

## DIN AND DEBATE: SOME DIALECTICAL PATTERNS IN TANNAITIC TEXTS\*

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### Introduction

Shamma Friedman has suggested that “the dialectical terminology (מונחי משא ומתן) of tannaitic literature should be studied directly, and specifically the terminology that belongs not to discussion of biblical exegesis but to discussion among sages concerning their laws, and especially in the Mishnah and the Tosefta. This is an area that has not yet received fundamental treatment.”<sup>1</sup> In this essay I undertake to study a set of technical terms employed in tannaitic literature in connection with the interrogation of a *din*, or logical inference. These terms are found in the Mishnah and in the Tosefta, but also in tannaitic Midrash. Their occurrence in the latter is due in considerable part to the assumption, prevalent especially but not exclusively in the school of R. Akiva, that a verse must convey a teaching that cannot have been reached independently through a *din*. Indeed, one of the most interesting questions surrounding these terms is how they change when they shift from the Mishnah and the Tosefta, where they occur in dialogue between named sages, to tannaitic Midrash, where they typically occur, instead, in anonymous dialectic. Of particular interest, too, are differences between the schools of R. Akiva and R. Ishmael with respect to their usage of these terms.

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<sup>1</sup> Shamma Friedman, *Tosefta Atiqta, Pesah Rishon: Synoptic Parallels of Mishna and Tosefta Analyzed with a Methodological Introduction* (Ramat-Gan: Bar-Ilan University Press, 2002), 129 (Heb.).

I begin in section 1 with an abstract map of the dialectical permutations that occur in anonymous interrogation of a *din* in Akivan Midrash. Section 2 provides concrete examples of such permutations, and identifies distinctive aspects of the distribution of technical terms therein. In section 3 I attempt to account for this distribution, in part by comparing the usage of the technical terms in anonymous dialectic and in dialectic between named rabbis. Section 4 compares Akivan usage with Ishmaelian. After a summary conclusion, two appendices address a curious dialectical pattern that occurs in the Babylonian Talmud, and the homiletical usage of expressions of wonderment and of denials thereof.

### 1. Dialectical Permutations in Anonymous Akivan Midrash

Suppose that the verse will teach  $x$ . The *din* that sets the stage for the verse's teaching may support either  $-x$  or  $x$ . Cases in which the *din* supports  $-x$  constitute category 1, and cases in which it supports  $x$ , category 2. In category 1, the ultimate aim of the dialectic that precedes the introduction of the verse is to uphold the *din*, and thus establish the verse's necessity as a refutation of the *din*. The dialectic in category 2 is directed, instead, at refuting the *din*, and thus establishing the viability of  $-x$ , and, in turn, the necessity for the verse.

Within category 1, three dialectical paths are available, of which only the last two are of immediate interest. The first, which we bracket out here, introduces the verse immediately after the *din*. In both the second and the third dialectical path, the *din* is challenged (to establish  $x$ ), then buttressed (to establish  $-x$ ). Exchanges of challenge and response may, in principle, recur *ad infinitum*, but they end with a viable *din*, and thus with the possibility of  $-x$ . To appreciate the difference between the second and third paths, we must take note of two distinct ways of challenging a *din*. The first is internal to the *din*. Thus, if the *din* attempts to apply a rule from situation  $A$  to situation  $B$  by arguing that, in one relevant respect,  $A$  is similar to (or more stringent than)  $B$ , then the first method of refutation is to argue that, in another relevant respect,  $A$  is different from (or less stringent than)  $B$ . The second method of refutation is external to the *din*. It introduces a third case  $C$ , where the rule in question does not apply, and argues that  $C$  is at least as similar to  $B$  as  $A$  is to  $B$ , hence the rule should not apply to  $B$ , just as it does not apply to  $C$ . The general term in tannaitic literature for a challenge to a *din* is *teshuvah* ("response").<sup>2</sup> For

<sup>2</sup> See, e.g., Sifra *Nedava* 9:1 (Weiss ed., 9c); *Hova* 1:2 (Weiss ed., 16c).

reasons that will become clear below, we shall refer to the first sort of *teshuvah* as a *to'mar* (“you will say”) response, or simply a say-argument.<sup>3</sup> The second we shall call a *yokiah* (“prove”) response, or a prove-argument.<sup>4</sup> Each of the two arguments, in addition to responding to an original *din*, can also respond to the other.

Let us return now to the second and third dialectical paths within category 1. The second refutes the *din* with a say-argument, and buttresses it with a prove-argument. The third refutes it with a prove-argument, and buttresses it with a say-argument. In the second path, which we shall call category 1a, the final stage before the proof-text, i.e., the stage that establishes  $-x$ , is a prove-argument. In the third path, which we shall call category 1b, the final stage before the proof-text is a say-argument.

In category 2, the *din* argues for  $x$ , and the dialectic that (necessarily) follows aims to refute it. As in category 1, the dialectic can begin either with a say-argument (category 2a), or with a prove-argument (category 2b), which establishes  $-x$ . The dialectic can end after this first argument, and turn to the verse, which teaches  $x$ . Alternatively, the dialectic can continue with paired arguments, the first of which rebuts the challenge and thus restores the integrity of the original *din*, and so of  $x$ , and the second of which responds to the rebuttal, thus reestablishing  $-x$ . In category 2a, because the original refutation of the *din* comes through a say-argument, the pair that (optionally) follows consists of a prove-argument, followed by a say-argument, while in category 2b, where the dialectic begins with a prove-argument, the pair consists of a say-argument, followed by a prove-argument. In category 2a, as in category 1b, the final stage before the proof-text is a say-argument, while the dialectic in category 2b ends, as in category 1a, with a prove-argument. The following chart summarizes the four permutations:

<sup>3</sup> In some passages in the Bavli, the say-argument is characterized as a challenge *מַעֲיָקָרָא דְּדִינָא* “from the root of the *din*.” For sources and analysis see Appendix 1, and see also the next note.

<sup>4</sup> Cf. the observation of R. Yom Tov ben Avraham Asevilli (Ritba) *ad* b. Hūl. 114a: “Take this rule in hand: Whenever we ask, ‘what holds of so-and-so’ (מָה לְפָלוֹנִי, the standard opening of say-arguments in the Bavli), this is a challenge from the root of the *din*, and whenever we ask, ‘so-and-so will prove’ (פְּלוֹנִי יוכיח), this is a challenge from the end of the *din*.” While the phrase “the end of the *din*” (סוּפָא דְּדִינָא) is found elsewhere in the Bavli, the technical usage evidently represents the Ritba’s own coinage, on the pattern of *מַעֲיָקָרָא דְּדִינָא*.

	Category 1: <i>Din</i> establishes $\neg x$	Category 2: <i>Din</i> establishes $x$
Subcategory a: initial refutation through say- argument	<i>din</i> ; say-argument; prove-argument; [say- argument; prove- argument] ( <b>category 1a</b> )	<i>din</i> ; say-argument; [prove-argument; say-argument] ( <b>category 2a</b> )
Subcategory b: initial refutation through prove- argument	<i>din</i> ; prove-argument; say-argument; [prove- argument; say-argument] ( <b>category 1b</b> )	<i>din</i> ; prove-argument; [say-argument; prove-argument] ( <b>category 2b</b> )

## 2. Patterns in Akivan Technical Terminology

The following dialectic (Sifra *Nedava* 9:2 [Weiss ed., 9d]) represents a typical instance of category 1a in the school of R. Akiva.<sup>5</sup>

### Case 1

1.	“His offering” (Lev 2:1): The individual brings a freewill meal offering; partners do not bring a freewill meal offering.	קורבנו היחיד מיביא מנחה נדבה אין השותפים מביאים מנחה נדבה
2.	Is it not a <i>din</i> ? The animal whole offering comes as a vow and as a freewill offering, and the meal offering comes as a vow and as a freewill offering. Just as the animal whole offering, which comes as a vow and as a freewill offering, comes as a freewill offering of two, so the meal offering, which comes as a vow and as a freewill offering, should come as a freewill offering of two.	הלא דין הוא עולת בהמה באה בנדר ובנדבה ומנחה באה בנדר ובנדבה מה עולת בהמה שהיא באה בנדר ובנדבה הרי היא באה נדבת שנים אף מנחה שהיא באה בנדר ובנדבה תבוא נדבת שנים

<sup>5</sup> The text for this and all other quotations of the Sifra comes from MS Vatican 66 (Assemani). Given that most of the cases to be considered below come from the Sifra, and given our interest in the relationship between attributed and anonymous usage, the results of this study should be considered together with Yonatan Sagiv’s recent dissertation (“Studies in Early Rabbinic Hermeneutics as Reflected in Selected Chapters in the Sifra” [PhD thesis; Hebrew University, 2009] [Heb.]), which devotes close attention to the relationship between the attributed and anonymous material in the Sifra.

