

Covenant and Community in Early Rabbinic Literature*

Tzvi Novick

University of Notre Dame; novick.3@nd.edu

■ Abstract

This article concerns the role of covenant in early rabbinic literature in relation to biblical and especially Second Temple-era predecessors. The first part establishes that the Qumran sectarians and earlier circles were drawn to the concept of covenant because it represented, especially through the mechanism of covenant renewal, a powerful tool for defining and supporting group identity. The second part shows that for the rabbis, the importance of covenant lay chiefly, instead, in its capacity to conceptualize the notion of Israel as a collective body defined by corporate responsibility. The third part suggests that this novel deployment of covenant arose in part to counter the individuating force of halakah as law, another innovation of the rabbis.

■ Keywords

covenant, rabbinic literature, Qumran, corporate identity, halakah, Deuteronomy 29

* Translations from the Hebrew are my own, but for the biblical text I have consulted the NJPS and NRSV. I developed some of the ideas in this article in a brief online post: Tzvi Novick, “Land or Torah: What Binds Israel as a Nation?” *TheTorah.com*, May 27, 2020, <https://www.thetorah.com/article/land-or-torah-what-binds-israel-as-a-nation>. Some of the text in the second part is drawn from this post.

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A people, says Grotius, can give itself to a king. According to Grotius, a people is therefore a people before it gives itself to a king. This gift itself is a civil act; it presupposes a public deliberation. Therefore, before examining the act by which a people elects a king, it would be well to examine the act by which a people becomes a people. For this act, being necessarily prior to the other, is the true basis of society.

—Jean-Jacques Rousseau¹

■ Introduction

E. P. Sanders famously coined the term “covenantal nomism” to describe what he understood to be the basic conceptualization of Israel’s relationship with God for a very broad swath of Jews in the Second Temple period and the rabbinic era. The noun “nomism” indicates the centrality of the law, dictated by God and carrying the expectation of obedience, along with the threat of punishment for disobedience. The qualifier “covenantal” indicates that the relationship between Israel and God is not exhausted by the law. The law exists, rather, in a covenantal framework, and God is committed to maintaining this covenantal relationship even in the face of transgression of the law, through mechanisms of atonement and an inclination to forgive. Sanders was responding to Christian scholarship that had branded rabbinic theology as marked by a fall from the covenantal grace of the Bible into a rigid legalism.² Not so, said Sanders: the covenant is just as central for the rabbis as for their forbears, and this is the case even though the term “covenant” (ברית) figures relatively rarely in rabbinic theological discourse. “The covenant was presupposed, and the Rabbinic discussions were largely directed toward the question of *how* to fulfill the covenantal obligations.”³

In an overview of the place of covenant in Jewish thought of the Second Temple period, Lester Grabbe takes issue with Sanders’s focus on covenant. It is clear that most of the Jewish groups surveyed by Sanders believed that God cultivates a special relationship with Israel that moderates judgment for violation of the law. But only a few of these groups assigned any particular importance to the notion of covenant in

¹ Jean-Jacques Rousseau, *On the Social Contract, with Geneva Manuscript and Political Economy* (ed. Roger D. Masters; trans. Judith R. Masters; New York: St. Martin’s Press, 1978) 52.

² The beginning of the fall into legalism could be dated, in most accounts, to later strata of the Hebrew Bible itself. See Bernard M. Levinson, “Revisiting the ‘And’ in Law and Covenant in the Hebrew Bible: What the Evidence from Tell Taniyat Suggests about the Relationship Between Law and Religion in the Ancient Near East,” *Maarav* 24 (2020) 27–43.

³ E. P. Sanders, *Paul and Palestinian Judaism: A Comparison of Patterns of Religion* (Minneapolis: Fortress, 1977) 421. Alan J. Avery-Peck’s recent encyclopedia entry, “Covenant,” in *Charisma – Czaczkes* (ed. Constance M. Furey, et al.; vol. 5 of EBR; Berlin: de Gruyter, 2012) 5:897–933, esp. 915–19 (“Covenant-Judaism-Rabbinic Judaism”), retains Sanders’s insistence, contra “some Christian scholars and theologians,” on the importance of covenant for the rabbis as a locus of divine mercy (916). Echoing the above quotation from Sanders’s book, Avery-Peck offers that “the concept of covenant as a theoretical construct is less a concern to the rabbis than the specific contents of the law through which the covenant is upheld. The rabbis’ primary focus, that is, is upon the substance of the law, not its meaning” (915).

conceptualizing this relationship; other groups gravitated toward different images and metaphors. Grabbe writes: “Sanders could with similar justification have coined the term ‘elective nomism,’ in light of texts that speak of God electing or choosing Israel, or ‘parental nomism,’ given the prevalent characterization of God as father.”⁴

This article revisits the place of covenant in rabbinic literature, with a particular focus on Tannaitic literature in relation to its biblical and especially Second Temple background. My argument runs as follows. The first part, elaborating on Grabbe’s claims, establishes that the Qumran sectarians and their forbears were drawn to the concept of covenant not because this was the default theological framework for Second Temple Judaism broadly, but because it represented, especially through the possibility of covenant renewal, a powerful tool for defining and supporting group identity. I focus in particular on the Qumran sect’s approach to Deut 29, an especially important passage in the reception of biblical covenant theology. In the second part, I pivot to the role of covenant in rabbinic thought through detailed study of rabbinic interpretation of Deut 29 and related passages. I show that the rabbis engage with covenant not to define the relationship between God and Israel, or to distinguish their group from others, but to conceptualize the notion of a corporate Israel bound together as a community of mutual responsibility. Part three identifies an important background aspect to this development. I suggest that the rise of halakah as law in rabbinic circles exerted an individuating force that problematized the notion of corporate responsibility; covenant came to serve as a solution.

■ Covenant in Biblical, Proto-Sectarian, and Sectarian Literature

I do not attempt here a comprehensive summary of where and how covenant appears in biblical and Second Temple literature.⁵ Rather, this part surfaces an interrelated set of functions that the concept serves for certain parts of these corpora. The biblical book in which covenant looms largest is Deuteronomy. The earliest edition of Deuteronomy may have begun with Deut 4:45, identifying the book as containing עֲדָת “treaty stipulations,” and ended with Deut 28:69, which characterizes it as דְּבַרֵי הַבְּרִית “the words of the covenant” that God commanded Moses to enact with Israel

⁴ Lester L. Grabbe, “Did All Jews Think Alike? ‘Covenant’ in Philo and Josephus in the Context of Second Temple Judaic Religion,” in *The Concept of the Covenant in the Second Temple Period* (ed. Stanley E. Porter and Jacqueline C. R. de Roo; Leiden: Brill, 2003) 251–66, at 265. Jacqueline C. R. de Roo’s contribution to the same volume also nuances Sanders’s framework by highlighting the prominence of ancestral merit as a source of divine grace in literature from the Second Temple period. See Jacqueline C. R. de Roo, “God’s Covenant with the Forefathers,” in *The Concept of Covenant*, 191–202. But, perhaps bound by the constraints of the volume, de Roo does not go far enough. She highlights Sir 44:19–21, which links Abraham’s merit to God’s covenant with Abraham, and, on this basis, she offers that “[the patriarchs’] role in God’s plan of salvation is directly related to the idea of covenant” (202), but in fact reference to covenant is very rare among the passages on patriarchal merit that de Roo takes up.

⁵ See, generally, *The Concept of the Covenant* (ed. Porter and de Roo); *Covenant in the Persian Period: From Genesis to Chronicles* (ed. Richard J. Bauckham and Gary N. Knoppers; Winona Lake, IN: Eisenbrauns, 2015); and the review essays dedicated to the latter in *JHS* 18 (2018).

in Moab, “in addition to the covenant that He had made with them at Horeb.” The “book of the covenant” discovered in the temple and read aloud by Josiah to the people in the ceremony described in 2 Kgs 23 could represent this early edition of Deuteronomy.⁶ The centrality of covenant in the book of Deuteronomy is bound up with covenant renewal in two ways. The book itself enacts a renewal of the Sinai covenant, and it served, in its historical context, as an occasion for covenant renewal under Josiah.

Covenant also figures importantly in the book of Jeremiah, which coalesced in circles connected with the book of Deuteronomy. In Jer 11, God calls upon Israel, through the mouth of Jeremiah, to “hear the words of this covenant.” The words are said to have been commanded to Israel “on the day that I took them out of the land of Egypt,” but the near deictic “this” suggests a contemporaneous manifestation of covenant, perhaps the Josianic covenant renewal.⁷ In Jer 34, Jeremiah condemns the people because, having committed to setting free their Hebrew slaves, they once again enslaved them. Jeremiah characterizes this commitment as a covenant (Jer 34:15) that represented a return to the covenant that God formed with Israel “on the day that I took them out of the land of Egypt” (34:13).⁸ In Jeremiah, as in Deuteronomy and 2 Kings, the invocation of covenant occurs in connection with covenant renewal.

