Early Halakhah in the Palestinian Targumim

by JOSEPH HEINEMANN

SINCE the beginning of modern Jewish studies scholars[1] have been discussing the problem of the antiquity of the Palestinian Targumim (PT), viz. Targum Pseudo-Jonathan (TJ1) to the Pentateuch, the Fragmentary Targum to the Pentateuch (TJ2) and Targum Jonathan ben Uzziel to the Prophets, as well as some of the Targumim to the Hagiographa. It is not the final date of the redaction of these Targumim which forms the focus of the discussion, since it cannot be denied that TJ1, for example, also contains late material such as the names of Muhammed's wife and daughter (*Gen.* 21:21), late geographical names and the like.[2] In any case, one cannot speak of a redaction in the strict sense of the word as regards these Targumim, which were orally transmitted for hundreds of years and remained in living use in the synagogue, continually changing their form in the process. The problem is how much really early material, going back as far as the Second Temple period, is embedded in them, and, if such material does exist, how it can be identified. In the past generation the tendency has grown to assign an early date to these Targumim—or at least to their main contents—in consequence of the publication of passages of the Palestinian Targumim from the Cairo Geniza by P. Kahle,[3] and again upon the discovery of Ms. Neofiti I in the Vatican library, where, for the first time, a complete "Jerusalem" Targum to the Pentateuch was found by A. Díez-Macho.[4] As a result of these discoveries numerous studies have appeared, most of which share the view that

[1] For example A. GEIGER, *Urschrift und Übersetzung der Bibel*, and Z. FRANKEL (cf. below). In this paper I shall use the following abbreviations:
OLMSTEAD—A. OLMSTEAD, "Could an Aramaic Gospel be written?" *JNES* I (1946), pp. 58 ff.
ALBECK—H. ALBECK, "External Halakhah in the Palestinian Targumim and in the Aggadah" (Hebrew), *B.M. Levin Jubilee Volume*, Jerusalem (1940), pp. 93 ff.
BERLINER—A. BERLINER, *Targum Onkelos*, Berlin (1884).
DÍEZ MACHO—A. DÍEZ MACHO, "The recently discovered Palestinian Targum etc.", *VT Supplement VII, Congress Volume, Oxford 1959*, Leiden (1960), pp. 222 ff.
FRANKEL—Z. FRANKEL, "Zu dem Targum der Propheten", *Jahresbericht d. jüd.—theol. Seminars*, Breslau (1872).
KAHLE—P. KAHLE, "Der Paläst. Pentateuchtargum etc.", *ZNW* 49 (1958), pp. 100 ff.
KAHLE-GENIZA—P. KAHLE, *The Cairo Geniza*, Oxford (1959), pp. 201 ff.
MCNAMARA—M. MCNAMARA, *The New Testament and the Palestinian Targum to the Pentateuch*, Rome (1966).

[2] Cf. for example L. ZUNZ, *Die gottesdienstlichen Vorträge der Juden*, Frankfurt a.M. (1892), p. 79; KAHLE-GENIZA, pp. 201 ff.; DÍEZ MACHO, pp. 222 ff.

[3] P. KAHLE, *Die Masoreten des Westens II*, Stuttgart (1930).

[4] See *op. cit.*, n. 1. Since then Díez Macho has published three volumes: *Neophyti I, Targum Palestinense* . . . Madrid (1968–71). The entire manuscript was published in a facsimile edition in 1971 by Maqor Publishing Co., Jerusalem.

the main body of material in the Palestinian Targumim has to be assigned to the end of the Second Temple period.[5] An expression such as "the New Targum Studies" has entered into the current usage of scholars.[6]

