Stammaitic Activity versus Stammaitic Chronology;
Anonymity’s Impact on the Legal Narrative of the Babylonian Talmud

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Abstract

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This dissertation explores the nature of the contribution of the Stammaim to the narrative of the Babylonian Talmud (BT). The primary suggestion is to view the Stammaim as the authors, narrators, and editors who contributed the anonymous Stammaitic activity to the text. The goal is not to dismiss the possibility of a Stammaitic period, or a period of heightened Stammaitic activity. Rather, it is to broaden the scope of possible chronological provenances for Stammaitic activity. Once broadened, it becomes necessary to view the notion of ‘Stammaitic’ as one defining a literary style regardless of whether it might also refer to a chronological period. The idea of the style comes first. After a Stammaitic style emerges, and once there is a period of time where the deployment of such a style becomes heightened, then – and only then – is it possible to define a period based upon the style. Nevertheless, the style is hardly confined to any period either before or after the Stammaitic period as it is currently understood.

Once I have addressed the issue of a Stammaitic style that cuts across the periods, I posit that anonymity fuels the engines of three other features that are worth considering when reading a BT text: canonicity, multiplicity, and pluralism. In considering anonymity, one must analyze the impact of anonymous elements on the narrative as a whole, and specifically what the anonymity does to or for the text. When assessing what makes this or that text canonical, degrees of canonicity emerge for the different elements
of a BT text. Understanding the impact of anonymity (and attribution) assists in assessing those degrees – whether based upon manuscripts or the internal workings of the text – and how degrees of canonicity are more easily manipulated by an anonymous voice. One interesting possibility also emerges that allows for anonymous actors to infuse canonicity into a tradition by manipulating attribution.

Regarding multiplicity, I argue that the authors and editors of the BT pursued a general agenda of including a greater rather than fewer number of attributed sages. While any one sage of great importance can infuse authority (and canonicity) into a tradition and the words associated with it, the inclusion of a broad range of sages from different places increases the potential ‘market’ for the text as a whole. In discussing pluralism, I deal with the manner in which the laws and customs are laid out in the BT as well as the substance of the laws and customs themselves. They are presented in such a way that the legal system that is the BT can easily operate within dominant, primary legal systems where the BT is clearly subordinate. I also suggest the possibility that the BT was crafted to be subordinate. There are many ways to read a text. In the case of the BT, I argue that an analysis of the text is well served by consideration of anonymity and the other three features. I approach the issue of the four features, as well as the matter of Stammaitic style versus Stammaitic chronology, theoretically in the first five chapters, after which I dedicate chapters to raw analyses of different types of texts and groups of texts as they help elucidate the earlier theoretical discussion.
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I came to study with Professor Halivni because of a quirk at Columbia Business School that allowed me to take ‘Critical Formation of the Talmud’ for credit (since I was not allowed to take a German language class, my first choice). Quickly I understood that Rabbi Halivni was creating a work based upon a system, designed to last for millennia, that is the heritage of the rabbinic sages. He was not, and never did appear to me to be, concerned with the possibility of creating a work to be discussed by academics for decades or even a century or two. While his deconstruction is inevitable, it is best accomplished with the understanding that rabbinic voices are not formally deconstructed within the tradition and rarely strive for a rarefied place in the modern academy (regardless of when modern is). While part of this dissertation is a friendly and amateur step in an articulated academic review of Professor Halivni and his Stammaim, it is also an apology for Rabbi Weiss-Halivni and his place in the Yeshiva. As a direct result of
my relationship with the Rabbi/Professor, I acknowledge that the modern academy has a long way to go before it can be proven – in the business sense – as a lasting pillar of the intellectual heart-thought and mind-feel of humanity in its broadest sense in the way the rabbinic institution has been for millennia.

When placing the flesh of my academic hunts onto my tables of business, family, thought, personal tradition, or any other metaphorical table, I acknowledge that it is also possible to have one table, and for all the aspects of an enlightened man to be spread in one place at one time. For Professor Halivni, there is no separation between the Yeshivish and the Academic; for him, *meqorot u’mesorot* is as much part of the library as it is of the *bet hamidrash*, regardless of how he or anyone might value one relative to the other.

As a former student of archaeology, I have come to learn that inevitable is the contradiction between the way (physical) evidence is understood in the Academy and the biblical stories and texts that underpin faith. This contradiction – for me still in my understanding of how the Academy operates – is chronologically and substantively relevant through the time of the compilation of the Babylonian Talmud, if not much later. Professor Halivni’s commitment to Ravina and Rav Ashi as major figures in or at least during the formation of the Babylonian Talmud is based more on tradition and a text by a relatively late Rabbinic sage (Sherira) than on a humanities-style scientific probe of the evidence. This commitment is the basis of Halivni’s expression of the idea that “ravina v’Rav ashi sof hora’a” (Ravina and Rav Ashi are the end of ‘instruction’). It thus emboldens him in maintaining the importance of the chronology of the Stammaim in order to uphold the distinction between what took place before and after Ravina and Rav
Ashi. It is this that allows Halivni to straddle the Yeshiva and the Academy, and for his life’s work to ultimately find its place on the eternal shelves of the Yeshiva, if not in the digital storehouses of the modern library.

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Talmid (student) of Halivni is not just a viable title. It is a badge of elite Talmudic knighthood. And I still have a long way to go. Leadership infused with scholarship like scholars who are leadership-infused are both hard to come by; I am thankful that I have come to know Rabbi Aubrey Glazer and his commitment to both. I appreciate Professor Mark Taylor’s pragmatic administrative help the last few years. More significantly, watching Professor Taylor and reading his works has renewed my sense of purpose as an academic. It’s great to know someone is thinking about education and to be around that thinking.

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Dedicated to Shani
Introduction

The purpose of this dissertation is to challenge aspects of the existing chronological paradigm through which contemporary scholarship has approached the Babylonian Talmud (BT). Specifically, I address the emphasis contemporary scholarship has placed on dating the Stammaim, and how this pursuit is similar to trying to date the splitting of the Red Sea or Solomon’s Iron Age reign. Cogent arguments can be made, but often there will be those who legitimately question the result. Further, I argue that the separation of chronological and literary concerns creates a prism through which to read the text that both opens up new caverns of meaning and frees up the energy to reach those caverns and their crevices. As part of this project, I also suggest alternative mechanisms with which meaning is extracted from the text. This alternative centers on four features (variables) that can be mapped onto the text: anonymity, canonicity, pluralism, and multiplicity. In no way am I seeking to dismiss historical possibilities and their relevance to the text. My goal is to understand the impact that dating elements of a text have on its more literary understanding. This informs how we can understand the BT and the many genres into which scholars have categorized it.

Stammaitic Period or Stammaitic Activity

An important part of my dissertation is a challenge to the over-emphasis on chronologies and periodization on the part of contemporary Talmud scholars. On the one
hand, there is an over-reliance on the traditional periodization forwarded by Sherira more than a millennium ago. On the other hand, there exists a discomfort with this periodization because of the impact of source criticism on the field in the last fifty years. Central to this discomfort was the isolation of the Stam or Stammaim not only as distinct literary contributors, but also as a distinct period. This forces the reader of the text to read what is attributable to the Stammaim as also emerging from a post-Amoraic, Stammaitic period.

Some recent scholarship has approached the text of the BT with a lesser emphasis on the issue of dating, and with a greater interest in the literary. Among them are Barry Wimpfheimer, Daniel Boyarin, Sergei Dogopolksi, and Zvi Septimus.\(^1\) Other scholars include David Kraemer and to a lesser extent Shamma Friedman.\(^2\) Although it is impossible fully to ignore chronologies and dating, these scholars have turned their focus elsewhere. So long as we are still dealing with the BT as possessing historical import and not as a work of fiction, issues of dating and chronologies are impossible to avoid. Where I go beyond the state of the art in the field is in the suggestion that stammaitic activity is potentially datable to different times; I am not suggesting that it is absolutely ahistorical. I also do not wish to dismiss the possibility of a period of heightened stammaitic activity. I am still cautious in applying premises borne of the isolation of the

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Stammaim as a distinct chronological group. While focusing on the literary is the direction in which I wish to go, it is still important to address dating in dealing with this or that sugya in light of the assumptions regarding dating.

Two types of sugyot are particularly problematic. The first are those where the text must be Amoraic because of which sages are mentioned and how the attributed traditions in the sugya relate to one another. Second and less problematic for scholars to date, but far more frequent, are the sugyot where there is no evidence in the text for a dating later than the first, second, third, or later generation of Amoraim; the only basis for dating the sugya later is the Stammaitic attribution of some of its parts, which also means a place within the traditional periodization of Sherira.

The first type of sugya is one which demands attention because it contradicts a traditional periodization with the Stammaim plugged in, between the Saboraic and Amoraic periods. Some scholars address these sugyot on a case-by-case basis, reaching conclusions such as this or that element is an ‘early stam.’ Others have cited these types of sugyot as evidence for the earlier dating of the Stammaim, and even for the existence of Stammaim during the late Amoraic period. Essentially, the debate is one about how to date the Stammaim. There is no questioning the existing periodization, and specifically the place of the Stammaim within it. The second type of sugya does not demand the same sort of attention, because the content of the sugya allows for a late

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3 See for example David Halivni, mevo’ot l’mekorot u’mesorot (Jerusalem: Magnes Press, 2009), 9.

dating. Yet it can also allow for an early dating, although that assumption is rarely made. When analyzing such texts, scholars do not bother testing for an early dating of certain elements of the sugya; fundamental premises in the field of academic Talmud study can be said to be less than encouraging regarding such early dating of Stammaitic activity, and one can argue that they preclude it.

I offer detailed discussions of Halivni’s source critical approach and the scholars who reacted to it in different ways. I am accepting of his source critical methodology and the way it enables the reader to isolate different elements in the text. Further, the relative dating of the different elements of the sugya are also useful in uncovering meaning. Absolute dating of the Stammaim to a post-Amoraic period is problematic. My suggestion for dealing with the Stammaim is to define all that is attributable to them as Stammaitic activity, with no chronological implication. Instead of reading the text of the BT and reacting to those instances where it is difficult to date the Stammaitic activity as post-Amoraic, I attempt to demonstrate that the Stammaitic activity can be dated to periods earlier than the post-Amoraic one and I test for as early a dating as possible based upon the content of the sugya. The point is not actually and necessarily to date elements that early, but to demonstrate that it is possible. Dating the Stammaitic activity in different ways allows for different types of meaning to emerge. Stepping away from dating them altogether, and viewing them as literary elements not reflective of any one specific chronological milieu, further allows for a new understanding of the text. Thus the groundwork is established to look for meaning and authority in the text in ways less reliant upon chronologies and the traditional rabbinic periodization. This is not to
dismiss chronologies, but to take them away from the center of the discussion. Regardless of the difficulties and challenges of considering chronologies and dating, it is impossible to ignore them. Further, they complement the assessment of a literary perspective rather than from a source critical one.

Four Features (Variables)

I dedicate four chapters to each of the four features which I map onto the text: anonymity, canonicity, pluralism, and multiplicity. The chapters on pluralism and multiplicity are related, and I define one as the inverse of the other. I am also most interested in how these four features impact our understanding of the BT as a text with legal import. Related to this is my interest in how the BT may have interacted with the societies and communities for which it served at least in part as the basis for how lives were governed. The authority of the BT could be construed as cultural as much as it can be legal. However, I recognize that this is peripheral to this project, and it is something I only touch upon in the context of viewing the BT as a legal text.⁵

Anonymity

What do the anonymous or Stamaitic elements do for the text of the BT, especially when we untangle them from the chronological demands of a traditional periodization? Phrased differently, what is the impact of anonymity upon the BT? What

can we learn about anonymity in general from other sources unrelated to the BT, and how can they inform our understanding of anonymity in the BT?

In understanding anonymity generally, it is valuable to look for discussions of anonymity in contexts unrelated to the BT, with an eye toward culling certain principles which can be applicable to a reading of the BT. One important place I look to for discussions on anonymity are discussions and analyses of the early print era. I also examine the Hong lou Meng, a Chinese literary work whose author was unknown and the text was treated as an anonymous one for centuries until its authorship was revealed. Additionally, I describe the anonymous nature of scribal cultures and their relevance to the culture of those who studied and transmitted the BT and the elements that ultimately comprise it. I argue that anonymity is a concept which lends itself to mutual analysis across disciplines, and that analysis of anonymity in one discipline is relevant to another, and specifically to the BT. I also argue for the possibility that anonymity can be the more powerful and authoritative element when juxtaposed with an attributed one. This is closely related to the power or authority that the anonymous narrator exudes in the narration of a text, removed ‘from the action.’

Ultimately, the anonymous voice is removed from any one specific set of agendas. Once anonymity is lost, the voice changes, as does the manner in which the text is read. I discuss this in the context of an anonymous text written by King James in the projected voice of an ordinary citizen, after which King James’ authorship was discovered. As a result, King James adjusted the text into the voice of the king. Because
we are unaware of the true voice of the anonymous Stammaitic elements, their voices can blend into a single ‘anonymous’ voice. If, however, we became aware of the true authors – say, Rav Pappa – then we would view the text quite differently.

In the BT, the contributors of the Stammaitic elements are the anonymous narrators of the halachic discourse. Often they are the driving force behind the flow of a sugya, as well as its resolution. This narrative power, however, is offset by the limits of what they are ‘permitted’ to do to sources and traditions that they received. Still, there exists the ability of the anonymous narrative to be at once respectful and charitable toward existing traditions, while still controlling what is included and – more importantly – how it is included. Further, there are earlier anonymous (Stammaitic) elements, which are treated with similar charity by relatively later anonymous (Stammaitic) elements. This is addressed more fully in the discussions of canon and canonicity and in the analysis of specific sugyot.

Beyond the BT, I also argue that there is a value to anonymity in rabbinic literature, including the Bible. In a more ambitious pursuit, I alsosuggest that anonymity can serve to mimic both the unanimous voice as well as a divine voice. Unanimity and divinity are critical features around which to build an understanding of a Talmudic text and of the Talmud itself. Anonymity also serves to bolster the canonicity of traditions and the words used to convey them. In the case of the BT, I also argue that there exists a tendency toward multiplicity in addition to a ‘legal humility’ that allows for – or even
encourages – the BT to be a subordinate legal system operating within a broader and dominant one.

**Canonicity**

In thinking about the BT in terms of canonicity, I conceptualize the BT as both a component of the rabbinic canon, and as a canon composed of tractates and sugyot. Therefore, my discussions of canon and canonicity are twofold, reflecting the two different ways the BT can relate to canon. My analysis commences with a discussion of three different types of canons: (1) literary, (2) legal, and (3) biblical. The analysis of each type of canon is centered on the purposes for creating or having a canon and on the features constituting a canon. I then relate the features of these canons to the BT in two ways. The first addresses how the BT as a complete work possesses some of these features and fits into the broader rabbinic canon. Specifically, it is worth assessing the degree of the BT’s canonical value or canonicity as compared to other texts of the rabbinic canon. Worth noting here is that the greater the degree of canonicity, the less we can adjudicate from that text; while Tannaim were still able to adjudicate from the Bible directly, Amoraim were precluded from this function because in their moment, the Bible’s relative degree of canonicity had already become too great, and the Amoraim had to be content with adjudicating based upon Tannaitic material.

The second way I relate the features of the three types of canons deals with the individual sugyot and their place in the broader canon that is the BT. I also go one step
further and view sugyot as canons of the different elements that are comprised therein. This opens the door to parsing the different degrees of canonicity of the different elements within the sugya.

**Legal Pluralism**

The primary purpose of incorporating legal pluralism as a feature is because part of the BT’s success is its ability to be a part of legally pluralistic systems. This is a result of flexibilities in adjudication based upon the BT. The BT also demonstrates that it recognizes the possibility that it is not always the dominant law. Specifically, the idea of *dina d’malkhuta dina* is a very specific testament to the BT’s respect of a dominant law within a legally pluralistic system. Another, broader piece of evidence is the extent to which the BT addresses the rituals and laws of a temple no longer in existence, yet does not contain tractates regarding land or agricultural laws; this could be seen as a concession to the fact that they had little if any control over land usage laws, but could maintain significant control over a now destroyed – or one day to be built – temple. The BT as a law code is ‘friendly’ to a dominant law, and specifically the law of the state. As part of a broader legal universe, where the BT is not the dominant legal system, I argue that the BT possesses many qualities which make it easier for it to be tolerated by the dominant law. When I speak of the BT as a ‘law code’ or ‘legal system,’ I do so with an understanding that the BT cannot be pigeon-holed into such a description as a broad understanding of the text in all contexts and for all readers.
For our purposes, and in the context of understanding the application of legal pluralism to the BT, I deploy these terms. Further, in many ways the BT does operate like a legal system. This is softened by the fact that pragmatically the BT is a strong cultural guide, and for some it is just another text reflecting specific aspects of a culture. In discussions of canonicity and anonymity, and to an extent even in discussions regarding multiplicity, there are inherent difficulties in considering the BT as legal text, without discussions of the other genres which can also come to define the BT as a complete or partial text. These difficulties are ameliorated, but are not absent, when discussing the BT through the prism of legal pluralism.

I also address the idea that within the BT itself, there are competing legal systems, and that the BT in itself is reflective of legal pluralism. There is some evidence for this, such as the Noahide laws. Nevertheless, much of what is defined as competing legal systems – such as the houses of Hillel and Shammai – are actually a reflection of a multiplicity of voices expressed within the same legal system. (The Noahide laws are within the legal system in that they represent very basic laws expected of everyone, even those outside the legal system of the BT.) In this way, the discussions of legal pluralism and multiplicity are related and can be viewed as working inversely, one with respect to the other. Just as the BT can be one legal voice among many in a legally pluralistic system (or society), so too can the BT contain many different voices within its single legal system. Whether the voices reflect historical persons and statements is of little consequence in the analysis of the text as a legal system within itself or one among many.
It is the legal attributes of the BT, and reading the BT with these attributes in mind that brings us to drawing upon the language of law.

Multiplicity

In approaching multiplicity, among my primary goals is to establish that the authors of the sugyot, and the assemblers of the tractates and the BT as a whole, sought to convey a sense of vast multiplicity while at the same time presenting a cohesive and unified whole. When looking at the BT as a legal text (or at the very least as a strong cultural guide with social consequences attached), this multiplicity has the potential to expand the scope of what is acceptable behavior, and thus allows the BT to be relevant to a greater number of people and strains within the tradition. There appears to be an effort on the part of the assemblers and authors of the text to include more than the necessary number of positions and names of sages where it is not necessarily essential. As I point out in the analysis of the sugyot, there are attributed statements which are not critical to the flow of the argument in the narrative, and on occasion they are entirely superfluous. These are the ones to which I refer when I speak of sages who are not essential to the text. They are included for inclusion’s sake. This is part of an agenda to appear inclusive and reflective of a multiplicity of voices and traditions, when the whole of the text is in fact uniform and monological.\(^6\) In the time of its formation, there is sense in this, as it makes the text more relevant to a greater number of people affiliated with the greater number of sages mentioned.

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\(^6\) See below p. 234.
For later generations who received the completed (or nearly completed) BT, there was a greater number of halachic options from which to choose, thus giving the later sages more room to adjudicate in times where flexibility was necessary. This flexibility was available for reasons including the demands of the laws of the state, and thus feeds into the ability of the BT to be the ‘friendly’ law it can be in a legally pluralistic system. At this conceptual point, the discussions on multiplicity and legal pluralism intersect. In this context it is worth elucidating how multiplicity and legal pluralism can work within an understanding of the BT within both a historical and a literary framework. On the one hand, one can argue that multiplicity and (a tendency toward) legal pluralism are literary techniques that impact the way we read the BT as a legal work. On the other hand, the multiplicity and legal pluralism of the BT are a reflection of some history, skewed as it might be by the authors and assemblers. We know about the interplay between the complete and canonical BT and ‘lived communities’ at some level because of historical documents such as responsa. We know far less, if anything, about the interaction of ‘lived communities’ and the BT while it was still in formation and during a period when it was sub- or not at all canonical. What is totally left to speculation is the function of the traditions, attributed and otherwise, of the BT within lived communities at a time preceeding the formation of tractates and before that sugyot. We must be cautious when discussing the BT as a ‘lived’ text, or as a legal text with real force among historical communities.

**Sugyot**
In order to test what I have written, above, I draw upon the following texts in the BT: (1) Nedarim 5b-6a, (2) Gittin 82a-82b, and (3) six v’la pligi structures, with the one on Berachot 38a serving as the primary one I use to define my analysis. While I refer to other sugyot from other tractates, in these chapters I focus primarily on the sugyot in Nedarim and Gittin as well as the v’la pligi structures. The sugyot in Nedarim and Gittin are rather standard and reflective of many sugyot in the BT in their structure and in how the anonymous narrative exerts authority over the text. The v’la pligi sugyot are short, highly structured halachic ‘vignettes,’ which contain consistent and relatively precise layering in all manifestations.

Among the goals of this close analysis of the Nedarim, Gittin, and v’la pligi sugyot is to demonstrate what I explain theoretically in the other chapters. Not every element in every sugya demonstrates what I attempt to accomplish. To recap, my analysis follows two paths. The first is to demonstrate that ‘Stammaitic’ is an activity and not a period. This is something that does manifest in all the texts I analyze. The second is to apply the four features – anonymity, canonicity, pluralism, and multiplicity – to the different sugyot.

The discussions of Stammaitic activity are closely related to the work I do in the chapter on anonymity. The factors that go into how anonymity impacts a narrative or a text are the same as what happens when anonymous Stammaitic activity is deployed in the BT. In some instances, activity that is usually anonymous and Stammaitic is attributed to a specific Amora. The v’la pligi sugyot specifically bear this out. Most
often, the actual words ‘v’la pligi’ are Stammaitic and anonymous. On several occasions the v’la pligi is attributed to a specific Amora. Much work can be done on differentiating between the impact of v’la pligi as anonymous versus as attributed. However, this project highlights that Stammaitic is an activity that not only is not bound by time, it does not necessarily need to be anonymous.

In analyzing the sugya in Gittin, I pay specific attention to peeling away that which is Stammaitic in style from what might necessarily be Stammaitic in chronology. I do not argue for a definitive early dating for specific Stammaitic activity. However, in this sugya, I do suggest the possibility of the early dating of certain essential Stammaitic elements. I do so in order to expand the field of potential meaning, and the impact of that meaning for the anonymous Stammaitic elements. This allows for greater variance in demonstrating the degree to which Stammaitic activity can pivot the direction of the text, and ultimately the legislation or adjudication of a specific legal (halachic) matter.

I point out aspects of the text that contribute to the BT’s ability to function as part of a broader pluralistic legal system. As I discuss in the chapter on pluralism, in the sugyot I also parse those parts of the tradition that would have been easily workable within another, dominant system. For example, in the analysis of the sugya in Nedarim, the adjudicators of the dominant legal system (i.e. the law of the land, in our case Sassanian) would not have cared much – if at all – about inexplicit abbreviated declarations. In some ways, multiplicity is the inverse of pluralism, in that it is the mechanism through which it is tolerable to have many different traditions as well as
contradictory adjudication and legislation. As I argue in my discussions of multiplicity, in the analysis of the text I try to highlight where the text appears to be going out of its way to include greater rather than fewer voices. Further, I argue that the v’la pligi sugyot are reflective of a multiplicity that was muted by a later editor, yet still preserved.

Where This Work Fits

As I mention above, I am reading the BT from a literary perspective while at the same time not ignoring the historical associations that exist around the BT. To the most cynical scholar, the entirety of BT history is at best dubious. Its creation is the work of masterminds who infuse the text with a deep and refined chronology which are all the creation of their imaginations. I am not that cynical. Yet. I try to draw upon the source critical approach with a softer touch and without overplaying the proverbial chronological hand. I therefore throw myself into the camp of those who read the text without the overemphasis on the historical and reliance upon the source critical approach. Like others in this camp, I do not feel confined or in any way limited in how to utilize the Stammaim and the source critical approach.

Beyond seeing this work as a continuation of the work of others who focused less on the source critical approach and looked more to literary (and legal) theory, I also see (parts of) this work fitting into a more specific strain of current BT scholarship. I come at these sugyot and the four features assuming that – by and large – there is a monological voice that brings the text into a unity. I am not arguing for a single author or even a
single set of authors operating together in time and place or in close temporal and spatial proximity. I am merely accepting of the idea that there is a natural way to read the text where this monological voice is felt on all the folios of the BT. This is not to discount the possibility of untangling different voices, and certainly varying halachic opinions, from within the sugyot. As I explain in my discussions on multiplicity, there is an essential tension in the BT. While appearing to convey multiple voices as well as multiple sages conveying a range of legal opinions, the text as a whole is unified in the limits of those voices and opinions. The inclusivity is actually an exclusivity. What appears to be a dialogical range of voices is in fact a monological and unified whole, on both a legal and literary level. In some ways, this places my work alongside Barry Wimpfheimer who – to the best of my knowledge – was the first to draw upon the work of Mikhail Bakhtin and how his categories and ideas about novels might apply to the BT. It is also Wimpfheimer who first expounded on the potentials of seeing the BT, or at least parts thereof, as a legal narrative with both literary possibilities and legal/halachic implications. Daniel Boyarin builds upon Wimpfheimer’s work, and specifically his work on Bakhtin, and argues that the BT is a monological work despite the juxtaposition between what appear to be multiple voices emanating from different (parts of the same) traditions.\footnote{Daniel Boyarin, \textit{Socrates and the Fat Rabbis}, 147.}

The isolation of the tension between unity and multiplicity or between the monological and the dialogical is apparent in the BT in many ways and in a range of contexts. Boyarin successfully parses what are two braod voices in the BT, the grotesque
and self-critical voices versus the ‘serious’ voices.\textsuperscript{8} He then defines them not as two distinct voices included in the text because of tradition of some literary incoherence, but rather as a single monological text with an intended self-critique of itself.\textsuperscript{9} There is the ‘serious’ and then there is the grotesque which serves as a form of self-criticism. This tension permeates many different conceptual realms, some of which I address above. Though the discussion regarding this tension is ongoing and still expanding and defining itself, I see this project as participating in that conversation as well.

\textsuperscript{8} Boyarin, \textit{Socrates and the Fat Rabbis}, 190-191.

\textsuperscript{9} Boyarin, \textit{Socrates and the Fat Rabbis}, 193-194. Boyarin specifically mentions Kalmin’s theory that the inclusion of the unusual or grotesque stories in the BT was merely an acquiescence to tradition, and almost done against the editors’ will.
Chapter I
Stammaim versus Stammaitic Activity

General Introduction to the Chapter

Recently I leased a car that came with satellite radio. There are hundreds of stations – if not a thousand. There are stations dedicated to every decade starting with the 1940s and ending with the 1990s; there is a country station, a classical music station, and a rap station; there is even a station dedicated to Elvis. I quickly realized that the satellite company was aware that musical styles are defined chronologically as well as by a range of other descriptions, including a genre dedicated to a single artist. I was most fascinated with the stations dedicated to specific decades; while it was often obvious to which decade certain music belongs, sometimes I would ask myself, “that’s from the 1950s?” To further highlight the tension, there is a daily program on the 1940s station that plays ‘1940s style’ music (i.e. Big Band, Jazz, etc.) performed by artists who did not record in the 1940s, and some who only recorded their performances in the last few years. As the satellite company has recognized, ‘1940s’ represents more than just the music recorded in the 1940s, and may also not be a correct description for some music really recorded in the 1940s. I feel that this story in some ways informs what I hope to accomplish in this chapter.

Discussing style requires us to use terms that are best suited to define the style. Merely to say: “this is the style” does not help the listener to understand what is meant
based on the words alone. Adding a series of words or a phrase contours the listener’s sense of the style at hand. Even a single word has an impact; for example, the word “French” limits to a degree the connotation of the word style: “French style.” While the listener may not know precisely what style refers to, he has a definite sense of what it cannot be: anything that would negate that it is French. Adding “1970s” to “French” as another adjective modifying the noun style further narrows the scope of what style can be. Adding “Haute Couture” injects a much greater level of precision; “it is 1970s French Haute Couture style.” That is a long way from, “it is style.” Further adding the name of a fashion designer and a season offers even greater clarity: “it is Pierre Cardin 1978 Autumn season French Haute Couture style.” The general idea is that the group of terms comprising the definition of a style is the essence of that style; it is the group of terms that brings groups of individuals together with respect to their sense of what is a particular style. This applies to a broad range of elements of the general human condition: music, visual arts, architecture, subways and buses, libraries and zoos, and nearly all areas where the style of a thing (i.e. a subway or library) can be discussed in terms of its style. While there are many different aspects to the definition of a style, two common aspects are time and geography.

“1920s Chicago” evokes a specific style. Nevertheless, “1920s Chicago” can also describe something that is definitively a part of 21st century New York City; for example a Broadway performance set in 1920s Chicago, with a set that includes obvious landmarks from Chicago, and music that sounds like it is from the 1920s (the music can actually be contemporary music written in a “1920s” style.) Similarly, I am free to write
a sonnet in a “16th century” style; I am free to mimic Shakespeare, and one might even be fooled into thinking that the sonnet in fact dates to the 16th century and its provenance is London. Similar to 1940s music recorded last year, one would be correct in stating that the poem is a 16th century sonnet, if my poetic and mimicry skills were that strong to have crafted such a poem (admittedly, I can’t even craft a 21st century poem). A more seasoned reader of 16th century sonnets may recognize that the poem is not from the 16th century, either because of his greater sensitivity toward 16th century poetry or because he may possess a complete knowledge of all 16th century poetry, and would therefore know that my poem is an imposter. Yet the seasoned reader may still define the poem as a sonnet from the 1500s even when he himself is aware that it was actually written yesterday; he may offer further information about its true temporal and spatial provenance (i.e. Josh Eisen wrote the poem yesterday), because the poem’s style takes on a time/space definition that has nothing to do with the true time/space origins of the poem. The same can be said of pottery found on an archaeological dig that includes a millennium or more of finds. For well-known ancient pottery styles, date is defined by features of the pot and not necessarily by its exact physical provenance within the chronological layering of the site.

When discussing Shakespearean sonnets, one is aware of what that means because of our historical knowledge of the man, his time, his place, anecdotes about him, and much more. Not all texts carry with them such information, and often the reader has little or no precise information about the text and must judge the text and define its style without the benefit of a good history of the text. Generally, the older or more obscure a
text, the less likely it is to carry with it such historical information. In discussing how to date Sukhodaya art, A.B. Griswold aptly defines his – and our dilemma – regarding dating and the ultimate solution: “To establish the chronology of Siamese art, there can be no substitute for examples inscribed with dates. In the art of Sukhodaya they proved very hard to find.”

Unlike Siamese art, the BT never inscribes its cultural artifacts – its words – with a firm date. A chronology of the BT is therefore difficult to produce without relying on historical and literary assumptions, which are not as firm as the inscriptions in the art of Sukhodaya or even the styles of pottery from an archaeological dig.

The Babylonian Talmud (BT): Style and Chronology

The BT offers its readers very little in the way of extra-textual historical information. Still, it is plain that the BT contains within it more than a single literary style; what is very difficult to accomplish is the chronological and geographical placement of many of these styles. We are often left guessing; this is exactly the case when later authors reconstruct earlier traditions and sources and the degree of the reconstruction is not known to us. Nevertheless, the manner in which the BT is studied both traditionally and critically requires significant reliance on the chronological period to which rabbinic authorities are dated. On a broad level, when dealing with the BT, ‘Tannaitic,’ ‘Amoraic,’ ‘Saboraic,’ and ‘Genoic’ denote periods of time that speak to the nature of the rabbinic authorities who lived during them and who affected the BT and/or

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the way we read the BT; within those periods, there are further rules to discern the degree of authority associated with a particular rabbinic sage. When speaking of rabbinic authorities in the BT, they are rarely discussed in terms of their literary or adjudicative style; rather, they are defined by the period during which they lived, and to a far lesser extent the location within Babylonia or the Levant where they operated. Beyond merely demonstrating that the generation of a source impacts his authority, it has also been suggested that the BT favors an older Amora when he is opposed by a younger one from the same or almost the same generation; this is even the case when the younger Amora possesses a rank higher than the older Amora.\footnote{Avinoam Cohen, “Was Age the Decisive Criterion of Subordination among the Amoraim?” \textit{JQR} 92 (January – April 2002):279, 283. On page 304, Cohen quotes Berakhot 30a and Rav Ashi stating that he would not do something that was not done by those older than him.} The focus in this chapter centers more on the temporal (chronologies, relative chronologies), specifically because of the recent scholarly emphasis on the dating of the Stam(maim) and of new approaches that have emerged from the critical school of BT study which takes chronology into the strongest of considerations. At times, this emphasis is greater than the analysis of pure literary elements and their impact on the text.

It is difficult to state with certainty where, when or with whom ‘contemporary scholarship’ (or modern or academic, but specifically non-traditional) of the Talmud commenced. Robert Brody posits that Zecharias Frankel was the first ‘modern’ scholar of the Talmud.\footnote{Robert Brody, “\textit{stam hatalmud v’divrei ha’amoraim},” \textit{Iggud} 1 (2007), 213.} Brody goes on to mention Isaac Halevy as the first scholar to react to and expand upon the work of Frankel.\footnote{Brody, “\textit{stam hatalmud},” 213.} Other scholars, and many an aspiring scholar as
part of their dissertation, have also weighed in on the issue. For my part, I would like to point to the work of David Halivni as the first to operate with independence from traditional constraints. His isolation of the Stam is a recasting of older ideas into a coherent framework with a more robust vocabulary gleaned outside of the ‘Yeshiva.’ This isolation of the Stam, despite the extreme to which Halivni and some of his followers took it, was a first step toward seeing the BT as a narrative and with the narrator really controlling the flow and message of the text. While Halivni does not view the Stam as anything more than a faithful servant in the honest transmission of Amoraic traditions, many who have accepted his overall paradigm have placed much more agency in the Stam. Additionally, Halivni is still perched within the traditional approach in that he discusses the BT as a legal text, the adjudications and legislations of which must be taken seriously. Daniel Boyarin and Barry Wimpfheimer have elevated the text of the BT to ‘literary’ status in their works, yet still they can be considered as working within Halivni’s paradigm in which a Stam is operating as and is transformed into the super-narrator of an often deep and complex narrative.14

The work of Wimpfheimer and Boyarin is critical in the progression (and in some ways, the culmination) of reading the BT as a literary work. While they are not alone, they represent well the current state of the art in BT studies with respect to a literary approach to the text. The text and what the text is ‘doing’ is their focus. As Wimpfheimer himself suggests in a review of Boyarin’s Socrates and the Fat Rabbis, the

actual author does not matter for Boyarin. Only the author’s function matters, and he goes further in stating that the “authors may even be one historical person.” This might seem like a clear shot over the bow to those most interested in dating and chronologies. Still, Wimpfheimer and Boyarin are uninterested in viewing the BT through a lens completely void of history. They draw upon chronologies and make assumptions regarding dating. Wimpfheimer and Boyarin, like much of the state of the field of Talmud, do not go as far as Jacob Neusner in his dismissal of the possibility of accepting chronologies and subsequently dating material in the BT, both relatively and absolutely. Even Neusner himself accepts that the document that is the BT reflects historical traditions and individuals. He challenges the precision of attribution and strongly emphasizes the role of the final redactors and editors in the assembly of the document. Unlike Neusner, Boyarin and Wimpfheimer do not need to contradict themselves when relying upon historical language and in making their assumptions about relatively dating elements within the BT. While they are primarily interested in the literary, they are not dismissive of the possibility of historicity in the BT.

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15 Barry Wimpfheimer, “The Dialogical Talmud: Daniel Boyarin and Rabbinics” JQR, Vol. 101, No. 2 (Spring 2011), 245-254. It is also worth noting that in the review Wimpfheimer also places Boyarin within a rabbinic paradigm, and Boyarin’s place within it: “This is the sort of book expected of a scholar trained by Saul Lieberman and Z. Dimitrovsky at the Jewish Theological Seminary in the 1960s and 1970s. As a corpus, these volumes puncture the comfortable definition of the field of rabbinic literature, staking a place for rabbinic literature within the fields of Late Antiquity, Early Christianity, and Greco-Roman rhetoric… Boyarin’s work invites outsiders to the field of rabbinics to see the relevance of this material for their own projects.” Speaking of ‘outsiders,’ Wimpfheimer is referring to those outside the paradigm of rabbinic studies and rabbis themselves. For Wimpfheimer, it is Boyarin who makes accessible the fruits of critical inquiry in the field of Rabbinics to outsiders. While Lieberman may have been looking outside the proverbial walls of the Yeshiva, it was Boyarin who stepped out and looked back at it with academic perspective.


17 See for example Wimpfheimer, Narrating the Law, 66 who describes his skeptical position vis a vis the BT as a source of historiography as “treat[ing] talmudic legal narratives as sources for historiography with reservations” [emphasis added], also see Dolgopoly, What is Talmud?, 8 “…in what follows I will map
I am aware that the historicity of the BT cannot be ignored. Despite the dangers of using the BT as a historical work, there is some history that can be culled from it, and the work itself does reflect a history of rabbinic ‘something’ of some period of time. This is the case where one agrees with Neusner that the BT is by and large the product of the latest redactors and editors, since Neusner still accepts the characters of the BT and many of their sayings as authentic and historical. He only argues that such history is too obscured by the different scribes and transmitters who came later. This is obviously also the case where people agree with Halivni and his more extreme ilk in that the BT is reliable in terms of the attributions and proclamations of the sages. Halivni accepts the historicity of the BT to the extent that the final redactors and editors – his (and our) Stammaim – were faithful to the traditions and attributions they received. If they had no reason to manipulate the text, they would not.\(^\text{18}\) This ignores the obvious possibility that we no longer have an awareness of reasons they in fact may have had to manipulate traditions.\(^\text{19}\) The fundamental difference between Neusner and Halivni is that Neusner lumps the entirety of the BT into a single chronological place, which is the post amoraic period and Halivni only posits the Stammaim in that period. They both agree in general terms with periodization as it applies to the Amoraic period. And they agree about

\(\text{the Talmud typologically, rather than chronologically and rather than in terms of specific names associated with the question of the Talmud in its intellectual history. This is not to say that chronology is abandoned, but that names are only synecdoches or landmarks for different views of the Talmud, views not found exclusively in the work of any given representative.}^{\text{18}}\)

\(\text{18 David Halivni, } \text{mev’ot l’megorot u’mesorot (Jerusalem: Magnes Press, 2009), 4 and 111.}^{\text{18}}\)

\(\text{19 As I will argue in chapter II on anonymity, it is actually possible to do this and anonymity is the catalyst. This is also demonstrated in the sugya in Nedarim where only an anonymous narrator can pull of the stunt it does (Chapter VI, p. 277).}^{\text{19}}\)
historicity for this period and the characters and traditions referenced in the BT regarding it. Halivni and Neusner disagree about how the BT presents them and the degree to which the traditions and attributions are authentic. It is also important to mention Shamma Friedman and his more cautious approach, which is in some ways a middle ground between Halivni and Neusner. As discussed later, Friedman accepts the reasonability of the late dating for the Stammaitic activity, yet he is only committed to dating such material later than the memrot they mention and the sages to whom they attribute traditions.20

Unlike Neusner who dismisses practical historicity in reading the BT, Wimpfheimer and Boyarin are not dismissive of anything. Rather, they have turned their focus in a new and compelling direction. It is this direction and milieu of BT reading that I wish to place my current work. My work is distinguished from theirs in that I am more interested in chronologies and dating to the extent that I am still grappling with the matter and have not looked beyond it. I am too aware that dating matters so long as the text is not a complete fiction, which is not even Neusner’s suggestion.21 I tend to agree with Friedman about relative dating, yet am not willing to be as accepting as he is of an absolute late dating unless there is something in the sugya that demonstrates this. Nevertheless, I am in complete agreement with Boyarin’s suggestion that it is fair to read

20 See below 39-41.

21 Worthy would be a comprehensive analysis of the kernels of history that make up the extra-BT sources for Talmudic traditions, characters, stories, etc. An argument can be made that this or that specific Talmudic sage is fictitious and the creation of the final editors and redactors. This argument is viable whether we are dealing with Neusner’s final editors and redactors or Halivni’s Stammaim. On the one side would be the historian demanding information from sources outside the BT, and on the other stand Neusner and Halivni, as well as Boyarin and Wimpfheimer and almost the entirety of BT studies.
texts as though the apparently different elements are in fact emanating from the same chronological period, if not the same author or group of authors. This possibility is important. I would like also to suggest that it is possible to test for different dates for the same element within a sugya. This allows us to see the impact on how the text is read if it was generated in one amoraic generation versus how it is read if it was generated in another. Dismissing historicity altogether would not allow for this. It would also not allow for Boyarin’s suggestions to be as profound as they are.

To be clear, I am not dismissing historicity or the value of acknowledging chronologies and dating. Further, I draw upon the periodization paradigm as it is accepted in contemporary BT studies and use the language of that periodization (i.e. Amoraic, Tannaitic, Saboraic). That language is rooted in assumptions about chronologies and history of the BT and its sages. Further, like Halivni, Neusner, Boyarin, Wimpfheimer and the majority of BT scholars, I agree that the BT is a product of some or all of the time between the second and sixth centuries and from the known Jewish Babylonian population centers, such as Sura, Pumpedita, Mahoza, etc. I accept that the BT reflects actual sages and actual traditions from the entirety of the period we commonly refer to as the Amoraic period. My approach allows for a flexibility in dating the different elements of a sugya, in that the elements are not confined to the periods with which their functions are associated. For example, as is the crux of my argument in this chapter, there can be Stammaitic activity which dates to the Amoraic period. There can be memrot which function Amoraically, yet date to a post-Amoraic or what is also called the Stammaitic period. This is similar to Neusner in that it allows for the late dating of
elements that are presented in the narrative seemingly earlier. It also fits within Boyarin’s framework, which in its extreme suggests a single author for the disparate elements of a sugya; and suggests that the chronological depth is all created by a single author or group of authors. Nevertheless, the activity of the Stammaim is central in the flow of the narrative. This is the case whether it is a chronological phenomenon, a literary one or some combination of both. I therefore dig deep into the work of Halivni and those who build upon his theory of the Stammaim in order to uncover what is a latent literary approach and its potential in his work. Again, this is not a dismissal of histories or chronologies, but it is partly a reconsideration of the assumptions surrounding how we might date certain elements.

I devote much of this chapter to Halivni’s work (and specifically to his most recent introduction to Baba Batra) as a paradigm for the Halivni school – the school that sees most Stammaitic activity as post-Amoraic. Inherent in my treatment of Halivni’s work and in my reaction to and criticism of aspects of his thesis is my belief that Halivni was the ‘first’ modern scholar, if one must be named. For the purpose of setting up a foil, and for the purpose of elucidating the progression of how anonymous elements were understood, I will briefly discuss the contributions of Z. Frankel, Y.I. Halevy, and Avraham Weiss on this matter.22

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22 Robert Brody has made this task significantly easier in his article, “stam hatalmud” to which I refer several times and which is an excellent scholarly work on the matter of Stammaitic elements. While he is not necessarily casting them as straw men, Brody respectfully treats their contributions as dated and the subject matter worthy of revisiting. With Halivni, Brody deals as he is with a contemporary whose scholarship is still relevant nearly half a century after it first appeared.
Zecharias Frankel, to the best of my and David Brody’s knowledge, was the first scholar – modern or otherwise – to break the BT down into parts that operate outside the paradigm set forth by Sherira in his iggeret. Conceptually, a first step in this direction was Frankel’s pointing out that certain sugyot possess two underlying strains that feed into the version extant in the BT; for example, the first chapter of tractate Temurah contains a disproportionate use of the phrase ‘lishna ahrini’ (other language) and can thus be defined as possessing more than a single tradition. Specifically, Frankel argues that they should be read as Saboraic emendations. More interesting to this project (and before this project, to Brody), he also isolates Stammaitic elements in certain sugyot that appear to pre-date Amoraic statements that are deployed in the same context. He does so by demonstrating that Amoraim are in fact responding to anonymous elements in the sugya, which would not be possible if the Stammaitic elements (the shaqla v’tarya to be specific) were crafted almost entirely in the post-Amoraic period of the traditional chronology.


24 In his mevo ha-yerushalmi (Introduction to the Palestinian Talmud), (Berlin, 1923), Frankel makes a similar argument regarding the Tosefta. His analysis – that the Tosefta was comprised of two distinct traditions – can be discussed and debated; it is intellectually dubious that he attributes one to Rav Hyya, per Sherira, and one to his Hyya’s student, Rav Hoshaya. Clearly, Frankel is still committed (possibly unintentionally) to a traditional chronology, and he is making his adjustments very much within that paradigm. While positing two strains in the Tosefta is a useful exercise, attributing them to two Amoraim with no basis except for Sherira and everything based on the iggeret sherira is faulty for a linguist, let alone a historian. Although not relevant to much of his scholarship, Frankel’s theology had to play a role in his scholarship, as he straddled the line between the the more extreme Reformers such as Hildesheimer and Geiger, to his ‘left,’ and the traditionalists such as Hirsch, to his ‘right.’ Less wedged theologically in his scholarship, Halivni breaks the paradigm much further by positing the Stammaim, and this feeds into why I feel more comfortable labeling Halivni the first modern scholar of the Talmud.


26 It is this part that is most intriguing to Brody, and his critique of the Halivni school. It is also probably why he refers to him as the first modern scholar!
Reading Halevy, it is worth noting that he expended academic energy engaged in intellectual debate with Frankel – at the time the relatively ‘untraditional’ (not anti-traditional) approach – regarding different occurrences in the BT.\textsuperscript{27} Like Frankel, Halevy also was a significant individual from a public theological perspective; he was the head of the Orthodox Agudah. His scholarship does not disappoint his constituency. As would be the focus of a traditional person critically looking at the formation of the BT, Halevy focuses much attention on Rav Ashi, and his role in the formation of the BT. On the whole, he reaches conclusions which are in line with a traditional perspective on the text. Where Halevy’s contribution is most valuable for this project in his assertion that substantial formative activity took place throughout the Amoraic period, yet without dismissing a significant contribution on the part of a later editor (e.g. Rav Ashi), per Sherira. Halevy divides the formation into three distinct stages: (1) with the acceptance of the Mishna as the primary halakhic text, an assemblage of explanations of the Mishna began to form, and the period culminated during the time of Abaye and Rava when much of the material was organized, including much of the \textit{shaqla v’tarya} (the back and forth logical argumentation) associated with the sugyot that were assembled;\textsuperscript{28} (2) a continuation of the same process during the time of Rav Ashi as well as its finalization, which included a broader rearrangement and mild emendation of the earlier material into

\textsuperscript{27} An example is Halevy’s criticism of Frankel’s dating of Yosey ben Yoezer, Yosey ben Yohanan, and Antigonos. Without going into detail, an examination of both their works will evidence the strong traditional leanings of both scholars, and their inability to look beyond ideas such as the historical chain of halachic transmission for periods where we have little or no history beyond the Rabbinic texts themselves. See Frankel’s \textit{darkhei ha’mishna v’darchei ha-sfarim hanilvim eleyha: tosefta, mekhilta, sifra, sifri} (1859), 30-31, and Yitzchak Halevy’s \textit{dorot ha’rishonim} (Frankfurt, 1897) Vol. I, 198.

\textsuperscript{28} Halevy, \textit{dorot ha’ris honim} II, 480-482.
a coherent whole;\(^{29}\) (3) Saboraic additions and adjustments that were made to a BT whose overall structure was complete and which materially affected neither the whole nor any individual sugya.\(^{30}\) The most important aspect of Halevy’s work in terms of his discussion of anonymous Stammaitic activity is that he attempts to prove that it can be traced to even as early as Rav and the first generation of Amoraim. What is also important for this project is that Halevy opens the door to thinking about Abaye, Rava, and their colleagues as operating both as the anonymous organizers and narrators of sugyot as well as individually and coupled sources to whom traditions are attributed. It is possible for a single source to generate contributions in multiple styles; in our case both individual memrot and the narrative/\textit{shaqla v’tarya}.

Weiss does not veer that far from the position of Halevy, specifically with respect to the continuing process of redaction throughout the Amoraic period.\(^{31}\) Like Halevy, Weiss operates firmly within the scope of traditional chronologies; Weiss also still deals with the issue of Rav Ashi. Although he diminishes the role Rav Ashi played, he was conceptually distant enough that he could consider dismissing Rav Ashi from the equation.\(^{32}\) He does ascribe to Rav Ashi and his period quite a bit of literary impact in

\(^{29}\) Halevy, \textit{dorot ha’rishonim} II, 560 and III, 116-120.


\(^{32}\) In order to demonstrate the degree to which Weiss was ahead of his time, one need refer to a review of Weiss’ “hithavut” written by J.K. Mikilszanski, “The Talmud in the Making,” \textit{JQR} Vol. 35, No. 4 (April 1945):437-444. In it, Mikilszanski zealously defends Rav Ashi’s assembly and redaction of the BT, and attacks Weiss’ diminished view of Rav Ashi’s role. At his most ridiculous, Mikilszanski states that “the last Amoraim and the Saboraim only completed, corrected and emended the work received orally or in scripts from R. Ashi… the fact that the Talmudic literature scattered over schools throughout generations
terms of the language and style of a sugya. He goes a step beyond Halevy in that he
discusses the idea of authority associated with different layers of the BT. For example,
there was an early layer developed by the first generation of Amoraim, for whom only the
Mishna itself was available for analysis; this layer then acquires an authoritative quality
to later Amoraim who accept it as part of a broader tradition that also includes the
Mishna. Thereafter, a next layer develops that includes an analysis not only of the
Mishna, but also of the attendant Amoraic traditions. Weiss puts much stock in Rav
Yehuda (of Pumpeditha) as operating as an early assembler and organizer of received
traditions of Rav and Shmuel as well as others in the first and second Amoraic
generations. Like Halevy, Weiss views Abaye and Rava as instrumental in the creation
of a ‘proto-talmud’ upon which the final BT is primarily based. Prior to Abaye, Rava,
and the fourth generation, Weiss argues that there were many strains of the Talmud
which originated in different schools; they all included their own anonymous elements,
and thus it is possible – as I argue – that the same individual could be anonymous in the
context of Stamaitic activity and attributed when putting forth a halachic memra. An
innovative element of Weiss’ approach is that he appears to be the first scholar to suggest
that it is not critical to ask, “who redacted the BT?” Part of his brand of the theory of
‘continued redaction’ is his belief that the BT was never formally redacted, and that its
redaction took place over time in some sort of organic manner, one which Weiss does not
fully unpack. Nevertheless, this is a significant contribution.

must have at one time been collected, arranged and molded into one work by some great man, is beyond
doubt… we know that his name was R. Ashi. To deny it is to refuse to accept unimpeachable testimony.”

32
Regarding Frankel, Halevy, and Weiss – as well as their contemporaries who operated within similar rubrics – it can be said that they were still tethered to traditional perspectives on the BT. As examples, they were unable to move past the significant influence of Rav Ashi on the formation of the BT nor do they attempt to work within a chronology other than the one put forth by Sherira more than a millennia prior to Frankel, Weiss, and Halevy. They did, however, scrutinize closely anonymous Stammaitic elements in a wide range of sugyot, and in this way they contribute to the idea that Stammaitic elements be treated from a literary perspective rather than from a chronological or halachic one. It is Halivni who takes the next step in isolating the Stammaim, albeit still with chronology at the forefront of the assertion, and thus isolating the global idea of Stammaitic activity, opening the way for reading the material as a narrative more than as an evolving legal document.\(^{33}\)

In summary, in addition to the traditional approach, there are – in a nutshell – three basic schools of thought regarding the formation of the BT and the anonymous elements that weave it into a coherent whole. The first sees the BT evolving primarily within the Amoraic period by anonymous actors who assembled traditions and the sources to which they are attributed. This approach does not negate the traditional one, yet it offers more texture and sophistication in how one views the BT as a text; instead of

\(^{33}\) Talya Fishman, in her most recent book, *Becoming the People of the Talmud: Oral Torah as Written Tradition in Medieval Jewish Cultures* (Philadelphia: University of Pennsylvania Press, 2011), 2-3 asserts that the shadow cast by medieval commentators have so influenced the view that the Talmud is a halachic/legal work that even contemporary scholars have been unable to re-contextualize the BT in its original Amoraic milieu. While Halivni did not articulate this, and Talya Fishman needs to be lauded for doing so, it was Halivni’s work that made such thinking possible in a way that the work of the scholars prior to Halivni did not. When discussing canonicity, I go into Fishman’s work in greater detail, and specifically in the parts of her work that address how it was really during the post-Geonic period that the BT attains the high degree of canonicity that has been prior hereto projected onto much earlier periods within the traditional view of how authority is perceived with respect to the BT.
having been put together ‘in a moment’ by Ravina and Rav Ashi, it snowballed over time, and by the end of the Amoraic period it was nearly complete. The second asserts that the assembly of the BT started at the end of the Amoraic period and took place primarily after the Amoraic period. The third school maintains that the BT was assembled and redacted after the Amoraic period.

Contemporary scholarship today primarily works within the paradigm briefly described in the second school of thought. Even Halivni falls into the second category for the purposes of my project. And it is Halivni who strongly defends the position that the Stammaim function as a real and distinct category, both in the text and on a chronological timeline. Yet Halivni allows that there was overlap between the end of the Amoraic period and the Stammaitic period; phrased differently, Halivni states that there were Stammaim who operated during the Amoraic period. This is important in that it demonstrates Halivni’s commitment to the notion that the Stammaim were distinct, and that they could not be Amoraim, though they could have operated contemporaneously with late Amoraim. This is also where Halivni goes well beyond Weiss, Frankel, and Halevy; the earlier scholars, as mentioned above, were unable to make this conceptual leap.  

In terms of discussing the authorship of the anonymous layer of the BT, Boyarin wisely quotes Richard Kalmin. In 1989, Richard Kalmin succinctly defined three different options for the authorship of the BT:

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34 While not the place of this dissertation, the earliest scholars may have been operating within certain theological constraints.
“This difference of opinion concerning the redaction of the Talmud is in large part a dispute over who authored the stam, the anonymous layer of the Talmud. In the anonymous layer, the Tannaitic and Amoraic portions of the Talmud are analyzed, explicated, and when necessary, emended and completed. In other words, this Tannaitic and Amoraic material was edited by the stam. According to the theory of Saboraic redaction, the Saboraim authored the stam, while according to the theory of continuous redaction, the stam derived from all Amoraic generations. According to the theory of Stammaitic redaction, the bulk of the stam was produced by the stammaim, sages whose names have not survived within the Talmud itself.”

Kalmin’s continuous redaction corresponds to the first option I present, above. It also corresponds – to a degree – to the view set forth by Abraham Weiss and Chaim Albeck in the mid-twentieth century. For different reasons they saw the anonymous Stammaitic elements as emerging on an ongoing basis during the Amoraic period, but not after. Kalmin’s theory of Saboraic redaction corresponds with my third option; while I refrain from using the term Saboraic, purely post-Amoraic can only mean Saboraic where there are no Stammaim, and even within a paradigm where there are Stammaim, they also operate (regardless of degree) during the Amoraic period and are thus not “purely post-Amoraic.” The post-Saboraic theory can be traced to Julius Kaplan, who was among the first to posit that it was the Saboraim – and not Rav Ashi and/or Ravina – who were the

final editors of the BT and creators of the Stammaitic elements and the sugyot that were borne of them.\textsuperscript{38}

To a lesser degree than in the first two theories, Kalmin’s theory of Stammaitic redaction corresponds with my third option, except that here is where Kalmin and others from the Halivni school get caught up in the tension between chronology and literary activity. Kalmin uses terminology rooted in a chronology of Rabbinic periods; the anonymous layer is Saboraic, Amoraic, or Stammaitic. Nevertheless, Kalmin acknowledges that there is little evidence pointing to a distinct period primarily defined by anonymous activity.\textsuperscript{39} Clearly, Kalmin is referring to the Stammaim first isolated and named by David Halivni in his different introductions to \textit{meqorot u’mesorot}, although his dating for the Stammaim has changed over time. Nevertheless, he has remained steadfast in not only isolating a Stammaitic literary activity, but also in attributing this activity to new cast of periodized characters, the Stammaim, who are wedged between the Saboraim and Amoraim. If they are not called Stammaim, this theory is not that different from Kaplan’s; it defines the Stammaitic contribution as primarily post-Amoraic. Within the Halivni paradigm, the fundamental difference of adding a period attributed to the Stammaim is that it implies that there was an additional, distinct break between periods and therefore also a break in the nature of activities engaged in during the period. The Stammaim, according to the Halivni school, are defined by the anonymous \textit{shaqla v’tarya}. As soon as the Stammaitic period commenced, so too did the massive work of

\textsuperscript{38} Julius Kaplan, \textit{The Redaction of the Babylonian Talmud} (New York: Bloch Publishing Co., 1933). Kaplan is also overly committed to the importance of Ravina and Rav Ashi, and therefore shows this theological bias in his academic work.

\textsuperscript{39} Kalmin, \textit{Redaction}, 59.
the creation of the *shaqla v’tarya* and the formation of sugyot. Kaplan offers a far softer landing in terms of when exactly the Saboraim commenced their work, and it is not as ‘overnight’ as Halivni’s Stammaim. For clarity’s sake, it is worth referring to Boyarin’s definition of the Stammaitic period, and his emphasis on the amount of work accomplished early in the period:

“The term [Stammaim] is a conceit, a shorthand name for a hypothesis to the effect that the bulk of the crucial redactorial work, that which makes the Babylonian Talmud the Talmud, was actually done at the end of the period of the cited authorities, that is, in the immediate post-Amoraic period.”

As Halivni is described by Boyarin, the Stammaitic period ‘in the immediate post-Amoraic period’ was front loaded with the heaviest lifting of Stammaitic activity. This is unlike Kaplan’s Saboraic period, which covers quite a bit of time and which is not as broken down as Halivni’s Stammaitic period. Halivni’s introductions to *megorot u’mesorot* have grown increasingly more interested in the degree to which Stammaitic activity is broken down both in terms of their literary quality and where to place them within the Stammaitic period; as the period progresses, Halivni’s theory goes, the Stammaim impacted the text less and less until the end, when the Stammaim were nothing more than *orkhim*, arrangers, as opposed to authors or even editors. And it is worth noting that it is in his latest introduction to Baba Batra (which receives significant treatment in this chapter), Halivni conceptually splinters Stammaitic activity from the Stammaitic period far more than his earlier ones.

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In addition to Halivni, Shamma Friedman is also closely associated with the academic beginnings of the Stam/Stammaim conceptually. While often lumped together with Halivni, Friedman has quite a different agenda than Halivni in that he is not producing a single commentary on the entire BT. Methodologically, Friedman differs from Halivni in his focus on larger parts of a tractate, such as a commentary on an entire chapter, whereas Halivni focuses on shorter excerpts from the text in his commentary in meqorot u’mesorot. They are lumped together because they were the first scholars to dissect the text by first isolating what was then called the Stam. Over the years, Friedman has done significant work built upon this underlying approach to the text. In his latest works, he has also gone beyond the current state of the art of the field of BT studies. Of greatest interest to this dissertation is Friedman’s latest work sugyot b’heker hatalmud habavli; asufat mehkarim b’inyaney mivneh, herkev v’nusah. Specifically, he discusses the notion of a Stammaitic style separate from the chronological Stammaim. The best example of this is his finding the Stammaitic voice attributed to specific Amoraim. He draws upon this as possible evidence for late Stammaitic manipulations of sources and for purposefully hijacked attributions. Friedman, like Halivni, maintains a place for the chronological Stammaim.

41 Also called Talmudic Studies; Investigating the Sugya, Variant Readings and Aggada (New York and Jerusalem: The Jewish Theological Seminary of America, 2010). The book is a compilation of studies by Shamma Friedman which showcase not only his great aptitude for the text, but also the range of his points of attack on the text. On the whole, Friedman has far less use for Ravina and Rav Ashi. He is not theologically constrained. While his books may never reach the same – if any – heights in the stacks of the Yeshiva, his scholarship is cutting edge and in this work he seems to have leapt ahead of the current state of the art of BT studies. While he covers a range of issues, my primary focus in deploying Friedman’s newest work is his interesting use of the modern Hebrew word for style in discussing the Stammaim. I am also specifically interested in his response to Robert Brody, as is discussed in this chapter.

42 Friedman, Talmudic Studies, 118.
Following Halivni’s innovations regarding the anonymous *shaqla v’itarya*, critical students of the BT, for almost a half-century, have added ‘Stammaitic’ as an additional period during the time at which the BT became a complete and whole text. For many critical students of the BT, the Stammaitic period is taken for granted. Unlike the four other periods, there are no rabbis associated by name with the Stammaitic period, and there is no mention of it anywhere until the 1960s, or even the 1970s.\(^{43}\) While critical scholars of the BT identify what is Stammaitic (also called Stam) based upon the literary activity of the element in the text, they also categorize them within an updated version of the traditional chronology in which the authority of rabbinic sages is based primarily upon the time in which they lived. The literary style of the texts in which they are represented is not as much a factor as the period associated with its source. Thus, there is tension when two situations emerge in a text: (1) in approaching the text generally, within it exists a literary style that becomes associated with a later period in the chronology of the development of the text – in this case the anonymous narrative style of the BT with the Stammaitic period; and (2) the literary style associated with the later period, in a given text, appears to command the response of what should be an ‘earlier’ source – in our case, situations where an Amora is responding to the Stammaitic element.\(^{44}\) Unpacking this and related tensions can inform our understanding of the relationship between authority and anonymity in the BT.

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\(^{43}\) In “Hellenism in Jewish Babylonia,” 339, Boyarin nicely states that “it must be emphasized that there was not, to the best of anyone’s knowledge, any group that ever were named the *Stammaim* either by themselves or by anyone in Jewish history until the last three decades.” This was published in 2007.

\(^{44}\) In placing the Stammaim firmly in the Amoraic period, Brody strongly relies on instances where Amoraim are reacting to Stammaitic material. He devotes quite a bit of his most recent work to this endeavor, and it is often also the topic of conversation in his seminars, as colleagues who have had the privilege of taking his courses at the Hebrew University have informed me. Specifically, I would like to thank Rabbi Ari Berman for first bringing this to my attention.
Halivni acknowledges that there are instances where an Amora appears to be responding to a Stammaitic element. However, he states that it is merely appearance, and that the Stammaitic authors (post-Amoraic, per Halivni) were filling in missing pieces of the Amoraic traditions they received. In doing so, they give the Amoraic statements the appearance of responding to Stammaitic elements. While this is possible in some cases, there might be others where the appearance is actually reflective of the literary evolution of the BT narrative. A textual structure that reflects early Stammaitic work can be the work of early Amoraim, and need not be an exception or a textual misunderstanding. Stepping back from the traditional periodization paradigm, and further, removing the Stammaim from its more contemporary manifestation, allows for an Amora to react to a Stammaitic element without concern for chronologies. The Stammaitic material is not chronologically bound, and can be understood as a marker for meaning. In a legal text like the BT, such meaning is bound with adjudicative or legislative authority. Rather than asking: “how can we explain the problem of an Amora responding to a Stammaitic element?” we can ask: “how is the Amora responding to the Stammaitic element and why would such a tradition be preserved?” Friedman takes steps towards answering this question. He does so by ascribing a “loose and free” approach to the earlier transmissions of Amoraic statements, and only later (i.e. in the post-Amoraic period) does this material become fixed as part of a literary whole.\footnote{Friedman, \textit{Talmudic Studies}, 116-121.} Because of the fluidity of this transmission process, there was ample opportunity for sources and traditions to become muddled and for historical inaccuracies to develop while a literary
accuracy evolved. It is important to note that Friedman goes one step further, and suggests that the crafters of the literary work that is the BT were not beyond attributing this or that tradition to a specific sage in order to infuse that tradition with greater legitimacy.\(^\text{46}\)

Among the goals of this chapter is to explore the implications of discussing elements of the BT as dating to the ‘Stammaitic period’ versus discussing them as literary forms of ‘Stammaitic activity.’\(^\text{47}\) Since Halivni first defined the Stammaim, those who accepted this scholarship placed elements of the BT chronologically more so than literarily; any literary element in the BT, such as the language used, a specific phrase or a unique word, is defined as Amoraic or Stammaitic. Dating the Stammaim was (and still is) a large part of critical Talmud study.\(^\text{48}\) Even Halivni, in almost every new release of *meqorot u’mesorot*, has re-adjusted the timing of the Stammaim because of the intra-Amoraic generational inconsistencies and because of the literary problems he encounters in certain sugyot. In addition to the problems that arise from wedging a literary style into a small chronological window, the elephant in the room is the lack of historical evidence for the definition of such a period prior to Halivni. Halivni has acknowledged this is a

\(^{46}\) I touch upon this concept when dealing with the manner in which anonymity can afford an author the opportunity to manipulate attribution. Halivni would never go this far in his ascription of authorial freedom to the crafters of the text of the BT, regardless of the stage of its evolution. Friedman does. It can be said that Friedman is theologically looser than Halivni in this regard.

\(^{47}\) While not part of the common parlance of contemporary Talmud scholars, the phrase, “Stammaitic activity,” was used by Jeffrey Rubenstein, “Aramaic addenda to Hebrew statements of the Amoraim are among the clearest signposts of Stammaitic activity.” *The Culture of the Babylonian Talmud* (Baltimore: The Johns Hopkins University Press, 2003), 68. While Rubenstein clearly also sees the Stammaim as directly related to a specific chronological period, his analysis here and elsewhere parses out a range of Stammaitic features which are not necessarily period-bound.

\(^{48}\) It is important to note that there is still quite a bit of scholarship that is concerned with things other than dating and some scholars even state that pursuing relatively fixed dates for the Stammaim might be a nearly impossible task. See Yakov Elman, “Righteousness as is Its Own Reward: An Inquiry into the Theology of the Stam,” *Proceedings of the American Academy of Jewish Research* vol. 57 (1990-1991), 63.
serious challenge, specifically the absence of the Stammaim in the *Iggeret Sherira*, where Sherira discusses the Tannaim, Amoraim, and Saboraim by name. While Sherira does not name the Stammaim, he does discuss actions that Halivni attributes to the Stammaim. Where Sherira does not offer the specifics a historian might crave regarding who performed which action and when, Halivni assumes something was missing and attributes a range of literary (and less than literary) activities to the Stammaim. Peeling anonymous narrative from attributed material – or vice versa – predates Halivni and this generation of Talmud scholars; their contribution is the creation of the Stam/Stammaim and a chronological place for them.49

While I do not wish to suggest that chronology is irrelevant, I would like to suggest that chronology is not always essential in understanding the different sugyot in the BT. Robert Brody has made a similar argument, although he does not state it explicitly, and one may perceive an apologist tone in his discussion regarding the relationship between Stammaitic activity and chronology:

“It is my wish to clarify: I do not intend to detach completely the question of *stamot* from the question of chronology.”50

Brody is somewhat beholden to the idea that the Stammaim were people of a period as much as they were people who engaged in a specific type of literary activity. It is interesting that Brody comes so close to suggesting that ‘Stammaitic’ is a literary feature

49 They also succeed in creating an environment for the deep personification of the Stam and the Stammaim. As I discuss, Rubenstein has recreated aspects of such a culture in his monumental trilogy on Babylonian Talmud and culture.

