Darkhei Ha'Mishnah: Context and Controversy

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Digest

The goal of this thesis is to examine the life and work of Zacharias Frankel, focusing specifically on his *magnum opus*, the groundbreaking *Darkhei Ha'Mishnah*. The first chapter begins by exploring the origins of *Wissenschaft des Judentums*, the critical-historical study of Judaism that emerged in Germany in the nineteenth century, including several of the scholars who helped shape the movement at its outset. The chapter continues with a study of the principles of *Wissenschaft des Judentums* and considers three leaders of the period and their relationship with this scholarly movement. The chapter concludes with a discussion of Zacharias Frankel including his rabbinic career, his conception of positive-historical Judaism and his scholarly achievements. The second chapter focuses specifically on *Darkhei Ha'Mishnah*, beginning with a study of the state of Mishnah scholarship in the first half of the nineteenth century. The chapter then explores three of the most important influences on Frankel's thinking and writing before moving on to a study of *Darkhei Ha'Mishnah* itself, including a detailed outline of its content. The next section of chapter two addresses the responses to *Darkhei Ha'Mishnah* ranging from the immediate and visceral to the later and scholarly. The final chapter consists of five translated sections from *Darkhei Ha'Mishnah*, each including an introduction that contextualizes the section and provides a brief analysis of its contents. The conclusion considers the continued relevance of *Darkhei Ha'Mishnah* within the scholarly arena as well as within the field of progressive *halakhah*.

Dedication

This thesis is dedicated to Peggy Segall-Segal, Joseph Segal, Janet Chaiyah "Little Segal" Jankovic, Ralph "Popi" Segall, Rosalie "Nonny" Segall and Emily Dunn. I would not be here without their love and inspiration. I thank them for always being there for me, supporting me, challenging me and making me better than I could ever be by myself.

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Contents

Introduction

Many of those who study traditional Jewish texts in the 21st century take for granted the opportunity to view these texts through a critical and historical lens. It is often forgotten that this method of study is still relatively young and that its development was in many ways a significant turning point in the history of Jewish learning and thought. Thus it is unexpected that one of the seminal works in this field has been largely ignored and underappreciated by a significant percentage of those who engage in Jewish studies, outside of the scholarly community. Zacharias Frankel's *Darkhei Ha-Mishnah* was a pioneering work in the study of *halakhah* and the Mishnah, yet it remains unknown to many in the Jewish community.

I first became aware of this book's existence during my third year here at Hebrew Union College in spite of the fact that I had spent many years both as an undergraduate and graduate student in the field of Jewish Studies. I was intrigued by the description of the book as a work which sought to place the Mishnah and *halakhah* into a historical context. As my primary academic interests are *halakhah* and history, this work seemed to be worthy of further study. When I inquired further about *Darkhei Ha'Mishnah*, I was informed that the book had never been translated into English. It was at that point that the seeds for this thesis were planted. I wanted to learn more about this work and initially hoped to translate a significant section of it. While in the course of this thesis I have deepened my knowledge of Zacharias Frankel and *Darkhei Ha'Mishnah* considerably, I discovered that the language and content of the book were such that a large-scale

translation was not in the cards. I instead had to be satisfied (for now) with translating several of the sections that I believed to be key to understanding the work as a whole.

The primary intention of this thesis, therefore, is to begin to rectify the general lack of knowledge about Zacharias Frankel and *Darkhei Ha'Mishnah* by providing not only the historical and scholarly context out of which this work emerged, but also a translation of what I believe to be the most important segments of Frankel's work.

The first chapter begins by addressing the rise of *Wissenschaft des Judentums*. In addition to providing general information about this scholarly movement and its origins, three figures central to the movement's development are discussed: Isaak Marks Jost, Immanuel Wolf and Leopold Zunz. Just as these three scholars provided the foundation upon which *Wissenschaft des Judentums* would be built, considering their contributions provides a basis for further discussion of nineteenth century scholarship in general and Frankel's work in particular. The chapter continues with a discussion of the principles of *Wissenschaft des Judentums*, exploring the general scholarly ethos that guided the movement, the relationship between *Wissenschaft des Judentums* and the drive for religious reform, and considering three of the key figures who represent the three dominant viewpoints of this period. The first is Samson Raphael Hirsch, who is included in the discussion because of his role as the primary opponent to both *Wissenschaft des Judentums* and religious reform and the head of the neo-Orthodox community in Germany. Second is Abraham Geiger who was the champion of the radical reformers and one of the greatest scholars of the era in the field of *Wissenschaft des Judentums*. Lastly is Zacharias Frankel who sought to carve out a middle road between the positions of Hirsch and Geiger. Frankel is considered at length, including discussions on his

personal life, his role within the religious reform movement, his development of the concept of positive-historical Judaism, and his scholarship.

The discussion of Frankel's scholarship leads into Chapter Two, which deals with *Darkhei Ha'Mishnah* specifically. The chapter begins with a study of the general state of Mishnah scholarship in the nineteenth century, noting that much of the debate focused on the role of Rabbi Yehuda Ha'Nasi ("Rabbi") and whether the Mishnah was transmitted in written or oral form. This is followed by a discussion of three scholars who were connected to what became known as the "historical school" and whose work had a direct influence on Frankel and *Darkhei Ha'Mishnah*: Nahman Krochmal, Heinrich Graetz and Abraham Geiger. The chapter then turns to *Darkhei Ha'Mishnah* itself, beginning with the technical information (date, publisher, etc.) as well as a discussion of Frankel's use of Hebrew. The discussion then moves to the content of *Darkhei Ha'Mishnah* with an outline provided followed by a brief explanation of what is found in each chapter. Following this, the responses to *Darkhei Ha'Mishnah* are discussed, looking first at the direct responses that came in the immediate aftermath of publication and secondly at three scholars, David Zvi Hoffman, Jacob Bruell and Hanokh Albeck, each of whom addressed *Darkhei Ha'Mishnah* in an indirect way through their own studies of the Mishnah.

The third and final chapter contains five sections of *Darkhei Ha'Mishnah* that have been translated, including for each a brief introduction providing the context necessary for full understanding of each except. These five particular sections were chosen because they address some of the key aspects of Frankel's arguments about the nature of the Oral Law and provide a glimpse into not only the content of his work but its

style as well. There is no existing English translation of *Darkhei Ha'Mishnah* so in addition to its relevance for this thesis, the hope is that these translated sections will begin a process of providing greater access to *Darkhei Ha'Mishnah* for those interested in Mishnah scholarship and/or *Wissenschaft des Judentums*.

Darkhei Ha-Mishnah is a central work in the history of Jewish Studies, yet one must wonder why it has been relegated to the periphery in the study of Mishnah and *Wissenschaft des Judentums*. One must further question why Zacharias Frankel, who played an equally important role in the development of modern Judaism and Jewish Studies as Abraham Geiger or Heinrich Graetz, remains unknown to so many otherwise knowledgeable students of Jewish history. This thesis is intended as a first step towards changing this reality and making those interested aware of both the tremendous contributions made by Zacharias Frankel to contemporary Jewry and the powerful and lasting influence of his *magnum opus* *Darkhei Ha'Mishnah*.

In Search of Middle Ground: Scholarship, Reform and the Life and Times of Zacharias Frankel

It is axiomatic that written work, regardless of its subject, is never created in a vacuum. The social and political context in which a book is developed, along with the personal feelings and experiences of the author, impacts both the style and content of a given work. This may be especially true when one is writing within the genre of history. In the case of Zacharias Frankel's *Darkhei Ha'Mishnah*, the atmosphere of scholarship that existed in his day combined with his personal religious attitude to exert an overt influence on both his thinking and writings. Therefore, in order to fully understand *Darkhei Ha'Mishnah* one must have a firm grasp of the movement out of which it developed: *Wissenschaft des Judentums* (the "Critical-Historical Study of Judaism"). This chapter explores the movement by discussing its origins and principles in general, its relationship to religious reform as well as some of the movement's major figures. One of these individuals is Zacharias Frankel and the second section of this chapter will delve more deeply into his life, career, religious ideology and scholarship. This will provide the foundation for the following chapter which will deal specifically with nineteenth century Mishnah scholarship, focusing on Zacharias Frankel and his *Darkhei Ha'Mishnah*.

Origins of *Wisseschaft des Judentums*

It is difficult to know precisely what triggered the beginning of *Wissenschaft des Judentums* (*WdJ*). Many will cite the development of the *Verein fur Cultur und Wissenschaft der Juden* (Society for the Culture and Science of the Jews) in the second decade of the nineteenth century as the starting point. While this may serve as an 'official' beginning, the true inception of the movement lies in the scholarly and political developments that emerged at the end of the eighteenth and beginning of the nineteenth century. From a political point of view, the French revolution had significantly raised the expectations of the Jewish community regarding their emancipation.[1] This heightened sense of anticipation continued through the end of the eighteenth-century and into the first decades of the nineteenth-century. It was further bolstered by the emancipation experienced during the French occupation of Germany "when civic equality was introduced in all German territories ruled directly or indirectly by Napoleon."[2] This is especially important in light of the fact that most of the members of the *Verein*, as well as a number of the other scholars who would become important figures in the *WdJ* movement, had experienced this brief emancipation. Although it was eventually revoked, emancipation motivated these young men to renew with increased vigor those activities that they thought would hasten the return of emancipation. One of these activities was the study of Jewish history.

The basic notion that knowledge of history is important for Jews was not a *WdJ* development; the idea was extant in the second half of the eighteenth century. For

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[1] Nils Roemer, *Jewish Scholarship and Culture in Nineteenth-Century Germany: Between History and Faith* (The University of Wisconsin Press, 2005), 21.

[2] Lester A. Segal, *Historical Consciousness and Religious Tradition in Azariah de Rossi's Me'or Einayim* cited in Roemer 27.

example, Naftali Zvi Weisel in his *Divrei Shalom ve'Emet* (Words of Peace and Truth) included a study of general history as a part of a new Jewish curriculum, albeit within a certain religiously oriented framework.[3] Although one cannot cite this as the impetus for the kind of critical-historical study of Judaism that is emblematic of *WdJ*, it indicates that the *WdJ* scholars did have a precedent upon which to build. *WdJ* was further influenced by both the scholarly and religious attitudes of German universities during its formative years. A new critical-historical spirit and historical methodology were sweeping Germany and influencing the scholarly culture of the universities. Although relatively few German Jews were entering secular universities, those who did were strongly influenced by this academic culture as well as the prevailing notion that "one who despised his past and was ashamed of it, was regarded as a wretched and deficient human figure by the intellectual and moral leaders of the time."[4] In this social and academic climate, Jewish scholarship began to turn inward and to look at Jewish history and culture through this newly acquired academic lens. This was the beginning of *Wissenschaft des Judentums.* The process of turning inward was accelerated by the fact that German universities, while being open to accepting talented Jewish students, were at the same time

> unwilling to grant them academic chairs in any discipline whatever. Young Jews with aspirations to scholarship were thus forced either to convert, to enter business, or to use their humanistic studies in the cause of Judaism while serving as rabbis of Jewish communities or teachers in Jewish schools[5]

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[3] Yosef Hayim Yerushalmi, *Zakhor: Jewish History and Jewish Memory* (University of Washington Press, 1996), 82.

[4] Benzion Dinur, "Wissenschaft des Judentums" in *Encyclopedia Judaica.*

[5] Michael Meyer, "Jewish Religious Reform and Wissenschaft des Judentums: The Positions of Zunz, Geiger and Frankel" in *Yearbook XVI of the Leo Baeck Institute* (London, 1971), 20.

One can see from this statement that the lack of opportunities in academia led many Jewish scholars to the rabbinate. The extent to which the *Wissenschaft* movement impacted the move towards religious reform and vice versa will be discussed below. At this stage, however, it is sufficient to take note of the situation that laid the groundwork for the growth and development of *Wissenschaft* in the early and middle parts of the nineteenth century. One can gain an even deeper sense of the beginnings of *Wissenschaft* by looking at some of its early members and their scholarly contributions. In the cases of Isaac Jost, Immanuel Wolf and especially Leopold Zunz, we find that not only was their work indicative of this new direction, but, in fact, helped to create the guidelines within which *Wissenschaft* would function.

Isaak Markus Jost

Although Jost was frequently overshadowed by the comrade of his youth Leopold Zunz (discussed below), when discussing Jewish historians in general and *WdJ* historians in particular, Jost remains an important figure to mention, if only in brief, because he was the first of his kind. Jost began writing his comprehensive history of the Jews (*Geschichte der Israeliten*, History of the Israelites) in 1815[6] (the first volume appeared in 1820) and had published nine volumes by 1828, starting his history in the Maccabean era and ending it in 1815. One can immediately note that there is a disconnect between the title of Jost's work and its subject matter. Although Jost chooses to call his work a history of the Israelites, intentionally using the biblical term, his history actually begins at the point where this community could no longer be accurately termed "Israelites," but rather, "Jews." This seeming idealization of the biblical period is indicative of an attitude that is expressed throughout Jost's work, namely that "Jewish history was in decline

[6] Others have him beginning his project in 1818. See Meyer, *Ideas of Jewish History*, 175.

thanks to the development of rabbinic Judaism."[7] Perhaps one reason that Jost's work was typically relegated to the scholarly sidelines is that his disdain for rabbinic Judaism became especially problematic in the middle part of the century, during which time scholars expended considerable energy not only on the study of rabbinic literature but also on justifying religious ideologies through an altered understanding of it. In that atmosphere, a history such as was written by Jost which seeks, in essence, to divorce contemporary Judaism from its rabbinic roots would likely be difficult for many scholars to accept. However, one area in which Jost's history was influential was his use of Josephus specifically and non-Jewish sources in general "to which he attributed an equal, if not higher, status than sources of Jewish origin."[8] As the first Jewish historian since Azariah del Rossi in the sixteenth century to use Josephus for the study of Jewish history, Jost opened the door for later scholars (including Frankel) to follow suit and not feel restricted to only Jewish sources as a means of sifting through and understanding the scope of Jewish history. Beyond this, the other, and perhaps the primary importance of Jost's work was, as mentioned above, that it was the first of its kind. Despite a bevy of flaws in both style and content that his contemporaries were quick to point out, "Jost insisted that the state of the field precluded perfection and scholarship stood to benefit even from his errors."[9] He was right. One can only build after a foundation has been laid, and Jost's work, flawed though it was, provided a significant part of the foundation upon which the study of Jewish history, and to a large degree the entire *WdJ* scholarly enterprise, would be built.

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[7] Roemer, *Jewish Scholarship and Culture in Nineteenth-Century Germany: Between History and Faith*, 31.
[8] *Ibid.*, 30
[9] Ismar Schorsch, *From Text to Context: The Turn to History in Modern Judaism* (Hanover and London, 1994), 235.

Immanuel Wolf

In addition to being one of the founders of the *Verein*, perhaps Imannuel Wolf's greatest impact on *WdJ* is the essay he contributed to the *Zeitschrift fur die Wissenschaft des Judentums* for its first issue in 1822 entitled "On the Concept of *Wissenschaft des Judentums*." The essay consists of two parts, "a conception of the substance of Jewish history and an outline of the nature of Jewish scholarship."[10] For the purposes of this thesis, the center of the discussion will be the second part of the essay, in particular Wolf's conception of the role of history in this new system of study. Wolf begins laying out his plan by expressing what he believes are three essential characteristics to his science of Judaism

1. The science of Judaism comprehends Judaism in its fullest scope
2. It unfolds Judaism in accordance with its essence and describes it systematically, always relating individual features back to the fundamental principle of the whole
3. It treats the object of study in and for itself, for its own sake, and not for any special purpose or definite intention. It begins without any preconceived opinion and is not concerned with the final result. Its aim is neither to put its object in a favorable, nor in an unfavorable, light, in relation to prevailing views, but to show it as it is.[11]

Wolf's third characteristic is especially noteworthy. As the connection between *WdJ* and religious reform becomes more pronounced we will see examples in which the importance of this idea seems to fade. Additionally, shortly after expressing the value of studying the object for its own sake Wolf raises the significance of scientific study above the purely academic and addresses its potential for a larger cultural impact:

> No universally valid principle has yet been found for the relations of the Jews; and if there is ever to be a just decision on the issue, then this can clearly only be done through the ways of science. Scientific knowledge of Judaism must decide

[10] Michael A. Meyer, *Ideas of Jewish History* (Detroit, 1987), 141.
[11] Immanuel Wolf, "On the Concept of a Science of Judaism" in Meyer, *Ideas of Jewish History*, 152.

> on the merits or demerits of the Jews, their fitness or unfitness to be given the same status and respect as other citizens.[12]

While Wolf's intention may have been to study Judaism for its own sake and let the unfiltered results determine the "merits or demerits of the Jews" one can see how essentially placing the status of the Jews on the back of *WdJ* might encourage other scholars to approach their work with an ulterior motive, even if only on an unconscious level.

Wolf's program for *Wissenschaft des Judentums* is a three part process: "first, the textual study of Judaism; second, a history of Judaism; third, a philosophy of Judaism."[13] While the history element is the focus here, it is important to note that Wolf advocates an "interpretive and critical understanding of the whole literature of the Jews," as opposed to the kind of uncritical and dogmatic text study that was believed to be the crux of Jewish learning. How scholars understood, and continue to understand, the term 'critical' varies depending especially on their religious outlook.[14] Regarding the history of Judaism, Wolf understood this as "the systematic description of Judaism, in the forms it has assumed at any special time, and in all its aspects" and goes on to specify three particular aspects which combine to create general history: the religious, the political and the literary. [15] One can see from Wolf's outline that much of his thinking on the new method of studying Judaism was adapted by the scholars that would follow him. This is true in particular of the ideas of studying Judaism in its "fullest scope," the need for critical text study and the importance of history. One can also see, however, that the notion of studying Judaism for its own sake would become increasingly problematic as *WdJ*

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[12] *Ibid.*, 155.
[13] *Ibid.*, 153
[14] I will address this to a greater degree in the discussions of Geiger, Hirsch and Frankel.
[15] Wolf, "On the Concept of a Science of Judaism" 153.

scholars sought means of justifying both religious reforms as well as their right to inclusion and emancipation.

Leopold Zunz

Leopold Zunz is considered by many as the "father" of *Wissenschaft des Judentums*, and for good reason. Like both Jost and Wolf, Zunz was a member of the *Verein* and was, in fact, the editor of its journal. However, Zunz's dedication to *WdJ* seems to have continued and deepened to an extent unmatched by either Jost or Wolf; Zunz remained at the forefront of the movement throughout his career, seeking to emphasize the importance of the scholarship itself, even as it was colored by ideological concerns.

While there are numerous works that one could consider in a study of Zunz and his impact on *WdJ*, this discussion will focus on his article first published in 1818, *Etwas ueber die rabbinische Literatur* ("Regarding rabbinical Literature").[16] Although such a work is surely deserving of deeper study, there are two general approaches to the issue that are evident in this work which are worthy of note: the scholarly and the emotional. The scholarly approach seems to be the better known aspect of this work, in that it is the one more often referred to in works about this period. In his article, Zunz begins by discussing the scholarly climate in general as well as the need for, and the importance of, a scientific study of Judaism. Even at this early stage Zunz recognizes, as Wolf would in his article several years later, the potential for the scientific study of Judaism to transcend academia and have a larger social and cultural impact: "the development of our science in

[16] I am using the translation found in Paul Mendes-Flohr & Jehuda Reinharz eds., *The Jew in the Modern World: A Documentary History* (New York and Oxford, 1995), 221-228.

a grand style is a duty, one whose weight increases because of the fact that the complex problem of the fate of the Jews may derive a solution, if only in part, from this science."[17]

In his presentation of a program or method of study, Zunz cites three aspects into which critical scholarship can be divided: ideational, philological and historical analysis. Although there are similarities here to the program that Wolf presents, it is important to note not only specific differences, but also that in this article Zunz does not expand to any discernable degree on what exactly he means by any of these terms. Instead, Zunz proceeds by presenting what is essentially an impressive list of potential topics for future scholars to study. Beyond being simply a list, however, this is indicative of Zunz's approach to *WdJ*, namely that he sought to develop an all-encompassing approach to Jewish studies. In this article he cites examples ranging from theology and "the study of the ancient histories of [Jewish] industry and commerce"[18] to poetry as a means of providing tangible examples of the potential depth and breadth of the field of study of rabbinic literature. It is this approach, even more than Wolf's, that provides an outline for the development of *Wissenschaft des Judentums* as a scholarly movement and sets the stage for the wide range of topics that would eventually be addressed by scholars throughout the nineteenth and into the twentieth century. The emotional approach is not overt but can be sensed from the language and apparent tone of Zunz's writing. There are two sides to this emotional aspect of Zunz's writing, one of which is a 'call-to-arms' to other Jews to take up the cause of *Wissenschaft des Judentums*, especially as it regards the study of rabbinic literature:

> How is it possible, one may ask, that at a time when all science and all of man's doings have been illumined in brilliant rays, when the most remote corners of the

[17] *Ibid.*, 222
[18] *Ibid.*, 225

> earth have been reached, the most obscure languages studied and nothing seems too insignificant to assist in the construction of wisdom, how is it possible that our science [i.e., the academic study of rabbinic literature] alone lies neglected?[19]

Zunz repeats this kind of exhortation at the end of the article expressing his desire that his work will "awake the passion for more thorough and fruitful studies."[20] The tone of the article in general is one of encouragement and hope for the future of the study of rabbinic literature. The second side of Zunz's emotional element is the critique, if not condemnation, of those who would use rabbinic literature as a means of denigrating the Jews. In his discussion of the study of theology, Zunz unleashes this invective against such characters: "Nothing more distorted, more damaging, more dishonest has ever anywhere been written than that which has been written on the religion of Israel. The art of inciting malice has here reached its pinnacle."[21] Having noted early in the article the potential for scientific study to positively impact the situation of the Jews, Zunz also acknowledges that there are those who approach the study of rabbinic literature with the intent of finding anything that "can be used against the Jews or Judaism."[22] This emotional aspect of Zunz's work is important to consider because it indicates a sense of idealism about what a scientific approach to rabbinic literature and Judaism in general could accomplish. It may be difficult at times for contemporary students to understand the vast expanse of potential that young scholars believed was opening up before them, yet Zunz's article provides at least a taste of the promise young Jewish scholars found inherent in *Wissenschaft des Judentums* and why this scholarly movement took on such social and cultural importance and has had such a lasting impact.

