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THE SYNOPTIC PROBLEM IN RABBINIC LITERATURE

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There is no denying that many paragraphs of mishnah have no parallel source in the Tosefta or anywhere else. But that does not disprove the theory that the Mishnah is, at its core, a reworking of an older collection. The redactor clearly added other statements of law that he found elsewhere or else produced new statements of his own. Similarly, there are many paragraphs in the Tosefta that have no parallel text in the Mishnah, although they do appear in one or both Talmudim, sometimes in association with a closely related mishnah and sometimes with some other mishnah. It is even true that some toseftan halakhot never appear anywhere else. This too does not disprove my assertion that the Mishnah is a reworking of an early Tosefta, since the Tosefta evolved over time and many paragraphs were added. I am simply saying that at the core of the extant Tosefta lies an ancient tannaïc collection that predates the Mishnah and that served as its basis. Since I can show that this is true in passage after passage and chapter after chapter (I have chosen but two representative texts for this study), I think it reasonable to generalize and say that the redactor of the Mishnah did not have just bits and pieces available to him, but an ordered tannaïc collection.

Finally, and most important, the unique advantage of engaging in a sustained analysis of the Mishnah together with related tannaïc texts is that seeing the origins of the Mishnah in a new light gives rise to a much more nuanced, more precise, and deeper understanding of the Mishnah itself.

Chapter 3 Uncovering Literary Dependencies in the Talmudic Corpus

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In studying the talmudic-midrashic corpus we often compare similar texts, whether on the lower-critical level, namely, several textual witnesses to one passage, or on the higher-critical level—synoptic investigation of parallel passages. I would like to preface this discussion with two quotations which can serve as paradigms for two contrasting ways of viewing these relationships. The first deals with the textual discrepancies between the two versions of the Ten Commandments found in the Torah (Exodus 20:7 || Deuteronomy 5:11):

זכור את יום השבת לקדשו | שמר את יום השבת לקדשו
"זכור" ו"שמר" שניהן בדיובר אחד נאמרו.¹

This discrepancy is explained in the well-known Mekhilta passage:

According to the Mekhilta, the relationship of these variants is not one of primary versus secondary, original versus edited. Rather, the two texts are equivalent. This paper was delivered as a lecture at the conference of the Association for Jewish Studies, 1998 (I acknowledge participants' questions). Many of the examples presented below rely upon fuller analyses of the passages in question, which are available in Hebrew studies cited. I am grateful to Prof. Shaye J. D. Cohen for suggesting this form of presentation. My submission at the synoptic conference was a Hebrew study on Babylonian beraitot (see note 11, below).

¹ *Mekhilta d'Rabbi Ismael*, ed. Horowitz-Rabin (Jerusalem, 1960), Hahodesh, parashah 7, p. 229, and parallels; text according to Ma'agarim, The Hebrew Language Historical Dictionary Project.

Other rabbinic texts are cited from the following editions: Tosefta, Berakhot-Bava Batra: *Tosefta*, ed. S. Lieberman (New York, 1955–1988); Sifrei Numbers: *Sifrei d'Be-Rab*, ed. H. S. Horowitz (Jerusalem, 1966); Sifrei Deuteronomy: *Sifrei al Sefer*

accorded equal status. Both of them were pronounced by the divine voice in miraculous simultaneity,² an impossible task for mortals, as remarked by both the Yerushalmi (Nedarim 3.2.37d) and the Bavli (Rosh ha-Shanah 27a):

כּוּה שֵׁאֵי אִפְשֵׁר לִפְנֵי לִוְבוֹר וְלֹא לְאִזְוִי לְשִׁמְעוֹת וְכּוּה שֵׁאִין שִׁמְעִין כִּיֹּל לְדַבֵּר לְדַבֵּר וְאִזְוִי רִחוּן יִכְוֹל לְשִׁמְעוֹת.

A feat that the human mouth cannot accomplish and the human ear cannot perceive.

We will use this paradigm to symbolize the approach espoused by many scholars, according to which parallel rabbinic texts represent two different traditions of which neither can be proven to be the source of the other.

The second quotation also refers to laws laid down in two separate passages in the Torah, passages which are partly similar and partly different:

וְכּוּה בְּחֻזְקוֹ, כּל פֶּרֶשֶׁה שֶׁאֵמְרָה בְּמִקְוִים אִחִיד וְחֻזְקָה כּוּה דְבַר אִחִיד וְחֻזְקָה וְשִׁמְעוֹת בְּמִקְוִים אִחִיד, לֹא שִׁמְעוֹת אִלֵּא עַל שְׂדֻדְסָה בְּהַ דְבַר אִחִיד.³

As worded in the Bavli,

דָּנָה דְבַר רַבִּי יִשְׁמַעְיֵאל: כּל פֶּרֶשֶׁה שֶׁאֵמְרָה וְשִׁמְעוֹת, לֹא נִשְׁמָעוּת אִלֵּא בְּכַפְּלֵי דְבַר שֶׁעֲשׂוּדְסָה בּוּה.⁴

The non-corresponding element of the two passages is an innovation, *innovated* in the second version to supply a necessary clarification or addition to the first version. This paradigm represents the model of *active* editorial change.

The *zakhor ve-shamor* paradigm, which I call the model of independent parallels, has prevailed among scholars during most of the twentieth century. It appears under a variety of names, all signifying independent parallel sources: "different traditions," "separate yeshivot," "different tannaim," *Devarim*, ed. E. Finkelstein (Berlin, 1940); *Genesis Rabbah: Midrash Bereshit Rabbah*, ed. Theodor-Albeck, 2nd printing with additional corrections by Ch. Albeck (Jerusalem, 1965); *Deuteronomy Rabbah: Midrash Devarim Rabbah*, ed. S. Lieberman (Jerusalem, 1940). Page numbers following citations refer to these editions.

² See Horowitz, *Mechillia*, p. 229, *ibid.*; E. Z. Melamed, *Essays in Talmudic Literature* (Jerusalem, 1986), p. 150; M. Benovitz, "A Critical Commentary on Chapter III of Tractate Shevuot in the Babylonian Talmud" (doctoral dissertation, Jewish Theological Seminary of America, 1993), pp. 140–141, 640 nn. 89–90; B. Schwartz, "I Am the Lord" and "You Shall Have No Other Gods" Were Heard from the Mouth of the Almighty: On the Evolution of an Interpretation," in *The Bible in the Light of Its Interpreters*, ed. S. Japhet (Sarah Kamin memorial volume; Jerusalem, 1994), pp. 178–180.

³ *Sifrei* Numbers 2 (p. 5). The rule is ascribed to the school of R. Yishmael. See W. Bacher, *Die älteste Terminologie der jüdischen Schriftauslegung* (Leipzig, 1899), pp. 100–103, 193; *idem*, *Die Agada der Tannaiten* (Strassburg, 1903), vol. 1, p. 242; A. J. Heschel, *Theology of Ancient Judaism* (London & New York, 1962), vol. 1, pp. 3–4. See J. Harris, *How Do We Know This?* (Albany, 1995), and specifically p. 261 there.

⁴ B. BQ 64b, B. Shevu 19a, B. Men 10a, B. Bekh 46a.

etc. Ultimately, in my opinion, this is an incomplete concept—in the extreme almost a mystical one—which came into being under the assumption that tradents would not change or alter the received text. Scholars believed that parallel texts which diverged from one another had been transmitted independently from early times, with each representing an equally "original" text.

This theory fails, however, to provide a full, rational explanation for the overall *similarity* which marks these parallels, and for the fact that the differences between them are highly localized.⁵ At the same time it closes the door on any detailed investigation of the nature of the differences, differences which, when categorized, often point to qualitatively different types of texts before us—namely, an earlier, more original version, and a later, more edited and reworked one.⁶

The "independent parallels" paradigm corresponds to certain traditional patterns of presentation found in talmudic literature,⁷ and can easily be related to specific talmudic concepts indicating independent and parallel transmission, such as *בְּסוּרָה מִתּוֹ הֵבֵי*, *בְּפִימְבֹרֵיחַ מִתּוֹ הֵבֵי*.⁸ Another is *אִכָּא דְאִכָּא*. Suffice it to be said here that recent research now points in the

⁵ See S. Friedman, *Talmud Avukh, B. Bava Metz'a VI: Critical Edition with Comprehensive Commentary*, Text and Introduction Volume (Hebrew; Jerusalem, 1996), pp. 12–13.

