Memory and Doubt

In his novel *One Hundred Years of Solitude* Gabriel García Márquez describes a plague that devastated the town of Macondo, as a result of which all residents of the town were gradually but rapidly losing their memory. To combat the process that was leaving Macondo's people increasingly helpless, the resourceful Aureliano Buendia sets out to inscribe every item he finds with the name by which it is called, and then, when he realizes that the name of the item alone will not do when all memory is otherwise lost, he also writes down instructions for using each item:

> With an inked brush he marked everything with its name: *table, chair, clock, door, wall, bed, pan*. He went to the corral and marked the animals and plants: *cow, goat, pig, hen, cassava, caladium, banana*. Little by little, studying the infinite possibilities of a loss of memory, he realized that the day might come when things would be recognized by their inscriptions but that no one would remember their use. Then he was more explicit. The sign that he hung on the neck of the cow was an exemplary proof of the way in which the inhabitants of Macondo were prepared to fight against loss of memory: *This is the cow. She must be milked every morning so that she will produce milk, and the milk must be boiled in order to be mixed with coffee to make coffee and milk*. Thus they went on living in a reality that was slipping away, momentarily captured by words, but which would escape irremediably when they forgot the values of the written letters.[1]

As this scene powerfully illustrates, memory is essential not only to our identity as individuals but also to our ability to function in the world on the most rudimentary and mundane level.[2] Aureliano's attempt to create a system of labeling and

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1. Gabriel García Márquez, *One Hundred Years of Solitude*, trans. Gregory Rabassa (New York: HarperCollins, 2006), 51–52 (emphasis original).
2. Cognitive scientists noted that García Márquez's descriptions are remarkably similar to the experiences reported by and observed in patients suffering from dementia. See Katya Rascovsky,

marking that will cover every known object to protect it from forgetfulness, which eventually becomes unmanageably complex and is abandoned by the people of Macondo altogether, captures the intricate network through which every item in our memory is connected to multiple other items and is constantly arranged into multiple categories. We do not realize the immense complexity of this network, to which cognitive scientists refer as conceptual knowledge,[3] until we attempt to create it artificially.[4]

Reading Márquez's poignant description of Aureliano's attempt to visibly inscribe the world around him with the information needed to function in it, I cannot help but wonder how many details Aureliano would have had to add to his memory apparatus had he been a rabbinic Jew. One can imagine signs such as these: *This is a cow, it is a kosher animal and one is allowed to eat its meat, but its milk can only be used if procured by a Jew. This is bread, you must wash your hands before eating it and you may not have it during Passover. This is a bowl made of clay, you must break it if a dead creature fell into it.* The Priestly Code of the Pentateuch, which constitutes the lion's share of the corpus of biblical law, presents life in accordance with God's ordinances as relying upon an ongoing activity of division and distinction. The Israelites are instructed repeatedly to distinguish between the holy and the unholy, between the pure and the impure, between animals that may be eaten and animals that may not, between the Israelites and the other nations, the priests and the rest of the Israelites, and so on. The rabbinic normative system that we call halakhah, which methodically expands, elaborates, parses, and dissects established biblical categories and imperatives, similarly presents the everyday life of its subjects as consisting of multiple tasks of distinction and division to ensure proper performance. But the high-resolution engagement of the rabbis with the finest details of legal and ritual concepts and laws,[5] and the many innovations they introduce, make the distinctions and divisions required by their system much more numerous and nuanced than those of biblical law.

Matthew E. Growdon, Isela R. Pardo, Scott Grossman, and Bruce L. Miller, "The Quicksand of Forgetfulness: Semantic Dementia in *One Hundred Years of Solitude*," *Brain* 132, no. 9 (2009): 2609–16.

3. Conceptual knowledge is defined as "the sum of our sensory and motor experiences with the environment in a categorial fashion. . . . Concepts refer to categories of objects, events or ideas because conceptual representations generalize across specific exemplars and situations, in which we have encountered the referent in the past." Quoted from Markus Kiefer and Friedemann Pulvermüller, "Conceptual Representations in Mind and Brain: Theoretical Developments, Current Evidence, and Future Directions," *Cortex* 48, no. 7 (2012): 806.

4. As observed by scientists who attempted to use computer modeling to understand the vast neural connections through which conceptual knowledge is attained and retrieved. See David E. Rumelhart, James L. McClelland, and the PDP Research Group, *Parallel Distributed Processing: Explorations in the Microstructure of Cognition* (Cambridge, MA: MIT Press, 1987).

5. I borrow the term "high resolution" to describe the rabbis' halakhic discourse from Halbertal, "The History of Halakhah," 2.

The rabbinic halakhic system is not only intricate and complex but also highly dynamic, since it is especially interested in how additional moving pieces and constantly changing realities can affect halakhic outcomes. It is a system of conceptual knowledge in which objects and actions are divided into multiple categories, subcategories, and cross-categories, but these categories are not simply dichotomous (pure/impure, permitted/forbidden, valid/invalid, etc.) but intersect with and diverge from each other through many dozens of combinations (forbidden on the Sabbath but permitted on festivals; pure in the public domain but impure in the private domain; valid if done by person X but invalid if done by person Y, etc.). To function properly in the halakhic world, one must have reliable access to this conceptual knowledge, and knowledge, to be sure, is simply another word for memory—for the most part, a particular type of memory known as semantic memory, which includes vocabulary, facts, formulae, rules, and so on.[6] The rabbis thus put enormous stock in their adherents' ability not only to keep all of the system's numerous rules in mind, but also to keep track of all the moving pieces and contingencies.

It is immediately evident that partaking in the normative rabbinic world makes substantial demands on one's semantic memory, but in this regard halakhah is admittedly no different than any other system of specialized knowledge, be it botany, marine navigation, or baseball statistics. Rabbinic halakhah, however, requires more than keeping in mind a host of concepts and their proper cross-categorizations according to a complex set of rules. The distinct ways in which the rabbis expanded and developed the biblical law codes created a system in which the categorization of an item or a person as pure or impure, permitted or forbidden, sacred or profane, and so on depends not only on its stable and visible traits but also on its *history*—on the things that were done to it over a period of time and, when relevant, also on the things that it has done. For example, the permissibility of an animal to be eaten, in the rabbinic configuration, does not depend only on its species (e.g., cow or pig) but also on the way it was slaughtered (by whom, with what instruments, through what procedure), and the admissibility of a person into the sacred realm depends not only on absence of visible markers of impurity (e.g. menstruation, genital discharge, skin affliction) but also on absence of previous contact with potential sources of impurity.[7] To go back to the imagery of Aureliano putting up signs on things to combat the townspeople's memory loss, for a rabbinic Aureliano it would not be enough to put up a sign

6. The term "semantic memory" was coined by Ross Quillian. See M. Ross Quillian, "Semantic Memory," in *Semantic Information Processing*, ed. Marvin Minsky (Cambridge, MA: MIT Press, 1969), 227–70.

7. As I argued elsewhere, the rabbis expanded and extended the biblical purity circuit considerably, thereby turning one's daily interactions with things, people, and even bodily substances into an elaborate exercise in memory keeping. See Balberg, *Purity, Body, and Self*, 37.

"This is bread" or "This is a clay bowl" that lists the halakhic rules that pertain to bread or clay bowls in general. He would also have to make a note of the history of this particular loaf of bread or clay bowl: *This loaf of bread was baked after a portion of its dough was given to the priests, so it is permitted to eat it. This clay bowl was left unattended overnight, so it can no longer be considered pure.* Perhaps even more staggering, a sign would have to be put on each individual, too: *This is X, she is betrothed to a certain man and forbidden to all others. This is Y, he touched a corpse five days ago and conveys impurity to anyone who touches him.* The rabbinic subject is expected to keep an active portfolio of the objects and people in his environment and of their various halakhic vicissitudes, as well as of his own movements, encounters, and activities. As this chapter will show, the rabbis assume that this is a task in which one is likely, at least on occasion, to fail. It does not take lethal amnesia to do so, as in the case of Márquez's Macondo: rather, memory failures are a normalized and even predictable aspect of life in accordance with halakhah.

With so much of one's halakhic operations dependent on memory, forgetfulness of past actions, or even of past thoughts, can sometimes lead to a cascade of unfavorable consequences. One example will help illustrate this. The Mishnah discusses a case in which a master asked his enslaved servant to slaughter an animal on his behalf for the Passover sacrifice. If the master did not specify which animal he wanted slaughtered for the sacrifice (the options are either a lamb or a kid goat), the servant may slaughter either of the two. Problems begin when the master did specify whether he wanted a lamb or a goat, but the servant cannot remember which the master asked for. The concern here is with what the rabbis call "an offering without owners." If the master deliberated that he is specifically interested in a lamb for the offering, then he did not attach his ownership to any offering that is not a lamb, and if the servant slaughters a non-lamb on his master's behalf this non-lamb will be considered an ownerless offering that must be burned rather than eaten. The forgetful servant's dilemma can be resolved if he slaughters both a goat and a lamb and declares his retroactive ownership over whatever offering the master did not want. But what if the master, too, forgot what he originally asked for? In this case, both the goat and the lamb are considered ownerless offerings and must be burned and not eaten. In short, if no one is able to remember what animal was originally requested for the offering, no animal can serve as the offering.[8] Cases such as these, in which one fails to remember not disembodied facts or rules but details of one's own actions and interactions, can be classified as failures of *episodic memory*, that is, the memory of specific events occurring at a specific time and place that one either participated in or witnessed directly.[9]

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8. M. Pesahim 8.2; cf. T. Pisha 7.5 (ed. Lieberman 177–78).

9. For a definition of episodic memory, see Michael Hasselmo, *How We Remember: Brain Mechanisms of Episodic Memory* (Cambridge, MA: MIT Press, 2012), 1. The term "episodic memory" was coined by Endel Tulving, "Episodic and Semantic Memory," in *Organization of Memory*, ed. Endel Tulving and Wayne Donaldson (New York: Academic Press, 1972), 381–402.

