

Ben Sorer U'moreh: Mishnah or Midrash? That Is The Question

Joshua Brunnlehrman



Abstract— What differentiates Midrash from Mishnah? In Midrash, usually a verse is referenced and is interpreted to teach us something, while in Mishnah the rules that we are supposed to follow are debated by the Tannaim and plainly stated. But what is the relationship between Midrash and Mishnah and, further, is it possible that the Mishnah itself engages in the act of ‘midrash?’ This paper will attempt to answer this question, shedding light on the nature of Mishnah and Midrash as religio-legalistic texts in the case of the ‘ben sorer u’moreh.’

In Deuteronomy, we learn about the case of a *ben sorer u’moreh*, translated by JPS as “a wayward and defiant son.”¹ When reading the mishnayot regarding *ben sorer u’moreh*, found in chapter eight of Sanhedrin, one becomes abundantly aware of the numerous references to verses and their hermeneutical interpretations. These hermeneutical interpretations of those verses guide the rabbis’ understanding of the *ben sorer u’moreh*. The Torah contains only four verses discussing the *ben sorer u’moreh*, Deuteronomy 21:18-21, yet there is a wealth of halakhot that the rabbis derive from these four simple verses. The rabbis seemingly utilize midrash to establish the halakha concerning the case of a *ben sorer u’moreh*. The mishnayot often refer explicitly to biblical verses to share midrashic ideas, yet the Mishnah may also share “covert” midrash that is seemingly drawn from some other source of midrashic material because no biblical verse is directly cited in the Mishnah from which the midrash is derived. This idea is succinctly articulated by Michal Bar-Asher Siegal who argues in her discussion on the second chapter of Makkot that:

“a covert midrashic layer seems to serve as the basis for the halakhot of the Mishna. This midrashic layer is evident when

¹ Lieber, David L., and Jules Harlow. *Etz Hayim = [Ets Hayim]: Torah and Commentary*. Travel-size Ed. Philadelphia: Jewish Publication Society, 2004.

comparing the Mishna, which is mostly based on the traditions studied in the school of Rabbi Akiva, with the Sifre Deuteronomy, the legal midrash which originated in the Rabbi Akiva midrashic school.”

The mishnayot in eighth chapter of Sanhedrin regarding *ben sorer u'moreh* seem to follow a similar pattern. The mishnayot offer overt midrashim on specific verses and covert midrashim where the textual source is unseen in that specific Mishnah. The clearest method a Mishnah uses to offer an overt Midrash is to state a rule in conjunction with the formula “שנאמר” followed by the verse or clause in the verse being interpreted. Beginning with the first Mishnah, we see that the Mishnah is citing the specific verse of Deuteronomy 21:18 to derive a halakha.

From when does a stubborn and rebellious son become liable to receive the death penalty imposed upon a stubborn and rebellious son? From when he grows two pubic hairs, which are a sign of puberty and from which time he is considered an adult, until he has grown a beard around. The reference here is to the lower beard surrounding his genitals, and not the upper beard, i.e., his facial hair, but the Sages spoke in euphemistic terms. As it is stated: “If a man has a stubborn and rebellious son” (Deuteronomy 21:18), which indicates that the penalty for rebelliousness is imposed upon a son, but not upon a daughter; and upon a son, but not upon a fully grown man. A minor under the age of thirteen is exempt from the penalty imposed upon a stubborn and rebellious son, because he has not yet reached the age of inclusion in mitzvot (Sanhedrin 68b)

The Mishnah requires a *ben sorer u'moreh* to be someone who has grown two pubic hairs but who has not yet sprouted a full beard, i.e., someone who is no longer a minor but not yet a full adult, as pubic hair is a sign of maturity. The Mishnah teaches its understanding through its interpretation of the phrase “, כי יהיה לאיש בן,” specifically the word “, בן” from the verse in Deuteronomy. According to the Mishnah’s midrash on the verse, the word “, בן” implies that the *ben sorer u'moreh* cannot be a “בת” (daughter) nor an “איש” (adult male). The Mishnah reads the word “, בן” as strictly referring to a male pubescent child, in stark contrast to the broad application of “, בן” as any child, as found in many other contexts including the command in Shemot 13:8, to educate your child about the exodus from Egypt:

“And you shall tell your son in that day, saying, 'This is done because of what the Lord did for me when I came up from Egypt.’”

