

PETER J. TOMSON

Studies on Jews  
and Christians in the  
First and Second Centuries

*Wissenschaftliche Untersuchungen  
zum Neuen Testament*

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**Mohr Siebeck**

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zum Neuen Testament

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## Foreword

The present volume gathers up most of the more important studies I wrote on the history and literature of early Jews and Christians over the past 35 years. The idea came spontaneously when Markus Bockmuehl suggested on behalf of the WUNT editors to prepare such a volume. This was a pleasant surprise, an honour to set about doing so, and favourably timed just after my retirement. It was also self-evident to arrange the articles in four sections dealing, respectively, with halakha and Jewish self-identification, the Jesus tradition, Paul's letters, and early Jewish and Christian history – areas on which I have spent most of my time in terms of research. It also seemed attractive then to see a historical process reflected, starting in early Judaism, leading from Jesus to Paul, and on to the process during which Jews and Christians eventually got separated. Indeed I considered such a main title as, 'A Shared and Ruptured History', but I dropped it again because it would be too heavy for such a collection and would not quite cover its contents either.

The truth is that the history of Jews and Christians in the early centuries of the era has been very much on my mind for the last decade or so, and some studies published here were written in preparation of the project I am nowadays involved in, together with Joshua Schwartz: 'Jews and Christians in the First and Second Centuries'. Obviously, one core issue in that history is the process by which Judaism spawned both rabbinic Judaism and apostolic Christianity over the course of the first century, only to see them formally separated by the end of the second.

Looking back through the spectrum of one's collected studies, however, does evoke an intellectual history. Mine gained speed at the University of Amsterdam, where from the late 1960s on I followed New Testament classes of Jan Sevenster and Joost Smit Sibinga, as well as at the Catholic Theological School in Amsterdam with Ben Hemelsoet's Pauline seminar where we read Krister Stendahl and E. P. Sanders, as also, for many years, the seminars in Talmudics of Yehuda Aschkenasy who introduced us to the halakha involved in Jewish prayer. Once in every few years, Aschkenasy also invited Shmuel Safrai and David Flusser of the Hebrew University in Jerusalem to teach concentrated summer courses in rabbinics, ancient Jewish history, and New Testament. They in fact became my most important teachers, and I made sure to join their seminars, along with other



courses in ancient Jewish history and literature, when I was able to spend a year at the Hebrew University in 1978–1979. Following that, I also got involved in the publication project they headed, ‘Compendia Rerum Iudaicarum ad Novum Testamentum’ (CRINT). A full circle is closing to the extent that CRINT is also the series where the project ‘Jews and Christians in the First and Second Centuries’ is being published. Precisely so, I see it as a welcome turn of events that the studies here assembled appear elsewhere, in effect offering the opportunity to throw some methodological sidelight on the project. It also seems fitting that the volume appears in the Germany-based series that accommodates so much of the rejuvenated combination of Jewish and early Christian studies.

When I alighted in academic publishing, three big scholarly debates were running. There was the debate about ‘the New Testament and anti-Judaism’ which in Germany and the Netherlands was especially intense during the 1970s,<sup>1</sup> though it had been pioneered by James Parkes already before the Second World War and by Jules Isaac immediately after it.<sup>2</sup> In the second place, there was the debate on ‘Judaism and Hellenism’. It was triggered by Martin Hengel’s eponymous study,<sup>3</sup> but as such, it was the high point in a debate that had been going on since the late nineteenth century. It had been preceded, e.g., by Saul Lieberman’s important studies, and it was carried on by such prominent critics as Arnaldo Momigliano and Menahem Stern.<sup>4</sup> These debates sharpened my awareness of a serious conflict between ‘Jews’ and ‘Christians’ (never mind conventional terminology) running through some New Testament writings and of the interplay of ‘Hellenism’ and ‘Judaism’ (!) that somehow conditioned the emergence of both Christianity and rabbinic Judaism. Over time, Momigliano became my lodestar in this matter, along with Stern and Flusser, allowing me also to value the great importance of Hengel’s work.

The third debate was about ‘rabbinics and the New Testament’ or ‘rabbinics and historiography’; it was more opaque and much more difficult to manage. At the time, many established scholars felt intimidated by Jacob Neusner’s rabid polemics, while his books were flooding their libraries’ bookshelves by the dozen. Neusner’s almost personal fight was first of all with ‘Jerusalem’, i.e., the Hebrew University, where E. E. Urbach and Shmuel Safrai, among others, showed themselves not impressed by his voluminous output. It was almost im-

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<sup>1</sup> By way of example: Eckert–Levinson–Stöhr, *Antijudaismus im Neuen Testament?* (1967), with top notch German-language contributors including David Flusser. Very influential was Ruether, *Faith and Fratricide* (1974), translated as *Nächstenliebe und Brudermord* (1978).

<sup>2</sup> Parkes, *Conflict* (1934); Isaac, *Jésus et Israël* (1948); cf Baum, *The Jews and the Gospel* (1961).

<sup>3</sup> Hengel, *Judentum und Hellenismus* (1969)/*Judaism and Hellenism* (1974).

<sup>4</sup> Lieberman, *Greek in Jewish Palestine* (1941) and *Hellenism in Jewish Palestine* (1950); reviews by Stern and Momigliano of Hengel, *Judentum und Hellenismus*.

possible to stay aloof from the polemic, and CRINT was definitely bombarded into the ‘Jerusalem’ camp.<sup>5</sup> So was I, by the looks of it, and fallout of the debate can be detected in some of the following studies. With the disappointing quality of some of Neusner’s work being exposed<sup>6</sup> and the polemics since abating, the way was cleared to make progress again and to soberly evaluate positions on both sides of the trenches. So much for a chapter of typical primates’ behaviour in academia.<sup>7</sup>

Meanwhile, much of my time was being consumed by academic teaching and administration at the Faculty of Protestant Theology in Brussels, as also by extensive editing work for CRINT. This was when most of the following studies were written. Then, good advice of an old friend and a grant from a Belgian research fund led to a five-month study leave in 2010. It occasioned a new departure in my research. Perched on a hilltop (‘Tantura’) between Jerusalem and Bethlehem, the ecumenical institute for advanced theological research Tantur offered both intellectual quiet and political challenge, facilitating the first formulations of the project Joshua Schwartz and I had started together. A seminar paper given at the Hebrew University, titled ‘Pliny the Younger, R. Eliezer, and some others in between: Romans, Jews, and Christians in the Early Second Century’, developed into an article which I was happy to publish together with Joshua Schwartz.<sup>8</sup> Meanwhile, the basic idea kept growing, and it resulted in the one study expressly written for this volume, ‘The Gospel of John and the Parting of the Ways’.

