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MIDRASH AND MISHNAH

A STUDY IN THE EARLY HISTORY OF THE HALAKAH

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I

THE teachings of the Halakah, as preserved to us in the tannaitic literature, have been given by teacher to disciple and transmitted from generation to generation in two different forms, namely, Midrash and Mishnah. The one, Midrash, shortened from 'Midrash Torah',¹ represents the Halakah as an interpretation and exposition of the Torah. It teaches the Halakah together with its scriptural proof, that is, in connexion with the passage from the Pentateuch, on which it is based or from which it can be derived, thus forming a halakic commentary to the written law contained in the Pentateuch. This form is especially used in our halakic Midrashim, Sifra, Sifre, and Mekilta, but it is also found in some parts of the collections

¹ The term מדרש from דרש 'to search, inquire, investigate', means 'research, inquiry', and מדרש תורה accordingly means an inquiry into the meaning of the Torah, an exposition of all laws and decisions which can be discovered in the words of the Torah. In this sense the term 'Midrash Torah' is used in the Talmud (b. Kiddushin 49b) where it designates the halakic interpretation or exposition of the Torah. As we now have many Midrashim to the Torah of a haggadic character, the term Midrash Torah would be too indefinite to designate an halakic exposition of the Torah. A haggadic exposition of the Torah would also be a Midrash Torah. The more specific term Midrash Halakah is therefore now used to designate a halakic interpretation of the Torah. See the writer's article 'Midrash Halakah' in the *Jewish Encyclopaedia*, VIII, pp. 569-72.

of our Mishnah and Tosefta, as well as in many so-called Midrash-Baraitot scattered in both the Palestinian and the Babylonian Talmud. The other form, the Mishnah, represents the Halakah as an independent work, giving its dicta as such, without any scriptural proof, and teaching them independently of and not connected with the words of the written law. For this reason the Mishnah is also designated as 'Halakah' or in the plural 'Halakot', that is, merely rules or decisions. This form is especially used in our collections of the Mishnah and the Tosefta, but it is also found in many Baraitot scattered in the Talmud and in some parts of our halakic Midrashim.² (See D. Hoffmann, *Zur Einleitung in die halachischen Midraschim*, Berlin, 1887, p. 3.)

Of these two forms of teaching the Halakah, the Midrash is the older and the Mishnah the later. The Midrash was the original form, and was used in the earliest times, in the very beginnings of the Halakah. This is quite self-evident, as the Midrash was in reality the origin of the Halakah. The dicta of the Halakah had their source in the Midrash Torah, i.e. an inquiry into the full meaning of the written law from which alone the earliest Halakah derived its authority.

The returned Babylonian exiles, constituting the new Jewish community, reorganized by Ezra and Nehemiah, accepted the written Torah, so to speak, as their constitution. They entered into a covenant by oath, to keep and follow the laws of Moses as contained in the book read

² As the difference is only in form, it is not surprising to find that very many of the Halakot are cast in both forms. Very often the same Halakot which are found in the halakic Midrashim together with their scriptural proofs are also found in the Mishnah and Tosefta without scriptural proofs as independent Halakot.

to them by Ezra (Neh. 8 and 10. 30). The Book of the Law, therefore, as read and interpreted by Ezra, was for them the only authority they were bound to follow. Whatever was not given in the book, they were not bound to accept. All the religious practices and the time-honoured customs and even the traditional laws, if there were such, had to receive the sanction of the written Law in order to be absolutely binding upon the people. This means, that the practices, customs, &c., had to be recognized as implied in the written Law or contained in its fuller meaning. The teachers, therefore, interpreted the written Law so as to include in it or derive from it all those customs and practices. Thus, the teachings of the Halakah (for all such rules, customs, practices, and traditional laws constituted the Halakah) had to be represented as an interpretation or an exposition of the written Law. This, as we have seen above, means, to be given in Midrash-form.

It is expressly stated of Ezra that he explained and interpreted the Torah to the people, and that he set his heart to search (לדרוש) the meaning of the Law, to interpret it, and to teach in Israel statutes and judgements (Ezra 7. 10). We learn from this, that Ezra taught only the Book of the Law with such interpretations as he could give to it. His successors, the Soferim, who were the earliest teachers of the Halakah, did the same. They gave all their teachings merely as interpretations to the Book of the Law. Indeed, the very name Soferim was given to them because it characterized their manner of teaching. This name סופרים is derived from ספר 'the Book'. It means 'Bookmen', and it designated a class of people who occupied themselves with the Book of the Law, who interpreted it and who based all their teachings upon this book exclu-

sively (Frankel, *Hodegetica in Mischnam*, p. 3, and Weiss, *Dor*, I, p. 47).

For a long period this Midrash-form was the only form used in teaching the Halakah. This is confirmed by reliable traditions reported to us in Rabbinic literature. One such report is contained in the following passage in the Pal. Talmud (Moed *ḳaṭan* III, 7, 83^b):

איהו תלמיד חכם? חוקיה אמר כל ששנה הלכות ועוד תורה אמר
ליה ר' יוסי הדא דאת אמר בראשונה אבל עכשיו אפילו הלכות.

