

In The Idea of Biblical Interpretation: Essays in Honor of  
James L. Kugel, ed. Hindy Najman and Judith H. Newman,  
pp. 399-422. Supplements to the Journal for the Study of  
Judaism, 83. Leiden: Brill, 2004.

MOSES AND THE COMMANDMENTS:  
CAN HERMENEUTICS, HISTORY, AND RHETORIC  
BE DISENTANGLED?

STEVEN D. FRAADE

I. THE BOOK OF MOSES

What precisely was the nature and extent of Moses' intermediary role in the transmission of the divine commandments to Israel at Mt. Sinai and thereafter, and in the creation of the written record (Torah) of that communication? This question has perplexed biblical interpreters from Scripture's very origins until the present.<sup>1</sup> The account of the revelation at Mt. Sinai is famously ambiguous as to which commandments were directly communicated to the Israelites by God, and which only via Moses at God's instruction, either then or subsequently in the Tent of Meeting.<sup>2</sup> From the perspective of

<sup>1</sup> I have dealt previously with rabbinic understandings of revelation, including its mediated nature, in the following publications: *From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York Press, 1991), 25-68; "Rabbinic Views on the Practice of Targum, and Multilingualism in the Jewish Galilee of the Third-Sixth Centuries," in *The Galilee in Late Antiquity* (ed. L. I. Levine; New York: The Jewish Theological Seminary of America, 1992), 253-86; "The Kisses of His Mouth: Intimacy and Intermediacy as Performative Aspects of a Midrash Commentary," in *Textual Reasonings: Jewish Philosophy and Text Study at the End of the Twentieth Century* (ed. P. Ochs and N. Levine; London: SCM, 2002), 52-56.

<sup>2</sup> For example, does the change from first to third person speech with respect to God after Exod 20:6 (that is, following the second commandment by Jewish reckoning) denote a change in the speaker from God to Moses? What is the relation of what was communicated to Moses during his first forty-day sojourn on Mt. Sinai (Exod 24:3-18; before the incident of the Golden Calf) to that which was communicated to him during his second forty-day sojourn on Mt. Sinai (34:27-28; after the Golden Calf)? The Book of Deuteronomy assumes that only the Decalogue was delivered to the people at Sinai, the rest having been conveyed to Moses at Sinai but not delivered by him to the people until they reached the land of Moab and prepared to enter the promised land. See Deut 5:19, 28; 6:1; 10:4. This is in contrast to Exod 24:3-8; 35:1, 4; Lev 7:38; 25:1; 26:46; 27:34. According to the Book of Numbers (26:3; 33:50; 35:1; 36:13) the instructions for a census, dividing the land, conquest of the land, and designation of the Levitical cities of refuge were not communicated until the covenant at Moab. For continuing revelation after Sinai,

biblical tradition, to what extent was Moses' intermediary role required from the beginning by the impossibility of an ongoing direct encounter between God and ordinary humans, or only as a concession to the people's fear of engaging the divine presence directly?<sup>3</sup> To what extent did Moses record the divine commandments immediately, as if by divine dictation, or only subsequently from his memory and/or in his own words?<sup>4</sup> To what extent is the book that comes to be called the Torah (Pentateuch) the direct product of the divine revelation at Mt. Sinai or the cumulative record of Moses' ongoing intermediary activity up to (or even beyond) his death?<sup>5</sup> Put differently, when biblical writers refer to Moses' having commanded the people, is that simply shorthand for God's having commanded the people through Moses?<sup>6</sup> Or, when later the biblical writers speak of the Torah as the "Torah of Moses," or the "Book of Moses," or the "Book of the Torah of Moses," in what sense is he assumed to have been its "author," and if he is not, what degree of editorial and/or transmissional credit is he being given?<sup>7</sup> In sum, was Moses' media-

as interpreted in rabbinic literature, the following is still useful for its collection of sources: Bernard J. Bamberger, "Revelations of Torah after Sinai," *HUCA* 16 (1941): 97-113.

<sup>3</sup> See Exod 3:6; 19:21; 20:15-18 (18-21); 33:18-20; Deut 5:5, 20-24.

<sup>4</sup> As the "author" of the Temple Scroll is well aware (and seeks to rectify), the Book of Deuteronomy is particularly problematic in this regard, since it presents itself narratively as Moses' own retelling of what previously transpired and was previously divinely commanded (in the preceding three books of the Pentateuch), even where Deuteronomic commandments are previously absent or different. Hence, the Temple Scroll's transformation of Moses' third person references to God's commandments into God's own first person commanding voice can be understood as a way of asserting that Moses spoke the word of God. See Moshe Weinfeld, "God versus Moses in the Temple Scroll," *RevQ* 15 (1991): 175-80. See below, n. 27.

<sup>5</sup> What does it mean (Deut 31:24) that Moses wrote "the words of this Torah on a scroll to their very end" if the last eight verses of Deuteronomy follow his death? The problem of the "authorship" of these final eight verses of Torah following Moses' death is acknowledged by *Sifre Deut.* 357 (Finkelstein ed., 427-28); *b. B. Mešia* 15a (*baraita*); *b. Menah.* 30a (*baraita*); where several solutions are proposed. Cf. Philo, *Mos.* 2.291. Note also the talmudic discussion (*b. Gū.* 60a, with Rashi) of whether Moses wrote the Torah "scroll by scroll" in chronological progression, or all at once shortly before his death.

<sup>6</sup> For the former, see Exod 16:24; Lev 9:5, 21; and especially Deut 33:4: "Moses commanded us [the] Torah." Similarly, Josh 1:13; 8:31, 33, 35; 11:12; 22:2, 5; 2 Kgs 18:12; 21:8; 1 Chr 6:34; 15:15; 2 Chr 8:13. The expression "I [Moses] have commanded (וְצִוֵּיתִי)" appears some thirty-seven times in the Book of Deuteronomy, whereas it is used only once in Deuteronomy with God as the third person subject (26:16), and once in the Tetrateuch with God as the first person subject (Exod 34:11). For God's commanding "through Moses" (בְּיַד מֹשֶׁה) see Exod 35:29; Lev 8:36; Num 4:49; 15:23; 27:23; 36:13; Josh 14:2; 21:2, 8; Neh 9:14.

Bat.

tive role in the transmission of the commandments to the people a purely passive, conductive one, or did he have a more active, transformative role in the process of translating the commandments from divine source to human targets? These are questions that are not simply answered by the scriptural text itself, opaque and multivalent as it is, and therefore of necessity demand the efforts of scriptural