Furthermore, the Mishnah excludes a “קטן” (minor) because a minor is not yet obligated to observe the commandments, an idea found elsewhere in the Mishnah:

And likewise, a young boy who reached the age of puberty and grew two pubic hairs is an adult and is obligated to fulfill all the mitzvot stated in the Torah. And he is fit to be declared a stubborn and rebellious son... From when he grows two pubic hairs until his beard will form a circle. The reference is to the lower, pubic, hair and not to the upper, facial hair, but the term beard is used, due to the fact that the Sages spoke euphemistically (Niddah 52a)

This Mishnah from Niddah explicitly states that prior to sprouting two lower hairs a male is not obligated to perform mitzvot. Since our Mishnah interprets the clause in Deuteronomy “כי יהיה לאיש בן” to mean a male who is neither an adult nor a minor, the only other option is allow the *ben sorer u'moreh* to be a male who is transitioning between being a minor and on adulthood. The Mishnah in Niddah does state that a male is liable to be a *ben sorer u'moreh* from the time of sprouting two hairs until a full beard is grown, which matches our Mishnah in Sanhedrin, but is an example of a covert midrash since an explicit link to the textual source is missing.

The mishnayot in Sanhedrin also cite hidden midrashim where the textual source is absent from the Mishnah itself. For example, the text states:

A stubborn and rebellious son is sentenced to death not because of the severity of the transgression that he already committed but on account of his ultimate end, because a boy of his nature will grow up to lead an immoral life, and it is better that he should die while he is still innocent, before causing excessive harm, and not die after he becomes guilty. This is because the death of the wicked is beneficial to them, because they can no longer sin, and it is also beneficial to the world, which is now rid of those who do it harm. Conversely, the death of the righteous is detrimental to them, as they can no longer engage in the performance of mitzvot, and it is also detrimental to the world, as the righteous are now absent from it. The wine and sleep of the wicked are beneficial to them and beneficial to the

world, as when they are sleeping or under the influence of wine, they do not cause harm to others. And, conversely, the wine and sleep of the righteous are detrimental to them and detrimental to the world, as wine and sleep prevent them from engaging in their good deeds. The dispersal of the wicked, so that they are not found in close proximity to each other, is beneficial to them, as they are less likely to provoke each other to sin, and it is beneficial to the world. The dispersal of the righteous is detrimental to them and detrimental to the world. The assembly of the wicked in one place is detrimental to them and detrimental to the world, while the assembly of the righteous is beneficial to them and beneficial to the world. The tranquility of the wicked is detrimental to them and detrimental to the world, while the tranquility of the righteous is beneficial to them and beneficial to the world.

According to this Mishnah, the *ben sorer u'moreh* is judged based on his ultimate end, so he should die earlier in life while innocent rather than living longer to die guilty. Unequivocally, the Mishnah declares that the *ben sorer u'moreh* should get killed for his future actions, and the only actions mentioned in the other mishnayot in this chapter are (I) stealing from his parents or (II) eating meat and drinking wine.

Neither of these actions is deserving of the death penalty, the punishment as sanctioned in the verses from Deuteronomy. The Sifrei — the classical legal biblical exegesis which interprets the books of Numbers and Deuteronomy— seems to be curious about this and quotes a statement from Rabbi Yossi:

