

ORAL TORAH VS. WRITTEN TORAH(S):
COMPETING CLAIMS TO AUTHORITY*

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The Claim to Authority and the Qumran Community

The halakhic writings originating in the Qumran community show the early fusion of many commandments of the Torah into a consolidated legal system¹ that in turn is indicative of attention and fidelity to the Torah and its worldview.² Once we penetrate the sectarian outer garb of these writings, we uncover details and general principles that are not characteristic of a dissident community. Consequently, these

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¹ A. Schremer (“[T]he[y] Did Not Read in the Sealed Book’: Qumran Halakhic Revolution and the Emergence of Torah Study in Second Temple Judaism,” in *Historical Perspectives: From the Hasmoneans to Bar-Kokhba in Light of the Dead Sea Scrolls. Proceedings of the Fourth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 27–31 January 1999* [ed. D. Goodblatt et al.; STDJ 37; Leiden: Brill, 2001], 105–26), argues that the members of the Qumran community were the first to engage in the exegetical study of the Torah, because of a halakhic controversy that arose in their time. Schremer implies that Torah study began in 150 BCE. The very existence of a halakhic disagreement, however, speaks of the prior development of the halakhah, leading us to assume an established practice of Torah study before the withdrawal of the Qumran community. Prolonged Torah study among the elite and at the center of the nation’s religious life may explain the existence of interpretive traditions that were common to different groups and that appear in various writings over the course of centuries. For descriptions of these shared traditions, see: J. L. Kugel, *Traditions of the Bible* (Cambridge, MA: Harvard University Press, 1998); M. Kister, “A Common Heritage: Biblical Interpretation at Qumran and Its Implications,” in *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls. Proceedings of the First International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 12–14 May 1996* (ed. M. E. Stone and E. G. Chazon; STDJ 28; Leiden: Brill, 1998), 101–11.

² This appears to characterize the concept of “priestly halakhah” which is frequently invoked when discussing halakhah at Qumran; that is, a halakhah whose fundamental constitution is the Pentateuch, and whose laws are fashioned in accordance with this constitution in a way that attempts to resolve contradictions and to rule between inconsistent sources. This halakhah acquired distinctive features when adapted by the Qumran community, a sect with an apocalyptic worldview.

halakhot may have been, not the fruits of study by the members of the Qumran congregation in isolation, but rather rulings formulated prior to the secession of the community. These halakhot probably evolved in Jerusalem, among the Temple priests who engaged in the study of the Torah (are those the *soferim* [scribes] mentioned in later sources?)³ during the Second Temple period, before the sect came into existence. Priestly authority in halakhic matters derived from the standing of the Temple as a religious and political center.⁴ Furthermore, the very Torah that the priests developed gave them the central role in its dissemination: “They [Levi’s offspring, the priests] shall teach Your statutes to Jacob, Your Torah to Israel” (Deut 33:10). At Qumran, these laws were committed to writing in a variety of literary genres.⁵ It has not been determined, however, whether the fruits of priestly study and teaching were written down before Qumran,⁶ and if so, in what literary forms these principles and halakhot were conveyed, whether as collections of midrashim, or as collections of laws.⁷

³ E. E. Urbach (“The Derasha as a Basis of the Halakha and the Problem of the Soferim,” *Tarbiz* 27 [1958]: 173 [Hebrew]) describes the activity of the *soferim* (the comparison of parallels, the application of something explicit in another place, the resolution of conflicting texts, and more). Unlike Urbach, I do not believe that such activity should be called “*derashah*.” I find no evidence of the existence of a group of authoritative Sages (predecessors of the rabbis) in the period of the *Soferim*, leading me to disagree with Urbach, who paints a picture that includes this group. See also below.

⁴ See a survey of the ruling classes during the Second Temple period in D. Goodblatt, *The Monarchic Principle* (Tübingen: Mohr [Siebeck], 1994). As was shown by Goodblatt, there are no echoes in Second Temple literature of any representation of the common people in any form of government.

⁵ A. Shemesh and C. Werman, “Halakhah at Qumran, Genre and Authority,” *DSD* 10 (2002): 104–29.

⁶ The “Book of Decrees” mentioned in *Megillat Ta’anit* is discussed below. For the claim that the *Temple Scroll* is of sectarian origin, see n. 12.

⁷ The halakhic part of *Aramaic Levi Document*, a pre-Qumranic priestly writing formed as a collection of laws, might give us a clue. However, the solar calendar of 364 days, hinted at in *Aramaic Levi*, points to an origin in an (pre-Qumranic) oppositional group. Thus, we cannot deduce from *Aramaic Levi Document* clear conclusions regarding the genre that was used by the Temple priestly circles. On the halakhah in *Aramaic Levi* see: C. Werman, “The Flood Story in the Book of Jubilees,” *Tarbiz* 64 (1995): 183–202 (Hebrew); C. Werman, “Qumran and the Book of Noah,” in *Pseudepigraphic Perspectives: The Apocrypha and Pseudepigrapha in the Light of the Dead Sea Scrolls: Proceedings of the Second International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 12–14 January, 1997*. (ed. E. G. Chazon and M. E. Stone; STDJ 31; Leiden: Brill, 1998), 171–81.

In the middle of the second century BCE, upon the appointment of Hasmonean High Priests, their allies the Pharisees gained more influence in Jerusalem; they sought to impose their own halakhic system, which included some ancient traditions that contradicted Scripture.⁸ The established Jerusalem priests had to decide whether to accept the halakhah promoted by the Pharisees, or to withdraw to a place where they could maintain the halakhah to which they owed allegiance. The priesthood split: one group, that from this time on would be known as the “Sadducees”⁹ (בית אבשלום?)¹⁰ chose to remain and cope with the new reality. Their decision proved wise, since a generation later, during the time of John Hyrcanus, the reins of power once again passed to the priests (Josephus, *Ant.* 13.196). Another group, known to us as the “Qumran community,” elected to leave.¹¹

The departure of the latter from Jerusalem was also a withdrawal from the locus of halakhic power. From this juncture forward, the dissenters could not exercise general authority to explain, interpret, and expand Scripture, for their connections with the Temple had been severed. In other words, the members of the new Qumran community could no longer claim the authority rooted in the Temple and in the civil authority that the priests had enjoyed until the decrees promulgated by Antiochus. The Qumran community had to develop a different basis for their authority; and indeed, we find two different claims advanced by the

⁸ On an ancient tradition preserved by the Pharisees see: M. Kister, “Some Aspects of Qumranic Halakhah,” in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18–21 March 1991* (ed. J. Trebolle Barrera and L. Vegas Montaner; STDJ 11; Leiden: Brill 1992), 2:571–88.