'Who is to be considered a scholar?' Hezekiah says, One who has studied the Halakot as an addition to and in connexion with the Torah.³ Said to him R. Jose, What you say was [correct] in former times, but in our day, even [if one has studied merely detached] Halakot, [he is to be regarded as a scholar].' Here it is plainly stated that in earlier times (בראשונה) the only form of teaching Halakot

³ The term *ועוד* means 'addition', as, for instance, in the phrase: *לקרא ויהודה ועוד* 'Is it necessary to mention the custom in Judea as an addition to the law indicated in the Scriptures?' (b. *Ḳiddushin* 6a). It is also found in the plural form, *ועודות* 'additions' (b. *Erubin* 83a). The expression *ועוד תורה* here means, therefore, as an addition to the Torah, i. e. to teach the Halakot not independently but as additions to the passages in the Torah from which they are derived. In almos' the same sense it is also interpreted by the commentator Pne Mosheh, *ad loc.*

It should also be noticed that in b. *Ḳiddushin* 49a Hezekiah says that to be called a student (*שונה*) it is enough if one has studied merely detached Halakot. This, however, does not contradict his saying in our passage in the p. Talmud. For *תלמיד חכם* is a scholar of a higher degree of learning. From b. *Megillah* 26b it is evident that the student called *שונה* is not as advanced as the scholar called *תלמיד חכם*. To be considered a scholar, such as is designated by the name *תלמיד חכם*, Hezekiah tells us, one must study the Halakot in the Midrash-form. For even after the Mishnah-form had become popular, the Midrash was considered the proper form to be used by advanced scholars. See Guttman, *Zur Einleitung in die Halakah*, Budapest, 1909, p. 20.

was as an addition to and in connexion with the written Law, that is to say, in the Midrash-form. In those days, therefore, one could not acquire a knowledge of the Halakah, i. e. become a scholar, except by learning the Midrash, for the very good reason that the halakic teachings were not imparted in any other form.

Sherira Gaon who no doubt drew upon reliable sources likewise reports in his Epistle (Neubauer, *M. S.*, ch. I, p. 15) that 'in the earlier period of the second temple, in the days of the earlier teachers, all the teachings of the Halakot were given in the manner in which they are found in our Sifra and Sifre', that is, in the Midrash-form.⁴ Modern scholars⁵ have, accordingly, recognized it as an established historic fact that the Midrash was originally the exclusive form in which all teachings of the Halakah were given.

Not only were those Halakot which were derived from some scriptural passage by means of interpretation taught in Midrash-form, that is to say in connexion with the passages which served as proof, but also such Halakot and teachings as were of purely traditional origin—rules, practices, and customs that had no scriptural basis at all were likewise taught in this manner. The latter were taught in conjunction with some scriptural passage with which they could in some manner be connected, or together with certain written laws to which they were related, either as

⁴ The passage in the letter of Sherira Gaon reads thus: *וספרא וספרי דרשי דקראי נינהו והיבן רמיוו הילכתא בקראי ומעיקרא במקדש שני להון ביומיה דרבנן קמאי לפום הדין אורחא הוּו תני להון 'them', i. e. the Halakot, only in the form used in our Sifra and Sifre, i. e. Midrash.*

⁵ N. Krochmal in *More Nebuke Ha-Zeman*, porta XIII, Lemberg, 1851, pp. 166-7; Z. Frankel in *Hodegetica in Mischnam*; Weiss, *Dor Dor ve-Dorshow* and *Mabo la-Mechilla*; Oppenheim, 'Toledot ha-Mishnah' in *Beth Talmud*, II; D. Hoffmann, *Die erste Mischnah*, Berlin, 1882; and others.

corollary or modification. (See D. Hoffmann, *Die erste Mischnah*, Berlin, 1882, pp. 5-7.) This procedure was necessary, because the only recognized authority was the written Book of the Law which the teachers used as their text-book in teaching. However, in teaching out of this text-book, they gave not only the meanings of words and the explanations of each written law, but also additional rules as well as modifications to some laws. All of this may be included in an exposition (מרש) of the Torah and could properly be taught in connexion with the text. Thus the Midrash-form could continue to be in exclusive use for teaching the Halakah, even after the latter, in the course of time, came to include traditional laws and customs, as well as new institutions and decrees issued and proclaimed by the teachers themselves in their capacity as religious authorities.⁶

The Mishnah-form, on the other hand, is of a much later date. It was introduced a long time after the Midrash-form⁷ and was used side by side with it. At

⁶ Weiss, *Mabo la-Mechilta*, p. iv, remarks about the Soferim: שבבלל תרגומם ופירושם למקרא כללו גם דברים אשר מקורם הגויה והתיקון. Although the instance mentioned by him as proof for his statement is not a teaching of the Soferim (see below, note 55), yet the statement as such is correct. The Soferim or those who only taught in the Midrash-form could include in their teachings altogether new laws and decrees, issued by themselves as religious authorities, by connecting them with the scriptural laws. Only we may assume that it rarely happened that they taught a traditional law or a decree of their own merely in connexion with some scriptural law. In most cases, the Soferim, who had charge of the text of the books of the law, could manage to indicate in the text itself, by means of certain signs and slight alterations, any traditional custom or decree of their own. Thus, these same decrees could be taught as interpretations of the written law. See N. Krochmal, *op. cit.*, p. 167. Compare also below, notes 36 and 37.