<sup>7</sup> For the first, see Josh 8:32; 1 Kgs 2:3; 2 Kgs 23:25; Mal 3:22; Dan 9:11, 13; Ezra 3:2; 7:6; 2 Chr 23:18; 30:16; for the second, see Ezra 6:18; Neh 13:1; 2 Chr 25:4; 35:12; for the third, see Josh. 8:31; 23:6; 2 Kgs 14:6; Neh 8:1. These expressions presumably arise under the influence of the Book of Deuteronomy. It is in the Book of Deuteronomy that the word "Torah" first refers to something more than the discrete "torah" or teaching on a specific subject or of a specific group, presumably now to the Book of Deuteronomy (or some antecedent) as a whole. See Deut 1:5; 4:8, 44; 17:18, 19; 27:3, 8, 26; 28:58, 61; 29:20, 28; 30:10; 31:9, 11, 12, 24, 26; 32:46; 33:4. Of these, the following stress the written nature of the Torah in a book (scroll): Deut 17:18; 28:58, 61; 29:20; 30:10; 31:9, 24, 26. On the developing nature of the conception of Torah within the Hebrew Bible see: Mordechai Cogan, "On the Borderline between Biblical Criticism and Hebrew Linguistics: The Emergence of the Term *תורה*," in *Tehillah le-Moshe: Biblical and Judaic Studies in Honor of Moshe Greenberg* (ed. M. Cogan, B. L. Eichler, and J. H. Tigay; Winona Lake, Ind.: Eisenbrauns, 1997), 37\*–43\* [Hebrew]; Michael Fishbane, "תורה" in *אנציקלופדיה מקראית* (Jerusalem: Bialik Institute, 1982), 8:469–83; Moshe Greenberg, "Three Conceptions of the Torah in Hebrew Scriptures," in *Die Hebräische Bibel und ihre zweifache Nachgeschichte: Festschrift für Rolf Rendtorff zum 65. Geburtstag* (ed. E. Blum et al.; Neukirchen-Vluyn: Neukirchener, 1990), 365–78; repr. in *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1995), 11–24; James L. Kugel, "Rise of Scripture," in J. L. Kugel and R. A. Greer, *Early Biblical Interpretation* (Philadelphia: Westminster, 1986), 13–26; Barnabas Lindars, "Torah in Deuteronomy," in *Words and Meanings* (ed. P. Ackroyd and B. Lindars; Cambridge: Cambridge University Press, 1968), 117–36; Hindy Najman, "Torah of Moses: Reading Interpretation and Authority," in "Authoritative Writing and Interpretation: A Study in the History of Scripture" (Ph.D. diss., Harvard University, 1998), 75–118; Jacob Neusner, "From Scroll to Symbol: The Meaning of the Word Torah," in *Formative Judaism: Religious, Historical, and Literary Studies: Third Series: Torah, Pharisees, and Rabbis* (Chico, Calif.: Scholars Press, 1983), 35–57. Note the brilliant way in which Philo of Alexandria cuts through these questions by unambiguously positing Moses as the writer of the Pentateuch, after having had his purified soul "engraved," like the tablets of the Ten Commandments, by the divine logos at Sinai. For an excellent account of Philo in this regard, see David Dawson, *Allegorical Readers and Cultural Revision in Ancient Alexandria* (Berkeley: University of California Press, 1992), 110–12. See also below, n. 43. Most recently, see Najman, "The Divine Moses and His Natural Law: Philo on Authority and Interpretation," in "Authoritative Writing," 179–231. In the Dead Sea Scrolls: for the "Torah of Moses," see 1QS V, 8; VIII, 22; CD XV, 2–9, 12; XVI, 2, 5; 4Q266 (4QD<sup>a</sup>) 11 6; for "commanded by the hand of Moses," see 1QS VIII, 15; 1QM X, 6; 1QH XVII, 12; 4Q504 (4QDibHam<sup>a</sup>) V, 14; for "by the hand of Moses and the prophets," see 1QS I, 3; CD V, 21; for the "Book of Moses," see 4Q174 (4QFlor) 1 I, 2; 4QMMT C 10, 17, 21; 4Q247 1 verso; for "Moses said," see CD V, 8; VIII, 14 (= XIX, 26). For the New Testament, see below, n. 45.

interpretation, already inner-biblically, but more ambitiously post-biblically. As we shall see, the nature of Moses' intermediary role was of significance to post-biblical interpreters not just for their understanding of Scripture, but also for their self-understanding as scriptural interpreters.

## II. THE MEKILTAS

Although the question of Moses' intermediary role in revelation comes up frequently, albeit often only implicitly, in post-biblical literature of Second Temple and early rabbinic times,<sup>8</sup> I wish to focus here on a parallel pair of early midrashic texts that comment on one locus of this larger question and which have not received the attention they deserve, in part because they have been previously misunderstood and mistranslated. The passages, from the two Mekiltas, comment on Exod 19:9a in a section describing Moses' shuttle diplomacy in preparing the people for the revelation: "And the LORD said to Moses, 'I will come to you in a thick cloud, in order that the people may hear when I speak with you and so trust you ever after'" (NJPS). This verse appears immediately after Moses conveys to the people "all that the LORD had commanded him" (19:7), the people unanimously respond, "All that the LORD has spoken we will do!" (19:8a), and Moses relays the people's words back to God (19:8b). Exod 19:9b would appear to reiterate 19:8b: "Then Moses reported the people's words to the LORD." Thus, it might be midrashically assumed that Exod 19:9a refers to yet another communication, not explicitly quoted in the biblical text as we have it, supplementary to the preceding exchange, that results in the people's trust in Moses for ever after.<sup>9</sup> What specifically did God say to Moses in the people's hearing that would elicit not only their assent but their continuous confidence in a human intermediary?

<sup>8</sup> For Philo and the Temple Scroll, see above, nn. 4, 5, 7. Similarly worth considering in this context is the Book of *Jubilees*, in which it is emphasized that Moses, while on Mt. Sinai, writes what is dictated to him by an angelic intermediary from heavenly tablets. See Hindy Najman, "Interpretation as Primordial Writing: Jubilees and its Authority Conferring Strategies," *JSS* 30 (1999): 379-410. For aspects of this issue in other early rabbinic texts, see my earlier publications cited in n. 1.

<sup>9</sup> Similarly, the *Mekilta* to Exod 19:9b presents multiple other views of what this "missing" communication might have been. Of course, modern critical Bible schol-

*Mekilta of R. Ishmael Bahodesh 2* (henceforth, MRI):<sup>10</sup>

"In order that the people may hear when I speak with you": R. Judah [bar Ilai] says: From whence can you say that the Holy One, blessed be he, said to Moses, "Behold, I will say something to you, and you will challenge me (מחזירני), and I will accede (מדדה) to you, in order that Israel will say, 'Great is Moses, for God acceded to him?'" As it is said, "And also trust in you for ever."<sup>11</sup> Rabbi [Judah the Patriarch]

arship, not sharing these midrashic assumptions, must interpret the seeming disjunctiveness of Exod 19:9 in literary terms, whether compositional or redactional. Thus, Nahum Sarna explains 19b as follows: "This phrase refers not to the immediate antecedent but to the quote in verse 8. It is an instance of resumptive repetition, a literary device in which the text, following a digression, reconnects with an earlier text" (*Exodus* [JPS Torah Commentary; Philadelphia: Jewish Publication Society, 1991], 105). Similarly, U. Cassuto, *A Commentary on the Book of Exodus* (Jerusalem: Magnes, 1982), 157–58 [Hebrew]. For more on such repetitive resumption (or *Wiederaufnahme*, as it is commonly termed) in biblical narrative, see Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford: Oxford University Press, 1997), 17–20; Shemaryahu Talmon, "The Presentation of Synchronicity and Simultaneity in Biblical Narrative," in *Studies in Hebrew Narrative Art Throughout the Ages* (ed. J. Heinemann and S. Werses; ScrHier 27; Jerusalem: Magnes, 1978), 9–26. On the literary structure of the Sinaitic narrative more generally, see Baruch J. Schwartz, "The Priestly Account of the Theophany and Lawgiving at Sinai," in *Texts, Temples, and Traditions: A Tribute to Menahem Haran* (ed. M. V. Fox et al.; Winona Lake, Ind.: Eisenbrauns, 1996), 103–34; Benjamin D. Sommer, "Revelation at Sinai in the Hebrew Bible and in Jewish Theology," *JR* 79 (1999): 422–51; Arie Toeg, *Lawgiving at Sinai: The Course of Development of the Traditions Bearing on the Lawgiving at Sinai within the Pentateuch, with a Special Emphasis on the Emergence of the Literary Complex in Exodus xix–xxiv* (Jerusalem: Magnes, 1977 [Hebrew]).

<sup>10</sup> Lauterbach ed., 2:207–8; Horovitz-Rabin ed., 210. Except where noted, manuscript variations are inconsequential to the meaning. The translation that follows is my own.

<sup>11</sup> This proof-text, but not "from whence can you say," is absent in the best textual witnesses, MSS Oxford, Munich, Vatican 299, and the first printing (Constantinople, 1515), but included in modern critical editions, which rely here on the late *Midrash Hakhamim*. *Yal. Shim'oni* omits "as it is said" but has the proof-text. The parallel in MRSBY (below) has neither "from whence can you say" nor the proof-text. A later reiteration of R. Judah's statement in MRI (see below, n. 21), has "from whence can you say," but no proof-text according to all the witnesses, including a Cairo Geniza fragment (MS St. Petersburg Antonin 957). Thus, on text-critical grounds, it is most likely that the proof-text was not original to the *Mekilta*. The question "from whence can you say" without a concluding proof-text is anomalous. Perhaps the text once read "from here" (מכאן, but written as מכן), which could easily have been mistaken by a scribe for "from whence" (מנן), which subsequently required the addition of a proof-text. Alternatively, and I think preferably, the following interpretation attributed to Rabbi [Judah the Patriarch] (through the citation of Exod 19:20) may not be original to our text, but an insertion made at a later stage of editing. For this possibility, evidenced elsewhere, see Menahem Kahana, "Marginal Annotations" of the School of Rabbi in the Halachic Midrashim" in *Studies in the Bible and Talmud: Papers Delivered at the Departmental Symposia in Honour of*

says: We need not make Moses great, if, in order to do so, we cause the Holy One, blessed be he, to reverse himself and his word (שחזר בו ודבריו).<sup>12</sup> Rather, this teaches that God said to Moses, "Behold, I will call to you from the top of the mountain and you will ascend," as it is said, "And the LORD called Moses to the top of the Mountain and Moses went up" (Exod 19:20). "And also trust in you forever": Also in you, also in the prophets who will in the future arise after you.

