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"Enjoin Them upon Your Children to Keep" (Deuteronomy 32:46)

Law as Commandment and Legacy, or, Robert Cover Meets Midrash

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I INTRODUCTION

On April 26, 2004 I attended a one-day conference at the Yale Law School on "Rethinking 'Nomos and Narrative': Marking Twenty Years Since Robert Cover's Essay." My modest contribution to that occasion was subsequently published as "Nomos and Narrative Before *Nomos and Narrative*," in the *Yale Journal of Law and the Humanities*, in which I explored some of the history of the dynamic intersection of "nomos and narrative" in Judaism from antiquity to modern times, mainly through an assembly of rabbinic texts.[1] Here I wish, once again, to pay tribute to Robert Cover by critically engaging another of his essays, "Obligation: A Jewish Jurisprudence of the Social Order" (first published in 1987 in the *Journal of Law and Religion*).[2] I shall do so by bringing for our close reading pleasure an early rabbinic

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[1] Steven D. Fraade, "Nomos and Narrative Before Nomos and Narrative," *Yale Journal of Law and the Humanities* 17 (2005): 81–96; republished in Steven D. Fraade, *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages*, Supplements to the Journal for the Study of Judaism 147 (Leiden: Brill, 2011), 17–34.

Cover's essay first appeared as, "The Supreme Court, 1982 Term – Forward: Nomos and Narrative," *Harvard Law Review* 97 (1983), 4–68; reprinted as "Nomos and Narrative," in *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: The University of Michigan Press, 1992), 95–172. On *nomos* (law) being the Greek word consistently employed by the third-century Jewish Greek translators of the Pentateuch for the scriptural Hebrew word *torah* (teaching), the consequences of which have been enormous, see Fraade, "Nomos and Narrative," *supra* n. 1, 83–85 (as well as *Legal Fictions*, *supra* n. 1, 20–21).

[2] Robert Cover, "Obligation: A Jewish Jurisprudence of the Social Order," *Journal of Law and Religion* 5, no. 1 (1987): 65–73. It was reprinted in *Narrative, Violence, and the Law*, *supra* n. 2, 239–48. My page citations will be to the reprint. The essay was first given orally at the Columbus School of Law, Catholic University

text of midrash (scriptural commentary) that is highly relevant to Cover's theme and remarkable for its honesty and prescience, qualities shared with Cover. For the Rabbis, and the Hebrew Bible before them, there can be no law without religion or religion without law, however we might define those slippery terms.

II ROBERT COVER ON JEWISH LAW AS COMMANDMENT OR OBLIGATION

In his aforementioned essay on "Obligation" (Hebrew: *mitzvah*, but more broadly understood by Cover as "incumbent obligation" [239]), Cover draws a sharp contrast (but with caveats) between western secular jurisprudence, which is based on individual *rights*, and Jewish religious jurisprudence, which is based on collective (but also individual) *obligations*. Thus, for example, in the former, justice is served by fulfilling the *rights of individuals* to, say, receive affordable medical care, whereas in the latter, it is the *obligation of the collective* to provide it.

Cover argues that each such system of law (or legal discourse) is founded and sustained by a distinctive narrative or "myth." Thus, modern individual "rights" are rooted in the *secular* mythos of a social contract, whereas Jewish "commandments" are rooted in the *religious* mythos of an all-encompassing divine (or Mosaic) revelation that enjoins those commandments upon *all* of Israel, including future generations, standing at Mt. Sinai.[3] Here is Cover in his own words:[4]

> The basic word of Judaism is obligation or mitzvah. It, too, is intrinsically bound up in a myth – the myth of Sinai. Just as the myth of social contract is essentially a myth of *autonomy*, so the myth of Sinai is essentially a myth of *heteronomy*. Sinai is a collective – indeed, a *corporate* – experience. The experience at Sinai is not chosen. The event gives forth the words which are commandments. . . . All law was given at Sinai and therefore all law is related back to the ultimate heteronomous event in which *we were chosen – passive voice*. (emphases added)

of America, as Cover's contribution to the Symposium "The Religious Foundations of Civil Rights Law," sponsored by the Interdisciplinary Program in Law and Religion, on April 19, 1986.

[3] See Deut. 29:13–14: וְלֹא אִתְּכֶם לְבַדְּכֶם אָנֹכִי כֹּרֵת אֶת־הַבְּרִית הַזֹּאת וְאֶת־הָאָלָה הַזֹּאת׃ כִּי אֶת־אֲשֶׁר יֶשְׁנוֹ פֹּה עִמָּנוּ עֹמֵד הַיּוֹם לִפְנֵי יְהוָה אֱלֹהֵינוּ וְאֵת אֲשֶׁר אֵינֶנּוּ פֹּה עִמָּנוּ הַיּוֹם ("I make this covenant, with its sanctions, not with you alone, but both with those who are standing here with us this day before the Lord our God and with those who are not with us here this day" [NJPS]), taken by some commentators (e.g., the Palestinian targumim) to refer to (and obligate) all future generations. Thus the "myth of Sinai" is not just that the Torah was divinely commanded to Israel there and then, but that all subsequent generations are equally bound by virtue of their have been proleptically included. The universal legal question of whether a constitution can obligate successive generations to fulfill the commitments undertaken by its predecessors is famously discussed in Thomas Jefferson's letter of September 6, 1789 to James Madison in the *Papers of Thomas Jefferson*, most recently accessed at https://jeffersonpapers.princeton.edu/selected-documents/thomas-jefferson-james-madison. See also below, n. 54.

[4] Cover," Obligation," *supra* n. 2, 240.

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Cover acknowledges that for most of Jewish history, Jews have not exercised the coercive, sovereign authority necessary to enforce most of the commandments, understood as having been initially commanded by God through Moses, his prophetic agent. Again, citing Cover:[5]

> The Jewish legal system has evolved for the past 1900 years without a state and largely without much in the way of coercive powers to be exercised upon the adherents of the faith. … The Jewish legal apparatus had not had the autonomous use of violence at its disposal for two millennia which are, indeed, for all practical purposes the period in which Jewish Law as we know it came to be. In a situation in which there is no centralized power and little in the way of coercive violence, it is critical that the *mythic center of the Law reinforce the bonds of solidarity*. Common, *mutual reciprocal obligation* is necessary. The myth of divine commandment creates that web. (emphases added)

According to Cover,[6] even when Jewish law created plenty of space for divergent legal interpretations and rulings, it predicated that polysemy or legal pluralism not on individualism, per se, but on the myth of a single, divine, originary, commanding voice.[7] This renders the system of commandments qua commandments (and not simply as "good deeds") all the more remarkable for its persistence and relative continuity over thousands of years in the absence of a centralized, politically (as distinct from socially) coercive enforcement of judicial sovereignty. Even so, Cover argues, the system is predicated on its subjects' understanding their obligations as stemming from the collective self-understanding of, passively speaking, "being commanded."[8]

Cover acknowledges that rights-discourse and duties-discourse are not impervious to one another, often producing hybrids that belie the secular (rights) versus religious (commandments) dichotomy. Thus, one can just as easily identify secular systems based on duties-discourse (e.g., communism, fascism), as one can justify systems based on rights-discourse that are founded on religious principles or myths (e.g., the US

[5] Ibid., 242–43.

[6] Ibid., 243.

