

## Remembering Forgetfulness

“It’s a poor sort of memory that only works backwards,” says the White Queen to Alice, after Alice tells the Queen that she cannot remember things before they happen.<sup>1</sup> Like Alice, we tend to think of memory as exclusively past-facing, but the Queen is right: many of our memory tasks, such as remembering to pick up bread or take a medication or call a friend on their birthday, pertain not to the past but to the future, and our memory would be rather poor if we could not handle them. A common charge like “Remember the appointment you have to keep next Thursday” is not a charge to remember an appointment that has already happened, but one that has yet to take place. Rabbinic texts that engage with scenarios of forgetfulness in the halakhic realm clearly reflect an understanding that memory failures can work both backward and forward: one can forget details of past actions, and one can also forget to make good on intended future actions. The following passage neatly and briefly exemplifies this:

[What are] erroneous vows?

[A] “[I am under obligation] if I ate or if I drank,” and then he was reminded that he ate or drank.

[B] “[I am under obligation] if I will eat or if I will drink,” and then he forgot and ate or drank.<sup>2</sup>

This passage deals with a particular category of vows that can automatically be considered void and do not require formal dissolution by a sage—namely, vows that were made based on erroneous assumptions (*nidre shegagot*). Case A is quite straightforward: a person made a vow based on misremembrance of his past actions. He thought that he did not eat or drink anything, and to assert

1. Lewis Carroll, *Through the Looking Glass and What Alice Found There* (1871; Orinda, CA: SeaWolf Press, 2018), 50.

2. M. Nedarim 3.2.

his conviction said that if he did eat or drink he would be bound by a certain obligation.<sup>3</sup> Because the vow was based on error, in this case on faulty memory, the vow is automatically void. Case B is more surprising: a person made a conditional vow, saying that if he *will* eat or drink at some point in the future he *will* be under obligation once he does so. He then forgot his vow and ate or drank. This, too, is defined by the rabbis as a vow made in error, that is, in a state of misremembrance. The first vow is considered inherently void at the very moment in which it is made, because it relies on a mistaken view of the past, whereas the second vow becomes retroactively void once it turns out that it relied on a mistaken view of the future.

The first type of erroneous vow, which derives from misremembrance of the past, is an example of episodic memory omission similar to the memory omissions discussed in the previous chapter—that is, situations in which subjects are unsure of the details of actions or interactions that had already taken place. Failures of episodic memory, however, are only a handful of the memory failures discussed in rabbinic literature. The majority of halakhic memory failures that the rabbis discuss, and to which they seek solutions and corrective measures, are of the second type mentioned with regard to erroneous vows: forgetting forward (what one intended to do in the future) rather than backward (what one did in the past). Cognitive psychologists refer to “forward” memory as *prospective memory*. Prospective memory is the memory that allows us to attend to future events, or, put more pithily, it is the cognitive tool through which we remember to remember. In essence, prospective memory is memory for “delayed intentions,” and as such it always unfolds in two stages.<sup>4</sup> First, I form an intention to do something at a future point in time (e.g., I have to attend a meeting next Thursday at 10:00 a.m.), and then, when that future point arrives, I have to retrieve the intention I formed earlier and complete the relevant task. Remembering to submit work by a given deadline, to pack a toothbrush before traveling, and to take a cake out of the oven before it burns are all examples of prospective memory.

By its very nature, life in accordance with rabbinic halakhah is filled with prospective memory tasks. One must remember to pray when the appropriate prayer time arrives, to tithe one’s food before eating it, to destroy one’s leaven before Passover, to wash one’s hands before eating, and so on. Life is also filled with tasks of

3. While a vow, traditionally, is an obligation to transfer an item to the holy precincts, in Tannaitic literature the differences between vows (which pertain to objects) and oaths (which pertain to persons) become very blurry. The cryptic phrases “if I ate or drank/if I will eat or drink” are phrased as vows but are best understood as solemn oaths that one did not/will not eat and drink. See Saul Lieberman, *Greek in Jewish Palestine/Hellenism in Jewish Palestine* (New York: Jewish Theological Seminary Press, 1994), 115–44; Moshe Benovitz, “The Prohibitive Vow in Second Temple and Tannaitic Literature: Its Origin and Meaning” (in Hebrew), *Tarbitz* 64, no. 2 (1995): 203–28.

4. See Judi Ellis, “Prospective Memory or the Realization of Delayed Intentions: A Conceptual Framework for Research,” in *Prospective Memory: Theory and Applications*, ed. Maria Brandimonte, Gilles O. Einstein, and Mark. A. McDaniel (New York: Psychology Press, 1996), 1–22.

“negative” prospective memory, that is, with things that one must remember *not* to do at particular times, against one’s ordinary habit: not eating and drinking when one is under a fast obligation, not performing certain labors on the Sabbath, not using property designated for the temple, and so on.<sup>5</sup> Through a variety of scenarios, rabbinic texts demonstrate that humans, as committed as they may be to the ordinances of halakhah, are highly prone to prospective memory omissions and can fail to act on their good intentions at the appropriate time because of forgetfulness.

Why were the rabbis so preoccupied with prospective memory failures? Evidently, this is both the most common and the most conspicuous type of forgetfulness.<sup>6</sup> Prospective memory tasks are particularly exerting and demanding, since during the interval between the intention and the execution one thinks of and does other things that naturally distract one from the original intention. Special vigilance is required to keep up with the original intention amid these distractions, and such vigilance, if exerted in full force, comes at the price of compromising the other activities that one engages in in the interim (think of a person who checks the cake every two minutes to make sure it is taken out of the oven at the right time).<sup>7</sup> As we know from our own experiences, prospective memory tasks greatly rely on what Andy Clark called “external scaffolding” such as notes, calendars, timers, and phone alerts, which were generally unavailable in the ancient world.<sup>8</sup> Prospective memory failures also lead, more often than not, to disadvantageous results—in the world of the rabbis, to transgressions and halakhic malperformances—and therefore register individually and communally more than other memory failures. It is not surprising that the rabbis engaged with prospective memory failures more than with any other kind of memory failure, especially when we take into account how many prospective memory tasks a rabbinic subject regularly negotiates. What is more surprising, however, are the ways in which the rabbis utilized prospective memory failures to construct a vision of idealized Jewish observance—and of themselves and their role as religious experts.

In this chapter, I examine rabbinic scenarios and ordinances pertaining to prospective memory failures, that is, to incidents in which a subject forgets to fulfill a halakhic obligation. My analyses in this chapter build on and enhance the observations I presented in the previous chapter, but also aim to take those observations

5. See Jeffrey E. Pink and Chad S. Dodson, “Negative Prospective Memory: Remembering Not to Perform an Action,” *Psychonomic Bulletin and Review* 20, no. 1 (2013): 184–90.

6. Studies show that when people complain of “memory problems,” 50–70 percent of their complaints pertain to prospective memory. See Anna-Lisa Cohen and Jason L. Hicks, *Prospective Memory: Remembering to Remember, Remembering to Forget* (Cham: Springer, 2017), 2.

7. See Gilles O. Einstein and Mark A. McDaniel, “Prospective Memory: Multiple Retrieval Processes,” *Current Directions in Psychological Science* 14, no. 6 (2005): 286–90.

8. Andy Clark, *Associative Engines: Connectionism, Concepts, and Representational Change* (Cambridge, MA: MIT Press, 1993), 139–48. See also Kim Sterelny, “Minds: Extended or Scaffolded?,” *Phenomenology and the Cognitive Sciences* 9, no. 4 (2010): 465–81.

to the next level by offering a more synthetic outlook on the ways in which forgetfulness shapes both the rabbinic subject—the intended audience of the rabbinic teachings—and the rabbis themselves as figures of authority. In chapter 1 I showed that the rabbis normalized forgetfulness within the halakhic realm as a predictable and understandable process, thereby presenting their demanding system as suitable for and accommodating toward fallible and imperfect subjects. In this chapter I argue, first, that the forgetful subject is not only included in the rabbinic vision of halakhic observance but is in fact *idealized* in this vision, since it is his forgetfulness that highlights his overall commitment to halakhah and knowledge of halakhah. In other words, the forgetful subject is not placed at the periphery of the halakhic playing field but at its very heart, since it is only through unintentional slips in practice that one demonstrates the faithful intentionality that governs his actions otherwise. Second, I argue that Tannaitic texts use scenarios of forgetfulness to construct an image of the rabbis as specialists not only in the law and its interpretation, but also in the discernment and management of people's minds. The rabbis' ability to predict, and even more important, to preempt forgetfulness becomes a defining feature of their role vis-à-vis their subjects, and it is an important component of the cultural icon of "the Sages" as religious experts. Thereby, Tannaitic texts reframe individual vigilance in observance of the commandments not so much as flawless remembrance of the task itself, but rather as trusting adherence to the rabbis' guidance on how to manage the vicissitudes of memory.

#### FORGETFULNESS AS A MARKER OF COMPLIANCE

Let us begin by quickly looking at a cluster of three short Tannaitic rulings regarding voluntary fasts. All three rulings pertain to cases in which one began a voluntary fast (whether a fast one took upon oneself or a fast that a community imposed upon its members), and then, sometime before the time when the fast was supposed to end, faced uncertainty as to whether the fast should be completed or not. Only the second case of the three is immediately relevant for our purposes, yet the two cases between which it is sandwiched help illuminate its significance:

[A] If one was fasting over a sick person, and [before the end of the fast, the sick person] was healed, or [one was fasting] over a trouble and [before the end of the fast, the trouble] passed—he should complete his fast.

[B] If one was fasting, and he forgot and ate and drank—he should complete his fast.

[C] If one went from a place in which they were fasting to a place in which they were not fasting—he should complete his fast.<sup>9</sup>

In case A, the inherent reason for the fast—the trouble or misfortune on account of which the fast was taken on—has been eliminated before the end of the fast,

9. T. Ta'aniot 2.15–17 (ed. Lieberman 335–36).

and in case C, the external reason for the fast—adhering to a communal undertaking—has been eliminated before the end of the fast. In both cases it is ruled that since the individual took the fast upon himself for a designated period of time (usually twenty-four hours) he should fast until the end of the period even if the conditions have changed. In case B, however, no objective conditions have changed, but the subject, through a temporary lapse, forgot that he was supposed to fast and was reminded of it only after he ate and drank. To counter the possible view that at this point the fast is no longer worth completing, since it was disrupted, the ruling is that here, too, the subject should resume his fast until the end of the designated period.

What I find noteworthy about this passage is, first, the very consideration of the case of forgetting in this cluster, and second, the ruling on the case of forgetting. A voluntary fast is by definition an act of piety, of going above and beyond what is required in order to invoke God's mercy, whether as an individual or as part of a community.<sup>10</sup> The rabbis' choice to put forth a subject who both took a voluntary fast upon himself *and* was able to forget about it is thus a resounding statement on the fallibility of human memory as a force to reckon with, which does not reflect on the forgetful subject's devotion. Furthermore, the matter-of-fact way in which the rabbis include forgetfulness among several possible reasons on account of which one may consider not completing his fast normalizes forgetfulness as one of many contingencies in the halakhic decision-making process, rather than presenting it as a unique personal failure that requires self-flagellation of any sort. The ruling that if one forgot the fast he should just pick up where he left off portrays forgetting as nothing more than a minor hiccup in the halakhic performance.<sup>11</sup>

To be sure, the Tannaitic ruling regarding forgetfulness of voluntary fasts is quite lenient, probably because such fasts are not mandated by biblical law but are self-imposed. In other cases, as will be discussed in chapters 3 and 4, forgetfulness does require specific measures in order to be rectified or counteracted and cannot be simply ignored. Yet the normalizing consideration of cases of forgetfulness as an integral part of the realm of halakhic contingencies can be traced across multiple areas of Tannaitic legislation. Halakhic forgetfulness is never viewed as

10. See Eliezar Diamond, *Holy Men and Hunger Artists: Fasting and Asceticism in Rabbinic Culture* (New York: Oxford University Press, 2004), 93–120.

