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Abstract

A great deal of ink has been spilled on the question of early rabbinic literary culture and the rabbinic dedication to the development of an explicitly oral legal tradition. In this essay I will argue that given that the manifest content of early rabbinic discourse is law, it is productive to look to the very public practices of communication inscribed, literally and figuratively, in the Roman legal culture of the east. Within this context, the rabbinic legal project makes sense as a form of provincial shadowing of a dominant Roman legal culture. This paper will explore the paradoxical rabbinic deployment of the most public of Roman genres, law, in a manner explicitly coded as private. How does one make sense of the public aspirations of rabbinic law with its choice to remain unwritten and therefore largely invisible in the imperial landscape of the rabbinic city?

Keywords

Ancient Judaism, Ancient Christianity, Islam, Public, Private

Disciplines

History of Religion | Islamic World and Near East History | Near Eastern Languages and Societies | Other Classics | Other Religion | Religion | Religious Thought, Theology and Philosophy of Religion

Natalie B. Dohrmann

9. Can “Law” Be Private? The Mixed Message of Rabbinic Oral Law¹

The only phenomenon with which writing has always been concomitant is the creation of cities and empires, that is, the integration of large numbers of individuals into a political system.

Claude Levi-Strauss. 1955

What is the difference between us and the gentiles? Those bring forth their books and these bring forth their books, those bring forth their documents and these produce their documents. (yPeah 2.6, 17a)

Abstract: A great deal of ink has been spilled on the question of early rabbinic literary culture and the rabbinic dedication to the development of an explicitly oral legal tradition. In this essay I will argue that given that the manifest content of early rabbinic discourse is law, it is productive to look to the very public practices of communication inscribed, literally and figuratively, in the Roman legal culture of the east. Within this context, the rabbinic legal project makes sense as a form of provincial shadowing of a dominant Roman legal culture. This paper will explore the paradoxical rabbinic deployment of the most public of Roman genres, law, in a manner explicitly coded as private. How does one make sense of the public aspirations of rabbinic law with its choice to remain unwritten and therefore largely invisible in the imperial landscape of the rabbinic city?

1. Introduction

A robust scholarly discussion swirls around the rabbinic development of an oral ideology. To date, when the oral component of rabbinic oral law has been studied and set in socio-historical context, explanatory paradigms have been, broadly speaking, two: polemical and (Greco-) philosophical—either as an ideology that emerged as a way to control access to a contested but shared scriptural tradition, and/or drawing from the master-disciple modalities of philosophical schools and Greek rhetorical *paideia*. In this essay I will argue that while illumi-

¹ I am grateful to the many people who read drafts of this paper and engaged me in useful conversation, debate, and corrective: Elsie Stern, Seth Schwartz, Ra’anan Boustán, Annette Yoshiko Reed, Ishay Rosen-Zvi, Talya Fishman, Cliff Ando, Jörg Rüpke, and the participants in the conference from which this paper sprung (Erfurt, 2013).

nating, these positions have not sufficiently taken into account the culture of legal writing in the Roman east, and that so doing will add a modest but important facet to our understanding of emergent rabbinic culture.

The rabbinic legal project makes sense as a form of provincial shadowing of a dominant Roman legal culture.² Given that the manifest content of early rabbinic discourse is law, it seems not unreasonable to look to the very public practices of communication inscribed, literally and figuratively, in the Roman legal culture of the east. This paper will raise the problem of the paradoxical rabbinic deployment of the most public and self-consciously inscribed of Roman genres, law, in a manner at once coded as private. How does one make sense of the public aspirations of rabbinic law with its choice to remain formally unwritten and therefore largely invisible in the imperial landscape?

As a way to frame the problem as a problem, I want to home in on the imbrication of Roman imperial law and ideology with its modes of communication. The message of imperial rule is folded in good measure with its medium—writing practices, media, circulation, public reading, storage, citation, and publication. This written culture was a visible, ubiquitous aspect of the Roman urban space and of the citizen's sense of his connection to the state. Eschewing writing is itself then a form of engagement with this public economy of power. The rabbinic development of a new Jewish religious discourse in a legal mode exemplifies the process by which the empire's normative order insinuated itself among a certain subject (and stubbornly resistant) population. Why, then, having absorbed the empire's ambient legalism, do the rabbis reject its medium, and what might that tell us about the public and the private in one provincial religious community.

The empire defined, populated, and furnished the "public" for the increasingly urban rabbi.³ Not insignificant was the publication of the law, and it is in this sense of public/ation that I will approach the topic at hand. Through the medium of law, the rabbi insinuates his self into a public space in a most unlikely mode, complicating easy ideas of provincial participation in the Roman polity. This case below, ideally, will contribute to the accumulated knowledge of how a polyethnic empire might be imagined as multiply Roman; how Romanization is a major factor for even the most inward-looking populations; and how state power may impact cultural modalities and media at the margins.

2 Dohrmann 2013; Hezser 1998.

3 Whittaker 1997; Hanson 1997; Lapin 2012: 67–69.

2. Some background

When the dust settles after the two major revolts against Rome in 66 and 132 CE, we witness the rise of the so-called "rabbinic movement"—a loose collective of learned promulgators of the Jewish law, Torah experts. The nature of early rabbinic (*tannaitic*, 2nd–3rd c) "literature" is more than a little difficult to map onto the contours of the eastern Roman empire.⁴ For a small provincial population, the earliest generations of rabbis (the *tannaim*) are responsible for a rather large corpus of preserved materials—the Mishnah and Tosefta, substantial compendia of legal dicta and debate, as well as a series of lemmatic commentaries on the four books of the Pentateuch containing legal material, known as the halakhic (legal) midrashim. Tannaitic material is not authored (received tradition attributes the Mishnah's redaction to the rabbinic Patriarch, Rabbi Judah ha-Nasi, 2–3rd c.). It is preserved in mishnaic Hebrew, which was neither the Greek of the empire nor the Aramaic spoken by Jews. With rare exception, the Mishnah itself is not explicit about its transmission and publication,⁵ though there is broad scholarly consensus that it was only committed to writing in any sort of official manner well after the tannaitic era.⁶ It was stored, managed, and promulgated orally, any sporadic reliance on notes remaining partial and informal.⁷ There is evidence that this was the case with the commentarial corpus as well.

3. Rabbinic project as legal project

The Mishnah, the most significant tannaitic work, is an extensive corpus covering a wide range of civil, criminal, and ritual law. Only one of its sixty-three tractates is not law, and its legal voice can be seen in these entirely unremarkable passages:

An object found by a man's son or daughter who are minors, or by his Canaanite slave or maidservant, or by his wife, belongs to himself. An object found by his son or daughter who are majors, or by his Hebrew slave or maidservant, or by his wife whom he has divorced,

⁴ On the economic and social stability of Palestine through the 3rd c. "crisis", see Bowersock 1998: 35; Schwartz 2007: 78–79; Goodman 1992: 127–39; Appelbaum 2011. Cf Ando 2012: 224–29.

⁵ mAvot 1.1. Jaffee 2000; 2001: ch. 4; Lieberman 1950: 83–99.

⁶ Rosental 1987.

⁷ Jaffee 2001: 69. Contra Sussman 2005.

although he has not paid [her according to] her marriage-contract, belongs to the finder. (mBM1.5)

Some finds belong to the finder; others must be announced. The following articles belong to the finder: if one finds scattered fruit, scattered money, small sheaves in a public thoroughfare, round cakes of pressed figs, a baker's loaves, strings of fishes, pieces of meat, fleeces of wool which have been brought from the country, bundles of flax and stripes of purple-colored wool; all these belong to the finder. This is the view of R. Meir. R. Judah says: whatsoever has in it something unusual must be announced, as, for instance, if one finds a round [of figs] containing a potsherd, or a loaf containing money. R. Simeon b. Eleazar says: new merchandise need not be announced. (mBM 2.1)

This is just a sample of tannaitic legal efflorescence and ambition, one that emerges from a group without prestige or influence outside of small local circles, and to whom most Jews did not appeal for legal guidance or adjudication.⁸ The early sage's authority had no institutional or state backing; it grounds itself in the learning and piety of the individual, and is checked by the wisdom and ethics of the collective.⁹ Scripture, citationally speaking, is a bit player in the Mishnah; Moses and God by this measure are entirely off stage.¹⁰ Outside of Scripture, books or texts are not brought to bear.¹¹

For the tannaim, the word Torah does not signal solely a circumscribed written corpus, but names the work of doing God's law for the Jews—inhabiting it, applying it, obeying it, studying it, expounding it. The core of the enterprise was legal, and while this statement may seem obvious, it should by rights be jarring. There is nothing inevitable or natural about the translation of Torah into law (*halakhah*). While Torah had always been a central Jewish religious idea, and God's law had been culturally defining, this grand translation of religious knowing into legal expertise; worship into legal study,¹² is unprecedented.¹³ Neither other Jewish groups nor early Christians, who share a Torah tradition, develop in this direction. Yet the rabbis' cultural swerve has been understudied, in large measure because of prejudices, both internal and external, that ascribe to Judaism an inherently legal orientation. The result being that somehow, rabbinic Judaism—in its macro-structure, in its legalism—has managed to be seen as coterminous with what is "Jewish," continuous with past traditions, and essen-

⁸ Lapin 2010; S. J. D. Cohen 1992.

⁹ mKid 1.11; mEduy 5.7. Cf. Rüpke 1996.

¹⁰ Neusner 1982: 139–47. Cf. S. J. D. Cohen, 2007: 123–25.

¹¹ One exception being Megillat Ta'anit (mTa'an 2.8); on the LXX, cf. Simon-Shohan 2007.

¹² mAvot 3 passim.

¹³ Neusner 1984; S. J. D. Cohen 2007: 138–40; Shemesh 2009: 3–7, and bibliography there; Halivni 1986.

tial. Noting the innovation in this adoption of a legal idiom forces one to take the claims embedded in such a choice seriously.

