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STEVEN D. FRAADE

Anonymity and Redaction in Legal Midrash:
A Preliminary Probe

1. INTRODUCTION

Most recent scholarly discussion of the relation of attribution and anonymity to redaction in rabbinic literature has occurred with respect to the Babylonian Talmud, that is, in consideration of the contributions of the Babylonian amoraim and their anonymous editorial successors (commonly referred to as “stammaim”) to the literary and historical formation of the talmudic text. Less attention has been paid to similar questions as they pertain to the earlier Palestinian Talmud and the tannaitic corpora of Mishnah and Tosefta, and still less to the so-called tannaitic or halakhic midrashim. Because of

1 For the most recently published formulation of this matter, see David Weiss Halivni, “어서 קורות תימנים,” in Sidra: Journal for the Study of Rabbinic Literature, 20 (2005): 69-117. For a somewhat reduced English version of the same, see idem, “Aspects of the Formation of the Talmud,” in Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggada, ed. Jeffrey L. Rubenstein (Tübingen: Mohr Siebeck, 2005), pp. 339-60. The fullest and most recent version of Halivni’s views on this subject appeared after the present essay was completed and submitted for publication: David Halivni, Sources and Traditions: A Source Critical Commentary on the Talmud Tractate Baba Bathra (Jerusalem: Magnes, 2007), pp. 1-148 [Hebrew]. It should be noted that the term “stammaim” is a modern coinage, since talmudic and gaonic rabbinic literatures have no consistent term for referring to the collective redactors of the Talmud.

2 I say “so-called” since these collections, while including the teachings of Palestinian tannaim (rabbinic sages of the first two centuries CE), are most likely the editorial products, at least in their final forms, of their rabbinic successors (amoraim), since they contain substantial amounts of aggadic (narrative) exegesis. For the most recent and comprehensive survey of these midrashic collections, see Menahem I. Kahana, “The Halakhic Midrashim,” in The Literature of the Sages: Second Part: Midrash and Targum, Liturgy, Poetry, Mysticism, Contracts, Inscriptions, Ancient Science and the
this imbalance of attention, we risk importing from the more studied to the less studied. That is, we might presume that conclusions drawn regarding the functions of attribution and anonymity with respect to the redaction of later texts identically govern texts of earlier times, different places, and dissimilar genres. The attitudes of the tannaim to anonymity and attribution should not be inferred from how their teachings have been transmitted and transmuted in later talmudic texts, but rather from how their teachings are formulated and combined in the tannaitic corpora themselves (and not just the Mishnah). Since these corpora are likely to have been finally shaped by anonymous amoraic redactors, some time in the third century, they may tell us as much about the early anonymous amoraim as textual redactors in their own rights, rather than simply as the suppliers of attributed sayings and rulings for anonymous late-amoraic and post-amoraic talmudic redactors.

In particular, the tannaitic midrashim, and especially their halakhic sections, have received insufficient scholarly attention in this regard — as more generally. Being roughly contemporaneous with the Mishnah with respect to their contents, and, presumably, slightly later than the Mishnah with respect to their redaction, they can shed important light on the differences and transition between late tannaitic and early amoraic attitudes toward attribution and anonymity in the formation of rabbinic texts. With respect to genre, like the talmudim, the tannaitic midrashim take the form of running dialogical and dialectical commentary. However, unlike the talmudim, the base text, whose interpretation the tannaitic midrashim purport to transmit, is that of the Hebrew Bible, rather than that of an earlier stratum of rabbinic teaching. Furthermore, and perhaps related to this previous point, the language of the tannaitic midrashim (like that of the


3 Halivni (“Aspects of the Formation of the Talmud,” pp. 357-60; "ניוגי חזות התורה in the halakhah," pp. 114-17) briefly treats the question of anonymous materials in the tannaitic midrashim, but focuses his attention mainly on the anonymous aggadah therein.