11. This ruling apparently struck later interpreters as inappropriate. In the Babylonian Talmud (BT Ta'anit 10b) this passage is presented differently: the first and third cases in the cluster are identical, but in the second case it is stated that if one forgot and ate and drank, he "should not show himself to the public and should not pamper himself," which suggests that the forgetful person's fast cannot be completed. All he can do is hide himself from others and not continue to gorge himself for the rest of the day but eat moderately. In several medieval texts the Hebrew word *mashlim*, "completes," was vocalized as *meshalem*, "repays," to indicate that the forgetful subject must fast on another day to make up for the disrupted fast. See Saul Lieberman, *Tosefta ki-pshutah Mo'ed*, 5:1099–1100. This version may be influenced, as Lieberman notes, by PT Nedarim 8.1, 40d, which mentions a view that one can take a "loan" on an interrupted fast and repay it on another day.

an indicator of a dismissive or careless approach to the observance of God's law, nor as a sign of weakness of character. Rather, in Tannaitic scenarios the backdrop of incidents of forgetfulness is always the subject's overall commitment to the commandments. Forgetting is always highly specific—one forgets to perform a particular action, and the very fact that he forgot it highlights his original intention to perform it—and these scenarios unfold around the notion that the subject realizes his omission and immediately seeks to correct it. Moreover, in various cases the cause of forgetfulness is the subject's preoccupation with *another* commandment: for example, one forgets to destroy the leaven in one's house before Passover because one is in a rush to perform the Passover sacrifice, or one is so eager to circumcise one's child that one forgets on which day this ought to be done and mistakenly violates the Sabbath.

The rabbinic subject whose forgetfulness does not reflect negatively on his commitment to the commandments, and in fact highlights his overall commitment to the commandments, accentuates some challenges that were unique to the halakhic system as devised and developed by the rabbis and were not pertinent to earlier iterations of Jewish law. For one, the fact that halakhah inscribes pretty much every moment of the individual's life, from relieving oneself to renting a cow to eating bread to sowing vegetables, means that much of the time one must negotiate competing halakhic demands, a situation that, as we shall see later on, lends itself to forgetting. But beyond that, rabbinic halakhah incorporates some novel practices, arrangements, and ways of maneuvering the environment that rely heavily on delayed intentions, that is, on the subject's ability to "remember to remember" the task in due time. While scenarios of forgetfulness appear in Tannaitic sources with regard to a variety of halakhic practices, it is immediately evident that two types of practices, tithes and *'eruv* (spatial prearrangements for Sabbaths and festivals), give rise to more scenarios of forgetfulness than all other practices. There are ten mentions of forgetfulness with regard to tithes in the Mishnah and Tosefta combined, and twenty-two mentions of forgetfulness with regard to *'eruv* in the Mishnah and Tosefta combined. Without getting into the intricacies of these two complex halakhic topics, it would be useful to consider briefly why forgetfulness was viewed as so pertinent to those practices, and what we can learn from this about the dynamics of forgetfulness as the rabbis understood it—and used it—more broadly.

### *Tithes and 'Eruvin as Test Cases*

Despite the fact that rabbinic halakhah is replete with prospective memory tasks, Tannaitic texts rarely ever mention strategies that people may use, of their own initiative, to remind themselves or others to preform required tasks.<sup>12</sup> There is,

12. One important exception to this generalization are the references to public reminders instituted and performed by the temple's authorities. According to M. Sukkah 5.5, it was customary to blow

however, one notable exception to this rule. According to the Mishnah, every week on the Sabbath eve, shortly before dark, one should tell the members of his household: "Did you tithe? Did you prepare an *'eruv*? Light the lamp."<sup>13</sup> The two questions are meant to verify that things that have to be done before the Sabbath were in fact done (and if not, to make sure they are done in the time that is left), whereas the imperative "Light the lamp" is to indicate that if both required tasks are complete, the Sabbath can officially begin with the ritual lighting.<sup>14</sup> The fact that the only text in the Tannaitic corpus that explicitly suggests that one remind others of prospective halakhic tasks pertains to tithes and *'eruv* is commensurate with the disproportionate attention that these two halakhic practices receive in scenarios of forgetfulness. This heightened attention, I propose, has to do with the fact that these practices present the challenges of delayed intentions in full force, but also with the notion that forgetfulness in these practices serves to emphasize the "insider" status of the one who forgets and his overall commitment to rabbinic halakhah. Let us begin with tithes, which is a biblical ordinance that was significantly retooled in rabbinic texts, and then move on to *'eruv*, which is a wholly rabbinic innovation.

Different biblical passages put forth an obligation for the Israelites to give 10 percent of their crops to the Levites who live among them. While the Priestly Code merely mentions that the Levites are entitled to this tithe but does not elaborate how it is transferred from the Israelites to the Levites,<sup>15</sup> the Deuteronomic Code (which adds the poor and needy to the Levites as entitled to this tithe) offers a more vivid picture of the transaction: "Every third year you shall bring out the full tithe of your produce for that year, and store it within your towns; the Levites, because they have no allotment or inheritance with you, as well as the resident aliens, the orphans, and the widows in your towns, may come and eat their fill so that YHWH your God may bless you in all the work that you undertake."<sup>16</sup> According to this edict, the Israelites in a given town collectively bring 10 percent of the crops that grew in their fields when the appropriate time comes, and the Levites

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the horn in the temple on the Sabbath eve to remind people to cease their work and complete their preparations (cf. BT Shabbat 35b), a report also supported by Josephus (*The Jewish War* IV.9, 582, ed. Whiston 691–92). M. Sheqalim 1.1 mentions a public reminder on the first day of the month of Adar to prepare the requisite half-shekel for the temple and to watch for growths of mixed kinds (*kilayim*) in the fields. These public reminders are associated with the centralized authority of the temple as the rabbis envision it, and there are no references to similar mechanisms outside the temple.

13. M. Shabbat 2.7.

14. As explained by Yitzhak Gilat, *Studies in the Development of Halakhah* (in Hebrew) (Ramat Gan: Bar-Ilan University Press, 2001), 348.

15. Num. 18:21–32. Cf. Lev. 27:30, which considers tithes as sacred unto God rather than as the property of the Levites.

16. Deut. 14:28–29. While Deuteronomy maintains that tithes are given to the Levites only every third year, later attempts to reconcile the Priestly and Deuteronomic rulings determined that tithes for the Levites (otherwise known as "first tithes") are given every year. Cf. Neh. 10:38.

and the poor all arrive at that same time to claim what is due to them. Texts from the Second Temple period suggest that tithes (which at that point were usually given to the priests, not the Levites) were usually brought to the Jerusalem temple and collected there.<sup>17</sup> Rabbinic sources, however, present a much more chaotic picture of the allocation and delivery of tithes, since they envision the world of agricultural procurement as consisting of multiple moving pieces. If biblical texts imagine only two parties—a landowner who grows produce and a landless Levite or needy person—the rabbis imagine the tithing realm as consisting of growers of produce, sellers of produce, buyers of produce, and eaters of produce, all of whom can be different people, in addition to those entitled to the tithe.<sup>18</sup> It is agreed that one may not eat of produce items that were not tithed at all (which the rabbis call *tevel*), but it is not at all clear whose responsibility it is to tithe produce items that are sold in the market.<sup>19</sup> Tannaitic texts determine that within this somewhat chaotic system, and considering the fact that many Jews were rather lax in the practice of tithing,<sup>20</sup> any kind of engagement with produce items that could potentially be untithed requires one to tithe them—whether one is the grower, buyer, seller, or eater.<sup>21</sup>

In the rabbinic setting, then, tithing became an individual and sporadic rather than a communal and concentrated operation, and the time and situation in which it must be performed vary depending on a host of circumstances. There is no simple arrangement in which produce items from a given field are collected at a single point and given to the Levites at a single point, but a recurring process that must be done on multiple occasions, as needed. In addition, the rabbis rule that one may casually eat untithed produce items until he brings them into his house, but

17. See Aharon Oppenheimer, *The Am ha-aretz: A Study in the Social History of the Jewish People in the Hellenistic-Roman Period*, trans. I.H. Levine (Leiden: Brill, 1977), 23–42; Eyal Regev, “The Collection of Tithes by Priests in the Provinces of the Land of Israel during the Hasmonean Period” (in Hebrew), *Proceedings of the World Congress of Jewish Studies* 12, vol. B (1997): 19–11.

18. See Ruth Alster, “The Meaning of the Term ‘Demai’ in Tannaitic Literature” (in Hebrew), *Sidra* 29 (2014): 5–38.

19. While the Mishnah does present a general rule that fruits should be tithed once they are ready to go to market, presumably by the grower or by the seller (M. Ma’aserot 1.5), it also presents a prohibition to sell produce to a person who is known not to tithe, which suggests that it is the buyer’s responsibility to tithe (M. Ma’aserot 5.3). One passage (Sifre on Deuteronomy 105 [ed. Finkelstein 165]; cf. BT Baba Metz’ia 88b) presents a fierce disagreement, dating back to the Second Temple period, on the question of whose obligation it is to tithe; see Oppenheimer, *The Am ha-aretz*, 71–76.

20. The literature on this topic is substantial, and there are various conjectures as to who the Jews who did not tithe were, as well as when laxity in matters of tithing became commonplace. For helpful surveys, see Oppenheimer, *The Am ha-aretz*, 67–117; Ruth Alster, “The Image of the ‘Am-ha’aretz in Light of the Laws of Tithes” (in Hebrew), *Netu’im* 18 (2013): 101–24.

21. M. Demai 2.2. Rabbinic texts draw a distinction between food that is known in certainty not to have been tithed (*tevel*), from which 10 percent must be removed and set aside, and food that is only suspected not to have been tithed (*demai*). For *demai*, one only needs to remove 10 percent of the 10 percent (i.e., 1 percent of the total) as a “tithe offering” for the priests.



once he brings them into his house they must be tithed to be eaten.<sup>22</sup> Accordingly, days or weeks may pass between the time in which produce items ripen and fall under the general obligation of tithing and the time in which one who plans to eat them must actually tithe. Scenarios of forgetfulness in regard to tithes indicate clearly that the main problem with tithing is the time gap, or the delay, between the moment in which produce items come into one's possession and the time by which they absolutely must be tithed.<sup>23</sup> This is most evident in cases in which one intends to eat fruit (or drink wine) during the Sabbath. For example:

If one bought produce [items] from one who is not faithful in regard to tithes and forgot to tithe them, he may ask [the seller whether they were tithed] on the Sabbath and eat in accordance with his word. If it had darkened at the end of the Sabbath, he may not eat until he tithes.

If he did not find [the seller], and one person who is not faithful in regard to tithes told him, "They are tithed," he may eat in accordance with his word. If it had darkened at the end of the Sabbath, he may not eat until he tithes.<sup>24</sup>

In this case, a person bought fruits from a person who cannot be trusted to sell only tithed food. The fruits were procured before the Sabbath, and they do not need to be tithed until they are eaten, but it is forbidden to tithe on the Sabbath itself. The subject, it can be inferred, thinks, "I do not need to tithe until I eat," and lets the tithing task slip from his mind. When the Sabbath comes he wants to eat the fruits, and he is reminded that they need to be tithed before they can be eaten, but at that point he cannot tithe them. The Mishnah makes special allowances to rely on the seller's word, if the seller asserts that the fruits he sold were indeed tithed, and to eat the fruits on the Sabbath, but does not extend this allowance beyond the Sabbath, after which the buyer has to tithe the fruits himself. Moreover, even if the buyer does not find the seller himself but finds *another* unfaithful person that promises that the produce items were tithed, the buyer may eat them during the Sabbath.<sup>25</sup>

22. M. Ma'aserot 3.1–10.

23. Tannaitic texts never mention the possibility that forgetfulness could lead one to actually eat untithed food (which is a serious transgression), and in all scenarios of forgetfulness one realizes that he did not tithe before he eats the produce. T. Demai 1.18 (ed. Lieberman 66), however, mentions the possibility that forgetting may cause one to use untithed seeds for planting.

24. M. Demai 4.1; cf. T. Demai 5.1 (ed. Lieberman 85).

25. According to the Tosefta (T. Demai 5.2 [ed. Lieberman 85]), this dispensation is given under the assumption that "the fear of the Sabbath" is upon the untrustworthy seller. That is, even though the seller is not particularly concerned about complying with rabbinic tithing laws, he can be assumed to be reverent of the Sabbath laws, and so he will not dare to lie on the Sabbath; see also Alster, "The Image of the 'Am-ha'aretz," 120–21. Responding to this reasoning, the Palestinian Talmud (PT Demai 4.1, 23d) cogently asks: "If the fear of the Sabbath is upon him, why did we teach that once the end of the Sabbath has darkened upon him, he may not eat until he tithes?" In other words, if the seller is assumed trustworthy in everything he says during the Sabbath, then what he said on the Sabbath should be believed even after the Sabbath, and there should be no reason for the seller to tithe these

This passage demonstrates that the time gap between the moment in which the obligation is formed and the time in which it comes into effect can be a black hole of sorts, in which the intention to fulfill the obligation may disappear.<sup>26</sup> Forgetting the obligation to tithe during the time gap between purchase and planned consumption, however, does not reflect negatively on the forgetter here. Note that the forgetful subject is positioned in clear opposition to the one who is “not faithful in regard to tithes” with whom he has to negotiate. Rather than putting one’s commitment to the tithing obligation in question, forgetfulness here serves as a *marker* of one’s commitment to this obligation. This becomes especially clear when we continue on to the following passage in the Mishnaic chapter, which discusses a case of one who is bound by another person’s vow to eat with that person, and the person who made the vow is not faithful when it comes to tithes. In this case, the subject is allowed to eat the vower’s food as long as the vower *tells* him that the food is tithed, even though the subject does not necessarily believe him.<sup>27</sup> The fact that the same halakhic solution—ad hoc permission to rely on the word of an unreliable person—is proposed both for a case of forgetfulness and for a case of constraint outside of one’s control illustrates the extent to which the rabbis refrain from assigning blame to forgetful subjects.