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[19] *Ibid.*, 222
[20] *Ibid.*, 228
[21] *Ibid.*, 224
[22] *Ibid.*, 227

Principles of *Wissenschaft des Judentums*

It is difficult to speak of the principles of *Wissenschaft des Judentums* because this seems to imply that there was a single set of guiding maxims according to which all the scholars within the movement functioned. Rather, there was a relatively broad range of understandings as to what exactly *Wissenschaft des Judentums* meant and how it should be applied. This will become even clearer in discussing the relationship between *WdJ* and religious reform as well as through looking at three of the most important figures connected to the movement: Samson Raphael Hirsch, Abraham Geiger and Zacharias Frankel.

It is nonetheless important to note at least a few ideas that were broadly accepted by the *WdJ* scholars and served to shape the kind of scholarship that was produced during the nineteenth century. Some of these were alluded to above in the discussions of Jost, Wolf and Zunz: considering the entire scope of Judaism, using a broad range of sources including non-Jewish sources and study without preconceptions. Beyond these, there were several other principles that were of paramount importance in guiding *WdJ*. One of these was "a common scholarly ethos, a secular research imperative that had shunted aside the ancient validation of piety for the study of sacred texts"[23] which was connected to the idea that one should study without preconceptions. Centuries of Jewish text study leading up to the periods of the *Haskalah* and *Wissenschaft des Judentums* had been predicated on certain assumptions about the nature of such study and those who engaged in it.

The study of Jewish texts had long been connected with religious observance both in terms of its goals as well as the expectations for students. Texts were studied in order

[23] Schorsch, *From Text to Context: The Turn to History in Modern Judaism*, 163.

to understand how one must live, work, eat, etc and to be able to guide others in their lives. In a community structured around *mitzvoth* that come from God, the primary purpose of study was to best understand those *mitzvoth*, and in turn God's will, through studying the textual tradition that had been handed down and rendering judgments based on one's knowledge and understanding. Understandably, those who were serious students of these texts--the scholars--were expected to adhere to a certain level of piety, not only because they were responsible for making decisions about God's *mitzvoth* but also because the study of the *mitzvoth* was itself a holy activity and as such should be limited to those individuals whose mind, heart and soul were appropriately keen and pure. With the advent of *Wissenschaft des Judentums* these preconceptions no longer applied.

That is not to say that those who engaged in Jewish text study were not pious observers of the *mitzvoth*--many were--but it was no longer a prerequisite. Additionally, the intention of study was not geared towards understanding the *mitzvoth* for practical purposes but rather as a means of gaining a deeper knowledge of a particular era, a certain type of literature[24] or a specific concept. Although it was held as ideal of the Wissenschaft, this was not necessarily study for its own sake. Rather, study was part of a process of historicizing Judaism and Jewish texts with some, if not most scholars hoping that this would lead to changes in the legal and cultural attitudes of the state towards Jews and Judaism. As discussed above, the scholarly climate of the time was one in which history played an important role, so "virtually all nineteenth-century Jewish

[24]Even the notion of treating traditionally sacred Jewish texts as 'literature' was a recent innovation and shifted the methods through which scholars studied texts.

ideologies...would feel a need to appeal to history for validation."[25] This was not only internal validation, but validation within the non-Jewish world as well. Christian scholars had a tradition of studying Jewish texts using critical methods, but this was often a thinly veiled attempt to find means of denigrating Jews and Judaism, as Zunz discussed in his article, or it had a missionizing purpose to it. Jewish scholars hoped that as they moved into the field of critical scholarship on Jewish subjects and texts, their work would eventually supersede that of Christian scholars in the field and in turn "dissipate the miasma of Christian ignorance and distortion that usually attended these subjects."[26]

We should not, however, make the mistake to think that the role of *WdJ* vis-à-vis the non-Jewish world led the scholars of the movement to treat their subjects with kid gloves; quite the contrary. An integral principle of *WdJ* was the active criticism of Jewish texts and tradition and to apply the methods of *WdJ* "meant to undermine the unity and sanctity of Jewish tradition. Its first stage was necessarily demolition."[27] This may seem like an unnecessarily extreme approach, and for some it was. There was, therefore, a range of attitudes amongst *WdJ* scholars as to which texts should be subject to this method of study as well as varying levels of respect accorded to the topics being examined. One distinction made by some of the scholars was that the Pentateuch should be off-limits. Zacharias Frankel was an advocate of this approach, as he maintained the belief that it was revealed by God to Moses at Sinai. Others, such as Abraham Geiger, believed that there should be no limits to *WdJ* and that the critical method should be applied to the entire corpus of Jewish literature.

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[25] Yerushalmi, *Zakhor: Jewish History and Jewish Memory*, 86.
[26] Schorsch, *From Text to Context: The Turn to History in Modern Judaism*, 164.
[27] Michael Meyer, *Judaism within Modernity: Essays on Jewish History and Religion* (Detroit, 2001), 130.

Unlike the attitude regarding the Pentateuch, a majority of scholars accepted that rabbinic literature needed to be placed under the critical microscope, yet it was in this field that a range of personal feelings towards the subject matter seemed to color the scholarship. Some, like Jost, saw rabbinic literature and the rabbis as an anchor, weighing down Jews from moving forward and joining Western society. These scholars often spoke of the rabbinic texts and their authors in harsh terms reflecting their animosity, Abraham Buchner's *Der Talmud in seiner Nichtigkeit* (The Worthlessness of the Talmud) being an example of this trend. Others sought to paint rabbinic literature and the rabbis in a more sympathetic and progressive light, Frankel's *Darkhei Ha'Mishnah* being among them. In each case, ironically, the goal beyond study itself was similar, namely to 'prove' that rabbinic literature was not a deterrent to Jews becoming full citizens of a Western culture. The study of rabbinic literature was also an integral part of the drive for religious reform for which so many of the *WdJ* scholars were advocates. In this context, the various understandings of rabbinic literature took on a decidedly practical concern and helped to delineate various 'camps' whose religious ideologies were expressed in their scholarship and vice-versa.

There was a wide spectrum of opinions and we could distinguish between numerous such 'camps' were we to delve into the deepest nuances of the ideologies. However, it is widely accepted that there were three umbrella 'camps' under which most scholars and ideologies fell, even if imperfectly. These three camps are best understood through a discussion of their foremost representatives: Samson Raphael Hirsch, Abraham Geiger and Zacharias Frankel. As Frankel, along with *Darkhei Ha'Mishnah,* is the primary subject of this thesis he will be discussed last and in the greatest depth. The

treatments of both Hirsch and Geiger, on the other hand, will be limited in scope with the intention of simply providing enough of an outline of their thinking and work that one may better understand the cultural, religious and scholarly context in which Frankel existed.

Samson Raphael Hirsch

Samson Raphael Hirsch was born in Hamburg in 1808. As a youth he received both secular and religious education and went on to study at the University of Bonn for a short time before accepting the offer to become the *Landesrabbiner* (Chief Rabbi) of the principality of Oldenberg in 1830. Hirsch stayed in this post for eleven years before moving to become the rabbi of Aurich and Osnabrueck in Hanover for five years and then spent five years as the *Landesrabbiner* of Moravia. In 1851 Hirsch was called to be the rabbi of Orthodox congregation Adass Jeschurun (known in German as the "*Israelitishe Religionsgesellschaft*") in Frankfurt on the Main, a position he held for thirty-seven years until his death.[28]

It was in Frankfurt that Hirsch engaged in his most noteworthy battles with *Wissenschaft des Judentums* and religious reformers. Hirsch's relationship to *Wissenschaft des Judentums* and the religious reform movements with which it became so intimately connected is essentially one of opposition. Hirsch advocated, and was in fact the primary spokesperson in this period, for traditional Jewish practice. Even though there were a few aspects of his thinking and approach that were closely associated with both *WdJ* and religious reform movements, these were generally tangential and superficial. A notable exception was that Hirsch, like his reform-minded contemporaries,

[28] Biographical information taken from Simha Katz "Hirsch, Samson (ben) Raphael" in *Encyclopedia Judaica.*

recognized the importance, if not the necessity, of secular education. This attitude was influenced by his parents who had Maskilic leanings and the fact that Hirsch "was sent to a non-Jewish school in his formative years, a most extraordinary phenomenon among pious Jews of that era."[29] These experiences played an integral role in the idea of *Torah im derekh eretz* which would characterize his educational philosophy.

In considering Hirsch's relationship to *Wissenschaft des Judentums*, we cannot ignore the influence of non-Jewish philosophers on his religious thinking, particularly Kant and Hegel.[30] This is an important element to consider for two reasons. The first reason is the fact that Hirsch "insists that Judaism must be organically comprehended.... No outside criterion or cleverly constructed hypothesis can be applied to Judaism; it must be comprehended from within."[31] While this idea was expressed as a critique of Moses Mendelssohn, it similarly applied to *Wissenschaft des Judentums* scholars who sought to understand Judaism within the context of contemporary scholarly criteria. Thus it is ironic, and perhaps hypocritical, that Hirsch would choose to apply Hegelian and Kantian modes of thought to Judaism and to base an element of his religious philosophy on their thinking. The second reason is that Hirsch's reliance on non-Jewish philosophy put him in league with many of the members of the *Verein fur Cultur und Wissenschaft des Judentums*. Although Hirsch never attributes any influence to the *Verein*, we must consider it reasonable that Hirsch as a "sensitive, young, concerned Jew eager to

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[29] Noah H. Rosenbloom, *Tradition in an Age of Reform: The Religious Philosophy of Samson Raphael Hirsch*, (Philadelphia, 1976), 53.

[30] There is some debate as to which of these philosophers was more influential for Hirsch's thinking. Although Noah Rosenbloom argues in favor of Hegelian influence, this is not a widely accepted viewpoint. That Kant's philosophy had a greater impact on Hirsch's thinking is the more commonly accepted understanding amongst contemporary scholars.

[31] Rosenbloom, *Tradition in an Age of Reform: The Religious Philosophy of Samson Raphael Hirsch*,152

revitalize Judaism would not have overlooked or ignored their [the *Verein*'s] endeavors."[32]

In regards to religious practice, Hirsch understood the need for certain reforms in aesthetics, including replacing cantorial chants with a male choir and preaching in German. These changes were undertaken not only for their own sake but specifically "to rival the Reform temple in decorum and dignity."[33] These examples demonstrate that Hirsch was sensitive to the *Zeitgeist*, yet there remained important distinctions between Hirsch and the *Wissenschaft* and religious reform movements. The most essential of these differences is that, although he advocated for the inclusion of secular education alongside Torah learning, Hirsch was opposed to the application of critical methods to Jewish texts that was the hallmark of *Wissenschaft* scholars. Hirsch's attitude is reflective of his belief that "nothing could be allowed to shake the foundations of the dogmatic and behavioral structure of Jewish Orthodoxy, for it represented the product of divine revelation."[34]

Seeing as much of *Wissenschaft* was geared, intentionally or not, towards the very "shaking of the foundations" that Hirsch feared, it is no wonder that he responded as harshly as he did to this threatening scholarship. Further on in the thesis Hirsch's response to *Darkhei Ha'Mishnah* will be discussed as a specific example of this trend, however it is necessary to note at this point one of the important roots of that response. Hirsch's belief in the divine origins of the "dogmatic and behavioral structure of Jewish Orthodoxy" also served as the basis for his position against religious reforms and their

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[32] *Ibid.*, 180
[33] *Ibid.*, 104
[34] Jay Michael Harris, *How do we know this? Midrash and the fragmentation of modern Judaism*, (Albany, 1995), 224.

advocates. Clearly the substance of a movement that altered what Hirsch believed to be fundamental and divinely ordained aspects of Jewish life and gave "legitimacy to a truncated Judaism"[35] would have been anathema to Hirsch in spite of his affinity for some of the stylistic changes. [36] We can see from all of these examples the complex nature of Hirsch vis-à-vis *Wissenschaft* and religious reform. On the one hand he accepted and applied certain elements of each movement's thinking to his own work and ideology. On the other hand, he argued vehemently against the movements as a whole since he felt they acquiesced too much to the *Zeitgeist* and threatened traditional Judaism.

Abraham Geiger

Abraham Geiger was born in Frankfurt in 1810. He received a traditional Jewish education and also earned a doctorate from the University of Marburg after studies in Heidelberg and Bonn. In 1832, Geiger became rabbi in Wiesbaden where he convened the first meeting of Reform rabbis and in 1838 he was chosen as *dayyan* and assistant rabbi by the Breslau community. He was not able to take up his position until 1840 and then in 1843, Geiger was accorded the rabbinate by the majority of the community. He was a leading participant in the rabbinical conferences held by Reform rabbis in Brunswick (1844), Frankfurt (1845) and Breslau (1846) and helped to initiate the *Juedisch-Theologisches Seminar* in Breslau, although he was not chosen as its head due to protests from conservative elements. From 1863 Geiger served as the Liberal rabbi of the Jewish community in his hometown Frankfurt, and from the beginning of 1870 was a rabbi of the Berlin community. In 1872, the *Hochschule fuer die Wissenschaft des*

[35] Michael Meyer, *Response to Modernity: A History of the Reform Movement in Judaism*, (Detroit, 1995), 79.

[36] One notable exception is the fact that Hirsch removed the *Kol Nidre* prayer from the Yom Kippur Eve service, fearing it would be misunderstood by Gentiles.

Judentums was established in Berlin with Geiger's assistance and he directed it until his death.[37]

Geiger was similar to Hirsch in the sense that each expressed and defended his ideological point of view with a certain vehemence bordering on militancy, however their viewpoints were diametrically opposed to each other. Whereas Hirsch fully accepted the divinity of the Bible and Talmud, Geiger attributed each to human authorship. While Hirsch rejected *Wissenschaft des Judentums* in any form, Geiger set no limits to its scope, and in fact viewed it as the ultimate means by which he and his generation would "bring about the great cave-in which will bury an old world beneath its ruins and open a new world for us in its place."[38] This statement is indicative of a central idea of Geiger's approach to *Wissenschaft.* Aside from the fact that everything was subject to critical analysis, Geiger promoted the idea that the tradition must be torn down in order to be rebuilt in a way that would take into account contemporary ideals and the results of modern scholarship. Geiger viewed *Wissenschaft* and religious reform as being inextricably linked and in turn his scholarship reflected not only his academic leanings but his religious ideology as well. In contrast to someone like Zunz who attempted to avoid any ideological bias, Geiger was clear in his belief that "the function of modern Jewish scholarship is to examine the basic texts of Judaism critically, to reconstruct its

[37] The biographical information was taken from Jacob S. Levinger, "Geiger, Abraham" in *Encyclopedia Judaica.*

[38] Max Wiener and Ernst J. Schlochauer, *Abraham Geiger and Liberal Judaism: The Challenge of the Nineteenth Century*, (Philadelphia, 1962) in Mendes-Flohr & Reinharz eds., *The Jew in the Modern World: A Documentary History*, 233.

development over time, and to utilize the results for the articulation of religious policy."[39] But what was Geiger's "religious policy"?

Like the man himself, Geiger's thoughts about the religious aspects of Judaism were complex. Although he clearly advocated for religious reforms, he "categorically rejected religious reform motivated by the quest for civic equality"[40] and also opposed changes that were merely imitations of Christian practices. Unlike some reformers, Geiger did not advocate a return to Mosaic religion, though he did emphasize the importance of the prophetic literature and its moral character. Although he questioned the use of Hebrew in contemporary worship and scholarship, as a rabbi he conducted services primarily in Hebrew. While some might view the apparent differences in Geiger's rabbinic and academic attitudes as being indicative of a lack of authenticity, it was in fact representative of his desire and ability to maintain an understanding of the distinct nature and requirements of each. He understood that the pulpit was not the place for the kind of critical approach one might take in a scholarly article, but rather an opportunity to "inspire his listeners and deepen their conviction that Judaism represented ideals not antiquated by contemporary thought and culture."[41] While Geiger is known as the "father of Reform Judaism" for the broad scope of his work, perhaps no aspect is a better representation of this role than this ability to distinguish between his roles as scholar and rabbi. His promotion of a program of radical scholarship combined with his encouragement of less radical, but nonetheless provocative religious reform provided a

[39] Schorsch, *From Text to Context: The Turn to History in Modern Judaism*, 315.
[40] Meyer, *Response to Modernity: A History of the Reform Movement in Judaism*, 97.
[4141] *Ibid.*, 95

platform on which Reform Judaism would be built in the nineteenth century and which continues to exert considerable influence today.

Zacharias Frankel

As his work is the primary subject of this thesis, this section will discuss Frankel's life, religious ideology and most of his scholarly work. *Darkhei Ha'Mishnah*, which is generally considered Frankel's most important and influential work, will be the subject of the next chapter and as such will not be addressed here in a significant way. First, Frankel's personal and professional life will be discussed, essentially providing a brief biographical sketch along with an 'employment history', so to speak. Following this will be a discussion of Frankel's religious ideology, focusing specifically on his concept of positive-historical Judaism and his relationship with the Reform movement. Lastly Frankel's scholarship will be considered by looking at the nature of his work in general, some of the main influences on his thinking and each of his scholarly contributions individually. This will lead into chapter two which will discuss *Darkhei Ha'Mishnah* specifically.

Personal and Professional Life

Zacharias Frankel was born in Prague in 1801 into a prominent family with a prestigious scholarly pedigree. On his father's side, Frankel was a descendant of the famous rabbinical Spira family, while on his mother's side he descended from the Fischel family, which included a lineage of distinguished Talmudists in Prague. He was given a traditional education and received his rabbinical training from Rabbi Bezalel Ronsperg before leaving Prague in 1825 to pursue secular studies in Budapest, first at a secular high school and then at the local university. Frankel focused his studies on philosophy, the

natural sciences and philology and received his doctorate in 1831 from the university in Budapest. He was married to Rachel Meyer and had no children.[42]

Frankel's received his first rabbinic position when he was appointed by the Austrian government as the *Kreisrabbiner* (district rabbi) of Leitmeritz. Frankel's appointment was historical in that he was the first rabbi in Bohemia to possess a university education. He settled in Teplitz which was home to the largest community in the district and was subsequently elected as its rabbi. Early in Frankel's tenure as rabbi in Teplitz, the president of the community expressed his hope that Frankel would "institute reforms and do away with the 'Missbraeuche' (abuses)."[43] Frankel responded that he knew of no such abuses and even if he did "it was not the business of the laity to interfere in such matters."[44] It is interesting to note, given the discussion below on positive-historical Judaism that this attitude seems contrary to Frankel's understanding of the role of the community. In spite of this feeling and a general sense of caution regarding religious reforms, Frankel did institute certain primarily aesthetic modifications, such as the abolishment of some of the *piyutim*, the use of a boys' choir, the incorporation of an organ, and sermons delivered in German.

In 1836, Frankel took up a new post, moving to Dresden to become the chief rabbi of Saxony. It is during this period that Frankel's "middle-of-the-road" approach began to take greater shape and also began to earn him enemies on both the liberal and traditional ends of the Jewish spectrum. The first vehicle for this approach was the debate over the 1841 Hamburg Temple prayerbook. Frankel disagreed with the

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[42] Biographical information taken from D., "Frankel, Zecharias," *The Jewish Encyclopedia* 482 and Joseph Elijah Heller, "Frankel, Zacharias," *Encyclopedia Judaica.*
[43] D. "Frankel, Zecharias" *The Jewish Encyclopedia* 482.
[44] *Ibid*

traditional element, which had issued a warning[45] to traditional Jews against using the prayerbook, on two counts: method and content. Regarding method, Frankel believed that Hakham Isaac Bernays, who had issued the warning, "should have resorted to persuasion, not condemnation"[46] in his attempt to garner support for his opinion and on the issue of content, Frankel found the prayerbook acceptable from a *halakhic* perspective. He took issue with the reformers, who had created the prayerbook, by "pointing out inconsistencies from the historical and dogmatic points of view"[47] instead of simply giving it a stamp of approval. During his time in Dresden, Frankel's developing religious ideology found further expression in the rabbinical conference that was held in Frankfurt in 1845, which will receive specific attention below. Also during this period of his professional life (in 1843), Frankel was offered the position of the chief rabbi of Berlin, which he ultimately turned down because the Prussian government would not recognize his appointment.[48]

Frankel stayed in Dresden for eighteen years, and then in 1854 he assumed the founding directorship of the *Juedisch-Theologisches Seminar* (JTS) in Breslau, where he remained until his death. The fact that Frankel received this position was a considerable coup for the conservative elements of the Reform movement. Abraham Geiger had been expected by many (including Geiger himself) to be appointed as head of the institution, since he had been so influential in its establishment. JTS would come to serve as the model for the modern rabbinical seminary, "its foundation completing the key stage in

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[45] This was initially a *moda'ah* (public notice) but was changed to an *azharah* (simple warning). A *moda'ah* was considered weightier by the community and so it being changed to an *azharah* was intended to soften its tone.

[46] Meyer, *Response to Modernity: A History of the Reform Movement in Judaism*, 117.

[47] D., "Frankel, Zecharias", *The Jewish Encyclopedia*, 482.

[48] They "would not meet his stipulations: complete recognition of the Jewish faith, denial of support to missionary activities among the Jews, etc." Heller, "Frankel, Zacharias" *Encyclopedia Judaica.*

the emergence of the modern rabbinate."[49] In assuming this position, Frankel not only had a platform from which he could advocate for both his religious and scholarly points of view, but he also had the opportunity to exert tremendous influence on those who would go out to serve the people as rabbis and thus further expose communities throughout the region to his ideology.

