, spiritual, ritual). These cannot be separated. For the rabbis, it was a *religious* precept undergirding the entire Torah that the land of Israel was given to the Israelites as an eternal possession, that non-Israelites may reside in the land as resident aliens (the *ger ve-toshav*), but that the land itself had been apportioned to the members of the Israelite family in perpetuity. The religious scheme set forth in the Bible conceives of possession of the land of Israel by Israelites who will observe the numerous religious laws connected with the land (laws of agriculture, labor, tithing, the sabbatical and jubilee years, and other laws that serve to preserve the purity and sanctity of the land). Thus the rabbis' resistance to alienation of the land from its Israelite owners is a fundamentally *religious* resistance based on an adherence to the blueprint set forth in the Torah. Ironically, there is no stronger support for the religious nature of these rabbinic rulings (*taqqanot*) than the very verse that Alon cites as evidence of a *national-economic* motive: "do not let them settle down" (Dt 7:2), that is, gain a foothold, live with you in the land. In the wake of the Roman wars, demographic changes, and forced and voluntary emigrations, the biblical blueprint was eroding to a greater degree than ever before. These *taqqanot* of the tannaim are attempts to rearticulate in concrete terms the fundamental religious vision of the Bible: Israel's divine apportionment to the Israelites and all that that stewardship entailed. In these *taqqanot* then, we see a complex interaction of hermeneutical and historical factors.⁵

I am not suggesting that the rabbis were hermetically sealed off from events around them or that they worked out the halakhah from first principles, like ivory tower philosophers making no reference to anything outside their philosophical system. The very nature of the tradition the rabbis received—a multivoiced tradition with inherent tensions and inconsistencies—would make such a description impossible. I am, however, arguing against a reductive brand of historical analysis which implicitly paints a portrait of tannaitic rulings as the *de novo* creation of the rabbis in response to pressing social, economic, or national crises. This description is generated when scholars fail to acknowledge the many points of contact (not necessarily *continuities*) between rabbinic rulings and biblical voices and when they dismiss so-called religious discourse, particularly that of the Talmuds, as pious rationalization or co-optation of tannaitic rulings.

It was, of course, a major advance in scholarship when historians recognized that the Talmuds as hermeneutic literatures postdating the Mishnah may reveal more about the views and cultural experiences of the amoraim than those of the tannaim. But it is possible that the lesson has been learned too well. Where traditionalists may once have adopted uncritically the Talmuds' interpretation of a mishnah—or, more precisely, the Bavli's interpretation—scholars today are in danger of an uncritical posture of the inverse type: a blanket dismissal of the evidence and discussions of the Talmuds as discontinuous creations containing no data relevant to a study of the Mishnah. Such a view undermines a serious appraisal of the Talmuds as herme-

neutical literatures and fosters an impression of them as purely independent and ideologically driven discussions superimposed upon the Mishnah in the light of socioeconomic and regional interests of a later time.

The External or Historical Approach to Legal Difference Between the Talmuds

The historical approach to halakhic texts is encountered also in the study of halakhic difference between the two Talmuds. The historical explanation for halakhic difference attributes legal discrepancies between the two Talmuds to regional and cultural differences. This is the position adopted by Louis Ginzberg (1941b), when he argues that the divergent regional, cultural, socioeconomic, political, and historical experiences of the two Jewish communities were influential, if not determining factors for the way in which each community interpreted traditional materials and arrived at decisions in all areas of religious and civil law: "Whatever branch of talmudic law or doctrine we study, the observation is forced upon us that numerous differences between the two Talmuds reflect the differences between Palestinian and Babylonian life and thought" (p. xxiii). It is in the area of civil law that Ginzberg sees the greatest distinctions:

The potentialities for the free development of court-made legislation were enormous, and in both Palestine and Babylonia this development was closely linked with the prevailing economic and political conditions. Palestine retained its agricultural character throughout the talmudic period, while in Babylonia, commercial activity among the Jews expanded noticeably during the same period. Talmudic law in Palestine was therefore dictated by the interests of the farmer; whereas in Babylonia commerce was given due consideration. (p. xxvi)

Ginzberg provides several examples to support his claims:

Palestinian authorities recognized the right of the father to the earnings of his children, male and female, minor or adult, as long as they were supported by him, while the Babylonians denied the father's right to the earnings of his adult children even when they were supported by him. The small farmer in Palestine could not easily afford to pay for the labor supplied by his grandchildren who were still supported by him; the merchant in Babylonia did not find it too arduous to compensate them for their labor. (p. xxvi)⁶

In addition, Ginzberg records differences in laws of slavery (or Jewish serfdom), overreaching, and usury. In regard to the last, he notes that in Babylonia the development of commerce forced the rabbis to modify the rigor of Palestinian laws against usury, which were antispeculation and thus a benefit to the farmer.

It is certainly true that talmudic traditions are the function of specific communities of persons in specific historical times and cultures and therefore do contain information of interest to the historian of Jewish religion and culture. However, in the ensuing analyses of halakhic difference between the two Talmuds, I will argue against a reductive brand of historical analysis which focuses on socioeconomic, political, and other extratextual factors as the key to understanding halakhic differ-

ence and which dismisses the exegetical format of rabbinic texts as little more than pious packaging. Reductive historical analyses fail to recognize that in the rabbinic world of late antiquity the reading and interpretation of sacred or authoritative texts were real and powerful forces in the construction of culture, and in the generation of halakhic developments—as real and powerful as famines and wars. Rabbinic texts are, certainly formally speaking, fundamentally exegetical. The two Talmuds are more or less a literature of interpretation, development, and analysis of Mishnah. Thus, unless we understand rabbinic reading practices and canons of interpretation, unless we appreciate the degree to which and the specific way in which rabbinic literature is generated and shaped by the reading of other texts, we run the risk of subjecting this literature to reductive historical analysis. Historical forces and events, socio-economic pressures, and so on may be hypothesized in an effort to account for phenomena that may in fact be partly or fully explained as a response to exegetical stimuli. At the same time, however, one must guard against a kind of exegetical reductionism that would parody rabbinic texts as the dry and pedantic production of a scholastic elite cut off from (or simply ignoring) the realities of everyday life.

In sum, any study of talmudic literature, any reading of rabbinic readings, must do justice to the complex exegetical and historical forces that interact in the formation of rabbinic culture of late antiquity—or in that piece of rabbinic culture available to us: the texts in question. In this work, I endeavor to avoid the dual dangers of reductive historical and exegetical analyses. I argue that before we approach a passage of Talmud as cultural or religious historians, we must first understand the canons of interpretation and legal argumentation that have produced the passage before us. Subsequent historical and cultural analysis, if any, will be the more reliable for this approach. Why more reliable? Only with a proper understanding of talmudic strategies of interpretation, argumentation, and rhetoric is one equipped to recognize precisely those places in which these strategies are violated, to spot interpretations of a mishnah or early tradition that diverge from interpretive norms, to sense when a rabbinic reading is a reading against the grain. And it is precisely where the exegetical element is muted or compromised or deformed that the text may be susceptible to analysis in cultural-historical terms.

Critique of the Historical Analysis of Rabbinic Texts

While it is true that a society's laws take shape partly in response to socioeconomic, political, and other realities, the external or historical analysis of halakhic traditions as it has been executed in talmudic studies often suffers from several significant shortcomings.

First, the external or historical approach is a poor fit to the text it seeks to understand if it presupposes the capacity of this material to yield historical information *in a relatively transparent manner*. Second, as was stated earlier, this method is reductive if it devalues or fails to attend to the many (at times explicit) *internal* causes of halakhic difference.

Moreover, for much of the period of the formation of the Talmuds—the Babylonian Talmud in particular—we have very little relevant historical information.

Lacking external means of verification, scholars who seek historical explanations for legal differences between the two Talmuds often arrive at conclusions that are not only speculative and idiosyncratic but unfalsifiable. Indeed, in the absence of verification, the historian is often guilty of begging the question, assuming rather than proving that the stimulus for a particular halakhic difference is external rather than internal, and then simply positing the possible external cause of the documented difference.

In the following sections I will discuss each of these three problems at length and suggest concrete correctives that will enable us to retain the best elements of the historicist approach while rejecting those elements that are methodologically or conceptually flawed. Specifically, I will argue that cultural-historical information *can* be obtained from rabbinic texts, but only reliably so if one attends to the special characteristics of rabbinic texts that condition their historical use, such as the rhetorical and dialectical strategies employed.

I will also argue that a hyperactive and reductive brand of historical analysis can be prevented by scholars' attending to a range of internal (textual, hermeneutical, dialectical) causes of halakhic difference.

Finally, I will suggest that the lack of external verification is mitigated by the possibility of contextual and intratextual verification as well as the best methods of source criticism.

On the Susceptibility of Rabbinic Texts to Historical Analysis

The external or historical approach to halakhic difference, and to rabbinic literature generally, entails a confidence in the possibility of historical reconstruction from rabbinic texts. This confidence is based on a deduction that runs something like this: Generally speaking, if halakhic views in rabbinic literature are shaped by external circumstances, then halakhic literature must reflect those external circumstances. Further, insofar as halakhic differences between the Palestinian and Babylonian communities may be generated by their divergent geography, history, socioeconomics, and culture, these halakhic differences may provide the modern scholar with an index to the diverging history of and regional variation between the two Jewish communities. It is on the strength of this reasoning that some talmudic historians turn their attention to halakhic texts in reconstructing the social, economic, political, and cultural realities of late antique Judaism—specifically the divergent realities of Palestinian and Babylonian Judaism.

However, as was stated earlier, the historical approach is a poor fit to the text if it *presupposes* the capacity of this material to yield historical information *in a relatively transparent manner*.⁷ In fact, the susceptibility of rabbinic texts to historical analysis and their usefulness for historical reconstruction are contested issues in rabbinic scholarship and turn, in part, on our answer to a most basic question, articulated recently by Richard Kalmin (1994): To what extent do these ancient documents contain diverse sources?⁸ Are attributed statements and other apparent sources the work of late pseudepigraphs or do they indeed derive from earlier periods and various localities? (1994:1). Until this basic issue is resolved, the use of rabbinic texts for

the purposes of historical reconstruction lacks epistemic justification and methodological clarity. Kalmin sketches three modern scholarly approaches to the question of the dating and authorship of talmudic sources (2–3) and their concomitant assumptions concerning the historicity (and by extension the historical usefulness) of talmudic traditions. I reorganize and elaborate upon this tripartite division as a convenient frame for my own discussion of the issues.

In what may be called the traditional approach,⁹ it is assumed that rabbinic texts are basically historically reliable. For example, talmudic stories and legends, when stripped of clearly fabulous elements and exaggerations, yield a historical “kernel” that corresponds in a direct and relatively transparent way to historical events, actions, and speech.¹⁰ This uncritical approach has drawn fire from several quarters (e.g., Friedman 1987, Boyarin 1993:10–16) as scholars employ increasingly sophisticated methods of historical research.¹¹

In direct contrast to the traditional approach is the approach of scholars who hold some version of the view that rabbinic texts are not susceptible to meaningful historical analysis beyond the level of redaction. The analytical-descriptive approach of Arnold Goldberg, which emphasizes the fundamental synchronicity of rabbinic texts, is a clear example.¹² Goldberg uses formal criteria to identify and analyze individual citations (“textemes”) and then describes their function within the larger redactional unit. Since all the textemes exist simultaneously, he eschews any historical differentiation or diachronic analysis whatsoever.

Less extreme, yet still strongly opposed to the traditional approach, is the most recent work of Jacob Neusner. Neusner asserts, against Goldberg, that rabbinic documents “as we know them certainly encompass not only materials that serve the clearly-manifest program of the framers or compilers of the documents, but also the self-evident interests of authors of compositions and framers of composites who had other plans than those realized in the documents as we have them” (1995a:40). In other words, Neusner asserts the existence of diverse sources within the talmudic text (28–37). Nevertheless, his own documentary approach is itself primarily synchronic, focusing on the level of the complete redacted work as the primary level about which positivistic statements can meaningfully be made. Neusner maintains that the diverse sources of the Talmud were so thoroughly reworked and recontextualized by late Babylonian redactors as to neutralize their ability to provide information about the circles in which they originated.¹³ In addition, Neusner espouses an extreme skepticism regarding the value of attributions of sayings to particular sages at particular times and places, and so denies the possibility of historical reconstruction on the basis of rabbinic texts.¹⁴ Neusner’s most recent projects privilege the redacted plane of the text to an extreme, on the theory that although attributions cannot be validated, books (i.e., the individual *documents* of rabbinic literature) can (1990a:23). In several works employing this documentarian approach, Neusner speaks of each rabbinic work, including the Talmud, as a single unit, as though produced by a single authorship and giving testimony to a single community. Each rabbinic work is considered at the redacted level to be an authored text, shaped according to the ideology or philosophy of the final authors/redactors and bearing witness to the ideology of the period of redaction. In this view, individual rabbinic texts can be arranged in a chronological sequence *according to their dates of redaction* and then analyzed so as to

illuminate the diverse stages in the history of rabbinic Judaism. Neusner believes he can work out the characteristic teaching of each document (as reflected in the redacted level of the text) and produce a history of the major ideas or themes of Judaism through the rabbinic period. Thus by charting the views of first Mishnah, then Tosefta, then Yerushalmi, and then Bavli (interspersing various midrashic works according to chronology), we can see the development of Judaism itself, or rather a series of Judaisms each represented by its own text.¹⁵

While it is certainly true that the very composition and editing of rabbinic works exerts an influence on the contents so that a rabbinic work is more than its sources, the privileging of the period of the text's redaction as the period "represented" by the text, and thus the period whose history is retrievable from it, is questionable. The synchronic approaches outlined here do not adequately attend to the texts' implicit and explicit markers of diachrony and furthermore invoke modern notions of authorship that either do not apply well to rabbinic texts or are irrelevant to those engaged in *historical* study. These criticisms will be considered in greater detail later.¹⁶

Between the two approaches just outlined lies a third approach, which recognizes the important role of editors in the transformation of earlier source materials yet maintains the possibility of identifying and analyzing in historical terms some of the sources that comprise rabbinic texts. This third approach adopts a critical stance and is consequently distinct from synchronic approaches that either despair of or ignore the possibility of utilizing attributions and other phenomena to identify sources susceptible to historical analysis. Yet it is also quite distinct from the first approach in that the historical reliability of attributions and reported events is not accepted without further ado.¹⁷ The following pages make the case for this third, source critical, approach, which is the one followed in the present work.

Source Criticism of Talmudic Texts: Making the Case

DIACHRONIC MARKERS

In recent years several scholars have elaborated the principles by which source materials in the Talmud may be identified and the diachronic complexity of the text exposed.¹⁸ One marker of diachrony is the preservation of generational strata through the use of attributions. When employed critically, attributions enable us to locate rabbinic teachings at particular points in the history of rabbinic legal thinking, and on this basis "a fairly firm and solid history of the law and its religious and philosophical conceptions is to be worked out" (Neusner 1979:55). Many scholars have developed criteria for assessing the relative reliability of attributions (see Neusner 1971a:vol. 3, 1983:31, Green 1978:84, and Kraemer 1990:20–25). Tannaitic traditions in particular unfold in a disciplined and orderly fashion. In his study of the traditions attributed to R. Eliezer ben Hyrcanus, Neusner observed that what was attributed to an early tanna by his disciples and contemporaries would unfold and be developed in later strata and would never be contradicted. For example, he found no tendency promiscuously and without clear warrant to attribute to R. Eliezer b. Hyrcanus whatever was wanted. Rather there were efforts to amplify and augment materials assigned to him solely within the conceptions and principles already estab-

lished in his name. These observations led Neusner to the reasonable conclusion that the unfolding of the legal tradition in the three or four hundred years after the turn of the second century was governed by attention to what was said in the name of earlier authorities and was not generally characterized by attribution to an early authority of an idea first invented later (Neusner 1979:51). Neusner in this context specifically argues against the possibility that the orderly unfolding and consistency of attributions was pseudepigraphically imposed on the material at the time of its redaction. Likewise, Kalmin concludes, regarding talmudic texts generally, that “rabbis depicted as later comment on statements by rabbis depicted as earlier, and contemporaries comment on statements by contemporaries” (1994:12). With few exceptions, chronological order is preserved.

It is common knowledge that rabbinic texts also call attention to their diachrony by signaling the use of sources and citations in a variety of ways (e.g., the alternation of Hebrew and Aramaic and the use of various citation formulae).¹⁹ In his recent book (1994), Kalmin argues that “the Bavli attests to a variety of rhetorical, terminological, institutional and attitudinal differences between early and later, Palestinian and Babylonian, and attributed and anonymous sources” (11). Specifically, early and late sources exhibit different attitudes toward dreams and dream interpreters (chapter 3) and toward the authority and statements of Rav and Shmuel (chapter 2). Early and late sources also differ in regard to the existence of distinct judicial and academic hierarchies (chapter 4) and in certain formal characteristics such as the frequency of dialogue chains (chapter 6). The technical terms used to introduce statements by early amoraim differ from those used to introduce statements by later amoraim, and it is highly unlikely that this difference was imposed by even later editors (chapter 7). Kalmin argues persuasively that all of these phenomena attest to the existence of diverse sources and the lack of editorial homogenization.

Furthermore, already in the Mishnah we find phrases such as *משנה ראשונה/משנה* אחרונה (= “the former teaching was/the latter teaching is”) and *בו ביום* (= “on that day” or “at that time”). These are temporal markers (the first quite specifically indicating a shift in the halakhah by preserving both the earlier and later rulings) that actually mandate a diachronic, historicizing reading of the text. The amoraim were well aware that “early” and “late” were categories internal to the Mishnah and that the text was not linear, like a modern authored text. The amoraim have terms to indicate that one must not be guided solely by the redacted sequence of the Mishnah, since that sequence is governed ineluctably by the inherent linearity of speech (e.g., *אין סדר* לדעה = “there is no [significance to the] order of opinions,” or *אין סדר למשנה* = “there is no [significance to the] order of [the teachings of the] Mishnah”). Instead one must be aware of the temporal layers in the text which are marked in other, nonlinear ways (including attributions). The amoraim were also aware that the Mishnah contained “fossils,” that is, rulings or opinions that remained in place even though a modification or new ruling had been accepted and recorded later (*משנה לא זזה במקומה*) = “the Mishnah does not move [or, is not uprooted] from its place”).²⁰ As Urbach has argued, halakhic literature “contains expressions of awareness of historical development which is projected in the halakhot themselves” (1976:113). Although overly optimistic about the historical usefulness of rabbinic literature, Urbach makes the important point that the nature of halakhah itself leaves room for the historical pro-

cess, precisely because the halakhah was not understood by the rabbis to be a *lex eterna*. Many halakhot are narrated in the form of events or testimonies of events. Further, the method of halakhic transmission is actually historical and not normative, because contradictory and even abolished views are given alongside the prevailing view (118).²¹ Urbach points to m. Eduyyot 5:5–6 and p. Shev 1:1, 33a as evidence that part of the purpose of rabbinic literature is to record the past development of the halakhah for didactic reasons or with an eye to its future development (118). The former text explains that minority opinions are preserved so that later courts may rely on them should the need arise, and the latter text stresses the value of retaining even those opinions that have been abolished “in order to inform you.” Part of the halakhic text is its explicit diachronic record-keeping, and no doubt the significance of attributions should be interpreted in this light: not just to inform us who said what, but to inform us who said what *when*.

Those who attend to these internal markers of diachronic complexity are responding to the *redactor's* careful efforts to undermine the impression of synchrony produced unavoidably by the juxtaposition of traditions from various persons and periods. These explicit diachronic markers call into question the suitability of a basically synchronic approach to rabbinic literature. Indeed, historical analysis of rabbinic texts would appear to be not precluded but *mandated* by the very nature of those texts. We shall see that in addition to the preservation of temporal sequencing in rabbinic literature, there is generally little evidence of a homogenization of earlier sources or of an attempt to replace the polyphony of the sources with the univocality of a single authorship (more on this later). The redactors of rabbinic texts actively preserved the diachrony of their sources, thus subverting the importance of the synchronic plane of the text with which (ironically) they were perforce concerned!

Thus, rabbinic texts are fundamentally different from the biblical text. A diachronic method is inherent in the very composition of rabbinic texts, the redactors producing a text that is to be read not as a synchronic work but as a diachronic construction. In the case of the Torah and narrative books of the Hebrew Bible (Gen–2 Kings), however, we find signs of the reverse. Here, an implied author has leveled and smoothed his source materials through primarily narrative devices (e.g., the various legal codes are declared to have issued from Moses). Of course, the redactor slips at times, and the source critic can identify different diachronic layers within the text with the aid of Near Eastern parallels; grammatical, vocabulary, and syntactic analyses; and so on. Nevertheless, by definition the source critical study of the Bible reads the Bible *against the grain*—against the literary integrity and synchronic unity that a redactor has clearly attempted to impose upon these texts. Thus in the case of the Bible the interpretive context provided for us by antiquity is indeed the final redacted form of the text. The various other historical contexts posited by the source critic, for all their sophistication and corroboration by parallels and linguistic studies, are at the *epistemological* level scholarly constructs. In rabbinic texts, however, we do not find a comparable consistent synchronic leveling by an implied author. Rabbinic texts consciously signal their diachronic construction, and thus it is the notion of a synchronic plane imposed by an author that is a scholarly construct in talmudic studies, a construct that violates the linguistic and literary norms of the texts.

THE QUESTION OF PSEUDEPIGRAPHY

Louis Jacobs (1977) has argued that despite the consistency of attributed views and the verification provided by parallels, there is a large pseudepigraphic element in the Babylonian Talmud. At times the Talmud itself acknowledges fabrication. There are more than twenty cases in which a difficulty or contradiction forces the Talmud to concede that a view previously attributed to a sage was not in fact known to have been uttered by him but was inferred from some action or other saying by the sage and subsequently attributed to him. Such admissions are introduced by the phrase *לא בפרוש אלא מכללא* (“it was not said explicitly but was inferred”).

While some of Jacobs’ examples are drawn from halakhic texts, more are drawn from aggadic passages in which imaginary dialogues and fictitious episodes are assigned to biblical and early rabbinic characters. But the very genre of aggadah suggests fanciful embellishment and fictive coloring, and few scholars today need to be convinced of the presence of a pseudepigraphic element in the realm of aggadah. In general, Jacobs’ conclusions appear to overstep the evidence in regard to halakhic texts. The several examples cited in which fabrication is exposed cannot be interpreted as indicating that “there seems to have been no objection at all to attributing sayings to teachers who were not, in fact, responsible for them!” (53). Part of the point of these passages is that the fabricating party *loses*; his argument, once exposed as a fabrication, is no argument, and his position dissolves. This circumstance would indicate, then, precisely the opposite of Jacobs’ claim: that fabrication of attributions and views was not widely condoned. Add to this fact several passages in which the importance of repeating a tradition in the name of the sage who taught it is stressed and a strong case for the relative reliability of attributions is made. Jacobs himself cites *m. Avot* 6:6: “[W]hoever repeats a matter in the name of the one who said it brings redemption into the world;” and *b. Yevamot* 97a: “[W]hen a statement is made in the name of a departed scholar, his lips move in the grave.” Of course, such statements are no guarantee of anything, but they do show the value placed upon accurate attribution by this culture.

Furthermore, literary criticism has demonstrated that the Talmud is not a sixth- or seventh-century pseudepigraph. Literary critics have identified a sizable anonymous postamoraic stratum on the basis of terminology, grammar, and vocabulary, and there is strong evidence that the attributed material, assigned to the third to fifth or sixth centuries, has not been homogenized to resemble this later material but has instead been left intact. For example, Goodblatt’s study of rabbinic instruction in Babylonia reveals that third-century and fourth- to fifth-century sages do not mention the same academic institutions. Goodblatt argues convincingly that the most likely explanation is that the terminology of the third-century sources has been accurately preserved, and that, generally speaking, the language of earlier amoraic generations has not been homogenized by the Talmud’s editors (1980:36–37). Of course, if we can be fairly confident of the preservation of earlier layers of materials by the text’s editors, then it follows that our historical conclusions will rest on more solid ground.²² Likewise, as was indicated earlier, Kalmin’s work (1994) supports the claim “that the Talmud preserves identifiable sources which were not fully homogenized

by later editors, and contains usable historical information regarding the centuries prior to its final editing" (xiii).²³

In short, the identification of some pseudepigraphic elements does not justify a despair over the preservation of sources in the Talmuds and over the historical value of these texts or their attributions. It does caution us as to the need for careful and critical evaluation of each case.

THE NATURE OF REDACTION: AUTHORS AND EDITORS

In view of the scholarly work just cited, it can be said that rabbinic texts do not generally feature full homogenization of their diverse sources by late editors. Consequently, the designation of the redactors/editors of various rabbinic documents as authorships (a feature of the documentarian approach) is somewhat misleading. Comparing rabbinic redactors to authors elides the important differences between their respective activities, for it suggests that the redactor/editor is essentially autonomous, free to create and control that which is included in and excluded from the text. On the contrary, the redactors of rabbinic texts were not creating texts *ex nihilo*, but shaping and weaving an enormous corpus of inherited traditional materials. Parallel passages in various rabbinic and nonrabbinic works bear witness to the existence of preredactional sources.²⁴ Applying the term "authorship" to the final redactors of the Talmud may highlight the freedom the latter exercised in recombining, recontextualizing, glossing, and otherwise manipulating earlier traditions; however, it obscures the degree to which the redactors were also *constrained* by the raw materials they received, by the agenda set in earlier combinations and contextualizations of traditions, by the community within which they worked, and even by the genre of the work being produced.²⁵

Shamma Friedman's work (1987, 1981) demonstrates that aggadic sequences in the Babylonian Talmud are established not by free association alone but by the incorporation of an overall structural framework *already apparent in Palestinian sources, upon which the Bavli's editor(s) enlarges, embellishes, and augments locally with similar themes*. In other words, he shows that the Bavli's editors were often constrained to some degree by a previously established literary pattern. What Friedman has demonstrated for aggadic texts applies equally for halakhic texts, challenging the theoretical basis of the documentarian approach. How can the Babylonian Talmud be used as a source for sixth- or seventh-century Babylonian Jewry when its raw materials, associative links, and patterns were in many instances demonstrably established in Palestine several centuries earlier? In his redactional studies of the Horayot tractates, Martin Jaffee concludes that "the post-Amoraic editors of the [Babylonian Talmud] had something like the extant version of the [Palestinian Talmud] before them and reflected upon the logic of its construction as they composed their own commentary" (1989:23–24).

Furthermore, the notion that each rabbinic document is a single unit authored by a single "authorship" carries with it the notion that each text has a unitary ideology which can be discerned through analysis. In several works, Neusner strives to discern the specific ideology or agenda of various rabbinic texts, the underlying phi-

losophy expressed by the redactional program of each document.²⁶ In order to do this for the Talmuds, he must move beyond what he calls “the superficial contentiousness” masking the deeper consensus that is his goal. Neusner’s project in these recent works is essentially philosophical/theological and thus radically different from my own essentially historical project. Because I hope to uncover in the talmudic texts certain kinds of cultural and historical information, I am concerned precisely with the immediate and substantive plane of the text—the contentiousness with which Neusner is explicitly not concerned—rather than any underlying philosophical consensus. On the *immediate* level, the polyphony or contentiousness of the sources has not been smoothed out by an authorship that adopts its own single, univocal perspective and imposes it upon the sources. Rather, the polyphony has been encoded and preserved by a redactor/editor who exercises a certain amount of literary and rhetorical freedom, like any redactor/editor, but who can hardly be said to be authoring a book that represents his own conclusions, opinions, or agenda. In short, where Neusner is interested in distilling the philosophy or worldview of the Talmuds, I am interested in identifying and analyzing for historical purposes views (plural) on substantive halakhic issues. These two projects do not appear to intersect in a significant way. While an appreciation of the redactional manipulation of the halakhic views found in the talmudic text is essential to the success of my project, the disparate and polyphonous sources of which the text is composed are necessarily my primary focus.

To summarize, while it is true that the composition and redaction of rabbinic works form an important determinant of a work’s substance so that a work can be said to be more than the sum of its sources, and while it is also true that traditional sources are shaped by literary and rhetorical concerns, rabbinic texts are by no means immune to a diachronic analysis of their sources. Indeed, a number of linguistic and literary features render implausible the notion of authored, synchronically leveled texts and point to the need for historical interpretation and analysis. Thus, while rabbinic texts cannot be employed for historical reconstruction in a naive and uncritical manner, nevertheless, with proper attention to the distinctive features of these texts and the use of literary and source criticism, some *relatively reliable* diachronic and cultural-historical analyses of rabbinic texts *beyond the level of redaction* become possible.

As an example of the way in which the special features of rabbinic texts may condition the historian’s use of those texts, consider the issue of genre. The Talmud consists not of direct historical accounts but rather legal traditions, debates concerning all aspects of religious, civil, and criminal law. With the use of proper methods, nonhistorical texts can be made to yield historical information “against their will,” so to speak. However, legal texts are especially problematic for the historian. Legal argumentation and analysis (like philosophical discourse) are often governed by an internal logical momentum and a programmatic rhetorical or didactic strategy. Counterclaims, straw positions, and hypothetical limit cases are often exercises in logic and pedagogy and do not necessarily reflect actual experiences or ideological commitments on the part of the disputants. Failure to identify the dialectical and rhetorical strategies that condition rabbinic writings leads scholars to err seriously in the reconstruction of the sociocultural and historical forces represented in these texts. A talmudic statement may be lifted out of context and cited as typical of rabbinic Judaism when in fact the statement is no more than a counterthesis employed rhetorically and subsequently

rejected. In my study of tractate Avodah Zarah I have found two cases in which statements have been taken out of context and used as the basis for historical or cultural conclusions that may be counterindicated by the same text when read *in context*: The first is the Bavli's use of a statement attributed to Shmuel to undermine a view attributed to R. Yishmael concerning the prohibition of commercial transactions with non-Jews (b. AZ 7b; see chapter 5); the second is an aggadic text that moralizes against feasting with non-Jews in the diaspora (b. AZ 8a; see chapter 7).

Before one can work as a historian, one must first work as an exegete of the text—a legal interpreter. Only when the ambiguities, subtleties, rifts, tensions, and aberrations in the legal arguments are fully apparent is one equipped to probe their historical and cultural matrix. The careful identification of literary, rhetorical, and dialectical strategies is, therefore, a critical precursor to historical analysis.

In recent years scholars have become increasingly aware of the literary, rhetorical, dialectical, and pedagogical factors generating a talmudic sugya. In an article on the current state of talmudic studies, Baruch Bokser noted that the challenge for cultural studies is to pose questions appropriate to the nature of the evidence, particularly the aesthetics of each individual document (1990:96). Since the sources employed in the Talmud are shaped by literary and rhetorical considerations, “we cannot blindly employ them for information as to what they purportedly claim. . . .” Any effort to interpret “the cultural significance of the material must consider the literary and aesthetic traits of each document” (102). In his own research, Bokser argued that it is possible and necessary to draw a distinction between a text that reflects “the thoughts of individuals responding to an actual life situation” and a text that reflects “a literary, dynamic process and a theoretical expansion of earlier teaching” (97).²⁷ While it is important not to posit too strict a dichotomy in this regard, the present study will consider textual, hermeneutical, rhetorical, and dialectical explanations for halakhic difference before assaying any cultural or historical analysis. In short, this study will carefully consider internal causes of halakhic difference before hypothesizing and testing external causes. The next section will expand upon the reasons for adopting such a procedure.

*Failure to Consider Internal Causes of Difference:
The Intersection of Hermeneutics and History*

A hyperactive historicism in the study of halakhic differences between the Babylonian and Palestinian Talmuds can be prevented by taking seriously and attending to various internal causes of halakhic difference. The historicist method oftens fails to notice or consciously discounts as pious fraud the texts' own testimony to internal causes of difference. These internal factors can be broadly divided into exegetical factors and dialectical and redactional factors (the latter linked to the “external” but culturally “neutral” factor of chronological difference between the Talmuds).

THE EXEGETICAL IMPULSE

The historical method suffers from a reductionism if it fails to take seriously the Talmud's claim—both explicit and embedded—to be a literature of interpretation.

The historian's reductive dismissal of the essentially exegetical character of rabbinic texts ignores explicit formal and substantive markers of exegetical activity.²⁸ The point is that the rabbis apparently did not perceive themselves and certainly do not present themselves as imposing new, historically and ideologically conditioned values upon a received text, but rather as elucidating and unfolding meanings inherent in that text. It is true that the modern scholar may feel compelled to assess critically the accuracy of this self-perception; nevertheless, it must not be dismissed out of hand as a pious fraud. The modern scholar is surely obliged to understand how it is that the rabbis might have perceived their discussion or development of biblical or tannaitic texts as an *interpretation* of those texts rather than as an amendment to or distortion of them.

This perceived role is undoubtedly the underlying theme of the aggadic passages that speak of the Oral Torah as revealed in its entirety to Moses at Sinai (b. Ber 5a; Tanḥ B, Ki Tissa; b. Meg 19b). These traditions capture the sages' perception of themselves as participating in the continuous unfolding of God's will through time, as well as their perception of the basic organic unity of the Written Torah and the Oral Torah even when the latter is not grounded in direct exegesis of the former. The rabbis seem to understand what so many modern scholars have failed to realize—that they occupied a place at the intersection of hermeneutics and history, of tradition and transformation. Steven Fraade describes this “double-facing” characteristic of rabbinic texts as the interplay of constraint and freedom:

For our understanding of such texts' discursive practices and purposes must condition the historiographic manners in which we employ the information that they contain. Essential to our understanding of the way rabbinic texts work, and therefore to the social and historical reconstructions that we base on those texts, must be the recognition that rabbinic literature is a medium dedicated *both* to transmission and to transformation: its texts not only transmit received traditions from an earlier time, but simultaneously and often subtly transform—and for purposes of their own place and program in time—what they seek to transmit. (1991:69)

A well-known aggadic passage from b. Men 29b poignantly expresses the same paradoxical tension, albeit in a rabbinic key:

Rav Judah said in the name of Rav:

When Moses ascended on high he found the Holy One, blessed be He, engaged in attaching crownlets [decorative squiggles] to the letters [of the Torah]. He said to Him, “Lord of the Universe, why should you bother with this?”²⁹ He answered, “There is a man who is destined to arise at the end of many generations named Akiva b. Joseph, and to expound upon each squiggle heaps and heaps of laws.” [Moses] said to him, “Lord of the Universe, show him to me.” He replied, “Turn around.” Moses went and sat down behind eight rows [in R. Akiva's schoolhouse, with the least skilled students], but he could not understand what they were saying. His strength left him.³⁰ But when they came to a certain topic and the disciples said to him [R. Akiva], “Rabbi, whence do you know it?” he replied to them, “It is a law given to Moses at Sinai!” And Moses was comforted.³¹

Thereupon he returned to the Holy one, Blessed be He and said to Him, “Lord of the Universe, You have such a man and You are giving the Torah by me?!” He replied, “Be silent, for such is my decree.”³²

[Moses] said to him, "Lord of the Universe, You have shown me his Torah, now show me his reward." He replied to him, "Turn around." And Moses saw them weighing out R. Akiva's flesh in the market place.³³ Moses said to Him, "Lord of the Universe, that was his Torah and this is his reward!?" And He replied, "Be silent, for such is my decree."³⁴

This rich and intriguing passage, containing both humor and tragedy, addresses several themes (see Hayes 1997) but of interest to us is the fact that the story enables the rabbis brilliantly to voice their own sense of tremendous distance and difference from the biblical world of Moses and ancient Israel while at the same time affirming their sense of kinship with that world. Moses wonders why God bothers with what appear to him to be extraneous and insignificant orthographic details of the Torah. But Moses' question is due to his ignorance of the complex structure of laws and teachings that will be hung upon these very details by later scholars. Granted a vision of R. Akiva's schoolhouse where the biblical text is expounded to yield these heaps of laws, Moses is at a complete loss to understand.³⁵ Moses, the very one to whom God entrusted his Torah and the first to teach Torah to Israel, does not recognize that Torah in the hands of a sage some fifteen hundred years later. Moses' nonrecognition is a figure for the rabbis' own aching suspicion that they are unrecognizable, that a yawning gulf separates them from the world of ancient Israel. If we were to meet Moses today, they seem to be asking, would we even recognize and embrace one another as kin? In the story, Moses never does understand the proceedings of the schoolhouse, the complex exegetical processes by which a vast structure of laws and teachings had come to rest upon "insignificant" orthographic details in the biblical text. Indeed, R. Akiva's midrashic virtuosity makes Moses quite nervous—and in this he surely reflects the anxiety of the rabbinic author(s) of the story. On the other hand, the depiction of God as partner to R. Akiva's midrashic excesses suggests that this anxiety is not absolute. The portrayal of God as R. Akiva's partner betokens at least a desire on the part of the author(s) to believe that despite the gulf that appears to separate the teachings of the rabbis from the divine Torah of ancient Israel, there is an organic unity between them, and in Moses' mouth are placed words of praise and approbation for R. Akiva. Through this story the rabbis assert their faith in kinship, connection, transmission, and tradition, despite—or rather because of—their awareness of a profound transformation through time.

If we return to a consideration of the Talmuds: It is patent that the main task of talmudic texts, formally speaking, is interpretation. The amoraim had a more-or-less closed and distinct corpus of Oral Torah—the Mishnah; their statements are concerned primarily with explicating, delimiting, debating, and exposing the complex of meanings in mishnaic and other tannaitic traditions. Thus, amoraic statements that *do* introduce new issues or opinions (often the case in the later amoraic layers) or that violate the rabbis' own canons of interpretation are remarkable for their divergence from expected norms and invite cultural-historical analysis. By the same token, until the exegetical axis is fully understood and appreciated, historical "realities," forces, or events should not be hypothesized in an effort to account for phenomena that may constitute responses to exegetical stimuli. Of course, recognizing *how* a tradition or text constitutes an interpretation of an

earlier tradition or text helps to guard against this kind of hyperactive historicism and requires considerable familiarity with the theory and practice of reading in rabbinic culture. For this reason, chapters 3 and 4 explore the hermeneutical theory and practices that undergird the Talmuds and reach their fullest development in the Bavli. Chapters 5 through 8 then focus on cultural-historical analysis of halakhic difference in cases that feature some violation of common rabbinic hermeneutical practices.

DIALECTICAL AND REDACTIONAL FACTORS:
THE CHRONOLOGY GAP

Contributing to a growing awareness that divergences between the Talmuds cannot always be attributed to regional and cultural differences is the recent revision of the traditional dating of the two Talmuds. Whereas once the two Talmuds were thought of as “twins,” parallel compositions dating to approximately 425 C.E.,³⁶ many scholars now acknowledge a time differential of three hundred years from the abrupt close of the Palestinian Talmud (around 370 C.E.) to the gradual close of the Babylonian Talmud in the seventh century. The traditional date of 425 was something of a compromise, since it marked the abolition of the Patriarchate in Palestine and the death of Rav Ashi, a leading amora in Babylonia. But in fact, there is no evidence of amoraic activity in Palestine after 370 and much evidence of extended talmudic study and composition in Babylonia for more than two centuries after 425, as will be explained below.

Recognition of this chronological differential has important consequences. When we compare passages of the Palestinian and Babylonian Talmuds dealing with the same topic, it is no surprise to find that while each cites traditions and teachings of the first several generations of amoraim (up to 350 C.E. or so), the later Babylonian authorities (fifth generation on) do not appear at all in the Palestinian Talmud. Most notably absent are Abaye and Rava,³⁷ two of the most prolific Babylonian sages. The dialectics and logical virtuosity characteristic of the traditions attributed to these sages ushered in a new stage in the history of halakhah.³⁸ Hence, not only does the Babylonian Talmud contain the teachings of amoraim extending over a much longer period of time than that covered in the Palestinian Talmud, but the later amoraic material is of an entirely new character: dynamic argumentation, more precise legal and rhetorical terminology, and more extensive and rigorous dialectic.

Sussman (1990:101–105) plots the following chronological scenario: the growth of the Yerushalmi stopped abruptly in the second half of the fourth century.³⁹ Sussman refers to the period from the close of the Mishnah to the cessation of Palestinian amoraic activity as the first amoraic period (ca. 220–370 C.E.), common to both Palestine and Babylonia. However, amoraic activity continued in Babylonia for at least another 100 to 150 years. Sussman refers to this period as the second amoraic period (ca. 370–520 C.E.), beginning with Rava and Abaye and unique to Babylonia. The evidence of the texts suggests that during this second amoraic stage, earlier traditions were woven together in a dialectical format. This stage was followed in Babylonia by a further period of approximately 150 years (520–670), traditionally referred to as the savoraic period. Although this period is veiled in darkness, it was probably then that

earlier traditions were more fully embedded in the complex rhetorical and dialectical framework so characteristic of the Bavli, and that abstract legal and judicial concepts were developed and incorporated into the sugyot of the Bavli.⁴⁰ This period and its activity had no parallel in Palestine. As a consequence, we see in the Yerushalmi and the Bavli two very different types of Talmud: the concise, minimalist Palestinian Talmud and the highly developed, discursive, and dialectical Babylonian Talmud.

Earlier scholars observing this qualitative difference between the two Talmuds proposed historical explanations. For example, Louis Ginzberg surmised that the concision of the Yerushalmi Tractate *Nezikin* (thirty chapters dealing with torts, where the contrast between the two Talmuds is most pronounced)⁴¹ should be attributed to the fact that the Jews in Palestine did not have an independent court system and thus had no need to study or develop the material in *Nezikin*. Conversely, according to Ginzberg, Babylonian Jews maintained an autonomous court system and thus extensively studied and developed tractate *Nezikin*. Sussman (1990) argues that such a hypothesis cannot be supported. It is clear that the Palestinians studied tractate *Nezikin*, since there is as much Palestinian material on the topics and issues of this tractate (much appearing in the Babylonian Talmud) as there is on other topics of the Talmud. In short, there is no lack of Palestinian amoraic *material* on tractate *Nezikin*; it has simply been “handled” or preserved or *redacted* differently. As Sussman demonstrates, this fact becomes clear if one compares Yerushalmi sugyot from tractate *Nezikin* with their parallels in other tractates of the Yerushalmi. The Yerushalmi *Nezikin* passages, while containing the same basic traditions, will be shorter and more concise. Clearly the tractates of the Yerushalmi were not subjected to the same editorial treatment, just as the Yerushalmi generally and the Bavli were not subjected to the same editorial treatment.⁴²

Thus, some of the difference between the two Talmuds has to do with the enormous time lag between the completion of the two works and the intense and vigorous development of the Bavli that occurred particularly in the later part of the period (perhaps into the seventh century). Sussman goes so far as to argue that the central difference between the relatively simple Palestinian Talmud and the complex Babylonian Talmud is due not to regional and cultural considerations but to time. The Bavli is more elaborate and developed not because of some feature of the Babylonians’ Persian-Sassanian environment but because they had more than twice the time (from 220 to the late seventh century, compared with 220 to 370) to elaborate on earlier traditions, ponder and debate the teachings they received, and embed them in a dialectical superstructure.

Sussman describes the difference between the character of the two Talmuds this way: the Yerushalmi is a genuine “talmud” (study) of the Mishnah. It is composed primarily of comments, glosses, and explanations of the Mishnah — around which it revolves. There are no late additions, and the impression one receives is that the teachings of the amoraim have been preserved in essentially their original form, as learned in the fourth century. For the Bavli, on the other hand, the Mishnah is but a point of departure for lengthy and involved debates and dialectical discussions that take on a life of their own in the later layers of material. The Talmud of the late Babylonian amoraim has passed through a long and extremely thorough period of reworking,

redaction, and formulation and is the product of not the fourth century but the seventh (1990:96–99).⁴³

Baruch Bokser echoes these observations:

The Talmud is not merely the record of discussions between masters, but rather a sophisticated literary orchestration of sources, exegeses, traditions, and narrative accounts integrated and organized formally around the Mishna (with some sub-units . . . structured around topical, formal, or exegetical rubrics). At one point the earliest amoraic teachings responded to the Mishna, though subsequently they became in their own right the point of departure for other comments. . . .

[T]he later type of discussion — making up the characteristically anonymous “Talmudic dialectic” — formed an analytical inquiry in several tiers on the consistency of opinions, logic, and legal principles, and aimed at correlating and integrating sources and approaches. (1990:87–88)⁴⁴

A comparison of parallel passages reveals that this difference in character accounts for many of the specific differences between the two Talmuds. Shamma Friedman has shown in his comparison of narrative or aggadic passages from the Talmuds that the Yerushalmi tends to present a concise version while the Bavli presents the same material with added details, embellishments, interpolations, and digressions. Friedman shows (as does Shmuel Safrai, 1972) that the Babylonian tradents felt free to recast Palestinian narratives. In his study of b. BM 83b–86a, Friedman states that analysis of overall and specific parallelism between the Bavli’s complex sugya and two Palestinian texts indicates that the “Babylonian account is a literary recasting and its unsubstantiated details must be used critically in a reconstruction of factual events” (1987:68). He argues that when one considers the details of the Babylonian content and structure against the backdrop of its Palestinian counterparts and finds details not present in the Palestinian parallel, one cannot assume they are based on a tradition. Since some of these details are purely literary embellishments, they cannot be used as historical evidence for the period about which the passage purportedly reports.

Friedman criticizes earlier scholars for whom the historicity of the aggadah is simply a matter of distinguishing between legendary accretions and a genuine historic kernel. In other words, by removing what is fanciful or implausible, they are left with what is plausible and then rely upon this as historical. Friedman’s point is that much that is plausible and “historic” looking is nonetheless literary embellishment, the fabrication of the Bavli unsubstantiated by any Palestinian parallels. More reliable than the “historic kernel” method⁴⁵ is Friedman’s method of comparison in order to identify primary and secondary literary usages. Leaving aside the question of the historicity or reliability of the primary Palestinian story (a problem in itself), Friedman suggests that secondary details appearing only in the Bavli—even if plausible and nonlegendary in character—are probably a part of the Bavli’s embellishment or reformulation. He summarizes his method as follows:

Much of the narrative Aggadah in the BT is of Palestinian origin. The literary sources used by the BT have generally not survived, but many parallels exist in the PT and Midrashim. . . . [Comparison affords] insight on the sources used by the BT. We can describe the jointure . . . the type of embellishments added, and the creative transfer of themes and phrases even after the collections have been joined.

From literary development to history: having established the status of some narrative details as primary and some as secondary, resulting from the above-mentioned processes, we must apply this to the clarification of historic descriptions of the events portrayed in those narratives. (1987:75)

Here Friedman is concerned only with the historicity question as it pertains to Babylonian aggadic accounts of Palestinian events and personages. Thus his method and argument are perfectly cogent—the secondary materials found only in the Babylonian text and unsubstantiated by Palestinian sources are probably literary embellishments that cannot be used as reliable historic evidence *for the events portrayed in those narratives*. However, we should note the further possibility that these secondary accretions and embellishments may very well serve historians of Babylonian Jewry. Once one identifies within a Babylonian narrative the raw materials, associative links, and literary patterns paralleled in Palestinian sources, what remains most likely emanates from a later Babylonian source and to that degree may provide insight into the later Babylonian period.⁴⁶ In other words, the differential between the Babylonian and Palestinian versions of aggadah—the interpolated details, the redactional choices—may tell us something about the Babylonian Jewish world.⁴⁷ On the other hand it may not. The differential may indeed be attributable to the spirit of embellishment and expansion that has been so clearly documented in the Bavli. This is the subject of study in each and every case.

I have adopted a modified version of this method in my study of parallel halakhic sugyot in which the Yerushalmi preserves the amoraic core that lies at the base of the Bavli's dialectical structure.⁴⁸ By comparing the Yerushalmi and the Bavli, we can isolate those elements (generally in the Bavli) for which there is no parallel in the other text and then consider whether there are internal reasons for these elements (e.g., embellishment; rhetorical, pedagogical, or dialectical strategy; comparison with new teachings, traditions, or analogies), external reasons (e.g., different cultural or historical reality, new ideological commitment), or an intersection of the two. Any hypothesis as to extratextual forces or realities generating the halakhic difference in question will be the stronger if it can find some measure of verification.

On the Lack of External Verification

In a study devoted to the subject of the use of Josephan parallels to rabbinic texts, Shaye Cohen (1986) describes the lack of a control for rabbinic texts as the major problem in the study of rabbinic historiography. The problem identified by Cohen applies not only to rabbinic historiographic literature but also to halakhic texts. As was indicated earlier, for much of the talmudic period we lack any external means of verification or of control. Indeed, we know virtually nothing of the history of the Jewish community in Sassanian Persia in the late talmudic period. The material remains available to us consist of little more than some incantation bowls of late date from Nippur (Montgomery 1913) and the Dura-Europus synagogue. No significant nontalmudic literary remains from the Babylonian Jewish community of the amoraic period are extant. This problem would appear to be insurmountable: How are we to test the historical hypotheses of talmudic scholars that would account for substantive legal differences between the two Talmuds?

In fact, the situation is mitigated somewhat by the possibility of intratextual and contextual verification. As for contextual verification, some measure of reliability is attained when a particular tradition is carefully examined within both its immediate context and the larger context of rabbinic literature generally. Its divergence from or congruence with standard conceptions is an important key to assessing the sociocultural “work” performed by the particular tradition.⁴⁹ So, for example, the failure to read an aggadic tradition in *b. AZ* 8a in its full (immediate) context and to compare it with parallel versions leads certain scholars to misconstrue Babylonian Jewish attitudes to Jewish participation in feasts held by Gentiles. (See the detailed discussion of this text in chapter 7.)

As for intratextual verification, some measure of reliability is attained when a particular tradition is connected with other texts of various genres that address a common theme. In other words, the historical and sociocultural valency of a tradition is more readily discerned when it is seen in relation to other traditions, whether halakhic, aggadic, or midrashic. By associating a halakhic tradition with other teachings—with parables, gnomic sayings, legends and so on—it may be possible to identify the historical or cultural context to which all of these varied texts at once respond and bear witness. Identifying a variety of texts or traditions that resemble one another in addressing a specific cultural or historical issue provides one form of intratextual or contextual verification of the reality that is both behind and within rabbinic texts.⁵⁰ So, for example, when certain rulings concerning the prohibition of Israelite midwives for Gentile women (*m. AZ* 2:1; *p. AZ* 2:1, 40c; *b. AZ* 26a) are read in conjunction with a central aggadic text, it becomes apparent that both are symptomatic of a Jewish sensitivity to Gentile accusations of Jewish “hostility” and “inequity” to foreigners. (See the detailed discussion of these sources in chapter 6.)

Thus, while the lack of external verification does impose certain restrictions upon the historical interpretation of halakhic difference between the two Talmuds, it can be overcome, to some degree, by intratextual or contextual methods.

The Present Study

I have argued that the analysis of rabbinic texts, particularly one undertaken for the purposes of historical reconstruction, demands a sophisticated theoretical basis—one that attends to the complex intersection of the historical and exegetical axes in these texts. While rabbinic texts are not entirely determined by or explicable in terms of contemporary sociocultural and historical forces, neither are they the result of a kind of hypothetically “pure” exegesis. A tradition, narrative, or halakhic decision takes shape in response to scriptural and traditional stimuli, and at the same time it is a function of a specific community of persons in a specific time and culture. Research into rabbinic literature must do justice to the diachronic and discursive complexity of this literature.⁵¹

This work will account for halakhic differences between the two Talmuds found in selected passages of tractate *Avodah Zarah* (“Idolatry”), which regulates personal and business dealings between Jews and non-Jews. This tractate suggested itself for two reasons. First, it is precisely in the laws concerning relations with non-Jews that one

might expect external factors to be especially determinative of substantive legal differences between the two Talmuds. In short, it might be expected that legal differences would reflect the differences between Jewish–Gentile relations in Roman Palestine and those in Sassanid Persia. Second, selecting tractate Avodah Zarah brings about a fortuitous confluence of form and substance in my study: The very text I will examine for evidence of influence by external forces is itself devoted to a discussion of the proper relationship between Jews and the surrounding (non-Jewish) community.⁵²

Since I do not wish to read historical “data” into the text in an attempt to account for legal differences, I must first consider internal (textual, hermeneutical, dialectical, redactional) factors. This attempt to account for selected halakhic differences between the two Talmuds is therefore grounded on two assumptions.

First is the awareness that the Talmuds are at base hermeneutic literatures devoted to law, not historiography; they are self-described study and interpretation of a central text of religious and civil law—the Mishnah—and contain numerous glosses, delimitations, and explications of the meaning of that base text, as well as other tannaitic and biblical texts. Differences between the Talmuds are thus often traceable to the indeterminacy of the hermeneutic endeavor and also to diverging legal analysis and argumentation.

Second is the awareness of an enormous time lag between the two Talmuds. The Babylonian Talmud continued to grow and develop for three hundred years after the close of the Palestinian Talmud. In this time, new teachings, arguments and legal analogies, and more highly developed methods of analysis resulted in the creation of a Talmud different from its Palestinian “counterpart” in style, form, and actual substance. In the later Babylonian period, earlier layers—patterned on Palestinian traditions in style and substance—were taken up and incorporated into a dialectical superstructure, moving the law in new directions.

In this work I employ a broad definition of halakhic difference. Halakhic difference refers not only to substantive halakhic difference (i.e., differences in the substance of the legal views expressed) but also to *formal* halakhic difference. That is, the Bavli and Yerushalmi may contain the same substantive legal teachings but differ formally in that these teachings are not handled, presented, or justified in the same way. For example, the Talmuds may differ in the way in which a common tradition is derived from or linked to the Mishnah, or in the degree to which that tradition is subjected to dialectical treatment or counterclaims. Such formal differences fall squarely within the purview of any study of halakhic difference between the two Talmuds—and must be accounted for—because purely formal halakhic difference is no less significant than substantive halakhic difference as a cultural expression. Furthermore, justification for the consideration of purely formal halakhic difference stems from the nature of the Talmuds themselves. The Talmuds (particularly the Bavli) are not law codes (i.e., registers listing the practical halakhah) so much as they are works of legal argumentation and analysis which tend to open up rather than to foreclose halakhic possibilities. Restricting ourselves only to substantive differences in halakhic rulings would be an inappropriate and remarkably limiting strategy.

In addition, halakhic difference can occur in the form of halakhic development. In other words, one text (usually the Bavli) may attest to a new application or a later modification, reversal, or extension of the law in question. Such developments may

result from internal factors (the natural and logical extension of earlier legal principles) or from external factors (new historical circumstances that prompt a shift in the halakhah).⁵³

Method

It should be apparent by now that this comparative study of Yerushalmi and Bavli Avodah Zarah is not a comparison in the documentarian sense, that is, it is not an attempt to account for differences between the redactional programs of the two Talmuds. My interests are historical, literary, and legal, not philosophical. Thus I attend to both the diachronic and synchronic planes of the text in an effort to account for differences in legal detail—both substantive and formal—in selected passages of Yerushalmi and Bavli Avodah Zarah. My larger goal is to explore the degree to which and the manner in which specific differences (i.e., differences in content, substance, and detail, not redactional philosophy) between the two Talmuds may point to historical differences between Palestinian and Babylonian rabbinic cultures.

A further distinction is necessary. I am concerned here with halakhic differences between the two Talmuds as distinct from differences in the *practical halakhah* of Palestine and Babylonia. Indeed, in many cases, the practical halakhah in the two centers is entirely irretrievable. When I speak of differences between the Bavli and Yerushalmi, it should be understood that I am speaking of differences between two texts—specifically, their respective presentation and deployment of particular halakhic views and arguments. It follows that any cultural or historical conclusions that I draw will apply only to the subcommunity that produced the Talmuds—the talmudic rabbis of Palestine and Babylonia—and not to the general Jewish community in either center. Indeed, only in rare instances does the evidence permit us to speak of a particular cultural or historical phenomenon extending beyond the rabbinic context.

Finally, although I hope to use halakhic difference between the Talmuds to unearth information about the Palestinian and Babylonian rabbinic communities, I do not suppose that a difference between the two Talmuds is a direct representation of a difference between these two groups. As W. S. Green has argued, recent developments in hermeneutics, literary criticism, and the form analysis of rabbinic literature have forced scholars to give up the axiom “that rabbinic literature, and *halakah* in particular, is inherently mimetic, a straightforward reflection of ‘what actually happened’ in rabbinic antiquity” and to acknowledge the “status of texts as products and cultural constructions, as data rather than sources” (1983:2–3). A full discussion of the specific issues involved in moving from text to history appears in the introduction to part III of this book.

My study of parallel sugyot encountered the following patterns of difference:

1. The Yerushalmi may contain a set of traditions that appear also in the Bavli, but in addition there may be traditions, analogies, debates, analytical principles, or conclusions in the Bavli’s sugya that do not appear in the Yerushalmi’s sugya.
2. The Yerushalmi may contain a set of traditions that appear in the Bavli, but in addition the Yerushalmi’s sugya may feature traditions or other materials not found in the Bavli’s sugya.

3. The two sugyot may have common elements and in addition *each* may contain traditions or material not found in the other.

4. The two sugyot may not differ in a substantive sense (i.e., they may convey essentially the same halakhic views), but may differ in a formal sense (i.e., these views may function differently within the sugya or be argued or deployed differently).⁵⁴

Employing all the tools of modern text criticism and source criticism, one must first isolate diachronic layers so as to pinpoint as narrowly as possible the temporal locus (by generation) of any divergence. It should be clear from my earlier discussion (Source Criticism of Talmudic Texts) that the assumption—widely but not universally accepted among modern talmudic scholars—that diachronic strata can be distinguished within the talmudic texts rests upon the persuasive results of recent literary and source critical studies. These studies have shown a lack of editorial homogenization and a corresponding preservation of the specific characteristics of many of the Talmuds' various sources. They have further demonstrated the utility (not to be confused with infallibility) of rabbinic attributions for determining the generational and geographical provenance of a rabbinic teaching, and have also shown the overall consistency with which attributions mark the relative chronological order of sources, thus facilitating the identification of diachronic layers in the Talmuds. In this work I utilize rabbinic attributions critically to isolate diachronic strata in the talmudic text. It should be noted that utilizing attributions in this way does not entail the assumption that a particular statement was said by a particular rabbi in precisely the form recorded in the Talmud.⁵⁵

If a divergence between the Talmuds occurs in material that can be assigned to the first amoraic period (i.e., that period of amoraic activity common to both Palestine and Babylonia extending to the mid-fourth century), then one must begin as the Talmuds themselves began, namely, with legal exegesis. Is it possible that the Yerushalmi and Bavli differ for any of the following reasons?

1. They are based upon different versions of the Mishnah itself. Text critical analysis involving the use of manuscripts, other early witnesses to the text, and parallel citations, as well as the evidence of the Talmuds' discussions themselves, will determine if this is a possibility.

2. The mishnah or other tannaitic texts cited by the sugyot are genuinely ambiguous. Are these sources gapped or polysemic? Do they contain obscure words, internal contradictions, or other features that might have led sages in the two communities to different conclusions?

3. They feature different versions of other tannaitic traditions that figure in the sugya. Sources are modified in the course of transmission, and different versions of an early tradition may give rise to different interpretations in the two Talmuds. Once again, text critical analysis and the evidence of the Talmuds' discussions will determine if this is a possibility.

4. One text considers sources that are not considered in the other text. For example, perhaps the Bavli considers a source excluded from the Mishnah (a beraita), absent from the Yerushalmi, but attested in the Tosefta. What are we to make of the Bavli's rehabilitation of that source? At first glance it might appear that the Yerushalmi's exclusion of a Palestinian source and the Bavli's inclusion of that source is a phenomenon most susceptible to a historical analysis (i.e., there is an extratextual

reason for the Palestinians to reject a tradition the Babylonians accepted). However, I intend to show that the issue is far more complex than that. First of all, a missing source is not necessarily missing because it has been “consciously” omitted. Therefore, unless it can be demonstrated that a source’s omission is intentional (and this can be reasonably argued on occasion), there is no *prima facie* case for interpreting that omission in historical terms. Second, I will argue in chapter 4 that the rehabilitation of rejected or neglected teachings is characteristic of a rabbinic strategy of interpretation which attains its fullest form in the Bavli and is likewise not necessarily interpretable in historical terms. Nevertheless this commitment to dialectic, to the weighing of any and all alternative teachings and possibilities, can lead to formal or substantive halakhic change. For example, the Bavli’s juxtaposition of a beraita (attested perhaps in the Tosefta but not raised in the Yerushalmi) might create a legal problem by contradicting the mishnah at hand and so force an *oqimta* — a delimitation of the scope of a teaching (in this case, the mishnah) so as to allow for the contrary teaching of another source. If, however, it can be shown that a tradition is intentionally suppressed in one text while being actively endorsed in the other (and not simply introduced to advance the construction of a dialectical argument), then there is a *prima facie* case for attempting an external or historical explanation.

If the divergence occurs in the second amoraic period (that period of amoraic activity unique to Babylonia extending into the sixth century), one must again begin with legal exegesis. Do the Babylonian amoraim diverge from the earlier materials because

1. they come up with a different interpretation of an earlier source?
2. they reprioritize earlier sources?
3. they cite new sources or establish new cases as analogies?
4. they apply a new method of legal analysis or introduce new legal principles or categories?

As was mentioned earlier, in this study I am interested not only in substantive halakhic difference but also in formal difference (difference in argumentation, deployment of specific sources, and so on) between the two Talmuds. If two parallel texts result in the same halakhic position yet exhibit a clear formal difference, then one must pay close attention to the redaction of the sugyot, in particular the dialectical framework of the Bavli’s sugya.⁵⁶ One must consider whether the Palestinian and Babylonian texts differ for any of the following reasons:

1. The traditions and sources they share in common have been manipulated or reworked differently. The manner in which traditions are employed and the sequence in which they are presented can affect meaning.
2. Earlier sources have been delimited, qualified, or contextualized by the later *stam* (anonymous material) as a consequence of redactional choices. (If so, are these redactional choices necessarily subject to a historical explanation?)
3. A dialectical format involving rhetorical strategies, counterclaims, and straw positions has been imposed, resulting in formal if not actual halakhic difference.

Only when all of these issues have been considered are we justified in turning to external or historical explanations for halakhic differences between the Talmuds. However, as I have already argued, an appreciation of the textual, hermeneutical,

rhetorical, and redactional factors that can produce halakhic difference serves not merely as a prophylactic against reductive historical analysis of halakhic texts; it also equips one to recognize deviations and interventions that may signal an extratextual stimulus for halakhic difference. In short, sugyot that feature a violation of exegetical norms or some other novelty invite cultural-historical analysis.⁵⁷

Finally, any external or historical difference hypothesized in an effort to account for a halakhic difference or exegetical irregularity must then be verified to the greatest extent possible by nonrabbinic sources or through intratextual and contextual analysis. Only in this way can we achieve a relatively reliable understanding of talmudic history and culture generally, and the differences between Babylonian and Palestinian rabbinic culture specifically.

Parts I and II of the present work examine internal causes of halakhic difference and discuss textual and hermeneutical causes. Halakhic difference between certain sugyot can be shown to originate in the fact that the Palestinian and Babylonian amoraim possessed different versions of the Mishnah itself. Chapter 1 examines halakhic difference that is due to divergent versions of the Mishnah as a result of revision (m. AZ 2:5) or retraction (m. AZ 4:4) and as a result of amoraic emendation/conflation (m. AZ 4:11, m. AZ 1:3) or misconstrual (m. AZ 1:5).

However, even where the Talmuds are based upon the same version of the Mishnah, halakhic difference arises from the fact that the Talmuds are primarily interpretative literatures, that is, they are self-described study and interpretation of a central text of religious and civil law. Substantive differences between the Talmuds are thus often traceable to various factors native to the hermeneutic enterprise itself.

Chapter 2 explores halakhic difference that arises as a result of ambiguity in the Mishnah. An inherent polysemy or obscurity in the core Mishnah text—at times elusively terse—and in biblical or other rabbinic legal materials secondarily invoked and analyzed generates divergent interpretations and halakhah in the two Talmuds. This chapter examines cases that feature a gap of information (m. AZ 4:5), a structural gap (m. AZ 3:8), and a gap in rationale (m. AZ 1:1). Two further cases illustrate the way in which temporal and cultural distance can engender a semantic ambiguity which in turn combines with a syntactic or morphological oddity so as to result in halakhic difference (m. AZ 1:7, m. AZ 1:3).

Chapter 3, which is concerned with hermeneutical theory, considers halakhic difference as a result of hermeneutical presuppositions. The Talmuds share a basic hermeneutical assumption as to the meaningfulness of mishnaic idiom, but this assumption is carried to an extreme in the Bavli such that fine details of mishnaic idiom are considered to be interpretable. The more systematic application of this hermeneutical assumption in the Bavli leads to both formal and substantive halakhic difference between the two Talmuds. Cases of formal halakhic difference are m. AZ 2:3 and m. AZ 5:9, while cases of substantive halakhic difference are m. AZ 5:8 and m. AZ 3:5.

Chapter 4 takes up the question of hermeneutical practice and considers halakhic difference as a result of dialectical strategies of interpretation and redaction. In rabbinic culture, to read a text, whether Bible or Mishnah, meant primarily to read it in the light of, or in dialogue with, other texts, on the view that texts explicate texts. This strategy of reading attains its fullest development in the Bavli's dialectical juxta-

position of traditions, which can generate formal and substantive halakhic difference between the Talmuds. Furthermore, in the Bavli we find the dialectical treatment of mishnayot on the basis of logic alone. Interpretations of mishnayot are embedded in a dialectical framework that seeks to validate teachings by articulating hypothetical alternative possibilities and *invalidating* them; the result is a formal difference between the Talmuds. Three cases exemplify the Bavli's dialectical juxtaposition of traditions: m. AZ 2:1, m. AZ 5:1, and m. AZ 3:8. A further two cases exemplify the Bavli's dialectical treatment of mishnayot on the basis of logic alone: m. AZ 2:2 and m. AZ 1:1.

Part III examines external causes of halakhic difference and seeks to draw some historical conclusions. Insofar as halakhic differences between the Yerushalmi and the Bavli may be generated by the divergent geographical, historical, and sociocultural situations of the Palestinian and Babylonian rabbinic communities, these halakhic differences may provide the modern scholar with an index to regional variation between the two rabbinic communities. This section examines four halakhic differences between the Palestinian and Babylonian treatment of laws regulating the interaction of Jews and non-Jews, found in tractate Avodah Zarah. By carefully identifying the external stimuli that contributed to these halakhic differences, we gain insight into the rabbis' view of Jewish–Gentile relations in Palestine and Babylonia. Chapter 5 examines the diaspora reduction of the prohibition of commercial transactions on the communal festivals of idolaters (m. AZ 1:1). Chapter 6 considers the Bavli's leniency in regard to the prohibition of Israelite midwives for Gentile women (m. AZ 2:1). Chapter 7 discusses a surprising Babylonian stringency in regard to the social and commercial interaction between Jews and Gentiles on a Gentile's private [wedding] feast. Finally, chapter 8 examines the shifting fortunes of a prohibition against the sale of weapons and weapons-grade iron to Gentiles. In each of these four cases a halakhic novelty or exegetical aberration indicates the possibility of an extratextual pressure to modify the halakhah and provides the key to a cultural-historical analysis of the sources.

INTERNAL CAUSES OF HALAKHIC DIFFERENCE (I): TEXTUAL ISSUES

Much of the two Talmuds consists of interpretation, analysis, and discussion of a central text of religious and civil law—the Mishnah. At times halakhic differences between the Yerushalmi and the Bavli can be shown to originate in the fact that the two communities of amoraim possessed divergent versions of the Mishnah itself. David Rosenthal's critical edition of *Mishnah Avodah Zarah* (1980) reveals that the Mishnah existed in two basic versions: a Palestinian version, which was the basis of amoraic discussion in Palestine, and a Babylonian version, which was the basis of amoraic discussion in Babylonia. Rosenthal demonstrates that existing Mishnah manuscripts and textual witnesses can be divided into two branches: a Palestinian branch, which preserves the Palestinian version of the Mishnah, and a Babylonian branch, which preserves the Babylonian version.¹ Mishnah variants between the two branches that are tannaitic or early amoraic in provenance may have had a substantive bearing on the discussion and development of halakhah.²

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Textual Causes

Halakhic Difference Due to Divergent Versions of a Mishnah as a Result of Revision

*Evidence of the Revision of
Halakhic Traditions (m. AZ 2:5)*

The notion of a divergent or revised version of R. Judah's Mishnah is not a far-fetched one. Halakhic traditions generally were already subjected to reversal, revision, and retraction in the generations before R. Judah. Evidence of the emendation of halakhic traditions during their early formulation and transmission is found in m. AZ 2:5, which attributes a retraction to the early second century C.E.

m. AZ 2:5

R. Judah said: R. Yishmael inquired of R. Joshua when they were walking on the road:

“Why did they prohibit the cheese of gentiles?”

He said to him: “because they curdle it with the rennet (קִיבֵה) of a *nevelah* [an animal that has died of natural causes and is hence forbidden as nonkosher].”

He replied to him: “But isn't the rennet of a burnt offering a more severe case than that of the rennet of a *nevelah*, and yet they said:

a priest who can stomach it may suck it out; but the sages did not agree to this. Rather they said, no benefit may be derived from it [*ab initio*] though [*ex post facto*] the law of misappropriation is not applied.”

He said to him: “because they curdle it with the rennet of calves [sacrificed for] idolatry [and no benefit is permitted from idolatry].”

R. Joshua's first explanation for the prohibition of the cheese of Gentiles was based on his belief that the rennet of a *nevelah* is prohibited. R. Yishmael argues that the rennet of a *nevelah* is not prohibited, since even on the strict view of the sages,

the rennet of a burnt offering (a more severe case) is permitted to priests *ex post facto*. R. Joshua, persuaded that the rennet of a *nevelah* is not prohibited, offers an alternative explanation.

This is not simply a case of one tanna, R. Joshua, making a mistake and being corrected. As we learn from the discussion in the gemaras and from the evidence of the Mishnah elsewhere, R. Joshua's belief that the rennet of a *nevelah* is prohibited is in fact in line with the halakhah as it was at one time.

m. Hullin 8:5

The rennet of an [animal slaughtered by an] idolater and that of a *nevelah*—behold this is prohibited.

The contradiction is apparent: this mishnah prohibits the rennet of a *nevelah*, yet in *m. AZ 2:5*, R. Joshua modifies the rationale he first offered because of the principle that the rennet of a *nevelah* is permitted. The Talmuds both adopt the following explanation: *m. Hullin 8:5* was the teaching of the “former mishnah.” This teaching was subsequently retracted, which retraction is reflected in *m. AZ 2:5* (see *p. AZ 2:7, 41c*; *b. AZ 35a–b*; and *b. Hullin 116b*). In the words of the Yerushalmi:

p. AZ 2:7, 41c

R. Hiyya the son of Ba in the name of R. Yoḥanan:

—At first they said, we do not curdle with the rennet of a *nevelah* nor with the rennet of a gentile's animal;

—They retracted and said, we curdle with the rennet of a *nevelah* and not with the rennet of a gentile's animal. . . .

The language of the mishnah supports the view of R. Hiyya the son of Ba . . . [*m. Hullin 8:5* is cited].

Similarly in the Bavli, after pointing out the contradiction between the view that the rennet of a *nevelah* is permitted (inferred from a statement by Shmuel in this case) and the statement in *Hullin 8:5* that it is prohibited, R. Yoḥanan states:

b. AZ 35a–b

There is no contradiction.

The one teaching [*Hullin*] is before the retraction

And the other [*AZ*] is after the retraction

—And the mishnah [in this case *Hullin*] does not move from its place [= *ישנה* *למקומה*].

The final clause in R. Yoḥanan's statement is offered in anticipation of the query: Why was the mishnah of *Hullin* not updated in keeping with the revision of the law? The medieval commentator R. Ḥananel makes this question explicit in his commentary (to *b. AZ 35b*): “And why do they teach this mishnah without correcting it? It is explained in *Hullin*: R. Yoḥanan said: there is no contradiction . . . and the mishnah does not move from its place” (my translation).

R. Yoḥanan's statement provides us with two important pieces of information: first, that the revision or retraction of mishnaic laws may be recorded in one place and not in another; second, that the amoraim were themselves cognizant of this fact and were able to explain contradictions in the light of this phenomenon.

In this case, of course, halakhic revision occurred in the generations prior to R. Judah, and both teachings were preserved in diverse sites in R. Judah's Mishnah.³ However, there were revisions occurring at the level of the final redacted form of the Mishnah that led to the promulgation of two distinct versions of particular mishnayot, one of which served as the basis for amoraic discussion in Palestine and one of which served as the basis for amoraic discussion in Babylonia.

*Retractions by R. Judah ha-Nasi and Reversal by
Subsequent Generations (m. AZ 4:4)*

David Rosenthal argues that R. Judah ha-Nasi promulgated more than one edition of his Mishnah. Over time he emended or retracted certain mishnayot. The final version of his Mishnah was received by Rav and carried to Babylonia, where it became the basis of the discussions of the Babylonian amoraim (i.e., the basis of the Bavli). However, in Palestine, debate over the text of the Mishnah continued, and in a few isolated instances the sages of subsequent generations decided to uphold an earlier version of R. Judah's Mishnah. These reversals did not enter the Babylonian version of the Mishnah. In this way, a distinct Palestinian version of the Mishnah emerged as the basis of the discussions of the Palestinian amoraim, that is, as the basis of the Yerushalmi.⁴

M. AZ 4:4 provides a backbone of support for Rosenthal's thesis. Here we possess not only manuscript evidence of a divergence between the Palestinian and Babylonian branches of the Mishnah, but also explicit testimony to the effect that Rabbi retracted a particular ruling, only to have it reinstated by a subsequent generation. For our purposes, this case will illustrate the way in which halakhic difference in the gemaras resulted from the promulgation of two successive versions of an isolated mishnah by R. Judah ha-Nasi.

The mishnah of AZ 4:4 is attested in two versions, which divide neatly into a Palestinian and Babylonian branch (as identified by Rosenthal). The gemaras relate that both versions were promulgated by R. Judah ha-Nasi, the later or second version corresponding to the Babylonian version of the mishnah. The gemaras further suggest that Rabbi's son R. Shimeon preferred the former teaching, so this became the version accepted in Palestine and attested by Palestinian sources. I will outline Rosenthal's description of these two versions and then explore in depth their evolution and specific contribution to halakhic difference in the two Talmuds (an issue not discussed in the general literature).

Rosenthal notes the following two versions of m. AZ 4:4:

Palestinian version:

נכרי מבטל עבודה זרה שלו ושל ישראל
וישראל אינו מבטל עבודה זרה של נכרי

A non-Jew can annul⁵ the idol of himself and of an Israelite,
But an Israelite cannot annul the idol of a non-Jew.

This is the text that appears in the Kaufmann, Parma, and Lowe mss. of the Mishnah, the Leiden ms. of the Yerushalmi (Mishnah sections = Parma),⁶ Rambam Sassoon (though it is erased), Rambam Paris 330, the 1492 Naples edition of the Mishnah, and two geniza fragments (see Rosenthal 1980:175).

Babylonian version:

נכרי מבטל עבודה זרה שלו ושל חברו
ישראל אינו מבטל עבודה זרה של נכרי

A non-Jew can annul the idol of himself *and his fellow* [non-Jew].
An Israelite cannot annul the idol of a non-Jew.

This is the text that appears in the mishnah text of the JTS,⁷ Paris, and Munich mss., the Pesaro and Venice editions, and Temani New York. It also appears as an emendation in Rambam Sassoon (see Rosenthal 1980:175).

In addition, there is evidence from the Bavli that the Babylonian version was indeed (ושל חברו). The mishnah is cited on b. 42a in precisely this form (ושל חברו).⁸

Rosenthal's hypothetical reconstruction, which locates the two versions in two different time periods, is based on the following passages from the gemaras:

b. AZ 52b

מתני ליה רבי לר' שמעון בריה?
נכרי מבטל ע'ז שלו ושל חברו
א"ל ר' שנית לנו בילדותך
נכרי מבטל ע'ז שלו ושל ישראל

Rabbi was teaching mishnah to R. Shimeon his son:
A non-Jew can annul the idol of himself and his fellow.

He said to him, Rabbi, in your youth you taught us:
A non-Jew can annul the idol of himself and of an Israelite.

p. AZ 4:4, 43d-44a

רבי חייה בר אשי בשם רב
ר' הוה יתיב מתני לרבי שמעון ברה¹⁰
הנכרי מבטל עבודה זרה שלו ושל חברו
אמר ליה עד דהוה חיילך עלך כן אתנייתני¹¹
הנכרי מבטל עבודה זרה שלו ושל ישראל
אמר לו לאו בני
עבודה זרה שעבדה ישראל אינה לה ביטול לעולם
תני כן רבי שמעון בן מנסיא אומר
עבודה זרה שעבדה ישראל אין לה ביטול לעולם

R Hiyya the son of Ashi in the name of Rav:

Rabbi was sitting and teaching mishnah to R. Shimeon his son:

A non-Jew can annul the idol of himself and of his fellow.

He said to him, “While your vigor was still upon you you taught it to me thus:

A non-Jew can annul the idol of himself and of an Israelite.”

He said to him, “No my son. An idol that has been worshipped by an Israelite can never be annulled.”

Similarly, it was taught:

R. Shimeon b. Menasya says:

An idol that has been worshipped by an Israelite can never be annulled.

The texts are quite explicit. Rabbi changed his mind. His latter teaching is preserved in the Babylonian version of the Mishnah and his former teaching—perhaps at the instance of R. Shimeon, if we are to interpret the latter’s query as a preference for the earlier view—was reinstated in Palestine and is attested in the Palestinian branch of the Mishnah. But how did these two versions evolve and how do they contribute to divergent halakhah? To answer these questions we must understand the full halakhic content and context of the traditions involved.

In the earliest textual strata, the Mishnah and Tosefta, the issue of the annulment of an idol is connected with the issue of the time at which an idol’s prohibited status is initiated. The connection is only implicit in the Mishnah, which juxtaposes the two issues.

m. AZ 4:4 (Palestinian version)

עבודה זרה של נכרי אסורה מיד
 ושל ישראל משהיעבד
 נכרי מבטל עבודה זרה שלו ושל ישראל
 וישראל אינו מבטל עבודה זרה של נכרי

The idol of a non-Jew is prohibited immediately;

That of an Israelite is not prohibited until it is worshiped.

A non-Jew can annul the idol of himself and of an Israelite;

An Israelite cannot annul the idol of a non-Jew.

The connection between the two is explicit in the Tosefta, although the teaching there contradicts the Mishnah.

t. AZ 5:3b-4

ישר' שעשה עבוד' זרה אסורה אף על פי שלא עבדה
 לפיכך אין יכול לבטלה
 גוי שעשה עבודה זרה מותרת עד שתיעבד
 לפיכך יכול לבטלה
 ר' אומ' משום ר' יעקב
 אם עשאה ישר' מתחילה אין יכול לבטלה

An Israelite who *makes* an idol—it is prohibited [immediately] even though he has not worshiped it
 —*therefore* he cannot annul it.

A non-Jew who *makes* an idol—it is permitted until it is worshiped
 —*therefore* he can annul it.

Rabbi said in the name of R Ya'akov:
 If an Israelite made it from the outset—he [the non-Jew] cannot annul it.¹²

Let us ignore for a moment the fact that the Tosefta rules contrary to the Mishnah concerning the time of onset of prohibited status of an idol. What is important here is the *inferential relationship* between the time an idol becomes prohibited and the power of a non-Jew or an Israelite to annul the idol he has made. It is *because* an idol made by an Israelite becomes prohibited immediately even before it has been actually worshiped (i.e., treated like an idol) that the Israelite is powerless to annul that idol.¹³ In other words, just as he is powerless to initiate its prohibited status, so is he powerless to annul it and thereby end its prohibited status. By contrast, it is because an idol made by a non-Jew is prohibited only from the time that he worships it that the non-Jew has the power to annul that idol. For just as he initiates the idol's prohibited status, so is he empowered to annul it and thereby end its prohibited status.

To this point the Tosefta is concerned with the power of an Israelite to annul his own idol and the power of a non-Jew to annul *his* own idol. The passage concludes with a qualification by Rabbi in the name of his teacher R. Ya'akov which raises a new issue: the issue of cross-nullification. If an Israelite made the non-Jew's idol, then the non-Jew cannot annul it, presumably for the reason made explicit in the first clause: an idol made by an Israelite is prohibited immediately, even though it has not been worshiped. Thus, this passage is evidence for Rabbi's view that an idol made by an Israelite cannot be annulled (not only by the Israelite but also by the non-Jew who comes to own it). This position corresponds with his view as presented in the Babylonian version of the mishnah (the "later" version) in which he states that a non-Jew can annul the idol of himself and his non-Jewish fellow (but not that of an Israelite).

Later in the Tosefta¹⁴ we find a dissenting view:

t. AZ 5:7b

וחכמי אומ' נכרי מבטל עבוד' זרה של ישר'
 וישר' אין מבטל עבוד' זרה של נכרי
 ר' שמע' בן מנסיא אומ'
 עבוד' זרה של ישר' אין לה בטילה עולמית

But the sages say: A non-Jew can annul the idol of an Israelite
 but an Israelite cannot annul the idol of a non-Jew.

R Shimeon b. Menasya says: the idol of an Israelite can never be annulled.

This passage continues the subject raised by Rabbi above: the issue of "cross-nullification," as it were: Can a non-Jew and an Israelite annul one another's idols?

Rabbi had declared that a non-Jew cannot annul his idol if it was made by an Israelite. The sages disagree: A non-Jew *can* annul the idol of/made by an Israelite, but an Israelite cannot annul the idol of/made by a non-Jew. R. Shimeon ben Menasya's teaching that an Israelite's idol can never be annulled (presumably by an Israelite or a non-Jew) reinforces Rabbi's earlier statement that a non-Jew cannot annul the idol made by an Israelite.