4 On the relative lack of attention to the hermeneutical dimensions of tannaitic/legal Midrash, see Azzan Yadin, Scripture as Logos: Rabbi Ishmael and the Origins of Midrash (Philadelphia: University of Pennsylvania Press, 2004), pp. 1-10, which book as a whole is an important corrective, as is Moshe Halbertal, Interpretative Revolutions in the Making: Values as Interpretative Considerations in Midreshei Halakhah (Jerusalem: Magnes Press, 1997) [Hebrew]; and Menahem I. Kahana, “The Halakhic Midrashim.”
Mishnah and Tosefta) is all rabbinic Hebrew (aside from biblical Hebrew citations and foreign loan words), whereas that of the talmudim is a mix of rabbinic Hebrew and Aramaic, making the identification of textual strata easier in the latter than in the former. The relative linguistic coherence of the tannaitic midrashim, in comparison with the talmudim, may likewise be a corollary of the significantly shorter period of time over which their texts took form. The present paper will focus on a small sample of legal Midrash, from the Mekhilta of R. Ishmael, Neziqin, as a way of thinking through how the question of the roles of anonymity and attribution in the transmission and formulation of tannaitic midrashic tradition may be profitably posed.

2. FORMS OF “AUTHORSHIP”

Before doing so, however, it is useful to set our question within the broader literary-historical context of ancient Jewish “authorship,” by which I mean the speaking voice (or voices) through which the text presents itself. For heuristic purposes, I will divide post-biblical, pre-rabbinic Jewish writings into three categories of authorial self-presentation, understanding that these demarcations are not nearly as impervious or unambiguous as the following outline might suggest. I will not concern myself here with the inner-biblical models for these categories.

1. The first, and perhaps the most familiar to us from our own reading and writing, is what I would call individual, historical authorship, that is, where an historical individual is identified as the author of a writing or collection of writings, and where that attribution is generally accepted as being historically reliable. The foremost ancient Jewish examples of this would be the writings of Ben Sira, Philo, and Josephus, all of whom (perhaps not incidentally) either wrote in Greek or were transmitted mainly in Greek, and emulated Hellenistic forms of writing. Other such individually, historically

5 Such textual self-presentation may or may not coincide with historical authorship (hence, my use of quotation marks around the first use of the word). Rather, I am interested in how the text structures its narration so as to construct its authorship.

6 While the identity of Ben Sira as the author of the wisdom book that bears his name is provided in 50:27 (and is emphasized in his grandson’s prologue), the work as a whole does not bear as much of an individual authorial voice, or as much autobiographical material, as do the writings of Philo and Josephus. This may be a function of the wisdom
authored Jewish works are known to us in much more fragmentary form from antiquity.  We might also wish to include the authentic letters of Paul in this category, if we were to consider him a Jewish author at the time that he wrote them. Presumably, the stature of these writings derives, in good part at least, from that of their self-disclosing authors.

2. My second category of authorship would be writings that are, from our perspective, *pseudepigraphs*, attributed to much earlier biblical individuals, but whose actual historical authors remain unknown. Obvious examples of such writings would be the Second Temple period apocalypses attributed to such figures as Enoch, Baruch, or Ezra, or the “testaments” attributed to the biblical patriarchs. Blurrier cases – perhaps we might call them “implicitly pseudepigraphic” – would be the Book of Jubilees and the Temple Scroll, which present themselves as revelations to Moses, but without being written in his first-person “voice.” Since much has been written on the generic qualities of such writings and the reasons for their pseudepigraphic attribution, suffice it to say that what these writings gain in revelatory authority and venerable antiquity for their ancient adherents, they lose in social-historical contextuality for their modern scholarly readers.

3. Thirdly, we can speak of writings that lack any self-claimed individual authorship, either historical or pseudepigraphic, presenting themselves either as history per se (as in the case of the Books of Maccabees), or as the collective instruction of, or revelation to, a particular, elect movement or community. It is the latter sort of unattributed but collective writings that I wish to emphasize here, our best examples of which come from the “sectarian” writings of the Dead Sea Scrolls, including, among the major scrolls, the Damascus Document, the Community Rule, the War Scroll, genre of Ben Sira’s writing, which tends to speak in collective universals, and/or may be a reflection of the transitional nature of Ben Sira as the earliest individually authored Jewish book of wisdom.


