**Summary**

The laws of testimony in Jewish law, originating in tannaitic halakha, are known for the many difficulties that they impose on the possibility of conviction in criminal proceedings. These laws set out complex preconditions for the admissibility of testimony – preconditions that are unlikely to materialize in most cases. The rules perceived as imposing such difficulties include: (1) the requirement for the testimony of two qualified witnesses, as well as the inadmissibility of a confession by the offender, circumstantial evidence, and the testimony of women, relatives, and many others who are considered disqualified witnesses; (2) strict requirements regarding the interrogation of witnesses, which may lead to the invalidation even of two qualified witnesses for as little as a marginal contradiction between their respective testimonies; and (3) the law of forewarning, which requires that the witnesses confront the offender before he or she commits the offense and warn them not to do so. It is difficult to understand why the rabbis limited the admissibility and validity of testimony so severely: What is the jurisprudential logic that guided the enactment of these limitations?

These questions have preoccupied generations of commentators and scholars who have attempted to offer a variety of answers, and yet, to the present day no conclusive solution has been found. Through a philological investigation of the tannaitic sources in which these demanding requirements are imposed, conducted from a comparative perspective that considers other ancient and late-antique sources, this study offers a new approach to these problems, presenting a novel understanding of the conception of testimony reflected in early rabbinic literature. In it, I argue that the difficulty in understanding the purpose and role of the many preconditions imposed by the rabbis for valid testimony stems from scholars’ prior assumptions, not always articulated, regarding the role of witnesses and the meaning of testimony. By uncovering these basic assumptions and examining them critically, we find that they impose an unnecessary and textually unfounded burden on the object of study – in this case the tannaitic rules of testimony.

What is the role of witnesses in a judicial process? It is generally accepted that testimony is an instrumental tool, a mere means of transmitting information to the judicial forum authorized to decide a legal dispute. To be sure, this a good description of the role of witnesses in modern legal thought. But does this description hold true in all legal systems, or in all historical periods? I suggest that there are good reasons to doubt this, and to consider the possibility that, in ancient times, the predominant conception of the judicial process and the place of witnesses within it was different. I argue that the tannaitic rules of testimony reflect an alternative understanding of the role of witnesses, different from the conventional understanding of this role in modern thought, but well-grounded in conceptions of testimony contemporaneous with the Tanna’im.

The common supposition that testimony is a means to convey facts to judges has led many scholars to assume that, when a legal regime imposes restrictions on the applicability of testimony, the purpose of these restrictions must be to detect potential liars, allowing only the most reliable witnesses to testify. These probative explanations, as they are referred to in the legal literature, are also commonly invoked with respect to some of the tannaitic rules of testimony. However, probative logic works very poorly as an explanation for many other tannaitic rules and their complex details. In light of this, scholars of halakha have been reluctant to argue that the purpose of these rules is to assert the credibility of the testimony. What, then, could be their alternative purpose? In the absence of a probative justification, they have often been described as arbitrary and purposeless. Indeed, some scholars have tried to offer second-order explanations, speculating about the reasons the Tanna’im may have had for imposing ostensibly arbitrary requirements for the validity of testimony, rather than explaining the rules of testimony themselves.

Two central explanations have been offered for the supposedly arbitrary nature of the tannaitic rules of testimony, which I call “the ideological explanation” and “the religious explanation,” respectively. The ideological explanation presumes that the formulation of the tannaitic rules of testimony was guided by the rabbis’ profound reluctance to carry out the death penalty. According to this explanation, the rabbis intentionally sought to neuter their criminal proceedings, in order to ensure they avoid any conviction that would result in the need to administer the death penalty. On this view, certain tannaitic restrictions on valid testimony are arbitrary; they are not intended to achieve any positive purpose. Their only goal is a negative one – namely, to impose a procedural burden that will prevent convictions *de facto*.

While the ideological explanation attributes the design of enigmatic rules to human planning – motivated by a desire to avoid conviction – those who proffer the religious explanation believe that the unintelligible dimension of these rules indicates the existence of a divine purpose. According to this explanation, the incomprehensible foundations of these rules have mystical, spiritual purposes, which are centered on the religious relationship between God and His people. In other words, this explanation attributes the ostensible arbitrariness of the tannaitic rules of testimony to the limitations of human comprehension, and transfers the discussion of the purpose of these rules from the legal-civil sphere to the religious sphere.