Covenant renewal offers the opportunity to define community in three senses.⁹ First, it surfaces the community’s membership: the members are those who participate in the renewal ceremony. Second, it enables modification of the terms of the covenant because the renewal framework can introduce differences in substance or at least in emphasis from previously accepted practice. Third, it offers a framework for historical review, or the construction of a usable past. These features of covenant renewal become especially visible in postexilic literature. All three of

⁶ See Karel van der Toorn, *Scribal Culture and the Making of the Hebrew Bible* (Cambridge: Harvard University Press, 2009) 152.

⁷ See Yair Hoffman, *Jeremiah: Introduction and Commentary* (Jerusalem: Magnes, 2001) 309–10. Notable in this connection is Jer 11:5, where Jeremiah, after receiving God’s instruction to convey to Israel the command to adhere to the covenant, answers “amen,” the response expected for a covenant ceremony (e.g., Deut 27:15 ff.). See Dalit Rom-Shiloni, “‘On the Day I Freed Them from the Land of Egypt’: A Non-Deuteronomistic Phrase Within Jeremiah’s Conception of Covenant,” *VT* 65 (2015) 621–47 at 627 n. 14. Thus, rhetorically, the very invocation of the covenant becomes a covenant ceremony in itself. But the analysis of Jer 11:5 is complicated by the fact that it represents a break into the first person at the conclusion of a unit in the third person, Jer 11:1–5, and it occurs at the juncture between this unit and Jer 11:6–8, which appears to be an alternative version of Jer 11:1–5 but in the first person. On the relationship between these units, see Hoffman, *Jeremiah*, 310.

⁸ On the references to the exodus in both of these passages, see Rom-Shiloni, “‘On the Day,’” 621–47.

⁹ On covenant formation as a mechanism for formation and expression of group identity in the Josianic context, see D. R. Hillers, *Covenant: The History of a Biblical Idea* (Baltimore: Johns Hopkins University Press, 1969) 143–46, and for special attentiveness to this dimension of covenant in late biblical literature, see Gary N. Knoppers, “The End of Israelite Religion? A Response,” *JHS* 18 (2018) 49–54, at 52–53.

them are present in Neh 9–10, an extended passage that describes a pact (אמנה) entered into by the community of returnees from the exile “under oath and sanction, to follow the teaching of God, given through Moses the servant of God” (Neh 10:30). The ceremony begins with an extended summary of Israelite history that highlights God’s mercies and Israel’s sins (9:6–37). The pact takes the form of a written document that includes the names of the signatories, and thus of the covenantal community (10:1–30). Beyond the general commitment to follow the torah of Moses, it names specific undertakings, for example, forswearing intermarriage and abstaining from commerce on the Sabbath (10:31–40).

Ari Mermelstein has observed that the Nehemiah passage is the first among a number of covenantal texts in the Second Temple period that invoke as chief precedent not the covenant at Sinai but the covenant with Abraham: “You are the Lord God, who chose Abram, who brought him out of Ur of the Chaldeans. . . . Finding his heart true (נאמן) to you, you made a covenant with him to give him the land of the Canaanites, the Hittites, . . .” (Neh 9:7–8). Multiple considerations can motivate reliance on the Abrahamic covenant. In the case of Nehemiah, the prominence of inheritance of the land in the Abrahamic covenant offered an important orientation point for a community immediately concerned with the dynamic of exile and return.¹⁰ Later sectarian and proto-sectarian texts, some of which we will turn to below, hearken back to Abraham because, as God’s only associate, an island of righteousness in a sea of sin, he furnishes a model for the authoring communities’ conception of themselves as a lonely bastion.¹¹

For our purposes, a related feature of the Abrahamic covenant stands out as particularly important: Abraham is a single individual.¹² For the rabbis, as I have intimated, and as we will see below, a central function of covenant is to conceptualize the interrelationships among Israelites as a corporate body. Given that Abraham is not, of course, a corporate body, the fact that the Abrahamic covenant is paradigmatic for the covenanters of Nehemiah and for sectarians in the Second Temple period is evidence that covenant does not do the same theological work for them as for the rabbis.¹³

Covenant plays an organizing role in the book of Jubilees. Jacques van Ruiten counts some twenty-seven instances of the Ethiopic equivalent (*kidān*) and notes

¹⁰ See Ari Mermelstein, “When History Repeats Itself: The Theological Significance of the Abrahamic Covenant in Early Jewish Writings,” *JSP* 27 (2017) 113–42, esp. 130–35.

¹¹ See *ibid.*, *passim*.

¹² Cf. Ezek 33:24: “Abraham was but one man, yet he was granted possession of the land.” In this single statement the two features of the Abrahamic covenant of importance in Second Temple texts figure explicitly: his singleness and the promise of the land. On the singleness of Abraham, see also Isa 51:2, a roughly contemporaneous text.

¹³ Also of note in this connection is the way in which the term ברית האבות “the covenant with the forefathers” in CD viii 14–18 shifts the locus of the covenant from Israel to the patriarchs so that—per Devorah Dimant’s analysis—the covenant can exclude sinning Israelites (i.e., Israelites outside the sect). See Devorah Dimant, “Sectarian and Non-Sectarian Texts from Qumran: The Pertinence and Usage of a Taxonomy,” *RevQ* 24 (2009) 7–18, at 13–15.

that the book recounts God's entrance into a covenantal relationship with Noah, Abraham, Isaac, Jacob, and Israel.¹⁴ The most extended and important reflection on covenant in Jubilees comes in the context of the first covenant, between God and Noah, in Jub. 6:1–38. Here, the speaking angel tells Moses that the covenant that he is to enter into at Sinai follows from God's covenant with Noah (6:11). The angel reveals, moreover, that the covenant is to be renewed annually: "For this reason it has been ordained on the heavenly tablets that they should celebrate the Festival of Weeks during this month—once a year—to renew the covenant each and every year" (6:17).¹⁵ It is presumably not a coincidence that Abraham celebrates the Festival of Weeks in connection with the renewal of the Noahide covenant (14:1, 19–20).¹⁶

The Qumranites, who treasured Jubilees, also situated covenant at the center of their ideological world. The Damascus Document indicates that the sect understood itself as having originated through a moment of covenant renewal. Like Neh 9–10, but with a wider scope, the Damascus Document reviews the history of transgression, from the heavenly Watchers forward, and God's just punishment in the form of destruction and exile (CD ii 16–iii 12). In the wake of these events, a righteous remnant emerged:¹⁷ "And with those who remained from among them who held to the commandments of God, God established his covenant (בריתו) with Israel forever, to reveal to them concealed things (גסתרות) in which all Israel had erred." This covenantal relationship is not altogether new; it is the very same "covenant with Israel" from the past. But only the sect remains within the covenant, and the renewal of the covenant does involve innovation, in the form of the revelation of "concealed things."

The progression in the Damascus Document follows, in outline, the sequence in Deut 29:9–28, where Moses, concluding the covenant renewal on the plains of

¹⁴ See Jacques van Ruiten, "The Covenant of Noah in *Jubilees* 6:1–38," in *The Concept of Covenant* (ed. Porter and de Roo) 167–90, at 168–70.

¹⁵ The translation is from James C. VanderKam, *Jubilees 1: A Commentary on the Book of Jubilees, Chapters 1–21* (Minneapolis: Fortress, 2018) 298.

¹⁶ According to Cana Werman, the Noahide covenant, intended in principle for all people and renewed at Sinai, is separate from the distinctively Abrahamic covenant introduced in Jub. 15, intended for Israel alone and sealed by circumcision, but also, like the Noahide covenant, renewed at Sinai. See Cana Werman, "Two Creations for One Nation: Apocalyptic Worldview in Jubilees and Other Qumran Writings," in *The Religious Worldviews Reflected in the Dead Sea Scrolls: Proceedings of the 14th International Orion Conference* (ed. Menahem Kister et al.; Leiden: Brill, 2018) 264–84; eadem, "The Two Covenants: An Interpretation of the 4Q158 Fragments," *JSP* 28 (2019) 188–293, at 194–97. But note that the Festival of Weeks is the occasion for the Abrahamic covenant too, as it is celebrated just prior to it, in Jub. 15:1–2.