While Tannaitic texts acknowledge that there are people—*other* people, not the intended audience of the Mishnah—who reliably do not tithe their produce, and they prescribe ways of interacting and working with these people,<sup>28</sup> when these texts describe situations in which tithing should have happened but did not they always use the word “forgot” in relating the cases.<sup>29</sup> Thereby, they create a picture in which a subject’s intention to eat fruits inherently entails an intention to tithe them, even if the subject may not be aware of this intention until it is too late. This is particularly evident in the following scenario:

If children hid figs for the Sabbath and forgot to tithe [them], they may not eat [them] at the end of the Sabbath until they tithe them.<sup>30</sup>

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items at all. The answer given is, “because there may be one person upon whom there is no fear of the Sabbath”—that is, because some “people of the land” may be suspected to lie even on the Sabbath. Alster proposes an alternative explanation, according to which the “people of the land” regarded eating untithed food on the Sabbath a graver transgression than eating untithed food on weekdays. See Alster, “The Image of the ‘Am-ha’aretz,” 120.

26. For a similar example, see T. Demai 8.7 (ed. Lieberman 102).

27. M. Demai 4.2.

28. For example, M. Demai 3.1 and M. Demai 6.7 use the expression “one who does not tithe” as a fixed characteristic of a person (as opposed to “one who tithes” and “one who is faithful” in M. Demai 4.6). As Alster pointed out, the common categorical identification of “one who does not tithe/is not faithful” with *‘am-ha’aretz* is problematic. See Alster, “The Image of Am ha-aretz.”

29. Another set of forgetfulness cases (T. Ma’aserot 2:8–10 [ed. Lieberman 233–34]) refers to people who intended to place fruits in a specific place, in which they will not need to be tithed, but forgot their original intention and placed them somewhere else.

30. M. Ma’aserot 4.2; cf. T. Ma’aserot 3.2 (ed. Lieberman 237).

This case involves two different contingencies that are introduced as part of the complex rabbinic treatment of tithes. On the one hand, produce items that are placed outside and have not yet been brought into one's house can be eaten "casually" (*'ar'ai*) even without being tithed first. On the other hand, once one decides that certain produce items will be eaten on the Sabbath, the produce items in question *must* be tithed by the Sabbath. The scenario describes children who hide figs (in the ground or in a pile of straw, to keep them cool and fresh) with the plan of eating them during the Sabbath. It makes the point that even though these figs still fall under the category of "casual" eating (as they are still outside), their designation for the Sabbath means that once the Sabbath arrives and thereafter, they cannot be eaten unless they are tithed. While the principle that guides this ruling—namely, that intention to eat during the Sabbath generates an obligation to tithe—applies to any halakhic subject, casting children as the protagonists of this scenario serves to convey this principle's full extent. It illustrates that even children, who are normally not considered legal entities when it comes to forming intentions, can generate a tithing obligation merely by demonstrably planning to eat fruits during the Sabbath.<sup>31</sup> It is noteworthy, however, that the Mishnah describes the children as having *forgotten* to tithe the figs rather than saying that the children *did* not tithe the figs, or otherwise simply stating that the figs must be tithed.

By attributing the children's failure to tithe to forgetfulness, the Mishnah posits that a halakhically binding intention to eat figs also inherently entails an intention to tithe them. The incorporation of children into the rabbinic realm, insofar as their intentions to eat change the status of the figs, also means that they are taken to be faithful rabbinic subjects who willfully subscribe to the obligation to tithe even if they are not aware of it.<sup>32</sup> In a world in which many people downright dismiss the obligation to tithe, framing the children's failure to tithe in terms of "forgetfulness" serves to mark their insider status within the system, even though they are not yet fully fledged legal subjects.

The rabbinic insistence on attributing halakhic omissions to forgetfulness is even more conspicuous in the case of *'eruv*. *'Eruv* (roughly translated as "mixing") is an innovative rabbinic method for overcoming the limitations of the Sabbath or a festival, usually through symbolic use of food. There are three kinds of *'eruv*. "Mixing of realms" (*'eruv tehumin*) is a way of extending the area in

31. According to the Palestinian Talmud (PT Ma'aserot 4.2, 51b), it is only if the children collected the figs at dusk right before the Sabbath that it can be determined that they actually intended to eat them on the Sabbath. Otherwise, their actions do not generate a legally binding intention to eat on the Sabbath, and the obligation to tithe by the Sabbath does not apply.

32. It is possible that children in the rabbinic world did start practicing tithing at an early age: a story in the Palestinian Talmud (PT Sanhedrin 7.13, 25d) relates how children in Rome were making small piles and saying, "So say the people of the Land of Israel: this is a heave-offering and this is a tithe." See Hagith Sivan, *Jewish Childhood in the Roman World* (New York: Cambridge University Press, 2018), 322, 331.

which one is allowed to travel on the Sabbath, either by being physically present at the edge of the permitted realm when the Sabbath begins or by placing food there, thereby marking it as one's (temporary) home, which in turn allows one to add another two thousand cubits to the permitted area. "Mixing of dishes" (*ʿeruv tavshilin*) is undertaken when there is a festival that is immediately followed by the Sabbath. In principle, one may not cook on a festival day with the purpose of consuming the food after the festival. However, if one prepares one symbolic dish for the Sabbath before the festival begins, any dish that will be prepared during the festival for the Sabbath henceforth will be considered as a legitimate addition to the first dish. Finally, "mixing of courtyards" (*ʿeruv hatzerot*) is a method meant to turn several separate houses in one courtyard into a single private domain, such that all those who live in the courtyard will be able to carry items between their homes during the Sabbath (normally, one is not permitted to carry items more than four cubits in a public domain). This is done by collecting a symbolic amount of food from each of the residents in the courtyard and placing it in one house in the courtyard, such that this house, and by extension the entire courtyard, are considered—through the principle that one resides where one's food is—to be the home of all those who live in the courtyard. The same principle can also be used to turn several courtyards that share an alleyway into a single domain (*shituf mevoʾot*).

These creative ways of overcoming the limitations of the Sabbath, which are among the most striking rabbinic innovations, all require a good bit of preplanning and are thus quintessential examples of prospective memory tasks. By the time the *ʿeruv* becomes necessary it is by definition too late to prepare it. One must realize one's intention to travel on the Sabbath, or to cook during the festival, or to carry things in the courtyard during the Sabbath, before those take place, and remember to make preparations ahead of time. Delayed intentions, as we have seen, often lead to forgetting. Especially in the case of the Sabbath, for which there are always multiple urgent preparations,<sup>33</sup> one may be likely to forget an intention to do something that is not immediately relevant. These novel halakhic mechanisms, then, although they are intended to make people's lives easier, also add a significant cognitive burden. It is thus not surprising that forgetfulness is discussed in the context of *ʿeruv* more than in any other halakhic context.

While forgetting may be likely to take place in all three kinds of *ʿeruv*, Tannaitic sources are overwhelmingly concerned with forgetting in the context of "mixing of courtyards." Even in the single case in the Tosefta that discusses a person who forgot to prepare an *ʿeruv* of dishes before a festival, the forgotten dish was meant

33. Preoccupation with preparations for the Sabbath was so characteristic of the hours before its commencement that Josephus mentions special allowances Augustus made for the Jews not to be called to public services or to give testimony during those hours (*Antiquities of the Jews* XVI.6.163, ed. Whiston 436). Josephus refers to the eve of the Sabbath as "the day of preparation" (*paraskeuē*), a term also used in the Gospels (Mt. 27:62, Mk. 15:42, Lk. 23:54, Jn. 19:31).

to serve for the purpose of *eruv* in the courtyard.<sup>34</sup> More than twenty scenarios in the Mishnah and Tosefta describe different settings, either in courtyards or in alleyways, in which one homeowner (or sometimes more) in the courtyard “forgot and did not prepare an *eruv*.”<sup>35</sup> These cases are of heightened interest for an obvious reason: *eruv* of courtyards is a communal project, which depends on the willing participation of all the homeowners in the courtyard. As Charlotte Fonrobert observed, in order to be able to carry items between my house and yours on the Sabbath, I must concede that my house belongs to you, temporarily, as much as it belongs to me. Accordingly, failure of one homeowner to contribute food to the communal *eruv* has the potential of jeopardizing the entire enterprise, since it serves as indication that, in Fonrobert’s words, “the neighborhood has not been successfully transformed into a community with a common ritual intent.”<sup>36</sup> Nevertheless, Tannaitic texts that discuss various scenarios of forgetting try to find a way not only to keep the *eruv* intact, but also to allow the forgetful neighbor to benefit from it to the extent that this is possible. Forgetfulness is highlighted in those scenarios to make the point that if people are still, in terms of their commitments, part of the community, the community remains in place even if the ritual that technically binds it together was not performed perfectly.<sup>37</sup>

By always framing a subject’s failure to prepare an *eruv* in terms of forgetfulness, the rabbis assert that the subject fully *intended* to prepare an *eruv*, such that his forgetfulness demonstrates not his dismissal of the community and of rabbinic teachings, but his commitment to them. The abundance of such cases, as well as the fact that in Tannaitic sources there is no mention of any other reason to fail to prepare an *eruv* other than forgetfulness (nor is there even use of the phrase “if one did not prepare an *eruv*” rather than the recurring “if one *forgot* and did not prepare an *eruv*”),<sup>38</sup> have the effect of normalizing forgetfulness and turning it into a predictable and even likely occurrence within the realm of *eruv*. The one who experiences forgetfulness may be excluded, in some circumstances, from his local courtyard’s *eruv*, but not from his own community and not from the rabbis’ collectivistic view of “Israel.”<sup>39</sup> Rather than placing the one who experiences it at the

34. T. Yom tov 2.3 (ed. Lieberman 286).

35. M. Eruvin 2.6, 6.3, 6.7–10, 8.3; T. Eruvin 5.12, 5.15, 5.17, 5.24, 5.26–28 (ed. Lieberman 113–18), 7.7, 7.14 (ed. Lieberman 128–31).

36. Charlotte Elisheva Fonrobert, “The Political Symbolism of the Eruv,” *Jewish Social Studies* 11, no. 3 (2005): 16.

37. Fonrobert, “The Political Symbolism of the Eruv,” 16–19.

38. One understandable exception is M. Eruvin 6.9, which speaks of the failure of an entire courtyard (i.e., of most or all of the residents in a courtyard) to prepare an *eruv* (“if there are two courtyards one within the other, and the inner one prepared an *eruv* and the outer one did not prepare an *eruv* . . .”). Admittedly it would make little sense to speak of a nonhuman entity like a courtyard “forgetting” to prepare an *eruv*. Contrast this with the following passage, M. Eruvin 6.10: “if one person from the outer [courtyard] forgot and did not prepare an *eruv* . . .”

39. See Charlotte Elisheva Fonrobert, “From Separatism to Urbanism: The Dead Sea Scrolls and the Origins of the Rabbinic Eruv,” *Dead Sea Discoveries* 11, no. 1 (2004): 43–71.

margins of the observant community, forgetfulness showcases the extent to which one belongs to the observant community.

