**Summary**

The laws of testimony in Jewish law, originating in tannaitic halakha, are known for the many difficulties that they levy on the possibility of conviction in criminal proceedings. These laws impose complex preconditions to the admissibility of testimony, preconditions that are unlikely to materialize in most cases. Among the rules perceived as the source of difficulty are the requirement for the testimony of two qualified witnesses, and the impossibility of relying on the offender's confession, circumstantial evidence or the testimony of women, relatives, and many others who are considered disqualified witnesses; Strict demands regarding the examination of witnesses, such that may invalidate also the testimony of two qualified witnesses if there is any contradiction between them, even in a marginal aspect; And, finally, the law of forewarning, requiring that the witnesses confront the offender before he or she commits the offence and warn them not to do it. Indeed, it is difficult to understand why the rabbis limited the admissibility and validity of testimony so strictly. What is the jurisprudential logic that guided the design of these limitations?

These questions have occupied generations of commentators and researchers who sought to offer different answers, and yet to this day they are far from a solution. Through a philological investigation of the tannaitic sources in which the challenging rules are set, conducted from a comparative perspective of other ancient and late-antique sources, the work offers a new approach to these problems through a novel understanding of the conception of testimony reflected in early rabbinic literature. I argue that the difficulty in understanding the purpose and role of the many conditions posed by the rabbis on a valid testimony stems from prior assumptions, not always articulated, that scholars assume regarding the role of witnesses and meaning of testimony. If we expose these basic assumptions and put them to a critical examination, we will find that they impose on the object of the study, in this case the tannaitic rules of testimony, an unnecessary burden not supported by the sources.

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 the legal dispute. This is surely a good description of witnesses’ role in modern legal thought. But is this assumption correct in any legal system and in all periods? I suggest that there are good reasons to doubt that, and to consider the possibility that the perception of the judicial process and the place of witnesses within it was different in ancient times. I argue that the tannaitic rules of testimony reflect a different understanding of the role of witnesses, unlike the conventional understanding of this role in modern thought, but well-grounded in conceptions of testimony contemporary to the time and place of the Tanna’im.

The common supposition that the testimony is a means to convey facts to judges has led many to assume that when a legal regime sets restrictions on the applicability of testimony, the purpose of these restrictions is to detect potential liars, allowing only the most reliable witnesses to testify. Such explanations, referred to in the legal jargon as probative explanations, are also common with respect to some of the tannaitic rules of testimony. But probative logic works very poorly as an explanation to many other tannic rules and their complex details. In light of this, scholars of Halakha are reluctant to argue that the purpose of these rules is to assert the credibility of the testimony. But what could be their alternative purpose? In the absence of probative justification, they have often been described as arbitrary and purposeless. In fact, scholars aim to offer second-order explanations, explaining why did the Tanna’im impose arbitrary requirements for the validity of testimony, rather than explain the rules of testimony in themselves.

Two central explanations have been offered for the supposedly arbitrary nature of tannaitic rules of testimony, and I call them "the ideological explanation" and "the religious explanation". The ideological explanation assumes that the design of tannaitic rules of testimony is guided by the profound reluctance of the rabbis to perform the death penalty. According to this explanation, the rabbis intentionally sought to castigate their criminal proceeding in order to avoid at all costs a conviction that would result in the need to carry out the actual death penalty. Presumably, certain tannaitic restrictions on valid testimony are arbitrary because they are not intended to achieve any positive purpose; they have only a negative goal, to impose a procedural burden that will *de-facto* prevent convictions.

While the ideological explanation attributes the design of enigmatic rules to human planning – informed by the will to thwart conviction – those who hold the religious explanation believe that the unintelligible dimension of these rules indicates the existence of 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 ascribes the supposedly arbitrary nature of the tannaitic rules of testimony to the limited attainment of humans, 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 most noticeable is their common premise that, if it is not possible to offer a probative explanation to the tannaitic rules of testimony, this in fact makes them arbitrary, 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 maybe they had a different conception of testimony? Is it possible that the tannaitic rules of testimony only appear arbitrary, because we examine them in the light of the probative standards that result from the instrumental conception of testimony, and if we had waived this premise, we could identify some other internal logic? Through analysis of the tannaitic sources against their various cultural contexts, both in biblical and Greek-Roman sources, I find that the answer to both these questions is positive. Indeed, the ancient sources reveal a different conception of witnesses’ role in the judicial proceeding, which is not limited to providing information to the judicial body which holds the authority to make decisions; rather, the witnesses themselves are the forum on 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 via a thorough study of tannaitic sources which set the conditions for valid testimony, focusing on five major themes around which the five chapters of the work are organized. I examine both the rules which are commonly understood as promoting a probative purposes (primarily disqualification for testimony, as well as the rules regarding the investigation of witnesses), and others that were 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 that were perceived as probative, I show that the explanatory power of probative logic is limited to the superficial level. On a thorough examination, it is evident that these rules too are not shaped by probative considerations but are focused on the authority granted to witnesses in the judicial process, an authority that limits the discretion of 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 of conditions upon which the witnesses gain their special authority.

