

INSTRUCTIONS TO LIBRARY

Statement
by Referee

The Senior Thesis of Richard N. Levy

Entitled: "An Analysis of the Initial Section of the Sifre to Deuteronomy
in the Light of their Supposed Authorship by the School of Ishmael"

- 1) May (with revisions) be considered for publication (✓) ()
yes no
- 2) May be circulated () () () (✓)
to faculty to students to alumni no restriction
- 3) May be consulted in Library only () ()
by faculty by students

() ()
by alumni no restriction

March 15, 1964
(date)

Ernest Kehaly
(signature of referee)

Statement
by Author

I hereby give permission to the Library to circulate my thesis

(✓) ()
yes no

The Library may sell positive microfilm copies of my thesis

(✓) ()
yes no

March 6, 1964
(date)

Richard N. Levy
(signature of author)

Library
Record

The above-named thesis was microfilmed on

July 23, 1964
(date)

For the Library

Moira Steiner
(signature of staff member)

AN ANALYSIS OF THE INITIAL SECTION OF THE SIFRE TO DEUTERONOMY
IN THE LIGHT OF THEIR SUPPOSED AUTHORSHIP

BY THE SCHOOL OF ISHMAEL

Richard N. Levy

Thesis Submitted in Partial Fulfillment
of the Requirement for the Degree of
Master of Arts in Hebrew Letters
and Ordination

Hebrew Union College--Jewish Institute of Religion

1964

Referee:
Professor Eugene Mihaly

D I G E S T

This thesis concerns itself with methods of allocating authorship of the halakic midrashim among the two schools to which most scholars of this area have assigned these collections, viz., the School of Ishmael or the School of Akiba. To do this, we have first taken a brief glance at the problem of the relation of midrash to halakah, or, of midrash to mishnah, and then looked at the major characteristics of the two schools as generally defined by the six scholars on whose work we have relied most heavily: Zechariah Frankel, Isaac Hirsch Weiss, Heinrich Graetz, David Hoffmann, Chanoch Albeck, and J. N. Epstein, as well as the suggestions for the principles underlying the differences in exegetical methods by Louis Finkelstein and Abraham Heschel. Differing from the principles offered by Hoffmann, Finkelstein, and Heschel, we have tentatively offered our own suggestion, which needs, of course, much greater documentation and exploration than we have offered: Akiba believed the law had been given once on Sinai, through the Torah, and that legislation was possible only through exegesis; Ishmael seems to have accepted to a much greater degree the possibility of new legislation, and his hermeneutic principles may perhaps be seen to reflect his view.

But our major interest is in these very hermeneutic principles, and what they may tell us of the authorship of given materials. Frankel himself recognized that the halakic collections we have are not all of a piece, and that they stem from different schools; Weiss used form criticism to make some differentiations between Akibic and Ishmaelitic material, but it was Hoffmann who made the discovery that indeed, as Maimonides had

said in his Mishneh Torah, the School of Akiba and Ishmael had each collected a Mekilta to each book of the Torah from Exodus on--though parts of one school were found in the collections of the other. Albeck accepted Hoffmann's outline of the basic boundaries of the two collections but denied that any of the collections could with conviction be assigned to one school or the other. Epstein felt that they could, though with more reservations than Hoffmann had made.

Using the three major criteria of terminology, methodology, and Sages quoted in the text, both Hoffmann and Epstein consider that the first 54 chapters of the Sifre to Deuteronomy constitute in general an Ishmaelitic collection. Epstein has doubts about some of them--and we share them; in our explication of a major part of this section, it has been our purpose to examine each midrash in the light of these three criteria, and by comparing them with parallel or variant passages, attempt to determine which passages can be assigned to a school. We have found that definite attribution can be made in very few cases, and often the case is equally cogent for both schools--or for neither. This is particularly true of the first 30 piskaot, preceding the section on the Shema. Ultimately we must question Hoffmann's confidence, but we cannot with Albeck attribute our section of the Sifre to a completely different collection than the Mekilta and Sifre Numbers; but, unlike Epstein, we must also ask whether the heterogeneity displayed by the first 30 chapters entitles them in any significant sense to be considered part of an Ishmaelitic collection.

TABLE OF CONTENTS

DIGEST	i
CHAPTER ONE	1
INTRODUCTION	1
A. MIDRASH AND MISHNAH	3
B. THE METHODS OF AKIBA AND ISHMAEL	9
C. THE ATTRIBUTION OF THE MIDRASHIM	23
CHAPTER TWO	63
A. PARASHA DEVARIM	63
B. PARASHA VA-ETIHANAN	99
C. THE AIT	114
NOTES	133
BIBLIOGRAPHY	

CHAPTER ONE

INTRODUCTION

Our basic interest in this paper is the criteria accepted by most students of the Tannaitic midrashim to determine the differences between the exegetical schools of Ishmael and Akiba, and the value of these criteria in determining the authorship of a section of the Sifre to Deuteronomy--specifically, the first fifty-four piskaot, generally believed by more recent scholars¹ to stem from the school of Ishmael.

In itself, such an investigation may seem a quibbling task, based on inconclusive evidence and of passing interest at best--and if we view it merely as the search for authorship of a problematic section, it may well be so. But in the course of such an investigation--and particularly in a comparison and evaluation of the criteria devised by critics of this century and the past one, there arise many crucial problems in the principles and purposes of the halakic midrashim, as well as, derek a-gav, interesting insights into the motivations and concerns of the form critics of Tannaitic literature themselves.

To deal fully with the history of the establishment of the criteria, we should have to deal with many more scholars than here concern us. We shall, however, treat those who may represent a mainstream: Zechariah Frankel, Isaac Hirsch Weiss, David Hoffmann, Chanoch Albeck, and J. N. Epstein. We shall also discuss the views of Heinrich Graetz, the towering historian and perhaps arch-representative of the period of the Wissenschaft des Judentums, who represents less of a contribution toward midrashic form criticism than an attitude toward the period, expressed somewhat similarly

(but not at all so dramatically) by Weiss. We shall mention some of the views of Isaak Halevy, but nowhere near so extensively, since--though he undertook his lengthy Dorot Ha-Rishonim primarily as a critique of Weiss's Dor Dor V'Dorshav²--his interests are not pursued at much length by those who wrote after him. Nor shall we discuss such contemporaries of the 19th century scholars as Rapoport, or Brüll, partly for reasons of time and space, but also because these two are really less important than Frankel, who was the first to deal extensively in this area³ and Weiss, whose compendium of rabbinic studies was the most extensive that had yet appeared. In addition, we shall look briefly at a contemporary variety of form criticism, as illustrated in a forthcoming article in the Hebrew Union College Annual by Dr. Eugene Mihaly, and at a kind of thematic criticism as demonstrated by Louis Finkelstein in Akiba: Scholar, Saint, and Martyr, and by Abraham Heschel in his recent Torah Min Ha-Shamayim B'Aspaklaria Shel Ha-Dorot.

Before examining the works of these men, it is only proper that we first look into the motivation and intent of the authors and compilers of the midrashim with which they and we shall deal. To do this we must first examine--albeit briefly--the relation between midrash and mishnah, between the Scriptural derivation of the halakah, and the halakah which it derived. We shall then attempt to characterize the exegetical methods of the School of Ishmael and the School of Akiba on the basis of the collective descriptions emerging from discussions of the modern critics, and shall then offer some hypotheses on the purposes underlying these differing exegetical methods, thus completing our lamentably brief historical introduction to the problem of the two schools and their writings.

In the third part of this chapter we shall discuss the criteria of our six major critics and evaluate them in relation to each other, and finally attempt a summary of the problem raised by midrashic form criticism, as an introduction to our application of its methods in the second chapter, dealing with the text of the Sifre itself.

A. MIDRASH AND MISHNAH

Midrash halakah, says Frankel, both "derives the halakah from Scripture, and explains Scripture by means of the halakah."¹ Says Weiss, "The midrash contains the source of the halakot which are the substance of the Mishnah."² Albeck defines it thus: "Their common goal is to elucidate Holy Scripture, to interpret (deuten) and derive further inferences for cases not specifically mentioned in Scripture."³ Midrash is, then, intimately tied to mishnah, and the question which at once arises is: in what way? Does mishnah, i.e., the individual halakah, derive from an accepted interpretation of a Biblical verse? Or does midrash derive from an attempt to root a previously accepted (or enacted) halakah in a Biblical setting? If a definitive answer is ever to be found to this question, there will result a true understanding of the motives behind the different schools of midrashic interpretation. For if an individual midrash is merely an attempt to interpret a Biblical verse, then a different purpose is at work than if a midrash is an attempt to justify a law by finding a Biblical verse to which to attach it.

Unfortunately the issue is sometimes discussed from a formalistic rather than a historical point of view. Lauterbach's essay, "Midrash and Mishnah," thought to be one of the best discussions of this problem,⁴ treats the matter in terms of the way in which midrashim or halakot

(mishnayot) were taught, rather than the way in which each developed, and accuses his predecessors of treating the question the same way. "Midrash is the original form,"⁵ he maintains, and claims that the Soferim, continuing in the tradition of Ezra, "gave all their interpretations merely as interpretations of the Book of the Law,"⁶ since the returned exiles accepted the Torah as their "constitution," and so all practices, customs, etc. "had to be implied in the Written Law." But to say this is to beg the question, for what is significant toward an understanding of the purposes of the halakic midrashim is not which form came first, but which method came first, regardless of when it came to be taught. If the Biblical text is to be interpreted in accordance with an accepted practice, then surely the purpose of interpretation is not interpretation lishma (the exegete's view of the real meaning of the Biblical text), but rather its purpose is to legitimize a post-Biblical law. Lauterbach cites as examples of Soferic exegesis the interpretation of "etz ha-dar" as the etrog, and "ukshartem al yadecha" as tefillin--but from this it is clear that the practice antedated the interpretation, and Lauterbach, by saying "the practices, customs, etc. had to be recognized as implied in the Written Law," is of course saying this very thing. He quotes the responsum of Sherira Gaon:

In the earlier period of the Second Temple, in the days of the early teachers, all the teachings of the halakot were given in the manner in which they are now found in our Sifra and Sifre.⁷

But this again refers merely to the way the halakot were taught, and not the manner in which they were formed. He quotes Frankel in support of the primacy of the midrash form, but in doing so misinterprets him. Frankel admits that the prime function of the Soferim was the "explication

of the laws of the Torah, and the making of mitzvot, and this instruction was bound to the teaching of Scripture (verses)."⁸ But he earlier separates this function of teaching the law with the verse from the function of lawmaking. Teaching was but one facet of their work; of the second he says:

Sometimes they set up restrictions (gadru gedarim) and issued decrees (gezerot) according to the times. ..For it is known that things change with the times and matters come into existence which the rishonim had not legislated (לא שיערו).⁹

*did they attach this
as verse - 228, 8-0
in different
category*

The original method, it seems generally agreed, is thus not midrash, but mishnah, and the purpose of midrash from earliest post-Biblical times was to find justification for the law in the Biblical text.

Lauterbach continues to demonstrate---with much greater clarity---the subsequent development of mishnah as an explicit, discrete form and its later replacement by a new configuration of the midrash form. With this chronology Epstein agrees,¹⁰ except that he derides Lauterbach's assertion that with the development of mishnah, midrash was entirely dispensed with, but feels rather that the two forms continued to exist side by side, though for a time mishnah was dominant. Epstein somewhat misstates Lauterbach's points here, as we will note further on. Meanwhile, we may briefly summarize Lauterbach's chronology.

Since midrash enjoyed its initial dominance, from Talmudic discussion of such Soferic innovations mentioned above, during the period of the Soferim, Lauterbach reasons that the rise of mishnah must have begun at the end of the Soferic period, and dates it with Jose ben Joezer (ca. 165 B.C.E.), to whom are attributed in M. Eduyot 8:4 three halakot (in Aramaic) to which are attached no Scriptural derivation; Epstein accepts

this attribution, rejecting, with Lauterbach, the later date for the rise of mishnah-form given by Frankel, Weiss, and others.

With the ascension to power of Simon the Just I in 270 B.C.E., the Soferic method of anonymous legal exegesis by alteration of the Biblical text (tikun Sofrim) ceased, for he combined in himself the role of exegete and law-giver. At his death this kind of Scriptural exegesis was not renewed, says Lauterbach, and laws were determined in the Hellenistic period no longer by teachers but by courts and by popular practice, and there came into being two sets of practice: the laws inserted into the Torah by the Soferim, and the laws and practices which had developed independently of the Torah, and which could no longer be read into the Torah text by dint of their large number (and also, one would imagine, because the tradition of teaching the Torah as an organic, growing document of current practice had ceased with Simon). The midrash-form thus proving inadequate, the demand to find some Biblical basis for the new praxis was met by the development of the new mishnah-form, which Lauterbach describes as:

to enlarge the definition of the term "Law of the Fathers," so as to mean more than merely the written Book of the Law with all its possible interpretations. In other words it meant a declaration of the belief that...some religious laws of the fathers were transmitted orally, independently of any connection with the Book.¹¹

Thus the oral law, the mishnah-form, became independent of the written law (as of course it was when these laws were first developed), with as much authority, and the midrash-form dropped from use except with practices which were based on sound exegesis, lest the literalist Sadducees dispute the exegesis "to the confusion of Pharisaic young students."¹² As a result such halakot as the three of R. Jose ben Joezer in Eduyot (dealing

with the matter of primary or secondary impurity in relation to a certain species of locust, the stream in a slaughterhouse, and one who touched a corpse), which were originally tied to such midrashic exegesis as is recorded in the Sifra comment to Leviticus 5:2 (Hobah 12) were severed from their midrashic moorings, and the halakot were taught independently, the original exegesis being ignored.

Epstein denies such a violent suppression of the midrashic origin, citing the admission in M. Hagigah 1:8 that certain halakot פורחים באויר, i.e., lacked Scriptural basis, which view the Pharisees did not seem concerned to hide from the Sadducees. Epstein would place the prime cause of the rise of mishnah-form in the multiplication of halakot, rather than in the external pressures of Hellenism or Sadduceeism. He further quotes Lauterbach as implying that midrash died out entirely with the rise of mishnah, only to be resurrected later,¹³ but this is an exaggeration of the latter's point. For though Lauterbach believes that in the face of Sadducean pressure, and in order to assert the independent authority of Pharisaic oral law, midrash was subordinated to mishnah, he also notes that "they did not abandon the midrash form which was a help to the memory, and so used it for sound undisputed exegesis."¹⁴

Such are the halakot mentioned in the sefa of M. Hagigah 1:8 (dating, Epstein claims, from the end of the Soferic period): civil damages, Temple ritual, matters of purity and impurity, and the forbidden degrees. Though they are accepted as authoritative, their derivation from Scripture is recognized:

(יש להם על מה שיטמכו, הן הן גופי התורה)

as opposed to such halakot as vows and the laws of Shabbat, which "fly in the air," or "are like mountains suspended by a hair." Such statements

indicate that midrashic derivations for the "new" halakot (post-Soferic) were extant, though not always accepted; both Lauterbach and Epstein quote the exchange between R. Elazar ben Azariah and R. Akiba in regard to the requirement of a half-log of oil for the Todah offering, which Elazar ben Azariah accepted as halakah l'Moshe mi-Sinai as opposed to Akiba's attempt to derive it from his favored principle of ribbui and miyut.

This bolstering of halakah with midrash (and the skepticism in regard to it) dates at least from the time of Hillel, who presented to the Bene Baterah seven principles (middot) for derivation of halakah from Scripture at the same time as he taught them halakot as received tradition (they would accept his gezerah shavah only after he told them he had learned that application of the rule from Shemaiah and Abtalyon).¹⁵ Akiba also codified halakot and thus "saved the Torah from oblivion,"¹⁶ forming the basis of the Mishnah of R. Meir,¹⁷ while at the same time developing a unique system of deriving laws from the Torah (midrash).

Whether Lauterbach's chronology of development of midrash and mishnah is correct is, as we have noted, questionable. Nonetheless we may glean from his analysis (and from Epstein's general agreement) an understanding that the founders of the two schools of exegesis were concerned with both midrash and mishnah--both with the independent development of the halakah and with the derivation of halakah from Scripture. Even Ishmael, whose main efforts seem to have been in exegesis and not in codification, admitted that there were three cases where the halakah overrode Scripture, and he accepted these.¹⁸ Epstein, with Lauterbach, sees this as an example of Ishmael maintaining (as did Elazar ben Azariah, above) that there are some halakot l'Moshe mi-Sinai, which are non-derivable, while Hoffmann asserts that when Akiba sought to root such laws in

Scripture he succeeded in doing what the others desired to do themselves:

Many verses which previous Sages could not understand,
and halakot which could not be scripturally based,
Akiba with astounding wisdom explained and grounded.¹⁹

The trenchant exegesis of Akiba established a grounding
in Scripture for many halakot which earlier had value
merely as "Sinaitic tradition."²⁰

Though Hoffmann goes on to say that through Akiba "the area of midrash was significantly extended," we may understand that both Ishmael and Akiba were interested in the law and Scripture, and that their methods sought to establish the one and preserve the other, Ishmael through a kind of literalness (pshut), Akiba through an ingenuity extending the parts of Scripture to which laws might be tied. For the purposes of this paper we can do little more than assess this; to examine the views of either on the historical precedence of midrash or mishnah is beyond our scope. We shall attempt to discuss the following section what might have been some of their other purposes underlying their major differences in interpretation, but there as well we shall be extremely tentative.

B. THE METHODS OF AKIBA AND ISHMAEL

From the summaries of the form critics we can cull some of the basic characteristics of the two schools, both in regard to their hermeneutic principles and some fundamental rules of thought. While some critics may be more extensive than others in their discussion of the criteria of the two schools, there are not represented any basically conflicting points of view, as there will be in the question of attributing the midrash collections to the schools, and so we may effectively combine our critics' views into a more or less unified summary, noting differences where they occur.

Of the two leaders Akiba was the elder, who, reportedly at the wife's urging and with her continued help² began at about the age of forty to study Torah. Among his teachers was Nahum Ish Gam Zu, who was known for teaching according to the hermeneutic principle of ribbui and miyut³, and R. Eliezer ben Hyrkanos, "the well of sod which loses no drop,"⁴ who taught him halakot⁵. From these two teachers we may perhaps see the origins of Akiba's two primary activities: extending and refining the principles of Nahum⁶, and extending and putting in order the halakot which R. Eliezer had stored in his mind in the form he had received it from his teachers.⁷ Frankel notes that approximately 260 of Akiba's halakot are cited in the Mishnah and even more in the halakic midrashim and the Tosephta⁸; Weiss notes that he would create new halakic situations to sharpen his acumen, and that he himself would go beyond the halakot he accepted⁹. But of his two teachers, Nahum seems to have been more influential--which, if R. Eliezer was as unpleasant a man as he is generally regarded, is only reasonable; for Eliezer was a traditionalist, teaching halakah not as a derivation from Scripture, but as received authority, in the tradition of the Pharisaic insistence that the Oral Law, unrelated to Scripture, was of as great authority as the Written Law, and Soferic halakot derived from it.¹⁰

Hillel, as we have noted, taught halakot both as Oral Law and as a derivation from the Written Law; Akiba chose the latter way of Hillel. For as Nahum had expanded the form of Hillel's seven middot to include ribbui and miyut, Akiba expanded their use so that any halakah could be derived from the Scriptural text itself. Thus Akiba put no restrictions on the hermeneutic rules, as Ishmael did¹¹, and was renowned for "expounding

every jot and tittle ^{יְקִי} / כל קוץ -- of the Torah,¹² an extension of the ribbui-miyut principle, which utilized ^{אם , גם ,} and the confun-
 tion for extension, ^{אך , רק ,} and ^{מן} for limitation or exclusion.¹³
 He expounded all pleonasms (usually internal object constructions)¹⁴ as
 well as every ^{לאמר} ¹⁵ and such summary phrases as

¹⁶ . זאת הורה מנחה היא

He considered the concessive clause in legal passages beginning with אם
 or not, meaning "if" a particular case should occur, to imply that such
 a case shall occur: such actions were obligatory (חובה) and not, as the
 context would seem to indicate, רשות, optional.¹⁷ Furthermore, Akiba
 would use one of the hermeneutic rules to derive a halakah from another
 halakah which had itself been derived from the text by a hermeneutic
 rule--the principle of למד מן הלמד.¹⁸ He would also on occasion
 use such abstruse methods of interpretation as acrostic, Notarikon (con-
 sidering each letter of a word as an abbreviation of another word), and
 grammatical analysis.¹⁹ On occasion he would explain a word in the
 Torah by means of a foreign phrase.²⁰ Weiss sums up Akiba's Torah-
 centered derivation of law thus:

For Akiba, midrash was like the very substance
 of the Torah; he made no distinction between his
 midrashim, and indicated that any opponent should
 react to his Kal V'Homer as he reacted to the
 Torah itself.²¹

Akiba utilized Hillel's middot--supplemented by his teacher's
ribbui-miyut--but he used other means of interpretation as well. Ishmael,
 however, seems to have used only Hillel's system, which he formally en-
 larged and taught as a system in itself--or at least, as it appears in
 the introduction to the Sifra, it came to his pupils as a systematic
 teaching of the Master. The additions which Ishmael made in Hillel's

system were all ramifications of Hillel's fifth rule, klal u'prat,²² when a general statement is followed by specific examples, or vice versa, the rule limits itself merely to those cases which follow it, or the cases must be construed in the sense of the general proposition. This seems to have been the major principle of one of Ishmael's teachers, Nehuniah ben Ha-Kaneh, and it was assumed to be Ishmael's major principle (as expanded) as well.²³ Ishmael's other main teacher was Joshua ben Hanania, who had redeemed him from slavery in Rome,²⁴ and who frequently opposed both Eliezer's extremes and Akiba's methods of hermeneutics,²⁵ but in general is considered to have sought a middle way between opposing parties. It is interesting to note that as the teachers opposed each other, so did the disciples.

This opposition extends to their methods of interpretation. Graetz, Hoffmann, and Epstein would see Ishmael's principles as the obverse of Akiba's and try to relate the views of each to some corresponding principle of his bar plugta. Graetz would see the klal u'prat as Ishmael's "answer" to Akiba's ribbui and miyut,²⁶ but Albeck, who always looks for flies in other people's ointment, notes that in the Sifre Zutta Akiba uses a prat in the midst of ribbui-miyut interpretation,²⁷ and Epstein remarks on two differences between the methods: 1) prat limits the klal, but also explains it, while a miyut-word limits a ribbui-word but does not explain it; and 2) the order in a ribbui-miyut passage does not matter, while it does in Ishmael's extension of the klal-prat rules.²⁸ There is, however, as Graetz and Bacher point out, a similarity in limitation. Epstein claims that Akiba never used klal and prat, though the example in the Sifre Zutta to Num. 15:38 would seem to indicate a rare contradiction.

But this is merely ribbui and miyut in its basic formulation. In his extension of this to include " כל קוץ וקוץ " in the Torah, -- גם , אם , vav, and pleonasms--Akiba went far beyond what Ishmael would permit in his exegesis, and opened himself to the other's opposition. From the difference in their ages and Ishmael's later appearance on the scene, we may judge that Ishmael argued in opposition to Akiba, rather than vice-versa.

Thus against Akiba's principle of no superfluity in the Torah, on which basis he explained every jot and tittle, Ishmael opposed his view that דברה תורה כלשון בני אדם, "Torah speaks according to the language of man," or התורה דברה כדרכה : "The Torah has its own way of speaking."²⁹ In other words, nothing of special significance is meant by a pleonasm, or the use of an et or min, but merely that since men of that time used such pleonastic constructions in daily speech, the Torah uses them as well so that it may be understood.

Epstein sees as another alternative to Akiba's interpretation of pleonasms Ishmael's rule that a verse in the Torah which seems to repeat another verse appears in order to add something which the other verse omits (this often appears with the formula, למה נאמר לפי שהוא אומר).³⁰ This point was so important in Ishmael's hermeneutics, Epstein maintains, that he set it almost as an addition to the middot of Hillel.³¹ Hoffmann, however, sees this principle as the opposite of Akiba's exegesis of לאמר , though he gives but one example of this (Num. 5:5-8, Lev. 5:20). But surely not all verses whose interpretation begins with אומר / למה נאמר לפי שהוא include the word לאמר.³²

In direct opposition to Akiba's interpretation of the casuistic Biblical laws with or without אם as obligatory, Ishmael interprets

according to what seems their more literal meaning, namely, as conditional sentences, hence optional (רשות).³³ And in place of Akiba's interpretation of derivation of halakot from such phrases as מנחה היא , Ishmael views these merely להפסיק העניין --as summaries of a collection of halakot on a particular offering.³⁴

But more than these differences, perhaps the most significant disparity between the Akibic and Ishmaelitic exegesis is their comparative views on the middot of Hillel. As we have seen, Akiba used his system, with the addition of miyut and ribbui, and used it extensively. He would, as we have seen, derive a halakah by means of one midah from a halakah that had been derived from another midah, and he put no limitations on the Sage's rules. Ishmael however, attacked the principle of למד מן הלמד --of indirect derivation from a derived halakah, instead of the Bible itself.³⁵ He limited the use of gezerah shavah, exposition of one verse on the basis of a second verse in which there was a common word, to cases where at least one occurrence of the common word was מופנה --unnecessary for the meaning of its verse (מופנה בצד אחד).³⁶ And this was despite the fact, as Frankel quaintly puts it, "The Gezerah Shavah was dear to him."³⁷ It should be noted also here that when Hillel tried to use a gezerah shavah with the Bene Baterah in relation to whether the Pesach offering overrode the Sabbath, he was admonished, "One may not utilize a gezerah shavah on one's own (authority)"³⁸ --i.e., one had to have a tradition for its use. *Is this original in gezerah shavah*

Further in this connection, though the kal v'homer was "particularly valuable in his eyes"³⁹ Ishmael refused to use it for punishment, while Akiba had no such scruple. Epstein notes, however, that Ishmael did

order punishment in one case through a gezerah shavah.⁴⁰

These are, then, the major differences between the hermeneutic methods of Akiba and Ishmael. There are, surely, instances when each of them seems to argue with the other's principles, but as Epstein notes, when Ishmael seems to do this particularly with exposition of such expressions as מִיּוּט רִיבּוּי ⁴¹ מִן ⁴² and other miyut-ribbui terms,⁴³ and with the utilization of לִמְדָּה מִן הַלֵּמַד ⁴⁴--it is really his pupils, who would seem to have reacted to the general acceptance of Akiba's doctrines by adopting some of them themselves. But if we can make the clear distinction between the two of them which most scholars in this field have made (and we note the absence of Albeck in this whole discussion), then we may make some tentative judgments as to the reasons for the differences between the two schools.

