HOW DO WE KNOW THIS?
MIDRASH AND THE FRAGMENTATION
OF MODERN JUDAISM

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by the Gaon and his followers, on the one hand, and the activity of the venerated sages of old, on the other. Presenting the ideal of assiduous, creative Torah study as a historical constant came to Berlin naturally; it reflected his own world and cultural values, and what he mediated to the students who came to study with him. In Berlin’s view, by actualizing this defining ideal, students of Torah continue a process that extends back to Moses, and give meaning and purpose to their lives. The cultural pressure to once again address the question “How do we know this?” gave him and many others in Lithuania the opportunity to reshape a religious foundation myth to suit their specific cultural needs.

German Orthodoxy, by contrast, had little choice but to give voice to very different cultural aspirations. Its educational efforts were not, for the most part, devoted to producing great Torah scholars, but rather halakhically observant ba’ale batim (householders or laypeople). Its educational institutions, from its elementary schools to its rabbinical seminary, were not created to produce such Torah scholars, nor could they have been. Thus, beyond playing into the hands of Reform, a vision of scriptural law rooted in ongoing exegetical creativity would have created a gulf between the adherents of Orthodoxy in Germany and their religious tradition. They could only live an Orthodoxy that was apodictic and fixed; it is thus not surprising that, with the exception of Malbim (who was the least at home in Germany, anyway), German Orthodox thinkers envisioned a religio-legal past that was fixed and apodictic. All law of scriptural authority was conceived as the product of a single revelation in time, and was passed from generation to generation. The rabbis were the recipients and transmitters of this scriptural law, who felt free to tinker at the margins, creating “fences” around the law, but creating nothing more. This certitude—this projected closing of creativity and active participation in the formation of the historical Jewish legal system—reflected the reality of a German Orthodoxy consisting of laypeople (and even some rabbis) who could live the halakhic life, but not master halakhic discourse. Thus, the vision of the comprehensive tradition was invoked to insulate German Orthodoxy from the challenges of the liberals, but it also reflected the social and cultural reality and limitations of that Orthodoxy.

In examining these two patterns of Orthodoxy, then, we can see how, yet again, the response to the question “How do we know this?” helped form and also reflected a central component of religious identity.

It is one of the ironies of Jewish cultural history that the talmudic quest for epistemological and legal certainty has led to divisive and rancorous debate. By providing what, in their cultural contexts, they considered compelling midrashic responses to the ubiquitous question, “How do we know this?” the talmudic sages supposed they were establishing a firm foundation for extrabiblical Jewish praxis, enabling Jews to live their religious lives confident they were fulfilling divine mandates. As discussed in the first part of this book, their search for certitude led them to take what appear to be considerable liberties with the language and letters of the biblical text; they constructed a system of legal interpretation that, when carried to extremes, could be characterized as saying to the biblical text, “Be silent until I interpret you.”

Beyond taking liberties with the biblical text, the talmudic exegetical writings give the impression of legal chaos and arbitrariness, as the same law may be presented as deriving from different biblical verses by different exegetes. Similarly, the same phrase in the Bible may be interpreted in different ways even in the absence of any textual mandate. In one place a given sage may draw significance from a particular linguistic feature, and refrain from doing so elsewhere. The talmudic redactors saw fit to extend and rearrange the exegetical traditions under discussion in a given passage. The sages “removed and added” words to serve their exegetical needs. This image of arbitrariness was enhanced by the fact that, with the exception of an unidentifiable voice that overlays some passages in the Yerushalmi (see chapter 3), no one overtly discerned any consistent pattern in the application of techniques on the
part of any individual sage. It seemed that any sage might interpret the text in whatever way struck his fancy—all of this in answer to that fundamental question, “How do we know this?”

As we have seen throughout the second part of this book, for many Jews, throughout the generations, the sages’ efforts to provide a firm foundation for extrabiblical law have done precisely that. For others, however, the midrashic method has served to undermine their confidence as they confronted a complex web of extrabiblical praxis demanded by rabbinic literature, but whose epistemological foundation was less than self-evident to them.