There is, of course, no doubt as to the antiquity of the institution of rendering Scriptures into Aramaic in the Synagogue.[7] Already in the Tannaitic period the translation into Aramaic of the public readings from the Pentateuch, the Prophets and the Hagiographa was the established custom which required neither discussion nor proof. In spite of the fact that according to the Halakhah the Targum is rendered orally, there is evidence also of the existence of written Targumim as, for example, to the book of Job[8] from as early as the Second Temple period. Moreover, the Greek version of Job notes that the translation was made according to the "Syrian book"—some three hundred years before the destruction of the Temple.[9] Several scholars discovered traditions common to the Septuagint and the Aramaic Targumim,[10] indications that Josephus used an Aramaic Targum to the Bible,[11] traces of the influence of our Aramaic Targumim on the Peshitta,[12] and "quotations" from the Targum in the New Testament.[13] It seems most unlikely that this ancient tradition should have completely disappeared. To some extent it is probably preserved in the extant Palestinian Targumim, since these continued to be used in Palestine for a long time after the composition of the "official" Targum Onqelos, which did not take root there until a later period.[14]

[5] In addition to Kahle and Díez-Macho in n. 1 above, mention should also be made, for example, of OLMSTEAD, pp. 58 ff., G. VERMES, *Scripture and Tradition in Judaism*, Leiden (1961, ^{2}1973), particularly in the foreword, pp. 8–10, and in the epilogue, p. 228 (cf. my review in *Tarbiz* 36 (1967), especially pp. 90 ff). See also J. W. BOWKER, *The Targum and Rabbinic Literature*, Cambridge (1969), and VERMES, *The Cambridge History of the Bible* I (1970), pp. 199–231.

[6] S. SCHULZ, "Die Bedeutung der neuen Targumforschung etc.", *Festschrift Otto Michel*, Leiden/Köln (1963), pp. 425 ff.

[7] Cf. ZUNZ, pp. 65 ff; I. ELBOGEN, *Der jüd. Gottesdienst etc.*, Frankfurt a/M (1931), pp. 187 f.

[8] *bShab.* 115a and parallels; cf. also *mMeg.* 1:8, 2:1, *yMeg.* 4:1 (74d), *mYad.* 4:5. Passages from an Aramaic Targum to Job were found among the Dead Sea Scrolls. cf. J. P. M. VAN DER PLOEG and A. S. VAN DER WOUDE, *Le Targum de Job de la Grotte XI de Qumran*, Leiden (1971).

[9] Cf. OLMSTEAD, p. 58; BERLINER, p. 91, following Z. FRANKEL.

[10] FRANKEL, p. 7; A. KAMINKA, *HUCA* 8–9 (1933), pp. 169 f.; L. DELEKAT, *VT* 8 (1958), pp. 225 f.

[11] R. MARCUS (ed.), *Josephus, Jewish Antiquities* V, preface, p. VIII; W. H. BROWNLEE, "The Habakuk Midrash and the Targum of Jonathan", *JJS* 7 (1956), pp. 181 f.; S. RAPPAPORT, *Agada und Exegese bei Flavius Josephus*, Wien (1930); I shall deal elsewhere with the question whether we are to assume that Josephus knew this Targum from a written source.

[12] E. R. ROWLANDS, *VT* 9 (1959), pp. 178 f.

[13] OLMSTEAD, p. 64; and recently in particular MCNAMARA.
J. W. BOWKER, *NTS* 14 (1967), p. 96, suggests that in *Acts* 13:22, "The Lord hath sought Him a man after His own heart, which shall fulfil all my will", 1 *Sam.* 13:14 is quoted according to Targum Jonathan: "A man who would do His will".
According to BERLINER, p. 81, idioms which may have originated in the Targumim have been preserved also in the prayer of the high priest (*bYom.* 52b) and in Hillel's saying: "What is hateful to you do not do unto others" (*bShab.* 31b; cf. *Tobit* 4:15).

[14] BERLINER, pp. 108 f.; KAHLE, pp. 102 f.

