2. Mishnah As a Response to “Tosefta”

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Chapter 2

Mishnah As a Response to “Tosefta”

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The Tosefta has attracted much attention in the last decade. Probably because Lieberman’s critical edition made it so much more accessible than it used to be, parallel examination of Tosefta and Mishnah has become standard scholarly practice. It is somewhat ironic, therefore, that studies have begun to emerge that question the assumption that lies at the base of Lieberman’s work, namely, that the Tosefta is a commentary on the Mishnah.¹

A number of scholars, myself included, have suggested that the Tosefta is not exclusively a response to the Mishnah but that much material in the Tosefta seems to be the very “stuff” from which the Mishnah was fashioned.²

Having seen this reverse relationship to be the case in tractate Gittin, where

¹ Saul Lieberman assumes that whenever the Tosefta quotes a mishnah, it does so for the purpose of then explaining it. He understands the Tosefta as a running commentary on the Mishnah. As Shamma Friedman notes (Tosefta Atiqta, forthcoming), this is a direct outcome of Lieberman’s acceptance of Rabbenu Tam’s principle, “It is the practice of the Tosefta, in a thousand places, to cite a little from the Mishnah for reference (zikhron devarim)” (Saul Lieberman, Tashlum Tosefta [Jerusalem: Wahrmann, 1970], 21). See Friedman’s discussion of Lieberman’s theories, in Tosefta Atiqta. Abraham Goldberg also steadfastly asserts that the Tosefta is a commentary on the Mishnah (“The Tosefta—Companion to the Mishnah,” in Literature of the Sages, part 1 [Philadelphia: Fortress, 1987], 283–302, at 283ff.). See n. 7, below.

there appears to be a deliberate move on the part of the redactor of the Mishnah to rewrite paragraphs of the Tosefta in a more stringent manner, I now ask myself, whenever I compare two parallel, similarly worded passages of Mishnah and Tosefta, Which is based on which? The answer I most often arrive at is that the Mishnah appears in these cases to be based on the Tosefta. I believe, however, that the evidence warrants an even stronger, more encompassing conclusion. It seems to me that the redactor of the Mishnah had at his disposal not merely individual passages of tannaitic provenance that he then reworked and edited into a collection, but rather an extensive, ordered collection of tannaitic materials, much of which is embedded in the extant Tosefta.

What leads to this conclusion? We know that the beginning of the amoraic period is the terminus ad quem for the publication of the Mishnah, most likely in oral form, because the comments of the amoraim in both Talmudim form a running commentary on the Mishnah. In like manner, if we examine the two Talmudim closely, we will find that the skeleton of many sugyot (units of discussion; singular sugya), i.e., the collection of sources that served as the basis for later commentary, is composed not of memrot (statements ascribed to individual amoraim; singular memra) but of beraitot. If, in an effort to trace the chronological development of the sugya, we drop the memrot and the stama from the sugya, what is left is a mishnah and associated beraitot. It is thus clear that the first step in studying a mishnah in antiquity was to read it in conjunction with related beraitot.

I will now go just one step further and claim that these clusters of related beraitot coalesced into a collection even before the publication of the Mishnah. Since much recent scholarly work has shown that the editor of

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3 This study attempts to establish the relationship between these two works in the long course of their evolution. The importance of establishing this relationship lies in the fact that if the Tosefta is a response to the Mishnah, and if the Tosefta is shown to be more liberal and the Mishnah more conservative, then we can say that Jewish law evolved from the more conservative to the more liberal. If the Mishnah is based on earlier passages in the Tosefta, however, then we can say that Jewish law evolved from the more liberal to the more conservative.

4 By stama I mean the anonymous materials themselves (stama degemara) as well as any tannaitic or amoraic texts inserted by the editors of the stama to support their arguments.

the Mishnah rewrote one beraita after another, in this way turning them into mishnahs, I think it reasonable to conclude that he did not stumble upon each one of these “source” beraitot in a different place but rather that there already existed a collection of formally and thematically related passages. In a more or less systematic way he edited it, paragraph after paragraph, to make it reflect his own point of view. Once his mishnah was “published,” it made excellent sense for the ancient masters to study it in conjunction with the collection of beraitot that had given rise to it. Stated in general terms, I am claiming that the Mishnah is not the earliest edited tannaitic work but a response to an even earlier collection.

I have recently found new support for these ideas. In the course of reading through Mishnah and Tosefta Moed, I began to notice that the Mishnah, on many occasions, could not be understood on its own. It would make halakhic statements or refer to some quasi-historical incident but not provide enough information for the reader to understand fully what it was saying. To make sense of these statements, he or she had to turn to a commentary on the page, such as that of Hanokh Albeck, who often cites a beraita to explain the mishnah. Or else, and far preferable, the reader had to consult the associated passages in the Tosefta, because they spelled out the matter in full.6

This recurring, perplexing phenomenon can be explained in several ways. One possibility is that the redactor of the Mishnah did produce—intentionally—a partially incomprehensible document, either orally or in writing. It was therefore necessary for a supplementary document to come into being, one that would give the background of the laws or fabricate stories or adapt folklore motifs to flesh out the obscure references of the primary document. According to this explanation, the Mishnah is older than the parallel passages in the Tosefta, and the toseftan material was created to explain the Mishnah.7

A second possibility, which is a variation of the first, is that a cryptic or shorthand reference in the Mishnah was sufficient for the reader (or “hearer”) because much ancient material circulated in independent units,

6 At the SBL Convention in San Francisco, November 1997, I reported on this same phenomenon regarding cryptic references to minor historical events. The instances I dealt with, in addition to M. Suk 5.2 below, are M. Suk 5.8, M. Yoma 3.9, and M. Taan 3.5–8.
7 Goldberg (“The Tosefta,” 283–4) says that the Tosefta is a supplement and companion to the Mishnah. He goes on to say that it is also a continuation of the Mishnah in that it records the teachings of the last generation of tannaim. Together with the Mishnah, it is the basis of the teachings of the following generations, and these teachings resulted in the Bavli and Yerushalmi. The Mishnah and the Tosefta are, in his opinion, one interwoven literary work. For this reason it is irrational to search out differences between the two.
orally or in writing, and even if the Mishnah gave no more than a hint, the reader, who had access to that broad assemblage of materials, could figure out to which halakhic practice or historical event the redactor was referring. If so, it was only some time after the Mishnah was published that it became necessary to produce a supplementary document, to collect and order the bits and pieces that preceded the Mishnah and served as its basis. According to this view, the Tosefta came into being in response to the Mishnah, although its constituent elements were older.

