

a tale of two synods:  
nicaea, yavneh, and  
RABBINIC ECCLESIOLOGY

DANIEL BOYARIN

*For Chana Kronfeld*

I begin with a kind of paradox or conundrum, a mystery that I might call the Yavneh Conundrum. Shaye Cohen wrote, in a now near-classic essay:

A year or two before the church council of Nicea Constantine wrote to Alexander and Arius, the leaders of the contending parties, and asked them to realize that they were united by their shared beliefs more than they were separated by their debate on the nature of the second person of the Trinity. Let them behave like members of a philosophical school who debate in civil fashion the doctrines of the school (Eusebius, *Life of Constantine* 2.71). The council of Nicea ignored the emperor's advice and expelled the Arians. The sages of Yavneh anticipated Constantine's suggestion. They created a society based on the doctrine

---

I wish to express gratitude to Virginia Burrus, Catherine Keller, Chana Kronfeld, Lisa Lampert, Rebecca Lyman, and Dina Stein for reading earlier versions of this essay and commenting, as usual, sharply and usefully, and to Sheila Delany for patiently shepherding me through several rounds of revision of this article. Early oral versions have been delivered at the University of California at Berkeley and at Williams College, where I profited on both occasions from stimulating questions and discussion.

Exemplaria 12.1 2000 © Published by Pegasus Press, University of North Carolina at Asheville, Asheville, North Carolina.

that conflicting disputants may each be advancing the words of the living God.<sup>1</sup>

Much of Christian and Jewish scholarship before Cohen had indeed portrayed Yavneh (Jamnia, supposed date 90 A.C.) very differently. As Cohen himself described it:

According to the usual view, sectarianism ceased when the Pharisees, gathered at Yavneh, ejected all those who were not members of their own party. Christians were excommunicated, the biblical canon was purged of works written in Greek and apocalyptic in style, and the gates were closed on the outside world, both Jewish and non-Jewish. Functioning in a "crisis" atmosphere, the rabbis of Yavneh were motivated by an exclusivist ethic; their goal was to define orthodoxy and to rid Judaism of all those who would not conform to it. In this interpretation, the "synod" of Yavneh becomes a refiguration of the church council of Nicea (325 C.E.): one party triumphs and ousts its competitors.<sup>2</sup>

Thus, considering "the Council of Jamnia" as a real historical, religious, political event, New Testament scholars have accredited to reaction against the activities of this conciliar body everything from the ire against Jews in the Gospel of John to Jesus's Sermon on the Mount in Matthew.<sup>3</sup> Cohen himself assiduously dismantled the exclusivist image of Yavneh, arguing, to paraphrase his statement above, that Yavneh, far from being a type of Nicaea, was a counter-type. It was, for him, not a council in which an orthodoxy was established and heretics and Christians expelled but rather a pluralistic one in which there was "created a society based on the doctrine that conflicting disputants may each be advancing the words of the living God." Cohen's work has been largely adopted by scholars who have further unsettled the narrative of what supposedly took place at

<sup>1</sup> Shaye J. D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis, and the End of Jewish Sectarianism," *Hebrew Union College Annual* 55 (1984): 51.

<sup>2</sup> *Ibid.*, 28.

<sup>3</sup> W. D. Davies, *The Setting of the Sermon on the Mount* (1963; rpt. Cambridge: Cambridge University Press, 1966), 256–315. "The majority opinion is that the First Gospel was composed in the final quarter of the first century A.D.," W. D. Davies and Dale C. Allison, Jr., *Matthew*, International Critical Commentary (Edinburgh: T. & T. Clark, 1988), 1:128. The chronology, accordingly, works if we assume the Council of Yavneh to have been a real event as recorded in rabbinic literature.

Yavneh, including especially the closing of the canon of the Hebrew Bible and the alleged expulsion of the Jewish Christians.<sup>4</sup>

In a cogent revision of the revision, however, Martin Goodman has compellingly shown there was, in many ways, after Yavneh, less "tolerance" of difference rather than more. It was, after all, during that time—after Yavneh—that the category of *minim* and *minut* (heretics and heresy) first appears on the Jewish scene.<sup>5</sup> Following Goodman, it would seem, then, that although we can accept Cohen's argument that the focal point for sectarian division over the Temple with the concomitant production of a *particular* kind of sectarianism (separatism from the "corrupted" Jerusalem center or conflict over hegemony there) had vanished with the destruction of the Temple, nevertheless the epistemic shift marked by the invention of rabbinic Judaism included the production of a category of Jewish "outsiders" defined by doctrinal difference. Jewish sectarianism had been replaced, on Goodman's reading, by Jewish orthodox and Jewish heretics: those who are Jews and say the wrong things and may, therefore, no longer be called "Israel."<sup>6</sup> It is not, then, that sectarianism had disappeared but that one group was beginning to achieve hegemony and could now plausibly portray itself as Judaism *tout court*, and thus more like Nicaea than Cohen had proposed, an act of radical exclusion and not one of inclusion and pluralism.

It can hardly be denied, nevertheless, that rabbinic texts frequently thematize and valorize sanctified and unresolved controversy. Rabbinic textuality, far more than other Jewish or Christian

<sup>4</sup> Peter Schäfer, "Die sogenannte Synode von Jabne: Zur Trennung von Juden und Christen im ersten/zweiten Jahrhundert n. Chr.," *Judaica* 31 (1975): 54–64, 116–24; Günther Stemberger, "Die sogenannte 'Synode von Jabne' und das frühe Christentum," *Kairoi* 19 (1977): 14–21; Reuven Kimelman, "Birkat Ha-Minim and the Lack of Evidence for an Anti-Christian Jewish Prayer in Late Antiquity," in *Aspects of Judaism in the Greco-Roman Period*, ed. E. P. Sanders, A. I. Baumgarten, and Alan Mendelson, Jewish and Christian Self-Definition 2 (Philadelphia: Fortress Press, 1981), 226–44; 391–403.

<sup>5</sup> Martin Goodman, "The Function of Minim in Early Rabbinic Judaism," in *Geschichte—Tradition—Reflexion: Festschrift für Martin Hengel zum 70. Geburtstag*, ed. H. Cancik, H. Lichtemberger, and P. Schäfer (Tübingen: Mohr Siebeck, 1996), 1.501–10. See also now Daniel Boyarin, "Reforming Judaism; or, Justin Martyr, the Mishna, and the Rise of Rabbinic Orthodoxy" (forthcoming).

<sup>6</sup> I am, of course, playing on the title of another essay of Cohen's here, Shaye J. D. Cohen, "Those Who Say They Are Jews and Are Not': How Do You Know a Jew in Antiquity When You See One?" in *Diasporas in Antiquity*, ed. Cohen and Ernest S. Frerichs, *Brown Judaic Studies* 288 (Atlanta: Scholars Press, 1993), 1–45.

textualities, is marked, almost defined, by its openness to dissenting opinions, by its deferral of final decisions on hermeneutical, theological, halakhic, and historical questions, by heteroglossia. This characteristic of the literature is well thematized within the texts themselves, i.e., it is a self-conscious trait of rabbinic religion, just as much as doctrinal rigor is of fourth-century Christianity.

Talmudic tradition indeed fashions itself as a collective that avoids schism through pluralism, declaring: "these and these are the words of the Living God";<sup>7</sup> it displays tolerance, even appetite, for paradox and disagreement on issues even of fundamental importance for practice and belief. These are traits that contemporaneous late ancient ecclesial Christianity, with its history of constant schism and anathema, seems unwilling to foster. Gerald Bruns was, therefore, surely on to something when he wrote,

From a transcendental standpoint, this [rabbinic] theory of authority is paradoxical because it is seen to hang on the heteroglossia of dialogue, on speaking with many voices, rather than on the logical principle of univocity, or speaking with one mind. Instead, the idea of speaking with one mind . . . is explicitly rejected; single-mindedness produces factionalism.<sup>8</sup>

There is a certain elasticity to the Rabbis' form of orthodoxy that must, then, be captured in our descriptions. Cohen's revisionary description of Yavneh can, thus, certainly not be dismissed.

We seem, ourselves, then, to have arrived at an aporia. How can these two seemingly contradictory propositions be reconciled? In this scholion, I hypothesize that these two descriptions are best diachronically emplotted: heteroglossia is the end-point of a historical process and not an essential or timeless description of the rabbinic formation. The social historian of Rome Keith Hopkins is, however, perhaps the only scholar who has so far even adumbrated, and that in a virtual aside, the point that this vaunted heteroglossia of Judaism is the product of a specific history and not a transcendental essence of rabbinic Judaism, *a fortiori* of Judaism *simpliciter*. Hopkins argues that, "unlike Judaism after the destruction of the Temple [in

<sup>7</sup> Babylonian Talmud Eruvin 13b and Gittin 6b (see below). My translations throughout unless otherwise noted.

<sup>8</sup> Gerald Bruns, "The Hermeneutics of Midrash," in *The Book and the Text: The Bible and Literary Theory*, ed. Regina Schwartz (Oxford: Basil Blackwell, 1990), 199.

70 A.C.], Christianity was dogmatic and hierarchical; dogmatic, in the sense that Christian leaders from early on claimed that their own interpretation of Christian faith was the only true interpretation of the faith, and hierarchical in that leaders claimed legitimacy for the authority of their interpretation as priests or bishops." Hopkins accounts for the rabbinic formation historically: "Admittedly, individual leaders claimed that their own individual interpretation of the law was right, and that other interpretations were wrong. But systematically, at some unknown date, Jewish rabbis seem to have come to the conclusion, however reluctantly, that they were bound to disagree, and that disagreement was endemic."<sup>9</sup>

I would emend Hopkins's formulation, however, in three ways. First, I would put forth that we can locate that "unknown date," if not precisely, surely more accurately than "after the destruction of the Temple," specifically towards the end of the rabbinic period (fourth and fifth centuries), at the time of redaction of the classic texts. Secondly, it may very well have been much more prominent in Babylonia than in Palestine. Third, while Hopkins historicizes the process through which Judaic orthodoxy came to have a certain character, he reifies Christianity, as if it were always and everywhere (at least from "early on") "dogmatic and hierarchical." Our idea of early "Christianity" also has to be dynamized and historicized. The form of Christianity of which Hopkins speaks is as much the product of particular historical processes within Christianity as is the form of Judaism of which he speaks.<sup>10</sup> In neither case do we have a transhistorical essence, of course, and in both cases, I suggest, the processes that produced the differences are complexly intertwined. Indeed, the burden of my current project is to suggest that rabbinic Judaism and orthodox Christianity, as two hypostases of post-destruction Judaism, only find their separate and characteristic forms of discourse

<sup>9</sup> Keith Hopkins, "Christian Number and Its Implications," *Journal of Early Christian Studies* 6.2 (1998): 217.

<sup>10</sup> Richard Lim, *Public Disputation, Power and Social Order in Late Antiquity*, Transformations of the Classical Heritage 23 (Berkeley and Los Angeles: University of California Press, 1994) suggests that this form of Christian authority was the product of relatively late socio-historical processes, a point that I shall be further investigating in later chapters of the book in which this essay will eventually be incorporated—tentative title, *The Birth of the Study House: A Talmudic Archaeology*.

and textuality toward the end of late antiquity and not near the beginning.

