Textual Study and Social Formation: The Case of Mishnah

Jack N. Lightstone

Abstract
This paper examines, in context, the place of Mishnah study in the nascent rabbinic movement around the turn of the third century CE, a period of its social formation (or re-formation). The essay reviews two types of evidence: (1) attestations to Mishnah study and its mastery as a hallmark of being a rabbi and (2) Mishnah’s most pervasive literary and rhetorical traits. In so doing, the paper addresses the question, “What type of occupational or sapiential expertise is engendered by intensive study of a document with these traits?” The paper argues that Mishnah study prepares the ancient rabbinic novice to recognize and parse finely differentiated circumstances, and reinforces and further hones the same in full-fledged rabbinic masters. Mishnah models, and its study demands, “high-grid” thinking (as defined in Mary Douglas’s work) and analysis by its life-long students as an occupational set of skills, founded on knowledge of Scripture’s law and, at times, on legal traditions that intervene between the “raw” dicta of Scripture and the starting point of a mishnaic treatment of matters.

In recognition of the inauguration of this journal, permit me to begin with several basic claims about the academic interests of the humanities and social sciences and their relation to the study of Judaism. The proper objects and subjects of the academic pursuit of the humanities and social sciences is to enlarge the critical understanding of what it is to be human, apart from or in addition to our physiological-biological makeup, and within the limits of the natural world.1 Humans produce art and literature to entertain and give expression to thoughts and feelings, they make claims about the world in which we live, they define and validate forms of social organization and exchange, they posit the existence of unseen forces to make sense of our experiences and social institutions, and they make tools, and build infrastructure to support individual and collective lives and reinforce in material culture their social constructs. To study the Judaism (or Judaisms) of the Jewish People is to analyze it (or them) as instances of this larger set of human individual and group creativity and imagination.2

As a consequence of the foregoing, one important element of the pursuit of the humanities and social sciences is to identify, understand and, when possible, to explain similarities and differences in human behaviour and thought across individual human beings and across human communities.3 In so doing, we gain critical and well-founded perspective, both on the range and the practical limits of the range, of expressions of humanness across individuals and across groups. As scholars of the humanities and social sciences, we, thereby, implicitly or explicitly participate in a collective exercise of building a taxonomy, a classification system, of human expression and recurrent patterns of behavior. On this foundation, we are able to articulate and test theories that move us along on a continuum from observing correlations to positing reasons for, and at times causal relationships among, correlated phenomena.4

If we seek to understand the ranges and limits of human similarity and difference through comparison, then humanists and social scientists must supply, or be supplied with,
well-documented, individual cases of what heuristically appear to be more widely observed phenomena across individuals or across human communities. This paper offers such a case: the place of a literary creation, the Mishnah, and, specifically, of dedicated Mishnah study, in the nascent rabbinic movement around the turn of the third century CE, arguably, the period of social formation (or perhaps re-formation) of the early rabbinic group.5

Why focus on Mishnah? Because it was the first major literary production of the early rabbis, and Mishnah’s production and promulgation as an authoritative text is contemporaneous with social developments within the rabbinic movement in the last decades of the second and first decades of the third century. Why Mishnah study? Because a significant body of extra-mishnaic evidence from rabbinic literature, dating soon after Mishnah’s promulgation, attests to the centrality of Mishnah study and the mastery of Mishnah as the sumnum bonum activity that qualifies one for membership in the rabbinic group.6

As intimated earlier, a particular historical instance is illuminating, because it can be related to a wider set of phenomena of which our case in point may then provide a telling example—as a result of similarities to, and differences from, meaningful comparators. In the case of Mishnah and Mishnah study, the more immediate, important, culturally and historically relevant comparators come from two fronts. One is the study of authoritative texts (canonical texts, if you will) within ancient Judaism and Judaism of Late Antiquity, and the role of such mastery in social formation within Jewish society. That is to say, Mishnah study as a socially formative activity within the early rabbinic group did not arise within Jewish society ex nihilo, as it were, but emerges from a social history within antecedent Jewish communities. The second immediate arena to turn to for meaningful comparators is the social role of textual study within the contemporary Middle Eastern and Mediterranean world(s),7 of which ancient Israelite/Judaic polities and Jewish communities of Late Antiquity were a part. As I shall point out below by way of introduction to the case of Mishnah study, institutionalized forms of study of one sort or another in the Middle East, Egypt, and the Eastern Mediterranean regions in Hellenistic and Roman times both created and reinforced well-defined social/class boundaries and social strata. Such institutionalized forms of instruction also served the process of defining authoritative occupational groups. It is, then, to these comparators to which I now turn, in order to provide, albeit summarily, some context before proceeding to the case at hand, Mishnah study in the early rabbinic movement in Roman Palestine.

CONTEXTUAL ELEMENTS: TEXT, STUDY AND OCCUPATIONAL GROUPS IN ANCIENT JUDAIC SOCIETIES

The (temporarily successful) Deuteronomic reformation associated with King Josiah of Judah in the seventh century BCE (2 Kings 22 and 23) laid the seeds for major, more enduring changes to come several centuries later in the Jerusalem-centred, Persian-ruled territory of Judah (Yahud), associated with the careers and followers of Ezra and Nehemiah in the fifth and fourth centuries BCE. These changes placed a document, “the Torah of Moses,”8 at the center of all systems of legitimation and authority within the community. From that period onward, only those communities that claimed to possess this “true blue” text, to command the “true blue” interpretation of it, and, faithfully, to behave in accordance with that interpretation could lay claim to legitimacy, that is, to be the People of Israel under covenant with Yahweh.

As a consequence, other competing groups with roots in ancient Israel were delegitimized—the authors of Ezra-Nehemiah dismissed competing groups as mere “country folk” (amei ha-aretz), cast aspersions on their bloodlines, and questioned their monotheism (see Ezra 4)9—not because of any intrinsic “rightness” of the
Torah-of-Moses-alone community, but because of power politics of the region, first within the Persian Imperial system (see Ezra 4:1–6:15), and, subsequently, within the periods of Ptolemaic and Seleucid hegemony in the Land of Israel and, more broadly, the Levant. As a corollary, those who, backed by the imperial powers of the day, claimed mastery of the Torah of Moses (see Ezra 3:2, 6:18, 7:6, 7:10–12, 14, 21, 25–26; and Nehemiah 8, 9:13) and who possessed and were edified by the Torah’s companion literature (which eventually encompassed the books of the Prophets and the Writings) commanded the People of Israel, the People of Yahud, namely “the Jews.” While the historical and social processes that brought about this state of affairs in the fifth, fourth, and early third centuries BCE are sketchy, for lack of descriptive evidence beyond the production of the Books of Ezra and Nehemiah, the outcome by Hasmonean times (second and first centuries BCE) is both clear and seemingly so well entrenched as to appear irreversible.

By late Hasmonean times, something else appears well established: the existence of a cadre of “learned” (excuse the neologism) as a distinct social or occupational “class,” if that is an appropriate term, by reason of their scholarship of the Torah of Moses and of associated authoritative literature. They functioned as an identifiable occupational group within the Jewish “state” and Temple administrations. They called themselves, and were called by others, “scribes” (soferim, a well-documented title) and perhaps “sages” (hakhamim). So well-established is this class by the first century CE that scribes appear as “stock” figures in the Gospels, a point to which I return later.

Institutionalized education of soferim or hakhamim also seems attested to in, for instance, the Book of Ben Sira (51:23). (I deliberately set-aside here what rabbinic literature says or implies about the education of “sages” in Hasmonean or earlier times, as that testimony is late and perhaps an anachronistic reiteration). The by-then-mythologized “model” for such scribes was Ezra, entitled in Ezra-Nehemiah, as “the Scribe, expert in the Torah of Moses” (Ezra 7:6). As to what form such instructional institutions took, the evidence does not permit us to say. Were they institutions in which several or more instructors worked together as an organized school? Or were there individual tutors, each with a restrained number of private clients? We do not know, although both models are well attested to in Middle Eastern or Mediterranean society in the late Hellenistic or Roman Periods.

That the Torah-of-Moses-alone ideology should favor the emergence or enhancement of the roles of such groups of “scribes” or “sages” as an occupational class is not surprising in many respects. Nonetheless, it is worth noting how remarkable a transformation of early Judaic society this represents in the system of social authority within Israel. The Torah of Moses itself imagines no such authoritative group of “learned,” but does acknowledge kings, prophets, priests and Levites, and judges. What the Torah of Moses does do is to make the authority of the latter subservient to that of a document, the Torah, and Moses (long dead, of course) is now the only source of revelation that matters. According to Deuteronomy, kings are to study the Torah. Prophets whose utterances contradict the teachings of the Torah are ipso facto false prophets. One is to go to the priest, or to the “judge” for authoritative rulings based on Torah law, which assumes the priest (an hereditary post) has studied Torah (an acquired expertise). Clearly, the rug is being pulled out from under the forms of traditional authority that were normative and well-established in ancient Israel, and sapiential authority is being given a “leg up.” For an occupational group to be given a “leg up,” it is more likely that they will have already existed, and less likely for them to have emerged ex nihilo. The “sage” and the “scribe” are well referenced in biblical literature for the period prior to the ascendency of the Torah-of-Moses-alone ideology. They are figures in the royal court of ancient Israel, as they were in the Middle
East generally in this period. These figures appear to be retainers of the monarchy, acting as advisors and senior bureaucrats. The qualifications that suited them for their positions and the training regime that prepared them for their appointments can only be surmised by indirect methods. But they clearly had to have acquired “high literacy,” including not only the capacity to read and write, but familiarity with the literatures and knowledge of the day, some of which seems to be reflected in the “wisdom” texts of the Hebrew Bible (even if these biblical texts were produced in later periods).