The halakhic areas of tithes and *'eruv* both involve sets of complex halakhic practices developed by the rabbis that require diligence, vigilance, and careful preplanning. The rabbinic configuration of tithing as a recurring individual task determined by multiple contingencies goes well beyond the straightforward way this task is presented in biblical and Second Temple sources, and the concept of *'eruv* is a rabbinic invention through and through. These two practices epitomize both the increased importance of prospective memory in rabbinic halakhah and the rabbis' determination to find accommodations and solutions to the challenges posed by the complicated and demanding institutions that they themselves have devised. In addition, the rabbinic innovations in regard to tithes and *'eruv* were apparently met with more resistance, or blatant lack of compliance, among the larger Jewish population than others. Whereas in the case of tithes the rabbis' stringencies may have struck many Jews as overly pedantic and unnecessary, in the case of *'eruv* there seem to have been people who straight out did not accept this as a legitimate way of handling the Sabbath prohibitions.<sup>40</sup> Their rulings on forgetfulness in these two areas serve the rabbis to build an idealized world in which halakhic failures are not a sign of lack of compliance but, to the contrary, serve to highlight the overall compliance of subjects with what were evidently controversial or often-defied rabbinic instructions.

### *Halakhic Overload and Predictable Forgetfulness*

To the extent that the rabbis' accommodating treatment of forgetfulness in the performance of commandments is surprising, it is surprising because we have a tendency to explain failures to perform important tasks either as indications of incompetence or as indications of carelessness. In view of the early rabbis' punctilious and exacting approach to halakhic observance, we would expect that forgetfulness be penalized or at least be presented in condemning tones (as it is, for example, in the passage from Leviticus Rabbah I discussed in the previous chapter), but this is not at all the case. A closer look at Tannaitic sources reveals that the rabbis' matter-of-fact attitude toward forgetfulness is not just a byproduct of their parsimonious style and general lack of affect. Several Tannaitic texts

40. M. Eruvin 3.2 and 6.1 both mention a category of "one who does not concede the *'eruv*" (*mode ba-'eruv*), which suggests that the legitimacy of this arrangement (or according to other interpretations, the need for this arrangement) was not accepted by all. On this phrase in the Mishnah, see Ya'akov N. Epstein, *Introduction to the Text of the Mishnah* (in Hebrew) (1948; Jerusalem: Magnes Press, 2000), 608–9. The category "one who does concede the *'eruv*" is often interpreted as pertaining to Sadducees or to people of Sadducean persuasion; see Eyal Regev, *The Sadducees and Their Halakhah* (in Hebrew) (Jerusalem: Yad Ben Zvi, 2005), 59–66. In the Babylonian Talmud (BT Eruvin 31b) it is interpreted as pertaining to Samaritans. I agree with Fonrobert that we should resist the temptation to associate the rejection of *'eruv* with an identifiable and named "other" group, and instead acknowledge that there was a range of opinions and practices among Jews on this matter. See Fonrobert, "From Separatism to Urbanism," 62–63.

indicate that the rabbis understood prospective memory omissions as resulting from the challenging and demanding cognitive overload brought about by halakhic tasks, and that they saw this cognitive overload as objectively difficult to handle. Prospective memory omissions are thus not indications of flawed character or insufficient care, but are, in the words of R. Key Dismukes, “the result of the way task characteristics interact with normal cognitive processes.”<sup>41</sup> What stands in the way of perfect practice is not insufficient diligence but having to negotiate competing stimuli and habits—oftentimes competing *halakhic* stimuli and habits. As this section will show, the rabbis constructed various scenarios that showcase their own ability to predict how halakhic overload may lead a devoted subject to forgetfulness. These predictions of likely forgetfulness often take the form of decrees meant to preempt slippage into forgetfulness before it happens, thereby pointing to the rabbis themselves as experts not only in the law as such, but also in the workings of the human mind.

Most Tannaitic scenarios of prospective memory omissions do not provide any background or context that explains why forgetting took place, in part because of the hyperconcise nature of this literature and in part because the rabbis considered forgetting to be so natural and predictable that they did not find it necessary to explain it. A few texts, however, clearly indicate that preoccupation with another task or requirement is a prominent reason for forgetfulness. For example:

[A] If one was on his way to slaughter his Passover offering, or to circumcise his son, or to have a betrothal banquet at the house of his father-in-law, and he was reminded that there is leaven (*hametz*) in his house—if he can go back and destroy it and return to [the other] commandment [in time] he should go back and destroy it; if not, he nullifies it in his heart.

[B] [If one was on his way] to save [persons or property] from an army or from a [flooding] river or from robbers or from a fire or from a landslide—he should nullify it in his heart.

[C] [If he was on his way] to spend [a Sabbath or a festival somewhere else] voluntarily—he should return [to his home] immediately.<sup>42</sup>

According to Exodus 12:19, during the seven days of Passover it is prohibited not only to eat leavened bread, but also to have it anywhere in one’s home. The rabbis acknowledge, however, that one might forget to destroy one’s leaven prior to the festival, and they present three possible scenarios for such a turn of events. In scenario A, the forgetful subject recalls, on the Passover eve, that he forgot to destroy his leaven while he is on his way to perform another commandment, and we may deduce, even though it is not stated explicitly, that it was *because* of his

41. R. Key Dismukes, “Prospective Memory in Workplace and Everyday Situations,” *Current Directions in Psychological Science* 21, no. 4 (2012): 215.

42. M. Pesahim 3.7. I will discuss this passage at greater length in chapter 4.



preoccupation with the other commandment that he forgot to destroy his leaven. It is noteworthy that the Mishnah groups together two particularly hefty commandments (circumcision and the Passover sacrifice), which condemn one to extirpation if not performed on time, alongside participation in a betrothal meal (presumably, one's own betrothal), which falls under the category of "commandment" (*mitzvah*) but is not a matter of grave halakhic consequences.<sup>43</sup> Scenario B deals with issues of existential urgency, presenting a list of emergencies that the subject is in a hurry to attend to. Again, we can assume that it is on account of these emergencies that forgetfulness occurred in the first place. Scenario C, in turn, suggests that forgetfulness can also happen for no discernible reason (or in any case, for no reason that justifies accommodating the forgetful individual and sparing him the trouble of going back to his home to destroy the leaven).

The notion that competing tasks can distract one from the commandment one is intent on performing is evident also in the following passage, which discusses preoccupations of a more mundane nature:

One must not sit in front of the barber close to the afternoon prayer, until he has prayed. One should not enter into the bathhouse, nor into the tannery, nor to eat, nor into judgment [close to the afternoon prayer]. But if they started, they need not stop.<sup>44</sup>

The concern voiced in this passage is that if a person commences an attention-consuming activity shortly before the designated prayer time, he may become absorbed in the activity and fail to pray. While the word "forget" is not explicitly mentioned in this passage, I believe it is implicit in the setup and context of the scenario.<sup>45</sup> The hypothetical subject in this passage clearly knows that prayer time is approaching and plans on praying. He begins engaging in the said activity (haircut, bath, meal, court session) either with the intention of interrupting it for the prayer or with the intention of completing it by the prayer time. But this intention, we are told, stands a good chance of being thwarted as the subject is drawn into the activity he thought he would remember to stop in time. To prevent such likely absorption that would lead one to neglect the prayer obligation, this passage suggests that no attention-grabbing activity should be taken close to the time of prayer.<sup>46</sup>

43. Indeed, the Babylonian Talmud (BT Pesahim 49a) presents an alternative version of this ruling that classifies a betrothal meal alongside voluntary actions. The Palestinian Talmud, in contrast (PT Pesahim 3.7, 30b), comments that this ruling serves as indication that "peace" (in one's family) is as important as the weightiest of commandments.

44. M. Shabbat 1.2 (1.5 in the Mishnah's manuscripts).

45. Forgetfulness is explicitly mentioned in the following passage (M. Shabbat 1.3, which will be discussed below), indicating that this is the overall concern of this unit.

46. It is, of course, a matter of debate how to define "close to the time of prayer" in this context. See BT Shabbat 9b; PT Shabbat 1.2, 3a.



If the passage regarding destruction of leaven before Passover presents situations in which an unusual and ominous event distracts from a halakhic task, the passage regarding prayer presents situations in which the natural rhythm of everyday activities distracts from a halakhic task. Taken together, these passages serve as important reminders that life in accordance with halakhah requires negotiating multiple demands at the same time, not only the multiple demands of halakhah itself but also the demands of the body, of the home, and of other commitments. This may sound trivial—what is life if not managing competing obligations and intentions constantly?—but in the context of the Tannaitic discussions, there is more here than a simple recognition that following halakhah requires time, deliberation, and effort. The rabbis, I argue, viewed life in accordance with halakhah as requiring one, at times, to go against the force of habit and against automatic and natural reactions. Moreover, they viewed it as a life that regularly requires one to make high-stakes decisions in complicated situations based on seemingly conflicting principles. The cognitive overload created by the demands of halakhah can easily become too much to handle, which suggests, unnervingly, that halakhic behavior is not fully under the subject's control.

The notion that halakhic compliance may force one to go against one's habits and natural inclinations is evident in scenarios of negative prospective memory omissions, that is, in situations in which one is supposed to remember to *refrain* from an action or behavior but forgets to refrain from it. The most obvious examples for negative prospective memory omissions pertain to food: one is supposed to refrain from eating (in the examples we have seen earlier, due to a personal vow or a voluntary fast) but forgets his obligation to do so—presumably, because the hunger he is experiencing is powerful enough to drive the intention not to eat away from his mind, or because food is placed before him and out of habit, as if on autopilot, he begins to eat and drink. The dynamics of autopilot response to the presence of food is portrayed in the following passage:

[A field sown with seeds consecrated as heave-offering] is subordinate to [the laws of] gleanings, forgotten produce, and corner of the field, and the poor among Israel and the poor among the priests [can] both collect [those things in the field]. The poor among Israel will sell their share to the priests for the price of heave-offering, and they will keep the money.

R. Tarfon says, "Only the poor among the priests should collect, lest [the poor among Israel] forget and place [the collected produce] in their mouth."

R. Akiva said to him, "If so, then only pure [priests] should collect."<sup>47</sup>

This passage concerns a rather unusual case in which a field was sown with seeds that originate in a heave-offering (*terumah*), a portion of food that is designated for the priests alone. In principle, one is not allowed to use seeds from a heave-offering for sowing purposes, but if for some reason they were already sown they

47. M. Terumat 9.2.

should be left in place.<sup>48</sup> Once a field sown with heave-offering seeds is a given, all the ordinary obligations that pertain to agricultural fields in rabbinic law pertain to it, including the obligations to leave certain things in the field for the needy: gleanings (*leqet*, separated ears of grain that fell to the ground during the harvest), forgotten produce (*shikhehah*, items that the owner of the field unintentionally left behind), and the corner of the field (*pe'ah*, an area that is to be left unharvested).<sup>49</sup> According to the anonymous voice in the Mishnah, all needy persons have permission to collect those three leavings in a field sown with heave-offering seeds, but since non-priests ("Israel") are not allowed to consume heave-offering, they should sell whatever they collected to priests. R. Tarfon objects to this arrangement on the concern that when non-priests collect leavings in such a field, they may forget that they are dealing with consecrated food and place whatever they find in their mouths. R. Akiva responds that if forgetfulness that leads to prohibited consumption is to be feared, then the needy priests themselves should only be allowed to collect in this field if they are ritually pure, since purity is required for consumption of heave-offering.<sup>50</sup>

R. Tarfon's assumption is that if individuals, and perhaps especially poor individuals who are probably acutely hungry, are in a situation in which edible things are right in front of them, they are likely to forget the fact that they are not allowed to consume these items. For our purposes the word "forget" in this imagined scenario is key. R. Tarfon does not assume that a hungry non-priest will see a produce item he can sell but not eat and say to himself, "I don't care that it is consecrated and permitted only to the priests, I am hungry, and I am eating it now." Rather, R. Tarfon assumes that the original intention of the non-priest not to eat the produce would be driven away from his mind once he is confronted with the primordial combination of hunger and availability of food. Similarly, the subjects who forgot their vow not to eat or the fast they took upon themselves in the examples we saw earlier are specifically said to have forgotten the vow or fast, not to have been overcome by appetite or hunger. It is crucial to observe, then, that the rabbis depict here not situations of weakness of will, or of internal struggles between temptation and obligation in which temptation wins, but rather strong responses to physical stimuli that drive the obligation, temporarily, out of one's mind.

