

Talmudic Topoi:
The Hermeneutical Methods of Midrash and Greco-Roman Rhetoric

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Scholars have long noted an affinity between midrashic hermeneutics and Greco-Roman rhetoric, affirming that the rabbis participated in their surrounding intellectual culture. Although the rabbis employed these exegetical rules extensively, however, we will argue in this chapter that they also express a deep skepticism about their use—especially since they can threaten the authority of traditional teachings. This chapter will first review the parallels between Greco-Roman and midrashic methods of exegesis, then discuss the historical context for their adoption into the rabbinic legal system, and will finally analyze the rabbis' apprehension about their application. This will provide us with yet another window into the rabbinic encounter with the Greco-Roman rhetorical tradition. The midrashic hermeneutical rules¹ are introduced in T. San 7:11:²

Hillel the Elder expounded seven methods before the elders of Betera:

- [1] *a minori ad maius* (*qal va-homer*³),
- [2] comparison of equals (*gezerah shavah*),
- [3] a principle (*binyan av*) derived from one passage,
- [4] a principle derived from two passages,
- [5] a general category followed by a specific instance,⁴

¹ These rules are called *middot*, i.e. characteristic styles of the Torah. Establishing that the Torah's language follows certain conventions allows the reader to properly interpret and derive laws from it. See Wilhelm Bacher, *Erkhe midrash* (Jerusalem: Carmiel, 1969), 1.70; and Azzan Yadin, *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash* (Philadelphia: University of Pennsylvania, 2004), 120-21.

² Translation follows ms. Vienna, unless otherwise noted. See parallels at Sifra, Baraita d'R. Ishmael, *perek* 1.7, and Avot d'Rabbi Natan A 37.

³ Literally, "lightness and heaviness." Some mss. read *qol va-homer*. *Qol* is found more often in older manuscripts and *qal* more prevalent in Babylonian manuscripts. The pronunciation *qal* is grammatically problematic since *qal* (light) is an adjective and does not match *homer* (heaviness), which is a noun. However, Moshe Bar-Asher, "Hagilyonot v'ha-hagut bi-khtav-yad Parma B shel ha-Mishna behinah leshonit," in *Segulla to Ariella*, ed. Bar-Asher Moshe, et al. (Jerusalem: Hotsa'at Hamishpaha, 1990), 129, argues that *qal* can also be an nominal form and is therefore equally correct. We have chosen to use *qal* in this book in deference to popular pronunciation. See further at Yochanan Brueuer, *The Hebrew in the Babylonian Talmud according to the Manuscripts of Tractate Pesahim* (Jerusalem: The Hebrew University Magnes Press, 2002) (Hebrew), 278-79; E. Weisenberg, "Observations on Method in Talmudic Studies," *Journal of Semitic Studies* 11, no. 1 (1966), 18-19; and Bacher, *Erkhe midrash*, 1:118.

[6] something similar in another place,
[7] and something derived from its context.

These are the seven rules that Hillel the Elder expounded before the elders of Betera.⁵

Already medieval writers have linked these hermeneutical methods to Greek rhetoric and interpretation.⁶ David Daube and Saul Lieberman have similarly confirmed that many of the rules are directly related to parallels found in the Greco-Roman rhetorical tradition.⁷ The most obvious are the first two, which relate to what Greek writers call comparison of lesser, greater, and equal. Beginning with Aristotle, we find among his list of *topoi*,

From the more and the less (*ek tou mallon kai hēttōn*); for example, “If not even the gods know everything, human beings can hardly do so”; for this is equivalent [to saying,] “If something is not the fact where it would be more [expected, it is clear that it is not a fact where it would be less.”⁸

The next topic in Aristotle is “from analogy or precedent”:

Further, [there is a related form of argument] if [something is] neither more nor less. This is the source of the statement... that if Theseus did no wrong [in abducting Helen], neither did Alexander [i.e., Paris, who abducted her later].⁹

This schema is copied by Cicero:

⁴ The Tosefta in both ms. Vienna and ms. Erfurt reads “*kelal u-frat u-frat u-kelal*.” The parallel in the Sifra, however, includes only “*kelal u-frat*” in all mss. except for Vatican 31 which has only “*u-frat u-kelal*.” Menahem Kahana, “Kavvim le-toldot hitpathutah shel midat kelal u-frat bi-tekufat ha-Tannaim,” in *Mehqarim ba-Talmud uva-Midrash: sefer zikaron le-Tirza Lifshitz*, ed. Moshe Bar-Asher, et al. (Jerusalem: Mossad Bialik, 2005), 210, suggests that the version in the Tosefta, which includes both, was influenced by R. Ishmael’s thirteen *middot*. I have therefore translated only “*kelal u-frat*” in accordance with the Sifra.

⁵ For a clear explanation of each rule see, W. Sibley Towner, “Hermeneutical Systems of Hillel and the Tannaim: A Fresh Look,” *Hebrew Union College Annual* 53 (1983), 101-35.

⁶ See the citation of Judah Haddasi at Saul Lieberman, *Hellenism in Jewish Palestine* (New York: The Jewish Theological Seminary, 1962), 55, and further below p. 3 n. 14.

⁷ *Ibid.*, 47-82.; and David Daube, “Rabbinic Methods of Interpretation and Hellenistic Rhetoric,” *Hebrew Union College Annual* 22 (1949): 239-64.

⁸ Translation from Aristotle, *On Rhetoric: A Theory of Civil Discourse*, trans. George A. Kennedy (New York: Oxford University Press, 2007), 2.23, p. 174.

⁹ *Ibid.* Aristotle then continues with yet another topic similar to the more and less. Aristotle elaborates on these categories in his *Topics*, 3.6, 119b, 17-35.

From comparison all arguments are valid which are devised in this way: What holds in a wider sphere, should hold in a more restricted one (*quod in re maiore valet valeat in minore*), e.g., if boundaries are not regulated in the city, neither should water be excluded in the city.¹⁰

Again, conversely: What holds in the more restricted sphere, should hold in the wider one. Here one can use the same example in reverse.

Again: what holds in the equivalent sphere, should hold as well in this case, which is equivalent; e.g. Because use and warranty of a piece of land run for two years, it should also be two years for a house. Yet in the law a house is not mentioned, and it is (evidently) treated as belonging with the category ‘all other things’ for which use is one year. Let equity prevail which requires equal rights for equal cases.¹¹

Cicero derives the law of usucapion of houses from the law regarding land vs. all other things using an analogy.¹² In his progymnasmata, Aelius Theon combines these three forms of comparison into the title *synkrisis*:

Then from *synkrisis*, and this is threefold; for we compare what is charged to something greater or lesser or equal (GREEK *meizoni eautou sugkrinomen, h elattoni, h isw*)... When we make a comparison to the lesser we shall speak as follows: “If the thief is punished for taking men’s money, how much the more will this man be punished for looting the possessions of the gods?”¹³

¹⁰ Actions regarding boundaries as well as damage caused by diversion of water were generally limited to the country. See further at Cicero, *Topics*, 43; *Justinian’s Digest*, 10.1.4.19 and 39.3.1.17; and Tobias Reinhardt, *Cicero’s Topica* (Oxford: Oxford University Press, 2003), 249-50. DG209 .T36 gottesman (not there), DG209 .T36 nyu, watson 1972 Limits, anrw 1 2 215-25. Cicero’s argument assumes that regulation of water flow is less applicable in the city than regulation of boundaries.

¹¹ Translation from *ibid.*, 4.23, p. 125. See also paragraph 84. See further elaboration at 18.68-71. These categories of comparison are also discussed in Quintilian, *Institutes of Oratory*, 5.10.86-88 and 8.4.9-11. For more on analogies between law see also Cicero, *On Invention*, 2.50.148-53.

¹² Although it seems quite clear from the Twelve Tablets that immovable property, including houses, would require two years, Cicero re-interprets the law by analogizing houses with all other things besides land. For a comparison with Talmudic law, where three years is required for all property, see Boaz Cohen, *Jewish and Roman Law: A Comparative Study* (New York: The Jewish Theological Seminary of America, 1966), 1.19. Sifra, Behar, 6, similarly derives the use of *hezaka* for slaves from its use for land, although *hezaka* there means *usus* (T. Kidd. 1:5), not usucapion (as in M. BB 3:1). Cf. Y. Kidd. 1:3 and B. Kidd 22b where this is called *hezesh*. See further at *ibid.* 1.290-91.

¹³ Translation from George A. Kennedy, *Progymnasmata: Greek Textbooks of Prose Composition and Rhetoric* (Leiden: Brill, 2003), §108, p. 44. See also the progymnasmata of Hermogenes, *ibid.* §13, p. 80, and §18-20, pp. 83-

The link between the *qal va-homer* and the Greek comparison of lesser to greater was made explicit in the early nineteenth century by Rabbi Isaac Samuel Reggio:

It is evident that our holy rabbis, authors of the Mishnah and Talmud, were fluent in [philosophical] knowledge for it is well known that the 13 rules of R. Ishmael and the 32 rules of R. Eliezer the son of R. Yose the Galilean, which are the key to understanding all of the oral law, behold most of them are founded on the principles of logic. For example the first rule called *qal va-homer* is regularly referred to by the logicians in the name *argumentatio a minori ad majus*.¹⁴

Saul Lieberman explains that the strange term *gezerah shavah* derives its etymology from *synkrisis*, which means both comparison and decision.¹⁵ While *gezerah* does not itself mean comparison, it could likely have been the translation of *synkrisis* in the sense of legal decision¹⁶ and would have then been applied as a term for analogy since the Greek uses the same word.¹⁷

4, those of Aphthonius, *ibid.*, §19R, p. 107, and those of Libanius in Craig Gibson, *Libanius's Progymnasmata: Model Exercises in Greek Prose Composition and Rhetoric* (Atlanta: Society of Biblical Literature, 2008), pp. 149-53. One of the standard exercises in the progymnasmata is “*synkrisis*,” wherein the student is to compare two people or things to show that what is usually considered the lesser is actually the greater. This comparison is typically epideictic whereas judicial comparisons form part of the earlier stage of progymnasmata called “*topos*.” For a good example of epideictic *synkrisis* in rabbinic literature see the comparison of sacrifices and righteousness at Deuteronomy Rabbah 5, 3.

¹⁴ Isaac Samuel Reggio, *Ha-Torah ve-ha-filosofiah: hovrot 'isha 'el 'ahota* (Vienna: 1827), 30. See also Aviram Ravitsky, “Aristotelian Logic and Talmudic Methodology: The Commentaries on the 13 Hermeneutic Principles and Their Application of Logic,” in *Judaic Logic*, ed. Andrew Schumann (Piscataway: Gorgias Press, 2010), 131; and Daube, “Rabbinic Methods,” 251.

¹⁵ See Genry Gerge Liddel and Robert Scott, *A Greek-English Lexicon* (Oxford: Clarendon Press, 1940), s.v. σύνκρισις II and III.2.

¹⁶ *Synkrisis* translates Hebrew *mishpat* whenever the Targum translates it as דקזי (rather than the more common דיןא, which the Septuagint renders as κρίσις), as in Num 9:3, 29:6, 11, 18, 21, 24, 27, 30, 33, 37. In these cases, it carries the sense of “proper interpretation.” *Synkrisis* also translates *mishpat* in Jud 18:7 where the sense is “decision” or “law.” *Synkrisis* is also the standard word in the Septuagint for dream interpretation, as in Gen 40:12, 18, Jud 7:15 and many times in Daniel.

¹⁷ Solomon Zeitlin, “Hillel and the Hermeneutic Rules,” *The Jewish Quarterly Review* 54, no. 2 (1963), 166-67, rejects Lieberman’s hypothesis because גזירה only means decree or law, not comparison. Zeitlin prefers the standard explanation of גזירה שוה as “equal laws,” i.e. cases that are analogous and therefore require the same decision. This is also how Bacher, *Erkhe midrash*, 1.10, explains the term. Lieberman counters that this idea would better be expressed in rabbinic Hebrew by גזירה אחת, as in Tanhuma, Vaethanan, 1.

