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**It's Good to be King: The Monarch's Role in the Mishnah's Political and
Legal System**

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It's Good to be King: The Monarch's Role in the Mishnah's Political and Legal System

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The controversial status of the king in early rabbinic law emerges from various passages in the Tosefta, Midrash Halakhah, Jerusalem and Babylonian Talmud. In contrast with the Sanhedrin (the judiciary) and high priest who are portrayed as cornerstones of the Jewish political edifice, these writings equivocate about the stature of the monarchy.¹ Accordingly, they accent the alien nature of kingship, dispute the scope of royal prerogatives and emphasize the need to harness the king's powers.² Further, in a stunning passage, the Tosefta and Sifre even debate the very desirability of the royal office.³ The king's rank is openly called into question.

A survey of the Mishnah's selective treatment of this matter, however, reveals a different orientation altogether. Specifically, evidence from the Mishnah strongly suggests the following conclusions: (1) the king is projected as a leading political figure, with broad executive powers, granted singular license to function independently from the law and other institutions in order to pursue his political agenda; (2) by repeatedly drawing parallels between the king and high priest, the Mishnah intimates that they stand on par in terms of their position as national leaders; (3) these parallels hint at a dyarchy of prince and priest alongside the Sanhedrin, wherein each officer has a divergent relationship with the Sanhedrin and, more generally, the broader normative legal system; and (4) the above themes are significantly more pronounced in the Mishnah than in the Tosefta, as the latter contains mixed evidence about the standing of the king, and does not deliberately compare him in a favorable manner with the high priest.

In order to highlight these points, this paper will examine the main passages in the Mishnah and Tosefta discussing the monarchy. Rather than exclusively focusing on their content,⁴ this paper will also consider the Mishnah's rhetorical strategy, which is especially

¹ This ambiguity probably reflects mixed signals generated by the Bible's normative passages in Dt chapter 17, historical passages in 1 Sam chapters 8-12, and the uneven monarchic record presented in other portions of the Bible, especially the book of Kings. Later medieval rabbinic commentators continue to debate the king's status. See especially, Maimonides' Laws of Kings 1.1-3 and Abravanel Dt 17.14.

² See, generally, *tSanhedrin* chapter 4, Sifre and Midrash Tannaim on Dt 17, *ySanhedrin* chapter 2 and *bSanhedrin* chapter 2.

³ See Sifre *Shoftim* (156) and *tSan* 4: 5.

⁴ The content of these passages have been treated extensively elsewhere, although some of their nuances require elaboration. Further, these analyses have not read the Mishnah and Tosefta synoptically, nor paid sufficient attention to the distinctive contributions of the Mishnah. Some of the more important discussions can be found in

manifest when contrasted with the presentation in the Tosefta.⁵ An analysis of the formulations of the relevant mishnaic passages proves particularly enlightening, as these are largely uncontested, anonymous teachings that have been crafted by a strong editorial hand, and reflect a remarkably consistent tone and style.⁶

the following scholarly literature: Stuart Cohen, *The Three Crowns. Structures of Communal Politics in Early Rabbinic Jewry* (Cambridge, 1990); David Goodblatt, *The Monarchic Principle: Studies in Jewish Self-Government in Antiquity* (Tubingen: Mohr, 1994); Martin Sicker, *The Judaic State. A Study in Rabbinic Political Theory* (Praeger: New York, 1988); M. Walzer, N. Zohar and M. Lorberbaum, eds., *The Jewish Political Tradition*, Vol. 1 (Yale University Press, 2000); D. Elazar, ed., *Kinship and Consent. The Jewish Political Tradition and its Contemporary Uses* (University Press of America: Lanham, 1983); Jacob Neusner, *Rabbinic Political Theory* (University of Chicago Press: Chicago, 1991); Gerald Blidstein, "The Monarchic Imperative in Rabbinic Perspective," *AJS Review* 7/8 (1983): 15-39; Steven Fraade, "Priests, Kings and Patriarchs: Yerushalmi Sanhedrin and its Exegetical and Cultural Settings" in *The Talmud Yerushalmi and Graeco-Roman Culture III*, ed. P. Schafer (Tubingen: Mohr Siebeck, 2002): 315-333; Ibid, "The Torah of the King (Dt 17:14-20) in the Temple Scroll and Early Rabbinic Law" in *The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity*, ed. J. Davila (Leiden: Brill, 2003):25-60; [Yair Lorberbaum (forthcoming book)].

⁵ In my treatment I have attempted to steer a middle course between two extremes that often characterize synoptic studies of the Mishnah and Tosefta. At one pole, broad topical studies surveying a wide range of material have been undertaken, attempting to discern the distinctive viewpoint of each of these works. Thus, scholars have examined the Mishnah and Tosefta's respective approaches to tradition, sexuality, gentiles, even to Judaism at large. A classic example of this kind of scholarship is Jacob Neusner's *Judaism: The Evidence of the Mishnah* (Chicago: University of Chicago Press (1981). The danger of this approach is that, in its great ambition, it tends to generalize by assuming a highly debatable uniformity to each of these texts, and to overlook the precise structure and semantic of individual passages. See Peter Schafer: "Research into Rabbinic Literature; an Attempt to Define the 'Status Quaestionis.'" *Journal of Jewish Studies* 37, 2 (1986): 139-152; Chaim Milikowsky, "The 'Status Quaestionis' of Research in Rabbinic Literature." *Journal of Jewish Studies* 39, 2 (1988): 201-211. The opposite pole, skeptical about the ability to take a panoramic view, utilizes a zoom lense to analyze critically specific passages. The best example of careful analyses of discrete passages is Saul Lieberman's *Tosefta kifshutah* (New York, Jewish Theological Seminary of America). The limitation of this methodology is that it refrains from tackling the broader thematic questions that are the staple of the first approach. For some related observations see Shaye J. D. Cohen's "Jacob Neusner, Mishnah, and Counter-Rabbinics." *Conservative Judaism* 37, 1 (1983): 48-63. The most successful studies merge these methods, critically examining specific synoptic passages, and at the same time culling information relating to larger themes, thereby refining our knowledge of early rabbinic thought and advancing our understanding of the interrelationship of these texts. This paper aims to employ this latter approach to recover some of the rich political discourse relating to the status of the monarchy in the Mishnah and Tosefta. See also my methodological observations in the next footnote.

⁶ Before beginning this inquiry, a methodological clarification is in order. Whether the Mishnah can be evaluated as a whole to extract a distinctive attitude on a given halakhic issue is certainly debatable. Given that it is the most carefully redacted early rabbinic text, the possibility of such an inquiry in the Mishnah is more palatable than in other tannaitic works. However, I have done my best to avoid relying on this generalization, and have employed certain additional methodological safeguards in proceeding with this study. First, this paper begins with close readings of specific passages in the Mishnah, and only then proceeds to make broader generalizations about the Mishnah's orientation. Second, as the most consequential passages regarding the monarchy have been carefully crafted, their rhetoric is very suggestive about the orientation of the editor of the Mishnah, as demonstrated below. Third, the various contrasts with the analogous material in the Tosefta further reinforce these points. Similarly, the remarkable consistency of all such mishnaic passages, in contrast with the equivocal treatment in other rabbinic texts gives fuller weight to the thesis developed below. Finally, I do not negate the possibility that certain similar themes can be detected in passages recorded in other rabbinic texts, and at times I refer to such parallels myself. On these methodological issues, see the works cited in the previous footnote, as well as Avraham Walfish, *Literary Method of Redaction in Mishnah based on Tractate Rosh ha-Shanah* (Hebrew) (Ph.D. diss., Hebrew

The conclusion will explore several of the political, juridical and historical implications of this study of the mishnaic approach to the monarchy. It will also briefly relate to the unique role of the Sanhedrin as the leading authority in the mishnaic administrative system, and the distinctive nature of the doctrines of separation of power, sovereign immunity and the rule of law that emerge from this scheme.

Mishnah Sanhedrin 2:1-2⁷

The most elaborate treatment of the monarchy in the Mishnah is recorded in *mSanhedrin* chapter 2.⁸ An initial comparison of this corpus with analogous material in the *Tosefta* reveals several striking discrepancies. Unlike *tSan* 4.5, which openly debates whether there is a normative obligation to appoint a king altogether, the Mishnah treats the position of the king as axiomatic. Similarly, whereas *tSanhedrin* disputes whether the king is allowed the entitlements described in 1 Sam 8, *mSan* 2.4 dramatically affirms the absolute powers of the king, including his right of eminent domain:

He [the king] may force a way [through private property] and none may oppose him. There is no limitation to the king's way. The plunder taken by the people [in war] must be given to him, and he receives the first choice [when it is divided].⁹

University, 2001; Martin Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BC. E.-400 C.E.* (New York: Oxford University Press, 2000); Shamma Friedman, *Tosefta Atikita: Masekhet Pesah Rishon* (Hebrew) (Ramat Gan: Bar Ilan University, 2002); H. Fox and T. Meacham, eds., *Introducing Tosefta: Textual, Intratextual, and Intertextual Studies*. (New Jersey: KTAV, 1999); Alberdina Houtman, *Mishnah and Tosefta: a Synoptic Comparison of the Tractates Berakhot and Shebiit* (Tubingen: J.C.B. Mohr, 1996); Judith Hauptman, *Rereading the Mishnah: A New Approach to Ancient Jewish Texts* (Tubingen: Mohr Siebeck, 2005).

⁷ All citations below are based on the printed editions of the Mishnah, and on Lieberman's and Zuckerman's editions of the *Tosefta*. I have reviewed most of the manuscripts variants, and have not found them to be of consequence to my overall thesis.

⁸ Ephraim Urbach and J.N. Epstein date this material early on questionable grounds. See Urbach, *The Sages: Their Concepts and Beliefs*, trans. Israel Abrahams (Jerusalem: Magnes Press, 1979): 441; J. N. Epstein, *Introduction to Tannaitic Literature* (Hebrew) (Jerusalem/Tel Aviv: Magnes/Dvir, 1957): 55, 417-419. They have also been influenced by the Bavli's reconstruction of the historical and rabbinic origins of the Mishnah's pronouncement in *mSan* 2.2.