For such occupational groups, the self-transformation to purveyors of “Torah-literacy,” specifically, would not have been a bridge too far. The “scribes” encountered in the Gospels as Jesus’s strawmen are portrayed as precisely that—recognized, retained purveyors of Torah literacy, as the “scribes of the priests” and the “scribes of the Pharisees.”

CONTEXTUAL ELEMENTS: SAGE AND SCRIBAL “CLASSES” IN MIDDLE EASTERN AND EASTERN MEDITERRANEAN SOCIETIES OF THE GRECO-ROMAN PERIOD

As intimated, “scribes” and “sages” were “high-literacy,” occupational retainers of the ancient Israelite monarchy, modelled on contemporary, royal-court administration in the Middle East or Eastern Mediterranean generally. Evidence for this institutionalized occupational class comes from Egyptian sources, where some form of educational system to produce court or temple-scribal magistrates and bureaucrats from among the sons of the wealthy (and perhaps, at times, the very intellectually gifted among the poor) is clearly exhibited as early as the end the Old Kingdom, as in the wisdom text attributed to Dauf. Indeed, the scribal “wisdom literature” of Egypt and that of Israel resemble one another to an extent that cannot be by chance. The story of Ahikar, documented among the Elephantine Papyri of the fifth century BCE, has already mythologized a scribal/sage figure that the narrative sets in the Assyrian imperial period. The books of Ezra-Nehemiah (Ezra 5:8), in addition to describing Ezra as a “scribe,” use the term to designate officials in the Persian Imperial government of the territories “beyond the river,” of which Jerusalem was a part.

Even more important are governmental administrative systems of the Ptolemaic and Roman imperial periods in Egypt (and in the Land of Israel under Ptolemaic and Roman hegemony). The Ptolemies divided Egypt (and the Land of Israel, when the latter fell to their rule for about a century) into larger administrative districts, or nomes, and subdivided the latter into geographical “toparchies.” Within toparchies, villages and towns constituted subordinate administrative units. Only constitutional, self-governing “cities” fell outside this administrative system; constitutional cities were accountable directly to the monarchy, from which their city charter derived. At the apex of the governmental administration of each of the nomes, toparchies and towns were two administrative figures: (a) the archon, and (b) the scribe, who served as the chief bureaucratic retainer. Obviously, the archons and scribes of the nomes were far more powerful figures than those of toparchies and the towns, and with exemplary service officers of latter two might rise to positions in the former.

It is not clear me whether or in what manner the Hasmonaeans in the Land of Israel retained this organizational structure when the dust settled from, first, the Seleucids wrestling control of the Land of Israel from the Ptolemies, and, second, the Hasmonaeans winning (limited?) home rule for the Land of Israel under Seleucid hegemony. Nonetheless, I lean toward the conclusion that much of the Ptolemaic system of administration was retained, because of what we know about the region under Roman rule. When Rome assumed hegemony over Ptolemaic Egypt, they retained the system of nomes/toparchies and archons/scribes, even though it differed substantially from the system of Roman administration elsewhere. And as I have already noted above, the prominence
of scribal retainers in a Roman-ruled Land of Israel is well documented in the Gospels for the first century CE.

I cannot give an account of how specifically these scribes or archons were prepared for their occupations and careers, but it is well known that the gymnasium-system of education of Greek-Macedonian (upper-crust) boys of Ptolemaic society was very well established and that it was intended to prepare young men for military, political, and administrative leadership at the court and in the cities—and I would imagine in the imperial administration of the territories generally. In addition, throughout the Eastern Roman Empire various philosophical schools operated. Some were small tutor-student affairs; others were organized on a larger, more institutionalized scale. In the Roman Imperial Period, Athens was one center for such schools; Alexandria, too, was such a locus. Libanius, writing in Syria, in the fourth century CE, tells us much about his “school days” as a student in Athens, and he implies a great deal about his own illustrious career as a private teacher of aspiring aristocratic youth, in competition with other private teachers in his region of the Roman Levant. His students, like those of the gymnasion, were preparing for high-ranking roles in the imperial government and its administration and for assuming their rightful place as decurions in the governing councils and in the magistracies of their towns and cities.

Finally, and tellingly, if we turn to evidence from Jewish communities in the Mediterranean world outside of the Land of Israel, the titles “archon” and “scribe” appear liberally in Roman period inscriptions. The former title sometimes appears honorific or hereditary, like membership within the class of decurions in Roman cities. But the latter seems invariably occupational, referring to an administrative role in the Jewish community accountable to the political governance system of the “synagogue,” vested in an (aristocratic) council headed by the archon(s). This evidence is either contemporary with Mishnah’s promulgation and with the nascent period of rabbinic movement or (more frequently) from the several centuries immediately following the promulgation of Mishnah.23

This, then, constitutes a brief account of the general, more immediate, historically, and culturally relevant contexts for looking at Mishnah study as a socially formative activity within the early rabbinic group. The existence of administrative retainers, as an occupational group, class, or guild characterized by “high literacy” and education in sapiential traditions, is well attested within the Judahite/Judean communities for the centuries preceding the advent of the rabbinic movement. After the reforms which biblical literature associates with the careers of Ezra and Nehemiah, Torah study and mastery would likely have occupied a place of primacy in scribal preparation. But as the content of Ben Sira indicates, other sapiential traditions continued to have their rightful place in the education of scribes.

The existence of scribal occupational groups have been equally well documented for eastern Mediterranean society generally well before, at the time of, and in the era just after the production and promulgation of Mishnah near the turn of the third century CE. And, not surprisingly, a scribal administrative group was part and parcel of Jewish communal organization in the Roman-ruled Mediterranean.24 Against this backdrop, let us examine Mishnah study in order to glimpse aspects of the socially formative, core identity of the nascent Rabbinic group.

MISHNAH STUDY AND EARLY RABBINIC SOCIAL FORMATION, A CASE STUDY

In the remainder of this paper, I seek to summarize two distinct types of evidence that bear upon our chosen task. One type of evidence attests to the importance, even the primacy, of Mishnah study and the mastery of Mishnah as a hallmark of becoming and being a “rabbi,” beginning at the turn of the third century CE, when Mishnah was first produced and
promulgated by and within the early rabbinic group, and continuing in the subsequent several centuries. The other type of evidence has to do with the most pervasive literary and rhetorical traits of Mishnah itself. I will broach the question, “What type of occupational or sapiential expertise is reflected in or engendered by focused and intensive study of a document with these traits?” The former type of evidence helps establish the centrality of Mishnah study within the nascent rabbinic group. Evidence of the latter type allows us to glimpse the probable socio-cultural impact and meaning of Mishnah study in the formation of an early rabbinic social identity or “professional” profile.

Before summarizing these two types of evidence, I wish to state that I will not consider in this paper evidence concerning what institutionalized, organized forms of rabbinic education existed before, at the time of, or in the decades and centuries immediately following the authoring of Mishnah. This matter, in my view, was been well researched for more than 40 years, commencing with the work of David Goodblatt. The evidence and subsequent scholarship on this topic has been more recently reviewed and reassessed by Jeffrey Rubenstein.

Extra-Mishnaic, Early-Rabbinic Evidence for the Centrality of Mishnah Study to the Inner-Group Life of the Early Rabbinic Social Formation

Let me begin with the centrality of Mishnah study in the early rabbinic movement. For the most part, evidence supporting this claim comes, as one might expect, from sources external to Mishnah itself, if one is of the view that “Mishnah” Tractate Avot is a later addition to Mishnah—added, perhaps, some half-century later.

Avot (the Fathers), in form and substance, might well be characterized as a distinctively rabbinic version of Israel’s wisdom literature. At one level, Avot is a collection of wisdom teachings with a characteristically rabbinic ethos. The text touts the importance of Torah study and associated rabbinic discipleship, and it contextualizes other wisdom-type advice about the good life and traits of the sage within that frame. At another level, particularly in the first several chapters, Avot establishes a pedigree for rabbinic teachings and tradition, and, therefore, in effect, provides an authoritative pedigree for Mishnah, when later—perhaps as early as the mid-third century—Avot is inserted among Mishnah’s tractates. That insertion in effect declared Mishnah to be Torah, and Mishnah study to be Torah study.

