

## Guarding Oral Transmission: Within and Between Cultures

Talya Fishman

Like their rabbinic Jewish predecessors and contemporaries, early Muslims distinguished between teachings made known through revelation and those articulated by human tradents. Efforts were made throughout the seventh century—and, in some locations, well into the ninth—to insure that the epistemological distinctness of these two culturally authoritative corpora would be reflected and affirmed in discrete modes of transmission. Thus, while the revealed Qur'an was transmitted in written compilations from the time of Uthman, the third caliph (d. 656), the inscription of *ḥadīth*, reports of the sayings and activities of the Prophet Muhammad and his companions, was vehemently opposed—even after writing had become commonplace. The zeal with which Muslim scholars guarded oral transmission, and the ingenious strategies they deployed in order to preserve this practice, attracted the attention of several contemporary researchers, and prompted one of them, Michael Cook, to search for the origins of this cultural impulse.

After reviewing an array of possible causes that might explain early Muslim zeal to insure that *aḥadīth* were relayed solely through oral transmission,<sup>1</sup> Cook argued for “the Jewish origin of the Muslim hostility to the writing of tradition” (1997:442).<sup>2</sup> The Arabic evidence he cites consists of warnings to Muslims that *ḥadīth* inscription would lead them to commit the theological error of which contemporaneous Jews were guilty (501-03): once they inscribed their *Mathnā*, that is, Mishna, Jews came to regard this repository of human teachings as a source of authority equal to that of revealed Scripture (Ibn Saʿd 1904-40:v, 140; iii, 1).<sup>3</sup> As Jewish evidence for his claim, Cook cites sayings by Palestinian rabbis of late antiquity and by writers of the geonic era, which asserted that extra-revelationary teachings are only to be relayed through oral transmission (1997:498-518).

Occasioned by Cook's remarks, this paper argues that exhortations to guard oral transmission, whether articulated by Jews or by Muslims, were not expressions of any

---

<sup>1</sup> See Cook 1997:491-512.

<sup>2</sup> See also Cook 1997:501-03; 498, n. 560; 509.

<sup>3</sup> The two most pointed passages appear in a biographical encyclopedia of great Muslims ascribed to Ibn Saʿd of Baghdad (d. 845). One is an account related by Sufyān al-Thawrī (d. 778) on the authority of Ibn Shihāb al-Zuhrī (d. 742), and the other was reported by ‘Abd Allāh ibn al-ʿAlāʾ of Damascus (d. 786), a student of al-Qāsim ibn Muḥammad (d. 728), who was a grandson of the first caliph. The relevant passages are discussed in Goldziher 2004:59-60; Wegner 1982:34; Cook 1997:502; Musa 2008:23-24; and Fishman forthcoming a.

essentialist preference for the oral over the written, but, rather, historically contingent utterances that addressed the particular political, theological, or social needs of their proponents. When the nascent communities of rabbinic Jews and Muslim distinguished between the authoritative corpora of knowledge that each possessed, they did so in response to specific challenges. The technological and behavioral strategies they adopted in order to maintain these distinctions were ones they had inherited from Hellenistic culture. And when pockets of Jews and Muslims exhorted preservation of oral transmission well after the formative periods of their respective cultures, they were not echoing innate cultural predispositions to “oralism” in the “hollow” manner of “revivalists” (Cook 1997:439), but were responding to specific stimuli.

In order to put to rest the claim of Jewish culture’s putative preference for oral over written transmission, the first part of this study will reconstruct the historical contexts within which Jewish endorsements of oral transmission were formulated, both in antiquity and in the period of the Geonim, that is, the “Eminences” who presided over post-talmudic rabbinical academies in the area of Baghdad between the seventh and eleventh centuries. The second part will discuss performative strategies that rabbinic Jews used in order to tag certain corpora as “oral,” even when the latter clearly existed as written texts. Widespread use of inscribed texts of *oral matters* did not alter rabbinic society’s need to preserve a classification that distinguished sharply between two types of transmission, and it did not diminish the cultural meaning of this taxonomy. Finally, stimulated by studies on early Muslim resistance to *ḥadith* inscription undertaken by Cook (1997), Menahem Kister (1998), and Gregor Schoeler (1989 and 2006), the third part will ruminate on the timing and regional specificity of admonitions to guard the oral transmission of tradition that were articulated in eighth- and ninth-century Iraq by Muslims and Jews alike.

### Disparate Jewish Motives for Championing Oral Transmission

Third-century rabbis claimed that “Oral Torah,” extra-scriptural tradition, had been revealed at Sinai along with Scripture itself (Jaffee 1998:i, 54; 2001:140-67), and they promulgated rules to regulate the production, handling, transmission, and use of such *oral matters* on the one hand, and of *written matters*, or Scripture, on the other. The regulations they formulated are mirror images of one another; practices prescribed for one type of knowledge are proscribed for the other (BT, Tem. 14b; Git. 60b):

R. Judah ben Nahmani, the interpreter of Resh Lakish, discoursed as follows: It is written: [Ex. 24:27], “Write you these words/matters,” and it is written [*ibid.*], “for according to the mouth of these words/matters.” What are we to make of this? It means: The matters [*devarim*] that are written you are not at liberty to say by heart, and the matters [*devarim*] that are oral you are not at liberty to say/recite in writing.<sup>4</sup>

---

<sup>4</sup> Translation mine. The earliest source for this tradition, a *beraita*, appears in *Tanna devei Rabi Yishma’el*. See Lieberman 1962:213-24; Epstein 1948:i, 692-706; Elon 1978:i, 208-10; Baumgarten 1972; Gerhardtsohn 1961:122; Gandz 1939; Zlotnick 1984-85.