⁶ When discussing lower criticism of the Mishnah, J. N. Epstein tries to maintain the historical inviolability of the text of the Mishnah as much as possible. What may appear as alternate forms of the Mishnah's text are perceived as deriving from independent, parallel works. Creative editorial change is largely viewed by him as a negative development of the post-classical period. When mentioned (שְׂרִייתִים שֶׁל עֵינָיִים) this concept tends to be applied in the sense of the infusion of one text by another (עֵרִיבֵי הַלְקֵק), which is code for Epstein's concept of these texts being independent parallels. Also on the higher-critical level Epstein tends as much as possible to view different forms as being of equal weight, to such a degree that linguistic development in word pairs contained in the parallels is eclipsed in his analysis. See his *Miavo le-Nosah ha-Mishnah*, 2nd ed. (Jerusalem, 1964), pp. 1–7 (cf. *idem*, *Introduction to Tannaitic Literature* [Jerusalem, 1962], p. 239), 164–165, 349–353. On the above-mentioned editorial changes, see pp. 218, 250. On Epstein and tannaitic sources cf. A. Rosenthal, "Le-Masoret Girsat ha-Mishnah," in *Saul Lieberman Memorial Volume*, ed. S. Friedman (New York and Jerusalem, 1993), p. 32. On Epstein and parallel traditions: S. Friedman, "Mishnah and Josefa Parallels (2)—Kabbah Gamliel and the Sages (Shabbat 13, 14)" (Hebrew), *Bar-Ilan* 26–27 (1995) () *P. Gilit Festschrift*, ed. Z. A. Steinfeld, pp. 277–288, specifically p. 287 n. 49. On Albeck: *idem*, *Tosefta Atiqta*, Pesah Rishon (in press), introduction and n. 155.

⁷ The phenomenon deserves a full historical study in itself. In the meantime, see *Sefer ha-Atiqta* (as in previous note).

⁸ See I. Levy, *Introduction and Commentary to Talmud Yerushalmi (Bava Qamma I–II)* (Hebrew; Jerusalem, 1970), pp. 4–12; some other terms are mentioned on p. 13; *ישנה אחרונה*, *אִכָּא דְאִכָּא*, *בְּסוּרָה מִתּוֹ הֵבֵי*, *אִכָּא דְאִכָּא*, and *אִכָּא דְאִכָּא*.

direction of non-equality of two statements joined by *ואיכה דאמר*. One of the two can often be identified as the original, and the other as an editorial reworking, motivated by harmonizing purposes or mandated by a specific halakhic agenda.⁹ Parallel accounts of historical events, when developed editorially, can produce conflicting details between the two passages, leading some to the conclusion that two separate events are being referred to: *דרי עובדי דוי*.¹⁰

The second paradigm which we have presented—*parashah she-nihladesh bah davar*—corresponds much better to the basic and pervasive relationship which we find in synoptic parallels. Similar but differing texts do not spring into existence in primeval twinship. Changes come about developmentally and usually editorially, and their effects can be recognized in terms of a wide range of well-known literary and stylistic categories which are far from unique to our corpus.¹¹ This paradigm, which can be called the “edited parallel,” strikes a responsive cord among the *rishonim* who pioneered the perception of the Bavli as reworking its sources. I refer to the words of Rabbenu Tam (Jacob ben Meir of Ramerupt): *ועוד תבא מעשה*, ועוד *הוראות ודעות כשכבחו אותה בלמוד*, *מספרים ומקורות אודיה* they were interpreted by R. Shimshon of Sens: *ולקח*, *בשמרא מעשה מבורה ומודעת*, *ונפשה השני כפי הדין*.¹²

Editorial activity as the force which creates alternate forms of the same text can be traced in both lower-critical and higher-critical settings. Regarding lower criticism, the question can be phrased: “Do the variants preserved in the textual witnesses to the Bavli result from the fluidity and free transmission of the Talmud in its primordial stage?” This perception fits

⁹ See Friedman, *Talmud Arukh*, BT *Bava Metz'a VI: Critical Edition with Comprehensive Commentary*, Commentary Volume (Hebrew; Jerusalem, 1990), p. 60 and n. 26; M. Kahana, “Intimation of Intention and Compulsion of Divorce—Towards the Transmission of Contradictory Traditions in Late Talmudic Passages” (Hebrew), *Tarbiz* 62 (1993), pp. 225–264, English Summary p. vii–viii. Halakhic differences between parallels are commonly set aside in the Talmudim with equalizing terminology; Yerushalmi: *דא דא דא דא*, cf. Bavli: *דא דא* (Abbaye).

¹⁰ Regarding M. Yoma 2.2 and T. Yoma 1.12 (p. 224), see *Tosefta Aliqta*, introduction and n. 124; and S. Friedman, “Historical Aggadah in the Babylonian Talmud,” in *Saul Lieberman Memorial Volume* (n. 6, above), passim.

¹¹ See S. Friedman, “Historical Aggadah,” p. 162; idem, “The Beraitot in the Babylonian Talmud and their Parallels in the Tosefta” (Hebrew), in *Atara L'Haim: Studies in the Talmud and Medieval Rabbinic Literature in Honor of Professor Haim Zalman Dimitrofsky* (Jerusalem, 2000), pp. 163–201, at n. 7.

¹² *Sepher Hayashar by Rabbenu Tam*, ed. S. Schlesinger (Jerusalem, 1959), p. 10.

¹³ Tosafot on B. Bekh 27b, s.v. *די*. Cf. Z. Frankel, *Darkhei ha-Mishnah* (Tel Aviv, 1959), p. 232; Epstein, *Mevo le-Nosah*, p. 782. On the creative nature of the Babylonian transmission cf. A. Geiger, *Urschrift* (Frankfurt a. M., 1928), pp. 157–158 (Hebrew translation, pp. 101–102).

the model of independent parallels. Two voices emerge from the early, fluid Talmud, each presenting an independently formulated version. This indeed has been the regnant position, as articulated, for example, by Eliezer Shimshon Rosenthal.¹⁴ I have attempted to argue for a different model, in which the two voices can often be identified as one close to the original text on one hand, and a more reworked, edited version on the other. This approach adds visibility to the editorial categories (e.g. harmonization, updating of vocabulary, etc.), and the regular reappearance of these categories lends further weight to their pervasive role.¹⁵

Even talmudic terminology, sometimes considered a basic and unchangeable stratum of the Talmud, actually evolved editorially. An example: *הרביא* presented by one branch of witnesses should be taken as original, and *הרבינו* presented by the other is often an editorial change—fine-tuning the language for the purpose of greater clarity, to indicate that the beraita now being quoted contradicts the previous one.¹⁶

On the higher-critical level and in the synoptic comparison of parallel passages, I have elsewhere dealt with the Mishnah as a corpus which edits its sources. This becomes apparent when parallels to the Mishnah, such as those preserved in the Tosefta or in the tannaitic midrashim, are available for comparison.¹⁷ This analysis provides general insight into the Mishnah's own style and agenda, and particular insight into the evolution of laws or concepts, where the Mishnah can sometimes be construed as containing the latest tannaitic stand. Consequently, passages in the Mishnah should not be assigned to the earliest generations without rigorous proof. The tendency to view many passages in the Mishnah as extremely early was presented by D. Hoffmann in his *Die erste Mishna*, and was often followed by Epstein and other scholars.¹⁸

* * *

One of the most fruitful areas of application of the editorial model is in the relationship between the Tosefta and parallel beraitot in the Bavli. Contemporary scholarship still sees much independence on the two sides of this relationship, and consequently often assumes that the Babylonian version of a beraita represents an actual tannaitic statement.