I have contended elsewhere that this seismic formal shift reflects the Roman culture of law and expansion of legal expertise so useful for success in and under Rome.¹⁴ Roman legality made categorical and theological sense to the rabbis, echoing as it did already indigenous ideas of Torah. However the pre-rabbinic Jewish framing of Torah as law is far different from its formation in the rabbinic ambit. In the rabbinic theological imaginary, the rabbis function in relation to their god as do the legal experts in the inner circle of the deified *princeps* who translated and mediate his will. The rise of the Roman jurist as a new mode of authority and avenue for professional advancement finds resonance in the rabbis as Jewish sub-elite on the make, also looking for ways to rise in prominence, and to increase access to their own ultimate lawgiver.¹⁵ The emperor, accessible, even at a distance, by the common legal petitioner, finds a parallel in a rabbinic privileging law as language with which one best communicates with a distant but omnipresent God.

Accompanying the rabbinic elevation of legal discourse and expertise is a devaluation of other models of religious writing and other types of holy man and religious elite.¹⁶ At issue is not the existence of religious law and legal experts, which we can presume in all eras. Rather, it is the transformation of religious thought and discourse; the rabbis make legalism conceptually coterminous with Judaism. In committing to law, the rabbis are defining themselves and building their Judaism on and through a matrix of elements collected from and filtered through the Roman world.¹⁷ Granting the homology between rabbinic law and Rome's nomic sensibility, it is worth underscoring the manifest disanalogies. As legal system, halakhah is of course severely truncated—a sovereign, jurisdiction, courts, enforcement, even subjects, are ghost limbs; dominion is only a fantasy.¹⁸

14 Dohrmann 2013.

15 Hezser 2007; Cf. Appelbaum 2010: 217–22.

16 The rabbinic teacher not only displaces father, prophet, priest, even healer, he becomes a walking talking Torah—his words and actions a realized and ongoing revelation. Jaffee 2001: 155.

17 "Jurists, legislators, and judges needed, in other words, to acknowledge the fact of contingent divergence from Roman practice by nominal Roman citizens at some primary level of analysis in such a way that permitted the redescription and reorientation of that practice over time into alignment with Roman norms" (Ando 2011: 21). The ideas in this section summarize a longer essay on the theme, Dohrmann 2013. Cf. Woolf 2000: 24 n. 2. Schwartz 2010: 399; Lapin 2013.

18 Lapin 2012: 20–24; Schwartz 2004; Jacobs, 1995.

4. The legible *leges*, or, putting the public in publication

Rome by contrast had full use of all her legal limbs. My interest in this essay is on the ubiquity of writing in this system. If one were to do a heat sensitive mapping of writing in the largely pre-literate Roman world, law would constitute a rather glaring hot spot. Laws were public domain, and were communicated variously (what good is a law that no one knows?), from posted edicts to traveling courts. Ando writes that “even a skeptical reading of extant (legal) texts reveals abundant evidence of authors’ desire to disseminate and recipients’ desire to record official publications of every kind.”¹⁹ He goes on: “The government at Rome exploited every opportunity to send documents to the provinces... the sheer abundance of Roman texts is striking... Above all, the government at Rome always paraded its wish that its words should come to the attention of all its subjects.”²⁰ Writing, Ando shows, was far more than merely a medium—but was essential to Roman thinking about imperial administration, to a ventriloquism of the center to periphery, and to the accountability of subjects and rulers alike.

What is more, the connection between law and writing was self-conscious, and the legal record is rife with awareness regarding medium, be it stone, metal, wax tablet, papyrus, wooden board.²¹ Legibility meant that these artifacts were visible, often “eye level” throughout the urban space. Ulpian signals both the ways that the public space was overwritten by the law, and the ways the law designated the creation of a textualized public landscape.

By “public notice” we mean one written in clear letters, posted in such a way that it may be read properly from the ground level, in front of an inn, for example... not in a hidden place, but in the open.²²

It did not matter that the bulk of the law’s intended audience could not read. Its physical publication in words served its authority nonetheless.²³ Legal documents of empire are as aware of the power of their own inscription as were the rabbis. Given the suggestive legal homologies between the cultures, the rabbis’ ideological amputation of writing from law has special significance.

¹⁹ Ando 2000: 109.

²⁰ Ando 2011; 2000: 81.

²¹ E.g., Meyer 2004; 2007; Altman 2003.

²² Ulpian, *Dig.* 14.3.3, from Ando 2000: 98.

²³ Corcoran 2004: 65, 56–73.

5. Tannaitic orality

In Jewish Palestine of the Hellenistic and early Roman eras, the extensive corpus of **non-rabbinic** Jewish literature is marked by a wide variety of literary forms and genres in a range of languages—Hebrew, Greek, and Aramaic. This diverse library is predominantly narrative in structure and thought process, and most of it can be described loosely as parabiblical. The idea of the author is vibrant, even if most "authors" are hoary pseudepigraphical I's.²⁴ We have in addition a range of non- or more weakly narrative materials drawn from liturgical, oracular, and sapiential forms, a smattering of law, and, in the diaspora, philosophy. An investment in revealed books qua books is increasingly central to the evolving notions of prophecy, epistemology, and the history of revelation. A scribal strain studs the primordial and national epic with a series of mythic texts. In this horizon of revealed writings, the written Torah revealed at Sinai, becomes just one, if first, among many divine texts.²⁵

In stark contrast, for the tannaim, book production and publication, both mythic and actual, screeches to a halt. Moreover, Second Temple literature itself finds no place in emergent rabbinic Judaism—the sole exception being the works comprising the newly/increasingly canonized scripture, and predominant among its books, the Torah, or Pentateuch.²⁶ These sage scribes are not operating in the same discursive space as had Second Temple Jews, literarily or conceptually; they do not compose any extended narrative²⁷; they do law, and with a novel totalizing focus and singular intensity. What is more, they develop their new religious discourse in an emphatically oral mode.²⁸

Martin Jaffee writes that regardless of the uses of writing in practice, "no sage in the entire corpus of rabbinic literature was ever portrayed consulting a book in order to verify his rendition of a teaching of early masters of the tradi-

24 Schneidewind 2004: 7–9.

25 The apocalyptic and late prophetic traditions, esp. Jubilees and the Enoch traditions, are rife with books and writing. In addition, written documents figure prominently in texts as diverse as Deuteronomy, Esther, Aristaeas, 1 Maccabees, and the Testaments of the 12 Patriarchs. See, i.e., Reed 2011; 2014; Najman 2003: 117–26; Himmelfarb 1993: 101–2.

26 mSan 10.1: Among "those who have no portion in the world to come: ...one who reads in the outside books (*ba-sefarim ha-ḥitsonim*)."

27 Dohrmann 1999. Contra Meir 1994; Fraenkel 2005; Rubenstein 2010; Wimpfheimer 2011; Simon 2012. The literary scholar must be content analyze as "narrative," literary snippets of a few lines at most. This cannot be seamlessly compared to epic, novel, apocalyptic, or historiographic forms widely known from the non-rabbinic Jewish and Greek and Latin literary ambit.

28 Jaffee 2001: 97–99; Alexander 2006; Yuval 2011: 237–60, nn. 4 and 9; Heinemann 1974; Fraade 2012.

tion.”²⁹ Authority moves from masters through disciples by means of mouth and ear (both tropes heavily valorized in the corpus), repetition is how they both disseminate and archive the law, they apply the law in person, and adjust it collectively.³⁰ In addition to naming the first five books of the Hebrew Bible, in early rabbinic Judaism the word “Torah” comes to indicate the full world of specialized knowledge and expertise, and even behavior, derived and generated by and in the triangular space marked out between the sage, Scripture, and God. Tannaitic (oral) literature is then a record and performance of this Torah in its fullness.

The centrality of an oral medium leaves traces in frequent concerns about one of its main drawbacks, its fragility: “Just as one must be careful not to lose his money, so must he be careful not to lose his learning... the words of Torah are as difficult to acquire as gold and as easy to destroy as a glass vessel” (SifreDt §48³¹). The solution to this anxiety over forgetting is never inscription or other aides-mémoire, but increased diligence, and “the raising of many disciples” (mAvot 1.1). Clearly for the tannaim the benefits of orality outweigh its risks.

While early literature communicates its oral predilection unsystematically, in the amoraic era, 4–6th c. and beyond, these seeds develop into a mature idea that two Torahs were revealed to Moses at Mount Sinai, one in writing (the Pentateuch), and the other oral—the rabbis not only inherit and control the latter, in fact, anything a guild member says is itself Torah, direct from God.³² Written Torah (*torah she bi-ktav*) is then merely a partial revelation, and cannot be properly understood without its *symbolon*—the oral Torah (*torah she-be-‘al-peh*). It goes perhaps without saying in such a set up that oral Torah functions as prime minister to written Torah’s queen of England. “Matters derived from [what is taught] by mouth are more precious than those derived from Scripture” (yPeah 2:6, 17a). The question, often raised and rarely answered, is why the rabbis embrace orality—not as the transparent medium we know to have been widely employed by literate elites in the ancient world, but as a conscious, and increasingly theorized ideology.

²⁹ Jaffee 1999: 10. E.g., mTa’an 4.4 and passim. Hezser 2007: 158–59.

³⁰ Fraade 2008.

³¹ Cf. mOhal 16.1; mEduy 1.5–6. Naeh 2005.

³² ExR 47.1. Jaffee 2001: 63–85, 142–43; Yuval 2011; Schäfer 1978. On the apparent demotion of the scribe in rabbinic materials: mSot 9.15; mGit 3.1; mBM 5.11.

6. Whence oral ideology?

Oral instruction and *technes* of memorization were of course the koine of the realm. Rabbinic orality is distinguished not by the fact of rabbinic oral praxes, but by the rabbis' explicit thematization of what we could presume to be standard operating procedure.³³ A related, though not identical, distrust of writing can be found expressed by pagan philosophers and Christian theologians from Plato's well-known screed against writing in the *Phaedrus* (276a) to Paul, for whom the letter kills but the spirit gives life, and whose texts are inscribed on the heart.³⁴ It is in these two contexts, religion and philosophy, that most discussions of rabbinic transmission focus.³⁵ Indeed, regnant scholarly explanations for oral ideology may be folded into a fairly short list.

