The Human Will in Judaism

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Chapter Five

Conclusion

The Mishnah's Theory of Intention

The Mishnah employs the words for intention (i.e., kavvanah and mahshabah) in a variety of contexts, ranging from civil law to rules of purity. Throughout this study, I have claimed that a theory underlies the various statements in which intention is discussed. By a theory of intention, I mean a "systematically related set of statements" about when and why intention matters. I shall now proceed to defend this claim. What constitutes evidence that the diverse rules involving intention add up to a theory rather than just a collection of unrelated statements about the same topic?

Let me clarify this question by drawing on an analogy. Imagine cutting every quotation that contains the word "peace" from a newspaper. Assembling these quotations, you would probably find little agreement about what peace means or how it can be attained. The term might refer to the cessation of war in one context and the peace of afterlife in another. Furthermore, even those people who use the term to refer to the cessation of war might disagree about how to realize that goal. One might argue that the only method for achieving a lasting peace is by declaring a freeze on the production of nuclear weapons. Another might insist we can achieve peace only by building up an arsenal of weapons which will serve as deterrence to other countries. While all of these statements refer to the same subject matter, they obviously do not form a theory in the sense of sharing certain fundamental assumptions about the topic in question. They are merely a random collection of statements bearing on a similar theme. But now suppose that you cut out all the statements about peace from a journal which espouses a particular point of view. Although different people are represented by these statements, it is probable that the various statements will together present a theory, because they rest on certain shared assumptions about the nature of peace and the methods to attain it.

Our analysis of the mishnaic statements about intention has demonstrated that they coalesce to form a theory about when and why intention matters. By analysing rules involving intention in one part of the Mishnah, we discovered principles that also explained when and why the framers would appeal to intention in another part of the Mishnah. For example, in the first part of our
study, we discovered that the Mishnah appeals to an actor's intention only when the action bears more than one interpretation against the background of behavioral conventions assumed to prevail in Israelite society. Precisely the same principle emerged when we analysed the mishnaic rules involving a person's plans. The sages appeal to plans only if, on the basis of normal Israelite behavior, they cannot predict what the individual in question will do. The fact that similar principles underlie the statements about intention in various parts of the mishnaic system proves that we have at hand not a random set of unrelated statements but a theory about when and why intention matters.

The Mishnah's theory of intention, like all theories, takes as its point of departure certain basic presuppositions about the nature of the world and the place of human beings in that world. The Mishnah's theory flows out of its own distinctive set of assumptions about the nature of God and the relation of God to humanity. We need now isolate those fundamental notions that give coherence and sense to the Mishnah's theory. The axioms underlying the Mishnah's theory are by definition those ideas which repeatedly make their appearance when we analyse any of the statements the sages make about intention. To discover these presuppositions, therefore, we need only identify the ideas which emerged in each of the various chapters of this study. These will be the founding assumptions upon which the sages have erected their theory.

Having framed the question to be addressed, the answer is not far to seek. It turns out that four basic assumptions underlie all the mishnaic rules concerning intention: 1) intention is the human counterpart of the divine will, 2) intention serves as a criterion for classifying things (whether actions or objects), 3) the stress on intention derives from the importance of teleological criteria in defining an object's classification, and 4) intention plays a subordinate role to social norms.

The First Axiom: The Correspondence between Human Intention and Divine Will

The capacity to think or, more specifically, the ability to formulate intentions and plans, makes human beings like God. This idea provides the point of departure for everything the Mishnah says about human intention. From the sages' standpoint, "being created in God's image" means being able to exercise one's mind in the same way that God exercises the divine will. The sages work out the correspondence between human intention and divine will in each of the various parts of their theory. Most significantly, they ascribe to human intention the same characteristics that the priestly writer attributes to God's will in the biblical story of creation (Gen 1:1-2:4).

This story serves as a paradigm for the Mishnah's theory of intention in two respects. To begin with, the sages ascribe the same sorts of power to human intention that the biblical writer imputes to God's will. In the biblical account God wills the world into existence. Likewise, in the mishnaic system, human
beings have the power to transform the character of objects around them. Merely by formulating a plan to use an object for a particular purpose, an Israelite alters one of the most basic properties of that object, namely, its ability to absorb or withstand cultic contamination. For example, when a person plans to use a given object, the object can absorb impurity, whereas prior to the formulation of the intention, it could not become contaminated. By the same token, when a priest slaughters an animal, the plan he formulates has the power to desacralize the animal. In the system of the Mishnah, therefore, the thoughts and intentions of human beings have the effect of restructuring the very character of reality.

There is a second correspondence between God's will as portrayed in the biblical account of creation and the mishnaic understanding of human intention. In the biblical myth, God's principle task in creating the world involves mapping out lines that differentiate the world into its constituent categories. God creates an expanse which separates the waters above (sky) from the waters below (the seas). By the same token, God distinguishes the light from darkness, the day from night, the water from the land, the profane days from the Sabbath and so forth. According to the biblical writer, classifying the world was itself an essential part of the divine labor in creating the world. As part of classifying the world, God also gave each category a name. For example, "God called the light Day and the darkness He called Night."

In the system of Mishnah, human beings carry out a similar exercise. When they distinguish between useful and useless objects or between food and waste they parcel out reality between the human domain and the domain of nature. Moreover, when an Israelite distinguishes what is sacred from what is profane, he or she imitates the divine act of separating the profane days of the week from the Sabbath. From the Mishnah's standpoint, human beings are endowed with powers similar to God's, because they have the capacity to carry out the same intellectual operations as God, namely, the ability to classify the world.