¹⁴ E. S. Rosenthal, “The History of the Text and Problems of Redaction in the Study of the Babylonian Talmud” (Hebrew), *Tarbiz* 57 (1987), pp. 1–36.

¹⁵ See S. Friedman, “On the Origin of Textual Variants in the Babylonian Talmud” (Hebrew, English Summary), *Sidra* 7 (1991), pp. 67–102.

¹⁶ *Ibid.*, pp. 88–89; *Talmud Arukh*, Text Volume (n. 5, above), pp. 25–55.

¹⁷ S. Friedman, “Mishnah and Tosefta Parallels (1)—Shabbat 16:1” (Hebrew), *halakha* 62 (1993), pp. 313–338; “Mishnah and Tosefta Parallels (2)” (n. 6, above), pp. 277–288.

¹⁸ See *Tosefta Aliqta*, Pesah Rishon (in press), introduction.

The "independent parallels" theory regarding the relationship of Tosefta-Bavli parallels was impressed upon our consciousness in J. N. Epstein's famous diagram on page 246 of his *Introduction to Tannaitic Literature*, and in the explanation of this diagram as provided by the author, where he says, "Two descendants sprang forth from the primordial Tosefta—the beraitot of the Bavli and our Tosefta."¹⁹ According to this imagery, common ancestry is a prehistoric issue. In terms of the seeable and the scrutinizable, the two corpora have separate and independent stemmatic identities issuing forth on parallel lines which never intersect: *zakhlor ve-shamor*. Epstein's statement and accompanying diagram have exerted enormous influence on contemporary scholarship regarding the relationship of passages paralleled in the Tosefta and Bavli.²⁰ Since the Babylonian beraitot are described here as being an independent witness to the original Tosefta, it would follow that their readings may sometimes be superior to those of our Tosefta, and may be adopted by scholars when the situation warrants.

According to E. S. Rosenthal in his study "Ha-Moreh" on the work of Saul Lieberman, the precise nature of the relationship between the Tosefta and the beraitot of the Bavli, although an essential question for the proper interpretation of the passages involved, still remains an unsolved enigma. In his words, "The big question, which lies at the heart of source criticism and which affects most of all the commentator on the Tosefta, is: the relationship between our Tosefta and the two Talmudim. This is a complicated question that has occupied many scholars."²¹ It is quite true, of course, that the original forms of the Tosefta and other talmudic works are not available to us, and cannot be assumed to have been identical with their representations currently in our hands. However, recourse to this truism is not necessary in order to unravel this relationship (Bavli beraitot and Tosefta parallels). In my opinion the primacy of Tosefta passages to their parallels in Babylonian beraitot is a demonstrable fact rooted in the creative reworking that the Bavli brings to bear upon all its sources. The approach proposed herein is capable of providing us with one of the strongest keys available to unlock, and often rewrite, the history and evolution of tannaitic laws and concepts.²²

¹⁹ "הים [פסח] קדומה—שי לידתו, הביתית שבבבלי הוותיק [פסח] שלנו." 19

²⁰ See E. S. Rosenthal, "Hamoreh," *American Academy for Jewish Research* 31 (1963), p. 52 (Hebrew section). As to the fascinating question of the original source of the diagram and the degree that it integrates within Epstein's overall framework, see Friedman, "The Beraitot" (n. 11, above).

²¹ "הטענה הגדולה, שבה ענין לבקרה במקורות, ונעמק ביניהן לפישי ההיסטוריה, דומה שבוין (ibid.) שלנו שני העלמות. בניה פסכה, שתפקידה את הווקרים הדבין." (ibid.)

²² See "The Beraitot."

Harmonization is often the purpose and the vehicle of the editorial changes found in the Bavli's version of Tosefta parallels. The Mishnah is often the source of the harmonizing element. In other words, many Bavli beraitot are in reality a Tosefta passage with an addition from the Mishnah.

B. Avodah Zarah 42b; B. Hullin 40a T. Hullin 2.18 (p. 503)

השוטח לשום זמא לשום לבנה לשום כוכבים השוטח לשום הרים לשום גבעות, לשום ימים לשום מולות לשום מוכאל שר צנא הגדול ולשם לשום יחד, לשום מדברות לשום זמא לשום שלשול קפון הרי זה בשר וכו' מדום לבנה, לשום כוכבים לשום מולות, לשום מוכאל השר הגדול, לשום שלשול קפון, הרי איל וכו' מדום.

M. Hullin 2.8

השוטח לשם הרים לשם גבעות לשם ימים לשם יקרות לשם מדברות שדומין פסול.

T. Hullin 2.18 presents a list of heavenly bodies: sun, moon, etc. Anyone who slaughters an animal dedicated to these has invalidated the meat for consumption. The Mishnah presents an earthly list: mountains and seas, rivers and deserts. The Babylonian beraita, which is essentially parallel to the Tosefta passage, presents both lists, the celestial and the mundane, by inserting the Mishnah's list into the language of the Tosefta! Thus it seems clear that this beraita was formed by adding part of the Mishnah to the original language of the Tosefta. Since we posit that the Babylonian beraita tradents introduced elements from our Mishnah into their version of Tosefta beraitot, agreement of Mishnah with a beraita can no longer serve as a proof that the beraita is more authentic than its Tosefta parallel. The opposite is true. The beraita is similar to that Mishnah because it was harmonized editorially under the Mishnah's influence.

Other editorializing techniques are observable in these beraitot, such as updating of style, vocabulary, and even names. Converting a less common place-name to a more well-known one, or to the name of a greater center of activity, is a pervasive literary reality.²³ Even when beraitot in the two Talmudim agree on a place-name as against the Tosefta, if their agreement is upon a more popular name, the primacy of the Tosefta version must be seriously considered. Although it is true that the Bavli editorializes much more than the Yerushalmi, the Yerushalmi's conservative approach should not be construed as a rejection in principle of introducing editorial changes, but rather as a tendency to do so less often.²⁴

Let us look briefly at the editorial change of place-names. In a passage describing *haroset* and the Passover seder, an episode involving merchants

²³ See Friedman, "Historical Aggadah" (n. 11, above), p. 132 n. 57.

²⁴ For a lower-critical model of conservative editing, see *Talmud Arukh*, Text Volume (n. 5, above), pp. 39-41.

is mentioned. In the Yerushalmi (Pesahim 10.3 47d) and in the Bavli (Pesahim 116a), they are merchants of *Jerusalem*, hawking ingredients for the seder, or specifically for *haroset*. However, in the Tosefta (Pesahim 10.10) they are the high-standing merchants of *Lydda*, appearing in a particular historic setting with R. Elazar b. Zadok shortly after the destruction of the Temple, when the introduction of *haroset* as a new Passover obligation was being discussed. In effect, R. Elazar b. Zadok is saying to them, "Come, merchants of Lydda, and partake of the *haroset* ritual." Scholarly preference for the reading "merchants of Jerusalem" as found in both the Yerushalmi and the Bavli over that of "merchants of Lydda" in the Tosefta²⁵ places the event in the pre-destruction period. This completely alters our understanding of the history of the seder and of the ritual evolution that took place after the destruction. Furthermore, in a separate Tosefta passage (Pesahim 3.11 [p. 154]) we have independent corroboration of R. Elazar b. Zadok spending Passover in Lydda (despite the fact that the Bavli [Pesahim 49a] also retold *that* account as taking place in Yavneh).²⁶

We have seen that even place-names are updated in the process of creative transmission. The appearance of a more prestigious name in the talmudic parallels cited above is not an argument for their originality. The Bavli also shows its hand in reshaping the language of this beraita in the phrase *תני ר' ר' שבייטל*, which is the specific wording of the above-mentioned beraita (Pesahim 116a). The word *ר' ר'*, meaning "spices," is a hapax. This meaning is available only in Syriac, and thus demonstrates that this text is being reworked by the Bavli under the influence of Babylonian Aramaic.²⁷

Usually the Babylonian reworking is a matter of localized style editing—not free stylistic exchange for its own sake, but part of an overall tendency to refine harsh language and replace it with a more respectable substitute (or other stylistic agendas). For example, it is not *לֹאֲרֵיב* (to quarrel), as in Tosefta, Sifrei Deuteronomy and Yerushalmi, but more respectfully *לֹאֲרֵיב* (to quarrel), in the Bavli parallel alone.²⁸ We find the very same stylistic change between T. Niddah 1.5 (p. 641) and B. Nid-

²⁵ See S. Lieberman, *Tosefta Ki-fshuta*, vol. 6 (New York, 1952), p. 654; J. Tabory, *The Passover Ritual Throughout the Generations* (Hebrew; Tel Aviv, 1996), p. 259 n. 32.

