PART I

CLASSICAL JEWISH TEXTS AND MODERN INTERPRETERS
Two Literary Talmudic Readings

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The text of the Babylonian Talmud has been the object of a range of readings and exegetical approaches, embracing the "naïve" and the source critical and including historical, legal, linguistic, theological, and socioeconomic points of departure and analytical foci. The source-critical approach, which seeks to discover the sources out of which the literary text was constructed, is particularly fruitful, due in no small measure to the many instances in the text that appear to indicate "seams" or places where sources have been brought together but where some disjuncture remains. It is a scholarly commonplace to see in the many instances of disjuncture evidence that the talmudic text preserves a primarily oral tradition, though the redactional process might have resulted in the obliteration of traces of oral antecedents to the literary text. It has also been suggested that the sources exhibit some of the characteristics of a folklore tradition, such as the preservation of a multiplicity of versions, sometimes inconsistent and contradictory. Whatever the nature of the materials constituting the sources from which the talmudic text was created, at some time approximating the end of the Amoraic period a literary text was created, perhaps by redactors who came to be known as rabbanan sevoraei or sevora'im. Though some fluidity remained, a literary text was created, and understanding the process through which the underlying materials were transformed into a literary text presents an intriguing scholarly challenge.

The methodology utilized in creating the literary text out of the oral tradition that underlay it is often described as "associative" or "stream of consciousness." The intention of this paper is to suggest further fundamental criteria and methods that were utilized by the post-Amoraic

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1 It is with great joy that I present this paper as a tribute to my dear brother, friend, and teacher, Arnold Band, on the occasion of this significant milestone. Ad me’ah ve’esrim.
creators of the literary text in shaping it out of the large volume of oral traditions, some of which had in all likelihood been reduced to writing in fragmentary form and that circulated widely in the academies of Jewish Babylonia. I shall briefly set out what I would assert are the three methodological underpinnings of this literary/redactional process and then attempt to illustrate that process through the close reading of two talmudic pericopae.

To begin with the most basic assertion: the Babylonian Talmud is a carefully constructed literary text, rather than a casual anthology of transcriptions of discourse and debates in the academies of Babylonia. Talmudic pericopae were shaped with clear attention to a number of purposes and goals. First, consistent with other ancient redactional processes (such as New Testament redaction) and ironically resonant with the work of contemporary folklorists, the redactors were less interested in consistency and economy of expression than in the preservation of as much of the material at hand as possible. They did not seek to harmonize alternative versions or to choose a single “authentic” version and discard others. They preserved alternative versions. Often speculations on which version or approach was authoritative or authentic, frequently through the exploration of apparent inconsistencies and contradictions, were left inconclusive. Second, influenced by the orality of the tradition and the desire to shape a coherent though not necessarily consistent whole out of the material at hand, the redactors created contextual structures in which to embed the materials they sought to preserve. Fundamental to the contextual structures created was their “dialogical” inclination, their preference to cast apodictic and declarative statements into dialogical form, even when this required altering the original meaning of the earlier statements and creating anachronistic encounters out of these materials. Finally, consistent with their intention to preserve and include, they often shaped anthologies of texts either grouped loosely around a theme or created as collections of materials thematically unrelated but belonging to a single tradental tradition.

Through the close reading of two pericopae I shall attempt to demonstrate that the careful construction of talmudic pericopae drew on literary devices and constructions to suggest perspectives and insights that went beyond the superficial and literal meaning of the text. I shall argue that the process was conscious and skillful and that this literary approach to reading talmudic texts can enrich our understanding of these texts immeasurably.
I. Sanhedrin 32a

Mishnah:

Noncapital cases and capital cases are alike in investigation and inquiry, as it is written: “You shall have one manner of law” (Leviticus 24:22). In what ways do noncapital and capital cases differ? Noncapital cases are decided by three and capital cases by twenty-three …

Gemara:

Are investigation and inquiry actually required in noncapital cases? They challenged: “A contract that was dated the first of Nisan of a sabbatical year and witnesses came and said (of the witnesses who had signed and witnessed the contract): “How could you have witnessed this contract? On that day you were with us in another place!” The contract is valid and the witnesses are unimpeached.”

