

INTRODUCING TOSEFTA

*Textual, Intratextual
and Intertextual Studies*

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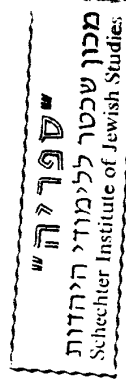
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THE PRIMACY OF TOSEFTA TO MISHNAH IN SYNOPTIC PARALLELS

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It is hardly coincidental that this conference on Mishnah and Tosefta is taking place exactly a decade after the passing of Professor Saul Lieberman ז"ל,¹ master of Tosefta studies in modern times. Literary studies regarding the Tosefta, its relationship to the Mishnah, and its place in tannaitic literature, abounded during the 19th and early 20th centuries, marked with a unique fascination for this early Palestinian corpus and its pristine content, a corpus hardly noticed in the then regnant style of traditional Talmud studies. However, for a period of over 50 years now, since Lieberman opened his Tosefta era with *Tosefet Rishonim*, the general scholarly methodological and literary studies of the Tosefta largely abated, as if held in suspension, in anticipation of Lieberman's magnum opus, yet to come.

Indeed, Lieberman's Tosefta edition, with his encyclopedic *Tosefta KiFshuta* commentary, provide us with exemplary treatment of this corpus, a model which anyone engaged in the crucial task of editing talmudic texts will strive to emulate. At the same time, it provides us with the most sophisticated basis for examining the manifold literary questions regarding the Tosefta.

¹Almost to the day: 9 Nisan, 5743 (March 23, 1983); Israel Independence Day, 5 Iyyar 5743 (April 26, 1993).

Lieberman himself tended to postpone deciding the overriding literary and methodological issues regarding the Tosefta until after the completion of his edition, which would then serve as the basis for his general introduction dealing with the Tosefta as a literary work. Until that time, and through the course of writing his commentary, he either tended to avoid taking a stand, or, if necessary, adopted a conservative position, on major methodological issues. Although Lieberman's introduction was never written, his edition and commentary serve as the basis par excellence for such inquiry. It is consequently quite natural to find ourselves, a decade after his lamented death, taking up once more the multiple methodological issues regarding the Tosefta, groping to find our own way, with meager assistance—for most of the early general studies have become woefully obsolete, and do not approach modern standards—but, fortunately, with the extraordinary textual and analytical foundations of Lieberman's *oeuvre*.

Almost all general definitions and descriptions of the Tosefta are dominated by the literal meaning of the name "Tosefta" and the essential relationship to the Mishnah which it implies; namely, that of *supplement*. However, this approach eclipses one specific type of Tosefta material which now bears independent clarification: those pericopae which are, in structure and form, not supplemental to Mishnah pericopae, but parallel to them.

A detailed investigation during the last several years of synoptic Mishnah-Tosefta parallels has led me towards a tentative conclusion that the primacy of the Tosefta pericope vis-à-vis its parallel Mishnah is more the rule than the exception, and indeed may indicate the pervading relationship of parallels between these two works. This finding runs counter to the prevalent judgement and accepted notion which views the Mishnah as primary to Tosefta, not only in the general sense, but even in regard to the synoptic parallels. Such indeed was Lieberman's approach throughout his *Tosefta KiFshutah*. The Tosefta's repetition of a law already found in the Mishnah

was viewed as a commentary upon the Mishnah, with the specific segment which contains a change of wording considered the actual commentary. This approach is inherently fraught with difficulties. If indeed the Tosefta is addressing a particular halakhah in the Mishnah, why repeat the entire halakhah? One would expect one of the accepted formulae of commentary or explanation to appear, such as *במה דברים אמורים* etc. Furthermore, the change in wording is often relatively insignificant, and it is difficult to construe such a variant as containing a legal position different from that in the Mishnah. Especially if we assume that the Mishnah had already attained receptivity as the (or: a) central text of the Oral Law at the time of the compilation of the Tosefta, the system of repeating the entire pericope in order to comment upon part of it through rewording is strange and illogical.

Rather, the Tosefta appears to be an anthology of material relating to the Mishnah, some of which is couched in explanatory formulae, but other materials preserving older forms of the same halakhot contained in the Mishnah. The Tosefta is clearly a work subsequent to the Mishnah in time, and containing an entire post-Mishnah stratum. However, regarding the parallel halakhot, this relationship is reversed; the Tosefta preserves the earlier forms of the halakhot which were reworked by the editor of the Mishnah. Another way of putting this: part of this post-mishnaic compilation supplies the Mishnah's sources, a process somewhat analogous to the commentaries upon Maimonides' Mishneh Torah supplying his sources. The chronological and developmental relationship of specific pairs of parallels—the primary one being the Tosefta, and the secondary one the Mishnah—is indicated by a series of comparisons, including linguistic, stylistic and conceptual. Thus the commonly held conception regarding the essential relationship of the Mishnah and the Tosefta vis-à-vis these parallels must be changed. The Tosefta parallel is often identical with, or quite similar to, an older Mishnah, which was Rabbi's source. The reworking—stylistic-

cally and otherwise—is comprehensible as part of Rabbi's *oeuvre* in editing and recasting the older halakhot, and arranging them in a new, comprehensive composition.