This chapter explores a set of Tannaitic scenarios of episodic memory failures of a specific kind—namely, scenarios in which a subject fails to remember certain details of his own actions or interactions that have halakhic significance and is therefore at an impasse when it comes to making a relevant halakhic decision. I use the term "memory failures" in a broad sense, to cover everything from initial failure to *form* a memory—for example, by not paying sufficient attention to details at a time in which a halakhically significant interaction was taking place—to failure to *retrieve* a memory after the fact. In all the cases discussed in this chapter, a rabbinic subject does not have access to information needed for smooth halakhic function, but no one else (or at least no one else who is available or reliable) has access to this information either, since this information pertains to a specific situation that the subject in question witnessed or experienced. In some of the cases we will see it is evident that at some point the subject had this information but later forgot it, whereas in other cases it is not entirely clear whether the subject had this information to begin with or not. As I mentioned in the introduction, "not knowing" in rabbinic texts is a spectrum that ranges between complete ignorance and temporary forgetfulness, and it is not always discernible where on the spectrum a particular case is to be located. What all those cases have in common, however, is that the subject's inability to know with certainty the details of his own activities and experiences generates a situation of halakhic doubt, which can only be resolved by applying generalized rabbinic principles to the situation.

Doubt, of course, is one of the topics the rabbis engage with most systematically and most eagerly, and it is by no means limited to cases of memory failures. Doubt (*safeq*) arises in any kind of halakhic situation in which critical pieces of information necessary for halakhic determination are missing. This happens when one encounters unmarked items whose history and origin cannot be traced with certainty (for example, a piece of meat was found on the street, and it is unknown whether it is kosher or not); when it is impossible to determine who is telling the truth (for example, two claimants each swear that a certain item belongs to them); and when the relevant data are inaccessible (for example, people are buried under rubble, and it is unknown whether they are alive or dead); many other situations of doubt are mentioned in Tannaitic sources. Tannaitic texts introduce a host of general principles for navigating the many uncertainties presented by a world in which different people with different levels of commitment to halakhah move around and act, and which changes constantly in ways that one cannot always keep track of.[10] For example, the rabbis determine that when one finds meat whose origin is unknown it can be considered kosher if the majority of people in that place consume kosher meat;[11] that property whose ownership cannot be determined

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10. See the detailed discussion in Moshe Halbertal, *The Birth of Doubt: Confronting Uncertainty in Early Rabbinic Literature* (Providence, RI: Brown Judaic Studies, 2020).

11. M. Makhshirin 2.9.

will be shared among its claimants;[12] that one is to clear rubble on the Sabbath even if one does not know whether there are people there and whether they are alive or dead;[13] and so on. These principles are presented and worked through in Tannaitic texts through various casuistic scenarios that demonstrate how these situations of doubt can come about, and how the appropriate principle should be applied to make the necessary halakhic determination.

Memory failures are one of many reasons on account of which the halakhic system is confronted with "unknowns" and has to resort to doubt-resolving mechanisms. What makes scenarios of memory failures unique in the vast landscape of rabbinic doubt, however, is that the subject could be *expected*—albeit to different extents—to possess the knowledge that he is lacking. The halakhic uncertainty at hand is not created by external circumstances outside of one's control but by one's own cognitive malperformance, and as such it has, or could have, bearing on the religious and moral standing of the subject. Put differently, in discussing memory failures that lead to halakhic doubt the rabbis present literary protagonists who are distinctly not attending to their actions and interactions in the ways they should. Nevertheless, the underlying assumption in these scenarios is that those fallible subjects actively seek rabbinic guidance on how to extract themselves from the situation of doubt, and that they will follow the instructions they are given even at the price of great inconvenience. This combination of cognitive omissions—sometimes egregious cognitive omissions—with overall commitment to the halakhic system and to rabbinic authority creates, I propose, a new model of Jewish piety and observance. At the heart of this model stands not perfect performance of the commandments, but rather determination to scrutinize and correct one's *imperfect* performance.

This chapter aims, through close analysis of a small number of scenarios that are structurally and conceptually similar, to offer an initial expedition into the rabbinic discourse on memory failures and cognitive omissions. The observations I propose in this chapter serve as a foundation for my arguments in the following chapters, where they will be bolstered and expanded through other kinds of texts and inquiries. I open with scenarios of episodic memory failures because they form a coherent subset of texts, and yet they run the full gamut from mundane and predictable (for example, being unsure whether one touched an impure object or not) to outlandish and surprising (for example, being unsure whom one betrothed as a wife). As such, these scenarios illustrate well how the rabbis, rather than set memory failures outside the normative realm, build such failures *into* the normative realm. The drama in these scenarios—and there is drama in them, I contend, albeit subtle and minimalistic—lies in the discord between the overall determination of the protagonists to adhere to rabbinic teachings and their

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12. M. Baba Metzi'a 1.1 and elsewhere.
13. M. Yoma 8.7.

inability to do so because of normalized cognitive limitations. It is through this discord that we can begin to analyze the role that memory failures play in the rabbis' religious and social vision.

UNCERTAIN ENCOUNTERS

The scenarios I discuss in what follows are for the most part structured in a similar pattern. A case is described in which a subject is aware that he was in a situation of halakhic significance and did something, but he cannot say what he did or what happened exactly, and therefore is uncertain as to how he should proceed. At times these cases are formulated in the first person—a subject is quoted, as though presenting a question directly to the rabbis ("I went to a place in which there was an impure substance, but I do not know if I touched it," "I made a vow to give something to the temple, but I do not know what I promised to give," "I stole money, but I do not know how much I stole"), and at times they are formulated in the third person ("One bought X from someone but does not know from whom he bought it," "One betrothed one of two sisters but does not know which one he betrothed"). While it is never stated explicitly that the subject (or someone else) asked the rabbis for advice or guidance, the very juxtaposition of the case and the ruling implies a situation of halakhic consultation, even if an entirely hypothetical one. In most if not all cases the subject's uncertainty could be attributed to insufficient attention or carelessness, but the rabbis' interest is in presenting practical solutions to the halakhic conundrums rather than in penalizing or condemning the subject.

At first glance, these scenarios of episodic memory failures are nothing more than scholastic examples that set the stage for what the rabbis really want to get at—namely, the principles through which uncertainty is to be dealt with. Telling of a debtor who forgot whether he paid or not is just a channel for discussing uncertain debt; this could be done just as well by telling, say, of orphans who do not know whether their father paid his debt before he died or not. Indeed, sometimes a principle for dealing with uncertainty is exemplified both through a scenario involving memory failure and through a scenario involving objective inaccessibility of knowledge. Yet I contend that even if the purpose of scenarios of memory failures is to set up a situation of doubt in order to present the "bottom line" of the ruling, the *effect* of those scenarios is the integration of cognitive omissions into the halakhic landscape, such that memory and attention are charted as stumbling blocks for committed rabbinic subjects. By presenting absence of knowledge due to subjective limitations—failures to attend to certain facts or to remember them—as akin to absence of knowledge due to objective limitations, the rabbis make the point that one's mind and memory are not entirely within one's control. This idea can by no means be taken for granted, and in the second part of this chapter I will argue that it helps us reconstruct both a rabbinic understanding of

memory and cognition and a rabbinic ideological stance regarding adherence to halakhah. Let us begin, however, with a few instructive examples.

The Doubtful Toucher

Tractate Tohorot of the Mishnah deals extensively with situations of doubtful impurity, that is, with the need to make determinations about purity and impurity when one is missing much or some of the necessary information. In many of the tractate's cases, the difficulty in making the halakhic determination stems from insufficient information about the history of an *object*, for example, when an item was left outside during the night and it cannot be known who may have touched it,[14] or when strangers entered one's house and it cannot be known whether they were ritually impure and what they touched while they were there.[15] There are, however, cases in which the difficulty in making halakhic determinations stems from insufficient information about the history of a *subject*, that is, from an individual's inability to determine whether he touched something or did not, entered a place or did not, and so on. The principles through which both types of cases are addressed are identical, and thus the Mishnah's decision specifically to mention cases of the latter sort is not self-evident.

The underlying assumption in the rabbinic purity system is that impurity is pervasive, ever present, and unmarked. Impure items can look exactly like pure items (e.g., a clod of dirt from a burial ground and a clod of dirt from a noncontaminated ground), and impure persons look exactly like pure persons. The rabbis, who operate on the premise that their subjects, whether real or imagined, attempt to maintain themselves in a state of ritual purity to the extent that this is possible,[16] devise a series of principles for negotiating this task in a world in which impurity potentially lurks everywhere but cannot always be known. The guiding notion behind some of these principles is that in situations that lie entirely outside of one's control, one should assume purity rather than impurity as a default (unless, of course, one knows with certainty that impurity was indeed contracted).[17] For example, if I suspect that I encountered a source of impurity in a public area, I may operate on the assumption that I did *not* become impure. In contrast, if I suspect that I encountered a source of impurity in a private domain (e.g., in someone's house or garden), I am to operate on the assumption that I did become impure.[18] This has got nothing to with the probability of impurity being found in the public versus private domain (if anything, one is more likely to find impure items in the

14. M. Tohorot 8.3.

15. M. Tohorot 7.2–6.

16. For an extensive and thorough discussion of the early rabbis' approach to the observance of ritual purity in everyday life, see Yair Furstenberg, *Purity and Community in Antiquity: Traditions of the Law from Second Temple Judaism to the Mishnah* (in Hebrew) (Jerusalem: Magnes Press, 2016).

17. See also Balberg, *Purity, Body, and Self*, 42–47.

18. For example, M. Tohorot 5.1–2.

public domain than in the private domain), but with the attempt to restrict the tracing and managing of impurity to settings in which one has a modicum of ability to do so. Similarly, the rabbis rule that if "one who has no mind to be asked"—for example, an infant or an animal—may have come into contact with a source of impurity, the default ruling would be that no impurity was contracted, whereas if one who "does have a mind to be asked" may have come into contact with a source of impurity, the default ruling is that impurity was contracted.[19]

Another principle guided by the attempt to restrict determination of impurity, in cases of doubt, to situations over which humans have some control is the principle of "moving impurity." The rabbis rule that if a source of impurity was in motion from one place to another, and it is uncertain whether it touched something or someone while on the move, the default ruling is that whatever or whoever may have been touched remains pure. If the source of impurity was stationary, however, the default ruling in a case of doubt would be that impurity was indeed contracted. This principle is illustrated through the following cluster of scenarios, which contrast settings of "moving impurity" with a setting of stationary impurity (or, in rabbinic terms, "impurity that has a place"). In all three scenarios, the subject is unsure whether there was or was not contact with a source of impurity. For our purposes, it is important to note that the Mishnah presents a gradient scale of the subject's direct involvement in the situation, ranging from a case in which the subject was a nonparticipating bystander to a situation in which the subject was the main actor:

> [A] If there was [dead] vermin in the mouth of a weasel, and it was walking over loaves of heave-offerings—if it is doubtful whether [the vermin] touched [the loaves] or not, its doubt (i.e., the loaves that the vermin may have had contact with) is pure.