The fundamental similarity which the sages perceive between human beings and God leads them to treat humanity as God's agent. The Mishnah apparently bases this idea on the Yahwist's account of creation, in which God asks Adam to name the animals (Gen. 2: 19-20). In the sages' view, by asking Adam to name the animals, God in effect assigned humanity the task of classifying the world into its constituent categories. Thus in the mishnaic system, as we have seen, Israelites are responsible for imposing order on the world around them. Just as Adam named the animals, Israelites give names to the objects around their homes and on their farms.

The connection between the Mishnah's theory of classification and the Yahwist account of creation is evident in the word the Mishnah adopts to speak about classification. In mishnaic Hebrew, the word for classification (ṣm) is the same word used in the biblical story of Adam's giving names (ṣmw) to the animals. In addition, the Mishnah refers to the act of classification as "calling
something a name (lqrwt sm)." This expression is used by the Yahwist in speaking about Adam's acts of classification (Gen. 2:19-20).

The mishnaic idea that intention is the human counterpart to the divine will leads to its corollary: in evaluating a person's action, God takes into account the intention which accompanies that act. In so doing, God determines whether or not the act in question constitutes a repudiation of the divine will. An actor rejects God's will when he or she intentionally performs an act which constitutes a violation of the law. An intentional violation signifies that the actor has set human will against the divine will. The sages also believe that God takes account of the purpose with which the person acted. If the actor's purpose was licit, no liability is incurred. But if the purpose was forbidden, the actor has repudiated God's law and hence incurs punishment.

Following the same line of reasoning, the sages claim that an actor's purpose plays an important role in determining whether this person has fulfilled a religious duty. If the actor performs the requisite religious act but does not specifically form the intention of satisfying that religious duty, the act does not fulfill the obligation. Although the actor carried out God's law, he or she did not do so with the intention of fulfilling God's command. In the Mishnah, therefore, few actions are inherently a violation or a fulfillment of divine law. All depends upon the intention with which the person acts. In asserting that God takes account of an actor's intention, the sages carry forward their basic belief that human intention corresponds to the divine will. If the capacity to formulate intentions makes human beings like God, it follows that human beings are most like God when they bend their will to the divine will. Conversely, when they set their will against God's, they repudiate the resemblance between themselves and God.

The Second Axiom: The Role of Intention in Classification

In the mishnaic system, intention serves as an important criterion in classifying things. In assigning either objects or actions to their respective categories, the framers frequently appeal to a person's intention. We have already seen how an Israelite's intention categorizes household objects. The intention to use an object places that object in the category of useful things and hence makes it capable of absorbing impurity. Similarly, the intention to eat a given substance places it into the classification of food with the result that it becomes susceptible to impurity. Intention, as I said above, also serves as a criterion for assigning actions to their respective categories. A person's intention determines whether the action he or she performs falls under the rubric of a transgression or satisfies a religious obligation.

It turns out, therefore, that the Mishnah's interest in intention flows from a more general concern with taxonomy. This leads to the following striking conclusion: were the sages not interested in classification in the first place, intention would play only a minor role in their system. In other words, if the
framers did not care about sorting things into categories, they also would take less interest in human intention.

Evidence internal to the Mishnah supports this claim. Our analysis of the terms for intention shows that, with a single exception, the sages never appeal to intention in a context that does not involve the classification of either an object or an action. For this reason, the Mishnah does not discuss cases involving a person who merely intends to violate God's law, for example, by committing murder, adultery, or any other crime. Since in cases such as these the Israelite has performed no action (and therefore nothing requires classification), the Mishnah has no reason to discuss intention in these contexts.

Furthermore, even in those contexts in which the sages discuss the classification of either an object or an action, they appeal to intention only as a last resort. If they can assign an object or action to its category by appealing to some other criterion, they simply ignore human intention. For example, if an object has already served a purpose, the sages do not take account of how the owner intends to use it. They can classify it simply by appealing to its actual function. We find, therefore, an unmistakable correlation between the Mishnah's interest in intention and its propensity to classify things. The cases in which the Mishnah invokes intention will be the same cases in which they face a problem in determining the classification of an object or an action. Conversely, when classification is not an issue, the Mishnah will take no interest in intention at all.

The Third Axiom: The Importance of Teleological Criteria in the Mishnah's System of Classification

The importance of intention in classifying objects and actions derives not only from the sages' desire to classify things. It also stems from a more basic judgment on their part about the proper strategy for placing things into categories. In their system, they consistently appeal to teleological criteria in assigning objects and actions to their respective categories. By this I mean that the sages define an object or action in terms of its end or telos. We have seen that the status of objects also depends upon their function. The function of an object, by definition, is the end that that object serves. Thus, classifying objects according to their function reflects a teleological concern. Likewise, in evaluating an action in terms of its purpose, the sages are also appealing to a teleological criterion. In this case, they are classifying the action by making reference to the goal or end that the action is meant to achieve.

The Mishnah's insistence upon using teleological criteria ultimately makes it necessary to invoke a person's subjective intention. Since the sages classify objects according to their function, an ambiguity arises with respect to objects which are not yet put to use. For example, when a householder finds a dead cow in the field, it is not clear whether it falls under the rubric of food or waste, because he has so far done nothing with it. A logical way to determine the
function of such objects is by appealing to the Israelite's intention. If he intends to use it, it falls under the rubric of a useful thing, whereas if he decides to discard it, it enters the category of waste. We see, therefore, that in a system which places emphasis on the function of objects, intention will also turn out to be important. Similarly, since the sages classify an action according to its purpose, they invariably need to know what an actor has in mind. This is because, in many cases, the action itself bears more than one interpretation. Consequently, without knowing what the actor at hand actually intended, it is impossible to determine the purpose of the action.