Louis Feldman, *Jew and Gentile in the Ancient World: Attitudes and Interactions from Alexander to Justinian*, vol. Princeton (Princeton University Press, 1993), 35, objects that the phrase σύνκρισις πρὸς ἴσον occurs for the first time in Hermogenes in the second century CE while Hillel used the Hebrew in the first century BCE. However, much Greek literature has been lost and the phrase could easily have been used by earlier writers; each work of progymnasmata mostly copies from those before it with very little innovation. In any case, it is very

Lieberman concludes: “Hence we unhesitatingly translate the term *גזירה שוה* *ἀναλογία πρὸς ἴσον*.”¹⁸ The first two rules in Hillel’s list thus correspond to the three types of analogy *synkrisis*: from greater, from lesser, and from equal. Lieberman summarizes: “The Greek rhetors counted them as three rules, while the Rabbis considered them two norms.”¹⁹

One could argue that deriving laws using analogies is a part of natural reasoning and so one cannot posit any borrowing by the rabbis of these rules. Indeed, Lieberman only claims to explain the terminology of Hillel’s rule, not the origin of the method itself.²⁰ David Daube, however, goes further and argues that the rabbis’ very modes of reasoning and the explicit awareness of their hermeneutics do derive from Greek thought.²¹ First, examples of analogies are not usually popular, as one might find in every day conversation, but can be rather technical. Second the project of naming, listing, and systematizing one’s modes of exegesis goes beyond natural popular reason and most likely borrows from the rhetorical tradition. He cites further support for a genetic connection between Hillel’s principles and Greco-Roman thought by showing parallels to the next three rules.

The third and fourth rules are “a principle derived from one passage” and “a principle derived from two passages.” With the former, the midrash applies a detail of one law to others like it. For example, Sifra, Ahare Mot, *parasha* 4.4, states: “Aaron shall lay both of his hands upon the head of the live goat (Lev 16:21): This teaches that laying of hands is with both hands. This is an archetype (*binyan av*) for all the layings that they must be with both hands.” Since Lev 16:21 specifies explicitly that both hands must be laid upon a sacrifice before slaughter, the midrash derives that all laying of hands for all sacrifices must use both hands, even when the

possible that the *גזירה שוה* was termed only in the second century CE and then put into Hillel’s mouth; see Zeitlin, “Hillel and the Hermeneutic Rules,” 161-73. Feldman objects further that the Greek analogy is generally conceptual while the rabbinic *גזירה שוה* is a verbal comparison. However, there is sufficient evidence showing that the *gezerah shavah* was first used as a basic conceptual analogy and only later came to be applied exclusively to verbal analogies; see further below, p. 29 n. 109.

¹⁸ Lieberman, *Hellenism in Jewish Palestine*, 59.

¹⁹ Ibid., 60. Notably, Aristotle counts them as two parts of one *topos* in *On Rhetoric*, 2.23, topic 4.

²⁰ Burton Visotzky, “Midrash, Christian Exegesis, and Hellenistic Hermeneutics,” in *Current Trends in Study of Midrash*, ed. Carol Bakhos (Leiden: Brill, 2006), 122-24, suggests various reasons for Lieberman’s “excess of caution” on this issue.

²¹ To be sure, Daube does make a statement along the same lines as that of Lieberman in his earlier essay: David Daube, “The Civil Law of the Mishnah: The Arrangement of the Three Gates,” in *The Collected Works of David Daube*, ed. Calum Carmichael (Berkeley: University of California, 1992), 269. However, his later essays emphasize the Hellenistic influence on both the terminology and the content of the midrashic hermeneutical rules. See below, n. 33.

verse uses “hand” in the singular, as in Lev 1:4.²² The “principle derived from two passages” works the same way except that one uses the common denominator between two passages as an archetype from which to derive a general principle.²³

Daube points out an example of similar reasoning in Roman Law.²⁴ The first chapter of the *Lex Aquila* establishes that one who kills the cattle of another must pay the highest value that animal had during that year.²⁵ The third chapter of the *Lex Aquila* legislates compensation for non-lethal damage to cattle as well as to all other animals and property including, “not only burning and breaking, but also cutting, bruising, spilling, and all kinds of damage, destruction, or spoiling.”²⁶ Here, however, the requirement to pay the “highest value” does not appear. While some jurists say that it is up to the judge to decide whether the litigant must pay its greatest value or an inferior value, “Sabinus held that we must interpret as if here too the word *plurimi* had been inserted, the legislator having thought it sufficient to have used the word in the first chapter.”²⁷

The Mekhilta deals with almost the exact same problem. Exod 22:4 requires that someone whose livestock grazes in another person’s land must make restitution with the best of his land. However, this requirement to pay with the best land is not mentioned in the next verse where a person starts a fire that spreads and destroys another’s field, nor in other laws of damages. Mekhilta d’R. Ishmael bar Yohai, 22:4, teaches:

“The best of his field and the best of his vineyard he shall pay (Exod 22:4). This teaches that we assess him only from the best land. I know only this case; what is the source for anyone who pays a fine that we assess it only from the best land? Therefore the verse comes to teach, “the best of his field and the best of his

²² See also B. Men. 93b and Ibn Ezra to Lev 1:4.

²³ See, for example, Mekhilta d’R. Ishmael, Nezikin, 9; and further at Encyclopedia Talmudit, s.v. *binyan av*. On the similarity between this form of induction and J. S. Mill’s “method of agreement,” see Louis Jacobs, *Studies in Talmudic Logic and Methodology* (London: Vallentine, Mitchell, and Co., 1961), 9-15.

²⁴ David Daube, “On the Third Chapter of the *Lex Aquila*,” *Law Quarterly Review* 52 (1936), 265.

²⁵ Cited in *Institutes of Gaius*, 3.210, and *Justinian’s Digest* 9.2.2.

²⁶ *Institutes of Gaius*, 3.217. Translations are from Francis De Zulueta, *The Institutes Gaius* (Oxford: Clarendon Press, 1946), 225. See also *Justinian’s Digest* 9.2.27.5.

²⁷ *Institutes of Gaius*, 3.218. See similarly Cicero, *On Invention*, 2.50.151: “Many provisions have been omitted in many laws, but nobody thinks that they have been omitted, because they can be inferred from the other cases about which rules have been laid down.”

vineyard he shall pay.” This is an archetype (*binyan av*) for anyone who pays a fine that we assess it only from the best land.²⁸

The fifth rule governs passages that list both a general category and specific examples of items to which a law applies.²⁹ For example,

When a man gives to another an ass, an ox, a sheep” (Exod 22:9) – these are specific instances; “or any other animal to guard” (ibid.) – this is a general category. When a specific instance is followed by a general category then the general category adds to the specific instance.³⁰

The verse introduces the law about an animal that dies or is injured while in the care of a second party. Although the verse specifies three types of animals, the midrash explains that the law in fact applies to any animal, in accordance with the general category that follows. Similarly, in the citation from Lex Aquilia above, a list of various types of damage is followed by the more general category, “destroying.” Celcus comments on this that “burning” and “breaking” are also included in the category of “destroy” but: “It is not unusual for a statute first to enumerate a few cases specially and then to add a comprehensive term by which to embrace any special cases.”³¹

These parallels between the midrashic rules and Roman legal interpretation can certainly be mere coincidence and a natural result of trying to interpret and apply any legal code. However, Daube argues for a genetic connection considering the very naming and listing of these rules. The project of distilling general rules of reasoning from specific instances and the awareness that any given interpretation is an application of that rules is not found among any previous group of Jews³² but rather has a distinctly Greek flavor.³³

²⁸ See also M. BQ 1:1.

²⁹ While Hillel’s list of seven rules includes only “*kelal u-frat*” (see above, n. 4), it seems clear that this includes all combinations of general categories following or preceding specific instances. Kahana, “Kavvim,” suggests that originally, all such cases would be interpreted to include items that are in some essential respect similar to the specific instance. By the time of the scholion to the Baraita d’R. Ishmael in the Sifra, however, this interpretation was limited only to *kelal u-frat u-kelal*. See also Michael Chernick, *Le-heger ha-midot “kelal u-ferat u-khelal” ve-“ribui u-mi’ut” ba-midrashim uva-talmudim* (Lod: Habermann Institute for Literary Research, 1984).

³⁰ Sifra, Baraita d’R. Ishmael. See also Mekhilta d’R. Ishmael, Nezikin 16, cited below p. XX.

³¹ *Justinian’s Digest* 9.2.27.16. Translation from Daube, “Rabbinic Methods,” 253.

³² See Moshe Bernstein and Shlomo Koyfman, “The Interpretation of Biblical Law in the Dead Sea Scrolls: Forms and Methods,” in *Biblical Interpretation at Qumran*, ed. Matthias Henze (Grand Rapids, MI: Eerdmans, 2005), 61-87.

Another Tosefta provides more details as to the circumstances in which Hillel introduced these exegetical methods:

Once the fourteenth [day of Nisan] fell on the Sabbath. They asked Hillel the Elder, “Does the Passover [sacrifice] supersede the Sabbath?”

He said to them, “Do we have but one Passover [sacrifice] during the year that supersedes the Sabbath? We have more than 300 Passovers during the year, and they supersede the Sabbath.”

The whole courtyard [of the temple] joined up against him.

He said to them, “The regular sacrifice [offered each morning and twilight] is a communal sacrifice, and the Passover is a communal sacrifice. Just as the regular sacrifice is a communal sacrifice that supersedes the Sabbath, so the Passover is a communal sacrifice that supersedes the Sabbath.

“Another proof: It [scripture] says in connection with the regular sacrifice, [*Present to me*] *at its appointed time* (Num 28:2), and it says in connection with the Passover, [*Keep the Passover*] *at its appointed time* (Num 9:2). Just as the regular sacrifice, of which it says, *At its appointed time*, supersedes the Sabbath, so the Passover, of which it says, *At its appointed time*, supersedes the Sabbath.³⁴

“Moreover, it [can be deduced] *qal va-homer*. If the regular sacrifice, for which one is not subject to [the punishment of] excision, supersedes the Sabbath, is it not logical that the Passover, for which one is subject to [the punishment of] excision, supersedes the Sabbath, is it not logical that the Passover, for which one is subject to [the punishment of] excision, supersede the Sabbath?”

“In addition, I have received [a tradition] from my masters that the Passover supersedes the Sabbath. Not only the First Passover but even the Second Passover, and not only the communal Passover but even the individual Passover.”

³³ Daube, “Rabbinic Methods,” 254. For further analysis of foreign influence on rabbinic modes of exegesis, see *ibid.*, “Alexandrian Methods of Interpretation and the Rabbis,” in *Essays in Greco-Roman and Related Talmudic Literature*, ed. Henry Fischel (New York: Ktav, 1977): 239-64; and Stephen Lieberman, “A Mesopotamian Background for the So-called Aggadic ‘Measures’ of Biblical Hermeneutics,” *Hebrew Union College Annual* 58 (1987): 157-225.

³⁴ See parallels at Mekhilta d’R. Ishmael, Pisha, 5 and Sifre Num, 65 and 142. This exegesis is there stated not in the name of Hillel but in the name of R. Yoshiah. See analysis at Alexander Guttman, “Foundations of Rabbinic Judaism,” *Hebrew Union College Annual* 23 (1950-1951), 462-63.