Consequently, in that there exist changes of wording, it is upon the "Mishnah" (parallel) that is interpreting or commenting upon the "Tosefta" (parallel), and not vice versa. Another way of looking at this is that we can now view the Tosefta parallel, not simply as a companion text, but as the very source, or close to the very source, out of which the Mishnah parallel was carved. The "discovery" that there were sources of the Mishnah in the Tosefta, rather than the Tosefta being simply commentary upon the Mishnah, is of major significance for the Mishnah's exegesis and literary history. It should provide insight as to how the Mishnah was edited, and supply authoritative control for all questions regarding the interpretation of Mishnah, including, significantly, those arising in the two Talmudim.

The synoptic comparison of Mishnah/Tosefta parallels usually shows that they are similar in structure, and often exhibit verbatim identity for long segments, most frequently the opening clauses. The differences are found in brief, delineated segments of text. This is compatible with our suggestion that the Tosefta parallel should be construed as identical, or nearly identical, with the source that served for our Mishnah. Rabbi's editing, in these cases, involved the introduction of localized changes, whether for stylistic or content purposes, leaving the main body and structure of the pericope intact. Furthermore, the nature of the specific differences usually corresponds to obvious or well-known editorial operations (clarity or refinement of style, halakhic harmonization, etc.). Thus this explanation is superior to the assumption that the parallels are independent reports of the same original statement with differences caused by free transmission. Free transmission would yield different types of changes, and could not account for the well-known patterns of redactional changes described above.

This approach has major implications with respect to how to read Mishnah. Its language is not simply a full and exact quotation of an earlier source; neither is it a free paraphrase or restatement of such a source. Were it one of the above, it could be considered a free and natural text, to which all the rules of deduction of meaning from nuances of style apply. However, as a text containing localized editorial intrusions, it must be treated otherwise. Localized editing usually creates a certain amount of friction or conflict between the new segments and the remaining sections of the original text. Commonly the editor refrains from a fuller, more invasive, reformation, allowing the recipient of the text to further apply the editor's position to pertinent additional details. The recipient must, however, guard against arriving at deductions from the new stylistic combination which go beyond the intention of the editor. The best control in such a situation is the comparison of the new text with its sources, in order to determine what the specific alteration was, and what was its specific purpose. Beyond this, the meaning of the original source should be maintained in the reworked text. The preservation of some of the Mishnah's sources in the Tosefta specifically allows this type of determination, and synoptic analysis is the most efficient vehicle of arriving at it.

The above can now aid us in defining the nature of Mishnah-Tosefta parallels. These are not parallels of free formulation, but "edited parallels". The reigning concept of parallel passages in rabbinical literature is that of independent, free formulation of an original, common source; this is often construed as a statement whose content was freely transmitted, without ever having received a fixed, literary form. This model is consistent with a widespread basic assumption that once a text receives a fixed, precise formulation, it would be maintained exactly, and the text would never be reworked. Our findings of extended verbatim identity of the parallels, with localized difference only, make it difficult to accept this model.

The model of the "edited parallels" rejects the *a priori* denial of the possibility for texts of fixed formulations to be reworked by localized style- and content-editing, and indeed appears to be mandated for a large percentage of Mishnah-Tosefta parallels by the data we have found.

Tosefta parallels in the Bavli are also essentially "edited parallels", containing localized editorial reworking of an original which was quite similar to the Tosefta parallel. In those cases in which a Tosefta pericope has a parallel both in Mishnah and Bavli, we can prepare a three-column synoptic comparison.

Our findings for such cases have indicated the primacy of Tosefta; an early and often major reworking in Mishnah, and a later, and relatively minor, reworking in Bavli. The Bavli baraita, having undergone only minor editorial changes, retains its status as a version of the Tosefta pericope, quite different from the Mishnah, which made use of earlier material (now preserved in our Tosefta) for a text whose status is a new composition. The similarity of the Tosefta baraita to the language of the Mishnah (due, according to our explanation, to their original editorial relationship), eventually becomes a factor in bringing these texts even closer together. Thus the type of editing found in the Bavli often introduces elements of the Mishnah into the baraita, and similarly substitutes the Mishnah's language for the original (Tosefta) style in the baraita! Consequently, agreement of Mishnah and Bavli baraita style, versus Tosefta style, should not be construed as an indication of independent preservation of the original language. The continuum is rather: Tosefta parallel—Mishnah—Bavli Tosefta parallel, which has been re-edited by introducing the Mishnah's language.