What we have discovered here in the Mishnah is also true elsewhere. Other systems that evaluate actions in terms of their purposes also take an interest in the actor's actual intention. This is true, for example, in recent discussions in analytic philosophy. Those thinkers who make the purpose of an action an important category in their system also need to know, under certain conditions, what the actor is thinking. We have already discussed the following passage from Anscombe's work in which she discusses a man whose job it is to pump a supply of water into a house. On one particular day, the man pumps a poisoned supply of water into the house. Now in this case, his action bears several interpretations. It is unclear whether he is pumping the water simply to earn his pay or whether he in fact intended to kill the owners of the house. Anscombe admits that in such a situation one needs to know what the actor has in mind:

Up to a point, then, there is a check on his (the actor's) truthfulness in the account we are thinking he would perhaps give; but still, there is an area in which there is none. The difference between the cases in which he doesn't care whether the people are actually poisoned or not, and in which he is very glad on realising that they will be poisoned if he cooperates by going on doing his ordinary job, is not one that necessarily carries with it any difference in what he overtly does or how he looks. The difference in his thought on the subject might only be the difference between the meanings of the grunt he gives when he grasps that the water is poisoned. That is to say, when asked 'Why did you replenish the house supply with poisoned water?' he might either reply 'I couldn't care twopence' or say 'I was glad to help to polish them off and if capable of saying what had actually occurred in him at the time as the vehicle of either of these thoughts, he might have to say only that he grunted. This is the kind of truth there is in the statement "only you can know if you had such-and such an intention or not". There is a point at which only what the man himself says is a sign (emphasis supplied).

Here, in a contemporary system of philosophy, we discover an interesting parallel to the Mishnah's system. Anscombe, like the sages of the Mishnah, believes the proper way to evaluate an action is by making reference to its purpose. Furthermore, Anscombe recognizes that in some cases it is impossible to determine the actor's purpose by observing his or her action. Consequently, she is forced to admit that in such cases one needs to take account of the actor's subjective intention. We discovered precisely the same principle in the Mishnah. Since the sages decided to evaluate an action in terms of its purpose, they
sometimes needed to appeal to the intention the actor had in mind. In summary, therefore, we find that the emphasis the sages place on intention stems from the logically prior decision to classify things in terms of teleological criteria. Since they evaluate actions in terms of their purpose, and since they classify objects by appealing to their function, they often need to make reference to a person's intention.

It stands to reason, therefore, that had the Mishnah adopted non-teleological criteria by which to classify things, intention would play a relatively insignificant role in the system. Suppose that the sages had decided to classify objects according to their size, color, or shape. In this case, the framers would not have needed to know the owner's intention, because the classification of an object would be readily apparent from its phenomenal features. All objects of the same shape or of the same color would automatically fall into the same category.

Intention would also be unimportant had the framers decided to classify actions not according to their purpose but according to their observable characteristics. Indeed, we are already familiar with a system which ignores an actor's intention for precisely this reason, namely, the system of Leviticus. For example, Leviticus prohibits donning a garment made from linen and wool regardless of the purpose that the action was meant to serve. Because the writers of Leviticus do not evaluate this act in terms of its purpose, they never appeal to the intention that the actor had in mind. Whether he intended to use it as clothing or to model it for customers, he has committed a transgression.

Similarly, in Leviticus the rite of sacrificing an animal is valid as long as the priest follows the proper procedure. His purpose in offering the animal does not affect the validity of the rite. Again, since the authors of Leviticus do not judge the act in terms of its purpose, they do not care about the intention the priest had in mind. Had the framers of the Mishnah followed the example of Leviticus in considering the purpose of an action irrelevant, they also would have taken little interest in the intentions that actors actually formulate. We therefore conclude that the mishnaic stress on intention follows from the framers' initial assumption about how to classify the world.

The Fourth Axiom: Norms as a Criterion of Classification

Human intention is not the only criterion the Mishnah relies upon in classifying objects and actions. In fact, intention turns out to be less important than a second criterion: normal Israelite behavior. The Mishnah suggests that both the function of objects and the meaning of human actions are often self-evident against the background of norms which are presumed to operate in Israelite society. Israelites tend to use certain types of objects and discard others. By the same token, Israelites tend to eat certain types of substances and regard others as waste. In the sages' judgment, it is also possible to deduce the meaning of an individual's action from the normal meaning of that act in Israelite society.
If most people perform the act in question for a specific purpose, one may assume that the individual at hand also has that purpose in mind.

What is the precise relationship between norms and intention in the Mishnah’s system of classification? It turns out that intention plays a subordinate role to norms in the sense that the sages prefer to base their classification of objects and actions on normal Israelite behavior rather than on an individual’s actual intention. Consequently, if an individual performs an action which normally bears a specific meaning in the context of Israelite society, the sages will impute to the actor the normal meaning of the act, and ignore the actual purpose of the actor. To cite one example, the sages always ascribe to a person who takes a vow the standard meaning of his or her words, even though the votary may have had a different meaning in mind.

Intention is also subordinated to norms in the Mishnah’s system of classifying objects. The Mishnah assigns objects to categories on the basis of their normal function, even if a person has formed an intention of using the object in question for some other purpose. The best example of this tendency was the case of a tanner who intends to use an untanned hide. Since tanners almost never consider such hides to be useful things, his intention has no power to place the leather in the category of useful objects (M. Kel. 26:8) When a clearly defined norm exists, therefore, it overrides the individual’s intention.