The articulation of these strictures should be viewed within the context of the intense factionalism that characterized Jewish society after the Second Temple's destruction in 70 CE. At a time when the very definition of the biblical canon was a subject of ferocious debate, the rabbinic regulations established boundaries that could be experienced in the public arena. The first ruling, stipulating that a particular corpus of tradition could only be transmitted by a lector chanting from the written text, offered public display to the scope—and the limits—of the “approved” scriptural corpus. Writings that other Jews of the time revered as inspired texts, but that rabbis pointedly excluded from the biblical canon, could not be liturgically performed. Indeed, the second-century Palestinian sage R. Akiba warned that anyone reading liturgically from *sefarim hitzoniyyim*, that is, writings deemed external to the rabbinic canon (for example, from the Apocrypha), would lose his share in the World-to-Come (JT San. 10:1).<sup>5</sup> By insuring that only texts to be venerated as Scripture would be performed aloud, the first regulation served to publicly mark the boundaries of the rabbinically defined canon. It was, in this sense, a marker of communal and theological identity.

Beyond this, however, the rabbis' requirement that the Bible be transmitted only through the declaimed reading of an open text served to mechanically arrest certain tendencies that occur naturally in the course of a tradition's transmission. Where propagation of tradition's content is the goal of instruction, linguistic formulations are fluid, even labile. Under such circumstances, clarificatory or interpretive perspectives tend to be incorporated into the body of the tradition itself, since the purpose of transmission is to relay meaning.<sup>6</sup> The insistence that certain traditions be transmitted only through direct reading (and not through oral paraphrase) served to curb natural tendencies toward linguistic slippage and the accretion of explanatory comments. Moreover, at a time when non-rabbinic Jews were producing works of so-called “re-written Bible” (such as the *Book of Jubilees*), this dictum prevented the “seepage” of extra-biblical interpretations or insights into the corpus of written Torah, shoring up the boundary between them and preventing later teachings from being mistaken for Scripture itself.

When viewed in tandem with the first regulation, the second regulation, which stipulates the mode of transmission appropriate for *oral matters*, promoted the agenda of rabbinic Jews in several ways. It insured that the teachings of the rabbis, unlike those of their Jewish contemporaries who claimed revelation, would be positioned as insights external to the revealed word of God. The distinctness of rabbinic *midrash* from the corpus of *written matters* was predicated on the assumption that Scripture's precise formulation was already fixed and immutable; in this sense, *midrash* authorized the Scriptural text it engaged. Finally, by giving their own extra-biblical traditions equal billing with Scripture, the dicta's parallel formulation bestowed authority upon the rabbis, the tradents and teachers of *oral matters*.<sup>7</sup>

---

<sup>5</sup> Menahem Haran (1955-56:247) adds in a footnote that this observation had been made previously by Yehezkel Kaufman and Nahman Krochmal.

<sup>6</sup> This phenomenon is boldly illustrated, for example, in Fishbane 1988.

<sup>7</sup> Hezser notes that “while the *concept* of the ‘Oral Torah’ was specifically rabbinic, its *function* seems to have been similar to the Pharisees' presentation of their own views as ‘ancestral traditions’ and the Essenes' lack of distinction between their own legal and exegetical extrapolations and the biblical text itself: namely, to demonstrate that they are ‘the legitimate and only legitimate heir to biblical Israel’” (2001:201).

The ascription of these paired rabbinic dicta to the time of Resh Laqish (c.200-c.275) complements Martin Jaffee's determination (2001:67) that the concept of "Oral Torah" emerged in the third century, and should assist in parrying the hypothesis that the rabbis promoted this construct only in reaction to what they perceived as Christianity's co-optation of Scripture.<sup>8</sup> The rabbinic ascription of greater value to Oral Torah than to Written Torah, prominent in the midrashic narratives equating *Oral Torah* with pedigree (JT, Peah 2:16 = 17a; JT, Meg. 4:1 = 74d; JT, Hagigah 1:8 = 76d), undoubtedly was a response to the Christian claim to being *verus Israel*,<sup>9</sup> but there is no reason to construe the actual rabbinic distinction between *written matters* and *oral matters* as one that was born of an interfaith polemical encounter.

Assertions that orally transmitted rabbinic teachings were superior to those learned from written texts were also made, with vehemence, by Jews in the circle of the Babylonian Geonim between the eighth and eleventh centuries. From a doctrinal standpoint, these remarks merely reinforce the second of the paired ancient dicta, but as historical records they indicate that rabbinic Jews felt some anxiety about the locus of rabbinic authority at a time when inscribed rabbinic texts had become more widely accessible.

Although the Baghdadi *yeshivot* headed by the Geonim were the acknowledged headquarters of rabbinic Judaism during this period (a status reaffirmed twice a year at monthlong academic convocations that brought Jewish students from all over the world to the geonic academies), rabbinic communities far from Baghdad (including those of Al-Andalus, Sicily, Kairouan, and Palestine) appear to have been largely self-sufficient, not only administratively, but juridically as well (Ben Sasson 1996). As the inscribed Babylonian Talmud became more widely available, Jews in several communities came to regard it as a reference work for adjudication. The composition of Maghribi talmudic commentaries in the eleventh century that focused on the clarification of applied law greatly abetted this process (Ta Shma 1999), but Jews remote from the geonic academies appear to have made legal decisions on the basis of inscribed texts of *oral matters* even before these works were created.

Adjudication from such inscriptions elicited harsh criticism. If we are to believe a claim made in the early ninth century by the Babylonian Jew Pirkoi ben Baboi (Ginzberg 1928; Spiegel 1965),<sup>10</sup> Yehudai Gaon had sought, in the 760s, to impress upon Palestinian Jews that legal teachings encountered in Talmud could not be construed on their own as actual prescriptions for practice. The only talmudic legal teachings that possessed such authority were those vetted by living masters, who were the links in the chain of tradition. Reporting on Yehudai Gaon's message, Pirkoi wrote:

And Yehudai, of blessed memory, also said that, never, when you asked me something, did I ever tell you anything other than that which has a proof from the Talmud and that I learned as a *halakha le-ma'aseh* [i.e., as actually implemented legislation] from my teacher, and my teacher from his teacher. But any matter for which there is proof in the Talmud, but for which I did *not* have

---

<sup>8</sup> Yisrael Yuval has made this argument in oral conversation.