- i. Conservatism and canon formation. Oral Torah is a way to distinguish rabbinic teachings from the relatively newly demarcated boundaries of their written canon and the authoritative sanctity of the Pentateuch, and at the same time establish the rabbis themselves as its sole authorized interpreter.³⁶
- ii. Rabbi as sage. Pivoting on a reading of Torah as wisdom, rabbinic oral praxes are read as an embrace of the master-disciple models of philosophical academies. This approach understands the rabbis as a form of school. The Mishnah thus reflects the manner that Roman elites were taught to reason, declaim and persuade orally, especially in preparation for public life including the courtroom.
- iii. Christian Polemic.³⁷ Not unconnected to reason (i) Oral Torah here is a boundary marker— invented to counter Christianity's gospel, claims to being the new Israel, and its relatively expansive book culture.³⁸ Sinaitic oral Torah wrests Scripture from Christians, and attests the primacy of the Jewish cov-

33 Schäfer 1978: 193–95. See *Oral Tradition* 14.1 (1999), and articles there for an excellent overview of the status quaestionis. Heszer 2001.

34 Loveday 1990: 221–47; Maxwell 2006; Heszer 2001: 94–101; Gamble 1995: 31 and n. 106. Interestingly, Christian and pagan logocentrism does not translate to a culture without books. It is ironic perhaps that the rabbis—the most maligned book-olators and accused slaves to the letter—produced perhaps the least bookish culture of any literate elite.

35 Work remains to be done comparing rabbinic writing culture to that of writing in Roman religion, on which see Beard 1991: 54–56 for a suggestive link between calendars, politics, bureaucracy, and religious writing; Scheid 1994; North 1998; Rüpke 2004; and Scheid 2006.

36 Sussman 2005; mYad, i.e., 4.5; Naeh 2008; Veltri 1990.

37 E.g., Boyarin 2004; Yuval 2011.

38 Gamble 1995; Haines-Eitzen 2000: esp chaps. 1, 4.

enantal bond with God, thus trumping Christian claims to a new and superior covenant.³⁹

Because proof for direct influence is so elusive, each theory of the reason for rabbinic orality is built circumstantially. The rabbis themselves never tell us why they “go oral,” and their literature is achingly thin on contextual cues.

I will address the second and third categories first. The vein of inquiry that has produced (ii) has yielded much fruit. Jaffee has built an argument for the rhetorical-performative ends of this process of study.⁴⁰ While this has contributed greatly to the formal analysis of individual mishnayot, it remains a stretch to equate the declamatory eloquence and public aims of the ambitious 2nd c. rhetor with the crabbed specialized shorthand of rabbinic legal give and take. It is unclear why the rabbis would invest ideologically in a training regime so at odds with their own social concerns.⁴¹

There is some precedent to thinking of similar collectives of Jewish Torah experts as akin to Greek philosophical schools.⁴² Like a philosopher, the rabbinic sage is disciplined and masters his passion, he strives to embody ideas in word and deed. There are in addition obvious parallels between the place of orality in rabbinic, pagan, and Christian chain of teachers/apostolic traditions.⁴³ In the end, however, differences remain: for one, rabbis don’t in fact do philosophy, either formally or conceptually.⁴⁴ The Mishnah is only philosophy to the extent that we can categorize the Plato’s *Republic* as law.

Anti-Christian polemic (iii) is difficult at best to pinpoint in late antique and early medieval rabbinic sources but a rare few deictics appear in the obfuscating corpus⁴⁵:

R. Haggai in the name of R. Samuel bar Nahman: Some teachings were revealed orally and some teachings were revealed in writing. We do not know which of them is more beloved, except from that which is written, *For in accordance with* (*‘al pi-’al peh* = *by the mouth of, orally*) *these things I make a covenant with you and with Israel* (Ex 34.27), which is to say that those that are transmitted orally are more beloved. (yMeg 4.1, 74d, 4–5th c.)

39 “Orality is the language by whose means there was created the rabbinic answer to soteriology.” Yuval 2011: 248.

40 Jaffee 2001: 130–40; Brodsky forthcoming.

41 Hezser 2001: 106.

42 Josephus, *Ant.* 13.171; 15.371; 18.11; 20.199; *War* 8.

43 Alexander 2007; Schofer 2005: 45–46; Tropper 2004.

44 Jaffee 1991: 20; Boyarin 2004: 77–86; Mason 1996: 38 n. 45; see also articles by Seland and Richardson there. A. D. Nock, 1933. Lapin 2012: 92–93, cf. Crouzel 1970; Swartz 2013.

45 See also Schäfer 1978: 196–97; Simon 1996: 189–190.

While Christians are not named, this passage connects oral teachings and the true covenanters. Yuval argues that the oral law, Mishnah, developed in parallel with Christian gospels—both extra-scriptural corpuses that serve to distinguish each from their Bible-reading neighbors, and claim sole possession of the divine promise.⁴⁶

The prominence of "Jews" in Christian polemical literature as the largely rhetorical figure marking heretical boundaries—compounded by the last 2000 years of Jewish-Christian entanglement—has prejudiced a scholarship that wants to find a reciprocal dichotomous self-fashioning coming from the early rabbis.⁴⁷ The evidence of such however is absent. Any argument about anti-Christian positions of any sort in the early material must be content to argue from anachronism or silence.⁴⁸ The preserved material gives us no reason to believe that early rabbinic identity was hardened on a "battlefield between the two competing religions"⁴⁹ when there is scant reference to anything obviously Christian in Palestinian sources before the empire shifts in the 4th c.,⁵⁰ and even then creative exegesis is often required. Current analyses of the mid first millennium too easily elide the early centuries into a late antique narrative.⁵¹

It somehow is still to be stated that the rabbis are not theologians, philosophers, or rhetors, they are not seeking first principles, the nature of god or the good, nor are they trying to teach, preach, lead or inspire the masses—they are expounding, analyzing, promulgating, and adjudicating a law before fellow experts. It cannot be often enough stressed that the tannaim do not inherit rabbinic Judaism; they invent it. Neither are they proto-talmudists—they are provincials of the sun-drenched landscape of the Roman east.

The main paradigm (i) is one shared, with variants, by scholars and practitioners of Judaism alike—and sees the oral as a protective barrier around the revealed scripture. The oral becomes not merely a religious practice but theological

⁴⁶ Yuval 2011: 243.

⁴⁷ Fredriksen 2007; see also Nirenberg 2013: 87–134.

⁴⁸ Goodman 2007a: 124.

⁴⁹ Yuval 2011: 248.

⁵⁰ Schäfer 2007 makes the case that a Christian empire and its anti-Jewish legislation catalyzed Jewish learning about Christianity, hardened a response to it, and forced its suppression. This suppressed negativity was expressed more safely in Babylonian sources (the Bavli), where the marginal and persecuted place of Christians under the Zoroastrian regime would have emboldened the stronger anti-Christian voices (pp. 115–22). This logic implicitly confirms my reading that the fact that 2nd – and early 3rd – century Christians do not appear in tannaitic sources, despite the fact they are similarly marginalized and persecuted, is evidence that they are not a significant blip on the early rabbinic radar. Stemberger 2010; Yuval 2006: 16–17.

⁵¹ Jaffee 2001: 146.

dogma in which writing is the reserve of the Bible. This is a strategy that serves to delegitimize rival scriptures and rival exegetes. This model is commonly argued or presumed and requires no elaboration here.⁵²

In a marketplace of competitive religious authority a new religious group will be expected to assert its claims over members and adversaries. However what these theories of orality do not account for is the *confluence of legal content and oral form*. There are many ways to delegitimize rivals—oral ideology is not inevitable. Additionally the fact that legalism is also a creation of rabbinic religiosity is undertreated in discussions of form. So while orality asserts that the rabbis' Bible is the only divinely authorized holy document, there is still to be accounted for the positive expansion of constructive legal thought occurring concurrently.

In the end, these models, as with so many others brought to the analysis of the rabbinic world, do not take seriously the implicit claims made by the system *as a legal system*, thereby divorcing the Mishnah from the legal work of torts, criminal, and civil law in key ways. *None sufficiently reckons with the cultural apparatus that accompanies this rabbinic choice of law as the predominant religious language.*

I propose then a new paradigm (iv)—Roman legal culture. A search for the genealogy of oral ideology would benefit from juxtaposition with Roman legal media. My model is additive—and is not meant to displace the paradigm that sees orality as the primary gesture of audacious modesty asserting the primacy of rabbinic Torah in all its iterations. To the extent that rabbinic religious discourse is legal discourse, and religious engagement is about the law, one should expect to figure external threats primarily *not* as doctrinal⁵³ but as *jurisdictional*—concerning questions of sovereignty. Law after all is a discourse about power. Following the cultural logic of the rabbis own priorities (and not those imposed by a back projected Jewish-Christian encounter on the field of “religion”), dangers should not be first expected to be those posed by apocryphal books, rival sermons, or even false messiahs, and heretics—despite their distaste to the rabbis—but posted imperial edicts.

My approach has been inspired by insights garnered from polysystem theory. Tannaitic law is what Even-Zohar would call a “polysystem,” itself a component of a larger polysystem—“that of ‘culture’ to which it is, semiotically speaking, both subjugated and iso-morphic.”⁵⁴ Polysystem theory analyzes literature as

⁵² Sussman 2005.

⁵³ Hirshman 2000; Schremer 2012.

⁵⁴ Even-Zohar 1978; 1979: 290.

representing a collection of systems, each of which is a web-of-relations that gains its value through respective oppositions.⁵⁵ This approach discourages a static model with a single center and its periphery in favor of dynamic multiple centers, while scanning the historical horizon for loci of ideological domination.⁵⁶ An awareness of power resists in turn overreliance on a literature's self-articulated orientation.⁵⁷ It takes seriously culture's dominating centers⁵⁸ (e.g., imperial law), and, significantly, permits us to deprivilege the influence of comparably marginal systems—Christianity, philosophical schools, and even scripture, for example—as the guiding paradigms for analysis, without discounting them.