50 Robert Brody, “*stam hatalmud*,” 226.
more than anything else; even his scholarship and placement of so many different types of Stammaitic elements so early in the Amoraic period makes such a suggestion reasonable.\textsuperscript{51}

Halivni is not particularly concerned with the culture of the Stammaim as a distinct group who lived in a specific time and engaged in a specific activity, yet he is nevertheless committed to keeping them chronologically separate even where the literature must be forced into his paradigm. Separating the Amoraim from the Stammaim in the literature is crucial if one is to succeed in separating them chronologically. As Halivni states:

“the most productive method by which to understand the depths of the Gemara is first and foremost to differentiate between the words of the Stammaim and the words of the Amoraim.”\textsuperscript{52}

Inherent in Halivni’s language here and his approach in general – and subsequently in the contemporary academic study of the Talmud – is the notion that there is a chronological break between the Amoraim and Stammaim. Although most Talmud scholars would agree that there was some overlap, the periodization is firmly part and parcel of the contemporary academic study of Talmud. When reading literature – and the BT must be

\textsuperscript{51} Brody is also theologically confined to dealing with the Stammaitic elements chronologically. While he does open the possibility of a Stammaitic style, he does not abandon the Stammaim, and the neat manner in which they fit in between the Amoraim and the Saboraim, per the traditional chronology. As is the case with many academicians of Talmud, Brody is stuck with maintaining a significance for Ravina and Rav Ashi. On page 227, Brody states that “from a chronological perspective, two-thirds of the instances date to the time of Rav Ashi and later.” That Rav Ashi remains some sort of ‘scientific’ beacon within the walls of the academy is compelling.

\textsuperscript{52} David Halivni, \textit{mevo’ot l’meqorot u’mesoret; iyyunim b’hithavut hatalmud} (Magnes Press, Jerusalem 2009), 47.
considered a work of literature, even if it is a ‘legal literature’ – placing elements into periods is less essential than understanding the impact the different elements have on the text. Halivni telegraphs this idea in the sentence following the one quoted above when he defines the methodology of, “discerning the changes in language (Hebrew or Aramaic), and being sensitive to the grammatical person employed (i.e. first, second, or third person) and the different style.”

This can be accomplished without an awareness of the history behind the text or of the chronology of the different elements that comprise various sugyot. Nevertheless, it is still worth noting that knowledge of the history and some awareness of the chronology does not hinder our understanding of the text. One must be careful where such understanding is the result more of speculation and less of hard knowledge.

Halivni succeeds in demonstrating that there was in fact a period of time where Stammaitic activity was heightened – and that possibly there was a golden age of Stammaitic activity. Even Brody concedes that Stammaitic activity was relatively muted in the earliest parts of the Amoraic period. While dealing with the extremes, Brody allows that he would never suggest that “similar amounts of stamot were created in the generation of Rav and Shmuel and in the generation of Rav Ashi.” Halivni does not succeed – nor does he strive to succeed – in demonstrating that Stammaitic activity did not occur during different parts of the Amoraic period. Where he is unable to at least create the possibility that the Stammaitic elements are post-Amoraic, he merely dismisses any significance by claiming that this element is part of a very distinct minority. Halivni

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53 Halivni, mevo’ot l’meqorot u mesorot, 47.

even goes beyond this type of dismissal; he also suggests that the Stammaim could have
attributed certain statements to Amoraim when in fact the Amora never actually uttered
them.\textsuperscript{55} Overall, Halivni as early as 1975 needed to acknowledge this major gap between
his desire to have as much Stammaitic material originate relatively late (i.e. the post-
Amoraic or very late Amoraic periods) and his understanding that there are cases where
an Amora pre-dating Ravina and Rav Ashi is reacting to a Stammaitic element. In this
context it is worth quoting the specifics from Halivni’s introduction to \textit{meqorot u’mesorot}
for Seder Mo’ed:

\begin{quote}
“I do not believe now that there were \textit{stamot} in the periods preceding Ravina and
Rav Ashi, or that Amoraim who preceded Ravina and Rav Ashi reacted to \textit{stamot}
in the Gemara… it was the late \textit{mosif stami} (anonymous addendum creator)…
who combined them so that it would appear as though the Amoraim are reacting
to \textit{stamot}, but it was never so.”\textsuperscript{56}
\end{quote}

This is essential both for my project and for Brody, who quotes this as part of a much
larger quote from Halivni. For Brody, this is as close to the smoking gun as he is going
to get from Halivni on the matter of Amoraim reacting to Stammaitic activity in the text;
Halivni is point-blank dismissing any historical implication. Both Halivni and Brody,
however, are operating with the chronology of rabbinic generations looming ever so
present in their analysis and subsequent debate.

\textsuperscript{55} David Halivni, \textit{meqorot u’mesorot: biurim b’talmud l’seder moed m’yuma ad hagiga} (Jerusalem: JTS
Press, 1975); see the introduction.

\textsuperscript{56} David Halivni, \textit{meqorot u’mesorot: biurim b’talmud l’seder moed m’yuma ad hagiga} (Jerusalem, 1975),
introduction.
Shamma Friedman responds to Brody’s article, which was based upon an earlier presentation at a Bar-Ilan Talmud conference in Israel in 2006. Friedman forms his counter-attack by focusing on Brody’s comment that Friedman never truly commits – one way or the other – as to the chronological provenance of the Stamaim: “We still do not know if Friedman believes that the words of the Stam are always later than the words of the Amoraim… whether he places the stamot [Stammaitic material] in a specific period following the Amoraic period. And in the end there is no firm establishment of the existence of a early stamot.”57 Friedman delivers a lengthy response, but he breaks it down into a single sentence: “In my analyses, never have I established a time or a period to the creation of the stam of the Talmud. Rather, I suggested that the stam of the Talmud appears late relative to the memrot near to which they stand.”58

For Friedman, chronology – or more aptly phrased here, dating – is useful only inasmuch as it allows us to date internally and only relatively the different parts of a sugya. Friedman also discusses Stammaitic style separate from chronology when he isolates examples of a Stammaitic style put into the mouths of Amoraim. This is part of Friedman’s leaving open the possibility that later contributors to the text could manipulate attribution, and even go so far to attribute a Stammaitic element one created to an older, more reputable Amora. On the whole, Friedman is more open to the idea that aspects of Stammaitic activity could be early; he is merely interested in demonstrating this. Where he goes further than he should is in generally assuming a late provenance for

57 Brody, “stam hatalmud,” 221.
58 Friedman, sugyot, 96.
the Stammaitic activity in situations where evidence is absent. Such ambiguity – for better or worse – is part of how the text must be read. We can only plug dates into the equation as variables whose chronological range is as broad as the internal history of the literature might allow; for some sugyot or parts thereof, this can be as broad as the entirety of the Amoraic period. In certain instances, Friedman even suggests much later provenances, based upon variant manuscripts.\textsuperscript{59}

Because of the nature of Halivni’s work in \textit{meqorot u’mesorot}, and the introductions to them, he does not weigh in on this debate in a formal academic manner. He does not formally respond to Brody’s criticism. Rather, he continues with his analysis of the text operating under the assumption of a distinct Stammaitic period. In the introductions he addresses where to place the Stammaim chronologically.\textsuperscript{60} The problem for Halivni essentially revolves around how long to make the Stammaitic period. He does not abandon the chronological paradigm and the place of the Stammaim therein. They will always follow the Amoraim and precede the Saboraim.\textsuperscript{61}

Regarding the statistics, Brody’s study does not necessarily make Halivni’s approach regarding the quantities of such cases appear off the mark. In Ketubot, which is the tractate upon which Brody bases his hypothesis and for which he provides data, there

\textsuperscript{59} Friedman, sugyot, 288-290.

\textsuperscript{60} He does not address Brody in his last two introduction, both of which Halivni wrote well after Brody’s presentation and subsequent article. Anecdotally, it should be mentioned that Halivni did respond to Brody at the conference. As Friedman relayed it to me – and I quote loosely: everyone in the room knew exactly how the wheels were spinning in Halivni’s mind, and could predict what he was going to say. And Halivni delivered, and defended the Stammaim as chronologically distinct.

\textsuperscript{61} Theologically, it is interesting to note how Halivni works to present his system as fitting seamlessly into the traditional view regarding chronologies.
are sixteen instances where an Amora is reacting to Stammaitic activity. And the vast majority of them date to the latest generations of Amoraim, which poses far less of a problem for Halivni. Only four date to the generation of Abaye and Rava. However, it is essential to consider two factors which also work against the post-Amoraic dating of Stammaitic activity: (1) Brody himself concedes that his criteria for determining instances where an Amora is reacting to Stammaitic activity follows very rigorous criteria which indicate to a strong degree that the Amora is truly reacting to an earlier or contemporary Stammaitic element – while it is never definitive, as Brody himself allows, these criteria could be much looser and more examples could have been included; and (2) because nothing is definitive, there are a great many sugyot where the simple chronology of the sages mentioned can make it possible that the sugya and its Stammaitic elements are Amoraic. Number (2) can also be seen from another perspective: using the most rigorous criteria, if we had to definitively determine that the Stammaitic activity from any given sugya is post-Amoraic, it would be nearly impossible to do so with certitude, with the possible exception being those that include the names of Saboraim. We would then be compelled to dismiss a strong connection between Stammaitic activity and a post-Amoraic chronology.

Halivni needs the *shaqla v’tarya* to be stylistically Amoraic, since in his paradigm the Stammaim are not creating the *shaqla v’tarya* style, nor are they creating from scratch the *shaqla v’tarya* of a sugya; rather, they are recreating them from informally recorded

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62 Brody, “*stam hatalmud,*” 227.

63 Brody, “*stam hatalmud,*” 228 n. 39.
At some level, even Halivni would have to acknowledge that *shaqla v’tarya* as a style is Amoraic and that the Stammaim sought to create a text that was Amoraic in its style in addition to its substantive halacha emanating from an Amoraic provenance and the authority related thereto. Where diverging from Halivni’s paradigm can be useful is in disentangling the Stammaitic period from the traditional rabbinic periodization (and then overlaying it over a broader range of periods, if one still wishes to see the Stammaim chronologically), and reading the text as though Stam or Stammaitic is a style and not a period of time. As I demonstrate, Stammaitic activity appears throughout the apparent different chronological periods that comprise the BT, from the earliest generation of Amoraim until a period after they ceased to function; further, in a primitive form, it is as old as the Mishna. Many difficulties arise when positing a chronologically long-standing literary activity into a specific and far shorter timeframe.

As I discuss in the chapter on anonymity, quite old is the idea that anonymous elements as conveyed by Stammaitic activity reflect a certain type of general agreement (*haskama klalit*). A general agreement, in its essence, is more authoritative than the position of any one person who is a party to the general agreement. Sherira specifically states this with respect to both Stammaitic activity in the BT as well as an anonymous Mishna (*stam mishna*). This notion is not challenged by contemporary scholars, and for most, the focus is more on how this might impact the chronology of the evolution of the BT. What seems to go unstated is that there might have been an awareness on the part of some Amoraim that anonymity in the Mishna possesses a greater degree of authority than

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64 Halivni, *mevo’ot l’mekorot u’mesorot*, 1 and throughout the introduction to Bava Batra.

65 Iggeret Rav Sherira, ed. B. Levin (Haifa, 1921), 64.
an individual position (*da’at yahid*). If there was such awareness, even if it only emerged later in the Amoraic period – after the first two generations, for argument’s sake – then there would have been a motivating factor to operate and narrate received traditions anonymously. Thus the Stammaitic activity’s anonymity should not come as a major surprise. If anonymity was equated with authority in any way, there would (or at least should) have been an opportunity to utilize such anonymity in advancing specific halachic positions.66

Thus, there would be reason for us to look for anonymity and its effect in periods such as the Amoraic period and even earlier, and further to see the need for *shaqla v’tarya* to be presented anonymously. And because of the impact that the *shaqla v’tarya* has on the transmission of the traditions, it is reasonable to posit that the process of creating the sugyot would have commenced earlier than the post-Amoraic period, so that the transmitters could take advantage of the greater authority associated with anonymous narration. This type of Stammaitic activity may not have reached its zenith during the Amoraic period. It almost certainly did not do so in the earliest generations of the Amoraic period before the recognition of the connection between authority and anonymity, as first articulated by Sherira. But as a literary tool it may have been employed. It is also unlikely that Sherira was the first to notice the relationship between anonymity and authority as a type of general agreement. Therefore, the Genoic and Saboraic emendations and adjustments to the text – even if not as a grand as a complex

66 I am not suggesting that this was done in a sinister manner, but the *tanna* would more naturally have been drawn to anonymous transmission since it was more likely to be considered of weighty authority. Adding his – the *tanna*’s name to a transmission may have diminished the tradition, since another *tanna* may have possessed a somewhat different tradition associated with a particular source.
and fully formed *shaqla v’tarya* – could have been made anonymously with this recognition in mind.

I am not advocating the elimination of the Stammaitic period as a distinct period between the Amoraic and Saboraic periods. Nor am I attempting to dismiss the idea that the Stammaim contributed significantly to the formalization of the BT as whole, including the *shaqla v’tarya*. Although they are not specified by name by Sherira, even within his chronology there is room for a distinct cultural world from which the Stammaim emerge. A possible way to reconcile Halivni’s approach is to reposition the point from (a) the Stammaim being the first to record formally the *shaqla v’tarya* to (b) the Stammaim being the first to treat *shaqla v’tarya* with canonical respect. In this way, they treat a received *shaqla v’tarya* that is complete with canonical respect and leave the text alone; and where it is incomplete they have no choice but to reconstruct the *shaqla v’tarya* and once they are done with the reconstruction, that *shaqla v’tarya* commands the same canonical respect as *shaqla v’tarya* that survived intact from the Amoraic period. The goal in the reconstruction was not to create something anew, but to recreate that which had already existed. While the above argument regarding the first to offer

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67 This is important for critical scholars of the BT who attempt to reconstruct the culture of the Stammaim (or whatever one wishes to call the earliest post-Amoraic rabbis). Scholars as intellectually distant as Jeff Rubenstein and Jacob Neusner attempt to reconstruct and define the redactors of the BT. In *Talmudic Stories: Narrative Art, Composition and Culture* (Baltimore: Johns Hopkins University Press, 1999), Rubenstein explicitly discusses “Stammaitic times” and reaches valuable conclusions about a Stammaitic culture based on his analyses of Stammaitic elements in the BT. Rubenstein is definitively speaking of a Stammaitic culture associated with a specific time period, and not a culture of people who engage in Stammaitic activity. Yakov Elman in “Righteousness as Its Own Reward: An inquiry in the theology of the Stam,” *Proceedings - American Academy for Jewish Research 57* (1991): 35-67 engages a similar pursuit, yet Elman is less fixated on dating the Stammaim than is Rubenstein or Halivni.

68 This is a large part of Halivni’s premise and Halivni also sees the Stammaim as not only recreating the text, but also as reconstructing the authority associated therewith.
canonical treatment to the *shaqla v’tarya* is made about the Stammaim, one could also work within the Sherira framework, and view the Saboraim as the first to offer such canonical treatment to the *shaqla v’tarya*.

For the purposes of framing more clearly the notion of canonical treatment on the part of Halivni’s Stammaim (or the Saboraim), one can look at the way in which the anonymous *shaqla v’tarya* is juxtaposed with the attributed Amoraic elements and Tannaitic elements.\(^{69}\) The anonymous Stammaitic elements are meant to be read as the less authoritative – and therefore less canonically infused – components of the narrative of a sugya. They set up the framework within which the weighty and authoritative Amoraic and Tannaitic material is presented. This accomplishes at least the appearance of a relative chronology within a sugya: the latest are the *shaqla v’tarya* and other Stammaitic elements, preceded by the Amoraic material, which is preceded by the Tannaitic material. This relative chronology yields a set of relative degrees of canonicity, both of which highlight the tension between deference to earlier Amoraic statements and the textual control possessed by a narrator. This formulation was suggested decades before Halivni, and a half-century before Brody.\(^{70}\) In its more pious extreme, the Stammaitic elements acknowledge that the Amoraim once possessed a similar attitude to

\(^{69}\) Moulie Vidas, “Tradition and the Formation of the Talmud,” (Dissertation, Princeton University, 2009), 88-89. In his dissertation, Moulie Vidas suggests that when discussing the anonymous versus the attributed, that we should really be paying attention to the cited versus the uncited. Rightly, Vidas points out that many Tannaitic memrot, such as Braitot, are anonymous. Nevertheless, nobody would ever confuse them for the anonymous Stammaitic activity which is our focus. He explains that the Braitot are cited material in the same way that attributed, and even unattributed, Amoraic memrot are cited.

the apodictic Tannaitic traditions that they received; thereafter, from the perspective of the authors of the Stammaitic elements, while not equally authoritative within the text, the Tannaitic and Amoraic traditions were infused with a degree of canonicity; meaning that the words were respected and studied with a significant degree of charity.\footnote{I mention this here because it shows how ideas of anonymity and canonicity might be related. I go into further detail on this in Chapter II.}

In order to read Stammaitic activity as it has been re-contextualized into a Stammaitic period, I focus much attention in this chapter on Halivni’s most recent \textit{mevo} (introduction) to tractate \textit{bava batra}. For the appropriate juxtaposition – which is always lurking in the background of this and Halivni’s other introductions and works and which is the paradigm to which Halivni is primarily reacting – I refer to the parts of \textit{iggeret sherira} that pertain to the formation of the Talmud. Halivni’s \textit{mevo} to tractate \textit{bava batra} is not only his most recent, but it is also his most comprehensive introduction to a volume of \textit{meqorot u’mesorot}.\footnote{It may be a stretch to call this his magnum opus. However, if we see \textit{meqorot u’mesorot} as the magnum opus, this should be its most comprehensive introduction, and probably the introduction to the corpus as a whole (and not just to \textit{Bava Batra}).} He offers significantly more details and examples of how he defines all the literary activities he attributes to the Stammaim. He also defines the chronologies upon which he relies, and occasionally explains why his chronology has changed.\footnote{While most cotemporary Talmud scholars in the academy accept Halivni’s Stammaim, there is much debate about how to date them, and Halivni is not representative of a majority of scholars who don’t see the Stammaitic period as lasting as long as Halivni suggests here. Specifically, Robert Brody has argued strongly for a much earlier dating of the Stammaim, and is more willing than Halivni to place more of their work within the Amoraic period; he still does not abandon the idea of ‘Stammaitic’ as a period, and has certainly not gone as far as to suggest that ‘Stammaitic’ is more a literary style than a chronological period.} Sherira’s work is the earliest text that discusses the formation of the BT; it is
not a historical work in a contemporary sense, but it provides us with the normative rabbinic view of the BT and its formation from a 9th and 10th century perspective.

The relationship and juxtaposition of Halivni and Sherira might not be the most obvious way to address the issue of a Stamaitic period versus Stamaitic activity. However, because of Halivni’s desire both to deal with the BT critically and to stay faithful to some traditional tenets, specifically those related to chronology and rooted in iggeret sherira, it is a useful exercise. In crafting his commentary on the BT, Halivni is aware of and informed by how the text is studied by traditional students of the Talmud. For centuries traditional readers of the BT have relied on Sherira for his chronologies and this reliance has certainly seeped into the consciousness of the critical world of Talmud study and into Halivni’s commentaries. One of Halivni’s oft-repeated arguments against the traditional view that Ravina and Rav Ashi compiled the BT is Sherira’s use of the phrase, “sof hora’ah” when discussing the role played by Ravina and Rav Ashi in the compilation of the BT. Unlike the corresponding sugya in the BT upon which Sherira relies, and in the context of Rav Yossi (or Rav Ashi, depending on the version), Sherira not only uses the language of ‘sof hora’ah’ but he also adds ‘istayem talmuda,’ implying much more than the text in the BT does. Halivni defines the phrase ‘sof hora’ah’ to preclude the possibility that Ravina and Rav Ashi compiled the BT. Rather they are merely the ‘last to teach’ which is the literal translation but not the manner in which it is

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74 Sherira lifts this language ‘sof hora’ah’ from the BT, Bava Metziah 86a, where the sugya explains that the period of the formation of the Mishna was completed with Rabbi Natan and Rabbi Judah the Prince, and that the period of the formation of the BT ends with Ravina and Rav Ashi. Obviously ‘end’ cannot mean the real end. Otherwise this statement about ‘sof hora’ah’ could not have been included. Whoever made that statement was worthy of inclusion in the text, and must have operated after Ravina and Rav Ashi. In the text in Bava Metziah, the author(s) resolve this problem by deploying this statement as an early prophecy from ספרי אדם ראשון (Book of the First Adam).
understood traditionally; traditionally, Ravina and Rav Ashi are seen as the compilers and as undertaking functions Halivni attributes to the Stammaim. Halivni tries to resolve literary problems while still working within the traditional paradigm; thus he still pursues a reconciliation of traditional chronologies with his own and he posits his Stammaim into the traditional chronology instead of deconstructing the periodization or at least discussing the Stammaim outside of it.

Separating the activity from the chronology with respect to the anonymous shaqla v’tarya is a first step toward utilizing this knowledge in better understanding the text. While it may not be possible to determine the chronological provenance of the author(s), it becomes easier to discern the contribution of specific Stammaitic elements, and the purpose they might serve. Daniel Boyarin, in Socrates and the Fat Rabbis, breaks down different layers of the Stammaim, as opposed to looking at them from the more traditional binary approach – one where there is only the attributed and the anonymous layers.75 Specifically, he breaks down the sugyot of the BT into three types that he attributes to three different types of authors: (1) the ‘stamma of the sugya’, who is by and large responsible for the shaqla v’tarya; (2) a narrator of “acerbic, corrosive, bizarre legendary narratives;” and (3) the ‘stamma of the Talmud’ who is “responsible for completing the Talmud by incorporating both of the Talmud’s two accents.”76 Boyarin also argues that the same author could serve two different functions,77 meaning that his

75 Boyarin, Socrates and the Fat Rabbis, 174-177.

*stamma* of the sugya can be the same person as the narrator, but operating in two different ways. Boyarin, however, does not explicitly suggest that an Amora could serve in such a capacity, and be an attributed name at the same time. Boyarin’s primary focus is inter-sugya, and not intra-sugya, and he is interested in a specific genre of narrative when he defines his narrator. Boyarin’s idea that there are multiple functions that apply on an inter-sugya level can also be applied on an intra-sugya level. The functions are obviously different, but it is valuable to be able to think about layering on both the intra- and inter-sugya level; especially valuable is decoupling these layers from absolute chronologies and understanding them in relative chronological terms and also in terms of the function and impact they have on the sugya. On an intra-sugya level, it is thus also possible to discern different authors who contribute different elements – possibly also at a different time, but not necessarily so – to the *shaqla v’tarya* and, when necessary, a later editor/author cleans it up and gives it the appearance of a single and unified sugya crafted by a single author. Just as Boyarin splices different types of authors throughout different types of sugyot in the BT, it is possible to do the same with respect to a range of individual sugyot on a basis internal to that sugya alone.

**Transmission**

Halivni asserts a fundamental aspect of how he understands the transmission of traditions during the Amoraic period: during this period, only apodictic halachot are

77 Boyarin even goes beyond positing that the same author can play different roles in different contexts of the BT; he describes a deviant, and nearly self-loathing, voice in the BT that can be expressed by the same author who might also be crafting the *shaqla v’tarya* of a straight-forward halachic sugya with no interesting or grotesque narrative.

78 In my analyses of sugyot, I specifically parse the different layers within a sugya, and attempt to unpack the impact a specific element has on the manner in which the sugya is read, and ultimately in how the law is legislated/adjudicated.
included in the formal transmission of an Amora’s repertoire of adjudication and/or legislation of law. The shaqla v’tarya was recorded informally and preserved within a particular bet midrash but not ‘memorized’ for posterity. Over time, some of the original shaqla v’tarya would become lost to later generations. It was the Stammaim, according to Halivni, who would infuse the shaqla v’tarya with the worthiness to be ‘memorized’ formally, and who ultimately set it up to be canonized as part of the BT. Where the Stammaim did not possess a complete (or even any) tradition for the shaqla v’tarya of a given sugya, they reconstructed it. In the introduction to Bava Batra, Halivni often returns to this theme; he is focused on how the Stammaim transmit and occasionally reconstruct the shaqla v’tarya. He unpacks it more completely here than anywhere else in his writings, and spends a good part of the introduction to Bava Batra categorizing, and sub-categorizing, the varying activities of the different types of Stammaim.

Important in Halivni’s discussions are the tannaim, the transmitters of formal (and possibly also informal) Amoraic traditions. Not to be confused with the Tannaim of the Mishna, these transmitters recorded and transmitted the formal halachic declarations of the Amoraic authority for whom they were recording. While Halivni does not explicitly state so here, these tannaim are almost entirely unknown to us by name; they are anonymous. Halivni often refers to them and depicts them as engaged in activities related to the transmission of rabbinic traditions during the Amoraic period.

Evident throughout the mevo is Halivni’s premise that not every piece of shaqla v’tarya that was transmitted was formally memorized for posterity. It is also reasonable
to assume that later transmitters would reconstruct the traditions received from older sources because of inconsistencies or other problems in the text. Halivni’s assumption that this is the work of post-Amoraic Stammaim is possible, at least for some texts. Yet there are many sugyot where we simply cannot know with any certainty whether this Stammaitic activity was in fact post-Amoraic. It is always possible that a 5th generation tanna (transmitter) engaged a 2nd generation tradition and its source in Stammaitic activity. When it is clear from his analysis that a Stammaitic element is from the Amoraic period, Halivni is willing to accept that the Stammaitic period overlapped with the end of the Amoraic one. Where I would like to go beyond Halivni is to address the literary activity as works of both the Amoraic and Saboraic periods (utilizing Sherira’s chronology). Stammaitic activity is comprised of a literary form that has been part of rabbinic discourse throughout a number of periods; additionally, based upon the Halivni school’s work over the last several decades, this form of Stammaitic activity appears to have been deployed more frequently during the later Amoraic and Saboraic periods and even the earliest parts of the Genoic period.

Beyond the mere reconstruction of texts, as described above, Halivni further assumes that the Stammaim would not reconstruct halachot psukot in the same manner in which they might reconstruct the less formally recorded, transmitted, and received shaqla v’tarya. He also assumes that the tannaim were required only to record formally the halachot psukot, the apodictic law. Halivni refers to the Mishna and Braitot as a precedent for this tendency toward recording apodictic laws while not recording the arguments behind them. However, the Mishna and Braitot contain examples where the
arguments behind the law are stated, and where there is even a back and forth in the text. Recording and transmitting an argument was not something that was absolutely avoided during the Tannaitic period. During the formation of the BT, recording the *shaqla v’tarya* was a normative part of the formal transmission, as Halivni details all the post-Amoraic activities which led to the formation of the canonized BT. It is reasonable to assume that between the Tannaitic period and the post-Amoraic period, the importance of the *shaqla v’tarya* increased and so did its formal transmission. Thus, while we may not have the precise transmissions of the Amoraic *tannaim*, we can safely assume that, relative to their forebears who recorded Mishnayot for Tannaim, they did not abandon the practice of recording at least some *shaqla v’tarya*. Because of the manner in which the trend moves toward the greater transmission of the *shaqla v’tarya*, we can also assume that the production of formal *shaqla v’tarya* increased as the Amoraic period progressed. Over time, so did its complexity and ultimately its transmission increase. Let us consider some literary elements as purely Amoraic; this is in juxtaposition to the adherents of the Halivni school, who date as late elements because of their style and/or provenance in a sugya. Regardless of the possibility that such elements can be dated much earlier, they are assumed by Halivni to be Stammaitic and thus chronologically post-Amoraic. If Halivni accepted Stammaitic activity as a regular facet of Amoraic literary transmission, there would be less need for him to parse sugyot as chronologically Amoraic or Stammaitic. He could then avoid the challenges associated with temporal Stammaim and deal only with a non-temporally infused Stammaitic style.

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79 See Mishan Pe’ah 6:6 and 7:7. I cite these as these are the first two in the entire Mishna and appear in only the second tractate. The Mishna is replete with examples of such logical back and forth.
In discussing Braītot, it is worth noting that the inclusion of the Braītot in a particular sugya is not necessarily the work of the actual Amora in connection with whom the Braīta is quoted. Yakov Elman highlights the idea that the citation of the Braīta can very well be the work of a later Amora who is organizing the text.\textsuperscript{80} In such a case, the citation is performed anonymously but is attributed to the Amora to whom it is relevant. This can viewed as an attempt to infuse an earlier Amoraic degree of authority into a later Amoraic emendation. Moving beyond Elman, there is no reason to dismiss the idea that the same Amora who is manipulating the deployment of a Braīta would not also deploy Stammaitic elements in order to infuse authority within other traditions of a sugya; a single Amora is impacting the text using two different voices. By associating a Braīta directly with an Amora, the literary affect is a conflation of authority from the linguistic contribution of a later Amora with the halachic authority of the earlier one. This would imply that the association of the Braīta with the Amora is a later creation and not part of the formally transmitted tradition. Further, the question then needs to be asked (specifically of Halivni): Would this association be transmitted as part of the formal transmission by the \textit{tannaim} or would this be a recreated association by a later Amora based upon informal transmissions related to this sugya?

While central to the transmission of the BT traditions, the \textit{tannaim} are rarely discussed in the actual context of studying the text. They appear to play no role once the text is transmitted and received, especially generations later. Yet they were the ones first to record a tradition as mandated by its source. It is their transmission that survives; this

is the case whether or not they properly recorded the original pronouncement. Further, the *tannaim* also re-recorded earlier sources and traditions that they received from their rabbinic masters, or from other *tannaim*. The power of the *tannaim* over the recording and transmission is evident; it may have been these *tannaim* who anonymously elevated the canonical value of the *shaqla v’tarya*, and not the post-Amoraic Stammaim. Even if they recorded the *shaqla v’tarya* ‘informally,’ per Halivni, it was recorded, transmitted and received, only with a lesser canonical weight. Later in the *mevo*, Halivni clearly articulates that there is a category of earlier Stammaim who actually received the *shaqla v’tarya* in some form and they reconstructed it so that it is coherent.81 The Stammaim must also have received full and coherent *shaqla v’tarya*. In Halivni’s paradigm, there is Amoraic *shaqla v’tarya*, and it is anonymous; both are primary features of the Stammaitic style.

Halivni does not unpack the anonymous nature of the *tannaim*; in a way, he conflates their anonymity with that of the Stammaim, but he does not articulate this in any way. Apparently, he leaves for others to explore the impact of their anonymity on their own authority and in the transmission of traditions that are found in the BT. Whether recorded informally, per Halivni, or recorded formally, as suggested here, the *shaqla v’tarya* cannot be taken as a verbatim recording of actual words uttered and heard by the *tannaim*. In both paradigms, an anonymous third party impacts the recording and its transmission and adjusts it so that it can be efficiently recorded (formally or not). Within Halivni’s method, in retransmitting the *shaqla v’tarya* the Stammaim would not

have known the source of the *shaqla v’tarya* of Amoraic provenance because it was recorded informally.\(^{82}\) This is somewhat circular logic, in that the informal recording precluded knowledge of the source, yet we still have traditions intact in the form of some sugyot – even complex ones with intricate *shaqla v’tarya*. It is difficult to accept that the authors of the *shaqla v’tarya* would be lost to history in such a way while the tradition is not. While I do not go into detail here, this is another example where actors in the evolution and creation of the BT are purposefully electing to maintain the anonymity of a source – either they themselves as a source for *shaqla v’tarya* or, as in the discussion at hand, of an earlier Amoraic source. An alternative is that intrinsic to the *shaqla v’tarya* style is anonymity; there never really was a source and only a tradition, if one wishes to view the *shaqla v’tarya* as part of the tradition and not a pure narrative style. As I explain in another chapter, there is apparently some value in resorting to anonymity.\(^{83}\)

Another example of the Stammaitic style, according to Halivni, is that it does not seek reasons for halachot, specifically for those learned from biblical verses. The Tannaitic and Amoraic layers still find it within their literary (and authoritative) ability to pursue the reasons behind laws in the Bible.\(^{84}\) This can certainly be interpreted as earlier

\(^{82}\) Halivni, *mevo’ot l’meqorot u’mesorot*, 33.

\(^{83}\) While my dissertation primarily revolves around authority and anonymity, this chapter is dedicated to the idea of Stammaitic activity versus Stammaitic period. Where it relates to anonymity and authority, I point it out and attempt to parse the implications.

\(^{84}\) Halivni, *mevo’ot l’meqorot u’mesorot*, 27. Halivni also points out the disagreement between R’ Judah and R’ Shimon on whether they interpret reasons for halachot from verses in the Bible. While traditionally this is how the argument is understood, Halivni reads the sugya differently, and deduces that R’ Judah did in fact accept as permissible interpreting meaning from the verses.
rabbis possessing greater authority to inquire in such a way. Halivni clearly associates the shift with a significant passage of time:

“A change of this sort in the thought process between the Stam and its predecessors points to the lateness of the Stam, since a conceptual change in approach of this type does not take place in a short period of time.”

It can also be a function of what is possible within different literary styles, and how different literary styles are meant to convey different degrees of authority. While the idea that one cannot interpret reasons in the text may have evolved over time, the literary reflection of this can represent itself at any time once the idea is ‘out there.’ There is no reason that some Amoraim still possessed the ability to interpret the verses in this way and others did not; or that they were only able to do so when working within certain literary styles. Meaning, that when they worked in a Stammaitic style, they refrained from, and when they operated in the more traditional Amoraic manner they engaged in, this type of interpretation.

**Periodization of the Stammaim and Saboraim**

**Stammaim**

In the section of the *mevo*, entitled “zmanam shel ha’stammaim” (the time/timing of the Stammaim), Halivni is challenged by his commitment to a clear and separate Stammaitic period. He does his best to keep the Stammaim chronologically distinct from the Saboraim and the Amoraim. In order to do so, Halivni wedges two centuries into Sherira’s chronology by recasting as Stammaitic what Sherira defines as Saboraic.

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Specifically, Halivni recasts Sherira’s earliest Saboraim, who are not mentioned by name in the BT, as Stammaim who contributed to the “stama d’gmara” (the Stammaitic literary element in the BT). In this section, Halivni also addresses the transmission of the shaqla v’tarya:

“And they [the Stammaim] transmitted the shaqla v’tarya in an anonymous form because neither the Tannaim nor the Amoraim transmitted the shaqla v’tarya, and a few hundred years later, during the Stammaitic period, a large part of it (the shaqla v’tarya) was forgotten, and they were uncertain regarding its source, and they reconstructed the missing parts themselves.”

As Halivni describes it, there was only an informal transmission of the shaqla v’tarya during the Amoraic and Tannaitic periods. It was the Stammaim who decided to transmit the shaqla v’tarya formally, since that was the impact on the tradition that was available to them. They were no longer able to record formally apodictic law. In this definition of the transmission, we need not change much in order to allow for Amoraic tannaim to engage in the Stammaitic activity of recording – however informally – the shaqla v’tarya that was underlying the apodictic laws they recorded formally. Halivni does not fully define the distinction between formal and informal recording and transmission. Thus, even in his paradigm, the shaqla v’tarya is a legitimate product of the Amoraic period; the amount of reconstruction invested in the received shaqla v’tarya tradition/text by the Stammaim dictates how truly Amoraic or post-Amoraic it is. Still, as Halivni explains,

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86 The word Halivni uses is stammit which also means plain but is here best understood as anonymous.
87 Halivni, mevo ’ot l’meqorot u’mesorot, 4.
88 Here, and throughout this dissertation, I use my own translation of Halivni’s text.
the Stammaim try to capture the style and spirit of the original when engaged in their reconstruction.

In terms of the text, Halivni’s definition of the Stammaim revolves more around the recording and transmission of the *shaqla v’taryya* than on its creation. Though not in these specific terms, Halivni concedes that it is Amoraic as a literary style; it is Stammaitic only as a canonical element in the BT. The Stammaim are not creating a new style; they are the first, according to Halivni, to record this style formally. This fits in well with the notion that both Halivni’s and Sherira’s chronologies are defined by the degree of authority of the individuals who operated during the period rather than by the literary style that was used to record how they legislated and adjudicated.

The Stammaim can be seen as co-opting the authority of the Amoraim by (re-)crafting *shaqla v’taryya*, which is not a post-Amoraic development, and may actually have been perceived by the Stammaim as a decidedly Amoraic style. Per Halivni, instead of totally deconstructing and reconstructing the *shaqla v’taryya* traditions they received, they attempt to reconstruct them to their idea of what was their original Amoraic form. Further, by doing so anonymously (*stammit*), they keep their post-Amoraic names and related authority out of the text and leave the reader/listener to perceive the text as Amoraic and as possessing that authority. While Halivni needs the *shaqla v’taryya* to be Stammaitic in terms of its authoritative power within the chronological paradigm, they also cannot be purely Stammaitic in their literary style since they must be reflective of the Amoraic period they are conveying. It would be easier to discuss the creation and
transmission of the *shaqla v’tarya* as a Stammaitic literary style instead of a chronological one; this would also obviate the need to put all the proverbial *shaqla v’tarya* eggs in the post-Amoraic chronological basket. Halivni can still maintain a post-Amoraic class of contributors to the BT who reconstruct and possibly even create *shaqla v’tarya*, and do so without the temporal confinement of all such elements to the post-Amoraic period.

Yet Halivni goes even further, and states that the Stammaim consciously recorded the *shaqla v’tarya* in order to distinguish themselves from the Amoraim in the chronology, and to define the end of the Amoraic period:

“they needed to find another way to signify the end of the Amoraic period and to distinguish it from earlier periods [i.e. the Tannaitic period] with their compilations of different *halachot*, and the way they chose was to reconstruct and transmit for generations the *shaqla v’tarya* as well [as the *halachot*].”

Halivni implies that the Stammaim were aware of their own periodization, in a manner similar to how the earliest Amoraim knew better than to include their own *halachot* in the Mishna, and even “the words of Rav, for example, are not quoted in the Mishna… and Rav occasionally argues against the Mishna.” Halivni also provides examples of Stammaim who are named in the BT, thus tempering the degree to which the Stammaim perceived their received corpus of Amoraic traditions as sealed.

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Later in the introduction, Halivni goes into a discussion regarding *tyuvta* in the BT. He points to the manner in which the Stammaim maintain the word *tyuvta* in the text even though they have crafted a *shaqla v’tarya* around it which appears to obviate it.\(^9\)

Halivni asserts that the reason for this is the lack of ability on the part of the Stammaim to emend existing Amoraic sources and traditions. In this context, Halivni again succeeds in demonstrating layers within the sugya, yet he is unable firmly to date the varying layers:

“However, the proofs for dating the end of the period are confined to sugyot comprised of many layers of Stammaitic material accrued over generations, yet the precise date is unknown.”\(^9\)

And he furthers the point later in the paragraph when he refers to the different sugyot from the different tractates he cited which contain Stammaitic manipulations of *tyuvta*:

“All these demonstrate late layers, even though the precise date of the end of the Stammaitic period remains in the realm of speculation.”\(^9\)

It is true that, from a purely literary perspective, most of the examples cited by Halivni, here and elsewhere, contain different layers which reflect different periods. This is especially true when the same or a very similar sugya appears in more than one place in the BT, and the differences allow us to date the two sugyot, relative to each other; these examples also allow for dating elements within one sugya as compared to elements in its

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cognate sugya.\textsuperscript{95} There is little reason to dispute that the relative dating works. And even though Halivni concedes that absolute dating is a murkier affair, he nevertheless posits the latest layers in the middle of the eighth century. Since the latest named sources date from the sixth century, and many much earlier than that, the seventh century is also a reasonable time, as is the end of the sixth century.\textsuperscript{96} Although I am in agreement that some sugyot evolved primarily in the post-Amoraic period, I would like to posit some completed sugyot within the late and even the middle part of the Amoraic period.\textsuperscript{97}

The sugya in Makkot, 9b, is an example of this. The sugya is short and comments on a Mishna which discusses who is eligible for exile (following accidental murder), and who is not. Specifically, the Mishna, and thereafter the BT, focus on the blind man (סומא) and the enemy of the man killed (שונא). I argue that this text could date to as early as the first or second generation of Amoraim. It contains no Amora by name or even by indirect reference. It also uses more basic Stammaitic language and focuses strictly on Tannaitic sources and the correlating verses in the Bible. Further, the shaqla v’tarya can be described as limited and not engaged in extensive back and forth.

Halivni also isolates the phrase ‘iba’ya lehu’ (it was asked of them) as a datable phrase. Halivni dates the authors of iba’ya lehu at least two hundred years after the

\textsuperscript{95} See Halivni, \textit{mevo’ot l’meqorot u’mesorot}, 26, where he demonstrates that the sugya in Qiddushin 3b is earlier than it cognates in Eruvin 16b, Sukkah 24b, and Gittin 21b and 83b.

\textsuperscript{96} This position is well discussed in the contemporary scholarship. While there are many examples, it is worth noting one of the earliest comprehensive ones: Richard Kalmin, \textit{The Redaction of the Babylonian Talmud: Amoraic or Saboraic?} (Cincinnati: Hebrew Union College Press, 1989). Although Kalmin is calling them Saboraim, he still posits their activity in the sixth century and later with some sugyot possibly becoming complete at that time.

\textsuperscript{97} While this is not the place for a theological treatise, it is important to note that theological considerations – to an extent – drive the school of thought that sees the BT as evolving exclusively within the Amoraic period and that accepts that it was sealed by the last Amoraim (i.e. Ravina and Rav Ashi). This is the traditional approach, and even many of those who are willing to adjust it to conform to contemporary academic thinking are still unwilling to abandon it altogether.
metzarfim (the couplers) and also places them after Ravina and Rav Ashi, and therefore after the Amoraic period. One example Halivni cites is Sanhedrin 24b, where he explains that the authors of the iba’ya lehu ignored the normal convention of placing first the halachic position which limits (rather than expands) the scope of the Mishna. While not central to my analysis, Halivni is addressing why R’Yohanan would be mentioned after Reish Laqish if they were both limiting the scope of the Mishna; clearly he was expanding the scope, and the authors of the iba’ya lehu did not pick up on this. Within the framework of this reasonable assessment, it is still possible to date the entirety of this part of the sugya within the Amoraic period, and even within the first five generations.

The sugya in Sanhedrin essentially contains three parts that could have been crafted, to a large extent, at different times. Since my primary goal is to demonstrate that the first part of the sugya could be a product of the Amoraic period, I only present the first part, but I briefly describe the other two parts below. The sugya is better understood with the Mishna at hand and both are presented here as follows:

98 As I discuss elsewhere, the metzarfim are the couplers who put together two related memrot and thus the narrative reads as though the two sources might be in conversation with one another. I also argue that the actions of the metzarfim are a rudimentary form of shaqla v’tarya, and at the very least a style which makes the more sophisticated narrative shaqla v’tarya style possible as the BT evolved.

99 Halivni, mevo’ot l’meqorot u’mesorot, 38.

100 In the same context Halivni also cites Avoda Zara 68a, which is another example of iba’ya lehu where Rabbi Yohanan seems to be mentioned out of order and where it appears that the Stammmaitic layer is unaware of that interpretations limiting the scope of a law are presented first. Although I don’t detail it here, very similar conclusions can be reached as we do with the sugya in Sanhedrin 24b.
Sanhedrin 24a: MISHNA: one (litigant) says to him (the other litigant):

“Father is acceptable to me (to serve as a judge)” or “your father is acceptable to me (to serve as a judge)” or “three cowboys are acceptable to me (to serve as judges)”;

Rabbi Meir says: he can recant (his statement regarding who will act as judge), and the Rabbis say: he cannot recant.

Sanhedrin 24b: Reish Laqish says: the disagreement (between Rabbi Meir and the Rabbis I regarding a case) before the final verdict, but after the final verdict, everyone agrees that he cannot recant. Rabbi Yohanan says: (the disagreement refers to recanting) after the final verdict. It is asked of them: (Are we actually saying that) after the final verdict there is a disagreement (between Rabbi Meir and the Rabbis) but before the final verdict everyone agrees that he can recant; or perhaps, there is a disagreement (between Rabbi Meir and the Rabbis) in this case (before the final verdict) and that case (after the final verdict).

The sugya then introduces a teaching of Rava, and concludes:

“we learn from this that the disagreement (between Rabbi Meir and the Rabbis refers to a case of recanting) after the final verdict (and there is no disagreement regarding cases of recanting before the final verdict).”
Reish Laqish and Rabbi Yohanan are both second generation Palestinian Amoraim, and
Rava is a fourth generation Babylonian Amora. This part of the sugya is self-contained,
and the next part of the sugya commences with fifth generation Amoraim who are
discussing the same law as above, and appear to be reacting to these traditions. It is also
important to stress that the use of Aramaic is a feature of the Stammaitic style, and a high
level of literary Aramaic was known to the Amoraim, and there are places in the BT
where they use it. 101

While the actual words iba’ya lehu are clearly the latest element in this sugya, the
actual question that follows might have been a tradition that the authors of iba’ya lehu
and of o dilma (or perhaps) received and narrated in this Stammaitic style, or they
themselves crafted those words as well. Because the latest source in this sugya is a fourth
generation Amora, it is reasonable to date the sugya to as early as the fifth generation of
Amoraim. Further, the nature of the next part of the sugya, where fifth generation
Amoraim are discussing the same law, in no way negates the possibility that the first part
of the sugya was complete and whole by the time the elements containing the fifth
generation of Amoraim was added to the text. As the elements were added, those adding
the elements continued to operate in the same Stammaitic style so as to continue the
narrative smoothly. This is not to discount the possibility that over time minor changes
could be made to a text, either on account of the nature of its transmission, or because of
purposeful literary intervention. The sugya concludes with Rav Ashi presenting a
different tradition that was transmitted to him regarding the same Halacha. Similar to the

101 Halivni even goes as far as to say that there are even Tannaitic drashot that are written in Aramaic, so
Amoramic use of Aramaic works also within Halivni’s paradigm. See Halivni, mevo’ot l’meqorot u’mesorot,
41.
manner in which the second part of the sugya was added to the first, this part with Rav Ashi, from the last generation of Amoraim, could have also been added to the first two. Its authors also resorted to the same Stammaitic style because they were operating within the same function and employing the same literary technique as the earlier anonymous authors. The authors in the case of the narrative surrounding Rav Ashi were certainly post-Amoraic, and were employing a typical Stammaitic style. But is this style exclusively theirs in terms of its recording and transmission, or did they receive relatively complete elements and continued to add to it in the existing Stammaitic style? As is mentioned elsewhere, it is reasonable to date elements within the sugya relatively; taking the next step, and attempting to achieve absolute dating, or dating relative to rabbinic authorities who are not mentioned in the particular sugya – such as Ravina and Rav Ashi – is more difficult.

Regardless of whether one approaches the texts in the BT from the traditional (with no post-Amoraic Stammaim) approach, the Halivni approach (with a significant and very late post-Amoraic Stammaitic layer), or some combination of the two chronological paradigms, there is little doubt that there existed an awareness of the impact of the Stammaitic style on the part of the authors of those elements in different sugyot. From Halivni’s perspective, the Stammaim worked in the Stammaitic style in order to distinguish themselves from the periods that preceded them. While not explicitly stated by Sherira, it is reasonable to assume, when viewing the BT through the prism of the traditionalists, that the authors of the Stammaitic elements operated anonymously and
added in the *shaqla v’tarya* in order to distinguish attributed pronouncements from the narrative that serves as the core of most sugyot.

Similar to Stammaitic reactions that appear to contradict *tyuvta*, contradictions between and among different pieces of *shaqla v’tarya* can also be viewed as pointing to earlier and later layers of Stammaitic activity. For Halivni, and for all who date the Stammaim firmly in the post-Amoraic period, this serves as proof that there were earlier and later Stammaim, and not just Stammaitic activity, as I argue in this chapter. Halivni attributes at least some of these contradictions to the informal manner in which the *shaqla v’tarya* was recorded in different *batei midrashoth* (houses of learning); because of its informal nature, the different *batei midrashoth* transmitted different versions of the same sugya, occasionally with such contradictions. This creates some difficulty for Halivni, since some of this Stammaitic activity appears to have taken place during the Amoraic period. Halivni addresses this with a category called “*stamot qdumim*” (early stamot), and by allowing for the *shaqla v’tarya* to be purely Amoraic when there was no need for the post-Amoraic Stammaim to emend the text so that it makes sense both within itself and within the broader corpus of the BT. He explicitly states that “in the [collective] memory were recorded also *stamot* from the Amoraic period.”

**Saboraim**

Halivni’s section in the introduction to Baba Batra that introduces the reader to his approach to the Saboraic period is entitled ‘*tqufat hasaboraim*’ (the Saboraic period).

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It is interesting that Halivni uses the word *tqufa* (period) when discussing the Saboraim, and the more ambiguous word *zman* (time/timing) when discussing the Stammaim; one can construe it as a nod to the traditional Sherira chronology, the periods he sets forth, and Halivni’s avoiding the linguistic complication of using the same word for the periodization of the Saboraim as he does for the Stammaim.

Ironically, Halivni attempts to use the term *gaon* in reference to sages from the Amoraic, Stammaitic, and Saboraic periods. While I attempt to do so with ‘Stammaitic’ as a literary – and not chronological – style, Halivni defines *gaon* not as necessarily from the Genoic period, but based upon the rabbinic authority’s role regardless of the period in which he lived.

“‘*gaon*’ is a description used to describe the head of a yeshiva, while a Stammaitic or Saboraic person is one who contributed to the gemara – and these are not necessarily parallel one to the other. Further, one who was not a head of a yeshiva could also have contributed to the gemara, while it is possible that a head of a yeshiva did not contribute.”

Halivni acknowledges that he is working “contrary to Sherira Gaon.” He pointedly asks why the earliest Geonim could not also have been counted as Saboraim as well. Only a page earlier in his introduction, Halivni does not propose the same thing with respect to the earliest Stammaim and their potential inclusion in the Amoraic period. In describing the Geonim and their relationship to the Saboraim, Halivni rightly points out that the

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defined periodization of the Saboraim and Amoraim occurred years after they lived and operated.\textsuperscript{105}

In doing so, he also offers the possibility that the Saboraim and Stammaim not only overlapped in time but were also distinguished by their functions. While the archives that were available to Sherira were accurate with respect to dates and places, they contained no information regarding the contributions made by the different sages:

“If one were to look into these archives, he will find that they are reliable concerning the places and dates that the Gaonim were appointed, lived, operated and died, but not concerning their contribution to the Gemara; who was Stammai and who was Saborai. ‘Gaon’ is a title that was given to the head of the Yeshiva, and with his appointment, they listed the event in writing… but the assessment of his functions, his contributions to the Gemara, did not occur in the generation of the Gaon.”\textsuperscript{106}

For Halivni, this also explains why the Stammaim were not mentioned by Sherira or by anyone else. For the argument that I am making, this highlights the possibility that chronology and function are not necessarily interconnected. Even in Halivni’s paradigm, it is possible to have a situation where, at the same time, there can be three different Gaonim: one who is neither a Stamma nor a Sabora; a second who is a Sabora; and a third who is a Stamma. There are also Stammaim who were not the heads of a Yeshiva, and thus not Gaonim. Just as the title Gaon relates to the function of the title, so too does

\textsuperscript{105} Halivni, \textit{mevo’ot l’megorot u’mesorot}, 44.

\textsuperscript{106} Halivni, \textit{mevo’ot l’megorot u’mesorot}, 44.
it become possible that Stamma relates to the function of the literary contribution. Sabora, however, connotes a period of time in a chronology.

Halivni gets into some difficulty when attempting to define the Saboraim by their function as well:

“The ones who added [simple explanations] lived at the end of this period, and are called Sabora or Saboraim because of the work that they did. The Stamma or Stammaim, who authored the sugya, would not be called Sabora or Saboraim; they preceded them. The Stammaim created the sugya, and the Sabora or Saboraim only later explained that which required explanation.”

While on the one hand Halivni is categorizing the Sabora or Saboraim based on the contributions they made to the sugyot comprising the BT, on the other hand he has no choice but to place them chronologically after the Stammaim.

Because Halivni wants to keep the Stammaitic period separate, he needs to move the Sabora or Saboraim chronologically forward which is only possible by placing them – at least in part – within the Geonic period and also conflating them with the Stammaim. Halivni does both:

(1) “… the Sabora or Saboraim operated during the time of the first Geonim, after the Stammaitic period…”

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107 Halivni, mevo’ot l’meqorot u’mesorot, 44.

108 Halivni, mevo’ot l’meqorot u’mesorot, 5.
(2) “… for those of us [i.e. the Halivni school] who assume that after the Amoraim came the Stammaim, there is no reason to state that there were two distinct periods – the Stammaitic period and the Saboraic period; rather there was only one period, the Stammaitic, as the Saboraim themselves were Stammaim, albeit the last of the Stammaim who no longer had Amoraic material which required reconstruction.”

While the above might appear somewhat contradictory, Halivni’s primary concern is the formation of the BT and thus the function and contribution of the Stammaim to the BT. Halivni differs from Sherira in the terminology of his chronology more so than in the actual functions and activities that led to the formation of the BT. Speaking of the functions that Sherira associates with the Saboraim, Halivni states that this “description fits the Stammaim better than it does the Saboraim.”

There are instances where Stammaitic elements are attributed to the Saboraim by third parties, outside the text of the BT. Specifically, Halivni cites a text in Qiddushin 3b, which Sherira attributes to rabanan saborai and others attribute it specifically to R’ Huna Gaon. Halivni’s purpose in citing the text is to demonstrate examples where there exist different layers of the sugya, one which may have been unaware of the other. For my purposes here, I want to point out that Halivni does not appropriate R’ Huna Gaon as one of the Stammaim; instead he demonstrates that the version with R’ Huna Gaon’s

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109 Halivni, mevo’ot l’meqorot u’mesorot, 5.

110 Halivni, mevo’ot l’meqorot u’mesorot, 8.

111 Halivni, mevo’ot l’meqorot u’mesorot, 26. An example of the others who attribute it to R’ Huna Gaon (as pointed out by Halivni) is the otzar hageonim: Kiddushin.
position is the oldest one and that the versions that exist elsewhere in the BT are all later. Not only are they all later than R’ Huna Gaon, but they are the real Stamaitim. Leaving R’ Huna Gaon out of the main Stamaitic mix, Halivni allows, “that all this demonstrates the great Stamaitic activity that took place after R’ Huna Gaon.”

Halivni’s demonstration that the BT was not sealed with the end of the Amoraic period resonates more strongly than does his idea that Stamaitic activity, by and large, is the contribution of post-Amoraic Stamaitim. Also reasonable is Halivni’s assertion that there are layers of Stamaitic activity and what necessarily follows: “it is however possible to demonstrate that the Stamaitic material is comprised of different layers demonstrating the existence of several generations of wise-men of the Stam.” These generations, according to Halivni, are all post-Amoraic. He fixes the commencement of this period with the end of the Amoraic period. Halivni is less precise about the end of the Stamaitic period, but he asserts “their period ended when they began to assemble books and called them by name, specifically the middle of the eighth century.” By the seventh century, “the activities of the Stamaitim was at its greatest.”

In an update to his position in the introduction to meqorot u’mesorot on tractate Bava Metzia, where the Stamaitim only operate for fifty years, here Halivni has them operating for almost 200 years. He posits the Saboraim in the last fifty of these 200 years, leaving a gap of 150 years in Sherira’s chronology where the Stamaitim are absent.

112 Halivni, mevo’ot l’meqorot u’mesorot, 26.
113 Halivni, mevo’ot l’meqorot u’mesorot, 25.
114 Halivni, mevo’ot l’meqorot u’mesorot, 25.
and from where Halivni has removed the Saboraim. Again, if Halivni ascribes to the Saboraim the ability to do all the things that the Stammaim do – to engage in Stammaitic activity – he would be able to work within Sherira’s chronology. It is not at all strange for a literary style – or a legal writing style – to remain in use for centuries, as would be the case with the Stammaitic style if it were to span the Amoraic and Saboraic periods. Instead, Halivni limits Saboraic as a period:

“It is not possible to speak about the Saboraic period as an independent period. The Saboraim signify the end of the Stammaitic period, and they (the Saboraim) seal the (Stammaitic) period.”

Referring to his earlier statement in the introduction to Bava Metzia, Halivni further presses the point that Sherira had it wrong:

“Rav Sherira, we stated there [the introduction to Bava Metzia], ‘transferred the traditional description of the Stammaim to the Saboraim,’ he switched the Stammaim with the Saboraim.”

Halivni implies that his chronology including the Stammaim is actually the correct one and that Sherira muddled the chronology by leaving out the Stammaim and ascribing to the Saboraim the same activities that Halivni has the Stammaim undertaking.

Halivni is also troubled by the 200-year gap between the sixth and eighth centuries where there was little recorded rabbinic literary activity. He believes that it is not possible that such a gap could exist. Rather, he sees the gap as demonstrating that

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115 Halivni, mevo’ot l’meqorot u’mesorot, 8.
116 Halivni, mevo’ot l’meqorot u’mesorot, 8.
whatever rabbinic literary activity took place occurred without attribution and initially was recorded anonymously. Where he takes the leap is in asserting that all this also points to the existence of a Stammaitic period, instead of asking more questions about the Saboraim and their activities, and why they are rarely mentioned by name or crafted works in an attributed fashion. Nevertheless, Halivni still needs to work – at some level – within Sherira’s and the traditional chronology, and thus doesn’t rid the chronology of the Saboraim altogether.

Within Halivni’s definition of the Stammaim and the Saboraim, where the Saboraim just manage the final touches of the BT and the Stammaim handle all the ‘heavy lifting,’ all shaqla v’tarya is recorded and transmitted anonymously. Even the Saboraim, who are handling earlier, and ostensibly more authoritative, texts that they received from the Stammaim, do not mention by name any of those Stammaim. The Saboraim are complicit in conflating the Stammaitic with the Amoraic since the final version of the BT weaves the Stammaitic material into the Amoraic and in no way exposes those who first record and transmit formally the shaqla v’tarya. This is important in terms of whether we view a contribution to the text as literary or as substantively halachic. An obviously halachic contribution must be associated with a specific rabbinic authority, whereas a literary contribution can be anonymous. This becomes important when trying to parse the halachot as legislative versus adjudicative.\textsuperscript{118}

\textsuperscript{117} Halivni, mevo’ot l’meqorot u’mesorot, 24-25.

\textsuperscript{118} In my Introduction I allude to the distinction between halachot that are recorded as legislative versus those that are recorded as adjudicative. After its initial recording, any subsequent transmission – even where it is clear that the initial recording was the adjudication of a specific halachic matter – is de facto perceived as legislative, since the only purpose of recording it is to legislate for future generations. The
While unstated by Halivni, the contribution of the Stammaim (Sherira’s Saboraim) is essentially a literary one which transforms received traditions of specific adjudications into a corpus of halachic legislation.

In the section entitled “re’ayot l’qviat zmanam shel hastammaim” (proofs for the determination of the time of the Stammaim), Halivni presents briefly three proofs, which he details later in the introduction. The first two proofs involve why the Stammaim often need to explain the Amoraic traditions in a difficult way that leaves the contemporary reader somewhat baffled (and is also the basis for the critical study of the BT), and why they simply didn’t ask the Amoraim themselves to resolve the matter if the Stammaim lived during the Amoraic period. Halivni’s query here is legitimate when discussing a tanna recording and transmitting halachic positions of his generation or even of the one preceding him, but not necessarily for a much older one. The Amoraic period stretched a few centuries, and it is reasonable that an Amoraic tanna of a later Amoraic generation is dealing with earlier Amoraic material in a Stammaitic manner. It is also possible that this is a literary matter and that contemporary tannaim operated in this Stammaitic manner for stylistic reasons. Halivni’s assertions can be true for many sugyot, but are not necessarily true for all sugyot if we consider the Stammaitic as a function of style more than of chronology.

relevance relates to how a literary contribution can transform what was originally adjudicative into legislative.

119 Halivni, mevo’ot l’meqorot u’mesorot, 10-11.
In offering his proof regarding dachuk (forced) explanations, Halivni recognizes that at least parts of some sugyot including its shaqla v’tarya – and possibly even entire sugyot – are Amoraic:

“the forced explanations of the words of the Amoraim result from the fact that before [the sources reached] the creators of the stamot (anonymous material), the sources were either not complete or not in the correct order.”

Again, Halivni not only allows, but also needs the Stammaim to receive some Amoraic material from which they can craft the shaqla v’tarya. Who is to say that they did not receive some shaqla v’tarya in a complete form? Further, whether the Stammaim received it completely or even just in part, they were not the creators of the shaqla v’tarya as a literary style. The style, even if just a milder version of it, must have pre-dated Halivni’s Stammaim. While Halivni is correct in questioning Sherira’s hard and fast assertion that all the shaqla v’tarya is the product of the Amoraic period, it would be too much for one to assert that the shaqla v’tarya is purely a Stammaitic convention. This is the case, unless Stammaitic refers to a literary style not necessarily rooted in a chronology rather than a periodic style rooted in a chronology.

In concluding this section, Halivni refers to a sugya in Bezah in order to demonstrate instances where “a Stam presents the question of one Amora, and before he presents the answer of the second Amora he suggests his own answer… and only later is the answer of the Amora to whom the question was asked.”

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120 Halivni, mevo’ot l’meqorot u’mesorot, 11.
121 Halivni, mevo’ot l’meqorot u’mesorot, 13.
the Stam is unaware of Rav Ashi’s position. Halivni asserts that there are two layers of Stammaitic activity in this sugya, one that was not aware of Rav Ashi’s response (per above) and a second that was aware of it but did not possess the literary authority to change the sugya itself and could only add it to the end of the sugya. It is a reasonable approach to layer the Stammaitic activity, and to define the differing degrees to which the Stammaitic activity can impact this particular sugya. The sugya itself, however, seems to point to the possibility that at least part of the Stammaitic activity was created during the Amoraic period. Halivni places both layers of Stammaitic activity in the post-Amoraic period.

Halivni then addresses why it is unlikely that the Stammaim lived during the Amoraic period; Halivni’s demonstration of this is based primarily on literary stylistic distinctions between Stammaim and Amoraim. Halivni is relying on literary elements in order to create a historical chronology. In some instances, the text certainly demonstrates that the Stammaitic element is post-Amoraic. An example is found in Kiddushin 48b, where the text presents Abaye referring to Rav Ashi and later in the sugya to Rav Nahman bar Yizhaq.\textsuperscript{122} Abaye lived a couple of generations before Rav Ashi, who is from the last generation of Amoraim, so it is quite likely that it was a post-Amoraic individual who created this piece of Stammaitic material. However, the chronology of styles is more dubious when not dealing with specific examples from the text, and when attempting to posit a generalization of what is a pure post-Amoraic, Stammaitic element.

\textsuperscript{122} Halivni, mevo’ot l’meqorot u’mesorot, 18.
based on pure style. Halivni provides three qualities that describe the work of Stammaim from the Stammaitic period (as opposed to Stammaim removed from a chronology):

1. “If the Stammaim were of the same time as the Amoraim, and if a stam element in the Gemara conveys a generally (agreed upon) conclusion, like a stam mishna (anonymous mishna) – why does the Gemara not reference the idiom “stama d’gmara” just as “stam mishna”?\(^{123}\)

2. “Why are the Stammaim drawn to rhetoric, and solve problems whose answers are readily understood, a style that we do not find among the Amoraim?”\(^{124}\)

3. “The stamma d’gmara arranges the questions in order of their complexity and not chronologically; stamma d’gmara sometimes commences with a weak question… and then moves on to the stronger question… sometimes he does so for literary purposes.”\(^{125}\)

The second and third qualities do not necessarily place the Stammaitic activity in a post-Amoraic period. Rhetoric is not a post-Amoraic convention nor is reordering a series of queries and responses within a specific text. Unless there is a historical reason to place the Stammaitic element in a post-Amoraic period – as is the case above in Kiddushin – the understanding of the text is unaffected by a chronology of its parts. That the BT itself does not refer to stamma d’gmara can be a result of how the corpus of Amoraic material was perceived on an intra-Amoraic basis, to which can be added earlier Stammaim. Within Halivni’s chronology, Amoraic memrot were not perceived as a sealed corpus

\(^{123}\) Halivni, mevo’ot l’meqorot u’mesorot, 13.

\(^{124}\) Halivni, mevo’ot l’meqorot u’mesorot, 14.

\(^{125}\) Halivni, mevo’ot l’meqorot u’mesorot, 15.
through the period of the earliest Stammaim – those who still possessed the authority to make a change within a sugya. While the memrot were recorded formally, they were not assembled yet into a cohesive, canonized corpus until Halivni’s later Stammaim and earliest Saboraim. This is in contrast to the Mishna; even the earliest Amoraim understood that the Mishna was a sealed text and therefore they could begin to discuss the Mishna as a complete and closed corpus. There is no evidence that any Amoraic material was sealed before the end of the Amoraic period and thus an Amora would not have the same perspective regarding a received Amoraic tradition as he would the Mishna; it was still too early in the evolution of the BT as a corpus to define a stamma d’gمرا. As Halivni explains elsewhere, and specifically in the above-mentioned case in Betzah, the earliest post-Amoraic Stammaim did not view the received traditions and sources as sealed and they made emendations to the text that later Stammaim were not able to make. Clearly at this early stage following the Amoraim, the Amoraic traditions were not sealed to the same degree as was the Mishna and therefore such observations as isolating the stamma d’gمرا would have been premature.

In further distinguishing between how the Stammaim and Amoraim relate to the Mishna, Halivni points to the language/methodology Amoraim use when disagreeing with a Mishna versus the language/methodology Stammaim would use:

“There exists a difference between the Amoraim and the Stammaim with respect to ‘matnitin yehida’ah hi’ (it is [the opinion] of one) and ‘hasurei mahsera’ (it
[the Mishna] is missing [pieces]). It follows that a difference such as this would not exist if the Amoraim and Stammaim operated during the same period.”

The essential difference between the two is that the Amoraim could dismiss a Mishna by stating that a Mishna reflects only one rabbinical opinion on a matter while the Stammaim could not argue with a Mishna and thus added a missing element to the text (since they could not make any changes to the words of the Mishna that were transmitted to them). Ironically, the lack of authority to argue with the Mishna in some way creates the opportunity, and hence the authority, for the Stammaim to make claims about the completeness of the Mishna and then to present additions to the text of the Mishna. “The Stammaim are forced to maintain the Mishna and they say ‘hasurei mahsera v’hakhey qtaney’ (it [the Mishna] is missing [pieces], and this is how it is learned).” There are no Stammaitic examples of ‘matnitin yehida’ah’ and Halivni mentions examples where ‘hasurei mahsera’ is attributed to an Amora.

Halivni provides examples of both, and I will address one example of each: matnitin yehida’ah hi on Shabbat 140a, and hasurei mahsera on Berakhot 15b. The purpose is to consider whether the sources for hasurei mahsera are necessarily both Stammaitic and post-Amoraic, or are another example of Stammaitic activity. It is reasonable to place matnitin yehida’ah hi within the Amoraic period, and to consider it as a legal textual activity undertaken by someone with greater authority than those

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126 Halivni, mevo’ot l’meqorot u’mesorot, 17.

