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The Talmud Yerushalmi and Graeco-Roman Culture

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Priests, Kings, and Patriarchs

Yerushalmi Sanhedrin in its Exegetical and Cultural Settings

by

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1. Introduction

Until very recently, scholarly attention to the Jerusalem Talmud (henceforth, Yerushalmi) has largely focused on mining its text for historical nuggets with which to reconstruct the history of Jewish/rabbinic law, events, and institutions of late antique Palestine. The Yerushalmi's own self-presentation as a commentary to the Mishnah has generally not attracted sustained scholarly attention. That is largely due to the fact that the Yerushalmi itself does not appear to be a sustained commentary to the successive words of the Mishnah, as we might normally expect of a commentary. Rather, its own disjointed discourse, especially in comparison to the more finely edited, and extensively studied, Babylonian Talmud (henceforth, Bavli), has tended to favor a more disjointed scholarly approach to its text as the location in which legal and narrative bits just happen to be embedded.¹

The present study is a modest attempt at taking seriously the Yerushalmi as mishnaic interpretation, by considering one chapter of the Yerushalmi in its relation to the chapter of the Mishnah upon which it presents itself as commentary. That mishnaic chapter (Sanhedrin 2) is itself remarkable for the extent to which it explicitly interprets a fairly self-contained biblical unit: Deuteronomy 14:17–20, the "law of the king." Both the mishnaic exegesis and the Yerushalmi's commentary thereto are furthermore noteworthy in that they deal with an institution (Israelite monarchy), and legal traditions attendant thereupon, that had long ceased to exist by the time both the Mishnah and the Yerushalmi were assembled in their extant forms. Thus, we might rightly ask what rhetorical function their interpretations of the norms of kingship had in a Jewish

¹ The most recent critique of and alternative to this dominant approach has been that of Christine Hayes, *Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Difference in Selected Sugyot from Tractate Avodah Zarah* (New York and Oxford: Oxford University Press, 1997).

world, historically at least, devoid of kings. This study, therefore, hopes to make an even more modest contribution to probing the intersection of hermeneutics, rhetoric (legal and narrative), and history in late antique rabbinic culture, and to argue, implicitly at least, that the three do not simply intersect, but intertwine.

2. Mishnah Sanhedrin 2

In the history of the interpretation of Israelite monarchy, Chapter Two of Mishnah Sanhedrin occupies a striking place for its bold juxtaposition of rules for the conduct of the king to those of the high priest. Following Chapter One of the Mishnah, which sets out the basic framework of the judicial courts, Chapter Two, implicitly at least, serves to situate the two highest offices of pre-rabbinic Israel, high priest and king, within that framework by considering to what extent they fall within or above the judicial system.² However, the structure of Chapter Two itself, which is relatively self-contained and coherent, serves firstly to compare and contrast the high priest and the king *to one another*. It begins with two carefully constructed and fairly parallel lists of ways in which each type of leader falls either within or without several institutions of law and life that obtain for Israel as a whole. Thus, the high priest can both serve as a judge on a court and be judged by the same, whereas the king, neither. Similarly, the high priest can bear witness and be witnessed against, whereas the king, neither. The lists proceed to non-judicial matters: performing or declining levirate marriage and having the same performed for his widow, mourning and being comforted.³ Except in matters expressly forbidden by Scripture, such as marrying a widow (Lev. 21:14), or coming into contact with the dead, the high priest engages in activities that might compromise his honor, while the king does not. Whereas both are to be honored by the people and distinguished from them, the king emerges from these parallel and juxtaposed lists more protected from dishonor and more elevated above the people than is the high priest.

This is not to say that the Mishnah is monological in its statements. Rabbinic countervoices, especially of R. Judah (ben Ilai), recur, seeking to allow the king

² According to *m. Sanh.* 1:5, it is the court of seventy-one that tries the high priest and which must authorize a "war of choice," the two being immediately juxtaposed to one another. Although the king is not mentioned explicitly, it is he who initiates such a war, as is stated in *m. San.* 2:4.

³ The list for the king (2:3) omits mention of his comforting mourners or being comforted himself as a mourner, and moves instead to the providing of a meal of consolation for the king. This omission may mean that unlike the high priest, who participates in the "mourner's row," both to comfort and be comforted, the king participates in neither. This is explicitly stated in *t. Sanh.* 4:2: "An Israelite king does not stand in line to receive comfort nor does he stand in line to give comfort to others."

what is forbidden to him and to forbid the high priest what is allowed to him by the anonymous voice of the Mishnah. Whereas R. Meir would have the high priest follow the bier of a relative, albeit at a distance and not in plain view, as far as the city limit, R. Judah would have him remain in the Temple, citing for support Lev. 21:12.⁴ While the anonymous voice of the Mishnah would prevent the king from submitting to *ḥālīṣā* or from performing levirate marriage, R. Judah would allow him to *elect* to do either, citing David (2 Sam. 12:8) as a positive precedent in this regard. But in conclusion, when the people come to the meal of comfort for a mourning high priest, they sit on the ground while he sits on a bench or stool (*sapsāl*), as befits a mourner, whereas the king under the same circumstances sits on a couch (*dargēs*). Thus, notwithstanding the internal mishnaic dialogue, the net balance is that the king's honor is to be safeguarded more rigorously than that of the high priest.⁵

Mishnah Sanhedrin 2:4 returns to the subject which triggered the Mishnah's treatment of the king, the requirement that he only lead the people into a "war of choice" with permission of the court of seventy-one (1:5), which, as rabbinically conceived, was comprised of sages. This is in sharp contrast to the Temple Scroll, in which the king is required to seek the judgment of the Urim and Thummim from the high priest (following Num. 27:21) before leading the people to war.⁶ But despite the Mishnah's subordination of the king to the court of seventy-one elders in this regard, it goes on to stress the king's absolute powers of eminent domain in cutting roads, and the king's priority in taking his share of the booty first, for which, unlike in the Temple Scroll, no measure is set.⁷

The mishnaic chapter (2:4–5) continues with a series of midrashic interpretations of Deut. 17:15, 16, 17, and 19, *but out of scriptural order*. The midrashic interpretations seek to define the limits to the king's accumulation of wives, horses, and money, and specify that he is to write his *own* Torah scroll and to keep it with him in *all* his stately activities: waging war, sitting in judgment,

⁴ In *t. Sanh.* 4:1 the sages respond to R. Judah by arguing that Lev. 21:12 only applies when the high priest is engaged in the sacrificial service.

⁵ Various efforts have been made either to explain or blunt this contrast, to which I will return below.

⁶ 11QT LVIII 15–21. For discussion see Yigael Yadin, *The Temple Scroll*, 3 vols. and supplement (Jerusalem: Israel Exploration Society, 1983), 1:358; 2:263; Michael O. Wise, *A Critical Study of the Temple Scroll from Qumran Cave 11* (Chicago: The Oriental Institute of the University of Chicago, 1990), 114–117; Lawrence H. Schiffman, "The Laws of War in the Temple Scroll," *Revue de Qumran* 13 (1988): 306–308. I will compare the Temple Scroll's treatment of Deut. 14:17–20 with that of tannaitic literature (Mishnah, Tosephta, and tannaitic midrash) in a separate forthcoming study: "'The Torah of the King' (Deut 17:14–20) in the Temple Scroll and Early Rabbinic Law," in *The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity*, ed. James R. Davila (Leiden: Brill, 2002).