...On that very day they appointed Hillel patriarch [*nasi*], and he taught them the laws of the Passover.³⁵

This *chreia* tells of a time when Passover fell out on Saturday night so that the sacrifices would have to be prepared on the Sabbath. However, the leaders of the time, the elders of Betera,³⁶ did not know whether they would be permitted to violate the Sabbath in order to prepare the Passover sacrifices.³⁷ They turn to Hillel who, sure enough, uses three different analogies to the daily burnt offering in order to prove that one is permitted to offer the Passover sacrifice on the Sabbath.³⁸ Hillel, however, does not stop there, but rather continues by adducing an oral tradition from his teachers, Shemaya and Avtalion, confirming and even generalizing the same outcome as the analogical derivations. In fact, ancient halakha would have most likely prohibited

³⁵ T. Pes. 4:13-14. Translation from Jeffrey Rubenstein, *Rabbinic Stories* (New York: Paulist Press, 2002), 72-73. On the relationship between this text and T. San 7:11, see Louis Finkelstein, *Sifra on Leviticus*, 5 vols. (Jerusalem: The Jewish Theological Seminary of America, 1983-1992) (Hebrew): 5.120-22.

³⁶ On the identity of the elders of Betera, see Gedalia Alon, *Jews, Judaism and the Classical World: Studies in Jewish History in the Times of the Second Temple and Talmud* (Jerusalem: Magnes Press, 1977), 328-34. Louis Finkelstein, *Ha-Perushim ve-anshe keneset ha-gedolah* (New York: Jewish Theological Seminary of America, 1950), 1-16.

³⁷ Many have wondered how the Temple leaders could have forgotten such a law; surely Passover would have fallen out on the Sabbath every few years under an empirical lunar calendar. Rubenstein, *Rabbinic Stories*, 71, writes that, “the story creates a fictional scenario to teach the audience about how one derives law in general, not to provide information about this particular law.” However, Isaac Sassoon, *Destination Torah* (Hoboken, NJ: Ktav, 2001), 186-92, suggests that the Second Temple followed a fixed calendar for most of its history until it was changed to an empirical calendar during later Hasmonean times—perhaps as a renunciation of Greek influence. Under the fixed calendar, the eve of Passover could have been preset never to fall on the Sabbath in order to avoid this very problem, just as it was preset in Amoraic times when they reverted back to a fixed calendar in order that the shofar and the ritual of the willow branches not fall on the Sabbath (Y. Suk. 4:1, 54a). It is therefore possible that during Hillel’s time, Passover fell out on Sunday for the first time since the fixed calendar was replaced with an empirical calendar. See also Sacha Stern, *Calendar and Community: A History of the Jewish Calendar, Second Century BCE - Tenth Century CE* (Oxford: Oxford University Press, 2001), who argues that a lunar empirical calendar was in use during Hasmonean times, though evidence for this is only “sporadic” (113). Some Jewish groups followed a solar calendar during this same period. However, there is no evidence as to whether those groups following a lunar calendar in the pre-Hasmonean period used a fixed or empirical system. While the months of the Babylonian lunar calendar were decided empirically, by the Hellenistic period, astronomers already had tables that could predict the first visibility of the new moon. See George Sarton, *Hellenistic Science and Culture in the Last Three Centuries B.C.* (Cambridge: Harvard University Press, 1959), 337.

³⁸ Although the Tosefta only names the *qal va-homer*, the Yerushalmi plausibly matches up the other two with the rules of *heqesh* and *gezerah shavah*. The main point here is not that Hillel used the named rules but that he turned to exegesis at all rather than tradition.

preparing the Passover on the Sabbath,³⁹ which would explain why the people present ganged up on Hillel.⁴⁰

While historians cast doubt on various details of this story,⁴¹ we can at the very least accept that towards the end of the Second Temple period, these exegetical methods began to circulate among the Pharisees and early rabbis. It is furthermore very plausible that Hillel, an important religious leader of the Pharisaic movement, was central in advancing the authority of the Pharisaic oral law and the project of legal biblical exegesis.⁴² It is worth noting that Hillel is depicted in Talmudic sources as someone well-educated in the science and philosophy of his day. In particular, many of his sayings parallel those of Seneca, the great Roman stoic.⁴³ Hillel is also storied as exemplifying the stoic virtue of remaining calm and never becoming angry even in the face of great provocation.⁴⁴ It is therefore of great interest that of all of the various philosophical schools in the Hellenistic world, only the Stoics supported rhetoric and considered it an art.⁴⁵ This lends support to the possibility that the historical Hillel took steps to institute midrashic hermeneutics in some form.

Even accepting that Hillel played an important role in the development of legal midrash, however, this does not deny the norms of interpretation existed in some form before Hillel and their systematization continued long after him.⁴⁶ There is also no way to confirm that Hillel formulated the particular seven rules listed in T. San 7:11 nor the historicity of any of the details of T. Pes. 4:13-14. We must therefore analyze these sources less for what they teach about the historical Hillel and more for the light they sheds on the rabbis who authored and transmitted

³⁹ See Damascus Document 11:17-18: "A man may not offer anything on the altar on the Sabbath except for the burnt offering of the Sabbath for so it is written, 'except for your Sabbaths' (Lev 23:38, MT reads Sabbaths of the Lord)." See further at Lawrence Schiffman, *The Halakhah at Qumran* (Leiden: Brill, 1975), 128-31.

⁴⁰ Compare this with the parallel story where Beth Shammai gangs up against Hillel also in the Temple courtyard at T. Hag 2:11 = Y. Hag 2:3, 78a, = B. Bes. 20a. See analysis at Richard Hidary, *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud* (Providence: Brown University, 2010), 183-86. On the uage of על הבר to mean to join against, see also Job 16:4.

⁴¹ See above, n. 37; Armand Kaminka, "Hillel's Life and Work," *The Jewish Quarterly Review* 30, no. 2 (1939): 78-79; and Henry Fischel, "Story and History: Observations on Greco-Roman Rhetoric and Pharisaism," in *Essays in Greco-Roman and Related Talmudic Literature*, ed. Henry Fischel (New York: Ktav, 1977), 452-53.

⁴² On the image of Hillel in other aggadic sources as a central figure in reconstructing oral law, see Menachem Katz, "Ha-sipurim `al minui Hillel be-sifrut ha-talmudit: 'agadat yesot shel `olam ha-hakhamim," *Sidra* 26 (2011), 111-114. See also Jose Faur, *Golden Doves with Silver Dots: Semiotics and Textuality in Rabbinic Tradition* (Bloomington: Indiana University Press, 1986), 124.

⁴³ Kaminka, "Hillel's Life and Work," 115-22.

⁴⁴ B. Ber. 60a.

⁴⁵ See Yosef Liebersohn, *The Dispute concerning Rhetoric in Hellenistic Thought* (Göttingen: Vandenhoeck & Ruprecht, 2010), 32-35.

⁴⁶ See Zeitlin, "Hillel and the Hermeneutic Rules," 161-73.

them as the founding narratives of their own exegetical project. In that spirit, we ask, what was the purpose in introducing these exegetical rules? Why does Hillel figure so prominently in this connection? Why does Hillel in the Passover story put so much effort into deriving the law exegetically when he had an authoritative tradition on the matter all along. What was the significance of these details in the minds of the story's narrators?

Let us remember that the last two centuries of the Second Temple period were a time of great sectarian strife. While the sects disputed some philosophical points, their primary focus of contention was legal.⁴⁷ Fundamental to their legal disputes was the reliance of the Pharisees in unwritten traditions of their fathers. These seem to have been unconnected to scripture and the subject of intense attack by the Sadducees. The Pharisees must have felt pressure to respond and convince their adherents and the masses at large of their own authenticity. Heinrich Graetz argues that Hillel accepted the Sadducean challenge and introduced the hermeneutical rules in order to ground the Pharisaic oral law within Scripture.⁴⁸ Hillel took the mass of traditions he learned from his teachers and "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...After this demonstration by Hillel, no dispute amongst the schools could arise as to the binding power of traditional law. By the introduction of seven rules, or Middoth, the oral law could be imbued with the same weight and authority as that actually contained in the Scriptures."⁴⁹ Along the same lines, Daube writes:

The greatest Pharisaic scholar of all times, Hillel, not without some difficulty, convinced his party that the main Sadducean point had to be conceded: in

⁴⁷ See Yaakov Sussman, "The History of Halakha and the Dead Sea Scrolls: Preliminary Observations on *Miqsat Ma'ase Ha-Torah* (4QMMT)," *Tarbiz* 59 (1990) (Hebrew), 36; and Hiday, *Legal Pluralism*, 33.

⁴⁸ Kaminka, "Hillel's Life and Work," 114-15, points to M. Avot 1:12 as another attack against the Sadducean priests.

⁴⁹ Heinrich Graetz, *History of the Jews*, 6 vols. (Philadelphia: The Jewish Publication Society of America, 1891-98), 2.98. See also Jay Harris, *How Do We Know This?: Midrash and the Fragmentation of Modern Judaism* (Albany: State University of New York Press, 1995), 175-90; Zeitlin, "Hillel and the Hermeneutic Rules," 172; Guttmann, "Foundations of Rabbinic Judaism," 453-73; Daube, "Texts and Interpretations," 188-99; and Y. N. Epstein, *Mevo'ot le-sifrut ha-Tannaim, Mishnah, Tosefta, u-midreshe halakha*, ed. E. Z. Melamed (Jerusalem: 1947), 521. Graetz' position here relates to a larger scholarly debate as to whether the oral law of the Pharisees was transmitted apodictically, similar to the form of the Mishnah, or as commentary to the Pentateuch, like midrash. See the literature cited at Harris, *ibid.*; H. L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash*, trans. Marcus Bockmuehl (Minneapolis: Fortress Press, 1992), 126-29; and David Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge: Harvard University Press, 1986), 18-19. Evidence for either side is scant and even those who claim that midrash came first should agree that the end of the Second Temple period saw a great increase in exegetical material and its systematization, as does, for example, Jacob Lauterbach, *Rabbinic Essays* (Cincinnati: Hebrew Union College Press, 1951), 210.

principle there could be not binding law independent of Scripture. But the way he convinced them was by showing that nothing would be lost; and that by energetic and systematic interpretation, the entire mass of traditional observances, sanctioned over the centuries by the religious leaders and sages, could be derived from the Pentateuch.⁵⁰

It is for this reason that Hillel first proved from Scripture in various ways that the Passover trumps the Sabbath and only afterwards did he relay the tradition he learned from his teachers. He wanted to show that midrashic exegesis was a reliable method for deriving halakha and therefore makes a good foundation as the source of Pharisaic oral law.⁵¹ Hillel and his followers utilized rhetorical modes of reasoning common in Roman culture and jurisprudence in order to persuade their current and potential adherents as to the legitimacy of the oral law. No longer could the Sadducees claim that only their laws had biblical basis. Perhaps it is for this reason that Resh Laqish says, “When [Torah] was forgotten, Hillel the Babylonian went up [to Israel] and reestablished it.”⁵² As a case in point, let us analyze a more elaborate version of Resh Laqish’s statement at Y. Pes. 6:1, 33a:

Over three matters did Hillel come up from Babylonia.

[1] “It is pure” (Lev13:37). Can it be that he can take leave and walk away [after the skin has healed]? [Scripture] teaches, saying: “the priest shall purify him” (ibid.). Since [the verse states] “the priest shall purify him,” can it be that if the priest declares the impure to be pure then it will be pure? [Scripture] teaches, saying: “it is pure” (ibid.) and “the priest shall purify it” (ibid.). For this did Hillel come up from Babylonia.⁵³

[2] One verse states, “You shall slaughter the Passover sacrifice for the Lord your God, from the flock and the herd” (Deut 16:2). But another verse states, “You

⁵⁰ Daube, “Texts and Interpretations,” 189.

⁵¹ See Guttman, “Foundations of Rabbinic Judaism,” 465-66. This same goal drives a number of traditions about rabbis successfully deriving halakha through exegesis even after the halakhic tradition had been forgotten or corrupted. See Sifre Num. 75; T. Zevahim 1:8; and B. Temurah 16a.

⁵² Bavli Sukkah 20a. See also Frank Moore Cross, *From Epic to Canon* (Baltimore: The Johns Hopkins University Press, 1998), 217.