A third possibility, which is a variation of the second, is that the clear dependence of the Mishnah on earlier tannaitic materials, as noted above, may imply that the Mishnah is not older than the Tosefta (in its early form), but that, on the contrary, there existed a tannaitic collection, or at the very least clusters of material, that preceded the Mishnah and that were self-sufficient, i.e., that presented a full explanation of the halakhot that then found their way into the Mishnah. These tannaitic materials served as the raw material of the Mishnah. For reasons not entirely clear, parsimony of language being one possibility, when the redactor of the Mishnah reshaped these early tannaitic materials he chose merely to make mention of certain halakhic practices or events but not to report them in full. He knew, it seems, that the reader had access to the older, associated tannaitic collection and could and (probably) would pursue the matter further himself. If so, the Mishnah as it was produced in the third century was not an incomprehensible document—as it is today when it is read on its own—but was in fact fully comprehensible when read together with the older tannaitic collection.

A fourth possibility is that the Mishnah is simply one extraction of material from all the “stuff” that was circulating at the time and the Tosefta is another extraction from the same pool of “stuff.” It therefore makes no sense to compare the two collections to each other and analyze in detail which preceded which or which is based on which. I reject this line of thinking because the similarities between the Mishnah and the Tosefta are so great that even if both derive from a third source—which is no longer extant (if it ever was)—much can be learned about the evolution of rabbinic legal thinking by comparing these two end products. Painstaking comparison of mishnaic and toseftan sources leads to the conclusion that what lies before us is evidence of ingenious editorial activity: we find sources that were made to look as if little change had been introduced when in reality they had been totally transformed. Little of this would come to light if we dismissed the value of comparative studies.

I favor the third explanation of the relationship between the Mishnah and the early Tosefta. The literary coherence of many parts of the Tosefta and the fact that the passages of the Tosefta that explain the cryptic references of the Mishnah are embedded in elaborate, independent literary struc-
tures, lead me to doubt that the Tosefta came into being as a paragraph-by-paragraph commentary on the Mishnah, as suggested by the first and even second explanations. For something to be a commentary, it needs to be written in response to the source document. In addition, the relationship between the commentary and the source text should be clear at most points. It also goes without saying that the material should appear in roughly the same order in both the source and the commentary. But the Tosefta reads in many places like a document with its own literary integrity, with a beginning, middle, and end to its sections and with its own halakhic and aggadic points. It does not appear to be a response to some other document in these instances, despite its great similarity in form and content to that other document. Most telling, and often noted in the past, is that the passages of the Tosefta in many places do not follow the same order as those of the Mishnah.

It therefore seems to me that the Tosefta of old, much of which is embedded in the Tosefta of today, was an independent collection of tannaitic materials. It came into being gradually, as individual sources and clusters of sources coalesced into a collection. It further seems that the Mishnah, with all of its cryptic references, may be an “edited down” version of this older tannaitic collection, reworked by the redactor for the purpose of making a statement of his own legal and even political philosophy. He appears to have condensed a considerable number of the Tosefta’s halakhot and anecdotes, presenting them only as brief notes whenever this served his purposes. He did not feel impelled to record them in full since a brief note would apparently be sufficient to enable the reader to seek out the full account elsewhere.

The most important benefit of positing that the beraitot in the Tosefta that are associated with a given mishna are older than that mishnah and are the very materials from which that mishnah is created, is that this assumption makes it possible to read the Mishnah with greater depth and precision. By seeing what materials were accessible to the redactor and how he reshaped them, we can arrive at a far more nuanced interpretation.

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8 Goldberg (ibid., 284–5) claims that the Tosefta diverges from the order of the Mishnah for pedagogical reasons. Y. N. Epstein (Mevo’ot Lesifrut Hatannaim [Jerusalem: Magnes, 1957], 257–9) claims that the Tosefta has its own independent order. See S. Friedman’s discussion of Epstein in Tosefta Atiqta.

9 This is not the same thing as saying that the Mishnah of the Bavli is an extraction of the Tosefta by the Babylonian amoraim. According to M. S. Zuckermandel, the amoraim took the Tosefta, which was Rebbe’s Mishnah, shortened it, and then arranged it according to their own customs. See Goldberg, “The Tosefta,” 294 n. 20. According to my theory, the redactor of the Mishnah was rejecting (in part) the Tosefta’s teachings, not accepting them, as suggested by Zuckermandel. See Epstein, Mevo’ot, 250; Hanokh Albeck, Mavo Latalmudim (Tel Aviv: Devir, 1969), 76.
of his words, at mishnah kifeshutah. This interpretation will often differ significantly from the traditional one, which assumes the Tosefta to be a commentary on the Mishnah.

I will now illustrate this proposition with two examples of the many that I have found. The first mishnah to be examined is generally clear, but contains one totally opaque statement. I will show that this statement can be understood only if read together with the Tosefta, although the Tosefta passage seems to have had an independent and early existence of its own.

I. The Women’s Gallery and Simhat Bet Hashoevah

M. Sukkah 5.1-2

אמרו: כל מ שלא ראח שמחה כות האמצע אלא ראה שמחה מצה.

במסתא וס מבס אמצע שלוח ידיע לULATE תחבורה

ומחקין את קוק נדות

ומשבחות שלוחהו זדו smack ...

... They said: Anyone who has not seen Simhat Bet Hashoevah has not seen rejoicing his entire life.

At the end of the first day of Sukkot they would go down to the Women’s Gallery umetaqnin sham tiqun gadol.

There were golden candelabra there...

