

REVIEW ARTICLES

ON THE STATUS OF THE TANNAITIC MIDRASHIM*

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A critique of Jacob Neusner's latest contribution to Midrashic studies.

THE PRESENT WORK BY JACOB NEUSNER is part of a gigantic project of redescription of the history of Judaism in Late Antiquity. Since each volume of this project essentially recapitulates the claims of the whole with different emphases, any volume can serve as an introduction to the whole project, and a review of any part is, in effect, an evaluation of the whole. Neusner makes very dramatic and impressive claims for his research on the history of rabbinic thought. He believes that he has shown that

there are two distinct Judaic systems, each comprising a theory of the social order made up of a worldview, way of life, and doctrine of the social entity ("Israel"); each system, or Judaism, is internally coherent, responding with an answer deemed self-evidently true to a question regarded as urgent and critical. We can easily differentiate one system from the other. And we also know in what ways they are connected, both in form (the later documents present themselves as exegeses of the earlier ones), and in mode of thought or method. The points of connection validate the claim that we deal with a single unfolding Judaism in process. The points of differentiation vindicate the claim that the two systems, though connected, are autonomous of one another, each identifying its urgent question and setting forth its self-evidently true answer. (pp. 8–9)

The first of these "Judaisms" is that attested to by the Mishna and the Tosefta, while the second is that attested to by the Palestinian Talmud, and the major Pal-

estinian midrashim, that is Genesis and Leviticus Rabbah and Pesikta derav Kahana. The first of these two systems is called a "philosophical system," while the second is a "religious theory." The project of the present work is to determine where the tannaitic midrashim fit into this system. Or to put it bluntly, the question is whether the tannaitic midrashim are relevant for describing the Judaism of the tannaim.

1. *Method and the History of Judaism*

Neusner's method is not in any sense an adequate response to the challenges of modern critical thought for the history of Judaism, except to the extent that it does clear away some of the underbrush of uncritical work that has been done (and in some quarters is still being done, but not nearly as widely as Neusner claims).¹ He claims that his method involves no *a priori* assumptions, that it is scientific on the model of the natural sciences; he repeatedly refers to this book as an experiment with definitive results, which can be repeated by others. However, as we shall see, in fact his work is animated by a series of very strong assumptions:

I maintain that it is by reference to the time and circumstances of the closure of the document, that is to say, the conventional assignment of a piece of writing to a particular time and place that we proceed outward from context to matrix. (p. 22)

Documents reveal the system and structure of their authorships, and, in the case of religious writing, out of a document without named authors we may compose an account of the authorship's religion: a way of life, a worldview, a social entity meant to realize both. Read one by one, documents reveal the interiority of intellect of an authorship, and that inner-facing quality of mind

* Review article of: *The Canonical History of Ideas, The Place of the So-called Tannaite Midrashim: Mekhilta Attributed to R. Ishmael, Sifra, Sifré to Numbers, and Sifré to Deuteronomy*. By JACOB NEUSNER. With an Appendix on the Dating of the *Mekhilta*. University of Southern Florida Studies in the History of Judaism (Atlanta: SCHOLARS PRESS, 1990).

¹ However even here, the uncritical mode of Neusner's critique dulls it considerably.

inheres even when an authorship imagines it speaks outward, toward and about the world beyond. (p. 23)

... what we have to do is simply ask the principal documents, one by one, to tell us their picture of the topic at hand, hence, Rome and Israel's relationship to Rome. . . . Each document, it is clear, demands description, analysis, and interpretation, all by itself. Each must be viewed as autonomous of all others. (p. 185, emphasis added)

What are the assumptions that these very central quotations reveal? First of all, they assume that texts are autonomous, transparent reflections of the intentions of their authors. Even more pointedly, they assume that a collective can have a single mind, an "interiority of intellect," which can produce a coherent, single worldview. And more extravagantly, the first quotation explicitly claims that the final editors (the "authorship") of a work built up over centuries of accretion have such complete control over the material that it can only be referred to the time and place of that authorship for its socio-historical context or matrix, and that, indeed such reference is possible.

I submit that not one of these assumptions holds water, following contemporary paradigms of critical thinking. Most theorists now hold that texts do not "tell" us their meanings unaided by a reading process that is partly governed by assumptions from outside of the text.² The notion of a reading without presupposi-

² Note that this formulation is specifically intended to be noncommittal with respect to any particular stronger or weaker version of this principle, which as stated is consistent with any position from Dilthey to Derrida. It is extraordinary that Neusner wishes to make theoretical interventions in the study of "History of Ideas" and yet makes no reference to such seminal works as Dominick LaCapra's "Intellectual History and Critical Theory," in *Soundings in Critical Theory* (Ithaca: Cornell University Press, 1989), 182–211. I would not carp at Neusner's adoption of an older intellectual style were it not for the fact that he himself regards all work done in other (and older) intellectual paradigms as totally useless. Rather, I propose a practice whereby we learn what we can from and respect the work of scholars whose theoretical positions are different from ours. (The reader of this essay will note where I mark what I have learned from Neusner in spite of theoretical disagreements and distaste for his style of interaction with other scholars.) I am not necessarily claiming that the latest views are correct or definitive simply because they are the latest, but only that Neusner should take them into consideration in his work, whether or not he ultimately accepts them.