On one area of opposition there seems to be a measure of agreement, and we may well examine this first. Ishmael felt that the Torah spoke according to the language of man; Akiba felt that every pleonasm was intended to have a special meaning. Weiss interprets Akiba's reasoning thus:

The words of God are complete by themselves, and do not need the additions of letters or words for metaphorical elegance (צִוְהוֹת הַמִּלִּיצָה).⁴⁵

Thus for Akiba the Torah has been transmitted in the very words in which God conceived it, or with which He transmitted it to Moses, without mediation by a translation into human idiom, as Ishmael would seem to have it. Both Akiba and Ishmael would surely agree that God's speech is not like man's speech, but Ishmael would accept the tradition in which God's speech was interpreted through the ages (i.e., through the present Torah text), while Akiba would say that the interpretation must be done by exegetes of the present day. Heschel and Finkelstein, who both side with

Akiba against Ishmael, consider that ^{Ishmael's} Akiba's principle of

דברה תורה כלשון בני אדם

"would bring the Torah down to the level of any secular book," and would thus have to be interpreted like one.⁴⁶ But as Friedlander points out in a note on Maimonides' use of this expression in the Moreh, to say that the Bible must be treated as any other human book is only one of two possible interpretations of the phrase. The other, used by Maimonides and also, it would seem, by Ishmael, is merely that divine truths are communicated through simple language, "adapted to the average intelligence of man"⁴⁷—this could hardly be said of secular writing! That such an interpretation permits Ishmael to understand the difficult conceptions in the Torah through logical means and relate them to God speaks in favor of Ishmael over Akiba, in the view of Weiss, who is with Ishmael all the way.⁴⁸ But whether it is Ishmael or Akiba who more accurately interprets the Torah is not really the significant point; it is most important to note, however, that the question of the relation of God to the Torah is a problem for them both, and the different literary theories within their interpretations reflect on their differing views on the problem. To rephrase it: does the Torah (the Written Law) represent the verbatim speech of God, different from man's speech as God is different from man, and so we must interpret it now according to the best rules that we have? So would Akiba argue. Or, shall we say with Ishmael, that we never knew God's verbatim words because they were transmitted from the beginning as an interpretation in human language of God's ideas? In other words, Ishmael might say, we do not know God's Torah; we know only the Torah of tradition, and we need not now interpret the interpretation, for it is clear in front of us.

This is, we may conjecture, not an isolated difference, but one

that infuses all the differences between their two systems. The reason for this difference has occupied most scholars who have dealt with this problem. Some, like Frankel and Hoffmann, would say that Akiba was concerned with extending the range of the halakah, by deriving as many laws as possible from Scripture.⁴⁹ Finkelstein argues from a Marxist viewpoint (which, according to reports, he has since regretted) that Akiba the plebeian wished to base support for the principles of his party on a base all might accept, while Ishmael the patrician, though he happened to have learned Hillel's plebeian system from his plebeian teacher Joshua (though it is not to Joshua that the Talmud attributes them), he used this system to expound his patrician doctrines. The plebeians, however, much more concerned with the substance of the law than its form, gladly accepted Akiba's un-plebeian hermeneutics (some of which Finkelstein implies he learned from the patrician Eliezer, on the basis of one discussion between that sage and Ishmael) to further their common plebeian views.⁵⁰

Heschel, on the other hand, relates Akiba's insistence on the Torah as the verbatim words of God to his "transcendent" view of that document, which was, says Heschel, "a mirror of the mysteries" of the universe.⁵¹

Akiba's words "burn with the flame of desire to see the face of the Almighty"⁵² as had Moses and the Israelites at Sinai -- but Ishmael claimed this was impossible.⁵³ In contrast to Akiba's transcendentalism, Ishmael is for Heschel an immanentist: Torah was given to man for man's sake, that man might perform the mitzvot, and not for God's. Reason was the intermediary between Torah and God; for Akiba it has to be a direct experience. Thus Ishmael would sift the Torah through the system of Hillel's middot, regulating them and limiting them, while Akiba sought

through a direct confrontation with the very text of God Himself, a confrontation with God Himself.

There is difficulty with each of these interpretations of the differences between Akiba and Ishmael. For while it seems correct that indeed Akiba did extend the halakah, there is apparently no evidence that any of his contemporaries (except perhaps R. Eliezer) opposed extending it, and indeed since Yochanan ben Zakkai ordained in Yavneh that the shofar might be blown there on a New Year's day that fell on the Sabbath,⁵⁴ it was accepted that new halakot could be taught there. It is doubtful, therefore, that it is in this realm that Akiba based his distinct hermeneutics--particularly since he was often opposed not for the halakot he established but rather for this very system of interpretation--by Gamliel II, for example.⁵⁵

We are equally unimpressed by Finkelstein's explanation, and apparently he himself has had second thoughts about his attempt both here and in his three-volume The Pharisees to force the Tannaitic period into a Marxist mold. To view competing systems of hermeneutic rules as class-based is far-fetched enough, but Finkelstein is forced by the facts to have Ishmael the patrician taught plebeian rules by a plebeian and Akiba the plebeian taught by a patrician rules which the plebeians were content to ignore so long as he furthered plebeian principles; one boggles at so much crossing of class lines to prove a principle based on class.

As for Heschel's interpretation, it is reasonable to assume that Heschel, himself inclined in his writings toward a mystic, experiential view of the world, would wish to view these two major antagonists along the lines of his world-view. As we have noted in discussing Akiba's

literary principles, the Tanna does seem concerned about the question of the relation of the law and God, and, as well as a record of his mystic speculations in the Garden, we have his belief that Israel and Moses were provided with a view of God,⁵⁶ which Ishmael denies; and there is value in the distinction that Ishmael believes that what is not said in the Torah can be deduced by the Sages through reason, while Akiba says that "nothing in the Torah depends on the mind of man, since there is no law not hinted at in the Torah."⁵⁷ To make this philosophical distinction the basis of the difference in hermeneutics, while closer than Finkelstein's approach to the problems with which the two sages explicitly deal, is yet to miss what appears to be their prime concern, namely with Jewish law and its derivation.

In attempting our own understanding of the underlying principles of the two sages, let us begin with the last quoted statement of Heschel, namely Ishmael's belief that the sages are capable of deducing laws on their own, in the face of Akiba's view that all is hinted in the Torah--there is no need for human reason. In the Sifre to Deuteronomy Piska 135, Ishmael is quoted as saying that "Scripture was handed to the sages to tell you which day is forbidden and which day allowed; what work is forbidden and what work allowed." In J. Berakot 1:4, Ishmael (ר' ישמעאל) is quoted as saying, "There are matters in the Torah which are forbidden and matters which are allowed; there are minor principles (קולין) among them, and weighty (חמורים); but all the words of the Scribes are weighty." In discussing the controversy between Akiba and R. Elazar ben Azariah over the source of the half-log of oil for the todah, Epstein sees an echo of Ishmael's method in ben Azariah's insistence that despite all of Akiba's argument the law is

הלכה למשה מסיני:

Ishmael did not want to bring halakah into the

Torah, where Scripture contravened it, but he says, 'It is a halakah,' and we accept it without proof from the Torah.⁵⁸

If we accept Lauterbach's view that the position represented by Elazar ben Azariah is a manifestation of the old Pharisaic assertion of the authority of the Oral Law independent of Scripture, as opposed to the newer view of Akiba which tried to strengthen the Oral Law by rooting it in Scripture, we may similarly view Ishmael as a defender of the old school, asserting the independent authority of the Oral Law and the ability of men (i.e., the Sages, or the Soferim) to establish that law on the basis of tradition. For him, as we have seen, the Torah as we have it is itself a tradition, and so we need not wring meaning out of each word and letter of what is not divine language but human language. Since it is a tradition, it should not be wrenched, as we should respect the traditions--decisions--of the Sages; therefore, we should be careful in the rules of interpretation we employ lest the tradition be twisted out of the meaning which is apparent to men since it is written in men's speech. The limitations which Ishmael set on the Kal V'Homer and the Gezerah Shavah are thus both protections of tradition, to avoid perverting their meaning, and also protectors of the right of contemporary Sages to pass their own law: punishment cannot come from a logical inference from a verse, but rather from the present situation which confronts us. There is further no need to derive a law hermeneutically from another law derived hermeneutically: we have the ability to make new, original legislation ourselves.

Akiba, we are told in M. Keritut 3:9, accepted traditional halakot: "If it is a halakah, we accept it; if it is derived by logic, we may rebut it." Weiss lists several instances where Akiba accepts old halakot and

supports them with perhaps more cogent reasons than other Tannaim. In other cases, however, Akiba argues against established halakah and teaches differently, almost the only one of his generation to do so.⁵⁹ Indeed, Akiba seems first to have made his mark in the academy by contradicting the opinion of R. Eliezer.⁶⁰ Graetz notes that Akiba attacked the view of Elazar and Joshua that one should follow the majority in arriving at a decision, since "the essence of the halakah is not tradition (*הקבלה*) and agreement, but proof from the text."⁶¹

Thus despite Akiba's respect for certain halakot of tradition, on points where he disagreed he did not hesitate to prefer the text to the tradition. Since he held the former in such high regard, and since--if he disagreed--it was the only basis on which to support his new halakot, he put no restrictions on the accepted methods (the *middot*) for deriving halakot from Scripture, but rather extended them. Study of Torah was for him a most important thing; it was, he held, the key to God's acceptance of Israel.⁶² Akiba appears to have been a strong determinist: "All is foreseen, but choice is given (Avot 3:15)." He was an ardent advocate of the doctrine of *זכות אבות*, the belief, experienced in the extreme, that man is saved not by his own deeds but by the righteous actions of the Patriarchs, and righteous men in earlier ages who intercede for him--at birth, Akiba seemed to feel:

The merit of a father determines the beauty, the strength, the wealth, the wisdom, and the life-span of the son; and it also fixes the number of generations which will arise from him, which implies the End.⁶³

But he was, Finkelstein notes, unwilling to extend this determination to the people of Israel as a whole--indicating that it depends on their study

of Torah. Ishmael in a revealing passage in Midrash Tannaim, quoted in the notion of זכות אבות (which Hoffmann notes occurs in several Akibic passages), in opposition to his own view, which seems to have been salvation by שכר מצוה⁶⁴ : performance of the mitzvot, the halakot, as opposed to study of the Torah. It is interesting in this connection to note Ishmael's comment and its באור on Ex. 22:30,

ואנשי קדוש תהיון לי : "When you are קדושים, you belong to Me." Issi ben Guriah, a pupil of Ishmael, follows with what seems to be an explanation: "When God creates (מחדש) a mitzvah for Israel, he adds קדושה to them (for observing it)."⁶⁵ Though we might think that "When God creates a mitzvah for Israel" would contradict our view of Ishmael as insisting that law comes from the Sages, this rather indicates that really new mitzvot are possible--i.e., that the Sages can ordain laws with God's sanction, as opposed to the Akibic view that no new laws are possible, since they were all ordained when the Torah was given. But the significant point here is that salvation is seen coming from performing the mitzvah, and not, as Akiba would have it, from Torah study or, on an individual basis, from the merit of the fathers. These two points are of course related: The zhut avot is a zhut of the past, and study of the Torah is a study of the past. But schar mitzvah is an act of the present, done solely by the individual; the new is possible for him, where it is not, really, for Akiba.

We may summarize these very tentative suggestions for the difference between Akiba and Ishmael thus: Ishmael still holds to the old Pharisaic insistence on the divine authority of the Oral Law, independent of the Torah, permitting each generation's Sages to make its own halakot, obedience

to which determines an individual's salvation. Akiba is of a newer school, which wants to try once more to ally mishnah (halakah) with midrash, to bind the halakah to the Torah. For this he must say that all laws are inherent in the Torah, and that through it lies salvation, and through no new legislation, or new act of obedience of the individual. To find these laws we must utilize all possible hermeneutic principles, which may not be in accord with human reason--for the Torah which we have is not in human language, but divine, which is as far removed from human reason as is God's nature from man. Yet as Moses saw God on Sinai, so can we see God through His eternal law--if we will but search it hard enough.

G. THE ATTRIBUTION OF THE MIDRASHIM

Having determined the general characteristics of the hermeneutic schools of Akiba and Ishmael, we now proceed to the more subtle question of the authorship--or editorship--of the collections of Tannaitic midrashim assigned by most critics to one school or the other. As Akiba enjoins us to search the Torah, so did these men search the midrashim, to discover to which school (if either) we may attribute the final redaction of each of the midrashic collections. While we have noted more or less general agreement on the characteristics of the principles of Akiba and Ishmael, there is much greater dissension on the matter of authorship, and so here we shall be forced to consider each of the form critics separately, prefaced by a brief biographical discussion of each.

I. ZECHARIAH FRANKEL (1801-1875)

Darkey Ha-Mishnah (1859)

(original title: Hodegetik zur Mischna)

Along among the five men we shall consider, Frankel was a theologian

as well as a student of halakic literature. He was an active member of the "scientists of Judaism"--the Wissenschaft des Judentums, movement but he was also a concerned participant at the early sessions of the Frankfort Rabbinical Conference where he first enunciated his celebrated principle of "positive-historic" Judaism as a way which he felt the Reformers were deserting, and the way which he, as leader of European Conservatism, would follow.¹ In the sphere of religious practice, he upheld the authority of tradition, but in scholarship his university training and his deep Jewish knowledge led him to advocate just as strongly freedom of academic research. Gotthard Deutsch asserts that his major works (our volume and the Mevo Ha-Jerushalmi, 1870) derived from his need as professor of Talmud at the Breslau Seminary to have a "modern scientific textbook upon rabbinical literature and archeology."²

From our standpoint, Frankel is more an arranger than a "scientific" critic. His discussions of Ishmael and Akiba are primarily summaries of their methods of argument, with no comparison or analysis. Since he is, after all, writing a book on the halakah (meaning "mishnah" in the general sense), it is to be expected that his interest in the halakic midrashim will be as repositories of halakah, and not as representatives of peculiar midrashic technique. As we noted above, Frankel divides halakic midrash into two categories: an explanation of Scripture followed by a halakah (preceded usually by (מכאן אמרו), and a halakah which is merely "hung" on a verse.³ He categorizes the collections of halakic midrashim according to these two methods, believing, for example, that the Sifra does not really derive a halakah from Scripture, but rather is concerned with analyzing the verse itself to make sure it is suitable for a proof of that particular halakah. This

kind of משא ומתן של דברים, play on words, occurs much less often in the Mekilta and Sifre, whose purpose is primarily, he feels, to derive halakot from Scripture.

The question of authorship, our major concern, is here treated very sketchily. He quotes the statement from Maimonides in his introduction to the Mishneh Torah that R. Ishmael explained from the beginning of Exodus until the end of the Torah, which commentary is called Mekilta, and that R. Akiba also composed a Mekilta,⁴ which Nahmanides in his comment to Lev. 23:24 calls the Mekilta of R. Shimon ben Yochai.⁵ Frankel does not go into the question of the remaining parts of Ishmael's complete Mekilta. As to the authorship of the Sifra, he accepts the view of Sanhedrin 26a that stam Sifra passages are by R. Yehudah after (אליבא ד) R. Akiba. He also notes that Parasha Milluim, Arayot (in Ahare Mot), and Kedoshim are additions⁶ --later critics will attribute these to the School of Ishmael. As far as the Sifre is concerned, he notes that in our version of B. Sanhedrin, stam passages are attributed to R. Shimon, but in another version of that tractate, they are attributed to R. Ishmael. Frankel compromises, and maintains that our Sifre had two editors: men of the school of R. Ishmael, and R. Shimon, and that the Sifre is a combination of their editions of comments on Numbers and Deuteronomy. In a footnote he indicates that the section belonging to R. Ishmael (he does not indicate where that lies) is possibly part of the Mekilta of R. Ishmael about which Maimonides speaks.⁷ He indicates that the rishonim were aware of the Sifre Zutta, which Rashi, the Rash and the Raibad mention, but which he claims has been lost.

A sketchy discussion of authorship, but one which nonetheless points the way to the more elaborate treatment which Frankel's successors would

offer. For he notes the problem of authorship in the Sifre, that there are two strata, representing two different schools (R. Shimon was of the School of Akiba), though he is unable to tell which part belongs to whom. He is also aware of the 13th century view that both the major exegetes had compiled "Mekiltas"---though Maimonides' attribution of a Mekilta to Akiba is ambiguous: Frankel seems to understand it merely as a comment to Exodus, which was identified by Nahmanides as the Mekilta of R. Shimon ben Yochai. It is also significant that Frankel makes a distinction between Ishmael and his pupils, though this may be merely a recognition of the fact that his pupils' names are mentioned in the Sifre; Epstein will expand this distinction, noting the differences in hermeneutics between disciple and master.

But the groundwork of investigation is laid; the identification of the rest of the Mekiltas of the two schools, and the means for identifying the strata, remain for Frankel's successors.

II. ISAAC HIRSCH WEISS (1815-1905)

Dor Dor V'Dorshav (1871-91)

Frankel wrote a history of the halakah and its development---a textbook for students of the Talmud, serious, objective, with no intrusion of the views of the author into the matters being discussed. Weiss's five-volume History of Jewish Tradition, in the German title, popularized Frankel's method,⁸ and attempted a wider-ranging, more hypothetical treatment than had his predecessor. Unlike Frankel, he immersed himself thoroughly in his pages, attacking an ancient here, praising a Sage there. Partly because of the scope of this work. Isaak Halevy published his Dorot Ha-Rishonim as an attack on Weiss,⁹ which, for reasons we shall

discuss later, was upheld in a review of Halevy's work by David Hoffmann. Weiss published his opus while an instructor at the Bet Ha-Midrash which Jellinek had founded in Vienna, where with his colleague and fellow-publisher-of-editions Meir Friedmann, he also edited a short-lived periodical on Talmudic studies, Bet Talmud. His Dor Dor made him, Ginzberg estimates, "a father of Jewish science,"¹⁰ and judges his work thus:

Completeness of material to the limits of the possible;
calm presentation; circumspect research and objectivity
and impartiality of judgment.¹¹

He further states, paraphrasing von Humboldt's opinion of Kant, that Weiss "pointed out the way along which the history of Judaism will have to move."¹² For "Judaism," we may read "the halakic midrashim," and in truth Weiss made judgments in the areas where others would work, though with different answers. As to the format in which he made his studies of our material, we shall see later on to what extent his successors moved along his path.

It is Weiss's basic contention that just as each of the major Tannaim had collections of mishnah (Bar Kappara, R. Hiyya, R. Yehudah) so were they each in possession of a collection of midrashim on the Torah. These were edited by the last generation of Amoraim, and passed on by "Tannas"--men who had memorized collections of midrashim of a particular school, the meaning, he claims, of the phrase תנא דבי ר' יוחנן, which does not refer to an actual member of the School of Ishmael. In many cases the language used is therefore Amoraic, but sometimes the Amoraic editor would render the midrashim in the old Tannaitic style.¹³

He derives this interesting view primarily from a study of the stam passages in the three major collections, taking issue in each case with the traditional attributions, such as Frankel records. Thus he

rejects Ishmael as the editor of the Mekilta and the author of the anonymous passages, for six reasons:

1. Over 300 attributed passages in the Mekilta postdate Ishmael.
2. Some anonymous passages in the Mekiltas are found elsewhere in the name of R. Shimon ben Yochai or R. Yehudah.
3. Some stam passages are also stam in the Sifre, and the Talmud attributes all of these to R. Shimon (not that Weiss accepts this attribution, but he merely wishes to argue against the Talmud's statement on its own grounds).
4. Since the author of the Mekilta stam passages often depends on the author of a Sifra stam passage (since he uses אמרן אמרן which Weiss seems to indicate, refers to the Sifra, contra Frankel), which at the earliest dates from R. Yehudah, who was in the generation after R. Ishmael.
5. Ishmael is found disagreeing in the Mekilta with a stam passage.
6. In most cases where Ishmael's name is mentioned, his opponents are cited as well; if all the stam passages are by him, why is his name mentioned at all? And since sometimes his name is mentioned without an opponent, we cannot say that whenever there is no opponent to a stam passage, the author is Ishmael.¹⁴

Thus the only reason to call this the Mekilta of R. Ishmael is because we may assume from the occurrence of his name more frequently than any other Tanna that the Babylonian Amora who edited the Mekilta memorized and taught the midrashim of the School of Ishmael, and inserted into that

collection on Exodus the views from other Tannaitic Mekiltas as well--- such as Shimon's and Akiba's: Weiss assumes that the two were separate. The fact that they were Babylonian Amoraim is borne out by the fact that we find תנא דבי ר' ישמעאל only in the Babylonian Talmud.¹⁵

Weiss accepts the attribution of stam passages in the Sifra to R. Yehudah who, he notes, arranged his midrash in accordance with R. Akiba, his teacher. Through him we thus have present Akiba's entire midrash on Leviticus, but also remnants of a complete midrash on the book by Ishmael, recorded in the Sifra mostly for the purposes of opposing the methods of Ishmael. Weiss also perceived that the midrash on the forbidden degrees in our Sifra is by the School of Ishmael, since Akiba refused to teach the arayot in public. Because of this prohibition, however, the Ishmaelitic midrash was later removed from some editions of the collection.¹⁶ On the basis of this continual sifting process, Weiss explains why some passages in the Talmud cited as stam Sifra are not in our collection, and why some passages cited in the name of R. Yehudah are also missing from ours. These passages were present in an earlier collection, he notes, but were later removed, and since it was felt that stam Sifra passages were all by R. Yehudah, his name was attached to them, though they were probably not found so attributed in the original collections.¹⁷

As to the editor of the Sifra, Weiss denies that it was Rav, since many passages postdate him, but rather that the editor was a Tanna of the Amoraic period who memorized the collection of his school (Be).¹⁸

In his discussion of the Sifre, Weiss enters the field of terminological criticism, on the basis of which he posits that the Amoraic Tannaim who edited the Mekilta also edited the Sifre. One such example is the phrase למאן נאמר לפי שהוא אומר in place of which the Sifra

uses

מה תלמוד לומר...לפי שנאמר

Other phrases which the Sifre has in common with the Mekilta are:

- (1) כל פרשה שנאמרה במקום אחד וחזר ונשנה במקום אחר, לא שנאה אלא על שחזר בה דבר אחד
- (2) אין עונשין מן הדין
- (3) והדין נוחן
- (4) האין עליך לומר כלשון הראשון אלא כלשון האחרון.¹⁹

The Talmud attributes stam passages in the Sifre to R. Shimon ben Yochai; Weiss shows on the same bases he used for the Mekilta that this is difficult: a) the presence of similar passages elsewhere attributed to Ishmael or others, some of whom are several generations later than he and b) the existence of passages in which Shimon argues against the stam passage. Editorship by Rav is impossible because of the mention of Amoraim several generations later than he.²⁰

Clearly Weiss is much more critical of authors than Frankel, and indeed he goes rather too far in his radicalism. For despite his use of terminological criticism, his assertion that the entire midrashim were either memorized in the language of generations previous, or consciously written in their style, is a bit too much to accept. That Amoraic comments were added seems clear, as he notes, by virtue of the names attached to them, and some Amoraic language ²¹ (כתיב הכא, מאי דכתיב) though Bacher views this as merely a variant, without significance.²² But these could well have been added to a collection taught and preserved much earlier in Tannaitic Hebrew and by Tannaitic disciples of the respective schools. Nonetheless, because of his use of parallel sources, noting names attributed to midrashim and their comparative dates; his logical deductions on the basis of other sources; his realization that in concern with

anonymous passages and their authorship lie many keys to the ultimate attribution of the entire collection; and his comparative language studies--all these mark him as the first of the real form critics, who set a path that would be widened surely by those who followed him, but along which they too would conduct their investigations.

Weiss was a historian and a form critic; and he was about the last of that breed. Halevy was interested both in history and in texts, but his own style was so rambling, that he cannot be called a real systematic historian in the sense of Weiss or of Graetz. And Graetz was a pure historian--he engaged in text analyses as a foundation for his study, and as we have seen he does compare the hermeneutic principles of Akiba and Ishmael, but he was not primarily interested in it. And so, while Graetz's comments on Akiba and Ishmael are valuable, for thorough discussion of the authorship of midrashic collections, we must turn elsewhere.

III. DAVID HOFFMANN (1843-1921)

Zur Einleitung in die Halakischen Midraschim (1887)

Hoffmann was not a theologian, as in a sense Frankel was; nor was he a historian, like Weiss or Graetz--indeed he agreed with Halevy that the time had not yet come for the kind of history that Weiss and Graetz were writing.²³ A student of Hildesheimer, he joined the faculty of his Berlin Seminary in 1873 as a teacher of Talmud, Codes, and, later, the Pentateuch, in which he wrote several studies attacking the documentary hypothesis of Wellhausen and others. Like Frankel and unlike Weiss, he studied at a university--the University of Vienna. While doing Pentateuchal studies on Deuteronomy, he edited the Tannaitic interpretations

to that book contained in the as yet unpublished Yemenite collection, the Midrash Ha-Gadol. After Israel Lewy published the extracts of the Mekilta of Shimon ben Yochai found in the comments to Exodus in the Midrash Ha-Gadol, Hoffmann published serially what he considered the entire Mekilta of Shimon based on Lewy's work and some Genizah fragments. From the Genizah and the Midrash Ha-Gadol he also announced the discovery of a Mekilta of R. Ishmael on Deuteronomy, which in our work he hypothesized, and published it with critical papers in 1897. Two other works stemmed from these same sources: an edition to the Sifre Zutta, which he abandoned out of deference to his pupil, Saul Horovitz, who had begun an edition of the same work;²⁴ and the Midrash Tannaim, the full Ishmaelitic comment to Deuteronomy, in 1909.²⁵ He also started work on an edition of the Midrash Ha-Gadol to Exodus, but was able to complete only half the work. In the meanwhile, he had published some studies of the Mishnah in Die Erste Mischna (1882), indicating his view that some midrashim were composed before the destruction of the Temple, and some dated back to the first century B.C.E.

But Hoffmann's primary contribution was in the area of the halakic midrashim. He had the unique good fortune to posit the existence of collections which he was later able to locate and publish, and though subsequent editors of the Mekilta of R. Shimon ben Yochai and the Midrash Tannaim made several changes in the work he had done, yet he brought the literature into the light to be re-examined.