For an analysis of *mSanhedrin* chapter 2 and the status of the king in Jewish works of late antiquity in general, see Fraade, "The Torah of the King," 25-60.

⁹ See also *mBB* 6.7. Urbach already notes the sweeping language of the Mishnah in this context in *The World of the Sages: Collected Studies* (Hebrew) (Jerusalem: Hebrew University, 1988): 441.

The careful editorial strategy of chapter 2 of *mSanhedrin* is also evinced in its opening passages (mSan 2.1-2):

The high priest may judge and be judged, testify and be testified against, perform *halizah*, and have *halizah* performed to his wife...The king may neither judge nor be judged, testify nor be testified against, perform *halizah* nor have *halizah* performed to his wife...

Before discussing various aspects of the monarchy, chapter 2 commences with a suggestive pair of symmetric passages that capture the stark contrast between the high priest and the king by drawing attention to the high priest's participation in the judicial process, in contrast with the king. These opening paragraphs take on additional significance in light of chapter 2's placement within tractate Sanhedrin. Whereas the majority of *mSanhedrin* discusses the judiciary—the primary political institution in the rabbinic system that is afforded wide jurisdiction—this tractate also considers the other two prominent leadership positions: the high priest and king.¹⁰ Given the leading role assigned to the Sanhedrin, the Mishnah frames its discussion of these two offices by considering their opposite relationships with the judiciary.¹¹ The larger role of the judiciary, relative to these two other offices, will be further discussed in the conclusion below.

The Mishnah proceeds to significantly amplify the distinction between these two officials by stating that the high priest is governed by standard halakhah such as levirate marriages and mourning rituals, which do not pertain to the king.¹² In taking this step, the Mishnah suggests that the king's independence from the judiciary is symptomatic of his broader independence from the standard law (conversely, the Mishnah establishes the judiciary's independence from the king). Importantly, even though the Mishnah presumably recognizes limitations on the king's independence, rhetorically it chooses to focus on his exemptions, in

¹⁰ The particularly broad jurisdiction of the Sanhedrin is already apparent in mSan 1.5 that assigns the Sanhedrin legislative, judicial and religious responsibilities. See also tSan 3. 4. MSan 11.2 accents the unique role of the Sanhedrin in disseminating Torah to the Jewish people. See the conclusion below.

¹¹ On this Mishnah, and its later interpretation by the Talmud, Maimonides and other medieval commentators, see Samuel Atlas, *Netivim ba-Mishpat ha-Ivri* (New York: American Academy for Jewish Studies, 1938).

¹² Although the Mishnah continues to describe the idiosyncratic manner in which these laws apply to the high priest, it importantly emphasizes that they do apply to him on some level.

contrast with the high priest.¹³

Later rabbinic writings debate how to assess the singular autonomy granted to the king in this Mishnah. The Bavli clearly marks it as negative, describing the king's independence as a reluctant concession to the insolence of the kings of Israel, and therefore concluding that kings from the Davidic dynasty retain their privilege of participating in the judiciary.¹⁴ Aside from the obvious strain involved in qualifying the Mishnah's principle, the Bavli's reading undermines the stark contrast between the king and high priest that the Mishnah seems to convey.¹⁵ Moreover, although the Mishnah primarily employs the generic designation "king," it draws support for several of its rulings specifically from the life of King David (see mSan 2.2-4). Therefore, the Mishnah's "king" at least also refers to members of the Davidic dynasty.

An alternative reading of the pronouncement of the Mishnah is found in a *Deuteronomy Rabbah* passage, which has strong echoes in *ySanhedrin*:¹⁶

Our Rabbis have taught us: Why may not a king be judged? R. Jeremiah said: Because of King David it is written, 'Let my judgment come forth from Thy presence (Ps 17.2).' Hence no human being may judge the king, only God...

According to the Midrash, the king is granted sovereign immunity because he is only subject to God's jurisdiction. Clearly, this is closer to the simple sense of the Mishnah, as well.¹⁷ The principle here does not necessarily derive from the king's superiority, but rather the

¹³ The opinion of Rabbi Judah (b. Ilai) recorded in the Mishnah partially disputes the primary position, and illustrates that the Mishnah here is not monologic. See Fraade, "The Torah of the King." Yet, overall the anonymous teachings of the Mishnah in this context significantly advance a coherent and uniform approach.

¹⁴ J. N. Epstein sees mSan 2.4 as an echo of this position. This is somewhat dubious, but undoubtedly this source is problematic. Fraade, "The Torah of the King," fn. 51, suggests that bSan 19a-b would read mSan 2.4 as referring to kings from the Davidic dynasty. Fraade himself proposes that there maybe a distinction between a king joining the judiciary and presiding on his own. In this vein, it is worth noting that mSan 2.4 seems to slightly amend tSan 4.7 (I assume that the Mishnah here is later than the Tosefta, see fn. 26 below). The latter states that the king brings his Torah Scroll with him to "bet din" (presumably a judiciary court), which the parallel Mishnah emends to read as "yoshev be-din" (possibly to be interpreted as sitting in royal judgment).

¹⁵ The medieval commentators add other interesting qualifications to the Mishnah's pronouncement. See especially *Tosafot* and *Hidushe Rabbeinu Yonah* on bSan 18b, and *Meiri Sanhedrin* p. 65.

¹⁶ See *Deuteronomy Rabbah* (*Shoftim* 8) and *ySan 2.3*. Bernard Septimus brought the midrash, and the source in the next note to my attention. He also made me aware of the drastic change in tone in the continuation of the midrash. In terms of the Yerushalmi's position, another *ySanhedrin* chapter 2 passage (with a parallel in *yHorayot*) seems to contradict it, and state that the king is judged by three judges (who can administer lashes to him as a punishment).

¹⁷ See the commentary of *Rabbeinu Yonatan mi-Lunel* on the Mishnah. See also *Meiri Horayot*, p. 266, who proves that the continuation of the Mishnah is stating a Torah regulation (in prohibiting the king from testifying in court).

king's distinctive role requires a greater amount of independence.¹⁸ In contrast, the high priest not only does not need this degree of freedom; but, on the contrary, his role as a spiritual leader demands his full compliance with standard halakhic norms. Accordingly, his responsibilities are closely linked with those of the Sanhedrin, accentuated by the very rhetoric of the Mishnah.¹⁹ Indeed, the Sifre, cited in *Hidushe ha-Ran* specifically commenting on this Mishnah, confirms this nexus by stating that ideally the Sanhedrin should be composed of priests, “it is preferable that the court include priests and Levites among its members.”²⁰

The importance of this opening Mishnah can be better appreciated by contrasting it with the corresponding Tosefta. As opposed to the Mishnah, the Tosefta does not develop the same deliberate comparison between the king and the high priest. On the contrary, in assessing the laws that it records relating to these two offices the opposite impression emerges, as both the king and high priest are placed within the constraints of the Halakhah as "ordinary people," despite several exemptions that apply to each: “if he (the king or high priest) violates a positive or negative commandment or any other commandment he is treated like an ordinary person in all respects.”²¹ In fact, *tSanhedrin* even extends the regular legal status of the high priest to homicide laws, notwithstanding his unique role in this area.²² Moreover, the Tosefta likewise departs from the Mishnah in apparently ruling that both the king and the high priest can participate in, and are subject to the jurisdiction of, the judiciary. To wit, the Tosefta never states

This insight would be even more palatable if the opening statement of the Mishnah is also stating a Torah regulation.

¹⁸ Fraade, "The Torah of the King," p. 41, states that the king is superior according to the plain sense of the Mishnah, as his honor is more safeguarded. This is partially corroborated by tSan 4.1's description of the high priest's legal status as akin to that of an "ordinary person." If one were to transpose this logic to the Mishnah then what would emerge is that the high priest is being treated as an "ordinary person" while the king is being treated as an extraordinary person. However, I am impressed by the symmetry of the Mishnah's parataxis which implies an equality in standing. Also, the Mishnah seems to deliberately discard the Tosefta's analogy of either personage to an "ordinary person." For the Mishnah, both officers seem to be extraordinary, albeit in opposite ways.

¹⁹ This nexus is already apparent in *mSanhedrin* chapter 1, and is enhanced by their common responsibility to serve as teachers (see, e.g., the biblical passage Mal 2.7 and the rabbinic passage mSan 11.2). Later, Maimonides continues to amplify this theme. See, e.g., *Hilkhhot Sanhedrin* 4.15 and *Hilkhhot Shemitah ve-Yovel* 13.12-13.

²⁰ The actual word used in this passage for this preference is *mitsvah*.

The contrasting relationship of the king and the high priest to the judiciary is especially developed in the writings of Rabbi Nissim—See *Derashot HaRan*:11 (who is not the same figure as the author of the misattributed *Hidushe ha-Ran Al Sanhedrin*). For an analysis of his position, see Menachem Lorberbaum, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (California: Stanford University Press, 2001).

²¹ Exceptions abound in all directions. See, e.g., tSan 4.1-3, 5, 7-8.

²² See Num 35.28 and mMak 2.6-7.

that the king cannot be summoned to court.²³ Further, the fact that an earlier Tosefta (tSan 2.15) only precludes the king from joining the Sanhedrin implies that he can function as a lower level judge.²⁴

By juxtaposing the largely parallel laws of the king and high priest, the Tosefta essentially couples them in the same normative category. This is further reinforced by the Tosefta's commanding respect for both the high priest (in tSan 4.1) and the king (in tSan 4.2), in contrast with the Mishnah which privileges such respect only for the king. Finally, tSan 4.10 seems to stipulate a novel rule that a king's wife must be from a priestly family, although the precise meaning of this passage remains uncertain.²⁵

Given the significant overlap between much of the substantive material in these Mishnah and Tosefta passages, and the fact that the Mishnah presents a more carefully crafted rendition of these laws, a plausible hypothesis is that the Mishnah deliberately revised the earlier teachings of the Tosefta.²⁶ The following is a possible reconstruction of the Mishnah's redaction: the Mishnah expands (and essentially changes) the principle in tSan 2.15—prohibiting the king from joining

²³ Given the significant overlap in subject matter discussed in the Mishnah and Tosefta in this context, yet considering their difference in respective orientations, it is difficult to suggest that the Tosefta here is merely adding glosses to the Mishnah. If anything, the Mishnah here appears to be later than the Tosefta parallels (see fn.26 below). For a discussion of similar methodological considerations in comparing specific Mishnah and Tosefta passages, see the sources cited in fn. 6 above. See also the important methodological observation that I make in fn. 52 below.