In some cases, norms do not provide a definitive classification of an object but only narrow the range of possibilities. This is the case when people use objects like the one at hand in several specific ways. From normal Israelite behavior alone, it is impossible to determine the precise function that the object will serve. But at the same time, it is clear that Israelites put such objects to a limited range of uses. In cases such as these, norms determine the boundaries within which an individual’s intention has the power to define the status of the object. As long as the individual intends to use the object for at least one of its normal functions, his or her intention determines that object’s classification. But the intention to use the object in an idiosyncratic way has no effect whatsoever.

Why does the Mishnah subordinate intention to norms in its system of classification? At first blush, a relatively simple answer seems to present itself. It would appear that the sages consider norms to be more reliable than intentions in two respects. First, norms provide a more objective criterion for determining the meaning of a person’s action than do intentions. This is because people have no access to one another’s intentions. When an actor claims to have had a specific intention in mind, there is no way of determining whether he or she is telling the truth. The sages’ propensity to rely on norms, therefore, may stem from the fact that intentions are unverifiable and hence problematic for a functioning legal system.

Second, intentions are also less reliable than norms for anticipating an Israelite’s future behavior. If an Israelite intends to use an object in an idiosyncratic fashion, the sages assume that the person will ultimately change
his or her mind and conform to the typical practice. In sum, the Mishnah's reliance on norms may stem from the fact that human intentions are unverifiable and unreliable for predicting a person's action.

According to the interpretation just given, the Mishnah is treated as essentially a legal code which is concerned with the proper functioning of the law. The concern with objectivity and reliability stem from the sages' attempt to create a working legal system. As in other legal systems, a person's subjective intentions play no role in determining the legal outcome. On the surface, this interpretation is compelling. However, as I have argued previously, treating the Mishnah as merely a legal system fails to explain one important fact. If the sages were solely interested in developing a viable legal system, why would they ever take account of a person's actual intention?

The sages' frequent appeal to an individual's subjective intention can only be understood in light of certain theological presuppositions. The Mishnah relies on intention because it takes for granted that God holds actors accountable for their innermost thoughts. The sages, therefore, conceive of God as serving as an adjunct to the human court. When humans cannot determine an actor's intention, God steps in and makes certain that justice is done. The Mishnah makes this viewpoint explicit in specifying the penalties for certain transgressions. A person is only liable to the divine penalty of a premature death if the human court cannot convict the actor of the crime and impose punishment. But a person who is convicted and flogged is no longer subject to the divine punishment of premature death (M. Mak. 3:1-2, 15; M. Ker. 1:1). In essence, the Mishnah is claiming that God administers justice when the court does not have sufficient evidence to do so. In this way, the Mishnah sidesteps a problem that faces all legal systems, namely, the possibility that a person can be guilty of a crime yet be acquitted for lack of evidence. In the Mishnah, a person always gets the appropriate punishment, one way or another. The laws set down in the Mishnah, therefore, do not represent a legal system that is meant to be adjudicated exclusively by human beings. It also represents laws for which God holds a person accountable.

The Mishnah's stress on norms may also stem from certain theological convictions. This is suggested by the fact that the Mishnah appeals to normal Israelite practice even in cases which are not routinely adjudicated in a human court. The rules of purity and vows are cases in point. The Mishnah does not conceive of these types of cases as being routinely brought to a human court. A person who takes a vow must know from what he or she is expected to abstain. By the same token, a householder must determine for himself whether various objects around the home are susceptible to impurity. Such cases are not routinely adjudicated by a court. Rather, the Mishnah takes for granted that God holds a person responsible for fulfilling a vow and for obeying the rules of purity.
Significantly, norms play a critical role in both of these areas of law. In determining whether an object is susceptible to impurity, a householder must find out whether most Israelites consider it useful. If so, then it is automatically susceptible to impurity. Similarly, a person who wants to fulfill a vow must determine the normal meaning his or her words bear. In these instances, the emphasis on norms cannot be explained as deriving from the sages' concern with verifying the Israelite's intention, because these cases are not adjudicated by a court.

It is for this reason that I have offered an additional explanation for the Mishnah's interest in norms. The stress on norms suggests that the sages believe that God takes account of the norms in judging an Israelite's action. The Mishnah implies that God holds a person responsible for the normal meaning of a vow. Similarly, in the sages' conception, God takes account of normal Israelite behavior in determining what can and cannot absorb impurity. God treats as susceptible to impurity whatever most Israelites deem to be useful.

To be sure, the notion that God appeals to Israelite norms in judging human action seems counterintuitive. After all, according to the Mishnah, God knows an Israelite's actual intention. It seems, therefore, that the emphasis on norms derives from the conviction that Israelite society, in obeying divine law, comes to embody the divine will. Consequently, the norms produced by this community become normative in the sense that they serve as models of virtuous behavior. One carries out the divine will, therefore, by paying attention to the norms whenever deciding upon a course of action. This explanation accounts for the fact that the Mishnah actively encourages Israelites to take account of the behavioral and linguistic norms which operate in their society. As we have seen in case after case, an infraction of divine law often occurs when one fails to determine the norm or conform to it.

Explaining the Mishnah's Theory of Intention: A Sociological Perspective

At a certain point in analysing a theory, one discovers those basic assumptions upon which the theory as a whole rests. These assumptions or axioms admit no further analysis, for they constitute the points of departure for the entire theory under discussion. In my judgment, the four axioms discussed above provide the foundation upon which the Mishnah's theory of intention rests. Having isolated these axioms, we can penetrate no deeper into the framers' thought, because these ideas are the unquestioned premises of their theory of intention.