Thus, in the first chapter of the work, I deal with the famous tannaitic list of disqualified witnesses, which includes "a dice-player, a usurer, pigeon flyers, and traders in Seventh Year produce”. Previous explanations claimed that the four characters on the list were disqualified for testimony because they were considered “suspect in money matters”, like thieves, meaning that they were suspected of giving false testimony 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 designing their rules regarding the disqualification for testimony, the Tanna’im borrowed the model of Roman *infamia*, a legal institution whose main purpose is 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 the disqualified witnesses to that of women with regards to the scope of their mutual incompetence to testify. I propose that in designing 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 work I deal with disqualification of women for testimony. Here too, probative logic will find it difficult to explain the complex system of disqualification rules, whereby women are allowed to testify in some contexts and not in others. Through analysis of the sources dealing with the disqualification of women for testimony, I show that the rabbis linked women’s disqualification to another rule relating to the number of witnesses which ought to testify in the 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 incompetent to testify when two witnesses were required and eligible to testify in any matter for which one witness was a legitimate witness.

Following this distinction I argue that the Tanna’im have shaped two different procedural tracks: the "Two Witness track", and "The individual Witness track". Separate rules govern each of these two tracks, both with respect to qualification for testimony (and especially whether women are eligible to testify or not) but also on other matters, for example, on how to decide between conflicting testimonies of two groups of witnesses. In the course of the “two witness track”, contradictory testimonies of two groups of witnesses offset each other - and this is the rationale of the famous rule "two are like a hundred"; on the individual witness track, however, the rule is that you prefer the larger group of witnesses, according to a majority rule: "follow the majority of opinions".

On the basis of the source analysis, I argue that what distinguishes the two procedural tracks from one another is not the number of witnesses who testify in each, but the perception of the way in which they testify. In the course of the two witness track, the witnesses were seen as acting together, as a group, whereas in the individual witness track, even if several witnesses came to testify, they were seen as acting separately, as individuals. This is why in the two witness track "two are like a hundred": When the witnesses testify together as a group, the testimony of a group of two may be equivalent to the testimony of a group of three, and even the testimony of a group of a hundred. The relevant entity is the group and not the witnesses it is comprised of. In contrast, when witnesses testify as individuals they are counted as individuals, so three witnesses are more than two, and one hundred are more than three. Thinking of the testimony of two witnesses as a group testimony also explains the reason why women are qualified to testify as individual witnesses, but are disqualified for the testimony of two witnesses: As in other halachic fields, 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.

The analysis of the rules regarding the disqualification of women for testimony portrays a general structure that goes beyond the question of the status of women’s testimony only. In the third chapter of the work, I examine the extent to which the perception of witnesses as a group did in fact influence the design of tannaitic rules of testimony more broadly. I show it is, indeed, an all-embracing worldview that manifests itself in various and varied dimensions of the tannaitic sources that deal with the laws of testimony: in both terminology, halakhic midrash, and the details of halakhic doctrine. Underlying this concept 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 multiplication as stating the principle that two witnesses are equal to three witnesses, meaning, that we would have to think of witnesses as a cohesive group, regardless of the number of witnesses the group consists of.

Accordingly, the Tanna’im think of testimony in terms of sets of witnesses, using regularly the term “*kat edim*”. Thus, the testimony of two witnesses, constituting one group, is referred to as "one testimony”, and a situation in which the statements of the two witnesses differ from one another in a way that they cannot be joined to one group is described as a case where “the testimony is divided". Many aspects of tannaitic rules of testimony that appear arbitrary from a probative point of view are concerned, in fact, with the prerequisites of joining two witnesses into a group, and this explains, among other things, the full conformity required of the two witnesses' statements as part of witnesses’ investigation rules (drisha ve’hakira). Another condition for the validity of the testimony of two witnesses, which has not yet received the attention it deserves, is that the witnesses will see each other during the event on which they will later testify, or else their testimony will not be accepted in court. The demand that witnesses see each other echoes other halachic contexts in which a similar demand emerges 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. And finally, the Tanna’im insist that the forewarning of the offender also be performed by the two witnesses together, in the presence of each other. Once again, witnesses must act together, as a group, for their testimony to be valid.