The ideological explanation and the religious explanation are, of course, very different from one another, but they share a notable common premise: namely, that if it is not possible to offer a probative explanation for the tannaitic rules of testimony, they must be considered arbitrary and meaningless, at least from a human point of view. The two explanations aim to explain the same arbitrariness, rather than the (arbitrary) rules themselves. But is the role of testimony in the conception of the early rabbis really the same instrumental role of reporting truth to the judges, or did they perhaps conceive of testimony differently? Is it possible that the tannaitic rules of testimony only seem to be arbitrary because we examine them in light of probative standards that stem from an instrumental conception of testimony, and that, if we were to abandon this presupposition, we might identify some other internal logic? Through analysis of the tannaitic sources, against the backdrop of their various cultural contexts as attested in both biblical and Greco-Roman sources, I find that the answer to both of these questions is affirmative. Indeed, the ancient sources reveal a different conception of witnesses’ role in judicial proceedings, not limited to providing information to the judicial body which holds the authority to make decisions. Rather, in this view, the witnesses themselves constitute a forum upon which the judicial decision depends. Furthermore, the analysis I propose reveals that the tannaitic rules of testimony are all organized in a way that serves to shape the conditions for granting this authority to the witnesses.

I reach these conclusions by means of a thorough study of tannaitic sources that determine the conditions for valid testimony, focusing on five major themes around which the five chapters of this study are organized. I examine rules which are commonly understood to be serving probative purposes (primarily disqualification for testimony, as well as the rules regarding the interrogation of witnesses), and also others that are viewed as arbitrary and meaningless (such as “if one is found a relative or disqualified,” “two are like a hundred,” and the forewarning requirement). With respect to the first set of rules, which have been understood to be probative, I show that the explanatory power of probative logic is limited to the superficial level. On the basis of a thorough examination, it becomes evident that even these rules are not informed by probative considerations, but rather are focused on the authority granted to witnesses within the judicial process – an authority that limits the discretion of the judges. As for the second category of rules, which are perceived as arbitrary, I show that they are, in fact, organized according to systematic principles which set out conditions in which the witnesses gain their special authority.

Thus, in the first chapter of the study, I deal with the well-known tannaitic list of people disqualified from serving as witnesses, which includes “a dice-player, a usurer, pigeon flyers, and traders in seventh-year produce.” Previous explanations claimed that the four characters on this list were disqualified for testimony because they were considered “suspect in money matters,” like thieves, meaning that it was suspected they might give false testimony in return for money. Instead, I propose that the organizing rationale underpinning the list is rooted in a Greco-Roman context, and more specifically, in the political ideal of self-control. I show that, in formulating their rules regarding disqualification for testimony, the Tanna’im borrowed the model of Roman *infamia*, a legal institution whose main purpose was to degrade the civil status and political competence of those who were thought to lack self-control. A key aspect of this degradation was the comparison of the status of *infames* to that of women. The rabbis also compare the status of disqualified witnesses to that of women with regards to the scope of their incompetence to testify. I propose that, in formulating their rules of disqualification for testimony, the Tanna’im adopted the organizing logic of Roman *infamia*, under which qualification for testimony was not regarded as merely a probative matter, but also, and perhaps primarily, as a political status.

In the second chapter of the study, I deal with the disqualification of women from testifying. Here, too, it is difficult to provide an explanation based on probative logic for the complex network of disqualification rules, according to which women are allowed to testify in some contexts but not in others. Through analysis of the sources dealing with the disqualification of women from testifying, I show that the rabbis linked women’s disqualification with another rule relating to the number of witnesses who ought to testify in a judicial proceeding. In particular, they distinguished between matters for which two witnesses are required and matters for which one witness is also acceptable. Women were considered ineligible to testify when two witnesses were required, but eligible to testify in any matter for which one witness was considered sufficient.

Following this distinction, I argue that the Tanna’im formulated two different procedural tracks: the “two witness track” and the “individual witness track.” Separate rules govern each of these two tracks, with respect to qualification for testimony (especially whether women are eligible to testify) and also on other matters, for example, how to decide between conflicting testimonies of two groups of witnesses. In the “two witness track,” contradictory testimonies from two groups of witnesses offset each other – this is the rationale of the well-known rule, “two are like a hundred.” In the “individual witness track,” however, the rule is that one favors the larger group of witnesses, according to the majority principle: “follow the majority of opinions.”