The question therefore arises as to how to account for the Mishnah's preoccupation with the constellation of themes represented by the four axioms spelled out above. This question is complicated by the fact that none of the ideas taken by itself is entirely new. Each is a common place notion in the biblical writings. At the same time, these ideas were unrelated to one another in the
biblical corpus. Although each of them may be found in the Bible, they tend to represent different streams of thought. In combining what were unrelated biblical ideas, therefore, the Mishnah has produced a theory totally unlike anything found in the literature of ancient Israel. In the same way that the combination of two colors may produce a third, the Mishnah created a new theory by bringing together what previously were independent themes.

In trying to account for the Mishnah's theory of intention, it is important to consider the nature of the group that produced the Mishnah and their purpose in writing it. Unfortunately, the sages of the Mishnah tell us little about themselves and their purpose in creating the Mishnah. However, from the traits of the document itself, we can speculate as to the nature of their activity.

At the simplest level, the Mishnah appears to be the work of intellectuals reflecting upon the inherited religious tradition as represented in the literature of ancient Israel. By Weber's account, intellectuals systematize the religious tradition which, because it has developed over time, is necessarily disorganized and full of contradictions. Systematization involves imposing logical organization on accumulated knowledge, working out contradictions, and filling in lacunae. Much of the Mishnah, including its theory of intention, is understandable as an attempt by intellectuals to systematize the biblical legal traditions.

The sages' desire to systematize the biblical rules is evident in the attention the Mishnah devotes to the potential conflict among Scriptural laws. The Mishnah examines hundreds of situations in which two or more biblical rules conflict with one another. For example, the Mishnah takes great interest in the potential conflict between the Sabbath laws and other biblical laws, such as circumcision. According to Scripture, one must cease one's labors on the Sabbath day which, in the Mishnah's understanding, means that one must forgo all creative or destructive acts. This law may come in conflict with the duty to circumcise a male Israelite child on the eighth day after his birth. This conflict occurs if the eighth day after the birth of a male child is a Sabbath. Does the command to cut the child's foreskin override the prohibition on performing destructive acts on the Sabbath day (M. Shab. 19:2)? Cases such as this one represent the sages' desire to anticipate and resolve all possible conflicts between various biblical laws.

The same effort towards systematization is evident in the sages' concern with ambiguity. The Mishnah takes up hundreds of situations in which an object or situation fall between two established classifications of biblical law. We have seen countless examples of this tendency in the study at hand. To cite one example, the Mishnah takes up the statement in Leviticus that food can absorb impurity if it becomes wet. Now it is clear that grain constitutes food and that wood does not. But what about other substances such as wild spices? Because they are wild, some people treat them as weeds. But because they are spices, others use them for seasoning (M. Sheb. 8:1, M. Uqs. 3:2). The attention to
ambiguous cases, like the interest in the potential conflict of rules, derives from the sages' attempt to create a system out of the biblical laws.

Many of the mishnaic cases which strike the contemporary reader as bizarre or farfetched merely represent the sages' desire to rationalize their system, in the sense of carrying their legal principles to their logical conclusions, and imagining all possible permutations of a given situation. Consider, for example, the way in which the Mishnah discusses the biblical rule that a man must marry his deceased brother's wife. The Mishnah takes up a series of hypothetical cases in which a husband had died. The simplest case is where the man who dies has only one brother. Here the brother is obligated to marry the widow of his deceased brother. But as the Mishnah progresses from case to case, other permutations of the situation are considered, which introduce complications in the law. The Mishnah varies the total number of brothers involved, the number of brothers who are married, the number of brothers who die, and the relationship of the brothers' wives to one another (in some cases the wives are sisters which complicates the problem, as marriage to one's sister-in-law is considered incest) (M. Yeb. 3:1-7). This series of cases, then, represents an attempt to carry one legal principle to its logical conclusion by testing it in all possible situations. There are many other instances of this tendency in the mishnaic corpus. As a literary work, therefore, the Mishnah represents an attempt to turn the biblical rules into a fully exposed and coherent system.

We are now in a position to understand why the Mishnah owes such a substantial debt to the mode of thought and ideas of the priestly writers of Scripture. We have seen, for example, that the Mishnah takes great interest in the laws of sacrifice and purity, both of which are concerns of the priestly writings. Moreover, the interest in classification which dominates the priestly writings is also absorbed into the mishnaic system. I would suggest that the Mishnah's sages found the priestly writings more compelling than other strands of Scripture because they represented the most systematic part of the biblical corpus. Like the sages of the Mishnah, the priests were interested in presenting a fully exposed system of Judaism. The priestly writings spell out in extraordinary detail the laws of sacrifice, laws of purity, genealogies, the specifications for building the Temple. Their concern was to provide a systematic and comprehensive account of the tradition as they understood it. The sages of the Mishnah had precisely the same concerns. As a group of intellectuals, they wished to work out a coherent and systematic account of God's will. For this reason, the priestly strand of Scripture drew their attention. To borrow a phrase from Lévi-Strauss, the sages of the Mishnah turned to the priestly writings because they were "good to think." In these writings, the sages found a system that displayed all the characteristics which as intellectuals they considered important.

To return to the main point of this inquiry, the Mishnah's theory of intention can also be understood as part of the sages' general interest in
systematizing and harmonizing biblical laws and ideas. This is most clearly evident in the mishnaic conception that human intention has the power to classify things. This idea represents a combination of two separate themes in the literature of ancient Israel, 1) the notion that God takes an interest in human thoughts and intentions, and 2) that the classification of objects is important in carrying out God's will. The former idea is a frequent theme in some of the biblical works, especially the prophetic writings, Deuteronomy, and Psalms. However, in biblical literature this theme is not integrated with an interest in classification, which is the hallmark of the priestly writer. The Mishnah, therefore, has joined these two streams of thought by introducing the category of human intention into the priestly world view. Whereas according to the priestly writer, the classification of all objects is determined by God (Genesis 1, Leviticus), in the Mishnah the classification of objects depends to a great extent on how people use or intend to use them.