127 Halivni, mevo’ot l’meqorot u’mesorot, 16.
deploying *hasurei mahsera*; how related this is to the chronological placing of both phrases is more difficult to demonstrate.

The sugya on Shabbat 140a deals with *hiltit* – a plant used as a spice and for its medicinal qualities – and whether one can soak, and subsequently dissolve it in water on the Sabbath; is such an activity prohibited on the Sabbath? The sugya also addresses the difference between soaking the *hiltit* in cold and warm water.

Shabbat 140a: It was asked of them [the scholars]: What if one dissolved [the *hiltit*]? Rav Adda of Naresh explained before Rav Yosef that if one dissolves he is liable for a *hatat* [sacrificial offering]. Abbaye said to him: therefore, now when one soaks meat in water he is also liable [for a *hatat*]? Rather, Abbaye said that it is a Rabbinical [prohibition] that one not act in the same way [on Shabbat] as he does on a weekday. Rabbi Yohanan asked Rabbi Yannai: “what is the case of dissolving *hiltit* in cold water?” He said to him: “forbidden.” [Rabbi Yohanan followed up:] “we learned in a Mishna, ‘there is no dissolving *hiltit* in warm water’; but in cold water it is permitted. He [Yannai] said to him [Yohanan]: “if
so, what is the difference between you and me? *It is the opinion of one*, for we learned [in a Tosefta]: ‘there is no dissolving *hilit* in warm nor cold [water]; ‘Rabbi Yossey says: in warm [it is] forbidden, [and] in cold [it is] permitted.’ ”

Yannai dismisses the Mishna because it is – as we learn from the Tosefta – only the opinion of Rabbi Yossey. Yannai and Yohanan are both first generation Palestinian Amoraim. Their greater proximity to the Tannaitic period allows them the flexibility to dismiss a Mishna in favor of a competing Tosefta, in a way the post-Amoraic Stammaim would not, and neither would a fifth or sixth generation Amora. Allowing for Yannai to disagree with a Mishna does not necessarily lead to the conclusion that all Amoraim can disagree with a Mishna by deploying *matnitin yehida’ah hi*. In fact, the number of instances where the phrase is deployed is almost insignificant and it is difficult to draw any conclusions. However, once we are already looking at the examples, it is worth noting that all the examples of *matnitin yehida’ah hi* are associated with Amoraim from the fourth generation or earlier. Halivni successfully demonstrates that the phrase and its accompanying methodology are unavailable to the authors of Stammaitic elements. However, because the authors of the Stammaitic elements cannot be confined only to the post-Amoraic period, it is more dubious to assert that such a methodology was not deployed by authors of Stammaitic material; rather, when operating ‘Stammaitically’ the authors would not deploy such language and methodology. This is a reflection of the Stammaitic style and approach operating in a hyper-deferential manner with respect to the attributed Amoraic traditions and presumably to the Amoraim themselves. Unlike an attributed statement, an anonymous, Stammaitic one cannot be as ‘disrespectful’ toward
the text of the Mishna and its understanding in as dramatic a way. When working in the Stammaitic voice, such treatment of the Mishna is off limits because they are acting more like transmitters or scribes whose role is not to choose from among traditions, but only to record and transmit. When they encounter a problem, they take the least disruptive path toward resolving it, and disregarding a Mishna is far too disruptive for it to be deployed by the Stammaitic voice.

The sugya in Berakhot 15a-15b deals with the validity of different individuals to read the Megilla. The two basic positions are (1) that everyone can read the Megilla except for a deaf, a fool, and a minor and (2) that all can read the Megilla except for a deaf, a fool, and a minor, but Rabbi Judah permits a minor to read the Megilla.

**Berakhot 15a-15b:** We learned there: “all are kosher to read the Megilla except for a deaf, a fool and a minor, but Rabbi Judah permits the minor.” Who is the
Tanna who states that the act of a deaf man is invalid [even] if [the act] already occurred? Rav Matanah states: “it is Rabbi Yossey, for we learn, ‘one who reads shema but did not hear [it] with his own ears, fulfilled [his obligation] according to Rabbi Judah; Rabbi Yossey says: ‘he did not fulfill [his obligation].’ ’ ” How do we know that this [position] is Rabbi Yossey and that the completed act [of a deaf man] is invalid? Perhaps it is [according] to Rabbi Judah, and initially it is not [valid], but if it is done already, then it is valid. This should not enter your mind! For we learned that a deaf is similar to a fool and a minor. Just as with a fool and a minor if the act is completed it is not [valid], so too with a deaf, if the act is completed it is not [valid]. And perhaps this [ruling for a deaf] is as it appears, and this [ruling for a fool and a minor] is as it appears? Can it be understood as following Rabbi Judah's [position]? Since we learned in the final clause [of the Mishna]: “Rabbi Judah validates with [respect to] a minor,” then the first clause [of the Mishna] is not according to Rabbi Judah. Perhaps the whole thing [both clauses of the Mishna] is according to Rabbi Judah? And there are two types of minors, and it [the Mishna] is missing [an element] and this is how it [the first clause] is learned: “all are kosher to read the Megilla except for a deaf, a fool, and a minor. But to what case is this referring? To a minor who has not reached the age of education; but a minor who reached the age of education is valid in the first place.” These are the words of Rabbi Judah, since Rabbi Judah validates with a minor.
Unlike the sugya on Shabbat 140a where it is an Amora disagreeing with the Mishna, in this sugya it is the stamma d’gmara (i.e. the Stammaitic actor(s)) that is disagreeing with the Mishna. In an effort to reconcile both clauses of the Mishna with the position of Rabbi Judah, the Stammaitic actor presents the reader with the possibility that there is a lacuna in the Mishna. The sugya then offers the ‘missing’ element which allows for the desired reconciliation. The Stammaitic actor, unlike Rabbi Yannai the early Amora, was not going to dismiss the Mishna, and instead worked the Mishna into his understanding of the halacha. For Halivni this is demonstrative of both the Stammaitic nature and the chronologically late nature of the hasurei mehsera. While the literary quality of the element at hand makes it Stammaitic, there is nothing in the text that points to it being post-Amoraic. All we know for certain is that the basic formation of the sugya took place after Rav Matana, who was a second/third generation Amora. How the tanna recorded Rav Matana’s statements, and the degree to which it is similar to the final form of the sugya is difficult to know. The understanding of the sugya is not impacted by the dating of either the final form of the sugya or of a proto-sugya which evolved into the one that is extant. Our understanding is impacted by the literary activity, separate from the time at which it took place.

This is another example where Halivni must straddle the line between that which is formally recorded – the apodictic statements of the Amoraim – and that which was informally recorded – the shaqla v’tarya. On the one hand, Halivni needs the shaqla v’tarya not to be reflective of a purely post-Amoraic, Stammaitic milieu; on the other hand, halivni, mevo’ot l’meqorot u’mesorot, 17-18.
hand, he wants to dilute the ‘Amoraicness’ of the *shaqla v’tarya* so that he can maintain the Stammaim and their contributions as something that can only be post-Amoraic. Once Halivni concedes that the *shaqla v’tarya* was recorded in any fashion, it becomes difficult to posit the *shaqla v’tarya* as purely post-Amoraic.\(^{129}\) As I attempt to point out, the reader is better served reading the Stammaitic elements as a form of literary activity rather than as always reflective of a post-Amoraic weltanschauung. This is not to say that the history within the sugya never allows for a concrete dating of elements within it; rather, the Stammaitic style should not always be viewed as reflective of post-Amoraic dating.

Halivni explicitly states that only the raw memrot of the Amoraim were assembled during the Amoraic period; the weaving of the memrot into the *shaqla v’tarya* narrative came later in the post-Amoraic period (i.e. the Stammaitic period):

> “Only the memrot and limited commentary of named Amoraim were assembled by the Amoraim themselves.”\(^{130}\)

Within Halivni’s paradigm, the assembly of memrot, which essentially is the ordering of sugyot in the BT as a whole, would have been the only thing of interest to an Amora interested in assembling received traditions. He would not have been interested in dealing with or assembling the *shaqla v’tarya* because he would not have perceived it as being part of the formal transmission of halachic traditions. It is in large part for this

\(^{129}\) Halivni, *mevo’ot l’meqorot u’mesorot*, 18-19. Here, Halivni has a difficult time with instances of *hasurei mahsera* where it is attributed to an Amoraic source, since it undermines the idea that a style is reflective of a literary activity rather than a period of time.

reason that such Amoraic assembly was almost exclusively done in Hebrew. Aramaic *shaqla v’tarya* would have been perceived as informal, and not as worthy of inclusion in an assembly of received traditions.

It is also important for my argument that, despite my attempt to peel Stammaitic activity from the chronology, there exists a post-Amoraic Stammaitic contribution to the *shaqla v’tarya* and also to some of the apodictic Amoraic material the post-Amoraic actors received. I argue that the Stammaitic activity’s anonymity allowed it to seamlessly fit into a sugya without being detected as not possessing Amoraic authority. Some actors during the Amoraic period did not possess the same authority as others, and therefore their influence could only be felt in their anonymous contribution through their recording, interpreting, and then transmitting the less formally recorded *shaqla v’tarya*; yet, per Halivni and the broader world of contemporary critical BT scholarship, there were post-Amoraic actors (i.e. the Stammaim) who also engaged in Stammaitic activity anonymously and thus also avoided detection and the subsequent scrutiny of any attributed sources for the *shaqla v’tarya* traditions.

**Halivni, Sherira, and the Difference**

In defining the differences between his and Sherira’s approaches, Halivni entitles the section that deals with it: “*ben hashqafato shel r’ sherira lehashqafateinu*” (between the view of R’ Sherira and our view). Halivni briefly presents Sherira’s view – also the traditional view and the one that dominated BT study until the 20th century – which sees all elements of the BT as creations of the Amoraic period; the exceptions are minor
adjustments made by the Saboraim, whom Sherira places immediately following the Amoraim.\textsuperscript{131} Halivni contrasts this with his own view:

“However, according to our view, the Stammaim, who authored the *stamot* (anonymous [elements]), were not from the same time as the Amoraim, but rather they followed them; and they presented their material anonymously and they did not combine it with the Amoraic material – as their period already ended – in order to distinguish between the teachings of the Amoraim, which were primarily *memrot* and precise halachot, and the teachings of the Stammaim, which were primarily *shaqla v’tarya*.”\textsuperscript{132}

The above quote captures the essence of how Halivni views the Stammaim and also how he sets apart his approach from the traditional one. Halivni extends the period of authoritative creation of *shaqla v’tarya* past the Amoraic period; Sherira maintains that the authority to craft sugyot, including *shaqla v’tarya* and *halachot psuqot*, ended with Ravina and Rav Ashi. Halivni rightly concludes that there exist sugyot where certain factors, such as the internal history of the Amoraim mentioned in a sugya, suggests that the *shaqla v’tarya* is post-Amoraic. Instead of expanding the role of Sherira’s Saboraim, Halivni assumes a Stammaitic period, where the Stammaim set themselves apart from the Amoraim who preceded them by contributing *shaqla v’tarya* to the formal transmission of halacha. Yet the BT is constructed so that the Stammaitic activity is part and parcel of the work as a whole; once the BT is absolutely sealed, the Stammaitic material – the *stamma d’gmara* – is equally canonical. Thus, Sherira (and the traditional view) and

\textsuperscript{131} Halivni, *mevo’ot l’megorot u’mesorot*, 19-20.

\textsuperscript{132} Halivni, *mevo’ot l’megorot u’mesorot*, 20.
Halivni both agree that – regardless of who first formally transmitted a sugya with its *shaqla v’tarya* – the authority infused in the *shaqla v’tarya* is on par with Amoraic authority. Where Sherira actually places the creation and formal transmission of them within the Amoraic period, Halivni separates the creation from the reconstruction and formal transmission.

Halivni and most contemporary scholars of the BT allow for post-Amoraic emendations to and redrafting of received traditions (and even to their sources). Such emendation and redrafting is necessarily the result of a judgment made by Stammaim. Again, I agree that such judgment must be that of the final editor or author of the text, but in the case of the BT, it does not always have to be bound to a specific chronology. Sherira’s view is that nearly all parts of the creation of the BT took place during the Amoraic period. Halivni, on the other hand, places ‘arrangement’ (*‘aricha*) within the Amoraic period, and almost every other part of the creation of sugyot and the BT as a whole in the period(s) that follow.

Within both the traditional approach (i.e. Sherira’s) and Halivni’s approach, there is a Bakhtinian quality whereby the same individuals are crafting different types of voices during the very same period; voices which have since been seen as reflecting a chronology and not something else, such as the level of authority or canonicity that the author wishes to infuse into the text. Bakhtin describes different types of linguistic stratification, what he calls the “professional stratification of language… the language of
the doctor, the businessman, the politician, the public education teacher, and so forth.”

Bakhtin also allows for individual authors to utilize different voices in the creation of dialogues and the novels comprised by them. While Halivni places the formal transmission of the *shaqla v’tarya* in the Stammaitic period, Sherira does not. Within Sherira’s almost sealed BT of the late Amoraic period, there are multiple types of voices; instead of Bakhtin’s businessman and politician, the BT contains the voices of the rabbinic authorities who make proclamations, the *tanna* who records them for posterity, and the authors of the *shaqla v’tarya*. For all we know, the same individual could have been responsible for all three voices at different times. Instead of reflecting different times, they reflect different literary voices with differing impacts on understanding and responding to that understanding.

While Halivni is correct in placing more creative authority over the *shaqla v’tarya* in the post-Amoraic period, it is still reasonable to accept the part of the Sherira view that has the Amoraim creating and transmitting *shaqla v’tarya* as part of completed and almost sealed sugyot. For Halivni there is also a deployment of varying voices by the same individuals, as Halivni puts the onus of creating the literary sugya, with its narrative nuance, on the Stammaim. These Stammaim, regardless of how much they were reconstructing the *shaqla v’tarya*, were aware of the different literary styles that convey different levels of authority; and they placed them in the sugyot they crafted. At some level, this was happening since the Tannaitic period. It is also possible to understand the

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133 Mikhail Bakhtin, *The Dialogic Imagination; Four Essays*, edited by Michael Holquist and translated by Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 1981), 289. While the original date of Bakhtin’s authorship of the essays is not accurate, they are known to have been written in the 1930s.
crafting of the *shaqla v’tarya* by deploying Bakhtin’s dialogical methodology. This works for the most disparate types of narratives as well as those that are absolutely contradictory. It also leaves open the possibility to view the text as Boyarin might view it. Boyarin would have his ‘*stamma* of the Talmud’ purposefully “include seemingly contradictory texts as the bizarre narratives are a deliberate corrective to, or apology for, the authoritarian voice of the ‘*stamma* of the sugya.’ ”

All the while, the Stamma is a single monological – and not dialogical – force operating in the text. As I will discuss in the chapter on multiplicity, there exists a tension between the text possessing a veneer of dialogism while maintaining a strong monological set of values as well as legal (and cultural) positions as conveyed in its variety of narratives and styles. The discussion of the *v’la pligi* structures also address this specific issue of conveying a multiplicity of voices on a given issue, and using the perception of multiplicity to cover up what is actually a uniform and controlled monological message.

Halivni specifically insinuates that one goal of the literary activity of the authors of the Stammaitic elements was to infuse their work with an Amoraic authority. In some way, Halivni (and much of contemporary BT scholarship) view such an infusion as an honest attempt to recreate original Amoraic *shaqla v’tarya* traditions from the

134 Language taken from Wimpfheimer, “Dialogical Talmud,” 249.


informal transmissions they received. I argue that there is room to see the Stammaitic activity as more purposefully attempting to coopt Amoraic authority for their own purposes and to advance their own agendas regarding specific halachic positions. While I am not advocating for Neusnerian cynicism regarding all Stammaitic activity, I merely raise the possibility that not all Stammaitic activity is pure in its attempt to reconstruct existing Amoraic traditions – both the formally recorded memrot, and the informally recorded shaqla v’tarya. Further, some may not at all be a reconstruction of existing shaqla v’tarya, but are newly created shaqla v’tarya. This would apply to both the Stammaitic activity/shaqla v’tarya which originates during the Amoraic and that which is crafted after the Amoraic period ends.

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Chapter II

Anonymity

Anonymity as Literary Feature

Anonymity as a developed and studied concept is a 19th century phenomenon; the word ‘anonymity’ first appears then and the word ‘anonymous’ did not come into use in the English language until the 15th century.1 “Today authorship and authority have become inextricably linked, and literature without a responsible agent identified is like an artifact that turns up in the saleroom lacking a decent provenance. Both anonymity and pseudonymity have become suspect behavior.”2 Before and during the early part of the print era, and before the isolation of anonymity as a concept, this was not the case. Once it is established as a style of authorial attribution, when anonymity is deployed intentionally there must be a reason. Prior to anonymity’s emergence as a form of attribution, it is difficult to project an intentional anonymity upon a text. This would be true for pre-medieval authors, compilers, editors, lawmakers, et alia. At best, theirs is a casual anonymity; more likely, it was unintended.

One can also argue that “there was an intermediate stage in literary history when anonymity was neither routine nor eccentric.”3 While anonymity existed, it was not fully recognized nor given serious academic treatment. Nonetheless, the impact that

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anonymity has upon the reader (or listener) of a text can be similar, if not the same, whether routine or eccentric, regardless of the degree of intent associated with the authorial anonymity of the text at hand. For example, the authorial intent of parts of Leviticus does not impact how an adherent might read the text. For the adherent, the actual intent of the author of Leviticus has faded into the background; the text transcends historical circumstance. The adherent is processing passages of Leviticus through the prism of centuries of different forms of interpretation. It is the anonymity of the text that makes this possible. By having forgotten the author, and his/her nature, divine or mosaic attribution is now possible.

While anonymous intent is something to consider, the goal is to explore anonymity and its impacts and to understand the intended or received textual aspiration of an anonymous text, specifically an anonymous text created for or within a sacred, legal system. How a text became anonymous is only one variable in the equation. Because it is relatively new as a studied concept, one must be careful when overlaying notions regarding anonymity from one era upon another. Still, if proper consideration is given to the problematic elements, then there is value in attempting to overlay what we find about anonymity regarding one text upon a text from another era, culture, and/or subject matter. I will pay specific attention to Pat Roger’s idea that “anonymity is in some measure textualized; that is, the author uses the absence of an acknowledged identity to produce meaning within the ongoing discourse.” Anonymity is not only the absence of the author, it is also the addition of a certain ‘something.’ In a similar vein, Marcy North aptly states, “Anonymity proved to be a complex convention that invited numerous competing
interpretations and justifications.”⁴ Just as the BT can be discussed as having “neither routine nor eccentric” anonymity, simply because we can never know the specifics of how the transmitters operated, it can be said to fall squarely within this notion of textualization. In using Rogers’ idea of textualization, I am ascribing a ‘something’ to the anonymity of the BT, and not just the absence of something. In the case of the BT, the anonymity can be said to be adding a divine quality, similar to the one of the Bible, upon which the laws of the BT are based.

Anonymity can also be viewed as creating the image of the multiplicity of authorship. Once there is attribution to a named author or set of authors, there is the de facto dis-attribution of the text to everyone else.⁵ The author can also be said to be assuming “a variety of outlooks.”⁶ This perception is important in the BT in that it moves the text from the authority of a single sage or set of sages to the realm of the ‘every-sage.’ Beyond perception, the traditions cited in the BT are clearly attributed to multiple sources. It is reasonable to posit that the crafters of the shaqla v’itarya were many and this created the need for anonymity. It also allows for the authorities, who might be acting both as anonymous redactors as well as sources to which traditions are attributed, to speak of themselves in the third person.⁷ Further, beyond these potentially

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⁴ Marcy North, “Anonymity’s Subject: James I and the Debate over the Oath of Allegiance,” *New Literary History* 33.2 (Spring 2002): 223.

⁵ Mark Robson, “The Ethics of Anonymity,” *The Modern Language Review* Vol. 103 No. 2 (April 2008), 356. Here, Robson makes the point that “this remains true even when the ‘original’ author is ‘anonymous.’” One can argue that for some the idea of the Stam becomes the author of the BT.

conflicting roles, redactors and editors were likely to have been also adjudicators of halacha in their own day. They, therefore, had an interest in “choos[ing] anonymity if they felt that their authorial persona conflicted with their daily one.” Additionally, in the time when the BT was firmly canonized and accepted by the Genoic authorities, the reader/listener would beundistracted by the knowledge of the author and any ‘baggage’ they might carry. This was quite common in the 17th and 18th centuries; Rogers describes Pope as balancing his anonymity with his attributed works. This is also apparent in the case of King James I, and his anonymous work attributed to a ‘loyal subject.’ By operating as a loyal subject and not as the king, James I relieved his readers of considering the baggage of reading the work of a king. The BT narrators can be thought of as balancing attribution to themselves (albeit in the third person) using the anonymous shaqla v’tarya who puts it all together. The BT narrator(s) could have themselves been players in the halachic text they were crafting and were thus narrating their own positions.

In the 16th century, as the word ‘anonymous’ first appeared, it emerged as a distinct concept. Anonymity was first isolated as a feature in the sphere of literature, and from there spread to other disciplines, such as sociology and law. To the faithful

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10 Rogers, “Uses of Anonymity,” 238.
reader, the BT is a book of law, in many ways no different than the Constitution is to an American jurist.\textsuperscript{12} Anonymous, third-person narration – even where the author is known – exists in different forms of literature and comes off as natural in many instances; this is true for the reader of the BT. Anonymity in the BT is a phenomenon which is so ubiquitous that it does not stand out and does not normally attract attention to the degree to which anonymity is deployed – knowingly or unknowingly – in the BT. This is particularly interesting considering that attributing traditions to sources is an important activity of the redactors of the BT. And, in fact, in later periods, per the Encyclopedie’s entry on anonymity, “the author’s name is the most important consideration; given this, they agree with everything unquestionably.”\textsuperscript{13} This is in juxtaposition to the earliest readers of the BT (i.e. the Geonim), who accepted the anonymous narrator’s attribution without serious consideration of the narrative’s attribution. While anonymity is obvious to the student of the BT, as a literary element in itself, it does not receive significant attention from the reader of the text. It is taken for granted that the redaction of the BT was performed anonymously, or at least no effort was made to preserve the names of the editors and redactors. This could have been the result of how the editors and redactors conducted their work or of how the later transmitters transmitted the received texts. The result is the same: the text is read as an anonymous work. The impact of anonymity on

\textsuperscript{12} While it may appear dissonant to leap forward to the US Constitution, I do so only to make a conceptual point regarding how the authority of a text can become disentangled from its author(s) and take on an authoritative life of its own. Following its initial production, the Constitution unfolds over time in the form of both amendments, such as the Bill of Rights, adjudication in Federal courts, and legislation in Congress. Specifically, many amendments take on the deep authority of the initial text, as the Bill of Rights or the Emancipation Proclamation are seen as equally authoritative as the Constitution itself and not subject to debate. The fact that there are amendments, such as Prohibition, which have been overturned demonstrate that an amendment can be overturned, yet no legal scholar would ever challenge the Bill of Rights or Emancipation.

how scholars read the BT – traditionally, but even in ‘academic’ circles – deserves treatment. In this chapter my goal is to discuss anonymity as a concept in general, and to explore how scholars in other disciplines might deal with anonymity and its impact. This will open up the concept of anonymity in such a way as to determine the degree to which we can establish consistent attributes of anonymity. These attributes can then inform how one can understand the different forms of anonymity in the BT.

In this chapter, I first discuss anonymity in general terms, and then move on to a discussion of the deployment of anonymity in two specific contexts. I discuss two contexts related to anonymity: (1) authorial attribution and anonymity during the period following the advent of the printing press (the print era); and (2) the Hong lou Meng, a Chinese novel whose authorship was unknown for over two centuries, and was treated as a compiled, anonymous work. Within the above-described discussions, I also apply the features of anonymity that I define in those contexts to the BT.

**Anonymity as Authority**

One of the earliest attributes of anonymity is the perceived ancientness with which such texts are perceived. Ancientness can provide authority to a text. Along with ancientness, anonymity can reflect “a common wisdom and shared truth.”14 In fact, many anonymous texts are ancient, and many ancient texts are transmitted anonymously. Ancientness combined with anonymity can be even more authoritative. As Michel Foucault put it, “their [ancient texts’] anonymity caused no difficulties since their

14 North, “Anonymity’s Subject,” 227.
ancientness, whether real or imagined, was regarded as a sufficient guarantee of their status; specifically, ‘more’ ancient texts (i.e. the Bible or even the Mishna) for ‘less’ ancient readers (i.e. Amoraic authorities). One need not look further than the Bible, also narrated anonymously, to find a text that fits the ‘ancientness + anonymity = authority’ paradigm. The ancientness and anonymity of the Bible are what drive the authority of the text. These two features, ancientness and anonymity, are what create the textual climate for the text to evolve into a divinely inspired one. The authority of the Bible is closely connected to its divine attribution. It is the divinity of the Bible that moves it from being a great epic to being a source of authority. However, before the Bible – and the laws learned from it – was divinely attributed, it had to be anonymous; the actual authors were forgotten. Parts of the Bible – and specifically the Pentateuch whence most BT laws originate – were not attributed to any individual author, or group of authors; a cultural recollection of any such author would have precluded the possibility of divine attribution. Before acquiring divine attribution, a text and its readers must forget its human attribution, its actual authors.

In the BT, the anonymous elements are clearly meant to appear as functioning as a later literary feature used to frame various memrot that are meant to appear earlier. They can be said to be ‘ancient’ which does not necessarily mean old in absolute terms, or older than other elements or texts with which it is contextually juxtaposed. Whether

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16 For example, Mormon texts, such as the Book of Mormon are created and distributed in a way that gives them an ‘ancient’ vibe, when in fact they were written alongside works like The Adventures of Tom Sawyer. This can be done by contextualizing the Book of Mormon in the way the Bible is contextualized. Examples include leaving the book in a hotel room drawer or requesting to swear an oath over it.
they are older than the memrot or not, it is not inward toward the text that the narrative possesses an ancient feel. It is outward toward the readers who are exposed to a more complete and robust BT, years and centuries after both the sages and the narrators operated. The ancientness is not one relative to the other elements within the text, but relative to anything that is not necessarily ‘ancient’ outside of the text. It is to those readers who come along years and centuries later that the anonymity of the text produces a feeling of ancientness. Anonymity is only possible at a time when the names of those who crafted the text had already been forgotten, as is the case with the Bible. This elapsed time was enough to generate a feeling of ancientness for the BT. The anonymous elements are not necessarily authoritative within the text because they are intrinsically authoritative as a narrative. They are authoritative to the extent that they are in control of the attributed elements. This results from their functioning in the text as a later production, perceived or real. Yet, in the perception of the text as a whole to the later readers who are exposed to the more complete BT, the anonymity of the narrative is what offers the entirety of the project the necessary degree of ancientness that also comes with the potential for an infusion of authority.

The notion of anonymity yielding authority aptly fits in with the anonymity of the BT’s narrative. By not associating with any one sage or rabbinic institution, the Stammaitic elements of the BT operate ‘above the fray.’ Further, the anonymity of the Stammaitic elements lends them a greater authority than the actual attributed halachic positions. While a specific halachic position can be dismissed by the Stammaitic elements, there is no arbiter in the text to dismiss the Stammaitic elements. This is
somewhat exemplified by the manner in which commentators (and even modern readers) discuss the BT: “the gemara says…” The fact alone that the BT says something infuses that something with authority. While its authors may not have intended to project a divine quality from the text, later readers did ascribe such a divinity to it. The perceived quality of divinity evolves, and is attached to the text over a period of years and centuries. The BT is the kind of text capable of acquiring such a quality in a way most texts, ancient or not, are unable. To the traditional student of the BT, there is no question that the BT is a divinely inspired text. This divinity is the authority of the BT.

**Anonymity as Narrative**

In the BT, anonymity ultimately allows for the narration, which is often a commentary, to be integrated into the existing texts. This is especially the case where the anonymous elements seek to cloak themselves in the language of the text they are dealing with; as if there is no authorship and only attributed sources to traditions. While it comes off as narration, it is also a form of interpretation. This is true for any type of working or re-working of a text. The idea that anonymous editors can serve as interpreters has even been argued with respect to the Bible. “The anonymous, transdenominational scholars who flourished working from 300 BCE to 200 BCE, who Kugel called the ‘early interpreters,’ truly created the Bible. Kugel admits that the evolutionary chain of interpreting the Bible began in the Bible itself, and admits that selected biblical texts go back to 100 BCE, if not further.”

This phenomenon is apparent in the Midrash, where

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the stories are delivered as definitively more full descriptions of biblical tales. This is also seen in the Hong lou Meng, where the original text and the emendations meld into a unified work of literature whose layers are not meant to be felt by the reader.

In a scribal culture, the scribe who is merely a transmitter of manuscripts may feel that an emendation is in order, or some sort of commentary is necessary in order to elucidate the text. When the scribe passes on the manuscript, the next generation scribe may not be able to discern between the actual text received by the first scribe and the emendations made by him. As far as reading law into the narrative, later halachic authorities read the *shaqla v’tarya* and the traditions and sources it transmits as the same. It can be said that the *shaqla v’tarya* had become sacralized and was perceived as authoritative to the same degree as the sources and traditions it was transmitting; a theopolitics of reality so to speak. Because of the narrative’s anonymity and the way it distances itself from any one particular sage, it possesses an authority separate from those sages. In time, the narrative also absorbs the authority it ascribes to the sages within it. As discussed, often people speak of the *gemara* and not the sages. The narrator and the narrated ultimately become one.

This oneness that emerges in the BT allows for later readers and students of the text to include the BT as part of their overall narrative of halacha. For example, a commentator such as Rashi discusses the Stammtaic elements with the same reverence

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18 It needs to be mentioned in this context that in the Midrash, despite the existence of attribution, the phenomenon is quite similar. Similarly, the Hekhalot texts, whose authorship is unknown (and parts of which appear almost verbatim in the BT), there exist attribution but lost to us are the attributors. While Rabbi Ishmael is the clear protagonist and person to whom the stories are attributed, scholars have been unable to determine the authorship, and the dating of the text is also in dispute.
with which he discusses attributed traditions. Within the BT, it is the anonymity of the narrative that affords it the ability to offer a ‘complete’ picture of the evolution of this or that tradition. The absence of any attribution to the Stammaitic elements is what makes it possible for the reader to assume that they are getting the ‘complete’ story, so to speak. If we were to know that a specific sugya was crafted by, say, Abaye or Rava, it would impact how we read the sugya. A narrator is de facto anonymous with respect to the situation he is narrating; the exception is where the narrator places himself in the story or is somehow otherwise narrating from within the situation, in which case he is not a pure narrator and is part of the story.\footnote{For example, if we didn’t know that Mark Twain/Samuel Clemens was the author of \textit{The Adventures of Huckleberry Finn}, the text would give us no clue, as opposed to a story written from a first person perspective where at some point the name of the author is betrayed. And even then, this name could simply be invented.} One cannot effectively narrate a ‘complete’ picture of oneself. Anonymity can also be achieved by adopting a “variety of literary and anecdotal devices by means of which the authorial voice was transposed to situations or substituted by characters which had their own \textit{raison d’etre}.”\footnote{Wrigley, “Censorship and Anonymity,” 17-28.} In the BT this is achieved through the \textit{shaqla v’tarya} and in a different way by the manner in which unknown voices are framed, such as ‘\textit{ta shma}’ and ‘\textit{amar mar}.’

\textbf{Anonymity as Corporative}

Anonymity affords a text the opportunity to act as a representative of the society or organization the anonymous author(s) purport to represent.\footnote{Kronick, “Anonymity and Identity,” 222-224.} As early as 1862, in an article published anonymously in the British Medical Journal, the idea is presented that
an editor of a journal “is by theory the impersonation of the honor and dignity of the class which he represents” and “speaks as the mouthpiece of a collective body.”

Similarly, in the BT, transmitters of traditions and sources who left their own names off the transmission – and who were then themselves retransmitted without attribution – were speaking on behalf of the institution that was the sage whose tradition they were conveying. Institutional anonymity is a phenomenon which appears in early scientific journals where the weight of the journal far exceeds the authority of the individual.

Interestingly, Haym Soloveitchik makes a similar point regarding the authority – or lack thereof – infused into the tractates of the Talmud copied and transmitted by Rabbi Gershom, a noted tenth century Talmudist. It is the text that possesses intrinsic authority and not the transmitter (or scribe) that infuses authority into it. Specifically, he states that the works copied by Gershom “had canonical authority is Ashkenaz on their intrinsic merit, not because of the prestige of their scribe.”

On a literary level, one can argue that anonymity creates the illusion of “an omniscient corporate authority.” The treatment of the Bible by Tannaitic authorities, and later the Mishna by Amoraic authorities, demonstrate this type of treatment in other

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23 William Hargreaves, Is the anonymous system a security for the purity and independence of the press?: a question for the Times newspaper, (William Ridgway, 1864).

24 Haym Soloveitchik, “Halakhah, Hermeneutics, and Martyrdom in Medieval Ashkenaz (Part II of II),” The Jewish Quarterly Review New Series, Vol. 94, No. 2 (Spring 2004), 281. It is worth noting that Soloveitchik here and elsewhere ignores the possibility of personal-agenda driven motives on the part of a scribe, anonymous or not, when choosing which text to transmit and how. In this case, Soloveitchik acknowledges that Gershom recorded only some, and not all, of the tractates of the BT. While there is no way to speculate as to why this tractate is copied and that one is not, it is reasonable to assume that it is not always random.

contexts. The text itself, however, can still read like a single narrated work if the final editing and glossing follow consistent rules. Readers will ultimately come to refer to the text by some name, and in a way will give a face to the faceless. This is the case with the Hong lou Meng. When speaking of it, students of the novel would speak in terms such as “the Hong lou Meng says…” Similarly, students of the BT throughout the centuries have given such a face to the faceless: “the gemara says.” Ironically, contemporary scholars for decades referred to the final anonymous layer in the BT as the ‘Stam,’ singular, masculine and in the third person: “What is the Stam attempting…” ‘Stammaim’ has now fallen into broad use among scholars, thus acknowledging that the redaction of the BT was not the work of a single person (or even institution). In many ways, when using the word ‘Stam,’ scholars engaging in the art of attribution to what Tucker refers to as an imagined source.

Corporate anonymity is a practice “that metaphorically produces both the book and the author whose name is attached.” In the case of the BT, it is the narrator who produces the work and potentially some of the sources in whose name traditions are attributed. While we cannot know in any certain terms, the authors and narrators of the BT had available to them a plethora of traditions and sources to whom to attribute those traditions. Part of their text is a reflection of a selection process. This selection may also

26 Buurma, “Corporate Authority,” 37.
28 Herbert Tucker, “Introduction” to New Literary History 32.2 (Spring 2002).
29 Buurma, “Corporate Authority,” 25.
have included an effort to consolidate opinions and unify the multitude of opinions into a more unified voice. In describing the French salon, Richard Wrigley states that the number of critics involved created a “cacophony of opinion.”\(^{30}\) Before moving forward, it is worth unpacking the notion of a ‘cacophony of opinion’ as it is relevant to the BT. An effective manner of conveying this is by imagining ten rooms, where each room contains 50 individuals; further, all 500 individuals care about one single matter. That matter is whether or not they should speak. In the first room, nobody says a word, and in the tenth room 25 individuals argue loudly that they should speak, and 25 do the same advocating for silence. For clarity, one can imagine the first room as absolutely silent; the second room has one individual speaking, advocating for people to speak. In the third room there are two people speaking: the advocate for speech and the dissenter. And so on. The tenth room is the space where no opinion can be heard, and if one were to enter only the tenth room, they would not know what the issue even is. They would be exposed to a ‘cacophony of opinion’ where all opinions and ideas blur into an indiscernible noise. Our primary concern is the tenth room where the cacophony exists; I mention the first ten rooms in the analogy in order to point out the manner in which positions on the law – and in our case Jewish law or halacha – can commence with a single unanimous voice, and evolve into the cacophony described in the tenth room.

Out of this cacophony, anonymity is the ideal mechanism through which the voices as a collective can be understood. It is the anonymous voice – the anonymous narrator who is not in the story, who is merely narrating the ‘facts’ – that is somehow

\(^{30}\) Wrigley, “Censorship and Anonymity,” 23.
empowered to fashion the noise into a discernible set of opinions. In some instances, this process must involve the omission of certain opinions. The irony of the deployment of anonymity in this context of the cacophony of voices is that it both defines the cacophony and ultimately operates as its solution and simplifier. It is neutral. Again, imagining oneself in the tenth room where all there is to hear is the loud hum of 50 voices speaking (and presumably not listening), one also cannot put a name to that hum; that noise is anonymity. As one who wishes to actually understand what is happening in the tenth room, one must approach each individual, and listen specifically to what they are saying. After hearing the positions of all 50 individuals, the narrator can transmit those opinions, and is best served doing so anonymously in order to avoid the appearance of having this or that agenda. He is also best served mentioning specific and influential critics by name in order to advance the narrative and its conclusions.

The idea of the French salon was that all those operating therein were entitled to an opinion on the art within their purview. And everyone had an opinion, to the extent that all the voices merged into the type of cacophony described above. Nevertheless, at a certain point, the salon itself becomes a single voice reflecting its many individual voices. There is a discernible voice and message, but no individual name can be attached to either. While in the salon, the cacophony was both real and reflected in the various texts of the day, in the BT we have just the texts and not the history. Whether invented or ‘honestly’ received and transmitted, the narrative in the BT seems eager to

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31 Realistically, only a limited number of artists can succeed and receive the ‘seal of approval’ from the salon. While a majority of salon participants may contribute to the rise a specific artist, it is also possible that individual voice within the salon were stronger and influenced what the ultimate “voice of the salon” would be.
present a similar cacophony of opinion. The result in the BT is a range of potential halachic options available to a future rabbinic adjudicator, with the range of options dictated by the Stam.

**Anonymity as Representative**

When dealing with journals or other forms of institutional anonymity, the editors give the impression that they, “despite their multi-authorship and distinct fragmentation, present themselves as a whole.”\(^3^2\) The authoritative Encyclopedie defined itself as having been produced “par une societe de gens letters” (by a society of men of letters). During the early print era, the publishers of the journals often possessed greater prominence than professional writers; it was their name which appeared on the title page.\(^3^3\) While the BT doesn’t generally define itself in any terms, certainly those who read it traditionally\(^3^4\) see it as having been produced by men of stature and authority. The BT is quite similar to the journal in being an amalgam of authoritative voices presented as a unified whole. Where in defining the cacophony of voices the impression is that there is a loud, dissonant sort of noise, we can think of such a multitude of voices as a choir when found in a venue such as a journal, where multiple voices are presented. If all the voices are centrally organized and controlled by an anonymous conductor with no participatory voice of his/her own, they can coalesce into a larger harmonious single voice; one with no single name attached thereto. While each individual voice on its own


\(^3^3\) Rogers, “Uses of Anonymity,” 242.

\(^3^4\) By ‘traditionally’ I mean those who read it as authoritative and from within the tradition. More specifically, those who see at least an element of divinity therein.
may not be discernible, the organized and selected assemblage of voices conveys a single institutional message. In his Introduction to the *New Literary History: Anonymity*, a volume containing several articles on anonymity, Herbert Tucker moves the idea of institutional anonymity one step further to representing not only the journal but potentially everyone: “Most texts, written as well as oral come, if not out of nowhere, then certainly from nobody, which is to say that cultural everybody we dub anon.”

Quite simply, ‘anonymity = everybody.’

Thinking of anonymity in this way – that ‘anonymity = everybody’ – allows us to plug two new variables into the equation: ‘anonymity/x = everybody/y’. Phrased as a word problem, an example could be: ‘Does the Bible’s anonymity cause it to belong to everybody from the Episcopal Church?’ Accepting that Homer is nothing more than a name, and that attributing the Iliad to a historical figure named Homer is quite a dubious assertion, we can also plug Homer into the equation similarly: ‘Does the anonymity of Homer cause it to belong to everybody of 5th century Athens?’ While I have set it up in binary terms in order to parallel more closely the equation as it is, we can be more nuanced and discuss the degrees to which such texts might ‘belong to everybody;’ meaning everybody who received it in 5th century Athens. The Bible and Homer are texts that did – and still do – belong to everybody. Everybody is free to quote, manipulate, interpolate, and even rewrite them. The myths contained within those works, one can argue, do in fact belong to everybody. The author of the text – even if he were known – would be of no consequence to how the text is read. It is read as an anonymous text in the sense that it belongs to everybody. To be clear, just as there is no evidence for

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a Homer, there is no evidence for a divine being who crafted or to a lesser extent inspired the Bible or parts thereof.

Another facet of corporate anonymity is the space it creates for censorship. Let us first look at academic and scientific journals of the last several centuries. In the earliest times, anonymity was the norm for contributors of scientific journals. The editors of a journal selected articles for inclusion, and in the process, de facto, were censoring others. Such censorship was accepted because of the authority and, partly, the institutional anonymity of the journal. There was not a person censoring, but something larger – more authoritative – than an individual person, such as ‘science’ or ‘medicine’ or the like; something so beyond the individual that it could not possess the name of any specific individual.

Pseudonymity and fictitious authorship are also discussed by Griffin as part of the broader discussion on anonymity. In the BT there are instances where the attribution of a position is clearly incorrect, and even later authorities will point this out in their commentaries. Some have even argued that certain rabbinic authorities in the BT often are the subject of incorrect attribution; but their authority is great enough that there is a payoff in this fictitious attribution. This allows for a “relation of filiation,” per Foucault, even where the author is not real.

36 Griffin, *Faces of Anonymity*, 880.
Griffin goes a step further and suggests that filiation can exist even where the author remains unknown. He discusses this in terms of books which were anonymous to the extent that the cover page of the book attributes the work as being written “by the author of…” The way the BT is set up, and especially the manner in which it is juxtaposed to the Mishna, the notion of “by the author of…” applies to each sugya as it relates to any other sugya; meaning that different sugyot could have been crafted by a different author or set of authors, and that traditional authorial attribution a la the 19th century novel is not applicable to the BT and the sugyot therein. In its final form, the BT appears as though it is to be treated as a unified whole, and the narrative is constructed in this way; it is constructed so that one would be hard pressed to begin to offer a documentary-type hypothesis for what is known as the ‘Stam;’ isolating different voices within the text based upon linguistic and grammatical cues. Is it a stretch to suggest that the anonymous redactors are purposefully manipulating sources in order to promote one tradition over another?

Only recent modern scholarship of the BT has begun to look at the BT in this way. Essentially, it is not any one particular sugya or halachic position

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37 Griffin, *Faces of Anonymity*, 882.
38 Aside from Jacob Neusner and his students, this type of questioning has taken time to penetrate the academic study of Talmud. While far beyond the scope of this chapter and dissertation, there are many explanations for why modern scholars of the Talmud would shy away from such queries. The most obvious one is the fact that the field of Talmud study in the academy was set up with linguistic prowess as critical for entry into the circle of modern Talmud scholars. The effect was the virtual elimination of potential scholars with no background in Talmud study; background in Talmud study can easily be read as code for ‘religious, Jewish and respectful of basic assumptions of traditional (i.e. Yeshiva) students of the BT.’ David Halivni, despite the progress he made in his analysis of the BT, assumes that unless we can somehow demonstrate it through the Sugya itself, that we must assume that attribution in the BT is correct because “they had no reason to create false attributions.” See David Halivni, *mev’ot l’meqorot u’mesorot* (Jerusalem: Magnes Press, 2009), 4 and 111.

that possesses the supreme authority conveyed by the text as a whole, it is the collective of all the sugyot and the positions contained therein that creates that authority.

The Hong lou Meng

The Hong lou Meng is a text whose authorship was unknown for over two centuries. Eventually, in the early part of the 20th century, it became known that Cao Xueqin, one of the compilers of the text, was in fact the primary author of the work. There is a school of thought that does not accept this attribution to Cao Xueqin, but this does not diminish the value of an analysis of those who do, as that position is the more accepted one. Prior to the novel being attributed to Cao Xueqin, he himself was described as someone who “compiled… added to and trimmed” the text of the novel.40 This has allowed scholars to examine the difference between how the text was read and perceived both prior to the discovery of the author, when the text was still anonymous, and also afterwards. While Cao Xueqin is now known to be the author of the novel, later commentaries pre-dating the discovery of Cao Xueqin’s authorship did not just comment but also put their pens to the text itself, and had some leeway in making emendations and adjustments to the text. Thus, before Cao Xueqin was identified as the author of the Hong lou Meng, the text itself made no secret that the text was not ‘closed’ and that interpolations and commentary were acceptable. This relates to the notion of weaving such interpolations into the existing novel in a style so as not to be recognized as such.41


41 This also true of the Bible and the Zohar as well as other Jewish texts. The goal here is to relate this to the narrative in the BT.
We can therefore look to the Hong lou Meng as a text that can inform our reading of the BT in two ways: (a) as an anonymous work, including the impact that anonymity has on the readers of a text before and after attribution is determined, and (b) as a text that allowed for interpolations and emendations but where such activity was limited both in the nature of changes allowed and the nature of the person who could engage the text in such a manner. It is important to note that while anonymity is a factor in finding meaning in the text, and a significant one, it is not the only one.

In terms of the open nature of the Hong lou Meng, Saussy is informative in describing a “circle of intimates who each added their touches to the novelist’s ongoing project.” The novel was known to many, but few had license to impact the text and to adjudicate acceptable from unacceptable emendations. The Hong lou Meng itself offers an idea of what type of person can engage in such activity when it comments that “now and again comes an observant reader who can tell the difference [between] the hidden side of the book [and the] apparent side.” This is also a clear allusion to the idea that the text possesses some inner meaning, and that each word could possess value in such a way that a reader can manipulate the plain meaning of the text in exchange for something ‘hidden.’ The novel itself states that there is not “a line of redundant writing” in the text. “The novel becomes the property of its readers, in the sense that they are its discoverers and can claim finder’s rights.” And to the observant reader are available “a

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43 Hong lou Meng, Chapter 12. This is akin to a scribal culture.


million undiscovered meanings [that] are scattered throughout it.” 46 Thus, the emendations and interpolations are not to be perceived as such, and are not even to be looked for, but are rather part of the text itself; the incorporation of hidden meaning into the actual surface of the text is a legitimate activity. Similarly, the incorporation of the hidden meaning of the legal elements of the Bible into the Mishna, the BT, and even later rabbinic authorities is, to the traditional reader of these texts, a true and legitimate incorporation of hidden aspects of the Bible into halacha. 47 While the texts of the Bible and the Mishna were not open to change or emendation on the part of the Amoraic and post-Amoraic authors and editors of the BT, the sugyot of the BT itself were still a work in progress for them. Like the Hong lou Meng, there was a period of time when the text was still more fluid and open to changes. Further, just as the Hong lou Meng is no longer open to such emendations, so too did the BT become closed to emendations at a certain point. What made such emendation possible was the anonymity of the texts, and the idea that the text was categorically not associated with any one particular author or sage.

In contrast to promoting the notion that numerous interpretive possibilities are available and might be the only way to read the text, especially for the ‘initiated,’ Hu Shi, in an inter-linear commentary on the Hong lou Meng, is interested in showing “how subjective, arbitrary, unsteady, and profitless these forced interpretations are.” He goes on, “now I want to announce to all those who love to read the Honglou Meng, ‘if we really want to understand the Honglou Meng, we must first destroy all the forced

46 Shitou ji 1. “Dufa”.
allegorizing of Honglou Meng riddle lore.” Hu Shi goes further in sounding much like a critical reader of an ‘ancient’ text: “All we need to do is to base ourselves on reliable editions and reliable information, to determine who exactly is the author of this book, to uncover the history of the author and his circle with the time in which the book was composed and investigate the various editions and publishers of the work.” He finishes by defining the above questions – and not what he perceived to be overly interpolative readings of the novel – as making up “the proper sphere of Honglou Meng research.”48 Much of Hu Shi’s approach to commentary has parallels in how modern scholars read the BT, and their perspective on BT commentaries that are more forceful in their interpretation of the text. Even the BT, and to a larger extent the Mishna before it, allowed for flexible readings of the Bible; this is highlighted by literal readers of the Bible, such as the Samaritans and Karaites, who were also critical of the highly interpretive style of rabbinic authorities. Like the Samaritans, Tannaitic, Amoraic, and later rabbinic authorities see halacha as a form of natural law when in fact, quite similarly to the Hong lou Meng, it is quite positivist in its inclination. While the Hong lou Meng makes little effort to appear positivist, which is hardly the agenda of literature (as opposed to law), it does operate with this positivist inclination while at the same time it discusses those with the power to interpolate as possessing some sort of natural gift with respect to an ability to understand hidden meanings.

Exploring the anonymity of the novel in its earlier phases does not minimize the authorship of Cao Xueqin, nor its impact. Per Sauss: “I am not proposing that we

should forget all we have learned about Cao Xueqin, only that we not lose sight of the quite different textual horizon that obtained before his discovery.\textsuperscript{49} In a time after attributions are acknowledged, and at which attribution is no longer weaved into the narrative (i.e. the Stam), the degree to which anonymity was needed becomes more concrete. Because of political, nationalist, and other factors affecting the situation, Saussuy argues that the 19\textsuperscript{th} century was more in need of anonymity that the 20\textsuperscript{th} century. Saussuy sums up his discussion by asserting that “neither authorship nor anonymity goes without explanation as a fact in the life of texts; both conditions participate in a larger story about how texts become meaningful to their audiences.”\textsuperscript{50} Thus, in the 19\textsuperscript{th} century, as the text was still acquiring necessary meaning among its readers and still ‘striving’ for a canonical form, anonymity served the text in that it left the text more open to emendations and interpolations, as opposed to extra-textual commentary. This resonates with students of the BT. The manner in which anonymity and its absence impact the reading of a text is evidenced in the Hong lou Meng. Like Hong lou Meng scholars predating attribution, BT scholars read the text as an anonymous compiled work which, for a time, was a work in progress and open to manipulation.

\textbf{The Printing Age: Anonymity and Attribution}

I have selected the early printing age as a focus for this chapter because of the extensive work on anonymity (relative to work done on anonymity in general) completed by Marcy North. She sums up much of the essence of her project in the following statement: “one must assume that anonymity had some power even if it was imposed on

\textsuperscript{49} Saussuy, “The Age of Attribution,” 130.
\textsuperscript{50} Saussuy, “The Age of Attribution,” 132.
attribution ‘after the fact’ or set side by side with attribution.” The manipulation of a text, whether by means of anonymity or otherwise, is reflective of a certain power and therefore also some degree of authority over the text, and in the case of the BT, the laws it conveys. Our interest is obviously the attributes of anonymity. North successfully extrapolated broad attributes of anonymity and its deployment from the Early Modern English texts she examined. The easiest way to convey her conclusions is to list them sequentially. The degree of relevance to the study of the BT in some cases will require little, if any discussion.

- The potential for the manipulation of anonymity is an outcome of the invention of the printing press. While the printing press could (should) have caused anonymity to go out of use, it actually gave anonymity a new life outside the ancient world of the quiet scribes. Conversely, authorial attribution took time to settle in as something necessary or even common. In a way, the printing press created the environment within which anonymity was ‘discovered,’ and once discovered, also manipulated. Specifically, the printing press allowed for a much broader range of texts to be mass-published. This allowed for financial gain to exist for both the publisher and author, thus creating an environment where authorial attribution had a real value; this also put into starker relief a text published anonymously. Much of what is listed below relates in some way to the manipulation of anonymity and its exploration; nonetheless, I would like to highlight upfront the simple idea that anonymity can be a form of manipulation,

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51 North, “Ignoto in the Age of Print,” 412.
53 North, “Ignoto in the Age of Print,” 391.
and phrased in a milder way, can cause the manipulation of how a text and its attribution are accepted by later readers. In relating this to the BT, we need to move a step beyond what North accomplishes in determining the manipulative effects as being the result of the printing press, and to see if these effects apply in cases pre-dating the printing press. It is not in the scope of North’s project to address this matter, but she has left the door open for us to do so.

- When the printing press was invented it did not in any way immediately disassemble the existing scribal culture. If anything, the scribal culture may have reinforced itself and adjusted its own traditions in the face of the threat posed by the printing press. Further, scribal traditions, and specifically scribal traditions operating anonymously, retained much of their force during the early printing age. In reacting to Elizabeth Eisenstein, who demonstrates that there isn’t a strict dividing line delineating before and after print, North states that “although Eisenstein does not discuss anonymity in this context, her work suggests that author anonymity… of the scribal culture might have been disseminated in the 16th century along with the book and ideas from the scribal period.” Essentially, North is taking Eisenstein one step further by suggesting that the anonymity of the early printing age is a relic of scribal cultures which controlled the production of texts until that time.

- There existed resentment, both weak and strong, toward authorial attribution. In describing the coterie of writers, North asserts that “they pretended to disdain
print because of its connections with industry.” Hence they demurred from putting their names to their projects.

- Anonymity served “many book writers and book producers [who] held on to and cultivated anonymity as a tool that could help them negotiate their own complex environments.” As anonymous operators, they did not have to concern themselves, nor their texts, with how the reader might read their texts in the way they would have had to if they had had to consider the authors’ backgrounds and potential personal agendas. As North notes herself, this echoes the work of Roland Barthes and Michel Foucault, who contend that the author-function is in its essence an anonymous one; hence they can articulate a position defining the ‘death of the author.’ Specifically, knowledge of the author muddles the reader’s ability to process the text, as once the text is created, it no longer belongs to the author. Because of the speed with which the BT becomes accepted and canonical (less than two centuries), there is clearly no need for attribution in the author function of the shaqla v’tarya. The goal of its authors was broad acceptance and that was definitively achieved. The reader did not care or need for the shaqla v’tarya to be attributed. I argue that the lack of any significant attempt at attributing the shaqla v’tarya to an author or a group of redactors demonstrates the value of anonymity within that function for the BT as a literary work, legal or

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54 North, “Ignoto in the Age of Print,” 393.
55 North, “Ignoto in the Age of Print,” 394.
57 While this is not the place for a discussion of the death of the author, I feel that it is valuable to mention it in this context as it highlights the ‘damage’ that knowledge of the author might do to the text, and in the case of the BT, to law.
otherwise. At the time of its ‘publication’ the text must have been connected in some way with one authority or another – as is discussed below – but the attribution was lost over time. At that time – presumably at or close to its initial recording and transmission – authority associated with an institution or an individual was required before the text could be read as purely anonymous and still authoritative. Before this time, the transmitter (or scribes) who preserved sources and their traditions must be perceived as both reliable and authoritative. North suggests that “it is common to find publications that are anonymous for one audience but not for another.” To readers of the BT since Maimonides, and possibly earlier, the text is anonymous – there is no name or institution associated with its publication. In its time however, while it was actually still in production, the provenance of the authority of the positions contained within the BT was known because for that audience such an association was still required. It is difficult to imagine a situation where those who recorded the positions of the Amoraim – and later those individuals who weaved them together in the shaqla v’tarya as part of their transmission – were working in secret and preserved their anonymity. The transmitters (scribes) preserved their own anonymity as well as that of transmitters who preceded them, but not of the actual source associated with a specific tradition. An example of this is the manner in which the Stam does not tell us who was (were) the metzaref (metzarfim).

- During the early printing age, achieving anonymity is not the work of any specific individual. Printers, compilers, and authors all play a role in the construction of

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58 North, “Anonymity’s Subject,” 217.
For example, an author can try to opt for anonymity, only to be betrayed by the printer; or an author can attach his name to a text, only to have a later compiler quote him without attribution. North discusses the possibility of a publisher reestablishing anonymity.\textsuperscript{60} In the BT, instances where attribution is reestablished are clear when conflicting halachic positions are attributed to the same rabbinic authority; later compilers within the BT then need to go out of their way to reconcile this tension.\textsuperscript{61} This is often the function of the \textit{shaqla v’tarya}. Its authors operated not only as compilers/transmitters in the tradition of the first or second generation Amoraim, but as heavy-handed redactors who had great leeway in how traditions were conveyed and attributed to sources. In describing authors, printers, and publishers during the early printing age, North allows that “in [creating journals or other publications], they participated in the authoring of texts, an act which was more dependent on a group of producers than modern ideas of authorship allow.”\textsuperscript{62} In a scribal period authoring, printing, and ‘publishing’ (to the extent such a thing is similar to its modern equivalent) are all controlled by the same group of scribes operating within a tradition. This is true of the transmitters of the traditions which ultimately comprise the BT. The crafters of the Stammaitic elements, the \textit{shaqla v’tarya}, can be said to parallel all three functions, since in the pre-printing age printers and publishers did not yet exist in any real sense. Publication in a scribal culture means that a text will be

\textsuperscript{59} North,“Ignoto in the Age of Print,” 405.

\textsuperscript{60} North,“Ignoto in the Age of Print,” 407.

\textsuperscript{61} For example, the dispute between R’ Yohanan and Resh Laqish in Bava Batra see Tosfot 154b “Beram”.

\textsuperscript{62} North,“Ignoto in the Age of Print,” 416.
written and then preserved. In the ‘oral’ culture of the BT, publication is scribal in the sense that a qualified group (Halivni’s tannaim)\(^63\) would make a determination that a tradition and its source were worth recording – only that they were recorded orally.\(^64\) In many ways an ‘oral publication’ requires much more on the part of the community of transmitters, since texts must be memorized.

- In setting up the category of institutional anonymity, North successfully demonstrates how the authority of an institution closely tied with a specific individual can produce a work that operates anonymously to the extent that it behaves anonymously even if the authority behind the publication is well known. “Anonymity marks texts composed over time through a command process of text production or texts claimed by an institution but not by an individual member of that institution.”\(^65\) In her discussion of King James I and his anonymous response to the Papal condemnation of his proposed oath of allegiance to the King of England, who obviously was King James I himself, North points out that even while authored by a ‘loyal subject,’ it still bore the royal coat of arms;\(^66\) it still carried the authority of the royal palace. Ironically, North almost goes as far as categorizing royal authorship as something that is inherently institutional in its behavior and the anonymity of its authors: “Anonymity already seems to be an important part of the definition of royal authorship, for the collaborators behind a


\(^{64}\) Halivni would routinely discuss the Mishna and the BT as a “published” work. Clearly he does not mean that it was printed in the modern sense by a publisher.

\(^{65}\) North, “Anonymity’s Subject,” 217.

\(^{66}\) North, “Anonymity’s Subject,” 218-220.
royal document often went unacknowledged.” Attribution of the document is to the king, and its authority stems from his authority; the coat of arms is the identifying symbol. In the BT, it is not known to the modern reader what constituted “the royal coat of arms” in terms of identifying the author of the *shaqla v’tarya* of any given sugya. The authors seem to want the reader to believe that there is a divine element to their authority, thus further moving the perception of the law from a positivist one to a naturalist one. At the time of its ‘publication’ as a comprehensive BT, the provenance of the sugyot comprised therein were still known to the reader of that time. Those contemporary with the Stam probably knew which schools preserved which traditions as well as the sources associated with them, since each school possessed its own transmitters and therefore a library specific to that school. Further, their authority was in some way related to that provenance. The provenance was most likely rooted in the institutions associated with prominent Amoraim of the 6th generation. It is difficult to imagine the redaction taking place separately from the authorities to whom traditions are attributed and at the same time that they were still active. This is highlighted by traditions where two or more attributions are suggested. We can deduce that the sugyot were published more institutionally (even an institution as a basic scribal institution), and thus a ‘pure’ name was never associated with them, and the manner in which they were composed further conceals any authorship. Unlike James, the redactors of the BT did not apologize

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[68] In my discussion of specific sugyot, this is elaborated upon.
for their anonymity, and the anonymity became part of the text and how it is read.

• There exist degrees of anonymity, and anonymity “need not be absolute to serve a purpose.” Pseudonymity is a most blatant example, in which case the reader can at least have a relative sense of the author when the author has produced works under the same pseudonym. Where authorship is truly ambiguous, the reader might still be left wondering who wrote the text and he might even be asking himself ‘why.’ Thus the BT avoids this problem by associating traditions with specific sources, but not by associating transmission with specific sources. As I discuss in the context of my analysis of sugyot and of the phrase v’la pligi, while we know that, for example, Rav took this or that position on an issue, the BT does not offer to us the name of (or any information about) who transmitted the source and tradition.

• When an author of rank concealed himself under the cloak of anonymity, he did so in order to distance his textual position from his rank; a position accepted on its merit, the reasoning goes, is of greater value than one accepted merely because of its inherent authority. In the case of King James I, he used anonymity because it was a convention which allowed one “to see the text as part of a theological conversation in which author’s logic could be as persuasive as his social

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69 North, “Anonymity’s Subject,” 215.

70 North, “Ignoto in the Age of Print,” 412.
standing.” North, “Anonymity’s Subject,” 216.

72 North, “Anonymity’s Subject,” 218.

73 North, “Anonymity’s Subject,” 221.
actually vested in a position because it was his own. James realized that the authority of a king is of no use when trying to convince someone to accept the idea – without force – that an oath to the king is a good idea. James was specifically “not using his authority” as a king; he was speaking specifically in another voice. The authority of the king was actually a limiting factor for James.⁷⁴ “James seeks in anonymity a kind of ideal authority, one without limitations or compromise.”⁷⁵ The BT transmitters who created the shaqla v’tarya were specifically not putting their authority into the language of the BT, and instead limited their use of any personal halachic authority and relied more on a scribal authority. If it was worth recording by a transmitter or scribe or scribal school, then it possessed some intrinsic value. If, as Halivni has suggested, Rav Pappa’s school and his students were major players in the formation of the Stam,⁷⁶ why not say so and come clean about it? It is because then the authority and subsequently the legal tradition would be limited to Rav Pappa and his school and not ‘the cacophony’ of all sources and schools of which Rav Pappa was a part. Rav Pappa – or someone from his school – would want to maintain the appearance of merely being a part of the whole, as opposed to its primary crafter; this would further legitimate the entirety of the project as it is representative of the entire tradition and not only of Rav Pappa’s place within and perspective on the overall tradition. They needed to take themselves out of the debate – at least on a

⁷⁴ North, “Anonymity’s Subject,” 224.

⁷⁵ North, “Anonymity’s Subject,” 228.

⁷⁶ Halivni has conveyed this to me several times both personally and in class contexts.
literary level. This is not different from James, who could not be in the debate and the subject of the debate at the same time.77

Building on the last point above and moving beyond the scope of North’s work, I posit that the authors of the Stammaitic elements spoke in a scribal voice. A fundamental attribute of the scribe is his neutrality and ability to preserve and to transmit intact texts and manuscripts passed to him from the previous generation of scribes. The scribe specifically does not wish to put his name to a text. The authors of the shaqla v’tarya saw themselves more as scribes than authors, as preservers of traditions and their sources. The shaqla v’tarya, unlike the work of a traditional scribe, is far more than a simple transmission of traditions. It is a literary narrative that impacts how halacha is understood and legislated. The scribe does not inform us of his logic nor of the degree to which he is emending or interpolating what he received and is then retransmitting; the shaqla v’tarya does. (In some ways, we can see the shaqla v’tarya as a glimpse into the inner workings of Amoraic scribal culture. In the text – and quite possibly if we were able to talk to him - the scribe cannot concede that he is, in fact, making decisions about the texts and impacting them in some way. Even mere copying can never just be copying before the printing press (and one could argue after the printing press too). The scribes are trusted because of this feeling people have about them and the scribal culture; they are perceived as faithful and neutral preservers of a specific aspect of any given culture. Similarly, the shaqla v’tarya is attempting to convey a similar neutrality. This neutrality is closely tied to the anonymity with which it is presented.

77 North, “Anonymity’s Subject,” 225. This is of course true until he was outed!
Like the scribe, the shaqla v‘tarya remains nameless in an effort to demonstrate that it has no impact on how traditions are constructed and received. It operates in a scribal manner not only outward from the text, but also inward. It is operating in a scribal manner outward from the text because the text as a whole strives for a level of neutrality among available texts and cultural options. Within the text, the scribal aspect of the anonymous elements positions the narrative as the neutral arbiter among and between the sages and the memrot attributed to them. Neutrality conveyed through anonymity in this way can be seen as implying a greater degree of impersonality than can ever be the case for any text, since a person or persons must have written all texts at some time. Scribes or transmitters or narrators are also caught in the conundrum of having to manipulate pronouns; like James I, they need to avoid the first person, and cannot make claims in this way even if they avoid attribution through anonymity.

Scribal Anonymity

Regarding the neutrality of a scribe and the scribal culture, it is worth pointing to the hypographeus, a type of scribe who operated in Graeco-Roman Egypt after the conquest in 30 B.C. In a nutshell, he served as the literate representative of an illiterate party to a contract or as the literate arbiter in the creation and consummation of contracts between and among illiterates.78 His job was not only to draft the document on behalf of the illiterate(s), but also to serve in a trustworthy capacity.79 In his article on the matter,


Herbert Youtie suggests that initially we might expect the hypographeus to be part of a “shadowy and largely anonymous group.”\footnote{Youtie, “The Social Impact of Illiteracy”, 209.} Yet he goes on to state that “it was common practice for professional scribes to remain anonymous, but the hypographeus, whose basic function is not different from that of ordinary scribes, are never anonymous… It is easy to see that the hypographeus served as any scribe might, writing what someone asked him to write. On the other hand, since it was obligatory that he give his name, his function was different from that of the usual anonymous scribe, and more significant.”\footnote{Youtie, “The Social Impact of Illiteracy”, 209-210.} The more important role played by these scribes, and expectations upon them based upon their role, required that they be not only not anonymous, but easily identified in case they are needed in connection with the contract or document they drafted. While this highlights that the ancient scribe was quite capable of being not anonymous (nonymous?), it also demonstrates that anonymity was not necessarily a given among scribes and that they may have purposefully elected anonymity at certain times and in certain functions. There is an awareness of the impact of non-anonymity, and therefore there is also an awareness of the impact of anonymity. In the case of the contract, the impact is practical and in the moment. In the case of a scribe scribing scribbles in a royal court, the impact of anonymity can be historical.

Conclusion

In this chapter, I am more concerned with addressing “what does anonymity do for the text, its transmission, and how it is read” rather than asking “why did the author
choose to remain anonymous?” Still, in looking at anonymity in the BT, it is worthwhile to address why they might have remained anonymous. The most basic answer, which is discussed above, revolves around the scribal nature of those who handled the transmission of the text; they did not perceive themselves as authors in any way and functioned as transmitters, even when they manipulated some language for the purposes of easier transmission. It could be unintended anonymity. This is not that different from David Halivni’s view that his Stammaim subjugated their expressed authority in the text out of respect for the previous generations and because of their personal humility.82 This type of reverence on the part of the anonymous Stammaim toward the Amoraim who preceded them is evident in much of how Halivni reads the BT; it is also inherent as well in much of the contemporary world of Talmud study. The flaw, in a nutshell, is that this requires us to accept a type of reverence on the part of people who lived in such close temporal proximity to those they revered. This subsequently presumes a degree of self-awareness on the part of the Stammaim regarding their own position within the periodization of rabbinic authorities.83 There is also a view which is the polar opposite to this charitable one suggested by Halivni and accepted by many: that the authors deliberately chose to operate anonymously in order to further their agendas and so that they could more easily coopt the authority of relatively earlier Rabbis. This would not have required any awareness of periodization.

