

Memory and the Integrity of the Oral Tradition

DOV ZLOTNICK
Jewish Theological Seminary

The danger of the oral tradition becoming corrupt as it was handed down from master to disciple was, of necessity, a major concern to Sages of the Mishnah and the Talmud. An inaccurate oral text could of course undermine the very structure of the law. What then were the steps taken to keep it intact? The attribute of brevity is seen as foremost among the advantages of Rabbi's Mishnah. In a word that had to be put to memory and then reviewed constantly in order that it be retained, even one word added to a specific case when multiplied by the more than five thousand *hālākōt* in the Mishnah could present a serious burden to the student. Hence, a Rabbinic rule of pedagogy is that a teacher not be long-winded, but that he instruct *derek kēsārā* "in a concise way" (TB *Pesahim* 3b).

The Gaon Rab Sherira asserts that brevity was a quality of the Rabbi Meir (according to Rabbi Akiba) Mishnah and the primary reason why Rabbi adopted it as the basis for his own text. More so than all other collections of law, this Mishnah was concise, containing no *šēfaṭ yeter* "excessive language." The other strengths of Rabbi Meir's Mishnah were:

1. It is easily learned.
2. It is well-structured with each matter related to what follows.
3. It is more accurate than the texts of all the other Tannaim.

And finally, the Gaon concluded, it is not given to every scholar to create this kind of work. He considered it a Divine gift, citing a verse in Proverbs (16:1) as the proof-text: "The preparations of the heart are man's, but the answer of the tongue is from the Lord."¹

In the ancient world where silent reading was rare, both children and adults read aloud, often committing large sections of material to memory: "beginners at least used to recite in a sing-song manner, syllable by syllable."² In the earliest literatures of most

1 *Iggeret rab šerira' gaon*, ed. B. M. Levin (Jerusalem, 1972), 29.

2 H. I. Marrou, *A History of Education in Antiquity*, trans. by G. R. Lamb (New York, 1956), 154. When school manuals spanning a period of more than half a millennium are compared, "one is struck by the extraordinary similarity of the methods employed. . . . Innovations were few. Word-lists and selected passages came to be presented alphabetically . . . (with) short one-line sentences after each word . . . and then

nations one finds that "literary prose began to develop after verse and in the footsteps of verse, and that the very earliest prose shows that it stems from the poetry that came before it."³ For example:

It was verse and not prose that was still cultivated in the Cretan education system when the historians, orators and pamphleteers had formulated a prose medium in Ionia and Attica.⁴

Laws appearing in verse are not an uncommon feature of this period, and we also find a reference showing that the laws of the Ionian lawgiver, Charonadas, were actually sung.⁵

The young of Sparta, Crete, and, perhaps, even those of Athens, memorized their respective laws.⁶ When Cicero was a youth, school children, as a matter of course, learned the Twelve Tables by heart.⁷ An able student was one who could arrange and store his learning so that it could be recalled with precision. When Josephus writes of his early education, he tells of gaining a reputation not only by virtue of his understanding but also because of an "excellent memory."⁸ An account of phenomenal memorization by a contemporary of Josephus is to be found in the *Lamentations Rabbah* (I:31) version of Vespasian's encounter with Rabban Johanan ben Zaccai.⁹ The Sage was seized and put within seven barred enclosures¹⁰ so that he was unable to see the light of day. He was then asked:

"What time of the night is it?" And he would tell them.

"What time of the day is it?" And he would tell them.

He was, according to this Aggadah, able to calculate the time on the basis of his constant recitation of text, knowing precisely how long it took to repeat a given amount of material.

whole passages of an elementary nature" (ibid.). Cf. contemporary African schools in which the Qur²an is put to memory by children "chanting texts in sing-song fashion . . . First the shorter surahs . . . and then the longer and later ones" (G. Parrinder, *Religion in an African City* [Oxford University Press, 1955], 65, cited by Geo. Widengren, "Holy Book and Tradition in Islam," in *Holy Book and Tradition*, ed. F. F. Bruce and E. G. Rupp [Manchester University Press, 1968], 231). For examples of rabbinic displeasure with silent learning, note Beruria's sharp response to the student studying quietly and the case of R. Eliezer's disciple who did not study aloud and, after three years, forgot his *talmud* (TB *Erubin* 53b and 54a).

3 U. Cassuto, *Biblical and Canaanite Literatures* (Jerusalem, 1972), 24 [Hebrew]. Note too that the prologue and epilogue to the laws of Hammurabi are encomiums written in poetry "even to the extent of an artificial attempt at rhyme" (G. R. Driver and J. C. Miles, *The Babylonian Laws* [Oxford, 1960], 1:40, n. 2).

4 *The Law Code of Gortyn*, ed. R. F. Willetts (Berlin, 1967), "Introduction," 8, n. 3. See also R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle* (New York, 1970), 1:77, n. 1.

5 Bonner-Smith, *Administration of Justice*, 76, n. 1.

6 *The Law Code of Gortyn*, loc. cit.

7 Cicero, *De leg* 2.23.59 cited by R. W. Lee, *Elements of Roman Law* (London, 1952), 7, n. 23. Cf. the special schools in Egypt where, by the end of the fourth year, pupils are expected to memorize the whole of the Qur²an (Widengren, *Holy Book and Tradition*, 232).

8 *The Life*, trans. H. St. J. Thackeray (Cambridge, 1961), 2:5.

