Early Rabbinic Civil Law

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CHAPTER II

Mishnah Tractate Baba’ Mesi’a
Literary and Redactional Problems

How the Mishnah was written? If the members of the great assembly began to write it and the sages of each and every generation wrote part of it until the generation of Rabbi [Judah the Patriarch] who sealed it—lo, the majority of the Mishnah is anonymous, and “the anonymous Mishnah is R. Meir”! And most of the sages of the Talmud [i.e., the Mishnah] whose names are made explicit, R. Meir and R. Judah and R. Yose and R. Simeon—and they were all the disciples of R. Aqiba; and the general rules that our sages of blessed memory taught us in the Talmud, that the law follows R. Aqiba against his fellow, and R. Yose against his fellow—they are all from the end of the second Temple [sic!]. Why did the earlier Rabbis leave over the majority to the later, and especially if nothing of the Mishnah was written until the end of the days of Rabbi?¹

In the preceding chapter, I have attempted to draw attention to the problem of reconstructing “history” from Rabbinic texts, and in particular from the Mishnah. The Mishnah is neither an authoritative archive of laws, practices and events, nor even a mine of “facts” to be uncovered and, if necessary, cleansed, purified or cut to shape. Instead, I suggested that we should pay close attention to the Mishnah, and m. Baba’ Mesi’a in particular, as itself an artifact that must be placed into a historical context. This means unpacking the underlying assumptions and referents of the Mishnah, to the extent that these can be recovered. I will sketch out the outlines of some of these in the next chapter. However, this approach to the Mishnah also requires that we pay close attention to the way in which the Mishnah itself came into being, and it is to this that I now turn. In particular, I wish to draw attention to m. Baba’ Mesi’a as a document that has been edited from sources.

In part, my goal is to problematize what we mean by Rabbinic “texts.” Western literary tradition has conditioned us to expect “texts” to represent unities (or, at least, apparent unities whose very integrity must be

¹ From the question of the community of Kairouan to Sherira Gaon (late tenth century). B. M. Lewin, ed. 'Iggeret rab šerit' qā'ôn (1921) rpt. (Jerusalem: Makor, 1972), 5.
deconstructed). If the argument about the redaction of *m. Baba* Mesi' *a* from sources is correct, the Mishnah reflects a technology and sensibility of text production rather different from that of conventionally “authored” texts, one that betrays the indeterminacies and complexities of meaning on its surface. (How, for instance, should we read apparently contradictory passages?) However, my primary concern here is historiographical. If we are to be able to contextualize the contents of the Mishnah (in this case claims about the way in which the economy ought to work) in the “real” world in which “real” men produced it, we have to take seriously the mechanics by which the Mishnah makes its message known, a process that is not only literary, but social. By focusing on the sources of the tractate, I am attempting to highlight the emergence of the Mishnah within a larger human framework of authors, compilers or transmitters of traditions that conformed to certain conventions and that addressed topics of concern to the Rabbis who produced the Mishnah. What social relations or standards of authority and authenticity are presupposed in this text that uses already existing material, at least in part, to make its statement?

In this chapter, I ask first what evidence there is that suggests that the Mishnah has utilized sources; second, whether there is any evidence that suggests what those sources might have looked like before their redaction into their present context; and third, what traces there are of the process of redaction itself: how sources might have been used, altered, glossed or corrected. Finally, I consider the significance of statements attributed to named individuals. Although these are the only internal markers of chronological development, I point out the secondary or supplementary character of the attributed material, and the limitations of any argument based on attributions for the dating of the ideas or sources of the tractate. At the same time, the attributed material offers some support for the contention of this chapter that the sources of *m. Baba* Mesi' *a* have undergone a process of revision and editing. Since statements attributed to a particular sage, although apparently supplementary, can link pericopae of disparate material together, such statements may reflect on the process of redaction through circles to whom the traditions of individual sages were particularly important. This last observation is important, since it leads us, however tenuously, into the realm of the social context for the production of the Mishnah. The existence of different and occasionally contradictory source material suggests that different “schools” (or disciple circles) may have existed. The interest in organization and systematization that is manifested in *m. Baba* Mesi' *a* may possibly correspond to an attempt to centralize and institutionalize the Rabbinic movement.
A. Sources in the Mishnah

The question of the “source criticism” of the Mishnah has a long history. The earliest students of the Mishnah could already use the idea that the Mishnah was not of one piece as an analytical tool. Thus, in the Tosepta an apparent conflict between two passages in *m. Sukka* is resolved by the assertion that they reflect different views, despite the fact that they appear together in the Mishnah. Amoraim, too, suggested similar solutions to such problems, as in the exclamation: “A contradiction: the one who taught this [passage] did not teach this [one]!” Amoraim were acute readers of the text of the Mishnah, and sensitive to the implications of subtle differences in language or formulation. Nevertheless, ancient Rabbinic exegesis of the Mishnah reflects hermeneutical purposes (legal, intellectual or religious) and stance that are those of neither the historian nor the text critic, and reach different results. Thus, to take an example from *m. Baba* Meši‘a, M3:9 appears to be internally consistent: the liability of a depositary who moved the deposit is different in a case in which the owner specified that the object (a jar) be kept in a specific place, than when he did not make such specification. Yet the Babli cites the exclamation of R. Yohanan that “whoever explains [the case of the] jar according to one tanna? (‘reciter’), I will carry his things with him to the bath house” (B41a). This objection attributed to R. Yohanan seems to derive from a specific Amoraic (or Talmudic) exegetical agenda, and not from any “internal” problem with the pericope from the Mishnah.

Similarly, statements are ascribed to Amoraim that attribute whole tractates,
chapters (not necessarily identical with ours), and individual pericopae to specific tractates in circles other than those that produced other parts of the Mishnah, as L. Ginzberg has shown. Nor is it implausible that Rabbinic literature preserves valuable traditions about the composition of Rabbinic texts. But where modern arguments about the redaction of the Mishnah are based on later Talmudic traditions (and, in the case of m. Tamid, on contradictory traditions) they rely on traditional assertions whose accuracy can generally not be determined. Equally problematic is reliance on other types of traditions supplied by later Rabbinic literature and utilized by scholars to determine the history and nature of the redaction of the Mishnah. To take one oft-quoted example, in Abot de-Rabbi Natan (A, ch. 18), R. Aqiba is described as a laborer who has gone out and gathered different kinds of produce, and then proceeded to separate them by kind: “thus R. Aqiba made all the Torah into separate rings [or: coins].” Leaving aside the problems of the reliability of the attribution (to R. Judah the Patriarch), the dating of the tradition itself, and the late date of the text in which it appears, the question remains, to what extent this statement may be used as evidence for R. Aqiba as a redactor of a proto-Mishnah. The context of the passage is a highly

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6 E.g., y. Git. 8:5 (39c); b. Ned. 82a.
9 Ginzberg, 1919, 285–93. See also N. Krochmal, Mōreh nēḇûḵē ha-zēmān, ed. L. Zunz (Lemberg, 1851), 205–9; D. Hoffman, “The First Mishnah and the Controversies of the Tannaim” (1882), in The First Mishnah [and] the Highest Court, tr. fr. German P. Forscheimer (New York: Maurosho, 1977) 27–29; L. A. Rosenthal, Über den Zusammenhang der Mischna (Strasbourg, 1909), 42; Epstein, Siprūt, e.g., 28, 31, 53, 55. Albeck, Mābō; 85–6, while disagreeing with the reading of the traditions about Tamid and Middot by Krochmal and others, still feels compelled to accept their basic veracity (“It follows, that since according to the Yerushalmi it is a fixed tradition ... we can only accept it .... However, we have no authority to interpret it in any other manner than that in which it is interpreted in the Yerushalmi ...,” p. 86).
10 On Abot R. Nat. see the discussion and literature in H. L. Strack, Introduction to Talmud and Midrash, ed. G. Stemberger, tr. M. Brockmuelh (Minneapolis: Augsburg-Fortress, 1992), 245–7 (dates given for the composition of the work as a whole range from the third century to the ninth).
11 See, e.g., S. Lieberman, “The Publication of the Mishnah,” in Hellenism in Jewish Palestine (Texts and Studies 18: New York, JTSA, 1950), 95:
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stylized classification of sages using similes (a pile of nuts, a filled \(bālām\) storehouse, a merchant's basket) and their explication. Such an “enumeration of the merits of sages” might have been worked out based on knowledge of the activities that the individual sages undertook during their lives, but remains typological rather than strictly biographical. The present instance, moreover, does not appear to deal with the activity of redaction. The formation of “rings,” whatever they were, is a special attribute of R. Aqiba's wisdom and teaching style, to be contrasted with that of two other sages whose teaching resembled the cascading of a pile of nuts or stones (R. Tarfon) or a merchant who always seems to have just the produce his customers want (R. Eleazar b. Azariah).

We are left, at least in the first instance, with literary criteria. How does the tractate, chapter or pericope hold together? Are there persistent patterns or abrupt disjunctures in the text? Can glosses be identified? Are there contradictions in the text? The purpose of this section is to identify some of the criteria for discerning the seams between sources, and to exemplify these through an analysis of \(m. \text{Baba} \text{'Mesi'\a}\).

These rings seem to signify general rules, i.e., R. 'Akiba used to convert case law into abstract general rules. At any rate the part played by R. 'Akiba as a systemizer of the Mishnah is quite evident from the tradition reported in \(Aboth de\text{R. Nathan}\). See also Z. Frankel, \(Drakh ha-mishnah\) (Leipzig, 1859), rev. ed. I. Nusbaum (Tel Aviv: Sinai, n.d.), who on 123f. cites the passage as a discussion of R. Aqiba’s method of study, but on 221 cites it again as an indication that R. Aqiba was instrumental in the redaction of the Mishnah; Epstein, \(Siprut\), 72.

12 “This is what R. Tarfon was like when \((bē-\text{'a}d \text{'e}-)\) a disciple of a sage would come in to him and say: ‘Recite [i.e., “teach”] to me’...”; “Thus was R. Eleazar b. Azariah at a time when \((bē-\text{zēmān \text{'e}-})\) disciples of sages came in to him: he asked him [a question] in connection with Scripture, he would say [i.e., “answer”] to him ...,” \(\text{‘Ab. Rab. Nat.} A 18\) (ed. Schechter, p. 67). After a substantial gap, the other two members of R. Judah’s list are dealt with briefly. Again, the images probably refer to wisdom and personal style rather than a “literary” project: R. Yohanan b. Nuri is “a basket of \(hālākō\);” Yose the Galilean is “one who picks [produce] well, without arrogance of spirit, for with it [i.e., his spirit?] he seized the measure \(middā\) of sages from Mt. Sinai, and with it would teach all of the Sages of Israel” (ed. Schechter, p. 68).

13 This is where the work of Albeck in his \(Māhō\)‘; and in his \(Untersuchungen über die Redaktion der Mischena\) (Veröffentlichungen der Akademie für die Wissenschaft des Judentums. Talmudische Sektion 2: Berlin, 1923); Epstein, \(Siprut\); A. Weiss, \(Lē-heqer siprut ha-mishnah\), \(HUC\)A 16 (1941), 1–33; and, more recently, the work of D. W. Halivni (see Chapter I, n. 71), excel.
1. Context, terminology, style.

The clearest example of two passages stemming from two different authors is that of a contradiction. For instance, M7:10 [E–G] allows the “four watchmen,” connected by the Mishnah to the biblical discussion of Exodus 22:6–14, to stipulate changes in the level of their liability, while M7:11 [A] prohibits the making of conditions “on [i.e., contrary to] what is written in the Torah.” On the face of it, at least, these passages contradict each other, although it is not impossible that a harmonizing interpretation could already be presupposed in the juxtaposition of these passages. M4:5–6 deal with the problem of worn coins: if they are worn beyond a certain point they may not be used. At the end of M4:6, however, the following, apparently contradictory, comment occurs: “and he may give it for [redemption of] second tithe and he ought not hesitate, for this [i.e., failure to accept the coin] is only stinginess” [F–G]. One possible explanation is that the author of M4:6 [F–G] is in disagreement with the various rulings in M4:5 about the permissible amount of wear (ranging from 1/24 to 1/6).

For the most part it is difficult to find outright contradictions. Instead we can point to shifts in frame of reference, that is, to passages that do not

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14 For the connection between the Mishnah’s concept of deposit with the passage in Ex. 22:6–14 see H. Lapin, “Early Rabbinic Civil Law and the Literature of the Second Temple Period,” JSQ 2 (1995), 149–83. The contradiction between M7:10 and M7:11 was already recognized by the Babli (B94a) (see the note to M7:11 in Appendix I). The force of the expression “All who make conditions on [i.e., contrary to] what is written in the Torah, his condition is invalid” is that it is the stipulation alone that is invalid, but that the transaction made conditional upon the stipulation retains its validity, as is clear from m. Ket. 9:1 (cf. also m. B. Bat. 8:5; t. Ket. 9:2; t. Naz. 2:2; t. Git. 9:1; t. Qid. 3:7).

15 A clear attempt at such harmonization that occurs in t. Qid. 3:8 suggests a possible way in which this might have been carried out: “This is the general rule: All who make conditions on what is written in the Torah: in a matter of money his claim is valid, in a matter that is not money his claim is invalid.”

16 Compare m. Kel. 12:7: “How far may [a sela] be worn down and one still be permitted to keep it [for use]? Up to two denarii [=1/2]; [if it contains] less than this let him cut it.” For the relationship between M4:5–6 and m. Kel. 12:7 see T3:8 and the discussion below in Chapter IIIA.1. At any rate, it certainly seems clear that there existed a far more permissive view than that found in M4:5, and this may well be what underlies the qualification in M4:6 [F–G]. The interpretation given here is not that favored by the medieval commentators, who tend to explain M4:6 [F–G] as a gloss of M4:5 [A] (“How much may a sela be lacking and there [still] not be honayyâ in it?”): as long as the coin is still valid, adds M4:6 [F–G], there is no reason why it should not be accepted as second tithe money. (See the second view in Tos. s.v. Nîtnâh [B52b]; Rosh to B52a who cites Rif and Rabad; see also Nîmmîgê yôsêp to Rif ad loc.).