The Frankfurt Conference

Frankel's religious ideology took shape largely during the period he served as a rabbi in Dresden. We have seen above that both in practice and in print he advocated limited religious reform and sought to establish a middle ground between the radical reformers on one end and the traditionalists on the other. Over time Frankel's ideas began to take on a more definitive shape and in 1844, in the prospectus to the *Zeitschrift fur die religioesen Interessen des Judenthums*, a new journal he was founding, Frankel first gave voice to the notion of positive-historical Judaism in a discussion on the challenges facing Judaism from those elements who:

> misunderstanding the depths of Judaism, wish to dissolve it in the general mood of the modern age. The synagogue faces a crisis, but this must not dishearten us nor must we give way to doubts that it can be victorious, for the innermost content of Judaism is guaranteed both in its continued existence as well as in its latent possibilities of self-development. How such development shall take place must be determined by scientific research based on positive historical foundations[50]

In the first volume of this journal, Frankel presented the religious philosophy and attitude towards reform, which had been apparent from his actions in both Teplitz and Dresden, in a manner that explained his thinking in clear and seemingly simple terms:

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[49] Andreas Braemer, "The Dilemmas of Moderate Reform: Some Reflections on the Development of Conservative Judaism in Germany 1840-1880," *Jewish Studies Quarterly*, Volume 10 (2003), 81.

[50] Zacharias Frankel, *Anzeige und Prospectus einer Zeitschrift fuer die religioesen Angelegenheiten des Judenthums*, (Berlin, 1843), 5 f. in W. Gunther Plaut, *The Rise of Reform Judaism: A Sourcebook of its European Origins*, (New York, 1963), 23.

> We aim at a worthy representation of the total will of the people and at a science of Judaism. These will lead us to our goal and aid us to find that measure for reforms which live not only in abstraction but can be translated into reality. Our slogan is *Moderate Reform* which, properly understood, will be Judaism's saving force and will contribute to its eternal continuity[51]

Thus we have a sense of Frankel's religious mindset as he came to the Frankfurt rabbinic conference. He had some misgivings about attending the conference at all, having not only skipped but also denounced the Brunswick conference that had taken place earlier and Frankel would express the ambivalence he felt about his attendance in a letter of resignation from the conference. The context for Frankel's seemingly abrupt resignation is important to consider because it includes further elucidation of the idea of positive-historical Judaism as well as insight into Frankel's perceptions about his place among the reformers.

The impetus for the ensuing controversy was a debate on the use of Hebrew as the language of Jewish prayer and Frankel's argument ostensibly grew out of his belief that Hebrew was an integral part of Jewish experience both religiously and culturally. Frankel began by expressing his concern that the conference had not explicitly stated its principles and he continued by presenting his own, namely that "he stands for a positive, historical Judaism. [This approach posits that] in order to understand Judaism in the present one must look back and investigate its past."[52] Although Frankel did not provide many specifics regarding the meaning of positive-historical Judaism at this time, he did offer another important general principle under the guise of a warning not to tear down Judaism under the influence of the *Zeitgeist*, which "may seem reasonable, but it will never satisfy, console and calm the soul; Judaism on the other hand, always inspires and

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[51] Zacharias Frankel, "Moderate Reform", *Zeitschrift fuer die religioesen Interessen des Judenthums*, vol. I, 26f in Plaut, *The Rise of Reform: A Sourcebook of its European Origins*, 24-5.
[52] Mendes-Flohr and Reinharz eds., *The Jew in the Modern World: A Documentary History*, 179.

fills the soul with bliss."[53] This, it is important to remember, stood in contrast to Geiger's approach of destroy and rebuild and ran against the general tenor of the radical reformers. Geiger, in fact, was one of the respondents to Frankel's presentation, but seems to have focused his argument on the particular subject at hand and did not stray into the realm of general religious philosophy as Frankel had. Though the vote on the "objective necessity of Hebrew in prayer" resulted in a narrow defeat for Frankel's point of view, the ramifications of this defeat were to be considerable. As mentioned above, in light of this defeat Frankel offered his resignation from the conference. While he cites the vote specifically as the reason for his resignation, it is clear that there are deeper issues at play:

> I disagree with such a decision, not only because I have a different point of view, but also because I disagree with the *tendency* of the decision. For this spirit leaves unheeded so many important elements and eliminates the historical element which has weight and power in every religion. In my opinion this is not the spirit of preserving but of destroying positive historical Judaism, which I declared distinctly before the Assembly was my point of view[54]

Whether it was intended in this manner or not, Frankel understood the vote against Hebrew as not only a vote against his religious ideology but also, based on his tone, a vote against him personally. In a statement regarding Frankel's resignation, the attendees of the conference argued that on the contrary, "different points of views were involved here, not different tendencies" and that they had not "forsaken the view of positive historical Judaism."[55] Yet the damage had been done, intentionally or not, and we can point to this moment, perhaps, as the official splitting of the reform movement into two camps.

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[53] *Ibid*

[54] Zacharias Frankel, "Resignation," *Protokolle und Aktenstucke der zweiten Rabbiner-Versammlung,* (Frankfort, 1845) 86ff in Plaut, *The Rise of Reform: A Sourcebook of its European Origins*, 88.

[55] *Ibid*

Positive-Historical Judaism

In the years following the conference, Frankel continued to shape and clarify the fundamental concepts of positive-historical Judaism. Not long after his departure from Frankfurt, he published an article in his own journal that restated a general principle and also spelled out one of the integral ideas of his religious philosophy: the importance, indeed the revelatory nature, of the will of the people. Frankel once again presents the general *modus operandi* for his approach, explaining that it "affirms both the divine value and historical basis of Judaism and, therefore, believes that by introducing some changes it may achieve some agreement with the concepts and conditions of the time."[56] Frankel goes on to explain that such changes have to develop from within the people; those practices which are no longer relevant will fall to the wayside through a general abandonment by the community and those acts and ideas that are accepted by and remain important to the community must not be altered or changed by theologians or scholars[57]. Thus when considering changes to religious practice, it is not the role of authorities to dictate to the populace but they must instead earn the community's confidence and thus be able to appropriately discern its will. Only then can a scholar or theologian begin to propose changes, since he will have a deep enough understanding of the community that these changes are likely to reflect the community's will. This approach led Frankel to ascribe extraordinary status to the ingrained beliefs and practices of the community, and in turn these customs become an integral element in the shaping of contemporary Jewish life. This notion of the communal will is one element of the "historical" component of positive-historical Judaism, and a second element is the dynamic and historical nature of

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[56] Zacharias Frankel, "Die Symptome der Zeit," *Zeitschrift fuer juedische religioese Interessen 2,* (1845), 1-21 in Mendes-Flohr and Reinharz eds., *The Jew in the Modern World: A Documentary History* 195.

[57] Frankel draws this idea from the Babylonian Talmud, *Avodah Zarah* 3b.

Jewish law. Frankel's views on this issue will be addressed in greater detail in the next section and in chapter two. However, it is important to take note at this point of his general attitude towards Jewish law. Unlike the Orthodox who accepted the revelatory nature of both the Written and Oral Law and the divinity of the entire scope of *halakhah*,

> Frankel perceived the Oral Tradition to be the ("historical") result of human creativity and innovative interpretations given by the Sages and Rabbis since the time of classical Judaism and before—not an integral part of superhistorical Sinaitic revelation[58]

The historical nature of the Oral Law and in turn the legal tradition that developed out of it was thus subject to thoughtful change and the critical lens of *Wissenschaft*.

The Jewish law that was a product of revelation, namely biblical law, was not simply part of the "historical" to Frankel, but it was also an integral component of the "positive." In this sense he differed from the radical reformers who "tended to limit it [the 'positive'] to the realm of theology and morality."[59] Unlike the Oral Law, Frankel understood the Pentateuch to be the product of Sinaitic revelation. Its relation to the "positive" lies in the fact that such a revelation had to be accepted on faith and that "true faith, due to its divine nature, is above time, and just as the nobler part of man is not subjected to time, so does faith rise above all time, and the word which issued from the mouth of God is rooted in eternity."[60] In addition to these religious and theological considerations the use of the term "positive" is, to a certain extent, simply meant to contrast with what Frankel viewed to be the negative nature of the radical reformers' program:

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[58] Braemer, "The Dilemmas of Moderate Reform: Some Reflections on the Development of Conservative Judaism in Germany 1840-1880," 77.
[59] Meyer, *Response to Modernity: A History of the Reform Movement in Judaism*, 86.
[60] Zacharias Frankel, "Die Symptome der Zeit," *Zeitschrift fuer juedische religioese Interessen 2*, (1845), 1-21 in Mendes-Flohr and Reinharz eds., *The Jew in the Modern World: A Documentary History* 195.

> We shall conceive it to be our task to avoid the kind of negative reform which leads to complete dissolution, but instead to show how the teachings of Judaism itself contain the possibility of progress[61]

This idea that the radical reformers were destructive and that they were "preoccupied with cutting and curtailing"[62] is seen throughout Frankel's work, especially after the Frankfurt conference. We can now understand the elements of positive-historical Judaism as follows: the "historical" aspect included the will of the people as expressed through their ingrained customs, the Oral Law which was developed by human intellect and was subject to the critical-historical method and also to a certain degree *halakhah*, which exists within the scope of history. Jewish law was also one of the "positive" features, understood by Frankel as similar to the dogmas of Christianity,[63] while other "positive" characteristics included the Pentateuch and faith in the Sinaitic revelation as well as the *peshat* understanding of "positive," namely in contrast to negative. These elements all combined to create a "distinctive original interpretation of Jewish religion"[64] which would provide a middle ground for Jews who sought to engage with secular learning and culture without abrogating traditional Jewish practice and eventually serve as the model for the Conservative movement in America and the international *Masorti* movement.

Scholarship

Although *Darkhei Ha'Mishnah* is regarded as Frankel's most impressive and influential scholarly contribution, he is responsible for a number of works that were each important in their own right in addition to two scholarly journals and his stewardship of

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[61] Frankel, *Anzeige und Prospectus einer Zeitschrift fur die religiosen Angelegenheiten des Judenthums*, 5 f. in W. Gunther Plaut, *The Rise of Reform Judaism: A Sourcebook of its European Origins*, 23.
[62] Schorsch, *From Text to Context: The Turn to History in Modern Judaism*, 256.
[63] Meyer, *Response to Modernity: A History of the Reform Movement in Judaism*, 86.
[64] Braemer, "The Dilemmas of Moderate Reform: Some Reflections on the Development of Conservative Judaism in Germany 1840-1880," 79.

JTS. His accomplishments will be addressed in chronological order, because this approach may provide insight into the growth and development of his scholarship over his career. Before discussing his specific works, however, we must first consider his general scholarly approach.

As mentioned above, Frankel did subscribe to the ideas of *Wissenschaft des Judentums* but he "drew the line at Pentateuch criticism. The Five Books of Moses remained beyond the grasp of *Wissenschaft*, a kernel of direct divine revelation that Frankel would not allow to be dissected into disparate sources."[65] In light of both this and the importance of *halakhah* in Frankel's conception of positive-historical Judaism, it stands to reason that most of his work falls under the umbrella of rabbinics, which Frankel viewed as "the core of Jewish intellectualism. Since law expressed the essential character of Jewish piety, it followed that the study of the law constituted the authentic form of Jewish scholarship."[66] This also highlights the fact that Frankel did not hide his belief that there was, and should be, a connection between the scholarly and religious/theological realms. Unlike Zunz who sought to engage in study for its own sake and avoid ideological entanglements, Frankel not only viewed *Wissenschaft* as essential to Jewish survival but also sought to "draw *Wissenschaft* into the circle of faith where it could serve as a fructifying influence."[67] While most of Frankel's work addressed religious issues, his first work addressed a particular political situation. *Die Eidesleistung bei den Juden* (The Oath of the Jews), published in 1840, which argued that a Jew's oath could be trusted, was essential in reforming the attitude of the Prussian government and even came to the attention of Prince John of Saxony who "entered the parliament with the

[65] Meyer, *Judaism Within Modernity*, 132.
[66] Schorsch, *From Text to Context: The Turn to History in Modern Judaism*, 260.
[67] Meyer, *Response to Modernity: A History of the Reform Movement in Judaism*, 86.

work in his hand and the result of the legislative debate was the abolition of this outrage."[68] This first work of Frankel's also introduced the concept of using comparative jurisprudence as a means of analyzing *halakhic* problems,[69] reflecting to some degree the influence of Jost's belief in the importance of using non-Jewish sources.

In his second work, *Vorstudien zu der Septuaginta* published in 1841, Frankel became the first Jewish scholar of the nineteenth century to work with the Septuagint[70] as he attempted to show traces of Palestinian *halakhah* in the Greek translation of the Bible. This work indicated several important aspects of Frankel's scholarship. One was his predilection for the Palestinian Talmud, which became a focus of his scholarship later on in his life. Secondly this work marked the beginnings of his efforts to historicize and contextualize the *halakhah* and the literature out of which it emerged. We will see an example of this in our study of *Darkhei Ha'Mishnah*, in which Frankel uses the work he does in *Vorstudien zu der Septuaginta* as a means of proving the existence of a legal tradition that pre-dates the Mishnah. Related to this is the idea evident early in Frankel's scholarship that biblical exegesis scarcely plays any creative role at all in the development of *halakhah* but rather it came about by means of the creative responses of living communities to the challenges of life.[71] I have already discussed the *Zeitschrift fuer die religioesen Interessen des Judenthums* which Frankel founded in 1844 and its role as "a kind of cradle and wellspring of 'Positive-Historical' ideology within religious

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[68] Louis Ginzberg, "Zechariah Frankel," *Students, Scholars and Saints*; it would appear that the actual abolition did not happen until later, as Frankel returns to this subject in 1846. This does not negate the influence that this first work would have had in general or on the Prince specifically.
[69] Heller, "Frankel, Zacharias," *Encyclopedia Judaica.*
[70] Joel Gereboff, "The Pioneer: Zecharias Frankel" in Jacob Neusner, ed. *The Modern Study of Mishnah*, (Leiden, 1973), 59.
[71] Jay Michael Harris, *How Do We Know This?* 191.

Judaism;"[72] here it is necessary only to note that three volumes were published between 1844 and 1846 before being discontinued. Frankel returned to the subject of oaths in 1846 with *Der gerichtliche Beweis nach talmudischem Rechte*, a study of legal evidence according to Talmudic law, following which he seemed to take a hiatus from publishing.

When he returned to publishing, he did so with gusto, publishing *Ueber den Einfluss der palaestinischen Exegese auf die alexandrinische Hermeneutik* in which we find a shift in Frankel's thinking on the role of exegesis within Palestinian intellectual culture as well as the development of *halakhah*:

> the direction of Palestinian intellectual activity in the centuries before the Septuagint was not to find a foundation for the laws originating in "life"; rather, "The teachers and students of the law strove essentially to determine how life was to be regulated according to it [i.e. scriptural law], how the law was to be preserved and carried out: 'knowledge should lead to action.'"[73]

This shift in Frankel's thinking reflects the influence of Nahman Krochmal's Guide of the Perplexed of the Time and will be further reflected in Frankel's treatment of the *Sofrim* in *Darkhei Ha'Mishnah*. Frankel's other important scholarly contribution to take shape in 1851 was the publishing of the *Monatsschrift fuer Geschichte und Wissenschaft des Judentums*. In contrast to Frankel's earlier journal which attempted to determine the Jewish religious general will, the *Monatsschrift* focused on scientific research. It served as the leading journal of Jewish scholarship for many decades, due largely to the quality of contributors; many of the most renowned scholars of the day submitted articles for publication. The journal was made up of two distinct sections, as indicated by its title: *Geschichte* "was pitched towards an educated but non-scholarly body of readers and contained translations of sources and synthetic essays that were meant to edify and

[72] Braemer, "The Dilemmas of Moderate Reform," 79.
[73] Harris, *How Do We Know This?* 196.

uplift..."[74] while the scholarly substance was contained within *Wissenschaft des Judentums*. Through this journal Frankel was able to provide Jewish educational material of a wide variety to a relatively large audience as well as make "a major contribution to reconfiguring a new image of Judaism as a dynamic historical phenomenon."[75] The journal would remain a leader in Jewish scholarship until it was forced to shut down by the Nazis in 1939.

Although Frankel would not publish another book until *Darkhei Ha'Mishnah* in 1859, the early part of the decade found him actively involved in scholarly pursuits through his contributions to and role as editor of the *Monatsschrift*. After 1854, however, the small number of scientific papers that Frankel placed in the *Monatsschrift* attested to the degree with which, alongside his teaching responsibilities, he concentrated his efforts on *Darkhei Ha'Mishnah*.[76] As mentioned above, *Darkhei Ha'Mishnah* will be addressed extensively in the next chapter. In the last decade of Frankel's life he continued to undertake ambitious projects, beginning in 1865 with *Entwurf einer Geschichte der Literatur der nachtalmudischen Responsen* (Draft History of the Literature of the Post-Talmudic Responsa), which unfortunately was never fully realized and is considered one of Frankel's weaker works. As mentioned above, Frankel focused his later scholarship on the Palestinian Talmud, which he felt had been neglected to that point. This resulted in his publication of *Mevo Ha'Yerushalmi* in 1870, which was intended to serve as an introduction to the Palestinian Talmud and perhaps the introduction to the critical edition and commentary that Frankel had undertaken, entitled *Ahavat Tziyon*. Unfortunately he

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[74] Schorsch, *From Text to Context*, 259-60.
[75] Braemer, "The Dilemmas of Moderate Reform," 80.
[76] Andreas Braemer, *Rabbiner Zacharias Frankel, Wissenschaft des Judentums und konservative Reform im 19, Jahrhundert*, (Hildesheim, 2000).

was able to work through only three tractates of the Palestinian Talmud prior to his death in 1875: *Berakhot* and *Pe'ah* were published in 1874 and *Demai* in 1875. As noted above, much of Frankel's scholarly reputation is connected with *Darkhei Ha'Mishnah*. It is clear, however, from the range of examples given that his individual works, his journals, and his role at JTS, exerted a powerful influence in Frankel's own time and in some cases well beyond. Therefore his importance as a scholar cannot be denied.

Summary

An understanding of the religious and scholarly milieu out of which Frankel emerged is imperative for understanding both the man and his work. Through our consideration of the early *Wissenschaft* scholars Jost, Wolf and Zunz we are able to understand the roots of the scholarly movement of which Frankel would become an important figure. The discussion of Abraham Geiger and Samson Raphael Hirsch set the boundaries of the subject at hand, since "only if the boundaries are clearly seen does it become possible to map out the territory within."[77] That "territory within" is the life, career and thought of Zacharias Frankel, who was responsible for the development of a middle route between Orthodoxy and radical reform. The span of Frankel's career included several rabbinic positions, during which he emerged as an advocate of moderate reform and honed his religious ideology into what would become positive-historical Judaism. The events at the Frankfurt conference of 1845 provided him with a platform upon which to present this ideology to his contemporaries, yet it ultimately proved to be the point of separation for Frankel from the extant Reform movement. The foundational ideas of positive-historical Judaism that Frankel elucidated during his time in Dresden incorporated the revelatory nature of both the will of the community and the Pentateuch,

[77] Meyer, *Response to Modernity*, 77.

in addition to the importance and dynamic nature of Jewish law. Frankel's most important role may have been as the head of the *Juedisch-Theologisches Seminar* in Breslau. Under Frankel's stewardship JTS became the model for the modern rabbinic seminary and in this way forever altered the nature of modern Jewry. In addition to his role as rabbi and educator Frankel was a well respected scholar and contributed a variety of works, dealing mainly with rabbinics with a focus on rabbinic law. Frankel's most important scholarly contribution was *Darkhei Ha'Mishnah* to which we will now turn our attention.

Darkhei Ha'Mishnah: Influences and Responses

The first chapter of this thesis has provided a broad-based view of the cultural, scholarly and religious context within which Frankel lived and worked. This chapter will focus on the specific scholarly milieu that both helped to produce and was influenced by Frankel's seminal work *Darkhei Ha'Mishnah* as well as the book itself. The first element that will be addressed is the state of Mishnah scholarship prior to *Darkhei Ha'Mishnah*. Through studying several of the notable scholars whose work influenced the field in general and Frankel in particular, a better understanding of the developments that Frankel makes in his work and their importance for the furtherance of Mishnah scholarship can be ascertained. Having studied its predecessors, the discussion will turn to *Darkhei Ha'Mishnah* itself regarding both its structure and content. Following this the reactions of Frankel's contemporaries will be noted, including direct responses to *Darkhei Ha'Mishnah* that emerged in the years after its publication as well as the indirect responses of the several scholars of the late nineteenth and early twentieth centuries whose works most directly connected to Frankel's thought and conclusions.

The Influences

The discussions and debates about the nature of the Mishnah that became such a dominant part of the scholarly culture of nineteenth century Germany began to take shape during the period of the *Haskalah*. The differences in approaches and attitudes towards rabbinic literature and Jewish Law in general exhibited during the *Haskalah* served to some degree as the foundation for the development of various positions on Jewish Law

amongst the scholars of *Wissenschaft des Judentums (WdJ).* Several of the *maskilim* were not merely critical but disparaging of rabbinic literature and Jewish Law. Solomon Maimon was amongst the most outspoken, asserting in his autobiography that "the irrational, artificial intellectual underpinnings of rabbinic law began to eat away at Jewish rationality from the beginning."[78] One of the notable sources for a more positive viewpoint was Moses Mendelssohn's Jerusalem in which he sought to portray Jewish Law as flexible and progressive: "He alluded to the fact that Jewish Law constantly strives to renew itself according to the conditions of the times, and resists any adherence to a fixed mode or process of fossilization."[79] The idea that the law adapted to the circumstances of the time was a new concept in the approach to Jewish Law. Mendelssohn supported his theory by further asserting that the Mishnah was not originally written down since this would have limited its scope and flexibility. In spite of the fact that neither Mendelssohn nor Maimon were religious reformers, each of these approaches inspired religious reform and set up a debate that lasted through the nineteenth century: what role, if any, should the Oral Law play in the development of religious reforms?