⁹ As was shown by D. Schwartz (“On Two Aspects of Priestly View of Descent at Qumran,” in *Archaeology and History in the Dead Sea Scrolls. The New York University Conference in Memory of Yigael Yadin* [ed. L. H. Schiffman; JSPS 8; JSOT/ASOR Monographs 2; Sheffield: JSOT Press, 1999], 159) the name ‘Sadducees’ itself is a sign of opposition to the Hasmonean family.

¹⁰ *Habbakuk Pesher* 5:9; M. Stern, *Hasmonaean Judaea in the Hellenistic World: Chapters in Political History* (ed. D. R. Schwartz; Jerusalem: The Zalman Shazar Center for Jewish History, 1995), 57–58 and n. 26 (Hebrew).

¹¹ To intensify the rift with the rest of the nation, the Community embraced a 364-day calendar. Of Babylonian origin (W. Horowitz, “The 360- and 364-Day Year in Ancient Mesopotamia,” *JANES* 24 [1996]: 35–44), this calendar is presented to Enoch by the angel Uriel in *1 Enoch*. The author(s) of *1 Enoch* also put a statement in Uriel’s mouth, declaring that in the future, because of the people’s sins, the celestial bodies will change their route. This angelic claim is a hidden confession that 364-day calendar can not be in use in the author’s days. The use of the 364-day calendar by the Community members is a revolutionary act.

members of the community in justification of their halakhic approach. One, alluding to the traditional priestly perspective, looked to Mount Sinai, to argue that the interpretation of the Torah in accordance with priestly halakhah had already been given to Moses. The other, deriving directly from the circumstances of dislocation from the Temple, identified the source of authority with the leader of the community, the agent of God, who provided the community's members with the hermeneutical tools necessary for the study of the written Torah.

The argument that the explanation and further development of the Torah had already been given over to Moses at Sinai, along with the Torah itself, appears in *Jubilees* and in the *Temple Scroll*.¹² According to *Jubilees*,¹³ Moses received, along with the Torah engraved on stone tablets,¹⁴ another written Torah; this second Torah, however, Moses himself copied.¹⁵ The purpose of the second Torah, the Torah and the *te'udah* (predestined history), which contains the expansion and interpretation of the first Torah, is to stand before the people as a witness when the correct interpretation is forgotten in the future: “[...] this Torah and *te'udah* will confront (them), fo[r they will forget all of my commandments, everything which I will co]mmand you” (*Jub.* 1:9; exegetically following Deut 31:19–21: “Therefore, write down this poem and teach it to the people of Israel; put it in their mouths, in order that this poem may be My witness against the people of Israel [...] then this poem shall confront them as a witness”).¹⁶

¹² The prevailing scholarly inclination is not to ascribe sectarian authorship to these two compositions, since they seemingly contain no hint of the rift within the Jewish people or of a sectarian worldview that distinguishes between the elect group and the sinning multitudes. However, as I demonstrated in my essay, “The *Book of Jubilees* and the Qumran Community,” in *Meghillot: Studies in the Dead Sea Scrolls 2* (ed. M. Bar-Asher and D. Dimant; Haifa: Haifa University Press; Jerusalem: Bialik Institute, 2004), 37–55 (Hebrew), *Jubilees* does presume the existence of a separatist and elect community.

¹³ The first column of the *Temple Scroll* is not preserved, and therefore we cannot know just how the claim to authority was presented. The second column of the scroll contains a rewriting of Exodus 34, describing the Revelation at Sinai. We may conclude that the Revelation served as background for the presentation of the *Scroll*.

¹⁴ In the words of *Jubilees* [1:1]: “Come up to me to] the mountain, [that I may give you] the [two] stone [tablets]—the Tor[ah and the commandment which I have written down to in]stru[ct them”]; contrast Exod 24:12: “The Lord said to Moses: Come up to Me on the mountain and wait there, and I will give you the stone tablets with the Torah and commandments which I have written down to instruct them.”

¹⁵ Exegetically based on Exod 34:27: “Write down these words, for in accordance with these words I make with you a covenant and with Israel.”

¹⁶ C. Werman, “The תורה and the תעודה Engraved on the Tablets,” *DSD* 9 (2002): 75–103.

The second claim to authority, which locates the prerogative of interpretation in the special status of the community and its leader, is set forth in CD. The author of CD believes that the aggregate of the commandments comprises both the “revealed” commandments (i.e., those stated explicitly in the Torah) and the “hidden” ones, the interpretations and laws that have been disclosed only to the members of the community.¹⁷ The author describes the process by which the latter are revealed in an exposition of a verse from the Song of the Well:

“The well which the chieftains dug, which the nobles of the people excavated, with the ruler, with their own staffs” (Num 21:18)—the well is the Torah, and those who dig it are the penitents of Israel who depart from the land of Judah [...] and the ruler is the Interpreter of the Torah, of whom Isaiah said “and produce a tool for his work” (Isa 54:16). And the nobles of the people are those who came to excavate the well, with the statutes which were ordained by the ruler to walk in them in the entire time of evil. (CD 6:3–9)¹⁸

According to this metaphor, the “nobles of the people” are the members of the community, and the “ruler” is the Interpreter of the Torah. The author explains the role of this exegete by comparing him to a smith, aided by a verse from Isaiah (54:16): “It is I who created the smith to fan the charcoal fire and produce a tool for his work.” God created the smith, who in turn produces tools in order to continue to produce. The moral of this parable is that the Interpreter of the Torah was sent by God to produce the tools needed for the exposition of the Torah, i.e., the “statutes” thus promulgated. The Interpreter of the Torah transmits these statutes to the members of the community to enable the Qumranites to *continue* the interpretation of the Torah and the disclosure of the concealed commandments. The author of CD thereby presents the halakhic creative process as a combination of human intellectual activity and divine inspiration: it is the community’s wise men who expound the Torah and uncover the hidden commandments, but this exegetical activity is feasible only by means of the tools that they were given through their Teacher, who was sent to them by God.

¹⁷ A. Shemesh and C. Werman, “Hidden Things and their Revelation,” *RevQ* 18 (1998): 409–27.

¹⁸ Translation as in J. M. Baumgarten and D. R. Schwartz, “The Damascus Document,” in *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 2: Damascus Document, War Scroll, and Related Documents* (ed. J. H. Charlesworth; The Princeton Theological Seminary Dead Sea Scrolls Project; Tübingen: Mohr [Siebeck]; Louisville: Westminster John Knox Press, 1995), 22.

The Sages' Claim to Authority

The necessity for two claims to authority in the Qumran community will be discussed below. In this section, I will attempt to show that these two claims to authority inherent in the Qumran writings will likely aid us in discerning the two claims to authority advanced by the Pharisees and the Tannaim, two groups that (contrary to the priests) considered themselves as abiding by traditions in addition to the Sinaitic revelation presented in the Pentateuch.