²⁴ BSan 18b seems to harmonize this pronouncement with the Mishnah (see the commentaries *ad loc.*) But this is not the simple sense of the Tosefta, which seems to bring the monarchy and judiciary closer together. See also tSan 4.10 which cites a prohibition on appointing kings in the diaspora, a law that the Bavli associates with the Sanhedrin (see bSan 14a).

It should be noted that tSan 2.15 does recognize a difference between the king and high priest in their capacity to join the Sanhedrin. In addition, tSan 4.6 seems to describe royal punishments that are distinct from those meted out by the judiciary, although it debates whether the legal consequences differ in terms of inheritance. This last source raises an important issue that I do not address fully in this paper—the distinction between the king leading or participating in the general legal system, as opposed to the king leading his own royal judiciary (similar to the parallel legal regimes that were operative in medieval England, see John Baker, *An Introduction to British Legal History* (London, Boston: Butterworths, 1990). For the purposes of my analysis, either form of judicial activity by the king would be sufficient to assign to him a role of judicial responsibility.

²⁵ But see tSan 4.2 which seems to record a different ruling.

²⁶ Recent scholarship has challenged the previous orthodoxy that the Tosefta always constitutes a later gloss on the Mishnah, and has demonstrated that often the reverse is the case. Obviously any sweeping presumption is problematic, and each discrete synoptic parallel has to be evaluated separately. My hypothetical reconstruction of the redaction history of these texts is the most plausible one in my estimation, but it is not crucial for my broader thesis. See fn. 52 below. For a very helpful summary of these issues, see the introduction of Shamma Friedman, *Tosefta Atikta*. Contrast this with the classical position of Abraham Goldberg in *The Literature of the Sages*, ed. S. Safrai (Assen/Maastricht: Van Gorcum and Philadelphia: Fortress Press, 1987): 283-302.

the Sanhedrin—to preclude the king from participating in the judiciary altogether.²⁷ In a similar vein, the Mishnah perhaps deliberately omits, or even rejects, the ruling found in tSan 3.2 that assigns to the Sanhedrin the responsibility for appointing a king. In contrast, the Mishnah preserves, and underscores, the link between the high priest and the Sanhedrin—an association already apparent in mSan 1.5. In order to preserve the dichotomy between these offices, the Mishnah relocates the laws of accidental murder that presumably apply to the both leaders, and the king's role in increasing the size of the Temple Courtyard—which obscures his role with that of the high priest.²⁸ By carefully constructing a symmetric contrast, the Mishnah summarily captures the fact that the high priest is governed by the judiciary and bound by standard law, while the king is not.

In the continuation of chapter 2, the Mishnah focuses exclusively on the monarchy, in contrast with the Tosefta, and continues to project the king in a positive light. The passages in mSan 2.4-5 delineate the king's special prerogatives and the unique restrictions that circumscribe his actions. By presenting these prohibitions in a positive context, *mSanhedrin* defangs these laws, and their deep distrust of royal discretion.²⁹ The concluding Mishnah discusses the various expressions of the heightened respect commanded by the king. Interestingly, this list is formed by concatenating two distinct sources from the Tosefta—one pertaining to the high priest (tSan 4.1), the other pertaining to the king (tSan 4.2), and adding a new biblical source, “Thou shall surely

²⁷ Perhaps expanding on the rationale of the Tosefta rule as explained in the Yerushalmi.

²⁸ The former is relocated to mMak 2.7 and carefully integrated into the material there. The latter is relocated to mShev 2.2, which interestingly presents the king as leading this procession. In contrast, mSan 1.5 describes the Sanhedrin as heading this procession and does not mention the king. The absence of the king from mSan 1.5 may be deliberate, as it further avoids associating the roles of the king and the Sanhedrin.

mSan 2.4 is the only example where *mSanhedrin* presents the king and the Sanhedrin as having overlapping jurisdictions (in voluntarily waging war). Contrast this with the scheme presented in the Qumran Temple Scroll, discussed below. Importantly, even as the Mishnah admits that the king must defer to the Sanhedrin, it ascribes this prerogative as belonging to the monarchy, with the judiciary only having a power of ratification (in mSan 1.5 and 2.4). Further, mSan 2.4 continues to impressively broadcast the overall autonomy of the monarch. Once again the rhetoric of the Mishnah is particularly noteworthy. Finally, it is interesting that the Mishnah does not mention the Priest or the *Urim* and *Thumim* as a prerequisite for voluntarily waging war, even though B Sanhedrin (16a-16b) projects them as such. Perhaps, even if the Mishnah concurs with this point substantively (which is questionable given mSan 2.4 and mYom 7.5, see below), it elects to mute this point, thereby maintaining the dichotomy between the high priest and the king (even as it allows for a slight overlap between the Sanhedrin and the king).

²⁹ Importantly, it also substantively modifies these laws, as demonstrated by Fraade, "The Torah of the King," 42-45. Further, it reconfigures the order in which they are presented in the biblical text, further amplifying the theme of respecting the king. See *Ibid.*

set over thee a king (Dt 17.15)'—that his awe may be over thee.'" For the Mishnah, this respect is only mandated for the king, and likely bespeaks his singular stature.

In sum, two main features distinguish the redacted chapter 2 of *mSanhedrin* from the presumably earlier *tSanhedrin* passages. First, the Mishnah eliminates negative and restrictive positions recorded in the Tosefta that undermine royal authority. Second, the Mishnah employs a parataxis absent from the Tosefta, wherein the king emerges as equal to, but opposite in nature from, the high priest. These two points might be connected, as the Mishnah's positing absolute royal power implies a high degree of independence from standard normative law.³⁰ Importantly, the Mishnah conveys the king's independence as a positive defining feature that accords him a distinctive role parallel in standing to the high priest.³¹

Mishnah Sota 7:7-8.

Rabbinic tradition designates the king as the leader who publicly reads the Torah at the post-Sabbatical *Hakhel* ceremony (in contrast with Josephus and others), although, the precise nature of this rabbinic tradition has been misunderstood by modern scholarship (see below).³² Beyond the general significance of assigning the king this significant responsibility, the particular presentation of this rite in *mSotah* chapter 7 further amplifies the king's vital religious role. In listing recitations that must be recited in Hebrew, *mSot* 7.1 counts *Hakhel* alongside the "blessing of the high priest." Upon closer examination, the deliberateness of this juxtaposition becomes eminently clear. In its substantive teaching and literary construction, the Mishnah draws a strong parallel between the ritual roles assigned to the king and high priest.³³

³⁰Tsan 4.5 may have an opposite nexus.

³¹Thus, the leadership, as presented in the Mishnah, consists of a leading institution, with two subordinate offices: the primary institution is the judiciary, led by the Sanhedrin, with the high priest functioning along their side, and the king operating in a parallel office that is afforded singular independence to pursue complementary aims. See the conclusion below.

³² See *Antiquities* 4.209 [LCL 4:574-77] and Philo, *Hypothetica* (in Eusebius, *Praep. Ev.* 7.13). The simple sense of Dt 31.9-13 supports their reading. The Mishnah's identification maybe partially based on the king's duty to transcribe the Torah (which is never mentioned in Josephus, and may be the priest's duty according to the Temple Scroll). See Fraade, "The Torah of the King," 45. Also, Josephus' position may be based on the broader ambivalence reflected in his comments about the monarchy, in contrast with the priesthood. See, e.g., *Antiquities* 4.223 and *Against Apion II* 16.164-66.

³³ Certain aspects of *mSota* chapter 7 have been studied by David Henshke, "How 'The King's Portion'? On the Methods of Editing the Mishnah," (Hebrew) *Sidra* (2000): 21-32.

mSot 7.7 defines the "blessing of the high priest" as his public Torah reading on *Yom Kippur*. The Mishnah vividly depicts the ceremonial procession at this occasion in which a line of officials transport the Torah scroll to the high priest, who then reads it while standing:

What is the procedure with the benediction of the high priest? The synagogue attendant takes a Torah scroll and hands it to the synagogue president. The synagogue president hands it to the deputy and he hands it to the high priest. The high priest stands, receives [the scroll], and reads from it while standing...and he recites eight benedictions in connection therewith...

The very next passage (mSot 7.8) portrays *Hakhel*, intentionally invoking the same imagery:

What is the procedure with the portion read by the king?...The synagogue attendant takes a Torah scroll and hands it to the synagogue president. The synagogue president hands it to the deputy and he hands it to the high priest and he hands it to the king. The king stands, receives [the scroll], and reads from it while sitting...The same benedictions that the high priest pronounces, the king also pronounces...

Analogous to the high priest, the king also conducts a public reading of the Torah, accompanied by the same impressive procession that assisted the high priest. Further, the concluding line confirms the deliberate comparison between these two readings, "The king pronounces the same benedictions as the high priest...."³⁴ In short, mSot 7.7 borrows the king's role of reading the Torah and assigns a parallel duty to the high priest; mSot 7.8 conversely, assigns the priestly role of blessing the people to the king.³⁵

What emerges from *mSotah*, then, are two distinct grand ceremonial public Torah readings, which is a more complex scheme than the one which is frequently ascribed to the rabbinic tradition by scholarship.³⁶ For even as the rabbinic tradition differs from other Second

³⁴ The simple implication of the Mishnah is that the king even says the seventh blessing—"On behalf of the priests."

³⁵ The primary role of blessing the people belongs to the priests. See Num 6:22-27. Consistently, mSot 7.7 labels this ritual as the "blessing of the high priest", rather than the reading of the high priest. Nevertheless, the king also has the role of blessing the people. See 1 Kings 8:14.

³⁶ See David Goodblatt, "Agrippa I and Palestinian Judaism in the First Century," *Jewish History* 2, 1 (1987): 7-32; Fraade, "The Torah of the King"; Joseph Tabory, *Moade Yisrael bi-Tekufat ha-Mishnah vaha-Talmud* (Jerusalem: Magnes Press, 1995); Daniel Silver, "The Shrine and the Scroll," *Journal of Reform Judaism* 31, 2 (1984): 31-42.