The Tosefta explicitly connects the susceptibility of an idol to annulment with the time of onset of the idol's prohibited status: Where prohibition is immediate, the idol cannot be annulled; where prohibition depends on an act of worship, the idol can be annulled. The time of onset of prohibited status is in turn connected to the status of the idol maker (Jew or non-Jew). I would argue that the next step in the evolution of this halakhah involved the dissolution of the first connection (i.e., the connection between the susceptibility of an idol to annulment and the time of onset of the idol's prohibited status). This first connection is dissolved because the second connection (between the time of onset of prohibited status and the status of the idol maker) is reversed. The evidence for this reversal is preserved in the Yerushalmi:

p. AZ 4:4, 43d

ע"ז של נכרי אסור מיד לפיכך יש לה ביטול
 ושל ישראל משחיעבד לפיכך אין לה ביטול
 א"ר זעיר' ליה כאן לפיכך
 אלא אין לה ביטול ויש לה ביטול

The idol of a non-Jew is prohibited immediately
 —therefore it can be annulled

The idol of an Israelite [is prohibited only] from the time that it is worshiped
 —therefore it cannot be annulled.

R. Zeiri¹⁵ said: There is no “therefore” here! [i.e., no inferential relationship] but rather [it is simply]:

- “it cannot be annulled” and
- “it can be annulled.”

As we learn elsewhere (b. AZ 51b–52a), the time of the onset of an idol's prohibited status was an issue contested by tannaim—specifically by R. Akiva and R. Yishmael. In the Tosefta passage above, the view attributed to R. Yishmael was adopted (though not labeled as such): that the idol of/made by an Israelite is prohibited immediately while that of/made by a non-Jew is prohibited only once it is worshiped. On this view, an inference is drawn in the Tosefta. Because the prohibited status of an Israelite's idol is immediate and not initiated by the Israelite himself, it is equally not within the Israelite's power to end the idol's prohibited status, that is, to annul it. The converse is true of a non-Jew. Because the prohibited status of a non-Jew's idol is initiated by the non-Jew (through an act of worship), he also has the power to end that prohibited status, that is, to annul it.

However, in the Mishnah and in the Yerushalmi here, the view of R. Akiva (or so it is labeled in the Bavli) is adopted: that the idol of an Israelite is prohibited only once it has been worshiped, whereas that of a non-Jew is prohibited immediately. As

R. Zeira is quick to inform us, any inferential reasoning from the time of an idol's prohibited status to issues of annulment is no longer possible once R. Akiva's view is adopted. Indeed, as we have seen, no such inference appears in the Mishnah; the two topics are merely juxtaposed. Once we hold like R. Akiva that an Israelite's idol is not prohibited until worshiped, then we must simply assert *independently* that an Israelite cannot annul his idol (or, as the Yerushalmi says, that an Israelite's idol cannot be annulled) and that a non-Jew can annul his idol (or that his idol can be annulled).

In the continuation of the sugya, the Yerushalmi in fact does just that. After citing the biblical basis for the Akivan view (= the Mishnah) and then the alternative Yishmaelian view (= the Tosefta), the gemara indicates *independent* bases for our knowledge that a non-Jew's idol is susceptible to annulment (a biblical verse)¹⁶ while that of an Israelite is not (from a practical precedent).¹⁷ There then follows the passage cited earlier concerning the revised teaching of Rabbi and the teaching of R. Shimeon ben Menasya. Both of these teachings are in line with the position that an Israelite's idol is not susceptible to annulment.¹⁸

It would appear that at some point, certainly by the time of Rabbi, the controversy concerning the time of an idol's prohibition was decided in favor of the view attributed to R. Akiva in the Bavli: that the idol of an Israelite is permitted until worshiped while that of a non-Jew is prohibited immediately. This view is presented anonymously in our mishnah and in the Yerushalmi.

However, with the adoption of the Akivan view, the inference recorded in t. AZ 5:3, that a non-Jew has the power to annul his idol while an Israelite does not, was deprived of its logical basis, and in fact it *does not appear outside the Tosefta*. The p. 4:4, 43d passage makes explicit the dissolution of this inference, which is only implicit in the Mishnah, and searches for an independent basis for the minority view that the idol of an Israelite cannot be annulled. The gemaras further indicate that Rabbi had accepted the view that the idol of an Israelite is not subject to annulment (perhaps precisely because it was established on independent grounds, as is later reflected in the amoraic traditions of the Yerushalmi?). Having accepted this view, he was forced to modify the mishnah in line with the position that a non-Jew cannot annul the idol of an Israelite. (His view to this effect is found also in t. AZ 5:3.)

The sources thus capture various moments in the probable evolution of the mishnah: The connection between susceptibility to annulment and the time of onset of an idol's prohibited status is found in the Tosefta; the endorsement of the Akivan view concerning the connection between the time of onset of prohibited status and ethnic-religious status is found in the Mishnah and Yerushalmi and runs counter to that of the Tosefta, which endorses the Yishmaelian view; the explicit dissolution of any possibility of inferring the rules concerning the annulment of idols from the Akivan view is found in the Yerushalmi; the explicit and independent adoption of the view that an Israelite's idol can never be annulled is found in the Yerushalmi; and Rabbi's acceptance of this view as against the sages (with whom he presumably once agreed) is intimated in the Tosefta and made explicit in both gemaras. As a consequence of his acceptance of this view, Rabbi revised his teaching as recorded in 4:4. Since he now holds that an Israelite's idol can never be annulled, he cannot teach that a non-Jew can annul the idol of an Israelite and teaches instead "himself

and his fellow,” utilizing language current in related traditions such as t. AZ 5:3, b. 43a, and b. 64b (see note 8).

How the revision of this mishnah contributed to halakhic divergence between the two Talmuds is not discussed by either Rosenthal or Epstein. For the Bavli, it is axiomatic that the idol of an Israelite cannot be annulled. Indeed, this principle is utilized elsewhere in the Bavli and is never challenged¹⁹ (a far cry from its minority status in the Tosefta). Further the Bavli refuses to entertain the possibility that Rabbi would have ever promulgated a view contradicting this axiomatic principle. In other words, the Bavli refuses to accept that Rabbi ever ruled that a non-Jew can annul the idol of an Israelite and, consequently, that Rabbi would ever have needed to revise his view on this matter. Thus, our mishnah in *both* its versions must be reinterpreted. The Bavli concludes that both versions were taught in reference to a specific case: the case of an idol owned jointly by a non-Jew and an Israelite.

b. AZ 52b

מתני ליה רבי לר' שמעון בריה²⁰
 נכרי מבטל ע"ז שלו ושל חברו
 א"ל ר' שנית לנו בילדותך
 נכרי מבטל ע"ז שלו ושל ישראל
 דישראל מיהא מבטלה והא ושם בסתר כתיב
 א"ר הלל בריה דרבי וולס
 לא נצרכה שיש לו בה שותפות
 בילדותו מאי קסבר ובזקנותו מאי קסבר
 בילדותו סבר ישראל אדעתא דעובד כוכבים פלח
 כיון דעובד כוכבים מבטל דנפשיה דישראל נמי מבטלה
 ובזקנותו סבר ישראל אדעתא דנפשה פלח
 כי מבטל עובד כוכבים דנפשה דישראל לא בטיל

Rabbi was teaching mishnah to R. Shimeon his son:

A non-Jew can annul the idol of himself and his fellow.

He said to him, Rabbi, in your youth you taught us:

A non-Jew can annul the idol of himself and of an Israelite.

The idol of an Israelite—does he indeed annul it [or: can it be annulled, *hitpa'al*]?
 Behold “sets it up in secret” is written (Dt 27:15)!²¹

R. Hillel the son of R. Wallas said:

His teaching was required for the circumstance in which he [the Israelite] had joint ownership of the idol [with a non-Jew]²²

In his youth what did he hold, and in his older years what did he hold?

In his youth he held that [this] Israelite worshiped the idol for the sake of the non-Jew;

—when the non-Jew annulled his part of the idol, that of the Israelite is also annulled.

But in his older years he held that this Israelite worshiped the idol on his own account

—when the non-Jew annulled his part of it, he did not annul that of the Israelite.

After noting the earlier version, “a non-Jew can annul the idol of himself and of an Israelite,” the stam expresses surprise that Rabbi would ever have taught such a view. Surely he did not ever mean to say, as R. Shimeon has reported, that a non-Jew can annul the idol of an Israelite. What then was the true import of his earlier teaching?

The Bavli’s answer succeeds both in justifying the seemingly problematic view attributed to Rabbi and in changing the terms of the debate entirely. The teaching of R. Hillel is cited to indicate that Rabbi never contradicted the (by now) firmly established principle that an Israelite’s idol cannot be annulled. Rather, his teaching in the mishnah is said to apply to a specific case: the case of an idol owned jointly by an Israelite and a non-Jew. Can such an idol be fully annulled by the non-Jew? At first, Rabbi ruled that it can be; later he ruled that it cannot be. This shift is understandable, since the matter requires an admittedly subjective evaluation: whether the Israelite in question is “really” worshiping the idol or simply acting for the sake of his non-Jewish partner.²³

To summarize: In the Bavli’s sugya the fundamental principle that the idol of an Israelite can never be annulled is assumed and unquestioned. We find here no trace of the fact that at one time this issue was not universally adopted. For this information we need to turn to the Tosefta. There in 5:4 we learn that the majority view was that an Israelite’s idol could be annulled by a non-Jew. Only R. Shimeon b. Menasya is said explicitly to hold that the idol of an Israelite could never be annulled. From the Tosefta and the gemaras, we learn that Rabbi openly adopted the opinion of R. Shimeon b. Menasya, as a consequence of which he modified the mishnah at 4:4 to read *ושל חברו*. This version traveled to Babylonia. The tradition that Rabbi at one time taught this mishnah differently (*ושל ישראל*) and the reason for his revision (i.e., his endorsement of the minority view of R. Shimeon b. Menasya that an Israelite’s idol is never susceptible to annulment) are preserved in the Yerushalmi. However, the Bavli omits the reason for Rabbi’s revision: his acceptance of R. Shimeon b. Menasya’s minority opinion. In the absence of this information, and on the assumption that the insusceptibility of an Israelite’s idol to annulment was a firmly established and uncontested principle (and we have seen that it was not), the Bavli explains away the two versions of the mishnah of Rabbi as applying to a narrow and specific set of circumstances: the case of joint ownership of an idol by an Israelite and a Gentile. The narrow construal of this halakhah is not paralleled in the Yerushalmi.

Halakhic Difference Due to Divergent Versions of a Mishnah as a Result of Amoraic Emendation/Conflation or Misconstrual

Babylonian Emendation/Conflation (m. AZ 4:11— Libation Wine Thrown in Anger)

We have seen an example of how alternative versions of a mishnah created in Palestine contributed to the formation of divergent halakhah in the Yerushalmi and the Bavli. However, alternative versions of mishnayot were not in every case created in Palestine. In the following example, I will argue (against Rosenthal) that an alternative version of one mishnah was most likely generated at an early stage within

Babylonia itself. The initial result is a halakhic divergence between the two Talmuds, although at a later stage in the sugya of the Bavli an attempt is made to neutralize this difference.

m. AZ 4:11

Palestinian version:

נשל את החבית וזרקו לבור זה היה מעשה והכשירו²⁴

If he [an idolater] took a cask and threw it into the vat [of wine]
—this did happen and they declared it [the wine] fit.

So read the Kaufmann, Parma, and Lowe mss. of the Mishnah, the Leiden ms. of the Yerushalmi (mishnah = Parma), a mishnah geniza fragment (see Katsh 1970:98–99), Rambam Paris 330 and the uncorrected form of Sassoon, the Naples printed edition, and a pisqa of the Venice edition of the Bavli (see Rosenthal 1980:153).

However, the Babylonian version is as follows:

Babylonian version:

נשל את החבית

וזרקו בחמתו לבור זה היה מעשה והכשירו²⁵

If he took a cask and threw it *angrily* into the vat
—this did happen and they declared it [i.e., the wine] fit.²⁶

So read the Munich,²⁷ Paris, and JTS manuscripts (בחמתו follows the word לבור in JTS), the Pesaro and Venice printed editions, Temani New York, the corrected version of Rambam Sassoon, and also an Austrian Bavli fragment (see Rosenthal 1980:153).

In addition to the direct evidence of the divergent Palestinian and Babylonian versions of this mishnah contained in the manuscripts and textual witnesses, there is indirect evidence for these versions from the gemara discussions.

b. AZ 60b

אמר רב אשי כל שזבב טמא בעובד כוכבים עושה יין נסך
כל שזבב טהור בעובד כוכבים אינו עושה יין נסך
איתיביה רב הונא לרב אשי
נשל את החבית וזרקו בחמתו לבור
זה היה מעשה בבית שאן והכשירו²⁸
בחמתו אין שלא בחמתו לא התם דקאזיל מינה ומינה

Rav Ashi said:

Whatever is rendered impure by a *zav*²⁹ renders wine “*yen nesek*”³⁰ by an idolater;

Whatever is not rendered impure by a *zav* does not render wine *yen nesek* by an idolater.

R. Huna³¹ objected to Rav Ashi with the following:

If he took a cask and threw it *angrily* into the vat
—this did happen in Bet Shean³² and they declared it fit.

[If done] “angrily” —yes [it is fit]

but [this implies if done] “not angrily” —no [it would not be fit].

[Response to the objection]:

In that case [i.e., if done “not angrily”], he rolls it.

In this sugya Rav Ashi teaches a certain parallelism between the *zav* and the idolater. Just as the *zav* renders items unclean, in the same manner an idolater bestows on wine the legal status of *yen neseq* (prohibited to Israelites).³³ To this Rav Huna objects with a counter example. He first cites the mishnah³⁴ and then subjects it to a *diyyuq*³⁵ as follows: the language of the mishnah states that the wine is declared fit when the cask is thrown *angrily*. Hence, under normal circumstances, when the cask is not thrown in anger, the wine would not be fit. Rather, it would be declared *yen neseq*. The difficulty raised by Rav Huna’s objection is implicit: His *diyyuq* on the mishnah has shown that a cask thrown under normal circumstances by an idolater renders wine *yen neseq*. But a cask thrown by a *zav* does not render objects impure (since physical contact is required before a *zav* can defile an object). Thus Rav Ashi’s parallelism between the *zav* and the idolater has been challenged.

This sugya provides indirect evidence that the mishnah text in its Babylonian version read בחמרו. Not only does this term appear in Rav Huna’s citation of the mishnah, his entire *diyyuq* depends upon its presence.³⁶

The sugya in the Yerushalmi supports the claim that the Palestinian amoraim had before them a different version of the mishnah — the Palestinian version that omits “in anger.”

p. AZ 4:12, 44b³⁷

רבי שמואל בשם ר' אבהו
אין עושין נסך בזריקה גוי מהו שיעשה יין נסך בחמרו
נישמעינה מן הדא ארמייא הוה ליה קופין גו מעצרתא
אתא ישראל חלף בהון חמר
אתא ארמייא קולחא ושפכון לגובה
אתא עובדא קומי רבנן אמר אין הגוי עושה יין נסך מחמרו

R. Shmuel in the name of R. Abbahu:

A non-Jew does not make wine *yen neseq* by throwing.

What is the law? Does a non-Jew make wine *yen neseq* when he acts³⁸ in anger?

Infer it from this case:

A certain Aramean had kegs [lit. = baskets] in a winepress [room]. An Israelite came and filled them with wine. The Aramean came with his pitcher and poured them [the kegs] into it [the press].³⁹ The case came before the rabbis. They declared: A non-Jew does not render *yen neseq* in anger.

Rosenthal interprets the question posed in this passage (“Does a non-Jew make wine *yen neseq* when he acts in anger?”) as evidence that the Palestinians knew of

both versions of the mishnah: the Palestinian version of throwing and the Babylonian version of throwing in anger. He writes:

[T]he Palestinians were familiar with the alternative version.⁴⁰ And thus they ask in p. AZ 4, 44b, “R. Shmuel in the name of R. Abbahu: What is the law? Does the non-Jew make wine *yen neseq* when he acts in anger?” . . . It is clear from the Yerushalmi . . . that certainly their version of the mishnah did not read “in anger”; and in line with this all of the manuscripts of the Palestinian branch do not have this version of the text (by contrast, the Babylonian branch does have this version, which fact is also evidenced by the gemara of the Bavli), but here also *the Palestinians were familiar with the alternative version and presented it in their talmud*.⁴¹ (1980:18)

I do not agree with Rosenthal’s analysis of the Yerushalmi’s sugya. Closer examination reveals that two separate issues are being discussed in this sugya: on the one hand throwing, and on the other hand emptying out with a vessel, which is done in anger. The Yerushalmi never addresses the issue of throwing in anger; that is a new issue born of the Babylonian version of the mishnah and nurtured in the sugya of the Bavli cited above.

I interpret the Yerushalmi in the following manner. The sugya opens with a reformulation of the mishnah that abstracts from it the general halakhah, to wit: a non-Jew does not make wine *yen neseq* by throwing. In short, tossing an object into wine from a distance does not render that wine prohibited. This is so because wine falls within the rule of *yen neseq* only when an idolater has touched it—the fear being that in so doing he dedicated or libated a few drops to his god, thus rendering the remainder completely prohibited for drinking or for sale.

Naturally one might wonder: Does any and all contact by a non-Jew render wine *yen neseq*? Does indirect contact, such as touching wine by means of a measuring rod, count as contact in regard to the laws of *yen neseq*? What if the non-Jew’s contact with the wine is in some sense “nonlibating” contact? In other words, what if the non-Jew’s contact is unintentional (e.g., he falls into the wine), or intentional contact but without the intention to libate (e.g., he is settling the fermentation)? The first part of m. AZ 4:11 lists a number of cases that illustrate the rabbis’ concern with covering such irregular contingencies. They indicate how the halakhic prohibition of *yen neseq* is compromised or inapplicable as a result of these irregularities.⁴² Both the Yerushalmi and the Bavli in the fourth and fifth chapters of our tractate explore these issues.⁴³

I submit that it is precisely this gray area that is explored by the Yerushalmi now. Does the non-Jew make the wine *yen neseq* when he is angry, that is, when his *contact* is made in a state of anger? Notice that the text does not say “when he *throws* in anger” (although this is what Rosenthal assumes is meant), but simply “in anger” (hence, I supply the neutral “when he acts” in my translation). Further support for my interpretation emerges from the case brought in answer to the query. The case has nothing whatsoever to do with throwing. In this story an Israelite misappropriates the storage jars of a non-Jew. This act angers the non-Jew, and in his anger he *empties out* the Israelite’s wine with a pitcher—indirect but intentional contact. Normally, an act of emptying would render the wine *yen neseq* because one suspects

a non-Jew of libating while pouring wine. However, since the non-Jew was acting in anger, his contact with the wine was not for the purpose of libating.⁴⁴ Hence, the rabbinic rule that the wine is permitted.⁴⁵

On my interpretation, the Yerushalmi discusses two discrete but related issues: the case of a non-Jew who throws a cask into wine (i.e., a case of nonphysical contact), in which the wine is declared permitted; and the case of a non-Jew who empties wine with a pitcher (i.e., a case of indirect contact) but who does so in anger. His anger obviates the normal suspicion of libation and thus the wine is not held to be *yen neseq*. The Palestinian sages never discuss the case of *throwing in anger* and thus, despite Rosenthal's claim, there is no evidence that they were aware of an alternative version of the mishnah: *ורקה בחמה*.

Only in the Bavli do we find a kind of hybrid of the two issues of throwing and indirectly contacting in anger. Once the mishnah includes *בחמה* as an adverb modifying the verb of *throwing* (which it never does in the Yerushalmi), then the two issues become interconnected and a discussion is generated in the gemara in which throwing angrily is counterposed to throwing not in anger. Since there is no evidence for such a conception in the Palestinian sources, it is most likely that the Babylonian version of the text was generated in Babylonia. Perhaps this is a case of Babylonian conflation of issues that were held distinct in the Palestinian tradition.⁴⁶ In other words, discrete (but obviously related) Palestinian traditions concerning (1) a non-Jew throwing a cask into wine and (2) a non-Jew emptying wine with a pitcher when angry were conflated in Babylonia, a conflation reflected in the Babylonian version of the mishnah, which reads "threw in anger," a form unknown in Palestinian sources, including (on my interpretation) the Yerushalmi. This conflation would have occurred in the amoraic period prior to R. Huna (second-generation amora), who apparently relies on it in his teaching, which is presented by the *stam* as an objection to the statement of Rav Ashi.⁴⁷

The legal ramifications of these two alternative versions should be apparent. According to the Palestinian version, an idolater does not render wine *yen neseq* by throwing an object from a distance. According to the Babylonian version, the idolater does not render wine *yen neseq* by throwing an object *in anger*. However, in normal circumstances (and this is the force of Rav Huna's *diyyuq*), his throwing an object *does* render wine *yen neseq*. Hence the halakhah emerging from the two versions of the mishnah is directly contradictory.⁴⁸

In a final step, however, the Bavli attempts a harmonization by redefining "throwing not done in anger" as a kind of rolling in which indirect contact is to be suspected. In other words, in the inferred case proposed by Rav Huna of throwing done "not angrily," we should not assume that the idolater stands at a distance and heaves the cask, as indeed he would do if angry. Rather, we should assume that he rolls the cask to the vat and, once it is near, simply drops or pushes it in.⁴⁹ In such a case, there is indeed the possibility of (indirect) physical contact, and for that reason, the wine would not be declared fit.⁵⁰ Hence, Rav Ashi's parallelism remains intact. Both the *zav* and the idolater in the case described would render the wine prohibited/*yen neseq* only by contact.

The Bavli's final position is this: (a) throwing in anger does not render wine *yen neseq* while (b) throwing done not in anger, which is actually a kind of rolling in

which physical contact is possible and which is therefore assimilated to the law of physical contact rather than throwing, does render wine *yen nesek*. The implication of (a) and (b) is that (c) true throwing, which cannot be confused with rolling and in which there is no possibility of physical contact, does not render wine *yen nesek*.

The Meiri's description of the Bavli's final position is precisely worded:

Whoever does this angrily will ordinarily cast it from even a slight distance and will not wait until he is so close that one side of the cask is touching his hand while the other side is touching the wine.

But whoever does this not in anger, we must suspect [of contact as just described];

And in any event, *if he actually threw it—a genuine and complete throwing—and didn't roll it at all, then even if it was done not in anger, it is permitted as is explained.* (ed. 1964:237; translation and emphasis mine)

Thus by the end of the sugya, the Bavli has come full circle and, although having traversed a rather tortuous route, its halakhah closely resembles that of the Yerushalmi in regard to the case of throwing. Both teach ultimately that in a true case of throwing the idolater does not render wine *yen nesek*. However, the Yerushalmi adds further that even emptying out with a pitcher when done in anger does not render the wine *yen nesek*. The Bavli's sugya contains no parallel case.⁵¹ Further, the alternative version of the Bavli's mishnah has forced the Bavli to distinguish among three cases: (1) throwing in anger; (2) throwing not in anger, which is a kind of rolling; and (3) true throwing, also not in anger (an implied case).

I suspect that the logical generation of these three distinct cases led to the post-talmudic emendation of the Mishnah (certainly in the Sephardic wing of the Babylonian branch—reflected in the JTS and Paris mss.—and in one Rambam ms.) to *הזריר* rather than *הכשיר*.⁵² When used in contradistinction to one another, the former term means that the item is permitted for benefit (in general, sale is meant) but is not fit for actual drinking, while the latter term means that the item is permitted not only for benefit but for actual drinking by a Jew. The halakhah that emerges from the Sefardi tradition of the mishnah and its gemara is as follows: (a) throwing in anger—the wine is permitted for sale but is not fit for drinking (*הזריר*); (b) throwing not in anger, which is a kind of rolling—the wine is not permitted for sale or fit for drinking (*לא הזריר*); and (c) true throwing, also not in anger (implied case)—the wine is permitted for sale and is fit for drinking (*הכשיר*). The Yerushalmi teaches only case (c). Cases (a) and (b) are unique to the Babylonian tradition and necessitated by the Bavli's version of the Mishnah.⁵³

Babylonian Emendation/Conflation (*m. AZ 1:3—That Day Only*)

There is another example of an alternative Babylonian reading of the mishnah text which in my view may be understood as the result of a conflation in the Bavli of issues that are presented as distinct in the Yerushalmi.⁵⁴ Here again, I differ with Rosenthal, who interprets the sugya of the Yerushalmi as evidence that both versions of the text were current in Palestine and known to the Palestinian amoraim but only one was adopted by the Babylonians. In my view, the Yerushalmi provides no such evidence,

and therefore no positive claim can be made for the coexistence in Palestine of the two versions.

The third mishnah of the first chapter of AZ provides a list of the festivals of idolaters that are subject to the restrictions listed in the first and second mishnayot. The list concludes with personal festive days and reads as follows:

m. AZ 1:3

Palestinian version:

יום תגלחת זקנו ובלוריתו
 ויום שעלה בו מן הים
 ויום שיצא בו מבית האסורין
 אינו אסור אלא אותו היום ואותו האיש

The day of shaving his beard and/or *belorit* (forelock)

The day on which one returns from a sea voyage

The day on which one is released from prison

—these are not prohibited except in regard to that day and that person.

This version is found in the Kaufmann, Parma, and Lowe mss. of the Mishnah, the Leiden ms. of the Yerushalmi (mishnah = Parma), in Rambam Sassoon and Paris 330, in several geniza fragments, and in the Naples edition (see Rosenthal 1980:58).

Babylonian version:

יום תגלחת זקנו ובלוריתו
 ויום שעלה בו מן הים
 ויום שיצא בו מבית האסורין
 וגוי שעשה משתה לבנו⁵⁶
 אינו אסור אלא אותו היום ואותו האיש בלבד

The day of shaving his beard and/or *belorit* (a lock of hair)

The day on which one returns from a sea voyage

The day on which one is released from prison

And a non-Jew who prepares a feast for his son⁵⁶

—these are not prohibited except in regard to that day and that person *only*.

This version is found in all Babylonian witnesses: the Munich, JTS, and Paris mss., and the Pesaro and Venice printed editions (see Rosenthal 1980:58). Furthermore, Rav Ashi's citation of the mishnah on b. AZ 8a includes the word בלבד (= "only"), suggesting that this text stood before his generation of amoraim in Babylonia (although the word בלבד in this case follows אותו היום, "that day" rather than "that person").⁵⁷

Rosenthal (1980:17) infers from the sugya of the Yerushalmi that both versions were known in Palestine. The sugya of the Yerushalmi runs as follows:

p. AZ 1:3, 39c

יום תגלחת זקנו
 מה אותו היום בלבד או אותו היום בכל שנה

[*Incipit*]: “the day of shaving his beard”

What does it mean?

—That day only, or that day every year (i.e., the anniversary)?

In my view, this passage constitutes strong evidence that there did *not* exist in Palestine a version of the mishnah that included the word בלבד (*pace* Rosenthal). Notice the structural similarity between this sugya and the Yerushalmi’s sugya to 4:11 (“What is the law? Does a non-Jew make wine *yen neseq* when he acts in anger?”). In the previous example, the halakhic question opening the sugya and, more important, its solution from court precedence were sure signs that the answer to the question was not provided in the mishnah. Similarly here, the very fact that the sugya opens by asking whether the term אורו היום בלבד is meant is strong evidence that בלבד was not included in the mishnah text. Far from indicating that both versions existed in Palestine and were preserved in the Yerushalmi, this sugya may indicate that only one version was known in Palestine. I will argue that the alternative version of this mishnah was born in Babylonia as a result of conflation, just as we saw in the case of 4:11 (בחמתו).

Our first task must be to clarify the question posed by the Yerushalmi. First we must recall that the mishnah states: “these are not prohibited except in regard to that day and that person.” The confinement to the specific day of the festival and to its celebrants is by no means an obvious move. The previous two mishnayot discuss festivals for which prohibitions are in force for a period of three days prior to (and in one view three days after) the festival day itself. By contrast, these celebrations, listed in the latter clause of the third mishnah, are prohibited only on the actual day of the celebration. Context indicates, therefore, that the phrase “that day” (אורו היום) provides an essential piece of information—the prohibition covers that day, to the exclusion of surrounding days (unlike the larger communal festivals and royal observances in the preceding mishnayot). The Bavli itself recognizes that this is the function of the phrase “that day,” in the following passage.

b. AZ 8a

אורו היום לאפוקי לפניו ולאחריו

The phrase “that day” is used to exclude the days before and after [the celebration from coverage by the prohibition].⁵⁸

The Yerushalmi then raises a natural question. Granted the mishnah teaches “that day” so as to exclude the days prior to and subsequent to the day of celebration. But what about anniversary celebrations of that day in subsequent years? Is the phrase “that day” particular enough to exclude anniversary celebrations also? Does it literally mean “that day *only*” (אורו היום בלבד) and no other day at any other time is prohibited? Or does the phrase “that day” signify a weaker degree of specificity, ruling out the days prior to (and after) the celebration but not going so far as to rule out the anniversary of the day in question? These are the two possibilities: אורו היום (“that day”) means (a) אורו היום בלבד: that day *only* is prohibited and no other at any other time, including an anniversary, is prohibited; (b) אורו היום: that

day is prohibited and not the days before or after, but the prohibition of anniversary days remains a possibility.

The question receives no answer in the Yerushalmi. Perhaps, however, it is answered implicitly in the Babylonian version of the mishnah. Perhaps the addition of the word בלבר into the Babylonian text is intended to foreclose the second possibility. The highest degree of specificity and exclusionary power is thus guaranteed in the Babylonian version of the mishnah: that day and that person *only* are covered by the prohibitions in this law; no days prior or subsequent to that day *and* no anniversary celebrations are covered.

Admittedly, the Bavli never explicitly states that the presence of בלבר in the mishnah excludes even anniversaries. However, it is not unreasonable to suppose that the Babylonian inclusion of the term בלבר imparted the highest degree of specificity to the mishnah. The term בלבר is a halakhically important term, used already in tannaitic traditions to narrow or pinpoint the law precisely. Many technical phrases used in the Bavli employ בלבר as an exclusionary term — for example: (a) אין לי אלא X בלבר (= “I have established only X”); (b) לא אמרו X אלא Y (לענין) בלבר (= “X was said only in regard to Y”); (c) אין בין X וY אלא Z בלבר (= “There is no difference between X and Y except Z”); and especially (d) לא X בלבר אלא אפילו כל Y (= “not case X precisely and only, but all cases in which . . .”). Given these usages, it is quite possible that the amoraim viewed the term בלבר as halakhically significant. And if the term בלבר was so viewed by the amoraim, then it is possible that its addition to the text of the mishnah here was a purposeful restriction of the scope of the prohibition, intended to exclude not only surrounding days but anniversaries also.⁵⁹

Misconstrual and/or Dialectal Phonemic Homophony

(*m. AZ 1:5*)

In this final example, a diachronically secondary gloss embedded within the mishnah was (1) misconstrued in Babylonia as a distinct element of the mishnah and (2) reinterpreted in Palestine as an adjectival clause as a consequence of the dialectal homophony of the phonemes /w/ and /b/.

m. AZ 1:5

Palestinian version:

אלו דברים אסורין למכור לגוים
איצטרובלין ובנות שוח בפטוטרותיהם⁶⁰
ולבונה תרנגול לבן

These items are prohibited for sale to non-Jews: Itstrobolin [= fir cones], Benot-shuah *with their stems*,⁶¹ and frankincense and a white cock.

The term that will concern us is בפטוטרותיהם, translated here as “*with their stems*.” While there are numerous variants of the noun in question, all witnesses to the Palestinian branch of the mishnah prefix the word with a *beyt* (ב-), which is what concerns us now. Hence the Kaufmann, Parma, and Lowe mss. of the Mishnah, the Leiden ms. of the Yerushalmi (mishnah = Parma), Rambam Sassoon and Paris 330, three geniza

fragments, and the Naples printed edition read *beyt* + some form of the noun (see Rosenthal 1980:160). For convenience's sake I will employ the version of ms. Parma and the Naples printed edition as the Palestinian version: בפטוטרותיהם. Lowe differs only in the insertion of a *yod* after the first *beyt* while ms. Leiden, the Rambam versions, and one geniza fragment differ only in attaching the suffix הן rather than הם.

Babylonian version:

אלו דברים אסורין למכור לגוים
איצטרובלין ובנות שוח ופטוטרות
ולבונה ותרנגול הלבן

These items are prohibited for sale to non-Jews: Itstrobolin [= fir cones], Benot-shuah and stems, and frankincense and a white cock.

The word פטוטרותיהם (usually translated “and stems”), with no possessive suffix and with initial letter *vav*, is found in the Munich, Paris, and JTS mss. and the Pesaro and Venice printed editions (see Rosenthal 1980:160). (The version of Temani New York differs in adding a possessive suffix.)

The difference between the two versions, though based on an alternation of only one letter and a suffix, is not insignificant. In the Palestinian version four objects must not be sold to non-Jews, one of which is *benot shuah* with their stems. In the Babylonian version there are five objects that must not be sold to non-Jews, including *benot shuah* but also something called פטוטרות.⁶²

The Yerushalmi has only a single comment on the items in this mishnah.

p. AZ 1:5 3rd

שמעון בר בא בשם רבי יוחנן
בנות שוח בפטוטרותיהן ואיצטרובלין במשולותיהן

Shimeon bar Ba in the name of R. Yoḥanan said: “*Benot-shuah*” with their stalks and “fir cones” with their stems.

Just as *benot-shuah* are forbidden with their stalks, so fir cones (*itstrobolin*) are forbidden with their stems.

The Bavli (14a) records two traditions attributed to R. Yoḥanan and cited by Rabbah bar bar Hana. In the first, Rabbah bar bar Ḥana reports R. Yoḥanan’s identification of *benot shuah* as “white figs.” In the second, Rabbah bar bar Ḥana cites R. Yoḥanan as an authority concerning the alternative Palestinian version:

b. AZ 14a

ופטוטרות
אמר רבה בר בר חנה אמר ר' יוחנן
בפטוטרותיהן שנו

“and *petoterot*” — Rabbah bar bar Ḥana said R. Yoḥanan said: “with their stalks” is taught.

It was Saul Lieberman (1946:47–51) who identified the objects in this list and demonstrated that *petoterot* are not stems or stalks. The following is a summary of his conclusions.

1. *Benot shuah* cannot actually be figs. The description of its growth in Shevi'it (to wit: the fruit ripens over a period of three years so that at any given time there is one-year old fruit, two-year old partially ripe fruit, and three-year old ripe fruit) does not match that of figs.

2. Its association here with *its'trobolin*, a type of fir pine, suggests that it is also a type of pine. The Aramaic Fragment of the Testament of the Twelve Patriarchs⁶³ lists woods that may be used on the altar: וַאֲמַרְתָּן בְּלֵיל שְׁמֵחָא corresponding to the Greek καὶ στροβίλον καὶ πίτυν (Geoponica VII.20.5). Both of these are a kind of pine. Hence שְׁמֵחָא is a translation of Greek πίτυς and thus בְּנוֹת שֹׁחַ = πίτῦδα or small pines. Note p. Shevi'it 5:1, 35d: “Which trees are called *benot shuah*? [Answer]: פִּישִׁירִיהַ = πίτῦδα, which through various shifts becomes פִּטְוִשְׂרוּתָהּ.

3. R. Ḥananel's description of the *benot shuah*'s three-year growth in b. RH 15b (based on p. Shev 5:1, 35d) matches Pliny's account of the pine.

4. R. Yoḥanan's reference to *benot shuah* as “white figs” is actually an accurate reflection of the popular Greek name for the pine. According to Theophrastus, *Hist. Plant* III, 3.9, some Greeks referred to the fruit-like formations of the *Pinus halepensis* as white figs.

5. The mishnah prohibits the sale to non-Jews of objects used in idol worship—that is, the cones of two kinds of pine (*its'trobolin* and *pitudia*), the white cock, and frankincense. These items are known from a magic papyrus “The Eighth Book of Moses,” which describes pine cones, white cocks, and frankincense being placed on the altar (50).

Lieberman apparently holds that the two terms in the mishnah refer to two types of pine. Rosenthal, however, holds that the term פִּטְוִשְׂרוּתָהּ is a gloss on the word *benot shuah*. Rosenthal discusses the phenomenon of glosses found in the mishnah of AZ (1980:Part VI). The tractate contains numerous references to realia that were obscure even to the amoraim (see b. AZ 14b, where the amoraim complain that they cannot identify many of the objects mentioned; similarly, the geonim despair in their writings over identifying the various fish mentioned in the mishnah). There are consequently many explanatory glosses in the mishnah of AZ, particularly in the first two chapters. In the majority of cases it is a Hebrew word *that is glossed by a Greek word*—just as appears to be the case here. Rosenthal suggests that glosses in the printed edition that appear in only one manuscript should probably be attributed to post-amoraic commentators. But glosses, such as פִּטְוִשְׂרוּתָהּ, that appear throughout the manuscript tradition and in amoraic citations of the mishnah and in parallel beraitot are probably glosses that date from the tannaitic period itself.⁶⁴

Equipped with the foregoing information, how can we explain the formation and function of the two versions of the mishnah that appear in the two Talmuds? Let us grant Rosenthal's claim that the original text of the mishnah was בְּנוֹת שֹׁחַ וּפִטְוִשְׂרוּתָהּ (“*benot shuah*, i.e., pine”). This version is faithfully preserved in the Babylonian tradition. However, as Rosenthal himself points out (1980:233), later generations often reinterpret the *vav haperush* (explanatory *vav* = “i.e.”) as a *vav haḥibur* (ordinary conjunction = “and”), with the result that the gloss is treated as a distinct entity. This

process seems to have occurred in Babylonia (certainly this is the understanding of the Rishonim), where the mishnah is interpreted as: *itstrobolin* and *petoterot*. Apparently, when Rabbah bar bar Ḥana arrived from Palestine and heard the Babylonians recite the mishnah with a *vav* meaning “and,” he presented a tradition to counter the idea that פטוטרות was a distinct entity joined to a series of other entities by a conjunctive *vav* (Rosenthal 1980:160).

Ironically, however, Rabbah bar bar Ḥana’s correction (based on R. Yoḥanan’s teaching) is an error in its own right. The Palestinians too had lost sight of the fact that פטוטרות was an explanatory gloss of the term *benot shuah*. The homophony of the bilabials /w/ and /b/ had given rise to an understanding of the term as בפטוטרות [= “with stems”], which was realized by an orthographic shift from *vav* to *beyt*.⁶⁵ This Palestinian version is evident in the Yerushalmi and in the Palestinian tradition appearing in the Bavli. The adjectival nature of this phrase was then further reinforced by the addition of a possessive suffix ending: בפטוטרותיהן = “with *their* stems.”

Halakhically speaking, the Yerushalmi’s understanding of the mishnah is unitary: prohibited are *benot shuah* with their stalks. This Palestinian reading surfaces in the Bavli, which therefore contains a record of both interpretations: (1) the interpretation based on its own text, that *benot shuah* and also something called פטוטרות are prohibited; (2) the interpretation based on the Palestinian text reported by Rabbah bar bar Ḥana that *benot shuah* are prohibited with their stems. In any event, neither Talmud retains the original ruling of the mishnah—that only *benot shuah* (in Greek, πικύδα) are prohibited. Each Talmud has reinterpreted the mishnah. But the halakhah of the one—a result of misconstrual of *vav haperush* as *vav haḥibbur*—is not the halakhah of the other: a result of dialectal phonemic homophony that enabled the substitution of *beyt* for *vav*.

The preceding examples have demonstrated that at times halakhic difference between the Yerushalmi and the Bavli is grounded in the fact that the Palestinian and Babylonian amora'im possessed divergent versions of a particular mishnah. Rosenthal has argued that Rabbi Judah produced a revised version of his Mishnah which served as the basis of amoraic discussion in Babylonia, but that on occasion the Palestinians preferred and reinstated the earlier version of a particular mishnah which then served as the basis of amoraic discussion in Palestine. M. AZ 4:4 is an illustration of this hypothesis.

In another respect the text of the Mishnah was not entirely stable during the amoraic period. Independent *amoraic* emendations or errors, conscious or unconscious, led to new versions of the mishnah in one center and not the other and thus influenced the development of the halakhah in one center and not the other. M. AZ 4:10/11, 1:3, and 1:5 are all illustrations of this phenomenon.

In all four cases presented in this chapter, I have argued that a careful study of the manuscript evidence and analysis of the gemara commentaries enable us to identify a *textual* source for halakhic difference between the Yerushalmi and Bavli.

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INTERNAL CAUSES OF HALAKHIC DIFFERENCE (II): HERMENEUTICAL CAUSES

In part I, I examined halakhic difference that could be traced to the fact that the two communities of amoraim possessed different versions of the core Mishnah text. In part II, I will argue that even where the gemaras are based upon the same version of the mishnah, halakhic difference arises from the fact that the gemaras are primarily hermeneutical literatures (i.e., the Talmuds are self-described study and interpretation of a central text of religious and civil law). Substantive differences between the Talmuds are thus often traceable to various factors native to the hermeneutic enterprise itself.

In chapter 2 I will argue that the inherent ambiguity or polysemy of the core Mishnah text—at times elusively terse—and of biblical or other rabbinic legal materials secondarily invoked and analyzed, generates divergent interpretations and halakhah in the two Talmuds.¹ A specific form of the more general issue of textual ambiguity is the omission of rationales for mishnaic teachings. The Mishnah, with its terse style, rarely provides reasons for the legal opinions expressed in its paragraphs. The gemaras may posit alternative reasons for mishnaic traditions, which can lead to divergent halakhah.²

In chapter 3 I will show that the Talmuds share a basic hermeneutical assumption as to the meaningfulness of mishnaic idiom (similar to their hermeneutical assumption regarding biblical idiom), but this assumption is carried to an extreme in the Bavli such that fine details of mishnaic idiom are considered to be interpretable. The more systematic application of this hermeneutical assumption in the Bavli leads to both formal and actual halakhic difference between the two Talmuds.³

In chapter 4 I argue that to read a text in rabbinic culture—whether Bible or Mishnah—meant primarily to read that text in the light of or in dialogue with other texts, on the view that texts explicate texts. This strategy of reading attains its fullest development in the Bavli's dialectical juxtaposition of

traditions. A mishnah is placed alongside other mishnayot that contradict, qualify, or expand it. Further, para-mishnaic traditions (beraitot, excluded from the Mishnah) are sought out, rehabilitated, and set into a dialectical relationship with a particular mishnah. Such dialectical juxtapositions of traditions generate formal and actual halakhic difference between the Talmuds. Finally, in the Bavli we find the dialectical treatment of mishnayot on the basis of logic alone. Interpretations of mishnayot are embedded in a dialectical framework that seeks to validate teachings by articulating hypothetical alternative possibilities and *invalidating* them. Earlier traditions (found in the Palestinian sources also) are often incorporated into a dialectical structure, resulting in a formal difference between the Talmuds.

Halakhic Difference as a Result of Ambiguity in the Mishnah

Here I will examine five cases in which the Bavli and the Yerushalmi develop different interpretations of an ambiguous mishnah. In the first two cases (m. AZ 4:5 and 3:8) the gemaras are confronted with gapped texts. M. 4:5, concerning the nullification of idols through sale, contains a gap of information which is filled in the Palestinian sources and further refined in the Bavli. M. 3:8, concerning passage under an asherah, contains a structural gap spotted by the Bavli and resolved explicitly only there. In a third case I examine the Talmuds' discussions of the rationale for m. AZ 1:1, the prohibition of certain transactions on the days prior to an idolatrous festival, and demonstrate that the ambiguity of the mishnah itself on this matter is replicated in the amoraic and post-talmudic literature. In the two final cases (m. AZ 1:7 and m. AZ 1:3) the gemaras are doubly exercised—by the use of an unfamiliar Greek term (in m. AZ 1:7 בסילקי and in m. AZ 1:3 בלורית) and by an oddity of morphology (1:7) or syntax (1:3). These two cases provide an excellent study of the way in which temporal and cultural distance, internal exegetical pressures, and dialectical and redactional considerations contribute jointly to the construction of new interpretations of tannaitic provisions.⁴

Gapped Texts: m. AZ 4:5 and m. AZ 3:8

A Gap of Information (m. AZ 4:5—the sale of an idol)

M. AZ 4:5 is ambiguous in the sense that it contains a gap of information. The gemaras must work to fill that gap, the Yerushalmi adopting a particular interpretation of the mishnah and the Bavli further refining that interpretation. In a discussion of the rabbinic regulations concerning the nullification of idols, Urbach argues that a trend toward halakhic leniency is apparent and can be understood primarily as a response to the socioeconomic pressures felt by Jewish craftsmen. I will argue that the gemaras' discussions are guided by logical halakhic considerations and that the rabbinic construction of the category of nullification of idols is best explained as the logical unfolding of biblical principles in the Greco-Roman cultural milieu.

The text of the mishnah is as follows:

m. AZ 4:5

כיצד מבטלה
 קטע ראש אוזנה ראש חוטמה ראש אצבעה
 פחסה אף על פי שלא חסרה בטלה
 רקק בפניה השתיין בפניה
 גיררה זרק בה את הצואה הרי זו אינה בטלה
 מכרה או משכנה
 ר' אומ' בטל והכמים אומ' לא בטל

1. How does one annul it?
2. If one cut off the tip of its ear, the tip of its nose, the tip of its finger, or defaced it without there being any reduction of its mass, it is annulled.
3. If one spat before it, urinated before it, dragged it, or threw excrement at it—behold it is not annulled.
4. If one sold it or gave it as a pledge
 - Rabbi says it is annulled
 - but the sages say it is not annulled.

The subject of the mishnah is the annulment of an idol by its worshiper. What acts can be taken as sure signs that the idol has been annulled and that it is therefore permitted (as a mere object) to an Israelite (e.g., to sell, to melt down, to use in some other nonworship fashion)? Physical mutilation of the idol is a sure sign that it has been annulled. However, acts of contempt or degradation are not a sure sign of annulment.⁵ Concerning a third category of action there is a dispute. Rabbi holds that alienation of an idol (as a sale or pawn) is a sure sign that it has been annulled while the sages do not hold that sale is a guarantee that the idolater has annulled the idol as an object of worship. The rabbis can apparently conceive of circumstances in which an idolater might sell his idol without annulling it first. Sale is an ambiguous case precisely because profit is involved that might prompt the idolater to part with his idol despite his continued belief in its divinity. By contrast, we learn in the next mishnah that abandonment of an idol in a time of peace is a sure sign of annulment, the idea being that circumstances did not constrain the idolater to abandon his idol.

The dispute recorded in the mishnah therefore prompts the general question: Is sale of an idol by an idolater an indication that the idolater no longer attributes divine status to the idol and has annulled it? Or should we suppose that the idolater sells his idol for financial reasons and does not therefore necessarily annul it? Clearly the phrase “if he sold it” is simply too vague a delineation for one to make a determination concerning the status of the idol. It is pertinent to know to whom and under what circumstances the idol was sold. It is no surprise then that the Tosefta and the gemaras explore this issue by filling in the gapped picture of the mishnah.

What the purchaser has in mind for the idol is certainly a relevant factor in the consideration of whether or not the seller has first annulled the idol, and the Tosefta sets up a simple binary opposition: one cannot assume annulment by the seller if he is selling the idol to one who will worship it; but if he is selling the idol to one who will not worship it, then presumably he has annulled it.

t. AZ 5:5

גוי שמכר עבודה זרה לעובדיה אסורה
שלא לעובדיה מותרת

If a non-Jew sold an idol to one who worships it, it is prohibited;
to one who does not worship it, it is permitted.

However, if one assumes these clear guidelines, then how can Rabbi and the rabbis dispute the matter? This is the question underlying the discussion of the mishnah in the gemaras. The amoraim must come up with a case of sale in which the fate of the idol—to be worshiped or not—is not entirely clear, for only in such a case is it reasonable to suggest that there is a dispute between tannaitic authorities.

p. AZ 4:5, 44a

זעור בר חינה בשם רבי חנינה בשמכרה לצורף⁶ נחלקו
אבל אם מכרה לעובדה דברי הכל אינה בשילה . . .
מאי כדון בשמכרה לצורף נחלקו אבל אם מכרה לעובדיה
דברי הכל אינה בשילה

1. Ze'or bar Hinenah in the name of R. Hāninah: They dispute over the case in which he sold it to a smelter,⁷ but if he sold it to one who worships it, all agree it is not annulled. . . .
2. How is it then? They dispute over the case in which he sold it to a smelter, but if he sold it to those who worship it, all agree it is not annulled.

While two opinions are expressed in the Yerushalmi, it is the view of R. Hāninah as taught by Ze'or ben Hinenah that is endorsed at the end of the sugya (hence I cite only this view and its endorsement). Rabbi and the sages agree that if the idol is sold to a worshiper, it is not annulled and remains prohibited to an Israelite. They disagree, however, when the idol is sold to a smelter. Rabbi assumes that the idol is sold to be melted down and so has been annulled. The rabbis however, are not prepared to make that assumption.⁸

The Yerushalmi's distinction between the worshiper and the smelter is simply a more precise formulation of the distinction we have already seen in the Tosefta's tradition (the distinction between a worshiper and a non-worshiper). For surely the person who stands most directly at odds with the worshiper who cherishes his idol is the smelter who would melt it down for profit. Note further that the sugya of the Yerushalmi appears to modify our mishnah in the direction of strictness. The mishnah makes no distinction among various sales. Presumably, in every case of sale, Rabbi declares the idol to be annulled while the sages declare that the idol is not annulled. However, according to the Yerushalmi, it is in only certain cases of sale that Rabbi would declare the idol to be annulled. In others, presumably, he would concur with the sages that the idol is not annulled. By narrowing the scope of the dispute, the Yerushalmi narrows the cases in which the lenient position of Rabbi might be articulated.

The Bavli adopts much the same reasoning but further refines the distinction made by the Yerushalmi.

b. AZ 53a

זעירי א"ר יוחנן ור' ירמיה בר אבא אמר רב
 ח"א מחלוקת בצורף עובד כוכבים אבל בצורף ישראל
 דברי הכל ביטל וחד אמר בצורף ישראל מחלוקת
 איבעיא להו
 בצורף ישראל מחלוקת אבל צורף עובד כוכבים
 דברי הכל לא ביטל
 או דלמא בין בזה ובין בזה מחלוקת . . .¹⁰
 ה"ק א"ר נראין דברי לחביריי כשמכרה לחבלה ומנו
 צורף ישראל שאף חביריי לא נחלקו עלי
 אלא כשמכרה לעובדה
 אבל לחבלה מודו לי

1. Ze'iri [cited a tradition] said [by] R Yoḥanan;¹¹ and R. Jeremiah bar Abba [cited a contrary tradition] said [by] Rav.
2. One said: the dispute is over the case of a non-Jewish smelter but in the case of an Israelite smelter all agree that it is annulled.
3. But one said: the dispute is in the case of an Israelite smelter.
4. It was asked [in regard to the view in number 3]: Is the dispute in the case of an Israelite smelter but in the case of a non-Jewish smelter all agree that it is not annulled,
 or perhaps in either case there is a dispute? . . .¹²
5. This is what is meant: Rabbi said, my opinion is accepted by my colleagues when he sells it to be broken up—and to whom is that? To an Israelite smelter, for indeed my colleagues only disagree with me when he sells it to one who worships it but when he sells it to be broken up they agree with me.

The Yerushalmi concluded that the dispute between Rabbi and the sages was in the case of the sale of an idol to a smelter. The Bavli presses the idea further, arguing that there are smelters and there are smelters! The gemara concludes that the dispute in the mishnah is limited to the case of the sale of an idol to non-Jewish smelters, since all would agree that in the case of an Israelite smelter the idol has surely been annulled.¹³

In these four sources we see a progressive and logical refinement of a single idea.¹⁴ The mishnah points out that sale of an idol is a disputed case as regards the issue of annulment. The Tosefta explains that this is so because an idol can be sold to one who will worship it or one who will not worship it; in the former case we assume no annulment but in the latter case it is possible that there is annulment. The Yerushalmi sharpens this binary opposition, for surely the antithesis of one who will worship an idol is one who will destroy an idol (a smelter); only in the former case is the idol surely not annulled, while in the latter case it is possible to hold as Rabbi does that the idol is annulled. The Bavli, however, transforms the binary opposition into a three-part scheme, which recognizes that the terms “worshiper” and “smelter” are not true polar opposites because they are not mutually exclusive categories. While there may

be worshipers who are not smelters and smelters who are not worshipers, there may also be persons who are *both* worshipers and smelters.

Thus if the idol is sold to an ordinary worshiper, one assumes it is not annulled; if it is sold to a smelter who does not worship the idol, it is reasonable to assume that the idol is annulled; but if it is sold to one who is both a smelter and a worshiper, one cannot assume that it is annulled, because there is the possibility that the purchaser intends to worship it rather than destroy it. But neither can one assume that it is not annulled, because there is the possibility that the purchaser intends to destroy it rather than worship it. Thus only this latter case is reasonably subject to dispute, for only this case refers to a type of sale that is inherently ambiguous: sale to a non-Jewish smelter. One party to the dispute assimilates this case to the case of the non-Jew (not annulled) while the other party to the dispute assimilates this case to the case of a smelter (annulled). Both parties exercise reasonable options in a truly hybrid case.

Urbach (1959:229–231) makes reference to these texts in his discussion of socioeconomic pressures that produced an increasing rabbinic leniency concerning the nullification of idols.¹⁵ In his socioeconomic account of the laws of nullification, Urbach argues that the “possibility of an idol’s being desecrated by a Gentile offered ample scope for easing the restrictions in Jewish economic life and particularly on business relations with Gentiles. This was presumably *the fundamental purpose of the lenient rabbinic ruling*” (p. 233, emphasis mine). In Urbach’s view the various dispensations in the halakhah concerning nullification of idols “reflect the day-to-day requirements of those Jews who earned their livelihood by making and marketing idols” (p. 236)—presumably not only Jewish craftsmen and scrap merchants but also smelters.¹⁶

While Urbach’s analysis may explain some cases, it does not explain this case because here we do not find a uniform tendency toward leniency in the gemaras. Indeed, the efforts of the gemaras to identify a principled difference between the disputing parties (i.e., whether in the hybrid case one should apply the law of the worshiper or the law of the smelter) result in a slightly stricter version of the mishnah in both the Palestinian and Babylonian sources. While the Mishnah seems to state that Rabbi views *all* cases of sale as conferring annulment and the rabbis view *all* cases of sale as not conferring annulment, the Yerushalmi suggests that Rabbi views only cases of sale to smelters as conferring annulment. Likewise, according to the Bavli, the lenient view (the view attributed to R. Judah in the Mishnah) that sale annuls an idol does not apply to *all* sales, but only to sale to a smelter. In other words, the cases in which sale can be held to annul an idol are restricted in the Yerushalmi and the Bavli.¹⁷ Thus there is no clear and consistent trend toward leniency in the progression of our sources in this instance of idol nullification.¹⁸

Further, the problem with the socioeconomic analysis proposed by Urbach becomes apparent when in the same article Urbach states, “[O]ne thing is certain: neither the Tannaim of the second century nor the Amoraim of the third showed any tendency to compromise or concession in anything connected with emperor worship, even though here too *the same economic considerations were involved*” (emphasis mine). This statement would appear to undermine Urbach’s original thesis. If in one area of halakhah the rabbis yielded to economic pressures and in another

area of halakhah they did not yield to those *same* economic pressures, clearly some *other* principle was guiding the formulation of the halakhot in question. Urbach himself suggests what this might be:

In the sphere of the laws concerning idolatry the economic reality discovered above was not the only decisive factor. There was also the clear recognition that there was no longer any danger in the making of idols, or in the trade in fragments of idolatrous objects, or in the use of vessels and ornaments bearing artistic designs, or even in the “statues in the house.” Within the Jewish camp the idolatrous impulse was virtually dead, while even in the surrounding gentile world its influence had been greatly weakened. *It was a fact that many Gentiles used their idols and images for decorative purposes only, and were ready to desecrate them when necessary.* (Urbach 1959:236; emphasis mine)

Although Urbach views the economic factor as the primary force motivating the construction of laws of nullification, here he notes an additional factor: the recognition that the impulse for idolatry was dead among Jews and the fact that often even Gentiles did not treat their idols and images as objects of worship. But Urbach’s prioritizing of these factors should be reversed in light of the explicit discussions found in rabbinic texts. What is of least significance to Urbach (decorative or nonworshipful use of idols and images) is precisely of most significance to the rabbis (see discussion later). By the same token, what is of most significance to Urbach (the socioeconomic pressures on the rabbis to ease the laws of nullification in order to assist Jewish craftsmen) finds little support in the discussions of the rabbis. Indeed, I would argue that the category of “smelter” is most likely raised in our gemaras in response to the demand for a logical symmetry. Its function is rhetorical, creating a binary opposition between a purchaser who would preserve an idol—a worshiper—and one who would precisely destroy an idol—a smelter! Thus attributing any historical reality to the discussions involving smelters is highly questionable.

On the other hand, there are numerous traditions to the effect that Gentiles used idols and images as objects of art and decoration and that as such they did not technically qualify as idols that Israelites are biblically commanded to destroy (m. AZ 3:1, m. AZ 3:4, t. Kelim BM 4:8, p. AZ 3:1, b. AZ 40b–41a and 44b). Only an idol that is treated like an idol, that is, only one that is worshiped, is anathema and subject to the ban set forth in the Torah (see t. AZ 5:6, b. AZ 51b and 53b). The rabbis clearly recognized, however, that many statues and images held no religious significance for non-Jews. It makes little sense to ban as an idol an object that is not worshiped as an idol. In the Greco-Roman cultural milieu, the category of nullification seems a logical refinement of the biblical laws regulating Israelite relations with the world of idolatry.¹⁹

Certainly law, by its very nature, is a pragmatic enterprise which is concerned with events and actions in the real world. In many cases the rabbis explicitly take note of real and pragmatic concerns in their articulations of halakhah. But as Blidstein points out, the laws of nullification are

not fully explicable as a programmatic attack with specific social-economic goals in mind. . . . The social-economic results of the doctrine of nullification themselves provide a suggestive analytical tool. Whether they provide a sufficient ex-

planation is, aside from the general problem of the relationship of social needs to ideas, moot. (1975:44)

In this particular case, both (1) the logical demands and rhetorical devices of the relevant sugyot and (2) the existence of legal principles and categories across texts that exhibit both leniency and stringency would indicate that a socioeconomic analysis of the halakhic developments in these texts does not provide a full account.

A Structural Gap (m. AZ 3:8—passing under an asherah)

The mishnah at 3:8 is ambiguous in that it contains a structural gap that exercised the Babylonian amoraim and led to a more finely nuanced construction of the halakhah. This mishnah occurs in a chapter that prohibits various forms of benefit deriving from certain idolatrous objects. M. AZ 3:7 defines and categorizes types of asherah, and 3:8 then promulgates this paragraph of law concerning the asherah.

*m. AZ 3:8*²⁰

לא ישב בצילה ואם ישב טהור
ולא יעבור תחתיה ואם עבר טמא
היתה גזולת את הרבים ועבר תחתיה טהור

One may not sit in its shadow
—but if one sat one is pure.

One may not pass under it
—and if one passed one is defiled.
If it was encroaching on the public domain and one passed under it, one is pure.

The Bavli contains the following sugya on the last clause of this mishnah.

b. AZ 48a

איבעיא להו עבר או עובר
רבי יצחק [בן אלעזר משמיה דחזקיה]²¹ אמר עובר
ורבי יוחנן אמר אם עבר²²
ולא פליגי הא דאיכא דירכא אחרינא
הא דליכא דירכא אחרינא
אל רב ששת לשמעיה כי מטית להחם ארזיטני
היכי דמי
אי דליכא דירכא אחרינא ל'ל ארזיטני מישרא שרי
ואי דאיכא דירכא אחרינא כי אמר ארזיטני מי שרי
לעולם דליכא דירכא אחרינא ואדם חשוב שאני

It was asked: “one passed” or “one passes”?

R. Isaac b. El'azar in the name of Ḥezekiah said: “one passes”
While R. Yohanan said: “if one passed.”

But there is no disagreement.

—The one view is when there is another road

—The other view is when there is no other road

Rav Sheshet²³ said to his attendant, “When you arrive there, hurry me past.”

How can this be?

—If there was no other road why did he have to say “hurry me past”? [Surely] it is permitted [to pass]!

—And if there was another road, when he said “hurry me past,” was it permitted?²⁴

Indeed there was no other road, but an important man is a different case.

(Note that in the JTS and Paris mss., as in the Rif, the views are inverted such that R. Isaac b. El’azar says in the name of Ḥezekiah “[if] he passed” while R. Yoḥanan says “he passes.”)

Rosenthal (1980:18–19) believes that the gemara expresses confusion over the *text* of the mishnah. Does the final clause of 3:8 read עבר [אם] (“if” +) a perfect verb = past tense conditional)²⁵ or עובר (participial form = present tense)? The question is of significance halakhically: a participle constitutes a ruling operative *ab initio* (לכתחילה), that is, something directly and immediately permitted or prohibited. By contrast, a perfect form in a conditional clause renders the ruling an *ex post facto* (בדיעבד) ruling only.

Hence those who would read עבר [אם] understand the law to say: “If it was encroaching on the public domain, then if one passed under it one is pure.” In other words, *ex post facto* we say that the act of passing under this asherah does not defile. However, by declaring one pure explicitly and only in the *ex post facto* case, the mishnah implies that one is impure and may not pass under the asherah²⁶ in the alternative case: *ab initio*.

By contrast, those who would read עובר understand the law to say: “If it was encroaching on the public domain and one passes under it, one is pure.” In other words, from the very outset (לכתחילה) one can pass under an asherah with no defiling consequences.

According to Rosenthal, the *stam* of the gemara is asking: Which is the correct version of the mishnah (and thus the halakhah): the version that reads עובר and so declares the act defiling (and prohibited) *ab initio* but nondefiling (and permitted) *ex post facto* OR the version that reads עבר [אם] and so declares the act nondefiling (and permitted) from the very outset?²⁷ The sugya of the Bavli provides us with two conflicting opinions. R. Yoḥanan teaches²⁸ that the text is עובר and it is therefore not defiling from the outset to pass beneath such an asherah. But it is reported in the name of Ḥezekiah that the text is אם עבר, indicating that it is defiling from the outset to pass beneath this asherah, though *ex post facto* the act has no defiling consequence. Note that the two versions are reported in the names of two earlier *Palestinian* amoraim, though no record of these views is found in *Palestinian* sources.

Rosenthal’s explanation of the sugya is challenged by two data. First, there is no external evidence (in the Mishnah mss., editions, commentaries) for the existence of two readings: עובר and עבר [אם]. Indeed, neither corresponds precisely to the text

attested by all textual witnesses: ועבר. Second, the Bavli answers the question by means of an *oqimta*—a strategy by which two seemingly contradictory rulings or opinions are upheld by the assertion that each operates or is true within certain specific parameters.²⁹ The use of an *oqimta* suggests that the gemara is not trying to establish the correct *version* of the text (as Rosenthal believes it is) but trying to harmonize competing *interpretations* of an ambiguous text.

Epstein (1948:413) notes that the term איבעיא להו (“it was asked”), although often used to introduce questions or raise doubts about the *text* of a tradition, can introduce doubts of another type—doubts as to the correct *interpretation* of a tradition.³⁰ He suggests that this is in fact the function of the question as it appears here. “And so, the question does not concern the *text* of the mishnah but rather its meaning; either ועבר is meant precisely and the law is *ex post facto* or it is not meant precisely and even *ab initio* one may pass” (ibid.; my translation). Epstein points out that this is in fact the Riṭba’s construal of the Bavli’s question.³¹

Epstein does not get at the heart of the question, however, because he does not identify precisely the *textual* stimulus for the Bavli’s question. Indeed, his comments imply that it is the term ועבר that is somehow ambiguous and thus the source of the Bavli’s question. I will argue that a close examination of the mishnah reveals a fundamental and inherent *structural* ambiguity that prompts the Bavli’s question.

The three clauses that comprise the mishnah can be schematized as follows:

Case	<i>Ab initio</i>	<i>Ex post facto</i>
1. Act X (sitting in the shade)	Prohibited	Pure
2a. Act X + 1 ³² (passing under the shade)	Prohibited	Impure
2b. Act X + 1 (when “unavoidable”) ³³	?	Pure

The logical structure of these clauses makes it clear that the third and final clause is a subset of the second clause, prescribing a leniency that is operative in a special circumstance. The ambiguity lies in the degree of the leniency. The possibilities can be described as follows: in the first clause we learn of an act that is prohibited *ab initio* but pure/permitted *ex post facto*. In the second clause we learn of a related and more aggravated act that is, logically enough, prohibited both *ab initio* and *ex post facto* (literally, impure *ex post facto*). The third clause describes a special case of the more aggravated act, for which a concession is to be made. The question is: How much of a concession? Is the prohibition modified only partially so that *ab initio* the act remains prohibited and is only *ex post facto* pure/permitted (analogous to the less severe act of case 1), or is it modified entirely so that the act is permitted both *ab initio* and *ex post facto*, that is, pure—which is not even true of the act in case 1?

The ambiguity arises because of a structural gap. In the third clause the binary structure established in the first two cases breaks down. In cases 1 and 2a we have a prohibition (*ab initio* ruling) followed by the purity consequences of having done the act (*ex post facto* ruling). In other words, there is a clear indication of the situation both *ab initio* (prohibited) and *ex post facto* (defiling or nondefiling). This binary structure is missing in the third clause, which is a subset of the second case. Here we are given only the purity consequences of having done the act without an

explicit indication of the status of the act *ab initio*. Is the act prohibited or permitted *ab initio*? There are textual signals that pull in opposing directions. On the one hand, since the final clause is a subset of the second case, one might argue that the prohibition *ab initio* of the second case extends to the final clause also. On this interpretation we are to “supply” the *ab initio* prohibition of the second case to the subcase represented by the final clause. Even where the asherah encroaches on the public domain, it is prohibited to pass *ab initio*, but if one does pass, one is not defiled (*ex post facto*). On the other hand, the terms specified in the final clause would indicate that this final case assumes an *ab initio permission*. The final clause is a case in which the asherah extends into the public domain such that passage under it is, if not unavoidable, then at least difficult to avoid. Is it likely that a prohibition would be made for an act that is unavoidable or extremely inconvenient? It is only logical to suppose that in such a case passage is in fact permitted. On this interpretation, the final clause is included to inform us that in the case of unavoidable passage, not only is one not defiled *ex post facto*, one is even permitted to pass *ab initio*.

Thus the structural tension of our mishnah can be stated in these simple terms: the final clause, as a subset of the second, is apparently prohibited *ab initio* also. Yet the case described in the final clause involves an “unavoidable” act. How can an “unavoidable” act be prohibited *ab initio*? Surely we are to assume that it is permitted *ab initio*!

I submit that this structural tension or ambiguity lies behind the Bavli’s question. The *ab initio* ruling for the final clause is absent and must be supplied. There are syntactic and logical considerations to support either of the two possibilities: the act is prohibited *ab initio* or the act is permitted *ab initio*. The *stam* of the Bavli asks: In the final case, is it precisely and only if one passed that one is pure (implying that the act is prohibited *ab initio*) or is it also when one passes that one is pure (so that the act is permitted *ab initio*)? An *oqimta* strategy upholds the two alternative opinions in separate circumstances. When the act is genuinely unavoidable (when there is no other road to take), then it is permitted *ab initio*; but if it is only inconvenient and not unavoidable (when there is another road to take), then it is prohibited *ab initio*. (This *oqimta* solution supports my claim that the Bavli was troubled by the mishnah’s apparent prohibition *ab initio* of an act that seemed unavoidable or difficult to avoid.)

The Bavli’s concern with the mishnah’s ambiguity and the resolution by *oqimta* are not paralleled in the Yerushalmi. Indeed, this entire clause in the mishnah is not directly discussed in the Palestinian gemara. Insofar as the Bavli’s prohibition *ab initio* of passage beneath an asherah encroaching upon the public domain is entirely absent from the Yerushalmi, a halakhic difference exists between the two texts. This difference should in all probability be attributed to a Babylonian amoraic sensitivity to the structural ambiguity in the mishnah, an ambiguity that engendered contradictory interpretations: passage is prohibited *ab initio* versus passage is permitted *ab initio*. The two interpretations are accommodated by means of an *oqimta* that produces a conditional law: if there is another road, passage is prohibited *ab initio*; however, if there is no other road, passage is permitted *ab initio* (though an important person should hurry even in such a circumstance).³⁴

Halakhic Difference as a Result of Gaps in Rationale for Mishnaic Teachings

In the previous section, I analyzed sugyot in which a gap in the context or structure of a mishnah contributed to the generation of divergent interpretations in the two gemaras. Here I will treat separately a specific type of textual gapping that can have significant halakhic consequences. I refer to the omission of rationales for positions expressed in the Mishnah.

The Mishnah, with its terse style, rarely provides reasons for the legal opinions expressed in its paragraphs. Yet knowing the reason for a ruling can greatly alter its meaning, its possible corollaries, or the scope of its applicability.³⁵ When the gemaras posit different reasons for opinions found in a mishnah, the halakhah can be affected substantively. The gemaras themselves are aware of this fact and will often point out that the practical halakhah will vary depending on the reason underlying a ruling. When two authorities posit different reasons for a ruling in the Mishnah, the Gemara will often state: . . . מאי בנייהו? איכא בנייהו . . . = “What is the difference for the practical halakhah between these two views? The difference is in the following case. . . .”

As a brief example, the following mishnah is provided with slightly differently phrased rationales in the two gemaras, with the result that a corollary ruling is made in the Yerushalmi that is not made in the Bavli:

m. AZ 2:1

בת ישראל לא תניק בנה של נכרית
אבל נוכרית מניקה בנה של בת יש ברשותה

An Israelite woman may not suckle the child of a foreign woman;
but a foreign woman may suckle the child of an Israelite woman in her own premises.

The Bavli explains the reason for the prohibition against suckling the child of a foreign woman as follows:

b. AZ 26a

ת"ר בת ישראל לא תניק בנה של עובדת כוכבים
מפני שמגדלת בן לעבודה כוכבים

The rabbis taught:
An Israelite woman may not suckle the child of an idolatress *because she would be raising a child for idolatry*.

Slightly different language is found in the Yerushalmi.

p. AZ 2:1, 40a

בת ישראל לא תניק בנה של נכרית מפני שנתנת לו חיים
אמר רבי יוסי הדא דאמרה שאסור ללמדו אומנות

An Israelite woman may not suckle the child of a foreign woman *because she gives it life*.

Rabbi Yosi said: this means that it is prohibited to teach it a trade.

The rationales are roughly equivalent. An Israelite should not assist in the propagation of idolaters. However, the specific turn of phrase employed in the Yerushalmi permits a corollary ruling to be deduced: If it is prohibited to perform an action that sustains the life of the foreign woman's child, then teaching that child a trade by means of which it will be able to support itself must be likewise forbidden. This ruling is *not* deduced in the Bavli, where the rationale for the law is expressed in slightly different language.

Discovering or positing the reason for a legal ruling is therefore a powerful hermeneutical tool.³⁶ In an extreme form, it can be used to limit that ruling to specific or unusual cases, thereby rendering it ineffective in a general sense. Because of the practical consequences, it is very tempting to assume that a rationale is given for a law precisely *in order to* bring about one or another result. However, it is in fact a fallacy to argue from consequence to motive, that is, to argue that simply because a particular rationale for a mishnah results in a shift in the halakhah, the desire to produce that shift was the underlying motive for positing the rationale. Certainly the study of amoraic rationales for tannaitic teachings raises questions of ideology and of accommodation of the law to new or changing historical circumstances. Nevertheless, we must recognize that in such cases the rabbis are, *au fond*, involved in the kind of legal hermeneutics common to every legal system. Terse statements of law, in order to be applied to complex and variegated situations, *must* be analyzed and their rationales articulated. In such cases the generating force for the discussion can be said to inhere in the text itself, and the processes by which a rationale is determined can be as plainly hermeneutical as they can be historical. However, in searching out the rationale for a law, the rabbis do not in general merely seize upon what is expedient or necessary to effect a desired shift in the halakhah. Time and again we see them hunt for clues in the context and language of a teaching, or compare analogous or parallel traditions, in order to elicit a rationale from the sources themselves.

In the following section I will consider halakhic difference between the gemaras that results from the attribution of different rationales to m. AZ 1:1. I will outline two trends of interpretation attested in both Talmuds but weighted differently by them. These dueling interpretations respond to and replicate a tension in the mishnah itself, which omits any explicit rationale for the halakhah in question but contains hints that support each of these interpretations.

m. AZ 1:1—The Prohibition of Transactions

M. AZ 1:1 is a classic example of a gapped and ambiguous mishnah. The mishnah provides no explicit rationale for its prohibitions; further, various elements of the mishnah imply contrary rationales. This combination of terseness and ambiguity gave rise in the gemaras to two main currents of interpretation, each grounded in different features of the mishnah text, and these two currents remain in dialectical tension in the post-talmudic commentaries. I will argue that these rationales, whatever

their practical consequences in terms of the halakhah, are best understood as hermeneutical responses to a gapped and ambiguous mishnah.

m. AZ 1:1³⁷

לפני אידיהן של גוים שלשה ימים
 אסור מלשאת ומלתת עימיהן
 מלהשאילן ומלהשאיל עימיהן מלהלוותן ומללוות מהן
 מלפרוען ומלפרע מהן
 ר' יהודה אומ' נפרעין מהן מפני שהוא מצר
 אמרו לו אף על פי שהוא מצר עכשיו שמח הוא לאחר זמן

1. For three days prior to the festivals of non-Jews it is prohibited:
 to buy and sell³⁸ with them,
 to lend objects to or borrow objects from them,
 to lend money to or borrow money from them,
 to repay a debt or to collect a debt from them.
2. R. Judah says one may collect a debt from them because he is distressed [by it].
 They said to him, even though he is distressed now, he will be happy about it later on.

This mishnah contains a list of activities prohibited to Israelites during the three days prior to idolatrous festivals. Although the reason for this prohibition is not made explicit, the dispute between R. Judah and the sages in the final clause of the mishnah provides a clue to the reason. R. Judah objects to one of the items included in the list—collecting a debt—on the grounds that it distresses the idolater, and it should therefore be permitted. The sages however support its inclusion here on the grounds that this distress is only temporary and that in fact the idolater will in the end be pleased that he has rid himself of his debt. This dispute suggests, then, that the activities listed in the mishnah are prohibited during this period because one does not want to provide the idolater with any cause for celebration and thanksgiving before his idol on his festival day. Hence Rashi comments on this mishnah: “and all these prohibitions are for the reason that he will go and thank his idol on the day of his festival.”

Yet there is an internal asymmetry in the four pairs of terms listed which calls into question this interpretation of the mishnah’s rationale. Each of the latter three pairs of terms describes a pair of one-way transactions: lending or borrowing objects, lending or borrowing money, repaying or collecting a loan. In each of these six transactions, one party gains money or a commodity while the other party is deprived of that money or commodity. It is logical to assume, then, that a person would be pleased and thankful upon receiving a loan of money or an object or a debt repayment. (The gemaras will explain how it is that a person might be pleased and thankful upon *lending* money or objects and upon *repaying* a debt also.) However, the first pair of transactions in our mishnah—*לשאת ולתת*—is dissimilar in nature. As an idiom the phrase connotes buying and selling or barter, that is, a two-way transaction or even exchange. At first blush it seems a little odd to suggest that buying and selling (everyday activities) are prohibited because they will give the idolater cause to thank his idol.³⁹

It is this discontinuity between the first and the subsequent terms in the mishnah's list that prompts the gemaras' examination of other reasons for these prohibitions. Emphasizing the fact that the prohibition of buying and selling applies only to the three days prior to the festival, the gemaras argue that the reason for the prohibition is the concern that an Israelite might sell the idolater items necessary for his celebration of the idolatrous festival (e.g., a sacrificial animal). If so, the Israelite will be guilty of violating the commandment not to place a stumbling block before the blind (understood by the rabbis as a metaphor for providing the means with which someone will violate a commandment).

Thus the mishnah before the amoraim is not a seamless unity. There is a certain ambiguity inherent in its coupling together for prohibition, activities that are different enough to suggest different reasons for their prohibition. The two gemaras are alert to the two possible rationales for this mishnah — which I will label the rationale of “thanking” and the rationale of “enabling” — as will be evidenced in the texts adduced below.

First we will consider the evidence of the Yerushalmi.

p. AZ 1:1, 39a

ר' חמא בר עוקבה שמע כולהון מכא
והביאו לבורק זבחיכ' לשלשת ימי' מעשרותיכ'
א"ל רבי יוסי אין כיני אפילו בגליות דתני
נחום המדי אומר יום אחד בגליות אסור
מאי כדין
תמן בדקו ומצאו שהן עושין צרכיהן ליום אחד
ואסרו יום אחד
ברם הכא בדקו ומצאו שעושין צרכיהן לשלשה ימים
ואסרו להן שלשה ימים

1. R. Hama b. 'Uqba derived all of these⁴⁰ from here:
“Present your sacrifices the next morning and your tithes on the third day”
(Amos 4:4).
2. R. Yosi said to him: if so, then even in the diaspora! Yet it is taught—Nahum the Mede says, “one day is prohibited in the diaspora.”
3. How is it then?
4. There (in Bavel) they checked into the matter and they found that they prepare their festival needs one day beforehand and so they prohibited only one day;
But here they checked and found that they prepare their festival needs for three days beforehand and so they prohibited three days before.

This sugya opens with a discussion of the source for the prohibition's extension over a period of three days. R. Hama b. 'Uqba would derive it from a verse in Amos, but R. Yosi argues that if the time period were of biblical origin it would apply universally; yet according to a tradition by Nahum the Mede,⁴¹ the three-day period applies only in the land of Israel. In the diaspora only one day prior to the festival is subject to the prohibitions in the mishnah. (Subsequently the verse in Amos is reinterpreted.) R. Yosi then explains that the length of the period of prohibition is shorter in the diaspora because idolaters in the diaspora prepare the items needed for their festivals for only one day. This explanation assumes that the reason for the prohibi-

tion of the mishnah is the reason of “enabling”: One does not want to sell the idolater materials that will enable him to engage in his idolatrous practices. Although there is no explicit mention in this sugya as to which of the activities listed in the mishnah are prohibited for the reason of “enabling,” the fact that the prohibition is connected with the idolater’s preparations for the festival implies that the concern is that one might sell the idolater something he will use in his celebration. Therefore it is quite possible that the discussion in this sugya refers to the phrase *לשאת ולהח*.⁴² This interpretation is borne out by the fact that in a later passage the Yerushalmi turns to a consideration of the other three pairs of activities listed in the mishnah and suggests that the reason for the prohibition of these activities is the reason of “thanking.”

p. AZ 1:1, 39b.

ניחא מלהשאל מלשאל מהן מפני שהוא כמשיאו שם
 ניחא מלהלוותן מלהלו' מהן מפני שהוא כמשיאו שם
 ניחא מלפרען מליפרע מהן שלא יאמר ע'ז שלו סייעה

1. Lending objects to them is understandable, but why borrowing objects from them? Because it honors him.
2. Lending money to them is understandable, but why borrowing money from them? Because it honors him.
3. Repaying a debt is understandable, but why collecting a debt from them? It is so that he not say that his idol assisted him.

The gemara is puzzled by the second item in each of these three pairs, and it would be fair to say that this puzzlement is akin to the puzzlement of R. Judah in the mishnah itself. One can understand the prohibition of lending objects and money and repaying a debt; these would be cause for the idolater to give thanks to his idol. But why prohibit activities such as borrowing objects or money from him and collecting a debt from him? Surely these merely deprive him and distress him! The gemara’s answer is that in fact these activities do carry some measure of pleasure for the idolater and, as the final clause clearly states, they may serve to fuel his idolatrous beliefs and observances (on the forthcoming festival day). Note that the first pair of terms in the mishnah, “buying and selling,” is conspicuously absent here. Presumably it has been explained in terms of “enabling” in the passage described above.

Presumably, then, the Yerushalmi is satisfied with a split decision. The reason for the prohibition of selling is to prevent “enabling” the idolater’s cultic observance. The reason for the remaining prohibitions in the mishnah is to avoid giving the idolater cause for “thanking” his idol.⁴³

One final passage in the Yerushalmi complicates this picture slightly.

p. AZ 1:1, 39b

חברייא אמרי טעמא דר' ישמעאל משו' בריה דמועדא
 אמר רבי בא כיון שהוא יודע שאסור לך לישא וליתן עמו
 הוא ממש בשמחת אידו
 מה מפקה מביניהון למכור לו דברים שאינן מתקיימין
 על דעת חבריא אסור על דעת רבי בא מותר

1. *Haverim* say the reason for R. Yishmael's view is because of the festival feast⁴⁴ [which continues for three more days].
2. R. Ba says: since he knows that it is prohibited for you to deal with him, that diminishes the joy of his festival.
3. What is the practical difference between these two views? Selling him a perishable item. According to the view of the *haverim* that is prohibited; according to the view of R. Ba that is permitted.

The authorities in this passage propose reasons for the position of R. Yishmael in m. AZ 1:2 that the activities listed in m. AZ 1:1 are prohibited not only for three days before the festivals of idolaters but also for three days afterwards. The first authorities (the *haverim*) suggest that R. Yishmael so rules because the feasting continues for three days after the actual festival day. It would seem, then, that the concern of the *haverim* is that one not provide the idolater with items needed for his extended feasting, that is, the reason of “enabling.” The second authority, R. Ba, suggests that R. Yishmael so rules because the idolater will be distressed by the potential loss of so much business. We can detect here the concern that one not provide the idolater with any cause for thanksgiving on his festival day, that is, the reason of “thanking.”