Forgetfulness as a result of autopilot-like responses or behaviors, which are so overpowering that they drive a halakhic obligation or intention out of one's mind, does not take place only when one is presented with luring physical temptations. In other words, it is not simply a symptom of being overcome with passion. A passage

48. M. Terumot 9.1.

49. See Lev. 19:10; Deut. 24:19.

50. It seems that R. Akiva makes this point to dismiss R. Tarfon's concern, but it is not clear whether he dismisses it because he thinks that people are not likely to forget and consume what they are not supposed to, or because he thinks that such a concern is not sufficient grounds for denying poor nonpriests an opportunity to acquire the meager profit to which they are entitled.

in tractate Shabbat of the Mishnah presents a series of rulings whose underlying concern is that deeply ingrained habits compromise one's ability to observe the Sabbath's prohibitions. This concern leads the Mishnah to determine that one should avoid certain habitual behaviors either before or during the Sabbath, not because they are forbidden in and of themselves but because the capture of the habit is so strong that it could inadvertently lead to forgetfulness and to prohibited actions:

[A] A tailor may not go out carrying his needle close to darkness [on the eve of the Sabbath], lest he forget and go out [with it on the Sabbath], nor may a scribe go out with his quill.

[B] One may not delouse one's articles nor read by the light of the lamp [on the night of the Sabbath]. In truth they said, "The cantor (*hazan*, teacher of children) may see where the children are reading, but he may not read."

[C] Likewise, a man with genital discharge may not eat with a woman with genital discharge, because of the [possible] following<sup>51</sup> of transgression.<sup>52</sup>

The issue at hand in case A is the prohibition to carry any articles during the Sabbath (certainly articles meant for work, such as a needle or a quill).<sup>53</sup> The Mishnah expresses a concern that if an artisan goes around carrying his work implement before the Sabbath, he may forget to put it aside in due time and continue carrying it when such carrying is prohibited. Carrying, to be sure, is prohibited for all people, yet the Mishnah specifically refers to artisans, since they are so accustomed to carrying their respective work implements that they are likely to experience them as part of their bodies and forget that they are even there.<sup>54</sup> The artisan's predictable memory failure is not the result of inability to control his passion, but of habit capture—a bodily way of being so natural that without noticing the subject may slip from the time in which it is permitted to carry such items to the time in which it is prohibited to carry them. To prevent this, the rabbis advise the creation of a buffer zone sometime before the Sabbath in which artisans are not allowed to carry their implements, similar to the buffer zone they advise establishing before prayer.

51. I translated the Hebrew phrase *hergel* 'averah as "following of transgression," since the root *rgl* in rabbinic Hebrew mainly refers to the dragging or drawing of one thing after another. See Shlomo Naeh, "Hergel Mitzvah" (in Hebrew), *Tarbitz* 65, no. 2 (1996): 231–36; Shamma Friedman, *Tosefta Atiqta, Pesah Rishon: Synoptic Parallels of Mishna and Tosefta Analyzed with a Methodological Introduction* (in Hebrew) (Ramat Gan: Bar-Ilan University Press, 2003), 377–79.

52. M. Shabbat 1.3 (1.6 in the Mishnah's manuscripts).

53. The Tosefta (T. Shabbat 1.8 [ed. Lieberman 2]), which adds several additional examples of artisans and the implements they must not go out with right before the Sabbath, specifies that the carrying in question is of a particular kind: not carrying in one's hand, but rather carrying implements in such a way that they are attached to one's body, which is not technically prohibited on the Sabbath. See Lieberman, *Tosefta ki-pshutah Mo'ed*, 3:6–8.

54. Cf. T. Shabbat 1.8 (ed. Lieberman 2).

Whereas scenario A deals with activities that are permitted before the Sabbath but prohibited during it, scenario B deals with activities that are permitted during the Sabbath but could lead to prohibited activities—in this case, kindling a lamp. To clarify, the lamps that the rabbis had in mind were oil lamps in which a wick was placed on one end and was kept burning by the oil in the basin. It was permitted to light such a lamp before the Sabbath but not to add oil to it during the Sabbath. The concern here is that if one uses an oil lamp not merely for general illumination but to examine something closely, such as one's garments (for lice) or a written text, one would automatically want to increase the amount of illumination and would do so by tilting the lamp in order to drive the remaining oil in it toward the wick. This is yet another scenario of habit capture: there is nothing more natural than trying to generate more light for oneself when one is striving to see something in the dark. To prevent one from being captured by this habit, the Mishnah rules that the habit-invoking behavior (i.e., examining something closely by the light of the lamp) should be avoided in the first place. The exception provided to this rule is also interesting: young children are allowed to study by the light of a lamp during the Sabbath, while their teacher may supervise them but not read himself.<sup>55</sup> Different explanations were offered for this ruling: the Babylonian Talmud explains that the children are fearful of their master and will not tilt the lamp without his permission, whereas the Palestinian Talmud maintains that children have no desire to study on the night of the Sabbath, so they are in fact eager to have the light die out.<sup>56</sup> My own reading of this exception is that children were not seen as having formed habits of reading that might lead them to forget and succumb to their habits as adults would.

The inclusion of scenario C in this passage, even though it has no apparent connection to the Sabbath at all, is instructive. This clause asserts that if a man and a woman are both suffering from genital discharge, they should not eat with each other, since the shared meal may lead to forbidden intercourse. Eating together, here as in other places in rabbinic literature, is an intimate activity that functions as a precursor or placeholder for sex.<sup>57</sup> While the man and the woman with genital discharge are both ritually impure already, the Mishnah still wishes to distance them from each other lest they end up having intercourse, which they are prohibited to do in their impure state (even if they are married to each other). Purportedly, if the impure man and impure woman engage in a licit activity that is considered intimate, they may continue on to an *illicit* intimate activity.

55. The expression “in truth they said” appears several times in rabbinic sources, usually to introduce an established teaching that seems to conflict with or qualify a teaching that was just introduced.

56. BT Shabbat 13a; PT Shabbat 1.3, 3b.

57. On the relations between food and sex in rabbinic literature, see Judith Baskin, *Midrashic Women: Formations of the Feminine in Rabbinic Literature* (Hanover, NH: Brandeis University Press, 2002), 107–11.

The common thread connecting scenario C and the two scenarios that precede it is the principle of “distancing one from transgression” (also known as “putting a fence around the Torah”).<sup>58</sup> In all three cases, the rabbis devise ways to prevent a person from getting into a situation from which they could easily drift into a forbidden act.<sup>59</sup> While this principle is at play in other halakhic contexts as well, the juxtaposition of these three particular cases in a single passage is significant. The Mishnah ties together two cases in which the most banal habit capture can lead to forgetfulness of an important prohibition with a case in which nonsexual intimacy can lead to sexual intimacy. Had we encountered the latter case on its own, we would have probably assumed that the issue at hand is the overwhelming power of sexual desire, and that the rabbis forbid the shared meal because they suspect that an individual consumed by desire as a result of the intimate meal will succumb to the temptation to have sex while knowing that it is forbidden to do so. While later (particularly Babylonian) sources certainly describe sexual desire as a force that can subdue the well-meaning individual,<sup>60</sup> the context in the Mishnah suggests that the operative power in his case is not temptation but forgetfulness. The shared meal between the couple will not lead them to insurmountable desire, but rather lead them to forget that they are subject to a prohibition. This, too, I propose, is a case of habit capture: since the couple is used to sharing meals followed by sex, engaging in the former may lead them, as if on autopilot, to the latter.

Once we realize the prominence of forgetting in Tannaitic scenarios as what leads one to the brink of transgression, we are in a position to understand the centrality of memory in the early rabbinic construction of religious subjectivity more broadly. While the forgetful subject of Tannaitic texts may superficially seem reminiscent of the early Christian notion of the divided self, who, in the words of Paul, does not do the good that he wants to do but the evil that he does not want to do,<sup>61</sup> it is important to emphasize that the tribulations of the Tannaitic subject are not of desire and not of will, but rather of *memory*.<sup>62</sup> This subject does not stand on the

58. See M. Berakhot 1.1, and the extensive discussion on “a fence around the Torah” in Avot de-Rabbi Nathan A, chapters 1–2 and B 1–3 (ed. Schechter 3–14).

59. Commentators and scholars struggled to determine whether the rulings listed in this passage are among the eighteen decrees mentioned in M. Shabbat 1.4, or if they constitute a separate addendum to these eighteen decrees. See Hanoch Albeck, *The Six Orders of the Mishnah: Mo'ed* (in Hebrew) (Tel Aviv: Bialik Institute, 1959), 2:406–7; Avraham Goldberg, *Commentary on Tractate Shabbat* (in Hebrew) (Jerusalem: Magnes Press, 1956), 16–22; Lieberman, *Tosefta ki-pshutah Mo'ed*, 3:13–15. For a comprehensive summary of scholarship on the “eighteen decrees,” see Israel Ben-Shalom, *The School of Shammai and the Zealots' Struggle against Rome* (in Hebrew) (Jerusalem: Yad Ben Zvi, 1993), 252–72.

60. See Ishay Rosen-Zvi, *Demonic Desires: Yetzer Hara and the Problem of Evil in Late Antiquity* (Philadelphia: University of Pennsylvania Press, 2011), 102–19.

61. Rom. 7.15. On this theme, see Albrecht Dihle, *A Theory of Will in Classical Antiquity* (Berkeley: University of California Press, 1982), 68–98; Paula Fredriksen, *Sin: The Early History of an Idea* (Princeton, NJ: Princeton University Press, 2012), 33–35, 116–19.

62. Here I echo the pathbreaking observations of Mary Carruthers, who showed that dealing with the limitations and vicissitudes of memory was a definitive challenge for monastic individuals in late

precipice of transgression because the alluring power of sin gets the better of him, but because avoidance of transgression—whether it is the transgression of doing something prohibited or of not doing something required—can be an exerting cognitive task. One has to employ constantly an additional layer of self-reflection and self-check atop activities that are completely habitual and natural, and often to work against one's habit. Halakhah, in other words, sometimes requires one's mind to work against itself.

To be clear, the cognitive overload brought about by halakhic observance cannot be simplistically construed as a result of living in two parallel orders, a “secular” one and a “religious” one. If it were merely a matter of asserting the superiority of the prohibition “Do not eat” over the instinctual reaction “I am hungry,” we could argue that inculcation into the rabbinic way of life is just a particular iteration of a civilizing process in which, as per Freud, nature stands to be tamed by culture.<sup>63</sup> What makes the halakhic system uniquely challenging is that oftentimes the habit in which one is captured is itself “religious,” and the cognitive overload is created by introducing a new halakhic variable into an already established set of commandments-following behaviors. This is evident in the following scenario:

If one was standing in prayer and was reminded that he had a seminal emission, he should not stop, but shorten his prayer.<sup>64</sup>

Seminal emission, although generating a fairly light ritual impurity, precludes one from participation in sacred activities such as prayer, recitation of the Shem'a, and studying Torah.<sup>65</sup> Prayer, however, is an obligation that one must fulfill every day multiple times a day, whereas seminal emission only happens so often. The subject in this scenario is so captured in his habit to pray at set times that he forgets the fact that he had a seminal emission and is actually not allowed to pray in this condition until he immerses himself in water. Put differently, the forgetfulness that compromises the subject's prayer in this case is in and of itself a testimony to his profound commitment to regular prayer. This scenario demonstrates that the individual in the halakhic system is always required to keep a portfolio of his obligations and restrictions in memory—the ordinary and the unordinary, the habitual and the exceptional, the collective and the individual—and to negotiate these obligations and restrictions in everyday situations. Within this complex undertaking forgetfulness is not only predictable but is also an indication that halakhic observance is so ingrained in one's nature that one has to work against oneself to change its course. In this respect, the forgetful subject is also an idealized subject.

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antiquity, and not only the memory of texts but also the memory of heaven, hell, salvation, and so on. See Carruthers, *The Craft of Thought*, 60–115.