9 This Sage, like Josephus, is reported to have witnessed Jerusalem's destruction, survived by a ruse, and predicted the accession of Vespasian as Emperor (TB *Gittin* 56a and b and parallels; *Jewish War*, III, pp. 685-90).

10 On the term *kankelin* (*cancelli*, *καγκελον*), see S. Lieberman, *Tosefta Kifshutah* (New York, 1962), 3:460 top.

Many generations later, when the scholars of Babylonia had to decide which attribute was overriding in the selection of a new head of the Pumbedita academy, they inquired of their colleagues in the West: "Who takes precedence?" Is it Rabbi Joseph, called "Sinai" because of his prodigious memory, or is it Rabbah, "The uprooter of mountains," so designated because of his prowess in the give and take of legal discussion? The answer they received was: "Sinai takes precedence because everybody needs the master of wheat,"¹¹ that is to say: Choose Rabbi Joseph who controls the breadbasket of the oral law—the Mishnah and different collections of Beraita.

The inherent difficulty with an oral tradition is, of course, the problem of forgetting. Singing the laws could make it easier to memorize them. And so in the metaphor of Rabbi Akiba, the law itself proclaims: "Sing me again and again" (Tos. *Ohalot* 16:8; *ibid.*, *Parah* 4:7). This figure of speech is found in a context that treats of cases in which Rabbi Johanan ben Zaccai (an alternate tradition has Hillel the Elder) answers questions of law incorrectly. When the sage is challenged, he responds:

What you say is correct! If something that my hands did and my eyes saw I (nevertheless) forgot, how much more so of something my ears heard. . . .

The text goes on to say that the mistake was made purposely to alert his students: If the master forgot a question of law in which he was an active participant, how much more likely might one forget something learned only as a tradition. We are then told that he who studies and does not repeat his study is like one who sows and does not reap, and, more poignantly, he who studies and forgets is likened to a woman who gives birth and buries her child. This passage then closes with the metaphor which in the Talmudic parallel (TB *Sanhedrin* 99b) appears in a somewhat different form: "Sing every day, sing every day." More than a century later the motif is continued as Rabbi Johanan applies the verse "Wherefore I gave them statutes that were not good and judgments whereby they should not live" (Ezek. 20:25) to a person "who reads Scripture without melody or to one who studies Mishnah without song" (*Megillah* 32a). In a brief comment on this motif, the Tosafists emphasize the relationship between memory and melody:

They (the scholars) were accustomed to recite the *mišnāyôl* with melody because they studied them by heart and because of this, the *mišnāyôl* were better remembered (*ibid.*).

Resh Lakish¹² equates the word *šîr* "song" with study as he expounds the verse "The Lord will command his loving-kindness in the daytime and in the night his song is with me" (Ps. 42:9) to mean that he who engages in the study of Torah (i.e., "his song") by night is graced by the Holy One Blessed Be He with a thread of loving-kindness by day" (TB *Abodah Zara* 3b).¹³ Another indication that the law was sung is to be found in a remark of a disciple to his teacher concerning a general rule in the Mishnah:

¹¹ TB *Horayot* 14a.

¹² Disciple and later colleague of his brother-in-law, Rabbi Joḥanan (d. 279) whom he predeceased (TB *Baba Meši'a* 84a bottom).

¹³ This exposition is in keeping with his view that the optimum time for memorizing the oral traditions (i.e., *girsā*³) is the night: "Moonlight was created only for *girsā*" (TB *Erubin* 65a).

Rabbi Simeon ben Gamaliel said: “Not all vivariums are alike. This is the rule: Whatever requires trapping is forbidden (on the festival); Whatever does not require trapping is permitted” (*Beṣah* 3:1).

In the Talmud (*ibid.*, 24a), Rabbi Joseph cites a tradition maintaining that the law follows this Mishnah. Because no one disagrees with the rule, Abaye finds the citation of Rabbi Joseph misleading in that it implies controversy. When the teacher asks: “What difference does it make?” (If no one disagrees, the law certainly follows Rabbi Simeon ben Gamaliel), the disciple replies:¹⁴ “Learn the tradition, and let it be for a song?” That is to say: Are traditions, regardless of whether they are correct or corrupt, to be learned as words sung in a ditty? (See Rashi, *ad loc.*)

These statements in Rabbinic literature indicating that the Mishnah was sung did not go unnoticed by Rabbi Israel Lipshutz (1782–1860), author of the major nineteenth century commentary on the Mishnah—*Tif^{er}et yiśrā^ʔel*. In his commentary to *Arakin* 4:1 (*Boaz*) he addressed himself to a problem in Mishnaic style.¹⁵ Why were two items in this text taught separately when they could just as easily have been combined and taught as a unit? The problem was already touched on by the Tosaphists (*ibid.*, 17a top); the solution, however, is his own. It is certainly far-reaching as he attributes a host of difficulties in the text—tautologies, on the one hand, and the fact that lacunae in the text are not filled in—to Mishnaic style. Since the Mishnah was sung, a particular textual form, be it shortened or lengthened, was demanded by the meter and the melody:

Were I not afraid I would suggest . . . that they (i.e., the Tannaim) had specific melodies for each and every Mishnah . . . and this was in order to enforce their memorization since they learned the Mishnah by heart even in the days of Rabbi. And because of the tune, the language of the Mishnah is better retained for the melody is arranged according to the words and clauses of the Mishnah. And for this reason, a section that seems superfluous is sometimes taught in the style of “this and needless to say this,” since it was thought necessary to balance the clauses in the Mishnah with those of the melody. And for this reason when there is a lacuna in the text, they left it as such. . . . If we filled it in with a babel of words the poetic structure will have been destroyed, the memory confounded, and, God forbid, the Mishnah will be forgotten. Pay heed to this: in most cases precious pearls are imbedded in places where there are discrepancies in the language of the Tanna. Nevertheless, where we cannot explain a difficulty with another reason, one should be content with this answer, for it too is independently valid.