What was new now became a main stay of our project. The history of both Jews and Christians in the first two centuries, and more importantly, their complex interaction, can only be adequately assessed by continuously referring to the larger history that enveloped and impressed them both: the Roman empire evolving to its maximum strength during this very period. It is obvious to think of the three Jewish revolts against Rome and their aftermath that occurred in a timeframe of just 65 years, even if the precise impact such upheavals have on society is always difficult to quantify. Also, it may not be as strange as it seems to associate the execution of Jesus and a number of his followers at Roman hands with the destruction by the Romans of Jerusalem and its Temple 40 years later,

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<sup>5</sup> See Neusner’s shamelessly dismissive review of CRINT 2.3.1, *The Literature of the Sages, First Part*, in *JBL* 107 (1988) 565–567.

<sup>6</sup> Cf Lieberman’s review of Neusner’s Yerushalmi translation, *JOAS* 104 (1984) 315–319 and Shaye Cohen’s review of his *Are there Tannaitic Parallels to the Gospels?*, *JOAS* 116 (1996) 85–89. Neusner’s latter work was an attack on the work of his (and Cohen’s) erstwhile *doktorvater* Morton Smith, *Tannaitic Parallels of the Gospels* – Smith’s dissertation which was written, in Hebrew, at Hebrew University.

<sup>7</sup> More in the Introduction to Schwartz–Tomson, *Jews and Christians ... The Interbellum*, 2 f.

<sup>8</sup> Schwartz–Tomson, ‘When Rabbi Eliezer was Arrested for Heresy’.

not as theological symbols, but as formative moments in an overarching, continuous historical development. In fact the study on the 'Parting of the Ways' just mentioned is one of the places in the volume where this new principle is put most squarely into practice. In this perspective, it is also likely that the foundation of Aelia Capitolina on top of Jerusalem and the devastating revolt it provoked represents a decisive turning point that left Jews, Christians, and their mutual relations totally changed forever.<sup>9</sup>

A second-degree result of this new approach is that the grand debates mentioned above lose much of their obsessive power and gain in accuracy and, so to say, in optical resolution. Viewed in the chronological framework of Roman history, it seems natural to interpret early rabbinic texts historically with the help of early Christian documents, and vice versa. Thus one of the emphases of the project about 'Jews and Christians ...' ended up providing the title of section four in the present volume: 'Historiography and the Import of Early Christian Sources'. As a matter of fact, the section contains five studies that grew out of the project, including the brand-new one just mentioned. Finally, the debate on 'Hellenization', which mostly regards the last two centuries BCE, takes a different turn in the two centuries following, merging with the novel, more political process of 'Romanization'.

The articles have been updated to varying degrees. Most are reprinted with only minor additions in square brackets in the footnotes, documents to the state of my knowledge at the time. One of the early footnotes to each article states its pre-history, earlier publication, and permission to republish if applicable, and the original page numbers are indicated in square brackets. Translations of the Bible follow the New Revised Standard Version, with occasional adaptations to the context at hand. Unless otherwise indicated, translations of other works are my own. All of this also goes for the five papers originally written in French or German and which I have now translated into English. The paper on 'Devotional Purity' grew over the years but was never published before, and as I said the one on 'The Parting of the Ways' was created *de novo*, although not *ex nihilo*. Finally, the paper on the names 'Israel' and 'Jew' continued to develop in stages after its publication in 1986, along with the evolving discussion. In the end I decided, however, that it is more transparent to reprint it as first published, with supplementary documentation where fitting, and to relegate discussion and advancing insight to a 'Reconsideration'.

Thus the book came into being in its four sections. Section I is mainly about halakha. This is a major dimension of Jewish life both past and present. It is little

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<sup>9</sup> See preliminary considerations in the introduction to Schwartz–Tomson, *Jews and Christians ... The Interbellum*, 12–15.

known among Christian scholars, although it is essential also for understanding Jesus and Paul, and so I devoted my MA and PhD work to this subject.<sup>10</sup> The study on ‘Mishna Zavim 5:12’ in fact re-uses source-critical and redaction-critical materials from my MA thesis, while responding to an invitation to join the ongoing discussion on the literary and historical qualities of rabbinic literature. The paper on ‘Halakhic Letters’ was written as a contribution to a conference on ancient Jewish letters to which I was invited on account of my analysis of the halakha in Paul’s letters; it also draws in the halakhic letter from Qumran (4QMMT) that at that moment was circulating in a ‘pirated’ edition, as well as the scattered evidence of the halakhic letters utilised by the ancient rabbis. A conference on Josephus in Paris inspired me to analyse ‘The Halakhic Systems in Josephus’, with the interesting conclusion that while Josephus’ *Antiquities* and *Life* signal loose fidelity to Pharisaic-rabbinic halakha, his *Against Apion* draws on a quite different, much more severe system. A conference on ‘The New Testament and Rabbinic Literature’ I was honoured to organize along with my colleagues of the University of Leuven included a section on halakha, of which my paper on ‘Divorce Halakha in Ancient Judaism and Christianity’ was a part. The paper on ‘Devotional Purity’ has been long in coming, as I said; it proposes to view the purity rules involved in Jewish prayer as a ‘system’ separate from levitical purity, converging as it seems with Hellenistic purity usages.

The long study on ‘The Names Israel and Jew’ arose from the discussion on anti-Judaism in the New Testament and especially in the Gospel of John mentioned earlier. In retrospect, I found the result to be far from perfect, but I like the article for its wide scope and the amount of valuable information it contains. Therefore, as I said, I provided it with a ‘Reconsideration’ taking account of subsequent discussions and gave it a place of its own at the end of section I. The alternating use of ‘Israel(ite)’ and ‘Jew’ in Jewish and early Christian sources remains a fascinating and infinitely complex phenomenon, and it also appears to relate to the problem of the meanings of *Ioudaios/Yehudi* which the original article discussed inadequately. Finally, late in the day, I decided to preface section I with a fragment from a bibliographic survey of ‘Halakha in the New Testament’ which is not contained in this volume. The fragment offers clarification of the meaning and origins of the key word, ‘halakha’.

Section II seriously purports to deal with traditions deriving from the historical Jesus. Indeed, yet another intuition that had dawned on me is that the methodological scepticism on this subject we have been brought up with would ease once we study these traditions in their likely Jewish surroundings. Rabbinic literature in itself being difficult to handle in this connection, the Qumran scrolls

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<sup>10</sup> MA thesis, *Mitsvat netilat yadayim li-seuda: Het wassen van de handen voor de maaltijd*; PhD dissertation, *Paul and the Jewish Law: Halakha in the Epistles of the Apostle to the Gentiles*.

have come in to create a whole new situation. David Flusser was one of the first to grasp the immense implications, which is why the first study in this section is dedicated to him. It connects the new Qumran evidence to the interaction with Deutero-Isaiah that is pre-eminently documented in the basic gospel tradition. The study on ‘The Song of Songs in the Teachings of Jesus’ is the fruit of years of thinking and teaching on the matter, among other places in our MA seminar in Brussels. It is thrilling to see apparent echoes from the teachings of Jesus finding their natural place in the history of Jewish literature. The paper on the ‘Parable of the Ten Maidens’ is a recent outgrowth of the same study, engaging among others with David Flusser and his work on parables. ‘The Lord’s Prayer’ represents another core element of the Jesus tradition, grown out of varied Jewish prayer usages but eventually made into a touchstone of Christian over against Jewish identity. In the evolving conflict with Judaism, early Christian tradition developed a tension vis-à-vis the Jesus tradition. This is poignantly visible in the Gospel of Matthew which also evinces a strong Jewish-Christian sediment. Due precisely to this contrast, the ‘Shifting Perspectives in Matthew’ seem to provide an unexpected glimpse of Jesus’ hesitant attitude towards foreigners. Even starker is the contrast felt in the Gospel of John, where the deadly conflicts over Jesus’ healings on Sabbath contradict the implications of a halakhic midrash also ascribed to him (John 7:22f), strongly resembling a midrash of Rabbi Eliezer. The contrast is uncovered via an experimental ‘epichronic reading’.

