

The Embryo in Ancient Rabbinic Literature:
Between Religious Law and Didactic Narratives
An Interpretive Essay¹

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ABSTRACT – At a time when bioethical issues are at the top of public and political agendas, there is a renewed interest in representations of the embryo in various religious traditions. One of the major traditions that has contributed to Western representations of the embryo is the Jewish tradition. This tradition poses some difficulties that may deter scholars, but also presents some invaluable advantages. These derive from two components, the search for limits and narrativity, both of which are directly connected with the manner in which Jewish tradition was constructed in Antiquity.

The article accomplishes three goals:

- To introduce some central elements in ancient Rabbinic literature on the subject of the embryo and its representation;
- To present this body of literature as clearly as possible, noting some of the difficulties encountered by scholars who engage in its study;
- To explain how the literature's textuality came about, examining the particular sociopolitical circumstances of Judaism at that time, including the reasons for the delay in the production of scientific texts, transmitted as such, as compared to other philosophical or religious traditions.

The article claims that these circumstances engendered a tradition peculiarly relevant for the study and teaching of medical ethics today.

KEYWORDS – Embryo, Embryo ensoulment, Fetal development, Rabbinic literature, Jewish sources, Talmud and Midrash, Seder yetsirat ha-vlad

¹ The present article is based on a paper given at the *Colloque sur l'embryon (constitution et animation) dans l'Antiquité et au Moyen-âge*, organised by Luc Brisson, Marie-Hélène Congourdeau, and Jean-Luc Solère, on 30 June, 1-2 July 2005 at the Collège de France. It is an expanded version of the paper, published in French, in the conference proceedings (Brisson, Congourdeau, and Solère 2008, 199-211).

In light of recent bioethical concerns, there has been renewed interest in the study of representations of the embryo in different religious and philosophical traditions.² The Jewish tradition is certainly one of the traditions that has helped to shape perceptions of the embryo in the Western imagination. Although a part of Western history, it has not been exclusively so and, as a result of its unique relationship with Christianity, it has also represented an alternative or counterpoint to it. It goes without saying that every tradition must be accorded its rightful place in today's multicultural societies. The Jewish tradition presents researchers with a number of difficulties, but also offers a number of advantages. Beyond the difficulties posed by the languages in which they are written, traditional Jewish sources differ both in form and content from philosophical, or philosophical-scientific, as well as Christian traditions.³ On the other hand, the circumstances of their development and the form they assumed lend them two properties that would appear especially relevant to the study and teaching of medical ethics; that is, their legal nature (i.e., the constant attempt to define limits) and their narrative quality.

In this article, I suggest that the source of this particular form of textuality, not based on the systematic exposition of given topics, should be sought in the adverse, if not outrightly hostile, sociopolitical conditions of Late Antiquity. This also had an effect on the place that the Jewish tradition later held in the West, in the Middle Ages, and even in modern scholarship. Although Hebrew, Greek, and Latin were the three sacred languages in the mediaeval West, only texts written in the latter two have been the object of studies termed classical. Certainly there has been an attraction to Greek rationality, but when ethical questions are

² Bioethical literature on the subject of embryology is as vast and multidisciplinary as bioethics itself. To mention but a few examples: in the field of theology, see Thévoz 1990, whose 14 tightly-printed pages of bibliographical references in English and French give some idea of the work that has been done in this area; in the field of sociology see Boltanski 2004; and in the field of jurisprudence Iacob 2002. For a historical perspective, beyond the classic (Needham 1959), see Dunstan 1990; Riddle 1992, and McLaren 1990. For a specific focus on ancient Christian texts, see Congourdeau's anthology (Congourdeau 2000) as well as Congourdeau 2007 and Caspar 2005. On Jewish tradition, beyond the relevant passages in Preuss 1978, see Kottek 1981, and Lepicard 1992.

³ Many studies, throughout the twentieth century, have addressed this topic, showing the interactions between the two not-so-independent worlds. Hezser (2000) offers a current view on the matter. Naiweld (2009) attempts to show the similarity, as well as the differences, between the two worlds, based on the conception of ancient philosophy as a way of life and not only speculative reasoning (Nussbaum 1994; Hadot 1995). Indeed, it is always possible to show, for a given topic, the various elements common to the two worlds and to discuss the possible influences. On embryology, see Van der Horst (1994). The point of departure for this paper, however, lies as much in comparing form as in comparing content.

brought to the fore by the very success of techno-scientific rationality, I maintain that the study of the Jewish tradition, or traditions, is of even greater interest.⁴ Furthermore, such an interest derives precisely from the manner in which the Jewish tradition was constructed in Antiquity. As religious law, on the one hand, it was shaped by the idea that a society cannot exist without laws, including the determination of limits; and on the other hand, it was constructed from countless stories, each more alluring than the next, due to the necessity of transmission under unfavourable conditions. In my opinion, these two components, limits and narrativity, number among the most promising areas of study in the field of ethical research.