As historians of Christianity have observed for some time now, "Nicaea" itself is largely the retrospective textual and then legendary construction of a primal scene of the triumph of orthodoxy. In a recent paper, Michel René Barnes has offered a sharp summation of the current historical consensus regarding the trajectory of trinitarian theology from Nicaea (325) to Constantinople (381) and the retrospective construction of Nicaea as founding moment by Athanasius, Bishop of Alexandria.<sup>11</sup> One of the strongest arguments for this description of Nicaea as virtually a constructed Athanasian representation is the fact, noted by several scholars in the last fifteen years or so, that "a careful reading of Athanasius's works reveals that it took [Athanasius] almost twenty years to come to this understanding of the significance of Nicaea, while he took almost another ten years to fasten upon *homoousios* as the sine qua non of Nicene theology. . . . The suggestion that that paragon of Nicene theology, Athanasius, did not always regard Nicaea as authoritative is breathtaking."<sup>12</sup> It is breathtaking because, until less than two decades ago, the prevailing scholarly consensus was that Athanasius emerged immediately from a fully transparent and clear conciliar verdict on the orthodox faith at Nicaea as the "lonely and courageous" champion of that orthodoxy, prepared to defend it against the depredations of "Arian" opponents.

In a similar vein, Richard Lim has suggested that Nicaea, the Council, is a product of later legend-making.<sup>13</sup> In his very impetus, however, to demonstrate the "legendary" character of the fifth-century construction of a Nicaea that enshrined *homonoia*—total unity of opinion without discussion or dialectic—as the utopian pattern of Christian truth, Lim played down the role of prior textual practices in preparing the soil in which those legends could take root. These are the practices to which Barnes's analysis of Athanasius's role calls our attention, and which have been further explored by Virginia Burrus, as she examines the formative influence of Athanasius's lit-

<sup>11</sup> Michel René Barnes, "The Fourth Century as Trinitarian Canon," in *Christian Origins: Theology, Rhetoric, and Community*, ed. Lewis Ayres and Gareth Jones (London: Routledge, 1998), 47–67.

<sup>12</sup> *Ibid.*, 53.

<sup>13</sup> Lim, *Public Disputation*, 182–216.

erary corpus in producing the textual practices of fourth-century (and later) Christian orthodoxy, the modes of its discourse, its *habitus*.<sup>14</sup> Positioning her mediation in relation to Lim's claim that it is with the death of the last "eye-witness," Athanasius, that the "legends about Nicaea began to emerge,"<sup>15</sup> Burrus writes: "Athanasius' death marked the *end* of a crucial phase in the *literary* invention of Nicaea; and, furthermore, the layered inscription of his 'historical' or 'apologetic' texts—resulting in his retroactive construction of a virtual archive for the council—contributed heavily to the creation of a documentary habit that was, as Lim and others have demonstrated, crucial to the success of the late antique council in producing 'consensual' orthodoxy."<sup>16</sup> By substituting "end" for "beginning" and "literary" for "legendary," Burrus both supports Lim's argument and subtly shifts its terms. The implication of the "death of the eye-witness" and "legend" is that during Athanasius's lifetime, something like a "true" memory of the council was available, while Burrus implies that through the literary work of the eyewitness himself the "legend" of Nicaea was already being constructed. The implied oppositions of true and legendary, written and oral, are thus unsettled.

Furthermore, Lim had emphasized that Nicaea, in contrast to other synods and councils, left no written record of its acts. Agreeing with him, Burrus shows, however, through close readings of the Athanasian dossier on Nicaea, that Athanasius, through the arrangement and redacting of materials documentary and otherwise, produced *ex post facto* virtual *acta* for "his" council. Burrus's reframing allows us to perceive that Athanasius may have made a contribution through this activity to the practice of the production of such archives and *acta* for other conciliar formations, as well as to the system of textual practices, in general, that constituted late ancient "patristic" orthodoxy. Nicaea, the Council—and not only (or primarily) Nicene doctrine—was "invented" through the writings of Athanasius. The point of overlap between Barnes and Burrus, and the point that I most need for my own narrative here, is to be found in the keen articulation of the extent to which Athanasius's literary

<sup>14</sup> Virginia Burrus, "Fathering the Word: Athanasius of Alexandria," in *Begotten not Made: Conceiving Manhood in Late Antiquity*, Figurae (Stanford: Stanford University Press, 2000).

<sup>15</sup> Lim, *Public Disputation*, 186.

<sup>16</sup> Burrus, "Fathering the Word," emphasis added.

exertions produce retrospectively a certain account of "Nicaea," an account which, as Burrus makes clear, was generative for the future history of Christian textual practices. Burrus thus focuses our attention on the particular form of textuality and the textual form of particular types of orthodoxy and their "habitus," a point that will provide special resonance in my own inquiry, in which the question of literary and legendary textual practices will also prove central.

The solution that I suggest, therefore, to the seeming aporia in descriptions of rabbinic Judaism as rigid and exclusivistic or as inclusive and elastic, is to realize that Yavneh itself, like Nicaea, is a legend, or rather, a series of changing legends of foundation. It must, however, be made clear that, even though it is a foundation myth, the idea of a Synod at Yavneh is hardly a "myth of Christian scholarship," nor is it the product of Spinoza's imagination, *pace* David Aune.<sup>17</sup> Both the early third-century Mishnah and the later Talmuds are full of material which suggests that Yavneh was *imagined* as a council by Jewish texts much before Spinoza.<sup>18</sup> Both the exclusivist and the pluralist version of Yavneh are encoded, then, within rabbinic literature itself. Both the early one of conflict and exclusion and the later one of "agreement to disagree" are versions of Yavneh. This will emerge when we read the different "myths" of the Council of Yavneh in the third-century tannaitic or fourth- and fifth-century amoraic contexts of their literary production, and not in the first-century context of their ostensible subject-matter, as the nineteenth-century (and later) positivist historians had done. I would suggest also that, parallel to the scholarship on Nicaea, the portrayal of Yavneh in the rabbinic literature of the early third century underwent a reinterpretation in the second half of the fourth century to receive a normative status (of course we can hardly date this reinterpretation as specifically as Nicaea's normatization at Constantinople "in 381," nor assign agency to a particular author, a rabbinic Athanasius). In any case, that retold and ultimately definitive

<sup>17</sup> David Aune, "On the Origins of the 'Council of Yavneh' Myth," *Journal of Biblical Literature* 110.3 (Fall 1991): 491-93.

<sup>18</sup> To be fair, what Aune was referring to was the question of the canonization of Scripture at such a "synod," and I agree that there is little evidence for that, as there is also little evidence to suggest that the Christians were expelled at the "real" (i.e., imaginary) Synod of Yavneh, as already shown by Stemmerger, "Synode"; Kimelman, "Birkat Ha-Minim." My student Robert Daum is preparing a dissertation on the corpus of Yavneh legends.

Yavneh-legend finally fits Cohen's description of the "creation of a society based on the doctrine that conflicting disputants may each be advancing the words of the living God."<sup>19</sup> The very phrase, however, that Cohen refers to here is never found in early sources but only in the two Talmuds of late antiquity. In the Palestinian Talmud we find it:

It is taught, a heavenly voice went out and said, "These and these are the words of the Living God, but the Law is like the School of Hillel." Where did the voice go out? Rabbi Bibbi said in the name of Rabbi Yoḥanan, "In Yavneh the voice went out."<sup>20</sup>

I would, therefore, substitute for Cohen's prospective "creation," a retrospective and utopian "imagination." Cohen is right, I think, but the Yavneh that he describes is a product of the late myth-making discourse of the Talmuds.

In contrast to W. D. Davies's classic position that the "Sermon on the Mount" is "the Christian answer to Jamnia [Yavneh],"<sup>21</sup> it is possible to hypothesize that "Yavneh" was produced in the talmudic *imaginaire* as a sort of rabbinic answer to the conciliar formations of the Christian fourth century, themselves, as we have seen, the product of a certain *imaginaire* as well. One way of configuring this point would be to say that while the retrospective construction of Nicaea by Athanasius and his followers involved the production of an imaginary enemy, "the Arians,"<sup>22</sup> the retrospective construction of Yavneh in late-fourth-century (or even later!) rabbinic texts involved

<sup>19</sup> Cohen, "Yavneh," 51.

<sup>20</sup> Palestinian Talmud Yabmut (sic) 3b, chapter 1, halakha 6.

<sup>21</sup> Davies, *Setting of the Sermon on the Mount*, 315; and see Jacob Neusner, *Eliezer Ben Hyrcanus: The Tradition and the Man*, Studies in Judaism in Late Antiquity 3-4 (Leiden: Brill, 1973), 2.333-34.

<sup>22</sup> "Arianism" as a coherent system, founded by a single great figure and sustained by his disciples, is a fantasy—more exactly, a fantasy based on the polemic of Nicene writers, above all Athanasius," Rowan Williams, *Arius: Heresy and Tradition* (London: Darton, Longman & Todd, 1987), 82. Also, "the term 'Arian' seems to have been Athanasius' own coinage and his favoured appellation for his opponents (unless he could call them 'Ariomanics')." Apparently it was only in 341, however, that the Eastern bishops learned that they were being called 'Arians,'" Joseph T. Lienhard, S.J., "The 'Arian' Controversy: Some Categories Reconsidered," *Theological Studies* 48 (1987): 417. This, moreover, according to Barnes, represents the consensus of present-day scholarship on the trinitarian controversies ("Fourth Century as Trinitarian Canon," 47).

the denial of real enmity and the production of an imaginary and utopian comity. The Talmud, I suggest, is Yavneh's collective Athanasius.

### Women's Bodies and the Rise of the Rabbis

If Nicaea was a belated Athanasian invention that helped produce a Christianity "in which dissent and debate were literally swept aside,"<sup>23</sup> Yavneh as a "grand coalition" in which everybody in Jewish antiquity who wasn't an outright "heretic" was a Rabbi, and all opinions were equally "Torah," was an equally belated talmudic invention. This late moment of literary crystallization was the juncture at which the "agreement to disagree" was raised to a theological and hermeneutical principle of the highest order, indeed to a divine institution. Just as the story of Nicaea "gives rise to the 318 conciliar 'fathers,' and also to their only begotten credal Word,"<sup>24</sup> the story of Yavneh gives rise to the father Rabbis and their only begotten Oral Torah.

Moshe Halbertal has written:

The idea that expertise in the text is a source of authority—an idea that gives rise to the centrality of the scholar in the Jewish hierarchy—defines an important feature of text-centeredness. Such expertise may become the main source of authority, and then priests and prophets are replaced by scholars. The leading role of the scholar constituted a revolutionary, postbiblical conception of religious authority within Judaism, challenging other conceptions.<sup>25</sup>

What Halbertal apparently misses here is the extent to which the revolution was not only in the transfer of power from priests and prophets to scholars but also in the particular role that the concept of Oral Torah played in locating all religious authority in the hands of one community of scholars, the Rabbis, and one institutional locus, the House of Study (bet-hamidrash). This epistemic shift begins, to be sure, with the Mishnah at the end of the second cen-

<sup>23</sup> Lim, *Public Disputation*, 227.

<sup>24</sup> Burrus, "Fathering the Word."

<sup>25</sup> Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge: Harvard University Press, 1997), 6.

tury,<sup>26</sup> just as the process that Athanasius and his Nicaea were to bring to fruition began, in some sense, with Justin and Irenaeus in the second century as well. Athanasius's "ἐκ Πατέρων εἰς Πατέρα" ("from Father to Father")<sup>27</sup> is strongly reminiscent of the Mishnah's succession list which represents the Oral Torah received by Moses on Sinai and codified by the Fathers in the mishnaic tractate called "Fathers" at "Yavneh."<sup>28</sup> But just as Christian orthodoxy received its definitive formation in the fourth century, so too the social form, i.e., the heteroglossic regime of power/knowledge of rabbinic orthodox Judaism, was formulated much later than the Mishnah. The codified dissensus, the "agreement to disagree," was as efficient a mode of power for the achievement of "consensual orthodoxy" for rabbinic Judaism as were the creeds and councils of orthodox Christianity. Yavneh and Nicaea can thus also be said to represent a twin-birth of orthodoxies.<sup>29</sup> Late rabbinic literature more than once produces self-descriptions in which the notion of irresolvable controversy over central issues is made an emblem of the pattern of Jewish truth. This is occasionally thematized within the texts in the form of divine approbation of the undecidability of a given point of interpretation or law.