The reasons for these differing reactions to the exegetical activities of the rabbis of antiquity are tied to the very nature of midrash itself. The coherence of midrash, not merely as a means of reading but of authoritatively establishing norms, depends on one’s ability to share in a particular weltanschauung that incorporates distinct views regarding the controlled polysemic nature of the language of the biblical text. To the people who produced the halakhic midrashim and the Talmuds, the polysemy of the legal texts was an obvious outgrowth of its divine origins. As a divinely revealed text, the Torah must be perfect. Yet judged from the perspective of human linguistic conventions, it appears to be anything but. Repetitions, partial repetitions, partially contradictory repetitions; lengthy, verbose treatment of some matters and frustrating reticence regarding others; syntactically or contextually inappropriate phrases—all these would all compromise the perfection of the text were they not intended to encapsulate information or preclude erroneous conclusions. The rabbis of antiquity went further still. To them, the notion that the Torah was a perfect text meant that not only the apparent imperfections required explanation; in a divine text nothing, not even prepositions or conjunctions, could be haphazard or unintended. Thus, throughout rabbinic literature, we find laws that, it is claimed, were encoded within the biblical text’s use of a conjunctive or prepositional prefix.3 While as a practical matter much remains unexplained, and while occasionally one finds theoretical doubts expressed in classical rabbinic literature, the entire text of the Torah was generally conceived, theoretically, as being extraordinarily elastic and replete with meaning.

At various stages in Jewish history the implications of this weltanschaung became terribly problematic. With the emergence of new textual assumptions in the tenth through thirteenth centuries in the Islamic lands, many Jewish intellectuals could no longer find in talmudic exegesis a reliable rendering of the meaning of the biblical text. While the intellectual standards of the world in which they lived led to discomfort with their rabbinic exegetical heritage, these standards did not, with few exceptions, lead to a rejection of the Torah itself, or to its practical expansion in talmudic literature. The challenge for these Jewish intellectuals, then, was to uphold the demands of the halakhah even when they could not accept the dominant talmudic conception of its source. The Talmud claimed that we “know” hundreds of unwritten laws, because that information is encoded within the linguistic peculiarities of the Torah. This explanation was not acceptable to these intellectuals, because it implied that a change of practice had occurred (or could have occurred) from the time that the written text was revealed until it was interpreted to yield law X, and because their own sense of language led them to reject the linguistic assumptions that supported the rabbinic interpretation. Yet they could not and did not wish to reject the halakhah as established in the Talmud; they simply insisted that the laws must derive from a different and time-honored source, namely revealed tradition. By shifting the epistemological foundations of their legal system from the talmudic emphasis on exegesis (with a minority of laws identified as traditional) to a comprehensive revealed tradition, these scholars replaced the talmudic path to halakhic certitude with one that was more culturally and existentially appropriate. In the process they markedly distanced themselves from the “irrational” exegetical discourse of the Talmud, the legal prescriptions of which they were seeking to uphold.

Other Jews, living primarily within the Christian Kulturbeich, were not so troubled by the distance between the simple and applied meanings of the Torah. This is not because they were somehow less aware of this distance. Certainly Rashi, his grandson, Samuel ben Meir (Rashbam), and Naḥmanides, among others, recognized that the rabbinic legal applications often had little relation to the peshat of the verse; indeed, on rare occasions, one can even find them rejecting the midrash offered in rabbinic literature as the source of law.4 Nevertheless, they were all decidedly more comfortable attributing multivalence to the language of the Bible and thus with the results of the rabbinic quest for certitude. They therefore insisted that the peshat represented but one level of significance—an important one, to be sure—that scarcely precluded other levels of meaning that were legally repercussive.

It seems to me that there are two essential points of difference that are noteworthy here. The first is the very different nature of the external cultural pressures. There was an absence of a strong Karaite presence, and the Christian attacks focused on other issues, or on issues of which Franco-German Jews may have been unaware. To be sure, until the thirteenth century, Christian attacks on the Talmud did indeed focus on its exegetical distortion of the “Old Testament” and its “heretical” preference for laws made by humans over divine mandates.5 Yet
the Tosafists were not Latin readers, and I wonder how aware they were of all this. In any event, by the thirteenth century the grounds of the polemics shifted, since as Amos Funkenstein points out, the Church could hardly have argued for a sola scriptura position. I would add that in some sense focusing on the talmudic applications of biblical mandates was to lose sight of the larger point of contention. After all, the Church argued against the religious viability of the Old Testament law, however one chose to interpret it. To challenge the interpretation and not the obstinate subordination to “the law” was to focus on secondary matters. Further, in time Christians came to see the Talmud as a useful source in their polemics against Jews. Thus throughout most of the time frame I have explored, Jews in Christian lands rarely experienced direct challenges to their system of legal exegesis—although their traditional exegeses of the narrative and prophetic portion of the Bible were subject to extensive debate—and almost never in a language they could understand.