3.	No. If you say concerning the animal whole offering, which comes as a freewill offering of the congregation, will you say concerning the meal offering, which does not come as a freewill offering of the congregation?	לא אם אמרתה בעולת בהמה שהיא באה נדבת ציבור תאמר במנחה שאינה באה נדבת ציבור
4.	The bird whole offering will prove, for it does not come as a freewill offering of the congregation, but it comes as a freewill offering of two. So you should not wonder about the meal offering, that even though it does not come as a freewill offering of the congregation, it should come as a freewill offering of two.	עולת העוף תוכיח שאינה באה נדבת צבור ובאה נדבת שניים אף אתה אל תתמה על המנחה שאף על פי שאינה באה נדבת ציבור תבוא נדבת שנים
5.	Hence it says, “his offering”: the individual brings a freewill meal offering; partners do not bring a freewill meal offering.	תל' לו' קורבנו היחיד מיביא מנחה נדבה אין השותפים מביאים מנחה נדבה

From the singular pronominal suffix “his” in Lev 2:1, the Sifra deduces that only an individual, not two partners, can make a freewill meal offering (stage 1). This deduction is challenged: the logical inference (*din*) from the case of the animal whole-offering is that partners *can* make a freewill meal offering (stage 2). The dialectic might have ended at this point, because the *din* explains the necessity for the verse’s teaching. But the Sifra chooses to interrogate the *din*. Stage 3 rebuts the *din* with a say-argument, and stage 4 defends it with a prove-argument. Having thus preserved the viability of the *din*, the Sifra (stage 5) introduces the verse’s teaching again as a refutation of the *din*.

Consider now an instance of the dialectical path that we have called category 1b, again from the school of R. Akiva (Sifra *Nedava* 7:1 [Weiss ed., 8b]).

**Case 2**

1.	“His offering” (Lev 1:14): the individual brings a bird; the congregation does not bring a bird.	קורבנו היחיד מיביא עוף אין הציבור מיביא עוף
2.	Is it not a <i>din</i> ? The animal whole offering comes as a vow and as a freewill offering, and the bird whole offering comes as a vow and as a freewill offering. Just as the animal whole offering, which comes as a vow and as a freewill offering, comes as a freewill offering of the congregation, so the bird whole offering, which comes as a vow and as a freewill offering, should come as a freewill offering of the congregation.	הלא דין הוא עולת בהמה באה בנדר ונדבה ועולת העוף באה בנדר ונדבה מה עולת בהמה שהיא באה בנדר ובנדבה הרי היא באה נידבת צבור אף עולת העוף שהיא באה בנדר ונדבה תבוא נדבת ציבור
3.	The meal offering will prove, for it comes as a vow and as a freewill offering, but it does not come as a freewill offering of the congregation.	מנחה תוכיח שהיא באה בנדר ונדבה ואינה באה נדבת ציבור
4.	No. If you say concerning the meal offering, which does not come as a freewill offering of two, will you say concerning the bird whole offering, which does come as a freewill offering of two?	לא אם אמרתה במנחה שאינה באה נדבת שנים תאמר בעולת העוף שהיא באה נדבת שניים
5.	The peace offering will prove, for it comes as a freewill offering of two, but it does not come as a freewill offering of a congregation.	שלמים יוכיחו שהן באין נדבת שנים ואינן באים נדבת ציבור

6.	Though the peace offering does not come as a freewill offering of a congregation, it is limited with respect to being whole and male. <sup>6</sup> Will you say that the bird should not come as a freewill offering of the congregation, when it is not limited with respect to being whole and male? Since it is not limited with respect to being whole and male, it should come as a whole offering of the congregation.	מה לשלמים שאינן באים נידב(ו)ת ציבור שהרי ניתמעטו בתמות ובזיכרות תאמר שלא יבוא עוף נדבת ציבור שהרי ניתרבה בתמות ובזיכרות הואיל וניתרבה בתמות ובזיכרות יבוא נידבת ציבור
7.	Hence it says, “his offering”: The individual brings a bird; the congregation does not bring a bird.	תל' לו' קורבנו היחיד מיביא עוף אין הציבור מיביא עוף

From the singular pronominal suffix “his” in Lev 1:14, the Sifra deduces that only an individual, not the congregation, can make a freewill bird whole offering (stage 1). Stage 2 introduces a *din* that suggests otherwise. This time the attack on the *din* begins with a prove-argument (stage 3), which is parried by a say-argument (stage 4). The dialectic repeats, with another prove-argument (stage 5), and, in response, another say-argument (stage 6). This last say-argument defends the *din*, and thus yields to the proof-text (stage 7), which refutes the *din*.

A comparison between the say-argument of stage 4 and that of stage 6 reveals that only in stage 6 is the implication of the say-argument clarified with an addendum: “Since it is not limited, etc.” The absence of such an addendum at stage 4 confirms that, from a

<sup>6</sup> That is, only unblemished (“whole”), male animals may serve as peace offerings, whereas bird offerings may be blemished, and female. In fact, as Louis Finkelstein notes (*Sifra on Leviticus* [5 vol.; New York: Jewish Theological Seminary of America, 1983], 2.57; 4.53), peace offerings may be female; only whole offerings are obligatorily male. Finkelstein suggests that “male” enters as part of the formula “with respect to being whole and male,” even though the peace offering need only be whole, not male. Alternatively, but to my mind less likely, Finkelstein reads “male” to exclude not female animals, but animals of ambiguous sex.



logical standpoint, it is superfluous. In case 1, at stage 3, which also features a say-argument, the addendum is likewise absent. As the “since” clause occurs as a non-obligatory addendum to the say-argument, so the prove-argument in case 1, at stage 4, is extended by a rhetorical conclusion that restates its conclusion: “So you should not wonder about the floor offering, etc.” This addendum does not occur in either of the prove-arguments in case 2, at stages 3 and 5. The distribution of both addenda, which we shall call the since-addendum and the wonder-addendum, is clear: they only occur when the argument to which they attach is in final position, immediately prior to the proof-text. Hence, the since-addendum can occur only in dialectical paths of the categories 1b and 2a, and the wonder-addendum only in those of categories 1a and 2b.

Not surprisingly, when, as on rare instances of category 1a, two prove-arguments occur, only the second contains the wonder-addendum. The following case (Sifra *Nedava* 3:2 [Weiss ed., 5a) is illustrative.

### Case 3

1.	“Your offering” (Lev 1:2): This teaches that it (the animal whole offering) comes as a freewill offering of the community.	קרבנכם מלמד שהיא באה נדבת ציבור
2.	But is it (the inverse) not a <i>din</i> ? The meal offering comes as a vow and as a freewill offering, and the animal whole offering comes as a vow and as a freewill offering. Just as the meal offering, which comes as a vow and as a freewill offering, does not come as a freewill offering of the congregation, so the animal whole offering, which comes as a vow and as a freewill offering, should not come as a freewill offering of the congregation.	והלא דין הוא מנחה באה בנדר ונדבה ועולת בהמה באה בנדר ונדבה מה מנחה שהיא באה בנדר ונדבה אינה באה נדבת ציבור אף עולת בהמה שהיא באה בנדר ונדבה לא תבא נדבת ציבור
3.	No. If you say concerning the meal offering, which does not come as a freewill offering of two, will you say concerning the animal whole offering, which does come as a freewill offering of two?	לא אם אמרת במנחה שאינה באה נדבת שנים תאמר בעולת בהמה שהיא באה נדבת שנים



