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Who is the Author of Halakhah?

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Corresponding Author	Family Name	Volli
	Particle	
	Given Name	Ugo
	Suffix	
	Division	
	Organization	Università di Torino
	Address	Turin, Italy
	Email	volli.ugo@gmail.com

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Abstract	<p>The Jewish Law (Halakah) is probably the older legal system working in our time. It is established on a hierarchy of different texts. The oldest and more authoritative is the Torah (the five books of Moshe), then come the Mishnah, the Talmud, the compilation as Maimonide's <i>Mishne Torah</i> and Caro's <i>Shulchan Arukh</i>, then the responsa of the rabbis. While the authorship of the later texts is more or less clear, the one of the Torah is highly problematic, also in the self-understanding of Jewish hermeneutics. This question is discussed in the present paper not from a philological-historical point of view, but from a semiotic one, trying to understand what devices and regimes of enunciation are enacted by the text in order to establish its semiotic-judicial effects. A special double enunciation frame is proposed as the mark of the legislative power in the text, in correlation with another textual device, a sort of divine "signature". The further evolution of the authorship of the Jewish Law is discussed in its relation with the question of the autonomy in the interpretation of the sacred text.</p>	
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Keywords (separated by '-')	Torah - Halakhah - Authorship - Talmud - Enunciation	
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Footnote Information	<p><i>Halakhah</i> (literally path, from the root H-L-CH) is the overall name of the <i>actual</i> Jewish law, that is what <i>actually</i> binds the Jews. We shall see the meaning of this specification later. By "Jewish law" we mean the traditional and religious legal system of Jewish people—not to be confused with that of contemporary Israel, which is secular and presents the key features and authorship of a typical modern democratic legal systems. It should be noted, as I will show later, that the Jewish legal system is probably the world's oldest still widely applied one, at least in certain areas.</p>	
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3 Who is the Author of Halakhah?

4 Ugo Volli

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7 **Abstract** The Jewish Law (Halakah) is probably the older legal system working in
8 our time. It is established on a hierarchy of different texts. The oldest and more
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11 then the responsa of the rabbis. While the authorship of the later texts is more or less
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A1 *Halakah* (literally path, from the root H–L–CH) is the overall name of the *actual* Jewish law, that is
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A6 the world's oldest still widely applied one, at least in certain areas.

A7 U. Volli (✉)
A8 Università di Torino, Turin, Italy
A9 e-mail: volli.ugo@gmail.com



25 Although, as we will later see, the Jewish legal system is layered in a complex
 26 hierarchy of sources, it undoubtedly considers itself as based ultimately on the text
 27 of Holy Scripture (*Mikrah* or *Tanakh*).¹ In fact, according to the Jewish tradition,
 28 throughout all the *Tanakh* only the *Torah*² (i.e. the *Chumash*, the Five Books of
 29 Moses) is truly normative—and not, for example, the many prophetic passages or
 30 the Proverbs, which also show rules, obligations and examples of actions, though
 31 they are often used as guidelines for legal interpretation.³ Even the second major

1FL01 ¹ Corresponding roughly (but with considerable textual differences and organization of the canon) to
 1FL02 what in the Western languages, namely in the Christian world is called the Bible. Nevertheless, *Mikrah*
 1FL03 does not mean *writing* but *reading* or better *proclamation*, coming from the root קִרָּא K–R–H, which is
 1FL04 the same used in Arabic for the *Koran*. *Tanakh* is an acronym structured according to the consonantal
 1FL05 Hebrew phonology, which recalls the three parties that compose the Hebrew scriptures: the *Torah*
 1FL06 (Pentateuch), *Neviim* (Prophets), *Ketuvim* (Writings or Agiographs). I would like to use this note in order
 1FL07 to clarify that the transcription of Hebrew words in this article is not scientific and only aims to facilitate
 1FL08 the understanding for the non-expert reader. I want also to clarify that obviously the point of view of this
 1FL09 study is not a legal or rabbinic, but only semiotic, and certainly it does not pretends to usurp in any field a
 1FL10 decision power that does not belong to the author.

2FL01 ² *Torah* is a semantically rich word, used in different ways in the Jewish tradition. The word *Torah*
 2FL02 (תּוֹרָה) is etymologically linked to the teaching (מּוֹרֵה, *Moreh*, is the teacher), to the act of aim and hit
 2FL03 (so to be accurate in teaching and doing: the correspondent verb is יָרֵה *ioreh*; the sin -het-, consistently
 2FL04 has the etymology of a target error), and also to the light (אֵר, *or*), with its metaphoric field of lamps,
 2FL05 lighting, etc. (which is scattered throughout the biblical text, for example, Prov. 6:23, Psalm 119: 105–
 2FL06 115, Is 8:20). In practice, we use the word *Torah* to define all the Jewish study, including “what an expert
 2FL07 rabbinical student will say”, but mainly for the *Torat Moshe*, the Pentateuch (in Hebrew also named as
 2FL08 *Chumash*), which is also defined as “Written *Torah*”, while the *Talmud* and by extension the later
 2FL09 interpretive tradition, is often called “Oral *Torah*”. Finally, it often happens that a single law is called the
 2FL10 *Torah* (eg Lev. 6:2, “*Torat haolà*”, the law of the Holocaust, Lv 14:97: “*Torat tsar*”, the law of leprosy;
 2FL11 Nm 19:2, “*hukkat torah*” the statute of the law, etc...) In other contexts, the same rule shall be called the
 2FL12 “*mitsvah*” (commandment), “*Hukka*” (norm), “*Mishpat*” (rule). Often these words appear together, as in
 2FL13 Gn. 26: 5, Ex 16:28, 18:16 and so on. Those who are usually called in western languages “ten
 2FL14 commandments”, in their Hebrew name lose this imperative tract: they are called “*asseret hadibrot*”
 2FL15 meaning “ten words” (hence properly “Decalogue”). The differences in all this complex terminological
 2FL16 field are not clear. Beginning from the Talmudic discussion (*Makkoth* 23b), the main obligations that the
 2FL17 Jewish laws imposed on individuals or communities (not so for example the legal obligations of
 2FL18 contractual aspects etc...) are summarized in “613 *mitsvot*” or precepts. The number 613 is explained as
 2FL19 the sum of 248 *Mitsvot* “*laassè*” or positive and 365 “*lo taassè*” or negative laws. About these numbers,
 2FL20 there is plenty of Kabbalistic thought. Suffice it to say here that 365 is defined as the number of days of the
 2FL21 year, 248 that of the “bones” of the human body (in the Talmudic conception) and the number 613 is
 2FL22 usually related to the “numerical value” or “*ghimatria*” of the word *Torah* which is actually 611. But the
 2FL23 sum becomes right with the addition of 2 for the first two words of the Decalogue, that “God signature”
 2FL24 about which we will discuss later. For a summary list of the 613 *mitsvot*, cf. http://it.wikipedia.org/wiki/613_mitsvot. The most authoritative discussion is the *Sefer Hamitsvot* (“Book of Precepts”) of
 2FL25 Maimonides, which can be found on the Internet in its original language (<http://www.daat.ac.il/daat/mahshevt/hamitsvot/shaar-2.htm>).

3FL01 ³ The rule is based on the well known passage of Deuteronomy (30:12) which states that “The *Torah* is
 3FL02 not in heaven,” reinterpreted by TB *Bava Mets*. 59b to show that the practical rule of Judaism, the
 3FL03 *Halakhah*, is established in the discussions of the sages, following their majority (Es.23:2). Then there is a
 3FL04 passage in TB *Baba Mets*. 2b that says that one does not follow the interpretation given by the prophets
 3FL05 about the *Chumash*. Maimonides in Chapter 9 of his “Foundations of the *Torah*” (the beginning of the
 3FL06 *Mishna Torah*), specifies that a prophet has no right to innovate *halakhot*, and that its purpose is just to
 3FL07 remember to look at the *Torat Moshe* (i.e. the Pentateuch), and cites the passage of Malakhi (3:22) that is
 3FL08 read as *Hafarah* of *Shabbat Hagadol* and is also the conclusion of the *Tanakh*. In fact, some laws are



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32 source of Jewish law, the most detailed one, which directly leads the current
 33 religious law, i.e. the *Talmud*, presents itself predominantly as a clarification (in the
 34 form of discussion) of the contents of the *Torah*.⁴ So the problem of the authorship
 35 of Jewish law brings us ultimately to inquire about the one (or the One) who is the
 36 author of the *Torah*.