The final clause indicates that only the reason for the prohibition of the first term—buying and selling⁴⁵—is at issue in this passage. This clause states that the practical difference between these two explanations for R. Yishmael's ruling is the case of selling the idolater a perishable item. Since such an item may be used by the idolater in his festival celebrations, it is prohibited on the view of the *haverim*; however, purchase of a perishable item is hardly cause for celebration and thus would be permitted on the view of R. Ba.⁴⁶ The sale of a durable item however, would be prohibited on both views.

This sugya has thus nuanced the schematized description presented earlier. Whereas “enabling” seemed the appropriate rationale for the prohibition of selling, and “thanking” seemed the appropriate rationale for the other activities listed in the mishnah, this sugya suggests that in the view of at least R. Ba certain kinds of purchases may prompt an idolater to feel thankful. Selling the idolater a valuable, non-perishable commodity (e.g., real estate) might indeed create a sense of pleasure and lead the idolater to thank his idol. Depriving the idolater of such a purchase would diminish his joy. Hence some cases of selling to an idolater might even be prohibited for the reason of “thanking.”

Turning now to the Bavli, we find the same tension between these two rationales for the prohibitions in the mishnah.

b. AZ 6a

איבעיא להו⁴⁷
 משום הרווחה או דלמא משום ולפני עור לא תתן מכשול
 למאי נפקא מינה דאית ליה בהמה לדידיה
 אי אמרת משום הרווחה הא קא מרווח ליה
 אי אמרת משום לפני עור לא תתן מכשול
 הא אית ליה לדידיה
 וכי אית ליה לא עבר משום עור לא תתן מכשול

1. It was asked:⁴⁸
Is the prohibition because of profiting⁴⁹ (them) or perhaps because of “do not place a stumbling block before the blind”?
2. What is the practical difference between these two? The case where he has his own animal.
3. If you say it is because of profiting—this does indeed profit him; but if you say it is because of “do not place a stumbling block before the blind”—he already has his own animal, and since he already has his own animal, one does not transgress [the prohibition] “do not place a stumbling block before the blind.”

The Bavli asks point blank the question that has concerned us throughout the previous discussion: What is the reason for the prohibition in the mishnah? Is it because of increasing his property such that one gives him cause to offer thanks to his idol,⁵⁰ that is, “thanking,” or is it because one might provide him with the means to engage in idolatrous sacrifice, that is, “enabling.” Although the question remains unanswered, a practical difference between the two positions is stated: the case of selling an animal to an idolater who already has an animal. Since one does not thereby enable him to sacrifice to his idol, this sale would be permitted on the theory that one is prohibited from selling only if in so doing one enables the idolater to engage in his idolatry. However, since such a sale does increase the property of the idolater, it would be prohibited on the theory that one is prohibited from giving the idolater cause for thanking his idol.

It is clear from the discussion that this sugya is asking about the reason for the prohibition of the mishnah’s first term *לשאת ולתת* only, since the example provided concerns selling to the idolater an animal that might then be used for idolatrous sacrifice. Indeed, the Munich and JTS mss. read: “It was asked: *is it prohibited to buy and sell with them* because of profiting (them) or because of ‘do not place a stumbling block before the blind?’”

Like the Yerushalmi, the Bavli never raises the idea that the prohibition of the other activities listed in the mishnah (lending and borrowing money and objects, repaying and collecting debts) is connected to the issue of enabling. The reason for *these* prohibitions is unequivocally to avoid any activity that might prompt the idolater to thank his idol. This is clear from a passage on b. AZ 6b that parallels a passage from the Yerushalmi (p. AZ 1:1, 39b . . . גיחא) cited above. The stam voice of the Talmud states that one can understand the prohibition of lending objects, lending money, and repaying a debt, because these three benefit him in some way, but the second item in each pair of terms—borrowing objects, borrowing money, and collecting a debt—deprives him and should therefore not be prohibited. Two solutions are offered: Rava argues that there is some measure of pleasure for the idolater even in these latter three activities (just as the Yerushalmi argued), while Abaye says that these latter three activities are prohibited simply as a protective measure against performing the first activity in each of the three pairs. On either view, the rationale for these prohibitions is primarily to prevent an Israelite from giving an idolater cause to thank his idol.⁵¹

This passage is followed by a *צריכותא* sequence which more formally demonstrates the necessity of every clause of the mishnah. It is conducted in the stam voice and is probably of a fairly late date. The Bavli’s *צריכותא* sequence does differ from the

chronologically earlier parallel in the Yerushalmi in one important respect. It adds to the discussion the first term—buying and selling! The passage opens: “Each clause of the mishnah is necessary, for if it taught only ‘buying and selling’ with them, I would have thought that that was because that profits him but since borrowing simply deprives them it is permitted, etc.” Although the printed edition reads “because that profits him *and he will go and give thanks before his idol*,” this latter clause is lacking in the JTS, Paris, and Munich mss. Nevertheless, the printed edition’s text simply makes explicit the probable meaning of the passage. Profiting the idolater inspires him to give thanks.⁵² Thus, in this anonymous and probably late Babylonian passage at least, it would appear that a uniform reason is assumed for all the clauses of the mishnah—the reason of “thanking.”

However, this late צריכותא sequence has roots in earlier traditions found in the Bavli. In the following passage, the Bavli recognizes that the rationale of “thanking” is not entirely out of place in regard to buying and selling.

b. AZ 6b

תניא כוותיה דר' ל
 כשאמר אסור לשאת ולתת עמהם
 לא אסרו⁵³ אלא בדבר המתקיים
 אבל בדבר שאינו מתקיים לא
 ואפילו בדבר המתקיים נשא ונתן מותר
 תני רב זביד ברבי רבי אושעיא
 דבר שאין מתקיים מוכרין להם אבל אין לוקחין מהם

1. And there is a beraita in support of Resh Lakish:
 “When they said that it is prohibited to do business [*lit.* buy and sell] with them, they only prohibited a durable item;
 but something that is perishable—no;
 and even in the case of a durable item it is permitted *ex post facto*.”
2. R. Zebid of the school of R. Oshaya taught:
 A perishable item one may sell to them but may not buy from them.

The Bavli cites a Palestinian tradition that makes the same distinction that we saw in the Yerushalmi. There are some purchases that do bring a person a feeling of pleasure and wealth—purchases of durable items. Thus it is possible that at least the selling aspect of the prohibition of buying and selling is to be explained on the grounds that one does not wish to give the idolater cause to celebrate. R. Zebid pushes this idea one step further (a step not paralleled in the Yerushalmi): by the same token, the idolater would be pleased for an Israelite to buy a perishable item, that is, the idolater would be pleased to get something for the item before it decays or otherwise perishes. Thus perhaps even the buying aspect of the prohibition of buying and selling is to be explained on the grounds that one does not wish to motivate the idolater to thank his idol. This passage, then, goes the furthest of any passage in either gemara to find one uniform rationale for all of the prohibited activities listed in the mishnah: the rationale of thanking.

There is both parallelism and divergence between the traditions in the Yerushalmi and those in the Bavli. Both Talmuds suggest that the rationale motivat-

ing the prohibition of the first paired term of our mishnah might be different from that motivating the remaining three paired terms (enabling vs. thanking). However one view reported in the Yerushalmi suggests that “thanking” may be applicable even to a subset of selling (selling durable items to an idolater). The Bavli drives this notion even further: A sugya in the Bavli cites a Palestinian tradition to the effect that “thanking” may apply to some sales, and then cites the further opinion that “thanking” may be applicable even to a subset of buying (buying perishable items from an idolater). Finally, in the following passage the Bavli explicitly endorses for the second time the idea that buying and selling are prohibited lest they be the cause of thanksgiving to an idol.

b. AZ 32b

:ההולכין לתרפות אסורין לשאת ולתת עמהם:
אמר שמואל עובד כוכבים ההולך לתרפות בהליכה אסור
דאזיל ומודי קמי עבודה כוכבים
בחזרה מותר מאי דהוה דהוה

“One may not deal with those on their way to an idolatrous festival”

1. Shmuel said: an idolater on the way to an idolatrous festival—it is prohibited because he will go and give thanks to his idol;
on the return trip—it is permitted, for what is past is past.

Thus where the Yerushalmi gives greater weight to the rationale of “enabling” as motivating the prohibition against the mishnah’s first term, recording only a single sage’s suggestion that the rationale of “thanking” applies to certain cases of sale, the Bavli strongly endorses the idea that all of the prohibitions in the mishnah are due to the rationale of “thanking,” although the issue of “enabling” is certainly entertained.

In both gemaras the contested issue is the rationale for the prohibition of the first term in the mishnah: לשאת ולתת. The issue is of halakhic significance. If we suppose the reason to be “enabling,” then the prohibition is limited to selling the idolater items that will be used in his idolatrous celebration. Other business, however, would not be prohibited at all. If we suppose the reason is “thanking,” then the prohibition covers transactions that give the idolater cause for thanksgiving before his idol: In the view of the Yerushalmi that would be a case of selling him a significant durable commodity, while in the view of the Bavli that would further include buying from him a perishable item.

Each of these rationales has points of tension with the language and structure of the mishnah. As regards the rationale of “enabling”: it is a little strange (but not impossible) that the reason for the prohibition of buying and selling is different from the reason for the subsequent prohibitions. One might expect a uniform reason for all of these prohibitions, and it is perhaps this expectation that fuels the efforts of the gemaras (particularly the Bavli) to understand the reason for the prohibition of buying and selling as “thanking” also.⁵⁴ Slightly more problematic, however, is the fact that if the reason for the prohibition is the fear that one might sell the idolater something needed for his celebration, the term לשאת ולתת must be understood as a reference to selling only. While this interpretation is not impossible, and it is argued en-

ergetically by R. Tam, it is not obvious. Elsewhere in rabbinic literature the term connotes transactions generally in which one buys or sells.⁵⁵ Thus, the rationale of enabling is predicated on a disjunction between the first and the subsequent prohibitions in the mishnah, and on a nonintuitive reading of the term *לשאת ולתת*.

On the other hand, as regards the rationale of “thanking”: it is not immediately apparent why ordinary transactions would prompt an idolater to thank his idol. In fact the gemaras find it necessary to delimit certain subcases of selling and (in the Bavli) buying in order to make sense of the notion that the reason for the prohibition of the first terms is also “thanking.” However, the rationale of thanking as understood at least by the Bavli does not require us to understand the term *לשאת ולתת* as a reference only to selling. It can refer to buying and selling, since there is a type of buying and a type of selling that might prompt thanksgiving.

It is precisely because neither explanation is a perfect fit to the mishnah that now one and now the other surfaces in each of the gemaras—though the rationale of “thanking” is more thoroughly supported in the Bavli. But where the gemaras were willing to hold both possibilities in tension, later commentators felt a need to decide the issue one way or the other. Representing opposite poles are Rashi and R. Tam. Each selects one rationale and is thus forced to explain away those passages that would indicate the other rationale.

Rashi selects the rationale of “thanking” as a uniform rationale for the entire mishnah. As was noted above, he comments on the mishnah itself: “[A]nd all of these prohibitions are for the reason that he will go and thank his idols on the day of his festival.” The only passage in the gemara of the Bavli that might pose a problem for this interpretation is the passage on 6b which asks the reason for the prohibition and suggests that it may be because of “enabling.” However, since the question remains unanswered, there is no serious challenge to Rashi’s interpretation. He can simply endorse the alternative suggestion: The prohibition is because of profiting them, which Rashi explains as follows: “[T]hey would profit and thus would go and thank their idols.”

R. Tam, on the other hand, endorses the rationale of “enabling” as the explanation for the first term in the mishnah’s series.⁵⁶ He advances the logical argument that the category of “thanking” is irrelevant in the case of transactions, because there is no special benefit or profit involved in an ordinary sale. One hands over just as much as one receives! Therefore R. Tam concludes that the prohibition is due to the rationale of “enabling” and as such the prohibition is limited only to the sale of objects used in idolatrous worship. He further asserts that this position is entirely compatible with the language of the mishnah, since the term *לשאת ולתת* means precisely and only “to sell.” *לשאת* (“to take”) refers to the action of taking the money while *לתת* (“to give”) refers to the action of handing over the commodity. Hence in his view the mishnah states explicitly that three days prior to an idolater’s festival it is prohibited to sell to him, and in so doing it refers implicitly to selling the idolater something required for his idolatrous celebration.

To sustain this interpretation, R. Tam must account for the many texts of the Bavli that promote the rationale of “thanking.” First, the passage on 6b that suggests that there are some who hold the reason for the prohibition to be *הרווחה* (“profit”). R. Tam disagrees with Rashi’s interpretation of the phrase *משום הרווחה* cited above,

reinterpreting the gemara as follows: the gemara is asking whether the prohibition of sale is due to the fact that one thereby enables the non-Jew to commit a transgression, or whether it is due to the fact that one thereby enables him “better” to commit a transgression. In other words הרחיקה refers to increasing the idolater’s wealth such that he can *more easily* offer an animal, or can choose the finest among his animals for offering. On R. Tam’s interpretation, the question assumes the rationale of enabling and simply seeks to refine our understanding of that rationale: Is selling prohibited because it enables the non-Jew to worship at all, or because it enables him to worship in a fine manner? According to R. Tam, the gemara contains no suggestion (as Rashi would have it) that “thanking” is a possible explanation for this prohibition!

A further potential difficulty for R. Tam is found on 6b in the passage that contains the idea that the prohibition refers to selling (durable items) *and buying* (perishable items). The Tosafot there⁵⁷ acknowledge that this is a problem for R. Tam, who interprets the phrase לשאת ולתת as referring only to selling. They suggest that the term לקח (“take”) used in the gemara (6b) concerning perishable items does not mean “purchase” but simply “accept” and refers to accepting a gift of a perishable item from a non-Jew—a rather forced explanation. (Alternatively, one could argue that buying is prohibited because it places at the idolater’s disposal money with which to buy what is needed for his idolatrous celebration.)⁵⁸

Each of these commentators—Rashi and R. Tam—tries to give the “bivocal” gemara (and, indeed, the mishnah, which is itself in tension), a uniform interpretation that privileges just one voice in the text. In order to do so, each must ignore or explain away those passages speaking in the dissenting voice. Menahem b. Meiri, by contrast, would effect a grand synthesis. He argues on the basis of 6b that it is conceivable that the prohibition of the first term is due to the fact that one prompts the idolater to give thanks. For this reason the gemara states that sales of durable items and purchases of perishable items are precisely prohibited since these transactions are cause for thanksgiving. Nevertheless, the Meiri points out that it is clear from other passages that “enabling” is an issue here also; for example, the gemara’s illustration on 6b reflects a concern about selling the idolater an animal that could be used in idolatrous sacrifice. Hence the Meiri concludes that in fact the reason for the prohibition is “enabling” but that there is the further auxiliary reason of “thanking,” which covers cases where “enabling” may not apply, such as the case where the idolater already has his own animal. The Meiri argues that although one might think selling an animal to a person who already possesses an animal is permitted because one does not truly enable him to perform his idolatrous sacrifice, the sale is in fact still prohibited because of the auxiliary rationale of “thanking.” The sale would prosper him and give him cause to thank his idol; consequently, it is prohibited.

The Meiri holds that the primary reason for the prohibition of the first term in the mishnah is “enabling,” although “thanking” is an auxiliary rationale to cover cases that are not covered by the rationale of “enabling.”⁵⁹ He further maintains that לשאת ולתת cannot refer only to sale (as R. Tam would have it) but means buying *and* selling; buying also is prohibited, on the grounds that it places money at the idolater’s disposal which can then be used to purchase his needs for his festival day (“enabling”).

But where Rashi assumes a uniform rationale of “thanking” and R. Tam endorses a split decision (“enabling” as the rationale for the first term and “thanking” as the rationale for the remaining terms), the Meiri seeks to extend the rationale of “enabling” beyond the first pair of terms of the mishnah. In regard to the subsequent three pairs of terms prohibited in the mishnah, the Meiri holds that Rava’s explanation of the reason for these prohibitions as “thanking” refers only to the second term in each pair (borrowing money and objects, collecting a debt); as for the first term of each pair, the reason again is “enabling” (i.e., lending objects and money and repaying a debt smoothes the way for the idolater to offer a sacrifice, etc.). But since the reason of “enabling” does not extend to the second terms, the reason of “thanking” is secondarily invoked.⁶⁰ The Meiri’s interpretation achieves a certain symmetry. “Enabling” is the primary reason for the prohibition of the mishnah (for buying and selling, lending money and objects, and repaying a debt) although “thanking” is an auxiliary reason that covers cases and activities that would not be covered by the “enabling” rationale (i.e., selling the non-Jew an animal when he already possesses one, borrowing money and objects and collecting a debt).

I have devoted some time to the interpretations of some of the medieval commentators, because they are an important index of the bivocality of the gemaras and the ambiguity of the underlying mishnah. Responding to a variety of textual and logical considerations, the amoraim raised two possible explanations for the prohibition of transactions with idolaters three days before their festivals. Each reason affects the definition of the halakhah (specifically, the circumstances of its applicability). Rashi and R. Tam select one rationale and reinterpret passages suggestive of the other rationale in conformity with the privileged rationale. Rashi’s privileging of “thanking” is in line with the dominant voice of the Bavli while R. Tam’s privileging of “enabling” is in line with the obvious trend of the Yerushalmi. However both gemaras contain passages supportive of the alternative rationale and with these passages Rashi and R. Tam must contend. The Meiri attends to both voices in the text so as to arrive at a kind of synthesis; but it is a synthesis that in the end least resembles the sugyot of the Yerushalmi and the Bavli, as it insists on the tandem operation of both rationales. That the gemaras encode and struggle with both rationales for this mishnah and that the debate continued for centuries in the classic talmudic commentaries are strong evidence that the issue here is exegetical, not historical.⁶¹

Semantic and Syntactic Ambiguity in m. AZ 1:7 and m. AZ 1:3

m. AZ 1:7 (בסילקי)

In the talmudic text to be examined here, the Babylonian amoraim reinterpret a mishnah in a manner that restricts the range and types of buildings of non-Jews subject to a construction prohibition. I will argue here that this reinterpretation is not the result of a supposed Babylonian trend toward leniency, but rather, that a diachronic shift in the range of reference of a Greek term employed in the mishnah created an ambiguity with which the Bavli had to contend. Amoraic traditions informed by this ambiguity were dialectically juxtaposed to the mishnah by the redactor of the Bavli’s sugya, engendering a contradiction that demanded resolution.

This resolution was achieved by means of a reinterpretation of the original mishnah, a reinterpretation that was itself facilitated by a morphological “accident” involving the Hebrew transliteration of the Greek term in question. Thus, this sugya exemplifies the way in which the temporal and cultural distance separating the Babylonian amoraim from the Palestinian tannaim can interact with exegetical, dialectical, and redactional factors in the formation of rabbinic texts and the modification of halakhah.⁶²

m. AZ 1:7

*Palestinian version*⁶³

אין בונין עימה
בסילקי וגרדון אסטרייה ובימה

One may not build with them
a basilica and a gallows,
a stadium and a judge's tribunal.

Hebrew בסילקי = Greek Βασιλική and refers to a large, high building used as a market and also as a court of law. Hebrew גרדון (variant גדרום) is from γράδον, a loanword from the Latin *gradus* or *gradum* (accusative singular), and refers to a small platform used in trial proceedings on which the accused was questioned/tortured or on which the court-tribunal sat.⁶⁴ Although Elmslie translates גרדון as “the tiers of seats which surround the arena of the amphitheatre and circus” — places objected to strongly by Jews⁶⁵ — traditional rabbinic commentaries also gloss גרדון as a platform for the trial of capital offenses.⁶⁶ Further, as Lieberman (1944) has already shown, the *gradus* is identical with the *catasta* featured in the descriptions of trials in the Christian acts of martyrs (the terms being interchangeable in the *Passio Perpetuae* VI.2; see Lieberman [13]). The phrases עלה לגרדון and בגרדון found frequently in rabbinic literature are none other than *ascendere in catastam* and *suspendere* (or *levare*) *in catasta* found in the Christian literature, and connote ascending the *gradus* or being suspended or lifted in the *gradus* in order to be tried, questioned, and tortured (so as to extort a confession; Lieberman (14–15)).⁶⁷

The term אסטרייה represents Greek στάδιον (“stadium”) and refers to the site of events such as wild-beast hunts and gladiatorial contests. Finally, בימה is Greek Βῆμα, a special tribunal or platform on which the magistrate sat and which was erected when there was no regular law court (hence the term “basilica” does not cover this kind of special tribunal).⁶⁸ The items listed by the mishnah fall into two chiasmic pairs, each comprised of a judicial structure and a structure related to public execution. Since persons were sentenced to death in courts of law, all four of these structures are places associated with unjust or violent death.⁶⁹ It is apparently for this reason that the mishnah prohibits Israelites from assisting in their construction.

A textual variant between the Palestinian and Babylonian branches of the mishnah text occurs in m. AZ 1:7. The text cited above, which includes a *vav* (“and”) before the second item in the list (וגרדון), is that of the Palestinian branch: the *vav* is present in the Kaufmann, Parma, and Lowe manuscripts of the mishnah (and the Leiden ms. of the Yerushalmi), and in Rambam (Paris, Sassoon, and Naples) as well

as in four geniza fragments. However, the Babylonian branch of witnesses to the text of the mishnah omits the *vav*—the Munich, JTS, and Paris manuscripts, the Venice printed edition of the Bavli, and one geniza fragment (see Rosenthal 1980:187).

Babylonian version:

אין בונין עמהם
בסילקי גדרום איצטדייא ובימה

One may not build with them
a basilica, a gallows,⁷⁰
a stadium and a judge's tribunal.

Whether this variant represents the text that formed the basis of (and thus influenced) amoraic discussion in Babylonia or whether this variant is a post-talmudic emendation *as a result of* the amoraic discussion in Babylonia will be considered later (see notes 79 and 89).

The Bavli's gemara on this mishnah runs as follows:

b. AZ 16b

אמר רבה בר בר חנא א"ר יוחנן
ג' בסילקאות
שלמלכי עובדי כוכבים⁷¹
ושל מרחצאות ושל אוצרות
אמר רבא⁷² ב' להיתר ואחד לאיסור . . .
ואיכא דאמרי אמר רבא כולם להיתר
והתנן אין בונין עמהן
בסילקי גדרום⁷³ איצטדייא ובימה
אימא⁷⁴ של גדרום ושל איצטדייא ושל בימה

Rabbah bar bar Ḥana said R Yoḥanan said:
There are three [types of] basilica
those of the kings of the idolaters⁷⁵
and those of bathhouses and those of storehouses.

Rava⁷⁶ said: Two are permitted and one is forbidden [i.e., that of kings] . . .

And there are some who say Rava said⁷⁷ all of them are permitted.

Yet did we not learn in the mishnah:

“One may not build with them a basilica, a gallows, a stadium and a judge's tribunal.”

Say rather⁷⁸ “[basilicas] of a gallows, of a stadium, of a judge's tribunal.”

First, a Palestinian tradition (first and second generations, mid-third century) is cited in which it is taught that there are in fact three kinds of basilica. A third-generation Babylonian amora, Rabbah (reading Rabbah, not Rava, with most mss.), remarks that of these three, only one is covered by the mishnah's prohibition—the basilica of kings. However, an alternative version of the tradition attributed to Rabbah/Rava is pre-

sented: none of the three is covered by the prohibition of the mishnah! It is Rabbah's tradition (in either version) that generates the question that drives the last two steps of the sugya. How can Rabbah's teaching, which permits certain basilicas, be harmonized with the language of the mishnah itself, which seems to suggest that basilicas (unqualified) are prohibited? The solution proposed by the gemara is as follows: Rabbah's teaching is in line with the mishnah if the latter is reinterpreted: the word *בסיליקי*, though a transliteration of a Greek term, looks (and sounds) like a masculine plural noun in the construct case (suffix *יקי*). The four terms in the mishnah might thus be read as a construct (genitive) chain: basilicas of a *gradun*, of a stadium, and of a *bimah*. Only these three types of basilica are prohibited and not the three types of basilica first itemized in the name of R. Yoḥanan.

The interpretation suggested in the final line of the sugya is facilitated by the absence of a *vav* on all but the last term; in other words, it is facilitated by the version of the mishnah that appears in the Babylonian witnesses to the mishnah text.⁷⁹

The Bavli's reinterpretation affects our understanding of the mishnah. The plain sense of the mishnah is that Jews may not join with non-Jews in the construction of four structures, all staples of classical Roman architecture. One of these four is the basilica. The term "basilica" draws no comment in the gemara of the Palestinian Talmud, and no halakhic modification is evident in the Palestinian amoraic discussion. However, the Bavli's sugya reinterprets the mishnah so that the prohibition becomes a prohibition against constructing three types of basilica (not four structures, one of which is a basilica): those associated with gallows, stadia, and tribunals.

Since monumental Roman architecture and judicial structures of the type mentioned in the mishnah were not commonplace in Sassanian Babylonia, it is not reasonable to suppose that the late amoraic reinterpretation of the mishnah is part of a trend toward halakhic leniency prompted by some hypothetical socioeconomic pressure of diaspora life.⁸⁰ Rather, I would argue that the sugya is driven, in the first instance, by an ambiguity in the term "basilica," an ambiguity created by a diachronic shift in the range of structures to which this term could refer. A survey of the historical development of the basilica, its forms and functions, will enable us to document this diachronic shift and to explicate the attributed traditions that serve as the raw materials of the Bavli's sugya.

Notwithstanding the Greek name,⁸¹ the basilica was a standard of Roman imperial architecture. The earliest known basilicas date to the second century B.C.E., and the last pagan Roman basilica was built in the early fourth century by Maxentius on the Via Sacra near the Forum. The basilica was a public building which generally consisted of a high central room covered by a roof and subdivided by colonnaded aisles on all four sides (occasionally on only two). Perhaps originally attached to the forum as a shelter for those transacting business or for pilgrims to nearby temples, the basilica increasingly attracted the general traffic of the forum, serving as a money exchange and place of business as well as a law court.⁸² A tribunal for the administration of justice, when present, was housed in either an apse or an elevated exedra.

It was only natural that in the course of time the form and function of the basilica should undergo a variety of changes so that the term referred both to buildings of various forms situated in the forum and serving its purposes and to buildings of a standard form but situated elsewhere and serving other functions,⁸³ both public and

private. These shifting forms and functions, which shed light on the elements comprising our *sugya*, are discussed by Ward-Perkins:

At Velleia, [North Italy] for example, already in Augustan times we see a building which has few of the architectural characteristics of the ancestral type but which stood beside the forum and was certainly called *basilica*. At the same time we find the name *basilica* used in a variety of contexts that have nothing whatever to do with the forum or public affairs: the halls flanking the stage-building of a theater; one of the rooms of a bath-building; the audience hall of a private villa; a cloth market; the headquarters of the Roman silversmiths; a covered exercise yard for troops; the private meeting place of a religious cult. Not all of these were basilican even in the architectural sense; it is quite clear that in course of time the name came to be applied to any large covered hall, regardless of its architectural form.⁸⁴ (1981:182)

Although the Roman version of the basilica spread rapidly through central and north Italy and throughout the western provinces, it had to fight for acceptance in the east (Ward-Perkins, 1977:15, 154), and it was not until the second and third centuries C.E. that the basilica entered the architectural canon of these provinces (*ibid.* 168). Numerous basilicas were built in Antioch; excavations have turned up remains of only four certain examples of basilicas in Asia Minor (Ephesus [early first century C.E.], Kremna [Hadrianic], Smyrna [mid-second century], and Aspendos [end of third century]), three in Syria (Berytus [Herodian], Shaqqa in Hauran [late second century], and Bostra in Hauran [third century]), and many in North Africa.⁸⁵

As for the Syrian basilicas, the Herodian basilica at Berytus (Lebanon) lies on a forum and is somewhat unremarkable. The late second-century basilica of Shaqqa (south Syria) was probably a private hall and possibly used as a military exercise room. The third-century basilica of Bostra (south Syria) is a large, well-lit hall with a single concrete, vaulted apse and external porticoes suggestive of a ceremonial audience hall (Ward-Perkins 1981:347).

With regard to the discussion of the *gemaras*, several central points emerge from this survey of the basilica. First, the classical republican and imperial basilica was a public building situated on the forum and utilized for the conduct of commercial transactions and legal proceedings (for which purpose a tribunal was erected). Second, by the first century C.E. private basilicas were constructed in palaces or great houses. While these fine halls of audience were originally the site of public councils and private judicial arbitration, they later served nonofficial functions. Third, public basilicas had already developed other functions in the imperial period and were found (primarily in the provinces) in conjunction with parks, baths, theaters, military institutions, and even a riding school. Fourth, geographically, we know of classic forum-type basilicas (i.e., basilicas serving judicial and commercial uses) in the east (Antioch, several in Asia Minor, and Berytus in Syria). Herod's Temple mount "cloister" referred to as βασιλική στοά may represent a deviation from the strictest usage of the term. The later basilicas of Shaqqa and Bostra in Syria are also representative of the shifting functions of the basilica—the former possibly a military exercise hall and the latter a ceremonial audience hall. However, examples of basilicas serving more varied functions (e.g., those constructed in connection with parks, baths,

and theaters), while found in the western provinces, are lacking for Syro-Palestine and the east generally.

Reading our rabbinic sources in the light of this information, the following schematization suggests itself. The prohibition against joining in the construction of basilicas recorded in the Mishnah most probably dates to a time when, first of all, hostility between Jews and their Roman conquerors was strong (from the early first to the mid-late second century C.E.) and when, in addition, basilicas were built primarily as large public buildings attached to a forum and containing a tribunal. Since classic forum-type basilicas equipped with a tribunal were already known in Syro-Palestine (Antioch, Berytus) in the very early tannaitic period, this prohibition may date to the early first century C.E. and is probably no later than the early second century C.E.⁸⁶

However, in the late second and third centuries C.E. Syro-Palestine witnessed the construction of basilicas of varied forms and functions (Shaqqa, Bostra). The third century Palestinian tradition cited in the Bavli is testimony to the expanded range of structures to which the term “basilica” could refer by the late second century. R. Yoḥanan’s (third century) list of three types of basilica—those of kings (i.e., palaces), of baths, and of storehouses—reflects precisely the shift in reference indicated above.⁸⁷ Indeed, we have explicit evidence of basilicas that were large public buildings attached to baths and palaces. (Although the former are attested in the western provinces, it is conceivable that knowledge of such structures was available throughout the empire.)

Thus the Babylonian amoraim fell heir to two Palestinian traditions: the tannaitic prohibition of basilica construction based on the association with a tribunal, and an amoraic gloss (conveyed by Rabbah bar bar Ḥana) identifying nontribunal forms of basilicas. It is not surprising that a Babylonian amora of the late third or early fourth century (Rabbah/Rava), in response to the tradition cited in the name of R. Yoḥanan, should attempt to clarify precisely which basilicas are targeted by the mishnah’s prohibition. Rabbah is represented as rejecting the possibility that all structures to which the term “basilica” is applied by R. Yoḥanan are prohibited, and stating that only those of kings are prohibited while those of baths and storehouses are permitted. This is a logical and natural differentiation, since the mishnah is clearly concerned with the basilica *qua* tribunal, or locus of capital sentencing. Perhaps, then, Rabbah is suggesting that of the three basilicas listed by R. Yoḥanan, the basilica most likely to feature sentencing is that of a king and it is therefore a king’s basilica that is intended by the mishnah. But the second version of Rabbah’s statement asserts that none of the three basilicas listed by R. Yoḥanan is covered by the mishnah’s prohibition. This assertion quite possibly stems from an awareness that the basilicas of kings were also not tribunals but simply fine halls of audience.⁸⁸

However, Rabbah’s distinction which permits the construction of certain basilicas (those detailed by R. Yoḥanan) creates a logical problem. A clear tension—if not an outright contradiction—generated by the diachronic shift in the form and function of the Roman basilica described above, exists between the mishnah and the amoraic traditions. Consequently, the very juxtaposition of the mishnah and the amoraic traditions in the construction of the sugya sets up a dialectical tension that demands resolution. If basilicas are large public halls attached to palaces, baths, and

storehouses and have nothing to do with capital sentencing, as the early amoraim attest, then why should the tannaim have issued a prohibition against Israelite participation in their construction?

The redactor must square the mishnah's blanket prohibition of basilicas with the amoraic tradition permitting certain types of basilicas, and he must do so, in all probability, with little or no firsthand knowledge of basilicas or Roman architecture generally. In other words, the redactor's task at this point is *purely interpretative*: he must make sense of a set of apparently contradictory traditions. And indeed, the tension can be resolved by construing the four items in the mishnah as elements in a lengthy construct (genitive) chain: it is the basilicas of gallows, of stadia, and of tribunals only that are prohibited (not the basilicas of palaces, baths, and storehouses mentioned by the early amoraim).⁸⁹ As was noted earlier, this reinterpretation of the mishnah is suggested by a morphological "accident": the Hebrew transliteration of Greek "basilica" resembles a plural construct (genitive) form.

It is extraordinarily unlikely that this relatively late Babylonian reinterpretation reflects any actual knowledge of or practical concern for basilicas and their association with various monumental or judicial structures. It is doubtful that the law had any concrete application in Babylonia at the time of the sugya's redaction. Thus the halakhic modification that occurs in b. AZ 16b is not the result of a diaspora commitment to halakhic leniency, nor is this sugya a conscious effort on the part of the Babylonian amoraim to disguise a predetermined halakhic innovation as interpretation. Rather, it is the product of several factors—temporal/cultural distance, exegetical, dialectical, and redactional considerations—that contributed to the construction of the sugya as a whole. The historical development of the basilica in both form and function detailed above is reflected in a set of amoraic traditions that speak of (and permit) basilicas that serve purposes beyond the judicial. The juxtaposition of these amoraic traditions with the mishnah in the redaction of the sugya created a dialectical tension that could not be ignored. An exegetical maneuver necessitated by the redactor's dialectical schematization of earlier traditions and based on a fortuitous morphological coincidence ends the sugya. The resulting halakhic leniency is the consequence of the reinterpretation; the reinterpretation is not the consequence of a preconceived halakhic leniency.

m. AZ 1:3 (ובלוריהו)

Rosenthal lists *m. AZ 1:3 (ובלוריהו)* among those mishnayot whose text was known by the amoraim themselves to exist in more than one version. However, in my view the gemara's discussion in b. AZ 11b indicates that the amoraim were exercised not by a textual variant of the mishnah but by a syntactic ambiguity inherent in it, an ambiguity exacerbated by imprecise knowledge of the relevant Greco-Roman rituals involving the beard and forelock. As in the previous example, the temporal and cultural distance separating the Babylonian amoraim from the Palestinian tannaim combines with internal exegetical pressures to effect a halakhic shift in the Babylonian Talmud.

m. AZ 1:3

וְאֵלּוּ אִידִיּוֹתָם שֶׁל גֵּוִים . . .
יּוֹם תִּגְלַחַת זָקְנָם וּבִלְוִיָּתוֹ . . .

These are the festivals of non-Jews . . .
The day of shaving his beard and his forelock

M. AZ 1:1 and 1:2 contain prohibitions that apply during the festivals of non-Jews. M. AZ 1:3 then lists those days that qualify as festivals so as to be subject to the prohibitions contained in 1:1 and 1:2. Within this list we find “the day of shaving his beard and his בְּלוּיָתָהּ (forelock).” Apparently the mishnah has in mind an idolatrous ritual that involves the beard and/or forelock of hair.⁹⁰

The Bavli contains the following discussion of this mishnah:

b. AZ 11b

יּוֹם תִּגְלַחַת זָקְנָם:
אִיבַעִיָּא לְהוּ הִיכִי קָתְנִי
יּוֹם תִּגְלַחַת זָקְנָם וְהִנַּחַת בְּלוּיָתָהּ
אוֹ דְלִמָּא יּוֹם תִּגְלַחַת זָקְנָם וְהַעֲבַרְתָּ בְּלוּיָתָהּ
תִּשְׁדַּחְנִי תְרוּיָהּ
יּוֹם תִּגְלַחַת זָקְנָם וְהִנַּחַת בְּלוּיָתָהּ
יּוֹם תִּגְלַחַת זָקְנָם וְהַעֲבַרְתָּ בְּלוּיָתָהּ

“The day of shaving his beard . . .”

1. It was asked of them: How does it teach?
“The day of shaving his beard and *leaving*⁹¹ his forelock”
Or perhaps,
“The day of shaving his beard and *removing* his forelock?”
2. Come and hear: Both of these are taught in a beraita.
“The day of shaving his beard and leaving his forelock;
the day of shaving his beard and removing his forelock.”

Rosenthal and Epstein offer divergent interpretations of this passage. After stating my reasons for rejecting these interpretations, I will offer my own interpretation in the light of extratalmudic evidence of beard and hair rituals in Greco-Roman society. My interpretation will represent the sugya of the Bavli as an effort to decode an unknown term by exploring a syntactic ambiguity in the mishnah.

Rosenthal (1980:19) understands the gemara’s question “what does the mishnah teach?” as a question concerning the actual *text* of the mishnah. On this interpretation, the question indicates that the amoraim were familiar with *two versions of Rabbi Judah’s Mishnah*. These two versions are articulated by the questioner. In response a beraita is cited which contains and endorses both of these versions.

I do not accept Rosenthal’s understanding of the gemara, for two reasons. First, neither of the two alternative “versions” is that of the mishnah text (nor are they attested in any manuscripts or printed editions). Rather, they appear to be interpreta-

tive paraphrases of the mishnah in an effort to elicit its meaning. Second, the response in the gemara makes little sense on Rosenthal's interpretation. It simply echoes the question: as to whether X or Y is the *text* of the mishnah, we respond that there is a beraita that teaches X and Y.

I agree with Epstein (1948:418) that the question of the gemara pertains not to the text of the mishnah but to its meaning, to wit: "How does it teach" = What is the meaning of the mishnah? Does it mean the day of shaving the beard while leaving the בלורית or does it mean the day of shaving both the beard and the בלורית? The gemara's answer seems to be that the question cannot be finally determined since both are found in a beraita.

I disagree with Epstein, however, in his assertion that the mishnah's meaning is unambiguous. Epstein states that the mishnah certainly means only יום הגלחה ובלוריתו זקנו, "the day of shaving his beard and (of shaving) his forelock" (which is equivalent to the second interpretation proposed by the gemara: "the day of shaving his beard and removing his forelock"). Epstein holds that the alternative possibility posed by the gemara — "the day of shaving his beard and leaving his forelock" — is not even hinted at in the mishnah. But if we grant that the mishnah is unambiguous, how are we to explain the gemara's question? Epstein argues that doubt about the mishnah's meaning arose in *Babylonia* alone because of the beraita which was known only there. This beraita teaches of two separate occasions: a day of shaving the beard only, and a day of shaving the beard and the forelock. Their familiarity with this beraita prompted the amoraim to ask: To which of these occasions does the mishnah refer?

However, the meaning that Epstein refers to as the plain meaning of the text — the day of shaving both beard and forelock — does not correspond to Greco-Roman ritual, as we shall see. Assuming that the text does not seriously misrepresent the facts, this lack of correspondence would suggest that the mishnah's meaning is not as transparent as Epstein would have it. Indeed, there is a fundamental ambiguity⁹² in the mishnah, and it is to this ambiguity that the gemara's question is directed. Thus it is not merely a question as to the mishnah's intended teaching but a question concerning the proper interpretation of the mishnah as it stands.⁹³

The ambiguity to which I refer pertains to the distributive force of the *vav* (ו) that connects the word בלוריתו to the rest of the phrase. Consider the following example in English:

Rachel looked in all of the boxes of old books and papers.

There is an ellipsis here preceding the word "papers." The speaker does not mean to say that Rachel looked in all of the boxes of old books and in papers. The papers were probably in boxes just as the books were. The terms that precede and modify "books" apply also to "papers." I refer to this as a distribution of the modifiers of the term "books" to the term "papers" by means of the conjunction "and." But the question is: How much of the modifying phrase is to be distributed to "papers" — all of it or only some of it? How the ellipsis preceding "papers" is filled in depends on how much of the information referred to "books" is distributed to "papers."

Our sentence modifies “books” in two ways: the books are in boxes and the books are old. One or both of these facts may be distributed to the term “papers” in the conjoined clause, resulting in sentences with quite different meanings.

1. Distribution of boxes: Rachel looked in all the boxes of old books and [in all the boxes of] papers.
2. Distribution of old: Rachel looked in all the boxes of old books and [old] papers.
3. Distribution of both boxes and old: Rachel looked in all the boxes of old books and [in all the boxes of old] papers.

The differences are immediately apparent. Sentence 1 indicates that Rachel looked in boxes containing old books and in addition she looked in boxes containing papers. Sentence 2 indicates that Rachel looked in boxes which contained old books and old papers. Sentence 3 indicates that Rachel looked in boxes containing old books and in addition she looked in boxes containing *old* papers. (A further possible construal is that Rachel looked in boxes containing not only old books but also papers.)

In my view the gemara is asking a question based on precisely this kind of distributive ambiguity. The phrase “the day of shaving the beard and forelock” can be read in two ways depending on how much of the information pertaining to “beard” is distributed by means of the conjunction to the term “forelock.”

1. The day of shaving the beard and [shaving] the forelock = one day of removing both.
2. The day of shaving the beard and [the day of shaving] the forelock = two different days.⁹⁴

On the first interpretation, the mishnah might refer to a day in which the beard and the forelock are both shaved. This is the second possibility found in the gemara and it is the interpretation that Epstein labels as the plain meaning of the mishnah.

On the second interpretation, the mishnah might connote two days: (1) the day of shaving the beard *but nothing else*, that is, the day of shaving the beard and leaving the forelock in place (though “leaving the forelock” is understood by Rashi as actually forming the forelock; see note 91); (2) the day on which the forelock (also) is shaved.⁹⁵ This interpretation surfaces in the gemara when it asks whether the mishnah refers to the day of shaving the beard *only*? Understood this way, the gemara’s question is an abbreviation of the fuller question: Does the mishnah refer to a day of shaving the beard only (יום תגלחת זנקה) and then subsequently to a second day of shaving the forelock also (יום תגלחת בלוריה)?

This then is the question in the gemara: Is there a distribution by the *vav* of the mishnah such that the mishnah is speaking of (1) a day of shaving the beard and (2) a day of [shaving] the forelock also?⁹⁶ Or is there a distribution by the *vav* of the mishnah such that the mishnah is speaking of a single day of shaving both the beard

and the forelock? The gemara answers that in fact there is a beraita teaching that both cases constitute festivals for the non-Jew. Thus the Bavli concludes that (at least) two days in the life of the non-Jew are celebrated as festivals and fall under the prohibitions of the preceding mishnayot: on the one hand, the day the beard only is shaved, and on the other hand, the day both beard and forelock are shaved.⁹⁷

It would seem reasonable to suggest that uncovering the realia behind this terse phrase would help determine both the meaning of the mishnah and the plausibility of the two interpretations of it proposed by the Bavli. Interestingly enough, the extratalmudic evidence only underscores my claim that the Bavli is struggling with an issue of interpretation in the absence of information concerning the cultural reality in question.

I have found no evidence in Greco-Roman literature of a ritual that involved both the shaving of a beard *and* the shaving or dedication of locks of hair at the same time. On the contrary, the pertinent rituals would appear to be as follows:

HAIR

Sources refer to forelocks and hair dedication rituals in the classical period in Greece (centuries before the editing of the traditions contained in the mishnah). Referring to the period after the Persian Wars, Smith writes:

Children still wore their hair long, the front hair being tied up in a knot (σκόλλυς) on the crown . . . or arranged in a long plait or plaits stretching from the forehead across the middle of the crown to the back of the head. . . . The former is supposed to be the σκορπίος alluded to by the Scholiast on Thucydides . . . as the tuft peculiar to children. The hair cut off when the boy became an *ephebus* was called σκόλλυς by Athen. (xi. p. 494f) and μαλλὸς by Hesychius. It was cut off on the third day of the Apaturia (κουρῆῶτις ἡμέρα) . . . the ceremony being preceded by a libation to Hercules called οἰνιστήρια, and the hair being dedicated sometimes to Apollo . . . but generally to some river-god. (1891:406)

The Greek term κόμη, which appears in b. Qidd 76b as a parallel for בלוריה (see note 90), means “hair,” and the verb κομᾶν means “to wear long hair.” Classically, the long hair of young boys plaited or bundled on the crown was dedicated to a god at puberty.⁹⁸ This ritual occurred on a fixed day of the year. Plutarch’s account of the life of Theseus contains the following remark:

Since it was still a custom at that time for youth who were coming of age to go to Delphi and sacrifice some of their hair to the god, Theseus went to Delphi for this purpose, . . . But he sheared only the forepart of his head, just as Homer said the Abantes did . . . and this kind of tonsure was called Theseis after him. (*Theseus* 5)

Although the classic encyclopedias do not refer to the continuation of this ritual into Roman times or its adoption by the Romans during the empire, two Roman sources indicate that there was at least some custom of dedicating locks of hair to a god. A brief passage in Juvenal’s *Satire* 3:186 states, “one of these great men is cutting off his beard, another is dedicating the locks of a favorite.” A text from the *Epigrams* of Martial (end of the first century C.E.) associates the custom with a young boy.

Revered grandson of Latona, who with the magic of thy gentle herbs dost win over the threads and brief distaffs of the fates, these locks by his master praised thy boy has sent, his vow's fulfillment, from Latium's city; and to his consecrated hair has he added the bright disk, by whose judgment his happy beauty was assured. Do thou preserve his youthful bloom, that he be no fairer with long curls than with shortened locks. (Book 9, poem 17)

The circumstances of these dedications are unclear. Although the Martial text speaks of a young boy, we do not know if the dedication of locks in fulfillment of a vow was the standard practice marking puberty or if such acts occurred on a fixed festival. In any event, here also there is no mention of shaving a beard at the same time.

BEARD

There is much evidence of a beard-shaving ritual in the Roman period. Smith writes:

The first time of shaving was regarded as the beginning of manhood, and the day on which this took place was celebrated as a festival (Juv. Sat. iii 186). There was no particular time fixed for this to be done. Usually, however, it was when the young Roman assumed the *toga virilis*. Augustus did it in his twenty-fourth year, Caligula in his twentieth. The hair cut off on such occasions was consecrated to some god. (1891:vol I, 286)

Two passages from Suetonius refer to these occasions:

Then he [Caligula] fell to the care of his grandmother Antonia, and in the 19th year of his age he was called to Capreae by Tiberius, on the same day assuming the gown of manhood and shaving his first beard, but without any such ceremony as had attended the coming of age of his brothers. (Suet. *Calig.* 10)

At the gymnastic contest which he [Nero] gave in the Saepta, he shaved his first beard to the accompaniment of a splended sacrifice of bullocks, put it in a golden box adorned with pearls of great price, and dedicated it in the Capitol. (Suet. *Nero* 12)

Dio Cassius reports on the public festivities in conjunction with Caesar's first shaving of the beard:

For though they were expending vast sums for themselves and especially upon the soldiers, the only thing they were ashamed of was that the expenditures they were making were contrary to precedent. For example, when Caesar now for the first time shaved off his beard, he held a magnificent entertainment himself besides granting all the other citizens a festival at public expense. (*History*, Bk XLVIII, 34)

From the preceding it appears that there is no indication of a ritual involving the shaving of both beard and forelock. There is a classic Greek ritual of cutting the forelock upon attaining puberty/majority and dedicating the hair to a god, and there are indications that (young) Romans dedicated hair to a god perhaps in fulfillment of a vow. Finally, it seems to have been common Roman practice to shave the first beard as a sign of passage into manhood, and public festivals accompanied the first beard shaving of the Caesars.

The possibility exists that the mishnah refers precisely to public festivals surrounding the events not in the life of the private individual but in the life of the emperor only—his genesis (see discussion in note 4), the day of shaving his beard, and the day of dedicating or cutting his forelock. The medieval commentators in fact are quite divided on this issue. Rashi and Ramban reject the notion and assert that the mishnah refers to events in the life of private individuals, beginning with our clause (“the day of shaving the beard and the forelock”). The printed edition of the Bavli, following Rashi, inserts אבל (“but”) at the head of this clause, perhaps to mark this shift (from royal to private occasions).⁹⁹ However, this is a late accretion, missing in all manuscripts. Rashba and Rabad assert that the mishnah refers to the day of the *king’s* shaving his beard or cutting his forelock. The Meiri also writes (*ad loc.*): “the day of shaving his beard and his forelock”—this means that the first time that the *king* shaves his beard, he shaves it in his idol’s temple and fixes a festival, and likewise for the forelock.”¹⁰⁰ (How similar this sounds to the evidence of classical sources that the two were separate rituals and that the rituals of the emperor’s life were occasions for public festivals.) In the view of these commentators, the switch to private festivals occurs subsequently with יום שעלה בו מן הים (“the day on which he returns from the sea”). It is important to realize that both interpretations (royal vs. private) have syntactic difficulties in the context of the entire mishnah. Here too, then, there is a significant measure of ambiguity.

The Yerushalmi’s short sugya does not enter into the difficulties addressed by the Bavli. The tannaitic material cited there is concerned with the possible application of the prohibition not only to the day of one’s own shaving (no object—neither beard nor forelock—is provided) but also to the day of one’s son’s shaving (a question or distinction that is not pursued in the Bavli). Further, it seems that the Yerushalmi interprets the mishnah as referring to the shaving of private individuals (see Blidstein 1968:78–79).

In sum: the mishnah includes in its list of Gentile festivals prior to which business transactions are forbidden, the day of shaving the beard and the forelock. Epstein argues that a single day in which both beard and forelock are shaved is not only the plain meaning of the phrase but the meaning intended by the mishnah. I have argued on the basis of extratalmudic evidence that the mishnah must intend to denote two separate rituals—a ritual involving the first shaving of the beard and a puberty ritual in which the forelock was cut and dedicated to the gods. However, the mishnah employs an ambiguous phrase which can be interpreted as a single day of shaving both beard and forelock. The Babylonian amoraim were thus stymied not only by the syntactic ambiguity of this mishnah but by an unfamiliarity with the rituals involved, due to temporal and cultural distance. The Bavli raises the possibility that the mishnah refers to a single day in which both beard and forelock are shaved, and in the end cites a beraita that supports both interpretations of the mishnah. The resulting sugya, which differs from its counterpart in the Yerushalmi, is best understood as the product of internal exegetical pressures on the one hand and temporal and cultural distance on the other.

The very nature of the Mishnah gives rise to halakhic difference between the two Talmuds, as the rabbis struggle to fill lacunae, resolve ambiguities, explicate obscu-

rities, and define rationales for halakhic rulings. In three cases examined above, halakhic difference results from divergent resolutions of a gapped mishnah. First, m. AZ 4:5 contains a gap of information in regard to the case of nullification of an idol upon sale. The Yerushalmi fills this gap and the Bavli fine-tunes the Palestinian effort in this regard, resulting in slightly stricter construals of the halakhah in question. Second, and by contrast, the structural gap in m. AZ 3:8 exercises only the Babylonian rabbis. They consider two resolutions of the gapped text. Since these two resolutions lead to contradictory interpretations of the halakhah in question, an *oqimta* strategy is employed in order to uphold each of the two possible resolutions (each within a particular set of circumstances). Third, the omission of a rationale for the halakhic ruling in m. AZ 1:1 gives rise to discussions in the gemaras in which possible rationales and their halakhic implications are considered. In general, the gemaras examine the language and context of the mishnah itself or search for related traditions in their effort to ascertain the reason for (and thus the scope and applicability of) a mishnaic teaching. In the case of m. AZ 1:1, two possible rationales are already intimated in the mishnah. The two Talmuds champion now one, now the other rationale (though each has its preference), and the contest continues in the commentaries of the medieval period.

Two further cases underscore the fact that the various forces that collide in an act of interpretation can be complex and multiform. Amoraic interpretations of m. AZ 1:7 and m. AZ 1:3 illustrate the way in which temporal and cultural distance may engender ambiguity, which can in turn combine with a variety of exegetical, dialectical, and redactional considerations so as to effect halakhic changes in the post-tannaitic period. In the case of m. AZ 1:7, the semantic evolution of a Greek term denoting an architectural form unfamiliar to the Babylonian amoraim combines with dialectical and redactional factors and a morphological coincidence, producing a modified understanding of the prohibition on construction, only in the Bavli. In the case of m. AZ 1:3, a syntactic ambiguity in the mishnah combines with Babylonian unfamiliarity with certain Greco-Roman shaving and hair-cutting rites and prompts a reinterpretation of the text in question.

All five examples discussed in this chapter illustrate the way in which halakhic difference emerges from the fact that the Talmuds are fundamentally literatures of interpretation, dedicated to the explication and development of a text that is by its very nature replete with gaps, ambiguities, and obscurities.

Hermeneutical Theory: Halakhic Difference as a Result of Hermeneutical Presuppositions

Hermeneutical Presuppositions

Every hermeneutic endeavor is grounded in certain presuppositions about the nature of the text that is being interpreted and the task of the exegete. These presuppositions set the ground rules for the development and deployment of specific strategies. For example, if an exegete presupposes that the text before him is an allegory, he will develop and deploy a hermeneutical strategy that decodes literal meanings for symbolic meanings. If an exegete presupposes that the text before him is divinely revealed truth, he will develop a strategy that enables him to read apparently false or contradictory statements in the text in a manner that accords with his notion of truth. The strategy and rules chosen depend on the hermeneutical endeavor in which one is engaged.

The Talmuds are patently hermeneutic literatures. On the most basic level they consist of interpretation and analysis of the Mishnah of R. Judah ha-Nasi. But in addition other texts and traditions—biblical, tannaitic, and amoraic—are cited and subjected to interpretation and analysis. I will explore here the hermeneutical presuppositions that undergird the reading practices of the two gemaras, in order to show how these presuppositions attain their fullest expression only in the Bavli and are thus responsible for both formal and substantive halakhic difference between the Talmuds.

The Principle of Verbal Economy, or “Is the learning of gemara then to be like singing a song?”

It is a commonplace principle that the rabbis’ *biblical* hermeneutics presupposed a certain precision in the language of the text. Midrashic interpretations of biblical texts assign great import to fine details of grammar, syntax, verse sequence, vocabulary choice, and so on. The rabbis assume that nothing in the biblical text is there by

accident. No word, phrase, or verse could be other than it is without a transformation in meaning.

There are indications in the gemaras that similar presuppositions were in force in regard to the language of the Mishnah.¹ Although this is not a consistently applied presupposition, it is nevertheless fair to say that the amoraim increasingly presuppose that the *medium* of the Mishnah was an important part of its message—that syntax, grammar, arrangement of clauses, choice of words, and terminology are not accidental but are consciously chosen to convey a particular point.²

That precision of language was highly valued in the study of Oral Torah generally is illustrated on b. AZ 32b, where the formulation of even amoraic statements is held to be pointed and purposeful. The mishnah under discussion is m. AZ 2:3, which lists items belonging to non-Jews that are prohibited for all benefit. Included are animal skins that are pierced opposite the heart. In connection with these skins the mishnah records the following comment: “R. Shimeon b. Gamliel says: when the hole is round they are forbidden but if oblong they are permitted.” The gemara (on 32b) then records the following interchange:

1. R. Joseph said in the name of R. Judah in the name of Shmuel:
“The halakhah rests with R. Shimeon b. Gamliel.”
2. Abaye said: “‘The halakhah rests with . . .’—that statement implies that there is a dispute over the matter!”
3. The other retorted: “What difference does it make to you?”
4. He replied: “Is the learning of gemara then to be like singing a song?”

Abaye chastises R. Joseph for a certain sloppiness. By stating that the halakhah is according to R. Shimeon b. Gamliel, he implies that the halakhah is *not* according to some other authority who disagreed with R. Shimeon b. Gamliel. This reasoning would lead one to believe that the matter was disputed when in fact it was not. R. Joseph is a little surprised at Abaye’s rebuke. After all, what difference does it make how he phrases his statement? The practical result remains that the halakhah is according to the statement of R. Shimeon b. Gamliel, whether or not one is under the impression that this view was disputed. Abaye, however, asserts that it does matter. Learning (probably in this context *memorizing*) gemara is necessarily a precise discipline and not at all approximate, like learning a mere song. At times matters of great weight will depend precisely on such details of formulation.³

I refer to the notion of the utter meaningfulness of the language of the Mishnah and other halakhic traditions as “the principle of verbal economy” (cf. Harris 1995:18). This principle, by which halakhic traditions are assumed to convey the maximum information in the minimum terms, expresses itself in several forms.

VERBAL ECONOMY—NO REDUNDANCY

On this principle, the amoraim assume that the Mishnah will not waste words by repeating itself. They analyze apparent redundancies, glosses, paraphrases, and recapitulations in order to demonstrate that in fact they do convey some new piece of information, some *hiddush*. The amoraim rarely concede that one phrase of the

Mishnah is a gloss or reformulation of another but insist that each phrase is necessary (צריכה, *tserikha*, “it is necessary”) in its own right.

VERBAL ECONOMY—NO SELF-EVIDENT STATEMENTS

The amoraim assume that the Mishnah will not waste words by telling us something that is self-evident (פשיטה, *peshita*, “it is obvious”), self-evident either because it is deducible from other teachings of the Mishnah or because it is a known fact of extratextual experience. If a teaching appears self-evident, the amoraim will show that it is not self-evident, that on the contrary, the teaching is necessary (צריכה) in order to preclude some plausible but erroneous alternative—a *havah amina* (הוה אמינא).⁴ At times a sugya will be devoted to demonstrating that each detail of a particular mishnah is formulated specifically to guard against some erroneous alternative (and, again, the phrases are all צריכה).

The Bavli carries these hermeneutical assumptions further, holding that traditions (even those that are not apparently redundant or self-evident) are always formulated in a precise manner so as to preclude a plausible but erroneous alternative (הוה אמינא). In other words, the Bavli assumes that the phraseology and specific locutions of every tradition are adopted precisely in order to preclude some mistaken notion—an error that could be made in the absence of the mishnah’s teaching (א הוה אמינא).⁵ This notion will be developed more fully in the next chapter.

It should be emphasized here that the hermeneutical principle of verbal economy is evidenced in both Talmuds but is more frequently and rigorously pursued in the Bavli.⁶ Thus halakhic differences emerge in the gemaras as a result of the differential application of this principle: The Bavli will apply it to one mishnah while the Yerushalmi does not (and only very occasionally vice versa).

In the cases analyzed below, only the Bavli pursues a verbal economy argument. Two types of halakhic difference can emerge from this type of hermeneutic: a purely formal difference or a substantive difference.

FORMAL HALAKHIC DIFFERENCE

A formal halakhic difference occurs when the Yerushalmi and the Bavli record the same basic tradition(s) in their discussion of a mishnah but only the Bavli encodes the tradition(s) specifically as a solution to the problem of redundancy or self-evidence. Thus, a tradition that is merely associated with the mishnah in an unspecified way in the Yerushalmi is represented in the Bavli as precisely intended by the mishnah’s (apparent) violation of the principle of verbal economy.⁷

SUBSTANTIVE HALAKHIC DIFFERENCE

A substantive halakhic difference occurs when the Bavli cites a tradition as a solution to the problem of redundancy or self-evidence that is not paralleled in the sugya of the Yerushalmi. Here the Bavli’s concern with the violation of the principle of

verbal economy generates more than a formal difference—it generates a new teaching and thus a substantive halakhic difference.

In the next section I will examine two cases in which the Bavli's assumption of verbal economy generates a formal halakhic difference, and in the final section of this chapter I will examine two cases in which it generates a substantive halakhic difference. I submit that just as in the case of purely formal halakhic difference between the Talmuds this difference is not susceptible to an external "historical" interpretation, *so also in the case of a substantive halakhic difference the difference is not susceptible to an external historical interpretation.* The structural and rhetorical similarities between the cases in the two sections suggest that both formal and substantive differences are generated *in the first instance* by the Bavli's hermeneutical assumption of verbal economy.

Formal Halakhic Difference

As was mentioned earlier, the amoraim assume that the Mishnah will not state something that is mundanely true or self-evident, something that can be logically deduced. The gemara has a specific term to describe a teaching that appears self-evident and that therefore requires special justification for having been stated: פשיטא, "they are obvious!"⁸

m. AZ 2:3—vinegar and boiled wine

The following mishnah contains a clause that the amoraim claim is logically self-evident.

m. AZ 2:3

אילו דברים של גוים אסורין ואיסורין ואיסור הנאה
היין והחומץ של גוים שהיה מתחלתו של יין

The following items of non-Jews are prohibited and their prohibition extends to all benefit:

the wine or the vinegar of non-Jews that was formerly wine.

This mishnah prohibits the wine of non-Jews and also the vinegar of non-Jews that was formerly wine. The Bavli opens with a declaration that the latter is self-evident, the implication being that it need not have been taught.

b. AZ 29b

והחומץ של עובדי כוכבים שהיה מתחלתו יין:
פשיטא משום דאחמיץ פקע ליה איסוריה
אמר רב אשי הא לאשמעינן חומץ שלנו ביד עובד כוכבים
אין צריך חותם בתוך חותם
אי משום אינסוכי לא מנסכי
ואי משום איחלופי כיון דאיכא חותם לא טרה ומויף

“And the vinegar of non-Jews that was formerly wine”;

1. That is obvious! Simply because it has turned to vinegar should the prohibition end?
2. R. Ashi said: It is to inform us that our own vinegar in the possession of a non-Jew does not require a double seal.
—as for the possibility of his libating it, they don’t libate [vinegar];
—as for the possibility of exchanging it, since there is one seal he won’t bother to defraud.

The gemara’s question in step 1 is rhetorical. The mishnah’s statement that vinegar that was formerly wine is also prohibited is self-evident since wine itself is prohibited. One would hardly expect the prohibition to end simply because the wine has soured. On the assumption that the gemara does not teach what is self-evident, a justification must be found for the mishnah’s inclusion of the prohibition of vinegar. It is surely the case that the statement imparts some new information that is not at all self-evident.

R. Ashi suggests that there is in fact a *hiddush* in this statement. I would argue that he arrives at this *hiddush* by reasoning in something like the following manner: The tanna could have said simply “wine and vinegar of a non-Jew.” Instead the tanna says “wine and vinegar of a non-Jew *that was formerly wine.*” This makes it clear that the vinegar is not prohibited *qua* vinegar; rather it is prohibited *qua* ex-wine. This mishnah is therefore teaching by implication that a non-Jew does not libate vinegar and does not render vinegar itself prohibited. He libates only wine and therefore renders only wine prohibited. However, once wine has been libated, it remains prohibited even after it has soured into vinegar. Consequently the mishnah prohibits a non-Jew’s vinegar only if it was formerly *his* (the non-Jew’s) wine.

The information that a non-Jew’s vinegar is prohibited only because of the possibility that it was libated during the period that it was wine is extremely important halakhically. It enables us to conclude that vinegar to which a non-Jew has not had access during the period that it was wine cannot be rendered prohibited by him since it was not and will not be libated by him. Thus it is safe for a Jew to leave his vinegar in the care of a non-Jew without the double seal customarily required on wine that is deposited with a non-Jew, the double seal serving as protection against libation. Only a single seal is required for vinegar, since there is no fear the non-Jew will libate it (the lesson of the ostensible logical redundancy in the mishnah). And as for the fear that the non-Jew might use some of the vinegar and replace it with his own prohibited vinegar, the single seal is enough to deter him.

Hence R. Ashi interprets the mishnah as follows: certain items of non-Jews are prohibited, and their prohibition extends to all benefit—wine, and vinegar of a non-Jew that was formerly wine, which teaches that non-Jews libate only wine and not vinegar, with the halakhic implication that the vinegar of a Jew left with a non-Jew need not be sealed with a double seal.

This same *ששיטתא* (*peshiṭta*) method is applied to nonmishnaic tannaitic teachings. Further in our sugya, R. Ilai, a tanna, is cited as having taught that a non-Jew’s boiled wine that was formerly fresh wine is prohibited. The gemara states that this statement too is self-evident, since the wine’s prohibition would not end simply be-

cause it has been boiled. Here again R. Ashi states that the tanna intends to inform us that a non-Jew does not libate boiled wine⁹ and that therefore the boiled wine of a Jew left with a non-Jew does not require a double seal.

In this case (as in the case of m. AZ 5:9 below) the Yerushalmi contains traditions that parallel the raw materials of the Bavli's hermeneutical maneuver. After citing a tradition by R. Ilai that sweet wine (which is then explained as boiled wine) is not subject to the laws of libation wine, the Yerushalmi's gemara records the following question by R. Bun bar Kahana.

p. AZ 2:3, 41a

... ולא מתניתא היא
 תני רבי חייה מבושל של גוי למה הוא אסור
 שהיה מתחילתו יין
 אמר רבי יוסי מתניתא אמרה כן היין והחומץ
 שהיה מתחילתו יין

1. . . . is it not a tannaitic teaching?
2. R. Ḥiyya taught: The boiled wine of a non-Jew—why is it prohibited? Because it was formerly wine.
3. R. Yosi said: The mishnah teaches likewise—the wine and the vinegar that was formerly wine.

R. Bun bar Kahana identifies R. Ilai's claim that boiled wine is not subject to the laws of libation wine (i.e., it is not libation wine) with our mishnah. This identification occurs in a two-step process. First, the tradition of R. Ḥiyya teaches that the boiled wine of a non-Jew is prohibited precisely and only because it was formerly fresh wine. This teaching—that wine derivatives of non-Jews are forbidden because they were formerly fresh wine—is then identified by R. Yosi as the basic lesson of our mishnah.

The Yerushalmi's gemara on m. 2:3 is quite protracted, but after an aggadic sequence the discussion does turn to the issue of seals on wine deposited with a non-Jew (41b). R. Abbahu in the name of R. Yoḥanan describes three types of libation wine of varying degrees of certainty and thus varying degrees of prohibition—for example, wine that a non-Jew has certainly libated is deemed severely defiling, while the wine of an Israelite deposited with a non-Jew and sealed with one seal is prohibited for drinking and permitted for benefit. This is then followed by a statement attributed to R. Jeremiah. "See what he said! He only said in the case of a seal, thus when there is no seal it is prohibited for drinking and for benefit." A few lines down we find this tradition: "everything is permitted with one seal except for wine."

So it is that the Yerushalmi already carries the traditions that are the raw materials for the sugya of the Bavli: first, the tradition that our mishnah's prohibition of vinegar that was formerly wine is designed to convey the information that non-Jews libate only fresh wine, not wine that has been boiled or soured; and second, the tradition that only one seal is required of nonwine items deposited with Gentiles. But it is only the Bavli that takes the rhetorical step of formally presenting these traditions as the solution to a hermeneutical problem: the apparently self-evident nature

of the mishnah's formulation. It is only the Bavli that explicitly reads these two teachings out of the precise phraseology of the mishnah, thereby demonstrating the utter meaningfulness and efficiency of that phraseology.

m. AZ 5:9—behold, these things are prohibited

A mishnah will occasionally contain both a statement of general principle and a list of specific illustrations of that principle. Strictly speaking it seems unnecessary to provide both pieces of information, for surely one can derive a general principle from the specific cases illustrating it, or specific cases from a general principle. The inclusion of both pieces of information is therefore seen as a redundancy that violates the principle of verbal economy. Confronted with a mishnah so constructed, the Bavli will seek to demonstrate that a statement of general principle following upon specific details, or a recapitulation of a general statement at the end of a list of illustrations, does in fact add some new information.¹⁰ The Bavli's hermeneutical presupposition of verbal economy thus leads to an analysis that either encodes an existing tradition as precisely the teaching conveyed by means of an *apparent* redundancy (a formal difference between the Talmuds), or that generates an entirely new halakhic datum (a substantive halakhic difference between the two Talmuds). In the following case, the Bavli's hermeneutical presupposition of verbal economy leads to a formal difference between the two Talmuds.

m. AZ 5:9

אילו אסורין ואוסרין בכל שהוא
 יין נסך ועבדה זרה . . .
 דרי אלו אסורין ואוסרין כל שהו

The following are prohibited and render prohibited by the smallest quantity:

Libation wine, and an idol . . .

Behold, these are prohibited and render prohibited by the smallest quantity.

This mishnah has a tripartite structure. First, there is a general statement that the items listed in the mishnah are prohibited and render prohibited by the smallest quantity. Second, there is the list of specific prohibited items. Third, there is a recapitulation of the first statement indicating that the items listed in the mishnah are prohibited and render prohibited by the smallest quantity. This recapitulation seems blatantly to violate the principle of verbal economy! The gemara of the Bavli here again assumes that this apparent repetition in fact conveys some new point of information.

b. AZ 74a

הרי אלו:
 למעושי מאי למעושי דבר שבמנין ולא איסורי הנאה¹¹
 אִן למעושי איסורי הנאה ולא דבר שבמנין¹²

“Behold these”:

This phrase is to exclude what? To exclude things that are individually numbered but not prohibited for all use, or things that are prohibited for all use but are not individually numbered.

The repeated statement that “*these* things” are prohibited and render prohibited by the smallest quantity is understood as underscoring that *only* these things are prohibited and render prohibited by the smallest quantity, to the exclusion of other items. In other words, the repetition is to inform us that the preceding list of items is exhaustive and not merely exemplary. Without this important piece of information, one might have reasoned that by analogy certain similar items should also render prohibited by the smallest quantity.¹³ In this case, the items listed in the mishnah share two features. They are all individually numbered (i.e., exist in discrete pieces, like slices of meat, casks of wine, idolatrous statues, etc.) and they are prohibited for any use whatsoever. One might have thought that items that share one or the other of these two features should also render prohibited by the smallest quantity. The recapitulation effectively dismisses that possibility by emphasizing that the list is exhaustive. Hence the Bavli surmises that slices of *nevelah* meat,¹⁴ which are individually numbered but not prohibited for all use, and leaven at Passover, which is prohibited for all use but not individually numbered, are specifically excluded from this list by the mishnah’s recapitulation.¹⁵ Without this recapitulation, we might have thought, by analogy, that these items also render prohibited by the smallest quantity. Interestingly enough, the Yerushalmi on this mishnah mentions that slices of *nevelah* meat and leaven at Passover do not render prohibited by the smallest quantity.

p. AZ 5:12, 45b

ולמה לא תנינן נבילה עמוק
אמר רבי יוסי בי ר' בון לא מתני אלא דבר שאסור בהנייה
נבילה מותרת בהנייה
התיבון הרי חמץ בפסח
חמץ יש בו כרת ואילו אין בהן כרת

1. Why don't we teach in the mishnah *nevelah* among them?
2. R. Yosi b. R. Bun said: We only teach those things prohibited for benefit. *Nevelah* is permitted for benefit.
3. They objected: behold there is leaven on Passover.
4. Leaven is subject to the punishment of *karet* [extirpation] but these aren't subject to the punishment of *karet*.

Here the anonymous voice of the Talmud questions the exclusion of *nevelah* from this list. As in the Bavli, the exclusion is justified on the grounds that the list is concerned only with items that are prohibited for all benefit (note that this justification is attributed to an amora of the last Palestinian generation, R. Yosi b. R. Bun). The anonymous voice then questions the exclusion of leaven on Passover. The justification for this exclusion differs from that found in the Bavli, but the principle is the same: Leaven is excluded because it too is not entirely analogous to the items listed in the mishnah. The disanalogy is identified differently by the two Talmuds.

Thus the Yerushalmi also explicitly notes and justifies the exclusion of *nevelah* meat and leaven on Passover from this list. However, it is only the Bavli that *reads that information out of the precise language and structure of the mishnah itself*. It is only the Bavli that rhetorically encodes the exclusion of *nevelah* meat and leaven on Passover as the intended implicit teaching of the mishnah, a teaching signaled by its

apparent violation of the principle of verbal economy. This then is a case of formal halakhic difference between the Talmuds generated by a hermeneutical assumption of verbal economy in the Babylonian gemara.

Substantive Halakhic Difference

m. AZ 5:8—libation wine

M. AZ 5:8, like m. AZ 5:9 examined above, contains specific illustrations of a general principle and a statement of that principle. It suffers a redundancy that is the inverse of that found in m. AZ 5:9. In this case, the Bavli's hermeneutical presupposition of verbal economy leads to a substantive halakhic difference between the two Talmuds.

m. AZ 5:8¹⁶

יין נספ אסור ואסור כל שהוא
 יין בין ומים במים כל שהוא
 יין במים ומים בין בנותן טעם
 זה הכלל (ל)מין במינו כל שהוא ושלא במינו בנותן טעם

1. Libation wine is prohibited and renders prohibited by the smallest quantity;
2. Wine mixed with wine and water mixed with water—by the smallest quantity;
3. Wine mixed with water and water mixed with wine—when it imparts a flavor.
4. This is the general rule:
 - a species mixed with the same species—by the smallest quantity;
 - a species mixed with a different species—when it imparts a flavor.

The mishnah opens with several statements about libation wine: When mixed with other wine it prohibits by the smallest quantity, when mixed with water it prohibits only when in sufficient quantity to impart a flavor. This specific ruling is followed by a statement of general application: A species mixed with the same species will render prohibited by the smallest quantity; mixed with a different species it will render prohibited only when in sufficient quantity to impart a flavor. The Bavli wonders why the statement of general principle is necessary. Surely it could be inferred from the foregoing illustration concerning libation wine. The principle of verbal economy informs the assumption that in fact the general statement is not telling us something we already know but rather is extending the principle beyond the specific case of libation wine, something that one would not otherwise know was to be done.

b. AZ 73b

רב ושמואל דאמרי תרוייהו
 כל איסורין שבתורה במינן במשהו שלא במינן בנותן טעם
 זה הכלל לאתוויי מאי לאתוויי כל איסורין שבתורה¹⁷
 ר' יוחנן ור' ל דאמרי תרוייהו
 כל איסורין שבתורה בין במינן בין שלא במינן בנותן טעם
 חוץ מטבל ויין נסך במינן במשהו ושלא במינן בנותן טעם
 וזה הכלל לאתוויי טבל¹⁸

1. Rav and Shmuel, both say:
“All the prohibited things of the Torah, if mixed with the same species [they prohibit] by the smallest quantity; if mixed with a different species [they prohibit] when they impart a flavor.”
2. What then does “this is the general rule” mean to include?
It is to include all of the [other] prohibited things of the Torah.¹⁹
3. R. Yoḥanan and Resh Lakish, both say:
“All the prohibited things of the Torah, whether mixed with the same or a different species, [they prohibit] when they impart a taste, except for *ṭevel*²⁰ and libation wine.
[In regard to these] if they are mixed with the same species [they prohibit] by the smallest quantity and with a different species when they impart a flavor.”
4. What then does “this is the general rule” mean to include? *ṭevel*.²¹

The *stam* makes two suggestions as to the degree of the extension of the principle in question beyond the case of libation wine. In each case, the *stam* cites a related early amoraic tradition as the basis for its suggestion.²² The first suggestion, which draws upon a tradition attributed to Rav and Shmuel, is that the general statement applies the principle (of different criteria for mixture with the same versus with a different species) beyond libation wine to *all other things prohibited by the Torah*. In other words, it renders the principle of universal application. The second suggestion, which draws upon a tradition attributed to R. Yoḥanan and Resh Lakish, is that the general statement applies the principle of same versus different species beyond libation wine but to only one other case—that of *ṭevel*.²³ It does *not* render the principle universal.

No comparable hermeneutic is contained in the Yerushalmi, and thus no extension of the halakhic scope of this mishnah beyond the items listed appears in the Yerushalmi. The halakhic extension featured in the Bavli is the result of the hermeneutical assumption of verbal economy, applied to this mishnah only in the Bavli.

m. AZ 3:5—R. Yosi haGalili

The Bavli detects a redundancy in *m. AZ 3:5* and sets to work scrutinizing the mishnah to show that this redundancy is more apparent than real. The text of the mishnah is as follows:

m. AZ 3:5

הגוים העובדים את ההרים ואת הנבעות הם מותרין
 ומה שעליהן אסור שנאמר
 לא תחמוד כסף וזהב עליהם ולקחת
 ר' יוסי הגלילי אומר
 אלהיהם על ההרים ולא ההרים אלהיהם
 אלהיהם על הנבעות ולא הנבעות אלהיהם
 מפני מה אשירה אסורה מפני שיש בה תפיסת יד אדם
 וכל שיש בה תפיסת יד אדם אסור

1. If non-Jews worship mountains and hills they are permitted but what is upon them is prohibited as it is said, “You shall not covet the silver and gold upon them and take it for yourself” (Dt 7:25).

2. R. Yosi ha-Galili says:
“their gods upon the mountains” (Dt 12:2)—not the mountains that are their gods;
“their gods upon the hills” (*ibid.*)—not the hills that are their gods.
3. Why is an asherah prohibited? Because there is manual labor connected with it and everything that has manual labor connected with it is prohibited.

The anonymous first tanna teaches that hills and mountains worshiped by idolators are permitted for use by Israelites. Only that which is upon them is prohibited, as is indicated by the verse from Dt 7. R. Yosi then cites Dt 12 as a source from which to infer that hills and mountains that are worshiped are permitted.

The gemara wonders what is the difference between the view of the first tanna and R. Yosi. At first glance it seems that R. Yosi is simply citing a second text as evidence for the same view that mountains and hills that are worshiped are themselves permitted. This is inefficient—R. Yosi’s statement seems to convey no new information! The principle of verbal economy therefore motivates the discussion in the following sugya.²⁴

b. AZ 45a-45b

ורבי יוסי הגלילי היינו תנא קמא
אמר רמי בר חמא אמר ריש לקיש צפוי הר כהר איכא בינייהו
תנא קמא סבר צפוי הר אינו כהר ומיחסר
ור' יוסי הגלילי סבר צפוי הר הרי הוא כהר
רב ששת אמר דכולי עלמא צפוי הר אינו כהר
והכא באילן שנשעו ולבסוף עבדו קמפלגי
ת"ק סבר אילן שנשעו ולבסוף עבדו מותר
ורבי יוסי הגלילי סבר אילן שנשעו ולבסוף עבדו אסור
ממאי
מדקתני סיפא מפני מה אשירה אסורה
מפני שיש בה תפיסת ידי אדם
וכל שיש בו תפיסת ידי אדם אסור

1. But R. Yosi[’s view] is the same as the first tanna[’s view]!
2. Rami bar Ḥama said Resh Lakish said: the difference between them is in regard to whether the covering of a mountain is considered to be like the mountain.
—the first tanna holds that the covering of a mountain is not considered to be like the mountain and is prohibited;
—R. Yosi haGalili holds that the covering of the mountain is considered to be like the mountain.
3. Rav Sheshet said: all agree that the covering of the mountain is not considered to be like the mountain.
Here they differ over the case of a tree which is planted and only subsequently worshiped.
—the first tanna holds that a tree which is planted and only subsequently worshiped is permitted;
—R. Yosi haGalili holds that a tree which is planted and only subsequently worshiped is prohibited.

4. How do we know this? From the fact that the final clause of the mishnah teaches: “Why is an asherah prohibited? Because there is manual labor connected with it, and everything that has manual labor connected with it is prohibited.”

The sugya opens by stating the problem: There seems to be no difference between the view of R. Yosi and the first tanna, and thus the principle of verbal economy is violated. Two attempts are then made to identify a point of difference between the two tannaim. Each attempt constitutes a genuine close reading of the mishnah itself that exploits some linguistic or structural feature of the mishnah. The author of the first suggestion turns to a close analysis of the language of the first tanna, searching for some clue as to the difference between the two authorities, while the author of the second suggestion searches for such a clue within the language of the tradition of R. Yosi (which is thought to extend to step 3 of the mishnah).

The first suggestion, attributed to an early Palestinian amora,²⁵ is that the two tannaim differ on the status of that which covers the mountain. In other words, we must imagine three entities here: the mountain, “that which covers it,” and the idolatrous objects upon it. Both tannaim agree that the mountain is permitted and the idolatrous objects upon it are prohibited. They differ, however, in regard to other nonidolatrous objects covering the mountain but not an integral part of it. In the view of the first tanna everything on the mountain is prohibited—idolatrous and nonidolatrous items alike. In the view of R. Yosi only idolatrous objects are prohibited; other items covering the mountain, even if not an integral part of it, are considered permitted like the mountain itself. This attempt to locate a difference between the two views takes its cue from the language of the first tanna *מה שעליהם* (= “what[ever] is upon them is prohibited”). This phrase implies that *all* that is on the mountain is prohibited and so it could be argued that the first tanna holds a more extreme position than R. Yosi in this regard.

An alternative solution is suggested by a third-generation Babylonian amora: The tannaim differ over the case of an asherah that was planted and only subsequently worshiped. This solution takes its cue from the verse cited by R. Yosi and from the third clause of the mishnah concerning the asherah. R. Yosi cites Dt 12:2 as support for the idea that only the idolatrous objects and not the mountains or hills are prohibited: “You shall utterly destroy all the places in which the nations that you shall dispossess worshiped their gods, whether on lofty mountains, or on hills, or under leafy trees.” If R. Yosi were to continue his exegesis of this verse consistently, he would have to say that only the gods under leafy trees are prohibited and not the leafy trees themselves. Yet elsewhere the Bible commands the utter destruction of every asherah, and in the view of the rabbis an asherah was a living tree often worshiped itself.²⁶ R. Sheshet apparently interprets the next clause of the mishnah, concerning the prohibition of an asherah, as an explanation for the fact that R. Yosi’s midrashic interpretation does not extend to the final clause of the verse so as to permit an asherah. According to R. Sheshet, R. Yosi holds that an asherah is, after all, prohibited and consigned to destruction by Dt 7:5 because it differs from mountains and hills in an important way: It involves human labor (i.e., it is not fully natural). R. Sheshet is now ready to identify the difference between the first tanna and R. Yosi: For R. Yosi every asherah is prohibited, even one that was planted and only subsequently wor-

shaped, because it involves human labor; for the first tanna only an asherah planted at the outset for idolatry is prohibited. The entire teaching of R. Yosi was included in the mishnah (despite the initial apparent redundancy) in order to teach this distinction in views concerning an asherah.