8 I stress that it is only in hindsight that we claim to be able to distinguish between this and the preceding category.
the Hodayot, the Pesharim, and, I have argued, 4QMMT. Although these writings share with the pseudepigrapha an indeterminate authorship, rendering them thereby impossible to date precisely with any certainty, they have the advantage of being locatable within a particular social-historical context. It is, presumably, from the collective revelatory self-understanding of the community (both leadership and membership) that they derive their authority, thereby rendering unnecessary individual authorship, whether historical or pseudepigraphic.

While all three forms of authorial voice continue to be evidenced in the writings of early Christianity (as, more broadly, in late antiquity), not a single one continues, at least in its “pure” form, in the central texts of early rabbinic Judaism. It is not until gaonic times (eighth-tenth centuries, perhaps under Islamic influence) that we encounter our first individually authored rabbinic writings, some seven-eight hundred years after the last previously known Jewish author (Josephus or Paul). Every known early rabbinic writing is, in a variety of forms, an anthology of traditions, some of which are ascribed, without bearing internally ascribed authorship for the collection as a whole. While later rabbinic texts sometimes ascribe an earlier collection to a named sage, most notably the Mishnah to Rabbi Judah the Patriarch, it is not clear what such ascriptions denote, e.g. how heavy an editorial hand Rabbi Judah the Patriarch (in distinction to his predecessors and/or students) exercised in producing the Mishnah as we have it, and therefore what such “authorship” or “editorship” really means. In general, later rabbis are more interested in ascribing “authorship” to the anonymous traditions within a given anthology.


11 The following may be considered exceptions, but their relation to the central curricular texts of rabbinic texts is also ambiguous: Seder Olam Rabba, Megillat Ta’anit, targum, piyyut, heikhalot.
(e.g. מכתבים מסכם ר' יוחנן) than in identifying the authorship of the collection as a whole (the two not necessarily being the same). For example, in the case of (what we know as) the Mekhilta of Rabbi Ishmael, the earliest ascription of the collection as a whole to Rabbi Ishmael, however understood, is medieval, even though ascription of specific traditions to “the school of R. Ishmael” is talmudic. In general, there appears to be a decreasing tolerance for anonymity of specific traditions in later times, and hence a tendency of later sages to attribute identity to earlier anonymity.

What, therefore, is unique to rabbinic collections, and might have seemed strange in their own historical contexts, is what we might call their hybrid quality of anonymity and attribution, of collective and individual voices. That is, the collections as wholes are of anonymous, and hence implicitly collective (rabbinic?), “authorship,” while their contained traditions are often attributed to individual, named rabbinic sages. The extent to which those attributions are themselves “historical” or “pseudepigraphic” need not detain us here. While there are significant differences among the various rabbinic collections as to how the attribution of individual traditions are terminologically expressed, and there is a varying preponderance of anonymity or attribution to particular sages or groups of sages in different collections, it is the congruence of anonymity and attribution that is both characteristic of and unique to rabbinic literature as a whole, both with respect to its Jewish antecedents and with respect to contemporary non-Jewish writings, both Roman and Christian. It is also what makes that literature so difficult to employ for historical purposes, since it is neither wholly attributed nor wholly unattributed, but a complex and changing mix of the two. On the one hand, rabbinic texts appear to claim, implicitly at least, collective legal and interpretive authority, while, on the other, they attribute their diversity of legal and interpretive opinions to individually named sages, thereby mixing up our heuristic models of types of authorial structures of narration and modes of self-presentation.¹²

3. THE SAMPLE

In what follows, I will focus on a limited sample from the *Mekhilta of R. Ishmael, Neziqin*, chapters 1-5, covering Exodus 21:1-17, dealing mainly with matters of the Israelite slave and capital punishment. The text comprises 362 lines in the Horovitz-Rabin edition, and 627 lines in the Lauterbach edition. While I do not claim this sample to be representative of the *Mekhilta* as a whole, it is substantial enough to be considered typical of *Mekhilta Neziqin*. Dividing the text between those statements that are attributed to named sages and those that are unattributed, I calculate that, when measured by the numbers of lines of text (that is, by bulk), the sample comprises approximately two-thirds unattributed to one-third attributed traditions of interpretation (more precisely: 65.6 percent/34.4 percent); that is, almost twice as much unattributed material as attributed. However, if measured by the numbers of discrete dicta, the proportions are roughly even, with a slight advantage to unattributed traditions over attributed ones (54 percent/46 percent). The reason for this difference in proportions is clear: the unattributed dicta are, on average, longer than the attributed dicta, by more than a half (62.55 percent to be precise). That is not to say that there do not appear long attributed dicta or short unattributed dicta, but that the unattributed dicta are, overall, dialectically more complex.