Based on an analysis of the sources, I argue that what distinguishes the two procedural tracks is not the number of witnesses who testify in each, but rather the perception of the way in which they testify. In the “two witness track,” the witnesses are seen as acting together, as a group, whereas in the “individual witness track,” even if several witnesses come to testify, they are seen as acting separately, as individuals. This is why, in the “two witness track,” the rule is that “two are like a hundred:” When witnesses testify together as a group, the testimony of a group of two may be considered equivalent to the testimony of a group of three – or even that of a group of 100. The relevant entity is the group itself and not the witnesses of which it is comprised. In contrast, when witnesses testify as individuals, they are counted as such, so that three witnesses carry more weight than two, and 100 witnesses carry more weight than three. Conceiving of the testimony of two witnesses as a group testimony also explains why women are qualified to testify as individual witnesses but disqualified from testifying as part of a group of two witnesses: As in other halakhic spheres, such as the reciting of grace after meals, women have a legal status that allows them to act as individuals while barring them from joining a group action. The rabbis limited women’s legal capacity to the private sphere and restricted their participation in collective actions which symbolize the public arena.

Analysis of the rules regarding the disqualification of women for testimony reveals a general structure that goes beyond the question of the status of women’s testimony alone. In the third chapter of the study, I examine the extent to which the perception of witnesses as a group influenced the formulation of tannaitic rules of testimony more broadly. I show that there is an all-encompassing worldview that manifests itself in various dimensions of the tannaitic sources dealing with the laws of testimony: in terminology, halakhic midrash, and the details of halakhic precepts. Underlying this conception is an exegetical reading of the biblical verses which state that every matter should be decided “by two witnesses or by three witnesses.” The Tanna’im understand this formulation as a principle according to which two witnesses are equal to three witnesses, meaning that one ought to think of witnesses as a cohesive group, regardless of the number of witnesses who together constitute the group.

Accordingly, the Tanna’im think of testimony in terms of sets of witnesses, regularly employing the term “*kat edim*.” The testimony of two witnesses constituting one group is thus referred to as “one testimony,” and a situation in which the statements of the two witnesses differ from one another in a way that prevents them from forming a single group is described as a case in which “the testimony is divided.” Many aspects of tannaitic rules of testimony that appear arbitrary from a probative perspective are concerned, in fact, with the prerequisites for combining two witnesses into a group. This explains, *inter alia*, the requirement for full conformity of the two witnesses’ statements, as part of the rules for interrogating witnesses (*derisha* *ve-hakira*). Another condition for the validity of the testimony of two witnesses which has not yet received the scholarly attention it deserves is the requirement that the witnesses see each other during the incident about which they will later testify, in order for their testimony to be accepted in court. The requirement that witnesses see each other echoes other halachic contexts in which a similar demand appears as a means for forming a group – for example, in order to recite grace after meals collectively, or to eat the Passover offering as a group. Finally, the Tanna’im insist that the two witnesses forewarn the offender together, in each other’s presence. Here, too, witnesses must act together, as a group, for their testimony to be valid.

I maintain that requiring witnesses to act as a group is the logical consideration which guided the formulation of many tannaitic rules regarding testimony, and that these rules should thus not be regarded as arbitrary. But why are witnesses required to act as a group? I suggest that the answer lies in the assumption that, by joining together, the witnesses become a micro-representation of the political community. When they act together, as one, their action is no longer a private act of individuals testifying, but rather a public action that expresses the political power of the entire community. In support of this argument, I reconstruct a lost exegesis hidden in a few verses from the Gospel of Matthew (18:15-20). In many respects, these verses echo the terms of tannaitic rules of testimony and, in particular, the idea that witnesses should congregate together, in order for “every matter to be established.” According to the proposed reading, the verses in Deuteronomy that require “two witnesses or three witnesses” for conviction were read in certain Jewish circles not merely as formulating conditions for conviction, but rather as containing a promise – that when witnesses gather together and act as a group, they will be empowered to “establish anything” and, more specifically, to establish the charge against the accused in a manner sanctioned by God Himself.