17 On the possible contradiction between M7:9 [A] and [H] in some manuscripts (but not the Kaufman ms.) see the note to M7:9 in Appendix I. The contradiction between M8:4 [F–S] and [A–E] (a contradiction that may have already appeared in a cluster of pericopae,
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quite disagree but were very likely not authored by the same person in the same context. For example, M2:7 [E–H] distinguishes between finding “a thing that produces and eats” and “a thing that does not produce and eat.” The latter, since some expense is required for its maintenance, is to be sold and the proceeds kept, rather than maintained. The next pericope proceeds with a series of rules about the care that certain kinds of objects should

M8:4–5, utilized by the redactors as a source) is discussed below in Section B.2, in connection with the relationship between M8:1–3 and 4–5. Another possible example of contradiction that is worth noting is M2:2–4. In M2:3 [C–E] a utensil, kēli, found in a dungheap cannot be appropriated but must be left for the owner (who presumably hid it there) or, if the finder did take it, must be publicly proclaimed. By contrast, M2:3 [F–2:4 [D] presents a series of cases in which a kēli (the term does not occur in these cases, but carries over from M2:3 [A]), when found, may be kept. I suggest that M2:3 [C–E] considered a generic utensil as the kind of thing the owner was likely to be able to identify (in agreement with M2:2, which ruled that a kēli “as it is” [B], i.e., empty, as opposed to filled with produce, must be publicly proclaimed), whereas M2:3 [F–2:4 [D] considers such an item to be unidentifiable. Otherwise, I see no way of accounting for the difference between, for instance, the rule regarding a dungheap (M2:3 [C–E]) and that regarding a new wall [G–J]. (The question of why in the case of a new wall the finder is not required either to leave the item or, having taken it, to proclaim the find, was already raised by Tos. s.v. Bē-kēšēl [B26a]; see also Maimonides to M2:3.) The view taken here is not the traditional one. Tos. s.v. ‘Ahar ha-gapār (B25a) understood a dungheap as a “place that is guarded,” i.e., where one might leave an object for safe keeping, hence the finder ought to leave it in its place. It is not clear, however, why a dung heap should be any more “guarded” than the other installations mentioned. The case of the old wall was already glossed in the Tosepta: “for he can say that they belonged to the [pre-Israelite] Amorites” (T2:12; cf. Y2:4 [8c]; B25b). That is, the wall must be old enough (according to the Babli the object must be rust-bitten [sāṭīth] enough) to be presumed ownerless, and therefore the finder may appropriate it. The commentators recognized that the case of a new wall requires the same logical step to distinguish it from that of a dungheap. In the words of Rosh (to B25b): “In a new wall, that is, in a wall about which it is known that the forefathers of the present owners built it and it never left their possession ... even in the case of something that has a distinguishing mark ... because it is very rust-bitten” (see also, e.g., Tos. s.v. Bē-kēšēl [B26a]). This is a rather strange interpretation of “new,” and is designed to remove an exegetical difficulty, and does not correctly interpret the passage at hand.

In addition, note that TYT and Melekets ṭelomoh (the latter basing himself on Rosh to B111a, dependent, in turn, upon Rif, although neither make the internal contradiction in the Mishnah explicit) took M9:11 [C] (following the view attributed to Rab in B111a: “a worker hired for hours, [hired] for the day, he collects all through the day ... [for] the night, he collects all through the night”) to conflict with [D–F] (“... if he left [work] during the day, he collects all through the [same] day, if he left [work] during the night he collects during the [same] night and the following day”). However, this is neither the inevitable interpretation of the Babli (which, more likely, attributes the dispute of Rab and Samuel, and not the clauses of the Mishnah, to an antecedent Tannaitic dispute), nor is it clear that the views of Rab and Samuel ought to be taken as exegeses of the Mishnah rather than independent legal statements, of which that attributed to Rab apparently conflicts with the Mishnah.
receive (books, fabric, silver or brass, gold or glass; M2:8 [A–G]). The implication of the binary opposition in M2:7 is that there is no middle ground between “every (kol) thing that produces and eats” and “that which does not produce and eat.” In that case, the items listed in M2:8 should fall into the latter category, that is, they should be sold off rather than cared for. It is clear, however, that the assumption behind M2:7 is that the lost object is an animal whereas the items enumerated in M2:8 are inanimate. This suggests that the same author is not responsible for both passages as they appear before us, even though they may not actually conflict.

In the present instance we can go somewhat further in elucidating the contexts of the two passages. The problem of lost animals is strikingly absent from the discussions of Chapters 1–2. Indeed, with the exception of M2:9–10, M2:7 is the only pericope that deals with domestic animals. This is all the more noticeable in light of the fact that the Pentateuchal verses on the subject deal primarily with animals. It is therefore probably no accident that M2:7 [A–H] is explicitly tied to the exegesis of Deuteronomy 22:1–3, citing portions of 22:2 as prooftexts. The topic of lost animals recurs in M2:9; once again, the passage is tied to Scriptural interpretation. First, Deuteronomy 22:2 is cited as a prooftext. Second, the connection with Scripture accounts for the connection of M2:10 with M2:9. The topic of M2:10 [E–N], the obligation to care for an animal suffering under a burden, is irrelevant to the discussion of Chapters 1 and 2, but the presence of M2:10 is explained by the fact that in both Exodus (23:5) and Deuteronomy (22:4) it is this topic that immediately follows the rule about lost animals. Moreover, there are distinct parallels between parts of M2:9 and M2:10, suggesting that (at least parts of) these pericopae were intended to form a unit:

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18 That M2:7 [E–H] is concerned primarily with animals is already implied by T2:20, in which a somewhat different version of the Mishnaic passage includes the gloss “such as a cow or an ass” to “a thing that produces and eats” (M2:7 [E]) and the gloss “such as a goose or a chicken ... in the case of calves or foals ...” to “a thing that does not produce and eat” (M2:7 [F]). (See also Maimonides Code, Gēzēlā wa-'abdā 13:15 whose paraphrase of our passage opens: “He found a living thing [lit. ‘a thing that has the spirit of life in it’], which, indeed, he has to feed: if it was a thing that produces and eats ....”) The expression “produces and eats” is also found in M5:5 where the context once again involves animals.

19 There are two other passages that deal with finding living things. The deer and birds introduced in M1:4 are wild: the question that arises is merely who has the right of acquisition. Similarly, the bound fledgling birds in M2:3 [A] are presumably birds that have been caught. M2:7 and M2:9, however, are concerned with domesticated farm animals.

20 Ex. 23:3: “If you should come upon the ox of your enemy or his ass ....” Deut. 22:1: “You shall not see the ox of your brother or his sheep ....” The rule in Deut. is extended, however, to include a garment (22:3); cf. M2:5.

21 It should be noted that M2:9 [A–C] is in some literary tension with M2:10 [A–B]. M2:9 distinguishes between animals that are grazing on the road (which are presumed not to be
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Although in one case the verse cited stems from Deuteronomy and in the other from Exodus, the parallels between the passages extend to the grammatical form of the Biblical lemmata cited (the emphatic construction with infinitive absolute). M2:9-10, I suggest, derives from a source that is concerned with Scriptural interpretation and that allows the order of Biblical verses to dictate its literary structure. A similar argument can be made for separating off M2:7 [A-H] as stemming from a source concerned with the Biblical verses. The rest of Chapters 1–2 are rather unconcerned with Scripture.

lost) and those with their burdens turned over or running in vineyards (which are presumed to be lost). In M2:10 [B] the rule is given that if one finds animals in the public domain (of which a road is one example) one is obligated with respect to them. These pericopae need not conflict: M2:9 is concerned with the attitude of the animal; M2:10 with its location. (Rabad, cited by Rosh [to B32a], suggested that the animal in M2:10 is escaping from a loud noise [in contrast to the case of M2:9 where the animal is grazing], or that the finder felt that someone might appropriate the animal if he did not take it in; Rosh himself gave a more general version of the same view, namely, that in M2:10 [B] the animal is clearly lost.) Nevertheless, it would seem that either M2:9–10 was composed with considerable awkwardness, or the awkwardness stems from the process of redaction (either through the combination of originally disparate material or through the modification of M2:9–10 in the process of its removal from its original context). It is worth noting that in Sipre Deut. a parallel to M2:9 is cited in connection with Deut. 22:1 (“... or his sheep straying,” in the manner of its straying. From here they said [mi-ka’n ‘āmrd]: ‘What is a lost object ...’ [=M2:9 [A–C]]”) (Sipre Deut. 222 [ed. Finckelstein, pp. 255–6]); but M2:10 is cited in connection with Deut. 22:4 (“‘On the road,’ and not in the cattle shed. From here they said: ‘[If he found it in the cattle shed...’ [M2:10 [A–B]])” (Sipre Deut. 225 [ed. Finkelstein, p. 257]). That is, the passages are taken to refer to different legal problems, the one to lost property, the other to a struggling animal. Since Sipre Deut. appears to cite the Mishnah we can, at most, conclude only that there was an ancient exegetical tradition that resolved an apparent conflict between M2:9 [A–C] and M2:10 [A–B]. If this exegesis is correct, and M2:10 properly relates to the question of helping an overburdened animal, M2:10 [D] (“[If his father said: ... ‘Do not return it’”), which apparently refers to a lost animal, becomes problematic. Compare the related tradition in Mek., which may attempt to resolve this problem by recasting 2:10 [D] in terms of an overburdened animal as well: “[If his father said: ‘Do not unburden with him,’ or ‘Do not load with him,’ or ‘Do not return to him his lost object ...’” (Mek., Kaspā’? 20 [ed. Horovitz, Rabin, p. 325]). On the relationship of m. B. Meḥ and the halakhic midrashim see further Appendix II.
The dependence of both M2:7 [A–H] and M2:9 on Scripture shows itself in terminology as well: M2:7 [A] and M2:9 [A–C] both use the noun ‘abêdâ, “lost object,” the noun used in Deuteronomy 22:3. Heretofore in Chapters 1–2 the term mêṣî’â, “found object,” has been used. The dependence or independence of a passage on the text of the Torah can be an important indicator of what I have called a shift in frame of reference.

Anomaly of style is another indicator of distinct origin. By far the best example, M2:5, is once again a passage that is dependent upon Scriptural interpretation:

[A] Even the garment was included among all these, and why did it go out [and was mentioned separately]?

[B] So that analogy be made with it:

[C] Just as the garment is unique in that it has identifying marks, and has claimants,

[D] so for everything that has identifying marks and claimants, he is required to proclaim.

The “garment” mentioned in M2:5 [A] is that referred to in Deuteronomy

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22 M2:11, with no particular connection with Biblical usage, also uses ‘abêdâ. This suggests that M2:11, literally and topically independent of the rest of Chapters 1–2, stems from a “source” with little contact with the materials preceding it in the tractate. In using ‘abêdâ M2:11 corresponds to the regular usage of the Mishnah elsewhere. When the Mishnah refers to the obligation to return lost objects the expression used is typically one or another variant of mêšî ‘abêdâ, “one who returns a lost object”: M3:6; 6:7; 7:4; elsewhere in the Mishnah: m. Ned. 4:2; m. B. Qam. 5:7; m. Šebi. 6:1 m. Hor. 3:7; m. Kel. 27:12. On several occasions ‘abêdâ clearly echoes Biblical usage as it does in the case of M2:7 and M2:9: M7:8 (=m. Šebi. 8:1), echoing Ex. 22:8; m. Šebi. 4:5; 5:3, echoing Lev. 5:21–22, 23. Incidentally, the kind of lost object presupposed by the term ‘abêdâ in m. B. Qam. 5:7 is an animal.

By contrast, the usage of mêšî as a noun with the concrete sense of “found object” is restricted to the first two chapters of m. B. Mes. (M1:3, 4; 2:1). Elsewhere, as also in M1:5, the verbal noun mêšî retains the emphasis on the action, approximating “that which [someone] finds” (see Segal, 103–4, §227), especially in connection with the question of who acquires that which someone of restricted legal personhood, such as women, minors and incompetents have found: m. Yeb. 10:1; m. Kêt. 4:1, 4; 6:1; m. Git. 5:8; 8:5; m. Nid. 5:7 (see also m. Tôh. 3:5; 4:12; 5:7; ki-šî’at mêsîṭaṭân, purity or impurity “according to its state at the time of its being found”).

23 It is not, however, the only one. For instance, ‘anê in M7:9 bears a somewhat different meaning from M7:10 [A–D] (see Appendix I). Similarly, in Chapter 4, hônayâ can have a technical meaning (overcharge in sale) or retain its root meaning of “oppression” (see Appendix II). It should be noted that the fact that a pericope utilizes or is even structured around a Biblical verse does not necessarily imply a different frame of reference from that of another pericope. Thus, for example, although M8:1 is structured around conditions given in Ex. 22:13b–14a, the transition from M8:1 to M8:2–3 does not reflect such a shift.
22:3: "And so shall you do with his ass, and so shall you do with his garment, and so shall you do with every lost object (‘abédā) of your brother...."

As a passage from the Mishnah M2:5 is quite odd, but the style is quite typical of the "dialectical midrash" form well known from the "Tannaitic" midrashim. Curiously, M2:5 does not explicitly cite the verse upon which it is dependent (the verse is absent in all the versions of the Mishnah checked). Presumably the verse has been omitted in the process of inclusion of the pericope into the Mishnah, but the basic stylistic contours remain unchanged.