<sup>9</sup> Indeed, one midrashic iteration of this motif contrasts the writings of Jews not with those of Christians (or Muslims), but with the archives of pagan Hellenists.

<sup>10</sup> Reservations about Pirkoi's credibility are discussed in Ben Sasson 1996:171 and 241, n. 287.

[testimony] from my teacher or from his teacher, as a *halakha le-ma'aseh*, I did *not* say to you. [I have] only [said] that which has a *halakha* [legal tradition] in the Talmud, and that I had received as a *halakha le-ma'aseh* from my teacher—in order to uphold the tannaitic teaching [cf. *BT*, BB 130b], “one does not derive applied *halakha* from Scripture, nor *halakha* from Mishna, nor *halakha* from Talmud, until they [i.e., the teachers] instruct him that it is a *halakha le-ma'aseh*— and *then* he should go and perform the deed.”<sup>11</sup>

Taking up Yehudai's mantle, Pirkoi begged the Jews of ninth-century Kairouan to recognize that applied Jewish law could not simply be derived from the consultation of written texts. In keeping with the Talmud's own instruction, he wrote, a legal teaching was prescriptively authoritative only if a living master asserted that it was one to be implemented in practice. Babylonian Jews, who were instructed by the Geonim, used this method of vetting, claimed Pirkoi, but the Jews of Kairouan did not. The latter, he lamented, had been influenced by the practice of Palestinian Jews, a population that wrongly derived applied law from nothing but inscribed rabbinic texts. According to Pirkoi, the Jews of Palestine had succumbed to this faulty practice because repressive Byzantine rule had made it difficult for them to perpetuate oral transmission. Once there were no longer masters who were living links in the chain of tradition, he wrote, the Jews of Palestine had come to rely on written inscriptions of *oral matters*, notwithstanding the fact that these had been intentionally sequestered (cf. Ginzberg 1909:ii, 53, 559; Levin 1931:403; Danzig 1993:19-22):

Some of them found texts of Mishna and parts of Talmud that were hidden [*genuzin*], and each one engages with it [i.e., the text] and interprets it in accord with his own ideas [and with] whatever arises in his heart. For they did not apprehend it from earlier sages who would teach them *halakha le-ma'aseh* (Spiegel 1965:245).<sup>12</sup>

In short, Palestinian Jewry's reliance on inscriptions of *oral matters* that were uncorroborated by living testimony was an unfortunate by-product of its beleaguered circumstances. It was, in Pirkoi's words, a “custom of oppression” (Ginzberg 1928:ii, 559-60).

Echoes of the battle waged by Yehudai Gaon and Pirkoi ben Baboi—their denigration of reliance on inscribed rabbinic teachings and championing of teachings that were orally transmitted—may be discerned in later writings of the geonic period. When, around 998, Jewish immigrants from Italy arrived in Kairouan and raised questions about the local Kairouanese practice of blowing shofar on Rosh HaShana, R. Yaakov ben Nissim of Kairouan turned to R. Hai Gaon in the Babylonian academy of Pumbeditha for clarification (Levin 1928-43:RH Responsa 117, 61-62; Ben Sasson 1996:173). When the students in Kairouan had read the relevant talmudic passage and found corroboration for the challenge of the newcomers, wrote R. Yaakov, they came to realize that the pattern of shofar-blasts that prevailed in their community

---

<sup>11</sup> My translation differs somewhat from that offered in Brody 1998:179.

<sup>12</sup> For a different interpretation of this passage, see Friedman 1978:250-51. Muslim passages with possibly related *topoi* are cited in Cook 1997:472 and 505.

differed from that described in the text.<sup>13</sup> This discovery had shaken Kairouanese confidence in their own local traditions. How could they know which practice was truly correct—that which they had been told by their ancestors, or that which was inscribed in the Talmud? The answer, wrote Hai Gaon, was obvious (Levin 1928-43: RH Responsa 117, 61-62):

That practice by which we fulfill our obligation and the will of our Creator is established and certain in our hands. That which we do is a legacy which has been deposited, transmitted, and received in tradition from fathers to sons, for continuous generations in Israel from the days of the prophets unto the present time.<sup>14</sup>

After affirming the local practice handed down by ancestors through mimesis and oral transmission, Hai Gaon proceeded to address the larger epistemological issue by illuminating what was really at stake (Levin 1928-43: RH Responsa 117, 62):

How do we know *at all* that we are commanded to blow [the shofar] on this day? [Moreover,] regarding the essence of the *Written* Torah, how are we to know that it is indeed the Torah of Moses, that which he wrote from the mouth of the Almighty, if [we do] not [know this] through the mouth [i.e., attestation] of the Community of Israel? After all, those who testify to it are the same ones who testify that, through [performance of] this deed, we have fulfilled our obligation, and [who testify that] they received this by means of tradition, from the mouths of the prophets, as Torah transmitted to Moses at Sinai. It is the words of the multitudes that testify to [the authority] of each *mishna* and every *gemara*.

As Hai pointed out in his impassioned responsum, the authoritativeness of any tradition is not guaranteed by the text in which it is inscribed, but only by catholic Israel's acceptance of that tradition. Universal social endorsement, that is, consensus, bears witness to a tradition's authenticity and is the source of its authority (Levin 1928-43: RH Responsa 117, 62):

Greater than any other proof is: [*bBer.* 45a] “*go out and see what the people do.*” This is the principle and the basis of authority! [Only] *afterwards* do we examine everything said about this issue in the Mishna or Gemara. Anything that arises from them and that can help to explain what we want is fine, but if there is nothing in it [Mishna or Gemara] which aligns with our wishes, and if it is not clarified through proof, this [i.e., the teaching of Mishna and Gemara] does nothing to uproot the principle [of following universal practice].