> [B] If there was [dead] vermin in the mouth of a weasel or a carrion in the mouth of a dog, and they passed between pure people or pure people passed between them—their doubt (i.e., whatever these people may have touched) is pure, because impurity does not have a place.

> [C] If [a weasel or a dog] were pecking [at the vermin or carrion] on the ground, and one said, "I went to that place, but I do not know[20] whether I touched it or did not touch it"—his doubt is impure, because impurity has a place.[21]

These three scenarios all illustrate the rabbinic principle that in a case of doubt "moving impurity"—that is, a source of impurity that does not stay put but travels through space—does not cause one who may have had contact with it to become

19. M. Tohorot 3.6–8.
20. All Mishnah manuscripts read here: "I went to that place, but it is not known (*ve-'ein yadu'a*) whether I touched it or did not touch it." This version may be influenced by the use of "but it is not known" in most other cases in M. Tohorot 4–6. However, since the speaker uses the first person here, the more plausible version is "but I do not know" (*ve-'eini yode'a*), as it appears in the printed edition.
21. M. Tohorot 4.2–3.

impure. Case A describes a somewhat unappetizing scene in which a weasel walks over loaves of bread meant to be used for heave-offering (i.e., a requisite gift to the priests) while carrying some type of dead vermin (*sheretz*) in its mouth. The weasel cannot harm the loaves (no living animal conveys impurity), but the dead vermin in its mouth, if it touches the loaves directly, would make the loaves impure such that priests will not be able to use them. Whoever noticed the weasel on the loaves cannot tell with certainty whether there was direct contact between the vermin and the loaves, so the case is decided according to the principle that "moving impurity" does not convey impurity in a case of doubt. In case B, the suspected contact is not between the source of impurity and inanimate objects, but between the source of impurity and humans: a living animal carrying a source of impurity in its mouth moves between pure humans, or pure humans move by it. If those humans had direct physical contact with the source of impurity, they would now be impure, but since this cannot be known for sure, the principle of "moving impurity" is applied and the humans are rendered pure. Finally, case C is presented as contrastive to the previous two: if the source of impurity was placed in a fixed location on the ground, and a person who was at that place cannot remember whether he touched the source of impurity or not, that person would be rendered impure by default, because the principle of "moving impurity" does not apply.

In each case, the human subject involved is ostensibly more equipped to make the determination regarding contraction of impurity than the one in the previous case. In case A, the human is merely an observer, who does not play a part in the potential contraction of impurity; in case B, the humans are potentially passive contractors of impurity, since the source of impurity may have just brushed against them; in case C, the human is potentially an active contractor of impurity, as he may have touched a source of impurity that was located in a particular place. While we cannot necessarily say that the subject in case C could have *prevented* the contact with the source of impurity—indeed, the rabbis imagine a host of ways in which involuntary contact can take place—we do pause to wonder why this subject cannot say with certainty whether he touched the source or impurity or not. The Mishnah, as it often does, leaves it to its readers to construct the backstory of this scenario. We may imagine that the contact that may or may not have happened was so insignificant that the subject did not pay attention to it (for example, he only touched the carrion with the tip of his foot); or that the subject was too distracted by other things to register if he touched the source of impurity; or that some time has passed since then and the subject no longer remembers whether he touched the source of impurity or not. Either way, I would classify case C as a case of *memory failure*, whether the subject never formed a clear memory of his contact with the source of impurity or formed a memory and later on could not retrieve it. It is a "failure" insofar as one who cares about maintaining ritual purity is expected, within the rabbinic normative system, to keep his own actions and interactions with potential sources of impurity in close check.[22]

22. See also Balberg, *Purity, Body, and Self*, 155–61.

From a legislative perspective, the sole purpose of case C is to provide a contrast to cases A and B, and to illustrate how a case of doubtful impurity is decided when the source of impurity is *not* moving. To make that point, the rabbis had to depict a situation of doubt having to do with stationary impurity. If the source of impurity is stationary and there is certainty as to its location, what else could be the reason for uncertainty, all other things being equal? Supposedly, only the confusion of the toucher himself. But this in and of itself is significant: the rabbinic notion that one of several factors that could introduce uncertainty into the impurity realm is the faulty attention or memory of humans regarding their own actions, and the readiness to use this notion to develop certain halakhic inquiries, indicate that the rabbis did not see any contrast between commitment to the observance of purity laws and fallibility in its practice. In this scenario the rabbis imagine a subject who clearly knows enough and cares enough about impurity to report that he may have had contact with a source of impurity, but somehow failed to be attentive enough when this contact may have happened or failed to remember the details of the event after some time has passed. This failure does not place the subject alongside those who are careless in the observance of purity, but rather it is registered as a normal obstacle that a devoted and committed rabbinic subject may run into in his sincere attempts to observe ritual purity—an obstacle not fundamentally different from the inability to discern an impure clod of dirt from a pure clod of dirt, or to know whether an unattended toddler wandered into an impure place or not.

The rabbis' literary choice to report the subject's uncertainty in scenario C in the first person, "*I* went to that place, but I do not know (or: it is not known, according to the manuscripts' version) whether *I* touched it or did not touch it," is noteworthy. This case could have been phrased in the third person to convey the exact same ruling, as we find in other Mishnaic passages regarding uncertainty in relation to impurity; for example, "If one walked in one of two [paths] and it is not known in which one he walked, if he hung over one of two [objects] and it is not known over which one he hung, if he shifted one of two [objects] and it is not known which one he shifted . . . ," and so on.[23] It is of course not uncommon for the Mishnah to use the first person in the presentation of halakhic scenarios, yet we should not overlook the fact that this literary device, which introduces the halakhic dilemma at hand in the form of a direct quote of the subject implicated in this dilemma, has a clear mimetic effect. It represents a hypothetical case as though it "really" happened, thus adding an element of dramatization.[24] The use of direct quote heightens the subject's stakes in the rabbis' ruling: the act of declaring out loud what happened (or did not happen), followed by rabbinic deliberation, constructs a confession-like setting in which a subject in need actively seeks out rabbinic remedy. In this case as well as in others we will see throughout this

23. M. Tohorot 5.1; but cf. M. Tohorot 5.2, which uses the first person.

24. On the mimetic and dramatizing effect of direct speech in the casuistic laws of the Pentateuch, see Assnat Bartor, "The Representation of Speech in the Casuistic Laws of the Pentateuch: The Phenomenon of Combined Discourse," *Journal of Biblical Literature* 126, no. 2 (2007): 231–49.

chapter, the subject's "confession" manifests his deference to the rabbis and to their laws while also reporting failure on his end to be as attentive as he should have been to elements crucial to his observance. The following passage provides another example of deferent confession/consultation regarding an impurity-related memory failure:

> If one entered a valley [in which there were multiple fields] during the rainy season, and there was impurity in a particular field, and he said, "I went to that place, but I do not know[25] whether I entered that field or not"—R. Eleazar renders him pure, and the Sages render him impure.[26]

The premise of this scenario is that people rarely walk into fields during the rainy season, and therefore a valley that would be considered public domain during the planting and harvest season would be considered a private domain during the rainy season. Since cases of uncertainty regarding impurity are decided differently in the public domain and in the private domain, the season in which one enters a particular field is of consequence. Again the factor of uncertainty is introduced through the figure of a person who is not sure of his own actions—he was in a valley in which one field was known to have a source of impurity in it (e.g., buried corpses), but he is not sure whether he entered that particular field or not. Here, too, the Mishnah presents the subject as reporting his predicament in the first person, "I went to that place, but I do not know/it is not known whether I entered that field or not," such that the subject appears as seeking advice or instruction regarding his purity status.

The act of *saying* in this passage, through which the subject, hypothetical as he may be, confesses his uncertainty, is more than simply a way to communicate the halakhic issue at hand (as we saw, this could be done in the third person). The confession/consultation setting created through the use of quoted speech juxtaposes the subject's memory failure with his unreserved subordination to the rabbis. On the one hand, a person who is careful in the observance of purity could be expected to keep track of where he goes and where he enters, as those facts are critical to this endeavor; on the other hand, the subject's speech act suggests that he is aware of the consequences of potential contraction of impurity and seeks to find out how he ought to proceed in accordance with rabbinic guidelines. Thus, the speech act in the first person, here and elsewhere, serves the rabbis to create a dramatized literary subject who is at one and the same time concerned about his impurity status *and* fallible when it comes to keeping track of his own actions vis-à-vis impurity. I contend that this combination of fallibility and deference, proneness to errors and eagerness to correct them, is a key facet of the rabbis' interest in memory omissions, as we will continue to see in the following examples.

25. All the Mishnah manuscripts read here: "I went to that place, but it is not known (*ve-'ein yadu'a*) whether I touched it or did not touch it." See note 20 above.

26. M. Tohorot 6.5.

The Confused Customer

The examples we have seen above, of memory failures pertinent to the contraction of impurity, are quite mundane and innocuous in nature. The pervasiveness of impurity, and the fact that it is contracted through actions that humans are often incognizant of, such as walking or touching, make it fairly likely that one would not be able to give a full reckoning of one's fleeting interactions with sources of impurity. Indeed, the rabbis note that one is not always in full cognitive command of one's hands,[27] and one cannot always be held accountable for the roads on which one chooses to walk.[28] In the remaining examples in this section, however, we will see that the prospect of memory failures regarding one's own actions is considered in rabbinic texts even when it comes to actions that should supposedly be performed with significant attention and deliberation. In the following example, the memory failure in and of itself could be described as predictable and benign, but it is a very unpredictable memory failure for a committed subject of rabbinic halakhah. This example heightens the tension between the normal tendency to forget minute details of one's everyday dealings and the keen attentiveness required of one who wants to operate within the rabbinic normative system.