Before dispensing with numbers, I might mention two others (again for this sample alone): of the attributed dicta, slightly more than half (57 percent) are attributed either to Rabbi Ishmael or to his tradents, with significantly different concentrations among the five chapters. Among the attributed dicta, plotting them by tannaitic generations yields a fairly symmetrical bell curve: one from T1, 15 from T2, 30 from T3 (post-Hadrianic), 15 from T4, and none from T5, with a concentration around the mid-second century CE.

14 I should stress that these numbers, and those that follow, are not nearly as “scientific” as they might appear, since determining what constitutes a textual unit for such purposes is inexact, as is determining how much of what follows an attribution to a named sage is being attributed to that sage. Thus, these numbers should be taken as they are intended, as rough estimates.
15 In addition, there were two named sages (one dicta to each), whom I could not identify
Numbers aside, what I wish to stress, especially in the present context, is not only that my sample contains a preponderance of unattributed material, but that I discern no differences in midrashic style and substance (aside from length, as noted above) between what is attributed and what is anonymous, not only with both sorts of statements sharing a single language of mishnaic Hebrew, but with both sharing the same dialectical rhetoric and terminology. In other words, there seems to me to be no way to peel away an anonymous dialectical editorial stratum of the text, as can be done with later talmudic texts, especially the Bavli. Whether or not this is possible for other tannaitic collections (e.g. the Mishnah) is, it seems to me, debatable, but for the Mekhilta, at least, this would be impossible, since the dialectical language is part and parcel of the dialectical dicta overall, regardless of whether they are anonymous or attributed.

Undoubtedly, much of the midrashic terminology is consistent enough to be considered editorial in nature, e.g. the terminology for scriptural citation (תלמוד דמיון, שנאמה, כמי שווה שאופד), the terms for attribution to named sages (כר א德拉, דמיון דמויי, דמיון דמויי דמיון), and such linking language as (relatively rare, with only three instances in the sample), or (פסא אפר אפר) (ten times in the sample), and, of course, the rhetorical language so typical of the R. Ishmael group of midrashim (e.g. דמיון דמיון, שמה אEp, מידי ש). I do not deny that here and there late editorial insertions or interventions into the text can be discerned. But, to repeat my main point, these are equally distributed between attributed and anonymous dicta. Whether such relatively consistent rhetorical and terminological features are the work of a single, final, heavy-handed redactor, or a set of redactors, or the product of successive stages of more modest redaction (presumably within a midrashic “school,” however understood), is, it seems to me, impossible to tell given the seemingly non-stratified nature of the text as a whole before us.

Why then are some dicta attributed and others anonymous? It has been

suggested, especially with respect to the Mishnah, that the unattributed or anonymous statements of law or legal interpretation represent the "authoritative" tradition, that is, the *communi consensu*, or at least that backed or promoted by the text's editor(s). For example, it is often assumed that *all* mishnaic traditions are, in a sense, attributed, some by name and some, implicitly at least, to the unnamed authority (Rabbi Judah the Patriarch) that lies behind the redacted document as a whole. Whether or not this principle is true for the Mishnah (that is, at its creation rather than its later reception), it is a difficult one to apply to the "halakhic" midrashim. The differences between anonymous and attributed interpretations of a given scriptural lemma often (if not mostly) have less to do with applicable halakhah than with the variety of ways that a lemma can be interpreted, that is, how many legal teachings can be uncovered therein, or the variety of ways in which a shared legal tradition can be grounded in scriptural hermeneutics or logical proof. Certainly, there are cases in which multiple interpretations of a lemma result in varying legal teachings, but not enough so as to assume, for the collection as a whole, that anonymity stands for editorial authority in contradistinction to the attributed dicta. In several cases in our sample alone, an opening anonymous interpretation of a lemma is immediately followed by a dicta in the name of R. Ishmael, which extends or clarifies the anonymous interpretation, or responds to a question it raises. In other cases, interpretations attributed to R. Ishmael appear first. It should be noted in this regard that R. Judah the Patriarch is cited in our sample as frequently (six times) as is R. Ishmael, but without the same pride of place. It seems to me, therefore, that an explanation must be sought for the alternation of anonymity and attribution other than that of editorial authority, or broader consensus, lying behind anonymity.