What are the specific types of style- or content- editing which we can observe in the Mishnah vis-à-vis the Tosefta? There is a general tendency in the Mishnah to brevity, in contrast to the more extended style of the earlier sources. This tendency to brevity in the Mishnah applies not only to the statement of a law, but also

to its attribution, with explicit attributions often converted to anonymous ones, and dissenting opinions dropped. However, an editorial process rarely moves in one direction only. We can cite evidence for cases in which it is specifically the Mishnah that expands or explicates the older pericope, which may appear in a shorter form in the Tosefta parallel (thus "Mishnah" comments upon "Tosefta"!): Originally conflicting statements can be grafted together to form one composite statement, attributed in its entirety to one of the two original authors.

The Mishnah often emends the language of the law, in order to adapt it to a halakhic position different than that represented in its source (= *our* Tosefta parallel). The new legal position imposed by the Mishnah is sometimes that of the surrounding framework of the neighboring laws in the Mishnah; that is, there is integration with the other laws of the chapter—a major function in producing a systematic, halakhic work such as the Mishnah.

Also, specific stylistic trends can be observed in the Mishnah regarding the use of its sources. We feel that this may be evident in the removal of Greek terms (which are still found in the Tosefta parallel), and the localized substitution of their Hebrew counterparts. Furthermore, lexemes similar to biblical Hebrew may be updated to a different linguistic usage that existed in the Sages' dialect. A harmonizing phenomenon, typical of editorial activity, is evident in the leveling of halakhic terminology towards stock or stereotyped language.

Having characterized the Mishnah passages as "edited parallels" in relationship to their Tosefta counterparts, and having determined the nature of specific operations of editorial activity, we are now in a position to propose the phenomena of development and evolution as basic and pervasive categories in the relationship of these pericopae. The way is thus cleared, and the door is opened, for determining a developmental evolution of halakhic institutions, literary forms, and linguistic usage. This contrasts with the major trend in

twentieth century scholarship of viewing variants in all these areas as parallel developed, equi-weighted, separate formulations of different traditions stemming from different centers or authorities. Due to this tendency, scholars veer away from engaging in detailed comparisons which can uncover and investigate relationships of earlier versus later, primitive versus developed, original versus secondary, etc.

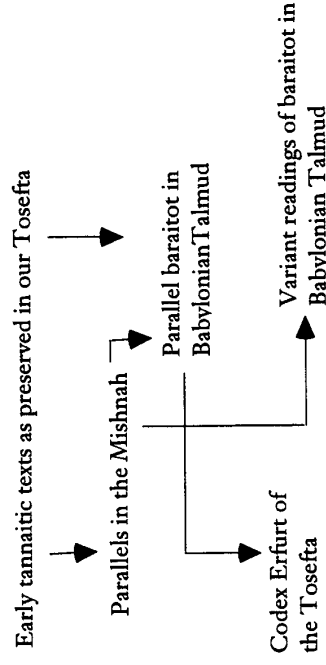
In applying these categories, we find the laws recorded in the Tosefta more essential—namely, they are the essence of the given institutions being described—earthy and anthropological; their Mishnah parallels, however, often reflect more abstract legal conceptualization, external and formal. Also, the Tosefta parallel is often more rooted in the concrete historical situations of ancient Palestine, with the Mishnah exhibiting abstraction or adaptation. The language in the Tosefta parallels preserves linguistic forms antecedent to those in their mishnaic counterparts.

Similarly, the baraitot of the Bavli corresponding to Tosefta passages contain evolved style and leveled presentation. A challenge raised in tannaitic debate is elevated to a concrete halakhic position, diametrically opposite to that of the challenger's "protagonist", whose position is now editorially supplied. Mention of the exotic reality of ancient Palestine is simplified, with more standard examples substituted.

It had been axiomatic in classical studies on the redaction of rabbinic works that a text whose exact formulation had been fixed would not undergo subsequent change through intentional editing, or even unconscious, free variations, such as automatic linguistic adaptation to forms and styles prevalent at the time of the tradent. We have found this assumption unwarranted; our analysis indicated that fully formulated texts still undergo both types of development. Our position has been presented above regarding early pericopae preserved in our Tosefta, and their transformation in the Mishnah on the one hand, and the Bavli's baraitot on the other.

The general validity of this analysis is supported by its further applicability, in whole or in part (with adaptation when mandated), to other rabbinic literary contexts and categories. Thus, the Erfurt Codex of the Tosefta represents a more developed and edited text than the family represented by Codex Vienna and Editio Princeps, with the Bavli exerting a particular influence on Erfurt. The text of the Bavli itself underwent expansive textual treatment under the hands of (or: through the recitation of) certain tradents.

We can summarize these relationships graphically as follows:



Let us turn to some examples:²

1. **Mishnah Eruvin 4:2 and mShabbat 16:8 /tShabbat 13:14** (Lieberman pp. 61-62).