In the midst of a detailed description of Simhat Bet Hashoevah, a once-a-year, grand celebration, apparently the first stage of the water libation ceremony, we find one phrase that makes almost no sense—umetaqnin sham tiqun gadol. In general, the verb letaqen means “to correct,” “fix,” “prepare,” or “enact,” and the noun tiqun means “a correction,” “an improvement,” “setting things straight.” But there is no situation in need of repair mentioned in this mishnah. Moreover, the grammatical form of metaqnin (present plural) suggests a repetitive action, which means that a tiqun gadol was made year after year. If we take these factors into consideration, the phrase may mean that “they” (apparently the priests) made some kind

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10 M. Suk 5.2 implies either that Simhat Bet Hashoevah took place only once a year or else that only the first of a series of celebrations was grand. T. Suk 4.5 makes reference to the fact that there were repeated celebrations, one on each night of Sukkot. Simhat Bet Hashoevah is most likely the first stage of the water libation ceremony (M. Suk 4.9). During the night, men and women made merry in the Temple and then, at dawn, formed a procession to go down to the Shiloah, a pool near Jerusalem, to draw water (hence Shoevah, or “drawing of water”) for the libation ritual which followed. Neither the Mishnah nor the Tosefta states explicitly that the ceremonies connect in this way, but most commentators suggest such a sequence. Maimonides (Hilkhot Lulav 8:12ff.) does not connect the two rituals. The difficulty is that in both the Mishnah and the Tosefta the description of the water libation ceremony precedes that of Simhat Bet Hashoevah.
of preparation every year for the celebration in the Women’s Gallery. It is not clear, however, what kind of preparation they made, or who made it, or for what reason it was necessary to make it. The next phrase of the mishnah sheds no light on this one—it goes on to describe the golden candelabra that would illuminate the nighttime festivities.

M. Middot 2.5, which also mentions the Women’s Gallery, makes a cryptic reference to a change in its architecture:

... commwhynsno nm

The Women’s Gallery was 135 [cubits] long and 135 [cubits] wide... It was smooth at first. They then surrounded it with a balcony so that women could see from above and men from below so that they would not mingle.

The expression “it was smooth” means, according to the commentaries, that at first there were no structures jutting out from the walls. They, either priests or rabbis (see discussion of this point below, n. 14), then surrounded it with a balcony so that women could see from above and men from below, so that they would not mingle. But what did women and men need to see? For what reason should they not mix? Did they not regularly mingle in the Women’s Gallery, an area that men had to pass through on their way to the Israelite Gallery to offer a sacrifice? This mishnah in Middot is almost as opaque as the one phrase of M. Sukkah 5.2.

If we now turn to T. Sukkah 4.1, we find answers to all of these queries. This passage follows a lengthy description of the water libation ceremony in 3.14–18 (M. Sukkah 4.9, 10), and introduces a long discussion of the Simhat Bet Hashoevah celebration (T. 4.1–5 || M. Sukkah 5.1–4).

T. Sukkah 4.1

At first, when they used to watch Simhat Bet Hashoevah, the men would watch on the inside and the women on the outside. And when the court

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11 Maimonides says, in his commentary on M. Suk 5.2, that tiqquon gadol means “of great benefit” (gedol hatoelet), i.e., that they prepared a place for women and for men, with the women higher up so that the men do not look at them. In his commentary on M. Mid 2.5 he says that women looked out at men from a protected chamber. I do not see any basis for these remarks about men and women looking at each other in the rabbinic materials. See n. 12.
saw that this led to [excessive] levity, they made three balconies on the three sides\textsuperscript{12} so that women could sit there and watch Simhat Bet Hashoevah and not mingle [with men].

If we read T. Sukkah together with M. Middot, we see that both are referring to some incident that made separation of men and women necessary. If, according to the Tosefta, men used to be on the inside and women on the outside, then, even to begin with, they were separated. If so, how did this lead to excessive levity? Since most women could not see over men’s heads, and since seeing the Simhat Bet Hashoevah celebration was what everyone wanted to do, as the various texts note, some women may have infiltrated the ranks of the men, maybe even asking men to pick them up. This physical nearness, as well as the general atmosphere of celebration, might have led to sexually inappropriate behavior.\textsuperscript{13} By placing the women’s vantage point higher than the men’s, the rabbinic court solved the problem.\textsuperscript{14}

Thus, M. Middot, when read with T. Sukkah, makes sense. The Women’s Gallery acquired a superstructure in order to ward off possible promiscuous behavior at the yearly celebration. If we now return to the statement in M. Sukkah, \textit{umetaqnin sham tiqqun gadol}, we see that although it probably means that they engage each and every year in elaborate preparations for the celebration—in this case the construction of balconies or bleachers—the mishnah’s phrase might serve as a double entendre. The redactor is telling us that these extensive preparations were necessary year

\textsuperscript{12} The three sides are the north, south, and east, because the “show” took place in part on the steps leading down from the Israelite Gallery. See M. Suk 5.4. Lieberman (\textit{Tosefta Ki-fshuta}, Sukkah [New York, N.Y.: Jewish Theological Seminary of America, 1962], 886) says that the \textit{tiqqun} was performed each year, that even if there were some parts of the structure that were left in place, other parts had to be set up again and again. This explanation resolves the seeming contradiction between M. Sukkah, which says that they would make a \textit{tiqqun gadol}, presumably each time they celebrated, and M. Middot, which says that the gallery used to be smooth but they then erected balconies, presumably ones that remained permanently in place. Lieberman notes that the verb \textit{metaqnin} forced Rashi (B. Suk 51b, s.v. \textit{hiqifuha gezoztra}) to say that they made protrusions from the walls (to support planks) which remained in place permanently, but that the planks were laid down each year anew. Albeck (commentary on M. Middot, 322) says that “it was smooth” means that at first there were no protrusions from the walls. It is rather clear that he, too, follows Rashi.

\textsuperscript{13} See B. Suk 52a (\| Y. Suk 5.2 55b), “... if, during a eulogy for the dead, when the evil inclination does not control them, the Torah says that men and women should be separate, here, at a celebration, when the evil inclination does control them, how much the more so should men and women be separate!”