²⁶ See *Tosefta Atiqta*, Pesah Rishon, ch. 21. Regarding the switch from Rabbi Eliezer to Rabbi Joshua in the Bavli passage, see below.

²⁷ See *Tosefta Atiqta*, *ibid.*

²⁸ T. Git 7.1 (p. 272); Sifrei Deuteronomy Piska 269 (p. 289); Y. Git 9.1 50a; B. Git 83a. The extended text paralleled in these four sources provides an excellent opportunity to observe the Bavli's tendency for localized editorial change in short segments of beraitot, which remain otherwise intact. See my forthcoming commentary on B. Gittin chapter 9, sugya three (83a).

dah 7b. Another example of refining language can be found in a passage that recounts an incident in which a husband imposes an impossible condition for the divorce he grants his wife. In the Tosefta and in the Yerushalmi parallel he does it crassly and insultingly: "on condition that you fly in the air."²⁹ In the Bavli the husband's language is refined and spiritualized: "on condition that you ascend to the firmament."³⁰ The Bavli imposes this type of style editing upon its sources on a regular basis.³¹

It is true that the Bavli's version of a beraita may be smoother and more focused, and may spell out the halakhic content that the reader is looking for. It is therefore not surprising that scholars have often given preference to the Babylonian version in the course of their research, frequently with no specific proof.³² In light of the examples given above, we suggest that more caution should be exercised before concluding that the beraitot of the Bavli represent earlier and more original texts.

* * *

The creative reworking that we find in beraitot of the Bavli when compared with their parallels in tannaitic corpora leads us to a further conclusion. Once we have uncovered significant editorial activity in the Bavli, there is much room for suspecting³³ that some of the Babylonian beraitot with no independent tannaitic parallels may contain post-tannaitic material, especially when they present features which correspond to known editorial tendencies or deal with early tannaim whose statements on basic issues would normally be represented also in Palestinian traditions.³⁴ This

²⁹ T. Git 5.12 (p. 268); Y. Naz 2.4 52a. For another example of the insulting use of this expression, see M. Ket 13.7, cf. Gen. Rab. 22.8 (p. 213).

³⁰ B. Git 54a. On the spiritual nature of *עלה לרקק* cf. Gen. Rab. 19.8 (p. 176), Deut. Rab. 11.1 (p. 38), and *passim*.

³¹ See *Talmud Arukh*, Text Volume (n. 5, above), pp. 14–15; *Tosefta Atiqta*, index, *passim*.

³² Many such preferences can be documented.

³³ And then corroborating or rejecting, through specific investigation.

³⁴ The question of the Babylonian beraitot in general and their problems has been discussed in the past, sometimes heatedly. See I. H. Weiss, *Dor Dor v'Dorshav* (Vienna, 1876), vol. 2, pp. 215–216; H. Malter, "A Talmudic Problem and Proposed Solutions," *JQR* n. s. 2 (1911), p. 89 n. 15; A. Weiss, *The Talmud in Its Development* (New York, 1954), pp. 37–47; L. Jacobs, "Are There Fictitious Beraitot in the Babylonian Talmud?" *HUCA* 42 (1971), pp. 185–196. Jacobs' examples belong to various categories, and should be commented upon separately; see below, n. 56. Regarding B. Kosh ha-Shanah 24a–b (=Avodah Zarah 43a–b), see my upcoming commentary on B. Avodah Zarah chapter 3. Recent writers have touched on the question *en passant*, usually not conclusively, listing bibliographic references. See D. Goodblatt,

suggestion is not intended as a blanket generalization. Our claim is that alongside the many unparalleled Babylonian beraitot which appear to represent authentic historical tannaïc statements, there are others which present a series of features that, after detailed analysis, lead us to the conclusion that they may be, at least in part, Babylonian creations.

Proliferation of tradents has long been connected with the problem of inaccurate transmission of tannaïc opinions.³⁵ The many collections of beraitot which already existed shortly after the Mishnah was compiled give testimony to the creative forces operating within these circles.³⁶ The tannaïc authorities required special credentials for a beraita to be accepted as authoritative: "Any tannaïc dictum which did not enter the college is not trustworthy"; "Any tannaïc dictum which was not taught in the college of R. Hiyya or R. Hoshai is faulty."³⁷

³⁵ The Story of the Plot against R. Simeon B. Gamaliel II, *Zion* 49 (1984), p. 358 n. 28; C. Millikowsky, "Which Gehenna?" *NJS* 34 (1988), p. 247 n. 17; E. B. Diamond, "A Model for a Scientific Edition and Commentary for Baveli Ta'anit," (doctoral dissertation, Jewish Theological Seminary of America, 1990), p. 320 n. 97; S. Friedman, "Baraiyot," in *The Oxford Dictionary of the Jewish Religion*, ed. R. J. Z. Werblowsky and G. Wigoder (New York and Oxford, 1997), p. 98. Concerning B. Sanh 51b (ב"ב 51ב), see my comment as quoted in Harris (n. 3, above), p. 279 n. 41; I hope to present the detailed analysis elsewhere. Epstein apparently took this passage as an authentic historical beraita; see his *Introduction to Tannaïc Literature*, p. 521 (cf. p. 659), and his *Marco le-Nosah*, p. 82.

³⁶ As already observed in the *Tosefta*: לא תשנו כל קריא על פניו של רבי שמעון (Y. Eruv 1.6.19b), and cf. below. See S. Lieberman, *Hellenism in Jewish Palestine* (New York, 1962), p. 90; J. N. Epstein, *Introduction to Tannaïc Literature*, p. 647 n. 33. I have translated "tannaïc dictum" rather than "Mishnah" as used by Lieberman in order to emphasize that no distinction between mishnah and beraita is meant here. These dicta would usually fit our category of beraita. Regarding רבי יודנה רבי אבהו, see the discussion in B. BM 34a, Lieberman wrote, "In case of doubt he [=the college-tanna—SF] was consulted as to the sequence or the arrangement of several clauses in the *Mishnah*" (*Hellenism*, p. 89), even though the reference is to beraitot paralleling our *Tosefta*; see *Tosefta Kî-fshuta*, Nezikin (New York, 1988), p. 170; and Epstein, *Marco le-Nosah*, p. 675 (similarly, the terminology of "beraita" is apt regarding B. Nid 43b, mentioned in *Hellenism*, where the genre of halakhic midrash is referred to; see Epstein, *Introduction to Tannaïc Literature*, p. 243 n. 12).