Temple traditions in assigning the post-sabbatical *Hakhel* reading to the king, the Mishnah does recognize the High Priest's central role in a public reading and benediction, albeit at a distinct juncture—the annual *Yom Kippur* Temple service. This dual assignment itself coheres with the Mishnah's advancement of a dyarchic model of leadership responsibilities shared between the king and high priest.

By comparing the ritual recitation of the king to the high priest's role on *Yom Kippur*, the Mishnah elevates significantly the king's role.³⁷ Further, in a certain sense the Mishnah goes beyond this by depicting the king as occupying the high priest's space—the Temple Mount—and especially by including the high priest in the hierarchy of officials that transport the Torah scroll to the king, implying that in some sense he is subordinate to the king. In a similar vein, while the high priest is enjoined to read while standing the king is afforded the privilege of reading while sitting.³⁸

As opposed to the Mishnah, *tSotah* (chapter 7) does not draw a parallel between the sacred readings of the king and the high priest.³⁹ In any event, the Tosefta certainly does not accent a dual distribution of leadership responsibilities to the king and high priest. In a similar vein, the fact that *tSot* 7.13-14 turns to Ezra, a priest, as a paradigm for the king's *Hakhel* reading militates against the separation of roles implicit in the Mishnah, as Ezra now emerges as a kind of priestly monarch. *TSanhedrin* likewise hails Ezra the Priest as a model monarchic figure.⁴⁰

Further, the Tosefta includes two statements that are absent from the Mishnah, which, at least in effect, reduce the ritual sanctity of the *Hakhel* reading, and the stature of the king implied in entrusting him with this responsibility. First, the Tosefta records the position of

³⁷ The particular comparison here is especially noteworthy, as the king's role at *Hakhel* is equated with the high priest's function on *Yom Kippur*, presumably the religious pinnacle for the Jewish people. At the same time, the importance of assigning the king a leading role in the Temple in conjunction with the unique Temple celebrations of *Sukkot* is also significant. On the centrality of the Temple during *Sukkot* see Jeffrey Rubenstein, *The History of Sukkot in the Second Temple and Rabbinic Periods* (Atlanta, GA: Scholars Press, 1995).

³⁸ A parallel ruling surfaces in *tSan* 4.4 which privileges kings of Davidic descent with the exclusive right to sit in the Temple sanctuary.

³⁹ In fact, it is unclear whether the Tosefta even assigns a distinct reading to the high priest altogether. But see *tYom* 4.18. This of course depends on whether the Tosefta is a later gloss to the Mishnah here, or an earlier or distinct tradition. See fn. 26 above. The fact that the Tosefta cites the model of Ezra does suggest that it is not operating with the sharp dichotomy of the Mishnah, but this is not foolproof evidence.

⁴⁰ See *tSan* 4.7. Other scholars alternatively depict Nehemiah as a monarchic figure, alongside Ezra the Priest. See Goodblatt, *The Monarchic Principle*, 59.

Rabbi Judah that the king's *Hakhel* reading would not take place in the Temple Court, but rather outside on the Temple Mount. The implication may even be that *Hakhel* is not a sufficiently sacred activity to be allowed to transpire in the priestly sanctum.⁴¹ Second, the testimony of Rabbi Tarfon (tSot 7.16) suggests that even priests with blemishes were able to participate in the priestly ensemble that accompanied the *Hakhel* assembly, thereby implying that the *Hakhel* ceremony did not constitute a sacred ritual which would require the higher standards of qualification for Temple worship.⁴²

The most striking discrepancy between *mSotah* and *tSotah* is their differing reactions to the historical *Hakhel* reading led by Agrippa, a king of inferior lineage.⁴³ The Mishnah first records his supererogatory act of reading while standing, which generated the praise of the sages, “King Agrippa stood and received it and read standing, for which the sages praised him....” The mutually respectful interaction between the king—according respect for the Torah—and the sages—recognizing his upstanding behavior—informs the rest of the Mishnah's account, as well:

When he reached, thou mayest not put a foreigner over thee, his eyes ran with tears they, they said to him, ‘Fear not, Agrippa, thou art our brother, thou are our brother.’

The strong approbation for King Agrippa that is voiced in the Mishnah sharply contrasts with the scathing critique of this episode cited in the Tosefta. TSot 7.16 does not record King Agrippa's respectful standing position, and harshly condemns the generation that meekly reassured King Agrippa, “Israel made themselves liable to extermination, because they flattered Agrippa.” The Tosefta unabashedly implies that the rule of King Agrippa was illegitimate and that the people of Israel accordingly had the obligation to denounce him.

These polar reactions to King Agrippa's *Hakhel* reading are consistent with the Mishnah and Tosefta's different orientations to the monarchy. The Tosefta openly presents positive and negative aspects of monarchy. In *tSanhedrin* it records opinions that undermine this institution

⁴¹ This should be contrasted with the Mishnah's emphasis of the king's right to even sit (presumably) in the Temple mount (which admittedly is echoed in another Tosefta passage, as stated in fn. 38 above).

⁴² This source also underscores the Tosefta's combination of monarchic and priestly rituals.

⁴³ On the identity of Agrippa in the Mishnah, see Dalya Trifon, “Qeta mimishnah ke'edut lema'amado shel hamelekh Agrippas hasheni.” *Cathedra* 53 (1989): 27-48; Daniel R. Schwartz, *Agrippa I. The Last King of Judea*. Jerusalem (1987); Goodblatt, “Agrippa I.”

and in *tSotah* it does not hesitate to criticize a problematic regime. The Mishnah, on the other hand, maintains its constant positive slant toward the monarchy. Instead of vilifying King Agrippa, the Mishnah depicts him heroically, and even adduces corroboratory evidence from the King Agrippa episode to further accent the king's positive leadership role in the *Hakhel* ceremony.⁴⁴ King Agrippa is likewise presented in a positive religious leadership role in *mBik* 3.4 where he is described or imagined as leading the ceremony of the first fruits, and humbling himself by transporting the fruit basket with his own hands⁴⁵ In fact, this may be part of a larger pattern of a pro-monarchic historical revision in the Mishnah, as discussed in the conclusion below.

In sum, *mSotah* provides another compelling portrait, employing a deliberate rhetorical construct, of dual distribution of leadership responsibilities to both the king and high priest. *TSotah*, in contrast, does not appear to utilize this parallel construct. Further, by conceiving of Ezra the Priest as a model monarchic figure, the Tosefta does not espouse a division of leadership responsibilities altogether. Finally, the distinctive orientation of the Mishnah can be detected in its discussion of the *Hakhel* laws and the historical memory of Agrippa's reading, as well. As opposed to the asymmetrical material recorded in the Tosefta, the Mishnah presents a uniformly positive portrait.

Mishnah Horayot (Chapter 2, 3)

MHorayot offers a highly schematic presentation of the laws of the special sin offerings that are obligatory for various institutional leaders under certain circumstances (based on Lev chapter 4 and Num chapter 15).⁴⁶ Chapter 1 discusses the laws concerning the special sin offerings brought by the Sanhedrin after declaring an erroneous ruling. Chapter 2, in turn, discusses the regulations of the sacrifices brought by the high priest after he errs in a ruling,

⁴⁴ Other scholars have drawn other (sometimes speculative) inferences from the varying reactions to Agrippa's *Hakhel* reading recorded in the Mishnah and Tosefta Sota. See the discussion in Trifon's "Qeta," p. 35. While the above suggestion is also only conjecture, it has the advantage of resonating with the broader orientation of the Mishnah to the monarchy (in contrast with the Tosefta), and being consistent with how the Mishnah treats other historical kings elsewhere. See the conclusion below.

⁴⁵ See *tBik* 2.10 for a slightly fuller account.

⁴⁶ On this scheme, see Avraham Walfish, "Individual and Communal Sin—Tractate Horayot Chapter One," (Hebrew) *Netuim* 6 (2000): 9-36; Martin Jaffee, *Tractate Horayot* (Brown Judaic Studies: Atlanta, Georgia Scholars Press, 1987): Introduction; Aharon Shemesh, *Onashim ve-Hataim* (Jerusalem: Magnes Press, 2003).

which are in many ways comparable to those of the Sanhedrin.⁴⁷ The latter half of chapter 2 introduces the king as the third official with special sacrificial guidelines (although his obligation is apparently not triggered by a mistaken ruling but rather a wrong action). In doing so, the Mishnah includes the king among the nation's leading dignitaries, even as it treats him separately in certain respects.⁴⁸ While the overt purpose of these passages is to analyze subtleties in sacrificial laws, their broader relevance concerns the different foci of power within the rabbinic framework. In addition, *mHorayot* conveys that all three institutions of leadership are fallible, and responsible to repair their own failures. This latter point includes the monarch too, notwithstanding the principle of sovereign immunity that mHor 2.6 explicitly recognizes.⁴⁹

The king's standing is even more prominent in the final chapter of *mHorayot*. In its opening passages, chapter 3 (mHor 3.1-2) again presents a deliberate comparison between the laws applicable to the high priest and the king:

An anointed high priest who committed a sin...and likewise a ruler who committed a sin...an anointed high priest who vacated his appointment, who then committed a sin, and likewise a ruler whose vacated his position, who then committed a sin. ..

These passages are particularly noteworthy since the Mishnah elects to pursue this comparison, notwithstanding the fact that the high priest actually bears greater similarity to the Sanhedrin in the realm of sacrificial laws, as evinced in chapter 2. Moreover, unlike the chapter 2 passages that are essentially a *midrash* on the various sacrificial schemes appearing in Lev chapter 4, the comparison presented in chapter 3 between the king and high priest is an original

⁴⁷ See, mHor 2.1-4 (especially the suggestive language in 2:1).

⁴⁸ The differences including the nature of the error (a ruling or an action), the nature of the sacrifices required, and the rules which govern the obligation to bring a sacrifice.