4.	The bird whole offering will prove, for it comes as a freewill offering of two but it does not come as a freewill offering of the community.	עולת העוף תוכיח שהיא באה נדבת שנים ואינה באה נדבת ציבור
5.	No. If you say of the bird whole offering, which does not come in fulfillment of a community obligation, will you say concerning the animal whole offering, which does come in fulfillment of a community obligation?	לא אם אמרת בעולת העוף שאינה באה חובת ציבור תאמר בעולת בהמה שהיא באה חובת ציבור
6.	The peace offering will prove, for it comes in fulfillment of an obligation of the community but it does not come as a freewill offering of the community. So you should not wonder about the animal whole offering, that even though it comes in fulfillment of an obligation of the community, it should not come as a freewill offering of the community.	שלמים יוכיחו שהן באין חובת ציבור ואינן באין נדבת ציבור אף אתה אל תתמה על עולת בהמה שאף על פי שהיא באה חובת ציבור לא תבוא נדבת צבור
7.	Hence it says, “your offering”: This teaches that it comes as a freewill offering of the community.	תל' לו' קרבנכם מלמ' שהיא באה נדבת ציבור

The *din* reaches a conclusion opposite to that which the verse will teach. The aim of the dialectic that follows is to uphold the *din*. The Sifra first challenges the *din* with a say-argument (stage 3), then rebuts the latter with a prove-argument (stage 4), then introduces another challenge, and the response thereto, in stages 5 and 6. Of the two prove-arguments, in stages 4 and 6, only the second, immediately prior to the prooftext (in stage 7), includes the wonder-addendum. In neither of the two say-arguments (stages 3 and 5) does the since-addendum occur, because neither represents the final stage of the dialectic.<sup>7</sup> A review of all of the say-arguments and prove-arguments

<sup>7</sup> I know of only one case in which the since-addendum occurs in non-final position, and only one in which the wonder-addendum does so. The latter is Sifre Zuta Numbers *ad* Num 6:3, discussed below. The former occurs in an alternative dialectic (דין אחר) that immediately follows case 3 above (Sifra

in the first two sections of the Sifra suggests that the inverse of the addenda constraint also holds: if a say-argument or prove-argument is not supplemented by its respective addendum, then it does not occur in final (pre-proof-text) position.

Before reflecting on the significance of the restriction of the addenda to dialectic-final position, let us take note of the distribution of the addenda in the tannaitic corpus. Both occur most commonly, by far, in Akivan sections of the Sifra. Scattered occurrences of one or the other addendum, or both, in the Mishnah, and in the other works of Akivan Midrash (Mek. R. Shimon; Sifre Zuta Numbers; Sifre Deuteronomy) confirm that the addenda are characteristically Akivan.<sup>8</sup> Notably, however, long, anonymous dialectical chains occur only in the Sifra, not in other works of Akivan Midrash.<sup>9</sup> The Akivan character of the addenda finds additional confirmation in the occurrence in exegetical works from the school of R. Ishmael of structurally equivalent addenda that differ terminologically and distributionally from their Akivan counterparts. Most importantly, for the current purposes, they occur throughout the dialectic, not specifically in final position. We will return to these Ishmaelian terms in section four.

Within the school of R. Akiva, the only significant variation occurs in Sifre Zuta Numbers, which includes three instances of the wonder-

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*Nedava* 3:2 [Weiss ed., 5a]). In this dialectic, a since-addendum attaches to a say-argument in the penultimate stage. A prove-argument follows, supplemented by a wonder-addendum, that leads into the proof-text. But this case (for which Vatican 66 is not available) is exceptional in another respect, and possibly corrupt, for it involves two consecutive say-arguments.

<sup>8</sup> For the Akivan character of the wonder-addendum see Menahem I. Kahana, *Sifre on Numbers: An Annotated Edition* (3 vols.; Jerusalem: Hebrew University Magnes Press, 2011), 2.260 n. 3 (Heb.). “You should not wonder” (אל תתמה) occurs in another dialectical pattern closely related to category 1a, and it, too, is specific to the school of R. Akiva. In this pattern, a יכול clause introduces a hypothesis that the verse will refute, or, to use the terminology introduced above, it establishes  $-x$ . The next sentence, beginning with “You should not wonder,” buttresses the hypothesis by identifying a different case in which it holds. The verse then refutes  $-x$ . See, e.g., Mek. R. Sh. *ad* Ex 12:21 (Horovitz-Rabin ed., 25); Sifra *Hovah* 13:2 (Weiss ed., 28b); Sifre Deut. 110 (Finkelstein ed., 171).

<sup>9</sup> Thus, of the four dialectical paths, only one, category 2b, occurs in Sifre Deuteronomy, and each of the four instances involves the minimal pattern: *din*; prove-argument. See Sifre Deut. 76 (*bis*); 268 (*bis*) (Finkelstein ed., 141-42, 287). On Sifre Deut. 268 see Appendix 1.

addendum. Of these, two (*ad* Num 19:4 and 19:11 [Horovitz ed., 302, 307]) involve debate between named parties, a permutation that we will take up below, but one (*ad* Num 6:3 [Horovitz ed., 240]) involves anonymous dialectic. It differs from the cases that we have examined above in two respects. First, וכן occurs instead of אף.<sup>10</sup> Second, and for our purposes more importantly, Sifre Zuta Num. *ad* Num 6:3 represents the only case of anonymous dialectic in which the wonder-appendix occurs before the ultimate dialectical stage, in particular, in the penultimate one. That this exceptional usage pairs with a distinctive terminological form and occurs in a work that in many other ways sets itself apart from the Akivan mainstream confirms the general rule.<sup>11</sup>

In works of the school of R. Ishmael, the wonder-addendum occurs no more than twice, and the since-addendum, in two or possibly three pericopes. Of the five instances, four are from Sifre Numbers, and the fifth appears to be connected to it as well.<sup>12</sup> Below we will take note

<sup>10</sup> Kahana, *Sifre*, 2.260 n. 3, takes note of this difference. וכן also occurs in the instance *ad* Num 19:11. On the interchange of כן and אף in other contexts see Aharon Mirsky, *The Origin of Forms of Early Hebrew Poetry* (Jerusalem: Magnes Press, 1985), 11-34 (Heb.).

<sup>11</sup> Intriguingly, Sifre Zuta Num. *ad* Num 6:3 distinguishes itself in another respect: it appears to represent an earlier form of the dialectic that occurs in the parallel Sifre Numbers passage, Sifre Num. 23 (Horovitz ed., 26-27). See Kahana, *Sifre*, 2.203-08, and especially 206 and 208. The dependence of the Sifre Num. 23 passage on the Akivan parallel is advanced on independent grounds in Tzvi Novick, *What is Good, and What God Demands: Normative Structures in Tannaitic Literature* (Lieden: Brill, 2010), 27, and see also the next note. The wonder-addendum in Sifra Hovah 3:1 (Weiss ed., 17c) occurs in the last stage of the dialectic, but in this case the dialectic ends with x, so that another line of reasoning must be developed in order to justify the necessity for the verse.

<sup>12</sup> The wonder-addendum occurs in Sifre Num. 29 (Horovitz ed., 35) and Midr. Tannaim *ad* Deut 14:22 (Hoffmann ed., 76). As Kahana (*Sifre*, 2.260 n. 3) observes, the latter may trace to Mek. Deuteronomy. Significantly, however, the exegesis centers on a verse from Numbers (Num 18:26). The since-addendum occurs in Sifre Num. 4, 28 (Horovitz ed., 7, 34). In some witnesses, most importantly Oxford 151, it also occurs in Sifre Num 23 (Horovitz ed., 26), a pericope whose apparent dependence on an Akivan parallel we observed in the previous note. But in some reliable witnesses, especially a Genizah fragment (RNL Yevr.-Arab. II A 269), the standard Ishmaelian terminology occurs instead. See Kahana, *Sifre*, 1.61. Also noteworthy, in this connection, is t. Yom Tov 1:7 (Lieberman ed., 2.280-81) = t. Hul. 6:11 (Zuckermann ed., 508). The dialectic therein includes the formula הן יוכיחו ל-, which is otherwise,

of other affinities between Sifre Numbers and the school of R. Akiva (first and foremost, the Sifra) in connection with the dialectical patterns under discussion.

