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# Gestation and Birth

(ESSENTIAL TALMUD PART ONE)

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## CHAPTER I

### Talmud on Fire Liability

The Talmud is a commentary on an earlier law code, the Mishnah, which was published orally by the rabbis around the year 200 CE. Much like other ancient law codes (including the ones found in the Hebrew Bible) the Mishnah writes many of its laws as hypothetical scenarios. A far-fetched hypothetical is grounds for a fascinating Talmudic discussion of the basis of liability for fire that damages a neighbor's property. This brief foray into a Talmudic text introduces a passage about fire liability that this book will return to in greater depth in subsequent chapters.

#### **Mishnah Baba Qamma 2:3b**

A dog who took a cake [baking on top of hot coals] and went to a haystack; it ate the cake and set fire to the haystack:

on the cake [an owner] pays full damages, but on the haystack [an owner pays] half damages.<sup>1</sup>

The owner pays the full value of the eaten cake and half of the value of the burnt haystack. Liability for the full value of the cake follows a basic principle of expectation: since animals can be expected to eat cake, one is responsible to watch them and ensure that they do not do so. For the haystack, the owner of the dog is liable for half of the damages. No rationale is offered in the Mishnah and a reader must work to produce an explanation. One common explanation is that the burning of a haystack is unexpected; since the owner could not have anticipated this form of damage, the owner is only liable for half of the damages. Another common explanation considers fire damage to be a form of secondarily causal damage such as when pebbles projected by an animal's moving feet break a pane of glass.

The Talmud begins its discussion of this mishnah by citing a debate between two rabbis, R' Yohanan and Resh Laqish, who lived in Palestine and were active in the first half of the third century.

### **Babylonian Talmud Baba Qamma 22a**

It was said:<sup>2</sup> R' Yohanan said, "his fire<sup>3</sup> because [it is] his arrow."

And Resh Laqish<sup>4</sup> said, "his fire because [it is] his property."

Though the Babylonian Talmud was produced in Babylonia, it preserves many texts that were first articulated by Palestinian rabbis. Each of the two rabbis explains fire liability by drawing a specific analogy. R' Yohanan says that

liability for fire is like liability for an arrow: just as one is liable for the distant damage caused by a launched arrow, one is also liable for the distant damage caused by kindled fire. Resh Laqish analogizes liability for fire to property liability: as one is liable for damage caused by property (such as one's animal), one is also liable for damage caused by a set fire.

The Talmud's anonymous voice teases out the differences between these two analogies by asking after the stakes for each individual rabbi.

Why did Resh Laqish not explain like R' Yohanan?  
(He would say to you,)<sup>5</sup> "arrows move from his force,  
this [fire] did not move from his force."

And why did R' Yohanan not explain like Resh Laqish?  
(He would say to you,)<sup>6</sup> "property has tangibility, this  
[fire] does not have tangibility."

Why does R' Yohanan prefer the analogy to an arrow and Resh Laqish the analogy to property? Resh Laqish rejects the analogy to the arrow because the damage caused by the arrow is directly linked to the energy of the archer's pulling the bow; while fire may share the feature of being able to cause distant damage, it does not share this direct connection between the energy of the person responsible and the damage. R' Yohanan rejects the analogy to property because property is tangible while fire is not; though the two are similar since one is responsible for them, there is a fundamental difference between responsibility for tangible items and intangible ones.

The Talmudic passage continues by connecting this debate about fire liability to the mishnah cited above on which the entire Talmudic passage is something of a commentary. Drawing an inference, the Talmud asserts that the mishnah seems to support the view of R' Yohanan that liability for fire is like liability for the damage of an arrow:

It was stated in the Mishnah, “A dog who took a cake, etc.”<sup>7</sup>

Granted that for [R' Yohanan] who said (fire liability is)<sup>8</sup> like an arrow, the arrow is of the dog<sup>9</sup> [and for this reason the owner is not liable for full damages]. But for [Resh Laqish] who said (fire liability)<sup>10</sup> is like property liability, (this fire)<sup>11</sup> is not the property of the dog's owner?

A hungry dog eats a cake that was cooking on some coals. The cake is still attached to a coal and the dog transports the coal to a haystack, setting the stack on fire and burning it to the ground. The mishnah rules that the owner of the dog pays full damages for the cake and half damages for the haystack. The Talmud's anonymous narrator seeks to determine whether this mishnah about a bizarre case of fire liability holds the clue to the conceptual debate regarding whether fire is like an arrow or like other property. Drawing attention to the idea of half damages for the haystack, the Talmud's anonymous voice suggests that this scenario's law reflects the arrow view more than the property view. For while one can understand a dog owner's

responsibility for the secondary effects of the dog as akin to the repercussions of shooting an arrow, the indirect nature of this tort makes any liability for the haystack hard to explain for someone who thinks of fire liability as based on liability for one's property.