Second, as the sixteenth-century Polish rabbi, Solomon Luria, understood, the whole issue could be reduced to the degree of pious confidence one had in the authority and exegetical skill of the ancient rabbinic sages. For someone like Maimonides, the rabbinic sages interpreted as best they could, but, as he put it, they were not necessarily the equivalent of “Joshua and Pinchas.” Thus the disputes and the possibility of error made it impossible for Maimonides to consider the exegetical readings of the rabbis as scripturally authoritative. For Nahmanides, and Luria, and hundreds of others, by contrast, the sages who interpreted were inspired by the holy spirit, and their teachings carry a different authority than the interpretations of those Jews who came after them. While Saadia and Ibn Ezra would see the greatness of the sages in the fact that they assiduously and impeccably transmitted the traditions they received, those from the Christian Kulturbereich (with exceptions to be sure) saw the sages’ greatness in their actively determining the meaning of the Scriptures. For whatever the reason, they were able to maintain far greater confidence in the exegetical greatness of their rabbinic predecessors.

By the seventeenth century modern textual assumptions were emerging that necessarily and fundamentally challenged the weltanschauung that gave coherence to midrashic patterns of reading. At the same time, the advent of modern historical consciousness provided a formidable challenge to the credibility of a comprehensive, orally transmitted tradition. These cultural shifts were accompanied by the beginnings of a broader pattern of secularization that undermined the power of the centripetal social and religious forces that limited the range of expression of medieval skepticism. Over the next two centuries numerous students of rabbinic literature came to the conclusion that rabbinic readings were the absurd fancies of men either dishonest or foolish, and they felt perfectly free to express this understanding. Such published conclusions naturally led to calls for the reform or disappearance of traditional Judaism. In the early part of this time frame, the calls for change issued from scattered individuals. In time, however, the numbers calling for—and implementing—religious change became much greater. There were many forces that led to this increase; in chapters 5 and 6 I show that the ideological justification that accompanied these changes frequently revolved around the “irrational” textual assumptions that shaped the Jewish legal system. In the nineteenth century, a Reform movement emerged that sought to give shape, and sometimes rein in, the impulse to modify Jewish religious praxis. In the early stages of this movement, disenchantment with rabbinic midrash continued to provide justification for religious shifts rooted in the quest for modernization (and Westernization). In time, though, even the more radical Reform intellectuals saw the need to forge a reconciliation with their parent culture; here the exegetical freedom manifest in rabbinic midrash is invoked in an effort to cast the ancient rabbis as reformers who put the demands of life ahead of the demands of text.

As is to be expected, both the attacks on rabbinic midrash and the liberating reconciliation to it stuck in the craw of traditionalists of different types. Thus, in the nineteenth century both religiously conservative and Orthodox Jews were driven to address the origins of rabbinic midrash in historical and/or exegetical terms. The traditionalist historical school developed a new picture of the emergence of rabbinic Judaism that depicted the rabbis and their predecessors as judicious legislators and exegetes. Building on earlier, neglected traditions, they portrayed Jewish praxis as having but shallow roots in far-fetched legislations; for the most part it emerged over time, in response to various needs, through rational and logical extensions of the biblical law codes that, despite a few exceptions, continue to speak to contemporary society.

The Orthodox, in Germany in particular, were led to challenge the historical and exegetical conclusions of the traditionalists as well the Reformers. They insisted that no extrabiblical law to which scriptural authority is imputed ever emerged as the result of exegesis. Rather they asserted that all laws of scriptural authority not specifically written in the Bible were revealed by God to Moses orally at the same time as the written Torah was revealed. I have discussed in chapter 8 the various ways they justified this claim. Here I wish simply to emphasize the extent to which this construct was crafted in response to cultural challenge. As with the earlier efforts to identify extrabiblical law as originating in a
single revelation, the Orthodox participants in this discussion have distanced themselves considerably from the thought-world of the ancient rabbis and of their more recent Ashkenazic predecessors. In other words, they have felt compelled to reshape traditional self-understanding in order to rescue its practical demands.