⁷ Georg Aicher (*Das Alte Testament in der Mischnah*, Fr.-i.-Br., 1906, pp. 165 ff.) stands alone in the assumption that the Mishnah is older than

no time did the Mishnah-form become the exclusive method for teaching the Halakah, because the Midrash never ceased to be in use.⁸ At just what date this Mishnah-form was introduced, that is to say, just when the teachers of the Halakah began, for the first time, to teach Halakot independently of the written law, has, to my knowledge, not yet been ascertained. Sherira Gaon who, as we have seen, informs us that at some period in earlier times the Midrash-form was the only one in use, does not state exactly how long that period lasted, and does not mention when the Mishnah-form was introduced. Neither is there any other gaonic report to tell us when this happened.⁹ Hoffmann (*op. cit.*, pp. 12-13) states that, according to the views held by the Geonim, the Mishnah-form was first introduced in the days of Hillel and Shammai, but he fails to bring proof for this statement. To my knowledge, there is no foundation in gaonic literature for the views ascribed by Hoffmann to the Geonim. Hoffmann bases his theory on the spurious

the Midrash. This cannot be maintained. His statement (p. 64) that 'the appearance of scriptural proof in connexion with the Halakah was due to the radical changes effected by the catastrophe of the year 70', hardly needs any refutation. The many Halakot in the Midrash form given by teachers in the time of the Temple as well as the disputes between the Sadducees and Pharisees, hinging upon different interpretations of scriptural passages as bases for their respective Halakah, ought to have shown Aicher to what extent Midrash was used before the year 70.

⁸ We must emphasize this fact against the theory advanced by Weiss and Oppenheim and also by Jacob Bassfreund in his *Zur Redaction der Mischnah* (Trier, 1908, pp. 19-24), that there was a time when the Midrash-form was altogether abandoned, and the teachings of the Halakah given exclusively in Mishnah-form. We shall see that this theory is untenable (below, notes 15, 22, and 53).

⁹ The account given in the letter of Sherira stops very abruptly. See the discussion at the end of this essay.

responsum found in *Shaare Teshubah*, No. 20, and ascribed to Hai Gaon,¹⁰ in which the following passage is found:

דע מימות משה רבינו עד הלל הזקן היו שש מאות סדרי משנה כמו
שנתנם ה"ב"ה למשה בסיני ומן הלל ואילך נתמעט ונתמסכן העולם
וחלשה כבודה של תורה ולא תקנו מהלל ושמואי אלא ששה סדרים
בלבד.

'Know, that from the days of Moses our Teacher until Hillel the Elder, there were six hundred orders of Mishnah just as God gave them to Moses on Sinai. However, from the time of Hillel on the world became impoverished, and the glory of the Law was diminished, so that, beginning with Hillel and Shammai, they arranged only six orders.' It is evident that this responsum cannot be taken to represent a reliable gaonic tradition, as it is apparently based on the haggadic passage in *Hagigah* 14 a, and is accordingly of merely legendary character. Aside from this, the passage does not say what Hoffmann has read into it. It does not even deal with the origin of the Mishnah-form. If anything, we can see from this responsum that its author, quite to the contrary, assumed that the Mishnah-form was very old, and that it was given to Moses on Sinai.¹¹ He deals merely with the origin of six

¹⁰ This responsum had been added by some later hand to the responsa of Hai Gaon, but does not belong to the Gaon. Comp. Harkavy, *Studien und Mitteilungen*, IV, p. xiv. The fact that this report is repeated in *Seder Tannaim we-Amoraim*, (Breslau, 1871, p. 29) and in *Sefer Hakanah*, p. 81 b, and in S. Chinon's *Sefer Kritot* (Book *Yemot Olam*, Amsterdam 1709, p. 20 a) does not in the least alter its legendary character and cannot make it more reliable, for the authors of all these works drew from one and the same source. This source cannot be of a more reliable character than the *Midrash Abkir*, from which the *Yalkut* (Genesis, sec. 42) quotes the statement that Methuselah studied 900 orders of Mishnah, משוחלח צדיק, גמור היה והיה שונה מ' מאות סדרי משנה.

¹¹ The belief that the Mishnah was given to Moses on Sinai is repeatedly

orders of Mishnah which he assumed to have been extant in the days of Hillel and Shammai. These six orders were in his opinion but a poor small remnant of the six hundred orders which Moses received from God on Sinai and which were extant till the days of Hillel when the world became impoverished and the glory of the Torah diminished. Hoffmann arrives at his interpretation of this responsum by arbitrarily giving two different meanings to one and the same term used by the author twice in one sentence. He states (p. 13) that when the Gaon speaks of the 'six hundred orders of Mishnah', he is using the term 'Mishnah' in a broad sense to designate traditional law in the Midrash-form and not in the Mishnah-form, but when the Gaon speaks of the reduced 'six orders' extant in the days of Hillel and Shammai, he uses the term 'Mishnah' in a narrow sense to designate only independent Halakot in the Mishnah-form. This distinction is extremely arbitrary. Furthermore, when Hoffmann concludes his argument with the remark (*ibid.*, p. 13) that 'No doubt the six orders of Mishnah introduced in the days of Hillel and Shammai were, like our present Mishnah, composed in the form of independent Halakah, and by this *new form* were distinguished from the earlier form of teaching', he no longer

expressed in the Haggadah. See b. Berakot 5 a and p. Hagigah I, 8, 76 d. In the Pirke de-Rabbi Eliezer, ch. xlvi, it is said that during the forty days which Moses spent on the mountain, receiving the Law, he studied the Scriptures (ספרים) in the daytime and Mishnah at night. In Pesikta Rabbati V (Friedmann, p. 14 b) it is said that Moses wished to have the Mishnah written, but God told him that in order to distinguish Israel from other nations it was better that the Mishnah should be given to Israel orally, so that the other nations should not be able to claim it for themselves. See also Tanhuma, *Ki-Tissa* (Buber, pp. 58 b and 59 a), and p. Hagigah, l. c. The author of our responsum had as his authority such haggadic sayings when he spoke of the Mishnah which God gave to Moses on Sinai.