The article addresses three goals: first, to introduce the main principles of the Jewish tradition, here limited to ancient Rabbinic literature, on the subject of the embryo and its representations; second, to present this body of literature, as clearly as possible, pointing out certain difficulties encountered by scholars; and, finally, to explain the context of its unique textuality and, especially, to consider the delay in the appearance of texts of a specifically scientific nature.

Regarding the embryo and its representations, Rabbinic literature, like all ancient literature, reflects what Aline Rousselle described as “the existential *angst* of the origin of life and its transmission” (Rousselle 1997, 25). In contrast to Greek or Latin literature of the same period, however, there is an absence of dedicated treatises with titles such as *On the Nature of Man* (Nemesius of Emesa), *On the Soul* (Tertullian), or even *On How Embryos Are Ensouled*, as the *To Gauros* has been also titled. First attributed to Galen, it has been attributed to Porphyry since the work of Karl Kalbfleisch in 1895.⁵ All of these works address a specific question in a philosophical manner. In ancient Rabbinic literature on the other hand, it is not until the ninth century that a treatise appears

⁴ For an example of this attraction that Greek (mainly Aristotelian!) rationality held for Christianity, to resolve a number of physiological-theological *aporia* such as embryonic ensoulment, see Bertrand (2005). The same attraction can be noted in Judaism with regard to someone like Maimonides, for instance. Today, however, bioethical discussions call for an alternative to the ontologist/techno-scientific approach and such an alternative can be found in “Rabbinic literature.” For a brief introduction to the concept of “Rabbinic literature”, see Fonrobert and Jaffee (2007, 3-5). Although this paper is not based on the work of Handelman (1982), I note certain affinities with it, notably with the first part of her book, although Handelman does not address the historical dimension of her work, a dimension I consider critical. For such a critique of Handelman, see Boyarin (1990, 1 and 117, and footnotes there).

⁵ I have chosen the *To Gauros* as a point of reference, due in part to the circumstances in which this essay was written (cf., note 1) and in part to the fact that it is emblematic of the type of textuality I would like to compare the Jewish tradition, in the sense that it is a relatively systematic philosophical essay on a given topic. For more on *To Gauros*, see Porphyre (1953); for its philosophical assessment, see Brisson, Congourdeau, and Solère (2008) as well as Bertier (1992).

specifically addressing embryology, extant in two principal versions, entitled *Seder yetsirat ha-vlad* (Order of the Creation of the Foetus).⁶ Like the cosmological treatise known as *Sefer hayetsirah* (Book of Creation) and a number of other texts, this embryological treatise can be considered part of the earliest Hebrew scientific literature (Langerman 2002).

The claim is not that the content of these treatises is this late nor that the beginning of Jewish interest in science is this late (Ruderman 2001), but rather, following Tzvi Langermann, that it was only in this period that such texts appear to have taken on relative independence, with the primary goal of transmitting scientific knowledge.⁷ Thus, there are certain manuscripts in which this treatise on the formation of the foetus is interspersed with commentary in Judeo-Arabic, creating a link with contemporary scientific literature (Langermann 1995, 386-387).

That which is commonly referred to as Rabbinic literature is a vast corpus of frequently cryptic and widely varied texts, comparable to a sea.⁸ Here, it is characterized as resistance literature; that is, as an expression of cultural resistance to surrounding socio-political hegemony. The product of many generations of masters, who referred to themselves as “disciples of sages,” this literature is generally divided into Halakhah (religious law) and Aggadah (legends, stories, sayings and, in effect, everything that is not religious law),⁹ associated with two main periods, that of the Tannaim (c. 200 BCE-200 CE), and that of the Amoraim (200-500 CE). Its origins can be traced to the two large centres of Judaism at the time, the Land of Israel and Babylonia. In a sense, it is proof that following the destruction of the Temple in 70 CE and, even more so, Hadrian’s repression of the Bar Kokhba revolt of 135, it was the Pharisaic stream

⁶ *Midrash ha-Gadol to Leviticus* (Adani 1976) on “*ishah ki tazri’a*” (if a woman be delivered) and *Midrash Tanhuma to Exodus*, Pekudei 3, for which there is no critical edition. See also *Seder yetsirat ha-vlad* in Eisenstein (1915). One might argue that *Leviticus Rabbah* (Lev. 12) for the period of the Mishnah and BT *Niddah* 31b for the Talmudic period, constitute two mini-treatises on the subject. Both works, however, have been transmitted within codices intended to serve Halakhic rather than philosophical purposes.

⁷ These midrashic compilations have long been considered exclusively as a potential source of information regarding antecedent traditions. The current tendency represented by Langermann (2002) is to see them as original creations by mediaeval communities, notably in Yemen. See *Yemenite Midrash* (Langermann 1996).

⁸ For this brief characterization of Rabbinic literature, I have drawn, inter alia, upon (Gafni 1994). In French and English see e.g. (Strack and Stemberger 1986). For a more recent study, including contemporary interpretive perspectives (anthropology, gender studies, folklore studies, etc.) see Fonrobert and Jaffee (2007). The attempt at historical interpretation is my own.