Thus the Bavli has taken an instance of apparent textual poverty and transformed it precisely into an instance of textual richness that contains an entirely new piece of information, a *hiddush*. The *hiddush*, however, is differently identified by two amoraim: R. Yosi prohibits even the nonidolatrous items on the mountains in question; or R. Yosi prohibits every asherah, even one not planted from the very first for idolatry. Again, there is no comparable hermeneutic applied to this mishnah in the Yerushalmi and thus no parallel halakhic deduction concerning the views of R. Yosi and the first tanna.

The four examples presented above demonstrate that the hermeneutical presupposition of verbal economy, pursued most aggressively in the Bavli, leads to minute analysis of apparent redundancies and self-evident statements within mishnayot, resulting in both formal and substantive halakhic difference between the Talmuds.

Hermeneutical Practice: Halakhic Difference as a Result of Dialectical Strategies of Interpretation and Redaction

Texts Explicate Texts: The Dialectical Juxtaposition of Traditions

In the preceding analysis of the hermeneutical presuppositions of the amoraim, I argued that the amoraim began to approach the language of the Mishnah as if it were Scripture. Just as the rabbis' biblical exegesis presupposed a certain precision in the language of the text, and an absence of superfluity and redundancy, so their exegesis of Mishnah often proceeded from the same assumptions of verbal economy. However, the similarity between the rabbis' exegesis of Bible and their exegesis of Mishnah extends beyond the realm of theory (i.e., hermeneutical presuppositions) and into the realm of actual exegetical practice (hermeneutical strategies). For the rabbis, to read a text—whether Bible or Mishnah—meant to read that text in the light of, or in dialogue with, other texts.¹

As Daniel Boyarin has argued, rabbinic midrash is a type of hermeneutics built upon the insight that the Bible is, in Gerald Bruns' words, a self-glossing book, in which texts refer to and illuminate one another (1990:1–21 esp.). Thus, in midrash, verses from disparate parts of the Bible are mobilized so as to generate a reading of a narrative or passage in Torah. The rabbis juxtapose verses of Torah, the Prophets, and the Writings, reading each in terms of the others as if these verses refer to one another. Through the co-citation of verses, meanings are revealed and/or generated.² It is important to realize that in these cases of textual juxtaposition, the verses cited are *not* mere prooftexts summoned to support a preconceived or externally derived interpretation or teaching. They are the very stuff out of which the midrashist's interpretation is generated, for it is precisely in the confrontation of text with text that meaning becomes apparent and interpretations are born.

In their analysis and explication of Mishnah, the gemaras often employ what can be described as the talmudic counterpart of the interpretive method or strategy found in midrash—the explication of texts by other texts. In midrash, the rabbis de-

vote themselves to the explication of Scripture by Scripture. Likewise in the gemara, the rabbis devote themselves to the explication of legal traditions by legal traditions. The rabbis clearly hold that mishnaic traditions are fully explicated only when placed alongside other mishnaic and rabbinic traditions that contradict them, qualify them, expand them, or otherwise affect them. As we shall see, the juxtaposition of traditions can lead to a new understanding of a mishnah, and ultimately to a halakhic shift. Such passages hold the greatest danger for the historian who may wish to analyze in historical terms a halakhic development that is most likely generated by the rabbis' dialectical method of interpretation by textual juxtaposition.

I am not saying that the reading of tannaitic texts in dialectical relation to other texts accounts for halakhic difference because it occurs only in the Bavli. Such explications of Mishnah are already present in the Yerushalmi. Rather, I am saying that they are found in a much more highly developed form in the Babylonian Talmud. The greater frequency and complexity of textual juxtapositions in the Bavli can lead to halakhic difference between the Talmuds, for the faster and more furious the co-citation of texts, the faster and more furious the generation of new interpretations. The more highly developed and complex dialectical method of the Bavli appears to be a function of the enormous time lag between the completion of the two works and of the intense and vigorous development of the Bavli that occurred from the second amoraic period on, mid-fourth to the late seventh centuries. (See the discussion of the time differential between the Talmuds in the Introduction.)

As I will demonstrate in this chapter, the analysis or explication of a mishnah by means of other teachings that are juxtaposed to it is standard operating procedure. It is *the* way to study texts in rabbinic culture, not merely a strategy resorted to only when there is an exegetical difficulty. On the contrary, the practice of dialectical juxtaposition of traditions often *generates* an exegetical difficulty (redundancy, self-evidence, contradiction), which then drives the sugya and even necessitates new interpretations of the mishnah.

For example, m. AZ 2:1 is analyzed in relation to m. Qidd 4:12 and its amoraic expansion. The juxtaposition of m. AZ 2:1 and m. Qidd 4:12 creates a problem of self-evidence, which then drives the sugya in b. AZ 25a–b and leads to a reinterpretation of the prohibition in m. AZ 2:1 that is not paralleled in the Yerushalmi.

m. AZ 2:1— isolation of an Israelite woman with non-Jews

The mishnah at 2:1, which prohibits the isolation of an Israelite woman with non-Jews, is viewed in the Bavli as self-evident because it is deducible from a mishnah in tractate Qiddushin. The mishnah in Avodah Zarah is therefore interpreted in such a way as to convey an entirely new teaching, not derivable from the mishnah in Qiddushin. This strategy of interpretation and the resulting halakhah are entirely absent in the Yerushalmi's discussion of this mishnah. Thus a substantive halakhic difference is generated by the juxtaposition of m. AZ 2:1 and m. Qidd 4:12, because this juxtaposition exposes an apparent violation of the hermeneutical assumption of verbal economy which is resolved by reinterpretation of the mishnah in m. AZ 2:1.

m. AZ 2:1

לא תתיחד אשה עמהם מפני שהם חשודין על העריות

A woman should not be alone with them because they are suspected of sexual immorality.

The Bavli's sugya constitutes an analysis of this mishnah in the light of m. Qidd 4:12. The mishnah there runs as follows:

m. Qidd 4:12

לא יתיחד איש אחד עם שתי נשים
 אבל אשה אחת מתייחדת עם שני אנשים
 ר' שמעון או'
 אף איש אחד מתייחד עם שתי נשים
 בזמן שאשתו עמו³
 ישן עמהם בפונדק מפי שאשתו משמרתו

1. A man should not be alone with two women,
but a woman may be alone with two men.
2. R. Shimeon says: [it is] even [the case] that one man may be alone with two women;
when his wife is with him,⁴ he may even sleep with them in the same inn because his wife is a guard/restraint.

The juxtaposition of these two mishnayot in our sugya is not arbitrary. Both refer to the same general topic—laws concerning the isolation of males and females with one another—and there are certain linguistic resonances between the two. It seems natural, then, to read one in the light of the other, and this the Bavli does.

b. AZ 25 a-b

במאי עסקינן אילימא בחד דכוותה גבי ישראל מי שרי
 והתנן לא יתיחד איש אחד עם שתי נשים אלא בתלתא⁵
 דכוותה גבי ישראל בפרוצים מי שרי
 והתנן אבל אשה אחת מתייחדת עם שני אנשים
 ואמר רב יהודה אמר שמואל⁶
 לא שנו אלא בכשרים אבל בפרוצים אפילו עשרה נמי לא
 מעשה היה והוציאוה עשרה במטה⁷
 לא צריכא באשתו עמו
 עובד כוכבים אין אשתו משמרתו אבל ישראל אשתו משמרתו⁸

1. In what circumstances [is this prohibition applicable]?
If with one non-Jew, then even in the case of an Israelite is that permitted?
Haven't we learned:
"One man should not be alone [even] with two women."
—It must therefore refer to three non-Jews being present.⁹
2. But would three be permitted in the case of dissolute Israelites? Haven't we learned:

“One woman may be alone with two men” and R. Judah said Shmuel¹⁰ said: this refers to worthy men, but as for dissolute men, it is not permitted even if there are ten.

There was an incident in which ten men carried a woman out on a bier.¹¹

3. [Therefore the mishnah] refers to a case where the man’s wife is present. His wife does not guard/restrain him, whereas an Israelite’s wife would guard/restrain him.¹²

The gemara’s discussion is guided by the following assumptions. First, the mishnah cannot be informing us of something that we could deduce for ourselves from m. Qidd 4:12. Second, as regards the suspicion of sexual immorality, what is suspected of Israelites, who are restrained by the sexual regulations of the Torah, is *a fortiori* suspected of non-Jews, who are not restrained by the laws of the Torah.¹³ Given the assumption that a prohibition that applies to an Israelite because of the suspicion of sexual immorality will apply *a fortiori* to a non-Jew, one can independently deduce the following: A woman may not be alone with a non-Jewish man, since it is taught in the first clause of m. Qidd 4:12 that even two women may not be alone with an Israelite man;¹⁴ a woman may not be alone with three non-Jewish men (indeed with any plurality), since it is taught in the second clause of m. Qidd 4:12 and its accompanying gemara that she may not be alone with even ten dissolute Jewish men (who are certainly no *more* suspect than non-Jews generally). The mishnah’s prohibition must cover some case other than these.¹⁵

The sugya concludes that the mishnah’s prohibition must refer to a case where the non-Jew’s wife is also present. Here at last is a lesson that cannot be derived from already known laws concerning Israelites in m. and b. Qidd.¹⁶ The Bavli has succeeded in its effort to demonstrate that the teaching of the mishnah at AZ 2:1 is necessary and not self-evident. For “I might have thought” (דוּרַי אֶמְיָא) that a woman may be with a non-Jewish male if his wife is present, since according to R. Shimeon in the final clause of m. Qidd 4:12, the presence of an Israelite’s wife serves to render one of the prohibited configurations permitted.¹⁷ The purpose of the mishnah is therefore to inform us that isolation of a woman with a non-Jewish male is prohibited even in the presence of his wife.¹⁸ The Bavli’s interpretation actually fits the language of the mishnah quite well: A woman may not be alone with *them*—that is, with a non-Jewish man *and his wife*—because non-Jews are suspected of sexual immorality [even in this case].¹⁹

There is no comparable hermeneutic of this mishnah in the Yerushalmi, no construal of this mishnah as referring to isolation with a non-Jewish male in the presence of his wife. It is difficult indeed to see this discussion as an outgrowth or even a reflection of some external event or reality in Babylonia. It is clear that the exegetical problem that drives the sugya—the problem of verbal economy—is exposed precisely in the textual juxtaposition of m. AZ 2:1 and m. Qidd 4:12 by the gemara of AZ. The Bavli assumes that the mishnah must be telling us something more than what it appears to be telling us at first blush, for what it appears to be telling us we can already learn elsewhere. The subsequent reinterpretation of our mishnah clearly takes its cue from the language of R. Shimeon’s teaching in m. Qidd 4:12 and exploits a plural object ending present in m. AZ 2:1.

In the preceding example, the interpretation of m. AZ 2:1 was shaped by the Bavli's juxtaposition of a related mishnah in m. Qidd 4:12. However, frequently mishnayot are explicated in connection with para-mishnaic traditions, that is, with rejected tannaitic teachings (beraitot). While this kind of juxtaposition of tannaitic positions with mishnaic opinions occurs on occasion in the Yerushalmi and in the early layers of the Bavli, it is the classic *modus operandi* of Rava and Abaye. These two scholars apply themselves to resolving contradictions between the mishnah and para-mishnaic teachings (some of these beraitot are attested elsewhere in rabbinic literature while others are not). I submit that in many instances rejected tannaitic teachings are rehabilitated, as it were, *purely as a consequence of the commitment to the dialectical study of tradition* among the later Babylonians. As might be expected, the dialectical juxtaposition of a tannaitic (or early amoraic) teaching can lead to a reinterpretation or qualification of the mishnah. Thus the Babylonian dedication to a dialectical method (in both study and redaction) is in many instances directly responsible for halakhic difference between the two texts.

I will examine two cases in which the late Babylonian commitment to dialectics is manifested in the rehabilitation and juxtaposition of a marginalized tradition, resulting in a reinterpretation of the mishnah. In the first case, this dialectical juxtaposition is attributed to Rava and Abaye; in the second it occurs at the level of redaction.

m. AZ 5:1—wage for libation wine: Rava and Abaye and the dialectical rehabilitation of marginalized traditions

M. AZ 5:1 prohibits an Israelite from deriving benefit—specifically, earning a wage—from libation wine. However, if an Israelite is hired to perform other labor, that is, if his wage is earned for performing another task, then he may agree to an employer's request that, in addition, he move casks of libation wine.

m. AZ 5:1

השוכר את הפועל לעשות עמו בין נסך שכרו אסור
שכרו לעשות עימו מלאכה אחרת אף על פי שאמר לו
העבר לי חבית של יין נסף ממקום למקום שכרו מותר

1. If [a non-Jew] hires a[n Israelite] worker to assist him in preparing libation wine his wage is prohibited.
2. If he hires him to assist him in other work, then even if he should say to him, "Move for me that cask of libation wine from this place to that place"—his wage is permitted.

The following beraita found in the Tosefta echoes these rulings with a slight variation.

t. AZ 7:10

השוכר את הפועל לעשות עמו מלאכה
ולעיתותי ערב אמי לו הליך את הלנין זה במקום²⁰ פלוני
אף על פי שאין ישראל רשאי לעשות כן שכרו מותר

1. If [a non-Jew] hires a worker to assist him in some labor, and toward evening he says to him,²¹ “Bring this flagon to such-and-such a place” then even though the Israelite is not permitted to do this, his wage is permitted.

The Tosefta passage adds a further condition to the case envisaged in the second clause of the mishnah. The wage is permitted in the case where the Israelite was hired to do other work, but only if the request to work with the libation wine comes *toward evening*. Rashi is representative of many commentators when he explains that permission is given in this case because the request is made in the evening so the wage has already been earned and does not cover the additional work now being done with the libation wine.²²

This is basically the teaching that is raised as a contradiction to our mishnah by the Bavli.

b. AZ 65a

שכרו לעשות עמו מלאכה אהרת:
 ואע"ג דלא א"ל לעיתותי ערב
 ורמינהי השוכר את הפועל ולעיתותי ערב אמר לו
 העבר חבית של יין נסך ממקום למקום שכרו מותר
 שעמא דא"ל ולעיתותי ערב [אין כולי יומא לא]²³
 אמר אביי כי חנן נמי מחניתין דאמר לעיתותי ערב חנן
 רבא אמר ל"ק
 הא דאמר ליה העבר לי מאה חביות במאה פרושה
 הא דא"ל העבר לי חבית חבית בפרושה

“If he hires him to assist him in other work”;

1. [Is the wage permitted] even though he didn't make the request toward evening? Against that one can object with the following tannaitic teaching: “If he hires a[n Israelite] worker and *toward evening* he says to him, ‘Move that cask of libation wine from this place to that place’ his wage is permitted.” — the reason [for the permission] is that he said it to him toward evening; hence if he said it sometime throughout the day, no [the wage would not be permitted].
2. Abaye said: When we learned our mishnah also — we learned that it is where he says it to him toward evening.
3. Rava says: There is no difficulty.
 The one is a case where he says to him, “Move for me 100 casks for 100 coins;”
 The other is a case where he says to him, “Move for me casks at the rate of a coin each.”

The gemara points out the apparent contradiction between our mishnah and the beraita. Since the beraita states that the wage is permitted when the request comes toward evening, we can infer (a *diiyyuq*) that if the request comes at any other time of the day and the laborer performs the labor, the wage would be prohibited. This then seems to contradict our mishnah, which apparently sets no time constraints on the request.

Two solutions are offered. Abaye's solution is one of harmonization;²⁴ he states simply that we should assume that the mishnah also refers to a request that comes toward evening even though this fact is not stated explicitly. In other words, the two

do not contradict each other—the beraita simply makes explicit a condition that is assumed by the mishnah. Rava, however, solves the problem by means of an *oqimta*.²⁵ The mishnah and the beraita are referring to two entirely different situations. In the case inferred from the beraita (the employer asks one to move libation wine sometime during the workday and the wage is prohibited) the request is presented in the following form: move a number of casks for a lump sum. In other words, the entire wage is paid only upon completion of the entire task, and thus if there is a cask of libation wine among the casks to be moved the whole wage is prohibited. However, in the case presented in the mishnah, although the request is also made during the day, it is presented in the following form: move a number of casks for a coin apiece. In such a case the [overall] wage is permitted because if there is a cask of libation wine among the casks, the coin for that one only is prohibited and the wage for all the others is permitted.

Thus whether according to the interpretation of Abaye or Rava the final clause of the mishnah has been recast either as being subject to the additional [unstated] condition that the request come toward evening, or as referring to a “piece work” arrangement.

The reinterpretations of the mishnah by Abaye and Rava are generated by the dialectical juxtaposition of the mishnah and the beraita. The beraita is simply not cited by the Yerushalmi and therefore no harmonization or *oqimta* is effected there. A tradition excluded from the Mishnah and passed over by the Yerushalmi is reclaimed by the Bavli and set into a dialectical relationship with our mishnah so as to reform our understanding of that mishnah.

Now no one would claim that this is an ideological effort by Babylonians to force a reinterpretation of the mishnah in light of some changed circumstance in the diaspora and to disguise this historical intervention as exegesis. First of all, two different interpretations are generated. Second, the picayune qualifications offered by Rava and Abaye do not affect the law in any truly substantive way; it is still basically forbidden to accept a wage for working with libation wine. (In fact, their dialectics make the law a little stricter, running counter to the assumption of many historians that the Babylonians relaxed prohibitions involving Gentiles; see chapter 7). The halakhic payoff here is so slight that it is difficult to see the sugya as motivated by a nonexegetical or historical pressure to achieve a particular legal result. Rather, the reinterpretation of the mishnah is best understood as a function of the rabbinic practice of reading in which texts are believed to be fully explicated and illuminated only in the confrontation with other texts. This practice, pursued so passionately by Rava and Abaye and later Babylonian generations, involved the rehabilitation of related but marginalized teachings which are strategically deployed so as to facilitate a more precise and detailed analysis of mishnaic teachings. As anyone can see, it would be a mistake to make positivistic historical claims about the situation of Babylonian Jews on this basis.²⁶

m. AZ 3:8—foliage of an asherah: the stam’s dialectical juxtaposition of traditions

In this case, the dialectical juxtaposition of earlier traditions is pursued in the anonymous voice and appears to occur at the level of redaction. In its consideration of a

dispute recorded in m. 3:8, the stam raises no less than five tannaitic traditions, embedding them in a complex dialectical schema in an effort to abstract or expose a particular legal principle. Since the sugya is quite lengthy, I will only summarize it here, but the result is a reinterpretation of the dispute in the mishnah and an almost counterintuitive representation of the majority opinion. The Yerushalmi cites none of the analogous cases cited in the Bavli and does not try to conform this tradition to the abstract legal principle proposed by the Bavli. Still in no sense can the motivation of this sugya be understood in purely historical terms. It is patently a product of the Bavli's commitment to the dialectical analysis of earlier traditions, and the introduction of abstract legal principles.

Chapter 3 of the mishnah prohibits deriving any benefit from an asherah.²⁷ This includes deriving benefit from its shade. Thus, after prohibiting Israelites from sitting and passing under the shade of an asherah, the mishnah makes the following statement.

*m. AZ 3:8*²⁸

וּזְרַעֵן תַּחְתֵּיהָ יִרְקוֹת בִּימֹת הַגִּשְׁמִים אֲבָל לֹא בִימֹת הַחֶמֶה
וְהַחֹזְרִין לֹא בִימֹת הַחֶמֶה וְלֹא בִימֹת הַגִּשְׁמִים
ר' יוֹסִי אוֹמֵר אִף לֹא יִרְקוֹת בִּימֹת הַגִּשְׁמִין מִפְּנֵי²⁹
שֶׁהִגְבִּייהָ³⁰ נוֹשֶׁרֶת וְהוֹתָה הַנְּאִהָ לָהֶם לְזֹבֵל

1. One may sow vegetables under it [an asherah] in the winter but not in the summer;
and lettuce in neither the summer nor the winter.
2. R. Yosi says: even vegetables in the winter because the foliage falls and becomes beneficial to them as fertilizer.

One may not take advantage of the shade of an asherah to protect vegetables from the heat of the summer sun, and so one may not sow vegetables under an asherah in the summer; in the winter, however, when the shade of the asherah provides no benefit and in fact may deter growth, one may plant vegetables under an asherah. (Lettuce, however, being of greater delicacy may not be planted even in winter, since the asherah does benefit it by protecting it from heavy rains.)

To this anonymous view, R. Yosi objects that vegetables may not be sown in winter either, since the foliage that drops from the asherah fertilizes the seedlings, and thus benefit is derived from the prohibited source.

The stam of the Bavli opens its sugya with a statement of the abstract legal principle assumed to be at stake in the dispute between the rabbis (the anonymous view) and R. Yosi. Since both the soil (which is permitted) and the fallen foliage (which is prohibited) contribute to the growth of the plant, the question dividing the disputants is said to be the following: What is the status of an entity that is the product of combined causes, one of which is prohibited and one of which is permitted? Is the product permitted or prohibited? It would seem from this mishnah that in the view of the rabbis the product is permitted, since after all they permit vegetables that are the product of permitted soil and prohibited fertilizer, while in the view of R. Yosi the product is prohibited since he prohibits such vegetables. However, the mishnah

at m. AZ 3:3 contains a case in which the rabbis and R. Yosi seem to hold precisely the opposite views.

b. AZ 48b

למימרא דרבי יוסי סבר זה וזה גורם אסור
 ורבנן אמרי זה וזה גורם מותר
 הא איפכא שמעינן להו דתנן
 רבי יוסי אומר שוחק וזורק לרוח או מטיל לים
 אמרו לו אף היא נעשה ובל
 ונאמר לא ידבק בידך מאומה מן החרם
 קשיא דרבנן אדרבנן קשיא דר' יוסי אדרבי יוסי . . .

1. Let us say that R. Yosi holds that the product of combined causes is prohibited while the rabbis hold that the product of combined causes is permitted.
2. But haven't we learned the opposite is the case, for we learned [m. AZ 3:3]:
 "R. Yosi says one may grind it and scatter it to the wind or throw it into the sea; they [the rabbis] said to him—but this may become fertilizer, and yet it is written, "let nothing of the prohibited thing cleave to your hand."
 —thus there is a self-contradiction between the views of the rabbis and a self-contradiction between the views of R. Yosi.

In this mishnah it is the rabbis who express the view that fertilizer deriving from a prohibited source would render plants prohibited even though it contributes to the growth of the plant only in combination with soil that is permitted. Further, R. Yosi appears to hold that the product of combined causes, one of which is prohibited, is permitted.

The *stam* of the Bavli solves this apparent contradiction by arguing that in fact the two cases—A 3:3 and 3:8—are not analogous and therefore there is no inconsistency. In the case of m. AZ 3:3 the prohibited idolatrous object is entirely destroyed, while in 3:8 the asherah, though having lost its foliage, remains alive and functional. R. Yosi therefore permits in the former case because the idolatrous object is entirely destroyed, although ordinarily he would prohibit. For their part the sages also would normally rule that the product of combined causes is prohibited, but they permit in the case of the asherah because the benefit provided by the foliage is counterbalanced (and in essence obviated) by the fact that the asherah harms the plants by blocking the sun. Therefore, both R. Yosi and the rabbis are said to hold generally that the product of combined causes one of which is prohibited is itself prohibited. However, R. Yosi makes an exception when the prohibited cause is entirely destroyed—hence he permits the case found in m. AZ 3:3; and the rabbis make an exception when the prohibited cause is as much of a detriment as it is a benefit—hence they permit the case found in m. AZ 3:8.

This conclusion is immediately challenged by the *stam* of the gemara. Is it really possible that R. Yosi holds generally that the product of combined causes one of which is prohibited is itself prohibited? A mishnah is cited in which R. Yosi *permits* the fruit of a plant that grows from a grafted *orlah* shoot³¹—that is, a shoot from a tree less than three years old—(since the shoot itself is not prohibited and thus does

not transfer a prohibition to that which grows from it), but he prohibits the fruit that would grow from an *orlah* nut (since the nut itself is prohibited and transfers its prohibition to that which grows from it).

והתניא³² רבי יוסי אומר
נוטעין יחור של ערלה ואין נוטעין אגוז של ערלה
מפני שהוא פרי

1. But is it not taught:

R. Yosi says, one may plant an *orlah* shoot but one may not plant an *orlah* nut because it is fruit.

Rav Judah in the name of Rav immediately presents a tradition to the effect that R. Yosi nevertheless would admit that if a prohibited *orlah* nut were planted, trained, and then grafted onto an existing tree, the subsequent fruit would in fact be permitted. A beraita is then cited to support this claim. Thus there is evidence that for R. Yosi, the product of combined causes (the fruit from a prohibited shoot and the permitted tree to which it is grafted) is permitted.

In a lengthy passage the *stam* then seeks to establish that R. Yosi does in fact permit the product of combined causes. Yet, if so, how is one to explain his apparent prohibition of the vegetables in 3:8? The *gemara* anticipates and argues against one possible solution: that in matters involving idolatry, which is an extremely serious matter, R. Yosi adopts a stricter rule. This cannot be so, it is argued, because of the following tannaitic teaching:

והתניא שדה שנודבלה בזבל עבודת כוכבים
וכן פרה שנחפשמא בכרשיני עבודת כוכבים
הני חרא שדה תורע פרה תשחט
והתניא אידך שדה חבור ופרה תרוח . . .

1. And is it not taught:

A field fertilized with manure of [calves sacrificed for] idolatry, and similarly a cow fattened on idolatrous fodder, one *tanna* teaches that the field may be sown and the cow slaughtered while another *tanna* teaches that the field must lie fallow and the cow be allowed to slim down. . . .

The *gemara* then immediately suggests that the *tanna* who teaches that one may make use of the field and the cow that have benefited partially from idolatry is R. Yosi, while the position of the other *tanna* is that of the rabbis. Several other teachings are cited in an effort to undermine this identification, but in the end it prevails. Thus in its penultimate stage, the *sugya* has come to the conclusion that R. Yosi does indeed *permit* the product of combined causes, as is evidenced by his view in *m. AZ* 3:3 concerning a ground idol, his view in the case of the grafted shoot from an *orlah* nut, and the view attributed to him in the case of the field and the cow. He does not rule more strictly in regard to matters of idolatry.³³

But this conclusion poses a problem for the mishnah in 3:8, where R. Yosi prohibits vegetables that are the product of permitted soil and prohibited foliage deriving from an idolatrous source! Therefore *the mishnah is reinterpreted*.

b. AZ 49a

ר' יוסי לדבריהם דרבנן קאמר להו³⁴
 לדידי זה וזה גורם מותר
 לדידכו דאמריהו זה וזה גורם אסור³⁵
 אף לא³⁶ ירקות
 בימיה הנשמים³⁷

R. Yosi was *discussing* the view of the rabbis. He said to them:
 “On my view, the product of combined causes is permitted;
 but according to you who say that the product of combined causes is prohibited, *not even vegetables planted in the winter* [should be permitted]!”

R. Yosi’s statement has been radically reinterpreted from an expression of his own opinion to a rebuke against the rabbis for their apparent inconsistency. This interpretation is achieved by the *stam*’s providing a larger context within which R. Yosi’s statement is represented as having been made. The mishnah, so the Bavli maintains, preserves only the final clause (“not even vegetables in the winter”) of the larger statement. By supplying the missing context of this final clause, the *gemara* alters the meaning profoundly. According to the *gemara* when R. Yosi said, “not even vegetables in the winter . . . !” he was addressing the rabbis and discussing *their* view, not his own—reminding them, so to speak, that the logic of their own position should lead them to prohibit winter vegetables.

This *sugya* expresses the hermeneutical conviction of the amoraim that texts are to be read in dialectical juxtaposition with other texts. If m. AZ 3:8 were read in isolation from other traditions, one might be led to the erroneous conclusion that the rabbis permit the product of combined causes while R. Yosi prohibits the product of combined causes. In fact, the *gemara* argues, other teachings show that precisely the opposite is true: the rabbis generally prohibit and R. Yosi generally permits the product of combined causes. Only here in 3:8 do the rabbis make an exceptional ruling permitting winter vegetables that have been fertilized with foliage from an asherah, because of the principle that the benefit provided by the prohibited tree is counteracted by the harmful effects of its shade. R. Yosi’s reaction of astonishment to this exceptional ruling is then recorded in the mishnah. He calls upon the rabbis to be consistent and to prohibit even the case of winter vegetables. But, according to the *gemara*, by no means are R. Yosi’s words to be construed as his personal endorsement of the idea that these vegetables should be prohibited. On the contrary, there is clear evidence in other traditions that R. Yosi would rule these vegetables to be permitted.

Clearly this counterintuitive reinterpretation of the mishnah (which finds no parallel in the Yerushalmi) is generated precisely and only by the *stam*’s dialectical juxtaposition of a series of related teachings, by its commitment to the principle that

texts are explicated by other texts.³⁸ The extreme complexity of the schematization, the concern for subsuming the traditions considered under a particular abstract legal principle, and the absence of any amoraic names suggest that this dialectical sugya was constructed in a late period, probably at the time of redaction, centuries after the close of the Yerushalmi.³⁹

Dialectical Treatment of Mishnayot on the Basis of Logic

Sometimes traditional material is not available or is simply not used for the analysis of a mishnah by the late amoraim, or for the construction of a dialectical sugya by the redactor. In these cases, argumentation is created on the basis of logic.⁴⁰ Most notably, the anonymous voice of the Bavli will propose straw positions and counterclaims for a teaching that is uncontested in earlier sources, precisely in order to advance the dialectic and establish that tradition's claim to validity.⁴¹

The Bavli's extreme commitment to purely logical dialectical argumentation is not a startling new development. The dialectical treatment of traditions—in both study and redaction—has its roots in the hermeneutical presupposition described in chapter 3: the view that traditions are always formulated in a precise manner so as to preclude a plausible but erroneous alternative (א *הרה אמינא*). The dialectical method proceeds from this view in that it seeks to justify the existence or the specific formulation of a teaching by articulating the *havah amina* that the teaching is designed to preclude.⁴² For it is a short journey from the idea that a teaching occurs in order to preclude an alternative but erroneous opinion to the conviction that a teaching is fully validated⁴³ only when its alternatives have been considered and *invalidated*, when its *havah aminas* have been articulated and set aside. This is fundamentally an epistemological conviction, one that was articulated by R. Yitzhak Camponton in his Introduction to Talmudic Methodology: הפסוק: כי אין האמת ניכר אלא מדרך הפסוק, “the truth is known only through its opposite” (1980:39, siman 3; see in this regard Boyarin 1989). This epistemological conviction determined the final form of the Bavli in the following way: Interpretations of mishnayot and other traditions are embedded in a dialectical framework that seeks to validate teachings by articulating alternative possibilities and *invalidating* them.⁴⁴

This logical dialectical analysis of mishnayot generally occurs at the level of redaction of the Bavli. It is very common in “anonymous” sugyot that are widely held to be the constructions of the final redactor(s). Above we examined cases in which mishnayot were set into dialectical tension with other traditions. Here, however, we will examine sugyot in which a mishnah or tradition is dialectically tested in a *purely logical manner* by the positing of alternative or straw positions and hypothetical limit cases. In these cases the Bavli's commitment to the dialectical treatment of earlier traditions, through the articulation of logical counterclaims, leads to a formal halakhic difference between the two Talmuds.

m. AZ 2:2—healing by a non-Jew

First a simple illustration of the Bavli's penchant for the dialectical presentation of earlier materials: M. AZ 2:2 contains two obscure terms—רפוי נפשות and רפוי ממון

(literally, “healing of money/property” and “healing of lives”). The phrase in which these terms appear is מהרפאין מהן ריפוי ממון אבל לא ריפוי נפשות (= “one may be healed by them [non-Jews] a healing of *mammon* but not a healing of *nefashot*”). The Yerushalmi at p. AZ 2:2, 40d cites a tradition in the name of R. Abbahu that defines these two terms: ריפוי ממון בהמתו ריפוי נפשות גופו, “a healing of *mammon* is [healing of] one’s animal; a healing of *nefashot* is [healing of] oneself.” The gloss stands alone and uncontested. By contrast, although the Bavli’s final position is identical to that of the Yerushalmi, this final position is validated only after two alternative glosses have been considered and rejected.

b. AZ 27a

מאי ריפוי ממון ומאי ריפוי נפשות
 אילימא ריפוי ממון בשכר ריפוי נפשות בחנם
 ליתני מהרפאין מהן בשכר אבל לא בחנם
 אלא ריפוי ממון דבר שאין בו סכנה
 ריפוי נפשות דבר שיש בו סכנה
 והאמר רב יהודה⁴⁵
 אפילו ריבדא דכוסילחא לא מתסינן מינייהו
 אלא ריפוי ממון בהמתו ריפוי נפשות גופיה

1. What is healing of *mammon* and healing of *nefashot*?
2. If you should say the former is healing for payment and the latter is healing *gratis* then let the tanna teach “healing for payment but not healing *gratis*!”
3. Rather the former is healing for a condition that is not life-threatening while the latter is healing for a life-threatening condition.
4. But didn’t R. Judah⁴⁶ say that even a scar from a bloodletting wound one should not have healed by them?
5. Rather, the former is healing of one’s animal and the latter is healing of oneself.

Although the Bavli’s final position is identical to that of the Yerushalmi, it is validated only after two alternative glosses have been considered and rejected. The first suggestion, picking up on the term *mammon* as “money,” is that the mishnah is contrasting healing received for payment and healing that is *gratis*. This suggestion is rejected on purely logical grounds: If this were what the tanna meant, he would not have adopted such obscure terminology. The second proposal (probably picking up on *nefashot* as “life-force/soul”) is that the tanna distinguishes healing for a life-threatening illness (which is permitted) from healing for an illness that is not life-threatening (which is prohibited). However, this suggestion does not stand in the face of a teaching by a second generation Babylonian authority that prohibits one from accepting from a non-Jew healing for a certain wound that is not life-threatening. With the dismissal of these two alternatives, the final gloss — healing of one’s animal and healing of oneself — is validated.

The entire sugya, including the alternative glosses, is conducted in the anonymous voice. There is no record that the alternatives were actual positions held by a particular authority, neither in the Bavli itself nor in earlier documents (the Mishnah, Tosefta, or Yerushalmi). Indeed the very formula with which these glosses are intro-

duced—“If one should say X . . .”—is strong evidence that they are straw positions generated by the redactor of the sugya in the service of the epistemological conviction that a thing is known or established only when its alternatives have been considered and rejected. It is obvious that the purpose of the sugya is not to record three schools of thought in Babylonia concerning precisely what types of healing it was prohibited to receive from non-Jews; rather its purpose is to indicate that a *single* tradition of interpretation of the types of healing mentioned by the mishnah, alternative possibilities for which could be set aside easily, stood without serious challenge.

Therefore the difference between parallel sugyot in the two Talmuds is frequently a formal difference, itself a function of final editing. Two sugyot may share identical traditions, but in the Bavli these traditions have been absorbed into a dialectical superstructure in which alternative positions are filled out and pursued, and traditions are fully “vetted.” It is this feature of the Bavli that poses the greatest problem for the historian, who must be constantly alert to the fact that certain views, hypothetical scenarios, and disputes are generated by the logic of the sugya’s dialectic and may not represent actual positions espoused by historical persons or schools.

m. AZ 1:1—three days: inclusive or exclusive?

I submit that the Bavli carries the epistemological conviction described above and its attendant hermeneutical strategies to a radical extreme: At times the Bavli *deliberately renders strange* an interpretation that is considered so obvious in earlier sources as not to merit comment, doing so precisely in order to reclaim and reestablish that interpretation through dialectic. M. AZ 1:1 contains the following phrase:

m. AZ 1:1

לפני אידיהן של גוים שלשה ימים אסור . . .

“Before the festivals of non-Jews for three days it is prohibited . . .”

There is no indication in Palestinian sources that this text was interpreted in any way other than as introducing prohibitions that were operative for a three day period prior to and exclusive of the festival itself. (Indeed, it is the clear assumption of a sugya on p. AZ 1:1, 39a that the prohibited period referred to is a period of preparation that precedes the festival and is not inclusive of the festival day.)

However, what is assumed by the Palestinian texts is precisely questioned in the Bavli. How do we know that “Before the festivals of non-Jews for three days” refers to a three day period before and exclusive of the festival? Perhaps it means a three-day period inclusive of the festival! This alternative is then considered in the light of two teachings and finally a linguistic analysis of the mishnah itself. In the final stage of the sugya, R. Ashi argues that the language of the mishnah quite precisely indicates that the prohibited period is exclusive of the festival itself, for any other possibility would have necessitated a different formulation.

Again throughout this discussion the gemara never actually cites an explicit tradition, tannaitic or amoraic, in which it is taught that some authority actually holds

that the prohibition extends for a period of three days *inclusive* of the festival. Palestinian sources also contain no record of such a view. It is proposed only by the anonymous voice of the Bavli and is encoded as a *hypothetical* interpretation: “If you think it is inclusive, [then I could say . . .].” Once again, it is difficult to see this argument as anything more or less than a straw position generated by the Bavli as a hermeneutical strategy in the service of its epistemological conviction that a thing is known only when its alternatives have been articulated and rejected. Clearly, no historical reality should be ascribed to this debate *qua* debate, or to the *havah amina* position that is proposed and rejected.

Puzzles and Conundrums

Just as the Talmud contains logical dialectics to which no concrete historical reality should be ascribed, it also contains legal puzzles or conundrums. Such teachings are brain teasers that expose the tension between two legal principles or that posit a case, perhaps an extremely remote one, that does not seem to be accounted for in the existing construction of an issue. Such a conundrum is posed on b. 63a: What is the law in regard to a wage earned for breaking casks of libation wine? This conundrum brings two principles into direct conflict. On the one hand the wage for this labor should be prohibited because it is a benefit that derives from an idolatrous source. On the other hand the wage should be permitted because it is labor undertaken precisely to destroy idolatrous materials (which is after all a *mitzvah*). The fact that both sides are based on equally persuasive principles is dramatically underscored by the fact that the Yerushalmi prohibits the wage in this case while the Bavli permits it.

A similar conundrum appears on b. AZ 14b regarding the prohibition of selling certain items to a non-Jew since these items are utilized in rites of idolatry. The mishnah’s list includes a white cock, though R. Judah says that one may sell a white cock if one first clips its foot, since a non-Jew will not offer a maimed animal to his idol. In the gemara a distinction is made between sale to a non-Jew who has specifically requested a white cock and sale to a non-Jew who has simply asked for a cock. Only the former is prohibited, since it is certain that the buyer needs the cock for an idolatrous rite—why else the request for a *white* cock?! The final stage of the sugya, however, is a brain teaser posed by R. Ashi. What is the law if a non-Jew asks for a *maimed* white cock? On the one hand by asking for a white cock, he has indicated it is for idolatry and therefore the sale should be prohibited. On the other hand by asking for a maimed animal, he has indicated that he does not intend to use it for an idolatrous rite and therefore the sale should be permitted. Should we suppose that the non-Jew is being cunning: perhaps he needs a white cock for an idolatrous rite, knows that a Jew won’t sell him a white cock if he asks for a white one, and therefore adds the condition “maimed” in order to create the impression that he does not require the animal for an idolatrous sacrifice. In this way, he hopes to throw the Jew off guard and trick him into selling a whole white cock. The Bavli’s question is left unresolved. Clearly we do not have here an actual case but rather a carefully formulated paradox that brings out the extent and reasoning of existing prohibitions.

The Bavli's fundamental epistemological conviction that a thing is known only when its alternatives are articulated and rejected gave rise not only to a variety of specific hermeneutical strategies but also to a preference for the dialectical presentation of earlier traditions. An inherent part of this presentation is the generation of *havah aminos*, straw positions, counterclaims, and even legal conundra that test basic principles. Failure to grasp the dialectical strategy in a given sugya can lead to egregious errors in scholarship. Specifically, a scholar can assume that every statement reflects an opinion held by an actual authority or school, or may ascribe historical reality to cases or situations that, understood within the dialectical framework of the sugya, clearly have none.

In summary, the hermeneutical assumption of verbal economy, prevalent in rabbinic interpretation of Bible, is also operative in rabbinic interpretation of Mishnah. Apparent redundancies or self-evident statements are scrutinized minutely in order to discover some *hiddush*, some teaching that is in fact not redundant or self-evident. The result is often a new interpretation of the mishnah in question.

Similarly, the hermeneutical strategy of explicating texts in dialogue with other texts, prevalent in rabbinic interpretation of Bible, finds a parallel in rabbinic interpretation of Mishnah. The rabbis appear to hold that a mishnah is fully illuminated and understood, its meanings fully exposed, only in juxtaposition with other traditions with which it is set into some sort of dialectical relation. Examining a mishnah in the light of other mishnayot often generates a hermeneutical problem—either redundancy (i.e., why do we need mishnah X when mishnah Y teaches the same thing explicitly or implicitly?) or contradiction—which then drives the discussion in the gemara.

The practice of interpreting by means of dialectical juxtaposition of traditions is not limited to mishnaic teachings but extends to para-mishnaic teachings. Beraitot, teachings excluded by the Mishnah, are rehabilitated by the gemara and set into dialectical relation with a particular mishnah. Again, the dialectical juxtaposition of a beraita will generate a hermeneutical problem (generally a problem of contradiction) that drives the discussion of the gemara. In such cases, reinterpretations of the mishnah (and thus substantive halakhic difference between the Talmuds) are best understood as a consequence of the practice of *reading* or interpretation of texts in rabbinic culture, a practice in which texts are thrown together for mutual explication.

Finally—and perhaps in the absence of relevant traditions—a mishnah will be subjected to a dialectical examination on the basis of logic alone. This method of study is itself grounded in the hermeneutical assumption of verbal economy and the utter meaningfulness of language. No two locutions are ever precisely equivalent and no text can be formulated in any way other than the way in which it is formulated without some corresponding shift in meaning. Thus the formulation of a particular tradition entails the rejection of all alternative formulations, because these alternatives would each convey some erroneous additional meaning. If the language of a tradition is chosen so as to preclude erroneous alternatives, then that tradition is fully and firmly comprehended only when those erroneous alternatives are articulated and set aside. Consequently, in the study of a mishnah, counterclaims and hypothetical alternatives are presented and either invalidated by contrary traditions or shown to

be precluded by the very language of the mishnah itself. This dialectical treatment of earlier traditions is the source of much formal halakhic difference between the Talmuds.

The hermeneutical presuppositions and strategies described in chapters 3 and 4 are shared by both the Palestinian and Babylonian rabbinic communities. However, they are carried to an extreme in the Bavli, and it is this extreme that accounts for much of the formal and substantive halakhic difference between the two Talmuds. Further, the more rigorous and extensive development of these presuppositions and strategies in the Bavli is itself a function of the enormous time difference between the two Talmuds.

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EXTERNAL CAUSES OF HALAKHIC DIFFERENCE: HALAKHAH AND HISTORY

In the introduction to this book I discussed certain characteristic features of rabbinic texts that support a *prima facie* case for their analysis and interpretation in diachronic or historical terms. E. E. Urbach (1976) has argued that rabbinic texts are susceptible to historical analysis because they are self-consciously formulated in response to history and historical concerns. The nature of halakhah itself leaves room for the historical process—for the weighing of external factors—precisely because the rabbis did not understand the halakhah to be a *lex eterna*. Urbach described halakhic literature as containing “expressions of awareness of historical development which is projected in the halakhot themselves” (1976:113).

One indication of the responsiveness of halakhic literature to external circumstances is the construction of legal exceptions—clauses adapting the legal norm to the special circumstances, needs, or status of certain individuals, communities, or cases. For example, p. AZ 2:2, 41a exempts the patriarch and his entourage from the prohibition against having one’s hair cut by a non-Jew (m. AZ 2:2 and t. AZ 3:5), because of these individuals’ need to adopt the manners and dress appropriate to their official duties in the Greco-Roman world.¹ Occasionally a different halakhic standard is articulated for Torah scholars and non-Torah scholars (see two cases in b. AZ 58a, and 59a–b).

Exceptions, exemptions, and modifications of halakhic norms are made in consideration of regional variation, be it geographical, cultural, or customary. In many places rabbinic texts explicitly cite regional variation as the motivation for establishing more than one halakhic norm. For example, the foods and wines prohibited for fear of spoliation by snake venom vary from place to place (b. AZ 30a-b).² The laws concerning prohibited and permitted fish show similar regional variation (b. AZ 39a; p. 2:9, 41d-42a).

The land of Israel occupies a unique status in biblical and rabbinic sources, and its uniqueness is reflected in halakhot that draw legal distinctions between Israel and other lands. While in many cases the land of Israel is subject to more stringent laws (b. AZ 59a) and concessions are made for Jewish communities outside the land of Israel, in some areas of law greater legal strictness is required outside the land of Israel (as we shall see in chapter 7).

Popular opinion may be an influential factor in the development of halakhah. The phrase “we make no decree upon the community unless the majority is able to abide by it” appears in b. AZ 36a and p. AZ 2:9, 41d to justify R. Judah Nesiah’s revocation of the prohibition of Gentile oil.³

With the passage of time, the political and economic circumstances and the everyday needs and realia of a particular community change. Halakhic modifications occur as part of an effort to adapt to these changes.⁴ The Mishnah contains explicit references to diachronic shifts in the halakhah, employing the terms “formerly” and “latterly” (e.g., b. AZ 31a concerning the eventual permission of wine from Jewish towns located near Samaritan towns). Many modifications are signaled by the term “הַיּוֹמֵינוּ” (“nowadays”; see b. AZ 69b). One such case will be examined in detail in chapter 8 (b. AZ 15b–16a).

Further, the Mishnah and other tannaitic sources often contain details that reflect the reality of Greco-Roman Palestine before the third century, details that may find no parallel in Babylonia from the third century on. The adaptation of essentially early Palestinian halakhot to the later Babylonian milieu is thus a response to both regional and diachronic difference. Again, there are explicit examples of this kind of shift in tractate AZ. M. AZ 1:3’s list of the idolatrous festivals that are subject to the prohibition of transactions is updated in b. AZ 11b to reflect Babylonian and Persian religious observances.⁵ As a further example, prohibitions concerning an asherah are applied in the Babylonian context to trees whose produce is used by non-Jews in the production of ritual wine (b. 48a).⁶

All of these examples demonstrate that in a general sense the notion of halakhah taking shape in response to various influences is not alien to the spirit of the talmudic sources. Adaptations of halakhic norms are often explicitly attributed to external factors.

However, the scholar must assess such claims critically. While rabbinic testimony as to the historical, regional, or cultural stimuli of halakhic change must not be dismissed, neither should it be accepted at face value. Some of the rabbis’ explanations of halakhic change strain credulity or contradict other data. For example, in chapter 5 I will argue that a Palestinian sage’s explanation of the halakhic divergence between Palestine and Babylonia in regard to the prohibition of transactions prior to an idolatrous festival derives more

from logical necessity than genuine knowledge of cultural variation. On the other hand, the Bavli's explanation for modification of the midwifery law in m. AZ 2:1 finds intratextual verification (see chapter 6).

A further caveat: Halakhic divergence that owes something to external factors is not always explicitly marked or even recognized as such within the talmudic sources. Thus we must be prepared to entertain the possibility of external influences when these are only obliquely indicated. In the Introduction to this book I argued that amoraic statements that introduce entirely new halakhic issues and opinions or that violate the rabbis' own canons of interpretation are remarkable for their divergence from expected norms and invite cultural-historical analysis. The four cases examined in the chapters that follow all feature precisely this kind of novelty or exegetical aberration.

When a halakhic difference is identified for which historical explanation seems likely—because the rabbis' own canons of interpretation have been violated, or because there seem to be no clear internal stimuli generating the difference—several possibilities must be considered.⁷ First, it is possible that the difference has been created by later editors or redactors who have placed particular views into the mouths of earlier sages in the Yerushalmi and the Bavli. Second, it is possible that the difference represents an actual historical difference between Palestinian and Babylonian rabbis of various generations. Third, it is possible that the difference is a textual phenomenon only (i.e., the sages for some reason preserved and recorded only those sources that manifest a halakhic difference) but does not represent an actual historical difference between Palestinian and Babylonian sages of various generations.

The first and third alternatives are remote. The first alternative depends upon the consistent editorial manipulation of sources in the compilation of the Talmuds.⁸ But as we have already seen, recent studies that demonstrate the complex and variegated nature of the Talmuds are a strong argument against this kind of editorial control. The third alternative is equally unlikely. It is difficult to understand why the amoraim would preserve sources that represent a halakhic difference between rabbis in the two centers if there was none. We would have to suppose that the amoraim preserved only sources with which they did not agree and discarded sources with which they did agree. Not only is there no evidence for such a practice, it contradicts common sense. The second alternative is the most likely of the three: The differences between the Palestinian and Babylonian Talmuds (when internal factors have been ruled out) most likely reflect actual differences between the rabbinic sages of Palestine and Babylonia.

But even here there appear to be two possibilities. It may be that a halakhic difference in the sources attests to an actual difference in the halakhic positions of Palestinian and Babylonian sages. Alternatively, it may be that our sources attest to a difference in the way rabbis in the two centers wish to

portray themselves. It is not always possible to determine whether a halakhic difference is real (i.e., an actual difference in rabbis' halakhic views) or fictive (i.e., a difference resulting from the rabbis' desire to portray themselves as holding certain views). However, the distinction is less important than it might seem, since a *fictive* difference between the two centers is no less a difference and no less susceptible to cultural analysis and explanation. In short, our concern is to uncover the extratextual and historical factors that might have led the rabbis of Babylonia and Palestine to *actually hold or portray themselves as holding* different halakhic views on a particular issue.

Current scholarship generally assumes the Babylonian sages to be more lenient in their treatment of laws governing the interrelations of Jews and non-Jews. And indeed, it would appear that the relaxation of prohibitions that touch upon economic interaction between Jews and non-Jews in the diaspora was motivated by certain pragmatic considerations unique to diaspora life. Hence, Palestinian rules prohibiting transactions with non-Jews on communal festival days for fear of contributing materially or motivationally to the worship of idolatry are attenuated in the diaspora (see chapter 5), as are prohibitions against Israelite women serving as midwives to non-Jewish women (see chapter 6). However, as regards a private party's feast day, the later Babylonian amoraim encode and extend an extreme set of prohibitions against social interaction and a measure of prohibition against commercial interaction (see chapter 7). The Bavli's strictness in this case so surprises scholars that some resort to forced and insupportable interpretations of the relevant texts in order to conform them to the generally held theory of a uniform trend toward leniency among the Babylonians. But after setting aside the presuppositions of talmudic historians and distinguishing between early and late texts and between disparate areas of law, I will argue that the Bavli's divergences from the Yerushalmi follow a coherent pattern.

Finally (in chapter 8), I will argue that the suppression and reemergence of a prohibition against the sale of weapons to non-Jews, as well as other related halakhic developments, can be correlated with documented shifts in the relations between Jews and the non-Jewish regimes of Palestine and Babylonia.

The Reduction of the Prohibition of m. AZ 1:1 in the Diaspora

In the following example the Talmuds explicitly articulate divergent halakhah for Jews in Palestine and for Jews in the diaspora while disagreeing on the details of this divergence. Two specific halakhic differences will occupy us. The first is the difference in the number of days prior to a non-Jewish festival during which it is prohibited to carry out certain transactions with non-Jews. According to the Yerushalmi, three prior days are prohibited in Palestine and one prior day in Babylonia. According to the Bavli, three prior days are prohibited in Palestine but only the festival day itself is prohibited in the diaspora. The second difference is the manner in which the stricter minority view of R. Yishmael, recorded in m. AZ 1:2, is treated in the two Talmuds. In the Yerushalmi it is neutrally explored but in the Bavli it appears to be discredited.

In regard to the number of days for which the prohibition is held to be in effect, the Bavli reaches novel conclusions; in regard to the treatment of R. Yishmael's strict interpretation of the prohibition, the Bavli appears to reduce this teaching to an absurdity—an unusual occurrence given the Talmuds' general practice of articulating rationales for even rejected opinions.⁹ These irregularities invite a cultural-historical analysis of the sources. I will provide evidence for the claim that both external historical and internal halakhic factors contributed to the differences between the two Talmuds regarding commercial interaction on communal idolatrous festivals.¹⁰

It should be emphasized that my goal is to account for difference *between the two Talmuds*. What the actual halakhic practice was in each community, what halakhah Palestinians or Babylonians actually followed, cannot be reliably retrieved from these sources and is not the concern here. That the Talmuds as literary texts handle these halakhot differently is a clear fact and invites consideration of the textual and extratextual pressures on those who contributed to the production of these texts over the course of time.

The Sources

m. AZ 1:1

לפני אידיהן של גוים שלשה ימים אסור מל— . . .

Before the festivals of non-Jews for three days it is prohibited to. . .

This mishnah prohibits Jews from engaging in any of a number of specified commercial and business transactions with non-Jews during a three-day period prior to a non-Jewish festival. (That these transactions are also prohibited on the festival day itself is self-understood.) As was explained in chapter 2, this prohibition is motivated by the general rabbinic concern that Jews not contribute to idolatry, either by providing the material means for idolatrous rites or by motivating an act of idolatrous worship (specifically, thanksgiving).¹¹

The mishnah records a blanket prohibition of three days, presumably of universal application. However, a geographical differentiation appears in the Tosefta.

t. AZ 1:1

נחום המדי אומן יום אחד בגליות לפני עידיהן אסור
במה דברים אמורים באידין הקבועין
אבל באידין שאינן קבועין אין אסור אלא אותו יום בלבד

Naḥum the Mede says: one day in the diaspora before their festivals it is prohibited. In what case is this so?

In the case of fixed festivals, but in the case of festivals that are not fixed, only the day itself is prohibited.

The Tosefta records a tradition that qualifies the anonymous halakhah presented in the mishnah. This tradition that registers a different halakhah for Jews outside the land of Israel is attributed to Naḥum the Mede, a Babylonian who is said to have emigrated to Palestine in the first century and served as a judge in Jerusalem (b. Ket 105a). Ostensibly, this text is evidence of a very early (predestruction) tradition according to which there is a divergence between the Palestinian and diaspora communities as to the period of time during which transactions are prohibited prior to a non-Jewish festival.

However, Blidstein (1968:31ff) points out that in all likelihood the Tosefta does not bear witness to the original form of the tradition attributed to Naḥum the Mede. He compares our three versions of this tradition. The results are represented in the following outline:

Tosefta

יום אחד בגליות לפני עידיהן אסור

- (a) one day
- (b) in the diaspora

- (c) before their festivals
- (d) is prohibited
- (e) —

Yerushalmi 1:1, 39a:

יום אחד בגליות אסור

- (a) one day
- (b) in the diaspora
- (c) —
- (d) is prohibited
- (e) —

Bavli 7b

אינו אסור אלא יום אחד לפני איריהון
אמרו לו נשתקע הדבר ולא נאמר

- (a) only one day
- (b) —
- (c) before their festivals
- (d) is prohibited
- (e) and they said to him: “let this statement be neglected and not spoken.”

The only elements in common to all three traditions are (a) one day and (d) is prohibited. Blidstein surmises that the view of Naḥum in its original form was *יום אחד אסור* (= “one day is prohibited”). He suggests that this may have meant only the festival day itself. Naḥum’s teaching thus represents a different tradition, one opposed to the view that prohibitions apply not only to the festival but to the (three) days prior to the festival. Blidstein further surmises that this tradition underwent two changes. First, in order to harmonize it with the opposing view (that encoded in the mishnah), the phrase “in the diaspora” was added, as is found in the Tosefta and Yerushalmi versions. Thus the contradiction between Naḥum and the mishnah was solved by *oqimta*: the mishnah’s standard of three days prior applied to the land of Israel while Naḥum the Mede’s statement applied only to the diaspora.¹² Second, the phrase “before their festivals” was added to remove an ambiguity. The phrase “one day” may mean only one day before the festival as opposed to three days, or it may mean only one day of prohibition, that is, the festival day itself and no prior days. In two of the versions—that of the Tosefta and the Bavli—the ambiguity was resolved with the addition of “before their festivals,” indicating that Naḥum intended to limit prohibitions to only one day prior to the festival rather than three.

Blidstein holds that the views of Naḥum and the mishnah represent two stages in the history of the rabbinic prohibition. He concedes that our sources are insufficient for determining which is older but he maps out two possibilities. On the one hand, it may be that the original prohibition was that represented by the mishnah: a three-day period prior to the festival was subject to prohibitions. Naḥum would relax this to one day. In reaction the Palestinian majority reasserted the view

that was recorded in the mishnah and Naḥum's view was neglected (see b. 7b for that datum). On the other hand, it may be that the original halakhah was a one-day ban. This was taken to Babylonia and held by Babylonians such as Naḥum at a very early date. The Palestinians later enunciated the stricter three-day ban, but the older halakhah was preserved in Babylonia and (as we shall see below) eventually appears in the teaching of Shmuel that only the festival day itself is prohibited (b. AZ 11b).¹³

In general, I accept Blidstein's analysis, but with two differences in emphasis. First, I would emphasize that just as it is possible that the various versions of Naḥum's statement contain interpolations that transform the meaning of that statement, it is equally possible that these interpolations are actually glosses that render explicit the original meaning of that statement. Naḥum is said to be a Babylonian after all; perhaps he was simply attesting to the practice in Babylonia, a detail clarified by the addition of "in the diaspora." Similarly, perhaps the addition of "before their festivals" conveys correctly the original sense of the statement.¹⁴ The point is that even if we could be sure we have the "original form" of Naḥum's tradition, our question as to its "original meaning" must remain largely unanswered. All we can state with certainty is that the tradition attributed to Naḥum is more lenient than that encoded in the mishnah (three days). We cannot ascertain whether this tradition was a prescription of universal application in conflict with the prescription encoded in the mishnah (one day instead of three days should be prohibited everywhere), or whether it was merely a description of local (diaspora) practice—as indeed the Tosefta, Yerushalmi, and probably the Bavli understand it to be.

Second, concerning the sequence of the two traditions, it strikes me that this is a relatively unimportant issue. Certainly, 1 Macc 10:25–45 is evidence of the antiquity of the notion that the days surrounding a festival take on some of its character and that prohibitions or exemptions that apply to a festival are sometimes applied to the days before or after it.¹⁵ But it is likely that *both* views reflect long-standing perspectives and practices. The two views were probably roughly contemporaneous competitors. What is important for us is the fact that this competitive dialectic is both captured and neutralized by the tannaitic texts. The mishnah encodes one position: three prior days are prohibited. The Tosefta's beraita encodes the other: one prior day. And yet even as it asserts this divergent position, the Tosefta diffuses the dialectic tension it creates by noting that the prohibition of one day applies only to the diaspora. Thus, where once there may have been two views competing for prominence, we find now in the combined evidence of the tannaitic sources two views, one of which sets the standard (that of the mishnah), the other of which records an exception applicable to a specific geographical location only.¹⁶

Let us return to the statement as it appears in the Tosefta and thus as it was apparently understood by some third-century Palestinians. Naḥum the Mede's statement to the effect that only one day prior to the festival is subject to the mishnah's prohibition in the case of Jews living outside the land of Israel is, of course, a lenient position. The anonymous gloss that follows his statement relaxes even further the halakhah for diaspora communities. The gloss notes that the one-day prohibition of Naḥum the Mede applies only to regular or fixed festivals, but that in the case of

festivals that are “spontaneously” or arbitrarily organized, the prohibitions are applicable only on the day of the festival itself. Thus, from at least the late tannaitic period (and probably earlier) we find the notion that this rabbinic *gezerah* may be relaxed in the diaspora.

The Talmuds are fully cognizant of the twin halakhot that are evidenced by the joint testimony of the Mishnah and the Tosefta. In the gemara to m. AZ 1:1, the Yerushalmi cites the tradition of Naḥum the Mede. This citation leads to a fascinating discussion of the reason for the existence of divergent halakhot for Jews in Palestine and Jews in the diaspora. The Yerushalmi here explicitly considers and rejects an exegetical explanation in favor of a cultural explanation.

p. AZ 1:1, 39a

לפני אידיהן של גוים כו'
 ר' חמא בר עוקבה שמע כולהון מכא
 והביאו לבוקר זבחיכ' לשלשת ימי מעשרותיכ'
 א"ל רבי יוסי אין כיני אפילו בגליות
 דתני נחום המדי אומר יום אחד בגליות אסור
 מאי כדון
 תמן בדקו ומצאו שהן עושין צרכיהן ליום אחד
 ואסרו יום אחד
 ברם הכא בדקו ומצאו שעושין צרכיהן לשלשה ימים
 ואסרו להן שלשה ימים
 מה מקיים רבי יוסי אהן קרייה והביאו לבקר זבחיכם וגו'
 במלכות ירבעם הכתוב מדבר

“Before the festivals of non-Jews” etc.

R. Ḥama bar Uqba derived all these [three days] from here: “And bring your sacrifices in the morning and your tithes after three days” (Amos 4:4).

R Yosi said to him: If so, [i.e., if the number three is biblically ordained] then even in the diaspora [three days should apply]! Yet it is taught—Naḥum the Mede says, “one day is prohibited in the diaspora.”¹⁷

Why is that so? There [in the diaspora] they checked and found that they [non-Jews] prepare their needs [for the festival] for one day, and so they prohibited one day. But here [in Palestine] they investigated and found that they prepare their needs for three days, so they prohibited for them three days.

Then to what does R. Yosi read the verse “and bring your sacrifices in the morning” as a reference?

Scripture is speaking about the reign of Jeroboam.

R. Ḥama bar Uqba is said to be of the opinion that the prohibition of transactions for a period of precisely three days is derived from a biblical text. It is important to realize that R. Ḥama bar Uqba is not claiming that the *prohibition* is derived from this text, but only that the number *three* is indicated in this text. The sugya is thus devoted to the topic of the duration of the period of the prohibition. R. Yosi objects that the number three cannot possibly be biblically ordained,

for if so then it would be uniformly and universally applicable. However, in the diaspora the period of prohibition is only one day, as we learn from the teaching of Naḥum the Mede. He argues that this proves there is no biblical basis for the number three. It follows that the duration of the period of prohibition is rabbinically determined.

How then does R. Yosi account for the fact that in Palestine there is a three-day prohibition and in the diaspora a one-day prohibition? He argues that there is not an exegetical, but rather a cultural basis for these numbers. The number of days prohibited in each case is determined by the activity of non-Jews prior to their festivals. Three days are prohibited in Palestine because the rabbis observed that the non-Jews there prepare for their festivals (buy the animals for the sacrifices, etc.) for a period of three days. However, only one day is prohibited in the diaspora because the rabbis observed that the non-Jews there prepare for their festivals only one day before. R. Yosi explicitly rejects an exegetical account of the halakhah in question, reading the verse cited by R. Ḥama bar Uqba in its plain, contextual sense—as a description of events in the time of Jeroboam. In contrast to R. Ḥama bar Uqba, he is of the opinion that the different halakhic standards promulgated for Palestine and the diaspora are to be attributed to the divergent practices of the non-Jewish communities in these locations. His description of the process by which these divergent halakhot were decided—“they checked and found”—is noteworthy in that it points to the rabbis’ consideration of empirical data in their articulation of halakhah.

However, R. Yosi’s statement should not be accepted at face value, for two reasons. First, it is unlikely that upon observation the rabbis would have found what he claims they found: that non-Jewish festivals within Palestine required three days of preparation while non-Jewish festivals outside Palestine required only one day. Second, his statement is suspiciously circular in that it explains the divergence by extrapolating from the mishnah’s prohibition itself. In other words, the mishnah’s ban is designed to prevent Israelite contribution to or encouragement of idolatrous celebration. Thus, if in the diaspora the prohibition lasts for one day only, it is only logical to suggest that the non-Jews there prepare for their festivals for one day only; and if in the land of Israel the prohibition lasts for three days, it is only logical to suggest that the non-Jews there prepare for their festivals for three days.

R. Yosi’s description of the genesis of the divergent standard should be taken with a grain of salt; nevertheless his *instinct* in formulating this explanation should be taken quite seriously: To explain the difference between Palestine and the diaspora on this matter, one should look not only at texts but at the different circumstances of these two communities. More specifically, R. Yosi indicates that this difference relates in some way to the different character of the non-Jewish communities with whom the Palestinian and diaspora Jewish communities interrelated.

There is another Palestinian tradition whose diverging treatments in the Yerushalmi and the Bavli pertain to our discussion. In the continuation of m. AZ 1:1 R. Yishmael states that for three days before *and* three days after the festival of non-Jews the transactions listed in the first mishnah are prohibited.¹⁸ The Yerushalmi contains the following sugya:

p. AZ 1:1, 39b

חברייא אמרי טעמא דר' ישמעאל משו' בריה דמועדא¹⁹
 אמר רבי בא כיון שהוא יודע שאסור לך לישא וליתן עמו
 הוא ממעט בשמחת אידו
 מה מפקה מביניהון
 למכור לו דברים שאינן מתקיימין
 על דעת חברייא אסור על דעת רבי בא²⁰ מותר
 אמר רבי יוחנן קרייא מסייע למה דאמרי חברייא
 וביום עשרים וארבעה לחדש השביעי נאספו בני ישראל
 בצום ובכי ובשקים ואדמה עליהם
 ולמה לא אמר בעשרים ושלושה משום בריה דמועדה
 אין נימר דהוה בשוכתא לית יכיל
 דאת מחשב ואת משכח צומא רבא בחד בשוכא [=בשוכתא]
 ומה בה ולית ר' חזוניה מיקל למאן דמעבר ליה מן אתריה
 אמר ר' יוחנן בר מדייא אנא חשבייתה ולא הוה בשוכתא

1. The ḥaverim say: the reason for R. Yishmael's view is on account of the feasting of the festival.²¹
 R. Ba said: since he knows that you are prohibited to deal with him it reduces the enjoyment of his festival.
2. What is the practical [legal] difference between these two explanations? Selling him a perishable item. According to the [explanation offered by the] ḥaverim it is prohibited but according to [the explanation offered by] R. Ba it is permitted.
3. R. Yudan said: there is a scriptural verse that supports the ḥaverim
 —“Now on the 24th of the seventh month, the Israelites were assembled with fasting and weeping and sackcloth and dirt on their heads” (Neh 9:1).
 — Why doesn't it say the 23rd? Because of the festival feast [i.e., they feasted on the 23rd even though Sukkot ended on the 22nd].
 And if you say it was the Sabbath [and thus they postponed the fast until the 24th] that cannot be, for you can calculate it and you will see that [in such a case] the great fast [Yom Kippur] would have been on a Sunday [which the rabbis always prevent through intercalation].
4. And what of it? Didn't R. Ḥonyah curse one who moved it from its place?
5. R. Yoḥanan bar Madya said: I calculated it and it wasn't a Sabbath.

In this sugya there are two efforts to explain the reason for R. Yishmael's view that the prohibitions extend for an additional three days beyond the festival. The ḥaverim suggest that it is because the feasting and celebration extend beyond the festival day itself and there is a fear that one will contribute materially to the celebration through one's transactions with the non-Jew at this time. R. Ba suggests that this prohibition has nothing to do with the postfestival days' being days of continued worship or celebration; rather the continued deprivation of business reduces the idolater's enjoyment of the actual festival period. (Note that the explanation of the ḥaverim is supported not by empirical evidence concerning the festival practices of non-Jews, but by a creative interpretation of a scriptural passage that actually refers to Israelite practice in the period of Nehemiah!)

It should be noted here that the Yerushalmi neutrally reports and discusses R. Yishmael's stricter interpretation/position. His view is taken to be logical and coherent, and two traditions concerning the rationale behind this minority view are recorded. This impartial treatment will contrast with the Bavli's treatment of R. Yishmael's view.

In the Bavli the number three is explored just as in the Yerushalmi. However, while R. Yosi in the Yerushalmi rejected the idea that the number three is of biblical origin, the Bavli finds oblique confirmation of this number in the biblical text, in the following sugya.

b. AZ 5b

ג' ימים אסור לשאת ולתת עמהם וכו'
 ומי בעינן כולי האי
 והתנן בארבעה פרקים בשנה המוכר בהמה לחבירו
 צריך להודיעו אמה מכרתי לשחוט בזה מכרתי לשחוט
 ואילו הן עיר'ט האחרון של חג עיר'ט הראשון של פסח
 וערב עצרת וערב ר'ה וכדברי ר' יוסי הגלילי
 אף ערב יוה'כ בגליל
 התס דלאכילה סניא בחד יומא
 הכא דלהקריבה בעינן תלתא יומי
 ולהקריבה סני בתלתין יומי
 והתניא²² שואלין בהלכות הפסח קודם הפסח שלשים יום
 רשב'ג²³ אומר שחי שבחות
 אנן דשכיח²⁴ מומין דפסלי אפילו בדוקין שבעין
 בעינן תלתין יומין
 אינהו דמחוסר אבר איהו בתלתא יומי סני
 דא'ר אלעזר מנין למחוסר אבר דאסור לבני נח
 דכתיב ומכל החי מכל בשר שנים מכל וגו'
 אמרה תורה הכא בהמה שחיין ראשי אברים שלה

Pisqa: "three days, it is prohibited to transact with them, etc."

1. Are all [three days] necessary? Haven't we learned: "Four times annually, one who sells an animal to another must tell him, 'I sold the mother to be slaughtered' or 'I sold the daughter to be slaughtered'²⁵—and these are the days: the eve of the final festival day of Sukkot, Passover eve, the eve of Atseret and the eve of Rosh haShanah; and according to the view of R. Yosi haGalili, also the eve of Yom Kippur in the Galilee."
2. In that case where [the animal is] for eating, one day is sufficient. Here however where [the animal is] for sacrifice, one requires three days.
3. Where it is for sacrifice, is three days really enough? Haven't we learned: "They discuss the laws of Passover for thirty days before; R. Shimeon b. Gamliel says for two weeks."
4. We for whom there are disqualifying blemishes even in the whites of the eyes—we require thirty days; but in their case where there is [only the blemish of] mutilation, three days is sufficient, for R. Elazar said:
 "Whence is it, concerning a mutilated animal, that it is prohibited to Noahides? From what is written, 'And from all living things, from all flesh, two from all etc.,' (Gen 6:19). Torah is saying, bring animals whose principal limbs are living."

This *stam* passage, like the passage of the *Yerushalmi*, assumes that the duration of the period of prohibition corresponds to the period required for preparation for a non-Jewish festival. Beyond this basic similarity the *Bavli* and *Yerushalmi* part company in certain significant ways.

First, the *Yerushalmi* contains R. Yosi's outright rejection of the effort to locate a biblical basis for the number three. Indeed, he undermines the very possibility of such an effort: Since the duration of the period of prohibition is reduced only in the diaspora, the number must be of rabbinic and not biblical origin. R. Yosi then claims that the determination of the number is keyed to the practices of the relevant non-Jewish community. By contrast, the *Bavli's* *sugya* contains no mention of the divergent practice in the diaspora (though this is surely a Babylonian discussion.)²⁶ The *Bavli* relates to the number three as if it were of universal application, and it does not hesitate to locate a biblical intimation, admittedly oblique, of this number. The *Bavli's* position is in fact an odd compromise. Like R. Yosi in the *Yerushalmi*, the *Bavli* assumes that the duration of the period of prohibition is keyed to the practice of non-Jews. However, unlike R. Yosi, the *Bavli* derives the duration of the prohibition from a biblical text and not from observation of contemporary idolatrous customs.²⁷

This methodological difference has a substantive impact. Deriving information concerning non-Jewish practice from empirical observation (as R. Yosi claims the rabbis did) allows for a plurality of halakhic norms depending on the idolatrous practices of various localities. However, deriving such information from a biblical verse (as the *Bavli* does) might be expected to yield a halakhic norm that is invariable and universal (indeed, this is the force of R. Yosi's objection in the *Yerushalmi* text cited above). How this view is to be reconciled with the fact that a different halakhic norm applies in Babylonia is not raised in this *sugya*. Indeed no mention is made of the fact that the period of prohibition in the diaspora is one day only. (We should note that in a subsequent discussion [b. AZ 6a] also conducted in the *stam* voice, the period of three days is again simply taken as a standard and no divergent diaspora practice is mentioned.)

We observed above that the *Yerushalmi* was cognizant of the divergent halakhot that are evidenced by the traditions of the *Mishnah* and *Tosefta*, that is, a ruling of three prior days of prohibition recorded in the *Mishnah* (presumably universal) and a ruling of only one prior day for diaspora communities, attributed to Naḥum the Mede and recorded in the *Tosefta*. The *Bavli* also contains Naḥum the Mede's teaching, but in addition it records an even more lenient ruling in the name of Shmuel,²⁸ the first-generation Babylonian amora.

B. AZ 11b reads:

אמר שמואל בנולה אינו אסור אלא יום אידם בלבד
 ויום אידם נמי מי אסיר?²⁹
 והא רב יהודה שרא ליה לרב ברונא לזבני חמרא
 ולרב גידל לזבני חיטין בחגתא דשייעי
 שאני חגתא דשייעי דלא קביעא

1. Shmuel said: In the diaspora it is only forbidden on the day of the festival itself.
2. And is it indeed forbidden on the day of the festival? Didn't Rav Judah permit Rav Berona to sell wine and Rav Gidal to sell wheat on the festival of Arabs?³⁰
3. The festival of Arabs is different because it is not fixed.

Shmuel's tradition, not attested in the Yerushalmi, is the most lenient position to be found in any source. He prohibits only the festival day itself. In addition, the distinction between fixed or regular festivals and those that are not regular is applied to Shmuel's statement just as it was applied to the statement of Naḥum the Mede in the Tosefta.³¹ Consequently, Shmuel's view when read in conjunction with its anonymous gloss is that only fixed festival days are subject to the prohibitions listed in the first mishnah. No days prior to a festival day are prohibited, and festivals that are not regularly recurring carry no prohibitions whatsoever. This position is one degree more lenient than the view of Naḥum the Mede recorded in the Tosefta.³²

Shmuel's teaching provides the key to understanding a passage in which a hostile orientation to the stricter minority interpretation/position attributed to R. Yishmael—quite different from the more neutral orientation of the Yerushalmi—may be in evidence. The mishnah upon which the gemara comments reads as follows:

m. AZ 1:2

ר' ישמעאל אומר
שלושה ימים לפניהם ושלושה ימים לאחריהם אסור
וחכמים אומרי' לפנייהם אסור לאחר אידיהן מותר

R. Yishmael says: three days before them and three days after them, it is prohibited. But the sages say: before their festivals it is prohibited; after their festivals it is permitted.

The Bavli's sugya opens with a second-generation Babylonian amora's citation of the following teaching by Shmuel:

b. AZ 7b

אמר רב תחליפא בר אבדימי³³ אמר שמואל
יום א' לדברי ר' ישמעאל לעולם אסור

Rav Tahlifa the son of Avdimi³⁵ said Shmuel said:
[As regards] Sunday,³⁶ on the view of R. Yishmael, [it is] always prohibited!

Most commentators, medieval and modern, understand this passage as follows: R. Yishmael would prohibit transactions with non-Jews for a period of three days before and three days after the festival day itself. Shmuel spells out the implications of this view in a Christian context, assuming every Sunday to be an א'יד: if according to R. Yishmael the prohibitions apply three days before and after the festival, then the Christian Sunday has the effect of rendering the entire week prohibited. And since each week contains a Sunday, transactions are forever prohibited between Jews and non-Jews on the view of R. Yishmael.

While I agree that this is the *meaning* of Shmuel's statement, I do not agree with commentators as to its *tone*. To the best of my knowledge all commentators see Shmuel's comment as a plain declarative statement (במחנהא). Shmuel is simply informing us that the logical consequence of R. Yishmael's view is the ces-

sation forever of all transactions between Jews and Christians who observe the Christian Sunday. Shmuel's gloss exposes the isolationist potential of R. Yishmael's view when the Christian Sunday is included within the legal category of an ג'א . However, given the lenient and nonisolationist view(s) attributed to him in adjacent sugyot on precisely this issue of transactions during non-Jewish festivals (see below), it is possible that Shmuel's statement does not function here as a mere gloss or application of R. Yishmael's view to the Christian context, but rather that Shmuel's statement is utilized by the redactor of the sugya as a *reductio ad absurdum*³⁷ that attempts to discredit entirely the extraordinarily strict view of R. Yishmael.³⁸

By applying R. Yishmael's prohibition of three days before and after a festival to the Christian Sunday with the absurd result that Jews and Christians may never transact business, Shmuel's tradition has the effect of undermining R. Yishmael's strict view altogether. For it is a feature of the *reductio ad absurdum* argument that when one shows a position to be absurd in a related or extreme situation, one cripples its appeal even in its proper domain. The redactor of the sugya may be employing Shmuel's tradition to do precisely that. He is no doubt aware that in the opening mishnayot of this chapter the festivals in question are pagan festivals. In a pagan context, R. Yishmael's view, though strict, is entirely plausible. However, by showing that R. Yishmael's opinion leads to an untenable situation when applied to the Christian Sunday, the redactor casts doubt upon the reasonableness of R. Yishmael's position in every context, even the pagan one. The argument relies on the following steps: (1) If X applies to pagan festivals we can apply it also to Christian festivals; (2) but applying X to Christian festivals leads to an absurd or untenable consequence; therefore (3) since X is invalid for Christian festivals, we must declare it invalid for pagan festivals also, since its application to pagan festivals leads like a slippery slope to its application to Christian festivals. Perhaps, then, the inclusion of Shmuel's statement applying R. Yishmael's teaching to a Christian context is a calculated rhetorical strategy.³⁹

This kind of argument is entirely fallacious because no logical necessity drives a slippery slope. It is possible to draw distinctions between different cases. One could, for example, simply retort that R. Yishmael's teaching applies to the major pagan festivals but not to the Christian Sunday, which occurs weekly. However, as fallacious as slippery slope arguments may be, they are nonetheless persuasive rhetoric, rendering an opponent's view guilty by (often illegitimate) association. The redactor of our sugya may be fully exploiting this rhetorical weapon.

Here then is a second difference between the Bavli and the Yerushalmi. The Yerushalmi clearly understood R. Yishmael to be referring to a (probably pagan) feast day of some sort (certainly not the Christian Sunday) and devoted itself to a discussion of the reasoning behind R. Yishmael's view. The Yerushalmi in no way denigrates or undermines R. Yishmael's stricter position but neutrally explores the reasons that might lie behind it. By contrast the Bavli's only remark on R. Yishmael's statement is the gloss by Shmuel, possibly presented as a *reductio ad absurdum* attempting to discredit the view entirely.⁴⁰ The Bavli deviates from its usual practice of seeking out the logic in rejected or minority opinions (a practice that is carried out in this case only in the Yerushalmi).⁴¹

Accounting for the Difference

At this point, summarizing the portrait that emerges from the sources will help to pinpoint the halakhic difference between the two Talmuds. The Mishnah provides a categorical prohibition of transactions with non-Jews for a period of three days prior to their festivals. It records the strict interpretation of this view by R. Yishmael that would extend the prohibition for three days after the festival. The Tosefta adds a geographically based distinction in the name of Naḥum the Mede, who states that in the diaspora only one day before a festival is prohibited.⁴² An additional gloss further specifies that this one-day prior prohibition applies to fixed festivals only; in the case of nonfixed festivals, only the actual festival day is prohibited. Thus we have tannaitic evidence (possibly early) of a different halakhic standard promulgated for the diaspora. The Yerushalmi registers not only the views of the mishnah but also the view attributed to Naḥum the Mede to the effect that in the diaspora only one day before the festival is prohibited. The Yerushalmi does not contain the gloss that distinguishes between fixed and nonfixed festivals. Exploring the reason for the existence of two different time periods—one for Palestine and one for the diaspora—R. Yosi rejects the notion that the durations of the prohibition are exegetically based and asserts that they correspond to the actual religious practices of non-Jews as observed by the rabbis. Since the practice of non-Jews in the diaspora differs from that of non-Jews in Palestine, the period of prohibition accordingly differs. Finally, the Yerushalmi explores the stricter interpretation/position of R. Yishmael and even finds an oblique biblical support for his view that the postfestival period ought to be subjected to prohibitions also.

The Bavli registers the view of the Mishnah and in one sugya suggests that the number three is keyed to the religious praxis of non-Jews as indicated paradigmatically in the Bible (as opposed to empirically observed by contemporary rabbis). In a different sugya the Bavli records the view of Naḥum the Mede, without the gloss concerning fixed and nonfixed festivals, but adds a comment to the effect that this teaching had been neglected. In addition, the Bavli records a more lenient view in the name of Shmuel to the effect that in the diaspora only the festival day itself carries any prohibitions.⁴³ The dialectic following this statement based on a still more lenient ruling by Rav Judah leads to the conclusion that Shmuel's teaching is in reference to fixed festivals only and that no prohibition applies at all in the case of nonfixed festivals. In line with the leniency attributed to Shmuel, the Bavli further cites a tradition by Shmuel that appears to discredit the strict view of R. Yishmael that would extend the duration of the prohibitions into the postfestival period. The Palestinian sources contain no parallel to the lenient halakhah espoused by Shmuel⁴⁴ or the further concessions made by later amoraim, nor do they contain the statement that may be construed as hostile to the strict position of R. Yishmael. Both Talmuds attest to different halakhic standards for Palestine and the diaspora in regard to festival prohibitions. They agree that the halakhah for the diaspora is more lenient, but they disagree on the *degree* of that leniency. How are we to account for this halakhic disagreement between the Talmuds in which the Bavli espouses a more lenient halakhic standard for the diaspora than does the Yerushalmi? Two explanations will be considered.