\textsuperscript{14} Note that it is the rabbis who impose standards of moral behavior in this telling of the story, even in the Temple, the precinct of the priests! The other two texts are silent about who it was who imposed moral standards.
after year for their own sake and also to correct, or rather prevent, a
“social” wrong. His choice of the verb pn, which does not appear in either M.
Middot or T. Sukkah, allows for and even hints at both. By “both” I mean
elaborate preparations for the celebration and also, at the same time, pre-
vention of social wrong. It appears that the redactor deliberately intro-
duced a verb and a noun, in very close proximity to each other, that are
resonant of the terms associated with repairing the social order.15 That is,
the redactor deliberately made an enigmatic statement, virtually forcing
the reader either to understand it in the most general way possible—as
preparations for the celebration—or else to search out the meaning of this
phrase in some other collection and connect it with a specific event of the
past. M. Sukkah 5.1–2, much more than M. Middot 2.5, is dependent on T.
Sukkah 4.1 for explanation.16

We thus see that T. Sukkah 4.1 is the only comprehensive and compre-
hensible text of the three. Since this passage serves the Tosefta’s purposes
well, in that it introduces the topic of Simhat Bet Hashoevah at the begin-
naming of Chapter 4, and since it has no linguistic link at all with M. Sukkah—
there is no mention of the root pn anywhere in the Tosefta’s version of the
story—it seems that T. Sukkah is the oldest text of the three. At the very
least, it is not a commentary on the Mishnah or a response to it. The redac-
tor of M. Middot knew the story of T. Sukkah but cited only the element he
needed to explain the architecture of the Temple: he tells the reader that a
change was made in the Women’s Gallery, that balconies were added on
three sides for women’s “viewing” so that men and women would not
mingle. He mentions no time of year and no past event of excessive levity
because they do not serve his purposes. The difficulty with M. Middot, as
noted above, is that it creates the impression that the balconies were per-
manent additions to the Women’s Gallery, contrary to the statement in M.
Sukkah that they were erected each year.17

The redactor of M. Sukkah also took only what he needed from the
Tosefta story. Since his focus is the preparation for and celebration of Sim-
hat Bet Hashoevah, he needed to say that each year they erected special
structures—tiqyun gadol—for women’s viewing. He did not need to relate
why this practice was instituted. Perhaps he did not wish to divulge its
less-than-praiseworthy origins and for that reason chose a very vague
expression—“they prepared a grand preparation.” As for the apparent

15 See M. Gittin, chapters 4 and 5, and elsewhere.
16 Albeck (Qodashim, 313 [introduction to M. Middot]) states that the goal of M.
Middot is to preserve details of Temple architecture so that future generations
could rebuild it and replicate it exactly. Josephus’s descriptions are, for the most
part, similar to those of the Mishnah. Epstein (Mevo’ot, 31, 37) claims that M. Mid-
dot and chapters 4 and 5 of M. Sukkah are very early.
17 See n. 12.
contradiction between the two mishnahs—did they erect balconies every year (M. Sukkah) or only once (M. Middot)—there is no easy resolution.\(^{18}\)

In this way it is possible and also easy to chart the path from T. Sukkah to M. Middot and M. Sukkah. One would have a hard time explaining how to go from M. Sukkah's inscrutable *tiqqun gadol* to T. Sukkah's story.

That M. Sukkah can only be understood by reading it in conjunction with M. Middot and T. Sukkah is already suggested by the amoraim of the Bavli.

B. Sukkah 51b

\[\text{What does *tiqqun gadol* mean?}^{20}\]

Said R. Elazar, "Like that which we learned about in the mishnah [Middot]: it was smooth at first and then they surrounded it with a balcony and enacted (vehitqinu) that women sit above and men below."

Our sages have taught [an editorial introduction to a beraita]: At first women were inside and men outside, and they came to [excessive] levity. They then enacted (hitqinu) that women sit outside and men inside, and they still came to [excessive] levity. They then enacted (hitqinu) that women sit above and men below.\(^{21}\)

\(^{18}\)ibid.

\(^{19}\)The word *yoshoth*, "sit," makes no sense. It is absent from the Munich ms. Why would women sit in the gallery if they are outside of, or behind, the men and the point is to see the celebration? This word must have changed because of the similar verb in both the preceding memra and the following clause of the beraita. It should have been *ro’ot*, "they see," or else no verb at all, as in the first clause of the beraita. See the variants in R. Rabbinovicz, *Diqduqi Soferim* (1959 reprint of Munich: Huber, 1867–97), note *heh*.

\(^{20}\)See n. 12.

\(^{21}\)See Chaim Lapin, "Palm Fronds and Citrons: Notes on two Letters from Bar Kosiba's Administration," *HUCA* 64 (1993) 111–135, at 129 and n. 59. The rabbinic sources describe the Sukkot celebrations in Dionysian terms—carrying and waving of branches, decoration of the altar with branches, water libations, etc. Since these practices do not have a biblical basis, Lapin notes, they are likely to be descriptions of the actual Temple cult. Note also that at the end of M. Suk 5.2 there is a statement that in this place people used to worship the sun, a possible Apollonian influence.
The word *hitqinu* appears three times in this passage—once in the mouth of an amora citing a mishnah (Middot 2.5) and twice in a beraita (a parallel to T. Sukkah 4.1)—but not at all in either M. Middot or T. Sukkah.\(^{22}\) It is rather clear that either the amora or the redactor or the transmitter added this word to M. Middot as quoted here in the Bavli to make a connection between the *tiqqun gadol* of M. Sukkah and the action reported in M. Middot, i.e., to suggest an intertextual reading.\(^{23}\) Even without the addition of *vehitqinu*, however, R. Elazar is still equating the *tiqqun gadol* of this mishnah with the erection of the balconies described in M. Middot to prevent men and women from mingling.\(^{24}\) Similarly, the stama or redactor or transmitter of this beraita added *hitqinu* twice to the text, again to establish links with the *tiqqun gadol* of the mishnah. It is of special note that the meaning of *vehitqinu* in the last line of the beraita is not only “enacted” but also “erected (a gallery)” so that women could sit and watch the event with an unobstructed view. This meaning approaches the meaning of *vehitqinu* in M. Sukkah 5.2. What I am saying is that the amoraim themselves interpret M. Sukkah by reading it together with M. Middot and T. Sukkah, thereby suggesting that all three sources refer to the same incident: the one described in T. Sukkah. This might mean that in the eyes of the amoraim both mishnahs, Sukkah and Middot, are based on the Tosefta, and not vice versa.\(^ {25}\)

\(^{22}\) Note that the phrase “so that they would not mingle,” key in both M. Mid 2.5 and T. Suk 4.1, does not appear here.