Furthermore, those very Targumim contain material whose antiquity is beyond doubt. The classical example to which A. Geiger already drew attention is 1TJ to *Deut.* 33:11, "And of them that hate him, that they rise not again": "The enemies of Joḥanan the High Priest shall not have a leg to stand on". Z. Frankel already found Tannaitic expositions which reflect the tradition of the Targumim with regard to the interpretation of certain words.[15] The continued existence of largely paraphrastic Targumim in spite of R. Judah b. Ilai's warning: "He who translates a verse literally is a liar, and he who adds to it is a blasphemer" (*tMeg.* 4(3):41 and parallel passages), certainly testifies to their antiquity.

Recently new evidence has come to light, such as the discovery of elements clearly common to the Targumim and the Dead Sea Scrolls, particularly in Pesher Habakkuk.[16] A. Díez Macho[17] claims that expositions which are convenient to Christian propaganda could only have been incorporated into the Targumim in pre-Christian times, such as the Targum to *Mic.* 5:1 which explicitly speaks of the birth of the Messiah in Bethlehem; for already Origen states that the Jews avoid any interpretations which could be utilised by Christians. Furthermore Kahle[18] and Díez Macho[19] try to prove that the Aramaic language—particularly that of the Geniza fragments and of Ms. Neofiti—supports the hypothesis of the Targumim's antiquity and their Palestinian origin. However, Díez Macho's[20] attempt to demonstrate that Ms. Neofiti reflects a pre-Masoretic version of the Bible has been decisively rejected by P. Wernberg-Møller.[21]

The most weighty evidence for the antiquity of the traditions embedded in the Palestinian Targumim is actually supplied by the Halakhah. We are faced here with the remarkable phenomenon that more than once the PT preserved interpretations explicitly disqualified by the Halakhists as, for example, TJ1 to *Lev.* 22:28: "My people, children of Israel, as our Father is merciful in heaven so you shall be merciful on earth, a cow and a ewe and their young you shall not slaughter on one day." But in *yBer.* 5:3 (9c) we read: R. Jose ben R. Bun said: Those who make mercy the principal quality of God are not acting right; and those who translate 'My people, children of Israel, as our Father is merciful in heaven so you shall be merciful on earth, a cow and a ewe and their young you shall not slaughter on one day', do not do the right thing. . . ." The above Targumim also contain many "halakhic Midrashim" which do not fit in with the Halakhah as laid down by the

[15] *Op. cit.*, pp. 6 f.
[16] N. WIEDER, "The Habakkuk Scroll and the Targum", *JJS* 4 (1953), pp. 14 f.; BROWNLEE, *op. cit.* (n. 11), pp. 169 f.
[17] DÍEZ-MACHO, p. 226.
[18] GENIZA, pp. 201 f.
[19] Pp. 236 f.
[20] Pp. 233 f.
[21] *VT* 12 (1962), pp. 312 ff.

Tannaim and Amoraim, and at times they even contradict the express halakhah of the Mishnah.[22]

This led Kahle—and others before him—to the conclusion that these Targumim have preserved pre-tannaitic halakhic traditions.[23] Kahle was correct in recognising the decisive proof for this in the Targum of *Ex.* 22:4: "If a man cause a field or vineyard to be eaten, and shall let his beast (בעירה) loose, and it feed in another man's field; of the best of his own field, and the best of his own vineyard shall he make restitution", where one of the Geniza fragments[24] translates the word בעירה as fire, and the verse is therefore considered to be dealing with damage by fire and not, as in the Mishnah and in Talmudic literature as a whole, with damage caused by the "tooth". The reference here is to one of the elements of the legal system regarding the "four primary causes of damage". But since this system had been incorporated into the Mishnah and other Tannaitic sources and had thus become authoritative, it was no longer possible to interpret this verse as referring to damage by fire; for if so—from where could the damage of the tooth be derived? It is therefore precisely this deviation from the accepted Halakhah which clinches the matter and makes possible the definite conclusion that this Targum contains a pre-Tannaitic tradition.