³⁷ רבי שמעון בן לקיש כל משנה שלא נכנסה לדבורה אין נאמריה עליה (E. Erub 1.6.19b), and cf. below. See S. Lieberman, *Hellenism in Jewish Palestine* (New York, 1962), p. 90; J. N. Epstein, *Introduction to Tannaïc Literature*, p. 647 n. 33. I have translated "tannaïc dictum" rather than "Mishnah" as used by Lieberman in order to emphasize that no distinction between mishnah and beraita is meant here. These dicta would usually fit our category of beraita. Regarding רבי יודנה רבי אבהו, see the discussion in B. BM 34a, Lieberman wrote, "In case of doubt he [=the college-tanna—SF] was consulted as to the sequence or the arrangement of several clauses in the *Mishnah*" (*Hellenism*, p. 89), even though the reference is to beraitot paralleling our *Tosefta*; see *Tosefta Kî-fshuta*, Nezikin (New York, 1988), p. 170; and Epstein, *Marco le-Nosah*, p. 675 (similarly, the terminology of "beraita" is apt regarding B. Nid 43b, mentioned in *Hellenism*, where the genre of halakhic midrash is referred to; see Epstein, *Introduction to Tannaïc Literature*, p. 243 n. 12).

Amoraim cited in the Bavli voice concern that the later collections may contain beraitot which do not represent genuine tannaïc opinions. B. Hullin 141a-b.³⁸

מתני'. הוסיף את על הבנים ר' יודנה אומר: לוקה אחי משלח, וחכמים אומרים: משלח ואחי לוקה, זה הכלל: כל מצות לא תעשה שיש בה קום עשה — אין לוקה עליה: נמי: בעי רבי אבהו בר ממל: מעמא דרבי יודנה משום דסבר לא שניתק לעשה לוקה עליה, או דלמא: בעלמא סבר לא שניתק לעשה אין לוקה עליה, והכא היינו מעמא משום דקסבר שלא מעיקרא משמע: הא שמעי: גב ונולן ישנן בכלל מלקות — דברי רבי יודנה הוא הכא, דלאו שניתק לעשה הוא, דהדמא אבר לא תגזול והשב אוה המולק, שמע מינה: מעמא דר' יודנה משום דקסבר לאו שניתק לעשה לוקה עליה: אבר ליה ר' יודנא: לאו אמטא לכו כל מנהגא דלא תניא בי רבי חייא ובי רבי אשימא משבשלא היא, ולא תוחבו מנה בי מדרשא: דלמא איהא בכלל מלקות ארבעים יודנא, הש, דהני... לא תשוב ושבו, לא תכלה וכלה, ישנן בכלל מלקות ארבעים דברי רבי יודנה, שמע מינה: מעמיה דרבי יודנה קסבר לא שניתק לעשה — לוקה עליה: דלמא: דהם היינו מעמ דקסבר העובד — מעיקרא משמע: אל רבינא אבר — אשי, דיש לא תוחזרו ממנו עד בקר ונז' באט תשריפ' — בא הכותב לוקה עשה אבר לא תעשה, לומר לך שאין לוקה עליך — דברי ר' יודנה, שמע מינה: דר' יודנה משום דקסבר שלא — מעיקרא משמע עליה.

The beraita quoted in this sugya in the name of R. Yehudah is, according to the *Talmud*, not historical and incorrectly extrapolated from the mishnah. The position of the sages in this Mishnah is that one who took the mother bird together with her young (Deuteronomy 22:6) does not receive lashes for violating the negative commandment, for this prohibition contains a positive method of rectifying the transgression: "let the mother go" (verse 7). Since R. Yehudah holds that he is liable to lashes, it was assumed that he does not subscribe to the rule that a positive method of rectifying the transgression precludes lashes. Based upon this assumption, a beraita was formulated in his name stating that thieves and robbers receive lashes, despite the existence of the positive commandment to return what they took illegally.³⁹ The beraita is eventually rejected⁴⁰ in favor of another beraita which explicitly quotes this rule in R. Yehudah's name. That the latter

³⁸ Cf. R. Rabinovitch, *Variae Lectiones (Diguqei Sofrim)*, 205a nn. 4, 5. The ellipsis represents אשי in the printed editions. The absence or major variations of this phrase in the manuscripts indicate that it is probably a later addition that cannot be used (as by Epstein, *Marco le-Nosah*, p. 41) to demonstrate the existence of common beraitot taught by these two sages. On R. Abba b. Memel and R. Yehudah's colleagues, see *Marco le-Nosah*, p. 1300.

³⁹ יש תאים דרבי שמעון על משנת ברדמי כי דכא משום דשמעין לרבי יודנה דכא רמזי ב"י שרבי אבהו משום לא שניתק לעשה לוקה עליה הוסיף לומר גב ונולן ישנן ונז' (Rashi on B. Hullin 111b, s.v. דינא דר' יודנא) (Ch. Albeck, *Studies in Beraita and Tosefta* [Hebrew; Jerusalem, 1969], p. 28 n. 3).

⁴⁰ And explained through emendation.

beraita is the authentic one, representing the historical position ascribed to R. Yehudah in the tannaitic period, can now be demonstrated by the fact that this beraita has been preserved in the manuscript text of Mekhilta de-Rashbi:

ואל הורדר ממנו עד בקר יבול אם הורדר ממנו עד בקר לוקח את הארבעים הללי הונדר ממנו עד בקר באש השופר. בא בת ליתן עשה על לא תעשה. דבי ר' הורדר.⁴¹

Even though we have presented this talmudic precedent, the issue, as usual, must be decided on the basis of investigation. The regnant position in talmudic research has been to give full historical credence to Babylonian beraitot, without requiring confirmation from Palestinian sources or attempting to identify features which could lead to a late dating. This position is often taken by Epstein, as we will cite below. However, it is significant that Epstein provides an important catalogue of tannaitic statements which appear in changed, evolved or corrupt forms,⁴² culminating in several categories of non-historical beraitot, newly created in Babylonia. Among these he mentions:

Sometimes they intentionally reversed the dispute in the mishnah and taught a type of "talmudic" beraita in order to have the law they preferred stated in the name of that tanna or that house whose opinion is considered authoritative In Babylonia a unique type of mishnah-beraita came into existence, beraitot which summarize the mishnah, epitomize it, eliminate the dispute while adopting the position of one of the disputants according to the regnant halakhic rules

[In the category of] explanatory "talmudic" beraitot . . . belong certain Babylonian beraitot introduced by tanna'im following the fashion when their language is exactly like the tanna's statement⁴³

The problem is compounded by the very skill of Bavlī creativity, and the explicit and developed nature of these passages. The scholar can thereby be led to enticing pieces of information about the tannaim, which he or she

⁴¹ Ed. Epstein-Melamed, *Mekhilta de-Rabbi Shimon ben Yohai* (Jerusalem, 1955), p. 14.

⁴² Epstein, *Macro le-Nosah*, pp. 677–681.

⁴³ *Ibid.*, pp. 680–681. At this point Epstein refers to preceding passages by page numbers, but the location of some of the passages is questionable. As to the import of the statement here, he certainly appears to be suggesting that the beraitot introduced by tanna'im in these passages were formulated according to the (anonymous) emendations. In the body of his work, however, I have found only the opposite position. Regarding B. Hag 2b Epstein states: "[Thus] based upon this Babylonian beraita the Mishnah was 'expanded' [=תפארת] with a 'strong hand'" (p. 633); regarding B. Hag 7b: "[Thus] the Mishnah has been 'explained' [תפארת] according to the Babylonian beraita" (p. 634); and regarding B. BQ 16a: "The tanna's statement was certainly formulated here according to the beraita"

would prefer not to discount. As a result, some of scholarship's essential historical conclusions are based upon such beraitot in the Bavli.⁴⁴

This possibility of non-historical opinions ascribed to tannaim in Babylonian beraitot could have major methodological implications for the study of the tannaim. For example: authoritative histories of tannaitic literature assign passages to great antiquity because they are already quoted by early tannaim. Quite often, however, these quotations are found only in Babylonian beraitot. So regarding *M. Pesahim* 3.1:

אלו עוברין בפסח כוחה דבבלי, ושכר דמדי, וזומוני האדומי, וזווחי המצוי, וזוהי של צבנים, תמלין של טבחים, וקולן של סופרים. דבי אלעזר אומר, אף תכשתי נשים זה הכלל כל שהוא ממין דקן, דדיי זה עובר בפסח. דדיי אלא באהודי, ואין בוקן משום כרד.