תוספתא שבת י"ג (בד ובכ"ד) פ"ד י"ד

ספינה הבאה בים אין עולין מתוכה ליבשה, אלא אם כן היו בתוך התחום עד שלא השיכה. מעשה ברבן נמליאל וקנים שהיו כאן בספינה וקדש עליהן היום, אמר לו לרבן נמליאל מה אנן לירד? אמר להם צופה הייתי והייתי בתוך התחום עד שלא השיכה, אלא נטרפה הספינה פעמים הרבה. באותה שעה עשה נוי סקלא

² I wish to thank the editors for their suggestion of adding examples to the text of my lecture, and for providing a translation of my analysis which originally appeared in Hebrew for this purpose; see: "Maqbilot haMishnah vekaTosefta." Compare also "Tosefta Anuqta: leYahas Maqbilot haMishnah vekaTosefta [1]—Kol Kivvei HaQodesh (Shabbat 16. 1)"; "Maqbilot haMishnah vekaTosefta [2]—Rabban Gamliel vekaHakhamim"; *Tosefta Anuqta: Synoptic Parallels of Mishnah and Tosefta Analyzed with Introduction, (Tractate Pesahim)*.

לירד בו. אמרו לו מה לנו לירד? אמר להם הואיל ולא כפינו עשאו מתרין אנו לירד בו, וירדו בו הזקנים.

Tosefta Shabbat 13:14

[If] a ship comes in the sea [to port], they do not disembark from it to dry land, unless they were within the limits before dark. It happened that Rabban Gamliel and the elders were travelling in a ship, and the Sabbath arrived. They said to Rabban Gamliel: "May we descend?" He said to them: "I was looking, and we were within the limits before it was dark, but the ship was cast about many times." At the same time a gentile made a gangway by which to descend [from the ship]. They said to Rabban Gamliel: "May we descend?" He said to them: "Since he did not make it in front of us, we are permitted to descend by it," and the elders descended by it.

משנה עירובין ג:ב
פעם אחת לא נכנסו לנמל עד שחשיכה. אמרו לו לרבן גמליאל, מה לנו לירד? אמר להן, מתרין אתם שכבר הייתי מסתכל והייתי בתוך התחום עד שלא חשיכה.

Mishnah Eruvin 4:2

On one occasion they did not enter the harbor before it became dark. They said to Rabban Gamliel, "May we disembark?" He answered them, "You are permitted because I have already taken the bearings and we were within the limit before it was dark."

שבת פרק ט"ז משנה ח'
וכרי שחדליק את הנה משתמש לאורי ישראל, ואם שכביל ישראל אסור. מילא מים להשקות בהמתו משקה אחריו ישראל, ואם שכביל ישראל אסור. מצעה ברכן נמלאל וזקנים שהיו באין בספינה ועשה נוי כבש לירד בו וירדו בו רבן נמלאל והזקנים.

Mishnah Shabbat 16:8

If a non-Jew lit a lamp [on the Sabbath], a Jew may make use of the light, but if [he lit it] for the sake of the Jew, it is forbidden. If he filled [a receptacle] with water to give his cattle to drink, a Jew may water his cattle after him, but if [he filled it] for the sake of the Jew, it is forbidden. If a non-Jew made a gangway to go down by it, a Jew may descend after him, but if [he made it] for the Jew's sake, it is

prohibited. It happened that Rabban Gamliel and the elders were traveling in a ship and a non-Jew made a gangway by which to descend, and Rabban Gamliel and the elders came down by it.

In tShab we read of a precedent concerning Rabban Gamliel and the Elders and their sea voyage. The precedent forms a single compact unit with two issues: (1) entry into port boundary limitations, with some doubt as to whether this occurred either before sanctification of the Sabbath or after; (2) the construction of a ramp by a gentile on the Sabbath and whether it is permitted to use it or not. These two issues are described as events occurring one after the other, as one unitary event, with respect to the question of whether one is permitted to disembark, which is raised twice. (Only the issue of "Boundaries" is of immediate concern in tShab, and the issue of the ramp arises only *en passant*, in the manner of a fixed text whose editor does not wish to disturb the integrity of the source. Yet, in the Mishnah these two issues are separate—the first in Eruvin concerning boundary laws, and the second in Shabbat concerning gentile workers. Here we have the careful consideration of the editor of a legal document. According to the reigning theory that Tosefta innovates with reference to its mishnaic sources, Goldberg in his commentary to Shabbat suggests that "our Tosefta combined together what was told in two mishnaic texts."

Nonetheless, not only the Mishnah's "Maimonidean" method of organization and categorization of its sources according to their topic speaks in favor of the priority of the Tosefta account, but also some stylistic matters. Mishnah uses Hebrew *kevesh* for Tosefta's Greek/Latin *scala*; mishnaic Hebrew *mistakel* for biblical Hebrew *ta'afeh*; *mutar*, "it is permitted", an explicit legal decision, as opposed to allowing the matter to be implied from the conversation of the parties, such as "we were within the boundary prior to nightfall," etc. Further, Mishnah's use of *mutar*, an official legal term, concerning the entire issue is of later and more secondary usage than Tosefta's "(are) we permitted," which retains a more personal element.

