

CLASSICAL RHETORICAL ARRANGEMENT AND REASONING IN THE TALMUD: THE CASE OF YERUSHALMI BERAKHOT 1:1

by

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R. Yose from Mamleh, R. Yehoshua of Sikhnin in the name of R. Levi: Children during the time of David, even before they tasted sin, knew how to interpret the Torah [by adducing] forty-nine [arguments that something is] impure and forty-nine [arguments that the same thing is] pure.¹

Aristotle trained young men ... that they might be able to uphold either side of the question in copious and elegant language. He also taught the Topics ... a kind of sign or indication of the arguments from which a whole speech can be formed on either side of the question.²

Saul Lieberman has shown that various aspects of Greco-Roman culture were pervasive not only among more Hellenized Jews of the first centuries CE, but that even “the Rabbis of Palestine were familiar with the fashionable style of the civilized world of that time. Many of them were highly educated in Greek literature. ... They spoke to the people in their language and in their style.”³ An integral part of this culture involved the study of rhetoric, a staple of higher education throughout the Roman Empire.⁴

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1. Pesikta de-Rav Kahana, *Parah 'adumah*, pis. 4:2, to Numbers 19:2 (ed. Mandelbaum, 1:56). All translations of rabbinic texts are my own.

2. Cicero, *Orator*, trans. H. M. Hubbell, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1952), xiv.46.

3. Saul Lieberman, *Greek in Jewish Palestine* (New York: Jewish Theological Seminary, 1942), 66–67.

4. See Teresa Morgan, *Literate Education in the Hellenistic and Roman Worlds* (Cambridge: Cambridge University Press, 1998), 190–239. Rhetorical training could be found in pagan Sophistic

Therefore, it comes as no surprise that many parallels exist between various forms of Greek rhetoric and the Talmud.⁵ To cite a few prominent examples, Henry Fischel analyzes parallels throughout rabbinic literature to numerous rhetorical literary forms, most significantly the *chreia*.⁶ Eli Yassif finds cases of

schools throughout the Roman Empire from antiquity until the third century CE, when very similar training became dominant in Christian schools. Jews also participated and even excelled in this training. Caecilius of Calacte, who is identified as Jewish, was an important rhetorician in Rome during the reign of Augustus; see W. Rhys Roberts, "Caecilius of Calacte," *American Journal of Philology* 18, no. 3 (1897): 302. George A. Kennedy, *Classical Rhetoric and Its Christian and Secular Traditions from Ancient to Modern Times* (Chapel Hill: University of North Carolina Press, 1999), 149, writes, "Rhetorical schools were common in the Hellenized cities of the East" in the first century CE. Thomas Conley, "Philo's Rhetoric: Argumentation and Style," in *Aufstieg und Niedergang der römischen Welt II*, 21/1, ed. H. Temporini and W. Haase (Berlin: Walter de Gruyter, 1984), 343–71, analyzes Philo's use of rhetorical devices. Paul's letters exhibit elements of classical arrangement and other techniques of rhetorical reasoning; see Kennedy, *Classical Rhetoric*, 149–51; and Mark Nanos, ed., *The Galatians Debate: Contemporary Issues in Rhetorical and Historical Interpretation* (Peabody, MA: Hendrickson, 2002), chaps. 1–11. Other books of the New Testament similarly "employ some features of classical rhetoric" for the benefit of their Greek audience, "many of whom were familiar with public address in Greek or had been educated in Greek schools" (Kennedy, *Classical Rhetoric*, 143). See also George A. Kennedy, *A New History of Classical Rhetoric* (Princeton, NJ: Princeton University Press, 1994), 258–59; and, more extensively, James Kinneavy, *Greek Rhetorical Origins of Christian Faith* (New York: Oxford University Press, 1987), 57–100.

Getting closer to the period of the Yerushalmi, the tenth-century Byzantine encyclopedia *Suda* (Z 169) mentions the sophist Zosimus "of Gaza or Ascalon," who lived "in the time of the emperor Anastasius." See George A. Kennedy, *Greek Rhetoric under Christian Emperors* (Princeton, NJ: Princeton University Press, 1983), 169–77; and Malcolm Heath, "Theon and the History of the Progymnasmata," *Greek, Roman and Byzantine Studies* 43, no. 2 (2002–2003): 150 n. 57. Raffaella Cribiore, *The School of Libanius in Late Antique Antioch* (Princeton, NJ: Princeton University Press, 2007), 76–77, lists centers of rhetorical study at Caesarea, "which compensated sophists lavishly," at Elusa in the Negev and in Gaza. All of these centers were active during the fourth century, when the Yerushalmi was being redacted. Yosef Geiger, "No'amim Yevanim be-Eres Yisrael," *Cathedra* 66 (1992): 47–56 and references at n. 3, further documents the activity of the Second Sophistic in Palestine. See also note 16 herein.

5. The following survey focuses specifically on aspects of the Greco-Roman rhetorical tradition in the Talmud. Also relevant to a wider discussion, of course, are the thousands of Greek loan words and phrases incorporated into rabbinic Aramaic and Hebrew, and the many folktales, mythologies, and philosophical ideas known from classical literature that are found in rabbinic texts. See Henry Fischel, ed., *Essays in Greco-Roman and Related Talmudic Literature* (New York: Ktav, 1977), xiii–lxxii; and Catherine Hezser, "Interfaces between Rabbinic Literature and Graeco-Roman Philosophy," in *The Talmud Yerushalmi and Graeco-Roman Culture II*, ed. Peter Schäfer (Tübingen: Mohr Siebeck, 2000), 161–87.

6. Henry Fischel, "Studies in Cynicism and the Ancient Near East: The Transformation of a 'Chria'," in *Religions in Antiquity: Essays in Memory of Edwin Ramsdell Goodenough*, ed. Jacob Neusner (Leiden: Brill, 1968), 372–411; idem, "Story and History: Observations on Greco-Roman Rhetoric and Pharisaism," in *Essays in Greco-Roman and Related Talmudic Literature*, 443–72; and idem, *Rabbinic Literature and Greco-Roman Philosophy* (Leiden: Brill, 1973). See also Catherine Hezser, "Die Verwendung der hellenistischen Gattung Chrie in frühen Christentum und Judentum," *Journal for the Study of Judaism* 27 (1996): 371–439; idem, "Interfaces," 167–70, and references there; and Amram Tropper, *Wisdom, Politics, and Historiography: Tractate Avot in the Context of*

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exempla and fables that are repeated, sometimes almost exactly, in rabbinic literature.⁷ Saul Lieberman and David Daube investigate the links between Hellenistic and rabbinic methods of interpretation.⁸ Boaz Cohen compares discussions by Greco-Roman rhetoricians about letter versus spirit in legal interpretation with similar notions in the Talmud.⁹ Jacob Neusner analyzes the use of dialectics in rabbinic literature.¹⁰ Alan Avery-Peck examines the use of Greco-Roman modes of

the Graeco-Roman Near East (Oxford: Oxford University Press, 2004), 182–84, on the use of *chreiai* within succession lists.

7. Eli Yassif, *The Hebrew Folktale: History, Genre, Meaning*, trans. Jacqueline Teitelbaum (Bloomington: Indiana University Press, 1999), 120–32, 191–209. See also Haim Schwarzbaum, “Talmudic–Midrashic Affinities of Some Aesopic Fables,” in *Essays in Greco-Roman and Related Talmudic Literature*, ed. Henry Fischel (New York: Ktav, 1977), 443–72.

8. David Daube, “Rabbinic Methods of Interpretation and Hellenistic Rhetoric,” *Hebrew Union College Annual* 22 (1949); idem, “Alexandrian Methods of Interpretation and the Rabbis,” in *Essays in Greco-Roman and Related Talmudic Literature*, 165–82; and Saul Lieberman, *Hellenism in Jewish Palestine* (New York: Jewish Theological Seminary, 1962), 47–82. See also Burton Visotzky, “Midrash, Christian Exegesis, and Hellenistic Hermeneutics,” in *Current Trends in the Study of Midrash*, ed. Carol Bakhos (Leiden: Brill, 2006), 111–31. Unlike the foregoing authors, who locate aspects of rabbinic hermeneutics in classical rhetoric, Adolf Schwarz, *Der Hermeneutische Syllogismus in der Talmudischen Litteratur; Ein Beitrag Zur Geschichte Der Logik Im Morgenlande* (Karlsruhe, 1901), finds the background for the *qal va-homer* in the logical syllogism. See, however, Louis Jacobs, *Studies in Talmudic Logic and Methodology* (London: Vallentine, Mitchell, 1961), 3–15, who rejects the similarity to the syllogism.

9. Boaz Cohen, “Letter and Spirit in Jewish and Roman Law,” in *Essays in Greco-Roman and Related Talmudic Literature*, ed. Henry Fischel (New York: Ktav, 1977), 138–64.

10. Jacob Neusner, *Jerusalem and Athens: The Congruity of Talmudic and Classical Philosophy* (Leiden: Brill, 1997). See Neusner’s bibliography on page 156 for other works of his relating to this topic. Neusner, however, turns toward analytic dialectics, syllogism, and modes of scientific inquiry, rather than the rhetorical mode of dialectics, the enthymeme, and modes of persuasive argumentation, which form the basis of my approach in this article. See also Richard Cohen, “The Relationship between Topic, Rhetoric and Logic: Analysis of a Syllogistic Passage in the Yerushalmi,” in *Judaic and Christian Interpretation of Texts: Contents and Contexts*, ed. Jacob Neusner (Lanham, MD: University Press of America, 1987), 87–125; Jack N. Lightstone, *The Rhetoric of the Babylonian Talmud: Its Social Meaning and Context* (Waterloo, ON: Wilfrid Laurier University Press, 1994); and idem, “Mishnah’s Rhetoric: Other Material Artifacts of Late-Roman Galilee and the Social Formation of the Early Rabbinic Guild,” in *Text and Artifact in the Religions of Mediterranean Antiquity*, ed. Stephen G. Wilson and Michel Desjardins (Waterloo, ON: Wilfrid Laurier University Press, 2000), 474–502. Cohen and Lightstone argue that rabbinic literature evinces a rhetoric of its own, but one that is not significantly related to Greco-Roman rhetorical modes.

Other rhetorical readings of rabbinic texts, also not directly dependent on Greco-Roman models, can be found in David Kraemer, “Composition and Meaning in the Bavli,” *Prooftexts* 8, no. 3 (1988): 271–91; idem, “Rhetoric of Failed Refutation in the Bavli,” *Shofar* 10, no. 2 (1992): 73–85; Jay Rovner, “Rhetorical Strategy and Dialectical Necessity in the Babylonian Talmud: The Case of Kiddushin 34a–35a,” *Hebrew Union College Annual* 65 (1994): 177–231; Michael Satlow, “Rhetoric and Assumptions: Romans and Rabbis on Sex,” in *Jews in a Graeco-Roman World*, ed. Martin Goodman (Oxford: Clarendon Press, 1998), 135–44; and Richard Hidary, *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud* (Providence, RI: Brown University, forthcoming), chaps. 1, 2, 4, and 6, to name just a few. See, on the other hand, Vernon Robbins’s rhetorical analysis of M. Gittin 1:1–2:2 in Lightstone, *The Rhetoric of the Babylonian Talmud*, 201–13, who does base his analysis on classical canons.

argumentation in rabbinic pronouncement stories.¹¹ Shlomo Naeh's research on the art of memorization, one of the five stages in the study of rhetorical oratory, points out fascinating parallels between rabbinic and classical literature.¹² Martin Jaffee, based on examples from the Yerushalmi, argues that Galilean rabbis practiced oral exercises similar to those described in the progymnasmata of Theon and Hermogenes.¹³ Lieberman submits that the rabbis "probably did not read Plato and certainly not the pre-Socratic philosophers." He does, however, conclude that the rabbis' "main interest was centered in Gentile legal studies and their methods of rhetoric."¹⁴

The goal of this study is to further explore the possible use of classical rhetorical structures and thought processes in the Talmud. This analysis will shed light on the interactions between the rabbis and their surrounding Greco-Roman culture, as well as provide insight into the nature and provenance of talmudic reasoning. This article focuses on one *sugya* from the Yerushalmi. I will first present a source-critical analysis of the *sugya*, followed by a second analysis using rhetorical criticism. The rhetorical analysis will focus on the arrangement of the parts of the *sugya* and will reveal its similarity to classical rhetorical structures and methods, as defined in the rhetorical treatises of Aristotle, Cicero, Quintilian, the anonymous *Ad Herennium*, and *On Invention* attributed to Hermogenes.¹⁵

I make no claim that any of the rabbis or schools of redaction read any of these works or even any summaries of these works written in later centuries.¹⁶

11. Alan Avery-Peck, "Rhetorical Argumentation in Early Rabbinic Pronouncement Stories," in *The Rhetoric of Pronouncement*, ed. Vernon Robbins (Atlanta, GA: Scholars Press, 1994), 49–69.