It is not only on the level of legal force or literary formulation that the seams between pericopae appear, but also on the level of terminology. I have already noted this in connection with the terms ‘abédā and mēštā. Similarly, M5:1 sets up a binary opposition between two Biblical terms for usury, nēšēk and tārbīt. "Which is nēšēk and which is tārbīt? Which is nēšēk?... And which is tārbīt?..." [A, B, E]. The former term is taken to refer

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24 A parallel to M2:5 occurs in Sipre Deut. 224 (ed. Finkelstein, p. 257). D. W. Halivni, Midrash, Mishnah and Gemara: The Jewish Predilection for Justified Law (Cambridge: Harvard, 1986), 53, has called this type of midrash "complex" or (in oral communication) "complex midrashic midrash," to be distinguished from "mishnaic midrash." (Incidentally, the passage in Sipre Deut., like M2:5, has no lemma from the verse, but in the case of Sipre Deut. this is to be explained by the broader context in which the verses are cited.) Such interpolated midrashic fragments are not unheard of in the Mishnah: see Hoffman, 1882 (1977), 11, 13; see also the discussion by Halivni, 1986, 47–58 (a clear example of such a passage is m. Mak. 1:7). The relationship between the halakic midrashim such as Sipre Deut. and the Mishnah is dealt with briefly in Appendix II. For the present it is enough to point out that the form which M2:5 takes is a midrashic one.

25 See Epstein, Siprāt, 234–40. Epstein, Nūsah, 1129–31 addresses passages where it is precisely the language of Scripture that exerts pressure on the language of the Mishnah. In addition to the examples cited below, see the two disputes between Hillelites and Shammaites in M3:12 [A–C; E–G], which use the Biblical expression šalah yād (Ex. 22:7); where related issues are raised elsewhere (M3:9; M3:12 [H–J]) no such terminology is used.

26 Compare the force of similar rhetorical structures in M2:1–2; a variant of this structure appears in M7:2 (without the introductory question). In both cases, the force of the pericope is to make a single subdivision in the legal field (found objects must either be kept or proclaimed; workers either eat or do not). See, e.g., m. B. Qam. 2:4 (distinguishing between the terms mū‘ād and tām; the case is complicated by the fact that this pericope is used to gloss the item "ox" in the list of "five tamīm and five mū‘ādim"); m. Zeb. 11:2 (glossing a rule that mentions sin-offerings that were or were not at one time valid [šē- (lo’) hāyā (sic) lāh šā’at ha-kolē]; "Which is it that was at one time valid ?... and which is it that was not at one time valid?..."; this passage has a parallel in m. Meqil. 1:1 in which the opposition is between offerings that did or did not have a time during which they were permitted to priests [šē- (lo’) hāyā (sic) lāh šā’at betār la-kohanim]; m. Qin. 1:1 (distinguishing between two Biblical terms for vows [i.e., votive offerings]: "Which is a neder?... and which is a nēdābā?..."; see Lev. 7:16; 22:18, 21, 23; Num. 15:3; 29:39; Deut. 12:6, 17).
to a loan in which the borrower is required to pay back more than he borrowed; the latter to a transaction in which someone sells produce that he does not yet have (so that the appreciation in the value of the produce by the time of delivery is, in effect, paid to the buyer in exchange for his waiting for delivery). Neither word reappears in the chapter or, for that matter, in the Mishnah as a whole; the term utilized everywhere else is the Rabbinic ribbit. While this abrupt terminological shift need not necessarily mean that M5:1 stems from a different hand than the rest of Chapter 5, it is suggestive: M5:1 sets up an expectation for a distinction in terminology for types of usury that does not appear elsewhere. If so, the fact that the distinction between nešek and tarbit seems to underlie the chapter as a whole may imply that M5:1 was an already existing tradition utilized and explicated by the redactors, or, alternatively, that it was formulated to introduce a chapter composed of other materials.

Another example of a shift in terminology also occurs in Chapter 5 (M5:6):

[A] One may not accept “iron sheep” from an Israelite,
[B] because it is interest.
[C] But one may receive “iron sheep” from the nations (goyîm),
[D] and one borrows from them and lends to them at interest,
[E] and so too with a resident stranger (ger tıšâb).
[F] An Israelite may lend [at interest] with the money of a foreigner (nokri),
[G] with the knowledge of the foreigner (nokri), but not with the knowledge of the Israelite.

[F–G] add a rather more nuanced case (one Jew lending to another with money belonging to a gentile) to a straightforward pericope [A–D] about who is or is not protected by the prohibition of usury. These clauses are

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27 For the Biblical use of the terms see Lev. 25:36, Ez. 18:8, 13, 17; 22:12; Prov. 28:8. The commentaries, following the tradition in the Babli attributed to both R. Abbahu and Raba, read nešek as divinely (i.e., Biblically) prohibited usury and tarbit as a Rabbinic supplement to the Biblical rule (B61a). This seems to be the implication of the view attributed to R. Yannai in the Yerushalmi (Y5:1 [10a]) that nešek is “the [type of] interest (ribbit) that can be confiscated by the judges,” as opposed to others that, although prohibited, may not be confiscated (see also the tradition attributed to R. Eleazar at B61b). This interpretation is quite surprising in that it takes a Mishnaic passage clearly working with Biblical terminology and reads it in terms of a distinction of Biblical and non-Biblical prohibitions.

28 M5:2, 5, 6, 9, 10; elsewhere in the Mishnah: m. Roš Hai 1:8; m. Sanh. 3:3; m. Šebu. 7:4; m. Arak. 9:3.

29 Neusner, Damages V, 66. I return to this subject below, Section C.3.
concerned with "subjective" criteria (knowledge, awareness) and not merely "objective" criteria (Jew, gentile, interest). On these grounds [F–G] might be deemed a later supplement. In this context, the fact that the first part of the passage refers to gentiles by the term "the nations" [C], but the latter part uses "foreigner" [F, G], may be important. While both terms stem ultimately from Biblical usage, one particular usage of the term nokri, "foreigner," is significant in this context: "the nokri shall you charge interest (taššik, cf. nešek); your brother shall you not charge interest" (Deut. 23:21). In other words, [F–G] explicitly echo a verse in Deuteronomy that [A–D] do not.

In M4:9 [E], M7:8 [D, G] and M7:10 [G] a paid depository is called a nōšēʾ šāḵār (wage bearer). In M6:6 [A (plu.), [C], 7 [A, C], 8 [C], by contrast, the term used is šōmēr šāḵār (paid watchman). The clauses of M6:6–7 in which šōmēr šāḵār appears all make a similar argument: they attempt to define the liability of someone who holds property belonging to someone else (e.g., an artisan holding raw materials or finished products) in terms of the liability of a paid or unpaid depository. It follows that (whatever the redactional history of these passages) the terminology of M6:6 persists in M6:7 because the two passages were ultimately meant to be taken together. That the term šōmēr šāḵār reappears in M6:8 may be due to the function of M6:6–8 together as a "coda" (see below, section C) to M6:1–5.

M7:8 [C–H] has another terminological feature, and once again Biblical language offers a key. In describing those kinds of loss for which a paid depository or a renter is not liable and a borrower is liable, M7:8 [G–H] states: "the wage bearer and the renter swear for the break (šēber), for the

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30 The suggestion that [F–G] stem from a different source than [A–E] is supported by the fact that, like the key clauses in M5:4–5 (M5:4 [A, D, E, G, H]; 5:5 [A, D, E]), M5:6 [A–E] is formulated in an impersonal construction using the plural participle (present) (see Segal, 159, §330). By contrast, the final sentence [F–G] uses the somewhat emphatic malweh hāʾ yisráʾēl, “an Israelite lends (or: may lend),” using a singular form and a clearly defined subject (see Segal, 163–4, §341), which may have supplementary force (“however he may ...”).

31 In making reference to the resident alien (gēr ṭōlāb), M5:6 [E] also echoes verses in Scripture prohibiting interest, but in this case the Biblical passage is Lev. 25:35–6. This reference is problematic since the rule of [E] apparently contradicts Scripture (the discussion of M5:6 in Appendix I). If [E] is not a later supplement (as formulated, [A–D] form a self-contained unit; [E] explicitly adds to it [we-ken, “and so also ...”), and might be an addition), [A–E] might be conceived of as formulated with reference to Lev. 25:35–7. In this case M5:6 would provide an example of material originating in the interpretation of verses in Leviticus, supplemented (by a different hand) by materials stemming from the interpretation of Deuteronomy. While this is not impossible, there is nothing in [A–D] as a unit that requires that it is the product of exegesis of Lev. 25:35–7 specifically, other than the presupposed prohibition of interest.

32 In fact, M6:6–8 is the only place in the Mishnah where the term šōmēr šāḵār is used. Elsewhere nōšēʾ šāḵār is used (m. B. Qam. 4:9; m. Šebu. 6:5; 8:1, 6).
captured animal (šēbuyā), and for the dead animal (mētā) [and are exempt from payment], and pay for the loss (ʿabēdā) and for the theft (gēnēbā).” This language clearly reflects Exodus 22:9–10: “(9) If a man gives an ass ... to his fellow to watch, and it dies (mēt) or is broken (niṣbar) or taken captive (niṣbd) and no one sees, (10) let an oath of the Lord be between the two of them ....” Furthermore, the ruling with respect to theft (and, from the Mishnah’s point of view, loss) corresponds to verse 22:11: “If it should be stolen (gānob yiggănēb) from him [the depositary], he shall pay its owners.” The Mishnah has manifestly interpreted Exodus 22:9–12 as referring to a paid depositary (and perhaps to a renter as well).33 The material that follows immediately in M7:9–10 [D] introduces the term ḥōnēs to cover precisely those acts of force beyond the control of the depositary for which M7:8 had used Biblical terminology.34 Although M7:8 could circulate independently (cf. m. Šebu. 8:1; see Section A.2 below), M7:10 [E–G] corresponds clause by clause to M7:8 [C–H], and there is clearly an intentional connection between them. It is possible that M7:9–10 [D] has been interpolated into an already existing unit to amplify the limits of “accidental” death or damage.

The final example of terminological variance to be discussed here is M9:13.35 In general, the term used for the distraint of pledges is maskēn.36

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33 On the problem of Biblical derivation for the rule of the renter (šōkēr) from Ex. 22:6–14, see the brief discussion in Lapin, 1995, 155–6, n. 16.

34 However, in M7:9–10 [D], too, Scriptural interpretation seems clear. Mek. Nēẓaquin 16 glosses Ex. 22:9 (“... and it dies [mēt] or it is broken [niṣbar] or it is taken captive [niṣbd]”) as follows: “‘and it dies,’ that its death be at the hands of heaven [and not due to human intervention], ‘or it is broken,’ that an animal broke it, ‘or it is taken captive,’ that brigands (liṣṭm) took it captive” (ed. Horovitz-Rabin, p. 303). While the precise connection between the Mekila and the Mishnah here is far from clear (see the discussion of this passage in Appendix II), the Mekila transmits interpretations of the three key words used in M7:8 [G] in a manner that helps unpack M7:9–10 [E]. Thus, when M7:9 works out under which circumstances damage by an animal [A–F, H–J] or a brigand [G, K] is considered ḥōnes, it is apparently using the definition found in the Mekila for niṣbar (šēber in the Mishnah), and niṣbd (šēbuyā in the Mishnah) respectively. Similarly, in M7:10 [A–E] what is at issue is whether the animal died (mētā) due to human intervention or due solely to “the hands of heaven.”

35 One additional case of variant terminology should be mentioned, although I am not certain that it shows a redactional seam. In M9:11 [A–D], 12 [H], the term used for a hired laborer is šākir, “wage-earner, hireling.” Clearly the term echoes the use of šākir in Lev. 19:13 (“You shall not keep the wages of the wage-earner [šākir] with you overnight until the morning”) and Deut. 24:14–15 (“You shall not oppress a poor or impoverished wage-earner [šākir] ..., on his day let him receive his wage, and let the sun not set upon him [unpaid]”). Elsewhere in the tractate (M2:9 [G]; M5:4 [C]; M6:1 [D]; M7:1 [A, G], 4 [F], 5 [A]; 10:5 [G]) and in the Mishnah as a whole, the term used is pōʾēl (laborer). This may suggest that M9:11–12 together stem from a source (or sources) more dependent upon Biblical terminology than elsewhere in the tractate, a suggestion supported by explicit citation of verses in M9:12 [B–C].
The final section of M9:13, which deals with the distraint of a millstone, uses the term *habol* (M9:13 [L]). The choice of this latter verb is dependent upon the use of precisely the same word in the Bible.\(^{37}\) This is clear from language of the passage itself:

[L] One who seizes the mill as pledge (*ḥa-ḥōbēl ‘et *ḥa-rēḥayīm*)—

[M] he transgresses a negative commandment,

[N] and is liable for two utensils,

[O] as it is said: “You shall not seize the upper and lower millstone as pledge” (Deut. 24:6: *lo*\(^2\) *yahabol rēḥayīm wā-rekel*).

[P] Not the upper and lower millstone alone did they say,

[Q] but everything with which one makes food for living (*nepēs*),

[R] as it is said: “For it is a life that he seizes as pledge (*ki *nepēs hā’ ḥōbel*)” (Deut. 24:6).

Not only the operative verb *habol*, but also the object of that verb (the millstone), and the term (*nepēs*) from which the general definition of items that may not be distrained is deduced, derive from a Biblical verse. It is precisely the point of this passage to flesh out some of the legal implications of Deuteronomy 24:6. By contrast, the passage immediately preceding this one uses the verb *maškēn*, in conjunction with a citation of a verse using *habol*: “A widow [*ʿalmānāḥ*] ... one does not distrain a pledge from her [*ēn mēmaškēnām ʿōtāḥ*], for it is said ‘You shall not seize the garment of a widow as a pledge [*lo*\(^2\) *ṭahabol beged ʿalmānāḥ*’] (Deut. 24:17)’ [J–K]. The self-conscious echoing of Scripture in [L–R] juxtaposed with its absence in [J–K] makes it possible that [L–R] derives from a different source than the preceding material.\(^{38}\)

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However, when *iākīr* is used in the Mishnah (outside of *m. B. Mes.*, see *m. Šebi*. 10:5; *m. Šebu*. 7:1) the subject is always identical: the worker’s right to prompt payment of wages. Thus it may also be that the use of *iākīr* is merely a stereotyped way of referring to a particular topic, and may not necessarily imply that the authorship of M9:11–12 is different from that of, say, M7:1–7.