7. Rabbis and written Romans

The regnant theories of rabbinic orality listed above attempt variously to naturalize the phenomenon; for each, orality as they frame it, looks like something we already know (the rabbis are *like* rhetors, the oral law functions *like* the gospels). By situating orality in the context of Roman legal circulation, we must confront a discordant paradigm. How dissonant is the severing of law from writing, not only with Roman practices, but with Jewish ones?

The non-rabbinic Jewish documentary evidence is slim, but suggestive finds exist, most famously the Babatha archives, which are consistent with legal practices in Egypt and elsewhere, combining an expected admixture of local and imperial elements.⁵⁹ Similarly, Josephus is a typical first-century elite in his awareness of, reading, and transcribing law that he thinks will serve his purpose, and Rajak charts in detail the ways he manipulates this self-selected and copied legal anthology to attempt to better Jews' legal position.⁶⁰

How did the rabbis think they fit into this world of ever encroaching imperial law, even as they were building a sprawling legal cosmos of their own? It is clear that on the whole, rabbinic laws simply ignore Roman law, implicitly allowing it

⁵⁵ Even-Zohar 1979: 291.

⁵⁶ Lotman 1976; Even-Zohar 1979: 293–94, 295, 303–304.

⁵⁷ Even-Zohar 1979: 300–303.

⁵⁸ Even-Zohar 1979: 296.

⁵⁹ Bagnall 2011: 113–16.

⁶⁰ Rajak 1984; Ando 2000: 85–87. Paul Kosmin (in a workshop at the University of Pennsylvania on Feb. 2, 2014) suggests that Josephus's legal anthologizing may in fact adapt the inscriptional practice of creating an archive wall of all laws relevant to a local polity such as the one in such as on the north *parados* in the theater of Aphrodisias.

no jurisdiction. But there is evidence of anxiety about the draw exerted by the competition. Tannaitic sources forbid recourse to gentile courts, even if they adjudicate according to rabbinic law.⁶¹ That said, they did not live in a remote desert compound. The rabbis were a mobile collective, and an increasingly urban movement, even as the cities of Palestine were Romanized.⁶² While inscriptional evidence in the area is slight, there is little reason to imagine a legal landscape different from other provincial cities and towns.

[The words of the *Shema*] should not be in your eyes like some antiquated edict to which no one pays any attention, but like a new edict (*ke-diatagma*) which everyone runs to read. (SifreDt §33)

The rabbis' central credal daily prayer (the *Shema*) proclaiming the unity and dominion of God, here receives less respect than the posting of an imperial edict in the town square (note also the awareness of the visible vestiges of older laws still posted and marking the public space). Tropper following Lieberman has recently trolled this and similar passages for Roman legal terms proving that the rabbis were cognizant of Roman imperial processes and protocols for the promulgation of edicts even as they fought their allure⁶³; but stepping back, this hardly seems necessary. Proving that a well-to-do resident of the bustling 3rd-c. Galilee knew something about Roman law is a bit like proving that a 21st-c. American had access to television.⁶⁴ This is not to imply that they knew legal detail, as indeed even Roman judges often did not,⁶⁵ but like other provincials, they were surrounded by a dominant culture that defined itself in and through its idea of justice. Rabbis were cognizant of archives,⁶⁶ the workings of the Roman court,⁶⁷ and while I do not know of preserved petitions from or rescripts addressed to a known rabbi, we have the letters of Babatha from early second-cen-

⁶¹ Mek *Nezikin* 1. Lapin, 2012: 98–111; Mek *Kaspa* (on Dt. 16.19) Hezser 1997: 476–77, and notes there.

⁶² Lapin 2000; Klein 1929: pt. 1. (Miller 2007). Isaacs 1990; Sperber 1998; Schwartz 2001a: 154–55; Fonrobert 2004; cf. Hezser 1997: 157–64; but 2011; Levenson 2013.

⁶³ Tropper 2005; Lieberman 1944. The sources here are all late, but confirm what we know of the wide visibility and popularity of Roman courts from papyrological evidence and rescripts from the late second and early 3rd-century East.

⁶⁴ Ando 2000: 364–65 and *passim*.

⁶⁵ Bryen 2012: 771–811; Meyer 2004: 3.

⁶⁶ mKid 4.5; tMK 1.12; tBB 8.3; cf. mEduy 1.5–6. Hezser 2001: 150–60. Cf. The Sepphoran archives appear to have been centrally located. Ando 2000: 80–96, 187. Cotton and Yardeni 1997: no. 64. If archives were housed in temples, this may have added to the gentile/imperial taint of writing.

⁶⁷ yBer 2.5c. Lieberman 1944: 86–88, 207–8.

ture Arabia, which along with the sheer volume of petitionary evidence proves there was pervasive opportunity for legal access and address in the legal life of the regular provincial.⁶⁸ Ando says that domestically held copies of legal documents provide evidence of the provincials' "faith in the rationality of imperial administration."⁶⁹

Rabbinic law by contrast evidences a distinct lack of faith in that rationality. Tannaitic law shows few direct incursions of Roman legal forms, and aggadic literature regularly ridicules the emperor, and bemoans the corruption of non-rabbinic courts. Use of Hebrew, moreover, did not merely signify an embrace of the holy tongue, but a clear rejection of Greek, the language of the "kingdom."⁷⁰

Disdain for Roman laws/courts was as much prescriptive as descriptive. Hear the rabbis project their anxiety into the mouth of an imagined doubting Jew:

Lest you should say: **They have statutes and we have no statutes**, Scripture says *You shall keep my ordinances, and my commandments/statutes you shall observe, to walk in them. I am the Lord your God* (Lev 18:4). Still, there is hope for the evil inclination to deliberate on it and say: **Theirs are nicer than ours**, [therefore] Scripture says, *You shall observe and do [my ordinances], for it is your wisdom and your understanding [in the eyes of the nations, who, when they hear all these statutes will say... "What great nation has such statutes and ordinances such as this entire law (torah)?"]* (Dt 4:6–8) (Sifra *Aḥare Mot* 9.13.11)⁷¹

Roman law is an attractive nuisance (it is nicer than ours), but worse, without sanction, is rabbinic law even law at all?

I have been suggesting that oral ideology be seen as a rabbinic recusal from Roman legal life and the normative order proffered by the Empire. In building what must be a circumstantial case, I have looked at the rabbinic reception of biblical depictions of legal writing. For biblicists interested in the question of when the bible became a book, and why the idea of God became linked to writing at all, Deuteronomy is a vital source. Writing is rarely depicted in the bible, but in the Deuteronomic corpus there is a relative explosion of depictions of texts, beginning from the discovery of the scroll of the lost law in 2 Kgs 22, threading through the repeated hexateuchal tellings of the revelation, writing, and posting, reading, sealing, and deposit of the covenant before gathered Isra-

68 Cf. P.Babatha 13; Cotton 1993: 94–108; Bowerock 1994: 336–44. For Egyptian petitions, Bryen 2012. On the denigration of scribes: mSot 9.15; Bar-Ilan 1989: 21–38; Jaffee 2001: 92–99; Goodman 1994.

69 Ando 2000: 79; contra Isaacs 1998: 329.

70 tSot 15.8; mSot 9.14; SifreDt §34; Sifra *Aḥare Mot*, 9.13.11; Lieberman 1950b: 100–115. On Greek usage in documents, Bagnall 2011: 95–116 Cotton 2013: 209–21; Hezser 2001: 150–60.

71 Berkowitz 2012: 77–111.

el.⁷² Van der Toorn theorizes that the physically written Torah was created to serve as a substitute icon for a nation whose local altars had been outlawed by the Deuteronomic reforms of the 7th c BCE.⁷³

Deuteronomic legal performances share several elements with what we know of Roman legal communication, and these would have been apparent to a rabbinic reader. There is a divine lawgiver (God/King) a comparison of which the rabbis are keenly aware.⁷⁴ Once revealed, the law is written (Ex 24:4, 7, 12; Dt. 4:13; 5:22), displayed before the people, the manner of its display is written into the law itself. The law is both on a scroll (Ex 24; Dt 29) and inscribed on a plaster covered stele or stone (Ex 24:12; Dt 9:9; 27:8; Josh 4, 8). It is copied and promulgated through the territory (Josh 8:12). The posted laws is then read before the people (Ex 24:7–8; Dt 29:20–21; Josh 8:35; cf. Neh 8:5), who are meant to accede to its commands—the details received aurally, the conceptual whole communicated symbolically through the ritual performances surrounding writing. There is also instruction for its storage, in this case in the tabernacle (Dt. 10:1–5; 31:24–26; Ex 25:21), and later, the Temple (2 Kgs 22:8, 10). The law, like Roman laws, includes rules for its own publication and deposit.

The tannaim devote a lengthy commentary to the book of Deuteronomy (SifreDt). It is striking that in their granular engagement with this text—along with Genesis, the most copied and important of the books in the Pentateuch for Second Temple Jews⁷⁵—the key scenes of writing and deposit of the law are consistently and flagrantly ignored. Two brief examples will have to suffice. Deuteronomy 27 describes God's command for the posting of the laws, and their ceremonial covenantal acceptance by the nation.

On the day that you cross over the Jordan into the land that the Lord your God is giving you, you shall set up large stones and cover them with plaster. You shall write on them all the words of this law... you shall write on the stones all the words of this law very clearly. (vv. 2–3, 8)

As with all other such dramatic mentions of the book or writing of the law, this passage is omitted from the midrash's lemmatic sequence. When the verses do appear elsewhere it is as prooftexts used (out of context) to determine the mate-

⁷² Schneidewind 2004: 106–17; 119–41.

⁷³ van der Toorn 1997: 229–48.