*Mekilta of R. Shim'on bar Yohai* 19:9 (henceforth, MRSBY).<sup>13</sup>

"In order that the people may hear when I speak with you": Rabbi Judah [bar Ilai] says: The Holy One, blessed be he, said to Moses, "Behold I will say something to you and you will challenge me (משכיבני), and behold I will retract (דחור) and accede (מרה) to your words." Rabbi [Judah the Patriarch] says: It was not because of the honor of Moses that God acceded to his words, rather this is what he said to him: "The commandments which I gave to you at Marah, behold I will again teach (דחור ישננה) them to you here [at Sinai]." It does not say, "which the LORD commanded," but, "which the LORD commanded him" (Exod 19:7). This teaches that one who hears from your [Moses'] mouth is as one who hears from the mouth of the Holy One, and not [just] from your mouth, but from the mouth of elders who in the future will come after you and from the mouth of the prophets. Therefore it is said, "And also trust in you for ever."

*the Sixtieth Anniversary of the Institute of Jewish Studies* (ed. S. Japhet; Jerusalem: Hebrew University, Institute of Jewish Studies, 1987), 69–86 [Hebrew]. If so, then in the original version of the text, the subsequent citation of Exod 19:9b would have been the direct answer to "from whence can you say," before being commented upon itself. Its not being preceded by "as it is said" is not a problem since this word is often absent in the best witnesses to tannaitic midrashim. The version in MRSBY (below) and the later attestations of MRI would be based on the later editing of MRI but would have smoothed out the text by either removing "from whence can you say" (MRSBY) or adding a proof-text before Rabbi's statement (later attestations of MRI). Notwithstanding this possibility, I treat Rabbi's statement as part of MRI and MRSBY (except MRSBY Exod 9:23, where it is lacking) as it appears in all of our extant witnesses.

<sup>12</sup> This is the reading in MS Oxford and the first printing (Constantinople, 1515), adopted by Lauterbach. Horovitz-Rabin has שחזר בו בדבריו, which is the reading in *Yal. Shim'oni*. MS Munich, has שחזר בו ודבריו. In any case, the meaning is the same: God changed his mind and retracted his previous words.

<sup>13</sup> Epstein-Melamed ed., 140. The translation that follows is my own. On the relation between MRI and MRSBY, especially with regard to their narrative exegeses, see Menahem I. Kahana, *The Two Mekhillot on the Amelek Portion: The Originality of the Version of the Mekhilla d'Rabbi Ishma'el with Respect to the Mekhilla of Rabbi Shim'on ben Yohai* (Jerusalem: Magnes, 1999), 15–32 [Hebrew]. Kahana demonstrates the overall dependency of MRSBY on MRI.

Although there are significant differences of wording and substance between these two texts, in both, the interpretation of R. Judah b. Ilai (ca. 150 c.e.) is stunning. According to him, God stages a rabbinic-style halakhic dispute with Moses in the hearing of the whole people, in which Moses challenges God's articulation (whether outrightly refuting or simply correcting is not clear), whereupon God retracts and accepts instead Moses' alternative formulation.<sup>14</sup> Others have rendered Rabbi Judah b. Ilai's interpretation more weakly, but the wording of R. Judah b. Ilai's representation of the dialogue in MRSBY (הריני חוזר ומודה לדבריך), and the force of R. Judah the Patriarch's objection in both texts and his wording according to MRI (שחזר בו וברברו), make the stronger reading inevitable: in response to Moses' objection, God immediately retracts his original formulation and accepts Moses' alternative.<sup>15</sup> All of this is done in Israel's hearing so that they will, *in the future and for all time* (לעולם), have confidence in Moses as the divinely authorized transmitter of the

<sup>14</sup> For the verb חוזר (especially חוזר ב- denoting a sage's retracting of his halakhic opinion in favor of another, see, for example *m. Hor.* 1:2: ודרו ביה דין וידעו ששעו: "If a court gave a decision, which they [later] realized was wrong, and they retracted. . . ." See also *m. Ed.* 1:12, 13, 14; 5:6, 7. The force of the *hiph'il* of חוזר in this context would be, literally, to cause to retract, or, as I have translated, to challenge. Similarly, the use of *hiph'il* form מודה to denote acceding to another's halakhic opinion is common in rabbinic legal disputes. See, for example, *m. Ed.* 2:6, 8; 3:9; 4:2, 6; 5:1, 4. For this understanding of MRI, see the commentary *Merkevet Hammishneh* (R. Moses David Ashkenazi; Lvov, 1895) *ad loc.*, who relates R. Judah b. Ilai's interpretation to the view of R. Jose in *b. Sabb.* 87a, that Moses added on his own an extra day to the two days commanded by God for the men to separate from their wives in preparation for the revelation at Sinai (on which see below, n. 31). Whatever the imagined content of their exchange, my point is that the language employed by the *Mekilla* is intended to represent a halakhic dispute and not simply a one-time disagreement over what needed to be done in preparation for the revelation. This is further supported by the interpretation of Exod 19:7 in MRSBY as referring to commandments in general, which may be read as a continuation of R. Judah b. Ilai's interpretation after R. Judah the Patriarch's interruption (see above, n. 11). For the broader motif of the praiseworthiness of God's acceding to human objections, see MRI *Bahodesh* 9 (Lauterbach ed., 2:271; Horovitz-Rabin ed., 237); *Sifre Deut.* 176 (Finkelstein ed., 221); *Sifre Num.* 134 (Horovitz ed., 177-78); *Midr. Tanna'im* Deut. 18:17 (Hoffmann ed., 111); *'Abot R. Nat.* A37, B40 (Schechter ed., 112).

<sup>15</sup> Compare Lauterbach's translation of MRI (2:207-8), "I will be saying something and you shall answer Me, and I will then agree with you"; and a recent translation of MRSBY as cited in S. Y. Agnon's *'Atem Re'item*: "I will say something to you, you will answer Me, then I will acknowledge your answer" (*Present at Sinai: The Giving of the Law. Commentaries selected by S. Y. Agnon* [trans. M. Swirsky; Philadelphia: Jewish Publication Society, 1994], 125). These make it sound as though

commandments, not simply as unthinking stenographer, but, as it were, as contributor to revelation, with advance divine approval. In exegetical terms, R. Judah b. Ilai understands Exod 19:9a to mean that what was communicated between God and Moses in the public hearing must have had an effect on the people's trust that would transcend the present moment.

In both Mekiltas, R. Judah b. Ilai's interpretation is too audacious for R. Judah the Patriarch (ca. 200 C.E.), who according to MRI objects to building up Moses at God's expense.<sup>16</sup> However, the two texts attribute entirely different alternative interpretations to R. Judah the Patriarch and yet another one elsewhere in MRI (see below). According to MRI, Rabbi Judah the Patriarch understands Exod 19:9 to refer to the people's hearing of God's calling Moses to ascend the mountain. They thereby will know that when Moses disappears into the cloud at the top of the mountain he will be in direct communication with God, even though they will not be able to witness it directly.<sup>17</sup> According to MRSBY, Rabbi Judah the Patriarch argues that what the people hear is God's repeating to Moses of the pre-sinaitic commandments previously issued at Marah, but which now need to be repeated in the presence of all the people in order to be formally included in the Sinaitic covenant.<sup>18</sup>

Both MRI and MRSBY end by interpreting Exod 19:9b to refer not only to the people's trust in Moses, but also to their trust in his successor prophets (MRI) or elders and prophets (MRSBY). This is based on the interpretation of the unnecessary Hebrew word  $\square$

---

God is testing Moses for his correct understanding of what God had previously said, rather than Moses' questioning of the correctness of God's previous words. See previous note. Louis Ginzberg, in condensing and paraphrasing MRSBY, leaves R. Judah b. Ilai's interpretation out entirely and gives R. Judah the Patriarch's (unattributed) interpretation alone (not as a rebuttal): "God hereupon said to Moses: 'I will come to thee in a thick cloud and repeat to thee the commandments that I gave thee on Marah, so that what thou tellest them may seem as important as what they hear from Me. But not only in thee shall they have faith, but also in the prophets and sages that will come after thee'" (*Legends of the Jews* [trans. P. Radin and H. Szold; 7 vols.; Philadelphia: Jewish Publication Society, 1968], 3:87).