R. Yossi said: Now is this one stoned because he ate a tartimar of flesh and drank half a log of wine? Rather, the Torah probed to the "end" of this one, and said: "Let him die innocent, and let him not die guilty." For the death of the wicked is beneficial for them and beneficial for the world. What is bad for the righteous is bad for them and bad for the world. Wine and sleep for the wicked is good for them and good for the world; for the wicked, bad for them and bad for the world. Quiet for the wicked is bad for them and bad for the world; for the righteous, good for them and good for the world. The father of this one desired a yefath toar (a woman of beautiful form), and he brought the Satan into his house and his son became a sorer umoreh, whose end is to die a violent death, it being written (following) "And if there be in a man a sin whose judgment is death, then he shall be put to death." (Sifrei Devarim 220)

Rabbi Yossi seems surprised that a *ben sorer u'moreh* would be stoned just because he ate meat and drank wine, and he confirms that these actions of consumption are not the basis for the death penalty. Similarly, there is a *baraita* attributed to Rabbi Yose HaGalili which shares the Sifrei's skepticism.

Rabbi Yosei HaGelili says: Is it simply due to the fact that the boy ate a *tarteimar* of meat and drank a half-log of Italian wine that the Torah states that he shall be taken out to court to be stoned? Rather, the Torah penetrated the ultimate mind-set of the stubborn and rebellious son and the inevitable results of his actions, and it is understood that he will continue on this path, and in the end he will squander his father's property, and then, seeking the pleasures to which he had become accustomed but not finding them, he will go out to the crossroads and rob people. The Torah said that it is better that he should die now when he is still innocent, and he should not die later when he is guilty. This is because the death of the wicked is beneficial to them and also beneficial to the world, while the death of the righteous is detrimental to them and detrimental to the world. The sleep and wine of the wicked is beneficial to them and beneficial to the world, while that of the righteous is detrimental to them and detrimental to the world. The tranquility of the wicked is detrimental to them and detrimental to the world, while the tranquility of the righteous is beneficial to them and beneficial to the world. The dispersal of the wicked is beneficial to them and beneficial to the world, while the dispersal of the righteous is detrimental to them and detrimental to the world (Sahnhedrin 72a)

Rabbi Yoesi HaGalili is also shocked that excessive consumption would warrant the death penalty for the *ben sorer u'moreh*. Yet, he adds something new to the discussion, and explicates that violent theft is the other condition that indicts a *ben sorer u'moreh*. According to Rabbi Yose HaGalili, it is not the act of consumption that condemns the *ben sorer u'moreh* to death, but rather, the fact that the son will pilfer his parents' money and subsequently steal from strangers (and inevitably kill them in the process of robbing them). By stating that the *ben sorer u'moreh* will ultimately kill someone, Rabbi Yosei HaGalili justifies why the death penalty is indeed the fitting punishment when judging a *ben sorer u'moreh* on his ultimate end, because the crime of murder is an action deserving of the death penalty. This idea is further clarified in the Sifrei:

Just because he used his father's money he must die?! Only he is judged based on his future behavior - better he die while [relatively] innocent and not for more severe sins. His father desired a captive woman and brought the devil into his home and caused his son to be rebellious. The result will be that he will kill him in an unnatural way, as it states, "And if there be in a man a sin whose judgment is death, then he shall be put to death" (Sifrei Devarim 218)

The Sifrei also questions how the action of eating (the money of one's father) justifies the execution of a *ben sorer u'moreh*. However, the Sifrei justifies the ultimate end of a *ben sorer u'moreh*. According to this Midrash, the reason that a *ben sorer u'moreh* is killed because he emerged from a corrupt past and is heading into a violent future. His ultimate ending stems from his unethical beginnings: his mother is the woman of beautiful appearance who was taken by a Jewish soldier. This Jewish man's desire for a prisoner of war "brought the devil into his home" and precipitated a child who would sever himself from the righteous ways of the Torah and would certainly earn himself the death penalty if given time to do so.