Moreover, Mishnah has also had to adjust the legal content of the story in Tosefta to fit it into its new legal context. The explanation in Tosefta that the gentile “had not worked in front of them” was deleted in Mishnah to avoid any contradiction with the new context: there, the justification for deriving benefit from gentile work on the Sabbath is that the work done was not for our benefit. Even the discussions in the Bavli of the toseftan baraita (Shabbat 122a) delete the phrase “not in front of us” from the source, by an explicit emendation, *ema*. And the additional phrase in Mishnah, “they had not entered the port until nightfall,” has as its object clarification and unification. Both the language and the logical organization and harmonization of opinions demonstrate the originality of the more complete precedent in Tosefta and its reduction and fresh development in our Mishnah.

2. Mishnah BM 2:1-2/tBM 2:3, 5-8

(Lieberman pp. 67-8)

תוספתא בבא מציעא ב"ג ה"ח

3. מצא תחכות של בשר, וחתכות של [דגים], ודג נשוק, הרי אילו שלו. מחרוזות של בשר, ומחרוזות של דגים, וחביות של יין, ושל שמן, ושל תבואה, ושל גרונות, ושל ויתים, אין חייב להכריז. 5. מצא כריכות ברשות היחיד חייב להכריז, ברשות הרבים, אין חייב להכריז. האלומות, בין ברשות היחיד ובין ברשות הרבים, חייב להכריז. 6. מצא פירות צבורין חייב להכריז, מפורין, אין חייב להכריז. מקצתן צבורין חייב להכריז, חייב להכריז. 7. מצא מצות עשויות מגדלות, חייב להכריז, מפורת, אינו חייב להכריז. מקצתן מגדלין ומקצתן אין מגדלין, חייב להכריז. וכמה הוא מגדל, שלשה מסבעות זה על גבי זה. 8. מצא כלי לפניו פירות, כיס ולפניו מצות, חייב להכריז; מקצתן בכלי מקצתן בארץ, מקצתן בכיס ומקצתן בארץ, חייב להכריז.

Tosefta BM 2:3, 5-8

3. [If] one found pieces of meat, pieces of fish, or a bitten fish, they are his. [If one found] strings of meat, strings of fish, or barrels of wine, oil, grain, figs or olives, he is not liable to proclaim [it]. 5. [If] one found bundles [of grain] in a private domain, he must proclaim [it]; [if one found them] in the public domain, he is not liable to proclaim [it]. [If one found] sheaves, whether in a private domain or the public domain, he must proclaim [it]. 6. [If] one found fruit in a heap, he must proclaim [it]; [if they are] scattered, he is not liable to proclaim [it]. If part is in a heap and part is scattered, he must proclaim [it]. 7. [If] one found coins arranged in a tower, he must proclaim [it]; [if they are] scattered, he is not liable to proclaim [it]. If part are arranged in a tower and part are not, he must proclaim [it]. And how many [coins] constitute a tower? Three coins one on top of the other. 8. If one found a vessel with fruit in front of it, [or] a purse with coins in front of it, he must proclaim [it]; [if] part [of the fruit] is in the vessel and part on the ground, [or] part [of the coins] are in the purse and part on the ground, he must proclaim [it].

משנה בבא מציעא ב"ג

אלו מציאות שלו, ואלו חייב להכריז. אלו מציאות שלו, מצא פירות מפוזרין, מצות מפוזרות, כריכות ברשות הרבים, ועינולי דבילה, ככרות של נחומם, מחרוזות של דגים, וחתכות של בשר, ועי צמר הבאות ממדינתן, ואניצי פשתן ולשונות של ארנמן, הרי אלו שלו. דברי רבי מאיר. רבי יהודה אומר, כל שיש בו שני חייב להכריז. כיצדו מצא עינול ובתוכו חרס, ככר ובתוכו מצות. רבי שמעון בן אלעזר אומר, כל כלי אנפוריא אין חייב להכריז.

Mishnah BM 2:1

Some finds belong to the finder and others must be proclaimed. The following finds belong to the finder: if one found scattered fruit, scattered money, small sheaves in the public thoroughfare, cakes of pressed figs, a baker's loaves, strings of fish, (and) pieces of meat, wool shearing [in their natural state] as they arrive from their places of origin, (and) bundles of combed flax or strips of purple wool—these belong to the finder. This is the view of R. Meir. R.

Yehudah says, "Everything that contains something unusual must be proclaimed." How so? If one found a cake of figs with a potsherd therein or a loaf with money in it [such must be proclaimed]. R. Simon ben Elazar says, "All brand-new vessels need not be proclaimed."

משנה בבא מציעא ב:ב
 ואלו חייב להכריז, מצא פירות בכלי או כלי כמות שהוא, מצות בכיס או כיס כמות שהוא, ציבורי פירות, צבורי מצות, שלשה מטבעות זה על גב זה, כריכות ברשות היחיד, וככרות של בעל הבית, ונוי צמר הלקוחות מבית האומן, כדי יין, וכדי שמן, הרי אלו חייב להכריז.