<sup>16</sup> For the possibility of R. Judah the Patriarch's statement being an insertion here, see above, n. 11.

<sup>17</sup> *Midrash Leqah Tob* (Buber ed., 64b) and *Midrash Sekel Tob* (Buber ed., 340) give this interpretation alone, unattributed, for Exod 19:9.

<sup>18</sup> For the giving of commandments to Israel at Marah, see also the view attributed to Rabbi (Judah the Patriarch) in MRI *Bahodes' 3* (Lauterbach ed., 2:211; Horovitz-Rabin ed., 211). See also *b. Sanh.* 56b (*baraita*); Ginzberg, *Legends*, 3:39-40, 47:6:15 (n. 83), 18-19 (n. 129).



("also") as a term of inclusion (*ribbui*).<sup>19</sup> MRSBY derives this as well from the preceding words of Exod 19:7, where the pronominal suffix of "commanded him" (צִוָּהוּ) is, strictly speaking, redundant. Rather, it comes to specify that Moses communicates to the elders (and they to the people) what was commanded to him directly by God. The elders and prophets stand in relation to Moses as Moses stands in relation to God, and those who receive commandments from the elders and prophets should regard them *as if* received from the mouth of God. The order of elders and prophets in MRSBY is reminiscent of their identical order in the "chain of tradition" of *m. 'Abot* 1:1, and is thereby suggestive of the full line of Mosaic descendants in that chain down to and including the rabbinic sages of the Mekiltas' textual community.<sup>20</sup>

Both MRI and MRSBY cite R. Judah b. Ilai's interpretation again in their commentaries to Exod 19:23, but in MRI with yet another contrary interpretation attributed to R. Judah the Patriarch.<sup>21</sup> In Exod 19:21, God tells Moses to go down to warn the people not to break through to the mountain. But in 19:23, Moses reminds God that he had previously warned the people not to approach the mountain, in accord with God's previous instruction to him in 19:12, therefore making God's latest instruction unnecessary. MRI interprets 19:23 so as to have Moses say, "I have already warned them

<sup>19</sup> The word לעלם ("forever") might also have suggested Moses' successors. The explicit repetition of the word ב in MRI makes clear that it is the primary basis of the inclusive interpretation.

<sup>20</sup> According to *m. 'Abot*, second temple and rabbinic links in that chain both transmit and contribute to the words of Torah they receive. Compare *Sifre Deut.* 41 to Deut 11:13 (Finkelstein ed., 86), where biblical elders are similarly authorizing antecedents to rabbinic sages, treated by me in *From Tradition to Commentary*, 79–83, 234–36 nn. 33–47; as well as the partial parallel in *t. Soṭah* 7:9–12. On the association of biblical elders with rabbinic sages, see *From Tradition to Commentary*, 75–79, 233–34 nn. 27–31. Note that MRI *Bahodesh* 2 (Lauterbach ed., 2:206; Horowitz-Rabin ed., 209) interprets Exod 19:7 ("and Moses came and summoned the elders of the people") to mean: "This teaches that Moses shared his glory (status) with the elders." *Tgs. Geniza, Fragment, Neofiti* and *Samaritan* to Exod 19:7 all have "sages" (חכמים) for "elders."

<sup>21</sup> MRI *Bahodesh* 4 (Lauterbach ed., 2:226; Horowitz-Rabin ed., 217–18); MRSBY 19:23 (Epstein-Melamed ed., 145). However, note that in MRI MS Oxford, "another interpretation" (abbreviated, א"ר) appears in place of "Rabbi says." However, this may simply be a scribal error for "Rabbi says" (abbreviated, א"ר), as is evidenced elsewhere. See Kahana, "Marginal Annotations," 81. Note that MS Vatican 299 and a Cairo Geniza fragment (St. Petersburg Antonin 957) have א"ר א"ר.

and set boundaries for them." To this God responds abruptly, "Go, descend" (19:24), which MRI interprets as, "You have spoken well," meaning that Moses was right in telling God that there was no need to warn the people again. We are next told that this is the sort of exchange to which R. Judah b. Ilai referred previously. It is clear from this that MRI understands R. Judah b. Ilai's interpretation to refer, as I previously argued, to Moses' challenging of God's instruction and to God's acceding to Moses' objection.<sup>22</sup>

Once again, according to MRI, R. Judah the Patriarch objects to R. Judah b. Ilai's elevating of Moses at God's expense, arguing instead that it was necessary for God to repeat his warning: "One should warn a person at the time of instruction and warn him at the time of execution." MRSBY omits here any mention of R. Judah the Patriarch's objection to R. Judah b. Ilai's interpretation. Thus, in three places R. Judah the Patriarch denies the possibility of a dispute, even if staged, between God and Moses in the context of Sinaitic revelation and interprets the biblical grounds for such a dispute in ways that affirm Moses' role as passive recipient and transmitter of God's words/commandments.

Did Moses as prophetic lawgiver play an intellectually active and independent role in the transmission of the commandments or was he rather a passive transmitter to Israel of the divine commandments communicated to him? The Mekiltas never resolve the differences of interpretation between the two R. Judahs, setting them, rather, alongside one another without favoring outrightly either (with the exception of MRSBY to Exod 19:23). R. Judah b. Ilai's interpretation has the advantage of remaining constant and generalizable, whereas R. Judah the Patriarch's objections and three alternative interpretations are tailored to each scriptural application. Nevertheless, the views of the two R. Judahs remain in dialectical suspension within our present texts.<sup>23</sup> The scene of Moses and God engaged in dis-

<sup>22</sup> See above, nn. 14, 15. For the same understanding, see the commentary *Zayit Ra'anah* to *Yal. Shim'oni Yitro* 285 (n. 49).

<sup>23</sup> Compare David Weiss Halivni's sketching of maximalist and nonmaximalist rabbinic views of how much of Torah was directly revealed at Sinai: *Peshat & Derash: Plain and Applied Meaning in Rabbinic Exegesis* (New York: Oxford University Press, 1991), 112–19. If my suggestion (see above, n. 11) that R. Judah the Patriarch's view is an editorial insertion to the *Mekilta* is correct, then this dialectical suspension would be the product of a secondary level of editorial construction.

pute is mirrored in, and thereby lends authority to, the narrative frame of the interpretive dispute between the two R. Judahs, two of the most distinguished successors in the revelatory chain of tradition extending back through the prophets and elders to Moses. However, there is one crucial difference: whereas, according to R. Judah b. Ilai, God quickly retracts and accedes to Moses' correction, according to the final framers of the *Mekilta*, the rabbinic dispute remains open-ended.

### III. RELATED TANNAITIC TEXTS

R. Judah the Patriarch would presumably not have been the only early sage to take issue with the strong interpretation of R. Judah b. Ilai. In fact, it runs counter to a frequent theme in early rabbinic texts, which asserts the faithful and absolute accuracy with which Moses transmitted and recorded God's commands. For example, elsewhere in the *Mekilta*'s commentary to the giving of the Torah at Sinai it makes this very point:

"Thus (כֹּה) shall you say" (Exod 19:3): "Thus," in the holy language; "thus," in this order; "thus," in this manner; "thus," that you should not subtract and not add.<sup>24</sup>

"These are the words" (Exod 19:6): That you should not subtract and not add. "That you shall speak to the children of Israel": In this order . . . "All these words" (19:7): The first, first and the last, last.<sup>25</sup>

Similarly, in commenting on Exod 19:15, where Moses instructs the people (men) to separate from the women in preparation for the theophany, an instruction which is not explicitly given to him by God, the *Mekilta* raises the possibility that perhaps Moses added to God's command. As MRSBY rhetorically asks, "Is it possible that

<sup>24</sup> MRI *Bahodesh* 2 (Lauterbach ed., 2:201; Horovitz-Rabin ed., 206, with note for parallels). The same is found, in even more detail, in MRSBY ad loc. (Epstein-Melamed ed., 138). That the Torah is not to be altered by addition or subtraction derives from Deut 4:2; 13:1 (12:32 LXX). Josephus frequently denies having done so (although he does plenty of both): *Ant.* 1.17; 2.234; 4.196–198; 10.218; 20.261; cf. *Ant.* 9.242; 12.109; 14.2–3; *C. Ap.* 1.42. For discussion of this topos, see *Flavius Josephus: Translation and Commentary. Volume 3: Judean Antiquities 1–4* (trans. and commentary by L. Feldman; ed. S. Mason; Leiden: Brill, 2000), 7–8. Compare Philo, *Spec.* 4.143; *Let. Aris.* 311.