In the course of this study, we have also discovered a second way in which the Mishnah brings together two biblical traditions. The Mishnah creates a synthesis of the two biblical stories of creation (Gen. 1 and 2). In many respects, the priestly account of creation (Gen. 1) is at the heart of mishnaic theology. This story says that as part of the work of creation, God classified the world into its constituent categories. The Mishnah explicitly links its system of purity to God's act of classification. It claims, for example, that things which are susceptible to impurity were created on alternate days of creation (M. Kel. 17:14). In making this claim, the Mishnah is suggesting that God's act of ordering the world is directly related to the classification scheme which governs the system of purity.

The Mishnah also refers to Genesis 1 when determining whether the seas can serve as a immersion pool (mikveh) for cleansing a person of ritual impurity (M. Par. 8:8, Miq. 5:4). The fact that God called the gatherings (mikveh) of water "seas" (Gen. 1:10) is used to prove that the sea can serve as an immersion pool (mikveh) for the purposes of ritual purity. Here, too, we see that the priestly account of creation functions for the Mishnah's framers as a paradigm for their system of purity.

But the Mishnah undermines the priestly theory of creation by combining it with the theology represented in the Yahwist story of creation (Gen. 2). One significant difference between this account of creation and the priestly version is the central part played by humanity. Whereas in the priestly story, Adam has a passive role in creation, in the Yahwist's version, Adam not only is created to till the garden but actually participates in ordering the world by giving names to the animals (Gen. 2:15, 19-20). As I have argued in Chapter Three, the Yahwist's idea that humanity plays an active role in classifying the world is at the center of the Mishnah's theology. In the Mishnah, humans carry forward the work of creation by determining which objects absorb impurity.
As is now evident, the Mishnah's theory of intention reflects in part the work of intellectuals interested in systematizing and harmonizing various strands of the tradition. At the same time, we can detect a polemic underlying the Mishnah's treatment of the biblical ideas. The Mishnah is clearly committed to the priestly framework and its overriding concern with issues of classification and ontology. Yet at the same time, the Mishnah dramatically relativizes the priestly world view by making the classification of objects dependent upon how humans think and act. The priestly writers, we recall, envisioned the world as divided into a set of fixed categories which had been established by God at the very creation of the world. In this view, everything has its clearly defined and unalterable place. The Mishnah retains the basic set of distinctions which occupy the priestly writers, such as the distinction between pure and impure, sacred and profane. But the Mishnah argues that people play a significant role in determining which objects fall into the various categories. A given object, therefore, no longer has a preexistent classification. Its status ultimately is determined by how Israelites use that sort of thing.

Accounting for this shift in perspective raises a complicated question in the interpretation of the Mishnah, because the Mishnah itself provides no explanation for its position. One school of thought relates this new stance to the despair among Jews over the destruction of the Temple by the Romans in 70 C.E. and the loss of a second war to Rome in 135 C.E.. According to this argument, the sages of the Mishnah responded to the chaos and disorder following the destruction of the Temple by asserting that Israel does have the power to control her destiny. The sages expressed this conviction by granting human intentions and perceptions a definitive role in ordering the world. In a world in which they lacked all social and political control, the sages of the Mishnah claimed that what humans do and say actually makes a difference. By this account, the Mishnah's theory of intention testifies to a group which has triumphed over its subjugation and humiliation. This explanation is suggestive in that it makes sense of why human intention and perception become so important in the mishnaic corpus. However, in my judgment we lack sufficient evidence to support such an interpretation. Apart from a few isolated references in the Mishnah, there is little indication that the sages despaired over their military defeat and the destruction of the Temple, let alone created their theory of intention as a response to those experiences. Therefore, while this argument is plausible, it is not very convincing.

In what follows, I will provide an alternative account of the same set of facts. Specifically, I will attempt to relate the Mishnah's conception of intention to the social characteristics of the group which produced the Mishnah. Simply stated, the sages of the Mishnah belonged to a social group which differed from that of the priestly caste. Consequently, they altered the priestly view of the world to conform to the characteristics of their own social group. In making this claim, I am basing myself on a modified version of Durkheim's theory that a
people's system of classification is directly related to the organization of its society.

Durkheim argued that it was the structure of society which originally gave human beings the idea of classifying their world. By Durkheim's account, the tendency to classify is not an inherent property of the human mind, as Kant had suggested and as Lévi-Strauss would later argue, but arose as people reflected upon the organization of their societies. Consequently, Durkheim suggested that the type of classification scheme which a group of people devised corresponded directly to the organization of their social group. If a society was divided into two clans, then people in that society would divide the world into pairs of opposites. One set of things would correspond to one clan (e.g. the moon, the black cockatoo), while their opposites would correspond to the other clan (e.g. the sun, white cockatoo).12

Durkheim's theory has been challenged from a number of quarters as being overly simplistic. In most societies, there is no simple correspondence between the classification system and social organization.13 Nonetheless, a modified version of Durkheim's theory is still persuasive. It would appear that a group's social characteristics and location in the social system influences how that group perceives the world and consequently goes about classifying things.14 In other words, although there is no one to one correspondence between social organization and schemes of classification, the social characteristics of a given group will shape its theory of taxonomy. Extending this argument to the Mishnah, it seems that the sages' desire to alter the priestly scheme of classification stemmed from the fact that they constituted a different sort of group than the priests, and hence found the priestly system of classification problematic.