gives the views of the author of the responsum, but his own. And these views are absolutely wrong.¹²

Thus we see that there is no mention in gaonic literature,¹³ of the time when this innovation in the form of teaching the Halakah took place. Neither is there any report in talmudic¹⁴ or gaonic sources about the cause of this innovation. We are not told why it was necessary or desirable to introduce a new form of teaching Halakah alongside of the older Midrash-form.

Modern scholars have attempted to answer these questions; both to fix the date and to give the reasons for this innovation in the method of teaching. However, the various theories advanced by these scholars are all unsatisfactory. They are the result of mere guess-work—without solid proof or valid foundation. It will be shown

¹² There is no doubt that at the time of Hillel and Shammai there were no Mishnah-collections like our Mishnah. The responsum in Shaare Teshubah, § 187, which tells us that when a certain Gaon died they found that he had the six orders of the Mishnah of the days of Hillel and Shammai, which had been hidden away, is spurious and legendary. See S. D. Luzzatto, *Beth ha-Ozar*, pp. 55 b–56 a. Although there were in the times of Hillel and Shammai collections of Halakot composed in Mishnah-form, this form was not new to them and could not be the characteristic which distinguished them from the form of teaching used before. For, as we shall see, there had been even before Hillel and Shammai collections of independent Halakot in the Mishnah-form. And if Hillel himself composed a Mishnah-collection, he did not arrange it in order, and did not divide it into tractates as Pineles (*Darkah shel Torah*, pp. 8–9) and Bassfreund (*Zur Redaction der Mishnah*, p. 25) assume. The arguments brought forward by the latter to prove that Hillel's Mishnah-collection was arranged and divided into tractates are not convincing.

¹³ On Saadya's opinion see further below.

¹⁴ There is, however, as we shall see in the course of this essay, a report in the Talmud stating until when the Midrash-form was in exclusive use. This talmudic report has been overlooked or else not correctly understood, for not one of the scholars dealing with the problem of fixing the date of the beginning of the Mishnah-form has referred to it.

that some are based upon inaccurate reasoning, and all of them are in contradiction to certain established historic facts.

We have already seen that the theory which Hoffmann ascribes to the Geonim has no foundation in gaonic literature and that it is altogether Hoffmann's theory. But, no matter whose it is, the theory itself cannot be maintained.¹⁵ In the first place, there were Mishnah-collections before the time of Hillel and Shammai, as Rosenthal has proved (*Ueber den Zusammenhang der Mishnah*, Erster Teil, 2te Aufl., Strassburg, 1909). In the second place, the introduction of a new form necessarily precedes any collection of Halakot composed in this new form. It must be quite plain that there were individual, detached Halakot taught in the Mishnah-form (and not in the Midrash-form) before any collection of such detached Halakot could be made. Accordingly, if we assume with Rosenthal (*op. cit.*, p. 111) that a collection of such independent Halakot in the Mishnah-form was already arranged in the time of Simeon ben Shetaḥ, we have to go still farther back in fixing the time when the teachers first began to separate the Halakah from its scriptural proof and teach it independently, as Mishnah. This would bring us to about one hundred years before the time of Hillel and Shammai. Not only is this theory of Hoffmann wrong in respect to

¹⁵ Compare also Bassfreund (*op. cit.*, pp. 18 ff.) who likewise seeks to refute Hoffmann's theory. Some of Bassfreund's arguments, however, are not sound. He is altogether wrong in assuming that for a long time before Hillel the Mishnah was the exclusive form used in the teaching of the Halakah, and that Hillel was the first to reintroduce the Midrash-form. He confuses the development of the Midrash methods which were furthered by Hillel with the use of the Midrash-form which had no need of being introduced by Hillel since it was never abandoned (see above, note 8, and below, note 22).

the date given for the introduction of the Mishnah-form, but it is also unsatisfactory in regard to the cause of this innovation.

According to this theory, the Mishnah-form was introduced in order to assist the memory in mastering the contents of the traditional law.¹⁶ However, it is difficult to see how the teachers could have considered the new form of greater aid to the memory than the old form. This new form is on the contrary quite apt to make it more difficult for the memory. It seems to us that it is less of a task for the memory to retain Halakot taught in the Midrash-form. The written Law, being the text-book, each passage in it, as it is being read, helps, by mental association, to recall all the halakic teachings based upon it. On the other hand, it is much harder to remember detached Halakot given in an independent form, especially when they are not arranged systematically or topically but merely grouped together. This, we must keep in mind, was actually the mode of arrangement used in the earlier Mishnah collections.¹⁷

Hoffmann himself must have felt that this theory was not satisfactory, for later in his book he advances another

¹⁶ The same reason is also given by Frankel and Weiss. They all seem to have been influenced by the haggadic sayings found in the Talmud, sayings which exaggerate the number of Halakot known to former generations.