A number of scholars tried to refute Kahle's view with all its implications for the history of Halakhah. Thus Albeck argued that the above-mentioned "halakhic Midrashim" which contradict the Mishnah are not necessarily of great antiquity because it cannot be assumed that whatever contradicts the Mishnah is pre-Tannaitic. For the Aggadists and also biblical commentators throughout the ages used to interpret the Bible even in contradiction to the accepted Halakhah. Moreover, the Targumists had no scholarly authority and one cannot infer that their Halakhot were commonly held and accepted by the Sages at the time. These arguments are far from convincing. Admittedly, the Targumists were not by definition the greatest of halakhic scholars, but neither were they ignoramuses;[25] on the contrary, they were the bearers of a tradition and experts in their field. Certainly not everyone was permitted to act as a *Meturgeman* in the Synagogue; it appears that the Targumists were professionals, who received payment for their work.[26] The case of

[22] Cf. ALBECK, and MCNAMARA, e.g. pp. 49 f. and pp. 134 f. See also VERMES, *The Cambridge History of the Bible* I (1970), pp. 215 f.
[23] Pp. 113 f. and also *Geniza*, pp. 205 f.
[24] MS A in *Masoreten des Westens*, cf. above n. 3.
[25] In spite of the statement of Hai Gaon (*Genizah Studies in Memory of S. Schechter* II, New York (1929), p. 86) that the Targum of the Hagiographa is "a Targum of laymen".
[26] *bPes.* 50b. Even though according to most commentators the reference is to a *Meturgeman* who repeats aloud to the congregation the words of the preacher during the discourse, it seems more probable that the reference is to an official translator during the reading of Scripture in the Synagogue. Cf. J. EPSTEIN in the *Soncino Talmud*, Moed IV, p. 245, n. 12; also J. J. WEINBERG, "On the History of the Targumim" (Hebrew), *Abraham Weiss Jubilee Volume*, New York (1964), p. 364.

interpretations contradicting the Halakhah advanced by Bible commentators cannot be considered analogous, since the Aramaic Targum had a permanent and definite function in the prescribed liturgy of the Synagogue, and its task was to render faithfully into the vernacular the written text read in public. In this it differed, for example, from the exegeses of Rashi and Naḥmanides, or even from the discourses of the Aggadists, neither of which was a regular and essential part of the public service. Furthermore, Albeck failed to deal with the extreme, and particularly instructive, example of the Targum of *Ex.* 22:4. The decisive importance of this passage was fully understood by J. J. Weinberg who, in a long and detailed discussion, attempted to refute it;[27] for this exegesis does not merely contradict a detail of Tannaitic Halakhah, but destroys one of the central pillars of the elaborate system of primary causes of damage, the general outlines of which were commonly accepted by all the Tannaim. However, both the attempts of Weinberg and of J. L. Teicher[28] to "explain" this contradiction are unsatisfactory. Their main theory, that the word "fire"—יקידתא—in *Ex.* 22:4 is simply a mistake of the copyist or the translator who erroneously transferred it here from the following verse, was finally refuted by G. Schelbert[29] after the discovery of Ms. Neofiti. In this Targum all three derivatives of בער are translated by the Aramaic root יקד: "If a man puts fire to a field or a vineyard and allows the fire to spread and to set fire to the field of another man. . . ." While it might possibly be argued that the one word "fire" in Kahle's passage is simply a scribal error, it is absurd to claim that Neofiti contains "a three-fold error".[30] Schelbert also points out that in spite of Weinberg's[31] categorical statement "that talmudic literature does not contain even the slightest allusion to a reading different from that of the Masorah" (i.e. of בְּעֵרָה instead of בְּעִירָה), there actually exists an early exegesis which explains this verse as referring to damage by fire. In the phrase "He who allows the fire to spread"—השולח את הבערה—occurring twice in the Mishnah (*B.K.* 6:4), the combination, שלח and בערה undoubtedly originates in the verse under discussion and clearly applies to damage caused by fire.[32] Moreover, traces of this ancient exegesis are preserved not only in the texts to which Schelbert has drawn attention, but also in two halakhic Midrashim in the Mekhilta of R. Shimon Bar Yoḥai

[27] *Studies in the Talmud* (Hebrew), Berlin (1937–8), pp. 63 ff.