⁹ According to Gafni, this distinction can be dated at least to the time of Samuel ha-Naggid (993-1056). Cf. Gafni (1994, 478).

that succeeded in rebuilding Jewish life, enabling its survival, at least in the Land of Israel, despite subsequent persecutions.¹⁰

Tannaitic Literature

The literature of the Tannaim (from an Aramaic verb meaning to repeat or recite, denoting the importance of memory in the fundamentally oral tradition of the period) comprises three types of texts:

- *Targumim*, “translations” of the Bible into Aramaic, sometimes relatively literal, but often, veritable commentaries on the text;
- *Midrashim*, commentaries on Scripture, at this stage essentially Halakhic, on four of the five books of the Pentateuch (Halakhic, i.e. pertaining to religious law, which explains the fact that there was no Midrash in this period on the book of Genesis or the first, primarily narrative part of the book of Exodus);
- *Mishnah* and the *Tosefta*, thematic anthologies of the Halakhic precepts.¹¹

The Mishnah is undoubtedly the magnum opus of this body of literature. The text that has come down to us is a compilation of the religious laws, covering all aspects of life, divided into six orders: *Zera'im* (Seeds) deals with subjects pertaining to agriculture; *Mo'ed* (Festivals) with the Sabbath and holy days; *Nashim* (Women) with family life, marriage and divorce; *Nezikin* (Damages) with juridical organization, penal and civil law; *Kodashim* (Sancta) with the Temple sacrifices; and *Taharot* (Purity) with matters of ritual purity and pollution.

It is generally agreed that this compilation was the work of Rabbi Judah ha-Nasi (c. 138-220 CE), to this day referred to simply as Rabbi, who was the spiritual and political leader of the Jewish community at the time, recognized by Jews and Romans alike. Not all of the content of the Mishnah can be attributed to Rabbi himself. But it is he, or those under his authority, who created the Mishnah in its current form. The Mishnah quickly gained recognition as the sole authoritative code of law and was, in turn, the object of meticulous commentary in the subsequent period, that of the Amoraim.

¹⁰ On the history of ancient Judaism in the context of the Roman Empire, see Schaefer (1989) and more recently, albeit less specifically Sartre (2001); Biale (2002) and especially Meyers (2002, 162-169). On the persecutions and their consequences, see Herr (1972), and more recently Boyarin (1998).

¹¹ Recent scholarship has drawn attention to the “anthological” nature of Rabbinic literature. See Elman (2004); Segal (2004) and Stern (2004b).

The Tosefta (Addition) is an anthology of *baraitot* (elements of religious law not included in the corpus of the Mishnah), compiled by the disciples of Rabbi and following the same order as the Mishnah. Although the date of its final redaction is disputed, the Tosefta has considerable value from the perspective of cultural history because it often helps to clarify the context of a given *mishnah*, providing discussions or opinions that run counter to those found in the Mishnah.

The literature of this first period is characterized by the fact that it is essentially Halakhic in nature and by the fact that it was created primarily in the Land of Israel. Following the two stages of destruction of the Temple and transformation of Jerusalem into a pagan city, in 70-135 CE, we are witness not only to the regrouping of Judaism around the Pharisaic stream, which placed greater value on study than on the Temple cult, but above all, to the reconstruction of Jewish life around Halakhah or religious law.¹² The long reign of Judah ha-Nasi as spiritual and political leader of the Jewish community in Palestine and the relatively comfortable relations with the Roman authorities at the time, made this reconstruction possible. This did not preclude confrontation perceived as a matter of survival. This focus on the publication of a juridical corpus is the first indication of that which I have termed a literature of cultural resistance.

The Halakhic origins of the Mishnah, combined with the fact that it was created in the Land of Israel, are reflected in its language and style. It is written primarily in Hebrew, although enriched with Aramaic, Greek, and Latin words. But it is also wonderfully concise, unburdened by elaborate commentary. This is clearly illustrated in the following excerpts from the Mishnah, which also serve to present a Mishnaic approach to the formation of the embryo.

Mishnah *Niddah* 3 (Albeck 1958)

1. A woman who aborts (lit. drops) a piece; if it is accompanied by blood, [she is] impure; if not [she is] pure. Rabbi Judah says either way, [she is] pure.
2. A woman who aborts something that resembles a husk, a hair, earth, mosquitoes, shall put them in water. If they dissolve, [she is] impure; if not [she is] pure. A woman who aborts something that resembles fish, grasshoppers, insects and vermin; if it is accompanied by blood, [she is] impure; if not [she is] pure. A woman who aborts something that resembles a domestic or wild animal or a

¹² Actually, all the tractates of the Mishnah but one are Halakhic in content. The exception is Pirke Avot, a treatise of ethical maxims which has given birth to a specific current of ethical compilations in Jewish literature. See Tropper (2004) and Schofer (2007).