2 The contract included both date and place. The newly arrived witnesses state that the witnesses who had signed the contract could not have done so on that date in that place since they were with them in a different place on that day. The phrase “You were with us” is the classical formulation for witnesses who are
We presume that perhaps they wrote it later.4

And if it occurs to you to say that we require investigation and inquiry in noncapital cases, how can we presume that “perhaps they wrote it later?”

According to your reasoning, the mishnah should be viewed as problematical…. He prefers to ask a better question.

In any event, the question remains!

(Mnemonic symbol: HRPS)5

R. Hanina said: According to the Torah, noncapital and capital cases are alike in investigation and inquiry as it is written, “You shall have one manner of law.” And for what reason did they say: “In noncapital cases we do not require investigation and inquiry?” In order not to lock the door in the face of borrowers.

The literary unit under discussion here includes both the mishnah and the accompanying Gemara discussion. It is often the case that the Gemara material is quite independent of the mishnah with which it is associated; in the present instance the connection is intimate. Beginning with the mishnah, word order is significant. The first and defining word of the mishnah is ehad, “one,” and this word functions as a title for the mishnah, asserting that capital and noncapital cases are one, treated equally. Immediately following this first assertion is a radical limitation of the principle: bidrishah vahaqirah, “in the matter of investigation and inquiry.” That this second clause is in fact a radical limitation of the broad principle of consistency between capital and noncapital cases rather than discrediting the testimony of other witnesses. It is a convention of Jewish law that the second group of witnesses who make this claim are believed, and the testimony of the first witnesses is discredited, all other things being equal.

3 Tosefta Makkot 1:2 in a different formulation.

4 Either that they wrote the contract after having seen the transaction on an earlier date at the place indicated in the contract, but used the later date of actual writing at which time they were in a different place, presumably where they were seen by the second pair of witnesses (Rashi), or that the note was written prior to the actual transaction and included the place where the writing was taking place and where the transaction was presumably to take place, and was postdated, so that by the time of the actual transaction the witnesses to the transaction were no longer at the place of the transaction (Tosafot).

5 A common interpolation in talmudic texts, in this instance identifying the authors of the four ways of responding to the stated problem: R. Hanina, Rava, R. Papa, and Resh Lakish.
the second part of a limited statement, namely, that only as relates to the matter of investigation and inquiry are capital and noncapital cases alike, is attested to both by the prominence of the initial defining word *ehad* and by the proof text that is adduced from Leuiticus. The verse is, in fact, taken out of context and interpreted to refer to capital and noncapital cases. Its original context in Leuiticus is the equality before the law of citizens and resident aliens. No suggestion of the application of the verse specifically to the matter of investigation and inquiry is adduced.

Most striking about the mishnah is the actual subject matter of which it is constituted. Following the bold assertion of the consistency of law regarding capital and noncapital cases and the proof text that itself is interpreted broadly and generally, the mishnah asks rhetorically about the differences between capital and noncapital cases and goes to some length to spell out ten substantive differences between them. In sum, then, after assigning by word placement the title "one" to this paragraph, the actual subject of the mishnah is quite opposite: it deals with the substantial and substantive differences between the two. The only remnant of the "one" left in the mishnah is the limited area of *derishah vahaqirah* (investigation and inquiry).

How striking then to find as we encounter the Gemara’s comments that even this remaining consistency between capital and noncapital cases is challenged! Do we in fact require investigation and inquiry in noncapital cases? The challenge is based on a *baraita* that discusses the case of a contract in which the witnesses’ testimony is called into question. A second pair of witnesses claim that the first could not have signed the document at the time and in the place referred to because they, the second witnesses, were with them elsewhere on that day. Rather than disqualifying the contract, the law presumes that it was postdated and validates it despite the challenge of the second pair of witnesses. If, in fact, investigation and inquiry were required in noncapital cases, the contract presumably should have been invalidated and the signatory witnesses impeached. Before attempting to respond to the apparent inconsistency with the mishnah, which states that investigation and inquiry are, in fact, required in noncapital cases as they are in capital cases, the Gemara suggests that the same challenging point might have been made from an even more authoritative source, namely, another mishnah that validates rather than invalidates post-dated contracts in general. That question is responded to by suggesting that the special circumstances of the sabbatical-year date make the contract discussed in the *baraita* even more suspect and therefore the basis for an even stronger challenge to the point of the mishnah. Salvaging an

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6 The contract, already suspect because of inconsistency of date, is even more suspect because it formalizes a loan putatively made shortly before the end of the
even more seriously flawed contract would provide a stronger challenge to the principle that investigation and inquiry are required in noncapital cases. Having dealt with that subsidiary problem of the questioner’s preference for the baraita over the mishnah to state his challenge, the Gemara reasserts that the major question remains, introduces a series of responses beginning with R. Hanina, and resolves the issue.