The anonymous voice of the Talmud does not concede that this bizarre case of the Mishnah supports R' Yohanan. Rather, it modifies the narrative of the scenario to create space for Resh Laqish's property-based notion of fire liability.

Here with what are we dealing? [With a scenario in which the dog] threw the coal. For the cake [the dog's owner] pays full damages, for the site of the coal [the dog's owner] pays<sup>12</sup> half damages and for the entire haystack [the dog's owner] is exempt.

In this new version of the story, the dog threw the coal in the air and it landed on the haystack. The owner of the dog is liable for full damages for the cake, half damages for the initial landing spot of the coal and exempt from the damage to the rest of the haystack. By modifying the story such that the dog threw the cake/coal onto the haystack, the Talmud has created space within which to understand the mishnah as agreeing with the conceptual approach of Resh Laqish that fire liability is based on property liability.

The Talmud is replete with passages like this one that explore the intricacies of law (ritual, civil, criminal), metaphysics, and theology. The Talmudic method of drilling down into the underlying bedrock to uncover

core doctrines involves a marriage of creative logical deduction with careful analysis of valued canonical texts. The specific way in which the Talmud attempts to maintain the validity of the mishnah as a core textual precedent alongside the conceptual possibility of fire liability as a subset of property liability is thorny, and became the basis for commentarial controversies in the enhanced Talmud. This book will return to further probe this Talmudic passage more extensively in the second chapter, and to unpack the controversies surrounding its interpretation in the third chapter. For now, though, this taste of the Talmud provokes a series of questions:

1. The passage opens with a legal dictum from the Mishnah. What is the Mishnah and in what ways is it central to the Talmud?
2. R' Yohanan and Resh Laqish are two named rabbis whose debate structures the passage. Who were these rabbis, and what was the context in which they debated the conceptual character of fire liability?
3. The original debate is enriched through a seemingly unique idiosyncratic textual discourse. Where did this interesting rhetorical and exegetical project come from, and how did it come to be the quintessence of rabbinic religiosity?
4. The anonymous narrator thickens the respective conceptual approaches of the two named rabbis and draws their debate into conversation with the Mishnah's strange hypothetical of the dog with the cake. Who is this anonymous narrator?

5. The passage about fire liability continues in the Talmud for a few pages in the standard print editions. As we will see in the next chapter, the Talmud uses different scenarios found in rabbinic legal precepts to prove that fire liability is more akin to an arrow than to property liability and each of these is explained away.<sup>13</sup> Then a fourth-century Babylonian rabbi, Abaye, draws attention to a statutory scenario that works better with a property liability understanding and not as well with an arrow liability approach, and the Talmud works extremely hard to explain this problem away. The passage's conclusion is that even those who think that liability for fire is akin to arrow liability must accept, at times, that one is liable for fire because it is one's property. A reader who successfully follows the intricacies of this passage might justifiably wonder about its goals. Is the reader expected to land on a specific understanding of fire liability? If not, does this passage have a specific learning outcome? Do Talmudic passages have goals?

## Who Were the Rabbis?

### **History: Continuity and Disruption**

Among its many stories, the Talmud includes a legendary rabbinic origin tale.<sup>14</sup>

Abba Sikra, the head of the *biryoni*<sup>15</sup> in Jerusalem, was the son of the sister of Rabban Yohanan b. Zakkai.



[R. Yohanan] sent (to him)<sup>16</sup> saying, “Come visit me privately.”<sup>17</sup>

When [Abba Sikra] came, he said to him, “How long are you going to act this way and kill all the people with starvation?”

[Abba Sikra] replied: “What can I do? If I say something<sup>18</sup> to them, they will kill me.”

[R. Yohanan] said: “Devise some plan for me to escape. Perhaps there will be a small salvation.”

[Abba Sikra] said to him: “Pretend to be ill, and let everyone come to inquire about you. Bring something evil smelling and put it by you so that they will say you are dead.<sup>19</sup> Let then your disciples get under your bed, (but no others, so that they shall not notice that you are still light,)<sup>20</sup> since they know that a living being is lighter (than a corpse).”<sup>21</sup>

[R. Yohanan] did so, and R. Eliezer went [under the bier] from one side and R. Joshua from the other. When they reached the opening, [some of the people inside the walls] wanted to run a lance through [the bier].

[They]<sup>22</sup> said to them: “Shall [the Romans] say. They have pierced their Master?”

They wanted to jostle it.

[They] said to them: “Shall they say that they pushed their Master?”

They opened a town gate<sup>23</sup> for him and (he got out).<sup>24</sup>

When [R. Yohanan] reached [the Romans] he said, “Peace to you, O king, peace to you, O king.”