Hoffmann's disapproval of the work of Graetz and Weiss lay with the feeling that not enough preliminary studies had been made to justify a work of their scale. The text studies he undertook seem to have been intended to lay the groundwork which had not been available to the historians. In

our work, Hoffmann's main interest, as we have indicated, is the establishment of the complete canon of Ishmaelitic and Akibic midrashim. If Frankel and Weiss were intrigued by Maimonides' laconic assertion in the Mishneh Torah that "R. Akiba also composed a Mekilta," they do not show it; both seem to assume that Maimonides referred merely to the Mekilta of R. Shimon ben Yochai. But on the basis of a rigorous analysis of terminology, of the names and their school membership in each collection, as well as a thorough comparison of stam passages with attributed parallel passages, Hoffmann identified the following parts of the original complete Mekiltas of each school to the last four books of the Torah:

	<u>Akiba</u>	<u>Ishmael</u>
Exodus	Mekilta of R. Shimon ben Yochai	Mekilta of R. Ishmael
Leviticus	Sifra (most)	Sifra: Mekilta of de Milluim (to Lev. 8:1-10:7) (p. 3-15) Ahare Mot (13:3-15) Kedoshim (9:1-7; 9:11-11:14)
Numbers	Sifre Zutta	Sifre Numbers
Deuteronomy	Sifre Deut. 59-303	Sifre Deut. 1-58, 304-357-most; see below) Midrash Tannaim

The school from which the Akibic midrash collection comes is called Be Rav, and the scholar quoting a teaching of that school is a Tanna de Be Rav. Similarly, the source of the Ishmael collection is Be R. Ishmael, and the one repeating an Ishmaelitic midrash is called a Tanna de Be R. Ishmael. Hoffmann thus agrees with Weiss that "Tanna" means not scholar of the Tannaitic period, but a student of midrashim (and mishnah and baraitot as well) in the Amoraic period (he does not say at what point in

that era, as Weiss does). He denies, furthermore, that Rav (Abba Arika) is meant by Be Rav, since several times the Amora Rav is found in contradiction with the Tanna de Be Rav.²⁶ Later he notes that Be Rav is to be taken as merely Bet Ha-Midrash, in general--it was the midrash taught in the schools.²⁷ He quotes Rashi as explaining that this title was due to the fact that this midrash was known by everyone, while the baraitot of R. Ishmael were known only by his students²⁸--in Hoffmann's terms, by the Tannas who memorized his midrashim. But the occurrence of this phrase over 200 times offers us a proof of Maimonides' view that there was a Mekilta of R. Ishmael to all four later books of the Torah.²⁹

Weiss believed that an Amoraic Tanna edited the Sifra, but Hoffmann placed the date of the redaction several generations earlier--with R. Hiyya the elder, a fifth generation Palestinian Tanna. This is the view of Malbim, whose commentary to the Sifra (1874-80) was published after Weiss completed the section of his Dor Dor dealing with the Sifra.

Hoffmann seems to accept the arguments of Malbim, since he does not offer very many of his own, but merely records the 37 stam passages in the Sifra which elsewhere are attributed to R. Hiyya.³⁰ Hoffmann takes account of the two standard arguments against attributing editorship to a man:

1) that comments on the Biblical book in question are found in places other than our book; and 2) that some comments are attributed to him in the book--the argument being, that if he had edited it, why would not all his comments have been anonymous (stam)? In answer to 1) Hoffmann says merely that R. Hiyya merely taught these in other baraitot and did not choose to include them in the Sifra. To 2) he notes that Judah Ha-Nasi, the redactor of the Mishnah, appears by name in that collection forty

times; thus the six attributions to R. Hiyya (of which he claims three are doubtful) should not concern us.³¹ He adds, however, that the Sifra includes some Amoraic interpolations, but that aside from these we may consider the Sifra to have come completed from the hand of R. Hiyya. The choice between Hoffmann's view and Weiss's view that these interpolators were really the editors is a difficult one to make, since to a certain degree it is a matter of semantics; since there are not many of these interpolations, on the mechanical basis of comparing figures, one should choose Hoffmann's view. Furthermore it appears that the book had begun to have some stature by the second generation of Tannaim, since Elazar ben Azariah cites a law in the Sifra (**תורה כותבים**) of which R. Yochanan had read only a third.³² To consider the work to be in a fluid state until a late Amoraic period seems to jar with this passage.

But if R. Hiyya was the redactor, he was only that, and not a main source for the material in the book. Hoffmann sees three major components which Hiyya put together: 1) the Midrash of R. Yehudah, the root (Stamm) of the collection, agreeing with the statement in Erubin 96b that **היהודא ר' יוחנן סמרא**, following the views of Yehudah's teacher Akiba; 2) selections from the Midrash of Shimon ben Yochai, which collection the Talmud had in mind when it referred to the Sifre to Exodus, Numbers, and Deuteronomy;³³ and 3) the Midrash of the School of Ishmael--but since some of the Sifra quotations from this work (labeled **משום ר' ישמעאל אמר**) are not identical with quotations from the Baraita of R. Ishmael as it appears in parallel passages in the Talmuds, Hoffmann conjectures that Hiyya took these sections from the Midrash of R. Shimon, in whose school the Midrash of R. Ishmael was taught along with Akiba's. Selections from smaller midrash and halakah

collections were also fodder for R. Hiyya's redactive mill.³⁴ The sections which, as we have noted, Hoffmann attributes to Ishmael (Milluim, and selections from Kedoshim and Ahare Mot) are different in respect to language, viewpoint, and the Sages quoted, from the major part of the Sifra, but are instead similar to the Mekilta and Sifre Numbers. Pleonasm, interpreted elsewhere in the Sifra, are not discussed here, nor are

מנחת ה"א or דאמ תורת

In his comment on the Mekilta, Hoffmann returns to another problem raised by Maimonides' cryptic description of the Tannaitic midrashim, namely that Ishmael had composed a Mekilta to the whole Torah beginning with Exodus 1--while our Mekilta begins with the first halakic sections in chapter 12. From the presence of comments to Exodus found in the Talmud but not in the Mekilta, Hoffmann presumes the existence of an Ishmaelitic comment to the whole book; this observation, plus his further indication that there are passages from the Mekilta of R. Shimon bar Yochai (indicated by the rubric דבר אמי) and other Akibic midrashim in our Mekilta would necessitate positing a redactor for the Mekilta later than the men of both schools, and Hoffmann's candidate is one or more of the pupils of Judah Ha-Nasi. He attributes the title "Mekilta of Eretz Yisrael," given our work in the Babylonian Talmud, to the fact that this work was brought to Babylonia by the pupils of R. Yochanan. Hoffmann also assigns our work to what the Talmud calls, -- ספרי דבי רב -- works covering the same books as the Akibic midrash collections, which had been accepted as normative.³⁵

In addition to borrowings from the Akibic midrashim, our Mekilta borrows from the Mishnah and the Tosephta collection of R. Nehemiah,

indicated by מכאן אמרו --which term Frankel had said was used only for citations from Rabbi's Mishnah. Aggadic sections derive from "Aggada-Books."³⁶

Hoffmann notes in the halakah of the Mekilta several terminological differences from the manner in which similar concepts are expressed in the Akibic midrashim:

Ishmael

שומע אני
והדין נותן, יש לי בדין, שהיה בדין
כיצד יתקיימו שני מקראות הללו
(שני כתובים הללו)

Akiba

יכול
והלא דין הוא
הא כיצד

Other expressions peculiar to the Mekilta and Sifre to Numbers are

אם זכיתי מן הדין; למה נאמר; לא זכיתי מן הדין;
צריך הכתוב להביאנו; אינו צריך.

The middot are also specifically referred to.³⁷ But while pleonasm are not interpreted in the halakah of the Mekilta, they are in the aggada, indicating to Hoffmann that "the redactor of the Aggada" (different from the redactor of the halakah?) borrowed this from the School of Akiba. (But why, as Albeck was to suggest, could he not have "borrowed" it from the Aggada-Books, which Hoffmann mentions?) All of this borrowing, and the delicate problem of who borrowed from whom is what doubtless leads Albeck to say, as we shall note later, that no one school borrowed from another, but rather that there were extant common interpretations which circulated from collection to collection. Hoffmann's exposition of the highly derivative nature of our Mekilta would seem to lend support to Albeck's view of a common source.

While Weiss attributes the Sifre to both Numbers and Deuteronomy to the same redactor, Hoffmann tries to weed out the Ishmaelitic material from the Akibic, and believes that they were redacted by the school which authored them. The Sifre to Numbers he attributes to Ishmael, on the basis of Ishmaelitic Sages and terminology included in the work, and because only five Talmudic citations of **חנא דבי ר' ישמעאל** to Numbers are not found in the Sifre to Numbers--considering his attempt to reconcile a much higher number of absent citations in the Sifra and the Mekilta, this appears to be strong evidence. Sometimes the selection from the general Baraita (or Midrash) of R. Ishmael is abridged in the Sifre, while it is given in longer form in the Talmud, and here as in the Mekilta there are borrowings from the Numbers comments of the Mekilta of Shimon ben Yochai. Sometimes an Akibic midrash from the Sifre to Deuteronomy is recast into an Ishmaelitic mode.³⁸

In the Sifre to Deuteronomy, however, the problem is more complicated, and Hoffmann's method in discovering the authorship of this work is most instructive. He first divides the book according to the nature of the greater part of its content, and so finds three sections: from Piska 1-58, aggadic; Piska 59-303, halakic; Piska 304-the end, aggadic. In the first aggadic section (the portion with most of which we shall deal in the next chapter), he identifies the halakic discussion of the Shema and **חנא דבי ר' ישמעאל** as taken from the **והיה אם שמע**, which gives him his first hint that "much" of this first section is Ishmaelitic. He finds support for the presence in this section of such Ishmaelitic

phrases as **אמר הפרש אלמוד דבר מדבר!** **והדין נותן;**
שומע אני **אינו צריך;**

and of such disciples of Ishmael as Issi ben Akavia, R. Yeshiah, R. Yitzchak, and R. Natan. He further finds thirteen passages which parallel comments either in the Mekilta (which he attributes, apparently, to Ishmael, since they are not included in the passages from the Mekilta of Shimon ben Yochai or the Aggada-Books) or in the Sifre to Numbers. But the greater part of the Aggada, he claims, seems to belong to the Midrash of Shimon ben Yochai, and so he posits that in this section the selections from the Mekilta (Baraita, Midrash) of R. Ishmael are interwoven with the Mekilta of R. Shimon ben Yochai.⁴⁰

The second and third parts of the Sifre to Deuteronomy he attributes to the Midrash of Shimon ben Yochai, though he later claimed that the third part was primarily Ishmaelitic.⁴¹ He notes that there may be many objections to this identification, viz., the mentions of either **יִשְׁמַעֲלֵל** or his pupils, and insertions of Ishmaelitic terminology

(כיצד יתקיימו שני כתובים; מופנה להקיש ולדון בזירה שוה).

Despite this, he maintains that this is primarily an Akibic collection, from the Midrash of Shimon ben Yochai, which took over some Ishmaelitic citations as occurred in the Sifra. He bases this attribution on two grounds: 1) the Ishmaelitic references are much fewer in our work than in the Sifre to Numbers, because there appear none of the Talmudic controversies on Deuteronomy between Ishmael's students, R. Yeshiah and R. Yonathan; 2) few of the Talmudic citations of Tanna de Be R. Yishmael to Deuteronomy (there are over 30 in the Talmud) appear, while very few of these citations to Numbers were missing in the Sifre to Numbers. As in the Sifre to Numbers, some of the selections from the parent source, here the Mekilta of R. Shimon, are abridged, or defectively lengthened,

as a glance at parallel passages in the Talmud tells us--not a serious argument against Akibic authorship.

Having brought the negative arguments in favor of Akibic origin, Hoffmann now introduces the positive ones, primarily linguistic: Stam passages are frequently introduced elsewhere in the name of Akiba, or using the hermeneutics of Akiba; pleonasms are frequently interpreted; ribbui and miyut are found; from one expression many drashot are derived; and expressions in the Sifra are found repeated here. There are also Ishmaelitic baraitot to this section of Deuteronomy not found in the Sifre, as well as comments to Exodus present in the Sifre but not found in the Mekilta.⁴²

Thus Hoffmann concludes that there were two primary collections of midrashim, of Ishmael and Akiba, the latter collected in the Mekilta of Shimon ben Yochai. In Babylonia the midrash of Shimon was the more popular, and were authoritative for halakah; in Palestine a selection was made from each: from Ishmael's collection for the Mekilta and Sifre Numbers, from Shimon's and others for the Sifra and Deuteronomy--two and two. Because the greater part of the midrash to Numbers and Deuteronomy agreed with the Talmudic Sifre de Be Rab and the "Rest of the Sifre de Be Rab," the Sifre to both Numbers and Deuteronomy was considered to be one collection and was together called Sifre de Be Rab.⁴³ Hoffmann concludes with a discussion of the remaining, lesser known parts of the complete midrash of the two schools, analyzing their authorship by names and terminology, as we have outlined above.⁴⁴

Many problems remain to us from Hoffmann's arrangement of the components of the two great midrashic collections. The terminology of one is

found in what purports to be the collection of the other, the school of R. Shimon, he argues, taught the midrashim of R. Ishmael--and thus the question of the identity of the author of these sections becomes rather academic; from a literary or halakic point of view, however, it still has interest as far as the history of the collection. At which number of omissions of a school's midrashim from that school's collection do we determine that the collection could not be by that school? How valid an argument is it that, like R. Hiyya, the compiler taught relevant material in two different places, thus explaining some of the omissions? Hoffmann himself later changed his mind on the allocation of material in the Sifre to Deuteronomy, claiming the first and last parts were definitely Ishmaelitic. With all these questions and weaknesses of argument, perhaps Albeck's denial of Hoffmann's entire system is only the logical next step.

IV. CHANOKH ALBECK (1890-)

Untersuchungen über die halakischen Midraschim (1927)

Albeck has continued Hoffmann's revolt from broad histories to preliminary studies. This volume was published by the Akademie für die Wissenschaft des Judentums in Berlin, where Albeck worked for a while while teaching at the Berlin Bet Ha-Midrash and since 1936 he has taught halakah (and, since 1937, aggada as well) at the Hebrew University. Our volume and the Untersuchungen über der Redaktion der Mischna, published in 1927, are his two greatest original works; in 1928-30 he completed Theodor's translation of Genesis Rabba, and in 1947 he edited a translation of Zunz's Gottesdienstliche Vorträge (Ha-drashot b'Yisrael).⁴⁵ The title of his two works are indicative of the work itself, as is Hoffmann's: not histories, not epitomes of tradition, but studies, investigations. While Hoffmann has

a chapter of the comparative views of Akiba and Ishmael, Albeck lacks even that; this is purely a textual study.

Albeck agrees that the Mekilta and Sifre to Numbers exhibit a similar structure and external form, and that the Sifra and the Sifre to Deuteronomy in the main likewise show a similar structure and form.⁴⁶ With Hoffmann he admits also that the Mekilta de Milluim⁴⁷ and sections of Ahare Mot (3:3-15) and Kedoshim (9:1-7, 9:11-11:14)⁴⁸ do not really belong to our Sifra. But he will not admit that these represent Ishmaelitic incursions; it is his view that the midrashim present in our collections come from many different sources, and from several different schools, and that nowhere can we attribute stam passages to one particular Tanna, since we find that what appears in our midrashim as a stam baraita may in the Talmud be attributed to several different Tannaim.⁴⁹ Not that the final redactors of our collections suppressed the names of the authors of these anonymous passages; these midrashim most likely had come down to them without the names of their original authors.⁵⁰ We recall Lauterbach's assertion that all halakot were taught anonymously before the time of Jose ben Joezer; Albeck seems to say that the tradition of teaching them in this manner continued. Albeck also rejects as a reliable guide to authorship the canons of terminology, upon which Hoffmann placed so much reliance in determining the authorship of individual midrashim and collections. Directly disputing Hoffmann's arguments, Albeck sees so much variation in terminology in individual works, and between midrashim and parallel baraitas cited in the Talmud,⁵¹ that he posits a developing terminology for each of the schools, as opposed to Hoffmann's assertion of a hard and fast system of terms constant from the time of Ishmael and Akiba to the time of

the Amoraic Tannas who redacted their materials (we shall see below how Epstein poses a middle view in relation to the development of terminology, by explaining that Ishmael's pupils adopted Akibic terminology). The terminology which we have in our collections is thus the terminology with which the final redactors were conversant, and is not necessarily that of the schools themselves.⁵²

To some characteristic terms Albeck admits: he notes that midrashim which insist that a gezerah shavah be used only when one of the two terms is מקור most probably belong to the School of Ishmael, though the Jerushalmi also indicates that Akiba sometimes adopted this principle himself.⁵³ But despite the frequent appearance of the restriction on the gezerah shavah in the Mekilta and the Sifre to Numbers, he notes also that this restriction does not appear as often as it should if this were a fundamental principle of the School of Ishmael--he further cites instances in which the formula appears in the halakic midrashim in the mouth of Akiba, and others where Ishmael uses a gezerah shavah but does not specify that it must be מקור.⁵⁴ He also notes that the interpretation of pleonasms is a characteristic of Akiba's School--but that many pleonastic expressions in the Sifra and Sifre to Deuteronomy are left uninterpreted.⁵⁵ It would also seem that Albeck accepts the interpretation that a conditional sentence in Biblical law which is interpreted as obligatory (חובה) instead of optional belongs to an Akibic stratum, since he notes this as "a unique feature of the halakic midrashim," occurring in Sifre Numbers under the rubric אמר רבי, indicating a different source.⁵⁶ He does not, however, note the general attribution of this principle to Akiba (see above).

Albeck concludes his attack on attribution of authorship, already expressed through denial of the validity of terminology and comparison of siam passages, with a rejection of names of Tannaim appearing in a collection as a viable criterion. Hoffmann's point that some rabbis appear in the Mekilta and Sifre Numbers who do not appear in the Sifra and the Sifre to Deuteronomy may indicate merely that the absent names were not known to the redactor.⁵⁷ He further asserts that different names attached to similar Baraitas may indicate that one attribution is a false one,⁵⁸ and so one cannot totally rely on the names in our collections.

In the place of Hoffmann's view that our collections are built on a core of midrashim preserved intact by the two major schools, Albeck posits the existence of an Urguelle, original sources,⁵⁹ (or Urzelle, original pieces)⁶⁰ from which the schools and the later redactors drew. These original sources, he believes, contained midrashim which followed certain words in the Bible wherever these words appeared. He notes that midrashim on some words are repeated in what Hoffmann considered Akibic and Ishmaelitic sources-- וְאֵל excludes a minor;⁶¹ וְאֵל means the direct object alone, not considered together with anyone else,⁶² etc. In general, he notes, the closer the explanation is to the simple meaning of the word, the more similar is the content in different halakic midrashim.⁶³ Beside these points of contact with interpretations of individual words, within our midrashic collections themselves, there are parallel baraitas which appear throughout the midrash collections in slightly altered form, indicating that at one time these came from a common source.⁶⁴ Another common source is aggada, which, he notes, "wanders from midrash to midrash" and so parallel aggadot are found in all collections.⁶⁵ In detailing these slightly varying parallels, he notes, however, that material in the Mekilta

and Sifre Numbers which may parallel midrashim in the Sifra and the Sifre to Deuteronomy still differs from this latter group in its formal appearance--i.e., in terminology. But in explaining this difference, in each of his three mentions of it⁶⁶ he does no more than say that the two pairs stand "over against one another": he will not commit himself to assign them to schools.

On the basis, therefore, of these common word-interpretations, and nearly parallel baraitot, Albeck conjectures that halakot and arguments were taken from one case and applied to another within the same source, and that these "carry-overs" (Übertragungen) form the greatest part of the halakic midrashim. He shows instances in which the same explanation of a word will occur in two or more cases, in at least one of which the explanation has no relation to the passage or the halaka being derived.⁶⁷ Sometimes a drash will be "carried over" from a word in one midrash to a different word in another, where the meaning is still appropriate.⁶⁸ As a result of this frequent use of "carry-overs," halakot are taught in the midrash in several places, based on several different words or verses, thus strengthening the authority of the midrash, unlike the frugal Talmud, which considers it an extravagance to derive a halakah from more than one word or verse.⁶⁹ From these parallel "carry-overs," we can sometimes find the original passage to be the one which the interpretation fits most closely.⁷⁰ Each set of his examples of parallel "carry-overs" is taken from the same collection, which might indicate either that each school (the Mekilta-Sifre Numbers school, the Sifra-Sifre Deuteronomy school) had its own traditions which it transferred via its own interpretations to several different verses, or--which he seems to prefer--that the

tradition of carrying interpretations from one word to another, from one verse to another was a tradition practiced by both schools, though each clothed its techniques in different terminology.

We have noted above, however, Albeck's contention that terminology is fluid, developing in the schools, and that our final terminology is that of the last redactor and not the schools themselves. He devotes a good deal of time to terminology in the halakic midrashim, in which he demonstrates both that the Mekilta-Sifre Numbers use in the main a different set of terms from the Sifra-Sifre Deuteronomy, but that there are incursions of the terminology of one school into the collections primarily attributed to the other. We have noted his agreement with Hoffmann in excluding the Mekilta de Milluim and certain sections of Ahare Mot and Kedoshim from the root portion of the Sifra; while he seems throughout most of the section on terminology to group all of the Sifre to Deuteronomy together, at the end he posits that chapters 31 through 54 of the Sifre to Deuteronomy are not really a part of the Sifre itself, but derive from a midrash similar to the Mekilta-Sifre Numbers school; this on the basis of its terminology and passages parallel to the Mekilta and the "Pseudo-Sifra" of Ahare Mot.⁷¹ On the basis of terminology and parallel material he also attributes the Sifre Zutta and the Mekilta of R. Shimon ben Yochai to the same source as Sifra-Sifre Deuteronomy, though notes briefly the unusual terminology of the Sifre Zutta, unlike that of any other collection.⁷²

At one point Albeck takes up specifically the question of attributing midrashim to one school--or Tanna--or another. He notes Friedmann and Hoffmann's identification of the Mekilta with the School of Ishmael, and counters it with five arguments:

- 1) Individual midrashim may stem from the School of Ishmael (or presumably, the School of Akiba), but this does not implicate the whole collection.
- 2) Some references to quotations by R. Ishmael are not direct quotations (חנא דר' ישמעאל) but only allusions to his words (דר' ישמעאל אמר) and thus may have been said by someone having no connection with his school.
- 3) Aggadot, as mentioned above, can seldom be traced to one original source.
- 4) Many midrashim cited in the name of R. Ishmael in the Talmud do not appear in the Mekilta or Sifre Numbers.
- 5) Many anonymous midrashim in the Mekilta are opposed to the view of Ishmael.⁷³

He does admit, however, that there are "indications" that the Sifra and Sifre to Deuteronomy are by Akiba, since there appear in these works differences in method which go back to his school--but even there, as we have noted above with his analysis of the views of the gezerah shavah and pleonasms, the purity of the collection is no longer present.⁷⁴

A lengthy chapter in our work is devoted to proving that the Talmud was not aware of our halakic midrashim, which view Epstein later attacked, as we shall note. In regard to the editorship of the Sifre, he rejects Hoffmann's attribution of the final redaction of the work to R. Hiyya, indicating that either all the Sifra quotations in the Talmud should be superscribed with Tanna R. Hiyya, or none of them should be so identified--but instead there are a few such references. He rejects the authority of the aggadic midrashim which proclaim R. Hiyya the final redactor, because of their lateness, and so concludes that no reliable tradition exists for attributing the final editing of the Sifra to anyone. He thus refuses to enter the lists against either Weiss or Hoffmann in regard to dating. He does admit to an opinion on the place of redaction of our midrashim, however:

since our midrashim agree in general more with baraitot in the Jerushalmi than in the Babli, he asserts with Hoffmann that our midrashim were edited in Palestine.⁷⁵

Albeck is clearly in the minority in the severity of his source analysis. While he used methods used by all the form critics before him and deals with the same material, he adopts a more puritanical view on the limit to which one can label as "incursions" baraitas from school x present in a collection to school y, and at what point one must say: there is so much non-y in y, that we are not correct in labeling this a y collection. Albeck agrees with Hoffmann's differentiation of two "schools" from each other, but he will not identify their "authors." Rather there were two groups of redactors, who used approximately similar original material, transferring halakot from one verse to another in a similar manner, but who clothed their teaching in different terminology--the terminology not of a long-standing school, but of the current technical vocabulary of the redactor. This is more logical than Hoffmann's assertion that the Midrash of Shimon ben Yochai taught Ishmaelitic material, included in the Sifra, and that the Ishmaelitic Mekilta in turn includes material from Shimon's midrash, but there is still merit in Hoffmann's arguments that the majority of midrashim in each of the collections is of the school of either Akiba or Ishmael, with later incursions, and with exclusions: no editor includes everything, and ignorance of some material cannot be discounted. Somehow Albeck's arguments sound very much like saying, "the person who wrote the book of Isaiah was not Isaiah but another man of the same name." Albeck is useful for his great caution, for his strictures against arbitrarily assigning to one school a work which surely reflects

other schools as well. But there are two major groups of collections, as he notes, both of which reflect more material of one or another of the two great Tannas. With Epstein's valuable suggestion that some of Ishmael's pupils followed the increasingly popular Akiba in some of his methods and terminology, Albeck's anonymous collections may, with the addition of large question marks at the end, be again called, Collections of the School of Ishmael and the School of Akiba.

V. JACOB NAHUM EPSTEIN (1879-1953)

Mevo'ot l'Sifrut Ha-Tannaim (published in 1957 by E. Z. Melamed)

When Epstein died in 1953 he left behind manuscripts for Introductions to the Mishnah (in addition to his Introduction to the Form of the Mishnah published in 1948), the Tosephta, the halakic midrashim, and the Jerushalmi. His disciple Melamed published the first three in a single volume, which continues the linguistic tradition of Hoffmann and Albeck, though his discussion of the Tannaitic midrashim includes several chapters on the character of Akiba and Ishmael's teaching, reminiscent of the more lengthy treatments of Weiss and Graetz--though totally lacking their Wissenschaftlich bias. Epstein, who had a traditional Jewish upbringing, studied Semitic philology at the University of Vienna and at Bern, and so came by his linguistics rightly. He taught for a while at the Bet Midrash Ha-Gadol Israel in Berlin, and then at the opening of the Hebrew University in Jerusalem accepted the professorship of Talmud, which he held for twenty-five years. He founded the scholarly journal Tarbitz and served as its editor for over twenty years, and worked also to establish a text of the Mishnah and at several lexicographical studies in the Talmud.⁷⁶

Aside from his note that the pupils of Ishmael often differ from

the master, Epstein reasserts Hoffmann's conclusions on the basis of the same evidence that Albeck used, and considering the same arguments. The chain from Hoffmann to Albeck to Epstein is an interesting example of the tenuous nature of all of their hypotheses, and indeed of midrashic form criticism itself. Our quintumvirs all agree on the nature of Akibic and Ishmaelitic terminology and methodology and the names of their disciples; where they differ is in their interpretation of these agreed-on facts.