63. See Sigmund Freud, *Civilization and Its Discontents*, trans. James Strachey (New York: W.W. Norton and Co., 1961).

64. M. Berakhot 3.5. I will discuss this example in greater detail in chapter 4.

65. See T. Berakhot 2.12 (ed. Lieberman 8); BT Berakhot 22a.

The following scenario suggests that in situations of halakhic overload, forgetfulness that attests to eagerness to fulfill a commandment can be overlooked, even if this forgetfulness ultimately generates a transgression:

R. Yose says, "If the first day of the festival [of Sukkot] happened to take place on the Sabbath, and one forgot and took out his *lulav* (palm branch) into the public domain on the Sabbath—he is exempt, because he took it out with permission."<sup>66</sup>

A rabbinic ordinance determines that the ritual of handling a *lulav* on the first day of the festival of Sukkot should be performed even if this day happens to be the Sabbath. The complication is that while one is required to perform the ritual on the Sabbath, it is prohibited to carry the *lulav* from one place to another through the public domain during the Sabbath. The solution devised in the Mishnah is that one should bring the *lulav* to the place in which the ritual will be performed, usually the synagogue, on the eve of the Sabbath.<sup>67</sup> R. Yose then adds that if one forgot and did carry the *lulav* in the public domain on the Sabbath, he is exempt from the usual penalty for such a transgression, which would be a sin offering (*hattat*). The laconic phrasing of the ruling leaves it ambiguous what, exactly, the subject forgot: did he forget that he is not allowed to carry on the Sabbath? Did he forget that the day was the Sabbath? Or did he forget to take his *lulav* the day before and he now thinks he has no choice but to carry it? All these interpretations are possible, but what is clear is that the cognitive overload created by negotiating the prohibition (carrying on the Sabbath) and the obligation (taking a *lulav* on the first day of Sukkot) can lead to forgetfulness, and strikingly, R. Yose does not even think that such forgetfulness should be penalized. Rather, he says that this subject actually operated "with permission."<sup>68</sup> The Talmuds interpret this phrase to mean that the subject's preoccupation with a commandment nullifies his transgression,<sup>69</sup> an idea closely resonant with the rabbinic principle that preoccupation with one commandment gives one a temporary exemption from

66. M. Sukkah 3.14.

67. M. Sukkah 3.12–13. Cf. BT Rosh ha-shanah 29b.

68. Cf. M. Pesahim 6.6. As Albeck noted, this is a strange expression to use in this context, since it seemingly suggests that there was no prohibition to carry the *lulav* in the first place. See Albeck, *Six Orders: Mo'ed*, 2:476. One possible interpretation is that the one who carried the *lulav* on the Sabbath *feels* as though he did so with permission, since his intention was to fulfill a commandment, and therefore he is devoid of what Noam Zohar called "a consciousness of sin," which is the main reason (according to some Tannaitic positions) for incurring a sacrificial penalty. See Noam Zohar, "Sin Offering in Tannaitic Literature" (in Hebrew) (master's thesis, Hebrew University, 1988), 91–94.

69. BT Sukkah 42a; PT Sukkah 3.14, 54a. This interpretation is commensurate with T. Sukkah 2.11 (ed. Lieberman 265), in which R. Yose rules that once the obligation pertinent to the *lulav* has been fulfilled it is no longer permitted to carry it around. See Lieberman, *Tosefta ki-pshutah Mo'ed*, 4:868–69. For a more elaborate discussion, see Arye Edrei, "If Any One Shall Sin through Error: On the Culpability of the Unwilling Transgressor in Biblical and Rabbinic Literature" (in Hebrew), *Annual of the Institute for Research in Jewish Law* 24 (2007): 44–47.



another commandment.<sup>70</sup> Whether or not this is the most accurate interpretation of R. Yose's statement, it is clear that in his view, forgetfulness that stems from a desire to comply with halakhah should be viewed as a marker of observance and not as breach of observance.

One final example of forgetfulness brought about by cognitive overload will illustrate the rabbis' awareness of their system's demands on its subjects, as well as the view (which was apparently controversial) that if forgetfulness showcases halakhic compliance, its detrimental results can be predicted and at times overlooked. This passage is meant to demonstrate the rule that a male baby should be circumcised exactly eight days after it was born, even if the eighth day happens to take place on the Sabbath, but in all other cases it is strictly forbidden to perform circumcision on the Sabbath.<sup>71</sup> The subject in this passage is dealing with two babies who were born one calendrical day apart (possibly, one was born before dusk and the other was born after dusk), such that for one of them the Sabbath is the appropriate day for circumcision and for the other it is not. In each of the passage's two scenarios, the subject violates the Sabbath by mixing things up and circumcising the baby who should *not* have been circumcised on the Sabbath alongside the one who should have been circumcised on the Sabbath. This passage, however, has a complex textual history, and it was preserved in two competing versions in the two branches of the Mishnah's textual witnesses.<sup>72</sup> Let us begin with the version in the printed edition, which is based on the Mishnah as it appears in the Babylonian Talmud:

[A] If one had two babies, one to circumcise after the Sabbath and one to circumcise on the Sabbath, and he forgot and circumcised the one of after the Sabbath on the Sabbath—he is liable [to bring a sin offering for violating the Sabbath].

[B] If he had one [baby] to circumcise on the eve of the Sabbath and one to circumcise on the Sabbath, and he forgot and circumcised the one of before the Sabbath on the Sabbath—R. Eliezer obligates him to bring a sin offering, but R. Yehoshua exempts him.<sup>73</sup>

70. For discussions of this topic, see BT Berakhot 11a and BT Sukkah 25a, as well as BT Shabbat 137a and BT Pesahim 72b.

71. On circumcision after the eighth day and its implications, see Yedidah Koren, "The Fore-skinned Jew in Tannaitic Literature: Another Aspect of the Rabbinic (re)Construction of Judaism" (in Hebrew), *Zion* 82, no. 4 (2017): 397–437.

72. On the division of the Mishnah's textual witnesses into a Babylonian branch and a Palestinian branch, see Ya'akov Sussmann, "Manuscripts and Text Traditions of the Mishnah" (in Hebrew), in *Proceedings of the World Congress of Jewish Studies* 7, vol. C (1977): 215–50. On this specific passage, see Epstein, *Introduction to the Text of the Mishnah*, 311–14; Goldberg, *Commentary on Tractate Shabbat*, 334–37.

73. M. Shabbat 19.4; see also BT Shabbat 137a and BT Pesahim 72a. This rendition of R. Eliezer and R. Yehoshua's dispute is attributed to R. Shimon in T. Shabbat 15.10 (ed. Lieberman 72) and in the Palestinian and Babylonian Talmuds.



According to this version, in case A it was not yet time for the first baby to be circumcised, so nothing justifies the circumcision on the Sabbath. In case B, it was already time for this baby to be circumcised—he should have been circumcised on Friday—and so it could be argued that the forgetful subject at least performed a necessary commandment while violating the Sabbath, which for R. Yehoshua is sufficient reason to exempt him from penalty. R. Yehoshua maintains that if forgetting led one to perform a commandment one had to perform anyway, then the transgression entailed in this performance can be overlooked, whereas R. Eliezer maintains that a transgression remains a transgression even if it was done in the service of a commandment.

In the version that appears in the Palestinian Talmud and in the Mishnah's manuscripts, however, the order of the cases is reversed:

[A'] If one had two babies, one to circumcise on the eve of the Sabbath and one to circumcise on the Sabbath, and he forgot and circumcised the one of the eve of the Sabbath on the Sabbath—he is liable [to bring a sin offering for violating the Sabbath].

[B'] If he had one [baby] to circumcise after the Sabbath and one to circumcise on the Sabbath, and he forgot and circumcised the one of after the Sabbath on the Sabbath—R. Eliezer obligates him to bring a sin offering, and R. Yehoshua exempts him.<sup>74</sup>

According to this version, R. Eliezer and R. Yehoshua both agree that if on the Sabbath one circumcised a baby that should have already been circumcised on Friday, one is liable for violating the Sabbath. They disagree as to the one who circumcised a baby prematurely, that is, circumcised on the Sabbath a baby that should have been circumcised the following day. In this version the debatable issue is not whether *actual* fulfillment of a commandment exempts one from penalty, but rather whether *eagerness* to fulfill a commandment exempts one from penalty. Both R. Eliezer and R. Yehoshua agree that there is no excuse for delaying circumcision because of forgetfulness, so the one who circumcised the baby on the Sabbath having already forgotten to circumcise him on Friday is clearly at fault. But they disagree as to whether forgetfulness can serve as legitimate justification if one was so eager to perform the commandment that he did it ahead of its time.<sup>75</sup>

In both versions, neither of which can be regarded as more “original” than the other, the Mishnah could have made its point by putting forth a scenario that involves only one baby.<sup>76</sup> The second baby, the one who actually had to be

74. In the two Talmuds, this rendition of R. Eliezer and R. Yehoshua's dispute is attributed to R. Meir. See also BT Karetot 19b.

75. For a somewhat different explanation of the reasoning behind these two versions, based heavily on the Babylonian Talmud, see Edrei, “If Any One Shall Sin through Error,” 35–39.

76. Lieberman maintains that two babies are strictly necessary only for the Palestinian version (disagreement on premature circumcision), whereas the Babylonian version (disagreement on belated circumcision) makes perfect sense with one baby only. See Lieberman, *Tosefta ki-pshutah Mo'ed*, 3:253–54.

circumcised on the Sabbath, was introduced to complicate the situation further, and thereby to explain how forgetting occurred in the first place: the subject forgot which baby was born when, or he was so consumed with circumcising one of the babies on the Sabbath that he bundled the other baby with him. In other words, the scenarios of two babies were created distinctly to depict a situation of significant cognitive overload. The setting in which the Mishnah piles together halakhic contingencies one on top of the other—three different combinations of circumcision + Sabbath (before, after, or during) that are, in turn, combined again with each other (“after” baby + “during” baby or “before” baby + “during” baby)—is illustrative of halakhic life as a whole. While a situation of having to circumcise two babies born one day apart is admittedly not a common occurrence, situations in which multiple halakhic factors nullify each other, or take precedence over each other, or generate a new arrangement altogether, are par for the course in halakhic observance. Rabbinic discussions of forgetfulness in such complex settings, then, divulge profound awareness that the system that the rabbis created can at times be more than humans can handle. This is not because those humans are lazy or weak or incompetent, and also not because the system is ill-conceived (the rabbis certainly did not think that it was). It is because the human mind operates in ways that the individual, no matter how willing, cannot fully control. Slipping in one element of this complex system, however, can only take place if one is so deep in the system already that he attempts to meet all of its competing demands at the same time, that is, if one is already a fully committed halakhic subject.

The rabbis’ preoccupation with forgetting is an acknowledgment that the mind is not fully controllable and, moreover, that the cognitive demands of the halakhic system are so exerting that forgetfulness may at times be inevitable. At the same time, it is also an attempt to restore control over this uncontrollable reality by trying to predict how and when forgetfulness could happen and sometimes also to prevent it from happening. These efforts do not resolve the challenges of fallible memory as much as they reinscribe them: they shift the individual’s responsibility from remembering the halakhic task at hand to remembering what the rabbis prescribed for fixing or avoiding forgetting. Forgetting, as I will now turn to show, thus becomes a defining feature not only of halakhic compliance, but also of rabbinic authority.

#### HOW GREAT ARE THE WORDS OF THE SAGES

As much as the rabbinic halakhic system governs every minute aspect of one’s daily life, from the way one bakes bread to the way one puts on one’s shoes, this system is devoid of any formal mechanisms of surveillance or supervision. Rabbinic sources operate with the assumption that it is every practitioner’s responsibility to keep track of halakhic tasks and prohibitions, and they do not prescribe

any institutional measures to ensure correct practice. The rabbis make a point of depicting subjects whose halakhic motivation is intrinsic and whose commitment to practice is absolute, and of depicting their own role vis-à-vis their subjects as merely offering guidance when something goes awry. It could be argued, of course, that by assuming that their subjects would fail and come to seek their assistance afterward the rabbis are creating a *retroactive* surveillance system, but this system still relies on the premise of individual self-monitoring. At the same time, Tannaitic literature presents a variety of executive rabbinic decisions to expand prohibitions or to rechart halakhic requirements in order to “distance one from transgression” and to prevent possible mistakes or omissions.<sup>77</sup> The underlying premise of these decisions is that left to their own devices, subjects are likely to err in their halakhic practice or neglect it altogether—in other words, that subjects are not always able to self-monitor.

Above we examined several rulings put forth to prevent what the rabbis deem probable forgetfulness. In some cases, such as prayer or carrying on the Sabbath, they institute a buffer zone to decrease the likelihood of forgetfulness, whereas in others, such as reading by the light of the lamp on the Sabbath or a man and a woman with genital discharge sharing a meal, they entirely prohibit a licit activity so that it does not lead to an illicit activity. In these cases and others like them the rabbis openly present themselves as manipulating the laws of halakhah, justifying this manipulation by asserting that the unmodified law leaves people too prone to failure. Let us consider the very first example of “distancing one from transgression” in the Tannaitic corpus:

As of when does one recite the Shem’a in the evenings? From the time in which the priests enter to eat their heave-offering, up until the end of the first watch, the words of R. Eliezer. And the Sages say, “Until midnight.” Rabban Gamaliel says, “Until the break of dawn.”

It once happened that [Rabban Gamaliel’s] sons came back from a wedding feast [past midnight]. They said, “We did not recite the Shem’a.” He told them, “If dawn has not yet broken, you are obligated to recite.”