It should be noted that the exact standing of the king according to the passages in chapter 2 is unclear. On the one hand, the king seems to be at the bottom of the list of these three leadership offices. See M Horayot (2:6-7). Nevertheless, his very inclusion among the list of leading dignitaries is noteworthy. On the other hand, mHor 2.7 cites Rabbi Eliezer as stating that only the king brings a he-goat (although this may be a function of his wealth). Moreover, mHor 2.5 subtly debates the exact relationship of the king to the high priest and Sanhedrin, as Rabbi Yose Ha-Gelili equates them, while Rabbi Akiva contrasts them. In general, even as much of Mishnah Horayot considers the hierarchy of Jewish leadership, its specific rank may be informed by the stature of the respective leaders as legal adjudicators. Thus, mHor 3.6 ranks the high priest ahead of the Sanhedrin, even though the former seems inferior to the latter in mHor 2.6-7. The relationship between the opening and closing hierarchies in *mHorayot* deserves further study.

creation of the Mishnah. Thus, the Mishnah, perpetuating the motif developed in *mSanhedrin* and *mSotah*, emphasizes the essentially parallel standing of the king and the high priest.⁵⁰

The climactic statement regarding the monarchy in *mHorayot* appears later in chapter 3. In a surprising exegetical comment, mSot 3.3 dispels any possible signs of monarchic inferiority to the other leadership positions in one stroke. Justifying the common rabbinic tradition of identifying the biblical *Nasi* as the king, the anonymous Mishnah states, “Who is meant by ‘ruler’? A king, for it is stated in Scriptures ‘any of all the things which the Lord his God hath commanded (Lev 4.22),’ a ruler above whom there is none but the Lord his God.” This mishnaic teaching constitutes one of the more positive characterizations of the monarchy recorded in rabbinic literature.⁵¹

A comparison with the Tosefta again highlights distinctive aspects of the editorial program of the Mishnah that are absent in what appears to be the raw material of the Tosefta.⁵² First, the Tosefta does not record the suggestive comparison of the king and high priest that appears in chapter 3 of the Mishnah.⁵³ Second, while tHor 2.2 identifies the ‘ruler’ as *Nasi Yisrael*, presumably a reference to the king, it does not invoke the very positive exegetical basis

⁴⁹ This is a crucial point that as far as I can tell has been largely ignored. Apparently, the *mHorayot* is envisioning that the king will come forth on his own and publicly (to the extent that a royal sacrifice receives public attention) admit his error, and not just leave matters between him and God.

⁵⁰ The only difference mentioned in the opening passages of chapter 3 concerns the limited duration of the monarch's status relative to that of the high priest (mHor 3.2). This may indicate that according to the Mishnah monarchy is more functional, and less formal than the high priesthood. However, the status of the king while he functions still must be considered—and such is the focus of this paper.

On the question of whether the standing of the king requires functional power, see also yHor 3.2 (on the status of King David when he fled from Absalom). TSan 4.11 may implicitly relate to the difference between formal and functional power as well (discussing the discrepancy between the requirement to anoint the king and high priest).

⁵¹ The precise semantic of this statement is a little ambiguous (see *Meiri Horayot*, p. 276). I assume that it is at least partly expanding on the sovereign immunity which the king enjoys (stated in mSan 2.2 and repeated in mHor 2.5), which corroborates reading the king's legal immunity broadly (unlike the Bavli), as argued above.

⁵² The same methodological issues were raised above (see fns. 23, 26 and 39 above).

It should be noted that although I have argued in various places throughout this paper that the Mishnah appears to be a later redacted version of earlier raw teachings preserved in the Tosefta, this argument is not crucial for my broader thesis. Rather, it is sufficient for establishing my thesis to note that the Mishnah and the Tosefta's teachings differ in these various contexts, and that the Tosefta has a much fuller and more variegated view of the king's role and status. In contrast, the Mishnah appears to be more consistently and uniformly pro-monarchic in its respective passages. This observation stands whether the Mishnah is earlier, later or independent of the Tosefta. Nevertheless, my impression regarding the specific passages analyzed above is that indeed the Mishnah is a later redacted version.

⁵³ At the same time, the nexus between the Sanhedrin and the high priest that emerges in chapter 2 of the Mishnah (see fn. 47 above) is less apparent in the Tosefta. See tHor 1.2, 8, 10 and 2.4.

Regarding the king and testimony, tHor 1.10 deserves more careful analysis and comparison with mHor 2.5, 7 and *tSanhedrin* chapter 4 (as this passage in *tHorayot* again confirms that a king can testify according to the Tosefta).

that appears in *mHorayot* to explain this identification. In light of the Tosefta's mixed presentation of material regarding the monarchy, this omission is noteworthy. Moreover, in the next passage, *tHorayot*, addressing an issue not found in *mHorayot*, states that when a *Nasi Yisrael* and *Nasi Bet David* share power, they both bring special sacrifices.⁵⁴ The Tosefta's ruling undercuts the singular stature of the *Nasi*, and suggests that the special sacrifice is more a function of the king's de facto political muscle than of his distinguished title.⁵⁵ In contrast, *mHorayot*, which identifies the *Nasi* as the king who has no superior other than God, never suggests that two people can simultaneously share this title.⁵⁶

The concluding passages of *tHorayot* explicitly address the priority of the monarch relative to other leaders. In an ambivalent comment, the Tosefta states:

A sage takes precedence over the king, since if a sage dies there is no replacement, but if the king dies all of Israel are worthy to be kings. The king takes precedence over the high priest...⁵⁷

Even as *tHorayot* impressively asserts the king's priority over the high priest, it offsets this approbatory remark by placing the king beneath the sage, and emphasizing that while sages have singular significance, monarchs are replaceable. Not surprisingly, the Mishnah never records this partially dismissive statement.⁵⁸ Indeed, the impression conveyed by *mHor* 3.3, emphasizing the uniqueness of the monarch, runs directly counter to this sentiment.

In sum, by developing the biblical verses into an elaborate tripartite scheme, and by comparing the various figures with one another, the Mishnah presents the Sanhedrin, high priest

⁵⁴ Regarding the distinction between Davidic and Israelite kings, see *tSan* 4.4, and 11 and *bSan* 19a-b cited above. It is interesting that the Tosefta discusses these distinct kingdoms explicitly, while the Mishnah never does (perhaps the Mishnah wants to depict the ideal of a unified kingdom, similar to its ideal description of a national and tribal (twelve tribes!) court system in *mSanhedrin* and *mHorayot*).

See also *Tosafot* Sanhedrin 20b, *Meiri Horayot*, p. 279 (and his Introduction to *Tehillim*), and Maimonides, *Hilkhot Melakhim* 1.7-11.

⁵⁵ Although Maimonides, *Hilkhot Shegagot* 15.9, combines the ruling of *tHorayot* and the language of *mHorayot*. See Lorberbaum, *Politics and the Limits of Law*.

⁵⁶ The Tosefta's extension of the special sacrifice to the Patriarchate may be a further signal of the same. See also *bHor* 1 lb.

For more on the term *Nasi*, see Ezek. 40-48. See also David Goodblatt, "The Title *Nasi* and the Ideological Background of the Second Revolt," in *The Bar-Kohva Revolt. A New Approach*, eds. A. Oppenheimer and U. Rappaport (Jerusalem, 1984): 118-120.

⁵⁷ *tHor* 2.8-9. See also Trifon, "Qeta," p. 35.

⁵⁸ *Thor* 2.8-10 appears to be earlier, less-edited material than *mHor* 3.8.

and king as outstanding positions of leadership that warrant special rules for achieving their respective atonement. In addition, by specifically comparing and contrasting the king's laws to those that apply to the high priest in several passages (especially in chapter 3), the Mishnah again suggests that it conceives of these two dignitaries as occupying parallel offices. At the same time, *mHorayot* returns to the theme developed in *mSanhedrin* that emphasizes the disparate natures of these leadership positions, as it couples the high priest and Sanhedrin (both depicted in the role of adjudication), as opposed to the king. Finally, by employing certain rhetorical devices, the Mishnah projects the singular stature of the monarchy, despite its limitations, thereby underscoring the pro-monarchic orientation of these passages. The Tosefta omits this material and instead includes rulings and statements that are of a more equivocal nature.

Other Material

Various other passages scattered throughout the Mishnah confirm the monarch's central place in the Jewish administration, including:

MAvot 4.13, attributed to Rabbi Shimon, famously describes the three reigning crowns corresponding to Torah, priestly and royal authority, "Rabbi Shimon says there are three crowns, the crown of Torah, the crown of Priesthood, and the crown of royalty."⁵⁹ This passage states plainly what was implicit in the various passages surveyed above, identifying three (presumably, equal) sources of authority among the Jewish people.⁶⁰ Interestingly, the parallel source in Abot de Rabbi Nathan (ARN) adds an ambivalent gloss to this statement, stating that ultimately the crowns differ from one another, as priesthood and royalty are inaccessible, in

⁵⁹ The early date of this statement (R. Shimon is a third generation tanna) makes this source relevant to a characterization of mishnaic material, even if it appears in *mAvot*, which may be of a later date. Admittedly, the fact that it is a discrete, individual teaching makes it less probative in describing the "broader mishnaic orientation" than the anonymous, rhetorically elaborate, teachings discussed above.

The relevance of other pro-monarchic passages in *mAvot* (including 3.2 and several in the later chapter 6) has to be assessed on an individual basis. For more on the dating of *mAvot*, see M.B. Lerner, *The Literature of the Sages*, 263.

⁶⁰ The conclusion of the passage subordinates all of them to the "crown of the good name," which may be part of a broader anti-establishment thrust present in tractate Avot. See, e.g., *mAvot* 3.5 and 4.15. This source does depart slightly from the previous sources which imply that the Sanhedrin is above the other two offices. See fn. 10 above and the conclusion below. For more on this source, see Cohen, *The Three Crowns*.

contrast with the accessible "Crown of Torah."⁶¹ This comment, along with the one from tHor 2.8 cited above (both non-mishnaic sources), portrays the monarchy as being inferior to Torah leadership since it is ironically either too closed (ARN) or too open (*tHorayot*).

