

Yonatan Adler

The Content and Order of the Scriptural Passages in Tefillin:

A Reexamination of the Early Rabbinic Sources
In Light of the Evidence From the Judean Desert

Introduction

Of the epigraphic material from Qumran and the Dead Sea environs, perhaps the most concrete representation of halakhic observance is to be found in the tefillin from the Judean Desert. Approximately twenty-seven decipherable tefillin parchment slips have been discovered at Qumran (or are purported to have derived from Qumran),¹ and slips deriving from three additional tefillin sets have been discovered at other Judean Desert sites.² The Qumran material dates roughly to the late Second Temple period, while the exemplars from outside of Qumran date to the period of the Bar-Kokhba Revolt—although they certainly may have been written somewhat earlier.

Approximately twenty-five leather tefillin casings have also been discovered in the Judean Desert caves, the vast majority having derived from Qumran,³ and one from Wadi Murabba‘at.⁴ It should be noted that in only

¹ These exemplars have been published in: D. Barthélemy, “Textes Bibliques,” in idem and J. T. Milik, eds., *Qumran Cave I* (DJD 1; Oxford 1955) 72–76, pl. XIV; M. Baillet, “Textes des grottes 2Q, 3Q, 6Q, 7Q, à 10Q,” in idem, J. T. Milik, and R. de Vaux, eds., *Les ‘Petites Grottes’ de Qumrân* (DJD 3; Oxford 1962) 149–57, pls. VIII, XXXII–XXXIII; J. T. Milik, “Tefillin, Mezuzot et Targums,” in R. de Vaux and J. T. Milik, eds., *Qumran Grotte 4, II* (DJD 6; Oxford 1977) 33–79, pl. VI–XXV; Y. Yadin, *Tefillin from Qumran (XQ Phyl 1–4)* (Jerusalem 1969) = *EI* 9 (1969) 60–85. For a preliminary publication of four of the exemplars later published by Milik, see K. G. Kuhn, *Phylakterien aus Höhle 4 von Qumran* (Abhandl. der Heidelberger Akademie der Wissenschaften, Philosophisch-Historische Klasse 1; Heidelberg 1957). Note that our discussion takes into consideration only the decipherable slips that have been identified by their publishers as “phylacteries”.

² These exemplars have appeared in the following publications: J. T. Milik, “Textes Hébreux et Araméens,” in H. Benoit, J. T. Milik, and R. De Vaux, *Les Grottes de Murabba‘at* (DJD 2; Oxford 1961) 80–85; Y. Aharoni, “Expedition B,” *IEJ* 11 (1961) 22–25; M. Morgenstern and M. Segal, “XHev/SePhylactery,” in E. Tov, ed., *Miscellaneous Texts from the Judean Desert* (DJD 38; Oxford 2000) 183–91.

³ These have been published in: G. L. Harding, “The Archaeological Finds: Introductory. The Discovery, the Excavation, Minor Finds,” in DJD 1, 7, pl. I 5–7; R. de Vaux, “Archéologie: les grottes 7Q à 10Q,” in DJD 3, 31, pl. VIII 5–6; J. T. Milik, “Textes de la grotte 5Q: phylactère,” in DJD 3, 178, pl. XXXVIII 8; Yadin, *Tefillin from Qumran*; Milik, DJD 6, 34–5, pl. VI 1–13.

two instances were decipherable parchment slips found inside of the original tefillin casings.

The first record of prescriptive halakhic regulations regarding the observance of tefillin appears in the Mishnah, a rabbinic compilation redacted in the first quarter of the third century CE. Naturally there are considerable methodological problems inherent in any attempt to compare and contrast early epigraphic material with substantially later texts.⁵ The existence of a well formulated halakhah with regard to tefillin practice in the late Second Temple period should not be taken for granted. Even if certain regulations recorded in later rabbinic texts were already being followed by the end of the Second Temple period, we cannot assume that such regulations were observed by the Jewish population at large or by all religious factions and sects. This problem is particularly acute with regard to any attempt at an archaeologically based study of tefillin practice, considering the fact that all of the tefillin exemplars that may be firmly dated to the Second Temple period derive exclusively from Qumran. Even exemplars dating to the Bar-Kokhba Revolt, with 135 CE as their *terminus ante quem*, date to no later than the early stage of the tannaitic period, and as such may very well pre-date halakhic regulations found in the Mishnah and other tannaitic texts. A handful of studies that have touched upon the interplay between the Judean Desert exemplars and the early rabbinic halakhic regulations have not been sufficiently sensitive to these methodological stumbling blocks.⁶

Rather than looking to the rabbinic literature in search of answers to the questions posed by the earlier epigraphic material, in the present study I propose to address the issue from the reverse direction, focusing on the contribution that the Judean Desert evidence may provide to our understanding and appreciation of the pertinent rabbinic sources. Naturally, the tannaitic sages were called upon to address preexisting practices with regard to the form and content of tefillin. Whether tannaitic halakhah was conservative or activist, codifying earlier norms or establishing new ones,

⁴ R. de Vaux, "Archéologie," in DJD 2, 44, pl. XIV 4.

⁵ In this vein, one may question the identification of the parchment slips and leather casings under discussion as "tefillin". Minimally, the almost microscopic size of the text found on these slips indicates that they were never meant to be read but rather, in all probability, were meant to be worn on the body. As mentioned, two leather casings were found with decipherable parchment slips *in situ*, and it may be presumed that some if not all of the additional slips were originally housed in such casings (examples of which, as we have seen, have been found as well). The phenomenon of parchment slips containing Pentateuchal verses which were placed in leather casings and probably worn on the body is similar enough to the rabbinic tefillin that the Judean Desert exemplars may be productively compared and contrasted with the tannaitic prescriptions regarding tefillin practice.

⁶ See for example S. Goren, "The Tefillin from the Judean Desert in Light of the Halakhah," *Torat Hamoadim* (Hebrew; Jerusalem 1996²) 534–49.

the sages who formulated the tannaitic texts were certainly *conscious* of preexisting practices. Thus, while the tannaitic texts are written on the backdrop of earlier practice, the finds from the Judean Desert evidence the actual observance of these practices.⁷

The present study focuses on the contribution of the Judean Desert findings toward enhancing our understanding of the tannaitic prescriptions regarding the content and order of the scriptural pericopes that are to be included in tefillin. A reexamination of the tannaitic texts in light of the evidence supplied by the Judean Desert tefillin can provide numerous insights into questions posed by individual rabbinic passages, and may potentially shed light on some broader historical questions with regard to rabbinic literature in general.

The Boundaries of the Scriptural Portions Contained in Tefillin

The rabbinic literature prescribes that tefillin are to contain four scriptural pericopes. The exegetical source for this halakhah is found in *Mekhilta de Rabbi Ishmael*:

בארבעה מקומות מזכיר פרשת תפלין: "קדש לי", "והיה כי יביאך", "שמע", "והיה אם שמוע"; מכאן אמרו: מצות תפלין – ארבע פרשיות של יד, הן כרד אחד. ארבעה פרשיות של ראש, הן ארבע טוטפות. ואלו הן: "קדש לי", "והיה כי יביאך", "שמע", "והיה אם שמוע"

In four places (the Torah) records the scriptural portion of tefillin: "Consecrate to Me," (Exod 13:2), "And when the Lord has brought you" (ibid. 13:11), "Hear, (O Israel)" (Deut 6:4), "If, then, you obey" (ibid. 11:13). On this basis they have said: The commandment of tefillin (consists of) four scriptural portions of arm-(tefillin) which are (written on) one roll (of parchment). The four scriptural portions of head-(tefillin) are (made as) four *totafot*.⁸ And these are the (four scriptural portions): "Consecrate to Me"; "And when the Lord has brought you"; "Hear, (O Israel)"; "If, then, you obey."⁹

⁷ In this vein, it is fitting to quote the comments by H. M. Cotton regarding the interplay between rabbinic halakhah and the epigraphic evidence of legal documents from the Judean Desert: "Rabbinic law itself acquired its shape in the same environment: that it reflects the documents is only to be expected. We would be wrong, though, to assume without compelling proof that the documents reflect the still-to-be-codified halacha" (H. M. Cotton, "The Rabbis and the Documents," in M. Goodman, ed., *Jews in a Graeco-Roman World* [Oxford 1998] 179).

⁸ The term *totafot* here would appear to refer to individual slips of parchment. Cf. Sifre Deut 34 (ed. Finkelstein, 63); M. Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (New York 1950) 1:523.