¹⁷ Hoffmann makes the mistake of assuming (*op. cit.*, pp. 13, 15, and 48) that simultaneously with the separation of the Halakot from their scriptural basis came the grouping of such detached Halakot into orders and treatises, as we have them. But this is absolutely wrong. The earlier Mishnah went through many different forms of grouping before it was finally arranged according to subjects and divided into treatises and orders. See the writer's article in the *Jewish Encyclopaedia*, VII, p. 611. The opinions expressed by the writer there on page 610 (following Hoffmann) are hereby retracted.

and altogether different theory (*op. cit.*, p. 48). According to this second theory, the innovation was not made for the purpose of aiding the memory, and was not made in the days of Hillel and Shammai. Here Hoffmann assumes that the Mishnah-form was first introduced in the days of the later disciples of Hillel and Shammai. The purpose of the innovation, he explains, was to maintain the unity of the Halakah by minimizing the differences of opinion and eliminating the disputes about the halakic teachings which arose among these very disciples of Hillel and Shammai. These disputes, Hoffmann tells us, were in many cases only formal, namely, concerning the underlying Midrash or the scriptural proof for the halakic teaching. The traditional Halakah, as such, was agreed upon by all the teachers. That is to say, there was no dispute about the transmitted rules and decisions which all the teachers received alike. The teachers, however, often did disagree as to the scriptural passages and their interpretations whereon these received halakic decisions were based. One teacher would derive a certain Halakah by interpreting a given passage in a certain manner. Another teacher would deduce the same Halakah from another passage, or even from the same passage but by means of another interpretation. Thus, as long as the Halakah was taught only in Midrash-form there existed many differences of opinion between the teachers, not in regard to the halakic decisions or rules in themselves but in regard to their midrashic proof and support. The teachers of those days who were very anxious to maintain harmony among themselves and unanimity in their teachings therefore decided to separate the Halakah from the Midrash and to teach it independently of the scriptural proof or support. In other

words, they introduced the Mishnah-form—the Halakah as an independent branch of learning. By this innovation all the differences of opinion and disputes about the midrashic proof necessarily disappeared. Thus uniformity was restored in teaching the Halakah, and harmony was established among the teachers.

This second theory of Hoffmann is even less tenable than the first. In the first place, it fixes the date for the introduction of the Mishnah even later than the first theory. Consequently, in this respect it is refuted by the same arguments that were brought against the first theory. We have seen above that there were Halakot in Mishnah-form, even collections of such Halakot, at a much earlier date. Furthermore, the explanation of the cause for the innovation put forth in this theory presents a palpable error in reasoning. It presupposes that the decisions of the Halakah, as such, were older than their midrashic connexion with the scriptures, and that at some earlier time they had been transmitted independently of scriptural proofs. For this reason the teachers could well be unanimous in accepting the Halakah and yet find cause for dispute as to methods of proving certain halakic decisions from the scripture by means of the Midrash. But this means nothing else than that there were some Mishnahs, that is, independent Halakot before the disputes about the scriptural proofs caused their separation from the Midrash. This line of reasoning contradicts itself. It sets out to find the cause for the first introduction of the Mishnah-form, but assumes that before this introduction some Halakot had already been transmitted in Mishnah-form. In other words, this so-called first introduction was really not a first introduction.

If they had taught only in Midrash-form, the alleged evil results which the Mishnah-form, according to Hoffmann, was to remedy could never have arisen. It would have been impossible for the teachers to agree upon a halakic decision, and at the same time to disagree about its scriptural proof. Since every teacher received each Halakah in the same Midrash-form, that is, as an interpretation of, or connected with, a certain scriptural passage, every one who remembered the decision must have remembered the form in which he received it, that is, the scriptural passage with which it was connected. It is very improbable that a teacher remembering the decision, but having forgotten the scriptural basis, would have supplied another scriptural proof therefor, and then disputed with his colleagues who remembered the right passage on which this Halakah was based. If he did forget the passage for which the Halakah was an interpretation, the mere mention of that passage by his colleagues must have brought it back to his memory. It is evident that there could be no universal acceptance of a Halakah together with disputes regarding its proofs, unless such a Halakah had been taught apart from its proof. This, however, was not done, as long as the Midrash-form was in exclusive use, that is, as long as the Halakah was merely taught as a commentary on the text of the Law.¹⁸

¹⁸ This would hold true even if we should believe in the genuineness of the so-called *למשה מסיני*, that is, that there had been given oral laws to Moses on Sinai and transmitted independently of the written law. For, as Hoffmann himself states (*op. cit.*, p. 7), even all the traditional teachings were taught together with the scriptural laws and connected with them in the Midrash-form. All through the period of the Soferim, and according to Hoffmann till the time of the disciples of Hillel and Shammai, such traditional laws would somehow be connected with the Scriptures. The mental attitude of the teachers was not in the direction

Quite as unsatisfactory is the theory advanced by Z. Frankel (*Hodegetica in Mischnam*, pp. 6, 7, and 10). According to this theory, the innovation of teaching detached Halakah in the Mishnah-form was made by the last group of Soferim.¹⁹ This was done to overcome three difficulties which Frankel tells us existed in those days. In the first place, the halakic decisions based upon the individual passages had increased to such an extent that the task of studying and teaching them in the Midrash-form became very difficult. In the second place, the absence of inner logical connexion between the individual dicta of the Halakah made its study a work of mere of separating such traditional laws from the scriptural passages with which they had for centuries been connected. This would have remained their attitude even if they had realized that such a connexion was merely artificial (see below, note 27). No differences of opinion were therefore possible as to how such traditional laws were to be connected with the Scripture.