Furthermore, there are a lot of overlaps between what is stated in the Mishnah and Sifrei Devarim (218-220), either stated word for word or with slight variations. In both works, we find Rabbi Yehudah's ruling that a father and mother need to be fitting for each other:

"Then his father and mother shall take hold of him": We are hereby taught that he is not liable unless he has a father and a mother. These are the words of R. Meir. R. Yehudah says: If his mother were not fit for (i.e., similar to) his father, he does not become a *sorer u'moreh* (Sifrei Devarim 219)

If his father wishes to have him punished but his mother does not wish that, or if his father does not wish to have him punished but his mother wishes that, he does not become a stubborn and rebellious son, unless they both wish that he be punished. Rabbi Yehuda says: If his mother was not suited for his father, the two being an inappropriate match, he does not become a stubborn and rebellious son (Mishnah Sanhedrin 8:4)

Based on the vast textual overlap between the Sifrei and the Mishnah above, it becomes apparent that the Sifrei and Mishnah share a common midrashic analysis of the text. Moreover, this mutual midrashic reading of the verses in Deuteronomy in the Sifrei and Mishnah is often in opposition to other midrashic readings of Deuteronomy found elsewhere in tanaitic

literature. Turning back to our first Mishnah, both it and the Sifrei share the same interpretation of the phrase “כי יהיה לאיש בן;” with the Sifrei adding the extra clause “ולא כשיהיה בן לאשה.” Considering that a child must have both a biological mother and father, the new clause does not seem to add anything new. If a father has a son, then that son is also the son of a woman (the mother); and if there exists a son to a woman (his mother), then that son is his father's son. Perhaps this statement is meant to imply that the son has a mother who is a single parent and since his father is not in the scene the son can't be regarded as a *ben sorer u'moreh*. Or perhaps, the son has a stepfather and therefore the son cannot be a *ben sorer u'moreh* since his stepfather is not his biological father. The verse in Deuteronomy states: “כי יהיה לאיש בן” so the clause in the Sifrei must be introducing some interpretation of the verse implying that the man must be able to call the child “his son.” Moreover, there is even yet another textual version of this exact Sifrei which states:

כי יהיה לאיש בן ולא כשיהיה לבן בן בן ולא בת בן ולא איש קטן פטור
שלא בא לכלל מצות

This new variant attested to by a printing of Sifrei Devarim in 1866² adds yet a different clause not found in the Mishnah: “ולא כשיהיה לבן בן.” Both the Bavli and the Yerushalmi (b.Sanhedrin 68b; y.Sanhedrin 8:1) mention the case of a “בן” having a “בן” and whether the younger son may be considered a *ben sorer u'moreh*, and both Talmuds conclude that this younger son cannot be a *sorer u'moreh*.

However, neither textual variant of the Sifrei nor the Mishnah itself includes the interpretation from Rabbi Yishmael as found in a *baraita* from Sanhedrin 69a which states “תנא דבי ר' ישמעאל בן ולא אב.” This means that the Mishnah does not include the opinion of Rabbi Yishmael and moreover is not understood according to the opinion of Rabbi Yishmael. According to Rabbi Yishmael, the case of a *ben sorer u'moreh* excludes the case when the rebellious son is himself a father by understanding the word “בן” to mean someone who is only a son (since every human has biological parents) and is not a father *and* son. On one side of the debate stands the Mishnah and Sifrei in reading the phrase “בן” to mean that the son of a son is exempt, and on the other side is the *baraita* from Rabbi Yishmael, which excludes the rebellious son who is also a father.

It is important to note that Sifrei Devarim is a midrashic work from the School of Rabbi Akiva, distinct from the school of thought of Rabbi Yishmael. In the world of *halakhic midrash*, Rabbi Akiva and Rabbi Yishmael are the only two schools of thought and Rabbi Yehudah Hanasi is a disciple descended from the school of Rabbi Akiva. Therefore, as Seigal

² ספרי: במדבר, דברים. ש. צוקערמאן ע"י ש. לוריא בדפוס ש. י. פין, א. צ. ראזענקראנץ, 1866. Solomon, E. 1866. <https://books.google.com/books?id=NOdHAQAAMAAJ>.

proved for Makkot, the covert midrashic layer in Makkot overlaps with the Akivian school of thought; here too the covert midrashic layer in Sanhedrin also seems to overlap with the Akivian school of thought, in explicit opposition to the Yishmaelian school of thought.