Hai's rule asserts that legal teachings in the talmudic text are to be taken into account only when they corroborate tradition as practiced. Custom and consensus, both non-textual criteria, determine the legal applicability of a talmudic opinion.

---

<sup>13</sup> They discovered that their own practice reflected compliance with an ordinance that had been implemented by the amora, R. Abbahu [BT, RH 33b.].

<sup>14</sup> My translation of this passage differs from the overlapping sections translated in Groner 1985:16-17.

Impressing this epistemological hierarchy on his readers, Hai urged them to reflect on it in a more philosophical vein, quite apart from issues of applied law (Levin 1928-43: RH Responsa 117, 62):

We must acknowledge this principle even when we are not compelled by need on the occasion of performing a commandment. After all, it is in this [principle] that we find the great proof that it [i.e., the practice in question] was fulfilled in keeping with the law transmitted to Moses at Sinai.

Hai's claim that consensus is a source of law (as, indeed, *ijmā'* is in Islamic legal theory)<sup>15</sup> seems to describe a *modus operandi* that had been in effect for generations, for even early geonic responsa conclude with the formulaic affirmation, "this is the *halakha* and this is the custom," indicating that the decision just rendered was informed by both of the necessary legal conditions (Libson 1995:91).

To sum up, each of the endorsements of oral transmission examined above must be understood as a response to a discrete set of social or political provocations. While it is true that Jews touted the mere existence of an oral tradition as a sign of theological preeminence when they were assessing their status in the context of interfaith polemics, the rabbis' initial decision to distinguish Oral Torah from Written Torah by enforcing disparate modes of transmission did not portray oral transmission as superior to writing. It was, instead, a strategic move designed to consolidate rabbinic identity and authority in the wake of the Temple's destruction, at a time when disparate groups of Jews jockeying for power were defining their relationships to the past. By the same token, rabbinic endorsements of oral transmission were formulated in the geonic period—a time that witnessed the rise of Islam and the emerging scrutiny of *hadith*—as Jews attempted to work out the relative degrees of authority wielded by living tradents on the one hand, and by the inscribed Talmud on the other. Each of the above-mentioned utterances was a response to specific challenges; none points to any essential Jewish "preference" for oral transmission or to an innate cultural "hostility to writing."

### The Cultural Technology of "Phantom Texts"

As is obvious from the preceding remarks, inscriptions of *oral matters* did circulate in rabbinic circles in antiquity and in the geonic period. Indeed, the Talmud itself makes references to inscriptions of extra-biblical traditions in the realm of both *halakha* (legal matters)<sup>16</sup> and *aggada* (non-legal teachings).<sup>17</sup> How could these practices have existed so openly, in the face of the third-century dictum? There are, in effect, several answers.

---

<sup>15</sup> However, consensus does not seem to have had the status of a formal source of law in the Talmud. See Ben Sasson 1983:ii, 20, n. 18. On the geonic conjoining of "consensus" with "tradition," see Libson 1995:95; Sklare 1996:162-64. Sklare notes (164) that Rabbanites took the position of the majority as indicative of consensus, whereas Karaites did not.

<sup>16</sup> For example, BT, Hor. 14a re: *pashat, garas viteretz*.

<sup>17</sup> For example, BT, Pes. 62b; Tem. 14b.

Certain rabbinic passages portray such inscriptions as lamentable but necessary evils, concessions to human frailty and to the corrosive force of forgetfulness. Though suboptimal, the consultation of the written texts of *oral matters* was excused as something necessary for the greater good—a situation anticipated and legitimated in the Psalmist’s teaching, “It is time to act for the Lord, for they have regarded Your law as void” (Ps. 119:26).<sup>18</sup>

A non-apologetic explanation may be reconstructed from a combination of philological and historical evidence. The awkwardly formulated prohibitive dictum intentionally links together seemingly incompatible verbs: “Matters that are oral you may not *say* in *writing*” (“Devarim she-bi’al peh i attah rashai *li-omran bikhtav*”). The key to this strange locution was provided by Saul Lieberman one half-century ago: he noted that Palestinian rabbis availed themselves of a distinction that was made by others in Hellenistic societies between a *syngramma*, an authorized edition of a book, on the one hand, and a *hypomnêma*, on the other, that is, the notes which an individual inscribed for his private use. Lieberman pointed out that the paired rabbinic dicta of the third century identified Scripture as the lone corpus occupying the category of *syngrammata*, or *written matters*, and designated extra-biblical teachings as *hypomnêmata* or *oral matters* (Lieberman 1950:87f., 204f.; Gerhardsson 1961:159). When *oral matters* are understood as teachings that can exist in writing, but are merely an individual’s private notes—and not as official data intended for public knowledge—the awkward formulation of the second rabbinic dictum comes to assume a precise meaning: “Matters that are oral you may not *say* in *writing*.”<sup>19</sup> When closely scrutinized, it is clear that this ruling does not prohibit the writing of *oral matters*, but rather the recitation of *oral matters* from their inscriptions.

But if both *oral matters* and *written matters* existed in inscribed form, how was one to distinguish between one type of text and the other? The difference in taxonomic status was partly reflected in their respective sites of preservation: inscriptions of *oral matters* were not to be exhibited in public places, but were instead to be sequestered. The Babylonian Talmud refers several times to a *megilat setarim*, literally “a scroll-to-be-sequestered,” a type of inscription that may be thought of as a phantom text; while none denied its existence, it was ascribed no social, political, or cultural authority. Lieberman’s understanding of the *hypomnêma* as a feature of Hellenistic culture has found corroboration in Yaakov Elman’s observation that all talmudic references to a *megilat setarim* were made by Palestinian sages (1999:54, n. 5), and in Cook’s claim that the “oralist” passages in ancient rabbinic writings are all ascribed to Palestinian rabbis (1997:498-500).<sup>20</sup>

The use of the *megilat setarim* and the cultural understanding of the function of such phantom texts persisted well beyond the third century. This would stand to reason, given recent research by Yaakov Zussman (2005) showing that *oral matters* really were transmitted orally through the end of the amoraic period (around the year 500, in Babylonia), and given Nahman

---

<sup>18</sup> See, for example, BT, Tem. 14b.

