III

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 Segot 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. 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. 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 countervoces, especially of R. Judah (ben Ilai), recur, seeking to allow the king

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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 in the sacrificial service.

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


7 11QLVIII 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 (wēnēḥēn mīmēḥn lanmelekh, by whom is not stated), whereas in the Mishnah its quantity is not defined and is taken by the king himself (wēnēḥ mōfēl bēleq bērōn).
and dining. 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 eighteen), or their qualities (that they not turn his heart), or the two in combination that defines the limitation? 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 (‘adéká) a king,” meaning, “that his awe (‘émató) should be over you.” 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. The intervening section stresses the limitations of the king’s powers of

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10 “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 life 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, mišnéh hattÔrâ hażzÔrâ, 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 (yôkél baddôn) and the rule in 2:2 that he not judge (ôdôn dân), see below, n. 12.

11 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 threefold multiplication of six wives.

12 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. Yad, 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.’

13 The Tospeha (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 Tospeha (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. Sošaf 416.

14 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 analogical and historical 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

15nent 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. 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 Hyarcanus 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. 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. 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. Soâta 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 deprecating. See, in particular m. Hor. 3:8; p. Shabb. 12:3 (13b); 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 Cob Mutual 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 King in the Jerusalem Synagogue” (Hebrew), The Journal of Jewish Thought and Philosophy 6 (1997): 89–104; Jeffrey L. Rubenstein, Talmudic Studies: Narrative Art, Composition, and Culture (Baltimore: The Johns Hopkins University Press, 1999), 176–211 (“Torah, Lineage, and the Academic Hierarchy” [Hebrew], Jerusalem/Tel Aviv: Magnes/Dvir, 1955, 57, 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, Sîšâk sidre milâna, 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 had happened with a slave of King Manasseh, 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.

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 Deuteronomistic “law of the king” (11Q T. LVI 12 – LIX 21) as a polemical response to John Hyrcanus and/or Alexander Jannaeus. 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 Tanaitic regulations appertaining to the law relating to the king were, it seems, framed in the era of the Hasmonaeans, whose monarchy they recognized.” See also ibid., 4-5.


3. Josepha Sanhedrin

Josepha 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 Josepha directly contradict those of the Mishnah, attributing to the high priest what the Mishnah attributes to the king and vice versa. This suggests that the Josepha 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.

In one rule, however, the Josepha

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 1: Authority, ed. Michael Walzer, et al., chap. 3, “Kings” (New Haven: Yale University Press, 2000), 108–163; 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 Josepha 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 ḥālāʾ and others do not perform with his wife” 4:2: “If the king transgressed any positive commandment or negative commandment, behold he is treated like a commoner in all respects.”

19 For the Josephian materials sometimes being prior to the constructions of the Mishnah,
associates the biblical king (melek) with the rabbincic patriarch (nāḥal), an association which is expressed, as we shall see, several times in the Yerushalmi. The Tosefta 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. 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.

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 Tosefta, is to be extended, by association, to the patriarchs, but not to common people. This is the sole explicit association, if not identification, of (rabbincic) patriarchs with kings in the Mishnah or Tosefta, one that we will see repeated several times in the Yerushalmi.


This is similar to m. Sanh. 2:3, with the addition of the words “crown or” and “or any of his regalia.”

21 T. Shabb. 7:18 (ed. Lieberman, 28) similarly derives this practice from the precedent of king Zedekiah (Jer. 3:45), 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. Zav. 1:3; b. ‘Abod. Zav. 11a. Compare Mas. Sanh. 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-Fshuthah, 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 Tosefta, 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 prooftext of Jer. 34:5, but without inclusion of the patriarchs.

23 Sifre Deut. 160 (ed. Finkelstein, 211). The better Sifre manuscripts 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 (בַּדוֹת) of seventy-one. Cf. p. Sanh. 2:6 (20c). Finkelstein’s text depends on MS Berlin and Midrash Hakhamim, 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 tòn hieroßen tôn Leutôn.
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 going 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 rabbincic 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. 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

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

30 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 sapsal (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 darges (couch) (m. Sanh 2:13). Of the high priest, the Yerushalmi (2:2 [20a]) comments:

From this we learn that a stool (sapsal) 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 (darges) 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.