82 David Halivni, Meqorot u’Mesorot; Bava Batra (Jerusalem: Magnes Press, 2007), see Introduction.
83 Much of Halivni’s work operates under this assumption, and it is never fully unpacked within his work as his agenda does not revolve around periodizing rabbinic authorities.
This is particularly true within a paradigm where such ‘manipulative’ anonymity is deployed much earlier than the Stammaim, and is a feature of even second and third generation Amoraic traditions. Appreciating the cynicism in his voice, Boyarin expresses the other extreme:

“There is, to be sure, another historical approach to the ‘anonymous’ voice in the Talmud, which would see this voice as constantly developing throughout the Amoraic period itself, with each Stamma representing the contemporaneous view of the ‘Amora’ in question, rendered anonymously because all agreed!”

For those who are unsure, the exclamation point gives away the tone of Boyarin’s comment. Clearly, the implication is that there is no way that they all agreed. The deployment of the anonymous voice is what makes this possible; therefore, the anonymous voice is purposefully utilized in order to give the appearance that there is this type of broad consensus, even when such consensus is unreasonable. While Boyarin is not explicit in expressing the most extreme degree of possible manipulation of anonymity on the part of the anonymous authors, his language and appropriation of Halivni are quite suggestive.

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85 If we wish to give even more credit to the manipulative powers of the anonymous editors, one can assume that they were also aware that they were crafting a text for the ages. They were less concerned with how it might be perceived or accepted in their moment, and were more concerned with how it would stand the test of time. Even if there exist voices of dissent, over time they grow muffled and ultimately muted. This is especially true in a world where transmission of traditions is limited and where it is controlled by a scribal culture generally loyal to the most conservative elements in society.
Having discussed anonymity in the broader literature and how it relates to the BT more generally, it is important to look at examples from the BT and assess the impact anonymity has on a specific sugya. Specifically, attention is paid to the degree of authority the Stammaitic elements pay to the other elements in the sugya and the degree of authority they seek to impose on the halachic outcome. There are a great many features of the Stammaitic style, but the feature that is most relevant here is the control over the different sages that the shaqla v’tarya possesses as the narrator of the BT. In the sugyot I analyze, I focus on the nature in which the narrator narrates the different sages contained in the sugyot.

With most works, even anonymous ones, the assumption is generally that there existed a single narrator or author in a single time and place who either constructed or provided a final edit to a text. In the case of the BT, “the author is rarely an individual or original creator, but rather unknown or barely recognized.”86 While there may have been a last editor or narrator or author (or any other title one wishes to utilize here), he was not ‘final’ in the sense that he had the final impact on the work as a whole. Rather, at most, he had the final impact on a specific sugya, and possibly its position within a given tractate.

Chapter III

Canonicity

Canonicity, a Definition

Before discussing pluralism, canonicity, and their relationship to anonymity and authority, I would like to define canonicity as I use it in this and other chapters of the dissertation. Later, regarding the v’la pligi structures, and elsewhere in the dissertation, I point out where degrees of canonicity increase. I also try to pinpoint when and where any degree of canonicity is associated with words, concepts, and the halachic positions they convey. Yet the word canonicity is not nearly as common as the words canon or canonical, and is more nuanced in its meaning depending on the context in which it is deployed.

The simple definition of the word in the Oxford dictionary is “the fact or status of being canonical.” The etymology of the word has its roots in the Latin canon, and before that in the Greek word κανών (kanwn), which means measuring rod or standard; it is also related to the Greek word κάμβα (kanna), which means reed. Supposedly a measuring rod was made from a reed. Additionally, there are those who argue that its origins prior to its Greek usage might be related to the Hebrew word for reed, qaneh. Succinctly, it can be said that a canon is “a collection of standards and works, which are accepted as legitimate by a dominant social group in a culture and are protected by the
community as part of its historic heritage.”

Frank Kermode defines canon quite differently; he would not agree that a canon consists of a definitively limited group of texts whose authority is unquestioned and legitimate. For Kermode, a canon is part of an ongoing conversation, whereby all participants in that conversation are versed in the works that are included in that canon in that particular time and space. Kermode also asserts that a text becomes canonical once it enters the space of a text worthy of interpretation by ‘licensed practitioners.’ These licensed practitioners, according to Kermode, can also be grouped together in a formal institution, such as a Yeshiva, a court, or a university. Beyond this assertion, Kermode states that, “the institution must validate texts before they are licensed for professional exegesis.” He calls this “the seal we place upon our canonical works.” For a student of the BT – and much of Rabbinical and pre-Rabbinical texts that are relevant such as the Bible – the idea of licensed practitioners interpreting licensed texts is natural. Licensed practitioners are the Rabbis of a certain milieu, and licensed texts are the ones that they study and pontificate over. The licensed practitioners and their conversation about the canon are just as much a part of it as the texts themselves.

Before getting into a detailed definition of canonicity as it pertains to the BT, it is worth exploring how the word canon is deployed in different contexts. Three contexts

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2 Frank Kermode, “Institutional Control of Interpretation” Salmagundi No. 43 (Winter 1979): 72-86.

3 Kermode, “Institutional Control,” 73.

4 Kermode “Institutional Control,” page 83.

5 Kermode “Institutional Control,” page 84.
within which the word is used are: (1) Canon of Law; (2) Canon of Literature; and (3) Biblical Canon. In each of these, a canon represents texts that are suitable to be included in an accepted group of texts that comprise and are also representative of the whole in some manner. By exploring what is meant by canon when used with respect to Law, Literature and the Bible, the task of defining what it means to be part of the Canon of the Babylonian Talmud becomes easier. We can then explore what infuses canonicity into different sugyot, and further we can explore what canonicity means in terms of the different elements that make up an individual sugya.

**Legal Canon**

Different legal structures can possess their own canons of law. There are canons of case law for any legal system wherein a compilation of cases is necessary in order to teach law. While an entire legal corpus can be considered the canon of that particular legal system, there are legal systems where the number of cases is too enormous, and where the number of cases that are no longer relevant is also quite large. Thus, while all cases can be part of the history of a legal system, they are not all necessarily equal in their degree of canonicity nor in their place within the canon. For the purpose of simplicity, one need only look at the United States federal legal system; there are hundreds of years of cases from multiple courts at different levels (e.g. district, appeals, supreme), with a whole range of cases that were overturned and many which have merely grown irrelevant over time. In order to outline some features (and hardly an all-inclusive list) of canonicity in legal canons, I have chosen to focus on US Constitutional Law, and some literature, for a potential legal canon of constitutional cases.
In the United States, Constitutional Law is considered the most ubiquitous (and important) in the sense that federal law is unavoidable in any jurisdiction. While in Alabama, cases from the Supreme Court of Alabama might be important and relevant to students of law who will practice in Alabama, these cases are not necessarily relevant outside of the state. Constitutional Law is different, and is better suited to the analysis of the idea of a canon of law. In exploring canon as it is used when discussing Constitutional Law, I refer to an article, “The Canons of Constitutional Law” by J.M. Balkin and Sanford Levinson. In the article, the authors’ goal is to explain how the canon of Constitutional Law used in law schools in order to educate generations of lawyers differs from similar canons in the liberal arts, such as a canon of literature. The primary difference is that those who are assembling a canon of constitutional cases possess less agency than their counterparts in the liberal arts. A canon of law is impacted by many more external factors, such as actual cases selected and then adjudicated by the Supreme Court and what is pedagogically useful in educating a future lawyer. Specifically, they state that, “legal materials can be canonical because they are important for educating students because they ensure a necessary cultural literacy for citizens in a democracy, or because they serve as benchmarks for testing academic theories about the law.” On the other hand, professors in the liberal arts and others who are assembling different pieces of literature when constructing a canon are freer to choose what they feel

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6 Because this is a dissertation prepared for an American university, it is reasonable to look to Federal US law as an example of a legal system and the canons that it spawns.


should belong in that particular canon. The liberal arts canon creator possesses greater agency, and is free from the constraints imposed by pedagogical concerns or the realities of which cases courts are actually adjudicating.\footnote{Balkin and Levinson, “The Canons of Constitutional Law,” 964.}

The article addresses different cases that are included in the varying casebooks used in different law schools in the United States. There are only ten cases that are included in virtually every single casebook used in American law schools. One specific case they cite is McCulloch vs. Maryland. They point out that despite the fact that law professors no longer write about this case in law reviews, and despite the fact that it is not generally referenced in actual legal contexts, it is still included in the casebooks. The opinion written by John Marshall in this case argues for an expansive view of the powers of the federal government in relation to the state governments. This expansive view is the earliest such opinion expressed on the topic, and paves the way for the federal Supreme Court’s power in the future. It also sets the groundwork for the other nine cases that are unanimously included in casebooks, as they are all Supreme Court cases and must rely on the relatively expanded powers of federal law, the precedent of which is set in this case. The case is not included because it is relevant in any case that a law student might encounter upon graduation from law school and their personal practice of law and appearance before any court, or even the Supreme Court. It is part of the canon because it is conceptually essential to the project of Constitutional Law and the powers wielded by the Supreme Court.
To varying degrees, the other cases included in the canon of constitutional law are also included because of their conceptual relevance to authority inherent in the Supreme Court and in the idea of federal power. At the other extreme are the cases that are included in very few casebooks, and which are included because of their pragmatic value in terms of actually understanding the current processes of the Supreme Court and the ever-evolving sensibilities of the law professors who are selecting cases to be taught in their Constitutional Law classes. Those cases would be viewed as far less canonical than McCulloch vs. Maryland or Plessy vs. Ferguson or the other eight cases cited by Balkin and Levinson. Yet, those are the cases that would be far more helpful to the student of law who may actually have to stand before a judge someday. Thus in a canon of Constitutional Law, the primary considerations can be reduced to two main factors: (1) what is necessary for a future lawyer; and (2) what is necessary for a future professor of law or other academic in the legal field.

Ultimately, after accounting for the primary considerations mentioned above, what really constitutes a canon of Constitutional Law – and perhaps of any type of law canon – is what those in the field include in their casebooks. A casebook can be viewed as the personal canon of the person creating it. The overlap among all the different personal canons is the space where a more ‘ratified’ and global canon emerges, and those cases that are referred to unanimously can be considered The Canon. Once in The Canon, certain conservatisms take over, which maintains older and potentially less useful cases in the canon.10 Phrased differently, such a canon essentially can be defined as those legal works and cases with which a legal scholar would expect all other legal scholars to

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be familiar. For example, if a lawyer claims to be unfamiliar with McCulloch or another such prominent case – whether he does so as a lawyer before a judge or as an aspiring legal scholar in conversation with his professor – he is also a person unfamiliar with the canon of Constitutional Law; this is damaging to his credibility.

The reasons for why a precedent case is important is understandable: it is oft-quoted in other cases, it contains a fundamental principle because it is the first case to address a specific issue, or it is a substantial reinterpretation of a law relative to how the law was perceived prior to the case. As discussed, even after ceasing to be quoted, and falling to the margins of practical case law, some cases still maintain their positions in the canon of Constitutional Law. As with works of literature, where there is a certain informal human unanimity about what appeals to people, with legal cases there is a similar unanimity which pervades among scholars. This unanimity is essential in the formation of canons.

In terms of a canon of law, the degrees of canonicity are by and large defined by which cases are considered essential in a casebook by the greatest number of scholars who include them. The greater the number of casebooks that include a case, the more the canonicity of the case increases. Unanimous inclusion offers the highest degree of canonicity. Substantively, one can then ask what is it about those cases that make them includable? In the case of a canon of law, the answer is the pedagogical value to the student and the theoretical value to the scholar; and many cases overlap in that regard, and it is those cases that possess the highest degree of canonicity, and are therefore most canonical. Beyond this, one can further inquire as to what makes a case pedagogically
valuable to a student and pedagogically valuable to an academic in the field of law. While this can be a dissertation topic in itself, considerations with respect to pedagogical and theoretical value are not the same. In terms of the legal theorist, some obvious considerations include the social importance of a case, the specific Supreme Court that adjudicated the case, the specific judge who wrote the opinion, and the degree to which the case impacts cases that follow it. Pedagogical value might be informed by the above reasons, but could be informed by more mundane factors such as the writing style of the opinion or current social issues to which a case might be relevant and thus interesting to the professor of law teaching a constitutional law class; and therefore valuable to the student.

Canon of Literature

In thinking about canons of literature, there is much more leeway given than there is when compared to a canon of Constitutional Law. The assembler of a canon of literature is not concerned with the practical adjudications of a court, nor is the assembler concerned with trying to convey any fundamental principle about the law that is inherent and thus unavoidable in the actual practice of the law. These do not apply to literature in the manner in which they apply to the law.

As with canons of law, there are many different types of canons of literature. There can be a comprehensive literature comprising all great works, such as a canon of all literature. There can also be canons that are far narrower in their scope, such as a
canon of 20th century American poetry, or a canon of Romantic English novels. There are also anthologies of literature from specific regions that can be perceived as canons; ironically, from the Western perspective, and the one that prevails at American universities, there can be an attempt to create a canon of East Asian Literature.

Similar to the assembler of a casebook of constitutional law cases, the assembler of a canon of Western literature might be concerned with the pedagogical value of the literature that they are including in their canon; he might also be concerned with assembling a list of works which he believes are worthy. In pre-medieval times, before the printing press and when the amount of literature that could be preserved was limited, the decision to record something in a canonical manner was almost the same as deciding to preserve it for the broad cultural good and for posterity. In terms of ‘worthiness,’ its importance to the transmission and survival of a text (or a law or tradition) has significantly decreased since the advent of the printing press. Where the modern assembler of law cases or texts might be concerned with the worthiness of the case of the text, the case or text will survive whether or not it is included in the casebook or anthology. Therefore, for the modern assembler, the pedagogical concerns can more


12 When discussing canons of Asian Literature, it is important to note the colonial connotation of such an enterprise. An example of such an anthology where the colonial and post-colonial arguments are ignored is William McNaughton’s Light from the East: An Anthology of Asian Literature – China, Japan, Korea, Vietnam, and India (New York: Dell Laurel Printing, 1978). McNaughton, as late as 1978, is conflating cultures and texts as disparate as Indian and Vietnamese.
greatly inform the creation of anthologies (and hence canons) than in a scribal culture. This is the case because for the scribe, the preservation and transmission of texts (legal, historical, religious, political, etc.) was his raison d’etre; pedagogy was important only to the extent that it produced a future generation of scribes.

While there is likely to be overlap, some works may not make it to both lists; the pedagogical and the worthy. For example, a comprehensive anthology might be too long for it to be pedagogically practical. Pragmatically, a canon of western literature would manifest in the form of an anthology of great works, or a list of great books (such as that for a course), or something of that nature. Therefore, one could look at the works of literature included among the Penguin Classics as a type of canon of western literature; other, similar types of collections would also qualify as such. The curriculum of ‘core’ or ‘required’ courses such as Great Books or Western Literature would also be a place from which to draw data if one were to conduct a survey with the goal of finding unanimity among different types of canons. This is evidenced by the fact that most American universities did not even offer an English major until the second decade of the twentieth century and “great books” really meant classical (i.e. Ancient Greek and Latin) works. By only requiring students to study the classics, the corpus of texts available for study was not only finite and not massive, it was also one to which nothing new could be added. It was forever finite. Once English and other texts could be included, the number

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13 Wendell V. Harris, “Canonicity” PMLA Vol. 106, No. 1 (January 1991): 113-114. Harris also describes the four-year “course of study” at Dartmouth for 1852-1853, which includes Livy, Homer’s Iliad, Coleridge’s Introduction to the Greek Classic Poets, Ovid, Horace, Felton’s Selections from the Greek Historians, Aeschylus, Tacitus, Sophocles, Demosthenes, Cicero, Plato’s Gorgias, Juvenal and Terence’s Andria. While Harris does not pick up on the irony, Coleridge himself ultimately becomes part of the canon – at least in some iterations, and at least in a canon of English poetry – for his actual creative work and not tangentially as one describing ancient works in a secondary work.
of texts available became infinite and disparities between and among the required core reading increased. Where the 19th century student at a university would be studying Homer, Plato, Virgil, and Cicero, the 21st century student could be studying almost anything, depending on those making the decisions and the agendas and ideologies that drive them.

The idea is almost intuitive that the age of a work is related to its potential suitability to be included in canon of literature, western or otherwise. Works from a past can serve to glorify both the work itself as well as the period from which it comes. Conversely, a work from a ‘great’ or shall I say ‘classical’ period of time in many ways carries with it the greatness or ‘classicalness’ of its time. Hence the dramatic emphasis on Ancient Greek and Roman literature, which was simply defined as ‘Classical Literature,’ per the discussion above. One can argue that the overreach into a period two millennia earlier is a way to reconstruct a pristine world whose flaws are no longer discernible in the face of its greatest literature, art, and architecture as a remnant left for examination. As in the case of English literature entering the canon – at least in terms of what was considered pedagogically valuable – it can take hundreds of years for genres and languages to become regarded as worthwhile of preserving in a canonical manner.

One important work seeking to examine a canon that is more concerned with the literary value (or contribution) of a work, and one that goes beyond the scope of what can be accomplished in a university course – or even in four years of university study – is Harold Bloom’s *The Western Canon*. Bloom specifically defines his criteria for inclusion
in his rather exhaustive list of works included in his canon: "Since the literary canon is at issue here, I include only those religious, philosophical, historical, and scientific writings that are themselves of great aesthetic interest."\textsuperscript{14} Bloom uses the phrase ‘great aesthetic interest’ as a primary feature of what ought be included in his canon. He even goes beyond the scope of what is traditionally perceived as ‘western’ so long as the work has significant influence on western literature and is thus of ‘great interest’ even if it might not be great with respect to its aesthetics, as Bloom defines them. Obviously, even to one less than absolutely cynical, Bloom is relying heavily on his own perspectives and may not in fact reflect a common or popular perception in his creation of a canon. Jean Francois Botrel expresses this cynicism in his discussion of popular canons when he articulates that a group possessing a mass of literature but not a formal canon “have simply not yet produced a Harold Bloom to draw up their canon.”\textsuperscript{15} For the purposes of trying to make more precise our definition of canon and canonicity, Bloom is useful, and it is worthwhile looking at his list in order to get a sense of what canonicity might be. But it is hardly the definitive canon of western literature.

Like the McCulloch and Plessy vs. Ferguson cases, there are works of literature which are unanimously included in any canon of western literature. (While defining ‘western literature’ might be a murky endeavor, for our purposes I will operate under the basic assumption that anything written in a European language or in the English language qualifies.) For example, Homer and Shakespeare would be included almost unanimously in any ‘legitimate’ anthology of western literature, and can thus be viewed as canonical

\textsuperscript{14} Harold Bloom, \textit{The Western Canon} (London: Macmillan 1995), 84.

works. There are other works which also fall into this category. Beyond the obvious ones, there would be a range of works of literature which might also be canonical, but might not be included because of the assembler’s personal opinions about them. The Bible, while a great work that heavily influences and informs a great deal of post-Roman western literature, might be considered pre-western and therefore excluded from this or that specific list of great western works.

**Biblical Canon**

The third type of canon I mention is the Biblical Canon – specifically the Old and New Testament canons, although my focus here is on the Old Testament, as that is the one relevant to a discourse on rabbinic law. Before delving into the details of the formation of a Biblical Canon, and the features that books of such a canon might have in common, it is worth noting the context in which such a canon was formed. The Biblical Canon is ancient, and has been transmitted alongside other (great) western works for centuries. It is fully formed, and there is little room for contemporary scholars to adjust the canon; contemporary scholars are empowered only to ask why this book or that book was – or was not – included by the ancients in the Biblical Canon. The fundamental difference between the Biblical Canon and the other two is that the Biblical Canon was formed in a time when recording texts was essential to a text’s survival, and therefore was a more meaningful designation. Because of simple pragmatics, per Kermode, few individuals can be designated as licensed practitioners with respect to the text, and only very few were able to assemble groups of texts, whether they were as short as a memra in a Mishna or as long as Psalms or as redundant as the Gospels. And only these few
licensed practitioners would have been able to set the groundwork for what is ultimately canonical and thus worthy of inclusion in a final canon. During the formation of the Biblical Canons, it was impossible to record an unlimited number of texts and to transmit them, as we are able to do today. I mention the possibilities of today to highlight that during the period of the formation and sealing of the Biblical Canons the possibilities were severely curtailed when compared to the relatively ‘unlimited’ possibilities afforded by more sophisticated scribal cultures and later by the seemingly infinite reach of the printing press. In some ways, the biblical canon can be seen as a literary canon formed in a time when the recording and transmission of texts was immutably entangled with many aspects of people’s lives, and especially with what we today call religion.

In part, the reason I discuss the very different world in which the Biblical Canon formed was in order to highlight the finite and fixed nature of the Biblical Canon versus the malleable and organic nature of literary and legal canons. The Bible contains a rudimentary legal system and is also seen as a source for the authority of certain legal systems; it is, however, also a work of literature. Unlike the criteria of contemporary assemblers of texts into canons, who explain to us the criteria based upon which they reached the final group of texts, the record for the biblical canons is far more murky. This is also true of publishers who include some works in this “Great Works of…” or the other, and exclude others; they tell us why, and we can do what we wish with that information. As far as the Bible is concerned, we have far less information about the

16 In chapter 2, I discuss the impact of the printing press primarily in the context of anonymous publication, but I also address the issue of the power of the printing press relative to what existed prior to its invention. As was the case with the scribal culture, there was a keen attempt to sanction and also control printing presses; unlike the scribal cultures who stayed true to their lords
formation of the canon. This is specifically the case with respect to its earliest parts, the parts which were already put together and received by relatively later scribes and transmitters. Like the BT, there are layers within the Bible as a whole such as this book, Judges, preceded that one, Jeremiah.

Beyond the level of the books, there are layers within the books of the Bible themselves, sometimes even on a chapter and verse level. For example, we are able to discern different layers within the book of Genesis, and this is the essence of the documentary hypothesis.\textsuperscript{17} Yet we do not have in our possession the texts which we call J or E; we have a theory about them and a text in Genesis that as far as history records was a whole, complete text. The different parts of Genesis may have been fully canonical to some person or group prior to their inclusion in it; as part of the text of Genesis they carry its full canonical weight in a manner in which a discovered or a reconstructed ‘book of J’ would not be.\textsuperscript{18} One can argue that this is because the Book of J is only canonical on account of its inclusion in the version of the book of Genesis that became part of the Biblical Canon. Yet, one can also argue that those verses, which some scholars define as J, as well as any verse included in Genesis, possess a degree of canonicity on their own. It is this degree of canonicity which then makes it possible for this small piece of text to become part of the Biblical Canon. Separate from whether a verse is included in a theoretical or reconstructed proto-book that ultimately becomes part of Genesis, its canonicity is not necessarily tied to its inclusion in such a proto-book, such as the Book


\textsuperscript{18} A reconstruction of such a book was attempted by David Rosenberg and Harold Bloom, \textit{Book Of J} (Boston: Little, Brown, 1951).
of J. The verse can possess some degree of canonicity in its own right, and this is borne out by those verses whose provenance vis-à-vis this or that proto-book is not easily detectable.

The focus here is on the Biblical Canon as a whole, and the different and equally whole books that comprise the Bible. Further, the Biblical canon I deal with specifically is the Rabbinic Old Testament (as opposed to Christian versions). Because this is not a dissertation on the formation of the Rabbinic Biblical Canon, my focus is on demonstrating different types of canons and juxtaposing the Biblical Canon with legal and literary canons. Unlike the other two canons above, the Biblical Canon is quite distant from us chronologically, and it is much more difficult – and some argue, impossible – to determine the formative stages of the canon’s development. To quote Jack Lightstone, “Let me forewarn the reader where we shall end up, for it is not where one might have expected or wanted. Simply put, we have not sufficient, reliable evidence to determine with any precision or confidence the ‘how,’ ‘when,’ ‘where,’ ‘who,’ or ‘why’ of the fixing of the Rabbis’ Bible.”

The traditional view on the canonization of the Rabbinic Bible, which was uniformly accepted well into the 20th century, was that a council of rabbinic sages convened at Yavneh (Jamnia) at the end of the first century AD and put together the corpus that comprises the Rabbinic Bible. In putting it together, they did it all in one fell

swoop, including the three different parts of the Bible, the Pentateuch, the Prophets, and the Writings.\textsuperscript{20} As bizarre as it might seem, this ancient and simplistic view went unquestioned until the 1960s, when scholars began to suggest that the Rabbinic Bible took form in stages.\textsuperscript{21} Later, this was broken down more specifically, and it was asserted that the books of the Rabbinic Bible were canonized around the three different parts. When a single part was closed, nothing could be added to it, and any subsequent text of canonical worth would be included in the next part that was still ‘open’ until the close of the Scriptures when the entirety of the Bible was closed and possessing of a final canonicity.\textsuperscript{22} Over the years, a range of different perspectives on the canonization of the Rabbinic Bible emerged from schools of thought that fully reject the canonization at Yavneh by a council of rabbinic sages. While hardly an exhaustive representation of the vast scholarship on the matter, many divergent opinions on the matter have been put forth; some focus on the parallel Christian versions of the Old Testament, others focus on

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\textsuperscript{20} Heinrich Graetz, “Der alttestamentliche Kanon und sein Abschluss” in \textit{Kohelet oder der Solomonische Prediger, Ahnang I} (Leipzig, 1871): 147-173. This is the first ‘modern’ construction of the canonization of the Rabbinic Bible that affirms the centrality of the convention of rabbinic sages at Yavneh at around 90 AD.

\textsuperscript{21} The first scholar to truly question the Yavneh theory was Jack P. Lewis in his article “What Do We Mean By Jabneh” \textit{Journal of Bible and Religion}, Vol. 32, No.2 (April 1964): 125-132. Lewis does mention H. H. Rowley’s 1950 work, \textit{The Growth of the Old Testament} (London: Hutchinson University Library, 1950) in which Rowley makes a very similar claim, but comes just short of Lewis’ final conclusion, which is “to allow the question to remain as vague as the sources are,” and almost to assume that beyond a gathering, we can know nothing else. Rowley’s discussion of the matter still assumes that something significant took place at Yavneh, even if it was informal and not absolutely binding. Lewis is establishing a different framework where Yavneh may have been inconsequential.

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the texts from the Dead Sea Scrolls, and still others look at the specifics of the language in order to determine divergent strains within the Rabbinic Bible.

While my main focus is the general pattern of how the Rabbinic Biblical Canon formed may potentially inform our notion of canon/canonicity in the BT, it is worth unpacking certain aspects related to the idea of divergent strains in the evolution of the canonization of the Rabbinic Bible. A first step in doing so is referencing the Mishna Yadayim 3:5, which is discussing purity laws and which objects cause one who touches them to become impure. Beneath the surface is the projection of different philosophies within – what is in the Mishna – a normative rabbinic weltanschauung, followed by a whole chapter dedicated to matters that were legislated in Yavneh at the same time that certain aspects of their canon debate were resolved on the day Rabbi Elazar ben Azarya was installed as the nasi. The first part of the Mishna discusses the purity law regarding books and scrolls and is then followed by a back and forth discussion regarding the canon:

“All holy books cause hands to be impure. Song of Songs and Ecclesiastes cause the hands to be impure. Rabbi Judah says: Song of Songs causes the hands to be impure, and there is a dispute regarding Ecclesiastes. Rabbi Yose says: Ecclesiastes does not cause the hands to be impure, and there is a dispute regarding Song of Songs. Rabbi Simon says: Ecclesiastes is from among the leniencies of the House of Shammai and from among the stringencies of the House of Hillel. Rabbi Simon, son of Azzai said: I have a tradition from the mouths of the seventy-two elders from the day that they installed Rabbi Elazar,
son of Azarya in the Yeshiva that Song of Songs and Ecclesiastes cause the hands to be impure. Rabbi Akiba said: Mercy and Peace! [has v’shalom which more loosely translates as ‘heavens, no’ or ‘heaven forbid’] No man of Israel disputes regarding Song of Songs, [and states] that it does not cause the hands to be impure, since the entire world is not worthy like the day on which Song of Songs was given to Israel; all the Writings are holy, but Song of Songs is the holiest of the holies; and if there were a dispute, they did not dispute anything except for Ecclesiastes. Rabbi Yohanan, son of Joshua, son of Rabbi Akiba’s father-in-law: they disputed according to the words of Ben Azzai, and they legislated [in accordance with them].

Before even getting to modern conceptions regarding different strains in the formation of the Rabbinic Biblical Canon, the Mishna in Yadayim is telegraphing at least some element of divergence in the traditions. It is rare for a Mishna to include this number of halachic options, and this many voices associated with those options. In the rest of the first three chapters of Yadayim, there is only one Mishna where three sages are mentioned, one where two are mentioned, and a few where only Rabbi Yose is mentioned; a vast number contain no named sage. This Mishna alone contains nine different named sages with a saying or halachic opinion on the matter of purity and holy scrolls. While not reflective of nine distinct positions, the Mishna is certainly trying to

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23 The translation is my own.

24 I am not considering the fourth chapter because it is a continuation of the theme of laws that were legislated in Yavneh on the day Rabbi Elazar, son Azarya was installed in the Yeshiva. While none possess nine distinct sages, there is certainly the appearance of a purposeful inclusion of a range of rabbinic sages, possibly for the same or similar reasons for doing so in the verse that we are discussing.

25 While I do not wish to get into a tangential discussion here regarding the value of Plurality in a legal text, and the manner in which Plurality is deployed in this Mishna. However, I do discuss Plurality in Chapter 5,
fit in as many voices as possible. In this case, the voices also reflect lived positions, and the reality of the canon possessed by certain groups within the ‘normative rabbinic’ world of the Mishna. Beyond what is reflected in this Mishna, there existed other groups who might have been considered not part of the ‘normative rabbinic’ world of the Mishna and whose canons and sages are not mentioned in this dispute.

Because of the important nature of something like the Biblical Canon to the rabbinic class of the Mishna and the fact that it is the text based upon which halacha acquires its authority, it is not surprising to see the ‘participation’ of so many sages in this rather arcane dispute regarding purity. It becomes anything but arcane once it becomes clear that the discussion at hand is really about the canon, and the purity law is only a mechanism for getting to it. Even the tractate of Yadayim flows in such a way: this Mishna precedes the fourth chapter, which includes those that deal with matters not related to purity.26 Our Mishna is a suitable segue as it is both related to the purity laws discussed in the Mishna Yadayim, and it conveys among the most important pieces of legislation to emerge from the council at Yavneh. Such legislation is better served with greater rather than fewer sages associated with the dispute and its resolution; and the Mishna takes the tact of ‘the more, the merrier.’ Yet despite the great plurality of opinion conveyed, the Mishna at the same time is marching toward a conclusion, one which seemingly exudes a certain consensus; the Mishna ends with Yohanan, Joshua, Akiba,

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and there attention is also paid to Plurality in the Mishna, and this Mishna is demonstrative of a tendency – however great or small – toward Plurality in the Mishna and this tendency then flourished during the amoraic period and during the formation of the BT.

26 It is not unusual for a tractate of the Mishna to ‘go off topic’ and shift focus based upon a linguistic or conceptual matter that is introduced.
and, for good measure, Akiba’s father-in-law, introducing Ben-Azzai’s position regarding the dispute and its resolution. Ben-Azzai’s position is that the council at Yavneh considered hands impure by contact with Song of Songs and Ecclesiastes, and thus they are ‘holy’ and part of the canon. While conveying consensus in resolution, the dispute indicates that the reality on the ground could have been quite different and the resolution is idealized. Specifically, the reality on the ground may have been that there were different strains regarding the canonicity of Song of Songs and Ecclesiastes as well as other books of the Bible and what became the Apocrypha.27

It is noticeable in the language of this Mishna, specifically in the words of Rabbi Akiba, that there exists a certain ‘above-the-fray’ type of quality to the canonization process of the rabbinic Bible, and not only to the works that it contains. This is contrary to the canons of literature and law, where the assemblers of canons seek out special works or cases worthy of inclusion, but in no way is their selection process seen as something as special as the works which are part of the process. A great poem that is universally loved and a centuries-old precedent-setting case that is still relevant are both special and ‘meta-’ in a way that the process of assembling such poems and cases is not. While the objects of the process (i.e. the texts) are special (or holy or divinely inspired),

27 The Dead Sea Scrolls evidence this to the extent that we can assume that at least some of them were canonical to someone. Unfortunately, much of the history surrounding the Dead Sea Scrolls is lost, and we cannot even know the degree to which the texts might even be representative of the ‘normative rabbinic’ world of the Mishna. There is much scholarship that gets into the issue of canon and the Dead Sea Scrolls. Among them: Moshe Bernstein, “Pentateuchal Interpretation at Qumran” in The Dead Sea Scrolls after Fifty Years: A Comprehensive Assessment eds. P. Flint and James C. VanderKam (Leiden: Brill, 1999),128-159; Eugene Ulrich, “The Paleo-Hebrew Biblical Manuscripts from Qumran Cave 4” in Time to Prepare for the Way in the Wilderness: Papers on the Qumran Scrolls by Fellows of the Institute for Advanced Studies of the Hebrew University, Jerusalem, 1989-1990 eds. D. Dimant and L. Schiffman (Leiden: Brill, 1995), 103-129; James C. VanderKam, “Authoritative Literature in the Dead Sea Scrolls” DSD 5.3 (1998): 382-402; and Dwight D. Swanson, The Temple Scroll and the Bible: The Methodology of 11QT (Leiden: Brill, 1995).
the process itself is not. This is unlike Yavneh, where – at least over time – the process itself of selecting the books of the canon came to be perceived as special or divinely inspired. In time, the entirety of the Rabbinic corpus also comes to be regarded as divinely inspired – hence the moniker, torah sh‘b‘al peh, a reference to its being on par with the ‘original’ written one.

In discussing the Rabbinic Biblical Canon, as Lightstone points out, there is even a theological residue in the works of modern scholars which causes their perspective on canons to be tainted by the idea that the process of canonization carries with it a special or meta-quality that is also inherent in the works comprising the Rabbinic Bible. It is this theological residue which precluded questioning the idea of Yavneh as the primary source of the Biblical Canon. While certainly a moment in the canonization process of the Bible upon which generations of sages would operate, it is hard to attribute to that moment and its associated process anything more than a discussion regarding what books were to be included in the canon. It happens that, within the rabbinic tradition, it is the last discussion, after which there appears to be no dispute.28

By the time of the convention at Yavneh, the canon was by and large agreed upon,29 and the sages all generally adjudicated and legislated based upon the same set of texts. The dispute in Mishna Yadayim reflects a discussion or a negotiation where all

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29 Halbertal, People of the Book, 16-17.
contenders for inclusion in the Biblical Canon seem to have been included. The Mishna only references Tannaim who opposed including books that ultimately were included. A corresponding Tosefta actually does mention the book of Ben Sira by name as one that does not cause the hands to be impure, and thus is not part of the canon.\textsuperscript{30} The Tosefta also demarcates Ben Sira as the first book not to be included, and that all books written thereafter cannot be included in the text. The Tosefta is implying that chronology plays a significant role in which books are and are not included in the Biblical Canon. And this idea that age is associated with authority weighs heavily in rabbinic discourse, including its view of its Biblical Canon. Much of the debate regarding the Biblical Canon for the culture and tradition from which the sages emerged, who actually participated at Yavneh was therefore sorted out well before any of them were alive. It is unlikely that the participants at Yavneh thought of their task regarding the canon creation to be anything more than an affirmation of the status quo. They probably saw legislation as their primary task.

While there is little extra-Rabbinic information regarding the formation of the Bible as they – the Amoraic and Tannaitic sages (and those who followed them) – believe that it was created, there is little reason to consider significantly different canons between and among different Tannaitic strains of halacha. Rather, they all operated within a very narrow range of what was acceptable, since they had to not only agree on which book was or was not included in the canon, they also had to agree on which book was ‘holy.’\textsuperscript{31} Inclusion in the canon was not merely a legal matter, it was a deeply theological one.

\textsuperscript{30} Tosefta Yadayim 2:5.

\textsuperscript{31} Halbertal, \textit{People of the Book}, 17-18.
where ‘holiness’ actually played a role. It’s almost as if the excluded books were agreed upon before Yavneh – not necessarily explicitly, but implicitly, as a simple matter of how the texts were treated by the time of Yavneh. This is a projection of something almost metaphysically authoritative upon the goings-on at Yavneh and the sages associated with it. The manner in which the Mishna, here in Yadayim as well as elsewhere, references legislations from Yavneh is a reflection of the same type of projection of authority. This projection of authority upon earlier sages becomes the bedrock principle guiding the development of halacha.

The BT Canon

Now that we have highlighted the different features that the various above-discussed canons possess, I would like to lift them from those contexts and discuss them in the abstract in an effort to extract their relevance to the idea of the BT as a canon of halachic statements. The BT bears similarities to the above types of canons, yet also is different enough that it cannot be categorized in the same away as the others. Before providing some detail, I want to paint the similarities with the broadest strokes: the BT is similar to a literary canon in that what is included in the BT canon possesses many of the qualities of works included in a literary canon, such as a narrative which weaves statements in legal contexts, and interesting stories (i.e. the aggadic material), which are often loaded with an underlying message or theme; it is similar to a legal canon because its primary function – at least prima facie – is to present the laws of the rabbinic halachic system; and it is similar to the Biblical Canon in the manner in which it needs ‘divine’ authority to give legitimacy to the legal and aggadic material it presents and ultimately to
be legitimate as a canon itself. Regarding the Rabbinic Biblical Canon, it is also important to note that over time the important canon in the normative rabbinic circles evolved to include first the Mishna; later the BT, as a complete work, becomes part of a broad canon of rabbinic material that includes the Bible and the Mishna.32

All the different canons discussed contain elements which possess different degrees of canonicity, regardless of how one might wish to construct the canonicity. What they share in common is that they all operate on a progressive scale of degrees of canonicity. This is the most essential aspect of being part of a canon, or being a text, which evolves into a something possessing canonical status and the attendant degree of canonicity. The BT is quite the same in that it too is associated with degrees of canonicity. It itself, as a complete work, possesses a certain degree of canonicity within the broader rabbinic canon. As a complete work it includes the many sugyot, which include many different elements with their own degrees of canonicity. The different elements within a sugya include a memra, its introduction, and introductions of Tannaitic material or Stamnaitic elements. On a relative scale, it might be possible to assign degrees of canonicity to the different elements.

All three types of canons are, to some extent, created with inherent pedagogical value. While in literary and legal anthologies and canons this is often stated and not up for debate, with the Biblical Canon, it is more difficult to parse the pedagogical than it is

32 The question of biblical authority very much informs the issue of authority in the BT because it is a biblical authority that the BT wishes to convey. One can even argue that it seeks an even higher degree of authority than the Bible because it does reinterpret very clear biblical statements dramatically. For example an ‘eye for an eye’ becoming an ‘eye for financial damages.’
other features that contribute to a canonical text. With a legal canon, there is the adjudicative value of a case to a judge on a bench in addition to the pedagogical value to the student and the professor in the classroom. While a case can be extremely important to a student because of its place in legal history and the deep precedent it imprints on many subsequent cases, it may be unimportant to a judge who is seeking to adjudicate a matter before him. With a literary canon, there is the cultural worth of a literary work in addition to its pedagogical value in the classroom. While a specific piece of literature may be very important from a cultural perspective, it may not lend itself to being part of the standardized collection or canon of works which are included in core curricula at colleges and similar academic outlets. Unlike the literary and legal canons, the Biblical Canon’s pedagogical agenda is generally unknown to us. (This may be why it is the least permeable of the canons we discuss.) Further, the cultural and adjudicative features of the Bible are also less prone to being isolated in the text in the way they are in legal and literary canons. It can be argued that the BT contains all of the features described above: the adjudicative, the cultural, and the pedagogical, which are part and parcel of the canonicity of the corpus as a whole in its place among the rabbinic corpus. In a similar vein, each sugya also contains at least one of the above three, if not more of these features, and they inform the canonicity on the more micro level of defining degrees of canonicity within individual sugyot and the elements comprising them.

The adjudicative canonicity of the BT is the most obvious as compared to the others, although there are some areas where the adjudicative appears to be the driving feature, but in fact it is more cultural or pedagogical than it is adjudicative. As I mention
on more than one occasion, the laws discussing Temple practices could not have really been assembled and crafted for any pragmatic purpose of adjudication, especially the purely Amoraic ones; rather, it is of deep cultural importance to the project of the BT to include such information for a range of reasons, such as the co-opting of the Temple’s authoritative stature for the rabbinic world, which includes the BT. Within the confines of the rabbinic legal system, the canonicity of the BT is secure by the end of the Genoic period, and post-Genoic rabbinic literature treats both the substance of the sugya and the actual language of the sugya with great charity and a high degree of canonicity.33 For the purposes of adjudication in the period after the Geonim, the BT becomes possibly the most canonical work in that it is the primary halachic work upon which post-Genoic authorities base their adjudications.

When looking at the BT as a compilation of canonical elements, it can be argued that many of the sugyot included in the BT possess a degree of adjudicative relevance both in the moment of their construction and their inclusion in the BT, and thereafter, when the BT is already constructed at some level. Similar to the overwhelmingly large corpus of cases that comprise the history of federal cases in United States, not every case

33 As I discuss later in this chapter, the greater the charity offered to the language of the text, the higher the degree of canonicity. As I also explain later, Halivni explains in Peshat and Derash (Oxford London: University Press, 1991), 47-48, that the Bible is the sort of text that can only be ‘read into’ and problems on the surface of the text cannot be fixed by making changes to the text. Discrepancies in the text can only be fixed through interpretation. Similarly, the BT eventually becomes a similarly closed text where much of the substance and language can require reinterpretation before any adjustment to the text. When exactly the BT ceased to be a text that can absorb and adjust to the language – as it is now within traditional Yeshiva circles – is debatable, but one can firmly assert that by the post-Geonic periods such adjustments were due to available variant texts and not to the thought process and decision making of a scribe. See Talya Fishman, Becoming the People of the Talmud (Philadelphia: University of Pennsylvania Press, 2011), 34-36. While Fishman argues for a late date for a full acceptance of the BT, she does not argue for a relatively later formulation of the BT as text, she is most concerned with the authority of the text wields among its readers in the 11th -12th centuries.
can be included in a canon. While it is difficult to prove something is absent, it is not unreasonable to assume that there existed memrot and even entire sugyot which did not make it into the final canon of the BT. Even some sugyot and memrot, which may have been actively included by this or that rabbinic circle, may have fallen out of the transmission. Because of their lack of adjudicative relevance they did not possess any significant degree of a canonical quality.

Certain texts are included in the BT strictly for their cultural or moral resonance. The criteria by which such texts appear to be included are similar to those isolated with respect to a literary canon. These would include all the non-legal sugyot, those without adjudicative quality for the sage with a real case he must judge. Examples of this are the aggadic stories which convey different moral messages, some of which are apparent, and others which require more knowledge of the tradition. Other examples of sugyot and entire tractates that have little or no adjudicative value are those related to Temple ritual. While the individual aggadic stories convey some more immediate moral – or other – meaning, the sugyot discussing Temple ritual are often bland and lacking in anything beyond the pure technical discussion of the matter at hand. They were created to legislate what is supposed to happen in the Temple in Jerusalem; regardless of whether the legislation speaks to the Temple of history which was destroyed or to a future Temple, it is not addressing any real contemporary matter. Similar to a literary canon that as a whole conveys certain messages because of a theme or idea that reappears throughout, this is also occurring in those sugyot dealing with Temple ritual. And just as the literary canon is also comprised of individual works with their own nuanced moral messages, so
too does the BT as a whole contain shorter stories with their own nuanced cultural value. Thus, it becomes possible to look at the criteria by which a work can be included in a literary canon, and deploy them in the context of the BT, precisely because of its literary (and non-legal) elements.

Within the pedagogical sphere, as mentioned above, there is an aspect to it which centers on the vastness of the knowledge required to have been considered a ‘licensed’ student. While even stating that there was some amount of required knowledge is in the realm of speculation – however reasonable it seems – it is difficult to speculate on the different ranges of knowledge which would offer a student greater cultural capital as a scholar in the rabbinic institution of the time. Such knowledge can be some sort of compendium of memrot and sugyot; one can argue that such a compendium in a given rabbinic institution was both the canon of the institution and the material which the ideal all-knowing student of the text should know. Beyond the knowledge of actual traditions regarding specific laws and the sugyot in which they are conveyed, there are also certain cases which are grouped together for different reasons which are relevant to how different parts of the text can be studied. An example is ס-קג-ליע, which is an acronym for the six cases where, from among the many disputes between Abaye and Rava, the ruling follows Abaye and not Rava. The letters are broken down as follows:

34 Barry Wimpfheimer, “Legal Narratives in the Babylonian Talmud,” (Dissertation, Columbia University 2005). Wimpfheimer dedicates Chapter 2 to the idea of “knowledge as cultural capital” and he is the first to develop it in this way in the context of understanding the BT.

put up accidentally; קידושין שלא נמסרו לבראה, betrothal which cannot lead to cohabitation; ג – נלוי דעת בתשיש, revealing one’s attitude indirectly in divorce; and מ – מומר להכעיס נבלות אוכל, an apostate who eats forbidden food out of spite.36 The acronym in itself is proof of the mnemonic quality of these cases and how they are grouped together. A student would have memorized this, its implications, as well as other similar acronyms and rules about the tradition of certain disputants. Therefore, while these cases possess real adjudicative value, they can also serve a pedagogical purpose in terms of what a student in a rabbinic institution might be required to know.

Unanimity

The degree of unanimity between and among ‘proto-canons’ such as anthologies or casebooks is what informs the creator(s) of an actual canon.37 In the cases of literary and legal canons, unanimity is routinely part of the conversation when thinking about a canon of this legal system or that literary genre. When compiling a ‘new’ anthology, one will look to anthologies published prior thereto, and at least in part will seek works that appear in many, if not all, of the anthologies. While not necessarily achieving works of unanimous selection, a compiler can still be engaged in pursuing unanimity, knowing full well that pure unanimity cannot be achieved. With respect to the Rabbinic Biblical Canon, the evidence seems to point to a pursuit of unanimity, similar to the anthological

36 While these are the cases as the medieval Rashi describes them, there is little doubt that the acronym is ancient, and dates to a period – quite possibly Amoraic and certainly not definitively post-Amoraic – post-dating Rava and Abaye. While the BT itself accounts for some of the letters, others are left to guesswork, which Rashi does, and upon which I am relying here. Nevertheless, there are six cases which would have fallen into this category of cases where the ruling follows Abaye, and which would have been ‘required knowledge’ for a student in a Babylonian rabbinic institution.

37 In the end, even this ‘actual’ canon itself – as we discuss above – is but another anthology. It is this pursuit of canon, and what goes into the pursuit that defines what the idea is around creating a canon. This can be a way of getting as close as possible to essence of canon itself.
form of a canon in that a pure unanimity was unlikely. This is certainly the case for the groups whose biblical canons were not considered normatively rabbinic, and there would be no mirage of a pursuit of unanimity if they too are considered. Within the normative rabbinical circles at the time of the council at Yavneh, regardless of how definitive the events at Yavneh were in the formation of the final canon, it was unlikely and maybe impossible to assemble a Biblical Canon that could be called truly unanimous. The Mishna in Yadayim conveys the feeling that there was a certain spirit of compromise and that the inclusion of Song of Songs and Ecclesiastes was not a reflection of pure unanimity in the way the books of Genesis and Judges were unanimous. Like the legal casebooks and the literary anthologies, based upon which one can conjecture a canon, the Rabbinic Biblical Canon contains elements that were unanimously agreed upon, and others which were still not yet included.

Although unanimity is nearly impossible to achieve, for practical purposes, the Tannaitic sages needed an agreed-upon canon in order to be able to refer to a single primary text based upon which they created their laws and ultimately the Mishna. This canon, intact, was picked up by the Amoraic sages. For the different editors and authors who contributed to the formation of the BT, there was a single Biblical text upon which they relied. This is in contrast to the general difficulty in seeking unanimity of selection in different canons. Pursuing such unanimity over time requires each new assembler of a canon to create a new one. Once he does so, then he has fallen into the trap of creating a canon, which cannot possibly be definitive, such as is the case with Harold Bloom. Even more ironic would be the temptation to pursue a populist or popular notion of what a
canon might be, and thus to purposefully look away from the more intellectualized
canons that exist; and thus also to minimize them and pursue a notion of canon that might
break down such paradigms.\textsuperscript{38} Even without getting into the psychology of an assembler
of a canon or anthology, there is certainly a school of thought “that there are no canons
and never have been.”\textsuperscript{39} And this more easily applies to the contemporary literary and
legal canons, where there is no need to create such a definitive and final and unanimously
agreed-upon canon. The rabbinic tradition appears to avoid this problem with the story
about the counsel at Yavneh. With religious canons, including the Rabbinic Biblical
Canon, things are quite different; we have books called “The Bible.” Even though there
are different versions, certain groups such as the Rabbis of the Babylonian milieu all
worked within a purely unanimously agreed-upon Biblical Canon.

Similarly, a final version of the BT emerges at some point, which is unanimous in
the make-up of its tractates, and to a lesser degree, the sugyot within those tractates.
Variances in versions\textsuperscript{40} make it clear that there was not the purest of unanimities during
the earliest periods after the formation of its general structure and the sugyot comprised
therein. By the time several centuries had passed, and the printing press came into play,
the text of the BT evolved into a final, fixed status. I would like to speculate based upon
notions of unanimity’s relationship with canon in the BT on two levels: the first concerns

\textsuperscript{38} Botrel,“Popular Canon,” xxix. Botrel uses the language of “contempt for oneself” in describing such
scholars who would rather pursue a popular case, but are mired in the intellectualism of their own pursuits
(and acquired skill).

\textsuperscript{39} Harris, “Canonicity,” 120.

\textsuperscript{40} It is important to note that nearly all variances occur on the ‘micro’ level of the word or the phrase within
a sugya and not the entirety of the sugya itself. Certainly, there is little debate, if any, regarding which
tractates are to be included as there is with books in the Bible.
the unanimity of individual sugyot and their inclusion in the final work, and the second concerns the inclusion of memrot within the sugyot.

At some point, the BT itself becomes a unanimous and cohesive whole where there is absolute agreement on what is part of the canon. The precise moment at which this occurs cannot be known, but by the time of the Geonim, the general consensus is that there was significant unanimity regarding much of the BT. As Halivni and others have suggested, there were different traditions from different rabbinic institutions. The BT can be described as a canon that grew out of an anthology. There is a canonical character to the creation of an anthology, especially as it relates to the BT.

For the purposes of clarity, I further define two different levels: one is on the level (micro, in this context) at which memrot are included in traditions surrounding specific Mishnayot and the other is on the level (macro, in this context) of the larger sugyot (in which those memrot were positioned) and their place in the BT as a whole. The line between what is a grouping or pairing of memrot and what is a fully formed sugya might be blurred at certain junctures. At those junctures, one possible way of handling the matter is by viewing the micro level as being more directly connected to the content of the Mishna, and by viewing the macro level as deviating from the content of the Mishna and moving on to tangential issues that arise in the context of the primary discussion. In

41 Even Talya Fishman, who argues for a late “canonization” of the BT as a whole, does not argue against its achieving its near final textual form by the time of the Geonim. Fishman, People of the Talmud, passim.

42 David Halivni, mevo’ot l’Mekorot u’Mesorot, (Jerusalem: Magnes Press, 2009), 32.

thinking about the micro level, it is worth imagining the goings-on in a rabbinic institution during the second, third, fourth or even fifth Amoraic generation as they pass on and formalize Amoraic traditions that they are going to associate with specific parts of the already fully-canonized Mishna.

In order to discuss how one might wish to imagine the second, third, fourth or fifth generation rabbinic institution, I would like to point out (again) that I assume here and everywhere in my dissertation that there were more positions on many halachic matters discussed in the BT than are recorded in the BT. Here, I would like further to posit that it was in the context of the rabbinic institutions of the middle Amoraic generations that some were formally recorded and others were not – to be clear, not in the final version of the BT, but in the formal transmission of the specific institution, as it is ultimately these local traditions which come to comprise the BT as a whole. Further, more than likely and reasonable to assume, the one(s) who served as arbiter(s) at different rabbinic institutions might have chosen different sages with whom to associate specific traditions; some tradition-to-sage associations may simply have been known and available to one institution but not another. This is often reflected in the BT, where multiple sages are associated with one tradition; one is a reflection of this local canon, and the other is a reflection of that one. This can also be informative in terms of

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44 Halivni explicitly offers that there were heads of academies who were excluded from the text of the BT. He bases this on the listing of rabbinic heads mentioned in Iggeret Sherira. While one can argue that they had nothing to contribute, the idea of “nothing to contribute” can also be a form of “excluded from the text.” See David Halivni, “Criteria of Stammatite Intervention in Aggadata,” in Creation and Composition: the Contribution of the Bavli Redactors (Stammait) to the Aaggada ed. J. Rubenstein, (Tübingen : Mohr Siebeck, 2005), 342. Hyman Klein (“Gemara Quotations in Sebara,” JQR 43: 342-343) makes a similar point that Amoraim (and Savoraim) are taking part in a selective process when deciding which Amoraic material to in include in the corpus.
understanding what happens when more localized canons of halachic positions must be combined together in the process of creating a comprehensive – more global – canon; instead of selecting the sage and tradition of one rabbinic institution, the later editors/authors of the evolving BT associated multiple sages with specific traditions.\textsuperscript{45}

While speculative, the above arguments regarding the micro level of an evolving BT canon are far more reasonable when dealing strictly with variables, which include simple memrot and the sages with whom they are associated. However, once we take into account the \textit{shaqla v’tarya} and other Stammaitic elements, the argument takes on a whole different dimension, since in the final form of the BT there can only be a single narrative weaving all the different memrot together. Inclusivity with respect to apodictically presented sources and traditions is difficult but manageable; inclusivity with respect to a narrative, the \textit{shaqla v’tarya}, and other Stammaitic elements is a far more complex proposition, although not absolutely impossible. One solution to the possible issue of inclusivity regarding the \textit{shaqla v’tarya} is simply to have used different \textit{shaqla v’tarya} from different institutions in crafting the final corpus of the BT.

In this context, it is worth mentioning the possibility that within the rabbinic institution, their \textit{shaqla v’tarya} with all its nuance and verbiage was canonical to them, but not outside their walls. This is to say that each rabbinic institution would have had its own evolving conversation around canonical rabbinic positions, such as those coming from the Mishna or from other Tannaitic sources, and as time progressed, from the earlier

\textsuperscript{45} I discuss possible reasons for why this is the case in my chapter on multiplicity (Chapter V). There, I argue that multiple voices create greater acceptance since there would be a greater number of people who would be able to identify with the work as a whole because of their identification with a specific sage.
Amoraic sources. That evolving conversation becomes the formal *shaqla v’tarya* only of that particular institution. This would fall in line with Halivni’s contrast between the informal *shaqla v’tarya* that was transmitted, but not as part of the formal tradition, and the raw, apodictic halachic positions. As opposed to pure halachic traditions where the substance of the position might have been canonical across different rabbinic institutions but not its verbiage, the *shaqla v’tarya* is defined by the language it deploys as much as it is by the ideas it attempts to convey.

In thinking about the macro level of the BT as a canon, there are the sugyot which comprise the material that becomes – over time – canonically associated with specific Mishnayot. The Mishnayot are already part of the Mishnaic canon, which can be broken down into orders, which include tractates; the tractates include chapters which are comprised of Mishnayot. The Mishnayot themselves are broken down into different apodictic halachic statements that were pieced together in the creation of the Mishna. Once whole, and in the tractate, the Mishnayot were then in the position of being the canonical centerpiece around which the sugyot clustered. The starting point in the canonicity of the BT is the earliest association of post-Tannaitic, Amoraic halachic traditions with the formal, highly canonized, and firmly fixed Tannaitic Mishna. The end point is where the sugyot of the BT and the Amoraic traditions they contain are entirely textualized in fixed language and also firmly associated with a specific Mishna (or

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46 The creation of the Mishna presents its own set of questions, which I do not address here. I understand that when discussing the assembly of the Mishna, that it operates in different ways. There is an assumption that Rabbi Judah assembled the entirety of the Mishna in a relatively short period of time, and included the compendium of Mishnayot of individual tannaitic sages; while the details of the who and where is important, more important is the question of the speed with which it became the text that became sealed as the Mishna. Thus, it is very difficult to address in such a cursory manner the issue of whether to look at chapters, individual Mishnayot, or entire tractates.
Mishnayot); moreover, a defining quality of the endpoint is where the BT and the Mishna are treated with the same degree of charity, and can thus be described as possessing very similar – if not the same – degree of canonicity.

This association between a Mishna and formally transmitted Amoraic traditions is the basis for the ‘macro-’ level canonicity of the BT. When looking at a sugya, one can ask – as we did earlier – about how the different traditions, sources, and Stammaitic elements came together to form the sugya; one can also ask about the manner in which a sugya is incorporated in association with a specific Mishna.\(^47\) There is room to view the sugya as a canon of the traditions and Stammaitic elements that are included within it, and at the same time to view the BT as a canon of a multitude of sugyot. Conceptually, this would not be that different from a canon of western literature including the works of Plato, and for the idea of Plato’s works to be a canon of Plato’s dialogues. Essentially, within the broader rabbinic canon, this type of hyper-macro to hyper-micro scale exists: just as tractates are part of the BT canon, so too is the BT part of the rabbinic canon; and conversely, as described above, the tractates can be broken down into ever smaller parts, almost including the level of the individual word.\(^48\)

The goal in defining canon was to set up the idea that degrees of canonicity exist on different levels and in different ways in the BT. By understanding these, we are better positioned to establish what goes into the highest degree of canonicity: the canonicity of

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\(^47\) This is especially critical when looking at sugyot, or parts thereof, that appear at multiple points in the BT. So called “מהלכתי סוגיות” (cognate sugyas) are an example. See Y.N. Epstein, *mevo’ot l’Sifrut ha’amoraim* (Tel Aviv: Magnes Press, 1962), 99 – 101.

\(^48\) When I analyze texts, it is partly for this reason that I begin with the word, and provide my analysis with the word as the springboard.
the sealed text which reflects a sealed tradition, and in the case of the BT, its source as well. I have drawn upon definitions of canons of literature, law, and the Rabbinic Bible in order to create a framework from which it is possible to glean an understanding of what canon and the BT might mean. While the Rabbinic Bible offers insights into what defines an absolutely fixed canon, the contemporary literary and legal canons allow us to think in more flexible terms about evolving canons, and canons which have not yet been fixed substantively or linguistically. While I leave the primary discussion regarding plurality to the next chapter, in closing this chapter, it is worth noting that all three canons possess a certain quality of plurality. I have hinted to this, above, and feel that it is the appropriate point of departure before embarking on a discussion of plurality in the BT.

The highest degrees of canonicity emanate from the plurality of voices that are included within the final version of the canon. The idea is that there are not only a plurality of voices contained within the narrative of the BT, but also many voices that remain equally authoritative regarding the same traditions because of a lack of dispute resolution in many sugyot. This comfort with unresolved dispute is in a way at odds with the common notion that the pursuit of canon is also the pursuit of something resolved.49

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49 Sergey Dolgopolski, *What is Talmud? The Art of Disagreement* (New York: Fordham University Press, 2009), 16-20. It is also worth noting that Dolgopolski (Dolgo) also argues for an analysis of the text removed from a chronology. Instead of focusing on chronologies, Dolgo’s goal is to read the text as also expressing a philosophy, and that a certain rationalism can be found therein that elevates it to this status. This type of reading is precisely the sort of reading that becomes possible when looking at texts without the obsession over chronology and layers and “original sources.” I attempt to find a different type of meaning which in no way is an attack on Dolgo’s project, which must be expanded upon. Rather, different types of readings are all valuable and add to how we view meaning and how we understand the text of the BT. Dolgo, because of his background in Philosophy, approaches the text naturally and without the preconceptions with which more traditional students of the BT are occupied, without an obsession with chronology and periodization. While this is not the place to go further into this matter, it is worth looking at Dolgo’s book for a discussion on the broader idea of Talmud and chronologies of sages who commented on it in the millennia after the Amoraic period. As one example (page 134) Dolgo analyzes a specific
This is an area not discussed above and that applies to the BT in a way which it does not to the above three canon types. As discussed above, when viewing the BT as a canon of sugyot (and not necessarily as a completed work within the broader rabbinic canon), one will find that they are unresolved in two ways: (1) within themselves; and (2) in relation to other sugyot. Within many sugyot, there are multiple halachic positions that are not only mentioned, but that are also left standing at the end of the sugya. Among sugyot in the BT, there are sugyot that contradict one another not only in the substance of the ‘bottom-line’ halacha, but also in the source associated with the particular halacha – meaning that in one sugya a particular Amora will argue one position on a given halachic matter, and in another he will appear to argue the opposite position. These types of unresolveds are canonical in terms of their place in the BT, and are part of the fabric of the text. Without allowing for a plurality of voices to become canonical, the BT is quite a different enterprise.

sugya regarding Shmuel, and seamlessly drifts between the medieval commentaries and the text, and pays no attention to chronology in his pursuit of meaning.
Chapter IV

Pluralism

As I do when I am otherwise unsure of how to begin to define a term or commence a chapter, I resort to the Oxford Dictionary for a definition. It defines pluralism as “a condition or system in which two or more states, groups, principles, sources of authority, etc., coexist.” While this Oxford definition can apply in a range of different arenas such as politics, culture, and philosophy, the focus of our attempt to understand pluralism in the BT is on legal pluralism and to a lesser extent on religious pluralism. The BT was crafted at a time when the idea of halacha as the dominant law (of a land or state) was far from the minds of its creators; this is outside of the theoretical world in which halacha is dominant. The BT therefore can be viewed as an example of a legal system that is easily absorbed into a dominant law in a state where legal pluralism is possible. It is structured in such a way that it readily can conform to the demands of a broader, more dominant legal system. Additionally, an essential quality of the BT is the multiplicity and plurality of voices that permeate its pages. This plurality refers to the actual legal positions and sources, traditions, and disputes associated therewith. When discussing multiplicity or plurality, it is also a reference to the plurality of sources of authority in the text of the BT. Such sources include not only the named authorities but also the anonymous Stammaiteic elements. The goal of this chapter is to offer a general description of pluralism, its manifestation in the BT, and the manner in which it impacts how a reader approaches the text.

In establishing a definition, I break down pluralism into two very general types in such a way as to best shed light on the phenomenon in the BT. Within these two general types, I will be able to plug in relevant scholarship so as to give greater texture to my deployment of the word (and concept) plurality. The two types can be described as follows: (1) the first is ‘inter-’ in the sense that it is about a pluralism of different – and possibly competing – systems co-existing in the same time and space; and (2) the second is ‘intra-’ because it revolves around the pluralism of legal (or other) positions co-existing within what is seemingly the same legal (or other) system. Similar to how the BT relates to canonicity and is canonical in two ways – it is both part of a broader rabbinic canon and itself a canon of sugyot – the same is true for how the BT can be defined in terms of its legal pluralism. It is part of a broad pluralism outside the walls of the institutions that create and transmit them, and thus an ‘inter-’ pluralism. The BT is a system capable of operating alongside other systems, and in its way carrying and asserting authority as well. It might be said that it possesses an ‘intra-’ pluralism because of both the number of sources that are almost forced into different sugyot as well as the number whose positions are still acceptable at the resolution of the sugya’s argumentation. Having asserted the above, my overall conclusion is that the evidence does not really point to multiple legal systems between and among the different Amoraic (and Tannaitic) sages; rather, there is confirmation that the text purposefully puts forth a

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2 In their recent studies, Secunda and Elman have certainly demonstrated that the BT was not standing alone as a legal system in its time and place. See for example Yaakov Elman, “Returnable Gifts in Rabbinic and Sassanian Law,” *Irano-Judaica* VI (2008): 139-184; Idem., “Toward an intellectual history of Sassanian law : an intergenerational dispute in ‘Herbedestan’ 9 and its rabbinic and Roman parallels,” in *The Talmud in Its Iranian Context* ed. by Carol Bakhos and M. Rahim Shayegan (Tübingen: Mohr Siebeck, 2010), 21-57; Shai Secunda, “Reading the Bavli in Iran,” *Jewish Quarterly Review* 100,2 (2010): 310-342; Idem., “Talmudic text and Iranian context : on the Development of Two Talmudic Narratives,” *AJS Review* 33,1 (2009): 45-69. This list is not meant to demonstrate whether or not or the degree to which the BT actually operated alongside other systems. It is meant to demonstrate that it can.
multiplicity of options regarding most halachic issues that come up. This multiplicity of options is still operating within a single legal system, one which is tolerant (or even encouraging) of a range of positions regarding a given halachic matter.

When exploring pluralism while looking for meaning in the BT and its sugyot the emphasis should be on the multiplicity of voices and the possible intra-pluralism, which more often than not is merely a reflection of a multiplicity of voices in the sugya and not a reflection of intra-pluralism. This is almost a dismissal of the idea of there existing an intra-pluralism within the BT in favor of the simpler and more useful multiplicity of voices. Many of the ideas and concepts that are relevant to pluralism from the inter-perspective can be reframed and applied to the intra-pluralism of the BT. The most easily accessible material that deals with pluralism generally comes at it from the inter-point of view, and this is primarily how pluralism has been framed. Further, because this type of pluralism is easier to define, I focus first on pluralism from this vantage point, of the inter- in law broadly. Obviously, as in my discussion of canonicity, there is a ‘western’ bias in my discussion and the materials from which I try to draw conclusions regarding a description of legal pluralism, and how those descriptions are relevant to the BT and the nature of its pluralism and multiplicity of voice.

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3 I maintain the category (and do not dismiss) intra-pluralism because of Suzanne Stone’s arguments regarding halacha (and the BT) being a form of legal pluralism. Clearly, she is not referring to my inter-pluralism when she discusses pluralism, and she must be discussing intra-pluralism. As I discuss, she points to the Noahide laws and to references to non-Rabbinic courts as demonstrative of legal pluralism in the BT. She claims that these are evidence of different legal systems existing side by side. This is legal pluralism of the inter-sort, if it is to exist in the BT. Multiplicity is a reference to multiple legitimate positions on any given halachic matter. See Suzanne L. Stone, “Sinaitic and Noahide law: legal pluralism in Jewish law,” Cardozo Law Review 12 (1990-1991): 1157-1214.
My approach to defining the BT as a legal system which can fit into a world where there exists legal pluralism requires several smaller discussions whose end goal is to posit that the BT fits into the world of legal pluralism in a dual way: (1) that it is a legal system capable of being – and at times actually is – a law that operates side-by-side with formal state law; and (2) that it also sees itself as being – or as having the potential of being – a supreme law that allows for legal pluralism even where it is the dominant law, similar to Stone’s idea of legal pluralism in the BT. To that end, I attempt to discuss some contemporary notions of what is legal pluralism. While such a discussion can mean many different things, I try to unpack the definition of what law is and the breadth of what systems of governance or even lesser human controls can also be construed as law. My goal in doing so is to determine whether a legal system is legally pluralistic or capable of legal pluralism. The definitions of law I draw upon include those written by scholars dealing with contemporary law and modern legal systems. Nevertheless, some of the principles gleaned from looking at contemporary theories of legal pluralism and law as well as the relatively different ways scholars in those fields have of articulating law serve to shed light on the BT and its relationship to legal pluralism as a concept, specifically on the inter- level. I also look at some of the

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4 Stone, “Noahide Law”.