### 3. Is There a Class in This Text?

The distinctive distribution of the addenda in anonymous dialectic affords us insight into the rhetorical character of tannaitic, or specifically Akivan, Midrash. As Mordechai Mishor and others have observed, while the Mishnah and Akivan Midrash trace to the same circles, the anonymous voice of the Midrash is considerably more colloquial than that of the Mishnah, which speaks instead in a more formal or “official” register.<sup>13</sup> But the Midrashic texts do not, of course, represent verbal transcripts. They adopt but also transform the speech patterns of the academy. This section considers how, and to what end, they do so, by comparing the usage of the wonder-addendum in anonymous dialectic to its usage in dialectic involving named parties.

Only once in Akivan Midrash does a named rabbi construct a dialectic of the sort surveyed in the previous section, where the dialectic is a handmaiden to the teaching of a verse: R. Eliezer, in Sifre Deut. 76 (Finkelstein ed., 142). In three cases in the Mishnah and the Tosefta (m. Pesah . 6:2; t. Pesah . 4:5-6 [Lieberman ed., 161-62]; and m. Zebah . 7:4, a longer version of which occurs in t. Zebah . 7:16-20 [Zuckerman ed., 490]), the addenda occur in exchanges between named parties, R. Eliezer and R. Joshua. In these cases, the question is not how to justify the necessity of a verse, but the very law itself. In t. Zebah . 7:16-20, for example, the two rabbis debate about whether a certain bird whole offering is subject to the law of trespass. R. Eliezer defends his view with a *din*. R. Joshua challenges it with a say-argument, to which R. Eliezer responds with a prove-argument. R. Joshua advances another say-argument, and R. Eliezer parries with another prove-argument. There the argument ends. Both prove-arguments are accompanied by the wonder-addendum.<sup>14</sup> That the

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as we will see below, specific to Sifre Numbers, but it also includes the since-addendum.

<sup>13</sup> Mordechai Mishor, “The Tense System in Tannaitic Hebrew,” (unpublished PhD; Hebrew University, 1983), 277-79 and *passim* (Heb.). See also Tzvi Novick, “The ‘For I Say’ Presumption: A Study in Early Rabbinic Legal Rhetoric,” *JJS* 61 (2010), 48-61; *idem*, “Crafting Legal Language: Four or Five in the Mishnah and the Tosefta,” *JQR* 98 (2008), 289-304.

<sup>14</sup> The addenda occur both in Zuckerman’s edition and in MS Vienna.

wonder-addendum does not occur in connection with the last prove-argument alone stands to reason. No dialectic-final restriction can apply in an actual dialectic between two parties, or in a dialectic that purports to verisimilitude, where the endpoint is unknown.<sup>15</sup>

In restricting the addenda to the ultimate stage of the dialectic, the anonymous Akivan editor appears to transform them into something like punctuation or italics. They inform the implicit audience (or class) that the argumentation is coming to a close: that a decisive argument in support of  $-x$  has been articulated, and that a verse teaching  $x$  will immediately follow. Conversely, the absence of an addendum in every earlier stage of the argument signals to the audience to expect a refutation, and perhaps even encourages the audience to search for one. The editor thus channels the rhetorical force of the addenda toward pedagogical ends.

As they are employed by the Akivan editor, the addenda might be compared to free indirect discourse, the narratological mode in which the narrator of a story speaks from the perspective of a character, as in, for example, the sentence: *When would he get his own chance?* While the desire is expressed in the narrator's third-person voice, the emotive force of the direct question (*When would he*, not *He wondered when he*) belongs to the character, not to the narrator. The

<sup>15</sup> Dialectical exchange between named parties about the viability of a *din* frequently occurs without addenda. See, e.g., m. Karet. 3:10; t. Šabb. 15:10. It may prove useful to note other ways in which tannaitic texts convey surprise in the context of legal debate. One is *ואיפשר לומר כן*, on which see n. 17 below. Another is “what is this?” (*מה זה*), which is followed, obligatory, by the interlocutor's proper name. See, e.g., m. Pesah. 6:2 (where the wonder-addendum also occurs), and especially t. B. Qamma 7:16 (Lieberman ed., 4.32), where a parable involving unnamed characters uses the expression, and introduces “פל” (MS Vienna) = *פלוגי* (“so and so”) in place of the expected proper name. In t. Hag. 2:12 (Lieberman ed., 2:386; but see MS London), where the protagonist is likewise anonymous, the text adverts to a different usage of the expression, one that recollects the biblical usage (e.g., Gen 27:20; 2 Kgs 1:5). A third expression that conveys surprise in the context of legal debate, an expression that is, ironically, unconnected to the wonder-addendum, but seems likewise to be native to the school of R. Akiva, is: “I wonder” (*תמיה אני* or *תמיהני*). See, e.g., m. B. Meš i'a 6:8; m. Karet. 4:3; m. Makš. 4:3; Sifra Šeraš im 7:1 (Weiss ed., 54b); Sifre Zuta Num. ad Num 19:3 (Horovitz ed., 302). Finally, surprise can also be conveyed by having students interchange glances (*מסתכלין זה בזה*) upon hearing their master's assertion. See m. Nid. 8:3; b. Hul. 27b. The connection between interchange of glances and the root *תמה* is clear from, e.g., Gen 43:33 (*ויתמהו האנשים איש אל רעהו*); Isa 13:8 (*איש אל רעהו*); Pseudo-Jonathan ad Ex 16:15 (*והיון תמהין ואמרין אינש לחבריה*).

sentence thus belongs neither to the narrator nor to the character, but to both.<sup>16</sup> Analogously, the addenda represent “character” speech, but their restriction to dialectic-final position can only be attributed to the “narrator” (editor), insofar as only he knows where the dialectic will end.

Whether the editorial strategy that I have isolated here – the transformation of rhetoric into a structuring device (punctuation) – occurs elsewhere in the representation of dialectic in tannaitic Midrash is a question that requires further study. We may, however, note here, first, that the Akivan editor appears to make distinctive dialectical use of another expression associated with surprise, “and is it possible to say thus?” (וַאִיפֶשֶׁר לומר כן).<sup>17</sup> Second, in the case at hand, of addenda to *din* arguments, the school of R. Ishmael does not avail itself of the Akivan editor’s punctuation strategy. The next section establishes the latter claim.

#### 4. Equivalents from the School of R. Ishmael

Dialectical paths similar to the ones in Akivan Midrash occur in works from the school of R. Ishmael. Category 1 is ordinarily introduced by the formula שהיה בדיון “for by *din* it should have been.” Cases of category 2 begin with some variant of the formula עד שלא יאמר יש לי

<sup>16</sup> On free indirect discourse see, e.g., Mieke Bal, *Narratology* (2<sup>nd</sup> ed.; Toronto: University of Toronto Press, 1997), 16-52, 142-49.

<sup>17</sup> This rhetorical question is typically employed, e.g., in Mek. R. Ishmael and in Seder Olam, in aggadic contexts, to reject the plain sense of a verse. In only three instances in classical rabbinic literature does it occur in connection with halakhic material: Sifra *Nedava* 8:1 (Weiss ed., 9a); Sifra *Ṣav* 8:1 (Weiss ed., 36a); and b. Pesah. 28b. In the second of these three cases, the speaker is the anonymous Sifra. In the first case, the question appears to come from the mouth of R. Akiva, but Sagiv (“Studies,” 94-104) has argued persuasively that it in fact represents an editorial addition. The third case, as Sagiv notes (*ibid.*, 96 n. 46), rewrites Sifre Deut. 130 (Finkelstein ed., 187), where the rhetorical question does not occur. One wonders whether the addition comes from the Bavli itself (as also, perhaps, in the other case flagged by Sagiv in the same footnote), or whether the Bavli instead received a version of Sifre Deut. 130 revised by an Akivan editor in a manner analogous to that attested in Sifra *Nedava* 8:1. Note in any case that in the parallel to Sifra *Nedava* 8:1 in the Bavli (b. Zebah. 29a), the rhetorical question is absent, but the wonder-addendum appears. For a philosophical treatment of the passage see Shalom Rosenberg, “The Future: Foreknowledge and Free Will,” in *Studies in Talmudic and Midrashic Literature: In Memory of Tirzah Lifshitz* (ed. M. Bar-Asher et al.; Jerusalem: Bialik Institute, 2005), 553-54 (Heb.).