⁷ 11QT LVIII 11–15 also contains a section on war booty, of which the largest part goes to the king. Perhaps significantly, in the Temple Scroll the king's portion is defined (one tenth) and is *given* to him (*wēnāṭēnū mimmenū lammelek*; by whom is not stated), whereas in the Mishnah its quantity is not defined and is *taken* by the king himself (*wēhū' nōṭēl ḥēleq bēro'š*).

and dining.⁸ In particular, the question of the number of the king's wives receives some dialectical debate: is it the number of wives (a maximum being set at eighteen⁹), or their qualities (that they not turn his heart), or the two in combination that defines the limitation?¹⁰

Finally, the Mishnah (2:5) states that no one else is to use the king's symbols of authority (his horse, his throne, or his scepter), and that no one should see him exposed (having his hair cut, naked, or in the bath house). As proof, and in conclusion Deut. 17:15 is cited: "You shall surely establish *over you* ('*ālêkā*) a king," meaning, "that his awe ('*ēmātō*) should be *over you*."¹¹ Clearly, the legal midrash has been presented *out of scriptural order* so as to conclude the mishnaic chapter with Deut. 17:15 and its interpretation, thereby emphasizing, in conclusion, the king's honor and authority.

The two main parts of the chapter, the contrasting lists comparing the king and the high priest and the midrashic interpretations of the scriptural rules for the king, complement one another, even as they encompass different subjects.¹² The intervening section stresses the limitlessness of the king's powers of emi-

⁸ "Scroll of Torah" here must be assumed to be the whole Pentateuch. This is more explicitly stated in *t. Sanh.* 4:7. In the LXX and Philo, Deut. 17:18 is taken to refer only to the book of Deuteronomy, while the Temple Scroll takes the reference to be a Torah of the king's laws in particular. Josephus does not treat the issue directly enough for us to know how he understands the verse. These differences derive from the ambiguity of the Hebrew of Deut. 17:18, *mišnēh hattôrâ hazzōt*, and its Greek translation, *to deuteronomion touto*. Interestingly, the Mishnah does not cite the biblical text of Deut. 17:18, as it does for its other rules here, but exegetically paraphrases it. On the apparent contradiction between the king's sitting in judgment (*yōšēb baddin*) and the rule in 2:2 that he not judge (*lō' dān*), see below, n. 12.

⁹ The reason for the number eighteen is given in the Berlin MS of *Sifre Deut.* 159 as deriving from 2 Sam. 12:8, taken to imply a three-fold multiplication of six wives.

¹⁰ The anonymous voice of the Mishnah sets the maximum number at eighteen. According to R. Judah, so long as the wives do not turn the king's heart, the number does not matter. According to R. Simeon, any wife who turns the king's heart is one too many, but even a righteous wife who does not do so (such as Abigail) should not be taken if she will bring the number to more than eighteen. This dialectic is more fully developed in *Sifre Deut.* 159, which adds (in MSS London and Vatican) that even one wife like Jezebel is one too many. Note that the Mishnah, unlike the Temple Scroll (LVII 16–17; cf. Yadin, *The Temple Scroll*, 1:354–55), is not interested in the wife's lineage. This is stated explicitly in *t. Sanh.* 4:2: "He can choose wives from among whichever group he wishes: priests, Levites, or Israelites."

¹¹ The Tosephta (4:1) applies the *same* rule against public exposure to the high priest, citing Lev. 21:10: "And he who is high priest among his brothers": that his fellow priests should treat him with grandeur." The Tosephta (4:5), however, states in the name of R. Judah: "The whole section (Deut. 17:14–20) was only written to cause the people to revere [the king]," citing Deut. 17:15 for proof. Cf. *b. Soṭah* 416.

¹² There is, however, one point of discordance between them: 2:2 states that the king neither judges nor is judged, whereas 2:4 speaks of his sitting in judgment. Firstly, consistency has never been the hallmark of rabbinic discourse, given its anthropological and dialogical nature. However, in this case it is possible that the first rule refers to the king sitting as a judge on a court, or standing before a court in public, that is, as one among others (see the commentaries of the two talmuds), whereas the second refers to his sitting in judgment alone. For another explanation, which resolves the seeming contradiction by relegating the two

ment domain, even as it subordinates him to the court of seventy-one elders in declaring a war of choice. Thus, the overall, but gradually emerging effect of the chapter, in its dual logics of categorical parataxis and exegetical dialectic, is to stress the honor and authority of the king, in contrast to the initial foil of the high priest.¹³

Before turning to the Yerushalmi's commentary on this mishnaic chapter, it should be noted that several important modern scholars have claimed that its striking privileging of the king in comparison to the high priest, and especially its exempting of the former from participation in the judicial process, represents a response to a *specific* set of historical circumstances during Second Temple times, when, during the rule of corrupt Hasmonean rulers, the honor of the king had to be safe-guarded. Thus, what might appear as an elevation of the office of king in principle is understood instead as a polemic against the behavior of specific kings or kinglike rulers, particularly John Hyrcanus and/or Alexander Jannaeus. These scholars assume that for the mishnaic rules to make historical sense and have legal force, they must derive from a time in which Israelite kings and high priests still functioned, obviously not the case at the time of the composition of the Mishnah as a whole.¹⁴ This rendering of the

rules to different periods of Second Temple times, see below, n. 14. *B. Sanh.* 19a-b suggests that the first rule might have been applied to the kings of Israel while the second to the descendants of David.

¹³ Compare the Babylonian Talmud's opening interpretation of this chapter of the Mishnah (18a): we are only told about the high priest so as to be told about the king. Other mishnaic passages appear similarly to position the king above the high priest in status: *m. Soṭa* 7:8; *t. Hor.* 2:9; but cf. *m. 'Abot.* 4:13. Although priesthood and monarchy are both hereditary, priestly status by pedigree alone, especially when devoid of Torah learning, was particularly prone to rabbinic deprivileging. See, in particular *m. Hor.* 3:8; *p. Shabb.* 12:3 (13c); *p. Hor.* 3:5 (48c). Similarly, the absence of priests as a group in the "chain of tradition" of *m. 'Abot* 1:1, especially in light of the prominent place of the priests as transmitters of Torah in the Hebrew Bible and second temple Jewish literature, has been frequently noted. For discussion of this motif in ancient Judaism more broadly, see Stuart A. Cohen, *The Three Crowns: Structures of Communal Politics in Early Rabbinic Jewry* (Cambridge: Cambridge University Press, 1990); Steven D. Fraade, "Shifting from Priestly to Non-Priestly Legal Authority: A Comparison of the Damascus Document and the Midrash Sifra," *Dead Sea Discoveries* 6 (1999): 109–125; Moshe David Herr, "Continuum in the Chain of Tradition" (Hebrew), *Zion* 44 (1979): 43–56; Martha Himmelfarb, "A Kingdom of Priests": The Democratization of the Priesthood in the Literature of Second Temple Judaism," *The Journal of Jewish Thought and Philosophy* 6 (1997): 89–104; Jeffrey L. Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: The Johns Hopkins University Press, 1999), 176–211 ("Torah, Lineage, and the Academic Hierarchy [Horayot 13b–14a]").