It would, perhaps, be going far afield to suggest along with the author of the *Tif^{er}et yiśrā^ʔel* that what others have infelicitously termed “the rough textual material of the Mishnah”¹⁶ is really cast in a poetic form. It is clearly not poetry as the term is traditionally used. The Mishnah is not a rhymed or metrical composition with a pattern of stressed and unstressed syllables. Its motivation is not the creation of a heightened image or a finely turned phrase—although it may contain both. Its themes are usually mundane: weights and measures, the goring ox, accidental homicide, tithes, and sacrifices. Nevertheless, the Mishnah—in its syntax and in the language it employs—brings to these subjects a cadence of its own, a distinctive rhythmic low. It is a kind of

14 The reading of R. Isaiah de Trani in the edition of the *Institute of the Complete Israeli Talmud* (Jerusalem, 1971), III, *Beṣah* 24a, p. 62, would indicate that this is a declarative statement of a teacher.

15 I want to thank Mr. David Kirshenbaum for directing my attention to this reference.

16 B. Gerhardsson, *Memory and Manuscript* (Uppsala, 1961), 167.

free verse structured with precision, marked by continual lucidity, and begging to be memorized. And just as the sacred texts of the written law were read with cantillation,¹⁷ so the Mishnah was also recited with melody.

Traces of this tradition are found in many places and in different periods. The Parma (B) manuscript to the Order *Toharot* (circa 12th century),¹⁸ in addition to being vocalized, is also accompanied by a system of cantillation.¹⁹ Musical accents also appear in the text of the Mishnah of the Sabbionetta edition to the tractate *Kiddushin* (1553) and in a significant percentage of Mishnah fragments stemming from the Geniza.²⁰ In the sixteenth century, for example, the study of Mishnah flourished in Prague, Safed, and all along the Mediterranean.²¹ Texts were published without the accompanying Talmud,²² and the Mishnah was not only memorized and annotated by many scholars, but it was also sung by the "Tanna of Safed," Rabbi Joseph Ashkenazi.²³

Even when we have no direct evidence that the Mishnah was sung, we do know that it was studied with great intensity and committed to memory. In the *Maggid Mēšārīm*,²⁴ for example, we are repeatedly told that whenever Rabbi Joseph Karo (the author of the *Shulhan Aruch*) would recite Mishnah by heart, a Maggid²⁵—best explained as the personification of the Mishnah itself—would appear exhorting him not to waver even for a moment in this singleminded study:

I, I am the Mishnah that speaks in your mouth. I am the soul of the Mishnah. I, the Mishnah, and you are united as one. Therefore, always turn to my *mišnāyôt*, never separating your thoughts from them even for a single moment.²⁶

In the introduction to his miniature, vocalized Mishnah (Venice, 1704), Rabbi Israel Isserles describes a city where scholars met regularly to study Mishnah from memory:

17 Ibid., 166, n. 4.

18 See M. Bar Asher, "Mishnah Ms. Parma" in *Qōbeš ma ʿāmārīm bilšōn ḥazal* (Jerusalem, 1977), 1:167.

19 On cantillation in this manuscript, see Y. Yeivin, *Haṭʿamat tōrā šebēʿal pe(h) biṭʿāmīm*, *Lešonenu* 24 (1900), 219f.

20 Cf. S. Schechter, *Talmudical Fragments in the Bodleian Library* (Cambridge, 1896), "Introduction," 5, n. 4; and see J. N. Epstein, "An Arabic Translation of *mišnāyôt*," in *Marx Jubilee Volume*, ed. S. Lieberman (New York, 1950), Hebrew section, 23.

21 On the study of Mishnah in Spain during the Middle Ages, see R. Solomon b. Joseph's (also called ben Jacob) Introduction to his Hebrew translation of Maimonides' *Nezikin* (in most standard editions of the Talmud). He explains that the work was originally written in Arabic so that it would be understood by the masses "who in most countries were accustomed to repeat them (i.e., the *mišnāyôt*) on Sabbaths and festivals until they knew them by heart."

22 On the subject of Mishnaic texts independent of either Talmud or the Commentary of Maimonides stemming from "Italy-Byzantium-Palestine" in contradistinction to Germany, France, and Spain where they are inextricably tied to either Talmud or commentary, see Y. Sussman, "Manuscripts and Text Traditions of the Mishnah," in *Proceedings of the Seventh World Congress of Jewish Studies* (Jerusalem, 1981), 215–50 [Hebrew]. On their appearance and study in early liturgical literature (e.g., the inclusion in prayer books of tractates such as *ʿAbot*, *Shabbat*, or *Zebahim*, Chap. 5), see E. E. Urbach, "*Mišmārôt* and *Maʿāmādôt*," *Tarbiz* 42 (1973), 309ff.; and see Y. Sussman, *ibid.*, nn. 41, 46, 55.