5 When I speak of the capacity or capability of a law, legal system, the BT, et alia for legal pluralism, I refer to its potential more so than its actual state in any particular moment. For example, even Rabbinic Law can be considered capable of legal pluralism, but in a world without non-Jews, such legal pluralism would be unnecessary and only the capacity would be left. This can also be said for strains of Islamic and Christian law.
scholarship from within Jewish studies, and specifically from legal theorists who work in the worlds of both rabbinic law and general legal theory.

Generally speaking, theory speaks to ideas that emanate from the best evidence available to us. Often, that includes a combination of different types of evidence; the literary, the historical, and the legal are the ones that come to mind when approaching the BT. With respect to the BT, those three types of evidence have all emerged from the BT itself for scholars who are trying to understand and analyze the BT outside (as much as is possible) the more traditional paradigms through which the BT is often viewed. Beyond that, there is very little in the way of extra-BT evidence to speak of, and we need to look to the text for clues, since the overt message of the text carries with it only one point of view of its place and context within its formative time and space. For the purposes of this chapter, the focus will primarily be on the more conceptual aspects of the BT and its place within a legally pluralistic state.

There is little known about the actual history during the formative years of the BT, but even without the full history, some application of legal theory can inform our understanding of the matter. Beyond the fact that little is known about the history of the BT, little attempt has been made to unearth actual historical evidence that could inform our understanding of the BT’s place in the relatively legally pluralistic Zoroastrian world. The most promising is the work on parallels with Zoroastrian law recently undertaken in

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6 A dissertation can be written on the topic of why modern scholars of the BT still rely upon the periodization created by Sherira, who operated firmly within the tradition and specified the halachic importance of each period. When discussing Stamaitic activity, I discuss this matter at some length, questioning why Halivni insisted on plugging his Stammaitm into the existing periodization paradigm.
a meaningful way and inspired by Yaakov Elman. Very little has been written about the BT as a system among others, although Elman comes the closest to addressing this matter in his work on the BT and its legal parallels in contemporary Zoroastrian law. What we do know is that the BT was in no way authoritative beyond the Jewish communities in Babylonia who studied it, and even in that context, its level of authority among the community is something that can only be speculated. Even asserting that the BT ‘competed’ with any truly authoritative legal system might be a stretch. It is, however, likely that the BT and the traditions contained therein did possess some amount of authority for at least some members of the different Jewish Babylonian communities. Laws regarding the Temple would be nearly irrelevant, and laws regarding land sales might be subject to non-Talmudic local laws. Yet laws regarding the Sabbath, circumcision, and even marriage and divorce might have fallen within the purview of a Rabbi and the BT traditions to which he referred in order to adjudicate a particular halachic matter. Within the sugyot of the BT, such a parsing of the text’s (or the Rabbi’s) authority is in no way hinted. Betrothal, Sabbath, contract, and Temple laws are all delivered with the same authoritative voice and in the same narrative style.

Legal Pluralism

In discussing legal pluralism beyond the pure conceptual realm of the BT, the past 20 years have seen a significant rise in the number of deployments of the concept and the

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7 See above note 2.

8 It is worth noting some examples of texts dealing with these matters and trying to demonstrate how the language and style of resolution are indistinguishable. To my knowledge, there is no scholarship attempting to discern among the different types of authority that would have existed regarding the different laws ranging from those the rabbis most certainly controlled (Sabbath and circumcision) and those they certainly did not (contracts, land ownership, capital cases).
degree to which it is part of the general discourse regarding law. In his article seeking to
demonstrate the value of a non-essentialist view of legal pluralism, Brian Tamanaha
points to several statements regarding legal pluralism made by contemporary scholars.  
He discusses how it is “a central theme in the reconceptualization of the law/society
relation,” and “capable of identifying authentic legal phenomena operating on a global
level,” and how “this pluralism is so commonly accepted that it can be assumed,” and,
most powerfully, stated that, “anyone who does not [accept legal pluralism as a concept]
is simply out of date and can safely be ignored.” Tamanaha goes on to provide another
observation that is uncanny in its relevance to students of the BT: “The core credo of
legal pluralists is that there are all sorts of normative orders not attached to the state
which are nevertheless ‘law.’ These non-state legal orders range from pockets within the
state legal systems where indigenous norms and institutions continue to exert social
control, to the rule-making and enforcing power of corporations and universities, to the
normative order which exists within small social groups.”

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14 Tamanaha, “Non-Essentialist,” 298.
Addressing legal pluralism is difficult while avoiding modern political terminology inextricably connected to discussions of law. Tamanaha uses the word ‘state’ to define the apparatus which is in control of the law, and conversely to which the law and its guardians are beholden. While imperfect, the state can successfully represent the idea of the dominant law. The strength/weakness of the state in relation to the strength/weakness of communities with other ‘legal’ or cultural obligations represents the degree of dominance. I am aware of the tension of using terms such as the ‘state’ in discussing cultures which predate the formulation of such terminology. Nevertheless, there is little choice when discussing the relationship of Rome to Roman Law; in the most basic abstract terms, Rome is the state. Roman Law is dominant in Rome. Similarly, in a legal context, the Sassanid Empire and its law is best understood as the ‘state’ and its apparatus, respectively.

Tamanaha is approaching the task of defining law from a path that is acutely non-essentialist and therefore he still needs to find features and a shared ‘language’ that is common to all forms of regulations. Tamanaha best defines his form of rejecting essentialism in stating that it “assumes that law consists of a singular phenomenon which can be defined, and it assumes that law is by nature functional. This essentialist approach to law gives rise to unresolvable analytical and instrumental difficulties that inhibit the

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15 One need not look past Adam Smith’s Wealth of Nations and Karl Marx’s Kapital for basic use of the term.

development of the idea of legal pluralism.”¹⁷ This non-essentialist approach supports the removal of obstacles that might slow down the application of legal pluralism.

Specifically, for the scholars of the BT who see themselves also as legal theorists, this legitimizes the idea that the BT can be law and part of a pluralistic legal system. The first step, however is establishing the legitimacy of legal pluralism itself. In this process, Tamanaha’s words resonate with the BT scholar, and at times it seems as if Tamanaha is speaking of the BT (which he is obviously not). Even the traditional scholar of the BT – or one can say especially the traditional scholar of the BT – would sense the applicability of Tamanaha’s broad definition that “Law is whatever people identify and treat through their social practices.”¹⁸ Even more relevant to our discussion is Tamanaha’s reference to religious law as an example of what he is conveying in the above quote: “and people refer to religious law (or specifically, to Islamic Law, or the Sharia, or the Talmud, or canon law).”¹⁹


¹⁸ Tamanaha, General Jurisprudence, 194. This quote came to my attention where it is quoted by Simon Roberts. Further, it is worth noting that Tamanaha is primarily responding to Teubner in his attack on legal essentialism. While some essentialists can easily consider the BT a legal text, and ‘law’ per se, I have left out a discussion of the debate between the to, and point the reader to Roberts’ article, which succinctly summarizes the essence of that debate. Our goal is to discuss the BT as a work that has the potential for inclusion within a legally pluralistic system, and how this may have manifest over time.

¹⁹ Tamanaha, “Non-Essentialist,” 314. It is worth noting that Tamanaha draws upon the Talmud as an example side-by-side with Islamic law, but he does not offer any detail in terms of the distinctions between the two, specifically that the Talmud was never the official law of any state or government. This is unlike Islamic law, which is designed to be a dominant and singular, and which is also less able to become part of a legally pluralistic society. I argue that the BT is distinct from Islamic law in the sense that it is ‘able’ seamlessly almost to fit into the legally pluralistic systems that will have it.
The above discussion primarily revolves around an analysis of pluralism on the inter-level, and legal pluralism as it is discussed in today’s academy is primarily viewing legal pluralism in this way. Yet it is also possible to view all the different types of systems which govern life that are listed above as part of one much larger legal system which comprises all those different elements, and also includes within it the actual legal system of the state – the legal system as understood in normal conversation. I only make the point in order to demonstrate the ease with which the inter-/intra- paradigm can be deconstructed. Legal pluralists are primarily concerned with contemporary law and its relation to social structures which possess many of the features of a legal system, but are not ‘the law’ in the sense of having a structure that emanates from the state and being enforced by the state or an entity closely associated with it. Also, beyond the categories above, in terms of the legal system in the United States there is the duality of nearly all jurisdictions operating at least under federal and state laws and a great many further operating under the jurisdiction of municipal, county, and/or other set of local laws.

The BT as a text, and as the source for a lived experience, is more than a mere part of a larger social fabric; it too is an organized legal system with an element of enforcement connected to it. We can only speculate on the nature of enforcement during the Amoraic period and the periods that followed during which the BT was still evolving as a comprehensive text. We can, however, safely assume that in some areas of religious life there would have been at the very least an informal enforcement resulting from the social realities within the community, which was not tolerant of certain types of violations and would have reacted to them in some way. In many ways, the BT is
designed to operate as the ideal non-primary legal system in a world where a dominant legal system – one affiliated with and enforced by the state – allows for the promulgation of legal pluralism within its realm. Because of the manner in which the traditions are submitted so relatively humbly and without force – nearly always adjacent to an opposing position – the text of the BT does not comes off as harsh or as demanding of its place within any society nor within a legal pluralism that might be associated with it.

The BT does not pose any threat of usurping the dominance or primacy of the state’s legal system. This is true both in the moments of its creation, and through the ages. It might offer situations in which adherents to its traditions would have to eschew this or that specific law if it is contradictory to its laws. Rabbis who looked to the BT, both in its formative states and in its final form, did not have the authority – even from the text itself – to challenge existing state law as a natural, day-to-day course of action. The acknowledgement of the impact of the law of the state upon rabbinic authority is evidenced in the BT. An example is found in Bava Qamma 117a, where Rav Kahana slaughters a man who was about to turn in his fellow Jew to the dominant non-Jewish authorities (i.e. to the State as I use the term in this dissertation). Rav, who is present in the story, urges Rav Kahana to leave town and go to Israel because the authorities now care about murder where in the past they might not have. Rav Kahana then goes to

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20 As mentioned earlier, the BT reads as almost purposefully malleable and can thus read as a legal system that can easily co-exist in a society where legal pluralism is the order of the day.

21 Examples might include where the state mandates that citizens must engage in idol worship, which is considered a sin that one should be killed for per Sanhedrin 74a.

22 The text actually states that the new authorities who care about murder are the Greeks, and the ones who did not care about murder were Persians. As the commentators on the BT have pointed, and as Boyarin has elucidated (Socrates and the Fat Rabbis, 186-188), there is very little historical sense in the notion of
Israel to study with Rabbi Yohanan. The story highlights the degree to which the authors of the text – and possibly the historical players in the story to the extent the story reflects history at all – acknowledged the power of the state and the reach of its laws. Under one regime murder was an offense, but one with which one could get away. Under the other regime, as Rav states, murder is considered an offense worthy of the interest (and prosecution) of the state. Conversely, the one who was murdered was killed because of his desire to be overly complicit with state law. It appears from the text that the sages represented therein would be willing to allow a man to get away with murder if that murder was only a violation of state law and not halacha. At the same time, the murder in the story is in response to a Jewish individual acting in a manner that is complicit with state law by turning in his fellow Jew to the authorities of state.

In a world of legal pluralism there can exist systems such as those of ‘domestic law’ which are juxtaposed with those of ‘state law’ where the authorities might clash in more dramatic fashion, and where each ‘law’ and its proponents will attach themselves with full fervor. This contemporary example regarding the tension between domestic law and state law has served as a paradigm within the community of legal pluralists. As opposed to ‘state law’ which is easy to identify and whose accoutrements are often obvious, ‘domestic law’ – if it can even be categorized as law – is murky and not as readily identifiable. In general terms, ‘domestic law’ can be defined as that part of a

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Greeks assuming such authority from the Persians at this time. If anything, as Boyarin points out, it would have been the other way around. The Persians assumed authority from the Greeks. Further, the entire history of this story is shrouded in dubiousness. Yet looking at the story as a legal narrative allows for a literary reading while still maintaining a significant legal consideration. As I mentioned earlier, the legal considerations are primary in this chapter, but in no way do they diminish (or even usurp) the potential primacy of the literary when operating in other contexts.
familial culture that governs itself through an intuited web of informal and unwritten codes for conduct and even thought.  

There are and have been societies where domestic law is absolutely separate from state law, and they exist side by side, in pluralistic fashion, without any tension; this is obviously made easier where the state respects domestic law and makes little attempt to govern in the areas of the domestic or familial.  Specifically, an oft-cited case in this context is that of domestic abuse; there is the authority of domestic law where the abuse of a spouse is acceptable, on the one hand, and on the other hand the authority of state law where physical abuse of any kind is unacceptable and prosecutable under the law, and this enforcement in the form of legal prosecution is financed and supported by the government.  De Sousa Santos’ definition of law – which allows for some vicious behavior under domestic law to be defined as law – gives a certain credibility to those who value their immediate domestic law by giving it the title of law and not classifying it in some other way.  

The laws in the BT, and more importantly the degree of authority it exudes vis-à-vis the law of the state and the manner in which it mutes it, are in no way as

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23 While the description is my own, it is my ‘nutshell’ definition based upon my reading of de Sousa Santos’ work regarding legal pluralism, and specifically his general theory that significantly broadens the spectrum of what can be considered law. See Boaventura De Sousa Santos, Toward a New Legal Common Sense: Law, Globalization, and Emancipation (London: Routledge, 1995).

24 In one of the defenses written by Lysias, Euphiletus defends himself in the murder of Eratosthenes, claiming that he cannot be found guilty of murder under Solon’s laws because the man he killed had an adulterous relationship with his wife. Solon’s laws do not recommend (nor can we know if they condone) the murder of an adulterer; they simply don’t find the murdered guilty of murder because of the circumstance. Athenian law is structured to dismiss charges against citizens whose domestic law demands this type of murder. For the defenses of Lysias see Kathleen Freeman, The Murder of Herodes and Other Trials from the Athenian Courts (New York: Norton, 1963), 43-53.

25 De Sousa Santos, New Legal Common Sense, 428-430.

26 Tamanaha, “Non-Essentialist,” 304.
threatening as certain domestic laws might be. It also has little in it that would allow for a reader to construe the BT as inspiring its students and adherents to take action harmful to the state under normal circumstances.

Thus, as alluded to above, there was little danger to the legal systems of some states in allowing the BT to develop and evolve as a self-contained legal system, and not just as a compilation of customs. While I can only speculate, it is likely that during the process of its creation, the BT was not under any pressure to classify itself as something other than law. I attribute this to the ease with which it can be a safe system within a legally pluralistic society. This is especially the case for legal pluralists of the de Sousa Santos ilk, who freely label almost any set of behavioral codes as law and as part of the broader societal legal pluralism. Within the paradigm of de Sousa Santos, the BT need not undergo any analysis in order to be deemed a legal system, especially where there are actual people who still rely upon it as authoritative for guidance in their lived lives.

A legal pluralism that views virtually every behavioral structure as law clearly has its critics, who will work toward limiting the scope of the definition of law while still maintaining their place as legal pluralists. One school of thought regarding limiting the scope of law, yet still remaining within the realm of legal pluralism, limits law to that which is articulated. The boundaries of law are far vaster than what a purely essentialist view would allow, and is inclusive of anything that is binary in the legal/illega sense.27

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It is the language surrounding those things that control human behavior that defines whether those controls can be defined as law or not. While such limits may preclude things such as domestic law from the realm of law, it still firmly leaves the BT as a legal system. Regardless of its actual authority in lived lives, the BT conducts all its dialogue very much as a piece of legal work. It discusses behavioral suggestions as much more – it discusses them as law even when there might not have been available to the text (and its authors) the enforcement that it might require. The BT possesses that unique feature in that its discourses and narratives are loaded with legal implications and consequences, yet it is still a valuable cultural and halachic document often operating without any formal enforceability regarding those suggestions. Even where law’s definition starts to become limited in a world where legal pluralism reigns, the BT still remains unthreatening and is able to maintain its place in the orbit of legal systems acceptable within a state where other laws are more dominant and primary.

The scope of the definition of law is impacted by attempts at expanding the idea of what can be considered law within a state where legal pluralism can be said to appear to exist. On the inter- level, the more broadly one defines law, the easier it is to posit the legal system of the BT as part of the legally pluralistic world. One method which can be utilized in determining the degree to which law is broadly defined is by applying theories of law that seek to detach law from the state. This first requires a definition of law that can work without drawing upon the language that conjures images of, or requires references to, the state. Such an extreme view certainly – after moving past such radical definitions and conceptually returning to the reconsideration of the state and its law as
actors in the most broadly defined notion of law – would have room to include a text such as the BT that carries many accoutrements of a formal legal system. To get at the most extreme of these notions of law separate from the state or government, one can look at how they seek to uncover what law might have been like in a time before the existence of the state as a formal arbiter and enforcer of the law. In a world without a state, there are still laws – even if they are informal, unwritten, and enforced in a less than highly consistent manner. This is the position promoted by Rodolfo Sacco, who explicitly states that it is necessary to “trace the origins of the basic structures of law from beyond the recent past covered by conventional legal history.”28 He continues by arguing that, “law preceded any individual design… and lived, even without a lawgiver.”29

Such an approach certainly sets a very clear path for a scholar to argue for the BT to be considered law in any society, and especially in one defined by legal pluralism. For many a legal theorist interested in the BT’s place among legal systems operating within a legally pluralistic society, such a broad-based conclusion is not sufficient. This type of conclusion, because it nearly totally deconstructs the meaning of law, is essentially lumping the BT together with things like domestic law and the rules that might have governed a community of prehistoric homo-sapiens or even the caves where Neanderthals or homo-erectus conducted their affairs and practiced whatever social rules they had – social rules that are now a form of law on par with that of the state and of the


BT. The scholar of the BT, and especially the traditional scholar of the BT, would prefer the narrower definition of law, and would still like to maintain the conceptual viability of legal pluralism. They would also like to see the BT defined as a part of that legal pluralism. This is their preference regardless of whether we are discussing different situations such as the following: the contemporary western milieu in which we think about and express our theories about the law; the historical medieval places where Jewish courts relied on the BT as central to the adjudication of religious matters and disputes; or in a more ‘imagined’ world in which the BT is dominant and was created and evolved into the authoritative text it ultimately becomes.

Roberts, in his article “After Government? On Representing Law Without the State,” offers a perspective on the law that explores such a detachment of law from the state. Nevertheless, in the end he concludes that, “it is very difficult to specify in a convincing way a secure grounding for ‘law’ if we try to shake it free from particular forms historically associated with the state.” Roberts’ fundamental fear is that “we risk losing all sense of what it [law] is” if we broaden the scope of its definition and “extend the space claimed by jural discourse and institutional forms.” Because such broad definitions allow for interlopers into the legal system who can claim as legitimate a part of it as possessed by the state and its instruments, there is greater concern for Roberts and contemporary scholars than for those interested in non-contemporary legal systems. Yet this concern sheds light on the way in which we can perceive a corpus like the BT. As

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alluded to above, the BT was able to find its way into the legally pluralistic world – and possibly to have contributed to its legally pluralistic quality – because in certain specific periods and places it did not pose problems of this or that type of law being so incongruous with state law that it created a conflict. It posed no real threat at those times and places regarding certain sets of laws so that there was no need for the state to attack the legitimacy of calling halacha, and specifically the BT, a legal work and ultimately being referred to as law.

In analyzing the BT within Roberts’ paradigm or any other that requires that the state be part of the definition of law, it is possible to draw a distinction between how those other non-state laws are or are not operating within the state’s legal system. A set of laws that is not explicitly part of the state’s official and formal law can still be considered as operating within the state’s legal system; this happens all the while it is operating outside of the state’s formal law. This hinges on whether the state is sanctioning specific aspects of the law to other courts or if the state is merely ignoring certain aspects of life and at least some ‘other’ social orders in its midst. It is the difference between the following: (1) a state which is actively authorizing certain institutions, which are outside the purview of the state or its formal instruments with state-sanctioned legal powers; and (2) a state which is not authorizing any institution formally, and quite possibly is leaving certain aspects of the governance of life to customs and regulatory bodies not sanctioned nor recognized officially by the state. In (2), those customs, rules, regulations, etc. cannot be defined as law because they are specifically not a state-related affair; at best the relationship between the state and this ‘other’ law is one
of some degree of tolerance on the part of the state and its instruments. In (1), the state is bringing the laws of the ‘other’ – in our case, the BT – and its adjudicative structure within the orbit of its more general legal system. The BT is more likely than not to be tolerable enough to a dominant legal system for at least parts of it to be sanctioned by the state, and for rabbinic authorities to be authorized to adjudicate matters related to those parts. Even if the state is not calling it or recognizing it as law in the sense that the official law of the state is law, it is still within the sphere of the legal system of the state, and therefore it can still be defined as law.

While the BT clearly survives as and is a text for the ages, during the time of its creation and early transmission it was meant to carry a certain authority regarding some practical day-to-day issues directly related to its time. It also was not created to be a state-sanctioned set of laws during this time, since those who created the elements of the evolving BT were not in control of the state and had no misconceptions about this matter. It is reasonable to posit that the BT is a continuation of the Mishna in the sense that its text was created in the spirit of the Mishna with respect to the notion of an ideal state where rabbinic law would be the law of the state; a state which would include a Temple and fields in the land of Israel, and priests to whom pure tithes could be given. But there is also recognition of the limits of the powers of the text and of those who crafted it and also those whose traditions and halachic positions are included therein. Those limits, as suggested above, revolved around purely religious matters where the state would have little or no interest in getting involved, such as betrothal and

33 Again, I refer to Elman, Secunda and their fraternity of Irano-Talmudists who are undertaking, sometimes unknowingly, the task of teaching us about the primary state sanctioned legal system to which the BT can be juxtaposed, thus setting up a paradigm of pluralism, in the inter- sense.
circumcision. It was created – perhaps not for the purpose of being part of a greater pluralism – in such a way that it seamlessly fits into a plurality of legal systems that can be defined as tolerating legal pluralism.

It also is textually and substantively equipped to be able to control as many legal matters as were available to be controlled; generally, these were situations where such control outside the purview of the state posed little or no threat to the state. Essentially, regarding religious matters, the sages were free to rely on a different set of laws, while at the same time looking to the state regarding matters such as taxes owed to the state, land ownership, and capital cases. While the BT addresses how such laws of the state must be observed, the tendency of the BT is not to dismiss state law. An ideal example of this is the concept of *dina d’malkhuta dina* (state law is law). There are also periods and places where the Jews were left to their own devices to legislate and adjudicate a range of cases that extended beyond the purely religious and into matters that might otherwise fall under a state’s civil law. This was true for a number of medieval Jewish communities where they were permitted by local authorities to adjudicate according to their own legal system, and thus they adjudicated according to halacha, with the BT serving as the centerpiece among the legislative works of the Rabbinic Canon.

34 This concept, attributed to the Amora Shmuel, appears several times in the BT see for example Bava Batra 54b, Gittin 10b and Bava Kama 113a.

35 Suzanne Stone discusses this in a footnote in her article “Sinaitic and Noahide Law,” 1164. Additionally, Talia Fishman in *Becoming the People of the Talmud* (Philadelphia: University of Pennsylvania Press, 2011), 122-154 goes into greater detail about this phenomenon in her attempts to define the BT as becoming as authoritative as would because of its treatment on the part of medieval rabbis who, she argues, were the first to treat the text with the degree of charity until then reserved for the Bible and the Mishna.
It is also from this type of thinking that problems emerge for those who wish to discuss the BT as an example of legal pluralism, and apply that type of language to the study of its text, per Suzanne Stone.\textsuperscript{36} Within this paradigm, inherent to the BT and rabbinic law in general is the fact that most halacha applies only to Jews (Israelites, Judeans, etc.). As far as rabbinic law is concerned, non-Jews are only obligated to obey the seven Noahide laws. Within the system itself, there is an acceptance of the fact that there exist parallel legal systems. While the Noahide laws might be an indication that another legal system can be tolerated provided that certain basic laws are observed, it is clearly the case that a society needs more than just seven laws by which it is to be governed. The BT is accepting of non-rabbinic systems provided that the state is one whose citizens conduct themselves within a nearly universal set of laws. Within the pages of the text of the BT and the institutions in which it was formed and studied, it would appear that the dominant law is the rabbinic one, and that the Noahide laws are simply a guide for how the non-Jew must conduct himself if he is living in a rabbinic state governed by rabbinic law.\textsuperscript{37} As mentioned above, the idea of \textit{dina d’malkhuta dina}, is in itself a sufficient acknowledgement of the potential primacy of the ‘other’ law that is an instrument of the state, where the law of the state is not rabbinic. The lack of any textual Babylonian traditions regarding the Mishnaic order of Zeraim is testament to a certain lack of interest in the subject. This lack of textual interest can also be seen as a lack of authority on matters related to land ownership. Further, the laws do not apply

\textsuperscript{36} Stone, “Sinaitic and Noahide Law”.

\textsuperscript{37} There are different theories regarding the introduction of the concept of Noahide laws within the rabbinic legal system. One theory, mentioned by Stone in “Sinaitic and Noahide Law,” 1164, has the Noahide laws forming during the Hasmonenean period when the Jews were in control of the state and the law, and had to do something about non-Jews in their midst. She also cites Saul Lieberman’s theory that the laws came about as a reaction to the schism created by Christianity, and the need for defining who exactly fit into the category of “fearers of heaven.”
outside the land of Israel, thus further cementing its lack of usefulness to the Babylonian sage of the Amoraic period.

On the face of it, and in the manner in which Noahide laws are often conveyed in some contemporary scholarship, the non-Jew appears to have a simple mandate of observing seven (and in one place of the BT, thirty\(^{38}\)) Noahide laws. Further, except for the prohibition against worshipping other gods, for many, these seven laws are quite reasonable. Beneath the surface of the BT is a far more arrogant look at the role and place of the non-Jew in the theoretical rabbinic world of the BT where rabbinic law is the formal and only law of the state. The legal pluralism implied by Noahide laws for the non-Jew is actually a requirement for the non-Jew to practice many laws applicable only to Jews.\(^{39}\) There is also a limitation on certain due processes mandated for Jews that are specifically not required when prosecuting a gentile. An example is the opinion that a non-Jew does not have the benefit of a warning before being prosecuted and tried for a violation of the law.\(^{40}\) There are also civil and monetary laws where the treatment and

\(^{38}\) Hullin 92a.

\(^{39}\) An example of this is the attitude of the BT regarding a non-Jew (goy) who keeps the Sabbath and according to some any halachot he is not commanded to keep. Sanhedrin, 58b, reads as follows: אֵלֵי לְרֵי נָר שִׁשַּׁמְשָׁמְשׁ חַיֵּי חַדָּמָּה (רָבָּשֶׁר תֵּקָנָה) וְיִשְׁכֹּבָּה לֵמֵי לַא אֶשֶׁבֶת רָבָּה מִלְמַחְתָּה (רָבָּה מִלְמַחְתָּה) רַבֵּי פְּרָטָה אֶפֶלֶל שְׁנֵי בְּשֵׁשָּׁמַת; the translations is “and Resh Laqish states: a goy who rests [colloquially: keeps the Sabbath] is required to die, as it says ‘and day and night they shall not rest.’ And Mar stated: their warning [for transgressing] is their death. Ravina stated: even if [they keep the Sabbath] on a Monday.” Resh Laqish keeps the death penalty to the keeping of the Sabbath and Ravina (rather peculiarly) expands this to keeping the Sabbath on any day. Mar, however goes much further in broadens this completely in order to include all laws applicable to non-Jews. When he says their warning is their death, he means that unlike a Jew who gets the benefit of warning before he can be prosecuted for a violation, the non-Jew gets the death penalty both in this case of the Sabbath, and also if they transgress one of the Noahide laws. It should be noted that this statement attributed here to Mar is attributed to Rav Nahman bar Yitzhaq on 57a. On 57a the statement is juxtaposed with a Braita that implies that a non-Jew does in fact receive a warning for a transgression such as the worship of foreign gods, which is the rule for all violations for which the Jew, if convicted, receives a death penalty.

\(^{40}\) Sanhedrin 58b, see note 37.
obligations to the non-Jew are less than they are when a Jew is dealing with Jew. Examples of this include laws such as interest on a loan, the handling of a lost object, obligations regarding relations with betrothed women, and others.\(^{41}\)

It is difficult to avoid the manner in which the BT in many instances does have a double standard for the non-Jew and even prescribes how the law is different whether the situation is between a Jew and a Jew, a Jew and a non-Jew, and a non-Jew and a non-Jew.\(^{42}\) One such strange double standard is the role of Jewish and non-Jewish midwives and nursemaids in the births and nursing of non-Jewish babies and Jewish babies, respectively. Specifically, a Jewish nursemaid or midwife cannot nurse or birth a non-Jew, and vice versa.\(^{43}\) One might think that the choice of a midwife falls outside the purview of law, but the Mishna and then the BT after it address the matter as a legal one, and not one of custom. Intuitively, one might also think that such laws apply only in the

\(^{41}\) See Bava Metzia 24a regarding lost objects belonging to a Gentile which a Jew finds, and the discussion in Bava Metzia 70b-71a regarding interest on loans.

\(^{42}\) As tempted as I am to write a long footnote about the role of the slave, and the different sets of laws for the slave, I refrain from doing so. Within the internal legal system of the BT, the slave is essentially a variable in the law, albeit one that can become more human through redemption. Nevertheless, the standards expected of the slave fail to include some basic dignities demanded of all non-slaves, Jew and non-Jew. A prominent example, and one worth referencing as paradigmatic of this more extreme view of slaves is from Sanhedrin 58b: “אמר רבי יהודה תענית容纳Cambodia חורך תבון צא מקולו נבר ובליל שירואל לא א א.”

\(^{43}\) Avodah Zara 26a: "הר מצרא לא מילות א [เตรיה] מיתר שמיתנת ב [לזרה] ויהי לא מילות א בトー מצרא פקטי. שמשנים על מצא מיתר. Here, the BT offers additional tannaitic sources beyond the Mishna regarding the prohibition of a Jew birthing a non-Jew. The text then shifts into the typical Aramaic Stamaitic narration that goes beyond the basic prohibitions, and explains how terrible things will befall the woman who engages in such a practice.
theoretical rabbinic state. However, the reasons offered by the BT for the prohibition for Jews revolves around the fear of birthing and nursing a child who will come to engage in foreign worship. In the ideal Rabbinic state, such people would not exist, since the prohibition for the non-Jew’s transgression of this law is death (without warning, according to some). The reasoning of this law can only apply in a world where rabbinic law is not actually the law of the state but where it is imagined to be. Further, in a later part of the sugya, the BT offers a position that would allow for the birthing of a non-Jew where it is done professionally and the midwife is paid for her labor.\textsuperscript{44} The reasoning given there is to avoid eyvah with the nohrim; eyvah is understood as creating ill.\textsuperscript{45} This reasoning is distinct from the first – where the concern is assisting in the creation of a child who will engage in foreign worship – in that the first one still does not even concern itself with the pragmatics of stoking the ire of non-Jews, and especially those non-Jews who control the law of the state. The milieu of the Tannaitic one can be described as both still legislating with the arrogance of state control, and understanding the reality that there is no rabbinic control over state law and that de facto many facets of life are outside rabbinic control – even ones as serious as allowing a foreign worshipper to avoid the death penalty.

The type of reasoning that allows for the consideration of non-Jews without a state-mandated control over them can be perceived as betraying the aspirations of applying these laws in a rabbinic state. Conversely, it can also be seen as recognizing the

\textsuperscript{44} Avodah Zara 26a.

\textsuperscript{45} This is the definition offered by Marcus Jastrow, \textit{A Dictionary of the Targumim, Talmud Babli, Yerushalmi and Midrashic Literature} (New York: J.P. Putnam’s Sons, 1903), s.v. יבשא.
practical limitations of the BT’s influence as a code of law both during the time of its evolution and in periods thereafter when the code served precisely as a non-state law. This highlights for the traditional student of the BT its place as a code that, in almost the best scenario, can be applied only to Jews, and even then only to the degree to which it does not interfere with the legal system of the state. For example, the BT and any legal authority it might have had were cast aside by the state at times when simply identifying as a Jew and not as a Christian was a violation of state law.\footnote{See Amos Funkenstein, “ha’temurot b’vikuach ha’dat she’bein yehudim l’notzrim b’meha y”b’,” Zion, 33, 3-4 (1968/5728), 137-144. (The article was translated into English as “Changes in Christian anti-Jewish polemics in the twelfth century,” Perceptions of Jewish History (1993): 172-201.) Funkenstein offers some discussion regarding the attack on the BT that went hand in hand with forced conversions and expulsions in the Christian world since the medieval period. He also offers some information regarding how at times not of expulsions and forced conversions, the BT was able to operate with some degree of authority.}

Although it is not my interest in this dissertation to unpack this further, it is worth noting that the idea of Noahide laws is only one element in how the non-Jew is treated in the theoretical rabbinic world. More pragmatically, the Noahide laws can serve as a barometer by which to judge non-Jews, and by extension the states that are run by them; the purpose being to determine things such as the degree to which dina d’malkhuta dina might be relevant to that state and the Jews who live in it. The Noahide laws get more attention because of how they are more relevant to the real world in which the BT operated historically, especially in the legally pluralistic states in which it was able actually to exert some influence over the Jewish community within those states. And this may – in part – explain the emphasis on the Noahide laws to the relative exclusion of those laws which would have no practical value outside of a theoretical rabbinic state with rabbinic laws along with the BT at its center.
These two facets of the BT – first, elements such as its discussion of Noahide laws and second, its deployment of *dina d’malhuta dina* as well as its omission of transmitting (and possibly also creating) traditions regarding certain Mishnaic orders dealing with land matters where the sages had minimal if any authority – can be perceived as speaking to the duality of how the BT operates on the *inter*-level of pluralism. On the one hand, there are many indications from discussions on matters such as *dina d’malhuta dina* that the BT acknowledges the limitations of its actual authority as compared to the state and its formal laws. It is also from this point of view that the BT appears aware of the nature of the authority of which the text is capable when speaking of it as a halachic work written in such a way that it can maintain an authoritative position within a legally pluralistic society. (And this is separate from whether this was part of the authorial intent of the BT.) On the other hand, when engaged in debate and halachic expression regarding the Noahide laws, the BT is fancying itself as a text written for a world where halacha reigns, and where the rabbis adjudicate accordingly.

In this world where rabbinic law is also the law of the state, there must be a place for the non-Jew, and there must be a way for halacha to extend to him. In this way, the BT seems almost ignorant of its actual authority. One way to explain this is to posit that the authors and editors of the BT were totally unaware of the authoritative limits of the text, or did not care; they were creating a legal system for an imaginary world, which was not only gone and somewhat forgotten, but also one which they fully expected to return. It is this duality of self-reverence as a supreme law coupled with a self-awareness
regarding authoritative limits that infuses the BT with its ancient authority, its contemporary\textsuperscript{47} relevance, and at the same time the aspiration it has to once again become a supreme rabbinic law where it is the also the governing law of the state. When reading the texts of the sugyot in the BT, it is worth noting where the debate is about something that is relevant to a stateless law, and where it is not. Often, it is not clear, as is the case with monetary laws and any laws that fall under the principle of \textit{dina d’malkhuta dina}.

As discussed, above, there were places and times when Jews were given the latitude to adjudicate monetary matters and where the state would actually refer Jews to their own courts; conversely, there are situations such as ours today in the United States where the law of the state trumps Jewish law in monetary matters. Monetary matters, as well as a host of others, are “take it or leave it” from the perspective of the text. The “it” in “take it or leave it” refers to enforceable authority. The BT seems ready to “not be taken seriously” as part of its essence; extensive debate about matters over which the BT cannot have any practical authority are testament to the BT’s willingness to pursue the “law” without pursuing the law.\textsuperscript{48} It seems perfectly content to control the Sabbath and circumcision, and betrothal laws, and is “take it or leave it” with respect to the vast majority of other laws. The BT also telegraphs which laws are important and which are

\textsuperscript{47} In any period, and quite possibly more so in the periods that post-date the Amoraic period by several centuries.

\textsuperscript{48} Examples include temple sacrifice, land laws, etc.
non-negotiable in terms of whether it can still maintain its place in a legally pluralistic society.\footnote{As I discuss, such laws definitively include the three cardinal sins of עיריות, גילוי דמים, והשפיכות, Sanhedrin 74a.}

It does so on two levels: (1) the laws that are absolute and non-negotiable, such as foreign worship, murder, and illicit relations; (2) those that are critical to the maintenance of society, but which are not ones which would require the rabbis to abandon the particular state in which they are living.\footnote{Examples of this are rabbinic adjudications that allow soldiers in foreign armies to engage in ‘sinful’ behavior, such as consuming non-kosher food. While food is construed as a critical component of communal or societal life, it is one where the Rabbis were lax in certain situations. This is unlike the three laws mentioned earlier.} Rather, within (2), they would simply operate surreptitiously and not respect other aspects of the state’s legal system. There are then the laws that the text does not purport to mandate beyond the pages of the text. There is value in attempting to look for where different halachic matters from the BT fall on the spectrum of pragmatic legal plausibility; the value is in realizing how difficult it might be for the legal theoretician while at the same time seeing how simple it would be for the pragmatic traditional adjudicator of halacha (i.e. the rabbi). The traditional student or adjudicator would be able to tell you that the Sabbath is definitively governed by the BT and its antecedent halachic works, and that laws regarding the betrothal of multiple wives are theoretical and no longer applicable. He might also be able to explain how monetary law applies, for example, but that in this country or that one, they must rely upon the laws of the land because of \textit{dina d’malhuta dina}. They may also offer some reasoning such as the law of the land is reasonable as it allows religious freedom – or they can provide some other logic. Thus, the greater freedom offered to the authoritative viability of the
BT in areas not of interest to the state, the more likely a traditional adherent and adjudicator of the BT and its antecedent halacha would be to accept other aspects of the law governed by the state. For the legal theoretician, it is nearly impossible to definitively say anything about where a specific halachic matter stands on the spectrum of pragmatic legal plausibility. How is it possible to know when the text is ‘serious’ and when it is just engaged in the theoretical gymnastic of defining laws for a rabbinic state to be built, or for one long gone (or simply longed for)?

_Intra-

While the text of the BT can be said to be flaunting the multiplicity of voices, and thus a potential _intra_-pluralism, it rarely is explicit in offering any information about the _inter_- side of its pluralism. There is little in the way of a true acknowledgement of a dominant legal system to which the halachic one is subordinate. There is no discussion of how to absorb a foreign law within a rabbinic state; as discussed above, there is only discussion about the foreigner or non-Jew and the fact that they may or even should have their own system of courts. There is no discussion of what such a court and its broader system might look like. At best, there are mandates primarily directed at the individual – and not at the broader community – that would make life easier (and probably also safer) by directing that the laws of the land be observed where they are reasonable. However, this is couched in the broader thrust of the BT weltanschauung where the BT’s is the dominant legal system, and this mandate is but a part of the much larger legal project. In much of its narrative, the BT reads as though it is not only a law for the theoretical rabbinic state discussed above, but also the only law. There is no acknowledgement of
the law of the other in almost all contexts where the BT appears to be speaking to the theoretical rabbinic state and not to the ‘real’ world. Yet internally, the BT often appears to be reflecting a range of different schools of thought, and also leaves multiple options available to the practitioner of halacha. It is for this reason that when one thinks of the internal pluralism of the BT, one is really addressing the matter of the multiplicity of halachic voices that appear within and across different sugyot. Although the different halachic positions taken by the various sages regarding a specific matter may reflect what might once have been a truly pluralistic state of affairs in terms of BT study and halachic adjudication, the narrative of the BT presents the different positions as all operating within the same general legal system.

Ultimately, discussions of legal pluralism lead us to a discussion regarding the multiplicity of voices within the BT. Before doing so, and abandoning the discussion of intra-pluralism within the BT in favor of a more grounded discussion of a legal multiplicity, several points are worth addressing. Firstly, it is worth explaining how legal pluralism is different from legal multiplicity in the way I use the phrases: legal pluralism is the allowance for completely different legal systems to operate side-by-side, even if one is dominant and restrains (significant) parts of the other(s); multiplicity refers to the allowance of many voices asserting different opinions on specific legal issues, and doing so all within a single legal system. It is this definition that precludes me from simply

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51 The only possible exception is a basic acknowledgement of state courts and adjudicative processes.

52 It is for this reason that I give shorter treatment to the intra-pluralism here, and pay more attention to multiplicity in a separate chapter. Additionally, the manner in which multiplicity is closely intertwined with the canonicity of the different elements that comprise the BT.
putting forth Suzanne Stone’s ideas about legal pluralism with Jewish law in place of anything else I might assert here.\textsuperscript{53}

Building on Robert Cover’s earlier work,\textsuperscript{54} Stone discusses pluralism as not only a system wherein divergent legal outcomes are possible and worth recording, but also as reflective of divergent “behavioral and divergent pluralism.”\textsuperscript{55} Speaking of Jewish law’s relationship to American law, Stone offers the following: “These scholars depict the Jewish legal system as having successfully confronted – and resolved – several central dilemmas currently facing American law by maintaining a coherent legal system while accepting behavioral and interpretive pluralism.”\textsuperscript{56} The idea of “behavioral pluralism” existing within a culture does not necessarily imply that there exists a legal pluralism of which it is reflective. Even Stone herself states that “diverse opinions leading to \textit{behavioral} pluralism are due to the fact that halacha has not been finally determined. Indeed, only on rare occasions does one find cases of true legal pluralism in which the Talmud explicitly regards two contradictory behavior-regulating norms as equally valid, final resolutions of a legal problem.”\textsuperscript{57} (Italics are mine.) Stone is acknowledging that we


\textsuperscript{55} Stone, “In Pursuit of Counter Text,” 813 and 839.

\textsuperscript{56} Stone, “In Pursuit of Counter-text,” 813 - I offer the full quote to highlight how Stone – and Cover before her – are discussing different legal systems from different times and places in an effort to shed light on both of them. This type of analysis removed from the traditional temporal and spatial constraints is relatively new to the study of religion and still seen as controversial by many and cutting edge by all.

\textsuperscript{57} Stone, “In Pursuit of Counter-text,” 838-839.
are not dealing with two legal systems, but rather a system that records and respects dissent. One can go further, as Stone does, and define some legal systems as possessing the ability to “recognize a plurality of conflicting norms or truth claims at the level of discourse, each a valid formulation of the law.” However, it can be argued that this does not necessarily point to the existence of two distinct legal systems operating simultaneously within what appears to be a single legal system. In the case of the BT, there is little if any evidence pointing to the sages representing separate legal systems as opposed to representing different positions on specific legal matters.

Behavioral pluralism can run quite deep and broad within a cultural community and the individuals who comprise it. For our purposes, I define a cultural community as one where all individuals adhere to the same legal system. The adjudicative processes associated with the legal system can be disparate as long as they are operating within certain bounds acceptable to the ‘legal system.’ Thus, while Stone’s use of the houses of Shammai and Hillel are effective in conveying a sense of behavioral pluralism, it would be difficult to demonstrate that Hillel and Shammai were actually operating within different legal systems. Nevertheless, to anyone familiar with how the houses of Hillel and Shammai positioned themselves within the halachic system, it is not difficult to imagine that the behavior of the two groups would be different and predictable; specifically, the adherents of the house of Shammai would have been very exacting and


59 I am aware of the problem of personifying the system as opposed to referring to specific individuals who would have to carry out actions in order to enforce the boundaries of how the law/halacha is adjudicated. Whether the boundaries are correctly enforced, some enforcement always occurs. In legal systems without the power to impose the law as prescribed by its code, some form of exclusion from the adjudicative realm is an effective consequence.
strict in terms of the observance of the law, and conversely the adherents of the house of Hillel would have been less exacting and next to Shammai relatively lenient. Yet the Mishnah famously declares that daughters from one house would marry sons from the other.\textsuperscript{60} The implication being that a daughter of any sage within the tradition can marry the son of any other sage who also adheres to halacha within certain boundaries of legal positions as well as actual behavior. Therefore, one might better refer to Stone’s “behavioral pluralism” as “behavioral multiplicity.” It is reasonable to assume that there were certain groups whose children were off-limits for marriage. Further, for those operating within the milieu of the BT, such exclusion was based upon not only behavior, but also the method of adjudicating halacha. By declaring in an inclusive manner what is permitted in terms of betrothal, the BT is also confirming the existence of an “other.”

An example of the “other” – and possibly the “other” lurking in the minds of the earliest readers of the BT, specifically those reading it when it was first a complete and cohesive text – are the Karaites, who ignore the rabbinic tradition and glean law directly from the Bible, and who are perceived from within the rabbinic tradition as operating firmly outside of it.\textsuperscript{61} For the rabbinic reader of the BT, the Karaites are not only part of

\textsuperscript{60} Mishnah Yevamot 1:4. It is worth noting that the actual history of the houses of Hillel and Shammai is less pleasant than the fact that their children would marry and that its members would eat in one another’s homes. There is the story of members of the House of Hillel being killed in discussions with member of the House of Shammai, and the survivors accepting Shammai’s adjudications (18 articles). See Yerushalmi Shabbat 1:4.

\textsuperscript{61} Sources regarding the Karaites in Maori and S. Schechter’s Documents of Jewish sectaries 2: Fragments of the Book of Commandments by Anan, (Cambridge Univ. Press, 1910). It is important to note that Anan may or may not have been a Karaite, but from what is extant, it can be said that he is operating within a legal system other than the rabbinic one conveyed in the BT, and one that is similar to if not the same as the Karaite legal system. While not necessarily directly related to sugyot in the BT, the Karaites and specifically their treatment in later rabbinic literature sheds lights on how those outside the normative range of halacha were handled. Additionally, the BT’s treatment of the Kuthites, also a class of quasi-Jews who interpreted the Bible literally and who ignored rabbinic hermeneutics, can be somewhat reflective of how
another group, but their law and method of legislation and adjudication are not the same as the rabbinic tradition as the authors of the BT convey it. It is the legal system of the Karaites that most distinguishes them from the rabbinic sages. The rabbinic sages accepted an oral law which in many ways supersedes the Bible as an authoritative legal corpus; the Karaites practiced Judaism based strictly on the verses in the Bible. As the BT is constructed, for its traditional reader, a fundamental aspect of eligibility for a halachic position within the BT (and to the Mishna and broader Tannaitic corpus) is an acceptance of the idea that the Bible requires the interpretations of the rabbinic tradition, without which the Bible cannot be understood properly and from which law can be gleaned legitimately.\textsuperscript{62} There is an oral law that effectively is the authoritative legal arbiter of halachic behavior. The Bible cannot stand on its own and offer the complete or correct picture of halacha. For the Karaite, the Bible was not only sufficient, but also complete in its offerings and rabbinic tradition or oral law was but another factor that might inform adjudication but was hardly the driving force.\textsuperscript{63}

Redemption of the first born of an ass or unclean beast is an example of a law where there can be a position that is operating outside the bounds, and which is also reflective, of another legal system entirely. There are three verses in the Bible that deal

\textsuperscript{62} Elsewhere, in Chapter 3, I discuss this issue in further detail. In that context, I discuss degrees of charity available to a text, and how these degrees of charity actually reflect a degree of canonicity within the texts – or parts thereof. This notion applies to all the generation and periods within the rabbinic chronological rubric.

\textsuperscript{63} See David Henschke, “A Non-Rabbinic Law Rejected by the Tannaim” \textit{JQR} Vol. 92 1-2 (2001): 79-103. While Henchke only briefly mentions the Karaites, he thoroughly unpacks the logic behind the position that the Bible is only speaking of an ass and not all unclean animals.
with this matter, two in Exodus (13:13 and 34:20) and one in Numbers (18:15). The verses in Exodus limit the commandment to the ass alone, while the verse in Numbers applies the law to all unclean animals. Without any interpretation or deep analysis, it would be obvious that because of the verse in Numbers, all unclean animals would be subject to redemption. Nevertheless, the interpretive style of the rabbinic oral law reads the verses in Exodus as limiting the scope of the verse in Numbers. The Karaites’ legal tradition mandates that all unclean animals must be redeemed. The Karaites would not be the first to interpret the law closer to the text; Philo also interprets the verses in this way. What makes this case compelling is that throughout almost all Tannaitic literature, and all Amoraic literature, no sage takes the position that all unclean animals are subject to redemption.

The Karaites, however, can be the “other” legal system tolerated and also defined by the earliest readers of the BT. It may be the “outsider” legal system that in fact points to the legitimate multiplicity of voices that is extant within the legal system of the BT. While adherents to the legal tradition give the impression that there was little, if any, interaction with the Karaites, there is a history between the two groups which proves to be more amicable and mutually tolerant than the impression offered by the rabbinic tradition. Nevertheless, to the outsider – and here I mean an outsider with respect to the overall BT, including the rift between the Karaites and the ‘normative’ rabbinic sages – the two groups can be defined as still operating within a single legal system with different positions regarding different legal (can we call it halachic?) matters. This might be

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64 Henschke, “A Non-Rabbinic Law,” 81.
similar to the manner in which a Roman lawmaker may have perceived Christians and Jews during the second century AD.65

The multiplicity of voices in the BT – regardless of whether it is contrived or naturally evolved into its extant form – establishes the boundaries of acceptable choices regarding the halachic matters that are raised within it.66 Such a multiplicity of voice is not necessarily reflective of *intra*-pluralism. The text of the BT can be said to be embracing a multiplicity of voices; pluralism – and here I refer to *intra*-pluralism – is difficult to find in the BT, and therefore multiplicity cannot be said to be an extension of a vast, legally pluralistic system. Rather, the pluralism is muted and multiplicity is embraced. Further, beyond a lack of true pluralism, the authors of the narrative even confine multiplicity to a set of boundaries. Without any fanfare, it is the anonymous Stammaitic activity that seems to be determining, on a textual level, the extent to which the multiplicity of the text is exhaustive or selective. However, we can safely assume that there are instances where certain positions are not included in the text; there are probably also entire issues that might have been left out. Such speculation aside, all the halachic traditions and sources are part of a multiplicity of voices – and the potential legal pluralism that may extend therefrom – only to the extent that they can still safely operate within the rabbinic halachic system and its rules of exegesis and are expressed in the formal language of the text.


66 This idea that multiplicity can reinforce certain larger commonalities while allowing for disputes in less important areas is alluded to regarding aggadic material in rabbinic literature by Judith R. Baskin in her book *Midrashic Women: Formations of the Feminine in Rabbinic Literature* (Hannover : University Press of New England, 2002), 11: “I find that certain dominant themes emerge out of the multiplicity of opinions preserved in aggadic literature….”
Origins of Pluralism in Roman Law’s Empire

Because of the vastness of the Roman Empire, and the distinct legal systems of the peoples they added to a growing empire, the Romans understood that allowance for local – yet at the same time definitively subordinated – laws strengthened rather than weakened the Roman military’s hold on a particular place upon which it wished to impose dominion. By not imposing the fullness of Roman law upon occupied peoples, the Romans accomplished two things: (1) they did not create a situation where they had to fully enforce what would be a foreign and often misunderstood set of laws; and (2) they alienated their ‘hosts’ far less than they might have otherwise. A cultural compromise – if it can be called that – was made in order to preserve the empire. It seems that a larger and less ‘Roman’ empire was preferred to a smaller and more culturally Roman empire with a fixed and immutable Roman legal system governing all personal and state affairs. While not formulated as legal pluralism to the Roman lawmakers and powers-that-be that managed and refined the Roman legal system, it was a legal pluralism that the Romans were achieving, or at least approaching, in their management of the integration of local law with the dominant Roman law.

It is for this reason that when looking for the origin of the tendency toward pluralism in the BT, it is worth looking at Roman law. It is also during the Roman period, and specifically during the third century, when “Homeland and Diaspora were thus increasingly faced with the same challenge: sustaining Jewish specificity in a non-
Jewish society. The expanding Roman Empire as well as the increasing opportunity for attaining Roman citizenship prompted this challenge. While there were periods when the pursuit of a pure Roman law and cultural milieu throughout the Empire were pursued, “on the whole the history of the Jews under the Roman Empire can be described as one of practical compromise, interaction, and ambiguity, not inflexibility.” This is the same time at which halacha was undergoing – and had to undergo – fundamental shifts resulting from the destruction of the Temple, and of the evolving decentralization away from Jerusalem – and eventually the Levant – of Jewish law and culture. It is from this environment from which the Mishna emerges and upon which the BT builds. It is an environment where Jewish law is subordinate and where “the subordination of the Jewish law is even more pronounced: unless explicitly authorized and recognized as a constitutive element of the Common law, it functions on sufferance only, unsupported by the judiciary and penal institutions. It was, so to speak, on parole, always liable to be overruled and invalidated by the two superior laws.”

When speaking of pluralism, I speak of the tendency towards operating as a subordinate law within a broader legal system accommodating of halacha. In mentioning Roman law, I refer to both the pagan and Christian periods. Roman law through the centuries was aware of, and accommodating of, not only other persons outside the Roman


68 Linder, “The Legal Status”, 129.

69 Linder, “The Legal Status,” 132. The two laws Linder refers to are the common law and Jewry law. For our purposes they both constitute the dominant legal system to which the halacha was subordinated. Linder defines the whole situation as one of a three tiered hierarchical legal system, with common law at the top, followed by Jewry law, and lastly and least there is halacha.
legal system, but also of other legal systems. Where there was “no skin off the Roman’s back,” often Roman law tolerated – and occasionally officially sanctioned – elements of other legal systems, such as halacha.\(^\text{70}\) The Romans also had something called ‘Jewry Law’ which addressed the laws within the Roman law codes pertaining to Jews. An example of Jewry Law is the Roman prohibition of circumcision, which was eliminated for the Jews, who were allowed to be circumcised.\(^\text{71}\) Another example is how under the reign of Septimius Severus, the Hadrianic prohibitions were lifted, and a path was charted whereby Jewish institutions, such as the “Sanhedrin and the Patriarchate were not only restored but significantly reinforced.”\(^\text{72}\) Jewry Law allowed for Jews to “live according to their custom,” and “to follow their particular ordinances according to their ancestral law,” and to “practice their particular customs and law.”\(^\text{73}\) Included was the right “to observe the Sabbath and the other rites according to their ancestral laws,”\(^\text{74}\) and “to pay to


\(^{71}\) Linder, “The Legal Status,” 138. The flip side of this is that it gave cover for Jews who chose not circumcise their children. The default in the Roman empire and under Roman Law is to avoid circumcison. The Jew can opt out of the prohibition, and he does so by circumcising his son. That is not a necessary act that must be taken by Jews; it is merely tolerated under Jewry – and essentially – Roman Law.


\(^{74}\) JRRW no. 17, Ant. 14.10.20, as referenced by Linder, “Legal Status,” 141. Later in the article, Linder describes how the Sabbath was even further ‘consecrated’ by Christian emperors such as Justinian, pp. 152-155. While the chronology and history point to a new time, if not place, the attitude is quite similar and intentionally hearkens back to an age where respect for Jewish custom was – at least perceived to be – the correct approach.
god their ancestral prayers and sacrifices… according to the customs incorporated in
laws.”

There was a rooted understanding and recognition of Jewish autonomy in certain
social and cultural spheres. This is further highlighted in Sardis, “where this principle
was invoked to sanction the right of Jews who were also Roman citizens to have their
own court with jurisdiction over Jews.”

While I argue that the BT is very much a product of the rabbinic attitudes taken
toward halacha as a result of Roman Law and proclivities, it is the Palestinian Talmud
which was formulated completely under Roman legal jurisdiction. Not in a vacuum did
this occur. Prior thereto, the Mishna and its related Tannaitic literature were also crafted
under the influence of – and more precisely, in reaction to – Roman behavior, both
cultural and legal. The PT “gives direct and detailed evidence regarding those domains
regulated by the halachah, and testifies indirectly on domains resigned to the other two
laws.” Among the realities unleashed following the Bar Kochba Revolt was the fact
that the “Jewish population in the land of Israel retained its law, not only because this
was the easiest practical expedient, but also for the simple reason that no other legal set
was applicable to them in entirety, that is as a comprehensive body of law reflecting their

75 JRRW no. 20, Ant. 14.10.24.
76 Linder, “The Legal Status,” 140 where he references JRRW no. 14, Ant. 14.10.17.
77 Linder, “The Legal Status,” 133. While Linder is interested in the status of Jews and the individual Jew
under Roman dominion, and while he concedes the importance of the PT as testimony for the relationship
between Roman Law and halachah, he sees “a problem about the direct relevance of its sources to the legal
status of the Jews.” In terms of attitude, and specifically how Roman law may have accommodated
halachah, Linder does find the PT useful.
social mores and cultural uniqueness. Some law had to be applied to them and by right as well as contingency it was usually their own.”78 Lindner also discusses their “impressive achievements of the legislative and codificatory activities in the Mishna and subsequently in the Palestinian Talmud provide the best evidence of their restored vitality.”79

I argue that it is in this milieu that the pluralistic tendency of halacha develops and evolves. By the time the BT had begun to be recorded during the earliest Amoraic generations, the pluralistic tendency was a firm part of the pragmatics of halacha. The Mishna, as Lindner argues, emerges from the evolving perspective taken toward Roman law. The BT develops after the evolution is complete, and when pluralistic tendencies are an essential part of the pragmatic halachic project. The recording and transmission of traditions and their sources was a precise and conservative affair. The forces that drove the actual pronouncements of those traditions – the original halachic statements – were filtered through this conservative prism as managed by the rabbinic class. They were filtered in such a way that they could legitimize their control over “a range of social activities and institutions.”80

Although he lived after the last Amoraim died, Gregory the Great articulates the balance a subordinate legal system might find with a dominant one: “Just as the Jews should not have the freedom to presume anything in their synagogues beyond what is

78 Lindner, “The Legal Status,” 134.
79 Lindner, “The Legal Status,” 134.
80 Lindner, “The Legal Status,” 140.
permitted by law, in the same way, they should not suffer any prejudice in those matters that were granted them."\textsuperscript{81}

\textsuperscript{81} Linder, “Legal Status,” 169.
Chapter V

Multiplicity

Because of the difficulty in establishing the *raison d'être* for any literary work from the perspective of the author (or editor or redactor, etc.), there is value in establishing it from the perspective of the reader. It is also much easier since readers can always be contemporary, while authors can be dead, anonymous and both. Both is the situation with the BT. It has been this way for as long as there has been a record of the BT and its antecedent works.¹ When looking at anonymity, I addressed the question of what anonymity does for the text and the manner in which it is read. This is different from asking what is the intent of the author in remaining anonymous. The first question may seem like a possible answer to the second and it is. But it is not possible to consider the second question in any real way, especially when an author is both dead and anonymous. We therefore speculate based upon the first question what it is that the author may have had in mind. Similarly with multiplicity, it is difficult to ascertain why the authors and editors of the BT deployed such a significant degree of multiplicity of voices. We can, however, determine the impact of multiplicity on the reader, especially when there are many recorded reactions and commentaries to the BT spanning over a millennium. From these reactions and commentaries, it might be possible to glean a sense of the purpose of multiplicity and the possible motive of the author, although the

¹ This is not a summary dismissal Sherira and his assertions. I am viewing these assertions from the appropriate perspective. Considering that he is the primary source for the recording and transmission of BT traditions and attributions, and even he is not certain or clear about what really took place, it is not a stretch to think of the BT as crafted by the dead and anonymous.
motive of the author is of limited interest. The impact of multiplicity, or the veneer thereof, on the text and ultimately on the reader is of interest in this chapter.

There are two general types of multiplicity when dealing with halachic/legal sugyot in the BT. The first is where the text apodictically presents two or more positions on a specific halachic matter. The second is where the text presents an attributed tradition not as a primary part of the sugya, but as part of the argument that grew out of the apodictic presentation of those traditions. An example of this is Berakhot 38a from among the v’la pligi structures, which are the most basic: before eating farina, Rav states that one blesses a sh’hakol nihiyah bidvaro while Shmuel states that one blesses a borei minei mezonot, to which Rav Hisda adds that there is no dispute between the two positions since one is referring to a thick farina and the other to a thin one. In this case Rav and Shmuel are the primary apodictic traditions and Hisda is secondary to the primary dispute. In the text in Nedarim 5b-6a, the references to Rabbi Judah’s opinion on divorce are secondary to the primary apodictic traditions attributed to specific sages regarding abbreviated inexplicit declarations, which is the main focus of that particular sugya. This secondary layer of voices more than the primary voices demonstrate a propensity for multiplicity. To put it in perspective, the Mishna usually does not offer a third primary opinion, and rarely does it offer an opinion or a tradition in the way Hisda and Judah are deployed in Berakhot and Nedarim, respectively. In a basic way, this also highlights how multiplicity in the Mishna is different from the BT. Multiplicity in the BT has the potential to be more expansive. Rhetoric and dialogue allow for that in a way that raw apodictic proclamations do not.
Both types of multiplicity serve to create an image that the text is inclusive. The greater the number of sages mentioned, the more inclusive. Or so it seems. As Daniel Boyarin has recently argued, the rhetoric and dialogue give the BT a dialogical texture when the text is in fact monological. Similarly, multiplicity may be a duplicity disguising high unity. On Berakhot 38a, one can view Rav and Shmuel as dialogically opposed in a most simple sense, and one not necessarily intended by Bakhtin when he conceived of his theories. Boyarin is certainly looking at the text through a more sophisticated lens than to assert with respect to a sugya like our v’la pligi structure from Berakhot 38a that Rav and Shmuel represent dialogism. However, the voice of Hisda introducing v’la pligi serves a distinct enough role when compared to those of Rav and Shmuel. This is not a simple multiplicity of opinion but a textured multiplicity of voice within a highly structured – almost poetic – halachic vignette. The high form should immediately give away the deeper unity behind all the voices and opinions. Additionally, the manner in which Hisda’s voice breaks down the dispute is conceptually distinct. Where the presentation of Rav and Shmuel, and the underlying tradition behind it are comfortable with dispute in a way that the voice attributed to Hisda is not. This tension is at the core of the v’la pligi structures.

The focus in the chapters on multiplicity and legal pluralism center more on Halacha. Therefore, when I discuss multiplicity in this chapter, I am generally referring

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2 Boyarin, *Socrates and the Fat Rabbis*, 175. Boyarin’s focus in this context is on the dialogism between the Stamma and the Grotesque. I ‘dumb it down’ for my purposes, and look at the presentation of the multiplicity of voices as an authorial attempt at dialogism, more in line with Bakhtin’s discussions regarding novels and the authors efforts in creating different voices, and subjugating his own into those while never putting himself in a position where his own are revealed.
to a multiplicity of halachic opinion, rather than the multiplicity of textured voices. As the phrase implies, legal pluralism is about the law and what is legal; in our context it is about the interplay between the BT (Halacha) and other legal systems with which it comes into contact. In defining the two types of multiplicity, primary and secondary, it is worth briefly noting that ‘multiplicity of voice’ might also be used (and how it may come to be used in future work) where the focus is purely on the literary.

Multiplicity of Voice

The goal of this chapter is to study the multiplicity of halachic opinions within the BT. Where relevant, I will also explore this multiplicity’s relationship with the narrative’s anonymity and canonicity, which have been explored in previous chapters. This chapter is focused on the manner in which the BT and its anonymous narrative allow for a multiplicity of halachic outcomes. As I tried to demonstrate in earlier chapters, anonymous transmissions of memrot infuse authority into the earlier Amoraic sources associated therewith; these transmissions along with later anonymous edits further enable the anonymous actors to inject their own understandings and agendas into the narrative. Nevertheless, this hinges on how attribution is handled in the context of a multiplicity of opinion, if not voices. While working on the relationship between anonymity and multiplicity in the BT, I have become aware that there is much work I need to do before I can fully integrate discussions on multiplicity into the discussions on anonymity and canonicity, both in talmudic and halachic scholarship as well as scholarship outside of halacha, such as legal and literary theory. This is particularly the case when much of BT scholarship today is based upon David Halivni’s analysis of the text, which results in a
distinct Stammaitic period. This conclusion is rooted in a style of reading the texts and a specific understanding of them and their evolution; the historical evidence is not as strong.

Stylistically unique, the BT is that rare legal corpus that reads more like a narrative than an apodictic set of law and custom. The narrative is alive, and guides its reader to the idea that there is an organic element in the evolution of the customs, laws, and law codes. The narrative has as its most explicit agenda the delivery of custom and law; as discussed in Chapter Two, I posit that the authors of the Stammaitic elements implemented an anonymous narrative as an effective style and mechanism through which to transmit law and custom. Through the literary application of a narrative, various authoritative Rabbinic voices – sometimes from different generations – are presented in an interactive legal dialogue. What is often overlooked is the degree to which the narrative actually drives the legal arguments, and the manner in which the narrative presents legal positions attributed to rabbinic sources, some of whose traditions were centuries old during the latest redactions of the BT. The narrative appears to exert great energy on the inclusion of positions within the progressive logic of the legal argument such as premises, assumptions, references, or even mere declarations; this as opposed to their exclusion. Beyond their mere inclusion, often multiple positions are still legitimate at the end of the sugya. Maintaining a multiplicity of voices is important to the different authors of Stammaitic activity. It is, I suggest, an agenda of those authors and editors to appear to be inclusive, at least to some degree. By allowing for this vast multiplicity of halachic positions, the narrative can be said to be “federalizing” behavioral norms related
to halachic tradition for all those who might accept this corpus as canonical. Unlike any individual rabbinic authority, who must ultimately select from a number of halachic options so that a real-life halachic matter can be resolved, the editors of the narrative were not constricted by the realities of adjudication. The editors and authors can be defined both as interpreting the rabbinic material they received (which at some point becomes the BT) and as establishing a halachic guideline.³ At a certain point in the evolution of the BT, the authors do so by interpreting not individual memrot, but rather groupings of memrot and other sources and traditions that have been weaved together, at least to some extent. It appears as though the authors of the Stammaitic elements operate under the assumption that multiplicity is essential for acceptance and ultimate canonicity, and therefore one could view the narrative as both presenting an existing multiplicity of tradition and also interpreting such multiplicity in such a way as to ameliorate the complications associated therewith. Because a significant energy in my research has revolved around this issue of multiplicity of voice in the anonymous narrative of the BT, in this chapter I attempt to spell out how the editors utilized the sources and traditions available to them.

At a certain point, multiplicity is an outgrowth of disputes within the halachic corpus.⁴ At the outset it is important to emphasize that I do not believe that the contributors to the BT saw a multiplicity of halachic positions as a negative, per se. Rather, the differences in tradition – conveyed in the BT as disputes – were already part

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³ This echoes the Fish-Fiss debate, where Fish would have us believe that establishing law is the same as interpreting law. See Stanley Fish, “Fish v. Fiss” *Stanford Law Review* Vol. 36, No. 6 (July 1984), 1325-1347.