tions is simply, therefore, a self-delusion. More importantly, many thinkers about textuality would now claim that texts (even single-authored texts) are not created by their authors but produced within a heteroglotic socio-linguistic matrix that is necessarily heterogeneous, inasmuch as it is the product of social conflict and cultural contention. By definition, then, a text could not reflect its "author's" interiority. All discourse is constrained, at least in part, by the past of the language and the other texts that are being produced in the language. This is the notion of intertextuality, a notion which Neusner either ignores or consistently and conveniently mischaracterizes in his writing as an analogue of his straw-men scholars who hold that all of rabbinic literature is a unity. This is, of course, only more to the point when the texts are not the product of a single author but of whole communities working over generations, a point even Neusner surely does not deny. This is neither equivalent to accepting the attributions as "inerrant" nor the quotations as verbatim transcriptions of what was said but only to recognize that the text very often is citing and contesting, or interpreting, or distorting other texts it has received and is constrained to treat. The best way to do cultural history, then, is to investigate such moments within and between the texts of rabbinic literature, not to gloss them over by the assumption of a wholly coherent, self-consistent "authorship" identical with the final editors of the document at hand. In short, intertextuality produces more difference, not less, within and between texts.

Finally, the assignment of all citations to the date of the putative closure of the document (as if that were not a matter of scholarly conjecture as well) involves assumptions no less than the contrary method of critically assessing the likelihood that they are earlier than the final redaction. We just do not know for sure whether a given citation is contemporary with the closure of the document or not, and the likelihood that it is older than that is at least as great as the likelihood that it was made up of whole cloth by the "authorship" of the final text. A truly "objective" method, then, would have to give up on the idea of writing history of ideas at all from these texts, even were we to assume that the dates and orders of the closures were certain. But Neusner, in fact, does the opposite. He draws very strong conclusions indeed from his assumption that a given text is to be dated by the date of the closure of the document. In fact, his entire notion of epistemic breaks and successor Judaisms is crucially dependent on this very strong and highly implausible assumption. The fact is that we just cannot know for certain whether a given attribution is absolutely true, i.e., that

the particular tanna actually said something like he is supposed to have said; or partly true, i.e., that the idea in question was at least roughly contemporaneous with the cited authority; or entirely made up at a later time and thus pseudepigraphic. Drawing conclusions from lateness, as Neusner does all the time, is just as precarious as drawing conclusions from earliness. The relevant matrix for a given statement may indeed be another time and place than the one of the document in which it appears, and documents have history themselves, history retained on their surface in the bumps and inconsistencies of the final text. These, which are called intertextuality, are finally what make cultural historiography possible.

There is, moreover, with regard to the tannaitic midrashim that are the main subject of the current effort, very good evidence that they are indeed what they claim to be, edited collections of tannaitic interpretations of the Torah. Paradoxically the very discontinuities of form, ideology, and program between the various tannaitic midrashim, discontinuities noticed at least as far back as Maimonides, provide the evidence. There is no reason to assume that these very different texts were dependent on each other, but they share much material in common. The most plausible assumption in the case of such shared substance is that the editors of both collections have received this material from common sources, oral or written.

The descriptions of God's voice at the giving of the Torah are practically identical word for word in the Mekhilta and the Sifra, a fact which, I would maintain, practically guarantees that they are tannaitic in origin, because these two texts clearly do not cite each other and must, then, be drawing from a common earlier source. This conclusion would seriously disturb Neusner's thesis that the Judaism of the tannaim was not a religious but a philosophical system. It follows, even in cases in which we do not have such parallelisms from other independent witnesses to the text, that it is at least as plausible to assume that the materials from which the text was built were older than the stage of redaction and that, in fact, they derive, roughly speaking, from the same time as the texts from which the Mishna and Tosefta were constructed. Since the midrashim cite, by and large, the same authorities cited in the Mishna and Tosefta, we can utilize the midrashim critically in a reconstruction of the religious culture of the rabbinic circles of the second century as well. What (I agree here with Neusner) would be very dangerous would be to depend either on the exact attribution in order to claim that the historical Rabbi Akiva, for example, said this and this or to make overmuch from the

exact form of the words in claiming an interpretation to be tannaitic. Both of these aspects of the text seem very likely to have been shaped by the later transmission and redaction, and the later the text, the more likely is such intervention. This common-sense principle is adhered to by many if not all critical scholars of rabbinic tradition.³

Finally, it is very important not to homogenize the texts. The circles of redactors (Neusner's "authorships") have certainly in most cases shaped and formed the final texts in the light of their own ideological positions, and these positions can be shown to be different from each other. Thus, even the Mishna and Tosefta, assigned by Neusner to the same Judaism, often reveal the ideological positions of the editors as different on such crucial issues as study of Torah for women. The Sifra and the Mekhilta clearly belong (at the redactional level) to different ideological sub-groups in post-tannaitic Judaism as well. Neusner is right that we should read the texts synchronically and not just mine them for atoms that are read with other atoms. We will learn a lot, and indeed have been learning a lot for several generations, by paying careful attention to the differences between the Mekhilta and the Sifra, between the Babylonian and the Palestinian Talmuds.

Nevertheless, the texts cannot be made to reveal the autonomous worldviews of autonomous socio-cultural groups, either by any modern theory of texts or culture, or by their specific nature. On the contrary, there is every reason to believe that the texts were edited by sub-groups (interlocking and interacting with others) of a larger group using what were by-and-large materials common to the whole group. If we want to describe the Judaism of the tannaim, we will certainly have to make judicious use of the tannaitic midrashim in that enterprise and fully expect that very Judaism to be heterogeneous itself, not coherent, self-consistent, and complete. We will want to analyze the ideologies of the editors of the final text, as well as the counter-ideologies preserved willy-nilly by those very editors.