[7] On interpretive polysemy and legal pluralism in classical rabbinic sources, see the following: Steven D. Fraade, "Rabbinic Polysemy and Pluralism Revisited: Between Praxis and Thematization," *AJS Review* 31 (2007): 1–40 (as well as *Legal Fictions*, *supra* n. 1, 427–75); Steven D. Fraade, "Response to Azzan Yadin-Israel on Rabbinic Polysemy: Do They 'Preach' What They Practice?" *AJS Review* 38 (2014): 339–61; Steven D. Fraade, "'A Heart of Many Chambers': The Theological Hermeneutics of Legal Multivocality," *Harvard Theological Review* 108 (2015): 113–28.

[8] For a thorough treatment of the problematic reception of commandments in post-enlightenment, secularized Jewish societies, see Arnold Eisen, *Rethinking Modern Judaism: Ritual, Commandment, Community* (Chicago: University of Chicago Press, 1998). For theological reflections on Jewish law as commandment, see Benjamin D. Sommer, *Revelation and Authority: Sinai in Jewish Scripture and Tradition*, Anchor Yale Bible Reference Library (New Haven: Yale University Press, 2015), esp. 99–146.

Declaration of Independence). As Cover indicates, this is not simply a function of modernity:[9]

> Now, just as the social contract theories generated Hobbes and others who bore a monstrous and powerful collective engine from the myth of individualism, so the Sinaitic myth has given rise to *counter myths* and accounts which stress human *autonomy*. The rabbinic accounts of law-making autonomy are very powerful indeed, though they all conclude by suggesting that everything. . . . everything was given at Sinai. And, of course, therefore, all is, was, and has been commanded – and we are obligated to this command. (emphases added)

In the end, "Sinai and social contract both have their place" as dynamically intersecting mythoi of jurisprudence.[10]

The midrashic text that we will shortly examine asks, how can the commandments (and the Sinai/Moses myth[11] upon which they rest) be obligatory for all time, that is, be upheld and transmitted across the generations, especially in the absence of political and judicial sovereignty and in the reality and cacophony of human autonomy? As we shall see, the midrash is a beautiful example of an ancient rabbinic text that reads a "counter myth" of *legal autonomy* into the heteronomy of Scripture.

III THE HEBREW NOUN *MITZVAH* AND VERB *TZIVAH*

Before doing so, however, a few words are required regarding the meaning of the noun *mitzvah* (commandment or obligation) and the verb from which it derives, *tzivah*, (to command or enjoin). As Cover indicates, this is the core word for biblical/Jewish law as being divinely commanded and obligatory (alongside many other words for law).[12] But this verb, *tzivah*, has another, less widely attested and acknowledged meaning, or shade of meaning, that being to will possessions or instructions to one's heirs in anticipation of one's death, as in an "ethical will."[13] But the two

[9] Cover, "Obligation," *supra* n. 2, 241.

[10] Ibid., 248.

[11] Since the book of Deuteronomy is narratively framed as Moses's teachings (see Deut., 1:5) forty years after the revelation at Sinai, Moses here can be thought of as a forty-year extension of Sinai, in terms of Cover's "myth of Sinai."

[12] For some random examples of the noun and verb used biblically with respect to divinely or Mosaically commanded laws, see Exod. 19:7; 25:22; 34:34; 35:1; Lev. 6:3; 27:34; Num. 30:1; 36:13; Deut. 1:3; 4:2, 5; 5:15, 28; 6:1–2, 6, 25; 11:13; 15:15; 24:18, 22; 30:8; 31:10; 34:9; Mal. 3:22. I calculate the frequency of occurrence of such words among the books of the Pentateuch as follows, indicating rounded frequency per 1,000 words: Genesis 1.3, Exodus 3.2, Leviticus 2.9, Numbers 2.8, Deuteronomy 6.2. Note the significantly higher frequency of occurrence in the book of Deuteronomy. For a broader linguistic treatment of *mitzvah* in tannaitic rabbinic corpora, see Tzvi Novick, *What Is Good, and What God Demands: Normative Structures in Tannaitic Literature*, Supplements to the Journal for the Study of Judaism 144 (Leiden: Brill, 2010).

[13] See Frances Brown, S. R. Driver, and C. A. Briggs, *A Hebrew and English Lexicon of the Old Testament* (Oxford: Clarendon, 1907), 845b; Gen. 18:19; 49:29, 33; 50:16; 2 Sam. 17:23; 1 Kgs. 2:1; 2

meanings are close to and sometimes bleed into one another (both being forms of instruction), as in the following biblical verse, Deuteronomy 33:4, referring to Moses at the very end of his life and career, introducing what might be termed Moses's ethical will, or "blessing," (Deuteronomy 33) to the tribes: "Moses charged us with (the) Teaching (Torah), as the heritage of the congregation of Jacob" (New Jewish Publication Society (NJPS) adapted).[14] The poetic parallelism of this verse would suggest an alignment between the verb to charge (*tzivah*) and the noun for heritage (*morashah*). By this understanding, Moses, at the very end of his life and leadership, is more likely to have enjoined the people to embrace what is now their heritage than to have commanded them collectively to obey its laws. We are here, after all, in the midst of a rhetorical discourse of admonition rather than that of law as commandment, even though the difference is a subtle and unstable one. Alternatively, the parallelism might suggest what began as Moses's command soon became the heritage of the successive generations of Israelites. This meaningful ambiguity (commandment/legacy) both foreshadows and enables the radical midrashic reading of Deuteronomy 32:46 that we are almost ready to engage.

IV THE BIBLICAL CONTEXT: MOSES'S SWAN SONG

Deuteronomy 32, the scriptural lection *Ha'azinu* ("give ear"), is Moses's swan song, just prior to his death at the ripe old age of 120, after 40 years of unsought leadership of the Israelites in their epic journey from Egypt to the edge of the Promised Land. In Cover's mythic-narrative sense, Moses's oration is Sinai's

Kgs. 20:1; Isa. 38:1. It is not until rabbinic literature that the nominal form *tzava'ah*, for a will or testament, is evidenced in b. Bava Batra 147a. See Avraham Even-Shoshan, *Hammillon Heḥadash* (Jerusalem: Kiryath Sepher, 1979), vol. 5, 2207b. For Hebrew ethical wills across history, see Israel Abrahams, ed., *Hebrew Ethical Wills* (Philadelphia: Jewish Publication Society of America, 1926; repr. 1976). For ancient exempla, attributed to biblical patriarchs, see James H. Charlesworth, ed., *Old Testament Pseudepigrapha*, vol.1 (Garden City, NY: Doubleday, 1983), 773–995.

[14] There is no definite article in the Hebrew for "(the) Teaching (Torah)." The word *torah* (teaching, instruction) in the book of Deuteronomy can refer to Deuteronomy as a whole (or to some parts thereof), as in Deut. 1:5; 17:18, 19; 31:11, 12. For Deuteronomy's expanded understanding of *torah*, see, most recently, John J. Collins, *The Invention of Judaism: Torah and Jewish Identity from Deuteronomy to Paul* (Oakland, CA: University of California Press, 2017), 21–43 ("Deuteronomy and the Invention of the Torah"). However, here it can refer just to the present section (Deut. 33) or to divine/Mosaic teaching more abstractly. In later times the word would denote the Pentateuch as a whole, and in still later times, as we shall see, to the totality of Torah teaching, both scriptural ("written") and rabbinic ("oral"). See below, nn. 20–22. Sir. 24:23 (LXX) equates the Torah of our verse with the "book of the covenant" (cf. Exod. 24:7; 2 Kgs. 23:2). For a variety of midrashic understandings of "heritage" in this verse, see Sifre Deut §345 (ed. Finkelstein, 402), on which see Steven D. Fraade, *From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York Press, 1991), 56–60. For the continuing importance of this verse in Jewish religious culture and education, see Jeffrey H. Tigay, *The JPS Torah Commentary: Deuteronomy* (Philadelphia: Jewish Publication Society, 1996), 321–22; 407 n. 40. For this verse standing for the Torah as a whole, see b. Sukka 42a; b. Bava Batra 14a.

forty-year extension. The book of Deuteronomy is Moses's paraphrastic reprise of the laws and narratives of the past forty years. It is full of pathos regarding Moses's repeatedly denied petitions to God to be able to see his epic mission to its completion across the Jordan River.[15] Throughout Deuteronomy, Moses worries and warns the people that without his charismatic prophetic leadership, upon settling in the Land and enjoying its bounty (and mixing with its non-Israelite inhabitants), they will grow complacent, forgetting their history and abandoning the commands to their great covenantal peril. Deuteronomy is Moses's last chance to inoculate them, rhetorically speaking, against this feared or anticipated outcome.