⁴ This is further developed later in the chapter.
of the corpus of existing Amoraic sources and traditions a tanna would transmit (and add to). For the tanna, as well as his audience, there already exists a heightened degree of canonicity in such traditions; not only for the individual memrot, but also for how they are grouped and conveyed. The Tannaim and later the authors of newer Stamaitic elements accepted them with little doubt, and thus had little issue in deploying them as disputes in the text of the BT. Though they may have addressed the issue of how disputes may have arisen, the editors did not seem particularly bothered by the mere existence of disputes. Further, I would like to suggest that the editors were not overly concerned with the ‘problem’ of dispute and saw multiplicity as essential to the halachic process. This is evidenced by the numerous instances in the BT where the narrative either does not resolve a dispute or ameliorates it in a less than satisfactory manner. 

Ironically, they were doing this while still crafting a narrative which is styled to give the impression of a certain type of wholeness in any specific sugya. One might even refer to controversy as a “major component” in Halacha. Roth takes this to a further extreme: “Controversy is inherent in the nature of Jewish law; neither the personal deficiencies of the sages nor the external circumstances of the nations cause it to occur.” How dissent and controversy first become essential to halacha is less interesting to this project than the fact that they are part of the process of all those authors from the different Amoraic and post-Amoraic generations who engaged in an anonymous narrative.

There are numerous advantages to allowing the multiplicity of voices to be

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5 Specific examples are pointed out later in the chapter and elsewhere in the dissertation.


preserved. It is reasonable to discuss the BT’s multiplicity of voices in terms similar to the manner in which dissent is discussed in legal theory circles. Specifically, emergency situations, unforeseen situations, and the general rule that as time moves forward what were once emergency situations might become the norm; when this occurs with regard to a specific halacha, the normative law must change as well. The tools for doing so must be canonized along with traditions which vary from a future rabbinic authority’s own position. These future authorities must be “as conversant with dissenting positions as they are with authoritative rules, because in an unforeseen emergency, they may need to implement a temporary solution based on a dissent to meet the needs of the hour.”

Those needs of the hour may evolve into the norm, and the multiplicity of voices makes the corpus relevant even when times are dramatically different from when the narrative was initially composed. The emphasis on the emergent halachic situation is useful in that such a situation would first occur several times before a serious re-interpretation of the text might be required. Further, by operating inclusively to such a degree, the different authors and editors of the BT through the generations insulate the narrative from being marginalized by those represented therein regardless of the context within which their position might be conveyed. In conducting this analysis, there emerges a powerful purpose that multiplicity plays: it is the halachic diversity reflected in the narrative, and more than likely reflective of the varied behavior of the Amoraic authorities whose

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8 This echoes the Mishna in Eduyot 1:5, where the logic for preserving the minority or individual position is so that future courts of Jewish law (bet din) can draw upon it to support a change. The Mishna also delineates certain pre-requisites: that the future court be greater in wisdom and number.

9 Jeffrey Roth, “Justification for Controversy,” 382.

10 To elucidate drawing upon a contemporary halachic matter, one need not look further than the dispute regarding eating qitniyot on Passover. Abiding by one position does not preclude one, and in fact still requires one, to accept the ‘dissenting’ position as equally authoritative, just not relevant to oneself.
This acknowledgment of diversity can also be viewed as a federalization of the halacha. In using the term federalization, I wish to convey a sense of centrality of authority; yet, while central, the text still allows for variance in behavior and practice within a certain framework and range. Following the publication of the Mishna, Jews began to live in many more places, and under a range of new realities. The rabbinic authorities responded to those situations as well as to the more mundane halachic questions with great variety.\footnote{David Kraemer, \textit{Responses to Suffering in Classical Rabbinic Literature} (New York: Oxford University Press, 1995), 221. In this context, it is notable that Kraemer argues that the rabbis were not only widespread but also possessed little if any true authority. While not fundamentally connected to this project at this time, in the dissertation this matter will be discussed.} Unable to confirm everything in Jerusalem, as they had during the Temple period, or in central locations such as Yavneh and Sepphoris during much of the post-temple Tannaitic period, and operating more on a community-by-community basis than their Tannaitic forebears, the Amoraic authorities generated not only a variety of actual lived traditions, but also a variety of interpretations of the existing Tannaitic corpus. Legislation such as the one that occurred at Yavneh, and which is reflected in the Mishna, reflects multiple positions, but has a methodology for determining the correct one, the one to be observed. The BT, however, often does not have such a methodology that applies throughout. In this way, the BT can be described as more definitively defining boundaries for different matters and as leaving adjudication for future authorities. The Mishna is more suggestive, although it too includes dissent which ultimately is used as a potential adjudicative tool for future sages.
The BT not only allows for variance in opinions, but also injects nuance or the potential for nuance in both the accepted position (where a position is firmly accepted) as well as in the dissent. Often, this is done by presenting the underlying arguments of a halachic position. Where the Mishna generally presents only a primary and a dissenting opinion, the BT makes use of myriad positions within its halachic dialectic. Often, these positions are attributed to specific rabbinic authorities; however, there is always an anonymous aspect to the attributor and what I generally refer to as “the narrative.” Within the broader narrative, I will argue that there are sub-narratives, as they can be called, which were canonical enough in their form and substance that they were included in the narrative by later editors. These sub-narratives correspond to an extent with sub-canonical elements from which the editors drew the material they ultimately incorporate into the narrative. The editors – both of the macro-narrative which comprises the entirety of the BT and of the sub-narratives included therein – are always anonymous, and one can only speculate as to who they might be. This too is unlike the Mishna, where the reader always is aware that it was assembled by Rabbi Judah the Prince.\footnote{While I am not going into detail in this chapter regarding anonymity in later halachic works, I would like to point out that the Mishnas of various Tannaim were attributed to named Rabbinic authorities, as is the case with the extant and authoritative Mishna of Judah the Prince. This is unlike halachic works of the last few centuries, where the author is known as – and/or referred to – by a moniker and not his real name; an obvious example is the Mishna Brurah, known within halachic circles to have been written by the ‘Chafetz Chaim.’} While the editors are certainly anonymous in the text, it is unclear that they were purposefully employing anonymity. Rather, operating anonymously, as I argue, is a mechanism through which a later editor or author could deal with earlier halachic material, yet not appear to be unfaithful to the text. It is not the place of the transmitter, in this line of
thinking, to put his stamp on halacha, even if he is actually doing so. What takes hold in
the end is a narrative full of canonical structures which reflect an earlier – and then
canonically fixed – tradition of multiplicity in halacha. This resonates further as we
discuss redactional layering in the BT.

**Disparagement and Reconciliation – How the Narrative Facilitates Multiplicity**

An example of how the narrative might promote multiplicity is the manner in
which Amoraic disparagements of one another are included within the narrative.\(^\text{13}\) It is
unreasonable to posit that the author(s) of the narrative crafted such remarks totally on
their own. Richard Kalmin, a scholar firmly within the Halivni School, suggests that
such disparaging remarks may have been the result of the school of one Amoraic
authority recording or affirming such a tradition in order to weaken the authority of a
rival Amoraic school; this occurring not during the life of the Amoraic authority, but after
a generation or two following his death.\(^\text{14}\) Kalmin later clarifies that the disparaging
remarks in their essence were not the product of the author(s) of the narrative or even a
later Amoraic authority or editor such as the rival school mentioned above, but simply
traditions they received and which they included as part of the canon;\(^\text{15}\) the actual
disparaging comment, Kalmin argues, was made by an Amoraic authority contemporary

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\(^{13}\) Richard Kalmin, “Talmudic Portrayals of Amoraic Relationships: Amoraic or Pseudepgraphic” *AJS Review* 17 (1992), 169-170. Here, Kalmin briefly discusses the matter of disparagement and remarks in general, including positive ones.


\(^{15}\) As I later argue, any and all recordings of memrot serve to infuse further those memrot with canonical weight; without a position being recorded in the first place, it is lost, and if not reaffirmed and reworded for ‘the ages’ then its chances of canonicity are severely impaired.
with the disparaged rabbinic figure.\textsuperscript{16} He cites a similar phenomenon with respect to the ancient Greek philosophical schools, such as the Socratic School.\textsuperscript{17} By the time the narrative was being authored, these disparaging remarks were already firmly a part of the tradition and were included in the sources from which the authors were able to choose for inclusion in the narrative. They can be defined as already canonical. This is how the narrative can be defined as “a discourse composed of multiple voices in which the Multiplicity of those voices is not lost.”\textsuperscript{18}

What I argue the narrative is really accomplishing, and what is at the heart of its agenda, is the inclusion, and subsequent authorization, of even the ‘disparaged’ Amoraic figure. By reaffirming the inclusion of the story in the canon, the narrative is also reaffirming, and in this case for ‘the ages,’ the authority of that particular Amoraic figure. The narrative avoids entangling itself within the internal politics by attributing such statements firmly to authorities, and not leaving them as anonymous elements in the text. As mentioned, the narrative is careful with regard to who is disparaging whom; the greatest chronological gap will be one Amoraic generation; an example is Rav Sheshet’s criticisms of Rav, even as Rav operated a generation prior to Rav Sheshet.\textsuperscript{19} Essentially, the narrative is trying to stay above the fray and is creating the appearance of impartial

\textsuperscript{16} Kalmin, “Amoraic Relationships,” 173.

\textsuperscript{17} He references Patricia Cox, Biography in Late Antiquity (Berkeley: University of California Press, 1983), 9-12, where she posits that attacks on Socrates’ character were really attacks on the Socratic school.

\textsuperscript{18} Kraemer, Responses to Suffering, 220.

\textsuperscript{19} Yevamot 24b and 91a; Bava Kamma 47b, 65a, and 67b; Bekhorot 23b; and Niddah 60a; as cited by Kalmin. Kalmin also refers to other examples of where a generation separates the disparager from the disparaged, such as Rav Yosef’s and Abaye’s curses of statements made by Rav.
inclusiveness vis-à-vis the sources and traditions available to its authors; it appears not to prejudice one school over another (except, of course, the schools we don’t know about because they were marginalized and not included in the narrative at all). On a literary level, this ability to operate impartially can only work when the narrative is either divine or anonymous. The narrative is not at liberty to create a disparaging tradition about an Amoraic authority, even a contemporary one, at least within the constructed anonymous narrative. The authors of the Stammaitic material, when crafting that material, must have perceived themselves as distinct from the Amoraic authorities about and around whom they were creating their halachic narrative; or similarly with respect to Amoraic authorities, when engaged in Stammaitic activity, they would have perceived their engagement in such activity as distinct from their legislative or adjudicative functions. But if such a tradition were already a hardened source, meaning that it had achieved a degree of canonicity that the source and tradition had been circulating and had gained canonical currency, then the authors of the narrative may have felt obliged to leave it alone, or to specifically include it where it might further their halachic or other agenda. Thus, they respected existing canonical memrot, especially those of the earliest Amoraic sages, as mentioned, and re-infused such authority by their inclusion or lack thereof. The narrative therefore is preserving “identifiable sources which were not fully homogenized by later editors.”

A canonized multiplicity is discernible in earlier layers. Disparaging remarks, which are not dateable to the narrative itself, reflect such a canonized multiplicity.

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20 Richard Kalmin, *Sages, Stories, Authors, and Editors in Rabbinic Babylonia* (1994), see introduction. I also wish to point out that Kalmin takes this one step further by also stating that we can therefore glean “usable historical information” but I am skeptical about this conceptual leap.
To the extent that the anonymous narrative is assuming the charity it expects its readers to offer the multiplicity of sources and traditions it presents, the narrative will appear contradictory if one does not read these sources and traditions as capable of possessing contradiction within the seemingly seamless narrative. This is exemplified by the relationship between Rav and Shmuel as presented in the narrative. In some places, the narrative presents sources and traditions where there is a clear hostility between the two; in others, the narrative will present a source where they appear to be reconciled. More cleverly, if the narrative can pull it off, it attempts to create the appearance that there was no difference in tradition in the first place! An example of respect between them is a case where Rav requires that Shmuel enter the door of a building ahead of him, a timeless gesture of respect;\(^{21}\) Rav cursing the sons of Shmuel to death is an example of the opposite.\(^{22}\) I would argue that the inclusion of the reconciliation is essential in order for the narrative to create the backdrop into which it can plug two figures who must be equally authoritative. Otherwise the coupling of the two would be problematic and would make little sense. Stories like this can be unpacked with the result being a narrative explicitly conveying the following: “Rav and Shmuel may have had their issues, but in the end they respected each another’s authority, and we as later readers have no right to question this position taken by these two titans of the halachic process.”\(^{23}\) Such a statement can only be made by an impartial arbiter or a narrative which appears impartial.

\(^{21}\) Bava Kama 80a.

\(^{22}\) Shabbat 108a

\(^{23}\) In order to clarify this point, one can look at contemporary students of the BT who operate within the tradition. They would certainly see themselves as ill-equipped to understand why Rav and Shmuel are occasionally presented with such enmity one toward the other. They would discuss even some 19\(^{th}\) and 20\(^{th}\) century disputes with equal charity.
An anonymous voice can be this arbiter and anonymity offers the subsequent impartiality and therefore the promotion of multiplicity.

Authorship and the Narrative

The narrative rarely clues the reader into the lived positions of its authors. Rather, it presents two or more halachic positions, treats them as possessing the authority to have been included in the recorded text, and presents one as the halacha – or as a highly preferred but not exclusive halachic option; nevertheless, the narrative does not close the door on the other recorded positions. The inclusiveness, and hence the multiplicity, of the narrative is striking for something put forward as a legal text. The irony is that with all the narrated attribution, the identity of the narrator is not known and the narrative’s agenda is not explicitly revealed; it is unclear if there even is an agenda.

Multiplicity of Halachic Voices

Central to this chapter is the notion that the multiplicity of halachic voices in the narrative creates the opening through which the BT becomes a charitably treated text and subsequently highly canonized. By allowing for such multiplicity, the editors appear to have been placating as many traditions as they could without allowing too diverse a range of theological styles to contradict so much so that they may infringe on the viability of the text. While the BT does discuss groups whose philosophy of halacha is not worthy of inclusion in the BT (i.e. the Sadducees), it is always difficult to guess which more normative positions were excluded if they are no longer extant. As is often the case, the

24 This is evidenced by instances where later halachic authorities rely upon the ‘losing’ legal option.
editors included varying Amoraic interpretations of Tannaitic material, and they appear to include on occasion more than one interpretation of an Amoraic memra. All the memrot and interpretations thereof are legitimate and possess the authority to be included in the narrative. Their inclusion in the narrative and juxtaposition with one another further validate the narrative’s inclusiveness and further infuse the recorded sources, as well as the narrative within which they are woven, with authority and later with canonicity.

Without elucidating clearly the multiplicity behind this legislative work, one could posit that later authorities may have been less likely to accept the work as canonical. By operating inclusively, the BT allows for a broader range of rabbinic schools to ultimately validate the text, since they were more likely to see at least strains of their own traditions within the BT. The BT on several occasions presents information which also validates the possibility that two rabbinic authorities might be at odds, but that they are still both legitimate. The narrative draws upon the verse, “these and these are both the word of the living Gd,” in order to do so.\(^{25}\) Modern legal scholars have also defined Jewish law, and therefore the project of the BT narrative’s editors, as being “controversy among authorities.”\(^{26}\)

By allowing for this multiplicity of voices, the editors of the narrative avoid a large component of the decision making conundrum as described by Bleich:

“[A rabbinic authority must choose] between conflicting precedents and opinion that the consummate expertise of the decisor becomes apparent… He must carefully weigh and balance opinion and decisions, assigning weight not merely

\(^{25}\) Eruvin 13b.

on the basis of sheer number but also on the relative stature of the scholars whose opinions are under consideration, and must at the same time assess the complexities and relative importance of any number of component factors."

While the narrative does not appear to act as an arbiter of halacha, and need not implement any expertise in order to determine the halacha, it does determine which Amoraic authorities possess enough stature to be referenced. It is not the agenda of the narrative to provide the adjudicator with a black-and-white halachic legislation; the goal is to provide general guidance as to what acceptable options might be, as the BT generally offers more than one acceptable outcome. The editors of the BT affirmed the stature of halachic positions, and presumably, in their time and in their reality, they also divided normative (that which is ultimately included in the text) from non-normative behavior (that which was excluded). This is something about which we can only speculate. But the restatement of the law is also noteworthy. Jewish law codes, such as the Mishneh Torah and Shulkhan Arukh, can be viewed as restatements of law. What separates the narrative of the BT is its multiplicity within a single compendium of law and how this multiplicity is available and utilized by those later authorities who were more interested in generating a single apodictic law code than a compendium of available traditions.

Dialogue-Reinforcing Multiplicity


29 Ultimately, this fate does befall Maimonides and Caro, as their positions are viewed as authoritative and worth following, but they are not viewed as definitive norms in halacha. They are but a single voice among the Multiplicity of voices in the ever-expanding halachic canon.
The manner in which the narrative creates the dialogue has also been parsed as being part dialogue and part commentary.\textsuperscript{30} Here an attempt is made to demonstrate that when the narrative states that one rabbinic authority actually addresses another, that it is not necessarily always the case that they were, historically speaking, at one point engaged in a real, face-to-face conversation. In the narrative “the scribes (were) transforming dialogue into commentary because of their assumptions that the rabbis involved were not speaking in each other’s presence.”\textsuperscript{31} The implication is that the narrative was free to create and un-create dialogue as it saw fit. Further, it is possible to discern when the narrative is generating the dialogue and where it is historical, the argument goes. I will not argue that it is never possible to determine where a tradition is reasonably reflecting a real face-to-face encounter. I argue that the narrative preserves such encounters where it perpetuates multiplicity within halacha. Further, juxtaposing a ‘lesser’ rabbinic authority with a greater one can infuse greater authority into a specific rabbinic figure. Literally creating such encounters serves the same purpose.

To use a boxing analogy: when Ali met Frazier, it enhanced Frazier more than Ali, as great as Frazier might have been; nevertheless it was also a big part of what made Ali into Ali. In retrospect, both the Ali camp and Frazier camp will claim their man as ‘the champ’ and because both were at some point in fact the champ (since they both defeated the other to win the championship at least once), there is a case to be made that


there is a multiplicity of champions when discussing boxers of similar stature and pugilistic skill. Similarly, juxtaposing one rabbinic figure with another of equal or greater stature serves to enhance that specific rabbinic figure’s authority and the traditions associated with that particular rabbinic authority. This serves the agenda of the narrative by legitimizing further both authorities not only by means of inclusion, which is essential (as is noted and emphasized), but also by means of the method and style of inclusion, such as how the dialogue is portrayed, etc. I might also assume that if there was no reason to change the existing tradition of attribution and/or the method in which it is delivered, that the narrative would leave it as is. An example of this is the way the narrative deals with traditions of coupled sources – those crafted by a metzaref.\footnote{David Halivni, meqorot u’mesorot: Shabbat, (Jerusalem: hotza’at beit ha’midrash la’rabanim b’amerika, 1982), 24.} Some are no doubt changed, but by and large there is no need to doubt the core attribution of a position to a specific rabbinic authority. Beyond the rawest attribution of a tradition, the narrative certainly took the liberty to create a dialogue and/or commentary into which such sources were plugged. This can include situations where Amoraic or post-Amoraic editors might present two sources as having been coupled in a much earlier generation to make it appear as though an early metzaref’s hand was actually involved, where an early metzaref actually was not. Those contemporary with the narrative may have been sensitive toward knowing what is historical and what is staged. But for those of us who are operating one, two, or fifteen centuries after the narrative came to be, there is no way to know with certainty what is staged and what is not. Attempting to parse commentary from dialogue is reading the narrative without consideration that the narrative is controlling the entirety of the dialogue – and therefore its multiplicity of voices – and
preserved strictly that which was essential to its own agenda. Therein lies a certain brilliance of the narrative: that it knows how and when to employ specific styles, word usages, language, dialogue, and other literary techniques available to it, thereby making its embrace of multiplicity seamless and undetectable.

The editors of the narrative viewed the collection of sources and traditions as a whole single piece, or at least that is how it is presented in the narrative. Unlike the manner in which the Rabbis view Moses in the context of Jewish (i.e. Mosaic) law – that he was a utopian positivist source from whom law was proffered – they viewed individual rabbinic authorities as not possessing such a legislative power.\(^{33}\) The BT narrative successfully leads the reader to believe that it is, in its entirety, the definitive rabbinic law code of its time; that within the range of positions offered within its pages, there the proper adherent will find all the answers to any particular halachic issue. It is the ‘last word’ in legislation, and again will commence a period of adjudication. The multiplicity of voices, what one might call the federalization of the halachic universe of the time, is a strong factor in how the narrative came to be perceived and subsequently canonized. This is a legitimization of multiple voices and traditions (and behavior) in the narrative. Often, the halachic positions are not parsed as either accepted or dissenting. The idea of dissent is, in many instances, the result of later commentators, and usually the codifiers (i.e. Maimonides, Caro), selecting one position, thus labeling the other(s) as dissenting. The editors of the BT purposefully played down the idea that one particular position was in a full mode of dissent when juxtaposed to another regarding a specific

\(^{33}\) In the biblical case of Moses, as viewed by the rabbis, he legislates through adjudication. The Torah is said to come from Sinai by way of Moses. The divinity and anonymity of the Bible is also tied up in the idea of Moses and Mosaic Law. One can view Moses as anonymous and Mosaic law as divine.
halachic matter. At a base level, they provide multiplicity for multiplicity’s sake; subsequently, this multiplicity allows for greater inclusivity.

**Rabbinic Views On Multiplicity**

There have been various schools of thought regarding the multiplicity of sources and traditions in the BT. How did they proliferate? Why were the controversies recorded in the first place, thus allowing later editors to embellish the burgeoning multiplicity of voices by the second Amoraic generation? Essentially, the question that begs to be asked, and often is: What went wrong that so many sources and traditions were able to gain so much canonical currency?\(^{34}\) At a basic level, one could argue, as the traditional adherent might, that the destruction of the Temple and the dispersal of the high court in Jerusalem, the one with final and the most far-reaching authority, created a peculiar circumstance in which local authorities acquired far greater power than was possible when many matters might have been referred to the high court in Jerusalem.\(^ {35}\) Others – minimizers, as they are called – might suggest that while it might appear that there exists multiplicity and controversy, it is really minimal and not representative of the vast majority of matters upon which all the Amoraic figures in the BT agreed, specifically the major theological issues.\(^ {36}\) The later editors were in a position to control the range of non-halachic theological activity within the narrative, as is evidenced by the statistics of BT attribution where some sages are under-represented, some are over-represented, and

\(^ {34}\) Traditionally, the idea is that from the time of Moses it became increasingly difficult to remember all the laws and thus they needed to be recorded, even in the relatively imperfect form that is the BT as a purely legal document.

\(^ {35}\) Maimonides, *mishneh torah, hiclhot mamrim* 1:7.

\(^ {36}\) Abraham Ibn Daud, *sefer haqabala*.
still others are unknown to us. Nevertheless, the minimizers do not deny that breakdowns in the transmission of traditions can yield discrepancies among different rabbinic authorities within the halachic process.

Within the BT itself, the topic of dispute among sages is also broached, specifically with regard to how two great rabbinical figures such as Hillel and Shammai might have disagreed. The conclusion revolved around the erudition of the students who functioned in the schools of Shammai and Hillel after their deaths.37 Mishna Hagiga, clearly working within the tradition, makes a claim that at one point there was only one halachic dispute!38 This dispute then flowered into many disputes. This project can accept the above or variations of the above as long as it is still possible to posit that the narrative is not being inclusive because of some flaw in the halachic process. Rather this is the halachic process. Within the tradition, as exemplified by the text in Hagiga, there is a yearning for a golden age where there was only one – or even no – dispute(s). Ultimately, Hillel and Shammai and subsequently the schools named after them possessed differing traditions regarding a range of halachic issues. Their disputes more than likely reflected two poles on the Pharisic halachic (and one might argue, political) spectrum, one which might have predated Hillel and Shammai.39 Although not all Tannaitic authorities are explicitly connected to one school or another, it is also apparent that as the Tannaitic period progresses, Tannaitic authorities certainly tend toward one or

37 Sanhedrin 88b; two ‘torot’ is the language in the text there.

38 Hagigah 2:2.

39 Louis Ginzberg, mekoma shel hahalacha bhochmat yisrael (Jerusalem, 1931).
the other. 40 While the text in Hagiga attempts to look back to a time of no dispute, we see that multiplicity is attributed even to the earliest rabbinic periods.

Nonetheless, there is a tension that emerges from the acknowledgment of dispute in the BT. There is also indication of a very early tradition for embracing multiplicity in the BT.

Chapter VI

Nedarim 5b – 6a

Tractate Nedarim

An analysis of any sugya in Nedarim requires at least a short discussion of scholarship related to the tractate as a whole, how it might be editorially distinct from other tractates,¹ and the manner in which this distinction is relevant to the broader arguments put forth in this dissertation, and specifically the value of reading Stammaitic material stylistically instead of chronologically. In a nutshell, a generally accepted theory regarding Nedarim (as well as several other tractates such as Nazir) is that it was compiled relatively late because of the ‘thin’ nature of the narrative surrounding the attributed Amoraic and Tannaitic material. Therefore, little editorial and authorial work impacted the tractate until very late, and hence the dearth of Stammaitic activity. In looking at the sugya at hand, I will try to demonstrate that certain anonymous, Stammaitic elements and activity must be early. The ‘thin’ nature of the narrative or Stammaitic activity eases the process of peeling away those elements from the attributed Tannaitic and Amoraic material.

¹ Yaakov Nahum Epstein, mevo’ot l’sifrut ha’amoraim (Tel Aviv: Magnes Press, 1962), 54-55. See also Christine Hayes, Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Difference in Selected Sugyot from Tractate Avodah Zarah (Oxford: Oxford University Press, 1997), 22, note 42. Medieval commentators on the text also commented on the unique nature of the language in Nedarim; see Rosh on Nedarim 2b and Tosfot on Nedarim 7a and 20a.
As I discuss in Chapter 1, it is difficult to find the balance between focusing on the literary while at the same time not losing sight of the historical. I am interested in demonstrating the flexibility of potential in dating the various literary elements of the sugya. At the same time, I am not looking to eliminate the chronological texture that informs a literary approach. This is a delicate balance, since arguments for considering chronologies less can be understood as arguments for not considering chronologies altogether.

Although he made his arguments in the middle of the last century, Y. N. Epstein’s view on Nedarim – that it is late – is still accepted by many of those for whom such dating is critical to their reading of the text. It also leaves us with Epstein when looking to review such a chronologically-infused perspective on the tractate. Epstein commences his treatment of Nedarim by highlighting grammatical and terminological differences between Nedarim and other tractates.² He points out that the tractate of Nedarim sat on the shelf for over a century, as it was not studied in certain yeshivot for that time.³ The implication is that while other tractates were being treated and moving closer to being edited in a more final form, Nedarim was relatively ignored during this time and only later – after it was ‘rediscovered’ – was it edited in the way of the other tractates, although with its own distinct grammatical and terminological nuances. This somewhat ignores the idea that the core of the text – the parts around which narrative is crafted and based upon which one can think about editing a text – was of a similar chronological

² Epstein, mevo’ot, 54.

³ Epstein, mevo’ot, 55-56. Specifically, he refers to the geonim Neturnai as well as to Yehudai who stated that “we do not study Nedarim and do not know how to adjudicate from it regarding oaths and swears.”
provenance as the cores of other tractates. It belies the notion that even such early material contains Stammaitic elements which hold the *memrot* together, however rudimentary. And that such Stammaitic activity also impacts the legal trajectory of the narrative.

Epstein provides several examples of where the editors of Nedarim were clearly working from, and were obviously aware of, narratives from other tractates. He specifically points out that Nedarim is further distinct from the other few tractates that are distinct from the general population of tractates and is therefore from another yeshiva, and possibly later as it also draws from them. He does not dismiss the literary style that is Stammaitic activity, nor does this preclude the potential earlier dating for these sugyot. Epstein is primarily addressing the issue of assemblage more than the issue of authorship or the crafting of different parts of the text, separate from the tractate as a whole. Epstein even sets up a strong argument for an earlier ‘proto’ sugya existing as part of an earlier ‘proto’ tractate. He does so by establishing that the ‘other’ yeshiva from which Nedarim comes from Mehoza. Part of his evidence is the significant number of references to Rava in the tractate. He also mentions other Amoraim, Rav Yehuda and Shmuel, who are frequently mentioned in Nedarim, as whose attributed traditions were arranged as part of an “earlier, general Talmud.” An “earlier, general Talmud” is essentially a proto-Talmud. Regardless of nomenclature, Epstein acknowledges the existence of literary elements the chronological provenance of which include memrot attributed to Rav

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4 Epstein, *mevo’ot*, 69. Earlier (pp. 65-66), he points to a sugya in Nedarim that drew upon one in Shavuot.

5 Epstein, *mevo’ot*, 68-70.

6 Epstein, *mevo’ot*, 69.
Yehuda and Shmuel, and some Stammaitic activity so that the memrot can be transmitted in a relatively fixed form. Epstein’s Mehozan style is a form of Stammaitic style and activity.

Epstein’s chronology regarding Nedarim has its purpose, and specifically with respect to a late commencement of the assemblage of material into (and from) tractate Nedarim. In terms of the style, chronology becomes more difficult to pin down, even as geography seems to play some role in the Epstein model. This is especially the case when analyzing snippets of Stammaitic activity whose conceptual chronological provenance needs to be early, if not its language. In most cases, it is hard to dismiss the possible early dating for the leap from the canonical concept to the canonical language in certain elements of the transmitted text. Epstein does not address this possibility, and he does not categorically dismiss such inquiry of relatively small elements of a sugya.\(^7\)

**Our Sugya**

In presenting the sugya on Nedarim 5b-6a, it is worth introducing the sugya in the terms I have been using throughout the first several chapters of my dissertation. In the next few paragraphs, I will be going through more general analyses of the concepts I deployed earlier. My goal in analyzing any specific text in the BT is to be able to view the words of the text individually and their specific impacts, while at the same time keeping in mind the more theoretical frameworks I have tried to establish in the first five chapters. Additionally, I address the arguments I make in my first chapter regarding

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\(^7\) As I discuss later, there are phrases in this sugya which I argue are Stammaitic in style and impact, and which are necessarily early. Epstein does not address them as such.
chronologizing the manner in which one reads the text: the pursuit of peeling away layers in the text in a consideration of chronology ahead of the literary and/or legal analysis. ⁸

In addressing the issue of chronology in the sugya in Nedarim, my goal here and later in my analysis of the words of the sugya is to demonstrate that at least parts of the sugya are not necessarily of a post-Amoraic milieu. Further, in doing so, it becomes clearer that earlier transmitters could have deployed the type of anonymous Stammaitic activity attributed only to post-Amoraic Stammaim (and only under duress to the latest Amoraim). Specifically, the broader sugya, of which the text I analyze is one component, there are three chronologically – nearly self-contained – elements that only need to be dated to a period following closely the time of the sage who serves as the protagonist in that part of the sugya. As I allude to later in the context of my word analysis, the three components are the following: (1) the first element is the earliest and commences with 'לחברו האמר' on 4b and ends with 'מוכיחות ידים בעינן' preceding אתמר on 5b; the protagonist is Shmuel, and the narrative revolves around his reaction to a Tannaitic halachic statement; (2) the section I analyze here, and which follows the first part and ends at the end of 6a; the central Amoraic sages are Abaye and Rava; (3) the final part revolves around Rav Pappa’s extrapolation of the first two parts as they might pertain to other halachic situations where certain types of explicit declarations might be necessary.

⁸ To reiterate what has been discussed Chapter I, in arguing against putting chronologies of rabbinic generations at the center of how one reads the BT, I am not asserting that chronologies are unimportant. Nor am I putting forth my matrix of pluralism, anonymity, canonicity and multiplicity as the only way to read the text. These are all different prisms through which the text can be read, and different approaches that can inform how one reads a sugya.
The part of the sugya where Rav Pappa is primary and first mentioned can also be read as self-contained. Interestingly, in this part of the sugya, on 6b, the narrative puts Rav Pappa on par with Abaye when it states, “from what Rav Pappa said to Abaye,” (והא לאביי פפא רב לי מאמר). Abaye and Rav Pappa are chronologically similar, if not the same, when juxtaposed with Shmuel in this context. Evidence that the different components can stand alone as self-contained is the manner in which the Tannaitic position of Rabbi Judah is quoted nearly as fully in both the first part and the second part of the sugya. The second component makes no assumption that a reader would be any more familiar with the immediately preceding component of this sugya than with any random sugya in the rest of Nedarim, or even the entire BT. Such self-containment can be attributed to late, post-Amoraic editors purposefully writing in such fullness for reasons such as formulating texts so that they are more readable and less cryptic. While this is possible, it is also possible that the different components were formed, by and large, during different Amoraic generations, and not necessarily at the same time by a group of Stammaitic operators, chronologically bound to a single generation or two. Specifically, there would have been a second or third generation Stammaitic operator who put together the first part of the sugya involving only Shmuel and Tannaitic sages.

In terms of the anonymous elements of the text – the ones to which we can also refer as the Stammaitic elements – it is rather self-evident within the sugya that the narrator and its Stammaitic and anonymous formulations is one which remains on the sidelines and which possesses the respect of both parties in the halachic debate. It is this element that is indisputable; the narrator is neutral. Within the text, all parties ‘give in,’

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9 Both appear on 5b.
so to speak, to the narrator whose name is never mentioned within the sugya. It is the ultimate arbiter within the text. In this sugya, it is hard to argue with the idea that the anonymous narrator and the Stammitic elements it deploys are the most neutral and yet possibly the driving force within the text of the sugya. In this particular sugya, there are no apparent contradictions within the Stammitic elements. On the whole, the narrator of this particular sugya succeeds in conveying a sense of gravity both in the presentation of the narrator’s own words, and in the manner in which the sages are portrayed as the definitive rabbinic voices on this particular halachic issue of inexplicit abbreviated declarations. As in most sugyot, the narrator almost appears to be speaking on behalf of the entirety of the rabbinic tradition, offering the appropriate sages and range of acceptable positions in a case.

Regarding the notion of legal pluralism, there is little in this sugya that would pose a threat to an existing legal system within which Jews were operating while still trying to uphold some semblance of the legitimacy of the laws of the BT. It is worth pointing out that pragmatically the only aspect of this law that might be relevant is its association with marriage vows and divorce declarations. Vows in general, and Nazarite vows in particular, are not as relevant because of their association with sacrificial offerings never available to any Amora, from Rav onward. There is also little in this text that would lead us to attempt to unpack further the notion that some strain of legal pluralism exists within the BT itself. Rather, this sugya is typical in its presentation of a multiplicity of voices expressing a range of positions on a given halachic matter. The range of positions may appear critical within the theoretical rabbinic world where
offerings are brought and everyone is mindful of every word they utter. Practically, they very much represent a rather single overall rabbinic weltanschauung, with only the appearance of significant multiplicity.

Clearly, when dealing with a sugya in the BT we are dealing with a text possessing the necessary degree of canonicity to be included. In this sugya, there are certain markers, which can be construed as possessing significant degrees of canonicity when considered as elements alone and decontextualized from this sugya. Most significant are the primary players in the sugya, Abaye and Rava. One need not be a scholar of the BT to know that Abaye and Rava lend significant credence to any halachic position. Halachic issues framed around the coupled positions of Abaye and Rava must have been highly regarded by those sages who post-dated Abaye and Rava and who received them. Further, Abaye and Rava themselves must have been perceived as embodying the canon of rabbinic literature to those who initially recorded their positions, and specifically to the couplers, metzarfim, who put their positions together. Notable is the manner in which the later sages are presented as themselves dealing with the positions of Tannaitic and earlier Amoraic sages with great charity, and hence with a heightened degree of canonicity. In the sugya, Shmuel treats Tannaitic elements as canonical and by Abaye and Rava treat Shmuel as similarly canonical. The sugya can be said to be demanding a similar charity by those who follow and read it. And, in fact, the next part of the sugya with Rav Pappa at the center seems to offer proof of this to some extent.10

10 As I mention, above, a later narrator who narrated the Rav Pappa component conflates Abaye and Rav Pappa chronologically, and appears to offer Shmuel alone the heightened degree of charity. Because Rav Pappa was a student of Abaye (and Rava for that matter) and because they overlapped, it would not be unreasonable for one to narrate Rav Pappa and Abaye in one way, but the long-gone and highly venerated
When analyzing the sugya in Nedarim 5b-6a, I pay specific attention to the text and how it relates to the proliferation of multiplicity and the pursuit of (a perfected) canonicity. I point out how the anonymous elements in the text drive the multiplicity and the canonicity. What emerges is the degree to which the anonymous Stamaitic elements – and more specifically, the authors who crafted them – are able to maneuver the authority associated with different opinions raised in the sugya. This is particularly felt in the manner in which the narrator (in the form of the shaqla v’tarya)\(^\text{11}\) blurs the line between actually quoting Amoraic sages and presenting theoretical assertions on their behalf.\(^\text{12}\) In discussing the anonymous Stamaitic elements, I raise awareness about how they are not necessarily post-Amoraic, and some of them could have been created within a generation of Abaye and Rava.

This sugya discusses how explicitly a declaration must be articulated in order for it to be valid. Specifically, the sugya addresses the explicitness of laws where a declaration is necessary in order to perform the obligations related to that law. The sugya explores whether there exists a general rule regarding the explicitness of abbreviated declarations, and halachot from which it might be able to infer this principle. The sugya incorporates halachic matters where the explicitness of language is closely connected to whether that particular language is sufficient, and therefore results in a valid halachic act.

Shmuel would be in another category with respect to his treatment in a narrative that post-dates him by several generations.

\(^{11}\) As I mention several times, I use ‘narrative’, ‘author(s)’, ‘authors of the stammaitic elements’, ‘narrator(s)’ and forms of them, interchangeably.

\(^{12}\) While I translate the texts myself, in my analysis I will discuss other translations in order to demonstrate that the ambiguity is deep and still reflected in how the text is read today.
Examples include the language associated with sacrificial offerings, divorce, general vows, Nazarite vows, marriage, peah, among others. I focus on the part of the sugya dealing with the Nazarite vows and divorce agreements.

The part of the sugya I analyze is a fuller discussion of the dispute regarding yadayim sh’eyn mokhihot, inexplicit abbreviated declarations. The part of the sugya immediately preceding our fuller discussion of inexplicit declarations, and from which ours flows, centers on Shmuel’s position regarding inexplicit abbreviated declarations, and is one of only three other places in the BT where the phrase and concept of yadayim sh’eyn mokhihot are mentioned. The part including Shmuel might well be the most archaic, since Shmuel is a first generation Amora, and the words and concept are not mentioned in any Tannaitic literature or traditions. This part of the sugya also seems to be the first to infer a position on inexplicit abbreviated declarations from divorce agreements, and this is picked up in the part of the sugya I analyze. The inference, in all the different parts of the sugya, is the creation of an anonymous author of Stammaitic elements; it is not clear if the same author(s) who crafted the language and shaqla v’tarya surrounding Shmuel’s position are the same as the one(s) who does so for Abaye later in the sugya. What is clear is that they must post-date the sage to whom they are referring, yet are not necessarily post-Amoraic; no sage who operated after the fourth generation is mentioned.

Below are the texts of the two more essential components of the sugya in terms of my analysis. As mentioned, they revolve around the relevance of Nazarite vows and
divorce agreements. First I present the text as whole. When translating it I bracket additional English words which are useful in understanding the text, and without which the cryptic text is not comprehensible in translation.

Nedarim 5b\(^{13}\): It is stated [that there is a dispute] regarding abbreviated declarations (yadayim) that are not explicit: Abaye states: they are [valid] abbreviated declarations, and Rava states [that they are] not [valid] abbreviated declarations. States Rava: Rabbi Idi explained to me: “The Bible states, ‘[if a man or a woman explicitly utters a vow of] the Nazarite, to become a Nazarite to G-d’; he compares abbreviated declarations of Nazarite vows to Nazarite vows. Just as a Nazarite vow must be [made] explicitly, so too must abbreviated declarations of the Nazarite vow be [made] explicitly. Shall we say that [Abaye and Rava] are disputing [the same] dispute of Rabbi Judah and the Rabbis? We learned in a Mishna: the essence of a divorce document (get) is [the phrase]: “thus you are permitted to every man.” Rabbi Judah states [the following must be added]: “and, from me to you, this will be a book of divorce and a declaration of freedom and a decree of release.” [Does it not appear that] Abaye [whose position is that inexplicit abbreviated declarations are valid] states like the Rabbis and Rava [whose position is that inexplicit declarations are invalid] states like Rabbi Judah? Abaye could say to you: “That which I stated can even follow Rabbi Judah[‘s position]. Until now Rabbi Judah did not speak of inexplicit abbreviated declarations, but

\(^{13}\) The translation of the texts are my own.
rather [he speaks] about a divorce document, where a strong separation [of the couple is required]. Here [a strong separation] is not [required].” But, in general, who heard him (Rabbi Judah) [state that inexplicit abbreviated declarations are invalid]? And Rava could say: “that which I stated can even follow the Rabbis. Until now the Rabbis did not speak of inexplicit abbreviated declarations; but rather about a divorce document, where a man does not chase away (divorce) the wife of his friend [and therefore explicitness is not required]. But, in general, who heard them (the Rabbis) [state that inexplicit abbreviated declarations are valid]?”

The next part of the sugya I present is on Nedarim 6a. The middle part of the sugya is a related discussion about how language is used when bringing an offering to the Temple, and the degree of specificity that is required when doing so. In this section it is assumed that the need for explicitness in bringing a sacrifice is sufficient to infer a position regarding inexplicit abbreviated declarations. The shaqla v’tarya refutes Abaye once, and he responds, and the next section commences with another refutation of Abaye because the previous segment appears to conclude that inexplicit abbreviated declarations are invalid. These two parts of the sugya parallel one another in some ways, and their closeness is also reflected in the identical word choice in conveying the progression of the argument. The following is a continuation of the sugya on 6a:
Nedarim 6a: It is a refutation of Abaye [since it appears that inexplicit abbreviated declarations are invalid]. But Abaye could say to you: “according to whom [is this Beraita]? It is [according to] Rabbi Judah.” And was it not Abaye who stated: “that which I stated can even [follow] Rabbi Judah[‘s position].” He (Abaye) recanted [and agreed that his position is unlike Rabbi Judah’s]. Rather, can we say that Rava stated according to Rabbi Judah[‘s position and not the Rabbis’ position]? Rava could say to you: “that which I stated can even [follow] the [position of] the Rabbis. Until now the Rabbis did not state that we do not need [for] abbreviated declarations [to be] explicit; rather [the Rabbis allowed for inexplicitness] with respect to a divorce document, where a man does not chase away his friends wife; but in general, we do need [for] abbreviated declarations [to be] explicit."

Before offering commentary on the sugya, and overlaying a literary approach to Stammaitic activity, a brief explanation of the sugya and the terminology used therein is in order. The tractate of Nedarim deals with vows, and generally with vows which prohibit specified actions. If one were to translate the Hebrew word *nedarim* into English, ‘vows’ would be as good a choice as any. ‘Vow’ is a broad English word that encompasses a range of Hebrew verbal actions referenced in Nedarim. An extreme example of this is the vow of the Nazarite, to which a separate tractate is dedicated. The tractate emphasizes which words are considered valid in terms of infusing a vow with validity. Beyond the basic word used to indicate that one is undertaking a vow, there are also word formulations which comprise a vow. Vows can be hinted. They can be implied and they can also be precise and explicit. These formulations can be abbreviated. These are called *yadayim*. And they can also be inexplicit. These are referred to as *eyn*
mokhihot. Our sugya is dealing with the inexplicit abbreviated declarations, yadayin sh'eyn mokhihot, and their validity as vows. In the course of the dialogue, the text references different Amoraic and Tannaitic sages. Conceptually, the argument meanders through discussions on abbreviated and inexplicit nazarite vows as well as divorce declarations that are also inexplicit or abbreviated.

The first aspect of this sugya I wish to address is the manner in which Abaye is presented and with which traditions are attributed to him. The sugya is a rather typical one reflecting a dispute between Abaye and Rava. As in other sugyot, the shaqla v’tarya presents the possibility that the dispute between Abaye and Rava is in fact a reiteration of a Tannaitic dispute between Rabbi Judah and the Rabbis; thus there is no need to repeat the dispute in its Amoraic incarnation. This part of the sugya focuses on the defense of the inclusion of the Abaye-Rava dispute, and explains that this dispute is not reflective of the older Tannaitic dispute. In the first part of the sugya, the shaqla v’tarya creates a theoretical conversation where Abaye and Rava both are presented as potential respondents, and the language used is subjunctive, “Rava could say to you,” and “Abaye could say to you.” In the next part – on 6a – the text presents Abaye as actually having stated what was attributed to a theoretical Abaye on 5b. The more ‘real’ Abaye and Rava are made to appear in the text, the more authority that can be associated with the words – and the traditions they reflect – attributed to Abaye and Rava. In order to elucidate this further, I go through the Aramaic/Hebrew version of the text in order to parse the Stammaitic elements from the elements received by the crafters of the shaqla v’tarya (i.e.

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14 The tractate Yadayim deals with a different matter, and is not at all relevant here. Tractate Yadayim addresses actual hands and their purity or lack thereof.
the Stammaitic elements). As will be shown, the *shaqla v’tarya* becomes murky in the part of the sugya on 6a in terms of what was actually expressed by Abaye and what is the creation of the anonymous creators of the *shaqla v’tarya*. Because there are no known significant variations found, I am sticking to the traditional words and letters of the sugya as it is in the Vilna edition and providing my analysis based on them.

**אתמר – “It is stated”** – This is an anonymous element that introduces the concept to be discussed, which is the partial or abbreviated declaration. It should not be viewed as part of the *shaqla v’tarya*. Generally, *itmar* introduces a concept about which there is an Amoraic dispute. In our part of the sugya, the dispute is between Abaye and Rava. It is also possible that other Amoraim may have disputed the matter earlier, and the *אתמר* and its introduction of the concept at hand is a construct that could refer to other sages, more ancient than Abaye and Rava; perhaps there is a sugya discussing this same issue, lost to us, which opens with *itmar* and introduces earlier Amoraim. This becomes even more likely when considering two factors: (1) as the sugya progresses, the narrative stretches the internal logic of the sugya so that the dispute between Abaye and Rava appear reasonable and thus ‘admissible,’ as it were, into the sugya at hand; quite possibly, the anonymous narrators of older Amoraic traditions were unable to see the distinctions created by the authors of the Stammaitic elements here; and (2) that Abaye and Rava are more authoritative than a lesser-known Amora from a previous generation and authority is best infused into the position through them.
“Inexplicit abbreviated declarations” – These words comprise – in Hebrew and not Aramaic – the concept of inexplicit abbreviated vows addressed in this sugya. The concept and the words reflecting them can be dated as early as Shmuel, and might even be Tannaitic – as this sugya tries to demonstrate. The placement here of the concept and associated phrase is the work of anonymous narrators who post-date Abaye and Rava, although it is not clear by how much. Are they fifth generation Amoraic narrators or editors? Are they post-Amoraic (Stammaim)? The text obviously does not stop here, and the narrator is setting up the sugya so that it absorbs different opinions regarding inexplicit abbreviated declarations, and thus offers greater multiplicity. There is a definitive effort in the text to associate more rather than fewer sages with this relatively rare rabbinic concept. The matter – as with many in the BT – could have been settled apodictically and with just two sources associated with the tradition and the dispute surrounding it.

What cannot be certain is whether the actual author of the word itmar is also the same person to add these words to the sugya in this way. It is possible that there were earlier traditions that may have used another word or no word at all when introducing the concept in this sugya. Clearly at some point the words and the concept acquire a degree of canonicity, which makes the words nearly impossible to change. Variant texts support this, as the concept is phrased precisely the same way in all the manuscripts.\textsuperscript{15} Within the Halivni paradigm, the concept and the words associated there are not Stammaitic and are certainly Amoraic or earlier, but the itmar is Stammaitic; the Halivni school would

\textsuperscript{15} The only difference of note is one ‘vav’ instead of two in the word “הוין”.

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concede that the Hebrew words comprising the concept conveyed by ‘yadayim sh’eyn mokhihot’ predate his post-Amoraic Stammain. In terms of Amoraic chronology, they first appear in association with Shmuel and thus one would be hard-pressed to place these words’ origins with a post-Amoraic actor; by the time of the later Amoraic generations, I argue, they achieved a degree of canonicity, which makes them impermeable. The memra and its attribution to Shmuel would have been fixed.

Regardless of when they were combined, once put together the two – ‘itmar’ and ‘yadayim sh’eyn mokhihot’ – become equally canonical linguistic elements within the extant version of the text. Even if it was the final editors who added itmar and it was first generation Amoraim who deployed yadayim mokhihot, this is still the case. As a concept, inexplicit abbreviated declarations predate the word itmar as part of the halachic canon.16 In this sugya, they are presented so that they are read as equally canonical components of the same text. Layered, however, only slightly beneath the surface is the reverence that itmar pays to the concepts as definitively archaic, and thus definitively one commanding authoritative reflection. The itmar is clearly of later provenance, and the canonical intent of the author is unknown; yet because of the authority it infuses in the

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16 I would like to address the use of the word ‘canon’ again in this context of words within a sugya and the laws they reflect. I am specifically not discussing notions of canon related to works comprising a ‘canon of something’ such as the Biblical Canon or the ‘canon of western thought’ etc. (While I address that type of canon, it is not a major factor in how I read the text.) While there is a place to discuss macro notions of canon and canonicity, here I am dealing with canon and canonicity in a more micro manner. When I speak of canons, there are two aspect to canons (and canonicity). The first is the notion of the words and phrases that ultimately acquire a degree of canonicity which allows it to be incorporated in the Babylonian Talmudic canon. The second is the idea that there is an actual canon of laws and ideas upon which laws are based that are not necessarily related to fixed word-structures. This is reasonable in an environment where traditions and their sources are passed orally, and thus there is an inherent discrepancy which must emerge as the legal concepts gain currency and spread among more people. While the language used might be similar, exactness was not possible. But the concepts addressed and adjudicated and legislated would have been almost the same.
forthcoming Amoraic dispute, the *itmar* itself then acquires the authority it infused into the tradition, and is ultimately possessive of a degree of canonicity which allows for its inclusion as part of the text of this sugya. This method of transmission sets up the authoritative pedigree of what follows in the text.

Another version of the text\(^\text{17}\) omits the entire introduction, “*itmar yadayim sh’eyn mokhihot.*” Because it is the only such variant, we can operate under the assumption that it is also the mistaken one. Nevertheless, it points to something that may very well be possible, and which is not fully addressed above: (a) these words are introducing a concept that should be apparent to most readers at this point in the tractate and sugya; and (b) while these words serve to introduce a concept, they also serve to break up the earlier part of the sugya from this one. They therefore also highlight the different parts of the sugya and how they canonically reflect different Amoraic layers which emerge from different Amoraic periods. The entirety of this sugya that deals with inexplicit declarations generally begins on 4b, where Shmuel is presenting a clarification – and a narrowing of the scope – of the Mishna’s words, האומר לעבריו מוקדה, אני (I am precluded [from benefiting] from you). The discussion then focuses on inexplicit abbreviated declarations on 5b, prior to our section of the sugya, לא מוכיחות שאין ידים שמואל קוסבר לימא לא, אין ידים הוין. “Shall we say that Shmuel thinks that inexplicit abbreviated oaths are not [valid] abbreviated oaths? Yes!” This is the first time the phrase appears in this sugya. Additionally, the entire sugya until a few lines before our *itmar* centers on Shmuel, and the concept of inexplicit abbreviated declarations is imposed upon him. At no point in the text is he stating a position on it; it is all based on inference and reflected in

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\(^{17}\) MS Vatican 130.
speculative language that is subjunctive in mood, such as “leyma.” And it is all language crafted and assembled by authors and editors who post-date Shmuel.

The section starting on 4b ends with Rava mentioning that this particular Mishnaic element is difficult for Shmuel. Aside from Shmuel, only Tannaitic sages are named in this part of the sugya. It can be said that it reflects a purely early Amoraic discussion within the sugya; this is based on the fact that until the last piece, which could be a later addition, the entirety of the sugya focuses on Shmuel, a first generation Amora. This section does not need to post-date the first generation by too much; it can even be the product of the second generation of Amoraim. The next part of the sugya revolves primarily around the narrated discussion between Abaye and Rava specifically regarding inexplicit abbreviated declarations, yadayim mokhihot, which is the section that I analyze. Because Abaye and Rava are third/fourth generation Amoraim, this middle part can be described as middle-Amoraic. Aside from Abaye and Rava, the only sages it references are Tannaitic ones, similar to the first section where it is an amalgam of Shmuel and Tannaitic figures. The section, which follows the second part that we analyze and that begins on 6b, discusses two more issues, charity (צדקה) and betrothal (קידושין), as well as the degree to which declarations related thereto can be abbreviated and inexplicit. The case of charity revolves around Rav Pappa, who was a student of Abaye and Rava, and the case of betrothal revolves primarily around Ravina, a sixth generation Amora. These two sections are both later Amoraic, with the last section about betrothal the later of the two. These sections also do not include any Tannaitic sages by name, and briefly refer to Abaye and Shmuel when putting Rav Pappa in dialogue with Abaye.
But is R. Papa really in doubt? But since he said to Abaye. Does Samuel hold that inexplicit abbreviated declarations are valid? It follows that he [R. Papa] holds that abbreviations are valid in the case of kiddushin?"

In sum, while the version from Vatican MS 130 is alone in having this omission, it does point to a break in the text, which also seems to follow the chronology of the sages mentioned. The parts appear to break down smoothly into early, middle, and late (and even latest) Amoraic layers. While not introduced in the same way with itmar, the third (and fourth) parts use the word bai to introduce the statements made by Rav Pappa and Ravina, a word not used in the first two parts to introduce an Amoraic statement. On the whole this appears to support – at least at some level – the theory of continuing redaction in the BT; there are three distinct components, relatively easily dated to three specific periods within the Amoraic timeline. These components, in the paradigm of continuing redaction, would have been added one to the next over time during the Amoraic period; this would be separate from any final editorial work that was done to the text, an example of which is the itmar.

“Abaye states” – As in all cases where the word amar is used, the element cannot be attributable to Abaye himself; only a third party can speak of someone in the third person. In this case, it is difficult to know if the formulation is that of the tanna who worked with Abaye in his school, or if this is a later formulation by someone

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18 As discussed, there are different methods scholars use when approaching the issue of redaction in the BT, one of which is a theory of continuing redaction. Scholars such as Chanoch Albeck in “sof hahora’ah v’siyyum hatalmud” in Sinai: Sefer Yovel (Jerusalem: Mosad Harav Kook, 1958): 73-78.
who received the tradition with a looser (and less canonical) language formulation. What is known is that at some point the positions of Abaye and Rava were coupled, and the coupler could not have constructed the text without using the word *amar* in this particular way. It is also the coupler who injects a canonical dose of multiplicity into a halachic concept by recording and transmitting two opinions regarding a specific matter. He could have just picked sides. Instead, the coupler is compelled to present two opinions, presumably of the most authoritative sages to have a position; in this case it is Abaye and Rava. That is not to say that lesser known Amoraim did not have a position regarding the validity of inexplicit abbreviated declarations, or to say that the status of Abaye and Rava was elevated precisely because of how the transmission of the tradition is associated with Abaye and Rava. Nevertheless, their two positions are presented reflecting two different sages whose reaches were very broad both in their lives and thereafter.

On a separate note, the word *amar* also allows us to explore how, when analyzing sugyot in the BT, it is often difficult to discern whether the origin of the halacha is legislative or adjudicative in nature. There is no way to know whether Abaye in this case was originally recorded adjudicating a specific case from which he then inferred a position on the more macro concept of inexplicit abbreviated declarations. In its essence,

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19 The coupling of sources and traditions is something that occurs throughout the Amoraic period. Every generation of Amoraim is presented in this way. While Halivni often speaks of a *metzaref*, what he is really speaking of is *tziruf*, in the sense that there wasn’t a single *metzaref* who coupled all couplets in the BT. Just as he shifted his language from Stam to Stammaim, so too can we discuss *metzarfim* and not just a *metzaref*. *Tziruf* is a very old convention – as we see in much tannaitic material as well – and it is not confined to a single moment or person.

20 I allude to this in my Introduction. In analyzing any given sugya, it is essential to recognize that the BT, in its final form, is meant to read as a legislative work. Yet, when breaking down the different parts, it becomes clear that certain memrot were originally adjudicative. When transmitted in a formal form, such memrot eventually acquire a legislative quality.
a position on a concept such as this does not necessarily have to fall into the legislative or adjudicative categories since it is not dealing with a specific halachic issue. However, *amar* gives the halachic position far greater resemblance to legislation than to adjudication. As mentioned, we cannot know if Abaye was even responding to a question, or was in fact apodictically offering a halachic position following a debate. ‘*Amar*’ without any accompanying information masks any context.

ידים הווין – “are [valid] abbreviated declarations” – The language shifts into Aramaic, thus indicating a shift from a formal and existing canonical concept to less formal and not yet fully established canonical positions related to that concept. This will be borne out by the way the sugya progresses and questions whether the positions of Abaye and Rava are not actually the same as those of the Rabbis and Rabbi Judah regarding explicit language in divorce agreements.

Even though the word *yadayim* is in Hebrew, it is only so because the concept is directly associated with this specific word. This is the word used when discussing abbreviated declarations; thus when formulating phrases in either Hebrew or Aramaic, the same word will be used. This is common throughout the BT, and other examples arise in other sugyot. Further, the two words combined also comprise a fixed linguistic structure for an accepted – and canonized – response to the concept of inexplicit abbreviated declarations. As we shall see in a few words with Rava’s opinion of the concept, there is a positive and a negative reaction which both employ the same formulation for the concept: one in the positive, and one in the negative. When we first
see the words brought up with Shmuel earlier in the sugya, only the negative option, לא והווין ידש, is mentioned. It is in this part of the sugya, with Abaye, that a positive formulation emerges. This formulation holds up for centuries after the BT is sealed (and is still used by traditional students). The BT contains many other examples where concepts are associated with a linguistically fixed set of word(s).21

I would like also to argue that the phrase yadayim mokhihot is older than hevvyan yadayim, and that the two did not emerge simultaneously in terms of their degrees of canonicity in the formal transmission. While in the final version of the text, they evolve into the same canonical status in the sugya, as part of the transmission during the Amoraic period it was yadayim mokhihot that carried the greater canonical weight. While yadayim mokhihot is in Hebrew, thus indicating a greater degree of formality, hevvyan yadayim is in the more informal Aramaic. This is the same informal Aramaic used to transmit the informal shaqla v’tarya, according to those who see the text emerging primarily from a purely post-Amoraic milieu. While on the whole, I do not accept that the formal transmission of the shaqla v’tarya and other Stammaitic elements commenced with post-Amoraic Stammaim, I do accept that there were informal transmissions during the Amoraic period that could have been formalized at a later time, although still during the Amoraic period.

ו ורבא אמר لا והוין ידש

v’rava amar la hevvyan yadayim – The discussion of these words is similar to the ones conveying the tradition of Abaye. In the typical format of

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21 Two examples are "sight damage" (e.g. Bava Batra 2a) and ודא השלמה ודא ("the law of the state is the law") (e.g. Bava Kama 113b).
any two sources coupled by a metzaref, the positions of Abaye and Rava are juxtaposed with parallel language. While Abaye’s opinion is expressed in the positive, Rava’s is expressed in the negative. In both instances it should be noted that the word amar precedes the name of the sage. An anonymous thread weaves the two sets of a source and a tradition. Until this point in the text of the sugya, it could have stood alone and is understandable to those familiar with the basic concepts related to this halacha; it is possible that only later were the next few elements of the sugya added. In this type of apodictic form – a form definitively Babylonian and post-Tannaitic – the presentation makes sense and clarification can be deemed unnecessary. Further, the sugya, to this point, could have been assembled even during the lives of Abaye and Rava. It could then have been adjusted considering other traditions that may not have been transmitted with this one, but which are relevant and which can be incorporated into an elongated version of this core element of the sugya.

There are some mild variances in the phrase conveying the opinions of Abaye and Rava as a couplet, “אוביי אמר והוין ידימ ורבה אמר לא והוין ידימ.” They primarily are omissions of the “ו” conjunction before Rava’s name.22 A less mild variant inverts the statements, and has it “הויי אמר לא והוין ידימ ורבה אמר והוין ידימ.”23 Another variance is the use of one “ו” instead of two in the word hevyan, and the use of the word hevvyu instead of hevyyan. While not critical, they do open the door to the possibility that the concept in

22 Cf. Ms Munich 95, Ms Moscow 1134, and Ms Vatican 487.

23 See Nazir 62a, Tosfot.
close association with this set of words may not have been as strong as I believe it was, and to which I ascribe a certain degree of canonicity.  

Rava states – אמר רוחא. “Rava states” – is used to introduce an opinion expressed by Rabbi Idi. They are conveyed as a direct quote of Rava telling about how Rabbi Idi once “explained” something to him. As we shall see in the entirety of the sugya, there are elements which appear to convey a historical statement or situation and which are then found to be theoretical legal machinations formulated by the authors of the Stammaitic material and attributed to an older source. Therefore, the historicity of Rabbi Idi conveying this to Rava cannot be considered and is not relevant to how one reads the sugya. What can be considered is that it was presented as a true story, and that it is all introduced with amar rava with the verb preceding the noun, as opposed to the above. This is also how the authors set forth the groundwork so that the narrative can attempt to conflate the dispute between Abaye and Rava with a Tannaitic dispute between the Rabbis and Rabbi Judah; even if it does not work out when we reach the end of the sugya.

Rabbi Idi explained to me – ארבי אידיו אמר לי. “Rabbi Idi explained to me” – The story about Rabbi Idi attributed to Rava is presented as an accurate recollection of the words stated by Rava in

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24 For our purposes, I am assuming that these milder variances are not telling and that I can analyze the text without considering them, and I only mention the possible implication – as long a shot as it is – so that it not be ignored.

25 There are variances where the word Rabbi is not spelled out and only the letter R’ is presented as the title of Rabbi Idi. This matters because it is unclear exactly who this Rabbi Idi is, and whether he in fact is from Palestine or is Tannaitic and worthy of the title. In the way the text is read here, all that matters is that Rabbi Idi is in possession of greater authority than Rava, and that Rava references him precisely because of
conveying the event. However, the manner in which Rava conveys Rabbi Idi’s legal opinion leaves the impression that Rava is clearly paraphrasing. Rava uses the word *asbera* instead of one which could convey a direct quote. Still, the explanation carries the same degree of canonicity as if it were a direct quote; at no point is Rava questioned about the accuracy of his recollection, either anonymously or attributively. Rava is also presented speaking in Aramaic when conveying the introduction to his story. Interestingly, it is not clear who this Rabbi Idi is; we can speculate that it is the Rabbi Idi mentioned in the PT who moved from Babylonia to Palestine and thus took on the moniker of rabbi.²⁶ It certainly cannot be the second Rav Idi bar Avin, since he operated after Abaye and Rava. The first Rav Idi can be seen as a mildly older contemporary of Abaye and Rava, but he also would not carry the title of Rabbi, since he operated in Babylonia. Therefore, it could possibly be this Idi as well, and the moniker of rabbi is a mistake. The inclusion of Rabbi Idi is an example of the inclusion of multiple sources in a sugya. Further, it is not the anonymous authors who are including Rabbi Idi in the flow of the sugya; it is Rava and the greater authority he carries as compared to the anonymous narrative and the authors who crafted it.

It is still unusual that the narrative would have Rava relying upon a near contemporary to lend authority to his position in a dispute; one would think that Rava, or those narrating Rava, would not need to rely on a contemporary in this way. Regardless of why, it is clear that Rabbi Idi possesses the kind of authority that allows Rava to draw

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upon a tradition attributed to Rabbi Idi in order to demonstrate the validity of his own position. Rava is mentioning this story in order to show that he is not alone in requiring abbreviated declarations to be explicit, and he draws upon Rabbi Idi’s position regarding Nazarite vows to prove it. His not being alone is also a mechanism for the narrator to expand further the number of authorities who lend their authority to this dispute. Regardless of how they position themselves within the dispute, the dispute itself is further validated as a legitimate dispute worthy of transmission, and ultimately worthy of inclusion in the final canon of the BT.

"The Bible states” – This is an introduction to a verse in the Bible from which Rabbi Idi will infer a legal maneuver, according to Rava (who himself is being narrated). In a sense, this can be seen as the beginning of a quote within a quote.

"...Nazarite, to become a Nazarite” – This is a quote from Numbers 7:2. The use of the second verb lehazir in Numbers is apparently extraneous, and Rabbi Idi uses the extra word in order to elucidate a nuance in the text; specifically, that the second verb is there so that the verse applies to abbreviated Nazarite vows just as it does to ordinary Nazarite vows.

"he compares abbreviated declarations of Nazarite vows to Nazarite vows”27 – Based upon the verse cited, Rabbi Idi provided a comparison of

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27 Variances of this include Vatican MS 130 where there is an omission of the word ‘nezirut’, implying that the object of ‘maqish’ is the word ‘ydot,’ which is unusual since ‘ydot’ appears to be in the construct. Ignoring the grammatical matter, without the word nezirut the idea of ydot broadens from just Nazarite vows and declarations but to all vows and declarations.
Nazarite vows with abbreviated Nazarite vows. Again, within the context of the sugya, these are not the exact words of Rabbi Idi; rather, they are Rava’s paraphrase of what Rabbi Idi once explained to him. Rabbi Idi clearly possesses the authority to engage a verse from the Bible in this way, and a variation is not offered by Rava.

"Just as a Nazarite vow must be [made] explicitly, so too must abbreviated declarations of the Nazarite vow be [made] explicitly". – This phrase sets up the possibility for inferring a position on inexplicit abbreviated declarations from inexplicit declarations of abbreviated Nazarite vows. Ostensibly, this is the source for Rava’s mandating that abbreviated declarations be explicit. The formulation of ma...af ("just...so too") is a standard convention, and may be an older tradition whose original sources were lost. It is also worth noting that this terminology is Tannaitic, and appears often in the Mishna, Sifra, and Sifrei. Often, there is little or nothing in the biblical text – beyond the extraneous word or phrase, or even letter – that hints to the law drawn from that specific text from the Bible. Once an extraneous word is isolated, a sage can learn different laws from it, and it is not unusual for sages to disagree about what an extraneous word is teaching the student of halacha.