MYom 7.5 is one of several positive references to the king in *MYoma'*, which is significant given that this tractate primarily focuses on the high priest.⁶² MYom 7.5 is particularly noteworthy as it mentions the king's capacity to command the service of the *Urim* and *Thummim* worn by the high priest.⁶³ The pro-monarchic orientation implicit in the Mishnah can be highlighted by comparing it with the parallel law in the "Law of the King" section in the Qumran Temple Scroll.⁶⁴ The latter presents the *Urim* and *Thummim* as a necessary prerequisite for royal action and thus as a limitation on monarchic powers.⁶⁵ MSan 2.4, cited above, however, rejects this conclusion, proclaiming absolute royal powers with no such limitation. Consistently, mYom 7.5 instead conceives of the royal usage of the *Urim* and *Thummim* as another prerogative of the king.⁶⁶ The Tosefta does not seem to contain this material altogether.

MYev 6.4 records the fact that the king appointed Joshua ben Gamla as high priest. The Tosafists, medieval commentators, adduce this as a source that the king generally has the duty to appoint the high priest.⁶⁷ According to this reading, the king bears broad responsibility for the entire Jewish administration. In contrast, tSan 3.4 seems to allocate this responsibility to the Sanhedrin.⁶⁸

Other suggestive sources about the king include mYom 8.1 (singling out the king in a legal context); mYom 3.10 and mNaz 3.6 (celebrating the conduct of king Munbaz and queen

⁶¹ R.D.Z. Hoffman characterizes this as Tosefta. See H.L. Strack and Gunter Stemberger, *Introduction to the Talmud and Midrash*, (First Fortress Press Edition, 1992): 226. In any event, it is certainly a parallel source.

⁶² The very appearance of pro-monarchic material in a tractate that hails the high priest is itself suggestive.

⁶³ Specifically, this passage treats the king equally with others who the public depends upon.

⁶⁴ See Lawrence Schiffman, "The King, his Guard, and the Royal Council," PAAJR 54 (1987): 237-59.

⁶⁵ This is consistent with the overall orientation reflected in the Temple Scroll's "Rule of the King" which promotes a limited form of monarchy. See *Ibid.* See also Fraade, "The Torah of the King"; Yigal Yadin, *The Temple Scroll*. Jerusalem (1983).

⁶⁶ For several relevant biblical passages see Ex 28.30, Num 27.2, 1 Sam 14, 28.6, Ezek 2.63 and Neh 7.65.

⁶⁷ *Tosafot Yoma'* 12b.

⁶⁸ But see tYom 1.4. In Second Temple times, King Herod assumed the authority to appoint high priests, in contrast with the previous hereditary method (which was interrupted at various points when competing priests usurped the position during the Hasmonean period). See Isaiah Gafni, *The Literature of the Sages*, 1-34.

Helena);⁶⁹ *mShev* 2.2 (entrusting the king with zoning responsibilities, even for the Temple); and *mSan* 10.2 (listing kings that have forfeited their share in the world to come). The last one is probably the only negative source regarding the monarchy in the Mishnah, a phenomenon discussed further below.⁷⁰ Yet, underlying its statement is an appreciation for the stature of monarchs, which makes its claim that some have nevertheless forfeited their share in the world to come seem so powerful.⁷¹

Conclusion

This paper has carefully surveyed evidence from the Mishnah concerning the standing of the king in the rabbinic administrative framework. Although limited in his responsibilities, the portrait of the king that emerges from the cumulative passages surveyed above is impressive.⁷² In contrast with the *Tosefta*, which records divergent attitudes toward the monarchy, the Mishnah uniformly promotes this institution. Moreover, by repeatedly depicting the king as securely occupying a position of leadership (*mSanhedrin*, *mHorayot*, *mAvot*), exercising vital administrative power (*mSanhedrin*, *mShevuot*, *mYevamot*), conducting important religious rituals (*mSotah*) and commanding special treatment (*mSanhedrin*, *mHorayot*, *mYoma'*), the Mishnah projects the king as a central figure in its worldview. The prestige of the king is especially heightened by the Mishnah's presentation of monarchic laws alongside analyses relating to the

⁶⁹ The Mishnah's description of historical figures deserves more consideration concerning their historical veracity and their place in the Mishnah. Nevertheless, it seems striking that the Mishnah only records positive acts of kings, since history provides ample negative instances. Indeed, *Tosefta* includes some of the latter. See, e.g., *tPeah* 4.18 which criticizes King Munbaz, whereas *mYom* 3.10 praises him. See the conclusion below.

⁷⁰ As Maimonides already points out in his Mishnah commentary, *mPes* 4.9 which has the sages passing judgment on, and even partially criticizing, the actions of King Hezekiah, is not an original Mishnah passage.

⁷¹ A similar effect is achieved in *mBik* 3.4 discussed above.

⁷² An important interpretive question that still must be raised concerns the degree to which the Mishnah's positive rhetoric captures a deeper pro-monarchic sentiment, or rather subtly conceals a partial marginalization of the royal office from prominent leadership responsibilities. In the sense that the Mishnah is ultimately rabbinocentric, and therefore endows the judiciary with the greatest responsibilities, the answer is clear. However, beyond this the cumulative impression is that the Mishnah takes its pro-monarchic vision quite seriously. Given that at the time these texts are likely compiled there has been no actual king for over a hundred years, it is hard to imagine the Mishnah using such subtle techniques to impart an anti-monarchic message. Meanwhile, the patriarchal office is only in its nascent phase at this point, and its early figures are also rabbinic ones (who probably were instrumental in forming the Mishnah). While the Mishnah's support of the monarch may not be directly supporting the patriarchate, the Mishnah may be laying the conceptual foundation for a degree of political autonomy that ultimately would enable the patriarchate in its more mature, and less rabbinic, phases; even as this subsequently led to criticisms as well. See further discussion of this in the conclusion below. See also Goodblatt, *Monarchic*

high priest. The implication is that they enjoy equal standing in the Jewish administration, and the Mishnah even hints at a dyarchy that operates as secondary officials (see further below) alongside the Sanhedrin in sharing leadership responsibilities. Whereas the king functions independently of the legal and halakhic system, the high priest cooperates with the Sanhedrin in guiding the people within the normative framework. Even the dearth of sources devoted to the monarchy in the Mishnah, which at a distance seems conspicuous, emerges from within the mishnaic scheme not as a reflection of inferiority, but rather as a function of the monarchy's open-ended, autonomous nature.

In conclusion, this study has important implications for various juridical, political, historiographical and textual issues in the study of rabbinics and ancient political systems. The following comments summarize initial observations on several of these topics:

1. The passages in *mSanhedrin* discussed above are essential for understanding the jurisdiction of the king and the judiciary in the rabbinic system, and the distribution of power between them. Although a full treatment of this issue is beyond the scope of this paper,⁷³ certain salient points about the Mishnah's treatment are worth highlighting in the present context. MSan 2.1-2 contains two propositions, each of which should be assessed within a wider legal context. The first proposition incorporates the doctrine of sovereign immunity, a common feature of ancient legal systems.⁷⁴ Yet, these parallel systems operate under fundamentally different assumptions about legal authority which justify this principle. Specifically, the widespread legal doctrine of sovereign immunity surfaces within ancient legal systems that vest supreme legal authority in the king.⁷⁵ If the king is the originator of the law, or its ultimate arbiter, it takes a small step to assert that he stands above the laws' reach.⁷⁶ In

Principle and for a related type of issue see David Weiss Halivni, "The Reception Accorded to Rabbi Judah's Mishnah," in *Jewish and Christian Self-Definition II*, ed. E.P. Sanders (Philadelphia: Fort Press, 1981).

⁷³ I hope to deal with this issue further in a forthcoming paper relating to biblical, Second Temple and rabbinic sources, in comparative perspective.

⁷⁴ See R. Westbrook, ed., *A History of Ancient Near Eastern Law* (Leiden, Boston: Brill, 2003); H.F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law* (Florida:Gaunt, 1996). But see George Pugh, "Historical Approach to the Doctrine of Sovereign Immunity," 13 *La. L. Rev.* 476 (1952-53).

⁷⁵ See Westbrook, *Ancient Near Eastern Law*; Keith Whitelam, *The Just King: Monarchical Judicial Authority in Ancient Israel* (Sheffield: JSOT Press, 1979); Moshe Greenberg, *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1995); Bernard Jackson, *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975); Bernard Levinson, "The First Constitution: Rethinking the Origins of Separation of Powers and Rule of Law in Light of Deuteronomy," *Cardozo Law Review* 27:4 (2006): 1853-1888.

⁷⁶ *Ibid.*

contrast, rabbinic law emphatically denies the king's legal authority (especially the Mishnah, as discussed immediately below), and in this sense the Mishnah's affirmation of the king's immunity is far from obvious. Not surprisingly other rabbinic voices—such as the *tSanhedrin* and *bSanhedrin* discussed above—reject or constrict the Mishnah's doctrine.⁷⁷ Even in the Mishnah, sovereign immunity does not imply a doctrine of infallibility, as evinced by the passages in *mHorayot* discussed above.

The second proposition of *mSanhedrin* is far more anomalous from a comparative legal perspective. According to the Mishnah, a king may not participate in the court system,⁷⁸ and he certainly does not have the jurisdiction to oversee the operation of the judiciary. In the words of Robert Cover, the Mishnah here is stating a *rule of sovereign judicial incapacity*.⁷⁹ Redacted in Roman Palestine of the early third century C.E., The Mishnah's scheme is particularly striking, for Imperial Rome—which had by this point developed the most elaborate legal tradition of any civilization to date—identified the emperor as the supreme legal authority.⁸⁰ In sharp contrast, the mishnaic system envisions a fundamentally independent judiciary. While Greco-Roman political thinkers developed a sophisticated governance theory of a mixed constitution in which administrative responsibilities are distributed among different constituents,⁸¹ the Mishnah's promotion of a powerful and independent judiciary is largely unparalleled. Here, too, the Mishnah differs from various other rabbinic and Judaic writings of late antiquity.⁸²

More than advancing independent propositions of sovereign immunity and sovereign judicial incapacity, *mSanhedrin* couples them in a manner that suggests that they are interrelated, as argued above. This too is significant, because other Jewish writings affirm one or the other

⁷⁷ But other Jewish sources seem to concur with *mSanhedrin* on this doctrine. This may be the implication of Josephus' *Antiquities* 14.158-84. See fn. 83 below.

⁷⁸ See also *mHor* 2:6 and recall the entire scheme of tractate *Horayot*, Chapters 2 and 3 (discussed above), where an important shift takes place in the passages discussing the monarch's sacrifice, which focuses on actions, in comparison with the sacrifices of the court and high priest, which results from erroneous rulings.