The following text, from circa fourth-century Babylonia, is both scandalous and revealing. The text explores a biblical locus: "And his concubine went astray" (Judges 19:2). Two Rabbis, in interpret-

<sup>26</sup> Boyarin, "Reforming Judaism."

<sup>27</sup> *De decr.* 27, cited in Burrus, "Fathering the Word."

<sup>28</sup> It would be interesting to attempt to determine when the Tractate is first called *Avot*, "Fathers," particularly in respect to the fact that it was Athanasius who seemingly first referred to the bishops of Nicaea as "Fathers." The comparison between Athanasius's language and the idea of Tractate Avot is, at any rate, compelling:

Since those who attended Nicaea are in a conspicuous sense the transmitters and agents of the divine "tradition" or "παράδοσις," that is, of the "teaching" or "διδασκαλία" that is handed down from "Fathers to Fathers," they themselves are designated with this title, which is surely the highest that Athanasius has to bestow. And the more conscious Athanasius is of the fact that the Nicene faith in its positive formulation is the divine "παράδοσις" the more exclusively are the council's attendees designated by this title.

Hermann Josef Sieben, *Die Konzilsidee der alten Kirche* (Paderborn, Munich, Vienna, Zurich: Ferdinand Schöningh, 1979), 39, Burrus's translation ("Fathering the Word"). For a reading of the "Fathers" text, see Boyarin, "Reforming Judaism."

<sup>29</sup> With "Esau," Nicaea, the slightly elder of the two. The figure is drawn from Alan F. Segal, *Rebecca's Children: Judaism and Christianity in the Roman World* (Cambridge: Harvard University Press, 1986).

ing the story, try to discover what caused the concubine's husband's anger that had driven her out of the house:

Rabbi Eviathar said, "He found a fly on her." Rabbi Yonathan said, "He found a hair on her."

Rabbi Eviathar met up with Elijah [the prophet], and said to him, "What is the Holy Blessed One up to?"

He said, "He is studying [the story] of the concubine of Gibeah."

"And what does He say about it?"

He said to him: "[God says,] 'Eviathar my son says thus, and Yonathan my son says thus.'"

He [Eviathar] said to him [Elijah], "God forbend: Is there doubt before Heaven?"

He [Elijah] said to him, "These and these are the words of the Living God. He found a fly and did not get angry; he found a hair and got angry."

Rav Yehuda said: "The fly was in the cup, and the hair was in that place [her vulva]. The fly is disgusting, but the hair is dangerous."<sup>30</sup>

Rav Hisda said: "A man should never produce fear within his household, for behold the concubine of Gibeah; her husband produced fear in the household, and there was a massacre of tens of thousands in Israel."<sup>31</sup>

This rabbinic narrative deals with one of the most horrifying of biblical stories, the so-called "Concubine of Gibeah" in Judges 19–21. In this story a wife or concubine leaves her husband and is eventually violated and murdered. The story is a savage narrative of the most appalling violence toward a woman. It results in civil war, but for the Rabbis it conveys the domestic moral that a husband should not display anger towards his wife, for if he does, she may run away, with the appalling personal and public consequences of the story of Judges 19. The Rabbis debate what the fault was that the husband found with her that made him so angry that the concubine was afraid and ran away from him. According to one of the Rabbis, he had found an un-

<sup>30</sup> An interesting bit of sex lore is alluded to here. Women were apparently expected to shave their pudenda, and the presence of even one hair was understood to represent a danger of cutting off of the penis during intercourse (cf. Rashi ad loc., referring to Deut. 23:2).

<sup>31</sup> BT Gittin 6b.

wanted fly, and according to the other, he had found an unwanted hair. The remarkable thing about the rabbinic text is that it seemingly encodes radical undecidability in the biblical narrative itself.

Let us follow this process with the text. In the first move, when Elijah, the mediator of divine knowledge, is asked what God himself has to say on the question that the Rabbis are debating, the text informs us that all he does is quote his "sons," the Rabbis: "Eviathar my son says thus, and Yonathan my son says thus." According to the Rabbis, even God, the author of the Book, can only say with certainty that there are various interpretative possibilities; he can only repeat the tradition of interpretation that is extant in the Bet-Hammidrash (rabbinic House of Study). As if in panic at its own suggestion that the text is inhabited by such radical undecidability that even God can only "teach the controversy" and not resolve it, the narrative then opts for harmonization of the two views: The husband found both fly and hair.

In the spaces among the original level of controversy, the level of the narrative of God's doubt, and then the level of the retraction of that narrative, we can read a little historical allegory of the history of rabbinic Judaism. At the first stage of the talmudic story, there is controversy; at the second stage, undecidability; at the third, harmonization. Stories such as these have been taken up in much contemporary writing on rabbinic Judaism as encoding either radical undecidability in the theoretical sense or radical pluralism in the social sense. No one, scholars suggest, can exercise control over interpretation according to the rabbinic system of midrash, for the Rabbis allegedly understood that no textual interpretation is ever definitive, even that of the Author himself.<sup>32</sup> Somewhat less lyrically, but with equal idealism, we sometimes find this structure described as a radical democratization of interpretation within the rabbinic polity.<sup>33</sup> Neither of these two constructions, however, pays attention

<sup>32</sup> Susan Handelman, "Fragments of the Rock: Contemporary Literary Theory and the Study of Rabbinic Texts—A Response to David Stern," *Prooftexts* 5 (1985): 73–95.

<sup>33</sup> This is no more a democratization, pace Halbertal (*People*, 7), than the medicalization of childbirth is, simply because "everyone" can become a gynecologist. Halbertal explicitly refers to the fact that all men (!) had theoretical access to the House of Study as "democratic," not noticing that the stringent controls which the institution placed on interpretation, legitimate and illegitimate, represent an even more general set of exclusions of all who do not accept the rabbinic program than just the exclusion of women, which he duly and fully remarks.

to the fact that interpretative authority is located exclusively in the rabbinic Study House. Far from representing a utopian moment of ludic interpretative freedom, on my construction, the project of a hermeneutic parable like this one is rather to advance the rabbinic program of exclusive control over the religious lives of Jews and to secure the interpretation of the Torah for their institution, the House of Study, in whose controversies all truth and authority lie.<sup>34</sup> The key, I think, to a more nuanced and differentiated description of rabbinic Judaism than the relatively unheven ones offered so far has been provided not by a historian, but by a literary critic, David Stern, who discussed the vaunted "undecidability" (or protodeconstruction) of language promulgated in midrash, the "derridean" interpretation of rabbinic culture.<sup>35</sup> Stern's close reading of rabbinic texts suggests that their pluralism, even such a limited and internal pluralism, is a product not of the rabbinic schools or teachers but of later redactors of rabbinic texts.

In a famous derasha (rabbinic sermon) analyzed by Stern, the problem of polysemy is explicitly confronted in social terms of univocity (of the community, not the text!) and difference:

[What does the phrase] "the masters of assemblies" [mean]? These are the disciples of the wise, who sit in assemblies and study the Torah, some pronouncing unclean and others pronouncing clean, some prohibiting and others permitting, some declaring unfit and others declaring fit. Should a man say: "Since some pronounce unclean and others pronounce clean, some prohibit and others permit, some declare unfit and others declare fit how then shall I learn Torah"? Therefore Scripture says: All of them "were given by one shepherd." One God gave them, one leader (i.e. Moses) proclaimed them from the mouth of the Lord of all creation, blessed be He, as it is written, "And God spoke *all* these words" [Exod. 20:1; my italics].

<sup>34</sup> I should add, perhaps, that I mean by this to ascribe nothing sinister to the Rabbis, although the effects on some Jews (especially women) might well have been very deleterious, as the subject-matter chosen for this hermeneutic parable itself might hint. It is not inapposite for me to mention that I am one of the scholars whose former opinions I am revising here; cf. my *Intertextuality and the Reading of Midrash* (Bloomington: Indiana University Press, 1990), especially 33–37.

<sup>35</sup> David Stern, *Midrash and Theory: Ancient Jewish Exegesis and Contemporary Literary Studies*, Rethinking Theory (Evanston: Northwestern University Press, 1996), 15–38; David Stern, "Midrash and Indeterminacy," *Critical Inquiry* 15.1 (Autumn 1988): 132–62.

Therefore make your ear like the hopper and acquire a perceptive heart to understand the words of those who pronounce unclean and the words of those who pronounce clean, the words of those who prohibit and the words of those who permit, the words of those who declare unfit and the words of those who declare fit.<sup>36</sup>

Stern notes that, though the student despairs at the possibility of studying Torah owing to the multiplicity of interpretations, there is really no cause for such despondency, for "although the sages' opinions may contradict each other, they all are part of Torah, part of a single revelation."<sup>37</sup> This notion is then correlated with the already-quoted famous talmudic statement that a heavenly oracle declared, with respect to the contradictory opinions of the two "Houses," of Hillel and of Shammai, that "these *and* these are the words of the Living God."

The conclusion of such a discourse is powerful and tendentious support for rabbinic hegemony:

[T]he citation of multiple interpretations in midrash is an attempt to represent in textual terms an idealized academy of Rabbinic tradition where all the opinions of the sages are recorded equally as part of a single divine conversation. Opinions that in human discourse may appear as contradictory or mutually exclusive are raised to the state of paradox once traced to their common source in the speech of the divine author.

Stern, however, argues that this theology of language was not the operative ideology within the House of Study itself but is a purely liter-

<sup>36</sup> BT Hagiga 3a–b, trans. Stern, *Midrash and Theory*, 19.

<sup>37</sup> Stern, *ibid.*, 20. That this fear was not an idle one can be shown from the following quotation from the anti-rabbinic Karaite text:

I have set the six divisions of the Mishna before me. And I looked at them carefully with mine eyes. And I saw that they are very contradictory in content. This one mishnaic scholar declares a thing to be forbidden to the people of Israel, while that one declares it to be permitted. My thoughts therefore answer me, and most of my reflections declare unto me, that there is in it no Law of logic nor the Law of Moses the Wise.

Leon Nemoy, *Karaite Anthology, Excerpts from the Early Literature*, Yale Judaica 7 (New Haven: Yale University Press, 1961), 71; and see Halbertal, *People*, 46. Although this early medieval tradition is surely later than our talmudic text, it eloquently indicates the sort of polemic (and not merely psychomachia) that our text might be responding to.



ary phenomenon. Nor does it represent the social reality of human language use; it is a theological representation of the divine language. It is here, at the level of theology of language encoded in the redaction of the rabbinic texts themselves, in their very textuality and not in the practice of the House of Study, that the derridean moment is produced:

This representation, however, is a literary artifact. . . . The phenomenon we witness in multiple interpretation, in other words, is in actuality a literary impression given by the redaction of Rabbinic literature, the result of a common choice made by its anonymous editors to preserve minority as well as majority opinions, the varieties of traditions rather than single versions.<sup>38</sup>

Stern introduces an important distinction here. In the literary redactional textuality of the documents, the reader is implicitly informed that what is in human eyes a contradiction is in God's eyes a unity. But this "unity" does not represent, according to Stern, any historical reality. Rabbinic literature records bitter and sometimes violent strife between the various groups that constituted "Judaism" after the destruction of the Temple, even if we leave out of the picture the excluded minim (heretics): gnostics, Sadducees, and Jewish-Christians. As he emphasizes, in the century following the founding of Yavneh, far from a "grand coalition," we find rather a scene of constant combat "to consolidate Palestinian Jewry under the form of the specific religious vision that eventually came to be known as Rabbinic Judaism. . . . The task of unification was not accomplished easily, indeed, the endemic divisiveness that was a source of tragic factionalism in Palestinian Judaism as well as a source of its individualism and creativity was never entirely eradicated."<sup>39</sup> Stern shows compellingly that the very narrative context within which the above homily is recited in the Babylonian Talmud refers not to a world of idyllic pluralism but rather to one in which "conflict [is] a malignant presence and its resolution [is] the violent exercise of power, as indeed it sometimes was in Rabbinic society."<sup>40</sup> The redac-

<sup>38</sup> Stern, *ibid.*, 33.