[Vespasian] said: “Your life is forfeit on two counts, one because I am not a king (and you call me king),<sup>25</sup> and again, if I am a king, why did you not come to me (before now)?”<sup>26</sup>

[R. Yohanan] replied: “As for your saying that you are not a king, (in truth you are a king),<sup>27</sup> since if you were not a king Jerusalem would not be delivered into your hand, as it is written (Isaiah 10:34), “And Lebanon shall fall by a mighty one.” ‘Mighty one’ [is an epithet] applied only to a king, as it is written (Jeremiah 30:21), “And their mighty one shall be of themselves etc.,” and Lebanon refers to the Sanctuary, as it says (Deuteronomy 3:25), “This goodly mountain and Lebanon.”<sup>28</sup> As for your question, why (if you are a king),<sup>29</sup> I did not come to you (till now),<sup>30</sup> [the answer is that] the *biryoni* among us did not let me.”

[Vespasian] said to him: “If there is a jar of honey round which a serpent<sup>31</sup> is wound, would they not break the jar to get rid of the serpent?”

[R. Yohanan] could give no answer.<sup>32</sup> . . .

At this point a messenger came to him (from Rome)<sup>33</sup> saying, “Up, for the Caesar is dead, and the notables of Rome have arranged<sup>34</sup> to establish you as head [of the State].”

[Vespasian]<sup>35</sup> had just finished putting on one boot. When he tried to put on the other he could not. He tried to take off the first but it would not come off. (He said: “What is the meaning of this?”)<sup>36</sup>

R. Yohanan said to him: “(Do not worry:)<sup>37</sup> the good news has done it, as it says (Proverbs 15:30),

‘Good tidings make the bone fat.’ What is the remedy? Let someone whom you dislike come and pass before you, as it is written (Proverbs 17:22), ‘A broken spirit dries up the bones.’” He did so, [and the boot] went on.

[Vespasian] said to him: “Seeing that you are so wise, why did you not come to me (till now)?”<sup>38</sup>

[R. Yohanan] said: “Have I not told you?”—

[Vespasian] retorted: “I too have told you.”

[Vespasian] said: “I am now going, and will send someone [to take my place]. Ask something of me and I will grant it to you.”

[R. Yohanan] said to him: Give me<sup>39</sup> Yavneh and its Wise Men, and the [family] chain of Rabban Gamaliel, and physicians to heal R. Zadoq.

The setting for the legend is the Roman siege of Jerusalem in 70 CE. A rabbinic intellectual inside Jerusalem, Rabban Yohanan ben Zakkai, uses the ruse of death to sneak out of the city and speak directly with Vespasian, the Roman general. Fumbling over himself, the rabbi refers to the general as a monarch and the general considers this a blasphemous offense. When an emissary arrives mid-conversation informing Vespasian of a Roman election that has elevated him to the position of Caesar, the newly crowned monarch recognizes the prophetic abilities of his interlocutor. Rabban Yohanan ben Zakkai frames his ability to see the future as a byproduct of a midrashic reading of biblical verses that had predicted Jerusalem’s destruction. Vespasian offers him three requests. Rabban Yohanan ben Zakkai asks

for the preservation of the Gamaliel family, for a healer to heal Rabbi Zadoq, and for Yavneh (Jamnia) and its rabbis. This last request is often understood as a trade of Jerusalem for rabbinic Judaism.<sup>40</sup>

The Roman siege of the city of Jerusalem<sup>41</sup> was a siege preceding the final battle in a war that had stretched on for more than three years. The war had been triggered by the rise of militant Judean factions who sought the kind of political autonomy enjoyed earlier in the century under the Hasmonean rulers. Such Judean autonomy was not desired by the Romans, who understood the positioning of biblical Israel along the Mediterranean Sea as pivotal.

The rabbis who collectively produced the corpus of writings known as “rabbinic literature” did not produce epic poems like Homer’s *Odyssey* or national historiography along the lines of Thucydides’ *History of the Peloponnesian War*.<sup>42</sup> On the rare occasion that they produced histories, the rabbis produced short episodic legends that densely capture important themes. The story of Rabban Yohanan Ben Zakkai and Vespasian is one such legend.

In the ancient world, religion was not a separable piece of cultural activity or identity. Religion was closely related to national activity and identity. In the decades leading up to the Temple’s destruction, there was sectarian strife that pitted certain sects against the national religious leadership and its ideology, but even these sects still venerated Jerusalem. Rabbinic Judaism was a movement that gave up on the idea of political autonomy in exchange for a portable and robust religiosity. Rabban

Yohanan ben Zakkai's requests explicitly did not include a request for Jerusalem itself or for political power; he was prepared to sacrifice political hegemony for religious opportunity.

The term "sacrifice" gives pause. In giving up Jerusalem, Rabban Yohanan ben Zakkai not only sacrificed political ambition, he also acquiesced to the loss of the Temple—the building that had been the essential space of the Second Temple cult. Judean religiosity in the Second Temple period required the sacrifices that were the nearly exclusive cultic ritual; these could only be performed in Jerusalem's Temple. Rabban Yohanan ben Zakkai chooses a diasporic form of religiosity with no Temple and sacrifices, effectively renouncing the central religious cultic behaviors of prior generations.