But, taken on its own, outside of its current placement among Mishnah’s tractates, Avot is not a panegyric for Mishnah study, specifically, but it is for Torah study and rabbinic discipleship generally. However, Avot de Rabbi Nathan (AVRN), an elaboration and expansion of Avot, contains passages that explicitly designate the core curriculum of rabbinic study, as in AVRN (version a) 8:1 (my translation, AVRN’s citation of Avot in boldface type):

**AVRN**

A. Joshua b. Perahiah and Nithai the Arbelite received [the transmitted Torah] from them.
B. Joshua b. Perahiah says,
1. “Appoint for yourself a rabbinic master [as a teacher] (rav);
2. and acquire for yourself an associate [with whom to study];
3. and judge every person as meritorious [on balance, that is, give everyone the benefit of the doubt].”
C. “Appoint for yourself a rabbinic master.” How so?
D. This teaches that one should appoint for oneself a rabbinic master [that is, one should not flit from one rabbinic master to another] [with whom to study on a] regular basis.
E. And one should learn from him scripture, and mishnah, and legal midrash, and aggadot [that latter being edifying tales about/from the rabbis].

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The order of the mandated curriculum at AVRNa 8:1:E is not arbitrary. Mishnah’s primacy is exceeded only by biblical Scripture itself. And Mishnah study is preeminent over other substance of rabbinic learning. Nor is it fortuitous that after Mishnah in the list comes “legal midrash” (halakic midrash), the extant rabbinic compositions of Late Antiquity that serve to argue the necessity of a close reading of Scripture, in which no element of a biblical verse is superfluous, this in order to derive rabbinic law (halakah). Jacob Neusner, among others, has argued that halakhic midrash functioned to temper the ascendency and primacy of a solely logical-analytical approach to the study of Mishnah’s substance. The perceived need for such a corrective serves to bolster our claim.

Similar to the assertion in AVRNa 8:1 about the primacy of Mishnah study is another found in a beraita tradition—a tradition purported to come from authorities outside of, but contemporaneous with, those of the Mishnah—cited in the Babylonian Talmud (b. B.M. 33a). But, in contrast, b. B.M. 33a seems to register the necessity to re-assert the primacy of Mishnah study in the face of the increased stress on the study of post-mishnaic Talmudic traditions.

b. B.M. 33a:

Our Rabbis taught: Those that occupy themselves [just] with [the study of] scripture are of limited value; with [the study of] Mishnah [but not of subsequent rabbinic teachings] are certainly of value and will be recompensed [for their study]; with [the study of] Talmud, nothing is of greater value. But always pursue the [study of the] Mishnah more than the [study of the] Talmud.

But, of course, the most compelling evidence external to Mishnah of the centrality of Mishnah study to the interior life of the group comes from the following two fronts: (a) at the turn of the third century and in the subsequent several centuries, the rabbi or would-be rabbi was expected to have memorized Mishnah, and serving groups of masters and students were a company of official memorizers of Mishnah (i.e., the tannaim), who were living repositories of the textual tradition; and (b) entire literary-rhetorical genres of rabbinic traditions and study materials were collected or authored as companions to Mishnah study under the two generic designations of beraitot (or tosafot) and gemarot, with the Mishnah text providing the only overarching organizing structure for the eventual compilation of these materials into the extant Tosefta, Palestinian Talmud, and Babylonian Talmud.

In summation, briefly, the claim that Mishnah study and Mishnah mastery were central to the inner group life of the early rabbinic group from the turn of the third century CE and over the subsequent several centuries is very much an over-determined claim, based on the extra-mishnaic evidence from late antiquity.

Intra-Mishnaic Evidence and the Nature of Inner-Group, Normative Traits Modeled and Re-enforced by Mishnah Study

In a preceding section, I broached the question, “What skills or traits of mind, on the one hand, and what social/professional relations, on the other, are the requisites of, or are engendered by, life-long devotion to Mishnah study?” To some degree, the answer to these questions is reflected in the major post-mishnaic compilations, the two Talmuds, organized as commentaries of sorts on Mishnah. But, as stated earlier, if we are interested in the nascent rabbinic group at the turn of the third century, when Mishnah and Mishnah-study were initially promoted, and in the decades or the century immediately following, we must look principally to the Mishnah itself for answers, and, specifically, at its most pervasive literary and rhetorical features at both the macro and micro levels. It is these traits that would have confronted the student of Mishnah on a regular basis and placed
specific demands upon the student’s resources, intellectual and otherwise. Moreover, the acquisition of these resources bespeaks, indirectly, of a social network in which they may be accessed and in which they are valued.35

**Macro Literary Traits: Mishnah’s Topical Agenda and Scripture**

Mishnah’s content is legal in nature, spanning sacerdotal ritual and priestly gifts, religious-festive practice, purity maintenance, some civil and family law, and certain judicial processes, torts, and criminal law. However, while the treatment of many subtopics is extensive and seemingly exhaustive, for example, the signatory requirements for writs of divorce, Mishnah’s coverage of a number of its grand themes (the subject matter of its “tractates” and “orders”) is not; rather, coverage is episodic.

By what heuristic standard do I make such an assertion? Mishnah’s treatment of many of its grand topics would require much in the way of complementary and supplemental materials even to begin to approach the comprehensiveness that one would expect of a “working” law code for a “living” Judaic society. To satisfy the latter’s requirements, whole additional chapters would have to be added to many of Mishnah’s thematic tractates, and entire additional tractates would be needed.36 This contrast between apparent exhaustiveness at the level of many sub-topics and “gross lacunae” at the level of Mishnah’s topical agenda is an important datum,37 to which I will return. Moreover, while Mishnah sometimes articulates overarching legal principles from which detailed law follows, more often it does not. Rather, the reader is left to induce the law or legal principles from a series of specific rulings on minutia—that is, unless knowledge of the former type is assumed to already be part of the Mishnah student’s toolbox in some fashion—also a matter to be further discussed later in the paper.

One feature of the spectrum of Mishnah’s major topical themes is that while some of Mishnah’s legal content is relevant to Palestinian Judaic life at the time of Mishnah’s promulgation at the turn of the turn of the third century, a great deal of Mishnah’s substance concerns a Judaic world and society that disappeared before Mishnah’s authors undertook their work. When Mishnah was composed near the turn of the third century CE, the Jerusalem Temple, its associated institutions (its courts and tribunals), and its leadership (priests, Levites and temple scribes) had been defunct for more than a century. But one can barely surmise this from Mishnah’s substantive agenda in many of its tractates. Other parts of Mishnah’s agenda are, however, completely relevant to the post-destruction period and assume none of the Temple-era’s institutions in their articulation (e.g., m. Megilah and m. Eruvin). On still other occasions Mishnah’s substance proffers odd-ball anachronisms, such as, when Mishnah enjoins (rabbinic) sages to give instructions to Temple priests, because only the latter, by law, may act, but only the former know with accuracy what the priests must do (e.g., m. Yoma).

Social scientists and humanists (particularly historians) are used to studying evidence in historical time to provide important context. Synchrony and diachrony are important dimensions in scholarly analysis.38 But the social world that emerges across Mishnah’s agenda and topics is curiously “unstuck in time,” to use the novelist Kurt Vonnegut’s term.39 As a result of being so “unstuck,” the world that Mishnah’s content adumbrates in law is an “imagined” one. On the one hand, that world very likely never existed in the manner that Mishnah law portrays, and, on the other, it is a world that did not and could not exist as a whole, as a religio-cultural system, at the time of Mishnah’s production.

I use words such as “whole” and “system” for specific reasons and as important qualifiers. Three reasons are foremost, among potentially others: First, because my own work and that
of my teacher, Jacob Neusner, as well as that of many of his other former students, strongly support the claim that an integrated religio-cultural system underpins Mishnah throughout. To a large extent, it is the system that also underpins the Pentateuch, which I argue elsewhere in this paper is the core touchstone of Mishnah’s substantive agenda, even though Mishnah more often than not tends not to cite its dependence on scripture. Second, and in a completely opposing vector, I use the terms “whole” and “system”, because I do not wish to imply that all of Mishnah’s content is irrelevant or un-implementable at the turn of the third century. In theory, any Mishnah law that does not require the Temple cult and its administration is implementable in principle. Earlier, I pointed to tractates like Megilah and Eruvin. But one may also look to passages in many other tractates, including, for example, in Gittin, Kiddushin, Berakhot, and others. And indeed, when the rabbis came to wield sufficient power and authority—a state of affairs that emerged well after Mishnah’s production—the rulings of such tractates were taken as the basis for normative practice within Jewish communities. One has only to look at the bases in Mishnah for significant sections of the great medieval rabbinic codes. Third, and perhaps the most intriguing for some social historians of late Roman Palestine, while Mishnah’s “whole system” was not implementable at the time of Mishnah’s production, at a number of junctures in the text, those who produced Mishnah could not help but reflect in passing the historical or social reality of their times. Why? At these junctures, it was likely more difficult for Mishnah’s authors to “imagine” things to be otherwise than they actually were in the world around them. For example, one of the foundational underpinnings of Mishnah tractates Shabbat and Eruvin is the authors’ conceptual model of the typical layout of a late second-century Palestinian town or city, when translating biblical Sabbath prohibitions, which do not adequately take account of urban life, into an urban setting. Mishnah’s framers, by the way, tell us much about the towns and cities of their day, because it is much less likely that they are trying to imagine the structure of towns and cities of ancient Israel. Not so, by contrast, when Mishnah refers to cities of refuge enjoined in the Pentateuch itself. The same may be said for tractates dealing with agricultural gifts, like tithes and the heave offering, given to the poor and the Levitical-priestly caste. Here, Mishnah’s framers reflect the modes of agricultural production of their day, because at these junctures they are less likely or simply less able to “imagine” other ones.