<sup>39</sup> *Ibid.*, 34.

<sup>40</sup> *Ibid.*, 37.

tors of the rabbinic texts chose, however, to enshrine multiple views as being of equal validity:

In making this choice, the Rabbinic editors did not act without precedent; indeed, they followed in a venerable tradition of early Jewish literature that included such other sacred "compromise texts" as the Pentateuch, in which separate documentary sources are combined into a single composition as though their agenda and ideologies were compatible (which eventually they are made out to be). . . . *The difference between these earlier texts and the Rabbinic midrashim is simply that in the latter, editorial policy was elevated to the order of exegetical ideology, to the conception of polysemy as a trait of sacred Scripture. Here, for the first time, editorial pluralism has become a condition of meaning.*<sup>41</sup>

Stern draws a distinction between earlier Palestinian and rabbinic literature by indicating that it is only within the latter that we find polysemy not only enacted but thematized, lifted up, as it were, as a theological principle.

I would argue, however, that we have to separate out diachronic layers (and not merely "traditions" and "redactions") within rabbinic literature. The production of what Stern calls "sacred 'compromise texts,'" can be located in other Palestinian Jewish texts (including the Mishnah, with its harmonization of the schools of Rabban Gamaliel and Rabbi Yohanan ben Zakkai,<sup>42</sup> and the Gospels as collected in the New Testament Canon). But the "elevation [of editorial policy] to the order of exegetical ideology," indeed, "the conception of polysemy as a trait of sacred Scripture" seems peculiarly a characteristic of the Babylonian Talmud, as witnessed by the

<sup>41</sup> *Ibid.*, 34, emphasis added.

<sup>42</sup> Boyarin, "Reforming Judaism." Halbertal (*People*, 45) points out that in another respect,

The Mishnah, edited at the end of the second century by Rabbi Yehudah the Prince, is the first canon of its kind known to us, a canon that transmits the tradition in the form of controversy: the House (school) of Shammai said one thing, the House of Hillel said another, and so on. . . . By contrast, in the earlier canon, the Bible, debates are either repressed, concealed, or harmonized.

While I think that Halbertal's point is well taken, and does reveal how the Mishnah lies as it "ought" to at the rudimentary beginning of the textual practice that would culminate in the Babylonian Talmud, we cannot ignore also the ways that the Mishnah functions also precisely as the Bible does, e.g., in this very tacit merger between the *diadochoi* of what were clearly rival schools, the Gamlielites (= Pharisees) and the Yohannes (= Scribes).

very texts that Stern analyzes.<sup>43</sup> The distinction between these two categories is that while in the earlier Palestinian texts, incompatible views are set side by side, as in the Pentateuch itself, in the Babylonian Talmud it is a matter of principle that all the views, however incompatible, are *right*—"all have been given by the same shepherd"—as long, of course, as they are expressed by Rabbis.

Another way that I might articulate this difference would be to say that if for the earlier Palestinian Rabbis undecidability seems to be the product of the limitations of human knowing, for the Talmuds, and especially the Babylonian in its late redactorial stage, it would seem to be a condition of language itself, so that the idea that even God cannot know the truth of the text can at least be entertained—or alternatively, that our very ways of posing questions about meaning are irrelevant for the divine Logos. At the same time, the borders of the social body in whose hands it is given to determine the parameters of radical doubt—the walls of the House of Study, as it were—are being constructed and firmly shored up, as we shall see, through a process of "domestication" of figures who might otherwise be found outside these walls, figures such as Rabbi Eli'ezer or the early pietists.<sup>44</sup>

What I am proposing, then, is a foucauldian genealogy of a "deridean" episteme, for the textual practice of the redactors of the Babylonian Talmud was very effective. Owing to the overwhelming impact of the Babylonian Talmud, this pattern of truth becomes the intellectual legacy of medieval rabbinic Judaism everywhere. The nexus between textual habits of Palestinian Jews and the canonized, theologically sanctioned undecidability of the Babylonian Talmud, as symbolized by the legends of "Yavneh," is analogous to the hy-

<sup>43</sup> Stern's "polysemy" is not precise here; we need to distinguish between mere multiplicity of meaning, as in "The Torah has seventy faces," a concept found early and in Palestine, and the much more radical theologoumenon of the Babylonian Talmud that even mutually exclusive and contradictory views are all part of God's speech. In an expanded version of this essay, I will deal more extensively, *deo volente*, with the context of this passage as part of the legend of Yavneh in which it is set in the Talmud. For the nonce, it is important merely to note that that is its context there.

<sup>44</sup> William Scott Green, "Palestinian Holy Men: Charismatic Leadership and Roman Tradition," in *Principat: Religion (Judentum: Palästinisches Judentum)*, ed. Wolfgang Haase, Aufstieg und Niedergang der Römischen Welt 19.2 (Berlin: Walter de Gruyter, 1979), 619–47.

pothesized causal connection between Athanasius's production of a textual *habitus* and the textual practices of the "consensual" orthodoxy of the late fourth and fifth centuries, as symbolized by the legends of "Nicaea." What is needed here—and will be forthcoming in future chapters of my book—is a study of the subtle interanimations between the oral and the written, the documentary and the legendary, in the invention of ecclesial Christian and rabbinic Jewish orthodoxies.

It should be clear by now that, far from representing a democratic dispersal of power, the narrative of rabbinic heteroglossia is, on my view, a technique for the concentration of power in the hands of the Rabbis and their characteristic institution, the House of Study. Rabbinic Judaism is, on this conjecture, the end-product of an extended history of struggle for hegemony by a particular version of religious authority that locates it exclusively in the hands of a male elite devoted primarily to the study of Torah, that is, the preservation and development of their particular traditions and modes of interpretation. Paying close attention to these narratives will help us uncover the "significance[s]" of Yavneh. This history can be read, as it were, between the lines of various talmudic narratives. It is no accident, I suggest, that this struggle is enacted in no small measure as a contest for control over sexuality and at that a struggle between the Rabbis, a.k.a. the Torah, and women:<sup>45</sup>

Rabbi Yoḥanan the son of Dahavai said: "The Ministering Angels told me: 'Why are there lame children? Because they [their fathers] turn over the tables [have intercourse with their wives on top]. Why are there dumb children? Because they kiss that place. Why are there deaf children? Because they talk during intercourse. Why are there blind children? Because they look at that place' . . ."

Rabbi Yoḥanan said: "These are the words of Rabbi Yoḥanan the son of Dahavai, but the Sages say, 'Anything that a man wishes to do [together] with his wife, he may do, analogously to meat that comes from the shop. If he wishes to eat it with salt, he may; roasted, he may; boiled, he may; braised, he may. And similarly fish from the store of the fisherman.'"

<sup>45</sup> All the following is BT Nedarim 20 a–b.

Rabbi Yoḥanan—not the same as Rabbi Yoḥanan the son of Dahavai—dissents from the halakha that the angels had communicated through that former Yoḥanan, and next:

Amemar said: "Who are the Ministering Angels? The Rabbis, for if you say literally, *Ministering Angels*, then how did Rabbi Yoḥanan say that the law is not like Rabbi Yoḥanan the son of Dahavai? After all, angels certainly know embryology!"

Amemar cannot believe that Rabbi Yoḥanan would dissent from truly prophetic authority and has reinterpreted that authority, therefore, as being a metaphorical representation of "normal" rabbinic authority. So then:

And why does he call them "Ministering Angels"? Because they are excellent like the Ministering Angels.

Through his reinterpretation of the "angels" as a metaphorical representation of "our Rabbis," Amemar transforms the conflict in this text from a contest over power between different forms of authority, different modes of power/knowledge, into a normal rabbinic controversy within the same kind of episteme, the realm of Torah, the Rabbis themselves. He does this by converting the "angels" of the earlier text into ordinary Rabbis. The use of "the Sages" and "the Rabbis" here marks this subtle shift, since both designate the same group. It should be emphasized, however, that Amemar only renders explicit what was implicit in Rabbi Yoḥanan's dissent, wherein the latter already transformed the angelic knowledge into an ordinary rabbinic opinion of Rabbi ben Dahavai.

The narrative continues with "actual cases," precedents that both illustrate and buttress the point made in the preceding section and indicate, on my reading, one of the important matrices of this socio-cultural conflict:

A certain woman came before Rabbi, and said to him: "Rabbi: I set him a table, and he turned it over." He said to her: "My daughter, The Torah has permitted you; and I, what can I do for you?"

A certain woman came before Rav. She said to him: "Rabbi, I set him the table, and he turned it over." He said: "How is the case different from fish?"

Quite understandably, this has usually been read by scholars as a sort of rudimentary rabbinic *scientia sexualis*, or at least, *ars erotica*, and one, that is, moreover, particularly obnoxious in its disregard for women's sexual rights over their own bodies. At first glance, it seems as if a wife is being compared to a fish. I shall not be disregarding this element if, at the same time, I suggest that there are even more compelling political forces at work, and that the text represents part of a rabbinic project of take-over and disenfranchisement of all sources of traditional religious authority among Jews, including the traditional authority of women's traditions. It is thus not an accident, I would suggest, that so many of these crucial narratives of struggle over power and authority are connected with sexuality, because they are implicated in struggles against sites of women's traditional power/knowledge. The struggle for rabbinic authority is, I suggest, in part, a struggle for control of women's bodies and sexuality.

Now we must engage in some lexicography. The term "turning the tables" can most likely be identified as vaginal intercourse with the woman on top.<sup>46</sup> Most interpretations of the narratives of the two women who come to the Rabbis complaining of having set the table which the husband overturned and the Rabbi's refusal to intervene understand this as rabbinically sanctioned marital sexual abuse.<sup>47</sup> The full context, however, suggests another interpretation. This is, I suggest, a text primarily about the acquisition of rab-

<sup>46</sup> In the past scholars, including me, have wavered between this interpretation and identifying it as anal or dorsal vaginal intercourse. The standard lexica understand it as anal intercourse, although traditional commentaries do not. There is no philological or contextual support for that interpretation, however, and, in the context of our text, where it is understood to lead to conception, anal intercourse can hardly be comprehended. There is, moreover, another very common term for the latter. While it is possible to see why "turning the tables" could metaphorically suggest anal penetration i.e., turning the woman who has "set the table" over, however as an image of the bottom becoming top it also makes great sense. Indeed, in English we use this very metaphor to refer to a reversal of dominance, even, moreover, in sexual contexts. See also Michael L. Satlow, *Tasting the Dish: Rabbinic Rhetorics of Sexuality*, Brown Judaic Studies 303 (Atlanta: Scholars Press, 1995), 239, and especially Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources* (New York: Schocken Books, 1984), 137–39. Biale also compares BT Gitin 70a, where it is stated that "she above and he below is the way of brazenness."

<sup>47</sup> Typical, if judicious in his formulation, is Satlow, who writes, "From this passage, it is again not clear what activity is being performed. Clearly, though, these women do not like it," Satlow, *Tasting the Dish*, 240.

binic power and their struggle with other forms of Jewish authority, and not principally "about" sexuality at all. According to Rabbi Yohanan the son of Dahavai, one of the sexual practices proscribed by the "angels" is precisely the activity that the two women claim their husbands desired. Moreover, according to this "angelic" eugenics, intercourse in this position produces damaged children. My assumption is that this nascent angelic embryology represents a form of popular Jewish pietistic practice of sexual hygiene, one that would have been the province of women as well as men. The complaint of these wives is not that their husbands wish to engage in a painful or distasteful form of sex but that they wish to engage in intercourse that the old mores of the Jews considered improper and dangerous to the fetus. The responses of Rabbi and Rav do not, therefore, counsel submission to abuse, in order to indicate that the wife is either the husband's sexual property or a "consumable," but rather assert the sole authority of "Torah" over any other kind of religious leadership, whether angelic or traditional, including traditional women's power/knowledge.<sup>48</sup> If the Torah does

<sup>48</sup> This interpretation is supported by the continuation of the Nedarim text:

*And I will remove from you the rebellious ones and the criminals* [Ezekiel 20:39].