[28] J. L. Teicher, "A Sixth Century Fragment of the Palestinian Targum", *VT* 1 (1951), pp. 125 f., and recently, again, D. Rieder, *Tarbiz* 38 (1969), pp. 85 f.; and cf. the present writer in *Tarbiz* 38 (1969), pp. 294 f.

[29] G. Schelbert, "Exodus XXII.4 im palästinischen Targum", *VT* 8 (1958), pp. 253 f.

[30] According to Rieder, *loc. cit.* (n. 28).

[31] *Op. cit.* (n. 27), pp. 68 f.

[32] The use of this formula, originating in *Ex.* 22:4, in *B.K.* 6:4 is the more striking, as the cases of damage caused by animals grazing on another man's land, derived from *Ex.* 22:4, are discussed in the preceding paragraphs (6:1–3), while 6:4 refers explicitly to *Ex.* 22:5. Cf. also D. Daube, "The Civil Law of the Mishnah: The Arrangement of the Three Gates", *Tulane Law Review 18* (1944), pp. 374–5.

(p. 198), which deal with damage by fire in connection with *Ex.* 22:4. "From where do we know that if one did bring the fire and another brought the wood . . . that the latter one is liable? For Scripture says: 'If he burns . . . he shall pay', [כי יבער . . . ישלם], he that causes the fire must pay. . . . How do we know that if one brings the wood and another brings the fire . . . and yet another one comes and fans the fire . . . that the latter is liable? For Scripture says: 'If he burns . . . he shall pay', he that causes the fire must pay." There is no doubt therefore that in this case the Targumim have preserved a relic from pre-Tannaitic Halakhic tradition, which was rejected and practically forgotten after the formation of the systematic Tannaitic theory of the four primary causes of damage. This explanation could have penetrated the Targumim read in public in the Synagogue only before the creation of the uniform and definite Halakhah on this matter.[33]

Even though the case of the Targum of *Ex.* 22:4 contradicting the Halakhah of the Tannaitic period is the most outstanding, it is not the only example. Another such deviation is included in the Targum to *Ruth* 1:17. Here the punishment by strangulation, laid down in the Mishnah, is changed to hanging. The two instances have obvious analogies. As the Targum to *Ex.* 22:4 ignores the system of the four primary causes of damage, the Targum to *Ruth* contradicts the system of the four forms of capital punishment.[34] On both subjects we possess not only explicit, but early, Mishnayot, since the Mishnah tractate Sanhedrin presents laws which could only have been fixed during the Hasmonean monarchy.[35] The change of death by strangulation to death by hanging cannot possibly be attributed to the error of a late translator,[36] for it is unlikely that a person producing a Targum of a biblical book

[33] This is also the view of J. J. Weinberg himself concerning the other places in the Targumim which contradict the Halakhah as fixed from the time of R. Judah the Prince onwards; cf. *Abraham Weiss Jubilee Volume* (see above, n. 26), p. 367. For the subject as a whole cf. the recent article by A. Toeg, "Ex. XXII 4: The Text and the Law in the Light of the Ancient Sources" (Hebrew), *Tarbiz* 39 (1970), esp. p. 225.

[34] *mSanh.* Ch. 6–7, esp. 7:1.

[35] Y. Baer, "The Early Elements of the Halakhah" (Hebrew), *Zion* 17 (1952), pp. 4 f.; 10 f.; *idem.*, "Israel among the Nations" (Hebrew), Jerusalem (1955), pp. 62 f.; *idem.*, "The Mishnah and History", (Hebrew) *Molad* (1963), pp. 179–80, pp. 318 f. For the antiquity of the first Mishnayoth in *Bava Qama*, cf. *Molad* (1963), p. 311.