There is even yet another example of the Sifrei and Mishnah sharing a similar midrashic understanding of the text in opposition to a different interpretation of the text in Deuteronomy. The Sifrei states:

"And they shall say to the elders of his city": If one of them (either his father or his mother) had a severed hand, or were lame or mute or deaf or blind, he does not become a sorer umoreh, it being written "and they shall seize him" — and not if their hand were severed; "and they shall take him out" — and not if they were lame; "and they shall say" — and not if they were mute; "this, our son" — and not if they were blind;" "not heeding our voice" — and not if they were deaf, (in which case they could not hear his refusal to heed them.) They warn him before three (judges) and administer stripes. If he reverted to his wrong, he is judged by twenty-three, but he is not stoned unless there be among them the first three, it being written "This, our son," who received stripes before you — whereby we are taught that if one of them died, he is not stoned (Sifrei Devarim 219)

The Sifre requires that the trial of the *ben sorer u'moreh* be judged by a group of 23 judges and that the three people who had previously warned and whipped the *ben sorer u'moreh* be amongst the 23 judges, based on the phrase "בְּנֵנוּ זֶה;" "This is our son", meaning "this is the son who was whipped." For this statement to be corroborated, all three judges need to be present to testify that they were part of the original group of three judges who whipped the son. In fact, the Mishnah shares this same interpretation of the phrase:

If one of the parents was without hands, or lame, or mute, or blind, or deaf, their son does not become a stubborn and rebellious son, as it is stated: "Then shall his father and his mother lay hold of him, and bring him out to the elders of his city and to the gate of his place. And they shall say to the elders of his city: This son of ours is stubborn and rebellious; he will not obey our voices; he is a glutton and a drunkard" (Deuteronomy 21:19–20). The Sages derive: "Then shall his father and his mother lay hold of him," but not people without hands, who cannot do this. "And bring him out," but not lame people, who cannot walk. "And they shall say," but not mutes. "This son of ours," but not blind people, who cannot point to

their son and say “this.” “He will not obey our voices,” but not deaf people, who cannot hear whether or not he declined to obey them. After he is brought before the elders of the city, he is admonished before three people and then they flog him for having stolen. If he sins again, he is judged by a court of twenty-three judges, but he is not stoned unless the first three judges before whom he had been flogged are present there, as it is stated: “This son of ours,” this is the son who was already flogged before you. If the rebellious son ran away before he was sentenced, and afterward, before he was caught, his lower beard grew around, he is exempt from the death penalty. Once his lower beard grows around his genitals, he can no longer be judged as a stubborn and rebellious son. But if he ran away only after he was sentenced, and afterward, by the time he was caught, his lower beard had already grown around, he is liable to receive the death penalty. Once he is sentenced to death his sentence remains in force. (Sanhedrin 8:4)

The Mishnah also requires that the three people who had previously warned and whipped the *ben sorer u'moreh* be amongst the 23 who judge the *ben sorer u'moreh* based on the phrase “בִּנְנוּ זֶה.” Yet the Mishnah also adds a new clause — regarding if “he ran away” — not found in the Sifrei.

According to the Mishnah, if the alleged *ben sorer u'moreh* runs away and grows a full beard, then the alleged *ben sorer u'moreh* is only found guilty if a judgment had been brought down against him before he ran away. There seems to be no proof-text or basis for this ruling; however, the Tosefta seems to bring a proof-text for its ruling which is different from the mutual reading in the Mishnah and Sifrei.