To be sure, Neusner does remark that he claims only "here to say what the authorship at the end wished to state, in the time and circumstance of redaction. What else these documents contain, to what other ages and authorships they testify—these are separate questions,

³ Thus in my book, *Intertextuality and the Reading of Midrash*, whenever I refer to Rabbi Yehoshua, for example, I make it clear that I am speaking of Rabbi Yehoshua as portrayed by the Mekhilta, who may very well be quite other than Rabbi Yehoshua as portrayed by the Babylonian Talmud.

to be taken up on their own terms" (p. 187). The problem is not that he denies an internal history to the text, then, but that he does not take seriously the implications of that history for "asking the principal documents, one by one, to tell us their picture of the topic at hand" (p. 185). Neusner recognizes only two possibilities: either "each one of the documents says on its own essentially what all of the documents say together," or "our documents in fact do not say the same thing by themselves that all of them say when read together" (p. 184). The problem is that Neusner can only see a single socio-cultural formation as harmonious and undifferentiated, while in fact, as Paul Veyne has so well remarked, "A culture is a tissue of exceptions, whose incoherence goes unnoticed by those involved in it . . ." (Veyne 1987: 202). No document except the most simple ever consists of "a single continuous and harmonious statement" (p. 184), let alone a "Judaism," a cultural formation. There are, therefore, many other possibilities, including that given documents sometimes say the same thing and sometimes do not, that one document preserves what another wishes to hide, that at the redaction level the documents say different things but that they cite significant amounts of common material, etc. Indeed, "each document demands description, analysis, and interpretation, all by itself," but it is not the case that "each must be viewed as autonomous of all others" (p. 185), or, I might add, as internally consistent.

The tannaitic midrashim undoubtedly preserve much matter that is older than the Mishna as well as much that is later, and there is no escape from trying to tell the difference. Always assuming that the material is later and writing a history of ideas on that basis involves conjecture no less strong than assuming that the opposite is always true, and the science is, therefore, pseudo-science. As all sophisticated historians know by now, all we have are constructions—some more and some less plausible.

2. Neusner's Analysis of the Tannaitic Midrashim

The question of the relationship of the tannaitic midrashim to the Mishna is very much to the point and has been on the agenda of all modern rabbinic scholarship. Neusner defines the problem in the following way. "The exercise of this book, then, is to inquire into the position of certain indicator words or concepts in documents that are supposed to attest to ideas held by the framers of the Mishnah and in their times" (p. 13), that is the tannaitic midrashim. Given that according to him the two "Judaisms" are rigidly and clearly delineated

from each other and emplaced diachronically on a continuum, Neusner suggests that we can determine the place of the "so-called tannaitic midrashim" on this continuum by examining whether they are closer to point A or to point B.

Neusner studies seven ideas that supposedly can be clearly differentiated between points A and B in order to see how the tannaitic midrashim place themselves on the grid. Let us see, in brief form, how some of these arguments work. In one chapter, Neusner plots the origin of the "myth" of a written and oral Torah and argues that this myth does not appear in the Mishna or Tosefta at all, but does appear in the Palestinian Talmud. Since it appears in the Sifra, the tannaitic midrash on *Leviticus*, that text is deemed to be "not only post-mishnaic, but, in indicative traits, talmudic" (p. 53). Neusner finds no other significant evidence on this point in the Sifra nor in the other tannaitic midrashim.

The evidence that Neusner cites, moreover, can be construed in more than one way. Neusner quotes a passage from the Sifra as evidence that that document is "within the circle of the Yerushalmi" (p. 53). He cites the following passage:

"These are the statutes and ordinances and Torahs:"

"the statutes:" this refers to the exegeses of Scripture.

"and ordinances:" this refers to the laws.

"and Torahs:" this teaches that two Torahs were given to Israel, one in writing, the other oral.

Said R. Aqiba, "Now did Israel have only two Torahs? And did they not have many Torahs given to them? 'This is the Torah of burnt-offering' (Lev. 6:2), 'This is the Torah of the meal-offering' (Lev. 6:27), . . ."

Neusner wishes to conclude that the Sifra belongs to the social group that produced the Yerushalmi, because it mentions the doctrine of the Dual Torah, which is absent from the Mishna. He then concludes that the Sifra is irrelevant for describing the Judaism of the tannaim. However, another construction is possible here and at least equally as plausible, namely that the Sifra records (not verbatim, of course) the very conflict that eventually produced the doctrine of the Dual Torah, for Rabbi Akiva is clearly presented here as dissenting from that notion. Now, since Rabbi Akiva is, in some sense, the hero of the Sifra (and of the Mishna), we have at least a clue that the idea of the Dual Torah was contested between him or his school and others. This would fit perfectly with the downplaying (or even lack) of this notion in a document like Avoth, which was produced also (*ex hypothesi*) in Akivan circles, while

the Talmuds draw on much wider ideological resources. It seems not at all implausible to suggest that sometime during the tannaitic period this notion arose, was contested and gradually won hegemony. Our text would then fit perfectly in a tannaitic socio-cultural field. I am not arguing that this construction of the data is necessary, only that it is at least as possible as Neusner's, so that his claims for an ineluctable logic and replicability of his experiments are put into serious question.