¹⁴ See especially Jacob N. Epstein, *Introduction to Tannaitic Literature* (Hebrew) (Jerusalem/Tel Aviv: Magnes/Dvir, 1957), 55, 417–419, who claims that most of Chapter Two of Mishnah Sanhedrin is "early" (i.e., pre-70 C.E. at least), and dates the beginning of 2:2 ("The king neither judges nor is judged") to the time of Alexander Jannaeus (103–76 B.C.E.) or John Hyrcanus (135–104 B.C.E.), with 2:4 ("When he sits in judgment [the Torah] is with him") being even earlier. Similarly, Chanoch Albeck, (*Sišša sidre mišna*, 6 vols. [Jerusalem/Tel-Aviv: Bialik Institute/Dvir, 1952–56], 4:174), comments that the removal of the king from judging and being judged in *m. Sanh.* 2:2 was a consequence of the last Hasmonean

mishnaic chapter as being historically contingent, traces back to the commentary of the Babylonian Talmud (*Sanh.* 19a):

"The king may neither judge nor be judged," etc. Rav Joseph said: This refers only to the kings of Israel, but the kings of the House of David may judge and be judged, as it is written, "O House of David, thus saith the Lord, execute justice in the morning" (Jer. 21:12); and if they may not be judged, how could they judge ...? But why this prohibition of the kings of Israel? Because of an incident which happened with a slave of King Jannai, who killed a man ... It was there and then enacted: A king [not of the House of David] may neither judge nor be judged; testify, nor be testified against.¹⁵

Interestingly, this claim that the Mishnah must represent a response to the behavior of a specific king (or kings) is strikingly similar to the way in which contemporary scholars have interpreted the Temple Scroll's interpretation of the Deuteronomic "law of the king" (11QT LVI 12 – LIX 21) as a polemical response to John Hyrcanus and/or Alexander Jannaeus.¹⁶ Since the Temple Scroll, in subordinating the king's role and authority to that of the high priest and a priestly council is implicitly critical of the king, it is argued that this must represent a polemical response to the specific excesses of particular kings or kinglike rulers. Thus, although the Mishnah and the Temple Scroll take virtually opposite approaches to the relative statuses of king and high priest, they have both been regarded as historically contingent responses to the same Hasmonean rulers. This is not the place to question the presuppositions about ancient Jewish legal discourse (or legal discourse in general) that underpin these understandings of the Mishnah and Temple Scroll, except to note that they are rhetorically reductive and historically unfounded. Rather, both need to be understood as *exegetical* constructions of the roles of the king and the high

kings not having conducted themselves properly. Compare Gedalyahu Alon (*Jews, Judaism, and the Classical World*, trans. I. Abrahams [Jerusalem: Magnes, 1977], 23), who writes: "Also the Tannaitic regulations appertaining to the law relating to the king were, it seems, framed in the era of the Hasmoneans, whose monarchy they recognized." See also *ibid.*, 4–5.

¹⁵ *B. Sanh.* 19a–b (Soncino translation). For the historical incident, cf. Josephus, *B.J.* 1.208–211; *Ant.* 14.168–179.

¹⁶ M. Delcor, "Le Statut du roi d'après le Rouleau du Temple," *Henoch* 3 (1981): 47–68; Martin Hengel, James H. Charlesworth, and Doron Mendels, "The Polemical Character of the 'On Kingship' in the Temple Scroll: An Attempt at Dating 11Q Temple," *Journal of Jewish Studies* 37 (1986): 28–38; Doron Mendels, "'On Kingship' in the 'Temple Scroll' and the Ideological Vorlage of the Seven Banquets in the 'Letter of Aristeas to Philocrates,'" *Aegyptus* 59 (1979): 127–36; Lawrence H. Schiffman, "The Deuteronomic Paraphrase of the Temple Scroll," *Revue de Qumran* 15 (1992): 543–67; *idem*, "The King, His Guard, and the Royal Council in the Temple Scroll," *Proceedings of the American Academy of Jewish Research* 54 (1987): 237–59; *idem*, "The Laws of War in the Temple Scroll," *Revue de Qumran* 13 (1988): 299–311; M. Sweeney, "Midrashic Perspective in the Torah Ham-Melekh of the Temple Scroll," *Hebrew Studies* 28 (1987): 51–66; Moshe Weinfeld, "Temple Scroll or King's Law" (Hebrew), *Shnaton* 3 (1978/79): 214–37. The most common candidates as the polemical target of the Temple Scroll's laws of the king are John Hyrcanus (135–104 B.C.E.) and Alexander Jannaeus (103–76 B.C.E.), partly because they are also the subjects of criticism in Josephus and rabbinic literature for their having combined the authorities of high priesthood and royalty.

priest within the Israelite "constitution," as each tradition understood it. While both were created in specific cultural-historical contexts, and need to be understood as such, they both need to be understood as well within their broader discursive contexts, in which they continued to address rhetorically their respective audiences beyond the time of their composition.¹⁷

Although the historically contingent understanding of Mishnah Sanhedrin 2 has its roots in the Babylonian Talmud, such an understanding is *not evidenced in any of our ancient Palestinian rabbinic sources*, neither in the Mishnah itself, nor the Tosephta, nor the collections of tannaitic legal midrash, nor the Palestinian Talmud. To the contrary, by viewing the mishnaic rules for the king as being historically *non-contingent*, they are able to extend them to apply to post-monarchic (rabbinic) leadership figures. This development is completely absent from the Bavli's more historically contingent interpretation of the Mishnah. Before turning to the Palestinian Talmud, let me, then, briefly trace the intervening traditions of the Tosephta and the Sifre to Deuteronomy.

3. Tosephta Sanhedrin 4

Tosephta Sanhedrin 4, corresponding to Mishnah Sanhedrin 2, does not take the form of *parallel* lists of rules contrasting the high priest and the king to one another (and the implicit elevation of the honor of the latter over that of the former). Even more remarkably, several rules of the Tosephta directly contradict those of the Mishnah, attributing to the high priest what the Mishnah attributes to the king and vice versa.¹⁸ This suggests that the Tosephta reflects the sort of raw materials from which the mishnaic editor selected, fashioned, and combined traditions to form the relatively well structured and ideologically coherent unit of Mishnah Sanhedrin 2.¹⁹ In one rule, however, the Tosephta

¹⁷ This is not the place to go into the ways in which each is exegetically generated from the multivalent (and ambiguous) scriptural tradition regarding the role of the king within Israel's theocracy. Nor is it the place to elucidate the larger history of Jewish attitudes toward monarchy, Israelite and pagan, in the ancient world. For some recent treatments of the broader topic, see David Goodblatt, *The Monarchic Principle: Studies in Jewish Self-Government in Antiquity* (Tübingen: J.C.B. Mohr, 1994); *The Jewish Political Tradition. Volume I: Authority*, ed. Michael Walzer, et al., chap. 3, "Kings" (New Haven: Yale University Press, 2000), 108–165; Erich S. Gruen, *Heritage and Hellenism: The Reinvention of Jewish Tradition*, chap. 6, "Kings and Jews" (Berkeley: University of California Press, 1998), 189–245.

¹⁸ For rules in the Tosephta which contradict those of the Mishnah, in the direction of raising the status of the high priest or lowering that of the king, see, for example, the following: 4:1: "[The high priest] does not perform *ḥālîṣâ* and others do not perform with respect to his wife ... and [others] do not perform levirate marriage with his wife." 4:2: "If [the king] transgressed any positive commandment or negative commandment or any other commandment, behold he is treated like a commoner in all respects."