V THE MIDRASHIC COMMENTARY (SIFRE TO DEUTERONOMY §335)

The scriptural lemma (Deuteronomy 32:46) is part of the conclusion to Moses's *Ha'azinu* song. Its midrashic commentary divides the verse into two halves, so that each half receives its own discrete interpretation. We shall later return to the question of whether the two exegetical units form a larger whole, or just two distinct units that are editorially placed in sequence according to the order of the scriptural verse.[16] Here's the verse (32:46a–b in bold), together with its surrounding verses, to give a sense of its scriptural context:[17]

[מה] וַיְכַל מֹשֶׁה לְדַבֵּר אֶת־כָּל־הַדְּבָרִים הָאֵלֶּה אֶל־כָּל־יִשְׂרָאֵל:
[מו-א] וַיֹּאמֶר אֲלֵהֶם שִׂימוּ לְבַבְכֶם לְכָל־הַדְּבָרִים אֲשֶׁר אָנֹכִי מֵעִיד בָּכֶם הַיּוֹם
[מו-ב] אֲשֶׁר תְּצַוֻּם אֶת־בְּנֵיכֶם לִשְׁמֹר לַעֲשׂוֹת אֶת־כָּל־דִּבְרֵי הַתּוֹרָה הַזֹּאת:
[מז] כִּי לֹא־דָבָר רֵק הוּא מִכֶּם כִּי־הוּא חַיֵּיכֶם וּבַדָּבָר הַזֶּה תַּאֲרִיכוּ יָמִים עַל־הָאֲדָמָה אֲשֶׁר אַתֶּם עֹבְרִים אֶת־הַיַּרְדֵּן שָׁמָּה לְרִשְׁתָּהּ:

[15] For a detailed analysis of the of Moses's failed petition in Sifre Deuteronomy, see Steven D. Fraade, "Sifre Deuteronomy 26 (ad Deut. 3:23): How Conscious the Composition?" *Hebrew Union College Annual* 54 (1983): 245–301.

[16] This is a common question in interpreting midrashic commentary as a redacted collection of discrete exegetical comments. For consideration of this question, pursued with respect to another section of the Sifre Deuteronomy commentary, see Fraade, "Sifre Deuteronomy," *supra* n. 15, 245–301.

[17] Unless otherwise indicated, I transcribe the text according to MS London 341, with slight adjustments. I was able to access it from microfilm. This manuscript is adopted by the data base of the Academy of the Hebrew Language (*Ma'agarim*), since MS Vatican 32, which is generally preferred, is not extant here. Louis Finkelstein's standard edition (384–85) significantly departs from this and related manuscripts in the last lines of this section of the midrash, which I shall discuss in due course. I only indicate variants to this manuscript when they affect the meaning significantly enough as to have a bearing on my argument. I have treated this passage previously, although in different detail and for different purpose, in *From Tradition to Commentary*, *supra* n. 14, 119–20, with notes. The Sifre to Deuteronomy is an anthology of tannaitic (70–220 CE Palestine) exegetical traditions, redacted in the mid- to late third century CE. For a brief critical introduction, see Menahem Kahana, "Sifrei," in Encyclopaedia Judaica, ed. Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 18. (Detroit: Macmillan Reference USA, 2007), 562–64.

[45] And when Moses finished reciting *all* these words to *all* Israel,
[46a] **he said to them: Take to heart [lit.: set your heart toward] all the words with which I have warned you this day.**
[46b] **Enjoin them upon your children, that they may observe faithfully all the words of this Teaching (Torah).**
[47] For this is not a trifling thing for you: it is your life; through it you shall long endure on the land that you are to possess upon crossing the Jordan. (NJPS)

V PART 1

Here is the midrash's commentary to the first half of verse 46, following MS London:

"ויאמר אליהם שימו לבבכם לכל הדברים [אשר אנכי מעיד בכם היום]" (דברים ל"ב:מ"ו): צריך אדם שיהו עיניו ולבו ואוזניו מכוונין לדברי תורה. וכן הוא אומר,"בן־אדם [שים לבך ו]ראה בעיניך ובאזניך שמע (ושים לבך) את כל אשר אני (דבר אליך) [מדבר אתך] [לכל־חקות בית־ה' ולכל־תורתיו] ושמת לבך למבוא הבית (ל)[ב]כל מוצאי המקדש" (יחזקאל מ"ד:ה). והרי דברים קל וחומר, ומה בית המקדש שנראה בעיני(ה)ם ונמדד ביד צריך אדם שיהו עיניו ולבו ואוזניו מכוונין, דברי תורה שהן כהררין התלויין בסערה על אחת כמה וכמה.

"He said to them: Take to heart [lit.: set your heart toward] all the words [with which I have warned you this day]" (Deuteronomy 32:46a): A person needs to direct his eyes and his heart and his ears toward words of Torah. And so it says, "O mortal, [mark well] [lit.: set your heart], look with your eyes and listen with your ears to all that I tell you [regarding all the laws of the Temple of the Lord and all the instructions concerning it.] Note well [lit.: set your heart toward] the entering into the Temple and all who must be excluded from the Sanctuary" (Ezekiel 44:5). We may argue *a fortiori ad minore* (*qal vaḥomer*; from light to heavy or the reverse): If in the case of the Temple, which could be seen with the eyes and measured with the hand,[18] a person needed to direct his eyes and his heart and his ears (toward it), then how much more should this be with words of Torah, which are like mountains suspended by a hair.

While the idiom "to set one's heart (=mind) toward" would seem to denote mental engagement with or concentration on divine or Mosaic instruction, the midrash, based on the parallel use of the same idiom in Ezekiel 44:5, but there combined with the senses of seeing and listening, concludes that in Deuteronomy 32:46a too, Moses is exhorting the people to actively and intensely engage "words of Torah," not just mentally, but visually and aurally as well, in effect, with the totality of one's sensing self.[19]

[18] For measuring the heavenly Temple, see Ezek. 40:3–42:20; Zech. 2:1–5; Rev. 11:1–2.