It should be noted that Hoffmann seems to have subsequently abandoned both his theories. In his introduction to his translation of the Mishnah, Seder Nezikin (p. x, note 3), he states that according to the Palestinian Talmud the so-called Number-Mishnahs were already compiled and redacted by the men of the Great Synagogue. He refers to the passage in Shekalim, V, 48c, which, like Weiss and Oppenheim, he misinterprets. See below, note 26.

¹⁹ N. Krochmal (*op. cit.*, pp. 174-5) also assumes that even the last of the Soferim began to teach independent Halakot (so also Pineles, *Darkah shel Torah*, pp. 8-9). Like Frankel, Krochmal also gives as the reason the increased number of the Halakot and new decisions which could no longer be connected with the Scripture in the form of the Midrash. There is, however, a great difference of opinion between Krochmal and Frankel as to dates. Krochmal extends the period of the Soferim until about 200 B. C., assuming that the Simon mentioned in Abot as 'one of the last survivors of the Great Synagogue' is Simon II, the son of Onias II. Krochmal therefore designates him as the last of the Soferim and the first of the Mishnah teachers, the Tannaim (*loc. cit.*, p. 166). According to Frankel, the last member of the Great Synagogue was Simon the Just I, about 300 B. C. This Simon, then, was the last of the Soferim in whose days the Mishnah was introduced (*Hodegetica*, pp. 68 and 30-31).

mechanical memorizing—a very tiresome and repulsive procedure for the intelligent student. In the third place, the Pentateuch gives the laws pertaining to one subject in many different places. As the Midrash follows the Pentateuchal order, there could be no systematic presentation of all the laws on any one subject. The laws on one subject, for instance, Sabbath, being derived from widely separated passages in the Pentateuch, had to be taught piecemeal, each decision in connexion with its scriptural basis. For all these reasons, Frankel tells us, the last group of the Soferim decided to separate the Halakot from their scriptural bases and to teach them in the new Mishnah-form systematically arranged according to subjects.

Like Hoffmann, Frankel assumes that the plan of arranging the Halakot according to subject-matter was coincident with the very introduction of the Mishnah-form, so that the very earliest Mishnah collections must have been arranged topically. This, as we have seen, is incorrect. The topical arrangement of the Mishnah is of later date. It was preceded by other forms of grouping peculiar to the earlier Mishnah collections. Frankel himself credits R. Akiba with the systematic arrangement of Halakah according to topics (*op. cit.*, p. 115). He also qualifies by the following remarks his former statement concerning the Soferim and their arrangement of the Halakah according to subjects: 'We have stated in the preceding chapter that the teaching [of the Halakah] according to subjects began at the end of the period of the Soferim. Nevertheless, a long time undoubtedly passed before all [the Halakot] that belonged to one subject were brought together under one heading. Very often while dealing with one subject they would [not keep

strictly to it but] drift to another and pass from one halakic theme to another . . . R. Akiba, however, began to arrange the old Halakot to put each in its proper place and [under the topic] to which it belonged.'²⁰ If, however, the order in the Mishnah before R. Akiba was not strictly according to subjects, as Frankel here admits, and if some Halakot bearing on one subject would often be treated among Halakot dealing with another subject, what advantage was there then in separating the Halakot from the Midrash and teaching them in the Mishnah-form? The shortcomings of the Midrash-form, according to Frankel, consisted in the fact that the Halakot of one subject could not be taught connectedly but were interrupted by Halakot belonging to another subject. However, according to Frankel's own statement, the same defect was inherent in the Mishnah-form up to the time of Akiba.

Taking up another statement of Frankel, it seems difficult to realize why the study of the written laws together with all the Halakot derived from them, as is done in the Midrash-form, should be such dry mechanical work of the memory, and so repulsive to the intelligent student. One would be inclined to think that the study of the Halakot in the abstract Mishnah-form, especially when not arranged systematically, would indeed be a far more mechanical work and far more tiresome for the student. Again, according to Frankel, it was the alleged lack of inner logical connexion between the single Halakot

והנה כבר כתבנו בפרק הקודם הלימוד ע"פ הענינים התחיל סוף²⁰ ימי הסופרים, אבל בלתי ספק עברו ימים רבים טרם נאספו כל השייכים אל ענין אחד תחת דגל אחד, והרבה פעמים בעסקם בענין זה נמשכו מענין לענין ומהלכה להלכה . . . ור"ע החל לסדר ההלכות הישנות על מכוון ונבולם.

which made the Midrash-form inadequate for teaching purposes. However, this absence of inner logical connexion is merely alleged by Frankel, but not proved. If we should even grant that in the Midrash-form the Halakot were not always logically connected and coherently presented, the earlier Mishnah certainly did not remedy this evil. The earlier Mishnah collections were characterized by the most arbitrary modes of arrangement. Halakot bearing upon different themes and altogether unrelated in subject-matter were often grouped together under artificial formulas. Examples of these earlier modes of arrangement have been preserved even in the present form of our Mishnah as, for instance, in the so-called Number-Mishnahs or the En-ben-Mishnahs. The Midrash-form certainly established a better connexion between the individual Halakot than did these earlier arrangements of the Mishnah. The mere fact that many Halakot belong to one and the same chapter or are grouped around one and the same passage of the Scriptures, establishes a better connexion between them than the accident that they can all be presented under one formula.