This example concerns a specific facet of life in accordance with halakhah that requires active knowledge and memory: distinguishing between food items legitimate for consumption and nonlegitimate for consumption. Needless to say, food in the world of the rabbis did not come with packaging, stickers, or stamps to mark rabbinic approval. Since kosher meat and nonkosher meat, tithed produce and untithed produce, and so on look exactly the same, the observant subject must make the determination whether or not it is permitted to consume this food based on the reputation of the seller (unless, of course, he slaughters, grows, or tithes the food himself). The Tosefta presents a cluster of scenarios in which one is unable to report from which seller he bought food items, and is therefore unable to determine whether the items he bought may be consumed:

> [A] If everyone in a town sells fixed (i.e., tithed produce), and one [seller] sells unfixed (i.e., untithed produce), and one bought [produce in that town] and he does not know from which of them he bought it—it is forbidden [for him to eat until he tithes the produce].

> [B] If everyone in a town sells the meat of slaughtered animals, and one [seller] sells the meat of carrions, and one bought [meat in that town] and he does not know from which of them he bought it—it is forbidden [for him to consume the meat].[29]

27. M. Tohorot 7.8.

28. M. Tohorot 5.2.

29. In the Palestinian and Babylonian Talmuds this case is phrased somewhat differently: "Nine stores sell the meat of slaughtered animals, and one store sells carrion meat." See PT Sheqalim 7.2, 50c; BT Pesahim 9b, BT Kettubot 15a, BT Hullin 95a, BT Bekhorot 19b, BT Niddah 18a.

[C] If everyone in a town sells pure wine and one sells impure wine, and one bought [wine in that town] and he does not know from which of them he bought it—it is forbidden [for him to derive benefit from the wine].

To what does this apply? To a case in which one bought and does not know from whom he bought, but if one bought [the item] in the marketplace,[30] they follow the majority.[31]

The three cases in this passage all present variations on the same scenario: a subject purchased products in a town in which most sellers follow rabbinic ordinances when it comes to their merchandise—whether tithing produce, slaughtering animals according to protocol, or making sure wine is not touched by non-Jews[32]— but a single seller does not. The subject does not know from which seller he purchased the goods, and there is no visible marking of any sort that allows one to distinguish permitted goods from forbidden ones. It is important to stress that the situation at hand is one in which it is generally known which stores sell kosher items and which do not. As the concluding line of the passage clarifies, the problem is emphatically not that it is unknown whether a given store sells kosher items or not, but that this particular buyer does not know *in which* store he bought the items. The three scenarios in the Tosefta are contrasted with a case in which one purchased items in a marketplace, in which products from multiple sellers are laid out without discernment, such that one has no way of tracing a particular item to a particular seller. In the case of marketplace purchase, the rabbis apply the common principle that in situations of doubt, one "follows the majority"—that is, one can make the statistical assumption that if most people or items in a given place subscribe to a certain rule, then an unmarked item from that place can be assumed to subscribe to the same rule as well.[33] For example, if meat was found in a particular town and more than 50 percent of the butchers in that town follow the laws of kosher slaughter, the meat can be assumed to be kosher.[34] In the three cases of one who does not know in which store he made the purchase, however, the principle of following the majority does *not* apply: none of what this subject purchased is permitted for use, even though statistically it is likely to be legitimate.[35] The logic behind this contrast is, evidently, that the very lenient principle of following the majority was intended to help one procure products and conduct business under *objective* conditions of uncertainty, but it does not cover *subjective* conditions of uncertainty.

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30. In the Talmuds: "but if it was found in the marketplace," following M. Makhshirin 2.9.

31. T. Demai 4.8–10 (ed. Lieberman 79–80).

32. This is probably the intended meaning of "pure wine"; cf. M. Avodah Zarah 4.11.

33. For example, M. Kettubot 1.10, M. Tohorot 5.7, M. Makhshirin 2.4–11. See also Halbertal, *The Birth of Doubt*, 9–30.

34. M. Makhshirin 2.9.

35. See Halbertal, *The Birth of Doubt*, 36–39.

Read straightforwardly, the Tosefta describes a situation of episodic memory failure insofar as the subject cannot give an accurate account of an interaction he was involved in himself: "He bought and he does not know from which of them he bought" (*laqaḥ ve-ʾeino yodeʿa me-ʾeize me-hen laqaḥ*). Admittedly this terse account could cover a range of other iterations of uncertainty that do not entail memory failure—for example, if the products were purchased by someone else who is not available or unable to report where they purchased them. In its most minimalistic and basic formulation, however, this case is simply one of a buyer who cannot recall in which of the town's stores he purchased certain products. As far as memory failures go, this is a very realistic and understandable one. When we speak of "stores" in the context of the second or third century CE, we hardly speak of carefully designed enclosed spaces that are readily distinct from one another, and the products they sell are not packaged in plastic or paper bags with the store's logo. If someone purchased peaches and turnips at the produce stand on street corner A, and then purchased onions and strawberries at the produce stand on street corner B, we can certainly imagine that after two days they will no longer be sure at which stand they purchased what. What makes this cluster of scenarios somewhat surprising is not that the subject cannot recall in which store they made a purchase, but that he is uncertain whether he bought *kosher* products or not.

The subject in the Tosefta is in a halakhic conundrum because there is a possibility, even if an improbable one, that he purchased items that are forbidden to consume according to rabbinic law. But why is there such a possibility in the first place? Since the stores in these scenarios are set in fixed places and their sellers have certain reputations, it is not because it was impossible to verify the source and status of the products before making the purchase. We must assume either that the subject never bothered checking which store was halakhically legit and which was not, or that he was generally aware of the reputation of the different stores but was not paying attention at the time he made the purchase and may have accidentally bought from the "wrong" seller. That kind of inattentiveness or disregard for the halakhic status of one's food is very much at odds with what we would expect from a subject who is committed to rabbinic teachings. Of course, we could assume that this particular subject is *not* committed to rabbinic teachings, but if this is the case, for whom are the rabbis' rulings intended? If the subject cannot say from which seller he bought the products but is unperturbed about it, why would such a case even present an opportunity for the rabbis to prohibit the consumption of the products, with the underlying expectation of compliance?

The passage, to be sure, does not say explicitly that the consumer in these cases asked the rabbis for guidance, and unlike the impurity scenarios we saw earlier, it does not even use the first person to report the case. We could imagine a more convoluted backstory in which it is not the buyer himself who presents the question to the rabbis, but his more stringent friend or relative who wonders whether he can eat the food he was offered at the buyer's house. Alternatively, we could

say that the rabbis are interested in presenting a halakhic ruling for its own sake, regardless of whether this ruling is likely to be sought or obeyed in the circumstances in which it may be relevant. Be that as it may, from a literary perspective the casuistic scenarios so typical of Tannaitic texts construct narrative settings in which the ruling (*apodosis*) appears designated specifically for the actor(s) in the event described in the opening clause (*protasis*). As Assnat Bartor observed regarding the casuistic laws of the Pentateuch, "A pattern of law that sets forth an action or a state of affairs that throws the social order into disequilibrium and then spells out what is required to reintegrate that order may be used as a fertile ground for locating narrative elements; a narrative seems to be inherent in it."[36] As readers, we are disposed to fill in gaps in the narrative with which we are presented, minimalistic as it is, in the most direct way possible.[37] When we have a dilemma ("He bought and he does not know . . . ") and a solution ("It is forbidden") our tendency would be to assume that the solution was conjured specifically for the dilemma of the person actually mentioned in the scenario, in this case the buyer himself, and not for someone else who is not mentioned explicitly. The mini-narratives put forth in this passage construct a confused but pious subject, who cannot keep track of his own purchasing decisions and is thus awaiting a rabbinic ruling on whether he may consume the products he bought or not.

The significance of the scenarios of the confused consumer lies exactly in the juxtaposition of memory failure—specifically, failure to account for a decision that should be of great importance to an observant Jew, that is, where to purchase food items—and the presumed obedience and deference implied by the sequence of case and ruling. The literary effect of this juxtaposition becomes more evident when we contrast this Tosefta passage with a Midrashic passage from Leviticus Rabbah that deals with halakhic forgetfulness and closely echoes one of the Tosefta's scenarios. The Midrashic passage riffs on Proverbs 19:2, "Desire without knowledge is not good, and one who moves too hurriedly misses the way." While "misses the way" (used in modern Bible translations) is probably a better translation of the original Hebrew *ḥote* than the traditional translation "sins," *ḥote* does have strong negative connotations of transgression in rabbinic Hebrew. To illustrate how lack of sufficient attention can lead to transgression, three rabbis present three different scenarios. In the first scenario, a man forgets that his wife is about to begin menstruating and has sex with her as she is becoming impure; in the third scenario, a man forgets that a certain path is filled with thorns and large clods of dirt and walks through it on the Sabbath, which forces him to engage in the illicit activity of removing thorns and trampling clods. The second scenario is interestingly resonant with the Tosefta:

36. Bartor, "The Representation of Speech," 233.

37. On gap filling as inherent in the reader's engagement with a text, see Meir Sternberg, *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* (Bloomington: Indiana University Press, 1989), 186–229.

Yitzhak bar Shmuel bar Marta in the name of Rav [applied Prov. 19:2 to this case]: there were two stores in front of him, one sells the meat of slaughtered animals and the other sells the meat of carrions, and he forgot and purchased from the one that sells the meat of carrions. If he did not know [that he was buying carrion meat], *it is not good*, but if he knew and still bought [the carrion meat] all the more so, and not only that but *one who moves too hurriedly misses the way*.[38]

While the Tosefta speaks of a person who purchased meat and then forgot from whom he purchased it, the Midrash speaks of a person who, because of forgetfulness, actually purchased nonkosher meat. Although the former case deals with uncertainty and the latter with certainty, they both describe inattentiveness as easily leading one to transgression. But herein lies the difference: whereas the Midrash condemns the forgetful subject and places him just a few steps behind one who transgresses purposefully, the Tosefta presents the forgetful subject as one who, through the rabbis' guidance, can be corrected and kept from transgressing. Put differently, the Midrash presents forgetfulness as a sign of carelessness that puts one at the outer perimeter of the normative world, whereas the Tosefta presents forgetfulness as *part* of the normative world. This is not just a matter of genre difference between the didactic Midrash and the pragmatic Tosefta, but also an indicator, in my view, of a consistent Tannaitic tendency to normalize (and normativize) mistakes and cognitive omissions, as we will continue to see in the following examples.