Josephus indicates that the Pharisees developed a ramified system of halakhot,¹⁹ and that they were interpreters of the laws (*J. W.* 1:110–111; *Ant.* 18:12; *J. W.* 2:162). He does not explicitly connect these laws with the Mosaic code, and it therefore cannot be claimed that the Pharisees were the interpreters of the written Torah.²⁰ Rather, Josephus's comments match the picture that emerges from the tannaitic depiction of the halakhic activity of the Sages. The Sages do not study Torah. They determine a halakhah; they discuss halakhic matters among themselves; they raise questions, which they decide by majority decision.²¹ Consequently, even though the Tannaim do not claim to be the disciples of the Pharisees,²² in their activity they are, in fact, the successors of the latter; both groups developed and formulated collections of laws stemming from traditions that existed independently of the Bible.

Like the Qumranites, the Sages were forced to rely upon a claim to authority unrelated to the Temple. I suggest that as the Sages sought

¹⁹ This enables us to understand the charge leveled in the NT (Matt 23:2) that the Pharisees see themselves as sitting on Moses's seat, that is, occupying the seat of the legislator.

²⁰ A fact overlooked by M. S. Jaffee, *Torah in the Mouth* (Oxford: Oxford University Press, 2001), 53, and many others. A survey of the disputes between Beit Hillel and Beit Shamai is included in: M. Fish and H. Shapira, "פולמוסי הבתים: המחלוקת המטא-ההלכתית בין בית שמאי לבית הלל," *Iyunei Mishpat* 22 (1999): 461–97 (Hebrew). Most of the disputes are not the outcome of different reading of Scriptures and do not include *derashot*. A critical study of the figure of Hillel, with comments on the small number of midrashim attributed to him are found in: I. M. Gafni, *The Jews of Babylonia in the Talmudic Era: A Social And Cultural History* (Jerusalem: The Zalman Shazar Center for Jewish History, 1990), 68–76 (Hebrew); D. Henshke, "Studies in the Method of 'שני זה כתובים המכחישים זה את זה,'" *Proceedings of the Eleventh World Congress of Jewish Studies C.1* (Jerusalem: The World Union of Jewish Studies, 1994), 39–46 (Hebrew); D. R. Schwartz, "Hillel and Scripture: From Authority to Exegesis," *Hillel and Jesus* (ed. J. H. Charlesworth and L. L. Johns; Minneapolis: Fortress, 1997), 335–62.

²¹ Cf. Jaffee, *Torah*, 73–82.

²² Jaffee, *Torah*, 55–56.

to impart authoritativeness to their collection of laws they voiced two claims that resembled those of the Qumran community. Nonetheless, there are two significant differences between these sets of authoritative claims. The first is that one of the claims advanced by the Sages preceded the other: the claim that a second Torah was given at Sinai belongs to the Second Temple period, while the second claim to authority, that of divinely-inspired human elaboration of the law (parallel to the Qumran argument for both revealed and hidden laws), dates from a later generation, and might possibly be ascribed to R. Akiva. The second dissimilarity is that in the Sages' early claim to authority, the second Torah given at Sinai is oral, not written.

Admittedly, no Second Temple period source explicitly links the halakhic system developed by the Pharisees with the Revelation at Sinai. As Jaffee demonstrated, in the Christian tradition the Pharisees are characterized as preserving the traditions of the forefathers,²³ and Jesus charges them with preferring the tradition of the forefathers to the words of God Himself. Paul contrasts his way as a Pharisee, of fidelity to the tradition of the forefathers, to his way as a believer in Jesus, after having received a divine revelation (Gal 1:11–16). Consequently, divine revelation stands in opposition to tradition, a human creation. Josephus, as well, emphasizes Pharisee loyalty to the traditions of the forefathers, not written in the Torah of Moses (*Ant.* 13.297–298; 17.41). As Fraade observes,²⁴ these texts do not claim that the tradition of the forefathers is of Sinaitic origin (nor they do not assert that it is unwritten, only that it is not written in the Mosaic code; see below).

I nevertheless would contend that the Pharisees *did* set forth the argument of the two Torahs, as it was similarly stated by the Tannaim,²⁵ since the claim of two Torahs originating at Sinai, one in writing and the other oral, is embodied in the early stratum of tannaitic literature, as in this disagreement in *Sifra* between the *Tanna Qamma* and R. Akiva:

“These are the laws, the statutes, and the instructions [*torot*]” (Lev 26:46)—
this teaches that two *Torot* were given to Israel, one in writing and the other oral. R. Akiva said: Did Israel have two *Torot*? Were not many *torot* given

²³ Jaffee, *Torah*, 45–50. I do not accept his assumption, however, that the tradition of the forefathers was derived from exegesis of Scriptures.

²⁴ S. Fraade, “Literary Composition and Oral Performance in Early Midrashim,” *Oral Tradition* 14 (1999): 41.

²⁵ A. Yadin’s statement that the phrase “תורה (שב) על פה” “does not occur in tannaitic sources” is surprising; see A. Yadin, “4QMMT, Rabbi Ishmael, and the Origin of Legal Midrash,” *DSD* 10 (2003): 130, n. 6.

to Israel: “This is the torah of the burnt offering” (Lev 6:2); “This is the torah of the meal offering” (Lev 6:7); “This is the torah of the guilt offering” [Lev 7:1]; “This is the torah of the peace offering” (Lev 7:11); “This is the torah when a person dies in a tent” (Num 19:14)? (*Sifra* 112c [following MS Vatican 31])²⁶

The view that two Torahs were given at Sinai is presented in this teaching as axiomatic. R. Akiva, who lived about half a generation after the Destruction, disputes this opinion, thereby going against the earlier established view. He maintains that this biblical text cannot teach us how many Torahs were given at Sinai, since the Bible states that Israel had been given many *torot*.

The assertion that the oral Torah had been given at Sinai appears in an additional tannaitic source, *Sifre Deut.* 351:²⁷

[1] “They shall teach Your statutes to Jacob” (Deut 33:10)—this teaches that all decisions [*horayot*] can issue only from their mouths, as it is said, “Every matter of dispute or assault is subject to their ruling” (Deut 21:5): “dispute” [*riv*] refers to disputes concerning the [red] heifer (Numbers 19), disputes concerning the heifer [whose neck is broken] (Deut 21:1–9), and disputes concerning the suspected adulteress (Num 5:11–31). “Assault” [*neg’a*] refers to an eruptive plague affecting a person, an eruptive plague affecting clothing, and an eruptive plague affecting houses.

[2] “And Your Torah [sing.] to Israel” (Deut 33:10)—this teaches that two *Torot* were given to Israel, one oral and the other written. Agnitus the General once asked Rabban Gamaliel to tell him, How many *Torot* were given to Israel? He replied: Two, one written and the other oral.