There are a number of significant differences between the social characteristics of the priests and those of the Mishnah's sages. First, and perhaps most important, is the fact that the priesthood was a hereditary office. One was born a priest and retained that status for life. Consequently, a priest could not "drop out" of the priesthood, nor could a non-priest join the priesthood. Because the priestly status was fixed by birth, it was understood as being conferred on a person by God, for God had designated all Aaron's descendants as priests (Ex. 28-29, Lev. 8-10). In this respect, the priests constituted a caste that had a fixed relationship to all other groupings within Israelite society.15

In addition to constituting a caste, the priests also shared a single occupation and hence belonged to a single class within Israelite society. The priest's calling was to oversee the proper functioning of the Temple cult. Consequently, the priests could not own land or head farming establishments like the majority of Israelites (Deut. 18:1-6). As a landless class, the priests were supported from taxes on livestock and produce of Israelite farmers. In addition, the priests were entitled to eat parts of the animals which Israelites sacrificed in the Temple. We see, therefore, that the priests constituted a homogeneous group in the sense that
all those persons who shared the title priest also belonged to the same class of society and engaged in the same calling.

It is now obvious that the social characteristics of the priestly caste correspond in fundamental respects to the priestly world view as represented in Genesis 1 and Leviticus. The priestly writers envisioned the world as divided into a set of fixed and unalterable relationships. In their scheme, everything had a clearly defined place which God had determined at creation itself. This view speaks to and for a group that occupies a specified position within a rigid and highly stratified social system. Just as the status of priest was a clearly defined and unalterable status within the social system, objects in the priests' scheme also have definite and fixed classifications.

There is also a significant correspondence between the priestly theory of classification and the social fact that the status of a priest is fixed by birth. In this community, status is determined by God at conception and hence a priest has no power to alter his own status. The same conception of status is found in the priestly world view, where humans are given no significant role in determining the classification of things. In the story of creation, for example, the classification scheme was determined by God and thus existed prior to the creation of Adam. For this reason, Adam had no active role in organizing the world. He was but another element to be fit into the preexisting divine scheme. In Leviticus, too, the classifications appear rigid and predetermined. People play no role in determining an object's classification. Just as a priest has no power to define or alter his own status, in the priestly view of reality, one has no power to change the classification of a given object.

Because the sages of the Mishnah formed a very different type of social grouping than the priests, they felt compelled to introduce changes into the priestly theory of classification. In particular, status and prestige were determined very differently in the sages' community. The title of sage was not hereditary but based on an individual's mastery of Scripture and its interpretive tradition. In addition, the status of "colleague" (ḥbr) was based on one's way of life. One acquired this status by choosing to obey the rules of tithing and by keeping the laws of purity in one's home (M. Demai 2:2-3). In this community, therefore, one's status depended upon the choices and decisions one had made. Each individual had the power to alter his social location through discipleship and learning. For the sages, therefore, Israelite society was not a fixed set of relationships as it is was for the priests. Although a person could never decide to be a priest, an individual could choose to be a colleague and could aspire to be a sage.

The nature of status and prestige in the sages' community influenced their conceptions of classification. Since status in this group was linked to one's decisions and actions, the sages also granted humans an important role in determining the classification of things. In the sages' conception, the status of
objects is not predetermined and unalterable, but depends to a great extent on how people think and act.

The sages' unwillingness to accept a rigid system of classification may also have stemmed from the fact that they did not form a homogeneous grouping in the same way as the priests. Evidence suggests that the sages did not receive renumeration for their scholarly activity as sage and so had various occupations, including scribe, householder, baker, tanner, etc.\(^{17}\) Consequently, the sages constituted a status-grouping rather than a distinctive economic class. When a group is not homogeneous, it is much more difficult to agree upon a single, all-encompassing definition of reality. This would explain why social norms play such a definitive role in the Mishnah. The Mishnah clearly recognizes the fact that people of differing occupations and in different geographical locations act and think differently from one another. Indeed, the Mishnah claims that no single group's vision of reality is definitive for everyone else. Instead, the norms of a given group are normative only for members of that group. Consequently, the classification of a given object may differ depending upon the geographical location of its owner, or his occupation.

The Mishnah, therefore, represents the attempt by a new social group to appropriate the priestly world view, and make it into a meaningful system for all sectors of Israelite society. This tendency is evident in the Mishnah's concern with how the levitical laws apply to all the various classes of Israelite society, including the householder, merchant, tanner, baker, and others. Moreover, even those tractates that deal explicitly with the Temple and cult discuss it very much from the perspective of non-priests.\(^{18}\) In this study, for example, we have seen that the sages devote a great deal of attention to discussing the intentions of priests when sacrificing an animal. But as I have shown, the underlying concern is whether the priest's intentions correspond to the original intentions of the householder who brought the animal for sacrifice. So even when discussing the sacrificial cult, it is the householder and his concerns which trigger the framers' interest.