Said Rabbi Levi: "These are nine categories: Children of fright; children of rape; children of a despised woman; children of excommunication; children of exchange; children of strife; children of drunkenness; children of one whom he has divorced in his heart; children of mixture; children of an audacious wife."

Indeed? But did not Shēnuel the son of Nahmani say that Rabbi Yohanan said: "Any man whose wife approaches him sexually will have children such as were unknown even in the generation of Moses. . . ."

That refers to a case where she arouses him [but does not explicitly and verbally request sex].

It is hard to credit an interpretation of the text that leads us at one moment to assume that the Rabbis are saying that a wife has *no* control over sexual practice, and a few lines later indicates, using the same language of eugenics, that unless there is love and harmony between the couple their progeny will be rebellious criminals.

Furthermore, as indicated by my translation, the phraseology in Hebrew, "anything a man wishes to do [together] with his wife," does not suggest objectification of the wife's body. While in English, "do with" is ambiguous, in Hebrew, a different preposition would be used for the instrumental meaning. Finally, as Lisa Lampert has noted to me, part of the point is that women are responsible for cooking in that culture. Just as the "Torah" would make light of women's customs and taboos with respect to food that are not enshrined in the rabbinic high religious law, so also with respect to sex. Given the control that women had over the preparation of food, the Rabbis' statement to the wives is most plausibly read as: You have the fish, you are permitted to cook it in any fashion by the

not prohibit an activity, no other source of authority has any jurisdiction over Jewish behavior according to the Rabbis; neither angels nor popular, including women's, culture. The metaphor of the fish does not refer to the wife's body but to intercourse itself; since the Torah permits sex in general and does not prohibit any specific form of it, just as a kosher fish may be cooked in any fashion desired, therefore, women's and other popular traditions of interdiction are immaterial. You may have intercourse on top, says the male Rabbi to the woman, because the Torah, i.e., the Rabbis say that it is permitted, your women's customs notwithstanding. The irony is, of course, palpable and the cloaking of control as license conjures up Foucault, as well as feminist critiques of the "sexual revolution."<sup>49</sup> Women on top in intercourse, but not in discourse.

The interpretation of "Torah" in this context as referring to rabbinic power is supported and specified by another puzzling talmudic text having to do in part with sexuality:

We have learnt in a baraita Rabbi 'Aqiva said: "Once I followed Rabbi Yehoshua' into the privy and I learned from him three things. I learned that one does not eliminate standing but sitting; I learned that one does not eliminate facing east to west

Torah, and not: You are the fish; your husband is permitted to cook it in any fashion according to the Torah. Lampert remarks (in a letter, April 1999):

The talmudic discussion of the level of intimacy implied by wives serving food and drink and Bynum's arguments about food preparation as a key site of control for women seem to come into play here. The erotic and food could be linked or at the very least, they are both, to some degree, under women's control. I think just remembering that these rabbis probably were not cooking for themselves helps me to see your point much more clearly, since I do think one's first impulse, given the feminist focus on the objectification of women's bodies, is to want to see a parallel between the wife and the meat, which leaves out the importance of what women quite often do control in a culture, the food.

My point here, I would emphasize, is surely not to "defend" the Rabbis in any sense but to arrive at a more exact interpretation of the regime of power/knowledge that they are setting up here, and it does not, I remain convinced, operate by ceding power over women's bodies to individual non-rabbinic men but by retaining all such power in the hands of the Rabbis themselves (the "Torah"), thus maintaining control over the non-rabbinic husbands as well as the wives and abrogating the authority of traditional sexual mores of both men and women.

<sup>49</sup> This interpretation is a revision, if not quite a *retractio*, of my reading in *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley and Los Angeles: University of California Press, 1993), 109-20.

but north to south, and I learned that one does not wipe with the right hand but with the left."

Ben Azzai said to him: "Were you indeed so brazen-faced with your teacher!?"

He said to him: "It is Torah and I must learn it."

We have learnt in a baraita Ben 'Azzai said: "Once I followed Rabbi 'Aqiva into the privy and I learned from him three things. I learned that one does not eliminate facing east to west but north to south, I learned that one does not eliminate standing but sitting; and I learned that one does not wipe with the right hand but with the left."

Rabbi Yehudah said to him: "Were you indeed so brazen-faced with your teacher!?"

He said to him: "It is Torah and I must learn it."

Rav Kahana entered and lay down beneath the bed of Rav. He heard that he was talking and laughing and having sexual intercourse. He said, "The mouth of Abba [Rav's name] appears as if it has never tasted this dish [i.e., has never had intercourse (Rashi)]." He [Rav] said to him, "Kahana, get out; this is not proper behavior!" He [Kahana] said to him, "It is Torah, and I must learn it."<sup>50</sup>

To my mind, the crucial moment in this story is the three Rabbis' "defense" of their strange behavior in the statement that there is nothing that escapes from the purview of Torah. Torah here is not the written word, not Scripture, but the behavior of the Rabbi/master. The rabbinic project is to subsume everything under the control of Torah, that is, under the lineage of spiritual fathers and sons of which the rabbinic tradition and its *paradosis* consists, a married version of the celibate paternal relations of bishop to bishop in the contemporaneous Christian polity.<sup>51</sup> This interpretation is significantly strengthened by the doubling of the first sequence. Surely Ben 'Azzai could have learned what he had to learn via the report of his teacher Rabbi 'Aqiva of his observation of Rabbi Yehoshua's practice. Why, then, does the text insist that Ben 'Azzai embarrassed his teacher in the same way? By these means, the text inculcates the motif that Torah involves observing the behavior of the Master as

<sup>50</sup> Berakhot 62a.

<sup>51</sup> Burrus, "Fathering the Word." For the rabbinic version, see Boyarin, *Carnal Israel*, 205.

well, and therefore, can only be acquired within the confines of the rabbinic institution. The very contradictions between such an idolized homosociality and heterosexual relations are thematized in this story as well.

This interpretation, however, does not render the text any less "sexist"; in fact, if anything it is more male-dominant in its implications, precisely because of the power/knowledge nexus that it institutes, one in which all control is arrogated to the "Torah," i.e., to the community of rabbinic scholars. Even if we do not have here, on my reading, a tale of cruel indifference to sexual abuse of wives by husbands, we have an even more powerful grab by a male elite of control of all traditional and religious knowledge and power. This is accordingly one of the founding moments of rabbinic Judaism, defined as a Judaism in which a group called Rabbis are the only religious virtuosi.

One could read the later Rabbi Yirmiah's intervention (interpreting the angels as rabbis) as a further step in the same process of the denial of all power/knowledge outside of the rabbinic collective. The issue here is finally, not what kind of sex Jews will engage in but who gets to decide: angelic (i.e., mantic) authorities, women's tradition, or the "Torah" (the Rabbis). This seems to me a plausible construal of the text in that it renders the actual "cases" illustrations of the principle articulated by Rabbi Yoḥanan, and that persona together with Rabbi and Rav are surely central figures in the narrative of the rabbinic rise to domination. Deploying in this text precisely these three crucial culture heroes in the struggle against alternative sources of authority indicates the centrality of the narrative here encoded in telling the story of the rise of the rabbinic episteme. Nothing I am saying here, of course, diminishes the salience of the fact that here, as so often,<sup>52</sup> this battle between men for power is being carried out across the discursive bodies of women. The story of the concubine of Gibeah is, perhaps, then not so inept a figure for this struggle, since that story itself within the biblical context is also a

<sup>52</sup> See on this Virginia Burrus, "The Heretical Woman as Symbol in Alexander. Athanasius, Epiphanius, and Jerome," *Harvard Theological Review* 84 (1991): 229-48; Kate Cooper, "Insinuations of Womanly Influence: An Aspect of the Christianization of the Roman Aristocracy," *Journal of Roman Studies* 82 (1992): 150-64.

narrative of shifting modes of authority played out across the body of a woman.<sup>53</sup>

### The Rabbinization of Eli'ezer

The intervention of Rabbi Yirmiah provides a significant connection to another well-known Babylonian talmudic narrative that can be read as a figure of the two Yavnehs: a first stage in which rabbinic authority was produced through acts of exclusion not entirely dissimilar from the heresiology of contemporaneous Christianity and then a second stage of self-fashioning of rabbinic culture itself as one that permitted and even celebrated diversity within its borders. My next text is a fictionalized or legendary biography of one of the central figures of the Yavneh period and the Yavneh events, Rabbi Eli'ezer the Great. The Babylonian Talmud tells an elaborate story of Rabbi Eli'ezer's exclusion from the community of the Rabbis over an issue of authority.<sup>54</sup> Rabbi Eli'ezer refused to accept the will of the sages in a halakhic matter; he was cursed, sentenced to complete isolation, and removed from the rabbinic and even the Jewish community for this relatively minor malfeasance. I suggest that rather

<sup>53</sup> See Mieke Bal, *Death & Dissymmetry: The Politics of Coherence in the Book of Judges*, Chicago Studies in the History of Judaism (Chicago: University of Chicago Press, 1988). In a later chapter of the present research, I plan to do a more thoroughgoing analysis of the role of gender and sexuality in the production of rabbinic authority per se and thus explain why so many narratives of the construction of authority and power involve sexuality in their thematic matter. Indeed, the story of Rabbi Eviathar is cited in the Talmud in order to buttress his opinion on a matter of divorce law. It strains the bounds of credulity to imagine that this is mere accident.

<sup>54</sup> There is an important parallel in the Palestinian Talmud which shows the apparent "raw materials" of tradition from which the Babylonian story was made. The Palestinian version is either missing entirely or much less emphasizes the themes that I am highlighting in my reading of the Babylonian text. In a longer version of this discussion, I will treat these differences in detail and argue that they strongly support the construction offered here. See meanwhile Neusner, *Eli'ezer Ben Hyrcanus: The Tradition and the Man*, 2:411–16. For the Palestinian version of the excommunication story, see Palestinian Talmud Mo'ed Qatan 3:1, 81 c–d. As pointed out by Neusner, this Palestinian text is "the fragments of a story before they have been put together into a smooth and coherent account" (Neusner, *Eli'ezer Ben Hyrcanus*, 1:425). There are several stories of Rabbi Eli'ezer's death preserved in rabbinic literature. The only one that makes explicit reference to the excommunication tradition is the Babylonian Talmud's, although the closest parallel version to it in the Palestinian Talmud ambiguously alludes to it. The PT story is found at Shabbat 2:7, 5b.

than the point of halakhic disagreement, in this narrative it was instead the manner of Rabbi Eli'ezer's self-authorization, via quasi-prophetic or magical means, that so enraged the Rabbis<sup>55</sup>:

On that day, Rabbi Eli'ezer used every imaginable argument, but they did not accept it from him. He said: "If the law is as I say, this carob will prove it." The carob was uprooted from its place one hundred feet. Some report four hundred feet. They said to him: "One does not quote a carob as proof. . . ." A voice came from heaven and announced: "The law is in accordance with the view of Rabbi Eli'ezer." Rabbi Yehoshua<sup>c</sup> stood on his feet and said "it [the Torah] is not in heaven."<sup>56</sup>

On the original halakhic question, Rabbi Eli'ezer initially tried to support his position using the "normal" rabbinic modes of rational argument, the very modes of argument (*lēšuvot*) which might be said to define rabbinic rationality. When that failed, however, he didn't accept defeat but rather turned to another source of authority: miracles and heavenly oracles, a form of authority that, in my view, it was the essence of rabbinic Judaism to contest.<sup>57</sup>

As in the story of Rabbi Yoḥanan the son of Dahavai (above), it is not so much the content of Rabbi Eli'ezer's dissent that is anathematized but his appeal to mantic and even prophetic modes of authority, while the Rabbis are struggling to establish their own sole control via the institution of Torah. Rabbi Yehoshua's statement, frequently taken as an instance of a sort of proto-deconstruction, in fact, once again, in this Babylonian version, represents an instance of precisely that complete rabbinic take-over (not, of course, a hostile one) of religious life and practice. Not even God, not even the angels can compete with the Rabbis and their Torah. The Torah is

<sup>55</sup> Christine Trevett has remarked analogously: "The matters at issue between the earliest New Prophets and the developing Catholic tradition . . . concerned not heresy but *authority*." Christine Trevett, "Gender, Authority and Church History: A Case Study of Montanism," *Feminist Theology* 17 (January 1998): 14.