⁵³ See parallel at T. Neg 1:16. This text may relate to the question of the necessity for a priest to rule on akin afflictions even when others are more learned, on which see Steven Fraade, “Shifting from Priestly to Non-priestly Legal Authority: A Comparison of the Damascus Document and the Midrash Sifra,” *Dead Sea Discoveries* 6, no. 2 (1999), 109-25.

may take it from the sheep or from the goats (Exod 12:5). How can this be? Flock is for the Passover sacrifice. Flock and herd are for the festival sacrifice.

[3] One verse states, “You shall eat unleavened bread for six days” (Deut 16:8). But another verse states, “You shall eat unleavened bread for seven days” (Exod 12:15). How can this be? Six [days you shall eat] from the new grain and seven [days you shall eat] from the old grain.⁵⁴

He expounded, he accorded [his interpretation with the tradition], he went up [to Palestine] and received the tradition.

Hillel noticed three places where Scripture contains a contradiction and resolved each of them through midrashic reasoning. He went up to Palestine in order to test his theories and found that they accorded with the established traditional halakha as taught there. This story again proves that derivations through biblical exegesis can successfully arrive at traditional Pharisaic halakha.

The third case here is especially significant because it is the subject of one of the most important sectarian controversies. The Sadducees and other sectarians understood Lev 23:11 to prescribe the offering of the barley grain on the Sunday after Passover. The Pharisees, on the other hand, interpreted “after the Sabbath” to refer to the day after the first day of Passover. This controversy became especially heated when the first day of Passover fell out on Friday and the Pharisees proceeded to cut the grain offering on the Sabbath, thereby needlessly violating the Sabbath in eyes of the Sadducees. M. Men 10:3 recounts in detail how the Pharisees made a public display of the cutting of the barley offering with great pomp precisely in order to polemicize against the Sadducees. The Pharisees would have been greatly challenged to ground their interpretation in Scripture. Hillel, however, ingeniously derives the Pharisaic position through his resolution of Exod 12:15 and Deut 16:8. Since the new harvest may be eaten only after the barley offering, the command to eat seven days must refer to unleavened bread made from old grain, which is permitted on all seven days of Passover. The command to eat only six days must therefore refer to the last six days of Passover on which one may eat of the new grain. This proves that the barley offering must be held on the second day of Passover. From now on, the Pharisees would be able to uphold their oral traditions and also be assured that they are in accord with Scripture.

⁵⁴ See parallel at Mekhilta d’R. Yishmael, Pisha 8 and 17.

Alexander Guttman makes a further point that Hillel's method would be effective not only in defending Pharisaic traditions, but more importantly in developing them to meet the challenges of new historical realities: "The principal way of molding Judaism, of harmonizing changing conditions of life with hallowed ideas and practices was that of interpretation... The endorsement of a practice or the introduction of a new practice could be made effective, usually, by pointing to a basis in the Torah."⁵⁵ While the views of Shammai generally reflect an older layer of halakhic development, the view of Hillel is often creative, representing a newly evolved stratum.⁵⁶ The methods of midrashic interpretation played a key role in the ability of Hillel and his successors to direct halakha in a direction that could withstand the vicissitudes of the coming wars and the Temple's destruction.⁵⁷

The Skeptical Turn

The rabbis' use of rhetoric turned out to be very effective in advancing their movement and their halakha ahead of the sectarians. The success of the hermeneutical rules, however, quickly became a problem in itself. Once one allows reasoned exegesis into the system as an authoritative way to derive laws, then one must accept whatever outcome such exegesis may generate. The very power and flexibility of the hermeneutical rules that made them able to establish the basis of oral tradition now threatened that tradition itself. Just as one can apply a *qal va-homer* or *gezera shava* to prove a transmitted law, one could use them to disprove the same laws. How did the rabbis respond to this paradoxical challenge?

As we will see below, while the Tannaim and Amoraim apply the hermeneutical rules throughout their literature, they also formulate limits to their application. They are aware of the dangers to tradition inherent in relying on unbridled reason and are also conscious of the way rhetoric can be used to arrive at opposite conclusions. They therefore introduce a large dose of skepticism about the rules, though not so much that would nullify their use altogether. Consider how the founding story we read above from the Tosefta is embellished in its Yerushalmi version:

[Narration]

⁵⁵ Guttman, "Foundations of Rabbinic Judaism," 455-56.

⁵⁶ See Hillel's enactments at M. Shev 10:3 and M. `Arakhin 9:4 (= Sifra, Behar, *parasha* 4:8) and the scholarly literature cited at Vered Noam, "Beth Shammai veva-halakha ha-kitatit," *Mada`e ha-Yahadut* 41 (2002), 48-49.

⁵⁷ See Richard Hidary, "The Rhetoric of Rabbinic Authority," forthcoming.

This law [of M. Pes 6:1] was concealed from the elders of Betera. Once the fourteenth [day of Nissan] fell on the Sabbath, and they did not know whether the Passover supersedes the Sabbath or not. They said, “There is here a certain Babylonian named Hillel, who served Shemaya and Avtalion. He knows whether the Passover supersedes the Sabbath or not. Perhaps something good will come from him.”

He said to them, “Do we have but on Passover alone throughout the whole year that supersedes the Sabbath? Do not many Passovers throughout the year supersede the Sabbath?”

... They said, “Thus we thought that something good would come from you.”

[Partition]

He started to expound [the law] for them based on [1] a *heqesh*, [2] a *qal va-homer* and [3] a *gezera shava*.

[Proof]

[1] “From a *heqesh*: Since the regular sacrifice is a communal sacrifice that supersedes the Sabbath, so too the Passover is a communal sacrifice that supersedes the Sabbath.

[2] “From a *qal va-homer*: If the regular sacrifice, for which one is not subject [to the punishment of] excision, supersedes the Sabbath, then the Passover, for which one is [subject to the punishment] of excision, —is it not logical that it supersede the Sabbath?

[3] “From a *gezera shava*: Just as the daily sacrifice, in connection with which it says *At its appointed time* (Num 28:2), supersedes the Sabbath, so too the Passover, in connection with which it says *At its appointed time* (Num 9:3), supersedes the Sabbath.”

[Refutation]

They said to him, “Did we think that something good would come from a Babylonian?”

[1] “The *heqesh* that you stated can be refuted: What you say of the regular sacrifice, which has a limit [of two per day], you cannot say of [=apply to] the Passover, which has no limit [in the number that may be offered.]

[2] “The *qal va-homer* that you stated can be refuted: What you say of the regular sacrifice, which is of the Most Holy [class of] sacrifices, you cannot say of the Passover, which is of the Lesser Holy sacrifices.

[3] “The *gezerah shavah* that you stated—one may not infer a *gezerah shavah* on his own [but only if he received it as a tradition from his masters].”

R. Yose b. R. Bon said in the name of R. Abba b. Memel: “If one should come and reason based on a *gezerah shavah* on his own, he can make the reptile cause tent impurity and a corpse cause impurity with the size of a lentil, for he can interpret ‘clothing...skin’ (Lev 11:32) ‘clothing...skin’ (Num 31:20) as a *gezerah shavah*...”

R. Yose b. R. Bon said in the name of R. Abba b. Memel: “One may infer a *gezerah shavah* in order to uphold his teaching [as received from tradition] but one may not infer a *gezerah shavah* to nullify his teaching.”

R. Yose b. R. Bon said in the name of R. Abba b. Memel: “One may infer a *qal va-homer* on his own but one may not infer a *gezerah shavah* on his own.

Therefore, we do refute based on a *qal va-homer* but we do not refute based on a *gezerah shavah*.”

[Peroration]

Even though he [Hillel] was sitting and expounding for them the whole day, they did not accept it [the ruling] from him until he said to them, “May [harm] befall me if I did not learn thus from Shemaya and Avtalion.”

As soon as they heard that from him, they rose and appointed him patriarch over them.

As soon as they appointed him patriarch over them he began to rebuke them with words saying, “What caused your need for this Babylonian [=me]? Is it not that

you did not serve the two great men of the world, Shemaya and Avtalion, who were dwelling with you?”

As soon as he rebuked them with words the law was concealed from him. They said to him, “What will we do for the people—they did not bring their knives?” He said to them, “this law I heard and forgot. But leave Israel be. If they are not prophets, they are the sons of prophets.”

Immediately, he whose Passover was a lamb stuck it [the knife] in its hair. He whose Passover was a kid tied it between its horns. It turned out that their Passovers brought their knives with them.

As soon as he saw the event, he remembered the law. He said, “Thus I learned from Shemaya and Avtalion.”⁵⁸

The Yerushalmi version of the story greatly expands upon and modifies the Tosefta version.⁵⁹ The Yerushalmi is more dramatic and includes many satiric statements.⁶⁰ Bnei Bethayra repeatedly denigrate Hillel as a Babylonian, only to have the roles reversed at the end when Hillel comes to power and he rebukes them in return. Most significantly for our purposes, the Tosefta has Hillel present his midrashic proofs as well as his received tradition all at once and Bnei Betera immediately accept his teaching. The Yerushalmi, however, introduces tension between Hillel’s exegesis and his traditions. Bnei Betera rudely reject the former and proceed to list detailed rebuttals of each of Hillel’s hermeneutical methodologies. This stands in stark contrast with Bnei Bethayra’s enthusiastic embrace of Hillel’s apodictic tradition.

The Yerushalmi’s expansion of the Tosefta’s version follows the arrangement of rhetorical oratory, as discussed previously. After narrating the circumstances of the case, the storyteller introduces the three different proofs that Hillel will use. After presenting the details of each proof, the elders reject each one in turn. In a typical monological declamation, the refutation section serves to preempt any objections that the opposition may have or respond to arguments

⁵⁸ Y. Pes 6:1, 33a. Translation from Rubenstein, *Rabbinic Stories*, 77-79, with modifications.

⁵⁹ In the following analysis I follow Katz, “Ha-sipurim,” 81-115, and others who show that the Tosefta contains the more original version of this story and the Yerushalmi inserts several Amoraic expansions. While Katz also opines that the Bavli version is later than the Yerushalmi, Jeffrey Rubenstein, *Stories of the Babylonian Talmud* (Baltimore: Johns Hopkins University Press, 2010), 217-28, argues that this is a rare instance of Yerushalmi postdating the Bavli version of this story. Both scholars agree, however, that the Bavli shares with the Tosefta many points that are not in the Yerushalmi.

⁶⁰ David Lifshitz, “‘Aliyato shel Hillel la-nesi’ut be-askpaqlariah satirit,” *Moreshet Yisrael* 5 (2008), 18-30.

they already presented.⁶¹ In this case, the refutation is expressed by the opposition and the disproofs are accepted. The Yerushalmi thus ironically uses rhetorical arrangement as a tool to reject rhetorical reasoning altogether. Finally, the peroration closes the narrative with the story of Hillel's inauguration as Patriarch.

Understandably, the Bavli version of the story,⁶² does not include the satiric denigration of Hillel as a Babylonian. More importantly, the Bavli has Hillel simply present two midrashic proofs, which are immediately accepted, and makes no mention of a received tradition about this law. David Rosental has pointed to the difference between the Yerushalmi and Bavli versions of this story as an example of a more general contrast between the Talmuds about the relative value of tradition versus reason.⁶³ Rubenstein has further elaborated on this, showing that the Yerushalmi praises memorization of traditions as the highest value while the Bavli denigrates these skills as trivial. Rather, the Bavli celebrates dialectics, argumentation, and exegetical dexterity.⁶⁴

However, while I agree that the Yerushalmi and Bavli generally present contrasting views about the value of tradition versus reason in other contexts, I do not think that the Hillel story is a good example of that difference. First, these stories do not address dialectical skill per se but rather the legitimacy of midrashic hermeneutics. Second, the Bavli retains the description of Hillel as a student of Shemaya and Avtalion, suggesting that his exegesis is derived from or was at least inspired by his teachers.⁶⁵ Most importantly, the Bavli, like the Yerushalmi, also contains a rejection of Hillel's proofs except that they are recorded after the story rather than in the middle.⁶⁶ The Bavli cites and analyzes Hillel's proofs:

The master said: "Also, it can be deduced from a *qal va-homer*. If the regular sacrifice, for which one is not punished with excision, supersedes the Sabbath,

⁶¹ Aristotle, *On Rhetoric*, 3.14-15.