So, to summarize our observations thus far—Mishnah’s treatment of its subject matter oscillates between the exhaustive, when dealing with subtopics, and the highly episodic and incomplete, when covering themes relevant to a living Judaic community. Mishnah concerns itself with social, cultural, and religious norms and institutions, which as a cultural system did not exist at the time of Mishnah’s production and that likely never existed in the form that Mishnah gives it in law. I remarked earlier that in terms of substance, Mishnah’s content seemed “unstuck in time.” Mishnah is not, however, as unstuck in topographical space. With so much of Mishnah’s content referring to a Jerusalem-Temple-centered praxis, the geography of the “imagined” world of Mishnah clearly has its axis in Jerusalem and in the Land of Israel. Since the early rabbinic movement emerged in Palestine, Mishnah may simply reflect the decidedly Roman-Palestinian social location and social identity of its authors and its initial intended users.

I do not think such reasoning is compelling. At best, it is an incomplete explanation. Mishnah’s Land-of-Israel and Jerusalem-Temple centrism is at the same time an epiphenomenon of another abiding literary trait of Mishnah—namely its pervasive, first-order dependence upon biblical-Pentateuchal law, which is itself Jerusalem-Temple centric. Permit me to elaborate. Mishnah is faithfully grounded in the
laws and injunctions of the Pentateuch, when and where topically there is corresponding scriptural material. Chapter after chapter, in tractate after tractate, Pentateuchal injunctions underlie Mishnah passages. The former are authoritative axioms of the latter throughout Mishnah, even though nine times out of ten—I mean this rhetorically, not statistically—the relevant Scripture is neither cited nor alluded to. At times—some might say, not infrequently—Scripture is cited as a proof text. But episodic proof texting is very different than systematic citing or than pointing to the underlying scriptural basis of passage after passage in tractates and chapters; the latter rarely happens. Yet without a thorough knowledge of Pentateuchal injunctions, Mishnah’s content is all but incomprehensible. That knowledge is assumed to be possessed by the reader, or it is assumed that the reader has immediate and continuing access to someone who does have that knowledge. We will hold that thought for later, as we have held others, but I would recall here in passing the extra-mishnaic evidence of Late Antiquity (referred to earlier) about the hierarchy of the rabbinic core curriculum in the several centuries following Mishnah’s promulgation: The primacy of Mishnah study was exceeded only by the study of Scripture. To openly assert the inverse would be ideologically unthinkable in any post-Ezra-Nehemiah Judaic community. Mishnah’s often undocumented and unstated dependency on scripture is odd in two other, diametrically opposing ways. In some cases, Mishnah passages seem to deal with an uncited scriptural injunction, as if no intervening centuries of practice or interpretation existed—as if scripture were composed a mere day before the Mishnah passage in question, and the latter is a first attempt at understanding the former. For instance, m. Menahot 5:8 proffers a dispute concerning what the difference is between a mahkreshet (“a firepan”) and a mahvat (“a firepan”). Both terms are biblical (see Lev. 7:9–10), and Mishnah at this juncture is engaged in effect in first-order exegesis (or eisegesis) of biblical terms—to sort out a fuzzy matter in the scriptural injunctions. But the scriptural passages were not composed the day before the Mishnah passage. Surely, more than five centuries of practice in the Jerusalem Temple had long settled the issue in question. So, either Mishnah’s editors were unaware of five centuries of practice, or, far more likely, the established practice was beside the point, given Mishnah’s purpose for its intended readership, a core topic of the latter sections of this essay.

At the other end of the spectrum, Mishnah is, at times, based on Scripture (still uncited), but one or several (also) unstated premises or postulates may logically intervene between the datum in Scripture and the starting point in Mishnah’s treatment of a topic. In such instances, one may readily surmise what (uncited) Scripture is the premise, but the starting point of the relevant Mishnah is two or three logical removes from or beyond the premise in Scripture, and the intermediate logical postulates or suppositions are nowhere to be found in Mishnah (or elsewhere in Scripture, for that matter). Since without these intermediate postulates one cannot even begin to understand the Mishnah passage, then the reader, again, is assumed to already know them or to have ready access to someone who does.

What, then, might we begin to see reflected about a specific community, the community of those who first produced and studied Mishnah as a summum bonum of their social formation? First, that they valued the utopian, hypothetical, and theoretical over the historical. Second, their interest was directed more to the very concrete and specific, as opposed to the articulation of general legal principles or deduction from those principles. Third, in the production and study of Mishnah, the exhaustive attention to the specific was far more important than being comprehensive; exemplifying how to articulate and fully ramify some topics outweighed the value of covering all topics to produce a usable code.
Fourth, much in the way of anterior knowledge was demanded of the reader to even start understanding Mishnah, since many of the logically essential premises to reading a Mishnah passage or “chapter” are not there in the text. Fifth, and returning to the first observation, the world of Scripture mattered more than the world since; and the identity of the Mishnah’s producers and users was grounded and legitimated in their command of scriptural law.

On these bases, one can discern, as an interim proposition, that Mishnah reflects a community of scholarly elite, whose members are expected to have, or to acquire, a considerable body of antecedent knowledge. Moreover, Mishnah students practise (in entirely hypothetical-theoretical acts of imagination focussed on the world defined by biblical law) the application of that knowledge to the exquisitely concrete and specific. At first glance, based on macro-literary traits of Mishnah, we are dealing with a community of scholarship that values and inculcates quite specific capacities among its members.

**Micro-rhetorical Traits: Inculcating “High Grid” Taxonomical Vision**

A number of micro-rhetorical traits of Mishnah seem consistent with, and further bear out, these interim conclusions. First, most of Mishnah’s language is both highly formalized and decidedly laconic—economical to the extreme. This is evident to any first-time translator of Mishnah, who must continuously interpolate (often in square brackets) the language required to turn a mishnaic declarative sentence into a declarative sentence in English, French, German, etc.

A prime illustration can be found in m. Bekhorot 1:1a. I chose this passage not only because it is, in my view, typical of so much of Mishnah but, specifically, because it is the opening pericope of the opening chapter of a tractate of Mishnah. In other words, there is absolutely nothing that precedes this passage that provides any additional intelligible context for the reader. What the first-time reader of m. Bekhorot 1:1a sees (or more precisely, “does not get”) is all that the reader must be provided from somewhere or someone outside Mishnah itself to interpret/understand the pericope for him/herself. Below, then, I present two translations of m. Bekhorot 1:1a. The first represents Mishnah’s language as closely as I am able, in its fully laconic style; the second provides interpolations (in square brackets) to make the passage (more) intelligible.

### m. Bekhorot 1:1a (as is, without interpolations)

1. He who purchases the fetus of an ass of a Gentile,
2. And he who sell to him,
3. Even though it is not permitted.
4. And he who forms a partnership with him,
5. And he who receives from him,
6. And he who gives to him in trust—
7. is exempt from the law of the firstling,
8. as it is said, “Of an Israelite” (Num. 3:13),
9. but not of others.

### m. Bekhorot 1:1a (with my interpolations)

1. He [an Israelite] who purchases the fetus of an ass of a Gentile[, and the fetus, when born, if it turns out to be male, will be a firstborn of the ass owned by the Gentile],
2. And he [an Israelite] who sells to him[, the Gentile, the fetus of an ass of the Israelite, and the fetus, when born, if it turns out to be male, will be the firstborn of the ass owned by the Israelite],
3. Even though it is not permitted [for an Israelite to contract such a sale to a Gentile].
4. And he [an Israelite] who forms a partnership with him [the Gentile, so that they co-own the fetus of an ass owned by either the Gentile or the Israelite, and, subsequently, when the fetus is born, it is both male and a firstborn of the ass],
5. And he [an Israelite] who receives [a pregnant ass] from him [a Gentile, and, subsequently, when the fetus is born, it is both male and a firstborn of the ass],

6. And he [an Israelite] who gives [a pregnant ass] to him [a Gentile,] in trust [and, subsequently, when the fetus is born, it is both male and a firstborn of the ass]—

7. [in all of the foregoing cases, the fetus, when born] is exempt from the law of the firstling [of unclean species as enjoined in the biblical scriptures].

8. as it is said, “Of an Israelite” (Num. 3:13),

9. but not of others.

