ON STOVES, SEX, AND SLAVE-GIRLS: RABBINIC ORTHODOXY AND THE DEFINITION OF JEWISH IDENTITY*

Daniel Boyarin
University of California, Berkeley

In an enormously influential paper, "The Significance of Yavneh," historian Shaye Cohen produced a virtual revolution in the depiction of rabbinic Judaism, arguing that at Yavneh there was "created a society based on the doctrine that conflicting disputants may each be advancing the words of the living God." Indeed, more than once, directly contradictory interpretations are validated by a heavenly voice intoning: "these and these are the words of the living God." The opinion of every member of the House of Study is equally valid. Statements such as this 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, it is suggested, 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. Somewhat less lyrically, but equally idealizing, we sometimes find this structure described as one of a radical democratization of interpretation within the rabbinic polity.2

The first Mishna of the tenth chapter of Tractate Sanhedrin reads: "All Israel have a place in the next world, and these are they who have no place in the next world: One who denies that the resurrection of the dead is a dogma of the Torah; one who denies that the [oral] Torah is from heaven, and [Jewish] Epicureans." This passage, which has been nominated the "Pharisaic Credo" by Louis Finkelstein,3 seems to be promulgating, perhaps for the first time in a Judaism, a "rule of faith" for who is "orthodox," or even genuinely Israel, and who is not. Resurrection and the revealed Oral Torah are precisely the

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* I am providing the text here just as it was delivered orally at the University of Wisconsin on March 28, 1999, with only minimal and vital annotation added. A much fuller version of the argument has appeared in Exemplaria, 12.1 (Spring, 2000).
major doctrinal points at issue between the Pharisees and the Sadducees. The Epicureans are included here in my view, because they also deny a life after death. It seems, therefore, doubly difficult to posit "the emergence of the ideology of pluralism to replace the monism which previously characterized the temple and the sects." 4 Pace Cohen, the most straightforward interpretation of the Mishnaic passage seems to be that the three who are denied a place in the next world are indeed not Israel. Otherwise the text logically contradicts itself. It hardly bears out, therefore, Cohen's claim that "This is not the work of a sect triumphant but of a grand coalition." 5 All Israel indeed, but an "orthodox" Israel which denies the very name Israel to Sadducees.

Another important text in the Mishna will support this conjecture:

The daughters of the Sadducees, as long as they are accustomed to follow the ways of their fathers, have the same status [in matters of menstrual purity] as Samaritan women. When they have separated themselves [from the ways of their fathers] and follow the ways of Israel, they have the same status as Israel.

Rabbi Yosi says: "They always have the same status as Israel unless they separate themselves to follow the ways of their fathers." [Nid. 4:2] 6

Following methodological canons established by my teacher Saul Lieberman, 7 I would argue that this text has to be historicized vis-à-vis the time of its production, that is, the late second century. Whether or not the text means to refer to Sadducees contemporary with Rabbi Yosi and the Mishna, in any case the contrast between them and the dominant group is put into terms of "ways of their fathers" versus "the ways of Israel." In other words, this text projects a situation in which there are historical and genealogical Israelites who are not "Israel," and it finally doesn't matter whether these are actual Sadducees or not. As opposed to the situation in second-temple times in which various groups were all Israel with clear lines of demarcation between the contesting groups collectively and the true outsiders, the Gentiles, the Rabbis are in these texts appropriating the name "Israel" for those who hold their creed and follow the ways that they identify as the "ways of Israel," and the "Sadducees" are heretics who are beyond the pale and outside the name Israel. The passage is thus completely

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4 S. J. D. Cohen, "Yavneh," p. 45.
5 S. J. D. Cohen, "Yavneh," p. 42.
6 See C. Fonrobert, "How Are the Daughters of Israel Different from Other Women?: Rabbinic Constructions of 'Other' Women" (Los Angeles, CA, 1999).
consonant with the Sanhedrin passage cited above, which also effectively
denies the name “Israel” to those who do not cleave to the Pharisaic creed.