⁷⁹ Robert Cover, "Folktales of Justice: Tales of Jurisdiction," 14 *Cap. U. L. Rev.* 179 (1985): 183—"The law in the Talmud (Mishnah) seems clear: 'The king does not judge and we do not judge him.' This rule appears to state a not unexpected norm of sovereign immunity and a perhaps unexpected norm of sovereign judicial incapacity."

⁸⁰ See Barry Nicholas, *An Introduction to Roman Law* (Oxford: Clarendon Press, 1975): 18—"In general there was in Rome no idea of the binding or even persuasive form of precedents, but the unique authority of the Emperor gave to his decisions the character of authentic statements of law." See also A.H.M. Jones, *The Later Roman Empire: 284-602, a Social, Economic and Administrative Survey*, chapter 15 (Oxford: Blackwell, 1964); Jill Harries, *Law and Empire in Late Antiquity* (Cambridge, UK, New York: Cambridge University Press, 1999).

⁸¹ See, e.g., C. Rowe and M. Schofield, *The Cambridge History of Greek and Roman Political Thought* (New York: Cambridge University Press, 2000).

proposition, but not both.⁸³ The logic of these alternative approaches seems clear: sovereign immunity frequently attaches to the ultimate legal authority, and conversely one who may not judge is likely subordinated to the rule of law. Nevertheless, the Mishnah stakes out a distinctive position, linking both together, and thereby underscoring the stark separation between the king and the judiciary in the fullest possible sense. The Mishnah depicts the Sanhedrin as appropriating total responsibility for the judicial task (with the assistance of the high priest), while still affirming the stature and independence of the king. The latter is entrusted with significant independence and political responsibility, without the involvement of the other institutional branches. Holding a discrete and autonomous position within the administrative framework, the king participates in the administrative system at a distance from the other leading officials.

2. The Mishnah's suggestion of a dyarchy of the king and high priest is especially noteworthy, and can be set in sharper relief by, considering it against the backdrop of Jewish political writings from the Bible onward. As David Goodblatt has documented, pre-70 C.E. writings reflect two models of Jewish governance that prevailed in Palestine, in theory and in practice: (i) a dyarchy of priest and prince and (ii) a priestly monarchy.⁸⁴ Although after 70 C.E. vestiges of both of these models endured, most rabbinic writings, at least in theory, invested power in the sages, especially the Sanhedrin, and the high priest—but not in the king. This tendency is particularly surprising, as it ignores the monarchy's prominence in biblical- and Second Temple history, and its value as a precedent for the nascent office of the Patriarchate.⁸⁵

This paper has argued that, nevertheless, the Mishnah critically departs from other rabbinic writings on this seminal issue. The Mishnah consistently depicts the king as a leading figure in the ideal Jewish administration. Moreover, in partially restoring the

⁸² Including *ySanhedrin*, *tSanhedrin* and *bSanhedrin*.

⁸³ *YSanhedrin* and the passage from Josephus cited in fn. 77 above seem to only affirm the doctrine of sovereign immunity, although the precise implications of Josephus' passage(s) requires separate treatment. In contrast, the plain sense of Dt chapter 17 is that the king is subject to the rule of law, and he is not described as part of the judiciary. On the latter point, see Levinson, *The First Constitution*.

⁸⁴ Goodblatt, *Monarchic Principle*, 6-77. I hope to address these matters further in a forthcoming article.

⁸⁵ The dating and stature of the early Patriarchate is the subject of extensive dispute among scholars. See, e.g., Martin Goodman, *State and Society in Roman Galilee* (Totowa, N.J., 1983); Lee Levine, "The Jewish Patriarch (Nasi) in Third Century Palestine," *Aufstieg und Niedergang der römischen Welt II*, 19.2 (Berlin and New York, 1992); Shaye J.D. Cohen, "Pagan and Christian Evidence on the Ancient Synagogue," in *The Synagogue of Late*

monarch to his biblical and historical prominence, the Mishnah hints at the second model of the dyarchy of priest and prince, and thereby succeeds in allocating distinct responsibilities to each of these offices. Taking into account the analysis in paragraph (1) above, however, this historical echo emerges as only partial, as the Mishnah's separation of the king from the judiciary contradicts historical precedent. The Mishnah, then, perpetuates aspects of the historical legacy, even as it jettisons other parts.

3. The Mishnah's hint of a dyarchy must still be properly framed within its own hierarchical system which is rabbinocentric, as it privileges the rabbinic judiciary. Only after opening with an elaborate Mishnah (1:5) that delineates the impressively broad responsibilities of the Sanhedrin (including those that in modern taxonomy would be labeled as legislative and executive), does the Mishnah in chapter two turn to describe the secondary offices of the king and High Priest. Even the latter's role, which is very much connected with the judiciary (as argued above), is nevertheless subsumed under the institution of the court. To return to the *Sifre* passage, if ideally priests should be members of the Sanhedrin, they nevertheless must operate within this institution, and not as a distinct judicial power, as the biblical text would suggest. The king, on the other hand, is not absorbed into the jurisdiction of the court (as discussed further below),⁸⁶ but he also is not entitled to participate in the seminal judicial process altogether. In a fundamental sense, the judiciary stands apart.

For *mSanhedrin*—devoted almost entirely to the judiciary—certain political responsibilities are also assigned to the judiciary, alongside their broad religious and legal duties. In fact, according to *mSanhedrin* even the Temple mount is not the domain of the High Priest or the king,⁸⁷ but rather the site where the supreme court presides, declaring Torah regulations to all of Israel (mSan 11.2):

Three courts were there [in Jerusalem]: one used to sit at the gate of the Temple Mount, one use to sit at the gate of the Temple Court, and one used to sit in the Chamber of Hewn Stone...[they] come along to the Great Court (the Sanhedrin) which was in the

Antiquity, ed. Lee Levine (New York, 1987); and Seth Schwartz, *Imperialism and Jewish Society, 200 B.C.E. to 640 C.E.* (Princeton, N.J.: Princeton University Press, 2001).

⁸⁶ There is no real notion here of judicial review; rather there is a significant expansion of judicial responsibilities. A fuller study would the rabbinic approach to evolutions in the civil and common law traditions, beginning in early medieval Europe. See Harold Berman, *Law and Revolution: the Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983).

Chamber of Hewn Stone, from which Torah goes forth to all Israel, as it is said ‘From that place which the Lord shall choose (Dt 17.10).’

Borrowing the messianic phraseology from Isaiah (2.1-5)⁸⁸—the Mishnah transforms the idyllic site of future revelatory teachings into the established place where the Sanhedrin perpetually leads by way of its singular legal discourse. Both the king and High Priest are ancillary to this primary institution.

In a similar vein, *mHorayot*, even as it acknowledges fallibility, likewise hails this same hierarchy wherein the judiciary occupies the primary leadership position (even on behalf of all the twelve tribes).

Any statement about the administrative hierarchy presented in rabbinic writings, in general, and particularly in the Mishnah, must begin with an affirmation of the singular role that the judiciary plays within the rabbinic scheme. Even as Mishnah Sanhedrin acknowledges the significant leadership role of two other officials, and even carves out a rather surprising independence from the rule of law to one of them, it nevertheless emphatically underscores the distinctive position of the judiciary in this system. A fuller expansion on the rabbinic and mishnaic reconfiguration of the Sanhedrin’s responsibilities within its political framework awaits a separate study of its own.

4. The Mishnah’s separation of the secondary offices of the king and high priest touches on other issues debated by scholars, such as the image of the ancient Hasmonean dynasty in rabbinic ideology. One viewpoint among scholars has argued that the limited attention given to the Hasmoneans in the Mishnah, and much of the rest of rabbinic writings, reflects a purposeful suppression on the part of the Rabbis. An extension of this line of reasoning makes the further provocative claim that the rabbinic bias against the Hasmoneans explains the enigmatic omission of an extended analysis of the laws of Hanukkah from the Mishnah. In response, an alternative scholarly position, led by Gedalya Alon, challenges this thesis, rejecting the claim that rabbinic writings harbor an anti-Hasmonean sentiment. Recent

⁸⁷ This is also reflected in various laws in *mSanhedrin* chapter 1. See, e.g., *mSan* 1.3 and 5.

⁸⁸ “In the days to come the mountain of the Lord’s house shall be established as the highest of the mountains...Many peoples shall come and say ‘Come, let us go up to the mountain of the Lord, to the house of the God of Jacob, that he may teach us his ways and that we may walk in his paths.’ For out of Zion shall go

scholars have stressed the need to revisit this issue in a more balanced and systematic manner.⁸⁹

In regards to the Mishnah, Alon's contention that one finds little explicit anti-Hasmonean material is correct. However, the Mishnah also contains little positive information about this dynasty or their achievements either. A more precise description of the place of the Hasmonean legacy in the Mishnah, then, depends on a more subtle reading of the content and rhetoric of the Mishnah, in comparison to parallel treatments in other rabbinic writings. This paper makes a contribution to one aspect of this inquiry by demonstrating that the basic political structure envisioned by the Mishnah runs counter to the leadership model advanced by the Hasmoneans. In preferring a dyarchy, the priestly monarchy of the Hasmoneans emerges as problematic for the Mishnah.⁹⁰

5. The Mishnah's treatment of the Hasmonean legacy raises a larger point concerning the Mishnah's broader historical sensibilities. Recent scholarship has attempted to characterize the nature of rabbinic interest in Jewish history.⁹¹ While most rabbinic writings are a far cry

forth instructions, and the word of the Lord from Jerusalem. He shall judge between the nations, and shall arbitrate for many peoples..."

⁸⁹ See Gedalya Alon, "Did the Nation and its Sages erase the Hasmoneans," (Hebrew) *Sinai* 12 (1943):2534. See also V. Aptowitz, *Parteipolitik der Hasmonaerzeit in rabbinischen and pseudopigraphischen Schriftum* (Vienna, 1927); Joshua Efron, "The Hasmonean Rebellion in Modern Historiography," (Hebrew) in his *Hikre ha-Tekufah ha-Hashmonait*, (Tel Aviv: 1980). Isaiah Gafni, "The Hasmoneans in the Literature of *Hazal*," (Hebrew) in *Yeme Bet Hasmonai*, ed. D. Amit and H. Eschel (Jerusalem: Yad Ben Zvi, 1995): 261-277.