The verse that is the subject of this exposition authorizes the priests: “They shall teach Your statutes to Jacob and Your Torah to Israel.” The exegete learns from “They shall teach Your statutes to Jacob” that the authority to instruct the people in the ways of proper conduct was indeed given to the priests. Support for this assertion is brought from Deut 21:5, which is understood to limit this authority to cases of *riv* and *neg’a*. A clarification of these two terms further restricts priestly authority. *Riv* is not an ordinary disagreement; the exegete specifies three situations, to delineate the limits of the term: the red heifer (the ashes of which remove corpse impurity); the heifer whose neck is broken (employed in the case of an unsolved murder); and the suspected adulteress (who is

²⁶ My translation.

²⁷ L. Finkelstein, *Sifre on Deuteronomy* (New York: Jewish Theological Seminary, 1993), 408 (Hebrew); my translation.

brought to the Temple in consequence of her husband's suspicions). In all three cases the priest functions primarily as conductor of a ritual. *Neg'á* is narrowly defined as an eruptive affliction, the priestly role in relation to which is defined by the book of Leviticus: the identification of the affliction and the purification of the afflicted.

This limitation of priestly authority sheds light on the second part of the exposition. It seems likely that the exegete knew of the textual tradition that read *torotekha*, "Your *torot*" (plural instead of singular) in the second half of the verse.²⁸ By dividing this priestly-oriented verse, the exegete finds sanctions both for limiting priestly authority to specific contexts, and for granting overall interpretive authority more broadly. "Israel," who received both the written and the oral Torahs, holds the authority.

This exposition coheres well with the presumption of a contemporary clash between priests and sages over the basis for each group's interpretative authority. Such a clash likely had its roots in the Second Temple period. Perhaps, then, this midrash echoes disputes that existed even prior to the Destruction,²⁹ in which the Pharisees advanced their claim of two *Torot*.

The exegete, who finds biblical testimony for the authority of the Sages, seeks to entrench the standing of the halakhah of the latter in the political system of his time. He (or the redactor) accordingly appends to the exposition a dialogue between Agnitus the General and Rabban Gamaliel.³⁰ Agnitus poses a question to Rabban Gamaliel: How many *Torot* were given to Israel? The formulation of the question indicates that the non-Jew knew what the Torah was, and was aware that more than one had been given to Israel. Such thorough knowledge by an outsider is not plausible, and so the conversation was no more than a figment of the redactor's imagination. This narrative, in which the exegete has Rabban Gamaliel speak of two *Torot* from Sinai, was intended to afford formal status to the halakhic approach of the Sages in post-Destruction Judea.

²⁸ As evidenced in LXX, Peshitta, and Targum Ps.-Jonathan; see Finkelstein, *Sifre*, 408.

²⁹ On the suppression of priests in another tannaitic source see: M. D. Herr, "Continuum in the Chain of Torah Transmission," *Zion* 44 (1979): 43–56 (Hebrew).

³⁰ In *Midrash Tanna'im* on the same verse, the dialogue is between R. Yochanan ben Zakkai and Agrippa the General; see D. Z. Houghmann, *Midrash Tanna'im on Deuteronomy* (Jerusalem: Miphah Sepharim Le-yetzu, 1984), 215 (Hebrew).

These two midrashim, from the *Sifra* and from *Sifre on Deuteronomy*, indicate that the claim of two *Torot* was advanced in the generation of the Destruction and before. Additional support for the early origin of the argument of two *Torot* given at Sinai may be inferred from the existence of the two claims to authority in the Qumranic writings.

The need for the two different claims may be explained by the different audiences which the Qumran community addresses.³¹ The claim to reveal hidden teaching was suitable for the internal audience of the community itself, which believed that the Interpreter of the Torah was the agent of God. When addressing the broader audience beyond the community, a different claim was required, since this audience did not accept the Interpreter of the Torah and his status. The audience outside the community might have been receptive to the argument of two *Torot*, not only because this proposition was free of sectarian connotations, but also because it was an adaptation of another conception of two *Torot* with which “the simple ones” outside the community were familiar: the written Torah and the oral Torah. The claim to authority raised by *Jubilees*, that of a second written Torah given at Sinai, is comprehensible only in light of the opposing claim of an authoritative oral Torah, given from the desert mount.

Intriguing testimony on this issue is to be found in the *Scholium on Megillat Ta’anit*, which sets up a dialogue between the opinion cited in *Jubilees* (the *Scholium* attributes it to the Boethusians) and the view professing the Sinaitic origin of the oral Torah.

On the Tenth of Tammuz ספר גזרתא was annulled and removed. For the Boethusians would write laws in a book, so that when a person should ask, they would show him [the answer] in the book. The Sages said to them: Has it not been said already [in Scripture]: “...for in accordance with these words I make with you a covenant and with Israel” (Exod 34:27); “in accordance with the Torah that they shall teach you, etc.” (Deut 17:11), implying that it is forbidden to write [these laws] in a book? Another interpretation (דבר אחר): [...] The Sages said to them: Has it not been said already [in Scripture]: “the Torah and the commandment which I have written down to instruct them” (Exod 24:12); and it is further written: “Therefore, write down this poem and teach it to the people of Israel; put it in their mouths” (Deut 31:19)? “And teach it”—that is the written Torah (מקרא); “put it in their mouths”—these are halakhot [i.e., the oral Torah].³²

³¹ Shemesh and Werman, “Halakhah at Qumran,” 123–29.

³² MS. Oxford, in V. Noam, *Megillat Ta’anit: Versions, Interpretation, History with a Critical Edition* (Jerusalem: Yad Izhak Ben Zvi, 2003), 77–78 (Hebrew).

In the first part of this passage, the Sages reject the Boethusian claim that, besides the Torah, other writings were given at Sinai. The Boethusians write halakhot in a book, a person asks, and they show him what is written in a book. In other words, even though it is they who have written this book, they point to this tome that they themselves wrote as possessing Sinaitic authority.³³ The Sages, in response, cite two verses, one from Exodus (taken from the command that Moses received before he ascended Mount Sinai), and a second from Deuteronomy. It is the former to which *Jubilees* refers: “And the Lord said to Moses: Write down these words, for in accordance with these words I make a covenant with you and with Israel” (34:27). This verse is compared with the verse from Deuteronomy that is the basis for the authority of the Sages: “You shall act in accordance with (על פי) the Torah that they shall teach you and the ruling handed down to you; you must not deviate from the verdict that they announce to you either to the right or to the left” (Deut 17:11). The underlying midrash, employing analogous reasoning, concludes that the covenant that was forged at Sinai and mentioned in the verse from Exodus (“for in accordance [על פי] with these words I make a covenant with you and with Israel”) is likewise *‘al pi*, that is, *‘al peh*—oral; thus, this midrash undermines the claim to interpretive authority of the Boethusians (and of *Jubilees*).

In the second part, the Sages justify their position that an oral tradition may deviate from what appears in the written Torah, and they cite the two verses to which *Jubilees* refers.³⁴ While *Jubilees* chose these verses because they mention writing (“which I have written down to instruct them” [Exod 24:12]; “Therefore, write down this poem” [Deut 31:19]), the Sages learn from a close reading of the verses that, along with the *written* Torah and the poem that was *written*, there was also an *oral* transmission: “which I have written down”/“to instruct them”; “write down”/“put it in their mouths.” The Sages maintain that alongside the written Torah, the Five Books of Moses, an oral tradition was also conveyed, meant to fashion what was transmitted in writing.