12. Shlomo Naeh, "On Structures of Memory and the Forms of Text in Rabbinic Literature," *Mehqere Talmud* 3, no. 2 (2005): 543–89 (Hebrew). See also Jose Faur, *Golden Doves with Silver Dots: Semiotics and Textuality in Rabbinic Tradition* (Bloomington: Indiana University Press, 1986), 89.

13. Martin Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism 200 BCE–400 CE* (Oxford: Oxford University Press, 2001), 128–39; and idem, "The Oral-Cultural Context of the Talmud Yerushalmi: Greco-Roman Rhetorical Paideia, Discipleship, and the Concept of Oral Torah," in *The Talmud Yerushalmi and Graeco-Roman Culture I*, ed. Peter Schäfer (Tübingen: Mohr Siebeck, 1998), 27–61.

14. Saul Lieberman, *Texts and Studies* (New York: Ktav, 1974), 228. Lieberman, *ibid.*, 227, suggests that the rabbis' knowledge of gentile law and legal progymnasmata came from the rabbis' proximity to the famous law school in Beirut.

15. Citations of these works are from the following editions: Aristotle, *On Rhetoric: A Theory of Civil Discourse*, trans. George A. Kennedy (New York: Oxford University Press, 2007); Cicero, *On Invention*, trans. H. M. Hubbell, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1949); Quintilian, *Institutes of Oratory: or, Education of an Orator in Twelve Books*, trans. John Selby Watson (London: George Bell & Sons, 1892); *Ad Herennium*, trans. Harry Caplan, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1954); and George A. Kennedy, *Invention and Method: Two Rhetorical Treatises from the Hermogenic Corpus* (Atlanta, GA: Society of Biblical Literature, 2005).

16. As a matter of pure speculation, I venture that a member of the Patriarchal house who studied in a school of rhetoric during the fourth century could have composed this *sugya*, perhaps in order to clear the name of Rabban Gamaliel and thereby improve the reputation of the Patriarchal dynasty. The Talmud reports that many students in the Patriarchal house studied Greek wisdom; see

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Rather, I propose that elements of rhetorical thinking and its methodologies were widespread throughout the Greco-Roman world and formed an integral part of its culture.¹⁷ The rabbis may have absorbed these ideas in conversations with their neighbors or through listening to an orator in a public square. Whatever the case, the classical canons formed the basis of thought and composition throughout the Roman Empire, and the rabbis could not have been completely isolated from them.¹⁸ I propose that the composers or redactors¹⁹ of the *sugya* discussed here utilized some of the styles and goals of oratory composition common in their environment.

This article analyzes one section from Yerushalmi Berakhot 1:1, concerning the halakhic practice of Rabban Gamaliel II. Tannaitic sources include many

B. Soṭah 49b = B. Bava Kama 83a (and cf. Y. Shabbat 6:1 [7d], which only mentions Greek language but not wisdom). In fact, a letter from Libanius to a Jewish Patriarch written in 393 CE informs us that the son of at least one Jewish Patriarch in the late fourth century studied rhetoric at the famous school of Libanius in Antioch. See Wayne Meeks and Robert Wilken, *Jews and Christians in Antioch in the First Four Centuries of the Common Era* (Missoula, MT: Scholars Press, 1978), 62; and Visotzky, "Midrash," 120–21. See, however, Cribiore, *The School of Libanius*, 76, 321, who doubts that this letter is addressed to the Patriarch. Another possibility is that the provenance of this *sugya* is from Caesarea, which was an important center of rhetoric, and whose rabbis contributed significantly to the Yerushalmi. See Saul Lieberman, *The Talmud of Caesarea* (New York: Jewish Theological Seminary, 1968) (Hebrew).

17. Although the history of rhetoric covers many centuries and dozens of writers and handbooks, certain fundamental principles and tools remain fairly constant. The rhetorical model of the Attic orators and Aristotle remains the basis for Roman rhetoric in Latin as well as that of the Second Sophistic and its renaissance in the fourth century, even if some local variations occur in various periods and geographies. See Edward Corbett and Robert Connors, *Classical Rhetoric for the Modern Student* (New York: Oxford University Press, 1999), 493; and Kennedy, *Greek Rhetoric under Christian Emperors*, 52–103. This makes it difficult to pinpoint a single author as particularly influential during the rabbinic period. While Libanius may be closest to the rabbis in time and space, and may even have corresponded with the Patriarch (see note 16), we have no rhetorical treatise by him on the order of that of Aristotle or Cicero. The progymnasmata of Libanius and Aphthonius, his student, discuss various elements of declamation but do not mention the arrangement of elements in a full speech, even though Libanius clearly utilized such arrangement in his own orations. That the rhetorical model described by Aristotle, Cicero, and Quintilian continued to thrive in later centuries in the East is evident from various later Greek handbooks that summarize their system. See George A. Kennedy, *A New History of Classical Rhetoric*, 208–29; and Mervin R. Dilts and George A. Kennedy, *Two Greek Rhetorical Treatises from the Roman Empire: Introduction, Text and Translation of the Arts of Rhetoric Attributed to Anonymous Segeurianus and to Apsines of Gadara* (Leiden: Brill, 1997). Most significant in this regard is *On Invention*, attributed to Hermogenes but probably written in the third or fourth century; see Kennedy, *Invention and Method*, xvi. Therefore, I have utilized all of the classical authors whose aggregate teachings best approximate the common rhetorical culture of late antiquity.

18. See Fischel, "Story and History," 449 n. 31, for a similar approach.

19. Because I have no access to the prehistory of this *sugya*, I cannot tell whether it was originally composed with its current structure or whether later redactors reworked an earlier proto-*sugya* into its current format. I will use the term "redactors" throughout this article to be safe. I also do not know whether it was put together by one person or by a group; I use the plural here only out of convention.

narratives that portray Rabban Gamaliel of Yavneh as someone who did not always consider himself bound by the practice of the majority of sages. In some cases, Rabban Gamaliel was more stringent than his colleagues;²⁰ in other cases, he was more lenient.²¹ Rabban Gamaliel not only practiced according to his own opinion against the majority, but even reportedly used his power as patriarch²² to force others to accede to his view.²³ The picture formed by these rabbinic sources, regardless of whether it is historically accurate, is that Rabban Gamaliel sometimes dissented from the majority opinion by acting independently and, in some cases, even showed intolerance for those who did not agree with him.²⁴

20. See M. Berakhot 2:5; M. Bezaḥ 2:6; M. Sukkah 2:5; T. Berakhot 4:15; T. Bezaḥ 2:12; and T. Shabbat 1:22.

21. See M. Berakhot 1:1 and note 41 herein. All of these narratives are collected and analyzed in Ben Zion Wacholder, "Sippure Rabban Gamaliel ba-Mishna uba-Tosefta," *World Congress of Jewish Studies* 4, no. 1 (1967), 143–44; Shamai Kanter, *Rabban Gamaliel II: The Legal Traditions* (Chico, CA: Scholars Press, 1980), 238–42, 246–51; Hanah Kohat, "Ben 'aristoqratyah le-demoqratyah—Rabban Gamaliel ve-Rabbi Yehoshua," in *Sefer yeshurun*, ed. Michael Shashar (Jerusalem: Shashar Publishing, 1999), 213–28; Jacob Neusner, "From Biography to Theology: Gamaliel and the Patriarchate," *Review of Rabbinic Judaism* 7 (2004), 52–97; and Alexei Siverstev, *Households, Sects, and the Origins of Rabbinic Judaism* (Leiden: Brill, 2005), 218–31. Rabban Gamaliel is also portrayed as feeling himself above the rules regarding learning Greek studies (B. Soṭah 49b). Cf. M. 'Avodah Zarah 3:4 and Azzan Yadin, "Rabban Gamliel, Aphrodite's Bath, and the Question of Pagan Monotheism," *Jewish Quarterly Review* 96, no. 2 (2006): 149–79. Similarly, Rabban Gamaliel I is portrayed as maintaining special halakhic privilege in the Temple; see M. Shekalim 3:3 and 6:1.

22. I make no claim here concerning the historical role of Rabban Gamaliel of Yavneh as patriarch. My goal is to analyze how the Talmud represents and remembers Rabban Gamaliel; for this context, his purported role as patriarch is significant. On the history of the patriarchate in general, see Martin Goodman, *State and Society in Roman Galilee, A.D. 132–212* (Totowa, NJ: Rowman & Allanheld, 1983), 111f.; idem, "The Roman State and the Jewish Patriarch in the Third Century," in *The Galilee in Late Antiquity*, ed. Lee Levine (New York: Jewish Theological Seminary of America, 1994), 107–19; Shaye Cohen, "Patriarchs and Scholars," *Proceedings of the American Academy for Jewish Research* 48 (1981), 57–85; Lee Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity* (Jerusalem: Yad Izhak Ben-Zvi Press, 1989), 134–91; idem, "The Status of the Patriarch in the Third and Fourth Centuries: Sources and Methodology," *Journal of Jewish Studies* 47, no. 1 (1996), 1–32; Seth Schwartz, "The Patriarchs and the Diaspora," *Journal of Jewish Studies* 51, no. 2 (2000): 208–318; idem, *Imperialism and Jewish Society, 200 B.C.E. to 640 C.E.* (Princeton, NJ: Princeton University Press, 2001), 103–28, and references there at 111 n. 20; Paul Heger, *The Pluralistic Halakhah: Legal Innovations in the Late Second Commonwealth and Rabbinic Periods* (Berlin: Walter de Gruyter, 2003), 289–309; and David Goodblatt, "The End of Sectarianism and the Patriarchs," in *For Uriel: Studies in the History of Israel in Antiquity Presented to Professor Uriel Rappaport*, ed. M. Mor et al. (Jerusalem: Zalman Shazar Center for Jewish History, 2005), 32.

23. See M. Rosh Hashanah 2:8–9; Y. Berakhot 4:1 (7c–d) = Y. Ta'anit 4:1 (67d); B. Berakhot 27b–28a; and B. Bekhorot 36a.

24. For similar portrayals, see Louis Ginzberg, *A Commentary on the Palestinian Talmud*, 4 vols. (New York: Jewish Theological Seminary of America, 1941), 91; David Stern, "Midrash and Hermeneutics: Polysemy vs. Indeterminacy," in *Midrash and Theory: Ancient Jewish Exegesis and Contemporary Literary Studies* (Evanston, IL: Northwestern University Press, 1996), 34; and Heger, *Pluralistic Halakhah*, 309–34. For a different view of Rabban Gamaliel, see Goodblatt, "End of Sectarianism," 32–36, who bases his stance on historical assumptions and trends rather than rabbinic texts.

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My interest here, however, is neither in the historical Rabban Gamaliel nor even in his portrayal in tannaitic sources, but rather in how the Yerushalmi interprets one such report. As we will see in the source-critical analysis, the Yerushalmi reads M. Berakhot 1:1 and other sources against the grain in order to prove that Rabban Gamaliel and other Tannaim did not, in fact, act against the majority. Such forced interpretations reveal that the Yerushalmi's conclusions derive from a preconceived ideology of the Yerushalmi redactors. This strategy sheds further light on the genre of this *sugya* as rhetorical oratory. This will help explain how the *sugya*'s redactors may have reflected on their own activity and, in turn, how we should read their work generally.

SOURCE-CRITICAL ANALYSIS

The Yerushalmi passage under discussion comments on M. Berakhot 1:1, which reads as follows:²⁵

[A] מאמתי קורין את שמע בערבים משעה שהכהנים נכנסים לאכל בתרומתן.
[B] עד סוף האשמורת הראשונה דברי ר' אליעזר והכמים אומרים עד הצות רבן גמליאל אומר עד שיעלה עמוד השחר.
[C] מעשה שבאו בניו מבית המשתה אמרולו לא קרינו את שמע אמר להם אם לא עלה עמוד השחר מותרין²⁶ אתם ליקרות.

[A] From what time may one recite *shema'* in the evenings? From the time that the priests enter to eat their *terumah*.²⁷

[B] [One may continue to recite *shema'*] until the end of the first watch (i.e., the fourth hour of the night); these are the words of R. Eliezer. But the sages say until midnight. Rabban Gamaliel says until dawn arrives.