Section III opens with a study explicitly exploring the section’s theme, ‘Paul and His Place in Judaism’. It analyses the halakha contained in the parenthesis of 1 Thessalonians, continuing the quest of my book on Paul and the Jewish Law, and it ends on a description of the typically ‘Christian’ topos of *filadelfia*. In a rather more theological sense, the Jewish law is a major element in the lively discussion on ‘the new perspective on Paul’, to which ‘The Doers of the Law will be Justified’ was an invited contribution. It is about Rom 2, where indeed it is not halakha that draws the attention but the ‘synagogue language’ Paul adopts in his subtly balanced argument addressing the complicated relationship of Jewish and gentile Christians in the late 50s CE. There follows a ‘short study’ on the much-discussed ‘limping simile’ of the woman freed from the law of marriage once her husband dies (Rom 7:1–4). With ‘Those who know the Law’ Paul appears to mean those who know the ‘apostolic halakha’ on marriage and divorce he also cites in 1 Cor 7:39, but this time round using this law metaphorically. Another short study, published recently, summarises the evidence of ‘Paul as a Recipient and Teacher of Tradition’ – halakhic and mystic-apocalyptic Jesus traditions, in this case. Two larger papers were occasioned by a conference organized at the University of Leuven in 2009, titled ‘Jewish Perspectives on Paul: 2 Corinthians and Late Second Temple Judaism’. ‘Christ, Belial, and Women’ is about the fascinating coalescence of Christology, apocalyptic demonology, and a (relatively) women-friendly attitude in the would-be ‘Qumranic insert’ in 2 Cor

6:14–7:1. The other paper was written together with Ze'ev Safrai, an authority on the socio-economic history of Judaism in the Roman period, and it grew out of an idea he once floated to write something on Paul's collection for 'the Saints' in Jerusalem. The occasion induced me to take position on the much-debated literary and historical character of 2 Corinthians.

The study opening section IV begins by stating that section's theme: the significance of Christian documents for early Jewish and Christian history. Next to the Qumran texts, Philo, and Josephus, the early Christian writings are an important source, especially where the rabbinic texts leave us in the dark. This is often not realised in studying first and second century history, which I suspect is partly due to the debate about the historical value of rabbinic literature mentioned earlier. The paper was part of our historiographic project and was published in its first conference volume, on 'How to write the history' of Jews and Christians in the early centuries. The same goes for 'Josephus, Luke-Acts, and Politics'. It was a contribution to our conference on the hotly debated questions relating to the 'Yavne period', which we ended up dubbing 'The Interbellum 70–132 CE', i. e., the transition period between multiform pre-70 Judaism and the quite different post-136 situation. Each in its own way, these papers find early Christian texts to confirm the appearance of a 'rabbinic' movement around 100 CE.

In a way, another method or another 'scholarly rhetoric' is applied in this section than in earlier ones. Rather than using Jewish sources to elucidate Christian history, early Christian documents are used as a help to document developments in Jewish society and its external relations. This is also the gist of the study on 'Sources on the Politics in Judaea in the 50s CE'. Responding to a paper Martin Goodman gave at the conference on '2 Corinthians and Late Second Temple Judaism' mentioned above, it argues that information contained in Galatians and Romans makes it likely that the narrative of a steadily worsening situation in Josephus' War describes an actual development, rather than just imitating Thucydides. Next, another full circle closes when one realises that Paul's letters read in their Jewish background are our only written 'Source for the Historical Pharisees', rather than the works of Josephus with his somewhat doubtful Pharisaic credentials. The study on 'Gamaliel's Counsel' does not follow the same method, but I wanted to include it for its links with 'Josephus, Luke-Acts, and Politics', and I put it here for lack of better place. By contrast, 'The Gospel of John and the Parting of the Ways' is fully in place at the end of this last section. Taking note that the 'Benediction of the Heretics' cannot be the means by which Christians were excommunicated by the Jews (cf John 9:22), the article tries a new angle. The Gospel of John, testifying to a painful conflict with Jewish leaders, is contemporaneous to the rabbis linked to a passage in Tosefta Hullin that inculcates social distance from followers of Jesus. In line with our project, the comparison is contextualised using two Roman reports involving Christians that date to the same period, i. e. early second century CE. On this proposition, the

Johannine passages confirm the rabbinic reports as to the excommunication of the Christians, which furthermore seems to be an aspect of the ‘Romanisation’ of nascent rabbinic Judaism.

One could wish to point out circularity in the fact that while in earlier studies I am trying to illuminate early Christian texts using Jewish sources, in these later ones I do the opposite. In my view, this is a question of orderly scholarly rhetoric. Depending on the argument, one can use Paul’s letters as sources that document Jewish phenomena in the first century CE. One can also use Jewish sources to elucidate Paul’s letters, Qumran sources to demonstrate the pre-history of certain elements, and rabbinic sources to highlight the early existence of others. In the framework of one argument, one should not do both. This book contains different types of argument and hence different ways of comparing earlier and later, or Jewish and Christian, sources. At the end of the day, our discipline involves working with a network of literary and archaeological sources which mutually illuminate each other. An important field yet to be laboured more intensely in this connection is the combined comparison of Qumranic, early Christian, and rabbinic sources.

It remains to state my heartfelt gratitude to the colleagues who in various ways have significantly contributed to the genesis and quality of the following, in addition to those already mentioned. They are, in alphabetical order: Reimund Bieringer, Markus Bockmuehl, the late Willem Burgers, Matthijs den Dulk, Werner Eck, Jan Willem van Henten, William Horbury, Benjamin Isaac, Jan Joosten, Jan Lambrecht, Mireille Hadas-Lebel, Pieter van der Horst, Tamar Kadari, Menahem Kister, Emmanuel Nathan, Eric Ottenheim, Didier Pollefeyt, Ishai Rosen-Zvi, Ze’ev Safrai, Joshua Schwartz, Joseph Verheyden, and Boaz Zissu. Last not least, I offer my sincere thanks to the Editors of the WUNT series and the publishers of Mohr Siebeck for accepting and producing the book.

Lent 2018

*Peter Tomson*

# Abbreviations

## Sources

Abbreviations for biblical books and for Apocrypha and Pseudepigrapha follow the usage of the Society for Biblical Literature, but without italics and full stops. For Josephus, it is (Jewish) War, (Jewish) Ant(iquities), Life, and Ag(ainst) Ap(ion). Qumran sigla follow conventional usage.