We therefore have two tannaitic sources to indicate that the concept of oral Torah constitutes an early claim to authority, along with a slightly

³³ The presumption that the Sages uttered the verse that describes the Sinaitic Revelation teaches that the controversy centered around the question of authority, and not that of the writing. Consequently, the conclusion “this teaches that it is not to be written in a book” is not from the original stratum, but rather a later addition.

³⁴ Exod 24:12 and Deut 31:19; see the discussion at p. 4 and n. 14 above.

later composition that reconstructs a dialogue between Boethusians, who present an opinion resembling that in *Jubilees*, and the Sages, who present the concept of the oral Torah. The reconstruction assumes the contemporaneous existence of these two opinions even before the Destruction, in the time of the Pharisees. Although the dating of the *Scholium* is far from certain, its familiarity with the exegetical claim found in *Jubilees* implies that it preserved earlier material.

As was noted above, the Pharisees and the Tannaim were interpreters of laws, and they fashioned, expanded, and established halakhot as normative. An attempt to integrate the claim of the Sinaitic origin of the oral Torah with the awareness of the continual development of this Torah appears in a difficult passage in *t. Soṭah* 7:11–12:³⁵

He further expounded: “The sayings of the wise are like goads, and like nails firmly planted [are the masters of assemblies; they were given by one Shepherd]” (Qoh 12:11)—just as a goad leads the cow to bring life to the world, so, too, the words of Torah are life for the world, as it is said, “It is a tree of life” (Prov 3:18).

Or, [one might propose]—just as a goad is movable, so, also, are the words of Torah? Scripture teaches: “and like nails.”

“Firmly planted”—just as a plant flourishes and grows, so, too, the words of Torah flourish and multiply.

“Masters of assemblies”—those who convene and sit groups by groups, declaring the unclean “unclean,” and the clean, “clean,” for the unclean in its place, and the clean in its place. [. . .]

“They were given by one Shepherd”—one God created them, one Provider gave them, the Master of all things, blessed be He, spoke them.

Although the sayings of the wise, that is, the words of the oral Torah, live, flourish, and multiply, the Tosefta yet claims that “one God created them, one Provider gave them, the Master of all things, blessed be He, spoke them.”

A study of rabbinic expositions shows, however, that some exegeses present a single Torah, and not two. For example, note the following:³⁶

³⁵ S. Lieberman, *The Tosefta* (New York: The Jewish Theological Seminary of America 1996), 3–4:194–95. This citation follows MS. Vienna and the reconstruction by S. Naeh, “עשה לבך חדרי חדרים: עיון נוסף בדברי חז"ל על המחלוקת,” in *Renewing Jewish Commitment: The Work and Thought of David Hartman* (ed. A. Sagi and Z. Zohar; Tel-Aviv: Hakibbutz Hameuchad, 2001), 863 (Hebrew); translation my own.

³⁶ This citation and the next were translated by S. D. Fraade, See S. D. Fraade, *From Tradition to Commentary* (Albany: State University of New York, 1991), 96, 60–61.

Another interpretation of “May my discourse come down as rain” (Deut 32:2)—just as rain falls on trees and infuses each type with its distinctive flavor—the grapevine with its flavor, the olive tree with its flavor, the fig tree with its flavor—so, too, words of Torah are all one, but they comprise Mikra, Mishnah, Talmud, halakhot and *aggadot*. (*Sifre Deut.* 306)³⁷

The “discourse” that God gives Israel—the (written) Torah—is all one, embracing all the branches of rabbinic creativity. The midrash portrays a Torah which includes hidden things that the Sages, by the power of their intellect, draw forth from it.

The advocate of the oneness of the entire Torah does not accept the claim of two *Torot*, one in writing and the other oral, and he therefore must find another basis for the authority of the Mishnah, etc. The Sages do advance such a claim, which is similar to the Qumranic idea that God gave the members of the community tools with which to expound the Torah:

“He cared for him (= gave him understanding [*binah, yevonenehu*])” (Deut 32:10)—with the Ten Commandments. This teaches that when each Commandment went forth from the mouth of the Holy One, blessed be He, Israel would perceive it, and know how much *midrash* is in it, how much halakhah is in it, how many *a fortiori* arguments are in it, how many arguments by verbal analogy are in it. (*Sifre Deut.* 313)³⁸

In the Revelation at Sinai, the people of Israel received understanding (*binah*) from God, and could delve into the profundities that issued from the Lord’s mouth; that is, the people were given the ability to extract the world of rabbinic halakhah, in all its diversity. This claim to authority is close, albeit not identical, to that set forth in Qumran. The members of the Qumran community believed that the “Interpreter of the Torah” was sent to give them exegetical tools that would make possible the formulation of halakhot; in the above midrash, it is God Himself who gives, to the people as a whole, the sense of understanding that facilitates the creation of the world of halakhah.

These two exegetical passages from *Sifre on Deuteronomy* are anonymous, but it is evident that the Sage who voiced them also opposed the claim of two *Torot* given at Sinai. As we have seen, R. Akiva rejected the anonymous teaching that used the verse in Leviticus as a proof-text for the two *Torot* from Sinai argument, and these midrashim may reflect his view.

³⁷ Finkelstein, *Sifre*, 339.

³⁸ Finkelstein, *Sifre*, 355.

R. Ishmael and Claims to Authority

To this point, we have examined the early tannaitic claim to authority and the claim to authority that may reasonably be attributed to R. Akiva. We know, however, of the existence of a second school in the time of R. Akiva, that of R. Ishmael.³⁹ *Midrashei halakhah* were formulated in the latter school, but R. Ishmael voices no objection to the claim of two Sinaitic *Torot*. We shall now examine R. Ishmael's attitude to the biblical text and to the orally transmitted tradition, to try to discern which claim to interpretive authority he maintained. Our discussion will be based on an analysis of R. Ishmael's methodology in relation to two halakhic issues. We will compare R. Ishmael's approach with the halakhah of Qumran (which might also reflect the opinion of priests in Jerusalem) and with R. Akiva's approach.⁴⁰

The first topic is the law in Deut 21:10–14 concerning the beautiful female war captive. The book of Deuteronomy, like the other early biblical sources, permits marriage to a non-Israelite woman. The intention of the law in Deuteronomy is only to *restrict* the possession of non-Israelite women taken captive in war, as well as sexual relations with them. The law mandates the gradual integration of the captive in the house of her captor.