¹⁹ For the Tosephtan materials sometimes being prior to the constructions of the Mishnah,

associates the biblical king (*melek*) with the rabbinic patriarch (*nāšī*), an association which is expressed, as we shall see, several times in the Yerushalmi.²⁰ The Tosephta states (4:2–3):

And they do not ride on his [the king's] horse, sit on his throne, and handle his crown or scepter or any of his regalia.²¹ When he dies, all of them are burned for him ('*ālāyw*), as it is said, "You shall die in peace; and as there were burnings for your fathers, the former kings [who preceded you, so they will burn for you]" (Jer. 34:5). And just as they burn for kings, so they burn for the patriarchs, but not for ordinary people. What do they burn for them? Their bed and their regalia.²²

Thus, to insure that the king's regalia are not used after his death, they are burned as part of his funerary rites. This honor, according to the Tosephta, is to be extended, by association, to the patriarchs, but not to common people. This is the sole explicit association, if not identification, of (rabbinic) patriarchs with kings in the Mishnah or Tosefta, one that we will see repeated several times in the Yerushalmi.

see Shamma Friedman, "The Primacy of Tosefta in Mishnah-Tosefta Parallels – *Shabbat* 16,1: קדש כחבי הקדש" (Hebrew), *Tarbiz* 62 (1993): 313–338; translated and expanded as "The Primacy of Tosefta to Mishnah in Synoptic Parallels," in Harry Fox and Tirzah Meacham, eds., *Introducing Tosefta: Textual, Intratextual Studies* (Hoboken, NJ: Ktav, 1999), 99–121; Judith Hauptman, "Mishnah As a Response to 'Tosefta'," in Shaye J. D. Cohen, ed. *The Synoptic Problem in Rabbinic Literature* (Providence, Rhode Island: Brown Judaica Studies), 13–34.

²⁰ The identification of *melek* with *nāšī* is first evidenced in the prophet Ezekiel, who uses the term *nāšī* for the Israelite king in 12:10, 12; 21:30. The terms *melek* and *nāšī* are messianically equated in 34:24; 37:22, 24, 25; 44:3. The word *nāšī* is substituted for *melek* in CD V 1 (in citation of Deut. 17:17). See Alexander Rofé, "Qumran Paraphrases, the Greek Deuteronomy and the Late History of the Biblical מלך," *Textus* 14 (1988): 163–174, who argues that the substitution of *nāšī* for the Massoretic text's *melek* in the LXX's Vorlage reflects an anti-monarchic devaluation of the status of the king in Ezekiel and his successors, including Qumran. Both titles were used for Bar Kokhba. See David Goodblatt, "The Title Nasi' and the Ideological Background of the Second Revolt," in Aharon Oppenheimer and Uriel Rappaport, eds., *The Bar Kochva Revolt: A New Approach* (Jerusalem: Yad Yitzhak ben-Tzvi, 1984), 113–132; Yigael Yadin, Jonas C. Greenfield, Ada Yardeni, and Baruch Levine, eds., *The Documents from the Bar Kokhba Period in the Cave of Letters: Hebrew, Aramaic and Nabatean-Aramaic Papyri* (Jerusalem: Israel Exploration Society, 2002), 369–73. For the equation of *melek* and *nāšī* in the Mishnah, see *Hor.* 2:5; 3:3.

²¹ This is similar to *m. Sanh.* 2:5, with the addition of the words "crown or" and "or any of his regalia."

²² *T. Shabb.* 7:18 (ed. Lieberman, 28) similarly derives this practice from the precedent of king Zedekiah (Jer. 34:5), which does not specify in the Hebrew what is burned, and provides an anecdote from the death of Rabban Gamaliel (II). See also *m. 'Abod. Zar.* 1:3; *b. 'Abod. Zar.* 11a. Compare *Mas. Sem.* 8:6 (ed. Higger, 151), where the practice with respect to patriarchs is discouraged, even though the case of Rabban Gamaliel is acknowledged. See also Saul Lieberman, *Tosefta Ki-Fshutah*, vol. 3 (New York: Jewish Theological Seminary of America, 1962), 100–101. David Goodblatt (*The Monarchic Principle*, 188–89) suggests that the "burning for patriarchs" is a later addition in the Tosephta, coming after the time of Judah the Patriarch (I). See also *ibid.*, 142. *P. Sanh.* 2:6 (20c) and *b. Sanh.* 52b include the rule for burning the regalia of the king, with the proof-text of Jer. 34:5, but without inclusion of the patriarchs.

4. Sifre Deuteronomy 156–162

Since the latter part of Mishnah Sanhedrin 2 takes the form of a legal midrash to Deut. 17:14–20, we should compare it to the legal commentary of Sifre Deuteronomy to the same verses of Scripture. We may present the Sifre to be later than the Mishnah but earlier than the Yerushalmi. In keeping with its form and function as running scriptural commentary, the Sifre is considerably more multivocal and less concise and coherent than is the Mishnah. Nevertheless, it is considerably more concordant than is the Tosephta with the Mishnah's privileging of the king with respect to the priesthood, and stressing the awe and honor with which the king is to be regarded.²³ The Sifre eclipses the role of the priests in the transmission of Torah²⁴ and rabbinizes the king's reading of the Torah, linking it to the rabbinic curriculum of written and oral Torah study.²⁵ In a strikingly terse interpretation, the Sifre comments that while the king is instructed not to lord it over his fellow Israelites (Deut. 17:20), he is *not* so restricted with respect to what has been dedicated to the Temple (which he can, thus, claim for himself): "That his heart not be elevated over his brethren": but not with respect to what is dedicated (*hēqdēš*).²⁶ Most significantly, the Sifre twice establishes an exegetical association, if not identification, between the king and the rabbinically appointed communal administrators (*parnāšīm 'al haṣṣibbūr*): like the former, the latter must be males and pass their position to their sons upon their deaths.²⁷

²³ See *Sifre Deut.* 157 (ed. Finkelstein, 209).

²⁴ *Sifre Deut.* 160 (ed. Finkelstein, 211). The better *Sifre* manuscripts either omit commentary on the words "from before the levitical priests" entirely, or, as in the case of MS Vatican, gloss over them and introduce the court of seventy-one elders in their place. According to that manuscript, the king copies his scroll from one in the Temple Court (that is, in a minimal sense before the priests and Levites), but has it corrected by the court (*bēt dīn*) of seventy-one. Cf. *p. Sanh.* 2:6 (20c). Finkelstein's text depends on MS Berlin and Midrash Hākamim, which may be influenced by *t. Sanh.* 4:7, which says that "they shall correct it in the court of the priests, and in the court of the Levites, and in the court of Israelites suitable to marry into the priesthood." The same tradition as in the Sifre is found in *Tg. Ps.-Jon.* ad loc.: "And the elders write for him ... before the priests of the tribe of Levi." Thus, any active role for the priests is removed and is assumed by the (proto-rabbinic) court of seventy-one. Philo (*Spec.* 4.160) similarly stresses that the king writes the law for himself, without reliance on others. Philo makes no mention at all of the requirement that the king do so *para tōn hierēōn tōn Leuitōn*.

²⁵ *Sifre Deut.* 161 (ed. Finkelstein, 212).

²⁶ *Sifre Deut.* 162 (ed. Finkelstein, 212). See Finkelstein's note ad loc. The exegesis is based on the expression "his brethren" (fellow Israelites) excluding that which belongs to the Temple. Compare, *m. B. Qam.* 4:3, where Exod. 21:35 ("his neighbor") is similarly interpreted with regard to a goring ox. For the king/patriarch having claimed what was due to the priests, see *p. Sanh.* 2:6 (20c–d), treated below.