The Honest Thief

Much of rabbinic property legislation is concerned with what we may call a game of claims. Two people present an identical claim to a cloak, a house, or a chicken coop, each one claiming that it belongs to him; or one person claims that another person owes him 200 dinars, whereas his fellow claims that he only owes him 100; or a person who bought a cow claims that the cow's leg was already broken when he bought it, whereas the seller claims that it got broken only after the purchase. In all these cases and many others like them, the rabbis concede that it is impossible to know what truly happened, and they apply general principles in order to deal with the uncertainty. But there are a few cases in rabbinic property legislation in which uncertainty arises not from contradictory claims by two people, but from one person not remembering what he did with another's property or with his own. Here is one example:

[A] If one said to his fellow, "I stole from you, [or] you lent to me, [or] you deposited with me, but I do not know whether I paid you back or not"—he must pay.

[B] But if he said [to his fellow], "I do not know if I stole from you, [or] if you lent to me, [or] if you deposited with me"—he is exempt from paying.[39]

38. Leviticus Rabbah 4:3 (ed. Margulies 1:84; emphasis added).
39. M. Baba Qamma 10.7.

This passage presents two scenarios in which a subject is unsure of his own financial transactions. In case A, he remembers that he owed money or an object to someone (whether because of theft he must compensate for, a debt he must pay, or a deposit he must return) but he does not remember whether he paid back what was owed or not. In case B, he is not sure whether there was a debt to begin with. The principle is simple: if a debt as such is confessed, then this debt must be paid even if there is a chance that it was already paid; but if the debt itself is uncertain, the presumed debtor need not pay anything. While in theory the quoted statements "I do not know whether I paid you back or not" and "I do not know if I stole from you, [or] if you lent to me, [or] if you deposited with me" could be read as a response to a claim made by the presumed debtee, I am inclined to read it as a statement made by the potential debtor of his own accord.[40] If the potential debtor's statement had been meant to be read as a response to a competing claim, the case would have likely been phrased—like similar cases in rabbinic texts—in the form of a claim and a counterclaim: "That one said, you stole from me/I lent to you/I deposited with you, and the other said, I do not know."[41] The speaker's statement expresses genuine consternation over his memory failure: he wants to deal honestly with a debtee but is unsure whether the debtee is indeed a debtee, since he could not keep track of his financial interactions with that person. Even if we read this statement as a response to a claim made by the debtee, however, it should be noted that the rabbis generally perceive statements of absence of knowledge as sincere and not as manipulative or evasive. Had the subject wanted to avoid paying the debt, he could have simply denied it.

A situation in which one forgets whether and to whom one is in debt is less trivial than forgetting whether one entered a certain field, or in which store they made a purchase, but it is still not far-fetched. We normally think of stealing, lending money, and paying a debt as ominous events that one would not be inclined to forget or be unsure about, but it is certainly possible to imagine a host of situations in which those things would be forgotten: if the sums involved were particularly small; if the initial transaction happened many years ago; if the payment in question was one in a series of payments regularly made, such that it is hard to remember whether a specific payment was made or not; if the person in question is (or was) a professional thief or deposit holder, who stole from so many people or took deposits from so many people that he cannot keep track of them; and to that we may add the simple fact that no one likes to remember that they owe money.

40. Both the Palestinian Talmud (PT Baba Qamma 10.7, 7c) and the Babylonian Talmud (BT Baba Qamma 118a) maintain that the subject in these cases confessed of his own accord in order to be released "from the judgment of Heaven" and is not responding to the other party's suit. Mishnah commentators Maimonides and Obadiah of Bertinoro, however, interpret that the case could be read either as an independent confession (in which case the obligation to pay is only according to the rule of Heaven), *or* as a response to a suit in which the other party accuses the subject of failing to pay a debt.

41. See M. Baba Metzi'a 8.2, 8.4, M. Shevu'ot 6.6; T. Baba Metzi'a 8.22–24 (ed. Lieberman 107–8); BT Kettubot 12b.

Without external aids like ledgers or receipts, and without people clearly marking their own property, it is actually quite difficult to keep track of debts—especially if the debtee, who is more likely to be concerned with them, does not remind the debtor of them. What is surprising about this scenario is not so much the subject's uncertainty regarding his own debts, but rather the incommensurability between the subject's failure to keep track of debts and the same subject's concern with the possibility that he owes something, a concern that leads him to confess this to the possible debtee and to face possible financial repercussions. In other words, this case presents a seemingly paradoxical combination of attentional laxity and piety.

Indeed, two other passages that deal with forgetfulness in financial matters emphasize that willingness to confess uncertainty regarding debt of one's own accord puts one at a disadvantage that one would not have encountered had one just kept one's mouth shut. The subject's piety in these cases seems to stand in some tension, at least on the surface, with his inability to keep the record of his dealings straight. Consider the following passage in the Mishnah, and then the Tosefta passage expanding on that Mishnah passage:

MISHNAH

[A] If one tells two people, "I stole a *maneh* (i.e., 100 dinars) from one of you, but I do not know from which one, or the father of one of you deposited a *maneh* with me, but I do not know which one"—he gives that one a *maneh* and the other a *maneh*, because he admitted it of his own accord.

[B] If two men deposited with one [person], this one a *maneh* and the other two hundred, this one says, "The two hundred are mine," and the other says, "The two hundred are mine"—he gives each of them a *maneh*, and the rest will lie until Elijah comes. R. Yose says, "If so, what did the liar lose?! Rather, it will all lie until Elijah comes."[42]

TOSEFTA

[A] If one says, "I owe a *maneh*, but I do not know whether to this man or that man"—he gives each of them a *maneh*, because he admitted it of his own accord.

[B1] If one told two people, "I stole a *maneh* from one of you and two hundred from the other, but I do not know from which of you [I stole what]"—he gives two hundred to this one and two hundred to the other, for if [he did] not [want to have to pay], he should have kept silent.

[B2] If that one says, "The two hundred are mine," and the other says, "The two hundred are mine"—he gives each of them a *maneh*, and he should not give them the rest until they make a compromise.[43]

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42. M. Baba Metzi'a 3.3.
43. T. Baba Metzi'a 3.5 (ed. Lieberman 73–74).

These passages clearly contrast a thief or deposit holder who initiated the confession of his debt ("admitted of his own accord") with a thief or deposit holder who responds to a claim made by others. In the first case in both the Mishnah and the Tosefta (A), the debtor is not sure to which of two people he owes, and he must pay each of them the full sum.[44] In the second case (B, B1/B2), he knows that he owes one person one hundred and another person two hundred, but he is not sure which is which. In the Mishnah the debtor (in this case, a deposit holder) does not say a word, but rather responds to the competing claims of the two depositors, each of whom claims that he is the one who deposited two hundred. According to the majority opinion in the Mishnah, in such a case the deposit holder will pay each claimant the *lesser* amount he may be owed (according to R. Yose, he will pay neither of them anything). In contrast, the Tosefta (B1) presents a case of a debtor (in this case, a thief) who admits of his own accord that he owes one person one hundred and the other two hundred but he does not know which is which. The Tosefta rules that he will pay each of them the *greater* amount they may be owed (whereas if they initiated the claim, as clause B2 indicates, they will each only get the lesser amount). While it could be argued that the Tosefta's ruling is particularly harsh because it concerns a thief, and the Mishnah's ruling is more lenient because it concerns a deposit holder, the language of "admitted of his own accord" suggests that this, and not the nature of the activity through which the debt was accrued, is the decisive factor in the ruling.[45]

Again, it is not difficult to imagine how situations like these could transpire. We can think of a thief who went into an inn in which two people were sleeping and stole the purse of one of them without knowing of which one; or of a deposit holder with whom two people left articles for which they never came back; or of a person with whom two people regularly deposit money and he cannot remember how much they deposited in a particular instance. It is possible that the debtor never had information on the identity of his debtee in the first place, and it is possible that he had it and forgot it, but it is evident that one way or another, he failed to keep track of the details of the transaction in a way that would allow him to repay the owed sum with certainty. When the debtor openly proclaims his uncertainty, he takes it upon himself to pay the maximum amount he may owe to all the people to whom he may owe. If he did not want to face this hefty expense, the Tosefta comments bluntly, he could have simply never confessed the debt.

We see here, then, a rabbinic subject who is confused and forgetful regarding his debts, but he is also adamant about setting the record straight so as to rid himself of possible debts, even when his debtees are not seeking him out. Note that the Mishnah and Tosefta interestingly group together debt accrued legitimately (through

44. Cf. M. Yebamot 15.7, which describes a case of a man who stole from one of five people but does not know from which one.

45. Indeed, the Babylonian Talmud (BT Baba Metzi'a 37a) presents the possibility that the ruling is particularly harsh because it is a case of theft, but then dismisses this possibility.

borrowing or accepting a deposit) and debt accrued illegitimately (through theft). From the rabbis' point of view, there is no difference between the honest deposit holder or borrower and the honest thief: they all want to pay people what they are owed, even as they encounter difficulties in doing so along the way. The rabbinic subject that appears in these scenarios is thus a strange combination of flawed and idealized: he is unable to remember essential facts regarding his potentially dishonest interactions with other people's property, and he may even engage in problematic behaviors like theft or failing to return deposits, but he is also eager to rectify the situation even at the price of paying more than he owes. It is the same pattern that we saw with the customer who cannot remember from which seller he bought produce, meat, or wine but does not want to consume prohibited goods: a subject who experiences memory failures pertaining to critical halakhic issues, finds himself in a conundrum, and seeks rabbinic guidance so as to rectify the situation.

The Father of the Bride

Many of us may have experienced, at one point or another in our lives, uncertainty as to whether we made a payment we were supposed to make, and without being able to refer to checkbooks or credit card statements, we would probably experience it more frequently. I suspect, however, that very few of us have experienced uncertainty as to the identity of the person to whom we got engaged. Unlikely as they may sound, cases in which a person cannot remember the identity of one of the parties in a betrothal in which they took an active part recur several times in Tannaitic texts.