⁶² B. Pes 66a, not cited here. See translation at Rubenstein, *Rabbinic Stories*, 74-76.

⁶³ David Rosental, "Mesorot Eres-Yisraeliyot ve-darkan le-Bavel," *Cathedra* 92 (1999), 34-36; and see similarly at Binyamin Lau, *The Sages: Character, Context and Creativity* (Jerusalem: Koren, 2010), 189-90.

⁶⁴ Jeffrey Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore, Md.: Johns Hopkins University Press, 2003), 39-53. See also Israel Ben-Shalom, "'And I Took Unto me Two Staves: the One I Called Beauty and the Other I Called Bands' (Zakh. 11:7)," in *Dor-Le-Dor: From the End of Biblical Times up to the Redaction of the Talmud. Studies in Honor of Joshua Efron*, ed. A. Oppenheimer and A. Kasher (Jerusalem: Bialik, 1995) (Hebrew): 215-34; and Hidary, *Legal Pluralism*, 17-27.

⁶⁵ See Saul Lieberman, *Tosefta ki-fshutah* (New York: The Jewish Theological Seminary of America, 1955-1988), Pesahim, 566-67.

⁶⁶ This is noted by Guttmann, "Foundations of Rabbinic Judaism," 466.

then the Passover, for which one is punished with excision—is it not logical that it supersedes the Sabbath?”

We can refute it: the regular sacrifice is brought more often and is completely burnt.⁶⁷

He [Hillel] first told them the *qal va-homer* and they refuted it and then he told them the *gezerah shavah*.

But since he learned the *gezerah shavah* [from tradition], why was there a need to tell them the *qal va-homer*?

Rather, he spoke to them in their terms: it is well that you do not learn the *gezerah shavah* for one does not infer a *gezerah shavah* on his own. However, you should learn from the *qal va-homer*, which one may infer on his own.

They told him, “It is a refuted *qal va-homer*.”⁶⁸

According to this analysis of the story, Bnei Bethayra did reject Hillel’s *qal va-homer* and they accepted the *gezerah shavah* only because Hillel received it as a tradition from his teachers. The Bavli is thus very close in perspective to the Yerushalmi.⁶⁹ Both Talmuds value tradition over hermeneutical rules, towards which they show great skepticism. Let us now examine the two most frequently used rules, the *qal va-homer* and the *gezerah shavah*, in more detail.

Qal va-homer

Adolf Schwarz argued over a century ago that the *qal va-homer* was a type of Aristotelian syllogism.⁷⁰ Louis Jacobs, however, demonstrates that the types of reasoning are fundamentally

⁶⁷ This shows that in some respects, the regular offering is actually more weighty than the Passover sacrifice and therefore one cannot deduce from the regular offering that the Passover supersedes the Sabbath.

⁶⁸ B. Pes 66a. Translation follows printed editions as there are no significant manuscript variants.

⁶⁹ The Yerushalmi is not even that radically different from the Tosefta. The Tosefta does say that Hillel’s audience harassed him after he first introduced his view (see above n. xxx). The Yerushalmi storyteller may also have wondered why there was a need for an argument from tradition following the exegetical proofs. A logical solution is that Hillel’s audience must have remained unconvinced by the latter, thus requiring the former. All the Yerushalmi does is move the listener’s objections after all of his exegetical proofs.

⁷⁰ Adolf Schwarz, *Der Hermeneutische Syllogismus in der Talmudischen Litteratur, Ein Beitrag Zur Geschichte Der Logik Im Morgenlande* (Karlsruhe: 1901). Schwarz recognized that the *qal va-homer* does not have the form of a complete syllogism. He therefore posits that it is an enthymeme (ibid., 159-60 and 172), which Aristotle defines as a rhetorical syllogism in which not all of the premises are stated explicitly (On Rhetoric, 1.2.13 and 2.22.3). However, there is little difference between the enthymeme according to this definition and the full syllogism; one need only provide the missing premise. Therefore the criticism of Schwarz noted below still applies since the typical *qal va-homer* cannot be faithfully translated into a formal syllogism.

different.⁷¹ The major difference is that the Aristotelian categorical syllogism relates a genus and a species. If the species falls within the category of the genus then it will have the same properties that are common to all members of that genus. This is different from the *qal va-homer* where two different categories are compared as long as they have an essential similarity that reason would suggest relates the two.⁷² For example, Mishnah Hulin 12:5 teaches: “If regarding a light commandment (the prohibition against sending away the mother bird in Deut 22:6-7) which is like an *issar*,⁷³ the Torah says, ‘in order that you may fare well and have a long life’ (Deut 22:7) *qal va-homer* regarding weighty commandments of the Torah.” This is clearly not a syllogism since weighty commandments are not a species of light commandments.

Rather, as discussed above, the *qal va-homer* is a rhetorical form of reasoning that is listed as a type of analogy in the topics of Aristotle and Cicero. Quintilian provides an example of analogy from lesser to greater in a legal context: “If it is lawful to kill a thief in the night [when one is not sure if he threatens violence], how much more is it lawful to kill an armed robber [who definitely threatens violence]?”⁷⁴ The midrash includes a similar *a fortiori* argument, except it deals with a thief who does not threaten violence who may not be killed and teaches the contrapositive: “If when a person definitely comes to steal [without threatening violence] and he [the victim] kills him [the thief], he [the killer] is liable, all the more so [*qal va-*

Since Schwarz’s time, scholars such as Myles Burnyeat have rejected the traditional strict understanding of an enthymeme as a deductive syllogism with one premise implied and argue that Aristotle meant to include within the term enthymeme various types of arguments that are plausible even if defeasible. This would include the *topos of the more and the less* (*On Rhetoric*, 1.2.21), even when based on probabilities (*Prior Analytics* 2.27). Since the *qal va-homer* does fall within this description it could be called an enthymeme according to its more inclusive definition, but that it not how Schwarz meant it. See further at Myles Burnyeat, “Enthymeme: Aristotle on the Logic of Persuasion,” in *Aristotle’s Rhetoric: Philosophical Essays*, ed. David Furley and Alexander Nehama (Princeton: Princeton University Press, 1994), 3-55; and Douglas Walton and Fabrizio Macagno, “Enthymemes, Argumentation Schemes and Topics,” *Logique and Analyse* 205 (2009), 39-56. See also Arthur Prior, “Argument A Fortiori,” *Analysis* 9, no. 3 (1949), 49-50, for an attempt to express *a fortiori* arguments as syllogisms.

⁷¹ Jacobs, *Studies*, 3-8.

⁷² See Arnold Kunst, “An Overlooked Type of Inference,” *Bulletin of the School of Oriental and African Studies* 10, no. 4 (1942), 986-88; Towner, “Hermetical Systems,” 115; Susan Handelman, *The Slayers of Moses: The Emergence of Rabbinic Interpretation in Modern Literary Theory* (Albany: SUNY, 1982), 52-57; and Avi Sion, *Judaic Logic: A Formal Analysis of Biblical, Talmudic and Rabbinic Logic* (Editions Slatkine, 1997), 60.

⁷³ This prohibition would not require an expenditure of more than an *issar*, a very small amount of money, if one could not send the bird away and instead had to buy a bird.

⁷⁴ Institutes, 5.10.88. For more examples of a *fortiori* reasoning in classical writings, see Lysias, “On the Murder of Eratosthenes,” 1.31-32; *ibid.*, “On the Olive Stump,” 7.26; Isocrates, “Against Lochites,” 20.2-3; Dinarchus, “Against Demosthenes,” 1.45; Gaius, Institutes, 2.73; and further at Georgiana Palmer, “The *Topoi* of Aristotle’s “Rhetoric” as Exemplified in the Orators,” (PhD diss., University of Chicago, 1932), 15-19.

homer] one about whom there is a doubt whether he comes to steal or whether he does not come to steal [that his killer would be liable].”⁷⁵

Having established the close affinity between the rhetorical comparison of lesser and greater and the rabbinic *qal va-homer*, we can now analyze the rabbis’ use of and attitude towards the *qal va-homer* as a window into their view of reason and rhetoric in general. We find, on the one hand, that the *qal va-homer* is attested well over one thousand times throughout rabbinic literature.⁷⁶ This ubiquitous use shows that the rabbis are well entrenched within the rhetorical tradition, or at least their version of it. On the other hand, as we will demonstrate below, the rabbis also show a deep ambivalence and skepticism about the application of *qal va-homer* reasoning in many cases. They are apprehensive about *qal va-homer* arguments that contradict tradition and recognize the *qal va-homer* reasoning can be used in mutually opposing directions—thus casting doubt on its very reliability.

As discussed in chapter xx, R. Yohanan demands that a judge who opens the deliberation in a capital case must be able to argue that a reptile is pure and impure in one hundred ways. The Talmud continues with an illustration:

R. Yannai said: If a snake, which kills [and causes impurity], is itself pure, then all the more so a mouse, which does not kill, should be pure. Or the inverse: if a mouse, which does not kill, is impure, then all the more so a snake, which does kill, should be impure. R. Pinehas objected, “Behold a scorpion kills, yet it is pure.” A tradition was found stating, “[The same reasoning that applies to] both a snake and a scorpion.”⁷⁷

R. Yannai here, by assuming that an animal which causes impurity by killing it must be more impure itself than a non-lethal animal, is able to prove that the carcass of a mouse is pure—a direct contradiction to Lev 11:29. R. Pinehas cites a counterexample but the Talmud quickly upholds R. Yannai’s *qal va-homer* by subsuming the counterexample within the original

⁷⁵ Mekhilta d’R. Ishmael, Nezikin 13.

⁷⁶ There are over five hundred in Tannaitic midrashim, many hundreds in Amoraic midrashim, and another over five hundred in the Bavli. There are much fewer in the Mishnah, Tosefta and Yerushalmi. Accounting for parallels, the total number of different *qallin va-hamurin* (the plural is attested in Lev. Rabbah 11, 3, *et al.*) is probably closer to one thousand.

⁷⁷ ySan 4:1, 21d. See parallels at B. San 17a-b and B. Eruv 13b.

argument itself. If one can contradict the Torah using such reasoning, then that does not mean that the Torah is incorrect but rather that the method of reasoning is not reliable.

Similarly, using a *fortiori* reasoning, one can prove that almost all marriages are prohibited:

This is a question that R. Yose ben Tadaï from Tiberius asked Rabban Gamaliel: If my wife, to whom I am permitted, I am prohibited from her daughter, then a married woman, to whom I am prohibited, all the more so should I not be prohibited to her daughter?" He replied, "Go out and provide for me [with an answer regarding] a high priest concerning whom it is stated, 'But he shall marry a virgin from his nation' (Lev 21:14), and I will provide you [with an answer regarding] all the rest of Israel." Another version: [Rabban Gamaliel replied,] "We do not use reason to uproot a matter from the Torah." And Rabban Gamaliel excommunicated him.⁷⁸

R. Yose ben Tadaï reasoned that since one is prohibited from cohabiting with his step-daughter, even though he is permitted to her mother (his wife), then he should all the more so be prohibited from cohabiting with any other married woman's daughter considering that he is prohibited from cohabiting with her mother. By focusing on the permissibility of cohabiting with a woman's mother as a factor in how permissible one might be to the woman herself, R. Yose ben Tadaï succeeded in prohibiting all women whose parents are married. This is obviously a ridiculous conclusion but it does pose a logical challenge to Rabban Gamaliel. Rabban Gamaliel does not question the reasoning behind the *qal va-homer* but simply points out that this contradicts the Torah and therefore must be invalid. A high priest, after all, may marry a virgin even though he is prohibited in every case from marrying her mother, even if she is divorced or widowed. Rabban Gamaliel further excommunicates R. Yose ben Tadaï for using such sophistic reasoning to undermine the Torah.⁷⁹

While in the two cases just cited it is a rabbi who proposes a fallacious *qal va-homer*, other cases present the *qal va-homer* as a favorite method of rival sectarians. Daniel Schwartz

⁷⁸ *Derekh Eres*, `Arayot, 6.