¹⁷ The Hebrew text for quotations of the Dead Sea Scrolls comes from the transcriptions (in this case, of T-S 10K6) in the online Historical Dictionary Project of the Academy of the Hebrew Language (Maagarim), with editorial marks removed (<https://maagarim.hebrew-academy.org.il/Pages/PMain.aspx>). On this and related passages in the Damascus Document, see Liora Goldman, *Those Who Hold Fast to the Ordinances: The Qumran Community and Its Exegesis in Light of the Pesharim in the Damascus Document* (Jerusalem: Bialik, 2019) 53 (Hebrew).

Moab, envisions future transgression of the covenant, followed by exile. The chapter concludes with a declaration in Deut 29:28 that the “concealed things” belong to God and the “revealed things” to “us.” The chart below summarizes the common terminology between the chapter in Deuteronomy and the historical review in the Damascus Document.

“In their following their own willful heart . . . They followed their own willful heart . . . and they tracked after their willful heart.” (CD ii 17–18; iii 5, 11–12)	“I follow my own willful heart” (Deut 29:18)
“His anger was fierce against them . . . And God’s anger burned fiercely.” (CD ii 21; iii 8)	“In his fierce anger . . . the great ferocity of anger” (Deut 29:22–23)
“In their abandoning the covenant of God” (CD iii 11)	“They abandoned the covenant of the Lord, the God of their fathers” (Deut 29:24)
“To reveal to them concealed things” (CD iii 13–14)	“The concealed things belong to the Lord, our God, and the revealed things to us” (Deut 29:28)

The sect evidently took the declaration at the end of the chapter as an indication of a postexilic moment in which God’s “concealed things,” understood as new teachings concerning the religious laws, would be revealed.¹⁸

As the sect’s origin lay, according to its own self-understanding, in a moment of covenant renewal, so the sect envisions an annual covenant renewal ceremony, which, according to a fragment from a version of the Damascus Document recovered from Qumran (4Q266 11 17), is to take place “in the third month,” presumably during the Feast of Weeks. The ceremony is described in detail in the Community Rule (1QS i 18–ii 19). Like the ceremony in Neh 9–10 and the historical review in the Damascus Document, the sect’s covenant renewal ceremony involves the recitation of Israel’s transgressions and God’s mercies.¹⁹

The passage in the Community Rule also mirrors the Damascus Document in drawing heavily on Deut 29. To describe entrance into the covenant, it employs the construction *עבר ב-* (1QS i 18 *בעוברם בברית* “when they enter into the covenant”). As Martin Abegg notes, this construction otherwise occurs only in Deut 29:11.²⁰ More substantially, one of the curses in the covenant renewal ceremony rewrites Deut 29:17–20. The passage from Deuteronomy describes one who, having heard

¹⁸ For a detailed attempt to reconstruct the sect’s understanding of Deut 29:28, see Aharon Shemesh and Cana Werman, “Hidden Things and Their Revelation,” *RevQ* 18 (1998) 409–27, at 412–14.

¹⁹ According to Daniel Vainstub, “The Covenant Renewal Ceremony as the Main Function of Qumran,” *Religions* 12 (2021) 578–604, the Qumran site served, from the time of Herod forward, as a gathering point for all of the “camps” to celebrate the annual covenant renewal ceremony on the Feast of Weeks. On the use of the term “covenant” (*ברית*) in itself to refer to the Qumran community, as more or less a synonym for *קהל*; see Sarianna Metso, “Qumran Community Structure and Terminology as Theological Statement,” *RevQ* 20 (2002) 429–44, at 435, and see 443 for redactional interest in covenant in the different versions of the Community Rule.

²⁰ See Martin G. Abegg, “The Covenant of the Qumran Sectarrians,” in *The Concept of the Covenant* (ed. Porter and de Roo), 81–97, at 90.

the oaths that seal the covenant, resolves nevertheless to worship other gods. Moses assures Israel that God's anger will burn against such a person. The Community Rule, incorporating this passage into the imprecations that accompany the renewal of the covenant, has the priests and Levites curse one who enters into the covenant but has "idols of his heart" (גלולי לבו) and "sets his stumbling block of transgression before himself" (1QS ii 11–12). These characterizations are drawn from Ezek 14:2–8, where Ezekiel condemns those who seek the word of the Lord from the prophet but remain attached to foreign gods. The Community Rule's merger of Deut 29:17–20 and Ezek 14:2–8 occurs elsewhere in the sectarian corpus and depends on a number of verbal overlaps between them.²¹ For our purposes, most importantly, it confirms the centrality of revelation in the sect's conception of covenant: the covenant renewal ceremony involves seeking the prophetic word.

The above survey of the role of covenant in Second Temple Jewish thought indicates the centrality therein of covenant renewal and, in turn, the perception of substantial continuity between the present covenanting community and the biblical past. The covenantal rites that were performed in the past can be undertaken again in the present; the prophetic word continues to speak, enabling new commitments to be incorporated into the covenantal framework; and the covenanting community can be identified with Israel of the past within a seamless penitential narrative.²²

■ Covenant in Rabbinic Literature

How, against this background, can we assess the role of covenant in rabbinic literature? The relative importance of a particular concept within a conceptual network is a difficult thing to measure. In a recent article on the question of the rabbis' perspective on the land of Israel, Alon Goshen-Gottstein reflects on this methodological problem. It is altogether possible—it is in fact the case, he claims—that "despite the existence of tens or even hundreds of statements in the areas of halakah and haggadah concerning the land of Israel, the land of Israel does not occupy a central place in the economy of the sages' thought."²³ To evaluate the importance of a concept, one must consider not only the number of passages in

²¹ See CD xx 1–10; 1QH xii, esp. ll. 13–16. On the latter passage, see Carol A. Newsom, *The Self as Symbolic Space: Constructing Identity and Community at Qumran* (Atlanta: Society of Biblical Literature, 2004) 312–25. The verbal overlaps: Deut 29:16 refers to גלליהם "their idols," one of only two instances of the word in the Torah; there are two references in Deut 29:17–18 to the sinner's heart (לב); and, perhaps most importantly, just as Moses says that "the Lord's anger and jealousy will smolder against that man (באיש ההוא)" (Deut 29:19), and (per Deut 29:21–27) that God will make him into a sign for later generations, so Ezek 14:8 has God say, "I will set my face against that man (באיש ההוא), and make him a signal and byword."

²² On some elements of this conception of continuity, see Christopher S. Atkins, "The *Yahad* as the Locus of Divine Presence: On 4QFlorilegium's Divinatory Hermeneutics," *RevQ* 31 (2019) 209–38, and the literature cited there.

²³ Alon Goshen-Gottstein, "The Land of Israel in the Economy of Jewish Thought," *Daat* 86 (2018) 211–58, at 211 (Hebrew; my translation). My thanks to Yair Furstenberg for drawing my attention to Goshen-Gottstein's article.

which it appears. One must also consider, among other things, how the concept's role in rabbinic literature compares to that in the Bible (or, we may add, in Second Temple literature); the concept's relationship to other concepts within rabbinic thought; and to what degree rabbis do innovative work with the concept.²⁴

Goshen-Gottstein himself suggests in passing that covenant, like the land of Israel, occupies a more marginal place in rabbinic than in biblical thought.²⁵ A comprehensive evaluation of the significance and signification of covenant in rabbinic literature is not possible within the confines of an article.²⁶ Here, I offer only some framing reflections on the question of significance and one focused argument with respect to signification.

Evidence for the marginality of covenant as an organizing category for the rabbis might be adduced from cases in which Tannaitic literature incorporates origin stories for the rabbis that rework or typologically resemble some of the above biblical and Second Temple period sources, but stripped of the covenantal elements. Thus, many sources allude to the gathering in Neh 9–10, but in rabbinic memory it is “the great assembly” (כנסת הגדולה): a turning point in the canonization and transmission of Torah, and a font of liturgical innovation (or recovery), but with no link to covenant formation or renewal.²⁷ Again, a set of interrelated rabbinic texts associates the Yavneh assembly with the problem of forgetting. The rabbis' work, and the goal of their students after them, was to order and thus enable the

²⁴ Ibid., 212.

²⁵ Ibid., 214–15.

²⁶ For an attempt to gauge the role of covenant in rabbinic literature in comparison with the Dead Sea Scrolls, see Lawrence Schiffman, “The Concept of Covenant in the Qumran Scrolls and Rabbinic Literature,” in *The Idea of Biblical Interpretation: Essays in Honor of James L. Kugel* (ed. Hindy Najman and Judith H. Newman; Leiden: Brill, 2004) 257–78. Schiffman says little on methodology, offering that he can “let the ancient texts speak for themselves. What did they consider the notion of covenant in the context of their specific approach to Judaism?” (258). In practice, he lets the Qumran material define the comparison as he works through different covenantal elements therein—the covenants of Noah, Abraham, Jacob, Sinai, and Levi and Aaron; the covenant of the Qumran sect itself; covenant renewal; and the renewed covenant—and looks (but not, oddly, in the case of covenant renewal) for relevant material on them in rabbinic literature. Schiffman's conclusion is that “there is a large degree of incongruity between the concepts of covenant described in the sectarian and rabbinic corpora” (276), but he does not attempt a general formulation of the nature of this incongruity. Of the passages of main interest in this article, Schiffman treats only one, in a footnote (267–68 n. 40).