To someone schooled in the Hebrew Bible, the story of the rabbi and the general may be surprising for its failure to directly feature God as a character. The God of the Hebrew Bible is incredibly and overwhelmingly present. God's presence is manifest both in communication and action. Within the patriarchal stories of Genesis, God is a character who interacts with other characters, engaging them in dialogue from on high. As one progresses through the historical time of the biblical story, God remains an active presence, but communication is mediated through the person of the prophet, who is distinguished by his or her ability to hear God's messages. Even though communication with God is limited, the biblical narratives continue to understand God to have an active role in historical events. The legendary

encounter with Vespasian models a different mode of relating to God than through direct divine communication or manifestation. When God appears in rabbinic texts, that appearance is often the result of human manipulation. Rabban Yohanan ben Zakkai employs *midrash*, a creative mode of reading the Bible, to *read* God into historical events. God's control of the events of the day is less direct; there are neither Egyptian plagues nor the smiting of an Assyrian army. God is present because the Bible is a lens through which to process world events. The rabbi empowers himself to see God in a world which no longer has a direct prophetic line of communication and no longer witnesses miraculous divine intervention.

Midrash, a form of biblical interpretation which will be further explained below, empowers the rabbi to introduce God into a set of historical events from which God is seemingly absent. God's voice is now the voice of the Bible *as read by the rabbi*. The rabbi is the new prophet who produces God's word in the world.<sup>43</sup> The relationship between God and rabbi differs from the relationship between God and prophet. The God-prophet relationship is a unidirectional one in which God overwhelms the prophet with the message; the prophet, however reluctant, accedes and represents God to the people. The God-rabbi relationship is more aptly characterized as rabbi-God; it is the rabbi who produces God in the world through an act of interpretation.

The legend of the rabbi and the Roman general has been popular throughout Jewish history because it

prefigures various events in Jewish realpolitik in the medieval and early modern periods.<sup>44</sup> Gauging the limited likelihood of resisting the enemy, Rabban Yohanan Ben Zakkai strikes up a vertical alliance with the most powerful enemy authority and works out a contract.<sup>45</sup> Pragmatism is strange in a legendary text. Rarely do peoples tout their pragmatic compromises. But the rabbis embrace their status as a political minority by creating a legend that extols a rabbi for just that pragmatism.

This rabbinic legend is often employed to assert that *rabbinic Judaism reinvents Judaism in the wake of the Temple's destruction*. This pithy formulation captures a fundamental truth about the rabbinic project. The legend of the encounter with Vespasian is evidence that the rabbis themselves were occasionally aware of this assessment of their project. But the legend is ahistorical, and the historical record is more complicated than the pithy formulation. By shifting to the unreliability of the story as history, we can attend to an alternative understanding of the rabbis that supplements the reinvention claim with an understanding of the rabbis as a continuation of Second Temple realities.

It is difficult to accept the legend as historiography.<sup>46</sup> It is unlikely that the historical factions in Jerusalem shared the strong commitment to the laws of purity that enables the ruse that gets the rabbi outside the city walls. The opening of the gates to the city to remove the body would literally open the door to the enemy. The similar ease with which Rabban Yohanan ben Zakkai can meet and address the Roman general is suspicious.

External historical data also makes the story hard to accept. Roman sources indicate that Vespasian first seized the title of Caesar in the Middle East and only afterwards received Roman consular approval.<sup>47</sup> The episode in the story would have taken place in 69–70 CE, and shows the rabbis' willing to sacrifice political sovereignty for religious space. But in 132 CE, various rabbis supported Simon ben Kosiba (Bar Kokhba) in his military revolt against Roman rule in Judea to restore Jewish self-rule. Historically, it is the crushing of *this* revolt that eliminated Jewish fantasies of sovereignty.

An autobiographical story nearly identical to the legend of Vespasian and Rabban Yohanan appears in the work of Josephus, the first-century Jewish historian who switched from the Judean to the Roman side in the war and wrote various extant works in Greek about those experiences.<sup>48</sup> *The Jewish War* describes how Josephus, the Judean general, was imprisoned by the Romans upon surrendering. As he was led off in chains, Josephus prophesied that Vespasian would be named the Caesar. When the prediction came true a year later, Vespasian informed his son Titus, and Josephus was elevated to Titus' *aide-de-camp*. Josephus spent the rest of the war on the Roman side before retiring to Rome where he wrote his works.