The *Temple Scroll* rewrites the biblical passage as follows (11QT 63:10–15):

When you go forth to war against your enemies, and I give them into your hands, and you take them captive, and you see among the captives a beautiful woman, and you have desire for her and would take her for yourself as wife, then you shall bring her to your house, and you shall shave her head and pare her nails. And you shall put off her captive's

³⁹ A. Yadin ("4QMMT, Rabbi Ishmael," 136–40 = idem, *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash* [Philadelphia: University of Pennsylvania Press 2004], 142–54), recently proposed that R. Ishmael represented the priestly orientation, and was not of the Pharisaic school. Yadin indicates that R. Ishmael did not transmit tradition; his teacher instructed him in exegetical methodology, and not in halakhah, and R. Ishmael used the terminology of oral transmission for the exposition of the Torah. I shall show (below) that the halakhah of R. Ishmael differs from the priestly halakhah known to us at Qumran. Furthermore, the fact that R. Ishmael was not a transmitter of tradition teaches us nothing, for R. Akiva similarly did not transmit tradition; like R. Ishmael, he, too, was a disciple of a teacher of exegetical methods.

⁴⁰ For the differences between the two schools in methodology and vocabulary see a survey by: M. Y. Kahana, *The Two Mekhilot on the Amalek Portion* (Jerusalem: The Hebrew University Magnes Press, 1999), 15–19 (Hebrew).

garb, and she shall remain in your house and bewail her father and her mother a full month; after that you may be intimate with her and possess her and she shall be you{r} wife. But she shall not touch your pure stuff for seven years, and she shall not eat a sacrifice of peace offering until seven years pass; only then she may eat.⁴¹

Several interpretive and polemical differences infuse the rewriting. The *Temple Scroll* interprets the command “to pare her nails” as a simple directive to the husband (in distinction from the woman herself. The writer also replaces the term *yerah* with the neutral *hodesh*.⁴² Most importantly, the Qumran scroll adds a sentence that establishes the impurity of the captive woman: “But she shall not touch your pure stuff for seven years, and she shall not eat a sacrifice of peace offering until seven years pass; only then she may eat.” This text thereby undermines any possible marriage, by asserting that the woman is impure and is not permitted to touch pure foodstuffs. A wife who cannot bear her share of the household’s burden will be a weight around her husband’s neck, and not even her beauty will compensate for her inability to function in the kitchen. The *Temple Scroll* therefore transforms permission to marry a non-Jewish woman into a prohibition.

The midrash from the school of R. Ishmael (*Midrash Tannaim*), unlike the *Temple Scroll*, accepts the biblical law [2], albeit after first expressing its negative opinion concerning the act [1]. Later, however, it adds something original, and notes the existence of the possibility of conversion [3]:⁴³

“And you see among the captives a beautiful woman”—Scripture only speaks against the Evil Inclination. It is preferable for Israel to eat the flesh of dying animals that have been properly slaughtered rather than that of animals that have expired [without ritual slaughter]. To what is this comparable? To the son of a king who desired something that he cannot have. His father persuades him, and says to him, “My son, if you eat this, it will harm you.” When he [the father] saw that he [the son] did not take heed, he said to him “Do such-and-such, and you shall not come to harm.” This is the meaning of “and put off her captive’s garb.”

⁴¹ Y. Yadin, *The Temple Scroll* (3 vols.; Jerusalem: The Israel Exploration Society, the Institute of Archaeology and the Shrine of the Book, 1983), 2:285–86.

⁴² *Yerah*, month, implies following the lunar cycle, and does not accord with the solar calendar of the Qumran community.

⁴³ For the transition from גֵּרוּת = the state of being a stranger, to גֵּיּוּר = conversion see: C. Werman, “The Attitude toward Gentiles in the Book of Jubilees” (Ph.D. diss., The Hebrew University of Jerusalem, 1995), 258–78.

[2] “You shall bring her into your house”—so that he shall not press her [to yield to him] during the war.

“And she shall shave her hair”—for if he were to regard her hair as beautiful and pleasing, [to counter this] it therefore is said, “and she shall shave her hair.”

“And she shall put off her captive’s garb”—for if he were to regard her garb as beautiful and pleasing, [to counter this] it therefore is said, “and she shall put off her captive’s garb.”

[3] “She shall remain in your house lamenting her father and mother a full month; after that you may be intimate with her and possess her”—to what case does this apply? [The case that] she did not accept upon herself to convert; but if she agreed to convert, he has her immerse, and she is permitted to him immediately.⁴⁴

The school of R. Ishmael therefore accepts the biblical law: the woman is permitted to him following a period of acclimatization that extends for a month, once it has been determined that the man does indeed desire her, even while she is stripped of her beauty, without her hair and without the garment that she wore when taken captive. But R. Ishmael also adds another option: “But if she agreed to convert, he has her immerse, and she is permitted to him immediately” [3]. Conversion, not in Scripture, is mentioned here as a possibility that the husband and the captive woman may choose. The captive becomes a Jew; the period of acclimatization is unnecessary, and she is immediately permitted to him.

Rabbi Akiva’s approach is recorded in *Sifre on Deuteronomy*:

“She shall lament her father and mother”—father and mother, literally; the opinion of R. Eliezer. R. Akiva says, Not her [actual] father and her mother; this rather [refers] to idolatry, as it is said, “They said to a tree, ‘You are my father’” (Jer 2:27). (*Sifre Deut.* 213)⁴⁵

R. Akiva interprets in allegorical fashion the biblical demand to allow the woman to mourn her father and mother. According to his exegesis, the woman is required to forgo idolatry. The demand made of a convert to renounce paganism guides R. Akiva to find in the biblical passage the obligation to convert the non-Jewess prior to marrying her, rather than permission to marry her while she is not a Jew. He does not accept conversion as an alternative to the biblical law, but as the sole option.

Accordingly, R. Ishmael and his school accept both the biblical law that permits marriage to a non-Jewess, and conversion, which was an

⁴⁴ Houghmann, *Midrash Tannaim*, 127–28; my translation.

⁴⁵ Finkelstein, *Sifre*, 246; my translation.

innovation in his time; R. Akiva (or his school) does not accept the permission to marry in its simple sense, and authorizes marriage only after conversion, going so far as to find in the passage a proof-text for the necessity of conversion.