23 See M. Benayahu, *Toledoth Ha-ari* (Jerusalem, 1967), 122, n. 1; and J. N. Epstein, *Māvōʾ lenūsaḥ Hammišnā(h)*, 1284f.

24 R. J. Karo, *Maggid Mēšārīm* (Lublin, 1645). See also *Toledoth Ha-ari*, 217.

25 On the subject, see R. J. Z. Werblowsky, *Joseh Karo, Lawyer and Mystic* (Oxford, 1962), 9–23; 257–86.

26 *Maggid Mēšārīm*, 78.

... in most if not all of the cities scholars know the Six Orders of Mishnah by heart and study it constantly, especially ... the illustrious children of R. Samuel Aboab ... know the Six Orders from the beginning to the end, and daily there is a fixed meeting of scholars in their home. ...²⁷

These Venetian scholars not only knew the Mishnah by heart, but they also mastered its grammatical minutiae. They not only understood the words and the structure of the verbs, but they were also “able to distinguish the two forms of a consonant (*rāfe(h)* and *dāgēš*).”²⁸

Painstaking exactness was a matter of necessity, not pedantry, in conveying the oral law. The links between ministering to the master, memorization, study, and the transmission of an accurate text of Mishnah had to be firm. The reliability of the law depended on it. As we have indicated, learning inaccurate dicta could undermine the entire structure of the law. When scholars arrived in Babylonia bearing Rabbi Johanan’s rulings they were often challenged: “Did you hear this explicitly or is this an inference?” (TB *Shabbat* 39b). Among them we find a special group called *nēḥūtē*, literally “those who descend.”²⁹ It is evident that the *nēḥūtē* were itinerant scholars who were given the task of keeping the academies at Sura and Pumbedita abreast of the current legal thinking of the West. Of this company Rabin (i.e., Rabbi Ḳabin) was termed *bar samkâ*, “reliable,” while his colleague *Yiṣḥaq* was dubbed “unreliable” (*Yebamot* 64b).³⁰ The first was credited with *yešnô bēhāzārâ*, “being in the habit of going back,” while his colleague was not. The meaning of the phrase is explained in two ways:

1. He constantly reviews his Talmud.
2. He is always in the presence of Rabbi Johanan and should the master reverse himself on any point in a former decision, the student, having heard of it, will similarly revise the law.³¹

During the period of the Amoraim, Raḥabah of Pumbedita, the disciple of Rab Judah, was praised as the exemplary student who accurately mastered the tradition of the teacher. When a compliment was to be paid to the exactness of a ruling, the scholar conveying that ruling was likened to him. On one occasion, we find Rabbi Zeyra urging his colleagues to

Hold fast to the words of Rabbi Hiyyah bar Ḳabba for he took pains and carefully learned his traditions from the mouth of his teacher like Raḥabah of Pumbedita ... (*Berakot* 33b, and Rashi *ad loc.*).

On another occasion Rab Safra reserves this praise for a general rule reported by Rab Huna the son of Ḳiyka (TB *Pesahim* 52b).

The accuracy of the oral law, hence its reliability, depends almost entirely on the master-disciple relationship: the care taken by the master in teaching the law and the

27 Israel Isserles, *Mišnāyôt ʿim nēqûdôṭ* (Venice, 1704), “Introduction,” 4f.

28 *Loc. cit.*

29 TB *Hullin* 124a bottom and elsewhere. ‘Ulla’, one of the earliest of this group, is also designated as “our colleague who descended from the Land of Israel” (TB *Berakot* 38b).

30 Cf. the relative standing of R. Hiyya bar Abba and R. Binyamin bar Yafet, two other students of R. Johanan (TP *Pesahim* 2:5, 29c; TB *Berakot* 38a).

31 Rashi to TB *Yebamot* 64b.

intentness of the disciple in learning it. The inadequate attendance of disciples upon their masters was held as the cause of many divisive opinions emerging from the Schools of Shammai and Hillel (Tos. *Ḥagigah* 2:9). Disciples were, therefore, urged to sit at the feet of the scholars and “Drink their words with thirst” (*ʿAbot* 1:4). Attendance upon the Sages, *šimmūš ḥākāmim* became more important than the study of Torah. What better way was there to learn the practical application of the law than by observing the master in his daily routine, at prayer, at meals, even in the privy, and especially in the academy responding to questions and deciding cases?³²

The Men of the Great Assembly had declared as an imperative: “Raise many disciples” (*ʿAbot* 1:1). How else is the law to be conveyed? For all that, many disciples drawing all manner of inferences from the master’s discourse can arrive at opposing conclusions. Only the verbatim repetition of the discourse can insure the correctness of a tradition. “*Erratum* ingrained—remains!” (TB *Pesaḥim* 112a). A dialectic based on a corrupt text—be it written or oral—is a weariness of the flesh. And so we find the Sages being warned to take pains with the very words they choose (*ʿAbot* 1:11).