Mishnah BM 2:2

The following articles have to be proclaimed: if one found fruit in a vessel, or a vessel just as it is, money in a bag, or a bag just as it is, heaps of fruit, heaps of money, three coins on top of each other, small bundles in a private domain, or home-made loaves or wool shearing from the craftsman's workshop, [or] jars of wine or jars of oil—these he must proclaim.

At the beginning of the well-known first mishnah of Baba Metzia Chapter 2 concerning found objects that belong to the finder and those which must be declared as found objects, the Mishnah summarizes its laws in the form of a long list. Tosefta, however, takes these laws and deals with them one at a time. These halakhot of Tosefta contain little that is additional to Mishnah, and essentially determine the same issues in law as does Mishnah. It would seem that here Mishnah summarizes its lists based on some source similar to Tosefta's laws.

Proof for this is available in halakhah 7 of Tosefta: "[If] one found money in stacks one must declare [it]. . . . and how many are a [minimal] stack—three coins one on top of the other." This latter point, which comes as the conclusion of the toseftan halakhah, is a separate law in Mishnah: "These he must declare . . . three

coins one on top of the other." Would a Tanna who knew our Mishnah have added an entire halakhah of Tosefta? On the contrary, it is Mishnah that summarized this Tosefta! Since a definition of a stack already exists, it is sufficient for Mishnah to forego mentioning this and state only the law itself, as a type of elliptical statement.

If we accept this premise, we are able to understand the relationship of these sources better. Halakhot 5, 6 and 7 of the Tosefta are divided between the two sections of the Mishnah in an appropriate and natural manner. This is not the case with halakhot 3 and 8. These are two halakhot whose readings are still difficult: "these are his" and "he need not declare" (MS Vienna), without any contrast in 3; and "he must declare," stated twice in 8 without any contrast. These halakhot are difficult and ancient. It seems that Rabbi's version of these laws was such that the division between the two lists was unusual. On that list the Gemara questioned the division, for if this were a freely constructed version, why would it vary from the simple structure?

3. Mishnah Pes 3:7//Pisha 3:12

(Lieberman p. 154)

תוספתא פסחא ג"ז ב:
 אי זה צופה, הרוואה ואינו מפסיק. מיכן אהה אומ' ההולך לשחוט את פסחו, ולמול את בנו, ולוכל סעוד' אירוסי' בבית חמיו, ונוכר שיש לו חמץ בחוך הבית, אם יש לו שהות כדי שיחזור חזר, ואם לאו, אין חזר. ר' שמעון בן לעזר אי' כל סעודה שאינה לשם מצוה אין חזר רשאי לאכול הימנה.

Tosefta Pisha 3:12

What is a *tzofef*? One who sees [Jerusalem] without [his view being] impeded [by any obstacle]. From here you say: one who goes to slaughter his paschal [sacrifice], to circumcise his son, to eat a meal of betrothal in his father-in-law's house, and remembers that he has leavened [bread] in his house, if he has time to return, he returns, and if not, he does not return. R. Shimon ben Lezer says: a *havver* is

not to eat from any meal that is not [required] in the name of a mitzvah.

משנת פסחיים ג:ג
ההולך לשחוט את פסחו ולמול את בנו, ולאכול סעודה ארוסין
בבית חמיו, וזכר שיש לו חמץ בתוך ביתו, אם יכול לחזור
ולבער ולחזור למצותו—חזור ויבער; ואם לאו—מבטלו בלבו.

Mishnah Pes 3:7

... one who goes to slaughter his paschal [sacrifice], to circumcise his son, to eat a meal of betrothal in his father-in-law's home, and remembers that he has leavened [bread] in his house, if he [has time to] return and remove it and return to his obligation, he should go back and remove [it]. If not, he should cancel it in his heart . . .

Here Tosefta itself reveals that it preserves an ancient source. This is so because it quotes a halakhic midrash—"from here you say"—a midrash which itself quotes a halakhah. This halakhah is identical to the language of the opening of m3:7—eighteen words verbatim. In its conclusion, however, it does not add to Mishnah but deletes from its language. Tosefta has "... if not, he does not return," an *apodictic* law. In Mishnah a comment is added: "One should cancel it in his heart." Certainly the same law in Tosefta not only did not bring this justification which is in Mishnah, but also did not even consider it; it is impossible to cancel leaven in one's heart, according to this law in Tosefta! All we have here is a determination of the priority of obligations. A positive commandment which carries a penalty of heavenly extirpation (*karat*) outweighs the obligation of the burning of the leaven, and consequently one does not return. Mishnah adds a later and more developed reason: as an ease of conscience and relief from a difficult situation one should at least cancel the leaven in his heart.