[C] It happened that his [Rabban Gamaliel's] sons came from the banquet hall. They told him, "We did not recite *shema'.*" He responded, "If dawn has not yet arrived you may recite."²⁸

25. Text follows MS Kaufman.

26. MSS Kaufman, Parma, Geniza TS E 2.3 and 2.4, and Bavli MS Paris read מותרין. Geniza TS E 2.2 reads הייבין, which is changed to מותרין in the margin. The Mishnah in the Bavli printed edition and MSS Munich and Florence read הייבין. See Ginzberg, *Commentary*, 1:92 n. 11.

27. That is, priests who had been impure and had to bathe and wait until dark to become pure in order to eat from their priestly gifts of produce.

28. The Mishnah continues with another sentence that essentially eliminates the controversy between Rabban Gamaliel and the sages by explaining that the sages actually agree with Rabban Gamaliel that one may recite even until dawn from Torah law, but that the sages encourage people to recite before midnight as a safeguard. As we will see, however, the Yerushalmi assumes that the sages invalidate recitation of *shema'* after midnight, even from Torah law. The Yerushalmi's redactors either did not have this gloss, or they interpreted it differently and assumed that Rabban Gamaliel did oppose the sages; therefore, it makes its own attempt at reconciling Rabban Gamaliel with the sages. See Richard Hidary, "Tolerance for Diversity of Halakhic Practice in the Talmuds" (PhD diss., New York University, 2008), 262–65.

Line B records three opinions: R. Eliezer says one may recite only until the first watch, the sages say only until midnight, and Rabban Gamaliel says even until dawn. Line C recounts a story in which Rabban Gamaliel instructed his sons to follow his own opinion, even though the sages invalidated recitation after midnight. Rabban Gamaliel breaks with his colleagues in allowing his sons to recite after midnight; consequently, the Yerushalmi is bothered by this act of nonconformity. Y. Berakhot 1:1 (3a) reads as follows:²⁹

[I. Question]

[A]

מעשה שבאו בניו מבית המשתה אמרו לו לא קרינו את שמע אמר להן אם לא עלה עמוד השחר חייבין³⁰ אתם לקרות.
ורבן גמליאל פליג על רבנין ועבד עובדא כוותיה?

[B]

- [1] והא רבי מאיר פליג על רבנין ולא עבד עובדא כוותיה.
[2] והא רבי עקיבא פליג על רבנין ולא עבד עובדא כוותיה.
[3] [הא רבי שמעון פליג על רבנין ולא עבד עובדא כוותיה].³¹

[C]

[1] והן אשכחנן דרבי מאיר פליג על רבנין ולא עבד עובדא כוותיה? דתני סכין אלוונתית לחולה בשבת אימתי בזמן שטרפו ביין ושמן מערב שבת אבל אם לא טרפו מערב שבת אסור.
תני אמר ר' שמעון בן אלעזר מתיר היה רבי מאיר לטרוף יין ושמן ולסוך לחולה בשבת וכבר חלה ובקשנו לעשות לו כן ולא הניח לנו ואמרנו לו רבי דבריך מבטל בחיידך ואמר לן אף על פי שאני מיקל לאחרים מחמיר אני על עצמי דהא פליגי עלי חברי.³²

[2] והן אשכחנן דרבי עקיבא פליג על רבנין ולא עבד עובדא כוותיה כיי דתנינן תמן השדרה והגולגולת מב' מתים רביעית דם מב' מתים ורובע עצמות מב' מתים אבר מן המת מב' מתים אבר מן החי מב' אנשים רבי עקיבא מטמא והכמים מטהרין.³³
תני מעשה שהביאו קופה מליאה עצמות מכפר טבי והניחיה באויר³⁴ הכנסת בלוד ונכנס תודרוס הרופא ונכנסו כל הרופאים עמו אמר תודרוס הרופא אין כאן

29. Boldface text indicates a tannaitic source. The alphabetic section headings indicated in square brackets will be further explicated in the rhetorical analysis.

30. MS Leiden and printed editions read חייבין. See, however, note 26 herein.

31. This line is missing in printed editions because of homoioteleuton. The base text of MS Leiden does have this line for R. Akiba and R. Shimon but omits it for R. Meir. An attempt is made to correct this between the lines, which results in the text found in the printed editions.

32. See T. Shabbat 12:12; B. Shabbat 134a.

33. M. 'Ohalot 2:6; cf. T. 'Eduyot 1:7.

34. The basket was placed in the open air courtyard where there was no roof to create a problem of *ohel*. However, see the commentary of R. Eleazar Azikri (Safed, 1533–1600), *Perush mi-ba'al sefer haredim*, s.v. והניחיהו (printed in standard editions of the Yerushalmi), who says it was hung inside the synagogue so that nobody would touch it and thereby cause impurity according to all opinions. See also Saul Lieberman, *Tosefeth rishonim* (New York: Jewish Theological Seminary, 1999), 3:102.

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שדרה ממת אחד ולא גולגולת ממת אחד אמרו הואיל ויש כאן מטהרין ויש כאן מטמאין נעמוד על המניין התחילו מרבי עקיבה וטיהר אמרו לו הואיל והיית מטמא וטיהרת טהור.³⁵

[3] והן אשכחנן דר' שמעון פליג על רבנין ולא עבד עובדא כוותיה כיי דתנינן תמן רבי שמעון אומר כל הספחין מותרין חוץ מספחיי כרוב שאין כיוצא בהן בירקות שדה³⁶ וחכמים אומרים כל הספחין אסורין.³⁷
ר' שמעון בן יוחי עבר³⁸ בשמיטתא חמא חד מלקט ספחיי שביעית אמר ליה ולית אסור ולא ספחיי אינון אמר³⁹ ליה ולא את הוא שאת מתיר אמר ליה ואין חברי חולקין עלי וקרי עלוי ופורץ גדר ישכנו נחש⁴⁰ וכן הות ליה.

[D]

ורבן גמליאל פליג על רבנן ועבד עובדא כוותיה?

[II. Response]

שנייא הכא שהיא לשינון מעתה אף משיעלה עמוד השחר. ואית דבעי מימר תמן היו יכולין לקיים דברי חכמים ברם הכא כבר עבר הצות ולא היו יכולין לקיים דברי חכמים אמר לון עובדין עובדא כותיה.

[I. Question]

[A]

It happened that his [Rabban Gamaliel's] sons came from the banquet hall. They told him, "We did not recite *shema*." He told them, "If dawn has not yet arrived, you are obligated to recite."

35. T. 'Ohalot 4:2; B. Nazir 52a–b.

36. Cabbages do not generally grow ownerless in the wild. Therefore, even R. Shimon bar Yoḥai prohibits picking them during the seventh year.

36. Cabbages do not generally grow ownerless in the wild. Therefore, even R. Shimon bar Yoḥai prohibits picking them during the seventh year.

37. M. Shevi'it 9:1.

38. Following Geniza and Y. Shevi'it 9:1 (38d). See Louis Ginzberg, *Yerushalmi Fragments from the Genizah*, vol. 1, *Text with Various Readings from the Editio Princeps* (Jerusalem: Jewish Theological Seminary of America, 1909), 2, line 8. MS Leiden here reads עבד עובדא instead of עבר.

39. Following Geniza, which has 'א, MS Leiden reads, אמרי. See also Ginzberg, *Commentary*, 1:90, regarding the placement of this verb.

40. Ecclesiastes 10:8. This verse is used in a similar sense of threatening those who disobey the rabbis in, among others, T. Ḥullin 2:23; Avot de-Rabbi Natan B:3 (ed. Schechter, 14); B. Shabbat 110a; and, most explicitly, Y. Berakhot 1:4 (3b) (= Y. Sanhedrin 11:4 [30a]), which reads,

ר' בא בר כהן בשם ר' יודה בן פזי תדע לך שחביבין דברי סופרים מדברי תורה שהרי רבי טרפון אילו לא קרא לא היה עובר אלא בעשה ועל ידי שעבר על דברי בית הלל נתחייב מיתה על שם ופורץ גדר ישכנו נחש

R. Ba bar Kohen [said] in the name of R. Yehudah bar Pazzi: Know that the words of the scribes are more beloved than the words of the Torah for behold had R. Ṭarfon (M. Berakhot 1:3) not recited [the *shema*] at all he would have only transgressed a positive commandment, but because he transgressed the words of Beth Hillel he was liable to death as per the verse, "He who breaches a fence will be bitten by a snake" (Ecclesiastes 10:8).

Does Rabban Gamaliel disagree with the rabbis and did he perform a deed according to his own opinion?

[B]

[1] Behold R. Meir disagrees with the rabbis but did not perform a deed according to his own opinion.

[2] Behold R. Akiba disagrees with the rabbis but did not perform a deed according to his own opinion.

[3] [Behold R. Shimon disagrees with the rabbis but did not perform a deed according to his own opinion.]³¹

[C]

[1] Where do we find that R. Meir disagrees with the rabbis but did not perform a deed according to his own opinion? As it was taught: **One may oil a cloth for a sick person on the Sabbath only when he has mixed it with wine and oil from before the Sabbath. But if he had not mixed it from before the Sabbath, it is forbidden.**

It was taught: **R. Shimon ben Eleazar said, R. Meir used to permit one to mix wine and oil and to anoint a sick person on the Sabbath. It once happened that [R. Meir] became sick and we wanted to do so for him but he did not let us. We told him, "Rabbi, your ruling will become nullified in your lifetime." He responded, "Even though I am lenient for others, I am stringent upon myself for behold my colleagues disagree with me."**³²

[2] Where do we find that R. Akiba disagrees with the rabbis but did not perform a deed according to his own opinion? As we have learned there, **The spine or the skull from two corpses, a quarter [of a *log*] of blood from two corpses, a quarter [of a *qab*] of bones from two corpses, a severed limb of a corpse from two corpses, or a severed limb of a live person from two people, R. Akiba declares impure and the sages declare pure.**³³

It was taught: **It happened that they brought the basket full of bones from Kefar Ṭabi and placed it in the open air³⁴ of the synagogue of Lydda. Theodorus the doctor entered and all the doctors entered with him. Theodorus the doctor declared, "There is neither a spine from one corpse nor a skull from one corpse here." They [the rabbis] said, "Since there are some who declare pure and some who declare impure here let us put it to a vote." They began with R. Akiba who declared pure. They said, "Since you used to declare impure and now you have declared it pure, it is pure."**³⁵

[3] Where do we find that R. Shimon disagrees with the rabbis but did not perform a deed according to his own opinion? As we have learned there: **R. Shimon says, All the aftergrowths are permitted [during the seventh**

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year] except for the aftergrowths of cabbage for other vegetables of the field are not similar to them.³⁶ But the sages say all aftergrowths are prohibited.³⁷ R. Shimon ben Yoḥai was passing by during the seventh year. He saw someone gathering aftergrowths of the seventh year. He told him, “Isn’t this prohibited? Aren’t they aftergrowths?” He responded, “Aren’t you the one who permits?” He told him, “Don’t my colleagues disagree with me?” R. Shimon applied to him the verse, “*One who breaches a fence will be bitten by a snake.*”⁴⁰ And so it happened to him.

[D]

Does Rabban Gamaliel disagree with the rabbis and did he perform a deed according to his own opinion?

[II. Response]

Here it is different, for it [the recitation of *shema*] is simply repetition [a form of learning]. According to this, [his sons should be allowed to recite *shema*] even after dawn has arrived?

Others explain that there [in all three cases involving other Tannaim], they were able to fulfill the opinion of the sages. Here, however, midnight had already passed and they were not able to fulfill the opinion of the sages [in any case]. [Therefore, Rabban Gamaliel] told them to perform a deed according to his own opinion.

The *sugya* has two parts: [I] the question, which includes a well-structured argument based on three proofs, and [II] the response. The opening question of the *sugya* is directed to one instance of Rabban Gamaliel’s nonconformist practice, even though many other sources portray him in a pattern of independent practice. The *sugya* thus reveals at the outset its driving motivation: to make the case that sages never practiced in opposition to the majority.⁴¹ The agenda of this *sugya* is further made apparent by analyzing each of its proofs, all of which are problematic.

[1] R. Meir

The Yerushalmi brings three cases in which other Tannaim who had differing opinions nevertheless followed the majority ruling. The first case, quoted from

41. Y. Pesahim 7:2 (34b) asks a similar question about M. Pesahim 7:2, רבן גמליאל חלוק על חכמים—Does Rabban Gamaliel disagree with the sages and practices halakha accordingly? Similarly, Y. Bezah 3:2 (62a) comments on Rabban Gamaliel’s alleged nonconformity in M. Bezah 3:2. Similar phrases also appear at Y. ‘Avodah Zarah 3:10 (43b) and Y. Demai 3:3 (23c). Also relevant is Y. Pesahim 4:1 (30d), which assumes that Beth Shammai did not practice its own opinion but rather agreed that halakhah follows Beth Hillel. The combination of these texts shows a consistent tendency by at least some redactors of the Yerushalmi to read uniformly into the past. See Hidary, *Dispute for the Sake of Heaven*, chaps. 4 and 5.