\(^{36}\) M9:13 [B, J]; elsewhere in the Mishnah: *m. Peʿu* 8:8; *m. Šebi*. 10:6; *m. Maʿati. Š*. 1:1; *m. Šeq*. 1:3, 5; 7:5; *m. Ket*. 11:3; 13:8; *m. Šebu*. 7:2; *m. Ab. Zar*. 4:5; *m. Ārak*. 5:6; 6:3.


\(^{38}\) Against this suggestion, is the argument (ultimately unanswerable) that I have demanded too much consistency from Mishnaic terminology. Moreover, in context *habol* in M9:13 [L] could mean distraint by force or against the will of the court or debtor, whereas *maškēn* in [J] refers to the authorized seizure outlined in [A–D]. In that case, however, *habol* should have been expected in [C], rather than the comparatively long-winded *lo*\(^2\) *yikkānēs lē-bētō wē-yīṭṭol maškōnō* (“let him not go in and take his pledge”). In *m. Šebu*. 7:2, too, the Mishnah favors the conventional *maškēn*: “They were testifying against him that he entered his [the debtor’s]
2. Parallels.

I have been arguing that the Mishnah's redactors made use of heterogeneous materials, and that this process of compilation and redaction has left traces of alternative strategies of formulation and organization. There are times when the use of already existing materials is relatively clear. For instance, when a pericope appears in identical language in two separate tractates, as it does in M7:8 [C–H] and m. Šebu'ot 8:1, it is worth asking (a) whether the material originally circulated independently, or at any rate (b) whether one context served as the source for the other. The inference seems secure, however, that one or both of the passages is dependent upon antecedent material. In the example just cited, although both versions of the passage are followed by material that builds on them, there is no reason to grant priority to either m. Šebu'ot or m. Baba' Meši'a. It is possible, therefore, that M7:8 [C–H] circulated independently of both contexts, and has been utilized by one or more redactors in two different places.

From a redactional point of view, those parallel passages that differ somewhat from one another are of particular interest, since they may reflect the house to seize a pledge without authorization (lēmathkēnō se-lo' bi-rēšā)." Ḥabol, which only appears in Mishnaic usage in M9:13 [L], therefore appears to be essentially synonymous with mašken. On balance, the rarity of ḥabol together with the close connection of [L–R] with Deut. 24:6, and the tendency of the accusative absolute form using the definite article with the participle (ha-hobel ...) to mark the beginning of a pericope or unit (see below Section B.2), lead me to suggest that [L–R] was not authored together with the rest of M9:13.

As already noted above (the end of Section A.1), M7:8 [C–H] is echoed closely by M7:10 [E–G]: the passage in M7:8 outlines the liabilities for depositaries and related "watchmen," and the question of whether these liabilities may be altered by stipulation is addressed in M7:10 [E–G] in clauses that match the order and language of M7:8. Nevertheless, M7:8 can clearly stand by itself, and M7:10 [E–G] could be taken as a later supplement. The independence of M7:8 [C–H] of M7:10 [E–G], despite the close connections between them, suggests a complex process of redaction for M7:8–10. This is true whether or not M7:9–10 [D] is taken to have been interpolated into an already existing unit, as suggested above. m. Šebu. 8:1 is followed by several pericopae that explore the liability of the depositary to a sacrifice if he denied or misrepresented the loss of the deposit under oath. While the recurring key forms of loss (theft, loss, death, "breaking" or captivity) echo m. Šebu. 8:1, the question of sacrifice is secondary and could easily reflect later supplementation. (Rashi's comment to m. Šebu. 8:1 [b. Šebu. 49a], that the redactor had already taught this Mishnah in much the same language, "and the reason that R. [Judah the Patriarch] taught it here again is that he wanted to teach their [i.e., these 'watchmen'] liabilities and exemptions for the sacrifice for [a false] oath, and therefore he first taught the monetary liabilities and exemptions ..." implies that the passage in question has its original context in m. B. Mes 7:8, and is only used secondarily in m. Šebu. 8:1. However, Rashi bases his arguments on logical, not literary considerations [thus M7:8 serves as a primary context since M7:8–10 deal with "monetary liabilities and exemptions"], but does not explain why, say, M7:8 [C–H] appears where it does and not before M3:1, which clearly presupposes the rules of M7:8 [C–H].)
treatment of materials at the hands of redactors. The relationship of M3:11 to *m. Me'ila* 6:5 provides a case in point:

<table>
<thead>
<tr>
<th><em>m. Baba</em>? Meš'î'a? 3:11</th>
<th><em>m. Me'ila</em> 6:5</th>
</tr>
</thead>
<tbody>
<tr>
<td>[A] One who deposits money with a banker—</td>
<td>[A] One who deposits money with a banker—</td>
</tr>
<tr>
<td>[B] if it is bound let him not make use of it;</td>
<td>[B] if it is bound let him not make use of it.</td>
</tr>
<tr>
<td>[C] if it is loose, let him use it.</td>
<td>[D] If it is loose, let him use it.</td>
</tr>
<tr>
<td>[E] “The shopkeeper is like a householder,”</td>
<td>[H] “The shopkeeper is like a householder.”</td>
</tr>
</tbody>
</table>

40 The logic of this clause as well as [E] and [G] presuppose that in [A] the money deposited was sacred money. If the depositary was not permitted to use the money, when he uses it he does so on his own authority, and he himself is guilty of appropriating Temple funds. Where he was permitted to use the deposited money, he did so with the depositor’s authorization (later commentaries saw the depositary here as a kind of agent, as in *m. Me’ila* 6:1–4), and is himself not guilty of misappropriation. (That in such a case the depositor should be deemed guilty is the implication of a *bâratáta* parallel to *m. Me’ila* 6:5 [A–D] at B43a [or perhaps a variant version of *m. Me’ila* 6:5, as Tos. b. Me’ila 21b, s.v. Ha-mapqîd imply], in which [C] and [G] read “Therefore the *gîzûr* [i.e., the Temple official in charge of sacred property, who is presumably the depositor] has not stolen sacred property,” and [E] reads “the *gîzûr* has stolen sacred property” [B43a: the citation is attributed to R. Nahman]. However, *m. Me’ila* 6:5 appears in the context of individuals who are not Temple officials holding Temple funds, and giving them to a second party, and the rule for the depositor might not be identical in the case of a lay depositor and a Temple official [Maimonides, *Code*, Me’ila 7:9–10, for example, did not deem the depositor culpable, cf. *Kesep mišnâ ad loc.*]. The wording of *t. Me’ila* 2:11 [Vienna ms.] (“has not stolen ...” [C, G]; “has stolen ...” [E]) agrees with the *bâratáta* in the Babli, without the word *ha-gîzûr*. The Tosepta passage might conflict with the Mishnah, and rule that where the depositary ought not to have used the deposit what he intended was theft from a human and therefore he is not culpable for the misappropriation of Temple property. Arguably, where the parallel in the Babli adds *ha-gîzûr*, it might be attempting to resolve two apparently contradictory traditions.)
The pericopae are nearly identical but for three supplementary clauses. The passage from \textit{M. Me\'ila} thus seems to reflect the application of a rule originally formulated in the context of civil law (whether one may use deposited money) to the problem of the misuse of Temple funds. Since the parallels include material attributed to figures of the middle to late second century, the redactional process responsible for the reuse of the material (at least in \textit{M. Me\'ila}) can be no earlier than that period.

A second example occurs at M4:9 and \textit{M. \textit{Sebu\textquoteright}ot}: 6:5:

\begin{tabular}{ll}
\textit{m. Baba\textquoteright} Me\textacute{s}i\textacute{a}a}: 4:9 & \textit{m. \textit{Sebu\textquoteright}ot}: 6:5 \\
\begin{tabular}{l}
[A] And these are things that do not have [the rule of] h\textsuperscript{n}aya\textsuperscript{k}.

[B] slaves, documents, lands and consecrated goods.

[C] They have neither [the rule of] two-fold payment nor four- or five-fold payment;
\end{tabular} & \begin{tabular}{l}
[A] These\textsuperscript{43} are things for which one does not swear:

[B] slaves, documents, lands and consecrated goods.

[C] They have neither [the rule of] two-fold payment nor four- or five-fold payment;
\end{tabular}
\end{tabular}

\textsuperscript{41} Some traditions of \textit{B. Me\textquoteright} 3:11 have analogous supplementary clauses, but these may be later scribal additions (see the note to M3:11 in Appendix I). In \textit{M. Me\textacute{il}}: 6:5 the verb in the supplementary clauses has shifted from \textsuperscript{im}\textit{\textit{s}} to \textsuperscript{y\textsuperscript{s}}. Although the point of the verb h\textsuperscript{h}\textsuperscript{\textit{\textit{s}}}\textit{p}, “spent” (lit. “took out”) (cf. \textit{M. Me\textacute{il}}: 6:2, 6) may be no more than to specify what kind of “use” makes the depositary guilty of misappropriation of sacred property (as opposed to that which makes him culpable for misuse of a deposit; it is possible to cite at least one view, M3:6 [A–B], that any intervention with the deposit, even in the interests of the depositor, is prohibited to the depositary), the shift in verb may suggest the activity of a later hand. If all of \textit{M. Me\textacute{il}}: 6:5 had been formulated in a single piece, one might have expected the use of \textsuperscript{y\textsuperscript{s}} throughout. (See further, next note.)

\textsuperscript{42} The matter is complicated by the fact that M3:11 and \textit{M. Me\textacute{il}}: 6:5 have a partial parallel in M2:7 [I–M] and may have been formulated with reference to it. However, whereas M2:7 [K, M] have the supplementary clauses, although they are not required by context (M2:7 [E–H] introduces the problem of the permissibility of use, and not specifically the problem of liability in the case of loss; if the presence of M2:7 [K, M] cannot be accounted for by the immediate context, might these clauses be original here?), and M3:11 appears not to have them at all (see Appendix I), although they would fit with that context (M3:9, 10, 12 deal specifically with liability), \textit{M. Me\textacute{il}}: 6:5 would have no point in its current context without the presence of these clauses. Furthermore, M2:7 [I–M] itself may be reworked from a more general formulation about deposits of money (see below, Section D.2). Thus parallels, while suggesting the existence of sources, may not offer sufficient evidence for a nuanced transmission history.

\textsuperscript{43} Concerning the presence or absence of the initial \textit{waw} (i.e., “and,” as in \textit{B. Me\textquoteright}) in the manuscripts and early editions, see Epstein, \textit{N\textsuperscript{u}sh}, 429.
| D | an unpaid depositary does not swear, |
| E | a paid depositary does not pay. |
| F | R. Simeon says: “Sacrifices for which he is liable have honayda, and [those] for which he is not liable do not have honayda.” |

Clearly, the differences between the two versions of this pericope reflects their different contexts. Chapter 4 of m. Baba’ Mes’i’a is concerned, on the whole, with the question of honayda; m. Šebu’ot 6:5 appears in the context of a discussion of šebu’at ha-dayyânîm, “the oath [imposed by] the judges,” that is, the oath imposed upon a defendant who admits only part of the debt (or other claim) claimed against him. The situation is further complicated by the following passage in m. Baba’ Qamma’ 7:4 in which the view attributed to R. Simeon appears in still a third context:

| G | He stole [an animal] and consecrated it, and afterwards slaughtered or sold it: |
| H | He pays the two-fold payment, but he does not pay the four- or five-fold payment. |
| I | R. Simeon says: “Sacrifices for which he is liable he pays the four- or five-fold payment; sacrifices for which he is not liable he is exempt.” |

The parallel between the version of the statement attributed to R. Simeon in m. Baba’ Qamma’ and those from m. Baba’ Mes’i’a and m. Šebu’ot, and its

44 Although the formulation of m. Šebu. 6:5 applies to oaths in general (see below), the pericope is presumably designed to amplify the problem of šebu’at ha-dayyânîm. m. Šebu. 6:5 has been integrated into the discussion of šebu’at ha-dayyânîm through 6:6, in which the amplification of a dispute over whether produce still connected to land is considered land (i.e., and exempt from an oath in m. Šebu. 6:5 [A–B]) exemplifies the question with a case of šebu’at ha-dayyânîm. (The terms of the dispute itself are quite general [“there are things that are like land but are not like land ...”]; the amplification [“How (kēsad) ...”] may be secondary.)

45 The point of [H] is that it is only when one steals from a private person and then slaughters or sells, that one is liable for four- and five-fold penalty payments (Ex. 21:37). In the present case [G], however, when the animal was slaughtered or sold it was already consecrated, and was now the property of the Temple, and neither the theft nor the subsequent slaughtering or sale of consecrated goods carries these penalty payments (M4:9 [C] = m. Šebu. 6:5 [C]; see also t. B. Qam. 7:21). The thief does pay a double payment, since the animal was private property when he stole it.
formulation as a general rule, suggests that in *m. Baba* Qamma\(^2\) it was intended to have a wider application than to the rather narrow case of one who has stolen, consecrated and then sold or slaughtered an animal, in connection with which it appears in *m. Baba* Qamma\(^3\).\(^46\) By contrast, in *m. Baba* Mesi'\(^a\) and *m. Šebu'\(^o\)t*, the view attributed to R. Simeon matches the respective introductory clauses of the passages in which it appears. However, in each of these cases the tradition of R. Simeon appears embedded in a pericope that is somewhat problematic in its broader thematic context. In *m. Šebu'\(^o\)t* 6:5, the general formulation of the pericope as a whole (“These are the things for which one does not swear” [A]; “one does (not) swear” [F]) stands in some tension with its immediate context, the discussion of a specific kind of oath.\(^47\) The questions of double or four- or five-fold payment and of paid and unpaid depositaries are largely irrelevant to both *m. Baba* Mesi'\(^a\) 4:9 (on hōnāyā\(\)) and *m. Šebu'\(^o\)t* 6:5 (on šebū'\(\)at ha-dayyānim).\(^48\) The parallels between these two pericopaœ are best explained if we assume that a common pericope, formulated to discuss the specific legal qualities of slaves, documents, lands, and consecrated goods (but whose original form cannot

\(^{46}\) That the Babli, for exegetical reasons of its own (whether dedication is equivalent to sale with respect to obligation to pay four- or five-fold payments), could separate the statement of R. Simeon from its context in *m. B. Qam.* and connect it with another text (*amrē r. Šim'on *a-milēb*i\(\)a\(\)a\(\)a\(\)aharītī qā*ē* we-hākî qā-tān\(\)t\(\)ō\(\)), may reflect the fact that the wording of the rule was general enough to be applied to another text (*b. B. Qam.* 76a). Moreover, in this new context (apparently a variant or revision of *m. B. Qam.* 7:1 that includes the case of one who stole already consecrated goods) the tradition attributed to R. Simeon applies not only to four- and five-fold payments for sale or slaughter, but to any penalty payment for theft. (However, in the revised version, the Babli mss., apparently unanimously, have “Sacrifices ... he is liable” where the Mishnah has “Sacrifices ... he pays the four- or five-fold payment,” so that the language of the tradition of R. Simeon has perhaps consciously been given less specificity.)