- bird, whether pure or impure; if it is male, she shall remain [lit. sit] impure for a male; if it is female, she shall remain [impure] for a female; and if [the sex] is unknown, she shall remain [impure] for a male and a female. So said Rabbi Meir. The Sages say anything that lacks human form is not a foetus (*velad*).
3. A woman who aborts an amnion (*sbafir*) filled with water, filled with blood, filled with a many-coloured substance, shall not consider it a foetus. And if it is wrought (viz. has human form; following Ps. 139), she shall remain [impure] for a male and a female.
 4. A woman who aborts a *sandal* or a placenta (*sbilyah*), shall remain [impure] for a male and a female. A placenta in the house, the house is impure. Not that the placenta is a foetus, but there is no placenta without a foetus. Rabbi Simon says the foetus decomposed before it emerged.
 5. A woman who aborts a *tumtum* (of indefinite sex) or an androgyne (*androginos*) shall remain [impure] for a male and a female. A *tumtum* and a male, an androgyne and a male, she shall remain [impure] for a male and a female. A *tumtum* and a female, an androgyne and a female, she shall remain [impure] only for a female. If it emerges cut or backwards, once most of it has emerged, it is considered a newborn (*yelod*). If it emerges normally, once most of the head has emerged [it is considered a newborn]. What is most of the head? Once the forehead has emerged.
 6. A woman who aborts, but does not know what it is, shall remain [impure] for a male and a female. If it is not known whether it was a foetus or not, she shall remain [impure] for a male and a female and for *niddah* (menstrual flow).
 7. A woman who aborts up to the fortieth day need not consider it a foetus. On the forty-first day, she shall remain [impure] for a male and a female and for *niddah*. Rabbi Ishmael says, on the forty-first day, she shall remain [impure] for a male and for *niddah*, on the eighty-first day for a male and a female and for *niddah*, for the male is complete on the forty-first day and the female is complete on the eighty-first day. The Sages say, whether the creation of a male or whether the creation of a female, both are [complete] on the forty-first day.

In seven *mishnayot*, the above chapter describes the entire development of the foetus.¹³ Although there is an order of Mishnah specifically dedicated to women, the tractate of *Niddah* is part of the order of *Tabarot*, translated here as “Purity.” This sets the tone. The discussion concerns the laws of purity. It is not the transmission of knowledge regarding the formation of the foetus that is important, but establishing the purity laws, defining its boundaries.

A woman who experiences a spontaneous abortion (literally causes something to “drop”) is subject to the laws of purity. The question is, however, precisely which laws should be applied. In such a case, there are two possible categories of impurity. The first is menstrual impurity,

¹³ On foetal development in antiquity, see Hanson (2008).

a period of seven days following the end of every menstrual cycle, during which time the woman may not have sexual intercourse with her husband and may not come into contact with certain objects. This period is called *niddah*, which can be translated “excluded.” It is from this concept that the tractate derives its name, following the definitions established in Leviticus 15: 19-30. Note here the extremely strong statement, presented as the prevailing view (citing the Sages, rather than a specific rabbi), with which the second *mishnah* concludes: “anything that lacks human form (*tzurat adam*) is not a foetus.” Note also the philosophical character of this formulation. As opposed to the word used to determine the state of the amnion, taken from Psalms 139: 15 (“when I was made in secret, and wrought in the lowest parts of the earth”), the expression *tzurat adam* is not a biblical term. In fact, the concept of “human form” brings to mind the Aristotelian concepts of matter and form. The second category is that of impurity following childbirth and since these laws vary in accordance with the sex of the child, we must ascertain whether it is possible to determine the sex of the aborted foetus. The duration of the respective states of impurity vary and, in case of doubt, are cumulative. In the process, we come across a number of phrases attesting to the application of medical knowledge, such as “Not that the placenta is a foetus, but there is no placenta without a foetus.” Also, we find the Aristotelian distinction with regard to foetal differentiation between the formation of male and female embryos (cf. *Hist. Anim.* VII, 3, 583b).

Mishnah *Ohalot* 7, 6 (Albeck 1958)

When a woman experiences difficulty in childbirth, we cut the foetus (*velad*) in the womb and remove it limb by limb, because her life takes precedence over its life. If most of it has emerged, it is not touched because one does not cast aside one soul (*nefesh*) for another.

This *mishnah* establishes the rule regarding therapeutic abortion: the life of the mother takes precedence, until most of the child has emerged. Interestingly, this *mishnah* recalls *Niddah* 3, 5, in which “most” is defined as the emergence of the infant’s forehead. There are thus two important points here for the purposes of this discussion. First, like *Niddah*, the tractate of *Ohalot* is part of the *Taharot* order of the Mishnah, and pertains to the purity and impurity of habitations. Second, the *mishnah* here employs the concept of *nefesh*, one of the Hebrew words for “soul.”¹⁴

¹⁴ The Midrash in (*Genesis Rabbah* 14, 8) notes five Hebrew words for soul (*nefesh, ru'ah, nesamah, yebidah, hayyah*).

The word *nefesh* is the most general of the Hebrew terms for soul, often translated “being.” It is worth noting here that Genesis 2:7, cited in *To Gauros*, reads: “Then the Lord God formed man (*adam*) of the dust of the ground (*adamah*), and breathed into his nostrils the breath of life (*nishmat hayyim*); and man became a living being (*nefesh hayyah*).” *Nefesh hayyah* can also be translated “living soul,” as one might speak of a town of five thousand souls, meaning five thousand inhabitants, or say that there is not a “living soul,” meaning there is no one there.