On this, at least possible reading, it was the tannaim who first consid-
ered the “Sadducees” as wicked and deviant, as opposed to Josephus with
respect to Sadducees and Essenes, who though himself a Pharisee, allowed
for the legitimate difference of the “haireseis.” This reading, then, would
lead to the hypothesis of the production of a new category of the heretic
within rabbinic discourse. I am not claiming that the Mishna in general
considers Sadducees non-Jews, but only that the first seeds of a heresiologi-
cal discourse within rabbinic Judaism are to be located in these texts. This
interpretation also explains the frequent textual variations of “min,”
“Sadducee,” and even occasionally “Samaritan,” within the textual tradi-
tions. This is not mere euphemism, as has occasionally been opined, but
represents, in my view, a real category—minim/Sadducees.

What I propose is that we shift the question from that to which the
Mishna refers and stop asking about whether there really existed Sadducees
well into the rabbinic period or whether or not the Mishna is referring to
its own time or the past. The answer to these questions is most likely a re-
sounding non liquet. Instead, I propose, we can learn something else from
it that certainly applies to the (late) second century, namely that for rab-
binic discourse, there are Jews who are outside of “Israel,” and that these
Jews are called variously minim and Sadducees. The category of heresy has
been invented, and thus, the category of “orthodoxy,” at least tacitly. I find,
therefore, in the fact that the Mishnaic text discussed above opposes
“Sadducees” and “Israel,” not evidence for a tolerant non-sectarian
Judaism, but precisely for a “Catholic” Israel, a former sect that has won
the day, or at any rate so represents itself, and defines all others as simply
not in the fold at all.

This interpretation can be supported linguistically as well. It is only in
the rabbinic literature, that is, beginning with the Mishna (and not, for in-
stance, in Qumran), that we find attested in any Jewish writings a word
cognate with the later, Christian, usage of “heresy” and “heretic,” namely,
minut and min, which are first attested in the Mishna. Martin Goodman
further makes the significant point that: “Even more striking is the coinage
of the term minut, ‘heresy,’ since the creation of an abstract noun to denote
a religious tendency was not otherwise common in tannaitic texts (for ex-

8 A commonplace question, to be sure, in much recent scholarship. See notably S. Mason, Flavius
ample, there was no abstract noun in Hebrew for Pharisaism or Sadduceism.)

This premise too supports the hypothesis that in the latter part of the first century, the notion of heresy had not yet entered (pre-)rabbinic Judaism and that the term, 

min, only attested, after all, in early third century sources is, in fact, a later development in Jewish religious discourse. If not proof, it is certainly suggestive that it is in Justin Martyr that we find for the first time “hairesis” in the sense of “heresy” in the mouth of a Jew, Trypho, as well (Dialogue 62.3). On this text Marcel Simon comments:

However, when this passage, written in the middle of the second century, is compared with the passage in Acts, it seems that the term hairesis has undergone in Judaism an evolution identical to, and parallel with, the one it underwent in Christianity. This is no doubt due to the triumph of Pharisaism which, after the catastrophe of 70 C.E., established precise norms of orthodoxy unknown in Israel before that time. Pharisaism had been one heresy among many; now it is identified with authentic Judaism and the term hairesis, now given a pejorative sense, designates anything that deviates from the Pharisaic way.

This first usage of hairesis in this sense in the mouth of a Jew is chronologically a congener, then, for the first appearance of the Hebrew term minur at just about the same time. We need, therefore, more precision than Simon manifests. By substituting the mid-second century, the time, after all to which the Justin-text actually refers, for Simon’s “after 70,” and “Rabbis” for “Pharisees,” we end up with the thesis of the current lecture. In the Mishna, we might hypothesise, Jewish orthodoxy is codified for the first time in history.

The first crucial nexus, it would seem, in the mutual rabbinic and Christian story of the invention of heresy centers around the late second century and the writing of Justin Martyr on the one hand, and the Mishna, on the other.

I have so far reframed a certain story of the history of Judaism, showing, I hope, that this narrative can be retold in a way that is revealingly similar to the Christian story in the period. Three major events constitutive for the ultimate emergence of Catholic Christianity take place in the second


century: The emergence of the discourse of heresiology, the notion of the rule of faith, and the invention of the idea of the apostolic succession. Three threads in the fabric of rabbinic history that also seem to be woven together in the late second century, as evidenced by the literary product of that period, the Mishna, parallel these: The invention of *minuit*, the first Jewish term for "heresy," the promulgation of the Pharisaic credo as well as practices for the exclusion of the *minim* from the House of Israel, and the publication of a list of "apostolic succession" for rabbinic Judaism, Tractate *Avot*. I suggest, therefore, that we will learn much if we read the Mishna and its innovations in the context of the time of its production and see it as indicative of a more general socio-religious process that resulted in the production of not one, but two new orthodox Jewishisms in late antiquity, two orthodoxies, each, *mutatis mutandis*, with its own system of heresiography as well.