\(^{47}\) Cf. *TY* to *m. Šebu.* 6:5, who notes that “one does not swear” [A] refers to “any of the three oaths of Biblical authority” (i.e., the oath of a “watchman” [cf. [D]], that required of a defendant denying part of a claim, and that imposed on a defendant who denies a claim entirely, but whose denial is refuted by only one witness; see *TY*’s introduction to chapter 6).

\(^{48}\) It is possible to argue that *m. Šebu.* 6:5 is the “original” pericope, and that *m. Šebu.* serves as its proper context, since the rule that an unpaid depositary does not swear over slaves documents, lands and consecrated goods [D] is connected with the question of oaths in [A] (the rule about paid depositaries [E] being merely an extension of the thought of [C]). Against this suggestion that the pericope has its proper context in *m. Šebu.* 6:5, is the fact that the pericope, although placed in the context of a unit of material on šebū'\(\)at ha-dayyānim, deals with oaths in general, and supplements the opening general rule [A–B] with a specific case [D] that involves a type of oath not dealt with in the surrounding material, and that in any case is already guaranteed by that general rule. What is new in *m. Šebu.* 6:5 [C–E] (the exemption of a thief or a paid depositary from their respective payments) is also irrelevant to the context. Similarly, in M4:9, the whole of [C–E] is largely irrelevant to the immediate context.
literary and redactional problems necessarily be recovered) stands behind the formulation of both *m. Baba' Mesi'ā* 4:9 and *m. Šebu'or* 6:5, which could then be modified in later use.\(^{49}\)

If the tradition attributed to R. Simeon, which is concerned with a distinction between two classes of consecrated animals, was originally formulated in connection with this hypothetical original pericope (as is suggested by its inclusion in both *m. Baba' Mesi'ā* and *m. Šebu'or*), *m. Baba' Qamma* 7:4 might reflect the separation and adaptation of the tradition of R. Simeon in still a third passage, or perhaps even a reapplication of a common "original" pericope as a whole.\(^{50}\) *M4:9* and its parallels, then, are an example of the

\(^{49}\) D. W. Halivni, *Meqorot u-mesorot: Bdbd* qammd* (Jerusalem: Magnes, 1993), 291–3, argues that the original core of both *m. Šebu*. 6:5 and M4:9 is [C–E], an "early Mishnah" that served as the source from which the exclusion of slaves, documents, lands, and consecrated goods is derived for both oaths and *hônāyā*. The exclusion, Halivni contends, is based on exegesis of Ex. 22:6–12; the extension to oaths and *hônāyā* is derived by analogy. Attractive as this suggestion is (especially its attempt to account for material shared by *m. B. Meš.* and *m. Šebu*), I find it difficult to give it its full force. First, Halivni does not cite (nor have I found) other ancient sources that offer confirmation for the exegetical processes he proposes. By contrast *Sipra, Bê-har* III:1–3 (ed. Weiss, 107a), in a context that has much overlap with the Mishnah, derives the exemption for slaves, documents, lands, and consecrated goods from the rules of *hônāyā* from Lev. 25:14 (see also B47b; B65b). Second, the textual basis for Halivni's claim is not as strong as it might be. Halivni suggests that [C–E] be read as explanatory: "[there is no rule of *hônāyā* for oaths for slaves ...] for these have neither the rule of two-fold payment ...; an unpaid depositary does not swear ...." The *waw*, which Halivni wishes to take as introducing a causal clause, appears only in P; the Rome B ms. of *b. B. Meš.*; the Munich ms. of *b. Šebu*; and the Mishnah text (*m. B. Meš.*) of the Meiri as printed in K. Schlesinger, ed., *Beth Habehira* (Jerusalem: Mekize Nirdamim, 1959), 209. Moreover, this use of *waw*, while attested (e.g., *m. Nid*. 4:1: *wê-bêl yâbôt*, with the commentary of *TY* and *TYT*; '7:1: *wê-vêndô dômeh *bleh*, Erfurt ms.; Venice and *editio princeps* have *se-vêndô*), is hardly the most common use of *waw* in Mishnaic Hebrew, and can, in this case, just as easily be taken as merely conjunctive (i.e., adding an additional rule about slaves, documents, lands, and consecrated goods).

\(^{50}\) Halivni, 1993, 291–3 saw the view of R. Simeon as based on the "original" pericope. However, it remains possible that the legal distinction between two kinds of "holy things" attributed to R. Simeon, was itself a free-standing tradition that could be reapplied in various contexts. At any rate, as it appears in *m. B. Qamm*. 7:4 [I] this version of the tradition of R. Simeon too appears to have undergone alteration. Although *m. B. Qamm*. 7:4 [I] does have the formal qualities of a general rule, the formulation of the view attributed to R. Simeon in terms of penalty payments over and above the double payments (corresponding to the use of "four- and five-fold payments" in *m. B. Qamm*. 7:4 [H]), although from the point of view of law the statement of R. Simeon should apply equally to the more general case of double payments in a simple case of theft, suggests that [I] has been adapted to fit the requirements of its present context. Hypothetically, [I] might stem from an "original" pericope analogous to M4:9 or *m. Šebu*. 6:5, but dealing with the penalty payments for theft (something along the lines of "These are the things for which one pays neither two-fold nor four- or five-fold payments:..."
fluidity of traditions—even when attributed to named individuals—even as they indicate the basic conservatism towards the textual raw material at hand.

Another example may be found in the parallels between M7:4 [A–C] and m. Ma'aserot 2:8 [A–C]:

\[
\begin{align*}
\text{m. Baba' Mesi'a'7:4} & & \text{m. Ma'aserot 2:8} \\
\text{[A]} & \text{If he was working with figs, let him not eat from the grapes;} & \text{[A]} & \text{If he was working with } \text{lēbasim}^{\text{[I]}} \text{[figs] let him not eat from the } bēnōt \text{sheba'}^{\text{[figs]}} \\
\text{[B]} & \text{with grapes, let him not eat from the figs;} & \text{[B]} & \text{with } bēnōt \text{sheba'}, \text{let him not eat from the } lēbasim; \\
\text{[C]} & \text{but he may hold himself back until he reaches the place of the nice ones, and eats} & \text{[C]} & \text{but he may hold himself back until he reaches the place of the nice ones, and eats} \\
\text{[there].} & & \text{[there].}
\end{align*}
\]

The version in m. Baba' Mesi'a' distinguishes between two kinds of fruit, while that in m. Ma'aserot distinguishes between varieties of figs. It is presumably no accident, but the product of stylistic choice, that nearly all the cases in m. Ma'aserot 2:1–3:4 illustrate the rules of tithing with examples about figs.\(^{52}\) It is not clear whether m. Ma'aserot 2:8 [A–C] should be taken

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\(^{51}\) This word is variously preserved in the mss. (hbsym; lwhbsym; lupysym; kltupsym; and others). See the variants cited in The Mishnah, ed. N. Sacks (Institute for the Complete Israeli Talmud: Jerusalem: Yad Harav Herzog, 1971–), 219.

\(^{52}\) Three notable exceptions are: (1) m. Ma'ât. 2:6, which gives several variations on the following case: “One who says to his fellow: ‘Here is an ḥissār (as) for ten figs that I will choose” (2:6 [A], developing 2:5 [A]), in terms of clusters of grapes [C], pomegranates [E], and melons [G]; the primary example, however, is one of figs; (2) m. Ma'ât. 3:2, which gives illustrations using olives and onions; this pericope amplifies a rule already stated in 2:7 (cf. 2:5, R. Judah) in terms of figs; (3) m. Ma'ât. 3:4, which deals primarily with various kinds or by-products of figs (chopped, dried, pressed), supplemented with contrasting cases concerning olives and onions.
as having a direct application to tithing, or whether it has roughly the same force as M7:4 [A–C] and is included in m. Ma'aserot only by association with m. Ma'aserot 2:7. Given that m. Ma'aserot 2:8 [A–C] follows immediately upon material in which the worker’s right to “eat according to the Torah” is invoked (cf. M7:2 [A]), it seems likely that m. Ma'aserot 2:7–8 has been formulated with material now in M7:2–4 in view. However, below (Section C.2) I will suggest that M7:1–8 [B] shows traces of a complex process of redaction. Since these traces do not appear to be reflected in m. Ma'aserot, I am inclined to think that the two traditions have independently used material common to both. Since it does not appear that either formulation is dependent upon the other it seems likely that the pericope circulated independently, and was incorporated in slightly different forms in the two tractates.

53 See, e.g., R. Yehosep Ashkenazi in Mefket selomoh to m. Ma'as. 2:8 and TY to m. Ma'as. 2:8, who suggest that m. Ma'as. 2:8 deals with a case where the owner permits the worker to eat even from produce that the worker is not working on, but rules that the exemption from tithes is valid only for produce that the worker is working on. (Albeck, to m. Ma'as. 2:8 raises the issue of tithes here as well.)

54 So, explicitly, R. Solomo Sirillo, as cited in Mefket selomoh to m. Ma'as. 2:8. R. Samson of Sens, following y. Ma'as 2:7 (50a), treated the passage from m. Ma'as as dealing with a case in which the two varieties of fig were planted together; Bertinoro, TYT, and TY (with some misgivings) are dependent upon R. Samson of Sens or directly upon the Yerushalmi.

55 There are other examples that should be mentioned:

(1) M4:7, to be discussed below, has a number of parallels.
(2) M1:6–8 and m. Mo'ed Qat. 3:3. M1:6–8 deals with documents that are found; m. Mo'ed Qat. 3:3 presents a list of documents that may be written on the intermediate days of a festival. Although the pericopae are not formally similar to one another, the order in which the documents are presented in the two passages is strikingly similar:

**m. B. Mes. 1:6–8**

- loan documents
- divorce documents for women
- emancipation documents for slaves
- wills
- [deeds] of gift
- receipts
- letters of estimation
- letters of alimony
- documents of ḥaltšā and of refusal of marriage
- documents of selection [of judges]

**m. Mo'ed Qat. 3:3**

- divorce documents
- receipts
- wills
- [deeds] of gift
- letters of estimation
- letters of alimony
- documents of ḥaltšā and of refusal of marriage
- documents of selection [of judges]
Somewhat more ambiguous is the relationship between M7:7 and m. Ma'aserot 1:8. M7:7 reads as follows:

[A] If someone hires workers—
[B] to work with him on his fourth-year produce,
[C] lo, let these not eat;
[D] but if he did not inform them,
[E] he redeems [the produce] and feeds them.
[F] His fig-rounds broke up, or his jars were opened (nip'teh), his gourds were cut (nithakṭi)\(^{56}\),
[G] lo, let these not eat,
[H] but if he did not inform them,
[I] he separates the tithe and feeds them.

m. Ma'aserot 1:8 has the following tradition:

[F] Dried figs [are liable to tithing] from the time that he threshes them (i.e., presses them into jars).

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decrees of the court
letters of authorization

any act of the court

Loan documents are absent in m. Mo'ed Qat. because the writing of them is prohibited on the intermediate days of the festival (m. Mo'ed Qat. 3:4). The reading "letters of authorization" (i.e., ḫggerot sel rāṣṭa) in m. Mo'ed Qat. follows the context (court-related documents) and the responsa of the Gaon [Isaac] Zadok (appt. 816) (see B. M. Lewin, Ḫgger ha-qedōnim [Jerusalem: Hebrew University, 1928–43; rpt. Jerusalem, 1984] vol. 4, sec. 3, pp. 23–4): “a writing that the exilarch writes to a judge to go and teach Israel [that which is] permitted or prohibited and to make rulings for them ...”; and Rashi and Tos. ad loc. [b. Mo'ed Qat. 18b]: royal orders. Compare, however, the reading of the Yerushalmi (y. Mo'ed Qat. [Ma'asim] 3:3 [82a]; followed by, e.g., R. Hananel, Rif, Maimonides, Rabad [Haṣaḥqī]): Ḫggerot sel rāṣṭa, i.e., a personal letter. Although there is no question here of dependence between m. B. Mes. and m. Mo'ed Qat., the parallels between these two sources may be significant: is it not possible that a common stock catalogue of documents is being utilized in both tractates?

(3) M7:11 [A] reads: “All who make conditions of [i.e., in contradiction to] what is written in the Torah, his condition is invalid,” to which there is a partial parallel at m. B. Bat. 8:5 (technically the same tractate as m. B. Mes.) and a full parallel at m. Kel. 9:1 (see Section A.1 above).

(4) M9:12 [H], “A hired worker (ṣāḳir) at his proper time swears and takes [his payment] (niḥba' wē-nēṣēl),” finds an echo in m. Sebu. 7:1: “All those who swear according to the Torah swear and do not pay. And these swear and take (niḥba' wē-nēṣēl): the hired worker (ṣāḳir) ....” While there is no doubt that there is material in common, the use of ṣāḳir together with niḥba' wē-nēṣēl may reflect standardized terminology rather than the use of sources (cf. n. 35 above).