4. Mishnah Pes 1:4-5/tPisha 1:4

(Lieberman, p. 141)

תוספתא פסחא א:ג
א היוצאין בשיארה והמפרשין בספינה לפני שלשים יום, אין צריך לבדוק, בתוך שלשים יום. בודק ומשכים והולך לדרכו. ר' יהודה אף משם רבן גמליאל שתי חלות של תודה פסולות, ומונחות על גג האיסטבה, כל זמן שהן מונחות כל העם אוכלין חולין, ניטלה אחת מהן, כל העם אוכלין תרומה, ניטלו שתיהן שורפין אילו ואילו.

Tosefta Pisha 1:4

Those who go out in a carriage or sail in a ship before [the] thirty days, they are not required to check [for *hametz*]; [if it is] within [the] thirty days, he checks and gets up early and goes on his way. R. Yehudah says in the name of Rabban Gamliel: The two loaves of thanksgiving offering become unfit, and are placed on the roof of the portico. All the time that they lie there, all the people eat *batulin*; [when] one is removed, all the people eat *terumah*; [when] both are removed, they burn this one and that one.

משנת פסחיים א:ג
רבי מאיר אומר, אוכלין כל חמש ושורפין בתחילת שש. ורבי יהודה אומר אוכלין כל ארבע ותולין כל חמש ושורפין בתחילת שש.

Mishnah Pes 1:4:

R. Meir says, "They may eat all the fifth hour and burn it at the beginning of the sixth hour." But R. Yehudah says, "They may eat all the fourth hour and hold it in suspense during the whole fifth hour and burn it at the commencement of the sixth hour."

משנת פסחיים א:ג
יעוד אמר רבי יהודה, שתי חלות של תודה פסולות מונחות על גג האצטבא. כל זמן שמונחות כל העם אוכלים; ניטלה אחת חולין, לא אוכלין ולא שורפין. ניטלו שתיהן התחילו כל העם שורפין. רבן גמליאל אומר, חולין נאכלין כל ארבע, ותרומה כל חמש, ושורפין בתחילת שש.

Mishnah Pes 1:5:

And R. Yehudah made a further statement, "The two loaves of a thanksgiving-offering that had become unfit were placed upon the roof of the portico. All the time they lay there all the people could eat; when one was removed they remained in suspense: they neither ate nor did they burn [it]. When both of them were taken away all the people began to burn [it]." Rabban Gamliel says, "[Completely tithed *hametz* could] be eaten all the fourth hour, and the priest's tithe all the fifth hour, and they burn it at the beginning of the sixth hour."

It is not clear why in these mishnayot there is a gap of time during which nothing is done: the fifth hour in mishnah 4, and the period in mishnah 5 during which one suspends one loaf and neither eats leaven nor burns it. This question is also asked in the Talmudim (b 12b, y 1:4-5). In the Tosefta, the entire ritual of the two loaves is easier to understand and reflects authentic ancient Temple ritual, in the above-mentioned interim period, the priest would eat leavened *terumah*. This historical description was transferred to Mishnah, which simplified the law by using a system of hours designated by numbers in mishnah 4. The loaves in mishnah 5 were adjusted to reflect the post-Temple situation, in which in the interim there was no ritual act, but a period of respectful waiting, a suspension of time during which one neither ate nor burned. The simple reason for this suspension of activity is that it was a preservation of a Temple practice of having a middle time period, now empty, but then a time when the priests would eat consecrated food and the people respectfully waited. Thus we see that the original historical situation was preserved in Tosefta and not in Mishnah.

5. Mishnah Pes 1:7/tPisha 1:5-6
(Lieberman pp. 141-2)

תוספתא פסחא א:ה-ו

5 שורפין תרומה תלויה טמאה וטהורה כאחד דברי ר' מאיר, והכמים אומ' תלויה בסני עצמה, טהורה בפני עצמה, וטמאה

כפני עצמה. אמ' ר' שמעון לא נחלקו ר' ליעזר ור' יהושע על הטהורה ועל הטמאה ששורפין זו בפני עצמה וזו בעצמה, על מה נחלקו על התלויה ועל הטמאה, שר' ליעזר או' תישרף זו בעצמה וזו בעצמה, ור' יהושע או' שתייה כאחת. 6 אמ' ר' יוסה אין הנדון זה דומה לראיה, כשר שנשמה בולד הטמאה עם כשר שנשמה כאב טמאה שניה טמאין, אלא שזה טמא טמאה חמורה וזה טמא טמאה קלה, וכן שמן שנפסל בטבול יום כנר שנישמה טמא מת שניהן טמאין, אלא שזה טמא טמאה חמורה וזה טמאה קלה, ואני או' ששורפין תרומה שנישמת בולד טמאה עם תרומה שנישמת כאב הטמאה, אע"פ שמוסיפין לה טמאה על טמאחה, ותלויה וטמאה אומ' אני שהתלויה טהורה, אם נשרפת עם הטמאה נמצאת זו מטמאה, בית שמיי אומ' אין שורפין כשר טהור עם כשר טמא, ובית הלל מהירין.