The sigla m, t, y, b, followed by the siglum of the respective tractate, indicate, respectively, Mishna, Tosefta, Yerushalmi and Bavli. For Mishna and Tosefta, chapter and paragraph number are given, for the Yerushalmi, also page and column in parentheses (or, if the reference as a whole is in parentheses, page and column after a comma). The Bavli is referenced by folio and page, as usual. ARN a18 / b18 denotes chapter 18 from versions A or B of the Schechter edition.

Transcriptions from the Hebrew are simple and devised to render modern Israeli pronunciation. *Aleph*, *ayin*, and *he sofit* are not rendered usually; *quf* and *kaf*, and *sin* and *samekh*, are not distinguished.

1QS	Qumran cave 1, Serekh ha-yahad / Community Rule
4QMMT	Qumran cave 4, 'Miktsat maasei ha-Tora' = Halakhic Letter
Ah	Ahilot
ARN	Avot de-R. Natan, ed Schechter
Av	Avot
AZ	Avoda Zara
BB	Bava Batra
Ber	Berakhot
Bekh	Bekhorot
BK	Bava Kamma
BM	Mava Metsia
CD	Damascus Document (Covenant of Damascus)
CH	Eusebius, Church History
Dem	Demai
Ed	Eduyot
EkhR	Ekha (Lamentations) Rabba
Er	Eruvin
EstR	Esther Rabba
FrgTg	Fragmentary Targum
GenR	Genesis/Bereshit Rabba, ed Theodor-Albeck



Git	Gittin
Hag	Hagiga
Hor	Horayot
Hul	Hullin
Ker	Keritot
Ket	Ketubbot
Kid	Kiddushin
Kil	Kilayim
Kipp	Kippurim (Tosefta)
LamR	Lamentations/Eikha Rabba
LevR	Leviticus/Wayyikra Rabba, ed Margulies
MaasSh	Maaser Sheni
Mak	Makkot
MegTaan	Megillat Taanit (ed Lichtenstein or ed Noam)
MekRS	Mekhilta de-R. Shimon b. Yohai, ed Epstein–Melamed
MekRY	Mekhilta de-R. Yishmael, ed Horovitz–Rabin
Men	Menahot
MidrGad	Midrash Gadol
Midr Tann	Midrash Tannaim, ed Hoffmann
Mik	Mikvaot
MK	Moed Katan
ms(s)	manuscript(s)
ms x	New Testament, Sinai ms.
ms A	Septuagint, Alexandrian ms.
ms B	Septuagint/New Testament, Vatican ms.
ms K	Mishna, Kaufmann manuscript, ed Beer
ms S	Septuagint, Sinai ms.
Naz	Nazir
Ned	Nedarim
Nid	Nidda
NumR	Numbers/Bamidbar Rabba
Pea	Pea
Pes	Pesahim
PesR	Pesikta Rabbati, ed Friedmann
PesRK	Pesikta de-Rav Kahana, ed Mandelbaum
RH	Rosh ha-shana
RuthR	Ruth Rabba
San	Sanhedrin
SER	Seder Eliahu Rabba
Shab	Shabbat
Shek	Shekalim
Shev	Sheviit
Shevu	Shevuot
ShirR	Shir ha-Shirim Rabba (Song Rabba)
SifDeut	Sifrei Deuteronomy/Devarim, ed Finkelstein
SifNum	Sifrei Numbers/Bamidbar, ed Horovitz
Sifra	Sifra de-vei Rav, ed Weiss
SifZDeut	Sifrei Zuta on Deuteronomy, ed Kahana

SifZNum	Sifrei Zuta on Numbers, ed Horovitz
Sot	Sota
T12P	Testaments of the Twelve Patriarchs
Taan	Taanit
Tam	Tamid
TanB	Tanhuma, ed Buber
Tanh	Tanhuma, traditional ed
Tem	Temura
TevY	Tevul Yom
TgOnk	Targum Onkelos on the Tora
TgPsYon	Targum Pseudo-Yonatan
TgSong	Targum on Song of Songs
TgYon	Targum Yonatan on the Prophets
Toh	Toharot
Uk	Uktsin
Yad	Yadayim
YalShim	Yalkut Shimoni
Yev	Yevamot
Zav	Zavim
Zev	Zevahim

### Journals, Series, Publishers, Data Bases

AB	Anchor Bible
AGAJU	Arbeiten zur Geschichte des antiken Judentums und des Urchristentums (continued as AJEC)
AJEC	Ancient Judaism and Early Christianity (continuation of AGAJU)
<i>ANRW</i>	<i>Aufstieg und Niedergang der römischen Welt</i> , ed H. Temporini – W. Haase
ARGU	Arbeiten zur Religion und Geschichte des Urchristentums
ATANT	Abhandlungen zur Theologie des Alten und Neuen Testaments
<i>BAR</i>	<i>Biblical Archaeology Review</i>
BDAG	Danker, <i>Greek-English Lexicon</i>
BDR	Blass–Debrunner–Rehkopf, <i>Grammatik</i>
BIS	Biblical Interpretation Series
BIU	Bar-Ilan University
BIRP	Bar-Ilan Responsa Project
BJ	Bible de Jérusalem
BJS	Brown Judaic Studies
BZNW	Beihefte zur <i>ZNW</i>
CAP	Cowley, <i>Aramaic Papyri</i>
<i>CBQ</i>	<i>Catholic Bible Quarterly</i>
<i>CBR</i>	<i>Currents in Biblical Research</i>
CCSL	Corpus Christianorum series latina
<i>CHJ</i>	<i>Cambridge History of Judaism</i>
<i>CII</i>	Frey, <i>Corpus Inscriptionum Iudaicarum</i>
<i>CPJ</i>	Tcherikover–Fuchs, <i>Corpus Papyrorum Judaicarum</i>