⁷⁴ SifreDt §343; Appelbaum 2010: 217–22.

⁷⁵ 33 scrolls of Deuteronomy were found at Qumran, second only to Psalms (39) in numbers of copies, and outstripping Genesis (24) and Exodus (18), Leviticus (17) and Numbers (11) by a wide margin. See also Reeves 2010: 139–52.

rial required for making the brief ritual texts (biblical verses from the *Shema'*) encased in mezuzot and phylacteries (SifreDt §36, to Dt 6:9). Beyond these ritual items, the exegete skips depictions of writing entirely or transforms them into scenes of emphatically oral communication (SifreDt §306).

The second example: Dt 25:17 reads: "**Remember** what Amalek did to you on your journey out of Egypt," alluding to Ex 17, where, following a military victory over the Amalekites, God commands Moses to "**write** [of God's obliteration of Amalek] as a reminder **in a book**, and recite it in the hearing of Joshua" (Ex 17:14). In SifreDt §296 the command to write in a book has been altered:

Remember—with an utterance of your mouth (ba-peh). You shall not forget—in your heart (ba-lev). As it is said, Your people have heard, they tremble (Ex 15:14).

Here again, scenes of legal writing are either ignored or recast as oral—the book is displaced by the heart, the locus of memory. This strange black-out of passages dealing with the publication and deposit of the law is, I suggest, a tell. Here at the very core of the soteriological epic is a narrative that binds the sanctity and power of the law into performances of writing and transmission. The rabbis could have located an internal "Jewish" model for writing the law in these proof-texts—a strategy that they commonly employ to domesticate other Roman or Hellenistic practices—yet here they choose overwhelmingly to efface them. In SifreDt writtenness is surgically excised from authorizing penumbra of Sinai at key Scriptural junctions. This trend only accelerates in the later material where we find even the two tablets paradoxically *inscribed* with the *oral* law! (ExR 45.1⁷⁶).⁷⁷

In the few places where rabbinic materials do not duck or elide biblical depictions of the inscription/publication of the Torah, the passages are consistently run through with concerns over imperial jurisdiction. One tannaitic pericope says that just as the Roman edict is not binding from its conception, but only from its public posting, so too one is not liable to punishment for transgressing Torah law at Sinai, but rather from its public presentation from the Tent of Meeting. Note the disanalogy in this parable: while the edict (*diatagma*) is described as written/sealed, Torah law is re-published only orally from the Tent of Meeting (tSot 1.10). The adjacent passage makes the stakes of the medium explicit. The oral publication of the law from the Tent of Meeting (*kol ha-dibur*) causes gentiles to flee in fright (tSot1.11) so that only Israel hears its content and only Israel is

⁷⁶ Cf. yMeg 4.1, 74d, on Dt 9.10.

⁷⁷ An identical set of aporiae mark the Mekiltan corpus (on Exodus), and can be traced through nearly the entire tannaitic library.

liable to follow it, knitting a notion of orality to a notion of legal-national exclusivity.

In the few other places where strong biblical images of God's law inscribed on stone are not entirely sublimated, an anxiety of an imperial sort hovers. The inscription of the Torah onto stone pillars by Joshua is tied to images that underscore an inability (or refusal) to nativize the medium. The laws on the stelae lead the rabbis to conjure images of paranoia about Roman contagion and threat—*notarii* copying down Torah for deposit in their own archives (tSot 8); gentiles upsetting Jewish military success by quoting these archived laws against Israel (GenR 74.15); or rabbis asserting that the law on the stelae was only a small part of the full Torah corpus—censoring from it all laws that do not touch on international law⁷⁸—clearly a strong deviation from the biblical plain sense.

The public writing of law is not a neutral or transparent mode of communication for the rabbis. It was a distinctly Roman form whose uses, seductions, and dangers were clearly understood. Despite a powerful biblical tradition of the public inscription of the God's laws, for the early rabbis, by contrast, law communicated in plaster or stone was treated as adulterated. The biblical tradition had to be effaced, over-written—orally.

8. "Not in a hidden place, but in the open"

Tannaitic law moves lightly through the 2nd and 3rd centuries—rabbis are all but invisible in the material remains of this period.⁷⁹ By contrast, in this same era, Rome formed and filled the public space of the "Jewish" city, figuratively and literally from the early 2nd c. Art, city planning, architecture, and numismatics all attest to this physical transformation. Rabbinic accommodation to pagan realia such as idols and bath houses, for example, show us that they are processing and domesticating this reality.⁸⁰ Jewish items in the material record, such as ritual baths and the rare synagogue, or inscribed symbols such as menorahs, are not identifiably rabbinic—and in the case of synagogues and temple iconography, are probably explicitly *non*-rabbinic. It may be significant to our topic that the extant "rabbis" of the epigraphical sources do not represent the rabbis of the literary sources,⁸¹ which, following MacMullen and Woolf, might have

⁷⁸ Lieberman 1950: 200–202 and parallels cited there.

⁷⁹ Weiss 1998: 219–46; Goodman 2007: 501. While Jews show up in imperial legislation in the 3rd century, "rabbis" do not.

⁸⁰ Schwartz 2001b; Halbertal 1998; Neis 2012; Klein 2012; Fonrobert 2009: 5–21.

⁸¹ Lapin 2011; 1999; Hezser 2001: 357–97; Negev 1971.

been expected of a differently ambitious provincial elite.⁸² Orality likewise leaves no marks. To what extent is invisibility its aim?

Orality can be deployed to control access and demarcate a private space. When we remember that the tannaim worked in Hebrew, this space becomes even harder to access, for Romans and non-rabbinic Jews (and Christians) alike.⁸³ Indeed, access to the rabbinic *nomos* is as difficult to obtain as participation in the Roman one is impossible to evade. But to posit esotericism as the driver of oral ideology raises as many questions as it answers.⁸⁴ Jewish authors had at their disposal a wide range of options for the creation of a secret or closed religious world, yet by most metrics, the rabbis adopt an emphatic exotericism. Rabbinic texts doggedly de-authorize direct divine-to-human revelation, deny that knowledge can be found in hidden books, and avoid the symbolic and eschatological vocabulary of apocalyptic. Rare mentions of mystical knowledge exist, but deviate from a dominant paradigm that discourages metaphysical speculation.⁸⁵ The rabbis believe in a messiah and a world-to-come, but tannaitic references to each are lax and formulaic. Rabbinic rituals don't require secret admission. And even rabbinic biblical exegesis, while it borrows many of its habits from mantic and dream interpretation, does not sell itself as unlocking any scriptural or cosmic mysteries (in contrast to the Qumran *pesharim*).⁸⁶ The halakhah itself is anti-sectarian.⁸⁷

Palestinian rabbis function in a democratic mode, demanding only adherence to the sanctity and primacy of Torah. They are a meritocracy—Torah-learning and male Jewishness, which need not be genetic, are the only requirements for "admittance" to their loose and shifting network, and they tout the simple origins of some of their most prominent exemplars.⁸⁸ They eschew bloodline and deny special knowledge of "sacred" law to the priesthood. Sacred law is not generically distinguished from other branches of law.⁸⁹ Most importantly, de-

82 MacMullen 1982; Woolf 1996; Naveh 1979: 27–30.

83 Cf. mMeg 2.1; mSot 7.1 on synagogue readings in other vernaculars. The confabulation of oral transmission and exclusion is made explicit in some later materials, but the obviously anti-Christian vein—as in 9th c. Pesikta Rabbati 5 text that equates oral Torah and a god's mysteries—is alien to the tannaitic strata. Cf. Tanḥuma, *Ki-tisa* 34:27. On *mistorin*, see Yuval 2011: 248–51.

84 Yuval 2011: 245.

85 i.e., mḤag 2.1; GenR 1.10; tḤul 2.22, 24; mSan 10.1. Cf. Hezser 2001: 209–26.

86 Fishbane 1977; Finkel 1963/64.

87 Cohen 1984.

88 Schremer 2012: 249–75.

89 mAvot 1.1; mYoma passim; Swartz 2013. Contrast Scheid 1990; 2006.

spite their disdain for the unlearned Jew, tannaitic law everywhere signals that corporate Israel is the community under its (imagined) jurisdiction.

Note that **both** the oral and the written can be tools of secrecy, and so orality on its own is not an indicator of exclusion. While later rabbinic texts link writing with the fear of too-easy access, in early Jewish sources writing is as often associated with “obscurantism” and elitism⁹⁰—scrolls unfurled and performed from a dais before the illiterate, books sealed for the end of days, oracles interpreted by priests, texts flying through the air, or penned by God himself, not to mention the use of writing in many branches of magic.⁹¹

Esotericism, in sum, can be heuristically useful, pointing to literary markers of self-alienation, its inaccessibility, its use of Hebrew, and its resistance to the state.⁹² But it is a limited idea if it does not take into account *the inherently public claims of its content*. If the rabbis intended to create a closed, private world, they did so in a very odd manner. Tannaitic law qua law communicates permeability and openness. The following late passage captures a revealing schizophrenia at the heart of the project:

It happened that the government sent two soldiers (*istratiotot*) to learn Torah from Rabban Gamaliel. And they learned from him Bible and mishnah and talmud and laws (*halakhot*) and homilies (*agadot*). At the end they said to him, “All your Torah is fine and praiseworthy except for the following two things.” [...] Nevertheless, by the time they reached the Ladder of Tyre, they forgot everything they had learned. (yBK 4.3 [4] 4b)

The law here is not hidden from the government’s gaze, but is easily communicable to regular Roman keepers of the peace, and is even admired by them. In the end, though, the desire to be admired⁹³ is trumped by the desire to disengage. Forgetting—the great bane of the rabbi, for whom loss of memory is a loss of God’s covenant—befalls the Roman (whether by human nature or divine intervention is unclear). This passage is a wishful inversion of their own confrontation with an imperial law they can neither admire nor forget.

⁹⁰ Beard 1991: 57.

⁹¹ M. Bar-Ilan 1989: 35.