While I am reluctant to offer a global explanation, here is what seems

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16 The idea that anonymity reflects the absence of dispute may be traced back at least as far as the Epistle of Rav Sherira Gaon (987 CE), who suggests that so long as the Second Temple stood, before rabbinic disputes had increased, there was no need to record the names of sages, except for those of the *nasi im* and the *avot beit din*. Thus, the advent of attributions is traced to the loss of scholarly consensus, which necessitated knowledge of whose opinion was being cited. See *Iggeret Rav Sherira Gaon*, ed. B.M. Lewin (Jerusalem: Makor, 1972), pp. 9-11. For the most recent discussion of the anthological aspects of the Mishnah, including its heteroglossia of attributions, see Yaakov Elman, "Order, Sequence, and Selection: The Mishnah's Anthological Choices," in *The Anthology in Jewish Literature*, ed. David Stern (New York: Oxford University Press, 2004), pp. 53-80.
to work for the sample at hand. When single interpretations are given for a lemma they are unattributed. When multiple interpretations, and associated dicta, are attached to a lemma, they are differentiated from one another mainly by means of attribution, either with all attributed or the first anonymous and the following one(s) attributed. The pattern is often for the first attributed interpretation of a lemma to have its attribution at its end (רבר ר מלחין), with the subsequent interpretations beginning with the attribution (ר מלחין אמר). In some cases, the attributed teachings appear more as qualifications or clarifications of an otherwise anonymous interpretation than as independent interpretations, sometimes recurring as counter-voices, with their attributions serving to mark them apart from the otherwise anonymous surroundings into which they appear to intervene. Perhaps this pattern of attributions is related to the relative absence of the midrashic term רבר ר, commonly used in tannaitic midrashim (but more commonly in their aggadic sections), to link and differentiate alternative interpretations of a scriptural lemma. In our sample, רבר ר appears only three times, in all three cases to differentiate between two anonymous interpretations of the same lemma, a function much more commonly fulfilled through attribution.

Thus, it would seem that the balance achieved between anonymity and attribution in our sample is the product of the editorial process of joining together multiple interpretations in order to form a running dialectical commentary to a legal section of Scripture. The alternative editorial options would have been either to ascribe all interpretations to named sages, or to ascribe none, simply differentiating one from the other by a terminological marker such as רבר ר. This might suggest an editorial practice that either attached attributions to dicta that originally had none, or removed attributions from those dicta that had them. Alternatively, one might imagine that the editors began with a univocal commentary that originally had no attributions, to which they added dicta that bore attributions. While all of these possibilities are conceivable, none of them, it seems to me, is any more likely, judging from the text before us. It may be less fruitful to imagine how the text developed into what we have before us, than to consider how and what such a hybrid text performatively communicated to its readers/auditors, a question to which I shall return in my conclusions. For now we should simply note that the Mekhilta of R. Ishmael, at least in the sample examined, presents itself not very differently, notwithstanding its particular rhetorical
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flavor, from rabbinic literature as a whole, beginning with the Mishnah: a dialogical mix of anonymity and attribution, collectivity and individuality, in both its interpretive/legal authority and pedagogical practice. If so, hybridity of anonymity and attribution would be inherently related to polysemy of interpretation/law.

These tentative conclusions would need to be confirmed and modified (or retracted) based on a broader sample and set of comparisons among the tannaitic midrashim. For example, do these patterns hold true for Mekhilta Neziqin as a whole, and then across the legal sections of the Mekhilta of R. Ishmael as a whole? How would they compare to a similar analysis of the aggadic sections of the same Mekhilta, as well as to the halakhic and aggadic sections of the Mekhilta of R. Shim'on bar Yohai? How would they compare to the redactional shape and rhetorical practices of Sifre Bemidbar or Mekhilta Devarim, commonly attributed to the same midrashic “school” as the Mekhilta of R. Ishmael? While these questions cannot be answered here, I raise them in order to suggest a much broader research agenda regarding the blend of anonymity and attribution in rabbinic literature that awaits investigation.