[19] For the triad of heart (=mind), eyes, and ears, see Deut. 29:3; Isa. 6:10; 32:3–4a; Jer. 5:21. For the combination of seeing and hearing of revelation, see Exod. 20:15 (18), as rabbinically (and Philonically) interpreted, as discussed in my article, "Hearing and Seeing at Sinai: Interpretive Trajectories," in *The Significance of Sinai: Traditions about Sinai and Divine Revelation in Judaism and Christianity*, ed. George J. Brooke, Hindy Najman, and Loren T. Stuckenbruck, Themes in Biblical Narrative 12 (Leiden: Brill, 2008), 247–68 (as well as *Legal Fictions*, *supra* n. 1, 501–22). For the

Before proceeding, however, we should note that the expression "words of Torah," construed here broadly as including both scriptural and non-scriptural (oral) rabbinic teaching,[20] is without direct scriptural antecedent. In the present context, the phrase "words of Torah" does not appear in the first half of the verse (46a), but is the result of a midrashic importing of it from the second half of the verse (46b: "all the words of this Torah") to the first (46a: "all the words"). The expression "the words of Torah" within the Pentateuch only appears in the book of Deuteronomy, where it occurs nine times, but always modified by the demonstrative pronoun "this" (as in verse 46b), referring to some form of the book of Deuteronomy or a part thereof,[21] as in Deuteronomy 1:5, where "this Torah" introduces the book of Deuteronomy, or the bulk thereof, that follows. The expression "the words of Torah" appears only five more times in the rest of the Hebrew Bible, but always with the definite article "the."[22] The more inclusive (rabbinic) expression "words of Torah" (without the definite article or demonstrative pronoun) *never* appears scripturally or, for that matter, in any pre-rabbinic Jewish text (e.g., the Dead Sea Scrolls). By contrast, the expression appears 13 times in the Mishnah, 15 in the Tosefta, and 190 times in the tannaitic midrashim, in the latter predominantly (145/190) in commenting on the book of Deuteronomy.

Returning to our midrash, the parallel expressions of Moses's call to the people to pay close mental and multi-sense attention to his "words of Torah" and God's call to Ezekiel to pay close attention to the envisioned heavenly Temple do not constitute an analogy between equals. Rather, by an argument of *qal vaḥomer* the midrash says that if such multi-sense engagement is divinely demanded with respect to the seemingly solid, stable, and tangible Temple, *how much more* should it be required of the precariously fragile, unstable, and intangible "words of Torah."

The metaphor of "mountains suspended by a hair" demands a brief detour. The phrase appears in only one other tannaitic textual context, that being m. Ḥagigah 1:8 and its related t. Ḥagigah 1:9 and t. ʿErubin 8:23. There it metaphorically denotes a class of laws (e.g., Sabbath laws) with "little Scripture and many laws," meaning that this class of laws has little in Scripture upon which to "lean" (according to the Tosefta). The Sifre Deuteronomy commentary is unique in its

visual aspects of rabbinic textuality, see Rachel Neis, *The Sense of Sight in Rabbinic Culture: Jewish Ways of Seeing in Late Antiquity* (Cambridge: Cambridge University Press, 2013).

[20] On the rabbinic phrase "words of Torah" denoting both biblical and rabbinic oral Torah, see Fraade, *From Tradition to Commentary*, *supra* n. 14, 258 n. 219. See especially Sifre Deut. 306 (ed. Finkelstein, 339): "So too words of Torah are all one, but they comprise *miqrāʾ* (Scripture) and *mišnâ* (oral teaching): *midrāš* (exegesis), *hălākôt* (laws), and *haggādôt* (narratives)." For treatment, see Fraade, *From Tradition to Commentary*, *supra* n. 14, 97.

[21] Deut. 17:19; 27:3; 27:8, 26; 28:58; 29:28; 31:12, 24; 32:46. For the later expression "the Torah," see Neh. 8:18; 2 Chr. 34:14.

[22] Josh. 8:34; 2 Kgs. 23:24; Neh. 8:9, 13; 2 Chr. 34:19.

use of this metaphor to characterize "words of Torah" in their entirety. Should we read the Sifre in light of the Mishnah and Tosefta, as saying that all "words of Torah," that is, all of rabbinic law, are fragile by reason of having "little Scripture and many laws," that is, few scriptural hooks upon which to hang or from which to derive its laws? I would prefer not to do so, but to read the expression in Sifre Deuteronomy in its own right, thereby preserving the radical ambiguity of its reason for characterizing rabbinic "words of Torah" in their entirety as being "like mountains suspended by a hair." One could imagine other reasons for this fragility besides the abundance of rabbinic laws with respect to their meager scriptural bases, for example, the difficulty of committing such a large corpus of laws and cacophonous legal debate to memory and oral recitation, and hence the danger of their being lost.[23] This would link, as we shall see, the two parts of the midrash to one another. In any case, the *qal vaḥomer* argument is ironic, since at the time the midrash was composed, the physical Temple (but not its heavenly prototype) had long been destroyed, while the unstable "words of Torah" had survived, perhaps thanks to the multi-sense attention lavished upon them by their midrashic tradents over the generations.

V PART 2

As radical as is this self-admission of comprehensive rabbinic legal fragility, the midrash's comment to the second half of the biblical verse is even more radically honest, and potentially subversive. The end of the passage, as we shall see, is

[23] This is a fear frequently expressed in tannaitic texts, including in Sifre Deut. See Shlomo Naeh, "'Omanut ha-zikkaron: mivnim shel zikkaron ve-tavniyot shel tekst be-sifrut ḥazal," in *Meḥqerei Talmud III: Talmudic Studies Dedicated to the Memory of Professor Ephraim E. Urbach*, eds. Yaakov Sussmann and David Rosenthal (Jerusalem: Magnes, 2005), 543–89; Fraade, *From Tradition to Commentary*, *supra* n. 14, 105–19 (on Sifre Deut. §48); Marc Hirshman, *The Stabilization of Rabbinic Culture 100 C.E.–350 C.E.: Texts on Education and Their Late Antique Context* (Oxford: Oxford University Press, 2009), 31–48 ("Sifre Deuteronomy: The Precariousness of Oral Torah"). For the view that the fear here is one of loss of memory, especially of the Oral Torah, see the commentary to the Sifre by David Pardo (1719–92). On the textual reading, "like mountains suspended by a hair," see the excellent discussion by Michal Bar-Asher Siegal, "Mountains Hanging by a Strand? Re-Reading Mishnah Ḥagigah 1:8," *Journal of Ancient Judaism* 4 (2013): 235–56; "מיכל בר-אשר סיגל, "לפשר הביטוי 'כהררים התלויים בשערה' (משנה, חגיגה א, ח)", *Leshonenu* 76.1-2 (5774/2004): 137–48, whose argument for replacing the word "mountains" (*hararim*) with one that denotes "dry desert bushes" (*ḥararim*) is more relevant to the Mishnah and Tosefta than to the Sifre (where there are no manuscript variants to *hararim*), and in any case would not change the meaning of the passage for my present argument. The Hebrew word used here for the plural "mountains" (*hararim*; construct form, *harerei*) is found both in Scripture (twelve times) and in tannaitic texts (sixteen times). For the former, see Num. 23:7; Deut. 8:9; 33:15; Jer. 17:3; Hab. 3:6; Ps 30:8; 36:7; 50:10; 76:5; 87:1; 133:3; Song. 4:8. For the latter (in addition to Sifre Deut. §335; m. Ḥag.. 1:8; t. Ḥag. 1:9; and t. Erub. 8:23), see Sifre Deut. §353 (ed. Finkelstein, 414.1–2; five times); Midrash Tana'im Deut. 33:15 (ed. Hoffman, 217; three times); Mek. R. Ishmael Amalek 1 (ed. Horovitz-Rabin, 177.1); Mek. R. Shim'on bar Yoḥai Exod. 17:8 (ed. Epstein-Melamed, 119.22); Sifra Mek. Demilu'im 37 (ed. Weiss, 46a.3); Sifre Num. §161 (ed. Horovitz, 223.7). The frightening image of a mountain (Sinai) cut off and suspended in the air, can be found in the Mekhilta of R. Ishmael Baḥodesh 3 (ed. Horovitz-Rabin, 214.17, with note).

particularly difficult, and likely corrupt, in the opinion of several commentators, here following MS London:[24]

"אשר תצום [את בניכם לשמר]": אמר להם, "צריך אני להחזיק טובה שתקיימו את התורה אחרי. אף אתם צריכין (אתם) להחזיק טובה לבניכם שיקיימו את התורה אחריכם." מעשה שבא רבינו מלדקיא ונכנס רבי יוסי ברבי יהודה ורבי אלעזר בן יהודה וישבו לפניו. אמר להן, "קרבו לכ[א]ן וקרבו לכ[א]ן. צריך אני להחזיק לכם טובה שתקיימו את התורה אחרי. אף אתם צריכין להחזיק טובה לבניכם ש(ת)[י]קיימו את התורה אחריכם." אילו אין משה גדול הוא ואילו אחר וקיבלנו תורתו לא הייתה תורתו שוה [כלום] על אחת כמה (שהיו רצים)[25] וכמה. לכך נאמר, "אשר תצום [את בניכם לשמר]."