²⁷ For a convenient review of older scholarship on the “great assembly,” see Daniel Sperber, “Synagogue, The Great,” *Encyclopaedia Judaica* (ed. Fred Skolnik; 2nd ed.; Detroit: Macmillan, 2007) 383–85; and Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs* (trans. Israel Abrahams; Cambridge: Harvard University Press, 1975) 567–69, 944 nn. 84–87; Ira Jeffrey Schiffer, “The Men of the Great Assembly,” in *Persons and Institutions in Early Rabbinic Judaism* (ed. William S. Green; Missoula: Scholars Press, 1977) 237–76. See also Jörn Kiefer, “Die rabbinische Tradition von der ‘Großen Versammlung,’” in *Mein Haus wird ein Bethaus für alle Völker genannt werden (Jes 56,7). Judentum seit der Zeit des Zweiten Tempels in Geschichte, Literatur und Kult; Festschrift für Thomas Willi zum 65. Geburtstag* (ed. Julia Männchen and Torsten Reiprich; Göttingen: Vandenhoeck & Ruprecht, 2007) 221–33.

memorization and preservation of a jumble of legal traditions.²⁸ This account hovers close to the framework of forgetting and recovery that we find in the story of Josiah and in echoes thereof, but the rabbinic framework silences the elements of penitence and covenant renewal and instead focuses on scholastic practices of study and mnemonics.

Support for the impression of the marginality of covenant can come from appreciation for conceptual interrelationships that provisionally explain such marginality. Thus, if, as I have argued above, the importance of covenant in many biblical and Second Temple sources is connected with the notion of covenant renewal and, more fundamentally, with a sense of continuity with the biblical past, then one can perceive the marginality of covenant in rabbinic thought as bound up with a perception of discontinuity, of a break from the biblical past. From this perspective, the displacement of exegesis via rewriting (“rewritten Bible”) by exegesis via commentary (“midrash”) in the transition from Second Temple literature to rabbinic literature bears on the intellectual history of covenant. Rewritten Bible reflects a sense of continuity with the biblical past: it processes the Bible as a transparent text to be compositionally imitated. Rewritten Bible can be associated directly with covenant renewal, as in the case of Deuteronomy, an early instance of rewritten Bible that is set in a moment of covenant renewal (in Moab) and that was performed in the context of covenant renewal (under Josiah). Commentary, instead, processes the Bible as something exotic and opaque, and it is performed, paradigmatically, in a scholastic context, not in a ritual context. One might put this point more pithily: canon consciousness, which is one of the fulcrums between rewritten Bible and commentary, is closely tied to consciousness of the cessation of prophecy and thus, in turn, to the marginalizing of covenant as an organizing category.²⁹

To be sure, rabbis do invoke the covenant, as in the Bible, to justify the obligation to observe God’s law.³⁰ Various passages use the designation “member (lit., son)

²⁸ See especially t. ‘Ed. 1:1; t. Soṭah 7:11–12; Shlomo Naeh, “The Craft of Memory: Constructions of Memory and Patterns of Text in Rabbinic Literature,” in *Mehkerei Talmud 3: Talmudic Studies Dedicated to the Memory of Professor Ephraim E. Urbach* (ed. Yaakov Sussmann and David Rosenthal; Jerusalem: Magnes, 2005) 570–82 (Hebrew); idem, “Make Your Heart Chambers of Chambers: More on the Rabbinic Sages on Argument,” in *Renewing Jewish Commitment: The Work and Thought of David Hartman* (ed. Avi Sagi and Zvi Zohar; Tel-Aviv: Hakibbutz Hameuhad, 2001) 851–75 (Hebrew).

²⁹ Recent standouts in the enormous body of scholarship on canon and prophecy in the Second Temple period include Molly M. Zahn, *Genres of Rewriting in Second Temple Judaism: Scribal Composition and Transmission* (Cambridge: Cambridge University Press, 2020); Paul D. Mandel, *The Origins of Midrash: From Teaching to Text* (Leiden: Brill, 2017); Eva Mroczek, *The Literary Imagination in Jewish Antiquity* (Oxford: Oxford University Press, 2016); Alex P. Jassen, *Mediating the Divine: Prophecy and Revelation in the Dead Sea Scrolls and Second Temple Judaism* (Leiden: Brill, 2007).

³⁰ A recent dissertation intriguingly contends that it is specifically the school of R. Ishmael that invokes Israel’s willing entrance into the covenant as the foundation for this obligation. See Yosef Bronstein, “Tannaitic Legal Arguments for Israel’s Obligation to Observe the Divine Law” (PhD

of the covenant” (בן ברית), apparently to indicate that the law in question applies only to an Israelite.³¹ Circumcision is said to be the subject of no less than thirteen covenants; it is quintessentially “the covenant of Abraham our father,” and its role as a marker of Israelite identity receives extensive attention among the rabbis.³² To the extent, then, that covenant figures less importantly for the rabbis than for the above works from the Bible and the Second Temple period, it is not a matter of the absence of relevant terms, but of the fact that it does not serve to organize rabbinic theology; it is no more than one category, or set of categories, among others.

Leaving aside these tentative suggestions concerning the significance of covenant in rabbinic thought, I turn to the main task of this section, to establish that one important role that covenant does play in rabbinic thought is substantially different from the one that it plays in the texts analyzed above: the rabbis use covenant to think through the notion of Israel as a corporate body composed of individual members. This interest becomes visible in a sustained interpretive approach to Deut 29 among some rabbis.³³ The following passage, from Mek. R. Ish. ba-ḥodesh 5 (Horovitz-Rabin ed., 219), occurs in a comment on the beginning of the Decalogue in Exod 20.³⁴

Rabbi says: It³⁵ comes to convey Israel’s praises, that when they all stood together before Mount Sinai to receive the Torah, they made their hearts as one (והשוו) ³⁶ to receive the kingdom of God with joy. And moreover, they made themselves collateral, one against the other. And moreover (ולא עוד),³⁷

diss., Yeshiva University, 2019).

³¹ See, e.g., t. B. Qam. 1:1; Mek. R. Ish. kaspā 20 (*Mekhilta’ De-Rabbi Ishmael* [ed. H. S. Horovitz and I. A. Rabin; Jerusalem: Bamberger and Wahrmann, 1960] 331). There is no apparent connection between this term and the Syriac *ben qyāmā* “member of the covenant.” On the latter term, see Dmitriy F. Bumazhnov, “Qyāmā before Aphrahat: The Development of the Idea of Covenant in Some Early Syriac Documents,” in *Syrien in 1.-7. Jahrhundert nach Christus. Akten der 1. Tübinger Tagung zum Christlichen Orient (15.-16. Juni 2007)* (ed. Dmitriy Bumazhnov and Hans Reinhard Seeliger; Tübingen: Mohr Siebeck, 2011) 65–81.

³² See m. Ned. 3:11; t. Ber. 6:12; Shaye J. D. Cohen, *Why Aren’t Jewish Women Circumcised? Gender and Covenant in Judaism* (Berkeley: University of California Press, 2005).

³³ For a point of continuity between rabbinic and Qumranic interpretation of Deut 29:28, see Shemesh and Werman, “Hidden Things,” 415–17.

³⁴ For the Hebrew text, I cite the Munich 95 manuscript.

³⁵ The antecedent of “It”—i.e., the specific lemma to which this comment attaches—is unclear. On the redactional character of attributions to Rabbi Judah the Patriarch in Tannaitic midrashim, see Menahem Kahana, “Foreign Bodies from ‘the House of Rabbi’ in the Halakhic Midrashim,” in *Studies in Bible and Talmud: Proceedings of the Conference Held on the Sixtieth Anniversary of the Institute for Jewish Studies* (ed. Sara Japhet; Jerusalem: Hebrew University Press, 1987) 69–85 (Hebrew).

³⁶ I understand the copula before והשוו to be an error. In Oxford 151, the copyist accidentally skipped from the first ליקבל to the second, omitting everything in between.