²⁷ *Sifre Deut.* 157, 162 (ed. Finkelstein, 209, 212–213). For other passages in Sifre Deuteronomy that refer to these rabbinic administrators, see *Sifre Deut.* 357 (ed. Finkelstein, 429), and especially 306 (ed. Finkelstein, 339). For discussion of the latter passage, with additional

5. Yerushalmi Sanhedrin 2

Against this backdrop, I wish to approach the Yerushalmi's commentary to Mishnah Sanhedrin 2 with three questions: (1) Does the Yerushalmi recognize and attend to the Mishnah's overall form and theme of contrasting the statuses of the high priest and the king? (2) Does the Yerushalmi, like the Tosephta and the Sifre, but unlike the Bavli, associate the status of the king with that of rabbinic leadership and appointees? (3) Can we attribute the differences between the Yerushalmi and the Bavli to the Graeco-Roman cultural setting of the former?

As might be expected, given the atomistic nature of the Yerushalmi's mishnaic commentary, it does not respond to the overall structure of the mishnaic chapter as setting up a contrast between the statuses of high priest and king, with relative privileging of the latter. For the most part, the Yerushalmi takes up matters of definition or scriptural interpretation tangential to the Mishnah, with special attention to interpreting scriptural verses about Kings David and Solomon. However, it does display a mild tendency to blunt the mishnaic contrast between the high priest and the king by showing more concern for the honor due the high priest when commenting on the rules for the high priest.²⁸ However, when commenting on the rules for the king, it goes beyond the Mishnah in enunciating the honor due the king and in downplaying the authority of the

bibliography on the *parnās*, see my book, *From Tradition to Commentary: Torah and its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York Press, 1991), 96–99, 245–246 (nn. 115–119). Further evidence for the use of the title *parnās* for one of the top leaders of the Bar Kokhba revolt (if not Bar Kokhba himself), has recently been published: Amos Kloner, "Lead Weights of Bar Kokhba's Administration," *Israel Exploration Journal* 40 (1990): 58–67; idem, in *Eretz Israel* 20 (1989): 345–51. On the hereditary nature of rabbinic appointments, see *b. Giṭ.* 60a, where R. Isaac Nappaḥa (ca. 300 C.E.) states that after a priest and a Levite have been called to the Torah the following order obtains: disciples of sages who have been appointed *parnāsīm* over the public, disciples of sages who are worthy of being appointed *parnāsīm* over the public, disciples of sages whose fathers were appointed *parnāsīm* over the public, heads of the synagogues, and finally, any man. On hereditary rabbinic positions and authority, see Gedalyahu Alon, *Jews, Judaism and the Classical World*, 436–57 (citing our *Sifre* passage on p. 449); Moshe Beer, "The Sons of Moses in Rabbinic Lore," *Bar-Ilan University Yearbook of Judaic Studies and the Humanities* 13 (1976): 149–57 (Hebrew), summarized in idem, "The Hereditary Principle in Jewish Leadership," *Immanuel* 10 (1980): 57–61. On the tension between such inheriting of rabbinic positions of authority and the ideal of the sage as one who merits his position solely on the basis of his learning and deeds, and for an explanation of why this phenomenon developed in Palestine but not Babylonia, see Isaiah Gafni, "'Scepter and Staff': Concerning New Forms of Leadership in the Period of the Talmud in the Land of Israel and Babylonia," (Hebrew) in *Kehuna umeluka: yahase dat umedina beyisra'el uba'amim*, ed. I. Gafni and G. Motzkin (Jerusalem: Zalman Shazar Center, 1986–87), 84–91.

²⁸ See 2:1 (19d); 2:1 (20a); 2:3 (20a). For the text of the Yerushalmi, I have consulted *Synopse zum Talmud Yerushalmi Band IV: Ordnung Neziqin, Ordnung Toharot: Nidda*, ed. Peter Schäfer & Hans-Jürgen Becker (Tübingen: J.C.B. Mohr [Paul Siebeck], 1995), 164–68.

priests.²⁹ Overall, however, the Yerushalmi does not contravene the Mishnah to the extent that the Tosephta does.

The closest the Yerushalmi comes to reflecting the Mishnah's contrast between the high priest and the king is in the parallel ways it comments on the Mishnah's concluding points of comparison between the two: requiring a mourning high priest at a funeral meal to sit on a *sapsāl* (bench or stool) and the people to sit on the ground, while requiring that the mourning king, in the same situation, to sit on a *dargēš* (couch) (*m. Sanh.* 2:1,3). Of the high priest, the Yerushalmi (2:2 [20a]) comments:

From this we learn that a stool (*sapsāl*) is not subject to the law of 'overturning the bed' [in a house of mourning], [since] the High Priest is obligated to 'overturning the bed' [like everyone else].

Of the king, the Yerushalmi (2:4 [20b]) comments:

From this we learn that a couch (*dargēš*) is subject to the law of 'overturning the bed', [but] the king is not obligated to 'overturning the bed'.

In other words, by comparing the two rules, we might assume that since the high priest and the king in mourning sit respectively on a stool and a couch, while everyone else sits on the floor, that their statuses in mourning are identical. But this is not the case: The high priest, who *is* subject to the law of "overturning the bed" *like everyone else*, does not do so with respect to the stool since it is not of the class of "bed," whereas the king, who is *not* subject to the law of "overturning the bed," *unlike everyone else*, can sit on a couch, which is subject to the law of "overturning the bed," being of the class of "bed." The Yerushalmi, therefore, sharpens the mishnaic contrast between the high priest and the king: Even though both, while in mourning, sit above the people, the high priest is subjected to more degradation in mourning than is the king, who even in mourning sits on a couch, as befits his honor.³⁰

Unlike the Bavli, but like the Tosephta and somewhat like the Sifre, the Yerushalmi evidences an awareness that the Mishnah's rules for the king can refer as well to the rabbinic patriarch (*nāṣī?*), and by extension to rabbinic appointees. The Yerushalmi includes two stories involving the patriarch Judah (II) Nesiah (ca. 235–260 CE), neither of which appear in the Bavli. The first follows a discussion of how a high priest who sins is to be tried and punished (2:1 [19d–20a]):

²⁹ See 2:5 (20b); 2:6 (20d). In 2:6 (20c), the copying of a Torah scroll for the king is prepared without any involvement of the priests (cf. Deut. 17:18), but under the authority of the high court of seventy-one. Cf. *Sifre Deut.* 160, discussed above, n. 24.

³⁰ By contrast, the Bavli does not attend at all to the contrast between the mishnaic mourning rules for the high priest and the king. While it has a lengthy discussion of what exactly is a *dargēš* (20a), it does not comment at all on the high priest's sitting on a *sapsāl*.

R. Simeon b. Laqish (Resh Laqish) said, "A *nāšī*? who sins, they administer lashes to him by the decision of a court of three." What [is the law for] restoring him [to office]? R. Haggai said, "By Moses! If we were to return him to office he would kill us!" R. Judah (II) Nesiah heard this and was angered. He sent Goths to arrest Resh Laqish. He [Resh Laqish] fled to a tower, and some say to Kefar Hittayya.