4. A SAMPLE TEXT

For now, let us look closely at one example of a fairly complex, multipart anonymous legal midrashic unit, to which two attributed traditions appear to have been editorially appended. The verse being commented upon (Exod. 21:14) deals with the scheming and treacherous murderer who is to be denied asylum at the altar, and, in particular, with the phrase נִמְסֶם מֹאָבְתֹת תֵּקְנֵה לְמָתָן (“You shall take him from my altar to be put to death”).

17 For this and other Hebrew texts to be discussed, see Appendix 1. We will focus on text #1, reproduced from the Bar-Ilan Responsa Project CD-ROM, according to the Horovitz-Rabin edition of the Mekhilta of R. Ishmael (pp. 263-64), to which there are many textual variants, the most significant of which will be discussed below (as charted in Appendix 2, including MS Oxford 151, which is adopted by the database of the Academy of the Hebrew Language). For a Geniza fragment (Cambridge T-S C 4.7), unavailable to Horovitz-Rabin and Lauterbach, I have consulted photographs of the fragment as well as the transcription of Menahem I. Kahana, The Geniza Fragments of the Halakhic Midrashim. Part I: Mekhilta d’Rabbi Ishmael, Mekhilta d’Rabbi Shim’on ben Yohai, Sifre Numbers, Sifre Zuta Numbers, Sifre Deuteronomy, Mekhilta Deuteronomy (Jerusalem: Magnes, 2005), p. 105 [Hebrew]. On the serious text-critical difficulties with this passage, see idem, The Two Mekhilhot on the Amalek Portion: The Originality of the Version of the Mekhilta d’Rabbi Ishmael with Respect to the Mekhilta
1. The lemma is interpreted to mean that (יִמָּלְךָ֣ רַבִּ֗ים) even the priest (and even the High Priest, according to the Palestinian targumim) may be interrupted in his conduct of sacrificial worship in order to receive capital punishment. The comment assumes, perhaps anachronistically, that only priests would have come into direct contact with the sacrificial altar.

2. The next interpretation of the same lemma makes the same point (כַּאֲשֶׁר הָכְתַבּוּ לְאֶלְמוֹ) but frames it in terms of dehiyah (one obligation taking precedence over another): punishment for murder overrides the Temple service. It then offers a hypothetical argument of logic (דַּעַת מַרְדּוֹ) that would yield the opposite result: based on the fact that the Temple service overrides Sabbath observance (here assumed, presumably from the fact that the Temple service is not suspended for the Sabbath), and that punishment for murder does not override the Sabbath (here assumed, but later argued), one might conclude that punishment for murder does not override the Temple service. In order to reject such a hypothetical argument from logic, הבנה (our lemma) comes to teach that punishment for murder does, indeed, override the Temple service.

3. Next, another hypothetical (אָזְהַרְזְהָ) argument from logic is offered, this time that punishment for murder should override Sabbath observance (previously assumed not to be the case): since the Temple service overrides the Sabbath, and punishment for murder overrides the Temple service (our lemma), punishment for murder should override the Sabbath. Here, the hypothetical logical argument is rejected not with Scripture but by finding a fault in the argument itself, for, in another regard, the Temple service is of...
lesser standing than Sabbath observance, since the burial of the unclaimed dead overrides the Temple service but not the Sabbath.¹⁸

4. Here we have what appears to be an insertion, or an aside, in the text, since it employs different rhetoric both from what precedes and from what follows. It is introduced by “one of the disciples of R. Ishmael said” (אמר הלומדים אחר הלומדים וירשמעא), denoting more than complete anonymity but less than a full attribution. This phrase (roughly the equivalent of the talmudic expression א שם לר ירשמעא, but more individualistic) occurs only three times in the *Mekhilta of R. Ishmael* and once in *Sifre Bemidbar*, with one of the other occurrences in the *Mekhilta of R. Ishmael* being a fuller parallel to our passage (#3 in Appendix 1). Not coincidently, it employs one of the thirteen hermeneutical rules (#8) attributed to R. Ishmael (ל אם רנ אום והלומד הלומד ולא לולע על עמותי אשא לא לולע על הלאד חא אשא). Hence, expanding on the previous argument, it concludes: no form of judicial capital punishment overrides the Sabbath.