⁷⁹ On sophisticated *qal va-homer* inferences, see M. Mielziner, "The Talmudic Syllogism or the Inference of Kal Vechomer," *Hebrew Review* 1 (1880), 51-53. For more on self-uprooting interpretations, see Azzan Yadin, "The Chain Novel and the Problem of Self-undermining Interpretation," *Dine Israel* 25 (2008), 43-71.

shows that of the twenty or so explicit controversies between the Pharisees and the Sadducees/Boethusians mentioned in rabbinic literature, approximately half hinge on a *qal va-homer*.⁸⁰ In some cases, the Rabbis use a *qal va-homer* to show the absurdity of the Sadducean position. In most of these cases, the Sadducees present a *qal va-homer* to prove their position and the rabbis reject it. For example:

The Sadducees say, “We complain against you Pharisees, for you say that I am liable for my ox or ass that cause damage but I am not liable for my slave or maidservant who cause damage. If my ox and my ass regarding whom I am not responsible to ensure that they observe commandments, yet I am responsible for their damage, all the more so my slave and my maidservant regarding whom I am responsible to ensure that they observe commandments, I should be responsible for their damage.” They said to them, “No. If you say [that I am liable] regarding my ox and my ass, which have no intelligence, would you say [that I am liable] regarding my slave and my maidservant who have intelligence? If I make them angry, they will go and burn another’s grain pile and I will be liable to pay.”⁸¹

The Sadducees here analogize two types of responsibility: the responsibility of an owner to ensure that his property adheres to the commandments of the Torah and the responsibility of an owner to pay for damage caused by his property. The greater the former, they reason, the greater should be the latter. An owner is responsible to ensure that his slaves fulfill commandments but regarding one’s animal, an owner may not work the animal on the Sabbath but he need not stop the animal from grazing on its own on the Sabbath. Since an owner is liable to pay for the damages of his animal, even though he is not responsible for its fulfillment of commandments, then he should all the more so be responsible to pay for the damages of his slave, for whose fulfillment of commandments the owner is responsible.⁸² The Pharisees successfully rebut this argument by severing the analogy between the two cases considering that, unlike animals, slaves

⁸⁰ Daniel Schwartz, “Ti`une 'qal va-homer' ke-realism Sidduqi,” *Masechet* 5 (2006), 145-56. See also Daube, “Texts and Interpretations,” 186-87.

⁸¹ M. Yadaim 4:7.

⁸² See further at Schwartz, “Ti`une 'qal va-homer,’” 153.

have intelligence and it would lead to an absurdity if one held the owner responsible for a slave's actions.⁸³

Schwartz argues that there is likely a degree of historical authenticity behind at least some of these traditions and that the Sadducees used the *qal va-homer* extensively because it is the most logical and fits with their legal realism.⁸⁴ Schwartz further adds another possibility that the rabbis cast the Sadducees as representing the heretical or amateur student who mocks rabbinic halakha by applying *qal va-homer* arguments subversively. By placing such subversive arguments into the mouths of the Sadducees,⁸⁵ the rabbis attempted to silence those who would use this form of reasoning against the rabbinic establishment.⁸⁶ In either case, these debates show the anxiety of the rabbis towards such reasoning, how skeptical they were of its ability to reach valid conclusions, and therefore the need to limit its applicability.

Several other cases show an individual rabbi using a *qal va-homer* to challenge the majority consensus. For example, M. Yev. 8:3 teaches:⁸⁷

An Amonite and a Moabite are prohibited [in marriage to a Jew] and their prohibition is forever; however, their females are permitted immediately. An Egyptian and an Edomite are prohibited for only three generations [after conversion to Judaism], both males and females. R. Shimon permits [Egyptian and Edomite] females immediately. R. Shimon said, "It is a *qal va-homer*. If in a place where [the Torah] prohibits the males forever, it permits the females immediately, in a place where it prohibits the males for only three generation should we not all the more so permit the females immediately?" They told him, "If it is a tradition we will accept but if it is based only on a deduction [from a *qal va-homer*] then we have a response." He said to them, "No, I am teaching a tradition."

⁸³ See also Daube, "Texts and Interpretations," 196-98.

⁸⁴ Schwartz further proposes that the rabbis refrained from using *qal va-homer* reasoning during their polemics with the Sadducees and only reclaimed its use after the threat of sectarianism was gone and Christianity rose up. However, rabbinic literature shows continuous use of the *qal va-homer* throughout the generations of the Tannaim.

⁸⁵ Korah similarly challenges Moses' authority using *qal va-homer* arguments. See Num Rabbah, 18:3 and its parallel at Y. San 10:1, 27d-28a.

⁸⁶ Schwartz, "Ti' une 'qal va-homer'," 154-55.

⁸⁷ See parallel at Sifre Deut 253. See similar cases where an individual challenges the majority opinion using a *qal va-homer* at M. BB 9:7, M. Mach 6:8, T. Ket 5:1 (=Sifre Num 117), and Sifre Num 8.

As with the Yerushalmi version of the Hillel story cited above, the minority position is granted legitimacy only because it is based on a received tradition. *Qal va-homer* reasoning alone is insufficient. If the sage presenting the *qal va-homer* lacks a tradition, then his reasoning will be rejected as in M. Naz 7:4, where R. Akiva uses a *qal va-homer* to challenge a law taught by R. Eliezer in the name of R. Yehoshua. R. Eliezer responds: “What is this Akiva? We do not reason here from a *qal va-homer*.” R. Yehoshua similarly rebuts R. Akiva, saying: “You have spoken well; however, this is how they taught the tradition.”

The extent to which *qal va-homer* does not represent universal logic but rather subjective reasoning is evident by the numerous examples where controversy erupts over the validity of a *qal va-homer*. M. Makh 6:8, for example, records an extended debate over the validity of a *qal va-homer* presented by R. Akiva and rejected by his colleagues.⁸⁸ In the following controversy, Rabbi and his colleagues utilize the very same aspect of a law to argue both for the stringency and leniency of that law:

“He shall bring his wife to the priest” (Num 5:15): The biblical ordinance is that the husband brings his wife to the priest, but [the sages] said: Two disciples of the sages are to accompany him on the way lest he have intercourse with her.

Rabbi [Yehudah] says, her husband is deemed reliable as may be learned by *qal va-homer*. Since in the case of a menstruant the husband is deemed reliable, and that is a transgression whose punishment is *karet* [cutting off], in the case of the suspected adulteress, [intercourse with whom] is not punishable by *karet*, does it not stand to reason that her husband be deemed reliable with regard to her?

They said to him, No, for if that is the case for a menstruant who is permissible after the prohibition, then surely it is thus with the suspected adulteress who is not permissible after her prohibition, and, moreover, since intercourse with the wife is not punishable by *karet*, the husband is not deemed reliable with regard to her.⁸⁹

The very same quality of the menstruant—that relations with her is punishable by *karet*—is considered as a reason to deem the menstruant both more stringent as well as less stringent than the suspected adultress. If one is able to argue a *qal va-homer* in diametrically opposite

⁸⁸ See further examples at mShevi 7:1, mNazir 7:4, mEd 6:2, mHul 2:7, mKer 3:9-10 (= Sifra, Hova, 1:11-13).

⁸⁹ Sifre Num. 8. Translation from Yadin, *Scripture as Logos*, 84-85. See a similar phenomenon at B. Ber 21a.

directions, then it can hardly be considered as a foolproof method for deriving laws from the Torah. It is true that R. Yehudah ben Beteira presumes that deducing laws by *qal va-homer* is a simple matter when he excoriates Yohanan ben Bagbag by saying: “I was sure that you are an expert in the depths of the Torah. Are you ignorant of how to reason from a *qal va-homer*?”⁹⁰ But numerous cases of *qal va-homer* arguments that are contradicted by the Torah, by oral tradition, or whose logical validity are contested, show that *qal va-homer* reasoning can be complex and subject to rebuttal.

Considering the unwieldiness and untrustworthiness of the *qal va-homer*, Rabbinic literature limited its use. It seems that there was a time during the Tannaitic period when a *qal va-homer* could only be used to uphold a tradition but not to create a new law. That is the sense one gets from M. Yev. 8:3, cited above. This may have been necessary at the height of Sadducean polemics. At other times, however, perhaps after the Sadducean threat died down, *qal va-homer* was used even to derive new laws⁹¹ but still with three major limitations on its use. The first is that one may not deduce a law that is more stringent than the very source of the derivation.⁹² For example, Numbers 12:14 records an early example of a fortiori reasoning: “The Lord said to Moses, ‘If her father spat in her face, would she not bear her shame for seven days? Let her be shut out of camp for seven days.’” Sifre Num 106 comments:⁹³

If her father, who is of flesh and blood, [requires her to be punished for] seven days, then He Who Spoke and Created the World [should require her to be punished for] fourteen days. It is enough that what is deduced should be like the source of the deduction (*dayo la-ba min ha-din lihiot ka-nidon*). Just as her father, who is flesh and blood, [requires her to be punished for] seven days, so too He Who Spoke and Created the World [requires her to be punished for] seven days.

Although one might be tempted to apply a more severe punishment to one shamed by God rather than by a human, God declares it sufficient to punish Miriam with the same seven day

⁹⁰ Sifre Num 117.

⁹¹ See Y. Pes. 6:1, 33a, as cited above: “One may infer a *qal va-homer* on his own.”

⁹² Lysias, On the Murder of Eratosthenes, 1.31, also does not seem to abide by this principle.

⁹³ See also Sifra, Baraita d’R. Yishmael and further analysis at Menahem Kahana, *Sifre on Numbers: An Annotated Edition* (Jerusalem: The Hebrew University Magnes Press, 2011) (Hebrew), 1. 264-5 and 3.690-92. On the principle of *dayyo* generally, see Encyclopedia Talmudit, s.v. “*dayyo la-bba min ha-ddin lihiot ka-niddon*.”

banishment.⁹⁴ Both the use of inference by *qal va-homer* as well as the limitation of *dayyo* are exemplified in the Torah by God Himself. Azzan Yadin comments that the authority of the *qal va-homer* “does not derive from human reasoning but from its explicit use in the Torah.”⁹⁵

The second limitation confirms this reading. Mishnah Yadaim 3:2 teaches: “One may not derive matters of Torah from matters of the Scribes, nor matters of the Scribes from the words of the Torah, nor matters of the Scribes from matters of the Scribes.” The reason seems to be that the Scribes legislated decrees and enactments according to the needs of the times and were not necessarily consistent in being more stringent in weighty matters.⁹⁶ The Bavli similarly rules: “One may not infer using a *qal va-homer* from a tradition (*halakha*).”⁹⁷ Rashi comments: “The oral law was not given to be interpreted through the thirteen principles.”⁹⁸ That is, the applicability of the exegetical principles to the Torah depends not on their logical reasoning but on an explicit tradition that the Torah should be interpreted thus.⁹⁹

A third limitation is that the rabbis will not impose a punishment on the basis of a *qal va-homer* (*en `onshin min ha-din*).¹⁰⁰ Sifra, Kedoshim, *perek* 10.10, derives this rule from the Torah itself:

“If a man marries his sister, the daughter of his father or the daughter of his mother (Lev 20:17). I only know [he is prohibited to marry] the daughter of his father who is not the daughter of his mother and the daughter of his mother who is not the daughter of his father. How do I know [he is prohibited from his sister] from his father and from his mother? Scripture teaches, “his sister”—in any way. Even without Scripture teaching this, I can derive it by *qal va-homer*: If he is liable for his sister from his father and not from his mother or [for his sister] from his mother and not from his father, all the more so [he should be liable for his sister] from his father and from his mother. However, if you say so, you have

⁹⁴ There is some disagreement on the applicability of this limitation; see B. BK 25a and B. BM 95a.