CUP	Cambridge University Press
DJD 1	Barthélemy–Milik, <i>Discoveries</i>
DJD 2	Benoît–Milik–Devaux, <i>Les grottes de Murabba'ât</i>
DSD	<i>Dead Sea Discoveries</i>
EJ	<i>Encyclopedia Judaica</i> , 16 vols plus suppl. Jerusalem, Keter 1972
EKK	Evangelisch-katholische Kommentare zum Neuen Testament
ET	English translation
EvTh	<i>Evangelische Theologie</i>
FJCD	Forschungen zum jüdisch-christlichen Dialog
FJTC	Mason, <i>Flavius Josephus, Translation and Commentary</i>
FS	Festschrift
GCS	Griechische Christliche Schriftsteller
GLAJJ	Stern, <i>Greek and Latin Authors on Jews and Judaism</i>
HNT	Handbuch zum Neuen Testament
HUP	Harvard University Press
IES	Israel Exploration Society
JANES	<i>Journal of the Ancient Near Eastern Society</i>
JBL	<i>Journal of Biblical Literature</i>
JCP	Jewish and Christian Perspectives
JJS	<i>Journal of Jewish Studies</i>
JRS	<i>Journal of Roman Studies</i>
JSJ	<i>Journal for the Study of Judaism</i>
JSP	<i>Journal for the Study of the Pseudepigrapha</i>
JSIJ	<i>Jewish Studies Internet Journal</i>
JSJS	Journal for the Study of Judaism Supplements
JSNT	<i>Journal for the Study of the New Testament</i>
JSS	<i>Journal of Semitic Studies</i>
JTS	<i>Journal of Theological Studies</i>
KEK	Kritisch-exegetische Kommentar zum Neuen Testament
KJV	King James Version
LCL	Loeb Classical Library
LSG	Louis Segond Bible
LSJ	Liddell–Scott–Jones, <i>Lexicon</i>
MJS	Münsteraner Judaistische Studien
MM	Moulton–Milligan, <i>Vocabulary</i>
MPG	J. P. Migne, <i>Patrologiae cursus completus, series Graeca</i>
MPL	J. P. Migne, <i>Patrologiae cursus completus, series Latina</i>
MS	Mohr Siebeck
NedTT	Nederlands Theologisch Tijdschrift
NHL	Robinson, <i>The Nag Hammadi Library</i>
NOTA	Novum Testamentum et orbis antiquus
NovT	<i>Novum Testamentum</i>
NPNF	Nicene and Post-Nicene Fathers
NRSV	New Revised Standard Version
n.s.	new series
NTD	Neues Testament Deutsch
NTS	<i>New Testament Studies</i>
OTP	Charlesworth, <i>Old Testament Pseudepigrapha</i>

OUP	Oxford university Press
<i>PIASH</i>	<i>Proceedings of the Israel Academy of Sciences and Humanities</i>
PW	Pauly-Wissowa
<i>PWCJS</i>	<i>Proceedings of the World Congress of Jewish Studies</i>
<i>RB</i>	<i>Revue biblique</i>
<i>RHPR</i>	<i>Revue d'histoire et de philosophie religieuses</i>
RSV	Revised Standard Version
SAP	Sheffield Academic Press
SBLSP	Society of Biblical Literature Seminar Papers
SC	Sources chrétiennes, Paris, Cerf
<i>SCI</i>	<i>Scripta Classica Israelica</i>
<i>SH</i>	<i>Scripta Hierosolymitana</i>
SPB	Studia Post-Biblica
SJLA	Studies in Judaism in Late Antiquity
<i>SJT</i>	<i>Scottish Journal of Theology</i>
STDJ	Studies on the Texts of the Desert of Judah
Str-Bill	Strack–Billerbeck, <i>Kommentar z NT</i>
StUNT	Studien zur Umwelt des Neuen Testaments
<i>TDNT</i>	Theological Dictionary to the New Testament (ET of <i>ThWNT</i> )
<i>ThWNT</i>	<i>Theologisches Wörterbuch zum Neuen Testament</i>
TOB	Traduction œcuménique de la Bible
TuU	Texte und Untersuchungen
UCal	University of California
UP	University Press
Vdh&R	Vandenhoeck & Ruprecht
WBC	Word Biblical Commentaries
WBG	Wissenschaftliche Buchgesellschaft
WdF	Wege der Forschung
WJK	Westminster John Knox
<i>ZNW</i>	<i>Zeitschrift für die Neutestamentliche Wissenschaft</i>
<i>ZPE</i>	<i>Zeitschrift für Papyrologie und Epigraphik</i>
<i>ZTK</i>	<i>Zeitschrift für Theologie und Kirche</i>



## I. Halakha and Jewish Self-Definition



## The Term Halakha

Since the rise of the *Wissenschaft des Judentums* in the early nineteenth century, scholars have been calling the phenomenon of Jewish law by the term ‘halakha’.<sup>1</sup> The generic use of the word was new in the scholarly world, but it linked up with ancient rabbinic usage where someone could be called בקי בהלכה, ‘expert in halakha’.<sup>2</sup> In this sense the word denotes the discipline or genre of legal study and legislation,<sup>3</sup> as distinct from aggada or non-legal learning.<sup>4</sup> Its recognition as a separate and independent field of learning was typically found in Pharisaic-rabbinic circles, though not exclusively so. We find it documented in the Mishna and related texts that express the specific aim to formulate the various elements of religious law independently from Scripture. We see it also, however, in the singular set of ‘independent’ laws contained in the Damascus Document<sup>5</sup> that reflects the same aim, although in a different form and outlook.<sup>6</sup> Thus the genre ‘halakha’ existed by the second century BCE, even though the term itself surfaces first in rabbinic literature.

While retaining the rabbinic distinction vis-à-vis aggada, modern scholars adopted the term halakha, extending its application also to include ‘halakha’

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<sup>1</sup> This article reformulates an introductory section of my survey, ‘Halakha in the New Testament’ (2010). For the *Wissenschaft des Judentums* see e.g. Zunz, *Die gottesdienstlichen Vorträge* (1832; cf Vahrenhorst, *Nicht schwören*, 24f); Frankel, *Darkhei ha-Mishna* (1849). The study of halakha, however, was not a first concern of the pioneers of the *Wissenschaft*, see the critical judgment by Ginzberg, ‘Significance’, 78.

<sup>2</sup> mEr 4:8. Sages are seen יושבין ודנין בהלכה (tYev 14:5) or יושבין ודנין בהלכה (tNaz 5:1; tSan 7:10; tAhil 4:14).

<sup>3</sup> Cf also the phrase tHag 3:9, משם הלכה יוצאת ורוחת בישראל, ‘from there (i. e. from the court of 70 in Jerusalem) halakha would issue among Israel’.

<sup>4</sup> Cf באגדה בקי, ‘expert in aggada’, bBK 55a.

<sup>5</sup> CD 15–16 and 9–14. Schiffman, ‘Damascus Document’, though hesitant whether to call these by ‘the talmudic term halakha’ (275), gives a trenchant description including the headings of the various subjects (280–283). Hempel, *Laws*, insists on distinguishing the laws of ‘community organisation’ from general ‘halakha’, and similarly Davies, ‘Halakhah at Qumran’ wishes to distinguish between the ‘halakha’ in CD and the ‘radical revision of legislation’ in IQS. However, one can perfectly speak of ‘sectarian halakha,’ cf my review of Hempel, *Laws* in *JSJ* 34 (2003) 327–329. Cf also Baumgarten, ‘La loi religieuse’, 1012.

<sup>6</sup> Ginzberg, *Unknown Jewish Sect*, sees it as a deviant Pharisaic sect whose halakha ‘is presented in a form which is different from any pattern known from Talmudic sources’ (404f). More outspokenly, Baumgarten, ‘La loi religieuse’ underlines differences of substance with Pharisaic-rabbinic law. Schiffman, ‘Damascus Document’, 283 emphasises variety within the scrolls.



found reflected in non-rabbinic sources. This usage is spreading since the last three decades, coinciding with a novel interest in halakha in circles of non-Jewish scholars. Some have protested, especially since the word itself has not been found in Qumran texts or other pre-rabbinic sources.<sup>7</sup> But scholars cannot be prevented from inventing or adapting terminology that usefully describes the objects of their study. We also speak of ‘apocalyptic’ writings, a term widely accepted after its invention in the early nineteenth century, even though it is not without difficulties.<sup>8</sup> In comparison, the generic scholarly term ‘halakha’ is surely more felicitous.