In the following chapter, Neusner develops an argument that something which he calls the "gnostic" Torah appears for the first time in the Palestinian Talmud and is unknown in the Mishna. As far as I can tell, what this comes down to is a claim that, according to some pericopes in the later text, one who was learned in Torah developed supernatural or magical powers, a doctrine unknown in the Mishna and its associated texts, the Tosefta and Pirkei Avoth. Sometimes it seems as if Neusner is claiming more for his argument, as when he says,

where, in the Mishnah, do we find promises of transformation of the person effected through study of the Torah? These concern only the issue of one's status in the hierarchical order of being, but not one's very character and essence. Quite to the contrary, as to the Mishna's generative concerns on taxonomy [sic], knowledge of the Torah changed nothing; the *mamzer* who mastered the Torah remained in the caste of the *mamzer*, so that while if he lost his ass along with others, his would be returned first, still, he could not marry the daughter of a priest or even an Israelite. That means the transformation in no way affected the being of the man, but only his virtue. (p. 63)

Neusner can't mean what this passage seems to say, because surely he knows that according to the system of the Palestinian Talmud as well, a *mamzer* who studies Torah remains a *mamzer* unfit to marry an Israelite. By his argument, then, in the Palestinian Talmud, Torah would not be gnostic either. This, then, cannot be what he means by transformation effected by study of Torah. We are left with the distinction that the Palestinian Talmud claims that magic can be done with Torah or knowledge thereof, and the Mishna, Tosefta, and Avoth allegedly do not.

Neusner has not proven his case on this point at all. Indeed, he has not cited one bit of relevant evidence for his "gnostic" function of Torah. What he does adduce is two stories from the Palestinian Talmud. In one of them, in an attack a Rabbi stands on the rooftop

with a scroll of the Torah and says, "Lord of the ages! If a single word of this scroll of the Torah has been nullified [in our town], let them come up against us, and if not, let them go their way" (p. 58). This is hardly evidence for a gnostic notion of Torah; it is, at most, evidence that keeping the Torah was accounted as a merit with which one could bargain with God in an emergency. The second story Neusner cites not only fails to provide evidence for his claim, but it is counterevidence! It refers to a Rabbi who fasted in order to see one of the dead sages in a dream and succeeded. Another Rabbi who performed similar fasts was not vouchsafed the vision, and upon complaining that he had studied more Torah than the first was informed that the first had taught more than he had (p. 70). Now, if Torah had an automatic gnostic, transforming and saving effect, then certainly the fact that the second Rabbi had learned as much as the first should have given him the same vision, but it didn't. The first Rabbi was given this privilege, because of his greater merit in teaching Torah, not because of any gnostic transformation that he had undergone by studying Torah. Neusner may have other evidence for his claim; he has not provided it here.

Neusner cites several midrashic texts which support his notion that in the tannaitic midrash, there is a conception of a transformational practice of the study of Torah. One example will suffice to give the flavor of the argument. In Sifré to Deuteronomy, there is an extended typical passage in praise of the Torah and learning, which ends by arguing that one who is slothful will not properly understand Torah and will then "declare the clean unclean and what is unclean to be clean and breaking down the walls constructed by sages. What punishment is inflicted on this? Solomon came and made it explicit in tradition: 'Who breaks through a fence a serpent shall bite' (Qoh. 10:8). Whoever breaks through fences made by sages in the end will suffer punishments" (p. 76), and this is supposed to support the proposition that "Forgetting one's learning bears consequences for the person, not merely for knowledge. The opposite proposition then is the one we seek: knowing has consequences for the person, not merely for the intellect" (p. 77). I will gladly grant that Neusner has produced a lovely collection of midrashic texts in praise of the study of Torah and that two of them (on pp. 79 and 80) do generally ascribe a soteriological value to study of Torah; there seems, however, no case here for the midrashim being closer to the Palestinian Talmud than to the Mishna in ethos.

On p. 82, Neusner writes that in the Mishna, the Messiah is not systemically important. True enough: in

a document something like a Law Code or even ideal Constitution, this is not altogether surprising. But then he argues, "The framers of the Mishnah do not resort to speculation about the Messiah as a historical-supernatural figure. When the Mishna does refer to Messiah, it concerns a kind of high priest" (p. 83), a statement which to the unwary would imply that *the* Messiah has been somehow downgraded or rejected by this document, which simply is not true. The word 'messiah' means merely anointed, and the anointed priest is a type of priest indeed. This word, therefore, has nothing to do with the Messiah. This false argument bears quite a bit of weight for the chapter, moreover, for Neusner grants that there is nothing in the Mishna that is inconsistent with the notion of the Messiah; indeed that they are perfectly "congruent" (p. 87). The only evidence that remains, therefore, for an epistemic break is "treating the Messiah as a taxic indicator and that alone, not as a medium of expressing systemic teleology, places a document closer to the Mishnah." However, as I have said, 'messiah' in the Mishna has nothing to do with *the* Messiah, so the Messiah is not treated as anything in the Mishna at all. The Mishna simply does not treat eschatology, any more than the Constitution of the United States does, but you may be sure that many of the framers of that document heard sermons about the Day of Judgment, and some of them may even have delivered such sermons. That the word 'judgment' appears in the Constitution in some other meaning hardly argues otherwise. It may be that the messianic idea was one that became more significant over time in rabbinic circles. Neither I nor any other scholar of rabbinic Judaism (as opposed to certain fundamentalists, none of whom I know in academic settings) would have any problem with such historical developments, Neusner notwithstanding. Neusner, however, has not shown the historical development of the Messiah concept by comparing the Mishna to the Palestinian Talmud.