I maintain that requiring of witnesses to act as a group is the inner logic which guided the design of many tannaitic rules regarding testimony, which by no means should be portrayed as arbitrary. But why are witnesses required to act as a group? I suggest that the answer lies in the assumption that by joining one another 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 according to Matthew18:15-20. These verses reverberate in many respects 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 suggested reading, the verses in Deuteronomy that require "two witnesses or three witnesses" for conviction were read by certain Jewish circles not only as setting conditions for conviction but rather as containing a promise, that when the witnesses gather together, and act as a group, they will be given the power to "establish anything", and more specifically to establish the charge on the accused in a manner which is consented to by God himself.

In the fourth chapter of the work, I discuss the tannaitic requirement of forewarning, which is often seen as the central challenges to a probative conception of testimony. According to probative logic, the active role of witnesses only begins when they arrive at the court room, where they are required to tell the story and describe what happened at the event they attended and witnessed. At that event, however, the witnesses seem to function passively, absorbing the occurrences in their senses so that they can later report what they saw and heard. In contrast, the forewarning requirement gives the witnesses an active role that they must perform during the event on which they will later testify, for their subsequent reporting of that event to be valid. This role takes place 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 will involve punishment. Furthermore, the witnesses are also required to receive the defendant's reply in response to their warning, stating that he or she understand and yet intend 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 *le’haid*, 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. Presumably, there is no justification for the demand that the witnesses warn the accused in terms of legal theory; The justification is only an exegetical one. In contrast, I propose that the idea according to which witnesses should warn the defendant has 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 of the region, including Ancient Near Eastern, Greek and Roman cultures. As I show, this association is very strong also in biblical and rabbinic literature, so much so that in biblical Hebrew the verb *le’haid* (literally, to summon witnesses) often means also ‘to impose an oath’, ‘to adjure’. I argue that previous readings that understood this verb as denoting a warning alone caught only a limited part of the picture: every oath involves warning, as it sets of sanctions that will befall the oath taker in case of violation. However, imposing an oath is not mere warning, it is a mechanism for determining obligatory actions and their outcomes.

 The association of the verb *le’haid*, denoting the summoning of witnesses - and, in rabbinic corpora, also their testimony - with the power of witnesses to impose a sworn obligation, is not a distant biblical legacy, but a use that is very much alive also in the post-Biblical period, common in the New Testament (here with regards to the Greek verb *marturomai*) and is still present in the language of the rabbis. Based on this use, as well as an important parallel that I reveal from the Gospel according to Mathew, I propose that the forewarning was designed 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 settles both the highly literal adherence that the rabbis attach to the forewarning, as well as the requirement that the defendant respond to the witnesses and verbally accept the punishment that is set for the offence.

In sum, according to the analysis I propose the restrictions imposed by the rabbis on admissible and valid testimony are not arbitrary; they focus the two aspects that found the power of the witnesses to charge and convict the 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 will be forewarned and thus put under oath to bear the punishment. This analysis shows that the tannaitic rules of testimony are designed to construct witnesses as an independent authoritative body, which is not merely instrumental to the authority of the judges. In light of this conclusion, in Chapter Five I move to discuss the relationship between the witnesses and the judges in tannaitic thought, in light of similar discussions that were conducted in scholarship regarding other ancient legal regimes of the region. I draw attention to the neglected fact that the Hebrew language shares with other languages ​​of the ancient world a surprising trait: the use of a single term (in Hebrew: ‘ed) to denote what from a modern perspective are two different meanings: both a witness and a judge. This phenomenon was so far believed to be as a rare lingual use, insignificant from the point of view of legal theory, because researchers have failed to notice its broad scope which crosses geographical, cultural and linguistic boundaries in the ancient world. I propose that instead of explaining this use as depended on local etymological processes that 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, belong to witnesses to a large extent.

The conclusion of this analysis is that the basic scheme of the legal process, including the triangular format of the litigants, witnesses, and judges, often presumed to be a stable structure that has existed since the dawn of history, has in fact undergone important conceptual developments that have not yet received the scholarly attention they deserve. My work calls for future research that will deepen these ideas and describe the processes in 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 gained in modern legal thought.