\(^{23}\) It is common for tannaitic sources in the Bavli that are brought to explain a mishnah to adjust themselves linguistically to that mishnah. That is, the words of a beraita are changed so that they match the mishnah and thus look like a direct commentary on it. See e.g. B. Eruv 45a and B. Ket 110a. Here, in B. Suk 51b, a mishnah from elsewhere is altered.

\(^{24}\) It also seems that the Bavli lengthened the beraita to make the point more effectively—the necessity to separate men and women to prevent promiscuous behavior. However, it makes little sense to say that at first women were inside. This lengthening is probably due to the variant readings of this clause in the mss. See *Diqduqi Soferim*, note dalet. That is, by repeating the impossibility of letting men and women stay on the same level and avoiding levity, the Bavli concludes that the only solution is different levels. The outcome of adding *vehitqinu* to the beraita is that no explicit reference is made to the erection of a balcony, only that women sat higher than men. The preceding source, M. Middot, already mentions the balconies. We thus see how the Bavli alters its sources to make its points more clearly.

\(^{25}\) Note that the term *bet din* (rabbinical court), to which the Tosefta ascribes the erection of the balconies, has been replaced in the Bavli’s version of the Tosefta by the vague *vehitqinu*. The Mishnah too is vague, but implies priests. If, as I suggest, the Tosefta predates the Mishnah, then the Tosefta is making a political point which the Mishnah and the Bavli play down.
Although Y. Sukkah 5.2 55b, in commenting on this mishnah, does not cite the beraita from T. Sukkah, it does say in reference to the Mishnah’s phrase *tiqqun gadol* that they would put men by themselves and women by themselves,\(^{26}\) and it then quotes M. Middot. The Yerushalmi sugya continues, as does the Bavli sugya, with a discussion of the evil inclination. It is thus making the same point as the Bavli, that the Mishnah’s phrase, as neutral as it sounds, is a reference to promiscuous behavior and the rabbinic response to it at some time in the past.

A possible translation of the mishnah, in line with the view of both the Bavli and Yerushalmi, is: they went down to the Women’s Gallery and there they would enact a grand corrective enactment, i.e., build balconies. However, since even the Tosefta, which tells the whole story, does not use the word *vehitqinu*—in either the sense of “build” or “correct” (it says, instead, *asu*, “they made”)—it seems to me that the phrase *tiqqun gadol* of the mishnah is more likely to mean “a great preparation” or “a great construction.” But the Mishnah’s choice of words—its repeated use of the verb הָקִיא—may carry with it the remembrance of things past.

In short, the Mishnah’s opaque phrase, *umetaqnin sham tiqqun gadol*, is an ingenious and subtle way for the redactor to summarize two events from the time of the Temple: the specific instance of levity and the elaborate, yearly preparations for the “show.” Although one can still argue that the Mishnah’s opaque statement is the oldest of the three related texts, I think I have made a more compelling case for the opposite claim—that this was a phrase coined in response to an event of the past with the twin goals of mentioning it and also not mentioning it. M. Sukkah and M. Middot each made use of the Tosefta’s independent story for their own purposes. Neither told it in full but both made just enough of a reference for someone to be able to go and find the complete narrative elsewhere.

II. Hashaqah and Hatbalah

The second mishnah we will examine, M. Betzah 2.3a, is very hard to understand on its own. We will again see how reading it together with the toseftan parallel will allow us to make sense of it.

Chapter 2 of Betzah opens with a discussion of cooking food on a Friday festival to be consumed the next day, on the Sabbath (*Shabbat*). The second mishnah of the chapter does not connect thematically but formally. It, too, talks about a festival falling adjacent to Shabbat, in this instance on Sunday, and the problems that such a circumstance creates.

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\(^{26}\) Cf. B. Suk 52a, מספחתו מספחתו הלַבּ.
M. Betzah 2.2

If [the festival] fell on a Sunday, the House of Shammai says that one must immerse all [things] before Shabbat. But the House of Hillel says that one must immerse utensils before Shabbat, but persons [may immerse] on Shabbat.

Since people were in the habit of making themselves and their utensils ritually pure for a festival (Yom Tov), the question that arose was, When Yom Tov fell on a Sunday, could a person immerse himself and his utensils on Shabbat for the sake of Yom Tov? The House of Shammai says no, that all immersion of utensils and persons must be performed before Shabbat. The House of Hillel says that utensils must be immersed before Shabbat but persons may immerse on Shabbat for the sake of Yom Tov.

M. Betzah 2.3a continues the discussion of the immersion of utensils:

But they agree that one may submerge water in a stone vessel to purify it (the water) but one may not immerse.

The opening words of this mishnah, “But they agree that,” imply that despite their disagreements in the previous mishnah, here the two Houses agree. The reader, therefore, reasonably expects that the area of agreement will be stated with regard to the area of disagreement: that with respect to the immersion of persons, about which they disagree, there is still some aspect about which they agree. But this is not so. Neither side concedes to the other on a particular case of immersing persons either on Shabbat or before Shabbat. Rather, 2.3a says that both Houses agree that if a person wishes to purify water, then he can do so by pouring it into a stone vessel, which by definition is always pure, and then lowering the vessel into a ritual bath (miqveh) until the surface of the miqveh-water and the surface of the water in the stone vessel are level with each other, and they “touch” (mashiqin). The water in the stone vessel thereby becomes pure. I have used the word “submerge” to describe this procedure. The mishnah does not say when such an activity is permitted—on Shabbat or only before Shabbat. It also follows that need not refer to the Houses (see below).

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27 Vav prefixed to the beginning of a word can be translated either as a conjunction or a disjunction. Since “they agree” follows a disagreement, the most reasonable translation seems to be “but.”

28 Cf. the first mishnah of this chapter where they disagree about the number of cooked foods required for an eruv, the House of Shammai holding two and the House of Hillel only one, but agree that a fish with an egg coating is acceptable as an eruv, even though it is technically only one cooked dish.
The mishnah continues and says “but one may not immerse” (aval lo matbilin). But the mishnah does not specify what it is that one may not immerse. The entire line seems to be saying that submerging water in order to purify it is fine but immersing it is not. This cannot be the correct interpretation, however, because simple, physical considerations do not allow one to “immerse” water in other water in order to purify it. The object of the verb “immerse” has to be, therefore, the vessel itself (with its contents). But that cannot be the correct interpretation either, because a stone vessel never needs immersion because it cannot become ritually impure. This second part of the statement, therefore, must be referring to some other kind of vessel. We already know from the previous mishnah that both Houses agree that no immersion of vessels for purification is allowed on Shabbat. Therefore, “but one may not immerse” in 2.3a must refer to purifying a non-stone vessel in conjunction with, and incidental to, purifying the water inside it. Since one might think it acceptable to purify an impure non-stone vessel incidental to purifying the water inside it, the mishnah comes to tell us that this is not so. Note, once more, that the mishnah does not state when this prohibition applies, whether on Shabbat or Yom Tov or both.