<sup>56</sup> BT Baba Metsi'a 59a–b.

<sup>57</sup> To forestall any superfluous demur based on misunderstanding, I am *not* claiming that the Rabbis were more rational than their opponents among the Jewish leaders. Their own modes of authorizing themselves, notably divination through the reading of Torah, as in some forms of midrash, are hardly from our perspective less magical than divination via carob trees, but this is for another day. The point is that their own divination was thematized as "Oral Torah" as well but not the divinatory methods of opponents or dissenters.

no longer in heaven; it is on earth in the possession of the rabbinic institution. As Rabbi Yirmiah glosses Rabbi Yehoshua's statement: "Since the Torah has been given on Mt. Sinai, we no longer listen to heavenly voices, for you have already written in the Torah: 'Incline after the majority' [Exodus 23:2]." Rabbinic Judaism represents a particular episteme of power/knowledge, and the shift into rabbinic Judaism is analogous in structure to the transfer of authority over women's health from midwives and female practitioners to male doctors in the Hellenistic, high-medieval, and Victorian periods; it is a transfer of authority and of control over discourse.

In this story, as in the previous one of the undecided interpretation of the Gibeah narrative, we find Rabbi Yirmiah as the final arbiter: this suggests a connection between the two tales and a possible approximate dating (or at least a terminus post quem) for these discursive developments. In both we find the same theme, namely an explicit inscription of the victory of the Rabbis over the power/knowledge of God himself, as sanctioned by the mediating figure of Elijah the Prophet, a divine abdication of authority in favor of the House of Study and the Oral Torah of the Rabbis:

Rabbi Natan met Elijah [the Prophet] and asked him, "What was the Holy Blessed One doing at that hour?" He said to him, "He was laughing and saying, 'My sons have defeated me; my sons have defeated me.'"<sup>58</sup>

It is hard to imagine a more unambiguous and audacious account of an epistemic shift than this one. As in the story of Rabbi Eviathar above, a divine voice is made the guarantor that divine voices have nothing to say in the religious lives of Jews anymore; only the Rabbis, once more designed the sons of God, and their Torah serve that function. Only the majority decision of the Rabbis has power and authority, and only their knowledge is relevant.

The consequences for dissent from such a majority could be quite horrifying, for the Rabbis developed shunning and exclusion as powerful means of control. The following case is illuminating. According to the Mishnah 'Eduyot 5:6, Rabbi 'Aqabya ben Mehalelel was excommunicated and his coffin was stoned after his death,

<sup>58</sup> BT Baba Metsi'a 59a-b.

owing to a disagreement on whether or not female freed slaves were subject to the ritual of the errant wife (*Soṭah*) or not; once more a struggle for male power is fought over the body of a woman and her sexuality. The stoning of the coffin of Rabbi 'Aqabya ben Mehalelel, whether historically "true" or merely legendary, is surely more than a mere disciplinary measure but rather it related dire exclusion from the community.<sup>59</sup>

The consequences for Rabbi Eli'ezer were nearly as dire as those for 'Aqabya. According to the Talmud's version of this story, Rabbi Eli'ezer was then punished by an extremely harsh version of excommunication, a highly unusual practice in cases of halakhic disagreement: "On that day, all the objects that Rabbi Eli'ezer had declared clean were brought and burned in fire. Then they took a vote and excommunicated him." The Babylonian Talmud here preserves a memory, I would suggest, that Eli'ezer was not an "orthodox" member of the rabbinic party or even a tolerated dissident. Rabbi Eli'ezer, to put a point on it, is treated as a heretic.<sup>60</sup>

It has been related: On that day, they took all of the things that Rabbi Eli'ezer declared pure and declared them polluted. And they took a vote about him and "blessed him" [*a euphemism for dire curse and anathema*]!

They said: "Who will go tell him?"

<sup>59</sup> This represents precisely the parallel of the "false prophet" heresiology documented by Alain Le Boulluec in Justin and plausibly derived by Justin according to Le Boulluec from an older Jewish model; see Alain Le Boulluec, *La notion d'hérésie dans la littérature grecque II-IIIème siècles* (Paris: Études Augustiniennes, 1985), 65 and 33-34. "For just as there were also false prophets in the time of the holy prophets that were among you, so there are among us also many false teachers"; Justin, *Dialogus cum Tryphone* 82 (and *passim*), ed. Miroslav Marcovich, *Patristische Texte und Studien* 47 (Berlin: Walter de Gruyter, 1997), 212; trans. A. Lukyn Williams, *Justin Martyr: The Dialogue with Trypho*, *Translations of Christian Literature* (London: SPCK, 1930), 174. Indeed, as we learn from a tannaitic source in the Babylonian Talmud Sanhedrin 89b, the prescribed punishment (at least according to some authorities) for a false prophet is stoning, precisely the punishment meted out to 'Aqabya, suggesting that that new character, the Jewish heretic, just like his Christian compatriot, is indeed the genealogical scion of the false prophet who must be "utterly extirpated from your midst" (Deut. 13:6).

<sup>60</sup> Dina Stein, "Folklore Elements in Late Midrash: A Folkloristic Perspective on Pirkei de Rabbi Eliezer" (Ph.D. dissertation, Hebrew University, 1998), 173-81, makes the point that Rabbi Eli'ezer is precisely the type of the internal other, the heretic, as opposed to the apostate who leaves the community entirely. (Stein's thesis is in Hebrew with English abstract.)

Rabbi Aqiva said, "I will go tell him, for if someone who is not blameless should go and tell him, he might destroy the entire world."

If someone less saintly than Rabbi Aqiva were to inform Rabbi Eli'ezer of his excommunication, the latter's powers of magic would be sufficient to destroy the entire world:

What did Rabbi Aqiva do? He wore black clothes, and wrapped himself in a black cloak [signs of mourning], and went and sat before [Rabbi Eli'ezer] at a distance of four cubits [thus signalling the latter's excommunication].

Rabbi Eli'ezer said to him: "Aqiva—what is different about this day?"

He said to him: "My teacher, it seems as if the members of the fellowship are dissociating from you."

He [Eli'ezer] also tore his clothes and removed his shoes, and slid down and sat on the earth [further signs of mourning]. Tears rolled out of his eyes, and the world suffered the loss of a third of the olive crop, a third of the wheat crop, and a third of the rye crop.

And there are those who say that even the dough in the hands of a woman was spoiled [through over-rising].

It is taught: It was so great that day that every place where Rabbi Eli'ezer's eyes fell was burned, and also Rabban Gamaliel was travelling in a ship. A mighty wave came to sink it. He said, "I believe that this is only because of Eli'ezer the son of Hircanos." He stood on his feet and said: "Master of the Universe, you know that everything I did was not for my own glory and not for the glory of my father's house, but for your glory, *in order that there would not be many controversies in Israel.*" And the sea rested from its fury.<sup>61</sup>

At this stage in the story we have a dramatic rendition of the conflicts of the early stages of the formation of rabbinic Judaism. Rabban Gamaliel says that he excommunicated Rabbi Eli'ezer with the most dire form of anathema, one that renders him as if a dead man, in order to protect Israel from controversy. In other words, the initial stages of the process that would lead to the vaunted "grand coalition" and anti-sectarianism of "Yavneh" involve the most extreme

<sup>61</sup> BT Baba Metsi'a 59a-b.

acts of exclusion, both of Eli'ezer and of 'Aqabya. Cohen seems to accept almost en bloc the terms of the rabbinic literature itself when he writes that "two categories of people could not be incorporated into the Yavnean coalition: those who insisted upon a sectarian self-identification, and those who refused to heed the will of the majority."

Cohen attempts to soften the implicit self-contradiction in his argument by claiming that "[t]hese sectarians were denounced, not excommunicated." However, Rabbi Eli'ezer himself was certainly excommunicated. 'Aqabya too was certainly excommunicated. Cohen argues: "Whatever the truth of these amoraic stories, they reflect the essential problem of the Yavnean period: the creation of the society which would tolerate, even foster, disputes and discussions but which could nonetheless maintain order. Those rabbis who could not play by the new rules were too great a danger to be punished with just a curse. They were expelled." In the end, Cohen also admits, as it were, that this is only a rabbinic construction: "This rabbinic ideology is reflected in Justin's discussion of the Jewish sects: there are Jews, i.e., the 'orthodox' and there are sects, among them the Pharisees, who scarcely deserve the name Jew."<sup>62</sup> Reading critically, we hardly see here the inclusiveness and tolerance that most scholars now identify as the legacy of Yavneh. We find rather the production of an exclusivistic institution of orthodoxy not unlike, *mutatis mutandis*, the story of Nicaea, in order, like that invention, to prevent "the proliferation of controversy in Israel."<sup>63</sup> To be sure, the narrative registers some ambivalence about the treatment of Rabbi Eli'ezer—the boat does almost sink—, but in the end, Rabban Gamaliel's argument for authority and stability and centralized power/knowledge is affirmed, "in order that there would not be many controversies in Israel." Those who will not conform to the new rabbinic program of the sole authority of the House of Study are thrown out of Israel.

How then shall we explain the final form of rabbinic Judaism in which we find the opposite? —namely that "opinions that in human discourse may appear as contradictory or mutually exclusive are raised to the state of paradox once traced to their common source

<sup>62</sup> Cohen, "Yavneh," 49.

<sup>63</sup> Cf. Lim, *Public Disputation*.



in the speech of the divine author," that is, the form of ecclesiology that we today associate with the Rabbis and that Cohen ascribed to Yavneh. The Talmud itself dramatizes an answer. In the continuation of the Babylonian talmudic narrative found in Tractate Sanhedrin, in contrast to the unfortunate 'Aqabya ben Mehalel of the third-century Mishnah,<sup>64</sup> Rabbi Eli'ezer of the fourth/fifth-century Talmud is fully rehabilitated at the end of his life. This story can be read, I suggest, as a virtual historical allegory of the retrospective construction of catholic Israel on the part of the later Rabbis and especially (but not exclusively) the Babylonian Talmud:

It is taught: When Rabbi Eli'ezer was sick, Rabbi Aqiva and his colleagues went in to visit him. He was sitting in his canopied bed, and they were sitting in his anteroom. . . .

When the sages saw that his mind was clear, they went and sat down four cubits from him [thus indicating that, according to this text, Rabbi Eli'ezer is still excommunicate].

He said to them: "Why have you come?"

They said to him: "To learn Torah we have come."

He said to them: "And until now, why have you not come?"

They said: "We didn't have time."

He said to them: "I will be amazed if they die a natural death."

Rabbi Aqiva then said to him: "What about me?"

He said: "Yours is more severe than all of them."