Betrothal (*qiddushin*), in the rabbinic system, is a symbolic act through which a man designates a woman for himself and thereby immediately makes her forbidden to all men except for him.[46] To be sure, betrothal can take place many years before the marriage materializes, especially in cases in which a father or an older brother promises his child daughter or sister to another man.[47] Therefore, memory plays a crucial role in maintaining the status of the woman in question as dedicated to one specific man and in making sure she does not end up with another. This does not seem like a particularly demanding memory task—presumably, betrothal is a significant enough event that one would not be hard-pressed to remember its details—but the rabbis nonetheless engage with the possibility that acts of betrothal would be remembered inaccurately or partially by those who

46. As explained in M. Qiddushin 1.1, betrothal can take place in three forms: by giving a woman (or her guardian) something of minimal monetary value, by producing an official writ that confirms the betrothal, or by sexual intercourse.

47. While this practice is condemned in the Babylonian Talmud (BT Qiddushin 41a), the rabbis do consider it legitimate and discuss it extensively. See Adiel Schremer, *Male and Female He Created Them: Jewish Marriage in Late Second Temple, Mishnah, and Talmud Periods* (in Hebrew) (Jerusalem: Zalman Shazar Institute, 2004), 102–6.

initiated them. This possibility is of interest to the rabbis in the same way that situations of halakhic doubt or uncertainty are always of interest to them, but in the case of doubtful betrothal the stakes are especially high. A woman who was betrothed to one man is instantly forbidden to all other men, and the only way to release her from that bind is to provide her with a *get*, a divorce writ. If a woman who was betrothed to one man ended up having sex with another man and got pregnant, the children born of the latter union would be considered illegitimate (as will their children and their children's children for all eternity), even if none of the parties involved ever knew of the betrothal between the woman and the first man. Thus, uncertainty as to whether a woman was betrothed and to whom she was betrothed is potentially disastrous. While the consequences of forgetfulness in regard to betrothal are ominous, the possibility that such forgetfulness would take place is mentioned rather matter-of-factly:

> [If one said], "I gave my daughter in betrothal, but I do not know to whom I gave her," and one person came and said, "I betrothed her"—he is believed. If one person said, "I betrothed her," and another person said, "I betrothed her"—they must both provide her with a *get*, or if they want to, one provides her with a *get* and the other one marries her.[48]

This passage addresses the case of a father who promised his daughter to someone through a legally binding process of betrothal, but later he cannot remember to whom he promised her. This may sound very strange, but considering that fathers could, at least in theory, promise their daughters in marriage when they are very young and years could pass until it would be their time to marry, it is not impossible. We could make additional conjectures about the father's state that led to this forgetfulness—perhaps he was drunk at the time, perhaps he was losing his memory because of old age or illness, perhaps he simply did not care whom his daughter married—but the Mishnah, as usual, does not find it necessary to frame this case as remarkable in any way. Its concern is only to minimize the chance that the girl, who of course has no voice in the case at all, ends up marrying someone other than the person to whom she was betrothed. Note that in the Mishnah's minimalistic case narrative, the person who claims that he is the one to whom the girl was betrothed is not recognized or remembered by the father (or anyone else) upon his arrival. Rather, his claim is accepted simply because the father's statement that he betrothed his daughter to *someone* is considered reliable, and once there is a "someone" to fill that role, there are no further inquiries (as long as there is just one candidate).[49]

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48. M. Qiddushin 3.7.

49. In the Palestinian Talmud (PT Qiddushin 3.7, 64b) and in the Babylonian Talmud (BT Qiddushin 63b), Talmudic rabbis disagree as to whether the person who claimed that he betrothed the woman is believed only for the purpose of providing her with a *get*, or also for the purpose of marrying her. I believe that the Mishnah should be understood in the latter sense (as explicitly stated in T. Qiddushin 4.10 [ed. Lieberman 291]). It is worth mentioning that the Talmuds also discuss cases in which the woman herself is unsure whether she was betrothed and to whom.

In another passage in the Mishnah, the father has no trouble (apparently) remembering to whom he gave his daughter in betrothal, but he has trouble remembering *which* daughter he gave. More specifically, the father remembers—perhaps vaguely—what he said when he made the betrothal agreement, but not exactly what he meant:

> If one had two groups of daughters from two women, and he said, "I gave my older daughter in betrothal, but I do not know whether it was the oldest among the old ones or the oldest among the young ones or the youngest among the old ones who is older than the oldest among the young ones"—they are all prohibited, except for the youngest among the young ones, the words of R. Meir. R. Yose says, "They are all permitted, except for the oldest among the old ones."[50]

The man described in this convoluted scenario has two daughters from one marriage (e.g., ages twelve and ten) and two daughters from another marriage (e.g., ages seven and five).[51] He made a betrothal agreement with a man regarding his "older daughter," but he is not sure which daughter exactly he meant. "Older daughter" could refer to the oldest of all his daughters (the twelve year old), to the oldest among his daughters who were born more recently (the seven year old), or to his daughter from the first marriage who is still older in comparison to the daughters from the second marriage (the ten year old). In such a case of uncertainty, R. Meir adopts a maximalist position (any daughter that could qualify as "older" is prohibited and presumably needs a *get*), whereas R. Yose adopts a minimalist position (when one says "my older daughter" he can be assumed to mean his oldest daughter, so only she would be prohibited). The next passage then repeats the same scenario in reverse, with a man who gave his "younger daughter" in betrothal and cannot remember which "younger" he meant.

Needless to say that this is an extremely unlikely scenario, not only in terms of the unique family configuration but also in positing the figure of a father who does not remember which of his own daughters he intended to give in betrothal, and that it is presented here not because the rabbis expected to encounter such a case but because it presents an interesting mind game that highlights how serious betrothal agreements are. Yet one thing must be noted: both in this case and in the previous case, the rabbis could have presented the same uncertainty as resulting from objective lack of information—that is, from *other people* not having access to the father's exact actions, statements, or intentions. Had the Mishnah said, "If one gave his daughter in betrothal and it is not known to whom he gave her," or "If one said, 'I gave my older daughter' and it is not known whether he meant the oldest among the older ones, . . . ," we would assume that the father, for one reason

50. M. Qiddushin 3.9; cf. T. Qiddushin 4.12 (ed. Lieberman 291–92).

51. Technically a father can only betroth his daughter when she is a minor (under the age of twelve), and after that she has to manage her own betrothal. The Talmud (BT Qiddushin 64b) considers the possibility that a grown daughter would appoint her father to accept betrothal on her behalf, but then dismisses it as unlikely.

or another, is not available to provide the necessary information. The Mishnah, however, presents these cases in the first person: "*I gave my daughter and I do not know to whom I gave her*," "*I gave my older daughter and I do not know whether it was the oldest among the older ones*," thus presenting the uncertainty at hand as stemming from subjective lack of information—from a person not having full recollection of his own actions and intentions. Considering the fact that the rabbis could have conveyed the exact same principle by saying, for example, that the father had died, or simply by using the third person,[52] I find it significant that they chose to convey it through a mini-drama of self-confessed mental omission. With very few words, this scenario creates a picture of a father who cannot remember crucial decisions he made regarding his daughter's marriage but has significant enough investment in halakhah to make sure his daughter does not accidentally engage in illicit sex.[53]

Mental omissions in regard to betrothal can occur, according to the Mishnah, not only to fathers of brides but also to grooms, who may forget which woman they had betrothed:

> If one betrothed one of two sisters and he does not know which of them he betrothed, he must provide both of them with a *get*. If he died and he has one brother, [the brother] must perform *ḥalitzah* (i.e., levirate release) for both of them. If he had two brothers, one performs *ḥalitzah* [for one of the sisters] and the other performs levirate marriage [with the other]. If [the two brothers] went ahead and married [the two sisters], they need not be taken away from them.[54]

The puzzle presented in this passage has to with the strict prohibition for a man to be married to two sisters at the same time.[55] Thus, if a man is not sure which of two sisters he betrothed (and again, in the context of betrothal at a young age and lack of documentation, this is not impossible), there is a concern that he will live conjugally with the sister that he did not betrothe, while also being technically married to the other sister. To prevent this, the man must provide both women with a divorce writ. The same rule applies to the man's brother, who according to biblical law must take his brother's wife if the brother dies without children.[56] The brother will have to release both women from the levirate obligation, since he, too, cannot be married to one woman when there is a chance that he is bound through

52. Cf. T. Yebamot 4.2 (ed. Lieberman 10) for a similar case in which it is not known which woman was betrothed; here the case is discussed in the third person.

53. Fathers' concern with their daughters' sexuality is a recurrent trope in rabbinic stories, as observed by Haim Weiss and Shira Stav, *The Return of the Absent Father: A New Reading of a Chain of Stories from the Babylonian Talmud*, trans. Batya Stein (Philadelphia: University of Pennsylvania Press, 2022).

54. M. Yebamot 2.6.

55. Lev. 18:18.

56. Deut. 25:5–10.

levirate obligation to her sister. If there are *two* brothers, however, there is a solution in sight: once one brother releases one sister from the levirate obligation, the other sister is free to marry the other brother, because either she is the one whom the dead brother originally betrothed (in which case she would now be in a legitimate levirate marriage), or she is not the one who was originally betrothed (in which case she is simply marrying a man to whom she has no prior relation). The next passage in the Mishnah then continues to add another layer of complication to this already fantastic scenario, now with *two* men who betrothed two sisters but neither of them knows which one he betrothed, and what happens if these men die and each of them has a brother, and what happens if each of them has two brothers, and so on.[57]

Since the Mishnah's main interest is in the complex levirate arrangements that have to be made in a case of uncertainty, the passage could have easily started at the point of the groom's death. It could tell of a person who betrothed one of two sisters and died without leaving his brother(s) the information of which one he betrothed, which now leads to a complex levirate situation. The Mishnah crafters' decision to start with a case in which the groom himself does not know which sister he betrothed is not self-evident, since this case is not strictly necessary to convey the principles that the Mishnah seeks to convey. Particularly in a halakhic area of dire consequences (and presumably, personal importance) such as marriage, one could expect rabbinic subjects to demonstrate greater care and concern for confirming the identity of all the parties involved in betrothal. Thus, the decision to present subjects who are at a loss for such crucial information is meaningful. A world in which people cannot remember whom they designated as wives or as husbands for their daughters is not simply one in which people may face inadvertent halakhic consequences; it is a world that is downright chaotic, and this chaos is brought about by the failings of human memory. When the rabbis incorporate such chaotic scenarios into their legislative codices, they emphasize the extent to which proper halakhic function depends on subjects' attentive minds, while also relaying that minds can be profoundly unreliable.