⁹⁵ Yadin, *Scripture as Logos*, 84.

⁹⁶ See R. Asher (Rosh) in his commentary to this Mishnah.

⁹⁷ B. Nazir 57a and B. Shab. 132a.

⁹⁸ Rashi to B. Shab 132a, s.v. “*Aqiva*.” I cannot confirm that this is the original reason for the Talmudic rule, but it is certainly plausible.

⁹⁹ Also related to this is the Ishmaelian rule that one may not make an inference from the result of another inference, on which see Epstein, *Mevo'ot le-sifrut ha-Tannaim*, 524-25.

¹⁰⁰ On this principle, see Yadin, *Scripture as Logos*, 83-86. This limitation was not universally accepted; see Epstein, *Mevo'ot le-sifrut ha-Tannaim*, 525-27; and Elyakim Friedman, “En `onshin min ha-din,” *Mi-perot Eres Ha-sevi* (2009), 11-12. Greek writers regularly apply a fortiori arguments to punishments, as, for example, Isocrates, *Against Lochites*, 20.3.

punished based on a *qal va-homer*. Therefore it is stated, “his sister,” to teach you that they do not punish based on a *qal va-homer*.

The verse adds the word “his sister” in order to teach that one is liable for marrying his full sister and not only his half-sister. Although one could logically derive the liability for one’s full sister from the liability for one’s half-sister, that the verse adds the word “his sister” in order to teach that very law shows that logic alone would be an insufficient basis for meting out punishment.¹⁰¹ The continuation of the Sifra teaches further that one may also not derive a warning from a *qal va-homer*.¹⁰² Significantly, this limitation is cited as a reason not to accept a Sadducean legal interpretation based on a *qal va-homer*.¹⁰³

The reason for this limitation seems to be that, as Samuel ha-Nagid explains, “Sometimes one is mistaken in his reasoning and the *qal va-homer* is invalid even though we do not realize it.”¹⁰⁴ The court cannot physically punish someone on the basis of uncertain, even if convincing, reasoning. Susan Handelman similarly concludes from these restrictions that the *qal va-homer* “is not a universal principle or an apodictic premise” but rather can provide us with only “a relative conclusion based on a hypothesis and subject to continual testing and scrutiny.”¹⁰⁵

Howard Eilberg-Schwartz invokes the rabbinic *qal va-homer* as an example of a form of reasoning that a Western mind cannot make sense of and therefore as proof that all rationality is relative. The *qal va-homer* made sense for the rabbis because it functioned within a given set of myths regarding the perfection of the Torah, just as modern science makes sense for moderns within its given set of myths.¹⁰⁶ What he misses is that the rabbis themselves recognize the problematic nature of *qal va-homer* arguments and they are the first to criticize irrational

¹⁰¹ See similarly, Mekhilta d’R. Ishmael, Nizikin 11, and analysis at Yadin, *Scripture as Logos*, 85-86. Even where a *qal va-homer* does not involve a punishment, the Bavli states, “Matters that can be derived by *qal va-homer*, Scripture nevertheless takes the trouble to write” (B. Pes 18b, et. al). The *qal va-homer* inference is not considered significant enough to make redundant an explicit verse teaching the same thing. This rule, however, is not agreed upon by all (B. Pes. 77b).

¹⁰² Sifra, Kedoshim, perek 10.12.

¹⁰³ See B. Makkot 5b.

¹⁰⁴ See his introduction printed in the Vilna edition of the Bavli at the end of tractate Berakhot. See further at Friedman, “En `onshin min ha-din,” 13-14.

¹⁰⁵ Handelman, *Slayers of Moses*, 56-57

¹⁰⁶ Howard Eilberg-Schwartz, “Myth, Inference and the Relativity of Reason: An Argument from the History of Judaism,” in *Myth and Philosophy*, ed. F. Reynolds and D. Tracy (Albany: SUNY, 1990), 247-86.

arguments presented by their colleagues. They never make the claim that a *qal va-homer* furnishes syllogistic proof; instead, they work within the realm of rhetoric: “The tasks the rabbis faced were not tasks that could be solved with mathematics, but instead tasks of finding the most persuasive analogy in a world of infinite analogies.”¹⁰⁷ The tenuousness and arbitrariness that we often sense in *qal va-homer* arguments, and which the ancient rabbis sensed as well, is inherent to the realm of rhetoric. The rabbis made extensive use of *qal va-homer* reasoning but were also aware of its pitfalls and knew to proceed with caution.

Gezerah Shavah

The *gezerah shavah* in rabbinic literature generally refers to an analogy between two laws in the Bible when both laws share a common word. We already saw a good example of a *gezerah shavah* above when Hillel argues that since the word “at its appointed time” occurs in the context of the daily burnt offering as well as the Passover offering, we can analogize that just as the daily burnt offering supersedes the Sabbath so does the Passover offering.¹⁰⁸

The comparison of equals in Greek sources refers not to verbal analogies but to conceptual analogies, such as Cicero’s comparison of houses to land regarding the law of usucapion. The original rabbinic *gezerah shavah* also seems to have been a conceptual analogy, as we find in M. Bes 1:6.¹⁰⁹ Even when *gezerot shavot* include verbal analogies, it is most often

¹⁰⁷ Naomi Janowits and Andrew Lazarus, “Rabbinic Methods of Inference and the Rationality Debate,” *The Journal of Religion* 72, no. 4 (1992), 495. I do not dispute that reason is, to some extent, relative; that is after all an axiom of the rhetorical tradition. Rather, I agree with Janowits and Lazarus that Eilberg-Shwarz is mistaken in his assessment of the *qal va-homer* as logic and therefore as a proof for strong relativity. Rather, it is, like the Hellenistic *a fortiori*, a persuasive analogy whose validity cannot be proven but must be argued.

¹⁰⁸ See further analysis of this exegesis at Yitzhak D. Gilat, *Studies in the Development of the Halakha* (Jerusalem: Bar-Ilan University Press, 1992), 368-69.

¹⁰⁹ See Lieberman, *Hellenism in Jewish Palestine*, 60. Zeitlin, “Hillel and the Hermeneutic Rules,” 168-70, argues that the words “*gezerah shavah*” are a later insertion into the Mishnah considering that they are absent in B. Bes 21b. However, “*gezerah shavah*” does appear in T. Bes 1:12-13, as Zeitlin admits. For an analysis of these sources, see Moshe Weiss, “Ha-otentiut shel ha-shaqla ve-taria be-mahloqot bet Shamai u-vet Hillel,” *Sidra* 4 (1988), 63-64.

Lieberman, *Tosefta ki-fshutah*, Yom Tov, 5.931, also cites Sifre Zuta to Num 9:2 where R. Eliezer uses the term *gezerah shavah* to refer to conceptual analogies. In fact, R. Eliezer’s statement is an explanation of his earlier *qal va-homer*, confirming what was stated above that *qal va-homer* and *gezerah shavah* are simply two types of analogies. See also Hanoch Albeck, *Six Orders of Mishnah*, 6 vols. (Jerusalem: Mossad Bialik, 1959) (Hebrew), Kodashim, 403-4; Gilat, *Studies*, 369-71; *ibid.*, *The Teachings of R. Eliezer Ben Hyrcanos and their Position in the History of the Halakha* (Tel Aviv: Dvir, 1968) (Hebrew), 55-62; and Yerahmiel Bergman, “Gezerah shavah mahi?,” *Sinai* 71 (1972): 132-79.

In addition to Lieberman’s two examples, we should also consider texts that use the term “*shavah*” alone in the context of a conceptual analogy unrelated to Scripture. See M. Keretot 1:6 = Sifra, Tazria, *perek* 3:1; B. Nid 72a;

the case that there is a conceptual analogy as well. However, whereas in Greek and early rabbinic analogies, the conceptual element is the focus, by the middle of the Tannaitic period, the weight of the argument shifts to the verbal. One can witness this shift in the formula used numerous times in Akivan midrashim “let us see to which it is similar.” Here is one example:

[After a period of] seven years [you shall practice remission of debts] (Deut 15:1). Can this mean seven years for each and every individual? Behold you can reason: There is a requirement of seven years regarding land Sabbatical and there is a requirement of seven years regarding a debt. Just as seven years mentioned regarding land Sabbatical is for the whole world, so too seven years mentioned by a debt is for the whole world.

Or go in this direction: There is a requirement of seven years regarding a Hebrew slave and there is a requirement for seven years regarding debts. Just as seven years mentioned by a Hebrew slave means seven years for each and every individual so too seven years mentioned by a debt means seven years for each and every individual.

Let us see to which it is similar (*nir'eh le-mi domeh*)? We derive something that is not dependent on the Jubilee (debts) from something that is not dependent on the Jubilee (land Sabbatical) and let not the Hebrew slave, who is dependent on the Jubilee, serve as proof. Or go in this direction: We derive something (debts) that applies both in the Land [of Israel] and outside the Land from something (Hebrew slave) that applies both in the Land and outside the Land and let not land Sabbatical, which applies only in the Land, serve as proof.

Therefore the verse teaches “seven years” “seven years” for a *gezerah shavah*. Just as “seven years” (Deut 31:10) mentioned regarding land Sabbatical means seven years for the whole world, so too “seven years” (Deut 15:1) mentioned regarding a debt means seven years for the whole world.¹¹⁰

The Pentateuch includes three different laws that involve seven year periods: debts must be remitted after seven years (Deut 15:1), the land must lie fallow in the seventh Sabbatical year

and further analysis at Moshe Weiss, “Ha-gezerah shavah ve-ha-qal va-homer ba-shaqla ve-taria shel bet Shammai u-vet Hillel,” *Sidra* 6 (1990), 47-50.

¹¹⁰ Sifre Deut 111.

(Lev 25:4), and a Hebrew slave goes free in the seventh year (Ex 21:2, Deut 15:12). The seven years for the Hebrew slave are counted individually for each slave starting from the time he or she becomes a slave. The seven years for land Sabbatical, on the other hand, follow a collective count such that the entire country leaves the land fallow all during the same year. The midrash inquires whether the remission of debts should be counted individually from the start of each loan, or collectively like the land Sabbatical. The midrash then attempts to make a conceptual analogy. Remission of debt has in common with land Sabbatical that they both are practiced even when the Jubilee is not in effect, unlike the law of Hebrew slaves which is dependent on the Jubilee. On the other hand, remission of debt has in common with the freeing of Hebrew slaves that both laws also apply outside the Land of Israel, unlike land Sabbatical. Since these conceptual analogies are inconclusive, the midrash resorts to a *gezerah shavah* using the phrase “*miqes sheva shanim...shemita*,” which occurs only regarding debt remission and land Sabbatical.

In this midrash, as in others of this form, we see the rabbis attempt to apply a conceptual analogy, only to find that one can form analogies between most any given pair of laws by focusing on some or other aspect that they share. Conceptual analogies are ambiguous and inconclusive. The only reliable analogy is one that is not based on human reasoning but that is sanctioned by the Torah itself. If the Torah uses a phrase in only two places, then we can be sure that the Torah itself is directing us to compare the two verses.