37 The question would allow, of course, two possible lines of response. On the one
 38 hand we can historically and philologically examine the process of composition of
 39 the biblical text. This task has been undertaken by the biblical philology ever since
 40 the Spinoza's pioneering work in the Seventeenth century, reaching the apogee of
 41 its credibility with Wellhausen's work in the middle of the Nineteenth century and
 42 complicating and shattered into conflicting versions throughout the twentieth
 43 century.⁵ The basis of this paradigm is the idea that the biblical text should be
 44 broken down into a number of original parallel or synoptic "documents", in analogy
 45 to the Gospels model (hence the name of "documentary hypothesis" used to define
 46 this stream of studies), which supposedly were melted by editors in the received
 47 text. The documents hypothesized by Wellhausen were four: "E" (so characterized
 48 because in it the divine name *Elohim* is predominant); "J", (where the divine name
 49 is the Tetragrammaton, which in English transcription begins with this letter); "P",
 50 or Priestly (because in it the interests and concern of a group of priests would be
 51 reflected), and "D" or Deuteronomy, (because the content of the vast majority of the
 52 last book of the Pentateuch, i.e. Deuteronomy, would be attributed to it).

53 Over time, the evolution of this theory broke down even these documents into
 54 several sub-documents and it was assumed that they had also been recast by a
 55 number of partial editors. The history of the Documentary Hypothesis after
 56 Wellhausen shows a great variability of the paradigm, which fails to stabilize the
 57 analysis of text documents, nor their respective dating and authorship attribution.
 58 Considered from outside, the Documentary Hypothesis appears today as a
 59 predominantly Protestant point of view on the Bible, with strong ideological traits,
 60 that appears of little relevance for our purposes. The critical remark may seem hard
 61 but it is justified not only because this stream of biblical philology denies, in its
 62 majority, the received structure of the text and in particular the primacy of the
 63 Pentateuch, always recognized by the Jewish tradition, which is the frame for our
 64 authorship question,⁶ but also because, ideologically, it frames almost everything in

3FL09 Footnote 3 continued
 3FL10

3FL11 made on *Neviim*, but clearly the sages feared that it could be too easy to pretend to be prophets and change
 3FL12 the *halakhah*. There is a passage in *Megillah* 2b (parallel *Shabbat* 104a), where the verse "And these are
 3FL13 the words" (Lev 27.4) is used to emphasize that the prophets can not innovate, but they can only
 3FL14 reintroduce former things that had been forgotten: "from now on in a prophet is not allowed to innovate."
 3FL15 The same goes in *Yoma* 80a as regards the minimum of the sanctions. In...*Temurah* 16a the same
 3FL16 principle is reaffirmed, talking about the fact that many halakhot were lost after Moses, and the theo-
 3FL17 logical root is *elle hadevarim*: i.e., only these are the words of God, not that will be added. (thanks to
 3FL18 Haim Cipriani, for this personal communication). See also Maimonides, *Introduction to the Mishnah*, I, 2.

4FL01 ⁴ For some explanation about the *Talmud*, see later. Introductions and explanations for general reference
 4FL02 are, Steinsalz [19], Stemberger [20].

5FL01 ⁵ Cf. Nicholson [13].

6FL01 ⁶ For a review of all these positions, written by a scholar who defends "the Legacy of Wellhausen", see
 6FL02 Nicholson [13]. As our object is the authorship of *Jewish Law*, which is defined by the Jewish tradition as



65 a Christian framework, for example placing the emphasis on the prophetic writings
66 and underestimating those of the Pentateuch⁷ and in particular its legal portion.

67 Moreover, the influence of Protestant theology is evident in the way of
68 considering the complex textual structure: for example in the analysis of the Bible
69 as “salvation history”; in the attempt to identify here and there some explicit faith
70 declaration or, in their language, “creed”; in the prevalence given to the prophetic
71 “ethic” preaching and in disregard for what Judaism considers the main aspect of the
72 scripture, the legal content. These lines of analysis have not been accepted by the
73 Jewish religious culture, who has proposed alternative hypothesis.⁸

74 Of course, religious affiliations or ideologies aren’t good reasons for accepting or
75 refusing a scientific hypothesis. But the clear fact of a large plurality of
76 interpretations of the Documentary Hypothesis, which are not able to converge,
77 suggests that the research paradigm is somehow wrong or too ambitious. It would be
78 interesting, although not conclusive about its further use, knowing who and when
79 actually composed the Torah or its “documents”; but despite two centuries of wide
80 efforts in this direction no shared answer has been found. It is possible to suggest a
81 different approach: the semiotic one. In general, semiotics is not interested in
82 knowledge of as to who are the empirical authors of a text, what were their
83 intentions and social interactions, even when that is known; it looks to the texts from
84 the reader’s point of view, considering what is the representation of the author and
85 his/her ideology included in the text is, what kind of Encyclopedia it entails etc.

86 For these reasons, the question of who was the *empirical* author (or authors) of
87 the Torah on the historical-philological field, will not be considered any further in
88 this article. I will instead address the authorship *inscribed* in the text, that is, the
89 author (or, as we will see, the hierarchy of authors) who is implicitly communicated
90 and assumed by the text through complex enunciation mechanisms. It is important
91 to understand that our question does not concern the *authority* supporting the
92 binding character of the text, which is, of course, exposed by the text as God
93 himself, as Creator and hence as Master of the world, all-powerful and mindful of
94 the Jewish people. The problem in this paper is *authoriality*, i.e. the semiotic
95 instance assumed by the text itself as signing, constituting and validating the legal
96 text of the Jewish Law. I will discuss this after the *self-interpretation* of the Jewish
97 tradition, i.e. the way it is treated inside the text and in the following hermeneutic
98 work on it. We have rich continual traces of this hermeneutic elaboration since the
99 biblical texts coming after the Torah, through the *Mishnah* and the Talmud, till the
100 big Middle Ages commentary and the following discussions. Although it separates
101 the different layers of this elaboration, this article aims to examine the whole self-
102 understanding of the Jewish legal tradition, i.e. the consensus through the ages about
103 some basic principles, as “Torah”, in the wider sense (cfr. Volli [26]).

6FL03 Footnote 6 continued
6FL04

6FL05 originated in the Pentateuch, a theory devaluating and destructuring it can hardly be our point of
6FL06 departure.

7FL01 ⁷ Often it is recast together with the book of Joshua, in an “Exateuch”, which is a “discovery” of the
7FL02 Documentary Hypothesis writers, without any known support in the history of the text reception before it.

8FL01 ⁸ For a brief but effective argument for these positions, see Cassuto [6].



104 The Pentateuch is attributed by the Jewish tradition and, above all, in the text itself
 105 to Moses: (Ex 17:14, 24:3, 4, 7; 32:7–10, 30–34; 34:27, Lev. 26: 46; 27:34, Deut. 31:9,
 106 24, 25); as we find in Nm: 9:22 with an expression important for the Jewish liturgy, the
 107 Law is “written by Moses in the name of God”. It is considered unchangeable and
 108 closed, in the sense that nothing can be taken away from the text and nothing can be
 109 added (Dt 12:32, 4 :1–6). Also, it is regarded by the tradition as wholly given at the
 110 revelation at Sinai (*Torat Moshè min Sinai*), even if tells events after that time and
 111 even after the death itself of its author. This paradox, of course, is not neglected by the
 112 traditional comment which handle it in terms of prophecy: not in the sense of free
 113 forecast of the future, as in the popular meaning of the word “prophet”, but in that of
 114 divine dictation, which is the true meaning of this word (cf. Volli [26]) and hence of
 115 the divine omniscience that justifies it. We are interested in this detail mainly because
 116 it provides another clue to the problem of authorship in this text, because Moses is “the
 117 greatest of prophets” (Maimonides). The authoriality of a prophet is a very special and
 118 limited one. We must consider it in some detail.