The story continues with R. Yoḥanan arranging a meeting between the patriarch and Resh Laqish, during which the latter justifies his teaching. The story concludes with a citation of 1 Sam. 2:24, to the effect that it is better for leaders to be held accountable for their misdeeds than to let rumors fly among the people. Thus, although the Mishnah exempts the king from the judicial process, Resh Laqish, associating the patriarch with the king, rules that the patriarch should *not* be above the law, to which Judah Nesiah responds angrily.³¹

Even more telling for our purposes, since it explicitly links the biblical king with the rabbinic patriarch, is a similar story of confrontation between a mid-third century teacher and R. Judah (II) Nesiah (2:6 [20c–d]):

Yose of Ma'on expounded in a Tiberian synagogue: "Hear this, priests" (Hos. 5:1) – Why are you not studying Torah? Have you not been given the twenty-four priestly dues? They replied: They have given us nothing. "Pay attention, house of Israel" (ibid.) – Why have you not given the twenty-four priestly dues which you were commanded on Sinai? They replied: The king has taken everything.³² "Give ear, house of the king, for upon you judgment will come" (ibid.) – Was I referring to you when I spoke of "The judgment [i.e. dues] of priests"? (Deut. 18:3). In the future I will judge you, condemn you, and destroy you from the face of the earth. R. Judah (II) Nesiah heard [about this] and became enraged. [Yosi] panicked and fled ...³³

As in the previous story, R. Yoḥanan and R. Simeon b. Laqish arrange for the patriarch to meet with Yose of Ma'on in order to reconcile with him, which the patriarch does by asking Yose to explain Hos. 2:5 ("For their mother has played the whore"). Yose provides several lessons to be learned from this verse, among them, "as is the patriarch, so is the generation," meaning, that the patriarch's

³¹ For discussion, see Martin Jacobs, *Die Institution des jüdischen Patriarchen: Eine quellen- und traditionskritische Studie zur Geschichte der Juden in der Spätantike* (Tübingen: J.C.B. Mohr [Paul Siebeck], 1995), 39–45. For fuller discussion of this story and the next one to be presented, as well as their parallels in rabbinic sources and Graeco-Roman literature, see Moshe D. Herr, "Synagogue and Theatres (Sermons and Satiric Plays)" (Hebrew), in *Knesset Ezra: Literature and Life in the Synagogue. Studies Presented to Ezra Fleischer*, ed. S. Elizur et al. (Jerusalem: Yad Izhak Ben-Zvi, 1994), 105–119. See ibid., 106 n. 11, for other rabbinic sources that connect *nāšī* with *melek*.

³² The parallel in *Gen. Rab.* 80:1 (ed. Theodor-Albeck, 950–53) has, in place of *ōthe* king: "the members of the house of the patriarch." *Sifre Deut.* 162 (ed. Finkelstein, 212) may allow the king/patriarch to take what is dedicated to the Temple. See above, n. 26.

³³ 2:6 (20c–d). Translation is from Lee I. Levine, "The Jewish Patriarch (Nasi) in Third Century Palestine," in *Aufstieg und Niedergang der römischen Welt II.19.2* (Berlin: Walter de Gruyter, 1979), 673. For discussion, see Goodblatt, *The Monarchic Principle*, 138, 142; Jacobs, *Die Institution des jüdischen Patriarchen*, 168–170.

conduct influences that of the people of his time. This story, like the previous one, expresses criticism of the patriarch, here for usurping the priestly dues through a patriarchal tax.³⁴ Yose's interpretation of Hos. 5:1 is predicated on the identification of the biblical "house of the king" with the rabbinic patriarchate. In the context of commenting on Mishnah Sanhedrin 2, this story challenges the Mishnah's placing of the king above the law, even as it links the patriarch's authority to that of the king.

Our chapter of Yerushalmi Sanhedrin contains two other narratives which link the patriarch's status to that of the king, again in relation to R. Judah (II) Nesiah and again absent from the Bavli (2:6 [20c]):

"None may see him when he is naked, or when he is getting a haircut, or when he is in the bath-house."³⁵ This is in line with "Your eyes will see the king in his beauty" (Isa. 33:17).

R. Ḥaninah went up to R. Judah (II) Nesiah. He came out to meet him dressed in a linen undershirt. He [R. Ḥaninah] said to him [R. Judah Nesiah]: Go and put on your woolen garments, in accord with "Your eyes will see the king in his beauty."

R. Yoḥanan went up to R. Judah (II) Nesiah. He came out to meet him dressed in a flax shirt. He [R. Ḥaninah] said to him [R. Judah Nesiah], "Go and put on your wool shirt, in accord with "Your eyes will see the king in his beauty."³⁶

Thus, the patriarch should conduct himself as befits royalty.

In a continuation of this story, another incident is related which speaks of the honor due a rabbinic appointment:

As he was leaving [R. Judah Nesiah], he [R. Yoḥanan] saw R. Ḥaninah bar Sisi chopping wood. He said to him, "Rabbi, this is not [in keeping with] your honor." He said him, "What can I do, I have no one to serve me?" He said to him, "If you have no one to serve you, you should not accept an appointment [to a court]."

This incident is brought in relation to the expectation that the patriarch dress in a manner befitting his station, which is derived from a proof-text about the king needing to be seen in a manner becoming his honor, which is brought in relation to the Mishnah's requirement that the king not be viewed in contexts that would compromise his honor and status. Thus, the honor due the king is extended not only to the rabbinic patriarch but to patriarchal judicial appointments, as we

³⁴ For a discussion of the evidence for patriarchal taxation, see Goodblatt, *The Monarchic Principle*, 136–141. Cf. *Sifre Deut.* 162 (ed. Finkelstein, 212), discussed above. See also Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tübingen: J.C.B. Mohr, 1997), 487–88.

³⁵ *M. Sanh.* 2:5. The order in the printed versions of the Mishnah, following the Bavli, has "getting a haircut" before "naked."

³⁶ For discussion, see Goodblatt, *The Monarchic Principle*, 142; Jacobs, *Die Institution des jüdischen Patriarchen*, 51–52. For other uses of Isa. 33:17 with respect to the conduct of the king, see *p. Yoma* 8:1 (44d) (the king can wash his face on Yom Kippur); *b. Sanh.* 22b (the king has his hair trimmed every day).

saw was the case for the *parnās 'al haṣṣibbār* in the Sifre's commentary to the law of the king.³⁷

Finally, the Yerushalmi concludes, and perhaps summarized, its commentary to Mishnah Sanhedrin 2 with the following story (2:6 [20d]):

R. Hizqiyah was walking along the way in the market.³⁸ A Samaritan met him. He said to him, "Rabbi, are you the rabbi of the Jews?" He said to him, "Yes." He said to him, "Look what is written, 'You shall surely set a king over you' (Deut. 17:15). 'I will set' is not written, but 'You shall set, for you [yourself] will appoint over you.'"

I assume that R. Hizqiyah here is the sage by that name who was the head of the academy at Caesaria, ca. 350.³⁹ The exegesis of Deut. 17:15 stresses that Moses instructed Israel to appoint their king, but by extension patriarchs and other rabbinic appointments, by human authority, rather than requiring divine (or prophetic) ordination. Once again, rabbinic authority is justified in terms of biblical kingship. However, this exegesis conveniently ignores the verse's continuation: "one chosen by the Lord your God."⁴⁰ Perhaps, like Philo (*Spec.* 4.157), the exegesis takes the word order of Deut. 17:1 to mean that Israel's "election" of a king (or patriarch) is ratified by God.

6. Conclusions

Given the non-systematic nature of the Yerushalmi's commentary on the Mishnah, it should not be surprising that it does not interpret the Mishnah in a consistent manner. The tightly structured and relatively coherent mishnaic comparison between the high priest and the king, with a privileging of the latter, does not produce its clear reflection in the Yerushalmi. However, when compared to the Tosephta, Sifre Deuteronomy, and especially the considerably longer Bavli to the same mishnaic chapter, the Yerushalmi is striking for the degree to which it extends the rules for the king, and especially considerations for his honor, to the rabbinic patriarch as well as to rabbinic judicial and academic appointments. Like the Mishnah, but even more so, the Yerushalmi contains rabbinic countervoices, like that of R. Judah in the Mishnah, which seek to level the differences between the honors bestowed upon the high priest and the king. But unlike the Mishnah (or the Tosephta and Sifre) it contains rabbinic rebukes of the authoritative claims of the patriarch, especially with

³⁷ For a fuller discussion of evidence for the patriarchal authority to make judicial and other appointments, see Goodblatt, *The Monarchic Principle*, 133–136.