Another halakhic issue that is disputed by the schools of R. Akiva and R. Ishmael, and differs between these two schools and the Qumran halakhah, is that of the permissibility of slaughtering nonconsecrated animals. Chapter 17 of Leviticus is central to the prohibition of consuming blood. The Qumranites (and maybe other priests as well) regarded this chapter as cardinal, and claimed that it forbids the slaughtering of nonconsecrated animals. Every beast that one desires to slaughter must be brought to the altar and its blood put on the altar to atone for the slaughtering; the eating of blood is totally prohibited, since “the life of the flesh is in the blood” (v. 11). The Qumranic halakhah reads Deuteronomy 12 in the light of Leviticus 17, and restricts the broad permission granted in Deuteronomy to slaughter an animal anywhere and pour out its blood “like water.”⁴⁶

R. Ishmael’s understanding of Leviticus 17 is akin to the halakhah at Qumran. He maintains that Chapter 17 forbids the slaughtering of nonconsecrated animals, and commands that the slaughter of any animal be conducted only in the Sanctuary. R. Ishmael, however, in contrast with Qumran, does not impose Leviticus 17 on Deuteronomy 12. He accepts that when the Israelites entered the Land of Israel permission was granted to eat nonconsecrated meat:

“I shall eat some meat” (Deut 12:20)—R. Ishmael says, The sole purpose of this scriptural passage is to permit nonsacral meat. Initially, nonsacral meat was forbidden to them; when they entered the Land of Israel, nonsacral meat was permitted to them. (*Midrash Tannaim* on Deut 12:20)⁴⁷
 “And you say, ‘I shall eat some meat,’ for you have the urge to eat meat” [Deut loc. cit.]—R. Ishmael says, This testifies that nonsacral meat was forbidden to Israel in the wilderness, and when they entered the Land, Scripture [MS. Oxford: the Sages] granted permission to them. (*Sifre Deut.* 75)⁴⁸

⁴⁶ C. Werman, “The Rule of Consuming and Covering the Blood in Priestly and Rabbinic Law,” *RevQ* 16 (1995): 621–36.

⁴⁷ Houghmann, *Midrash Tannaim*, 52; my translation.

⁴⁸ Finkelstein, *Sifre*, 139; my translation.

“Scripture [or the Sages] granted permission” to the Israelites to slaughter nonconsecrated animals. On the one hand, R. Ishmael acknowledges the simple meaning of the chapter in Leviticus, while on the other, he proclaims the revocation of its applicability upon entering the Land of Israel. Intriguingly, Ms. Oxford ascribes the permission to the Sages, and not Scripture. Was R. Ishmael aware of the possibility of a less than total lifting of the prohibition in Leviticus 17? Did he think that it was the Sages who granted full permission, in like fashion to the sanctioning of conversion?

R. Akiva, unlike R. Ishmael, does not subscribe to the view that Leviticus forbids the slaughtering of nonsacral animals. He finds no contradiction between Leviticus 17 and Deuteronomy 12: “The purpose of the verse is solely to teach you the commandments set forth in it” (*Sifre Deut.* 75), and the entry into the Land of Israel therefore changed nothing in this respect.⁴⁹

A comparison of the approaches taken by R. Akiva and R. Ishmael to the female captive and the slaughtering of animals reveals that the former assumed the unity of the Torah, that it is all-encompassing, with no internal contradictions. To achieve this unity, however, he detaches from the simple meaning of the text and might impose on the text external ideas (i.e., the idea of conversion). The claim to authority that he advances corresponds to this general view: a single Torah was given, with the tools necessary for its exposition and expansion.

R. Ishmael, in contrast, subjects Scripture to a careful reading, and presents what emerges from the simple meaning of the biblical text. His colleagues call him a “mountain palm” (*Sifra, Tazria* 68b)—i.e., a palm that bears no fruit—because of his refusal to set forth daring exegeses and impose on Scripture what is not in it. On the other hand, R. Ishmael presumes the existence of halakhah that “circumvents” Scripture; that is, the halakhah accords with the details in the Bible, but expands it and permits additional details.⁵⁰ He accepts the interpretation of the

⁴⁹ Finkelstein, *Sifre*, 140; my translation.

⁵⁰ As D. Henshke (“Two Subjects Typifying the Tannaitic Halakhic Midrash,” *Tarbiz* 65 [1996]: 427–34 [Hebrew]) demonstrated, R. Ishmael’s teaching of the three instances (the covering of the blood with earth; the bill of divorce; and the awl used to pierce the slave’s ear) in which the halakhah circumvents Scripture is meant to reject midrashim that seek to limit, in accordance with the spirit of the Bible, the type and number of means to be used for covering, writing, and piercing. The halakhah, according to

Sages that raises a contradiction between the different books of the Torah (“Scripture/the Sages granted permission to them” to slaughter nonconsecrated animals when they entered the Land of Israel), and acknowledges the existence of a system of halakhot that is an alternative to the Bible (conversion). He cannot propose that “the Torah is all one,” and consequently cannot agree with R. Akiva’s claim to authority. The most suitable authoritative basis for R. Ishmael’s halakhic methodology is the claim, as adapted by the Tosefta, that a second Torah was given at Sinai; namely, that the oral Torah given by God contains also what was conceived by the Sages. R. Ishmael accepts that the additions, changes, and expansions are the words of God that are voiced by the Sages.

A Reexamination of Assumptions and Concepts

An analysis of the different conceptions regarding the essential nature of Torah and the interpretive authority asserted by the priests in Qumran, the Pharisees, and the Tannaim may shed fresh light on concepts that appear in the tannaitic literature, and aid in a reexamination of several scholarly assumptions regarding this literature. I present two such cases below.

(1) *Halakhot*

The first concept worthy of reexamination is that of “halakhot” itself. A comparison of the Mishnah and the Tosefta teaches that the term could be understood in two senses:

R. Ishmael, permits all: the slave’s ear may be pierced with any instrument; a writ of divorce may be written on anything; and the blood may be covered in any manner. R. Ishmael contends that the halakhah presumably is based on Scripture, but cunningly distances itself from the Bible. We should *not* conclude from R. Ishmael’s statement that he believes that, except for these three cases, the halakhah corresponds to Scripture; consequently, we cannot state, as A. Yadin did (“4QMMT, Rabbi Ishmael,” 135) that R. Ishmael contradicts the view of the Sages.

<i>Mishnah Hag 1:8</i>	<i>Tosefta Hag 1:9 (= t. Erubin 8:23–24)</i> ⁵¹
[The rules governing] the release from vows hover in the air	[The rules governing] the release from vows hover in the air
and have no [scriptural text] to rely on.	And have no [scriptural text] to rely on, But a Sage may release in accordance with his wisdom.
The halakhot of Sabbath, Festival offerings, and sacrilege are as mountains hanging by a hair, for [the teaching of] Scripture thereon is scanty, and the halakhot many;	The halakhot of Sabbath, ⁵² Festival offerings, and sacrilege are as mountains hanging by a hair, for [the teaching of] Scripture thereon is scanty, and the halakhot many; They have no [scriptural text] to rely on. In this regard R. Joshua said, Tongues are made with tongs. [But] who made the first tongs? They were created.
The torts, the Temple service, the purity laws, and the forbidden sexual unions—	The torts, the Temple service, the purity laws, and the forbidden sexual unions, and added to them are [the halakhot of] valuations, things declared <i>herem</i> , and things declared sacred, have abundant Scripture, a lot of exegesis and halakhot;
They have that [in Scripture] to rely on.	They have that [in Scripture] to rely on.
These are the essentials of the Torah.	Abba Yose ben Hanan says, These eight bodies of the Torah are the essentials of halakhot

The Tosefta speaks of two types of halakhot, those which “have no [scriptural text] to rely on”; and those which “have that [in Scripture] to rely on.” Those of the first type (Sabbath, Festival offerings, and sacrilege) are based on scanty Scripture, and the numerous halakhot therefore have no textual support. Halakhot of the second type (torts,

⁵¹ Lieberman, *The Tosefta*, 2:379; 138–39.