Though Josephus was a contemporary first century eyewitness to the events described, discrepancies between his own versions and his tendency towards self-aggrandizement make scholars suspicious of his work. In this particular case, Josephus' Vespasian story draws on tropes from the biblical Joseph story in which a Jewish



character is imprisoned and elevated to an important political post in exchange for an accurate prophetic prediction.<sup>49</sup> Bracketing the question of the historical reliability of Josephus' story about Vespasian, it is clear that a rabbinic writer, working between two to four centuries after Josephus, was familiar with the basic contours of Josephus' story when the Talmudic legend was crafted.<sup>50</sup>

The unreliability of the legend as historiography throws suspicion on its message that rabbinic Judaism is a post-Temple innovation, and pushes for consideration of an opposing characterization—that the rabbis continue the ideological and social realities that were present during the Second Temple period. *The rabbis magnify and unify the energy of the sectarian movements of the Second Temple period.*<sup>51</sup>

The elite populations of first-century Judea produced several different sects of Judaism. These sects self-segregated from the Jewish population at large—and each other—to engage in religious practices and scholarship. They were polemical rivals divided by core fundamental differences with respect to ideology and law. For all their differences, though, the sects had much in common with one another. They were highly scholastic, predominantly male organizations that filtered the world through a primarily religious lens. Their differing theologies all bore the imprint of apocalypticism, and they were staunchly committed, as both producers and consumers, to the idea of a scriptural canon.

The rabbis were a social group that perpetuated many of the values of these earlier sects without preserving the

polemical reality of multiple sects.<sup>52</sup> Some of the rabbis were biological descendants of Pharisees. Acts of the Apostles, a New Testament work, features a Pharisee leader named Gamaliel who saves the apostles from execution by a Jewish tribunal, which flogs them instead.<sup>53</sup> Rabbinic texts fill out the genealogy of Gamaliel's family, tracing a distinguished paternal line from the time of the Pharisees to the time of the rabbis. It is this distinguished family of heirs to sectarian Judaism whom Rabban Yo-hanan ben Zakkai saves with one of his three requests.

Both the sects and the rabbis actively attempted to resist the overwhelming influence of Hellenistic culture. The Hasmonean monarchy that ruled greater Judea for much of the first two centuries BCE was founded on a revolt that had an element of ideological resistance to Hellenic culture. The Maccabean resistance to Hellenism was but a momentary and minority phenomenon. As the centuries wore on, Judean culture became increasingly indistinguishable from other Hellenic subcultures.<sup>54</sup> The Hasmonean monarchs resembled other vassal kings and their children were sent abroad to receive schooling in Hellenistic schools. The sects that emerged in the last two centuries BCE were, in part, a response to increasing majority Hellenization. In this sense, they continued the trajectory of the zealous Maccabees who had revolted against Antiochus IV and set the Hasmonean Era in motion. As the populace and the royal elite were both becoming more Hellenized, the sects isolated themselves within the hermetic confines of the textual and cultic Jewish tradition. The rabbis carried on this mantle after the Temple's destruction.

Many rabbinic texts speak ill of Greek culture and mandate practices—like prohibitions on teaching Greek to one’s children—that are designed to keep Jews from being overrun by Greek ideas and inventions.<sup>55</sup> But by the close of the first century CE, Judea had been under Greco-Roman cultural influence for more than four hundred years. Roughly one-third of the vocabulary in rabbinic Hebrew and rabbinic Aramaic is comprised of words with Greek etymologies.<sup>56</sup> Archeological evidence of the period demonstrates the ubiquitous Greek influence on cultural production from pottery to coinage to sculpture.<sup>57</sup> This helps explain how the structure of the rabbis’ primary cultural activity—scholarship—was a Jewish facsimile of Greek scholastic culture.

One of the profound transformations wrought by Hellenism within Greek culture was the transition from the centrality of the city to the centrality of education.<sup>58</sup> That form of education was referred to as *paideia*, a term that meant both education and culture.<sup>59</sup> Where once one would want a child brought up as a warrior in service of city, now one aspired to educate a child through (or to) *paideia* into the leadership class. *Paideia* instruction was divided into three tiers: teachers of letters, grammar, and rhetoric, respectively. The elite student was one who could rise to the third tier and excel in its rhetorical exercises.

Similarly, the rabbinic educational movement was part of a transformation from the centrality of city (Jerusalem) to the centrality of education (rabbinic learning). A Jewish child would be trained by a teacher of letters

before moving on to a teacher of biblical reading and comprehension.<sup>60</sup> The role of the Bible was like the role of classical literature, which was the subject of instruction in the Greek system. Only advanced learners would progress to study rabbinic basic texts and be trained in the specific skills of argumentation and dialogue that contribute so much to the production of the Talmud. Like the Greeks, who understood *paideia* as a meritocratic way for lower classes to elevate their position in society, the rabbis understood their social practice of Torah study as a meritocratic enterprise open to all strata of society. Some of the most compelling rabbinic legends are rags-to-riches stories of men who start out ignorant, poor, and powerless before becoming wise, wealthy, and powerful through the vehicle of Torah education.<sup>61</sup>

The legend of Rabban Yohanan ben Zakkai and Vespasian testifies to the idea that the rabbis invented something new that replaced the Temple-based Judaism that had been rendered impossible by Jerusalem's destruction. At the same time, critical examination of the legend's limitations as history allows one to see that the rabbis both continued the legacy of the sects that thrived in the late Second Temple period, and drew upon a Hellenistic intellectual educational model.