T. Shabbat 12:12, reports that the sages prohibit the preparation of a wine-and-oil ointment for a sick person on the Sabbath, but R. Meir permits this. When, on one occasion, R. Meir was himself sick, his students offered to prepare this ointment, to which R. Meir replied, “Even though I am lenient for others, I am stringent upon myself for behold my colleagues disagree with me.” The *sugya* focuses on the second half of R. Meir’s statement, “I am stringent upon myself,” in order to prove that R. Meir conformed to the majority opinion. However, R. Meir also said, “I am lenient for others.” That R. Meir issued practical decisions based on his own opinion is confirmed earlier in this source, which states, “R. Meir used to permit...” This source contains elements of both conformity (R. Meir for himself) and nonconformity (R. Meir for others). In fact, the discussion of this *baraita*’ in the Bavli explicitly emphasizes R. Meir’s leniency for others, an interpretive possibility not taken by the Yerushalmi.⁴²

The Yerushalmi version of this *baraita*⁴³ does not fit well into the overall argument of the Yerushalmi *sugya*. The *sugya* is trying to prove that other rabbis

42. See the following note.

43. This source appears in T. Shabbat 12:12 and B. Shabbat 134a in a significantly different version from that in the Yerushalmi. The Tosefta version simply quotes R. Meir saying that one may mix them on the Sabbath, but it is more ambiguous about whether that was only his theoretical opinion or whether he also put it into practice. The end of the Tosefta adds that R. Meir would never contradict his colleagues, implying that R. Meir did not permit it to others either.

In the Bavli version, Abaye asks Rav Yosef why M. Shabbat 19:2 prohibits preparing a wine-and-oil salve for a baby after circumcision on the Sabbath, considering that R. Meir permitted preparing the same formula for a sick person. B. Shabbat 134a reads,

Abaye asked Rav Yosef ... wine and oil may also be used on the Sabbath for a sick person, as we have learned in a *baraita*’: **One may not mix wine and oil for a sick person on the Sabbath. R. Shimon ben Eleazar said in the name of R. Meir, “One may even mix wine and oil [on the Sabbath].” R. Shimon ben Eleazar said, “One time, R. Meir became sick in his bowels and we wanted to mix wine and oil for him but he did not let us. We told him, ‘Rabbi, your words will become nullified in your lifetime.’ He responded, ‘Even though I say this and my colleagues say that, I never in my life had the conviction to transgress the words of my colleagues.’”** He was stringent upon himself but for everyone else he permitted.

The Bavli here quotes the version of this source as it is found in the Tosefta but manages to interpret it such that it reaches the same conclusion as the Yerushalmi version. The Tosefta says only that R. Meir conformed and gives no explicit indication about what he taught others. Yet the Bavli, through a mid-rashic derivation, uses this source as a proof that R. Meir ruled leniently for others. The Bavli thus ignores R. Meir’s own confession of conformity and instead focuses on what he allegedly taught others. Conversely, the Yerushalmi ignores the report that R. Meir permitted it to others and focuses only on R. Meir’s conformity. In an ironic case of role reversal, the Yerushalmi version of the Tosefta would fit better into the Bavli *sugya*, and the Bavli’s version is better suited to the Yerushalmi! That each Talmud nevertheless uses the Tosefta to prove opposite conclusions reveals that each *sugya* is motivated not by the Tosefta, which contains both conformity and diversity, but rather by the redactors’ preconceived notions. The Yerushalmi seeks to prove that all Tannaim conformed to the majority opinion, while the Bavli assumes that R. Meir must have allowed others to practice his opinion. Both *sugyot* find what they are looking for in this Tosefta.

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conformed to the majority in order to question how Rabban Gamaliel could have taught his sons to contradict the majority. However, if R. Meir taught others to follow his own opinion, even if he was stringent for himself, then he poses no problem for Rabban Gamaliel, who is also lenient for others. Yet the Yerushalmi includes this as a proof for R. Meir's conformity and as a challenge to Rabban Gamaliel without further comment.⁴⁴

As a possible explanation, Louis Ginzberg posits that because Rabban Gamaliel was deciding for his sons, not for his students or laymen, we should assume that he held his household up to the same standard that he held for himself.⁴⁵ If R. Meir was stringent for himself, then Rabban Gamaliel should have been stringent for himself and his children as well.⁴⁶ However, even accepting this explanation, R. Meir's case is far from an absolute proof of universal uniformity. R. Meir seems to have acted not out of a halakhic duty to follow the majority; rather, he took upon himself a supererogatory stringency out of

While one could suggest that the original Yerushalmi *sugya* had a version of the R. Meir story similar to that in the Tosefta and the Bavli and that the words "Even though I am lenient for others" were added by a later copyist on the basis of the Bavli's interpretation, I find this extremely unlikely, for three reasons: (1) The language used by the Bavli to say that R. Meir permitted it to others bears no resemblance to that in the Yerushalmi; (2) the Yerushalmi also includes מאיר היה ר' מתיר, which has no parallel in the Bavli; (3) if this copyist were sophisticated enough to insert the Bavli's interpretation so smoothly in two places in the Yerushalmi *baraita*', then he would have known better than to change the Yerushalmi's *baraita*' in such a way that destroyed the Yerushalmi's entire proof.

44. R. Eleazar Azikri (1533–1600), *Perush mi-ba'al sefer ḥaredim*, s.v. וכבר חלה, appropriately asks,

קשיא טובא וכי לא ידעו דיחיד ורבים הלכה כרבים? ועוד מה שהשיב ר' מאיר אע"פ שאני מיקל כו' הרי זה מעשה לסתור דפליגי רבנן עליה והוא עביד עובדא כוותיה וכל שכן להורות לרבים?

This is highly problematic. Did they [R. Meir's students] not know that [in a dispute between] an individual and the majority the law follows the majority? Furthermore, that which R. Meir responds, "Even though I am lenient . . .," is a story that contradicts [what the Talmud sets out to prove], for the sages oppose him yet he practices in a case according to his own opinion and even teaches it to the public?

Azikri answers that R. Meir did not actually permit others to rely on his leniency, but also did not protest if they did so because it involved a matter of health. This, however, does not fit well with the words of the *baraita*', which suggest that R. Meir did permit it for others outright.

45. Ginzberg here distinguishes between a sage's children, who are extensions of himself, and his students, who are not. However, B. Pesahim 51a–b, discussed later, suggests that the sage's immediate circle of students are also extensions of himself, but perhaps only when in their master's presence. See also Hidary, "Tolerance for Diversity," 152–53.

46. See Ginzberg, *Commentary*, 1:81–86. This explanation is part of Ginzberg's more general thesis that during the tannaitic period, the rabbis had not yet voted on most matters and so individual rabbis would regularly teach others according to their own opinion even against the majority. Even during this period, however, Tannaim would usually be stringent upon themselves in order not to personally offend their colleagues. This context can help explain the double standard adopted by R. Meir. However, Ginzberg's general thesis has little foundation.

respect for his colleagues. He could be stringent for himself but could not impose this stringency on others since he thought the lenient position was actually permitted. This source does not pose a serious difficulty for Rabban Gamaliel, who did not feel particularly obligated to his colleagues. Furthermore, if Rabban Gamaliel would forbid his sons from reciting *shema*, he would cause them to sin by neglecting a halakhic obligation, whereas R. Meir's stringency did not force him to compromise his own halakhic views. One cannot prove that Rabban Gamaliel should follow the majority and violate his own halakhah from R. Meir's case, in which no violation ensued.⁴⁷ This "proof" thus assumes a number of contingent explanations and does hold up as a rigorous logical demonstration.

[2] R. Akiba

In the case just presented, R. Meir had a more lenient view than the rabbis and so could act stringently without compromising his own principles. However, in the next case, R. Akiba takes a more stringent view than the majority. A case came up in Lydda in the presence of many rabbis. They decided to hold a vote, knowing that R. Akiba disagreed with the majority. R. Akiba was called upon first, he voted in favor of purity, and the vote was stopped immediately.⁴⁸ This shows that R. Akiba voted according to the majority opinion even though he himself opined that the basket in question was impure.

The Tosefta version of this story at 'Ohalot 4:2⁴⁹ surrounds the narrative with a discussion by two of R. Akiba's disciples:

אמר ר' יהודה ששה דברים היה ר' עקיבא מטמא וחזר בו
מעשה שהביאו קופות של עצמות מכפר טביא והניחום באויר בית הכנסת בלוד ונכנס תיאודו-
רוס הרופא וכל הרופאים עמו אמרו אין כאן שדרה ממת אחד ולא גולגולת ממת אחד⁵⁰ אמרו
הואיל ויש כאן מטמאין ויש כאן מטהרין נעמוד למניין התחילו מר' עקיבא וסיהר אמרו לו הואיל
ואתה שהייתה מטמא טיהרתה יהו טהורין
אמר ר' שמעון ועד יום מיתתו של ר' עקיבא היה מטמא ואם משמת חזר בו איני
יודע.⁵¹

R. Yehudah said: Regarding six issues, R. Akiba used to declare impure but then changed his mind.

It happened that they brought baskets of bones from Kefar Ṭabi and placed them in the open air of the synagogue of Lydda. Theodorus the doctor entered together with all the doctors. They declared, "There is neither a spine from one corpse nor a skull from one corpse here." They [the rabbis] said, "Since there are some who declare pure and some who

47. See further in note 65 herein.

48. It is noteworthy that the rabbis did not assume that R. Akiba would concede and therefore thought that they had to outvote him. It is also possible, however, that they were simply asking him respectfully to concede, which he does.

49. The Tosefta also appears in B. Nazir 52b.

50. MS Vienna reads אחר, but the first printed edition, which I have followed here, reads אחד.

51. Based on MS Vienna. The manuscript reads איני in the second-to-last word, which I have emended to איני based on the first edition. B. Nazir 52b also reads איני in all witnesses.

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declare impure here let us put it to a vote.” They began with R. Akiba who declared pure. They said, “Since you used to declare impure and now you have declared it pure, let them be pure.”

R. Shimon said: R. Akiba declared impure until the day of his death. If he changed his mind after he died, I am not aware of it.

According to R. Yehudah, R. Akiba had changed his mind from his original position and actually agreed with the majority. The reason he voted with the majority was not that he wanted to conform despite his differences, but rather that he had reversed his opinion. R. Akiba was not an opposing sage who compromised for the sake of uniformity of practice, but was instead a sage who had previously opposed a position but then changed his mind. This information spoils the entire argument of the Yerushalmi. R. Eleazar Azikri asks the very same question:

וקשה דבנזיר פרק כהן גדול מייתי ברייתא בבלי דהדר ביה ר' עקיבא. אם כן, אין מכאן ראיה דלא עבד עובדא כוותיה דאילו לא הדר דלמא הוה משמא. וי"ל דהירושלמי אדר' שמעון סמך דאמר התם דכל ימיו לא חזר בו ומסתמא לא הכחיש ר' שמעון המעשה הזה המפורסם אלא שהבין דמשום דלא למעבד עובדא נגד הרבים טיהר כדעתם לא משום דחזר בו.

It is difficult because B. Nazir 52a cites a baraita that R. Akiba changed his mind. If so, there is no proof from here that he did not perform a deed according to his own opinion for if he had not changed his mind perhaps he would not have declared impure. One may answer that the Yerushalmi relied on R. Shimon who says there that [R. Akiba] did not change his mind all of his days. Presumably, R. Shimon did not doubt this famous story but rather understood that he declared pure like the sages in order not to perform a deed against the majority and not because he had changed his mind.⁵²

Azikri explains that the Yerushalmi assumes the view of R. Shimon that R. Akiba did not change his mind. Still, if the Yerushalmi redactors had before them our version of this Tosefta with the comments of both R. Yehudah and R. Shimon, then their argument here would be severely weakened were they to assume one interpretation of the story without providing reasons to reject the other.⁵³

Rather, we should probably assume that the Yerushalmi redactors had only the story itself, without the comments by R. Akiba's two students. That is, the Yerushalmi preserves the earliest version of this tannaitic tradition, which only included the story, while the Tosefta and the Bavli record a later version with added comments by R. Yehudah and R. Shimon.⁵⁴ Rabbis often extracted

52. *Perush mi-ba'al sefer ḥaredim*, s.v. הוי"ל. Ginzberg, *Commentary*, 1:88–89, follows this interpretation.