It should now be evident that this mishnah is virtually impossible to understand without assistance. First, the three words aval lo matbilin make little sense because they have no direct object. Second, although it is true that the mishnah presents a rule about submerging and immersion of utensils about which the Houses agree, the subject of their agreement should have been people, because it is about people that they disagree. Third, we do not know if the agreement is in reference to submerging and immersion on Shabbat, Yom Tov, or both. In short, this mishnah is cryptic when read on its own and can only be understood with the aid of later commentary. However, if we instead read the mishnah in conjunction with the associated passage in the Tosefta we will understand the mishnah fully. Most of the above difficulties will be resolved.

T. Betzah 2.9 is relatively straightforward. Note that it explicitly deals with two distinct, although related subjects: the purification of water and the purification of vessels.

T. Betzah 2.9²⁹

²⁹ This halakhah also appears in T. Shab 16.11, with slight changes.
³⁰ Erfurt ms., 'ב'א Barb. See n. 42.
One may not immerse a vessel [to purify it] incidental to [purifying] its waters on Yom Tov [and it follows that one may certainly not do so on Shabbat].

And one may also not submerge waters in a stone vessel in order to render them pure, on Shabbat. The opinion of Rebbe.

But the Sages say that one may immerse [and thereby purify] a vessel by immersing [it together with] the waters inside it on Yom Tov, and one may submerge waters in a stone vessel in order to render them pure [on Shabbat or on Yom Tov], but one may not immerse them (the waters) [to render them pure by immersion inside an impure vessel].

Before explaining how the Tosefta’s passage resolves the difficulties we found in the Mishnah, we should note that it is not the Houses of Shammai and Hillel who are engaged in this dispute, but Rebbe and the Sages. This is quite astonishing. We see here an instance in which the words of the Mishnah (veshavin, “but they agree”) lead us to believe that it was the Houses who agreed on these rules and yet the Tosefta reveals that it was later rabbis (not mentioned in this mishnah) who engaged in this dispute.

The first thing to notice about the toseftan passage is that it is fully comprehensible on its own. By first mentioning the matter of immersing a vessel, it is clear that any kind of impure vessel is spoken of, except for a stone one which cannot become impure. Second, the words Yom Tov and Shabbat appear in reference to three out of the four rules so that it is clear when hatbalah (immersion of utensils) and hashaqah (submerging of water) are permitted and when they are forbidden. In addition, the verb matbilin in the first and third sections has a direct object: the vessel itself (which may or may not become pure incidental to purifying the waters inside it). This is in contrast to the verb mashiqin in the second and fourth sections, which refers to the purification of the water in a stone vessel, not the vessel itself. Last, there are areas of agreement, not just areas of disagreement. We can deduce that all, i.e., Rebbe and the Sages, agree that the submerging of water is allowed on Yom Tov and that purifying a vessel together with purifying the water inside it is forbidden on Shabbat. It is evident that the disputes between Rebbe and the Sages are not about purification rites in

31 Lieberman (Tosefta Ki-fshuta, Shabbat, 273) notes that it is clear that the reference is to Shabbat.

32 We also see elsewhere in the chapter that the redactor takes liberties with names. Although it is the House of Rabban Gamliel in the Tosefta that used to grind pepper on Yom Tov in [special] pepper mills, M. Betz 2.8 says that it was R. Elazar b. Azariah who permitted the grinding of pepper with [special] pepper mills. This seems to be an example of the redactor of the Mishnah taking a phrase from the Tosefta, and inserting it unmodified into the Mishnah with a different attribution. See Lieberman’s comments in Tosefta Ki-fshuta, Yom Tov, 961. See also M. Betz 2.7 and its parallel, T. Betz 2.15, and Lieberman’s comments on this name change in Tosefta Ki-fshuta, Yom Tov, 960.
preparation for a Sunday Yom Tov but purification rites, in general, on Shabbat and on Yom Tov.

We thus see that had M. Betzah 2.3a been referring to Rebbi and the Sages (and not the Houses, as is strongly implied), and to permitted hashaqah of water in stone vessels on Yom Tov and prohibited hatbalah of vessels by indirect purification on Shabbat, and had it mentioned hatbalah first with a direct object, as does the Tosefta halakhah, then the mishnah would have made perfect sense and would tally rule for rule with the Tosefta. Since it did not do so, and since it is in many ways incomprehensible on its own, and since the Tosefta is clearly not formulated as a commentary on this mishnah but as an independent statement of disagreement, not agreement (as is the mishnah), it is reasonable to conclude that M. Betzah 2.3a is a reworking or reformulation of this older tannaitic source. As similar as it may be to the beraita, it presents a set of rules that differs somewhat. If we can assume that the reader of the mishnah had access to this beraita and studied the mishnah together with it, then the mishnah’s cryptic statements become much more clear.

The mishnah can now be understood in several ways. One interpretation is that hashaqah is allowed, even on Shabbat, as the Sages rule in the Tosefta, and hatbalah prohibited, even on Yom Tov, as Rebbi rules in the Tosefta (Albeck).33 It follows that the words “but they agree” mean that the Houses agree with the views of later(!) tannaim, with Rebbi and with the Sages. Another possible interpretation, as suggested by the Yerushalmi, is that the mishnah rules like the Sages, allowing submerging and prohibiting immersion, and refers only to Shabbat. Again, “but they agree” implies that the Houses agree with later tannaim, i.e., the Sages. A third possibility is that the mishnah is in accord with Rebbi, that submerging is permitted on Yom Tov but immersion is not. A fourth interpretation is that the mishnah is saying that Rebbi and the Sages agree that submerging is allowed on Yom Tov and immersing is forbidden on Shabbat, as deduced from the views presented in the Tosefta. According to this interpretation, it is not necessary to suggest that the Houses agree with tannaim who lived much later, because the phrase “but they agree” refers to Rebbi and the Sages themselves. A fifth possibility is that the mishnah is saying that Rebbi’s views about Yom Tov, permitting submerging but prohibiting immersion, are equivalent to the Sages’ views about Shabbat (Lieberman).34 Even if we cannot choose from among these options, we now know much more of what the mishnah means than we knew before.