<sup>25</sup> MRI *Bahodesh* 2 (Lauterbach ed., 2:206; Horovitz-Rabin ed., 209). Similarly, in even more detail, in MRSBY ad loc. (Epstein-Melamed ed., 139, 140).

Moses said this on his own (מפי עצמו)?” Rather, according to both Mekiltas, Moses correctly inferred from God’s words, “Let them be ready for the third day” (19:11), that separation from wives is intended. Moses added nothing that could not have been inferred from God’s own words.<sup>26</sup> The tannaitic midrashim, especially to Deuteronomy, frequently attribute to Moses the following assurance to the people: “I do not say this to you of my own (מעצמי), but from the mouth of the Holy One I say this to you.”<sup>27</sup>

This possibility, that Moses might have altered or added to the commandments in transmitting them to the people, is strikingly raised and rejected in two other tannaitic midrashim:

“And I besought the LORD at that time, saying” (Deut 3:23): . . . Moses said to the Holy One, blessed be he: “Master of the universe, let any transgression that I have committed be recorded against me, so that people will not say, ‘Moses seems to have falsified (פיי) the Torah,’ or ‘said something that had not been [divinely] commanded.’”<sup>28</sup>

“For he has spurned the word of the LORD” (Num 15:31): . . . One who says, “All of the Torah I accept as binding except for this thing/commandment,” is what is meant by “for he has spurned the word of the LORD.” One who says, “All of the torah is from the mouth of the Holy One, but this thing/commandment Moses said on his own (מפי עצמו),” is what is meant by “for he has spurned the word of the LORD.”<sup>29</sup>

<sup>26</sup> MRI *Bahodesh* 3 (Lauterbach ed., 2:216–17; Horowitz-Rabin ed., 213–14); MRSBY 19:15 (Epstein-Melamed ed., 142). Note as well *Sifre Num.* 103 (Horowitz ed., 101), where Moses’ own separation from his wife is said to have been at God’s express command, whereas in later sources this is said to have been at Moses’ own (commendable) initiative. Cf. *Tg. Ps.-Jon.* Num 12:8; Rashi Num 12:8. Cf. below, n. 32.

<sup>27</sup> *Sifra Shemini pereq* 1:8 (Weiss ed., 47a); *Sifre Deut.* 5, 9, 19, 25 (Finkelstein ed., 13, 16, 31, 35); *Midr. Tanna’im* Deut 1:6; 1:9; 1:20; 1:29 (Hoffmann ed., 5, 6, 11, 12). This is particularly apt for the Book of Deuteronomy since it might appear to contain Moses’ own commandments to the people. See Finkelstein ed., 13, note ad loc. See above, n. 4.

<sup>28</sup> *Sifre Deut.* 26 (Finkelstein ed., 36). For treatment of this passage in its larger textual context, see my article, “Sifre Deuteronomy 26 (ad Deut 3:23): How Conscious the Composition?” *HUCA* 54 (1983): 245–301. Note the parallel in the *Mekilta to Deuteronomy* (ed. M. Kahana, *Tarbiz* 54 [1985]: 518).

<sup>29</sup> *Sifre Num.* 112 (Horowitz ed., 121). A similar *baraita* is given in *b. Sanh.* 99a, but extends the argument to one who says all of the Torah is from heaven, except for particular rules derived from Scripture by rabbinic hermeneutical rules. For other rabbinic texts that show an awareness of critiques of Moses’ trustworthiness, see *Sifre Deut.* 5, 102 (Finkelstein ed., 13, 161); *b. Hul.* 60b. See also Josephus, *C. Ap.* 2.25, 145, 161–162, with remarks of Louis H. Feldman, *Jew and Gentile in the Ancient World* (Princeton: Princeton University Press, 1993), 142.

While these two passages strongly deny and condemn the view that Moses either falsified or fabricated commandments on his own, it would appear they do so in polemical recognition of those who made such claims. Who such people might have been, and how the previously examined tradition of R. Judah b. Ilai might have related to them, is a subject to which I will return in due course.

#### IV. MOSES TAKES THE HALAKHIC LEAD (WITH GOD'S APPROVAL)

Later rabbinic texts specify and celebrate specific acts or rules initiated by Moses on his own, but to which God immediately agrees. These begin with a *baraita* appearing twice in the Babylonian Talmud: "It is taught: Moses did three things of his own mind (מדעתו) and the Holy One, blessed be he, agreed with him: He added a day of his own mind, he separated from his wife, and he broke the tablets."<sup>30</sup> The *gemara* next explains Moses' own exegetical reasoning for each of the things he did, usually by applying a hermeneutical rule of logic to one or more scriptural verses of divine command in order to derive a new understanding. Space only allows me here to summarize each of these, without going into the various exegetical arguments:

- (1) In Exod 19:10 God tells Moses to have the people purify themselves "today and tomorrow" in preparation for the theophany, while in 19:15 Moses "adds a day," telling them to "be ready for the third day," to which God accedes in 19:11, therefore not allowing his *shekhinah* to descend to their midst until after three days.<sup>31</sup>
- (2) Although the Israelites were told to return to conjugal relations after completion of the revelation (Deut 5:27), Moses applies an *a fortiori* argument to himself, whereby he concludes that he must continue to remain separate from his wife ever hence, to which God accedes (Deut 5:28).<sup>32</sup>

<sup>30</sup> I translate from *b. Šabb.* 87a. Similarly in *b. Yebam.* 62a, but with differences in wording and order. Note in particular the latter's: והסכים דעתו לדעת המקים, "and his mind agreed with the mind of God."

<sup>31</sup> See *b. Šabb.* 87a (*baraita*); *b. Yebam.* 62a (*baraita*); 'Abot R. Nat. A2, B2; *Pirqe R. El.* 41; פסיקתא חדרתא לחג השבועה (in Jellinek, *Bet ha-Midrash*, 6:41).

<sup>32</sup> See *b. Šabb.* 87a (*baraita*); *b. Yebam.* 62a (*baraita*); *Exod. Rab.* 19:3 (but note

- (3) Upon witnessing Israel's apostasy with the Golden Calf, Moses applies another *a fortiori* argument that leads him to break the first set of tablets with the Ten Commandments, even though not told to do so by God. But God approves of his act after the fact (Exod 34:1).<sup>33</sup>

Later midrashic collections add other Mosaic initiatives to this list, variously grouping them:

- (4) Moses applies hermeneutical logic to conclude that he should not enter the Tent of Meeting until called upon to do so by God, to which God agrees (Lev 1:1).<sup>34</sup>
- (5) Following the Golden Calf incident, Moses convinces God to address Israel as "I am the LORD your (pl.) God," instead of "I am the LORD your (sing.) God" as in the Decalogue (Exod 20:2), so that they would know that he was addressing all of them and not just Moses. Here (as in other such cases), God says to Moses: "You have taught me" (למדתי).<sup>35</sup>
- (6) Whereas God, in listing his attributes of mercy, holds children culpable for the sins of their parents (Exod 34:7), Moses convinces God that this is unfair, causing him to revoke his own words and to establish Moses' in their place (Deut 24:16; 2 Kgs 14:6).<sup>36</sup>
- (7) Although God commanded Moses to conquer Sihon the Amorite straight away (Deut 2:24–25), Moses instead sent messengers with an offer of peace (Deut 2:26; Num 21:21–22), contrary to God's instructions. However, Moses was able to convince God that seeking peace was a primordial value consistent with the

contrary views that God commanded him to do so; cf. above, n. 26); *'Abot R. Nat.* A2 (with contrary views), B2; *Pirke R. El.* 46 (according to God's command). On Moses' abstinence from sexual relations with his wife, see also *Sifre Num.* 99 (Horovitz ed., 98). For further textual discussion, see Menahem Kister, *Studies in Avot de-Rabbi Nathan: Text, Redaction and Interpretation* (Jerusalem: Hebrew University, Department of Talmud; Yad Izhak Ben-Zvi, Institute for Research of Eretz Israel, 1998), 183.

<sup>33</sup> See *b. Šabb.* 87a (*baraita*); *b. Yebam.* 62a (*baraita*); *Exod. Rab.* 19:3; 46:3; *Deut. Rab.* 5:13; *'Abot R. Nat.* A2 (with contrary view that God commanded), B2; *Tanh. Šofetim* 19.