The given presuppositions of every school must have been the carefully worded laws, decrees, and decisions passed down by the head of the academy. Only after they were put to memory, even if the student did not understand them in every detail, did they become subjects for discussion: “A person should memorize (the text) and then explain it” (TB *Shabbat* 63a, Rashi ad loc.).³³ Raba, who found support for this methodology in biblical allusions, would say: “A man should first study Torah and then meditate on it, for it is written ‘his delight is in the law of the Lord’ and then ‘in *his* law does he meditate’ (Ps. 1:2)” —implying that it becomes his own law after putting it to memory. He would also say: “One should memorize (*gārēs*) even though³⁴ he forgets, even though he does not understand what he is saying, for it is written “My soul breaketh forth (*gārēsā*) for the longing of Thy judgments” (ibid. 119:20). The verb *gārēs*, “coarse grinding,” is used to imply imperfect understanding; the verb *tāḥan* “fine grinding,” which would suggest perfect understanding is not used (TB *Abodah Zara* 19a). In keeping with the biblical allusions of Raba, the Talmud splits the word *haskēt* (“silence”) of Deut. 27:9 into two components: *has*, “be silent and learn your traditions until you know them by heart,” and then *kātēt*, “break them into small parts analyzing them thoroughly until you understand them” (TB *Berakot* 63b and Rashi ad loc.). For simply learning a text, we are told that one teacher is preferable so that a student not be confounded with a multiplicity of readings; for *šēḥārā*³, “reasoning,” on the other hand, in which a student learns to compare passages and to raise and answer questions and so develop his mental faculties and broaden his horizons—more than one teacher is preferable (ibid., and Rashi ad loc.).

In the major academies of Babylonia, even as late as the tenth century, rabbinic texts continued to be studied primarily as an oral tradition. In one responsum, the Gaon

32 D. Zlotnick, *The Tractate “Mourning,”* Yale Judaica Series (New Haven, 1966), p. 22, n. 106. R. Akiba goes so far as to say that “he who does not attend upon the Sages will have no share in the world to come (*Abot de-Rabbi Natan*, ed. S. Schechter [New York, 1945], end of Chap. 36, 109).

33 Cf. TB *Sukkah* 29a top; and see the correction in Rabbenu Ḥananel ad loc.

34 Cf. the variant passage of the Munich ms. (*Diqduqe soferim*, *Abodah Zara* 19a, p. 48, and see n. 20). The Ubeda ms., ed. S. Abramson (New York, 1957) offers a unique variant in that it reads *mikkōl* “from

Aaron ben Joseph ha-Kohen (the antagonist of Saadya Gaon) who was the head of the school at Pumbedita (942–960) informs us that in his academy all learning by the students was acquired “from the mouth of the teacher and that the majority do not even know what a book looks like.”³⁵ In praise of Rabbi Johanan ben Zaccai it was said that “he never said a thing he had not heard from his teacher.” In turn, his pupil Rabbi Eliezer also said that about himself (TB *Sukkah* 28a);³⁶ indeed, his memory was likened to “a plastered cistern that never loses a drop” (*ʿAbot* 2:8). Among the Roman jurists, Capito, the founder of the Sabinian school,³⁷ was similarly “distinguished by the fidelity with which he adhered to the law as he himself received it (*Ateius Capito in his, quae ei tradita fuerant, perseverabat*—Dig. i, 2, 2:47).”³⁸

Although creativity added to a knowledge of the law is indispensable in applying rules to new cases, it is not essential in the transmission of law; it might even prove to be detrimental. In order to preserve the law, one merely needs a good memory. To be sure, every aid to the memory can be helpful. Among the Greeks, for example, Plato’s Hippias³⁹ taught an elaborate system of mnemonics. The Roman historian Pliny tells us of certain Greek named Charmades, who was able to recite “the contents of any libraries that anyone asked him to quote as if he were reading them.” He then writes of the construction of *memoria technica*, a method invented by the lyric poet Simonides and perfected by Metrodorus of Scepsis, enabling anything heard to be repeated in the identical words.⁴⁰

The fanciful and the factual are not always easily separated in the works of Pliny. Nevertheless, one must not be quick to dismiss every account of prodigious memory as a report given to hyperbole. Truly vast amounts of lore, poetry, and law were put to memory in the ancient world. The process was not peculiar to *hālākōt* (= Mishnah), save that Sages were explicitly prohibited from writing them. In one second century injunction stemming from the School of Rabbi Ishmael, the word “these” in the verse “Write down these commandments” (Exod. 34:27) is expounded to mean the written tradition but not *hālākōt* (TB *Giṭṭin* 60b; *Temurah* 14b). According to Rabbi Johanan, “he who writes *hālākōt* is as if he burns the Torah⁴¹ and he who studies from them will receive no reward” (TB *Temurah* loc. cit.). And similarly “that which was given orally,

everything” instead of *ʿaf ʿal gab* “even though.” If this reading is correct, then the following word *dēmiškāh* must take on the meaning “happens upon” instead of “forgets.” The translation would then be: “Let a person memorize from whatever comes his way even though he does not understand what it means.”

35 *ʿOṣar haggēʿōnīm*, ed. B. M. Levin (Jerusalem, 1936), *Yebamot*, VII, 71.

36 This was also said of R. Ḥanina (see TB *Shebiʿit* 6:1, 36d), the disciple of Rabbi.

37 According to Pomponius (H. J. Jolowicz, *Historical Introduction to the Study of Roman Law* [Cambridge, 1967], 388f.).

38 *The Institutes of Justinian*, trans. T. C. Sandars (London, 1952), “Introduction,” 27f.