In the next chapter, the argument turns to the status of "Rome" in the various documents. Neusner's argument here is once more, as he claims, quite simple. Rome in the Mishna and Tosefta refers to the city, the place, etc., simply and secularly, while in the system of the Palestinian Talmud it has become "Israel's nemesis and counterpart" (p. 96). He argues that it is Rome as Christianity that has taken on this status. I agree completely with Neusner's point here and think it can be supported in other ways as well. Much of rabbinic literature is formed in the context of the growing significance of Christianity as a political power and threat to "the Jews." Neusner argues, in any case, that in the

"so-called tannaitic midrashim," this theme is absent or less present at any rate, precisely what the prevailing theory (that the midrashim are tannaitic) would predict, as he admits (p. 110).

I leave any further specific analysis of the rest of the chapters to readers who remain yet unconvinced⁴ and state unequivocally that there is nothing in this book that contributes in any way to a conclusion that the tannaitic midrashim are anything but what they claim to be, collections of biblical interpretations that were produced, by and large, by tannaim and then edited (and indeed shaped and often modified) by redactors of probably the late third and fourth centuries. Having discredited (I think) Neusner's arguments that the tannaitic midrashim are only so-called tannaitic, we can return to the major question of whether the Mishna reflects an independent and complete socio-religious structure.⁵

3. *Is the Mishna a Judaism?*

I do not claim that the documents represent the state of popular or synagogue opinion. I do not know whether the history of the idea in the unfolding official texts corresponds to the history of the idea among the people who stand behind those documents. Even less do I claim to speak about the history of the topic or idea at hand outside of rabbinical circles, among the Jewish nation at large . . . What do I conceive to be at stake in the documentary history of Judaism? It is to set forth the history of the formation of Judaism, as the canonical writings of late antiquity allow us to trace that history. Let me explain. Between 200 and

⁴ I cannot, however, refrain from reacting to Neusner's claim on p. 133 that, "For one thing, as we recall, Scripture is explicit that the burden of sins cannot be passively inherited, willy-nilly, but, to form a heritage of guilt, must be actively accepted and renewed; the children cannot be made to suffer for the sins of the parents, unless they repeat them." Indeed?! What about, "And I will visit the sins of the parents upon the children until the third and fourth generations"? To be sure, this is contradicted by other Scriptures which make the opposite point, but that does not bother us historical scholars. Only fundamentalists who have to harmonize the verses make the sort of claim that Neusner does here, which is, after all, the standard midrashic harmonization.

Neusner's account of "woman" in the Mishna and other documents is similarly marked by distortions, for which see the excellent remarks of E. P. Sanders (1990: 329-30).

⁵ In an appendix below I will deal also with the supposedly open question of the dating of the *Mekhilta*.

400, Judaism changed from a philosophy to a religion. (pp. 32–33)

This is simply not coherent. Within the space of four sentences, Neusner first claims that he knows nothing about even the history of the ideas of the people who stand behind the documents (with which principle I agree entirely), but he is able nevertheless, *mirabile dictu*, to claim that “Judaism changed from a philosophy to a religion” on the basis of those very same documents. And what, then, is this “Judaism”?

Continuing the passage just quoted, Neusner writes that

In current work I explain the meaning of that simple sentence, starting with the subject, Judaism. Defining the word Judaism in this context involves the understanding of a religion as an account of the system of the social order (whether in fact or in imagination) by the believers, an account portrayed in writing. (pp. 33–34)

This utterance is nearly uninterpretable as it stands, because it is self-contradictory in a non-trivial way. Let us unpack it. First of all, we are told that Judaism is not always a religion, but was once a philosophy. Then we are told that defining Judaism always involves understanding it as a religion. The two statements significantly contradict each other. Neusner repeats this move. On p. 35, Neusner defines a religious system and then, “When, finally a religious system appeals as an important part of its authoritative literature or canon to the Hebrew Scriptures of ancient Israel or ‘Old Testament,’ we have a Judaism.” But on p. 37 we read that “Judaism took shape in a passage from a philosophical, to a religious, and then finally to a theological system.” Now, since the first sentence requires that we have to have a religious system in order to have a Judaism, the second contradicts itself, because the first system is explicitly claimed not to be a religious system but a philosophical system! The Mishna, moreover, on Neusner’s own account makes reference only rarely to the Scripture as its authority. The only possible way, indeed, to interpret the last sentence is that Judaism took shape (i.e., *came into existence*), in the process of the transformation of the philosophical system of the Mishna to the religious system of the Palestinian Talmud. I hardly believe that Neusner wants to claim that the “system” of the Mishna was not (at least a) Judaism. What then is he saying, and what is the problem with it?

It is here that the fundamental fault in Neusner’s entire research program can be exposed. The texts that he

is comparing differ from each other in ways that cannot be mapped diachronically.⁶ If indeed only a “religious system frames its propositions deductively and exegetically by appeal to the privileged evidence of a corpus of writing deemed revealed by God” (p. 37), then the Mishna, by definition, will not yield up a religious system, for that is not its *métier*. Furthermore, if Judaism is defined as “a religious system [which] appeals as an important part of its authoritative literature or canon to the Hebrew Scriptures,” then the Mishna, not being a religious system by Neusner’s definition, will not even yield up a Judaism. But certainly Neusner agrees that there was a Judaism in the time of the Mishna, so there must have been a practice of appeal to the Scriptures at the time of the Mishna as well, and presumably in the community—broadly defined—that produced the Mishna. Otherwise, please remember, there would not have been any Judaism then, once more by Neusner’s own definitions. Now it is, of course, in midrash [both halakhic and aggadic] that such appeal is to be found, so something like midrash must have existed, and in the circles [the tannaim] that produced the Mishna. There is no reason to assume that simply because the midrashim reached their final textual form somewhat later than the Mishna, they do not represent, *grosso modo*, the state of affairs in tannaitic circles, any more than the fact that the Mishna was edited in the late second century disqualifies it as evidence for the discourse of the early second century.