Legal Definition Explanation

The first explanation is the “legal definition” explanation, which might be formulated as follows: The prohibitions of the mishnah apply only to true idolaters and their festivals. They do not apply to persons who fall outside the legal definition of an idolater. Perhaps according to Shmuel (and Naḥum as presented in the Tosefta and Yerushalmi), the non-Jews who were encountered outside the land of Israel do not fall within the legally defined category of “idolater” and therefore their festivals are not אידים and the period of prohibition does not apply to them. Thus the difference between the Talmuds concerning the degree of leniency extended to the diaspora community is based on a different evaluation of the legal status of non-Jews in the diaspora.⁴⁵

Rashi adopts a version of this principle in his comment to Shmuel’s statement (when it first appears on b. AZ 7b) that in the diaspora only the festival day itself is subject to the prohibition of transactions. He writes: “idolaters [there in the diaspora] are not so attached to their idolatry, as we say later in Hullin 13b, ‘Idolaters outside the land of Israel are not worshipers of idols’ etc. And further, we are afraid of them.” In the first part of his comment, Rashi suggests that the non-Jews outside the land of Israel do not fall within the legal category of “idolaters” to whom the prohibitions of our mishnah are addressed; thus Shmuel has every right to declare that the three-day period prior to their festivals carries no prohibition in the diaspora. As support, Rashi cites a talmudic principle (attributed to R. Yoḥanan), as follows:

b. Hull 13b

נכרים שבחוצה לארץ לא עובדי עבודה כוכבין הן
אלא מנהג אבותיהם בידיהן

Non-Jews who are outside the land of Israel are not [true] idolaters;
rather they [simply] retain the customary practices of their ancestors.

In connection with the prohibition of transactions, there is some slight indication that the status of the non-Jew in question held some relevance already in talmudic times. I refer to a story on b. 64b–65a in which transactions are permitted on a non-Jew’s festival day when it is known that that particular non-Jew does not in fact practice genuine idolatry. There is no explicit evidence, however, that this principle is operative in both the Yerushalmi and the Bavli and also in connection specifically with the reduction of the prohibition in the diaspora. For this reason, a second explanation, for which there is clearer evidence, must be considered.

Pragmatic Explanation

The second explanation is the “pragmatic” explanation: The lenient ruling for the diaspora community is a pragmatic measure adopted in response to social and/or economic pressures upon diaspora Jews. Since it is conceivable that different authorities would assess these pressures and the community’s ability to withstand them differently, it is entirely possible that authorities would differ in their view of the *degree*

to which leniency should be extended to the diaspora community. Perhaps then, whereas the Yerushalmi's traditions make concessions in the light of social or economic pressures upon diaspora Jews, the Bavli's traditions yield to these pressures and carry their concessions to an even greater degree. The strength of the pragmatic explanation is that it accounts particularly well for the difference in the *degree* of leniency extended by the Yerushalmi and the Bavli.

What social and economic pressures might lead to a reduction in the period of prohibition of transactions? Socially, it is conceivable that Jewish abstention from various business transactions for extended periods around a non-Jewish festival might give rise to enmity among non-Jews and thereby create a hostile climate and even physical danger for Jews. Economically, it is conceivable that Jewish abstention from business transactions at this time might entail serious financial loss for Jews.

Some scholars focus on the social pressures of diaspora life. Finkelstein lists the legal concessions of Nahum the Mede and Shmuel as being among those "apologetic" changes made in order to improve relations with the pagan population—a kind of self-censorship to avoid giving offense to the non-Jewish community (1972:110). Similarly, although Beer discusses Shmuel's lenient ruling in the context of the close economic relations between Jews and non-Jews in Bavel, he remarks that this ruling was intended to prevent offense through aloofness on the non-Jews' festivals (1974:207–210). By contrast, Alon points to the economic pressures of diaspora life as generating the leniencies of the two Talmuds and states that "during the subsequent centuries, the pressure of economic need was in the direction of easing some of these restrictions" (1989:551).

Rashi balanced the two elements and interpreted Shmuel's great leniency as a concession to both economic and social pressures. He states on b. AZ 11b: "In the diaspora we cannot possibly take upon ourselves to refrain from transacting business with them, for we live among them and our income derives from them. Also, [it is] because of fear." Rashi candidly states that diaspora life is characterized by both economic dependence upon non-Jews and fear of hostility or violence from non-Jews. But is this assertion Rashi's anachronistic projection of the situation of medieval European Jewry, or are there in fact indications within the talmudic texts that such social and economic pressures not only existed in the diaspora to a larger degree than in Palestine, but also informed the articulation of halakhah generally, and this ruling specifically?

There are several places in the sources in which fear of non-Jews, fear of arousing enmity or of giving offense, plays a role in the formulation of halakhic opinions. In tannaitic literature such a fear is not used to justify a relaxation of the prohibitions in m. 1:1. It is found in an entirely different context.

m. Shab 2:5

One who extinguishes the [Sabbath] lamp because he is afraid of non-Jews, robbers, or an evil spirit;
or if it is so that a sick person might sleep;
—he is exempt.

[If he wishes to] spare the candle or spare the oil or spare the wick
—he is liable. . . .

Here we see that a rabbinic ordinance concerning the Sabbath lamp that should not be extinguished is set aside if one has reason to fear non-Jews (i.e., that the non-Jews will detect the presence of the Jew and harm him). Convenience and economy, however, are not strong enough arguments to set aside this ordinance.

More to the point, in the Talmuds we do find the principle of אִיבָה (“[fear of creating] enmity [among non-Jews]”) as a justification for relaxing certain aspects of the prohibition in m. 1:1. B. AZ 6b and p. AZ 1:1 39b contain versions of a story in which R. Judah Nesiah receives a gift from a non-Jew on his festival day. However, only in the Bavli is his reluctance to return it, as is halakhically required, attributed to the fear of generating enmity (אִיבָה). The principle of אִיבָה “[fear of creating] enmity” among non-Jews appears in the Bavli in three further cases. A passage that will be analyzed fully in the next chapter, b. AZ 26a, discusses the prohibition against an Israelite woman’s serving as midwife for non-Jews. R. Joseph would like to permit this under certain conditions for fear of creating enmity otherwise. B. AZ 26a also permits rescuing a non-Jew from a pit, for a wage—again for fear of creating enmity. Finally, b. BM 32b contains a debate over whether or not one is obligated to relieve the suffering of a non-Jew’s animal just as he must relieve the suffering of a Jew’s animal. Some argue that although doing this is not required by the Torah, it is rabbinically ordained for fear of creating enmity.⁴⁶ Thus it seems that the principle of אִיבָה plays an active role explicitly only in the Bavli in relaxing certain prohibitions of interaction and mutual service between Jews and non-Jews.⁴⁷

The legal definition and pragmatic explanations surface in the various traditional commentaries when the reason for leniency in the case of the diaspora is being considered. Further, these explanations play an important role in commentators’ efforts to explain the fact that in the post-talmudic period the prohibitions were generally ignored *even on festival days*. The Tosafot (b. AZ 2a, אֲסוּר לְשִׂאת וּלְהַח עִמֵּיהֶן, ask point blank: “[O]n what basis then does everyone [nowadays] do business with them on their idol’s festival?”) The tosafists consider several possibilities. First, according to the legal definition explanation: It may be that idolaters outside the land of Israel are not considered to be true idolaters in line with the teaching of b. Hullin 13b. This reason is rejected, however, for were it so then Shmuel (and Nahum the Mede) should have declared there to be no prohibition whatsoever, even on the festival day itself. The pragmatic explanation is then considered: perhaps transactions are [nowadays] permitted because of the fear of creating enmity. This explanation too is rejected, for by means of a reasonable excuse it is possible to extricate oneself from many of the transactions enumerated in the mishnah without generating suspicion or enmity. The Tosafot then return to a modified version of the legal definition explanation. Permission to transact with non-Jews in medieval Europe is attributed to the fact that the non-Jews there are not considered to worship idolatry. The Tosafot argue that the sources already indicate that transactions are permitted with a non-Jew on a festival day when it is known that that particular non-Jew does not practice idolatry (b. AZ 64b–65a).

In their discussion, the Tosafot shift their focus from accounting for Shmuel’s leniency, which is best explained on pragmatic grounds, to accounting for their own even greater leniency, which is best explained in terms of legal definition. Other

commentators are also careful to note that the reason for the initial leniency of the Talmuds and the reason for the post-talmudic demise of all prohibition in the diaspora are not necessarily identical. The summary provided by *Sefer ha-Zikkaron* (1964:394–395) expresses it best: “In the diaspora where we dwell among them and derive our income from them only the festival day itself is prohibited . . . but nowadays all [of these transactions] are permitted because we hold that they are not strongly attached to idolaters.”⁴⁸ In other words, the leniency extended in the talmudic period was essentially a response to the economic pressures of diaspora life. The post-talmudic abolition of the prohibitions, even on the festival day itself, reflects a later evaluation of contemporary non-Jews as not falling within the legal category of “idolaters.”⁴⁹

The discussion in the *Tosafot* is important for us, because it demonstrates that when a legal definition approach is adopted (here on a communal rather than individual level), a natural conclusion is to do away with the prohibitions altogether. Yet the *Yerushalmi* and *Bavli* both retain a prohibition, differing only in the degree of that prohibition.⁵⁰

The first mishnah of *Avodah Zarah* prohibits transactions with pagans for a three-day period prior to their festivals lest an Israelite contribute either materially or motivationally to idolatrous worship. This halakhah is addressed to a pagan context and encompasses certain major Greco-Roman holidays of the first century C.E. Already in the *Tosefta* a concession is granted in the diaspora: The number of prior days for which the prohibitions are in force is reduced from three to one. The *Yerushalmi* adopts this halakhah. In the *Bavli*, however, the diaspora concession is extended even further. First the prohibition is said to apply only on the festival day itself (Shmuel), and later it is said to apply not at all to irregular festival days (the *stam*, after consideration of the rulings of Rav Judah). In addition, it may be that a stringent minority interpretation of *m. AZ 1:1* is reduced to absurdity in the *Bavli*, in violation of the common practice of seeking rationales for even rejected and minority views.⁵¹

The primary explanation for the erosion of the prohibition of pre-festival transactions in the diaspora reflected in the *Bavli* and continuing through the post-talmudic period appears to be the pragmatic explanation. Because of certain socioeconomic pressures, Jews in the diaspora found it difficult to maintain the level of commercial distance demanded by these prohibitions. The *Yerushalmi* expects diaspora Jews to observe a certain level of pre-festival prohibition, the *Bavli* even less, and by the time of the medieval commentators it seems that no prohibition is in force at all. It would appear then that the difference in the degree of prohibition required by the *Yerushalmi* and the *Bavli* owes something to chronology. However, we must remember that the *Bavli*'s greater leniency is conveyed by extremely early tradents (Shmuel and Rav Judah) many of whose teachings on other matters have been included in the *Yerushalmi*. It is not impossible that the *Yerushalmi*'s editors chose consciously not to include the more lenient rulings developed by Babylonian authorities. This suggestion, however, suffers the weakness of an argument from silence. It remains no more than speculation.

The erosion of these prohibitions in Babylonia is in keeping with the portrait commonly painted by historians—a portrait of the Babylonian Jewish community accommodating itself to its surrounding culture to a greater degree than the Pales-

tinian Jewish community (see Neusner 1966–70:vol. 2, 68–72). As for ascertaining the degree to which these prohibitions were observed by the general Jewish populace in the diaspora, our sources simply do not permit us to draw conclusions with confidence (see Blidstein 1968:162).

In his discussion of the Babylonian sources, Neusner uses talmudic law as a negative indicator of the behavior of the masses. He writes, “[T]he great emphasis on laws calculated to separate the Jews from the Gentiles suggests that the masses of the people actually lived in close touch with their pagan neighbors, and required frequent admonitions from the rabbis to keep separate from them” (1966–70:vol. 2, 91). This statement is symptomatic of what can be called a cultural opposition theory of law: the theory that laws are the ideal articulations of an elite class of persons in direct response to contrary behavior by the masses. The more a rabbinic text—the product of an educated elite—stresses a particular law or prohibition, the more certain it is that that law or prohibition was being violated on the popular level. Similarly, infrequent mention of a law indicates that it was not generally violated by the masses.

The cultural opposition theory of law is unsatisfactory, as unsatisfactory as the inverse notion that laws directly mirror the behavior and actions of a society (i.e., if a society has a law against murder, there is no murder in that society). Just as we should question the supposition that people did precisely as the rabbis told them to with the result that rabbinic texts are a perfect mirror of society, so we should question the assumption of a kind of mathematically inverse relationship between the so-called elite and popular cultures.⁵²

In our case this model would make little sense, for we would have to assume the following: first, the restrictive laws of the first two centuries of the common era indicate a high rate of commercial interaction between Jews and non-Jews on festival days; second, the stricter prohibitions in Palestine indicate a higher rate of commercial interaction there than in the diaspora; third, the Bavli’s erosion of the prohibitions indicates decreased commercial interaction; and finally, the post-talmudic abolition of any prohibition indicates that the problem of interaction was finally overcome and that Jews generally did not do business with non-Jews on their festival days. But this portrait runs counter to both logic and the evidence (the medieval period is precisely the time of greatest commercial interaction between Jews and non-Jews).

We have uncovered ample evidence to support the claim that the relaxation of the prohibitions against transactions with non-Jews corresponded to pragmatic concerns about the feasibility of upholding the prohibitions in the diaspora. If a reconsideration of the legal definition of an idolater played a role in the promulgation of a different halakhic standard for the diaspora, it was most likely a rather limited role. The erosion of the law prohibiting transactions indicates that the halakhah of the rabbis was not the articulation of an ideal by an elite out of step with the life of “the ordinary Jew,” but rather a set of guidelines cognizant of shifting circumstances and reflecting genuine needs of the general Jewish community. In addition, it appears that in their articulation of a more lenient halakhah, the Babylonians relied upon halakhic principles (משום איבה, “the fear of generating enmity”; see also notes 46 and 47) that were already operative in earlier sources.⁵³

The Israelite Midwife

The following case contains evidence of a conscious emendation of the Palestinian law of the Mishnah, an emendation that appears to have been endorsed by R. Joseph, a second-century Babylonian amora. The Yerushalmi contains no such emendation. An interpretive irregularity in the Bavli signals the susceptibility of the sugya to cultural-historical analysis. As in the previous example, the gemara provides an explicit cultural-historical explanation for halakhic difference which must be critically assessed. In this case, however, the reason provided by the gemara is shown to have merit. Reading the halakhic sources in conjunction with a central aggadic text confirms the explanation provided by R. Joseph and reveals that the Bavli's emendation addressed a cultural issue alive in various Jewish circles in late antique Palestine and Babylonia. This finding also illustrates the importance for the cultural historian of the talmudic period of examining texts of various genres.

The Sources

The Mishnah contains the following prohibition:

M. AZ 2:1

בת ישראל לא תיילד את הנוכרית
אבל נוכרית מיילדת את בת ישראל

An Israelite woman may not serve as midwife for a non-Jewish woman, but a non-Jewish woman may serve as midwife for an Israelite woman.

This mishnah records an assymetrical law. Israelite women may not serve as midwives to non-Jewish women, but the latter may serve as midwives to the former. No Palestinian source modifies the prohibition against Israelite midwives for foreign women. A reason for the prohibition is provided in *beraitot* contained in the Tosefta

and the Yerushalmi. In addition, these texts modify the second clause, which permits non-Jewish women to serve as midwives for Israelite women, in the direction of strictness.

t. AZ 3:3

בת ישראל לא תילד את הנכרית מפני שמילדת בן לעזר'
ונכרית לא תילד את בת ישראל מפני שחשודין על הנפשות
דברי ר' מאיר
וחכמי אומ' נכרית מיילדת את בת ישראל'
בזמן שאחרים עומדין על גבה
בינו לבינה אסור מפני שחשודין על הנפשות

1. An Israelite woman may not serve as midwife to a non-Jewish woman because she gives birth to a child for idolatry; and a non-Jewish woman may not serve as a midwife for an Israelite woman because they are suspected of bloodshed
—the view of R. Meir.
2. But the sages say: a non-Jewish woman may serve as midwife for an Israelite woman when others are standing nearby her but if they are alone it is prohibited because she is suspected of bloodshed.

This beraita retains intact the first clause of the prohibition against Israelite midwives for non-Jewish women and adds a reason for the prohibition: the desire not to bring into the world children for idolatry. The second clause is subject to a dispute. R. Meir would prohibit even the use of non-Jewish midwives by Israelite women, because of the suspicion that the former will seek to kill the child (perhaps also the mother?). The sages, however, remark that with proper supervision non-Jewish midwives may be employed. On either view—that of R. Meir or that of the sages—the beraita makes the second clause of the mishnah stricter. Whereas the mishnah permitted non-Jewish midwives, R. Meir prohibits their use entirely and the sages permit it under supervision only. The next paragraph of the Tosefta details two things that a non-Jewish midwife should not be permitted to do under any circumstances: cut the fetus out of the womb of an Israelite woman and give her a sterilizing agent to drink.

The Yerushalmi follows the trend seen in the Toseftan passages, retaining the first prohibition intact and qualifying the permission of non-Jewish midwives.

p. AZ 2:1, 40c

בת ישראל לא תילד את הנכרית מפני שמעמדת בן לעזר'
אבל נכרית מיילדת בת ישראל'
ותני כן מיילדת מבחוזין אבל לא מבפנים
לא תכניס ידה לפנים שלא תמיק את העובר במיעיה
ולא תשקינה כוס של עיקרין

1. An Israelite woman may not serve as midwife for a non-Jewish woman because she raises a child for idolatry, but a non-Jewish woman may serve as midwife for an Israelite woman.

2. And it is taught likewise: she may serve as midwife externally but not internally. She may not insert her hand within lest she crush the fetus in the womb. And she may not give her a sterilizing agent to drink.

Like the Tosefta, the Yerushalmi retains the first clause prohibiting Israelite midwives for foreign women and adds a reason similar to that given by the Tosefta. The Yerushalmi also retains the second clause of the mishnah but follows it with a list of restrictions on the use of non-Jewish midwives. Thus in the Palestinian sources (Tosefta and Yerushalmi) there is no relaxation of the prohibition against Israelite midwives for non-Jews, and in addition, restrictions are placed on the Mishnah's unqualified permitting of non-Jewish midwives for Israelite women.

The Bavli moves in quite a different direction, permitting what no Palestinian source permits: the use of Israelite midwives by foreign women *in certain circumstances*.

b. AZ 26a

ה"ר בת ישראל לא תיילד את עובדת כוכבים
 מפני שמילדת בן לעובדת כוכבים
 ועובדת כוכבים לא תיילד את בת ישראל
 מפני שחשודין על שפיכות דמים דברי רבי מאיר
 וחכמים אומרים עובדת כוכבים מילדת את בת ישראל
 בזמן שאחרות עומדות על גבה אבל לא בינה לבינה . . .
 ורמינהו
 יהודית מילדת עובדת כוכבים בשכר אבל לא בחנם
 אמר רב יוסף בשכר שרי משום איבה
 סבר רב יוסף למימר
 אולודי עובדת כוכבים בשבתא בשכר¹ שרי משום איבה
 א"ל אבבי יכלה למימר לה
 דידן דמינטרי שבתא מחללינן עליהו
 דידכו דלא מינטרי שבתא לא מחללינן

1. Our rabbis taught:
 An Israelite woman may not serve as midwife to an idolatress because she would be giving birth to a child for idolatry;
 and an idolatress may not serve as midwife to an Israelite woman because she is suspected of bloodshed
 —the view of R. Meir.
2. But the sages say: an idolatress may serve as a midwife for an Israelite woman as long as others are standing by her side but not if they are alone. . . .
3. They raised a [beraita in] contradiction:
 A Jewess may serve as midwife to an idolatress for a wage but not for free.
4. R. Joseph said: for a wage it is permitted because of [the fear of causing] enmity.
5. R. Joseph wanted to say: serving as a midwife for an idolatress on the Sabbath for a wage² is permitted because of [the fear of causing] enmity.
6. Abaye said to him: She could always say to her [as an excuse], "For our own people who observe the Sabbath we may desecrate the Sabbath, but for you who do not observe the Sabbath, we may not desecrate the Sabbath."

The first part of the sugya mirrors the Palestinian sources, prohibiting Israelite midwives for foreign women and supplying a reason.³ The second clause, concerning non-Jewish midwives, is subject to the same dispute recorded in the Tosefta between R. Meir and the sages. So far the Bavli is following a well-worn path.

In the continuation of the sugya, however, the anonymous voice of the Talmud raises a contradictory beraita that states that an Israelite woman may in fact serve as a midwife for a non-Jewish woman if she receives a wage for so doing. Here the Bavli breaks new ground. Permitting Israelite midwives to serve non-Jewish women for a wage is unparalleled in any Palestinian text. Although the contradictory teaching is introduced with a term commonly used to introduce beraitot, there is no comparable teaching in the tannaitic sources. Indeed, the teaching runs counter to the general trend of the Palestinian sources toward strictness in the laws of midwifery. Therefore, despite the introductory terminology, it cannot be ruled out that this teaching is not in fact a genuine beraita—and this is our first aberration. It may be a teaching formulated in Babylonia in order to advance an alternative halakhah.⁴

The suspicion that this teaching is not a genuine beraita but rather a later teaching introduced with the clear purpose of shifting the halakhah in a new direction is supported by the slightly odd way in which this teaching is handled—something already noticed by most of the medieval commentators, who ask why the Bavli does not simply make some form of an *oqimta* instead of overruling the mishnah. A strategy commonly employed in the resolution of a conflict between a mishnah and a beraita is the *oqimta* strategy, which demonstrates that the ruling of the mishnah applies to a certain set of cases while the apparently contradictory ruling of the beraita is in fact not contradictory because it applies to an entirely different set of circumstances.

The mishnah and beraita here seem perfectly suited for precisely this kind of harmonization. After all, the alleged beraita states explicitly that it permits Israelite midwives so long as they serve *for a wage*. A logical solution to the apparent contradiction is therefore intimated in the language of the beraita itself: The mishnah's prohibition applies to cases where the woman does not receive a wage, while the beraita's permission applies to cases where the woman does receive a wage (as the beraita explicitly indicates).

However, this logical strategy is not employed here—a second exegetical aberration of note. Instead, R. Joseph simply comments on the beraita, providing a sociocultural justification for it. Further, he is then said to consider an additional leniency (Israelite midwives may serve non-Jewish women on Shabbat for a wage) for the same reason, indicating that R. Joseph is in sympathy with the beraita. In other words, R. Joseph does not serve as a mere glossator, explaining the reason of the beraita without also endorsing its ruling. The continuation of the sugya strongly suggests that he does in fact endorse the beraita, upholding it against the teaching of the mishnah.⁵ The net effect of the sugya is that the Bavli upholds a beraita that overrules the blanket prohibition of the mishnah.⁶

The Bavli's treatment of this beraita contrasts sharply with the sort of exegetical practice generally employed in the gemara. In chapter 4 I explored the Bavli's tendency to analyze a mishnah by rehabilitating marginalized traditions (beraitot) and placing them into a dialectical relationship with the mishnah under discussion. In general, a contradictory beraita is cited and then cleverly reconciled with the

mishnah in some way. Such sugyot are part of a practice of interpretation in which the challenge is to fit together into a larger whole the varied pieces of tradition — the marginal and the central. The fact that a dialectical exchange and reconciliation are not employed here suggests that the contradictory teaching is introduced not as part of a dialectical exercise, but simply in order to replace the mishnah with a preferred teaching. In short, the slightly unusual treatment of this teaching, combined with its lack of attestation in earlier or contemporary Palestinian sources and R. Joseph's own admission of a sociocultural motivation, lends credence to the claim that this sugya is motivated by a conscious ideological effort to modify the law concerning Israelite midwifery for non-Jews.⁷

The Bavli's justification for displacing the prohibition of the mishnah with the partial permission of the beraita is the fear of generating enmity. But what is the historical value of this justification? How can we be sure that the reason provided by the Bavli actually motivated this halakhic development? Surely it is possible that the reason offered was invented by R. Joseph or by a redactor who pseudepigraphically assigned it to R. Joseph. In short, do we have here evidence of real anxiety among Babylonian amoraim about laws that might engender ill will among Gentiles, or do we have evidence of a rabbinic desire to portray themselves as anxious about such laws? In the next section I will argue on the basis of intratextual evidence that the Bavli's sugya evinces a genuine anxiety among Babylonian amoraim over the potentially offensive nature of an inequitable law.

Intratextual Verification

In the Introduction I claimed that the lack of external verification for cultural-historical explanations of halakhic developments can be mitigated by the use of intratextual evidence. Some measure of reliability is attained when a particular tradition is connected with other texts of various genres that address a common theme. By associating a halakhic tradition with other halakhic, aggadic, or midrashic traditions, it may be possible to identify the historical or cultural stimuli to which these many and varied texts at once respond and bear witness. Aggadic and halakhic texts that address similar themes are often parallel attempts to work out the same cultural, political, social, ideological, or religious problem and thus provide some mutual, or intratextual, verification. While pseudepigraphic or fictitious consistency may be possible within one text, it is most unlikely across texts from diverse periods and localities. Thus the very fact that a particular problem finds consistent expression in texts of various genres and diverse provenance suggests that the problem is genuine and not fictitious.

In line with the justification provided by R. Joseph, we can hypothesize that the modification of the law of midwifery by the Babylonians was due to the perceived need to avoid engendering hostility among their Gentile neighbors. Support for this hypothesis and for the genuineness of R. Joseph's sentiments is found in an aggadic passage — versions of which occur in several sources — which testifies to Jewish sensitivity to the fact that the asymmetrical law concerning midwifery is among a handful of halakhot that might cause offense to non-Jews. I cite the passage as it appears in the Palestinian Talmud, in the context of a discussion of the laws of the goring ox.

p. BQ 4:3, 4b⁸

מעשה ששלחה מלכות הרשעה שני אסטרטגיטות? ללמוד
 תורה מרבן גמליאל ולמדו ממנו מקרא ומשנה תלמוד ואגדה
 ולבסוף אמרו לו כל תורה שלכם נאה ומשובחת היא חוץ
 משני דברים הלילו שאתם או'
 בת ישראל לא תילד את הנכרית
 אבל נכרית מילדת את בת ישראל¹⁰
 בת ישראל לא תניק בנה של נכרית
 אבל נכרית מניקה בנה של בת ישראל
 גזילו של ישראל אסור
 וגזילו של גוי מותר
 כאותו השעה גזר רבן גמליאל על גזילו של גוי שיהא אסור
 מפני חלול השם
 שור של ישראל שנגח לשור של נכרי פטור
 ושל נכרי נגח לשור של ישראל בן חם מועד
 משלם נזק שלם¹¹
 בדברים הלילי¹² אין אנו מודיעין למלכות
 אפי' כן לא משון לסולמיה דצור עד דשכחון כולה

It once happened that the wicked [Roman] government dispatched two officers to learn Torah from Rabban Gamliel. They learned from him Scripture, Mishnah, Talmud, and Aggadah. At the end, they said to him, "Your entire Torah is pleasant and praiseworthy except for these inequitable rulings¹³ which you say:

An Israelite woman may not serve as midwife for a non-Jewish woman
 but a non-Jewish woman may serve as midwife for an Israelite woman;

An Israelite woman may not suckle the child of a non-Jewish woman
 but a non-Jewish woman may suckle the child of an Israelite woman in her
 premises;

The stolen property of an Israelite is prohibited but the stolen property of a
 non-Jew is permitted. . . ."

—At that very moment, Rabban Gamliel decreed that the stolen property of
 a non-Jew should be prohibited for fear of desecration of God's name—¹⁴

“ . . . The ox of an Israelite which gored the ox of a non-Jew, [the owner] is
 not culpable
 but that of a non-Jew which gored the ox of an Israelite, whether a first-time
 gorer or a known gorer, [the owner] pays full damages.

These things we will not report to the government.”

Even so, they did not reach the Ladder of Tyre before forgetting everything.

The sugya in which this story appears opens with various attempts to explain or justify the unequal treatment of Jews and non-Jews in the laws of the goring ox. Despite these efforts, a sense of the basic unfairness of this law remains and is articulated in this brilliant story, in which two government officers find the entire Jewish tradition

deserving of praise except for four halakhic rulings. They object to these four rulings because of their discrimination against the non-Jew, or application to the non-Jew of a different legal standard. Among these is our mishnah, which prohibits Israelite midwives for non-Jews but permits non-Jewish midwives for Israelites.

In the parallel versions of this story that appear in *Sifre Devarim* 344¹⁵ and in b. BQ 38a, the allegedly offensive laws are differently identified. In the *Sifre*, the officers are spies charged with discovering the nature of Israel's Torah. At the completion of their studies they find but one objectionable law—that concerning stolen property—which they declare they will not report to the government. In the Bavli's version of the story, the officers complain also of only one objectionable law, but it is the goring ox law. These variants suggest that there was a basic tradition concerning laws perceived to be potentially offensive to Gentiles but that the number and identity of these laws were subject to variation. Following is a synopsis of the traditions contained in these three versions of the story:

<i>Sifre Dt</i> 344	<i>p. BQ</i> 4:3, 4b	<i>b. BQ</i> 38a
1 objectionable law:	3–4* objectionable laws:	1 objectionable law:
	Midwife/Wetnurse	
Stolen property (promise not to report it)	Stolen property (retracted)	
	Goring ox (forgotten)	Goring ox (promise not to report it/forgotten)

*It is unclear whether the midwifery and wetnurse clauses of m. AZ 2:1 should be counted as two (because they are distinct cases of inequity) or as one (because they comprise one halakhic unit).

I submit that the differences between these three versions of the story are not accidental and I would suggest the following reconstruction of this tradition's modification in each source. There is reason to believe, as I will soon explain, that discomfort over the stolen property law was quite ancient and that the earliest version of this story is that of the *Sifre*, which lists only one objectionable law—that concerning stolen property.¹⁶ The Yerushalmi includes this law among those capable of giving offense to non-Jews but further records its retraction (attributed to Rabban Gamliel) because it would lead to a profanation of God's name. This retraction finds confirmation in t. BQ 10:15, which states in opposition to the view that the stolen property of a Gentile is permitted: "One who steals from a Gentile must return [what he stole] to the Gentile. The stealing from a Gentile is worse than the stealing from an Israelite, and if he has denied by oath [the theft] and then dies, [his inheritors] must return it [to the Gentile] because of profanation of the divine name" (see Fraade 1991:217 n. 148; see also *Sifra Behar* 9:2–3, which forbids the stolen property of a Gentile). Further, Schiffman discusses a parallel in the Damascus Document 12:7–8, which contains a prohibition against robbing Gentiles lest the latter blaspheme (בעבור אשר לא יגדפו, which is equivalent to profanation of God's name) (1983b:382–384). Finally, Josephus (*Life* 128) also refers to a law against robbing "even our enemies."¹⁷ The Josephan and Damascus Document parallels would indicate that Jew-

ish discomfort over this law dates at least to the early tannaitic period and lend credence to the claim that its retraction is also tannaitic. The verifiable antiquity of concern over the stolen property law thus supports the hypothesis that the Roman officer tradition originally involved the stolen property law.

The Yerushalmi's version of the tradition is expanded to include the equally inequitable traditions found in m. AZ 2:1 and m. BQ 4:3.¹⁸ The inclusion of the law of the goring ox adapts the tradition to its present context in Bava Qamma—a discussion of the law of the goring ox. In accommodating the story to this context, the Yerushalmi establishes a connection between the older aggadic tradition of Gentile objection to Jewish laws and the law of the goring ox. The connection “traveled” to Babylonia and is replicated in the Bavli: The story appears there in tractate BQ in the discussion of the law of the goring ox. However, in the Bavli the story is subject to further modification—or rather, editing—since the *only* objectionable law listed in the Bavli's version is the goring ox law.

It is tempting to interpret the omission of the other laws (m. AZ 2:1 and the stolen property law) as a consequence of their retraction. We have seen explicit evidence of the retraction of the stolen property law. As for m. AZ 2:1, is it possible that after the modification of the midwifery portion of this law in Babylonia it too was no longer included among those laws that might cause offense to non-Jews? Is it possible that the Bavli's version of our story reflects the fact that in amoraic Babylonia only the goring ox law remained unmodified and potentially offensive?

Granted, this reconstruction does presuppose that the Bavli's version “consciously” omits the midwifery case, when in fact the Bavli may choose to focus on the goring ox law for stylistic reasons or simply because that is the law being discussed by the gemara at this point.¹⁹ While the issue cannot be definitively determined, the possibility is no less intriguing.²⁰ In any event, the larger point remains: There is intratextual evidence of Jewish sensitivity to the possibility that certain laws may engender ill will among Gentiles, including a specific reference to the mishnaic law of midwifery.

The fact that this intratextual evidence derives from texts of Palestinian origin requires some discussion. Earlier I suggested that the beraita cited on b. AZ 26a is not a genuine beraita given its lack of attestation in Palestinian sources and the trend of the Tosefta and Yerushalmi to stiffen rather than relax the terms of the midwifery laws. However, we have now identified in Palestinian sources evidence of Jewish anxiety over the potentially offensive nature of the midwifery law. It might be argued that the beraita on b. AZ 26a is genuine after all, a tannaitic teaching that arose in response to the anxiety evidenced by the aggadic traditions of the *Sifre* and the Yerushalmi examined above, and that was preserved only in the Bavli.

It is certainly possible that the beraita is genuine, but this possibility does not substantially affect the argument I have made. It remains the case that the beraita is treated in a slightly unusual manner in the Bavli and it is this fact, plus the nature of the rationalization offered by R. Joseph, that led us to suspect a conscious effort to modify the law, and to investigate the reasons for this modification. Further, the existence of the more lenient halakhic view in Palestine (if we grant for a moment that the beraita is authentic) does not mean that there is no halakhic difference here. That the beraita may have existed in Palestine or, indeed, that a lenient position may

have been the actual halakhah in both centers is not germane to the present discussion. For the goal of this chapter (indeed, the goal of this book) is to identify and account for the genesis of halakhic difference between the two *Talmuds*, not between the two Jewish communities. Regardless of the possibility that the lenient view was known in both Palestine and Babylonia, there is certainly a halakhic difference between the Talmuds in their respective discussions of this issue. The Yerushalmi simply does not cite the lenient position and in fact stiffens related rulings, while the Bavli not only cites but fully adopts the lenient position. In short, that the Bavli draws on a tradition that may have originated in Palestine is beside the point; that the Yerushalmi excludes this “Palestinian” tradition while the Bavli includes it is the point, and requires explanation. Thus my argument would not be undermined were we to assume the Palestinian origin of the tradition relied upon by the Bavli, but my guiding question would be rephrased. Instead of asking why the Bavli *creates* and endorses a lenient halakhic treatment not paralleled in Palestinian halakhic sources, I must ask: Why does the Bavli *resurrect* and endorse a lenient tradition originating in Palestine but excluded from all Palestinian halakhic sources? Does it do so simply because of the dialectical treatment of tradition discussed in part II (i.e., is it due to internal factors) or are there external historical considerations?

It would seem that in this case (unlike similar cases discussed in part II) the most likely explanation for the Bavli’s more lenient position is external and not internal. The Babylonian amoraim chose to act upon the anxiety for which evidence has been found in both Palestine and Babylonia. That this anxiety is found in both centers does not weaken the conclusion here, but strengthens it: It is clear that this anxiety was a feature of Jewish culture in late antiquity that endured for centuries and was geographically widespread. It is not surprising, therefore, that at some point an effort to modify the midwifery law would be broadly endorsed. This case demonstrates that using halakhic difference between the Talmuds as a tool for cultural-historical reconstruction can uncover not only differences between the two rabbinic cultures but also commonalities and continuities.

Whereas Palestinian sources from the Mishnah to the Yerushalmi show no indication of relaxing the absolute prohibition against Israelite women serving as midwives for non-Jewish women, the Bavli overrules the Mishnah and upholds a beraita — one not attested in Palestinian sources — that permits Israelite midwifery for a wage. The reason cited is the fear of generating enmity by refusing services even though a wage is involved. That this justification for the Bavli’s relaxation of the prohibition is genuine (even if the beraita employed is not) is born out by a prevailing aggadic tradition found in both Palestinian and Babylonian sources. The halakhic sugya of the Bavli and the aggadic tradition attest jointly to an uneasiness among Jews (Palestinian and Babylonian) regarding inequitable rulings and their potential for offending non-Jews. But it is only R. Joseph, a Babylonian amora, who halakhically redresses the inequitable midwifery law featured in this internal cultural critique. Following the logic employed in the case examined in the previous chapter, one might conclude that halakhic leniency in Babylonia regarding the tannaitic midwifery prohibition is most probably a result of pragmatic concerns about the feasibility of upholding the prohibition in the diaspora.

The midwifery law is an excellent illustration of both the possibilities and the limitations of cultural-historical reconstruction from rabbinic texts—of what rabbinic texts do and do not tell us. These texts *do* tell us a great deal about the tensions and issues alive in Jewish culture from the point of view of the rabbis—the rabbis' sensitivity to non-Jewish perceptions of the halakhah, their capacity for self-criticism, and their willingness to effect halakhic change in response to real or perceived hostility from non-Jews. What we do not learn from these sources is anything about actual non-Jewish attitudes to the midwifery legislation. Were non-Jewish women up-in-arms over the discriminatory practices of Jewish midwives? Were non-Jews really concerned about or even interested in the halakhic inequity that troubled R. Joseph? Any attempt to read the texts as providing answers to these questions about non-Jewish society and attitudes is doomed to failure. We meet with success when we limit our questions to those areas about which our texts do indeed testify: in this case, *rabbinic* perceptions of, representations of, and responses to non-Jewish attitudes—rich and important cultural data in their own right.

The Private Feasts of a Gentile

The example in this chapter concerns prohibitions regarding the private feasts of idolaters. The Bavli and the Yerushalmi diverge on two questions, one economic and one social, regarding the private feast day of an individual non-Jew. The economic question is: Does the prohibition of commercial transactions listed in *m. AZ* 1:1 apply to days on which an idolater holds a private feast [for his son]?¹ The social question is: Are Jews permitted to attend or participate in the private feast days of idolaters? In the discussion of both questions, an exegetical irregularity in the Babylonian gemara may signal a cultural difference between the Babylonians and Palestinians in regard to the issue of interaction with non-Jews. In other words, the Babylonian amoraim violate their own norms of interpretation, suggesting that an extratextual agenda or reality has disturbed their usual reading practices.

In regard to the economic question, the Babylonians read dissension as consensus and as a result adopt the stricter of two Palestinian standards (essentially obviating the more lenient view altogether). In regard to the social question, the Bavli utilizes an aggadic tradition to establish a halakhic standard (although in Palestinian sources this step is not made), allowing the development of a set of remarkably stringent halakhot unprecedented in the Palestinian sources. Indeed, the Yerushalmi is altogether silent on the issue. I will argue that scholars have not fully appreciated the significance of this remarkable stringency, or the nature of the text that serves as its foundation. The failure of scholars to assess properly the Bavli's exegetical move and the resulting halakhot may be due to the fact that the halakhot forbidding Jewish participation in the private feasts of non-Jews do not conform to the widely held theory that prohibitions on Jewish–Gentile relations were relaxed in the diaspora. I will argue on the basis of the sources examined here that this theory is valid only for economic interaction on the communal level but not for social (and some economic) interaction on the individual level.

Here, as elsewhere, my goal is not to identify and explain differences in the actual halakhah practiced in Palestine and Babylonia, but to identify and explain a halakhic difference between the Bavli and the Yerushalmi in their discussion of a particular halakhic issue. Thus the fact that the stringent view in the Bavli regarding

economic interaction is also one of two views found in the Yerushalmi does not undermine my claim of halakhic difference *between the Talmuds* (whatever it may mean for differences in the actual halakhic practice of the two Jewish communities). On the contrary it *generates* my inquiry: I want to know why the Yerushalmi contains both a lenient and a stringent view while the Bavli obviates the lenient view altogether so as to create a stringent consensus.

Economic Interaction on Private Feast Days: The Sources

There is evidence that the Bavli not only opted for a stricter position on the question of economic interaction on a non-Jew's private feast day, but interpreted away the dissenting view preserved in Palestinian sources. First, the Babylonian and Palestinian branches of the text of the Mishnah preserve different versions of the mishnah at AZ 1:3. The version found in the Palestinian branch is as follows:

m. AZ 1:3

Palestinian version:

יום תגלחת זקנו ובלוריתו
 ויום שעלה בו מן הים ויום שיצא בו מבית האסורים
 אינו אסור אלא אותו היום ואותו האיש

The day of shaving his beard and forelock,
 the day on which he returns from the sea or comes out of prison,
 the day itself and the person himself are prohibited.

This version, which appears in Kaufmann, Parma, Lowe, the Leiden manuscript of the Yerushalmi, Rambam's version of the Mishnah, and several Geniza fragments (see Rosenthal 1980:58), reads more smoothly than the version found in the Babylonian branch of the Mishnah:

Babylonian version:

יום תיגלחת זקנו ובלוריתו
 ויום שעלה בו מן הים ויום שיצא בו מבית האסורים
 וגוי שעשה משחה לבנו
 אינו אסור אלא אותו היום ואותו האיש בלבד

The day of shaving his beard and forelock,
 the day on which he returns from the sea or comes out of prison,
 —a non-Jew who holds a feast for his son—
 only the day itself and the person himself are prohibited.

This version appears in the Munich, Paris, and JTS manuscripts, as well as the early printed editions and one geniza fragment (Rosenthal 1980:58).²

The omission of the phrase וגוי שעשה משחה לבנו ("a non-Jew who holds a feast for his son") from the entire Palestinian branch of the Mishnah manuscripts, and its

jarring interruption of the mishnah's style in the Babylonian branch, indicate that it is not original to the text of the mishnah but was added to the Babylonian version at some point in the text's transmission history. It was apparently taken from a beraita that appears in the Bavli on 14a (see Rosenthal 1980:58–59). Although this insertion dates to the post-talmudic period, it is nevertheless significant for the following reason. The Bavli's view that the prohibition of commercial transactions extends even to private feast days is, as we shall see, so clear and univocal that a later generation saw no obstacle to including the private feast day among the days listed in the Bavli's text of m. AZ 1:3.

Yet the inclusion of the private feast day among those days on which the prohibition of certain transactions applies is a controverted issue in the Palestinian sources. Dueling beraitot on the issue appear in the Tosefta.

t. AZ 1:4

... הרי כרבים
יחיד אפילו יום המשתה שלו ויום שנעשה בו שלמון
ר' מאיר או' אף יום שעמד בו מחליו אסור

... These [the Kalends, Saturnalia, Kratesis and Genesia] are the public [communal] festival days.

As for an individual: even his feast day and the day he ascends to authority
—R. Meir says even the day he recovers from illness—are prohibited.

t. AZ 1:21

אמ' ר' יהודה במה דברים אמורים
בזמן שא' לי מכור לי חרנגול סתם
אבל אם פירש לו מפני שהוא חולה או למשתה בנו
הרי זה מותר

R. Judah said: to what does this refer [the prohibition of sale of a white cock to a non-Jew]?

When he says to him “sell me a cock” with no further specification;
but if he specifies to him that it is because he is ill or it is for a feast for his son, then it is permitted.

The first beraita numbers the private feast day of an individual non-Jew among those days on which the prohibition of commercial transactions applies, while the second beraita presents the view of R. Judah to the effect that the sale of a white cock to a non-Jew is permitted precisely when a wedding feast is planned. (The Bavli's treatment of these conflicting traditions will be considered below.)

Additional evidence of the disputed status of the private feast day in the Palestinian sources is found in the Yerushalmi's discussion of this question.

p. AZ 1:3, 39c

נירדאי שאלון לרבי אמי יום משתה של נגים מהו
וסבר מישרי לון מן הדא מפני דרכי שלום

אמר ליה רבי בא והתני רבי חייה יום משתה של גוים אסור
 אמר רבי אממי אילולא ר' בא
 היה לנו להתיר עבודה זרה שלהן
 וברוך המקום שריחקנו מהם

The Girdaites [probably Gedarites] asked R. Ammi: the feast day of non-Jews, what is the law [concerning it]?

He was inclined to permit it to them because of this principle of “in the interests of peace.”

R. Ba said to him, “and didn’t R. Ḥiyya teach: the feast day of non-Jews is prohibited?”

R. Ammi said, “Were it not for R. Ba we would have permitted their idolatry! Blessed be God who has kept us distant from them!”

The sugya indicates a certain confusion about the status of a *יום משתה*, or “feast day,” held by an individual non-Jew.³ R. Ammi, a third-generation Palestinian, is asked about the status of the *יום משתה*. This amora considers ruling that transactions are permitted on the private feast day, in the interests of peaceful relations with non-Jews. It is important to realize that the very fact that a question is asked and that R. Ammi considers the alternatives suggests that there is no clearly fixed tradition on the matter at the time. In other words, this authority is represented as knowing of no clearly stated prohibition of transactions on the private feast day of a non-Jew. (Certainly, the absence of such a clause in the Palestinian version of the mishnah at 1:3 and the presence of conflicting tannaitic teachings in the Tosefta would support that conclusion.)

According to the sugya, R. Ba (= R. Abba, a contemporary of R. Ammi)⁴ conveys to R. Ammi a teaching by the late tanna R. Ḥiyya in which it is stated that the [private] feast day of a non-Jew is prohibited. R. Ammi is said to respond by expressing gratitude for R. Ba’s information, which saved him from a grievous error. Thus, while the Palestinian sources preserve conflicting traditions on the question of economic interaction on a non-Jew’s private feast day, the Yerushalmi relates a story in which the prohibition of such interaction is adopted.⁵

The Bavli, by contrast, is consistently stringent on this issue, giving rise to a formal halakhic difference between the Talmuds.⁶ Evidence of Babylonian stringency appears in the striking manner in which dueling beraitot on the question (paralleled in the Tosefta) are treated in a sugya that appears on b. AZ 14a. The two beraitot are cited in the context of a discussion of the sale of certain items to non-Jews. In explicating the laws concerning sale of a white cock to an idolater (m. 1:3), the gemara first cites the following beraita:

b. AZ 14a

תניא נמי הכי אמר ר' יהודה . . .
 עובד כוכבים שעשה משתה לבנו
 או שהיה לו חולה בחוך ביתו מותר

It is likewise taught in a beraita:

R. Judah said . . . a non-Jew who is holding a feast for his son or who has a sick person at home—it is permitted.

According to this beraita (paralleled in t. AZ 1:21), R. Judah is of the opinion that private (wedding) feast days do not fall under the prohibition of transactions. However, the gemara immediately objects with another beraita:

b. AZ 14a (cont.)

והתניא⁷ עובד כוכבים שעשה משחה לבנו
 אינו אסור אלא אותו היום ואותו האיש בלבד
 אותו היום ואותו האיש מיהא אסור
 אמר רב יצחק בר רב משרשיא⁸ בשוויג

1. But hasn't it been taught:⁹
 'If an idolater gives a feast for his son, the prohibition applies to that day and that man alone?'
 —[in other words] that day and man *are* prohibited!
2. R. Isaac son of R. Mesharsheya¹⁰ said: our statement refers to an ordinary party [without idolatry].

The gemara points out that according to this beraita, the private (wedding) feast day of an idolater is subject to some prohibition of transaction. (This tradition thus corresponds to t. AZ 1:4, which includes the *יום משחה* of an individual under the law of the prohibition of transactions.) The contradiction between the first beraita on b. AZ 14a and this second beraita (the emended Babylonian version of the mishnah at 1:3) is confronted here directly. R. Judah has stated that the sale of a white cock, normally assumed to be purchased for use in an idolatrous ritual, is permitted if the idolater is holding a [wedding] feast for his son. To this the anonymous voice of the Talmud immediately objects: "Have we not learned: If an idolater gives a feast for his son, [then the prohibition of transactions for a non-Jew's festival day applies] to that day and that man alone?" The resolution of the contradiction is somewhat artificial and yet it is the typical strategy employed in such cases—resolution by *oqimta*: R. Judah permits the sale because he is referring to an ordinary party in which there is no idolatry whereas the second beraita (later, mishnah 1:3, according to the Babylonian version) prohibits transactions because it refers to a true [wedding] feast in which there is idolatry.

The upshot of the sugya on 14a is that [wedding] feasts given by idolaters for their sons feature idolatrous worship and are therefore to be included among those days on which prohibitions against transactions with the non-Jew apply. Notice, however, that in the process of its argumentation, the Bavli transforms the point of difference between the two beraitas. The two beraitas appear to record a dispute over the following issue: Should the prohibition of transactions extend also to a private feast day, *since a private feast day also involves idolatry*.¹¹ Apparently not all authorities felt it was reasonable to extend the prohibition to an idolater's private [wedding] feast day, even though it was standard on such days for some idolatrous rituals to occur.

The Bavli's construal of the dispute obviates altogether the lenient view (that transactions are permitted on the private [wedding] feast day even though idolatrous rituals occur). According to the Bavli *no one* would hold that private wedding feasts are excluded from the prohibition of transactions as long as they feature idolatrous

rituals; the presence of idolatry *in the view of all* renders a private feast prohibited. It follows then that the beraita containing the permissive view must refer to an ordinary party without any idolatrous ritual at all while the beraita containing the stringent view must refer to a wedding feast proper. Thus, on the Bavli's interpretation, there is no prior Palestinian tradition to support the exclusion of the private wedding day (featuring idolatry) from the prohibition of transactions. The two beraitas cited differ because they refer to different cases — one involving idolatry (a wedding feast) and one not involving idolatry (an ordinary party). There is nothing in the two beraitot themselves to indicate that this is the difference between them, and there is no foundation for such a view in the Tosefta's presentation of these beraitot. Nevertheless, Palestinian dissension becomes, in the hands of the Babylonian amoraim, consensus. All agree that a private wedding feast proper is subject to prohibitions.

In sum, the Bavli resolves the question of economic interaction on a non-Jew's private feast day in a less conflicted and more decisively prohibiting manner than does the Yerushalmi, by reinterpreting the Palestinian debate on this issue so as to obviate the permissive view entirely. The eventual post-talmudic insertion of a prohibition into the text of the Mishnah in its Babylonian version may be taken as a testimony to the clarity of the Bavli's teaching on this matter.

In opting for formal stringency concerning commercial interaction on a private feast day when a lenient view was available, the Bavli is somewhat surprising, given the fact that in general the Bavli exhibits a trend for greater leniency in regard to the prohibition of transactions around *communal* non-Jewish festivals. As we saw in chapter 5, the Bavli restricts the prohibition to the festival day itself for fixed communal festivals and eliminates any period of prohibition for communal festivals that were not fixed. Yet here the Bavli does not uphold the lenient Palestinian tradition that would exclude the private feast day of the non-Jew, opting instead to include the private feast day of a non-Jew among those days upon which transactions are prohibited. Perhaps the Bavli's apparent contradictory position can be illuminated by a second set of sources that discuss Jewish *social* participation in private feasts held by non-Jews. In these sources the Bavli takes what is surely no more than an aggadic tradition of moral suasion attributed to a tanna and makes it the basis for a set of increasingly stringent halakhot in which Jewish participation in private feasts held by non-Jews is prohibited for extended periods of time. This kind of prohibition is entirely absent from the Yerushalmi.

Social Interaction on Private Feast Days: The Sources

The Tosefta features the following tradition.

t. 4:6

ר' שמעון בן אלע' אומר
 ישרי שבחוצה לארץ עובדי עבודה זרה¹² הן
 כיו צד (=כיצד)
 גוי שעשה משחה לבנו
 והלך וזימן את כל היהודים היושבים בעירו

אף על פי שהן אוכלין ושותין משלהן ושמש שלהן
 עומד ומשמש עליהן עובדי עבודה זרה הן
 שנ' וקרא לך ואכלת מזבחו

R. Shimeon b. Elazar said, “Israelites outside the land of Israel are idolaters.”¹³ How is this so? A non-Jew gives a feast for his son and goes and invites all the Jews who dwell in his town. Even if they eat and drink only their own foodstuffs and their own servant waits upon them, they are still idolaters for it is written, “*And invite you and you will eat from his sacrifice*” (Ex 34:15).

This tradition could almost be understood as a kind of rabbinic riddle. R. Shimeon b. Elazar makes a provocative statement: “Israelites outside the land of Israel are idolaters!” Like all classic riddles, the statement contains an apparent contradiction and is designed to pique the curiosity of its hearers.¹⁴ How could R. Shimeon b. Elazar equate diaspora Jews with idolaters?! The riddle is solved: When an Israelite accepts an invitation to the feast of an idolater, even if he takes every precaution, abstaining from the idolatrous sacrifices and eating kosher foods in a state of purity, Scripture considers him to have partaken of those sacrifices. The point is driven home by a clever bit of exegesis.¹⁵

R. Shimeon b. Elazar makes an important moral point but he clearly does not make a halakhic pronouncement.¹⁶ A consideration of the general context will illuminate the force of his tradition. First, a series of statements extols the virtue of living in the land of Israel. Two statements are formulated on the following pattern: One who does X it is as if he is doing Y: “Whoever is buried in the land of Israel it is as if he is buried under the altar” (4:3) and “Whoever leaves the land of Israel in a time of peace and goes abroad it is as if he worships idolatry.” In the latter case a scriptural verse is also cited. Similarly, Avot de R. Natan follows this tradition with an exhortation (similar to that found in Tosefta): “David said, ‘anyone who leaves the land of Israel and goes abroad, Scripture accounts it to him as if he worshiped idols.’” Clearly such statements are not meant literally (i.e., one who leaves Israel in peacetime does not incur the same legal liability as one who worships idols) but are moral exhortations. This fact is indicated by the use of the phrase מעלה עליהן (הכתוב), כאלו, “Scripture attributes it to them *as if*,” which never expresses a literal equation but is used for statements of ethical suasion (see Steinsalz 1989, s.v. מעלה עליהן (הכתוב), כאלו). Yalqut Shim’oni cites a version of the passage in t. AZ 4:6, followed by this tradition: “R. Elazar b. Azariah says: All who belittle the festivals, it is as if they worship idols, for it is said: ‘You shall not make molten gods for yourselves’ (Ex 34:17) and immediately after it is written: ‘You shall observe the feast of unleavened bread’ (Ex 34:18).” On the basis of the juxtaposition of two verses in Ex 34, R. Elazar b. Azariah draws a kind of moral equivalence—not to be taken as a strict legal equivalence—between two activities.

The paradox at the heart of our passage is sharpened in the version of the tradition found in Avot de R. Natan.

Avot de R. Natan 26:4

ר' שמעון בן אלעזר אומר
 ישראל שבחוצה לארץ עובדים עבודת כוכבים כשהרהר

הא כיצד כותי שעשה משתה לבנו
 שלח וזימן כל היהודים שבעירו
 אע"פ שהן אוכלין ושותין משלהם
 ושמש שלהן עומד ומשקה עליהן
 מעלה עליהם כאילו אכלו מזבחי מתים
 שנאמר וקרא לך ואכלת מזבחו

R. Shimeon b. Elazar says, "Israelites outside the land of Israel worship idols *without being (actually) defiled.*"

How is this so? A non-Jew who gives a feast for his son sends and invites all the Jews in his town. Even if they eat and drink only their own foodstuffs and their own servant waits upon them, *Scripture accounts it to them as if they have eaten from sacrifices of the dead* [i.e., idolatrous sacrifices] for it is written, "And invite you and you will eat from his sacrifice."

Two differences between this and the Toseftan text should be pointed out. First is the addition here of the word *בטהרה*, which is often translated as "in innocence" (following Rashi's comment to this tradition as it appears in b. AZ 8a). However, in my view the exemplum is strong evidence that the term should be taken literally—"in purity," that is, without being levitically defiled by the idol (cf. *tahor* in m. AZ 3:8). R. Shimeon b. Elazar wants to say that even if one strives to preserve levitical purity and observe the dietary laws, if he is present at an idolatrous feast it is as if he has eaten of the most abominable and impure items there—the sacrifices to the idols. This point is derived again from the verse in Ex 34:15, which indicates that the sin is not just in the eating of the sacrifices but in even accepting the invitation to attend. Again, this tradition by R. Shimeon b. Elazar is clearly not an authoritative halakhic ruling. It is an aggadic tradition that aims at moral suasion: Although no legal violation is involved, one should nevertheless stay clear of the private feasts of idolaters.

In the Bavli, this riddle, this ethical exhortation, was made the basis for a set of stringent halakhot.

b. AZ 8a

תניא רבי שמעון בן אלעזר¹⁷ אומר
 ישראל שבחוצה לארץ עובדי עבודת כוכבים בטהרה הן
 כיצד
 עובד כוכבים שעשה משתה לבנו וזימן כל היהודים שבעירו
 אע"פ שאוכלין משלהן ושותין משלהן
 ושמש שלהן עומד לפנייהם
 מעלה עליהם הכתוב כאילו אכלו מזבחי מתים
 שנאמר וקרא לך ואכלת מזבחו
 ואימא עד דאכיל
 אמר רבא אם כן נימא קרא וקרא ואכלת מזבחו
 מאי וקרא לך משעת קריאה
 הלכך כל תלתין יומין
 בין א"ל מחמת הלולא ובין לא א"ל מחמת הלולא אסור
 מכאן ואילך אי א"ל מחמת הלולא אסור
 ואי לא אמר ליה מחמת הלולא שרי
 וכי א"ל מחמת הלולא עד אימת

אמר רב פפא¹⁸ עד תריסר ירחי שחא
 ומעיקרא מאימת אסור
 אמר רב פפא משמיה דרבא¹⁹ מכי רמו שערי באסינתו
 ולבחר תריסר ירחי שחא שר²⁰
 והא רב יצחק בריה דרב משרשיא
 איקלע לבי ההוא עובד כוכבים לבחר תריסר ירחי שחא
 ושמעיה דאודי ופירש²¹ ולא אכל
 שאני רב יצחק בריה דרב משרשיא דאדם חשוב הוא

1. It has been taught:
 R. Shimeon b. Elazar²² says, "Israelites outside the land of Israel serve idols in purity."
2. How is this so? An idolater who gives a feast for his son and invites all the Jews of the town—even if they eat their own food, drink their own drink, and their own servant waits on them, Scripture accounts it to them as if they ate sacrifices to the dead, as it is said, "[you must not make a covenant with the inhabitants of the land, for they will lust after their gods and sacrifice to their gods] and invite you and you will eat of their sacrifices" (Ex 34:15).
3. Surely this applies only when there is actual consumption [and not just acceptance of the invitation]!?
4. Rava said, "If so, the verse would have said only 'and you will eat of his sacrifice.' Why then does it say 'and invite you?' This extends the prohibition to the time of his attendance (generally)."
5. Thus, all 30 days [of the feast celebration], whether or not it is mentioned that the feast is connected with the wedding, it is forbidden. From then on, however, if it is stated that it is connected with the wedding, it is forbidden, while if its connection with the wedding is not stated, it is permitted.
6. How long, if it is connected with the wedding?
7. Rav Pappa²³ said, "for twelve months thereafter."
8. And how long beforehand is it forbidden?
9. Rav Pappa said in the name of Rava,²⁴ "From the time the barley is placed in the tub."
10. And is it then permitted after the twelve-month period? But R. Isaac bar R. Mesharsheya once happened to be in the house of a certain idolater more than a year after a marriage, and when he heard they were praising their gods he abstained from eating!
11. It is different with R. Isaac bar R. Mesharsheya, who was an important man.²⁵

R. Shimeon b. Elazar's statement opens the sugya, and the midrash upon the verse of Exodus is explained in the ensuing dialectical exchange. The anonymous voice of the Talmud suggests with surprise that the verse surely means that one is blameworthy only if one eats of the sacrifices; but Rava points out that if that were all the verse meant to convey then it would simply say "and you will eat of the sacrifices." However, the verse includes the phrase "and invites you," thereby extending the prohibition to mere attendance at the event and not only the actual consumption of a sacrifice to an idol.

Having established that Scripture frowns upon Jewish attendance at an idolater's feast even if the Jew should take precautions to ensure that he does not partake of impure idolatrous sacrifices, the sugya proceeds on the assumption that this prin-

inciple carries a clear halakhic force. In other words, the rhetorical claim that attendance at an idolater's feast is morally tantamount to actual consumption of a prohibited idolatrous sacrifice is read here—and only here—not as a mere exhortation but as an actual halakhic prohibition. This move is made despite the fact that in no way can mere attendance at an idolater's feast be *legally* construed as equivalent to (and entailing the punitive consequences of) consumption of an idolatrous sacrifice. Yet the Bavli, unlike the Palestinian sources, reads this text as providing a clear halakhic statement prohibiting attendance at a non-Jew's feast.

Menahem Elon (1994:94ff) discusses the reciprocal relationship between halakhah and aggadah (the latter defined by him as material that is nonnormative but that often contains the philosophy of the halakhah). He notes that aggadic passages are interwoven with legal material in the talmudic literature and that *on appropriate occasions* aggadic material is made the basis for new normative rulings. However, this occurs only when there is no alternative—it is not the preferred practice for creating a new legal ruling. Further, according to Elon, it goes without saying that the aggadic passage relied upon to provide the rationale for a new ruling was not originally directed to the legal question facing the authorities who later appropriate it.

Our case appears to be a good example of the phenomenon described by Justice Elon. Because the Bavli is articulating a legal norm for which there is no clear halakhic precedent, it is forced to resort to an aggadic tradition. The Bavli utilizes this Palestinian aggadah in order to create a minimal prohibition on the basis of which the Bavli can simply spell out the period of time around a non-Jew's private feast during which one may not accept that non-Jew's hospitality. First we learn that the prohibition extends for thirty days after a wedding feast, whether or not the non-Jew states that food eaten during that time is from or for the wedding feast.²⁶ If the non-Jew does explicitly indicate that it is food from or for the wedding, then according to R. Pappa (in the name of Rava?—see notes 18 and 19) the prohibition remains in force for a whole year and the prohibition prior to the wedding dates from the time of planting barley in tubs.²⁷ In addition, an important man should not consume food in the home of a non-Jew for a period of twelve months after a feast in any circumstances. Note that the “important man” who serves as exemplar for this final stringency is none other than R. Isaac, the son of R. Mesharsheya, the very sage who, in the sugya on b. AZ 14a, was attributed with the resolution of the dueling beraitas in a manner that obviated the lenient view concerning *commercial* interaction on a private feast day (though see note 8).

It should be noted here, however, that in all likelihood steps 6 through 11 of this sugya, which are paralleled in b. Ketubbot 8a (see note 25) originated in the latter context. This fact changes the argument presented here only slightly. Since there is nothing in the aggadic tradition that would necessarily trigger the transfer of material from b. Ketubbot, it is not likely that the transfer was “mechanical” or incidental. On the contrary, it is likely that the transfer was a purposeful act, a conscious effort to build an explicit, detailed halakhic superstructure on a rather general aggadic foundation. Further, if the transfer of this material was effected by the sugya's redactor, as is likely, then we simply date the prohibition to a slightly later period and revise my suggestion regarding the possible significance of the appearance of R. Isaac the son of R. Mesharsheya in line 11. His consistent strin-

gency on the social and economic interaction is most likely an impression created by the redactor of the sugya.

It should also be pointed out that what is prohibited here is *social interaction*, specifically accepting hospitality (i.e., food and drink) from a non-Jew around the time of a feast that could feature acts of idolatrous worship or sacrifice. This prohibition is quite distinct from the one adopted on b. 14a, which concerns the day of a feast given by an idolater for his son from the point of view of *economic interaction*. The prohibitions spelled out in this sugya do not touch upon the question of economic interaction; commercial transactions would of course be permitted at all times except on the feast day itself, according to the Bavli.

Thus we see that a Palestinian aggadic text expressing disapproval of Jewish acceptance of hospitality extended by non-Jews, even if precautions are taken to ensure that no impure foods are consumed, has become in the Bavli the basis for a series of extremely strict halakhot discouraging Jews from eating at the homes of non-Jews for extended periods of time around a private wedding feast.

There is no parallel in the Yerushalmi for the halakhot developed here in the Bavli. The tradents who develop the aggadic tradition into a set of halakhot are Rava and sages from the generations after him, that is, sages from the second amoraic period in Babylonia, which coincides with and postdates the close of the Yerushalmi. Thus we see not only a geographical but also a chronological distinction between the Yerushalmi and the Bavli. If we assume that steps 6–11 originated here in the present context, then it appears that the later sages of Babylonia related to this text in a very different way, taking advantage of its moral equation of accepting the invitation of a non-Jew with actual consumption of idolatrous sacrifices. If we assume, as is more likely, that steps 6–11 originated in Ketubbot, then it is the redactor of the sugya (also chronologically late, of course) who puts the aggadic tradition to halakhic use in a manner not paralleled in Palestinian sources.

The sources examined here thus far point to a greater strictness in the Bavli regarding the private feast day of a non-Jew from both an economic and a social standpoint. In the economic sphere, the Bavli obviates the more lenient of two Palestinian views and includes the private feast day among those days upon which prohibitions against transactions with non-Jews apply. The Bavli reads dissension as consensus.²⁸ In the social sphere, the Bavli reads an earlier Palestinian aggadic tradition featuring the acceptance of invitations to non-Jewish private feasts outside the land of Israel as a binding halakhic principle. The redactor represents late amoraim as extending this principle considerably, leading to prohibitions against accepting hospitality from non-Jews for extraordinarily lengthy periods of time before and after a private wedding feast.

The strictness of the Bavli on this matter of private feasts is quite remarkable, particularly in light of the Bavli's trend toward greater leniency in laws that involve interaction with non-Jews. In the two cases discussed earlier—the prohibition of transactions around a (communal) festival day and the laws of midwifery—it was observed that fear of generating ill will was a likely motivation for the relaxation of prohibitions. However, in this case we see the opposite trend—a move toward strictness without apparent concern as to the negative consequences of this strictness (איבה).

I submit that it is because the Bavli's halakhot concerning Jewish participation in the private feasts of non-Jews do not conform to the Bavli's trend observed else-

where—to relax prohibitions on relations with non-Jews for fear of generating ill will—that the present text has been so often misconstrued by scholars. Some scholars interpret R. Shimeon b. Elazar’s tradition as somehow endorsing participation by diaspora Jews in the feast of idolaters. Such an interpretation is most likely the consequence of a conviction that the Babylonians always sought to relax prohibitions that govern relations between Jews and non-Jews in the diaspora. Expectations, in this case, appear to have determined interpretation. I intend to show that these interpretations of the sugya are insupportable and that the portrait of Babylonian Jewry as struggling toward increased liberalization of such laws needs to be adjusted.

Ginzberg’s misconstrual of the sugya provides a classic example:

The disappearance of the Levitical laws of purity in Babylonia and their retention in Palestine can in part be explained by differences in the relationship between Jew and Gentile in these two countries. Palestinian law was largely war legislation, for Judaism and Paganism were locked in combat for many centuries. In Babylonia, this state of war never existed. Says a Palestinian author of the second century, “Israel in the diaspora worship idols in all innocence; whenever there be a wedding among the pagans of the town, the entire Jewry participate in the wedding feast, easing their conscience by bringing with them their food and drink.” Less than a century later, a Babylonian amora remarks, “the Gentiles in the diaspora—Babylonia—are not to be considered idolaters in the real sense of the word.” Hence follows the rather lenient attitude of the Babylonian Talmud towards the old Palestinian laws which had their origin in the desire to avoid any dealings with a pagan which might encourage him in his idolatrous practices. From the Babylonian Nahum of Media to his countryman Samuel, this tendency is marked. (1941b:24)

The teaching of R. Shimeon b. Elazar is only partially cited here. By omitting the moral of the story (“Scripture attributes it to them *as if* they practiced idolatry”), and by translating the phrase *betaharah* as “in all innocence,” Ginzberg misconstrues the thrust of the statement. He argues that the passage teaches that Israelites who attend wedding feasts of non-Jews in the diaspora may be involved in the worship of idols but are accounted as innocent for this act.

Such an interpretation cannot be supported. The passage is a condemnation of Jewish participation in the private feasts of idolaters in the diaspora. Further, the tradition does not state that the Jews supply their own food, drink, and service in order to ease their consciences! The point of this detail is to stress that despite the extreme precautions taken by diaspora Jews to preserve purity (the probable meaning of *betaharah*) when attending a feast given by an idolater, they are nevertheless considered to have partaken of the sacrifices; the mere presence of a Jew at the feast of a non-Jew is frowned upon by Scripture. It goes without saying that this passage really has nothing to do with the disappearance of the laws of levitical impurity in Babylonia.

Further, Ginzberg cites the b. Hullin 13b passage and considers it the basis for the lenient attitude of the Bavli toward Palestinian laws that aimed at minimizing dealings with pagans. He regards the principle that the Gentiles in the diaspora are not idolaters in the true sense of the word as motivating the relaxation of the prohibition of transactions during festival periods articulated by Nahum the Mede and Shmuel. However, as was demonstrated in chapter 5, this is probably not the primary motivating force of these leniencies. This originally aggadic principle appears

only once in the entire Talmud. Although it was taken up in post-talmudic literature and used extensively to justify the elimination of various prohibitions concerning non-Jews—particularly Christians—in the medieval period it is not clear that it was a functioning legal principle within the talmudic period in this regard. Further, as I have demonstrated, there are clear indications within the sources that the primary reason for the Bavli's relaxation of the prohibition of transactions was economic and social pragmatism.

Finally, Ginzberg errs when he speaks of the lenient attitude of the Bavli toward the Palestinian laws. As was seen in chapter 5, the Palestinian Talmud itself allowed for a more lenient legal standard in the diaspora when it came to the number of days prior to a festival during which the prohibition of transactions applied. The Bavli simply carried this leniency to the next degree. Further, the Bavli's articulation of quite stringent halakhot in regard to accepting *hospitality* associated with a private feast contradicts Ginzberg's thesis.

In general, it seems that Ginzberg's views on Babylonian Jewry led him to elide certain differences between texts and to misconstrue the data. While it is true that there was a relaxation of the laws of midwifery and of the prohibition of economic transactions on a communal non-Jewish feast day, there was apparently no comparable relaxation of prohibitions against certain social interactions with non-Jews, particularly attendance of Jews at a wedding feast held by a non-Jew. The data indicate precisely the opposite trend—the erection of strict barriers against this kind of interaction.²⁹

Urbach construes the tradition of R. Shimeon b. Elazar in a manner that is consistent with the interpretation provided here. However, he errs in conflating this tradition with the tradition concerning the prohibition of economic transactions. That conflation is found in the following passage:

The laws which demanded that Jews maintain a social distance from Gentiles and from their customs and modes of behaviour were applied in all their stringency even by those sages who tended to leniency as regards idolatry itself. While there was no fear that their contemporaries would serve other gods or participate in heathen cults, the sages were very aware of the danger of national assimilation and moral degeneration and of abandoning the Torah and its commandments because of social contact with the Gentiles. This apprehension is expressed in R. Shimeon b. Elazar's statement that "Jews outside Erez Israel are idolaters. How? When a Gentile makes a feast for his son, he goes and invites all the Jews in his city. Although they eat and drink of their own [food] and are served by their own servant, they are idolaters, as it is written, 'And he will invite you and you will eat of his sacrifice' (Exodus 34:15)." The *amoraim* relied on this *beraita* as opposed to another which states "when a Gentile makes a feast for his son only that specific day and that specific person alone are forbidden," and forbade the acceptance of any invitation to the Gentile's home within 30 days or even within a year of the celebration if the Jew had been invited to it. Although the prohibition is explained as being lest the Gentile offers thanks to his god, it seems that the fear explicitly expressed in the above cited verse, "And you will take his daughters for your son," was no less a consideration particularly with regards to such Jews who did not "eat and drink of their own."

The historic reality of the second and third centuries C.E. demanded isolation from Gentile society and stringency in the application of laws concerning Gentile wine and food and the sale of articles which might be used in idolatrous rites or which might assist the Gentile purchasers in immoral behaviour. Although the orderly conduct of public life in cities of mixed population depended on co-operation in various areas “because of the ways of peace” or “in order [to prevent] enmity,” as is indeed expressed in a *beraita*: “If [a Jew] entered a city and found [the non-Jews] celebrating he should celebrate with them because he is merely flattering them,” it was for that specific reason that the Sages saw a need to take precautions in that area and indeed so they acted: “The men of Gader asked R. Ammi, ‘What is the law regarding a Gentile feast-day?’ He considered allowing it because of the ways of peace but R. Ba said to him, ‘R. Hiyya taught: A Gentile feast-day is forbidden!’ R. Ammi said, ‘were it not for R. Ba we ought to have permitted their idol! Blessed be the Omnipresent who has distanced us from them!’” The question which arose in Gader was whether it was permitted on a Gentile festival to practise those activities which the sages had permitted “because of the ways of peace” and R. Ammi accepted the more stringent view of R. Ba. (1986:216–217)

Urbach is correct, first, in interpreting R. Shimeon b. Elazar’s tradition as an indication of stringency warning against Jewish social interaction with non-Jews during their private feasts, and second, in noting the amoraic reliance on this tradition in order to articulate even more stringent halakhot prohibiting Jewish acceptance of hospitality (i.e., commensality) from a non-Jew for extended periods of time around a wedding feast. However, Urbach supposes a contradiction between the prohibition of accepting hospitality from a non-Jew for extended periods of time around a wedding feast (in the *sugya* on b. AZ 8a–b) and the *beraita* on b. AZ 14a (which was later inserted into the *mishnah*), in which it is stated that when a Gentile makes a feast for his son, only that day and that person are forbidden. In fact, there is no conflict here, because the two passages are discussing entirely distinct issues. It is this distinction that Urbach does not acknowledge. The *beraita* on b. 14a that prohibits only the feast day is taught in connection with the prohibition of *commercial transactions*. The halakhot on b. AZ 8a–b that set out lengthy periods of prohibition concern *socializing and the acceptance of hospitality*—specifically partaking of food in the home of a non-Jew—and do not concern the conduct of business transactions at all. These are entirely different subjects. In both cases, the Bavli is stricter than the Yerushalmi.³⁰ The Bavli adopts a minimal prohibition of commercial transaction (i.e., the day only) on the feast day of an idolater (something the Yerushalmi does not do unequivocally); the Bavli also institutes extraordinarily strict prohibitions against social interaction that involves commensality in a non-Jew’s home, ostensibly because of the danger of consuming food dedicated to an idol (and not, as Urbach claims, lest the idolater thank his idols).³¹

Urbach’s conflation of the two distinct sets of laws concerning a Gentile feast day—those that deal with the commercial prohibitions around a private feast and those pertaining to the prohibition of social interaction on a private feast day—is manifested again in his interpretation of the passage from the Yerushalmi concerning the men of Gader who ask R. Ammi what the law is for a Gentile feast day. As I

have argued above, the Gaderites want to know if the prohibition of various transactions on idolatrous festivals applies also to the private feast days of non-Jews, or if these prohibitions apply only to the standard communal festival days listed in m. 1:2. However, Urbach reads the passage out of context and surmises that the Gaderites are asking R. Ammi whether, on a Gentile festival, they are allowed to celebrate with the non-Jews in the interests of peace. There is nothing in the immediate context of the passage that would support such an interpretation. The phrase *yom mishteh*, as opposed to *yom 'id*, indicates a private feast day, and it is clear that the question is whether or not a *yom mishteh* is to be included within the legal rubric of a *yom 'id*—a festival day—to which the prohibition of the transactions listed in m. AZ 1:1 apply.

It is because Urbach focuses on the “halakhah” as an abstract entity that he elides geographical, diachronic, and even topical distinctions between the various traditions cited here. Geographically, he does not note that the orientation of the Talmud of Palestine is different from that of the Talmud of Babylonia and that one cannot speak of a single “halakhah” but must speak of the Yerushalmi’s halakhah and the Bavli’s halakhah (and even these are often complex entities). Diachronically, even within the Babylonian sources there is a diachronic development toward strictness which Urbach does not note. And topically, Urbach does not acknowledge the distinctions in the sources between communal and individual (private) feast days or between commercial activities and social interaction. Regarding private feast days the Bavli is more stringent in both the economic and social sphere than is the Yerushalmi; regarding communal feast days the Bavli relaxes prohibitions of economic interaction to a greater degree than the Yerushalmi (social interaction is not addressed in the context of communal feast days).

How are we to explain the difference we have identified between the Yerushalmi and the Bavli? We have noted that the Bavli’s halakhot concerning the private feast day of the non-Jew involve, first, an exegetical irregularity (the elimination of the lenient Palestinian view regarding economic interaction), and second, the elaboration of a set of stringent rulings on the basis of an aggadic tradition. These phenomena are unusual enough to suggest that these particular sugyot of the Bavli were not formed entirely in response to internal hermeneutical stimuli. Rather, it seems likely that the halakhic developments recorded by the Bavli were shaped by extratextual pressures of some description. Two possibilities present themselves. Either the circumstances of diaspora life prompted the Babylonian sages/redactors to adopt a more stringent line on the question of a non-Jew’s private feast day, or the Babylonian sages/redactors wished to portray themselves as more stringent on this question, perhaps for ideological reasons. While certainty on this matter is not possible, the second option seems unnecessarily complicated. To attribute to the Babylonians an ideological commitment to stringency or a desire to portray themselves as stringent raises questions about the historical reality that might have engendered such a desire or ideological commitment. Thus even the second option involves us ultimately in a consideration of the historical circumstances of diaspora life. It seems reasonable, therefore, to adopt the first option and to assume that the halakhic developments preserved in the Bavli are the result of the historical circumstances of diaspora life.³²

Urbach’s observations regarding the Jewish desire to “maintain a social distance from Gentiles and from their customs and modes of behaviour” while at the same

time realizing that “the orderly conduct of public life in cities of mixed population depended on cooperation in various areas ‘because of the ways of peace’ or ‘in order [to prevent] enmity’” may provide the key to an understanding of the data presented in this and the preceding two chapters. The practical realities of diaspora life, in which Jews lived as a minority economically dependent upon a larger general population of non-Jews, necessitated cooperation in several areas. Jews could not afford to generate ill will that might deprive them of income or turn their Gentile neighbors against them. This pragmatic concern probably explains the Bavli’s halakhic leniency in regard to the laws of midwifery as well as in regard to the prohibition of transactions during public or communal idolatrous festivals in the diaspora. In the latter case (as was argued above) the Babylonian rabbis may have felt that Jewish abstention from business dealings with all non-Jews for an extended period before such a festival not only imposed too great an economic hardship on the Jewish community but also constituted a visible and marked affront to non-Jewish sensibilities (whether or not it in fact did).³³

That the Babylonians chose to be stringent concerning economic and social interaction around the private feast day of a non-Jew would imply either that the concerns just mentioned were not thought to apply to a private feast day, or that these concerns applied but were overridden by some other consideration. These two options may operate simultaneously. It seems reasonable to suppose that abstention from both economic and social interaction with an individual non-Jew during his private feast day would not impose a great economic hardship on the Jewish community. However, the potential for offending an individual non-Jew through such abstention remains. Perhaps this concern was overridden by another consideration—that pointed out by Urbach. Perhaps Jews in the diaspora faced—or perceived themselves to be facing—a heightened danger of social, religious, or national assimilation, prompting them to “maintain a social distance from Gentiles and from their customs and modes of behaviour” (Urbach 1986:216). Thus, perhaps for this reason, the Babylonian rabbis erected strong barriers against interaction on the private individual feast day—whether economic or social. As we have seen, strict laws against social interaction on the private feast day of a non-Jew are found only in the Bavli. As regards business transactions, the leniency evidenced on the communal level is reversed on the individual level: The Babylonians extend the prohibition of transactions to the private feast of an idolater, eliminating the lenient view on this question in the process.³⁴

In regard to the halakhot pertaining to interaction between Jews and non-Jews, clear distinctions can be seen between the Yerushalmi and the Bavli. Palestinian rules prohibiting transactions with non-Jews on communal festival days for fear of contributing materially or motivationally to the worship of idolatry are attenuated in the diaspora, as are prohibitions against Israelite women serving as midwives to non-Jewish women. It would appear that the relaxation of prohibitions such as these that touch upon economic interaction between Jews and non-Jews in the diaspora was motivated by certain pragmatic considerations: the dependence of diaspora Jews upon the good will of their non-Jewish neighbors in order to earn their living and secure their physical safety.

However, in the area of purely social interaction on a feast day, the opposite trend is apparent. The Bavli encodes as halakhah what was in Palestine only a moral principle: Nonparticipation of diaspora Jews in the private feasts of non-Jews. The later generations of Babylonian amoraim who coincide with and postdate the close of the Yerushalmi continue in the direction of stringency in regard to this issue, prohibiting Jews from accepting hospitality from a non-Jew for extended periods of time around a private wedding feast. In addition, even economic interaction during a private feast day is unambiguously prohibited only in Babylonian halakhah.

Both of these stringencies exhibit exegetical aberrations and are thus susceptible to cultural-historical analysis. I have suggested that the circumstances of diaspora life may explain the divergence between the Yerushalmi and the Bavli in this matter. The Babylonians, as a minority in a land that was not their own in any political or religious sense, perceived themselves to be threatened by national and cultural assimilation to a greater degree than did Jews in Jewish communities in Palestine, despite the fact that those communities were also under foreign rule—a perception attested in the discussion of other laws concerning Jewish–Gentile interaction. For this reason, social and economic interactions with non-Jews on private feast days were circumscribed. Interaction on public feast days could not reasonably be prohibited, and thus the very same conditions—minority status in a foreign land—that promoted leniency during communal feast days promoted stringency during the private feast days of individual non-Jews.

The Sale of Weapons

In the following example the Bavli registers halakhic development in response to the historical situation of Babylonian Jews. The laws we shall examine concern the sale of weapons and weapons-grade material to non-Jews. It is true that in our consideration of the sources, we must not ignore the contribution made by the amoraic tendency toward dialectical rehabilitation of marginal traditions; nevertheless, well-documented shifts in the relations between Jews and the non-Jewish regimes in Palestine and Babylonia provide a key to unearthing the diachronic twists in the fortune of the weapons prohibition — its suppression and reemergence — and of related rulings.

The Sources

The Mishnah does not directly address the question of the sale of weapons to a non-Jew. However, *m. AZ* 1:7a does prohibit the sale to non-Jews of certain animals that can cause injury to the public. Since the gemaras discuss the issue of weapons in connection with selling (or leasing) large animals that may be used as weapons (specifically the horse, prohibited in *m. AZ* 1:6), this mishnah is relevant to the larger issue at hand.

m. AZ 1:7a

אין מוכרין להם דובים ואריות
ולא כל דבר שיש בו נזק לרבים

One may not sell them bears, lions or anything which may injure the public.