The same tendency is evident in the Mishnah's discussion of the various donations which Scripture requires the Israelite farmer to give to the priests and levites. But in discussing these topics, the Mishnah departs from Scripture by taking the perspective of the farmer. Whereas Scripture speaks from the perspective of those who receive the various offerings, the Mishnah reflects the concerns of the persons who have to dedicate such offerings, namely, the Israelite farmer. The Mishnah focuses, therefore, on the question of when and how one removes the tax from one's produce.\(^{19}\)

The Mishnah thus forms a kind of palimpsest, where one view of reality is superimposed upon another. At the foundation lies the priestly world view which was appropriated from Scripture. Superimposed upon this base is another system which is the sages' own contribution and speaks for and to their own social group. The dual character of the Mishnah is particularly evident when the
Mishnah discusses the ranking of Israelites according to status. The Mishnah recognizes that with respect to the Temple cult, a priest takes priority over other types of Israelites, because only a priest can perform certain Temple functions. On this scale, therefore, the priest stands at the top rung. Next stand other Israelites who can perform some but not all of the cultic functions. On the bottom rung stands the bastard (mamzer), who is not even permitted to enter the Temple. This system of ranking obviously derives from Scripture and represents the priestly caste.

At the same time, the Mishnah recognizes a second scale of ranking based on another criterion, namely, the extent of one’s learning. On this scale, the sage stands on the highest rung, followed by the disciple of a sage. On the bottom rung stand non-educated Israelites. This scale obviously speaks for the sages and their social group. Significantly, the sages explicitly claim that this second scale, which is based on learning and discipleship, takes priority over the first scale which is based on one’s status in the caste system. Thus a bastard who is a disciple of a sage takes precedence [in matters of honor] over a priest who is ignorant (M. Hor. 3:8). In summary, I have argued that the Mishnah’s revision of the priestly world view derives from the nature of the social group which produced the Mishnah. Because membership in this group did not depend upon heredity, and because the group itself was not homogeneous, it was unwilling to embrace a rigid and static system of classification.

Although we have no way to empirically test the theory set out above, the Temple Scroll found at Qumran lends support to the thesis at hand. This scroll written some time in the second century B.C.E. takes up many of the issues addressed in Leviticus, including the rules governing the functioning of the cult, and sources of impurity. Evidence suggests that this document was produced in the community at Qumran, a group in which status was determined in accordance with heredity. One priestly line, the descendants of Zadoq, functioned as leaders of the community. The presence of a priest was required at all social functions at which ten or more members were present. In addition, the structure of the community was strict and formal. Each member had a definite place in a hierarchical ranking.

The Temple Scroll, therefore, can serve as a test case for our theory. Since the group that produced it defined status in terms of heredity, our theory predicts that we would find no sign of the relativizing tendency which was so evident in the Mishnah. In particular, we would expect to find that in this system human intention would play no role in determining the classification of objects. Examination of the Temple Scroll confirms our expectations. The scroll exhibits none of the tendencies which are so prominent in the Mishnah. The Temple scroll considers the classification of objects to be self-evident and unproblematic, and consequently, no attention is given to determining the categories into which various objects fall. More significantly, the two crucial words in the Mishnah which stand for intention, namely, mahshabah and kavvanah, do not appear even
once in the Temple scroll. The Temple Scroll, therefore, lends support to the theory set out above: the Mishnah's tendency to base the classification of objects on human activity and intention derives from the growth of a social group which does not determine status on the basis of lineage.

The theory at hand also fits well with what we know about larger trends in the period at hand. Between the second century B.C.E. and the first century C.E., there is a growing shift away from a Temple-centered Judaism, and consequently away from a priestly definition of Judaism. Three developments during this period attest to this trend. First, the development of the synagogue signals a new attitude toward worship and the cult. The synagogue represented the possibility of worshipping God outside the confines of Jerusalem and without recourse to the Temple cult or the priestly class. Archeological and literary evidence now places the origin of the synagogue in the second century B.C.E.

Second, the same period witnessed the emergence of the Pharisees, the predecessors of the sages who actually wrote the Mishnah. Literary evidence suggests that the Pharisees observed levitical rules of purity in their homes. The fact that this group was keeping levitical rules outside the Temple also supports the view that new modes of piety were emerging that were not entirely centered on the Temple and the priests.

Third, it is well known that the Temple ceased to play a central role in earliest Christianity. Paul, for example, conceives of the Christian community as replacing the Temple and explicitly refers to the community as the "Temple of God" (I Corin. 3:16-17). Similarly, The Gospel of Mark speaks of Jesus as the replacement of the Temple (15: 29, 37-38). In both instances, we see that the Temple had merely a symbolic value. As a functioning institution it was unimportant.

What we find, therefore, is that among those who claimed to put forward a definitive theory of God's will and the holy life, the Temple no longer served as the center, and the priests no longer held a preeminent status. Perhaps this trend was given greater impetus with the destruction of the Temple in 70 C.E.. But all indications suggest that this process was well under way before the Temple was destroyed. As Jonathan Smith puts it, "if the Temple had not been destroyed, it would have had to be neglected." The Mishnah's attempt to articulate a form of Judaism that speaks for a non-priestly group, therefore, fully accords with other developments during the period in question.

In conclusion, we now know why intention plays such a key role in the mishnaic system as a whole. The idea that human intention is able to change the status of things expresses the distinctive perspective of the social group which produced the Mishnah. In this group, one's status depended upon what one thought and did, and so, in its understanding of the world, humans could also alter the character of reality itself. For this reason intention provided the point of departure for the sages' revision of the priestly world view which they had
inherited from Scripture. Since the priestly vision of reality corresponded to the characteristics of the priestly caste it could not speak for the new carriers of the tradition, namely, the sages. By introducing the concept of intention into the priestly system, however, the sages relativized the priestly world view and thus made this vision of reality their own. In sum, the Mishnah's theory of intention represents at the cognitive level what had already occurred in the social realm, namely, the emergence of a distinctive group, with characteristics that differed from those groups which previously played a dominant role in defining Judaism.