119 The prophetic discourse, at least in the *Tanakh*, has a special nature: it is not a
 120 personal word, it belongs literally to God. The prophet is not the real subject of his
 121 speech, rather he is a tool, manipulated, even unwillingly as in the case of Jonah, a
 122 tool chosen to speak to the man, a kind of megaphone: hence he may be called “the
 123 mouth of God.”, “You don’t have to seek advice from *my mouth*” i.e. from the
 124 prophet, God rebukes his people, using that same voice (Isaiah 30:2). In Jeremiah,
 125 God promises: “If you come back, I will come back, you’ll be the at my presence
 126 [...] you will be my mouth” (Jer. 15:19). Very often the talk of the prophets contain
 127 similar formulas: “Y–H–V–H⁹ speaks “says Isaiah (1:2 ff),” The word came to
 128 Jeremiah from Y–H–V–H” (Gr 7:1) “Listen to what is the word that proceeds from
 129 the Y–H–V–H” (Ezekiel 33:30; Is 1:10); “So says Y–H–V–H” (Isaiah 8:1) “oracle
 130 of Y–H–V–H” (Is 15:1, 17:1 and *passim*). The prophet is therefore “the man of
 131 God” (1 Kings 4:7), or “of the spirit” (OS 9:7). The Bible does not distinguish
 132 between their words and the word of God: “The house of Israel will not listen
 133 because you do not want to hear me” (Ezekiel 3:7). “For I sent my servants the
 134 prophets, day after day, but they did not listen Me “(Jer 7:25).” Rejecting their word
 135 means then rejecting God” (Zechariah 7: 9–13, cf. Deuteronomy 18:18ff).

136 The prophet is an instrument of God because God is manifested “through (*beyad*)
 137 his prophets”. The expression *beyad*, which has also the instrumental meaning of
 138 “through”, “by means of”, literally means “in the hand”. Thus we find, again with
 139 the use of *beyad*, “the mitsvah of Y–H–V–H given through Moses” (Num 36:13),
 140 “the mitsvah of Y–H–V–H indicated by the prophet Haggai” (Ag. 1:2, 2);
 141 “the words that Y–H–V–H proclaimed by the ancient prophets” (Zech. 7:7–12). The
 142 prophet is thus “mouth”, but also “hand”. And Moses being “the greatest of the

9FL01 ⁹ I will transcribe here and later the Tetragrammaton jod-he-vaV–He (so to speak that is the proper name
 9FL02 of the Lord, not to be uttered following the Jewish law) with the Western corresponding letters. In non-
 9FL03 liturgical context the Jewish tradition replaces it the definite description Hashem, which I will sometimes
 9FL04 literally translate “the Name”. The way of naming God in the Jewish contest, depends on semiotic-
 9FL05 liturgical rules that raise fundamental semiotic questions. For a discussion of the divine names in the
 9FL06 Jewish tradition cf. Volli [24]. Normally in Western languages the current translation for this term is
 9FL07 “Lord”. I will not use it, as it has deep theological implications, that I prefer avoid in this discussion.



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143 prophets”¹⁰ and the *Torah* the text of his prophecy, still in all of the world’s Jewish
 144 synagogues, reading the *Torah* is introduced by a public presentation of the text
 145 illustrated by a phrase that sums up the way the tradition understands the authorship
 146 of the Jewish law: “*vezot haTorà asher sam Moshè livnè Yisraèl, al pi Hashem,*
 147 *beyad Moshè*”, i.e. “and this is the *Torah* that Moses presented to the children of
 148 Israel, from the mouth of Y–H–V–H by the hands of Moses.”

149 The expression “the mouth of Y–H–V–H, by the hands of Moses” can be
 150 interpreted as alluding to the figure of dictation, certainly traditional but not
 151 expressly stated by the text. Only about the second writing of the Decalogue, does
 152 the *Torah* specify that it was dictated; indeed the first version was graven in two
 153 stone tables *directly from God* (Exodus 24:12; 31:18, 32:15–16; Deut. 5:22). After
 154 their breaking by Moses because of the golden calf mishap, the tables had to be
 155 written again. First Moses obtained the promise of a second writing by God (Ex:
 156 34:1), then he was ordered by God to do it himself: “Write down these words,
 157 because on the basis of these words I have made a covenant with thee and with
 158 Israel” (Exodus 34:27 ff). This episode is an important example out of the very
 159 small number of cases in which the prophets are commanded to write some lines (Ex
 160 17:14, 24:4, 34:1, Dt 5:22, 31:9, Isaiah 30:8, Has 2:,2, Gr 36:2–4, Ezekiel 24:2),
 161 cases in which the word “book” is also often used.¹¹ It should be noted, finally, that
 162 prophets do not always endorse what they must say (the canonical case of such an
 163 opposition is Jonah, who does not want to warn and save the inhabitants of Nineveh,
 164 as it is ordered by God). More, prophets do not always even fully understand the
 165 consequences of their prophecy. It is the case of a famous *Midrash*¹² of the
 166 Babylonian *Talmud*, *Menachot* 29b.

167 Rabbi Yehuda said in the name of Rav: When Moses went up on high, he
 168 found the Holy One sitting and tying crowns on the Holy letters. He said to the
 169 Holy One: Ruler of the Universe, who is holding back Your hand?. The Holy
 170 One answered: There is a man who will appear at the end of several
 171 generations and Akiva the son of Joseph is his name and he will need these
 172 crowns, because from each and every thorn he will derive scores and scores of
 173 laws.. He said to Him, Ruler of the Universe, show this man to me.. The Holy
 174 One said, Turn around! So, Moses went and sat in the back of Rabbi Akiva’s
 175 class, and he had no idea what they were saying. He became weak and
 176 disoriented. Soon the class reached an issue and a student asked, Rebbe,
 177 what’s your source for this ruling?. He said, It’s a law of Moses from Sinai..
 178 Moses was relieved. Moses returned to the Holy One and challenged Him,.

10FL01 ¹⁰ This is the seventh of the thirteen principles of faith proposed by Maimonides (*Pirush Hamishnayot*,
 10FL02 treated *Sanhedrin*, Chapt. 10) and reflects a tradition that starts from the very conclusion of the text of the
 10FL03 *Torah* (Deuteronomy 34:10), “*lo kam be Yisrael ke Moshe od navì*”, “did not rise in Israel a prophet like
 10FL04 Moses”.

11FL01 ¹¹ On the very complex way the expression *sefer* (usually translated as “book”) is understood in the
 11FL02 *Tanakh*, cf. Volli [25].

12FL01 ¹² Noun from the root D-R-SH, which means petting, soliciting, and hence commenting. It is a rabbinic
 12FL02 commentary that may be legal, theoretical or narrative; most often it is understood as a legendary and
 12FL03 homiletic expansion of the *Torah* developed in the rabbinic tradition. For a detailed discussion, see Banon
 12FL04 [5].



179 You have a man like this and yet. You are giving the Torah through me?. The
180 Holy One answered,.shut up! That's the way these thoughts ascend to me!
181 Moses asked,.Now that you've shown me his Torah, show me his reward.. The
182 Holy One said,.Turn around!. He turned around and saw people weighing
183 Rabbi Akiva's flesh in the marketplace. Moses hollered,.This is his Torah, and
184 that was his reward?. The Holy One answered, shut up! That's the way these
185 thoughts ascend to me!¹³

186 One should not make the mistake of taking this anecdote as meaningless and
187 naive. The conventional narrative of the Midrash is a systematic way of conveying
188 complex problems through a "concrete" rhetoric (Banon [5]). This story is important
189 in relation to our discussion, because it does not only doubts somehow the biblical
190 authorship (Moses is represented as the regular author, but it is God who writes the
191 text decorations from which in the future halakhot i.e. laws will be taken) but also
192 emphasizes the importance of creative interpretation, on which we will return later.
193 The relation between the God who dictated (or just inspired) and now is copying and
194 decorating the scroll, and the man to whom the book is attributed, is very complex
195 —as it is complex the relation between rabbinical evolution (*chiddush*) and fidelity
196 to the source. In our modernity we see a radical opposition between invention and
197 conservation—in the Jewish Tradition (and actually in all ancient word: the Latin
198 meaning of "inventio" is about *finding* something not creating it anew) things are
199 different.¹⁴

200 So, it is not clear *in the text* (except on the basis of an hermeneutical act of faith)
201 whether all the Torah was *dictated* by God to Moses, or *inspired*, or otherwise
202 *constructed*. Likewise one cannot easily find *in the Torah* a textual or narrative
203 justification of the belief deep rooted in Jewish mysticism that the Torah precedes
204 the creation itself, being a kind of model of the world. It will be then convenient, in
205 order to better understand the *authorship* of the Torah—the authorship which is
206 relevant to us, the *implicit* and self-described one—to try a closer look at its text.
207 Here in fact the problem of the authorship is reduced to the *enunciation* of
208 authorship: whom does the Torah say is saying its text? (or writing it?).