It can hardly be denied, nevertheless, that rabbinic Jewish texts frequently thematize and valorize a certain version of sanctified and unresolved controversy. Rabbinic textuality, far more than other Jewish or Christian 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, that is, it is a self-conscious trait of rabbinic religion, just as much as doctrinal rigor is of fourth century Christianity. Cohen’s description of Yavneh as creation of "a society based on the doctrine that conflicting disputants may each be advancing the words of the living God” can, thus, certainly not be dismissed.

How can these two seemingly contradictory propositions be held together? 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 solution that I suggest, therefore, to the seeming aporia in the descriptions of rabbinic Judaism as rigid and exclusivistic or as inclusive and elastic, is to realize that Yavneh itself is a kind of legend, or rather, a series of changing legends of foundation. Both legends are encoded within rabbinic literature itself, an early one of conflict and exclusion and a latter day one of "agreement to disagree." This will emerge when we read the differ-

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ent "myths" of the Council of Yavneh in the third or fourth-fifth century 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 Yavneh was portrayed in a certain fashion in the rabbinic literature of the early third century and then underwent a reinterpretation in the second half of the fourth century and received then a normative status. In any case, that retold and ultimately definitive 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." I would, therefore, substitute for Cohen's prospective "creation," a retrospective and utopian "construction." Cohen is right, I think, but the Yavneh that he describes is a product of the late myth-making discourse of the Talmud.

The key, I think, to a more nuanced and differentiated description of rabbinic Judaism than the relatively unspoken ones offered till now has been provided not by a historian, but by a literary critic, David Stern, although my recharting of his reading will be historically, that is chronologically defined, where his is exclusively literary. Stern discusses the vaunted "undecidability" (or protodeconstruction) of language promulgated in midrash, the "derridean" interpretation of rabbinic culture. Stern's close reading of the rabbinic texts suggests that the pluralism, even the limited internal pluralism, of the Rabbis is a product of much of the ideology of the rabbinic schools or teachers themselves but of the reductors of the rabbinic texts.12

In a famous derasha (rabbinic sermon) analyzed by Stern,13 the problem of polysemy is explicitly confronted in social terms of univocality (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]). Therefore make your ear like the hop-
per and acquire a perceptive heart to understand the words of those who pro-
nounce 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. [b. Hag 3a–b]

Stern notes that according to this text, while the student might despair at
the possibility of studying Torah owing to the multiplicity of interpreta-
tions, there is really no cause for such despondency: “Although the sages’
options may contradict each other, they all are part of Torah, part of a
single revelation.” This notion is then correlated by him with the famous
statement in the Talmud that a heavenly oracle declared with respect to the
contradictory opinions of the two “Houses,” the House of Hillel and the
House of Shammai that “these and these are the words of the Living God”
[b. ‘Erub. 13b].

The conclusion of such a discourse is a powerful and tendentious sup-
port for rabbinic hegemony. Stern, however, argues that this theology of
language was not the operative ideology within the House of Study itself
but is a purely literary phenomenon. Nor does it represent social reality of
human language use but 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.

Stern has introduced a very 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
impression of unity does not represent, according to Stern, historical real-
ity. 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. 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 soci-
ety.”

The redactors of the rabbinic texts chose, however, to enshrine multiple views as being of equal validity and value:

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14 Translation in D. Stern, Midrash, p. 19.
15 D. Stern, Midrash, p. 20.
16 D. Stern, Midrash, p. 34.
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.*

Stern has drawn a distinction between earlier Palestinian and later 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 within rabbinic literature. "Sacred 'compromise texts'" can be found in later Palestinian Jewish literature including rabbinic texts such as the Mishna, with its harmonization of the schools of Rabban Gamaliel and Rabbi Yohanan ben Zakkaï, the Midrashim which all tacitly combine the schools of Rabbis Ishmael and Akiva, and also 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 perhaps by the very texts that Stern analyzes. The distinction between these two categories is that while in the earlier Palestinian texts, incompatible views are set side by side with each other, as in the Pentateuch itself, in the Babylonian Talmud, it is a matter of ideological 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.