⁵² S. Lieberman, *Tosefta Kī-fshutah: A Comprehensive Commentary on the Tosefta* (10 vols.; New York: The Jewish Theological Seminary of America, 1962), 3:468–69: *regalim* (festivals) instead of *Shabbat*.

the Temple service, the purity laws, forbidden sexual unions, valuations, declarations of *herem*, and sanctifications) are based on abundant Scripture; thus they are derived via exposition of texts (“a lot of exegesis and halakhot”).

I maintain that R. Joshua endeavors to impart authority to the first category of halakhot, as well. He asserts that even halakhot that are based on scanty Scripture and not derived from the Bible are nevertheless divine: “They were created.” R. Joshua compares the halakhot to tongs that can be produced only by another pair of tongs; consequently, the first was a divine creation.⁵³ Accordingly, there are two categories of halakhot possessing sanctity: the first type originates in the word of God, and the second is derived from the words of the Torah. The Tosefta attests to the ambiguity of the term, applying it both to laws transmitted independently of the biblical text, and to those that are the result of an exegetical process. Its use of the term halakhot both in the case of independent transmission and in the case of an exegetical process fits the view of R. Ishmael.

The Mishnah (in which the term halakhot appears only 6 times, by contrast with the 36 instances in the Tosefta), takes care to use this word in only one context (“the halakhot of the Sabbath, Festival offerings, and sacrilege are as mountains hanging by a hair, for [the teaching of] Scripture thereon is scanty, and the halakhot many”); nor does this section contain the declaration present in the Tosefta: “They [these halakhot] have no [scriptural text] to rely on,” since they do have a scriptural basis, according to the Mishnah. It seems that the Mishnah’s version of the saying coheres with that of R. Akiva: all details derive from the biblical text. Consequently, the Mishnah has no need for the dictum of R. Joshua, who imparts divine authority to halakhot that do not enjoy scriptural support.

⁵³ The contrast between the writings of the Qumran community and the tannaitic position when using the same metaphor is noteworthy. In CD God creates the smith (the Interpreter of the Torah), who in turn produces the first instrument that is then used to produce additional instruments; in R. Joshua’s teaching, it is God who creates the first instrument from which the Sages develop additional tools. This difference clearly shows that the sect needed a leader, while for the Sages, the exposition of the Torah was not dependent upon a single leader or institution.

(2) *The Presumed Prohibition Against Writing in the Rabbinic Literature*

It is commonly accepted that the teachings of the Tannaim (and their Pharisaic predecessors) were not committed to writing, due to the prohibition against writing the oral Torah.⁵⁴ I wish to reexamine this assumption, based on the above discussion.

The concept of the “oral [*al peh*] Torah” is a claim about authority present in the early tannaitic stratum, which attributes the traditions of the fathers (at least their beginnings) to teachings that were orally transmitted to Moses at Sinai, along with the written Torah. The term originates in a verse from Exodus (34:27): “For in accordance with [*al pi*] these words I make with you a covenant and with Israel”; its interpretation makes use of Deut 17:11: “In accordance with [*al pi*] the Torah that they shall teach you.”⁵⁵ The concept “oral Torah” does *not* include the argument that what was given orally at Sinai is to be transmitted in similar fashion, merely that these teachings were given orally at Sinai, and are not included in the written Torah.

Thus, we need not assume that whatever was given orally at Sinai was subsequently transmitted orally. As long as the one who commits these teachings to writing is cognizant of their original Sinaitic oral expression, no harm has been done to the source of their authority. Nonetheless, the advocate of the “oral Torah” claim might be cautious when writing, especially during the writing of nonmidrashic collections of laws, due to his quite likely fear that the transition to written form might blur the claim of oral conveyance at Sinai. In any event, the advocate of the claim to authority that we have ascribed to R. Akiva (who rejects the theory of two *Torot* from Sinai, and maintains that exegetical freedom was given to Israel), would not issue a blanket prohibition against writing.⁵⁶ R. Akiva’s stance assumes that whatever is not Scripture is a human creation (under divine inspiration): both the midrash, which clearly distinguishes between Scripture and what is inferred from it; *and* the halakhot, which are derived through the exegetical process and were not given directly at Sinai.

⁵⁴ For the different opinions on the subject see: S. Naeh, “The Structure and Division of Torat Kohanim (A): Scrolls,” *Tarbiz* 66 (1997): 505–12 (Hebrew).

⁵⁵ See above, p. 4 and n. 14.

⁵⁶ It is clear, then, why the prohibition against putting halakhot into writing is ascribed solely to the school of Rabbi Ishmael (and only in the Babylonian Talmud [*b. Gittin* 60b]).

Summary

We find two bodies of ancient Jewish tradition that show a belief in a single Torah: the priestly halakha from the Second Temple period and traditions ascribable to R. Akiva. The priests were loyal to the written Torah, its spirit, and the worldview inherent in it.⁵⁷ R. Akiva established a single Torah by subjoining human exegetical endeavors to the written Torah.

The Pharisees endorsed the existence of two *Torot*, but expressed their allegiance only to one, given orally at Sinai. R. Ishmael affirms the existence of two *Torot*, both of which he examines and interprets.⁵⁸ R. Ishmael's method of expounding the written Torah is similar to that of the priestly *halakhah*. However, when one must decide between the two *Torot*, he favors the oral Torah, the independent system of halakhot.

While those who held to the existence of oral Torah refrained from putting their learning into writing, both groups who believed in only one, written, Torah did not hesitate to write down the outcome of their exegetical activity, thus creating a second authorized written text. The priests of Qumran presented their written text to outsiders as part of the Sinaitic revelation. Among themselves, however, they understood that they possessed a different basis for authoritative teaching because of the divine exegetical tools they had received. Like R. Akiva, the Qumranite priests felt that God had bestowed upon human beings the ability to interpret and expand His written Words. Unlike R. Akiva, they restricted the ability to their chosen group alone.

⁵⁷ See n. 2.

⁵⁸ R. Ishmael, who restored the position of the written Torah in the two-*Torot* theory, would likely use the same terms to elucidate both oral traditions and written document. We need not accept the hypothesis by A. Yadin ("4QMMT, Rabbi Ishmael," 137–40) that the application to the written Torah of terms familiar to us from the transmission of oral traditions (such as *sham'anu*—'we heard'; *le-kayem*—'to affirm'; *diber ba-hoveh*—'[the Torah] spoke in contemporary terms') is indicative of disregard for the oral Torah.