A specific prohibition against the sale of weapons to a non-Jew does appear in the Tosefta.

t. AZ 2:4

אין מוכרין להן לא זיין ולא כלי זיין
 ואין משחזיין להן את הזיין
 ואין מוכרין להן את הסדרן ולא כובלין ולא קוללין
 ולא שלשלאות של ברזל . . .

One may not sell to them weapons or accessories of weapons;
 and one may not sharpen a weapon for them.
 One may not sell to them stocks or neck-chains or ropes or iron cables. . . .

In the gemaras, a diachronic development can be traced in which the prohibition of the sale to non-Jews of weapons or items that may be used to inflict harm is qualified. The erosion of this prohibition is more pronounced, however, in the Bavli, and the reason for this phenomenon is stated explicitly in the text.

If we turn first to the Yerushalmi, we find that the prohibition found in the Tosefta is cited in the context of several discussions of the immorality and violence of non-Jews and Samaritans toward Jews and their animals. The citation is followed by a qualification that limits the applicability of the prohibition.

p. AZ 2:1, 40c

תני אין מוכרין להן לא זיין ולא כלי זיין
 ואין משחזיין להן את הזיין
 תיפתר בעיר שכולה גוים

It has been taught:
 “One may not sell to them weapons or accessories of weapons;
 and one may not sharpen a weapon for them.”
 Interpret this as referring to a town inhabited entirely by non-Jews.

The sale and maintenance of weapons is prohibited. There is no explicit antecedent for the pronoun “them,” but the context generally speaks of non-Jews and Samaritans. What is of interest to us, however, is the Yerushalmi’s addition of a qualification to this prohibition. It applies only in a town inhabited entirely by non-Jews. Apparently the author of this qualification holds that only in non-Jewish towns are weapons that are held by non-Jews likely to be used against Jews. We can infer from this qualification that sales to individual non-Jews among the general mixed population are permitted. Perhaps these sales are permitted because weapons used by non-Jews to defend a town of mixed population from outside encroachment benefit any Jews within the town also. If so, then we have here the germ of an idea that we shall see in full flower in the sugya of the Bavli—the sale to non-Jews of iron used in the manufacture of weapons is permitted where it is for the mutual defense.

Let us now compare the sugya found in the Bavli.

b. AZ 15b-16a:²

תנו רבנן
 אין מוכרין להן תריסין וי' א' מוכרין להן תריסין
 מ' א' אילימא משום דמגנו עלייהו

אי הכי אפילו חישי ושערי נמי לא
 אמר רב³ אי אפשר ה'נ
 איכא דאמרי היינו טעמא תריסין דלא
 דכי שלים זנייהו קמלי בגייהו
 ויש אומרים
 מוכרים להם תריסין דכי שלים זנייהו מערק ערק
 אמר רב נחמן אמר רבה בר אבוב הלכה כיש אומרים
 אמר רב אדא בר אבהו⁴ אין מוכרין להן עששיות של ברזל
 מ'ט משום דחלש⁵ מינייהו כלי זיין
 אי הכי אפילו מרי וחציני נמי
 אמר רב זביד⁶ ברזלא הינדואה
 והאידינא דקא מובנין א"ר אשי⁷ לפרסאי דמגנו עילון

1. Our rabbis taught:
 “One may not sell them shields; but others say that one may sell them shields.”
2. What is the reason? Because they protect them? In that case wheat and barley likewise should not be sold!
3. Rav⁸ said: if possible, these too [should not be sold].
4. There are some who say the reason for not permitting the sale of shields is that when they have no weapons left they use these for killing; but others say that one may sell shields to them for when they have no more weapons they run away.
5. R. Nahman said in the name of Rabbah b. Abbuha:
 The halakhah is according to “the others.”
6. R. Adda b. Ahabah⁹ said:
 One may not sell them bars of iron.
7. Why? Because they may hammer weapons from them.
8. If so, then also spades and pickaxes [should be prohibited for sale]!
9. R. Zebid¹⁰ said: [he was referring] to Indian iron [only].
10. Why then do we sell it now?
11. R. Ashi¹¹ said: [we sell] to the Persians who protect us.

The first discussion concerning shields is important in that it reveals the Bavli's unstated assumption that it is prohibited to sell to non-Jews not only weapons but also items that can be used as weapons. Step 4 contains an anonymous statement that seeks to explain the controversy over shields as a controversy over whether or not shields are sometimes utilized as weapons. The assumption is that were all to agree that non-Jews do in fact use their shields as weapons, then all would agree that the sale of shields is prohibited. Thus, although the prohibition against selling weapons to non-Jews is not encoded in the Mishnah, the Bavli assumes such a prohibition throughout this sugya. Indeed, the Bavli cites the beraita to this effect—attested also in the Tosefta and the Yerushalmi—in relation to a different matter in the preceding sugya. We see here yet another example of the phenomenon discussed earlier in chapter 4: the rehabilitation of marginalized tannaitic traditions by the amoraim—this time in both the Yerushalmi and the Bavli.

Steps 6–11 of the Bavli raise a new but related issue—the sale of raw materials that can be hammered or otherwise shaped into weapons. The discussion speaks

explicitly of a diachronic development of the halakhah within Babylonia and it is this development, not found in the Yerushalmi, that will concern us. According to the Bavli, the sale of bars of Indian iron was at one time prohibited because this iron was purchased for the express purpose of manufacturing weapons. (Note that the Bavli makes it clear that it does not prohibit the sale of any and all pieces of iron, but only those that are specifically used in the manufacture of weapons.) However, by the time of the sixth generation of amoraim (early fifth century) the sale of Indian iron was permitted despite the fact that it would be used in the manufacture of weapons. Indeed, the text indicates that precisely *because* it was to be used in the manufacture of weapons, its sale to the Persians was permitted. According to the Bavli, this sale of raw materials is permitted because the non-Jewish state (a corporate body) uses the weapons produced for the common defense.¹² Thus the legal reasoning that may lie behind the Yerushalmi's qualification of the weapons prohibition¹³ is used here to reverse a prohibition in a derivative case—the sale of raw materials for weapons.

Accounting for Halakhic Development

The issue of selling weapons to non-Jews is arguably connected with the prevailing state of relations between Jews and non-Jews. One does not generally sell weapons to one's enemy unless there are strong reasons for jeopardizing one's own physical safety (economic considerations, punishment for refusal, etc.). On the other hand, there is little reason not to sell weapons to an ally or protector, as R. Ashi (or R. Papa) himself hints in the sugya of the Bavli. Let us now plot diachronically and geographically the halakhic shifts concerning the sale of weapons to non-Jews with an eye to this general principle. What do the sources reveal about variations in the relations between Jews and non-Jews in the talmudic period? What does independently gained knowledge of the shifting state of relations between Jews and non-Jews add to our understanding of the history of this halakhah?

First, it is most remarkable that a prohibition against the sale of weapons appears in the Tosefta and is cited in the Yerushalmi and the Bavli but does not appear in the Mishnah. However, this omission is significant in cultural-historical terms only if it can be shown that it was a conscious omission. I submit that there is evidence that the Mishnah's final redactor(s) knew of this prohibition but consciously chose to exclude it from the Mishnah. I will first demonstrate this claim and then analyze its meaning.

The seventh mishnah of the first chapter of Avodah Zarah prohibits the sale to non-Jews of wild animals, such as bears and lions, since these animals inflict injury. Clearly, the historical reality behind such a prohibition is the use of wild animals in theatrical games and gladiatorial contests. This reasoning is supported by the fact that this very mishnah continues with a prohibition against building stadia and amphitheaters.

m. AZ 1:7

אין מוכרין להן דובים ואריות
ולא כל דבר שיש בו נזיקה לרבים
אין בונין עימיהן בסילקי וגרדון אספרייה ובימה . . .

One may not sell them bears, lions or anything which may injure the public.
 One may not build with them a basilica and gallows, a stadium and a tribunal. . . .

This mishnah prohibits Israelite involvement in the cruel and violent proceedings of Hellenistic games. Israelites may not assist in the construction of arenas that house these games or supply the animals used in the killing of humans for sport.¹⁴ Already in the first century of the common era such games were held on the soil of Palestine.¹⁵ It is entirely possible that this halakhah dates from at least the first century C.E.

The Tosefta also records the prohibition against selling wild animals in t. AZ 2:2, and t. AZ 2:4 further records the prohibition against the sale of weapons and weapon accessories to non-Jews, cited above. There is a logical, topical connection between these subjects—hence their proximity. This connection is still felt by the gemaras, for the beraita concerning the prohibition of the sale of weapons is found in both Talmuds within the larger context of the sale of large animals, both wild and domesticated. The question therefore suggests itself: Why does the Mishnah omit any mention of the prohibition against selling weapons, which is so closely associated with the prohibition against the sale of large animals in the Tosefta and both gemaras?

Were the prohibition of the sale of weapons to postdate the redaction of the Mishnah, there would of course be no significance in its absence from the Mishnah. Even if the prohibition clearly predated the close of the Mishnah, its absence from that text would be of no significance unless it could be demonstrated that it was a ruling that was commonly known, or at least known to the redactor(s) of the Mishnah. Only if there is evidence that the redactor(s) were familiar with this halakhah is it possible to attribute some significance to its omission. Such evidence exists.

As was noted above, t. AZ 2:2 contains the prohibition of the sale of large domesticated and wild animals while t. AZ 2:4 contains the prohibition of the sale of weapons. Between these two clauses, t. AZ 2:3 elaborates on the prohibition contained in the preceding paragraph and records the following dispute:

t. AZ 2:3

בן פתירא מתיר בסוס
 שאינו עושה מלאכה בשבת שחייבין עליה חטאת
 ור' אוסר¹⁶ משום שני דברים
 משום כלי זין ומשום בהמה גסה

Ben Bathera permits [sale] in the case of a horse which does not perform a kind of labor on Shabbat that involves liability for a purification offering.
 But Rabbi prohibits it¹⁷ for two reasons: on account [of the prohibition of selling] weapons and on account [of the prohibition of selling] a large animal.

This passage registers Rabbi Judah ha-Nasi's objection to Ben Bathera's permitting the sale of horses. A twofold reason for his objection is stated: A horse should be prohibited because it falls under the rubric of something that can be used as a weapon, and because it falls under the rubric of large domesticated animal. According to this

Tosefta at least, Rabbi Judah knows of and even accepts a prohibition against the sale of weapons (and large animals) to non-Jews.

If we grant for the moment that Rabbi Judah was, if not *the* redactor, at least a major contributor to the redaction of the Mishnah, then it is relevant to ask: Why are the prohibitions against the sale of large domesticated and wild animals encoded in the Mishnah while the related prohibition against the sale of weapons is entirely omitted? Surely the redactors were cognizant of a weapons prohibition, as the passage in the Tosefta (found also on b. AZ 16a) indicates is true not only of Rabbi Judah ha-Nasi but also of those reporting the tradition about him.¹⁸

It is possible that the neutral term דבר employed by the mishnah (“anything which may injure the public”) refers to any item that causes injury, not just animals, and therefore includes weapons. One might conclude that the Mishnah does contain a prohibition of weapons after all,¹⁹ but in a manner consistent with its penchant for brevity. I would argue, however, that the prohibition has been almost entirely gutted and masked by its being compacted into this phrase and pinned to the prohibition against the sale of wild animals. The Mishnah lacks an explicit and robust prohibition of the sale of weapons, weapon accessories, and the like, as is so clearly found and elaborated upon in the Tosefta and the beraitot of the gemaras.

It might also be argued that the Mishnah’s exclusion of a prohibition of weapons sales is due to the fact that the prohibition can be inferred from the prohibition against the sale of dangerous animals. This possibility is not supported by the sources. The tradition that appears in the Tosefta and the Bavli infers a prohibition of the sale of a large animal from a general prohibition of weapons sales (t. 2:3 and b. 16a). The inference does not run the other way (from animals [large or wild] to weapons). Thus it seems that the prohibition of weapons was understood by the rabbis to be at least as general a legal rubric as the prohibition of animals—whether large or wild (see further, note 23). How, then, are we to explain the eclipse²⁰ of a prohibition of weapons sales as evidenced by the Mishnah?

The most plausible explanation is that the prohibition of the sale of weapons dates to a time of hostility—even war—between Jews and non-Jews, and the eclipse of that prohibition dates to a time of relative peace. The evidence cited above would suggest that the prohibition predates the close of the Mishnah and that its eclipse coincides with the redaction of the Mishnah. Diachronically speaking, the literary evidence suggests a portrait of Jewish–Gentile relations that moves from an early period of hostility and conflict (the time of the prohibition) to a later, more peaceful co-existence (the time of its eclipse).

Indeed, our knowledge of Palestine in the first few centuries of the Common Era supports precisely such a portrait. The first two centuries of that period saw the Jewish War (33–70 C.E.), the destruction of the Temple, an influx of “foreigners” and appropriation of Jewish land, the Hadrianic persecutions and the Bar Kokhba revolt (the 130s), and the restrictive laws and occupying forces under the Antonine Caesars (138–193). The Roman military flexed its muscles repeatedly in these years, and Jews engaged in armed conflict against their would-be overlords on more than one occasion. That a prohibition against the sale of weapons and their accessories to non-Jews should date to this period occasions no surprise.

However the situation of the Jews in their land and their relationship with Roman rule changed greatly with the advent of the Severan Caesars (193–235)—precisely the period of the redaction of the Mishnah and the (alleged) eclipse of the prohibition against the sale of weapons. Alon describes the rule of the Severi as “the high-water mark in friendly relations between Rome and the Jews” (1989:685ff). An edict issued jointly by Septimius and Caracalla declared municipal honors to be open to Jews (enabling them to hold municipal office), and the extension of Roman citizenship was effected by the edict of Caracalla in 212 C.E. Alon describes the Jews’ recognition of Roman rule in this period:

It is possible that this newly benign attitude of Rome to her Jewish subjects may have been a major factor in the development of a more positive stance towards Roman rule on the part of the Jews. This is not to say that the Jews became enthusiastic supporters of the imperial system. Rome was still seen as “the wicked kingdom.” But it may well be that the Severan period gave an important impetus to the process whereby the conquered became adjusted to their conquerors, learned to accept the legitimacy of the regime, and made a sort of peace with the fact that their country would remain occupied for quite some time to come.

The long-drawn-out, stubborn refusal of the Jews to come to any kind of terms with Roman rule had been weakened by the defeat in the Bar Kokhba war. Now, in the third century, there emerged a sort of policy of accommodation, which may be stated as follows: no more armed resistance, and recognition of the validity of government laws and measures, except for those which interfered with the Jewish religion. . . .

The doctrine of submission to duly constituted authority had not been unknown earlier, during the days of the Second Commonwealth, but it had had few adherents then. . . .

Prior to the Bar Kokhba war there is no evidence of such ideas among the Sages. It may be conjectured that two factors combined after the fall of Beitar to make this doctrine more acceptable. First, there was not much choice: the Jewish People was greatly weakened, its will to resist at a low ebb. Second, the newly favorable political conditions under the Severans may have made cooperation with the Romans now seem more reasonable. (1989:698, 699–700)

R. Judah ha-Nasi himself was a central figure in the move toward recognition of Roman rule and mutual accommodation. I submit that it is no accident that the prohibition against the sale of weapons and their accessories to non-Jews is omitted from the Mishnah. R. Judah knew of this prohibition, dating to a period of hostility, and he even relied on it in his rejection of Ben Bathera’s ruling concerning the sale of horses.²¹ Yet R. Judah lived in a time of relative peace, security, and accommodation to Roman rule.²² Perhaps for these reasons, the final redaction of the Mishnah did not include an explicit prohibition of the sale of weapons to non-Jews.²³

The prohibition was marginalized and is recorded in a beraita in the Tosefta and is rehabilitated by both Talmuds. Whether the prohibition owes its reappearance to historical circumstances (a deterioration in relations) or simply to the dialectical impulse to preserve, document, or debate older traditions, one thing is clear. Neither Talmud accepts the prohibition in its bare form. The Yerushalmi qualifies the prohibition so as to apply only to towns inhabited entirely by non-Jews. This modification would indicate that while relations between Jews and non-Jews in the

land of Israel in the amoraic period were not so bad as to warrant a resuscitation of a complete ban on the sale of weapons, they were not so good as to warrant the unrestricted permission of weapons sales.

While the Mishnah and Tosefta jointly speak only of the prohibition of selling (1) animals that can be used as “weapons,” (2) weapons themselves, and (3) the accessories of weapons, the Bavli considers the more general question of other items that might be used as weapons (such as shields) and the novel question of raw materials used in the manufacture of weapons (iron in various forms). The common theme of the Bavli’s discussions is that only that which is certainly going to be used as or transformed into a weapon is prohibited. Thus it is permitted to sell shields, because there is no general agreement that the shield will definitely be used as a weapon. It is permitted to sell spades and pickaxes, because although these are made of iron it is not certain that the non-Jew will forge this iron into a weapon. Bars of Indian iron, however, whose *only* purpose is the manufacture of weapons, may not be sold to non-Jews. Apparently the sale of such bars is deemed to violate the spirit—if not the letter—of those earlier tannaitic rulings concerning the sale of weapons, weapon accessories, and animals that are used to kill. The case of bars of Indian iron is a new case taken up for consideration in Babylonia.

In the sugya to this point the weapons prohibition itself is not subject to debate or modification. The bulk of the sugya featuring early amoraim is nothing more than a discussion of the extent of the law’s application: Does the law extend to shields, pickaxes, or weapons-grade iron material? The views expressed so far can be reasonably understood as extrapolations from the basic principles at stake in earlier sources. For that very reason we cannot use them with confidence to draw conclusions regarding Palestinian–Jewish relations in the early amoraic period. By contrast, the final step of the sugya is susceptible to historical analysis. This step explicitly records a halakhic development internal to Babylonia. Whereas earlier amoraim held that the sale of raw materials came within the purview of the prohibition, this ruling is said to have been actively reversed by sages in the early fifth century. The sale of Indian iron to Persians for the manufacture of weapons is permitted, because the rabbis do not fear that these weapons will be deployed against them but assume they will be used for the mutual defense.

Here we may draw historical conclusions with some confidence, for here there is an explicit reversal of a previous prohibition—a reversal that is attributed to the circumstances of life under Persian rule. Thus, whatever Persian–Jewish relations in the early amoraic period might have been (and our sugya reveals nothing on this score), it seems that by the late amoraic period (early fifth century) the Babylonian rabbis felt secure enough to cooperate with the regime in the supply of weapons-grade material.

Historians of Babylonian Jewry describe the talmudic period in Babylonia in a manner that supports this claim. According to Gafni, the Sassanian period, beginning in the third century, was already a time of increasing alliance and loyalty toward the government (1975:18–19). Shmuel’s declaration that “the law of the government is law” points to a solid mutual understanding between the Jewish and Persian authorities. There were periods of religious persecution, particularly during the efflorescence of religious zeal following the death of Shapur I. Nevertheless, Babylonian

Jews were basically loyal to the Persian regime. They continued in a position of strength right into the early fifth century, to which time certain traditions featuring the friendship of the king toward Jews can be dated.²⁴

Concerning our sugya, Neusner states:

R. Ashi's dictum does not prove he was a "Persian patriot." It only indicates he knew full well the importance of the common defense. Since the Iranian government secured the prosperity of all its subjects through holding the northwestern frontier against the Roman Christian enemy, the desert frontier against the Arabs, and the Armenian and Caucasian passes against the barbarians, the Jews among others had better cooperate in the defense for their own good. (1966:vol. 5, p. 18)

Differences among the Bavli and the Yerushalmi, the Tosefta and the Mishnah, in regard to laws concerning the sale of weapons, weapon accessories, raw materials for the manufacture of weapons, and so on are best explained as reflecting the shifting relations between Jews and non-Jews in Palestine and Babylonia in different periods. Prohibitions may date to periods of hostility or conflict, whereas relaxations of prohibitions may date to periods of relative calm and accommodation to the non-Jewish state.²⁵ The tannaitic prohibition against the sale of weapons and their accessories to non-Jews (preserved in the Tosefta and Talmuds) probably dates to the period of armed conflict between the Jews and Romans (first and second centuries). The Mishnah's omission or suppression of this prohibition may signal a period of security in which Jews had come to recognize the legitimacy of Roman rule (early third century). The Yerushalmi's qualified endorsement of the original prohibition may indicate the return of tension, if not violence, in the relationship with Rome, although the trend toward the dialectical rehabilitation of marginal traditions by the amoraim should not be ignored. Finally, the Bavli's explicit reversal of an earlier ruling prohibiting the sale of raw materials used in the manufacture of weapons may reflect the historical situation of Jews in early fifth-century Babylonia who felt protected by, and in turn supported the defense effort of, the Persian government. These sources illustrate not only the importance of time and place in the articulation and modification of halakhah, but also the possibility of cultural-historical analysis of halakhic developments.

Conclusion

Scholars of rabbinic literature must do justice to the complex intersection of exegetical and historical axes in this literature. The careful identification of hermeneutical, rhetorical, and dialectical strategies is, apart from its own inherent value, a critical precursor to any cultural-historical analysis of rabbinic texts. I have not argued here that such cultural-historical analysis is impossible—only that it is fraught with difficulties and dangers if it fails to come to terms with the theory and practice of interpretation in rabbinic culture.

In regard to the issue of accounting for halakhic difference between the two Talmuds, I have argued that one must attend to a range of internal causes of halakhic difference—textual, hermeneutical, and dialectical—if one wishes to avoid a reductive brand of historical analysis. I have further argued that a sound knowledge of rabbinic canons of interpretation and strategies of reading are critical for reliable cultural-historical analysis of halakhic difference, for it is precisely the text in which the rabbis violate their own interpretive canons and strategies that invites cultural-historical analysis.

In the first two parts of this work, I examined internal causes of halakhic difference between the two Talmuds in tractate Avodah Zarah. That is, I examined the way in which halakhic difference might be traced to various phenomena native to the exegetical enterprise of the amoraim. I showed in chapter 1 that halakhic difference can result from the fact that the two communities of amoraim possessed divergent versions of the Mishnah itself. In chapter 2 I demonstrated that syntactic oddities, gaps, and semantic ambiguities in a mishnah could generate halakhic divergence between the gemaras as the amoraim struggle to interpret and analyze the mishnah. In chapter 3 I turned to a discussion of the formal and actual halakhic differences that emerge from the Bavli's more systematic application of the hermeneutical assumption of verbal economy in the language of the Mishnah (an assumption shared by, but less fully developed in, the Yerushalmi). Chapter 4 explored the way in which the Bavli's more rigorous pursuit of dialectical strategies of interpretation and redaction led to halakhic difference between the Talmuds. In these latter two chapters I

suggested that the Bavli's more systematic and rigorous application of hermeneutical presuppositions and strategies is a function of time. The Babylonian amoraim and savoraim enjoyed a further 300 years (after the close of the Yerushalmi) in which to pursue analogies, juxtapose traditions, and embed traditional material in complex dialectical frameworks.

In part 3 I turned to a consideration of halakhic differences between the Bavli and Yerushalmi that lend themselves to a cultural-historical analysis. In each case, some unprecedented novelty or exegetical aberration signaled the possibility of an extratextual pressure to modify the halakhah. In chapter 5 I examined the greater degree of leniency adopted in the Bavli in regard to the prohibition of commercial transactions with Gentiles during communal idolatrous festivals. As regards the number of days for which the prohibition was held to be in effect, the Bavli reached novel conclusions. In addition, a stringent minority interpretation of m. AZ 1:1 was, on my interpretation, reduced to absurdity in the Bavli, in violation of the common practice of seeking rationales for even rejected and minority views. These two phenomena indicate the susceptibility of these sources to cultural-historical analysis. I argued that both external historical and internal halakhic factors contributed to the differences between the two Talmuds in regard to the question of commercial interaction on communal idolatrous festivals.

In chapter 6 I examined the Bavli's emendation of a prohibition against Israelite women serving as midwives to Gentile women—a halakhic difference in the form of a halakhic development. The lack of Palestinian precedent for the beraita employed to effect this halakhic shift and the irregular manner in which the mishnah and beraita were handled signaled the susceptibility of this sugya to cultural-historical analysis. The reason cited in the gemara for the emendation was shown, through intratextual verification, to have merit. In this instance, the analysis of halakhic difference between the Talmuds uncovered cultural attitudes held *in common* by Palestinian and Babylonian rabbis.

In chapter 7 two exegetical aberrations prompted a cultural-historical analysis of the halakhic difference between the two Talmuds in regard to the private feast day of Gentiles. I showed that the Bavli encodes a surprising set of stringencies concerning both social interaction and economic interaction with Gentiles during a private [wedding] feast. I argued that the failure of other scholars to recognize and assess these stringencies is due to the fact that the Babylonian prohibition of such interaction with Gentiles in these circumstances does not conform to the widely held theory that prohibitions on Jewish–Gentile relations were relaxed in the diaspora.

In chapter 8 a comparison of sources regarding the prohibition of weapons sales to Gentiles suggested that a first-century prohibition of these sales was suppressed at the time of the redaction of the Mishnah. Although the prohibition reappears in the Tosefta, the Yerushalmi, and the Bavli, it is handled in various ways. A historical analysis of these sources demonstrates the manner in which this prohibition and related halakhic developments were tied to (and reflect) well-documented shifts in the relations between Jews and the non-Jewish regimes in Palestine and Babylonia at various times.

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Appendix: Response to Jacob Neusner

In 1995 Jacob Neusner published a book (henceforth 1995d) which included a critique of my 1993 doctoral dissertation (Hayes 1993) upon which the present volume is based. Neusner's critique had already appeared three times: as chapters in two earlier volumes by the same author¹ and as a "book" review in the *Journal for the Study of Judaism*, 26, 2:194–199.² Neusner's book (1995d) simply splits the *JSJ* review into two short sections (with added elaborations) that flank a presentation of Neusner's own thesis.³ Neusner's critique in all four manifestations contains several misrepresentations and inaccuracies to which I will here respond.⁴

First, I wish to state clearly the nature of the project that I undertake in the dissertation and in the present volume. Despite Neusner's statements to the contrary (e.g., 1995d:xxvi), it is not my goal to compare the two Talmuds (the Yerushalmi and the Bavli) *as whole documents*—that is Neusner's project represented in various recent publications, but it is not mine. My goal is to compare parallel pericopae or sugyot, that is, I want to compare the Yerushalmi's sugya on mishnah X and the Bavli's sugya on the same mishnah.⁵ This is comparable to wanting to compare Rashi and Ibn Ezra on a particular biblical verse rather than comparing the biblical commentary of each exegete as a whole.

But this leads to Neusner's major criticism of my work. He says that there can be no comparing of parts without some prior theory of the "wholes." He asserts that I have no theory (i.e., no characterization) of each document as a whole, and without a theory of the whole I cannot compare parts. To continue the analogy of the preceding paragraph, one cannot compare Rashi and Ibn Ezra on a particular biblical verse without a comprehension of the overarching characteristics of the commentary of each exegete.

Thus Neusner writes:

Comparing things that are alike but different, however, requires that we find bases for the characterization of both things, so differentiating them as wholes as to warrant comparing and contrasting the parts. But, for reasons she spells out, Hayes

does not want to see the documents as a whole, only atomistically—and yet she does want to compare them. (1995d:xxvi)

He states further that I deny integrity to that which is subjected to comparison, that I decline to characterize that which I propose to subject to comparison, and that I insist that characterization is impossible to begin with—producing therefore only episodic results (*ibid.*): “If Hayes has no general theory of the characteristics of the Bavli and the Yerushalmi, then she is left with data she cannot explain at all” (1995d:xxviii).⁶

I am not aware of any statement in my work insisting that a characterization of the Bavli and the Yerushalmi is impossible. Nor would I wish to make such a statement or decline to characterize the Bavli vis-à-vis the Yerushalmi, since I am in agreement with Neusner on this methodological point. I agree that one ought to propose a theory of the whole documents if one wishes to compare their parts, and in the introduction of my study I did provide just such a theory as a working hypothesis, *pace* Neusner (pp. 60–70 of the dissertation, and pp. 20–23 of this book). This theory of the “wholes” (to use Neusner’s language) is presented in the introduction precisely because it is a critical first step for my study. I am, after all, seeking to demonstrate, *inter alia*, that the difference in basic character between the two Talmuds can lead to differences in legal details (i.e., the basic difference between the “wholes” often generates differences in the “parts”). I wish to demonstrate this point because it is basic to my central thesis: Since particular halakhic differences may be the result of the basic difference in the characters of the two Talmuds, we must proceed with caution when utilizing particular instances of halakhic difference for historical reconstruction.

My characterization of the whole documents does not coincide in every detail with the characterization Neusner himself presents in several recent volumes, for reasons that will be spelled out later. Neusner’s work in this area should be acknowledged, however, and therefore in the present volume I have included references to Neusner’s conclusions where they are similar to mine.

Indeed, there are some striking similarities between the characterizations of the two Talmuds that Neusner proposes and the characterizations provided by me and other scholars—and there are some important differences. Neusner’s theory of the whole documents involves the claim that the Babylonian Talmud is radically different from the Palestinian Talmud. He states that the “differentiating characteristics are intrinsic and substantive: what is to be done with the shared formal statements taken from prior writings” (Neusner 1995a:79). He offers three generalizations that characterize the difference between the Talmuds:

1. the first Talmud [the Palestinian Talmud] analyzes evidence, the second [the Babylonian Talmud] investigates premises;
2. the first remains wholly within the limits of its case, the second vastly transcends the bounds of the case altogether;
3. the first wants to know the rule, the second asks about the principle and its implications for other cases. (1995a:80)

In sum, he holds that “the one Talmud provides an exegesis and amplification of the Mishnah, the other a theoretical study of the law in all its magnificent abstraction—

transforming the Mishnah into testimony to a deeper reality altogether: to the law behind the laws” (1995a:80). The hermeneutics of the Bavli “insists upon inquiry into premises, implications and principles behind cases and how they coalesce” (80).

My characterization of the difference between the two Talmuds is found in the following passage⁷ and is indebted to the work of both American and Israeli scholars. The similarities with the foregoing are immediately apparent.

Although this period [the late amoraic and savoraic period unique to the Babylonian Talmud] is veiled in darkness, it was probably then that (a) earlier traditions were more fully embedded in the complex rhetorical and dialectical framework so characteristic of the Bavli; and (b) abstract legal and judicial concepts were developed and incorporated into the sugyot of the Bavli. This period and its activity had no parallel in Palestine. As a consequence we see in the Yerushalmi and the Bavli two very different types of Talmud: the concise, minimalist Palestinian Talmud and the highly developed, discursive and dialectical Babylonian Talmud.” (Hayes 1993:62–63)

Further, in the dissertation (and in this volume), I cite the work of Jacob Sussman (1990) and Baruch Bokser (1990) in this regard.

Sussman (1990:96–99) describes the difference between the character of the two talmuds this way: the Yerushalmi is a genuine “talmud” (study) of the Mishnah. It is composed primarily of comments, glosses and explanations of the Mishnah—around which it revolves. There are no late additions and the impression one receives is that the teachings of the Amoraim have been preserved in essentially their original form, as learned in the 4th century. On the other hand, for the Bavli the Mishnah is but a point of departure for lengthy and involved debates and dialectical discussions that take on a life and momentum of their own in the later layers of material. The talmud of the late Babylonian amoraim has passed through a long and extremely thorough period of reworking, redaction and formulation and is the product of, not the 4th century but the 7th century. (Hayes 1993:64–65)

Baruch Bokser (1990) echoes these observations:

[The Talmud is] a sophisticated literary orchestration of sources, exegeses, traditions, and narrative accounts integrated and organized formally around the Mishna (with some subunits . . . structured around topical, formal, or exegetical rubrics). At one point the earliest amoraic teachings responded to the Mishna, though subsequently they became in their own right the point of departure for other comments. . . .

. . . the later type of discussion—making up the characteristically anonymous “Talmudic dialectic”—formed an analytical inquiry in several tiers on the consistency of opinions, logic, and legal principles, and aimed at correlating and integrating sources and approaches. (qtd. in Hayes 1993:65–66)

Despite a broad similarity, the characterization of the two Talmuds I adopt in my study differs from that of Neusner in three important respects. First, Neusner’s portrait of the two Talmuds is highly polarizing. For example, he states that “the framers of the Bavli *in no way* found guidance in the processes by which the Yerushalmi’s compositions and composites took shape” (1995a:79, emphasis mine) and “the two Talmuds in fact are utterly unlike pieces of writing” (92). Such extreme formulations

are challenged by the fact that at times (albeit infrequently) the Yerushalmi does look beyond the limits of the immediate case tentatively to explore more abstract principles, while the Bavli at times limits itself to glosses and simple exegesis of the immediate case. These exceptions do not make nonsense of the generalizations of the nature of the two Talmuds provided here, but they do suggest that there is not a radical discontinuity between them. Indeed, Neusner himself states at one point (and so contradicts his many assertions regarding the utter dissimilarity of the two Talmuds) that “the Bavli does commonly what the Yerushalmi does seldom and then rather clumsily” (1995a:92).

Second, Neusner’s description of the Bavli is ultimately philosophical and theological; as such it is irrelevant to my own project, the thrust of which is historical and literary.⁸ While I accept that the Bavli *in general* strives for abstraction, and it often aims at the larger principles operative in a plurality of cases, I am not convinced by Neusner’s claim that this amounts to a “quest for philosophical truth” (1995a:93), a “rigorous demonstration that the Torah, at its foundations, makes a single statement, whole, complete, cogent and coherent, harmonious, unified and beyond all division” (94) or that the Bavli’s single message is “that the truth is one.”⁹

Third, as should be clear by now, Neusner’s project regarding this issue is simply not my own, and yet he criticizes me for failing to succeed at *his* project. Neusner’s documentarian project aims at the characterization and comprehension of successive documents of the Judaic canon, enabling him to write what he holds to be an intellectual history of Judaism or a canonical history of successive Judaisms. Thus, a general documentary characterization of each Talmud is the goal in Neusner’s documentary analyses of the two documents. My work, by contrast, is devoted to the entirely different question of cultural-historical reconstruction on the basis of talmudic texts. The documentary characterization of each Talmud is not the goal of my work but is, rather, a tool that aids me in evaluating the susceptibility of particular passages to explanation in cultural-historical terms. My description of the characteristic features of the two Talmuds (a description prominent in much academic talmudic scholarship and corresponding in part with Neusner’s own assessment of the basic nature of and difference between the two Talmuds) is found in my introductory chapter precisely because it is the first step leading to my central claim. Again, that claim is that since particular halakhic differences may be the result of the basic difference in the characters of the two Talmuds, we must proceed with caution when utilizing particular instances of (halakhic) difference for historical reconstruction.

The argument presented in my dissertation (and the present volume) involves the following steps. The basic documentary difference between the two Talmuds is generally manifested in divergent hermeneutical assumptions and practices regarding the Mishnah. This claim is not only set out in the introduction but is also demonstrated in part II of the dissertation (and book). Comparing what the two Talmuds do differently with that which is common to them—the Mishnah—exposes their respective documentary characters. However, the primary purpose of the case studies presented in part II is not, as Neusner supposes, to demonstrate that this documentary difference exists, but rather to demonstrate how it can and does lead to differences in halakhic detail.¹⁰ That it can lead to halakhic difference in turn suggests that historical explanations of halakhic difference in such cases are suspect. By contrast, in part III I show that our knowledge of the different characters of the Talmuds

and their particular hermeneutical practices acts not only as a brake on inappropriate historical analysis but also as a guide to appropriate historical analysis. This is so because halakhic difference between the Talmuds that cannot be attributed to, or that violates, the characteristic nature of the texts in question is likely to have been formed in response to extratextual (historical) pressures of one kind or another.

In sum: as regards Neusner's view that one must have a theory of the wholes before one can compare parts of those wholes, it should be clear by now that I do have such a theory, even if it does not correspond precisely to that of Neusner. That theory is set out in the introductory section of the present volume (as it was in the dissertation) and forms the basis for my central hypothesis: Successful historical analysis of halakhic difference between the Bavli and the Yerushalmi involves, as a first step, a consideration of the divergent natures of these two texts as manifested in their divergent hermeneutical assumptions and practices.

Having addressed Neusner's major methodological criticism, I turn now to five specific charges.

1. Neusner claims that I misunderstand the notion of authorship advanced by him, imagining that Neusner refers to a single individual (1995d:164). This charge stems from a misconstrual of a passage in my introduction. I say that Neusner speaks of the Talmud as a single unit "as though authored by a single individual." I used the phrase "as though" precisely in order to underscore Neusner's emphasis on the single-mindedness of the authorship *as though* the work came from the mind of a single author, though of course it did *not*. My awareness that Neusner's notion of authorship entails a community of persons is indicated by the fact that in the next sentence I describe Neusner as concerned with the ideology "of the final author/redactor(s)" (the *s* being distributed to both of the alternative terms). The concept of a textual community (though variously defined) is not unfamiliar to me and is in fact widely held in academic talmudic studies.

2. Neusner states that "Hayes takes attributions at face value" (1995d:164). In fact, I do not. A fuller discussion of this matter appears in the introduction of the present volume, and readers are referred to the critical appraisal of attributions in the cases presented in the body of the work. My position is critical without resorting to extreme skepticism.

The following three charges will be answered at once, since they stem from Neusner's misconstrual of a single passage.

3. Neusner claims that I posit "a single, incremental Judaism, so that all Judaic sources, whatever the origin, attest e.g., to a single, harmonious, unitary law, subject to development in diverse times and places but always one and the same" (1995d:165).

4. Neusner claims that I "allege that what we find in the Mishnah and Tosefta that is paralleled in Qumran texts has to be 'dated' to the second century" (1995d:165).

5. Neusner states that I want to conclude that:

[T]he Mishnah or the Tosefta has derived that rule [paralleled in a Qumran text] from a continuous process of tradition—from Qumran to our sages of blessed memory. . . . But on what basis does she posit that continuous, unbroken process of tradition? The happenstance that a datum circulated early in one group, and circulated later, in some other, tells us that the datum is early, but it does not tell us that the document in which the item later on surfaces has gotten the item from the earlier one. . . . [W]e cannot know that what occurs in the one has reached the

other in such a way as to attest to the continuity and harmony of the two bodies of writing. Hayes does not consider the problem of systemic selection out of a receive [*sic*] corpus of inert facts because she also imagines that a single Judaism unites all documents—and that is by decree. (1995d:165–6)

The relevant sections of the passage in which Neusner claims to have found these views is as follows:

It is quite simply a fact, borne out time and again, that much material recorded in late texts reflects earlier traditions. Hence we find in the Babylonian Talmud material paralleled in tannaitic midrashim, we find in the Mishnah and Tosefta material paralleled in Qumran texts that date to the 2nd or 1st c. B.C.E. (Hayes 1993:36)

Concerning charges 3 and 5, it is precisely because I do not posit a single incremental Judaism (a position problematized by the work of Morton Smith, for one) that I used the word “reflects”—so as not to prejudge the question of the actual relationship between early and late parallels. I was careful not to say that late texts *record* early traditions, or *cite* them verbatim and unchanged. When I state that much material recorded in late texts reflects earlier tradition, I mean simply the following (and I believe it is an uncontroversial point that Neusner himself accepts; see Neusner 1995a:28ff): Rabbinic documents draw upon sources (in Neusner’s terms, preexisting compositions). The existence of parallels between early and late texts suggests that this is so because parallels are most reasonably explained in accordance with the view that certain traditions circulated widely, ending up in various forms in various documents. I believe that one can make such a statement without any assumptions concerning lines of connection or transmission between the early and late texts. It may well be, for example, that both texts draw from a third source and independently formulate their teachings in similar ways. Alternative scenarios, from direct transmission to complete discontinuity, can be imagined. Of course, just as one should not assume a continuous process of tradition behind parallel teachings in early and late texts, neither should one assume a complete discontinuity. Such matters are best determined on a case-by-case basis where possible. Where it is not possible, we must leave the question open rather than allowing a theory to dictate the answer. Thus, *pace* Neusner, I do not here or elsewhere say or intend to say “that the document in which the item later on surfaces has gotten the item from the earlier one”—nor do I deny that the redactors of the later texts have performed an act of selection out of a received corpus.¹¹

Finally, the fourth charge is based on a misconstrual of the relative pronoun “that” in the phrase “we find in the Mishnah and Tosefta material paralleled in Qumran texts that date to the 2nd or 1st c. B.C.E.” The clause “that date to the 2nd or 1st c. B.C.E.” refers to “Qumran texts” and not to “material.” That this is so is indicated by simple subject–verb agreement. The verb “date” is plural and therefore can refer only to “texts” and not “material.” Thus the sentence does no more than point out the simple fact that we do find in Mishnah and Tosefta material that is paralleled in second–first century Qumran texts.¹² In this sentence I clearly do not say nor do I imply that something found in the Mishnah or Tosefta that is paralleled in Qumran texts has to be dated to the second century B.C.E., as Neusner suggests.

Notes

Introduction

1. Other collections of tannaitic traditions were collected and studied, but in time the collection attributed to R. Judah ha-Nasi gained ascendancy. See the classic account in Epstein 1948.

2. For a similar dichotomy employing different terminology, see Steven Fraade's study of *Sifre Deuteronomy* (1991), in which he refers to the double dialogue of the *Sifre*. By this he means that "the commentary simultaneously faces and engages the text that it interprets and the society of 'readers' for whom and with whom it interprets" (14). Fraade seeks to avoid two fallacies found in scholarly analyses of midrash, which he terms the hermeneuticist and the historicist fallacies:

The former tendency is to see the commentary primarily in its facing toward Scripture and to view hermeneutical practice as if conducted within a sociohistorical isolation booth into which only the commentator and the chosen text, or self-contained corpus of texts, are allowed entrance. The latter tendency is to see the commentary primarily in its facing toward the events or circumstances of its time, and to view its response to and representation of those events as being only slightly veiled by the formal guise of the scriptural exegesis in which it is wrapped. The former claims to have explained the commentary when it has identified hermeneutical pressures within Scripture and the commentary's responses to those. The latter claims to have explained the commentary when it has identified historical pressures outside of Scripture and the commentary's responses to those. (14)

3. Elmslie's criticism of this view is in order: "It is true that the Jews hated the Roman dominion. But it seems to me that these laws, inasmuch as they are often the cause of far greater inconvenience to the Jew himself than to the heathen [e.g., avoiding a town where there is an idolatrous festival], are constructed for religious and not political ends" (4).

4. Within this rubric I include the rabbinic practice of exegesis of authoritative texts.

5. In the *Zadokite Document* 12, 8–9, the reason for a prohibition of the sale of large pure animals to non-Jews is explicitly stated to be lest the animal be sacrificed—an entirely "religious" motivation. This sectarian law is certainly earlier than the ruling concerning large animals (pure or impure) contained in the *Mishnah*, and thus its existence is evidence against

the view that religious explanations for these *taqqanot* are necessarily later rationalizations. See Ginzberg 1976:76–77.

6. It should be noted that this reasoning is not explicit in the texts but is provided by Ginzberg.

7. Although this study does not consider aggadic texts, the remarks of Yosef Yerushalmi concerning the historical value of such texts is of interest. Yerushalmi asserts flatly that “the history of the Talmudic period itself cannot be elicited from its own vast literature. Historical events of the first order are either not recorded at all, or else they are mentioned in so legendary or fragmentary a way as often to preclude even an elementary retrieval of what occurred” (1982:18). In any event, to search for the historical is “to burden rabbinic aggadah with a demand for historicity irrelevant to their nature and purpose. Classical rabbinic literature was never intended as historiography, even in the biblical, let alone the modern, sense, and it cannot be understood through canons of criticism appropriate to history alone” (ibid.). Yerushalmi goes on to argue that the “assumptions and hermeneutics of the rabbis were often antithetical to those of the historian, and generally remote from ours even when we are not historians” (ibid.).

8. It will be recalled that the Talmuds contain statements attributed to and stories involving rabbis from various localities and various periods prior to the texts’ final redactions.

9. This label is, of course, misleading, since traditional talmudic commentators vary widely in the degree to which they may adopt critical methods of textual study while modern scholars occasionally slip into uncritical readings of particular passages. The designation is for heuristic purposes only.

10. For examples of works that adopt such an approach, see Kalmin, 1994:3 n. 6, and 21–22 n. 1. See also subsequent discussion in this chapter.

11. Daniel Boyarin (1993) draws upon the methods of the new historicism and cultural poetics in his studies of rabbinic material. For Boyarin, rabbinic texts must be understood as social practice, functioning in a larger sociocultural system of practice (14). The conviction that rabbinic texts do not simply reflect extratextual reality is widespread among modern talmudic historians, who have modified their expectations regarding the historical information that is yielded by these texts. For example, in chapter 6 I examine a legendary text (p. BQ 4:3, 4b) which has been described by some scholars as a historically reliable account of the investigation of R. Gamliel’s academy by Roman officials. I argue that this text’s historical usefulness lies not in the fact that it records a historical event (and whether such an event actually occurred is not at all certain), but in the fact that it attests to an early rabbinic ambivalence toward certain halakhic rulings bearing upon interactions with non-Jews.

12. Goldberg’s method, presented in *Die Diskurs im babylonischen Talmud: Anregungen für eine Diskursanalyse*, is summarized in Schäfer 1986.

13. These views are summarized in Neusner 1995a, in which he refers to the many books that articulate and repeat his theories in full form; for an exhaustive list of these works, see the citations on pp. xvi–xx and xxii–xxv. See especially Neusner 1981a, 1992, 1994, 1995b.

14. The unreliability of the attributions attached to rabbinic teachings and the reworking of earlier sources by later redactors are central arguments of those who assert the impossibility of historical reconstruction on the basis of rabbinic sources. W. S. Green (1978:80–83) has argued that the *very nature of the Mishnah* precludes the possibility of historical reconstruction before the third century C.E., for several reasons.

First, rabbinic documents are carefully and deliberately constructed compilations, each with its own ideological or theological agenda.

Second, it is “axiomatic that the agenda of any document, though shaped to a degree by the inherited materials, ultimately is the creation of the authorities, most of whom are anonymous, who produced the document itself” (80).

Third, the features of these documents suggest that their agenda transcend the teachings of any single master. These features include: the substantial amount of unattributed material; the use of a formal, topical, thematic, or scriptural arrangement and the representation of the masters as glossators and not innovators, both of which features indicate that the teachings of individuals have been made subservient to the goals of the document; and the embellishment, refinement, and revision of earlier materials.

Fourth, we know of early rabbinic figures only what the documents' compilers wish us to know. "Consequently, the historical context, the primary locus of interpretation for any saying attributed to a given master or story about him is the document in which the passage appears, not the period in which he is alleged to have lived" (80).

Fifth, while it would seem that the earliest rabbinic documents—Mishnah-Tosefta—ought to provide better information about the Yavnean masters than later documents, in fact the teachings in Mishnah-Tosefta are still well removed from the rabbinic masters as historical figures. This is so because the teachings have been made to conform to literary and theological agenda. They have been formalized, stereotyped so that we no longer have the *ipsissima verba* of the Yavneans.

Sixth, we cannot even claim access to a formalized but *accurate* representation of a sage's ideas and positions because of the centrality of artificial superscriptions (topic sentences) to which the views of the sages have been attached. We cannot be sure of the "extent to which a master's views on a given matter have been revised in the tradental and redactional processes, and we therefore cannot automatically suppose that the superscriptions in disputes involving him accurately depict his perceptions and definitions of the issues and problems they represent" (82).

Although few today would contest the conclusion that conventional and even intellectual biography cannot be done on the basis of rabbinic texts (for this see Neusner 1979:41–57), the further conclusion—that we can learn *only* what it was important for a text's compiler(s) to say about earlier authorities (for this see Green 1978 and Neusner 1979:54)—does not necessarily follow. An excellent example of the historical usefulness of edited material is found in Kalmin 1994. In chapter 3 Kalmin examines tannaitic and amoraic statements and stories on the subject of dreams. He notes that Palestinian tannaim are depicted as interpreters of the symbolic dreams of nonrabbi and Babylonian amoraim primarily as the interpreters of verbal utterances (often biblical verses) of rabbis. This portrait of the Palestinian dream interpreter is supported by parallel Palestinian sources and remains intact even in a Babylonian passage that is clearly heavily reworked and edited. Kalmin surmises that editorial reworking of earlier material does not necessarily destroy the historical usefulness of that material.

Finally, while certain types of historical information are unavailable to us from rabbinic sources (e.g., detailed accounts of political events, personal biographies), there are other types of historical information (primarily cultural) that are available, and we must learn to ask the questions and employ methods of research that will elicit that information from these sources. (This issue will arise in the conclusion to chapter 6.) See also the criticisms of D. Goodblatt 1980:34.

15. Thus Neusner writes:

The first of the two principles by which I describe the matrix that defines the context in which texts are framed is that we compose histories of ideas of the Judaism of the Dual Torah in accord with the sequence of documents that, in the aggregate constitute the corpus and canon of the Judaism of the Dual Torah. . . . Documents reveal the system and structure of their authorships, and, in the case of religious writing, out of a document without named authors we may compose an

account of the authorship's religion: a way of life, a world view, a social entity meant to realize both. (1990a:23)

Neusner calls his method "the documentary history of ideas," which he describes as follows:

It is accomplished, specifically, by assessing shifts exhibited by a sequence of documents and appealing to the generally accepted dates assigned to writings in explaining these shifts. . . . [I]f we lay out these writings in the approximate sequence in which—according to the prevailing consensus, within which I do my work—they reached closure beginning with the Mishnah, the Tosefta, then Sifra and its associated compositions, followed by the Talmud of the Land of Israel, and alongside Genesis Rabbah and Leviticus Rabbah, then Pesiqta deRab Kahana and its companions, and finally the Talmud of Babylonia, we gain what I call "canonical history." This is, specifically, the order of the appearance of ideas when the documents, read in the outlined sequence, address a given idea or topic. (27, 29)

This method undergirds many of Neusner's analytical translations of rabbinic works as well as his other recent studies (see, e.g., 1981a, 1983, 1986b, 1986d, 1993–94). See also 1995a:xxii–xxv. For a critique of Neusner's approach, see Cohen 1990:62–65.

16. The work of Peter Schäfer should be noted here as a variation of a synchronic approach. Schäfer (1986) asserts that since it is impossible to date individual rabbinic traditions, one can study only the level of the final redaction of individual works. He endorses the analytical-descriptive approach of Arnold Goldberg (see earlier discussion) but sees a fundamental problem that is not addressed by it: The definition of a "work" of rabbinic literature is, for Schäfer, a historical issue. He criticizes Neusner and others for working with the *textus receptus*. For Schäfer, the manuscript traditions and variants are evidence that the very redactional identity of rabbinic texts is debatable, that the boundaries of rabbinic works are unclear. Because he questions the redactional identity of individual works of rabbinic literature, Schäfer ultimately disavows a synchronic research approach that focuses on the level of final redaction. Instead, he claims that at most we can study the history of a text's transmission.

Chaim Milikowsky (1988) maintains the existence of redactional identities and denies Schäfer's claims as to the extent and the significance of textual variants. Milikowsky reasserts the model of a redacted text, prior to which we may speak of the preredaction history of the sources included in the text, and after which we may speak of the postredaction transmission history of the redacted text (which may even lead to various recensions). He concedes that it is entirely possible that our manuscript tradition does not permit us to recover the Urtext, but there is nothing, in his view, to argue against the notion of individual redacted rabbinic works.

It is this model—the model of the redactional identity of a work as a kind of zero point or watershed between essentially distinct pre- and postredactional histories—that Schäfer (1989) rejects in his response to Milikowsky. He considers this to be a static portrait and insists on redaction as just a dynamic part of the transmission process. He criticizes the tendency to consider rabbinic texts as simple, self-contained "identities" composed at a given moment and clearly distinguishable. He views rabbinic literature as an open continuum in which the processes of emergence, transmission and redaction overlap.

Schäfer's work is important in reminding us that the boundaries between text criticism and source criticism in rabbinic literature can be blurred and that we do not always have a clear zero point for dividing text history from transmission history. However, although it may be difficult to pinpoint the moment of redaction of a text, defined works of rabbinic litera-

ture undoubtedly did emerge. At some point in the third century, for example, something known as the Mishnah was studied as a basically stable work, and one could generally only comment upon it rather than add to it (minor emendations, tamperings, and confusions excepted). In other words, when R. Meir studied halakhic traditions in the second century, his own teachings and views were integrated into the corpus of teachings as contributions; when Rava studied Mishnah, he studied it as a defined work and his teachings were not integrated as contributions but superadded as a commentary (again, leaving aside the more complicated issue of emendations, which are exceptions that prove the rule and are generally noted in the Talmud commentary rather than entered into the text of the Mishnah anyway). Likewise, although small additions are made to the Talmud quite late (seventh century), and despite evidence of some redactional activity in the medieval period, at some point in the early geonic period, rabbis perceived themselves for whatever reason no longer to be involved in the continuing growth of the text but to be commenting on a basically fixed and closed text. Similarly, midrashic works at some point made the transition from contribution to commentary. We may not be able to pin down the time when this occurred—we may come only within a century or so—but the point remains that an openness that allowed for growth through accumulation, reformulation, and revision of halakhic literature eventually was displaced by a closed state, a fixity that necessitated halakhic creativity through commentaries. As for Schäfer's description of the redaction model as "static," most scholars would concede that the so-called zero-point of redaction was less a point than a line segment, during which time a text only very slowly stabilized and after which minor changes could still occur as the text was transmitted.

17. The distinction between this third critical approach and the uncritical acceptance of attributions and reported events characteristic of the first approach is not clearly acknowledged by Jacob Neusner, who has on occasion lumped together scholars engaged in projects other than his own documentarian project. In several articles he has attacked what he refers to as the naive and uncritical traditionalism of nineteenth- and twentieth-century talmudic historians and philologists. See, for example, 1976:2–9; 1979:44–49, esp. 55–57; 1984:Introduction; and, more recently, 1990a, where Neusner writes:

One obvious mode of determining the matrix of a text, the presently paramount way, as I said, is simply to take at face value the allegation that a given authority whose time and place we may identify, really said what is attributed to him, and that if a writing says something happened, what it tells us is not what its authorship thought happened, but what really happened. That reading of writing for purposes of not only history, but also religious study, is in fact commonplace. It characterizes all accounts of the religion, Judaism, prior to mine, and it remains a serious option for all those outside of my school and circle (23–24).

The charges of gullibility against specific scholars and schools continue in the succeeding paragraphs. It is certainly true that some scholars adopt the traditional approach outlined above and assume a historical kernel to even the most fantastic legends and aggadot. Neusner is surely correct to attack any unjustified faith in the historicity of all details in the talmudic text. However, his blanket dismissal of all previous talmudic history, and much contemporary scholarship following lines of inquiry other than his own, as being fundamentalist and uncritical is itself indiscriminating. See J. Petuchowski's description of Neusner's comments as extreme (Neusner 1979a:chap. 2, notes). See also Boyarin 1992 to the effect that critical approaches to talmudic study predate Neusner, his "school and work." Boyarin notes Saul Lieberman's articulation of the principle that the Talmud may not serve as a good historic document when dealing with matters outside of its locality and time, and that any historical information gleaned from talmudic texts has to do more with general social conditions and

not with the specific events narrated, which are often tendentious and rhetorical (1992:462). (Boyarin adds that the Talmuds themselves point out occasional pseudo-attributions.) To cite at random one example of a critical approach outside the documentarian school: Shamma Friedman (1987) criticizes specific instances of naive historicism on the part of past scholars in his study of b. BM 83b–86a. His citation of Guttman (Friedman 70–71) is a clear and classic example. Guttman wrote: “[T]here is undoubtedly an historical kernel to the account that R. Elazar himself was unsure at the end of his days, as to whether he acted correctly . . . [I]t is inconceivable that the Babylonian tradition would thusly describe the relationships between R. Elazar and the sages unless it relied in this detail upon authentic information to some extent” (Guttman 1953:1, 4). By contrast, Friedman demonstrates that many details found in Babylonian texts and absent in Palestinian parallels are literary embellishments of purely Babylonian origin. Thus, Neusner’s claim that “the wrong, but commonplace, method is to assume that if a given rabbinic document ascribes an opinion to a named authority the opinion actually stated was stated in that language by that sage” (1990a:25–26) is puzzling, as is his dismissal of all Israeli scholarship as characterized by an “insistence that attributions eo ipso equal facts” (1995a:40). Scholars may differ in their evaluations of specific cases; nevertheless, it is the norm in academic talmudic studies in America and in Israel to be critical of naive historicism. For numerous examples of both American and Israeli scholars who adopt a critical stance on the question of attributions and historicity, without shading into the extreme skepticism characteristic of synchronic approaches to the text, see the extensive citations in Kalmin 1994:22 n. 1 (second paragraph).

18. For example, Shamma Friedman (1977) details fourteen criteria that he employs to distinguish the three main literary strata that, in his view, comprise the Talmud: amoraic statements, anonymous frame materials, and late glosses. See the studies in *Semeia* 27 and Kalmin 1994:163 for assessments of the adequacy and utility of Friedman’s theories. Goodblatt 1975 is another case in point (see discussion *infra*). See also, Kalmin 1994 and the works cited there (2 n. 5 for studies arguing that talmudic sources can be identified, and 11 n. 31 for studies concluding that the Bavli preserves Palestinian sources).

19. Tannaitic teachings are introduced by *תנן* or *תניא* or *תני רבנן* (usually *beraitot*); *ורמיהו* or *רמי* is used for a tannaitic teaching raised in contradiction. Amoraic traditions from Palestine may be introduced in the Bavli by *אמר* or *אמר* X *אמר* (“X” denoting the traveling tradent who brings the tradition).

20. Sometimes, of course, the later amoraim and geonim utilize these principles in order to solve a legal problem, when there may be no textual justification for invoking the principle. Nevertheless, the principles themselves most likely originated in legitimate cases.

21. How different this method is from that of a modern law code, which encodes statutes in a normative and synchronic fashion with no interest in how the statute came to be, who stated it when, who opposed it, and what statutes it may have replaced. That kind of legal history is recorded in other sorts of texts in our culture. But the Mishnah often preserves precisely that kind of history. Once again, this detailing indicates an effort to preserve diachrony that should not be violated with a synchronic flattening.

22. See, in this regard, the comments of David Kraemer (1990:20–25, and in more detail 1989:175–190). In addition to fine-tuning the principle of “independent” verification of attributions (by means of parallels in other sources), Kraemer discusses the literary criteria by which traditions and attributions might be deemed reliable. He argues that literary patterns do distinguish material from various amoraic generations, for example, and on occasion it is possible to verify even individual traditions (i.e., of the particular sage and not just his generation). Cf. also the literary analyses in the work of Richard Kalmin. A virtue of Neusner’s work is that it has forced talmudic scholars to prove that which was often simply assumed.

23. There is no need to duplicate here Kalmin's detailed list of the voluminous literature on the subject of preredactional sources in the Talmuds. The reader is referred to Kalmin 1994:10 nn. 30–32.

24. See Sussman 1989 for a discussion of the famous MMT text which records halakhic disputes over purity issues that find a parallel in the Mishnah tractate Yadayim. The Mishnah refers to the disputes as disputes between the Pharisees and the Sadducees in the first century C.E. The authenticity of the Mishnah's tradition has been doubted because of the highly technical and theoretical nature of the dispute (Neusner 1974, part 17, *Makhsirin*, chapter 10, secs iv–v). Yet the MMT's evidence undermines the claim that the Mishnah's tradition must be the speculative invention of a later academy projected back to an earlier period. In the light of the MMT text, it is highly probable that the Mishnah—redacted in the third century C.E.—preserves a genuine tradition concerning Pharisaic–Sadducean disputes over purity laws in the first century C.E. This is not to say that there is a direct line of transmission from the author(s) of MMT to the tradents and redactors of the mishnaic text. It is merely to say that the disputes in question were evidently real and pressing issues for various groups at approximately the time indicated by the Mishnah. This fact greatly enhances the historical plausibility of the Mishnah's account and supports the view that the Mishnah preserves information about periods prior to its redaction.

Of course, parallels in closely related rabbinic texts also permit us to see redactional *variation* which is useful in its own right, as will be discussed later. Nevertheless the enormous body of parallels among the various rabbinic works suggests that we are dealing with redactors who were handling a body of materials that were already formed and over which they had only certain types of control and could exercise only limited types of manipulation. Kalmin's study of the Talmud's portrayal of the characters and personalities of several prominent amoraim demonstrates that “for the most part [talmudic] sources display no clear discernible polemical intent” and that “the authors and transmitters of non-narrative materials and briefer stories . . . worked under more rigid constraints” than did the authors and transmitters of stories (1994:38–42). The former “were evidently more limited with regard to the types of additions they could make to the facts and sources at their disposal” (39). See also the works cited by Kalmin (41 n. 80) concerning the editorial techniques of ancient authors.

The point is this: Late texts may cite early sources and thus provide evidence of an early period. How that source is presented, contextualized, or treated in the later text may *also* tell us something about the later period, but that possibility does not obviate the ability of the source to tell us something about the period in which it originated. Classical scholars operate on the basis of this principle regularly. Much historical reconstruction for the classical and antique periods is based on the evidence of citations—the work of early authors cited by later authors. All we know of the work of Hecateus of Abdera (late fourth to early third century B.C.E.) is contained in citations from Diodorus Siculus, Josephus, Clement of Alexandria, Eusebius, and others. No classical scholar would allow that when Josephus cites Hecateus, we have evidence of only Josephus' time and views since we can never positively prove that Josephus did not invent the citation (even when similar citations are found in other writings). True, the citation is partial—it may even be paraphrased, altered, or manipulated to serve some new agenda—nevertheless the citation does bear some historical value for the earlier period. Granted the analogy is imperfect, given the difference in genre between classical and rabbinic literature; nevertheless, extreme skepticism seems unjustified, particularly since rabbinic literature is self-consciously constructed almost entirely of citation and commentary. Certain scribal practices are clear signs of the tradition's awareness of its construction by citation—for example, the copying or transfer of an entire sugya so that it is found alongside each mishnah that appears within it, or the scribal use of abbre-

vations (such as . . . עד . . . נרש = “continue . . . until . . .”) to indicate a citation from another rabbinic work.

25. The question of genre is not adequately addressed by the documentary history of ideas approach. Boyarin points out E. P. Sanders’ remarks to this effect and then adds: “It is simply a category mistake of the first order to assume that one can do thematic comparison between texts of such significantly different genres as the Mishna which is a legal code and midrashim which are biblical interpretation” (1992:461 n. 6). However, this category mistake leads Neusner to “ideological” interpretations of phenomena that can be traced to differences in the genres of the texts compared. For example, Neusner overinterprets the fact that the Mishnah contains few biblical supports for its teachings while the Sifra is dedicated to extracting halakhah from the biblical text. This phenomenon is not necessarily an indication of two radically different intellectual or religious communities. The first text is devoted to recording halakhic opinions and the second is dedicated to recording the mode of derivation of halakhic rulings from the text. The fact that each is engaged in its own project does not necessarily suggest hostility to the project of the other. Goodblatt (1980) draws an intriguing analogy. What would our picture of Maimonides be if we had only the Mishneh Torah? We would never be able to guess, from his halakhic work, the low opinion of Talmud scholars he expresses in the final chapters of *The Guide of the Perplexed*. Likewise, the New York statutes concerning marriage would leave a cultural critic or historian with a very distorted picture of twentieth-century American views of marriage as legalistic and bureaucratic in the absence of any other cultural expressions of the emotional, romantic, and moral value of the institution. To describe “a Judaism” on the basis of an individual and functionally specific text is a little like describing an elephant as a rope because one has felt only the tail. Like any complex cultural artifact, rabbinic Judaism is surely a composite and conflicted entity. Thus, to understand rabbinic Judaism, one needs to gather together *all* the testimony available in literary (and material) remains of *all* types whether legal or midrashic. Partial expressions of a culture should not be taken as exhaustive expressions of that culture or of segments of that culture (or even as evidence of multiple cultures), as if people who studied halakhah did nothing else in their lives: they did not expound Bible, speak Greek, compose prayers, or other liturgical expressions, and so on. Here I certainly do not mean to say (pace Neusner) that “all rabbinic sources [can be] treated as representatives of a single, seamless worldview and as expressions of a single essentially united group” (Neusner 1995a:11).

Further, Neusner does not attribute any significance to the fact that Mishnah-Tosefta and the tannaitic midrashim feature the names of many of the same tradents. Yet the overlap of tradents is surely a sign that roughly the same community of persons who generated and transmitted Mishnaic traditions generated and transmitted the teachings of the tannaitic midrashim. (Even if we assume that the coincidence of names in the two literatures is pseudepigraphically imposed at the level of redaction, we still end up with at least a redacting community that finds the two activities to be complementary and not antithetical.) No one text is therefore an exhaustive representation of “a Judaism”; the texts work in tandem to convey a picture of a particular community’s religio-literary self-expression (and that community is complex and conflicted). Members of this community may have chosen one genre rather than another for articulating a particular issue or topic because the issue was relevant or lent itself to that genre and not another. For example, in response to Neusner’s conclusions concerning the Mishnah’s lack of interest in the Messiah, and use of the word משיח to refer only to the “anointed” high priest, Boyarin writes:

The Mishnah simply does not treat eschatology, any more than the Constitution of the United States does, but you may be sure that many of the framers of that document heard sermons about the Day of Judgment, and some of them may even

have delivered such sermons. That the word “judgment” appears in the Constitution in some other meaning hardly argues otherwise. (1992:460)

Finally, I would note Fraade’s criticism:

There is no historical basis for the *linearity* of Neusner’s canonical-historical model. Even if we could establish that Neusner’s books achieved closure in clear succession, it would not follow that each one’s mode of discourse also succeeds that of its predecessors in linear progression. For example, the Mishnah and the earliest midrashic collections may represent two complementary forms of discourse—code and commentary—which dialectically accompany and interpenetrate each other throughout their evolution in the history of Judaism. (1987:86)

26. See, for example, 1986a, 1986b, 1986d, 1991. For further discussion of Neusner’s project and a response to his specific charges against my own, see the appendix to this book.

27. Here Bokser refers to his study of the ritual expansion of the seder (1988). Bokser suggests that even if the development or articulation of an idea is shaped by literary considerations, this intellectual activity is still subject to cultural interpretation. I will have occasion to consider this claim in chapter 4.

28. For example, in his analysis of *Leviticus Rabbah* (1986d), Jacob Neusner characterizes the discourse as externally directed argument disguised as exegesis and not exegesis at all. Neusner claims that *Leviticus Rabbah* is not essentially exegetical, despite evidence that the rabbis had a different self-understanding—the use of lemmas, the diverse interpretations and reimaginings of a base biblical text through biblical intertexts, co-citations, *meshalim*, and so on. See Fraade’s citation and pointed critique of Neusner’s work on *Leviticus Rabbah* (Fraade 1987). See also Harris 1995:10–11.

29. Lit. “who constrains your hand” [to do such a trivial and unnecessary task]?

30. An expression used to indicate despair or depression.

31. Or: “his mind was set at ease.”

32. Or: “so it has occurred to me to do.”

33. A reference to his martyrdom at the hands of the Romans.

34. See note 32.

35. This story builds beautifully on the biblical motif of Moses’ requests to be shown that which must elude him: first God himself (in Ex 33:18–23 he is denied the privilege of seeing God’s face and can see only God’s back), and then the Promised Land (in Dt 3:23–28 God denies his request to “cross over and see the good land” and permits him to view it only from afar). In this aggadic passage too Moses asks to be shown things (לִי הִרְאֵנוּ לֵי echoes Ex 33:18’s הִרְאֵנוּ לִי) that must ultimately elude him—the world of the rabbis and God’s unfathomable justice (exemplified in the cruel death of R. Akiva). One senses that a deeper connection between Moses and R. Akiva is being drawn by the rabbis. Moses’ words “*that* was his Torah and *this* is his reward!?” could be applied to Moses himself, who, despite his labors for Israel and for God, was punished with death in the Transjordan. This story is a subtle expression of a dismayed outrage at the fact that neither man received the reward that he merited through his dedication to God and Torah.

36. See Sussman 1990:nn. 187 and 196, for a review of scholarly opinion on this matter.

37. A genuine reference to Rava appears only once.

38. This statement is no less true for the recent study of Kalmin (1994:chapter 10) demonstrating that the lengthy arguments of Abaye and Rava filling the Bavli do not in fact reflect genuine interaction between the two sages. It remains the case that the traditions attributed to these sages are of a different character. For example, they are more argumentational, they investigate abstract principles, they rely on reason, and they employ more creative exegetical methods than do traditions from earlier strata. For a full characterization

of the traditions of successive generations of rabbis, see Kraemer 1990:chapter 2 and the summary in note 43 below.

39. As evidence that the cessation of talmudic activity in Palestine was abrupt and clearly demarcated, Sussman noted in a Taubman lecture presented at the University of California at Berkeley (1990) that in passage after passage everything comes to an abrupt end with the contribution of R. Yose b. R. Bun, one of the last of the major Palestinian amoraim (mid-fourth century), who appears in the Yerushalmi hundreds of times in almost every debate of every tractate. His teachings are always delivered in his name and never through disciples, and they are not subject to further commentary or discussion. (By contrast, R. Ashi, who is traditionally credited with closing the Babylonian Talmud, is cited by numerous disciples and disciples of disciples!) This fact would suggest the cessation of talmudic activity in Palestine shortly after the preservation of R. Yosi b. R. Bun's traditions.

40. Kalmin 1989 summarizes the various theories of modern scholarship concerning the savoraic period and the nature of its contribution to the Babylonian Talmud. His examination of late amoraic and stammaitic material leads him to the conclusion that "the theory which views the Saboraim as responsible for stammaitic redaction best accounts for the limited information presently available to us" (10–11). Scholars who have investigated the redactional/editorial activity of this period include Kaplan (1933), Lewin (1937), A. Weiss (1953), Efrati (1973), and Halivni (1982).

41. Sussman (1990:97 n. 175) reports the results of a statistical analysis by Benjamin Elitsur at the Academy for the Hebrew Language in Israel. Elitsur found that the average ratio of parallel tractates of Bavli to Yerushalmi is 2:1 while the ratio for tractate Nezikin is 7:1.

42. The same, of course, holds for the Bavli: Its tractates were not all subjected to one uniform redaction. The tractates Nedarim, Nazir, Meilah, Keritot, and Tamid exhibit marked differences from the rest of the Bavli, some of which can be attributed to a different style of redaction.

43. Sussman's characterization is supported by the work of David Kraemer (1990) and Richard Kalmin (1989). In his detailed statistical analyses of the literary forms employed in the Bavli (for the results of his research, see 1990:chapter 2), Kraemer finds that amoraic literary expressions undergo a diachronic shift from a relative preponderance of forms that are similar to the form of the Mishnah and Midreshe Halakhah (*brief and halakhic*) to an increase in forms that are different from the form of the latter (*argumentational and interpretative*). Material dating to the first and second generations of amoraim consists primarily of brief and independent declarations of an opinion or legal ruling. There are few argumentational sequences. Material dating to the third and fourth generations of amoraim is increasingly characterized by argumentation, a concern to justify earlier opinions with a source, to employ reason in explicit self-justification, to utilize more creative exegetical methods, and to object on the basis of reason alone. The traditions assigned to Abaye and Rava carry these trends to their natural creative conclusions. Material from the fifth and sixth generations of amoraim contain only modest developments in this direction. See further my review essay Hayes (1991) of Kraemer's study.

R. Kalmin describes in detail the salient characteristics of statements attributed to late Babylonian amoraim and discusses the implications of his findings for the question of redaction (specifically, the authorship of the *stam*). His conclusion—that the data are most consistent with the theory that the stammaitic redaction occurred in the savoraic period—accords with the general portrait provided here (1989, esp. xv–xviii, 1–11, and 66–94).

Finally, Jacob Neusner draws similar conclusions in his characterization of the Bavli as providing not merely an exegesis and amplification of the Mishnah (characteristic of the Yerushalmi) but "a theoretical study of the law in all its magnificent abstraction." He de-

scribes the Bavli as insisting “upon inquiry into premises, implications and principles behind cases and how they coalesce” (1995a:80). However, Neusner’s concerns are philosophical/theological rather than historical, leading to differences in detail. For a fuller discussion of his views in this regard and a response to his criticism of my own work, see the appendix.

44. Some scholars interpret the dialectical character of the later layers of the Bavli as signaling a new intellectual development. Bokser refers (1990:94) to the rise of anonymous teaching and analysis and to the waning of autonomous teachings attributed to named masters as an intellectual development. Bokser does suggest that the transition from oral to written forms may have facilitated the analysis of earlier traditions through diverse logical principles (although the time of the Bavli’s inditement is by no means a settled issue); nevertheless he argues that the later material may manifest a distinctive stage of intellectual development (100). However, the example he provides (100–101) exemplifies not an intellectual development but simply a reinterpretation of an ancient symbol to speak to new historical circumstances—an activity found in Jewish texts of every period.

In general, I am suspicious of efforts to identify a particular mode of conceptualization or ideology with a given literary style. The assumption that the selection of a particular literary form is an ideological expression is found in Kraemer 1990. Kraemer describes his book as “a history of the ideologies that are embedded in the very form, structure, and methods of” the Babylonian Talmud (3), or a “history of literary forms [found in the Bavli] as ideological expressions” (4). He proposes to chart on a chronological continuum the various literary forms found in the Bavli and then decode in ideological and intellectual terms the meaning of this diachronic shift in literary forms. The major part of the book is devoted to Kraemer’s hypotheses concerning the intellectual universe that might have led to the argumentational, dialectical form of the late *stam* of the Bavli. However, Kraemer may be overreading the data. Too strong an interpretation may be placed on a phenomenon that Kraemer himself passingly acknowledges is due at least in part to certain intellectually neutral factors (e.g., time). The Bavli’s argumentation presupposes an extensive documentary foundation. While the Mishnah had a first-order task of articulating basic definitions, and the *Tosefta* and *Midrashe Halakha* supplemented these definitions and tied them to Scripture respectively, the Bavli could attend to debate, speculation, and detailed analysis. I am not convinced that the *savoraim* “thought” or “argued” with one another all that differently from the *tannaim*. That they produced a new kind of literary work probably has more to do with the fact that the *savoraim* already possessed the work of the *tannaim* plus additional layers of commentary and teachings and could thus attend to a different *literary* task than it has to do with a new intellectual interest or development. Certainly, the *result* is that the Bavli and the Mishnah reveal to us very different aspects of the worlds of those that produced them. In other words, we as readers undergo very different intellectual experiences when we study the various texts. But the ideological interpretation of literary styles can slip too easily into the reductive view that, for example, the Mishnah is an exhaustive portrait of the intellectual activities, interests, and talents of first- and second-century rabbis. See Kalmin 1994:chapter 10, esp. p. 192, for an alternative analysis of the increase in argumentation in the later periods. See also my review essay (Hayes 1991) of Kraemer’s book.

45. Note Boyarin’s criticism of this method also in 1993:15–16.

46. Of course, the possibility of an independent genuine oral tradition not preserved in any of our Palestinian sources remains; but rarely is this explanation the more probable one.

47. For example, a comparison of the accounts of the deposition of Rabban Gamliel and the elevation of R. Eleazar b. Azariah (in first-century Palestine) found in the Bavli and the Yerushalmi teaches us a great deal about Babylonia. The Palestinian story itself contains anachronistic details that attest to third-century rather than first-century Palestinian reality,

such as the existence of a coterie of servants or bodyguards for the *nasi*. But the Bavli adapts the story to the Babylonian world of an even later period, and to its own native models of leadership (in which scholarly and hereditary qualifications are not combined in the person of the exilarch). I am indebted to Isaiah Gafni for pointing out the historical value of the differences in the two Talmuds' accounts of this story.

48. This statement and others like it are not intended to imply that there is a simple and direct line of transmission from the Yerushalmi to the Bavli. Most scholars assume that the Yerushalmi *as we know it* did not lie before the tradents and redactors of the Babylonian Talmud. The complex question of transmission is not taken up in this study. The statement to which this note attaches is purely descriptive: The Bavli weaves a variety of amoraic and tannaitic sources into a dialectical structure, and in many instances the same sources appear, though in simple list form, in the Yerushalmi.

49. In the 1990 Taubman series of public lectures at the University of California at Berkeley, Yaakov Sussman described the importance of examining each tradition on its own merits, distinguishing among sources and considering the general picture emerging from the literature as a whole so as to assess the degree to which particular traditions may fit standard conceptions or violate them. In this way it may be possible to determine when a particular tradition or idea is the result of speculation in a dialectical setting, for example, or represents a broader cultural phenomenon.

50. In a limited way, I am drawing upon the notion of cultural poetics as applied to rabbinic texts, set out by Daniel Boyarin (1993). Cultural poetics respects the literariness of literary texts while also attempting to understand how those texts function within a larger sociocultural system of practices. Boyarin looks at both aggadic and halakhic texts that address similar themes, on the assumption that both types of texts represent “attempts to work out the same cultural, political, social, ideological and religious problems” (1993:15). Since halakhah is the ideologically more explicit, it provides the background for understanding aggadic texts, which often dramatize actual cultural and political encounters. As a consequence, one studies culture—“as a set of complexly related practices both textual and embodied” (18). So, for example, cultural poetics enables Boyarin to interpret the connection between the “literary” practice of rabbinic interpretation of biblical creation texts and the social institution of marriage while avoiding both a reductionistic view of rabbinic interpretation as a product of ideology and an idealist view of biblical interpretation as the genesis of rabbinic ideology. “Both the interpretation and the ideology are co-existing practices within a single socio-cultural field” (18).

51. Steven Fraade's description of the interrelation of hermeneutics and history in Sifre Deuteronomy is pertinent here:

These two tendencies, even as they face, and view commentary as facing, opposite directions, are really two sides of the same coin. That is the coin that presumes that the hermeneutics and historicity of scriptural commentary can conveniently and neatly be detached from one another, in the first case by viewing the hermeneutics of commentary's *interpretations* apart from the sociohistorical grounding of its performance and in the second by viewing the historicity of commentary's *representations* apart from the hermeneutical grounding of its performance. One consequence of this common position is the view that such a text, whether as a whole or in its parts, is either hermeneutical or historiographic, either facing in upon itself and the texts with which it intersects or out upon history and society. The former kind of text is of interest to the student of literature, the latter to the student of history. The former kind of text is detached from or indifferent to history, the latter is directly engaged with it.

I wish to deny neither of these facings or groundings, but to assert their inextricable interconnection. The following chapters presume, and I hope will demonstrate, that their bifurcation, although perhaps useful for the self-confirming maintenance of our disciplinary boundaries, reductively distort [*sic*] the *Sifre*'s hermeneutical and historical aspects by viewing them in isolation from one another. (1991:14–15)

52. A third and more pragmatic factor influencing the selection of tractate Avodah Zarah for this study was the availability of an excellent critical edition of Mishnah Avodah Zarah by David Rosenthal (1980). Rosenthal's edition divides extant witnesses to the text into two branches: Palestinian and Babylonian. The version of the Mishnah represented by the former branch served as the basis for amoraic discussion in Palestine, and that represented by the latter branch served as the basis for amoraic discussion in Babylonia. The careful identification of Palestinian and Babylonian versions of the Mishnah is an essential precursor for any study of the genesis of halakhic difference between the two Talmuds.

53. See chapters 6 and 8 for examples of halakhic difference in the form of a halakhic development.

54. There are two other possibilities. First, the sugyot of each Talmud on a particular mishnah may have nothing in common. I have excluded such sugyot from consideration, since such cases cannot be said to be parallels and would be included only if I were interested in an exhaustive comparison of the treatment of the Mishnah by the Yerushalmi and the Bavli. Second, the sugyot of each Talmud may be identical or may contain identical traditions and differ only in that one weighs the evidence and rules in one direction while the other weighs the same evidence and rules in the opposite direction. Such cases are often unanalyzable in exegetical or historical terms and must be attributed to judicial temperament (e.g., the gemaras to m. AZ 3:13).

55. At no time do I mean to assert that a tradition attributed to a particular rabbi was actually stated by that sage and in precisely the words appearing in the text. Statements in this book that take forms such as "Rabbi X holds that . . ." or "Rabbi Y responded . . ." mean simply that in the world of the text Rabbi X is represented as holding a particular view and Rabbi Y is represented as responding in a particular way. Indeed, statements of this type should be considered shorthand for the larger phrase "Rabbi X is represented as holding . . ." and "Rabbi Y is represented as responding. . . ." For my purposes it matters little whether or not a tradition was actually stated as reported by a particular sage. What matters is the consistency with which rabbinic attributions mark the relative chronological order of sources (on this see Kalmin 1994:12 and Kraemer 1990:20–25).

56. Much of Halivni's work since 1975 has been devoted to tracing the transformations of traditions and the anonymous later reworking of earlier sources and teachings (see Bokser 1990:98).

57. I would like to draw attention to the similarities and differences that obtain between the exegetical method of David Weiss Halivni and the method outlined here. Halivni posits a distinction between two types of material in the Talmud, which he labels "sources" and "traditions." The term "source" refers to a rabbinic statement in its original form; the term "tradition" refers to the corrupted versions of these statements that emerged from the lengthy process of oral transmission. Later amoraim who are faced with the task of making sense of these corrupt materials resort to forced interpretation (i.e., interpretations that reject the plain meaning of a passage). For Halivni, forced interpretations serve an important function: They signal the presence of a corrupted source. Halivni draws upon textual witnesses of various sorts and connects parallel and related rabbinic passages in his effort to reconstruct the original source that lies behind a received tradition. In part III of this book, exegetical irregularities

serve an important methodological function also. It is argued that exegetical irregularities in connection with a halakhic difference between the two Talmuds may signal an extratextual stimulus for that difference. However, in two ways my use of exegetical irregularity is different from Halivni's use of forced interpretations. First, I define "exegetical irregularity" as any exegetical move (*whether forced or not*) that violates the rabbis' own normative exegetical practices. Forced interpretations as Halivni defines them (i.e., rejection of the plain meaning of a passage) abound in talmudic literature and are a normal feature of talmudic exegetical practice. Thus, the presence of a forced interpretation, however useful it may be for identifying a corrupt source, is not a reliable indicator of an extratextual stimulus for halakhic difference. Second, while Halivni focuses on forced interpretations as a response to the corruption of sources in the process of oral transmission, I explore the possibility that exegetical irregularities signal conscious intervention and modification of halakhah that can be analyzed in cultural-historical terms. See further Halivni 1968.