<sup>19</sup> Cf. Ibn Hazm’s claim that prophetic reports are a form of divine revelation that is not “recited,” although it is “read” (Musa 2008:78).

<sup>20</sup> It also supports the hypothesis that rabbinic culture’s insistence on the transmission of Scripture only from the reading of written texts was intended to fix (cf. the Muslim use of “shackle”) the still-labile language of Scripture in the culturally contentious environment of post-70 Palestine.



Danzig's claim (2006) that Talmud continued to be transmitted orally even later, in the geonic *yeshivot*. Such written inscriptions, called *nushaot*, were used as *aides-mémoires* in the academies, but they possessed nothing of the cultural authority of *girsatot*, that is, of oral formulations learned from a master (Brody 1990:290-91 and 1998:156-57). Indeed, through the eleventh century, pedagogic emphasis in these post-talmudic academies was on "putting [the traditions] in their mouths," that is, of enabling the students to recite them.<sup>21</sup> Along these lines, it may be possible to read Pirkoi's attack on Palestinian Jews for ascribing excessive authority to buried inscriptions of Mishna and Talmud, as a critique of this community's use of *megilot setarim* ("scrolls-that-are-to-be-sequestered") for purposes that went beyond mnemonic consultation.<sup>22</sup>

The persistence of a specific etiquette for handling *megilot setarim* (that is, *hypomnēmata*), behaviors that marked the inscriptions in question as mere "jottings" that fell below the radar screen of official writing (Drory 1988), helps to explain how the concept of *oral matters* could continue to remain culturally meaningful over the course of centuries, notwithstanding the fact that corpora bearing this designation were routinely encountered in textual form.

A particularly cogent illustration of this arrangement may be gleaned from Sherira Gaon's late tenth-century *Epistle*, the earliest Jewish work to describe the formation of the ancient rabbinic corpora of Mishna, Midrash, Tosefta, and Talmud. One recension of this seminal document (labeled "Spanish" because of the provenance of its manuscripts) portrays the Mishna as having been inscribed by Rabbi Judah the Patriarch around the year 200. The other recension (labeled "French"), thought by contemporary scholars to be the version that more closely reflects geonic attitudes,<sup>23</sup> insists that Rabbi Judah only arranged the Mishna, giving the corpus a fixed oral formulation. Yet a careful reading of even the "Spanish" recension reveals that the Mishna's status as a corpus of *oral matters* remained uncompromised even after its inscription. While readers of this version<sup>24</sup> learned that Rabbi Judah the Patriarch had actually written the Mishna, they also learned that (a) this sage continued, throughout his life, to amplify the Mishna's teachings in unscripted, oral exposition, and that (b) the written Mishna continued to be learned by heart and transmitted from memory, even after it was written (Sherira 1921:59).

The practice of memorizing inscriptions of rabbinic law and of transmitting them by heart—along with oral elaboration and explanation—persisted among Sephardi jurists through the

---

<sup>21</sup> From Sherira Gaon's description of his son Hai's method of instruction, in Brody 1998:55.

<sup>22</sup> *Pace* Mordecai Akiva Friedman. The Talmud recounts, for example, that when a Targum on Job, an inscribed text of oral matters, was found, he disapproved and caused it to be hidden away. BT, Sab.115a; JT, Sab. 16a; Tosefta Sab 14; BT, Sofrim 5, 15.

<sup>23</sup> See Beer 1967; Friedman 1998; Zussman 2005:214, n. 18; 234, n. 26.

<sup>24</sup> Including, for example, Maimonides, as is evident in Blau 1957: Responsum 442: "What is the source of our knowledge of how our Sainly Master wrote the Mishna?"

sixteenth century, if not later. In this manner, Sephardi Jews continued to affirm the taxonomic status of *oral matters*, even though they encountered these as written texts.<sup>25</sup>

In short, the classificatory distinction between *written matters* and *oral matters* continued to be culturally meaningful to Jews long after it proved unfeasible to transmit the latter solely through oral transmission. Written texts of rabbinic teachings were hardly shunned; their assignment to the role of “cueing devices” insured on the one hand that *oral matters* would not be forgotten, and on the other that they would never be mistaken for Scripture itself.

### Resistance to *Ḥadīth* Inscription: Abbasid-Umayyad Rivalry

Early Muslims sought to reinforce the distinction between the revealed teachings of the Qur’an and *ḥadīth*, human records of what the prophet Muhammed had said and done. Muslims initially proclaimed that such extra-revelationary teachings were not be committed to writing,<sup>26</sup> and like rabbinic Jews—though not because of them—they undertook many strategies to preserve the oral status of *ḥadīth* when such teachings were privately inscribed.<sup>27</sup> Arabic acknowledgments that inscription was an unfortunate but necessary concession to the inadequacy of human memory go hand in hand with dismissals of the resultant jottings as mere “notes” (*‘atraf*).<sup>28</sup> Those who produced such notes were enjoined to erase them or, at the very least, to keep them hidden with one’s personal possessions.<sup>29</sup>

Nonetheless, in the second decade of the eighth century, by which time few of the Prophet Mohammed’s companions were alive, Umayyad caliph ‘Umar II (717-20), commissioned the production of an official collection (*tadwīn*) of *ḥadīth*; he portrayed this project as a stop-gap measure that was designed to stave off the loss of tradition.<sup>30</sup> According to certain Islamic narratives, the scholars who were recruited for this project balked at participating in the inscription of *ḥadīth*, but were compelled to do so by the Umayyad rulers (Schoeler

---

<sup>25</sup> On the use of this practice by Maimonides in the twelfth century and by R. Joseph Caro in the sixteenth century, see Fishman forthcoming b.