³⁷ The text at this point has suffered some corruption in most witnesses. The best medieval manuscript, Oxford 151, has ולא שלכך instead of ולא עוד, and the Genizah fragment has ולא שלך. I presume that something like Oxford 151 and the Genizah fragment, as the *lectio difficilior*, is original, and that ולא עוד, attested in the Munich manuscript and other medieval witnesses, is secondary, but the meaning of the original is unclear to me.

the Holiness, blessed be He, revealed himself to covenant with them concerning the concealed things (בסתרות), as it is written (Deut 29:28), “The concealed things are for the Lord our God. . . .” They said to him: Concerning the revealed things we covenant with you, but we do not covenant with you concerning the concealed things, so that it should not be that one person sins in concealment and the congregation should be taken as collateral (מתמסכין).³⁸

According to this comment, attributed to Rabbi (R. Judah the Patriarch), Sinai was an occasion for national unity, not only in spirit but as a matter of law: the Israelites pledged themselves as collateral one to the other, allowing God to exact “payment” (punishment) from one Israelite on account of the sin of another. Deuteronomy 29:28 describes a limit to this pledge, perhaps articulated at Sinai, or perhaps in Moab: Israel accepted collective responsibility only for revealed or witnessed sins, not for sins committed in secret.³⁹

The thread of Rabbi’s teaching is picked up by the *amora* Resh Laqish in the Palestinian Talmud, in a comment on the story of Akhan at the beginning of the book of Joshua. Some background is necessary. According to Josh 7, Akhan took from the spoils of Jericho, which were under a ban, and as a result, some thirty-six Israelites fell in the next battle, against the city of Ai. The biblical author is singularly attentive to the implications of this story for the relationship between the individual and the collective.⁴⁰ The chapter begins by shifting back and forth between these two registers: “And the Israelites violated the ban, and Akhan . . .

³⁸ For מתמסכין I understand מתמשכן, as in the *editio princeps*.

³⁹ Medieval interpreters and modern scholars alike have supposed, not unreasonably, that this approach to Deut 29:28 emerges from a reading of earlier sections of the chapter. See Rashi *ad* 29:28; Shemesh and Werman, “Hidden Things,” 415 n. 15. In Deut 29:17–18, as noted above, an individual among Israel secretly expresses his intention to worship other gods, despite the covenantal oaths. But the consequence in the continuation is not only punishment of that individual (29:19–20) but the destruction of the land and exile (29:21–27). R. Judah the Patriarch solves the tension by construing 29:28 as a reflection on corporate responsibility: the nation suffers for the sin of the individual. (An additional inspiration for this approach to 29:28 comes from the covenantal curses in 27:15–26, which seem to focus on concealed [בסתרת] transgressions. See Rashbam *ad* 27:15. Finally, the first person plural prepositional phrase לנו “for us” in 29:28 is strongly linked to character speech, especially by a group, and especially in a ritual context. See, most proximately, 26:3, 9, 15; 30:12–13. These associations would have encouraged the rabbis to construe 29:28 as speech by collective Israel during the covenant rite.) Biblical scholars, sensitive to this tension, have offered source-critical solutions; it may be, for example, that 29:21–27 represents a secondary interpolation. See Joel S. Kaminsky, *Corporate Responsibility in the Hebrew Bible* (Sheffield: Sheffield Academic, 1995) 133–35. More likely, there is no real tension. While Deut 29:17–18 focuses on the treachery of an individual Israelite, it also envisions the possibility that the guilty party is a “family or tribe” (29:17), and the description of widespread destruction and exile in 29:21–27 evidently assumes a case in which the rot is widespread. On this approach, 29:28 is simply a concluding exhortation akin to the one found in the next chapter, in Deut 30:11–14: God does not demand of the Israelites that they seek out heavenly matters, concealed things; they need only heed what God has already revealed to them. The intervening verses, Deut 30:1–10, likely represent a secondary interpolation; see Alexander Rofé, “Redressing the Calamity in the Transmission of the Bible,” *Tarbiz* 82 (2014) 221–29, at 222–23 (Hebrew).

⁴⁰ On corporate responsibility in Josh 7, see generally Kaminsky, *Corporate Responsibility*, 67–95.

took from the ban, and the Lord was angry with the Israelites” (Josh 7:1). The opening words, “And the Israelites violated the ban,” assign the sin to Israel as a whole, with all of the authority of the narrator’s voice. Only in the continuation of the verse do we learn that the attribution of the sin to Israel is a constructive legal description, that in fact only a single Israelite took from the ban. When God alerts Joshua to the crime that led to the defeat at Ai, God, like the narrator, attributes the crime to Israel, with mainly plural verbs: “Israel has sinned. They have transgressed the covenant that I commanded them, they have taken from the ban. . . .” (7:11).

The book of Joshua returns to the story of Akhan as a source of reflection on the relationship between the individual and the collective in the story of the altar that the tribes of Reuben, Gad, and Manasseh build in the trans-Jordan (Josh 22). The delegation led by Phineas warns these tribes that their actions will have consequences for all of Israel: “When Akhan son of Zerah violated the ban, was there not anger against all the congregation of Israel? He was not the only one who perished for that transgression” (22:20).⁴¹

For the purpose of contrast with the rabbinic approach to Deut 29:28 and, as we will see below, to the story of Akhan, let us note how Josh 7 conceptualizes the logic of corporate responsibility. Unlike in Rabbi’s comment above, corporate responsibility in Josh 7 does not rest on a notion of Israelite consent in the formation of the covenant. God does make reference to violation of the covenant in Josh 7:11, but the covenant serves as background only to Akhan’s transgression itself; it does not explain why Akhan’s transgression should be imputed to Israel as a whole. The story makes sense of this imputation only implicitly, and in two ways. The first is through the logic of divine anger, referenced in Josh 7:1 and described, in accordance with the biblical convention, as burning. We are presumably supposed to understand that God’s anger spreads like a fire from the source—Akhan’s transgression—across the body politic.⁴² The second and more distinctive way in which the story implicitly explains Israel’s corporate responsibility occurs in God’s directive to Joshua in 7:12–13: “I will not be with you anymore unless you destroy the ban from your midst (מקרבכם). Rise and purify the people. Order them: Purify yourselves for tomorrow, for thus says the Lord, God of Israel: A ban is in your midst (במקרבכם), O Israel. You will not be able to stand up to your enemies until you remove the ban from your midst (מקרבכם).” The repeated word קרב “midst” constructs Israel as a body with an interior, such that what is inside that interior implicates the entire body that encloses it.

In the rabbis’ treatment of the story of Akhan we find a different calibration of the relationship between the individual and the collective. Before turning to Resh

⁴¹ For the last sentence (in Hebrew: והוא איש אחד לא גרע בעונו), compare Num 27:3, where the daughters of Zelophehad say that their father was not among the assembly of Korah, כי בחטאו מת, “but rather he died in his sin.” “To die in one’s sin/transgression” is to die on account of a deed that brings guilt upon the doer alone and not on others.

⁴² On “divine wrath and corporate punishment” (thus the chapter title) in the Bible, see Kaminsky, *Corporate Responsibility*, 55–66.

Laqish's comment in the Palestinian Talmud, I take note of a passage introduced as a Tannaitic teaching in b. Sanh. 43b.⁴³ "When the Holy One, blessed be He, said to Joshua, 'Israel has sinned' (הטא ישראל) (Josh 7:11), he said before him: Master of the world, who sinned? He said to him: Am I a denouncer? Go and cast lots." The exegetical narrative here depends on reading the word ישראל in God's pronouncement, הטא ישראל, not according to the biblical sense, where it indicates a collective (thus: "Israel has sinned"), but according to the rabbinic sense, where it indicates an individual Israelite (thus: "an Israelite has sinned"). As Adi Ophir and Ishay Rosen-Zvi have shown, a landmark transformation of the term גוי occurs between biblical and rabbinic literature, from signifying a nation to signifying an individual gentile.⁴⁴ The same transformation occurs in the term ישראל.⁴⁵ This transformation reflects the rabbis' reconceptualization of the relationship between the individual and the collective.

We have already seen, in Rabbi's comment on the Sinai event, that covenant plays an important role in this reconceptualization. Its importance becomes evident further in Resh Laqish's comment on the Akhan story. The immediate literary context for Resh Laqish's comment is an exegetical tradition, preserved in t. Soṭah 8, concerning the Israelites' crossing of the Jordan River in Josh 3. The biblical text (Josh 3:16) tells that when the Jordan stopped flowing to allow the Israelites to cross, the waters flowing downstream toward the crossing point piled up to a great height. The Tosefta (t. Soṭ. 8:3) records a debate between two rabbis about the precise height of the pile. According to the continuation of the Tosefta, Joshua took advantage of this looming mass to confirm the people's commitment to war.