"Enjoin them upon your children to keep" (Deuteronomy 32:46b): He (Moses) said to them: "I should be grateful[26] if you would maintain the Torah after me (=my death). Similarly, you should be grateful to your children if they would maintain the Torah after you." It once happened that when our Rabbi [Judah the Patriarch] came from Laodicea (in Asia Minor), Rabbi Jose the son of Rabbi Judah [bar Ilai] and Rabbi Eleazar the son of Judah[27] entered and sat before him. He said to them: "Come close! Come close! I should be grateful to you if you would maintain the Torah after me. Similarly, you should be grateful to your children if they would maintain the Torah after you."[28] Had Moses not been great, or had he been

[24] MS London 341, with minor adjustments. See above, n. 17. This manuscript is, by and large, consistent with MS Berlin 151, *Yalquṭ Shimʿoni*, the First Printing (Venice, 1546), *Liqutei Aggadot Sifre* (MS Oxford 937, photocopies of which were provided to me by Yonatan Sagiv), being French-Ashkenazi-Italian in provenance. For those noting that the text at the end of the passage, in all its attestations, is corrupt, see the commentaries ad loc. of Eliezer Naḥum (ca. 1660–1746) (מגומגם ["confused"]), David Pardo (מגומגם מאד ["very confused"]), and Louis Finkelstein (1895–1991) (המעתיקים שבשו את כל המאמר ["the copyists ruined the whole passage"]).

[25] The words within parentheses are a scribal error, and are marked as such by the scribe. This is presumably an error of *homoioteleuton*, since the words שהיו רצים appear in the Sifre's next comment (§336, ed. Finkelstein, 386 line 4), also in conjunction with the expression, על אחת כמה וכמה. My thanks to Yonatan Sagiv for pointing this out.

[26] Literally, "I need to give you credit." Compare m. ʿAbot 2:8; 6:6. For "be grateful," see Marcus Jastrow, *A Dictionary of the Targumin, the Talmud Bavli and Jerushalmi, and the Midrashic Literature* (New York: Choreb, 1926), 444b; Eliezer ben Yehuda, *A Complete Dictionay of Ancient and Modern Hebrew*, vol. 3 (Jerusalem: Makor, 1980), 1491b (Hebrew), citing our Sifre passage. See also Rashi to Num. 25:12, cited by *Aruch Hashalem*, ed. Alexander Kahut, vol. 3, 361–62, under the entry "חזק"and the sub-entry :"החזיק טוב" "את בריתי שלום'. שתהא לו לברית שלום. כאדם המחזיק טובה וחנות למי שעושה עמו טובה אף כאן פירש לו הקב"ה שלומותיו." ("'My covenant of peace': It should be for him a covenant of peace. Just as a person is grateful and gracious to one who does him a favor, so here the Holy One, Blesed Be He, assured him of his peace"). Finally, see Z. Ben-Ḥayyim, תיבת מרקה *[Tibåt Mårqe]: A Collection of Samaritan Midrashim* (Jerusalem: The Israel Academy of Sciences and Humanities, 1988), 58 (n. 2 to n. 15), for החזיק טובה as the equivalent of Aramaic אחסן טבו. My thanks to Berachyahu Lifshitz for having brought the last to my attention.

[27] These are not otherwise known to have been students of Rabbi Judah the Patriarch. See Ofra Meir, *Rabbi Judah the Patriarch: Palestinian and Babylonian Portrait of a Leader* (Tel-Aviv: Hakibbutz Hameuchad, 1999), 137–38 (Hebrew). For variant names, see Finkelstein's critical apparatus ad loc.

[28] I take what follows not to be the "words" of Rabbi Judah the Patriarch, but of the anonymous midrashist or redactor.

someone else,[29] and had we received his Torah,[30] would it not have been worth [a thing]?[31] How much more so![32] Therefore it says, "Enjoin them [upon your children to keep]."[33]

Before further unpacking this midrash, it should be noted that a different, shorter, more easily rendered strand of this midrashic tradition, especially the lines beginning with "Had Moses not been great," appears to have been preserved in a Byzantine-Yemenite tradition, as evidenced in *Midrash Ha-Gadol* and *Midrash Leqaḥ Ṭov*, here citing from the former:[34]

או אינו אלא משה רבן שלנביאים שאלולי אחרים ש(ת)קיימו את תורתו מה היתה תורתו שווה.

Were it not for Moses, the greatest of the prophets,[35] and had not others maintained his Torah, what would his Torah have been worth?

[29] The text's syntax here (ואילו אחר) is difficult and its meaning unclear. I will return to the word אחר below. I take it to mean that had Moses not been such a great prophet, or had the Torah-giver been someone else (inferior) altogether. But see below, n. 36.

[30] Note the switch here from second-person singular to first-person plural ("we") here. I understand "his Torah" to refer to the Torah of "someone else." and "we" to be the perpetual we of the text's readers/auditors. See below at n. 52.

[31] Compare the expression אינו שוה כלום ("it is not worth a thing"), appearing three times in the Sifra, four times in the Babylonian Talmud, and eleven times in the aggadic midrashim. I take this sentence to be rhetorical, and in disbelief: would not the Torah have had value regardless of its "author"? Note that in the commentary to the Sifre attributed to RaBad ("Pseudo-RaBaD") (ed. Basser, 315), the commentator comments with a single word, בתמיה ("in disbelief").

[32] I understand this enigmatic statement to mean, "How much more so is it to be valued since it was given by none other than the great Moses and maintained, generation to generation, ever since!" My explanatory insertion is necessary to make sense of the text, especially the awkward, "How much more so." For similar understandings, see the eighteenth-century commentary to the Sifre, *Zera' 'avraham* by R. Abraham Yequti'el Zalman Lichtstein, as well as that of R. Moses David Abraham Treves Ashkenazy (1780–1856) in his commentary to the Sifre, *Toledot 'adam*. For additional readings and suggested meanings, see Herbert W. Basser, *Midrashic Interpretations of the Song of Moses* (New York, Frankfort on the Main, Berne: Peter Lang, 1984), 263–65; Herbert W. Basser, *In the Margins of Midrash: Sifre Ha'azinu Texts, Commentaries, and Reflections* (Atlanta: Scholars Press, 1990), 157, 181. Ishay Rosen-Zvi has suggested to me that a rhetorical understanding of "how much more so" to mean that the value of the Torah is in itself and in subsequent generations having received and maintained it, and not in its having originated with Moses. Its value is all the greater ("how much more so") for having been passed down from generation to generation regardless of its originator. Stated differently, "Who wrote the Bible?" is irrelevant to its value as having been continually transmitted and received.