In Akivan midrashim, *gezera shavah* was generally limited to comparing words or expressions that occur only twice in the Pentateuch, as seen in the example above.¹¹¹ Ishmaelian midrashim, on the other hand, include *gezera shavot* using words that occur more than twice in the Pentateuch. However, they add a requirement that the words must be extraneous (*mufneh*) in their own contexts and therefore free to be used for the *gezerah shavah*. For example, see the version of the *gezerah shavah* regarding preparing the Passover on the Sabbath as it appears in Ishmaelian midrashim:

¹¹¹ See Schwarz; Daube, “Rabbinic Methods,” 241 n. 7; and Michael Chernick, *Midat "gezerah shavah" : surota ba-Midrashim uva-Talmudim* (Lod: Habermann Institute, 1994), 12-35. Even in these cases, there is nearly always also a conceptual similarity between the two contexts. Chernick, *ibid.*, 15-16, shows that Akivan midrashim occasionally perform a *gezerah shavah* using two phrases that occur many times in the Pentateuch but only twice in a given pericope.

R. Yoshiah said to him [R. Yonatan]:¹¹² Since it says, “Command the Israelite people and say to them: [Be punctilious in presenting to Me at its appointed time (*bemo`ado*)] My offering...” (Num 28:1). If this comes to teach that the daily burnt offering supersedes the Sabbath, this is not necessary, for it is already stated, “On the Sabbath day: two yearling lambs” (Num 28:9). What does “at its appointed time (*bemo`ado*)” come to teach? Rather it is free to be used to draw an analogy and form a *gezerah shavah*. It is stated here “at its appointed time (*bemo`ado*)” (Num 9:2) and it is stated below “at its appointed time (*bemo`ado*)” (Num 28:1). Just as “at its appointed time (*bemo`ado*)” stated below supersedes the Sabbath, so too “at its appointed time (*bemo`ado*)” stated here supersedes the Sabbath.¹¹³

The very same *gezerah shavah* found in the Tosefta and Amoraic sources cited above without the feature of *mufneh* is here presented with this Ishmaeliam requirement.¹¹⁴ In nearly all Tannaitic *gezerot shavot*, there is a conceptual link between the two laws.¹¹⁵ However, the conceptual analogy alone is insufficient to derive a law. Rather, the analogy must be validated by a verbal parallel. For R. Akiva, the two phrases must be unique to the two laws being analogized. For R. Ishmael, Scripture must provide an indication that a given analogy is valid by leaving at least one of its occurrences extraneous (*mufneh*) in its own contextual work and therefore free to act as a reference point for another law.

Azzan Yadin takes this point even further in his analysis of R. Ishmael midrashim. He shows that these midrashim limit the role of the reader as interpreter and instead present Scripture as being self-interpreting. Yadin locates this self-interpreting activity in the term “*ha-katuv*,” which serves in these midrashim as the personified Scripture that actively teaches and explains the words of the Torah. R. Ishmael advocates for a submissive reader who does not impose his will or explanation onto the text but rather waits passively until Scripture itself, *ha-katuv*, makes the meaning clear.

¹¹² These two sages were both students of R. Ishmael; see B. Men 57b.

¹¹³ Sifre Num. 65. See parallels at Sifre Num 142 and Mekhilta d’R. Ishmael, Pisha, 5.

¹¹⁴ On the relationship between this version of the midrash and that of Hillel, cited above, see Kahana, *Sifre on Numbers*, 3.439. It should be noted that Akiba midrashim do also occasionally utilize *mufneh*, as in Sifra Kedoshim perek 9:12, Sifre Deut. 249; see further at Chernick, *Midat "gezerah shavah"*, 44-51.

¹¹⁵ See Gilat, *Studies*, 369-71; and Chernick, *Midat "gezerah shavah"*, 43-44.

Yadin therefore proposes that by requiring that one of verses used in a *gezerah shavah* must be *mufneh*, R. Ishmael “shifts the agency of the analogy from the reader to Scripture....The reader cannot roam the biblical text in search of paired terms to interpret, but must carefully attend to the language of Scripture, seeking out redundancies that free up words for *gezerah shavah*. No independent interpreter, the reader carries out the exegetic instructions already inscribed in the text.”¹¹⁶

Yadin shows that the list of thirteen *middot* in the Baraita of R. Ishmael—which has been curiously transmitted as an introduction to the Akivan Sifra—should be read independently from Ishmaelian midrashim, Mekhilta d’R. Ishmael and Sifre Num. These midrashim employ only six of the thirteen and only refer to two of them as *middot*.¹¹⁷ The few occurrences of *middah* in a hermeneutic sense in these midrashim, do not refer to logical methods of deriving new laws but rather to a generalization about behavior characteristic of Scripture, which serves to limit the interpretive possibilities of various elements of biblical style.¹¹⁸ Yadin argues further that even these principles are derived by the Ishmaelian midrashim not from human reason but from Scripture itself. For example, Mekhilta d’R. Ishmael, Nezikin 16, teaches:

“When a man gives to another an ass, an ox, a sheep [or all animals to guard]...” (Exod 22:9): I thus know only about an ass, an ox, and a sheep. How about any other beast? [Scripture] teaches, saying: “Or all animals to guard.” I read, then, “All animals to guard.” What does it teach by saying, “an ass, an ox, a sheep”? Because if it had read only “all animal” I might have understood that the keeper is liable only if all beasts have been put in his care. Therefore it says, “an ass, an ox, a sheep,” to declare him liable for each one by itself. And what does [Scripture] teach by saying, “all animal”? *Ha-katuv* comes to teach you that a general statement that is added to a specific statement includes everything.¹¹⁹

Exod 22:9 contains a list of particulars followed by a general class, a potential source of confusion as to what exact cases the law covers. The midrash explains that the law covers all members of the class and that the particulars are also listed in order to teach that one is liable for

¹¹⁶ Yadin, *Scripture as Logos*, 83.

¹¹⁷ *Ibid.*, 99-106.

¹¹⁸ *Ibid.*, 109.

¹¹⁹ Translation from *ibid.*, 126.

every single member of the class and not only the collective. This midrash, however, goes further and derives from this example a general rule that anytime Scripture expresses itself in such a format, it should be interpreted thus. This is the same as the fifth of Hillel's rules and the sixth rule in the Baraita d'R. Ishmael. As discussed above, this rule can be easily explained based on parallels in Roman law. However, even if these origins are historically accurate, for this midrash, the origins of this rule are not in human reason or external influence but rather derive from within the Torah as a self-interpreting text. The *mufneh* requirement that one verse in a *gezerah shavah* be extraneous, similarly functions as a Scriptural warrant for performing an analogy between two Scriptural laws.

Moving past the Tannaitic era, we find a great expansion in the use of *gezerah shavah* arguments in both the Yerushalmi and the Bavli as the definitions of and requirements for valid *gezerot shavot* become looser. The distinctions between the schools of R. Akiva and R. Ishmael faded, and verbal analogies that would have previously been considered illegitimate by either school now came to be recognized as bona fide *gezerot shavot*.¹²⁰ With this increased in use and decrease in limitations, the *gezerah shavah* had the potential to become unwieldy in its ability to pair any two words in the Torah and thereby derive laws in almost infinite possibilities.¹²¹ The early Amoraim therefore established the principle: "One may not infer a *gezera shava* on his own"¹²² but rather can only repeat one that he has received from tradition. Similarly, "One may infer a *gezerah shavah* in order to uphold his teaching [as received from tradition] but one may not infer a *gezerah shavah* to nullify his teaching."¹²³ In effect, this principle does away with the entire method of *gezerah shavah* since it is entirely subsumed under and dependent upon the authority of received tradition.¹²⁴ Ironically, the expansion of the application of *gezerah shavah* led to its extinction.¹²⁵

¹²⁰ Chernick, *Midat "gezerah shavah"*, 117-53.

¹²¹ See the comment of Nahmanides to Maimonides, *Sefer ha-Misvot, shores 2*.

¹²² Y. Pes. 6:1, 33a, cited above. Although this principle is cited within a baraita, it is absent from the parallels at T. Pes. 4:14 and B. Pes. 66a. See analysis at Chernick, *Midat "gezerah shavah"*, 136-42; and Gilat, *Studies*, 372. This principle is also cited at B. Pes. 66a; and B. Nid 19b.

¹²³ Y. Pes 6:1, 33a.

¹²⁴ See further on this principle at Gilat, *Studies*, 365-68.

¹²⁵ Tension over the legitimacy of the *gezerah shavah* argument is further evidenced in the statement: "Let not a *gezerah shavah* ever be light in our eyes" (B. Keretot 5a). Also relevant is B. Sanh 99a: "Even if one says, 'all of the Torah is from heaven except for this detail, this *qal va-homer*, or this *gezerah shavah*,' behold this fulfills 'For he has spurned the word of the Lord' (Num 15:31).

Conclusions

To summarize, many of the exegetical methods of the Rabbis have been found to parallel similar *topoi* and hermeneutics of Greco-Roman rhetoric and law. This is especially evident in the identification, naming and codifying of these methods in the lists attributed to Hillel and R. Ishmael, activities found nowhere in Second Temple literature. These parallels can best have their provenance in the shared cultural and legal milieu of the early sages in Palestine (and perhaps Babylonia as well) who must have learned of such lists in their dealings with lawyers, traveling sophists, or innumerable people who studied in the nearby schools of rhetoric.

As significant as the integration of these rhetorical methods into their program of Scriptural exegesis is how the rabbis adapted, limited, and in some cases, ultimately rejected these very methods. The reason for their apprehensiveness is made explicit by R. Yannai and R. Yose b. R. Bon who demonstrate how the *qal va-homer* and *gezerah shavah* can be used to derive obviously incorrect laws concerning reptile impurity. Human reason can lead to contradictions, conclusions that oppose tradition, and is simply too subjective and open-ended as a basis upon which to explicate Divine law.

Yadin writes concerning Ishmaelian midrashim: “The refusal to accept a midrashic conclusion as the basis for analogy is motivated by the ineluctable contingency of human interpretation, a matter raised time and again by the midrashim themselves.”¹²⁶ Instead, these midrashim tend to limit the role of the reader and view Scripture as self-interpreting. Therefore, even if modern scholars are correct in finding parallels to techniques of Greco-Roman rhetoric, the midrash itself traces the origin of the rule as coming from within Scripture itself. These midrashim do not repudiate the use of rhetorical methods; far from it, they use them successfully throughout the midrash. Rather, they subsume the rhetorical methodology into their overall system by integrating human reason into the scripturally led exegetical process.

Neusner similarly writes that the purpose of the authorship of Sifre Num. is to make the point that “Reason unaided by Scripture produces uncertain propositions. Reason operating within the limits of Scripture produces truth.”¹²⁷ He makes the same claim for Sifra.¹²⁸ Even accepting Yadin’s hypothesis that Akivan midrashim allow for a more active role on the part of

¹²⁶ Yadin, *Scripture as Logos*, 93.

¹²⁷ Jacob Neusner, *Sifre to Numbers: An American Translation and Explanation* (Atlanta: Scholars Press, 1986), 1. 38.

¹²⁸ *ibid.*, *Uniting the Dual Torah: Sifra and Problem of the Mishnah* (Cambridge: Cambridge University Press, 1990).

the reader, these midrashim still significantly curtail that freedom and emphasize the authority of tradition over human reason.

Precisely because the *qal va-homer* is not a genus to species syllogism but rather an analogy between different categories, there is no clear criterion to decide the validity of the comparison. *Gezerah shavah* is also an analogy between equals, often buttressed by verbal links, but otherwise dependent on the subtleties of human reason. Having accepted that some analogies are valid and necessary for interpreting the bible, the rabbis pushed the possibilities of this analogical reasoning to their fullest, sometimes ad absurdum, to test its limits. This became useful for grounding previous oral tradition, authorizing new legislation, and proving the perfection of the Torah. However, it also became a double-edged sword wielded by sectarians and dissidents alike, threatening to undermine the Torah through its powerful sweep. The rabbis therefore had to limit its applicability and give highest priority to tradition. This analysis reveals rabbis entrenched in the rhetorical realm, engaging in persuasive argumentation and reasoning through analogies; but at the same time, they also remained skeptical of the subjectivity and volatility of human reason.