Aside from all these arguments, the fundamental position of Frankel can hardly be maintained. In the time of the last group of the Soferim, the halakic material could not have grown to such an extent as to make it impossible to use the Midrash-form and necessitate the innovation of a new form of teaching. The mere volume of the halakic material could by no means have brought about this change of form. This is evident from the fact that our halakic Midrashim, Sifra, Sifre, and Mekilta, present in Midrash-form a mass of halakic material far greater in volume than was extant in the days of the Soferim. Thus we see

that all the reasons which Frankel gives for the introduction of the Mishnah-form are insufficient and could not have been the cause of the innovation.

In conclusion, Frankel's admission that the teachers continued to use the Midrash-form even after the introduction of the Mishnah-form²¹ is the strongest refutation of his own theory. If the Midrash-form had so many disadvantages, if it was both tiresome for the student and inadequate for presenting the Halakot systematically, why was it not altogether abandoned? How did the new form obviate the evils of the old form if the latter continued in use?

The theory propounded by Weiss in his *Mabo la-Mekilta*, pp. iv and v, and in his *Dor*, I, p. 66, is somewhat of an improvement upon the ideas of Frankel. Like Frankel, he believes that the Mishnah-form was introduced by the later Soferim, and that the reason for this change was the large increase of halakic material. He avoids two of the mistakes that Frankel made. In the first place, he does not confuse the innovation of teaching detached Halakot in the form of Mishnah with the arrangement of the latter according to subjects. Nor does he assume that the Midrash-form continued in use, after the Mishnah-form was introduced. According to Weiss, the Midrash-form was abandoned because it proved inadequate. It was hard for the student to remember the great mass of Halakot that existed at that time, when taught in the Midrash-form. The teachers, therefore, felt the need of inventing another form which would help the

²¹ *Op. cit.*, p. 7, he says : בענין לעצמום בהם דרך שביררו להם : ודע כי אף שביררו להם דרך לעצמום בענין : ודע כי אף שביררו להם דרך הרשונים לגמרי אבל חיברו גם הם מאמרים למקרא הולכה לא עזבו דרך הרשונים לגמרי אבל חיברו גם הם מאמרים למקרא

memory retain the increased number of halakic teachings. This help for the memory they found in separating the Halakot from their scriptural bases and in expressing them in short, concise phraseology, and in arranging them according to a number-formula. The saying of Simon the Just, 'The world rests upon *three* things, &c.' (Abot I, 2), and the three Halakot mentioned in Eduyot VIII, 4, which according to Weiss are soferic Halakot, merely reported by Jose ben Joezer, are cited by Weiss in support of his theory that the Soferim taught detached Halakot expressed in concise terms and arranged according to number formulas. Weiss (*Mabo la-Mekilta*, p. v, note 7) admits, however, that the innovation was unsuccessful. The teachers, he tells us, soon found that the Mishnah-form, although superior to the Midrash, in being more easily memorized, had many other disadvantages. As a result, they had to return to the older form of the Midrash after they had abandoned it for a time.²²

This admission of Weiss that the advantages expected

²² In this assumption, that the Midrash-form had for a long time been abandoned and supplanted by the Mishnah, and that later on objections to the Mishnah-form caused a return to the Midrash, Weiss is followed by Oppenheim ('Ha-Zuggot we-ha-Eshkolot' in *Hashahar*, VII, pp. 114 and 116), and by Bassfreund (see above, note 15). It is strange that while these scholars cannot account satisfactorily for one change that really took place, namely, from the exclusive use of the Midrash to the admission of the Mishnah-form, they assume another change which never took place, namely, a return from a supposed temporary exclusive use of the Mishnah to the old Midrash. We have already seen that the Mishnah-form was never in exclusive use, for the Midrash continued to be used side by side with it. Consequently there could have been no return from Mishnah to Midrash. But we shall see that the very reason which Weiss, Oppenheim, and Bassfreund give for the return to the Midrash, namely, the opposition of the Sadducees, was rather the cause for the further departure from the Midrash-form and the extension of the use of the Mishnah-form (see below, notes 72 and 73).

from the new form were not realized, is in itself a strong argument against his theory. Further, we have seen above that the necessity for aiding the memory could not have been the reason for introducing the Mishnah-form. The words of the scriptural text with which the Halakot were connected in the Midrash-form offered sufficient help to the memory. We have also seen above that in the days of the Soferim the halakic material was not so large as to necessitate new forms and arrangements. The Soferim never gave their teachings in any other form but in the Midrash, namely, as interpretations and additions to the written laws. They never arranged them in any other way except in the order of the scriptural passages to which they belonged. The two passages, cited by Weiss, do not refute this statement. The saying of Simon the Just in Abot is not a halakic teaching but a maxim of the same character as the other wisdom literature of that time. We can draw no conclusions from it as to the form of halakic teachings of that day. As for the three Halakot mentioned in Eduyot, these will later be shown to have been the decisions of Jose ben Joezer himself. Consequently they do not prove anything concerning the form of halakic teaching used by the Soferim.