This phrase also echoes similar language used in discussing the same concept earlier in the tractate, on Nedarim 3a: "Just as in Nazarite vows, abbreviated declarations of Nazarite vows are like Nazarite vows so too by [other] vows abbreviated declarations of vows are like

28 Other examples can be found throughout the BT see for example Ketuvot 42a and Nazir 56b.
vows”. This formulation is listed along with other language which essentially reflects the idea that abbreviated declarations for standard vows and Nazarite vows are the same as the vows themselves. The formulation is introduced by v’tanya, thereby indicating that it is Tannaitic, although the Tannaitic source behind the tradition is not named. The notion of an inexplicit abbreviated declaration is not yet introduced here, on 3a. It only first appears with Shmuel on 5b. This may serve as evidence that the concept did not fully develop as an isolated one in the Tannaitic period. Citing the same verse in Numbers, the Tannaitic source equates abbreviated Nazarite vows with standard Nazarite vows. He goes further and also equates and compares the whole idea of parity between abbreviated declarations and standard declarations with respect to Nazarite vows to abbreviated and standard declarations with respect to ordinary vows.

As is the case whenever sages infer a specific law from the text of the Bible, the reader is (almost) forced to accept this method of inference, regardless of how reasonable it might seem at face value. The more critical the reader, the less likely he is to accept such inferences, but to the intended readers of the sugya, such inferences are treated with a certain reverence. This is also true of Amoraic sages transmitting Tannaitic inferences, such as the case with Rabbi Idi. It is worth noting that Amoraic sages or the anonymous authors who preserve their traditions, at times, do question the validity of such inferences. In this case with Rabbi Idi, the inference is not as far-fetched as it is in other cases where halacha is inferred from a verse in the Bible.  

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29 David Kraemer discusses this matter at much greater length in his article, “The Intended Reader as a Key to Interpreting the Bavli,” Prooftexts 13,2 (1993): 125-140. Kraemer differentiates between different types of readers of the text, and asserts that the intended audience would be an elite one steeped in the traditional rabbinical tradition, with all the knowledge and sensitivities associated therewith. Such an audience, he
The manner in which Rabbi Idi is presented lends itself to the perception that Rabbi Idi was explaining a specific halacha based upon a verse. He does not appear to be adjudicating a specific case. As above with Abaye, it is always possible that Rabbi Idi did in fact adjudicate a specific case. Only afterwards, during the formal recording and transmission of this tradition was the language set up so as to appear as legislative and not adjudicative.

קמהיפליי ורבנן יהודה 'דר בפלוגתא לה必不可 קמימלגי

“Shall we say that [Abaye and Rava] are disputing [the same] dispute of Rabbi Judah and the Rabbis?” – This formulation is common in the BT, and there are two general structures where leyma (“shall we say”) and ka’mifligei (“are disputing”) are put together in this way. The first, which is more common, involves a refocusing of the precise topic of dispute. The second – of which our case is an example – is where a dispute between two authorities had already been disputed by earlier authorities. In the BT, there are more examples where the older authorities are Tannaitic, but there are several examples where the older authorities are Amoraic. They also include all the generations of the Amoraim. Because the dispute may be an archaic one, there is no need to for it to be transmitted again in the names of Abaye and Rava. The Tannaitic dispute carries greater authority than the Amoraic one could. This is the case even if the dispute is inferred from a seemingly unrelated legal

asserts, might question such inferences, but would still possess significant reverence for them and would not feel that it is in their right to adjust them. This would be especially the case for late or post-Amoraic authors with respect to tannaitic inferences such as Rabbi Idi’s who is not taken to task for this inference regarding Nazarite vows and their relationship to inexplicit abbreviated Nazarite vows.

30 The best example of this is in Bava Batra 59b with לימה ביהקים ראו קמקלגי (shall we say that they are arguing about “sight damage”)

31 Examples of Tannaitic disputes referenced in this way with this language include Bava Kama.
situation, such as divorce laws in our case. This statement is typical of Stamaitic activity; however, it is not necessarily post-Amoraic, and it could date to as early as the fifth generation.\textsuperscript{32} The introduction of a dispute, even one which is ultimately proven to be less relevant, is another example of the pursuit of multiplicity within the law. Authorities are introduced, and legal positions spliced; all are transmitted, even those mentioned tangentially and those in dissent.

The inclusion of Rabbi Judah and the Rabbis further serves to validate the dispute itself as authoritative and worthy of consideration, and transmission. Despite the query in the text, the reader is well aware that the dispute of the Rabbis and Rabbi Judah will turn out to be not the same as the one between Abaye and Rava. The anonymous author is telegraphing the next element in the sugya where it is determined that the dispute between Abaye and Rava is original (and worthy of mention).

The precise translation is ‘we learn from a Tannaitic (source; i.e. the Mishna).’ At face value, this element postdates Abaye and Rava and the fourth generation of Amoraim. But it is not necessarily of the same layer as the part in between. It is possible that the sugya from \textit{itmar} until \textit{yadayim} (the second one, above) was connected to this \textit{d’tnan} and that they were transmitted together, and without what is in between. While not perfectly congruous, the formal part of the transmission included less formal elements, which were then formally included within the transmission. This

\textsuperscript{32} As discussed, above, there are no sages mentioned who would necessitate a late dating.
could have taken place either in the last two generations of the Amoraic period, or in the post-Amoraic period. 33

“the essence of a divorce document (get) is [the phrase]: ‘thus you are permitted to every man.’ ” – This is a purely Tannaitic element. It is in Hebrew, and it stands alone apodictically. It reflects the position that this statement is sufficiently clear and is valid, per the Rabbis. The word gufo refers to the essence of something, in this case the divorce document. It does not necessarily exclude other elements that can also be included in the divorce agreement or process; it is meant to include words which are essential and without which the divorce agreement cannot be valid.

A nearly identical דתנן formulation appears in the part of the sugya before this one which relates Shmuel’s position on inexplicit abbreviated declarations. The versions diverge in the element where Rabbi Yehudah insists that the language be explicit and delineates with precision the nature of the divorce agreement in Aramaic.

This part of the Tannaitic element is the position of the Rabbis, and also the normative and accepted position. Rabbi Judah’s position, which follows, represents a dissenting opinion. Beyond the two positions, the tradition of the dispute between the

33 Differentiating between formal and informal transmissions is a crucial piece of Halivni’s paradigm. As I detail in Chapter I, Halivni needs the existence of informal transmissions, the bulk of which is the informal transmission of the shaqa l v’tarya. Without the informal transmission, there is no need to emphasize the contributions of the post-Amoraic Stamaim. The Stamaim, as per Halivni, were primarily tasked with creating the shaqa l v’tarya because the informal nature of its transmission required it to be reconstructed, and occasionally written from scratch.
Rabbis and Rabbi Judah does not include any *shaqla v’tarya*, regardless of whether it was transmitted formally or informally. The anonymous authors make no attempt to recreate any *shaqla v’tarya* within the Tannaitic element in the sugya; instead, the splicing of the positions is attributed to Abaye and Rava, and the *shaqla v’tarya* is woven around them. The Tannaitic element is canonical, and was probably received by the authors of the Stamaitic material in more or less the form it is presented here.

“Rabbi Judah states” – This is the second part of the Tannaitic element introduced by *d’tnan*. Instead of the *amar*, the narrator chooses *omer*, which is far more common among the Tannaitic authorities. Rabbi Judah introduces the idea of greater explicitness in a divorce agreement. The author of the word *omer* is unknown; it is reasonable to posit that this author was of a Tannaitic provenance, or at least of a provenance where recording and assembling Tannaitic material was still subject to some emendation. When recording Rabbi Judah’s position alone, more language would have been required for his position to be clear if it were not preceded by the position of the Rabbis. In the text Rabbi Judah is reacting to the position of the Rabbis; in actuality, this position may have been generated by Rabbi Judah separately from the position of the Rabbis, and only later were the two put together as primary and dissenting positions.

“раб ויהודא אמרו, שבוקין ואיגרת תירוכין ספרeminaylicdiyowodidin” “and, from me to you, this will be a book of divorce and a declaration of freedom and a decree of release.”34 – While this is in

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34 There are mild variances with respect to the order of things at the end of the phrase, and with the spelling of *מיניה* and other words, which are not of significance. See Ms Vatican 130, Ms Vatican 487 and Ms Munich 95.
Aramaic, it is not meant to be read as a post-Tannaitic interpretation of an earlier Tannaitic manner of expression. Rather, like a marriage document, a divorce document is written in Aramaic specifically so that it is understood, since Aramaic was the common language. While the essence of the divorce can be expressed in formal Hebrew, the actual document must be explicit and understood. Therefore, using the informal Aramaic, Rabbi Judah is recorded as presenting nearly the same legal idea in three different, slightly nuanced, expressions. As mentioned, this part of the דתנן formulate differs from the one above in that it includes ו'גט ופיטורין, and the one above omits this language. This formulation more closely follows the one in the corresponding Mishna in Gittin, although here גט ופיטורין get piturin precedes ייגריט השועין iggeret shvuqin, and in the Mishna the order is the inverse of this one. Also notable is that the דתנן formulate here and above both omit the last five Aramaic words that Rabbi Judah, in the Mishna, requires in a divorce: למים להמתנה לך הגבר ותרצוני so that you can go and marry any man you wish.

Abaye states like the Rabbis and Rava states like Rabbi Judah” – Here the text reverts back to the anonymous narrator, and the suggestion that the dispute is older than this Amoraic version. He does so by equating Abaye’s position that inexplicit declarations are valid with the Rabbis’ position that stating the essence of a divorce alone is valid; and by equating Rava’s position that inexplicit declarations are invalid with Rabbi Judah’s position that a divorce document requires clear and explicit definition. This is also typical Stamaitic activity; as with ליימה... קמיילגי, we can only relatively date this after the fourth

35 Gittin 85a-85b.
It is not necessarily post-Amoraic. It is also the springboard from which greater multiplicity enters into the dispute regarding the divorce agreement.

אמר לך אביי – Grammatically, this is in the subjunctive mood, and is not portrayed as an actual statement by Abaye. Rather, this is something Abaye could say in response to the idea that his opinion is not according to Rabbi Judah. This is important, since the part of the sugya on 6a is far murkier about whether Abaye is the source of certain statements or whether they are the creation of the anonymous author who presents them in Abaye’s voice.

“That which I stated…” – These are still words projected by the anonymous author onto a theoretical Abaye. This is the beginning of what Abaye could have retorted (or would have if he could have, as the narrator would have us believe). It is also self-contained, does not necessarily add to the previous elements in the sugya, and does not reference Abaye’s actual position. It is reasonably assumed that the reader still has it on his mind. It can therefore also be inferred that this Stammaitic activity is part of the latest (or one of the latest) adjustments to the sugya. It is also worth noting that when read as a single phrase, אמר לך אביי formas a chiasmus: the two verbs are at the ends; the pronouns follow and precede the verbs, respectively; and the proper noun, Abaye, is in the center. While this can be chalked up to accident, it is also reasonable to suggest that this is purposeful, and the anonymous narrator is conflating a theoretical statement by Abaye with one he actually made. The phrase “that which I stated”) also validates the earlier statement by Abaye, even though it is all done by the
anonymous author whose narrative relies on the premise that the sources mentioned are in fact behind the traditions attributed to them. In the text, it is the source that infuses authority into a tradition and not the other way around. Hence, the authority associated with a statement increases when it evolves from one that is attributed to a theoretical Abaye into a statement from which Abaye must distance himself, and which he retracts. As is discussed later, Abaye appears to retract a statement he never made.

“Until now Rabbi Judah did not speak of inexplicit abbreviated declarations, but rather [he speaks] about a divorce document, where a strong separation [of the couple is required]. Here [a strong separation] is not [required].” – Interestingly, the narrator attributes the somewhat obvious query to the theoretical Abaye. Framed as a question: Why is Rabbi Judah’s position regarding divorce agreements relevant to our case of abbreviated declarations? The last three words convey a reason for why they are different; one involves a real separation (divorce) and one does not (other instances where a declaration is required, such as the Nazarite vow). The statement of Abaye works without the last three words, and they could be the work of an author operating after the one who originally crafted the statement attributed to the theoretical Abaye. Specifically, the three words are וולוכא הכריתות דבעינן (‘we need a strong separation and it is not’), serve only as a possible explanation for why one cannot infer Rabbi Judah’s position regarding inexplicit declarations from Rabbi Judah’s position regarding divorce agreements. While the explanation is helpful, the rest of the statement from אפי (even)

36 Vatican MS 130 is missing ‘l’rabbi yehuda’ which must be a mistaken variant, since the sentence loses sense without it.
through גטזכ (about a divorce document) can stand on its own, and a reader could read through the sugya without it. These words can be the work of a later anonymous author, though not necessarily a post-Amoraic one.

Even within Halivni’s paradigm, where the Stammaim handle most of the heavy lifting in the creation of the text, there is room for earlier Stammaim to put together nearly complete sugyot, and for later Stammaim to make minor adjustments or additions for clarity’s sake. This could be an example of where a relatively later author or editor felt that some reasoning is appropriate; this, despite that here it is sufficient simply to point out that Rabbi Judah is not discussing abbreviated declarations but is discussing divorce agreements. Thus, Halivni would see all this as the work of post-Amoraic Stammaim, regardless how it might be layered; there is nothing in the text that forces it to be much later than the last sages mentioned. In terms of the literary contribution of the Stammaitic elements, the absolute dating is not as important as the relative dating of the different elements. Also ambiguous – whether or not this was added after the original sugya was crafted – is whether these words were meant to be part of Abaye’s comment or if they are inserted as an explanation of Abaye’s statement; whether this is a later anonymous actor or the same one who created the theoretical Abaye, is he explaining the words of the theoretical Abaye outside of Abaye’s voice or within it? There is no way to know if the text is multilayered to this extent, but it is clear that the larger sugya is crafted with layers that can be discerned. Some are between and among different sages and/or different generations, as with Rava’s recollection of Rabbi Idi, and some are about a single person, as is the case here with Abaye and a theoretical statement.
Without the anonymous Stammaitic elements, there would be no reason for the positions of the Rabbis and Rabbi Judah to be adjusted in scope. Not only are the Rabbis and Rabbi Judah included in the sugya, but they are also at the center of a digression in the text, which has potential halachic implications. Regardless of how they are included in the sugya, the inclusion of the Rabbis and Rabbi Judah serves to enhance the authority and hence the canonicity of the sugya. With the digression, the authors of the Stammaitic elements have blurred some of the authoritative lines between the Tannaim and the Amoraim. The Stammaitic elements carefully place all halachic opinions not implicit in the traditions they received in the theoretical mouths of Abaye and Rava, and to a lesser extent, to Rabbi Judah and the Rabbis. In this sugya, the Stammaitic elements do not offer an opinion anonymously. They merely weave the received traditions in such a way that it exudes authority; specifically by keeping their contributions anonymous. And they weave it in such a way that there is room to add digressions which reflect theoretical conjecture and not actual events; and these are the creation of the anonymous authors of the Stammaitic elements. Often, they are contextualized in order to mask this fact. These digressions then carry a similar, if not identical, authority to the actual traditions that the authors of the Stammaitic elements received.

In terms of the evolving text of the BT, the entirety of the sugya acquires the necessary canonicity to be included in the sealed BT. At that point, regarding their degree of canonicity, the Stammaitic elements meld into and become one with the traditions they received; some of those elements are as benign as 'רava אמר' and 'יהודה לרב,' and some are as impactful as 'מ_lrbrי יוהגד.'
anonymous and attributed elements are both essential in the flow of the BT, and it is difficult to conceive of a BT without both. The authors could not have crafted the text without some existing traditions and sources. The traditions and their sources could not have been narrated in this way without the authors. A differentiation in degree of canonicity can result more from the manner of expression than from the substance of the expression itself. The traditions expressed as part of the anonymous narrative of the BT survive, as opposed to those not included within the narrative.  

Even if the text is multilayered in this way, it is still possible for the sugya to date to the Amoraic period. The fact that the style is Stammaitic does not necessitate that it is post-Amoraic. In terms of the authority conveyed, there are three layers of authority: Rabbi Judah, Abaye, and the narrator. The narrator wants the reader to believe that there are only two layers, Rabbi Judah and Abaye. It is difficult, however, not to consider the narrator when parsing the text word for word. Even if we could go back in time, sit the author down and convince them that we must consider that narrator as a layer on the metaphorical cake of authority, he would place himself and his narrative well below both Rabbi Judah and Abaye with respect to the degree of authority possessed. Yet it is the narrator who is putting it all together; comparing laws that are questionably related, postulating on behalf of Abaye, and suggesting that some disputes are not necessary.

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37 As I address in Chapter II, where I discuss the concept of anonymity, the BT was written in a time where the scribal culture was an essential part of the transmission process. Quite similar to scribal in meaning is the term tannaim which we use to describe those individuals who recorded the teachings of the sages of their yeshivot. In a time where the amount of traditions which could be recorded and transmitted formally was very limited, there was an advantage in being included in a broader corpus of traditions. The greater the number of authorities included in such a corpus, the greater the number of those who might have an interest in preserving the entirety of the corpus and not just the tradition of the sources they follow or who are interesting to them.
“But, in general, who heard him?” – Because the language of Abaye is the same as the shaqla v’tarya, it is not clear whether this is a continuation of Abaye’s previous statement, or part of the narration. This could also be a later addition in the way that הבפרט בין אריה ולימה (we need a strong separation and it is not) might have been. The question, “who heard Rabbi Judah say this?” is rhetorical, and the obvious answer is nobody, because Rabbi Judah could not possibly have had a position on this matter. If he did, then there would be no reason for Abaye to have one, nor for the earlier attempts to infer a position from divorce agreements; he could follow Rabbi Judah or the Rabbis or another dissenting Tannaitic source. It is the absence of a Tannaitic precedent to this dispute that authorizes the Amora Abaye to have a position. The question can also be seen as not only a question about Rabbi Judah’s position within the dispute, but about the dispute itself, “who heard about this dispute before now?” Tannaitic precedent is not needed to authorize the dispute; precedent merely would have obviated its Amoraic incarnation. The narrator (i.e. shaqla v’tarya, the narrative, the author) is infusing authority into the dispute itself. With the validity of the dispute not in question, and with its originality confirmed, Abaye and Rava are on different sides of the dispute. And no authority preceding them with a position on this matter is recorded, and anyone succeeding them must defer to them. A dispute between Abaye and Rava carries that sort of weight, and the author is quite aware of this, as is reflected in the sugya.

It is worth noting that the question is “who heard him say…?” and not “who heard that he said…?” The narrative goes beyond putting Abaye and later Rava in close theoretical interaction with the Tannaim; it presents them as potentially being around
those who might have actually heard the Rabbis or Rabbi Judah utter their positions regarding abbreviated declarations. Why else would they be asking such a question? The implication also is that Abaye and Rava did not hear Rabbi Judah or the Rabbis state anything on this matter, respectively. This literary illusion also blurs the actual chronology and the authoritative lines among the Tannaitic, Amoraic, and Stammaitic elements in the sugya. This serves to level the contours of authority that exist when each element stands on its own.

אמר ורבא "and Rava [could] state"—In introducing the theoretical statement attributed to Abaye, the author uses a verb clearly signifying the subjunctive mood. Here, as per the Vilna edition and Vatican 110, the language itself is not subjunctive in its nature, as is Abaye’s. As in the versions of Moscow 1134, Vatican 487, and Munich 95, Rava and his statement could be similarly subjunctive and entirely the work of the narrator, like Abaye. Or the narrator is actually asserting that Rava did in fact state what follows, and it is not in a subjunctive mood. When relying on Vatican 110, the ambiguity might appear strange at first glance, especially the lack of balance in language between Abaye and Rava; the author could have used the אמר לך ורמא ("Rava could say to you") formulation, as was the case with Abaye. It is possible, per Vatican 110, that the narrator wants the text to read as close to Abaye and Rava as possible, and thus to reap the benefit of the authority they infuse into the dispute. An actual statement by Abaye or Rava is more authoritative than one projected upon them theoretically by an author. The ambiguity is therefore more authoritative than if it is clear that this is the projection of a
statement by the narrator upon Rava. “Maybe Rava said…” carries more weight than “Rava definitely did not say, but he could have said…”

אמות את דברי אבי, ולא אמר רבנו דיבר בה東西ו של אבי, ולא אמר רבנו דיבר בה東西ו של אבי – “that which I stated can even follow the Rabbis. Until now the Rabbis did not speak of inexplicit abbreviated declarations; but rather about a divorce document, where a man does not chase away (divorce) the wife of his friend…” – The formulation for Rava follows very closely that of Abaye. It is therefore reasonable to assume that the two elements in the text were constructed together, even if the traditions may not have been transmitted as a coupled unit. It is the language that most signifies that they are coupled in the narrative. First Rava asserts that the Rabbis were not discussing abbreviated declarations but rather they were discussing divorce agreements. Then there is an explanation: a man does not divorce the wife of his friend, and therefore explicitness with a divorce agreement is not as necessary as with an abbreviated declaration related to other halachot, such as sacrificial offerings, where one might bring it on behalf of his friend. The two matters are not related. Like Abaye, Rava is not looking to discredit the Rabbis’ position. The narrator has him looking for a way to have his position still be in accord with Tannaitic ones, specifically those that might not be so obviously in line with his. Again, there is a force driving greater multiplicity relative to where the sugya was before Rava expanded the scope of the Rabbis’ position in order that it accord with his.

Regarding the internal layering among the different Stammaicitic elements, what was discussed regarding Abaye’s statement is relevant here. Any layering there would be
reflected in Rava’s statement as well. The parallel nature of the elements, regardless of whether they were emendations or were all constructed at the same time, further enhances the canonicity of the specific language that conveys the traditions; and therefore the traditions themselves.

“But, in general, who heard them?” – Because the Rabbis are more than one, there is a switch in number in the final pronoun from ‘leyh’ to ‘lehu;’ otherwise, this element exactly parallels the one above. The same ambiguity exists here as above, whether this query is meant to be part of Rava’s statement, or is part of the anonymous narrative.

“It is a refutation….his words stand” – I am not including the next part of the sugya, which is similarly structured. It is focused on language formulations used when bringing certain types of sacrifices, and the degree to which they – like the declarations we are discussing – must be explicit. I move on to the part of the sugya on the continuation of Nedarim 6a, where the theoretical suggestions by Abaye and Rava continue. As the sugya progresses at this point, the Stamaitic actors successfully blur the line between the theoretical Abaye and the real one. Because of the way the sugya progresses, there must be a retraction of the statements created by the anonymous Stamaitic actors and attributed to a theoretical Abaye. The retraction is attributed to Abaye himself, with little hint that he did not make the initial comments. The same holds true for the elements preceding the retraction.
“It is a refutation of Abaye!” – In this sequence of the sugya, this is the second tyuvta and refutation of Abaye and his position that inexplicit abbreviated declarations are valid. This again follows up on a Beraita in which it is inferred from another halachic dispute that inexplicit abbreviated declarations are invalid. Specifically, when bringing a chatat or asham sacrificial offering, it must be explicitly stated on behalf of whom the offering is brought. If it is not explicitly stated, then the individual must bring another offering if he was required to do so. If one were to utter הרר ו אשנ (this is an asham) or חטאת זו (this is a chatat), it would not be sufficient, and it is as though the person “didn’t say anything.” One must specifically state חטאת זו (this is my chatat) or אשמי זו (this is my asham) in order for the sacrifice to be valid.

It is the anonymous author who is determining that it is possible to infer a halachic position regarding the principle of inexplicit abbreviated declarations from inexplicitness in declaring one’s intention for a sacrifice. The narrative presents this matter-of-factly, and this even slips past the keen eyes of later, post-Genoic commentaries on the BT. A connection between the cases of divorce agreements and Nazarite vows with inexplicit abbreviated declarations appears elsewhere in the BT, thus strengthening the connection in the sense that this is not the only place where it appears. This is not the case with sacrifices, where this is the only place in the BT where it is juxtaposed with the concept of yadayim sh’eyn mokhihot.

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38 See Gittin 85b for divorce agreements and Nazir 2b for Nazarite vows.
Abaye could say to you” – The anonymous Stammaitic actors refer to the theoretical Abaye who will attempt to defend his position by inquiring further into the source behind the tradition in the Baraita. It turns out to be Rabbi Judah, which creates a problem for Abaye in relation to what was stated before.

“Who is this?”– These two words are the creations of the anonymous Stammaitic actors and attributed to a theoretical Abaye as he defends his position. Abaye is inquiring as to who is the source of this Baraita, since Abaye is already aware that there are different Tannaitic sages with different opinions on the issue of explicitness in language, and that not all are in alignment with his position on the matter. The author presumably knows the answer to this question, yet asks it as part of the rhetoric.

“It is [according to] Rabbi Judah” – This is the response to Abaye’s question. The Stammaitic actors are responding to the question, thus putting them in dialogue with the theoretical Abaye. This is still plausible in terms of the potential historicity of the text. What follows is rhetorical sleight of hand which blurs the lines between the theoretical and real Abayes.

“And was it not Abaye who stated: ‘that which I stated can even [follow] Rabbi Judah[‘s position].’ ” – The Stammaitic actors continue by quoting Abaye from the first part of the sugya, above. Yet, they are not quoting Abaye; they are quoting the statements that were attributed to the theoretical Abaye. Generously, we can suggest that the Stammaitic actors who are making this statement are different from the ones who
attributed the earlier one to Abaye. Either way, to the reader of a sealed BT, the distinction between the theoretical Abaye and the real one is diminished, if not absolutely dismissed, in this part of the sugya. The authoritative value of the real Abaye is now conflated with the authoritative value of the theoretical Abaye. Once part of the sealed BT, the narrative is set up so that the degree of canonicity of both Abayes and the literary elements that convey them are equal. Interestingly, in the actual phrasing of these words, variances persist to the extent they can with just four words: דא אביי והא אביי and אמא אביי. It conjures images of catching a child in a lie, and each time they repeat it, they repeat the same story but with different language.

“that which I stated can even [follow] Rabbi Judah’s position.” – This is a direct quote from the first part of the sugya. In another manipulation of the original context of this statement, it is presented as a definitive aspect of Abaye’s position; specifically, that Abaye aligned his position with Rabbi Judah’s position, and therefore there can be no contradiction between the two. This would be instead a case of Abaye relying on another Tanna, in which case this would be a reiteration of a Tannaitic dispute, and therefore extraneous, per the initial suggestion in the sugya. This alignment of Abaye’s position with Rabbi Judah’s originates not with

39 An important component of my dissertation revolves around the different layers of Stammaitic activity that exist. I go beyond Halivni and others in terms of my willingness to parse different layers of Stammaitic activity, even between adjacent sStammaitic elements in the same sugya.

40 Ms Munich 95.

41 Ms Vatican 130.

42 Ms Vatican 487.

43 Ms Moscow 1134.
Abaye, but with anonymous actors – more than likely the authors of the Stammaitic elements, although the tradition of this alignment can predate its formal transmission and the words crafted for it.

More important to my analysis is how the authors attribute to the (‘real’) Abaye a Stammaitic creation that was initially attributed to a theoretical Abaye. As we read earlier, "אמר لكل אמי אמי אמרו אמי לרב יהודה," ("Abaye could say to you, ‘that which I stated can even follow Rabbi Judah’s position’"). What Abaye could have said is not something that Abaye did in fact say. This is according to the theoretical Abaye, who himself is the creation of Stammaitic actors who create the rhetoric. It is because they are operating anonymously that the authors who assembled the sugya can make this move, which adjusts the authority of the specific element in the sugya – from a theoretical statement by a theoretical Abaye, it is now Abaye’s statement with all the authority associated with it.

"he recanted" – These two words are typically Stammaitic, and are part of the guiding and descriptive narration of the sugya. Here the narrative has Abaye recanting something he never really said. The retraction of a statement – in its own ironic way in our case – serves to legitimate it as a position that was once in fact real. What is more important to the narrative is not so much that the reader accept that the position is ‘out there,’ so to speak, but that the reader accept that the sage associated with the position is also the correct one. This is because a position associated with the author(s) of the anonymous narrative – whoever they might have been – is less authoritative than
when it is associated with an Amora. It is even more authoritative when it is associated with an Amora of Abaye’s stature. By remaining anonymous on the sugya level, as is the case here, the authors keep themselves and the potentially murkier nature of their authority out of the mix. They maintain the spotlight on the named sources such as Abaye and Rava, and also Rabbi Judah and the Rabbis as part of the digression in the sugya; and one can even add Rabbi Idi to the mix.

It is important to note that it is possible that the ‘real’ Abaye had little issue with disagreeing with Rabbi Judah so long as he had the Rabbis upon whom to lean to validate his position. The origin of the alignment of Rabbi Judah’s position is the conjecture on the part of the theoretical Abaye on 5b; therefore, as mentioned above, it is the work of the anonymous author who created the theoretical Abaye. Even in the language of Abaye there, no indication is given that Abaye and Rabbi Judah must be in accord and that the alignment is absolute; at that point in the narrative, all that is raised is the possibility that Abaye’s position could be like Rabbi Judah’s, but not that it definitively must be. The absolute alignment is only first presented at this point in the narrative of the sugya. This is the point at which it becomes clear to the reader that the Amoraic dispute between Abaye and Rava is in fact a close enough reflection of the Tannaitic dispute between Rabbi Judah and the Rabbis. Thus, this part of the sugya is actually unnecessary and all that is really resolved is that it might have been unnecessary to record and transmit the dispute between Abaye and Rava. Nevertheless, it was recorded, transmitted, and set up with a high degree of canonicity. This was accomplished anonymously. In the sealed
and extant BT, we are left with a single degree of canonicity; all the elements blend to form a single narrative with a nearly equal degree of canonicity throughout.

When Abaye (and Rava for that matter) formulated their positions, there was still no issue regarding whether to include their positions, and the dispute it spawned, in the text of the sugya. This is a problem created only when traditions reflected by these positions are recorded and then transmitted, and subsequently when the enterprise of creating a text is underway. It is then an issue to be addressed by the authors of the sugya, and the rules that they impose on the text and its transmission. Abaye and Rava may have been content following and advocating for existing Tannaitic positions on the matters of abbreviated language in vows, marriage, and sacrifices as separate matters. They may have been less interested in isolating a broad position regarding the concept of inexplicit abbreviated declarations. They certainly were interested in practical law relevant to the day-to-day lives of their constituents. While they may not have contributed anything original to the position, as a pragmatic matter they needed to take a position, specifically on divorce documents. One could argue that there is no reason for an Amora to take a position on Nazarite vows or language associated with sacrificial offerings, since it was no longer a practical manner; there was no Temple which was required both for sacrifices and for Nazarite vows. The only reason would be for the purposes of maintaining a position on a theoretical level as part of one’s study. With marriage vows and divorce agreements, however, there was a practical reason for Abaye

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44 This applies to other laws as well, such as marriage laws and peah, which are discussed on the next couple of pages of the Tractate Nedarim.
and Rava to take a position: people were still getting married and divorced in accordance with halacha.

While in our case, it seems that Abaye never actually made the initial statement that he ‘retracted,’ there are instances where a statement is attributed in one place, and unattributed in another context, and this has been discussed by Robert Brody.⁴⁵ Our case goes beyond what Brody is discussing in that it is the narrator – possibly the same individual – who creates the words, but crafts them in the voice of Abaye and then later actually attributes them to Abaye. Our case is a clear manipulation of attribution, while Brody does not go as far as to suggest that attribution is manipulated in this way. While it is not clear from his article, it appears that he is attributing such misattribution to breakdowns in transmission or simple carelessness.

Setting aside the differences in the nature of the misattribution, it is worth looking more carefully at Brody’s arguments regarding attribution, and the methods he utilizes in creating them. This is particularly true in terms of our discussions regarding attribution versus anonymity; further, it is important to cast Brody in the light of Halivni’s discussions regarding attribution. It is also important because Brody relies on this sort of misattribution to demonstrate that at least some anonymous Stammaitic elements are

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firmly dated to the Amoraic period, often contrary to how Halivni might read the particular sugya.  

Rather, can we say that Rava stated according to Rabbi Judah?” – Here the narrative suggests that Rava, too, ought retract his earlier statements and align his position only with Rabbi Judah’s position that unabbreviated declarations are invalid, following Rabbi Judah’s position that a divorce agreement be explicit. Again, the authors of the Stammitic material are setting up the dialogue so that Rava will be able to eliminate this possibility, and allow for his position to be in accord with both the Rabbis’ and Rabbi Judah’s divergent positions. Therefore, unlike Abaye, the narrative does not have Rava retract his earlier statement in the same explicit manner.

Rava could state to you” – The narrative now provides balance to Abaye’s theoretical and subjunctive statement by offering one on behalf of a theoretical Rava. Here the language reflects this type of intent on the part of the narrators because of the verb employed and the phraseology surrounding it. This is unlike the earlier part of the sugya, per Vatican 110 and the Vilna edition, where the language was in the past tense, and the subjunctive nature of the statement by Rava is understood from context; specifically it is understood from the manner in which Rava’s statement are set up as balancing those made by Abaye. It is worth noting that this type of balance is a feature of

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46 Brody, “stam hatalmud,” 226. Brody then relies on this in order to date other Stammitic elements, such as kushyot and ukimot (within the Amoraic period). This is quite contrary to Halivni’s perception that this type of activity is a distinct Stammitic one dateable only to the Stammitic period and not the Amoraic period. In less chronologically stratified parlance, Brody and Halivni are debating the degree to which stammitic literary elements can be dated to the amoraic period. I deal with this in Chapter I.
canonicity in the sense that it is more easily memorized and thus more easily recorded and transmitted through multiple generations.⁴⁷

אני דאמר אפולו לרבנן דע כל לא קאמרי רבנן דהו בוען ידמ מוכחתו ולא נבר גוי דואם

that which I stated can even [follow] the [position of] the Rabbis. Until now the Rabbis did not state that we do not need [for] abbreviated declarations [to be] explicit; rather respect to a divorce document, where a man does not chase away his friends wife; but in general, we do need [for] abbreviated declarations [to be] explicit.”⁴⁸ – This is the last element of this part of the sugya. The authors of this element present us with a theoretical Rava suggesting that this position of the Rabbis regarding abbreviated language – that a divorce agreement can be inexplicit and still valid – is relevant only to divorce agreements and not necessarily to vows or other matters where explicit language in an abbreviated declaration is required. Echoing what was stated earlier in 5b/6a, a man would only divorce his own wife and not another man’s wife, thus negating the need to be explicit in divorce agreements but not elsewhere. As is anticipated in the element preceding it, Rava does not retract his earlier statement and successfully aligns his position with that of the Rabbis, in addition to having already aligned his with Rabbi Judah’s. However weakly, this obviates the suggestion that the dispute between Abaye and Rava is redundant in light of the Tannaitic dispute between Rabbi Judah and the Rabbis. The dispute is not an exact match because

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⁴⁷ Quite a bit of Talmud scholarship is dedicated to uncovering meta structures of sugyot, and specifically to isolating elements that are in balance with other elements in the sugya. Shamma Friedman has done extensive work of this nature. See “Some Structural Patterns of Talmudic Sugyot” (Hebrew), Proceedings of the Sixth World Congress of Jewish Studies III (1977), 384-402.

⁴⁸ Ms Vatican 130, Ms Vatican 487 and Ms Moscow 1134 convey the same idea, but do so in the negative, “שאינן MS Vatican 130 שאני מוכחת אלא חפוך נבוי דיימ (MS Vatican 130 שאני)".
Rava’s position can be in accord with both Rabbi Judah and the Rabbis, according to the logic presented here. This legitimizes the formal transmission of the dispute between Abaye and Rava and the need for it to be included in the final version of the sugya.

I would like to argue that this formalization of the dispute was also reflected in the language used to convey the tradition of the dispute. Not only is the dispute part of the formal transmission, but so is the attendant argumentation in the form of the *shaqla v’tarya* and other accompanying Stammaitic elements. This part of the sugya becomes sealed, while obviously the parts containing later authorities can only begin the process of acquiring canonicity and ultimately becoming a tradition whose substance and language is sealed at a later time.

While this is a dissertation, and still a work in progress, I have done my best in my analysis of this part of the sugya in Nedarim to demonstrate two things. The first is that the hyper-focus on chronology and the traditional notions of chronology that go along with it cloud one’s ability to read the BT as a comprehensive narrative where layering is only one factor in the understanding of the text. The second is my offering the matrices of anonymity, multiplicity, and canonicity on which to map the different parts of the text as they present themselves to the reader. On the whole, this sugya also serves to demonstrate how the mapping of the matrices can offer the reader a greater sense of where authority actually lies within the sugyot of the BT. Without specifically pointing it out overtly at every turn, I read the Stammaitic elements as possessing the greatest authority in the text. While the sages’ names carry great authority, both to the
contemporary reader as well as to the Amoraic transmitter, it is their deployment by the authors of the Stammaitic elements that most directly impacts their degree of authority. They were clearly crafted in such a way so as to convey the necessary degree of canonicity to be not only transmitted once or twice, but also to be included in the broader BT corpus.
Chapter VII

Gittin 82a – 82b

Introduction

The ninth chapter of Gittin commences on folio 82a, and the text discussed here begins with the Mishna and continues into 82b. The sugya as a whole continues until 85a. The goal of this chapter is to demonstrate further the thesis that Stammaitic elements are not necessarily the product of the latest Amoraim, or earliest Saboraim, or Stammaim. Rather, Stammaitic activity is a unique narrative style independent from a chronological paradigm. As I argue throughout this dissertation, I suggest “a shift away from historical and social evaluations and toward the stylistic and textual characteristics which might be located in various times or groups of figures.”¹ One can read them as pivoting the trajectory of how we can create meaning out of the sources and traditions, and out of the anonymous Stammaitic elements that weave them. More significant a contributor to this pivot is the manner in which the Stammaitic elements and the sources and traditions they present become a single and cohesive narrative. It is a narrative that seeks to convey a collective and unified authority. In this sugya, there are elements that have been viewed as the work of post-Amoraic Stammaim. I argue that some of these elements are in fact the work of Amoraim or those transmitters (tannaim) contemporary

¹ The language is that provided to me by Daniel Abrams in reviewing my draft.
with them – both early and late Amoraic generations. Additionally, I note how reliance upon traditional rabbinic chronologies is in tension with reading the text critically.²

Beyond the effects of anonymity, I also discuss the other three features – canonicity, pluralism, and multiplicity – as they can serve as characteristics through which to find meaning in the text. While I do not offer an overview of each feature as they relate to the sugya, I do address the matter of pluralism and the pluralistic potential of this sugya. Regarding anonymity, canonicity, and multiplicity, I address those in the context of my analysis of the sugya as a whole and of the different elements in the text and the words contained therein.

In addressing the matter of Stammaitic activity versus Stammaim in this sugya, I look to the analysis offered by Shamma Friedman³ and David Halivni.⁴ I have chosen this text in part is because it is has been sufficiently analyzed by both Friedman and Halivni, who read all texts in the BT under the assumption of a post-Amoraic class of Stammaim bound – at least to a certain degree – to a specific chronological place. While Halivni offers a more cursory analysis of the sugya, it is worth noting the aspects of the sugya he focuses on. Friedman, on the other hand, offers a comprehensive analysis of the sugya, and offers the student of this sugya sufficient information from which to spring

² Specifically, I refer both to the chronologically bound Stammaim and also, in this case, to the way the demarcated line between Amoraim and Tannaim prevent positing this first element of the sugya, its introduction, as late Tannaitic. Contextually, this might be an even better way to read the text, as I explain later.

³ Shamma Friedman, chamesh sugyot min hatalmud habavli (Jerusalem: ha’igud l’parshanut ha’talmud, 2002), 123 – 148.

⁴ David Halivni, meqorot u’mesorot: seder nashim (Toronto: Otzrenu), 604-606.
into a counter-analysis of the text. I also address the sources and/or commentaries upon which Friedman and Halivni rely to advance their positions.

This sugya focuses on the reasoning behind Rabbi Eliezer’s position that exclusions are permitted within a get (divorce agreement). The Mishna states that “if one divorces his wife and states to her ‘you are hereby permitted to all men but (ela) ploni, ’” then Rabbi Eliezer considers such a get valid. In my translation, below, I have translated the word ela as ‘but’ even while the intuitive meaning is ‘except.’\(^5\) If I were translating only the Mishna, without requiring the translation to make sense with the associated sugya in the BT, I might have translated it as ‘except.’ The BT opens up the sugya by offering two possible meanings for the word ela: hutz (except) and al menat (on condition). In order to capture the ambiguity infused into the Mishna, first by Rabbi Jose, son of Rabbi Judah, and later by the anonymous author of the introductory statement to the sugya, I translate the word ela as ‘but.’ This ambiguity is the primary focus of the sugya.

Specifically, I would like to argue that the first part of the text of the BT after the Mishna (אברעיה ליה... דהא שירו לה בצק) is necessarily archaic. An early dating is even more reasonable to posit for the first question, ending in על מנה תאמ. Reading it as archaic and dating it as early as late Tannaitic or early Amoraic offers us an insight into how the authors of the Stammaitic elements pivoted the meaning of a set of sources and traditions. Because of the obvious problem with exclusions in a divorce agreement, this pivot in

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\(^5\) As I discuss later, Friedman specifically articulates this, and also points to the parallel Tosefta, where hutz is deployed. See Friedman, chamesh sugyot, 123-124.
meaning necessarily occurs early chronologically on account of the Tanna associated with it – in our case Rabbi Eliezer. Further, because it drives the first few folios of this chapter in Gittin, meaning in the sugya is better culled when reading this first element as earlier than any Amoraic tradition in the sugya. The evidence points to the problem of exclusion and Rabbi Eliezer’s position on get as one that is very early. Before approaching meaning, the internal history of the BT and other rabbinic texts, such as the Mishna and Tosefta, it is essential to demonstrate that the concept in this first part of the sugya is Tannaitic.

The position of Rabbi Eliezer is problematic since it appears to undermine the whole idea of divorce. This is the gut reaction of those who lived contemporaneously with and soon after Rabbi Eliezer, and specifically the Tannaitic sages. This gut reaction becomes part of the way the Mishna had to have been read, and it is difficult to accept that it took six or seven generations of Amoraim – and let us not forget one or two generations of Tannaim – before this reaction becomes a formal part of the transmission of the text of the Mishna. The idea of the *hutz/al-menat oqimta* and the language used to convey it in the introduction of the sugya were not separated by centuries. A concept – and this concept specifically – requires language for transmission. The concept and the phraseology possess a similar degree of successful transmission. By this I mean that the language used to convey the concept became fixed at some point, and was at the center of how later Amoraim read the Mishna, as the next part of the sugya evidences; Ravina’s

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6 While in some instances, it is possible to state that both ways of reading the text are adequate and work, the importance of this introductory element in the sugya is that it is better to read this definitively Stammaitic element as early Amoraic or even pre-Amoraic.
reaction operates within the parameters of the *oqimta*. What is unclear is whether it was transmitted and received by Ravina, fixed formally or informally,\(^7\) and how this might impact its degree of canonicity.

It is worth noting here that the concept must come first, and later is committed to ever greater degrees of canonicity of language. In our sugya, the idea that the position of Rabbi Eliezer is problematic is chronologically first attributed to the four elders, who appear later in the sugya. The deployment of the *oqimta* is first associated with a specific source, Rabbi Jose. At some point after Rabbi Jose’s interpretation of the Mishna is formally recorded, the essence of Rabbi Jose’s position is decoupled from Rabbi Jose. It then turns up in the form of anonymous Stammaitic activity at the beginning of the sugya. The introduction’s anonymity is reflective of a unanimous acknowledgement of Rabbi Jose’s approach to the problem with Rabbi Eliezer’s position. It is an acknowledgement of the *hutz* versus *al menat* debate advanced by Rabbi Jose. Not only is the problem acknowledged in the introduction, so too are the options of Rabbi Jose regarding the meaning of *ela*. It is Rabbi Jose’s approach that provides the pivot to how later Amoraim and the narrative of the BT in this sugya develops. And it is the introduction that effectively sets the pivot into motion.

\(^7\) As I discuss in Chapter I and below, discerning the distinction between what Halivni means by formal versus informal transmission clues the reader into the degree to which Stammaitic activity is ‘Stammaitic’ chronologically or merely stylistically.
Halivni, Informal Recordings, and Stammaitic Reconstruction

Among Halivni’s innovations is the notion of an informal transmission of Stammaitic activity throughout the Amoraic generations; he posits that the Stammaim often reconstructed it because it was not as closely guarded as the formally transmitted Amoraic apodictic statements. Therefore, conceptually, even those firmly in the Halivni camp – including Halivni himself – would agree that the issue raised in the first part of the sugya is Tannaitic, since it is attributed to Rabbi Jose. As a concept, the oqimta was known that early. The debate centers on when the anonymous language conveying the essence of the oqimta was crafted and the degree to which it was preserved thereafter and until it reached the Stammaim. Even if the first Amoraim did not craft it, it could not have been too many generations thereafter.

This case highlights the importance of how the Stammaim were reconstructing rather than creating from scratch. If it was a reconstruction, then we must assume that they were reconstructing – or at least faithfully attempting to reconstruct – the language associated with the concept and not just the concept itself. In this case, the language is simple enough that one can assume that a complete reconstruction was not necessary here, and that the language is almost as old – if not as old – as Rabbi Jose, the Tanna who first raised the issue regarding Rabbi Eliezer’s position. And certainly, it is most reasonable that first and second generation Amoraim, well versed with Rabbi Jose’s oqimta, were also familiar with a canonical set of words and phrases associated with it.

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8 David Halivni, mevo’ot l’meqorot u’mesorot: iyyunim b’hithavut hatalmud (Magnes Press, Jerusalem 2009), 19.

9 David Halivni, mevo’ot l’meqorot u’mesorot, 20 – 30.
beyond just Rabbi Jose’s Braita. The question to be asked is, what is the degree of formal canonicity that can be ascribed to anonymous Stammaritic activity that was preserved from the earliest Amoraic generations and – within Halivni’s paradigm – required little or no reconstruction? The answer to this question impacts the meaning of the sugya, and most specifically, the introduction to the sugya where the oqimta of Rabbi Jose is first raised, albeit unattributed.

In his commentary on this sugya, Halivni commences his quote of the text with א“what is the reason of Rabbi Eliezer.” In his analysis, Halivni opens with a reference to Tosfot’s elucidation of one view of Rabbi Eliezer’s position, the result of which is that just as a woman’s divorce only from her husband and without her having become permitted to anyone else precludes her from marrying into the priesthood, so too does a woman who is divorced from the whole world except from one man become permitted to an Israelite (non-priest). 10 This is in contrast with Rabbi Yannai’s view of Rabbi Eliezer’s position. Further, Halivni points out the practical halachic consequences: Rabbi Yannai validates a get where she is permitted only to one person, as opposed to Rabbi Yohanan, who interprets Rabbi Eliezer as not validating such a get. It is also notable that Halivni does not mention Rabbi Yohanan by name; rather, Halivni only refers to the actual tradition (in our case, the interpretation of Rabbi Eliezer’s position) and not the source; he opens his analysis with the following words, “Tosfot and others already elucidated that he who states the reasoning of Rabbi Eliezer…”11 This sets up the

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10 Halivni, meqorot u’meserot: seder nashim, 605.

11 As Friedman points out, chamesh sugyot, 144, Rabbi Yohanan often reflected traditions that originated in Palestine where the provenance is unknown. I also address this in the detailed analysis, later.
next part of his analysis, where he will demonstrate that Rabbi Akiba was unaware of this interpretation of Rabbi Eliezer’s position.

Halivni then moves on to a later part of the sugya, on page 83a, where Rabbi Akiba is offering an alternative interpretation for Rabbi Eliezer’s position. He is doing so within the context of the Braita where the four Tannaitic elders came together to ‘undo’ the position of Rabbi Eliezer – in addition to Rabbi Akiba, there were Rabbi Jose Haglili (the Galilean), Rabbi Tarfon, and Rabbi Elazar, son of Azaria. In building upon the analysis of the first part of the sugya involving Rabbi Yannai and Rabbi Yohanan’s interpretation of Rabbi Eliezer, Halivni demonstrates that Rabbi Akiba probably was not aware of the position attributed to Rabbi Yohanan. Rabbi Akiba’s position is convoluted and requires imagination (at least relative to the position of Rabbi Yohanan). Had Rabbi Akiba known of this tradition, he could have drawn upon it and conveyed his interpretation in much simpler terms. Halivni then concludes that the author of the Braita with the story of the four elders would have been aware of the interpretation of Rabbi Akiba. Halivni’s assertion is based upon the fact that this Braita is also quoted elsewhere in rabbinic literature.

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12 For this part of the sugya, I do not provide a phrase-by-phrase analysis later in this chapter. I mention and refer to it because of its importance more to the evolution of the approach to Rabbi Eliezer’s tradition and less to this sugya as a whole and as it evolved in Babylonia centuries later.

13 Halivni cites the corresponding Tosefta at the beginning of Chapter 9, the Sifri Dvarim.
Halivni’s assertion, when put under the historical microscope, is even more convincing. While it is unclear which Rabbi Yohanan is referred to here,\textsuperscript{14} it is likely that it is Rabbi Yohanan Nafha or Rabbi Yohanan Hasandlar, since they are the two Rabbi Yohanans who followed Rabbi Akiba chronologically and thus could have recorded a tradition of which Rabbi Akiba would have been unaware.\textsuperscript{15} Nafha was removed enough from Akiba that he could not have recorded a tradition known to Akiba in his name, and if it were an original concept Akiba could not have known it at all. Hasandlar, however, lived chronologically closer to Rabbi Akiba, and therefore it is less likely that Rabbi Akiba would have been unaware of a tradition attributed to him, but it is still a possibility. Further, Rabbi Yohanan Nafha is the more prominent of the two. Both Rabbi Yohanans were contemporaries or near contemporaries of Rabbi Yannai, and therefore it is sensible that either would have been paired with him. The three were all first generation Palestinian Amoraim.

The way Halivni sets up his analysis highlights how the Tannaitic and earliest Amoraic sources operate as the backbone of this sugya. They offer the first and most significant pivots in the understanding of the position of Rabbi Eliezer, as they are associated with our Mishna. It is difficult to speculate why the author(s) of the Mishna (Rabbi Judah the Prince) elected to include Rabbi Eliezer’s position in his corpus. At the time of the compilation of the Mishna it was already quite dubious, as is evidenced by the

\textsuperscript{14} As mentioned earlier, Halivni’s language clearly demonstrates an ambivalence regarding the accuracy of an attribution to Rabbi Yohanan. I am entertaining the possibility, while recognizing that it might be just an exercise.

\textsuperscript{15} Yohanan ben Zakai, Yohanan ben Nuri, and Johanan ben Bag Bag all preceded Rabbi Akiba, and would not make sense within Halivni’s argument. This would have been especially true for ben Zakai and ben Nuri, who were prominent in the period immediately preceding Rabbi Akiba’s.
number of Tannaitic sources who are apologetic about it, and specifically the story about the four elders who had to find a way to retract the plain meaning of the words conveying Rabbi Eliezer’s position. The author of this Mishna does not use the language of *hutz* which was available to him, as it is in the Tosefta, and may have circulated elsewhere in the general rabbinic corpus of his time. While not the topic of the dissertation, in analyzing this sugya, it is worth noting that the Mishna is actually more canonical when certain language is (purposely) left ambiguous. One could argue that this is a mechanism for dealing with rogue traditions of otherwise reliable sources.

Despite their falling squarely into the Amoraic camp, the positions of Rabbi Yohanan (regardless of which one or if neither) and Rabbi Yannai are presented as part of the narrative in a manner which is no different than the manner in which the Tannaitic positions are presented within the Baita earlier in the sugya. Unless one possessed knowledge regarding how one adjudicates from the text, and was aware of the Tannaitic/Amoraic periodization, the narrative presents Rabbi Jose, Rabbi Yohanan, and Rabbi Yannai as contributing sequentially to the debate. All the Tannaitic and first generation Amoraic material could have been associated with the Mishna quite early. Specifically, the story of the four elders, the dispute with Rabbi Yohanan, and the Baita presenting Rabbi Jose’s interpretation could have been firmly associated with the Mishna by the second generation of Amoraim. Halivni’s emphasis on these parts of the sugya highlight how central they are to the sugya. If one were to parse out the later Amoraic material that is included in the sugya, the Tannaitic material that is left would flow well. The Tannaitic and first generation elements also follow the Mishna logically. It is not a
stretch to place not only the sources and traditions regarding Rabbi Eliezer’s position and their association with the Mishna as early as the first generation, but also the language used to convey them.

This is particularly important in the case of Rabbi Yohanan and Rabbi Yannai as they are both first generation Palestinian Amoraim. The assumption is that they would have had access to much Tannaitic material in a form possessing a high degree of canonicity, both linguistic and conceptual. This would include, per Halivni, the material in our sugya. However, less clear is whether they would have been aware of the basic Stammaitic material which introduces the sugya. Yet, the Stammaitic material, which binds the different Tannaitic and first generation Amoraic elements, is reasonably understood as a highly canonical part of the text around and within which later material was weaved, both anonymously and attributively. Without this first generation Amoraic and Tannaitic material, the other material could not be added, and could not make sense. The exception is the introductory statement, as well as the ‘mai ta’ama d’rabbi eliezer’ formulations. One question that must be asked is about the degree of canonicity associated with the language of the introductory statement and its shaqla v’tarya at the time it was recorded. Clearly, the sources in the sugya are aware of and reacting to the concept behind the introduction and to the ‘mai ta’ama d’rabbi eliezer’ formulations.

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16 This Stammaitic material may have only been informally recorded and I deal with this later.

17 As I point out later, the reference by Ravina to the Mishna in Negaim is an example of this. If it were removed from the sugya, the text would read just as, if not more, coherently. Ravina is responding to the oqimta of Rabbi Jose and more like he is responding to the anonymous Stammaitic material with which the Mishna was associated for centuries. Hence, his placement in the sugya. Associating Ravina’s “ta shma” with the Mishna as the first element only confuse the reader.
The concept regarding the problematic nature of Rabbi Eliezer’s position possesses a high degree of canonicity; how formally was it recorded? And if it was recorded informally, to what degree did the language hold up over the next seven Amoraic generations? Here, I emphasize the importance of the early sources and traditions in this sugya and, in general and as Halivni has emphasized, the distinction between the formal and informal recording of them and how the Stammaim reconstructed, as faithfully as they could, this informally recorded material. Conceptually there is little, if any, doubt that the concept conveyed in the introduction was formally associated with the Mishna. The way Halivni analyzes sugyot in general leaves open the door in our case to the possibility that at least the language of the introduction, and the shaqla v’tarya therein required little, if any, reconstruction by the Stammaim. That then leaves us with an archaic piece of Stammaitic activity, and we are only left to determine if it was formally or informally recorded. Its chronology is not in question.

Shamma Friedman’s Analysis

Friedman’s analysis of the text is as detailed a critical analysis as is available for this sugya. He goes into greater detail regarding medieval commentators and their issues with the text. He also discusses variances among the manuscripts. He presents the reader with an etymology of the word ela, and different possible meanings for it. He even offers a definition from the dictionary of Ben-Yehudah.18 Beyond the technical aspects of his analysis, Friedman also offers insights regarding the way the Braita of Rabbi Jose and his oqimta operate in the sugya. He also directly relates Rabbi Jose’s oqimta to the introduction of the sugya and the oqimta there.

18 Friedman, chamesh sugyot, 129.
One aspect of Friedman’s presentation of the text is the chronological order of its different parts. In his own words, Friedman states that he is opening “our topic not according to the order of the sugya, but with the braita of R’ Jose b”r [son of R’] Judah, because it is the *oldest foundation* (יסוד) in the sugya.”\(^{19}\) (Italics are mine.) While they preceded him, none of the four elders who are quoted later in a Braita produce an approach toward Rabbi Eliezer’s position that was satisfactory enough around which to build a counter-interpretation, a sugya, or both. Friedman is adept at recognizing the importance of Rabbi Jose’s parsing of Rabbi Eliezer’s tradition in the Mishna.\(^{20}\) Freidman further states that Rabbi Jose’s tradition is the basis for the *oqimta* in the anonymous introduction to the sugya.\(^{21}\) As discussed, correlating the sugya’s introduction to Rabbi Jose’s tradition opens the possibility for an early Amoraic – or late Tannaitic – provenance for the language of the introduction and its earliest (informal) transmissions. This establishes a basis through which to disconnect the anonymous Stammaitic language of the introduction from historical considerations and to view it as a literary tool that preserves a generally accepted approach to the Mishna.\(^{22}\)

In discussing the tradition of Rabbi Jose, Friedman argues that Rabbi Jose’s agenda is to uphold the tradition of Rabbi Eliezer in some way, and therefore he must

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\(^{19}\) Friedman, *chamesh sugyot*, 123

\(^{20}\) Friedman, *chamesh sugyot*, 123. Additionally, it is worth noting that one ought be careful about how we speak about Rabbi Jose’s relationship with the Mishna since he was a contemporary of Rabbi Judah the Prince. He may have been aware of and reacted to the tradition before its inclusion in the corpus of the Mishna. We can only speculate about this, and thus careful with how definitively we discuss Rabbi Jose’s relationship to the Mishna.

\(^{21}\) Friedman, *chamesh sugyot*, 124.

\(^{22}\) As I discuss, Halivni’s notion of formal versus informal transmission is relevant to this part of the discussion. While I don’t go into detail here, it is important to be mindful of this distinction when thinking about how such early concepts were transmitted textually at such a nascent stage.
assert that Rabbi Eliezer would invalidate a divorce agreement which contains a *hutz* formulation.\(^{23}\) According to Friedman, it was Rabbi Jose who “established that even Rabbi Eliezer himself would not validate ‘*hutz.’”\(^{24}\) Instead, Rabbi Jose derives *al menat* (on condition) from the Mishna’s use of *ela*. Friedman puts into relief the absolute contrast between Rabbi Eliezer’s position in the Tosefta, where he validates *hutz*, and Rabbi Jose’s *oqimta*, the result of which is Rabbi Eliezer’s prohibiting *hutz* and permitting *al menat*, which is first suggested more than a century later by Rabbi Jose.

This also highlights the importance of this *oqimta* throughout the Amoraic generations, as well as the archaic nature of its association with Mishna. However, we define its transmission, the concept is transmitted (informally?) along with the Mishna and the other traditions already associated with it.

**GITTIN 82a – 82b**


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\(^{23}\) Friedman, *chamesh sugyot*, 130.

\(^{24}\) Friedman, *chamesh sugyot*, 132.
MISHNA: The one who divorces his wife, and says to her, “you are hereby permitted to all men but (ela ploni.”  Rabbi Eliezer allows [for the legitimacy of the divorce agreement] and the Rabbis prohibit.  How does he go about it?  He will take it [the divorce agreement] from her, and return and give it to her and he will say, “you are hereby permitted to all men.”  If he wrote it [but…] within it [the divorce agreement], it is invalid even if he were to go over and erase it.
GEMARA: It was asked of them: this ‘but’ (ela) means ‘except’ (huz) or ‘on condition’ (al menat)? [If it is] ‘except’ then it is regarding ‘except’ that the Rabbis differ from the words of Rabbi Eliezer, since he excluded [someone] from her divorce agreement (get); but [if it is to mean] ‘on condition’ they [the Rabbis] concede to him [Rabbi Eliezer that the divorce agreement is invalid], as it is with any other condition. Or perhaps, it [the Mishna] is [referring to] ‘on condition’, and it is regarding ‘on condition’ that Rabbi Eliezer is in dispute with the Rabbis; however, regarding ‘except’ Rabbi Eliezer concedes [to the Rabbis that the divorce agreement is invalid], because he excluded [someone] from her get.

Said Ravina: “Come listen: ‘all houses can become impure with leprosy but those of gentiles.’ ” If you say that it’s meaning is ‘except’, then it makes sense. If you are to say that it’s meaning is ‘on condition’ [then this follows:] ‘on condition’ that the houses of gentiles do not become impure, therefore the houses of Jews can become impure; however, if the houses of gentiles become impure, then the houses of Jews cannot become impure! And, further, can the houses of gentiles become impure? We learned in a braitay: “‘and I shall place an impurity of leprosy in the house of the land of your possession;’ ‘the land of your possession’ becomes impure with a defilement [of leprosy], but the houses of gentiles cannot become impure with a defilement [of leprosy]. Thus, we infer from the above that it[s correct meaning] is ‘except’, [and that is what] we infer from this.
[This] Mishna is not in accord with the [following] Tanna: we learn in a braita: said Rabbi Jose, son of Rabbi Judah: Rabbi Eliezer and the sages were not in dispute regarding the one who divorces his wife and says to her, “you are permitted to everyone except (hutz) from ploni.” She is not divorced. Regarding what were they disputing? Regarding the one who divorces his wife and says to her, “you are hereby permitted to every man on condition (al menat) that you do not marry ploni.” For Rabbi Eliezer permits [betrothal] to every man except (hutz) for that particular man, and the sages prohibit [it].

What is the reasoning of Rabbi Eliezer? He [and his position here] is consistent with [his position regarding] conditions in general. And [what is the reasoning of] the Rabbis? Conditions in general do not create exclusions to the divorce agreement; here it creates exclusions in the divorce agreement. And [regarding this] Mishna, [when the meaning of the word ela is] upheld as ‘except,’ what is the reasoning of Rabbi Eliezer[‘s position that the get is valid even though it’s not a pure and total separation]? Rabbi Yannai said in the name of one old man: “The Scripture states: ‘and she leaves his home, moves on, and is with another man.’ Even if he did not free her [to any man] but only to another [specific] man, she is divorced.” [With respect to the] reasoning of Rabbi Eliezer, the Rabbis state: “this [that is stated by the Scripture] is ‘man,’ [referring] to [her being permissible] each and every man.” And Rabbi Yohanan said: “the reasoning of Rabbi Eliezer [is learned] from this [verse in the Scripture]: “and a woman divorced from her man they [the priests] shall not take.” Even if she is only divorced from her husband [and not free to others], she is ineligible for [marriage into] the priesthood. From here [it is
demonstrated that] it is a get. And the Rabbis [would have it that] the prohibition of [divorced women marrying into] the priesthood is different.

Analysis

[For this sugya, I am breaking down the analysis into what can be described as ‘stand-alone’ elements within the sugya; meaning that even on their own they still have meaning removed from context. This is not to minimize how context impacts our understanding of these elements, and this is thoroughly addressed below. In the analysis of the sugya in Nedarim, I break down the sugyot into far smaller pieces consisting of a phrase of several words; these, on their own, would not possess meaning in the same way as the elements as broken down here.]

This is the introduction to which I refer throughout this chapter. It can be broken down into two parts: (a) the basic question addressing the most essential aspects of the oqimta, the hutz/al menat distinction in defining ela; and (b) the nature of the dispute between the Rabbis and Rabbi Eliezer considering both possible definitions for ela. The value of breaking down the introduction in this way is realized when assessing the degree to which the anonymous author(s) of this Stammaitic activity veered from the Braita of Rabbi Jose. In this sugya, it is also realized in defining Stammaitic activity as a stylistic tool that impacted the way the Mishna and the developing sugya were studied throughout the Amoraic generations.
The Braita of Rabbi Jose could have seamlessly followed the first part of the introduction. He is essentially answering this question, although the critical reader is aware that Rabbi Jose actually predates the formulation of this question.25 The question is in line with Rabbi Jose’s Braita. The second part of the introduction does not answer the question. Rather, the author offers the two possibilities for the dispute: (a) that the dispute is about *al menat*, and the Rabbis and Rabbi Eliezer agree that *hutz* is invalid; and (b) that the dispute is about *hutz*, and that both agree that *al menat* is valid. Rabbi Jose’s agenda is to negate the possibility that Rabbi Eliezer’s intent was *hutz*, and therefore he reflects only the possibility provided in (a). However, (b) is a step back conceptually from Rabbi Jose. Instead of conveying Rabbi Jose’s position – or something like it – as a response to the question, the author parses further the possible interpretations for how to understand the dispute between the Rabbis and Rabbi Eliezer. Rabbi Jose can still appear to be responding to the entirety of the introduction. As the sugya is arranged he appears to be doing so.

The introduction, however, represents a time at which the problem of *hutz* was more muted and offered far less practical concern than it did to the four elders and to Rabbi Jose. The author of the introduction is less concerned, if at all, with attributing *hutz* to Rabbi Eliezer.26 The impact of the expanded scope of the dispute is an expanded roster of sages who can be mentioned in the sugya – an increased multiplicity of voices.

25 As I discuss above, see Friedman, *chamesh sugyot*, 123 – 124. Friedman argues that the *oqimta* originates with Rabbi Jose.

26 As is evidenced later, particularly with Ravina, Rabbi Eliezer’s position moves more and more into the abstract world of Talmudic discourse, and away from the practical world of adjudicative law. At a certain point in time, Rabbi Eliezer’s tradition becomes arcane. While it might be at the center of this intellectual limbo dance, it was far from the Jewish courts which presided over divorces.
Once *hutz* is a possible reading of the Mishna, there is greater room for deliberation on the matter, and broader incorporation of Amoraic sages, such as Ravina, whose conclusion could not be reached without the re-entry of *hutz* into the range of possible interpretations of *ela*.

The introduction is a stylistic mechanism through which to set up the sugya, and the *mai ta’ama d’rabbī eliezer* questions that come later. This is in contrast to Rabbi Jose’s tradition, which is not a literary mechanism but a recorded tradition attributed to a source. Rabbi Jose was concerned with preserving Rabbi Eliezer’s tradition, while at the same time defining it in such a way that it was acceptable, hence shunning *hutz* as possibly valid. The author of the introduction was no longer concerned with making Rabbi Eliezer’s position tenable. For the author of the introduction, Rabbi Eliezer’s position was fully canonized, both conceptually and linguistically to the degree that *hutz* was no longer a threat to the credibility of the tradition nor to pragmatic adjudication. The author of the introduction inverts Rabbi Jose’s position and offers an explanation of how the dispute could also be about *hutz*; within that broader scope, Rabbi Jose’s Braita is one element. The introduction veers from Rabbi Jose in the broadness of its interpretive scope of *ela* and serves as the literary tool which makes the sugya possible.

As discussed, the *oqimta* of Rabbi Jose as distilled in the introduction is nearly as old as the Braita of Rabbi Jose. The distilled introduction broadens the scope and is thus distinct from Rabbi Jose, and therefore is also a conceptual component unto itself. It had to be incorporated into the traditions and language surrounding the Mishna. The
language of the introduction, and particularly the first half, is basic and concisely reflects the *oqimta*. While transmitted in some form, it is unclear if the form in the extant text is the same as the one associated with the Mishna during the first, second, or third generation of Amoraim. The question asked above regarding formal versus informal transmission is relevant here. Within the Halivni paradigm of informally transmitted Stammaitic material being reconstructed by the Stammaim as necessary, it is difficult to isolate any part of the first half of the introduction as requiring any reconstruction. While informally transmitted, it was still transmitted, and when the time came for it to become formally transmitted its form did not require reconstruction or change. There is little reason to doubt its archaic provenance.

אמר ברinaire הוא שמע... אלא שול גוי, וא אמרת בישלמה... ולא מ cpf ויהי ירCharArray... והחיה... שמע

Because of its association with Ravina, this element of the sugya is necessarily chronologically late. While it is possible that the text from Negaim was already associated with the Mishna prior to Ravina, there is no evidence among the manuscripts or other sources to support such an assertion, and therefore we must accept the attribution to Ravina. It is also not clear how much of this part of the sugya is attributable to Ravina, if any. He is certainly the voice behind ‘*ta shma*’ introducing the text from Negaim. The Stammaitic activity from ‘*i amrat b’shlama*’ until ‘*shma mina*’ could also be attributable to Ravina. Or it can be ordinary anonymous Stammaitic

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27 Ravina appears in all the manuscripts.