### **Theology: Torah as Abstract Ideal**

Legends are not the only types of texts in which the rabbis produced their own origin stories, and the rabbis did not always connect their origins with the destruction of

Jerusalem. At times, the rabbis indeed told their story as an uninterrupted continuation of prior religious realities. *Ethics of the Fathers*, a *sui generis* tractate of the Mishnah that is a compilation of proverbs and ethical teachings, opens with a chain of transmission that connects rabbinic literature with God's revelation at Sinai:

Moses received the Torah from Sinai and transmitted it  
to Joshua;  
and Joshua to the elders;  
and the elders to the prophets;  
and the prophets transmitted it to the men of the Great  
Assembly . . .

Simeon the righteous one was one of the remaining  
members of the men of the Great Assembly . . .  
(*Mishnah Avot* 1:1–2)

Within a few words, the text moves from revelation on Mount Sinai to the late Second Temple period. The text's continuation is a bit more complicated, but a few additional generational links reach the period of the *tannaim*, the rabbis who were active before the oral publication of the Mishnah around the year 200 CE.

In the opening line of this chain, Torah is the entity that Moses receives and transmits to the rabbinic present. The chain of transmission is a genre employed in the Greek writings of near contemporary Stoic philosophers.<sup>62</sup> While the Stoics were interested in philosophical *truth*, the rabbis were interested in *Torah*. "Torah" literally means teaching, but the type of lesson implied by the word Torah led Egyptian Jews to translate the term into

Greek as “*nomos*” or law. “Torah” is the teaching of a religious way of being in the world.

The text describes Moses as receiving Torah “from” Sinai. The sentence makes Sinai (rather than God) the object of the preposition “from”—the *mountain* is the source of this teaching. This displacement of God is not incidental; it reflects a broader rabbinic substitution of the abstract value of Torah for the concrete God whose tangible home in Jerusalem no longer exists.<sup>63</sup>

The theology of the rabbis is often characterized as a doctrine of two Torahs: a written Torah produced with ink on parchment, and an oral Torah produced in an unwritten ether of transmission from teacher to student, that encapsulates ideas of Judaism not contained within the verses of the written Torah’s text. This helpful characterization of rabbinic theology ends up producing the oral Torah as an analog to the written—one could imagine the oral Torah as a virtual text containing all the traditions missing from the written Torah. In the opening to *Ethics of the Fathers*, in contrast, Torah is not a text but an abstract concept. Moses is not receiving a second (oral) book.<sup>64</sup> Moses receives an idea of Torah more powerful than any tangible book.

Throughout their writings, the rabbis display a profound commitment to Torah that transcends its function as an educational book or a ritual object. Torah is the rabbinic *raison d’être*. Life derives meaning from its association with the exercise of learning and living Torah. Though the rabbis value biblical laws and understand the Bible’s mandates as the specific commands of a divine

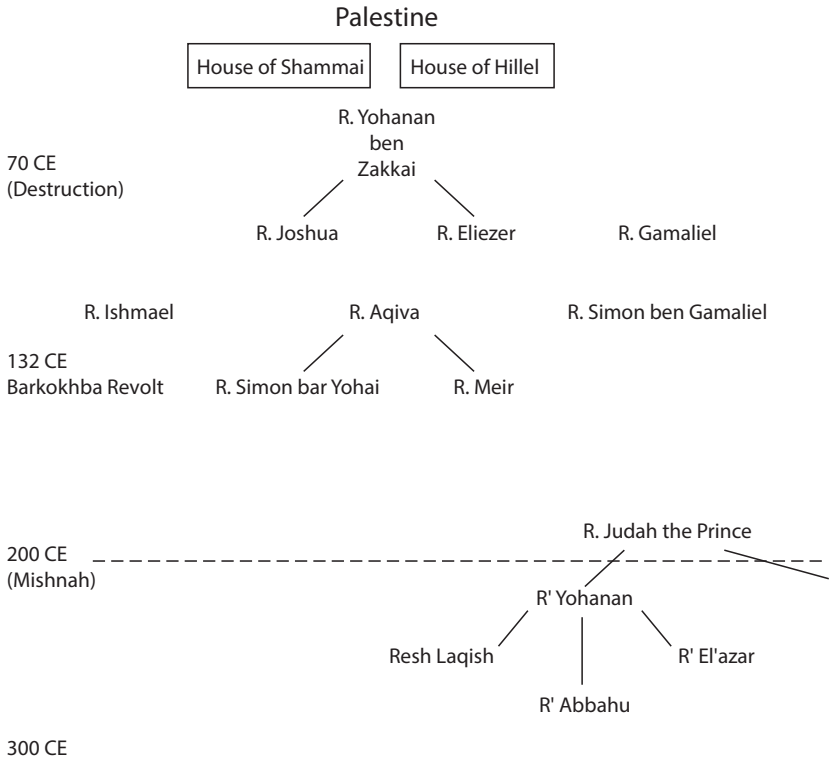
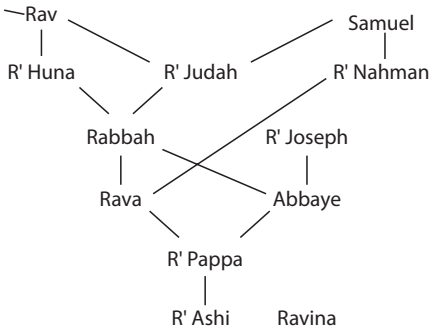