209 The outer narrative frame of the Torah, in the terms of Genette [7] is strictly
210 heterodiegetic, at least in formal terms. If we did not know already that the One who
211 dictates/authors is the divinity, we would not be able to know it in terms of explicit
212 narrative. All the story is seen in the third person and from afar: the Creation, the
213 Flood, Babel, the stories of the patriarchs, the exodus of the people of Israel from
214 Egypt, their experiences in the desert, the same divine revelation... Beyond any
215 philological theory about the various "documents" composing the text, one can
216 reconstruct a perfect continuity from the narratological and enunciation point of
217 view, at least for the outer frame of the text (i.e., without taking in consideration for

13FL01 ¹³ <http://www.hillel.org/NR/rdonlyres/F0514602-925C-4343-A0A4-392CED4949CC/0/Understanding>
13FL02 [Shavuot.pdf](#). Cf. Rabello [15]:51.

14FL01 ¹⁴ See the opposition between two kind of innovations, *shinui* and *hiddush*, as defined in Askenazi
14FL02 [1]:248–253.



218 the moment those textual layers of “*enunciated enunciation*”¹⁵ that Genette [7] calls
219 metadiegetic). Even Deuteronomy, although it has an strongly metadiegetic and
220 homodiegetic internal form, consisting of three speeches held by Moses in first
221 person, is opened and closed by an heterodiegetic frame: an introduction for
222 presenting space and time (“These are the words that Moses spoke to all Israel” etc.
223 (Deuteronomy 1: 1–5) and the end in Chapter 34 with the description of his author
224 death from the outside (“Then Moses went up from the plains of Moav on Mount
225 Nevo,” etc.).

226 The narrator implied in the frame of the Torah and in many of its narrations,
227 never explicitly defined in its identity, is “omniscient” in narratological (and
228 therefore weak or metaphorical) terms, or rather his omniscience is strong enough to
229 bear witness to events that could not be attended by any mortal such as the creation
230 of the world, or to narrate people’s (and even God’s) internal subjective states as
231 beliefs and feelings. But in the text, we note only the evidence of this *narrative* or
232 weak omniscience, alike to that which can be found in much part of Western
233 literature, starting from Homer and Hesiod who claim to know secrets and thoughts
234 of the gods and men. That the *weak omniscience* of the narrator should be identified
235 with the true and strong one reserved to the divinity, is a conclusion that can be
236 drawn only if one accepts as matter of faith that the biblical narrative is also literally
237 true.

238 By contrast, from the beginning of the text (from the third word: “*Bershît Barà*
239 *Elohim*”), God is an *object* of narrative, a “character” or an “actor” that is spoken in
240 the third person—and that by the way is very often *said* to speak.¹⁶ Thus, reading
241 the Torah, we are confronted to a “narrative character” with the quality of being an
242 Author or Creator or Inspirer or Dictator of the text (without prejudice now and for
243 the rest of this essay about the question of which of these definitions is correct), all-
244 powerful, good, caring, compassionate etc. We meet also as a narrative character a
245 material author, recognized as such by tradition and by some clues of the text, a
246 “hand” that contributes somehow to the text (in an equally not-decided-for-us-here
247 way), and confront the Pharaoh, leads the Jewish people etc. Thus both the authors
248 are also characters of the text,¹⁷ who speak among themselves and with others, give
249 orders and proclaim laws. This is particularly meaningful in this inquiry, because
250 among the objectives of the text—perhaps even its main purpose, or even the unique

15FL01 ¹⁵ I remember that for “enunciated enunciation” semiotics intend that within an utterance (e.g. a
15FL02 narration) there is the statement of a character – no matter if a “true” historical or a fictional one. So it is a
15FL03 kind of act of enunciation, not in the real world but in that of the story, hence not a live word but its
15FL04 narrative.

16FL01 ¹⁶ By this statement of course I don’t mean that God is *only* a literary character, as some people think
16FL02 today. I will just say that when we study the text of the Torah with the techniques of contemporary
16FL03 narratology, we find characters (actors) actants, speech, focus, storytellers, just as if one looks at it with
16FL04 the techniques of grammatical analysis there are subjects, predicates, parataxis and hypotaxis etc. without
16FL05 of course implying that the Torah as such, its story and those who act in it are *reduced* to these categories.

17FL01 ¹⁷ For example, the passages in which Moses is ordered to write “this Torah” that may be the specific law
17FL02 which is spoken or the entire text. In any case, as in this discussion we accept the text as it is, since we are
17FL03 interested in its consequences and not enter into the philological problem of its composition, so we work
17FL04 using the traditional attribution, without discussing it.



251 one, as we will soon see—there is their legislative activity, which is also a narrative
252 object.

253 In the text of the Torah the laws are all explicitly presented as divine provisions,
254 i.e., as speech acts of the divine character. They never appear in the narrative frame
255 or in any impersonal form, but are always attributed to a divine “enunciated
256 enunciation”, often in a peculiar and quite complex form, as we will see. Very often
257 the verses intended to be taken as laws (and that actually became the ground of
258 Jewish law) are also “signed” in the text, that is they are characterized by a closing
259 clause as “*Ani Y-H-V-H*”¹⁸ meaning “I, Y-H-V-H” or “I am Y-H-V-H” (often
260 with additional specifications, such as “Y-H-V-H, your God,” or, “Y-H-V-H that
261 drew you from the land of Egypt” and the like). This signature, which appears also
262 alone as the first “word” of the Decalogue, is not mandatory to establish the legally
263 binding status of the rule, but appears very often and many authors maintain that it
264 provides special solemnity to the injunctions to which it is affixed.

265 Beyond the question of signature, the fundamental fact remains that the
266 authorship of the law is always attributed expressly to God, to which the foundation
267 of the legislature is reserved. Thus, in those cases there is always an “enunciated
268 enunciation” attributed to the Divinity. The law, in this context, is essentially a kind
269 of divine order and in fact “mitsvah”, the word that most correctly designates
270 halakhic rules, derives from the Hebrew TS-V-H root, which means to yoke, to
271 impose. Not all the divine commands, however, assume a truly legal character, there
272 are specific orders directed at individuals or individual groups at certain times (such
273 as the request made to Noah to build the Ark) or generic ones for all mankind (“be
274 fruitful and multiply”) These commands do not belong de jure to the specific Jewish
275 law as their target is improper, but can be allowed to enter it by analogy or by
276 extension or as an example. Actually, the true biblical laws are typically
277 characterized by a form that qualifies the command as law. The main point is
278 that they are directed explicitly to the “*bené Yisraèl*”, the children of Israel, that is
279 the Jewish people.

280 In order to understand what belongs to Jewish law it is therefore necessary to
281 consider not only the author but also the declared recipient of the message. It is in
282 the correct coexistence of the two terms in the text that the validity of the norm is
283 ground, but this coexistence obviously cannot be but *in the text*. In fact only those
284 orders are accepted as Jewish law, that God addresses *in the Torah* specifically and
285 explicitly *to the community of the Jewish people* (even when, from a practical point
286 of view, the norm involves only a fraction of it, such as the rules on the sacrifices,
287 which can be performed only by priests). It is interesting to note that what allows
288 one to recognize this relationship in most, if not in all, cases is an enunciation mark:
289 in order to be recognized as law, it is not enough that the rule be simply expressed or
290 commanded by the divinity, but the text must express it through Moses being
291 ordered to communicate it to the Jewish people. In these cases communications pass
292 through three logical levels:

18FL01 ¹⁸ The ambiguity is due to the fact that in Hebrew language the copula in the present tense is not usually
18FL02 expressed by a separate word and any combination of a subject and a verbal predicate, or as in this case a
18FL03 pronoun and a noun can be always understood as predication.



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- 293 1. **Frame level**¹⁹ in which the narrator in third person, whoever he is, says that
 294 God (usually named in these cases as *Y-H-V-H*) speaks to Moses (often in
 295 Hebrew: *Vaiomer Y-H-V-H el Moshe*). In this frame level, usually very few
 296 details of space and time are given (for example, He spoke “at Mount Sinai” or
 297 “after” a certain fact). Often the frame sentence ends with the expression *lemor*,
 298 literally “to say”, that serves as the opening quotation mark of a statement or,
 299 more technically of an *enunciated enunciation*.
- 300 2. **The second level** (subject to a further *debrayage* and expressed as imperative
 301 speech act, in the singular number) is what is commanded to Moses, a very
 302 simple order that has just the form of “speak to the children of Israel” (*emòr el*
 303 *bené Yisrael*), or “to the community of Israel”, or “to all Israel” (details that are
 304 often significant in terms of interpretation, but don’t matter here for us) “and
 305 tell them”, a clause that opens a second nested enunciated enunciation.
- 306 3. **Third level** The object of this second speech act (after a third *debrayage*) is
 307 again in the imperative mood but plural in number: it is that of the law or set of
 308 laws that are often punctuated by the signature that we have already dealt with.
 309 Compared to the previous level, this time the represented speaker is the same
 310 (God), but while before it was a simple command to be uttered to Moses to say,
 311 here we read the description of another provision to be disseminated to all the
 312 Jewish people.