The Forgetful Vower

The final example I will present for rabbinic subjects' limited access to memory of their own actions pertains not to interactions with other humans or objects, but to speech acts. In the rabbinic world, words often have the power to transform reality and to change the status of objects and persons from one category to another, especially through vows and oaths. Failing to remember what words were spoken, even in matters that seem trivial, can have grave halakhic consequences, as we saw above in the example of the master and his servant who forgot what

57. M. Yebamot 2.7; cf. T. Yebamot 4.1–3 (ed. Lieberman 10).

animal was designated for the Passover sacrifice. Accurate memory of one's own speech acts is especially critical when one proclaims that certain objects are consecrated to the temple and thereby immediately ceases to be the owner of the objects in question.[58] Forgetting one's own words and the exact content of one's own stated obligations in the sacred realm can lead to a situation in which one is misusing a sacred item (i.e., an item that formally belongs to the temple), which is a serious offense. The only way to avoid such misuse is by assuming the most maximizing reconstruction of the forgotten proclamation that would cover every possible item that may have been consecrated. Here are two examples:

> [A] [If one said,] "One-tenth [of fine flour] is upon me"—he is to bring one-tenth.
>
> [B] "Tenths [of fine flour] are upon me"—he is to bring two[-tenths].
>
> [C] "I specified [how many tenths I was going to bring] but I do not know what I specified"—he is to bring sixty-tenths (i.e., the maximum amount that a person may donate to the temple).[59]
>
> [D] [If one said,] "A burnt offering is upon me"—he is to bring a lamb. R. Eleazar ben Azaria says, ["He is to bring] a dove or a pigeon."
>
> [E] "I specified [that the offering will be of] cattle but I do not know what I specified"—he is to bring a bull and calf.
>
> [F] "I specified [that the offering will be of] quadrupeds but I do not know what I specified"—he is to bring a bull, a calf, a ram, a kid goat, and a lamb.
>
> [G] "I specified [which animal I will bring] but I do not know what I specified"—he brings [all of the above] and adds to them a dove and a pigeon.[60]

As these cases and others like them illustrate, it is better to make a vague and unspecified proclamation of consecration to the temple, which would be interpreted in the most minimizing way possible, than to specify what one would bring. If one forgets what one specified, he is obligated to bring every possible object that fits the category regarding which he vowed, at a potentially prohibitive expense. For example, one who vowed an animal burnt offering and specified which animal he would bring but then forgot what animal he vowed has to bring one specimen of each and every animal that could possibly be sacrificed as a burnt offering. Fortunately for him, this category is restricted to male animals: as the next passage elaborates, if one made a vow to bring an offering that could be either of male or of female animals, he must bring both male and female specimens of each of the

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58. According to a well-established rabbinic principle, verbal statement made to the "high" (i.e., to the realm of the sacred) is equivalent to an actual transaction with a layperson; see M. Qiddushin 1.6.

59. M. Menahot 13.1; and see similar examples in M. Menahot 13.2, 13.4 (which will be discussed below), and 13.5. Cf. T. Menahot 12.11–15 (ed. Zuckermandel 532).

60. M. Menahot 13.6.

animals mentioned above.[61] The Mishnah is obviously keen on demonstrating to its audience that spoken words in the realm of the sacred have ominous consequences, but it is important to emphasize that its point here is not that vows must be taken with thoughtfulness and care (vague vows taken without much thought, as I noted, require only the minimum of the vower). Rather, its point is that the ability to fulfill a vow correctly relies on accurate recollection of the vow in question, and when human memory fails in the recollection of vows—which it is perhaps wont to do, as human memory fails in any other realm of life—halakhah is especially unforgiving.

One passage is of particular interest in this regard. When one vows to give sacrificial substances to the temple, such as grain, oil, or wine, the maximizing interpretation of his vow is limited by the upper bound of the amount of that substance that could be used on a single day. When one vows to give money to the temple, in contrast, there is no upper bound to his potential donation, as monetary donations of any amount are acceptable (and desirable). The only way to deal with a forgetful consecrator in this case is to get him to reestablish a memory of his original intentions:

> [H] "I specified [how much of a particular currency I will bring], but I do not know what I specified"—he is to bring [without limit], until he says, "That is not what I meant."[62]

A person who vowed to donate a certain sum of money to the temple and then forgot how much exactly he vowed is now in a position in which he potentially owes *all* his money to the temple, and possibly all the money in the world. Even if he brings an exorbitant sum of one thousand golden dinars, there is a chance that he vowed one thousand and one dinars, and the extra dinar that will remain in his possession is actually temple property. The solution that the Mishnah conjures for this unfortunate situation is noteworthy: the person who made the vow is to bring money to the temple until he reaches a point at which he says, "I do not know how much money I said I would bring, but I know it has to have been less than this." The rabbis are not proposing to ask the person directly what the absolute maximum that he is willing to give *now* is, but rather they push him to recognize the maximum that he was willing to give when he made the vow. In other words, the mechanism described in this passage is one of reactivation of memory. As the Mishnah describes it, the person in question brings money not until he no longer can, but until he ostensibly remembers a significant enough detail about his past intentions that allows him to reconstruct the forgotten vow to a sufficient extent.

What kind of person would make an honest confession that he forgot what he had vowed, and thereby subject himself to potentially enormous expenses, instead

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61. M. Menahot 13.7.
62. M. Menahot 13.4.

of simply bringing to the temple what he is comfortable bringing and claim that this was what he vowed to begin with? The answer is, obviously, a person so pious and reverent that the possibility of misusing temple funds is inconceivable to him. But again, one cannot but wonder how a person who is so reverent of the temple's laws makes a vow that commits his property to the temple and then does not remember what the vow was. We could perhaps invent a backstory to account for this puzzle, but at this point we are already in a position to see that this kind of seemingly paradoxical protagonist appears multiple times in Tannaitic literature. It is the same imagined subject, the literary creation of the rabbis, whom we encountered throughout the examples discussed in this chapter: one of very fragile memory and of very eager spirit. In what follows I propose that this subject, whom the rabbis craft through scenarios of memory failures, reflects an innovative rabbinic stance toward life in accordance with the Torah's laws, and that this stance is key to understanding the rabbinic religious and social vision more broadly.

THE FRAGILITY OF MEMORY
AND INCLUSIVE ELITISM

At the beginning of this chapter I explained that the rabbis' systematic expansion, elaboration, and intensification of biblical law significantly increased the need to rely on one's memory in the performance of halakhah. Not only does the rabbinic subject need to remember many more laws and their intricacies than his biblical counterpart, but he also needs to keep an accurate record of activities and interactions that take place in the world. In the rabbis' world, many of the most crucial halakhic distinctions are based on invisible traits. There is no sensory input that allows one to distinguish tithed from untithed food, sacred objects from profane ones, betrothed girls from unattached girls, pure roads from impure ones. The only way to maintain the distinctions that are crucial for correct halakhic performance is to keep things in memory, and rabbinic texts do not assume that external memory aids are available to help one in this task.[63] Moreover, it is noteworthy that in the halakhic scenarios discussed above there is no one available to help retrieve the information on which the subject is blanking out, not even when the subject wonders whether he owes money to people who should ostensibly be able to confirm or deny his debt. To begin with, then, the rabbinic subject commits to a regimen that is fairly cognitively demanding, and this is before we even speak of all the things this subject has to remember to *do* on a regular basis (such as pray, prepare for the Sabbath, destroy his leaven before Passover, tithe his own food,

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63. Although we can securely assume that daily life in Palestine in the second and third centuries offered far fewer memory aids than our own world, especially with the relative scarcity of writing materials and implements, some rabbinic sources do suggest that people used specific methods of marking and arranging items to keep them memorable (e.g., M. Ma'aser Sheni 5.1; T. Ma'aser Sheni 5.13 [ed. Lieberman 269–71]).

and many others), which will be discussed in the next chapter. The rabbis' guiding ethos is not Deuteronomy's "Surely, this commandment that I am commanding you today is not too hard for you, nor is it too far away. . . . The word is very near to you; it is in your mouth and in your heart for you to observe."[64] Rather, the rabbinic ethos is that halakhic observance is effectively a full-time job that requires highly developed cognitive mechanisms of memory and attention. But it is not only the external world that is chaotic and unmarked in the scenarios we have seen; so too is one's own mind. Committed halakhic subjects, these scenarios suggest, can sometimes lose critical details pertaining to their own actions, details without which they find themselves at an impasse. Put differently, halakhic subjects have little they can rely on other than their own memory, and their memory is not very reliable.

To be sure, the rabbis were not misguided in their low regard for the human ability to remember past events and experiences accurately. As numerous studies in cognitive psychology show, our episodic memory is much more fragile than is often assumed.[65] We often think of our memory as a video camera, and of retrieving a memory as akin to going to the video library, reaching for the right recording, and watching it again (this is certainly how memory is portrayed on television and movies).[66] As a matter of fact, however, between the event taking place and its retrieval, memories change, fade, and sometimes become inaccessible.[67] The rabbis, while not cognitive psychologists, seem to have realized that. As much as they relied on memory in various operations of halakhah, they were also aware of its limitations. Thus, for example, they were cautious when it came to accepting testimonies of adults regarding things they saw as children,[68] and they dismissed a seller's testimony that he sold an item to one person and not to the other if time had passed since the buyer got hold of the item, with the logic that a seller only keeps track of his buyers while the item is still in his possession but forgets them soon thereafter.[69] Particularly interesting is the ruling that a judge may only be trusted when he says, "I acquitted this one and rendered that one liable," if the case and the parties are still before him, but if time had passed he is "as any other person"—that is, an ordinary witness who needs an additional witness to corroborate his testimony.[70] Doubtlessly, the rabbis were highly attuned to the very real prospect of memory failures in all everyday occurrences.