בדין – “before it says, I already have by *din*.” Let us consider two examples, one from each category. The first, from Sifre Num. 110 (Horovitz ed., 115), instantiates category 1a.<sup>18</sup>

#### Case 4

1.	“For your generations” (Num 15:21): To include dough of the sabbatical year such that it be obligated in <i>ḥallah</i> .	לדרתיכם להביא את עיסת שביעית שתהי חייבת בחלה
2.	For by <i>din</i> it should have been: If other fruits that are obligated in tithes are exempt from <i>ḥallah</i> , then dough of the sabbatical year, which is exempt from tithes, should it not by <i>din</i> be exempt from <i>ḥallah</i> ?	שהיה בדין מה שאר פירות שחייבין במעשר פטורין מן החלה עיסת שביעית שפטורה מן המעשר אינו דין שתהי פטורה מן החלה
3.	Grains gathered under the laws of collecting, forgetting, and the corner will prove, for they are exempt from the tithe and obligated in <i>ḥallah</i> , and they will prove concerning dough of the sabbatical year that even though it is exempt from tithes, it should be obligated in <i>ḥallah</i> .	הרי לקט שכחה ופאה יוכיחו שפטורין מן המעשר וחייבין בחלה והן יוכיחו לעיסת שביעית שאף על פי שפטורה מן המעשר שתהי חייבת בחלה
4.	No. If you say concerning grains gathered under the laws of collecting, forgetting, and the corner, whose species are obligated in tithes, for which reason they are obligated in <i>ḥallah</i> , will you say concerning dough of the sabbatical year, whose species is exempt from tithes, for which reason it should be exempt from <i>ḥallah</i> ?	לא אם אמרת בלקט שכחה ופאה שמינן חייבין במעשר לפיכך חייבין בחלה תאמר בעיסת שביעית שמינה פטור מן המעשר לפיכך תהי פטורה מן החלה
5.	Hence it says, “for your generations”: To include dough of the sabbatical year such that it be obligated in <i>ḥallah</i> .	ת' ל' לדרתיכם להביא את עיסת שביעית שתהי חייבת בחלה

<sup>18</sup> The text for this and all other quotations of Sifre Numbers comes from MS Vatican 32.



The *din* (stage 2) reaches a conclusion opposite that of the teaching derived from the verse (stage 1). A prove-argument challenges the *din* (stage 3), then a say-argument rebuts the latter (stage 4). The *din* thus survives, and establishes the necessity for the verse, which follows in stage 5. The second example, instantiating category 2a, comes from Sifre Num. 123 (Horovitz ed., 152), which concerns the red heifer.

### Case 5

1.	“Which has no blemish” (Num 19:2).	אשר אין בה מום
2.	Why is this said? Before it says, I already have by <i>din</i> : If sanctified animals, which labor does not invalidate, are invalidated by a blemish, then the heifer, which labor does invalidate, should it not by <i>din</i> be invalidated by a blemish?	למה בא' הא עד שלא יאמר יש לי בדין מה מוקדשין שאין מלאכה פוסלת בהן מום פוסל בהן פרה שמלאכה פוסלת בה אינו דין שיהא מום פוסל בה
3.	No. If you say concerning sanctified animals, whose preparation is in purity, for which reason they are invalidated by a blemish, will you say concerning the heifer, whose preparation is in defilement, for which reason it should not be invalidated by a blemish? <sup>19</sup>	לא אם אמרת במוקדשין שעשייתן בטהרה לפיכך מום פוסל בהן תאמר בפרה שעשייתה בטומאה לפיכך לא יהא מום פוסל בה
4.	The Passover [sacrifice] will prove, for its preparation is in defilement, and it is invalidated by a blemish. It will prove concerning the heifer, that even though its preparation is in defilement, it is invalidated by a blemish.	הרי פסח יוכיח שעשייתו בטומאה ומום פוסל בו הוא יוכיח לפרה שאף על פי שעשייתה בטומאה שהמום פוסל בה
5.	No. If you say concerning the Passover	לא אם אמרת בפסח שיש

<sup>19</sup> The meaning of “preparation in purity” and “preparation in defilement” is unclear. Horovitz (*ad loc.*) suggests that the text refers to the fact that the red heifer may be prepared by a *ṭ evul yom*. However, this rule is specific to the red heifer, whereas in stage 4, the text predicates preparation in defilement of the Passover sacrifice as well. Perhaps the reference is to the fact that elements of the preparation of the heifer, like that of the Passover sacrifice, must be performed outside the Temple.

	[sacrifice], which has a fixed time, for which reason it is invalidated by a blemish, will you say concerning the heifer, which has no fixed time, for which reason it should not be invalidated by a blemish?	לו זמן קבוע לפיכך מום פוסל בו תאמר בפרה שאין לה זמן קבועה לפיכך לא יהא מום פוסל בה
6.	Hence it says, "which has no blemish."	ת' ל' אשר אין בה מום

Here the *din* (stage 2) reaches the same conclusion as the verse (stage 1), so that the object of the dialectic is to refute the *din*. The refutation begins with a say-argument (stage 3), to which a prove-argument responds (stage 4). Another say-argument refutes the *din* (stage 5), and thus justifies the verse.

Each of the prove- and say-arguments in cases 4 and 5 includes an addendum, a clause that is logically unnecessary, but clarifies the argument just made. After prove-arguments comes the addendum: "It will prove, etc." The addendum to say-arguments, which occurs not only in the apodosis but also the protasis, is: "for which reason." We may call these addenda the prove-addendum and the reason-addendum. In all works of the school of R. Ishmael, the addenda attach to their respective arguments at all stages of the dialectic. In some instances they do not occur, perhaps due to copyist omission, or perhaps from a desire for concision, but there is no pattern to the omission. Thus, in sharp contrast with their Akivan parallels, the addenda do not serve as rhetorical punctuation to signal the end of the dialectic. The contrast between the two schools is particularly clear in the following pair of parallel passages from Mek. R. Ishmael and Mek. R. Shimon, where, however, the dialectic concerns the law itself, rather than a *din* that serves to ground an exegetical claim. Given the amount of text, and given that our interest lies in form rather than in substance, I forgo translation, and instead simply place the relevant technical terms in bold.<sup>20</sup>

<sup>20</sup> The Mek. R. Shimon text depends on a Genizah fragment, Antonin 236. For the Mek. R. Ishmael text see the discussion below.

**Case 6**

Mek. R. Ish. Pish a 9 (Horovitz-Rabin ed., 30)	Mek. R. Sh. ad Ex 12:16 (Epstein-Melammed ed., 18)	
	1. ביום הראשון מק' קו' וביום השביעי מק' קו' אין לי אלא יום טוב ראשון ואחרון שאסורין במלאכה חולו שלמועד מנ'	
אם יום טוב הראשון והאחרון שאין קדושה לפנייהם ולאחריהם הרי הן אסורין בעשיית מלאכה חולו של מועד שיש קדושה לפנייהם ולאחר' אינו דין שיהא אסור בעשיית מלא	2. אמרת ומה יום טוב ראשון ואחרון שאין לפנייהם (שאין) ואחריהן מקודשין <אסורין במלאכה> חולו שלמועד שלפניהם ואחריהן מקודשין אינו דין שיהו אסורין במלאכה	
ששת ימי בראשית יוכיחו שיש קדושה לפנייהם ולא' והן מותרין בעשיית מלא' [הם יוכיחו על חולו של מועד אע"פ שיש קדושה לפניו ולאחריו שיהא מותר בעשיית מלאכה]	3. הרי ששת ימי בראשית יוכיחו<ו> שלפניהם ואחריהן מק' מקודשין ואינן אסורין במלאכה	
לא אם אמרת בששת ימי בראשית שאין בהן קרבן מוסף לפיכך מותרין בעשיית מלא' תאמר' בחולו של מועד שיש בו קרבן לפיכך יהא אסור בעשיית מלאכה	4. לא אם אמרת בששת ימי בראשית שאין עמהן קרבן מוסף תאמר בחולו של מועד שיש עמהן קרבן מוסף	
והרי ראשי חדשים יוכיחו שיש בהן קרבן מוסף ומותרין בעשיית מלאכה [הם יוכיחו על חולו של מועד אע"פ שיש בו קרבן מוסף יהיה מותר בעשיית מלאכה]	5. הרי ראשי חדשים יוכיחו שיש עמהן קרבן מוסף ואינן אסורין במלאכה	
לא אם אמרת בראשי חדשים שאינן קרואין מקרא קודש לפיכך הן מותרין בעשיית מלא' תאמר בחולו של מועד שהוא קרוי מקרא קו' לפיכך יהא אסור בעשיית מלאכ'	6. לא אם אמרת בראשי חדשים שאין קרוין מקרא קודש תאמר באילו שקרוין מקרא קודש הואיל וקרוין מקרא קודש דין הוא שיהו אסורין במלאכה	
הא למדנו על חולו של מועד שאסור בעשיית מלאכה	7.	