The contrast between the two versions is stark and typical of so much of Mishnah. As we can see from our exemplary passage, m. Bekhorot 1:1a, the very micro-literary-rhetorical traits of Mishnah’s language bespeaks of a document the study and understanding of which is impossible outside of an organized social context in which vital information is learned that renders Mishnah’s content intelligible. That requisite information is of several sorts. One sort is captured in the question, “What is Mishnah actually talking about in this passage?” That is, Mishnah does not provide enough information to surmise the circumstances that together comprise the often-hypothetical cases upon which Mishnah proffers a ruling. The cases (the “protases” of the sentences in m. Bekhorot 1:1a) cannot be understood without the explicative interpolations, and these must come from somewhere or someone. The other sort is captured in the question, “What background law must one know to make sense of the ruling or rulings (the ‘apodoses’) that m. Bekhorot 1:1a offers?” In the latter instance, one must know the biblical injunctions about the gift of the firstborn males, of humankind and of clean and unclean animals. And one must also know that Mishnah, although not the biblical text, further assumes that the biblical laws concerning first-born males of unclean species apply only to the ass. Those of us who have spent years reading Mishnah and related documents forget or are no longer cognizant of the significant knowledge gap that the un-interpolated text of Mishnah presents to the novice reader, a gap that had to have been bridged by some organized social context and institutions, of which the novice reader would have had to have become a part, studying, then, together with resident experts.

Primarily post-mishnaic rabbinic documents talk specifically of such Palestinian-rabbinic institutions, notable among them, the House of Study (bet ha-midrash), and perhaps it is anachronistic to project these back into the period in which Mishnah was first authored, promulgated, and studied. We can suspend judgment on that issue for the purpose of this paper and its argument. My point rather is this: we do not need these post-mishnaic sources to reasonably conclude that a social institution or institutions of some facilitating type existed at the core of the organization of the rabbinic movement at the time of Mishnah’s initial promulgation in order to provide what the novice reader of Mishnah needed to gain sufficient mastery. At this juncture, we may say, first, that the very micro-literary-rhetorical traits of Mishnah itself beg the existence of such institutions by indirection (derekh ha-gav). It is warranted, preliminarily, to conclude from such evidence that (1) entry into the early rabbinic movement and (2) passage from a more or less novice status to full membership were via study in some such organized setting. Moreover, we may further hypothesize that the passage from the status of novice to the status of full membership involved becoming an “autonomous,” “self-sufficient” reader and analyst of Mishnah, in so far as the mastery of Mishnah was the summum-bonum activity of the group.

Second, not only do Mishnah’s micro-literary-rhetorical traits reflect and, indeed, beg a specific type of knowledge acquisition in the passage from novice to member, but they also foster the inculcation of particular types of analytic skills, once that antecedent knowledge is mastered.
Again, let me demonstrate this point using m. Bekhorot 1:1 (although very many Mishnah passages would do equally well). For the purposes of this illustration, we must play a mental game. We must strip sections 8 and 9 from m. Bekhorot 1:1a. Sections 8 and 9 adduce a scriptural proof text for the ruling at section 7. My excuse for this request is this: more often than not such an appeal to a scriptural proof text would not be included in a typical Mishnah passage. But my reason for asking that you bracket out the appeal to Scripture is that it helps make the point I have in mind when one looks at the “raw” un-interpolated text of m. Bekhorot 1:1a.

One will note that there is not one case, but five cases that are the subject of the ruling at section 7. The five cases are created, or more appropriately, “spun out,” by simply varying one word in each of sections 1, 2, 4, 5, and 6. That word in each case is the use of the heb-emphaticus together with a verb in the third-person, singular, masculine, present-participial form in order to create a substantive in Hebrew:

1. he who purchases;
2. he who sells;
4. he who partners;
5. he who receives; and
6. he who gives.

All other circumstances that comprise the cases are held constant: an Israelite contracting with a Gentile; an unborn fetus, the gender of which is unknown; a pregnant ass that has never before given birth to offspring. What the reader is asked to surmise is whether the stated systematic variation in the contracted activity between the Israelite and the Gentile, with all other variables held constant, changes the outcome. Mishnah’s answer is no, it does not. The question that is now begged, but not stated is, “Why should the outcome be the same in all five instances?” Because as long as the Israelite does not have total, unrestricted title and control of the unborn fetus and its dame, the offspring is not subject to the law of the firstling, should the fetus end up being a male firstborn of the ass. But that general answer is not given, although it could have been proffered as a general rule at the outset. It has to be “doped out” by the reader from contemplating the five “spun-out” cases and analyzing their salient differences and similarities. If the general rule had been given at the outset by Mishnah, then the rest of m. Bekhorot 1:1a would have been, strictly speaking, unnecessary, indeed, superfluous. But it is also true, and this is my point, that the student of m. Bekhorot 1:1a would have been intellectually engaged in a very different manner. The student would have (simply) learned a rule, rather than having had to figure out the rule, or when it applied to similar but still slightly varied circumstances, or both.

I could repeat this demonstration over and over again with dozens or hundreds of Mishnah passages. All examples would give similar indirect evidence of privileging of this type of intellectual engagement by reason of the micro-literary-rhetorical traits that pervade Mishnah: vary the circumstances and tell me when or whether this (biblically grounded) rule or that applies, or still applies.

In m. Bekhorot 1:1a, only one variable was changed each time. Many passages in Mishnah will systematically vary, in turn, first one then other variables to spin out more cases of increasing complexity, requiring increasingly complex intellectual engagement. In fact, we do not have to stray far in Mishnah to find such a text. M. Bekhorot 1:3 to 1:4a is an apt example. Permit me to provide a translation without any explanatory interpolations.52

**m. Bekhorot. 1:3**

1. An ass which had not given birth,
2. and bore two males—
3. one gives a single lamb to the priest.
4. Male and female—
5. he separates a single lamb for himself.
6. Two asses which had not given birth
7. bore two males—
8. one gives two lambs to the priest.
9. a male and a female,
10. or two males and a female——
11. one gives a single lamb to the priest.
12. They bore two females and one male,
13. or two males and two females——
14. there is nothing here for the priest.

m. Bekhorot. 1:4a

15. One which had given birth, and one which had not given birth,
16. and which bore two males——
17. one gives a single lamb to the priest.
18. A male and a female——
19. one separates a single lamb for himself.

Again, we may begin by asking, “What must one know of the law of the firstling as an antecedent to engaging with the ‘whys and wherefores’ of this passage?” First, biblical law declares that the firstborn males of humankind and animals, both of clean and unclean species, are holy. That holiness must be dissipated by being redeemed and transferred back to its originator, the deity, in some fashion. The firstborn male of an ass—we now know that, for Mishnah, the only unclean species to which the law of the firstborn applies is the ass—is redeemed with a lamb (a clean species), which, in turn, is given to a member of the priestly clan as his due, effectively returning it to the deity. The firstborn ass is now de-sanctified and may be used by the owner. The passage also assumes that in cases of doubt—when we do not know whether the male offspring is a firstborn—one de-sanctifies it by redeeming it with a lamb, but one need not give the lamb to the priest. When all this is understood by or conveyed to the novice reader, one may begin to contemplate the series of cases spun out before us by varying first one hypothetical factor and then another, by simple concatenation and permutation of the highly laconic terms of the extended passage. My point is, again, the literary-rhetorical features that are the atomic building blocks of extended passages demand of the student, particularly of the novice, considerable intellectual engagement. One must dope out the legal principles from a series of slightly differentiated, hypothetical cases, when one could have been given the general rules and principles first, rather than having to induce them. But to do this one must first inform oneself, or be informed, of the relevant biblical law and its subsequent developments, and one must mentally fill in the lacunae in Mishnah’s highly laconic language, in order to begin to comprehend the hypothetical factors that are being permuted to create cases.

I cannot here provide a complete catalog of Mishnah’s micro-literary-rhetorical traits. However, one other is so prominent and pervasive that it warrants a fulsome discussion. It is the dispute form. In the dispute, the reader encounters two rulings (apodases) for a single case (protasis). The literary-rhetorical features of disputes’ protases (cases) and apodases (rulings) are typical of other passages of Mishnah, but one or more of the apodases is attributed to a named rabbinic sage, from whose authority the ruling is portrayed to stem. Generally speaking, one can identify three sub-species (with several variations of each) of the dispute form in Mishnah. They are the following:

1. -circumstances,
   -ruling,
   -Rabbi x says,
   -ruling;

2. -circumstances,
   -Rabbi x says,
   -ruling,
   -the sages say,
   -alternative ruling;

2’. -circumstances,
   -ruling,
   -the words of Rabbi x,
   -the sages say,
   -alternative ruling;
3. -circumstances,  
- Rabbi x says,  
- ruling,  
- Rabbi y says,  
- alternative ruling.

3’. -circumstances,  
- ruling,  
- the words of Rabbi x  
- Rabbi y says,  
- alternative ruling.

The circumstances (protases) and rulings (apodases) in mishnaic disputes display the same highly laconic, concatenative and permutative literary-rhetorical characteristics as other passages in Mishnah. Disputes are constructed by the simple interpolation of: “Says/say,” or “the words of”; and “Rabbi” plus name, or “the sages.” That is it. Nothing more.