313 Thus the rule is given not as direct order but rather as a description of an order or
 314 as its matrix or model: a special status that is expressed in the fact that usually such
 315 sentences are formulated in the third person (and by the way in the future tense i.e.
 316 imperfective aspect, that in the language of Torah often cannot be distinguished
 317 from the imperative). Since the imperative is typically linked to the axis I-thou of
 318 communication, an imperative sentence in the third person is always problematic. In
 319 this case, this mode is used to make the command temporally unlimited, to exempt it
 320 from the space–time conditioning of the utterance situation.

321 After a few verses or a few chapters, the act of legislation closes, and we are
 322 taken back to the frame level, sometimes with an explicit formula, such as “this is
 323 what *Y-H-V-H* said to Moses” in the given circumstance. The same organization,
 324 with few trivial differences of grammatical form, can be found in the homodiegetic
 325 talks attributed to Moses which represent the biggest part of Deuteronomy.²⁰

19FL01 ¹⁹ A level that is subject, in semiotic terms, to the first basic *debrayage* that every text undergoes,
 19FL02 detaching it from the I-here-now of the actual utterance or writing of the text. “*Débrayage*” literally
 19FL03 means disengagement. It is the disjunction or the separation of the text from the actual situation of
 19FL04 enunciation or writing and then the creation inside the text of simulacra (tracks, marks, indicators) of
 19FL05 another I-here-now. Thus it entails the projection of one or more subjects (= actors) other than those of the
 19FL06 enunciation, and of a space and a time different than those of the enunciation.

20FL01 ²⁰ Further evidence of the need for a double enunciated frame can be found in those numerous
 20FL02 episodes where Moses (or both Moses and Aaron, in some cases) receive the command to do something,
 20FL03 without it becomes law. It’s the case, of course, of the instructions for the dialogues with the Pharaoh in
 20FL04 the first chapters of Exodus, but also of the institution of the census at the beginning of Leviticus (chapt.
 20FL05 1–4): “*Y-H-V-H* spoke to Moses [...] saying so [*lemor*]: Count the people of the whole community of the
 20FL06 children of Israel,” etc. (Lev. 1:1–2). This is a complex operation that requires a broad cooperation (wit
 20FL07 the appointment of supervisors of each tribe, etc....) But the order is not intended to ground a law for
 20FL08 establishing censuses, which indeed is considered forbidden in Jewish tradition, but only to hold that



326 This account of the need for a double enunciation frame may help to clarify the
327 first famous question which opens the Rashì influential commentary on the Torah,²¹
328 commenting its very first verse. Rashì begins quoting from his master (and probably
329 his father) Rabbi Yitzhak, the problem of why the Torah starts from as early the
330 creation of the world, instead of beginning, as it would seem logical to a legal mind,
331 from the enunciation of the first mitsvah, located by him in the Exodus verse that
332 prescribes that the month of Nissan, in which the Jewish people came out from
333 Egypt, “will be for you the first of the months” (Ex. 12:2) We are not interested here
334 in the response of the commentator, though it is highly significant, but in his own
335 question. First of all, we note that the question implicitly justifies the assessment of
336 the Torah as an essentially legislative text, and mainly the identification of the
337 Teaching with the Law, as we pointed out early. Second, it makes it clear, tough
338 here too in an implicit way, that only certain provisions have a directly legislative
339 character, as we have seen. Typically it is argued that they are those particularly
340 affecting the Jewish people.

341 For instance, neither the prohibition of murder implied by the episode of Cain,
342 nor that of adultery, which can be detected in the episode of Sarah and the Pharaoh,
343 would be considered Jewish laws, because these rules are not formulated in the
344 imperative form, but only through a narrative implication, and because they do not
345 concerns only the children of Israel (however this last point is debatable, because
346 the prohibition of adultery and murder actually become *mitsvot*, Jewish rules, later
347 in the text but precisely through an explicit order proclaimed even in the most
348 important list of Jewish rules, the Decalogue).²²

349 But there is at least one other notable exception, the law of circumcision, which is
350 given to Abraham explicitly, with a clear legislative language, the future without
351 limits, and the third person plural (Gen.17:10–15). It is true that this rule applies to
352 all descendants of Abraham and thus to the Arabs (descendants of Ishmael in
353 biblical terms), the Midianites, the Edomites, etc., and even to the Amalekites; and
354 it is true that the custom of circumcision is in fact shared until now by the Jews with
355 the Arab world, but there is in the Torah no prevision of blame or punishment for
356 these people if they do not honor such obligation. Moreover, the religious meaning
357 of circumcision for the Jewish people is very different than for its neighbors: only in
358 Israel the circumcision is a mandatory requirement, the first that singles out the
359 Jews. Probably, the law of circumcision can be considered as established at this
360 point, as it is shown by the following biblical stories (for instance, that of Shimon
361 and Levi’s revenge for the violence suffered by Dinah, two generations later:

20FL09

20FL10

Footnote 20 continued

20FL11

single enumeration. Therefore it lacks the double frame. If it had been written in such terms as “Y-H-V-
20FL12 H said to Moses: Say to the children of Israel to count” etc., it would then probably become a law.

21FL12

21FL01

²¹ Written in France in the mid-eleventh century. Cf Rashi [16], *ad loc.*

22FL01

22FL02

22FL03

22FL04

²² All universal norms, which are known in Talmudic language as Noachic ones for allegedly be ordered to Noah, even though the *Torah* does not mention them directly but only perhaps hints at them, are also *Mitsvot*. The codification, which contains some pretty bold interpretations of apparently not legal passages from the Torah, is established in a midrashic source: *Genesis Rabbah* 16:6. Cfr. Rabello [15]: 7.



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362 Gen 34:14–17).²³ But Rashì, having to mention in his commentary the first law of
 363 the collective people of Israel, does not refer to it, but to the command of the first
 364 month, which *prima facie* seems much less relevant. In fact, the order of
 365 circumcision does not have the structure of double frame that we have underlined,
 366 but appears in the form of a simple enunciated enunciation (of God), while the order
 367 to consider Nissan as the first month responds to the structure that we have
 368 described.²⁴

369 Everything we have said so far allows us to reach a provisional conclusion. With
 370 regard to the Torah, the authorship of the Law (an authorship that does not
 371 necessarily identify the empirical author of the text, as we have seen) is exactly this
 372 double divine enunciated enunciation to be mediated by the prophet. Maybe this is
 373 meant exactly by the enigmatic expression on which we have wondered so far: *al pi*
 374 *Hashem, beyad Moshe*.

375 **2 2**

376 It should be noted that the normative content of the Torah is not just that of divine
 377 origin. Divine orders are to be executed to the letter, which the text shows
 378 repeatedly hosting a double explanation of the same details, the first in the form of
 379 orders, the second in that of their execution.²⁵ But Moses also happens to prescribe
 380 rules of which we trace can be found in the divine speech, for example when
 381 prescribing a period of chastity before revelation (Ex. 19:15), or when he decides
 382 the appointment of judges on the advice of his stepfather Ytrò (18:17–26).²⁶ It is not
 383 possible to say whether these rules are underlain by divine order or more or less tacit

23FL01 ²³ “One cannot be entirely sure of the existence of a circumcision law at this stage; it is safer to talk about
 23FL02 a costume, which from the way itself in which Levi and Shimeon and communicate it in Shechem, seems
 23FL03 to be part of a tribal culture more that being a religious principle: they do not say ‘G–d ordered us that ...’
 23FL04 but only that ‘it is a shame’ to give our sister to an uncircumcised man and talk of becoming one people,
 23FL05 but no more.” Rabbi Haim Cipriani, *personal communication*.

24FL01 ²⁴ Actually things are not exactly this way; i.e. in this case the clause of the second frame immediately
 24FL02 follows the proclamation of the rule, which is directed only to Moses and Aaron: “Y–H–V–H spoke to
 24FL03 Moses and Aaron in the land of Egypt in these terms [*lemor*]”. “This month is for you the head of months
 24FL04 that will be for you the first of the year. Speak to the whole community of Israel, telling them on the tenth
 24FL05 day of this month” etc. (Ex. 12: 1–3). We must assume that the legislative status also extends to the
 24FL06 Nissan definition, although when the text records Moses exact obedience to the order and his speech to
 24FL07 the “elders of Israel” (Exodus 12: 21) the privilege of the month is not mentioned.