[33] I understand this to mean, "*You* (in each generation) are to enjoin (command) them upon your children," even if they had been originally commanded by someone else, but all the more so since they were commanded by the great Moses.

[34] *Midrash Ha-Gadol* Deut. 32:46 (ed. Fisch, 737); also included in *Midrash Tanna'im* ad loc. (ed. Hoffmann, 205) with minor variants; *Midrash Leqaḥ Ṭov* ad loc. (ed. Buber, 120). The unique relationship between *Midrash Ha-Gadol* and *Midrash Leqaḥ Ṭov* is evidenced by the fact that they alone have the following sentence in the above story of Rabbi Judah the Patriarch: לא זז מקרבן עד שקרבן לפני רגליו ("He [Rabbi] did not cease urging them to come closer until they were as close as his feet"). For a stematic chart showing this textual branch, see Menahem Kahana, "Prolegomena to a New Edition of the Sifre on Numbers" (PhD dissertation, Hebrew University, 1982), 276 (Hebrew).

[35] *Midrash Leqaḥ Ṭov* has גדול העולם ("the greatest in the world").

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Note that instead of the word אחר ("other"), as in MS London and its family of witnesses, which I argued was awkward, we have אחרים ("others"), which could have been abbreviated as 'אחר and subsequently miscopied as אחר, which makes less sense here than אחרים. Thus, hypothetically, a prior un- or less-corrupted text behind both versions could have been, … אילו אין משה גדול הוא ואילו[לא] אחר[ים] קיבלו תורתו ("Had Moses not been so great, and/or had others not received his Torah … "). Interestingly, no witness to this part of the midrash includes both אחר and אחרים, suggesting that this is a differentiating marker between the two main recensions of the text: MS London and company (with אחר, referring to a law-giving leader other than Moses) and *Midrash HaGadol – Midrash Leqaḥ Ṭov* (with אחרים, referring to the successive generations of recipients after Moses).[36] Note also that the *Midrash HaGadol – Midrash Leqaḥ Ṭov* recension lacks the concluding (and awkward in MS London and its allied witnesses) expression על אחת כמה וכמה ("how much more so"), as well as the concluding citation of the lemma, לכך נאמר ("as it is said … "). It is possible that these are editorial accretions added for purposes of stylistic consistency. Although as collections, these midrashic anthologies are considerably later than the Sifre, they may at times preserve texts and traditions that are earlier than the manuscript evidence for the Sifre itself.[37]

Two modern rabbinic scholars have significantly emended the text of the Sifre here, using the printed edition (virtually identical to MS London), but pulling it into accord with the *Midrash Ha-Gadol – Midrash Leqaḥ Ṭov* tradition. Thus, the Gaon R. Elija of Vilna (the GRA) (1720–97), in "his emendations," renders our difficult concluding lines as follows:

משה גדול הוא ואלו לא באו אחרים לא היתה תורתו שוה אנו על אחת כמה וכמה כול.

> Moses was great, but if others had not come (to receive it), his Torah would not have been worth (a thing). How much more is this the case for us!

Similarly (but without acknowledged awareness of the GRA's emendation), Louis Finkelstein renders the end of our midrash as follows:

אילו אין משה גדול ואילולא אחרים קבלו תורה על ידו לא היתה שוה. [אנו] על אחת כמה וכמה. לכך נאמר,"אשר תצום את בניכם".

[36] It has been suggested to me that the word אחר in MS London and its related witnesses be taken in the temporal sense of "after" (as previously in אחרי ["after me"] and אחריכם ["after you"]). This too, however would require emendation: אילו אין משה גדול הוא ואילו אחר (ו)קיבלנו תורתו לא הייתה תורתו שוה [כלום] ("If Moses had not been great, and if after [him] (and) we had received his Torah, would his Torah have not been worth [a thing]?"). Consider as well Deut. Rab. 8:6, commenting on Deut. 30:11–12: "'It is not in the heavens': Moses said to them: So that you should not say another (אחר) Moses will arise and bring us a different (אחרת) Torah from the heavens." My thanks to Berachyahu Lifshitz for bringing this text to me attention.

[37] For this possibility, see Kahana, "Prolegomena," *supra* n. 34, 265 (Hebrew). Note that two of the modern commentators to the Sifre who consider its text to be corrupt (see above, n. 24), David Pardo and Eliezer Naḥum (ed. Kahana, 432), appear to favor the *Midrash Ha-Gadol – Midrash Leqaḥ Ṭov* recension, and paraphrase the Sifre's text accordingly.

With all of Moses's greatness, had no one received his Torah, it would not have been worth [a thing]. How much more is this the case [for us]![38] Therefore it says, "Enjoin them upon your children [to keep]."

Notwithstanding these text-critical challenges at the end of the midrashic passage, and my preference for the *Midrash Ha-Gadol – Midrash Leqaḥ Ṭov* recension, the various versions share some important exegetical features. In order to understand and appreciate them, it is first necessary to recognize an aspect of the biblical verse that might at first have gone unnoticed by the non-midrashist. We might have expected Moses to enjoin his immediate audience to observe the commandments once they had crossed over the Jordan River and entered the land, but without any longer the advantage of his charismatic, prophetic teaching and leadership. However, the biblical verse has Moses enjoin, rather, his audience to command *their children* to observe[39] all of the Torah's commandments, presumably in perpetuity (as would seem to be the implied meaning of verse 47).[40] Thus, in Moses's final days, his public role as commander and teacher in chief is not transmitted so much to future national leaders (e.g., Joshua according to Numbers 27:12–23; Deuteronomy 31:2–8; and 34:8–9; or Ezra according to Nehemiah 8:1–8) as to the succession of parents and future parents in the private setting of the family or home.[41]

Turning to the midrashic comment to the second half of the verse (32:46b), it paraphrases Moses's speech to the people in a strikingly altered form and emotional

[38] The word אנו ("for us") is provided by Finkelstein to make sense of the sentence, but is, as he admits, missing in all manuscripts. As we have seen, the GRA makes the same insertion into the Sifre's text ("How much more is this the case *for us*!"). This expression (including "for us") appears thirty-four times in classical rabbinic literature, twenty-seven of which are in the aggadic midrashim, but this is its only occurrence in the tannaitic corpora. It will be discussed below. Note that in a printed edition of *Yalquṭ Shim'oni* (Jerusalem, 1960), 678, the word עכשיו ("now") is inserted within square brackets where Finkelstein and the GRA insert אנו ("for us"), in either case bringing the midrashic lesson to the present readers of the text.

[39] The Hebrew verb employed here, *lishmor*, is commonly used biblically for keeping commandments or fulfilling obligations. See, for example, Exod. 12:17; 23:15; Deut. 5:1, 12; 29:8. In rabbinic Hebrew, it gains as well the sense of preserving (*leqayyem*) teachings in one's memory. See Fraade, *From Tradition to Commentary*, *supra* n. 14, 258 n. 222.

[40] Note the emphasis on transmission to both one's children and children's children (grandchildren). For a similar emphasis, see Deut. 4:9; 31:13; Exod. 10:2. Since Deut. 34:9 states that the present generation of Israelites "heeded him [Moses], doing as the Lord had commanded Moses," it might be assumed that Moses's was more worried about the next generation, not yet part of his audience, than the present generation. Compare Mek. R. Ishmael Beshallaḥ 1 (ed. Horovitz-Rabin, 80.6–10), commenting on Exod. 13:19: "He [Joseph] made the children of Israel surely swear" that they would carry his bones with them when they left Egypt. The doubling (infinitive absolute) of the verb "swear" in the biblical Hebrew is midrashically interpreted to mean that the Israelites, and Joseph's brothers in particular, not only swore themselves, but legally obligated their children as well under the oath.