<sup>26</sup> See Schoeler 2006:117-18; Cook 1997; Musa 2008.

<sup>27</sup> See Scholer 2006:113; Cook 1997:476-81; 504-07. Though Cook (1997:504) seems to assume that Muslims engaged in such practices because Jews did, the treatment of *hypomnēmata* in manners that emphasized their unofficial status was a legacy of the Hellenistic culture to which both Jews and Muslims were heirs.

<sup>28</sup> See Schoeler 2006:113 and Cook 1997:488. Such *‘atraf* (literally, “extremities” or “tips”) were abbreviated written notes in which only the beginning and the end of a *ḥadīth* were recorded.

<sup>29</sup> Even the standard Prophetic tradition against the writing of *ḥadīth* points to the safety nets that might be employed. On erasure, “notes,” and the sequestration of jottings in the house, see Schoeler 2006:116 and Cook 1997:488.

<sup>30</sup> Written *ḥadīth* compilations had been created on an occasional basis for the private use of Umayyad rulers of Damascus from the death of the second caliph (Umar I; Schoeler 2006:121 and Cook 1997:489). Schoeler (*ibid.*:122) describes Umar II as having played the role for *ḥadīth* that the third caliph, Uthman, played for Qur’an itself. Interestingly, this caliph was also the protagonist of several anti-inscriptionist tales.

2006:122, 125-26; Cook 1997:460). Nonetheless, even after its “shackling,” that is, inscription,<sup>31</sup> the transmission of *ḥadīth* under optimal circumstances continued to take place by means of the process of *samʿa*, or auditing (Schoeler 2006:129).

Researchers have noted with perplexity that, even after the *ḥadīth* collections of Muslim and Bukhari had entered circulation (Musa 2008:12, n. 40), opposition to the writing of *ḥadīth* persisted in the Iraqi garrison towns of Basra and Kufa well into the ninth century (Cook 1997:482-90; Schoeler 2006:114-15). Anti-inscriptionist arguments articulated in the 720s<sup>32</sup> undoubtedly nourished this strangely perduring phenomenon, but it seems historically appropriate to presume that these regionally limited protests of the ninth century were responses to some geographically specific stimulus.<sup>33</sup> A compelling hypothesis set forth in 1989 by Schoeler addresses this historical problem. Noting that the scholars of Basra and Kufa were renowned as the best keepers of tradition, either because or in spite of the fact that they had no books, Schoeler posited that their ninth-century fulminations against the inscription of *ḥadīth* served to impugn the juridical legitimacy of the recently overthrown Umayyad dynasty of Syria (2006:126). With the emergence of their own caliphate in 750, Abbasid scholars of Iraq condemned the Umayyads as power-hungry rulers who had permitted political aims to take precedence over religious goals. According to this Abbasid narrative, the Umayyads’ quest to dominate had led them to cavalierly abandon a taboo that had done so much to preserve the distinction between the human records of *ḥadīth* and the revealed Qur’an. Not surprisingly, the Abbasids deliberately refashioned the social and political hierarchy when they came to power, and pointedly installed scholar-jurists as the leaders of Islamic society (Coulson 1964:36-52).

Schoeler’s hypothesis<sup>34</sup> may shed light on a poorly understood development within contemporaneous Jewish culture. What specific historical circumstances triggered the critiques of the Jews of Palestine leveled by Yehudai Gaon in the eighth century and by Pirkoi ben Baboi in the ninth? The framing of Pirkoi’s *Epistle* as but another instance of a longstanding rivalry between Babylonians and Palestinian Jews that harks back to talmudic times (Gafni 1997:97, 41-57 and 1990) fails to address this question.<sup>35</sup> In thinking about the flare-up in rivalry between Babylonian and Palestinian Jews in the second half of the eighth and early ninth centuries, it may be worth noting that Jews from elsewhere referred to Palestinian Jews by the metonymic label of

---

<sup>31</sup> The major shift occurred during the time of az-Zuhri (d. 757). See Abbott 1957-72:ii, 53, 80, 184, 196; Schoeler 2006:129; Cook 1997:439.

<sup>32</sup> The debate emerged upon Umar II’s death in 720 (Schoeler 2006:125).

<sup>33</sup> However, Cook prefers to see the regional opposition of this late period as having been motivated by the same “oralist” attitudes that had prevailed earlier in all centers of Islam (Cook 1997:441-90). Yet he also seems to link the late resistance to *ḥadīth* inscription to conservatism that had prevailed in Basra in earlier times (*ibid*: 450-58).

<sup>34</sup> Cook (1997:474-93) disputes his argument, rejecting this possibility on doubts of the historicity of the accounts in question and finding no indication of hostility in the traditions cited.

<sup>35</sup> Indeed, by the time that Pirkoi excoriated the Jews of Palestine for perpetuating the “habits of persecution” they had developed under the restrictive conditions of Byzantine Christian rule, the community in question had been living under Muslim rule for more than a century and a half!

*Shami*, or “Damascenes.”<sup>36</sup> Might it be that Jews connected with the Babylonian gaonate in the half-century after the rise of the Abbasid caliphate were swept up in a broader cultural struggle that pitted Muslims of their region against Syro-Palestinian rivals? Iraqi jurists first discredited compilations of *ḥadīth* commissioned by the Umayyads in the decades following the Abbasid rise to power (Schoeler 2006:114), when Yehudai Gaon is reported to have made his appeal to the Jews of Palestine.