5. Returning from the semi-attributed aside, and taking up the previously mentioned obligation to bury the unclaimed dead, the *midrash* proposes that such burial does indeed override Sabbath observance, again using a rhetoric of logic: since the Temple service overrides the Sabbath (assumed), and the obligation to bury the unclaimed dead overrides the Temple service (assumed), the obligation to bury the unclaimed dead should override the Sabbath. This rhetorical argument is rejected both because of an internal weakness that renders the analogical argument unsound (Sabbath and Temple service are different in that punishment for murder overrides the latter but not the former), and because of a scriptural proof based on Deut. 21:23: capital punishment and burial must occur on the same day; since the former cannot occur on the Sabbath, neither can the latter.

6. Next, it is stated that although punishment for murder overrides the Temple service (our lemma), the obligation to save a life (simd'a נפש) does not override the Temple service. Once again, a logical argument for the opposite

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¹⁸ Although the conclusion is the same, the logic for reaching it differs among the textual witnesses. Lauterbach, in his edition of the *Mekhilta* (3:38), adopts the text of the better manuscripts. See Appendix 2, row #3.
conclusion is proposed: since punishment for murder does not override the Sabbath (previously established), but saving a life does (assumed); with respect to the Temple service, which punishment for murder does override (our lemma), should not saving a life logically override it as well? The rhetorical argument is rejected by citing and interpreting our lemma: the Temple service may be interrupted only for purposes of capital punishment, but not in order to save a life. We should note that later parallels (for which, see b. Yoma 85a-b) come to the exact opposite conclusion, probably causing corruption to some Mekhilta manuscripts of our passage.

7. Finally, we have an argument attributed to R. Shim'on ben Menasya (a fourth-generation tanna), the only named sage to whom a dicta is ascribed in this whole unit, which is both variously truncated and corrupted in the textual witnesses. My understanding (and very tentative reconstruction) is that what is attributed to R. Shim'on ben Menasya arrives at the same conclusion as the preceding argument, that is, that the saving of a life does not override the Temple service. As Finkelstein notes, our text has been corrupted by confusion with the only other citations of R. Shim'on ben Menasya in the Mekhilta of R. Ishmael, where he provides proof for the saving of a life overriding the Sabbath from Exod. 31:14 (4 and 5 in Appendix 1). Thus, it is highly unlikely that R. Shim'on ben Menasya is here suggesting a rhetorical argument for the saving of a life overriding the Sabbath, in a form that would require it to be rejected (יומא יומא ...איהו). What is attributed to R. Shim'on ben Menasya has been variously truncated precisely because its conclusion is the same as in the previous (unattributed) interpretation, ending with the citation of our lemma (introduced with בות in MS Munich), understood to mean that only the punishment for murder and not the saving

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19 I have placed the words at the end of section 6 of Appendix 1 in square brackets because they are missing in MS Munich and some printings, most likely due to a scribal error of homoioteleuton, but it is found in MS Oxford, a Geniza fragment (Cambridge T-S C 4.7) and MS Oxford of Yalqut Shim'on.

20 See text #6 in Appendix 1, informed by several textual witnesses, for which see Appendix 2, row #8.

21 See in particular MS Oxford of Yalqut Shim'on.

22 This interpretation, attributed to R. Shim'on ben Menasya, appears twice, once in the Mekhilta's commentary to Exod. 31:13 and again in its commentary to Exod. 31:14, suggesting that it was a well established attribution.
of a life overrides the Temple service. R. Shim'on ben Menasya is cited at the end of our unit for a variant on the previous interpretation, offering a different rhetorical argument that comes to the same conclusion, only to be rejected by scriptural citation of the lemma.