⁹² Cf. McNerney 2004; Frankfurter 2008: 221.

⁹³ Cf. Sifra *Aḥare Mot* 9.13.11; m’AZ 3.4.

9. Mixed messages: Public language/private medium

In the legal realm, "the search for positive rabbinic engagement with the idea that the Roman state had legitimate authority as a maker or executor of law has yielded little."⁹⁴ So writes Seth Schwartz in his social history of rabbinic disaffection from Roman and classical norms. This estrangement is clearly complicated.⁹⁵ The totalizing legal horizon of the Mishnah refuses to acknowledge Roman law, even while it is impossible that the rabbis were not fully aware of the demands of licit life in the eastern provinces. The rabbis knew the law of the land and how it operated, and moreover, it is apparent that they (and their non-rabbinic coreligionists) followed it. Moreover, rabbinic theology draws on Roman imperial logics of self, justice, power, communication, and order—the raw materials from which it constructs a resistant counter *nomos*.

As the deep grammar of rabbinic religious thought, we are forced to play out law's logic. Law was an ambitious discursive cooptation for a small group of marginal, powerless, religious academics. Legal systems by nature think in terms of sovereignty—tannaitic jurisdictional purview encompasses everything from bedroom, to courtyard, market, court, field, nation and even diaspora. Comparison of oral Torah with other literary praxes (exegesis, philosophy, etc.) overlooks the full signifying complex bound to the choice of legalism. Orality may not in the end be a way to make Jewish Scripture the private domain of the rabbi, but rather may be a more ambitious making-private of the most public sort of claims of law, as well as a digesting and inverting the essentially public modality of its communication. Let us return here to SifreDt §33:

[The words of the *Shema*] should not be in your eyes like some antiquated edict to which no one pays any attention, but like a new edict which everyone runs to read.

The *Shema*^a is built from three passages from Numbers and Deuteronomy, the prayer's own words command that God's law be posted on one's door posts, arm, and head (Dt 6:8–9). The midrash then is setting the posted word of the emperor against the posted word of God, doubly ironic in that the prayer is the assertion of god's unitary dominion. To what extent is the *Shema*^a ever in any rabbi's "eyes" (that is: read)? It was and remains for the rabbis their most

⁹⁴ Schwartz 2010: 128.

⁹⁵ Schwartz's characterization of the Mishnah as "utterly un-Western," for example, is overstated. *Ibid.*, 114.

universally memorized and recited mantra.⁹⁶ Moreover, its written materiality is bound inside sealed amulets on doorpost, arm and head. The writing is invisible.⁹⁷

Precious are Israel, for **Scripture has surrounded them with commandments**: phylacteries on their heads, phylacteries on their arms, mezuzahs on their doors, ritual fringes on their garments... When David went to the bathhouse and saw himself naked, he said, "Woe is me, I am naked of commandments," but then he saw his mark of circumcision. (SifreDt §36⁹⁸).

In this passage the rabbis move through the Roman city (David is in a bath house!) surrounded by law—*rabbinic* law. Public law, made private through a series of erasures, is transported back into the public on (and in) the rabbinic body. Orality and memorization function to render invisible, but also ubiquitous. By nature of the legal ambitions of the tannaim and the scope of the Mishnah, the law finds a way to overwrite the Roman urban/nomic space in countless micro and macro forms. It is a sort of utopia that functions in the here and now, like a halakhic lens that interposes Mishnah between the rabbi and the posted edicts and rescripts that surround them.

The oral Torah defers to the written Torah but colonizes it audaciously—in a like manner oral law defers to Roman (written) law while deftly "maneuvering around existing structures of control."⁹⁹ Controlling access to Roman law is at least as vital to tannaitic survival and success as controlling the meaning of Scripture. Romans have over built the Jewish landscape and the rabbis do it right back. Less esoteric than it is utopian—rabbis inhabit and regulate a parallel city, their private public. My essay suggests that from the perspective of law's logic, a critical structural counterpart to oral law (*torah she-be-'al peh*) is (written) Roman law. Oral Torah makes rabbis the intermediary between scripture and the Jews, this much is obvious, but *it also allows rabbinic law to set itself between the state and the Jew*. Law becomes the proving ground for Jewishness, facing off against Roman law—the dominant marker of civic membership in the

96 The prayer's anthology of passages from Deuteronomy and Numbers is saturated with directions for its own oral transmission: (Dt 6:4, "hear"; Dt 6:7: "repeat them" and "speak of them"; Dt.11:18 "Put these words on your heart"; Dt.11:19 "teach them to your children to speak of them"; Num 15:38 "Speak"; Num 15:40 "remember and do all my commandment" It reads like a condensed proto-manifesto to rabbinic oral ideology. Cf. Stern 2012.

97 SifreDt §36; Bar-Ilan 1989: 25.

98 Cf. yBer 4.2 4c. Yinon/Rosen Zvi 2010.

99 Fonrobert 2005: 29.

Roman polity. Orality permits this confrontation to be done in plain sight of the state.

Bringing Roman legal culture more squarely into the rabbinic constellation as a driver and comparison clarifies certain persistent problems. Oral Torah draws its meaning from a network of associated systems, both from within Jewish tradition and from without. Adding Roman legal writing to the conversation both better integrates the rabbis into the imperial history of the Roman east, and serves to narrate their own self-severing from it. The push-me-pull-you force of this comparison can contribute to our understanding of Romanization and the processes of imperialism. The rabbis have imbibed an argot of and logic from Roman rule, and used it to articulate a distinctive counter-imperial world. The reading of oral Torah sets Jews on a continuum with others under Rome who variously leverage the writtenness of the law, an unintended consequence of law's written domain—and represents another example of the legal ingenuity of the marginal before the law.

Works Cited

Rabbinic sources

Mishnah (m +tractate abbreviation)
Tosefta (t +tractate abbreviation)
Jerusalem Talmud (y +tractate abbreviation)
Babylonian Talmud (b +tractate abbreviation)
Sifre Deuteronomy (SifreDt)
Mekilta de Rabbi Ishmael (Mek)
Sifra
Genesis Rabbah (GenR)
Exodus Rabbah (ExR)
Tanḥuma
Pesikta Rabbati

Secondary sources

- Alexander, E. S. (2006). *Transmitting Mishnah. The shaping influence of oral tradition*. Cambridge.
- Alexander, P. S. (2007). "Jewish believers in early rabbinic literature (2nd to 5th centuries)," in O. Skarsaune and R. Hvalvik eds., *Jewish believers in Jesus. The early centuries: 659–70*. Peabody.

- Altman, R. I. (2003). "The size of the law: document dimensions and their significance in the imperial administration," in L. J. Hall, ed., *Confrontation in late antiquity. Imperial presentation and regional adaptation*: 11–28. Cambridge.
- Ando, C. (2000). *Imperial ideology and provincial loyalty in the Roman empire*. Berkeley.
- Ando, C. (2011). *Law, language, and empire in the Roman tradition*. Philadelphia.
- Ando, C. (2012). *Imperial Rome AD 193 to 284*. Edinburgh.
- Appelbaum, A. (2010). *The rabbis' king parables. Midrash from the third-century Roman empire*. Piscataway.
- Appelbaum, A. (2011). "The rabbis and Palmyra." *Jewish Quarterly Review* 101: 527–44.
- Bagnall, R. S. (2011). *Everyday writing in the Graeco-Roman east*. Berkeley.
- Bar-Ilan, M. (1989). "Writing in ancient Israel and early Judaism: scribes and books in the late second commonwealth and rabbinic period," in M. J. Muler and H. Sysling, eds., *Mikra*: 21–38. Philadelphia.
- Beard, M. (1991). "Writing and religion. Ancient literacy and the function of the written word in Roman religion," in J. H. Humphrey ed., *Literacy in the Roman world*: 35–58. Ann Arbor.
- Berkowitz, B. (2012). *Defining Jewish difference from antiquity to the present*. Cambridge.
- Bowersock, G. W. (1994). "The Babatha papyri, Masada, and Rome." *Journal of Roman Archaeology* 4: 336–44.
- Bowersock, G. W. (1998). "The Greek Moses: confusion of ethnic and cultural components in later Roman and early Byzantine Palestine," in H. Lapin, ed., *Religious and ethnic communities in later Roman Palestine*: 31–48. Bethesda.
- Boyarin, D. (2004). *Borderlines. The partition of Judaeo-Christianity*. Philadelphia.
- Brodsky, D. "From disagreement to talmudic discourse: *progymnasmata* and the evolution of a rabbinic genre" (in draft).
- Bryen, A. Z. (2012). "Judging empire: courts and culture in Rome's eastern provinces." *Law and History Review* 30: 775–76.
- Bryen, A. Z. (2013). *Violence in Roman Egypt*. Philadelphia.
- Cohen, S. J. D. (1992). "The place of the rabbi in Jewish society of the second century," in L. I. Levine, ed., *The Galilee in late antiquity*: 157–73. New York.
- Cohen, S. J. D. (2007). "Judaeen legal traditions and the *halakhah* of the Mishnah," in C. E. Fonrobert and M. S. Jaffee, eds., *The Cambridge companion to the Talmud and rabbinic literature*: 121–43. Cambridge.
- Cohen, S. J.D. (1984). "The significance of Yavneh: Pharisees, rabbis, and the end of Jewish sectarianism." *Hebrew Union College Annual* 55: 27–54.
- Connelly, S. (2010). *Lives behind the laws. The world of the Codex Hermogenianus*. Bloomington.
- Corcoran, S. (2004). "The publication of the law in the era of the tetrarchs—Diocletian, Galerius, Gregorius, Hermogenian," in A. Demandt, et al., eds., *Diokletian und die Tetrarchie: Aspekte einer Zeitenwende*: 56–73. Berlin.
- Cotton, H. and A. Yardeni (1997). "Aramaic, Hebrew and Greek documentary texts from Naḥal Ḥever and other sites." *DJD*. Oxford.
- Cotton, H. M. (1993). "The Guardianship of Jesus, son of Babatha. Roman and local law in the province of Arabia." *JRS*: 94–108.
- Cotton, H. M. (2013). "Change and continuity in late legal papyri from Palaestina Tertia. *Nomos Hellēnikos* and *Ethos Rōmaikon*," in N. B. Dohrmann and A. Y. Reed, eds., *Jews,*