⁹ *Mekhilta de-Rabbi Ishmael*, Masekhta dePaskha 18 (ed. Lauterbach², 114). Regarding a tannaitic dating of this work, see J. Z. Lauterbach, ed., *Mekilta de-Rabbi Ishmael* (Philadelphia, PA 2004²) xxv–xxvi; J. N. Epstein, *Introduction to Tannaitic Literature: Mishna, Tosephta, and Halakhic Midrashim* (Hebrew; Jerusalem 1957) 501–15. For a later dating of this work, see B. Z.

Here the *Mekhilta* uses keywords to identify the scriptural portions to be included in tefillin, a method used in other tannaitic sources as well.¹⁰ The word used here to refer to a scriptural portion, פרשה, is a term found in rabbinic literature to describe the division of scripture into paragraphs marked before and after by spaces in the text.¹¹ Such a method of paragraph division is already found in biblical (as well as non-biblical) scrolls from the Judean Desert. Although the existence of paragraph division is acknowledged in the tannaitic and amoraic sources, the *places* where these paragraph divisions are to be marked is nowhere described in the talmudic literature. Traditions regarding the places where paragraphs are to be marked are first discussed in the medieval Masoretic and rabbinic literature.¹²

As such, it remains unclear what the intention of the *Mekhilta* was regarding the exact boundaries of each of the pericopes identified by keywords alone. It has been implicitly assumed by both traditional commentators and modern scholars alike that the four scriptural portions referred to in these sources are identical with the scriptural paragraphs found in the medieval Masoretic tradition.¹³ Thus, the portion referred to in the *Mekhilta* (and elsewhere in the tannaitic literature) by the keywords קדש לי has been understood as referring to Exod 13:1–10; the portion referred to as ויהי כי יבאך has been taken to refer to Exod 13:11–16; שמע has been understood as referring to Deut 6:4–9; the final portion named by the keywords ויהי אם שמע has been presumed to refer to Deut 11:13–21.

D. Nakman has suggested that in using these keywords, the *Mekhilta* intended to refer to the scriptural pericopes which open with these words and which end with the verse that is understood as referring to the command-

Wacholder, "The Date of the Mekilta De-Rabbi Ishmael," *HUCA* 39 (1968) 117–44. For a criticism of Wacholder's position, see M. Kahana, "The Editions of the Mekilta De-Rabbi Ishmael on Exodus in Light of Geniza Fragments," (Hebrew) *Tarbiz* 55 (1986) 515–20.

¹⁰ mShab 8.3; bMen 34b; Sifre Deut 35 (ed. Finkelstein, 63); Treatise Tefillin 1, 9 (ed. Higger, 25).

¹¹ See for example: Sifra Lev 1:1 (ed. Finkelstein, 6); Sifre Deut 36 (ed. Finkelstein, 65–66); yMeg 1:9 (71d); bShab 103b, 115b–116a.

¹² For a general historical overview of the division of scripture into paragraphs, see I. Yeivin, *Introduction to the Tiberian Masorah* (Missoula, MT 1980) 40–42; M. Cohen, "Introduction to the Keter Edition," in idem, *Mikra'ot Gedolot 'Haketer': A Revised and Augmented Scientific Edition of 'Mikra'ot Gedolot' Based on the Aleppo Codex and Early Medieval MSS: Joshua – Judges* (Hebrew; Ramat Gan 1992) 50*–52*; Y. Ofer, *The Babylonian Masora of the Pentateuch: Its Principles and Methods* (Hebrew; Jerusalem 2001) 139–52.

¹³ To my knowledge, the first clear attestations to this understanding appear in two twelfth century works: *Midrash Sekhel Tov*, Exod 13:16 (ed. Buber, 161), and a work attributed to the academy of Rashi, *Sefer ha-Pardes* (ed. Ehrenreich, 23). This traditional assumption has carried over uncritically to modern scholarship—see for example G. Vermes, "Pre-Mishnaic Jewish Worship and the Phylacteries from the Dead Sea," *VT* 9 (1959) 65–72.

ment of donning tefillin.¹⁴ This formula, according to Nakman, lies behind the axiomatic assumption that the division of the four scriptural pericopes of rabbinic tefillin parallels the medieval Masoretic division of these paragraphs. As Y. B. Cohn has pointed out, however, the paragraph divisions found in the Masoretic traditions do not actually reflect this formula.¹⁵ Cohn makes the following observations: (1) The pericope referred to as קדש לי is presumed to begin with Exod 13:1, despite the fact that only the following verse opens with the words קדש לי; (2) The verse presumed to end the pericope entitled קדש לי is Exod 13:10, despite the fact that the verse prescribing the placement of “a sign on your arm” and “a reminder between your eyes” appears in the preceding verse; (3) The verse presumed to conclude the pericope entitled שמע is Deut 6:9, despite the fact that the verse prescribing the placement of “a sign on your arm” and “*totafot* between your eyes” appears in the preceding verse; (4) The verse presumed to end the pericope entitled שמע אה ויהי אה is Deut 11:21, despite the fact that the verse prescribing the placement of “a sign on your arm” and “*totafot* between your eyes” appears three verses prior, in Deut 11:18.

Although the four tefillin pericopes mentioned in *Mekhilta* and other tannaitic sources were almost certainly meant to include the verses containing the quoted keywords as well as the verses that were understood as referring to the commandment of donning tefillin, it remains unclear whether passages prior to and subsequent to these verses were also expected to be (or permitted to be) included, and if so—what these passages may have been. The reliance on keywords in these tannaitic sources would seem to indicate that the boundaries of the said pericopes were well-known at the time, and as such an examination of the tefillin exemplars from the Judean Desert may prove useful in elucidating this issue. We shall proceed by analyzing each of the four scriptural pericopes individually, examining all of the tefillin exemplars from the Judean Desert in which the relevant sections of text have survived sufficiently to allow for proper analysis:

1. קדש לי (Exod 13:2): Six exemplars begin with Exod 13:1.¹⁶ An additional exemplar (34SePhyl A) begins with either Exod 13:1 or Exod 13:2

¹⁴ D. Nakman, “The Contents and Order of the Biblical Sections in the Tefillin from Qumran and Rabbinic Halakhah: Similarity, Difference, and Some Historical Conclusions,” (Hebrew) *Cathedra* 112 (2004) 21 n. 8; idem, “*Tefillin* and *Mezuzot* at Qumran,” in M. Kister, ed., *The Qumran Scrolls and their World* (Hebrew; Jerusalem 2009) 143–55.

¹⁵ Y. B. Cohn, “Tangled Up in Text: Tefillin in the Graeco-Roman World (4th Century BCE to 3rd Century CE)” (PhD diss., Univ. of Oxford 2006) 228.

¹⁶ Scholars have used a variety of designations when referring to the same tefillin slip. Here we shall make use of the designations listed in the name column appearing in E. Tov, “Categorized List of the ‘Biblical Texts,’” in idem, *The Texts from the Judean Desert: Indices and an Introduction to the Discoveries in the Judean Desert Series* (DJD 39; Oxford 2002) 182–83. For publication details of the exemplars referred to here and throughout this paper, please refer to n. 1 and n.

(the parchment at this point is missing).¹⁷ In four exemplars which display passages from Exodus chapter 12, a vacat separates between Exod 12:51 and Exod 13:1—clearly signifying that Exod 13:1 was viewed as beginning a new scriptural portion.¹⁸ In one exemplar (8QPhyl III), Exod 12:43–51 is followed by an extensive vacat, followed afterwards by Deut 5:1–14—again indicating that Exod 13:1 was considered the start of a new section.

The five exemplars which include both Exod 13:10 and Exod 13:11 contain a vacat between the two, indicating that Exod 13:10 was viewed as ending a scriptural portion.¹⁹ In four additional exemplars, the passages from Exodus ch. 13 end with Exod 13:10.²⁰

2. והיה כי יבאך (Exod 13:11): In four exemplars, Exod 13:11 begins a new pericope.²¹ As we have just noted, the five exemplars which include both Exod 13:10 and Exod 13:11 display a vacat between the two, indicating that Exod 13:11 was viewed as beginning a new scriptural portion.²²

In eight exemplars, the passages from Exodus ch. 13 end with Exod 13:16.²³ No tefillin exemplars feature any verses of Exodus that appear after Exod 13:16.

3. שמע (Deut 6:4): Four exemplars begin a new section with Deut 6:4.²⁴ One exemplar (XQPhyl 2) which includes Deut 5:19–6:9 contains a vacat between Deut 6:3 and 6:4, indicating the beginning of a new section. An additional three exemplars which include the passages preceding Deut 6:4 conclude with Deut 6:3—presumably indicating that Deut 6:4 was viewed as the start of a new section. In only one exemplar (4QPhyl H) is Deut 6:3–4 displayed with no vacat between the two verses.