Like Abbasid jurists, rabbinic leaders of this time and place vehemently criticized co-religionists on the Mediterranean’s eastern shore for relying on written inscriptions of oral traditions, rather than on living embodiments of tradition. Indeed, Pirkoi’s proud claim that geonic Jews of Babylonia learn only from living authorities dovetails with a well-identified, if elusive, cultural phenomenon: at the precise historical moment when other Baghdadi intellectuals were deeply immersed in book culture and its propagation (Toorawa 2005), Babylonian geonim doggedly avoided the dominant trend and continued to transmit Talmud through oral instruction. None of the explanations proffered for this phenomenon—neither the geonic impulse to control legal information (Elman and Ephrat 2000), nor their desire to uphold third-century tannaitic dicta (Fishman forthcoming b)—exclude, detract from, or pre-empt the possibility that the rise of the Abbasid dynasty emboldened Iraqi Jews and Muslims to discredit the juridical status of their erstwhile challengers in Umayyad territory.

*University of Pennsylvania*

### References

- Abbott 1957-72                      Nabia Abbott. *Studies in Arabic Literary Papyrii*. 3 vols. Chicago: Oriental Institute Publications, 75-77.
- Baumgarten 1972                      J. M. Baumgarten. “The Unwritten Law in the Pre-Rabbinic Period.” *Journal for the Study of Judaism*, 3:7-29.
- Beer 1967                                Moshe Beer. “‘Iyyunim le-Iggeret Sherira Gaon.” *Shenaton Bar Ilan*, 4-5:181-95.
- Ben Sasson 1983                      Menahem Ben Sasson. “Jewish Community in Medieval North Africa.” Unpubl. Ph.D. Dissertation. 2 vols. Hebrew University.
- Ben Sasson 1996                      \_\_\_\_\_. *Tsemih at ha-Qehilah ha-Yehudit be-Artsot ha-Islam: Q ayrav an, 800-1057*. Jerusalem: Magnes Press.
- Blau 1957                                Yehoshua Blau, ed. *Teshuvot ha-Rambam*. 3 vols. Jerusalem: Meqitse Nirdamim.

---

<sup>36</sup> In the years following the Abbasid revolution, Jews of Palestine featured prominently alongside of Umayyads in uprisings staged against the Abbasids. See Gil 1992:280-83.

- Brody 1990 Yerahmiel (Robert) Brody. "Sifrut ha-geonim ve-ha-teqst Ha-talmudi." *Mehqere Talmud*, 1:237-303.
- Brody 1998 \_\_\_\_\_. *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture*. New Haven: Yale University Press.
- Cook 1997 Michael Cook. "The Opponents of the Writing of Tradition in Early Islam." *Arabica*, 44:437-530.
- Coulson 1964 Noel James Coulson. *A History of Islamic Law*. Edinburgh: University of Edinburgh Press.
- Danzig 1993 Nahman Danzig. *Mavo le-Sefer Halakhot Pesuqot*. New York: Bet Midrash la-Rabbanim be-America.
- Danzig 2006 \_\_\_\_\_. "MiU-Talmud 'al Peh le-Talmud Bi-khtav." *Sefer Ha-Shana Bar Ilan*, 30-31:49-112.
- Drory 1988 Rina Drory. *Reshit ha-Haga'im shel ha-Sifrut ha-Yehudit 'im ha-Sifrut ha-'Arvit ba-Me'ah ha-'Asirit*. Tel Aviv: HaQibbutz haMeuhad.
- Elman 1999 Yaakov Elman. "Orality and the Redaction of the Babylonian Talmud." *Oral Tradition*, 14:52-99.
- Elman and Ephrat 2000 \_\_\_\_\_ and Dafna Ephrat. "The Growth of the Geonic Yeshiva and the Islamic Madrasa." In *Transmitting Jewish Traditions: Orality, Textuality, and Cultural Diffusion*. Ed. by Yaakov Elman and Israel Gershuni. New Haven: Yale University Press. pp. 107-38.
- Elon 1978 Menachem Elon. *Mishpat 'Ivri: Toldotav, Meqorotav ve-'Eqronotav*. 3 vols. Jerusalem: Magnes Press.
- Epstein 1948 Jacob Nahum Epstein. *Mavo le-Nusah ha-Mishna*. 2 vols. Jerusalem: Magnes Press.
- Fishbane 1988 Michael Fishbane. *Biblical Interpretation in Ancient Israel*. Oxford: Oxford University Press.
- Fishman forthcoming a Talya Fishman. "Claims about the Mishna in Sherira Gaon's *Epistle*: Islamic Theology and Jewish History." In *Border Crossings: Interreligious Interaction and the Exchange of Ideas in the Islamic Middle Ages*. Ed. by David Freidenreich and Miriam Goldstein. Philadelphia: University of Pennsylvania Press.

- Fishman forthcoming b \_\_\_\_\_ . *Becoming the People of the Talmud: Transmission of Rabbinic Tradition and the Formation of Medieval Jewish Cultures*. Philadelphia: University of Pennsylvania Press.
- Friedman 1978 Mordecai Akiva Friedman. “‘Al ta’anat Pirqoi ben Baboi be-devar metziat sefarim genuzim shel ha-Yerushalmi.” *Sinai*, 83:250-51.
- Friedman 1998 \_\_\_\_\_ . “‘Al terumat ha-geniza le-heqer ha-halakha.” *Madda’ei ha-Hayahadut*, 38:277-94.
- Gafni 1990 Isaiah Gafni. “Expressions and Types of ‘Local-Patriotism’ Among the Jews of Sasanian Babylonia.” In *Irano-Judaica II*. Ed. by Shaul Shaked and Amnon Netzer. Jerusalem: Ben Zvi Institute. pp. 63-71.
- Gafni 1997 \_\_\_\_\_ . *Land, Center and Diaspora: Jewish Constructs in Late Antiquity*. Sheffield: Sheffield Academic Press.
- Gandz 1939 Solomon Gandz. “The Dawn of Literature.” *Osiris*, 7:261-522.
- Gerhardssohn 1961 Birger Gerhardssohn. *Memory and Manuscript: Oral Tradition and Written Transmission in Rabbinic Judaism and Early Christianity*. Trans. by Eric J. Sharpe. Uppsala and Lund: Gleerup.
- Gil 1992 Moshe Gil. *A History of Palestine, 634-1099*. Cambridge: Cambridge University Press.
- Ginzberg 1909 Louis Ginzberg. *Geonica*. 2 vols. New York: Jewish Theological Seminary.
- Ginzberg 1928 \_\_\_\_\_ . “Pirqoi ben Baboi.” In *Ginzei Shekhter*. vol. 2. New York: Jewish Theological Seminary. pp.139-47; 504-73.
- Goldziher 2004 Ignaz Goldziher. “Disputes Over the Status of *Ḥadīth* in Islam.” Trans. by Gwendolyn Goldbloom. In *Ḥadīth: Origins and Developments*. Ed. by Harald Motzki. Aldershot/Burlington, VT: Ashgate Variorum. pp. 55-66.
- Groner 1985 Tsvi Groner. *The Legal Methodology of Hai Gaon*. Chico, CA: Scholars Press.
- Haran 1955-56 Menahem Haran. “Mi-ba’ayot ha-qanonizatzya shel haMiqra.” *Tarbiz*, 25:245-71.
- Hezser 2001 Catherine Hezser. *Jewish Literacy in Roman Palestine*. Tübingen: Mohr Siebeck.