\(^{56}\) For the words “his gourds were cut” see the note to M7:7 in Appendix I.
Literary and Redactional Problems

[G] [Figs to be stored in] a storage jar, [are liable] from the time that he presses them.57

[H] He was threshing into a jar or pressing into a storage chamber:

[I] the jar broke or the storage jar was broken through (niphatā),

[J] let him not eat [even] casually from them.


The language and case of M7:7 [F–G] and m. Ma'aserot 1:8 [F–J] are strikingly similar, yet these two pericopae remain quite different. The one passage explores the middle ground between the time that the labor on the produce that renders produce liable to tithing (the “completing of its work”) and prohibited from consumption has begun, and the time that it is finished (m. Ma'as. 1:8); the other, the problem of produce whose work has been “completed,” but that, due to an accident, appears not to have been “completed” (M7:7).58 Although it is possible that the most closely parallel material (M7:7 [F]; m. Ma'as. 1:8 [I]) merely conforms to a common rhetorical pattern,59 these two pericopae may share a common source, or, perhaps, the author of M7:7 may have carried the material of m. Ma'aserot 1:8 forward by considering the case in which the produce only looks like it is not liable to tithing.

B. The Shape of Sources

The argument of the preceding section was that the redactor or redactors of the m. Baba' Mesiwhz'vè have demonstrably utilized already existing materials as sources. Whatever revision and adaptation of materials occurred in the process of redaction, a deep conservatism towards utilized materials is in evidence. This conservatism allows us to see the traces of various alternative strategies for presenting material and for organizing it. Before addressing the question of the process of redaction itself, it is worth asking to what extent we can determine what some of the sources available to the redactors may have looked like.

57 “Storage jar” translates the Hebrew megārā (also “storage chamber”; cf. Appendix I, note to M4:12). “From the time that he presses” corresponds to the Hebrew mi-le-ya'aggēl, from the same root as the term for a pressed fig-round, 'iggūl, used in M7:7. Maimonides, in his commentary to m. Ma'as. 1:8, takes the verb to mean “smooth with a trowel (‘iggūl).” This usage of ‘iggūl is unattested in the Mishnah.

58 Despite the parallels in language, the prohibition “let him not eat” in m. Ma'as. 1:8 [J] applies equally to householder and worker; in the analogous prohibition in M7:7, the antecedent of “these” is by definition the workers.

59 Cf. m. 'Orl. 3:8, and the note to M7:7 in Appendix I.
1. Strategies.

In the context of the discussion of pericopae in *m. Baba’ Mesi’a* paralleled in other tractates, I have suggested that in general the material that can plausibly be identified as source material is not original in one Mishnaic tractate as it has come down to us, and reused in another Mishnaic context, but rather seems to reflect the independent use by the redactors of the two (or more) places where the material appears. In the case of parallels the only material that can be shown to have served as a source is that which actually appears in both locations, and we are given no explicit information about the wider literary context of these source-pericopae. It is possible that some of these circulated singly.

On the other hand, it stands to reason that some of the materials utilized in the Mishnah were available in the form of clusters of pericopae. At least some passages concerned with the exegesis of Scripture conceivably stem from sources that were organized around verses. Unfortunately, at least in the case of *m. Baba’ Mesi’a*, it is possible at most to point to pericopae that presuppose exegesis of Scripture; it does not seem possible to reconstruct a “midrashic source,” much less to demonstrate the reliance of the Mishnah on an extant midrashic collection (see Appendix II). However, if it could be shown that the redactors of the Mishnah did indeed use exegetical sources, and chose, for the most part, to recast that material independently of Scriptural authority even where that authority could easily be cited, this conclusion would be potentially significant for uncovering the development of Mishnaic discourse. The Mishnah, after all, while claiming to present “Torah,” is, paradoxically, largely free rhetorically, topically, and structur-

60 Passages that cite verses (e.g., M4:10; 5:11), that echo the language of Scripture (e.g., M3:12; 7:8), or even that reflect conscious exegesis in their wording (e.g., M3:1), do not necessarily give evidence of a larger source that is dependent for its organization and structure upon Scripture. M7:9–10 [D], for instance, may reflect exegesis of “death,” “capture” and “breaking” in Ex. 22:9–13 (see above Section A.2), but may nevertheless form an isolated unit interested in a question deriving from Scripture. M2:5 is a fragment using midrashic style, and may, but need not, imply the existence of a Scripture-based source. M8:1 seeks to divine in its two parts the implications of two verses in the same Biblical passage [Ex. 22:13, 14], and might be taken as an example of how a pericope in Mishnaic style can be structured around verses, but it need not be part of a larger exegetical source. We are perhaps on stronger ground with M2:7, which offers exegesis of successive phrases of Deut. 22:2. In M2:9–10, which, I have argued above, derives from a source different from that of the rest of Chapters 1–2, the topics (including that of the animal struggling under its load, irrelevant in its present context) and their order are accounted for by Ex. 23:4–5 and Deut. 22:1–4. Similarly, the material in M9:12–13 is determined by that in Deut. 24:6, 10–15, 17–18. There are better examples of the phenomenon of clusters of Mishnaic pericopae organized around the exegesis of a passage of Scripture in other tractates, such as *m. Sot.* 8:1–7; 9:1–8; *m. Sanh.* 10:4–6.
ally, of the one unambiguously acknowledged source of authority that the
Mishnah cites: the Pentateuch (Torah) itself.

There is, however, other material in m. Baba’ Meši’a’ that betrays different
strategies of organization. Consider, for example, M4:7–8. The first three
clauses of M4:7 give a series of three brief rules setting out the minimum
value involved in a particular kind of claim. (Actually, M4:7 [B–C] are
linked in that they refer to a single case in which the plaintiff claims that he
is owed money, but the defendant only admits to a lesser amount.61) All
three clauses have parallels: the first [A] in M4:3 [A], and the second and
third [B–C] in m. šebu’ot 6:1. Strikingly, in their other contexts, the three
statements of M4:7 [A–C] appear with what appears to be secondary inter-
pretation. In M4:3 the rule that a case of hōnāyā must involve overcharge of
at least four silver coins (mā’ōt) is generalized as a proportion: “one sixth of
the purchase.” One implication of the formulation of M4:3 is that the rule
of hōnāyā applies even when the value of the purchase as a whole is less than
twenty-four silver coins. In m. šebu’ot 6:1 the rules about claim and (partial)
confession are taken to mean not that the amount of the claim itself must be
two mā’ōt, but that the difference between the amount claimed by the plain-
tiff and the amount admitted by the defendant must equal that amount.62

61 See Appendix I. Curiously, Neusner, Damages II, 60, has translated M4:7 [C]: “An
admission [as at M. 1:1] must be for at least what is worth a perutah” (my italics). In other
words, Neusner has taken [C] quite literally (although there is no case of admission at M1:1;
he may, perhaps, be referring to M1:2 [E], taking mōdim as “confess” or “admit”). In his
translation of m. šebu. 6:1 Neusner read the two clauses as linked, as the context there
requires (Damages IV, 51–2). Since Neusner’s treatment is under-documented, it is unclear
whether he has purposefully translated literally in m. B. Meš. or whether he has simply missed
the parallel with m. šebu.

62 m. šebu. 6.1 reads as follows:

[A] The oath that the judges [impose]:
[B] the claim is two silver coins,
[C] and the confession is a pērūṣā-worth,
[D] and if the confession is not of the same kind as the claim he is exempt.
[E] How (kēṣad)?
[F] [The plaintiff said:] “You have two silver coins of mine,” [and the latter said:]
“I only have a pērūṣā-worth of yours,”
[G] he [the defendant] is exempt [from an oath]
[H] [The plaintiff said:] “You have two silver coins and a pērūṣā of mine,” [and the
latter said:] “I only have a pērūṣā-worth of yours,”
[I] he [the defendant] is liable [to an oath].

In [F], the first illustration of [A–C], the plaintiff claims two silver coins, but the defendant
admits to only a pērūṣā-worth, to all appearances the very case of [B–C] (= M4:7 [B–C]).
However [G] rules that the defendant is exempt from an oath. In the second illustration [H],
the difference between the claim and the amount admitted by the defendant equals two silver
This cluster of three rules, referring to amounts in descending order of size, could easily be taken as a self-contained pericope that catalogues claims and the minimum values for which legal action on these claims may be brought. The other pericopae where these rules appear may be revisions of the earlier cluster of rules.

The remainder of M4:7–8 consists of two units: (1) a set of five cases in which the value of a pērūtā is determinative ("There are five pērūtā ...", M4:7 [D]), and (2) one of five cases in which a charge of an added fifth applies ("There are five [added] fifths ...", M4:8 [A]). Once again, we can point to multiple parallels with other passages in the Mishnah, frequently attributed to early figures. I suggest that, like the first part of M4:7, these
two units, essentially catalogues of rules sharing a particular characteristic, constitute relatively early formulations, that could be utilized in other contexts.\(^{65}\)

The link between the three parts of M4:7–8 is entirely associative: M4:7 [C] refers to the value of a *pērūtā;* [D–I] presents a set of rules involving the *pērūtā,* of which the first [E] is a restatement of [C]. M4:8 is structurally analogous to M4:7 [D–I] (opening title, followed by five cases each beginning with a definite article with the participle), but topically quite unconnected. With the exception of the first clause of M4:7, this whole cluster of rules is thoroughly unrelated to *m. Baba' Mesi’ā,* and it is precisely this first clause that serves as the link with the preceding material. The question that needs to be answered is at what point in the process of redaction this cluster of materials was put together. While it is certainly possible that the editor of the tractate as a whole appended each of these units of material to M4:3–6 as a sort of coda, we would then have to explain why a redactor who is interested in setting materials according to a general topical arrangement should here append not one “tangential” tradition, but three. It seems more likely that these materials stood together as a group before their inclusion into the

minimum bulk. (The same list recurs in *m. Orl.* 2:1: see the critical apparatus in Sacks, 1971–, 2, 374 and n. 2, and the discussion of Frankel, n.d. [1859], 267.) The remaining items in M7:8 do not have explicit parallels, but are generally presupposed elsewhere in the Mishnah: [C], on the produce of the fourth year, corresponds to the Hillelite view in *m. Pe’a* 7:6; *m. Ma’asî. Š.* 5:3; *m. Ed.* 4:3; [D], concerning the redemption of dedicated property, is presupposed, among other places, in *m. Ar.* 3:2, where the rule is referred to by the “Yabneh” R. Eliezer; the language of [E] bears a strong resemblance to M4:7 [G], although the rule is not explicitly referred to (it is, however, clearly based on Biblical authority: cf. Lev. 5:15–16); [F] is presupposed by *m. B. Qam.* 9:6–7.

There is a tendency among scholars to see pericopae organized along formal or mnemonic lines (e.g., “five rules concerning X”) as early. See, e.g., Krochmal, 1851, 202–3; Graetz, 1893 (1853–76) 162; Frankel, n.d. (1859), 12, 123; and much more recently D. Zlotnick, *The Iron Pillar: Mishnah* (Jerusalem: Bialik, 1988), 45–50; see also the view of Weiss, 1941. As such, this is an *a priori* judgment and no more valid than Neusner’s stated but unsubstantiated assumption that M4:7 [D–I] and M4:8 are “formal exercises” dependent upon earlier passages from which they have derived materials (Neusner, *Damages* V, 53, 60).

In the present case, at least, there are no linguistic or stylistic criteria (outside of that of the formulation of M4:7 [D–I] and M4:8 as “mnemonic catalogues”) such as archaic language or grammar that would necessitate an early date. What I mean by referring to M4:7 [D–I] and M4:8 as “relatively early” is (1) that on the basis of the parallels between these pericopae and other material attributed to Yabneh (or earlier) figures, these pericopae could conceivably date from the end of the first century at the earliest; and (2) that these passages and M4:7 [A–C] should at the latest have been early enough to allow for two stages of redaction (the joining of M4:7 [D–8], which are formally connected with one another, with M4:7 [A–C], and the inclusion of the whole cluster into the Mishnah as we have it).
tractate. Admittedly, this does not explain why or when someone did string these materials together, nor elucidate the social setting in which such a cluster of rules has meaning or utility. However, if this is correct, then one of the possible shapes that a source for the Mishnah could take is an "associative cluster." 

We may, perhaps, make a similar argument for M10:4 [E]–10:5. Note the following outline of M10:4–6:

a. M10:4 [A–D]: a rule that gives an analogous case to that of M10:2, and explicitly amplifies preceding material (we-ken).

b. M10:4 [E–L]: a wall or tree that has fallen (te-napălū; cf. M10:1 [B], 3 [B]) into the public domain and caused damage.

c. M10:5 [A–F]: the owner of a wall that has fallen (te-napal) into his neighbor's garden tries to get his neighbor to clear the stones.


e. M10:5 [N–A']: the deposit of dung or building materials in the public domain, and the liability for damage that ensues.

f. M10:6 [A–H]: two terraced gardens (zō 'al gabbē zō, cf. M10:4 [A]: we-ginnat 'āher 'al gabbdyw), and the produce that grows between them.