[36] In Ms. de Rossi 31 of Targum Ruth the reading is "strangling with a scarf"—חניקת סודרא, as S. Speier pointed out in *Tarbiz* 40 (1971), p. 259. This is, obviously, an emendation aimed at making the Targum conform with the accepted Halakhah. P. Churgin, *The Targum of the Hagiographa* (Hebrew), New York (1945), p. 141, makes no reference to this deviation from the Halakhah. E. Z. Melamed, *Bar-Ilan Annual* I (1963), p. 191, seems to think that our version is simply the result of a crass error made by an ignorant translator. A. Schlesinger, *Kitvey Akiva Schlesinger* (Hebrew), Jerusalem (1962), pp. 14 f., argues that this is a Sadducean Halakhah, because according to him the system of the four kinds of capital punishment undoubtedly antedates the dispute between Sadducees and Pharisees, and hence the former were obliged to change "strangulation" to "hanging" because they found no allusion to strangulation in the Bible. As regards the question of the alleged Sadducean tendency of Targum Ruth, cf. also Y. Reifman, *Hadarom* 27 (1968), p. 201, and the notes of M. Hershkovitz, *ibid.*, p. 205; D. Segal, *ibid.*, 29 (1969), p. 184, and J. Rosenthal, *ibid.*, 30 (1970), p. 172.

Dr. B. Lerner drew my attention to some of these references.

should be completely unaware of whole chapters of the Mishnah. Even more improbable is H. Cohn's hypothesis that what we have here is a post-Talmudic "reform" in the laws of capital punishment, abrogating strangulation and replacing it with the more humane hanging.[37] The institution at a late date of such a reform contrary to the clearcut Halakhah laid down in the Mishnah is *a priori* unlikely. Furthermore, had there been such a reform, it would be expected to have left traces in halakhic literature, and not merely in a remote corner of one of the Targumim. Finally, what point was there in reforming the Mishnaic laws of capital punishment when these laws had ceased to be practised already before the destruction of the Temple?[38] Besides, was hanging really a lighter and more humane form of execution—as H. Cohn claims[39]—than strangulation as described in the Mishnah (*Sanh.* 7:3)?

Again one is led to recognise that the Targum in fact preserves an old pre-Tannaitic tradition of punishment by hanging whose traces have almost disappeared from halakhic literature. Almost—since the report about Shimon Ben Shetaḥ who hanged women in Ashkelon would seem to reflect the custom of inflicting capital punishment by hanging in early times.[40] Later Tannaim do comment upon this report by R. Eliezer ben Hyrcanus (who generally transmitted early traditions[41]), that it referred to a special case which was decided *ad hoc*.[42] There is, however, no mention of this by the author of the tradition himself, and one cannot help concluding that the argument of a special decision is merely a typical attempt by later Sages to explain away a tradition irreconcilable with the accepted Halakhah.[43]

This hypothesis (advanced by me in 1968[44]), that the early Halakhah recognised capital punishment by hanging, has since received unexpected confirmation. In the Temple Scroll from Qumrân acquired by Y. Yadin, it is stated twice in connection with particularly serious offences that capital punishment was executed by hanging while the transgressor was still alive: "If a man has informed against his people and has delivered his people to a foreign nation and has done evil to his people, you shall hang him on a tree and he shall die. On the evidence of two witnesses and on the evidence of three witnesses, he shall be put to death and they shall hang him on the tree. If a man