25FL01 ²⁵ The most typical case is the construction, in the wilderness, of the Tabernacle, its furnishings and
 25FL02 priestly vestments, every small detail of which is very carefully prescribed in several chapters of the book
 25FL03 of Exodus (25–31) and then executed with an equally detailed and long description (capp. 35–40).
 25FL04 Between the two descriptions, one in the second person of the future tense and the other in the third
 25FL05 person of the past tense, however, there are small but significant differences (for example, in the order of
 25FL06 operations), which were often commented upon. About the enforceability of the legislation, it is
 25FL07 interesting noting the frequent use of the verb “to do”: the regulations are often qualified “to do” (cf Volli
 25FL08 [23]). A famous example of the proper attitude in receiving them is the promise “we will do and listen”
 25FL09 (first “do” and then “listen”), as the Jewish people responds to the Revelation (Ex. 24:7), which became
 25FL10 the subject of a famous commentary by Levinas [9, 10].

26FL01 ²⁶ Appointing judges is also, according to the sages of the Talmud, one of the seven “Noah’s laws”
 26FL02 mandatory for all people (all the sons of Noah).



384 divine agreement,²⁷ or whether this is the beginning of Jewish people's autonomous
385 power of human legislation, a power that will develop later. The fact remains that
386 these rules, established without the formalities that we have said, have not been
387 considered later in the formal group of *mitsvot*, unless there are other sources for
388 them.

389 This consideration raises the central problem of the later interpretation of Jewish
390 law. The Torah is not a code, it lacks the systematic order and the hierarchical
391 structure that are needed for being a code. It is instead a narrative containing mostly
392 normative contents. They are often proposed in the enunciational manner that we
393 have seen, but sometimes they are not. They are often repeated several times, as for
394 the rule of respecting *Shabbat*. At other times seem at odds with each other, as those
395 prescribing how to cook the Passover sacrifice.²⁸ There are also many laws,
396 universally recognized as such in the Jewish world, that are not grounded in an
397 explicit statement of the *Torah*, but later derived from it by way of reasoning. There
398 are rather generic laws, such as the very emphasized ones that require respect to the
399 *Shabbat*, but without specifying exactly what this respect consists in. The exact
400 rules were made explicit later.

401 No wonder, therefore, in finding that the written *Torah* (the *Chumash*, as I
402 explained above, the five books of Moses) is indeed the main source of Jewish law
403 and can not be changed—but it is incomplete. Hence it is necessary to assume,
404 although we have no direct evidence of it, that a process of completion, sorting,
405 reconciling the tension between different points, further explanation of the meaning
406 and exceptions was implemented beginning immediately after the writing of the
407 *Torah*. No doubt, this work was done by jurisprudence, i.e. it was the result of
408 decisions by authorities; but from a certain point onwards it was also carried on at a
409 theoretical level. This process of reflection and completion is called the “oral
410 *Torah*”, because until the Romans caused Jewish state's final loss of autonomy in
411 the first century, it was deemed unacceptable to write down the results of such
412 process (because this would have been tantamount to emulating, if not challenging
413 the original written *Torah*). If we accept the way in which texts themselves date this
414 process, then it lasted more than a millennium and a half.²⁹ If we prefer instead to
415 adopt any of the most diffused versions of the Documentary Hypothesis, this period
416 should be halved but is still very long, still much longer than the duration of the
417 entire classical Greco-Roman civilization (from Plato to Augustine). The texts of
418 tradition claim a complete continuity from Moses to the *Talmud*,³⁰ but this is

27FL01 ²⁷ Yitro for example in Es.18:23 makes reserve for an explicit divine approval of its advice.

28FL01 ²⁸ A famous case is that of the Paschal sacrifice, *Korban Pesach*, which in Ex 12:1–28 seems to be only
28FL02 roasted lamb and in Deut 16:2 to be cooked (hence possibly boiled) beef. The chosen solution was to
28FL03 follow strictly the first indication and treat the latter as inclusive of other circumstances. See
28FL04 http://ohr.edu/explore_judaism/daf_yomi/weekly_dafnotes/1019.

29FL01 ²⁹ The life of Moses is dated back in the fourteenth century before our era; the first writing of the oral
29FL02 Torah, that of the Mishnah that ends in the late second century CE.

30FL01 ³⁰ Thus the famous first chapter I of the Treaty “Pirkei Avot”, certainly the best known of the Mishnah:
30FL02 “Moses received the Torah at Sinai and transmitted it to Joshua, Joshua handed it to the elderly and the
30FL03 elders to the prophets and the prophets to the members of the Great Assembly” etc.. Note that the verbs
30FL04 used for transmitted and received are *Mesariá* and *Kibuli*, from which arise two key cultural
30FL05 developments of Judaism for the future: the Massorà, or care of the philological texts beginning from the



419 obviously an ideal claim that can not be supported by a textual evidence.³¹ The
420 problem of the authorship of these “additional” texts is therefore very complex,
421 because they present themselves in an explicit way as the sum of all this millenary
422 work (*Mishnah Pirké Avot*: 1).

423 The most complete exposition of this comprehensive “repetition” (this is the
424 meaning of the *Mishnah*) of the Torah is called Talmud (literally “study”). The
425 Talmud is composed of two layers, the most ancient *Mishnah*, which was completed
426 in the second century, and its own big commentary, the *Gemarah*, achieved between
427 the sixth and the seventh century, which comes in two versions, the Babylonian one,
428 the widest and most influent one, and the Jerusalem version, more limited but
429 nevertheless very authoritative. The Talmud is organized in “orders” and treatises;
430 hence, theoretically, it features a very neat frame structure. It also specifies in detail
431 and through cases the Jewish rules, and therefore it is the most comprehensive and
432 authoritative expression of the Law. But its composition is extremely complex,
433 particularly in terms of authorship.

434 The *Mishnah* plainly shows the intent to be a sort of code, a systematic
435 presentation of the Jewish law, but in fact presents itself sometimes also as a sort of
436 ideal record of the discussions of the early pharisaical masters, the so-called
437 *Tannaim*. This record is ideal because the opinions of authors even centuries away
438 from each other are juxtaposed and contrasted, so that the discussion is virtual, not
439 real. In the *Mishnah* there are also anonymous voices, included a distinct discursive
440 position that can close the discussion with binding conclusions (but not always
441 does), and one finds also different kind of materials as narrative interludes,
442 quotations from other parallel sources. All this in a rather terse and simple style. The
443 *Gemarah* works more or less the same way, but it shows the general form of a
444 discussion and not that of a code and has a far stronger emphasis on the different
445 opinions, including many quotations from different sources and large narrative
446 interpolations and speculative discussions, usually called *Haggadot*. The arguing
447 masters are often of later époque, dating back until to the sixth century. The
448 discussions start always from the arguments of one point of the *Mishnah*, complete
449 and comment them, try and clarify the doubts, add more or less pertinent
450 considerations and associated themes. Sometimes some recent opinion contradicts

30FL06
30FL07 Footnote 30 continued

30FL08 seventh century, and the Kabbalah, the mystical movement that defines itself as the guardian of the secret
30FL09 tradition of the Torah. The received Torah, in the opinion of commentators, “are the written and oral
30FL10 ones.” See Mello (ed.) [11] *ad loc.* which shows the classical commentaries.

31FL01 ³¹ The prophets, who at least in terms of the text self dating are intermediate between the Torah and
31FL02 Talmud, often emphasize the adherence to the law of Moses, but then sometimes speak as if they did not
31FL03 know it. See, as examples, the discrepancy between the description of the shrine of Ezekiel and that of the
31FL04 Exodus or the polemic against the sacrifices prescribed in Leviticus by Amos 5:21–24 (“If you offer me
31FL05 burnt offerings and grain offerings, I do not like: the fat of your sacrifices of fat victims I do not even
31FL06 look”), Isaiah 1.11–12 (“I am enough of burnt offerings of rams and the fat of the calves, I do not like the
31FL07 blood of oxen, lambs and goats. When you come to appear before me, who will claim this from you?”),
31FL08 Jeremiah 7.22 (“In truth, I did not speak, nor gave I command to your fathers about the Holocaust and the
31FL09 sacrifice when I brought them out of Egypt) etc. The controversy, however, certainly revolves more on
31FL10 the “hypocrisy of the rituals” as they were then realized in that time, that it does against the sacrifices as
31FL11 such in principle.