And not only that, but anything regarding which the Sages said, “Until midnight,” its commandment stands until the break of dawn. . . . If so, why did the Sages say, “Until midnight”? To distance one from transgression.<sup>78</sup>

Without delving into the complex textual history of this passage, which evidently consists of several different layers, I wish to observe the overall rhetorical thrust

77. As Aaron Panken showed, this is the primary meaning of the term “decree” (*gezerah*) in Talmudic texts. See Aaron D. Panken, *The Rhetoric of Innovation: Self-Conscious Legal Change in Rabbinic Literature* (Lanham, MD: University Press of America, 2005), 247–81.

78. M. Berakhot 1.1.

of this passage as it stands before us.<sup>79</sup> The reader/listener is presented with two key messages: first, that in truth it is legitimate to recite the evening Shem'a until dawn (except according to the discounted minority opinion of R. Eliezer), and second, that the Sages set an earlier time limit for the evening Shem'a because they assumed that individuals would occasionally falter in their observance. By setting an artificial early deadline for the recitation, the Sages enable people to miss the deadline, as they are likely to do, but still make the "real" deadline—as the story of the sons of Rabban Gamaliel demonstrates. In saying, effectively, "If we would tell you that the Shem'a time is until dawn you would postpone it to the last minute and miss your chance of reciting it altogether, so we will tell you that it is earlier," the Sages appear to be making two interrelated statements: first, *we do not trust you* to have the discipline or the cognitive resources to handle this halakhic task unassisted, and second, *you need to trust us* that we know you better than you know yourself. The same subtext is manifest in the examples we saw above of rulings meant to preempt forgetfulness: while people may think that they will remember the prohibition or the requirement in time to prevent halakhic mishaps, the rabbis tell them that they probably will not. The subjects' path to correct performance is not to trust themselves, but to trust the Sages.

Herein, I propose, lies the critical importance of forgetfulness for the formation of rabbinic authority in the Tannaitic corpus and thereafter. It is self-evident that the early rabbis want to present themselves as experts in the interpretation of scripture and in the practical (or nonpractical) navigation of the requirements of biblical law. If they were not invested in this self-presentation, they would not have taken on their ambitious legislative and exegetical projects to begin with. But scenarios of forgetfulness in the halakhic realm, and especially rulings meant to preempt forgetfulness in the halakhic realm, provide rabbinic input not only on the law but also on the very volatile workings of the human mind. As such, the authority claimed through these scenarios goes beyond a text-based or tradition-based specialty and reaches into the realm of skillful people-management. To be clear, the early rabbis are neither therapeutic philosophers nor pastors: they do not purport to take care of or transform their subjects' minds or souls (at least not explicitly), but they do purport to know how these minds work in halakhic settings and to shape these settings accordingly. Here it is important to distinguish between the rabbis' attempts to discern people's thoughts and intentions based on the circumstances or on their behavior, which are prominent features of the rabbinic halakhic discourse, and the rabbis' attempts to predict memory failures. Whereas the former endeavor is based on a view of individuals as rational

79. On the composition and creation of this passage, see Shlomo Naeh, "Text and Structure of the First Mishnah in Tractate Berachot" (in Hebrew), in *To Be of the Disciples of Aharon: Studies in Tannaitic Literature and Its Origins in Memory of Aharon Shemesh* (= *Te'uda* 31), ed. Daniel Boyarin, Vered Noam, and Ishay Rosen-Zvi (Tel Aviv: Tel Aviv University Press, 2021), 251–75.

beings who control their own decisions and actions, the latter endeavor assumes *lack* of control over one's mind and inability to conduct oneself rationally at all times. Scenarios of forgetfulness, in other words, are rhetorical means through which the rabbis assert not only their knowledge of the substance of halakhah, but also their role in directing the memory of humans who are not always able to direct it themselves. Again, the rabbis do not present an aim to correct their subjects and to turn them into perfect practitioners once and for all. Rather, their aim is to win the trust of subjects, real or imagined, who will never stop failing but will reliably seek advice and counsel on how to handle their failures.

There is no way of knowing whether broader circles of Jews in Tannaitic times were aware of this rabbinic rhetoric (and whether it had any impact on them) or if it was an entirely internal rabbinic discourse of self-positioning and self-justification. It can be safely said, however, that this mode of constructing rabbinic authority—as built not only on substantive legalistic knowledge but also on the ability to predict human cognitive failings—became highly prevalent in rabbinic texts after the Tannaitic period. In the Palestinian Talmud, a clear trend can be identified: when a need arises to explain a Tannaitic ruling that is not self-evident, a readily available explanation is that this ruling was meant to preempt possible forgetting.<sup>80</sup> In the Babylonian Talmud, Tannaitic rulings are frequently explained as setting out not to preempt forgetfulness per se but to preempt a possible misunderstanding of the prohibition that could lead one to make wrongful allowances.<sup>81</sup> While it is beyond the scope of this book to discuss the question of why the two Talmuds diverge in this respect, suffice it to note that both Talmuds divulge a working assumption that rabbinic halakhah is produced with a constant eye toward all the ways in which human cognitive fallibility (rather than weakness of will or misguided passion) can lead one astray. This working assumption, I contend, is rooted in Tannaitic discussions of forgetfulness.

The use of possible forgetfulness as a ready-made justification for rabbinic rulings that warrant explanation can be detected clearly already in one Tannaitic source:

It once happened that R. Ishmael was walking behind R. Yehoshua. [R. Ishmael] said to him, "One who is pure [in the degree appropriate] for purification water, who

80. PT Berakhot 8.1, 11d (= Berakhot 8.8, 12c), PT Demai 7.4, 26b, PT Ma'aser Sheni 2.4, 53d, PT Shabbat 2.4, 5a, PT Eruvin 3.7, 21a, PT Eruvin 7.1, 24b, PT Eruvin 7.6, 24c, PT Eruvin 7.10, 24d, PT Pesahim 3.3, 30a, PT Pesahim 4.4, 31a, PT Betzah 5.2, 63a, PT Hagigah 3.3, 79b.

81. There are several dozens of cases of this sort in the Babylonian Talmud, too many to enumerate here. For a particularly persuasive analysis of one example, see Richard Hidary, "'One May Come to Repair Musical Instruments': Rabbinic Authority and the History of the *Shevut* Laws," *Jewish Studies Internet Journal* 13 (2015): 1–26. As Hidary explains, a set of Sabbath-related prohibitions known as *shevut* date back to the Second Temple period and have to do mainly with customs for preserving the integrity of the Sabbath, but in the Babylonian Talmud these prohibitions are explained as meant to preempt one from inadvertently slipping into a forbidden activity.

shifted a key that was pure [in the degree appropriate] for heave-offering, what is he, impure or pure?"

[R. Yehoshua] said to him, "Impure."

[R. Ishmael] said to him, "And why so?"

[R. Yehoshua] said to him, "Lest there was some old impurity in his hand (i.e., he had become impure previously), or lest he forget and shift an impure object."

[R. Ishmael] said, "Is it not the case that he [remains pure even if he] certainly shifted [an impure object]?<sup>82</sup> But your words do seem [cogent] regarding an object that can convey impurity through treading, lest there was some old impurity in his hand, or lest he forget and shift an impure object."<sup>83</sup>

The specific halakhic details of this dialogue are intricate, and I will do my best to explain them as succinctly as possible. The degree of ritual purity required for handling purification water, which is used to eliminate corpse impurity, is very high, so much so that any lesser degree of purity is regarded as impurity in relation to it. Even priests who have purified themselves to the degree required to consume heave-offering convey impurity to those who are charged with handling purification water, and any object on which people at a lesser degree of purity "tread" (that is, sat on or lay upon or stepped on) also conveys impurity to those handling purification water.<sup>84</sup> The disagreement in this passage pertains to the impurity threat presented by objects that do not lend themselves to treading, such as a key. R. Yehoshua maintains that even such objects can convey impurity (while technically pure!) to those pure at the degree required for purification water, whereas R. Ishmael follows the opinion that only objects that lend themselves to treading (such as chairs, clothes, bedding, etc.) can do so.<sup>85</sup> Both rabbis agree that perfectly pure objects can convey impurity to those who must operate at the highest degree of purity, but they disagree on what kinds of objects fall under this category. Their discussion, however, revolves around the reasoning behind this admittedly strange ruling. If the general principle is that a person needs to be in contact with a known and certified source of impurity in order to become impure, how is it, R. Ishmael asks R. Yehoshua, that a person can become impure by causing a completely pure object to shift (not even touching it directly)?

82. The text is cryptic, and I am following the reading proposed by Lieberman. See Saul Lieberman, *Tosefet Rishonim: Tohorot*, vol. 3 (in Hebrew) (Jerusalem: Bamberger and Wahrman, 1937–39), 248. As Lieberman explains, R. Ishmael maintains that shifting an object like a key would not make one impure even if the object were actually impure.

83. T. Parah 10.3 (ed. Zuckerman 638–39). The passage continues with an exchange between the two rabbis that was probably imported wholesale from M. Avodah Zarah 2.5 and is not relevant for our purposes. See Shlomo Naeh, "Your Affections Are Better than Wine: A New Approach to Mishnah Avodah Zarah 2.5" (in Hebrew), in *Studies in Talmudic and Midrashic Literature in Memory of Tirtzah Lifshitz*, ed. Moshe Bar-Asher, Arye Edrei, Joshua Levinson, and Berachyahu Lifshitz (Jerusalem: Bialik Institute, 2005), 412–13n6.

84. M. Hagigah 2.7.

85. See M. Parah 10.1 and T. Parah 10.2 (ed. Zuckerman 638).

In response to R. Ishmael's question, R. Yehoshua presents two alternative answers, both of which have to do with forgetting. The first answer is that the person who is about to handle purification water may have forgotten that he contracted some other kind of impurity in the past, so it would not hurt to render him impure just to make sure he purifies himself one more time before he gets hold of the sacred water.<sup>86</sup> The second answer is that if the person who needs to maintain a particularly high level of purity feels comfortable moving objects around when they are pure, he may come to forget himself and move objects that are actually impure. Per both explanations, the reasoning behind this perplexing ruling is that human beings, even those charged with ominous tasks like handling purification water, cannot be trusted to be in full control of their memory. They are prone both to episodic memory failures (one may forget that one is impure) and to prospective memory failures (one may forget that one must not move impure things). To preempt or counteract forgetfulness and to prevent one from handling purification water when one is actually impure, the rabbis decided to impose an impurity status on objects that are otherwise pure. R. Ishmael, in turn, disagrees with R. Yehoshua as to the kinds of objects to which this preventative ruling applies, but fully adopts the reasoning that he suggests.

Now, I dare say that this reasoning (that is, the prospect of forgetfulness) was probably *not* the original motivation behind the rabbinic principle that objects pure at a lesser degree convey impurity to people pure at a higher degree. As Yair Furstenberg showed, this principle is most likely indicative of a hierarchical perception of the realm of purity as organized in concentric social circles, a perception that can be traced back to the Second Temple period.<sup>87</sup> But it is exactly because the explanation provided by R. Yehoshua seems quite artificial that it is so significant: it demonstrates that concern regarding forgetting could readily serve to justify rabbinic rulings whether these rulings were intended as such or not. Already in the Tannaitic period, then, rabbis presented themselves as predictors of forgetfulness and preemptors of forgetfulness, such that a preferred explanation for seemingly arbitrary rulings could be "This is meant to prevent failures of memory."