2, supra. Slips 8QPhyl I, 4QPhyl C, 4QPhyl E, 4QPhyl R, MurPhyl, and XHēv/SePhyl all begin with Exod 13:1.

¹⁷ According to Y. Aharoni's reconstruction of the missing portion from 34SePhyl A, this slip begins with Exod 13:2 (Aharoni, "Expedition B" 22). This reconstruction, however, is quite speculative considering the fact that the entire right-hand portion of this slip (approximately 40% of the estimated original overall length of the slip) is completely missing. As such, the lack of Exod 13:1 should be of no surprise – contra Y. B. Cohn, *Tangled Up In Text: Tefillin and the Ancient World* (Providence RI 2008) 125.

¹⁸ These are: XQPhyl 1, 4QPhyl A, 4QPhyl I, and 4QPhyl M.

¹⁹ These are: 8QPhyl I, 4QPhyl B, 4QPhyl C, and MurPhyl. An examination of the published photograph of XHēv/SePhyl indicates that a clear vacat was left between verses Exod 13:10 and 11 in this exemplar as well, although the editors of this slip neglected to note this in their publication. Cf. PAM 42.191, published in E. Tov, *Miscellaneous Texts from the Judean Desert* (DJD 38; Oxford 2000) pl. XXX.

²⁰ These are: XQPhyl 1, 4QPhyl M, 4QPhyl R, and 34SePhyl A.

²¹ These are: XQPhyl 3, 4QPhyl F, 4QPhyl G, and 34SePhyl B.

²² Supra n. 19.

²³ These are: 8QPhyl I, 4QPhyl C, 4QPhyl F, 4QPhyl H, XQPhyl 3, MurPhyl, 34SePhyl B, and XHēv/SePhyl.

²⁴ These are: 8QPhyl I, 4QPhyl C, MurPhyl, and XHēv/SePhyl.

Five exemplars conclude this pericope with Deut 6:9.²⁵ No exemplars were found to include any subsequent passages from this section of Deuteronomy.

4. והיה אם שמע (Deut 11:13): Five exemplars begin a new section with Deut 11:13.²⁶ One slip (4QPhyl K) displays only Deut 10:12–11:12, indicating that Deut 11:13 was viewed as beginning a new section.²⁷

Seven exemplars conclude this section with Deut 11:21.²⁸ No tefillin exemplars include any passages appearing after this.

From the preceding analysis, it is clear that scribes preparing tefillin during the late Second Temple period through the early second century CE divided the scriptural pericopes in their tefillin along exactly the same lines as the paragraph divisions found in the significantly later medieval Masoretic texts. The evidence clearly indicates that each of the following was viewed as an individual scriptural pericope: Exod 13:1–10, Exod 13:11–16, Deut 6:4–9,²⁹ and Deut 11:13–21. The tannaitic sources surely relied on this common practice in using keywords to refer to the four tefillin pericopes, and as such had no need to delineate the boundaries of the scriptural sections prescribed to be included in tefillin. It is worth noting that even though many tefillin exemplars from Qumran evidence a practice of including certain scriptural sections immediately preceding the four rabbinically prescribed pericopes, the paragraph divisions evidenced in these exemplars indicates that the Qumranic practitioners clearly viewed these “extra-rabbinic” passages as distinct from the four pericopes specified in the rabbinic sources.³⁰

²⁵ These are: 8QPhyl I, XQPhyl 2, 4QPhyl C, MurPhyl, and XHēv/SePhyl.

²⁶ These are: 8QPhyl I, 4QPhyl C, 4QPhyl D, MurPhyl, and XHēv/SePhyl.

²⁷ The same appears to be the case with 8QPhyl IV.

²⁸ These are: 8QPhyl I, 4QPhyl A, 4QPhyl C, 4QPhyl D, 4QPhyl I, MurPhyl, and XHēv/SePhyl.

²⁹ With one exception, 4QPhyl H, noted above.

³⁰ This conclusion may call into question the claim that the “extra-rabbinic” passages found in many of the Qumran tefillin exemplars were simply “extended” versions of the four “traditional” pericopes. This position has been most clearly argued by Nakman (“Contents”), although it has been suggested previously by other scholars as well. See J. H. Tigay, “Tefillin,” in *Encyclopaedia Biblica* (Hebrew; Jerusalem 1982) 8:888–89; D. Rothstein, “From Bible to Murabba‘at: Studies in the Literary, Textual, and Scribal Features of Phylacteries and Mezuzot in Ancient Israel and Early Judaism” (PhD diss. UCLA 1992) 363. A proper study of this question lies beyond the scope of this paper.

The Order of the Scriptural Portions Contained in Head-Tefillin

A well-known dispute between the medieval commentators R. Solomon b. Isaac (Rashi) and his grandson R. Jacob b. Meir (Rabbeinu Tam) concerns the order of the scriptural passages that are to be placed in tefillin.³¹ Numerous modern scholars have analyzed the order of the scriptural portions in the exemplars from the Judean Desert in light of this debate, with some suggesting that the dispute between the medieval commentators had an historical foundation in ancient competing traditions evidenced in the Dead Sea tefillin.³² Y. B. Cohn has recently contested such claims, arguing that the medieval dispute was rooted in exegetical considerations and not in earlier traditions of tefillin praxis.³³

We have already highlighted the methodological pitfalls inherent in any attempt to interpret earlier material remains on the basis of later rabbinic sources. It goes without saying that extreme caution must be exercised when attempting to interpret Judean Desert finds dating to the Second Temple period and to the Bar-Kokhba Revolt on the basis of medieval rabbinic writings which postdate the archaeological finds by some one thousand years. As such, the present study will avoid addressing the medieval debate on this issue, focusing instead on the contribution that the Judean Desert finds may potentially bring to the interpretation of difficult passages in the tannaitic literature which deal with the order of the scriptural portions that are to be included in tefillin.

The first passage that we shall explore is a *baraita* quoted in the Babylonian Talmud:

ביצד סדרן? "קדש לך" "והיה כי יביאך" מימין, "שמע" "והיה אם שמוע" משמאל

³¹ Rashi, bMen 34b, s.v. "והקורא קורא בסדרן"; Tosafot, ad loc., s.v. "והקורא קורא בסדרן".

³² Vermes, "Pre-Mishnaic Jewish Worship" 66–67; Milik, "Textes Hébreux et Araméens," 81; Yadin, *Tefillin from Qumran* 14–15; Goren, "The Tefillin from the Judean Desert"; Tigay, "Tefillin" 889–90; E. Tov, "Tefillin of Different Origin from Qumran?" in Y. Hoffman and F. H. Polak, eds., *A Light for Jacob: Studies in the Bible and the Dead Sea Scrolls in Memory of Jacob Shalom Licht* (Jerusalem 1997) 48*; L. H. Schiffman, "Phylacteries and Mezuzot," in *EDSS* 2.676–77; E. Tov, "Further Evidence for the Existence of a Qumran Scribal School," in L. H. Schiffman, E. Tov, and J. C. VanderKam, eds., *The Dead Sea Scrolls: Fifty Years after their Discovery* (Jerusalem 2000) 215 n. 31; E. Tov, *Scribal Practices and Approaches Reflected in the Texts Found in the Judean Desert* (STDJ 54; Leiden/Boston 2004) 271 n. 332.

³³ Y. B. Cohn, "Rabbeinu Tam's 'Tefillin': An Ancient Tradition or the Product of Medieval Exegesis?" *JSQ* 14 (2007) 19–327. It is worthwhile to note the brief comment made by D. Rothstein regarding this issue: "Historically, the notion that divergent DS practices are to be explained on the basis of two *mutually exclusive* medieval interpretations of an amoraic passage is patently absurd" (Rothstein, *From Bible to Murabba'at* 370 n. 193).