The final clause of this Mishnah is assigned to pre-destruction times by Epstein because it is referred to and actually quoted by R. Yehoshua (B. *Pesahim* 43a):

תנא, אמר רבי יהושע, וכי נאחד ששנו על שהוא מין דקן דדיי זה עובר בפסח למה מן תבנים את אלא כדי שיהא היכל בוקן וטמאיהון.

The above-mentioned mishnah is, as it were, quoted in this beraita with the introductory formula ששנו ששנו. Hence Epstein's conclusion: "This mishnah in *Pesahim* is an ancient one, already mentioned by R. Yehoshua."⁴⁵ R. Yehoshua, who lived through the destruction of the Temple, is perceived here as quoting the text of a mishnah which appears in the very same form in our tractate *Pesahim*. Therefore it is claimed that this passage should be assigned to the earliest stratum of our Mishnah. However, the style in this beraita is too dialectic to be accepted as a genuine tannaitic statement, and even Epstein himself cast doubt regarding the quotation formula ששנו ששנו, which is found in tannaitic statements only in Babylonian beraitot.⁴⁶ But it is not sufficient to limit the Babylonian reworking to the quotation term alone. The entire beraita, not corroborated by any tannaitic parallel, cannot serve as a proof that R. Yehoshua quotes our Mishnah and provides a dialectic explanation for its language.⁴⁷

⁴⁴ (p. 639). Regarding the last example, Jacobs ("Fictitious Baraitot" [n. 34, above], p. 100), takes the opposite stand, that the beraita was composed according to the same stand regarding B. *Ber* 13b–14a; Epstein (p. 626) follows the manuscripts which do not include the tanna'im beraita there at all.

⁴⁵ Regarding the historical credibility of the account of Yehudah ben Dostai (B. *Pea*. 71b), see *Tosefta Ahiqra*, introduction n. 273.

⁴⁶ Epstein, *Introduction to Tannaitic Literature*, pp. 24, 62, 324, 334.

⁴⁷ Epstein, *Macro le-Nosah*, p. 807; ברייתא בבבליה לרבין — אבלי ברייתא בבבליה לרבין — ששנו מניי כבוד בבבליה — אבלי ברייתא בבבליה לרבין (ibid., n. 12) takes the same stand regarding B. *Ber* 13b–14a; Epstein (p. 626) follows the manuscripts which do not include the tanna'im beraita there at all.

⁴⁸ M. I. Higger questioned the authenticity of this beraita specifically because R.

Epstein uses this method regarding other passages as well. In a beraita at B. Pesahim 38b R. Ilai queries both R. Eliezer and R. Yehoshua regarding the obligation of eating matzah:

תני: אמר רבי אליעזר, שאילוי את רבי אליעזר: מדר שיצא אדם בקלות וזודה ורקוקי נזרז אמר לי: לא שמעתי, באתי ומאילוי לפני רבי יוחנן, אמר לי: הרי אמרו ולוה הוודה ורקוקי נזרז שנשאת לעצמו – אין אדם יוצא בקו, למבור בשוק – יצא בקו. כשנשאת וזרצית דברים לפני רבי אליעזר, אמר לי: ברית, תן הן הדברים שנאמרו לו למשה בסני.

Since the language which comes after *אמר רבי* corresponds almost exactly with our Mishnah at Pesahim 2.5, Epstein concluded that this must be a Mishnah of ancient formulation, already known and quoted by R. Yehoshua. In his words: "There are mishnayot which R. Yehoshua already quoted . . . This mishnah is certainly from the time of the Temple, and R. Yehoshua already referred to it (in a beraita, 38b): *they have said* 'loaves of the thank offering' (in a beraita, 38b)."⁴⁸ However, the beraita containing this quotation by R. Yehoshua is not an independent, tannaïc beraita, but a reworking of a Tosefta passage (T. Hallah 1.6, p. 276) that deals with a similar issue in a different context. There it is *first* R. Yehoshua and then R. Eliezer who are asked a question regarding the laws of *hallah* by R. Ilai:

אמר ר' אליעזר, שאילוי את ר' יוחנן הלוח הודה ורקוקי נזרז מה הן בולא אמר לי פפוריה וכשנשאת ושאלתי את ר' ליעזר אמר לי עשאת לעצמי פפור למבור בשוק וזרוב וכשנשאת וזרצית דברים לפני ר' לעזר בן עזריה אמר לי הברית אילו דברים נאמרו מדר חורב.

It was R. Eliezer's answer in T. Hallah which was used to create M. Pesahim 2.5.⁴⁹ The Babylonian beraita recast the entire encounter, introducing several changes,⁵⁰ one of which is that R. Eliezer and R. Yehoshua are switched. R. Yehoshua is now the hero of the story who knows the correct answer and gains ascendancy over R. Eliezer. Another change is that R. Yehoshua is described as quoting this law from our Mishnah, with the formula *הרי אמרו*.

Consequently, this beraita cannot be used as proof that the historical R. Yehoshua knew this Mishnah. A more likely reconstruction would be: 1. The law was an original composition by R. Eliezer, as the Tosefta language indicates. 2. The formulation of M. Pesahim 2.5 rests upon R. Eliezer's statement. 3. R. Yehoshua is portrayed by the Babylonian beraita as quoting this Mishnah. The availability of a Tosefta parallel in this case strengthens the line of reasoning we took in the previous example, for

Yehoshua appears to be quoting our Mishnah in it (*Olisar ha-Beraitot*, vol. 8 [New York, 1945], p. 14).

⁴⁸ Epstein, *Introduction to Tannaïc Literature*, pp. 24 (cf. p. 62), 334.

⁴⁹ הלוח הודה ורקוקי נזרז עשאת לעצמי אין יוצאתי בן עשאת למבור בשוק יוצאתי בן.

⁵⁰ See *Tosefta Atiqta*, ch. 8.

which no parallel was available. It corroborates our position that we must be equally prepared for late editorial features in Babylonian beraitot which have no parallels.

Similarly, a statement ascribed in another beraita to Rabban Gamliel in discourse with R. Aqiva is construed by these scholars as quoting M. Pesahim 3.4. The beraita (B. Pesahim 48b) reads:

תניא, אמר רבי עקיבא: דתני לפני רבן גמליאל, למורי רבני בשמי וריות אן בשמי שאני וריותי בעצמי לוחם אן בעצמי יבשמי? בתור חם אן בתור צונק? אמר לי: אין לך אלא מה ששני חכמים, זה הכלל: תפח הלויש צונק.

This quote is adduced by both Albeck and Epstein as proof that M. Pesahim 3.4 was formulated in an exceptionally early period, since it is already quoted by Rabban Gamliel. Albeck writes, "The beraita quoted by Rabban Gamliel, Albeck writes, 'תניא אמר רבי עקיבא: דתני לפני רבן גמליאל, למורי רבני בשמי וריות אן בשמי' . . . Many reasons can be adduced for *not* considering this beraita tannaïc, however, from considerations of style and its relationship to the Mishnah."⁵² Auxiliary corroboration can perhaps be deduced from the portrayal of R. Aqiva as a self-abasing disciple of Rabban Gamliel, which is not historical, in terms of the picture presented in authentic tannaïc sources such as the following:

T. Berakhot 4.15 (pp. 21–22):

זה הכלל, כל שזוהא ממין שבעה וממין דקן, רבן גמליאל און מבדך אחריי שלש ברבותי. תחכמים און ברכה אחת. מעשה ברבן גמליאל תקנים שדו מסובין ביריות, הבאו לפניהם בוחבותו ואכלו קפין ר' עקיבא בדרן אחרין אחת, אמר לו רבן גמליאל, עקיבא, למה אתה מכנים ראשך לבין המולקית, אמר לו למחנה אחרת רבים להמות, אמר לי שאתה און בן תחבירין און בן, הלכה כרבבי המדרבין.