53. R. Yehudah's statement comes before the story and uses the story as proof. R. Shimon's comes after the story, which may suggest that he denies that the story ever happened. Azikri's only counterargument is that R. Shimon must have accepted this "famous" story. See also Lieberman, *Tosefeth rishonim*, 3:102.

54. The Tosefta as we have it was not used by the Yerushalmi. On the relationship between tannaitic statements found in the Tosefta and the Talmuds, see Binyamin Katzoff, "The Relationship

apodictic laws from stories and transmitted them as independent traditions.⁵⁵ In this case, it seems most likely that R. Yehudah (or someone speaking in his name) did not receive a tradition that R. Akiba had changed his mind, especially considering that R. Shimon, a fellow student of R. Akiba, so adamantly denied its veracity. Rather, R. Yehudah reasoned that if R. Akiba voted with the majority, then he obviously agreed with them and therefore must have reversed his opinion as stated at M. 'Ohalot 2:6.⁵⁶ The story is not the proof of R. Yehudah's statement but rather its source.⁵⁷

However, even accepting that the Yerushalmi redactors disagreed with or did not know of R. Yehudah's position, R. Yehudah's interpretation of the story represents an interpretive possibility not taken by the Yerushalmi. Furthermore, even if the redactors did not think of this interpretation, this source still does not serve as a solid proof. Perhaps R. Akiba only conformed to the majority because the vote was public and he nonetheless would have lost the vote. We cannot prove from here that Rabban Gamaliel, who was deciding alone and in private, could not have decided against the majority.⁵⁸

[3] R. Shimon bar Yoḥai

R. Shimon bar Yoḥai is more lenient than his colleagues about picking the aftergrowth of vegetables during the sabbatical year when farming is prohibited. A story is recounted in which R. Shimon tells a farmer to follow the stringent view of the sages despite his own lenient position. The Yerushalmi presumes that he would act stringently himself as well. However, there is good reason to believe that R. Shimon himself would eat and was simply making a point in his harsh treatment of this farmer. The story is repeated in Y. Shevi'it 9:1 (38d), where another story follows in which R. Shimon bar Yoḥai also rebukes and curses someone; that story, too, ends with "and so it was."⁵⁹ In that context, the story is one example of R. Shimon bar Yoḥai's intensity and zeal; he is portrayed in these stories as

between the Baraitot in the Tosefta and Their Talmudic Parallels: The Evidence of Tractate Berakhot," *Hebrew Union College Annual* 75 (2004): 1–24 (Hebrew).

55. Hanoch Albeck, *Introduction to the Mishna* (Jerusalem: Mossad Bialik, 1959), 92 (Hebrew).

56. Otherwise, R. Akiba should have voted according to his own opinion and then let the vote decide the outcome. He should have conformed to the majority only after he lost the vote, as is recommended in M. Sanhedrin 3:7. See Ginzberg, *Commentary*, 1:88, who incorrectly applies M. Sanhedrin 3:7 to the deliberation of the judges when the vote is taken, even though the Mishnah explicitly says, "When one of the judges leaves" the deliberation.

57. I thank Michal Bar-Asher Siegal for this insight.

58. Ginzberg, *ibid.*, asks this question and concludes that the Yerushalmi only compares one aspect of the cases even though they are fundamentally different. Ginzberg, 91, is forced to say that "the cases of R. Akiba and R. Shimon were only cited here as a mere example since they also were particular to honor their colleagues, but the main question to Rabban Gamaliel is from R. Meir."

59. The order of the stories is reversed in Bereshit Rabba, *Va-yishlah*, par. 79:6, to Genesis 38:18 (ed. Theodor-Albeck, 2:945).

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impatient and impulsive.⁶⁰ Furthermore, the tone of the story, with its repeated use of sarcasm, introduced by the words, ... ולא ... ולא ... ואין ..., shows that this recounting involves a personal tiff rather than an earnest halakhic discussion. R. Shimon bar Yoḥai was offended by the farmer's actions and cursed him. Rabbi Shimon bar Yoḥai might have been more tolerant had he seen a rabbinic colleague gathering vegetation. He seems to have been particularly upset by the farmer, who was a layman simply taking advantage of R. Shimon's leniency regarding this issue. The Yerushalmi uses this story as a proof that no rabbi may follow a minority opinion, even though the story describes only an exceptional case of an impatient rabbi dealing with an opportunistic layperson.

Compare this story to the following report in B. Pesahim 51a–b:

דאמר רבה בר בר חנה: סח לי רבי יוחנן בן אלעזר: פעם אחת נכנסתי אחר רבי שמעון בן רבי יוסי בן לקוניא לגינה, ונטל ספיחי כרוב,⁶¹ ואכל ונתן לי. ואמר לי: בני, בפני—אכול, שלא בפני—לא תאכל. אני שראיתי את רבי שמעון בן יוחי שאכל—כדי הוא רבי שמעון בן יוחי לסמוך עליו, בפניו ושלא בפניו. אתה, בפני—אכול, שלא בפני—לא תאכל.

For Rabbah bar bar Ḥannah said: R. Yoḥanan ben Eleazar told me, “One time I followed R. Shimon ben R. Yose ben Laqunia into a garden. He took an after-growth of cabbage,⁶¹ ate it, gave it to me and told me, ‘My son, you may eat in my presence but you may not eat when outside my presence. I saw R. Shimon bar Yoḥai eating and R. Shimon bar Yoḥai is worthy to rely on in his presence and outside his presence. You [who only saw me eat] may eat in my presence but may not eat when outside my presence.’”

According to the Bavli, R. Shimon does in fact follow his own opinion and even advises his student to do so. This is in direct opposition to the Yerushalmi story and may reflect the general tendency of the Bavli to be more tolerant of diversity.⁶² Tosafot wonder about this contradiction and insightfully explain that, in the Yerushalmi case, the source of R. Shimon's anger is not the lenient practice itself, but rather the character of the *am ha'ares* who just follows the leniency blindly.⁶³ Of course, we cannot assume that the Yerushalmi's redactors knew of this Bavli

60. See more on this story in Jeffrey Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: Johns Hopkins University Press, 1999), 121f.

61. The Bavli subsequently cites a baraita stating that R. Shimon bar Yoḥai prohibits after-growth of all vegetation except the cabbage, which is the opposite of M. Shevi'it 9:1. The Bavli story about R. Shimon bar Yoḥai eating the cabbage concurs with the Bavli baraita. See Tosafot to B. Nazir 51a, s.v. כל.

62. See Hanina Ben-Menahem, *Judicial Deviation in Talmudic Law* (New York: Harwood Academic Publishers, 1991), 89.

63. Tosafot to B. Pesahim 51b, s.v., אני. Ginzberg, *Commentary*, 1:90, does not accept the resolution of Tosafot because when read back into the Yerushalmi *sugya*, it suggests that Rabban Gamaliel should have treated his sons like *amei ha'ares*. Instead, he explains that the Yerushalmi simply was not aware of the Bavli story. I think, however, that Tosafot's interpretation is evident from a literary reading of the Yerushalmi story even independent of the need to reconcile it with the Bavli.

story.⁶⁴ As noted earlier, however, even if they did not know of it, it seems evident from the Yerushalmi story alone that R. Shimon was particularly upset by the farmer because he was a layman who was simply taking advantage of R. Shimon's leniency. One could easily imagine an alternate *sugya* trying to prove the opposite view, citing this story and concluding, עם הארץ שאני (a layman is different), just as Tosafot does.

Furthermore, as was the case for R. Meir, R. Shimon is stringent in a way that does not cause him to violate any of his own norms. This can only prove that a rabbi should be stringent in consideration of the majority, but it cannot prove that a rabbi may transgress what he thinks is a norm because of the majority. Thus, the R. Shimon story cannot prove that Rabban Gamaliel must forgo what he views as an obligation to recite the *shema*.⁶⁵ The Yerushalmi's use of this story to prove that no rabbi practiced against the majority is somewhat of a leap.

[II. Response]

After repeating its initial question, the Yerushalmi offers two answers. The first is that Rabban Gamaliel told his sons to recite, despite the fact that he did not think they could fulfill their obligation; that is, he shared the view of the sages that reciting after midnight is not valid and he only permitted his sons to do so as a form of study. The Gemara does not accept this because Rabban Gamaliel says, "If dawn has not yet arrived . . . , " and one could study *shema* even after dawn. The second response is that Rabban Gamaliel did rely on his opinion *ex post facto* and thought that his sons could fulfill their obligation. This response allows for a diversity of practice only in cases in which it is impossible to

64. Duberush Ashkenazi, *Sha'are Yerushalmi* (Warsaw: Drukerni N. Schriftgisser, 1866), 2b, in fact, takes the position that the Yerushalmi did not know of the Bavli story. He takes this point of view in order to resolve the difficulty that the Bavli story would pose to the Yerushalmi argument.

65. See 'Aryeh Leib Gunzberg, *Sha'agat aryeh* (New York: Israel Wolf, 1958), *siman* 4, p. 11, who writes,

The main question of the Yerushalmi is only from the case of R. Akiba, for there is no question from R. Meir and R. Shimon who act stringently according to the majority who disagree with them, since there is no stringency that leads to a leniency in their controversies. Therefore, they acted according to the majority and were stringent. However, regarding the recitation of *shema* after midnight, since according to Rabban Gamaliel this is still the time for the recitation of *shema* and they may recite, therefore they are necessarily obligated to recite. If they would act stringently according to the sages, even if the majority prohibits them from reading as a rabbinic enactment, this would be a stringency that would lead to a leniency.... The cases of R. Meir and R. Shimon were only dragged in incidentally by the Yerushalmi. Since it cited that R. Akiba did not perform an act according to his own opinion, it cites the cases of R. Meir and R. Shimon as well, who did not perform acts according to their own opinions even though the main question is only from R. Akiba. This is the way of the Yerushalmi in all places to drag in many things that are similar even though they are not very relevant to the topic of the *sugya* and this is clear to whoever is acquainted with the Talmud Yerushalmi.

Cf. note 58 herein. These comments indicate how problematic the proofs are in this *sugya*.

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fulfill the law according to the majority. Still, Rabban Gamaliel would not have opposed his colleagues before the fact.

In sum, all three proofs of the Yerushalmi are problematic in that they are based on unnecessary assumptions and are easily refuted. That the Yerushalmi nevertheless uses these three sources to prove halakhic conformity within the tannaitic community reveals the Yerushalmi's push to read uniformity into the past. Evidently, the Yerushalmi is uncomfortable with diversity of practice among the Tannaim and interprets away any past examples of it.⁶⁶

RHETORICAL ANALYSIS

How did the redactors of this *sugya* think about or justify their actions? Did they believe that the sources they cited definitively proved their point? Why did they not point out the difficulties in applying these three cases to the Rabban Gamaliel story? Even if they did think these sources were applicable to the case of Rabban Gamaliel, the fact that three other rabbis conformed in certain cases does not necessitate that Rabban Gamaliel also must have done so on every occasion. If we analyze the *sugya* in strict logical terms or try to translate it into syllogisms, it will be found wanting. I suggest that we view this *sugya* not within the genre of logical argumentation but rather in the realm of rhetoric in general and classical rhetoric in particular. The most evident use of classical Greco-Roman rhetoric emerges from the structure of the *sugya*.

On Arrangement

The question section of this *sugya*, part [I], displays a highly organized structure: it has a beginning, middle, and end; it repeats the primary query at the beginning and at the end; it includes a short introductory summary of its three more lengthy proofs; and it begins each proof with a similarly structured question. The arrangement of sections within the *sugya* seems to be purposefully and carefully planned. I propose that the entire question section can be analyzed as a work of rhetorical oratory based on the model of classical Greco-Roman rhetoric, which attempts to persuade the audience of a certain viewpoint.

Cicero describes five stages in the study of rhetoric:

Invention (*inventio*) is the discovery of valid or seemingly valid arguments to render one's case plausible. Arrangement (*dispositio*) is the distribution of arguments thus discovered in the proper order. Expression (*elocutio*) is the fitting of the proper language to the invented matter. Memory (*memoria*) is the firm mental grasp of matter and words. Delivery (*pronuntiatio*) is the control of voice and body in a manner suitable to the dignity of the subject matter and the style.⁶⁷

66. See note 41 herein.

67. Cicero, *On Invention*, I.9.

Within the study of arrangement, Cicero identifies six typical parts of a rhetorical discourse: “exordium, narrative, partition, confirmation, refutation, [and] peroration.”⁶⁸ While these six divisions represent the proper arrangement for a typical speech, certain types of oratory and different circumstances require changing the order or omitting some parts.