A rebellious son: we warn him before three (witnesses), as it states: "And you shall grab him... And you shall say to the elders of his city..." (We learn from here that it is a) Mitzva for the elders of the city. "...This, our child...", this is the man that was whipped before you. Another item: "...This, our child...", to exclude one who ran away and came when he had grown. (Additionally,), "...This, our child...", to exclude if one of the judges (from the initial trial) died. Another item, "...This, our child...", this teaches that one of the original (judges from the first trial) joins the last ones (the judges of the current, final trial) to sentence him to death (Tosefta Sanhedrin 11)

The Tosefta presents four different interpretations of the phrase “בִּנְנוּ זֶה” from Deuteronomy: (I) this is the son who was whipped before you; (II) to exclude one who ran away and returned when he had grown; (III) to exclude

the case where one of the three original judges died; (IV) to teach that one of the three original judges must join the later judges who rule on the death penalty.

The Tosefta, Sifrei, and Mishnah all share the first interpretation of the phrase “בִּנְנוּ זֶה” just like the Mishnah and Sifrei, the Tosefta also requires that the *ben sorer u'moreh* be warned in front of three judges. However, the Tosefta brings a proof-text for it which is found in neither the Mishnah nor the Sifrei. Furthermore, the Tosefta, Mishnah and Sifrei all share the third interpretation of the phrase “בִּנְנוּ זֶה” but that is where the similarities end, and the differences emerge. Although the Mishnah, Sifrei, and Tosefta agree that all three judges must stay alive, the Tosefta requires only one of the three judges to be part of the 23 who sentence the *ben sorer u'moreh* to stoning, while the Mishnah and Sifrei require all three earlier judges to be part of the later group of 23 judges.

As mentioned above, the fourth interpretation brought by the Tosefta understands “בִּנְנוּ זֶה” to exclude the case where the *ben sorer u'moreh* runs away and returns later as an adult. However, the Mishnah and Sifrei do not share this interpretation of the Tosefta. The Sifrei does not include the Tosefta's interpretation at all, and the Mishnah explicitly disagrees with the Tosefta. The Tosefta believes that a *ben sorer u'moreh* who runs away and later grows up loses his status as a *ben sorer u'moreh*, while the Mishnah as quoted above clarifies that if a *ben sorer u'moreh* runs away after a judgment has already been brought down and grows up then his status remains. Not only do the Mishnah and Sifrei share interpretations in opposition to the baraita of Rabbi Yishmael, but the Mishnah and Sifrei also share interpretations in contrast to other interpretations in the Tosefta.

Also, just like Seigal depicted regarding Makkot, the order of the halachot in Sanhedrin about *ben sorer u'moreh* follows the progression of the biblical verses themselves. For example, when details regarding the *ben sorer u'moreh* are discussed within the same Mishnah of Sanhedrin 8:4, they are mentioned in the order in which they appear in the biblical verses. “וּתְפֹשׂוּ” is from Deuteronomy 21:19, while “בִּנְנוּ זֶה” is from Deuteronomy 21:20. Furthermore, not only are details within a single Mishnah discussed in the order in which they appear in the biblical verses, but also the order in which the details are discussed within this group of mishnayot similarly follows the order in which they appear in the biblical verses.

For example, Mishnah 8:1 cites Deuteronomy 21:18, followed by Mishnah 8:2 which cites Deuteronomy 21:20, and Mishnah 8:4 which cites Deuteronomy 21:19-20.

A known characteristic of Midrash is that it interprets verses in the Torah and is organized by verse. This is exactly what is happening with this grouping of mishnayot. The mishnayot are sharing halakha about various

aspects in the order in which the aspects appear in the verses in Deuteronomy.

The mishnayot in Sanhedrin about *ben sorer u'moreh* are midrashic readings of the associated verses from Deuteronomy. The mishnayot share both overt Midrash, as evidenced by the formula “שנאמר” followed by a verse from the Torah and covert Midrash where the proof-text is found in a different source. Additionally, much of the material in these Mishnayot is shared with the Sifrei, sometimes opposing other interpretive readings found in other Tannaitic sources. The order in which the details of the *ben sorer u'moreh* are discussed follow the order in which they appear in the Torah. Sanhedrin and Makkot used to be one Masechet, and as Seigal states in her conclusion and the topic of *ben sorer u'moreh* highlights the complex relationship between these semi-contemporaneous sources.