Tosefta Pisha 1:5-6

5. We burn doubtful, impure and pure *terumah* as one—these are the words of R. Meir. And the Sages say: doubtful [is burned] by itself, pure by itself, and impure by itself. R. Shimon said: R. Liezer and R. Yehoshua did not disagree about pure and impure [*terumah*], that we burn this by itself and this by itself. On what did they disagree? On the doubtful and the impure, as R. Liezer says: This is to be burned by itself and this by itself, and R. Yehoshua says: Both [are burned] as one. 6. R. Yose said: The issue does not resemble the proof. [If] meat that became impure by a second degree impurity [is burned] with meat that became impure by a first degree impurity, they are both impure, but this one is impure with a more severe impurity and this one is impure with a lesser impurity. And also oil made unfit by *tevil yom* with a lamp made impure by contact with the dead—they are both impure, but this one is impure with a more severe impurity and this one with a lesser impurity. And I say that we burn *terumah* that became impure by a second degree impurity with *terumah* that became impure by a first degree impurity, even though we add impurity to impurity. [And as to burning] doubtful with impure, I say that the doubtful [may be] pure, and if it is burned with the impure, it will become impure. The House of Shammai say that we do not burn pure meat with impure meat, but the House of Hillel allow [it].

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MS Vienna, like the printed edition of Tosefta, reads, "R. Yehudah b. Beteirah says, 'One fulfills the obligation with lettuce and with lettuce.'" MS Erfurt reads [תולת] חזרת as does MS London. Lieberman favored the reading in MS Erfurt, but corrected the reading slightly to read *ובחזרת גלין* since Mishnah does not indicate the type of lettuce. Certainly, the source of MS Erfurt's reading is the baraita in b 39a, which reads *גלין חזרת*. And certainly the reading in the Bavli was influenced by mKil 1:2, which is cited therein, and which reads: *חזרת וחזרת גלים*. Also likely is that this reading was added to the baraita on the basis of the same sentiment expressed by Lieberman, namely that the baraita, like the later Tosefta, must have added to Mishnah. For this reason Lieberman departed from his usual rule that readings in MS Vienna et al. are to be favoured over readings in MS Erfurt et al. However, if we see Tosefta as the source for Mishnah in this case, and in the name of an early Tanna, R. Yehudah b. Beteirah, then MS Vienna's reading is acceptable, and its reading of *חזרת* is original and served as the basis of Mishnah.

Now I shall bring several instances in which stylistic changes and changes due to respect were introduced into Mishnah. In mKid 1:10 we read: "Everyone who performs one mitzvah—it is well for him and his days are lengthened and he inherits the land; and everyone who does not perform a mitzvah—it is not well for him and his days are not lengthened and he does not inherit the land." In Tosefta 1:13 we read "One who performs a mitzvah—it is well for him and his days and years are lengthened and he inherits the earth; and everyone who transgresses a single sin—it is made worse for him and his days and years are snatched away and he does not inherit the land." Lieberman in *Tosefta KiFshuta* wrote: "The Tosefta interpreted 'he does not perform a single mitzvah,' that is, he transgresses it." It seems, however, simpler to see Mishnah as refinement and "improvement" of the original and sharp style in this halakhah of Tosefta. Lieberman also wrote that the first line of Tosefta is a short quotation (*pisqa*) from Mishnah; the opening is a *pisqa* and the closing is a commentary. Though this is possible,

it seems preferable to understand the relationship of the sources as one between two complete parallels—Tosefta's being the original one and less developed, and that of the Mishnah being a more refined and stylized work.

In tPisha 3:11 we read: "R. Lezer b. R. Tzadoq said: Once we were sitting before Rabban Gamliel in the *beit midrash* in Lod, and Zones, the appointee, came and said, 'The time has arrived to burn the leavening.' I and my father went to Rabban Gamliel's house and burned the leavening." Tosefta contains phrases such as "we were sitting," "I and my father went." A comparison, in this case, to the baraita in bPes 49a is revealing: "Once father stayed in Jamnia." Not "we were sitting," but, "father stayed." It continues "And I followed father and burned the leavening," not "I and father went." There can be no doubt that these differences reflect changes due to respect, the honour due a father. And the Tosefta reflects the original style, not yet refined.

In conclusion I will note that occasionally the Talmud itself decides that a baraita which is similar to one that is before us in Tosefta is earlier than its parallel in Mishnah. Bavli Pes 48a (discussing m 3:11) refers to a baraita in which R. Eliezer questioned R. Yehoshua and the latter remained silent in response; it is stated in the Talmud that the reply came afterwards in the Mishnah: "He was silent in the baraita and responded to him in our Mishnah." In 1.0 and behold, in this case Mishnah is a commentary to the baraita. And concerning the parallels, according to our method it is possible to say that more than Tosefta commenting on Mishnah, it was the Mishnah which interpreted, through some sort of reduction and reworking of material, the ancient halakhot as brought in Tosefta.

To date scholarship has only addressed the priority of Tosefta texts to Mishnah on an occasional and *ad hoc* basis. What is new here is the need to generalize this phenomenon to be included as a regular question and method of literary, historical and judicial analysis.