451 the *Mishnah* conclusions (but always on behalf of other *Tannaim*, whose opinions
452 missing from the discussed *Mishnah* text are presented in other sections or in other
453 collections called *Toseftah*, which means “Supplements”, or in *Baraitot*, i.e. “added”
454 texts that we know through their quotes). Complex and labyrinthine, often written
455 with abbreviations and ellipses, with many diversions and often lacking of precise
456 conclusions, the text of the Talmud is very long and sometimes very difficult to
457 understand. Often a discussion can be concluded with a final binding opinion of the
458 anonymous editor. Otherwise the various opinions displayed are later assessed
459 according to the authority of the author to which the judgment is attributed, as to his
460 époque and to the school to which he belongs, and of course according to the
461 judgment of the other sages on such opinion.³²

462 What one among different Talmudic opinions is actually *Halakhah*, was decided in
463 practice many centuries later by a number of real codes that have been composed over
464 the time on the ground of these discussions and their subsequent comments.³³ The
465 most authoritative codes, which don’t quote the discussions, but refer only the
466 corroborated conclusions, are the *Mishnè Torah* of Maimonides (twelfth century) and
467 the *Shulchan Aruch* of rav Caro (sixtieth century), which is used until now. These
468 codes also underwent the process of endless commentary that is so characteristic of
469 Jewish thought, even of the legal one: only through the commentary (i.e. referring to
470 previous statements), the *chiddush* (innovation) is legitimate. But conversely the
471 comment is also intended as the cultural device needed to introduce this ceaseless
472 innovation, without which the law would not make sense in a changing world: a
473 dialectic of conservation and change that is an extraordinarily rich and complex and
474 even formalized model of the meaning of tradition.

475 It is worth noting at this point that although the great codifications are considered
476 as established and is universally shared in the Jewish world, the process of
477 interpretation/innovation/legislation continues today through the practice of
478 *responsa* or *Theshuvot*, which were utilized for the first time in the Babylonian
479 period, more than fifteen centuries ago. The rabbis may assume the authority of
480 *poséq*, decision makers, and as such take the responsibility of applying the
481 principles of written and oral Torah to more or less new concrete situations. Any
482 new opinion may of course be contradicted by others rabbis and often it is and a new
483 discussion starts. But in principle, sooner or later, a consensus is formed and a
484 decision taken. It is worth noting that usually the memory of minority views is
485 preserved in these discussions as it happens always in the Talmud. The Jewish law is
486 evolved this way, through decisions concerning practical cases and not by means of
487 legislative acts or abstract conceptualizations (and, therefore, it is closer to the
488 common law than to the Roman law) and on the basis of expert consensus, based on
489 previous decisions (or older minority opinions), by extending or redefining them.
490 There is, thus, a continuity of law that affects many rules (there are no other
491 examples which I know of, of laws made twenty or thirty centuries ago and

32FL01 ³² For a more precise explanation of this structure, cf. the texts of Steisnatz [19], Steinberger [20] already
32FL02 mentioned and Sierra [18], Ouaknine [14], Avanzinelli [4].

33FL01 ³³ Also in this case the comments of Rashi and those of his immediate successors, the Tossafot, should be
33FL02 mentioned as particularly influential.



492 continuously applied until now, as happens for example in the Jewish marriage law,
493 which is subsumed in the Israeli legal system; or, in particularly observant
494 communities, also in the economic and family law.

495 The basic idea is, however, that the law emerges from the discussions of the
496 sages, through dialectical and very complex processes (Lampel [8]), and that the
497 strength of tradition consists especially in this exchange of views, which is worthy
498 in itself. The authorship of the law in this stage, is necessarily a collective one. The
499 consensus of the sages, more than the single *poséq* shapes the law. A famous
500 passage of the Talmudic treaty Eruvim (13b) maintains that:

501 A debate between the schools of Hillel and Shammai lasted three years. They
502 insisted that the [application of the] Torah was to be established in their opinion,
503 and they insisted that the [application of the] Torah was to be determined in
504 accordance with theirs. Finally, a heavenly voice rang out: “The views of both
505 these and those are the words of the living God! However, the [application of
506 the] Torah must be determined in accordance with the provisions of the school
507 of Hillel.”

508 Therefore, in the end, the debate comes down to a practical decision, but all
509 opinions are “words of the living God,” even those who are refused, need to be
510 preserved: this is the reason why the Talmud is shaped more as a minute than of as a
511 code.³⁴ About the Talmud, there are explicit meta-rules in order to determine, from
512 the record, which opinion is the legally binding one, the one that gives rise to
513 *Halakhah*: for instance, the just quoted one states that in every discussion among the
514 two great legal schools of Hillel and Shammai, it is always the first to prevail,
515 except for a small number of specifically stated exceptions. Another important
516 criterion is the prevalence of the majority of the sages of the generation against any
517 dissenting opinion, but authoritative, that was already mentioned in a previous note.
518 The typical case in which this rule applies against an influential rabbi and even
519 against the apparent will of God is the case of “the Akhnai oven”³⁵:

520 If a man made an oven of separate coils [of clay, one upon Placing
521 Another], then put sand Between Each of the coils—such an oven, A. Declared
522 Eliezer, is not susceptible to defilement, while the sages Declared it
523 susceptible. It is Taught: On That Day R. Brought forward Eliezer Every
524 imaginable argument, But The Sages did not accept any of Them. Finally He
525 Said to Them: “If the *Halakhah* (religious law) is in Accordance with me, let
526 this Carob tree test it!” Sure enough the Carob tree uprooted Immediately
527 Moved Itself and one hundred cubits, and Some say 400 cubits, from the ITS
528 place. “No proof can be Brought in from Carob tree,” they retorted.

529 And again He Said to them “If the *Halakhah* agrees with me, let the channel of
530 water testing it!” Sure enough, the channel of water flowed backward. “No

34FL01 ³⁴ It is an interesting fact, and certainly an unusual one in the history of religions that the Talmud
34FL02 preserved also the views of Elisha ben Abuya, who is accused by the Talmud of apostasy and hence was
34FL03 nicknamed “acher” (meaning “the other”) because of his “epicurean” views.

35FL01 ³⁵ Talmud b. Baba Metz 59b, see Rabello [15]: 49.



531 proof can be Brought from a channel of water,” they rejoined. Again he urged,
532 “If the Halakhah agrees with me, let the walls of the house of study testing it!”
533 Sure enough, the walls tilted as if to fall. But R. Joshua, rebuked the walls,
534 Saying, “When disciples of the wise are Engaged in a halakhic dispute, what
535 right have you to Interfere?” Hence in deference to R. Joshua They did not fall
536 and in deference to R. Eliezer They did not resume Their upright position;
537 They are still standing aslant. Again R. Eliezer then Said to the Sages, “If the
538 *Halakhah* agrees with me, let it be Proved from heaven.” Sure enough, a
539 divine voice cried out, “Why do you dispute with R. Eliezer, always agrees
540 with Whom the *Halakhah*?” R. Joshua Stood up and protested: “The Torah is
541 not in heaven!” (Deut. 30:12). We pay no attention to a divine voice long ago
542 at Mount Sinai Because You wrote in your Torah at Mount Sinai, ‘After the
543 majority must one incline’. (Ex. 23:2) “R. Nathan met [the prophet] Elijah and
544 asked HIM,” What did the Holy One do at That Moment? “Elijah,” He
545 Laughed [with joy], Saying, ‘My children haves defeated Me, My Children
546 Have defeated Me”’.

547 Both biblical quotations in this Talmudic discussion are very constrained. The
548 verse in Deuteronomy, literally read, means that the Torah can and must be applied by
549 the Jews in their daily life, while the one from Exodus orders more or less the opposite
550 of what is told here, since it clearly says “do not you join a majority to make the evil”
551 (which is itself ambiguous: see Rashi [17] *ad loc.*). And yet this strange assembly of
552 text expresses a deep belief that has shaped all Judaism from that time on, perhaps for
553 polemic reasons with Christianity and other alleged messiahs of that time, as the study
554 just mentioned says: with the closure of the Biblical canon, the time of prophecy ends
555 for the Jewish world and the hermeneutic thought predominates. Rabbinic Judaism of
556 the last twenty centuries bases its legislative work on comment, on rational debate and
557 on the consensus of the scholars of a given generation. That is very important for our
558 problem, because in some way the divine authorship itself is considered as “closed” or
559 no more productive. For the Jewish thought God of course *is always* the legislator of
560 the Torah, but at a certain point He Himself ruled out His authorship, or maybe every
561 real legislative authorship. Now only comments are admissible, and in this field the
562 form of production is discussion and the necessary criterion of it is consensus.