Epstein notes that Ishmael's pupils Yeshai'a and Yonathan, either singly or in consort, oppose the master's view in several places. Both use Akibic terminology several times--interpreting pleonasms זאת תורה... and using ribbui. He quotes a passage in the Jerushalmi (Kiddushin I 59a) in which למד מן הלמד uses a ר' ישמעאל, which the Amora questions and solves by saying that the passage was taught in the name of the Sages, indicating that the Sages were to be equated with the system of Akiba, as opposed to the Tannaim of the School of Ishmael.⁷⁷ Similar occurrences are found in the Babli, where ר' ישמעאל ר' תנא דבי ר' follow Akiba's School.⁷⁸ Similarly, two Baraitas attributed to

ר' ישמעאל will agree in the content of their interpretations, but one of them follows the methodology of Akiba.⁷⁹ In addition, midrashim of R. Shimon ben Yochai are several times attributed to

ר' ישמעאל ר' תנא דבי ר'.⁸⁰ Elsewhere, however, material taught by R. Ishmael himself in one place is taught in others in the name of such of his students as R. Yitzchak, R. Nathan, etc.⁸¹ From all this Epstein concludes that "the midrash of the pupils of Ishmael-- ר' ישמעאל ר' תנא דבי ר' cannot and need not agree entirely with R. Ishmael" himself.

Taking these difficulties into account, Epstein sides with Hoffmann's view against Albeck, asserting that indeed the Mekilta and Sifre

Numbers are of the School of Ishmael. He supports his statement by the usual reasons: similarity of content, the stam passages which are elsewhere attributed to the school,⁸³ the absence of interpretation of the pleonasm in Exodus,⁸⁴ and the Ishmaelitic view on למד מן הלמד, gezerah shavah (one term must be קופנה), כלל ופרט, אין עונשין מן הדין,⁸⁵ דבר שהיה בכלל ויצא לידון בדבר אחר.

There are also several baraitot in clear opposition to Akiba on such matters as מִיָּד and והיה which Akiba says means "immediately,"⁸⁶ מ as a miyut, and the interpretation of גם and את. He also asserts that מגיד is an Ishmaelitic word, as opposed to the Akibic למד⁸⁷, and that it outweighs appearances of the latter in both the Mekilta and Sifre Numbers; however, מגיד appears in the Sifra to Lev. 7:13, an Akibic section, and as we shall see in the next chapter the two expressions interchange in our section of the Sifre to Deuteronomy. Finally, Epstein bases his attribution on the Tannaim appearing in the Mekilta and Sifre Numbers (and the Mekilta D'Arayot in the Sifra), none of whom is mentioned, he asserts, in the midrashim of the School of Akiba.⁸⁸ The mention of R. Yeshaiah in the Akibic section of Sifre Deuteronomy is, he claims, a later addition not found in all the manuscripts.⁸⁹

But Epstein has read Albeck, and he knows that he cannot present only the positive side--for he has not only read him, he wishes to dispute him. Thus he carefully notes places in which stam passages contradict each other, one of which is a pleonasm (בבקר בבקר), in one of which R. Ishmael interprets לאמר.⁹⁰ There is one stam passage (but only one) in the Mekilta which belongs to the School of Akiba (Nezikin 2),⁹¹ there are some relevant citations in the Talmuds in the name of

חנא דבי ר' ישמעאל

which do not appear in the Mekilta or Sifre Numbers⁹² and some citations which are in opposition to the Mekilta⁹³ (though these, as he has noted previously, might refer to his students, who differed with him). Furthermore, some passages in the Mekilta repeat each other,⁹⁴ and others teach the same point in two different verses,⁹⁵ with different terminology. The terminology prohibits us from identifying this as one of Albeck's examples of a single source strengthening a halakah by teaching it in relation to different verses. In the Sifre Numbers he notes that the tractate appears by terminology and Sages mentioned to come from a non-Ishmaelitic source, though there is some Ishmaelitic material in it--and some resembling the Sifre Zutta and the Midrash of R. Shimon.⁹⁶

In summary, he notes that not all of the baraitot of the School of Ishmael were included in the two works, that our works are not entirely in the system of R. Ishmael,⁹⁷ and that some Ishmaelitic material (especially in the Sifre Numbers) was introduced by copyists.⁹⁸ Nonetheless, he insists that the two works are certainly of the School of Ishmael and that it is so identified in the Talmud--despite Albeck's assertion to the contrary. He admits Albeck's statement that only four of the eight or nine Talmudic references he finds (Epstein hints there may be more) are in the Mekilta, but Epstein sees significance in the repetition of the identifying phrase

(אמר אחד מחלמידי ר' ישמעאל, חנא דבי ר' ישמעאל)

in the Mekilta and the Talmud, indicating that the one knew of the other. Thus Epstein rebukes Albeck for the impossibility of his "casting doubt on the faithfulness of the midrashim without proof," and maintains that there is a foundation for the Talmudic witness that the Mekilta follows the tradition of Ishmael, in relation to his methodology and midrashic

terminology.⁹⁹ In regard to the Sifre Numbers, he agrees with Hoffmann that the Talmudic statement, **סֵפֶרֶי ר' שמעון**, (Sanhedrin 86a), does not refer to our Sifre Numbers.¹⁰⁰ There are however some citations from Sifre Numbers appearing in the Talmud under the rubric **תנא**, or which appear in the Talmud as statements by Amoraim. But this misattribution and the general paucity of quotations from the Ishmaelitic Sifre Numbers does not mean, says Epstein, that the Talmud did not know the material in our Sifre Numbers. The misattributions merely indicate that the Amoraim did not know the source of their citations, and the lack of knowledge of some baraitas from the Sifre Numbers does not imply ignorance of the whole work. He asks rhetorically: "Some mishna's were not known to the Amoraim; does this mean that they did not know the Mishnah at all?"¹⁰¹

In this discussion of the Sifre to Numbers Epstein turns to questions of sources and their repetition or opposition. He denies that any conclusions about date can be made from the juxtaposition in either the Mekilta or Sifre Numbers of Ishmaelitic drash with an Akibic one. He further echoes Albeck's point about "carry-overs" (**העברות**) in two verses of a drash relating to both of them. But he ties up this notion with the Ishmaelitic phrase, **למה נאמר לפי שנאמר** which Albeck rides over as the equivalent of the Akibic **מה חלמוד לומר**, the purpose of both of which, he notes, is "not only to clear up a text-word, but to join a certain drash to a text-word."¹⁰² Mihaly notes that this identification is, by analysis of the syllogism, incorrect, as is Hoffmann and Weiss's identification of it with **למה נאמר פרשה זו**.¹⁰³ Epstein sees this expression as identifying the "essential locus" (**מקום העיקר**) of an idea in the midrash by the verse which precedes **למה נאמר**.¹⁰⁴ One may also see in this expression and its use a reflection of the Ishmaelitic principle

that if there are two verses apparently similar, the second is entered in the Bible only to teach a new thought.

In his analysis of the Sifre to Deuteronomy, Epstein, as we have noted, follows Hoffmann. He attributes the first 54 chapters (unlike, however, Hoffmann's early attribution of the first 58) and the last 54 (304-357) to Ishmael, the rest to Akiba. The reasons for the first attribution are: the difference between several passages in that section and the Akibic section of the work, or correspondences between other Ishmaelitic works, and the presence in chapter 55 of an Akibic interpretation of **והיה** as "immediately." The beginning of the Genizah fragment of the Midrash Tannaim (to cha. 22) agrees with ch. 54 of our Sifre to Deuteronomy, but from there on the fragment is completely different, indicating that here is the "seam" between the Ishmael section in our Sifre and the Akibic. Furthermore, the terminology and citations of Tannaim in this section clearly resemble terms and names in the Sifre to Numbers.¹⁰⁵

Nonetheless, he notes, everything in 1-54 is not from one source: some passages differ from parallels in the Midrash Ha-Gadol and the Mekilta; in Midrash Tannaim, among other differences, the initial drash on **אלה הדברים** includes the Ten Commandments, absent from our work.¹⁰⁶ Indeed Epstein concludes that chs. 1-25 in our Sifre are from a non-Ishmaelitic collection, since they utilize non-Ishmaelitic material--**מגיד** alongside **מה תלמוד לומר**, יכול מלמד--and R. Shimon is mentioned along with R. Ishmael; though, as we shall indicate in the next chapter, this is all a somewhat weak argument--particularly the **מגיד-מלמד** discussion. Chapters 26-30 are also from another source, he claims, citing in chapter 26 the expression **מה שאמר הכהן**, an expression

peculiar to the aggadic midrashim; the citation of R. Shimon, and an interpretation of **לאמר**. But in 27 and 28 there are passages similar to Sifre Numbers 134 and 135 Mekilta Amalek 2. Nonetheless, considering the presence in this first part of non-Ishmaelitic sources, Epstein concludes, as he did with similarly conflicting evidence in the Mekilta and the Sifre Numbers, that this section too is in the main of the School of Ishmael. In the rest, however, 31-54, he finds a great deal that is Ishmaelitic: the expressions

parallels between 32 (**מגיד הכתוב, שומע אני, למה נאמר לפי שהוא אומר**) and Mekilta Bahodesh 10, 35

(**וקשרתם לאות**) and Mekilta Pisha 17, and 36 (**על המזוזות**) with Sifre Numbers Hukat 124, Midrash Tannaim 93:9 and 163:3. Though there is some material brought in the name of R. Shimon, the names are otherwise those of the Ishmaelitic School.¹⁰⁷ It will be noted that the part of our Sifre which Epstein attributes unhesitatingly to Ishmael is the section (31) beginning with halakah--the shema; previous to this the material has been entirely aggadic, and seems to represent a potpourri of several sources. This would seem to agree with Albeck's assertion that one cannot rightly attribute aggada to any source, since this material "wandered" from collection to collection. We are reminded also of Hoffmann's reference to "Aggada-Books" as a source for this material.

For reasons similar to the above, Epstein also agrees that the last chapters of our Sifre are Ishmaelitic,¹⁰⁸ that there is a Ishmaelitic midrash to the rest of Deuteronomy imbedded in the Talmud,¹⁰⁹ and that the Midrash Tannaim, composed of Genizah fragments and selections from the Midrash Ha-Gadol to Deuteronomy, is also to be attributed in the main to Ishmael. The editor of the Midrash Ha-Gadol does, however, mix his sources, and so we are unable to say that everything in this collection

not found in our Sifre is from the Mekilta to Deuteronomy, nor can we say everything absent from the Midrash Ha-Gadol was not in the Mekilta to Deuteronomy, but rather we must decide each midrash on the internal evidence of terminology, names, and methodology.¹¹⁰ With Hoffmann he also finds evidence for a midrash of Ishmael to Leviticus, and cites as evidence sources in the Talmud, in Tosephta Shvuot, and in the Sifra, especially Milluim and Arayot (the section from Ahare Mot which Hoffmann noted), and, of course, the introductory Baraita in which are included the 13 middot of his school.¹¹¹ He does not seem to include, as Hoffmann does, the section from Kedoshim.

The same three criteria are used for the determination of Akibic portions of the corpus of the halakic midrash, whose collections are the Sifra, Sifre to Deuteronomy chapters 55-303, the Mekilta of R. Shimon ben Yochai to Exodus, and the Sifre Zutta to Numbers.¹¹²

In his discussion of the Sifra, of interest to us are his views on its editorship, in regard to which, he denies both Frankel's claim for Rav and Hoffmann's for R. Hiyya. Against the former he argues that Tanna de Be Rav, means only that an Amoraic Tanna taught the Sifra before Rav, who thus knew the collection, and taught it to his pupils, but could not possibly have edited it.¹¹³ Against R. Hiyya he notes with Albeck that all the proof texts for his authorship come from the Talmuds or Leviticus Rabba, which are all too late to prove authorship. He does say, however, that R. Hiyya perforce edited a midrash to Leviticus similar to our Sifra, midrashim from which appear in our Sifra. He thus does not rule out the possibility of R. Hiyya, but merely the reliability of the late evidence.¹¹⁴

The Akibic sections of the Sifre to Deuteronomy bear, as Hoffmann notes, the Palestinian nusah,¹¹⁵ and its anonymous passages derive from

the Midrash of R. Shimon.¹¹⁶ He denies, however, Hoffmann's claim that the collection comes from the School of R. Yochanan, since it was known as a collection by his teacher.¹¹⁷ Honest scholar that he is, he notes on the basis of terminology the presence in this section of many additions from the School of Ishmael.¹¹⁸

Two Akibic works remain: the Mekilta of R. Shimon ben Yochai and the Sifre Zutta. Epstein had before him Hoffmann's edition of the Mekilta of R. Shimon, and had undertaken another one which was published posthumously by Melamed in 1955, whose introduction is reprinted in the Mevo'ot. Again the point of interest to us is editorship, in which matter Epstein agrees with Israel Levi who in 1889 argued that the work (taken primarily from the Midrash Ha-Gadol) was of the Tanna de Be Rav, and many of its sections agreed with the Sifra, Sifre to Deuteronomy and the Tosephta. He contended that it was not edited by R. Hizkiah, since many of the midrashim of that Tanna cited in the Midrash Ha-Gadol contradicted midrashim in the Mekilta of R. Shimon, while many of Hizkiah's baraitas were not even included in the Midrash Ha-Gadol. Nonetheless, Hizkiah's comments to Exodus draw from the same source as the Mekilta of R. Shimon, and so has many points in common with it. Subsequently (in 1919) Levi Ginzberg tried to emend texts in order to find in many stam passages of Hizkiah's midrashim the hand of R. Shimon, but Horowitz saw that many of his emendations were forced.¹¹⁹ Hoffmann who, as we have seen, asserted that de Be Rav meant merely "the schools," and had no relation to Rav at all, would naturally disagree with Israel Levi, and with Ginzberg's champion Hizkiah as the editor;¹²⁰ Epstein finds much of Hoffmann's analysis doubtful, and sides once more with Levi in attributing the collection to the Sifre de Be Rav, from which, however, the Tanna de Be Hizkiah

also drew. He also attacks Ginzberg's generous attribution of stam passages to R. Shimon, since many of his baraitas are not found in his Mekilta, and some are found in Ishmael's Mekilta.¹²¹ Thus the collection is not entirely by his hand, but a good deal of it is; most of the aggada in the collection is like that of the Mekilta of Ishmael--underscoring Albeck's wary view of aggada; and there are some peculiarities of terminology.¹²²

The Sifre Zutta, as Hoffmann noted, is a strange work--Akibic in methodology (pleonasms are interpreted, non- gezerah shavahs are employed, etc.), but unique in terminology and in many of the Tannaim mentioned in it. Passages in the Sifre Zutta do not resemble relevant quotations of the Be R. Akiba in the Talmud. The work is primarily of the school of R. Eliezer, to whose Talmudic baraitas much of our collection does correspond,¹²³ though many citations of אמר ר' שמעון stem from the hand of the redactor of the Midrash Ha-Gadol,¹²⁴ and the redactor of the Sifre Zutta itself also borrowed from midrashim of the School of R. Shimon.¹²⁵ Mishnahs cited here are not always in accord with our Mishnah, but often resemble the collections of R. Nathan, R. Yose, or R. Yehudah. From all this Epstein concludes that its editor was a Tanna outside the circle of R. Akiba's most well-known pupils, and conjectures in the grand style on the basis of a citation of a standard of measure in our work, identified in Erubin 83b as peculiar to the אמרי-הים of Tiberias, that its editor may have been Bar Kappara, who lived in Tiberias for some time, who compiled his own mishnah, and who was separated from the School of Akiba--but then the honest scholar replaces the brilliant virtuoso, and he notes that we do not find a "complete identification" of one of Bar Kappara's remarks, in Avodah Zara 75b with a similar passage in the Sifre Zutta,

part of which, Epstein counters, is however borrowed from our Sifre.¹²⁶

What, then, is Epstein's contribution? Aside from the wealth of citations included in this volume, valuable in themselves, he restores some order to the anarchy which Albeck advocated. There is a Tendenz to be found behind the majority, or the plurality, of midrashim in a given collection, and such midrashim do have parallels in other works. This Tendenz--admittedly not found in all midrashim of a given collection, and admittedly violated in parts of a collection--corresponds to methodological principles attributed by name in the Talmud and our midrashim to Akiba or Ishmael. The main part of a collection is taught primarily by the named Sages who are known to have been disciples of one or the other of the two great masters, and an important contribution of Epstein is to show that Ishmael's pupils borrowed some of Akiba's methodology, which had become apparently by their time the dominant system, and so even passages showing Akibic tendencies can be seen to belong to the School of Ishmael. And against Albeck, this is significant--for most of the time these disciples use the Ishmael system, and we can identify their occasional apostasy as change, which is not chaos. Epstein is a restorer of the faith--that despite the presence of non-x material, a collection can in the main be attributed to x, with later, or contemporary (he prefers the latter) additions from elsewhere. As he notes, Rabbi's Mishnah contains material not by Rabbi, in contradiction to Rabbi's teaching, and juxtaposes material from various schools and sources. Weiss compared the process of collecting midrashim to the process of gathering mishnahs; Epstein echoes his analogy. Albeck is useful as a corrective; Epstein comes, like Akiba, to restore order to the chaos he would proffer.

VI. A NOTE ON CONTEXTUAL FORM CRITICISM

"A Rabbinic Defense of the Election of Israel," by Eugene Mihaly, HUCA 1964.

From Weiss on, the men whose views we have been discussing carried over the method of source analysis and form criticism developed by scholars of the Bible to the halakic midrashim. Their way was to isolate terms peculiar to individual collections, names of authorities quoted, and methods of exegesis, which proved to divide themselves into two groups, to which might be assigned mutatis mutandis all the midrashim, whether collected or secreted in the Talmuds. Primarily this kind of analysis depended on the halakic midrashim themselves, though Albeck indicated that individual verses do have a different Tendenz in the two "schools" and that the exegesis of each source is tied to verses and words--however often such words or verses appear, the interpretation on them is the same. Nonetheless, he confined his remarks about treatment of verses to the exegesis on each appearing in the halakic midrashim, ascribing parallel treatments to one source, and different treatments to another source. Eugene Mihaly, in his forthcoming essay in the HUC Annual, develops a contextual treatment of verses in which with Albeck, midrashic comment is seen to center around a verse, as well as around a problem or a method, as the other critics note. But the comment centers around the verse, Mihaly argues, just because the verse itself (or rather, certain verses), have developed a Gestalt which represents the significance of the verse as much as the Biblical words themselves. He shows, for example, that a proof-text from Jeremiah 10:16, seemingly inappropriate in its literal meaning to its context in the midrash with which he deals (Sifre Deuteronomy 312), is quite appropriate if the verse is considered as a key to the messianic promise with which it had been associated through

its frequent exegesis throughout rabbinic literature. Thus there is a midrashic context to a verse--the personality of a verse as it was used in the Tannaitic period--which is referred to as the "proof" as much as the extrinsic meaning of the words themselves. Admittedly the sources for this Gestalt are in the aggadic midrashim and not the halakic, and Mihaly's whole treatment of both the Jeremiah verse and another proof text, Ps. 135:4, supports Albeck's thesis that aggadic passages cannot be tied down to a specific school. Nonetheless, as a development from 19th and earlier 20th century form criticism, it is a notable contribution, and is, as he demonstrates, a worthwhile method particularly for aggada in the halakic midrashim.

A more immediately useful method which Mihaly develops out of his predecessors' form criticism is the analysis of the terms which they had cited only as support for attribution to one school or the other. Mihaly is not at all concerned with the authorship of this passage, which stems from what Epstein and Hoffmann considered the Ishmaelitic section of the Sifre to Deuteronomy. (Its tell-tale sign is the expression

הדבר תלי בדלא תלי, appearing in other Ishmaelitic sections of the Sifre to Deuteronomy.¹²⁷) Yet by analysis of the syllogism which this expression introduces, Mihaly is able, as Albeck was not, to distinguish it from expressions somewhat similar in form, and able also to arrive at a recondite understanding of his Sifre passage which would have been impossible without such an analysis. Through a similar syllogistic analysis of למא נאמר לפי שהוא אומר in Midrash Tannaim (to Deut. 14:2) he is able to eliminate that passage as a parallel to his midrash in the Sifre. To identify the school to which a collection, or a midrash, belongs is not sufficient; beyond the identification of characteristic terminology, there is the analysis of that terminology and the perception of the rab-

binic Gestalt of a Biblical verse in order to arrive not alone at authorship, but at meaning.

From our five critics we too have arrived at a Gestalt of sorts--the division of our midrash collections into two groups, the School of Akiba and the School of Ishmael. We do this on the basis primarily of methodology, terminology, and quoted authorities--and we realize the tentative nature of our attributions, and that ascription to one school rather than the other depends often on mere numbers of passages, and sometimes pluralities perhaps too small really to govern. To test these theories, and to see what kind of conclusions we may in honesty make about the authorship of a section, now, armed with Hoffmann on one side and Epstein on the other, with Albeck prodding us annoyedly from behind, Weiss and Graetz flying amiably overhead, and Frankel wishing Godspeed from the distance, let us turn to the first, supposedly Ishmaelitic, section of the Sifre to Deuteronomy itself, and see what kind of

מלחמת המדרש we may wage with them.

CHAPTER TWO

A. PARASHA DEVARIM (Piskaot 1-25)

I. אלה הדברים

The purpose of the interpretations in our Sifre appear to be to show that the words "אלה הדברים" are not meant to be taken literally--that these are not the only (ה) words that Moses spoke, but rather when the phrase אלה הדברים (or, in the supplementary passages, introduced by כיוצא בו, such variants as דברי or אלה דברי occurs, it intends to demonstrate that "these are words of chastisement (חוכחות)." Indeed, the whole intent of piska 1 seems to be a discourse on חוכחות, seeing the place names mentioned as reminders of the catalogue of Israelite sins up until the time when Moses, here, just before his death, rendered a general chastisement.

Missing from this passage is the interpretation in the name of R. Ishmael from the Midrash Tannaim, explicating אלה הדברים. It is Ishmael's view that because Moses reunited Israel with God through the chastisements recorded in Deuteronomy, the entire book is thus as dear to God as the Ten Commandments--i.e., the book of אלה הדברים is counted as equivalent to the עשרה דברים--and because Moses reunited Israel to God, the book is in Moses' name: אשר דבר משה, and not דבר ה'. But the authorship of our passage is thus a puzzlement. Epstein did not feel that this section was by an Ishmaelitic hand--certainly if it were, it would appear that the very first drash should not omit a baraita specifically assigned to Ishmael in the Midrash Tannaim. He was further convinced by such Akibic terminology as אין ת"ל and ל, as well as by the use of מלמד, which he considers an

Akibic expression,¹ though it does appear in a stam passage in the Midrash Tannaim which Epstein and Hoffmann (its editor) assign to the School of Ishmael.

The comment that we have in the Sifre is confused, furthermore; as we noted above, its main purpose seems to be to establish that various uses of the title-phrase וְיָדָבֵר, וְיָדָבֵר, etc. indicate an expression of chastisement. These are introduced by כִּי יִשְׁמַע בְּ, as is what appears to be a totally extraneous quotation from Amos, whose function is to show that Amos spoke not only to Israel but to other nations as well. This would appear to be from a source not concerned with our problem.

Is then our passage of the School of Akiba? The Midrash Tannaim also quotes a comment by R. Shimon ben Yochai, to the effect that the

וְיָדָבֵר are fortunate because they live to command their offspring to study Torah: the Patriarchs and David are quoted, as is Moses, who taught the commandments to Israel, as the first words of Deuteronomy tell us--nothing at all of the תוכחה theme. As we shall see, there are later comments which indicate that the Akibists did comment on the chastisement aspect of this passage, but here the comment of the Akibist R. Shimon is omitted. It may be that the Tendency of the entire piska is to justify the view of R. Ishmael that because of Moses' heroic efforts to reunite Israel with God--"And you shall cleave, all of you, to the Lord your God this day" (Deut. 4:4)--the words of chastisement that caused that reunification, are as precious to God as the Ten Commandments themselves, and so will be called after his name. Thus perhaps since his view is reflected in our Sifre, we may see in this passage an Ishmaelitic flavor--though the Akibic terms and the absence of the

Ishmaelitic drash in the Midrash Tannaim casts doubt on our suggestion. Also, in the interpretation of **אלה הדברים** in our Sifre, we see a departure from the views of R. Ishmael as expressed in the Midrash Tannaim: Our Sifre is concerned with the first part of Deuteronomy 1:1, **אלה הדברים**; did Moses speak only these words? But in M.T., Ishmael seems interested in the second part: **אשר דבר משה**: why does Moses open this book, whereas God opened Leviticus and Numbers? As we have noted, Ishmael does seem to play on the word **דברים**, equating the word in this passage to the **אם הדברים האלה** (Deut. 6:19), referring to the Ten Commandments, after which Israel started to rebel against God, and were not brought back until Moses's **דברים** in our passage. Though Ishmael does make the same comment in the Midrash Tannaim as our Sifre records to **אשר דבר משה לבני ישראל** in verse 3, in the comment to 1:1, our Sifre and the R. Ishmael of the Midrash Tannaim do not fully agree in intent.