³⁸ "Market" is found in MS Leiden, but not the printed editions.

³⁹ See Bacher, *Die Agada der palästinensischen Amoraer* (3 vols.; Strasbourg, 1892–1905; repr. Hildesheim, 1965), 3:690f.

⁴⁰ Cf. *Sifre Deut.* 157 (ed. Finkelstein, 208), which interprets the latter part of Deut. 17:1, "one chosen by the Lord your God," to mean, "by a prophet."

respect to his being above the judicial system, to his having usurped the priestly dues through taxation, and to the authority of patriarchal appointments.

The tendencies of the Yerushalmi in these dual directions of patriarchal voice and rabbinic countervoices can be traced exegetically back to the Mishnah itself, and beyond that back to Scripture's ambivalence with respect to the king's place in an ideally theocratic (or, literally, hierarchic) Israelite society. In other words, patriarchal authority is both exegetically justified from Scripture and exegetically resisted by Scripture, with that scriptural ambiguity having a lineage as antique as Israelite monarchy itself. But to the degree that these dual tendencies differentiate the Yerushalmi from the Bavli (and represent an intensification of their nascent figuration in the Tosephta and the Sifre), and to the extent that they cannot be explained by considerations of exegesis or genre alone, we may assume that the Yerushalmi reflects as well the ongoing conflict between patriarchal authority and rabbinic resistance to it in third and fourth century Palestine. This conflict appears to have centered on patriarchal claims to monarchic status and authority in general, and to Davidic descent in particular (the latter not figuring explicitly in the texts that we have examined).⁴¹

Coming around to the theme of this volume, might there be yet another factor at play in the Yerushalmi, that would explain its difference from the Bavli, namely influence by the widespread Graeco-Roman literary genre of *peri basileias*? Within the broader philosophical discussion of what constitutes the best form of government, this literature focuses on the characteristics of the ideal king and how he ought best to rule, as well as the shortcomings and excesses of monarchic government. Among ancient Jews, the influence of this genre can be readily seen, as might be expected, in the writings of Philo of Alexandria, the Letter of Aristeas, and Flavius Josephus, all considerably earlier than the rabbinic sources we have surveyed.⁴²

Philo's most sustained treatment of this theme is found in his paraphrastic commentary to Deut. 17:14–20, in *Spec.* 4.157–169, in the context of treating exemplifications of the cardinal virtue of justice.⁴³ Those parts of the Deuteronomistic passage that criticize or limit the excesses of the king are allegorized away by Philo, leaving a wholly positive idealization and universalization of the Israelite king: the king is of the people, chosen by them, sensitive to their needs, never taking advantage of them, ruling not by scepter but by the divine laws of scripture, in "the spirit of equality" (*isotēs*) toward his subjects.⁴⁴ The

⁴¹ For the relevant sources, rabbinic as well as patristic, for patriarchal claims of Davidic descent, see Goodblatt, *The Monarchic Principle*, 146–169.

⁴² For recent discussion, in relation to Jewish monarchy of the Hellenistic period, see Doron Mendels, *The Rise and Fall of Jewish Nationalism*, Anchor Bible Reference Library (New York: Doubleday, 1992), 55–79, 209–242; Gruen, *Heritage and Hellenism*, 189–245.

⁴³ See also *Dec.* 40–43; *Agr.* 84–89.

⁴⁴ Cf. Deut. 17:20a: "that his heart not be lifted up above his brethren."

Israelite king, as Philo constructs him from the Torah, is the ideal model for all kings.⁴⁵

Philo's idealization and universalization of the king shares much with the *Epistle of Aristaeus* 187–294, wherein the Egyptian king's questioning of the seventy-two Jewish elders from Jerusalem during seven banquets centers largely on the question of the essence of kingship, and the best way for a king to rule. In conclusion, the Egyptian king says to the Jewish elders (294): "I have profited much by the wise teaching which you have given me in reference to the art of ruling."⁴⁶

While Josephus's treatment of the "law of the king," like Philo's, needs to be viewed in the context of the Hellenistic discourse of *peri basileias*, he comes to a very different assessment of the Israelite monarchy. For Josephus (himself a priest⁴⁷), aristocracy, and in particular priestly aristocracy, is the best form of government, especially when compared to monarchy. The laws of Deut. 17:14–20 represent to Josephus not the ideal but its compromise. If the people will not embrace a priestly aristocracy, let them at least have a king who submits to the authority of the divine laws under the direction of a high priest and an aristocratic *gerousia*.⁴⁸ Even though Josephus remarks positively on the earlier Has-

⁴⁵ Philo takes exegetical advantage of the Greek translation (LXX), which in place of Hebrew *raq* ("only") has Greek *dioti* ("because") at the beginning of Deut. 17:16. This allows Philo to treat all of vv. 16 and 17 not as restrictions on, and implicitly criticisms of, Israelite kings, but as reasons for not choosing a non-Israelite king. With respect to Philo's claim that the Israelite king represents the universal ideal, compare Diodorus Siculus 1.70–72 (from Hecataeus of Abdera's *Aegyptiaca*), who says that the Egyptian kings were unlike all other autocrats in that "all their acts were regulated by prescriptions set forth in laws." Cf. Anne Burton, *Diodorus Siculus, Book I: A Commentary* (Leiden: Brill, 1972), ad loc.

⁴⁶ Note in particular, 187–189, 211–212, 222, 265, 288. On the *Epistle of Aristaeus* in general, see Emil Schürer, *The History of the Jewish People in the Age of Jesus Christ*, rev. ed. Geza Vermes, et al., 3.1 (Edinburgh: J. & J. Clark, 1987), 677–687. On its treatment of kingship as an expression of Hellenistic political philosophy, see T. A. Sinclair, *A History of Greek Political Thought*, 2nd ed. (Cleveland: World Publishing, 1968), 289–293.

⁴⁷ For Josephus's priestly and Hasmonean lineage, see *Vita* 1–9, 198; *B.J.* 1.3; 3.352; *Ant.* 16.187; *C. Ap.* 1.54.

⁴⁸ Josephus's emphasis on the king's submission to the priests in matters of law is consistent with his often expressed view that it is the priests who are the authoritative transmitters and teachers of the Torah. See *C. Ap.* 1.29–30; 2.184–88; 2.194; *Ant.* 2.417; 4.209; 4.224; 4.304; 8.395; *Vita* 9. For Josephus's retelling of biblical narratives so as to introduce or emphasize the priests' governing role, see Harold W. Attridge, *The Interpretation of Biblical History in the Antiquitates Judaicae of Flavius Josephus* (Missoula, Montana: Scholars Press, 1976), 176–77. Compare the famous statement by Hecataeus of Abdera (ca. 300 B.C.E.), *apud* Diodorus Siculus 40, in Menahem Stern, ed., *Greek and Latin Authors on Jews and Judaism*, vol. 1 (Jerusalem: The Israel Academy of Sciences and Humanities, 1976), 26–28, with Stern's notes on p. 31. It is unclear from where Josephus derives the *gerousia*. Compare *Ant.* 4.218, interpreting Deut. 17:9, where Scripture's "to the levitical priests and to the judge," becomes in Josephus: "the high priest, the prophet, and the council of elders (*gerousia*)."

monians and on Agrippa I,⁴⁹ his overall conception of the Jewish constitution is to favor priestly aristocratic rule and to work this idea into his narration of Jewish history from the time of Moses to the destruction of the Second Temple.⁵⁰ Josephus understands monarchic rule to have been an aberration whose consequences under the later Hasmoneans and their successors proved the wisdom of Israel's aristocratic constitution. After comparing different types of government (monarchy, oligarchy, democracy),⁵¹ Josephus states in *Contra Apionem* (2.165 [LCL 1:358–59]):

Our lawgiver, however, was attracted by none of these forms of polity, but gave to his constitution the form of what – if forced expression be permitted – may be termed a "theocracy," placing all sovereignty and authority in the hands of God.