The difference, then, between the Mishna and the midrashim or the talmuds (which are multi-generic) is one of the genre, and not the sign of a difference between Judaisms. On the other hand, Neusner is absolutely correct that there is a diachronic dimension here as well. None of the other texts can be held to be absolutely contemporaneous with the Mishna. We cannot, then, simply augment the Mishna by studying the midrashim as its complement. We must have more sophisticated methods for dealing with this problem.

⁶ This point has been very elegantly made by E. P. Sanders (1990: 309–32), and I will not repeat his arguments here. It is simply a category mistake of the first order to assume that one can do thematic comparison between texts of such significantly different genres as the Mishna, which is a legal code, and midrashim, which are biblical interpretation. Even were we convinced that there are ways in which the tannaitic midrashim are closer thematically to the later midrashim or even to the Palestinian Talmud, which contains much midrashic material, there would still be no argument whatsoever for dating from this fact.

Neusner's solution, however, is inadequate for the reasons adduced above.

4. *On the Epistemic Break: Pre- and Post-Neusner*

Neusner begins his book with what has become by now a familiar rhetorical ploy of his, the dismissal of all scholarship in rabbinic literature not produced by him or his "circle." In fact, such attacks on others' scholarship (including mine, see appendix below)⁷ form a major part of Neusner's scholarly production in recent years, including the book under review, so an evaluation of his methods in such "critical" writing is much to the point. Neusner considers all such scholarship simply antediluvian. His primary method for discussing scholarship that does not originate from him or his school is to caricature it. He characterizes all other research in rabbinic literature as

homogenizing what all documents say about that conception into a harmonious account, "the talmudic-midrashic view of. . . ." I have dismissed the received method of studying the history of ideas for two reasons. First, it ignores the distinctive traits, interests, tendencies, and programs of specific documents. Second, it takes at face value all the attributions of sayings to named authorities, therefore assigning to the time in which those authorities lived, rather than the age in which the documents that convey those sayings were redacted, the sayings themselves. Either of these flaws would suffice to render null all the results produced on such foundations; together they serve to invalidate all results, as to the history of ideas or mentalités, the characterization of documents, and the representation, in historical context, of Judaism or Judaisms, prior to my own. (p. 2)

The obvious meaning of this statement is that all research prior to his (or even now exterior to it in method and conception) is characterized by these two grotesque flaws: homogenizing all of the documents into the "talmudic-midrashic view" of something and taking at face value "all" attributions. Both claims are patently false, as I shall presently show.

I do not disagree with the methodological argument that talmudic stories are not to be taken as evidence

⁷ In the interest of complete transparency, let me state here that some of the energy behind this essay is generated by anger at Neusner's reviewing practices, as addressed to my recent book. But I hope that my claims are sufficiently substantiated here to stand on their own.

for things that happened, particularly not stories that are told in later texts about much earlier events. Further I agree that *much* historical scholarship on rabbinic Judaism is hopelessly naive in its assumption that what is not proven wrong can be assumed to have happened.⁸ My argument is rather that this naiveté simply does not characterize all accounts of Judaism prior to or exterior to Neusner, so the notion of an epistemic break just does not hold. While such credulity certainly did mark the work of some historians, there were others who criticized it sharply a generation ago.⁹ The esteemed talmudist, Saul Lieberman, wrote the following in 1944:

The simple rule should be followed that the Talmud may serve as a good historic document when it deals in contemporary matters within its own locality. The Palestinian Talmud (and some of the early midrashim), whose material was produced in the third and the fourth centuries, contain valuable material regarding Palestine during that period. It embodies many elements similar to those contained in the documentary papyri.¹⁰

Now the clear logical implication of this statement of principle is that the Talmud may not serve as a good historic document when it deals with matters outside of the locality and time of its production, precisely Neusner's claim. Moreover, Lieberman articulated in several places the principle that, even then, what one could learn historically from such texts had to do with general social conditions assumed or alluded to by the texts and not with the events that the texts narrated, for these were often tendentious and "rhetoric." His major methodological distinction was between the "truth of the text" and the "historical truth," and, to be sure, it was the truth of the text that generally occupied him, that is, the ideological investment of the text in the way that it told the story. There is one major difference

⁸ Although why Neusner uses the moral pejorative "canard" to refer to this dubious methodological principle is beyond me, as is his ascription of it to all "Jerusalem" scholarship.

⁹ More recently, the work of Jonah Frankel and his students, as well as that of Daniel Sperber, Yeshayahu Gafni, and Shamma Friedman have all challenged models of understanding that presuppose that the talmudic legends preserve historical truth in the literal sense. Below, I will articulate what kind of historical truth can be gleaned from such narratives.

¹⁰ "Roman Legal Institutions in Early Rabbinics and in the *Acta Martyrum*," in *Texts and Studies* (New York, 1974), 57 [originally published in 1944].

between Neusner and Lieberman regarding the usage of the Palestinian Talmud and the midrashim for historiography, and that has to do with whether the relevant matrix for analysis is the third and fourth century when the bulk of the material was apparently produced, or the fifth, in which the text was finally closed.