In the Mek. R. Ishmael text, the addenda supplement every argument. The bracketed prove-addenda in stages 3 and 5 do not occur in MS Oxford 151, which is the basis for the above transcription, but they are attested in MS Munich and in the *editio princeps*. The Mek. R. Shimon parallel, in accordance with the standard Akivan paradigm for anonymous exegetical dialectic—here applied, presumably because it reworks Mek. R. Ishmael at this point, outside of an exegetical context—omits all addenda until the final argument (stage 6).

It has been observed that the hermeneutic terminology of the school of R. Ishmael is more developed than that of the school of R. Akiva, so that, while both schools employ a particular interpretive strategy, only the first marks the use of that strategy with a specialized term.<sup>21</sup> In the case of the dialectical terminology that we have analyzed here, something like the opposite holds. Both introduce rhetorical addenda to the arguments surrounding the *din*, but only the school of R. Akiva deploys them so that they structure or punctuate the argumentation. The sample size is small, the analogy not altogether precise, and the distinction between the categories of hermeneutics and dialectics underdeveloped, but the conclusion that the data suggest, that Akivan terminology is more sophisticated in the area of dialectics, and Ishmaelian, in the area of hermeneutics, deserves further study.

Within the school of R. Ishmael, Mek. R. Ishmael and Sifre Numbers differ in two important respects in connection with the above dialectical permutations. First, in Sifre Numbers, as in cases 4 and 5, the prove-addendum begins: *הוא יוכיח ל-*. In Mek. R. Ishmael, as in case 6, the preposition is not proclitic *ל-* but *על*. Together with other data, such as the frequency of different figures in the two works, this fact confirms that the two works, while of a single school, emerge from distinct circles.<sup>22</sup> The second and perhaps more significant difference concerns the kind of dialectics that occur in the two texts. In Mek. R. Ishmael and in Sifre Numbers alike, dialectical paths headed by *שהיה בדין* (category 1) and *עד שלא יאמר יש לי בדין* (category 2)

<sup>21</sup> See Ishay Rosen-Zvi, *מונחים ושברים: לקראת לקסיקון הרמנויטי לטרמינולוגיה* (forthcoming in *מדעי היהדות*). I thank Prof. Rosen-Zvi for providing me with a copy of his paper.

<sup>22</sup> For differences between Mek. R. Ishmael and Sifre Numbers see Menahem I. Kahana, "Marginal Annotations of the School of Rabbi Judah the Prince in Halakhic Midrashim," in *Studies in Bible and Talmud* (ed. Sara Japhet; Jerusalem: Hebrew University, 1987), 84-85 (Heb.); *idem*, "The Halakhic Midrashim," in *The Literature of the Sages: Second Part* (ed. Shmuel Safrai et al.; Assen: Royal Van Gorcum, 2006), 33.

are very brief. In the first case, the verse usually follows immediately after the *din*, with no say- or prove-arguments at all. In most instances of the second category, the *din* is challenged by a say-argument, which sets the stage for the verse. More elaborate interchanges like cases 4 and 5, involving more than one argument after the *din*, occur with some frequency in Sifre Numbers.<sup>23</sup> I know of only one such case in Mek. R. Ishmael, and it appears to be corrupt.<sup>24</sup> In Mek. R. Ishmael, interchange of say- and prove-arguments does occur, but in other dialectical forms, sometimes with the aim of preserving a *din* that supports, rather than opposes, the desired interpretation of the verse.<sup>25</sup> The data thus suggest a particular affinity between Sifre Numbers and the Akivan Sifra, which includes the highest concentration by far of complex anonymous dialectic of categories 1 and 2. Whether the explanation for this affinity lies in a relationship between the circles that produced the Sifra and those behind the core of Sifre Numbers, or in the second redaction of Sifre Numbers at the hands of the “school of Rabbi,” or simply in the topical continuity between Leviticus and Numbers, is a question that we leave for a different occasion.<sup>26</sup>

### Conclusion

*Din* lies at the very heart of halakhic discourse in Tannaitic literature. I have attempted to isolate an analytically manageable portion of the discourse around the *din* by identifying four different ways in which a *din* may be set against a verse in anonymous Akivan exegetical texts. We have compared the instantiation of the four dialectical paths in these works with that in debate between named parties in Akivan sources, and with that in sources from the school of R. Ishmael. Amid an assortment of smaller observations, the main result of this investigation is that the anonymous stratum of Akivan Midrash deploys the since-addendum and the prove-addendum as rhetorical punctuation for its anonymous dialectic. While roughly parallel addenda occur in Ishmaelian Midrash, they never serve this structuring function.

<sup>23</sup> See Sifre Num. 23, 28, 65, 123 (Horovitz ed., 26-27, 35, 62, 153).

<sup>24</sup> See Mek. R. Ish. *Neziqin* 12 (Horovitz-Rabin ed., 292). On this pericope see n. 34 below.

<sup>25</sup> See Appendix 1 for further discussion.

<sup>26</sup> On the influence of the “school of Rabbi” on Sifre Numbers see Kahana, “Marginal Annotations,” 82; *idem*, “Halakhic Midrashim,” 91.

### Appendix 1: R. Ashi and the Illogical Dialectic

On five occasions in the Babylonian Talmud, a *baraita* is introduced in which a dialectical chain ends with the conclusion *x*, only to be followed by a verse that teaches *x*. Each time, the Bavli points out the obvious problem, with some variant of the question: “But what need have I of a verse? It comes [by *din*]!” R. Ashi responds by saying: “For one can say that from the root of the *din* (מעיקרא דדינא) there is a difficulty.” He (or possibly the *stam*) then identifies a say-argument that scuttles the *din*.<sup>27</sup> The following example is from b. Tem. 28a-b. The dialectic concerns an animal through which a sin occurred, e.g., sodomy, that would entail the judicial execution of the animal. Prior to the execution, the animal is ineligible for the altar, nor may it be consumed profanely. If fewer than two witnesses testify to the sin, the animal may not be executed, but it nevertheless becomes ineligible for the altar. The *baraita* attempts to justify the latter rule.

#### Case 7<sup>28</sup>

1.	If a transgression was committed through it by one witness, or with only the owner present[, whence that it is ineligible?]	נעברה בהן עבירה בעד אחד או על פי הבעלים
2.	Said R. Ishmael: I reason. If a blemished animal, which does not become ineligible for consumption through the testimony of two witnesses, becomes ineligible for	א"ר ישמעל אני דן ומה בעל מום שאין הודאת שני עדים פוסלתו מאכילה הור(!) את עד

<sup>27</sup> See b. Qidd. 4b (*bis*); b. Hul. 114a (*bis*); b. Tem. 28b. R. Ashi's statement occurs in a sixth context, b. Menah. 6a, where, however, it aims not to explain the necessity for a verse, for no verse is involved, but simply as part of the dialectic around a *din*. Thus in this case there is no challenge (“What need have I of a verse?”) to an inherited dialectic. This case is also the only one in which a rabbi (R. Aḥa son of Rava) responds to R. Ashi. One is therefore inclined to suppose that b. Menah. 6a provides the original context for R. Ashi's statement, and that it was later transferred to the other five contexts. But all manuscripts of b. Menah. 6a in the Saul Lieberman Institute of Talmudic Research Database (version 5) include the words “for one can say” (in MS Vat 118: only “for”), even though these words only make sense in the other five instances, where R. Ashi responds to the *stam*'s challenge. If b. Menah. 6a indeed represents the original context for R. Ashi's statement, we must suppose that the application of it to other contexts influenced the b. Menah. 6a text in turn, at an early stage in the text's transmission.