39 In drawing out this sophist, Socrates says “. . . and yet I forget your art of memory . . . in which you think you are most brilliant” (Plato, IV, *Lesser Hippias*, trans. H. N. Fowler [London, 1977] 368 B–D). And in Xenophon’s *Banquet*, trans. O. J. Todd (London, 1979), 4:62, he tells us how this “memory system” was acquired from Hippias.

40 *Natural History*, trans. H. Rackham (London, 1947), 2:Bk. VIII, XV, #88, 565.

41 See the reasons given by Rashi, TB *Temurah* 14b s.v. *kēsorfē*.

you may not put into writing and that which is given in writing you cannot recite by heart" (loc. cit.).⁴²

That memorization continued long after writing had developed is a phenomenon common to the ancient world. The Homeric epics, for example, were transmitted and recited orally even after they were put down in writing.⁴³ And although writing was known to the Hindus from before the fourth century B.C.E., they also continued to maintain their traditions by word of mouth.⁴⁴ To this day many Brahmins learn the more than one thousand hymns of the Rigveda by heart.⁴⁵ Similarly, the Qur'an, despite its written texts, is, as in the beginning of its existence, still handed down orally.⁴⁶

Scandinavian scholars,⁴⁷ with their own saga heritage, have done much to show that books and for that matter the very art of writing itself has not always been thought of as an unmixed blessing in the advancement of human culture. In antiquity their value was questioned not so much by the illiterate, who were generally awed by the written word, but by men of letters who feared that an undue reliance on writing would lead to shoddy reasoning and cause the memory faculty to atrophy. A classic presentation of this view is to be found in Plato's *Phaedrus*. Here, in the words of Socrates, we are given the dialogue between the god Thamus, king of all Egypt, and the god Theuth, who invented letters. In response to Theuth, who claimed that his invention will make the Egyptians wise and "improve their memories," Thamus responds:

This invention will produce forgetfulness in the minds of those who learn to use it, because they will not practice their memory. Their trust in writing, produced by external characters which are no part of themselves, will discourage the use of their own memory within them. You have invented elixir not of memory but of reminding; and you offer your pupils the appearance of wisdom, not true wisdom, for they will read many things without instruction and will therefore seem to know many things, when they are for the most part ignorant. . . .⁴⁸

In calling written words an "elixir not of memory but of reminding," Plato is, in effect, saying that, at best, they serve only as mnemonics: after they are written, they are of no use except "to remind him who knows the matter about which they are written."⁴⁹ They are, he goes on to say, both dumb and defenseless—bruted about by those who understand them and by those who do not.⁵⁰ They have no power to defend themselves.

42 It is only because of forgetfulness that the Talmud was eventually written (loc. cit. and see TB *Giṭṭin* 60b, Rashi ad loc.).

43 E. Nielsen writes of an entire guild of rhapsodists that appeared "especially at the festivals—as reciters of Homer" (*Oral Tradition* [London, 1961], 31 and see n. 2).

44 *Ibid.*, 24.

45 As for the reason: "Cult and religion are always rather immune to technical improvements" (loc. cit.).

46 Whoever wants to go into the Al-Azhar mosque in Cairo "must be able to recite the whole Qur'an without hesitation." And it is memorized "by one of the initiated reciting it and the younger disciples repeating it until they know it by heart (*ibid.*, 21 and see n. 1).

47 *Ibid.*, 12ff.

48 Plato, *Phaedrus*, trans. H. N. Fowler (London, 1977), 1:274E, 275A.

49 *Ibid.*, 275C and D.

50 *Ibid.*, 275D and E.

And so the wise will reject written words, employing them only as “reminders for himself when he comes to the forgetfulness of old age.”⁵¹

Plato’s decrial of the written word is separated from the rabbinic ban on writing the oral tradition by a time lapse of more than five centuries and by more than five hundred miles of sea. They developed independently, and there is no reasonable possibility that one influenced the other. Nevertheless, in light of the classic Greek rejection, we may perhaps better understand the rabbinic emphasis on *šimmûš ḥăkāmîm* “attendance upon the Sages.” The special master-disciple relationship conveyed by this term is the essential prerequisite in acquiring the oral tradition and in assuring that the student’s understanding of it is not flawed. It is the Sage’s antidote to the assimilation of inaccurate dicta or to what Plato called reading “many things without instruction.” As for the problem of forgetting, there is no plateau in the learning process. We are constantly learning or forgetting. Hillel expressed it in three Aramaic words, *dēlâ mōsîf yēsûf*: “One who does not add (to his knowledge) diminishes it” (*ʔAbot* 1:13). Mishnah (in its broadest sense as the entire oral tradition) was retained by *girsâ*, “constant repetition,” of what had already been learned and memorized even as new material was being added. We also know that students took notes on their own, recording them on writing tablets,⁵² and that the scholars had laws written in what the Talmud called *mēgillat sētārîm*, “secret scrolls.”⁵³ It has been shown that the legal authority of these private notes was limited:

If in the course of an argument a Rabbi had produced his notes they would have had no more authority than his oral assertion. The character of the notes recorded on the writing tablets, or the wall, makes it obvious that we have to do with private *πρὸς ἑαυτὸν* [notes] put down only for the use of the writer.⁵⁴

It is reasonable to assume that during the periods of the Mishnah and the Talmud, secret scrolls and private notes were viewed as “reminders” and were, at best, only tolerated by the Sages. After all, the ban on writing *ḥălākôt* remained in force. Even as late as the fourth century we find a Midrash⁵⁵ showing that God prevented Moses from putting the Mishnah into writing. It was foreseen that the Bible would be translated by the nations of the world⁵⁶ who, as a result, would claim: “We are the true Israel!”⁵⁷ And

51 Ibid., 276D. Fowler (ibid., 410) states that for a writer as prolific as Plato, it is surprising to find the written word designated as merely “a reminder.” Nevertheless, he asserts that this represents Plato’s judgment: “In the academy he laid great stress upon oral instruction, and this passage seems to indicate that he considered that instruction more important than his writings.”