[37] Haim H. Cohn, *Reflections on the Trial and Death of Jesus*, Jerusalem (1967), p. 41.
[38] Cf. Y. Baer, *op. cit.*; H. Cohn, *op. cit.*, p. 48.
[39] *Op. cit.*, pp. 47 f.; but cf. *idem.*, "Penology of the Talmud", *Israel Law Review* 5 (1970), pp. 60–4.
[40] *mSanh.* 6:4. According to the story told in *yHag.* 2:2 (77d) and *ySanh.* 6:9 (23c) the reference is to capital punishment by hanging (and not to hanging after death). This is also the view of Cohn, *op. cit.*, p. 44.
[41] Cf. J. D. Gilat, *The Teaching of R. Eliezer b. Hyrcanus* (Hebrew), Tel-Aviv (1968), pp. 7 ff.
[42] *mSanh.*, *ibid.*; *ySanh.*, *ibid.*; *bSanh.* 26a.
[43] Dr. B. Lerner has drawn my attention to the—apparently early—legend concerning Yaqim Ish Zeroroth who applied to himself all four forms of capital punishment. He carried out strangulation by hanging himself by means of a rope (*Gen. R.* 65:22).
[44] *Tarbiz* 38 (1968), pp. 295 f.

has committed a crime punishable by death and has run away unto the midst of the Gentiles, and has cursed his people and the children of Israel, you shall hang him also on the tree and he shall die and you shall not leave their bodies upon the tree in the night. . . ." (LXIV, 6–13).[45] Here we have a Second Temple Halakhah which explicitly orders execution by hanging. And there is no lack of indications that the sects at the end of the Second Temple often preserved early Halakhot which had formerly been accepted by all Israel.[46]

Yet, in spite of such elements in the Palestinian Targumim, whose antiquity is beyond doubt, one cannot ignore the fact that especially in TJ1 there is also late material which proves that the extant text was not "edited" before the eighth century. However, some of the spokesmen of the "new Targum studies" maintain that TJ2 is earlier than TJ1. Also, in Ms. Neofiti and in the Geniza fragments names and other indications pointing to a late redaction "are mostly missing".[47] Another writer goes so far as to claim that the Fragmentary Targum contains nothing that would place its redaction after the destruction of the Temple.[48] That this is an obvious exaggeration is clearly shown for example by TJ2 to *Lev.* 22:27 which explicitly refers to the situation after the destruction when sacrifices could no longer be brought.[49] Even though Ms. Neofiti has not yet undergone a systematic examination, it is extremely doubtful that one can agree with conclusions such as Kahle's: "We can today go further than Geiger and his successors, since we now possess that earlier Targum itself in its entirety and not a late redaction of it. This Targum was in all probability not greatly different from the one we have now before us, when it was in current use at the period of the formation of Christianity. Yet we must bear in mind that this Targum never had a fixed text". Or: "In the Palestinian Targum of the Pentateuch material has been

[45] Y. Yadin, *IEJ* 21 (1971), pp. 1 ff., esp. p. 8 and p. 9 n. 32.
Cf. also E. Schürer, G. Vermes, F. Millar, *The History of the Jewish People in the Age of Jesus Christ* I, Edinburgh (1973), pp. 224–5 n. 22.
[46] Cf. for example: J. D. Gilat, "Regarding the Antiquity of Several Shabbath Prohibitions" (Hebrew), *Bar-Ilan Annual* I (1963), pp. 106 f.; M. D. Herr, *Tarbiz* 30 (1961), pp. 242 f., esp. pp. 247, 350 f.; B. S. Jackson, *Theft in Early Jewish Law*, Oxford (1972), pp. 221, 248. Cf. also G. Alon, "Teḥuman shel Hilkhoth Tohorah", *Meḥqarim betoledoth Yisrael* I, Tel-Aviv (1957), which deals extensively with the laws of purity in the early Halakhah practised by the sects.
After this paper went to press, the article of Joseph M. Baumgarten "Does TLH in the Temple Scroll refer to Crucifixion?", *JBL* 91 (1973), pp. 472 ff., appeared. He argues convincingly that both the Temple Scroll and Targum Ruth refer to death by hanging, not crucifixion. He also quotes a wealth of bibliographical references (some of which I had missed). The point he is making on p. 475 n. 13, that some very late rabbinic sources still refer to hanging as "equivalent" to strangulation (in an aggadic context!), does not invalidate my contention that Targum Ruth preserves an ancient Halakhah; for the latter's substitution of hanging for strangulation in its list of the four forms of execution would have been impossible after the tannaitic system of the four forms of capital punishment had become authoritative.
[47] Kahle, pp. 110 f.; Díez Macho, pp. 233 f.
[48] Olmstead, pp. 59 f.
[49] Cf. my article in *Tarbiz* 35 (1966), pp. 87 f.