<sup>34</sup> *'Abot R. Nat.* A2, B2; *Exod. Rab.* 19:3; 46:3; but cf. *Sifra Achare Mot parashah* 1:6 (Weiss ed., 80a), according to which Moses is not limited from access to the Tent of Meeting.

<sup>35</sup> See *Num. Rab.* 19:33.

<sup>36</sup> See *Num. Rab.* 19:33; *Tanh. Šofetim* 19.

teachings of the Torah, causing God to institute Moses' practice as the law for all wars (Deut 20:10).<sup>37</sup>

All of these Mosaic innovations are generated by a seeming gap or inconsistency in the biblical text. They all have Moses applying rabbinic hermeneutical rules and reasoning to scriptural/divine words so as to determine his action independently (מרעזו, מעצמו) of, or even in contradiction to, a previously articulated divine command. In each case, Moses convinces God of the correctness of his action, in some cases leading to new or changed divine imperatives. However, it should be noted that in some of the later texts, we hear minority rabbinic counter-voices arguing that what might appear as Moses' independent action or ruling is already implicit in God's command; that is, what might appear to be a Mosaic innovation is in actuality not.

#### V. KORAH'S REBELLION

In contrast to the preceding traditions, other midrashim emphasize that Korah's chief complaint against Moses, for which he was killed, was that Moses had instituted commandments on his own, without divine authorization. This is occasioned by the ambiguous scriptural expression "And Korah took" (Num 16:1) as an expression of Korah's rebellion,<sup>38</sup> immediately following God's command to Moses to instruct the Israelites to make fringes on the corners of their garments, each with a blue cord (15:37-38). In response to Korah and his followers, Moses states that if the rebels die an unusual death, "by this you shall know that it was the LORD who sent me to do all these things; that they are not of my own devising (מלכתי)," but if not, "it was not the LORD who sent me" (16:28-29).

<sup>37</sup> See *Num. Rab.* 19:33; *Deut. Rab.* 5:13 (Lieberman ed., 29-30); *Tanh. Huggat* 22 (Buber ed.); *Tanh. Devarim* supp. 10 (Buber ed.); *Tanh. Huggat* 51 (Buber ed.); *Tanh. Tzav* 5 (Buber ed.). For an excellent analysis, see Adiel Schremer, "הפרשת העקרה, פידוש רדיקלי לאדם-הברית של דוד הרשמן," in *Renewing Jewish Commitment: The Work and Thought of David Hartman* (ed. A. Sagi and Z. Zohar; 2 vols.; Tel-Aviv: Hakibbutz Hameuchad & The Shalom Hartman Institute, 2001), 2:759-63.

<sup>38</sup> Expressed in all of the *targumim ad loc.*, including *Tg. Onqelos ad loc.*: ואחפליני: קרה.

From these verses, rabbinic midrashim weave a rich set of narratives of how Korah (in some versions at his wife's urging) challenges Moses' commandment of the fringes, arguing the illogic of the commandment, that it was Moses' own invention, that Moses was not a prophet, and that the Torah was not from heaven. Thus, whereas the central theme of the biblical narrative is Korah's jealousy of Moses' and Aaron's holy, supreme position among the people, the midrashic tradition turns Korah into a heretical *epikorsī* (Epicurean) who challenges Moses' prophetic status and the divine origins of the commandments communicated and recorded by him. As one midrashic tradition has Korah say to Moses: "You were not commanded regarding these matters, but you invented them of your own design (מלכך)." <sup>39</sup> Or, "From his heart and of himself (מלבו) Moses said all of these things/commandments." <sup>40</sup> According to another version of the midrash, Korah and his band said:

When the Ten Commandments were given to us, each and every one of us was nursed from Mt. Sinai, but we were only given the Ten Commandments, and we did not hear there about [laws of] *hallah*, nor of priestly offerings, nor of tithes, nor of fringes. Rather, you said these on your own (מעצמך) in order to give authority to yourself and honor to Aaron your brother. <sup>41</sup>

<sup>39</sup> *Num. Rab.* 18:3; *Tanh. Korah* 2; *Tanh. Korah* 4 (Buber ed.). These interpretations clearly play on מלכך of Num 16:28, taking the ambiguous "these things" to refer not simply to Moses' actions as commander in chief in the present crisis, but more broadly to his central role in the communication of the divine commandments.

<sup>40</sup> *Num. Rab.* 18:12; *Tanh. Korah* 22 (Buber ed.).

<sup>41</sup> *Yal. Shim'oni Korah* 752 (*Yelammedenu*). For other sources not mentioned in the preceding notes, see: *Tg. Ps.-J., Fig. Tg.* Num 16:1, 28; *y. Sanh.* 10(17):1 (27d-28a); *b. Sanh.* 110a; *Tanh. Korah* 5 (Buber ed.); *Tanh. Korah* supp. 1, 2 (Buber ed.); *'Ag. Esth.* 28a (Buber ed.); *Midr. Prov.* 11; *Midr. Haggadol* Num 16:1; *Leqah Tob* Num 16:1; *Chron. Jerahmeel* 55:5 (trans. Gaster, 161). For a fuller treatment of rabbinic interpretations of Korah's rebellion, see Moshe Beer, "Korah's Revolt—Its Motives in the Aggadah," in *Studies in Aggadah, Targum and Jewish Liturgy in Memory of Joseph Heinemann* (ed. J. J. Petuchowski and E. Fleischer; Jerusalem: Magnes, 1981), 9\*-33\* [Hebrew]. These rabbinic understandings of Korah's rebellion find no direct mention in tannaitic midrashim. However, Philo already interprets the biblical episode as a challenge to the divine origins of the commandments, specifically that "there were spiteful rumours that he [Moses] had falsely invented the oracles" (*Mos.* 2.176-177 [Colson, LCL], 278; *Praem.* 78); and Pseudo-Philo (*L.A.B.* 16:1) has Korah rebel because of the burden of the command of the fringes. Cf. *L.A.B.* 25:13, where "the forsaken of the tribe of Benjamin" say: "We desired at this time to examine the book of the law, whether God had plainly written that which was therein, or whether Moses had taught it of himself." See Frederick J. Murphy, "Korah's



It is striking that these midrashic traditions employ much the same language (e.g. מרעו, מעצמו, מלכו) in attributing to Korah the heresy of denying Moses' intermediary, divinely authorized role in the transmission of the commandments as do other midrashic traditions, in the same collections, in celebrating Moses' halakhic innovations and their winning of divine approval and adoption. The dialectical tension between the juxtaposed views of R. Judah b. Ilai and R. Judah the Patriarch in the texts of the Mekiltas with which we began continue through a long history of midrashic tradition, even as many new halakhic examples and narrative elaborations are added: Moses as a passive transmitter and recorder of divine commandments vs. Moses as an active participant and contestant in the process by which the commandments came to be and to become authoritative. One (late) midrashic text best sums up this ambivalence as follows:

"And the LORD said to Moses: Write for yourself (כתב לך) these commandments": . . . Another explanation of "Write for yourself": The ministering angels began to say before the Holy One, blessed be he, "Have you given permission to Moses to write whatever he wants, so he may say to Israel, 'I gave you the Torah; it is I who wrote it and gave it to you?'" The Holy One, blessed be he, said to them, "Perish the thought, that Moses would do such a thing, and *even were he to do so*, he is to be trusted, as it is said, 'Not so my servant Moses; he is trusted throughout my household' (Num 12:7)."<sup>42</sup>

In short, Moses and, I will further argue, his human (rabbinic) successors are divinely authorized and trusted *both* to transmit and to transform received tradition.

Rebellion in Pseudo-Philo 16," in *Of Scribes and Scrolls: Studies on the Hebrew Bible, Intertestamental Judaism, and Christian Origins* (ed. H. W. Attridge, J. J. Collins, and T. H. Tobin; New York: University Press of America, 1990), 111–20. On the rebellion of Korah, see further Ginzberg, *Legends*, 6:100–102 n. 566.