Chapter 1

1. The manuscripts can be divided into these two branches on the basis of both external and internal criteria. (The terms "external criteria" and "internal criteria" used by Rosenthal [following Epstein 1927:5ff] as labels for two types of evidence for alternative versions of the Mishnah should not be confused with my use of the terms "internal" and "external" as labels for two types of influence that may account for differences between the two Talmuds.) By external criteria, Rosenthal means differences in orthography, grammar, syntax, and dialect among the various manuscripts and printed editions, as well as the addition or omission of whole words or sentences and the use of alternative words or formulations. Further distinctions between the two branches are possible on the basis of internal indicators—that is, evidence of alternative versions that emerges from the discussions in one or both of the Gemaras.

2. Clearly, not all differences between the Palestinian and Babylonian branches of the Mishnah are relevant to our study. Emendations or alterations that crept into one branch of the text in the post-talmudic period (perhaps on the basis of amoraic or geonic discussions) could have had no influence on the creation of the gemaras and cannot account for halakhic differences between the two Talmuds (e.g., m. AZ 1:8, 2:6, 2:4–6 [sequence], 3:6, 3:9; see Rosenthal's demonstration of the post-talmudic origin of the alternative version of these mishnayot.) Furthermore, some variations, although tannaitic or early amoraic in provenance, did not result in substantive differences between the two branches (see Rosenthal 1980:62–66 for a list of such variations, although I will argue that the alternative version of 1:3 included in this list [בלבד vs. —] may make a halakhic difference). In short, I will consider here only Mishnah variants that are arguably tannaitic or amoraic in provenance and that can be shown to have a substantive bearing on the discussion and development of halakhah.

3. See further David Hoffmann (1967), who describes early compilations of mishnayot, remnants of which are to be found in the Mishnah of R. Judah ha-Nasi. If one of the teachings in these early compilations is retracted by a later teaching, it is referred to as *משנה ראשונה*, "the former mishnah," as against the later ruling that overturns it, referred to as *משנה אחרונה*, "the latter mishnah."

4. Rosenthal sees in m. AZ 4:9 and the gemara discussions upon it evidence of Rabbi's retraction of a particular ruling: "It is permitted to tread grapes with a non-Jew in a winepress, but it is not permitted to gather grapes with him. An Israelite working in a state of impurity, it is not permitted to tread or to gather grapes with him; but it is permitted to convey casks with him to and from the winepress." Both gemaras note that there were two teachings regarding these matters. At first one set of rules was taught, but later these were retracted and

another set was taught. However, there is an important difference in the records of the two Talmuds. According to b. AZ 55b–56a, the former mishnah’s teaching was that of the mishnah text as it now stands. By contrast, according to the Yerushalmi (p. 4:9, 44b), it is the *latter* teaching of the mishnah that corresponds with the text as we now have it, replacing a teaching in which gathering grapes with a non-Jew and treading grapes with an impure Israelite were both permitted. Rosenthal (1980:19–20) sees in this “contradiction” between the two Talmuds’ labels, evidence of the divergent perspectives of the two communities of amoraim. The Mishnah carried by Rav, although it was Rabbi’s final edition, was considered by the Babylonians to be the primary text of the Mishnah (i.e., the former mishnah), and changes to that text were secondary revisions (i.e., the latter mishnah) even if they were reinstatements of earlier versions of Rabbi’s own teachings. For Palestinians, Rabbi’s final Mishnah was already a revised or secondary version (i.e., the latter mishnah) of an earlier edition (i.e., the former mishnah), whose teachings were sometimes to be reasserted over the “secondary” formulation. Hence, the same version of m. AZ 4:9 is referred to in Palestine as the later revised version of the Mishnah (presumably because it represents Rabbi’s final revisions) while in Babylonia it is referred to as the original or primary teaching of Rabbi’s Mishnah (because it represents Rabbi’s Mishnah as originally conveyed to Babylonia by Rav).

5. To annul an idol is to perform an act of desecration whereby the idol loses its status as an object of worship. Israelites are prohibited from deriving any benefit from an idol, but an annulled idol is permitted to an Israelite for secular purposes.

6. Feintuch argues that R. Yehiel b. R. Yekutiel, the scribe of the Leiden manuscript, copied the text of the Mishnah inserted before the Palestinian gemara from the Parma manuscript of the Mishnah (1981:196). Rosenthal (1980:107–112) notes the Leiden manuscript’s dependence on Parma for its Mishnah text, although he suggests that it is indirect. The two scholars differ as to the priority of Kaufmann over Parma. Since Feintuch dates Kaufmann to the thirteenth century and identifies the scribe of Parma with the scribe of the Vatican 31 manuscript of the Sifra dated to 1073, he holds Parma to be the earliest complete manuscript of the Mishnah in our possession. Rosenthal argues, on the basis of errors whose origin can be traced to Kaufmann, that the latter manuscript must predate Parma (i.e., pre-1073). Nevertheless, the dependence of Leiden on Parma for its Mishnah text (whether direct or indirect) is well established.

7. The *pisqa* of the JTS text, 48b line 2, read originally *ושל ישראל* (and of an Israelite), but this has been erased and replaced with *ושל חברו* (and of his fellow).

8. Rosenthal cites two other passages as quotations of our mishnah and thus as evidence of the text of the mishnah before the amoraim: b. 64b and b. 43a. However, in my view, these two texts cannot be adduced as certain evidence of the text of the mishnah. The *sugya* on 64b describes the case of an Israelite who finds an idol in the market, and it indicates that as long as the Israelite has not effected legal acquisition of the idol (e.g., picked it up) he may order a [random] non-Jew to annul it, since it has been said that a non-Jew may annul the idol of himself or his fellow whether or not he himself worships it. Rosenthal holds that this is a citation of our mishnah in its Babylonian version (1980:176). But the tannaitic tradition referred to here is probably that represented in t. AZ 5:3, which teaches that when an Israelite comes across an idol, any non-Jew can be called upon to annul that idol, whether or not it is his, whether or not he is a worshiper of that idol, and whether or not coercion is involved. In the *Tosefta*, this *beraita* is not part of the debate concerning the power of a non-Jew to annul the idol of an *Israelite* (see 5:4 and 7); rather it fills out the laws of the nullification of idols by non-Jews and refers to the case of a discarded or lost idol. Likewise, the *sugya* in which this teaching is found in b. 64b is not concerned with nullification across ethnic-religious lines but is discussing nullification of the idols of certain non-Jews by other non-Jews (i.e., truly idolatrous non-Jews and nonidolatrous non-Jews [the *ger ve-toshav*]).

The second text adduced by Rosenthal is b. 43a:

Rabbah bar bar Ḥanah said Rabbi Yehoshua ben Levi said: “Once I was following behind R. Elazar haKappar beRabbi (= Bar Kappara) on the road, and he found there a ring on which there was the figure of a dragon. He found a non-Jewish child and said nothing. He found an adult non-Jew and told him to annul it, but he would not annul it. He struck him and he annulled it. Infer from this three things. First, infer from this that a non-Jew annuls the idol of himself and his fellow; second, infer from this that only one who understands the nature of idolatry and its appurtenances may annul . . . ; and third, infer from this that a non-Jew can annul by coercion.

In the Bavli, three legal conclusions are drawn from this story, one of which is that a non-Jew can annul the idol of himself and his fellow. Epstein already argued (1948:24) that the fact that the gemara must infer from this story the rule that a non-Jew can annul the idol of himself and his fellow (שלו ושל חברו) is evidence that this rule did not appear in the mishnah of Babylonia itself. He concludes that the mishnah before the amoraim of both Palestine and Babylonia read *שלו ושל ישראל* and thus the Babylonian amoraim included this story and its derivative rulings in their gemara. The mishnah was only much later emended (post-talmudically?) to *שלו ושל חברו* under the influence of the discussion in the gemara.

Rosenthal interprets b. 43a differently. That this story appears in the Bavli does not indicate to Rosenthal that the Babylonian version of this mishnah read *שלו ושל ישראל* rather than *שלו ושל חברו*, and the story was included in order to derive the teaching *ושל חברו*. Since the story is at base a Palestinian tradition that migrated to Babylonia, Rosenthal sees it as evidence for the Palestinian version of the mishnah. Thus, the fact that in Palestine the teaching *ושל חברו* is inferred from this story suggests that in Palestine the mishnah read *שלו ושל ישראל* (1980:176–177). The Babylonian amoraim simply preserved the story in its Palestinian form, even though their mishnah already taught *ושל חברו*.

There are problems with this analysis. First, a tradition in the Bavli, even if Palestinian in origin, cannot be assumed to reflect the Palestinian situation directly. Palestinian traditions are reworked and molded by the Babylonians, and the Bavli’s inclusion of a story about a Palestinian amora cannot be taken as evidence for the Palestinian situation without further ado. This is particularly apparent when the Yerushalmi contains a version of the story so very different from that of the Bavli, as is the case here. P. AZ 4:4, 44a reads: “Bar Kappara found a ring [and] grabbed a non-Jewish child who was running after it [to take it]. He struck him, cursed him, told him to spit on it but he refused. He told him to urinate on it but he refused. This is [as is] said: a non-Jew can annul the idol of himself and his fellow against his will and if he understands the nature of his idolatry.” (Presumably, the child’s refusal indicated that he understood the significance of the act, and thus Bar Kappara considered the child to have the power to nullify an idol despite his youth, and thus attempted to coerce him.)

In the Yerushalmi’s version of the story, only one ruling (albeit complex) is inferred—that a non-Jew can annul his or another non-Jew’s idol *by coercion and granted that he understands the nature of idolatry*. In the Palestinian version, there is no deduction of the simpler principle that a non-Jew can annul the idol of himself and his fellow. Rather, the point of the story is to illustrate that a non-Jew can be coerced to nullify an idol as long as he understands the action. The story thus has greater affinity with t. AZ 5:3 than with our mishnah, in that it too fills out the laws concerning nullification of an idol by a non-Jew. The Bavli presents a highly developed, more literarily polished and rhetorically balanced version of this story. Its division of the derived ruling into three is probably a late development. The

Bavli's version of the story is therefore not a faithful reproduction of a Palestinian story and, more important, cannot be used as evidence of the mishnah text before the Palestinian amoraim. Indeed, even the Palestinian version of the story may not tell us anything about the mishnah text assumed by the Palestinian amoraim, as it connects more directly to the kind of case found in t. AZ 5:3.

Finally, as Rosenthal himself admits (177 n. 5), the inferential term שמע מינה in at least one other case (b. Sanh 19a) does not introduce an entirely new legal principle not taught explicitly in the mishnah. It introduces an inference that reiterates the view of the mishnah. Therefore, it is possible that the Bavli cites this story and its inferences even though its mishnah already teaches שלו ושל חברו.

9. Reading with the Munich ms., rather than ברבי of the printed edition. The Paris ms. has לרי שמעון בר'.

10. Emending both the Venice p.e. and Leiden ms., which read במה.

11. Following Rappoport, Epstein, and Rosenthal (1980:177) in emending both the Venice p.e. and Leiden ms., which read איה תני תני.

12. All emphases are, of course, mine.

13. I am assuming a basic equivalence between the mishnah's "idol of a non-Jew/idol of an Israelite" and the Tosefta's "idol made by a non-Jew/idol made by an Israelite."

14. I concur with Epstein (1948:22–25) that this passage originally followed on the heels of the passage just cited.

15. The p.e.'s abbreviation is ר' זעיר. Leiden reads Zeira, which would denote a third-generation Palestinian sage, R. Zeira (Ze'or, Ze'ir) bar Hīnena (see Albeck, 1969:236).

16. R. Yohanan in the name of R. Yannai is said to expound the verse Dt 7:25, "You shall not covet the silver and gold on them and keep it for yourselves . . ." in the following manner: *You* may not covet the silver and gold on them and keep it, but others—that is, non-Jews—may. Once they have despoiled their idols (thereby nullifying them), then you may in fact "keep it for yourselves." Hence, this verse teaches that a non-Jew's idol may be annulled.

17. A legal precedent is cited in which R. Yohanan told Bar Derosai to break the idols in the public baths of Tiberias. The latter broke all but one, and R. Yosi be R. Bun explains that he refrained because an Israelite was suspected of offering incense at that one. From this precedent it is inferred that the idol of an Israelite cannot be annulled.

18. It should be noted that the Yerushalmi does record the "Yishmaelian" view also, stating that there are some who teach the reverse: that the idol of an Israelite is prohibited immediately and that of a non-Jew when worshiped.

19. E.g., b. AZ 42a and also 53a, where the assumption of this rule's validity is precisely what informs the discussion of problems arising from inadvertent acquisition of an idol by an Israelite.

20. See note 9.

21. This line is difficult. Is it part of the objection or a response to the objection? Since a response to the objection is cited in the name of R. Hillel, it is structurally more likely that this verse is a support for and continuation of the objection rather than a first response, that is: "the idol of an Israelite—can it be annulled? Behold, is it not written 'sets it up in secret?'" Yet, the phrase "sets it up in secret" from Dt. 27:15, as it is interpreted in both the Bavli and the Yerushalmi, does not in fact support the objection that the idol of an Israelite cannot be annulled. In b. 52a and p. 4:4 43b, this phrase is used as a source for the claim that an Israelite's idol is prohibited only when it is worshiped, from which principle it can only be inferred that an Israelite's idol *is* susceptible to nullification. Thus, this verse would appear to *respond* to the objection, asserting that an Israelite's idol can be annulled, and thus Rabbi's earlier teaching should occasion no surprise. Reading this line as a response serves

to relocate the objection. If the idol of an Israelite *can* be annulled, why should Rabbi have needed to modify his ruling? However, reading this line as a response creates an abrupt transition to the solution offered by R. Hillel.

It is not surprising that this entire phrase *והוא ושם בסתר כתיב* is lacking in the Munich, JTS, and Paris mss. It is apparently a late insertion in the printed editions, perhaps on the basis of Rashi's comment (see Rashi, b. 52b, *ד"ה שניה לנו*).

22. This solution is ingenious: Apparently, R. Hillel is reading the statement “a non-Jew can annul the idol of himself and of an Israelite” this way: the idol [that is simultaneously] of himself and of an Israelite, meaning that the idol in question belongs both to himself and to an Israelite.

23. Note that in the subsequent paragraphs the Bavli reports that other sages employ R. Hillel's statement in order to solve other conundrums. This fact adds further support to the suggestion that the Bavli's strategy is an *ex post facto* description of Rabbi's views.

24. Some texts read *התירו* instead of *הכשירו* (see Rosenthal 1980:153f). In addition, in the gemara's citation of the mishnah *התירו* appears in the Munich, JTS and Paris mss. This variant will concern us only briefly below.

25. The JTS and Paris mss. and the Rambam Sassoon ms. read instead *התירו*.

26. See previous note.

27. Actually Munich has *בהטורו*, clearly a scribal error for *בהמתו*, and therefore it is included here as evidence of the Babylonian version of the text. See Rosenthal 1980:153.

28. The Munich, JTS and Paris mss. read *התירו*. This variant will be discussed below.

29. Male with an abnormal genital discharge which generates a severe degree of ritual impurity.

30. Literally, “libation wine,” prohibited to Israelites. Halakhically this term is applied even to wine merely suspected of having been libated (i.e., wine that an idolater has contacted in a manner that afforded an opportunity to libate were he of a mind to do so).

31. Rav Huna is a second-generation Babylonian amora, whereas Rav Ashi is a sixth-generation Babylonian amora. Clearly, the latter did not object to the former. There are a number of variant readings for the name Rav Huna: R. Hiyya bar Ashi in the JTS and Paris mss. and a geniza fragment, R. Hiyya in a bookbinding fragment from Austria. In *Halakhot Gedolot* we find: Ravina in the Venice edition, Rava in the Berlin edition, and R. Abbahu in a Paris ms.; (see Rosenthal 1980:153–154). While some of these may be an attempt to attribute the objection to a contemporary of Rav Ashi (e.g., Ravina), for the most part these variants do not solve the problem. R. Hiyya is a late tanna, R. Hiyya bar Ashi is a second-generation Babylonian amora, R. Abbahu is a third-generation Palestinian amora, and Rava is a fourth-generation Babylonian amora. The text is simply corrupt at this point.

32. Note that the phrase “in Bet Shean” does not appear in the Mishnah's text.

33. Most commentators agree that the analogy is in regard to contact (*בגע*) only and that Rav Ashi is not drawing a complete analogy between the *zav*'s modes of communicating impurity and the idolater's modes of rendering wine *yen nesek*. For example, Rashi states that the analogy concerns contact and does not extend to *hesset* (impurity caused through vibration of an impure object). The Rosh states that R. Ashi's analogy is designed specifically to exclude throwing by an idolater as a mode of rendering wine *yen nesek*, just as throwing by a *zav* does not communicate impurity. These limitations are supported by the larger context of the mishnah itself, which deals with various types of contact and throwing.

34. For a discussion of the differences between the text of the mishnah and the text of this citation, see note 36 below.

35. A *diyyuq* is a form of inferential reasoning by which the law in a given case is assumed to operate only under the precise conditions of the case stated, and *not* under others.

36. See Rosenthal 1980:156. Rosenthal is aware that Rav Huna's citation would count

for nothing if it were shown to be a citation of a beraita rather than a citation of our mishnah. He points out Rabbinovicz' note (1959:124 *ad loc.*) that in *Halakhot Gedolot* the text cited by R. Huna is introduced by the term וְהִתְנִיחַ (rather than וְהִתְנַח, which one would expect for a citation of mishnah). Rabbinovicz is hinting that Rav Huna's objection is based on a beraita and not on the mishnah at all. Further, the tradition cited by Rav Huna contains the phrase בְּבֵית שֹׁאן, suggesting that it is not a citation of our mishnah, since our mishnah lacks this phrase. In response to this, Rosenthal points out (156) that the *Halakhot Gedolot*'s terminology is not consistent and mishnayot are often introduced by the term וְהִתְנִיחַ. In addition, the insertion of the phrase בְּבֵית שֹׁאן occurs only in the Paris ms. and early printed editions and is probably influenced by the mishnah at 4:12, which reads וְזֶה הָיָה מֵעֵשָׂה בְּבֵית שֹׁאן. Thus, while the indirect evidence of the Bavli for an alternative Babylonian version of the mishnah is not entirely unassailable, in combination with the direct evidence of the manuscripts and early printed editions for that alternative version, its value is greatly enhanced.

37. Following the Leiden ms.

38. The importance of this translation will become clear below.

39. The probable meaning is that he used the pitcher to empty the kegs *into the winepress*. Certainly, the contents of large storage vessels could not be emptied into a pitcher. Further, the singular object suffix “into it,” לְנוֹבָה, would indicate that the non-Jew is not emptying the contents of the *pitcher* into the *kegs* (in order to spoil them?), as this interpretation would require a plural object suffix. The plural object suffix on the verb of pouring suggests that the kegs themselves are being emptied out. In short, it seems that the kegs (plural object of the verb of pouring) are being poured into an object that is denoted by a feminine singular suffix and can realistically accommodate the large quantity of liquid. The only candidate is, not the pitcher, but the winepress itself (the מַעְצָרָה). Presumably, because it would be impossible for the non-Jew to lift the large kegs of wine to pour them into the winepress, he uses a pitcher. The word אֵרֶאֱתָא should probably be understood as אֵיִתִּי (cf. p. AZ 5:4, 44d), as was noted by Lieberman in a private communication to Rosenthal, printed in Rosenthal 1980:56–57 n. 6. I take the phrase as follows: The Aramean brought his pitcher and poured out *the kegs* into *the winepress* [by means of it]. For a different analysis of the language (though still with the conclusion that the wine is being emptied into the winepress), see Lieberman's correspondence to Rosenthal (*ibid.*). Note that traditional commentators also assume that the contents of the kegs are emptied into the winepress or vat, but they do not seem clear on the identity or function of the קִלְרָא. *Pene Moshe* states that the קִלְרָא is some type of wooden lever that enables the non-Jew to tip the large storage vessel. However, the term certainly refers to a pitcher (Targum Neofiti uses it to translate Biblical Hebrew כַּר throughout Gen 24).

40. I.e., with בְּחִמְתִּי.

41. Translation and emphasis mine.

42. Thus the mishnah states that when a non-Jew (1) falls into a vat of wine (direct but unintentional contact), (2) measures wine or flicks away a hornet from the wine with a measuring rod (intentional contact, but indirect and not with the intention to libate), or (3) taps the [perforated] lid to settle the froth caused by fermentation (direct and intentional contact though not with the intention to libate), then the wine is only partially prohibited. It may not be drunk by an Israelite but it may be sold. (R. Shimeon permits it entirely.) Finally, the mishnah presents our case: If a non-Jew throws an object into a vat of wine (no contact at all), the wine is completely permitted.

43. See especially b. 57a, 57b–58a, and p. 4:8, 44a–b.

44. Perhaps because he is not in an emotional state to libate or, alternatively, because his primary intent is to spoil the wine for the Israelite by rendering it prohibited.

45. Cf. b. 57b, where the Bavli discusses the case of a non-Jew who angrily thrusts his

hand into a keg of wine belonging to an Israelite shopkeeper. This case differs from ours in that it is a case of *direct* and intentional contact performed in anger, and although Rava initially *partially* prohibits the wine, he is refuted and the wine is prohibited for both drinking and sale! There is no complete analogue in the Bavli for the case here in the Yerushalmi, a case of *indirect* and intentional contact when angry.

46. When I speak of conflation, I mean conceptual conflation rather than textual conflation. In other words, I do not suppose that the Babylonians had the text of the Yerushalmi that lies before us and that they interpreted it as Rosenthal interprets it. I mean that the concepts conveyed by the traditions we read in the Yerushalmi were either transmitted to or received in Babylonia in such a way that distinctions were obscured, or more charitably, differently drawn.

47. Admittedly, the variants for Rav Huna's name listed in note 31 range from the very early to the late amoraic period; nevertheless, the point is that the conflation occurred prior to the close of the Talmud and thus affected its discussion.

48. For reasons that should be obvious by now I disagree with Rosenthal's presentation of the *explicit* teaching of the Yerushalmi: (1) in the normal case of throwing, the wine is permitted and (2) in the case of *throwing the cask angrily*, the wine is also permitted (see p. 153ff). As I have argued, the Yerushalmi never explicitly discusses a case of throwing a cask angrily.

49. Rashi and Tosafot differ as to the reason for prohibiting the wine in the case of throwing done not in anger, i.e., rolling. For Rashi, the difference between throwing in anger and throwing not done in anger is one of distance. A cask thrown in anger is thrown from a distance and there is no possibility of the non-Jew's contacting the wine. Hence it is permitted even for drinking. But a cask thrown not in anger is tossed from close range after being rolled to the vat. According to Rashi, the rabbis chose to be strict in this case because of the close proximity and the possibility of contact. Thus they take the precaution of declaring the wine prohibited for drinking (לא הכשירו) but not for sale.

The Tosafot argue that in the case of throwing done not in anger, the non-Jew maintains contact with the cask the entire time, even as it is lowered into the wine with a push. Thus it is indeed a case of indirect and even intentional contact with the wine in the vat—hence the partial prohibition. Drinking is prohibited but sale is permitted. In the ensuing discussion, I follow Rashi's interpretation.

50. See the Rid's explanation: "he rolls it"—thus it is a little like throwing and a little like actually touching with a rod [i.e., indirectly] . . . in this case where he lowers it [the cask] onto the wine with his hand, he appears to contact it and thus when not done in anger [the wine] is prohibited" (my translation).

51. Elsewhere the Bavli features a lengthy discussion of physical contact (as distinct from emptying out) by a non-Jew without the intention to libate (b. 57a–60b), but there is no exact parallel to the Yerushalmi's case. Interestingly, the Bavli records quite conflicting views on the matter of *contact* by a non-Jew without intention to libate, and there is a marked tendency toward stringency in the later layers. See especially the dispute between Rava and two other sages over the degree of prohibition involved in a case of nonlibating contact by a non-Jew (57b–58a).

52. Note, however, that the Munich ms. reads הכשירו in the mishnah but החריו in the citation of the mishnah raised as an objection to R. Ashi in the gemara. Nevertheless, it is clear from the discussions of Rashi and the Tosafot that both assume that in the case of "not in anger," לא הכשירו, i.e., they did not permit drinking but did permit sale (see Tosafot 57a ד"ה ה"ג). This indicates that these Ashkenazic authorities assume הכשירו in the text of the mishnah in the case of throwing in anger.

53. See Rosenthal 1980:157–159 for a discussion of related issues concerning the Rishonim.

54. Or differently stated, an incorporation of an issue raised by the Yerushalmi into the text of the mishnah of the Bavli.

55. The addition of this clause in the Babylonian branch of the mishnah does not fall within the purview of this study. Rosenthal demonstrates convincingly that this clause is a post-talmudic accretion influenced by the beraita of 14a (1980:58–59). See further chapter 7.

56. See previous note.

57. Of course it is possible that the citation attributed to Rav Ashi has been subjected to redactional or scribal homogenization so as to match the mishnah. However, given the textual witnesses to this version of the Bavli's mishnah, plus the tendency of the Talmud not to homogenize sources, it is *at least* equally possible that this version of the text was the one known to Rav Ashi. In any event, redactional homogenization would still mean that this version was before the redactors of the sugya. Note that a beraita on 14a cites the entire phrase from גוי שעשה, again with בלבד following the words אחרו היום. However, this passage is clearly a beraita and cannot be considered as evidence for the Babylonian version of the mishnah.

58. Similarly the phrase “that person” (אחרו האיש) indicates that the prohibition applies to that person and not to those subject to him; hence the tradition on b. AZ 8a continues: “but why ‘that person’ (אחרו האיש) unless to exclude those subject to him?”

59. Certainly, the Yerushalmi's sugya indicates clearly that the Palestinian amoraim *do* hold in this case that the presence or absence of בלבד makes a halakhic difference. As for the Babylonians, we cannot be sure that they view the presence of בלבד here as halakhically significant, but see b. Pes 36a (מידי בלבד כחוב), where the presence or absence of בלבד in a scriptural verse leads to different halakhic conclusions. On this point, then I tentatively disagree with Rosenthal, who lists 1:3 as among those variants that bear no substantive consequences for the meaning of the law.

60. Reading with the Parma ms. and the Naples printed edition. Kaufmann has בפטוריהו, with the *vav* deleted, possibly by the vocalizer of the manuscript.

61. These three terms and their meaning will all be discussed and revised where necessary in the ensuing discussion.

62. See Rashi's comment on Rabbah bar bar Ḥana's statement on b. AZ 14a that makes it clear that, as it stands, the version with *vav* would suggest that פטוריהו is a species in its own right, i.e., a separate item in this list, and that the version with *beyt* would be read as an adjectival clause modifying *benot shuah* (or both *benot shuah* and *its'trobolin*).

63. Charles 1977:248.

64. I agree with Rosenthal's rejection of Epstein's views concerning this mishnah. Epstein (1948:970, 974) holds that בפטוריהו is a late (late amoraic, post-talmudic?) addition to the mishnah prompted by the teaching of R. Yoḥanan and preserved in both gemaras. As support, Epstein argues that שו in R. Yoḥanan's statement שו בפטוריהו is a term only used to present something *not* already found in the mishnah text and that p. AZ 1:5 39c במטולתיהו במטורבלין ואיצטוריהו indicates that בפטוריהו was entirely absent from the mishnah before the amoraim (for just as במטולתיהו is an expansion by R. Yoḥanan in his view, so is בפטוריהו). Thus, Epstein holds that בפטוריהו (with *beyt*) was the original form of the term, which was corrupted to פטוריהו. By contrast, Rosenthal argues that the original form is הפטוריהו and that the term is an early (tannaic) gloss introduced by *vav haperush* (explanatory *vav*) to explain the term שו בטה.

65. This statement contains several assumptions about the oral nature of the Mishnah and its transmission. But even if we were to grant that these traditions circulated in written form, this scenario would simply be inverted: the merging of /w/ and /b/ into one phoneme

with a range of phonetic realizations which in turn could be orthographically represented by *vav* or *beyt* led to the version בפטוטרות in Palestine, which then came to be understood as “with stems” (*beyt ha-shimmush*). Whether the loss of phonemic distinction or shift in orthography prompted the reinterpretation of “i.e., stems” to “with stems” does not materially affect my argument but does require some consideration. For the orthographic interchange of *vav* and *beyt*, see Kutscher 1976:16 and also Rosenthal 1980:160. Note that this interchange does not occur only between *vav* and *spirant beyt* (which would preclude word-initial *beyt*, as in our case). Epstein’s list (1948:23f) includes examples from the Mishnah manuscripts of interchange between *vav* and *beyt* in a word-initial position (when *beyt* would normally be nonspirant). Compare also m. AZ 2:4, where the Palestinian branch carries the version ותינייק while the Babylonian tradition carries the version בית איניק.

More to the point, Epstein notes (1225–1226) alternations between *vav* and *beyt ha-shimmush* as in our example. Note, however, that in the case of ופטוטרות, the first radical bears a reduced vowel (פ) such that the preceding *vav* would be pointed ו and pronounced vocally. Is it conceivable that we might find *beyt* that has a consonantal pronunciation, or /w/, as an orthographic variant of *vav* when the latter is pronounced vocally? Two analogs appear in Epstein’s catalogue: (1) m. Ker. 5:2–3, אשם ושתי סלעים in Kaufmann and Parma 5:2, but in Lowe 5:2 and 3 and Kaufmann and Parma 5:3 אשם בשתי סלעים. (2) m. Shevi’it 4:7–9, בשאר שני שבוע ושאר שני שבוע three times in Lowe, but in Kaufmann and in Parma בשאר שני שבוע three times. Thus it seems clear that homophony in some cases led to an orthographic merging that was applied even in cases lacking true phonemic equivalence.

Chapter 2

1. Of course, the specific manner in which an ambiguous or gapped text is resolved and interpreted raises questions of ideology and “external” (i.e., socioeconomic, political, cultural, and other material) influence. Consequently the examples considered in this chapter will also be examined for signs of the influence of external and ideological factors. Nevertheless, insofar as halakhic difference in these cases is generated *in the first instance* by an ambiguity, polysemy, or obscurity that attaches to the language of the text (for whatever reason, including chronological and cultural distance), there is justification for considering them under the category of internal causes of halakhic change. For a discussion of this issue in the context of midrashic exegesis of Scripture, see Boyarin 1990, especially chapter 4.

2. See previous note, *mutatis mutandis*.

3. For a definition of formal versus actual halakhic difference see the Introduction and also chapter 3 below.

4. Rosenthal (1980:250ff.) considers m. AZ 1:3 to contain one of the clearest examples of a gloss that has been misconstrued and reinterpreted by the gemaras. Although this passage should be included here as an example of halakhic difference resulting from mishnaic ambiguity, it has been discussed in detail by others (see especially Blidstein 1968). Hence I will only summarize the main issues here, for the sake of completeness. M. AZ 1:3 reads:

ואלו אידיהן של גוים
קלאנדיר [ג] שנשורניא [ג] קרטיסים ויום ננוסיא של מלכים [ג] יום הלידה
ויום המיתה דברי ר' מאיר וחכמים אומרים כל מיתה שיש בה שריפה
יש בה עבודה זרה ושאיין בה שריפה איין בה עבודה זרה

“These are the festivals of non-Jews: Kalends and Saturnalia and Kratesis and the Genesisia of emperors *and* the birthday and day of death—the view of R. Meir. But the sages say, every death in which there is burning there is idolatry; one in which there is no burning there is no idolatry.” (The Kalends was the New Year’s Feast held January 1; the Saturnalia was a

week-long festival of merry-making around the winter solstice; the Kratesis refers to a festival commemorating Roman dominion [Empire Day]. The word “and” is italicized because the *vav* it represents appears in Parma [and Leiden ms. of the PT] and Lowe mss., in the three Rambam texts, in several geniza fragments of the Mishnah and the first printed edition [cited here], in the Munich and Paris mss. of the Bavli, Temani New York, and the Pesaro and Venice printed editions, but it is omitted in the JTS ms. of the Bavli and in *pisqa’ot* of Leiden, Munich, and the Venice and Pesaro editions. It is erased from the Kaufmann ms. of the Mishnah.)

According to Rosenthal, the *vav* attached to *יום הלידה ויום המיתה* (“the birthday and day of death”) is a *vav haperush* (a conjunctive preceding an explanatory gloss) introducing a phrase that serves to gloss the term *ניסיה* (= Greek *γενέσια*).

Rosenthal points out that both the Yerushalmi and the Bavli misconstrue the *vav haperush* in this mishnah, reinterpreting it as an ordinary conjunction rather than the marker of a gloss. Consequently, for the gemaras, the term *ניסיה* must connote something other than day of birth, since this was regarded by the gemaras as an independent term conjoined to it. Each gemara then proposes a way to distinguish *ניסיה* from that which follows it in the mishnah.

The term *γενέσια* in classical usage referred to a memorial day (see Elmslie 1911:15–22; Blaufuss 1909; Blidstein 1968: 65–66) for the dead (either on the birthday or the day of death), while the term *γενέθλια* referred to the birthday of a living person (Blidstein 1968:65–66). However, the boundaries between these terms were blurred, and in Jewish sources *γενέσια* can mean birthday of a living person—e.g., Gen 40:20, “Pharaoh’s birthday” in the LXX = *γενέσεως ἡν Φαραώ*; and in Targum Yerushalmi *יום גוסא יום*.

The Yerushalmi interprets the term *ניסיה* in the mishnah as a birthday celebration. However, interpreting the *vav* following *ניסיה* as a conjunction leads to a problem of apparent redundancy, viz., if *ניסיה* means “birthday,” then the subsequent term in the mishnah—“birthday”—is redundant. The gemara solves this problem by making a public/private distinction between the two birthdays: *ניסיה* refers to the public feasting and celebration of the king’s birthday; the term *יום הלידה* (birthday) that follows in the mishnah refers to the birthday celebration of a private individual and is thus the first in a list of celebrations of the individual (the day of shaving his beard and his forelock, the day on which he returns from the sea, etc.).

The Yerushalmi therefore retains the meaning “birthday” by distinguishing between *ניסיה* as the king’s birthday and the subsequent term *יום הלידה* as the birthday of a private individual. However, since the Bavli interprets R. Meir’s words *יום הלידה ויום המיתה* (birthday and death day) as a reference to the birth and death days of the king and not the private individual, this option is not available. In my view, the Bavli preserves another meaning *anciently associated* with the term *γενέθλια/γενέσια*—the anniversary of the day on which the king ascended to the throne. The term *γενέθλια* is found in an inscription concerning Antiochus and refers to the prince’s accession to the throne. It seems therefore quite likely that *γενέθλια* connoting the celebration of the accession of a new ruler developed out of the celebration of the death of the previous ruler and subsequent *birth* of his god. In sum: *γενέθλια* was used for celebrations of the birth of a daimon or god, either on an individual’s birthday or on the day of a prince’s death, and by extension it was used for the day of a new ruler’s accession to power.

It is surely significant that in different codices of Josephus one finds both *γενέσια* and *γενέθλια* as alternative readings (e.g., *Antiq.* 12, 4, 9). It is likely that the interchange of the two terms led to (or reflects) a conflation of the semantic fields of these terms. If we assume that *γενέσια* expanded in meaning so as to refer to “birthday of the living,” it is quite possible that it acquired also the meaning “anniversary of the day of ascension to power.” It is

hardly surprising then that R. Meir glosses γενέσια not just as the day of death but also as the day of birth (a meaning perhaps more properly accorded to γενέθλια) and that the Bavli proposes an interpretation of *genesisia* as “the day of a ruler’s accession to power” (a meaning probably originally connoted by γενέθλια). The authenticity of the Bavli’s interpretation of γενέσια as “day of accession to power” is supported by t. AZ 1:4, in which the term יום נָסִיאַיּוֹם of emperors is counterposed to the celebration of a private individual on the day on which he *acquires power*. So while Rosenthal has pointed out that both Talmuds lost sight of the original intent of the mishnah (which is made explicit by the gloss provided by R. Meir), I would add that each gemara, after struggling with the apparent redundancy, proposes an interpretation of נָסִיאַיּוֹם in a manner that preserves authentic associations of the term. This notion in turn suggests that these interpretations have some measure of tradition behind them.

Blidstein, however, disagrees. He does not interpret the *vav* in question as a *vav haberush*, and he does not construe R. Meir’s statement as a gloss explicating the term יום נָסִיאַיּוֹם: Rather, he sees “the day of birth and day of death” as the first in a list of *private* festivals. The mishnah, in his view, is referring to the private *parentalia* celebration, or to an actual funeral in which personal effects and spices were often burned. See the detailed discussion in Blidstein 1968:61–99.

5. Elsewhere we learn that the reason is twofold: (1) such acts may be performed in a fit of pique, but the idol worshiper does not thereby annul the idol and may in fact continue to worship it once his anger has passed; (2) for some idols such acts are the customary mode of worship.

6. Reading here with the Leiden ms., which has לְצוּרָה, “he sold it to a smelter,” throughout this sugya, in keeping with the discussion of this mishnah in parallel passages in the Tosefta and Bavli. Neusner’s translation of this passage (1982:168) as “he sold it for need” is based on the corrupt version of the Venice edition which reads לְצוּרָךְ and should be discounted. See Yefe Eynaim, (to b. AZ 53a), who already mentions this error in the printed edition of the Yerushalmi and suggests emending the printed edition to לְצוּרָה.

7. See previous note.

8. The Yerushalmi does not explain why the rabbis are not prepared to make that assumption but commentators suggest that it is because the smelter, realizing the value of the idol, may himself sell it to a worshiper. Aware of this possibility, the original owner does not annul it upon sale.

9. In the version of the JTS and Paris mss., the Rosh, the Ran, and the Rif הנייה is preferred and is consistent with the tradition recorded in the Yerushalmi.

10. JTS records another reading in the margin which makes the proposition more symmetrical: דיִלְמָא בְּצוּרָה גוֹי מְחַלְקָת אַבְלָה בְּצוּרָה יִשְׂרָאֵל דְּבָרֵי הַכֹּל בְּטַל; “or perhaps the dispute is in the case of a non-Jewish smelter, but in the case of an Israelite smelter all agree it is annulled.”

11. Probably R. Hanina, see note 9.

12. See note 10.

13. This conclusion is not reached, however, without some consideration of the alternative possibility: that the dispute is over the case of the sale of an idol to an Israelite smelter since all agree in regard to a non-Jewish smelter that the idol has *not* been annulled! The kernel of this view also appeared in the Yerushalmi but was not endorsed there either. Many of the Rishonim pursue this interpretation. Rambam (in his commentary on the Mishnah), however, states that the dispute between Rabbi and the sages is in the case of sale to an idolater but in the case of sale to an Israelite smelter all agree the idol is annulled.

14. This is a purely phenomenological statement and is not intended to suggest that each source consciously refines the tradition contained in the source(s) preceding it.

15. Specifically, the story in b. 43a and p. 44, 44a cited earlier concerning Bar Kappara.

16. Urbach’s socioeconomic analysis of the rabbinical laws of idolatry is concerned with

second- and third-century Palestine. However, insofar as he cites and interprets later amoraic and Babylonian texts in his analysis, extending our critique to his socioeconomic treatment of the Bavli's traditions would appear to be in order.

17. The difference between the two is slight, as is indicated in the following chart, which shows the cases of sale predicated in our sources (those sales that in the view of some party confer annulment are italicized):

	1. <i>Sale [to anyone]</i>	Mishnah
1.	Sale to worshiper	Tosefta
1.	Sale to worshiper	Yerushalmi
1.	Sale to worshiper	Bavli
	2. <i>Sale to nonworshiper</i>	
	2. <i>Sale to smelter</i>	
	2a. <i>Sale to a Gentile smelter</i>	
	2b. <i>Sale to an Israelite smelter</i>	

R. Judah's lenient view of annulment in the Mishnah applies to all cases (#1). The unattributed lenient view in the Tosefta is restricted to sale to a worshiper only (#2). Sale to a worshiper does not annul an idol, an idea found in the Yerushalmi and Bavli as well. R. Judah's lenient view in the Yerushalmi is restricted to sale to a smelter (#2), which is simply the Yerushalmi's paradigmatic nonworshiper. R. Judah's lenient view in the Bavli is restricted also to sale to a smelter (#2a and 2b). In addition, the rabbis agree with annulment in case 2b, a slight leniency in an otherwise consistent stringency in the sources.

18. For the view that our sources reflect a halakhic leniency, Urbach appears to rely upon the following passage from the Bavli's sugya: "the dispute [between R. Judah and the rabbis in the Mishnah] is over the case of a non-Jewish smelter but in the case of an Israelite smelter all agree that it is annulled." True, in this passage the rabbis are said to concede to R. Judah that there is annulment in one instance, while the Mishnah implied that the sages did not consider sale to confer annulment. However, viewed in its larger context (see the chart in the previous note) this is not a clear trend toward leniency. The Bavli has radically restricted the cases in which R. Judah's view of annulment applies at all, excluding all sales to worshipers as not conferring annulment, in line with the more stringent view of the rabbis. Thus while R. Judah is represented as winning over the rabbis in the case of the Israelite smelter, R. Judah's lenient view has already been completely obviated in the case of sales to worshipers generally.

19. Gerald Blidstein (1975) rightly critiques Urbach's attempt to explain lenient strands of the law as a response to socioeconomic pressure on Jewish craftsmen and scrap-metal importers. He demonstrates in an exhaustive presentation of the sources that no consistent programmatic approach can be uncovered that would promote one or another economic-commercial goal. He shows, in cases not considered here, that halakhic positions are precipitated by the demands of systematic or literary logic.

20. Following the Kaufmann ms.

21. This phrase is found in the printed edition and the JTS and Paris mss. but is omitted in the Munich ms.

22. Variants in which these views are inverted are discussed below.

23. Rav Sheshet was blind and was led by an attendant.

24. Variant in Munich ms.: *כי ארדהיטני מאי דוי*.

25. The *stam's* question counterposes *עובר* and *עובר*, while the amoraic responses counterpose *עובר* and *עובר*.

26. Pure and impure are not generally interchangeable with permitted and prohibited. In other words, an act that defiles is not necessarily prohibited. However, in this instance there is an overlap. The manner of contact discussed here (passing under the *asherah*) is both prohibited (because it confers the benefit of shade) and defiling. Thus there is a cer-

tain slipperiness of language such that if the act is declared pure we can assume that it is also permitted. Consequently, the issue is whether or not it is permitted to pass beneath an asherah, but the question is put in terms of purity and impurity.

27. Rashi summarizes succinctly: “for if it is עבר then it is *ex post facto* and if it is עובר then it is *ab initio*.”

28. Following the attribution of views found in the JTS and Paris mss. and the printed editions.

29. In this instance, Hezekiah’s permissive stance is said to apply when there is no alternative road available. In such a circumstance, and such a circumstance only, one is not defiled (*ab initio*) by passing beneath such an asherah. By contrast, R. Yoḥanan’s stricter stance is said to apply only when there is an alternative route. In such a circumstance one is defiled *ab initio* if one passes beneath the asherah, though if one did pass then the act is declared *ex post facto* to have had no defiling consequence. The Bavli’s synthesis through *oqimta* results in the following ruling: Only when it cannot be avoided is it held that passing under the asherah does not defile and is thus permitted, and even when it can be avoided, passage is deemed nondefiling and thus permitted *ex post facto*. A corollary that emerges from the *ma’aseh* concluding the sugya is that in any event an “important person” should be circumspect and exercise his right to pass when no alternative presents itself, with reluctance and dispatch. Compare here R. Ḥananel’s summary of the position of the Bavli (*ad loc.*): “If one passed under it, one is pure . . . we establish (make an *oqimta*) that when there is no other road, one passes *ab initio*, yet even so if he is an important person he should walk quickly; and if there is another road, one may not pass, and if he passed he is pure.”

30. Examples from our tractate occur on b. AZ 6a, 11b, and 56a. In addition, the term אִיבְעִי לְהוֹרָא is used to ask about new cases: “what is the law in X case?” Examples in our tractate are found on b. AZ 68b and 75b.

31. “The term עבר which is taught in the mishnah — is it meant *literally* or not? By contrast, in the first clause [of the mishnah, the tanna] employs the *ex post facto* construction [וְיֵאָמֵר יֵשֶׁב טְמֵאָה] — hence the ambiguity of the final clause.

32. I choose X and X + 1 rather than X and Y to describe cases 1 and 2a, because passing under the actual branches of the asherah (case 2a) is not an act distinct from the first (sitting in the shade of the asherah) but is in fact a more aggravated form of the first act. Thus if sitting in the shade rather than under the actual branches of the asherah = X, then passing under the branches = X + 1. This scheme also makes sense of the fact that the ruling for 2a is stricter than the ruling for 1. That this relationship between the first two clauses of the mishnah is sensed by the amoraim is reflected in their assertion that the “shade” mentioned in the first clause refers to shade cast *beyond* the actual overhang of the branches (b. AZ 48b) — i.e., the first case is a weaker version of the second case.

33. Unavoidability or great inconvenience is the point of the final clause after all. One should not pass under an asherah, and if one does, one is impure, but if the asherah is encroaching on the public domain where one needs to pass, a concession is made.

34. It is interesting to note that the Yerushalmi’s sugya presents three stories in which rabbis traveling on a road approach an idolatrous image. In each case, the rabbi inquires as to the law regarding passing before such an image, and in each case the response is: “Pass before it, but close your eyes.” In other words, though undesirable, passing before an image is permitted *ab initio* in these three stories. Although the stories in the Yerushalmi involve passing *before* an idolatrous image and not passing *under* an asherah, there is a certain similarity. Both involve movement in relation to a prohibited object of idolatrous worship, movement that is subject to divergent rulings in the *ab initio* and *ex post facto* cases. It may be relevant, then, that there is a certain correspondence between the view found in the Yerushalmi and the view of R. Yoḥanan in the Bavli, i.e., one may pass *ab initio*. Indeed,

R. Yoḥanan himself appears in the Yerushalmi as among those who respond to the halakhic question concerning passing before an image. R. Yoḥanan's view in the Yerushalmi that "guarded" passage before an idol is permitted ("Pass before it but close your eyes") can perhaps be likened to the view attributed to him in the Bavli (according to the version of the JTS and Paris mss. and the Rif) that one may pass under an asherah. Further, it is possible that this Palestinian story served as the source for the view attributed to R. Yoḥanan in the Bavli (i.e., his view on the matter of passing under an asherah was deduced from the traditions involving passing before idols).

While the final clause of our mishnah is not directly discussed in the Palestinian gemara, the analogy with the case of passing before idolatrous images would suggest that passage under an asherah was also permitted *ab initio*. However, there is no way to resolve this matter with certainty.

35. Consider the following example. A house sitter is told not to let the dog run outside. If the reason is that the dog is prone to attack the mail carrier, then a corollary to this rule would be that one must not let *any* animal run outside that might harm the mail carrier, and the scope of the law's applicability is limited to only those days and times that the mail carrier comes to the house. On this explanation the house sitter would be permitted to let the dog run outside in the evenings or on Sunday. However, if the reason is that this particular dog is allergic to grass, then the corollary to this rule would be that other animals without this allergy are indeed allowed to run outside, and the scope of the law's applicability is universal: at all times on all days the dog must remain inside.

36. The rabbis were aware that knowing the reason for a particular ruling could be a dangerous thing, particularly in the hands of novices. Some texts suggest that the reasons for new rulings were purposely suppressed lest the ruling be belittled, dismissed, or contested. M. AZ 2:8 contains a story that addresses these themes. R. Yishmael asks R. Joshua why the rabbis prohibited the cheese of non-Jews. R. Joshua answers that it is because the cheese is curdled with the rennet of a *nevelah* (and is thus nonkosher). R. Yishmael argues against this reason: although (1) more prohibition attaches to a burnt offering than to a *nevelah*, the rennet of a burnt offering has been permitted to any priest who can stomach it; therefore (2) the rennet of a *nevelah* should also, logically, be permitted. R. Joshua then states that the cheese is prohibited because it is curdled with rennet from calves sacrificed to idols. Here again R. Yishmael is able to find an objection: in that case the cheese should be prohibited for all benefit and not just partially (as the rabbis ruled)! At this point the text states that R. Joshua diverted him to another topic of discussion: how to read an ambiguous suffix ending in Song of Songs 1:2.

The gemaras explore R. Joshua's reluctance to reveal the reason to R. Yishmael. The Yerushalmi records R. Yoḥanan's opinion that R. Joshua did not reveal the reason because it was a recent prohibition and because R. Yishmael was a minor. R. Joshua raised the verse in Song of Songs 1:2 precisely in order to hint that when pupils are mere novices, certain matters of Torah are hidden from them. (R. Joshua's grammatical question concerning Song of Songs 1:2 is taken as an indirect reference to verse 1: "Let him kiss me with the kisses of his mouth." The root of the verb "kiss" can also mean to press together, and the verse is therefore expounded to mean that one should press one's lips together and not ask questions in certain matters of Torah.) The Bavli (35a) contains a similar tradition in the name of Ulla (a conveyor of Palestinian traditions to Babylon). After proposing that the prohibition is due to the fear that a snake has bitten the cheese and deposited venom in it, the Bavli asks why R. Joshua did not simply tell R. Yishmael so. The answer: "Because of Ulla's statement, for Ulla said: When an ordinance is made in Palestine, its reason is not revealed before a full year passes lest there be some who might not agree with the reason and would treat the ordinance lightly." In a nice touch of irony, Ulla's statement is confirmed in the very next

line, for we read that “R. Jeremiah ridiculed” the idea that the reason for the prohibition was fear of snake venom. In the ensuing sugya no less than five reasons are suggested for the prohibition, none being accepted with any finality.

37. Following the Kaufmann ms.

38. An idiom referring to commercial transactions. The precise meaning of this phrase is disputed by the commentators and will be explored here.

39. To anticipate some of what follows, and lest it be thought I have invented this asymmetry, the struggle to understand how buying and selling might motivate one to thank his idol is found in the sources. P. 1:1, 39b and b. 6b, to be discussed below, both consider whether, and under what circumstances, buying and selling might be said to engender thankfulness. In short, it is not obvious to our sources that thankfulness is always clearly associated with buying and selling.

40. Given the text cited from Amos, the meaning is “all three of these days” and not “all of these prohibited activities.”

41. The significance of the fact that this tradition is cited in the name of a Babylonian will be discussed below.

42. In other words, it is not immediately apparent how loaning money, repaying a debt, and so on could be construed as preparing the items to be used in the festival. Further, we may perhaps allow ourselves to be guided in our interpretation of this passage by the fact that in all of our sources the fear of supplying an idolater’s festival needs is always and only associated with selling (e.g., a sacrificial animal) and never with the other activities listed in the mishnah. In all likelihood this passage conforms to that pattern.

43. Or to avoid validating his idolatrous beliefs.

44. Probably from the root ברה/י meaning “eat” (cognate to Akk. *barû*); cf. 2 Sam 12:17, 13:6, 10. The nominative Hebrew form בריה appears in 2 Sam 13:5, 7, 10 and Ezek 34:20. However, Blidstein understands בריה as “son of” (i.e., Aramaic בר plus the proleptic 3 masc. sing. possessive suffix). The entire phrase would mean something like “the minor festival.” (בר has this meaning in “a small yoke” in p. Shab 7c, line 10, and in “a small wall or rampart” in p. Pes 35b line 41.) In any event, the meaning is clear: the day following the festival features some continued festival celebrations.

45. The possibility of construing ולתת לשאת as referring only to selling will be discussed below when we examine the interpretation of R. Tam.

46. In other words, the idolater’s joy is only diminished by his being deprived of the opportunity to purchase *durable* items, and his motivation for thanksgiving is lessened.

47. The JTS, Paris, and Munich mss. as well as the Rosh and the Riṭba have here: איבעיא אביעיא ליהו אסור לשאת ולתת עמהם (“It was asked: Is the prohibition of buying and selling with them because of. . .”).

48. See previous note.

49. Concerning the interpretation of הרווחה, “profiting,” see note 50.

50. When I discuss the dispute among the Rishonim, other interpretations of the phrase הרווחה will be raised. Until then our working interpretation will be that selling to an idolater increases his wealth and causes him to thank his idol for his prosperity.

51. On this point the Bavli’s explanation of the second item in these three pairs is in basic agreement with the explanation of the parallel text in the Yerushalmi (p. AZ 1:1, 39b).

52. Rashi states that his version of the text is דקא מרווח ליהו, implying that he knew of and rejects another reading. If the text he rejects is that represented in the printed edition (the text that makes explicit the motive of thanking), then we have evidence that that reading predates the printed edition. But it is possible that the version Rashi rejects is that found in the Paris ms. and attested by R. Hananel: דקא קאני ליהו, in which case we have no early evidence for the text of the printed edition.

53. JTS, Paris and Munich mss. read אמרו but there is no substantive difference between the two readings.

54. It is probably this expectation that also fuels Rashi's comment that the rationale of thanking applies to all of the prohibitions of the mishnah.

55. So, for example, b AZ 13a reads: . . . הנושא ונותן בשוק של עבודת כוכבים בהמה העקר . . . "if one 'makes purchases' in an idolatrous market, if [one purchases] an animal it must be mutilated . . . etc." This beraita explains what must be done with animals and items purchased from an idolatrous fair. Thus the idiom לשאת ולתת here is used to refer only to purchase and not sale. Apparently, this idiom connotes a commercial exchange which depending on context may be either a sale or a purchase. When unmodified, as here, it should probably be understood as "buying and selling" in the abstract.

56. Recorded in Tosafot on AZ 2a, *incipit* "אסור."

57. Tos. b. AZ 6b, *incipit* "אבל."

58. The Meiri (ed. 1964:2–3), for example, raises this possibility.

59. The Meiri writes:

ומתוך כך עיקר הפירוש לדעתנו שסתם משנתנו מחשב מכשול הוא שמה ישחמש באותו דבר או יקנה דבר לעבודת הע"ז ומה ששאלו בגמרא אי משום רווחא אי משום לפני עור פירושו שנחוש אף לרווחא עד שאם יפקע משום דין לפני עור כגון שיש לו אותו דבר על הדרך שביארנו ידא נשאר שם אסור הודאה ואם אין לו שיעבור על שזויהו.

"Therefore, in my view the essence of the prohibition in our mishnah is the fear of 'placing a stumbling block before the blind' ['enabling'], lest he make use of that specific object or purchase [with money from a sale] something for the worship of his idol. And as for the gemara's question as to whether it is because of profit or because of 'placing a stumbling block before the blind,' this means that we should be concerned also about profiting him such that if the case is exempt from the consideration of 'placing a stumbling block' e.g., if he already possesses the item as we have explained, then there still remains the prohibition of 'thanking;' whereas if he does not have the item then one would be transgressing both [rationales]."

60. The Meiri's comment is:

ומה שחירץ רבא כולה משום דמודה לאו כולה מתניתין קאמר אלא על הצדדין השניים שבה ר'ל לשאל מהם וללוות מהם וליפרע מהם שהרי על אלו באה הקושיא ואם כן כל שיש בו חשב מכשול הוא עקר האיסור ואסור הודאה נשפל עמו וכל שנפקע דין מכשול נשאר משום הודאה.

"And as for Rava's response that all of them are because of 'thanking,' he was not referring to all of the terms in the mishnah but rather to the second term of each pair, i.e., to borrow objects or money from them and to collect a debt from them, for in regard to these the objection was raised. And if so, then for everything in regard to which there is a concern about 'placing a stumbling block before the blind' this (i.e., enabling) is the primary rationale for the prohibition, while the rationale of 'thanking' is secondary to it such that should a particular case be exempt from the rationale of 'placing a stumbling block before the blind,' there still remains the rationale of 'thanking.'"

61. The exchange between Jacob Katz (1953, 1978) and Yisrael Ta-Shma (1978, 1979) on the question of commercial transactions between Jews and Christians in medieval Germany and Provence is concerned less directly with the medieval interpretation (פירוש) of the specific talmudic texts with which we are dealing than with the accommodation of talmudic norms to the realities of this period in various locales (פסק דין). Ta-Shma argues that the question of commercial interaction received very different treatments in Ashkenaz and in Provence, primarily because of the presence, in the latter area, of Muslim merchants (not considered halakhically to be idolaters), who could serve as intermediaries between Jews

and Christians engaged in business. Although Katz (1978) questions the claim that Muslim merchants were present in twelfth- and thirteenth-century Provence and is inclined to treat discussions of the halakhic ramifications of employing Muslim intermediaries and agents as academic, Ta-Shma insists on his historical reconstruction (1979).

Only some of the data presented by Ta-Shma and Katz bear directly on the question of the *rationale* for the prohibition, yet these data are of interest precisely because they demonstrate the manner in which exegetical choices are not always governed by notions of what will best serve an extratextual agenda.

Ta-Shma refers to the efforts of medieval Ashkenazic rabbinic authorities to bridge the gap between the theoretical prohibition of transactions and the widespread practice of doing business with Christians on Sunday (1978:198). It should be noted that the rationale of “thanking” in and of itself extends the range of the prohibition, thus providing fewer possibilities for Jewish business with non-Jews. By contrast, the rationale of “enabling” reduces the prohibition to an insignificant minimum (as Ta-Shma himself claims, p. 204). The latter rationale thus better serves the practical goal of disabling or circumscribing the prohibition, yet it is the rationale of “thanking” that is overwhelmingly adopted by medieval authorities! As a consequence, other legal principles must be articulated in order to bridge the gap between theory and reality. Ta-Shma notes three such principles that are already foreshadowed in the talmudic text itself: (1) fear of generating ill-will among the Gentile majority, (2) Jewish economic dependence on Gentiles, and (3) the fact that Gentiles of the medieval period do not fall under the legal rubric “idolaters” (see chapter 5 for further discussion of these principles in the talmudic period). The medieval data would suggest that, in this case at least, exegetical choices were not guided solely by a consideration of the easiest and most direct way to achieve a particular practical result. The rationale of “thanking” is widely adopted even though it broadens the scope of the prohibition, at a time when efforts are being made to justify nonobservance of the prohibition, not simply *de facto*, but also in some cases *de jure*.

As we have seen, it is only R. Tam who argues for the rationale of “enabling” and construes the prohibition as a prohibition of the sale of a sacrificial animal, thus reducing the law to a dead letter. Ta-Shma describes R. Tam as adopting his own original tack (“בחר לו דרך”, *מקוריה משלו*, p. 203), the principle value of which was its new method of interpretation of the talmudic sugyot (“לאחר מערכת ההתורים שקדמו לה—היא בררך פרשנותה” *החרישה את סוגיה התלמוד*, p. 203). However, this description does not give full credit to that strand of thought within the Talmuds themselves that signals an “enabling” rationale for the prohibition of transactions. As I have argued, R. Tam does not adopt his own original view of the matter but is himself responding to textual stimuli within the talmudic texts. Granted, R. Tam must labor to reinterpret those passages that point to a rationale of thanking. But as I have indicated, those who adopt the rationale of “thanking” must themselves work to square that rationale with passages that point to the alternative rationale of “enabling.” The talmudic legacy is ambiguous and it is therefore no surprise to find medieval authorities who champion one or the other rationale indicated in the sources, despite a general recognition that commercial interaction was occurring and had to be reconciled with the talmudic prohibition. See the referenced articles for further discussion, and note particularly the three responsa by twelfth-century Provencal rabbis (Rabad, R. Meshullam, and R. Abraham b. Isaac of Narbonne) published in Ta-Shma 1978. These responsa state explicitly that the rationale for the prohibitions is “thanking” before they proceed to determine whether or not that rationale is obviated in cases involving Muslim or heretic Christian intermediaries and agents.

62. Insofar as the ambiguity that fuels this sugya is the result of temporal and cultural distance, it is fair to say that there is an external factor at work in the production of halakhic change. However, in general I reserve the term “external” to connote socioeconomic, po-

litical, even geographical and other material forces that would prompt the rabbis to respond with an act of interpretative intervention in order to attain a particular (predetermined) halakhic objective (as in the cases examined in chapters 5–8). By contrast, temporal and cultural distance are often purely neutral factors that do not prompt conscious adjustments; thus the ambiguity or obscurity that attaches to language for reasons of temporal and/or cultural distance might just as reasonably be understood as internal causes of halakhic change, since the stimulus of change—a term of unknown meaning—resides ultimately in the text itself.

63. Following the Kaufmann ms.

64. D. Sperber (1984:76–78). The word is found in three forms: גרדון: γράδον; גרדום: *gradum*; גרדום: *gradus* or γράδος (ibid., p. 78). Cf. S. Krauss (1964:183), where גרדון is considered a later corruption of גרדום, from the acc. sing. form *gradum*. Note further the alternative vocalization “*gardum/n*,” an attempt to break the non-Hebraic word-initial consonant cluster.

65. Elmslie (1911:12–13). See his Excursus 3, pp. 26–27 for a discussion of Jewish attitudes to theaters and circuses.

66. See, for example, the commentary of Obadiah di Bertinoro (d. 1510) published in traditional editions of the Mishnah since the 1548 Venice printed edition.

67. See also Kohut’s *Arukh*, s.v. גרדום.

68. See, for example, Josephus’ use of the term βήματος in *Antiq.* 20:131.

69. See Elmslie: “The Jews refused to recognize Roman justice as justice, and so held the basilicas—where Jews might be sentenced to death—as places not of justice but of murder” (1911:12).

70. There is no conjunction between these terms.

71. JTS reads simply של מלכים.

72. Both Munich and JTS have רבה (Rabbah) here, and in the next line Munich has רבה again while JTS reads ואיכא דאמרי כולם להיהר with a marginal note to insert אמר רבה. The older printed editions have רבה as the first and רבא (Rava) as the second name. By the time of the later printed editions the names were harmonized to רבא. Thus we might assume the first tradition to be attributed to Rabbah (רבה) and the second teaching to be either anonymous or attributed to Rabbah (רבה). Against this, however, is the version of the Paris ms.: רבא followed by רבה.

73. Paris ms. reads גרדום. In the JTS ms. a *vav* appears between the lines and is meant to attach to גרדום.

74. So JTS and Paris mss., but Munich ms. has תני.

75. See note 71.

76. Probably Rabbah. See note 72.

77. Probably Rabbah.

78. See note 74.

79. There are two ways to understand the final line of the Bavli’s sugya: “Say rather . . .” etc. It either contains an emendation of the mishnah, in the light of which Babylonian texts of the mishnah omitted the *vav* before גרדון, or it contains an interpretation of a version of Rabbi Judah’s mishnah lacking a *vav* before the second term (a version attested in the Babylonian branch and not the Palestinian branch of the witnesses to the Mishnah text). The term used in the Bavli to introduce this reading/interpretation is אימא “I might say” or “say!” (in the printed editions and JTS, but Munich reads תני). Epstein (1948:510) points out that although אימא more regularly introduces an interpretation of a text, like תני it can be used to introduce a correction or emendation of the Mishnah text. Epstein claims that many of the emendations introduced by אימא are “interpretative” emendations, which are not registered in the text of the Mishnah but are preserved alongside it in the Talmud. In line with

this view, Epstein suggests that the final line of the sugya is either (1) emending the mishnah from . . . בסילקי של גרדון to בסילקי וגרדון in order to harmonize it with one tradition of later Babylonian law (!); or (2) merely interpreting the term בסילקי וגרדון as בסילקי של גרדון (1948:556). In any event, the omission of the *vav* in question appears to be a late development (note that the *vav* is included in the citations of R. Hananel; the *Arukh*, s.v. חסרדיה; the Rif; the Rosh; the Ran; and *Sefer Agudah*), in accordance with the interpretation/emendation suggested by the gemara here (see Rosenthal 1980:87).

80. The comment by Epstein that the final line of the Bavli's sugya is an effort to harmonize the mishnah with one tradition of later Babylonian law (1948:556) may represent such a view. However, the comment is not explained further.

81. The term “basilica” is from the Greek βασιλεύς (= king) taken as an adjective, which may originally have served to qualify the noun στοά (in βασιλική στοά) (PW, s.v. basilica, by Mau, Band III:I, 1897:83–96; see p. 83).

82. PW, 3:1, p. 93.

83. PW, 3:1, p. 95.

84. So, for example, the parks and baths designed by Gordian were supposed to include a basilica (*Hist. Aug.* 32). There is evidence of basilicas in combination with (1) baths in Narbo and in Britain, (2) theaters in Nicaea (in Bithynia in Asia Minor, as described in Pliny's *Letters*, 10:39) and probably Iguvium; (3) a meat market in Corfinium and a cloth market in Cuicul (North Africa). Further, we have evidence of a basilica for military exercises (in Britain, and possibly Shaqqa in southern Syria), a basilica for an equestrian cohort in Assuan, and a basilica for a riding school (PW, 3:1, p. 94).

As regards the private basilicas of large houses and royal palaces, the official wing of the palace built by Emperor Domitian on the Palatine Hill (the *Domus Flavia*, end of the first century C.E.) included a throne room and an apsed basilica. Private basilicas dating to a later period are found in palaces constructed in the provinces, such as Diocletian's retirement palace on the Yugoslavian coast (near Salona in Dalmatia) built in 300–306 C.E. Constantine completed a palace, basilican audience hall, cathedral, and baths in Trier (the capital of Spain, Gaul, and Britain). According to Vitruvius, (vi, 8. 1) the basilicas in royal palaces served for public councils and private judicial arbitration (PW, 3:1, p. 94). However, in later times palace basilicas served nonofficial functions, and the basilicas in the villa of Gordian were covered extensions of the large portico, designed primarily for strolling about.

85. Josephus (*Antiq.* 15:411) refers to the cloistered porticoes built by Herod to enclose the Temple precincts in Jerusalem as βασιλική στοά. These cloisters deviate from the strict basilica; specifically, they were open on one side, lacked a tribunal, and accommodated commercial traffic only (PW, 3:1, p. 89). Mazar (1985) discusses the main part of the royal stoa on the southern end of the Temple mount, which was a long rectangular hall of columns built on a basilica plan. Four rows of columns ran the length of the hall (called “double stoa” by Josephus [*Jewish Wars* V, 190] or “stoa within a stoa” in a tradition attributed to R. Judah [b. Pes 13b]). The columns created a central area one and a half times as wide and twice as high as the two side areas. Archaeological excavations have borne out the accuracy of Josephus' description of the royal stoa (*Antiq.* 15:411–416). See Mazar 1985 for the commercial and communal functions of the royal stoa and a discussion of the theory that the Sanhedrin was temporarily housed here. Mazar points to similar structures elsewhere in the east, e.g., a square enclosed temenos in Cyrene, surrounded by stoas on all four sides, one of which was a basilica with an apse. He asserts that such areas enclosed with a basilica became common in the centers of the eastern empire, such as Antioch and Palmyra. Finally, Mazar suggests that the builders of synagogues in the diaspora centers knew the design of the royal stoa and modeled their communal installations on it. Religious buildings were erected in the form of a basilica—with a hall of columns and semicircular apse (e.g., the

synagogue discovered at Sardis in Anatolia [Mazar 1985:147]). For more on the use of a basilica plan in the construction of synagogues see Dothan 1985. Dothan describes Galilean synagogues (e.g., Capernaum) of the second to third centuries CE as basilica (though they do not generally have niches or apses). The later synagogue of Hammath-Tiberias was built on the basilican plan with an apse (pp. 93–94).

86. It is true that some Greco-Roman basilicas even during the early period had no judicial function, as is argued here, but it would appear that for much of the tannaitic period only classic forum-type basilicas were known in Syro-Palestine. Thus it seems reasonable to assume that the unqualified term “basilica,” particularly when found in juxtaposition with other sites of judgment and execution, as it is here, was in line with architectural reality in the eastern provinces and also was unambiguous at the time of the prohibition’s formulation.

87. It is not entirely clear to me why R. Yoḥanan omits from his list of basilicas the classic forum-type basilica. Although some basilicas built in Syro-Palestine at this time (mid-third century) are nonjudicial in nature, it seems unlikely that older basilicas no longer functioned as places of judgment. For a useful collection of all rabbinic sources that refer to basilicas see Gordon 1931. Some of these sources refer to specific basilicas (e.g., the famous “synagogue” of Alexandria [t. Sukkah 4:6, p. Sukkah 5:1, b. Sukkah 51b] and the basilica of Ashkelon that served as a wheat market [t. Ahilot 18]) while others refer to basilicas in general when discussing, for example, the laws of the Sabbath or ritual impurity. Rabbinic sources draw a connection between basilicas and kings (e.g., the palace of Ahasuerus; see Gordon, pp. 356–357), between basilicas and courts (the Chamber of the Hewn Stone on the Temple Mount which housed the Great Sanhedrin is said to have been in the shape of a great basilica [see Gordon, p. 359]), and between basilicas and the forum and certain public buildings (e.g., bathhouses and theatres; see Gordon, pp. 365–366). Although Wischnitzer-Bernstein (1934) questions the value of written sources for the study of the architecture of late antiquity and undermines many of Gordon’s conclusions, her criticisms do not touch upon the value of these sources for reconstructing the rabbis’ understanding and use of the term basilica.

88. How these two versions of Rabbah’s statement actually arose is not a question that can be resolved. Nevertheless, it is tempting to speculate that the two versions’ disagreement concerning the basilicas of kings reflects the distinction between royal basilicas that did serve some official/judicial function and those that were halls of audience.

89. Whether this interpretation was facilitated by the existence of a Babylonian version that lacked a *vav* before גרדון or whether it was proposed in spite of the presence of a *vav* that was only later omitted, one cannot with certainty say (though the presence of a *vav* in the citations of this text found in so many of the commentaries of the Rishonim would suggest that the second alternative is the more probable).

90. The traditional and modern commentators and lexica regard בלורית as a lock of hair. Jastrow: “plait or locks, esp. the long hair worn by the Roman and Greek youths of the upper classes and offered to the gods on arriving at puberty” (1992, 1:172); Levy: Haarflechte, Lockengekrausel, und zwar das Haar der Kopfspitz, wie es namentl. von den Götzenpriestern und überh. von Götzendienern getragen wurde, während sie das Haar ringsherum abschoren” (1924, 1:237). Krauss describes the בלורית as a tuft of hair on the crown of the head which was formed by shearing the surrounding areas and which could be braided and left to fall to the back (1910:193, 197). Fashioning the hair in this manner was forbidden as a custom of idolaters. Cf. Boyarin, 1980:174–175 for a discussion of the nickname “X רציציה” as based on just such a hairstyle (רציציה = ציצית, “long hair” or “tress,” a usage that derives from a basic botanical meaning of “branch” or “shoot” [ibid., pp. 167–168]). Note the gloss of בלורית as שיער של שיער in the *Arukh* (s.v. בלר I).

That this lock of hair was regarded by the rabbis as a sign of idolatry is attested in Dt. Rab. 2: העושה בלוריתו אינו מגדלה אלא לשם עבודה זרה (“one who grows a forelock does so only for the sake of idolatry”). Interestingly, the several references to בלורית would indicate that it is connected not only with idolatry but with young persons (usually boys). B. Sotah 46b contains a midrash of the story in 2 Kgs 2 concerning Elisha and the little boys who mock him. Supplying a direct object for the verb of seeing in v. 24 and picking up on the taunt uttered by the boys in v. 23 (“Baldy!”) the midrash attributes Elisha’s violent response to the fact that he saw that the boys sported forelocks like Amorites (“בלורית ראה להן כאמוריים”).

The association of the forelock with foreign youth is repeated in B. Qidd 76b, and Sanh 21a and 49a, all of which contain traditions concerning the children born to David by beautiful captive (non-Jewish) women. These children are said to have Greco-Roman hair fashions (κόμη) and to grow forelocks (בלורית היו מסתפרין קומי ומגדלים). The term appears again in Sanh 82a in reference to the Midianite princess of Num. 25, of whom it is said that Pinhas seized her by her forelock (חפסה בבלוריתה והביאה אצל משה).

The etymology of the term is, however, obscure. The *Aruk* connects the root בלר with Arabic بليل (with metathesis of the liquids), which refers to a long ring of hair falling behind the head (a kind of ponytail), or with Syriac בלורא, which refers to a braid or tuft of hair. However, Geiger notes in Krauss’ *Tosefot* that the Arabic term connotes small neck feathers (1937). Krauss considers the possibility of בלורית as the Latin loanword *galerus* (wig) (1964:157). He notes, however, several problems with this derivation: the unlikely sound shift of /g/ to /b/ as well as the fact that the term *galerus* is never used for natural hair, but only for a wig. The issue of etymology cannot be resolved here, but the attestations of בלורית certainly indicate the following: בלורית refers to a hairlock usually associated with young boys (with the exception of the Midianite princess in Sanh 82a) and is considered a foreign fashion generally indicative of idolatry.

91. Possibly “forming” the forelock, if we are to understand that in the process of shaving the beard some hair is left untouched and in this way the forelock is formed or fashioned at the very time of shaving. However, a forelock is not formed by shaving facial hair or sideburns but simply by letting the hair grow long and fashioning a top knot (see Smith 1891, s.v. Coma: “Children . . . wore their hair long, the front hair being tied up in a knot (σκόλλυς) on the crown . . . or arranged in a long plait or plaits stretching from the forehead across the middle of the crown to the back of the head”). Since, as I will argue, the forelock was worn by *children* (though well into puberty), it is unlikely that shaving a beard was associated with its *formation*.

92. Ironically, this is an ambiguity to which Epstein unwittingly attests by interpreting the mishnah in a manner that is unlikely to have been its intended meaning since it does not correspond with Greco-Roman ritual.

93. I have considered the possibility that the Babylonians’ question as to the intended meaning of the mishnah stemmed from conflicting knowledge of hair rituals among their Persian neighbors. In other words, perhaps they were familiar with a Persian ritual in which beard or forelock or both were shaved, and they posed their question because the mishnah seemed in some way to contradict the ritual known to them. However, I have been unable to find any evidence of such rituals among Persians of the period, and Syriac passages once thought to refer to forelocks grown by Persians probably refer to fringes attached to clothing. In this regard see Boyarin 1980:166 n. 12.

94. I subsume here Rashi’s interpretation, which is the day of shaving the beard (= or) the day of the forelock, since this is a variation on the two-day theory rather than the one-day theory.

95. Alternatively, Rashi interprets “the day of shaving the beard (and forming the forelock thereby) OR the day of shaving the forelock *only*.” But see note 91 for problems with this interpretation.

96. Or, following Rashi, (1) a day of shaving the beard and that same day fashioning the forelock and (2) a day of shaving the forelock *only*.

97. Rashi and the Tosafot have different understandings of the two possible interpretations of the mishnah, the view of Tosafot resembling that offered here. As I have indicated, Rashi suggests that the mishnah may be read as follows: “the day of shaving the beard (only, and leaving/fashioning the forelock) OR the (day of shaving) the forelock (*only*).” (The Maharasha points out that Rashi reads the *vav* of ובלוריתו as a disjunctive [“or”]). Consequently, Rashi must interpret the beraita as two separate beraitas. The first refers to the day of shaving the beard only while leaving/fashioning the forelock. The second, like the mishnah, consists of two clauses, the first one mentioning again the day of shaving the beard only, and the second one mentioning a day of shaving the forelock only (which in Rashi’s view occurred at the end of the year).

By contrast, the Tosafot read the beraita more naturally as a unit and assume that shaving the beard occurred on both occasions, i.e., when the forelock was fashioned and when it was finally removed. It seems probable, therefore, that for the Tosafot the *vav* is *not* disjunctive and the two possible interpretations of the mishnah are just as I have outlined above: (1) the day of shaving the beard and the day of the forelock (i.e., its being “left” or possibly fashioned); (2) the day of shaving the beard and shaving the forelock also. This understanding of the two possible interpretations of the mishnah dovetails neatly with the language of the beraita brought in response to the gemara’s question.

98. Regarding the forelock of children, see further Daremberg and Saglio: “mais en général, dans les monuments, on voit aux enfants des cheveux bouclés tombant jusque sur le cou, quelquefois avec une touffe de cheveux se dressant sur le front ou une longue mèche tressée et ramener en arrière, qui part du front et couvre le sommet de la tête. . .” (1877:669–670).

In addition, at age 18 Athenian youths attained to their civic and legal majority (ἔφηβοι) and began a two-year period of military and moral/civic training, overseen by the strategoi and elected officials respectively. These youth were equipped with a shield and lance in a solemn public assembly and took a vow of civic loyalty and duty. The uniform of the ephebe included short hair (PW 5:2, s.v. ἔφηβία).

99. “These are the festivals of non-Jews: the Kalends, the Saturnalia, the Kratesim, the Genesia of the Emperors. . . *but* the day of shaving the beard and the forelock, the day he returns from the sea, etc.”

100. “אבל יום תגלחת זקנו ובלוריתו ר' ל ראשונה שמגלח המלך את זקנו מגלחה בבית ע' ז' שלו וקובע לו יום. איד וכן בבלוריתו.”

Chapter 3

1. The rabbis’ application of methods of biblical interpretation to the Mishnah (and other halakhic texts) has long been noted by scholars. See, e.g., Frankel (1959:96–97 n. 9), who refers to the use of midrashic methods by tannaitic authorities in the explication of *taqqanot* and ancient laws, not to mention ordinary language; and Weiss (1915, III:10ff and *passim*). In his discussion of the “tools” employed in the construction of the Talmud, Weiss makes the general claim that insofar as the Mishnah represented the essence of the Torah to the amoraim, it was only logical that the amoraim should apply themselves to detailed study and explication of the Mishnah and that they should employ for this task the hermeneutical canons and principles by which the Written Torah itself was expounded. Weiss also discusses the amoraic practice of subjecting tannaitic teachings to the same minute analysis characteristic of scriptural exegesis—for example, every redundancy actually conveys new or additional information. See further Elon 1994:chap. 10, esp. pp. 400ff and 407ff. For more on

the rabbis' hermeneutical assumptions regarding the biblical text see Harris 1995:252, Kugel 1981:103–104, Elman 1993:1–14.

2. To anticipate myself: I say “increasingly” because I will endorse the view that while the seeds of this phenomenon are apparent already in the Yerushalmi, they take root and flourish in the later layers of the Bavli. Abraham Goldberg refers to this phenomenon: “In seeking new meaning and additional understanding of the Mishna, the Babylonian Talmud comes to approach the language of the Mishna as if it were Scripture” (1987:331).

3. Ironically, Abaye’s point that one should choose one’s words carefully and with attention to their implied meanings is borne out by the fact that the Tosafot felt compelled to understand why the tradition cited by R. Joseph should state that the halakhah rests with R. Shimeon b. Gamliel if R. Shimeon b. Gamliel’s view was undisputed! The Tosafot suggest that this formulation was chosen precisely because “these amoraim [R. Joseph, R. Judah, and Shmuel, who taught this tradition] do not accept the principle that anywhere in the Mishnah where R. Shimeon b. Gamliel teaches the halakhah, the halakhah is according to him; we know this from the fact that they needed to specify that the halakhah is according to him here” (Tos. b. AZ 32b הלכה כב). The Tosafot go Abaye one better. Precision in language is assumed—thus there is *indeed* a meaning to the tradition reported by R. Joseph even if he himself did not know it!

Note that the discussion here assumes a meaningful precision in the phraseology of an *amoraic* teaching, suggesting that the assumption of the utter meaningfulness of language is not confined to texts of divine authorship (the Bible) but bespeaks a more general approach to language. In this connection, see Boyarin 1989, esp. chap. 2.

4. Literally, “I might have thought.” This will be discussed more fully below.

5. As an example, the following צריכא argument in the Bavli refers to the Mishnah’s prohibition of certain transactions with non-Jews during the three days prior to their festivals: buying and selling, lending and borrowing objects, lending and borrowing money, repaying or collecting a debt. Note that there is nothing particularly redundant or self-evident in the mention of these transactions. Nevertheless, the Bavli subjects them to a צריכא argument, showing that unless each was specifically mentioned, one would have cause to think it should not be included. Therefore each had to be mentioned.

b. AZ 6b

וצריכי
 דאי תנא לשאת ולתת עמהן משום דקא מרווח להו
 [ואויל ומודה = not in mss.]
 אבל לשאול מהן דמעושי קא ממעט להו שפיר דמי
 ואי תנא לשאול מהן משום דחשיבא ליה מילחא ואויל ומודה
 אבל ללוות מהן צערא בעלמא אית ליה אמר תוב לא הדרי זויי
 ואי תנא ללוות מהן משום דקאמר בעל כרחיה מיפרענא
 והשתא מיהא אויל ומודה אבל ליפרע מהן דתו לא הדרי זויי
 אימא צערא אית ליה ולא אויל ומודה צריכא

1. Each clause is necessary.
2. For if he only taught “to buy and sell with them” [I might think that that is] because it profits him [and he goes and gives thanks = not in mss.], but “to borrow from them” which deprives them [I might think] that that is all right.
3. And if he only taught “to borrow from them” [I might think that that is] because it is an important matter to him and he will go and give thanks, but “to borrow money from them” is simply distressful because he assumes he’ll never see the money again.

4. And if he only taught “to borrow money from them” [I might think that that is] because he assumes that he can enforce repayment of the loan and thus he goes and gives thanks nonetheless, but to collect a debt from them in which case the money will never return to him, I might assume that that is only distressful to him and he would not therefore go and give thanks.
5. Therefore it is necessary.