As noted above, the literature of the Tannaitic period was essentially Halakhic in nature. So, the Midrash of this period, commentaries on Scripture, following the order of the books of the Bible, was also primarily Halakhic in content. We are thus able to compare the sources arranged according to subject (Mishnah, Tosefta) with those arranged according to the order of the biblical verses. The *Sifra*, Halakhic Midrash on the book of Leviticus, thus offers a parallel to the discussion in *Niddah* 3, “published” in the same Tannaitic period. In Leviticus 12, we find the same discussion of the periods of impurity in case of spontaneous abortion, determined by their association with menstruation or childbirth, respectively. An additional element in the Midrash states on the eighth day after birth, the day on which a male child is circumcised, he is deemed “worthy of the creation of the breath” (the “breath of life,” mentioned in Genesis 2:7). *Sifra, Tazri’a* 1,8 (Weiss 1862). This creative event thus occurs either at the moment of birth, or eight days later. Although contrary to the previously noted usage of the word *nefesh*, this *midrash* presents “the creation of the breath” as an explanation rather than a determinant of Halakhah, in terms of purity or impurity. Before leaving the Tannaitic period, there is another context in which the foetus appears and that is in the laws of levirate marriage (Deut. 25:5-10). When a man dies without issue, his brother is obligated to provide him with issue, by marrying his wife. If he does not wish to do so, he must “release” the widow in a ceremony during the course of which the widow removes the levir’s shoe and spits before him. Since the obligation is to perpetuate the brother’s name, the legal questions raised by this situation, e.g. which of the levir’s relatives may marry his brother’s widow and whether she may marry a Kohen (a member of the priestly caste), are contingent upon whether a child has been born posthumously, even stillborn (see e.g. Mishnah, *Yevamot*, 4).

Amoraic Literature

What does Rabbinic literature of the Amoraic period (200-500 CE) comprise? In Palestine as in Babylonia, the magnum opus of this period is incontrovertibly the Talmud (from the root *lmd*, to study). The corpus known as the Jerusalem Talmud was “published” in Palestine in the early fifth century and the Babylonian Talmud in the early sixth century in Babylonia. What do they consist of? As noted above, the Mishnah quickly became the canonical text of Judaism, studied and interpreted in every detail, in the *batei midrash* (academies, houses of study) of the Sages.¹⁵ The two Talmuds are the anthologies of this study and these commentaries, arranged according to the six orders of the Mishnah. A portion of the Mishnah is cited at the beginning of each section, followed by commentary, called Gemara, from an Aramaic word meaning deduce or conclude. Neither of the Talmuds covers the entire Mishnah. The Babylonian Talmud, for example, lacks commentary on the order of *Zera'im* (Seeds), which concerns agricultural life in the Holy Land, with the exception of the first tractate, on the subject of blessings and prayers. The Jerusalem Talmud, on the other hand, lacks commentary on the final two orders of the Mishnah, which address laws of the Temple and ritual purity. Was this the result of historical circumstances? The question has been discussed, particularly in light of the fact that the Jerusalem Talmud is the less edited of the Talmuds.¹⁶ In terms of language, the Jerusalem Talmud is written in Hebrew and primarily Galilean Aramaic, while the Babylonian Talmud is part Hebrew and part Eastern Aramaic.¹⁷

The method employed in the Gemara is highly associative, often resulting in commentary that is significantly longer than the Mishnaic text on which it is based. The Gemara, for example, might tell the story of a conversation between Rabbi, the redactor of the Mishnah, and the Roman Emperor Antoninus, leading into a series of exchanges completely unrelated to the Mishnah that precipitated the entire discussion.¹⁸ Similarly, a Halakhic decision in the Mishnah might lead to a long reflection in the Gemara, citing philosophical arguments, customs,

¹⁵ To form an idea of the importance of the house of study in Jewish life of the Talmudic period, see the three chapters dedicated to this subject in Fraenkel (1996). See also Rubenstein (2007, 58-74)

¹⁶ The Jerusalem Talmud shows clear signs of less editing: repetition of pericopes, absence of commentary on numerous tractates of the Mishnah, etc. See Strack and Stemberger (1986, 209).

¹⁷ Here too I have drawn upon Isaiah Gafni's comprehensive essay (Gafni 1994). On the subject of language in the Talmud, see Fraade (1992); Schwartz (1995), and Greenfield (1995).

¹⁸ BT *Sanbedrin* 91a-b.

folk tales, or anecdotes about a certain rabbi. On the other hand, this type of commentary gives voice to disputes between the various schools, including those of previous generations. Thus, we find in the Gemara the opinions of a number of rabbis of the Tannaitic period, including elements of earlier medical knowledge that are difficult to date. With regard to foetal development, this refers in particular to a number of commentaries about a certain Cleopatra, queen of Alexandria, and the experiments she is said to have conducted on female slaves condemned to death. These are cited in support of the prevailing position, attributed the Sages in *Niddah* 3,7, which asserts that both male and female foetuses are fully formed at 41 days, contrary to the opinion of Rabbi Ishmael that a male foetus is fully formed at 41 days and a female foetus at 81 days.¹⁹ Talmudic discussion can thus differ greatly from, if not actually run contrary to, the kind of discussion we find in the Mishnah. Neither method however, is in any way similar to the analytical treatment of a given topic that we find, for example, in *To Gauros*.