The Yerushalmi *sugya* seems to be built with this arrangement in mind.⁶⁹ Here is an abbreviated presentation of the question section of the Yerushalmi *sugya* quoted earlier, with added labels indicating its rhetorical structure:

[A. Narration]

It happened that his [Rabban Gamaliel’s] sons came from the banquet hall. They told him, “We did not recite *shema*.” He told them, “If dawn has not yet arrived, you are obligated to recite.”

Does Rabban Gamaliel disagree with the rabbis and did he perform a deed according to his own opinion?

[B. Partition]

[1] Behold R. Meir disagrees with the rabbis but did not perform a deed according to his own opinion.

[2] Behold R. Akiba disagrees with the rabbis but did not perform a deed according to his own opinion.

[3] [Behold R. Shimon disagrees with the rabbis but did not perform a deed according to his own opinion.]

[C. Proof]

[1] Where do we find that R. Meir disagrees with the rabbis but did not perform a deed according to his own opinion? As it was taught: **One may oil a cloth.... He responded, “Even though I am lenient for others, I am stringent upon myself for behold my colleagues disagree with me.”**

[2] Where do we find that R. Akiba disagrees with the rabbis but did not perform a deed according to his own opinion? As we have learned there, **The spine or the skull.... They began with R. Akiba who declared pure....**

[3] Where do we find that R. Shimon disagrees with the rabbis but did not

68. Ibid., I.19. Aristotle, *On Rhetoric*, III.13–19, discusses these parts in more or less the same way. See also *Ad Herennium*, 3.16–18. *On Invention*, attributed to Hermogenes, discusses the following parts of the oration: *proemion* (equivalent to Cicero’s exordium), *prokatastasis* (introduces the narration), *diēgēsis* (narration), *prokataskeuē* (partition), *kataskeuē* (proof), and *epilogos* (peroration).

69. While typical examples of ancient orations are much longer and more elaborate than this Yerushalmi *sugya*, the *sugya* may be only an outline of what would be a much longer lecture if presented to an audience. On the relationship between literary versions of rabbinic texts and their performance, see Joseph Heinemann, “The Proem in the Aggadic Midrashim—A Form Critical Study,” *Scripta Hierosolymitana* (1971), 100–22. In the case of the proem, however, the literary versions seem to be longer and more complex than their performative versions.

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perform a deed according to his own opinion? As we have learned there:

R. Shimon says, All the aftergrowths are permitted.... He told him, “Don’t my colleagues disagree with me?” ...

[D. Peroration]

Does Rabban Gamaliel disagree with the rabbis and did he perform a deed according to his own opinion?

Let us discuss each part in order. The purpose of the exordium is to make the auditor “well-disposed, attentive, and receptive.”⁷⁰ Cicero explains that the exordium may be omitted when the audience is already favorably disposed to the speech. It seems that the redactors of this *sugya* felt that their audience of fellow rabbis or students would already be receptive to the arguments about to be presented, either because they also supported uniform behavior or because they implicitly accepted the authority of the redactors or whoever first presented this *sugya* publicly.

Next comes the narration of the story under discussion. Classical rhetoric delineates three types of oration: deliberative, in which one deliberates about future policy and public affairs; judicial, in which one accuses or defends a case that occurred in the past; and epideictic, which is used in ceremonial address to praise or inspire.⁷¹ In judicial oratory, the narration describes the case to be adjudicated, while in deliberative oratory, the narrative describes “events in the past, in order that by being reminded of those things the audience will take better counsel about what is to come (either criticizing or praising).”⁷² This *sugya* bears a great deal of similarity to judicial oratory, in that it judges whether Rabban Gamaliel is “guilty” of nonconformity. In the *sugya*, however, the charge against Rabban Gamaliel is only rhetorical; it assumes from the outset that Rabban Gamaliel is innocent and so reinterprets the norm against nonconformity to exclude cases in which the majority position cannot in any case be satisfied. Therefore, this *sugya* can also be read as deliberative oratory, arguing that rabbis in the future should conform to the majority.

In the next section, called the partition, “the matters which we intend to discuss are briefly set forth in a methodical way. This leads the auditor to hold definite points in his mind.”⁷³ Cicero continues to suggest that the partition “have the

70. Cicero, *On Invention*, I.20. This may explain why Rabban regularly began his lectures with words of humor (B. Shabbat 30b = B. Pesahim 117a). See further on the rhetorical value of humor in Quintilian, *Institutes of Oratory*, VI.3.

71. See Aristotle, *On Rhetoric*, I.3; and Cicero, *On Invention*, I.7.

72. Aristotle, *On Rhetoric*, III.16.11.

73. Cicero, *On Invention*, I.31. *Ad Herennium*, I.x.17, calls this section “division.” Aristotle, *On Rhetoric*, III.13.1–2, calls this section a “prothesis” and considers it an essential part of a speech: “There are two parts to a speech; for it is necessary [first] to state the subject with which it is concerned and [then] to demonstrate the argument. It is ineffective after stating something not to demonstrate it and to demonstrate without a first statement; for one demonstrating demonstrates *something*, and one making

following qualities: brevity, completeness, conciseness.”⁷⁴ Part B of the *sugya* fulfills all of these requirements. Interestingly, Cicero discusses three-example partitions, all of which list exactly three arguments.⁷⁵ Quintilian also cites a number of sample partitions, two of them from Cicero’s speeches, in which three arguments are listed.⁷⁶ *Ad Herennium* states explicitly that the number of points to be discussed “ought not to exceed three.”⁷⁷ *On Invention*, attributed to Hermogenes, similarly cites two examples from Demosthenes, an Attic orator, who enumerates three upcoming arguments.⁷⁸ Therefore, the use of three proofs in the Yerushalmi *sugya* is typical of classical oratory and is to be expected.⁷⁹

The next section contains the body of the argument. Cicero distinguishes between confirmation, in which proofs for one’s case are given, and refutation, in which opposing arguments are refuted. The *sugya* contains just one section of proofs that serve as confirmation, as they are all examples showing halakhic conformity.⁸⁰

The three “proofs” used in this *sugya* regarding three Tannaim bear no direct connection to the story of Rabban Gamaliel. There is no syllogistic logic, nor even an enthymeme, to prove that rabbis never acted against the majority. Rather, the type of reasoning used here is inductive, generalizing from examples. Because we have stories about three prominent Tannaim who each submitted to the authority of the majority opinion when it came to practical rulings, we can assume that Rabban Gamaliel would have done so as well.⁸¹ The unstated upshot is

a preliminary statement says it first for the sake of demonstrating it. Of these parts, the first is the statement [*prothesis*], the other the proof [*pistis*].”

74. Cicero, *On Invention*, I.32.

75. *Ibid.*, I.32–33.

76. Quintilian, *Institutes of Oratory*, 4.5.9–12. In the last case, Cicero explicitly states that he will address three issues.

77. *Ad Herennium*, I.x.17.

78. Kennedy, *Invention and Method*, 64–65.

79. Tripartite *sugyot* are common in both Talmuds, as shown by Shamma Friedman, “Some Structural Patterns of Talmudic Sugyot,” *Proceedings of the Sixth World Congress of Jewish Studies* 3 (1977): 391–96 (Hebrew); and Jeffrey Rubenstein, “Some Structural Patterns of Yerushalmi Sugyot,” in *The Talmud Yerushalmi and Graeco-Roman Culture III*, ed. Peter Schäfer (Tübingen: Mohr Siebeck, 2002). The context of classical rhetoric may help explain why tripartite structures are so prevalent.

80. As we have seen, R. Meir’s case could be used to show that he did not follow the majority since he was lenient for others. If we assume that the Yerushalmi’s redactors also knew of the story at B. Pesahim 51a–b, then that, too, would prove the opposite view of diversity of halakhic practice. If so, by citing these stories and providing alternative interpretations for them, the *sugya* ends up refuting these potentially opposing sources. Therefore, to some degree, the *sugya* accomplishes both confirmation and refutation at the same time. In fact, the redactors may have chosen some rather controversial cases, instead of clear-cut stories of conformity such as M. Rosh Hashanah 2:9, precisely in order to refute them and take them off the table.

81. These three examples do not actually prove anything about Rabban Gamaliel’s conduct or attitude because they are examples from other occurrences that bear no relation to the story under discussion. This, however, is typical of the argument by example. As Corbett and Connors, *Classical*

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that the audience should also take heed to conform to the majority practice. Aristotle elaborates on the use of examples in persuasive speech: “Paradigms [i.e., proof from examples] are most appropriate to a deliberative oratory, enthymemes more suited to judicial; for the former is concerned with the future, so it is necessary to draw examples from the past.”⁸²

When citing multiple arguments, classical rhetoric recommends placing the strongest argument last, because “what is said last is easily committed to memory,” another strong argument first, and the weakest arguments in the middle.⁸³ This *sugya* seems to follow this pattern. The middle argument, concerning R. Akiba, is the weakest because his vote is not going to be followed in any case. The first argument, regarding R. Meir, contains a problematic line within the source, stating that R. Meir did rule according to his opinion for others. This example is still strong, as it genuinely contains a story of conformity, although it also partly evinces nonconformity. The third argument, about R. Shimon, is the strongest proof because it contains an actual ruling for someone else (not a vote and not his own action) and therefore is most similar to the case of Rabban Gamaliel. This arrangement of examples suggests that the redactor was aware of the relative strength of each source and ordered them for maximum rhetorical effect.

Finally, the peroration repeats the main argument of the questioner. Aristotle writes that the purpose of the peroration, or “epilogue,” as he terms it, is “to remind the audience of what has been said earlier. . . . [I]n the epilogue one should speak in recapitulation of what has been shown. The starting point [of the epilogue] is to claim that one has performed what was promised.”⁸⁴ While a peroration in classical rhetoric can be rather complex, and might include ethos and pathos, the peroration of this *sugya* simply repeats the opening question verbatim.

If we read this as a judicial speech, then the accused in this case is Rabban Gamaliel. That is, M. Berakhot 1:1 seems to portray Rabban Gamaliel as “guilty” of practicing his own opinion. The anonymous prosecutor here adduces various other precedents of conformity in order to generalize from them a norm that would impute Rabban Gamaliel’s actions. The anonymous defender accepts that Rabban Gamaliel did act against the majority but finds a reason why the norm does not apply to this case, and so Rabban Gamaliel is acquitted. Read as a deliberative oration, the *sugya* retrojects conformity into the past as a paradigm to be followed in the future.

Rhetoric, 62, write, “An argument by example does not really prove anything, for like the rhetorical enthymeme, the example leads, most of the time, to a mere probability. But because a probability is what usually happens or what is believed to happen, the example has persuasive value.” On the rhetorical power of rabbinic stories as legal precedents, see Moshe Simon-Shoshan, “Halakhic Mimesis: Rhetorical and Redactional Strategies in Tannaitic Narrative,” *Dine Israel* 24 (2007): 101–23.

82. Aristotle, *On Rhetoric*, 3.17.5.

83. *Ad Herennium*, III.x.18; see, similarly, Cicero, *Orator*, xv.50.

84. Aristotle, *On Rhetoric*, III.19.3–4; see also Cicero, *On Invention*, I.98.

What can the careful arrangements of the parts of this *sugya* tell us about its redactors' goals and methods? A logician who wishes to present a formal demonstration of a geometric theorem or to prove a postulate based on syllogistic logic will be bound to arrange his or her argument according to strict logical requirements. Such arguments are static and remain valid independent of their audience. Attention to the order of proofs, introductions, repetitions, and summaries, on the other hand, places a composition outside the realm of formal logic and into the genre of persuasive rhetoric. This *sugya* must, therefore, be categorized as rhetoric. The goal of such an essay is not absolute truth or objectivity, but rather the presentation of a certain subjective point of view meant to persuade an intended audience.⁸⁵

On Rhetorical Reasoning

The method of rhetorical composition requires first stating a thesis and then inventing and formulating the most convincing arguments for it, regardless of whether the thesis is actually correct. Rhetorical training thus demands the ability to argue effectively for both sides of a proposition. As Thomas Sloane writes, "The first principles of whatever might be considered rhetoric's intellectual habit stem from the discipline's openness to contrarianness, even to perversity, and from the ancient dialogic practice of generating arguments on both sides of the question."⁸⁶ A standard element of progymnastic exercises was similarly to practice refutation and confirmation of the same point.⁸⁷ Quintilian connects the ability to argue both sides of a question to success in the courtroom:

The Academy will be the most useful school on the ground that its habit of disputing on both sides of a question approaches most nearly to the actual practice of the courts.⁸⁸

The Talmud makes a similar connection:

Said R. Yoḥanan: One who does not know how to derive that a reptile is pure and impure in one hundred ways, may not open the deliberation in merit [of the defendant].⁸⁹

Said Rav Yehudah in the name of Rav: One only seats in the Sanhedrin one who knows how to purify the reptile based on Scripture.⁹⁰

85. See Chaim Perelman, *The Realm of Rhetoric*, trans. William Kluback (Notre Dame, IN: Notre Dame Press, 1982), 146–52.