[41] For the intellectual/pedagogical preoccupation of Deuteronomy see Tigay, *The JPS Torah Commentary*, *supra* n. 14, xvii–xviii. For other examples, see Deut. 1:5; 4:1, 5, 9; 5:1; 6:7, 20–25; 11:19; 17:18-19; 31:11–13.

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tone. No longer is Moses the authority figure who commands absolute obedience to "all the words of this Teaching (Torah)," but a suppliant who implores the people not only to maintain themselves the "words of Torah" after his impending death, but to beseech their children to do the same. Subtle as the change is, the verb *lishmor* (observe) in the biblical text is replaced by *leqayyem* (to maintain, which rabbinically denotes as well study and memorization) in the midrash.[42] Impotent, as it were, any longer to command, Moses must employ moral persuasion in the hope that the people will both maintain the words of Torah and, perhaps even more importantly, transmit them to the next generation, and for it, implicitly at least, to do the same in turn in perpetuity.

As if to signal, from the advantage of hindsight, that Moses and the successive generations of Israelites succeeded in so fulfilling and transmitting the Torah laws, we are suddenly transported forward in time approximately fourteen hundred years to the study, as it were, of R. Judah the Patriarch, who as purported editor of the Mishnah, the earliest and most consequential digest of rabbinic Torah law, might be (and is) thought of as a latter-day Moses. R. Judah the Patriarch, we may infer, is either toward the end of his life or anticipating it ("after me"). He, we are told, has just returned from a mission of some sort to Laodicea (probably the one on the Lycus), a heavily hellenized Roman provincial city in Asia Minor (modern-day Turkey), with a substantial Jewish (and Christian) population. From the story, we do not know what R. Judah the Patriarch experienced there, but it would seem to have caused him to worry about the present and/or future state of Judaism in a highly hellenized environment. Inviting two students to come close (doubly expressed in some witnesses such as MS London), thereby indicating perhaps intimacy, but also urgency, he says to them, in the words of the midrash, *exactly* what Moses said to the people at the end of his life, some fourteen hundred years earlier. In this context, "children" could mean biological offspring or "students," intellectual offspring, or both.[43] The pathos here is similar to that of Moses in his waning days. With all the learning and authority that R. Judah the Patriarch commands, he cannot successfully command or coerce his students, but can only implore them to fulfill and transmit what he has imparted to them to their children/students, and so on. R. Judah the Patriarch is clearly portrayed here as a latter-day Moses, perhaps also implying a parallel in status between their respective Torahs (Written and Oral), and the fragile nature of both.[44]

The absolute identity of the midrashic words of Moses to those of Rabbi Judah the Patriarch, and the similarity and shared pathos of their situations, might lead us to

[42] See above, n. 39.

[43] See Sifre Deut. §34 (ed. Finkelstein, 61) to Deut. 6:7: "'Impress them upon your children' (וְשִׁנַּנְתָּם לְבָנֶיךָ): These are your students. Similarly, you find that in every place students are called children."

[44] For the dialectical tension between the two, see Yair Furstenberg, "The *Agon* with Moses and Homer: Rabbinic Midrash and the Second Sophistic," in *Homer and the Bible in the Eyes of Ancient Interpreters*, ed. Maren R. Niehoff, Jerusalem Studies in Religion and Culture 16 (Leiden: Brill, 2012), 299–328.

overlook some fundamental differences between them. Moses is *publicly* addressing the whole Israelite people, while Rabbi Judah the Patriarch is *privately* (and intimately) addressing two of his students (their being two allows Rabbi Judah the Patriarch to employ the same second-person plural forms of address as does Moses). There is a shift from a great leader *publicly* enjoining the "corporate" Israel, to a later great teacher who does so *privately* to two individuals (and their children/students). Thus, Moses's message and role, as midrashically construed, has become more individualized (and intimatized) with time, as, presumably, it has become for the "we" of the midrash's presumed audience,[45] who as *autonomous individuals*, may be moved (or not) to compliance by the rhetoric of *mitzvah* as legacy. Both Moses (as midrashically reinvented) and Rabbi Judah the Patriarch seek not just immediate observance of the commandments, but long-term maintenance of "words of Torah," now entrusted to internalizing textual study among small groups of masters and disciples, rather than to mass acceptance of the laws by the people as a whole.[46] Survival of Torah depends as much on its private as public transmission through performance.[47]

Note as well the subtle role reversal of master and students (or "patron" and "clients"). While they come, presumably, with the intent of paying their respects to Rabbi Judah the Patriarch (note the hierarchical language of "they entered and sat before him"), it is he who is now revealed to be dependent on their "favor." The honor that they expect to bestow upon him is now reversed, being no longer an expression of his superior status but of his total dependence upon them to carry forward his teaching.[48]

[45] This occurs in both strands of the tradition. See above, n. 30 for the MS London tradition, and above, n. 38 and below at n. 52, for the *Midrash Ha-Gadol – Midrash Leqaḥ Ṭov* tradition as incorporated by the GRA and Finkelstein in their emendations.

[46] Free choice, but with sharp covenantal consequences either way, is a central theme running through the book of Deuteronomy, but see, in particular, Deut. 11:26–28; 30:15–30. The shift to the more local, intimate, and individualized didactic relation of Judah the Patriarch to his students, might reflect the social reality of the rabbinic "movement" of the time of the Sifre's composition and redaction (second-third century CE), comprised as it was of small master-disciple study circles. See, for example, Shaye J. D. Cohen, "The Rabbi in Second-Century Jewish Society," in *The Cambridge History of Judaism, vol. 3, The Early Roman Period*, eds. W. Horbury, W. D. Davies, and J. Sturdy (Cambridge and New York: Cambridge University Press, 1999), 922–90.

[47] For more on this tension, see Natalie B. Dohrmann, "Can 'Law' Be Private? The Mixed Message of Rabbinic Oral Law," in *Public and Private in Ancient Mediterranean Law and Religion*, ed. Clifford Ando and Jörg Rüpke, Religionsgeschichtliche Versuche und Vorarbeiten 65 (Berlin: De Gruyter, 2015), 187–216.

[48] I am indebted to Ishay Rosen-Zvi for these suggestions. For Rabbi Judah the Patriarch (and his successors) receiving the salutation (*salutatio*) due to a patron, see Aharon Oppenheimer, *Rabbi Judah ha-Nasi* (Jerusalem: The Zalman Shazar Center, 2007), 52–53 (Hebrew). For patronage salutations and gifts in early rabbinic literature, see Mekhilta of R. Shimʿon bar Yoḥai to Exod. 22:24 (ed. Epstein-Melamed, 212). For the "gift economy" and patronage more broadly in the ancient world, see Phebe Lowell Bowditch, *Horace and the Gift Economy of Patronage*, Classics and Contemporary Thought 8 (Berkeley: University of California Press, 2001), esp. 31–63 ("The Gift Economy of Patronage"). For patronage in ancient Jewish societies more broadly, see Seth Schwartz,