To this we may add one curious ruling regarding the practice of *eruv*, the precarity of which was discussed earlier in this chapter. As I mentioned, there are two kinds of *eruv* arrangements that are meant to turn a public area into a private domain, such that one would be able to carry items freely within this area on the Sabbath: "mixing of courtyards," in which several houses in a single courtyard share a repository of food to render the courtyard everyone's residence, and "sharing of alleyways," in which several courtyards in one alleyway share a repository of food for the same purpose. It is immediately evident that the latter practice obviates the

86. Cf. T. Kippurim 1.16 (ed. Lieberman 227) and the discussions in BT Yoma 31a and PT Yoma 3.3, 40b.

87. Furstenberg, *Purity and Community*, 235–41.



former: if all the courtyards in a certain alleyway are considered to be one domain, then necessarily each one of these courtyards separately is also considered one domain. The Mishnah, however, determines that even if all the courtyards in an alleyway share an *‘eruv*, it is still necessary to prepare an *‘eruv* for each courtyard separately, “so as not to let the children forget.”<sup>88</sup> The underlying assumption here is that if children do not witness the practice of preparing an *‘eruv* in their immediate vicinity, they will forget the workings of this practice and presumably become unaware of it altogether. In the Babylonian Talmud’s interpretation, the concern is not only that children who did not see the *‘eruv* in their own courtyard will not know how to prepare an *‘eruv* in the future, but also that they will eventually question the very legitimacy of this practice: “Lest they say, ‘Our ancestors did not prepare an *‘eruv*.’”<sup>89</sup> Interestingly, in the Tosefta version (in which the Mishnah’s ruling is attributed to R. Meir), children are not explicitly mentioned; rather, the purpose of *‘eruv* in courtyards is “so that the essence of the *‘eruv* (*‘iqqar ha-‘eruv*) not be forgotten.”<sup>90</sup> This phrasing indicates that all members of the community, not only children, are prone to forget what an *‘eruv* is and how it is to be used if they do not engage in a practice that is, in and of itself, superfluous. Here, too, the rabbis present themselves as putting halakhic rulings and regulations in place strictly in an effort to preempt forgetfulness, in this case on a collective rather than individual level. The same explanatory pattern was utilized further in a few Amoraic sources, which justify practices that do not seem to have a clear purpose by saying that they were meant to keep entire halakhic areas of knowledge from being forgotten.<sup>91</sup>

The rabbis’ self-presentation as predictors and preemptors of forgetfulness is a critical element of the greater Tannaitic enterprise of creating “the Sages” (*hakhamim*) as a distinct, cohesive, and vital social entity. Scholars such as Catherine Hezser, Hayim Lapin, and Seth Schwartz convincingly argued that what we have come to call “the rabbinic movement” was, in the first and second centuries, a diffuse and scattered network of local informal associations, each organized around a master with his own disciples.<sup>92</sup> The emergence of this loosely connected network as one movement with shared traditions and ancestry, which has its own established institutions and its own commitment to the organization and preservation of materials, is not so much reflected in early rabbinic texts as it is achieved through these texts. In the words of Schwartz, “This text [the Mishnah], by constantly naming ‘rabbis,’ setting them in dialogue with one another and attributing to them legal opinions presented as more or less authoritative, in effect

88. M. Eruvin 7.9.

89. BT Eruvin 71b.

90. T. Eruvin 6.6 (ed. Lieberman 120).

91. See PT Sotah 7.8, 22a: “so that tithes not be forgotten”; BT Pesahim 51a, Bekhorot 27a: “lest the teachings of *hallah* be forgotten”; BT Bekhorot 18b: “lest the teachings of [priestly] gifts be forgotten.”

92. Hezser, *The Social Structure*; Schwartz, *Imperialism and Jewish Society*, 103–28; Lapin, *Rabbis as Romans*, 38–63.



constructs a rabbinic organization.”<sup>93</sup> Put differently, it is in the Tannaitic literature that “the Sages” are created and that a somewhat coherent picture of where they came from and what they do is put forth by compiling many scattered rulings and case-narratives. Scenarios of forgetfulness offer an added dimension to the emerging picture of “the Sages” by depicting the Sages’ role as creating a bridge between the hard-and-fast law and fragile and volatile human cognition.

From all that has been said so far, it may sound like the rabbis utilize forgetfulness not only to make the case for their own authority, but also to create a two-tiered model of society: at the very narrow top are the rabbis, who can handle the massive cognitive overload of halakhah and never forget anything, and at the very wide bottom are all other Jews, who are much less capable of perfect halakhic performance and are prone to forgetting, but who trust the rabbis to provide them with guidance on how to navigate the perils of forgetting. This, I contend, is not quite the case. At no place in Tannaitic literature do the rabbis suggest that there is a qualitative difference between people who are prone to forgetfulness and people who are not, and in one story we even see a prominent rabbi who presents the exact kind of forgetfulness that a rabbinic ruling sought to prevent. This story, with which I conclude this chapter, demonstrates that what was at stake for the rabbis was not their own infallibility as flesh-and-blood individuals, but the authority of “the Sages” as a religious institution and as a cultural icon.

*Did R. Ishmael Tilt the Lamp?*

We return now to the Mishnaic ruling according to which one should not read by the light of the lamp during the night of the Sabbath, since he may come to tilt the lamp and accidentally rekindle its flame. Commenting on this ruling, the Tosefta provides the following anecdote:

R. Ishmael said, “One time I was reading by the light of the lamp and I wanted to tilt it. I then said, ‘How great are the words of the Sages, who said that one must not read during the night of the Sabbath by the light of a lamp!’”<sup>94</sup>

The event tersely related in this passage is, admittedly, a nonevent: R. Ishmael confesses that he was once reading by the light of a lamp (presumably, during the night of the Sabbath) and almost tilted it to generate more light. This almost-incident led him toward a renewed appreciation of the rabbinic ruling that one should not read by the light of the lamp during the Sabbath. The first question that comes to mind is, of course, why R. Ishmael was reading by the light of the lamp during the Sabbath in the first place when the Sages—as he himself acknowledges—explicitly prohibit it (or at least discourage it). One possibility is that he forgot this rabbinic ruling until he was reminded of it when almost tilting the lamp; another

93. Schwartz, *The Ancient Jews*, 111 (emphasis original).

94. T. Shabbat 1.13 (ed. Lieberman 3).

possibility is that he remembered the ruling but decided to defy it, thinking that he would be able to read without running the risk of tilting the lamp. Both the Palestinian Talmud and the Babylonian Talmud opt for the latter interpretation: in the Talmuds' version R. Ishmael is quoted as saying (or thinking), "I will read but will not tilt."<sup>95</sup> One way or another, it is clear that in this statement R. Ishmael sets out to provide justification for a rabbinic ruling that can seem, on the face it, superfluous. For one who knows that the rabbis prohibited a perfectly licit activity just because it could lead through forgetfulness to an illicit activity, it is rather tempting to unconsciously dismiss or to consciously reject the prohibition and to trust oneself to monitor one's own behavior. R. Ishmael uses himself as an example to combat this impulse: in fact, he says, no one should ever trust oneself to monitor one's own behavior.<sup>96</sup> One must concede that the Sages know one better than one knows oneself.

R. Ishmael's position in this story is exceptional, since he is both one of "the Sages" and therefore directly implicated in the authority that made the ruling *and* is in the role of the forgetful subject for whom this ruling was intended. When R. Ishmael marvels at the greatness of "the words of the Sages" he effectively subordinates himself—the individual rabbi—to the authority of the institutional, collectivized Rabbis, to "the Sages" as an icon of knowledge and wisdom. The flesh-and-blood rabbi, he seems to say, is fallible and imperfect, but the abstract entity that the Rabbis constitute together merits obedience and awe insofar as it knows exactly how individuals are likely to fail and how to combat such failures. At the same time, it is worth noting that R. Ishmael, according to his own account, did not *actually* tilt the lamp, but only *almost* tilted it. While R. Ishmael concedes that no man, not even himself, is above the rulings of the Sages that are meant to assist fallible individuals in their observance, he also makes a point of drawing a subtle line between himself, who can stop short of transgression at the last minute, and those who actually transgress.

If the phrase "How great are the words of the Sages" in association with R. Ishmael sounds familiar, it is because this phrase also appears in the stories of the two weaving women that I discussed toward the end of the previous chapter. In these stories two women come to consult with R. Ishmael because they made a commitment to weave garments in a state of ritual purity, and while they cannot think of anything that compromised the purity of the garments, they also concede that they did not have it in their hearts to guard them. R. Ishmael asks the women questions that eventually lead them to remember an event that did, in fact, compromise the purity of the garments. He concludes by saying, "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

95. BT Shabbat 12b; PT Shabbat 1.3, 3b.

96. Indeed, in the Palestinian Talmud this anecdote is immediately followed by a quotation from M. Avot 2.4: "Do not believe in yourself until the day you die."

is impure.”<sup>97</sup> Both these stories and the story of the tilted lamp deal with memory lapses (the stories of the two women with episodic memory lapses, and the story of the lamp on the Sabbath with a prospective memory lapse), and, moreover, both deal with insufficient attentional monitoring—that is, with failure to keep conscious and vigilant watch of one’s environment and one’s memory. The concluding line “How great are the words of the Sages” in these stories epitomizes the Rabbis’ self-presentation as wise men who know not only the law, but also and perhaps especially the erratic and uncontrollable workings of the human mind.<sup>98</sup>

But the account in the Tosefta does not end there. Immediately after R. Ishmael is quoted as praising the greatness of the words of the Sages, we are offered an alternative version of what really happened that night:

R. Nathan said, “He most certainly did tilt [the lamp], and it is written on his tablet: ‘Ishmael ben Elisha tilted the lamp on the Sabbath, when the temple is rebuilt he will bring a sin offering.’”<sup>99</sup>

According to R. Nathan, R. Ishmael did not merely *want* to tilt the lamp: he actually did tilt it. R. Nathan claims to know this not because he witnessed the event or because R. Ishmael told him, but because he found that R. Ishmael himself documented his failure on his writing tablet.<sup>100</sup> Does R. Nathan imply that R. Ishmael was somewhat disingenuous in the way he was telling this story, attempting to protect his own reputation? Or does he suggest that the rabbis who transmitted the anecdote were the ones who (intentionally or unintentionally) modified the story? It is difficult to know, and yet one thing is clear: R. Nathan expresses unequivocally that there really is no separating line, not even a fine one, between a rabbi and a typical forgetful subject. If one would allow oneself to ignore the instructions of the Sages that are meant to prevent forgetfulness, one *will* forget, and one *will* transgress—regardless of who one is.<sup>101</sup>

Perhaps more intriguing is the fact that in R. Nathan’s account, the story ends with another prospective memory task: R. Ishmael commits not to forget that since

97. T. Kelim Baba Batra 1.2–3 (ed. Zuckerman 590).

98. This phrase appears only in one additional place in the Tannaitic corpus, in a statement attributed to R. Akiva in T. Yebamot 14.5 (ed. Lieberman 53).

99. In MS Erfurt (Berlin), as well as in the Babylonian Talmud: a fat sin offering.

100. Avigail Manekin-Bamberger raised the possibility that the tablet in this case is a heavenly tablet, which presents a divine accounting regarding R. Ishmael. This is an intriguing suggestion, but it does leave open the question of how R. Nathan came to know what is written on R. Ishmael’s heavenly score sheet.

101. Interestingly, in the Babylonian Talmud (Shabbat 12b) Rava maintains that “important men” have an exemption from the rule not to read by the light of the lamp on the Sabbath, presumably because they are conscientious enough not to tilt it. The anecdote about R. Ishmael is brought forth as a potential challenge to this ruling, but it is explained that R. Ishmael is exceptional, since he considered himself “as a layman” when it came to the words of Torah. According to this account, there *is* a fundamental difference between rabbis and commoners when it comes to forgetting, but a rabbi may take on (willingly?) the position of a commoner in his behavior.

he violated the Sabbath, he must bring the requisite sin offering when the temple is rebuilt. Remarkably, this is one of only a handful of references in the entire rabbinic corpus to writing for the purpose of private memory-keeping,<sup>102</sup> and it could be read as an indication that R. Ishmael decided to take his faulty memory seriously: scarred by his recent experience of forgetfulness, he decides to create a visible and concrete memory aid to ensure that he at least does not forget to atone for his transgression when it is possible to do so. Yet it would be a bit naïve to envision R. Ishmael, even as a literary character, assuming that the temple is going to be built so imminently that his to-do list on his writing tablet would soon come in handy. Rather, the act of writing on the tablet is performative in nature. It is a way of demonstrating a commitment to remember what is for all intents and purposes a purely theoretical obligation, as no actual temple exists in R. Ishmael's time, and of making this theoretical obligation as real and demanding as one's many other pressing memory tasks. R. Nathan, then, turns R. Ishmael's tilted lamp story from a commentary on all the small ways in which our memory fails us in everyday life—and on the Sages' ability to predict and preempt such failures—into a commentary on the expansive array of memory obligations that the most pious individuals work to keep in mind, which include even sacrifices and temple-related rituals that are not immediately relevant. In the next chapter, we will see how the rabbis' mapping of the sacrificial field and of the memory tasks pertinent to it gave rise to one of the most curious and perplexing concepts in rabbinic literature, the concept of *he'elem*, or, as I will call it, partial eclipse of the mind.

102. See Ya'akov Sussmann, "Oral Torah, Plain and Simple: The Power of the End of a Yod" (in Hebrew), in *Talmudic Studies*, vol. 3, *Dedicated to the Memory of Professor Ephraim E. Urbach*, ed. Yaakov Sussmann and David Rosenthal (Jerusalem: Magnes Press, 2005), 209–384.