It should come as no surprise that in the history of the so-called people of the book so much energy has been expended trying to determine the socially accepted meaning of the book. After all, any socially important text, and especially a sacred canonical text that does not allow for addition or formal amendment, is inherently culturally limiting. Controlling its socially accepted meaning is, by contrast, potentially liberating and empowering. It harnesses the power of the sacred text to the thought world of the exegetes.

Nor should we be surprised that, historically, once the midrashim and Talmuds constructed what was to become the socially accepted meaning (at least for practical purposes), this too would come to be seen at specific times as a culturally limiting, even undermining, force. The textual assumptions, the apparently arbitrary application of hermeneutic techniques, and the apparent manifestations of change severely shook the religious confidence of Jews at various times in Jewish history. For those committed to halakhah, the option of trying to establish a different socially accepted meaning was not viable, a priori. All they could do was try to establish a different foundation for the established meaning. That is, they could craft a different response to the question “How do we know this?” than did their rabbinic predecessors, one that removed the exegetical taint from Jewish law and, to those who accepted this response, restored the divine imprimatur to the full range of Jewish praxis to which biblical authority is imputed.

Those who felt free of the constraints of halakhah, by contrast, could reopen the question of authoritative meaning; they could seek to define anew what the Torah meant. At the most fundamental level they could address the question of whether the Torah ever intended to speak in practical terms to all subsequent generations, and, whatever its intent, whether this was possible from their newly controlling point of view. They could determine what resemblance, if any, their religious lives would bear to those of their ancestors. As we have seen, the efforts to reopen the question of the accepted meaning had first to reject and ridicule the talmudically established significance of the text, as well as the alternative foundation of Jewish praxis—tradition—determined by those who remained committed to halakhah but felt compelled to reject rabbinic patterns of reading. In time the Reformers came to look on their predecessors’ exegetical endeavors more benignly, and sometimes with considerable enthusiasm.

In the adherents of the historical school, we find the middle ground. Their faith and sense of Jewish religious history led them to embrace halakhah, but their sense of language precluded them from finding certainty in halakhic midrash, and their vision of history prevented them from believing in a comprehensive oral tradition that was transmitted intact through some three millennia. In the nineteenth century they chose, for the most part, not to challenge the socially accepted legal significance of the text. Yet, try as they might, they could not fully replace the lost sense of certainty with their historical constructs. With considerable ingenuity they developed arguments for the antiquity and continuity of Jewish law; for them that was sufficient to establish its authority. Yet, answering the question “How do we know this [law]?” with “It is a demonstratively ancient and time-honored practice that has helped to define what Judaism has been historically” does not establish contemporary relevance, nor does it address the full import of the question. For the question seeks to determine that we know this law to be a divine mandate; its demonstrative antiquity and time-honored observance beg the question. It is thus not surprising that there were many who found their historical constructs compelling but did not find the practical religious demands they endorsed as useful or authoritative.

What emerges from a study of all of these groups in the nineteenth century is the centrality of the question of rabbinic midrash and the authority of Jewish law. Spokespersons for any form of Judaism that engaged modernity on any level had to explain the basis for their rejection or continued acceptance of the authority of rabbinically developed law. Inevitably and invariably, this need led them to address anew the long-standing questions regarding midrash and the expansion of the legal codes of the Bible. Modern textual assumptions allowed little room for doubt that learned and critical historical and/or linguistic analyses could determine the definitive meaning of a text. In the face of such assumptions, rabbinic patterns of reading and applying the Bible appeared misguided and in need of full or partial rejection or explanation in order to sustain some kind of Jewish religious commitment in the modern world.