The first section (a) is clearly connected with M10:2, as noted. The place of the last section (f) in this context seems to stem from the fact that like M10:4 [A–D] (with which it has slight verbal links, as noted), and M10:1–3 in general, it deals with conflicts that arise due to properties that are shared or are in close proximity to one another. This subject is continued in m. B. Bat. 1–2. However, the second (b) deals with damages and is irrelevant to the predominant interest in problems of property in Chapter 10. Moreover, the following three sections (c–e) are also unrelated to their general context in Chapter 10, but are connected either directly (c, by the case of the fallen wall; e, by the problem of damages) or indirectly (d, by analogy with c) to (b) (M10:4 [E–L]) itself. (To the cases of damage in these pericopae (b, e), cf. m. B. Qam. 3:1–3. Albeck, 1923, 137–8, noted the analogy with m. B. Qam. and argued that M10:4–5 as a unit are brought in m. B. Mes., rather than m. B. Qam. where they belonged because of the analogy between M10:4 [A–D] and the subject of the preceding material. D. Daube, "Civil Law in the Mishnah: The Arrangement of the Three Gates," Tulane Law Review 18 [1944], 393, arguing [correctly] against the view that M10:4–5 are a displaced fragment that belongs in m. B. Qam. 3, took as separate categories of Mishnaic law the damage done by a collapsing house or other property [falling under property law and therefore belonging in Chapter 10 of m. B. Mes.] and that done by items left in the public domain [falling under the category of delict, and belonging in m. B. Qam. 3]. In fact, the relationship between m. B. Qam. 3:1–3 and M10:4–5 are closer than Daube supposes: m. B. Qam. 3:2 deals with a fence that has tumbled and caused damage, as in M10:4 [E–L]; m. B. Qam. 3:3 involves the case of refuse brought out into the public domain to be put on the dungheap, as in M10:5 [N–O]. It is redaction by associative links rather than by legal categorization that accounts for the presence of sections (b) and (e) in M10:4–5.) As in the case of M4:7–8, the links that unify these sections are entirely associative. I am inclined to suggest that at least M10:4:[E]–5 constitute a cluster of materials that was utilized whole by the redactor of the
In M3:2-5 there are traces of another kind of organizational strategy. M3:2 deals with the case of a lessee of a cow who lends the cow to a third party in whose possession the animal died. M3:3 is concerned with the matter of a thief who comes forward to admit liability but is not sure who the victim was. In M3:4-5 the problem of two householders claiming the more valuable of two deposits (whether in the form of money, M3:4, or objects, M3:5) from the depositary is discussed. On formal grounds, M3:2-5 can

Mishnah. In the absence of unambiguous criteria by which to determine whether this cluster of material constitutes a source, this suggestion must remain only a suggestion. Still, I find it striking that the four sections in this cluster can be associated more easily with one another than with any other pericope in the tractate. As in the case of M4:7-8, it seems more reasonable that the redactor of the tractate has utilized a source composed of irrelevancies, than that he has purposely assembled them. Nevertheless, it remains difficult to account for the inclusion of this cluster into the Mishnah by the editor who utilized it, except by the admittedly associative link of fallen houses with fallen trees and walls, and once this is admitted there is no a priori reason to exclude the assembly of other material based on further associative links.

To M3:3-5, compare m. Yeb. 15:7:

(Q) "[If] he robbed one of five people
(R) "and he does not know which he robbed,
(S) "each one says: 'It is me that he robbed,'
(T) "he leaves the property between them and departs,
(U) the words of R. Tarfon.
(V) R. Aqiba says: "this is not the way that removes him from sin:
(W) "[he cannot acquit himself] until he pays the robbed object to each one."

On the face of it, M3:3 agrees with the rule of R. Aqiba (which requires that every claimant be given the full payment claimed if the robber is to have fulfilled his obligation). But we should note that in M3:3 it is the thief's own confession that is significant and claims of the victims are not stated and perhaps irrelevant (see the motive clause in M3:3 [D]: "because he has admitted it by his own mouth"); similar logic seems to underlie m. B. Qam. 10:7), while in m. Yeb. 15:7 it is precisely the fact that there are multiple claimants that determines the ruling. (See t. Yeb. 14:2, which links M3:3 to m. Yeb. 15:7 with the connecting words: "And R. Tarfon concedes that if he said: 'I robbed one of you ..., '" [this led Lieberman to claim that M3:3 is according to (!) R. Tarfon, Lieberman, TK, 6, 171 to t. Yeb. 14:2; TK, 9, 70 to T3:5]. In other words, the author of t. Yeb. 14:2 considered M3:3 to be concerned with the specific problem of confessed liability, as opposed to m. Yeb. 15:7.)

More interesting is the relationship between m. Yeb. 15:7 and M3:4-5. The cases are analogous. Yet neither ruling in M3:4-5 corresponds to either of the rulings in m. Yeb. 15:7. In M3:4-5 the defendant returns the amount that definitely belongs to each (or according to R. Yose none of it), but on the basis of m. Yeb. 15:7 we expect the defendant to leave the whole sum for the plaintiffs to divide (R. Tarfon) or to pay the maximum amount to both parties (R. Aqiba). One possibility for the distinction may be that m. Yeb. 15:7 deals specifically with willful robbery, whereas M3:4-5 considers a case of deposit, in which there may have been no purposeful wrongdoing on the part of the defendant. If this is correct, then it is not necessarily self-evident that the author of M3:3, which deals with both robbery [A] and deposit [B], is the same as that of M3:4-5, who might rule differently in cases of robbery and of deposit.
be distinguished from M3:1, 6–11 in which some variant of the formula ha-
mapqid ēsel habĕrō, “one who deposits ... with his fellow,” recurs no fewer
than six times to introduce new pericopae. While a partial parallel to this
formulaic pattern may be found in M3:2 [A], which deals with another type
of contract, in M3:3–5, in which unpaid deposit is specifically invoked, the
formula is not in evidence. While it is possible that the redactor of the chap-
ter or tractate as a whole has brought together pericopae more or less uncon-
connected to one another, I wish to suggest another possibility: that M3:2–5 has
been utilized as a unit. What links these passages together is the series of tra-
ditions attributed to R. Yose (dated to the middle to late second century)
(M3:2: [C–E], M3:4 [D–E]; M3:5 [D–E]). The statements of R. Yose,
moreover, are structurally similar (although, admittedly, those from M3:4–5
are identical glosses to parallel pericopae): each consists of an exclama-
tion challenging not the underlying principles of the antecedent ruling but the
moral implications of the rule itself, followed by a new ruling. If my sugges-
tion that tradental glosses can serve as the common link for clusters of mate-
rial is correct, it is possible that we have a window, however opaque, into the
social and literary processes that produced the Mishnah. First, the attributed
statements in such cases are not merely “minority” dissenting views, but in
fact provide the organizing principle. This presupposes a redactor or author

(That a distinction between claims of robbery and other kinds of claims might make sense in
ancient Palestinian Rabbinic circles may perhaps be seen from t. Yeb. 14:2: “Said R. Simeon
b. Eleazar: ‘R. Tarfon and R. Aqiba did not dispute ... over one who purchased something
from five [people] and does not know .... Over what did they dispute? Over one who robbed ...
” However, as noted above, the Tosepta here connects this rule (analogous to m. Yeb. 15:7)
to the case of M3:3 that includes both deposit and robbery. In addition, note T3:5–6, which
includes analogues to M3:4 for both deposit [T3:6] and robbery [T3:5].)

68 M3:1 [A]: ha-mapqid ēsel habĕrō, followed by the object of ha-mapqid; M3:6 [A]; M3:7
[A]; M3:9 [A]; M3:10 [A]: ha-mapqid pĕrot (hābis, māt) ēsel habĕrō, i.e., with the object fol-
lowing the verb (participle); M3:11 [A]: ha-mapqid māʾōt ēsel ha-sulhān; i.e., following
the word order of M3:6–10, but with a different indirect object. (On this material see Section B.2
below.)

69 Ha-tōkēr pārā me-habĕrō, “one who leases a cow from his fellow.” However, the subject
of the verb (participle) is now not the owner of the object, but the renter, and “his fellow”
(habĕrō) is now the owner. The significance of the shift in aspect (from owner to contractor as
subject) in the formulaic introduction is limited, however. The formula ha-tōkēr is typical in
pericopae about the hiring of animals (e.g., M6:3–5) or labor (e.g., M6:1–2, 7:1; 10:5 [G]), as
opposed to a house (M8:6–9, ha-māskīr). However, the use of me-habĕrō in M3:2 [A], echoes
the use of habĕrō throughout the ha-mapqid series in Chapter 3, in contrast to the examples of
the formulaic ha-tōkēr used elsewhere in the tractate in connection with animals (cf. also
M8:1–3, ha-tōlēb, where this element of the formula is absent. If M3:2–5 originates in a dif-
ferent source from the rest of the chapter, it is possible that M3:2 [A] is meant to serve as a
redactional link to the ha-mapqid pericopae of Chapter 3.)
for whom the traditions of a particular sage (in this case R. Yose) were significant. I suspect (although the evidence falls short of proof) that what we have in such cases is the product of particular “schools” or “disciple circles,” which “annotate” traditions (perhaps already in existence) by reference to the view of the sage who is particularly important to them. Second, to the extent that the tractate incorporates several such clusters, from different “schools,” these clusters may offer some insight into how source material came into being and how it could be incorporated into the wider structure of the tractate. I will return to this problem below in Section D.3.

2. Nominative absolute (article + participle) series.

In the end, the strategy that is utilized by m. Baba’ Mesi’ a for the organization of its materials as a whole is that of topical arrangement. From the point of view of the redactional history of the Mishnah it is therefore important to ask to what extent the sources utilized by the Mishnah reflect this kind of organization. On methodological grounds, however, this sort of inquiry is quite problematic. The preceding section has relied on the observation that it is precisely where the Mishnah presents materials that do not seem to conform to the redactional patterns of the tractate as a whole (e.g., where it is organized by verse, by association, or by tradent) that it is possible to hypothesize that a source has been utilized. In the case of material arranged topically, however, we are faced with a redactional strategy that approximates that of the final product. How, then, are we to isolate such sources, if they exist? There is at least one class of passages in m. Baba’ Mesi’ a that is susceptible to analysis: passages that are linked to each other not only by content but also by formulaic patterning. In such cases distinct series of pericopae can be identified, and we can then proceed to ask whether these series betray signs of secondary redaction, which might show that they have been utilized as sources. In what follows, I examine the most prominent example of this type: series in which the protases of the member pericopae take the form of a nominative absolute construction (specifically, the article

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70 In the rest of the chapter the tradents of R. Yose’s generation are R. Simeon b. Gamaliel (M3:6 [C]); R. Judah (M3:7 [I]; 8 [B, F]; 11 [G]); and R. Meir (M3:11 [F]), whereas R. Yose does not appear again. If the unit comprising M3:2–5 is the product of a “circle” (“school”) interested in R. Yose, the rest of the chapter is not. Neusner, *Damages* II, 41, 43–4, already noted the linkage of M3:2–5 through the traditions of R. Yose, but his comment “Yose’s involvement in the matter explains the inclusion of an appendix” does make explicit how Neusner thinks the material got into the Mishnah, whether as a “formal exercise” or through the interpolation of a pre-existing source. Epstein, *Siprut*, 143, cited these traditions as examples of “the Mishnah of R. Yose,” but does not specify how these traditions constituted what he considered an early Mishnah.
Consider the following catalogue of occurrences of this form (brackets [ ] designate examples of the article + participle (present) that appear singly and not in series):

71 See Segal, 210–1, 212–5, §§439, 442–7. This is not, however, the only type of series in the tractate. For instance, a short series occurs in M1:3–4, where three cases dealing with the acquisition of lost objects are each opened with the verb nā'ā, “he saw,” and where terminological links connect all three passages (see Section C.3 below).

In M10:1–3 there is a series linked by the formula ha-bayit wa-hă-săliyād ū sel šēnāyīm, “the house and upper storey belonging to two people ...” (M10:1 [A], 2 [A], 3[A]). In this case the opening formula that links the pericopae uses a nominative absolute construction with a definite subject. This series was, I believe, available for use as a source. After M10:1–3, M10:4 [A–C] illustrates an analogous case (wē-kēn ...) involving a below-ground olive press with a garden above it and gives a ruling similar in content and language to that of M10:2 (especially [B, D]). The rather motley assortment of materials that follows (M10:4 [E]–6 [H]; see above n. 66) contrasts with the three closely linked pericopae that constitute M10:1–3, and suggests that the same hand has not produced both the first three and the last three pericopae of the chapter. In addition, the resumption in M10:4 of a topic dealt with in M10:2, and the failure to bring this material immediately after M10:2 (which would have been quite expected based on the kinds of redactional choices made in M10:4–6) makes M10:4 [A–C] appear to be a coda to the already completed M10:1–3.

Another example of such a series may be found in M1:6–8. In this example each member, dealing with the rules relating to the finding of documents, opens with the verb māṣa'. I have already shown that the order in which the documents is presented is based on some sort of stereotyped format (see above, n. 55). Moreover, the legal question throughout these three pericopae is identical (does one return documents that one finds?), and the cases are mere variants of one another (see, however, the discussion of M1:6, Section D.2 below). Thus, although it cannot be proved that M1:6–8 constitute a source used by the redactor, since there is no evidence that a redactor made use of these three pericopae as a whole, the interconnection between these passages is such that they are clearly one unit (even if one can make the case that all or part of M1:8 [C–K] has been added to it). The same formulaic pattern recurs in M2:1 [C, G], 2 [B]; 2:4 [A, C, F, G], 3 [A], 8 [A, D, H], 9 [B], 10 [A]. However, in the case of these passages from Chapter 2, there is far less that holds these materials together. The examples from M2:1–2 are part of the rhetorical structure introduced at M2:1 [A] and reiterated at 2:1 [B] and 2:2 [A]. M2:9 [B–C] is subordinate to the opening rhetorical question in M2:9 [A], and, in addition, stands in some tension with M2:10 [A–B] (see above, Section A.1). Both of these deal with domesticated cattle, which is not mentioned in the other passages opening with māṣa’ (Section A.1). Moreover, as I noted previously, the ruling of M2:3 [C–E] stands in apparent contradiction to M2:3 [F–4] [D] (Section A.1). Thus, the rhetorical patterning in Chapter 2, if it is not accidental, may reflect redactional shaping of disparate materials rather than the existence of a source. (On the other hand, this redactional activity itself could conceivably antedate the redaction of m. B. Meš. as a whole.)