What is their order? “Consecrate to Me” and “And when the Lord has brought you” are on the right, (while) “Hear, (O Israel)” and “If, then, you obey” are on the left.³⁴

The Talmud then notes that a different *baraita* has the order reversed:

!והתניא איפכא! “But there has been taught just the reverse!”³⁵

In turn, the Babylonian amoraic sage Abaye is quoted as harmonizing the two sources:

אמר אביי: לא קשיא – כאן מימינו של קורא, כאן מימינו של מניח – והקורא קורא בסדרן

Abaye said: “This is no contradiction, for in the one case the reference is to the right of the reader, whereas in the other it is to the right of the one that wears them; the reader thus reads them according to their order.”³⁶

The first question we may ask is if the referent here is to head-tefillin, to arm-tefillin, or perhaps to both. As we have seen in the passage from the *Mekhilta* quoted above, head-tefillin is constructed differently than arm-tefillin. The scriptural portions in head-tefillin are written on four parchment slips and placed in four separate compartments in the tefillin casing. Accordingly, the terms “right” and “left” are certainly applicable. The scriptural portions in arm-tefillin, however, are written on one slip and placed in a tefillin casing comprised of a single compartment. In modern-day tefillin, the scriptural portions of the arm-tefillin are written side-by-side in four columns, and as such a reference to the directions “left” and “right” would be appropriate in such a format. In antiquity, however, it appears that arm-tefillin were regularly written in a single-column format. That such a practice was current at the close of the tannaitic period is taken for granted by R. Joshua b. Levi, a prominent first generation amoraic sage from the Land of Israel:

ר' יודה בר פזי אמר: ר' יהושע בן לוי שאל: “ולמה לי נן אמרין: ‘יש בספרים מה שאין בתפילין ומזוזות – שהספרים נכתבין בשני דפין, ותפילין ומזוזות אינן נכתבים אלא בדף אחד?’”

R. Judah b. Pazi said: R. Joshua b. Levi asked: “Why does (the Mishnah) not teach: ‘This is a feature of scrolls which does not apply to tefillin and mezuzot—that scrolls

³⁴ bMen 34b. Note that all English translations of the BT are based on the Soncino Press edition, with slight emendations. Although recent scholarship has shown evidence of active editing and even “fabrication” of *baraitot* in the BT, there are no indications of such reworkings in this passage (see L. Jacobs, “Are There Fictitious Baraitot in the Babylonian Talmud?,” *HUCA* 42 [1971] 185–196; S. Friedman, “Towards a Characterization of Babylonian *Baraitot*: ‘ben Tema’ and ‘ben Dortai’,” in Y. Elman, E. B. Halivni and Z. A. Steinfeld, eds., *Neti‘ot Ledavid: Jubilee Volume for David Weiss Halivni* [Hebrew; Jerusalem 2004] 195–274). Significantly, the third–fourth century CE amoraic sage Abaye is quoted as commenting on this passage, a clear indication that the tradition predates Abaye’s generation.

³⁵ *ibid.*

³⁶ *ibid.*

are written on two columns, whereas tefillin and mezuzot are written on only one column?”³⁷

Significantly, the practice of writing arm-tefillin in a single-column format is also evidenced in the Judean Desert tefillin exemplars, which without exception are arranged in a vertical one-column format.³⁸ Accordingly, we should conclude that the passages quoted in *bMenahot* refer specifically to head-tefillin and not to arm-tefillin.³⁹

Having determined the referent of these passages, we may now turn to investigate the meaning of these two *baraitot*. The prescription found in the first *baraita* is rather unclear, and this ambiguity has in fact provided fodder for debate amongst the medieval Talmudic commentators (most saliently Rashi and Rabeinu Tam, as mentioned *supra*). In order to properly understand the difficulty involved, we must preface a brief description of the structure of the head-tefillin casing. The rabbinic sources indicate that the head-tefillin casing is to be constructed from a piece of leather folded in two (or two pieces of leather stitched together), and then divided into four compartments along the length of the fold/seam. A leather strap used for binding the tefillin case to the head was passed through the space created by the fold/seam in the leather (called *מעברתא* in Talmudic terminology). Leather casings fitting these exact prescriptions have been found in the Judean Desert.⁴⁰ With this description in mind, we may now proceed to posit four possible ways of interpreting the first *baraita*.⁴¹

1. The scriptural pericopes are to be placed in the tefillin casing, from right to left, in the sequential order in which they are found written in the Torah. Viewed from above, with the head-strap on the far end, this arrangement can be shown graphically as follows:

strap			
קדוש לך	והיה כי יביאך	שמוע	ואלה אבנים גדולות

³⁷ yMeg 1.8 (71c). Cf. Rothstein, *From Bible to Murabba'at* 289–91.

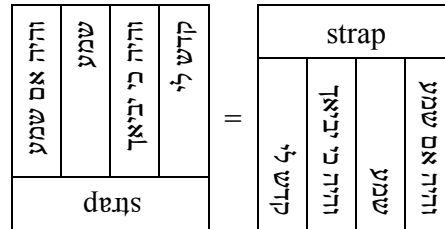
³⁸ This point has already been aptly noted in Rothstein, *From Bible to Murabba'at* 292–93; Cohn “Rabbenu Tam’s ‘Tefillin’” 320–21. See *infra* for a discussion of tefillin slip 8QPhyl I, which displays a slight variation of this format.

³⁹ It is interesting to note that Maimonides came to the same conclusion on the basis of exegetical reasoning. See R. Moses b. Maimon, *Responsa*, 289 (ed. Blau, 543–44).

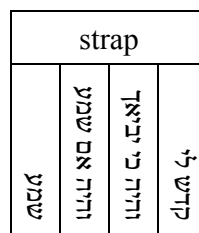
⁴⁰ *Supra* n. 3 and n. 4.

⁴¹ Each of these four interpretations has been put forth in the past by various medieval Talmudic commentators. A good summary of the medieval approaches may be found in R. Menahem Azariah da Fano, *Responsa*, 107 (ed. Ovadiah, 216–24).

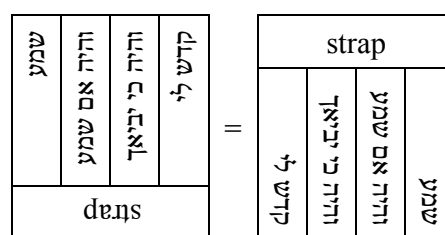
2. The *baraita* can be understood the same way as in (1), but with the point of reference reversed—with the head-strap on the opposite end. Viewed from above, this arrangement can be shown graphically as follows:



3. The *baraita* can be understood as prescribing the arrangement of two sets of pericopes, one (והיה כי יביאך and קדש לי) from right to left, and the second (והיה אם שמע and שמע) from left to right. This interpretation produces the following arrangement (viewed from above, with the head-strap on the far end):



4. Alternatively, the *baraita* can be understood in the same fashion as in (3), but with the point of reference reversed—with the head-strap on the opposite end. Viewed from above, this arrangement can be shown graphically as follows:



As we have seen, the Talmud notes the existence of an alternative *baraita* which reverses the order of the slips: **והתניא איפכא!** (“But was it not taught the opposite!”). This competing *baraita*, although not actually quoted, can be reconstructed as reading:

ביצד סדרן? “שמע” “והיה אם שמע” מימין, “קדש לי”, “והיה כי יביאך” משמאל

What is their order? “Hear, (O Israel)” and “If, then, you obey” are on the right, (while) “Consecrate to Me” and “And when the Lord has brought you” are on the left.

Although, as we have seen, the third–fourth century CE Babylonian sage Abaye is quoted as reconciling the two *baraitot*, this should probably be viewed as a legalistic harmonization of two competing tannaitic passages with the aim of explaining contemporary practice in light of a contrary tannaitic tradition.⁴² Viewing this second *baraita* as an independent tannaitic tradition, we may posit four possible ways to understand its prescription:⁴³

1. The four scriptural pericopes are to be placed in the compartments of the tefillin casing in the order prescribed by the *baraita*, from right to left. Viewed from above, with the head-strap on the far end, this arrangement can be shown as follows:

strap			
שמע	והיה אם שמע	קדש לי	והיה כי יביאך

2. The *baraita* can be understood the same way as in (1), but with the point of reference reversed—with the head-strap on the opposite end:

strap			
שמע	והיה אם שמע	קדש לי	והיה כי יביאך

=

strap			
והיה כי יביאך	קדש לי	והיה אם שמע	שמע

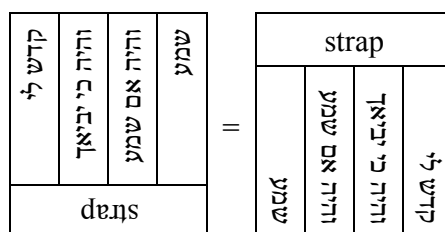
3. The *baraita* can be understood as prescribing the arrangement of two sets of pericopes, one (והיה אם שמע and שמע) from right to left, and the second (והיה כי יביאך and קדש לי) from left to right. Note that this understanding produces the same arrangement as in the fourth interpretation posited above for the first *baraita*:

strap			
שמע	והיה אם שמע	קדש לי	והיה כי יביאך

⁴² Rothstein, *From Bible to Murabba'at* 369–70.

⁴³ Cf. Nakman, “Contents” 25–26 n. 28, 39–40, 43. It is unclear why Nakman considered only one possible interpretation of this alternative *baraita* (the first interpretation listed here).