Apart from extending the application of the term, modern scholarly usage differs in another respect from the ancient one. Where we would designate a set of commandments involving one particular subject by an abstract singular, such as ‘the Sabbath halakha’, the ancient rabbis would rather use the more concrete plural: ‘הלכות שבת’, ‘the halakhot of Sabbath’.<sup>9</sup> The plural form also appears in the standard phrase indicating the threesome areas of rabbinic study, ‘מדרש הלכות, ואגדות’, ‘midrash, halakhot, and aggadot’.<sup>10</sup> Correspondingly, there is the use of the concrete singular to indicate ‘the formulated law’, as in the Hebrew phrase, ‘הלכה כדברי ר’ אליעזר’, ‘the law is as formulated by R. Eliezer’.<sup>11</sup> In this construction, the definite singular has no visible article because it is assimilated with the ensuing *he*, as is also seen in a number of other rabbinic utterances.<sup>12</sup>

The word *halakha* itself does not seem to have its origin in Hebrew. The popular etymology from the Hebrew verb הלך, ‘to go’ – hence ‘that in which

<sup>7</sup> Van Uchelen, ‘Halacha in het NT?’ (cf my response in *NedTT* 49, 1995, 190–193); idem, ‘Halakhah at Qumran?’ Meier, ‘Halakha ... at Qumran?’, scrutinising the available Qumran evidence, at 151 n3 observes that though the word is not found, ‘the reality is present abundantly in the Qumran documents’, and therefore, disagreeing with Stephen Goranson, he uses the word to compare ‘the rules for behavior in Qumran and Jesus’ teaching’. Cf Meier, *Marginal Jew* 4: 40f.

<sup>8</sup> Collins, *Apocalypse*, 1–20 understandably rejects the Anglicised noun ‘apocalyptic’ (cf German ‘Apokalyptik’) as erroneously suggesting the existence of a separate ‘apocalyptic’ trend of thought or ideology. There is less of a problem with the adjective ‘apocalyptic’.

<sup>9</sup> mHag 1:8, along with other areas of law. Cf ‘Sabbathalacha’ in the German title of Doering, *Schabbat*.

<sup>10</sup> mNed 4:3, and see Bacher, *Terminologie* 1: 42f.

<sup>11</sup> mNid 1:3 (ms K). Epstein, *Nosah*, 687f expresses the intuition that such phrases are additions to the Mishna and proves such in one case. The phrase is ubiquitous in the Talmudim: 200× in the Yerushalmi; 463× in the Bavli (BIRP).

<sup>12</sup> Cf the saying הלכה כדברי בית הלל בכל מקום, (tYev 1:13), or, לעולם הלכה בבית הלל (tHag 3:11): ‘In every respect, the halakha is as formulated by the School of Hillel’; and הלכה למשה מסיני, ‘The halakha as revealed to Moses at Sinai’ (on the hyperbolic meaning of which see Safrai, ‘Halakha’, 180–185). Cf also כן היתה הלכה בירם ושכחוהו (yPea 1, 16b; yShab 1, 3d; etc.); נעלמה ראה מעשה (yShab 19, 17a); נעלמה הלכה ממנו (yPes 6, 33a). Cf also the curious saying, ונזכר הלכה מהן (yShab 19, 17a; bPes 66a; bSan 82a), which seems to have been corrected by the scribe in yPes 6 (33a): כיון שראה את המעשה נזכר את ההלכה. Cf similar phrases in Bacher, *Terminologie* 2: 53f. – I am indebted to Menahem Kister and Jan Joosten for sharing their linguistic expertise in this matter.

Israel walks<sup>13</sup> – seems secondary at best. Instead, various Aramaic and Akkadian backgrounds have been proposed.<sup>14</sup> Thus Saul Lieberman has suggested that rabbinic הלכה derives from the Aramaic technical term הלך, in the emphatic mode הלכא, a masculine noun from Persian administrative usage ultimately deriving from Akkadian *ilku/alku/alāku* and meaning ‘service’, ‘tariff’, ‘tax’, or ‘rule’;<sup>15</sup> it is thus used in Ezra 4:13, 20; 7:24.<sup>16</sup> Although suggestive, this is not satisfying in view of the Aramaic equivalent הילכתא used in the same period. Like הלכה it is a feminine and is frequently found in the Talmud.<sup>17</sup> More adequately, therefore, Tzvi Abusch has made the proposal to view both Aramaic הילכתא and Hebrew הלכה as loan words modelled on the Akkadian feminine noun *alaktu*, ‘course, sign, decree’.<sup>18</sup> To the extent that this is acceptable, הלכה appears to be another survival from the Persian period preserved in rabbinic parlance, similar to a number of administrative terms of Aramaic, Persian, and/or Akkadian origin whose earliest mentions are mainly found in rabbinic literature.<sup>19</sup> The avoidance of the word at Qumran could be due to the sect’s avoidance of termi-

<sup>13</sup> Thus e. g. Jacobs–de Vries, ‘Halakhah’. Also mentioned by Safrai, ‘Halakha’, 121 along with a reference to Lieberman’s explanation (below n15). Similarly Meier, ‘Halakha ... at Qumran?’, 150 n2 prefers a Hebrew origin in view of the frequent OT usage of הלך followed by phrases like תורה, חוק, מצוה etc.

<sup>14</sup> Adding the Aramaic root הלך, Bacher, *Terminologie* 1: 42 explains הלכה as ‘Gang, Schritt, Weg > Brauch, Sitte, Satzung’. For late Palestinian Aramaic, Sokoloff, *Dictionary of Jewish Palestinian Aramaic*, 165 adduces Christian Palestinian Aramaic הלכא, ‘walk, way’.

<sup>15</sup> Lieberman, *Hellenism*, 83 n3 (cf Safrai, above n13), still followed by Tomson, ‘Halakhic Evidence’, 132 n7.

<sup>16</sup> Koehler–Baumgartner, *Lexicon*, s. v. derive הלך from Akkadian *ilku/alku/allūku/alāku*, from which they think also derived old Persian *harāka*. Frye, *Heritage*, 113f, referring to the bankers’ house of Murashu, also mentions Persian *harāka*, a land tax. The Akkadian connection is denied by Driver, *Documents*, 70, but confirmed by Stolper in his cuneiform study on the Murashu archives, *Management*, 50: ‘Taxes are summarized by the term *ilku*, service’, and 60 n46: ‘Babylonian *ilku* is rendered by Aramaic *hlk*’ [הלכא]. The rabbis knew this meaning, see EstR petihta 5, הלך זו אנגריא (ἀγγαρῆα, i. e. forced labour); bNed 62b, הלך זו ארנונא (*annona*, tax paid in kind) – both referring to Ezra 4:13; and cf GenR 64.9 (p711), footnote.