R. Hanina is quoted as affirming that the Torah requires investigation and inquiry in noncapital cases. And why did “they say” that noncapital cases do not require investigation and inquiry? In order not to place a closed door in the face of those seeking to borrow. The point appears to be that lenders who anticipate scrupulous investigation of a claim before repayment in the case of a dispute over the return of a loan would be discouraged from being responsive to any borrower’s request. Other attempts at harmonization of the mishnah and baraita are proposed, including the distinction between loans in which scrupulous investigation would not be required and fines and other civil matters where presumably they would be required, and the suggestion that scrupulous inquiry would be required in noncapital cases only when the claim is suspect. The pericope concludes when a verse is cited in connection with the last mentioned attempted resolution, leading to a modest anthology of interpretations of the well-known verse, “justice, justice shalt thou pursue.”

In fact, the pericope focuses on the concluding reflections about meanings of the pursuit of justice in the biblical injunction. The subject of the pericope is the tension between legal truth and “objective” truth. The objective of the legal system is to bring legal truth into conformity with “objective” truth, that is, to render a legal decision that is just because it conforms with what actually occurred. The process requires rigorous investigation of the circumstances and careful interrogation of principle and witnesses. This requirement is not affected by the scale of the matter under consideration or by whether the case is capital or noncapital. That is the force of the mishnah’s ehad, alike, for in theory the search for truth is the same in all manner of cases. In reality, however, whether a case involves a capital offense or a noncapital offense, and whether it is a civil or criminal offense must make a great difference. Rather than describing the contrast between theory and practice in

sabbatical year when along with other loans it would be cancelled and the obligation to repay wiped out. This circumstance would cast more suspicion on the document since a lender would presumably be disinclined to make a loan with a strong likelihood of its not being repaid.

7 Deuteronomy 16:20.
expository style, the talmudic text presents a dialogue that begins by boldly challenging the principle of unity that the mishnah states and focuses on the one area in which the mishnah asserts that the similarity between capital and noncapital cases survives, namely, investigation and inquiry. But in order to set up this dialogical confrontation, the very meaning of the term *derishah vahaqirah* undergoes transformation. In the context of the biblical usage of the term, it means careful and rigorous investigation. In the rabbinic law concerning capital cases, however, the term takes on a special meaning. Since the court takes the position that it seeks to bend over backwards to find for the defendant in capital cases, the court actively and energetically seeks to discredit witnesses for the prosecution. Any flaw in the testimony against the accused discredits that testimony. That specialized meaning of *derishah vahaqirah* is used to challenge the mishnah’s claim that capital and non-capital cases are similar in their requirement of scrupulous and rigorous investigation. But the specialized use of the term makes sense only in capital cases because of the court’s bias toward acquittal. In civil cases the court’s active intervention on the side of plaintiff or defendant to discredit the other side’s testimony would thwart, rather than serve, the purpose of the court to pursue justice. Through the intentional and conscious shift in the use of the term *derishah vahaqirah*, the construction of a dialogue based on this shift, and the presentation of a series of resolutions of the apparent inconsistency, the text is in fact making the point that it sets out to make: pursuing justice is in theory a single, straightforward, and consistent process. In reality, the situation has a fundamental and substantive impact on the procedures used. Procedures chosen must not only be right but must also be wise, and so lenders should not have to face potential insurmountable hurdles on the road to repayment of loans, and as the pericope continues, sometimes justice is best served through arbitration, mediation, or compromise, and though procedurally short of that ideal of *ehad*, justice is, in fact, served.

II. *Ketubot* 2A

החותם ב.