86. Thomas Sloane, *On the Contrary: The Protocol of Traditional Rhetoric* (Washington, DC: Catholic University of America Press, 1997), 11.

87. See, e.g., Kennedy, *Greek Rhetoric under Christian Emperors*, 101–105.

88. Quintilian, *Institutes of Oratory*, xii.2.25; cf. x.1.22–23. See also Adelino Cattani, "Subjectivist and Objectivist Interpretations of Controversy-based Thought," in *Controversies and Subjectivity*, ed. Pierluigi Barrotta and Marcelo Dascal (Amsterdam: John Benjamins Publishing, 2005), 185–87.

89. Y. Sanhedrin 4:1 (22a); see further discussion of this statement later.

90. B. Sanhedrin 17a.

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The ability to argue for both sides of an issue is especially important in the courtroom, where each side must make the most persuasive argument for its case based on the same evidence and set of laws.⁹¹ Therefore, the rhetorician must be able to interpret the very same set of sources in contrary directions. These quotations tie into the statement of Cicero and the parallel midrash cited in the epigraph to this article regarding the skill of forming multiple conflicting arguments, both of which deal with training students.⁹² Clearly, the goal of the rhetorician is not to reveal authorial intention or to discover one single correct interpretation of a source.

The rhetorical mode of reasoning thus implies a hermeneutic of its own for selecting and interpreting its sources. Chaim Perelman elaborates on the choices that the rhetorician makes when formulating an argument:

Every argument implies a preliminary selection of facts and values, their specific description in a given language, and an emphasis which varies with the importance given them. Choice of elements, of a mode of description and presentation, judgments of value or importance—all these elements are considered all the more justifiably as exhibiting a partiality when one sees more clearly what other choice, what other presentation, what other value judgment could oppose them. An affirmation and presentation that at first seem objective and impartial appear one sided—deliberately or not—when confronted with evidence from the other side.⁹³

Our Yerushalmi *sugya* seems, on the surface, to be an impartial argument based on three objective sources, each of which displays uniformity of practice. However, the source-critical analysis shows the other presentations that the redactors could have chosen. For the first proof, the Yerushalmi emphasizes one line in the story—R. Meir's stringency upon himself—and ignores another line—R. Meir's leniency

91. Lieberman, *Hellenism in Jewish Palestine*, 63, elaborates,

Rab maintained that no one is to be appointed a member of the high court (*Sanhedrin*) unless he is able to prove from Biblical texts the ritual cleanliness of a reptile (although reptiles are definitely declared unclean in Lev. 11:29). The reason for this requirement can be inferred from the statement of a younger contemporary of our Rabbi. R. Johanan asserted that a man who is not qualified to offer hundred [*sic*] arguments for declaring a reptile ritually clean or unclean will not know how to open [the trial of capital cases] with reasons for acquittal. The judge must thus be a rhetor who can *disputare in utramque partem* and prove at one and the same time the two opposite points of view.

In quoting this one Latin phrase, Lieberman connects the rabbinic enterprise with the essence of the rhetorical enterprise. See also Reuven Kimelman, "Rabbi Yohanan of Tiberias: Aspects of the Social and Religious History of Third Century Palestine" (PhD diss., Yale University, 1977), 72.

92. Cicero, *De Oratore*, i.34.158–59, similarly writes, "We must argue every question on both sides, and bring out on every topic whatever points can be deemed plausible." See also B. Eruvin 13b and other related rabbinic statements cited by Natalie Dorhman, "Reading as Rhetoric in Halakhic Texts," in *Of Scribes and Sages: Early Jewish Interpretation and Transmission of Scripture*, ed. Craig Evans (London: T&T Clark International, 2004), 91 n. 3.

93. Perelman, *The Realm of Rhetoric*, 34.

for others. The interpretation not taken in the Yerushalmi—to emphasize R. Meir’s nonconformity—is in fact found in B. Shabbat 134a.⁹⁴ The second source finds in R. Akiba’s vote an act of normative conformity despite theoretical disagreement. The Yerushalmi could have taken an interpretive strategy similar to that of R. Yehudah in the Tosefta, or could have rejected its applicability because it occurred in a public vote at which R. Akiba would have lost. The third proof applies a story about R. Shimon’s rebuke of a farmer to Rabban Gamaliel’s instruction to his sons, rather than rejecting this comparison on account of their different contexts. These alternative interpretive possibilities, which were not chosen, reveal the Yerushalmi’s partiality.

Cicero applies a similar hermeneutic in discussing how an orator should utilize laws and other documents to support his thesis: “A controversy turns upon written documents when some doubt arises from the nature of writing. This comes about from ambiguity, from the letter and intent, from conflict of laws, from reasoning by analogy, [and] from definition.”⁹⁵ Cicero then continues to show how an orator can argue for either side of a case using the same source,

by converting something in the written document to his own case or by showing that it contains some ambiguity; then on the basis of that ambiguity he may defend the passage which helps his case, or introduce a definition of some word and interpret the meaning of the word which seems to bear hard upon him, so as to support his own case, or develop from the written word something that is not expressed.⁹⁶

It is through identifying ambiguities, contradictions, and gaps in a text that one can utilize that source in contradictory directions. Perhaps this understanding of the hermeneutical strategy assumed by rhetorical reasoning will help explain some of the difficulties raised by the source-critical analysis of the Yerushalmi *sugya*. The Yerushalmi begins with the thesis that all Tannaim conformed to a uniform majority opinion. It then continues by adducing three sources in favor of this thesis. While the *sugya*’s redactors are not explicit about how they interpret each of these sources, we can retrace what their interpretations might have been based on their application of these sources to the Rabban Gamaliel narrative, as discussed earlier. Each of these three sources is rather ambiguous, and the

94. See note 43 herein.

95. Cicero, *On Invention*, II.116. Modern writers recognize not only the ambiguity of given texts but even the indeterminacy built into all language. Perelman, *The Realm of Rhetoric*, 43–44, writes,

For centuries, under the influence of rationalistic thinkers who considered mathematical language the model to be followed by ordinary language, and especially by philosophers, we have lived under the impression that messages, in principle, are clear and that multiple interpretations are the result of their authors’ negligence or the interpreter’s bad faith.... Today it is generally recognized that mathematics and for that matter all formal systems constitute artificial languages that we subject to numerous restrictions in the attempt to eliminate ambiguity.... In natural languages, ambiguity—the possibility of multiple interpretations would be the rule.

96. Cicero, *On Invention*, II.142.

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interpretations of them assumed by the *sugya* are far from necessary. But despite these difficulties, or perhaps even because of them (assuming that it wants to refute them),⁹⁷ the Yerushalmi utilizes them in its effort to make the best case possible. Another orator may utilize these same sources to argue for the opposite point of view, presenting alternate possible interpretations of them. A debate will thus ensue as to which interpretation is the most probable; however, that debate will remain within the realm of probability, which is the jurisdiction of rhetoric, rather than definitive proof, the jurisdiction of logic.

In an attempt to pry into the minds of the redactors a bit further, we may wonder how conscious they were of their interpretive choices. Were they aware that their interpretations were at best contingent and sometimes rather weak or even forced? If yes, how did they justify these choices? If not, how could these manifestly intelligent sages have missed these seemingly obvious objections?⁹⁸

One possibility is that the redactors were aware that their sources did not prove their thesis, but were more interested in teaching a halakhic-homiletic lesson on uniformity of practice than in presenting a historical and exegetically accurate account of the past.⁹⁹ That is, for didactic-rhetorical purposes, they deliberately reinterpreted these sources according to their chosen agenda. This approach would put these Palestinian redactors well within the tradition of Greco-Roman rhetoric, which emphasized achieving the persuasive goal but was less interested in the integrity of the process of arriving there.

A second possibility is that the redactors were truly convinced that their interpretations were correct and that these sources really did support their thesis regarding uniformity of practice. They held certain assumptions in mind that made their interpretive choices inevitable, even when they were aware of those other possibilities. Working within the rhetorical mode, the redactors recognized that received texts and traditions can be ambiguous or otherwise problematic and sometimes need to be explained, limited to a given circumstance, emended, or reconciled. The redactors therefore believed that the plain contextual interpretation of some sources could be faulty in light of their larger convictions regarding tannaitic diversity of practice; forced interpretations

97. See note 80 herein.

98. I reject the possibility that the redactors were not at all aware of alternate sources or readings and created the most impartial argument they could based on their monolithic understanding of the sources they had. Regarding the Rabban Gamaliel story of M. Berakhot 1:1, for example, the question of the *sugya* reveals an awareness that one reading of the story can find in it nonuniformity of practice. The two explanations at the end of the *sugya* are clearly deliberate and conscious rereadings. Rather, I assume that the redactors were in command of their sources and were able to lay out a range of interpretive possibilities for them. My question is only whether they thought that their interpretive decisions accurately reflected the thrust of these sources or were simply apologetic or creative uses of them.

99. This is similar to the reworking of narrative sources performed by the Bavli's redactors. See Rubenstein, *Talmudic Stories*, 15–21. While Rubenstein attributes this activity to the Babylonian Stammim, similar activity may be found in the Yerushalmi as well, even if much less frequently. Rubenstein, *ibid.*, 92, points to Y. Ḥagigah 2:1 (77b–c) as “among the most artful and complex of all rabbinic stories.” In the area of non-narrative *sugyot*, the *sugya* analyzed in this paper may be among the most carefully structured and rhetorically conscious of all rabbinic compositions.

of certain sources could hence sometimes be preferable to interpretations that might be more literal but still less accurate.

The Palestinian redactors of the Yerushalmi held the conviction not only that uniformity of halakhic practice is ideal, but also that it had been a reality in past generations. This viewpoint follows a common tendency throughout the Yerushalmi to avoid factionalism, prosecute dissent, systematize rules of codification, and maintain unified community norms.¹⁰⁰ If they read these texts with the basic assumption of uniformity already in mind, then they would regard the interpretations they then presented as the most plausible. That is, the redactors considered it appropriate to select a possible interpretation of a text, even if it may not have been the most straightforward reading, over another interpretation that would contradict a larger conviction that was basic to their worldview and built into their characterization of rabbinic society.¹⁰¹ Recognizing that texts are inherently ambiguous, the redactors read these sources in the best light they could, based on their historical and sociological assumptions regarding uniformity of practice.¹⁰²

100. See Hidary, "Tolerance for Diversity," 448–65.

101. The Yerushalmi similarly reads uniformity of practice into the past regarding disputes between the Houses of Shammai and Hillel; see Hidary, "Tolerance for Diversity," 69–70, 211–15.

102. This hermeneutical stance accords with what W. V. O. Quine, *Word and Object* (Cambridge, MA: MIT Press, 1960), 58–59, calls the principle of charitable reading. See further discussion on this concept in Ronald Dworkin, *Law's Empire* (Cambridge, MA: Belknap Press, 1986), 53; and Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, MA: Harvard University Press, 1997), 27–32.

The following quotation from Martin Heidegger describes accurately the interpretive mode of our *sugya*'s redactors:

An interpretation is never a presuppositionless apprehending of something presented to us. If, when one is engaged in a particular kind of interpretation, in the sense of exact textual interpretation, one likes to appeal [beruft] to what 'stands there', then one finds that what 'stands there' in the first instance is nothing other than the obvious undiscussed assumption [Vormeinung] of the person who does the interpreting. (Martin Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson [New York: Harper and Row, 1962], 191–92, cited in Gerald Bruns, *Hermeneutics Ancient and Modern* [New Haven, CT: Yale University Press, 1992], 4.)

The "being in the world" of the redactors necessitated halakhic uniformity, and so any texts on this subject would be understood in that light. It was inconceivable to them that the past could be otherwise, and so readings that from our perspective may seem forced were for them much less problematic than overturning their most basic assumptions.