52 See S. Lieberman, *Hellenism in Jewish Palestine* (henceforth *HJP*) (New York, 1950), 203–8.

53 TB *Shabbat* 6b; 96b; *Baba Mešʕia* 92a. Rashi ad loc. explains that they are called “secret” or “hidden” scrolls because it was forbidden to write *ḥălākôt*.

54 *HJP*, 87.

55 The author is the fifth generation Palestinian Amora, R. Judah ha-Levi b. R. Shalom (*Midrash Tanḥuma*, ed. S. Buber, *Vayera*³, 6, p. 88).

56 The day the Bible was translated into Greek (according to one tradition) “was as difficult for Israel as the day the golden calf was formed (*Soferim* 1:7).” And similarly when the Aramaic Targumim were made “the land of Israel quaked a distance of four hundred square *parsangs* and a heavenly voice came forth and said ‘Who is this that has revealed My secrets . . .’” (TB *Megillah* 3a).

57 See *HJP*, 207, nn. 35–38.

they could then be refuted in that it is the Mishnah that contains the “mysteries of the Holy One Blessed Be He.” And these are revealed only to the righteous, the supporting verse being “The secret of the Lord is with them that fear him” (Ps. 25:14).

Unlike the written “reminders” which were suffered as a concession to forgetfulness, the Sages urged their students to master oral mnemonics. How else could a verbal tradition be retained with precision? For example, the two most frequently cited Sages of Rabbi’s Mishnah, Rabbi Judah and Rabbi Jose, supplied literary devices of their own “in order than one might not err” (*Nazir* 6:2; *Menahot* 11:4). In contrast to the Galileans, the Judeans were “precise in their language and provided mnemonics” and we are informed that as a result, the law endured with them (TB *Erubin* 53a). Rabbi Ḥisdah, the head of the Babylonian academy at Sura, would say: “The law can be acquired only through mnemonics” (ibid. 54b)—finding a biblical allusion to the verse: “Therefore, write down this poem and teach it to the people of Israel; put it (*sîmāh*) in their mouths” (Deut. 31:19).⁵⁸ Here we have a play on the words *sîmāh* and *sîmān* “sign” (σημα). When this was reported to Rabbi Abbahu,⁵⁹ the head of the School at Caesarea, he, in turn, suggested another verse:

“Set thee waymarks (*siyunim*), make thee high heaps . . .” (Jer. 31:20), (that is to say): Set thee way-marks for the Torah. And how do we know that the term *siyyûn* implies *sîmān*? It is written: “When any seeth a man’s bone, then shall he set up a sign (*siyyûn*) upon it” (Ezek. 39:15).

We see that by the early part of the fourth century, major schools in the East and West concurred that mnemonics were indispensable in acquiring the oral law. These and other Amoraim (TB *Erubin* loc. cit.) merely verbalized what is implicit in so much of Tannaitic literature, for, in a sense, every structural arrangement of Mishnah is, in itself, a lesson in mnemonics.

There is reason to believe that the earlier arrangement of Mishnah was according to structure rather than theme. This would be in keeping with what appears to have obtained in the case of all ancient classifications of law:

None of the archaic codes are so organized as to bring together all applications of the same legal principle; often the most diverse subject matters are thrown together; at most the only method of grouping that can be discovered is that derived from external similarities of subject matter.⁶⁰

In the Mishnah, numbers often serve as the key to this kind of classification. In the Jerusalem Talmud (*Sheqalim* 5:1, 48c), we find Rabbi Abbahu ascribing the number grouping to the period of the Scribes. He explains the term “scribes” (literally, “counters”) in the verse “the scribes which dwelt at Jabez” (1 Chr. 2:55) to mean that they classified the oral law by number:

Five (categories of people) may not give heave-offering (*Terumot* 1:1).
Five species are subject to dough offering (*Hallah* 1:1).

58 Five generations earlier, Rabbi Akiba expounded this verse to mean that one must repeat the lesson to his disciples until it is ordered in their mouths (TB *Erubin* 54b).

59 On this scholar and his date of death (309), see S. Lieberman, “The Martyrs of Caesarea,” *Annuaire de l’Institut de Philologie et d’Histoire Orientales et Slaves* 7 (New York, 1944), 399f.

60 W. Seagle, *The History of Law* (New York, 1946), 103.

- Fifteen (categories of) women release their co-wives (*Yebamot* 1:1).
 Thirty-six cases of "excision" are mentioned in the Torah (*Keritot* 1:1).
 Thirteen things apply to carrion of a clean bird (*Toharot* 1:1).
 Four prime categories of damages (*Baba Kamma* 1:1).
 Forty less one are the primary categories of work (*Shabbat* 7:2).