משנה

בותולה נשאת זלא ורביעי זלא והممיש
ש溆פשמש נשאות בחי רדנא ישכין בשכינה זלא והممיש
שמעו היה ולא תعون בותולה זלא משכים כתיב דינ

II LITERARY TALMUDIC READINGS
נמרוא: 
אמר רבי יוסי אמר רבי יהודה אמר שמואל: מפני מיה אמור בתולה נשואת
לפי הרביינון
לפי살ו השיגנו בני נון אלו נשוא אוכלת משלי ואוכלת בחרומה יסוד
😲
לפי הרביינון
אמר רבי יוסי מריי ואברידאミニי חיליミニי חניא
以此 טגי וי לי חניא איה וחניא
לפי חילי חניא מפריש מעופס בדיחה דיימא הפרש עשת
לפי חילי חניא מפריש עופס בדיחה דיימא הפרש עשת
ולפי חילי חניא מפריש עופס בדיחה דיימא הפרש עשת
ואלא נהיה כה יאימה
אמר רבי יהודה אמר שמואל: מפני מיה אמור בתולה נשואת ליימ הרבעי
שאם היה ли שנועת בתולה לייממשיכ עליית די. ירחשה באחר בשמה
שאם היה ли שנועת בתולה לייממשיכ עליית די. ירחשה באחר בשמה
בנוגה יישאר שיווה ו南省ידה שלשה ימים במחרBush דרוי בשמה
ושילש ישבח וрусני יCorreo
ועבשיני שמעניי שדוקל ראות שמעניי בני נון אלו נשוא אוכלת משלי
ואוכלת בחרומה והיינ אוכלת בשמה מעושי כלכוס יי
מלעתה של מוחות
לפייך חולם לא או ש톨וחה 닫 וא שפירוש כמה גו מצעל הל מוחות

(ב)
משימ רבי דאהרי... אלא לא דאימנה כי דאה גורנה רקוני אוכלת משלי
ואוכלת בחרומה
אמר רבי אהרי: לוגוסי מים כל איך גורנה רקוני אוכלת משלי
אמר רבי: הלוגוסי נייניע גו

(ב)
אמר אמא כשב רבד אי איך גו
אמר אמא כשב רבד אי איך גו

(ב)
אותא דאמר או רבד וכה לוגוסי גו
אמר אמא כשב רבד אי איך גו

Ketubot 2a
Mishnah
A virgin is married on Wednesday and a widow on Thursday, since
courts convened twice weekly in towns, on Monday and Thursday, so
that if he had a challenge to her virginity,\(^8\) he would proceed to court early the next morning.

**Gemara**

R. Joseph in the name of R. Judah in the name of Samuel said: For what reason did they say, "A virgin is married on Wednesday"? Because we learned,\(^9\) If the time expired\(^10\) and they were not married she is supported by him and she may eat of the _terumah,\(^11\)_ you might have thought that if the time expired on Sunday he would be required to provide her food. For this reason we have learned, "A virgin is married on Wednesday."

R. Joseph said: Master of Abraham! You've linked what is learned in a _baraita_ with what is not part of the _baraita_!\(^12\)

Which is learned and which is not learned? Both are learned!

Rather (restating what R. Joseph said): You've linked a text that provides a reason with a text that does not provide a reason!\(^13\)

\(^8\) Beyond the difference in marriage price between a virgin and non-virgin, her status was considered an important matter because of the suspicion that she may have lost her virginity during the year of betrothal through a relationship that would have been considered adulterous. In those circumstances she may neither proceed with the marriage to her fiancé nor marry the man with whom she had had relations. The expectation is that the circumstances would be clarified in court if the groom brought a challenge to her virginity.

\(^9\) _Mishnah_ _Ketubot_ 5:2

\(^10\) The end of the prescribed maximum twelve-month period of betrothal, following which the wedding would take place and the bride would enter her husband's household and would be supported by him.

\(^11\) If she was marrying a Kohen, she was entitled to eat the _terumah_, or heave offering, one of the sources of support of the Kohanim of which his household could partake.

\(^12\) This is my suggestion for this passage, which the anonymous redactors themselves did not understand. R. Joseph is said to have lost his memory because of illness and was here upset with what was later reported to him as his statement. The fact that the original statement appended to R. Joseph's interjection was not understood is attested to by the continuation of the text. But the fact that the original statement was not understood and that a recasting of the statement is suggested confirms that R. Joseph actually made the statement in the first formulation. The thrust of my interpretation is set forth in the discussion.