<sup>42</sup> *Exod. Rab.* 47:9. The Soncino translation seriously mistranslates the last phrase before the prooftext as, "and in whatever he does he can be fully trusted." The Hebrew is: *הס ושלום שמשו עשה אז הדבר הזה ואפילו עשה נאמן הוא*. That is, even if Moses were to take full credit for having written the Torah and given it to Israel, what he has written in the Torah is still reliable as divine revelation. For this understanding, see the commentaries of RaDaL (R. David Luria) and MaHaRZU (R. Ze'ev Wolf b. Israel Issar Einhorn) *ad loc.*: even if Moses writes something on his own, he does so prophetically in harmony with God's intent. See also A. Schremer, "הפרשנות העוקרת והעקידה המפורשת," 763 n. 51, who similarly sees here an attempt to ground rabbinic legal authority.

## VI. THREE EXPLANATORY STRATEGIES

How are we to understand this deeply ambivalent record of rabbinic understandings of Moses' intermediary role in the communication of divine commandments to Israel? I shall heuristically posit three vectors, which for purposes of simplification I shall refer to as *scriptural hermeneutic*, *historical polemic*, and *performative rhetoric*.

As I sketched at the outset, the need to define Moses' mediative role in revelation is abundantly supplied by the Hebrew Bible itself, i.e., in the differing perspectives of the latter four books of the Pentateuch, one from the other, as to what was communicated by God to Moses and by Moses to the people, when and where, and in the developing understandings of "Torah" as a written record of revelation in the subsequent books of the Bible. Since others have dealt with these matters extensively, I need not draw them out here.<sup>43</sup> But for the rabbis, such macro issues are not what most immediately and rhetorically prompt midrashic responses so much as the need to fill apparent gaps and resolve seeming redundancies, ambiguities, and inconsistencies at the micro level of the scriptural text (even while the macro issues remain in broader interpretive play). As we have repeatedly seen, both in the narrative account of the revelation at Sinai and in the particular formulations of laws and practices, this is the level at which scriptural difficulties generate, formally at least, the wealth of rabbinic interpretations that we have surveyed. Of course, it is not the scriptural barbs alone that are responsible for the generation of the midrashic solutions (otherwise we should have seen many more such responses in pre-rabbinic, Second Temple Jewish writings), but rather the meeting of discrete scriptural stimuli and distinctive rabbinic "reading" practices, predicated as the latter are on rabbinic assumptions regarding the interpretability of the divine words of Scripture. But while local textual challenges and rabbinic exegetical practices are *necessary* for the generation of these rabbinic responses, they are not *sufficient* for understanding them in their dialectical plenitude nor in their historical context. Scriptural exegesis is not a linear, mechanical process whose course can be simply reversed back from midrashic interpretation to

<sup>43</sup> See above, n. 7.

its scriptural origins as if anesthetized from historical, social, and cultural intrusions along the way.

Can we identify parties, whether intramural or extramural, toward whom the midrashic arguments we have surveyed might have been polemically targeted, even if indirectly? For example, several midrashic texts that we examined, both early and late, presuppose the existence of a "heretical" claim that not all of the Torah was "from heaven" and that some of the commandments were Moses' own invention. This view is clearly evidenced in early Christian writings, already suggested in the New Testament. In Mark 10:2-9 Jesus argues that while Moses commanded/permitted divorce with a "certificate of dismissal," this had not been God's original intent when he joined together male and female at creation. It was only in response to the people's stubbornness that Moses "made this rule for you. . . . Therefore what *God* has joined together, *man* must not separate." In other words, the law of divorce could be understood to be Moses' own invention and not necessarily indicative of the divine will, and hence only a temporally-bound concession to human weakness.<sup>44</sup> Similarly, in Mark 7:1-13 Jesus argues against the Pharisees' "ancestral tradition" (*paradosis tōn presbyterōn*, literally, "teaching of the elders") on the grounds that the Pharisees give priority to such "ancestral tradition" over the Ten Commandments. "In this way by your tradition, handed down among you, you make God's word null and void."<sup>45</sup>

The fact that it is one of the Ten Commandments that is singled out for contrast with the "ancestral tradition" as an example of divine commandment versus humanly devised and transmitted tradition is telling. According to one mishnaic tradition, the Ten Commandments

<sup>44</sup> Note that in the parallel in Matt 19:3-9, Jesus argues this in response to a challenge from the Pharisees.

<sup>45</sup> In the parallel in Matt 15:1-9, the contrast is drawn even more sharply: "For God said . . . But you say . . ." Of course, the contrast in these passages is not between Moses' word and God's word, but between the Pharisaic ancestral human tradition and the divine commands as communicated by Moses. Thus, where Mark (7:10) has "Moses said," Matthew (15:4) has "God said." Similarly, Mark 12:26 has "have you not read in the Book of Moses," whereas Matt 22:31 has "have you not read what was said to you by God." For New Testament passages that assume Moses' "authorship" of the "law" in a positive sense, see Luke 16:29, 31; John 1:17, 45; 5:46-47; 7:19, 22, 23. Compare Josephus's portrayal of the Sadducees' rejection of the Pharisaic extra-scriptural "ancestral tradition," for which the Pharisees claim divine approval: *Ant.* 13.297; 17.41.

had formerly been read daily as part of the liturgy in the second temple, and according to its talmudic elaboration, that practice was abolished so as not to strengthen the view of heretics (*minnim*), who would argue that “these alone were given to Moses at Sinai.”<sup>46</sup> Whatever the historicity of this account, it testifies at least to the rhetorical possibility of claiming a unique *revelatory* status for the Decalogue. Whoever such *minnim* may have been, we know that there were early Christians who differentiated between the status of the Ten Commandments as divinely revealed and permanent and that of other commandments in the “Old Testament” as having been humanly devised and temporary. This view is most sharply expressed by a second-century Valentinian Christian teacher named Ptolemy (fl. 136–180, possibly in Rome) in his *Epistle to Flora*, which divides the laws of the Old Testament according to their authorship, and thereby, authority:

Now, first you must learn that, as a whole, the law contained in the Pentateuch of Moses was not established by a single author, I mean not by god alone: rather, there are certain of its commandments that were established by human beings as well. Indeed, our savior’s words teach us that the Pentateuch divides into three parts. For one division belongs to god himself and his legislations; while <another division> belongs to Moses—indeed, Moses ordained certain of the commandments not as god himself ordained through him, rather based upon his own thoughts about the matter; and yet a third division belongs to the elders of the people, <who> likewise in the beginning must have inserted certain of their own commandments. (33.4.1–2)<sup>47</sup>

<sup>46</sup> See *m. Tamid* 5:1; *y. Ber.* 1:8 (3c); *b. Ber.* 11b–12a. For a classic discussion, see Ephraim E. Urbach, “The Role of the Ten Commandments in Jewish Worship,” in *The Ten Commandments in History and Tradition* (ed. B.-Z. Segal; Jerusalem: Magnes, 1990), 161–89; repr. in *Collected Writings in Jewish Studies* (ed. R. Brody and M. D. Herr; Jerusalem: Magnes, 1999), 289–317. For a more critical analysis, see Reuven Kimelman, “The Shema’ and Its Rhetoric: The Case for the Shema’ Being More than Creation, Revelation, and Redemption,” *Journal of Jewish Thought and Philosophy* 2 (1992): 111–56, esp. 155–56; idem, “The Shema’ Liturgy: From Covenant Ceremony to Coronation,” in *Kenishita: Studies in the Synagogue World* (ed. J. Tabory; Ramat-Gan: Bar-Ilan University Press, 2001), 68–80.

<sup>47</sup> Translation is from Bentley Layton, *The Gnostic Scriptures* (New York: Doubleday, 1987), 309. The word “elders” translates the Greek *presbyteroi*. As Layton notes *ad loc.*: “Or ‘presbyters.’ Ptolemy refers here to the elders who were with Moses ‘in the beginning.’” For the critical Greek text, see Gilles Quispel, ed., *Ptolémée, Lettre à Flora: Analyse, texte critique, traduction, commentaire et index grec* (2nd ed.; SC 24; Paris: Cerf, 1966), 54–57. For a discussion of Jewish hellenistic (and Jewish-Christian) antecedents to Ptolemy’s division of the commandments, particularly in the writings of Philo, see Francis T. Fallon, “The Law in Philo and Ptolemy: A Note on the Letter to Flora,” *VC* 30 (1976): 45–51.