The issue of when and by whom the Mishnah was written down would become a particularly important subject during the nineteenth century, due in part to the impact it had on the way many Reformers viewed their movement and its relationship to the Mishnah. There were essentially four different ways of understanding the issue. There was the traditional viewpoint which believed that Rabbi Judah Ha'Nasi ("Rabbi") redacted and oversaw the compilation writing of the Mishnah. This camp, which

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[78] Harris, *How Do We Know This*, 151

[79] Chanan Gafni, *The Emergence of Critical Scholarship on Rabbinic Literature in the Nineteenth Century: Social and Ideological Contexts,* (Cambridge, 2005), 59

included Samson Raphael Hirsch along with all of the opponents of *WdJ* and religious reform, understood the editing and writing down of the Mishnah as having established it as fixed entity that was not subject to shifting historical circumstances. Therefore, any attempt to present the Mishnah as being reflective of a progressive or innovative spirit was thought to do violence to the Mishnah and the tradition in general.

Ironically, a similar position to that of the traditionalists was taken by the radical Reform contingent which constitutes the second approach to understanding the Mishnah and *halakhah*. The radical Reformers also believed that the Mishnah had been written by Rabbi and was intended as a fixed corpus of law. The difference of course was that the reformers viewed this not simply as a negative, but in fact a central element in the stagnation and degeneration of Jewish Law and life. They were the inheritors of the *maskilic* idea that Rabbinic Judaism was "a decadent form of religion that traduced the ideals and values of the earlier Mosaic revolution."[80]

A third way of viewing Rabbi and the Mishnah was to argue that nothing was written down until the late Talmudic period and that the oral nature of the law was intended to provide flexibility. This was a view held by many Reformers who wanted to "portray Jewish Law as a developing, oral tradition, rather than as an immutable, written body of literature."[81] Taking this approach to Jewish Law, the Reformers sought not simply to justify the changes they deemed necessary but to in fact portray the act of reform as inherent in Jewish legal culture.

Lastly, there was a segment of the scholarly community that accepted the traditional view that Rabbi had been responsible for the writing of the Mishnah but

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[80] Harris, *How Do We Know This*, 151

[81] Gafni, *The Emergence of Critical Scholarship on Rabbinic Literature in the Nineteenth Century: Social and Ideological Contexts*, 84

maintained that this did not preclude the potential for change. The best example of this approach is found in Aaron Chorin. Chorin came to the subject of the Mishnah with a desire to promote flexibility and reform, but without the animosity evident amongst the radical Reformers. Chorin actually viewed the style of writing in the Mishnah as evidence that Rabbi had intended for there to be continued legal debate in future generations. Based on this, he pointed to the Mishnah and Talmud as examples of progress within the realm of *halakhah* and that a similar evolution was possible in his time "if only one were ready to be as innovative as the early rabbis."[82]

These examples help to provide an understanding of the various directions Mishnah study took during the nineteenth century. They also indicate the fact that the study of the Mishnah was rarely without an ideological component. There were numerous methods for studying Mishnah that developed during the century. However this discussion will focus on the historical method, focusing on the works of three scholars who had a significant influence on Frankel and *Darkhei Ha'Mishnah*: Nahman Krochmal, Abraham Geiger and Heinrich Graetz.

Nahman Krochmal

Nahman Krochmal was a Galician scholar who lived at the end of the eighteenth and beginning of the nineteenth centuries (1785-1840). As mentioned, he was a scholar who did not believe that the Mishnah had been set to writing in the days of Rabbi. Rather, Krochmal understood the contents of the Mishnah to have been transmitted orally until well into the Talmudic period. This attitude reflects his approach to the study of Mishnah and *halakhah*. In many ways he can be viewed as a bridge between the *Haskalah* and *Wissenschaft des Judentums*, in part because of the period in which he

[82] Meyer, *Response to Modernity*, 158

lived, essentially straddling the two movements. Far more important, however, is the fact that he helped to create a transition from the philosophically oriented approach of the *maskilim* to the historically oriented approach that was characteristic of *WdJ.* Krochmal was not technically a part of what became known as the "historical school," but his influence on those scholars should not be minimized. Krochmal's only major work *Moreh Nebukhe Ha'zeman* (A Guide for the Perplexed of the Time) was published posthumously in 1851. While his treatment of the Mishnah in this work is relatively limited, it is nonetheless an important work to consider because of his application of the method of historical investigation to the Mishnah. Krochmal's method is reflected in his description of the Mishnah's development: it began with the scribes (*Sofrim*), who he considered to have lived between the time of Ezra and Shimon the Righteous, and continued in three distinct stages until it was organized and edited by the *tannaim.* Even as he historicized the Mishnah and *halakhah,* Krochmal did not want to abolish their authority, nor did he intend to attribute to the rabbis any ulterior motives. Rather, he believed that understanding the historical context of the Mishnah and *halakhah* would enhance Judaism and "was confident that reading sacred texts contextually would yield layers of undetected and uplifting meaning."[83] This statement was an inspiration for Frankel, who sought to bolster the authority of the Mishnah and *halakhah* by placing their roots in antiquity and had the highest regard for the *Tannaim.* Krochmal's work also paved the way for works on the Mishnah by Graetz and Geiger. Notably, Graetz, Geiger and Frankel each published works in this field between 1853 and 1859 and reflected the historical approach to Mishnah and *halakhah* which Krochmal had been so integral in developing.

[83] Schorsch, *From Text to Context*, 167

Heinrich Graetz

Heinrich Graetz was born in 1817 in Xions (Ksiaz), Poznan in Prussia. The son of a butcher, Graetz received a traditional religious education and pursued rabbinic studies from 1831-1836. His secular education, prior to university, was gained through extensive personal study. After reading Samson Raphael Hirsch's Nineteen Letters on Judaism, which helped him to avert a crisis of faith, Graetz accepted an invitation from Hirsch to study under him. Graetz would remain under Hirsch's tutelage for three years, 1837-1840, before moving on, but he remained fond of Hirsch, at least initially, as evidenced by Graetz's dedication of his dissertation to Hirsch, "the profound fighter for historical Judaism, the unforgettable teacher, the fatherly friend."[84] It was also during the period in which he studied at the University of Breslau[85] that Graetz had his first encounter with Abraham Geiger, who became his nemesis in many respects in both the scholarly and religious arenas. Graetz's personal animosity towards Geiger, as well as the Reform movement in general, was reflected in both the topics Graetz chose to focus on as well as the style in which he presented his arguments. By the time his dissertation was published, Graetz had developed a relationship with Frankel, having written to him following Frankel's resignation from the Frankfurt rabbinical conference.[86] Their professional relationship grew over the years, with Graetz submitting articles for each of Frankel's periodicals, serving as editor for the *Monatsschrift fuer Geschichte und Wissenschaft des Judentums* from 1869-1888 and joining the faculty of JTS in Breslau.

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[84] Heinrich Graetz, *Gnosticismus und Judentum* , (Krotoschin, 1846) as cited in Schorsch, *From Text to Context*, 281

[85] Although Graetz studied in Breslau, his PhD was officially earned through the University of Jena since Jews could not earn a PhD at the University of Breslau at that time.

[86] For a discussion of Frankel's and the Frankfurt conference see chapter one of this thesis

The first published volume of Graetz's *magnum opus*, the *Geschichte der Juden von den aeltesten Zeiten bis zur Gegenwart* (History of the Jews from the Earliest Times to the Present) covered the period from 70 to 500 C.E. Even though this volume was actually the fourth in the series, it was published first for ideological reasons, namely to respond to Reform attacks on rabbinic Judaism. One element of these attacks, as discussed above, was the idea that the emergence of rabbinic Judaism marked the beginning of a significant decline within Judaism. In making this era the focus of his first published volume Graetz sought not only to re-establish the period's importance but also to present it in more positive terms: "Graetz invoked the categories of recovery, regeneration, and consolidation. In the wake of national disaster, creative leadership forged new religious institutions to preserve and invigorate the bonds of unity."[87] In addition to this effort to rehabilitate the reputation of the rabbinic period and rabbinic Judaism in general, Graetz attempts to develop a historical conception of the Mishnah. His overall structure is reminiscent of Krochmal, in that Graetz recognizes stages of development in the Mishnah, but it is in his explication of those stages where Graetz's history begins to speak with a unique voice.

The first element of Graetz's treatment of the Mishnah that must be discussed is his understanding of the laws that were the forerunners of the Mishnah. Graetz looks to the period in Jewish history during which the community split into factions (Pharisees, Saducees, etc.), and in discussing the distinguishing characteristics of the Pharisees he explains:

> In a nation whose breath of life was religion, many customs whose origin was lost in the dim twilight of the past had taken their place by the side of the written Law. If these customs were not found in the books of the Law they were ascribed to the

[87] Schorsch, *From Text to Context*, 288

> great teachers (the Sopherim and the Great Assembly—Keneseth ha'gedolah), which, at the time of the return of the Captivity, had given form and new vigor to the religious sentiment.... Such religious customs were called the legacies of the teachers of the Law (Dibre Sopherim).[88]

Thus one can see that Graetz ascribes the extra-Biblical laws to the *Sofrim* and the Great Assembly. In doing this, Graetz paints a picture of a community of scholars who created laws that responded to their circumstances. By establishing this as the basis for the laws that would become the Mishnah, Graetz is presenting the Mishnah as a continuation of the process of response that began with the *Sofrim*.

Graetz promotes this concept even further in his treatment of Hillel's seven hermeneutical principles. It is important to note here that the idea that these principles were introduced by Hillel ran counter to the prevailing traditional belief that they were part of the Sinaitic revelation. Opponents of the historical method, such as Graetz's former teacher and mentor Samson Raphael Hirsch, argued that "the notion that exegetical principles emerged in time and in response to specific circumstances totally undermined their legitimacy."[89] This represents a trend in the interactions between the scholars of the historical school and their Orthodox contemporaries: the scholars believe they are supporting the tradition by placing it within history while the Orthodox feel that this approach only denigrates the Mishnah and Talmud. Orthodox protestations notwithstanding, Graetz's work actually portrays Hillel as not only a progressive figure but, to some extent, a figure in line with nineteenth century sensibilities:

> ...far more important was his logical derivation of the statutes of the Law observed in his time. He traced them back to their first principles, and raised them out of the narrow circle of tradition and mere custom to the height of reason[90]

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[88] Heinrich Graetz, *History of the Jews: Volume II*, (Philadelphia, 1893), 19
[89] Harris, *How Do We Know This*, 187-8
[90] Graetz, *History of the Jews*, 98

The depiction of Hillel as relying on logic and reason as a means of explaining the law and as a progressive figure were both radical departures from the traditional viewpoint. So too was Graetz's understanding of Hillel's hermeneutical principles. In Graetz's estimation, these rules both granted authority to existing laws and were at the same time a vehicle for innovation and progress:

> By the introduction of the seven rules, or Midoth, the oral law could be imbued with the same weight and authority as that actually contained in the Scriptures. Through these seven rules the oral law assumed quite a different aspect; it lost its apparently arbitrary character; it became more universal and reasonable in its tendency, and might be looked upon as originating from Holy Writ itself. These explanatory rules were, moreover, intended not only to justify the oral law, but also to lay down instructions to amplify the laws, and how to meet unforeseen cases of difficulty[91]

In addition to Hillel, Graetz focuses on Rabbi Akiva as well. Akiva was important in Graetz's estimation for two main reasons. One of these reasons was Graetz's belief that Akiva was responsible for pioneering "new methods of interpretation that went well beyond those of Hillel. Indeed in Graetz's telling he was the creator of an entire system of interpretation, hitherto unknown in Jewish history."[92] To Graetz, this new approach was characterized by Akiva's insisting that the Torah was not written in human language and it therefore cannot be read as one would read any other written work. The practical implication of this, according to Graetz, was that in Akiva's system "nothing is superfluous, no word, no syllable, not even a letter; every peculiarity of expression, every additional word, every sign is to be regarded as of great importance, as a hint of a deeper meaning that lies buried within."[93] In contrast to Akiva and his method, Graetz discusses Rabbi Ishmael, who accepted that the Torah was written in human language and therefore

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[91] *Ibid.*, 98-99
[92] Harris, *How Do We Know This*, 183
[93] Graetz, *The History of the Jews*, 352

believed one can assume that certain "expansive elements are devoid of significance."[94] The distinction Graetz makes between Rabbis Akiva and Ishmael, it is important to note, was generally limited to the means of interpretation. When it came to the final determination of law, Graetz argues that in most cases Rabbis Akiva and Ishmael agreed. This approach indicates that for Graetz it was not the application of interpretive principles that resulted in the law, for otherwise one would expect the varying methods of Rabbis Akiva and Ishmael to result in different legal conclusions.

One other element of Graetz's work that is worth discussing in this context is his belief that there was a Mishnah of Rabbi Akiva that replaced a 'Mishnah *rishonah.*' Graetz contends that subsequent generations developed their own versions of the Mishnah, drawing on their predecessors but also adding content and shifting the arrangement of the material. It is in this light that Graetz considers the Mishnah of Rabbi Judah Ha'nasi, contending that Rabbi never meant for it to be authoritative "but rather to be a private aid to himself, to help him remember the order of the issues he was to teach his students. But because of his personal authority, his collection soon superseded that of others."[95] Additionally, Graetz contends that Rabbi's Mishnah was not written down until centuries after its compilation and that it was passed on orally until that point.

The first published volume of Graetz's *Geschichte der Juden von den aeltesten Zeiten bis zur Gegenwart* elicited strong reactions from all sides of the religious debate ranging from laudatory to damning. In spite of this, or perhaps because of it, this volume was a major advance in the critical study of Jewish history in general as well as the study

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[94] Harris, *How Do We Know This*, 184

[95] William Scott Green, "The Talmudic Historians: N. Krochmal, H. Graetz, I.H. Weiss, and Z. Jawitz" in Neusner, *The Modern Study of Mishnah*, 113

of Mishnah and its history in particular and its influence would be seen in many of the works that followed it.

Abraham Geiger

For essential biographical and professional information about Geiger please refer to chapter one. This section will focus on two of Geiger's works not only because they provide access to his influential opinions and ideas, but also because they reflect a shift in Geiger's attitude towards the Mishnah. The first of the two works is *Das Verhaltnis des naturlichen Schriftsinnes zur thalmudischen Schriftdeutung* (The Relationship of the Natural Meaning of Scripture to Talmudic Scriptural Exegesis), which first appeared in 1841. In this volume, Geiger begins with an examination of the Biblical interpretation found in the Mishnah. In his earlier thinking, Geiger had expressed the belief that in its early stages the Mishnah was an example of an adaptive oral law.[96] He maintains that conviction to a degree in this work, but he additionally thinks that the Mishnah deviated from its adaptive origins at an even earlier stage than he had previously believed. Similar to Graetz, Geiger focused on the method of interpretation used by the rabbis of the Mishnah. Unlike Graetz, however, Geiger took a very critical view of this exegetical system. Geiger argues that in the beginning stages of the Mishnah "the Tannaim did not yet feel compelled to ground every halakhic innovation in a scriptural base and were quite ready to admit the most tenuous of connections."[97] He further contends that there is evidence in the Mishnah[98] which shows that even in the time of Yochanan ben Zakkai there was concern about the connection, or lack thereof, between the laws of the Mishnah and the biblical text. Basing himself on this idea, Geiger posits that in their fear and

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[96] Harris, *How Do We Know This*, 160
[97] Schorsch, *From Text to Context*, 315
[98] Sotah 5:2

desperation to forge connections between the emerging *halakhah* and Scripture, the later *Tannaim* and the *Amoraim* lost the ability to intelligently interpret Scripture, and that they "read Scripture without the slightest sense for the existence of a literal meaning."[99] In casting such dispersions on the interpretive method of the rabbis, Geiger calls into question the legitimacy of not only their exegetical system, but the entire *halakhic* enterprise. The methodology and claims he presents in this discussion of Mishnah are in keeping with Geiger's "tear down and rebuild" approach to traditional Judaism, but the fact that at one point he had viewed the Mishnah as representing "a critical historical example of infusing an ancient text with new life and meaning"[100] indicates a certain ambivalence in his thinking.

Geiger published another work on the Mishnah in between the two under discussion here, entitled *Lehr- und Lesebuch zur Sprache der Mischnah* (1845), which was a two-volume work. It is relevant here only to note an element in this work that is indicative of the direction of Geiger's thinking. Even though Geiger intended it to be a philologically inclined textbook and reader for the Mishnah, this work "clearly conveyed the historicity of Jewish law."[101] This is best reflected in his idea that the rabbis of the Mishnah and Talmud were significantly impacted by their shifting circumstances, and that their treatment of Scripture vis-à-vis *halakhah* reflected their need to respond to that influence within the context of the tradition.

Geiger would elucidate his concept of *halakhic* development in his most notable work, *Urschrift und Uebersetzungen der Bibel in ihrer Abhaengigkeit von der inneren Entwickelung des Judentums* (1857). Although this book is ostensibly a study of the

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[99] *Ibid*
[100] Harris, *How Do We Know This*, 158
[101] Meyer, *Response to Modernity*, 92

Bible and its early translations, it "is above all a study of how Jews during the period of the Second Temple and the Mishnah preserved the relevance of their sacred literature."[102] In spite of the personal animosity that existed between the two men, Geiger's work was influenced by Graetz's conception of the Mishnah and the interpretive methods of the rabbis. Rather than view the exegetical system as doing violence to the biblical text, Geiger now perceived not merely a progressive element in the exegesis of the rabbis of the Mishnah but an upheaval:

> The exegetical revolution of the first and second centuries, pioneered by Hillel and fully executed by Aqiba, completely overturned the "old" halakhah and replaced it with one that was fresh and new. This revolutionary activity became necessary because Jews were no longer in a position to "correct" the very words of the Bible, as previous generations of Jews had done; they thus had to "correct" the significance of the old words, so that they now meant something entirely new.[103]

This conception fit perfectly with Geiger's attitude towards religious reform and provided a justification through tradition for the changes he deemed necessary. Just as the rabbis of the Mishnah and Talmud used exegesis as a means of developing *halakhah* that was relevant to the age, so too the Reform movement could use the methods at their disposal to "correct" those interpretations of Scripture that were no longer applicable.

There are two other important aspects of Geiger's work worth noting here: his treatment of the Pharisees and his effort on the relationship between Akiva and Ishmael. By viewing them as a progressive element whose biblical exegesis "was precisely the innovative instrument which enabled them to challenge the tradition-bound hegemony of the priestly Sadducean aristocracy with a democratic religious program,"[104] Geiger helped to present the Pharisees in a more positive light. Regarding Ishmael and Akiva,

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[102] Schorsch, *From Text to Context,* 318
[103] Harris, *How Do We Know This*, 189
[104] Schorsch, *From Text to Context*, 187

Geiger built upon Graetz's work, but he presented Ishmael as being intransigent. This conception of Ishmael would be further reflected in how Geiger perceived the various works of the period, in that those attributed to Ishmael were deemed reactionary while those credited to Akiva were viewed as revolutionary.

In addition to the growth and development of Geiger's thinking on the Mishnah and the interpretive methods on which it is based, it is also important to recognize a shift in his tone. Early in his career, Geiger wrote on rabbinic Judaism with a level of contempt, an attitude which reflected his belief that the Reform movement needed to tear down in order to build up. As he got older his tone lost much of the negativity that had previously characterized it. Rather than understanding rabbinic Judaism as a degenerative force, Geiger viewed it as developmental and part of a process of growth and progress. Geiger's work, like Graetz's, was both praised and disparaged, depending on the critic's position on the religious and scholarly spectrum. Nevertheless, there can be no doubt that Geiger's work was influential and an important contribution to the study of rabbinic literature in the nineteenth century and beyond.

Darkhei Ha'Mishnah

As noted in chapter one which discussed the rabbinic career and scholarship of Zacharias Frankel, much of Frankel's scholarship throughout his career had dealt with the subjects of rabbinic literature and *halakhah* and *Darkhei Ha'Mishnah* was in many ways the culmination of a lifetime's worth of scholarship. Chapter three will study several specific ideas and arguments presented in *Darkhei Ha'Mishnah*, and therefore the object of this section is to provide a broad view of the book's technical details, outline the subjects covered and consider some of Frankel's conclusions. This will be followed by a

discussion of the positive and negative reactions to *Darkhei Ha'Mishnah*, including some of the scholarship that responded to Frankel's work.

Structure and Content

Darkhei Ha'Mishnah was first published in 1859 by the Leipzig publisher of Frankel's journal the *Monatsschrift fuer Geschichte und Wissenschaft des Judentums*. A second edition was published in 1867[105] with the addition of an index as well as a supplemental page that was meant to respond to the Orthodox attacks on the book. A third and final printing was done in Warsaw in 1923 by M. L. Cailingold. Including the additions of the 1867 version, the book is 386 pages divided into five chapters plus the aforementioned index and supplement. The book is written in Hebrew. Given the attitude of the times one might have expected Frankel to write in German, but there were several reasons that he chose to present his *magnum opus* in Hebrew, in spite of the fact that he had no experience in publishing long Hebrew texts. One of these is the fact that Samuel D. Luzzatto, a prominent Italian scholar of the time, had criticized Frankel's earlier works, as well as those of Heinrich Graetz, for not being published in Hebrew. A second reason for the use of Hebrew was a certain level of cultural pressure since "among German Jews, scholarly texts were printed in Hebrew, similar to Latin volumes in the Christian world of scholarship...even though it substantially shrank the target audience."[106] A third reason is that in spite of the fact that it limited the number of readers in one respect, the use of Hebrew did make *Darkhei Ha'Mishnah* accessible to an international readership, specifically the Jewish communities of Poland and Russia, who

[105]It is unclear whether the publisher of the 1867 edition is the same as that of the 1859 edition. Since I have not found any source that specifies otherwise, I believe it is appropriate to assume that it was the same Leipzig publisher on each occasion.