Once again, I consider this type of literature as a response to the socio-political circumstances facing Judaism during this period. In 313, Christianity became a *religio licita*; in 380 the state religion of the Roman Empire; in 425, the Jewish patriarchate was abolished in the Land of Israel (Strack and Stemberger 1986, 22-23).²⁰ Initially, Judaism reacted to Christian interpretations of the Bible, more so in the literary works produced in Palestine (the Jerusalem Talmud and certain exegetical Midrashim, such as *Genesis Rabbah*), but subsequently withdrew into Babylonian culture, Hebrew and Babylonian Aramaic, beyond the sphere of influence of the Christianized Roman Empire (Gafni 2002, 233). As the centre of Jewish life shifted eastward, the Babylonian academies assumed increasing importance. From a literary perspective, this phenomenon, observed in numerous examples in Jewish religious literature, can be regarded as a response to political and cultural hegemonies. This is evident in the apocalyptic literature, in the book of Daniel for example or the Apocalypse of John, which exhibit a sort of typical cryptic writing or “metalanguage,” created in order to facilitate continued freedom of thought.²¹ A similar phenomenon can be observed in the thirteenth century, in the Zohar and the Kabbalah. It is not that such difficulties necessarily produce a certain kind of literature,

¹⁹ BT *Niddah* 30b.

²⁰ For a cultural approach to this phenomenon, see Irshai (2002).

²¹ Oded Irshai refers repeatedly to this apocalyptic aspect and its connection to the existential angst induced by oppressive subjugation, but associates it with the expansion of mystical literature, which he sees as an expression of the priestly current that stood in opposition to the Rabbis. I believe there is also a connection, less in terms of content than in terms of thought structure developed during

but it is the way in which Judaism has responded to this kind of adversity. The types of literature this response has produced vary greatly, ranging from apocalyptic works to Talmudic discussion to Kabbalistic esoterica. Once again, it is not only the content that is important, but also the manner in which it is expressed, which must be taken into consideration when studying a given topic.

Thus understood, if we wish to adopt an objective point of view, like that of the historian, there is considerable cause for confusion. The narratives can parallel one another, yet serve completely different purposes, requiring certain “adjustments” to reconcile them with one another. The discussion between Rabbi and Antoninus, cited below, regarding the ensoulment of the embryo, is a good example of a single story employed to two different ends. This phenomenon is typical of oral culture in general, but especially Jewish oral culture, allowing us to observe many different aspects of Rabbinic literary activity. The above examples from the Tannaitic literature represent legal discussions, reflected in their use of clear, concise language (Alexander 2007). The same period also saw the development of a type of commentary that is generally termed exegetical, inasmuch as it explicates Scripture, verse-by-verse. The need arose also, to “convey the message from the bottom up,” and so an entire body of homiletical literature developed, aimed less at understanding the precise meaning of the biblical text, than at the moral and spiritual lessons that could be derived from them and applied to daily life.²²

Although both of these literary genres, exegesis and homily, can be found throughout the Talmudic commentary, they are particularly evident in the Midrashic works of this period, which, contrary to the previous period, are essentially Aggadic. The best-known exegetical Midrashim are *Genesis Rabbah*, a verse-by-verse commentary on the book of Genesis, and *Lamentations Rabbah*, on the book of Lamentations.

the Talmudic period and the unique literary form based on the association of ideas (cf. Irshai 2002, 183, 197f., 208f.). See also Irshai (2000). For a philosophical appraisal of the associative structure of thought of the Rabbinic literature and a claim for a contemporary revival of such a way of reasoning which goes much further than my own claim here, see Handelman, (1982).

²² In the aforementioned article, written from a cultural perspective, Oded Irshai contrasts the synagogue and the house of study, recognizing however the fact that the relationship between them, both in terms of physical space and in terms of their respective communal roles, is very unclear. Should the synagogue be seen as a recuperation of the role of the priestly caste, following the disappearance of public worship precipitated by the destruction of the Temple, or as a transformation of the communal role of the rabbi into that of a preacher. Irshai offers no opinion on the matter, choosing rather to focus on the appearance of liturgical poetry (*piyyutim*) and the development of homiletics (Irshai 2002, 193-199, esp. nn. 62, 83).

Leviticus Rabbah is probably the best-known of the homiletic Midrashim, arranged by portion, rather than by verse, following the triennial weekly cycle of public reading of the Torah (and homilies), common in this period.

The following are a series of (fictive?) exchanges between Rabbi, the redactor of the Mishnah, and some Roman Emperor called Antoninus, cited in both the Babylonian Talmud and *Genesis Rabbah*, which illustrate the instability of such narratives and some of the difficulties they present to scholars. They begin with a series of four questions posed by Antoninus to Rabbi, cited in the Babylonian Talmud.