\(^13\) This reformulation takes the two texts on which R. Joseph is commenting to be our _mishnah_, which provides the reason for Wednesday as related to the days the court convenes, and the text from the _Mishnah_ _Ketubot_ 5:2, "If the time expires," which supplies no reasoning for the law stated.
Rather, if the statement was made, this is what was said:

R. Judah said in the name of Samuel: For what reason did they say, "A virgin is married on Wednesday"? So that if he had a challenge to her virginity, he would proceed to court early the next day. Let her, then, marry on Sunday, so that if he had a challenge to her virginity he could proceed to court early the next day?! The sages were zealous\textsuperscript{14} to protect the interests of the daughters of Israel, to ensure that he (the groom) would spend three days preparing for the wedding feast, Sunday, Monday, and Tuesday, and on Wednesday he would marry her.\textsuperscript{15}

And now that we have learned the principle of shakdu, concerning that which we learned, "If the time expired and they were not married, she is supported by him and she may eat of the terumah," if the time expired on Sunday, because he may not marry her he is not required to support her.

Therefore, if he became ill, or she became ill, or she became menstruant, he is not required to support her.

And there are those who frame this assertion as a question….\textsuperscript{16}

(2b)

R. Aha i explained:\textsuperscript{17} … Rather, we must be dealing with a case of circumstances beyond his control such as these, and (the Mishnah) states: "She is supported by him and she may eat of the terumah."\textsuperscript{18}

\begin{enumerate}
\item[14] The term shakdu now becomes shorthand for this provision.
\item[15] This is a précis of the first baraita in the Tosefta of Ketubot 1:1.
\item[16] What follows is a series of queries that “unpack” the prior assertion that under any circumstances where for reasons beyond their control they cannot be married, he is not required to support her. The “unpacking” raises the possibility that the nature of the circumstances may have a profound impact on his responsibility. Is it a circumstance caused by his situation, such as his illness? Perhaps in that case he would be required to support her, but not in the case of her illness. Perhaps in the case of her illness, too, he would be required to support her, but not in the case of circumstances established by the law that compelled them to postpone the wedding.
\item[17] The verb used implies “made plain.” The R. Aha i mentioned here is the subject of some discussion. The Tosafot ad loc argue against the suggestion that this is R. Aha i Gaon, author of the She’iltot. Their argument is probably correct. If not, this section of dialogue would be a very late, post-Amoraic, addition to the text. A demonstration of continuing fluidity, indeed!
\item[18] R. Aha i uses a somewhat forced close reading of the text of the mishnah to substantiate his point: In any case of delay due to circumstances beyond his control, he is required to support her.
\end{enumerate}
R. Ashi said: To be sure, I say to you that in the case of delay due to any circumstances beyond his control, she is not supported.…

Rava said: “And in the matter of divorce that is not the case.”

It follows that Rava held that a claim of “unavoidable circumstances” has no force in divorce.…

(3a)

There are those who say: Rava said, “And the same applies to matters of divorce.”

It follows that Rava holds that a claim of “unavoidable circumstances” has force in divorce.

This pericope, which has sparked considerable commentary, provides a great deal of evidence of alternative versions and literary construction from antecedent source material. The mishnah itself is problematic, in that its assertion about the day of the week specified for marriages gives only a partial explanation for the day specified for the virgin and provides no reason at all for the setting of Thursday for the widow’s marriage. The Gemara’s discussion begins with a statement of R. Joseph in the name of R. Judah in the name of Samuel that is puzzling not only to the reader but that puzzled even R. Joseph himself! Upon hearing it recited, he burst forth with an interjection that suggested that the quotation had been badly garbled. But his own interjection was not understandable to the redactors, who shaped a brief dialogue about it: What did R. Joseph mean when he said: tali tanya bedela tanya? The redactors then provided a reconstruction of R. Joseph’s statement that serves

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19 R. Ashi takes the opposite position to R. Ahai and rejects his reading of the mishnah.