Given the specific purposes of this paper, what are we to conclude from the presence and literary-rhetorical character of disputes in Mishnah? First and most obviously, thanks in large part to the literary-formal characteristics of the dispute form, Mishnah has told us unequivocally that “full” members of the group that produced and studied Mishnah referred to themselves collectively as “the sages,” and addressed individual authorities within the group by the honorific “My Lord/Master” so-and-so, for that is the most reasonable translation of the term “rabbi.” Both would be highly loaded terms in late-Roman, Palestinian-Jewish society. We may additionally read here a respect and reliance upon some specific lineage of tradition and opinion, the lineage of those named: Yohanan ben Zakkai, Eliezer ben Hycranus, Joshua ben Hananiah, Aqiva, Yose ben Halafta, Judah ben Ilai, and the list goes on.

The adducing of named authorities is significant to this essay’s issues, because it could have easily been otherwise from a literary-rhetorical perspective. We could have had attributions to named authorities without disputes. And while sometimes we have just this, it is overwhelmingly the case that attributions to named authorities appear in one or another of the variations of the dispute form. Moreover, we must also consider that it was entirely within the realm of literary-rhetorical possibility that Mishnah could have had disputes without named attributions. For example, we could have had something that displays this literary-rhetorical patterning:

- protasis;  
- apodasis;  
- [and] there are those who say:  
- alternative apodasis.

What, then, are we to make of the fact that (a) we have names and (b) they largely appear in highly formalized, laconically worded, disputes?

Unless we wish to conclude that the number of members of the early rabbinic movement was very small in the decades leading up to the production of Mishnah (which is certainly a possibility), and that, consequently, Mishnah names virtually all early rabbis, we would be wise to consider that the named authorities in Mishnah are a subset, a particularly important and noteworthy subset of early members. These important early-rabbinic VIPs, if you will, are portrayed by Mishnah as often having diametrically opposed positions. I say “portrayed,” because the laconic, formulaic, and permutative nature of Mishnah’s particular micro-literary-rhetorical traits makes it highly unlikely that any real, historical, early rabbinic VIP’s language is portrayed, or that “his” legal position was articulated on precisely the case as articulated by Mishnah.54 What is portrayed is that the divergent legal traditions that may have come from various early rabbinic VIPs all find their place in Mishnah’s disputes, more often without any indication of which person’s view is the correct one.
A number of years ago, Shaye Cohen made essentially the same argument in proffering his “big tent” theory of the rabbinic movement’s origins. I accept Shaye Cohen’s view, and offer an additional claim about the social significance and meaning of the Mishnaic dispute for the community that produced, revered, and studied Mishnah.

Earlier, I wrote about the intellectual engagement required by Mishnah’s laconic language in the construction of its cases. We spoke as well of the use of concatenation and permutation of terms to generate a series of related cases, in order to test in each whether similarities outweighed differences such that one or another ruling should apply or not. Imagine now a passage in which not only the laconically stated elements comprising the case (the protasis) are varied to examine differentiation, but also the ruling is varied by the presentation of diametrically opposed outcomes in the apodases for a single protasis. The Mishnah student is, thereby, additionally invited to ask, “Why might someone legitimately rule one way in these circumstances, while someone else would legitimately rule otherwise in the same circumstances?” In other words, adding alternative rulings expands the matrix for active, engaged analysis.

That the dispute begs such additionally active analytic engagement, perhaps intentionally so by Mishnah’s authors, is indicated by the use in Mishnah of the debate form, in which a dispute is followed by very laconic justifications for the disputing parties’ different rulings. Debates (unlike disputes) are less common in Mishnah. But debates are more common in post/extra-mishnaic rabbinic sources, such as Tosefta, composed as companions to Mishnah study. This last observation, in my view, serves to bolster my claim about one important (intended?) effect of the dispute for the Mishnah student’s engagement.

CONCLUSIONS

Let me now summarize and characterize the sort of Mishnah-student engagement seemingly engendered by Mishnah’s pervasive micro-rhetorical traits. One may describe what is demanded of the engaged student as “matrix analytics.” Across the top of the matrix are various related cases, often spun out by varying the several circumstances that combine to define the case. Down the side of the matrix is the ruling or rulings that apply in each case. Where there is a dispute, down the side of the matrix there are more items than there would be otherwise. In every “box” formed by the matrix, there is a “Yes” or a “No.” “Yes,” rule x applies; “No,” rule x does not apply. In the case of a dispute, there are more boxes with “Yes” or “No,” providing opposing positions for the same case. To understand Mishnah, the engaged student is invited to figure out why Mishnah has placed a “Yes” or “No” in each box of the matrix. Why, upon reflection and analysis, are discrete cases more or less similar to one another in ways that are compelling and relevant in Torah law?. As one increases and permutes those elements that together define a case—take for example, m. Bekhorot 1:3–4a—one increases the number of boxes with “Yes” or “No” in them; the matrix gets larger, and, visually, the boxes smaller to fit the page. In other words, the greater the number of variables that define a hypothetical situation for which a ruling is given, the finer the gradations that differentiate one situation from another in a manner that is potentially significant in the application and ramifications of Torah law.

The study of Mishnah, then, prepares one to expect, recognize, and deal with—in the sense of making judgments about—such potentially highly or finely differentiated circumstances. Mishnah models, invites, demands, and inculcates high-grid thinking and analysis on the part of its life-long students as a professional or
occupational set of skills, founded, as we have seen, on thorough knowledge of Scripture's law and, at times, on legal traditions that intervene between the "raw" dicta of Scripture and the starting point of a mishnaic treatment of a related matter. And we know that the study, mastery, and life-long analysis of Mishnah constituted principal activities of the inner-group life of the nascent rabbinic social formation, and defined, in (large) part, "who" became qualified as a full member in the early rabbinic group.

We need to know more about the positions in Roman Palestine at the turn of the third century CE to which members of this group were appointed by reason of being rabbis. That is an historical inquiry in its own right; Mishnah itself tells us little or nothing of value in this regard. But Mishnah does hint at the aspirations of the early rabbinic group—to serve as the authoritative administrators and arbiters in the organized religious, civil, and judicial institutionalized structures of Jewish society in the Land of Israel, by reason of their unique professional competencies. They aspired, moreover, to a monopoly over these positions. Have I not just described the goals of a professional guild?

No evidence that I know of confirms that their broader aspirations were fulfilled in the third century, particularly their monopolistic ones. But some rabbis did fill some relevant positions, sometimes by appointment to them by the Palestinian patriarchate. Several centuries later in Palestine and Babylonia and, certainly, in the early Muslim period, they largely achieved the positions and levels of authority to which they seemed to aspire from the beginning.

In conclusion, what we glimpse is the core nature of a specific social formation in the late second- or early third centuries in Roman Palestine, that of the nascent rabbinic group. We have an indication of what turns the group’s novices into full-fledged members. We understand what knowledge and capacities are to be nurtured in that transformation. We surmise something of the expert resources the novice must access. We can see that, however particular the early rabbinic group is in these regards, it stands synchronically and diachronically within historical and social contexts in which such groups and the social institutions that support their continued existence were quite normal, even normative. These other groups (some antecedent to the rabbis in the Land of Israel itself) provided sapiential, high-literacy retainer classes—professional guilds, if you will—for their respective communities, governments or temple administrations in the Middle East well into the Roman imperial period. And it stands to reason that the members of the early rabbinic group aspired to much the same. That and how they acted on these aspirations, first in Roman Palestine, and soon after in Persian-ruled Babylonia, is another topic altogether with its own challenges of evidence and methodology.

REFERENCES

1. Of course, our biology and physiology are key conditioners of our human and social expressions. Psychology, for example, has been transformed by neuroscience. My point is simply that this relationship between biology, on the one hand, and human expression, thought, social systems, and culture, on the other, has tended not to be central to most of the issues that the humanities and social sciences have sought to address.

2. This is a point that my recently deceased doctoral supervisor, Dr. Jacob Neusner, made frequently and emphatically, when I and my fellow graduate students studied with him in the early 1970s. This may be an obvious statement now, but it was not then, as the scholarly study of Judaism was still largely undertaken in Jewish institutions of higher learning and most faculty in secular universities who dedicated their careers to the research of Judaism’s classical and medieval literatures had themselves acquired their expertise in these texts while studying in Jewish institutions such as seminaries and yeshivot—Jacob Neusner himself being among
that generation. Also among the most cogent and articulate writers on the study of religion, from the perspectives of the humanities and social sciences, in general, and the academic study of Judaism, is, to my mind, Jonathan Z. Smith. He has been consistent in continuing to reflect on these matters in light of his career experiences. In this regard, see Jonathan Z. Smith, “When the Chips are Down,” in Relating Religion: Essays in the Study of Religion (Chicago: University of Chicago, 2004), 1–43.