He [Eli'ezer] took his two arms and placed them on his heart and said: "Aiih to these two arms that are like two Scrolls of the Torah rolled up. I have learned much Torah, and I have taught much Torah. I have learned much Torah and I didn't diminish from the teaching of my masters even as much as a dog licks from the sea. I have taught much Torah, and my disciples have not diminished from my teaching so much as the brush in its case."<sup>65</sup>

"And not only that but I teach three hundred laws in the matter of leprosy, and no one ever asked me a question about them,

<sup>64</sup> Interestingly, 'Aqabya as well receives a sort of post-mortem rehabilitation in the Mishnah itself, when Rabbi Yehuda insists that it was not he to whom this happened but someone else entirely, some (otherwise) unknown Rabbi, and it was the tomb of this unknown Rabbi that was stoned.

<sup>65</sup> On this passage, see discussion in Jacob Neusner, *Why No Gospels in Talmudic Judaism?* Brown Judaic Studies 135 (Atlanta, 1988), 52; Stein, "Folklore," 166-67.

and in the planting of cucumbers, and no one ever asked me about them, except for Aqiva ben Yosef. Once he and I were walking on the way. He said to me: 'Teach me their planting.' I said a word and the field was full of cucumbers. He said to me: 'Rabbi, you have taught me their planting; now teach me their uprooting.' I said another word, and they were all gathered into one place."

The [sages then] said to him: "A ball, a slipper, and a cameo [that are made of leather and filled with wool]."

He said to them: "They are pure."

*And his soul left him in purity.*

Rabbi Yehoshua stood on his feet and said: "The vow is released. The vow is released!"

On the going out of the Sabbath, he met Rabbi Aqiva on the way [in the funeral procession] from Caesarea to Lydda. He was smiting his flesh until the blood flowed to the ground. [Rabbi Aqiva] opened his eulogy and said: "'My father, my father, the chariot of Israel and its cavalry' [2 Kings 2:12]. I have many coins and no banker to change them."<sup>66</sup>

Rabbi Eli'ezer is reincorporated into the rabbinic community just before his death "in purity." It is not his views on halakha that have changed but the manner of his discourse. He has been rabbinized. We can read this shift within the narrative, at the moment when Rabbi Eli'ezer turns from magic planting and harvesting of cucumbers to answering the Rabbis' purity question. Thus the story becomes a mini-historical allegory of the shift in the social status of dissent from the second/third-century to the fourth/fifth century context.

As Jacob Neusner has pointed out,<sup>67</sup> older traditions of Rabbi Eli'ezer hardly mention his commitment to the study of Torah as the central act of Jewish piety,<sup>68</sup> while here, the disciples come to "learn

<sup>66</sup> BT Sanhedrin 68a.

<sup>67</sup> Neusner makes the excellent point that in the earlier documents, Eli'ezer is never rabbinized, never depicted as making the study of Torah as central to his piety. He is, moreover, never depicted in the earlier stages of the tradition as a disciple of Rabbi Yohanan ben Zakkai, but rather as a representative of the old Pharisaic cultic practices. These, too, have been displaced in the production of rabbinic authority, of the House of Study as the sole locus of power, as our story represents it; see Neusner, *Eliezer Ben Hyrcanus: The Tradition and the Man*, 2:301.

<sup>68</sup> Jacob Neusner, "The Formation of Rabbinic Judaism: Yavneh (Jamnia) from A.D. 70 to 100," in *Principat: Religion (Judentum: Palästinisches Judentum)*, 36.

Torah," and the "much Torah" that Eli'ezer has learned and taught are now central to his self image.<sup>69</sup> According to the Tosefta,<sup>70</sup> Rabbi Eli'ezer never said a word that he had not heard from his teachers, fitting perfectly Josephus's description of the Pharisees who follow their traditions and do not argue with their elders.<sup>71</sup> Study of Torah and the practice of producing new interpretations must have been the province of another tributary group in the stream that became rabbinic Judaism, and our story dramatizes in narrative the historical confluence of these two tributaries.<sup>72</sup> Moreover, we see a shift in the very nature of Rabbi Eli'ezer's personality. From a mantic who relies on prophetic signs, oracles, and magic, Rabbi Eli'ezer is transformed within the space of the story into a proper talmudic sage,<sup>73</sup> converted into a Rabbi.<sup>74</sup> Rabbi Eli'ezer, historically perhaps a problematic and dissident Pharisee, has been thoroughly domesticated. What is narrated in the text as a story of transgression and repen-

<sup>69</sup> My student Gerald Roth has pointed out a similar development with respect to Pinhas ben Ya'ir, another early charismatic, who in the early sources produces an ascetic rule in which "diligence leads to cleanliness, cleanliness to purity, purity to sexual abstinence," and finally via resurrection one proceeds to "Elijah,"—prophetic vision (Mishnah Soṭah 9:15). In the Babylonian Talmud's version of this, the list begins with Torah (absent entirely from the early version) and ends with the resurrection—no prophecy (BT Avoda Zara 20h).

<sup>70</sup> PT Yabmut (sic) 3:1; ed. c. 250 A.C.

<sup>71</sup> Flavius Josephus, *Books XVIII–XX*, vol. 9 of *Jewish Antiquities*, ed. and trans. L. H. Feldman, Loeb Classical Library (Cambridge: Harvard University Press, 1965), 10–11.

<sup>72</sup> Boyarin, "Reforming Judaism."

<sup>73</sup> It is perhaps not inapposite to mention that at approximately the same time there was a struggle against the "New Prophecy" of the Montanists or Kataphrygians as well. It is fascinating that the leadership of this group was always referred to by its enemies as "Montanus and the women," e.g., by Eusebius; Hugh Jackson Lawlor and John Ernest Leonard Oulton, trans. and eds., *Eusebius, Bishop of Caesarea, the Ecclesiastical History and the Martyrs of Palestine* (London: Society for Promoting Christian Knowledge, 1927), 161 (5.16.20–22). I am not, however, claiming a strong connection between these events, just a certain suggestiveness to the coincidence.

<sup>74</sup> This interpretation is consistent as well with the argument made by Kalmin that the Babylonian Talmud so thoroughly "rabbinizes" such figures as the charismatic, antic, wonder-working holy men, Hōni HaMe'agel and Hanina ben Dosa that it actually has them studying Torah and thus "forgetting" that they were, in their Palestinian origin, an anti-theoretical force and factional opposition party to nascent rabbinic Judaism; Richard Kalmin, "Christians and Heretics in Rabbinic Literature of Late Antiquity," *Harvard Theological Review* 87.2 (April 1994): 158. See also Green, "Palestinian Holy Men: Charismatic Leadership and Roman Tradition"; Sean Freyne, "The Charismatic," in *Ideal Figures in Ancient Judaism: Profiles and Paradigms*, ed. George Nickelsburg and John Collins (Chico, Cal.: Scholars Press, 1980).

tance can be reread historically as the story of appropriation into rabbinic orthodoxy of a "heterodox" strand of Pharisaic Judaism.

### *Adversus Minaos*

An important constituent of my gloss here is the notion that there is reason to think that Rabbi Eli'ezer was figured, in the Palestinian rabbinic literature of the mid third century, as a Jewish Christian, a *min* (heretic) or at any rate as a rabbi who came dangerously close to sympathetic intercourse with such *minim*. In one early (mid third-century) Palestinian story, Rabbi Eli'ezer is arrested by the Romans on suspicion of being a Christian, referred to as *minut* in the story. This is the excerpt:

It happened to Rabbi Eli'ezer that he was arrested for sectarianism [*minut* = Christianity],<sup>75</sup> and they took him up to the platform to be judged.

The ruler said to him: "A sage such as you having truck with these matters!?"

He said to him: "I have trust in the judge."

The ruler thought that he was speaking of him, but he meant his Father in Heaven. He said to him: "Since you trust me, I also have said: 'Is it possible that these gray hairs would err in such matters?' [*Dimus* = *Dimissus*!] Behold, you are dismissed."<sup>76</sup>

Having tricked the Roman, he then confesses to his fellows that he has, indeed, had improper friendly religious conversation with a disciple of Jesus; indeed, on my reading, that he had been "arrested by *minut*," i.e., found heresy arresting, and not only arrested for *minut*—the Hebrew phrase allows for both meanings.<sup>77</sup> It is impor-

<sup>75</sup> This identification is explicit in the continuation (not cited here), in which Rabbi Eli'ezer refers to his intercourse with a certain James, the disciple of Jesus. Jerome knows that the term *min*, "sectarian" is a name for Jewish Christians, as we see from his famous letter to Augustine; Jerome, *Correspondence*, ed. Isidorus Hilberg, CSEL 55 (Vienna: Verlag der Osterreichischen Akademie der Wissenschaften, 1996), 381–82. This letter was written about 404; Ray A. Pritz, *Nazarene Jewish Christianity: From the End of the New Testament Period Until Its Disappearance in the Fourth Century* (Jerusalem: Magnes Press, 1992), 53.

<sup>76</sup> Tosefta Hullin, 2:24. M. S. Zuckerman, ed., *Tosefta: Based on the Erfurt and Vienna Codices, with Lieberman, Saul, "Supplement" to the Tosefta*, (Jerusalem: Bamberger & Wahrman, Publishers, 1937), 503.

tant to observe the shifts in reference of the term "min" itself chronologically as well as geographically. In its first appearances in the Mishnah (early-third-century Palestine), there is no evidence that Christians are being referred to, while in the Tosefta (mid-third-century Palestine), it is nearly certain that at least some references, including this story about Rabbi Eli'ezer are precisely about Christians in the Galilee.<sup>78</sup> This would be not inconsistent with the assumption, recently being made by sociologists of religion, of an exponential growth in the number of Christians throughout the Empire, precisely between the beginning of the third century, when the Mishnah was edited, and the mid-third when the Tosefta came into being.<sup>79</sup>

However, there is a further shift in the fate of the term *min* that is even more significant to my point here, for it will help us to understand why it was safe, as it were, for the Rabbis of the Babylonian Talmud to adopt such an expansive and elastic notion of Jewish orthodoxy. As Richard Kalmin has observed: "Th[e] notion of the powerful attraction that *minut* ('heresy') and Christianity exerted on rabbis and their families is found almost exclusively in tannaitic collections such as the Tosefta, but also in tannaitic sources in the Babylonian Talmud that have toseftan parallels. Statements attributed to later Palestinian and Babylonian amoraim in both Talmuds, in contrast, reveal no hint of this notion."<sup>80</sup> This argument can be further substantiated by observing that the Babylonian Talmud almost systematically "forgets" what the meaning of the term *min* is. There are two effective pieces of evidence for this proposition.

<sup>77</sup> For much longer and more detailed discussion, see Daniel Boyarin, *Dying for God: Martyrdom and the Making of Christianity and Judaism*, The Lancaster/Yarnton Lectures in Judaism and Other Religions for 1998 (Stanford: Stanford University Press, forthcoming), chapter 1.

<sup>78</sup> This point was made to me by my student, Henry Millstein. In a later, expanded version of this text, I will further treat the question of interaction between the usages of the term *minim* and the histories of the gradual separation of "Christianity" from "Judaism," as well as the much discussed question of the so-called "Curse of the Minim" (Kimelman, "Birkat Ha-Minim"). For the nonce, let it be said that even if there were such a curse and even if it did refer to Christians—both questionable points but *non liquet*—that would only demonstrate how much socio-political work had yet to be done to distinguish "Jews" from "Christians," and hardly that a final separation or a parting of the ways had taken place and was securely in place.

<sup>79</sup> Hopkins, "Christian Number."

<sup>80</sup> Kalmin, "Christians and Heretics," 160.