- Ibn Sa'd 1904-40                      Muh ammad Ibn Sa'd. *Kitāb al-Tabaqāt al-Kubrā*. Trans. by Eduard Sachau. 9 vols in 15. Leiden: Brill.
- Jaffee 1998                              Martin Jaffee. "The Oral-Cultural Matrix of the Talmud Yerushalmi: Comparative Perspectives on Rhetorical Paideia, Discipleship, and the Concept of Oral Torah." In *The Talmud Yerushalmi and Graeco-Roman Culture*. Ed. by Peter Schäfer. vol. 3. Tübingen: Mohr Siebeck. pp. 7-61.
- Jaffee 2001                              \_\_\_\_\_. *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE-400 CE*. Oxford: Oxford University Press.
- Kister 1998                              Menahem J. Kister. "La taqra'u l-qur'ana 'ala l-mushafiiyyin wa-la tahmilu l-'ilma 'ani l-sahafiiyyin: Some Notes on the Transmission of *Ḥadīth*." *Jerusalem Studies in Arabic and Islam*, 22:127-62.
- Levin 1928-43                          Binyamin Menasseh Levin. *Otsar Ha-Geonim: Teshuvot Geonei Bavel u-Ferushehem 'al pi Seder ha-Talmud*. 13 vols. Jerusalem: Hebrew University.
- Levin 1931                              \_\_\_\_\_. "Mi-sridei ha-Geniza B: Ma'asim Le-Vnei Yisrael." *Tarbiz*, 2:383-410.
- Libson 1995                              Gideon Libson. "Observations on Halakha and Reality in the Gaonic Period: *Taqanah, Minhag, Tradition, and Consensus*." In *The Jews of Medieval Islam*. Ed. by Daniel Frank. Leiden: Brill. pp. 67-99.
- Lieberman 1950                        Saul Lieberman. *Hellenism in Jewish Palestine: Studies in the Literary Transmission, Beliefs and Manners of Palestine in I Century B. C. E.-IV Century C. E.* New York: Jewish Theological Seminary.
- Lieberman 1962                        \_\_\_\_\_. *Yevanit ve-Yavnut be-Erets-Yisrael: Meh qarim be-Orh ot Hayim be-Erets Yisrael be-teqfat ha-Mishnah ve-ha-Talmud*. Jerusalem: Mosad Bialik.
- Musa 2008                                Aisha Musa. *Ḥadith as Scripture: Discussions on the Authority of Prophetic Traditions in Islam*. London: Palgrave/Macmillan.
- Schoeler 1989                          Gregor Schoeler. "Weiteres zur Frage der schriftlichen oder mündlichen Überlieferung der Wissenschaften im Islam." *Der Islam*, 66:38-67.
- Schoeler 2006                          \_\_\_\_\_. "Oral Torah and Hadit: Transmission, Prohibition of Writing, Redaction." In *The Oral and the Written in Early Islam*. Trans. by Uwe Vagelpohl. Ed. by James E. Montgomery. London: Routledge. pp. 111-41.
- Sherira 1921                              Sherira Gaon. *Iggeret Sherira Gaon*. Ed. by Binyamin Menasseh Levin. Haifa: Godla-Ittskovski.

- Sklare 1996 David Sklare. *Samuel ben H ofni Gaon and His Cultural World: Texts and Studies*. Leiden: Brill.
- Spiegel 1965 Shalom Spiegel. "Le-farashat ha-polmos shel Pirqoi ben Baboi." In *Harry Austryn Wolfson Jubilee Volume*. 2 vols. Jerusalem: American Academy for Jewish Research. Hebrew Section. pp. 243-74.
- Ta Shma 1999 Yisrael Ta Shma. *Ha-Sifrut ha-Parshanit la-Talmud be-Eropah uvi-Tsefon Afrik ah: Korot, Iшим Ve-Shit ot*. Jerusalem: Magnes Press.
- Toorawa 2005 Shawkat M. Toorawa. *Ibn Abi Tāhir Tayfūr and Arabic Writerly Culture: A Ninth-Century Bookman in Baghdad*. London: Routledge Curzon.
- Wegner 1982 Judith Romney Wegner. "Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts." *American Journal of Legal History*, 26:25-71.
- Zlotnick 1984-85 Dov Zlotnick. "Memory and the Integrity of the Oral Tradition." *Journal of Ancient Near Eastern Studies*, 16-17:229-41.
- Zussman 2005 Yaakov Zussman. "'Torah she-be-'al pe'—peshuta ke-mashma'a." In *Mehqere Talmud 3, Muqdash li-Zikhro shel Profeser Ephraim Elimelech Urbach*. Ed. by Yaakov Zussman and David Rosenthal. Jerusalem: Magnes Press. pp. 289-385.