Yet another way that I might articulate this difference would be to say that if for the Palestinians undecidability seems to be the product of the ineluctable limitations of human knowing, for the Babylonian Talmud, in its late redactorial stage, it would seem to be a condition of language itself, such 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. And yet, too, at the same time, the borders of the social body in whose hands it is given to

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17 D. Stern, *Midrash*, p. 34, emphasis added.
determine the parameters of radical doubt, the walls of the House of Study, as it were, are being constructed and firmly shored up, in large part, as we shall see, through a process of "domestication" of figures who might otherwise be found outside these walls, figures such as Rabbi Eliezer or the early pietists.

What I am proposing, then, is a foucauldian genealogy of a "derridean" 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 wherever it is found.

It should be clear by now that far from representing a democratic dispersal of power, the narrative of rabbinic heteroglossia is, in 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 "significances" of Yavneh. This history can be read, as it were, between the lines of various talmudic narratives themselves.

In the Babylonian Talmud *Ned. 20a–b*, and only there, we find the following remarkable text, a text which explicitly dramatizes the transfer of religious authority from its multiple legitimate sources at an earlier period of Judaism to being the exclusive prerogative of the Rabbis, the students of the Oral Torah. When we look carefully at this text, which is all about an epistemic shift from one set of traditional forms of power/knowledge to the exclusive control of the Rabbis, we will be in a position to contextualize further the set of developments around the figure of Yavneh that constitute the invention of rabbinic orthodoxy:

Rabbi Yohanan 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."

Rabb Yohanan said: These are the words of Rabbi Yohanan the son of Dahavai, but the Sages say, "Anything that a man wishes to do 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."

Rabbi Yohanan, not the same as Rabbi Yohanan the son of Dahavai, dissent from the halakha that the angels had communicated through that former Yohanan, and then:

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

Amemar cannot believe that Rabbi Yohanan 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 are actually designations for the same group. It should be emphasized, however, that he is only rendering explicit what was implicit in Rabbi Yohanan'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:

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 at stake here, that the text represents part of a rabbinic project of takeover and disenfranchisement of all sources of traditional religious authority among Jews, including, but not only, 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.

First, we must engage in some lexicography. The term “turning the tables” can most likely be identified as vaginal intercourse with the woman on top. Extant 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 rabbinally sanctioned marital sexual abuse. The full context, however, suggests another interpretation. This is, I suggest, a text primarily about the acquisition of rabbinic 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. And, 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. The complaint of these wives is not that their husbands wish to engage in a form of sex that is distasteful or painful but that they wish to engage in intercourse that the old mores of the Jews considered as

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18 In the past scholars, including me, have wavered between this interpretation and identifying it as anal or dorsal vaginal intercourse. The standard lectionary 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, if not, however, in sexual contexts. See also M. L. Satlow, Tasting the Dish: Rabbinic Rhetorics of Sexuality, (Brown Judaic Studies 303; Atlanta, GA: Scholars Press, 1995), p. 239 and especially R. Biale, Women and Jewish Law: An Exploration of Women’s Issues in Halakhic Sources (New York: Schocken, 1984), pp. 137–139, who also compare b. Gil. 70a, where it is stated that “she above and he below is the way of brazenness.”

19 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,” M. L. Satlow, Tasting the Dish, p. 240.
improper and even dangerous. The responses of Rabbi and Rav are not, therefore, counsels of submission to abuse indicating that the wife is either the husband’s sexual property or a “consumable,” but rather an assertion of the sole authority of “Torah”—as the text reads explicitly—over any other kind of religious leadership, whether angelic or traditional, including traditional women’s power/knowledge. If the Torah does 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 it is permitted to have sex, it may be had in any position according to the Torah, just as a fish may be cooked in any fashion desired, and 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, that is, 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 invokes Foucault. Women on top in intercourse, but not in discourse.

The interpretation of “Torah” in this context is 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 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!?"

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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.” [Ber. 62a]

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 everything 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 contemporary Christian polity. 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, but the text insists that Torah consists in observing the behavior of the Master 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 over behavior including intimate behavior is exclusively arrogated by the "Torah," that is, by the community of rabbinic scholars, all male of course, making their interpretations and rendering their decisions. In other words, 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 a rabbinic Judaism, defined as a Judaism in which a group called Rabbis are the only religious virtuosi.