4. Alternatively, the *baraita* can be understood the same way as in (3), but with the point of reference reversed – with the head-strap on the opposite end. Note that this arrangement follows the same order as found in the third interpretation suggested here for understanding the first *baraita*:



We thus have four different possible ways to understand the first *baraita*, and four viable alternatives to interpret the second tradition.⁴⁴ We may now proceed by turning to the tefillin exemplars from the Judean Desert in order to explore how this evidence may aid in shedding light on this difficult Talmudic passage.

Five tefillin casings have been discovered with parchment slips found *in situ* in their compartments.⁴⁵ Of these, only two casings were found with slips sufficiently preserved to allow deciphering. The first, which was purchased from an antiquities dealer and is purported to have derived from Qumran, was published by Y. Yadin in 1969. This tefillin casing contains four compartments,⁴⁶ three of which were found to house the original parchment slips. Each of these three slips contains one of the scriptural portions prescribed in the rabbinic sources (קדש לי, והיה כי יביאך, and שמע), as well as additional scriptural portions not prescribed in the rabbinic literature. A fourth slip (XQPhyl 4), purchased together with the tefillin casing, did not originate in this casing but rather was placed inside the fourth com-

⁴⁴ J. Mann ("Changes in the Divine Service of the Synagogue Due to Religious Persecutions," *HUCA* 4 [1927] 292 n. 106) speculated that the second *baraita* represents the original form of the tefillin, and that the desire to have the sections placed in the order of their occurrence in the Torah resulted in a later shifting of the pericopes. Mann suggested that the order of the pericopes according to the second *baraita* would have been (from right to left, apparently with the strap on the close side): (1) שמע, (2) קדש לי, (3) והיה אם שמע, and (4) והיה כי יביאך. It remains unclear, however, how Mann came to this conclusion, which appears completely unsupported by the *Bavli Menahot* passage.

⁴⁵ Three casings with parchment rolls found *in situ* were discovered in Qumran Cave 4 (Milik, *DJD* 6, 34–5), one casing was discovered in Qumran Cave 5 (Milik, "Textes de la grotte 5Q" 178), and one is presumed to have derived from one of the caves at Qumran (Yadin, *Tefillin from Qumran*).

⁴⁶ Cohn (*Tangled Up in Text* 58), questioned the publishers' methodology in identifying tefillin casings as belonging to head-tefillin or arm-tefillin, as this classification rests entirely on later rabbinic texts. For our purposes, it will suffice to note that a tefillin casing consists of multiple compartments since, as we have shown, the discussion in *bMen* 34b revolves around this type of tefillin.

partment at some later date—probably by the dealer who sold the casing. Yadin conjectured that the original fourth slip contained the scriptural portion **וְהָיָה אִם שָׁמַע**. The order of the scriptural pericopes found in this casing is as follows:

strap			
+	+	+	(וְהָיָה אִם שָׁמַע)
קְדָשׁ לַיהוָה	שָׁמַע	וְהָיָה אִם שָׁמַע	

As can be clearly seen, this order does not conform to any of the interpretations of either *baraita* suggested above. Yadin claimed that the order of the slips found in his exemplar: “is nevertheless most similar to that of Rashi”, i.e. the second of the four options listed here as possible ways to understand the first *baraita*.⁴⁷ Although Yadin admitted that the order of the slips in his exemplar does not fully accord with the tannaitic prescription found in the first *baraita*, as the two inner portions are reversed, he proffered that in fact such an order would have been acceptable in the opinion of the amoraic sage Abaye (bMen 34b–35a), who held that a change in the order of the scriptural sections in a tefillin casing disqualifies the tefillin only if a section that should have been placed in one of the outer cells has been switched with a section which belongs in one of the inner cells.⁴⁸ Yadin’s resort to the legal opinion of a third–fourth century CE Babylonian sage in his interpretation of material finds from Qumran is of course highly problematic, and clearly does not stand up to critical scrutiny. The inevitable conclusion is that the order of the scriptural sections found in Yadin’s exemplar does not accord with the tannaitic prescriptions preserved in bMen 34b.⁴⁹

The second casing found to contain parchment slips was discovered *in situ* in Cave 4 at Qumran.⁵⁰ In this exemplar, three compartments and the space presumably intended for the passage of a leather strap have survived, with one parchment slip found in each compartment (4QPhyl D–F).⁵¹ In a

⁴⁷ Yadin, *Tefillin from Qumran* 14. It seems that Yadin misunderstood the opinion of Rashi as formulated in his commentary on bMen 34b (s.v. **כָּאֵן מִיָּמִין שֶׁל קוֹרָא** and s.v. **כָּאֵן מִיָּמִין שֶׁל מִנִּיחַ**). Rashi’s opinion, in fact, coincides with the first of the four options listed here as possible ways to understand the first *baraita*.

⁴⁸ Ibid. 15. Elsewhere (ibid. 32) Yadin suggested that the two inner slips may have been interchanged in error!

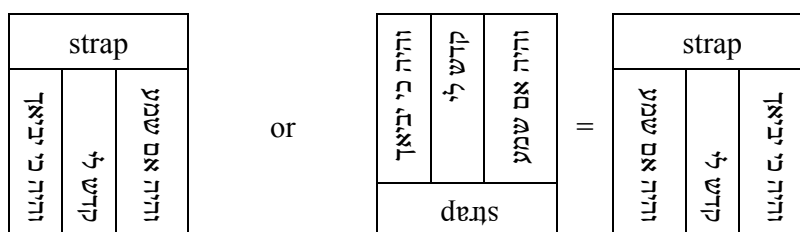
⁴⁹ C.f. Cohn, *Tangled Up in Text* 321–2.

⁵⁰ The tefillin casing under discussion is the first in Milik’s list of tefillin casings discovered in Qumran Cave 4 (Milik, DJD 6, 35).

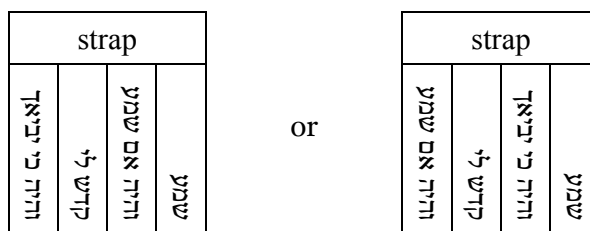
⁵¹ Milik, DJD 6, 55–7.

recent article, D. Nakman has suggested that the remains of a fourth compartment, which has not survived, are still discernable.⁵²

Unfortunately, Milik's description of the order of the 3 slips that were found is ambiguous: "Le fait d'avoir trouvé ce tefillin du front encore scellé dans son étui, assure l'ordre dans lequel on mettait les trois (ou quatre) morceaux de phylactère dans leurs compartiments: les sections de l'Ex. après celles du Deut".⁵³ Milik did not note which direction the casing was facing when the slips were removed from it for examination. Accordingly, Milik's description that the Exodus sections appear after those of Deuteronomy can be understood in one of two ways:



If, as Nakman has suggested, we are to reconstruct a fourth compartment which presumably housed a slip containing the שמע section, the order of slips in this casing would have been either:



While neither of these arrangements conforms to any of the suggested possibilities for interpreting the first *baraita*, the first arrangement conforms exactly to one possible understanding of the second *baraita* (the first in our list above). It remains possible, however, that the slips 4QPhyl D–F were in fact arranged according to the second sequence delineated above, an arrangement which does not conform to the prescriptions found in either of the two *baraitot*.

In summary, an examination of the tefillin exemplars from the Judean Desert indicates that slips containing multiple scriptural portions were essentially arranged in a single-column format. As such, it follows that the tannaitic prescription found in bMen 34b, which refers to the order of the

⁵² Nakman, "Contents" 22 n. 14, 30. Milik appears to have believed that this tefillin case did not originally include the שמע section in a fourth compartment (Milik, DJD 6, 38, 56).

⁵³ Milik, DJD 6, 56.

scriptural pericopes to be placed in the tefillin casing in terms of “right” and “left”, can be understood only as referring to tefillin constructed in a multiple-compartment format (i.e., head-tefillin). Beyond this conclusion, however, the limited and fragmentary state of the data provided by the Judean Desert tefillin provides little assistance in elucidating the difficult Talmudic passage found in *Bavli Menahot*. At most, we may conclude that the order displayed by XQPhyl 1–4 does not comply with the prescriptions recorded in this source (or anywhere else in rabbinic literature), and that 4QPhyl D–F does not comply with the halakhah found in the first *baraita* recorded there. While it is possible that the order of the scriptural pericopes found in this exemplar coincides with one possible interpretation of the second *baraita* quoted in this source, it remains equally possible that this exemplar does not follow the prescriptions laid down in this *baraita* either.