FIGURE 1.1. Selective Genealogy of the Rabbis

commander, commitment to Torah study supersedes. While the rabbis do not advocate a monastic disappearance from the world, Torah study challenges material needs, and Torah relationships challenge those of flesh and blood.<sup>65</sup> Scholastic pursuit of Torah-as-ideal epitomizes religious commitment. Along the way, the

## Babylonia

Tannaitic Period



Amoraic Period

prioritization of Torah and the scholastic way of life that commits fully to its acquisition, threatens the religious primacy of God, ritual, liturgy, and all other cultic aspects of Judaism. And this prioritization is profoundly important to the biography of the Talmud for two reasons. First, because the Talmud is the result of this scholastic





FIGURE 1.2. Map of Palestine/Babylonia

prioritization—it was produced as part of this new cultural commitment to Torah above all. Second, because it is the cause of this increased prioritization—its discourse of reception made it into the central piece of a religion built around scholasticism as religious devotion. *Within a religious production that has rewritten its story and changed its lead from God to Torah, the part of Torah has been played for over a millennium by the Babylonian Talmud.*

## How the Talmud Was Made

The early rabbis engaged in scholastic activity in small *ad hoc* disciple circles; each consisted of a charismatic rabbi surrounded by a handful of students.<sup>66</sup> In the period

immediately surrounding the destruction of the Second Temple and for the next hundred years, the rabbis engaged in two pedagogical practices—one primarily interpretive and the other primarily a mode of organizing the interpreted material. The interpretive method of study was called midrash while the organizational articulation was called mishnah.<sup>67</sup>

## **Midrash**

During the Second Temple period, the Hebrew Bible was becoming both increasingly central and more solidly fixed. The early rabbis studied their Bible in ways that contributed both to the nature of canonical authority (what it means for there to be a canon) and to the contours of the canon (what is included and what excluded).<sup>68</sup> They read their Bible in almost absurdly punctilious ways. In the hands of these rabbis, the Hebrew Bible became a cryptic code in need of deciphering. Every nonessential component of syntax (and even spelling) came to be understood as an opportunity for producing new meanings, whether legal, narrative, or theological. Biblical stories were expanded in plot, characterization, and drama; the nature of all things theological (God, heavens, Torah, angels, etc.) became richer; legal statutes were made both more specific and principled. At the same time, the rabbis developed a technique of resolving issues in one book of the Hebrew Bible through recourse to another passage of the Hebrew Bible.<sup>69</sup> This, even though the Hebrew Bible is an

anthology of works in different genres written by different authors at different times. Whether self-consciously or not, the rabbis read verses in the book of Genesis, for example, in light of some in the Song of Songs and vice versa. This reading practice both reflected the rabbis' understanding of the boundaries of the biblical canon and solidified those boundaries by broadcasting which books were to be included as part of the hermeneutic corpus.

## **Mishnah**

Even as the rabbis devoted significant backward glances at the Bible, they also engaged in a form of study that produced something new. This pedagogical process involved formulating their religious culture in statutory form as law. The ritual requirements of prayer, the calendrical requirements of the holidays, the particulars of sacraments and sacrifices; all of these were formulated as religious statutes. This procedure produced clarity within a cultural environment in which both inherited practices and interpretive polysemy could produce confusion about everything from basic requirements to smaller details. Organization was a major purpose of this form of pedagogy. The anthological makeup of the Hebrew Bible contributed a basic lack of substantive organization to the Hebrew Bible; the exegetical practice of reading across the corpus further undermined even local coverage of a religious subject. If the exegetical practices allowed the creative free work associated with the right

side of the brain, the statutory formulation organized the material as might the left side of the brain.