31 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 (nasi), 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]):
R. Simeon b. Lakish (Resh Lakish) said, "A nāḥīl 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) Neshiah heard this and was angered. He sent Goths to arrest Resh Lakish. He [Resh Lakish] fled to a tower, and some say to Kefar Hitayya.

The story continues with R. Yohanan arranging a meeting between the patriarch and Resh Lakish, 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 Lakish, associating the patriarch with the king, rules that the patriarch should not be above the law, to which Judah Neshiah 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) Neshiah (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) Neshiah heard [about this] and became enraged. [Yosi] panicked and fled ... 33

As in the previous story, R. Yohanan and R. Simeon b. Lakish 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 her 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 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) Neshiah and again absent from the Bavli (2:6 [20c–d]):

“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. Hananah went up to R. Judah (II) Neshiah. He came out to meet him dressed in a linen undershirt. He [R. Hananah] said to him [R. Judah Neshiah]: Go and put on your woolen garments, in accord with “Your eyes will see the king in his beauty.” R. Yohanan went up to R. Judah (II) Neshiah. He came out to meet him dressed in a flax shirt. He [R. Hananah] said to him [R. Judah Neshiah], “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 Neshiah], he [R. Yohanan] saw R. Hananah 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 prooftext 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

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 (Sermonts and Satiric Plays)” (Hebrew), in Knesset Ezra: Literature and Life in the Synagogue. Studies Presented to Ezra Fleischner; ed. S. Elitzur et al. (Jerusalem: Yad Izhak Ben-Zvi, 1994), 105–119. See ibid., 106 n. 11, for other rabbinic sources that connect nāḥīl with melekh.

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


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 *parnēs ‘al hašṣibbār* in the Sife’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. Hizqiyyah 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. Hizqiyyah here is the sage by that name who was the head of the academy at Caesarea, 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, Sife 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 Sife) it contains rabbinic rebukes of the authoritative claims of the patriarch, especially with 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 countervoice can be traced exegetically back to the Mishnah itself, and beyond that 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 Sife), 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 monarchical 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 monarchical 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 that 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 Deuteronomic 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” (isōtēs) toward his subjects. 44 The

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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.


40 Cf. Sife 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.”

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


43 See also Dec. 40–43; Agg. 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.\textsuperscript{45} Philo’s idealization and universalization of the king shares much with the *Epistle of Aristeas* 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.”\textsuperscript{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 priest\textsuperscript{47}), 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*.\textsuperscript{48} Even though Josephus remarks positively on the earlier Has-

\textsuperscript{45} Philo takes exegetical advantage of the Greek translation (LXX), which in place of Hebrew *ray* (“only”) has Greek *dioi* (“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 *Aegyptica*), who says that the Egyptian kings were unlike all other autocrats in that “all their arts were regulated by prescriptions set forth in laws.” Cf. Anne Burton, *Diodorus Siculus, Book I: A Commentary* (Leiden: Brill, 1972), ad loc.


\textsuperscript{47} For Josephus’s priestly and Hasmonaean lineage, see *Vita* 1–9, 198; *B.J.* 1.3:3;352; *Ant.* 16:187; *C. Ap.* 1.54.

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), 36–38, 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*).”\textsuperscript{50}

\textsuperscript{49} On the Hasmonaean 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, 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 *Aegyptica*), who says that the Egyptian kings were unlike all other autocrats in that “all their arts were regulated by prescriptions set forth in laws.” Cf. Anne Burton, *Diodorus Siculus, Book I: A Commentary* (Leiden: Brill, 1972), ad loc.

\textsuperscript{50} See the following: *B. J.* 1.169–170; *Ant.* 5.233–34; 6.3–43; 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]).


\textsuperscript{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 whomever 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 Monarchical Principle*, 34) for their statements as being independent, and hence confirming, testimonies.
of the Graeco-Roman discourse of *peri basilieas*. 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 Aristeas, derive from the Mishnah or its underlying Deuteronomic verses any idealizing or universalizing aspects of monarchy. Rather, the cultural context of the Yerushalmi's commentary is better located intra-murally in efforts by the patriarchy to claim for itself, and by extension its rabbinic appointments, monarchical 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 patriarchy, its appointments, and rabbinic criticism thereof, suggests perhaps that the *earliest* rabbinic text to make the argument for the Gamalielian patriarchy is, 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 countervoes 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? 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."  

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