Oppenheim²³ offers a theory that is in reality but a combination of the views examined above. However, he makes a very correct observation concerning the date of the innovation. According to Oppenheim, the Mishnah-form was first introduced during or immediately after the Maccabean uprising. As a result of the persecutions incident to the Maccabean revolution, the study of the

²³ 'Tolédot Ha-Mishnah' in *Beth Talmud*, II, p. 145, and also in his 'Ha-Zugot we-ha-Eshkolot' in *Hashahar*, VII, pp. 114-15.

law was neglected and the knowledge of it decreased. The teachers, therefore, decided to separate the Halakot from their scriptural bases and to teach them independently, in order to save them from oblivion ('Toledot ha-Mishnah', in *Beth Talmud*, II, p. 145). They chose this form either because they thought that in this form it would be easier for the student to remember the Halakot, or because they, the teachers themselves, no longer remembered the scriptural bases for many Halakot.

The first of these two reasons is identical with the one given by Frankel and by Weiss, which has been found insufficient. The second one is similar to the one given in Hoffmann's second theory, and, as we have seen, is not plausible. For, if they had not previously studied Mishnah but received the Halakot only together with their scriptural bases, it is hardly possible that the teachers could forget the latter and yet remember the former. The remembered Halakot would have recalled to them the scriptural passages in connexion with which they were received.

It seems that Oppenheim himself felt that neither his own nor Frankel's nor Weiss's theory was sufficient to solve the problem. He therefore offered another solution of the problem, and this is practically a denial of the fact that there is a problem. After stating that the Soferim taught in the Midrash-form and those who followed them introduced the new form of abstract Halakot, that is Mishnah, he contradicts himself by adding the following remark:²⁴ 'But in my opinion there is no doubt that the Soferim who taught [the Halakah] as a commentary on the Scriptures

²⁴ ולדעתי אין כל ספק כי הסופרים אשר אחזו בפירוש המקראות גם ידם מן ההלכות לא הניחו ידם 'Ha-Zugot we ha-Eshkolot', *l. c.*, p. 114.

[i. e. Midrash] also taught independent Halakot.' He then proceeds to prove that the Soferim had independent or abstract Halakot in the form of Mishnah.²⁵ According to this statement there is no problem at all. We need not account for any change in the form of teaching Halakah or explain the reasons for the innovation of the Mishnah, for there was no change and no innovation. The two forms, Midrash and Mishnah, were evidently used together from the earliest times, the Midrash possibly to a larger extent than the Mishnah. This would indeed be the best solution of the problem and would remove all difficulties. The only obstacle in the way of its adoption is that it is contradicted by all historic reports. It is against the tradition that in earlier times all the teachings of the Halakah were given in the Midrash-form only. This tradition, we have seen, is indicated in the discussion of Jose and Hezekiah mentioned in the Palestinian Talmud (Moed *ḳaṭan*) and is expressly mentioned by Sherira Gaon. It is also out of harmony with the generally accepted opinion that the

²⁵ This is also the stand taken by Halevi who goes even further and maintains (*Doroth ha-Rishonim*, I, chap. xiv, pp. 204 ff.) that in the main our Mishnah had already been composed and arranged by the Soferim, but he does not prove his statements. At the most, his arguments could only prove that there had been many Halakot and decisions in the days of the Soferim, and that the earliest Tannaim in our Mishnah in their discussions seek to define and explain these older Halakot and decisions. But it does not follow that these Halakot and decisions were already in the days of the Soferim composed in the Mishnah-form. These Halakot and decisions were originally given in the Midrash-form, as definitions or interpretations of written laws. The later teachers, that is, the earlier Tannaim, discussed and commented upon these decisions and Halakot of their predecessors which they had before them in Midrash-form. Later on, when these decisions and Halakot became separated from the Midrash, they were arranged in the Mishnah-collections as independent Halakot, together with all the comments and explanations given to them by the Tannaim, and in this form they are also found contained in our Mishnah.

Soferim, as the name implies, imparted all their teachings only in connexion with the written book of the Law. It is, further, against an absolutely reliable report in the Babylonian Talmud which, as we shall see, tells us not only that the older form of teaching the Halakah was the Midrash, but also gives us the period of time during which it was in exclusive use.

Thus we see that all these theories examined above have not succeeded in finding a real solution for our problem. None of the theories have given the exact time or the real cause for the introduction of the Mishnah-form.

Probably the strangest feature of the problem is the silence of the talmudic literature about this important innovation. This silence is all the more remarkable when we come to realize that this was not merely a change in form, but an innovation that had great influence upon the development of the Halakah and had great bearing upon the validity of its authority.

The theory proposed in this essay offers what appears to us to be a satisfactory solution for this many-sided problem. In the first place it determines the exact time when the innovation of teaching independent Halakot was introduced. In the second place it describes the conditions that compelled the teachers to make so radical a change. And finally it explains why no explicit report is preserved in talmudic sources regarding this great development in the teachings of the Halakah. This theory I shall now propound.

(To be continued.)