Over the course of the post-Temple period, the two pedagogical practices of midrash and mishnah influenced each other but remained separate. During the second century CE, various rabbinic disciple circles developed their own approaches and produced varying versions of similar works. Within the world of midrash, Rabbi Aqiva and Rabbi Ishmael (both active in the first half of the second century) developed slightly different, consistent philosophies.<sup>70</sup> On a hermeneutic (rather than ideological) level, Ishmael was restrained and Aqiva creative.<sup>71</sup> What Aqiva interpreted as an extraneous feature (worthy of interpretation), Ishmael considered a regular feature of language. These philosophical differences led to the production of two midrashic oral traditions covering four Pentateuchal books (Exodus, Leviticus, Numbers, and Deuteronomy).<sup>72</sup>

Among the rabbis who constituted the Aqiva school of midrash, a standard practice developed to produce works of legal statutes covering all the topics of Judaism. This pedagogical process continued until the end of the second century, when a political figure and scholar, Rabbi Judah the Prince, gathered the different mishnah traditions, edited, and redacted them into the definitive Mishnah (“the Mishnah”). The Mishnah consists of sixty tractates that are organized into six orders. The Mishnah contains three levels of organization: there is a rationale for individual orders (e.g., Moed includes tractates related to holidays and the calendar), for individual

tractates (e.g., Sukkot has its own tractate within Moed) and for individual chapters (e.g., the rules regarding the gathering of the four species on Sukkot are delineated in their own chapter in tractate Sukkah).<sup>73</sup>

Production of the Mishnah had a major effect on the rabbis. Over time, the Mishnah became so authoritative that it produced a chronological dividing line for the rabbis: those rabbis who lived early enough to be included in the Mishnah were called tannaim, and those rabbis active after the Mishnah's proliferation were called amoraim. It would eventually come to be understood within the rabbinic community that an *amora* could not directly contest the opinion of a *tanna*. The arrival of the Mishnah also affected the way in which the rabbis studied. Where tannaim bifurcated their study time into mishnah-style and midrash-style conversations, amoraim developed talmud-style conversations by formally structuring their study around the Mishnah but including midrash in those conversations.

## Talmud

As midrash was a freestyle conversation surrounding Bible, talmud was a freestyle conversation surrounding the Mishnah. A mishnaic text is usually a statute which states a requirement or prohibition clearly without authoritative source or rationale. Talmudic discussions often begin by asking, “how do we know this?” about a mishnaic rule. The answer to the question is typically a midrashic explication of a biblical verse. In this way, the

Talmudic discussion opens the Mishnah to the rich lode of rationales and verse interpretations of midrash. Several generations of rabbis (Figure 1.1) in both Palestine and Babylonia conducted talmud conversations. Through these conversations, the Palestinian and Babylonian amoraim produced new midrashic interpretations of the Bible, new mishnah-style statements of law and new interpretations of the Mishnah's laws. The amoraim often disagreed with one another about these types of text. These distinct types of text (midrashic interpretations, mishnah statements, amoraic arguments about prior texts, etc.) are all captured within the two extant Talmuds, the Palestinian and Babylonian.

The Palestinian and Babylonian Talmuds are similar in form and content, but have significant differences. The Palestinian Talmud attributes ideas to rabbis who lived until the middle of the fourth century CE, while the Babylonian Talmud attributes ideas to rabbis who lived until the end of the fourth century CE. This additional gestation period is accompanied in the Babylonian Talmud by a comparatively richer layer of anonymous editorial text. These unattributed words function as signposts that alert the reader to turns within the text. A reader well-schooled in the Babylonian Talmud can have trouble reading the Palestinian because it comparatively lacks these internal textual aids.

Despite the nearly equivalent number of tractates (thirty-three for the Babylonian and thirty-six for the Palestinian) in the respective Talmuds, the Babylonian is considerably longer than its Palestinian counterpart in

both length of individual conversations and the number of such conversations per mishnaic legal subject.<sup>74</sup> The Palestinian Talmud also often replicates identical passages in multiple tractates; when this phenomenon is taken into account, the Palestinian Talmud shrinks in size by a third.<sup>75</sup> The conversational style of the Talmud and its origins in a social educational practice led most traditional readers to the presumption that the Talmuds are a transcription of actual rabbinic conversations. This is not the case. The insufficiency of this paradigm is evident when one looks closely at the Talmud's multi-generational character. Since the Talmud's conversations span across centuries, the Talmud's literary conversations are evidently manufactured. The standard stylistic uniformity in the presentation of debates also indicates an editor's framing of controversy. In the past four decades, scholars have demonstrated that the anonymous editorial layer of the Bavli (Babylonian Talmud) routinely reflects a chronologically later voice that goes beyond framing the earlier debates and produces itself as the evolutionarily final approach to matters of law or theology.<sup>76</sup>

The final editors of the Talmud (sometimes referred to in the singular as the *Stam*—meaning anonymous, or in the plural as the *Stammaim*), are responsible for altering and framing the inherited traditions that are embedded in a Talmudic passage. The words of the Stam are the clearest site for identifying a conscious editing of the text.

The rabbis were active in two regions: Palestine and Babylonia (Figure 1.2). The rabbis of Palestine produced more than twenty works that survived the vagaries of

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