In the three previous chapters I have told this story in terms of the emerging denominations of modern Judaism in the nineteenth century. I wish here to briefly direct attention to the individual, existential aspects of the confrontation of rabbinic and modern textual assumptions. Dismay, anger, disgust, and, perhaps most of all, embarrassment
are all visible in the writings of the various scholars, rabbis, publicists, and historians who addressed the way in which rabbinic Judaism appropriated Scripture. Whether one chose, with Reines, to argue that rabbinic readings were actually an unappreciated, brilliantly crafted application of universal epistemological techniques; or, with Hirsch, that they were legally trivial and of limited cultural importance; or, with Graetz, Frankel, and Weiss, that they were historically conditioned, progressive, and often legally secondary; or, with Wessely, Meklenburg, or Malbim, that they revealed the profound pesbat of Scripture; or with the early Geiger and Holdheim, that they were absurd and reflective of turbid minds; or, with the later Geiger and other Reformers, that they represented deliberately and brilliantly subversive readings of the Bible—all were motivated by the conviction that the new cultural contexts rendered it impossible to go on with the traditional consensus that prevailed in premodern Ashkenaz and elsewhere. For all of them, in their struggle for recognition and some form of religious continuity, the inherited literature and patterns of thought proved to be a considerable burden. The inheritance could not be accepted without theoretical and, in many cases, practical, modification. Ultimately, their sense of who they are and what they can be was linked to their ability to confidently appropriate or justifiably reject all or part of their rabbinic heritage. Addressing the question of how or whether to remain connected to this heritage was existentially urgent for these scholars. This need proved to be a major cultural stimulus for Jews in the nineteenth century.

The Twentieth Century

In the twentieth century the problem of midrash halakhah has ceased to be a public issue. I do not mean to suggest by this statement that, as a point of debate, it was ever an issue dealt with by the Jewish public at large. However, in the nineteenth century it was debated before the Jewish public at large. That is, many of the writers who addressed the issue were engaged in a battle for the hearts and minds of Jews in the modern world; their treatments of the rabbinic past were aimed at the proverbial intelligent layperson. The German-Jewish journals, such as Frankel’s Monatsschrift, Geiger’s Wissenschaftliche Zeitschrift für jüdische Theologie, or Hirsch’s Jeschurun, were geared to sympathetic, educated laypeople. The lecture series, sermons, histories and Bible commentaries (at least the German ones) that treated the matter also hoped to reach this audience. Graetz’s Geschichte der Juden was probably the most widely read German-Jewish book of the nineteenth century (although, admittedly, its success was scarcely due to his portraits of the ancient rabbis alone). The Jewish reading public of the nineteenth century, particularly in Germany, was well aware of the Talmud’s image problem, and had ample opportunity to know that rabbinic exegesis played a fundamental role in this problem.

In the twentieth century, while the adjectives “pharisaic” or “talmudic” continue to be used as pejoratives, primarily by non-Jews who have never opened a Talmud, the Jewish community no longer feels the discomfort of the previous century. As I suggested in the closing section of chapter 7, I believe that for the non-Orthodox this is because the more liberal defenders of the Talmud have done their jobs well. Jewish readers of works like Graetz’s Geschichte, or Geiger’s lecture series, Das Judentum und seine Geschichte (1863–64), gained confidence in the progressive possibilities of rabbinic Judaism, and they and their successors have been able to comfortably dismiss what they considered the outdated parts as historically conditioned; that is, they may no longer address our needs, but they were perfectly understandable and acceptable in their own time, place, and cultural context. This confidence has been transmitted to those Jews who still actively embrace some form of Jewish religious observance, though they may no longer know of the underlying issues. Similarly, for the Orthodox for whom midrash emerged as a problem, the works of Hirsch, Hoffmann, and Halevy serve as a source of confidence that those who “know” history as well as the heretics have successfully established firm foundations for belief in a comprehensive revealed oral tradition.

The fact is that most Jews no longer study the Talmud, and are in no position to be made uncomfortable by its rhetoric or exegeses. They are therefore more dependent on the religious professionals to mediate its contents to them. I am in no position to judge with what accuracy this is done, but I know from my own experience teaching and lecturing to adults that people who have never opened a Talmud readily opine that it represents a remarkable compendium of pious and ethical extensions of the biblical law. Liberal Jews today see in the application of the biblical “an eye for an eye” to pecuniary compensation a remarkable ethical advance; that similar patterns of reading and legislating could exempt someone who offers all his children to Molech from punishment remains unknown to them. The linguistic and cultural distance that separates the majority of Jews from detailed talmudic learning has defused the urgency of reconciling this learning with modern exegetical and ethical assumptions.

Whereas it was once common to find Jews publicly attacking and ridiculing the Talmud, today it is rare indeed. One hundred and seventy
years ago, the Oberrabbiner of the German city of Emden, Abraham Loewenstamm, felt compelled to write a book entitled, Der Talmudist, wie er ist; oder wir sind alle Menschen (Emden, 1822). I have already described the circumstances that could lead such a person to write such a book—one whose content evokes a greater sense of pathos than does its title. Today it is difficult to imagine someone feeling the need to write such a book.