In the fourth chapter of the study, I discuss the tannaitic requirement of forewarning, which is often seen as the central challenge to a probative conception of testimony. According to probative logic, the active role of witnesses only begins when they enter the courtroom, where they are required to tell their story and describe the incident that transpired in their presence. During the incident itself, however, the witnesses function passively, merely absorbing the occurrences sensorily so they can report what they saw and heard later. In contrast, the forewarning requirement gives the witnesses an active role which they must carry out during the incident about which they will later testify, in order for their subsequent reporting of that event to be considered valid. This role is fulfilled even before the actual commission of the offense and includes what appears to be a warning of the defendant that his impending action is forbidden and punishable. Furthermore, the witnesses are also required to receive the defendant’s reply in response to their warning, stating that he or she understands and yet nevertheless intends to commit the offense.

What is the purpose of this requirement for a detailed dialogue between the witnesses – both of them together – and the defendant? Some scholars have suggested that it derives from an exegetical deduction based on the proliferate denotations of the word *leha’id*, which in biblical Hebrew also means “to warn.” However, this explanation is unsatisfying, as it gives no account for the jurisprudential meaning of the warning by the witnesses. Supposedly, there is no justification for the requirement that the witnesses warn the accused in terms of legal theory; the justification is only an exegetical one. I propose, however, that the requirement that witnesses warn the defendant does indeed have deep roots in legal theory, stemming from the central role witnesses play in establishing oaths.

Summoning witnesses is associated with the initiation of oaths in many ancient and late-antique cultures in the region, including Ancient Near Eastern, Greek and Roman cultures. As I show, this association is also very strong in biblical and rabbinic literature – so much so that in biblical Hebrew the verb *leha’id* (literally, to summon witnesses) often means “to impose an oath,” “to adjure.” I argue that previous readings, which understood this verb as denoting a warning alone, captured only a limited part of the picture: every oath involves a warning, as it lays out sanctions that will be imposed on the oath-taker in case of violation. However, imposing an oath is not merely a warning – it is a mechanism for determining obligatory actions and their outcomes.

The association of the verb *leha’id*, denoting the summoning of witnesses – and, in rabbinic texts, also their testimony – with the power of witnesses to impose a sworn obligation, is not a distant biblical legacy, but a usage that is very much alive also in the post-biblical period, common in the New Testament (with regards to the Greek verb *marturomai*), and present in the language of the rabbis. Based on this usage, as well as an important parallel that I reveal in the Gospel of Matthew, I propose that the forewarning was intended as a kind of “swearing in” of the defendant by the witnesses, with the witnesses adjuring the defendant to bear the punishment prescribed for his or her deeds. This understanding of the forewarning by the witnesses as an act of imposing an oath helps to explain the highly literal adherence to the forewarning requirement that the rabbis demand, as well as the requirement that the defendant respond to the witnesses and verbally accept the punishment that is set for the offense.

In sum, according to the analysis I propose, the restrictions imposed by the rabbis on admissible and valid testimony are not arbitrary. Rather, they deal with two aspects of establishing the power of witnesses to charge and convict a defendant: (1) the requirement that the witnesses testify as a unified group, thereby representing the community’s political power; and (2) the requirement that the defendant be forewarned and thus put under oath to bear the punishment. This analysis shows that the tannaitic rules of testimony were designed to establish witnesses as an independent authoritative body, not merely instrumental to the authority of the judges. In light of this conclusion, in the fifth chapter I discuss the relationship between witnesses and judges in tannaitic thought, taking into account similar scholarly discussions regarding other ancient legal regimes of the region. I draw attention to the fact that the Hebrew language shares with other languages ​​of the ancient world a surprising feature: the use of a single term (in Hebrew: *‘ed*) to denote what are, from a modern perspective, two different meanings: witness and judge. This phenomenon was previously thought to be a rare linguistic usage, insignificant from the point of view of legal theory, because scholars failed to notice its broad scope, which crosses geographical, cultural, and linguistic boundaries in the ancient world. I propose that, instead of explaining this usage as dependent on local etymological developments which vary between different languages, its commonality should be viewed as a profound indication of a different legal conception of the role of witnesses, shared by different cultures and languages ​​in the ancient world. According to this view, decision-making powers in the legal process, which we would normally attribute to judges, belonged, to a large extent, to witnesses as well.

The conclusion of this analysis is that the basic structure of the legal process as including the triangular formation of litigants, witnesses, and judges – a structure often presumed to have existed consistently since the dawn of history – has in fact undergone important conceptual developments, which have not previously received the scholarly attention they deserve. This study calls for future research that will further deepen these ideas and describe the processes by which the concept of witnesses evolved, moving from its original meaning in the ancient world, as related to power and authority, to the instrumental probative sense it acquired in modern legal thought.