Later (*C. Ap.* 2.186 [LCL 2:366–67]) he says of the superiority of Israel's constitution:

Could there be a finer or more equitable polity than one which sets God at the head of the universe, which assigns the administration of its highest affairs to the whole body of priests, and entrusts to the supreme high-priest the direction of the other priests?⁵²

By contrast, I have been unable with any certainty to detect within the rabbinic sources herein surveyed, especially Yerushalmi Sanhedrin 2, cultural residues

⁴⁹ On the Hasmoneans Josephus says with hindsight, in large measure in comparison to their Herodian successors: "Theirs was a splendid and renowned house because of both their lineage and their priestly office, as well as the things which its founders achieved on behalf of the nation. But they lost their royal power through internal strife, and it passed to Herod, the son of Antipater, who came from a house of common people and from a private family that was subject to the kings" (*Ant.* 14.490–91). Cf. *Ant.* 14.78. For Josephus's praise of Agrippa I, see *Ant.* 19.328–31, where he stresses the latter's generosity to Jews and non-Jews, his popularity, gentleness, residing constantly in Jerusalem, and that he "scrupulously observed the traditions of his people" (LCL 9:368–69).

⁵⁰ See the following: *B. J.* 1.169–170; *Ant.* 5.233–34; 6.35–43; 6.83–85; 8.131; 11.111–112; 14.41; 14.490–91; 20.229, 251; *C. Ap.* 2.164–65; 2.185–8, 193–95. Note, in particular, how Josephus projects his own view onto Samuel at the time of the people's request for a king. Whereas Scripture (1 Sam. 8:6) says, "But the thing displeased Samuel . . . And Samuel prayed to the Lord," Josephus writes: "These words sorely grieved Samuel by reason of his innate righteousness and his hatred of kings; for he was keenly enamored of aristocratic government, accounting it divine and productive of bliss to those who adopted it. So, from the anxiety and the torment which these speeches caused him, he had no thought for food or sleep, but passed the whole night turning over these matters in his mind" (*Ant.* 6.36–37 [LCL 5:184–85]).

⁵¹ Compare Herodotus 3.80–83. Josephus makes a similar survey and comparison in *C. Ap.* 2.164–165.

⁵² Compare Hecataeus of Abdera (above, n. 48), who states that "the Jews never have a king, and authority over the people is regularly vested in whichever priest is regarded as superior to his colleagues in wisdom and virtue. They call this man the high priest, and believe that he acts as a messenger to them of God's commandments." Josephus's language is so close to that of Hecataeus of Abdera that some scholars regard Josephus as being dependent on Hecataeus. But note the strong argument of David Goodblatt (*The Monarchic Principle*, 34) for their statements as being independent, and hence confirming, testimonies.

of the Graeco-Roman discourse of *peri basileias*. The Mishnah's implicit comparisons of priest to king is not taken up, except most indirectly, in the Yerushalmi's commentary. Nor does the Yerushalmi, in contrast to Philo, Josephus, and the Letter of Aristaeas, derive from the Mishnah or its underlying Deuteronomistic verses any idealizing or universalizing aspects of monarchy. Rather, the cultural context of the Yerushalmi's commentary is better located *intramurally* in efforts by the patriarchate to claim for itself, and by extension its rabbinic appointments, monarchic authority and honor, as well as intrarabbinic resistance to such claims. Looked at exegetically, however, Yerushalmi Sanhedrin 2, in its repeated association of the rules of Mishnah Sanhedrin 2 with the patriarchate, its appointments, and rabbinic criticism thereof, suggests perhaps that the *earliest* rabbinic text to make the argument for the Gamalielian patriarchate as, in David Goodblatt's terms, a "lay monarchy" is the Mishnah itself. Does the Yerushalmi simply make explicit what is already implicit within the Mishnah: that the privileging of the king with respect to the high priest (and the people), and the emphasis on the honor due him, is none other than a veiled privileging of the patriarchate, while the inner-mishnaic countervoices disclose rabbinic resistance to it?

Finally, there remain two extramural contexts that need to be considered, but not in the present setting: Might the Mishnah, with its privileging of the king over the high priest, be an argument against contemporary priestly circles that surely would have also resisted patriarchal claims to supreme authority?⁵³ Might the Yerushalmi, with its explicit identification of the patriarch with the king, be responding to Christian claims, datable at least to Origin (ca. 220–230 CE), that "from the time of Jesus there were no longer any who were called kings of the Jews."⁵⁴

⁵³ It is simplistic to assume that no sooner than the Temple was destroyed, the priesthood lost all its scripturally based and traditionally confirmed prerogatives and influence. Although the Temple with its sacrificial worship was the center of priestly authority and influence, the priests could claim leadership roles and legal authority independent of and outside the Temple. For further discussion and bibliography, see Fraade, *From Tradition to Commentary*, 73, 232 n. 20. More recently, see Seth Schwartz, *Josephus and Judean Politics* (Leiden: E. J. Brill, 1990) 58–109; Goodblatt, *The Monarchic Principle*, 176–231; Stuart A. Cohen, *The Three Crowns: Structures of Communal Politics in Early Rabbinic Jewry* (Cambridge: Cambridge University Press, 1990), 158–63; Geoffrey Herman, "Priests and Amoraic Leadership in Sassanian Babylonia," *Proceedings of the Twelfth World Congress of Jewish Studies, Jerusalem, July 29 – August 5, 1997. Division B: History of the Jewish People* (Jerusalem: World Union of Jewish Studies, 2000), 59*–68*; idem, "Jewish Priests in Babylonia in the Talmudic Period" (Hebrew), Master's thesis, Hebrew University of Jerusalem, 1998.

⁵⁴ Origen, *On First Principles* 4.1.3. Translation of F. Crombie in A. Roberts and J. Donaldson, eds., *The Anti-Nicene Fathers*, vol. 4 (Reprint, Grand Rapids, 1956), 351. See PG XI, cols. 81–84. For discussion see Goodblatt, *The Monarchic Principle*, 170.

In conclusion, while previous scholars have mined the Yerushalmi for historical nuggets with which to reconstruct the history of the patriarchate, I have approached the Yerushalmi first and foremost in its form and function as mishnaic commentary, set against the backdrop of the paramishnaic Palestinian texts of the Tosephta and the Sifre, and in contrast to the commentary of the Bavli. So viewed, the Yerushalmi not only gives rhetorical voice to third and fourth century patriarchal claims to monarchic authority and rabbinic resistance thereto, but enables us to locate the rhetorical "origins" of those voices within the Mishnah itself. Whether there are yet broader Graeco-Roman and Christian cultural contexts within or against which to locate the Yerushalmi's discourse, remains to be seen.