563 This is also a reason why the Talmudic law has the form of minutes of *all* the
564 relevant views expressed, in order to enable the masters of a later generation to
565 overturn the choice of previous ones, by relying on the opinion of some minority of the
566 past.

567 And why the opinion of the individual is remembered, alongside with that of
568 the majority, since the Halakhah cannot conform but to the majority? Because
569 if a court in the future will repute the opinion of the individual as plausible, it
570 will be able to use it as support.³⁶

36FL01 ³⁶ Mishnah Eduiot 1: 5. See Rabello [15]: 27. Note that this willingness to overturn in the future a rule (or
36FL02 rather a rabbinic court decision) even providing the tools for making it possible the reversal, is one of the
36FL03 great difference between the Jewish and Islamic legal system, which also show similarities formal being
36FL04 grounded both on a sacred text and an interpretive/legislative work around it. Except that for almost
36FL05 800 years the Islamic legal system has been “locked”, when in 1258, with the Mongol conquest of



571 Given this structure, in which the code is used not only to expose rules, but also
572 reasons and objections and alternatives, with their own reasons—and that about
573 every single detail—, it is clear that the Talmud is a very crowded text and at times a
574 truly labyrinthine one. Moreover, given the fact that it is based on oral traditions that
575 account about all these views for centuries long; and since there is also a good rate
576 of homonymy between the teachers mentioned, there is often confusion about the
577 actual authors of a single position³⁷ and the risk of getting lost is high. But in fact, if
578 not the motivations and objections, at least the final decisions, when they are
579 expressed, are quite clear. We must also add that the secular activities of
580 commentary has elaborated the current text of the Talmud as a kind of hypertext,³⁸
581 where the internal references, the different positions and the difficulties are
582 mentioned and possibly resolved, so that gradually the Talmud (or its anonymous
583 editors) was thought of as a sort of super-author able to organize the debate in such
584 an order that leads to the right conclusion.

585 In fact, after the great task of medieval and early-modern codes, the Talmud is no
586 usually not managed with a direct reference to it, but mainly as a privileged object
587 of study and a source of inspiration for the new problems that arise. It is therefore
588 today a repository of principles, knowledge, intelligence, an anchoring point, rather
589 than a code.

590 Finally, we must add that a well established hierarchy organizes this complex
591 structure of rules: there are *min hashamaim* rules (literally “from heaven”, of divine
592 origin, also called *miSinai*, given at Sinai, or in Aramaic *mideOraita*, from the
593 Torah), a concept generally very extensive and hence object of many discussions.³⁹
594 Then there are rabbinical (*derabbanan*) rules whose rationale is “to make a fence
595 around the Torah” (*Pirkei Avot* 1:1), i.e., to prevent involuntary breaches by adding
596 extensive rules and precautions (for instance the prohibition to perform certain acts
597 although prescribed by the ritual of certain festival—such as playing the ram’s horn
598 for *Rosh Hashanah*—when the festival falls on a Saturday, so as to prevent that
599 someone would want to carry the instrument from home to the synagogue, which is
600 forbidden by the rules of *Shabbat*) or to address situations not covered by the old
601 legislation.⁴⁰ Finally, there are customs and traditions of some places or even

36FL06 Footnote 36 continued
36FL07

36FL08 Baghdad was closed the so called “door effort”: the four legal schools (madhhab: Hanafi, Malic, Hanbali,
36FL09 Shaifi’it), have been fixed for ever, ancient decisions can not be discussed more.

37FL01 ³⁷ See for example the passage, by no means atypical, of the Treaty of *Moed Katan* 22a.

38FL01 ³⁸ The standard layout itself of the Talmud presents an hypertextual form, with the passage of the
38FL02 Talmud in the middle of every page and all around, with different bodies and characters, the main
38FL03 comments (Rashi, Tossefot etc.) the links to parallel passages, the notes of later authorities (Gaon of
38FL04 Vilna, etc.) and so on. For an explanation see Ouaknine 1986. The theme of the argumentative techniques
38FL05 of the Talmud (for instance, the thirteen principles of interpretation that are stated and applied in the
38FL06 Talmud, the discursive form in which its “ideological grasp of the world” takes place, its very
38FL07 idiosyncratic way of thinking and discussing) goes beyond the limits of this essay.

39FL01 ³⁹ Including the oral Torah, and hence also the living tradition, including even what “a good student” in
39FL02 the future will say “deducing it from the Law” (Palestinian Talmud, treated Pea, 2,4,17 a). See Volli [24].

40FL01 ⁴⁰ Given the very extensive definition of the “divine” law, which includes also what is inferable in a more
40FL02 or less logical way from other divine laws, the distinction between “de oraita” and “de rabbanan” laws is



602 broader geographical traditions (*minhag hamakom*), which are obligatory for the
603 Jews of that place but not for others.

604 The rules of authorship, of course, depend on this hierarchy: the first kind of laws
605 require a biblical reference, although it can be sometimes not so evident; the second
606 ones are formulated by some precise master, must always be supported through
607 reference to earlier rabbinical authorities, perhaps by means of analogy, but are
608 actually established by a rabbinical consensus; the third ones, often without known
609 author rest only on the witness of an established use. This last kind of norms recalls
610 the fact that in the Jewish tradition the popular habit are a recognized source of law,
611 although a lower one.

612 3 3

613 At this point, we can draw some provisional conclusion. The Jewish legal tradition
614 is remarkable for its antiquity and complexity, but also for the articulation of its
615 authorship. On the one hand, the centrality of divine unity in the Hebrew concept of
616 God is reflected on the intuition of *one single divine* law in some way older than the
617 whole world and anyway somehow all already given in the Revelation of Sinai.
618 Moreover: the strong sense of divine “regality” as the only possible source of power
619 implies that only the rule of God is real law. The kings of Israel have certainly
620 established rules, but these do not become part of the “real” law. At most they can
621 help, for instance rediscovering a lost text, as 2 Kings 22–23 say king Josiah (621
622 BC) did. On the other hand, the actual structure of the legislation is highly
623 pluralistic, as I have documented. The articulation in this apparent oxymoron is the
624 concept of interpretation and development. But this fact should be read also as a
625 significant case of *political theology* (Assmann [2, 3]; Taubés [21, 22]). That the true
626 law can come only from the sky, means that the real ruler of Israel can only be God,
627 not the Pharaoh of Egypt, which is the apparent target of all the biblical passages
628 that border on the topic, but even the kings of Israel, which are processed by *Mikrah*
629 with extreme distrust, not only because it is generally portrayed as sinners, but in
630 principle the institution of the monarchy:

631 But when they said: “give us a king to lead us” they let Samuel regret, so he
632 prayed to *Y-H-V-H*. And *Y-H-V-H* said to him: “Listen to all that the people
633 will tell you, they are not rejecting you, but they rejected me as their king.” (1
634 Samuel 8:6–7).

635 This political theology expresses the opposition character under which the canon
636 of the Bible was formed: Moses’s opposition to the Pharaoh, prophets’ opposition to
637 the kings, the Pharisees’ opposition to the clergy of the temple, the Jewish
638 opposition to the cultures of exile. This led to enhance the role of intellectuals (the
639 rabbis) and to see the law as something whose author is certainly divine, but that is

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Footnote 40 continued

very delicate matter, which is decided only by the comment. Is very difficult to point out a logical or semiotic standard for this problem.



640 entrusted to their hands and their responsibility. This is the meaning of the story of
641 the Akhnay oven we have mentioned before.

642 From a theological perspective, the first goal for a Jewish theory of the law
643 authorship is to ensure the transcendence of this Author, against all temptation of his
644 incarnation. This is the reason for seeing the text of the law as something concluded,
645 given once and for all, in terms of the Hebrew theory of the language as a *davár*
646 (word issued and fixed as a text, i.e. unchangeable) more than as *amirah* (a dynamic
647 speech, a spoken discourse). On the other hand it always has been necessary to
648 ensure that the system keeps its dynamism and can adapt to a historical-political
649 situation of continuous change in which, to quote Heine, for two millennia the law
650 was intended to be the only “portable homeland of the Jewish people”. Only in this
651 way, articulating its fundamental unity with a plurality that is sensitive to the
652 passing of time, it may continue to be consistent with its name: *Halacha*, the path.

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