BT *Sanhedrin* 91a-b

Antoninus said to Rabbi: [Both] the body and the soul can escape judgement. How? The body says it is the soul that has sinned; since the day it departed from me I am as a cast stone in the grave. The soul says it is the body; since the day I departed from it, I fly in the air like a bird. He said to him [Rabbi to Antoninus]: I will give you an example. What is it like? Like a mortal king who had a beautiful orchard (*pardes*), in which [91b] he had beautiful first fruits, and he placed there two guardians, one lame (*biger*) and the other blind (*suma*). The lame man said to the blind: I see beautiful first fruits in the orchard, come let me ride on your back and we will bring them to eat. The lame man rode on the back of the blind and they brought them and ate them. Later, the owner of the orchard came and said to them: where are the beautiful first fruits? The lame man said: have I legs to walk to them? The blind man said: have I eyes to see them? What did he do? He placed the lame man on the back of the blind and judged them as one. So God brings the soul and casts it into the body and judges them as one. As it is written: “He calls to the heavens above and to the earth to judge His people” (Ps. 50:4). “He calls to the heavens above” is the soul, “and to the earth to judge his people” is the body.

Antoninus said to Rabbi: Why does the sun rise in the east and set in the west? He said to him [Rabbi to Antoninus]: had it been the opposite you would have said the same thing! He said to him [Antoninus to Rabbi]: what I am asking is why it sets in the west (Rashi explains that Antoninus’s question pertains not to the direction but to the fact that the sun does not set in the same place that it rises). He said to him [Rabbi to Antoninus]: to pay respect to the Creator (lit. give peace to the “Acquirer,” [*Koneh*] one of God’s names). As it is written: “And the hosts of heaven bow to You” (Neh. 9:6). He said to him [Antoninus to Rabbi]: Let it go to halfway in the sky, pay respect and re-ascend. [Rabbi said to Antoninus:] On account of labourers and travellers.

Antoninus said to Rabbi: when is the soul placed in man: at the time of conception (*pekidab* – lit. order) or at the time of formation? He said to him [Rabbi to Antoninus]: at the time of formation. He said to him [Antoninus to Rabbi]: can a piece of flesh stand unsalted for [even] three days without rotting? It is rather at the time of conception. Rabbi said: Antoninus has taught me this thing, and Scripture supports his [view]. As it is written: “Your order (*pekudatkeba*) has preserved my spirit” (Job 10:12).

Antoninus said to Rabbi: When does man's domination by the evil inclination begin: at the time of formation or at the time of birth? He said to him [Rabbi to Antoninus]: at the time of formation. He said to him [Antoninus to Rabbi]: Then he would kick his mother's womb and emerge. It is rather from the time of birth. Rabbi said: Antoninus has taught me this thing, and Scripture supports his [view]. As it is written: "Sin couches at the door" (Gen. 4:7).

In the first exchange, Antoninus is concerned with the fact that if the human whole comprises body and soul, moral judgement is without basis. Rabbi, without disputing man's dual origin, declares that in the eyes of He who has power over judgement, it is duality that is without basis. Note the wording, "brings the soul and casts it into the body," developed further in the third exchange. When does this occur, at the time of the decree or at the time of the formation of the foetus (viz. at the moment of conception or after 40 days)?

If any one of these exchanges is surprising, it is the second one, regarding the rising and setting of the sun. What can this possibly have to do with human formation? The Mishnah, on which the above passage comments, *Sanhedrin* 10,1, concerns the question of who will have a share in the world to come and who will not. A number of foreign kings are mentioned, offering a good reason for presenting these conversations between Rabbi and Antoninus, all the more so because the final two exchanges cited here, in which Rabbi not only concedes the argument to Antoninus, but recognizes the fact that Antoninus's position is upheld by Scripture. But what connection is there between the rising and setting of the sun and questions of human formation? Is it because the first exchange ends with a biblical citation concerning heaven and earth? It would then be a simple matter of association. We could also say that the first and last exchanges concern morality, and the middle two exchanges concern natural determinism of the macro- and the microcosm, as believed in the Middle Ages. Be that as it may, this is a perfect illustration of the difficulty entailed in interpreting a text of this kind, assuming one considers it to be more than just the statement of random ideas and seeks to understand its internal coherence.

Also worth noting, with regard to the final two exchanges, is how "circular" this literature is, that is to say it presumes familiarity with other sources.²³ We see in one of the versions of the later treatise, *Order of the Creation of the Foetus*, mentioned at the beginning of this article (note 6 above), that the wording of Antoninus's third question, "When is the soul placed in man: at the

²³ I am using the term "circular" to allude to the "Hermeneutic circle" from the point of view of the reader. See Iser (2000) and the discussion of "intertextuality" by Boyarin (1990, 12-19). Hezser (2000, 181-183) also deals with this concept.

time of conception or at the time of formation?” is far from neutral and the verse cited in Rabbi’s response, “Your order has preserved my spirit,” if it relates to the literary meaning of conception (*pekidah* – lit. order) also evokes the idea of God “ordering” an angel to cast a soul into the “fetid drop” that will become a foetus. The fourth question also pertains to a subject addressed in the treatise: whether the formation of the foetus begins from within or without. In other words, is it the bones, tendons, etc. that are formed first, or the skin? And the answer is the same as here: were it the bones and tendons, the foetus could kill the mother from the womb. The very same response given here to resolve a moral question is given there to resolve a physiological-embryological question. The flexibility of these narratives is remarkable (Jaffee 2007, 34).