preserved which originates in the pre-Christian era."[50] The question is no longer whether these Targumim actually contain early material, but whether it is permissible to hold for this reason the entire Palestinian Targum, in all its versions, to be early. I submit that, at the present stage of research, one is not justified in assuming the antiquity of specific aggadic-midrashic traditions solely on the grounds that they occur in one of these Targumim.

[50] Pp. 115–16.

The Fence-Breaker and the actio de pastu pecoris *in Early Jewish Law*

by Bernard S. Jackson

According to a baraita in *bB.K.* 55b four cases wherein the offender is judged exempt by the laws of man but liable by the laws of heaven are attributed to R. Joshua b. Ḥananiah.[1] The talmudic sugya in which the baraita is found adds further cases, and considers objections of two kinds—that the offender should have been liable by the laws of man, and, contrariwise, that he should have been exempt even by the laws of heaven. The passage is artfully constructed, and raises many important literary, legal and historical questions. Was the role of R. Joshua that of compiler or reformer, and if the latter, what exactly needed reform? Why did R. Joshua select these four cases (a question asked by the Gemara), and wherein do they differ from the others added later, but also taken from tannaitic sources? What was the original formula denoting liability outside the courts of man, and what the significance of the variants? The situations discussed are not arbitrarily selected, nor are they pleonastic examples of a single principle, as later opinion appears to believe.[2] The problem of the fence-breaker may serve to attract attention to these issues.

Another, earlier[3] version of the baraita of R. Joshua is found at *tShebu.* 3:1–3 and *yB.K.* 6:1 (5b). There are some minor textual differences between the Tosefta and the Yerushalmi, most of them insignificant. For our purposes the two may be taken as one. But the talmudic baraita departs from the Tosefta/Yerushalmi (T/Y) version in a number of notable respects, the text of the formulaic apodoses, their repetition or absence after each protasis,[4] and

[1] On whom see, recently, Daube, "Ecstasy in a Statement by Rabbi Joshua ben Hananiah", *Niv-Hamidrashia* (1972), pp. 60–2.

[2] Z. W. Falk, "Elements of the Jewish Law of Torts", *Studi in onore di Giuseppe Grosso* (1968), Vol. II, p. 160. But even the *gerama* interpretation is capable of differentiating between the cases. See A. Gulak, *Yesode hamishaṭ ha'ivri* (1922), Vol. II, p. 209. S. Albeck, *Pesher dine hanezikin batalmud* (1965), pp. 45–7, 56, argues that *haporeẓ* and *hakofef* are *gerama* but *hasokher* and *hayodea'* are *garmi.*

[3] This conclusion is based not only upon legal-historical analysis of the four cases, but also on literary factors. For example, the different versions of the formula, each with its particular nuance, are standardised in the talmudic sugya. *Paṭur midine adam weḥayyav bedinei shamayim* derives from *mB.K.* 6:4, but *hasholeaḥ* is the only case to which it is applied in the tannaitic materials. The formula in R. Joshua's codex at T/Y is *'eyn ḥayyavin leshalem min hadin we 'eyn (min) hashamayim moḥelin lahen 'ad sheyeshallem,* while the additional cases cited in the sugya mostly derive from *tB.K.* 6:16–17, where the formula is *paṭur midine adam wedino masur lashamayim.* These two versions occur nowhere in B.T., though they do recur in later sources.

[4] In fact, T/Y repeats it after only three of the four cases. But variants in Y imply a version in which the formula was repeated consistently throughout.