33 Commentary on M. Betz 2.3a (Moed, 291).
34 Tosefta Ki-fshuta, Shabbat, 273. The problem with this interpretation is that it is not likely that a mishnah would say that two tannaim “agree” but mean that they
Were we to make the opposite assumption, that the mishnah came first and that the beraita was written in order to explain the mishnah, we would have to say that the redactor knowingly included impossible-to-understand passages in his collection. It is hard to figure out why he would do so. As noted above, should the response be that there were older materials circulating as independent units that would explain the opaque mishnah, this is no different from what I am saying, except that I am going further and suggesting that these older units were circulating not as bits and pieces but as part of a collection.

We thus see that only by reading the mishnah together with the associated passage in the Tosefta can the mishnah be understood. Is the mishnah’s lack of clarity intentional? I cannot answer except to say that if the redactor could rely upon an already-extant tannaitic collection, then his Mishnah “notes” could serve the purpose of presenting his halakhic opinions on these matters without burdening the tanna-as-memorizer with excessive and perhaps unnecessary information. It is precisely because the traditional assumption has been that the Mishnah is the first redacted tannaitic work and the Tosefta a response to the Mishnah that we have not allowed ourselves to consider the possibility that the earlier collection spells things out in detail and later collections need only refer to the earlier rule as a backdrop for the new points they make and for their divergences.

We will now turn to the Bavli’s and Yerushalmi’s commentary on this mishnah.

B. Betzah 18b

What do the words “but one may not immerse” mean?
Said Samuel: one may not immerse a utensil [to purify it] incidental to [purifying] its waters on Yom Tov.

Who authored this mishnah? Not Rebbe and not the Sages.
For it was taught in a beraita: One may not immerse a vessel [to purify it] incidental to [purifying] its waters,

agree in approach only, not in the specifics of the halakhah. The strength of this interpretation, however, is that it elegantly solves the problem of which time period is under discussion.
And one may not submerge water in a stone vessel in order to render them pure, the opinion of Rebbe;

But the Sages say, one may immerse a vessel to purify it incidental to [purifying] its waters,

And one may submerge waters in a stone vessel to render them pure.

Whose [mishnah] is it? If it is Rebbe’s [mishnah], the law of submerging poses a difficulty [for he holds that submerging is not allowed whereas the mishnah holds that it is allowed]; if it is the Sages’ [mishnah], the law of immersion poses a difficulty [for they hold that immersing is allowed whereas the mishnah holds that it is not allowed].

If you like, I will say it is Rebbe’s [mishnah]; if you like, I will say it is the Sages’ [mishnah]...

Samuel senses the opacity of the mishnah, particularly its last three words, and issues a statement that clarifies\(^35\) two critical points: the goal of the immersion is to purify the vessel, incidental to its water, and the time period when the activity is forbidden is on Yom Tov, which means it is also forbidden on Shabbat. It is no coincidence that the beraita that follows repeats his statement nearly verbatim. Only the words \textit{Yom Tov} are omitted. It is clear that Samuel did not formulate a statement on his own but rather lifted a line from a beraita that was already associated with the mishnah and then specified, it seems, that the prohibition applies on Yom Tov. There are questions about the exact reading of the text of the beraita, however, as Rashi indicates.\(^36\)

If we now compare Samuel’s statement to the first line of the Tosefta halakhah, we see that he has also added the word \textit{letaharo}. He needed to do so because the Tosefta is clear but the Mishnah is not. The Tosefta passage states explicitly in its opening statement that one does not immerse a vessel incidental to purifying its water on Yom Tov. But, as already noted above, M. Betzah 2.3a says that “they” agree that one may purify water in a stone vessel \textit{but one may not immerse}, and it is not clear what it is that one may not immerse. Since the words could mean that a person may not immerse water, Samuel informs the reader that the mishnah is saying that one may not immerse a vessel incidental to water. He is thus interpreting this part of the mishnah in keeping with the ruling of Rebbe in the Tosefta.

As this short Bavli sugya indicates, the Tosefta beraita was studied along with the mishnah even before the time of Samuel, an early amora. The amora inserts himself as a mediator between the mishnah and the beraita in order to state clearly and succinctly what the last three words of the mishnah mean.\(^37\) That is, the amora interprets the mishnah according to

\(^{35}\) Lieberman (Tosefta Ki-fshuta, Shabbat, 272) says that Samuel’s purpose is not to correct the reading of the mishnah but to explain it.

\(^{36}\) See Rashi ad loc., s.v. \textit{hukhi garsinan detanya}.

\(^{37}\) It is hard to understand why the stama, following Samuel’s statement, then asks \textit{לפי מה}, given that the mishnah is the point of agreement between the House
the beraita, a standard phenomenon in the *gemara*. Since Samuel's statement and the beraita are nearly identical, it seems that with the passage of time the beraita—in its Bavli context—assimilated a word from Samuel's statement (*letaharo*) but also lost some key words, *Yom Tov* and *Shabbat*. Since the beraita makes no sense without these words, it seems that they dropped out in the Bavli under the influence of M. Betzah 2.3a, which also lacks these words. That is, the beraita became similar in wording not just to the preceding statement but also to the preceding mishnah. Because the reading of the beraita in the Bavli is uncertain, however, as indicated by Rashi, these conclusions are provisional.

What was the attitude of the amoraim to the beraitot associated with the Mishnah? Can we determine if they thought that the Mishnah was derived from or based on those beraitot? At this point, all I can say is that it is clear that the amoraim felt it appropriate to interpret the Mishnah in light of the beraitot. In this instance, we see that Samuel recognized that M. Betzah 2.3a was not understandable and that the related beraita was. Is he suggesting that this mishnah is based on the beraita? I don't know.