In the 1830s, men like Graetz and Geiger had to marshal all their considerable historical and polemical talents to create images of the Pharisees to which Jews could relate positively. Today all the major denominations proudly claim to be heirs of the Pharisees.

In the early decades of the nineteenth century in Germany, and in the last decades of the century in Eastern Europe, there were still many Jews raised in the rabbinic tradition who, upon discovering new cultural possibilities, felt an almost adolescent need to rebel in the strongest possible terms against the traditional culture in which they were raised. At these times in these places, there was yet strong centripetal social pressure that collided with what, in some cases, were even stronger centrifugal political and intellectual forces; this volatile mix did not readily lead to moderation. In time, the political and intellectual challenges of modernity became more routine (or were neutralized through emigration from Eastern Europe to the West), and the religious choices of parents were largely decisive for their children. In urban areas, at least, the intense traditional centripetal forces were thoroughly weakened. As a result, Jews escaping tradition found it easier to fashion their religious identities without the need to publicly rebel against and seek to undermine the traditional culture that once nurtured them.

As the various denominations emerged in the nineteenth century, each could, for a time, maintain the ambition to be the dominant, if not the only, form of Judaism that would survive in the modern world. For this reason, each had a strong need to try to negate the teachings of the others. As I have argued in the previous three chapters, this competition was to prove to be a major stimulus of Jewish thought and historiography. By the end of the century, at least in Germany, it was clear to anyone with eyes to see that none of these groups would supersede the others. While questions of cooperation and communal integration remained, each, de facto, accepted the existence of the others. The polemics either ceased or shifted to other grounds. Each group had fashioned its own “usable past” that served its needs; as these “pastas” were fashioned out of the polemics of the century, it is not surprising that they were, for the most part, mutually incompatible. It is also not surprising that, in time, each community gave preference to internal consolidation over externally directed polemics. The question of rabbinic reading and midrash halakhah largely receded into the background, as each community had fashioned a picture of rabbinic religion that could support its contemporary aspirations and goals.

That the problematic nature of midrash is no longer a public issue does not mean that it has ceased to be an issue at all, or that it has ceased to be a stimulus for Jewish cultural creativity. From among the Orthodox of Eastern European origins has come the greatest Torah commentary of this century, the Meshekh Hokhmah (1927) of Meir Simhah Ha-Cohen of Dvinsk (1843–1926), which continues with the agenda of the Gaon of Vilna and Naftali Berlin, and is very attuned to the question of the relation of Jewish law to the biblical text. The magisterial Torah Shelemah of Menahem Mendel Kasher (currently forty-three volumes) represents a massively expanded cultural offshoot of Epstein’s Torah Temimah. Yet other lesser-known figures have continued the effort to explain the exegetical principles of the rabbis.

It has been primarily the heirs of the historical school who have kept the issue alive in this century. We must divide this group into two: those who remained overtly attached to the religious dimension of the traditional historical school, and those who, whatever their religious commitments may be, remained devoted to the research program of the historical school, without drawing any overt religious conclusions from this research.

To the first group belong various ideologues of the American Conservative movement. In particular, the central focus of Louis Finkelstein’s (1895–1991) work has been the development of Jewish law and the role of midrash. Like most who have addressed the question in this century, he has argued for the division of the rabbinic estate in the second century into two schools headed by Rabbis Ishmael and Aqiba. He has argued for important exegetical and theological distinctions between these schools. At the same time he has been the primary advocate of the antiquity of the Jewish legal process, arguing for its roots in prophetic times.

Finkelstein’s work developed in tandem with that of the leading theologian of the Conservative movement, Abraham Joshua Heschel (1907–72). The latter’s Theology of Ancient Judaism (3 vols., 1962–90) is a theological tour de force predicated on the fundamental divide within the rabbinic estate in the second century. Heschel builds on the theories of the nineteenth-century historians of midrash halakhah to construct two distinct theological systems that carry forward throughout Jewish history. As Arnold Eisen has argued, Heschel’s project is, among other things, an effort at reclaiming the place of Ishmael in Jewish tradition—an effort, that, as we have seen, has roots in nineteenth-century jüdische Wissenschaft.
To the second group belongs the work of Saul Horovitz (1859–1920) of Breslau, whose edition of the *Sifre Be-Midbar* was prefaced by an introduction in which Horovitz continued with the claims of Weiss and Hoffmann regarding the sources and authority of Jewish law. I should note that in his notes to the *Sifre*, Horovitz’s commitment to the two-system hypothesis led him to sometimes suggest emendations to dispose of texts that he surmised, ex hypothesi, could not be as transmitted.  