The systematic arrangement of laws by numbers is an essential device in the case of the oral tradition. It is an added aid if the categories such as those cited by Rabbi Abbahu are held together by single themes. In any event, there are many examples in the Mishnah and in all other areas of rabbinic literature of legal and extra-legal dicta clustered about a number.⁶¹

Another kind of mnemonic around which a catena of rulings is set is the literary cliché. It is a phrase which is concise in formulation, encompassing much, and leaving more to the legal imagination of jurists who must define the limits of the law with a measure of precision. It is a cliché inasmuch as it is repeated again and again. The following are illustrations of this mnemonic device:

1. The only difference between . . . and . . . is . . . (*Megillah* 1:4-11).
2. . . . the law is . . . because there is a basis for the matter (*Nazir* 9:2-4).
3. On that day . . . expounded (*Soṭah* 5:2-5).
4. In the case of . . . it cannot be less than . . . or more than . . . (*Arakin* 2:1).
5. In . . . there are aspects in which the law is lenient and others in which it is severe (*ibid.*, 3:1-5).
6. Whatever contains 'x' also contains 'y'; there are matters that contain 'y' but do not contain 'x' (*Niddah* 6:1-10).

The element of conciseness, an earmark of all Mishnaic law, is also characteristic of the archaic codes. The designation "code" is loosely applied in that the term implies "a statement of at least one particular branch of law that purports to be complete and systematic in form."⁶² The archaic codes, on the other hand, are "unsystematic digests of collections of laws."⁶³ But whereas Mishnah is multifaceted in structure, the codes seem to be cast in one mold. Its laws are generally expressed as a set of conditional commands introduced by "if" and followed by an imperative clause:

"If a son strike a father," decrees the Code of Hammurabi, "one shall cut off his hands" . . . "if three men carry off a freeborn girl," says the *lex Salica* "they shall be compelled to pay 30 shillings" . . . all the archaic codes without exception from the Code of Hammurabi to the early medieval Germanic laws state the law in these conditional sentences in the third person singular. When there is a departure from this form, it is usually an indication that later additions or forgeries have been made in the Code . . .⁶⁴

Mishnaic law, as we have seen, admits different formulations. In addition to the literary cliché, we find a structural listing of laws with a unifying theme in the following formulation:

61 See Zlotnick, *The Tractate "Mourning,"* 7:8, and "Introduction," p. 6.

62 W. Seagle, loc. cit.

63 Loc. cit.

64 *Ibid.*, 110. In describing the character of Middle Assyrian laws, the authors write "they are all drafted in the same conditional form as the old Sumerian laws and the Babylonian Code which in this respect followed the model . . . the verb is invariably put at the end of the sentence, as it is also in the Babylonian Code, in the Sumerian style" (*The Assyrian Laws*, ed. G. R. Driver and J. C. Miles [Oxford, 1935], 12f.).

- 1.1 There are those who do 'A' and 'B';
- 1.2 there are those who do 'A' and not 'B';
- 1.3 there are those who do 'B' and not 'A';
- 1.4 there are those who do neither 'A' nor 'B'.

Variants to this series may consist of four (*Baba Batra* 8:1; *Yebamot* 9:1), three (*Bikkurim* 1:1), or two phrases (*Temurah* 2:1). It is an introductory listing inasmuch as the Mishnah always reverts to it in order to explain each phrase in turn. The sequence of explanations, however, is not fixed.⁶⁵ At times the opening phrase is explained first in an ABAB sequence: "Who are they who do 'A' and 'B'?"—and so forth.⁶⁶ At times the closing phrase is explained first in an ABBA sequence: "Who are they who do neither 'A' nor 'B'?"—and so forth.⁶⁷

Although every classification of law may strive for brevity, not all languages are equally suited to the task. Whereas a concept of law may be precisely expressed in but a phrase in either Hebrew or Aramaic, its English equivalent generally requires a sentence of many words. For example, the translation of the formula recited by the messenger bringing a writ of divorce from abroad is: "It was written in my presence; and it was signed in my presence" (M. *Gittin* 1:1). Each line of this six and seven word translation is expressed by only two Hebrew words: *běpānay niqtav; ūbēfānay nehtam*.

One explanation of the Talmud for this declaration is that Jews living abroad might not know that the document of divorce had to be written specifically *lišmāh*, "for her (the woman's) sake." For all that, the term *lišmāh* was not added to each phrase of the formula: *dēʔi māfšaʔ lē(h) dībbūrā ʔātī lēmigzeh* "if you add words for him, he will omit them (ibid. 3a)." The scholars, according to this explanation, were fearful lest they burden the messenger—it being assumed that he would remember a formula of two and two words but might omit a word in one of three and three words (loc. cit.).

If brevity was deemed vital to the integrity of a formula of four words, how much more so in the case of the Six Orders of Mishnah, and, for that matter—all of rabbinic literature. *Dereḳ qeṣārā* "a concise manner" characterizes the composition of the oral tradition. The Talmuds of Jerusalem and Babylonia no less than the Mishnah of Rabbi Judah ha-Nasi were structured to be memorized. They too abound with mnemonics, and they too continued to be memorized and even sung long after writing had developed. In the instance of the proverbial *ʿillūy* "prodigy" they continue to be memorized and even sung to this day.

65 TB *Nedarim* 3a top.

66 M. *Shabbat* 5:1; *Yebamot* 9:1; *Baba Batra* 8:1; *Menahot* 5:3; 5; *Bekorot* 8:1.

67 M. *Shabbat* 2:1; 4:1; 6:1.