אל כל ישראל:

In Buber's fragments from Deuteronomy Zutta, taken from the Yalkut Shimoni and Deuteronomy Rabba, the first comment to **אל כל ישראל**, which appears stam in both our Sifre and the Midrash Tannaim, is attributed to R. Shimon, and appears to be more complete than its two brothers. This offers support for Hoffmann's contention that "the greater part of the aggada of this section seems to belong to R. Shimon ben Yochai."² Other evidence (for Epstein) is the use of **מלמד** in the second comment, a

דבר אחר. But this is confusing: for Hoffmann, Albeck, and Epstein³ agree that this rubric indicates a source different from the previous one, and since the first one, on the witness of Deuteronomy Zutta, is Akibic,

מלמד should then not be Akibic. The second דבר אחר, a trialogue between R. Tarphon, R. Elazar ben Azariah, and R. Akiba, is found also in Sifre Kedoshim 4:9,⁴ which is surely Akibic. The first and the third comments to our phrase are thus clearly Akibic; but if

דבר אחר does indeed signify a different source, Epstein's view that this word is also Akibic does not hold up, particularly since it is found in the Midrash Tannaim in this place. It is interesting to note that the Midrash Tannaim does not quote the whole text of the second דבר אחר, of the trialogue, but quotes only the opinions of R. Tarphon and R. Elazar ben Azariah, anonymously, and omits entirely the opinion of Akiba! This would seem heady evidence that this section is of Ishmaelitic origin, and since מלמד דבר אחר comes after what is also an Akibic passage, the מלמד of the second דבר אחר seems a strong candidate for a phrase used at least by the School of Ishmael. Our Sifre quotes the trialogue exactly as it appears in the Sifra, which might of course indicate merely that the redactor of the Midrash Tannaim did not have the complete text, but, as Mihaly notes, the editor of the Midrash Ha-Gadol, the source of Midrash Tannaim, often "summarizes the language of the original source--halakic or aggadic--sometimes compressing a whole page into a few lines."⁵ He might have done that here. It is thus difficult to make a judgment on the identity of the redactor of the comments to this phrase in our Sifre.

בעבר הירדן:

Here again the phrase מלמד appears: "it teaches that (Moses) rebuked them for what they did across the Jordan." It is a feature of the Midrash Tannaim comment to this section that with all the places mentioned, it says "this teaches (מלמד) that he rebuked them for what they did..."

with the place name, while this phrase is missing in our Sifre in the comment on **בֵּין פֶּאֶרְן וּבֵין תַּמֶּל** and . This consistency might

indicate that the pattern is originally that of Midrash Tannaim and if, as it appears, the entire comment on Deut. 1:1 is of Ishmaelitic Tendenz, then

מִלְמַד too would seem to be Ishmaelitic. Unfortunately, the Midrash Tannaim has in addition to this nice pattern a variant reading which interprets the whole phrase **בְּמִדְבַּר בַּעֲבֹר הַיַּרְדֵּן** to mean, "He rebuked them across the Jordan for what they did in the wilderness," which was idolatry--not at all what the comment on **בְּמִדְבַּר** alone discusses, which is, in both Midrash Tannaim and our passage, the complaint about food in Exodus 16.

From Ishmael's apparent passion for polemic against idolatry⁶ the variant passage in the Midrash Tannaim would seem to belong to him--and so would cast doubt on attributing **מִלְמַד** and the pattern of comment on the place names to Ishmael, unless, of course, his school taught this section in two different ways. A further note on this interesting variant in the Midrash Tannaim: though it sees the sin of the wilderness as idolatry, it uses a verse that in context refers also to the food revolt, but in Exodus 14:4, rather than Exodus 16:3, employed by the other version in Midrash Tannaim and by our passage. It seems however to interpret the verse in Exodus 16, "Let us make a head and return to Egypt," as though "head" referred to a god, but this may be an attempt to re-interpret what would then be the earlier tradition of the **מִלְמַד** pattern dealing with the food revolt in terms of the M. T.'s anti-idolatrous prejudice. But then to which school does **מִלְמַד** belong? We are still in the dark.

בְּמִדְבַּר:

The comment to this word, relating it to the food revolt, is quoted in the name of R. Judah, an Akibist, in both our passage and the Midrash

Tannaim, as a דבר אחר (following the מלמד pattern), supporting our conjecture above that the מלמד pattern in Midrash Tannaim is Ishmaelitic. A second דבר אחר says that the phrase is not specific, but rather is a כלל for all the misdeeds in the wilderness. This is not כלל in the sense of כלל ופרט, since there is no prat, no specific, following in the verse. Bacher quotes a use of כלל in an Akibic section of our Sifre (piska 87) where it appears to mean "principle"--as often it does: "From the principle that 'the fathers shall not be put to death for the sons nor the sons for the fathers,' we learn that..."⁷ But this does not really seem to fit here, and so it is difficult to utilize this term to determine authorship. If we accept דבר אחר as an unfailing indication of a different source, this should be perhaps Ishmaelitic.

בערבה:

The comment on this, using the מלמד pattern, is the same in our passage and Midrash Tannaim.

מול סוף:

The pattern appears in both our passage and Midrash Tannaim, plus a syllogism trying to decide whether this rebuke came before they entered the sea or afterward, with the latter winning. In our passage this has the form of יכול...מה תלמוד לומר, a series which causes Epstein to consider this non-Ishmaelitic.⁸ The Midrash Tannaim passage has אפשר instead of יכול, and the parallel in Deuteronomy Zutta quotes the conclusion, without the formula, in the name of R. Abba bar Kahana (a third generation Amora, one of many indications of the late date of this collection) who quotes R. Elazar--a contemporary of R. Akiba, but not of his

school. In both our passage and the Midrash Tannaim, it is quoted in the name of R. Yehudah--but in the Midrash Tannaim the syllogism is connected with the text phrase, "between Paran and Tofel," while in our passage this phrase is the proof text for the syllogism which is tied to מול סוף. Again the Midrash Tannaim inserts an Ishmaelitic side thrust against idolatry, identifying the sin on the sea as the carrying of the idol made by Mikah (see also Mekilta Bo 14).⁹

בין פראן ובין תפל...:

In the Midrash Tannaim, R. Ishmael confesses that he has retraced all the journeys in the Torah and has never found these places named, and so asserts that the sole intention of the phrase is a reference to the תפלות which the Israelites committed. This same interpretation is repeated in the Deuteronomy Zutta in the name of R. Shimon, and in our passage it is left anonymous. The attributions in the Midrash Ha-Gadol are suspect; but Deuteronomy Zutta is a late collection. Hoffmann conjectures that the R. Ishmael in the M.T. passage might be R. Yishmael ben R. Jose, since R. Jose is mentioned immediately afterward--saying that the complaints about the manna are referred to; Hoffmann also suspects that this passage was taken from our Sifre, but the opposite might just as well be the case. The manna explanation is repeated in our Sifre, and R. Jose is an Akibist. We can prove nothing from this section.

והצרות:

There is a considerable difference between the interpretations of this word in our passage and in the Midrash Tannaim. What appears to be the same stratum as the comment about idolatry in M.T. to בעבר הירדן here interprets והצרות as a reference to the food complaint in Ex.

16:3, which our Sifre and another M.T. stratum (probably merely a repetition of our Sifre) hung on **בַּעֲבֹר הַיָּרֵד**. Since our passage has already used the food complaint, it takes **הַצִּרְוֹת** to refer to Miriam's complaint, and brings three instances of Kal V'Homer to indicate that if she, a righteous woman, speaking against a younger (brother), privately to God, was punished--how much the more punishment should accrue to those who were not righteous, who complained against their elder (Moses), and in public. We here have Moses using a Kal V'Homer to punish, which Ishmael generally forbade and Akiba permitted (see Chapter One above)--but this is only aggada, and so it is questionable whether we can really pin down this passage to Akiba.^{9a} There does appear to be a difference, however, between what Hoffmann considers the Mekilta of R. Ishmael to Deuteronomy¹⁰ as expressed in the comment on **וְהַצִּרְוֹת**, and the start of the comment on **בַּעֲבֹר הַיָּרֵד**, and our Sifre on these two passages, but whether we can call one Akibic and one Ishmaelitic is greatly in doubt.

וְדִי זֶה:

This, both the Sifre and M.T. agree, refers to the Golden Calf, and was the "last straw": God could no longer refrain from anger at the Israelite complaints. Our Sifre gives three meshalim to indicate the effect of "last straws," three of which are by known Akibists: R. Yehudah, R. Shimon, and R. Benaya.¹¹ The fourth is by R. Jose Ha-Nethaniah. After another drash by R. Yehudah on the ten testings of the fathers, the controversy between him and R. Yose ben Dormaskit begins: the first is on the places where the trials took place, which R. Yose said were named for the trials, and he wins. The second (introduced by **וְיֹסֵף**) begins with R. Yehudah's messianic interpretation of Zech. 9:1: "The word of the

Lord is in the land of חדר , and Damascus is His resting-place."

This means, he says, that Israel will one day reach to this area--an interesting indication of the political nature of the Messiah at that time (he is נח with the nations, נח with Israel). R. Yose disputes this interpretation, and in our passage, after several verses are tossed back and forth, with different interpretations being given for each, R. Yehudah wins with his view. In M.T. R. Yose's first criticism, that there is an actual place named אבר , is there taken as authoritative. The significance of this difference in the M.T. is obscure, especially since we do not know whether the redactor shortened the passage, or preferred the non-Akibic view, or did not know the continuation--this is unlikely. But our passage seems clearly to represent an Akibic point of view. Both our Sifre and the M.T. add (כיוצא בן) what appears to be the rest of this little collection of disputes between R. Yose and R. Yehudah. The two כיוצא בן are related to each other (by the phrase

למה אחת מעויות עלינו את הכתובים , by the dialogue form, and by the argument over meaning of names), but not to the content of our passage.

II. אחר עמך יום... :

We find in this piska quotations by R. Yehudah, R. Benaya, and Abba Yose ben Hanin, all apparently of the Akibic, or at least non-Ishmaelitic, persuasion.¹² מלמד , furthermore, occurs in several successive דבר אחר , in the first of which R. Benaya is mentioned.¹³ One evidence of R. Benaya's loyalties is his typically Akibic exegesis of ויהי in Ex. 13:4-5 as "immediately." This is not present in the M.T.

comment to אחד עשר יום , which does include, however, several of R. Yehudah's comments.

In the Finkelstein edition of the Sifre, we find the interpretation of כל ישראל דבר משה אל כל ישראל to be essentially the same as the comment on similar words in piska 1--1.e., "Did Moses say only אלה הדברים ?" and exactly parallel to Midrash Tannaim, while all the other manuscripts (including Friedmann's) read: "Did Moses say only the Ten Commandments?" which comment, Finkelstein quotes the Rabad is attracted by דבר . Whichever the correct reading, we are given no clue to authorship; remembering Ishmael's parallel of Deuteronomy to the Ten Commandments does not give us much of a clue.

III.

The problem here is the meaning of the משל , whose language is garbled. The point seems to be that the king would not chastise the soldiers for their vain requests until after he had scored a victory and had returned home, lest they think he be totally powerless and lose their support. Similarly, Moses waited to chastise the people until after he had proved himself and his king by a victory over Sihon. There are, however, no telltale phrases or names in any of the interpretations in this section, and though the Midrash Tannaim version is somewhat different from ours, it seems merely to be explaining the Sifre passage. There is an aggadic Kal V'Homer in the comment to וישב בחשבון and

אז עוג מלך באן, but this does not help us.

IV. בעבר הירדן בארץ מואב הואל משה לבאר:

Two views of the meaning הואלה appear here: one, by R. Yehudah, is "beginning"; the one accepted by "the Sages" is: "an oath." The latter view appears with no attribution in Mek. Jitro piska 1 (Horovitz: p. 191), and in our Sifre, piska 27 (p. 41). The manner of its quotation is not the same in the three places, though all three use as a proof text Ex. 2:21: the two Sifre passages say, אין הואלה אלא שבועה; while the Mekilta passage says, אין אלה אלא לשון שבועה, but we may ascribe the difference in terms to the fact that the two Sifre passages are primarily concerned with either the meaning of the word הואל (our passage), or with vows in general (piska 27), while in the Mekilta, the verse from Ex. 2:21 is primarily to show that Moses agreed to start his child in idolatry and then to go to the worship of God, and so the remark on הואל is merely made in passing. In Midrash Tannaim הואלה as an oath is quoted in the name of "ר' יודה," which appears to be an error, in the light of our three passages, and also perhaps in the light of the interpretation of הואלנו in Sifre Zutta (a quasi-Akibic work) as החלה. In our passage, quoting הואלה as an oath in the name of the Sages would seem to indicate Ishmaelitic authorship, particularly when opposed by the Akibic R. Yehudah who has a different interpretation. Nonetheless, in the two other places in which this statement appears, no opponent is quoted, and no attribution of any sort is given, raising the question of why our passage, if it is from the same school, should be presented differently; despite the apparent misattribution in the Midrash Tannaim, it will be noted that there too only the accepted Ishmaelitic view is given. The Midrash Tannaim also quotes (in large type) in the name of R. Joshua, the meaning of "chastisement;" the relation of this to the Ishmaelitic view as expressed in the Mekilta and

Sifre Deuteronomy 27 is unclear, and casts some doubt on whether we may say that the M.T. is really Ishmaelitic.

באר את התורה הזאת לאמר :

Unlike the next piska, לאמר is not here explicated: the interpretation is all on באר את התורה, in the light of which Moses is described, as Kittel says, "with the characteristic features of the legal teaching of the rabbinic period."¹⁴

V. ה' אלהינו דבר אלינו בחורב לאמר :

It is, as we have noted in the previous chapter, considered one of the methodological principles of the School of Akiba to expound the word

לאמר. There are many ways of expounding it, but whether this can really be called an Akibic method is not at all certain. Twice in our section of the Sifre (piska 5 and 9) it is used to expound the phrase

לא מעצמי אני אומר לכם, which Albeck considers a phrase of the echt Sifre,¹⁵ ostensibly, not an Ishmaelitic phrase--and Epstein, too, used this as one indication that the first 25 chapters were not really Ishmaelitic. Thus, there are two problems which here confront us: is the exposition of לאמר an Akibic device? and 2) is לא מעצמי אני אומר לכם a non-Ishmaelitic one?

Expositions of לאמר are found in Mek. Bo (H-R p. 4); Mek. Bahodesh 3 (H-R p. 212) and 4 (H-R p. 219), twice in Sifre Numbers (piska 104, H. p. 104, piska 138, H. p. 184), and in our Sifre piska 26. In some of these places the interpretation is "Go and say":¹⁶ in others, "Answer me"--or, "Tell me whether or not you will do as I ask."¹⁷ Bahodesh 4 is an interesting passage, because the interpretation "Go and say" occurs

under the rubric לֹא אָמַר , following a controversy over וְרַב אֶחָד between R. Ishmael--who says it means, "They said yes to the positive commandments and no to the negative commandments"--and R. Akiba, who says, "They said yes to the positive commandments and yes to the negative commandments." What then is the significance of the וְרַב אֶחָד , which often represents a different source from the first? Since R. Akiba's answer is given last, perhaps the first dialogue is from the Mekilta of R. Shimon, found often in our Mekilta according to Hoffmann, and the second, corresponding to the apparently Ishmaelitic interpretation of לֹא אָמַר in Mek. Bo 1. Thus, while לֹא אָמַר is not always interpreted the same way by each of the two schools, it seems clear that its interpretation in some form is not restricted to the School of Akiba.

The phrase, לֹא מַעֲצָמִי אֲנִי אָמַר , occurs, in addition to piska 5 and 9 of our Sifre, in p. 12, 19, and 25, as well--sometimes with a variant of אָמַר: וְאִמַּר , in piska 19: וְאִמַּר , in piska 25--which follows a לֹא אָמַר which is not interpreted. The occurrence in piska 12 is not found in Finkelstein's edition, following the Midrash Ha-Gadol and Midrash Tannaim,¹⁸ but in the six manuscripts where it occurs, it is not tied to any variant of the root אָמַר . It appears also in Sifra Shemini perek 1:8, attached to the word צִוִּיתִי . Thus, while it is true, as Albeck notes, that the expression לֹא מַעֲצָמִי אֲנִי אָמַר לָכֵן occurs in both Akibic (Sifra) and supposedly Ishmaelitic sources,¹⁹ the phrase is derived from several different Biblical words, which seems to go contrary to his view that each source consistently derived the same point from the same word. Unless we are to see here three different sources (1) deriving the expression from לֹא אָמַר , 2) deriving it from אָמַר and אִמַּר , and 3) deriving it from צִוִּיתִי , Albeck's theory of "carry-overs" seems

cast into doubt here. But we really have no evidence to attribute this expression either to the School of Ishmael or to a non-Ishmaelitic source, for we have seen that though it is sometimes tied to לאמר, Ishmaelitic sources use אמר for several purposes, and though it is found in the Sifra, it is also found at least three times in a portion of the Sifre to Deuteronomy whose authorship is at best very much in doubt.

VI. והללנו:

Epstein attributes this section to the Ishmaelitic stratum on somewhat tenuous grounds. He notes that in the Mekilta to Deuteronomy (Tiferet Israel 192) R. Yonatan, a pupil of Ishmael, sees the order of events to be: appointing of a king, building the Temple, conquering the heirs of Amalek. In Sifre Deuteronomy R'eh, piska 67, R. Yehudah prefers the order: king, Amalek, the Temple. Since in our Sifre passage king precedes the Temple, Epstein sees this as an echo of the view expressed by R. Yonatan.²⁰ The absence in our passage of the mention of Amalek, however, makes this identification somewhat questionable. The phrase

ויבנו, which occurs often in the Mekilta, is here used in a different way, and is most probably of a different stratum. The Midrash Tannaim passage has several suggestions for והללנו which do not appear in our Sifre, stressing the joyousness of the Temple, which it accepts as the referend of the word, though our Sifre also sees it as possibly referring to the king, though it says ultimately--and without explanation: "It is none other than the Temple." The Temple reference alone is accepted in the repetition of the word in piska 28.

ער הנהר הגדול:

As Epstein²¹ and Hoffmann²² note, our "common proverb," "the servant of a king is (like) the king," is found in B. Shevuot 47b attributed to Tanna de Be R. Ishmael. But if it is a משל הדין, how may we with surety pin it down to one school, unless of course the meaning of "common proverb" here is that it was common to the members of Ishmael's School.

VII. ראה נחתי לפניכם את הארץ:

Epstein sees the phrase,

אמר להם, איני אומר לכם לא מאומד ולא משמועה... ("I speak to you not from supposition or rumor, but from what you see with your own eyes") which occurs here and in piska 19 as equivalent to

לא מעצמי אני אומר לך (which also appears in piska 19).

The burden of the two is admittedly similar: לא מעצמי ...concludes with the statement that God is Moses's authority, while our phrase urges empirical proof--in both cases Moses appeals to external criteria to validate his statement. But לא מעצמי, as we have seen, is tied to at least three different words, while איני אומר לכם ... is tied in each case to a similar verse: here, Deut. 1:8 ("See, I have set the land before you"), and in p. 19, to Deut. 1:21 ("See, the Lord your God has set the land before you this day"). This does seem to be an example of Albeck's point that one source will tie one interpretation to a verse wherever it appears, or wherever a minor variant appears. We cannot, as we have noted, speak so surely about the singularity of the source of

לא מעצמי, and so it is unclear that the two are from one and the same stratum.

VIII. אשר נשבע ה' לאבותיכם:

We have here a syllogism of the

מה תלמוד לומר... כבר שנאמר...
מה תלמוד לומר
type, which Epstein claims here represents a non-Ishmaelitic stratum.²⁴

Clearly this is different from the structure of the Ishmaelitic syllogism using למה נאמר, even when this appears in the form

למה נאמר... כבר שנאמר... מה ת"ל, though Albeck places the three in the same category.²⁵ Mihaly outlines the structure of למה נאמר the purpose of which, he claims, is to clarify an ambiguity in the second verse:

- A. The citation of the verse.
- B. The formula-- למה נאמר
- C. Citation of another Biblical verse which is not inclusive enough or from which one may draw a wrong inference which needs to be corrected--usually introduced by לפי שנאמר or its equivalent.
- D. The incorrect inference drawn from the second verse (Step C), introduced by אין לי, יכול, or similar term.
- E. The original verse, which clarifies the matter and corrects the possible error, introduced by ת"ל.²⁶

The structure of the למה נאמר... כבר שנאמר... מה ת"ל syllogism, of which our passage seems to be a variant, is rather different, and its purpose is certainly different. From the examples of this form used in Mek. Bahodesh 11 (Fr. 73a), Sifre Numbers 17 (H. p. 21), 44 (H. p. 50), 61 (H. p. 59), and 65 (H. p. 62), we note first that the purpose of the syllogism is not to clarify an ambiguity but to explain a seemingly superfluous expression. Secondly, the structure seems to be this:

- A. The citation of the verse.
- B. The formula-- למה שנאמר
- C. Citation of another Biblical verse (from the Torah) which seems to say the same thing with the same words--introduced by והלא כבר נאמר or והרי כבר נאמר or its equivalent.
- D. Repetition of the verse (Step A) introduced by מה ת"ל.

- E. An additional meaning is drawn from the use of the verse in Step A which is not present in the verse of Step C, introduced by וְשֵׁנִי , or (Sif. Num. 44) וְשֵׁנִי .

(This last use of the Ishmaelitic וְשֵׁנִי is interesting, since the syllogism in Sif. Num. 44 is quoted in the name of Rabbi, an Akibist, though perhaps the terminology was added by the supposed Ishmaelitic redactor, who supplied his preferred וְשֵׁנִי .) It would thus appear that, as Mihaly notes, Albeck is quite incorrect in identifying these two phrases as equal, since not only is their structure different, but their purpose varies as well. It is furthermore interesting to note, from the point of view of authorship, that although these all appear in ostensibly Ishmaelitic sources, three of the citations (Sif. Num. 17, 44, and 61) are quoted in the names of Akibists: Akiba himself (17) and Rabbi, whose instruction was primarily in the hands of Akibists.²⁷ The other two citations are anonymous. Whether, then, this formula is really Akibic is in doubt, since the terms might have been added by the Ishmaelitic redactor, who prefaced the לְמַה נֶאֱמַר construction with a לְמַה נֶאֱמַר frequently used in Ishmaelitic sources.

But, as we have noted, the passage with which we are immediately concerned does not strictly correspond to the formula we have outlined. Friedmann's edition carries a rather different outline than ours, and in the outline of the Finkelstein version that follows, we shall note the changes in Friedmann's edition (in which half of the formula is missing):

- | | | |
|----|--|---|
| A. | The citation of the first part
of the verse | $\text{אֲשֶׁר נִשְׁבַּע ה' אֱלֹהֵיכֶם}$ |
| B. | The citation of the second problematical
part of the verse, preceded by לְמַה נֶאֱמַר
(Friedmann has שֶׁאֵין ת"ל) | $\text{לְאֹרְהֶם לִיצְחָק וְלִיעֶקֶב}$ |

- C. Citation of another Biblical verse which seems to render our verse unnecessary--using different words; introduced by הרי כבר נאמר (some of the manuscripts Friedmann used lack either the formula or the verse, or both) שבועות מסות אומר סלה
Hab. 3:9 (i.e., if the tribes are mentioned, why must the individual founders be mentioned?)
- D. Repetition of the verse (Step B) introduced by מה ת"ל
- E. An additional (or, perhaps, "special") כדיי אברהם בעצמו... meaning is drawn from the verse in Step B which is not present in the verse of Step C--with no introductory particle or phrase.

The difference between this and its sibling are apparent--perhaps the three most significant being the absence here of למה נאמר; the fact that here Step C does not use the same words as Step A/B, but rather seems to state a generality which renders superfluous the specific as expressed in A/B; and the location of the verse used in Step C in the Prophets, and not in the Torah, as are the verses in the other syllogism we have noted. In short, our syllogism in p. 8 seems to be a version of the more frequent one in the Mekilta and Sifre Numbers above, but differs from it in several major respects--and thus we cannot really say with Epstein that this is non-Ishmaelitic, since we have little evidence that the Mekilta-Sifre Numbers formula was really Ishmaelitic either. We cannot with surely pin this syllogism to either school.

לוח להם;

An anonymous passage interprets each of the three phrases to refer to a different generation, with which interpretation Rabbi agrees, except that he applies it to a later time, i.e., of the Exile, and sees the final phrase as a reference to the coming of the Messiah. Both use the same method of exegesis; Rabbi may be considered an Akibist, but this does not

necessarily mean that the passage is of Akibic redaction.

IX. ואמר אליכם בעת ההיא לאמר:

לא מעצמי אני אומר is here interpreted as , for discussion of which, see above. The next section gives no clues to authorship.

X. והנכם היום ככוכבי השמים לרב:

From this verse (מכאן אמר), because the stars are arranged in order (so interprets Finkelstein in the light of Deut. Rabba (the exact reference is obscure), we derive the existence of seven orders of the righteous in Eden. Thus we see מכאן אמר used for neither a Mishnah citation nor a citation from the Sifra , as, respectively, Frankel and Weiss often viewed it. Continuing in this line, R. Shimon compares the righteous not to the stars but to the seven "joys" of the universe. Since R. Shimon and the anonymous author of the first passage both derive their drashot from the same interpretation of the same verse, and present a midrash structured in the same way, we may well attribute this piska to the School of Akiba, as found in the midrash of R. Shimon ben Yochai.

In the Mekilta of R. Ishmael in Midrash Tannaim a different association is made with the stars: Moses, who has turned from חוכמה to blessing, blesses Israel out of his love by invoking the stars, while Balaam, who hated Israel, blessed them through the dust.

XI.

The point of the mashal in this piska, though not the mashal itself, also appears in Sif. Num. Beha'aloteka piska 84 (end; H. p. 83), the aggada in which tractate is, Epstein says, a "source foreign to Sifre Numbers,"²⁸ which he attributes to Ishmael. The same point--the future promise to Israel of a multitudinous progeny--appears in the Mekilta to Deuteronomy in M.T., p. 71. The explanation in Sifre R'eh (piska 91, Friedmann edition, p. 94a), however, the interpretation for Deut. 13:19 (אשר נשבע לאבותינו), the verse on which the M. T. comments, is not that the promise to the fathers would fulfilled, but rather that "הכל בזכות אבותינו" -- apparently an Akibic comment, in line with our remarks above on Akiba's devotion to the principle. From this confrontation of opposites, it would seem that at best piska 11 in our Sifre is non-Akibic, though since it corresponds in content to a section of the Sif. Num. Be'ha-loteka which, according to Epstein, is often non-Ishmaelitic, we cannot with certainty ascribe our passage to Ishmael's School.

The Midrash Tannaim to our verse adds a very lovely mashal of an entirely different nature, in keeping with its stress on the nehemta inherent in this verse and the previous one: as a reward for accepting Moses's חוכמות in the wilderness with silent shame, God (the father of the erring daughter) would multiply the value of her Ketubah--i.e., the promise of descendants which Joab had received (in Hoffmann's explanation)²⁹

XII.

Friedmann's edition has an explication of the opening words, "How shall I bear your troubling alone?" as לא מעצמי אני אומר לכם --which indeed seems to fit the context of this verse better than the other occasions

of this phrase which we have noted above. Yet it is missing in Finkelstein's edition (and six of the eight manuscripts he consulted)--possibly because it was tied to individual words (of speaking or commanding--though not, as we have seen, to the same word), and not to verses. But because we do have both versions, it is dangerous to speculate. Finkelstein includes in small type a section found in the Midrash Tannaim as another (דבר אחר) comment to "your troubling and your burden and your quarreling," but in none of these comments have we a clue of authorship.