Ya’aqob Nahum Epstein (d. 1950), doyen of the Talmud scholars of the Hebrew University, also continued with the historical schema of the *Wissenschaft* scholars. With erudition, he argued for the Ishmaelian provenance of the *Mekhilt ha-Rabbi Ishmael* and *Sifre Be-Midbar* and parts of the *Sifre Devarim* and *Sifra*; and the Aqibon origins of the *Sifre Devarim* and *Mekhilt ha-Rabbi Shim’on bar Yohai*.  

The attachment of these scholars to paradigms pioneered by the *Wissenschaft* scholars of the nineteenth century is not of much interest in and of itself. What is noteworthy is that these scholars were drawn to these constructs for essentially the same reason as their predecessors, namely, that these constructs help diminish the legal and historical significance of rabbinic patterns of reading. The distance between rabbinic and modern textuality was simply too great for these scholars to seriously countenance the possibility that the rabbis really read Scripture as the rabbinic documents suggest they did. Whatever their own original agenda may have been, the rabbinic writings formed a central part of the cultural legacy they were instrumental in recovering; as such they were driven to retrieve rabbinic culture in a manner that diminished its apparent irrationality.

These scholars were driven by the modern assumption that the definitive meaning of a text can be established; since the rabbinic reading was quite distant from the “definitive” meaning of the Bible, modern textual assumptions would render the practical component of rabbinic Judaism devoid of foundation. By showing, through historical and philological investigation, that Jewish laws transmitted in rabbinic texts did not generally or ever originate in preposterous exegesis, the scholars of the twentieth century have carved out their own place in the ongoing Jewish struggle with the question, “How do we know this?”

A recent example of a scholar who has grappled with this question is David Weiss Halivni (b. 1928). His work is much more self-aware than that of his modernist predecessors, and he has formulated the problem in overtly religious terms. He too cannot accept that the rabbis could change the unmistakable meaning of divine imperatives and still command religious allegiance. He thus offers a theory of the restoration of the original meaning of the text to resolve the religious problem. What is of note for us here is that once again a work of scholarship and theology is motivated by the distance that separates modernist and rabbinic textuality. Halivni is, I would guess, the last of the major Jewish scholars who would formulate the problem as he does.  

In the past several decades new theories of textuality have emerged that have come to be called—in a triumph of meaninglessness—postmodern. Students of postmodern or poststructuralist textuality have rebelled against the notion that texts have definitive and timeless meanings unrelated to the consciousness of the reader and/or the self-referential character of language. Scholars who have engaged post-modern textual assumptions have come to see rabbinic midrash, whether halakhic or (especially) aggadic, as precursors in some sense, whose textual insight has been ignored or suppressed by the triumph of other cultural systems. Daniel Boyarin, for example, has explicitly announced his ongoing “intellectual/cultural project of inserting rabbinic textuality into critical discourse and critical discourse into the scholarship of rabbinic literature.” A generation ago, or a century ago, the last thing a Jewish scholar would have been comfortable doing is inserting rabbinic textuality into critical discourse. The former stood at such distance from what was then the latter that Jewish scholars spent their efforts undermining rabbinic textuality so as to provide a culturally respectable foundation for rabbinic religion and culture. This is clearly no longer the case. Today, the scholarly pendulum has swung in the opposite direction, providing scholars of rabbinics with new vocabularies and theories through which they can understand talmudic exegesis. Where these theoretical shifts will take the story of this book, and what impact, if any, they will have on living Judaism, remains to be seen. I think it is safe to say that the apologetics of the Reform, historical and Orthodox schools of the nineteenth century and their twenty-first-century offshoots, as well as the attacks of the Reformers and Eastern European rebels, will be sublated by the new theoretical discourse. It is equally safe to say that the question of the nature of rabbinic midrash will remain alive among those who continue to take this ancient culture seriously, and that new responses remain to be offered to that ubiquitous rabbinic question, “How do we know this?”