The full pathos of Moses's words (and by extension, those of R. Judah the Patriarch) is indicated in the concluding sentence of the midrashic commentary, regardless of which textual strand one prefers to follow. In either case, the critical role of transmission across the generations (whether by children or by students) is emphasized, while the commanding role of Moses (and of R. Judah the Patriarch) is sidelined. Moses's prophetic greatness does not ensure the "maintenance" of Torah teaching, but rather is contingent upon it, that is, upon the reception, fulfillment, and transmission of his words (understood to encompass the totality of rabbinic "words of Torah")[49] by successive generations, not of prophetic leaders (as in the "chain of transmission: in the opening lines of Pirqe ʾAvot), but of teachers and parents able to impress the laws and teachings of his Torah upon their students and children to both observe and transmit. Otherwise, we are told, it is as if Moses's Torah (and, we might infer, Moses himself, and, by extension, R. Judah the Patriarch) would not have been of any worth or consequence.[50]

The midrash, at least as explicitly emended by the GRA and by Finkelstein, and as less boldly asserted by MS London's introduction of "we,"[51] makes one final, gigantic, temporal leap, as it were, this time to the present of the text's auditors, with another argument of *qal vaḥomer* (although not fully tagged as such and absent in the *Midrash Ha-Gadol – Midrash Leqaḥ Ṭov* recension): Just as Moses's (that is, his Torah's) worth, with all of his greatness, was entirely contingent on his ability to impress the responsibility of transmission on the minds and hearts of his successors, how much more is that the case "for us"(*ʾanu*), who, shrink before the greatness of Moses (and by association, before that of R. Judah the Patriarch). Or, as MS London expresses it, the maintenance and transmission of the Torah is contingent on "us" rather than on Moses's prophetic greatness and revelatory authorship. Even had he not been so great, or not been the Torah's commander to begin with, "we" would still have been expected to receive, maintain, and transmit it in perpetuity. How much more so with Moses and his greatness! Nevertheless, the Torah could have been maintained (or not) by "us" without him. Ironically, "we," in effect, are now the equals (at least) of Moses and R. Judah the Patriarch in bearing the weight of the continuity of the chain of transmission. They are as dependent on "us" to maintain their "words of Torah" as "we" are dependent on them for the "words of Torah"'s prophetic and canonical authority. Although not explicitly stated here by the Sifre, "our" inclusion as the latest link in this chain is midrashically effected by the biblical verse's prescient reference in 46a to "this day," as if signaling the longue durée of the perpetual present, in which every successive day is signified by "this day."[52]

Were the Jews a Mediterranean Society? Reciprocity and Solidarity in Ancient Judaism (Princeton: Princeton University Press, 2009).

49 See above, n. 20.

50 See above, n. 31.

51 See above, n. 30.

52 For this exegesis in Sifre Deut, see §33 (ed. Finkelstein, 59), to Deut. 6:6; §41 (ed. Finkelstein, 86), to Deut. 11:13; §58 (ed. Finkelstein, 124), to Deut. 11:32; §153 (ed. Finkelstein, 206-207), to Deut. 17:9 and

VI CONCLUSIONS

In conclusion, let me first address the question of whether the two halves of our midrash constitute a whole, greater than the sum of its parts, even as each can stand perfectly well on its own. Both halves are honest yet radical in emphasizing the precariously fragile, unstable nature of "words of (rabbinic/oral) Torah," especially as transmitted orally through study and memorization. The first does so by comparing "words of Torah" to "mountains suspended by a hair," referring either to their tenuous scriptural warrants (as in the parallel in m. Ḥagigah 1:8), or to the tenuous task of their retention and transmission through memorization, at any moment liable to being severed from their roots by the cutting of their hairline suspensions.[53] The second does so by emphasizing the inter-generational human challenge to observing and transmitting "words of Torah" from teacher to student and parent to child, *without* the ability (already with Moses) of being able to command absolute fidelity.

Not only do the two halves of the midrash share with each other the rhetorical argument of *qal vaḥomer* (but not as explicitly in the second half), but they both do so with irony, reversing the seemingly obvious designation of "heavy" and "light": the Temple is no more sturdy than the fragile "words of Torah," and Moses (and R. Judah the Patriarch by association) is no greater than his successors when it comes to obligating the next generation to observe the commandments. "Our" "words of Torah" are as fragile as were theirs, and "we" are as impotent as were they to command obedience from our children and/or students. In the end, all "we" can do is *implore* them (as were "we") to carry forward the charge, based on a rhetoric, no longer of Sinai-based commandment, but of cross-generational fidelity to legacy.

Thus, in addition to (or between) Cover's rhetorical, mythic vectors of law as social contract (rights) and law as Sinaitic revelation (commandments), we might interpose that of law as legacy, which draws upon and nourishes both, without necessarily negating or superseding either: upon the myth of Sinai for its diachronic, inter-generational transmission of commandments (even without an immediate Commander-in-Chief or Lieutenant Commander), while upon the myth of social contract for its synchronic creation of sympathetic communities. Both can instill and inspire "bonds of solidarity," as Cover terms them, whether vertically or horizontally. But so too can law as historically transcendent legacy, extending both back to Sinai in shared memory and forward through the present of shared community to the next generation (at least) in unassured anticipation and aspiration. Stated differently, Moses retains (at least for now) his greatness, but it remains precariously dependent upon "our" bonds of both collective and individual solidarity with both one another and with his legacy. In that regard, we might compare Edmund Burke's

§345 (ed. Finkelstein, 402), citing Deut. 29:9. See Fraade, *From Tradition to Commentary*, *supra* n. 14, 256 n. 196. By my count, "this day" appears forty-two times in the Book of Deuteronomy. For all of Israel, throughout the generations, having been included in the revelation and obligation at Sinai "this day," see above, n. 3.

[53] See above, n. 23.

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understanding of the inter-generational grounding of law in society. For example, "[The state] becomes a partnership not only between those who are living, but between those who are dead, and those who are to be born."[54]

Circling back to Cover, we can say that a central mythic component of the Jewish legal legacy is the self-understanding of "being commanded." Even the anarchist in Cover would recognize law as commandment and law as legacy (like nomos and narrative) as two dialectical sides of the same coin, both being expressed by the same Hebrew verbal root, *tzivah*. Similarly, we might say (if we had a three-sided coin), that Cover's two foundational myths of law as contract (rights) and law as revelation (commandments) can only be deepened by their integration with law as legacy, which incorporates both rights and obligation.

[54] See Edmund Burke, *Reflections on the Revolution in France* (1890), ed. Frank M. Turner (Rethinking the Western Tradition, New Haven: Yale University Press, 2003), 81–83 (here 82). Burke continues: "But one of the first and most leading principles on which the commonwealth and the laws are consecrated, is lest the temporary possessors and life-renters in it, unmindful of what they have received from their ancestors, or of what is due to their posterity, should act as if they were the entire masters; that they should not think it among their rights to cut off the entail, or commit waste on the inheritance, by destroying at their pleasure the whole original fabric of their society; hazarding to leave to those who come after them a ruin instead of an habitation – and teaching these successors as little to respect their contrivances, as they had themselves respected the institutions of their forefathers. By this unprincipled facility of changing the state as often, and as much, and in as many ways, as there are floating fancies and fashions, the whole chain and continuity of the commonwealth would be broken. No one generation could link with the other. Men would become little better than flies of a summer" (81), or "like mountains suspended by a hair." For a philosophical meditation on the necessary confidence in a "collective afterlife" (and the potential consequences of its termination) for human projects including law, see Samuel Scheffler, *Death and the Afterlife*, with commentaries by Susan Wolf, Harry G Frankfurt, Seana Valentine Shiffrin, and Niko Kolodny, ed. and intro. Niko Kolodny (Oxford: Oxford University Press, 2013), relating to Moses on p. 35. See also above, n. 3.