The gemara is concerned with demonstrating the necessity of the inclusion of the second term in the last three pairs of activities found in the mishnah. Each of these terms refers to a transaction that entails some measure of distress. Therefore, one might think that these transactions should not be included in a list of activities prohibited during the period prior to a non-Jew’s festival, since such activities are generally understood to be prohibited lest they give the non-Jew cause for celebration before his idol. The gemara argues that contrary to what one might think, these transactions do indeed entail some measure of benefit or pleasure for the idolater and thus their inclusion here is logical (or more precisely, there is some measure of benefit for the first two—benefit for the third is simply asserted, thus making sense of R. Judah’s objection in the mishnah). Had the mishnah not mentioned each of these, one might have concluded (as indeed R. Judah in the mishnah does concerning the third) that they are permitted. The Yerushalmi contains a parallel argument that simply lacks the introductory and concluding term *צריכי/צריכא*. The structure is simply: Term A is understandable, but why term B? Because there is some benefit in it also for which the non-Jew will give thanks. This structure is repeated for all three pairs of activities.

Thus this form of reasoning clearly has Palestinian roots; it is certainly a salient hermeneutical strategy of much midrash halakhah (Palestinian) which repeatedly emphasizes that the Bible reads X precisely in order to preclude the alternative but erroneous thought Y. We must not see it, therefore, as the innovation of the Bavli. However it is more broadly and systematically applied in the Bavli.

6. Goldberg’s formulation is too strong: “One of the outstanding phenomena [in the Bavli] is the exegesis of seemingly unnecessary wording and tautology, an approach entirely unknown in the Palestinian Talmud” (1987:331). On the contrary, the exegesis of superfluous and tautologous phrases is found occasionally in the Yerushalmi, but it is not always marked with the explicit technical terminology used in the Bavli. While the term *פשיטא* does occur in the Yerushalmi also to signal a clear or self-evident teaching (e.g., p. Pes 7, 34b; p. Shab 10, 12d), the term *צריכא* in the Yerushalmi has an entirely different meaning from that in the Bavli. In the Yerushalmi it denotes something that is doubtful or undecided (e.g., p. Ned 4:1, 38c; p. Git 6:7, 48a). However, *צריכא* type arguments do occur; that is, the individual phrases of a mishnah or *beraita* are cited and then an explanation is given for each one’s inclusion (see p. AZ 1:1, 39b, discussed earlier in chapter 2). Nevertheless, it is true that this type of hermeneutics is *more broadly* and systematically applied in the Bavli, as will be seen below.

7. It is of course entirely possible that the Bavli is simply rendering explicit a hermeneutic that is implicit in the Yerushalmi. Nevertheless, insofar as this hermeneutic is not signaled by the discourse of the Yerushalmi, the two gemaras are formally or rhetorically different.

8. The term occurs also in the Yerushalmi (“X” is *פשיטא* to Rabbi A but not to Rabbi B; e.g., p. Shab 10, 12d), but in the Bavli its use is highly technical and standardized: “X” is *פשיטא*! No, for I might have thought (*havah amina*) “Y.”

9. Since the prohibition of boiled wine accrues to it by virtue of its having formerly been fresh wine, meaning that at that time *only* was it susceptible to libation.

10. Goldberg refers to this practice as follows: “Almost always, where the Mishna has a general statement followed by a particularized itemization, the Babylonian Talmud will

suppose a new and specific teaching. . . . The same procedure is followed where the Mishna has a general rule summarizing a number of preceding halakhot” (1987:331–332).

11. The Munich ms. adds here: כגון איסורי חזיכות נבילה = “such as the prohibition of slices of *nevelah* meat.”

12. The Munich ms. adds here: כגון חמץ בפסח = “such as leaven on Passover.”

13. Just as in English one might say, “These things *and these things only* are prohibited,” which implies that not even things analogous to the things itemized in the list are to be prohibited. By contrast the statement “these things are prohibited” does not carry the same exclusionary force, and one might think that the list is exemplary rather than exhaustive.

14. Meat from an animal that has not undergone kosher slaughtering but has died by natural causes and is prohibited for consumption but not for all use.

15. Only the version of the Munich ms. makes this point explicit precisely here (see notes 11 and 12). The printed edition and other mss. enumerate *nevelah* slices and leaven at Passover in the passage immediately preceding the text cited above.

16. Following the Kaufmann ms.

17. In the JTS ms. this line opens the sugya. In the Paris ms. it is omitted altogether.

18. The Paris ms. omits this line.

19. See note 17.

20. Produce from which the tithes and priestly portions (*terumah*) have not yet been removed and which is thus prohibited for consumption.

21. See note 18.

22. This passage is an example of the phenomenon referred to in the Introduction and discussed in greater detail in the next chapter: the incorporation of independent amoraic statements into the dialectical framework of the Bavli.

23. The idea that *ṭevel* renders prohibited in the smallest quantity is tied to a tannaitic analogy: just as *ṭevel* is rendered permitted in the smallest quantity, so it renders other grain prohibited in the smallest quantity. The Bible prescribes no minimum amount for the *terumah* offering to be separated from *ṭevel*. Thus, technically even one grain of wheat, if separated as *terumah* offering, can render *ṭevel* permitted. If the smallest quantity renders *ṭevel* wheat permitted, so the analogy goes, then likewise the smallest quantity of *ṭevel* renders other grain prohibited. See the continuation of the sugya on 73b for this information.

24. If we examine the mishnah on its own terms, however, we see that the verse cited by R. Yosi serves a function different from that cited in the first clause of the mishnah. The opening statement consists of two discrete halakhic data: (a) mountains and hills that are worshiped are permitted; (b) that which is on mountains and hills that are worshiped is prohibited. The text cited, Dt 7:25, states that the silver and gold on “them” (the antecedent, which was “images” in the biblical verse, switches to “mountains and hills” in the mishnah) is prohibited to Israelites. Thus the verse is a proof-text or source for (b) only. There is as yet no support for the statement that the mountains and hills themselves are permitted. It is that gap that R. Yosi ha-Galili’s teaching fills. Dt 12:2 prohibits their gods upon the mountains and hills, implying that the mountains and hills themselves are not prohibited. Thus the mishnah is structured chiasmically: (a), (b), proof (b), proof (a).

The final clause of the mishnah functions in two ways simultaneously. First, the case of the asherah is brought up because it deviates from the halakhic principle intimated in the first part of the mishnah and must be addressed. Second, the case of the asherah is brought up because it would seem to constitute a threat to the midrashic interpretation of Dt 12:2 attributed to R. Yosi ha-Galili and must be addressed. Let us examine each of these two suggestions.

In regard to the first, a halakhic principle can be abstracted from the initial teaching of the mishnah: that objects of nature do not become prohibited when worshiped. (This is only

logical. Should Israelites be expected to renounce all benefit from the sun because there are sun worshippers?) Yet a tree is also a natural object; why then is it explicitly prohibited in Dt 7:5: “You shall hew down their asherim?” The answer has to do with the fact that an asherah has an exceptional status. It is not a purely natural object, because it has been tended or cultivated in some manner in order to serve as an asherah. Thus it is more analogous to an image or an idol, “the works of human hands,” which if worshiped must be destroyed.

In regard to the second suggestion, R. Yosi gives a midrashic interpretation of Dt 12:2; however his interpretation stops short. The entire verse runs as follows: “You shall utterly destroy the places where the nations, whom you are dispossessing, worship: their gods on the high mountains, and [their gods] on the hills *and [their gods] under every leafy tree.*” R. Yosi interprets two of the final three phrases: their gods on the high mountains implies that the mountains themselves are not proscribed; their gods on the hills implies that the hills themselves are not proscribed. R. Yosi does not interpret the final phrase in the same way: their gods under every leafy tree and not the leafy trees themselves. Why? Because if the leafy tree is an asherah (as is clearly the rabbis’ assumption), then doing so would contradict the explicit teaching in Dt 7:5 “you shall hew down their asherim.” Thus the third clause of the mishnah may also constitute a response to an implicit objection to R. Yosi’s midrash. Why is an asherah prohibited even though a consistent midrashic interpretation of Dt 12:2 would teach that it is permitted? What makes an asherah different from mountains and hills such that we do not extend the midrashic interpretation of Dt 12:2 to the final clause of the verse and so consider it to be prohibited? This point will be discussed *infra*.

(We can now also understand R. Akiva’s teaching which follows in the mishnah—that the “leafy tree” clause of Dt 12:2 differs from the first two clauses [i.e., it serves a different function] and is thus not subject to a similar midrashic interpretation.)

25. The attribution to Resh Lakish (consistent in our manuscripts) may indicate that some Palestinians were already bothered by the apparent redundancy. However, it is only in the Bavli that this tradition is explicitly articulated and, more important, that the tradition is formally marked as the solution to a perceived problem of redundancy.

26. See Elmslie’s excursus on the difference between the biblical and rabbinic conceptions of an asherah (1911:60–61).

Chapter 4

1. According to the rabbis, the Bible itself contains all that one needs in order to discover and unfold the many meanings immanent within it. Consider the tradition from m. Avot 5:22: “Turn it and turn it again for everything is contained in it.” The midrashic method is thus radically different from that of Philo and the church fathers or from that of medieval Jews such as Saadya Gaon and Maimonides, who drew upon Greek philosophy in order to decode the meaning of the Bible. The rabbis generally resisted such decodings and allegorizations and pursued an intensely internal method of exegesis: the decoding of biblical texts not in terms of external systems of knowledge but in terms of other biblical texts. See Boyarin 1990.

2. In my article on the midrashic career of the confession of Judah (Gen 38:26) I point to the existence of two contradictory assessments of the character and motivations of Judah in the story of Judah and Tamar, ranging from hero to coward. The midrashic evaluations of Judah are in many instances demonstrably generated by textual juxtapositions of the type I have described. So, for example, a midrash in Genesis Rabbah opens by citing Job 15:18: “that which wise men have told and have not withheld from their fathers” [*sic*]. The verse is read in terms of Gen 38:26 and vice versa. Gen 38:26 is seen as a concrete instance of the general statement found in Job 15:18, i.e., Judah’s confession is an exemplification of not

withholding from one's fathers. But notice that a positive assessment of Judah is generated precisely by the co-citation of Job 15:18, since the latter explicitly refers to one who does not withhold things from his fathers as wise. Thus if Gen 38:26 = Job 15:18, then Judah is a wise man and a positive interpretation of Judah proceeds. In a similar manner, other co-citations generate negative readings of the character of Judah. See Hayes 1995a.

3. Kaufmann begins a new mishnah at *בזמן*. The consonantal text goes on to read *ישן*, which would be translated: "when his wife is with him he may even sleep with them in the same inn." This is also the text of the Rif and the Rosh. However, the vocalizer of Kaufmann has added a *schwa* before the word *ישן*, in order to indicate the absence of a *vav* (*ישן*); so Parma). This reading (*ישן . . . בזמן*) is found in the Munich ms. and the mishnah of the Yerushalmi and indicates that the phrase "when his wife is with him" should be attached to the preceding clause. A third reading is recorded in the Tosafot: *ישן . . . בזמן*. For these variants and their implications, see Epstein 1948:1108.

4. See previous note. In some readings this clause is attached to the previous clause.

5. Paris ms. reads: *אלא בתרי ובתלחה*. JTS ms. emends an original *בתרי* to *בתלחה*. See note 15 for discussion of "two."

6. Paris ms. reads *ואמר רב יהודה אמר רב* "and Rav Judah said Rav said."

7. JTS adds *לעולם בחד* "rather it does after all refer to one man. . . ." Paris adds *לעולם בחד*.

8. Munich and JTS mss. invert the order of these two clauses.

9. See note 5.

10. See note 6.

11. For an immoral purpose. Rashi explains that the woman was being smuggled out of the town, and in order to avoid raising suspicion her captors carried her out on a bier, as if she were a corpse to be buried. Also see note 7 for variants at this point.

12. See note 8.

13. This is a fairly common notion. See b. AZ 22b, which refers to the role of Torah in eliminating the lust that is common to all humans. It is not a question of racial superiority, but rather cultural superiority; the belief is that Jews are as subject as anyone to lust and violence, but they accepted the Torah, which enables them to curb these negative drives. As a consequence they are viewed as more trustworthy on these matters. Hence, the argument goes, if something is prohibited for an Israelite, it must be prohibited all the more so for a non-Jew, who has no guard against the exercise of destructive or immoral drives.

14. And thus certainly not one. Further, if an Israelite man may not be alone with one woman, then *a fortiori* a non-Jew may not.

15. Notice that the sugya moves from 1 to 3 without considering 2. This omission troubles Rashi, who solves the riddle of the omission in a manner faithful to the gemara's own method of interpretation by juxtaposition. The gemara of AZ 2:1 has already "called up" m. Qidd 4:12 and its gemara in its analysis and interpretation of AZ 2:1. Rashi merely locates within that context a teaching that would explain the gemara's failure to consider the case of one woman with two non-Jewish men (and in so doing may very well represent the thought process behind the redaction of the sugya). Rashi points out that it is taught in the gemara of m. Qidd 4:12 that the mishnah's permission of one woman with two Israelite men is limited to the city. In the country, however, a woman is not permitted to be with two men lest one of the men excuse himself in order to relieve himself, leaving the other man alone with the woman. (In the city the proximity of people generally is considered a deterrent to improper behavior even in such a case.) If a woman may not be alone with two Israelite men in the country, then *a fortiori* she may not be alone with two non-Jewish men.

16. The fact is that a woman is allowed to be with an *Israelite male* as long as the latter's wife is present, for the assumption is that her presence will deter them from any immoral activity.

17. R. Shimeon permits an Israelite with two women if his wife is present, since she guards/restrains him.

18. Note that the *a fortiori* argument works only in the case of a prohibition. What is prohibited of an Israelite on account of suspicion of temptation to improper behavior is *a fortiori* prohibited of a non-Jew. But no such *a fortiori* argument holds for what is permitted to an Israelite. Thus even if we learn that X is permitted to an Israelite, we still need to learn whether or not X is permitted to a non-Jew.

19. The point is that the plural form “them” facilitates this interpretation.

20. Vienna ms. reads למקום.

21. Neusner obscures the point of this teaching by displacing the conjunction from the beginning of this clause to the beginning of the next, translating: “[A gentile] who hires a worker to do work with him toward evening, and said to him . . .,” (1981b:vol. 4, 339). It is not the hiring that occurs toward evening but the request to move the flagon. The point of the teaching is that the request comes at the end of the work day, as is explained below.

22. See Rashi 65a, commenting on לשתותי ערב of the beraita.

23. Instead of these last four words, JTS and Paris mss. read: לא לא אמר ליה לשתותי ערב לא.

24. By harmonization I mean that one of the texts is taken as the norm or standard, literally true, while the other is resolved to it (i.e., some sort of decoding of its language occurs so that it is brought into line with the normative text). The underlying assumption is that both texts are identical in meaning despite their difference in formulation. In our case, the beraita is taken as the norm—the explicit text to be understood literally—and the mishnah is harmonized to it. Abaye posits that the mishnah means to say what the beraita explicitly says. This strategy is thus quite different from the *oqimta* strategy of Rava, in which the two teachings are held to have genuinely different meanings, but precisely because they refer to distinct cases.

25. Restriction of a rule to a specific situation or set of circumstances.

26. Rava and Abaye are the key figures in another such case in b. AZ 42b. Here a marginalized tradition (attested in the Tosefta) listing images that render a ring prohibited to an Israelite is taken up and brought into dialectical juxtaposition with a mishnah containing a slightly different list. The complex resolution of the contradiction by a third-generation Babylonian amora is endorsed by Abaye while Rava proposes a second (and simpler) resolution. Here again, the resulting halakhic shift is minimal and it is unlikely that there is a socioeconomic or other external explanation for the revival or rehabilitation of the contradictory para-mishnaic teaching. Rather, it should be attributed to a passionate commitment to the dialectical method through juxtaposition of conflicting traditions, a commitment that is more pronounced in sugyot featuring Babylonians of the mid-fourth century and on. The sugya itself bears witness to this claim. Before citing the contradictory beraita the stam announces: “Rav Sheshet [third generation] used to collect difficult tannaitic passages and expound them.” The implication is that some amoraim sought out contradictory traditions precisely in order to juxtapose and then resolve them. Finally, it is unlikely that this increase in the dialectical juxtaposition of traditions in the later amoraic period is pseudepigraphically imposed by the redactors (cf. Kalmin 1994, esp. pp. 213–216).

27. Elmslie points out that while the asherah of the Hebrew Bible was a wooden post, the mishnah uses the term to refer to a sacred living tree. Either the tree itself is worshiped or it shades an idol that is worshiped (1911:55).

28. Following the Kaufmann ms.

29. Although this line is marked for deletion by the vocalizer of the Kaufmann ms., it is attested in all other witnesses to the text.

30. The variants for this term (indeed for this line) will not concern us. See Rosenthal 1980:237–240 for details.

31. A tree that is *orlah* is one that is in the first three years of its fruit-producing life.

The fruit of trees that are *orlah* (lit. “uncircumcised”) is prohibited for use biblically (Lev 19:23).

32. Most printed editions suggest emending this to ורחק, since it introduces a mishnah.

33. See Rashi’s summary on b. AZ 49a, אלא לעולם: “The tanna who teaches that the field may be sown is R. Yosi, for we learned concerning him in the case of the *orlah* shoot that he said it was permitted, and in regard to an idol that he said it may be ground into powder and cast into the wind, and he makes no distinction between cases of idolatry and other prohibited things, and the reason [for his ruling in m. AZ 3:3] is not that the idol is completely destroyed as we originally taught.”

34. Reading with the Paris, JTS, and Munich mss., against the printed edition’s אמר להו.

35. Reading with the Paris, JTS, and Munich mss., against the printed edition, which adds here אורו לי מידה.

36. Reading לא with Paris and JTS mss.

37. Paris and JTS mss. continue here: לוקן = לוקן (JTS) = לוקן עלי ורזה עלי לוקן (זבל).

38. An example of the stam’s reinterpretation of a mishnah as a result of the rehabilitation and dialectical deployment of a tannaitic teaching and in keeping with a halakhic principle can also be found on a sugya on b. 39b, based on m. 2:7. The mishnah permits milk that a non-Jew has milked while an Israelite watches him (רואהו). The stam voice cites a beraita (attested in the t. 4:11) which contains an apparently more lenient ruling. It is enough that an Israelite be in the vicinity of a non-Jew milking the cow (literally, he may sit at the other side of his penfold); the milk is permitted even though the Israelite did not actually observe the entire milking process. The Bavli suggests that the mishnah is a support for the teaching of the beraita if the former is properly construed.

First, the gemara reasons that the beraita must refer to a case in which there are impure animals in the flock; otherwise the teaching is self-evident. The gemara further reasons that although the Israelite in the beraita is sitting off to the side of the penfold and cannot observe the milking, he could do so with little effort (i.e., he could simply stand and see it). The fear that the Israelite might at any moment stand and observe the milking serves to deter the non-Jew from mixing milk from an impure animal into it. Here the gemara is drawing upon an extremely common legal leniency: supervision of non-Jews who are in a position to tamper with Jewish wine, food, etc. need not be constant. The mere possibility that the Jew will enter and catch the non-Jew in the act of tampering is deemed a sufficient deterrent to the non-Jew (see m. AZ 5:4, b. 69b).

Finally, having stated that the mishnah is a *support* for the beraita, the gemara signals a new interpretation of the mishnah. The mishnah’s requirement that an Israelite *see* the milking is not to be construed as a requirement of actual physical observation. Rather, רואהו refers to a kind of general overseeing, like that represented in the beraita, rather than to literal seeing (see Tosafot, *ad loc.*, to this effect). Thus, a para-mishnaic teaching has been rehabilitated by the stam and brought into dialectical relationship with the mishnah, thereby effecting a slight transformation in its meaning—a transformation in keeping with a widely held legal principle concerning the nature of supervision of non-Jews entrusted with the food or drink of Jews.

39. At times the Bavli features a dialectical presentation of merely dissimilar views as thesis and antithesis. In other words, earlier disagreements are represented as binary disputes over principles formally articulated only later. An example occurs in the middle of the protracted sugya concerning foliage that we have just examined. On b. AZ 49a a point of difference between the tanna R. Eliezer and the rabbis in a mishnah is subjected to a forced interpretation by Abaye such that R. Eliezer and the rabbis in this mishnah are understood as disputing over an abstract principle articulated by the amoraim. The principle in question

is whether the product of two things, one of which is prohibited and one of which is permitted, is itself prohibited or permitted. The *stam* examines a range of tannaitic cases to see if any can be construed as a dispute over this principle. The suggestion is made (anonymously) that R. Eliezer and the rabbis dispute over this principle.

b. AZ 49a

דחנן שאור של חולין ושל תרומה שנפלי לתוך העיסה
לא בזה כדי לחמץ ולא בזה כדי לחמץ ונצטרפו וחימצו
ר'א אומר אחר האחרון אני בא וחכ'א בין שנפל
איסור לכתחלה
ובין שנפל איסור לבסוף אינו אסור עד שיהא בו כדי לחמץ
ואמר אב"י לא שנו אלא שקדם וסילק את האיסור
אבל לא קדם וסילק את האיסור אסור
וממאי דשעמא דר'א כדאב"י
דלמא שעמא דר'א משום דאחר אחרון אני בא
[JTS = דילמא שעמיה כדקאמי אחר אחרון אני בא
אי נמיר באיסורא אסורה ואי נמיר בהיתירא מותרין
בין סלקיה ובין לא סלקיה

1. Where have we a dispute between R. Eliezer and the rabbis on this question? Shall I say it is in regard to the matter of leaven, for we learned in a mishnah: "Ordinary yeast and *terumah* yeast [foods that are *terumah* are the perquisite of the priests and therefore prohibited to nonpriests] that fell into dough, there not being enough of the one to leaven it nor of the other to leaven it, but in combination they do leaven it,
— R. Eliezer says, I rule according to the one that fell in last, but the sages say, whether the prohibited one fell in first or fell in last [the dough] is not prohibited unless there is enough [of the prohibited *terumah* yeast] to leaven it."
2. And Abaye said, this was taught as a case where he first removed the prohibited substance, but if he did not remove the prohibited substance, it is prohibited.
3. But how do we know that R. Eliezer's meaning is that offered by Abaye? Perhaps his meaning is to be gathered from that which he said: "I rule according to the one that fell in last," i.e., if it ended with what is prohibited then it is prohibited and if it ended with what is permitted then it is permitted whether he first removed the prohibited one or not!

The rabbis hold that the dough produced by the combination of permitted and prohibited yeast is itself permitted. But while R. Eliezer holds a different view, he does not in fact hold the opposite view. In other words, R. Eliezer does not say the bread is prohibited, pure and simple. In order for this mishnah to function as support for the suggestion that R. Eliezer and the rabbis dispute over whether or not the product of combined causes is prohibited, a hermeneutic intervention is required so that the tradition will be read as presenting the two diametrically opposed opinions the *gemara* at this point hopes to find. This hermeneutic intervention is supplied by Abaye. This mishnah can be construed as a dispute over the abstract principle in question if it is taken to refer to a case in which the prohibited substance was removed. It is only in such a case that R. Eliezer rules according to which fell in last; however, if the prohibited substance were not removed, if both yeasts remained in the dough and leavened it, then R. Eliezer would rule that the dough is *prohibited*. Thus, as a consequence of Abaye's hermeneutic intervention, this mishnah can be taken as evidence that R.

Eliezer prohibits and the rabbis permit the product of combined causes one of which is prohibited.

The gemara, however, recognizes that the mishnah functions as a support for the claim that R. Eliezer and the rabbis hold opposing views only if one grants the rather forced hermeneutic intervention of Abaye. This intervention is immediately challenged. Why should one think that R. Eliezer means what Abaye has construed him to mean? Perhaps in fact he means precisely what he says — that he rules according to which of the two yeasts fell in last, regardless of whether or not the prohibited yeast is removed. Consequently this mishnah is dismissed as evidence for the suggestion that R. Eliezer and the rabbis dispute over the status of the product of combined causes.

Abaye's hermeneutic intervention should be understood as the symptom of a commitment to the dialectical treatment of earlier traditions and the desire to conform specific halakhic differences to binary disputes concerning abstracted halakhic principles.

Another example of the Bavli's presentation of merely dissimilar views in earlier sources as thesis and antithesis is found in a sugya in b. AZ. 6b concerning the status of proceeds from prohibited transactions with idolaters. Here the Bavli extracts from earlier traditions found also in the Yerushalmi, halakhic positions that can be presented as thesis and antithesis. This inferred binary opposition then becomes the basis for a dialectical schematization of a set of traditions that appear in the Yerushalmi also but serve different functions there.

40. David Kraemer details the Bavli's penchant for argumentation:

[W]e have seen that, for the *stam*, argumentation yields lengthier argumentation, and independent statements, too, can be made to yield argumentation. But the urgency of creating argumentation does not stop with these relatively minor fictions (minor because [in these] cases the gemara's author builds on actual amoraic traditions; he merely enhances them by positing a particular kind of relationship). Even where there is no argumentation to begin with, or even amoraic traditions to use as building blocks, the *stam* will create argumentation." (1990:87)

See further the fourth and fifth chapters of Kraemer's book.

41. It is the failure to recognize that many positions stated in a sugya of the Bavli are articulated as part of the dialectic project that has led many a historian to make odd historical claims. To assume that each position presented in the Talmud reflects an actual ideological commitment by one of the disputants is quite dangerous. Like any book of argumentation, statements in the Talmud must never be viewed apart from their larger context, for on occasion a statement held up as an exemplum of talmudic thought is precisely the *havah amina* — the erroneous alternative that is postulated only in order to be undermined and rejected.

42. The strategy runs something like this: Why does this teaching, text or verse say "X" rather than the apparently equivalent "Y"? Because if it said "Y," I might have thought (*havah amina*) inference "Z." Therefore "X" and "Y" are not in fact equivalent and the teaching, text, or verse says "X" precisely in order to preclude the plausible but erroneous alternative "Y" and its inference "Z."

43. Validated but not demonstrated. The Talmud is a discussion of law, not a book of philosophy. Therefore the issue is always validation of traditions and opinions rather than demonstration of objective truth. This is an obvious distinction, perhaps, but one that is frequently overlooked.

44. Sometimes, of course, this goal cannot be achieved; sometimes more than one tradition receives some measure of validation; there are any number of permutations but my description generally holds: the Talmud is about traditions and opinions — testing them, challenging them, and exploring their alternatives in order to establish their relative validity.

45. Paris and JTS mss. add *אמר רב*; so also R. Hananel, the Ramban, and the Ran.
 46. See note 45.

Chapter 5

1. B. Shab 121b contains another example of an exemption being granted to Rabbi on account of his special status. It is reported there that R. Hanina permitted three things to the household of Rabbi, including wine that had been conveyed in the coaches of non-Jews and sealed with only one seal. The tradent states that R. Hanina may have permitted the wine to Rabbi's household because non-Jews would be afraid to tamper with the wine of the patriarch (although another explanation is also possible).

2. See Preuss (1971:226–227) for evidence that this was a genuine fear in late antiquity.

3. Of course, it is incumbent upon the modern scholar to assess critically the rabbinic claim that the majority of Jews had never accepted the prohibition of Gentile oil, particularly in light of evidence from Josephus (*Antiq.* 12, 3; *Wars* 2, 21, 2 and *Vita*, 3) and the Yerushalmi (p. AZ 2:9, 41d), which attest to Jewish observance of the prohibition (the Yerushalmi's tradition indicating that zealous observance of the prohibition led to loss of life). Perhaps the rabbis misrepresent the case in order to justify the repeal; perhaps the situation had changed since the time of Josephus. On the other hand, the combined evidence may be understood as indicating that the reason for the repeal was twofold: the laxity of the majority in this regard and the reckless zealotry of a minority.

4. So, for example, one tradition in the Yerushalmi explains the third century repeal of the prohibition of Gentile oil as a response to the fact that procuring Jewish oil had become dangerous under Roman rule. See previous note.

5. See in this regard Neusner (1976:141ff), Bokser (Neusner 1976: appendix), Taqizadeh (1940–42:632–639), and Oppenheim (1854:347–352).

6. See in this regard Neusner (1966–70:vol. 2, 73 nn. and citations there).

7. In this consideration of methodological issues I am indebted to certain distinctions drawn by Kalmin (1994), esp. pp. 43–44, 53–54.

8. Of course, the Yerushalmi and Bavli were not edited by the same persons and thus there can be no claim of a pseudepigraphic imposition of halakhic difference by one common editorial agent. However, it might be argued that the Bavli's editor(s), familiar with Palestinian traditions or with something like our Yerushalmi, created a halakhic difference by altering or fabricating the sources of the Bavli.

9. Indeed, this is precisely what the Yerushalmi does. Two rationales are provided for R. Yishmael's view even though it is a minority opinion. By contrast, the Bavli appears only to ridicule the view.

10. In this I concur with Gerald Blidstein (1968), who balances the strongly historicist account of the evolution of these laws, by other scholars, with consideration of the importance of halakhic development. See his discussion, pp. 29–60, 135–162.

11. Alon's observations in this regard are surely a balanced appraisal: “[G]enerally, it was not the purpose of the Halakhah to inhibit economic cooperation between Jews and non-Jews, although obviously there were situations when it did restrain trade because of the limitations imposed by the Jewish dietary laws” (1989:551). He goes on to describe the prohibition in m. AZ 1:1 as a “serious brake on commercial relations” on days when Jewish merchants and businessmen surely had much to lose, but one imposed because of the “fear of contamination by idolatry” (*ibid.*). See also Blidstein (1968:161), who identifies the cause of the tannaitic *gezzerot* against commercial interaction with idolaters as the idolatry of the latter.

12. Blidstein's hypothesis is supported by the odd wording of the Tosefta passage. "In the diaspora" feels like an interpolation in that it disrupts the larger phrase "one day before their festivals."

13. In his consideration of these scenarios, Blidstein suggests two periods during which it is likely that the rabbinic decree of three days prior was promulgated, periods in which Jews reacted to a threatening penetration of paganism and idolatry in their land. One is the period following the Hasmonean defeat of the Syrians and Hellenizers (second century B.C.E.) and the other is the period just prior to the destruction (early first century C.E.). The evidence for or against each of these is inconclusive and can be found in 1968:43–47.

14. Blidstein (1968:32 n. 7) himself concedes that it is more likely that the bare phrase יום אחד ("one day") actually does mean "one day before their festivals" and not "the day of the festival itself." The day of the festival itself is generally indicated by יום אחד ("the festival day"), as in the continuation of t. 1:1 and in Shmuel's statement on b. 10b; or by אותה היום ("that self-same day") as in m. 1:3.

15. This passage reports Demetrius' attempt to bribe the Jews for their support in his bid for the Syrian throne. He promises relief from certain taxes and tithes, release of Jewish captives overseas, Jewish control of the Jerusalem citadel and adds (vv. 34–35): ". . . and all the feasts, and the Sabbaths, and new moons, and appointed days, and three days before a feast and three days after a feast, let them all be days of immunity and release for all Jews that are in my kingdom, and no man shall have authority to exact anything from anyone of them, or to trouble them concerning any matter."

16. This thesis leaves aside the equally likely possibility that even in its original form Naḥum the Mede's statement was reporting a Babylonian tradition.

17. Blidstein raises the possibility that, in the absence of the phrase "before their festivals" the expression "one day" may simply mean the day of the festival itself. I have already indicated that it seems far more likely that it means one day prior to the festival (see note 14). I would only add that the omission of the phrase "before their festivals" occasions little surprise here, since this is a highly abbreviated sugya. It is possible that R. Yosi cites only that segment of the tradition that supports his objection. Further, the explanation for the numbers three and one are based on the idea of days on which preparation is made for the festival. Thus it is clear that in this sugya Naḥum's words are understood by the Palestinian amoraim to refer to one day before the festival (since it is unlikely that the festival itself would be described as a day of preparation).

18. This mishnah is in itself interesting. Blidstein points out that we must not assume that R. Yishmael wished to adopt a stricter position than that stated in the opening line of m. 1:1. R. Yishmael may be presenting an interpretation of the opening line in the mishnah and the disagreement between R. Yishmael and the sages may be a disagreement over the proper meaning of the phrase לפני אסור שלשה ימים אידיהן due to an ambiguity in the word לפני. Blidstein cites evidence that לפני, in addition to conveying a sense of temporal priority (as opposed to אחרי or לאחר), can simply mean "close to, near, around" (see Blidstein 1968:37–40). If so, m. 1:1 might be interpreted as follows: Around the time of the festivals of idolaters for three days it is prohibited . . . , that is, three days on either end of the festival are prohibited. Thus R. Yishmael's statement may be a gloss that interprets the opening line of the mishnah as applying a prohibition to all days near the festival—specifically the three days before and the three days after it. The sages who disagree with him interpret לפני אידיהן in the sense of temporal priority and assert that the mishnah's prohibition applies only to the three days before the festival. Finally, it should be remembered that the principle that the days both before and after a festival have some of the character of that day is an old one, attested already in 1 Macc 10:25–45 (see note 15 above).

19. See note 21.

20. Leiden read originally *רַחַיְיָהּ*, but this is emended to *בֹּא*.
21. Probably from the root *ברד/י* meaning “eat” (cognate to Akk. *barû*); cf. 2 Sam 12:17, 13:6, 10. See chapter 2, note 44.
22. Paris, JTS, and Munich mss. read *והותן* here. This reading is attested by many Rishonim also.
23. Paris ms. has R. Gamliel here.
24. Paris ms. reads *אֵין דְּשִׁבְיָ גִבָּן*.
25. This warning is in order to ensure that the customer does not buy the animal and kill it that day and thus incur liability for the killing of an animal and its offspring on the same day.
26. This sugya bears the earmarks of a late Babylonian passage; it is in the stam voice and contains classical Babylonian dialectic which continues at length in the section following the present citation.
27. The derivation runs like this: The verse in Genesis intimates that the animals taken into the ark could not suffer mutilations (missing or damaged limbs). The rabbis understand this requirement as being due to the fact that Noah would be required to offer a sacrifice from among these animals. Thus one learns that Noah was not permitted to offer an animal with a mutilating blemish. The rabbis held that the sacrifice of Noah was the prototype of Gentile sacrifice and that the rules of sacrifice followed by contemporary Gentiles are the same as those followed by Noah. Why do they hold this view? According to rabbinic historiography, at one time all humans worshiped the one God. The ancestors of their contemporary Gentiles (e.g., Noah) brought sacrifices to YHWH. Later they corrupted their ways and offered these same sacrifices to idols. As Rashi (b. 5b) states, “It is forbidden to [contemporary] Noahides to offer one [a mutilated animal] to God, because the sacrifices which their ancestors [e.g., Noah] offered to God, they offer to their idols.” The sacrifices have remained the same, but their purpose has been perverted. Thus the verse in Genesis teaches not only that Noah could not offer a mutilated animal but that Gentiles still do not offer mutilated animals, even though their offerings are now presented to idols. It is because they must find an animal free of these mutilating blemishes that idolaters require a few days to prepare for a festival. However, since only mutilating blemishes disqualify their animals, Gentiles do not require any more than three days. Hence the verse in Genesis is the source for learning, first, that Gentiles must offer animals that are not mutilated and, more important for our purposes, that Gentiles prepare for three days, since finding animals and checking for mutilating blemishes requires three days—no more, no less.
28. I say “even more lenient” on the assumption that Naḥum’s statement prohibits the day before the festival rather than just the festival day itself. See the discussion above.
29. Munich ms. reads: *בְּגוֹלָהּ יוֹם אִידִים מִי אִסוּר*. Paris ms. also omits *בְּמִי*.
30. Literally, “travelers.” The term refers to nomadic Bedouin merchants (Obermeyer 1929:234).
31. Note that neither the Yerushalmi nor the Bavli apply this distinction to the statement of Naḥum the Mede.
32. Blidstein (1968:33–37, 153–154) argues that Shmuel’s statement may not represent a further relaxation of the prohibition. Rather it may be a restatement of the tradition attested earlier by Naḥum the Mede—that only one day, the festival day, is prohibited (in the diaspora). This older halakhah was neglected in Palestine and a stricter norm was adopted and encoded in the mishnah. Shmuel is simply reasserting the original form of the halakhah taught by his fellow countryman; indeed, his teaching may be no more than an interpretation of a legitimately ambiguous tradition if we accept that the original form of Naḥum’s tradition was “one day is prohibited” (and thus it is at odds with the “interpretation” of the Tosefta, which presents Naḥum as prohibiting one day before their festival in the diaspora).

Our sources simply do not permit us to decide these issues; therefore I will confine my remarks to the traditions as we have them, and their collective impact: Naḥum's position represents a leniency over the mishnah's position (whether or not his view is applied to the diaspora or more generally); and Shmuel's position represents an even further relaxation of Naḥum's position. Whether or not Shmuel's statement is intended as a representation or a revision of Naḥum's view, we cannot determine.

33. JTS reads אבימי, a common variant.

34. Munich, JTS, Paris, and the early printed editions read: [יום] נוצרי[ם] לדברי ר' ישמעאל: לעולם אסור. The readings נוצרי, נוצרים, and יום נוצרי are also found for the earlier citation of this tradition on b. 6a (attested by Rashi there). However, all references to Christians were deleted by the censor. See Rabinovicz 1959, 12:15 (ה), 17 (כ).

35. See note 33.

36. See note 34.

37. The *reductio ad absurdum* is an argument often used in the Talmud, although generally it is signaled by one of several technical terms. See Jacobs 1961:38–51.

38. In the following discussion I speak of the intent of the redactor rather than that of Shmuel. I do so because I cannot with confidence attribute any intentions to Shmuel in making this statement, but I can describe the effect achieved by the deployment of his statement precisely here and in light of statements attributed to him elsewhere on related topics. Since the literary deployment of Shmuel's tradition is certainly a function of the redactor of the sugya (whenever and whomever that may be), it is appropriate to speak of the redactor's design in utilizing Shmuel's teaching in a particular way rather than to speak of Shmuel's own intentions. Whether Shmuel intended his statement as a *reductio ad absurdum* is neither asserted nor denied here.

39. Some of the medieval commentators already sensed a problem with Shmuel's gloss on R. Yishmael's teaching, and while none of them actually suggests that his statement is a *reductio ad absurdum*, they come quite close. For example, Tosafot write (b. 6a, *incipit* מ' הן בלא אירידן ש' מ): "Shmuel needs to teach us that according to R. Yishmael it is prohibited forever, for (a) you might have supposed since it would never be permitted, we may exercise the option of permitting it at some specific time or another; or (b) I might have thought that R. Yishmael would agree with the rabbis in this case [the Christian Sunday case] that three days after are not prohibited; or (c) it may have been to teach us that the Christian Sunday is considered a festival day, meaning that it prohibits just like other festival days."

For the Tosafot, the problem is that Shmuel's statement seems entirely obvious and unnecessary. Anyone who can do simple arithmetic can figure out that on R. Yishmael's view Sunday will have the effect of rendering every day of the week prohibited. Therefore, the Tosafot assume that Shmuel intended to tell us something more. Shmuel's statement must be designed to preclude a *havah amina*, a plausible but erroneous view. The Tosafot suggest three such *havah amina* views, all of which can be reduced to a single common denominator: the idea that a permanent ban on transactions with Christians is extreme if not absurd. In other words, (a) one might think, since a permanent prohibition against transactions with Christians is extreme if not absurd, that we are in fact permitted to declare periods of permission. Or (b) one might think, since a permanent prohibition is extreme if not absurd, that R. Yishmael concedes to the rabbis in the case of the Christian Sunday that the prohibition does not extend for three days beyond the festival. Or (c) one might think, since a permanent prohibition is extreme if not absurd, that no sage would include the Christian Sunday within the legal category of an אידר. According to the Tosafot, Shmuel's statement is made in order to assure us that as *improbable as it may seem*: (a) R. Yishmael does hold to a permanent prohibition of transactions with Christians; (b) R. Yishmael sticks to his guns and does not concede to the rabbis even in the case of the Christian Sunday; or (c) despite the

extreme consequences, the Christian Sunday does qualify as an 7א. What is important for our purposes is the Tosafot's concession that the position spelled out by Shmuel is implausible and difficult to accept. I have taken this view one step further by arguing that it was the redactor's intent to utilize Shmuel's teaching in order to render R. Yishmael's view implausible and unacceptable. See also Rashba, *ad loc.*

40. Another possibility is raised indirectly by Neusner (1966–70:vol. 2, 72–74) and seems to be indicated also by Urbach (1986). Urbach points to the rabbis' vigorous opposition to Christianity, indicative of a hostility that surpassed rabbinic hostility to pagans. He cites R. Tarfon's statement in b. Shab 116a to the effect that he would rather take refuge in a house of idolatry than in one of "their" houses, because they are worse, having known God and denied Him. Urbach claims: "This evaluation of the Christians found expression in the *Halakhah*. To R. Ishmael's statement that business commerce with Gentiles is forbidden three days before and after their forbidden festivals, R. Tahlifa bar Avdimi added: 'With Christians . . . it is always forbidden'" (1986:217–218). However, Urbach does not note that the statement is attributed to *Shmuel* and is only reported by R. Tahlifa bar Avdimi. Yet this important fact is precisely what leads us to doubt that the statement is to be read as a simple declarative. It bespeaks an isolationism that seems uncharacteristic of Shmuel. However, Urbach seems to be suggesting, as Neusner does, that the rabbis distinguished between Gentiles/pagans and Christians (or Jewish-Christians at least). In that case, one might argue that Shmuel could very well have been lenient in regard to the prohibitions surrounding pagan festivals (hence his statement that only the festival day itself is prohibited in the diaspora), while supporting an absolute ban on business with Christians (expressed in his gloss on R. Yishmael's statement). Neusner points to b. Shab 116a as evidence that Shmuel viewed Christians as more reprehensible than pagans/Mazdeans, since he would enter the buildings of the latter but not of the former. Finally Neusner states, on the basis of our passage in b. AZ 7b, that "Shmuel probably regarded the Christians as idolaters." But if from a legal perspective both pagans and Christians are idolaters in Shmuel's view, it is even more difficult to understand how he could espouse such radically contrary halakhah for these two groups in regard to the law of transactions during a festival period. The purpose of the prohibitions is to prevent Israelites from contributing materially or motivationally to the practice of idolatry. It is possible that in regard to one set of idolaters (the Christians) Shmuel argued for the application of the strictest form of this law—a prohibition for three days before and after (in effect, for all time)—while for another set of idolaters (pagans/Mazdeans) he applied the prohibition only to the actual festival day of a fixed festival. However, the legal and conceptual inconsistencies here weaken the interpretations of Neusner and Urbach. Even if we were to grant the claim (which is not in fact fully supported) that Shmuel felt greater hostility to Christians than to pagans, or the claim that he considered Christians to be within the legal category of idolaters, these claims do not render coherent the claim that Shmuel's comment on b. AZ 7b is a declarative statement. They do not clarify the logical or legal basis for assuming that Shmuel was an unrealistic isolationist in regard to commercial activity with Christians and an accommodating realist in regard to commercial activity with pagans.

41. I realize that my interpretation of the redactor's use of Shmuel's statement is not uncontroversial. I should like to emphasize that I adduce the divergent treatments of R. Yishmael's teaching only as a *secondary* line of evidence for the broader difference between the Talmuds on the issue at hand. The primary evidence is, of course, the series of texts discussed above that explicitly address the question of the number of days in which transactions with idolaters are prohibited. Thus the substance of my claim in this chapter is not affected if my interpretation of the Bavli's use of Shmuel's gloss as a *reductio ad absurdum* is not accepted. The primary evidence of a difference between the two Talmuds still stands.

42. Note the various caveats concerning the original form and meaning of this tradition in the discussion above.

43. Again, it should be noted that Shmuel may be “interpreting” Naḥum’s teaching, which in the Bavli appears only as “one day [in the diaspora] is prohibited.” Shmuel may be stating that this means the festival day itself. If so, his interpretation of Naḥum differs from that of the Tosefta and the Yerushalmi.

44. For although the Tosefta and Yerushalmi contain Naḥum’s teachings, they take it as a prohibition of the day before the festival.

45. The Meiri notes (ed. 1964:9) that greater leniency applied outside the land of Israel in the talmudic period because the non-Jews there were not as strongly attached to idolatry, and thus a prohibition of the festival day only was deemed sufficient. However, elsewhere the Meiri develops other interpretations. The Ran (*ad loc.*) concurs that the more lenient ruling for the diaspora is due to the fact that the idolaters outside the land of Israel are not strongly attached to their idolatry.

46. Similarly, on b. Gittin 61a we read in the mishnah that the poor of the heathen must not be prevented from gathering certain of the agricultural contributions to the poor, “in the interests of peace.” The gemara then cites a beraita stating that the non-Jewish poor are supported along with the Jewish poor, their sick are visited and their impoverished dead buried just as the sick of Israel are visited and the impoverished dead buried, “in the interests of peace.” This phrase שלום דרכי, “in the interests of peace,” is simply the positive counterpart of the “for fear of creating enmity” principle. It indicates that the desire to cultivate friendly relations with non-Jews and to avoid hostility could play a role in the formulation of halakhah. However, as Blidstein indicates, the principle of שלום דרכי is not used to relax the prohibition of *commercial* interaction on festivals (1968:149–151). Indeed, a story on p. Gittin 5:9, 47c features R. Ammi considering excluding the private feast days of non-Jews from m. 1:1’s business ban “in the interests of peace.” But ultimately he rules against this relaxation on the strength of a Babylonian teaching that endorses the prohibition of commercial transactions even on private feast days. (This case is discussed in chapter 7.) Although it is difficult to see much conceptual difference between משום איבה and מפני דרכי שלום, the latter seems to be used primarily to relax prohibitions of a social and communal nature (extending greetings to non-Jews, assisting the sick and poor among non-Jews, etc.).

47. Blidstein (1968:145) points out a further motive for relaxing these prohibitions: flattery. In p. 1:1, 39b, the *ex post facto* case is discussed. If a Jew has transacted with a Gentile on the latter’s festival day, is it permitted to retain the proceeds? It is taught that doing so is permitted only in the case of a Gentile with whom one is familiar, because then it is a kind of flattery. The assumption appears to be that one is probably familiar with those Gentiles upon whom one depends in some way and whom one must be careful not to alienate. However, see Blidstein’s comments and notes on p. 146, in which he concludes that this teaching really had no connection to the *ex post facto* case to which it has been attached and probably refers to social contact during the festival rather than to commercial interaction.

48. Likewise, the Meiri states (ed. 1964:28) that “nowadays” these prohibitions are not observed, since idolatry has generally ceased in most places.

49. The Rashba (1966) conflates the latter two hypotheses, describing the leniency for the diaspora community as follows: “In the diaspora, where we fear them and depend upon them more, only the festival day itself is prohibited, because on that day they are more attached to their idolatry and will certainly go and give thanks and offer sacrifices if we sell them something; but the rest of the year they are not so attached to their idolatry, and since we need them, it is permitted.” In other words the primary reason for the leniency is pragmatic. However, rather than dispensing with the prohibitions altogether, they are retained for those times that would clearly and undeniably involve an Israelite in the support of idolatrous worship—the actual day of a fixed festival.

50. I am not saying that it would have been impossible to retain certain prohibitions with regard to trade with diaspora Gentiles while nonetheless exempting them from the category of idolater. Certainly the sages could, for example, retain a prohibition as a protective measure against transactions with genuine idolaters—a very common strategy in Jewish law. However, it is precisely because this is a fairly common legal move that I would expect to see it reflected more clearly in the sources, if it were indeed employed here. By contrast, there is explicit support for the pragmatic explanation in texts that evince a fear of offending or provoking non-Jews in the diaspora.

51. Again, since I adduce the divergent treatments of R. Yishmael's teaching as secondary evidence of a difference between the Yerushalmi and the Bavli concerning the number of days on which transactions are prohibited in the diaspora, my point is not materially affected if my interpretation of the Bavli's sugya as constituting a *reductio ad absurdum* is not accepted.

52. In general, we cannot speak of a simple opposition between “elite” and “populace” in Jewish life of this period, since there is no clear demarcation between these two entities and their “subcultures.” Cultural oppositions in Jewish culture of the talmudic period can be located in the dialectical structure of rabbinic texts themselves. In other words, the dialectic of the Talmud itself already contains thesis and counterthesis; it already encodes cultural resistance and conflict. One must not assume a univocal and monolithic rabbinic viewpoint from which the viewpoint and activity of the general populace (i.e., “history”) can be oppositionally derived. Daniel Boyarin reminds us that the very language and rhetoric of the Talmud reveal a discourse characterized by cross-currents, resistance, dialectic, and polyphony (1993:26–28). Thus the relation of rabbinic literature to general Jewish culture might best be seen as one of transposition or replication in a different register. The cross-currents, tensions, theses, and countertheses alive in Babylonian Jewish culture are replicated and addressed in rabbinic parlance and discourse on the pages of the Talmud. In many instances the relation between the rabbinic and the nonrabbinic Jewish world is not one of opposition, as Neusner would have it, but one of homology—not in the transparent sense, that is, that general Jewish life was exactly as the rabbis presented their own life to be, but in the more complex sense of a correspondence of parts. In other words, a dispute in a rabbinic text can perhaps be mapped onto a corresponding, perhaps nontechnical dispute or tension in the general Jewish world. Rather than assuming (often against the explicit discursive markers of rabbinic literature) that rabbinic texts encode X and are therefore resisted by the general populace whose practice must be non-X, this model recognizes that rabbinic texts more often record both X and non-X themselves, and that in so doing they capture and express *in rabbinic terms* a conflict or tension between X and non-X that existed within (Palestinian or Babylonian) Jewish culture generally. Much of Boyarin's work proceeds along this line. Indeed one of the foci of his *Carnal Israel* is the relation of rabbinic texts to that which is outside of them, to history and the real. The description of this model as one of replication or homology is my own.

53. Blidstein is correct to assert that the importance of internal halakhic development must not be neglected in our description of the Babylonian relaxation of the prohibitions against commercial interaction (1968:VIII).

Chapter 6

1. Paris ms. omits this word.

2. See previous note.

3. Note that a version of this reason “because one would be raising a child for idolatry” occurs in the Babylonian branch of the Mishnah itself. However since it occurs only in the printed editions and in manuscripts based upon the printed edition, it is almost certainly a post-talmudic insertion based on the beraita here (see Rosenthal 1980:58).

4. But see the important caveat below, pages 151–152. For the phenomenon of non-genuine beraitot, see Albeck 1969:chap. 3. See further Hauptman 1984 for a discussion of another type of artifice in the transmission of certain beraitot: the alteration of a subset of beraitot introduced by the technical term *tanya nami hakhi* (“thus is also taught”), with the result that these beraitot repeat verbatim an amoraic statement *originally* designed to comment upon or add to the beraita in some way.

5. My argument is not materially affected if the continuation of the sugya is deemed to be a pseudepigraphic elaboration of the view of R. Joseph. In that case, R. Joseph is simply serving as a mouthpiece for others who endorse the halakhic leniency of the beraita. The end result is the same (though assignable to a later date): The more lenient beraita in this sugya is upheld against the teaching of the mishnah.

6. The possibility that we have here an *implicit oqimta* (i.e., that we are simply to assume that the beraita refers to a paid midwife and the mishnah to an unpaid midwife) rather than an overruling of the mishnah is unlikely. This is so because the mishnah appears to be an absolute blanket prohibition without exception, since the parallel beraita cited in the Bavli provides a reason for the prohibition that implies universal application. The Bavli’s beraita (found also in t. AZ 3:3 and p. AZ 2:1, 40c) states that Israelite women may not serve as midwives to foreign women because in doing so they raise/give birth to a child for idolatry. (In this form the only exception to this law would be a case in which the child would for some reason not be raised as an idolater.) If the act is prohibited because the woman raises a child for idolatry, then receipt of a wage is immaterial—the act is forever and always prohibited. It would seem, then, that an *oqimta* strategy in which the mishnah is said to apply to cases where the woman provides free service and the beraita is said to apply to cases where she receives a wage is not even implicit here. The mishnah’s prohibition is intended to cover all cases.

The Tosafot already remark upon this possibility (Tos. b. 26a, רמנייהו): “And it does not occur to the one bringing the objection to say that our mishnah refers to a case where the service is free [i.e., restricts the mishnah’s prohibition to free service and so removes any contradiction with the beraita, which permits only in the case of paid service], because the reason provided [for the mishnah’s prohibition] is that she would be raising a child for idolatry. R. Joseph concludes that even so [i.e., even though the mishnah’s prohibition applies generally and without exception], service for payment is permitted for fear of generating ill will.” In the view of the Tosafot, the mishnah’s prohibition is of universal application, the beraita clearly opposes it, and R. Joseph simply chooses to overrule the mishnah in favor of the beraita because of the fear of generating enmity.

The Rashba concurs that R. Joseph is doing no less than rejecting the mishnah’s blanket prohibition in favor of the partial permission of the beraita, for fear of creating enmity among non-Jews. He observes (*ad loc.*): “[W]e might think, since the reason for our mishnah is said to be because she raises a child for idolatry, that even if her service is for a wage it is prohibited for this very reason. Yet they say that it is permitted because of the fear of creating enmity.” In other words, the justification provided for the mishnah’s prohibition certainly implies that the prohibition applies in all circumstances. Nevertheless, R. Joseph accepts the ruling that Israelite midwifery is permitted for a wage because of the fear of creating enmity. See also the Ritba (*ad loc.*), who holds that the *oqimta* strategy is obviated by the justification provided for the mishnah.

7. It is interesting to note that the Babylonians do not adopt the strategy adopted in regard to the prohibition of transactions around the time of non-Jewish festivals. In that case they simply stated that the mishnah’s prohibition applied in the land of Israel but not in the diaspora (and the sources hint at various reasons why a different standard ought to apply in the diaspora). Here, however, instead of simply stating that Israelite midwifery for a wage is

permitted in the diaspora because of the fear of generating enmity in a country in which Jews constitute a “guest” minority, the Babylonians seem to be making a more totalizing claim: The halakhah concerning Israelite midwifery is to be modified in the light of the (alleged) beraita without geographical distinction. The Babylonians are not arguing for an exception that would apply to the diaspora community; instead they would emend the Mishnah’s version of this halakhah for the entire Jewish community. Their claim is as totalizing as the mishnah they hope to displace.

One reason for the difference in the Bavli’s approach to the prohibition of transactions and the prohibition of Israelite midwifery might be the question of Palestinian precedent. The Palestinians themselves enunciated a halakhic distinction based on geography in the case of the prohibition of transactions (t. 1:1 and p. 1:1, 39a). The Bavli simply adopted an existing distinction and drove it further. However, in this case the Palestinian sources do not recognize a different standard for the diaspora community and instead perceive the mishnah to possess universal application. Indeed, the justification for this halakhah provided by the Palestinian sources (raising a child for idolatry) all but excludes the possibility of exceptions to the rule. The Bavli has little choice. It cannot argue that an exception be made for the diaspora community when the traditional understanding of this law is that it is exceptionless. The Bavli’s only resort is to uphold a beraita over the mishnah, providing some justification for this bold move (the fear of creating enmity).

8. Following the text of the Escorial ms. of Nezekin, as reproduced with variants in Rosenthal 1983).

9. אסטרטגיטות = στρατηγέτης, a late form of the classical στρατηγός (see Rosenthal 1983:465–466, nn. 6 and 7).

10. The word ברשותה which reflects the Palestinian version of this mishnah (Kaufmann, Parma/Leiden, Lowe) appears in the Leiden manuscript’s reading of this sugya, but not in the Escorial manuscript; see Rosenthal 1983:464–465.

11. So Escorial. The Leiden ms. abbreviates this mishnah, the second strophe represented by כר.

12. The plural form appears in Escorial, while the singular הזה appears in Leiden.

13. This translation of שני דברים (literally: “two words” or “two matters”) follows the proposal put forward by E. S. Rosenthal that שני דברים is none other than δισσοὶ λόγοι, a rhetorical term that connotes contradictory or inverted elements. Rosenthal describes a treatise composed in Sophist circles and dating to the early fourth century B.C.E. which lists δισσοὶ λόγοι, or phenomena that have two contrary aspects (i.e., things that are at once good to some and bad to others, for example, or beautiful to some and ugly to others) (1983:476–481). In a forensic context the term may refer to two contrary rulings on a single matter where one might expect no distinction. In our case, it could be objected that these four matters contain contrary rulings and are prejudicial to the non-Jew. In line with this idea, I have translated שני דברים loosely as “inequitable rulings.”

14. E. S. Rosenthal points out that this retraction is attributed to Rabban Gamliel only here. For his argument that this is an editorial insertion in order to bring the story into line with the halakhah of the day, see Rosenthal 1983:474–476 n. 48. For evidence that other authorities (early and late) ruled that the stolen property of non-Jews is prohibited, see *ibid.* n. 48 as well as the discussion *infra*. See further Fraade 1994:161 n. 14.

15. See Fraade’s comments, 1991:49–56.

16. E. S. Rosenthal (1983:474–476 n. 48) holds (*contra* Alon) that the *Sifre*’s is the oldest tradition and that its theft law is an ancient law not fully preserved in later sources. He sees p. BM 2:5, 8c (“hence, even according to the one who says the stolen property of a Gentile is prohibited”) as evidence of the change in the law. See Fraade 1994 for a discussion of this text.

17. Josephus relates the robbery of the wife of the procurator Ptolemy by a band of men in the Galilee. Against the wishes of the plunderers, Josephus wants to retain the stolen goods and return them to “Ptolemy, who was my compatriot, since it is prohibited by our laws to rob even our enemies.”

There is, of course, no biblical prohibition against robbing from one’s enemies. The closest possibility is Ex 23:4, which the LCL edition of Josephus’ *Vita* footnotes for comparison. This verse states: “If you meet your enemy’s ox or his ass going astray, you shall bring it back to him.” But the verse actually concerns the return of lost property, and the reference to one’s enemy in this context probably means a fellow Israelite who is one’s enemy. It would seem, therefore, that Josephus must have in mind not a biblical law but a traditional law. It is clear that his use of “enemy” (ἐχθρούς) connotes a non-Jew, since the term that stands in contrastive parallel is ὁμόφυλος (translated here “compatriot”), lit. “one of the same race.” Thus I take this citation from Josephus as evidence of a first-century tradition in some Jewish circles that one may not rob from Gentiles.

18. See E. S. Rosenthal (1983:474–475 n. 48), who argues that the Yerushalmi borrowed the frame story from *Sifre Devarim* and then inserted two tannaitic traditions around its stolen property law. The order of the clauses in the stolen property law in *Sifre* (Gentile, Israelite) is inverted by the editor of the Yerushalmi’s story (Israelite, Gentile) so as to parallel the other teachings (also Israelite, Gentile).

19. It also does not fully explain the absence of the second half of the law—the wetnurse law. It may be that redressing the midwifery law was seen as sufficiently redressing the overall inequity in 2:1.

20. For an alternative analysis see E. S. Rosenthal (1983:471–472), who argues that the Bavli simply preserves an entirely different version of this story—though one that is ancient and original in its own right. Following the Hamburg ms. (reading prior to emendation) he reconstructs the text of the Bavli as follows: ואמרו להן דקדקנו בכל תורתכם ואמת הוא הדבר שאתם זכרו אמרו להן דקדקנו ככל תורתכם ואמת הוא הדבר שאתם זכרו אמרו להן דקדקנו ככל תורתכם ואמת הוא הדבר שאתם זכרו = “They said to them: we have examined your entire Torah and the charge is true! [i.e., the charge] that you [do indeed] say: the ox of an Israelite, etc.”

On this reading, officers are sent to discover if a certain charge (הדבר) concerning Jewish law is true (אמת)—the inequity of the goring ox law. They do indeed find that the charge is true (ואמת הוא הדבר).

Chapter 7

1. Probably a wedding feast. See 4 Ezra 9:47 and Tobit chapters 8–9. In b. Ber 52b, Rav is reported to have said: “Ordinarily, a banquet of idolaters is held in honor of idolatry.”

2. The geniza fragment is Cambridge Add. 1207, 2 and consists of twenty lines of mishnah that agree with the Babylonian version. It is probably a fragment from a manuscript of Bavli AZ in which the full complement of mishnayot appeared at the head of each chapter. See Rosenthal 1980:35.

3. It is most likely that the people of Gedar are speaking about the feast day of an individual non-Jew since communal holidays, festivals, and so on are clearly covered by the prohibitions, as is apparent from the preceding mishnayot. Thus, although the text here does not speak specifically about a *private* feast day thrown for a son, it is the only logical interpretation (the law being so clear on general communal feast days of non-Jews) and thus we are justified in comparing this law with the Babylonian law.

4. The Palestinian Talmud often refers to Rav as R. Ba (his name being Abba Arika). Rav also was a Babylonian, of course, who studied with Rabbi and R. Ḥiyya. It would make sense that Rav would cite a teaching by the late tanna R. Ḥiyya. However, it is more likely that R. Ammi is answered here by his contemporary R. Abba, who traveled frequently be-

tween Babylonia and Palestine. R. Abba may simply be citing a tradition that he has heard attributed to R. Ḥiyya.

5. In a previous sugya the Yerushalmi partially cites a beraita concerning “the feast of himself and his son” but proceeds to interpret this as referring to “the day of his shaving for the wedding feast of himself or his son” and thus subsumes it under the law prohibiting transactions on the day of shaving (יום תגילתו). This cannot therefore be cited as evidence for a prohibition on the day of a private feast.

6. Given the Yerushalmi’s endorsement of a prohibition, there is no substantive halakhic difference between the Talmuds regarding economic interaction. However, the formal difference to be explained *infra* is what concerns us here.

7. Note that this teaching is introduced as a beraita rather than as a citation of mishnah, for which one would expect והתקן. This treatment would imply that at the time of the redaction of this sugya, the phrase ויניי שיעשה משהו לבנו had not yet entered the text of the mishnah at 1:3. Further, it is because the phrase was later inserted into the mishnah that certain commentators and marginal glossators would emend והתקן to והתניא. However, on the gradual development of the use of תקן and תניא as indicating citations of mishnayot and beraitot respectively, see Epstein 1948:chap 10. Note that Munich has והתניא at the beginning of the next line instead.

8. So the printed edition and the Paris and JTS mss., but Munich and R. Ḥananel have R. Nahman the son of R. Mesharsheya.

9. See note 7.

10. See note 8.

11. This is not too surprising. Elsewhere we have seen exemptions even when idolatrous rituals do occur, e.g., communal festivals that are not fixed (see b. AZ 11b, discussed in chapter 5).

12. The Vienna edition adds here במהרה, as does the printed edition and the parallels found in the Bavli, Avot de R. Natan, and Yalqut Shim’oni. The meaning of this addition will be discussed below.

13. See previous note.

14. An Israelite, in passages of a similar moralizing nature, is by definition someone who renounces idolatry (see b. Qidd 40a, b. Meg 13a, b. Hull 8a, which equate the rejection of idolatry with either the acceptance of the Torah or being a Jew). Yet R. Shimeon b. Elazar asserts that diaspora Jews are idolaters! How can this be? Our curiosity is aroused by the brain teaser. The answer reveals the special circumstances and sense in which the startling assertion is valid.

Note the similar aggadic tradition in b. Ket 110b: “Whoever dwells in the Land of Israel is as one who has a God and whoever dwells outside the Land is as one who has no God.” This extravagant statement is immediately challenged and then reformulated in the gemara: “Whoever dwells outside the Land of Israel is as one who worships idols.” For a discussion of the talmudic and post-talmudic objections to this reformulation see Rubenstein, forthcoming, and Saperstein 1986:195–204.

15. Just how this is derived from the verse in question will become apparent in the Bavli’s sugya cited below.

16. This is not to say that such a statement has no halakhic implications or that it is nonbinding. The boundary between aggadah and halakhah is often blurred because aggadah may convey the basic philosophy of halakhah, and aggadic passages such as this one can be binding in a *moral* sense. Nevertheless, the aggadah is not generally normative or binding in a *legal* sense (Elon 1994:94). It is clear from what we know about the content and the context of this passage (see immediately below) that it does not intend actually to classify diaspora Jews under the legal category of idolaters and that their designation as idolaters here carries

no legal force or obligation enforceable by a court. For more on the hyperbolic denigration of both the diaspora and the quality of religious life in the diaspora see Rubenstein, forthcoming. Rubenstein notes Nahmanides' comments to the effect that the talmudic rabbis make extravagant statements to encourage fulfillment of the positive commandment to dwell in the Land of Israel. Other scholars concur that the heightened rhetoric of traditions decrying diaspora life serves a polemical purpose and that such traditions are not, strictly speaking, legal pronouncements (Schweid 1985:39–42; Saperstein 1986:195–204).

17. Reading with Munich, JTS, and Paris and in line with parallel versions (Avot de R. Natan 26:4 and Tosefta), against the printed edition, which has R. Yishmael.

18. Munich, JTS, and R. Hananel read, א"ר פפי משמיה דרבא. So also the parallel in b. Ket 8a. Paris reads, א"ר פפי משמיה דרב (probably דרבא).

19. Munich and Paris mss. read, א"ר פפי. So also the old printed editions, the Rif, the Rosh, and the parallel in b. Ket 8a. See Rabbinovicz 1959, 12:20 (א). JTS is emended from א"ר פפי to read א"ר פפא and adds משמיה דרבא in the margin.

20. Instead of this line, Paris ms. reads איני.

21. Paris ms. omits this word.

22. See note 17.

23. See note 18.

24. See note 19.

25. B. Ketubbot 8a contains an interesting *structural* parallel to this text in a passage concerning the benedictions said during a wedding. On day 1, one says all the benedictions; through day 7 one says all the benedictions if there are new guests, and if not, then only שהשמחה במעונו and the sixth benediction. After the first week, the halakhah is chronologically graduated precisely as it is in this sugya. From day 7 to 30, whether or not it is stated explicitly that the meal is because of the wedding, one says שהשמחה במעונו. From then on, if the host states explicitly that the meal is because of the wedding, one says שהשמחה במעונו, but if not one does not. The gemara is then basically a verbatim repetition of steps 6–11, asking the same two questions that appear at the end of the sugya in AZ (for how long if it is connected with the wedding, and for how long beforehand) and citing the same two traditions in response (with some variations in the name of the tradent: R. Papa, Rava, R. Pappi). Note that steps 6–11 are entirely “context-neutral” and thus appropriate to both discussions. Note further that the same model for celebrating weddings is assumed in these two sets of halakhot, although one concerns a Jewish wedding and one concerns a Gentile wedding. See discussion *infra* for a consideration of the significance of this parallel for our inquiry.

26. It is unclear whether this basic rule is a continuation of Rava's statement or if it is reported anonymously.

27. This has been understood either as the placing of barley in vats from which beer will be made for use at the wedding feast, or the planting of barley in tubs which when sprouted will be brought out at the wedding feast as a symbol of the hoped-for fertility of the couple. See Beer's discussion of the evidence for and against each interpretation, 1974:173.

28. Again, the substantive halakhah in the Yerushalmi and the Bavli is ultimately the same: The private feast day is prohibited. But unlike the Yerushalmi, the Bavli admits of no alternative point of view, thus conveying a more stringent stance.

29. This misconstrual of our passage is repeated by Jonathon Goldstein (1981:84). Although Goldstein focuses in his article on the period prior to 134 B.C.E. and on Jews living in the Hellenistic diaspora, he makes a few general claims about the period stretching from 134 B.C.E. to the close of the Babylonian Talmud: “Rabbinic authorities disapproved of the close and friendly contacts between Jews of the Diaspora and their pagan neighbors, but even the rabbis felt compelled to be lenient.” He cites as evidence of this leniency the passage in b. AZ 8a. Apparently he too interprets the Bavli's citation of the beraita as meaning that those

in the diaspora worship idols in all innocence, i.e., they may do so with no legal liability. As I have argued, this is an insupportable interpretation of this passage. One who worships idols is not “innocent” according to both biblical and talmudic law. Rather, the text makes the ironic point that despite extraordinary efforts to preserve purity, Jews who attend the private feast of a non-Jew are nonetheless morally guilty as if they had partaken of sacrifices to idols.

30. Thus Urbach is wrong to imply that in the latter case the Babylonian sages were being stringent and in the former lenient. In both cases the Bavli is stricter than the Yerushalmi is inclined to be, since according to the Yerushalmi, the option to permit business transactions on an idolater’s private feast day is at least raised and considered.

31. The medieval commentators are quite clear that two separate issues are being discussed in these sources. For example, the Meiri first points out that (1) the reason for the Bavli’s prohibition against attending a feast held by a non-Jew for his son is that idolatrous sacrifices are offered at such a feast; (2) the Jew is prohibited from visiting and eating with them even if he should eat of his own food and drink; and (3) a prohibition against accepting foodstuffs offered there applies for thirty days prior to the feast and extends for a year after in certain cases. He then states that, by contrast, as regards transactions and business dealings only the day itself is prohibited. In other words, there is no conflict as Urbach suggests between the extensive prohibitions articulated in the Bavli on 8a–8b and the Bavli’s assertion that when a non-Jew holds a feast for his son that day only is prohibited (14a), because these are entirely separate issues—that of accepting hospitality and that of business dealings.

32. Even on the second option these developments would be the indirect result of the historical circumstances of diaspora life.

33. See chapter 6 for evidence of Jewish sensitivity to laws that might engender ill will among non-Jews.

34. Finally, I should mention Neusner’s treatment of the subject of social interaction between Jews and non-Jews specifically in the area of feasting. His interpretation is based upon his “cultural opposition” theory of law—that the articulation of a legal norm or exhortation is an indication that precisely the opposite activity is going on at the popular level. Neusner lists four examples—b. Ber 8b, b. Betsah 21b and 24b, and b. AZ 8b—and declares:

The point of these several stories is that one should not participate in pagan festivals nor make special preparations for the reception of non-Jews on Jewish ones. Yet it is clear from these very accounts that the opposite took place. Rabbis were welcome in pagan homes—though in R. Papa’s case we cannot say what he was doing there—and would both receive and pay visits on festival occasions. Whatever social intercourse took place among the religious virtuosi must have been duplicated many times over among the ordinary folk of the several communities. (1966:vol. 5, 27)

The stories of mutual hospitality and the constant warnings, now as earlier, against having much to do at all with non-Jews suggest that a very different situation prevailed in the streets. There the ordinary folk, both Jewish and Gentile, probably achieved a mutually respectful *modus vivendi*, just as the rabbis ignored their own prescriptions and did indeed exchange visits with non-Jews. (op cit., p. 29)

First the sources themselves. B. Ber 8b is a clearly fictitious story and cannot be adduced as evidence that visits were made. The story in b. Betsah 21b speaks of pagans coming to the homes of Jews on *Jewish festivals*, and 24b speaks of Gentiles bringing (sending?) gifts to Jews in the latter’s own homes on the festivals of the former. To have Gentiles visit Jewish homes and consume Jewish food is no problem. Problems arise only when Jews visit Gen-

tile homes, where they may be served nonkosher food or food that is dedicated or sacrificed to an idol and thus impure and forbidden. In none of these three cases does a Jew accept an invitation to participate in a private feast at the home of a non-Jew, or to eat of his food. The final case is of great importance, since the narrator takes great care to point out that R. Isaac did not answer an invitation but simply happened to be at the home of a non-Jew for some purpose and when he heard that there had been a marriage in the preceding twelve-month period, he did not leave but *abstained from eating any food*. Therefore, it does not seem to me that any of these stories contradicts the halakhot articulated by the Bavli: that Jews may not accept invitations of hospitality that involve food and drink at the home of a non-Jew who is holding, is about to hold, or has recently held a private (usually wedding) feast. Accepting gifts from a non-Jew on his feast day is something that is already permitted in the Yerushalmi (see chapter 2). Allowing non-Jews to attend feasts or festival meals in the homes of Jews is nowhere forbidden, and neither is going to the home of an idolater on other business. Therefore none of these stories constitutes a counterexample to the halakhot of the Bavli on AZ 8a. Indeed, there is really nothing terribly surprising about the activities revealed by these stories.

Further it simply does not follow that the ordinary folk duplicate “many times over” the kind of social intercourse evidenced among the religious virtuosi. There might be any number of reasons why the “religious virtuosi”—community leaders and authorities—would have had greater need for social interaction with non-Jews than did the ordinary Jew, who might have found it quite easy to avoid social interaction (though perhaps not commercial or economic interaction) with non-Jews. Neusner’s portrait presumes that Jews sought out social interaction with their non-Jewish neighbors and chafed against rabbinic exhortations against that interaction. Such a portrait makes several sociological assumptions that our sources simply do not support. In general, the degree to which these sources and laws reflect the actual state of social interaction between Jews and Gentiles cannot be taken up here. As regards Jews in the Roman diaspora, the reader is referred to the comments in Cohen 1993:26–29. See further Feldman 1993.

Chapter 8

1. In the Vienna ms. and first printed edition, קירין. See Zuckerman 1970:464.
2. There are many textual variants in this passage. In general they do not change the substance of the sugya, therefore I will cite primarily variants in attributions.
3. Paris, JTS, and Munich mss. have Rav Papa here. So also R. Elhanan and the Rosh (see Rabbinovicz 1959, XII:36).
4. Munich ms. has אבא.
5. An early printed edition and the Paris ms. have חשלי.
6. JTS ms. has R. Judah.
7. Some commentators attest here to Rav Papa instead of Rav Ashi (the Rosh, the Ran). However, the Paris ms. reads Rav Papa and it is a marginal insertion in the JTS ms.
8. See note 3.
9. See note 4.
10. See note 6.
11. See note 7.
12. See Rashi, *ad loc.*, “they fight to protect the town and its inhabitants.”
13. See the discussion of the Yerushalmi text above. Note, however that we can only guess at the reason for the qualification found in the Yerushalmi.
14. So Elmslie, who suggests that these animals are forbidden “because they were wanted for the degrading wild-beast exhibitions (venationes), which took place in the circuses and

amphitheatres throughout the Roman dominions. Cicero witnessed 600 lions slain at Pompey's *venatio* 66 B.C. . . . At the inauguration of Titus' amphitheatre in Rome 9000 beasts were slaughtered in the arena! Cp. Josephus, *Ant.* 15.8.1 (of Herod's games at Jerusalem) 'He also made great preparation of wild beasts, and even of lions'" (1911:12).

While it is quite possible that the prohibition is in part motivated by a concern for the fate of the animals, the Mishnah's juxtaposition of the catch-all phrase "or anything which may injure the public" indicates that the primary concern is the use of these animals for the destruction of human life. Elmslie's comments in his *Excursus* to chapter 1 of *M. Avodah Zarah* (pp. 26–27) are more to the point: "Moreover Jewish feeling was horrified by the sight of men being thrown to the wild beasts. 'He who sits in the Stadium to witness gladiatorial contests is a murderer' (Tj. *A.Z.* 40a)."

15. See Alon for details (1989:133–144). Also Elmslie 1911:*Excursus* 3.

16. The Erfurt ms. reads וְרַבִּי אוֹסְרֵהוּ ("and Rabbi [Judah ha-Nasi] prohibits it"), while the Vienna ms. and first printed edition read וְחַכְמֵי אוֹסְרֵהוּ ("and the sages prohibit"). However, parallel *beraitot* in both the *Yerushalmi* and the *Bavli* support the reading R. Judah [ha-Nasi]. See p. *AZ* 1:6, 40a [= p. *Pe* 4:3, 31a]; and b. *AZ* 16a, which has R. Judah according to the Paris and JTS mss. and Rabbi according to the Munich ms. and the printed edition.

17. See the previous note for important variants.

18. My argument is not significantly altered by the variant reading "and the sages prohibit," since this reading would suggest that the prohibition of weapons was accepted by a majority aligned against ben Bathera. Our question thus remains, but with a slight modification: Why was this prohibition omitted from the Mishnah of R. Judah ha-Nasi when it was a widely accepted principle? Be that as it may, the bulk of the textual evidence supports the reading "Rabbi/Rabbi Judah prohibits it."

19. Maimonides explicates the phrase "anything that can cause injury to the public" with the words "such as arms and instruments of punishment." In other words, Maimonides reads into this mishnah the prohibition of weapons that is omitted from the Mishnah and found only in the *Tosefta* and the *Talmuds*.

20. I say "eclipse" rather than "rejection," because the prohibition is not actively reversed. It survives in the *Tosefta* and in the two *Talmuds*, and perhaps even in the oblique reference to "anything that can cause injury to the public." Therefore, the best way to describe its omission from the central authoritative halakhic work of the early third century is to speak of its eclipse: It is temporarily obscured but not permanently obliterated.

21. But see note 18 for the implications of the variant reading "the sages prohibit."

22. Perhaps the effort attributed to R. Judah to abolish the fast of the Ninth of Av (b. *Meg* 5b) was in accordance with the tradition (b. *RH* 18b) that all four fast days observed by the Jews are obligatory only in times of trouble and conflict. If so, one might speculate that R. Judah perceived his age to be a time of relative peace.

23. It might be that R. Judah changed his mind on this issue. There is certainly evidence of his changing his mind on various issues, with one view reflected in the Mishnah and another in a nonmishnaic source (see the discussion of this phenomenon in chapter 2). Perhaps the *Tosefta* records his acceptance of a prohibition of weapons sales while the Mishnah's silence reflects his reversal on this matter. Alternatively, R. Judah may not have actually changed his views, but wished to downplay the weapons prohibition. Thus, while he was willing to utilize the prohibition to decide derivative cases (e.g., the sale of a horse), he eschews an explicit statement of the prohibition of weapons sales and does not include it in his Mishnah. That R. Judah accepted the prohibition (as evidenced by the *Tosefta*'s tradition) but simply omitted it from the Mishnah because of a desire for concision or because the prohibition can be derived from other rulings seems to me unlikely. The Mishnah's inclusion of the clause "anything which may injure the public" alongside the prohibition of

wild animals would suggest that the latter is not an exhaustive and general category from which other harmful items can be derived. Likewise R. Judah's invocation of the weapons prohibition in t. 2:3 indicates that it is a basic legal rubric. In sum, given the pervasive and conceptually basic nature of a weapons prohibition in our sources, it seems reasonable to interpret our mishnah as an effort on the part of the redactor to obscure this prohibition.

24. Interestingly enough, these traditions feature Rav Ashi and his circle. B. Ket 61b "Amemar, Mar Zutra, and R. Ashi were once sitting at the gate of King Yazdegerd . . . ;" or b. Zeb 19a "R. Ashi said: Hanna b. Nathana told me: I was once standing before King Yazdegerd. . . ."

25. Note that the continuation of an earlier prohibition is inconclusive, because simple inertia may cause a prohibition to remain in place despite improved relations. Hence little can be said on the basis of our sources concerning the early amoraic period in Babylonia, because the continued assumption of the weapons prohibition and the exploration of its application among early Babylonian amoraim may be the result of simple inertia. Thus, as regards the Bavli's sugya we are concerned primarily with the Bavli's late reversal of its iron prohibition.

Appendix

1. Henceforth 1995c (293–298), which is basically a reprint of 1995a, 73–78 (relocation of two paragraphs, and replacement of two sentences with four sentences).

2. Henceforth *JSJ*. The *JSJ* article corresponds to the chapter in Neusner 1995c.

3. Thus the pages corresponding to the *JSJ* review are xxvi–xxix (= *JSJ* 194–197) and 163–166 (= *JSJ* pp. 197–199).

4. This response appeared in *JSJ*, 27, 1:324–333.

5. That this is the purpose of the work is apparent not only in the title (. . . *Accounting for Halakhic Difference in Selected Sugyot from Tractate Avodah Zarah*) but also in the very passage cited by Neusner, which states that the "dissertation accounts for selected divergences between parallel passages in the two Talmuds dealing with laws governing relations between Jews and non-Jews" (1995d:xxvii, citation of Hayes 1993:1–2).

6. Neusner's complaint is a version of the old problem of the hermeneutic circle, which has been defined as follows: "The term [hermeneutic circle] is used to express the seeming paradox that the whole can be understood only through an understanding of its parts, while these same parts can be understood only through an understanding of the whole to which they belong. Allan Rodway suggested back in 1970 that the way we escape from such situations is by 'edging out', 'tacking from evidence to hypothesis to further evidence to renewed hypothesis' . . . although it is arguable that such a solution to the problem of the hermeneutic circle is already implicit in the work of Schleiermacher and Dilthey." (Jeremy Hawthorn, *A Glossary of Contemporary Literary Theory*, 2nd ed. [London: Edward Arnold 1994], s.v. hermeneutic circle). Thus it is not clear that Neusner's assertion that one must have a theory of the wholes before one can compare parts is unassailable on theoretical grounds. Nevertheless, as I will explain shortly, I do begin my work with a theory of the whole Talmuds that serves as a working hypothesis in my comparison of parts (individual sugyot). The validity of this theory of the wholes is, I believe, borne out by the subsequent analyses of parts.

7. All citations from my own work appeared in the dissertation text critiqued by Neusner.

8. In Neusner, 1995d, the fourth reprint of his critique, he adds a concluding paragraph (p. 166) which does for the first time acknowledge the actual goal of my work. Nevertheless, Neusner still writes under the mistaken impression that I propose no characterization of the Talmuds as whole documents (because I do not cite works by him that contain such a char-

acterization), and that I insist upon the Talmuds' incoherence and on the unity of a single Judaism.

9. For my criticism of a similar attempt by David Kraemer to apply truth language to the Bavli and to view the Bavli in philosophical terms see my review essay of Kraemer's book (Hayes 1991). This issue is also discussed in note 44 of the introduction in the present volume.

10. Part I considers an even more basic cause of difference—divergent versions of the Mishnah—but that is not relevant to the debate with Neusner.

11. Indeed, for a formulation of my view that there is an interaction of tradition and transformation in the composition of rabbinic texts, see the discussion in the introduction. For an example of the way in which the appearance of a datum in early and late texts is no guarantee of the continuity or harmony of the two bodies of writing, see my discussion in chapter 5 of the tradition attributed to Naḥum the Mede.

12. For an example of the way in which I do make use of a Qumran parallel, see chapter 6.

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