XIII.

The word **הבן** "always" means **עצה**, says our stam commentator, and he offers in support two verses which are not covered by the halakic midrashim: 2 Samuel 16:20 and Ex. 1:10. But in Sif. Deut. 306, commenting on Deut. 32:3, considered by Epstein and Hoffmann to be an Ishmaelitic passage, the phrase **הבן גדל לאלהינו**, is interpreted in various ways, but not at all as **עצה**. Not that it should be--of the many uses of the word **הבן** where counsel is indicated (primarily in Genesis) Deut. 32:3 is not one of them; unless this contradicts Albeck's view of words maintaining a constant interpretation, we should probably not attribute this passage to the same stratum as the supposedly Ishmaelitic section in Sif. Deut. 306, though it must be admitted that in the entire comment to **וּבְשֵׁם ה' אֱקַר הַבֵּן גָּדַל לְאֱלֹהֵינוּ**, there are no signs which might enlighten us as to either Ishmaelitic or Akibic authorship, except for the attribution of one statement to R. Shimon. But it is more probable that the phrase **אֵין...אֵל** is hyperbolic, and does not really intend to cover all instances the word in question.

חכמים:

The R. Yose mentioned here is perhaps R. Yose ben Halaphta the pupil of R. Akiba.³⁰ The phrase כבר נאמר is not here used syllogistically, as in the formula discussed above, but rather it rejects an interpretation of חכמים as meaning נבונים since that word is specifically mentioned in the verse of its own; (the formula in which כבר נאמר appeared in the examples above pointed to a superfluous expression not in the same verse, but in a different one.) כבר here as in the formula in piska 8 does not have a temporal meaning ("already"), but rather means "elsewhere." Similarly מה תלמוד לומר in the exposition of אנשים has a literal and not a syllogistic meaning--and so it is difficult to pin either of these isolated words to schools, since surely Ishmael used מה ת"ל as part of his formula.

וידעים לשבטיכם:

Bacher discusses the widespread use of the formula (ש) מה ראו in the sense of "what is the purpose," answered by a Biblical verse. In this sense he notes that Yochanan ben Zakkai, R. Gamliel, R. Eliezer, R. Chanina, and R. Shimon all employ this expression; in our passage it is attributed to R. Shimon ben Gamliel. The School of Akiba uses it in a different sense from our passage, *viz.*, to question the employment of a particular hermeneutic principle; and Bacher notes also that it appears in some places--apparently without a Biblical response--to mean, "What did X. experience, that he did such?"³¹ Thus it is apparent that neither by names nor by terminology may we attribute this passage to a school.

ראשימם בראשי כם:

The formula ל"ל מה...כול which appears twice here is considered by both Albeck and Epstein to be an Akibic term, as opposed to the syllogism used by Ishmael for the same purpose ל"ל מה...אני. ³² There follow two דבר אחר s, offering other interpretations of this phrase. The formula ל"ל מה...כול indicates that despite what the people do, the appointment of the chiefs still stands; the first דבר אחר asserts that unless the people obey their words, the chiefs will not be maintained. The second דבר אחר suggests homiletically an alternate reading for ראשימם : ראשם , i.e., the guilt of the people rests upon the leaders. This suggestion is introduced by the formula

אל תהי קורא...אלא which appears in that manner or in the form,

אל תקרא...אלא , frequently in Ishmaelitic midrashim, though sometimes in the mouth of Akibists. ³³ In our passage, however, the word suggested by the אל תהי קורא is followed by מלמד --but we have noted Bacher's assertion that this does not necessarily indicate Akibic material when it appears in aggada. In M.T., however, where this whole passage is reproduced with some variations in the small type, מגיד replaced מלמד . Evidence is strong that our final דבר אחר is Ishmaelitic. Also present (in large type) in M.T. is another דבר אחר which plays on the similarity between ראשימם and שממון : if you do not appoint worthy judges, I will set them as a reproach. Two points mark this as Ishmaelitic: its introduction of proof texts by the formula,

בענין שנאמר , which Bacher shows occurring in Ishmaelitic sources, ³⁴

and its avoidance of a special interpretation to the pleonasm ראשימם in one of its proof texts. Thus we have in our passage one probably Akibic baraita, one neutral, and one probably Ishmaelitic--but also the absence of another Ishmaelitic one from the M.T. Would an Ishmael-

itic editor have left out one of the baraitas of his school...?

XIV.

Here too we have the Biblical proof text introduced by **כְּעֵינִי שְׁנֵאמַר**, indicating its probable Ishmaelitic origin. In a variation of texts, M.T. has **לֹא יוֹדֵעַ אֲנִי**, which might be a variant of **אֲנִי יוֹדֵעַ**, also an Ishmaelitic phrase, but in three places in the Mekilta (and in Sif. Deut. 312) where this occurs³⁵ it is always followed by an answer: either from a Tanna, or by **מִמֶּה חִלְמוֹד לֹאמַר**. The M.T.'s version of our passage, then, cannot be seen as a variant of this supposedly Ishmaelitic phrase. From the phrase **כְּעֵינִי שְׁנֵאמַר**, it would seem to stem from the School of Ishmael.

XV. **וְאָמַר אֵלֶיךָ רֵאשִׁי שְׁבִטִיכֶם...**

As Albeck points out, the interpretation of **לִפְנֵי** as verbal persuasion is found throughout both the halakic and the aggadic midrashim: Albeck cites Mekilta Beshallah Va-yehi (H-R. p. 88), Sif. Num. 92 (H. p. 93), Sifra: Mek. deMilluim Zav 2, Sif. Deut. 305, Gen. Rab. 16:5, Num. Rab. Korah (beginning), Kohelet Rabba, 10:8.³⁶ All the passages from the halakic midrashim are in sources assigned to Ishmael, and piska 92 in Sif. Num. begins with the Ishmaelitic formula,

לֵמָּה נֹאמַר לְפָנֶיךָ שְׁהוּא אֹמֵר. But in Gen. Rab. 16:5 we have for the first time authorities associated with this interpretation: in a dispute between R. Yehudah and R. Nehemiah (both Akibists), R. Yehudah interprets Gen. 2:15 (**וַיִּקַּח ה' אֱלֹהִים אֶת הָאָדָם**) literally-- "He brought him up," and cites a proof text; while R. Nehemiah interprets it in accordance with our passage, and also cites a proof text: Hosea 14:3

דברים : קחו עמכם דברים . The other versions--all anonymous--may well have this exegesis in mind, and if so, it would seem to belong originally to the School of Akiba, though it was utilized by the School of Ishmael as well (as its location in Sif. Num. 92 may indicate).

אנשים חכמים:

This is one of the seven virtues (מדות) that leaders should have according to Jethro. M. T. spells out the others, with proof texts, but this is not a necessary indication that this section is Ishmaelitic.

לוטריים:

The initial proof text for identifying לוטריים as Levites is introduced by כענין שנאמר, an Ishmaelitic expression, as we have noted above.

XVI. ואצוה את שפתיכם...שמע בין אחיכם:

This verse is interpreted here in its entirety in the light of the well-known saying attributed to the men of the כנסת הגדולה : "Be patient in judgment" (Avot 1:1), which is used almost as a proof text from Scripture, to sum up the passage.

שמע בין אחיכם:

According to R. Ishmael, if he could acquit the Jew according to either Jewish or non-Jewish law, it made no difference to him which method of jurisprudence he employed. R. Shimon ben Gamliel, however, felt that his explanation of this verse (אחיכם means Jews, as opposed to non-Jews) was unnecessary (אינו צריך), interpreting the phrase thus: listen to the litigants' choice of legal system, and judge in accordance

with their choice. The phrase **אֵינוֹ צָרִיךְ** occurs frequently in all the halakic midrashim except the Sifra. In the examples listed by Albeck³⁷ most are used by one member of the School of Ishmael arguing against another;³⁸ but at least one is an inter-Akibic rivalry.³⁹ The phrase is translated by Lauterbach variously as "Scripture need not tell us this,"⁴⁰ and "There is no need of this proof,"⁴¹ with which latter translation Kittel agrees.⁴² Its purpose seems to be to indicate that a certain interpretation of a verse advanced by a Tanna is unnecessary, either because that interpretation is included in another verse (expressed by the formula **ה"ל** **הרי הוא אומר... מה/ or שכבר נאמר... מה"ל**)⁴³ or because by logical analysis (usually analogy) the interpretation is seen as superfluous.⁴⁴ There is a slight difference in the way the formula is used in Sif. Deut. 36, where not the interpretation but the hermeneutic rule used to derive it is viewed as unnecessary, as we shall note below. (Cf. also our discussion above of the formula **כבר שנאמר** in general). But the phrase **אֵינוֹ צָרִיךְ** as found in our passage follows some of the above patterns. In the first place, in all except the passage from Sifre Zutta, the phrase is uttered by a member of one school against a contemporary of the same school--where here, R. Ishmael's remark is answered by (probably) Rabban Shimon II ben Gamliel II, a generation after Ishmael and not a member of his school. Secondly, although their disagreement centers about a verse, Rabban Shimon ben Gamliel gives no support for his opposition--neither another verse, nor a logical argument; he merely states his own case. It may be that he is saying that R. Ishmael's harshness is not necessary (**אֵינוֹ צָרִיךְ**), or it may be that a later redactor affixed the well-known principles of these two to our verse, and since there was no actual discussion, the

formulas employed in the other passages were not entered with them. But since the phrase **אֵינוֹ צָרִיךְ** is used by Akibists as well as by Ishmaelists, and since our passage does not fit in with the structure of this argument in many other places, it would appear that in some way our passage is sui generis, and we cannot use it to determine redaction.

בֵּין אִישׁ:

The principle that orphans are not to be subjected to legal proceedings is expressed in Tosephta Trumot 1:11 and Tosephta Baba Batra 8:15 in the name of Rabbi, and so we may associate this derivation of the principle to the School of Akiba. Although in both Ishmaelitic and Akibic sources we find agreement that **אִישׁ** is intended to exclude the minor,⁴⁵ the inclusion here of Rabbi's legal teaching would seem to give weight to Akibic influence.

בֵּין אִישׁ וּבֵין אַחֵיו:

The word **אִישׁ** by itself connotes the exclusion of a minor; but the **אִישׁ** in connection with **אָחָיו** or **עִמָּתָיו** has an inclusive connotation: it includes women as well. So we find in at least three places in the Sifra, with the inclusive phrase **בְּכָל מְקוֹם**, as here.⁴⁶ Furthermore, in the passages which take **אִישׁ** by itself to indicate exclusion of a minor (see above), one of them--Sif. Num. 129 (H. p. 166)--asks whether the word might also connote exclusion of a woman, but R. Ishmael says no, because that exclusion is based on the word **טְהוֹר** in the verse in question. In Mek. Mishpatim 6 (H.R. p. 269) we have the rule stated by R. Ishmael and R. Yeshiah that all civil laws (**נְזִיקִים**) in the Torah, whether referring to women explicitly (**פֶּרֶט**) or implicitly (**סָמֵךְ**) include women as well as men, since in Num. 5:6 it says explicitly **אִישׁ אוֹ אִשָּׁה**. R. Ishmael states this as a rule without Scriptural derivation; R. Yeshia derives it Scripturally: why

is written (*למה נאמר*)? Because it is written (*אלא לפי שהוא אומר*), *כי יפתח איש בור* --- if a man opens a pit (Ex. 21:33); from which I might think only men were intended. Though R. Yonatan, using *אינו צריך* (see above) objects to this use of Num. 5:6, taking it literally (*לחלמודו*), it appears, from the Akibic citations in the Sifra, that this principle was accepted by both schools. Though from Mek. Mishpatim 6, the original derivation of the principle seems clearly Ishmaelitic.

It is of interest to note in this connection that in the comment to Nu. 5:6 (Sif. Num. 2, H. p. 5) the whole verse is taken as an omnibus statement of all sins not specifically mentioned in the Torah. This explanation is prefaced by the formula *למה נאמר פרשה זאת*, and answered with *לפי שהוא אומר*, referring to a specific legal statement; hence this verse comes to include all laws not specifically mentioned elsewhere. After this we have the principle cited in the previous chapter "Here is a principle (*מדה*) in the Torah: any phrase (*פרשה*) said in one place in which something is lacking and is repeated in another place, is repeated only because something was lacking in it." We may thus understand the phrase

to refer to this principle,⁴⁷
למה נאמר...לפי שהוא אומר as
 Hoffmann et al. believed, and as Mihaly criticizes.⁴⁸ The words

למה נאמר in connection with which *איש או אשה* is used both in Sif. Num. 2 and Mek. Mishpatim 6 are used to clarify an ambiguity in another verse (see our reproduction of Mihaly's outline of the *למה נאמר* syllogism above): the word *אנשים*, or *איש*, can mean either "a man" or "a person"---it is not that the inclusion of *איש* leaves out women, which would be implied had *למה נאמר פרשה זאת* been used.

As an exception to all this, however, we must note Sif. Num. 111 (H. p. 118) on which the inclusion of women as well as men is indicated by the phrase **כל עדת בני ישראל** in Num. 15:25, demonstrating that the principle of inclusion of men and women is hung on other hooks than merely **איש** with its hint of the exegetical paraphernalia of Sif. Num. 5:6 as illustrated above.

In summary, we may say of our passage that though the principle of inclusion of women in such phrases as **איש**, **אנשים**, **אחיו**, etc., is used by both schools, the original foundation in the text seems to have come from the School of Ishmael, as demonstrated in Mek. Mishpatim 6.

XVII. *power 8262 / 622*

A similar interpretation--I shall acquit the poor man, since the rich man is obliged to support him anyway, and he might as well be supported in innocence--is found in Sifra Kedoshim perek 4:2, and the Mekilta de R. Shimon, p. 155, (commenting on Ex. 23:3: "Do not show favor to the poor.") Albeck asserts that the Sifra passage is the original, since the passage from the Mekilta de R. Shimon concludes with Lev. 19:15, "Do not show partiality to the poor," the verse on which the Sifra comments--an example of a carry-over."⁴⁹ It would appear that our passage is not the original, since the interpretation here is only on the poor man, whereas the verse itself mentions both poor and rich. Yet it is difficult to say whether the Sifra or the Shimon passage is really the original, since the same interpretation may well have been attracted to both verses simultaneously. What the source is for our passage is a problem: Hoffmann believes that quotations from the Mekilta of R. Shimon are frequent in this section of the Sifre, but our passage (including the *70c 722*) means to reflect a verse which considers both the poor man and the wealthy man, whereas Ex. 23:3 refers only to the poor man. Lev. 19:15, on the other hand, considers both, and while there is a considerable difference in the language of our passage and the Sifra passage, the idea is still the same. Though Hoffmann considers the Mekilta of R. Shimon one of the sources which R. Hiyya used in his redaction of the Sifra,⁵⁰ it would appear that the Sifra passage is the original here of both the Akibic Mekilta and of our Sifre.

לא תגורר מפני איש:

Finkelstein includes a comment on this phrase which is absent from the Midrash Tannaim, and is not, he believes, part of the essential Sifre, since the next comment on the phrase is not introduced by *אמר ר' אבהו*.⁵¹

XVIII. :אצור

Ten differences between civil and capital cases, the nusah of our passage, is also the form of our Mishnah (Sanhedrin 4:1) where the ten are enumerated. Finkelstein notes that the Naples manuscript of the Mishnah has nine, which Ginzberg claimed was the original version of the Jerushalmi, as handed down by Rabbi, though the Babylonian Talmud preserved the older form of ten, which later editors of the Jerushalmi used to correct their manuscripts, so that now the two coincide. Our Mishnah begins, however, by equating civil and criminal cases--in the methods of cross-examination, using as a proof text Lev. 24:22. We find this association also in Sifra Emor perek 20:9 though with no mention of the differences--though there is a ribbui on ע'י חתח ע'י to show that the two kinds of cases are not similar in regard to the number of men on the court, one of the mishnaic differences between the two. It would appear that the mishnah began with the Sifra passage and expanded upon it to include the other differences, which had already been reduced to a kind of "number-mishnah" of ten.⁵²

ונסע מחורב:

The relation of the snakes and vipers seems to come from Deut. 8:15, where occurs the phrase המוליכך במדבר הגדול והנורא נחש שרץ ועקרב. This is listed in the catalogue of wilderness journeys in Mek. Vayassa l (H-R p. 153) and in Mek. de R. Shimon p. 72, and it is perhaps from here, as Finkelstein suggests in his note to this passage, that the relation to הגדול והנורא was derived. Which is the original source? Since R. Yehudah is mentioned in the catalogue in Mek. Vayassa l, it is conceivable that this is an Akibic source, and that the Mek. de R. Shimon passage is the original. There are no other clues, however.

XIX. ואמר אליכם:

Again this is taken to mean, לא מעצמי , for which, see above.

XX. וחקרבון אלי כלכם:

Epstein and Hoffmann point to the fact that while in our passage the interpretation of this phrase as ערבוניה is anonymous in M.T. p. 11, it is quoted (in small type) in the name of R. Ishmael.⁵³ But as we have noted before, the Midrash Tannaim is not to be relied on for attributions. In Sifre Numbers 136 (H. p. 182) we have an anonymous passage which says merely that this event represented a "gathering" (קריבה) that was not for a Godly purpose--quite different from our passage. But then the passage in which this is found seems to be a potpourri--there is one comment by Akiba and another by R. Eliezer, and so the fact that Sifre Numbers, generally considered Ishmaelitic, does not include our passage, may mean merely that the baraita in which Akiba's and Eliezer's comments were included might merely have lacked an Ishmaelitic comment--and so we cannot really judge the authorship of our passage.

והאמר ושלחה אנשים....

The comments of R. Shimon in our passage and in Sif. Num. 82 (H. p. 79) while similar in tone, are quite different in language. In our passage he speaks in pitying terms (עלובים בני אדם) of the Israelites who did not need scouts to explore the wilderness, but who want them now to inspect the lovely, fruitful Promised Land. In Sif. Num. he places the rebuke in the mouth of God Who accuses the people of not trusting Him to provide, but rather feel they must send scouts to investigate the land for themselves. This verse, he says, is גנות גדולה . It would appear that there were extant to the redactor of our passage two versions--

which is the correct one? In Sif. Num. this remark is preceded by another baraita by R. Shimon; the two occurring together might indicate a more complete, and thus perhaps more accurate, version of a complete baraita on the matter of the spies than the version in our Sife.

The Midrash Tannaim concludes this section with comments (in large type) by R. Yehudah (listed as R. Yudah), R. Nehemiah (an Ishmaelitist), and the Sages--who reflect Ishmael's viewpoint on idolatry. Since the section in our Sife hints strongly of Akibic derivation, it is not surprising that this primarily Ishmaelitic passage should be missing from it.

XXI. ואקח מכם שנים עשר אנשים:

The word ואקח is not here interpreted as verbal persuasion, as it is in piska 15 above--which we suggested might be an Akibic source. This view is strengthened by this passage, where the Ishmaelitic term appears.

But the phrase צריך אני מה gives us problems. Albeck lists it in two places: as a variant of למא נאמר⁵⁴ and as a form of אינו צריך⁵⁵. But there is little justification for the latter identification: as we have seen above, אינו צריך is used to disagree with a stated interpretation of a verse, whereas מה אני צריך is used in at least ten passages⁵⁶ in about the same sense as למא נאמר פרשה זאת to add something which another verse does not mention. In Sif. Deut. 288 and 289 it more closely approximates למי שהוא אומר, since it includes in the syllogism a יכול...ח"ל construction, intending to clarify an ambiguity in the original verse.

Of the eight passages whose intent seems to be that of adding something omitted in another verse, there are two basic formulations of the syllogism:

A

Sif. Deut. 21, 230, 281;
Mek. de R. Shimon p., 17

מה אני צריך

כבר נאמר
מלמד

(מגיד in our passage)

B

Sif. Deut. 31
Mek. de R. Shimon, p. 11, 123, 124

מה אני צריך

והלא כבר נאמר

מה חלמוד לומר

All the passages from the Mekilta of R. Shimon are in the name of R.

Akiba, but as we note they follow two different patterns. In pattern

A, we note that all but our passage uses the supposedly Akibic מלמד-

but of course it is possible that an Ishmaelitic redactor changed מלמד

to מגיד in our passage. Aside from Sif. Deut. 31, all the other

passages are assigned to Akibic sources, and Albeck notes that the formula

מה אני צריך does not occur in the Mekilta or Sifre Numbers.⁵⁷ From

the formula, evidence is strong for Akibism; from the absence of the per-

suation interpretation of ואשח , we cannot be so sure.

XXII.

We here have מגיד alternating with מלמד , and can therefore make no real judgments of authorship.

XXIII.

This piska also appears schizoid: we have a comment by R. Shimon, whose introductory word, עלויים , recalls his comment in piska 20 above, introduced by the same word, which was missing from a parallel passage in his own Mekilta. But the word מגיד also appears here.

XXIV.

בשנאח ה' ארחנו ;;;;:

Here the stam "common proverb" (משל הדיוט) is introduced to demonstrate that the people are projecting upon God their rebellious feelings toward Him:

מה דבלבך על רחמך מה דבלבה עלך: since they despise Him, they sense in Him a dislike for them. In Tanhuma Shallach (Buber, p. 84), the proverb is quoted by R. Jose ben R. Hananiah in the name of R. Ishmael in somewhat different form:

מה בלבך על חורך מה שבלבי עלי.

In both cases Mal. 1:3 ("I love you, says the Lord,") is opposed to our passage ("With hatred the Lord brought us out"), though, again, in somewhat different order. Nonetheless, as we have seen in piska 6, a popular proverb listed anonymously is quoted elsewhere in the name of R. Ishmael--strong evidence that the redactor of this stam passage is of his school. This supposition is strengthened by the Ishmaelitic phrase כענין שנאמר in the succeeding comment to the remainder of the verse.

XXV.

There are a few clues to authorship which seem to point to a non-Ishmaelitic passage: 58 מלמד 59 לא מעצמי אני אומר לכם and a repetition in the Mek. of R. Shimon of the remark, "If you do not believe in what is to come, believe in what has past," But in the Mekilta of R. Shimon this statement is tied not to this verse, but to the conclusion of Ex. 12:12, "אני ה' . But its effect here is much weaker than in our passage, where the reason given for the command not to fear is that the people remember what God did for them in the past, i.e., in Egypt; in the Mekilta of R. Shimon the argument rests on God's actions against the generation of the Flood, much less convincing from an experiential point of view, and one might suspect that the original

locus of this remark was in our passage, where, furthermore the verse seems to parallel the remark: "The Lord, your God...will fight for you in accordance with all the things He did with you in Egypt, before your eyes." Perhaps, then, this parallel with the Mek. of R. Shimon is not such a convincing argument for its dependence upon the Akibic Mekilta. And furthermore, we have seen above that neither מלמד nor לא מעצמי אני אומר לכם are irrefutably Akibic expressions.

Thus we may agree with Epstein that the corpus of comment on Parasha Devarim can in no way be ascribed with certainty to the School of Ishmael--yet there are surely Ishmaelitic (as well as Akibic) elements within it; it is, it would seem, a potpourri.

B. PARASHA VA-ETHANAN

B. PARASHA VA-ETHANAN

XXVI. :ןננן

Finkelstein puts in small print the first comment to this word, beginning with the quotation from Proverbs and the discussion of Moses's and David's reactions to the publication of their sins, since he follows two manuscripts (Berlin and the Midrash Hahamim) and the citation in the Genizah fragment and the Yalkut Mahiri, which omit them. The section also, he feels, lacks a relation to the previous parasha and to the context of this one. It is true enough that the previous sections dealt with Moses's relations to the misdeeds of his people, summing them up and offering also promise for future good, and that succeeding comments to this word deal only with Moses's attempt to persuade God to let him enter the Promised Land. Furthermore, while the second comment plays on the word ןננן, the first really has little to do with it. The parable of the king lamenting the three-fold maiming of his son each time he crosses the bridge where the accident took place is quoted in the name of R. Shimon, explicating the thrice-mentioned phrase, מי מריבה. In Lev. Rab. 31:4, the mashal of the king's order against gathering seventh-year fruit is quoted in the name of R. Yehudah; from this it would appear that both parables have an Akibic source. There is another version of it, however, found in Num. Rab. Hukat 19:12, and Sif. Num. 137 (H. p. 184), in which there are two women, to be punished not by the parade around the arena, but by stripes, and the women to be punished for the seventh-year fruit wants her sin to be differentiated publicly from her cohort, a prostitute. Israel is the nimshal for the second woman in Num. Rab., but the nimshal is not spelled out in the Sifre Numbers passage.

Both of these are anonymous, though the citation in Sifre Numbers follows immediately upon a drash attributed to R. Shimon ben Elazar, a pupil of R. Meir,¹ an Akibist. In Sifre Numbers the mashal--which begins with words similar to ours: שְׁנֵי פְּרִנְסִים עָמְדוּ לְיִשְׂרָאֵל --is followed by a general statement that the death of the righteous is always mentioned with their offenses, quoted by R. Eliezer of Modin, an older contemporary of Akiba and Ishmael. But from the Akibic names mentioned above, it would seem that this passage is Akibic in origin.

Is this whole passage suspect, as Finkelstein holds? Surely its context is relevant to the general theme of comments on וַאֲחֵחֶיךָ, viz., Moses's desire to overcome God's refusal to let him enter the Promised Land, since our passage reviews the reason for the refusal. On the other hand it is true that there is no relation in our passage either to the word וַאֲחֵחֶיךָ, or to the Proverbs verse, as there is in the second passage beginning with שְׁנֵי פְּרִנְסִים, and the repetition of those words in the two baraitas is surely suspicious. But in Sifre Zutta to Num. 27:14 (H. p. 319), "because you rebelled against me," Moses asks God why he is being punished by exclusion from the Holy Land and is answered by Num. 27:14, כֹּאשֶׁר מָרִיתָם בִּי "Because you rebelled against me...(at)

מִי מָרִיבָה." This comment is tied to Job's similar question on the source of his punishment, answered by Job 2:3: וַחֲסִיתָנִי בּוֹ לְבַעַלּוֹ חָנָם; "you moved me against him, to take mastery of him without cause-- חָנָם the same word (though with different meaning) used in the second baraita to וַאֲחֵחֶיךָ. Thus it appears that in the chain of comment on Moses's transgression at Meribah as relating to his exclusion from the Promised Land there was a relation to וַאֲחֵחֶיךָ, and because of this verbal connection our baraita was included here along with the more frequent

references to Moses's prayer for unmerited (חַסְדִּים) rescinding of God's punishment. We may, therefore, see in this passage a closer relation to this verse and its theme than Finkelstein felt was present.