<sup>28</sup> The text, is from MS Munich 95, with select expansions of abbreviated words. The translation is my own. The same holds for case 9 below.

	offering [upon the altar] through the testimony of one witness, then the sodomizing and sodomized animals, which do become ineligible for consumption through the testimony of two witnesses, should, by <i>din</i> , become ineligible for offering through the testimony of one witness.	אח' פוסלתו מהקרבה רובע ונרבע שהוראת שני עדים פוסלתן מאכילה אינו דין שהוראת עד אחד פוסלתן מהקרבה
3.	Hence it says, "from cattle" (Lev 1:2): to exclude the sodomizing and sodomized animals [from the altar].	ת"ל מן הבהמ' להוציא את הרובע ואת הנרבע
4.	But it comes [by <i>din</i> ]?	והא אתיא מדינא
5.	Said R. Ashi: For one can raise a difficulty. <sup>29</sup> What holds of a blemished animal? Its blemish is recognizable [in the animal's body]. Will you say concerning the sodomizing and sodomized animals, whose blemish is not recognizable? Since their blemish is not recognizable, they should be eligible for the altar.	א' רב אשי משו' דאיכ' למיפרך מה לבעל מום שכן מומו נכר תאמר ברובע ונרבע שאין מומו נכר הואיל ואין מומן נכר יהו כשרין לגבי מזבח
6.	Hence it says, "from cattle": to exclude the sodomizing and sodomized animals.	ת"ל מן הבהמה להוציא את הרובע והנרבע

There is a parallel to the *baraita* in Sifra Nedava 3:1 (Weiss ed., 4d), as follows.

#### Case 8

1.	If a transgression was committed through it by one witness, or with only the owner present, whence [that it is ineligible]?	נעברה בו עבירה על פי עד אחד או על פי הבעלים מנין
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<sup>29</sup> Four of the other five witnesses in the Lieberman Database, with the exception of MS Vatican 120, attribute to R. Ashi the extended formula, "For one can say that from the root of the *din* (מעיקרא דדינא) there is a difficulty." On MS Vatican 120 see below.



2.	Said R. Ishmael: I reason. If a blemished animal, which does not become ineligible for consumption through the testimony of two witnesses, becomes ineligible for offering [upon the altar] through the testimony of one witness, then the sodomizing and sodomized animals, which do become ineligible for consumption through the testimony of two witnesses, should, by <i>din</i> , become ineligible for offering through the testimony of one witness.	אמר רבי ישמעאל הרי אני דן מה אם בעל מום שאין יעידת שני עידים פוסלתו מן האכילה יעידת עד אחד פוסלתו מן ההקרבה הרוביע והנירבע שיעידת שני עידים פוסלתו מן האכילה אינו דין שתהא יעידת עד אחד פוסלתו מן ההקרבה
3.	Said to him R. Akiva: No. If you say concerning a blemished animal, whose blemish is exposed, will you say concerning the sodomizing and sodomized animals, whose blemish is not exposed? Since their blemish is not recognizable, they should be eligible for the altar.	אמר לו רבי עקיבה לא אם אמרתה בבעל מום שמומו בגלוי תאמר ברובע ונירבע שאין מומם בגלוי הואיל ואין מומן בגלוי לא יפסלו מעל גבי המזבח
4.	Hence it says, “from cattle”: to exclude the sodomizing and sodomized animals.	תל' ל' מן הבהמה להוציא את הרוביע ואת הנירבע

In the Bavli, R. Akiva's response to R. Ishmael's *din* is missing from the *baraita*. Hence the turn to the proof-text lacks apparent logic. R. Ashi remedies the *baraita* by supplying R. Akiva's response.<sup>30</sup> How are we to make sense of the relationship between the Sifra passage and the *baraita*? Before addressing this question, let us consider another, very similar example.

In b. Qidd. 4b, in the course of establishing the biblical basis for the various means by which a wife is “acquired,” the Bavli introduces a *baraita*, which it then challenges.

<sup>30</sup> Notably, one witness to b. Tem. 28a-b, MS Vatican 120, has the Sifra passage (case 8) instead of the entire text marked as case 7 (*baraita* and follow-up exchange).

**Case 9**

1.	"If a man takes a woman and cohabits with her" (Deut 22:13): There is no "taking" save through money. And likewise it says, "Let me give the money of the field, take it from me" (Gen 23:13).	כי יקח איש אשה אין קיחה אלא בכסף וכן הוא או' נתתי כסף השדה קח ממני
2.	But is it not a <i>din</i> ? If the Hebrew maidservant, who is not acquired through intercourse, is acquired through money, then by <i>din</i> should not this one (i.e., a wife), who is acquired through intercourse, be acquired through money? <sup>31</sup>	והלא דין הוא ומה אמה העבריה שאינה נקנית בביאה נקנית בכסף זו שנקנית בביאה אינו דין שנקנית בכסף
3.	The sister-in-law will prove, for she is acquired through intercourse but is not acquired through money.	יבמה תוכיח שנקנית בביאה ואין נקנית בכסף
4.	What holds of the sister-in-law? She is not acquired through a legal instrument. Will you say concerning this one, who is acquired through a legal instrument?	מה ליבמה שכן אין נקנית בשטר תאמר בזו שנקנית בשטר
5.	Hence it says, "if ... takes."	ת"ל כי יקח
6.	What need have I of a verse? It comes [by <i>din</i> ]!	למה' לי קרא הא אתיא
7.	Said R. Ashi: For one can say that from the root of the <i>din</i> there is a difficulty. From where do you establish it? From the Hebrew maidservant? What holds of the Hebrew maidservant? She exits through money. Will you say concerning this one, who does not exit through money?	א' רב אשי משום דאיכא למימר מעיקרא דדינא פירכא מהיכא קמייתית לה מאמה העבריה מה לאמה העבריה שכן יוצאת בכסף תאמר בזו שאין יוצאת בכסף
8.	Hence it says, "if ... takes."	ת"ל כי יקח

<sup>31</sup> On acquisition through intercourse in Tannaitic Midrash see also Kahana, "Marginal Annotations," 75-77.

The dialectic begins as an instance of category 2b. The *din* (stage 2) reaches the same conclusion as the verse. A prove-argument challenges the *din* (stage 3), but it is parried by a say-argument (stage 4). The *din* thus stands as viable. Yet the verse nevertheless follows (stage 5). The Bavli points out the problem, to which R. Ashi responds (stage 7) by supplying a say-argument that challenges the *din* (in accordance with dialectical category 2a). With the *din* undermined, the verse enters again (stage 8).

The same *din* occurs in Mek. R. Ish. Nezikin 3 (Horovitz-Rabin ed., 256), where R. Ishmael introduces it to justify acquisition of a wife through money. In that context, the *din* stands unchallenged. In Sifre Deut. 268 (Finkelstein ed., 287), a partial parallel to the Bavli *baraita* appears.<sup>32</sup>

### Case 10

1.	“If a man takes a woman and cohabits with her” (Deut 22:13): This teaches that a wife is acquired through money.	כי יקח איש אשה ובעלה מלמד שהאשה נקנית בכסף
2.	For by <i>din</i> it should have been: If the Hebrew maidservant, who is not acquired through intercourse, is acquired through money, then by <i>din</i> should not a wife, who is acquired through intercourse, be acquired through money?	שהיה בדין ומה אמה העבריה שאין נקנית בבעילה נקנית בכסף אשה שנקנית בבעילה אינו דין שתהא נקנית בכסף
3.	The sister-in-law will prove, for she is acquired through intercourse but is not acquired through money. So you should not wonder about the wife, that even though she is acquired through intercourse, she is not acquired through money.	יבמה תוכיח שנקנית בבעילה ואין נקנית בכסף ואף אתה אל תתמה על האשה שאפעלפי שנקנית בבעילה שלא תהא נקנית בכסף
4.	Hence it says, “if a man takes a woman”: This teaches that a wife is acquired through money.	ת' ל' כי יקח איש אשה מלמד שהאשה נקנית בכסף

<sup>32</sup> The text is from MS Vatican 32, with select expansions of abbreviated words. The translation is mine.

The dialectic instantiates category 2b, and is the equivalent of stages 1-3 of case 9. Crucially, however, it omits the say-argument in stage 4 of case 9, so that the verse follows naturally.