T. Demai 5.24 (p. 93):

מעשה שנכנסו רבוחתי לעייתיה של כותים שעל די הדרק, הבאו לפניהם ירק קפין ר' עקיבא ועשרין ודא. אמר לו רבן גמליאל, האך מלאך לבדך לעבור על דברי תחבירין, און מי נזק לך רשות לעשר. און לוכי הלכה קבעת בשרא. . . . רק שלי עשרתי. און לודע שקבעתה הלכה בשרא, שעשרתה ירק שלך.

Historically, R. Aqiva was quite independent of Rabban Gamliel. It would be difficult to imagine him saying *למורי רבני* as quoted in some texts of the version of the beraita on B. Pesahim 48b, where Rabban Gamliel is made to quote the Mishnah, or otherwise presenting himself as his pupil (see n. 52).

We have seen that one of the ways that the Bavli alters beraitot which paralleled in the Tosefta is by introducing language from the Mishnah.

⁵¹ Ch. Albeck, *Shitshah Sidrei Mishnah: Seder Mo'ed*, additions (Tel Aviv, 1952), p. 447.

⁵² See in detail, including the two textual versions of this beraita, *Tosefta Atiqta*, ch. 13.

Similarly, when the Bavli composes beraitot *de novo*, quotations from the Mishnah appear prominently. Consequently, it would not be correct to use these quotations placed in the mouth of tanna'im as proof that the given mishnah is an ancient one, already quoted by early tanna'im. Other attempts have been made to adduce evidence of ancient Mishnah material from Babylonian beraitot.⁵³

In one case a surprising halakhic position ascribed to an early tanna serves as a first clue that an opinion presented in a Babylonian beraita may not be a genuine tanna'itic opinion. Such is the opinion cited in the name of R. Yose Hag'lili, that benefit derived from *hametz*, other than eating it, is permitted during Passover. This position, indirectly suggested only in a Babylonian beraita, strikes a strange cord in terms of what we know about tanna'itic halakhah.⁵⁴ A careful analysis of the sugya confirms this suspicion and leads to an explanation of how the beraita and its strange phrasing came into being.⁵⁵ It can no longer be credited with providing historically reliable information about halakhic opinions held in the tanna'itic period.

It would appear that we can locate the literary parallel which served as the kernel for this beraita, though it does not bear the meaning which developed in the context of the Babylonian sugya:

Mekhilta, Bo, Parashah 16
(pp. 61–62)

לא יאכל המין, לעשות את המאכל כאוכל, או
אינו אלא לאוסר בנותח, כשהוא אוכל לא
האכל עמיו המין למדנו שאוסר בנותח, זה מה
הלך לא יאכל המין, לעשות את המאכל
כאוכל דברי רבי יצחק, רבי יצחק אוסר
אינו צריך, ומה אם שרצים קלים עשה בדם
את המאכל כאוכל, המין חמור אינו דין
שענשה בו את המאכל כאוכל, הא מה הלך

⁵³ Regarding passages which served as part of Hoffmann's original attempt to demonstrate the existence of early mishnayot, such as B. Pes 107b (Aggripas), see *Tosefta Atiqta*, introduction, and ch. 19.

⁵⁴ In contrast, R. Yose Hag'lili's position, cited elsewhere, that fowl is not included in the prohibition of Exod 23:19 is completely in keeping with tanna'itic halakhah, and R. Aqiva agrees that there is no Torah prohibition of fowl with milk; R. Yishmael's pupil R. Yonatan is also in agreement (M. Hul 8.4; Mekhilta, p. 336; Sifrei Deuteronomy, p. 163; cf. Epstein, *Introduction to Tanna'itic Literature*, p. 537). Furthermore, the position is quite logical in and of itself: רצ"ץ אינו יצא from the conclusion that לא תבשל נדב בדם, ומה אם שרצים קלים עשה בדם, ענין שאין לו חלב אם. What was probably added by the Bavli was the conclusion that בנקיטו של רבי יצחק, רבי יצחק אינו יצא (B. Shab 130a, Yev 14a, Hul 116a). See *Talmud Arikkh*, Text Volume, p. 17 n. 66.

⁵⁵ See *Tosefta Atiqta*, Pesah Rishon, chapter 7, additional note.

לא יאכל המין, לא כח הכותב אלא לאוסר
בנותח. רבי יצחק הגלילי אוסר לא יאכל המין
היום, מניח שלא אוכל ישראל מצה במצות
אלא יום אחד בלבד.

רבי יצחק הגלילי אוי והמה על עצמו הדין
המין אוסר בנותח כל שבעה...

רבי יצחק הגלילי אוסר: מניח לפסח מצרים שאין
המוציא נדב אלא יום אחד ולמדו לומר לא
יאכל המין וסמך ליה היום איום יצאים.

In the Mekhilta R. Yose Hag'lili's statement follows a discussion of the prohibition of benefit derived from *hametz*, but addresses another issue, the eating of matzah in Egypt one day only. This passage provides us with the earliest available example of this juxtaposition, in which the third-generation tanna R. Yose Hag'lili is not yet conceived as disagreeing with the law discussed in the preceding lines (by tanna'im of the fourth generation!). He is simply recorded as assigning a different *derasha* to one of the verses—not enough in the tanna'itic midrashim to establish rejection of the law which another (later) sage derived from this verse. The Bavli's (re)wording upgrades the statement by suggesting a direct (and opposite) halakhic position in the form of a dialectic challenge: רבי יצחק בנותח כל שבעה. In the context of the sugya this challenge is directed at sages of a later generation, R. Yehudah and R. Shimon, further indication that the context is not original. Higgen, Epstein and Halivni have already described the artificial nature of the combination of various beraitot and late compositions in this sugya. We have taken their thinking one step further by viewing the statement attributed to R. Yose Hag'lili as a development of the original Mekhilta context.⁵⁶

We can now round out and summarize as follows:

1. The prohibition of eating *hametz* is found several times in the Torah. In the Mekhilta we find R. Yose Hag'lili explicating Exodius 13:3–4, one of the superfluous verses (לא יאכל המין—היום), to mean that for the first Passover in Egypt *hametz* was prohibited for one day only.
2. Tanna'im younger than R. Yose Hag'lili (R. Yoshiah and R. Yitzhak) are quoted in the Mekhilta, each of whom derives other laws from this verse—R. Yoshiah: feeding *hametz* to others; and R. Yitzhak: the prohibition of deriving benefit from *hametz*.
3. The passage in no way suggests that R. Yose Hag'lili permitted the

⁵⁶ See in detail *Tosefta Atiqta* (ibid.).

derivation of benefit from *hametz*. However, the fact that he interprets the verse differently from R. Yitzhak eventually led to such a conclusion.

4. According to an early amoraic tradition (R. Abbahu) found in Yerushalmi and Bavli parallels at the beginning of Pesahim chapter 2, biblical prohibitions against eating something automatically include a prohibition against deriving other benefit, unless and until an explicit verse indicates that benefit is permitted.⁵⁷ R. Yose Hag'lili's position in the Mekhilta passage does nothing to challenge this view.

5. The Mekhilta passage, containing the opinions of R. Yoshiah and R. Yitzhak, is quoted in the Yerushalmi sugya without, however, including R. Yose Hag'lili at all. It would appear that the Yerushalmi did not consider R. Yose Hag'lili's Mekhilta statement as germane at all to the issue of benefit derived from *hametz*.⁵⁸

6. The Bavli contains no specific passage in which R. Yose Hag'lili permits benefit derived from *hametz*. The anonymous sugya at B. Pesahim 28b takes Exodus 13:3 as necessary for deriving the full prohibition of *hametz*, and also contains R. Yose Hag'lili's statement from the Mekhilta about the Egyptian Passover. The additional dialectic argument from the Mekhilta about the ר' יוס הגלילי אי' הוציא (על עצמן האין המן אסור בתנאי כל שבועה) he made different use of that verse.