Epstein notes the aggadic introduction to the proof text from Proverbs, וְהָיָה שִׁמְךָ כְּחַיִּים, and this is found also in Deuteronomy Rabba 2:4, where, however, quite different points are derived from the verse. Nonetheless, it may well be that the verse with its aggadic introduction was taken over from an aggadic collection, and then our two baraitas beginning with שְׁנֵי פְרוּסִים were inserted.

לֹאֲמַר:

We have discussed this word and the difficulty in assigning its exegesis solely to the School of Akiba in our explication of piska 5 above. This interpretation of לֹאֲמַר as signifying, "Answer me," is interesting in that its parallels occur in Sifre Numbers 105 and 138, generally considered Ishmaelitic sources. In Sif. Num. 138 the four cases in the Torah in which לֹאֲמַר is to be interpreted this way are quoted by R. Elazar ben Azariah, not really a member of the Akibic or Ishmaelitic School. But in his discussion Bacher notes that the phrase

שְׂאִין ח"ל מֵה"ל appears with Akiba's interpretation of the לֹאֲמַר in the first verse of the Shirat Ha-Yam in M. Sotah 5:4. He notes the use of the phrase also in Mek. Bo 16 (H-R p. 62), in connection with

וְהָיָה שִׁמְךָ כְּחַיִּים,² which parallels a comment in Sif. Deut. 128, thought to be an Akibic section. In Deut. Rabba 2:4, the "Answer me" interpretation of page 41, line 4f (ed. Finkelstein) is specifically said by Akiba, though without the שְׂאִין ח"ל מֵה"ל formula. What may have occurred is that the group of passages interpreted by R. Elazar were transcribed by the School of Akiba (as Deuteronomy Rabba was not) with this formula

and transmitted to this section of our Sifre. We recall that the first baraita to the comment on **וְאֵלֶּיךָ** also bears traces of the School of Akiba, and it is instructive to note that the mashal of the seventh-year sinner occurs in Deut. Rabba as a comment to **לֹא־מֵרָחֵק**, further evidence perhaps for the Akibic origin of our comment, though supporting Finkelstein's doubts of its placement in our Sifre.

XXVII. **אֵתָהּ הַחֲלֻמָּה:**

There is a striking dissimilarity between our passage and the comment on Deut. 3:24 in the Mekilta (Amalek 2, H-R p. 182) and Sifre Numbers 134 (H. p. 180), despite Epstein's remark that similarities in these two passages argue against attributing these pre-Shema chapters to a non-Ishmaelitic source.³ The passage in Sifre Numbers indeed offers, phrase by phrase, an interpretation almost totally at odds with our passage except for the comment on **אֵתָהּ הַחֲלֻמָּה**, which our passage says is a binyan av for all the goodness in the Torah, which Finkelstein explains commentators have equated with the Sifre Numbers passage (which reads, **וְזוֹ מִדַּת טוֹבָה**) to mean that in all goodness mentioned in the Torah there appears God's goodness, though the term **אֵתָהּ הַחֲלֻמָּה** does not occur in the Sifre Numbers passage. Finkelstein rejects this interpretation, however, preferring to interpret our passage and the Sifre Numbers passage to mean that whenever God's goodness is mentioned it means His spiritual goodness and not His material goods.⁴ In any case, for this phrase, and for one of the interpretations of **וְגִבּוֹרֹתֶיךָ**, our passage and the Sifre Numbers passage seem to be in accord. In all other phrases of the verse, however, the two versions are quite different:

Biblical Phrase	Sif. Deut. 27	Sif. Num. 134
אתה החלונת	You freed me from the vows I made to Jethro to stay with him (by commanding me to take the Israelites out of Egypt)	You broke the vow of חרם for those who sacrifice to foreign gods (by having mercy on the worshippers of the Golden Calf)
	You opened a door by which I might pray to you on behalf of my people--perhaps they now will pray for me	You "gave me an in" by letting me advance through the territories of Gad and Reuben ²
		You opened a door to show me (להראותו את עבודך) your miracles
ואת יד	The ten plagues	Your outstretched hand which is over all people
החזקה	(included in the above)	You allowed your מדה הרחמים to conquer your מדה הדין
אשר מי אל בשמים ובארץ	שלא כמדה בשר ודם מדה הקב"ה: An earthly king fears his subordinate and his successor, but You have neither--therefore, why do You not spare me?	שלא כמדה ב"ו מדה המקום: He who is greater than his colleague may overrule his colleague--but none may overrule You.
כמעשיך	(your deeds) in Egypt	in Egypt
וגבורותיך	at the (Red) Sea at the Jordan (דבר אחר)	at the (Red) Sea at the River Arnon (דבר אחר , said of the two words)

In the Mekilta passage, which contains of the Sifre Numbers material only the beginning mashal of the king's son and the concluding comment to

אשר מי אל בשמים ובארץ , the latter has the same idea as the Sifre Numbers passage, but the names of the increasingly superior colleagues are in Greek, as are the names of the subordinate and the successor in our passage; Sifre Numbers has only the Hebrew חבר . It should also

be noted that whereas our passage has a lengthy aggada to to

להראות את עבדך , discussing all the Biblical personages who either called themselves and/or were called עבד , this is totally lacking in the concise, seriatim comment of the Sifre Numbers and indeed seems an intrusion into the similar style of our passage. The comment on this phrase in Sifre Numbers is included, as we have noted, in the comment on החלום .

What are we to make of these distinct variations? Binyan av is one of Ishmael's 13 middot, but Bacher notes that this simple use of the term is found often in Akibic strata of the Sifra, but only once in Ishmaelitic strata: in Mek. Yitro 3 (H-R p. 213)⁶. But the authorship of this Mekilta passage, too, is somewhat circumspect, since it contains a מלמד and a

יכול...ה"ל, terms associated by our critics with Akibic strata.

Ishmael's use of the midah is much more complicated, as Mek. Mishpatim 5 (H-R p. 268f), Bacher's example, demonstrates. On Bacher's evidence, we may associate our passage, in which the term binyan av is specifically mentioned, with an Akibic stratum, and attribute the difference to the Ishmaelitic origin of the Sifre Numbers passage and perhaps also the Mekilta Amalek passage, disregarding the Greek. Though we speculated above (p. 73) in reference to piska 4, that the interpretation of הוֹאֵל (our line 11, p. 41) as "oath," seemed to be Ishmaelitic, the varied forms of that interpretation bothered us. Now we have an acceptance of this interpretation by what appear to be both Akibic and Ishmaelitic sources in our passage and in Sifre Numbers, and our hesitancy expressed above as to the origin of this interpretation still holds.

XXVIII. אַעבֶרָה נָא וְאַרְאֵה:

The differences between our passage and Sifre Numbers 134 continue. Sifre Numbers interprets נָא as בִּקְשָׁה, and though our passage reads ...אִפְשָׁר שֶׁהִיא מִשָּׁה מִבְּקֶשׁ--apparently assuming the exegesis of נָא --it goes on to question how Moses could ask again, (considering God's previous clear prohibition) and introduces a parable totally missing in the Sifre Numbers, where the main concern is on נָא. Since the exegesis of this word is frequent, it is not necessary that our passage drew upon the Sifre Numbers passage. In our passage, the word אַרְאֵה is included in the exegesis of אַעבֶרָה; in Sif. Num., it is given special significance: it is the land of Canaan that Moses wants to see, and not the portions of Reuben and Gad on the near side of the Jordan--but here we have a problem, for this remark is quoted in the name of R. Yehudah in Sif. Num., but this does not necessarily exclude an Ishmaelite redactor including his name.

הָרַר הַטּוֹב הַזֶּה וְהַלְבִּנוֹן:

Unlike Sif. Num., our passage comments on הָרַר, but this is another compendium like the exposition of עֵבֶר in piska 27, and it too seems like an addition from an aggadic source. The comments on וְהַלְבִּנוֹן are likewise quite different: though both accept it as a synonym for the Temple, different verses are used as proof (though Albeck notes that one school will sometimes base a proof on different verses). The Sif. Num. passage also mentions the view of some that הַלְבִּנוֹן refers to the kings, which view we have previously noted in piska 6, though here no proof text is offered. Attributions are harder here than in the previous piska--but we must notice the difference between our passage and Sifre Numbers 134.

XXXI. שמע ישראל:

It was Epstein's contention that from this chapter on we face primarily an Ishmaelitic stratum--but he selected a poor chapter with which to begin. True, it begins with the so-called Ishmaelitic expression

למה נאמר --but it is surely a strange use of it. We have cited above Mihaly's outline of the structure of the typical למה נאמר syllogism (see p. 78), but in several areas this does not follow it: the citation in Step C of the second Biblical verse (here, דבר אל בני ישראל --Ex. 25:2), generally includes a warning of an omission, or an ambiguity present in the title verse, Step A (שמע ישראל), but no ambiguity is present here, nor is there any אין לי or יכול followed by ה"ל, rectifying the ambiguity on the basis of the second verse; the verse from Ex. 25:2 seems merely a re-statement of our own verse--and though there is the phrase אין כתוב כאן, seemingly equivalent to

אין לי, this phrase introduces the implication from Ex. 25:2 that Jacob (Israel) specifically is mentioned, to the exclusion of Abraham and Isaac--but this implication is not rejected, as in the regular

למה נאמר formula, but is accepted--and the proof of Jacob's purity of descendants takes up the rest of the comment. Mihaly defines the

למה נאמר syllogism thus: "not to imply that the verse is superfluous but rather that it teaches a special lesson--a lesson necessary because of a possible ambiguity or an erroneous implication in another verse."⁷ From our use of the formula it is clearer than in most instances that indeed superfluity is not intended--and it is only on this basis that the formula is used, for there is no ambiguity or erroneous implication which the Ex. 25:2 verse clarifies; Ex. 25:2 merely shows that the word ישראל is

meant to teach a lesson, that the word is intentional, and not accidental. Thus, because of the considerable dissimilarity of our use of **למה נאמר** and the general pattern of its syllogism, it is doubtful that we can claim Ishmaelitic authorship on the grounds of that phrase--since the general Ishmaelitic usage is not found here.

Inserted in the description of Jacob's posterity is a baraita of R. Shimon ben Yochai detailing some of his interpretations which he considers superior to Akiba's. Finkelstein considers this a late addition to the Sifre (prior to R. Hananel), on the basis of context and of its omission from Midrash Tannaim (i.e., the Midrash Ha-Gadol) and of Midrash Hachamim. It surely appears to be inserted, and if it was added as late as the time of Hananel ben Hushiel (10th century), the question of Akibic or Ishmaelitic redaction is quite irrelevant. The passage itself, since it deals with an intramural dispute of a disciple with his master Akiba, would seem to be of Akibic origin. But whereas in our passage, Akiba interprets Gen. 21:9 as idolatry on the part of Ishmael, in Genesis Rabba 53:11 and the Yalkut Shimoni (#94, p. 55), Ishmael holds that it signifies idolatry, and Akiba says it signifies incest (**גילוי ערוה**), while in Tosephta Sota 6:6, while Akiba interprets the verse as idolatry, Ishmael says it means murder, and R. Jose the Galilean prefers incest. Finkelstein says that the version from the Yalkut comes from the Tosephta, but considering its similarity here to the comment from Genesis Rabba, and to the fact that it appears as a comment to the Genesis verse, its reliance on Genesis Rabba seems stronger. There appear to be no marks identifying the frequent discussion of the purity of Jacob's line or the elaborate discussion here of Reuben's ultimate justification, as belonging to either school.

Back to the Shema itself, the statement מיכן אמרו indicates what Finkelstein claims is the earlier law, which is cited in the Mishnah in the name of R. Yose in opposition to the stam Tanna Kama, whose opinion is that the Shema need not be said aloud.

ה' אלהינו:

The formula למה נאמר והלא כבר נאמר follows the regular form of the syllogism as we have outlined it above (p. 78f), though the solution to the seeming superfluity of ה' אלהינו (if He is One, then of course He is ours, too; but the obligation to praise Him is particularly incumbent upon us), is not prefaced by any introductory word or particle. In the Mekilta, Mish. 20 (H-R p. 334) not החל but יחד is used: it is Israel's special duty to unify God's name, which seems to be a preferable reading, though for our passage only one manuscript has it. The section of the Mekilta where this comment appears (in connection with Ex. 34:23) is replete with formulas such as mark our section, and it appears that both these comments are Ishmaelitic--or at least use the formula in the same way. In the confrontation of the two parts of Ex. 34:23, our passage uses מה אני צריך as an exact synonym of the למה נאמר in Mek. Mish. 20. It is thus different in several ways from the usage in a dialogue of controversy as we have seen on p. 88 above: there is no controversy, the מה אני צריך is only hypothetical, it is not the interpretation of the verse but the verse itself that is called into question (and so must be hyperbolic). This use of the formula, then, is not typical, and must be considered as a mere substitution for the more widely used למה נאמר, which is apparently an Ishmaelitic expression, while we have seen that the regular מה אני צריך formula is used by both schools. This applies to all occurrences of the phrase in this section.

XXXII. ואהבת:

The phrase כענין שנאמר would seem to mark the דבר אחר as Ishmaelitic, as we have noted above.

בכל לבבך ובכל נפשך:

The comments on these two phrases are drawn from several Tannaim. An interesting comment is R. Akiba's to בכל נפשך ובכל מאריך, where he suggests a hypothetical superfluity of ובכל מאריך on the basis of a kal v'homar, and then indicates by a play on מאד and מדה that a special meaning is intended. Aside from the play on the word, this reads very much like the למה נאמר הלא כבר נאמר formula discussed above. That it is not used here would seem to indicate that there was no Ishmaelitic tampering with this comment.

The various instances of men accepting God's punishment gracefully, (i.e., of loving God no matter what fate He measures out to them) are specifically cited in the name of Akiba in Mek. Bahodesh 10 (H-R p. 239f), though in our passage a kal v'homar is used specifically, where in the Mekilta passage it is only implied (e.g., ואנו שהיינו נאים בטובה

). The parallel between our passage and the Mekilta continues with the various descriptions of the blessings of suffering. The order of citations in the two passages is the same, though in our passage the comment by R. Natan ben R. Yosef is absent, and R. Yonatan's comment on the three good gifts brought by suffering (Torah, the Land of Israel, and the World to Come) is found in the Mekilta in the name of R. Shimon ben Yochai--an Akibist, though this whole baraita is not found in the comment on this verse (Ex. 20:23) in the Mekilta de R. Shimon (page 111f). The presence of the name of R. Yonatan,

a pupil of Ishmael, in our passage in place of R. Shimon in the Mekilta might weigh toward Ishmaelitic redaction, though of course the Akibists R. Eliezer ben Yakov and R. Meir remain. The passage continues with the visit of Rs. Tarphon, Joshua, Elazar ben Azaria, and Akiba to the ailing R. Eliezer, and the sick man's preference of Akiba's notion of the value of suffering. Our passage concludes with R. Meir's summary of our verse, which considers its three parts as lessons from the lives of each of the three Patriarchs, thus somewhat rehabilitating the omitted Abraham and Isaac of piska 31. He takes וְאַהֲבָה as a reference to Abraham, as does the anonymous comment of the דְּבַר אֱחָד⁸, though based upon a verse in which Abraham is called a lover of God, whereas the earlier stam passage is not tied so closely to its verse; his interpretation of בְּכָל נַפְשׁוֹ, applying to Isaac's willingness to sacrifice himself, echoes the universal interpretation above of giving one's life for the love of God, but his interpretation of וּבְכָל מַאֲדָּךְ as מִוֹדָה is new--though the notion of thanking God is surely inherent in Akiba's interpretation of the word as well.

In sum, therefore, the majority of comment in this section is Akibic, though in one place an Ishmaelitic hand may have changed one name--though of course an Akibic change in Sifre Numbers is also possible.

XXXIII. וְהָיוּ הַדְּבָרִים הָאֵלֶּה:

Rabbi, a disciple of Akiba's disciples, uses Ishmaelitic formulas, לְמָה נֶאֱמַר לְפִי שְׂנֵאמַר, as well as אֵינִי יוֹדֵעַ, (probably also Ishmaelitic) where this follows the pattern we have noted above (page 86). Albeck notes the difference in the interpretation of הָיוּ between our

passage and piska 58:⁹ our passage sees the word as implying enthusiasm-- as though you had just received the ordinance; while piska 58 mentions this too (though it mentions Mount Sinai specifically without the contemporary reference), it concludes with the idea of fluency (נְגִילִים בְּפִיכֶם). But really the two are very similar, and indeed piska 58 interprets fluency as: "as though you had heard them today." This bears against a clear distinction between our section and the middle section of the Sifre-- though of course this is an aggadic comment. Nonetheless the interpretation of the word הַיּוֹם seems constant.

על לבבך:

Finkelstein cites Horovitz's view that R. Yeshai'a (an Ishmaelist) reads אֱלֹהֵי הַדְּבָרִים as אֱלֹהֵי הַדְּבָרִים : there should be a verbal oath upon your יָצַר , (to prevent you from committing a passionate act) thus interpreting לבבך in accordance with an accepted stam interpretation of the previous piska. To justify this reading, Finkelstein notes two occasions in which R. Yeshai'a does change the reading: מִצֹּחַ to מִצֹּחַ in Mek. Bo 9 (H-R p. 33) and מִסְתַּחֵי to מִסְתַּחֵי in Mek. Bo 7 (H-R p. 25).¹⁰ In any case there here appears a clearly Ishmaelitic passage--set right next to what appears to be an Akibic one.

In these three passages, therefore, we must conclude that there is not strong evidence for either Ishmaelitic or Akibic authorship, but rather the nature of the material is much like that in the previous chapters. Let us look finally at the last chapters in the so-called Ishmaelitic section, and the first chapter of the so-called Akibic section of the Sifre.

LII. לא יתיצב איש בפניכם:

What appear to be Ishmaelitic expressions follow one upon the other in the comment to this verse; אין לי אלה...; מניין; מניין

ח"ל; כענין שנאמר

The first appears many times in the Mekilta--though often with שומע אני, the second, as we have seen, is also found frequently in Ishmaelitic sources. Admittedly the למה נאמר is not used in the same way as it is when it appears with לפי שנאמר, but rather we have a klal u'frat here, though without the terms (and correctly, since the principle is here used on only one word): איש is a klal--a general term for all people; it is also a prat--specifically indicating Og. We have noted above (page 89) the particular Ishmaelitic fondness for איש as including woman as well as men, and in chapter 16 the phrase בכל מקום was used to indicate this inclusion--though in our comment to that passage we noted its use with such words as את and עמית.

פחדכם ומוראכם:

The first refers to near peoples, the second to far-off ones. Here פחד is first in the pair, in Mek. Beshallah 9 (H-R p. 148) in the phrase אימחה ופחד, פחד is still interpreted as near, indicating something of a uniform tradition for this word (אימחה there is interpreted as far off; comparing the two passages may indicate that פחד is the governing word).

Attracted by the example of the residents of Jericho in whom news of the splitting of the sea brought much fear, a series of statements follows which explicate the explicit mention of a member of a group in addition to the name of the group. Bacher notes that this derives from Ishmael's eighth hermeneutic rule, כל דבר שהיה בכלל ויצא מן הכלל, לא ללמד על עצמו יצא, אלא ללמד על הכלל כולו יצא:

Any general statement followed by a specific statement (referring to a member of the general group) does not teach something about the specific, but about the general. In the 32 middot of R. Eliezer ben Jose the Galilean, this becomes #24 and #25,¹¹ of which our interest is in the former, which is really a contradiction of Ishmael's rule: **דבר שהיה:**

בכלל ויצא מן הכלל, ללמד על עצמו יצא:
the specific mention of a group member tells something about the member himself--in our cases, that each one was equal in strength, or honor, to the entire group. The language of this rule is used in our passage, and so it would appear that this passage is later than Ishmael himself, though his pupils may have enlarged the rule which R. Eliezer, a contemporary of their generation, later codified.

יתן ה' אלהיכם:

Here too we have a typical use of the apparently Ishmaelitic **למה** **נאמר לפני שנאמר** used to show that the pilgrims need not fear for the safety of their properties and possessions while they are away in Jerusalem.

כאשר דבר לכם:

There is frequent discussion in the Tannaitic midrashim about the exact statement which is referred to in such phrases as ours--"as (or when) He said to you..." In our passage and in Mek. Bo 12 (H-R p. 39) **כאשר** is taken as "when," and the speech to which the Tanna thinks Moses is referring is prefaced by **היכן**. In Sif. Deut. 75 and 116, however, the translation "as" is preferred--and in each case a different speech is recorded. The general context of piska 75 seems to be Akibic (names and such phrases as **למה... יכול**), as does piska 116 (a non-Mekiltic use of **למה... יכול**, R. Yehudah, **מנין**), further support for what seems to be a definite Ishmaelitic tinge in all of piska 52.

LIII.

This piska begins with what would seem to be a typically Ishmaelitic למה נאמר לפני שנאמר. But Friedmann notes that the first part of the formula is missing in many of his manuscripts,¹² and it is clear that this does not follow the structure whose outline we have noted above. Our suspicions are first aroused by the unwonted explicitness of the statement of ambiguity: "Lest Israel say, 'because God gave us two paths, the path of life and the path of death, we may walk in whichever we wish,'" no יכל or למה ח"ל, no brief two-or three-word summary of the difficulty. But there is a more significant difference: ordinarily, the title verse remedies an ambiguity in the second verse; but in our passage, the ambiguity and the remedy are both in the second verse, Deut. 30:19: "Life and death have I set before you this day, a blessing and a curse;" (ambiguity: I might choose either life or death--the statement of ambiguity quotes these words); "therefore, choose life" (remedy: here is the choice you must make). This is in no way a proper use of the למה נאמר לפני שנאמר formula, which is used almost always with two verses, of which the title verse offers the remedy. Our title verse is merely a hook on which to hang a midrash of an internal difficulty within another verse, and so we cannot with surety attribute the passage with this uncommon use of an Ishmaelitic formula to the School of Ishmael.

There are no other clues as to schools in this piska; it is comprised primarily of two meshalim, one in the name of R. Jehudah ben Karha, a contemporary of R. Eliezer the son of R. Jose the Galilean, who figures along with his father in the next piska. There is no special terminology, but we may conjecture that considering the frequent mention of R. Eliezer ben R. Yose the Galilean in piska 54, his contemporary ben Karha in this

piska, and the presence of one of R. Eliezer's middot in piska 52, that these three passages may have been redacted either by him, or by a later member of his school--and that thus Ishmaelitic-Akibic criteria are quite irrelevant.

LIV. :והקללה שלא חשמועון:

Moses and Jacob both refrained from chastising their people until the time of their death, after they had witnessed all the miracles which God had performed for them. It is the latter which draws the mention of Deut. 1:4, though these phrases and this comparison ~~are not found in the~~ comment on this verse in piska 3, where authorship was indeterminable--thus it must be here, though it appears to stem from a different source--perhaps also of R. Eliezer ben R. Yose.

:מן הדרך אשר צויתי:

The emphatic mention here of idolatry might indicate Ishmaelitic authorship, though we have no other clues. In any case, because of the frequent mention of R. Eliezer, son of the Galilean R. Jose, at the start of this piska, it seems clear that an Ishmaelitic hand was not the last which touched it.

IV. :והיה כי יביאך:

This, as we have noted above, is taken as an Akibic exegesis because of the special interpretation of **והיה** as "immediately." There follows a **כבר נאמר** construction, showing that the names of the mountains had been mentioned elsewhere, and so the verse demonstrates instead that there are certain similarities between blessings and curses--the author

utilizes a hekkesh. One of these similarities is that both blessings and curses are given לכלל ופרט—generally and specifically—though this does not imply an Ishmaelitic midah. Furthermore the אח of

אח הנרכה is here interpreted—not, however, as a ribbui, but as an indication that only this specific blessing, and not all of them, precede curses. This reminds us of the discussion between Akiba and Ishmael over Genesis 1:1, (Gen. Rab. 1:14), in which Akiba refrains from translating *See note of Tharston*

אח העמית as a ribbui; thus there is evidence here for Akibic redaction, though the כבר שנאמר formula is used in common.

LVI.

Here the polemic against the Samaritans—whose holy places were on Ebal and Gerizim—continues, in the name of two Akibists, R. Yehudah and R. Eliezer ben Yakov, but also in the name of our friend R. Elazar ben R. Yose the Galilean, indicating a later redaction than the immediate disciples of Akiba. A gezera shava is used here, but it is difficult to judge a school by this, since it is used for a geographical purpose, and so the Ishmaelitic rule of מופנה בצד אחד is not really applicable.

There seems justification, in these two piskaot, for seeing Akibic influence—surely here there are no Ishmaelitic names, and the exposition of אח is new to us. In the next piska, we are attracted by the notion of אשר ה' אלהיכם נוהן לכם in connection with זכות אבות, which as we have noted above is probably an Akibic conception. But whether with piska 55 we have a break with Ishmaelitic material is more difficult to assess, since as we have seen, many hands seem to be at work in most of the so-called Ishmaelitic midrashim we have noted. Can we judge a school

by terminology, if in various places that terminology is used in different ways (as in piska 53 et passim)? It would seem unlikely that variations of a generally established syllogistic pattern of terminology would all stem from the same school as the typical pattern--and under whose influence the pattern was changed is quite difficult to determine. And since there appears to be so much mixing of names and terms in the "Ishmaelitic" section, can it really be said that the "schools" have any role in informing the midrashim? Albeck denied that the collections could really be attributed to schools, but he did divide up the collections in much the same way as Hoffmann and Epstein did--and considering his acceptance of the basic divisions, Epstein was correct in noting his often niggling objections to attribution of a work to a school. But it is extremely questionable whether we can consider whole collections to be from a particular school (even "the school of Mekilta-Sifre Numbers," or "the school of Sifra-Sifre Deuteronomy," in Albeck's terms). We can see patterns in terminology in terms of syllogistic structures, and see carry-overs in that way, and we can compare exegesis of identical or similar verses, as Albeck noted; but whether from this contextual form criticism will come attribution to the Schools of Akiba and Ishmael is doubtful; more likely is an attribution to patterns of syllogism, or patterns of exegesis of similar verses. There are perhaps too many exceptions and suppositions in the work of our critics, as we have tried to show from our utilization of their criteria to these sections of the Sifra, to warrant further adherence to the Akiba-Ishmael School theory. Like the overburdened Ptolemaic universe, perhaps it too should be abandoned.