In the same vein, there is another version of the final two exchanges between Antoninus and Rabbi, from a Midrash on Genesis.

Genesis Rabbah 34,10 (Mirkin 1971), on the verse “for the inclination of man’s heart is evil from his youth” (Gn. 8, 21, in the context of God’s affirmation that he will not inflict another flood).

Antoninus asked Rabbi: when is the evil inclination placed in man: when he emerges from his mother’s womb or before he emerges from his mother’s womb? He said to him [Rabbi to Antoninus]: before he emerges from his mother’s womb. He said to him [Antoninus to Rabbi]: no, for if it were placed in him while he is in his mother’s womb, he would scratch at her viscera and emerge. And Rabbi conceded to him, comparing his view to that of Scripture. As it is written: “for the inclination of man’s heart is evil from his youth (*mine’urav*)” (Gen. 8:21). Rabbi Judan said: it is written “*mine’urav*” (from his youth), from the time at which *nin’ar* (he stirs; from the same or homographic root *na’ar*) to leave his mother’s womb.

Antoninus further asked Rabbi: when is the soul placed in man, when he emerges from his mother’s womb or before he emerges from his mother’s womb? He said to him [Rabbi to Antoninus]: when he emerges from his mother’s womb. He said to him [Antoninus to Rabbi]: no, for if you leave an unsalted piece of meat [even] for three days, it will rot immediately. And Rabbi conceded to him, comparing his view to that of Scripture. As it is written: “You have granted me life and favour, and Your order has preserved my spirit” (Job 10:12). When did you place the soul in me? When you ordered me (*viz.* at the time of conception).

How does this version of Rabbi’s exchanges with Antoninus compare with that of the Talmud? First of all, the order is reversed. This makes sense, considering the fact that the verse on which the Midrash comments corresponds to the final exchange in the Talmud concerning the evil inclination. We then note that the verses cited in each of the

two versions of the exchange are not the same. Here, the verse cited is, of course, the one on which the Midrash comments (Gen. 8:21), whereas the verse cited in the Talmud is “sin couches at the door” (Gen. 4:7). Nevertheless, both versions reach the same conclusion: that the evil inclination does not begin to dominate (Talmud) or is not placed (Midrash) in man until birth.

With regard to the embryo’s ensoulment, although the conclusion is the same, the difference in the wording of the questions is considerable, which would appear to explain the need of the Midrash to specify that ensoulment occurs at the moment of conception. While the Talmud in the wording of the question affords only two options, at conception or at 41 days, the wording in the Midrash encompasses three different possibilities, conception, the 41 days of formation, or birth. Hence, the need to clarify this point.

Conclusion

To the extent that ancient Rabbinic literature “published” during the same period as the *To Gauros* shows an interest in the origins of human life, it does not present them in the form of a philosophical exposition.²⁴ The propositions on which such texts are based certainly indicate medical knowledge, but the primary purpose of the texts themselves was of an entirely different nature, essentially prescriptive, particularly in the realm of ritual purity and pollution; namely, to serve religious ends. I intentionally say “published” during the same period as the *To Gauros*. As I have noted, opinions presented in later Rabbinic works may, in fact, date to the Tannaitic period but the redaction of these texts occurred much later. For the scholar, it is extremely difficult to know whether the opinions expressed are contemporary or later reconstructions. The fact remains that there is no equivalent to the *To Gauros* in the Rabbinic literature published in that period. The reasons for this can be found in the sociopolitical conditions of the time, which gave this body of work its character as literature of resistance, created to meet other needs; that is, construction of Jewish communal life (including the need to establish limits, even welcoming a variety of opinions) on the one hand²⁵

²⁴ It goes without saying that a critical edition of *Seder yetzirat ha-vlad* examining earlier sources, such as *Leviticus Rabbah* on Lev. 12 and *Niddah* 31b would be a welcome addition. Further study, particularly a comparison of the structures of these treatises to those of philosophical as well as Christian works is certainly required.

²⁵ On this subject, see Meyers (2002, 168), in which he notes that to the extent that there is a culture of “disputation” in the Talmuds, it excludes those barred from the circle of the “students of the sages.”

and the transmission of a living cultural heritage through narratives and anecdotes which are easy to remember, on the other.²⁶ I suggest that this character corresponds to two important areas of current ethical research, determining boundaries in such a fashion as to foster communal life, while heeding the narratives that allow each individual to imbue her or his own life with meaning.

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²⁶ The answer to the historiographical question of whether this should be seen as the transformation of a primary imperative (establishing communal law) into a secondary one (ensuring the "living" transmission of the law, and so the survival of the "students of the sages" who transmit it), or as a function of the polarization of Jewish communal life between synagogue and the study hall, does not affect the relevance of Rabbinic literature for current ethical research.

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