<sup>17</sup> Esp in the Bavli and related texts and indicating, significantly, ‘the prevailing halakha’. Cf also yKil 4 (29c), מותר לזרוע: הלכתא and yKid 3 (64d), הלכתא כר’ טרפון; but cf GenR, Vilna ed 33.3, הלכתא דבבלאי, ‘Babylonians’ halakha’; TgOnk Gen 40:13, בהלכתא קרמיתא, ‘like the earlier custom’. Cf the amazing combination in bMK 12a, למאי הלכתא? הלכות מועד כהלכות כותים בהלכה. לומר שהן עקורות (following note) Abusch (following note) points out that the meaning ‘law’ is restricted to Jewish Aramaic.

<sup>18</sup> Abusch, ‘*Alaktu and Halakhah*’, esp 35–42. Jan Joosten writes me that he thinks Abusch’s theory ‘speculative but possible’.

<sup>19</sup> Cf the administrative functions from the Temple, גזבר or המרכל and אמרכל (mShek 5:2), Persian loan words denoting ‘administrator’ and ‘treasurer’; and חזן (mTam 5:3), Aramaic – Persian (?), ‘overseer’. המרכל has been found in a non-sectarian Aramaic Tobit fragment from Qumran (4Q196 fr 2:6–7), see Fitzmyer, ‘Preliminary Publication’. For Iranian backgrounds see Greenfield, ‘Iranian Loanwords’; Shaked, ‘Iranian Loanwords’.

nology of post-biblical vintage, preferring their own somewhat artificial ‘biblical Hebrew’.<sup>20</sup>

Following modern scholarly usage, we shall use the term ‘halakha’ to indicate the phenomenon of Jewish law as reflected in rabbinic documents and any other Jewish and Judaeo-Christian writings. The use of one single concept for such a range of documents, to be sure, is not meant to imply homogeneity. The idea of ‘the halakha’ as a homogeneous system of laws encompassing all areas of Jewish life is primarily of medieval vintage, exemplified in Maimonides’ monumental codification.<sup>21</sup> To the extent, however, that Judaism in Antiquity was multiform, it is obvious that halakha in that period must be viewed as a variegated, unsystematic whole of laws and customs. Most concretely, the evidence of the Qumran scrolls in addition to the rabbinic texts gives us an idea of the possible range of variety. It follows that when studying ancient halakha, we must be prepared to accommodate any amount of differences within a larger whole, as well as any degree of development over the successive periods.

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<sup>20</sup> Observation made by Prof. David Flusser in a seminar, pointing out that they preferred ‘biblical’ *היון* over *מזון* – *μαμωνᾶ* as used in the traditions of Jesus and of the rabbis, except in a few cases that slipped their mind. Jan Joosten kindly refers me to his ‘Hebrew, Aramaic, and Greek’, where at p360 he observes that the Qumran writers continue the biblicising ‘pseudoclassicism’ that developed from the Persian period on.

<sup>21</sup> Maimonides, *Mishne Tora*. Cf the survey articles (though still restricting themselves to rabbinic law) by Elon, ‘Codification of Law’, and Jacobs–de Vries, ‘Halakhah’.

## Mishna Zavim 5:12 – Reflections on Dating Mishnaic Halakha

An investigation into the historical and literary background of the text to be discussed here is of interest in several respects. It will lead us to a thrilling episode in Jewish history, which at the same time was a painful event in the history of the halakha. It is also of direct relevance to the literary history of the Mishna, the theme of the present publication. Finally, there are important implications for the study of the New Testament, although these will not be made explicit here.\*

### On Methods

Being alert to these various connections is not of mere personal interest; in my view, it is essential to an adequate approach both of ancient texts and historical questions. Therefore it is encouraging, for example, that there is a growing interest in the Jewish backgrounds of the New Testament. Equally encouraging are the repeated warnings against the uncritical use of isolated rabbinic traditions as historical sources. The only question is, what is critical? Literary and historical criticism operates on methodical criticism of one's own axioms and results. In this respect, I have serious questions regarding the self-declared champion of critical study: Jacob Neusner. The emphasis here, however, will not be on polemics, but on the study of the details in which alone these matters are decided.<sup>1</sup>

Thus our investigation into the dating of a mishnaic halakha implies some reflection on method. It is proposed here, much in line with basic historical criticism, that evaluation of the literary significance and historical background of a certain textual unit or literary phenomenon must always be based on com-

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\* [Invited paper for a workshop 'Mishnah' in 1988 at the University of Amsterdam with the stated aim to pay special attention to Neusner's work. The paper was published as 'Zavim 5:12 – Reflections on Dating Mishnaic Halakha', in Kuyt-Van Uchelen, *History and Form*, 53–69 and is here reprinted with slight emendations. Implications for NT studies were elucidated in my MA thesis, *Mitsvat netilat yadayim li-seuda*.]

<sup>1</sup> For polemics see Neusner, *Reading and Believing*. A choice of scholars are criticised for naively quoting rabbinic traditions as historical sources, instead of verifying their historical reliability. Nowhere, however, in Neusner's own *Law of Purities* is such methodical historical criticism even attempted. Regarding 'the details' of the declaration by Neusner, *ibid.* vol 21, xiii, with reference to his teacher Morton Smith.

parison with a range of other sources. This also regards historical theories about the development of the halakha and its literary formulation. Nothing is as detrimental as the [54] atomising and isolating of data from their literary and historical context.

Methodical criticism is needed and is even essential, but it should not be allowed to turn into scepticism as to the possibilities of historical research. The very moment it turns into scepticism, criticism is no longer methodical. Often, ‘text-immanent’ or ‘synchronic’ methods of analysis are then proposed as the only means of stating something sensible about our ancient texts. These non-historical methods, however, can result in serious misjudgments if they are not related to and checked against the results of historical criticism.<sup>2</sup> Rather, they may be seen as specialized instruments to be applied in view of specific questions, and the answers they yield can contribute greatly to the larger task of critical study. Methods should never be taken absolute. They are means towards a greater end: our understanding of ancient texts on their own terms and within their own contexts.