The Order of the Scriptural Portions Contained in Arm-Tefillin

A second rabbinic source that refers to the question of the order of the scriptural portions that are to be included in tefillin appears in *Mekhilta de-Rabbi Ishmael*:

...מצות תפילין – ארבע פרשיות של יד, הן כרך אחד. ארבע פרשיות של ראש, הן ארבע טוטפות. ואלו הן: “קדש לי”, “והיה כי יביאך”, “שמע”, “והיה אם שמוע”. כותבן בסדרן, ואם כותבן שלא בסדרן – הרי אלו יגנזו.

...The commandment of tefillin (consists of) four scriptural portions of arm-(tefillin) which are (written on) one roll (of parchment). The four scriptural portions of head-(tefillin) are (made as) four *totafot*.⁵⁴ And these are the (four scriptural portions): “Consecrate to Me”; “And when the Lord has brought you”; “Hear, (O Israel)”; “If, then, you obey”. They must be written in their order, and if they are not written in their order they must be hidden away.⁵⁵

As opposed to the source in *bMenahot*, the passage in the *Mekhilta* appears quite straightforward: the four scriptural portions must be written in the order that they appear in the Torah. Two points may be adduced to show that the *Mekhilta* here refers specifically to arm-tefillin and not to head-tefillin: (1) The prescription that the tefillin should be “written” in order is most readily understandable with regard to arm-tefillin, which are written on one slip, but not with regard to head-tefillin—which in any event are written on four separate slips, and as such the chronological order in which they are written would appear to be inconsequential; (2) The *Mekhilta* pre-

⁵⁴ See above, n. 8.

⁵⁵ *Mekhilta de-Rabbi Ishmael*, Masekheta dePaskha 18 (ed. Lauterbach² 114).

scribes that if the tefillin sections are written not in their proper order that they must be “hidden away.” Such a regulation makes sense only if the referent is arm-tefillin written on a single slip, for once the scriptural sections had been written in the wrong order—the mistake could not be emended. On the other hand, if the slips of head-tefillin were misarranged in their compartments, these could simply be rearranged in the original tefillin casing.

An examination of the tefillin exemplars from the Judean Desert provides an opportunity to trace the development of this halakhic prescription. The scholars who published these finds classified the various exemplars as “arm-tefillin” or as “head-tefillin,” apparently on the basis of the differentiation between these two types found in the rabbinic texts. As almost all of the slips were found outside of a tefillin casing, it seems that the basis for the editors’ classification of a slip as either “arm-tefillin” or “head-tefillin” was the number of scriptural portions found written on any one individual slip. This approach is clearly problematic, as it takes for granted that such a differentiation existed already in the Second Temple period. While such a state of affairs is certainly conceivable and perhaps even likely, a critical treatment of the internal evidence provided by the Judean Desert exemplars themselves calls for a more cautious approach. As such, in the present study we shall examine all of the Judean Desert exemplars that display two or more non-consecutive scriptural portions in order to determine whether or not the tefillin pericopes were arranged in their scriptural sequence.

Only two tefillin slips, 4QPhyl C and XHev/SePhyl, contain scriptural portions that are clearly arranged in the order in which they are found in the Torah.⁵⁶ Both slips display the four rabbinically prescribed scriptural pericopes exclusively. While one slip was found in Cave 4 at Qumran, the second was purchased and is presumed to have derived from one of the caves of refuge dating to the Bar Kokhba Revolt—in either Naḥal Hever or Naḥal Se’elim.

⁵⁶ Four additional slips may be noted here: (1) 4QPhyl B displays on the “recto” Deut 5:1–6:5, and on the “verso” Exod 13:9–16. As these two scriptural portions are written on two sides of one slip, it cannot be determined how the order of the pericopes should be viewed. (2) Similarly, 4QPhyl M displays on the “recto” Exod 12:44–13:10, and on the “verso” Deut 5:33–6:5. Again, the fact that the two scriptural selections appear on either side of the slip make it impossible to determine what order was intended. (3) 4QPhyl Q has Deut 11:4–18 on the recto, while Exod 13:4–9 appears on the verso. In this case too, we are precluded from drawing any conclusions regarding the order of the pericopes. (4) 8QPhyl II displays Deut 6:1–3, followed directly by Deut 10:20–22. Fragments of unidentified passages are found preceding the passages from Deut 6, while fragments of additional unidentified passages follow Deut 10:20–22. It is unclear if all of the passages displayed in this exemplar actually follow the scriptural sequence. Notably, Deut 6:1–3 is not followed by Deut 6:4–9, i.e., the שמע section; if the שמע section was in fact included on this slip, it was certainly written out of sequence.

In four tefillin exemplars, multiple scriptural pericopes are written on one slip in an order that does not conform to the scriptural sequence.⁵⁷

1. 4QPhyl A displays on the recto passages from Deut chapters 5 and 10, followed by Deut 11:1–17. The text on the verso continues directly from the recto: Deut 11:18–21. The Deut verses on the verso are then followed by Exod 12:43–13:7.

2. 4QPhyl I displays on the recto Deut 11:13–21, followed by Exod 12:43–13, 10. The verso appears to have displayed verses from Deut chapter 6.

3. 8QPhyl III⁵⁸ displays Deut 10:12–19, followed by Exod 12:43–51, after which appears Deut 5:1–13. (Verse 13 displays a harmonization with the Exodus Decalogue, with the last five words replaced by Exod 20:10).⁵⁹

4. MurPhyl 1 displays Exod 13:1–16, followed by Deut 11:13–21, while MurPhyl 2 displays Deut 6:4–9. The two slips were folded over each other several times and wrapped together in a thin piece of parchment. The editor identified the slips as having comprised two elements of a single set, and this does in fact seem highly likely.⁶⁰ Consequently, the fact that Exod 13:1–16 is followed by Deut 11:13–21 and not by Deut 6:4–9 indicates that the scribe who wrote this exemplar was not concerned with arranging the four pericopes in their scriptural order.⁶¹

One tefillin exemplar deserves special notice. 8QPhyl I⁶² displays Exod 13:1–16 on the top of the slip, followed beneath by Deut 6:4–9 arranged in a paragraph on the left-hand side of the slip, and Deut 11:13–21 arranged in the shape of a backward “L” to the right of and below the Deut 6:4–9 paragraph. Considering that Hebrew is written from right-to-left, we may view the Deut 11:13–21 section as preceding the Deut 6:4–9 paragraph. On the other hand, the Deut 11:13–21 section wraps around below the Deut 6:4–9

⁵⁷ Two additional slips, XQPhyl 1 and XQPhyl 2, were found to contain pericopes not arranged in their scriptural order. These two slips, however, were found in their original casing comprised of four separate compartments, and as such do not bear directly on the *Mekhilta* passage under question.

⁵⁸ Although Baillet (“Textes des grottes 2Q, 3Q, 6Q, 7Q, à 10Q”) viewed the four groups of slips 8QPhyl I–IV as a set deriving from a single tefillin casing, Yadin (*Tefillin from Qumran* 34) appears to have been correct in viewing these slips as independent of one another. Cf. M. Baillet, “Nouveaux phylactères de Qumrân (XQ Phyl 1–4). A propos d’une édition récente,” *RevQ* 7 (1970) 414.

⁵⁹ E. Eshel, “4QDeutⁿ—A Text that Has Undergone Harmonistic Editing,” *HUCA* 62 (1991) 122–23, n. 31.

⁶⁰ Milik, “Textes Hébreux et Araméens” 80–81.

⁶¹ Cohn (“Rabbenu Tam’s ‘Tefillin’” 323; *Tangled Up in Text* 106), has suggested that the difference in the relative sizes of the parchment scraps at hand was the reason that the scribe chose Deut 11:13–21 to “round out” MurPhyl 1, since this section simply would not have fit on the significantly smaller MurPhyl 2 slip.

⁶² See *supra* n. 58.

paragraph, and as such should perhaps be viewed as following the latter section. Another point which should be considered is the fact that the Deut 6:4–9 paragraph appears to have been written before the Deut 11:13–21 section. This would seem to be indicated by the many instances where words and word-portions from the Deut 11:13–21 section are cut off by the Deut 6:4–9 paragraph, giving the impression that the scribe was trying to fit the Deut 11 portion onto the slip after the Deut 6 paragraph had already been written. It remains unclear why the Deuteronomy portions in this slip were arranged in this unusual format, and we may question whether or not the scribe viewed the scriptural sequence of the passages as a matter of concern.⁶³

Summarizing the evidence, we have seen that only two tefillin exemplars display the scriptural pericopes in the order that they are found in the Torah. We may note that these two exemplars include exclusively the four pericopes prescribed by rabbinic halakhah. It remains unclear, however, whether or not the scribes who penned these tefillin were in fact aware of any halakhic regulation which prescribed that the tefillin pericopes be arranged in their scriptural order. It must be remembered that the order prescribed in the rabbinic sources also happens to be the most intuitive sequence, and as such it is difficult to ascribe a definite halakhic motive to this arrangement.