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64. Deut. 30:11–14.

65. The literature on this topic is vast. For two very convenient summaries, see Baddeley, *Essentials of Human Memory*, 99–117; Thompson and Madigan, *Memory*, 86–116.

66. See Brian Bornstein, *Popular Myths about Memory: Media Representation and Scientific Evidence* (Lanham, MD: Lexington Press, 2017), 15–36.

67. See Wixted, "The Psychology and Neuroscience of Forgetting."

68. M. Kettubot 2.10; T. Sanhedrin 9.11.

69. T. Baba Metzi'a 1.11 (ed. Lieberman 64); cf. BT Qiddushin 73b–74a.

70. T. Baba Metzi'a 1.12 (ed. Lieberman 64); cf. BT Qiddushin 73b–74a.

All this may seem, on its face, as leading toward a very grim and pessimistic view of the human ability to function properly within the realm of halakhah. If halakhah makes such tall demands of one's memory, and memory is so fragile and unreliable, are those who seek to live in accordance with this system doomed to failure? I argue that the rabbis' engagement with scenarios of memory failures leads in the exact opposite direction. Rather than marking memory failures as malfunctions that exclude one from the realm of halakhah, the rabbis build such failures *into* the system, presenting them as happening regularly to pious and devoted individuals and capable of resolution through rabbinic resourcefulness. Thereby, instead of taking a polarizing and exclusionary stance of ingroup ("we who remember") versus outgroup ("they who forget"), the early rabbis bring forgetfulness into the circle of the ingroup and thereby expand this circle's perimeter considerably. Rhetorically framing halakhic mishaps in terms of memory omissions, rather than in terms of carelessness or transgression, allows the rabbis to champion the demanding system of halakhic Judaism as they perceive it and to deem it appropriate not only for a small, "hard-core" group of people who are exclusively concerned with living according to this system, but for all Jews.

One pair of almost identical narratives serves particularly well to demonstrate how the rabbis utilized memory omissions, and the unreliability of memory in general, to highlight their system's rigor and exceedingly demanding nature while also emphasizing its inclusiveness. While these narratives pertain specifically to purity and impurity, I believe we can extrapolate from them to other halakhic settings as well:

> It once happened that one woman was weaving a garment in [a state of] purity, and she came before R. Ishmael so that he would examine her.
>
> She said to him, "Master, I know that the garment has not become impure, but it was not in my heart to guard it."
>
> In the course of the examinations that R. Ishmael was conducting, she said to him, "Master, I know that a menstruating woman came in and pulled the rope [of the weaving loom] with me [which made the loom and therefore the fabric impure]."
>
> Said R. Ishmael, "How great are the words of the Sages, who said, 'If one did not intend to guard [an object in a state of purity], it is impure.'"
>
> It again happened that one woman was weaving a tablecloth in [a state of] purity, and she came before R. Ishmael, and he was examining her.
>
> She said to him, "Master, I know that the tablecloth has not become impure, but it was not in my heart to guard it."
>
> In the course of the examinations that R. Ishmael was conducting, she said to him, "Master, I know that a thread was torn, and I tied it in my mouth [thereby moistening the fabric and making it susceptible to impurity]."
>
> Said R. Ishmael, "How great are the words of the Sages, who said, 'If one did not intend to guard [an object in a state of purity], it is impure.'"[71]

71. T. Kelim Baba Batra 1.2–3 (ed. Zuckermandel 590). Cf. BT Hagigah 20a; PT Hagigah 3.2, 79a.

Much can be said about these anecdotes,[72] but for our purposes it suffices to register the sequence of events that unfolds identically in both narratives. In each narrative we have a woman who makes a firm commitment to weave a textile in a state of purity—that is, to prevent it from being exposed to any possible source of impurity. After she is done weaving, she approaches a rabbi to consult with him on the status of the woven piece, making two statements: first, that she knows for a fact that the woven piece was *not* exposed to impurity, and second, that "it was not in her heart to guard it"—that is, she was not fully attentive to the task of protecting it from impurity throughout the entire weaving process. The first statement is a report about what happened (or did not happen); the second statement is a report about her own mindset. As R. Ishmael is asking the women questions, they are suddenly reminded that there was, in fact, an event that took place in the course of the weaving process that exposed the fabric to impurity (of another woman in the first case; of the weaver herself in the second case). R. Ishmael's questions function, effectively, as retrieval cues that allow the women to recall details that they had previously forgotten.[73]

The women in these accounts did not forget the events that exposed the fabric to impurity because they did not care about impurity. They made a solemn promise to keep the fabric pure and they clearly cared enough about keeping this promise to seek the rabbi's validation even though they were certain that no impurity was contracted. It was also not due to ignorance, as these women display thorough knowledge of rabbinic purity regulations. The fact that these women had somehow dropped from their memory highly consequential events that they *know* were consequential is presented here as a completely natural and predictable occurrence (were it not predictable, the rabbis would not have made the ruling that in any case in which "it was not in one's heart to guard" something, it is automatically impure). What was missing from the women's halakhic performance, as the Tosefta explains, was what we may call *attentional monitoring*. To ensure that the fabric does not become impure, the weaving women needed to "have it in their heart to guard it"—to constantly think about keeping the fabric pure and to dedicate significant cognitive resources to the halakhic task at hand, keeping at bay other thoughts that could distract them. Without those dedicated cognitive resources, events that happened in the course of the weaving process did not register in the women's memory and were inaccessible to them until they were retrieved upon further inquiry.

These narratives clearly illustrate that for the rabbis, forgetting is not the aberration but the default. In an unmarked world, forgetting details of halakhic events, even important ones, does not happen only if one is especially careless; rather, it is bound to happen *unless* one is especially careful. Functioning seamlessly in

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72. See Balberg, *Purity, Body, and Self*, 165–68; Furstenberg, *Purity and Community*, 328–30.

73. On retrieval cues and "awakening" of memory, see Endel Tulving, "Cue-Dependent Forgetting," *American Scientist* 62, no. 1 (1974): 74–82.

the world of halakhah is thus a uniquely demanding cognitive task. These narratives chart out two possible avenues for navigating the halakhic realm. One avenue is that of constant attentional monitoring—that is, effectively considering the observance of halakhic tasks to be one's full-time job and having it "in one's heart" at all times. The other avenue is doing one's best while conducting a more or less ordinary life and accepting that one would forget things and function in the halakhic realm in a less than perfect way. Those who acknowledge that they cannot fully rely on their own memory can rest assured, at least, that the rabbis devised solutions and courses of action to deal with the fundamental unreliability of human memory.

The choice to present women as protagonists in both these stories is not incidental, and it is not due only to the fact that women were more likely than men to engage in weaving.[74] As I argued elsewhere, women were generally seen by the rabbis as less capable of self-control and of regulated and monitored behavior than men, and thus as more likely both to overlook the contraction of impurity (as happens in the first case) and to convey impurity themselves (as happens in the second case).[75] At the same time, women also serve to demarcate the perimeter of the Jewish ingroup as the rabbis envision it, as well as the rabbis' own reach of authority. For the rabbis, women are inherent outsiders who can never become part of the rabbis' own elitist circles, but they can demonstrate their pertinence to the rabbinic world by seeking rabbis' advice and counsel and adhering to their teachings.[76] To position a woman in the role of seeker of rabbinic guidance on the intricacies of halakhic observance, then, is to indicate in the most expedient way that the rabbis' highly regimented way of life is suitable and adaptable for all Jews and not only for a self-selecting group of a few learned men. By and by, the presumed inferiority and weakness of women within the rabbinic system help highlight, by way of contrast, the powerful and authoritative position of the sage, who offers his benevolent wisdom to those in need.

Indeed, the two narratives of the weaving women and their conversations with R. Ishmael do more than illustrate that memory omissions are inevitable unless special diligence and vigilance are at play. They also illustrate that the rabbis are a crucial resource, on which subjects can and should rely when dealing with the realities of mental omissions. In these stories, R. Ishmael is both able to reactivate the women's memory through the questions he asks, *and* serves as the mouthpiece of the Sages' juridical guidelines for determination of purity and impurity in cases of doubt. More broadly, the various scenarios of forgetfulness that we

74. See Miriam Peskowitz, *Spinning Fantasies: Rabbis, Gender, and History* (Berkeley: University of California Press, 1997), 77–94.

75. Balberg, *Purity, Body, and Self*, 171–74.

76. See also Charlotte Elisheva Fonrobert, "When Women Walk in the Way of Their Fathers: On Gendering the Rabbinic Claim for Authority," *Journal of the History of Sexuality* 10, nos. 3–4 (2001): 398–415.

MEMORY AND DOUBT 59

considered in this chapter not only convey halakhic information but also make a statement: if you encountered a halakhic problem as a result of memory failures, know that the rabbis already thought about it and have a path of recovery available for you. To be sure, the presentation of the rabbis as ritual experts who are capable of providing answers to any and every halakhic query and problem is by no means unique to the realm of memory failures; arguably, it is the underlying purpose of Tannaitic literature in its entirety. But by designing halakhic queries that stem from subjective malperformance rather than from objective difficulties, the rabbis highlight the suitability and attractiveness of their system specifically to individuals who do *not* measure up to the rabbis' rigid standards.

To summarize, memory omissions as a visible and recognizable part of the halakhic landscape serve two intertwined rhetorical purposes in Tannaitic literature. They both emphasize how important it is to keep an active memory of one's actions and interactions in the halakhic realm, and they shape the halakhic realm as accommodating and responsive to those who cannot do so. Through scenarios of memory failures, rabbinic texts construct their view of Judaism as both highly elitist and highly inclusive. Tannaitic texts present a set of interests and investments traditionally characteristic of small, isolated, and extremely devout groups,[77] while also depicting the pursuit of these interests and investments as akin to "Judaism" as such and as available to all. In the next chapter, I will argue that forgetful subjects are not included in the rabbinic system merely by way of concession: rather, in many ways they are this system's idealized subjects.

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77. On early rabbinic circles as "sectarian" in nature, see Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 C.E.* (New York: Oxford University Press, 2012), 56–59, 98–109.