A similar idea is developed in the analysis by Hans-Georg Gadamer, *Truth and Method* (London: Continuum, 2004), 336, of "historically effected consciousness [that] is at work in all hermeneutical activity." Gadamer points out the connection between his project and that of classical rhetoric (18). Moshe Halbertal, *Interpretive Revolutions in the Making: Values as Interpretive Considerations in Midrashei Halakhah* (Jerusalem: Magnes Press, 1999), 193–95 (Hebrew), applies Gadamer's description of the hermeneutical enterprise to midrashic readings of certain biblical passages in which the rabbis radically reinterpret these biblical laws to conform to moral principles. This paper follows a similar methodology. While Halbertal deals with how the Midrash interprets biblical verses in light of moral considerations, this paper deals with how the Yerushalmi redactors interpret tannaitic sources in light of social/political considerations. Halbertal, 197–203, concludes that the rabbis may

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As long as one agrees that the sources used by this *sugya* do not sufficiently support the interpretations given to them, then one must posit that the redactors of this *sugya* either consciously reinterpreted their sources (the first possibility) or that they unknowingly misinterpreted them (the second). According to both possibilities, the rabbis did use some rhetorical tools in order to convey their message, and also shared the rhetorical mode of finding ambiguities in and interpreting sources. However, according to the second possibility, the rabbis did not go so far as to knowingly present false arguments. It may not be possible to decide between these two possibilities, which may have been blurred for the redactors themselves.¹⁰³ However, a broader view of the rabbis' general use of rhetorical reasoning may suggest that the second view is preferable.

To what extent is the analysis of this *sugya* applicable to the rest of the Talmud? I doubt that many more *sugyot* contain a neat arrangement of multiple stages of oratory.¹⁰⁴ However, even if the form of rhetorical oratory is absent, the rhetorical mode of thinking does seem to prevail. As Jose Faur writes,

The intellectual space of the sages is the realm of the verisimilar. It pertains to rhetoric rather than metaphysics. One will fail to find in the Talmud formal and analytical proofs, proceeding, as with the Scholastics, from syllogisms accompanied by axioms, premises and conclusions. Talmudic "proofs" are not "demonstrative"—structured from formal deductions and inductions. Talmudic dialectics deal with probable and improbable alternatives, inferences and analogue constructs, indeterminate and statistical knowledge, variables and quantitative differences. Let us note that the Talmudic lexicon does not register the words "rational" (מושכל) or "necessary" (הכרח). Its dialectic is expository: it proposes the "reasonable" (סברא), not the absolute. The

have shared some of the interpretive methods described by Gadamer and other similar theorists; however, their motivations and underlying assumptions for doing so were very different from those of these postmodern writers. He is led to this conclusion based, in part, on the divinity of the biblical texts, a consideration that is less significant in amoraic interpretations of tannaitic texts.

103. It is possible, for example, that the original compiler of this *sugya* was working within the first possibility, but that later students then understood it according to the second.

104. It is my hope that future research will find more such examples, but searches based on keywords such as "ההן אשכחן" have not produced anything similar to this *sugya*. The repetition and elaboration required by the full rhetorical form such as that found in this *sugya* are rather uncharacteristic of the staccato rhythm of the Yerushalmi. It is possible that many *sugyot* were once structured in this way but have been abbreviated over the course of transmission. Therefore, although the kind of full-blown structure found here may not be common, we should look for more abbreviated forms or variations on the standard form in other *sugyot*. This may require a comprehensive form criticism of the Yerushalmi. See Baruch Bokser, "Talmudic Form Criticism," in *Essential Papers on the Talmud*, ed. Michael Chemick (New York: New York University Press, 1994). Based on the findings of this article, such a project will need to incorporate comparisons to Greco-Roman rhetorical forms.

divergent and contradictory opinions of the *amora'im* are not classified as “true” (אמת) and “false” (שקר).¹⁰⁵

Accordingly, whenever we are confronted with arguments in the Talmud that may not hold up to rigorous logical analysis, we should understand those arguments within the realm of rhetoric, meant as persuasion rather than proof. David Kraemer similarly utilizes Chaim Perelman’s *New Rhetoric* as a framework for understanding the Talmud’s argumentative discourse as a mode of rhetorical persuasion in which truth “is ambiguous and alternatives are always available.”¹⁰⁶ The talmudic use of this mode of reasoning is better understood if one places it within the context of the classical rhetorical tradition.

An important distinction, however, should be made between the rabbinic and Greek modes of rhetoric. Compare the previously quoted statements from the Talmud and rhetorical works on the ability to argue both sides of a case.¹⁰⁷ Whereas for the Greeks and Romans, rhetorical skill was used by the orator presenting his case before a deliberative assembly or court, the Talmud makes it a requirement not of the lawyers but of the judges themselves.¹⁰⁸ As Saul Lieberman notes, for the rabbis, the goal of argumentative skill is not “twisting the law according to the required aim and purpose,”¹⁰⁹ so that one can win a case regardless of the circumstances.¹¹⁰ Rather, the Talmud recognizes that a judge cannot reach the best verdict without the ability to identify ambiguities and think

105. Jose Faur, *The Horizontal Society: Understanding the Covenant and Alphabetic Judaism* (Boston: Academic Studies Press, 2008), 1:277. See also idem, “Retorica y hemeneutica: Vico y la tradicion Rabinica,” in *Pensar para el nuevo siglo: Giambattista Vico y la cultura europea*, ed. E. Hidalto-Serna (Napoli: La Citta del Sole, 2001), 928; English translation by David Ramirez is available at <http://www.josefaurstudies.org/>.

106. David Kraemer, *The Mind of the Talmud* (Oxford: Oxford University Press, 1990), 112. While Kraemer writes primarily about the Bavli, he agrees that his findings are also relevant to the Yerushalmi (100).

107. See references in notes 89–90 herein.

108. Cohen, “Letter and Spirit in Jewish and Roman Law,” 161, writes, “Books on Greek rhetoric were in part handbooks on pleadings for advocates, whereas in Talmudic times, a legal representative empowered to *plead* in behalf of another was unknown . . .; hence the science of rhetoric typical of the Greeks, with its emphasis upon devices and stratagems to help the client win his case, was not developed by the rabbis.” I argue that the rabbis did develop a system of rhetoric in their own way, but toward a different goal. Many of the stratagems used by the Greeks may not have been as fully developed by the rabbis, but at least some of them were adopted and adapted by the rabbis who put them to new use.

109. Lieberman, *Hellenism in Jewish Palestine*, 63.

110. This was the goal of the pagan orators. For example, Aulus Gellius, *Noctes Atticae*, trans. J. C. Rolfe, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1927), 1.6.4, writes, “It is the orator’s privilege to make statements that are untrue, daring, crafty, deceptive and sophistical, provided they have some semblance of truth and can by any artifice be made to insinuate themselves into the minds of the persons who are to be influenced.” Fritz Schulz, *Principles of Roman Law*, trans. Marguerite Wolff (Oxford: Clarendon Press, 1936), 130 n. 3, summarizes, “The Rhetor does not strive after truth and justice, but is concerned with the victory of his client, even when the latter has a bad case . . .; he may even lie, provided he is successful.”

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through various possibilities.¹¹¹ The Talmud is not interested in making the best case regardless of truth, but rather in developing that ability in order to see through false arguments and better arrive at the truth.

This reading is corroborated by looking at the literary context of R. Yoḥanan's statement in Y. Sanhedrin 4:1 (22a) that one cannot be a judge unless one can purify the reptile. M. Sanhedrin 4:1 prescribes that judges are to sway their judgment toward innocence in capital cases. This reflects an awareness that forensic proofs are rarely objective or absolute and that, therefore, great caution is needed before the court puts someone to death. Along these lines, the Talmud adds the following statement about how thoroughly witnesses are to be interrogated in different cases:

Ze'ir bar Ḥinena in the name of R. Ḥanina and Rav Yehudah [said]: One [verse] states, "You shall investigate and inquire and interrogate thoroughly" (Deuteronomy 13:15), and another [verse] states, "Justice, justice shall you pursue" (Deuteronomy 16:20). How is this? If you [as judge] see the law emerge truthfully, then inquire, but if not, then make it just.¹¹²

The point of this and other statements within this *sugya* is that the judge must not let procedure get in the way of justice.¹¹³ R. Yoḥanan's statement is similarly meant to ensure that judges possess the skills to see through false argumentation to better access the truth and arrive at just decisions.¹¹⁴ According to this, the second explanation, presented earlier, on the use of sources in Yerushalmi Bera-khot 1:1 would be more consistent with the rabbis' methodology.¹¹⁵

111. The idea that by recognizing rhetorical language one can better see through it and arrive at a more objective standpoint has been suggested recently by several thinkers. Stanley Fish, "Rhetoric," in *Rhetoric in an Antifoundational World: Language, Culture, and Pedagogy*, ed. Michael Bernard-Donals and Richard Glejzer (New Haven, CT: Yale University Press, 1998), 56–58, summarizes this approach, which argues that "the discovery (or rediscovery) that all discourse and therefore all knowledge is rhetorical leads or should lead to the adoption of a *method* by which the dangers of rhetoric can be at least mitigated and perhaps extirpated.... The reasoning is that by repeatedly uncovering the historical and ideological basis of established structures (both political and cognitive), one becomes sensitized to the effects of ideology and begins to clear a space in which those effects can be combated." In this view, the "realization of rhetoric's pervasiveness" (*ibid.*, 56) paradoxically opens up the possibility for a more objective use of language and argumentation.

112. Y. Sanhedrin 4:1 (22a).

113. See commentary of *Pene Moshe* here. See also Christine Hayes, "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis," *Dine Israel* 25 (2008): 73–121.

114. See the similar context for Rav's statement in B. Sanhedrin 17a. The Talmud there states that if a court votes unanimously that someone is guilty, then he is declared innocent because the unanimous decision shows that the court did not sufficiently take into account all possibilities. A thorough investigation would surely lead at least one member of the court to acquit. It is in this context that Rav requires the judges to be able to purify the reptile so that they should have the skills to find all possible arguments in favor of a defendant and therefore prevent an unjust punishment.

115. The first option puts the Yerushalmi redactors together with the Roman lawyers, who used and abused argumentation for their own benefits. For the second option, the Yerushalmi redactors recognized that their proofs are not absolute and that many sources seem to indicate pluralism;

Some scholars describe the rabbis' borrowing of elements of Greco-Roman philosophy and hermeneutical techniques in terms of adopting ideas from "external" sources.¹¹⁶ Other writers argue that the rabbinic resistance to philosophical and syllogistic forms of logic stems from a uniquely rabbinic view of language.¹¹⁷ Certainly there is much truth in both of these viewpoints, depending, in part, on specific subject matter. In this case, a combination of adoption and adaption best explains talmudic rhetorical structure and reasoning as analyzed in this study. The rabbis and their predecessors flourished in a common culture that included classical rhetoric, and they found within that tradition a mode of reasoning that resonated with their own organic thinking. This resonance allowed the rabbis to adopt various technical aspects of classical rhetoric, such as arrangement, certain hermeneutical tools, and select progymnastic exercises, even if they may have rejected some of the more relativistic and sophistic underpinnings and techniques of the Greco-Roman tradition.

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however, imbued with their overall monistic view, which they considered as truth, they waded through the various possible interpretations and arrived at what they believed were the correct readings. This methodology, of course, cuts both ways; that is, the same tools that a judge uses to reject seemingly good arguments that are actually false in order to arrive at the truth may also lead him to reject good arguments that are actually true. Nevertheless, from the perspective of the redactors, this *sugya* seems to be an attempt to present an honest and persuasive argument for monism.

116. This is the thrust of the work of Lieberman, Fischel, and others cited in notes 3–13 herein. Lieberman, *Hellenism in Jewish Palestine*, 64, for example, writes that the rabbis "would certainly not hesitate to borrow from them [the Greeks] methods and systems which they could convert into a mechanism for the clarification and definition of their own teachings." Henry Fischel, *Rabbinic Literature and Greco-Roman Philosophy* (Leiden: Brill, 1973), xi, similarly writes, "The entire midrashic output of a specific tanna is shown to be of Greco-Roman rhetorical provenance." These scholars are certainly careful to distinguish between Greco-Roman and rabbinic ideas when they are different. But the primary goal of their work does seem to be to show their similarities.

117. See Susan Handelman, *The Slayers of Moses: The Emergence of Rabbinic Interpretation in Modern Literary Theory* (Albany: State University of New York Press, 1982); Faur, *Golden Doves*; and criticism in David Stern, "Moses-side: Midrash and Contemporary Literary Criticism," *Prooftexts* 4 (1985): 194–98. As Faur points out, the very distinction between philosophy and rhetoric is already traumatic, especially once the former takes hierarchical primacy over the latter. Thus, even classical rhetorical works that value the rhetorical side of the dialectic are still haunted by this "primaevial rupture" (xxvi). The lack of this split in rabbinic thought underlies what is unique to the rabbis' organic view of language.