[106] Andreas Braemer, *Rabbiner Zacharias Frankel: Wissenschaft des Judentums und konservative Reform im 19 Jahrhundert*, 359

would not have understood a research work written in German. Although each of these factors surely played a role in Frankel's decision to write in Hebrew, perhaps the reason underlying all of these was that

> Frankel had despaired of ever getting a hearing among a broader German audience. He seems to have directed his book to those who continued to study classical Jewish texts, but who may have been confounded by the historical and/or exegetical underpinnings of the world of rabbinic literature.[107]

As mentioned above, *Darkhei Ha'Mishnah* is divided into five chapters. These are organized as follows:[108]

1. קורות המשנה (The History of the Mishnah)
    a. Overview of the Persian period and the return from Babylonia
    b. The Emergence of the *Sofrim*
    c. The Great Assembly
        i. Analysis of the statement "Be careful in judgment, raise up many students and make a fence around the Torah"
    d. The Mishnah of the *Sofrim*
    e. Alexander the Great and a new method of learning
        i. The development of "abstract" *halakhah*
    f. The definition and nature of Mishnah
    g. Greek wisdom and *apikorsim*
    h. Establishment of the Sanhedrin
    i. Evidence of *halakhah* in the Septuagint
    j. The Maccabean Revolt
    k. The Days of the Zuggot
    l. The Sadducees and Essenes
    m. The Destruction of the Temple and the establishment of Yavneh
        i. Rabbi Akiva and his disciples
    n. The Six Orders of the Mishnah
    o. The Study of *Halakhah*
        i. *Midrash vs. Peshat*
    p. The *Midot*
        i. Of Hillel
        ii. Of R. Yishmael

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[107] Harris, *How Do We Know This*, 198

[108] I have drawn from the outline found in Joel Gereboff, "The Pioneer: Zacharias Frankel" in Neusner, *The Modern Study of Mishnah*, 60-1

q. *Halakhah l'Moshe m'Sinai*

2. סדר התנאים ותהלוכות למודם (The Order of the *Tanna'im* and the Procession of Their Teaching)
    a. Men of the Great Assembly
    b. Sanhedrin
    c. *Zugot* (Pairs)
    d. *Khachmei Ha'Halakhah* (Sages of the Law)
3. The Organization and Structure of the Mishnah
    a. *Mesadrei Ha'Mishnah* (The Organizers of the Mishnah)
        i. Rabbi Akiva
        ii. Rabbi Meir
        iii. Rabbi Judah Ha'Nasi ("Rabbi")
        iv. Written or Oral Transmission
    b. *Nusakha'ot Ha'Mishnah ha'NImtza'ot b'Yadeinu* (Versions of the Mishnah Available to Us)
        i. Babylonian Talmud
        ii. Jerusalem Talmud
        iii. Books of Mishnayot
    c. *Seder ha'Sedarim v'ha'Masechtot* (The Order of the Orders and Tractates)
4. *Kelalei ha'Mishnah* (The Rules of the Mishnah)
5. *Ha'Sefarim ha'Mo'ilim l'Havanat ha'Mishnah* (The Helpful Books for the Understanding of the Mishnah)
6. *Mafte'ach* (Index)
7. *Hitnatzelut Ha'mechabeir* (Author's Apology)

Chapter One presents Frankel's understanding of the historical development of the Mishnah. He draws from the views expressed by both Krochmal and Graetz regarding the several stages of the Mishnah's development and he also relies on Krochmal's concept that the *Sofrim* were actively engaged in exegetical activity. Frankel additionally adopts a version of Geiger's thinking, in that he recognizes a shift in the way the sages related to *halakhah* and Scripture in the transition from the *Sofrim* to the *Tannaim* and that "an essential part of the activity of the *Tannaim* was to generate new

laws by means of biblical exegesis."[109] One can also see traces of Frankel's other work, such as his discussion of evidence of *halakhah* in the Septuagint, which is drawn from, or at least influenced by, *Vorstudien zu der Septuaginta*, which was his earlier work on the subject.

Chapter Two is by far the longest section of the book and includes a list of all of the scholars named in the Mishnah and attempts to "clarify the methodology of the individual rabbis by placing the laws into categories."[110] This chapter is primarily a compilation of source material, but there is disagreement among some contemporary scholars as to whether or not Frankel's work in this chapter shows any sense of a developing *halakhah*. Joel Gereboff in Jacob Neusner's *The Modern Study of Mishnah* argues that

> this catalogue of sayings in no way shows *development* of the law. The only comment that implies development of the law is his statement that the later generations of the Tannaim (particularly the fourth) discussed and reworked the material of the earlier generations, which is a valuable, if commonplace, observation.[111]

Andreas Braemer, on the other hand, who has produced the only scholarly biography on Frankel currently in print, contends that "he (Frankel) structured his second chapter as a developmental history of religious laws from the introduction of the Sanhedrin until the conclusion of the Mishnah by Rabbi Yehuda Ha'Nasi"[112] Regardless of which side of this argument one supports, it is clear that Frankel's collection of material has the potential to lend insight into the *halakhic* attitudes of the sages of the Mishnah.

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[109] Harris, *How Do We Know This*, 197
[110] Gereboff, "The Pioneer: Zecharias Frankel" in Neusner, *The Modern Study of Mishnah*, 66
[111] *Ibid*
[112] Braemer, *Rabbiner Zacharias Frankel: Wissenschaft des Judentums und konservative Reform im 19 Jahrhundert*, 362

In Chapter Three, Frankel delves into two especially contentious subjects: the role of Rabbi Judah Ha'Nasi ("Rabbi") and the nature of the Mishnah's transmission. As evidenced by the outline presented above, Frankel envisioned a multi-generational process of organizing and editing the Mishnah, beginning with Rabbi Akiva. He bases this on two verses: BT Sanhedrin 86a, which states that "the *stam Mishnah* is Rabbi Meir, the *stam Tosefta* is Rabbi Nehemia and all of it is according to Rabbi Akiva," and Mishnah Kelim 30:4 which reads "Happy is (masechet) Kelim, that began with impurity and ended with purity."[113] Frankel then discusses Rabbi Meir, who he believes collected anonymous statements and organized them in the Mishnah along with the material received from Rabbi Akiva, which is a similar opinion to that offered by Graetz. The third and final organizer of the Mishnah is Rabbi. Although some scholars had portrayed Rabbi as simply a compiler of material, "Frankel sought to provide evidence for his role as legislator as well,"[114] arguing that Rabbi "set halakhah that was in accordance with what they were teaching to do"[115] Frankel also addresses the question of Rabbi's intention regarding the Mishnah. Frankel believed that the Mishnah was in fact intended to be a legal code and the basis for *halakhic* decisions, and cites its brevity as one indicator of this.[116] He also counters the opinion of Graetz specifically, arguing that "the

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[113] It is unclear how Frankel understands this verse proves that Rabbi Akiva was involved in editing or organizing the Mishnah

[114] Gafni, *The Emergence of Critical Scholarship on Rabbinic Literature in the Nineteenth Century: Social and Ideological Contexts*, 163

[115] Zacharias Frankel, *Darkhei Ha'Mishnah*, (Warsaw, 1923), 226
"ולקבוע הלכה אשר על פיה יורו למעשה"

[116] Gafni, *The Emergence of Critical Scholarship on Rabbinic Literature in the Nineteenth Century: Social and Ideological Contexts*, 168

Mishnah...should not be seen merely as a digest of Tannaitic statements, nor as a private collection not intended for widespread use."[117]

On the question of whether the Mishnah was written down or transmitted orally, Frankel offered an opinion which ran counter to many of his conservative *WdJ* contemporaries. He argued:

> that the Mishnah had already been written in the time of Rabbi, and only its instruction had been conducted orally...[and] while the commitment of the Mishnah to writing did limit the freedom of subsequent sages, it did not render them completely inactive.[118]

Thus one finds Frankel seemingly carving out a middle ground in the debate over the written or oral nature of the Mishnah, but it is not quite that simple. Frankel bases his opinion in part on the *Iggeret* of R. Sherirah Gaon. This was problematic because at the time *Darkhei Ha'Mishnah* was published there were two extant versions of this *iggeret* that presented opposite opinions. The 'original' *iggeret,* which Frankel relied on, attributed the writing of the Mishnah to Rabbi, but in 1844 Baer Goldberg published an alternative version of the *iggeret* which stated that the Mishnah was not written down until after the completion of the Talmud. A second basis for Frankel's opinion was drawn from what he viewed as common sense. He argues that there are differences in the way mishnayot are relayed in the Talmud that could only result from the use of a written text. He cites the example of *Me'ilah* 15 in which there is confusion between *b'olah* and *b'olam*: "Here only in writing is there room to err between "*b'olah*" and "*b'olam,*" but orally how does one make this mistake...?"[119] Frankel also makes note of an instance in which there appears to be a switch between a *kaf* and a *nun* and argues that this kind of

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[117] *Ibid.*, 169
[118] *Ibid.*, 90
[119] Frankel, *Darkehi Ha'Mishnah*, 230
"והנה רק בכתב יש מקום לטעות בין "בעולה" ובין "בעולם", אול בפה איך יש לטעות בזה..."

mistake could only happen through use of a written text. The remainder of chapter three involves Frankel considering the three main sources of the Mishnah that were available to the people of his generation and then an attempt to show the logic of the organization of the Mishnah by going through each and every tractate, presented in the 'traditional' order.

In Chapter Four, Frankel presents forty-five principles[120] that he believed were used by Rabbi in organizing the Mishnah and which "attempt to account for every literary trait of the Mishnah, both the normal and the deviant."[121] In delineating these principles, Frankel sought to show that the rules applied to the organization of the Mishnah were both logical and consistent. Furthermore, he believed that establishing this fact would enable him to "prove that the Mishnah was produced, first and foremost, to serve as the basis for halakhic legislation."[122]

Chapter Five consists of a list of sources that Frankel believes will help one better understand the Mishnah. The list includes, but is not limited to, *Mechilta, Sifra, Sifre, Yosef ben Matityahu Ha'Cohen, Peirush ha'Rambam l'haMishnah* and *Tosefta.* The inclusion of *Tosefta* is expected, but interesting since in Frankel's time there was debate as to what exactly was the nature of the *Tosefta.* The Galician scholar Joshua Heschel Schorr contended that the *Tosefta* was in fact a competitor with the Mishnah and a reflection that a significant segment of the community was dissatisfied with Rabbi's work. Frankel, on the other hand, argued

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[120] For a list of all forty-five in English see Gereboff, "The Pioneer: Zacharias Frankel" in Neusner, *The Modern Study of Mishnah*, 71, n36

[121] Gereboff, "The Pioneer: Zacharias Frankel" in Neusner, *The Modern Study of Mishnah*, 71

[122] Gafni, *The Emergence of Critical Scholarship on Rabbinic Literature in the Nineteenth Century: Social and Ideological Contexts*, 165

> the Tosefta set out to realize a goal not addressed by the Mishnah, namely the introduction of rationales and explanations for the Mishnah's decisions. By positing this theory, Frankel could maintain that the Tosefta, almost by definition, not only did not represent a critical response to the Mishnah, but in fact underscored its preeminence.[123]

From this discussion of the structure and content of *Darkhei Ha'Mishnah* it is possible to gain a sense of some of the fundamental arguments put forth by Frankel as well as to see how the earlier works influenced his thinking. The responses to *Darkhei Ha'Mishnah* were especially strong to an even greater degree than the other works discussed thus far. Frankel had managed to touch a nerve, especially in the Orthodox community, and his contemporaries responded with vigor.

Responses

There are two types of responses that must be considered when discussing the reaction to *Darkhei Ha'Mishnah*. The first kind that will be dealt with here is the direct response, which might also be considered the visceral response. This kind of response was often characterized by extremely critical, if not insulting, language and was generally a product of the Orthodox community. A second method of response was more indirect and tended to be expressed through scholarship, an approach which was used by figures from a broad range of the religious and scholarly spectrum. The direct approach will be addressed first through considering the responses of several Orthodox rabbis with a focus on the epistle of Rabbi Gottlieb Fischer. This discussion will include a look at those figures that supported Frankel or disagreed but did so in a more moderate fashion. Secondly, understanding the indirect approach will involve looking into several scholars whose works responded to Frankel, both those who agreed with his conclusions and those who did not.

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[123] Gafni, *The Emergence of Critical Scholarship on Rabbinic Literature in the Nineteenth Century: Social and Ideological Contexts,* 175-6

As mentioned, the Orthodox community responded harshly to *Darkhei Ha'Mishnah*. The first and most vitriolic of these responses was the epistle of Rabbi Gottlieb Fischer of Stuhlweisenburg, Hungary. The epistle was published in three segments beginning in December of 1860[124] as part of a series in Samson Raphael Hirsch's journal *Jeschurun,* entitled "Articles on Dr. Z. Frankel's Darkhei Ha'Mishnah." Fischer begins with what is essentially a "state of the Torah" address, and his perspective is immediately apparent in his introduction where he refers to:

> so-called 'Rabbis' [who] have turned the weapons of ridicule and contempt upon the words of our Sages.... While assuring us of their profound respect for our Sages, their purpose is nothing less than to knock down the very foundations of the Torah.[125]

Fischer goes on in this vein, expressing his dismay at the lack of Torah knowledge among the populace as being fertile ground for the "fallacies" of the "so-called 'Rabbis,'" eventually singling out Frankel and *Darkehi Ha'Mishnah*. In addition to his critique of Frankel's work, Fischer also criticizes Frankel as an individual, explaining that Frankel "delights in deceptive appearances" because he has "wrapped himself into the cloak of a true believer of tradition...."[126] It is also interesting to note that Fischer refers to Frankel as "Dr. Z. Frankel" and does not refer to him as a rabbi. Fischer does acknowledge that Frankel has served as a rabbi, but does so in order to question his legitimacy.[127] Although he goes on to charge Frankel with a multitude of offenses, Fischer's fundamental complaint against *Darkhei Ha'Mishnah* is expressed in the epistle's first chapter:

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[124] David Bechhofer and Elliott Bondi eds., *Samson Raphael Hirsch: The Collected Writings, Vol. 5,* (New York, 1988), 209. The subsequent segments were published in January and July of 1861.
[125] *Ibid.,* 212
[126] *Ibid.,* 213
[127] *Ibid.,*224-5

> The claim that the traditional explanations of the Law are of human origin constitutes a denial of one of the fundamental teachings of the Jewish religion, and is therefore reprehensible. But in addition it is an utterly shallow, unscientific assumption that dissolves into nothingness before a logical, honest examination of the substance of the tradition.[128]

This tone and sentiment were characteristic of Fischer's attitude, but it is surprising that he appealed to logic and scientific reasoning. He builds on this by arguing that it is illogical to believe that

> The men of the *anshei keneset ha'gedolah* have reached the unanimous conclusion, "by *moetzot v'da'at*," by their own deliberation and understanding alone, that the commandment of *teruah* must be performed on, of all instruments, the shofar? Truly, all the scholarship and understanding in the world could not have made such a decision on the basis of mere human logic if not for a pertinent tradition going back to Moses....[129]

Chapters two and three of the epistle continue with essentially the same method and tone. In chapter two, Fischer addresses Frankel's understanding of *halakhah l'Moshe m'Sinai*. Fischer argues that Frankel turned an exception presented by the "Rosh" (Asher ben Jehiel) into a rule and in doing so had denied the Godly origin of the tradition's authority. In the third chapter Fischer contended that Frankel's treatment of the thirteen *midot* of Rabbi Ishmael had profaned the principles that had been laid out, and that Frankel had falsely attributed them to the *Tanna'im*.[130] These examples are indicative of the attitude of many within the traditionalist camp; they did not simply disagree with Frankel but viewed him as a threatening and even heretical figure.

Another response was presented in <u>*Hatzofeh al Darkhei Hamishnah*</u> by Rabbi Zvi Benjamin Auerbach of Halberstadt. Auerbach sought to refute a number of Frankel's specific claims through proof gleaned from the Talmud, including the ideas that the *Tannaim* altered commandments, and that rabbinical decrees originated in the time of

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[128] *Ibid.*, 220

[129] *Ibid.*, 221

[130] In contrast to the traditional opinion which viewed the *midot* as being part of revelation.

Ezra the Scribe. Although his language was not as caustic as Fischer's, Auerbach does level harsh criticism at Frankel, questioning his credibility and his knowledge by suggesting that he "has not studied the Mishna and the Poskin, which is why his book contains so many errors."[131] Other traditionalists were not nearly as scathing in their critique, although they clearly expressed their disagreement with Frankel's conclusions. Perhaps the best example of this is Samuel Freund, the *dayyan* of Prague, who "rejected the action of Hirsch and Fischer...and went so far as to brand their conduct as a desecration of God's name. However at the same time he considered it as proven that Frankel had lied about basic principles of Jewish belief."[132]

The neo-Orthodox community had responded to other works from *WdJ* scholars, so one must question why Frankel and *Darkhei Ha'Mishnah* elicited a more heated response than other works. One reason was that Frankel's work called into question not only what was deemed a fundamental Jewish belief, but specifically one that served as the foundation for the Orthodox community's entire way of life. *Darkhei Ha'Mishnah* was not the first work to do this, however, so it would seem that there were more specific reasons for the anger. One was that "Hirsch and his supporters were especially fearful of *WdJ* at its most conservative, for then its pernicious influence was difficult to detect."[133] The Orthodox scholarly elite may have feared that the laity, especially the well-educated lay people, would have found Frankel's ideas intriguing. It may have been easier for a traditionalist to dismiss the writings of the radical Reformers, but with Frankel's work

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[131] Zvi Benjamin Auerbach, *Hatzofeh al Darkhei Hamishnah*, (Frankfurt am Main, 1861), 54 in Assaf Yedidya, "Orthodox Reactions to 'Wissenschaft des Judentums'" in Steven T. Katz ed., *Modern Judaism: A Journal of Jewish Ideas and Experience Volume 30, Number 1* (Oxford, 2010), 74

[132] Braemer, *Rabbiner Zacharias Frankel: Wissenschaft des Judentums und konservative Reform im 19 Jahrhundert*, 377

[133] Michael Meyer, *Judaism Within Modernity*, 131-2

both his lineage and his praise of and general positivity towards the *sofrim* and other sages may have sweetened an otherwise bitter pill. A second reason for the anger related to Frankel's role as the head of a rabbinical seminary. The thought that Frankel was teaching the ideas and methods expressed in *Darkhei Ha'Mishnah* to students who would go on to serve as rabbis of communities, *dayyanim,* and teachers of Torah was anathema to the traditionalists. Their fear and anger may have been exacerbated by the fact that JTS drew students from all over Europe including some who came from otherwise traditional homes and communities, in addition to the fact that there was no comparable Orthodox institution until the opening of the *Rabbiner Seminar fuer das Orthodoxe Judentum* in 1873.

It may appear from the examples presented thus far that the vast majority of the German-Jewish community was united in their opposition to Frankel and *Darkhei Ha'Mishnah*, but this was not the case. There was a variety of individuals and groups who came to Frankel's defense, including Bernhard Beer, the longtime head of the Dresden community and its schools, who argued:

> those religious Jews don't want to admit that they are denying a portion of the Torah. Not all *memrot d'Gemara* can be *halakhah l'Moshe m'Sinai.* If they are pushed into prominence then the *halakhot* that are not *l'Moshe m'Sinai* are pushed down and lose their obligatory nature.[134]

Further support came via a document from the students of JTS that was included as an insert in the February 1861 edition of *Allgemeine Zeitung des Judentums*, the journal of Ludwig Philippson. Additionally, the community in Prague attempted to collect signatures in support of Frankel and the Chief Rabbi Solomon Judah Leib Rapoport submitted an "opus" supporting Frankel's arguments.

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[134] Braemer, *Rabbiner Zacharias Frankel: Wissenschaft des Judentums und konservative Reform im 19 Jahrhundert*, 367

In all of the tumult that came about as a result of his work, Frankel himself remained largely silent. With the exception of the aforementioned brief supplement appended to *Darkhei Ha'Mishnah* in 1867, Frankel did not publicly respond to his critics (although privately he referred to Hirsch and Fischer as idiots), but instead decided that remaining silent served as a retaliatory measure.[135] The supplement did not seek to address the specific critiques leveled against his work, but rather complained about the attacks on his book and reiterated his intentions in writing *Darkhei Ha'Mishnah*, noting that he "said nothing about tradition or dogma, which, according to my deepest convictions, no one with deep religious seriousness can ever deny."[136]

While the direct responses came in the years immediately following the initial publication of *Darkhei Ha'Mishnah*, the 'indirect' approach was often not seen until years, even decades, after the book first came out. The works that utilize this approach are characterized by arguments that address the conclusions of Frankel's work but do not attack Frankel personally or seek to undermine the scholarly ethos out of which his project developed. One could argue that almost every scholar who published on the Mishnah following *Darkhei Ha'Mishnah* responded to Frankel, but there are three who exhibit this most clearly: David Zvi Hoffman, Jacob Bruell, and Hanokh Albeck.

David Zvi Hoffman

David Hoffman was born on November 24, 1843 in Verbo, Hungary. He received a traditional Jewish education before pursuing secular studies first at the College of Pressburg and then at the Universities of Vienna and Berlin, eventually receiving his doctorate from the University of Tuebingen in 1870. Hoffman taught at several institutions, including Samson Raphael Hirsch's Jewish High School of Frankfurt-am-

[135] *Ibid.*, 371
[136] *Ibid.*, 378

Main, before being appointed as a professor at the newly opened Orthodox rabbinical school *Rabbiner Seminar fuer das Orthodoxe Judentum* in 1873.[137]

Hoffman's approach to *Wissenschaft des Judentums* and the Reform movement was one that recognized both their impact and their permanence. Therefore, rather than seeking to eliminate them, Hoffman worked to understand how he and the Orthodox community might live with them. In the case of *WdJ*, Hoffman did not believe that it was incompatible with Orthodoxy and sought to create an Orthodox historiography.[138] On the subject of the Mishnah, there are two works where Hoffman responds to some of the conclusions expressed in *Darkhei Ha'Mishnah* and to the historical school in general: *Die Erste Mischnah* (The First Mishnah) and *Zur Einleitung in die halachischen Midraschim*[139](An Itroduction to the Halakhic Midrashim).