We see similar developments in the Yerushalmi (Betzah 2.3 61b):

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פוניחא דלא חבר
דרחא אין מקסטרה כי אם מימי בור מבר
ואני מקסטרה כי אם בברך כי לא פרשו במשנה. דרבי רבי
ויבמור אפרים מקסטרה כי לי ימי בור מבר. 42

Our mishnah is not in accordance with [the views of] Rebbe.
For it was taught in a baraita: One may not immerse a vessel [to purify it] incidental [to purifying] its waters on Yom Tov.
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of Shammai and the House of Hillel. The stama's answer, after the difficulties are resolved, is that the mishnah represents the view of either Rebbe or Sages. How can this be reconciled with the fact that the word *pum* refers to the Houses of Shammai and Hillel? Or does the stama understand *pum* as a discontinuity and the referents must be sought elsewhere, if necessary? Or, is the question *pum* formulated on the basis of the following beraita?

38 See my Development of the Talmudic Sugya, chapter 3, pp. 75ff.
39 The beraita is thus saying that Rebbe prohibits *hashaqah* and *hatbalah* on Yom Tov as well as on Shabbat, a position more stringent than the toseftan beraita. The Sages allow *hatbalah* even on Shabbat and *hashaqah* both on Shabbat and Yom Tov. The Sages are more lenient than they are in the Tosefta and Rebbe is more strict. This is not likely.
40 That parts of memrot, in the course of time, are assimilated into beraitot, I have demonstrated in my study of the phrase *tanya nami hakhi*. See Development, chapter 4. That beraitot change their wording in accordance with the related mishnah, see above, n. 23.
41 See n. 36.
42 Vienna ms., אסא לא להבדית.
And one may not submerge water in a stone vessel to purify them on Shabbat. The opinion of Rebbe.

But the Sages say: One may immerse a utensil [to purify it] incidental to [purifying] its waters on Yom Tov,

And one may submerge water in a stone vessel for purity.

The passage opens by saying that M. Betzah 2.3a does not follow the ruling of Rebbe (contrast Samuel’s interpretation of this mishnah in the Bavli—that it does follow the view of Rebbe). It then quotes the associated beraita, in a version very similar to the Tosefta, with the introductory term detani, “as is taught in a beraita,” to provide the basis for the opening statement. This means that according to the Yerushalmi the mishnah speaks of Shabbat and not Yom Tov, and accords with the ruling of the Sages in the beraita who allow hashaqah on Shabbat but not hatbalah, although they do allow hatbalah on Yom Tov. If so, what does “but they agree” mean? Who agrees about what? According to Qorban Edah (ad locum), “they agree” refers to the Houses. The commentator is apparently saying that both Houses would subscribe to the view of later sages that submerging water is allowed on Shabbat but purification of a vessel incidental to purifying the water inside it is not—a view consistent with the stands the Houses took in M. Betzah 2.2. This implies that the Houses allow immersion of a vessel incidental to the water inside it on Yom Tov. This view, too, is consistent with the Houses’ positions in M. Betz 2.2.

If the mishnah is the primary source, then it presents a law that is very difficult to understand. Another text had to be composed to explain all of its ambiguities. If the toseftan halakhah is the primary source, and the mishnah is a condensation and reworking of that halakhah, the mishnah is not that difficult to understand. The remaining problem with this mishnah is that since it does not explicitly mention either Shabbat or Yom Tov, a

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43 Some mss. add דָּבָר in the last line of the Tosefta. See Lieberman (ed.), Tosefta Yom Tov (Betzah), 288 and Shabbat, 77–78.

44 This implies that the Houses allow immersion of a vessel incidental to the water inside it on Yom Tov. This view, too, is consistent with the Houses’ positions in M. Betz 2.2.

45 The Talmudim do not acknowledge the possibility of a mixed view, as does Albeck (mishnah commentary, p. 291). Maimonides in his Mishnah commentary interprets this entire passage as referring to Shabbat alone, as does the Yerushalmi.
number of interpretations are possible. According to most of them, the phrase “but they agree” is difficult to interpret. If the reader has access to the beraita, almost everything becomes clear. The bottom line is that this mishnah cannot stand alone. Medieval commentators like Rashi, and even modern ones such as Albeck, need to add much explanation to make the mishnah clear. It is tempting to speculate, therefore, that in those cases in which a commentator needs to cite a beraita to explain the Mishnah, the Mishnah is a reworking of that beraita.

Conclusions

The phenomenon of a mishnah making an incomprehensible statement and “relying” on the full report of the anecdote or halakhah elsewhere in order for the reader to understand it is, to my mind, strong evidence of the fact that the Mishnah was not a brand-new formulation of Jewish law, as so many have claimed for so long. Rather, the Mishnah was written in response to tannaitic passages that were already circulating in some kind of ordered collection. The chapters, tractates, and orders did not originate with the redactor of the Mishnah. He produced a new collection in the sense that it was his take on Jewish law but it was not a creation ex nihilo. Like Dead Sea scroll texts that present a restatement of the Torah and are original only in the sense that their authors modify the transmitted traditions in order to express views of their own, the Mishnah, too, is a reprise of an already circulating collection.

The importance of showing that a long, clear, understandable passage found in the Tosefta was condensed and made opaque by the redactor of the Mishnah is that this raises a serious challenge to the traditional wisdom that the fuller and more clear source is the later one which came into being to explain the earlier, more difficult and sketchy one. These close readings lead to the opposite conclusion: the clear, full source is the older one and the hard-to-understand source is the later one. But why would someone convert a clear source into an opaque one? The answer is that the clear source is still “there,” available to the reader. The opaque source functions like an addendum to the clear source for the purpose of presenting a different view of the halakhah.\textsuperscript{46} The ancient reader would read the two together, just as the early layer of the gemara would read a mishnah together with related beraitot. I would turn the challenge around and ask: If the Mishnah is the oldest, edited tannaitic work, why would a redactor produce an incomprehensible work, one that could not possibly be understood on its own?

\textsuperscript{46} These conclusions put me in Y. N. Epstein’s camp, that the Mishnah is a book of halakhah, and not in H. Albeck’s camp, that the Mishnah is a compendium.
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 tannaitic 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 tannaitic collection.

Finally, and most important, the unique advantage of engaging in a sustained analysis of the Mishnah together with related tannaitic 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.