4. The theoretical perspectives, methodological approaches, and sought-for-ends of the humanities and social sciences are diverse and increasingly so. Moreover, the boundaries between the two disciplinary families have become more difficult to draw. For an exemplary attempt to sort these out, see Abhijit Kundu, “Understanding the Humanities,” chap. 1 in The Humanities: Methodology and Perspectives, ed. Abhijit Kundu, Pramod K. Nayar, and Shweta (Delhi: Pearson, 2009). See also Jerome Kagan, The Three Cultures: Natural Sciences, Social Sciences and the Humanities in the 21st Century (New York: Cambridge University Press, 2009); on the ramification of theoretical perspectives in the humanities (and social sciences) in contemporary scholarship, see Vincent B. Leitch, Theory Matters (London and New York: Routledge, 2003). An example of the adoption of scientific-like methods in the contemporary humanities may be seen in the handbook by Willie von Peer, Frank Hakemulder and Sonia Zyngier, Scientific Methods for the Humanities (Amsterdam and Philadelphia: John Benjamins Publishing, 2012).

5. There is no doubt that early rabbinic texts themselves implicitly or explicitly place the development of the emergence of “the Rabbis” earlier than the dawn of the third century. The Mishnah itself attributes traditions to named “rabbis” who flourished just before and just after the destruction of the Jerusalem Temple in 70 CE. These texts also attribute rulings to proto-rabbinic figures like Hillel and Shammai and to their “Houses.” See Jacob Neusner, Rabbinic Traditions about the Pharisees, before 70, 1–3 (Leiden, NL: Brill, 1971). But “the Rabbis” did not produce and promulgate a common major text, even if traditions or collections of traditions may have circulated among them before, or other than, Mishnah. Post-mishnaic rabbinic texts consistently portray Rabbi Judah the Patriarch (last decades of the second century and first decades of the third century) as a pivotal figure in Mishnah’s production or promulgation, or both; see Lee Levine, “The Status of the Patriarch in the Third and Fourth Centuries,” Journal of Jewish Studies 47 (1996): 1–32, and David Goodblatt, The Monarchic Principle (Tuebingen, DE: Mohr Siebeck, 1994). Whether the attribution of Mishnah’s production to Rabbi Judah the Patriarch is historically accurate or, as is more likely, an honorific attribution only does not matter for our purposes. It serves only in combination with other evidence stemming from attributions to date “our” Mishnah’s production and promulgation to sometime near the turn of the third century CE. “Our” Mishnah is the only one extant, although Judith Hauptman has argued for the existence of a proto-Mishnah in Rereading the Mishnah (Tuebingen, DE: Mohr Siebeck, 2005). Concerning the above, see Jacob Neusner, Judaism, the Evidence of the Mishnah (Chicago: University of Chicago Press, 1981) and Martin S. Jaffee, Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism: 200 BCE to 400 CE (Oxford: Oxford University Press, 2001); see also Martin S. Jaffee, “Oral Tradition in the Writings of Rabbinic Oral Torah: On Theorizing Rabbinic Orality,” Oral Tradition 14, no. 1 (1999): 3–32; Elizabeth Shanks Alexander, “The Fixing of Oral Mishnah and the Displacement of Meaning,” Oral Tradition 14, no. 1 (1999): 100–139; Elizabeth Shanks Alexander, Transmitting Mishnah: The Shaping Influence of Oral Tradition (Cambridge: Cambridge University Press, 2006). See also David

6. See, for example, Avot de Rabbi Nathan, version a (AVRNAs), 8.1, cited in part and discussed later in this paper. See also Jaffee, Torah in the Mouth, 4; Alexander, “The Fixing of the Oral Mishnah,” 100–139; and Alexander, Transmitting Mishnah, 1–3.

7. I would recall at this juncture what Émile Durkheim wrote more than a century ago about “social facts.” He defined “social facts” as any shared norms or institutions that constrained human behaviour in one fashion or another. However, he also maintained that the explanation of a social fact was to be sought in its diachronic and synchronic contexts. Diachronic—in the history of other, related social facts that constituted an influential historical context; synchronic—in the contemporaneous systems of social facts within which the social fact under examination fit. See Émile Durkheim, The Rules of Sociological Method, (New York: Free Press, 1982), first published (in French) in 1895.

8. See Deut. 4:8, 45; 2 Kings 22:3, alternatively designated “the Book of the Covenant” in the next chapter, 2 Kings 23:2; and in Ezra 3:2, called “the Torah of Moses, the man of God.”

9. The tendentiousness of these criticisms is proven by Ezra-Nehemiah’s authors’ own admission that the very leadership of the fifth-to-fourth century BCE Jerusalem-centred community, including members of the priestly class, had to be forced on several occasions to divorce their foreign wives and to cleanse the Jerusalem cult of cult objects of foreign deities (see Ezra, chaps. 9 and 10; Nehemiah 13:23–31). Moreover, it seems that some Judean “nobles” (possibly landowners) were among those that resisted the Ezra-Nehemiah group’s reforms and (re-)establishment of Jerusalem’s centrality and power in Judah (Yahud) (see Nehemiah 7:15–19; see also Nehemiah 3:5; 5:7). Apparently, only with time did these reforms “stick.”

10. Clearly attested in the prologue to the Greek translation of Ben Sirah (a.k.a., Sirach or Ecclesiasticus). The prologue was added by the translator, who identifies himself as the grandson of the author, Simeon or Yeshu, of the original Hebrew. The translator describes his grandfather as someone who had dedicated himself to the study of “the law, and the prophets, and the other books of the ancestors,” and a person who promoted “the love of learning,” that is, the study of these texts and of associated “wisdom.”

11. Ben Sirah (10:1–5ff), who probably wrote just prior to the Hasmonean war and subsequent Hasmonean rule over Jerusalem/Judah, seems explicitly to link formal study in “wisdom” to high-ranking administrative bureaucratic roles in Hellenistic Jerusalem/Judah; the author also links such functions to the designation of “scribe.”


17. See esp. Jeremiah 18:18; see, for example, the role “Shaphan the Scribe” in Josiah’s administration in 2 Kings 22 and 23.

18. See, again, Davies, Scribes and Schools, 15–36; and Van Der Toorn, Scribal Culture and the Making of the Hebrew Bible, chaps. 3 and 4.
19. Their skills probably included numeracy as well. Shaphan the Scribe is clearly portrayed as handling both administrative and financial matters in Josiah’s court (2 Kings 22).

20. Ezra 5:8 refers to two senior governmental posts in the Persian Imperial district, the “commander” and the “scribe,” implying that some clear division of labor existed between these two positions. This provided a striking parallel to the twinned positions of archon (ruler) and grammateus (scribe) in the subsequent Ptolemaic system of imperial rule, as discussed in the next paragraph of this paper.

21. These early administrative systems have been well documented by scholars for more than a century. See, for example, Abdallah Simaika, Essai sur la Province Romaine d’Egypte Depuis la Conquete Jusqua a Diocletien: Etude d’Organisation Politique et Administrative (Paris: Imprimerie generale de Chatillon-sur-Seine, 1892).

22. Again, this system of administration is well documented in modern scholarship as early as the late nineteenth century; see discussion and evidence throughout Simaika’s Essai sur la Province Romaine d’Egypte.


24. Instances of scribal administrative presence in diaspora Jewish communities are well documented in the inscriptive evidence for the late Roman period. A tally of that documentation may be found in Lightstone, “Roman Diaspora Judaism,” 345–77.

25. This paper’s summary of the two designated types of evidence draws heavily on my analyses in Jack N. Lightstone, Mishnah and the Social Formation of the Early Rabbinic Guild: A Socio-Rhetorical Approach (Waterloo, Ontario: Wilfrid Laurier University Press, 2002) and further extrapolates, the observations made in that book. In a sense and to some extent, this question and the analyses and arguments of this paper constitute a type of “mirror-image” of the questions, analyses, and issues that drive the work of Elizabeth Shanks Alexander’s work. See both Alexander, “The Fixing of the Oral Mishnah,” 100–139 and Alexander, Transmitting Mishnah, 1–30. One could recast her research focus accordingly: What effects did the “oral” study of Mishnah have on the evolution of the text of Mishnah and its ultimate “fixity”? Understandably, then, some of the same rhetorical-literary conventions exhibited in Mishnah play heavily in her work and in mine as evidence, but, on the surface, the search for effect and cause or just influence are in opposing directions. While it is beyond the scope of this paper to provide a more complete assessment of Alexander’s theses, conceptual framework, and methods, I am inclined toward two highly general assessments. One, both she and I have articulated complementary, not opposing, phenomena. Two, after a close reading of her work, it seems to me she must start with the premise that Mishnah was composed by a process of oral transmission in order to show the effects of oral performance on the very composition of the Mishnah text, not just argue that Mishnah after its production was promulgated and studied via an oral performative process, which kept the text somewhat fluid for a period. From the point of view of method and evidence, the former (creation via oral transmission, with embedded rhetorical impact) is a much more difficult hill to climb; the latter (oral retelling/rehearsal) is not, even if both are possibilities. I suspect that one of the side effects of asserting the former position as well as the latter, versus asserting only the latter, has to do with how one views Tosefta, its purpose and its composition. At the risk of putting words into Alexander’s mouth, at times I have the impression she sees Tosefta (or its materials) as the first “Mishnah” that in the end was supplanted by the extant Mishnah, rather than viewing Tosefta as the earliest post-mishnaic composition that reflects something of how the Mishnah was received and studied, and which served the study of Mishnah. Again, both views are not necessarily logically incompatible, but the former is the steeper hill to climb as regards method and evidence.