The example of b. Qidd. 4b, like that of b. Tem. 28a-b, thus involves an underlying *din* that represents the view of R. Ishmael, and the rejection of that *din* in favor of a proof-text in the school of R. Akiva.<sup>33</sup> Possibly, this pattern may be generalized: the “illogical” *baraitot* to which R. Ashi responds arise from the total or partial omission, for one reason or another, of the Akivan dialectic that leads from the Ishmaelian *din* to the proof-text that displaces it.<sup>34</sup> Possibly, however, the *baraitot* are not illogical at all, but reflect a pattern, common in Ishmaelian Midrash, wherein the dialectic, involving say- and prove-arguments, aims to support, rather than negate, a non-obvious interpretation of a verse, in the face of an alternative plausible interpretation.<sup>35</sup> Even if the Bavli *baraitot* do not instantiate this pattern, the existence of this pattern helps to explain why these *baraitot* became corrupted in transmission.

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<sup>33</sup> It is noteworthy that Sifre Deut. 268 includes the formula “For by *din* it should have been” (שהיה בדיון), which is much more common in Ishmaelian than in Akivan Midrash. One wonders whether the use of this formula is connected to the fact that the *din* under discussion is R. Ishmael’s.

<sup>34</sup> Mek. R. Ish. *Neziqin* 10 (Horovitz ed., 282) is particularly relevant in this connection. In this case, R. Ishmael grounds a law in a *din*. A prove-argument then challenges the *din*. Then “one of R. Ishmael’s students” parries the prove-argument with a say-argument, and so defends his master’s *din*. This dialectic structurally parallels stages 2-4 of case 9, and presumably, it developed over time. R. Ishmael offered his *din*, then, outside of his presence, someone else (an Akivan?) challenged it. Then, perhaps immediately, perhaps later, R. Ishmael’s student defended the *din*. The chronological separability of succeeding layers of dialectic makes it easier to understand how the illogical *baraitot* could have arisen. Noteworthy, too, is Mek. R. Ish. *Neziqin* 12 (Horovitz-Rabin ed., 292), where the dialectic defies logic in the same way that the Bavli *baraitot* do, and the author of the dialectic is R. Akiva, in an Ishmaelian text.

<sup>35</sup> See, e.g., Mek. R. Ish. *Pisha* 8; *Neziqin* 16 (Horovitz-Rabin ed., 28, 307); Sifre Num. 6, 60 (Horovitz ed., 9, 58). The use of *din* argumentation to arrive at a conclusion that is the same as rather than the opposite of the desired exegesis offers important insight into the distinction between Ishmaelian and Akivan Midrash, but this matter must receive separate treatment.

## Appendix 2: Against Wonderment in Homiletical Contexts

The wonder-addendum has a homiletical parallel, in such cases as the following, from Mek. R. Ish. *Pisḥa* 14 (Horovitz-Rabin ed., 47).<sup>36</sup>

ויסעו בני ישראל מרעמסס סכתה מרעמסס לסוכות מאה וששים מיל מהלך  
ארב' פרסה הלך קולו של משה מהלך ארבעים יום ואל תתמה הרי הוא אומר  
ויאמר יי אל משה ואל אהרן קחו לכם מלא חפניכם וגו' והיה לאבק על כל  
ארץ מצרים וגו' והרי דברים קל וחמר ומה אם אבק שאין דרכו להלוך והלך  
מהלך ארבעים יום קל וחמר לקול שדרכו להלוך כהרף עין

“And the children of Israel traveled from Rameses to Sukkot” (Ex 12:37). From Rameses to Sukkot is one hundred and sixty *mil*, or a distance of forty *parsangs*. Moses’ voice traveled the distance of a forty-day journey. And do not wonder. Behold it says: “And the Lord said to Moses and Aaron, take for yourselves handfuls, etc., and it will become dust over all of the land of Egypt, etc.” (Ex 9:8-9). And the matter is *a fortiori*. If dust, which does not ordinarily travel, traveled the distance of a forty-day journey, *a fortiori* a voice, which ordinarily travels as quick as a wink.

Just as the prove-argument adduces a parallel from a different body of law to counter legal wonder, so the homilist invokes another narrative to silence an audience surprised by the claim that Moses’ voice traveled the distance of a forty-day journey.<sup>37</sup>

<sup>36</sup> For the sake of avoiding textual questions that do not bear on our discussion, I offer the smooth text from Lauterbach’s edition (1.106-7).

<sup>37</sup> See Arthur Marmorstein, “The Background of the Haggadah (VI: Diatribe and Haggada),” in Henry A. Fischel, ed., *Essays in Greco-Roman and Related Talmudic Literature* (New York: Ktav, 1977 [1929]), 204, who paints the scene: “It (the phrase ‘and do not wonder’) is used when the preacher indulges in depicting miracles, or repeating legends from the pulpit. There must have been critics among the audience, who by shaking their heads, or faint smiles, showed their disapproval.” Marmorstein might have cited Mek. R. Ish. *Va-Yassa* 3 (Horovitz-Rabin ed., 166), which introduces critics of precisely this sort. R. Eleazar of Modiin, speaking before R. Ṭarfon and the elders, claims that the manna accumulated to a height of sixty cubits. His audience replies: “O Modiinite, how long will you astonish (מתמיה) us?” The homilist replies by finding a parallel in the case of the flood. For other cases where “and do not wonder” is used in the same sense as in Mek. R. Ish. *Pisḥa* 14 see Mek. R. Ish. *Be-šallah* (Horovitz-Rabin ed., 78); Sifre Deut. 306, 317 (Finkelstein ed., 333, 360). The phrase occurs in late biblical and post-biblical literature (Eccl 5:7; Sir 11:21, 26:11), but its usage is different. The comparison of the human voice to

The same exegetical strategy, and the same terminology, occurs in classical and post-classical Homeric exegesis. Thus, for example, scholion bT comments as follows on *Il.* 3.424, where Aphrodite furnishes a chair for Helen:

If as an old woman, it is not unseemly. If as Aphrodite, Athena too revealed a lamp to Odysseus (*Ody.* 19.33-34). And it is no wonder (οὐ θαυμαστόν) if she does a service for her sister; for this reason it adds, “the daughter of Zeus” (*Il.* 3.426).<sup>38</sup>

If Aphrodite served Helen in the guise of an old woman, her action was obviously appropriate. One might think it improper if she did so in her own divine form, but the scholion defends this possibility with two arguments. First, the same phenomenon occurs elsewhere: Athena provided Odysseus with a lamp. Second, Helen was herself of divine origin, as Homer takes care to point out. Philo, too, adopts this exegetical technique to defend his claim that, after the flood, the earth produced fruit within a single day.

And do not wonder that the earth, given one day, grew all things through the power of God .... For also in the creation of the world, in one day out of the six He completed the production of plants.<sup>39</sup>

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dust in Mek. R. Ish. Pish a 14 may strike one as odd. The fact that the case of the dust is adduced in a different “do not wonder” argument, in Mek. Deuteronomy *ad* Deut 11:29 (Hoffmann ed., 57) (Menahem I. Kahana, *The Genizah Fragments of the Halakhic Midrashim, Part I* [Jerusalem: Magnes, 2005], 344), where the comparison (to the blood sprinkled by Moses upon the nation at Sinai) is more natural, perhaps explains why the homilist adverts to it also in the less intuitive context of Moses’ voice.

<sup>38</sup> Harmut Erbse, ed., *Scholia Graeca in Homeri Iliadem (Scholia Vetera)* (7 vols.; Berolini: de Gruyter, 1969-88), 1.433. The translation is mine. On wonder in Greek literary criticism see René Nünlist, *The Ancient Critic at Work: Terms and Concepts of Literary Criticism in Greek Scholia* (Cambridge: Cambridge University Press, 2009), 144-45, and especially n. 42; Maren R. Niehoff, *Jewish Exegesis and Homeric Scholarship in Alexandria* (Cambridge: Cambridge University Press, 2011), 46-51, 61-66.

<sup>39</sup> *QG* ii.47 (Loeb ed., 128). Bernard J. Bamberger (“Philo and the Aggadah,” *HUCA* 48 [1977], 159) uses the linguistic resemblance between Philo’s words and the rabbinic phrase to support his view that the substantive claim in this passage is genetically related to a similar one in amoraic Midrash.

It is of course possible, indeed probable, that rabbis, scholiasts, and Philo came independently to use the same term and technique, but the possibility that these similarities are a product of their common exegetical milieu cannot be excluded.