Conversely, we have seen that four tefillin exemplars contain pericopes that are not arranged in their scriptural order. Notably, one of these (Mur-Phyl) contains only the four pericopes prescribed by rabbinic halakhah, and dates to the Bar Kokhba period. Since any arrangement that does not coincide with the scriptural sequence of the pericopes would appear to counter intuition, these exemplars provide clear evidence that scribes and tefillin practitioners from as late as the second century CE were unaware of (or not concerned with) the rabbinic prescription recorded in the *Mekhilta*. Although the evidence is quantitatively somewhat limited, it may nevertheless suggest a relatively late date for the promulgation of this halakhah.⁶⁴

⁶³ Yadin suggested that this arrangement “would seem to indicate that the scribe perhaps adhered to the system of Rabbenu Tam, but that he made an attempt to reconcile both systems” (Yadin, *Tefillin from Qumran* 15 n. 28). See, however, Cohn (“Rabbenu Tam’s ‘Tefillin’”), who has shown that such a claim cannot withstand critical scrutiny. Cf. Rothstein, *From Bible to Murabba’at* 373.

⁶⁴ Contra Nakman, “Contents” 39.

The Inclusion of the Decalogue in Tefillin

The *Sifre* on Deuteronomy presents an interesting halakhic midrash which deals with the question of the inclusion of the Decalogue in tefillin:

[...] עדיין אני אומר אם "קדש לי", "והיה כי יביאך", שקדמום מצות אחרות, הרי הם בקשירה, עשר הדברות, שלא קדמום מצות אחרות, אינו דין שיהו בקשירה? אמרת קל וחומר הוא: אם "ויאמר", שהוא בשנון, אינו בקשירה, עשר הדברות, שאינם בשנון, אינו דין שלא יהו בקשירה? הרי "קדש לי" "והיה כי יביאך" יוכיחו, שאינם בשנון והרי הם בקשירה, והם יוכיחו לעשר דברות, שאף על פי שאינם בשנון שיהו בקשירה. תלמוד לומר "וקשרתם" – אלו בקשירה ואין עשר דברות בקשירה.

Still, I might say that if (the portions) "Consecrate to Me" (Exod 13:2) and "And when the Lord has brought you" (Exod 13:11), which are preceded by other commandments, are to be bound (as part of the tefillin), should not the Ten Commandments, which are preceded by no other commandments, to be bound (as tefillin)? You might then say that this is a matter of inference *a minori ad majus*: if "(The Lord) said" (Num 15:37), which is recited daily, is not bound (as tefillin), should not the Ten Commandments, which are not recited daily, be likewise excluded from being bound (as tefillin)? The answer is that "Consecrate to Me" (Exod 13:2) and "And when the Lord has brought you" (Exod 13:11) would prove otherwise, for they are not recited and yet are bound (as tefillin), which would prove that even though the Ten Commandments are not recited, they should nevertheless be bound (as tefillin). Hence, scripture states: "Bind them" (Deut 6:8)—these are to be bound (as part of the tefillin), but the Ten Commandments are not to be bound.⁶⁵

This midrash opens by suggesting that the Decalogue should be included in tefillin, after which hermeneutical proofs are brought to discount such a possibility. This is an extremely common formula found in halakhic midrash: "Perhaps the law should be X? [...] Y proves that this is not the case". What is somewhat unusual in this example is that the original contention, that perhaps the Decalogue should be included in tefillin, is not at all intuitive.

This midrash would have been understood as a theoretical exercise in rabbinic exegesis, until the discovery of two distinctive groups of tefillin at Qumran—one containing exclusively the four portions prescribed in the rabbinic literature⁶⁶ and a second group containing additional scriptural portions, of which nine exemplars include the Decalogue.⁶⁷ All of the Ju-

⁶⁵ *Sifre Deut 35* (ed. Finkelstein, 63).

⁶⁶ 4QPhyl C, 4QPhyl D, 4QPhyl E, 4QPhyl F, and 8QPhyl I. Both 4QPhyl R and 4QPhyl S also display passages from the rabbinically prescribed pericopes alone, however the extent of the text preserved in these slips is very limited. Milik (DJD 6, 78), notes that 4QPhyl S may have belonged to a mezuzah.

⁶⁷ Tefillin exemplars containing the Decalogue include: 1QPhyl, 8QPhyl III, XQPhyl 3, 4QPhyl A, 4QPhyl B, 4QPhyl G, 4QPhyl J, 4QPhyl L, and 4QPhyl O. Additional tefillin exem-

dean Desert tefillin exemplars which may be dated to the post-70 CE period include the four rabbinically prescribed pericopes exclusively.⁶⁸

As such, I would like to propose that in first raising and then rejecting the suggestion that the Decalogue be included in tefillin, the author of the *Sifre* was not engaging in a mere theoretical exercise meant for rhetorical purposes alone, but was rather addressing an actual contemporary halakhic dispute.⁶⁹ The lack of any intuitive basis for suggesting that the Decalogue be included in tefillin would seem to indicate that the author of the *Sifre* was keenly aware of an actual practice of including it. The suggestion that perhaps the Decalogue should be incorporated into tefillin was raised by the author of this midrash for the sole purpose of dismissing it forthwith through exegetical argumentation.

This is not the only example of a veiled polemic aimed against variant halakhic views to be found in the genre of halakhic midrashim. As M. I. Kahana has recently pointed out: “In a few instances, such a controversy is overtly present, but usually it is concealed and its identification requires information from other sources as to the opinions combated.”⁷⁰ While in rare instances this information can be found elsewhere in the corpus of rabbinic literature, in some cases, as in ours, the only available clue as to the polemical nature of the halakhic midrash at hand is to be found in external sources such as the findings from Qumran. As Kahana has noted, this area of study is still very much in its infancy.

A salient example of such a polemical halakhic midrash is found in *Sifra*, in the exegetical treatment of the expression (Lev 23:15): מִמָּחֳרַת הַשַּׁבָּת (“from the day after the Sabbath”). The midrash opens with the suggestion that the term שַׁבָּת should be understood literally as referring to Saturday, only to reject this possibility and to interpret the term instead as referring to the first day of the Passover festival.⁷¹ Here too we find the formula: “Perhaps the law should be X? [...] Y proves that this is not the case”. That this

plars from Qumran displaying scriptural passages not prescribed in the rabbinic sources include: 8QPhyl II, 8QPhyl IV, XQPhyl I, XQPhyl 2, 4QPhyl H, 4QPhyl I, 4QPhyl K, 4QPhyl M, 4QPhyl N, 4QPhyl P, 4QPhyl Q. Nakman (“Contents” 35–37) has suggested that 4QPhyl N was an amulet and not a tefillin slip. For a critique of Nakman’s view, and an alternative reading of the evidence, see Cohn, *Tangled Up in Text* 75–76.

⁶⁸ MurPhyl, 34SePhyl, and XHev/SePhyl.

⁶⁹ Cohn (*Tangled Up in Text* 126), has briefly raised the essential suggestion argued here, although he has also proffered the possibility that the *Sifre* was driven by scholastic concerns rather than knowledge of an actual variant practice. Nakman (“Contents” 29) has also viewed the discussion found in this source as purely theoretical (cf., however, *ibid.*, 40).

⁷⁰ M. I. Kahana, “The Halakhic Midrashim,” in S. Safrai, Z. Safrai, J. Schwartz, and P. J. Tomson, eds., *The Literature of the Sages, Second Part: Midrash and Targum, Liturgy, Poetry, Mysticism, Contracts, Inscriptions, Ancient Science and the Languages of Rabbinic Literature* (Assen 2006) 46.

⁷¹ *Sifra Emor* 12 (ed. Weiss, 100d); cf. bMen 65b–66a.

is more than just a theoretical exercise in rabbinic exegesis is clear from other rabbinic sources which indicate that the interpretation of the term שבת in this verse was historically a point of contention between the Pharisees and the Boethusians.⁷² Recent scholarship has identified a handful of additional such veiled polemical agendas in halakhic midrashim.⁷³

Presumably, the passage in the *Sifre* that argues against the practice of including the Decalogue in tefillin derives from a time when this was still an issue of current debate. What can the evidence of the Judean Desert tefillin contribute toward our understanding of the historical setting of this halakhic dispute?