⁹⁰ Gafni, "The Hasmoneans," p. 261, importantly notes that the scholarly inquiry has not been conducted in a sufficiently nuanced manner. Thus, he notes that scholars have not differentiated between different strands in rabbinic writings. I am suggesting making exactly such a distinction. See more in paragraph (5) below. Another interesting phenomenon worth noting about the Mishnah is that even as it supports a dyarchy it does not seem to insist that the king can only come from the Davidic dynasty. Thus, the Mishnah speaks generically of the king, even as it seems to consider King David as an emblematic king. Likewise, in praising kings such as Agrippa, the Mishnah implies that it recognizes kings from alternative descent as well. Importantly, Agrippa is more Herodian than Hasmonean. See Trifon, "Qeta" (king Munbaz presents a similar situation). The critical point may be that even non-Davidic kings are legitimate, as long as they are not priests. Ironically, what emerges then is that a king of problematic heritage has preference over a priest in that he is not occupying two distinct chairs. Accordingly, the problem with the Hasmoneans may not be in their usurping the monarchy from the Davidic dynasty (a sentiment which is usually emphasized as stemming from the Patriarchate's Davidic descent—see bShab 56a), but rather in their forming a priestly monarchy. See yHor 3.2 and Nahmanides on Gen 49.10.

⁹¹ See Yosef Yerushalmi, *Zakhor: Jewish History and Jewish Memory* (Seattle: University of Washington Press, 1996); Shaye Cohen, "Parallel Historical Tradition in Josephus and Rabbinic Literature," *World Congress of Jewish Studies* 91, B1 (1986):7-14; Jeffrey Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: Johns Hopkins University Press, 1999): Introduction; Chaim Milikowsky, "Josephus between Rabbinic Culture and Hellenistic Historiography," in *Shem in the Tents of Japhet: Essays on the Encounter of Judaism and Hellenism*, ed. James Kugel (Leiden: Brill, 2002): 159-200; Vered Noam and Tal Ilan, "Josephus and the Pharisaic Narrative," *Society of Biblical Literature Conference 2005* (unpublished paper).

from historiography, even in its classical form, the more difficult question is whether rabbis had any interest in history, and how they processed historical information. A more precise answer to such an inquiry requires distinguishing among different strata within rabbinic literature, and better defining the type of historical information in question.

This paper's study of mishnaic passages relating to the monarchy points toward the Mishnah's tendency to invoke history in a highly selective manner. Indeed, a broader survey of the Mishnah confirms that it provides very little specific information about actual kings, and the little that it does is almost entirely positive. Thus, the Mishnah refers to pious, legendary kings (like David), and even generous, marginal ones (like Munbaz), but states almost nothing about wicked and oppressive kings, even from late Second Temple history.⁹² Even when the Mishnah makes reference to an historical king with an uneven record, such as the late Second Temple king Agrippa,⁹³ it transforms his legacy into an illustrious one. More generally, the Mishnah's overall pro-monarchic slant completely ignores the negative history of corrupt and spiritually bankrupt kings in the biblical and Second Temple periods.⁹⁴ The monarchic history that informs the Mishnah, and is preserved by it, is therefore purposeful and programmatic—it both idealizes and spiritualizes the role of the king. In contrast, the Tosefta and other rabbinic writings present a more checkered monarchic history.

Returning to the Hasmonean period, two additional examples can further illustrate the Mishnah's broader approach toward monarchic history. The first one involves John Hyrcanus, whose significant military conquests and political achievements are omitted from the Mishnah. Instead, the Mishnah highlights certain of his religious accomplishments, and, perhaps deliberately, refers to him as high priest, not as king. Thus, the Mishnah includes him on a distinguished short list of people who were responsible for burning the red heifer (mParah 3.5), and accredits him for instituting various favorable religious reforms (mMa'asS 5.15 and mSot 9.10).⁹⁵ This positive characterization of Hyrcanus' religious contributions is especially noteworthy, considering Hyrcanus' eventual fallout with the Pharisees and alignment with the

⁹² For example, infamous Second Temple kings such as Alexander Janneus and Herod are never mentioned in the Mishnah.

⁹³ Whether he is Agrippa I or II makes little difference in this context. In any event, he is mentioned because he is among the last kings. See fn. 43 above.

⁹⁴ See the end of paragraph (2) above.

Sadducees.⁹⁶ The Rabbis perhaps even converted Hyrcanus into a kind of positive archetype of a Hasmonean ruler, or Hasmonean Priest.

A second example can be found in the Mishnah's treatment of Alexander Janneus. Although the Mishnah never explicitly mentions Janneus, it does allude to his notorious confrontation with the Pharisees on the feast of Tabernacles (mSuk 4.9).⁹⁷ From Josephus it becomes eminently clear that Janneus' showdown resulted from deep political dissension.⁹⁸ Yet, the Mishnah, tellingly, mutes this point and instead converts their disagreement into a religious one concerning Temple rituals. More, the Mishnah conceals the identity of the royal antagonist—the ruthless Janneus—and presents the episode as involving an anonymous offender. Elsewhere in rabbinic writings Janneus emerges as an almost opposite figure than Hyrcanus, constituting a kind of mythic embodiment of a bad Hasmonean ruler. In the Mishnah, by contrast, Janneus does not appear explicitly as an individual or as a negative symbol. The historical legacy that is preserved in the Mishnah, then, does not damage the esteem of the royal office. Both instances of Hyrcanus and Janneus highlight the programmatic nature of mishnaic monarchic historiography.

6. The Mishnah's pro-monarchic stance, especially in contrast with the Tosefta, has potential implications for other general issues in the study of rabbinics as well. Scholars, from Jacob Neusner to Peter Schaefer, have vigorously debated whether the Mishnah is a uniform work, with a unique voice that can be detected.⁹⁹ The suggestion of this study is that by carefully tracing the substance and form of the Mishnah's discussion of a certain topic, one can discern certain broader patterns that inhere in this text, which corroborates the assumption that the Mishnah is not a random anthology of earlier teachings, but, at least in some respects, a purposeful literary work that at times advances distinctive legal and theological motifs that are muted in, or even absent from, the Tosefta.¹⁰⁰

⁹⁵ See bSot 47b-48a that even provides a favorable explanation for the first item on the list, which at first blush seems negative.

⁹⁶ Contrast this with the rabbinic tradition preserved in bKidd 66a.

⁹⁷ See S. Cohen, "Parallels"; Noam and Ilan, "Josephus and the Pharisaic Narrative"; Jeffrey Rubenstein, "The Sadducees and the Water Libation," *Jewish Quarterly Review* 84, 4 (1994): 417-444.

⁹⁸ *Antiquities* 13.372.

⁹⁹ See fns. 4 and 5 above.

¹⁰⁰ The Tosefta, in contrast, seems to be more of an anthology of early teachings—and therefore records a wide range of opinions on a given topic. See fns. 5 and 6 above.

7. In addition, the specific agenda of the Mishnah surveyed in this paper—its avid support of the monarchy—could shed light on the identity and outlook of the voice(s) it records. Given the anonymous nature of this material and the fact that it is essentially undisputed, Ephraim Urbach and J. N. Epstein have suggested that its kernel is older than other material in the Mishnah,¹⁰¹ and that the Mishnah's support of the king and a dyarchy is informed by contemporary politics.¹⁰² On a more certain level, however, the Mishnah reflects the later redactor's voice, particularly discernible in its consistent rhetorical and substantive approach to the monarchy.¹⁰³ This pro-monarchic slant is intriguing, given the (popular, but uncorroborated) assumption that R. Judah's Patriarchate supervised the redaction of the Mishnah. Further, this study may contribute additional support for postulating a relatively early date to the origins of the mythic connection of the Patriarchate to the monarchy, another issue disputed by scholars.¹⁰⁴

While the Mishnah's pro-monarchic orientation may not be explicitly or deliberately instrumental in supporting the patriarchate (as the Mishnah rarely, if ever, refers explicitly to this office),¹⁰⁵ the political conception of the Mishnah is perhaps partially constitutive of the mentality that enabled the growth of this office. In the Mishnah one discerns an attitude that encourages the growth of an independent political office. Even its sweeping vision of judicial supremacy (discussed above) retreats from controlling various political matters.¹⁰⁶ If the king cannot judge, the judiciary and the priest, in important ways, cannot govern either. As the patriarchate evolves into more mature, and less rabbinic, phases, this notion of political autonomy potentially becomes more consequential, even as such developments generate subsequent criticisms as well.¹⁰⁷

To be sure, this study is not dispositive of any one of these enumerated issues. However, they all are potentially implicated by its thesis, and it can provide important evidence that should

¹⁰¹ See fns. 8 and 14 above.

¹⁰² On the political situation see Shaye Cohen, *From Maccabees to the Mishnah*, 2nd ed. (Louisville, Kentucky: Westminster John Knox Press, 2006).

¹⁰³ See fn.4 above. See also Seth Schwartz, "Historiography on the Jews in the 'Talmudic Period' (70-640 CE)," *The Oxford Handbook of Jewish Studies*, ed. Martin Goodman (Oxford: Oxford University Press, 2002): 79-114.

¹⁰⁴ See fn. 85 above. See also Goodblatt, *Monarchic Principle*, chapter 5.

¹⁰⁵ See mNed 5:5.

¹⁰⁶ See Emanuel Friedheim, "Politique et rabbinisme en Palestine romaine: opposition, approbation et réalités historiques," *Theologische Zeitschrift*, 59, 2 (2003): 97-112.

¹⁰⁷ See the sources cited in fn. 85 above.

be considered in weighing each of them. Given the centrality of these issues for the study of rabbinics, future research will help substantiate or revise certain of the tentative conclusions suggested above. In a more direct sense, this paper contributes toward the burgeoning field of Jewish political studies. For this paper reflects the subtlety and richness of rabbinic political thought and the need to carefully consider its various treatments. In the case of the Mishnah, the presence of a carefully constructed, if not fully developed, political constitution upholding monarchic power clearly emerges.