One could read the later Rabbi Yirmiaḥ’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, then, 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 that is articulated by Rabbi Yohanan, and that persona together with Rabbi and Rav are surely central, if not the crucial, figures in the narrative of the rise to domination of the Rabbis. Deploying in this text precisely these three 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, this battle between men for power is being carried out across the discursive bodies of women.

The intervention of Rabbi Yirmiaḥ 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—even exclusion from Israel itself—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. It is a fictionalized or legendary biography of one of the most 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. According to the story that is preserved in that Talmud, 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—if not insignificant—malfeasance. I suggest that rather than the point of halakhic disagreement, in the view of that Talmud at least, it was instead the manner of Rabbi Eli‘ezer’s authorization for his position, via quasi-prophetic or magical means, that so enraged the Rabbis:

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 stood on his feet and said “it [the Torah] is not in heaven.” [B. Meš. 59a–b]

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 [tešuvot] 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 entirely: miracles and heavenly oracles, a form of authority that, in my view, it is the essence of rabbinic Judaism to contest.

As in the story of Rabbi Yohanan 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, or even of democratization, 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 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’ [Exod 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 both the Hellenistic and Victorian periods; it is a transfer of authority and control over discourse. The co-reading of these two texts allows us to date these discursive developments around the figure of Rabbi Yirmiah.

In this narrative we find 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, 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.’”

It is hard to imagine a more unambiguous and audacious account of an epistemic shift than this one. A divine voice itself 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 any 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 powerful modes of shunning and exclusion as such a means of control. The following case is illuminating. According to the Mishna *Ed. 5:6*, Rabbi Aqablya ben Mehalelel was excommunicated and his coffin was stoned after his death, simply owing to a disagreement on whether or not female freed slaves were subject to the ritual of the errant wife (*Sotah*) or not, once more a struggle for male power fought over the body of a woman and a woman’s sexuality. The stoning of the coffin of Rabbi Aqablya ben Mehalelel, whether historically “true” or merely legendary, is surely more than a mere disciplinary measure but indicative rather of a dire exclusion from the community, 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: \footnote{20} “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.” \footnote{21} Indeed, as we learn from a tannaitic source in the Babylonian Talmud Sanh. 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). Once again the nexus between Justin’s heresiology and that of the near-contemporaneous Mishna seems revealing.

The consequences for Rabbi Eli’ezer according to the Babylonian legend were nearly as dire. 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 vow and excommunicated him.” In other words, the Babylonian Talmud here preserves a memory, I would suggest, that Eli’ezer was not an “orthodox” member of their party or even a tolerated dissident. Rabbi Eli’ezer, to put a point on it, is treated as a heretic:

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 vow about him and “blessed him” \textit{[a euphemism for dire curse and anathema]}…

What did Rabbi Aqiva do? He wore black clothes, and wrapped himself in a black cloak \textit{[signs of mourning]}, and went and sat before [Rabbi Eli’ezer] at a distance of four cubits \textit{[thus signaling 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 also tore his clothes and removed his shoes, and slid down and sat on the earth \textit{[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…

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 traveling in a ship. A mighty wave came to sink it. He said, “I believe that this is only because of Eli’ezer the

\footnote{20} A. Le Boulluec, \textit{La notion d’hérésie dans la littérature grecque II\textsuperscript{e}-III\textsuperscript{e} siècles} (Paris: Études Augustiniennes, 1985), p. 65.

son of Hyrcanos.” 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.

At this stage in the story we have a dramatic rendition of the conflicts of
the early stages of the formation of rabbinic Judaism. In order to protect
Israel from controversy, Rabban Gamaliel is represented as having ex-
communicated Rabbi Eliezer with the most dire form of anathema, one
that renders him as if a dead man. 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 acts of exclusion, both
of Eliezer and of Aqaba. Cohen seems to accept almost en bloc the terms
of the rabbinic literature itself when he writes that “two categories of peo-
ple could not be incorporated into the Yavneh 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 contradiction in his argument by
claiming that “[t]hese sectarians were denounced, not excommunicated.”
However, Rabbi Eliezer himself was certainly excommunicated. Aqaba
too was certainly excommunicated. Cohen argues, “Whatever the truth of
these amoraic stories, they reflect the essential problem of the Yavneh
period: the creation of the society which would tolerate, even foster, dis-
putes 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, “[t]his rabbinic ideology is reflected in Justin’s dis-
cussion of the Jewish sects: there are Jews, that is, the ‘orthodox,’ and there
are sects, among them the Pharisees, who scarcely deserve the name
Jew.”