- Christians and the Roman empire. The poetics of power in late antiquity*: 209–21. Philadelphia.
- Crouzel, H. (1970). "L'école d'origène a Césarée." *Bulletin de Littérature Ecclésiastique* 71: 15–27.
- Dohrmann, N. B. (1999). "Law and narrative in the *Mekilta de-Rabbi Ishmael*. The problem of midrashic coherence." Diss. University of Chicago.
- Dohrmann, N. B. (2002). "Analogy, empire, and political conflict." *Journal of Jewish Studies* 53: 273–97.
- Dohrmann, N. B. (2003). "The boundaries of the law and the problem of jurisdiction in an early Palestinian midrash," in C. Hezser, ed., *Rabbinic law in its Roman and near eastern context*: 83–103. Tübingen.
- Dohrmann, N. B. (2008). "Manumission and transformation in Jewish and Roman Law," in N. B. Dohrmann and D. Stern, eds., *Jewish biblical interpretation and cultural exchange*: 51–65. Philadelphia.
- Dohrmann, N. B. (2013). "Law and imperial idioms: rabbinic legalism in a Roman world," in N. B. Dohrmann and A. Y. Reed, eds., *Jews, Christians and the Roman empire*: 63–78. Philadelphia.
- Even-Zohar, I. (1979). "Polysystem Theory." *Poetics Today* 1.1/2: 287–310.
- Finkel, A. (1963/64). "The *pesher* of dreams and scriptures." *Revue de Qumran* 4: 364–70.
- Fishbane, M. (1977). "The Qumran *pesher* and traits of ancient hermeneutics." *World Congress of Jewish Studies* 6.1: 97–114.
- Fishman, T. (2011). *Becoming the people of the Talmud. Oral torah as written tradition in medieval Jewish cultures*. Philadelphia.
- Fonrobert, C. E. (2001). "The *Didascalia Apostolorum*: a Mishnah for the disciples of Jesus." *JECs* 9: 483–509.
- Fonrobert, C. E. (2004). "From separatism to urbanism: the Dead Sea Scrolls and the origins of the rabbinic *Eruv*." *Dead Sea Discoveries* 11: 43–71.
- Fonrobert, C. E. (2005). "The Political Symbolism of the *Eruv*." *Jewish Social Studies* 11: 9–35.
- Fonrobert, C. E. (2009). "Une cartographie symbolique: L'*eruv* en diaspora." *Les cahiers du Judaïsme* 25: 5–21.
- Fraade, S. D. (2008). "Hearing and seeing at Sinai: interpretive trajectories," in G. J. Brooke, et al., eds., *The significance of Sinai. Traditions about Sinai and divine revelation in Judaism and Christianity*: 247–68. Leiden.
- Fraade, S. D. (2012). "Concepts of scripture in rabbinic Judaism: oral and written Torah," in B. D. Sommer, ed., *Jewish concepts of scripture*: 31–46. New York.
- Fraenkel, Y. (2005). "The aggada in the Mishnah" (Hebrew). *Mehkerei Talmud* 3: 655–83.
- Frankfurter, D. (2008). *Archiv für Religionsgeschichte* 10: preface to part II.
- Fredriken, P. (2007). "What parting of the ways? Jews, gentiles, and the ancient Mediterranean city," in A. Becker and A. Y. Reed, eds., *The ways that never parted. Jews and Christians in late antiquity and the early middle ages*: 35–63. Minneapolis.
- Gamble, H. Y. (1995). *Books and readers in the early church*. New Haven.
- Goodman, M. (1992). "The Roman state and the Jewish patriarch in the third century," in L. I. Levine, ed., *The Galilee in late antiquity*: 127–39. New York.
- Goodman, M. (1994). "Texts, scribes, and power in Roman Judaea," in A. K. Bowman and G. Woolf, eds., *Literacy and power in the ancient world*: 99–108. Cambridge.
- Goodman, M. (2007). *Rome and Jerusalem. The clash of ancient civilizations*. London.

- Goodman, M. (2007a) "Thinking about the early separation of Judaism and Christianity in pictures," in A. Becker and A. Y. Reed, eds., *The ways that never parted. Jews and Christians in late antiquity and the early middle ages*: 119–30. Minneapolis.
- Haines-Eitzen, K. (2000). *Guardians of letters: Literacy, power, and the transmitters of early Christian literature*. Oxford.
- Halbertal, M. (1997). *People of the book. Canon, meaning, and authority*. Cambridge, Mass.
- Halbertal, M. (1998). "Coexisting with the enemy: Jews and pagans in the Mishnah," in G. N. Stanton and G. Stroumsa, eds., *Tolerance and intolerance in early Judaism and Christianity*: 159–72. Cambridge.
- Halivni, D. W. (1986). *Midrash, mishnah, and gemara. The Jewish predilection for justified law*. Cambridge, Mass.
- Hanson, W. S. (1997). "Forces of change and methods of control," in D. J. Mattingly, ed., *Dialogues in Roman imperialism. Power, discourse, and discrepant experience in the Roman empire*: 67–80. JRA Supplementary Series 23.
- Hayes, C. E. (2000). "*Halakhah le-Moshe-mi-Sinai* in rabbinic sources: a methodological case study," in S. J. D. Cohen, ed., *The synoptic problem in rabbinic literature*: 61–117. Providence.
- Heinemann, J. (1974). *Aggadah and its development*. (Hebrew). Jerusalem.
- Hezser, C. (1997). *The social structure of the rabbinic movement in Roman Palestine*. Tübingen.
- Hezser, C. (1998). "'Privat' und 'öffentlich' im Talmud Yerushalmi und in der griechisch-römischen Antike," in P. Schäfer, ed., *The Talmud Yerushalmi and Graeco-Roman culture*, vol. 1: 423–579. Tübingen.
- Hezser, C. (2001). *Jewish literacy in Roman Palestine*. Tübingen.
- Hezser, C. (2007). "Roman law and rabbinic legal composition," in C. E. Fonrobert and M. S. Jaffee, eds., *The Cambridge companion to the Talmud and rabbinic literature*: 144–64. Cambridge.
- Hezser, C. (2011). *Jewish travel in antiquity*. Tübingen.
- Himmelfarb, M. (1993). *Ascent to heaven in Jewish and Christian apocalypses*. New York.
- Hirshman, M. (2000). "Rabbinic universalism in the second and third centuries." *Harvard Theological Review* 93: 101–15.
- Honoré, T. (2nd ed. 1994). *Emperors and lawyers*. Oxford.
- Isaacs, B. (1990). *The Limits of Empire*. Oxford.
- Jacobs, M. (1995). *Die Institution des jüdischen Patriarchen: eine quellen- und traditionskritische Studie zur Geschichte des Juden in der Spätantike*. Tübingen.
- Jaffee, M. S. (1999). "Oral tradition in the writings of rabbinic oral torah: on theorizing rabbinic orality." *Oral Tradition* 14: 3–32.
- Jaffee, M. S. (2000). "The oral-cultural context of the Talmud Yerushalmi: Greco-Roman rhetorical paideia, discipleship, and the concept of oral torah," in Y. Elman and I. Gershoni, eds., *Transmitting Jewish traditions: orality, textuality, and cultural diffusion*: 27–73. New Haven.
- Jaffee, M. S. (2001). *Torah in the mouth: writing and oral tradition in Palestinian Judaism 200 BCE–400 CE*. Oxford.
- Klein, G. (2012). "Torah in triclinia: the rabbinic banquet and the significance of architecture." *Jewish Quarterly Review* 102: 325–70.
- Klein, S., ed. (1929). *Sefer ha-yishuv*: pt. 1. Jerusalem.

- Lapin, H. (1999). "Palestinian inscriptions and Jewish ethnicity in late antiquity," in E. M. Meyers, ed. *Galilee through the centuries. Confluence of cultures*: 239–68. Winona Lake.
- Lapin, H. (2000). "Rabbis and cities. Some aspects of the rabbinic movement in its Graeco-Roman environment," in P. Schäfer and C. Hezser, eds., *The Talmud Yerushalmi and Graeco-Roman culture*, vol. 2: 51–80. Tübingen.
- Lapin, H. (2010). "The rabbinic class revisited: rabbis as judges in later Roman Palestine," in Z. Weiss, et al. eds., *"Follow the wise". Studies in Jewish history and culture in honor of Lee I. Levine*: 255–73. Winona Lake.
- Lapin, H. (2011). "Epigraphical Rabbis: a reconsideration." *Jewish Quarterly Review* 101: 311–46.
- Lapin, H. (2012). *Rabbis as Romans. The rabbinic movement in Palestine, 100–400 CE*. Oxford.
- Lapin, H. (2013). "Law of Moses and the Jews: rabbis, ethnic marking, and Romanization," in N. B. Dohrmann and A. Y. Reed, eds., *Jews, Christians and the Roman empire*: 79–97. Philadelphia.
- Levenson, J. (2013). "There is no-place like home: rabbinic responses to the Christianization of Palestine," in N. B. Dohrmann and A. Y. Reed, eds., *Jews, Christians and the Roman empire*: 99–120. Philadelphia.
- Lieberman, E. S. (1987). "The history of the text and problems of redaction in the study of the Babylonian Talmud" (Hebrew). *Tarbiz* 57:1–36.
- Lieberman, S. (1944). "Roman legal institutions in early rabbinics and in the *Acta Martyrum*," *Jewish Quarterly Review* 35: 1–57.
- Lieberman, S. (1950). *Hellenism in Jewish Palestine*. New York.
- Lotman, J. (1976). "Un modèle dynamique du système sémiotique," in Lotman and B. A. Ouspenski, eds., *Travaux sur les systèmes de signes. Ecole de Tartu*: 77–93. Paris.
- Loveday, A. (1990). "The living voice: skepticism towards the written word in early Christian and in Graeco-Roman texts." *JSOT* 87: 221–47
- MacMullen, R. (1982). "The epigraphic habit in the Roman empire." *American Journal of Philology* 103: 233–246.
- Mason, S. N. (1996). "Philosophical. Graeco-Roman, Judean and Christian," in J. S. Kloppenborg and S. G. Wilson, eds., *Voluntary associations in the Graeco-Roman world*: 31–58. London.
- Maxwell, J. L. (2006). *Christianization and communication in late antiquity. John Chrysostom and his congregation in Antioch*. Cambridge.
- McInerney, J. (2004). "'Do you see what I see?': Plutarch and Pausanias at Delphi," in L. de Blois, ed., *The statesman in Plutarch's works*: 43–55. Leiden.
- Meir, O. (1994). "Hashpa'at ma'ase ha-'arikha 'al hashkafat ha-'olam shel sipure ha-'agada." *Tura* 3: 67–84.
- Meyer, E. A. (2004). *Legitimacy and law in the Roman world. Tabulae in Roman belief and practice*. Cambridge.
- Meyer, E. A. (2007). "Roman tabulae, Egyptian Christians, and the adoption of the codex." *Chiron* 37: 295–347.
- Millar, F. (1986). "A new approach to the Roman jurists." *JRS* 76: 272–80.
- Miller, S. S. (2007). *Sages and commoners in late antique Erez Israel. A philological inquiry into local traditions in Talmud Yerushalmi*. Tübingen.