In The First Mishnah, Hoffman expresses agreement with the *WdJ* scholars in noting that the Mishnah is a composite document. He also recognizes through his study of tractate Avot "no less than three reworkings of prior material," attributing these to Hillel and Shammai, Akiva, and Rabbi.[140] While his conclusion is reflective of the historical school, Hoffman used internal, as opposed to historical, evidence to make his case. This is reflective of a trend found in Hoffman's work in that there is some level of agreement with Frankel and the historical school but also an important distinction in either method or conclusion. Another example of this is found in the opening pages of

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[137] Biographical information taken from Ginzberg, *Students, Scholars and Saints*, 253

[138] Harris, *How Do We Know This*, 229

[139] This version of the title is taken from Ginzberg, *Students, Scholars and Saints*, 260 however Gafni cites it as *Zur Einleitung in halakischen Midrasch* (231)

[140] Charles Primus, "David Hoffman's *The First Mishnah*" in Neusner ed., *The Modern Study of Mishnah*, 130

The First Mishnah in which Hoffman distinguishes between the origins of the Mishnah's content and structure:

> The Mishnah...is for the best part of Divine origin as far as the content is concerned, but the form has only been fixed at a relatively much later time. From Moses until the Tannaim the form of the Mishna was fluid, and each transmitting teacher handed down the received teaching in the formulation that appeared fittest to him.[141]

One can see from this example that Hoffman's opinion on the form of the Mishnah has been influenced by the historical school but that he maintains the Orthodox belief as to the nature of the Mishnah's content.

A similar approach is apparent in An Introduction to the Halakhic Midrashim. In this work Hoffman argues against Frankel's contention that the hermeneutical principles (*midot*) originated with Hillel or that they derive from any source other than Sinai. He claims that this notion is evident from numerous Talmudic sources but "this is one of Hoffman's few claims regarding what we can learn from the Talmud that carries no footnote, no citation of Talmudic sources, with which the book otherwise abounds."[142] In contrast to this, Hoffman embraced the idea put forth by both Graetz and Frankel regarding the schools of Akiva and Ishmael. Unlike Hirsch who feared that this would undermine the integrity of the *halakhah,* "Hoffman, like Graetz and Frankel, saw that this historical distinction could be invoked to demonstrate that the halakhah was not dependent on midrash but on tradition...."[143] To a certain extent, Hoffman was to Frankel as Frankel was to Geiger; someone who shared certain understandings as to the nature of rabbinic literature but differed on many of the specifics, as well as the implications of the findings of critical scholarship. Furthermore, Hoffman was

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[141] David Hoffman, *The First Mishnah*, trans. Paul Forchheimer (New York, 1977), 1-2
[142] Harris, *How Do We Know This*, 231
[143] *Ibid*

attempting to respond to research and an ideology that was somewhat more radical than he was willing to engage in, much like Frankel with Geiger.

Jacob Bruell

Born in 1812 in Neu-Raussnitz, Moravia, Bruell was ordained as a rabbi by his father-in-law Nehemiah Trebitsch and served as the rabbi in Kojetin from 1843 until his death in 1889. Bruell's most important work was his two-volume *Mavo Ha'Mishnah* (Introduction to the Mishnah). The first volume was published in 1876 and deals with the biographies and methods of sages from the time of Ezra to the end of the mishnaic period. The second volume was published in 1885 and addresses the method used by Judah ha-Nasi in the arrangement and editing of the Mishnah.[144] In this case, there is no question as to whether Bruell was influenced by Frankel and *Darkhei Ha'Mishnah,* as Bruell makes this explicit in the preface to volume one:

> "...the beginning of the matter was to know the masters of the work of the Mishnah, the method of their learning, and the tools with which they built it. While examining and investigating this matter, there came into my hands the book *Darkhei Ha'Mishnah*.... I said [to myself] I shall walk according to the work that is before me in this matter....[145]

In volume two of his work, Bruell supports Frankel's contention that the method of teaching laws shifted from the *Sofrim* to the *Tanna'im*, in that the *Sofrim* sought to connect their laws to Scripture while the *Tanna'im* did not. Bruell attempts to support this notion by explaining:

> these rabbis were not called Scribes, that is, expounders of a written book; they were called Masters of the Mishnah.... B. Qidd. [Babylonian Talmud, Kiddushin] 49a-b states that the name *Mishnah* was applied to those teachings which were taught in separation from the biblical verses.[146]

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[144] Biographical information taken from Moshe David Herr, "Jacob Bruell" in *Encyclopedia Judaica*

[145] Jacob Bruell, *Mavo HaMishnah* trans. Gary G. Porton in "Jacob Bruell: The Mishnah as a Law Code" in Neusner, ed. *The Modern Study of Mishnah*, 77

[146] *Ibid.*, 79

Bruell also reinforces Frankel's belief that Rabbi functioned as a legislator and not simply as a compiler of materials, recognizing that Rabbi "placed in his Mishnah only those statements which conformed to his view of the law"[147] and created many of the Tannaitic debates through his arrangement of the material.

One area where Bruell seems to differ from Frankel is the idea that most of the Mishnah as rendered by Rabbi had its roots in the time of the Great Assembly. It is not that Bruell states his opposition to this point of view specifically, but he does not make a similar claim. Considering his otherwise consistent support for Frankel's claims, this omission may infer that Bruell did not accept this position. In spite of this difference, the majority of Bruell's work is in line with Frankel's thinking. This work is also revealing of the influence of *Darkhei Ha'Mishnah* because of Bruell's expressed desire use Mishnah study "to facilitate his fulfillment of the *halakhah.*"[148] This indicates that Frankel's work was used by at least a segment of its readers as a means of maintaining and deepening *halakhic* observance as opposed to undermining it as was feared by the neo-Orthodox.

Hanokh Albeck

Born in 1890 to a father who was himself a renowned rabbinic and Talmudic scholar, Albeck studied at JTS and the University of Vienna before becoming a research scholar at the *Akademie fuer die Wissenschaft des Judentums* in Berlin in 1920 and a lecturer in Talmud at the *Hochschule fuer die Wissenschaft des Judentums* in 1926. In 1936 Albeck made *aliyah* and became a professor of Talmud at the Hebrew University in Jerusalem until 1956. Albeck passed away in 1972. Although he was responsible for

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[147] Gary G. Porton, "Jacob Bruell: The Mishnah as a Law Code" in Neusner ed., *The Modern Study of Mishnah*, 83

[148] *Ibid.*, 77

numerous scholarly works, including a critical edition of the Mishnah, the focus of this discussion will be his *Mavo La'Mishnah* (Introduction to the Mishnah). Although it was published a century after *Darkhei Ha'Mishnah*, Albeck's work continues to wrestle with ideas introduced by Frankel and the historical school.

Even though "Albeck considered Frankel a researcher and teacher, without whose record-setting achievements halachic research would never have reached current levels,"[149] he nevertheless takes issue with some of Frankel's conclusions. One of these concerns Frankel's assertion that the editing of the Mishnah was a multi-generational process. Albeck contends that Rabbi was the "first and only editor of our Mishnah" and argues that Frankel's conclusion is based on a misunderstanding of the verse in the Babylonian Talmud, Sanhedrin 86a which attributes the anonymous *mishnahs* to Rabbi Meir, anonymous *toseftas* to Rabbi Nehemiah, "and all of these are according to the opinion of Rabbi Akiva." Albeck believes that this phrase refers to "R. Akiva's fixing the language and tradition of the laws"[150] and not to the ordering of the Mishnah as Frankel believes, therefore negating the idea that Akiva was the first editor of the Mishnah. A second important issue on which Albeck differs with Frankel is on the question of the Mishnah's intention. Frankel argued strongly in favor of the Mishnah as a law code and Rabbi as a legislator. Albeck, on the other hand, believes that the multitude of contradictions and repetitions found in the Mishnah are evidence that it was not meant to be a practical code of law. Rather, Albeck contends that the Mishnah was compiled because "even in the days of Rabbi a fear existed that because of the different orders a

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[149] Braemer, *Rabbiner Zacharias Frankel: Wissenschaft des Judentums und konservative Reform im 19 Jahrhundert*, 364

[150] Hanokh Albeck, *Mavo La'Mishnah* trans. Gary G. Porton, "Hanokh Albeck on the Mishnah" in Neusner ed., *The Modern Study of Mishnah*, 215

clear law and a clear Mishnah would not be found in one place"[151] and would be forgotten. One can see that even a century later, *Darkhei Ha'Mishnah* was still viewed as a central work in Mishnah scholarship that was not only worthy of study but a text with which contemporary scholars must actively engage.

Summary

Zacharias Frankel's *Darkhei Ha'Mishnah* was an innovative scholarly work and its influence was felt for at least a century in the field of Mishnah scholarship. It developed out of a scholarly culture that began to take shape at the end of the eighteenth century with the *maskilim* and continued through the early scholars of *Wissenschaft des Judentums*. Frankel's work was especially influenced by the writings of Nahman Krochmal, Heinrich Graetz and Abraham Geiger, but *Darkhei Ha'Mishnah* set a new standard for Mishnah scholarship in the nineteenth century. This is evidenced not only by the content of the work itself, but also by the extent of the responses to both Frankel and *Darkhei Ha'Mishnah*. Some of these responses were direct and attacked not only Frankel and his work but the entire scholarly enterprise of which he was a part. Other responses came in the form of scholarship which, while exhibiting the influence of *Darkhei Ha'Mishnah*, took issue with some of Frankel's methods and conclusions.

Certain contemporary scholars have dismissed *Darkhei Ha'Mishnah* as having "little lasting value"[152] beyond being the first work to provide a critical-historical analysis of the Mishnah. This opinion fails to take into account the fact, as Albeck noted, that it is questionable whether Mishnah scholarship would have reached the level that it has so quickly without the impetus provided by *Darkhei Ha'Mishnah*. Furthermore, this view

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[151] *Ibid.*, 224

[152] Gereboff, "The Pioneer: Zecharias Frankel" in Neusner ed., *The Modern Study of Mishnah*, 74

does not recognize the potential that remains to apply the basic premises of Frankel's thinking to a contemporary understanding of *halakhah*.

Zacharias Frankel, in his own words...

This chapter includes the translation of five sections of *Darkhei Ha'Mishnah* as well as an introduction to each section that contextualizes the specific segment within *Darkhei Ha'Mishnah* as well as Frankel's general scholarly and religious approach. These particular sections have been chosen because they address key elements of Frankel's discussion on the nature of the Mishnah. The goal of this section is to provide direct access to the Frankel's arguments so that one might gain a deeper understanding of his approach and determine if he makes a convincing case for his point of view. The translation attempts to stay as true to the original wording and syntax as possible while making it understandable in English. The footnotes in bold indicate those that are found in *Darkhei Ha'Mishnah*, all others are the work of this writer.

Section One (Pg. 1-pg. 5 "...u'melachtem nisharah l'ad")

Introduction

In his opening to *Darkhei Ha'Mishnah*, Frankel presents an historical overview of the period starting with the edict of Cyrus and the return to Israel from the Babylonian exile and ending with the era of the men of the Great Assembly. As a part of this history, Frankel attempts to explain the circumstances that precipitated the shift away from prophecy and the emergence of the *Sofrim,* who he understands to be the original interpreters of the Biblical text. He includes in this section a discussion of the interpretive methods of the *Sofrim* as well as examples of how those methods were applied. In his treatment of the men of the Great Assembly, Frankel focuses on the one phrase that the tradition attributes to them, from tractate Avot 1:1: "Be careful in judgment, raise up many students and make a fence around the Torah," handling each segment independently. The segments are understood as being reflective of their historical context and as the guiding concept for the men of the Great Assembly in their actions.

The intention of this section is to not only provide historical context, but to place the emergence of the Oral Law in antiquity. As the previous chapters have discussed, Frankel did not accept the idea that the Oral Law was delivered in a revelatory fashion as the Written Law had been. Highlighting the antiquity of the Oral Law was an attempt to lend it strength and credibility outside of the framework of revelation. Additionally, Frankel's description of the *Sofrim* and their role in interpreting Scripture enabled him to posit an Oral Law that developed naturally as a response to the needs of the people, as

opposed to a system that was imposed upon the populace in a hierarchical manner. This is further evidenced by Frankel's treatment of the *Sofrim* vis-à-vis the priests and his discussion on "raise up many students."

Frankel relies on biblical and rabbinic texts as the sources for most of his arguments, a trend that continues through the rest of *Darkhei Ha'Mishnah*. At the time Frankel published his work the use of these texts as reliable historical sources was accepted by much of the scholarly community. This has since come to be seen as a serious flaw in Frankel's approach because modern scholarship has shown that while in some cases biblical and rabbinic texts may provide insights into the general nature of a particular time and place, they should not be considered legitimate historical sources. Another problematic element is that outside of the phrase "words of the *Sofrim*" in a handful of *mishnayot*, Frankel does not provide other significant evidence for a corpus of law that could be attributed specifically to the *Sofrim*.

This opening section introduces the reader to Frankel's ideas and arguments, as well as some of this work's shortcomings. His historically-based approach to the Oral Law and his desire to root it in antiquity are evidence of his scholarly and religious attitudes. His reliance on biblical and rabbinic texts as historical sources is indicative of a fundamental flaw in his method.

Translation

"Adonai roused the spirit of King Cyrus of Persia"[153] and he proclaimed freedom for all of the people of Israel in his kingdom to ascend to Jerusalem in order to build the Temple. So the people gathered their strength and ascended with Zerubbabel son of

[153] Ezra 1:1

Shealtiel, chief of those who came, they came to Jerusalem and they built the alter. And in the days of Artaxerxes King of Persia[154], there was a second ascent to Jerusalem and Ezra, from the line of Pinchas b. Elazar b. Aaron, was the head of those who ascended. This Ezra had dedicated himself as it says in Scripture (Ezra 7:10) "to study the Teaching of Adonai so as to observe it, and to teach laws and rules to Israel." The situation of those who came was very bad, because the nations who had been settled there by Sennacherib King of Assyria during the resettlements of the ten tribes[155] persecuted them and wrote an accusation against them to the kings of Persia[156]. Also (at) the time of the building of the walls of Jerusalem they were an obstacle and a trouble, and they said to destroy them if God who is great and a savior had not established Nehemiah ben Hacalia. Here, even though God inclined the heart of most of the Persian kings favorably towards the settlers they did not leave their servitude for freedom, as when Ezra lamented: "today we are slaves, and the land that You gave our fathers to enjoy its fruit and bounty -- here we are slaves on it."[157] From the stories of Persian history we know that the ruling of the kings was not built on the institutions of law and justice, nor did they pay attention to the successful leadership of the state in general. Nor did they establish law and justice for her (Persia's) residents specifically but they ruled whatever inclination of their soul and inspiration of their spirit: one moment they would say to build and plant and the next moment they would command to uproot and destroy; one moment they would exalt and enrich and the next moment they would humiliate and take away, and was the case for the ruler so was the case for his servants. Furthermore other evil spread to the kingdom of

[154] first referenced in Ezra 4:7, follows reign of Ahasuerus
[155] See 2 Kings 17:6-41 for the complete biblical rendering of the Assyrian expulsion of Israel and resettlement of Samaria
[156] Ezra 4:4-16
[157] Nehemiah 9:36

Persia. The kings established satraps in every state of their rule, since the kingdom increased greatly from the end of India to the Mediterranean Sea. These satraps did as they pleased, and the kings did not investigate their practices or those of their deputies. How bitter was the lot of the inhabitants with their memories of Zion, and the greatness that she had in the olden days, a time when the thrones of the House of David sat there, and a king of the stock of Jesse was in the land, and his priests, counselors and ministers surrounded him.

But the heritage of Jacob[158] and the portion is from God and it is not an increase in freedom or control (lit. dominion) and not dwelling is not peace or tranquility. But when God divided to the nations their inheritance (land/home)[159] He saw that the beginning of the seed of His adherents is the Torah, "from his right hand went a fiery law for them"[160] and this is the eternal inheritance. They did not come to this inheritance **(page 2)** in the days of the First Temple and very few knew her value and delight. And when God exiled them to Babylon the hearts of those who whored[161] after the gods of their fathers were broken, thus they came in violation of the covenant so He (God) drove away the idolaters and the idols, and a new heart and a new spirit was created for them to call on God's name and to serve Him as one portion[162]. And this was the banner under which they returned to the land of their fathers and in its shade they made roots below and glorious fruit in the fulfilling the commandments above. And if they were slaves to their labours, did they not rise up higher and higher over their oppressors by cleaving to God Most High and choosing to follow His paths? For this has been the glory of Israel

[158] Isaiah 58:14
[159] Deuteronomy 32:8
[160] Deuteronomy 33:2
[161] Ezekiel 6:9
[162] Genesis 48:22

forever and this they did remember from generation to generation. If we do all of this in every nation, the Persians as well as other kingdoms will be completely finished, and the memory of Jacob will never be wiped out.

And so, because in the days of old they desired to be like all the nations that surrounded them and to follow after nations the word of Adonai, the heart of those who returned from the Exile and those who came after them was changed to seek God and to draw from the spring of Torah. But who would fill their desire and quench their thirst? The word of God was not spread in those days and many did not understand how to read the book of Adonai, additionally books were not found abundantly (as one understands from reading the books of Ezra and Nehemiah). And desiring God, the way of that generation was to establish sages for themselves who could understand for them the commandments and laws and were as water to thirst. These sages were from the founders of the state and paved the desolate paths to settle; they revived the settlers to make them the eternal people. And with this it was recognized that the second inheritance was greater than the first inheritance. With the first inheritance they conspired to set a king (to rule) over them and they rejected God, as it is said: "I gave you a king in my anger, and I took him away in my wrath".[163] With the second inheritance they decided collectively to listen to the words of the teachers and they would lead the people. The sages stood now in place of the prophets, who ended with Haggai, Zecharia and Malachi, because these generations did not need prophets, but rather sages, since the primary concern of the prophet is not to do signs and wonders or to tell the future, but rather to return the people to their Father in heaven and to strengthen the faith in the heart of those who had stumbled and those who had strayed. Therefore, no prophet was found

[163] Hosea 13:11

that taught the laws of Torah or any specific commandment, but the words of these prophets were like a flaming fire to ignite knowledge of the One God in the hearts of those who listened to them, to put an end to the worship of other gods, to turn the people from their evil ways and to demonstrate to their faces their rebelliousness and their stiff-neckednes; that they had dug for themselves broken wells and had forsaken the source of the water of life. Not so these generations (the generations of the second inheritance). They returned to Adonai with their whole being, and the prophet's words of castigation were to them superfluous; since all their concern and desire was to know the commandments and the ways of Torah in detail, and this learning was in the hands of the sages and not the prophets.[164]

The way of the teaching of these sages was dual faceted: A) to clarify and explain to the people the laws of Torah and what is the intention expressed by some commandment, for example: "don't do work on Shabbat,"[165] which work comes under this category called 'forbidden on Shabbat', and similarly: "don't boil a kid in its mother's milk,"[166] including the eating, etc. B) Sometimes they erected fences and announced decrees according to the moment and the time. They also made regulations according to the situation of the state and the community and the people in their days. Because it was known that over the course of time they would establish new interpretations and ideas would be originated that **(page 3)** the first sages did not imagine, whether for the needs of the people or for the leadership of the state and connecting its inhabitants to each other, and because of this they will be in need of new customs and laws.

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[164] **See Rambam's introduction to *Seder Zera'im***
[165] Exodus 20:9; Deuteronomy 5:13
[166] Exodus 23:13, 34:26; Deuteronomy 14:21

These were the sages called *Sofrim*, since their primary job, heavenly work, was the first method: to enlighten the laws of Torah and the doing of the commandments. This teaching was connected with the study of Scripture, as it says, any time that you teach the people the Torah you are immediately interpreting the commandment, since when they read the verse: "an eye for an eye,"[167] they interpret to the people that the intention is not really an eye for an eye, rather…; "And on the first day you shall take the product of *hadar* trees,"[168] they interpret this is an etrog and so on. It appears that along with this occupation of theirs was interpreting the book, as it says: scribe/teacher of the Torah, they are called *sofrim*,[169] because the essence of the meaning of the word in Hebrew is the word book (*sefer*), and therefore the royal scribe came,[170] since for the king there is a book in which he writes everything that comes to pass for him and for the kingdom. And in the days of the second Temple this name was used for those who engaged with the well known book i.e. the Torah (**Shrift Klarer**). And it is because of this Ezra is called "a scribe expert in the teaching of Moses" (Ezra 7:6). The interpretations were one with the commandments, in the mouths of the students and the people, and these were the old *halakhot,* which will come later. These scribes also developed edicts that were not attached to the commandments, since they were not included in them (the commandments) and didn't come to explain the commandment but they were as guards positioned around the commandment in order that the impetuous would not touch them. And from these came the secondary grades of forbidden decrees which are referred to in

[167] Exodus 21:24; Leviticus 24:20
[168] Leviticus 23:40
[169] Related idea in BT Kiddushin 30a and *Midrash Tanhuma, Parashat B'shalach* 16:5
[170] 2 Chronicles 24:11

the Mishnah (Yebamot 2:3): the words of the Scribes[171]. They also made declarations (*takanot*) of the kind we mentioned above, but we will talk about them below.

In those days arose a society of men of renown[172] known by the name the Great Assembly. This assembly continued from the beginning of the Second Temple until the time that the kingdom of Greece was spreading in Asia, approximately 200 years, which is clear from the statement: "Shimon HaTzadik was from the remainder of the men of the Great Assembly."[173] From this Assembly were made known decrees that come at the end of Nehemia[174] (see *Yerushalmi Shevi'it 6:1* or *Midrash Rabah* for Ruth ch. 3), and they also attributed to them the writing of Ezekiel, the book of 12, Daniel and the Scroll of Esther (*BT Baba Batra* 15a), the reading of the *megilah* (*reish megilah*), blessings and holy prayers and *havdalah* (*BT Berachot* 33), transferring instruments on Shabbat (*BT Shabbat* 123a)[175], but among the special statements of theirs none are found except three, and they are in tractate *Avot*: "be careful in judgment, raise up many students and make a fence around the Torah."[176] These three statements are not generally concerned with an issue of *halakhah* and do not flow from the spring of explaining Torah, but they have a specific intention for the situation of the people at that time and for the fulfillment of the Torah. Also the solution (to the) word "*amru*" (*hem amru v'chulei*) is not (that it is a) special statement, for logic does not tolerate that the assembly that stood for two hundred

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[171] In other versions of the Mishnah it is found in Yebamot 2:4. "A prohibition on account of a commandment: a secondary grade [of forbidden degrees] on account of the words of the Scribes. A prohibition on account of sanctity [of the *levir*]: a widow [married] to a high priest, a divorcee, or a woman who has executed the rite of *halitzah* to an ordinary priest, a *mamzeret*, a *netinah* to an Israelite, a daughter of an Israelite to a *netin* or to a *mamzer*."