The divine laws of the Pentateuch are themselves divided into three categories: The Ten Commandments alone are "pure legislation not interwoven with evil, which alone is properly called law, and which the savior did not come to abolish but to fulfill" (33.5.1); while other laws are either "interwoven with injustice" (the *lex talionis*), and abolished by "the savior as being incongruous with his own nature" (ibid.), or are "symbolic," that is, "allegorical" (ritual laws), whose "referent" the "savior changed . . . from the perceptible, visible level to the spiritual, invisible one" (33.5.2). For our purposes it is important to stress Ptolemy's assertion that the laws devised by Moses and the elders are contrary to the law of God (and rejected as such by Jesus).<sup>48</sup>

Given the near contemporaneity of Ptolemy and R. Judah b. Ilai (ca. 130–160 c.e.), and the degree to which their arguments would appear to mirror one another, it is tempting to imagine the latter responding to the former (or at least his ideas) in exegetical dispute: What if Moses altered or added to the directly revealed divine commands? He did so as a divinely pre-authorized agent of revelation, as did the elders who succeeded him! But there are problems with positing a Christian (or gnostic Christian) context for the origins of the midrashic traditions that we have examined. The most significant is chronological: the traditions we have examined, while reaching full bloom in late midrashic sources, are already well evidenced in tannaitic midrashic collections (generally thought to have been redacted in the mid- to late third century, but containing earlier materials).<sup>49</sup> Scholars who wish to demonstrate the direct influence of Christianity in the formation of distinctive aspects of rabbinic Judaism are on stronger grounds if those aspects only emerge when Christianity has

<sup>48</sup> For a similar, but somewhat later and less radical, early Christian formulation, see *Didascalia Apostolorum Syriacae* chap. 26 (trans. Vööbus [CSCO 408], 223–48), which differentiates between the Law, comprising the Ten Commandments and the Judgments (the *mishpatim* of Exod 21–23), which was given prior to the incident of the Golden Calf and is indissoluble, and the more burdensome "second legislation," the rest of the laws (especially dietary and sacrificial), which were given by God in anger after the Golden Calf and from which Christians are freed through baptism. According to some rabbinic traditions, Israel received the commandments directly from God before the Golden Calf incident, but only through mediation thereafter. See my "The Kisses of His Mouth."

<sup>49</sup> On the dating of the *Mekilta*, see most recently Menahem Kahana, "The Critical Edition of *Mekilta de-Rabbi Ishmael* in the Light of the Geniza Fragments," *Tarbiz* 55 (1986): 515–20 [Hebrew].

already ascended to imperial power after the Christianization of the Roman Empire (mid-fourth century on).<sup>50</sup> Whether nascent Christianity already had such an influential presence in relation to rabbinic Judaism in mid-second century to mid-third century Galilee is difficult to tell, but certainly less likely. It is more likely that later Christian writings give expression to ideas that might have earlier circulated within Jewish society, or on its fringes. Furthermore, the very questions with which the early rabbinic traditions that we have examined deal—to what extent are laws divinely revealed, divinely inspired, or the product of the human mind—were longstanding subjects of interest among Greek Jewish writers, ancient pagan philosophers, and pagan writers on Jews and Judaism, among whom Moses as the Jewish “Lawgiver” was both acclaimed and debunked.<sup>51</sup>

Before being forced to choose between hermeneutical or historicist positivisms (as the choice is too often posed), we need to consider a third possibility: that these traditions are not so much about the biblical past or contemporary extramural polemics as internal rabbinic self-understandings of the privileged human role of the sage in the performative enactment of Torah law and legal discourse as part of a continual process of revelation from Sinai to the present and beyond. This is suggested by the interpretation (apparently shared by the two R. Judahs) of Exod 19:9, that whatever the content of the dialogue between God and Moses, it was staged in the hearing of all of Israel so that they would trust not only in Moses but in the elders and prophets who would succeed him thenceforth and

<sup>50</sup> For this line of argument, see most recently Daniel Boyarin, *Dying for God: Martyrdom and the Making of Christianity and Judaism* (Stanford: Stanford University Press, 1999); Seth Schwartz, *Imperialism and Jewish Society, 200 B.C.E. to 640 C.E.* (Princeton: Princeton University Press, 2001).

<sup>51</sup> See John J. Gager, *Moses in Greco-Roman Paganism* (Nashville: Abingdon, 1972), 25–112; Menahem Stern, *Greek and Latin Authors on Jews and Judaism* (3 vols., Jerusalem: Israel Academy of Sciences and Humanities, 1976), 1:32, in note to Hecataeus of Abdera 6: “Among the Greeks there was much discussion regarding the origin of the laws, i.e., whether they were divinely inspired or only products of the human mind.” For Ptolemy’s possible (at least partial) dependence on Hellenistic Jewish antecedents, see Fallon, “The Law in Philo and Ptolemy.” For evidence from Josephus, see above, n. 29. For antecedents in Pseudo-Philo (usually dated to early first century C.E.), see above, n. 41. For Moses as lawgiver in a wide range of Jewish and non-Jewish sources, see Wayne Meeks, *The Prophet-King: Moses Traditions and the Johannine Christology* (NovTSup 14; Leiden: Brill, 1967), 107, 112–13, 130, 132–33, 171–72.

forever. In this context, it is R. Judah b. Ilai's interpretation (and similar, later rabbinic interpretations of specific Mosaic legal innovations) that is the more radical and in need of explanation: not so much that Moses reliably recorded and transmitted God's words, but that God acceded to Moses' rational arguments and legal innovations as a model for all times thenceforth. Students of rabbinic literature can easily bring to mind other texts in which similarly radical (yet also ambivalent) divine authorizations of rabbinic legal initiative are exegetically grounded in the words of Scripture and, in some cases, traced back to the biblical elders, even while narratively framed in the context of intramural rabbinic disputes.<sup>52</sup> Such texts are not simply etiological, in the sense of tracing claims of rabbinic interpretive authority back to Sinai. Rather, in dialogically drawing their own readers/students into such interpretive debate they are rhetorically performative and transformative in the here-and-now of their textual communities.

By now it should be clear that the three alternatives that I have set out here are really not alternatives at all but are deeply interconnected to, and inclusive of, one another.<sup>53</sup> If hermeneutics is an interpretive shuttle between a scriptural text and a scriptural community situated in a different historical and cultural setting, then hermeneutics cannot exist apart from having one foot planted in that setting. Likewise, if the most proximate historical context of any text is its own community of "readers," and if a text responds to and is shaped by extramural historical circumstances only via its dialogical engagement with, and transformation of, its intramural textual

<sup>52</sup> Examples that come to my mind, focusing on earlier rabbinic sources, are as follows: *Sifre Deut.* 154 (Finkelstein ed., 207, with note ad loc.), on Deut 17:11, concerning the (rabbinic) high court: "Even if they show you that right is left and left is right, obey them" (cf. *Song Rab.* 1:2[18]); *m. Roš Haš.* 2:9 (cf. *Sifra 'Emor* parashah 9:9, 10), interpreting Lev 23:4 to mean, "whether at their proper time or not at their proper time, I [God] have no other festivals than these," as set by the human (rabbinic) courts, extending the authority of the elders of Moses' time thenceforth; the much celebrated story of R. Eliezer and the "Oven of Aknai" in *b. B. Mešia* 59b (*baraita*): "It is not in heaven. . . . After the majority must one incline." See also above, n. 20.

<sup>53</sup> For a more extensive discussion of these three "facings," see my *From Tradition to Commentary*, 13–18; as well as Richard S. Sarason, "Interpreting Rabbinic Biblical Interpretation: The Problem of Midrash, Again," in *Hesed Ve-Emet: Studies in Honor of Ernest S. Frerichs* (ed. J. Magness and S. Gitin; Atlanta: Scholars Press, 1998), 132–54, including discussion of other recent scholarship.

Mesica

community, then the connection between that text and its historical context must run through its hermeneutical and rhetorical engagement with that community of readers, or in our case, students.

To conclude, in the words of Qohelet (4:12): החוט המשלש לא במהרה ינהק ("A threefold cord is not readily broken"). Rather than seeking in vain to isolate these three strands, we need to attend to the dynamic of their interplay.<sup>54</sup>

---

<sup>54</sup> An earlier version of this paper benefited from the critical responses of Richard Sarason and Derek Krueger at a session of the History and Literature of Early Rabbinic Judaism Section, Society of Biblical Literature Annual Meeting, November 25, 2002. Friends and colleagues contributed in ways large and small to its progress, especially when they criticized my interpretations: Rachel Anisfeld, Beth Berkowitz, Adela Yarbro Collins, Alon Goshen-Gottstein, Christine Hayes, Menahem Kahana, Ranon Katzoff, Bernard Levinson, Chaim Milikowsky, Adiel Schremer, and Aharon Shemesh.