FOOTNOTES

CHAPTER ONE

INTRODUCTION

1. Except by Chanoch Albeck, Untersuchungen über die halakischen Midrashim, (Berlin, 1927).
2. See Max Seligsohn, "Isaac Hirsch Weiss," Jewish Encyclopedia, vol. 12, p. 497, and David Hoffmann, Review of Halevy's Dorot Ha-Rishonim in Zeitschrift für hebraische Bibliographie, (1900), vol. 5., p. 100.
3. Zunz, whose Gottesdienstliche Vorträge (Ha-Derashot B'Yisrael) appeared in 1845, 15 years before Frankel's Darkey Ha-Mishnah, devotes essentially one paragraph to the Tannaitic midrashim.

A. MIDRASH AND MISHNAH

1. Zechariah Frankel, Darkey Ha-Mishnah (Warsaw, 1923), p. 325.
2. Isaac Hirsch Weiss, Dor Dor V'Dorshav, Vol. 2 (Wilna, 1904), p. 201.
3. Albeck, Untersuchungen, p. 1.
4. George Foot Moore, Judaism in the First Centuries of the Christian Era (Cambridge, 1958), p. 150, note 2.
5. Jacob Z. Lauterbach, Rabbinic Essays (Cincinnati, 1951), p. 164.
6. Ibid., p. 165.
7. Ibid., p. 166.
8. Frankel, op. cit., p. 3.
9. Ibid., p. 2f.
10. Jacob N. Epstein, Mevo'ot l'Sifrut Ha-Tannaim (Jerusalem, 1957), pp. 506-508.
11. Lauterbach, op. cit., p. 210.
12. Ibid., p. 230.
13. Epstein, op. cit., p. 508.
14. Lauterbach, op. cit., p. 236.

15. Epstein, op. cit., p. 510; Pesahim 66b.
16. Alexander Guttman, "Akiba, 'The Rescuer of the Torah,' HUCA vol. XVII (Cincinnati, 1942-3) indicates that this phrase, found in Sifre Deuteronomy ch. 48, signifies that Akiba saved the "Torah" from the uselessness of the current organization of its halakot and midrashim by author, by collecting it in terms of type of material-- mishnah, baraita, midrash halakah and aggada.
17. Henrich Graetz, Divrey Y'mey Yisrael (tr. S. P. Rabinowitz), who notes Abot de R. Natan 18 (Nusha *) and Gittin 67; vol. 2, (Warsaw, 1893), p. 189; Frankel, Darkey Ha-Mishnah, p. 123, Weiss, Dor Dor, vol. 2, p. 101 (with reference to J. Shekalim 5:1); Lauterbach, "Mishnah," JE, vol. 8, p. 611.
18. Epstein, p. 535. The cases deal with 1) the Toraitic ספר כריחות which in the halakah can be written בכל דבר ;
2) במרצע --the awl with which the slave is to be marked for life, while the halakah permits אמילו בסול או בקוץ and
3) וכעו בעפר --in regard to a sacrifice--while the halakah permits covering בכל דבר צמח מן האדמה.
19. David Hoffmann, Zur Einleitung in die halakischen Midraschim (Berlin, 1886-87), p. 11.
20. Ibid., p. 12.

B. AKIBA AND ISHMAEL

1. Louis Finkelstein, Akiba: Scholar, Saint, and Martyr (New York, 1962), p. 166.
2. Ibid., p. 22f; Weiss, Dor Dor, vol. 2, p. 97: Abot de R. Natan, pp. 14b-15b.
3. Tosephta Shevuot 1:7; Genesis Rabba 1:13.
4. Graetz, op. cit., p. 182.
5. Weiss, op. cit., p. 97 (J. Pesahim 6:3 ff).
6. Nahum was said to have foundered, in his interpretation of אה , over the verse, אלהיך חיה (Deut. 6:13, 10:20), until Akiba explained that the אה was a ribbui to include one's teachers, respect for whom should be like one's respect for God. Graetz, p. 188.
7. Ibid., p. 180.

8. Frankel, op. cit., p. 118.
9. Weiss, op. cit., pp. 99, 100.
10. Graetz, p. 181.
11. Frankel, p. 116.
12. Ibid., p. 119.
13. Ibid., p. 121; Weiss, op. cit., p. 102; Graetz, op. cit., p. 188.
14. Frankel, p. 121; Graetz, p. 188; Hoffmann, Einleitung, p. 9; Epstein, p. 536.
15. Frankel, p. 121; Graetz, p. 188; Epstein, p. 535.
16. Hoffmann, Einleitung, p. 10; Epstein, p. 535.
17. Frankel, p. 122; Epstein, p. 534.
18. Graetz, p. 188; Hoffmann, Einleitung, p. 6; Epstein, p. 524.
19. Weiss, op. cit., p. 103.
20. Ibid. His example is נח טט explaining the Biblical טטח by two African words (Sifre Deuteronomy, Piska 35).
21. Weiss, op. cit., p. 104.
22. In Abot de R. Natan perek 37, p. 55b (Shechter edition) and in Tos. Sanhedrin 7:11, it appears הלל דורש מכלל ופרט ומפרט וכלל. In the Baraita of R. Ishmael in the Sifra it appears merely as כלל ופרט.
See also Wilhelm Bacher, Die Älteste Terminologie der Jüdischen Schriftauslegung, vol. 1 (Leipzig, 1899), p. 80.
23. See Genesis Rabba 1:13, B. Shavuot 26.
24. Weiss, op. cit., p. 92; Finkelstein, Akiba, p. 332, note 2.
25. Weiss, (op. cit., pp. 183-185), who does not like Akiba, emphasizes this, while Finkelstein, who does, belittles the influence that the "plebeian" Joshua had on Ishmael.
26. Graetz, p. 188, Bacher (Terminologie, p. 109) equates this with Ishmael's principle כלל ופרט וכלל.
27. Albeck, op. cit., p. 15 (Sifre Zutta to Num. 15:38). Frankel (p. 123) also notes instances where Akiba uses כלל ופרט.
28. Epstein, p. 529f. An example is found in Sifre Numbers חקת #124.
29. Sifre Numbers שלח #112.

30. See Albeck, 45f. and Eugene Mihaly, "A Rabbinic Defense of the Election of Israel," offprint from HUCA, vol. XXXV, (Cincinnati, 1964), p. 38.
31. Epstein, p. 532.
32. Cf. Mekilta Bo 15 (ed. Friedmann p. 18a), Bahodesh 10 (73a); Mishpatim 10 (86a).
33. Frankel, p. 113; Weiss, p. 93; Epstein, p. 534. But Bacher (Terminologie, p. 59) notes three places in which Ishmael also interprets an אם as obligatory--Ex. 20:25, Ex. 22:24, Lev. 2:14.
34. Epstein, p. 535.
35. Graetz, p. 192; Hoffmann, Einleitung, p. 6; Epstein, p. 534.
36. Weiss, p. 97; Hoffmann, Ibid.,; Epstein, Ibid.
37. Frankel, p. 116.
38. Pesahim 66b.
39. Frankel, p. 115.
40. Frankel, p. 116; Weiss, p. 97; Graetz, p. 76; Epstein, p. 527. See J. Yebamot 11:1.
41. Epstein, p. 535.
42. Ibid., p. 530f.
43. Ibid., p. 527f.
44. Ibid., p. 524.
45. Weiss, p. 101.
46. Abraham Heschel, תורה מן השמים באספקלריה של הדורות (London, 1962), p. 11.
47. Moses Maimonides, Guide to the Perplexed (ed. M. Friedlander, New York, 1881), p. 90, note 1.
48. Weiss, p. 96.
49. Frankel, p. 121; Hoffmann, Einleitung, p. 12.
50. Finkelstein, Akiba, p. 172f.
51. Heschel, op. cit., p. xlix.
52. Ibid., p. xlii.
53. Ibid., xlvii.

54. See Finkelstein, Akiba, p. 69f; M. Rosh Ha-Shanah 4:1.
55. Weiss, p. 100: "Gamliel did not like Akiba's attempts to publicize his method of investigation and accused him of getting involved in controversies."
56. Quoted by Finkelstein (Akiba, p. 195) from Mekilta Bahodesh 9.
57. Heschel, p. 1.
58. Epstein, p. 536.
59. Weiss, p. 99, note 3: for acceptance, cf. M. Peah 14:5, M. Kelim 2:4. For rejection, cf. M. Maaser Sheni 5:8, Shabbat 84a, and others.
60. Finkelstein, Akiba, p. 92f.
61. Graetz, p. 187.
62. Finkelstein, Akiba, p. 200f.
63. Ibid., p. 200, translated from M. Eduyot 2:9.
64. Midrash Tannaim, ed. Hoffmann, vol. 1 (Berlin, 1908), p. 62, par. 2, note 2.
65. Mekilta Mishpatim 20.

C. THE ATTRIBUTION OF THE MIDRASHIM

1. Louis Ginzberg, "Zechariah Frankel: Address Delivered at the 'Ohole Shem' Meeting," Zechariah Frankel, ed. Gotthard Deutsch, 1902.
2. Gotthard Deutsch, "Zechariah Frankel," JE, vol. 5, p. 483.
3. Frankel, Darkey Ha-Mishnah, p. 325.
4. Moses Maimonides, Mishneh Torah, vol. 1 (New York, 1953), p. 4.
5. Frankel, p. 326, note 6.
6. Ibid., note 7.
7. Ibid., p. 328, note 1.
8. Deutsch, Scrolls: Essays in Jewish History and Literature, and Kindred Subjects, vol. 2 (New York, 1917), p. 296.
9. Ibid. See also Saligsohn, "Isaac Hirsch Weiss," JE, vol. 12, p. 497.
10. Ginzberg, Isaac Hirsch Weiss, p. 8.

11. Ibid., p. 10.
12. Ibid.
13. Weiss, Dor Dor, vol. 2, pp. 204, 203.
14. Ibid., p. 202f.
15. Ibid., p. 205.
16. Ibid., p. 209.
17. Ibid., p. 209f.
18. Ibid., p. 206.
19. Ibid., p. 211.
20. Ibid., p. 210f.
21. Ibid., p. 203.
22. Bachem, Terminologie, p. 88, note 6.
23. Hoffmann, Review of Halevy, Dorot Ha-Rishonim, op. cit., p. 100.
24. Alexander Marx, "David Hoffmann," Essays in Jewish Biography (Philadelphia, 1947), pp. 207-210.
The Sifre Zutta was included at the end of Horovitz's edition of Sifre Numbers.
25. Mihaly, "A Rabbinic Defense," p. 35f.
26. Hoffmann, Einleitung, p. 16.
27. Ibid., p. 35.
28. Ibid., p. 16.
29. Ibid., p. 19.
30. Ibid., p. 22f.
31. Ibid., p. 24.
32. Yebamot 72b. Quoted by Isaak Halevy, Dorot Ha-Rishonim, vol. 1 (Frankfurt, 1898-1906), p. 543, and others.
33. See Hoffmann, Einleitung, p. 45f.
34. Ibid., pp. 26-28.
35. Ibid., pp. 40-42.
36. Ibid., p. 43.
37. Ibid., p. 43f.

38. Ibid., pp. 52-56.
39. Ibid., p. 66.
40. Ibid., p. 66f.
41. Cited by Epstein, Mevo'ot, pp. 625, 628: in Yahrbuch, vol. 6, and Midrash Tannaim, p. 312.
42. Hoffmann, Einleitung, p. 68f.
43. Ibid., p. 71f.
44. Ibid., pp. 73-80.
45. "Chanoch Albeck," Encyclopedia Ha-Ivrit, vol. 2, p. 368f.
46. Albeck, Untersuchungen, pp. 25, 44, 81.
47. Ibid., p. 83.
48. Ibid., p. 84.
49. Ibid., p. 121.
50. Ibid., p. 126.
51. He cites, for example, uses of יכול and פרט by two pupils of Ishmael.
52. Albeck, p. 85f.
53. Ibid., p. 135.
54. Ibid., p. 137.
55. Ibid., p. 138.
56. Ibid., p. 8, quoting Meir Friedmann, Mekilta de R. Yishmael, p. 13a, note 1, on this use of דבר אחר.
57. Albeck, p. 134.
58. Ibid., p. 1.
59. Ibid., p. 21.
60. Ibid., p. 2.
61. In Mekilta Mishpatim 4, 5, 12; Sifra Zabim, Perek 6:1, 8;7:1; Sifre Numbers 7, 22, 124, 129, 153; Sifre Zutta to Numbers 35:22; Sifre Deuteronomy 16, 238, 245, 255, 273; Midrash Tannaim, p. 142; Mekilta de R. Shimon (Hoffmann edition), p. 135, etc. (Albeck, p. 4).

62. In the Sifra, Sifre Numbers, Sifre Deuteronomy 221, Sifre Zutta, and Mekilta de R. Shimon (Albeck, p. 4f).
63. Albeck, p. 2.
64. Ibid., p. 21f.
65. Ibid., p. 131.
66. Ibid., pp. 28, 44, 81 (See note 46).
67. Ibid., p. 27f.
68. Ibid., p. 29.
69. Ibid., p. 30.
70. Ibid., p. 37.
71. Ibid., p. 84.
72. Ibid., pp. 148-151.
73. Ibid., pp. 129-131.
74. Ibid., p. 135f.
75. Ibid., p. 119f.
76. "J. N. Epstein," Encyclopedia Ha-Ivrit, vol. 5, p. 434.
77. Epstein, Mevo'ot, p. 537.
78. Ibid., p. 540f.
79. Ibid., p. 541.
80. Ibid., p. 542 (Sifra Shemini 3:5).
81. Ibid., p. 539.
82. Ibid., p. 588.
83. Ibid., pp. 566, 550, 588.
84. Ibid., pp. 565, 588.
85. Ibid., pp. 566, 588.
86. Ibid., p. 566f.
87. Ibid., p. 568.
88. Ibid., pp. 578, 588.

89. Ibid., p. 572.
90. Ibid., p. 582.
91. Ibid., p. 566.
92. Ibid., pp. 551, 588, 595f.
93. Ibid., p. 562.
94. Ibid., pp. 584-587.
95. Ibid., p. 583.
96. Ibid., p. 597f.
97. Ibid., p. 564.
98. Ibid., p. 596.
99. Ibid., p. 564f.
100. Ibid., p. 588.
101. Ibid., p. 614f.
102. Albeck, p. 45f.
103. Mihaly, "A Rabbinic Defense," p. 38, note 76; Hoffmann, Einleitung, p. 7; Weiss, p. 105f.
104. Epstein, p. 604f.
105. Ibid., p. 625f.
106. Ibid., p. 626f.
107. Ibid., p. 627f.
108. Ibid., pp. 628-630.
109. Ibid., p. 630.
110. Ibid., pp. 631-633.
111. Ibid., pp. 634-641.
112. Ibid., p. 644.
113. Ibid., pp. 647-652.
114. Ibid., pp. 652-655.

115. Ibid., p. 710.
116. Ibid., pp. 705-707.
117. Ibid., p. 709f.
118. Ibid., p. 711.
119. Ibid., p. 725.
120. Ibid., pp. 728-730.
121. Ibid., pp. 735-738.
122. Ibid., p. 738f.
123. Ibid., p. 741f.
124. Ibid., p. 743.
125. Ibid., p. 744.
126. Ibid., p. 745.
127. Mihaly cites the discussion of it by the various critics ("A Rabbinic Defense," p. 12, note 19), adding that the variant of the expression appearing in the Sifra (עדיין הדבר צריך) is used in a different manner--as is the expression אני אומם in Sifre Numbers.

CHAPTER II

A. PARASHA DEVARIM

1. Epstein, p. 626. But note Bacher, Terminologie, p. 200, n. 3, who says that this is used in non-halakic portions of midrashim of the School of Ishmael.
2. Hoffmann, Einleitung, p. 67. This point, along with the citations of Sifre Zutta (p. 13) is noted also by Epstein, p. 627.
3. Epstein, p. 582.
4. Noted by Albeck, Untersuchungen, p. 24.
5. Mihaly, "A Rabbinic Defense," p. 37.
6. See Finkelstein, Akiba, p. 253.
7. Bacher, Terminologie, p. 82.
8. Epstein, p. 627.
9. Noted by Hoffmann, Midrash Tannaim, p. 2, n. 8.
10. Ibid., p. 1, n. 2.
11. Epstein (p. 627) notes the Akibic origin of R. Benaya.
12. Ibid.
13. Sifre Deut. (ed. Finkelstein), p. 9, lines 9, 13, 15; p. 10, line 1.
14. Gerhard Kittel, Sifre zu Deuteronomium (Stuttgart, 1922), p. 12, n. 5.
15. Albeck, Untersuchungen, p. 84.
16. Bahodesh 4 and Bo 1, with דבר אחר.
17. Sif. Num. 105, 138; Sif. Deut. 26.
18. Sifre Deuteronomy (ed. Finkelstein), p. 19f, n. 12.
19. Albeck, Untersuchungen, p. 20---though he does not call them by this name.
20. Epstein, p. 625.
21. Ibid.

22. Hoffmann, Einleitung, p. 67.
23. Epstein, p. 627.
24. Ibid.
25. Albeck, Untersuchungen, p. 45f; see Mihaly's critique in "A Rabbinic Defense," p. 38, n. 76.
26. Mihaly, p. 39.
27. Hermann Strack, Introduction to the Talmud and Midrash, (New York, 1959, p. 118. His instructors were the Akibists R. Yehudah (bar Elai), R. Shimon ben Yochai, and R. Eliezar ben Shammua--but also the Ishmaelitist R. Nathan; but Strack notes that "he subsequently opposed (him) quite frequently."
28. Epstein, p. 597.
29. Midrash Tannaim, p. 7, n. 10
30. Strack, p. 115.
31. Bacher, Terminologie, p. 177f.
32. Albeck, Untersuchungen, p. 59; Epstein, p. 627.
33. Bacher, Terminologie, p. 175f.
34. Ibid., p. 141. Albeck records these occurrences also but notes that the phrase also occurs twice in the Sifra.
35. Bacher, Terminologie, p. 68f.
36. Albeck, Untersuchungen, p. 5.
37. Ibid., p. 72f.
38. a) Mekilta Bo 6 (end): Ishmael against stam
b) Mekilta Bo 6 ("): Yonatan against Ishmael
c) Mekilta Bo 6 ("): Isaac against Yonatan
d) Mekilta Bo 16 Isaac against Yeshiah
e) Mekilta Bo 8 Yonatan against Ishmael
f) Sifre Numbers 2 Yonatan against Ishmael
g) Sifre Numbers 12 Ishmael against Yeshia
h) Sifre Numbers 26 Ishmael against stam
i) Sifre Deuteronomy 36 Isaac against Ishmael
39. j) Sifre Deuteronomy 109 Eliezer ben Yaakov against R. Yehudah
k) Sifre Zutta 11 R. Shimon ben Pinchas (school?) against R. Yehudah.

40. Mekilta de R. Ishmael (ed. Lauterbach), vol. 1, p. 50f. (to Bo 6).

41. Ibid., p. 63 (to Bo 8).

42. Kittel, Sifra zu Deut., p. 69: "Es bedarf dieses Beweises nicht."

43. See n. 38-39 above: e, f, g, h, i, j.

44. See n. 38-39 above: a, b, c, d, k.

45. E.g.: Mek. Mishpatim 4 (H-R p. 261), 5 (H-R p. 266), 12 (H-R p. 290)--
all with להוציא; Sifra Kedoshim Perek 5:1 and Behukotai
Par. 3:3 and Perek 12:10: איש פרט לקטן; Sif. Num. 7 (H. p.
11), 22 (H. p. 25), 124 (H. p. 157), 129 (H. p. 166), and 153
(H. p. 199): להוציא. In 124 and 129 Akiba and Ishmael
both agree that איש excludes a minor. (Cited by Albeck,
Untersuchungen, p. 4.)

46. Sifra Behar par. 3:9 with	<u>אחיו בכל מקום</u> ; <u>איש את אחיו</u>
par. 6:6 with	<u>באחיו בכל מקום</u> ; <u>איש באחיו</u>
Kedoshim par. 2:4 with	<u>עמיתו בכל מקום</u> ; <u>איש בעמיתו</u>

47. Epstein (p. 535) quotes other cases where this rule (or a form of
it) occurs in juxtaposition with למה נאמר פרשה זאת.

48. See n. 25 above.

49. Albeck, Untersuchungen, p. 41.
50. Hoffmann, Einleitung, p. 27.
51. Sifre to Deuteronomy (ed. Finkelstein), p. 28, note 9.
52. For "number-mishnahs," see Lauterbach, "Midrash and Mishnah," p. 236.
53. Hoffmann, Einleitung, p. 67; Epstein, p. 626.
54. Albeck, Untersuchungen, p. 47.
55. Ibid., p. 73.
56. Sifre Deuteronomy 21 (our passage), 31, 230, 281, 288, 289;
Mekilta de R. Shimon, pp. 11, 17, 123, 124.
57. Albeck, Untersuchungen, p. 84.
58. Sifre to Deuteronomy (ed. Finkelstein), p. 35, line 3.
59. Ibid., line 10.

B. PARASHA VA-ETHANAN

1. Strack, Introduction, p. 117.
2. Bacher, Terminologie, p. 200.
3. Epstein, p. 627.
4. Sifre to Deuteronomy (ed. Finkelstein), p. 43, note 13.
5. Relating to a marshal, found in both the Sifre Numbers and the Mekilta passages, of a king permitting his son to come through several rooms--
but no further.
6. Bacher, Terminologie, p. 9f.
7. Mihaly, "A Rabbinic Defense," p. 38.
8. Sifre to Deuteronomy (ed. Finkelstein), p. 54, line 13f.
9. Albeck, Untersuchungen, p. 84.
10. Sifre to Deuteronomy (ed. Finkelstein), p. 59, note 11.
11. Bacher, Terminologie, p. 80f.
12. Sifre to Deuteronomy (ed. Friedmann), p. 86a, note x.

CORRECTIONS TO NOTE

p. 71 Should read: "We find in this piska quotations by R. Yehudah and R. Benaya, both Akibists, but also by Abba Yose ben Hanin, an Ishmaelitist."

p. 88 6th line should read "this here."

7th line should read "none of the above patterns."

B I B L I O G R A P H Y

I. TEXTS

- Abot de R. Natan (ed. Schechter), New York, 1945.
- Deuteronomy Zutta (ed. Buber), Vienna, 1885.
- Moses Maimonides, Mishneh Torah, New York, Feldheim, 1953.
- Mekilta de R. Ishmael (ed. Friedmann), Vienna, 1870.
- Mekilta de R. Ishmael (ed. Horovitz-Rabin), Jerusalem, 1960.
- Mekilta de R. Ishmael (ed. Lauterbach), Philadelphia, 1933.
- Mekilta de R. Shimon ben Yochai (ed. Hoffmann), Frankfurt, 1905.
- Midrash Rabba (Vilna): New York, 1952.
- Midrash Tanhuma (ed. Buber), New York, 1946.
- Midrash Tannaim (ed. Hoffmann), Berlin, 1908.
- Mishna (ed. Albeck), Jerusalem, 1959.
- Sifra de Be Rav (ed. Weiss), Vienna, 1862.
- Sifre de Be Rav (ed. Friedmann), Vienna, 1864.
- Sifre to Deuteronomy (ed. Finkelstein), Stuttgart, 1939.
- Sifre Numbers (ed. Horovitz), Frankfurt, 1917.
- Sifre Zutta (ed. Horovitz), Frankfurt, 1917.
- Babylonian Talmud.
- Jerusalem Talmud.
- Tosephta (ed. Zuckermann), Jerusalem, 1963.

II. TRANSLATIONS

- Herbert Danby, The Mishnah, London, 1933.
- Gerhard Kittel, Sifre zu Deuteronomium, Stuttgart, 1922.
- Moses Maimonides, The Guide of the Perplexed (tr. Friedlander), New York, 1881.
- The Midrash (Soncino), London, 1939.

Moïse Schwab, Talmud de Jerusalem, Paris, 1871.

The Talmud (Soncino), London.

III. CRITICAL LITERATURE

Chanoch Albeck, Untersuchungen über die halakischen Midrashim, Berlin, 1927.

Wilhelm Bacher, Die Älteste Terminologie der Jüdischen Schriftauslegung, vol. 1, Leipzig, 1899.

Gotthard Deutsch, "Isaac Hirsch Weiss," Scrolls: Essays on Jewish History and Literature, and Kindred Subjects, Cincinnati, 1917.

Articles on Chanoch Albeck and J. N. Epstein in Encyclopedia Ha-Ivrit, Jerusalem.

Jacob N. Epstein, Mevo'ot l'Sifrut Ha-Tannaim (ed. E. Z. Melamed), Jerusalem, 1957.

Louis Finkelstein, Akiba: Scholar, Saint, and Martyr, Philadelphia, 1962.

Zechariah Frankel, Darkey Ha-Mishnah, Warsaw, 1923.

Louis Ginzberg, "Zechariah Frankel," Address Delivered at the 'Ohole Shem' Meeting, Zechariah Frankel, ed. by Gotthard Deutsch, 1902.

Heinrich Graetz, Divrey Y'mey Yisrael (tr. S. P. Rabinowitz), vol. 2, Warsaw, 1893.

Alexander Guttman, "Akiba, the 'Rescuer of the Torah,'" Hebrew Union College Annual, vol. XVII, Cincinnati, 1942-43.

Isaak Halevi, Dorot Ha-Rishonim, vol. 1, Frankfort, 1898.

Abraham Joshua Heschel, תורה מן השמים באספקלריה של הדורות, Introduction, London, 1962.

Jacob Z. Lauterbach, "Midrash and Mishnah," Rabbinic Essays, Cincinnati, 1951.

Alexander Marx, "David Hoffmann," Essays in Jewish Biography, Philadelphia, 1947.

Eugene Mihaly, "A Rabbinic Defense of the Election of Israel," (offprint from the Hebrew Union College Annual, vol. XXXV), Cincinnati, 1964.

George Foot Moore, Judaism in the First Centuries of the Christian Era, vol. 1, Cambridge, Mass., 1927.

Max Seligson, "Isaac Hirsch Weiss," Jewish Encyclopedia, vol. 12, p. 497.

Hermann L. Strack, Introduction to the Talmud and Midrash, New York, 1959.

Isaac Hirsch Weiss, Dor Dor v'Dorshav, vol. 2, Wilna, 1904.

Leopold Zunz, Ha-Derashot b'Yisrael (tr. by Ch. Albeck), Jerusalem, Mosad Bialik, 1954.