29. The dating of Avot de Rabbi Nathan (AVRN) has been much disputed by modern scholarship. A century ago, the scholarly consensus was that the AVRN was compiled sometime in the seventh to ninth centuries CE. In the early 1970s, A. J. Saldarini undertook
a careful comparison of the two recensions of AVRN and Avot. He concluded that in all probability early versions of AVRN, likely circulating in oral form, were almost contemporaneous with early versions of Avot, dating from near (or perhaps just prior to) the time of Mishnah's authoritative composition at the turn of the third century CE. Saldarini also points out that all recensions of AVRN take pains to attribute traditions to rabbinic authorities contemporaneous with mishnaic sages (tannaim), save for three exceptions that prove the rule. One must be cautious in drawing conclusions from the latter observation, because of a penchant for anachronistic attribution to earlier authorities in rabbinic literature. My own view is that in its earliest version(s) AVRN likely predates the authoring of the Palestinian Talmud sometime from the mid-fifth century to mid-sixth, and so sits in the period bounded by Avot in the mid-third century and the Palestinian Talmud. See A. J. Saldarini, The Fathers According to Rabbi Nathan (Avot de Rabbi Nathan) Version B: Translation and Commentary (Leiden, NL: Brill, 1975), 1–16.


31. This is my own translation, which is influenced by that of Joel Zaiman. For his, see “The Traditional Study of the Mishnah,” in The Modern Study of the Mishnah, ed. Jacob Neusner (Leiden, NL: Brill, 1973), 3. Similar views of the place of Mishnah in the early rabbinic core curriculum are expressed in Avot 5:21; but Avot 5:21 together with Avot 6 are generally agreed to be later additions to Avot. In this last regard, see H. Albeck's commentary in Shishah Sidre Mishnah: Seder Neziqim, no. 20. ed. H. Albeck (Jerusalem and Tel Aviv: Mosad Bialik and Dvir, 1953), 380.


34. And to some extent they are reflected, although less explicitly, in materials in the Tosefta, which serve to ramify correlative sections of Mishnah in the guise of supplementing Mishnah. I realize that in making this claim I am implicitly taking a stand on the literary relationship between Tosefta and Mishnah, or, at a minimum, between Mishnah and materials that came to be included in Tosefta. See Jacob Neusner, Judaism, the Evidence of the Mishnah (Chicago: University of Chicago Press, 1981), and Jacob Neusner, The Mishnah: An Introduction (New York: Aronson, 1994). Compare the position argued by Judith Hauptman over the course of her book, Rereading Mishnah. See also the position defended in Alberdina Houtman’s volume, Mishnah and Tosefta: A Synoptic Comparison of the Tractates Berakhot and Shebiit (Tübingen, DE: Mohr Siebeck, 1996); Houtman’s introduction provides a good summary of the scholarly debate in the modern period about the nature of Tosefta and about Tosefta’s relationship to Mishnah. The recent scholarly literature positing some version of the thesis that some or much of Tosefta’s materials predate Mishnah includes: Joshua Kulp, “Organizational Patterns in the Mishnah in Light of their Toseftan Parallels,” Journal of Jewish Studies 58, no. 1 (2007): 52–78; Judith Hauptman, “Does the Tosefta Precede

35. What follows in this section largely reproduces the lion’s share of section IV of a paper I presented in July 2016 to the Research Group on “Sociological and Anthropological Approaches to the Evidence of the Mishnah” at meetings in Leuven, during the European Association of Biblical Studies (EABS); the paper is entitled “The Bases for Social Cohesion and Group Identity of the Early Rabbinic Guild: What does the evidence of the Mishnah show?” I rely throughout the sections that follow on my own research published in Lightstone, *Mishnah and the Social Formation*, cf. chaps. 2 and 5. See also Jacob N. Lightstone, “Whence the Rabbis? From Coherent Description to Fragmented Reconstructions,” *Studies in Religion* 26, no. 3 (1997): 275–95. The influence on my own thought processes of Jacob Neusner’s studies of Mishnah are evident in my *Mishnah and the Social Formation*, chap. 5; see Jacob Neusner, *Judaism, the Evidence of the Mishnah*, and Jacob Neusner, *The Mishnah: An Introduction*. In the intervening period, Jaffee’s work (*Oral Tradition*) on the topic of Mishnah’s orality has increasingly impacted my thinking about Mishnah’s traits, as has Alexander in “The Fixing of the Oral Mishnah,” 100–139 and *Transmitting Mishnah*, 1–40.

36. Within the history of Rabbinic legal texts, one need only compare Mishnah to the breadth of Maimonides’ Mishneh Torah (12th c.), or to Jacob b. Asher’s Arba’ah Turim (13th c.) and Yosef Karo’s Shulkhan Aruk (16th c.). For indication of the validity of this observation consider that Tosefta, beraitot in the Talmuds, and the later “minor tractates” exhibit a tendency to complement and complete Mishnah’s topical agenda.

37. This is an observation made in passing by Jaffee in “Oral Tradition,” 3–12, for quite other purposes and interpreted in relation to a quite different set of questions than those addressed in this paper.

38. A point made very early on about social facts in the writings of Émile Durkheim; see above n. 7: Émile Durkheim, *The Rules of Sociological Method*.


40. See Lightstone, *Mishnah and the Social Formation*, chaps. 1 and 5; see Neusner, *Judaism, the Evidence of the Mishnah*, 167–229; and Neusner, *The Mishnah: An Introduction*, 40–199. However, to say that a vision of a “system” underlies Mishnah is not to say that Mishnah is a systematic articulation of that vision. It clearly is not, as I have already intimated. Moreover, it is easy to overstate the systemic qualities of Mishnah as a unified literary work, a point emphasized by Jaffee in “Oral Tradition,” 12–26. Jaffee proposes that the compositional processes that produced Mishnah and other early rabbinic texts might better be understood as a type of anthologization.


42. On Mishnah-Tosefta and agricultural realia in late Roman Palestine, one need only refer to the classic work by J. Feliks, *HaHaqla’ut BeErez Yisrael BiTqufat HaMishnah VeHaTalmud* [Agriculture in Palestine in the Period of the Mishna and Talmud] (Jerusalem: Magnes Press, 1963).

43. A good example of this is the first chapter of Mishnah, Tractate Gittin, which concerns writs of divorce issued outside of the Land of Israel for use by parties inside the Land of Israel. The entire composition assumes this uni-directionality.

44. For example, see Deut. 12 and 14:22ff.

45. As in AVRNa 8:1 and Avot 5:21.

46. At first glance, so compellingly odd ideologically is Mishnah’s explicit literary penchant not to systematically document its dependence on scripture that David Weiss Halivni, in his magisterial work covering the range of early rabbinic legal literary genres, concluded that substance antecedent to Mishnah was a now lost literary genre, some form of earlier
halakhic midrashic literature, that did explicitly derive Mishnaic teachings from scripture. The producers of Mishnah, in his view, stripped away those scriptural exegetical parts to produce the Mishnah genre we now possess, and post-mishnaic rabbinic writers recreated, subsequently, a halakhic midrashic literature. See David Weiss Halivni, *Midrash, Mishnah, and Gemara: the Jewish Predilection for Justified Law* (Cambridge MA: Harvard University Press, 1986). I agree with Jaffee’s elegant comment on Halivni’s claims: Halivni has the genres right, but the historical order wrong (see Jaffee, “Oral Tradition,” 3–12).

47. Again, this is a trait of Mishnah captured by Jacob Neusner when he called the religion of Mishnah, “a religion of pots and pans.” While I remember him using the phrase in the early 1970s, in the late 1980s, it became the title of one of his books: Jacob Neusner, *A Religion of Pots and Pans?: Modes of Philosophical and Theological Discourse in Ancient Judaism: Essays and a Program* (Atlanta: Scholars Press, 1988).


50. Some may wish to argue at this point that Mishnah’s laconic style is merely a by-product of its composition for oral transmission, as with other literary traits of Mishnah. But such an argument does not undermine the point I am making in the least. It matters not at all why Mishnah is this way or how it came to be this way. Rather Mishnah is this way, with attendant consequences for the ancient Mishnah-student, which I will continue to detail below.


52. Again, the translation is my own and is based on the one I prepared for Lightstone, *The Rhetoric of the Babylonian Talmud*, 177–78.

53. The identification of the dispute form and its variations in Mishnah was a product of Jacob Neusner’s analyses of the rabbinic traditions of proto-rabbinic figures who flourished before the destruction of the Jerusalem Temple in 70 CE. It is from that point that he began to undertake what he called “form analysis.” See Neusner, *Rabbinic Traditions*, 3, Conclusions, 5–179.