20 The fact that a circumstance beyond his control frees him from the requirement to support her by the end of the prescribed engagement period leads to the generalization that such a claim has force in marriage. Rava is first quoted as saying that in matters of divorce, which are often parallel to laws of marriage, this is not the case and such a claim would have no force. The Talmud proceeds to explore possible sources for this position and concludes that this was a position based on his own reasoning, in order to preclude the disastrous situation that would be created if doubt were cast over the status of a divorce because of an admissible claim of “unavoidable circumstances.” This would lead to the proliferation of divorced women who might choose not to remarry because of concern about the possible invalidity of their divorces, and of mamzerim, born to women who had remarried on the basis of a divorce that had later been declared invalid because of a claim of “unavoidable circumstances.”
to interpret it in a way they could understand. They suggest that his critique of the version he heard was based on bringing together a source that provided a reason and a source that did not. That, however, hardly represents the key difficulty in the statement originally attributed to R. Joseph. In fact, the meaning of R. Joseph’s statement as originally cited is quite clear, despite the redactor’s difficulty with it. The translation I have presented reflects my suggested understanding of the passage. R. Joseph had originally cited the baraita from the Tosefta that gave the reason for specifying Wednesday for the wedding of a virgin and why Sunday was not acceptable. Two conditions were necessary: the convening of the court the next morning and preparation time for the wedding (shakdu). R. Joseph then drew the implications of this specification as related to the requirement of the groom to support his wife at the end of the prescribed betrothal period. He was drawing the implications of the baraita for the law stated in the mishnah, “If the time expired…” When he heard the conflated and corrupted version of his statement, he protested, saying, “you’ve connected that which is in the baraita (tanya) that provided the reasoning for the mishnah’s law with the observation concerning its implication for the law of “If the time expired…,” which is not part of the baraita at all (la tanya).”

What follows is a passage that serves to bridge the mishnah/R. Joseph section with the general theme: circumstances beyond one’s control and their impact on legal claims. All that precedes the statement, “Therefore, if he became ill, or she became ill,” is introductory to this anonymous but central assertion. Following the interpolated passage, “There are those who frame this assertion as a question,” it serves as the referent for Rava’s statement in both versions, “And in the matter of divorce that is not the case,” and, “The same holds true in matters of divorce.” Two versions of R. Joseph’s statement are paralleled by two versions of Rava’s statement. Moreover, each version of Rava’s statement is followed by an inference of his position on the law and what is stated as conjecture over

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21 Halivni suggests that only the interjection was originally stated by R. Joseph in the current context and that the continuation that puzzled the redactors was erroneously copied from another source. There can be no doubt, however, that the redactors had the problematic phrase in their text and that this elicited their reconstruction. See David Halivni, Meqorot umesorot: be’urim betalmud (Tel Aviv: Dvir, 1968), 1:131.

22 Rashi goes to some lengths to suggest that this statement was R. Joseph’s own comment, in order to prepare the ground for the position being challenged by R. Ahai. Presumably, R. Ahai would not have challenged a mishnah or baraita. The statement may or may not be R. Joseph’s.
what his reasoning might have been. It is clear that no direct citations of Rava were available to the redactors, although fragments of traditions of what Rava may have said must have been available. Out of the raw material of a problematic and laconic mishnah, a relevant *baraita*, a tradition relating to an anecdote about R. Joseph’s reaction to having heard a corrupt version of his own earlier statement, and some indication that Rava had articulated a position on the subject at hand, the redactors constructed this pericope on the topic of the impact of claims of circumstances beyond one’s control in marriage and divorce. Rather than choose a straightforward expository style selecting out what they considered authentic and authoritative, the redactors constructed a pericope that is dialogical and preserves alternative versions.

A final comment on the construction of this pericope: Why, it may be asked, preserve the flawed and problematic first version of R. Joseph’s statement? I would suggest that the redactors found it particularly appropriate to introduce the topic of circumstances beyond one’s control with an account of a scholar who himself was an example of the phenomenon. R. Joseph himself had “lost control” of his scholarly corpus because of illness. The account of his retrieval of that corpus and his correction of a corrupt version was viewed as an ideal introduction to the subject of uncontrollable circumstances and also a perfect literary context in which to embed this account, which, following the general principle of inclusiveness, they wished to preserve.

The two pericopae discussed here are not atypical or unusual. They illustrate the approach taken by the redactors of the text of the Babylonian Talmud in transforming the fragmented, heterogeneous, and predominantly oral corpus that they received into the literary work that they produced. The subtleties of their redactional method invite the reader to join the dialogical process. In so doing, the reader comes to appreciate and respect the complexity of their achievement and admire the artistry of their creation.