Another egregious example of Neusner's mischaracterization of the state of scholarship in order to aggrandize his own is the following. On p. 5 he writes,

So what I want to know is the relationship between the several Tannaitic Midrashim, respectively, and the Mishnah. The question, of course, cannot trouble those who take at face value the attributions of sayings, assuming that the named authorities of a determinate age (in this case, mainly the second, but in part the first, centuries) really said what is assigned to them, in the very words before us.

Of course Neusner's argument is correct. His premise is, however, false. Even in traditional religious circles it is recognized that attributions are not always accurate in rabbinic literature, since the same sayings are often attributed to different named authorities in different contexts and there is often controversy as to the attribution even in a single place. Moreover, the talmuds more than occasionally suggest that attributions were made for rhetorical or polemical purposes and are therefore pseudo-attributions. Thus, for example, the following comment in the Palestinian Talmud *Peah*, that "because Rabbi Abbahu wishes to teach his daughters Greek he ascribes [a saying permitting such teaching] to Rabbi Yochanan!" This text was cited by Lieberman in *Greek in Jewish Palestine* (New York, 1965 [original publication, 1941]), p. 24.

What is dangerously misleading here is the implication that it is the general state of the art in rabbinic scholarship to hold "fundamentalistic" views and, therefore, not to question the relationship between the tannaitic midrashim and the Mishnah. Non-specialists in the field will be very surprised to discover, though, that, in fact, as far back as fifty years ago, at least, major monographs were produced on this very subject by one of the leading talmudists of the Jerusalem school, Hanoch Albeck! Now my argument is not that Albeck's work is satisfactory in all or even most of its details nor that there has not been methodological advance in the last half century, but merely that Neusner's attribution of theological motivations and fundamentalism to all of Jewish scholarship—"until I Deborah arose"—is absolutely stunning in its fallaciousness. In fact, I know of no scholarly opinion that would claim

that we have the *ipsissima verba* of the tannaim, still less of the semi-legendary figures of the first century. There may be scholars who hold more-or-less skeptical positions vis-à-vis attributions of opinions to named authorities in the absence of contravening evidence (I tend sharply toward the more skeptical direction myself), but nowhere is a doctrine of "inerrancy of attributions in the rabbinic canon" promulgated. The disagreements of scholars with each other and with Neusner on this issue are no more unusual than disagreements on the likelihood that any particular ancient or medieval text is or is not a pseudepigraph. Neusner's suggestion to the contrary, i.e., that everyone outside his school is a theologically driven primitive who believes in the historical equivalent of "phlogiston" (p. 21), amounts to nothing more nor less than slander of an entire community of scholars.¹¹

APPENDIX: THE DATING OF THE *MEKHILTA DE RABBI ISHMAEL*

The question of the dating of the *Mekhilta* has undergone a curious fate in Neusner's writing on the subject. In his book, *Mekhilta According to Rabbi Ishmael: An Introduction to Judaism's First Scriptural Encyclopedia* (1988), Neusner has the following to say on the subject:

While the document at hand differs in fundamental ways from others of its species and genus, a single authorship or era in the formation of the canon can have produced writings of more than a single type. It follows that nothing I set forth . . . is relevant to the problem of dating the work or assigning it to a determinate era in the formation of the canonical writings of the Judaism of the Dual Torah. (p. 24)

¹¹ While on this subject I would like to comment sharply on Neusner's practices in discussing the work of other scholars. His treatment of Hyam Maccoby is nothing short of shameful. Further, his statement about the work of Shmuel Safrai, Abraham Goldberg, Y. Gafni, Daniel Schwartz and Albert Baumgarten, viz., that "they have made no important contribution to historical scholarship. . . . [and] [t]hat seems to me to constitute a judgment that is not more than a common consensus among nearly all scholars in the field outside of Jerusalem" (p. 20), is simply not acceptable scholarly discourse, not by any means. I will not honor with refutation his outrageous claim that the "single best-known piece of writing that Lieberman did in his entire life" is his review of Neusner's translation of the Yerushalmi (p. 174).

Neusner cites there Ben Zion Wacholder's article (1968), which had proposed that the Mekhilta is, in fact, a medieval pseudepigraph, and Stemberger's arguments (1979) against Wacholder. He also mentions Menahem Kahana's article (1985), in which a decisive refutation of Wacholder's thesis is advanced, but confuses it with another article by the same author that is totally irrelevant to the question at hand.¹²

In the work being reviewed here, Neusner makes the following set of mutually contradictory claims about the Mekhilta:

1. That it is in a group of texts which are to be dated, "ca. 200–300 (or even 400)" (p. 4).

2. That Wacholder may be correct and that, therefore, "Nothing in my treatment of Mekhilta bears a proposed date, and, as is clear, in these pages I do not propose dates for any of the documents under discussion" (p. 5!).

Neusner treats the Mekhilta in the book at hand as part of the category of tannaitic midrashim, as indeed he should have, leaving open the question of exact dating but placing them between the closure of the Mishna and the closure of the Palestinian Talmud. But by the time he reviewed my book on the Mekhilta, that midrash had become "probably medieval" (Neusner 1990: 254), and only one page later, "medieval" without "probably!" In two years, then, Neusner has moved from qualified rejection of Wacholder's thesis to unqualified acceptance of it, without once addressing the important arguments advanced against it by Stemberger and Kahana.