Thus, what begins with a verse mandating the removal of a murderer from the altar so as to be executed, becomes a mini-treatise on five intersecting obligations and their various combinations: capital punishment for premeditated murder, Temple service, Sabbath observance, burial of the unclaimed dead, saving of a life. The result of examining the ways in which these might intersect, stripped of all rhetorical argumentation, may be reduced to four rules: 1. Punishment for murder overrides the Temple service. 2. Punishment for murder does not override the Sabbath. 3. Burial of the unclaimed dead does not override the Sabbath. 4. The saving of a life does not override the Temple service. Along the way, the following principles are assumed and hence do not require proof: 1. The Temple service overrides the Sabbath. 2. The burial of the unclaimed dead overrides the Temple service. 3. The saving of a life overrides the Sabbath. Only one insertion and one addition to the set of arguments are marked by attribution, the first to a disciple of Rabbi Ishmael, the second to R. Shim'on ben Menasya. The former serves to expand the rule that capital punishment for premeditated murder does not override the Sabbath to include all forms of judicial capital punishment. The latter provides an alternative form of the preceding rhetorical (and rejected) argument that the saving of a life does not override the Temple service. Almost as a dialectical refrain, in each case a rhetorical argument based on the logic of hierarchical analogies is suggested, only to be rejected, due either to a fault internal to the analogical argument itself, or to a scriptural citation (most commonly our lemma), or, in one case, to a combination of the two.

Lest we forget, since it is nowhere apparent from our text itself, two of the five obligations, though scripturally mandated, were functionally inoperable at the time of the text’s composition and reception (third century CE and thereafter): capital punishment for premeditated murder and the sacrificial conduct of the Temple service. Consequently, three of the five argued rules,

23 Alternatively, but to my mind less likely: R. Shim'on ben Menasya’s statement was originally an actual proof that saving a life overrides the Sabbath (but using a proof that is attributed to R. Akiva, and not R. Shim'on, in the Mekhilta of R. Ishmael, Shabbata 1), but was editorially assimilated to the dialectical rhetoric of our passage.
and two of the three assumed rules, were likewise functionally inoperable, but no less performatively constitutive to the dialectical construction of a rabbinic nemo-narrative world.

5. CONCLUSION

Is there any way to identify either the anonymous voices whose dialogical arguments comprise this sample composite text (or the larger corpus for which it stands), or the anonymous editor(s) who formed it into the rhetorically complex and yet dialectically coherent form before us? Was the text, as we have it, created in stages, progressively perhaps through accretion, whether oral or literary, or all at once by some masterful editor(s) who selected and shaped the disparate midrashic raw materials before him (them), deciding which to transmit anonymously and which with attributions? Desirous as we may be of answers to these questions, I see no simple way to know. Only two names appear in our examined passage: Rabbi Ishmael, but only through the voice of an anonymous disciple, and Rabbi Shim’on ben Menasya, but almost as an afterthought. In one sense, they appear to be interlopers in a text that otherwise seems to glory in its anonymity. Their contributions to the arguments seem, at best, secondary. Yet, more significantly, they serve to remind us (in the middle and at the end) that this is not merely a collective text of legal argument and scriptural interpretation, but a pedagogical medium that rhetorically engaged and formed particular rabbinic sages and their disciples, even while being the sole product or possession of none. If the rhetoric of scriptural citation and explication draw the commentary’s audience into the words and world of divinely revealed Torah law, then the rhetoric of multiple interpretations and successive stages in logical argumentation, with partial attribution, draw them into the humanly constructed world of midrashic Torah teaching. Understanding how the Mekhilta’s dialectical intersection of anonymity and attribution helped to shape the historical practice of late tannaitic/early amoraic Palestinian pedagogy is no less an historical desideratum than being able to isolate anonymity from attribution as inert historical-literary layers of a text that defies such simple and flattening stratification.24

24 My thanks are due to Mark Hirschman, Chaim Milikowsky, and Tzvi Novick for helpful comments on earlier versions of this essay.
APPENDIX 1: HEBREW TEXTS

(1) מכילתא דרבי יוסי莫斯א ממשהו - מס' ד' - דג'י' מפרשה

(2) מכילתא דרבי שמברון בר אחא פרך א - מס' ב' - דג'י' מפרשה

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(3) מכילה את הרבי ישיםיאל יוקלט — המס違うת פורשה א

(4) מכילה את הרבי ישיםיאל כ תושא — המס創新ת פורשה א

(5) מכילה את הרבי ישיםיאל כ תושא — המס創新ת פורשה א

(6) מכילה את הרבי ישיםיאל משמשים — המס创新ת פורשה ד (شعارד)