[172] Numbers 16:2

[173] Mishnah Avot 1:2

[174] Nehemiah 13:9-31. These verses include decrees regarding Temple offerings, the Levites, Shabbat regulations and mixed marriages

[175] **See what they have written: Dr. Levy (Frankel's Monatsschrift 4. Jahrg. S 303ff.); Dr. Gratz (das. 5 Jahrg. S. 64ff)**

[176] Mishnah Avot 1:1

years spoke in all its years of existence only these three statements. But the intention of the men of the Great Assembly was to always place these statements, which came from the mouths of the founders of the Assembly, as the purpose of their actions and their leadership. In another place[177] we discussed at length that these three statements are the tenets of the Torah and the sustenance of the nation according to the situation in those days, and we are repeat here in short the things that were said there. The returnees (**page 4)** from the exile were under the Persian authority and they paid a head tax and road tax to the King of Persia and to the governor that was across the river. It is also possible that some Jews fought in his war and worked in his army, and all of this was included in the servitude to the conqueror and to the governor. The way of conquerors and rulers in the old days was very different from the ways of most conquerors in our day. Since before this in all the nations, if they brought a country under their control they would impose upon the conquered taxes etc. which we mentioned, but they would leave alone their customs, religions and arguments and legal cases between a man and his fellow would be judged as they had been before, according to the customary laws of judgment transmitted to them either in writing or orally. This custom was a source of stability and a spring of hope to those returnees from the exile so that their feet would not slip and they would renew their strength to stand against their enemies that surrounded them. Since they have righteous laws and statutes by which they judge, and there is not a foe or enemy raising his hand (against them) to be an adversary in the fulfillment of the Torah and its mitzvoth, the internal administration of the state was autonomous, and they were free in their land under the canopy of Torah. Therefore the men of the Great Assembly cautioned the judges: "be careful in judgment," since if justice is meted out in a distorted

[177] **See Monatsschar. Jahrg. 1 209**

manner, the parties found liable may go to rulers courts to request their judgment, namely from the governors and the assistants that sit in judgment. It will start with small cases but there will be grave consequences. The Persian ruler will interfere in the internal administration of the state, and later will interfere with the mitzvoth of the Torah and will command with his great powers to act against its (Torah's) laws. The men of the Great Assembly taught this warning all of their days, generation after generation, since this is the foundation to autonomy. The second statement 'raise up many students' is built magnificently to increase Torah study and glorify it, but it has another intention that is very deep. Teaching of Torah, and the deeds that separate between the holy and the secular etc according to the mitzvah of the Torah (this teaching) was in essence in the hands of the priests. But the priests quickly turned aside from the path and did not desire to ascend to Adonai's mountain and to carry the burden of Torah and study, therefore when the last of the judges stood, his name was Shmuel[178] among those who called God's name, who turned the heart of children to their parents[179], he established groups of prophets that from them Torah would go out and they would teach the word of Adonai. Also in the beginning of the second Temple period the burden of teaching was upon the shoulders of the priests, as the prophet says (Ezekiel 44:23): "They shall declare to My people what is sacred and what is profane, and inform them what is clean and what is unclean...." But also at this time the priests gave a rebellious shoulder[180] and bent the covenant of the Levites when Malachi rebuked them[181]; also a few of them were guilty,

[178] This is the judge/prophet Samuel of the biblical book of the same name
[179] Paraphrase of Malachi 3:24
[180] Nehemiah 9:29
[181] Malachi 1:6-2:10, specifically 2:8

as the stories of Nehemia[182] make clear. And here the thoughts of God were deep and it appeared that it was from the same circumstance, in order that the Torah would not be the inheritance of one tribe alone, and that tribe alone would determine the fates of God's mitzvoth. Although in the beginning of Israel becoming a nation the Torah was given to the priests and Levites, because the people were rough and did not understand the preciousness of faith in One God. But after they implanted the foundations of faith and love of Torah in the souls of the last generation, (those being) the people of the second Temple, the best thing to establish the Torah was that there would be an inheritance for every man in the community of Jacob[183], the crown of Torah would be set, and all who wanted to take (i.e. learn) would come and take. The wise understand that from this free access to Torah continues, in order that a man would not dare to rise over the heads of the Holy People and to set himself between Adonai and the community; and this could happen if the foundation of faith is given to elite people to be guardians of religion, so very quickly those who lust authority will establish a hierarchy (**hierarchia**). The portion of Jacob is not like this,[184] small and great alike[185] have a share in God's Torah, the head of a tribe and one of lowly birth if they are competent to they will inherit a legacy , and a *mamzer* be part of the teaching before (**page 5**) the Cohen Ha'Gadol *ayin"heh.* So this is the intention of the statement, "raise up many students": not for priests or specific people will Adonai's Torah be guarded, but rather for all of its seekers. The third statement: make a fence around the Torah, this is clear in and of itself but we thought it had another different intention, but it is not to be expounded here.

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[182] Nehemiah 13:4-13
[183] Deuteronomy 33:4
[184] Jeremiah 10:16
[185] 1 Chronicles 25:8, 26:13

And besides these worthy statements, we cannot find *halakhot* and sayings by men of the Great Assembly in the *midrash* to the Torah. Because these great ones are themselves *sofrim* who interpreted the commandments and composed commentaries on Scripture. And not every man invented from his heart brought out words because this valuable and precious work requires a thorough examination and the approval (of the) sages of the generation, and because with this they interpreted the commandments of *halakhah* and action and this is in essence Oral Torah; and indeed no one can do as he alone wishes. But these interpretations were said in investigative assemblies of the men of the Great Assembly, and afterwards they were publicized to the people by the majority of teachers, in a way that we mentioned above. The *mitzvah* and the interpretation were one by the understanding of the students and the people, they cannot be separated, and therefore the name of the interpreters was forgotten and their work survives forever.

Section Two (Pg. 6 "Hor'at milat halakhah..."-pg. 7 "...hu ha'yom b'yadeinu")

Introduction

Frankel begins and ends this section with definitions of *halakhah* and Mishnah respectively, which he draws from a lexicon compiled in medieval Italy. Frankel's focus in this section is differentiating between two methods of determining *halakhah.* The first method he identifies is attributed to the *Sofrim* and involved direct connections between the *halakhah* and the text of the Torah. Frankel argues that the second method was developed in the period following the *Sofrim* and interpreted subjects from Scripture without actually relying on the text of Scripture; he refers to this as "abstract *halakhah.*" Frankel also notes that even though the new generation did not tie their *halakhah* directly to Scripture, this method was maintained to some degree and is evidenced in *midrash.*

This section lies immediately following Frankel's discussion of the decline of the *Sofrim,* and therefore it is intended to not only supplement this discussion but also to introduce the notion of a new style of *halakhah.* This was important for Frankel's argument for several reasons. One is that the development of a new method for determining *halakhah* helps to explain why the *halakhah* originated by the *Sofrim* does not exist in Jewish literature outside of the few references discussed in the previous section. Second, Frankel's assertion that abstract *halakhah* overtook the *halakhah* developed by the *Sofrim* enables him to explain why certain elements within the Oral Law seem to have no direct connection to the Torah and its laws. Further on in his work,

Frankel explicitly states that the Sages derived abstract *halakhah* "by the light of their reasoning"[186] and his discussion here augments this idea and provides examples that explain the Sages' approach. The third important aspect of Frankel's argument in this section is that it presents the Oral Law as a dynamic entity that can respond to new methods and ideas without losing its power or relevance. This was an especially important argument for Frankel to make because it bolstered his assertion that the application of *Wissenschaft des Judentums* to the Oral Law would not damage it but, in fact, strengthen it.

Translation

The *ba'al ha'aruch*[187] wrote that the meaning of the word of *halakhah* is something that goes and comes from the beginning until the end, or something that Israel wanders in it. And Binyamin Mussaphia Musaf HaAruch (1606-1675) adds: "translate 'as is the practice with daughters'[188] as '*halakhah* of the daughters of Israel.'"[189] But more than these ways the word *halakhah* is said about a statement that comes in and of itself to interpret a subject from subjects of the Torah, without relying on Scripture or making itself an addition to Scripture, and we designate this *halakhah:* abstract *halakhah* (*halakhah mufshetet*). This will be clear for us when we return further to the study of the

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[186] Frankel, *Darkhei Ha'Mishnah*, 18

[187] R. Nathan ben Jehiel of Rome (1035-1110)-Italian lexicographer, also called Ba'al he-Arukh ("the author of the *Arukh*") after the title of his Talmudic lexicon.

[188] Exodus 21:9

[189] It is not clear who Frankel is citing, however the idea, if not the exact wording, can also be found in the work of Eliezer ben Joel Ha-Levi of Bonn (*Ravyah;* 1140-1225) *khet"dalet* 919

(**page 7**) *Sofrim*, who connected their statements to Scripture, as was said above. The Sages (*he'hachamim*), who came after them, left this way and they disseminated the laws which the interpreters of the commandments brought and they made them houses unto themselves.[190] This is made clear in the subject of the laws of Shabbat. The tractate begins: "[Acts of] transporting objects from one domain to another [which violate] the Sabbath are two, which [indeed] are four."[191] When the *Sofrim* arrived to the verse in Scripture "let no one leave his place"[192] they connected to it laws of going out from domain to domain etc. But the Sages introduced laws of going out separated from Scripture and not developed from "let no one leave his place", but rather as abstract halakhah and standing by itself, "[Acts of] transporting objects from one domain to another [which violate] the Sabbath are two, etc." And they did this with all of the mitzvoth: "A *sukkah* which is taller than twenty cubits is invalid"[193] they did not explain (from) "You shall live in booths seven days; all citizens in Israel shall live in booths"[194] They even did this with mitzvoth that are not explicit in the Torah but were known and done by the *Sofrim*, for example, "from what time may they recite the *Shema* in the evening?"[195] In the Torah the mitzvah of reciting the Shema is not explicit, because there are those who interpret the words of Scripture "[Impress them upon your children.] Recite them [when you stay at home and when you are away, when you lie down and

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[190] *asu lahem batim bifnei atzman;* meaning the laws stood alone without a basis in Scripture
[191] Mishnah Shabbat 1:1
[192] Exodus 16:29
[193] Mishnah Sukkot 1:1
[194] Leviticus 23:42
[195] Mishnah Berakhot 1:1

when you get up]"[196] [to mean] words of Torah [see *Berakhot 21a*[197]]. But already the mitzvah for reciting the Shema had become customary for all of Israel, since the interpretation of the Shema included the foundations and pillars of the religion: oneness and love of the creator. And here also in this Mishnah they did not explain from Scripture or from a connection to Scripture, and they changed to a way of abstract halakhah, thus: "[The crossbeam above] an alley entry which is higher than twenty cubits should one diminish [making it lower]"[198] when the legal principle of 'alley' is from the words of the *Sofrim*. "What blessing does one recite over produce,"[199] yet the first principle/origin of blessing is not found from interpreting the Torah [see *Berakhot* 37 & 48, *Yerushalmi* the beginning (*reish*) '*keitzad m'varchin*], and similarly in other places. But know that those who chose for themselves a way in the matter of *halakhah* did not abandon the way of the predecessors completely, but they connected statements to Scripture also, and this way is called *midrash*, and it runs through *Mekhilta, Sifra* and *Sifrei*, and also sometimes in the Mishnah. But this is the *Midrash*, it is very far from the method of their predecessors, meaning (lit. as it says) the *Sofrim*, as is clarified below.

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[196] Deuteronomy 6:7

[197] Rab Judah said: If a man is in doubt whether he has recited the Shema, he need not recite it again. If he is in doubt whether he has said "True and firm" (*emet v'yatziv*) or not, he should say it again. What is the reason? The recital of the Shema is ordained only by the Rabbis, the saying of "True and firm" is a Scriptural ordinance. R. Joseph raised an objection to this, "and when you lie down, and when you rise up." — Said Abaye to him: That was written with reference to words of Torah.

[198] Mishnah Erubin 1:1

[199] Mishnah Berakhot 6:1

The interpretation of the word of *mishnah* is like that which the *Aruch*[200] brings, that the word *shinon* is like *v'shinantam* [and you shall teach]; see there. There it is synonymous to the name *halakhah*, but the word *mishnah* is said about *halakhah pasuka* or without discussion [lit. a decided law] (like it is for most of the arranged Mishnah now before us), and the word *halakhah* is said both about *halakhah pasuka* and also abstract halakhah (see below, ch. 3).[201] The word *mishnah* is also said about the collection of the orders of the Mishnah which today is in our hands.

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[200] The Talmudic lexicon of R. Nathan ben Jehiel of Rome

[201] **And therefore came *Nedarim* 4:3 (which says) "And he teaches him *midrash*, *halakhot* and *aggadah;" *midrash* includes *halakhot* which are connected to Scripture, for example: *Mekhilta*, *Sifrah*, etc while *halakhot* (refers to) the abstract *halakhot*: *Mishnah* and *baraita*.**

And so *Berakhot* 47b (says): "*Sifra* and *Sifrei* (they are the midrash) and *halakhot*." And see (*Berakhot*) 12 (in some versions of the Talmud 11b) (which says) "Rav Huna said: to (study) Scripture, one must recite the blessing (upon Torah), but to (study) Midrash, one need not recite the blessing. But R. Elazar said: (Whether) to (study) Scripture or to (study) Midrash, one must recite the blessing (upon Torah), (but) to (study) Mishnah, one need not recite the blessing." Also in the Yerushalmi 1:4, "R. Huna said, 'this is my view of matters: [if one studies] Midrash, he must recite the blessings [for Torah study]. [If one studies] *halakhot*, he need not recite the blessings." This is (i.e. '*halakhot*' refers to) the Mishnah, since the Yerushalmi calls most of the Mishnah *halakhah*.

And in *Kiddushin* 49a there is: "What is [meant by the term] Mishnah? R. Meir says *halakhot*, R. Yehuda says *midrash*."

It appears that this name 'mishnah' was renewed in the days of these *Tanaim* or a time a little earlier than them, and there was not more agreement from all the sages about what to be coined. According to the words of Rabbi Meir using quoting Rabbi Yosi, *Sanhedrin* 3:4: "...this is the version of Rabbi Akiva (*mishnat R. Akiva*) etc" and so too *Ketubot* 5:2 and other places; see below in chapter 3. In later *midrashim* and in additions to the early *midrashim* they already distinguished between the Mishnah and *halakhot*, and the Mishnah is the Mishnah of six orders, and the *halakhot* are the *baraitot* within which the *halakhot* are explained more clearly, which will come below.

Section Three (pg 20 "U'milvad ha'halakhot..."-"...shel be'emet amru.")

Introduction

The focus of this section is the concept of *halakhah l'Moshe m'Sinai* which Frankel brings it as the third source for abstract *halakhah*. Frankel relies on a famous passage from the great medieval Talmudist Asher ben Jehiel (Toledo, 1250-1327, often referred to by the acronym, the "Rosh") as the basis for his argument. The central argument Frankel presents is that, based on the Rosh's explanation, the phrase *halakhah l'Moshe m'Sinai* should be understood figuratively rather than literally. He also cites the use of the phrase in regard to a dispute between the houses of Hillel and Shammai as further evidence that the phrase was never meant to be taken literally, as well as the fact that sometimes the laws deemed *halakhah l'Moshe m'Sinai* are referred to simply as "old laws."

Frankel's argument on the meaning of *halakhah l'Moshe m'Sinai* was not only a critical element of *Darkhei Ha'Mishnah* but also of *Wissenschaft des Judentums*. Traditional Jewish thinking had attributed the Oral Law to revelation at Sinai, and this conception had received renewed attention from Samson Raphael Hirsch's neo-Orthodox camp in response to the proliferation of critical scholarship on the Oral Law. Frankel's assertion that *halakhah l'Moshe m'Sinai* was intended as figurative speech served as a serious critique of this position. Additionally, the fact that he cited the Rosh as his primary source for this controversial opinion would have been problematic for the Orthodox, in that Rosh was viewed as a giant of traditional Talmudic learning. One of the main arguments offered against Frankel's position was that the Rosh intended this particular view of *halakhah l'Moshe m'Sinai* as an exception, and Frankel had made it

the rule.[202] The fundamental issue underlying this section is that Frankel's understanding of *halakhah l'Moshe m'Sinai* denies the divine origin of the Oral Law. This idea is seen throughout *Darkhei Ha'Mishnah* and reflects Frankel's personal beliefs as well as those of *Wissenschaft des Judentums*, but it put him in direct opposition to the Orthodox, as discussed in the previous chapter.

Translation

In addition to the *halakhot* that came from the midrashic exegesis of Scripture and from the *midot* (hermeneutical rules) that were mentioned, other *halakhot* were found where it is impossible to understand the reason for them, and they have been received and called 'law of Moses from Sinai' (*halakhah l'Moshe m'Sinai*). In the Mishnah we find 'law of Moses from Sinai' two times (*Pe'ah 2:6, Yadi'im 4:3*).[203] [It should be said: other *halakhah l'Moshe m'Sinai* are found for R. Yochanan ben Zachai at the end of tractate *Eduyot*[204], but this matter is too close to *aggadah*. See there the interpretation of the Rambam and R. Ovadia of Bartenura.] Sometimes '*stam halakhah*' is said (*Yevamot 8:3, Nazir 7:4*) but the intention is also to interpret the Mishnah as *halakhah l'Moshe m'Sinai*. In the *Gemara* we find many examples of *halakhah l'Moshe m'Sinai*, and the Rambam in his introduction to *Seder Zera'im* cites many places where it says *halakhah l'Moshe m'Sinai*, and there are more to add to them. [It should be said: see the responsa *khavat ya'ir* #192. And the matter of *halakhah l'Moshe m'Sinai*, it is just like its

[202] See the discussion of Rabbi Gottlieb Fischer's epistle in Chapter 2

[203] **Peah 2:6** "Said Nahum the Scribe, 'I have received [the following ruling] from R. Miasha, who received [it] from his father, who received [it] from the Pairs (*zugot*), who received [it] from the Prophets, [who received] the law [given] to Moses on Sinai, regarding one who sows his field with two types of wheat....'" **Yadayim 4:3** "Go and tell them, 'do not be anxious about your vote. I have received tradition from Rabban Yohanan b. Zakkai, who heard it from his teacher, and his teacher from his teacher, a law given to Moses at Sinai, that Ammon and Moab give poor man's tithe in the Sabbatical year.'"

[204] Mishnah *Eduyot* 8:7

meaning, that it was said to Moses from Sinai, but sometimes it is said about something that is very clear] and in the matter of *halakhah l'Moshe m'Sinai* see the Rosh *Hilchot Mikva'ot siman* 1 and this is what he says: "Rabbi Y says that we do not find in any place *halakhah l'Moshe m'Sinai* [about] a ritually unacceptable *mikvah.* And if we have it in any place [that is a rabbinic law] it is to be explained as *halakhah l'Moshe m'Sinai*: 'Amon and Moab must give the poor man's tithe in the Sabbatical year' (*Yadi'im 4:3*), this only means something is 'explained as a *halakhah l'Moshe m'Sinai,*'[205] and similarly, 'every [statement that begins with] in truth (*be'emet*), this is *halakhah,*'[206] it is said in the *Shas* as being according to the words of the rabbis, as it is in the first chapter of Shabbat (11a)[207]: "and one may not read [from a text] by the light of a lamp. In truth, they said (*be'emet amru*) 'the *hazan* may look etc,'"[208] and Rabbeinu Tam interprets every *halakhah* (beginning with) 'in truth' (*be'emet*) in the Yerushalmi as *halakhah l'Moshe m'Sinai.*[209] Even though the prohibition against lighting a lamp is from the rabbis, you cannot say anything except that this thing is explained as a *halakhah l'Moshe m'Sinai*" [end of the citation of the Rosh]. There are those who bring clear proof for this from that which is in *Tosefta Pe'ah* chapter three about a disagreement between Beit Shamai and Beit Hillel, it (the disagreement) is also found in Mishnah *Pe'ah* 6:2, and this is what it says: "R. Ilai said, "I asked R. Joshua, 'Over which sheaves did the House of Shammai disagree with the House of Hillel?' He said to me.... But when I came and asked R. Eliezer [which sheaves the Houses disputed], he said to me.... And when I came

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[205] This is derived from a *baraita* in BT Chagigah 3b

[206] BT Baba Metzia 60a and BT Shabbat 92b

[207] Mishnah Shabbat 1:3. Frankel's reference is to the Talmud page on which this mishnah is found.

[208] The full statement reads, "...and one may not read [from a text] by the light of a lamp. In truth, they said: the *hazan* may look where the children are reading [by lamplight], but he may not read [by lamplight].

[209] JT Kilayim 2:1, JT Terumot 2:1, JT Shabbat 10:4

and recited these matters before R. Eleazar b. Azariah, he said to me, 'These are the covenant, these are the matters that were spoken to Moses at Sinai.'"[210] How is it relevant to say about the interpretation of a disagreement between Beit Hillel and Beit Shamai that it is *halakhah l'Moshe m'Sinai*, except according to the (understanding of the) Rosh, that it is something explained as if it was said to Moses from Sinai? It further appears that sometimes it is called 'old law' (*halakhah yishanah*), which was disseminated from the early days and years in Israel but the name of their speaker was forgotten, with the name *halakhah l'Moshe m'Sinai*, and from this is the idea that they are mostly *halakhot* of *be'emet amru.*[211]

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[210] The full text reads: R. Ilai said, "I asked R. Joshua, 'Over which sheaves did the House of Shammai disagree with the House of Hillel?' He said to me, 'By the Torah! This [dispute refers to] those *sheaves that are near the picking ladder, grain heap, cattle, or fram tools, and that the householder forgot'* (Mishnah *Pe'ah* 6:2). But when I came and asked R. Eliezer [which sheaves the Houses disputed], he said to me, '[the Houses] agree that these [sheaves near fixed locations] are not [subject to the restrictions of] the forgotten sheaf. With regard to what did they disagree? [They disagree] with regard to *a sheaf that [the householder] picked up in order to take it to the city [for sale], and [which he]* placed near the fence and *then forgot* (Mishnah *Pe'ah* 6:3). For the House of Shammai say [that such a sheaf] if not [subject to the restrictions of] the forgotten sheaf, because the householder had taken possession of it. But the House of Hillel say [that such a sheaf] is [subject to the restrictions of] the forgotten sheaf.' And when I came and recited these matters before R. Eleazar b. Azariah, he said to me, 'These are the covenant, these are the matters that were spoken to Moses at Sinai.