- Naeh, S. (2008). "The script of the Torah in rabbinic thought, (a)" (Hebrew). *Leshonenu* 70: 125–41.
- Najman, H. (2003). *Seconding Sinai. The development of mosaic discourse in second temple Judaism*. Leiden.
- Naveh, J. (1979). "Grafitti and dedications," *BASOR* 235: 27–30.
- Negev, A. (1971). "Inscriptions hébraïque, grecques et latins de Césarée Maritime." *Revue Biblique* 78: 247–63.
- Neis, R. (2012). "Eyeing idols: rabbinic viewing practices in late antiquity." *Jewish Quarterly Review* 102: 533–60.
- Neusner, J. (1982). *Formative Judaism. Religious historical and literary studies*. Chico.
- Neusner, J. (1984). *From Mishnah to Scripture. The problem of the unattributed saying with special reference to the division of Purities*. Chico.
- Nirenberg, D. (2013). *Anti-Judaism. The western tradition*. New York.
- Nock, A. D. (1933). *Conversion*. London.
- North, J. (1998). "The books of the pontifices," in C. Moatti, ed., *La mémoire perdue. Recherches sur l'administration romaine*, CÉFR 243: 45–63. Rome.
- Novick, T. (2013). "Liturgy and law." *Jewish Quarterly Review* 103: 475–502.
- Rajak, T. (1984). "Was there a Roman charter for the Jews?" *JRS* 74: 107–23.
- Reed, A. Y. (2014) *Demons, angels, and writing in ancient Judaism*. Cambridge.
- Reed, A. Y. (2014). "Textuality between death and memory: the prehistory and formation of the parabiblical testament." *Jewish Quarterly Review* 104: 381–412.
- Reeves, J. C. (2010). "Problematicizing the Bible... then and now" *Jewish Quarterly Review* 100: 139–52.
- Rosental, A. (1994). "Oral Torah and Torah from Sinai—Theory and Practice" (Hebrew), in D. Rozental and M. Bar-Asher, eds., *Talmudic Studies* 2: 448–87. Jerusalem.
- Rubenstein, J. L. (2010). *Stories of the Babylonian Talmud*. Baltimore.
- Rüpke, J. (1996). "Controller and specialists: analyzing religious specialists." *Numen* 43: 241–61.
- Rüpke, J. (2004). "Acta aut agenda: relations of script and performance," in Alessandro Barchiesi, Jörg Rüpke and Susan Stephens, eds., *Rituals in ink*: 23–43. Stuttgart.
- Schäfer, P. (1978). "Das 'Dogma' von der mündlichen Torah im rabbinischen Judentum," in his *Studien zur Geschichte und Theologie des rabbinischen Judentums*: 153–97. Leiden.
- Schäfer, P. (2007). *Jesus in the Talmud*. Princeton.
- Scheid, J. (1990). "Rituel et écriture à Rome," in A.-M. Blondeau and K. Schipper, eds., *Essais sur le rituel II*: 1–15. Paris.
- Scheid, J. (1994). "Les archives de la piété," in S. Demougin, ed., *La mémoire perdue. À la recherche des archives oubliées, publiques et privées, de la Rome antique*: 173–185. Paris.
- Scheid, J. (2006). "Oral tradition and written tradition in the formation of sacred law in Rome," in C. Ando and J. Rüpke, eds., *Religion and law in classical and Christian Rome*: 1–33. Stuttgart.
- Schneidewind, W. M. (2004). *How the Bible became a book. The textualization of early Israel*. Cambridge.
- Schofer, J. W. (2005). *The making of a sage. A study in rabbinic ethics*. Madison.
- Schremer, A. (2009). "The Christianization of the Roman empire and rabbinic literature," in L. I. Levine and D. R. Schwartz, eds., *Jewish identities in antiquity*: 349–66. Tübingen.

- Schremer, A. (2012). "Thinking about belonging in early rabbinic literature: proselytes, apostates, and 'children of Israel,' or: Does it make sense to speak of early rabbinic orthodoxy?" *Journal of Jewish Studies* 43: 249–75.
- Schwartz, S. (1995). "Language, power, and identity in ancient Palestine." *Past & Present* 148: 3–47.
- Schwartz, S. (2001a). *Imperialism and Jewish society, 200 BCE – 640 CE*. Princeton.
- Schwartz, S. (2001b). "The rabbi in Aphrodite's bath: Palestinian society and Jewish identity in the high Roman empire," in S. Goldhill, ed., *Being Greek under Rome. Cultural identity, the second sophistic and the development of empire*: 335–61. Cambridge.
- Schwartz, S. (2004). "Big men or chiefs?: against an institutional view of the Palestinian patriarchate," in *Jewish religious leadership: image and reality*, ed. J. Wertheimer (New York), 1:155–73;
- Schwartz, S. (2010). *Were the Jews a Mediterranean society?* Princeton.
- Shemesh, A. (2009). *Halakhah in the making. The development of Jewish law from Qumran to the rabbis*. Berkeley.
- Simon-Shoshan, M. (2012). *Stories of the law*. Oxford.
- Simon, M. (1996). *Verus Israel. A study of the relations between Christians and Jews in the Roman empire AD 135–425*. London.
- Sperber, D. (1998). *The city in Roman Palestine*. Oxford.
- Stemberger, G. (2010). "Rabbinic reactions to the Christianization of Roman Palestine: a survey of recent research," in A. Laato and P. Lindqvist, eds., *Encounters of the children of Abraham from ancient to modern times*: 141–63. Leiden.
- Stern, E. (2012). "Praying scripture: rethinking the role of biblical utterances in early Jewish liturgy," in C. Evans and H. D. Zacharias, eds. "What does the scripture say?" *Studies in the function of scripture in early Judaism and Christianity*, vol 2: 187–200. London.
- Sussman, Y. (2005). "'Torah she-be-'al peh': peshutah ke-mashma'ah." *Mehqerei Talmud* 3.1: 209–384.
- Swartz, M. (2013). "Chains of tradition from Avot to the Avodah piyutim," in N. B. Dohrmann and A. Y. Reed, eds., *Jews, Christians and the Roman empire*: 189–208. Philadelphia.
- Tropper, A. D. (2004). *Wisdom, politics, and historiography. Tractate Avot in the context of the Graeco-Roman near east*. Oxford.
- Tropper, A. D. (2005). "Roman contexts in Jewish texts: on *diatagma* and *prostagma* in rabbinic literature." *Jewish Quarterly Review* 95: 207–27.
- van der Toorn, K. (1998). *The image and the book. Iconic cults, aniconism, and the rise of book religion in Israel and the ancient near east*. Leuven.
- Veltri, G. (1990). "Zur Traditionsgeschichtlichen Entwicklung des Bewusstseins von einem Kanon: die Yavneh-Frage" *Journal of Study of Judaism* 21: 210–26.
- Weiss, Z. (1998). "Greco-Roman influences on the art and architecture of the Jewish city in Roman Palestine," in H. Lapin, ed., *Religious and ethnic communities in later Roman Palestine*: 219–46. Bethesda.
- Whittaker, C. R. (1997). "Imperialism and culture: the Roman initiative," in D. J. Mattingly, ed., *Dialogues in Roman imperialism. Power, discourse, and discrepant experience in the Roman empire*: 143–64. JRA Supplementary Series 23.
- Wimpfheimer, B. S. (2011). *Narrating the law. A poetics of talmudic legal stories*. Philadelphia.
- Woolf, G. (1996). "Monumental writing and the expansion of Roman society in the early empire." *JRS* 86: 22–39.

- Woolf, G. (2000). *Becoming Roman. The origins of provincial civilization in Gaul*. Cambridge.
- Yadin, A. (2004). *Scripture as logos. Rabbi Ishmael and the origins of midrash*. Philadelphia.
- Yinon, D. and I. Rosen-Zvi (2010). "Men's jewelry, women's jewelry: a new look at the religious status of women in rabbinic thought" (Hebrew). *Reshit* 2: 55–79.
- Yuval, Y. I. (2006). *Two nations in your womb: perceptions of Jews and Christians in late antiquity and the middle ages*, trans. B. Harshav and J. Chipman. Berkeley.
- Yuval, Y. I. (2011). "The orality of early Jewish law: from pedagogy to ideology," in L. Gall and D. Willoweit, eds., *Judaism, Christianity, and Islam in the course of history: exchange and conflicts*: 237–60. Munich.

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