28 This is directly related to Halivni’s notion that unless there is reason to doubt the authenticity of attribution, it is reasonable to accept it. In the case of Rabbi Yohanan, clearly Halivni feels that the attribution is dubious.
activity. Regardless of its attribution, it is also necessarily late, because it reacts to Ravina or is attributable to him.

It is important to note how the Stammaitic activity in this section of the sugya serves as the literary mechanism through which Ravina’s ta shma interacts with other elements in the sugya. The Stammaitic activity serves to pivot the meaning of the text from Negaim within this section, and the implications of Ravina’s ta shma within the sugya as a whole.

The chronological provenance of the Stammaitic activity – whether it is the work of Ravina or his tannaim or the work of the post-Amoraic Stammaim – does not impact our understanding either of the sugya or of Ravina. The Stammaitic activity that follows the quote from Negaim is not only necessarily later than the Stammaitic activity that introduces the sugya, it is also more complex than the Stammaitic activity from the introduction. This is especially true for the opening question, which is in as basic a form as possible. While the Stammaitic activity here might have been subject to greater reconstruction by the Stammaim because of its complexity, the opening question in the introduction is far simpler and would have required relatively less reconstruction.

If we were to remove the entirety of this part of the sugya, it still flows seamlessly from the introductory question to the Baita of Rabbi Jose.\textsuperscript{29} It does not require great imagination to envision this (evolving) sugya at a time predating Ravina and the section

\textsuperscript{29} In order for this to work, the phrase ‘matnitin d’la ki hai tanna’ would need to be dropped. I address this in the next part of my analysis of the sugya.
that is either attributed to him or is reacting to the Mishna from Negaim that he inserts into the sugya. Whether it was a sugya or merely traditions associated with the Mishna, imagining the sugya without this section offers insight into how the traditions surrounding the Mishna evolved into the final, canonized sugya.

Without this section, the sugya would flow directly into the position of Rabbi Jose and the Tannaitic approach to Rabbi Eliezer’s tradition, which necessarily precludes *hutz*. Within the narrative, Ravina along with the Mishna from Negaim – and not the Braita of Rabbi Jose – are first to respond to the introduction and the question it presents. As much as the Tannaitic sources appear to be running from *hutz*, the narrative matter-of-factly presents *hutz* with the definitive ‘*shma mina hutz hu shma mina*’ formulation to end the section. A few centuries removed from Rabbi Jose and his *oqimta*, Ravina is able to explain *ela* for what it is: *hutz*, which is intuitively, historically, and contextually the intended meaning. Ravina is going one step beyond the introduction and its formulation of the *oqimta* in the degree to which he presents *hutz* as the correct interpretation of *ela*.

Ravina’s position is the fourth step in a process that commenced when Rabbi Eliezer’s tradition was first recorded. The steps are as follows: (a) the original recording of the tradition attributed to Rabbi Eliezer, where *hutz* is the understood meaning; (b) the Tannaitic reaction to the tradition of Rabbi Eliezer on the part of the four elders and Rabbi Jose, their effort to distance Rabbi Eliezer from *hutz*, and the introduction of the *almenat/hutz oqimta*; (c) the reformulation of the *oqimta* by the author of the introduction, and the re-introduction of *hutz* as a possible interpretation of *ela*; and (d) Ravina and his
interpretation of *ela* as *hutz* based upon the Mishna in Negaim. The manner in which the interpretation of Rabbi Eliezer comes full circle from *hutz* to *al menat* and back to *hutz* represents the way a tradition makes its way from a lived reality to a recorded tradition to a theoretical position found only in a text. As it is for the author of the introduction, for Ravina *hutz* is not necessarily an adjudicative option to the same degree that it is a theoretical position attributed to a long-gone Tanna.

- Per Friedman, this Braita is the original provenance of the *hutz/al menat oqimta*. Its association with the Mishna – or the tradition of Rabbi Eliezer prior to the creation of the Mishna – predates the Amoraic period. Its content is reacting directly to Ravina and the *hutz* definition of *ela*. It is also a reaction to Rabbi Eliezer as he is understood both in the Tosefta and by the four elders in a Braita later in the sugya. In a way, Ravina serves as a surrogate for the tradition of Rabbi Eliezer as his contemporaries and other Tannaim, such as Rabbi Jose, understood him. The sugya does not place Rabbi Jose ahead of Ravina in the narrative, with Rabbi Jose responding to the introduction and its open-ended question. Instead, Rabbi Jose is juxtaposed with the same *hutz* interpretation to which he was reacting during his time. The narrative and the way the different elements of the sugya are arranged simulate in the text the conditions within which Rabbi Jose first suggested his *oqimta*. It would not be strange for Rabbi Jose to be placed ahead of Ravina in the sugya. Rabbi Jose and Rabbi Eliezer in this context are not tangentially related, as is the text from Negaim with the Mishna here; the relationship is

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30 Friedman, *chamesh sugyot*, 123.
direct. Nevertheless, Ravina is placed first with the Braita of Rabbi Jose reacting to *hutz* in this narrative *again* and in some way still for the *first time*.

The language of the Stammaitic activity which serves as the hook between the two sections supports this reading of the text. The phrase introducing the Braita, ‘*matnitin d’la ki hai tanna,*’ is a reaction to the previous section, which includes the text from Negaim as introduced by Ravina, and where the conclusion in that section is that *ela* means *hutz*. Because it is reacting to Ravina, this Stammaitic activity is likely late, and the original work of late Amoraim or the Stammaim. If the Stammaim, it would be their original work as opposed to their reconstructions of existing informal Amoraic traditions and the language used to convey them. The ‘*matnitin d’la ki hai tanna*’ introduces Rabbi Jose and his assertion that *al menat* is the correct interpretation of *ela*.

Unlike Ravina, who appears to be choosing from among two possible interpretations, Rabbi Jose, and later in the sugya the four elders, are not selecting from two options; they are eschewing the obvious meaning of *ela* as it is deployed in the tradition of Rabbi Eliezer. They are looking for mechanisms through which to ameliorate the severity of Rabbi Eliezer’s position, which requires the marginalization of *hutz*, and the justification of an alternative interpretation. They only need to come up with one acceptable alternative to *hutz*. As the interpretations advanced by the four elders demonstrate, they were not bound to *al menat* as the only possibly alternative. They can be described as operating at a time when the alternative(s) were still being sorted out in the transmission of the traditions surrounding what eventually becomes the first Mishna
in the ninth chapter of Gittin. Ultimately, it is the interpretation of Rabbi Jose as presented in the Braita which most contributes to the development of the sugya and the final form it takes in its most canonical state.

An essential question of this sugya centers on the reasoning of Rabbi Eliezer. It is first asked here, and then raised twice more in varying forms in short succession as the sugya progresses. Anonymous Stammaitic activity responds to the first ‘mai ta’ama d’rabbi eliezer’ and the first generation Palestinian Amora Rabbi Yannai is presented in the narrative responding to the second one. Rabbi Yannai himself is quoting an older, presumably Tannaitic source.31

Conceptually, the interest in the reasoning of Rabbi Eliezer is later than the oqimta of Rabbi Jose, and the introduction of the sugya – conceptually if not phraseologically. It is post-Tannaitic. Regardless of how it is legislated and later adjudicated, for the Amoraim, the question begs to be asked: mai ta’am d’rabbi eliezer. What was Rabbi Eliezer thinking? Did he not realize that he was breaking down an essential aspect of divorce – the complete separation, kritut? The Amoraim developed an interest in Rabbi Eliezer’s position and the logic behind it. The Tannaim are more concerned with the practical realities that might emerge from such a tradition regarding so important a matter as divorce. In the narrative – and likely in their realities as well – the Tannaim are presented as attempting to undo the obvious meaning of Rabbi Eliezer’s

31 As a first generation Amora, anyone considered ‘old’ must have been a Tanna. I treat this matter is more detail below.
tradition. For them, and especially for the four elders who were near contemporaries of Rabbi Eliezer, the tradition of Rabbi Eliezer was not merely theoretical; it is presumably the way in which Rabbi Eliezer would adjudicate if such a case were to come before him. It is how he is presented as legislating this particular halachic matter. Regardless, the Tannaim are presented as shunning the most extreme interpretation of ela, hutz. The Amoraim accept that Rabbi Eliezer once held such a position, and the final expression of this chronologically is Ravina’s conclusion of hutz. For them exploring the reasoning of Rabbi Eliezer does not have the adverse effect of validating an untenable position; rather, it is the exploration of what evolved into a theoretical position which had been rejected. Nevertheless, it was worthy of transmission and even inclusion in the Mishna.

The response of Rabbi Yannai to mai ta’ama d’rabbi eliezer, in the name of one old man, is Amoraic to the extent that Rabbi Yannai forwards it; it is Tannaitic to the extent that it is quote from a man who almost certainly was of the Tannaitic period. This association between a first generation Palestinian Amora and a tradition he received from the Tannaitic generation preceding him can serve to highlight the somewhat arbitrary nature of rabbinic periodization. Here it manifests in the grey area in which this tradition is attributed to one old man by Rabbi Yannai. It is unlikely that Rabbi Yannai – nor the one old man for that matter – was aware of how they would come to be ‘periodized’ centuries later in the epistle of Rav Sherira. In his introducing the one old man, Rabbi Yannai does not convey anything in his language or in his style that the one old man possessed any greater authority than he (maybe only other than he was older and worthy of the respect of an elder) as were the traditions he may have taught. If notions of
periodization even entered his head, or the head of the person who recorded his traditions, Rabbi Yannai would not have seen himself as periodized differently from the one old man.

Rabbi Yannai is operating ‘Amoraically’ in that he is addressing the reasoning of Rabbi Eliezer under the assumption of *hutz*. Quite differently, the Tannaim in no way entertain *hutz* as an option. If, however, this is the tradition of one who was old with respect to a first generation Amora, then we are more than likely dealing with a Tannaitic tradition; one possibly contemporaneous with Rabbi Jose. This indicates that at the same historical moment – or very close – two divergent approaches to dealing with Rabbi Eliezer were in effect. They are reflective of the Tannaitic versus the Amoraic. The first is ignorance – or a feigned ignorance – of the possibility of *hutz* as the correct interpretation. The second is the acceptance of *hutz* functioning at least as an option for the interpretation of *ela*. The one old man’s tradition is the interpretation of a verse which would presumably validate a divorce where a man allows his wife to marry only one specific man. This interpretation of the verse is certainly far narrower than the way we might understand *hutz*. It is not exclusive of this or that person; it is inclusive of potentially only one person. This attempt to validate a divorce according to the *hutz* interpretation of Rabbi Eliezer is more absurd, and fraught with more potential pragmatic pitfalls, than the plain meaning of Rabbi Eliezer and *ela* as *hutz*. Nevertheless, Rabbi Yannai’s one old man is similar to Ravina in that he is accepting of the possibility of *hutz*. He differs from the Tannaim for the same reason. The one old man is chronologically Tannaitic, and operationally Amoraic.
Unlike the previous ta’ama d’rabbi eliezer formulations, here it takes on a tone that is not interrogatory. Instead of ‘mai’ the ‘…ta’ama d’rabbi eliezer’ is preceded by forms of the verb amr: amar and amri. They both are responding to the hutz interpretation of Rabbi Eliezer as well as to the question in the narrative above, ‘u’matnitin d’oqimna hutz, mai ta’ama d’rabbi eliezer.’ The traditions attributed to the Rabbis and to Rabbi Yohanan both emerge from a milieu where hutz is at least worthy of consideration when discussing Rabbi Eliezer’s tradition regarding divorce.

The traditions attributed to the Rabbis and to Rabbi Yohanan are narrated in Aramaic. This is in contrast to the position of the one old man as told by Rabbi Yannai, which is narrated in Hebrew. The actual statement in both cases is in Hebrew. The verb amr is in Aramaic when introducing the Rabbis and Rabbi Yohanan, and in Hebrew when introducing Rabbi Yannai. The statement of Rabbi Yannai directly parallels the introduction to the ninth chapter of the Palestinian Talmud. In the PT, it is Rabbi Ili, and not Rabbi Yannai quoting one old man, who presents this position: “amar rabbi ili ta’ama d’rabbi eliezer v’yaza mi’beito v’halhka vhayta l,ish aher afulo lo hitira ela l’adam ehad.” The language is almost identical. The first difference is the use of ‘adam’ instead of ‘ish’ and the second is the absence of ‘harei zo megoreshet.’ The phrase ‘harei zo megoreshet’ (this one is divorced) could also be part of the narrative, and not part of

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32 These are the Amoraic rabanan, and are not to be confused with the hakhamim of the Mishna.

33 As mentioned above, attribution to Rabbi Yohanan is often a mechanism for conveying a Palestinian tradition of unknown provenance in the BT.

34 PT Gittin 50a.
the statement attributed to the one old man by Rabbi Yannai. It is in the same Hebrew as the rest of the narrative. In a way it parallels the ‘alma havei gita’ (it is a valid get) phrase, which completes the narration of the reasoning of Rabbi Eliezer according to Rabbi Yohanan.

The reasoning of Rabbi Eliezer attributed to Rabbi Yohanan echoes the second opinion of Rabbi Akiva, as one of the four elders. Here, it draws upon the unique betrothal laws applicable to priests in order to create a scenario by which Rabbi Eliezer might be understood. In the case of Rabbi Akiva, the opposite is taking place; Rabbi Akiva, like the other four elders, is seeking to get to the conclusion of ‘eyn zeh critut’ (it is not complete separation) and therefore it is not a valid divorce. There is no interest in understanding Rabbi Eliezer. Beyond drawing upon betrothal laws unique to priests, distinct are the cases of priestly betrothal deployed by the two sources. Rabbi Yohanan speaks of a case where a woman is divorced only from her husband, but is not available to all others. Rabbi Akiva is addressing a case where a priest is the person excluded based upon hutz, and where the husband then dies after granting this divorce with the exclusion. Rabbi Akiva arrives at a scenario where the woman is a widow with respect to the priest and divorced with respect to all other men. Rabbi Yohanan’s interpretation finds that divorce with exclusions is valid because such a divorce precludes the marriage of the woman to a priest.
Pluralism

Our Sugya

From among anonymity, canonicity, multiplicity and pluralism, it is only pluralism that requires specific attention separate from the analysis of the text or the discussions of the critical scholarship surrounding it. Unlike the other three, pluralism is unique in that it specifically requires considerations outside of the text and the world within which the text operates. We look to the text only to the extent that we can analyze how it relates to an existing dominant legal system, or speculate about an imagined dominant legal system and/or its real-world manifestation. Because of the importance of betrothal and divorce laws in most legal systems, it is a worthy law around which to assess the tendency toward the potentially subordinate status of the BT, and specifically this tradition regarding divorce, in a legally pluralistic milieu. Pluralistic potential offers survival to legal systems which are no longer dominant, or were never meant to be. Does the sugya, and its mistrust of hutz, possess that ‘survival instinct’? Does it allow for the sugya and its traditions and sources to survive within the evolving BT corpus? How does it fit into the paradigm of traditions and laws that can operate as subordinate to a tolerant, dominant legal system? The answers to all these are positive, and put into relief how the individual traditions of legislation and adjudication in the BT can at least sometimes operate outside the purview and authority of the dominant or state law and at the same time not upset it.

Matters of betrothal and divorce are at the center of the fabric of family and community life. So long as certain conditions are met regarding certain laws – and these
can differ from culture to culture – a minority group can adhere to a tradition or law from a subordinate legal system. The arbiters of the dominant system, as well as those who back them or otherwise represent the state, might have certain expectations, such as a degree of general complicity on the part of the minority group. In order to remain within the bounds of the values of the dominant system, there might also be an expectation of some flexibility in the adjudication of matters regarding their adherence to this or that law from the subordinate system.

It is worth noting that divorce and betrothal are also among matters that would be of relatively little interest to the arbiters of a dominant legal system, where other systems are also tolerated; this as compared to laws regarding land purchases and murder. This is particularly true in the case of minority groups bound to non-dominant legal systems which adequately address divorce. There is little reason to believe that the Jewish communities of Babylonia during the Amoraic period did not manage their own betrothal affairs with little interference from the state, which at the time was operating under some form of a dominant Sassanian law. While we can only speculate about the degree of the state’s involvement in the affairs of the Jews in Amoraic Babylonia, there is also little in the Sassanian legal texts available to us that would lead one to believe that the state would have a significant interest in the betrothal or divorce of foreigners who were not marrying into their faith.

Regardless of how it might have related to Sassanian law specifically, with respect to dominant legal systems more generally, there is little in this sugya which
would be offensive to the overseers of a dominant legal system or one administered by the state. Further, the ability to control betrothal and divorce while still maintaining good standing within the dominant legal system of the state further strengthens the standing of the minority group bound to the non-dominant legal system. The BT successfully navigates the terrain between talking the dominant talk and walking the subordinate walk. When possible, the betrothal and divorce mechanisms of the BT must possess the capacity to function separately from the authority of the state. At the same time, where state law requires adherence to state laws regarding betrothal and divorce, or where social pressures mandate adherence to state laws for betrothal and divorce, there is nothing in the BT that precludes such adherence.35 As mentioned above, there is little about this sugya that would be detrimentally contradictory within a dominant legal system, and this would even include systems where such exclusions in divorce would be acceptable.

Conclusion

Demonstrating that the introduction is as archaic as the earliest Amoraic generation also demonstrates how early the trajectory of the meaning of Rabbi Eliezer’s tradition was pivoted. Ultimately, the introduction of the idea that becomes this pivot is

35 David M. Engel, in his article, “Legal Pluralism in an American Community: Perspectives on a Civil Trial Court” (American Bar Foundation Research Journal, Vol. 5, No. 3, pages 425-454, 1980), offers a discussion of the pluralistic nature of laws that govern divorce in Sander County, Illinois. In it, he demonstrates how there exist entrenched local customs regarding how divorce is understood. There is also a language used to express them. This language must be re-crafted – or crafted from scratch – so that they can be accepted by the court and comply with Illinois state law. The local customs and the language used to convey them were in stark contrast to the laws of the state and the language required to comply therewith. Nevertheless, the local customs were as such that it was possible to convey them in the language of the state. As they stand and have been and still are by many currently understood, there exist legal systems whose customs and laws regarding divorce would not be as compatible with the laws of Sander County. With a conclusion of hutz, the traditions from this sugya would not be compatible with the laws of Sander County. Marginalizing Rabbi Eliezer and both hutz and al menat serves to make divorce laws of the BT compatible with the laws of Sander County. And they are contemporarily interpreted in such a way by modern adjudicators of halacha.
the result of a manipulation of the plain meaning of the text; in our case, the word *ela*. The four elders were still operating under the plain meaning of the text, and understanding *ela* as ‘except.’ They do not attempt to manipulate the plain language of the text. It is also possible that the textual tradition available to them, and possibly the original Rabbi Eliezer tradition, deployed the word *hutz*, and quite possibly they were operating before the formulation using the word *ela*. While the four elders were sages of note and while this story about the retraction of Rabbi Eliezer’s legislation was recorded in a way that it too was canonized, the story about them does not serve as this pivot. As Friedman asserts, the foundation of the sugya is Rabbi Jose,\(^36\) and not the four elders; it is none of their interpretations that drive the sugya, and they are tangential to the primary narrative of the sugya.

As opposed to the four elders, Rabbi Jose offers the text far greater charity.\(^37\) As mentioned, the elders may not even have been aware of the *ela* formulation. Rabbi Jose reads into the meaning of *ela*, and therefore does not need to retract Rabbi Eliezer’s position. The tradition stands because the tradition is, for Rabbi Jose, the language conveying the tradition, where for the four elders the tradition was the ‘tradition’; regardless of whether they were exposed to the *ela* formulation or not, they knew exactly what Rabbi Eliezer meant. Because of his chronological distance from Rabbi Eliezer, it probably never crossed Rabbi Jose’s mind to retract the tradition. Retraction after so long was no longer possible. The only mechanism that was available to him was to read into the language and interpret it in such a way so that it no longer conveyed its obvious

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\(^36\) Friedman, *chamesh sugyot*, 123.

\(^37\) See Chapter 3.
meaning. This is in contrast to the four elders. Nearly a century separated the four elders from Rabbi Jose, who lived at the end of the second century and was of the last generation of Tannaim. The elders, who all had to wait for Rabbi Eliezer to die to retract his words and might have known him personally and what he said, could not reasonably alter the concept of Rabbi Eliezer’s tradition because of an ambiguity in the language, if it even existed. For Rabbi Jose, this is not a problem. After the passing of a hundred years, the language associated with the concept acquires a canonical degree of canonicity; its inclusion in the Mishna evidences this. For Rabbi Jose, the language supersedes the obvious meaning of the contemporary listener who can immediately clarify the meaning (something the four elders were able to do).

In unpacking this further, one can isolate a distinction between what the four elders are doing in their Baita and what Rabbi Jose is doing in his. While the four elders were able to retract a recorded tradition, they had no mechanism by which to maintain the tradition while reinterpreting its language. Conversely, Rabbi Jose was unable to retract a tradition attributed to Rabbi Eliezer, especially one recorded in the Mishna, but he was able to read into the language of the tradition as presented in the Mishna. They both achieve the same result, which is minimizing the practical impact of Rabbi Eliezer’s tradition on divorce.  

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38 As I discuss, this is related to the notion of pluralism and how betrothal laws would often be something within the authority of the rabbis, and thus the stakes are much higher here than they might be elsewhere, such as in a discussion regarding Temple rituals.
As the BT was compiled around this Mishna, it was not the apparently more authoritative retraction of the four elders with which the sugya opens, but rather with the essence of Rabbi Jose’s *oqimta* in introducing ‘*hutz*’ and ‘*al menat*’ as possible ways to read the Mishna. Further, by the time it is formulated in this way, it is done so anonymously and in the Aramaic Stamaitic style; a style that, I argue, is reflective of the pervading perspective on the Mishna and the traditions surrounding it. The essence of Rabbi Jose’s tradition as recorded in the Braita is distilled into the purer form it takes in the introduction to the sugya. In our case, this form – anonymous Stamaitic style – is divorced from any historical or chronological constraints. It is a style with its own requisite set of analytical tools.

The tradition of Rabbi Eliezer was canonical to the four elders at some level, but the language and the tradition were still vulnerable to emendation and even outright retraction. A century later, it is the greater canonicity of the text of that tradition that opens the door for the charitable reading of Rabbi Jose. That charitable reading and interpretation – and not those of the four elders – serves as the basis for the introductory question and the pivot for the entirety of the sugya. As discussed earlier, this pivot is definitively part of the tradition in the first Amoraic generation, and definitively canonized when the Braita of Rabbi Jose was recorded. Thus the distilled concept – in our case the *oqimta* – as presented in the introduction was a central part of the tradition of the Mishna during the first Amoraic generation. This was not the case regarding the

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39 While not the subject here, this highlights the difference between a canonical text and canonical behavior. Behavior is just behavior, but a text prescribing actions or laws can be interpreted as many possible behaviors.
tradition of this *ogimta* before the closure of the Mishna and certainly not at the time of the four elders, who were unaware of it.

While still speculative in its essence, establishing chronologies serves the reader of the BT and this sugya in two ways. It helps in extracting meaning where historical considerations might be applicable. More important to this project, it chronologically places the Stammaitic activity, as well as the traditions and sources relative to one another. This better guides the reader to the intent of the source and the later re-working and interpretation of the source’s tradition. Positing all Stammaitic activity at the end of the Amoraic period and during the periods that follow it deflates the possibility of finding meaning in the sources and traditions when considering that the sources of the traditions and those who recorded and transmitted them (i.e. the traditions in the names of the sources) interacted – at least conceptually – with the substance of the Stammaitic activity. This is especially the case regarding simplistic Stammaitic activity where there does not exist the potential for divergent forms of expression and where there would be little need for reworking or reconstructing this activity.

The canonicity of the language can only be considered after a degree of conceptual canonicity can be established. In this sugya, the conceptual canonicity of the introduction is easily established as late Tannaitic. The problem with Rabbi Eliezer more generally dates to Rabbi Eliezer himself. The reactions of the Tannaim indicate knowledge of the problem with Rabbi Eliezer (by the four elders) and the reactions of the Amoraim indicate knowledge of the essentialized, non-partial *ogimta* of the introduction.
Conceptually, there is a degree of canonicity regarding a tradition that has problems with Rabbi Eliezer as soon as the four elders came together (if they in fact did). Linguistically, this begins to occur (and quite possibly finished) when the story and their statements were recorded and transmitted. Similarly, the canonicity of Rabbi Jose’s oqimta acquires a degree of conceptual canonicity when he first suggested it. It acquired linguistic canonicity as soon as it was first recorded and transmitted. At this point, the oqimta – in its one-dimensional, ‘pro-al menat,’ Rabbi Jose form – is in possession of both linguistic and conceptual canonicity. By the time of Rabbi Yannai (and Rabbi Yohanan), both first generation Palestinian Amoraim, the oqimta as synthesized by the authors of the introduction’s Stammaitic activity (which is all of it), was ‘out there’ even if it was not yet formulated as it is in our sugya.

The narrative makes sense only if the concept of the oqimta was actually known to those who are presented as reacting to it. It is not a reach to establish that the language associated with the oqimta as it is presented in the introduction also contributed to the reaction of the Amoraim, and specifically the first generation Amoraim. Because a concept needs language, there must have been some language associated with it even before it was formalized as it is in the introduction. Whether formally or informally recorded, it was recorded. The simpler the language, the less reconstruction was required before making the Stammaitic activity part of the formal tradition. Formalizing the Stammaitic activity may have been the purview of the Stammaim; even its reconstruction may have fallen to these same Stammaim. But their original authorship is difficult to place chronologically. This, as opposed to its literary contribution, which is difficult to
ignore, especially where the Stammaitic activity – and the concepts that first inspire their crafting – pivot interpretation for generations. I stand by my argument that the text reads better when the language and not only the concept are fixed in the degree of canonicity.
Chapter VIII

v’la Pligi Structures

In this chapter, I look at a specific language formulation, what I call the v’la pligi structure, which appears throughout the BT in different legal contexts. In the last two chapters, I worked in a sugya-centered manner. As opposed to analyzing an entire sugya, I look at the formulation in all its contexts and cover much more topical ground. I also establish a data set from which patterns emerge and which can point to subtle understandings unavailable when looking at a single sugya. Additionally, this study is strictly focused on linguistic parallels. This is in contrast to those studies where the emphasis is on the traditions and their sources, regardless if their emphasis is on the literary, the chronological, both or neither. In looking at the v’la pligi structures, I assume that the crafters of the structure were aware of its fixed nature and knew that they were in fact crafting a specific structure with a specific formula for its creation, similar to other poetic forms (such as a sixteenth century English sonnet).

The analysis of the v’la pligi structures yield fruit in a range of literary approaches. The analysis highlights the balancing act of viewing the text through a literary prism while still considering chronologies. It also further clarifies the malleability possible in dating different elements of the v’la pligi structure. Further, in terms of considering the BT as historical, some of the v’la pligi structures are an opportunity to test for ‘lived traditions’ and how they might relate to the structures and
their specific elements. This peak into the relevance of lived traditions could also bolster the notion that the BT is a monological work operating beneath a veneer of multiplicity and that the BT as a cohesive work is strongly suggestive of a culturally legislated lifestyle, if not a legally binding one. The v’la pligi structures show how the multiplicity of voices is used to set bounds of accepted behavior; the range of accepted behavior in the v’la pligi structures is narrow and further points to its monological potential.

As a literary form, I argue that the v’la pligi structures are highly canonical. They possess a high degree of canonicity. I break down the different elements with respect to the manner in which they might infuse canonicity into the v’la pligi structure, which is essentially addressing the matter of how and why was this particular v’la pligi structure authored. Breaking down the text in this way also allows for the isolation of what can be called Stammaitic from a literary perspective, rather than from a historical or chronological one. This further cements them as a literary phenomenon, separate from a discussion about their periodization. As I discuss, Halivni relies on the concept of the metzaref (the coupler of sources) as a historical figure(s) who needed to operate prior to the chronological Stammaim because of the function he plays in the formulation of any sugya where sources are coupled. This metzaref is engaged in Stammaitic activity yet is not necessarily chronologically Stammaitic.

I analyze six different v’la pligi structures, which are representative of the two different general types of resolutions provided in v’la pligi structures. (As I explain below, there is (a) the geographical, which allows for the dispute to stand and which
provides no resolutions, and (b) the creation of a distinction that allows the divergent halachic positions to stand.) In discussing the theory behind how I approach the text, I use the v’la pligi structure in Berachot 38a as an example of a text with which to explain v’la pligi structures in general. Therefore, I will offer that text and a brief explanation of that text, here; a more detailed analysis of the v’la pligi structure on Berachot 38a is below, alongside the other five v’la pligi sugyot that are analyzed.

With regard to shatita, Rab said that the blessing is 'by whose word all things were made', while Samuel said that it is 'who createst various kinds of foods'. Said R. Hisda: They do not differ: the latter is said over the thick variety, the former over the thin. The thick is made for eating, the thin for a medicine.

In this sugya, the question is raised, which blessing is made on shatita. Rav states that when eating shatita one blesses with a shehakol nihye b’dvaro, and Shmuel states that one blesses with a boreh minei mezonot. Rav Hisda introduces the v’la pligi, and attributes the resolution of the dispute to the nature of the shatita – one is avah (thick) and one is raqah (thin). While one speaks of a thick shatita, requiring a boreh minei mezonot, the other is referring to a thin shatita, requiring a shehakol nihye b’dvaro. Stammaitic authors then elaborate that one shatita is designed as a food, while the other
is designed for consumption as a medicine. This distinction is not necessarily part of Rav Hisda’s statement.

Recording and Transmission

The v’la pligi structures demonstrate how, after a source is recorded, it also can acquire a linguistic canonicity, after which it becomes a linguistic element and a recognizable layer in the text. Degrees of canonicity, in the case of v’la pligi structures as well as many different sugyot in the BT, are ultimately defined by the form the text takes in its final and linguistically fixed manifestation. While the halachic position can remain the same, the words used to convey it evolve until they reach this final fixed form. The v’la pligi structures in some ways reflect this process in their final, and most canonical, form. This forces us to question the assumption that when a tanna recorded and transmitted a statement of an Amora, that he did so faithfully and that he maintained the language conveyed to him. This assumption is not only prevalent in traditional circles such as Yeshivot, but also in large parts of the ‘academic’ study of the BT.¹

In this sugya, Rav and Shmuel are both first generation Amoraic sources whose opinions were recorded and transmitted separately during or soon after their lives, which is also the first century following the codification of the Mishna. Transmission is the first step in the process of acquiring canonicity, and by virtue of recording and transmitting a

¹ See for example David Halivni, mev’ot l’megorot u’mesorot (Jerusalem: Magnes Press, 2009), 4 and 111. Here is another instance in this dissertation where I can point to premises within the academic profession of Talmud study that are highly dubious and which have not been put to grindstone of a humanities-style inquisition, let alone one more rooted in the physical sciences. This is not to say that the assumptions are necessarily wrong. And I certainly do not wish to imply that we cannot work within the parameters of these assumptions. I do so myself. I only wish to point out a weak part of the underbelly of BT study in the academy where significant deconstruction is still in order.
halachic statement it acquires authority. At the point of their initial transmission, by virtue of being recorded the traditions of Rav and Shmuel acquired a degree of canonicity. Originally, the substance of the legislation itself – the actual halachic position, separate from the linguistic formulation – acquired as much a degree of canonicity as, if not more than, its linguistic formulation. Again, we are looking at the final linguistic form as the one possessing the highest degree of canonicity in the text. Before the linguistic form can achieve the degree of canonicity approaching the one in the final form of the text, the behavior associated with that position must also find its place in the ‘canon’ of lived traditions.

Essentially, we must assume that different halachic positions in the BT reflect actual variances in the lived halachic traditions of the Amoraim. This is true even in some cases where the narrative attempts to reconcile them. Over time, the linguistic or narrative treatments imposed on the text by (different) attributed and anonymous authors and editors, such as the reconciliation of divergent positions (in our case using v’la pligi), becomes more fixed.

In the case in Berachot 38a, the students of Rav and Shmuel, and/or the transmitters of their statements, did not think of their transmission as textually canonical, but only halachically canonical.² Thereafter, Rav and Shmuel’s statements are coupled, thus forcing the coupler to adjust the language so that the two sources and traditions can be best narrated. The exact wording of either Rav or Shmuel was not recorded by the

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² As is discussed later, and as mentioned elsewhere in this chapter, this is a reference to the “canon of behavior”.
coupler (Halivni’s *metzaref*), but was adjusted. The coupler then injected a greater degree of canonicity into each individual source by coupling them, and subsequently by abbreviating them. Both at this stage, and in the later ones, the abbreviations more than likely served a mnemonic purpose, which demonstrates both a desire to record a source and a desire to infuse it with the authority of something worth memorizing and transmitting. A third generation source, Rav Hisda, further increases the canonicity of what appears to be an emerging Talmudic formulation – one which is closer to its final form – while attempting to alleviate the state of contradiction between the coupled sources. By mentioning Hisda by name, the later anonymous transmitter narrative allows for further multiplicity of halachic voices. Another transmitter, one who postdates Rav Hisda, reworked the sources and their narration in order to include Rav Hisda and to produce the sub-canonical narrative quoted here. This transmitter, like the final editors of the narrative, is operating anonymously; his identity is not of interest to the final editors, as only the positions he attributed, and the persons to whom they were attributed, are of interest. Further, his anonymity – whether an anonymity of intent or not – can be seen as a contributing factor to its acceptability, since there are names we can plug in which could potentially lessen its acceptability, such as the name of a student of one of the two original rabbinic authorities of this structure. At this point, the sugya acquires a greater degree of canonicity, as it relates to the fixed language found in the Talmudic corpus.

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3 Halivni mentions this point on more than one occasion; that when there are two sources, the second source’s position can be abbreviated where it is understood from the language conveying the position of the first source. The following argument is primarily based upon Halivni’s introduction to Bava Metzia.

4 While not directly related to this paper, it is important to note that at the same time, underway is a sort of federalization of the halacha and the text representing it. To this end, contradictory sources are reconciled in order to minimize contradiction. This parallels Michael Fishbane’s argument regarding the redaction of the Bible as taking place toward the end of eliminating contradiction. Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford 1985), 20.
The form is very close to the final form it takes in the fixed and accepted version of the BT, and does not change much.

It is unclear how to date the v’la pligi form in its entirety; although the players in this narrative are all from the first half of the Amoraic period and the Stammaitic element could be as early as the third generation, if we attribute it to Hisda or a contemporary. Regarding the v’la pligi structure on Berachot 38a, it is reasonable to posit that the structure as a form is not later than the fourth generation. By that time at least three voices were included within this structure, and while we do not have evidence in this particular case, it is possible that an attribution may have been recorded and then excluded during the latest edits of the narrative, as most v’la pligi structures carry no attribution but this example plugs Rav Hisda into that spot.

Before its inclusion in the narrative that becomes the BT, this structure remained intact for as many as three Amoraic generations, thus indicating that a degree of canonicity is reached in the BT far earlier than the chronological Stammaim. Further, within the structure, and as mentioned above, there exists an array of anonymous contributors; there exist a range of Stammaitic activity separate from the chronological period of the Stammaim as established by Halivni. As will be discussed later, these contributors can be seen as having laid the foundation for the style of anonymous narration undertaken in the final form of the BT. Such narratives illustrate how the canonicity of halachic form can be as important as the canonicity of halachic substance. While this sub-canonical residue is intentionally made evident as part of the narrative in
the BT in its final form, it is lost to us in other halachic works, as is the case with the highly codified and apodictic Mishna.

Another result of mentioning Hisda by name is the attribution of what appears to be Stammaite activity to an Amora. Aside from this example, there are an additional eight examples where the *v’la pligi* is attributed to an Amora. There are 68 structures that fit the *v’la pligi* paradigm. Therefore, there are 59 cases where the *v’la pligi* is both anonymous and Stammaite; but there are nine where they are just Stammaite and not anonymous. This serves to support the idea that Stammaite activity is not bound to a chronology. It even supports the notion that Stammaite activity need not always be anonymous.

**V’la pligi Resolution**

There are several ways in which the *v’la pligi* structures are resolved linguistically. Conceptually, however, they can be broken down into two groups. The first is where the dispute is resolved by the creation of a distinction whereby the original sources are said to have been referring to different situations in formulating their positions. The second is where the dispute is resolved because of geographical differences. Because the positions come from two different locations, they are not considered a dispute, and therefore get the *v’la pligi* resolution. In actuality, it is not resolution. Within this second category the two primary ways in which it manifests are: (1) **לְהוֹ וַהֲאַלֶן הָא אַלֶן** which mean that “this law refers to here (Babylonia), and this one to there (Palestine);” and (2) **מָר כָּאַרְרָה בֹּרָה כָּאַרְרָה** which means “this man according to
his location, and this man according to his location.” For the first category, there are more linguistic formulations than for the first. However, they are not conveying nearly the type of difference as is conveyed between and among them as is the case in the second category involving geography.

Practically, the resolution is merely a linguistic one. In the realm of lived behavior, there will be no resolution; one person will say this blessing, and the other person will recite that blessing, but on a linguistic level there is no dispute, or so the narrator says. The transmitter of the \textit{v’la pligi} pursues the idea of resolution and even forces it linguistically where he cannot do so substantively. In the first type of \textit{v’la pligi} structures there at least is an attempt to actually reconcile the dispute by creating a difference that may not have been apparent to the original sages; if it was, then the question needs to be asked: why did the sages not articulate this distinction? Why did Rav and Shmuel, in the case in Berachot 38a, not articulate the distinction between thick and thin \textit{farinas}? The obvious answer is that they actually disagreed about what blessing to make on \textit{shatita}, and this dispute was recorded and transmitted. Only later was the idea that Rav and Shmuel agreed injected into the tradition. This appears to be a maintenance of a multiplicity of voices, but split between created halachic categories which were unknown to Rav and Shmuel when they actually expressed an opinion on this halachic matter.

In the second type of \textit{v’la pligi} structure, where the distinction is dismissed on geographical grounds, no attempt is made at all to reconcile the dispute. The dispute is
left standing. Yet an author at some point still injected the language of “no dispute” where he could have just as easily not stated “no dispute.” This indicates a certain pursuit of dispute resolution while maintaining the value of allowing for a multiplicity of voices to be available for potential adjudication of specific halachic matters. While the BT is full of unresolved disputes, what is interesting about the \( v'la pligi \) structures is that it almost unnecessarily offers the “no dispute” resolution, where it is not truly resolved. The narrator seeks to have it both ways; on the one hand he is maintaining the multiplicity of voices regarding the halachic issue, and on the other hand he is conveying a sense of unity between and among the sages whose traditions he is narrating and transmitting.

The significance of the multiplicity of voices resonates particularly well when looking at the how later, Genoic and post-Genoic rabbinic sages deal with the halachic matters dealt with in the \( v'la pligi \) formulations.

**Berachot 38a**

(The text and the translation of the text is above.)

This is the only instance in which Rav Hisda introduces a \( v'la pligi \). This is demonstrative of what is usually anonymous Stamaitic activity being attributed to a named Amora. More interesting is the fact that Hisda is a third generation Amora, and he is engaging in this type of Stamaitic activity. Thus, this \( v'la pligi \) structure can be dated to as early as the fourth generation. The structure following the \( v'la pligi \) is the \( ha b'... ha b' \). This example of \( v'la pligi \) is deceptive in its appearing first in the Talmud Bavli.
In terms of anonymity, and its relation to Stammaitic activity, it is worth asking the question: what is the impact of the *v’la pligi* being introduced by Hisda as opposed to being introduced anonymously? Or conversely, we can phrase the question as follows: what would have been the impact had the *v’la pligi* been introduced anonymously and not by Rav Hisda? Rav Hisda was a student of Rav. This should be a factor in how we approach the text. If this were anonymous, absent would be the dynamic of the introducer of the *v’la pligi* also being a student of one of the parties in the dispute. Clearly, it is the position of Rav that is more difficult. It seems more natural that the *shatita* would require the blessing of *borei minei mezonot*, because it is a grain-based product. Possibly in an attempt to justify what may have been a difficult position, Hisda comes up with the distinction between thick and thin. Presumably, the thinner the *farina*, the less it is made of grain and the more it is made of water thus allowing for the distinction to have some merit. As I discuss below, it is not necessarily clear from the text that Hisda authored the next part of the distinction involving medicinal versus non-medicinal. Nevertheless, that distinction further shows that the difficult position is Rav’s, and it is the one that requires the unique circumstance of medicinal use; for ordinary use, Hisda (or whomever anonymous contributor added the medicinal distinction) will have us believe that Rav himself agreed that the *farina* normally requires the *borei minei mezonot* blessing.

Later Rabbinic authorities elaborate upon and legitimate this distinction. Rambam, in the Mishneh Torah, expounds on the notion and introduces the concept of
chewing, and sets up the distinction as being between achilah (eating) and shtiyah (drinking) – as opposed to the achilah and refuah (healing) language used in the Gemara. Additionally, he broadens the notion of shatita rakah (thin shatita) to include a drinkable food product – a sort of farina or hot oatmeal. This is a reasonable thing to feed an ill person, and this fits in well with the original logic of the original Gemara following the v’la pligi. The Shulchan Aruch maintains Rambam’s chewing and drinking factors, and keeps the achila and shtiyah language.6 Ironically, a recent source, the Mishnah Berurah, reintroduces the language of avah (thick) in order to broaden the degree to which the shatita must be thick (and firm) before it is considered l’shtiyah.7 R’ Eliezer b. R’ Yoel Halevi, in referring to this Gemara, states that shatita avah requires the boreh minei mezonot blessing. In the following sentence, he elaborates that if it was rakkah, then one should bless a shehaqol nihyeh b’dvaro.8 The reactions of the Rishonim show how a multiplicity of voices allows for the later rabbinic sages to adjudicate within the bounds of what is offered within the sugya. The bounds of available behavioral options with respect to this particular halachic issue is that a blessing must be made; one who would argue that no blessing is required is out of bounds.

This v’la pligi is an example of where the dispute, in its concept, is sensible, and where the tradition of dispute between Rav and Shmuel on this matter may still have been legitimate. Rav Hisda successfully parses the tradition, and the later authorities leave the

5 Rambam, Perush ha’mishnayot, Berachot 3:3.
7 Mishna Berura 208:22.
8 Berachot, 104.
final result of the v’la pligi intact. Essentially, Rav Hisda is dismissing the tradition of a dispute between Rav and Shmuel, but he is doing so while preserving the canonized language of the coupler or metzaref. Thus, the language reflects dispute, but the legislation strives for unanimity. Similarly, the later authorities view the entirety of the sugya as linguistically canonical, but draw upon different aspects of the sugya to arrive at different halachic outcomes. Therefore, it can be said that the treatment of the authors of the v’la pligi – in this sugya, Rav Hisda – treat their received traditions with a canonical quality similar to the one with which Rishonim treat the BT.

Berachot 44a

What do we say in this case [over fruit]? — R. Hisda said: 'For the land and for its fruits'; R. Johanan said: 'For the land and for the fruits'. R. Amram said: They do not differ. The one blessing is for us [in Babylon], and the other for them [in Palestine]. R. Nahman b. Isaac demurred to this: Shall they eat and we bless? You must therefore reverse the names, thus: R. Hisda said: For the land and for the fruits; R. Johanan said, For the land and for its fruits.

In this sugya Rav Chisda states that one recites the words al haaretz v’al hapeirot as the conclusion to the beracha acharonah (a blessing following the consumption of
food or drinks) for fruits, while Rav Yochanan states that one concludes this blessing
with the words *al haaretz v’al peiroteha*. Rav Amram introduces the *la pligi*, resolving
the dispute, followed by the *ha lan ha lehu* (“this is for us this is for them”) breakdown.
The resolution of the dispute is based upon the divergence in practice between Babylonia,
where the words *(על הארץ על פרייהיה)* were recited, and
Israel, where the words *(על הארץ על פרייהיה)* were recited. Rav Nachman bar Yitzchak then questions why residents of Babylonia used the term
פירותיה (“its fruit”) referring to the land of Israel, when the residents of Israel are the ones
eating its fruits. He reverses attribution in order to reflect geographic reality. In terms of
dating, the elements up to and including Rav Amram’s introduction of the *v’la pligi* can
be dated as early as the third generation. Rav Nachman’s ‘correction’ of the sources
could have been added to the sugya later, yet still as early as the fifth generation of
Amora'im.

Regardless of the permutations regarding where each blessing was made, this is a
situation where the dispute exists only on the face of the issue. For people in Babylonia
and Israel to recite different blessings based upon language suitable for their location is
reasonable. The nature of the מתקיפת לה רב חיסד בר יצחק (“Rav Nachman son of Yitzchak
demurred to this”) demonstrates that the dispute between Babylonia and Israel in this
case was probably immaterial at the time when Rav Yochanan made his statement, as he
is basing his conception of the dispute on logic and not tradition. Essentially, as with
other *ha lan ha lehu* breakdowns of *v’la pligi*, there is no reason to believe that the two
sources – Rav Chisda and R’ Yohanan, in this case – are in a state of dispute with respect
to the custom in the other’s land. The use of the word *pligi* in the context of the *ha lan ha lehu* breakdowns may offer insight into the mutual perception of those who resided in Babylonia and of those who resided in Israel. This is reflective of a declaration of ‘no dispute’ when in fact the dispute is not resolved on a behavioral level, but only a geographic one. It also reflects the high value placed on multiplicity while striving for resolution.

This sugya highlights the manner in which accepted disputes can evolve into no dispute at all without any reconciliation of position. The solution to the problem of the tradition of dispute is to state *ha lan ha lehu*, which is in fact an acknowledgement of dispute. Because we must assume that there was a tradition of dispute in a case where the two positions reflect Babylonia and Palestine, the resolution of *ha lan ha lehu* can also be viewed as a broad dismissal of the idea that there can be a dispute between a Palestinian sage and a Babylonian one. In some ways, it is the ultimate nod to multiplicity; not only are all sides of a dispute recorded and transmitted, we are taught that there is no dispute even though the practices in Babylonia and Palestine are different.

**Berachot 45b**

בְּאִם שָׁמַעְתָּנוּ דַּקְאָא בַּמִּצְרָיִם דַּקְאָא בַּמְבָּרוֹרִים דַּקְאָא בַּמּוֹהַאֲרֵי דַּקְאָא בַּפַּפַּא רָבָּא דַּקְאָא בַּמְבָּרוֹרִים דַּקְאָא בַּמְבָּרוֹרִים דַּקְאָא בַּפַּפַּא רָבָּא דַּקְאָא בַּמְכַלְכִּיהָ דַּקְאָא אֲמַרְיָא בָּרוֹרִים דַּקְאָא אֶמְרָא בָּרוֹרִים דַּקְאָא אִשָּׁכַנְיוֹאֵת דַּקְאָא אֲמַרְיָא בָּרוֹרִים דַּקְאָא אֲמַרְיָא בָּרוֹרִים דַּקְאָא אִשָּׁכַנְיוֹאֵת דַּקְאָא אֲמַרְיָא בָּרוֹרִים דַּקְאָא אֲמַרְיָא בָּרוֹרִים דַּקְאָא אִשָּׁכַנְיוֹאֵת דַּקְאָא אֲמַרְיָא בָּרוֹרִים
If one came and found three persons saying grace, what does he say after them? — R. Zebid says: Blessed and to be blessed [be His Name]. R. Papa said: He answers, Amen. They do not differ; the one speaks of the case where he found them saying 'Let us say grace', and the other where he found them saying 'Blessed'. If he found them saying 'Let us say grace', he answers 'Blessed and to be blessed'; if he found them saying 'Blessed', he answers 'Amen'.

In this sugya, the Gemara deals with how a person must respond if he enters a room and finds people participating in a zimmun (communal blessing) following a meal. Rav Zevid states that he should say the words baruch u’mevorach (Blessed and to be blessed [be His Name]) and while Rav Papa states that he simply says amen. The anonymous v’la pligi resolves the dispute by offering the breakdown that if the leader of the zimmun had said the word nevarech, (let us bless) then the one who enters responds with the words baruch u’mevorach; if the leader had said baruch, (blessed) then the one who enters responds with amen.

The v’la pligi breakdown, to an extent, relies upon a linguistic play in order to alleviate the tradition of dispute. Rav Zevid refers to a case where the person enters the room, and finds the leader of the group uttering, “nevarech;” and that Rav Pappa refers to case where the person enters the room and the finds the respondents uttering, “baruch.” Rashi reads the text in this way, and adds the word hamezamen, (the leader of the communal blessing) "נברך המציון Speaking this,“ (that the leader of the blessing said “let us
bless"). In order to arrive at this reading, Rashi changed the number of the most critical words in the resolution offered by the v’la pligi, from the plural אמרי (they said) to the singular אמר (he said). Tosafot offers an elaboration involving a person who enters a room and finds more than ten people participating in a zimmun. Rambam reads the text in the same manner as Rashi, and offers a halachic rendering based upon such a reading – that when one enters and hears the leader uttering “nevarech,” one should respond with baruch u’mevorach; and that when one enters and hears the respondents uttering “baruch,” one should respond with amen. The Shulchan Aruch offers the same halachic rendering as Rambam, and adds the words sh’lo achal – an addition of the concept of entering the room, and not having eaten. Later sources commenting on the Shulchan Aruch offer a distinction between those who did not eat, but who drank.

There is no clue in the words of the two original sources, Rav Zevid and Rav Pappa, that one is speaking of a case where the leader is uttering words, and the other where the respondents are uttering words. The distinction, as created by the v’la pligi, almost needs the elaborations of the later sources in order to maintain the distinction which resolves the original tradition of mahloqet.

Stylistically, the parallelism in this v’la pligi, ha d’... ha d’... is worth noting. The language almost resonates poetically, “ha d’ashkechinhu d’qa amri nevarech, ha

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9 Rashi, Berachot 45b “ha d’q’ammar baruch u’mevorach”.
10 Berachot 5:17.
11 Shulchan Aruch, Orach Chaim 198:1.
12 Mishnah Berurah, Magen Avraham.
"d'ashkechinhu d’qa amri baruch.” Again, the resolution is similar to the one in the previous sugya with *ha lan ha lehu* in that it also affirms multiplicity not only within a dispute. This type of resolution articulates specifically that what appears to be a dispute is not a dispute, thus allowing for both positions to stand without the tension of an opposing position and the stigma of dispute.

**Shabbat 9b**

וַנִּשְׁמַת הָהֲלָךְ אֶכְלָה רַב אָמַר מַשְׁמַּעְיָא יְדִי וָר וָנֵגֵנָה אָמַר מַשְׁמַּעְיָא חֲנוֹנָא אָמַר חֲנוֹנָא פֶּלְגִּי וָלָא פֶּלְגִּי וָלָא פֶּלְגִּי

*And when is the beginning of eating? Rab said: When one washes his hands; R. Hanina said: When he loosens his girdle. And they do not differ: the one refers to us [Babylonians]: the other to them [Palestinians].*

Because of prohibitions related to eating food before the time for *Mincha*, this Gemara is attempting to establish the point at which a meal commences. While Rav states that the meal commences when one has washed one’s hands, R. Chanina states that the meal commences when one has loosened one’s belt. An anonymous *v’la pligi* is introduced in order to break down the tradition of dispute, using the *ha-lan v’ha-lehu* response. The source of the *v’la pligi* presumes that Rav’s opinion is based upon the prevailing view in Babylonia, while the view of R. Hanina is based upon the prevailing view in Israel. The sugya can be dated as early as the third generation of Amoraim based upon the sages mentioned.
Rambam directly echoes this resolution, and offers one halachic rendering for בֵּנֵי בָבֶל (Babylonians), and one for בֵּנֵי אָרֵץ יִשְׂרָאֵל (Residents of the Land of Israel).\textsuperscript{13} The Shulchan Aruch offers only the tradition relevant to Rambam’s “Babylonians,” and states that the meal commences at the time one washes one’s hands.\textsuperscript{14} The Mishnah Berurah, commenting on the above, reintroduces the idea that a meal commences when one loosens one’s belt. Specifically, the Mishnah Berurah states that if one is accustomed to loosening one’s belt prior to washing one’s hands, then for such a person, the meal commences at the time at which the belt is loosened.

Stylistically, the v’la pligi fits the standard ha lan v’hā l’hu structure. It is interesting to note the manner in which the later rabbinic authorities omit and reintroduce the traditions related to the commencement of the meal based upon washing hands or loosening the belt – ostensibly, on the basis of the practice in their own lands.

**Shabbat 10b**

When is the beginning of a lawsuit? R. Jeremiah and R. Jonah one maintains: When the judges wrap themselves round; and the other says: When the litigants commence [their pleas]. And they do not differ: the latter means when they are already engaged in judging; the former, when they are not already engaged in judging.

\textsuperscript{13} Mishneh Torah, Hilchot Tefillah 6:6.

\textsuperscript{14} Shulchan Aruch, Orach Chaim 232:2.
In this sugya, an attempt is made to determine the point at which a court hearing commences. As with the previous case, the concern is whether one must say *Mincha*, (afternoon prayer) or continue, since one is not required to cease from participation in a court hearing in order to say *Mincha*.

The participants in this dispute are R. Yirmiah and R. Yonah, although the text does not record who says what. One believes that the court hearing commences when the judges wrap themselves in their garments, while the other believes that commencement occurs when the litigants begin their claims. The Stammaitic elements rely upon the *v’la pligi* to demonstrate that if the judges have just come from another court case, then the beginning of this case is signified by the litigants' opening claims. If, however, they are just beginning to judge cases now (meaning that this is the first case of the session), then the beginning of the case is when they first wrap themselves in their garments.

In this case, the deployment of *v’la pligi* serves to emphasize the importance and severity of judges who hold court, and not to break down an existing tradition. The sugya later discusses whether Moshe Rabeinu really spent his time "דומם עד השקיעה" (from dawn to dusk) holding court. Even the thought of this minimizes the nature of the dispute in this case. It is not unreasonable to assume that the author is reacting to a petty debate of his time by dealing an emotional strike shrouded in a halachic framework and language structure.
Mishnah: **HE MAY DEDUCT A SIXTH IN THE CASE OF WINE. R. JUDAH SAID: A FIFTH...**

Gemara: *And they do not differ; each master rules in accordance with his region. In the locality of the first master they covered [the inside of the wine barrels] with wax, so there was not much absorption; whilst in that of the other [sc. R. Judah] they covered [them] with pitch; hence they absorbed more. Alternatively, it is on account of the clay [used in making the barrels]: the one quality absorbed more, the other less.*

In this Mishnah, the question of how much wine can be deducted from the amount given to a bailee is discussed (it is assumed that some wine has been absorbed by the barrel and therefore the bailee need not give back as much wine as was given to him). The Tanna Kamma says that 1/6 of the original amount of wine is deducted; Rabbi Yehudah says 1/5 of the original amount is deducted. The Gemara then says that they don't argue, but the Tanna Kamma refers to his town where barrels were covered with wax and there is less absorption, while Rabbi Yehudah refers to his town where barrels were covered with pitch and there is more absorption, and therefore more wine can be deducted from the amount to be returned.
The anonymous narrator here uses a practical consideration to resolve the apparent dispute. It is apparent that both the Tanna Kamma and R’Yehudah agree to the general principal that some amount of wine should be deducted due to evaporation; the only question is in what quantity. Having said this, it is a logical possibility that the dispute was only reflective of different methods of covering barrels in different locales.

This is the only instance in the BT where the v’la pligi is relating directly to a Mishna. The v’la pligi is introduced anonymously and no Amoraic sages are mentioned. Based on content alone, it is possible to date this v’la pligi structure to the second or even the first generation of Amoraim.

Once it has been established that the BT contains fixed textual/linguistic structures predating its final compilation and redaction, it is also possible to establish that a later generation Amoraic authority would view such a textual structure with special reverence and would not manipulate the actual words comprising the structure. This later authority would be more likely to manipulate its interpretation, thus adding another voice to the sphere of sources and traditions regarding a particular halachic matter. At some point, even this interpretation can become incorporated into the fixed structure by an even later generation Amoraic authority. The v’la pligi structures evidence this phenomenon with their consistently fixed components, each of which refer to authorities of different generations. As mentioned, it is difficult to determine with certainty whether such elements were recorded/published orally or in writing; it is safe to assume that there was an attempt at efficiency in language and at least creating the appearance of pure orality to
the elements within the v’la pligi structure. It is also safe to assume that the rabbinic authority of each generation was merely acting as a transmitter when dealing with received sources and traditions; when working with a pre-existing textual element, they would view that element as possessing a canonical weight such that the rabbinic authority in his capacity as a transmitter and in his temporal moment could not ascribe his own contribution to the structure. This can only happen by a later transmitter. Transmissions of this sort – where even mild or benign adjustments are made – are a form of Stammaitic activity and thus could have taken place throughout the range of Amoraic generations. The passage of time and the preservation of a particular rabbinic authority’s memra are what offer the text status as canonical, and ultimately a degree of canonicity which allows for inclusion in the final fixed corpus of the BT. It is difficult to determine the status of such a memra in this interim stage, except to surmise that it was less than absolutely canonical, but more canonical than individual memrot which were not ultimately included in the final corpus of the BT. In analyzing the v’la pligi sugyot, I also seek to posit as early a dating as is possible based upon the content of the text and not its style. The v’la pligi structures demonstrate this.
Conclusion

In this dissertation, I attempted to accomplish two primary goals. The first was to demonstrate the over-emphasis on chronology in the way scholars read the BT. The second was to provide potential new ways of reading the text without the deep consideration of chronology when doing so. In terms of overall structure, I can look back and view the dissertation as a sketch for a comprehensive approach to understanding the BT and mechanisms for reading the text to achieve those understandings. Parts of the sketch are more fully drawn out, and others are still relatively empty. As a result, the dissertation can be legitimately criticized for swimming in too many waters at once. I can also justifiably accept criticism regarding my inability to more precisely define certain terms, even critical ones such as canonicity. Further, legitimate is criticism regarding my ‘reader(s) of the text’ and my constant reference to this reader or group of readers without proper identification and/or construction of who they might be. Nevertheless, I accomplished enough in some parts of the dissertation so that I can reflect upon those parts that I have dealt with successfully to the extent that I can continue my work where I left it. At the same time, I am also in a position to reflect hypercritically upon those parts that require reworking and clarification before moving forward with my work in those particular areas.

Stammaitic

I have expended the greatest amount of energy and time in dealing with the issue of Stammaitic activity versus Stammaitic chronology. In the dissertation I have failed to articulate that my proposal regarding Stammaitic activity versus chronology is not a
necessary step in order to look at the text from a literary or non-historical perspective. My suggestion is more about degrees to which we might want to expend energy in this or that pursuit of an understanding of the text. Where we expend less energy addressing histories and chronologies regarding a text that is neither historical nor verifiably chronological based upon normative standards in the humanities, we can invest more energy addressing the matter of why the text ‘works.’ While there is little contemporary extra-talmudic evidence for the formation of the BT beyond Sherira, from Sherira forward there is a historical record of a relationship with the BT as a text of importance. Why it has the influence that it does? Without the best of articulations within the dissertation, here I can ask: How does Stammaitic activity infuse authority into sources and excavate power from traditions?

Taken a step further, worthy of further exploration is the notion that Stammaitic activity can manipulate existing traditions and their attribution to sources. Beyond the anonymous Stammaitic activity in the BT, Stammaitic activity or something similar also operates in other halachic works which comprise the rabbinic canon of which the BT is a central component. Exploring this common theme throughout rabbinic or halachic literature may yield a more refined definition of what it means for an element in the text to be Stammaitic. Peeled from chronologies, Stammaitic can also be a concept only first isolated in the BT, but a concept worthy of application in other rabbinic texts. Are there Stammaitic elements in medieval rabbinic commentaries on the BT? What is the relationship between anonymity and the Stammaitic outside of the BT as a text and away from the historical milieu in which we place the BT?
As a concept, we can begin to ask in a far broader way what it means for a textual element to be Stammaitic. Before asking this question, one can also ask if textuality is a necessary quality in order for an expression to be defined as Stammaitic. Tempting as it is to present the poor reader on page three-hundred-whatever with examples, one is free to muse about the possibilities of seeking the Stammaitic elsewhere in that which one wishes to define as rabbinic. One can also look outside of rabbinic texts, and ask if Stammaitic is a Jewish feature; or if it is one which can reach into other cultures and academic disciplines. Is there anything about the Honglou Meng that can be defined as Stammaitic? Is there something Stammaitic about a newscast where the reporter’s names are known, but knowledge about the producers and writers are not as easily accessible? Are the unseen producers Stammaim of a modern form, attempting to ‘honestly’ present sources and their words? I ask these questions as a way to stimulate the discussion and to demonstrate the distance we can leap when stripping concepts from their historical and cultural provenances. Such is the goal with idea of the Stammaitic.

Chapters II-V

Beyond the criticism of the emphasis on chronologies among contemporary BT scholars, the four chapters dealing with the four variables will also require a great deal of work and research in order to move forward properly. As of this moment, the section on anonymity is most coherently developed and most likely to be ready for ‘prime time.’ While not as polished as the work of many of my esteemed colleagues in the field, I still believe that there is something in the chapter that can be of value for someone reading it.
today or tomorrow. While I plan to improve significantly upon both the research and the presentation of conceptions of anonymity and how they impact the BT and how it is read, valuable and progressive is the idea that anonymity is a concept with consistency among and between its deployment in different cultural contexts. In preparing the chapter for publication, I expect to offer further clarity on the meaning of anonymity. Specifically, I will look to unpack further the idea of anonymity as neutral, divine and scribal.

The chapters on canonicity, pluralism and multiplicity require more work before I can consider them for publication. With all three, I would commence any re-crafting of the chapter with a thorough analysis of how each word is used in BT scholarship. I will also look to the fields of law and literary criticism in order to better define and flush out potential meaning from these terms as they might impact a reading of the BT. I have juxtaposed the concepts of pluralism and multiplicity, and even discuss them one as the inverse of the other. Canonicity stands more on its own, and I was left parsing notions of canon and canonical in order to arrive at a working understanding of canonicity as a word and concept.

On a most basic level, there is a failure in how I have crafted the chapter on canonicity because of the still too fluid and potentially broad conceptual space represented by the word ‘canonicity.’ While ‘fixity’ may serve as a quick-draw synonym, textual fixity does not capture all that I am after. As I explain in the chapter, canonicity can commence with verbal utterances in the most informal of settings. Important as the text is, there is all that goes into the text that also influence the breadth
with which we can define canonicity in the text. While the words themselves and their contexts and insinuations are a big part of it, it is hard to ignore that part of how the BT is read (by at least some readers) is with consideration of a history that stands behind the text. This deeper analysis of canonicity will further highlight how the tension between the literary and the historical is at play when thinking about the BT as reflective of formal (and informal) (historical) pronouncements and the verbal communication that must have preceded them. My failure to unpack this interesting tension will be rectified in the next iteration of my work on canonicity and the Talmud. In the future, I may even broaden the scope to think about canonicity, history and contemporary readers, rabbis and academicians.

In all four chapters I routinely refer to the literary without any clear definition of the term. At no point do I offer a definition, and in thinking about doing so after the fact, I realized that such a definition is a project in itself. There are the more traditional uses of literary, such as ‘literary criticism’ which does not help us unless we are prepared to unpack the discipline of literary criticism and its relevance to the BT. Such a pursuit has its merits, and enough work on the BT has been written which utilizes the word ‘literary’ and which places itself in the discipline of ‘literary criticism.’ Utilizing simple search technologies can yield much data on how the word ‘literary’ has been deployed in BT scholarship. Then one can conduct an analysis of these contexts and the professors who wrote them and the possible agendas of the writers when crafting the articles and books which turn up in the data sets.
Sugyot

In the dissertation I analyze a number of sugyot and attempt both to peel away the chronological undertones one takes to the text and to define the texts through the prisms of canonicity, multiplicity, pluralism and anonymity. Again, because of my deeper concern for what is Stammaitic, I did the best job of exposing the text to anonymity as a concept. For the others, I achieved some success, but at times the analysis reads too generically. Work must be done, and the manner in which I undertake this work is my focus as I think about reading texts while drawing upon conclusions I reach in analyzing the four concepts further.

In the dissertation, for reasons of expedience, I worked traditionally in terms of the process of analyzing a text and expressing it. I read the texts, looked for secondary sources related to them, found manuscript variances, took notes on all of it, crafted the notes into sentences and paragraphs and then into something more coherent and finally I edited the text I created into a more or less final version for this dissertation. This approach is not necessarily unique to the academic study of the BT or to how texts are read elsewhere, such as the church or otherwise outside of the academy. For most texts, there is little at stake in performing such proverbial autopsies on a text. For some texts, however, an autopsy is not possible in the same way. Some texts are still alive. The US Constitution. The Talmud. Living texts are not in a pure word vacuum. They represent an element of the lived, and when reading the texts, there is value in considering those to whom the text is alive and how their approach might be reflective of how the text was perceived historically and through the ages.
The Reader

Often, I refer to the reader of the text or to how the text is read. I do not identify a reader, and I am not certain of how to address this ambiguity. I am uncertain whether I can consider this criticism or commentary. The reader of the dissertation can be left to imagine who is the reader of the BT. By and large, I assume that the reader of the dissertation would see themselves as also the reader of the BT. In retrospect, I make many assumptions about who is the reader of the BT. And in retrospect, I realize that the reader could be me. I also realized that I might be representative of something. If I can articulate what that something is, then I might be able to create a construct of the reader. At the same time, I recognize that there are many different types of readers of the BT, both in actuality and in potential.

Beyond the consideration of me as the reader, there is the consideration of what is the reader and how the reader relates to the text. Are there people who relate to the text who do not actually read it? Essentially, in thinking about the reader, we can also think about how one relates to the text; is it a literary relationship, a legal one, a sociological one, some other relationship or some combination of all these? Is it possible for me to take myself out of the equation when I am the one formulating the construct of a theoretical reader of the BT? In attempting to answer these questions, I will be able to think about how to articulate in words what are now just feelings and intuitions about who the reader might be.
Attempting to address the matter of “who is the reader of the Talmud?” is a daunting prospect, and can be a subject of multiple articles, dissertations, and books. As I mention, there are different disciplines through which one can approach such a study. It is in this area where the burgeoning discipline of Religion may be best suited to handle such a question. Because we as students of Religion are not coming at the text from the perspective of a Rabbi or literary critic or sociologist or legal theorist, we are able to approach the BT in drawing upon terms from all the above disciplines while also bending their meaning to fit our purpose. Because the BT is more than just a text to some of those who associate with it, such a pursuit can yield more fruit than approaching the text utilizing the tools of any one discipline alone.

In sum, addressing the matter of the reader of the BT is major undertaking and one which I look forward to engaging at some point in the future. Such a project might best be served as a group effort comprised of experts from all the relevant disciplines. It is my strong belief that the ideal manager of such a project should be a scholar trained in the discipline of Religion with its open-ended and less than strict rules about what it means to be a scholar of Religion, and what tools are at their disposal.
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