[211] Meaning that they are *halakhot* based on the Talmudic principle that a phrase beginning with *be'emet amru* (Truly they said...) is *halakhah* or according the *Yerushalmi* the phrase *be'emet amru* implies a *halakhah l'Moshe m'Sinai*

Section Four (Pg. 226 *"V'od zot l'Rabbi..."-"...lo zazah mimkomah.")*

Introduction

This section is derived from Chapter Three of *Darkhei HaMishnah*, in which it is part of the discussion on Rabbi Yehuda Ha'Nasi ("Rabbi") and his role in the development of the Mishnah. Up to this point, that chapter discusses the roles of Rabbi Akiva and Rabbi Meir in compiling and editing what would later become the Mishnah, after which Frankel moves on to discuss Rabbi who is believed to be the Mishnah's final redactor. This particular segment addresses an issue that was the source of a great deal of disagreement among *WdJ* scholars in the nineteenth century, namely the question of whether was Rabbi primarily a compiler and editor, or did he also function as a legislator. Frankel positioned himself strongly on the side of those who viewed Rabbi as a legislator and his arguments here represent that point of view. An essential aspect of Frankel's argument addresses the question of why there are sometimes contradictory laws found in the Mishnah. Rather than an example of poor or hasty work, Frankel argues that this is a sign of Rabbi's diligence since he went back over all of the anonymous arguments and added new laws and understandings as necessary, even if they contradicted existing laws.

Frankel's intention here is similar to that in the other sections that have been discussed in this thesis, namely to show the inherent flexibility and dynamic nature of the Oral Law. Furthermore, in presenting Rabbi as a legislator Frankel is simultaneously casting him as an innovator who created and adapted laws to ensure that they remained relevant.

Translation

And more on Rabbi, he did not organize only the *halakhah* and the disagreements (between the sages), but added more in order to distinguish essence from essence and to determine the *halakhah* which they instructed to be done. And for this Rabbi has greater prominence over one who is exclusively an organizer, he weighed in the eye of his wisdom the opinions of the early *Tanna'im*, and the opinions that were good in his eyes he presented in his Mishnah in the language of the *Tanna Kamma* or the sages or anonymously without disagreement. See *Hullin* 85a: "Rabbi saw [the virtue] of Rabbi Meir's opinion regarding [the law of] 'it and its offspring,' and he [therefore] taught [this opinion] as [representing] the words of 'the Sages,' and [he saw the virtue of] Rabbi Shimon's [opinion] regarding [the law of] 'covering the blood,' and he [therefore] taught it as [representing] the words of 'the Sages.'" See *Rosh Hashanah* 7b: "It [the Mishnah] is [authored by] Rabbi and he formulated it according to [the views of the various] *Tanna'im*," and similarly in other places (see below, ch. 4). Rabbi did not determine on his own to say "accept my opinion,"[212] but he did so (based) on the council of the sages that sat before him, like we find (in) *Gittin* 5:6: "Rabbi called a court into session...," *Ohalot* 18:9: "Rabbi and his court voted concerning *Beit Kini*...." It is possible that he took council with R. Natan and that they argued together to determine *halakhah*, and about this it is said (in) *Baba Metzia* 86a: "Rabbi and R. Natan [shall be] the last [of the *Tanna'im*, the sages of the era] of the Mishnah." After Rabbi had finished organizing the *mishnayot* he added by the strength of his spirit to pass a critical eye over the work that which he had done, and he prepared a second addition, that is to say he returned to a

[212] Mishnah Avot 4:8

particular point where he had stated a first mishnah anonymously,[213] but did not erase or remove the mishnah because it (the first anonymous mishnah) was already known to many.[214] This is what is taught in *Shevuot* 4a[215]: "...how could Rabbi himself state this view anonymously here and this [other view anonymously] there? Rather [even you must admit that] initially he [Rabbi] held...and he stated [that view] anonymously [Shevuot 2a]. And subsequently he [reversed himself and] held...and he stated it [that view] anonymously [Shevuot 27b]; but the [original] Mishnah [on 2a] did not move from its place."[216]

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[213] And now he had a second Mishnah that he wanted to add that contradicted the first one

[214] Meaning that there were extant traditions that had been accepted and were practiced by the community and even if a new interpretation contradicted the existing one, the older tradition was maintained for the sake of the community. Additionally, there was an assumption that the second interpretation would be recognized as the legally binding position.

[215] The full text of this section reads: ...how could Rabbi himself state this view anonymously here and this [other view anonymously] there? Rather [even you must admit that] initially he [Rabbi] held [that] one does not receive lashes for [violating] a prohibition that does not involve action, and he stated [that view] anonymously [Shevuot 2a]. And subsequently he [reversed himself and] held [that] one does not receive lashes for [violating] it, and he stated it [that view] anonymously [Shevuot 27b]; but the [original] Mishnah [on 2a] did not move from its place

[216] **See Rashi there and see *Kerem Khamad* section 7 pg. 159 and it will be elucidated further below. We found that also the *ba'alei ha'Shas* made from the generation of the *Tanna'im* for their teaching and organizing. See *Baba Batra* 157: "Rabina said: 'in R. Ashi's first round [through teaching the Talmud].... [But] in his later round [through teaching the Talmud]..." and see there the Rashbam. And see Yerushalmi *Pesachim* 5:3, *Yevamot* 1:2 in repetition of a *Tanna* R. Yosi repeats it.**

Section Five (pg. 228 "U've'inyan he'hakirah..."-pg. 230 "...m'ro'ah l'ro'ah.")

Introduction

This section addresses an issue that was central in the discussions about the Mishnah amongst the scholars of *Wissenschaft des Judentums,* namely whether the Mishnah was transmitted orally or in writing from the time of Rabbi through the *Amoraic* period. As discussed in chapter two of this thesis, the perceived nature of the transmission provided "proof" for any and all sides of the debate on this question and at times led opposing parties to use the same "proof" to opposite ends. Frankel argues that the Mishnah was put down in writing during the time of Rabbi but that it was still transmitted orally. This was a unique perspective in that most of the scholars of his day planted themselves firmly on one side of the debate or the other. This reflects Frankel's propensity to seek out a middle ground but also indicates the sophistication of his views on the Mishnah relative to many of his contemporaries. Frankel bases his assertion on three main points, the first being that R. Sherirah Gaon and Rambam both express the opinion that the Mishnah was put into writing. His second point is essentially an argument from logic, noting that it seems unreasonable to assume that the Mishnah was memorized and transmitted orally. His final argument is drawn from a selection of Talmudic passages in which a mishnah is recited in two different ways, but the difference is minor and generally the result of a one letter being mixed up. Frankel argues that these kinds of mistakes could only be made if there were a written text from which one is working. Frankel also presents the opinion that the Mishnah was only transmitted orally,

citing Rashi and a well known Talmudic passage that prohibits the writing of the Oral Law, but he dismisses this notion in the course of his argument.

The most intriguing of Frankel's arguments is his contention that the idea of a solely oral transmission of the Mishnah is not feasible. He points out the seemingly impossible nature of such a task, relying primarily on learning styles as evidence that this is not a realistic position. This is another case where Frankel may have been ahead of his time, because according to the work of Albert B. Lord in *The Singer of Tales*, "The view of oral transmission as verbatim reproduction of a fixed text is only possible in the world of print, where literary copies make such a result possible."[217] This is precisely Frankel's opinion: that while the transmission of the Mishnah may have taken place orally there had to have been a written text for this transmission to be possible.

One issue with Frankel's arguments, however, is his use of the *iggeret* of R. Shrirah Gaon as a source. The problem does not lie simply in using this kind of text as an historical document, but rather in the fact that there were two extant versions of this *iggeret* which presented contradictory views. The traditional version used by Frankel argues that the Mishnah was written down in the time of Rabbi, but the version discovered and published in the nineteenth century states explicitly that it was not. Frankel does point out the fact that there is an alternative version, but he does not offer any explanation as to why he has chosen to focus on the traditional understanding.

Frankel makes a persuasive case that the Mishnah was written during the time of Rabbi, even leaving aside his use of the *iggeret* of R. Shrirah Gaon. His arguments from

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[217] Elizabeth Shanks Alexander, *Transmitting Mishnah: The Shaping Influence of Oral Tradition*, (Cambridge, 2006), 5

logic and the types of discrepancies between renderings of the Mishnah in the Talmud do indeed provide strong support for his position.

Translation

On the matter of the inquiry how the Mishnah was disseminated, whether in writing or orally, the greatest of the *Rishonim* already understood this. From the words of R. Shrirah Gaon, in his known note (*iggeret*) it appears in plain wording that Rabbi put together his arrangement in writing, see there in many places. [It should be said: this is according to the version in *Sefer Yokhsin* but from the early version of the *iggeret* of R. Shrirah in *Sefer Hupesh* it appears (**229**) to be opposite, that the opinion of R. Shrirah Gaon was that the Mishnah was organized orally and not in writing.] And the Rambam followed in his footsteps in his introduction to the *Mishneh Torah*. And the opinion of Rashi in many places (see *Sukkot* 28b on *'mikre', Ketubot 19b* on *'sefer'* and see there in *Shitah Mekubetzet*, *Baba Metzia* 33a on '*v'einah midah*') was that the Mishnah was not in writing. Reason decides according to the words of R. Shrirah Gaon and the Rambam, for was it not the intention of Rabbi to save the old *halakhot* from the sea of oblivion and to make for them houses in order that one may find each and every thing or in any case most things in their places, as Rashi *z"l* himself wrote (in) *Baba Metzia 33b* on *"b'yamei Rabbi"* and see the *iggeret* of R. Shrirah Gaon. And how would they learn orally complete tractates according to their order if they did not learn (them) initially from the book? Could it occur to them that the students learned the *mishnayot* word by word from their rabbis when they began to learn to read, and they also engraved on their memories with an iron pen everything that was said by their rabbi? Strange! Surely if a man gives every possession of his house to this thing, he will not find it and it will not come until

his end and it will not be achieved one out of a thousand times, for one who learns it by heart will succeed only if he began with a book and he repeats in his memory the things that were written by way of what was seen with the eyes, as is known by all wisdom and all science. It is also known to all who study *Shas* that the *Gemara* rules precisely many times from one word in the Mishnah that is superfluous or repeated in the beginning, at the end, etc "according to the words of *ploni*," and how is it possible that the words whose entire basis was only oral remained so much in the memory of every man until not only their essence was routine for everyone but also the words according to their order and status? But in contrast to this evidence there are places in *Shas* which apparently show the opposite, that the Mishnah was not written. The main one of these is the teaching in *Gittin 60b:* "the words transmitted orally you are not at liberty to recite from writing. A Tanna of the school of R. Ishmael taught: [It is written] these you may write, but you may not write *halakhot.*" Also that which the *Shas* changes is found many times in the Mishnah: (for example) it teaches "forbidden" in a place that in the Mishnah there is "permitted" etc, it teaches "there is not" in a place that in the Mishnah has "there is" and the like, and it must be judged from this that they did not have the Mishnah in writing.

And to understand the essence of the thing we must say first also if the Mishnah was written it did not shift from being Oral Torah, since surely the Mishnah was said to most with maximum brevity, and it is impossible to understand its statements and to understand the essence except for by way of a teacher who proclaims its intention and explains the unclear [things]. And this differentiates it from the *baraita* that is generally called *halakhah*, the *baraita* that is repeated in most places with amplification, and

anyone who reads it can skim through quickly[218] (see Rambam in his introduction to *Seder Zera'im d"h, 'achar kein ra'ah l'histapeik'*). And from this Rabbi's intention was only to compose a book that in it is a memory of the words of the springs,[219] and the broadening explanation has been transmitted since then orally, and about this commentary they said "things that orally are permitted, etc." And this itself was also an intention of the statement "A Tanna of the school of R. Ishmael taught: [It is written] these you may write, but you may not write *halakhot"* in other words *braitot* that explain the Mishnah. And here for the Mishnah they did not establish masters of the tradition that built and fenced in for the sake of the text transmitted to them, and we have already seen above that they had different textual traditions; and therefore they sometimes changed "forbidden" in place of "permitted" etc. More cautiously we also teach that variants like these suggest that the Mishnah was written, because if it was spoken in every mouth and disseminated by the yeshivot in a "forbidden" manner how is the contradiction resolved with the teaching "permitted" and it contradicts all who study the Mishnah with "permitted?" See *Baba Metzia* 8b: "R. Joseph [then] said: Rav Judah said to me, let us look [into the matter] ourselves. We learned: He who leads [a team composed of an ox and an ass] receives (**230**) forty lashes, and [likewise] he who sits in the wagon [drawn by such a team] receives forty lashes. R. Meir declares him who sits in the wagon free. And since Samuel reverses [the Mishnah] and reads: 'And the Sages declare him who sits in the wagon free' it follows that [according to Samuel] he who rides [on an animal] by himself etc" and how does Samuel dare to change the Mishnah that is known to all in this manner? See there (*Baba Metzia*) 107a: "R. Judah taught Rabin: (If

[218] Phrasing drawn from Rashi's commentary on Isaiah 8:1

[219] This refers to R. Akiva and his students. Similar language is used by Frankel on pg. 15 of *Darkhei Ha'Mishnah*: *"v'hanahar ha'yotzei me'mekor chaiyim zeh..."*

rented for) cereals.... He (Rabin) said to him (R. Judah): But did we not learn...? [There is no difficulty] this refers to ourselves; the other, to them (the Palestinians)" for will they listen to him to change that which is known to all? From all of this it must be concluded that the Mishnah was written but not with much commentary since the essence of the learning was oral, and therefore it is easy to say that the author erred and omitted the word(s) "there is not" (*ein*) or wrote the word "forbidden" (*asur*) in place of "permitted" (*mutar*) (and mistakes or different versions like these were surely found also in *mishnayot* that were written before the *Rishonim* Rashi, Rambam, etc; see below) or wrote "R. Meir" in place of "sages" etc. If this is so, they shook some from joining R. Shrirah Gaon and Rambam for no reason, surely if the Mishnah was also written the essence of the study would remain oral as earlier, and since then the Mishnah's substance has been transmitted from shepherd to shepherd.[220]

[220] And sometimes the *baraitot* were written, that is to say some sages wrote a few of them for themselves, and they are called *megilat setarim* on which the Rav Samuel David Luzzato comments. See *Pesachim* 64b: "The Rabbis taught in a *baraita*, 'no one ever was crushed in the courtyard except for one *Pesach* in the days of Hillel when one old man was crushed. They called it 'the crushed *Pesach*' (*Pesach me'uchin*). The Rabbis taught in (another) *baraita*, 'one time, king Agrippas wanted to keep his eye on the masses of Israel. He said to the High Priest, 'keep your eyes on the *Pesach* offerings.' He (the High Priest) took a kidney from each one (of the offerings) and six hundred thousand pairs of kidneys were found there, double (the number of) those who went out of Egypt. (This is) besides whoever was *tamei* and someone who was a long distance (away). You will not find from all the *Pesach* (offerings, even one) that did not have more than ten people registered for it. They called it 'the thick *Pesach*' (*Pesach me'uvin*)" and those who think easily understood that there were here two written versions, the first 'bruised' and the second *caf* was changed to *vet*, and the two acts were known, and they connected the one to *Pesach me'uchin* and the other to *Pesach me'uvin*. Similarly in *Ketubot* 66b: "[Do they not say this proverb in Jerusalem], 'the salt of money is deficit (*kheser*)?' Others say (that the *baraita* reads, 'the salt of money is) kindness (*khesed*).'" And this is from *Avot d'Rabbi Natan* ch. 17 and see Rashi in *Baba Metzia 114b* on "*v'raba amar hachi k'amar*" and he says: The Tanna did not err in what he taught, 'he is obligated to return...' to add and to say 'he is not obligated to return...', rather surely 'he is not obligated to return...' is also taught, 'and this is what it says...' and it was forgotten, omitted and skipped over from 'he is obligated to return' to 'he is not obligated to return....'"and here this is only in writing some find skipping from line to line with similar letters [this is a scribal error called haplography], and in this case Rashi's opinion that this *baraita* was written. Here is the first that made noise about Rambam, this being the teacher R. Ya'akov Hagiz in his introduction to his book *Eitz Hayiim*, and after him went some contemporary sages and from them precise proofs were brought against the opinion of the Rambam but there was no foundation for them and the gates of repentance were not locked, and by virtue of some detail this matter cannot be determined.

Conclusion

In his forward to The Modern Study of the Mishnah, Jacob Neusner offers the following opinion:

> Zacharias Frankel, the founder of the modern study of the Mishnah, appears...to belong to the distant past. It would, indeed, be unnecessary to criticize his ideas at all, were they not still taken seriously, as shown by the reprinting of his books and their use in contemporary Israeli scholarship to this day. ... But scarcely a line of his *Darkhei Ha'Mishnah* can be taken seriously.[221]

With all due respect to Professor Neusner, I believe he is wrong. There can be no doubt that there are many flaws with *Darkhei Ha'Mishnah*, some of which have been addressed in this thesis. Relative to many of the contemporary scholarly efforts, including that of Neusner, Frankel's work is a quaint reminder of the nascent days of Mishnah scholarship. His reliance on biblical and rabbinic texts as historical sources, his tendency to offer proof-texts with no explanation, and his sometime circular reasoning are all legitimate grounds to dismiss his work as belonging to "the distant past." One could say that in this case, however, Neusner makes the mistake of not being able to see the forest through the trees. The fluid nature of scholarship in general, in addition to the great strides taken in a relatively short period of time in the field of Jewish Studies in particular, has indeed rendered the specifics of Frankel's work, along with the work of many other *Wissenschaft des Judentums* scholars, largely irrelevant. Nonetheless, the broad ideas upon which Frankel based his work remain not only relevant but integral to our understanding of the Mishnah and *halakhah*. The thought that the Oral Law must be viewed as existing within the flow of history and not above it, the concept that *halakhah* is human, dynamic and

[221] Neusner, The Modern Study of the Mishnah, xviii-xiv

progressive in nature, and the notion that Jewish tradition at its best has been influenced by and responded to its circumstances are all ideas that continue to impact Jewish life and thought in the twenty-first century and remain essential to the modern study of the Mishnah and *halakhah.*

The study of Frankel is also integral to the study of *Wissenschaft des Judentums* and nineteenth century German Judaism. One of the greatest surprises I encountered in my research was the fact that Frankel was truly one of the *gedolim* of his generation. This was surprising because while I was well aware of Abraham Geiger, Samson Raphael Hirsch and Heinrich Graetz, prior to my rabbinical studies I had only heard of Zacharias Frankel as the name of the non-Orthodox seminary in Chaim Potok's The Promise. As noted in the introduction, it was not until my third year of rabbinical school that I learned anything about Frankel. This may be an indictment of my undergraduate or graduate Jewish Studies programs, but I believe it is more likely reflective of the fact that Frankel has, for some reason, faded into the background of history. In light of my research, I find this shocking. Frankel's achievements are on par with any of the great Jewish scholars and visionaries of the nineteenth century. The journal he founded and edited in its early years, the *Monatsschrift fuer Geschichte und Wissenschaft des Judentums*, was perhaps the most important scholarly journal of Jewish studies until World War II. The school he headed served as the model for the modern rabbinical seminary. He is the spiritual founder of one of the three major non-Orthodox Jewish movements. The man is a giant of modern Jewish history, yet he is unknown to so many. Therefore it is imperative that students of modern Jewish history and thought encounter Frankel and his work if they are

to have a full understanding of *Wissenschaft des Judentums* and nineteenth century German Jewry.

If these were the only reasons to devote energy to the study of Frankel and *Darkhei Ha'Mishnah, dayeinu*. However, of additional importance is the fact that he was the first to study the Mishnah in this manner, and *Darkhei Ha'Mishnah* is the fruit of that labor. It is the nature of the innovator that his creation will eventually be improved upon and often relegated to the historical dustbin, but that does not free us from studying and understanding those on whose shoulders we stand. Knowledge of contemporary scholarship is incomplete if one does not have a full understanding of its predecessors and influences. In the case of *Darkhei Ha'Mishnah* the point may be that Frankel's methods and arguments are no longer tenable, but in spite of this one may be better able to discern the process through which later scholars developed their work by studying Frankel and his work.

Outside of the realm of scholarship, another area in which I believe Frankel's work can continue to have an impact is progressive *halakhah*. Aside from the fact that his removal of the Oral Law from the realm of the revelatory has helped to create the very concept of progressive *halakhah*, his historically-based approach to the Mishnah and *halakhah* can still serve as a method for determining contemporary *halakhah*. As liberal Jews do not generally see themselves fettered to the traditional *halakhic* interpretations or methods, it is imperative that we seek out a consistent alternative. Asking questions about when a law was created, who developed it, and what circumstances surrounded its development have and will continue to enable us to create a *halakhic* system that honors the traditional understandings but recognizes that our situation is different, and the same

understandings may not apply. We can use the concepts, if not the methods, developed by Frankel to ensure that progressive Judaism continues to have a stake in the *halakhic* enterprise and does not leave it solely in the hands of the *haredim*.

There is a great deal that can still be learned from studying Zacharias Frankel and *Darkhei Ha'Mishnah*. The concepts Frankel developed about the Mishnah and *halakhah* continue to be relevant not only for study but for practical application in the field of progressive *halakhah*. Additionally his role in the development of *Wissenschaft des Judentums* and the debate over religious reform were pivotal in guiding each. A disservice has been done to Frankel in that he is not known equally along with the other great men of his generation. It is my hope that the project I have undertaken can serve as a small step towards rectifying this and bringing to light the many achievements of Rabbi Zacharias Frankel.

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