They were yet on the other side of the Jordan. Joshua said to them: On this condition are you entering the land, that you dispossess its inhabitants, as it is written, "And you shall dispossess [all] the inhabitants of the land; you shall destroy. . . . But if you do not dispossess . . . then what I planned to do to them, I will do to you." (Num 33:52, 55–56) And if you do not accept, the waters will come and flood you.⁴⁶

⁴³ For the Hebrew I rely on MS Yad HaRav Herzog, as transcribed in Maagarim. See the citation from this passage in b. Sanh. 11a.

⁴⁴ Adi Ophir and Ishay Rosen-Zvi, *Goy: Israel's Multiple Others and the Birth of the Gentile* (Oxford: Oxford University Press, 2018).

⁴⁵ See Ayelet Hoffmann Libson, "Commandments and the Community of the Law in Tosefta Berakhot," *JQR* 111 (2021) 155–84, at 170–71, and the scholarship cited there.

⁴⁶ For the Hebrew text I rely on MS Vienna. Rashi *ad* b. Soṭah 34a clarifies the exegetical basis linking Num 33:52–56 to the crossing of the Jordan. First, in the introduction to the speech in Num 33:51, God tells Moses: "Speak to the Israelite people and say to them: When you cross (כי אתם) the Jordan into the land of Canaan, you shall dispossess. . . ." The Tosefta supposes that the words "when you cross the Jordan into the land of Canaan" mark not (as I have translated them) the beginning of the speech that Moses is to address to Israel, but an adverbial phrase modifying the imperative "Speak," so that God is telling Moses: You (or whoever is leading Israel at the time) should speak to Israel when you are crossing the Jordan, etc. Thus the speech is supposed to occur in the Jordan River. The influence of Num 33:51 is probably detectable in the fact that MS Vienna begins with the words עורם בעבר הירדן, echoing the verb at the beginning of the verse; the story

Resh Laqish, in the Palestinian Talmud (y. Soṭah 7:5 [22a]), shifts the topic of interest for Joshua. “Said R. Shimon b. Laqish: In the Jordan they accepted upon themselves the concealed things (הנסתרות). Said to them Joshua: If you do not accept upon yourselves the concealed things, the waters will come and flood you.” According to Resh Laqish’s revision, Joshua in the Jordan compelled Israel under pain of death to accept that which, according to R. Judah the Patriarch, they refused to accept at Sinai: communal responsibility for concealed transgressions. The Talmud continues with the proof for Resh Laqish’s view from the aforementioned case of Akhan. “Said R. Simon bar Zavda: And it is reasonable. Know that it is so, for behold, Akhan sinned and a majority of the Sanhedrin fell at Ai.”⁴⁷ Thus, if in the first stage of Israel’s covenantal history, at Sinai, the people accept responsibility only for sins committed openly, in the second stage, upon entering the land of Israel, they are made to accept responsibility also for concealed sins. But the continuation of the passage in the Yerushalmi indicates that this new state of affairs does not endure forever. “Said R. Levi: At Yavneh, the strap was unknotted. An echo came forth and said: You should have no truck with concealed things (נסתרות).” The strap is that which inflicts lashes, and for it to be unknotted is for it to be laid aside, so that there is no punishment for the crime in question.⁴⁸ R. Levi asserts on the basis of an “echo”—though the words in fact come from the book of Ben Sira—that, at Yavneh, God frees Israel from responsibility for covert sins.⁴⁹ R. Levi’s claim follows from that of Resh Laqish: if it is as a self-governing people on its land that Israel must assume responsibility for concealed transgressions, then such responsibility comes to an end with the destruction of the temple and the dawn of a new, exilic era at Yavneh.

seems in fact to require, as in MS Erfurt עון בירדן “when they were yet in the Jordan”), that the Israelites be already in the Jordan. Second, Josh 4:10 speaks of the priests remaining in the river “until all the words that the Lord had ordered Joshua to convey to the people had been completed, according to all that Moses had commanded Joshua.” The reference cannot (for the rabbinic exegete) be to the command to retrieve stones from the Jordan or to set up stones in the Jordan, as the preceding verses already address these matters; moreover, Moses never makes any reference in the Pentateuch to retrieving stones from or placing stones in the Jordan. The reference must therefore be to something else that Moses commanded to be done in the river, namely, the issuance of the threat in Num 33:52–56.

⁴⁷ The great Sanhedrin consists of seventy people, and thirty-six Israelites died at Ai. The reference to the Sanhedrin may be intended to imply that the source of Israel’s collective responsibility lay in its failure to punish Akhan for his transgression.

⁴⁸ For this expression, see also Lev. Rab. 28:1 (*Midrash Wayyikra Rabbah: A Critical Edition Based on Manuscripts and Genizah Fragments with Variants and Notes* [ed. Mordecai Margulies; New York: Jewish Theological Seminary of America, 1993] 448), observing that one might infer from statements in Ecclesiastes that “there is no judgement and no Judge; the strap has been unknotted.” See likewise y. Bik. 1:5 (64a).

⁴⁹ The words from Ben Sira occur in Sir 3:22. Cf. the quotation of this verse with the attribution to Ben Sira in y. Hag. 2:1 (73c). As correctly understood in y. Hag. 2:1, the “concealed things” of Sir 3:22 are in fact the concealed ways of God, divine mysteries, not concealed transgressions; see the similar expression in Aramaic in b. Ber. 10a. On the two meanings of נסתרות—concealed knowledge and concealed transgressions—see Shemesh and Werman, “Hidden Things.”

I note briefly one other Tannaitic text that is unrelated to the above exegetical trajectory but that likewise invokes Deut 29, with other covenantal passages from the Bible, to undergird the notion of collective responsibility.⁵⁰ The Tosefta (t. Soṭah 7:2–6) describes in detail the rite whereby judges impose an oath on a litigant in a civil case who insists on his innocence despite the evidence against him.⁵¹ According to this description, first the judges attempt to persuade him to concede guilt and only adjure him if he refuses.⁵²

1a. One who owes an oath to another party, they (i.e., the judges) say to him: Know that all the world shook on the day on which it was said, “You shall not swear falsely by the name of the Lord your God[, for the Lord will not clear one who swears falsely by His name]” (Exod 20:7).

1b. All transgressions in the Torah, it is written concerning them, “clearing” (Exod 34:7), but this one, it is written concerning it, “He will not clear” (ibid.; Exod 20:7).⁵³ All transgressions in the Torah, punishment is exacted from him, but this one, from him and from the whole world, and the transgression of the entire world is suspended on him, as it is said, “Curse and dishonesty, . . . for that, the earth is withered” (Hos 4:2–3). All transgressions in the

⁵⁰ For a third case, but not involving Deut 29, see Sifra šav 3:3 (*Sifra 'De-ve Rav [Torat Kohanim]* [ed. I. H. Weiss; Vienna: J. Schlossberg, 1861/2] 32a), where R. Shimon interprets Lev 6:15 so that the verse indicates that the post mortem meal offering of the high priest comes ממי שהברית שלו “from the one to whom belongs the covenant,” i.e., from the congregation of Israel, presumably to exclude the notion that an individual Israelite might fund it. There is much that is unclear about this passage. The comment, “from the one to whom belongs the covenant,” occurs in Sifra emor 13:2 (104b), interpreting the words ברית עולם “eternal covenant” in Lev 24:8, whereas in Lev 6:15, the lemma is חוק עולם “eternal statute,” and there is no reference to the covenant. See also the version of R. Shimon’s comment in b. Menah. 51b, with no reference to the covenant. In any case, I note that on the Sifra’s version, R. Shimon appears to invoke the category of covenant to single out the congregation in contrast with individuals.

⁵¹ On this oath see now also Tzvi Novick, “The Rabbinic Courtroom Oath in its Roman Context,” *Zutot* 20 (2023) 1–11.

⁵² For the Hebrew text I rely on the *editio princeps*. What survives in MS Vienna is largely the same. Major differences in MS Erfurt are noted in the footnotes below; they are substantial but not important for my purposes. The parallel material in the *baraita* quoted in b. Šeb. 39a is substantially the same as the *editio princeps* of the Tosefta.

⁵³ In Exod 34:7, God says that he “will not altogether clear (נקה לא ינקה), but visits the iniquity of parents upon children and children’s children, upon the third and fourth generation.” The exegesis in the above passage depends, first, on the typical rabbinic tactic of construing the absolute infinitive (נקה) separately from the conjugated form (לא ינקה) as describing a different scenario. On this approach, God represents himself as fundamentally prepared to clear, or forgive. And in what circumstance does he not clear but visits the sin upon subsequent generations? The answer is supplied by 20:7, according to which God “will not clear” one who swears falsely by God’s name. The exegesis may also be supported by the fact that the notion of God exacting punishment from “the third and fourth generation,” the manifestation of “not clearing” in 34:7, occurs in 20:5b–6. These verses can (and according to the plain sense should) be construed as an appendix to the commandment concerning worship of other gods (20:1–5a), but our exegete may take them to be a prelude to the commandment concerning false oaths (20:7). This exegesis is connected with the boundary role of the commandment concerning false oaths in the division of penitence in Mek. R. Ish. ba-ḥodesh 7 (229); t. Yoma 4:5; cf. the commentary of Nahmanides and Ritba *ad* b. Šeb. 39a.