The first comes simply from the continuation of the Babylonian Talmud's version of the narrative about the arrest of Rabbi Eli'ezer. In the earlier Tosefta and the Palestinian midrash, this text appears without a sequel, but in the Talmud we find the following continuation:

Our Rabbis have taught: When Rabbi El'azar the son of Perata and Rabbi Hanina the son of Teradyon were arrested for sectarianism [*minut*], Rabbi El'azar the son of Perata said to Rabbi Hanina the son of Teradyon: "Happy art thou who has been arrested for only one thing. Woe unto me who have been arrested for five things." Rabbi Hanina the son of Teradyon said to him: "Happy art thou who has been arrested for five things and will be rescued. Woe unto me who have been arrested for one thing and will not be saved, for thou hast busied thyself with Torah and with good deeds, while I only busied myself with Torah." — This is in accord with the view of Rav Huna who said that anyone who busies himself with Torah alone is as if he had no God.

In contrast to Rabbi Eli'ezer, where it is explicit that the *minut* involved is Christianity, these two Rabbis clearly are under no suspicion whatever of Christianity. Their fictive arrest is clearly during the Hadrianic persecutions of the early second century (not under Trajan in the second half of the first) and has to do with the public teaching of Torah, forbidden by Hadrian for political reasons. And yet the Talmud refers to it as an arrest for *minut*. The term *minut* has clearly shifted meaning for the Babylonian Talmud. No longer Jewish heresy, it now refers to the binary opposition between Jewish and Gentile religion. Judaism is *minut* for the Romans; Roman religion and Christianity are *minut* for Jews. This semantic shift changes the interpretation of Rabbi Eli'ezer's arrest in the Talmudic context as well.<sup>81</sup> It is unthinkable to this Talmud that Rabbi Eli'ezer had been under suspicion—much less somewhat justifiable suspicion—for association with *minim*, and therefore the text has to make it a code

<sup>81</sup> In the early Palestinian version of the narrative, there is not a hint of the term *minut* involved with respect to the arrest and martyrdom of these Rabbis; see Louis Finkelstein, ed., *Sifre on Deuteronomy* (1939; rpt. New York: Jewish Theological Seminary of America, 1969), 346; and, for discussion (in Hebrew), Daniel Boyarin, "A Contribution to the History of Martyrdom in Israel," in *Festschrift for Prof. H. Z. Dimitrovsky*, ed. Menahem Hirschman, et al. (Jerusalem: Magnes Press, 1999).

name for arrest for being Jewish, for teaching Torah, i.e., *minut*, heresy, from the point of view of the Roman order, not from the point of view of Judaism.

On my view, we have evidence then that by the time of the editing of the Babylonian Talmud, and perhaps at that geographical distance from the center of contact, Palestine, Christianity had receded sufficiently into the distance from rabbinic Judaism, was sufficiently definable as a separate "religion," that it no longer posed a threat to the borders of the Jewish community. It is in the Babylonian Talmud that early Palestinian Judaism comes to be represented as a "a society based on the doctrine that conflicting disputants may each be advancing the words of the living God." With the borders of unanimity secured, there are no more (at least in theory) internal others.

We now have an explanation for the well-known fact that, in the Babylonian Talmud, the term *min* no longer refers to a difference within Judaism, an excluded heretical other, but has come to mean gentiles and especially gentile Christians as well. Judaism has been reconfigured as a grand coalition of differing theological and even halakhic views *within the strictly defined borders of rabbinic Judaism*, and it is this reconfigured Jewish polity with no heresies and no heresologies that is exhibited in Cohen's and Bruns's phenomenologies. Once more, as in the period of the second Temple (up until 70 A.C.) and before, the excluded other of Judaism is the Gentile and not the heretic within. A story, previously read in a very different context by historians, bears out this suggestion:

Rabbi Abbahu used to praise Rav Safra [a Babylonian immigrant to Caesarea Maritima] to the *minim* that he was a great man [i.e., a great scholar]. They released him from excise taxes for thirteen years.

One day they met him. They said to him: "It is written: 'Only you have I known from all of the families of the earth; therefore I will tax you with all of your sins' [Amos 3:2]. One who is enraged,<sup>82</sup> does he punish his lover?"

He was silent, and didn't say anything to them. They threw a scarf on him and were mocking him.

Rabbi Abbahu came and found them.

He said to them: "Why are you mocking him?"

<sup>82</sup> My translation here follows the interpretation of Rashi ad loc.

They said to him: "Didn't you say that he is a great man, and he could not even tell us the interpretation of this verse!"

He said to them: "That which I said to you has to do with Mishnah, but with respect to the Scripture, I didn't say anything."

They said to him: "What is it different with respect to you that you know [Scripture also]?"

He said to them: "We who are located in your midst, take it upon ourselves and we study, but they do not study."<sup>83</sup>

Following the principle set out by Saul Lieberman—that talmudic legend may be read as useful information for the history of the time and place of its production and not the time and place of which it<sup>84</sup>—there is no way that this story, only attested in the Babylonian Talmud, ought to be taken as representing Palestinian reality. Moreover, it can be demonstrated that it almost definitely does not do so, simply by virtue of the fact that the genre of encounters between Rabbis and *minim* is very rare in Palestinian sources and very common in Babylonian texts, as Kalmin has recently shown.<sup>85</sup> Almost always these Babylonian narratives relate the confrontation between a Palestinian sage and a *min* of whatever variety.

A story such as this may tell us something, therefore, about Babylonian reality in the fourth or fifth century.<sup>86</sup> In that time and space, this text explicitly testifies, Christians were no longer an internal threat to the integrity of the religious life-world of the Rabbis: "They [the Babylonians] do not study Bible, because you [the Christians] are not found in their midst." This is not, however, to be taken as a sign that Christianity did not have powerful effects on the historical development of Judaism in Babylonia (and the reverse),<sup>87</sup> but only that with the borders clearly established, it was now, I conjecture, more functional to expand the definition of in and out, rather than

<sup>83</sup> BT Avoda Zara 4a.

<sup>84</sup> Saul Lieberman, "The Martyrs of Caesarea," *Annuaire de l'Institut de Philologie et d'Histoire Orientales et Slaves* 7 (1939-44): 395.

<sup>85</sup> Kalmin, "Christians and Heretics."

<sup>86</sup> Cf., e.g., Lee I. Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity* (New York: Jewish Theological Seminary of America, 1989), 87; and see as well Lieberman, "The Martyrs of Caesarea," 398.

<sup>87</sup> Daniel Boyarin, "Martyrdom and the Making of Christianity and Judaism," *Journal of Early Christian Studies* 6.4 (Dec. 1998): 577-627.

to shut it down— just in time, that is to confront the so-called “Karaitic schism” of the early Middle Ages.<sup>88</sup>

### Yavneh and Nicaea Revisited

The talmudic production of a Council of Yavneh and the effects of its *Nachleben* in the real world can be usefully compared to the Athanasian production of the Council of Nicaea and its effects in the real world. There are, however, significant differences as well. These legendary narratives have their correlates finally in distinct forms of textuality and formations of canon. Burrus writes,

Sorting through the complicatedly intercalated writings either authored or ghostauthored or edited and published by the bishop of Alexandria [Athanasius], we observe Nicaea and its frozen Logos being produced as the cumulative effect of a series of very deliberate textual acts of self-defense, by which the armoured body of the bishop was also conceived.<sup>89</sup>

In the even more complicatedly intercalated pseudospeech of the Rabbis as edited and published in the Babylonian Talmud, a similar body, that of the Rabbi, was being conceived. If, in Burrus's words, “the Alexandrian Father conceives Nicaea as the ‘ecumenical’ council of the Fathers who begat the immortal body of the written word,” then the Talmud conceives Yavneh as the ecumenical council of Fathers who transmitted the immortal (but ever-growing and shifting) body of the Oral Torah. Just as Athanasius promulgated “the strikingly close identification of the divinely begotten Word with the written texts that now incarnate ‘Nicaea,’”<sup>90</sup> so too did the Talmud closely identify its own founding text, the Mishnah, and their own commentaries on it, with the divinely given Oral Torah.

Yavneh was projected back into the first century, Nicaea only into the beginning of the fourth. Nicaea is a textual story that begins its life with eye-witnesses to a real event which then gives rise and gives way to legends; Yavneh is an event whose very existence is always already shrouded in legend and folk-tale but which then becomes the

<sup>88</sup> See above, note 37. This point will be further developed elsewhere, *deo volente*.

<sup>89</sup> Burrus, “Fathering the Word.”

<sup>90</sup> *Ibid.*

foundation-myth for a distinctly textual and literary culture.<sup>91</sup> Both are myths of foundation of an orthodoxy.<sup>92</sup> The Talmud itself, however, is a different kind of text from either the Athanasian corpus or the monovocal “Church Fathers” that the late ancient Christian orthodoxy produced.<sup>93</sup> Exploring that distinction, and querying how much of a difference it made, will be the work of a sequel to the present essay, but it is to an extent prefigured in the differences between the exclusive orthodoxy of the end-point of the Nicaea myth and the equally exclusive divinely sanctioned heterodoxy of the end-point of the Yavneh myth. Barnes sharply phrases the new narrative of Nicaea: “In the end, Nicaea 325 became orthodoxy only when its potential cost to real distinctions was contained at Constantinople 381.”<sup>94</sup> Of Yavneh we could say (marking at once both the similarity and the difference from Nicaea): The myth of a universal, inclusive creation of a non-sectarian Judaism only became orthodoxy when its potential cost to the blurring of the boundaries of rabbinic Judaism was contained—also late in the fourth century, if not later than that.<sup>95</sup> By the time the Babylonian Talmud retales this story, the Rabbis have won the struggle for hegemony, the heresiological strifes of the past and of Palestine are over, the “parting of the ways” has taken place, the lines are clearly drawn between Jewish identity and Christian identity, Jewish practice and Christian practice, and it is plausible at least to speak at this point of a single Christianity and a single Judaism—at least for a time. It is at this moment (this perhaps

<sup>91</sup> As such, even more than to Nicaea, the legend of the founding of Yavneh as preserved in the Talmud (BT Gittin 56a–b) is strikingly similar to the equally fabulous tale of the retreat of the Jerusalem Christians in the same circumstances to Pella, as pointed out recently by Galit Hasan-Rokem, *The Web of Life—Folklore in Rabbinic Literature: The Palestinian Aggadic Midrash Eikha Rabba*, (Tel Aviv: Am Oved, 1996), 201 (in Hebrew).

<sup>92</sup> Barnes, “Fourth Century as Trinitarian Canon,” 62. The differences in textual and literary as well as political structure between these two orthodoxies remain salient and will be explored in another part of the present project.

<sup>93</sup> See Patrick T. R. Gray, “The Select Fathers: Canonizing the Patristic Past,” *Studia Patristica* 23 (1989): 21–36; Mark Vessey, “The Forging of Orthodoxy in Latin Christian Literature: A Case Study,” *Journal of Early Christian Studies* 4.4 (Winter 1996): 495–513; David Brakke, “Canon Formation and Social Conflict in Fourth-Century Egypt: Athanasius of Alexandria’s Thirty-Ninth Festal Letter,” *Harvard Theological Review* 87 (1994): 395–419; J. Rebecca Lyman, “The Making of a Heretic: The Life of Origen in Epiphanius *Panarion* 64,” *Studia Patristica* 31 (1997): 445–51 (Leuven: Peeters, 1997).

<sup>94</sup> Barnes, “Fourth Century as Trinitarian Canon,” 62.

<sup>95</sup> The reasons and conditions for this containment remain to be explored elsewhere.

fourth-, perhaps fifth-century and particularly Babylonian moment) that Cohen's Yavneh, his "grand coalition," comes into being. In this sense, as Rosemary Ruether put it a quarter of a century ago, "The fourth century is the first century for Christianity and Judaism."<sup>96</sup>

*University of California, Berkeley*

---

<sup>96</sup> Rosemary Radford Ruether, "Judaism and Christianity: Two Fourth-Century Religions," *Sciences religieuses/Studies in Religion* 2 (1972): 1-10