Even before the publication of the discoveries from the Judean Desert, some scholars had suggested that Second Temple period tefillin included the Decalogue, and that this pericope was removed only after 70 CE, sometime during the Tannaitic period.⁷⁴ At the time, the sole basis for this theory was the fact that the recitation of the Decalogue is listed together with the recitation of the *Shema* as part of the daily liturgy of the Jerusalem Temple,⁷⁵ whereas in the tannaitic literature the recitation of the Decalogue no longer appears as a part of the daily prayers. A passage from the Jerusalem Talmud, quoting later amoraic sages, relates that although the Decalogue should rightly be recited as part of the daily liturgy, its recitation is not included in everyday prayers in order to avoid the heretical claims of the “*minim*” who maintain that only the Decalogue was given to Moses at Sinai and not the rest of the Torah.⁷⁶ Reading this passage as an historical account of the removal of the Decalogue from the liturgy in reaction to the so-called “*minim*,” scholars had theorized that a parallel development occurred with regard to the tefillin, proffering that the Decalogue was originally included

⁷² mMen 10, 3; tRosh 1, 15 (ed. Lieberman, 308–9); bMen 65a–b; Scholion to Megillat Ta’anit, 8th of Nissan (ed. Noam, 59–63) according to the Oxford ms. (Bodleian Library, Michael 388, Neubauer Catalogue no. 867.2). According to the Parma ms. (Biblioteca Palatina, De Rossi Collection no. 117), the controversy was between the Pharisees and the Sadducees. Cf. mHag 2, 4. For the view of the Qumaran sectarians on this issue, see Y. Yadin, *The Temple Scroll* (Vol. 1; Jerusalem 1983) 116–19; J. M. Baumgarten, “The Calendars of the Book of Jubilees and the Temple Scroll,” *VT* 37 (1987) 71–78.

⁷³ See M. Halbertal, *Interpretative Revolutions in the Making: Values as Interpretative Considerations in Midrashei Halakhah* (Hebrew; Jerusalem 1997) 22 n. 18, 129 n. 9, 178 n. 4; Kahana (“The Halakhic Midrashim” 46–51); Ch. Safrai and A. Campbell Hochstein, *Women Out—Women In: The Place of Women in Midrash* (Hebrew; Jerusalem; Tel Aviv 2008) 38.

⁷⁴ Mann, “Changes” 289–94; A. M. Haberman, “The Phylacteries in Antiquity,” (Hebrew) *EI* 3 (1954) 174–77.

⁷⁵ mTam 5.1.

⁷⁶ yBer 1.4 (3b). For an investigation into the identity of these “*minim*,” see: G. Vermes, “The Decalogue and the Minim,” in M. Black and G. Fohrer eds., *In Memoriam Paul Kahle* (Berlin 1968) 232–40.

in tefillin during the Second Temple period and later removed as a reaction to the heretical “*minim*.”⁷⁷

This theory received considerable support with the early publication of a number of tefillin slips from Qumran which provided the first physical evidence of the inclusion of the Decalogue in Second Temple period tefillin.⁷⁸ With the subsequent publication of additional tefillin slips, however, it soon became clear that some Qumran tefillin exemplars did *not* include the Decalogue. In light of this new evidence, Y. Yadin posited a hypothesis according to which the common practice was to include the Decalogue and other “extra-rabbinic” scriptural portions principally in head-tefillin, while including only the four “traditional” scriptural pericopes in arm-tefillin.⁷⁹ At the time, most of the published fragments containing “extra-rabbinic” scriptural sections were attributed to head-tefillin, while those containing only the four “traditional” pericopes were ascribed to arm-tefillin. Yadin himself noted the tenuousness of this theory, posited at a time when the majority of the Qumran tefillin slips had not yet been published. Indeed, with the publication of the tefillin slips from Qumran Cave 4,⁸⁰ this theory has essentially lost relevance—as 4QPhyl D, 4QPhyl E, and 4QPhyl F are all head-tefillin slips which contain only the four “traditional” pericopes, while 4QPhyl A and 4QPhyl B are both identified as arm-tefillin slips and yet contain “extra-rabbinic” pericopes, including the Decalogue.

Today, with the final publication of the entire corpus of decipherable tefillin slips from the Judean Desert completed, it is clear that during the Second Temple period the practice of including the Decalogue in tefillin was not universal, as at this time tefillin containing the Decalogue existed side by side with tefillin containing exclusively the four pericopes prescribed in the rabbinic literature. Furthermore, we must bear in mind that the only evidence for a practice of including the Decalogue in tefillin derives from Qumran, as all of the exemplars found outside of Qumran contain the four rabbinically prescribed pericopes exclusively. As I have shown elsewhere, all of the Qumran exemplars which include the Decalogue also display orthographic and textual features characteristic of sectarian Qumran

⁷⁷ Supra n. 74. In addition to these rabbinical sources, both Mann (“Changes” 290 n. 102), and Haberman (“The Phylacteries” 175) enlist the testimony of Jerome (to Ezek 24:15 [Migne, *Patrologia Latina*, vol. 25, col. 230]) who reports a practice of contemporary Jewish Babylonian sages to include the Decalogue in their head-tefillin. Mann (ibid.) also referred to Jerome’s homily on Matt 23:5–6 (Migne, *Patrologia Latina*, vol. 26, col. 174), in which he described the φυλακτήρια of Matthew as containing the Decalogue. It should be kept in mind that Jerome (ca 347–420) was contemporaneous with the last generation of the Babylonian amoraim.

⁷⁸ H. Schneider, “Der Dekalog in den Phylakterien von Qumrân,” *Biblische Zeitschrift* 3 (1959) 18–31; Vermes, “Pre-Mishnaic Jewish Worship” 69, 71.

⁷⁹ Yadin, *Tefillin from Qumran* 34–35.

⁸⁰ Milik, DJD 6.

scribal practices.⁸¹ Consequently, we have no indication that the inclusion of the Decalogue in tefillin was ever practiced outside of Second Temple period sectarian circles.⁸²

As such, the most appropriate *Sitz im Leben* for the passage in the *Sifre* that argues against the inclusion of the Decalogue in tefillin would appear to be the highly sectarianized Second Temple period. Although it is certainly possible that some individuals continued to practice the inclusion of the Decalogue in their tefillin for some time after 70 CE, the sectarian disputes characteristic of late Second Temple period Judaism present the most likely setting for the veiled polemic found in the *Sifre*. Although the *Sifre* was probably compiled only sometime during the third century CE, it would appear that the passage under discussion here preserves material which in fact dates to the pre-70 CE period.

Summary

The present study has suggested a number of contributions that the evidence of the tefillin from the Judean Desert may provide in elucidating early rabbinic texts that discuss the question of the content and order of the scriptural pericopes to be included in tefillin.

Our extensive analysis of the epigraphic evidence has shown that the traditional understanding regarding the boundaries of the rabbinically prescribed scriptural pericopes has its basis in the earliest surviving tefillin exemplars. The evidence provided by the Judean Desert tefillin exemplars has also aided in elucidating a halakhic midrash and a well-known and complex Talmudic passage that prescribe the sequence of the scriptural portions to be included in tefillin. Lastly, our inquiry has shown how conflicting practices with regard to the inclusion of the Decalogue in the Judean Desert tefillin provide the historical background for the composition

⁸¹ Y. Adler, "Identifying Sectarian Characteristics in the Phylacteries from Qumran," *RevQ* 89 (2007) 79–92.

⁸² Contra Nakman, "Contents." For an early (and highly speculative) discussion of the sectarian background for including the Decalogue in tefillin during the Second Temple period, see A. Krochmal, *Ijun-Tephillah* (Hebrew; Lemberg 1885) 34–37. In light of the findings from Qumran, the question once again arises as to why certain sectarians, and members of the Qumran sect in particular, would have been especially interested in including the Decalogue in their tefillin. As many have already pointed out, the term "these words" appearing in the biblical injunction to "keep *these words* that I am commanding you today in your heart [...] bind them as a sign on your hand and as *טפת* between your eyes" (Deut 6: 6, 8) was probably understood as referring to the Decalogue found in the preceding chapter (Deut 5: 6–18). We are perhaps better off inquiring as to why others would have chosen to *omit* the Decalogue from their tefillin; however this is a question that lies beyond the scope of our present study.

of a halakhic midrash, which can now be viewed as an example of a polemical exegesis.

Our study has shown how a reexamination of early rabbinic texts in light of the evidence supplied by the Judean Desert tefillin can provide important insights into the interpretation of these texts. Further investigations using this method are sure to shed light on additional aspects of tefillin practice described in other early rabbinic sources.