Torah, punishment is exacted from him, but this one, from him and from his relatives, as it is said, “Don’t let your mouth bring disfavor on your flesh” (Ecc 5:5), and his flesh is none other than his relative, as it is said, “and not to ignore your own flesh” (Isa 58:7). All transgressions in the Torah, there is suspending for him for two or three generations, but this one is immediate, as it is said, “I have sent [the curse] forth, declares the Lord of Hosts” (Zech 5:4); immediately, “and it shall enter the house of the thief” (ibid.), this being the one who adjures falsely, knowing that [the one being adjured] does not have it, and thus he steals the minds of people; “and the house of one who swears falsely by my name” (ibid.), which is just as it means. All transgressions in the Torah, [the punishment is assessed] in his property, and this one, in his property and in his body, as it is said, “and it shall lodge [inside his house and shall utterly consume him, and his wood and his stones]” (ibid.). Come and see that things that the fire does not consume, a false oath utterly consumes.⁵⁴

2. If he says: I will not swear, they dismiss him immediately. If he says: I will swear, they say to each other, “turn aside from the tents of these wicked men [. . . lest you be swept up in all their sins]” (Num 16:26).

3. They adjure him with the oath that is said in the Torah, as it is said, “And I adjure you by the Lord, the God of the heavens and the God of the earth” (Gen 24:3).

4. They say to him: Know that it is not subject to a condition in your heart that we adjure you, but subject to a condition in our heart. And so we find that when Moses⁵⁵ adjured Israel on the Plains of Moab, he said to them: Know that it is not subject to a condition in your heart that I adjure you, but subject to a condition in my heart, as it is said, “And it is not with you alone [that I make this covenant, with its curses,] but both with him who is here [with us, standing today before the Lord our God, and him who is not here with us today]” (Deut 29:13–14).⁵⁶ I have only the commandments that Israel was commanded at Mount Sinai. Whence to include the reading of the scroll [of Esther]? Hence it says: “[The Jews] undertook and accepted, etc., irrevocably” (Esth 9:27).

The rite features two major sections, both of which begin with “know that”: the initial attempt at dissuading the litigant from taking the oath (section 1) and the qualifications that the court attaches to the oath (section 4). In between comes the

⁵⁴ The exegesis about property and body (which appears in a substantially different and, in a number of ways, clearly corrupt form in MS Erfurt) evidently turns on the interpretation of the pronominal suffix of וכלתו “and it shall consume him” as a reference to the owner of the house (thus “him,” as translated in the body of the text) and not the house itself (“it”), so that, so interpreted, the verse indicates that the curse triggered by the false oath destroys not only the house (“his wood and his stones”) but also him. The last sentence, about the stones of Zech 5:4, which the fire cannot consume but the false oath does, is an appendix that incorporates the word וכלתו into a different exegesis. See y. Šeb. 6:5 (37a) for a related treatment of Zech 5:4.

⁵⁵ In MS Erfurt, not Moses but the Holy One, blessed be He.

⁵⁶ Is “him who is here” Moses? Is “him who is not here” the court that is Moses’s successor?

crux itself: the litigant is either persuaded and declines to swear, or he persists and takes the oath (sections 2 and 3).⁵⁷

A covenantal framework encloses the entire rite. The judges begin by recalling the pronouncement of the Decalogue at Sinai (section 1) and end by referring to the covenant at the Plains of Moab and its aftermath around the festival of Purim (section 4).⁵⁸ The exegeses in section 1 are linked by the root "גק", which occurs in Exod 20:7, 34:7, and Zech 5:3, and by the word "curse" (אלה) which occurs in Hos 4:2 and Zech 5:3.⁵⁹ This word evokes the curse that seals the covenantal oath, and it is introduced again in section 4 through the quotation of Deut 29:13. The covenantal framework drives the notion of collective responsibility that is the major (though not the exclusive) theme of section 1. This theme takes center stage again when the litigant insists on swearing, in section 2: the verse that the judges quote, Num 16:26, voices the concern that the punishment of the oath-taker will radiate outward and sweep away those around him.⁶⁰ Thus, as in the exegetical trajectory around Deut 29:28, so this passage makes use of covenant in order to give expression to the notion of collective responsibility.⁶¹ It is notable that the corporate bodies explicitly identified in section 1 are the family and the world, not Israel. Nevertheless, Israel does occur in section 4.

⁵⁷ There are clear points of contact with two judicial rites in the Mishnah: the attempt to dissuade the suspected adulteress from carrying forward the ordeal process in m. *Soṭah* 1:4, and the intimidation of witnesses in capital cases in m. *Sanh.* 4:5. There is reason to think that the Tosefta passage depends on the two Mishnah passages. The last exegesis in section 1, concerning the property and body of the oath-taker, is somewhat strained and is probably best construed as a nod to the judges' speech in m. *Sanh.* 4:5, which dwells on the greater severity of cases where life is at stake over cases where only property is at stake. Likewise, the insistence (with only a slim exegetical basis) that punishment in the case of the false oath is not "suspended" until later but administered immediately seems designed to evoke the context of the *soṭah*, where much attention is devoted (m. *Soṭah* 3:4) to the possibility of punishment being suspended; see also the occurrence of "suspension" in the exegesis of Hos 4:2–3 in section 1.

⁵⁸ The language of covenantal oath-taking is reflected in Esth 9:27, quoted in section 4, both through the terminology of "undertaking" (קיימי; cf. Aram. קימא "covenant, oath") and of "accepting upon oneself."

⁵⁹ The oath that the *soṭah* swears is also characterized by the word אלה in Num 5:21. Cf. t. *Soṭah* 1:4, introducing 1 Kgs 8:31, featuring the same word, to locate the *soṭah*'s ordeal.

⁶⁰ Num 16:26 is arguably connected with Lev 26:37, the locus classicus for the notion that each Israelite is guarantor (i.e., can be called upon to pay the penalty) for the sins of other Israelites; see Sifra *beḥuqotai* 2:5 (Weiss ed., 112b). According to Num 16:34, describing the event following Moses's warning in Num 16:26, "all Israel around them fled at the sound of them (נסו לקלם)," while Lev 26:36 imagines Israel as "fleeing" (ונסו) from the "sound" (קול) of a driven leaf.

⁶¹ Contrast the intimidation of witnesses in the case of a capital crime (m. *Sanh.* 4:5), where responsibility propagates vertically rather than horizontally: The judges insist that a witness whose false testimony leads to the execution of the defendant has on his hands the blood of the descendants who would have come from the defendant.

■ Law and the Problem of Corporate Identity

The above rabbinic texts enlist covenant in a new role: to undergird the notion of collective responsibility for the transgression of an individual Israelite. In this section, I suggest that this development responds to the rise of halakah in a genuinely legal sense among the rabbis. Because the paradigmatic legal subject is the individual, the emergence of law problematizes collective Israel. Covenant enables the rabbis to make sense of collective Israel as a legal subject.

The insights of legal theory and attentiveness to the rabbis' Roman context have enabled scholars to appreciate the degree to which rabbinic legalism represents a genuine innovation in relation to the rabbis' Second Temple period predecessors. Moshe Halbertal writes of a shift from *mitzvah* in the Second Temple period to halakah among the rabbis. What characterizes the latter, in contrast with the former, is "a dense and thick field of instructions at high levels of resolution."⁶² Natalie Dohrmann offers "that rabbinic literature represents a break from Jewish precedent precisely in its legality and that this in turn may tell us something about Romanization."⁶³ Dohrmann finds that the machinery, rhetoric, and ideology of Roman law inspired the production of a competing Jewish law, *mutatis mutandis*, among the rabbis. Prior to this point, in the Second Temple period, references to the law describe not so much injunctions associated with mechanisms of legislation and enforcement as "symbolic markers of Jewish identity."⁶⁴

The sociologist Ferdinand Tönnies, in his masterwork, *Community and Civil Society*, links law, in the Roman and modern contexts alike, with the disentanglement of the individual from the community.