Let us examine, then, Wacholder's arguments and Kahana's counter-arguments. One of Wacholder's major arguments for the pseudepigraphic nature of the Mekhilta was based on supposed ignorance on the part of its author of basic facts in tannaitic chronology, thus having Rabbi Ishmael report traditions in the name of tannaim who lived two generations later than he did. Kahana shows, however, that in one case Wacholder depends on what is demonstrably a scribal error (and a very commonly attested one), which appears only in the vulgar prints of the Mekhilta, while in others Wacholder has simply misread the Mekhiltan text by constructing as an argument between authorities what is, in fact, mere juxtaposition of their differing views, a

very common technique in all rabbinic literature (Kahana 1985: 516).

Another argument of Wacholder's was that the author/editor/forgery of the Mekhilta was ignorant of the differing midrashic methods of the tannaitic schools, having Rabbi Akiva, for instance, utilize an argument based on two contradictory verses, an argument-type which is canonized as belonging to the thirteen canons of Rabbi Ishmael! However, as Kahana shows, several of the canons of Rabbi Ishmael are common to that authority and to Rabbi Akiva. Moreover, Rabbi Akiva is portrayed as using this very argument-type in other tannaitic work, whose authenticity Wacholder does not doubt (*ibid.*).

A third argument of Wacholder's was based on the disproportion in the names of the cited tannaim between the Mekhilta and the Mishna. That is, tannaim who are central to the latter are marginal in the former, and indeed the Mekhilta mentions several tannaim who do not appear in the Mishna at all. As Kahana argues (1985: 517), however, all this attests to is the already accepted notion that the Mekhilta was edited by a different circle than the circles that edited the Mishna, a difference commonly recognized as the difference between the schools of Rabbi Akiva and Rabbi Ishmael. The Mekhilta is entirely symmetrical with the Sifré on Numbers in this matter, a work also attributed to the putative school of Rabbi Ishmael.¹³

As for alleged linguistic "barbarisms" in the Mekhilta, Kahana shows that all of the forms adduced by Wacholder exist in other tannaitic works and sometimes are very common in them. Finally, as Kahana claims, there is positive evidence for the Mekhilta's language being tannaitic in the fact that the Genizah fragments of the text include many linguistic forms that occur only in other good manuscripts of tannaitic works and do not appear in any later Hebrew texts at all (Kahana 1985: 519). In short there is not the slightest bit of evidence that the Mekhilta is anything but what it appears and claims to be, that is, an edited collection of early tannaitic commentaries on the Torah—once more, this is not a claim that we have the *ipsisima verba* of the tannaim, nor that the attributions are inerrant.

I am quite puzzled, therefore, as to what led Neusner to revise so drastically his evaluation of Wacholder's

¹² Ironically, Neusner accuses me of inaccuracy in citation of this article. In fact, my citation was accurate. I cited the exact pages of the appendix to the larger article in which Kahana treats the subject of Wacholder's thesis, as Neusner certainly knew when he wrote the above sentence.

¹³ I will not discuss here further arguments of Wacholder's, which are shown by Kahana to be based on simple factual errors, as the interested reader can find them in the latter's article.

work between early and late 1990. The only clue for the reason for such a shift in Neusner's thinking is his claim that:

Dr. Mireille Hadas-Lebel's major paper, on loan words from Greek and Latin in Mekhilta, has definitively demonstrated that these loanwords are terms that did not come into existence before the third or fourth century C.E. Borrowing these terms into Hebrew necessarily belongs to a subsequent date. That paper was written without reference to WACHOLDER's thesis but substantiated his views point by point (Neusner 1990: 253).

This is quite an amazing claim. It escapes me entirely how a paper that allegedly proves that certain loan words in the Mekhilta are from the third or *possibly* the fourth century could prove that the Mekhilta is from the eighth century.¹⁴ Such an argument could at best prove that the text is from the third or fourth century, and even that not definitively, as there is no reason to as-

¹⁴ Neusner gives no title, place, nor date of publication for this article—because he could not, in fact, *since the paper has never been published!* It has, subsequent by nine months to the publication of my book, been included as part of the author's book. Thus, Neusner's statement that the lack of a citation of this article demonstrates ignorance on my part borders on defamation.

sume that words must necessarily appear in Greek or Latin documents before they appear as loan words, but it certainly cannot be corroborative evidence for the Mekhilta being medieval. There is, therefore, not the slightest reason to assume that the Mekhilta is significantly later than the other tannaitic midrashim in either its source materials or in its final linguistic shape.

Neusner, however, has made another argument about the Mekhilta, namely that it is "asymmetrical in rhetoric and logic to the entire corpus of other, demonstrably early Midrash compilations, Sifra, and the two Sifrés, for example, as shown in my *Mekhilta Attributed to R. Ishmael: An Introduction to Judaism's First Scriptural Encyclopedia*" (Neusner 1990: 253). In fact, Neusner's book does not even claim to show what he now claims to have shown, for all it demonstrates is that the Mekhilta is significantly unlike the Sifra and the Sifré to *Deuteronomy* and says virtually nothing about the Sifré to *Numbers*. Now since it is a commonplace of rabbinic scholarship that the Mekhilta is of different origin than the Sifra and the Sifré to *Deuteronomy*, Neusner's book achieves nothing new. And, to the extent that his taxonomies are useful at all, the same characteristics can be shown *grosso modo* to be useful in describing the Sifré on *Numbers* which has traditionally, at least since the time of Maimonides, been assigned to the same category as the Mekhilta; and no modern scholars have doubted that taxonomy. The only disagreements have been on how to account for it.

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