7. R. Yose Hag'lili would hardly have addressed such an argument to sages of the generation which followed him (R. Yoshiah and R. Yitzhak), and certainly not to sages of the generation after that (R. Yehudah and R. Shimon), whom he appears to address in a highly composite passage in the Bavli.

8. The anonymous sugya of the Bavli (Pesahim 32b), in line with the sugya at 28a-29a, assigned to R. Yose Hag'lili an absolute position that deriving benefit is permitted: כרבי יוסי הגלילי דאמר המן בפסח מותר בתנאי. This formulation is a clear indication that the opinion is a post-tannaic extension or generalization, and in this case not a tannaic quote at all.⁵⁹

9. Were R. Yose Hag'lili's position permitting benefit derived from *ha-*

⁵⁷ R. Abbahu in the name of R. Elazar (Y. Pes 2.1.28c = Y. Orlah 3.1.62d; B. Pes 21b and parallels). Hizkiah disagrees in both places. In the Yerushalmi, Hizkiah's question follows R. Abbahu. In the Bavli it is made to precede, and only in the Bavli does it specifically touch upon the laws of *hametz*.

⁵⁸ Furthermore, the Yerushalmi takes R. Yoshiah as a support for R. Abbahu and R. Yitzhak as a support for Hizkiah, while ascribing to both of them the clear stand that benefit from *hametz* is prohibited. R. Yitzhak requires the additional (*Nifal*) prohibition of Exod 13:3, while the general prohibition of eating *hametz* is sufficient for R. Yoshiah to prohibit the derivation of benefit also. R. Yose Hag'lili would certainly be categorized with R. Yoshiah.

⁵⁹ Cf. also דברי מאיר דאמר עירי חזמה כדון רבי א'יעור דאמר עירי כפרה כדון רבי. See S. Friedman, *Talmud Arukh*, Text Volume, pp. 436-438 and literature quoted there.

metz already enunciated in historical, tannaic sources, its complete omission from all Palestinian sources would be more than astounding, in light of the extended discussions of this prohibition in all of them.

In another case (B. Gittin 83b) the use of Babylonian Aramaic⁶⁰ within the beraita attributed to R. Yehoshua serves as the first clue that this may not be an authentic tannaic statement. Assuming that the beraita is comprised only of the short text that precedes the Aramaic is inadequate stylistically. Actually this beraita is a re-adaptation of a *memra* of Rava's (B. Nedarim 70a-b).

B. Nedarim 70a-b

B. Gittin 83b

הניא ארי דיושע: מקש קרמי היה שניה אמר רבא, דאמר קרא: ואם היו הדיה לאיש לקדמי היה ראשונה, מה קדמי היה ראשונה ונדרה עליה, מקש קרמי היה שניה לקדמי ולא אנדרה באיניש אודינא, אף קדמי היה היה ראשונה, מה קדמי היה ראשונה אב שניה ולא אנדרה באיניש אודינא.
מפיר לחדיה, אף קדמי היה שניה אב מיפיר לחדיה.

In its original context the *hepesh* is a classical one-referring to two adjacent biblical words—and the reference to two *huayot* is transparent.⁶¹ Furthermore, in context of the issue being discussed, it would be extremely surprising not to find any Palestinian parallel to R. Yehoshua's statement.

* * *

I would like to close with the famous beraita describing the history of the Hanukkah lights (B. Shabbat 21b):

הוה רבנן: מצות חנוכה נר איש ובריה. והמזרחין — נר לכל אחד ואחד. והמזרחין מן המזרחין, בית שמואל אמרי: יום ראשון מולק שנתה, מכאן ואילך פותח הדלק ובויה הלל אמרי: יום ראשון מולק אותה, מכאן ואילך מוסרי הדלק.

This beraita proclaims that the basic commandment is one light for each household; for the punctilious, one light for each person; for the most punctilious, the house of Shammai says that eight lights are lit on the first night and the number is progressively reduced to one over the course of the eight days of the festival, and the house of Hillel says that one light is lit on the first night, and the number is progressively increased to eight.

It would be difficult to consider this beraita in its present form an authentic tannaic passage in its entirety,⁶² providing the opinions of the house of Hillel and not even Second Temple Aramaic as in M. Eduy 8.4, M. Avot 4.5, and T. Hullin 8.23 (p. 138) (R. Yehoshua).

⁶¹ See Rashi's attempt to address the difficulties of the Gittin passage on B. Git 34b, s.v. מדרש מן ש, יח.

⁶² See L. Ginzberg, *A Commentary on the Palestinian Talmud* (Hebrew; New York, 1941), vol. 1, p. 279 n. 33; J. Tabory, *Jewish Festivals in the Time of the Mishnah and Talmud* (Hebrew; Jerusalem, 1995), p. 377.

Conclusion

The model of the edited parallel provides a more realistic concept for talmudic literature than the model of independent parallels. Careful philological treatment, enhanced by greater access than ever available before to manuscript versions, encourages us in the judicious application of the model of editorial development in assessing synoptic parallels.

In this paper we have mentioned synoptic comparison of Mishnah and Tosefta, and have dealt with Babylonian beraitot paralleling the Tosefta, and beraitot occurring only in the Bavli. Elsewhere we have applied this model in additional areas: in lower-critical issues, explaining two text types found in many of the tractates of the Bavli, one conservative and one editorially creative,⁷⁰ in expanding awareness of the Erfurt manuscript of the Tosefta as an editorially creative text, building upon Lieberman's conclusions;⁷¹ regarding dicta of the amoraim appearing in both Talmudim, where the Yerushalmi preserves a more original text of early Babylonian statements, and the Bavli creatively reworks them.⁷²

The model of independent parallels was already used by the *geonim*, albeit apologetically, in order to combat the challenge presented by the existence of variant forms.⁷³ Regnant scholarship has exhibited a fascination with this idea. Under its influence a textual tradition of the Mishnah in Babylonia was posited, which was said to stand on equal footing with the Palestinian Mishnah.⁷⁴ This approach also accepted the Babylonian beraita as sometimes superior to its Palestinian tannaic counterpart, and at other times gave unbridled authority to unique Babylonian beraitot as authentic representations of tannaic statements and opinions, or was open to accepting the Erfurt manuscript's creative editing as authentic Tosefta, over the Vienna manuscript/printed edition family. The pervasiveness of the evolutionary process as perceived in the editorial model will also aid in

⁷⁰ Friedman, "On the Origin" (n. 15, above).

⁷¹ *Tosefta Atiqta*, introduction. Lieberman furthered the development of the model of editorial treatment in his description of the doctored nature of the Erfurt manuscript of the Tosefta, which he likened to *tiqqune sofrim*. At the same time, however, he continued to treat some of the Erfurt readings as independent traditions, and recognized in them the original Tosefta even when they could equally fit the evolutionary pattern. (In this connection, see S. Lieberman, *Tosefeth Rishonim* [Jerusalem, 1937–1939], vol. 4, pp. 12–13.) Compare, e.g., *Tosefta Ki-fshuta*, Nashim, p. 186 ll. 3–4; S. Friedman, "Variant Readings in the Babylonian Talmud—A Methodological Study Marking the Appearance of 13 Volumes of the Institute for the Complete Israeli Talmud's Edition," *Tarbiz* 68 (1998), p. 154 n. 96.

⁷² *Talmud Arukh*, Text Volume, pp. 9–13.

⁷³ See "On the Origin" (n. 15, above), p. 99 and notes.

⁷⁴ See *Talmud Arukh*, Text Volume, p. 88 n. 104, and H. Fox cited there.

clarifying linguistic issues, where tracking development can go far beyond simply recording different traditions.⁷⁵ Spelling out the general relationship between the component works of the talmudic corpus, and modes of literary evolution discernible in synoptic parallels, will lead to the identification of institutional and conceptual evolution and development.⁷⁶

⁷⁵ In other words, "good" representative manuscripts give only a partial and sometimes idealized picture. See Friedman, "Variant Readings" (n. 71, above), p. 150.

⁷⁶ See "Historical Aggadah" (n. 10, above).