Rational, scientific, liberalised law did not become possible until individuals were in fact emancipated from all ties of family, country and home town, of belief and superstition, of inherited tradition, custom and duty. . . . This process can never be regarded as complete. To some extent it finds its ultimate and crowning expression in the imperial declaration which conferred Roman citizenship on all free men within the empire, granting them access to law-courts and freeing them from taxes.⁶⁵

While the formulation is extreme, Tönnies's claim conveys a basic truth: law in the modern sense—which here, as for Tönnies, means likewise the Roman sense—reflexively constructs a subject who is an individual. It is the individual who is the

⁶² Moshe Halbertal, "The History of Halakhah and the Emergence of Halakhah," *Diné Israel* 29 (2013) 1–23, at 2 (Hebrew; my translation).

⁶³ Natalie B. Dohrmann, "Law and Imperial Idioms: Rabbinic Legalism in a Roman World," in *Jews, Christians, and the Roman Empires: The Poetics of Power in Late Antiquity* (ed. Natalie B. Dohrmann and Annette Yoshiko Reed; Philadelphia: University of Pennsylvania Press, 2013) 63–78, at 64.

⁶⁴ *Ibid.*, 68.

⁶⁵ Ferdinand Tönnies, *Community and Civil Society* (trans. Jose Harris and Margaret Hollis; Cambridge: Cambridge University Press, 2001) 218.

paradigmatic bearer of rights and obligations. The community as a corporate body enters into the framework of the law only as the exception.⁶⁶

One example of this predilection of the law comes from the case of עיר הנדחה, the city turned toward idolatry. The Bible (Deut 13:14–19) demands that, after careful investigation to ascertain the facts, the city should be subjected to the rule of *herem*, i.e., the killing of all of the city’s inhabitants and the destruction of their property. As scholars have observed, the rule of the turned city merges the institutions of warfare and of justice.⁶⁷ The fact-finding is judicial, but the punishment belongs to the realm of warfare, especially in the rule’s refusal to distinguish between the guilty and the innocent: the collective punishment is grounded in the logic of friend and foe that defines war, rather than in the logic of innocence and guilt that defines justice and law. The main line of rabbinic interpretation advances the judicial or legal element at the expense of the warfare element and insists that inhabitants who did not worship foreign gods are not, in fact, subject to execution. The rabbis preserve the collective element of the law only with respect to property, and even then, only with the support of geography: though innocent inhabitants are spared, property of theirs that is situated inside the city, but not outside the city, is subject to the *herem*.

The challenge of processing the corporate body in legal terms emerges especially clearly in the context of liturgy. The Tosefta (t. Roš. Haš. 2:18) reports a debate between Rabban Gamaliel and the sages. Rabban Gamaliel takes the view that the Amidah prayer by the emissary of the congregation exempts individuals from their prayer obligation. The Sages disagree and insist that each individual must “exempt himself,” i.e., must pray the Amidah individually. Rabban Gamaliel’s response—“if so, why do we have [the emissary of the congregation] descend before the ark?”—is to the point and supports the supposition, advanced by Gerald Blidstein among others, that the practice for which he advocates is original: the emissary of the congregation served genuinely as emissary, and he alone prayed the Amidah.⁶⁸ Nor, most likely, did he offer this prayer to “exempt” individuals from their obligation to pray (and in this respect, even Rabban Gamaliel’s position departs from the original practice); rather, the prayer was imagined as in the first place the collective work of the congregation, not as an obligation incumbent on each individual member of the congregation.⁶⁹ This latter notion, which finds fullest expression in the sages’ position, represents a

⁶⁶ Clifford Ando (*Law, Language, and Empire in the Roman Tradition* [Berkeley: University of California Press, 2011] 3) has observed that the Roman conception of the political unit, the *populus*, is distinctive in that “it is individual possession of membership, and individual commitment to the entailments of membership, that bind one to the community.”

⁶⁷ See David Henshke, “The Children of Ir ha-Nidahat: Bible, Midrash, and Maimonides,” in *The Wisdom of the Sages: Biblical Commentary in Rabbinic Literature, Presented to Hananel Mack* (ed. Avigdor Shinan and Israel Jacob Yuval; Jerusalem: Carmel, 2019) 135–70 (Hebrew); Moshe Halbertal, *Interpretative Revolutions in the Making: Values as Interpretative Considerations in Midrashei Halakhah* (Jerusalem: Magnes, 1999) 122–44 (Hebrew).

⁶⁸ See Gerald Blidstein, “Between Individual Prayer and Public Prayer,” *Sinai* 106 (1990) 255–64, at 256 and n. 8, and *passim* (Hebrew).

⁶⁹ Cf. the third position on the *musaf* prayer in m. Ber. 4:6.

secondary development: it came to be understood that each individual is obligated to pray the Amidah and ought ideally to carry out this obligation himself. Blidstein attributes this development to an alleged crisis of confidence about communal institutions following upon the destruction of the temple, and a consequent rise in the individual as the locus of praxis. I think it more likely that the cause lies with the rise of halakah as law, addressed paradigmatically to the individual.

A similar development occurs in the Shema liturgy. The history of this liturgy, which traces to the Second Temple period, is complex and uncertain, and a full account of its development lies far beyond the scope of this article, but the key transformations for our purposes were most likely as follows. In the Second Temple period, a daily morning liturgy at the temple involved the recitation of the Decalogue, followed by the three units of the Shema familiar from contemporary practice (Deut 6:4–9; 11:13–21; Num 15:37–41). This liturgy appears to have been colored by a notion of covenant renewal, evoking the Sinai covenant through the Decalogue, and beginning (Exod 20:2) and ending (Num 15:41) with the declaration of the Lord as Israel's God and savior. Alongside this rite there is evidence for a practice of individual recitation of the first two paragraphs of the Shema (Deut 6:4–11; 11:13–21), either specifically in the evening, for apotropaic purposes, or perhaps in both the morning and the evening, for apotropaic purposes or as an act of Torah piety. The rabbis, or the circles whose practice they affirm, merge these practices, dropping the Decalogue from the temple rite and surrounding the Shema with blessings. In the Tannaitic period, the liturgy is still in flux: the evening Shema still does not, for some, include the third paragraph (m. Ber. 1:5), and there is a form of communal recitation of the morning Shema that recalls its (partial) origin in a public rite (m. Meg. 4:3). But the development occurs in a way that suppresses the dimension of covenant renewal. The sovereignty of God emerges as an alternative thematic center, and the distinctive communal recitation falls into desuetude.⁷⁰ Among the factors that motivated these developments, we may return to the considerations identified above: a hesitation about covenant renewal, and the emergence of a legalistic framework that processes obligation, including ritual obligation, as inhering first and foremost in the individual.⁷¹

⁷⁰ The above account summarizes, synthesizes, supplements, and nuances the posited reconstructions in Reuven Kimelman, "The Shema' and Its Rhetoric: The Case for the Shema' Being More than Creation, Revelation, Redemption," *Journal of Jewish Thought and Philosophy* 2 (1992) 111–56; idem, "Rabbinic Prayer in Late Antiquity," in *The Late Roman-Rabbinic Period* (vol. 4 of *The Cambridge History of Judaism*; ed. Steven Katz; Cambridge: Cambridge University Press, 2006) 573–611; and especially Aharon Shemesh, "The Origins of the Reading of the Shema," in *Ke-Tavor Be-Harim: Studies in Rabbinic Literature Presented to Joseph Tabory* (ed. Arnon Atzmon and Tzur Shafir; Alon Shevut: Tevunot Press, 2013) 125–38 (Hebrew). See also Sarit Kattan Gribetz, "The Shema in the Second Temple Period: A Reconsideration," *JAJ* 6 (2015) 58–84.

⁷¹ See also Mira Balberg, *Blood for Thought: The Reinvention of Sacrifice in Early Rabbinic Literature* (Berkeley: University of California Press, 2017) 108–41, on the congregational offering. The insistence that each Israelite must acquire a share in congregational offerings though the contribution of a half-shekel should probably be linked to the same development.

■ Conclusion

The emergence and dominance within the rabbinic movement of halakah—law in a recognizably modern sense and in the ancient Roman sense—meant also the rise of the individual within this legal framework and the problematization of collective bodies like the congregation, the city, and the people Israel. I have shown that, unlike their Second Temple predecessors, rabbinic interest in covenant—and, in particular, a key covenantal text, Deut 29—centers not on the relationship between the covenantal partners, God and Israel, and not on defining who counts and who does not count as Israel, but on the problem of Israel as a collective body, bound in mutual responsibility. I suggest that these two developments are connected: the rabbis found the concept of covenant a helpful framework to think through a notion of corporate Israel that had been problematized by the rise of halakah. This conclusion is ironically but only superficially close to E. P. Sanders's notion of covenantal nomism. In his formulation, too, covenant responds to or qualifies a certain tendency within nomism, but in the view that I have defended, it supplies not grace, but community.