Reading critically, we hardly see here the inclusiveness and toler-
ance that most scholars now identify as the legacy of Yavneh. Indeed 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.

To be sure, the nar-

22 S. J. D. Cohen, “Yavneh,” p. 49.
23 Cf. R. Lim, Public Disputation, Power and Social Order in Late Antiquity (Transformations of the
order that there would not be many controversies in Israel.” Those who will not get with the program are simply thrown out of Israel.

How then shall we explain the final form of rabbinic Judaism in which we find precisely 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 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 Agbayya ben Mehaelel of the third century Mishna, Rabbi El'eezer 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 El'eezer was sick, Rabbi Akiva 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 El'eezer is still excommunicated].

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 Akiva then said to him: “What about me?”

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

He [El'eezer] took his two arms and placed them on his heart and said: “Ailh 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.

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, and in the planting of cucumbers, and no one ever asked me about them, except for Akiva 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!” (b. Sanh. 68a)

I wish to spotlight not the content but rather the form itself as a historical allegory of the shift in the social status of dissent from the second/third century to the fourth/fifth century context. Rabbi Eli‘ezer is reincorporated into the rabbinic community just before his death “in purity.” It is not his views on the halakha that have changed but the manner of his discourse. No longer a representative of a mantic or traditional authority, he now accepts, as it were, the rules of discourse of the Rabbis: He learns Torah. He has been rabbinized. We can read this shift in the narrative itself, at the moment that Rabbi Eli‘ezer turns from magic plantings and harvestings of cucumbers to answering the purity question of the Rabbis.

As Jacob Neusner has pointed out, older traditions of Rabbi Eli‘ezer hardly even emphasize his commitment to the study of Torah as the central act of Jewish piety, while here, the disciples come to “learn Torah,” and the “much Torah” that he has learned and taught are made central to his self image. The Rabbi Eli‘ezer of the early tradition never “studied Torah,” while in the latest stages of rabbinic tradition, he is the very embodiment of the Torah itself. According to the Tosept (Yabmut [sic] 3:1; ed. c. 250 A.C.), 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. 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. 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

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25 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 Yehanan 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. J. Neusner, Eliezer Ben Hyrcanus: The Tradition and the Man, II (Leiden: B. J. Brill, 1973), p. 301.
into a proper talmudic sage. Thus he is converted into a Rabbi. Rabbi Eliezer, historically perhaps a problematic and dissident Pharisee, has been thoroughly domesticated and rabbinized through this account. What is narrated in the text as a story of transgression and repentance can be reread historically as the story of appropriation and domestication into rabbinic orthodoxy of a "heterodox" strand of Pharisaic Judaism. By the time the Babylonian Talmud retales this story, the Rabbis have won the struggle for hegemony, the heresiological strife 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 fourth, perhaps fifth century and particularly Babylonian moment) that Cohen's Yavneh, his "grand coalition" comes into being.

27 This interpretation is consistent as well with the argument made by Kalmin that the Babylonian Talmud so thoroughly "rabbinizes" such figures as the charismatic, manic, wonder-working holy men, Honi HaMa'agel and Hanina ben Dosa that it actually has them studying Torah and thus "forgetting" that they were in their Palestinian origin an antithetical force and factional opposition party to nascent rabbinic Judaism. R. Kalmin, "Christians and Heretics in Rabbinic Literature of Late Antiquity," Harvard Theological Review 87.2 (Apr 1994) 158; W. S. Green, "Palestinian Holy Men: Charismatic Leadership and Roman Tradition," in Aufstieg und Niedergang der Römischen Welt II, Principat 19.2, ed. W. Haase (Berlin: Gruyter, 1979), pp. 619-647; S. Freyne, "The Charismatic," in Ideal Figures in Ancient Judaism: Profiles and Paradigms, eds. G. Nickelsburg and J. Collins (Septuagint and Cognate Studies Series, no. 12; Chico, CA: Scholars Press, 1980).