### Zavim 5:12 – Introductory

Let us now review our text:

These render *teruma* (heave-offering) unfit: (1) he who eats food unclean in first remove; (2) and he who eats food unclean in second remove; (3) and he who drinks unclean liquids; (4) and he who immerses his head and the greater part of his body in drawn water; (5) and a clean person upon whose head and the greater part of his body there fell three *logs* (c. 1,5 L) of drawn water; (6) and a book (of Scripture); (7) and the hands; (8) and the *tevul yom* (one who immersed for purification but still must await sunset); (9) and foods and (10) vessels which have been rendered unclean by liquids. (mZav 5:12) [55]

Some words of explanation. The issue is the purity of *teruma*, heave-offering, i. e. that part of the harvest which must be given to the priests and consumed by

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<sup>2</sup> In my view, Schäfer, ‘Research into Rabbinic Literature’ reflects such scepticism, resulting in the view of rabbinic literature as an unorganized collection of manuscript fragments. Schäfer makes, however, an illegitimate generalization from the Heikhalot literature, a specific group of very fluid texts, comparable to the *Derekh Erets* literature or the synagogue prayers (on the latter see the exemplary literary-historical study by Heinemann, *Prayer*). The situation with the ‘main’ collections is quite different. There is no healthy reason to question the possibility of treating the Mishna as a coherent document represented in various textual traditions and reflecting developing historical circumstances (i. e. the history of the halakha). Schäfer’s words about Epstein and Lieberman as representing the ‘traditional-halakhic approach’ which in the end is ‘systematical-theological, not historical-literary’ (139f) are gratuitous and shallow to anyone who seriously studies their achievements. [See also the response by Chaim Milikowski, ‘Status Quaestionis’, and Schäfer’s reply, ‘Once again the Status Quaestionis’, as well as the survey of the whole discussion in Goodman–Alexander, *Rabbinic Texts*, 51–88.]

them in ritual purity.<sup>3</sup> Insofar as the biblical commandment of *teruma* appears to have been widely observed,<sup>4</sup> and these rules about its purity have been existing before 70, they must have been of importance for large parts of the predominantly agrarian population.<sup>5</sup> According to biblical law (Lev 22:3–7), sanctified food could be made impure by a source of impurity, such as a *zav*, i. e. someone suffering from a flux, or by something which has been in touch with such a source. In the first case, the food is unclean in first remove, and in the latter case, unclean in second remove. *Teruma* could be defiled by yet a third degree. That stage is what is called *pasul*, ‘unfit’: it is unclean but does not render unclean. This was not included in the biblical rules, but was derived from them as a logical precaution.<sup>6</sup> Such defilement in third remove could originate from a ‘regular’ source of impurity mentioned in the Bible. The purpose of our text is to list ten additional special categories which ‘render *teruma* unfit’. Elsewhere, as we shall see, they are termed ‘words of the Scribes’, i. e. non-biblical laws.<sup>7</sup>

Two of these additional categories are of immediate historical interest: ‘a book’ and ‘the hands’. There is a well-known discussion, which must have taken place not long after 70, about ‘which books render the hands unclean’, i. e. were declared unclean because they were read in the community as sacred scriptures (mYad 3:3–5). This implies the principle itself to have been in existence for some time at that moment. And indeed, the principle is the subject of a discussion between the Sadducees and the Pharisees, which is preserved towards the end of the same tractate (mYad 4:6).

This leads us immediately into the historical and literary questions about mZav 5:12. Two theoretical observations may clarify our approach.

A distinction must be made between the successive stages of the development and formulation of a halakha, and of the halakha in general, in ancient Judaism. Only by exception, halakha was decided [56] and issued by legislation. The normal procedure was that halakha originates and grows within the community at large.<sup>8</sup> A certain custom would originate within some group, from causes and occasions which are generally very hard to get by. Successively, it could grow accepted by the larger community. A case in point are the so-called *kedushot*, hymnic doxologies with a mystical colouring, which are a part of the community prayers. These *kedushot* must have originated in esoteric circles, but have

<sup>3</sup> Num 18:9–11; Deut 18:4; Lev 22:1–16; mTer 4:3; 1:6; 2:1.

<sup>4</sup> See Safrai, ‘Religion in Everyday Life’, 819 and n4.

<sup>5</sup> On the degree of observance of the purity laws before 70 see the ground-breaking study by Alon, ‘The Bounds of the Levitical Laws of Cleanness’.

<sup>6</sup> mSota 5:2 testifies (a) that the third remove for *teruma* was an ancient rule already for Yohanan ben Zakkai but (b) that only in the days of R. Akiva was it linked to Scripture.

<sup>7</sup> The Bavli, bShab 14b, disputes this as regards the *tevil yom* on the grounds of Lev 22:7. See discussion by Epstein, *Nosah*, 592f, and cf Albeck, *Mishna* 6: 457.

<sup>8</sup> See Safrai, ‘Halakha’, 163–168, in discussion with E. E. Urbach. Safrai also discerns a real influence of midrash on the creation of halakha, *ibid* 146–163.

gradually grown towards their wider acceptance in the Amoraic period.<sup>9</sup> The third stage, which in the case of prayers was not reached since they were fixed and written only in the post-talmudic period, is the formulation of the custom into a halakha and its gathering up in to the Mishna or Talmud.

A second theoretical viewpoint regards the formulation process of the Mishna itself. It seems most adequate to the literary texture of the Mishna to assume the existence of four redactional layers, corresponding to four generations, which each in succession formulate the mishnayot of a preceding generation.<sup>10</sup> Thus the first layer, formulated at Yavne by R. Eliezer and R. Yoshua and their colleagues, reflects the mishnayot of the last generation of the Temple period. And the fourth and most prominent layer, which was formulated, along with the extant Mishna, by R. Yehuda ha-Nasi, contains a selection of the mishnayot of the pupils of R. Akiva: R. Yehuda, R. Meir, R. Yose and R. Shimon. This theory explains two prominent facts about the Mishna: the name of the redactor himself is hardly mentioned at all, and it contains tractates which describe the procedures in the Temple in the past tense with very few later additions (Middot, Tamid, Kinnim). The prominence and the distinct character of the fourth layer indicate the great influence of R. Akiva on the development of the Halakha and the formulation process of the Mishna.<sup>11</sup> [57]

### Zavim 5:12 and the ‘Eighteen Decrees’

After these preliminaries, we can unfold the historical and literary questions about mZav 5:12. When did the halakhot contained in it originate? When did they attain to formulation in a halakha or mishna? And when did this formulation receive its present context in the Mishna?

The two Talmudim give a clear-cut answer to the first two questions, which of course had a decisive influence on commentators and historiographers. The ten categories of mZav 5:12 would have belonged to the so-called ‘18 decrees’ re-

<sup>9</sup> Heinemann, *Prayer*, 145–147.

<sup>10</sup> The following summarizes the theory of Abraham Goldberg as set forth in his two chapters, ‘Mishna’ and ‘Tosefta’.

<sup>11</sup> Axiomatically, Neusner declares source criticism impossible: ‘The redactor ... radically revised (his materials), obliterating the evidence of *sources*, that is, major and prior, already-redacted collections of materials’ (*Law of Purities* 21: 17f). Strack–Stemberger, *Einleitung*, 133–136 [= Stemberger, *Einleitung*, 134–138] on the one hand embraces this hypercritical view of Neusner’s on previous redactions, but at the same time assumes that the *material* used by the redactor, i. e. single mishnayot, did originate in the successive stages, Yavne – Usha – final redaction. On second thought, however, this must imply traces of previous redactions to have been preserved. Proof is to be found in mishnayot beginning with connective phrases which are senseless in their present context. See Safrai, ‘Oral Torā’, 77, referring to mMak 2:8, and see Albeck, *Mishna* 4: 288 *ad loc.* mZav 5:3 is another example, see below.

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