Note also the following usages: M4:7 [H, I], M4:8 [B–F]; M7:4 [F], in which the form is used to express a rule briefly. The participle introduced by the article also serves to illustrate rules: M5:1 [C, F]; M7:2 [B, F].
M3:1 [A] ha-mapqid ḫesel habero
One who deposits with his fellow
M3:2 [A] ha-tokēr pārā mē-habero
One who rents a cow from his fellow
M3:6 [A] ha-mapqid pērōt ḫesel habero
One who deposits produce with his fellow
M3:7 [A] ha-mapqid pērōt ḫesel habero
One who deposits produce with his fellow
M3:9 [A] ha-mapqid ħābit ḫesel habero
One who deposits a jar with his fellow
M3:10 [A] ha-mapqid māʾôt ḫesel habero
One who deposits money with his fellow
M3:11 [A] ha-mapqid māʾôt ḫesel šulhānī
One who deposits money with a banker
M3:12 [A] ha-soleaḥ yād ba-piqādōn
One who appropriates a deposit
M3:12 [E] ha-hōṭeb līloah yād ba-piqādōn
One who intends to appropriate a deposit
M5:2 [A] ha-malweh ḫet habero
One who lends to his fellow
M6:1 [A] ha-tōkēr ḫet ha-ummānīm
One who hires artisans
M6:2 [A] ha-tōkēr ḫet ha-ummānīm
One who hires artisans
M6:3 [A] ha-tōkēr ḫet ha-hāmōr
One who hires an ass
M6:3 [K] ha-tōkēr ḫet ha-hāmōr
One who hires an ass
M6:4 [A] ha-tōkēr ḫet ha-pārā
One who hires a cow
M6:5 [A] ha-tōkēr ḫet ha-hāmōr
One who hires an ass
M6:7 [A] ha-malweh al ha-māşıkōn
One who lends on security
M6:8 [A] ha-māʿabīr ħābit mi-māqōm
One who was moving a jar from place to place
M7:1 [A] ha-tōkēr ḫet ha-pōʿālim
One who hires workers
M7:7 [A] ha-tōkēr ḫet ha-pōʿālim
One who hires workers
M8:1 [A] ha-tōʾel ḫet ha-pārā
One who borrows a cow
M8:2 [A] ha-tōʾel ḫet ha-pārā
One who borrows a cow
M8:3 [A] ha-tōʾel ḫet ha-pārā
One who borrows a cow
M8:4 [A] ha-mahalip pārā bē-hāmōr
One who exchanges a cow with an ass
M8:5 [A] ha-mōkēr sēṭāyw lē-ʾēsim
One who sells his olive [trees] for wood
M8:6 [A] ha-māskīr bayt lē-habero
One who leases a house to his fellow
M8:7 [A] ha-māskīr bayt lē-habero
One who leases a house to his fellow
M8:8 [A] ha-māskīr bayt lē-habero
One who leases a house to his fellow
M8:9 [A] ha-māskīr bayt lē-habero
One who leases a house to his fellow

73 See also the discussion of M6:3 [F] in Appendix I.
74 Note M8:4 [B]: wē-kēn ha-mōkēr šiphāṭō, ... and so too, one who sells his female slave.
The series of passages utilizing these formulae are found in some thirty pericopae out of a total of one hundred and one (based on the division of the text in the standard printed editions), a sizable proportion. If we include only those chapters in which these traditions appear (i.e., those with shared subject matter, excluding chapters 1, 2, 4, 5, and 10) the passages account for more than half of the pericopae (thirty out of fifty-three). It is reasonably self-evident that the disproportionately large number of these passages, and their arrangement in series is not accidental. What does need elucidation is whether these series are the work of the final redactors of *m. Baba*? *Mesi*?a? as a whole, or whether they were already available to the redactors for secondary use. In what follows, I review the evidence in favor of considering these series as sources utilized in a more or less complete form in the process of redaction.

The *ha-mapqidal* series in chapter 3 consists of six passages. This series is interrupted by another series linked, as I have argued above, by attribution to
R. Yose (M3:2–5). While it is attractive to see this as indicating that a redactor has broken up an existing series to interpolate another, the case is hardly secure. M3:2–5 cannot be shown to refer to the contents of the ha-mapqid series in Chapter 3; hence, we have no evidence that the series as a whole was known to the person (whether “redactor” or “author”) who placed M3:2–5 after M3:1. Some support may be gleaned from the similarities between the opening formula of M3:2 and those of the ha-mapqid series (see Section B.1, above). 

More suggestive is the return to use or appropriation of the deposit in M3:12, a topic already raised in M3:9. It is possible that M3:12, in its various parts, serves as a coda to the already existing ha-mapqid series. 

The relationship between M3:6, 7, and 8 is complex. After an introductory statement that a depositary may deduct the losses incurred to the produce (hesronöt) in his care [A–B], M3:7 lists acceptable amounts of loss arranged in order of increasing proportions (4.5/180 = 1/40 [C]; 9/180 = 1/20 [D]; 18/180 = 1/10 [E]).

The second part of the pericope follows with two attributed traditions (M3:7 R. Yohanan b. Nuri [G–H]; R. Judah [I]), which both echo the language of the introductory statement and respond to the general conclusion to the first part: “All is [assessed] according to the measurement and all is [assessed] according to the amount of time” [F].

M3:12 [A–D] and [E–G] share formal characteristics and common terminology (both use forms of šalah yād, Ex. 22:7, 10), and are clearly designed to be taken together (whether or not both parts were composed at the same time). Together these passages deal with the use or appropriation of a deposit, a topic already dealt with in M3:9 and 11. The placement of M3:12 [A–G] might be due to the topic of M3:11, and does not reflect awareness of any other items in the ha-mapqid series of Chapter 3, so it is hardly necessary to take M3:12 [A–G] as the coda to an existing series. If M3:12 [I–J], which deals more specifically with jars on deposit that are moved and broken, as in M3:9, should be taken as an independent pericope (it could circulate separately, t. B. Qam. 10:34; and some versions of the Mishnah do not include [H], kēṣād, which links [I–J] directly to [A–G]; see Appendix I), M3:12 [I–J] may serve as a supplement to M3:9, and hence as a coda to an already existing ha-mapqid series. If M3:12 [A–G] and [I–J] made their way into m. B. Mes. together as a unit (with [I–J] amplifying the Hillelite position), all of M3:12 might serve as a coda to M3:11. If the ha-mapqid series in Chapter 3 were composed by the redactor of the Mishnah as it has come down to us, should we not have expected all or part of M3:12 (especially [I–J]) earlier in the tractate? 

M3:7 [C–E], like M4:5, presents a geometric progression of ratio 1/2 (in M4:5: 1/24; 1/12; 1/6). Neusner’s translation and commentary for this passage are wrong (Damages II, 46–7). First, Neusner misread “nine half qabbim” [B] as “nine qabbim and one half,” which he gave as 5.2% (properly, it rounds off to 5.3); second, he came up with a figure of 16.6% (i.e., 16.7) for the proportion “three šēṭīn to the kōr” [E], apparently by dividing 30 šēṭīn by 180 gab, i.e., by merely giving the ratio of the šēṭā to the gab. (Since one kēr equals 30 šēṭīn, the actual ratio is 3/30 = 1/10.) 

Neusner, Damages II, 47, stated that M3:7 [F] conflicts with [C–E] since these latter clauses require fixed proportions, and suggested that [F] and the tradition attributed to R.
Without any transitional material, M3:8 gives a list of deductions for wine and oil. In contrast to M3:7, in which the opening sentence [A-B] provided the verb for all three elements on the list [C-E] with which they are syntactically connected, the list in M3:8 consists of two independent but parallel sentences [A, C]. Moreover, whereas the cases of grains are worked out quite tersely in M3:7, the case of oil in M3:8 [C] is expanded with both an explanatory clause [D] and two qualifications [E-F]. In short, M3:8 is a less tightly controlled pericope than M3:7. There is some tension between the two pericopae in terms of content as well. From the objection and gloss of R. Yohanan b. Nuri [G-H] it would appear that at least one possible reading of the “losses” in [B] took them to be the result of vermin alone, and not spoilage, although by itself, that [A-E] refers to spoilage as well seems likely. In M3:8 the kind of loss for which one makes deduction is the absorption by the container, and not for consumption by vermin (since M3:8 deals with liquids) or for spoilage. It is possible, therefore, that the lists in M3:7 and M3:8 derive from different hands. This possibility becomes important when we consider the relationship of both these pericopae to M3:6. In particular, while M3:7 can be seen as referring to the same general problem as M3:6, M3:8 cannot: M3:8 is not concerned with the loss of all or part of the deposit due to spoilage, but only with the standard amount of wine or oil that a depository returns at the end of the term. At the same time, the topical as well as linguistic (specifically the use of the expression י_decay_ in M3:8 [A, C, F]; cf. M3:7 [B]) links between M3:8 and M3:7 suggest that M3:8 was intended to supplement M3:7.

Significantly, the presupposition behind M3:8 is that the depository is not returning jars of oil or wine that the owner has left with him, but pours the liquid out of his own jars: hence the concern for the deduction for sedimentation and absorption. A similar argument can be made with respect to the various types of produce mentioned in M3:7. It is at least possible in such

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Yohanan b. Nuri [G-H] together form an interpolated dispute concerning only the topic sentence [A-B] but not [C-E]. However, [F] does not conflict with [C-E], but supplements it with the observation that the deductions in [C-E] are deductions and not fixed amounts, and that they are dependent upon the duration of the deposit (presumably in years) and the amount of produce deposited. It remains possible that [F-H] form an added dispute, but [G-H] could easily be taken as a gloss disputing with the whole of [A-F], a hypothesis that requires less “surgery.”

78 Cf. the reply to R. Yohanan b. Nuri in T3:10 (cf. B40a): “Rather [Lieberman, TK, 9, 174, reading פ for ל in the Vienna ms.] because they become scattered; rather because they perish (י_decay_; cf. M3:6 [B]);” i.e., the produce is thought to perish not merely because of vermin. Compare the more humorous response in the Yerushalmi: “There [in Babylonia] they say: ‘Those wicked mice [are meant who] when they see much produce call their friends and eat with them’” (Y3:8 [9b]).
cases that the depositary is not returning the produce that he received. If this is so, M3:8 (and, by implication, perhaps M3:7 as well) stands in striking tension with M3:6, which presupposes that the owner’s produce is readily identifiable, and, according to the anonymous opinion, that the depositary may (indeed, must) sit by and watch the produce go to waste. At any rate, if the rules of the anonymous opinion of M3:6 applied generally, there should be no reason to invoke acceptable percentages of loss in M3:7–8: it should be enough that the depositary returns the very same produce in whatever state it now is (perhaps with guarantees by oath, if necessary, that there was no wrongdoing on the part of the depositary).

While the mutual tensions among the various pericopae of M3:6–8 are rather clear, just what bearing this has on the redaction of the *ha-mapqid* series in Chapter 3 is far from self-evident. Several possibilities present themselves. First, M3:8 may have been added to M3:6–7 as a supplement. In support of this possibility is the fact that some of the tension between M3:6 and M3:7 is relieved if M3:8 does not inform our reading of M3:7. Second, it is

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79 That the depositary returns different produce than he received is proposed explicitly by the gloss to M3:7 [B] in T3:9: “In what context are [these] things said? When he mixed it with his own produce; but if they were set by themselves let him [the depositary] say to him: ‘Lo, yours is before you.’” That is, where the produce of the owner is readily identifiable the depositary returns it in whatever state it may be (for this use of *hare selkā lē-pānēkā* cf. *m. B. Qam.* 9:2; 10:5; *m. B. Mes.* 6:3).

80 It is tempting to see the gloss to M3:7 [B] in T3:9 (cited in the previous note) as an attempt to resolve the tension between M3:6 and M3:7 (and 8) by proposing that M3:7 is a special case where the rules of the anonymous view of M3:6 do not apply. However, the language of T3:9 (*hare selkā lē-pānēkā*, “lo, yours is before you”) implies that the depositary is merely not liable for certain kinds of expected damage, but M3:6 [B] (*hare zeh lo yigga’ bāhen*, “lo, let him not touch them”) conveys prohibition and actual culpability for taking action to prevent damage. If T3:9 does indeed respond to an apparent contradiction between M3:6 and M3:7, it may be that “lo, yours is before you” is intended to correct the language of M3:6 [B].

Incidentally, the conception of M3:8, at least, of deposited produce returned by pouring it out of the depositary’s own jars, does not dovetail well with pericopae that consider the liability of a depositary who has broken a jar that is on deposit. See M3:9, 3:12 [I–J]; 6:8. Arguably (although this is unlikely), M3:9 and M6:8 might refer to the deposit of an empty jar, and have no bearing on the way the authors of the pericopae assumed that deposit of produce was carried out. Compare, however, M3:12 [H–I], where “a jar” is assumed to be full (cf. *m. B. Qam.* 3:1).

81 At the very least, both M3:6 and M3:7 can be taken to be concerned with spoilage. Moreover, without M3:8, it is not necessary to see M3:7 as a case where the depositary mixed the deposited produce with his own. M3:7 could be taken as qualifying M3:6 by giving acceptable rates of loss in produce: above the rates in M3:7, both disputants in M3:6 might agree that the depositary should sell the produce; below those rates, the depositary does not
conceivable that M3:7–8 together were interpolated into the series. In support of this it should be noted that the presence of three glosses attributed to R. Judah within these two pericopae suggests that they be marked off as having a common origin. In either case, moreover, the joining of these problematic materials may have been the work of the redactor of Chapter 3 as it appears before us, or may already have been present in a source. On balance, the latter possibility, that M3:6–8 together were part of the ha-mapqids series, strikes me as promising. If this is correct, the process of the combination of material that may not quite agree, or of the supplementation of material, is not merely the product of the final redaction but has a longer and more complex history.

The next series of the type that I have been discussing occurs in Chapter 6 (M6:1–5), with a possible continuation in M7:1, 7. Here we are on somewhat stronger grounds than in Chapter 3. To begin with, M6:6–8 together seem to form a coda to M6:1–5. The common link within M6:6–8 is the liability of depositaries. What links the material in this unit to M6:1–5 is sell (according to the anonymous view of M3:6), and is not responsible to make up the losses. (Something akin to this interpretation was suggested by Nimmugy yosef to M3:6 in connection with that pericope, in keeping with the Babli’s discussion of whether the case disputed in M3:6 is one where the produce has suffered the usual amount of spoilage or more than the usual amount [B37a]. However, Nimmugy yosef also followed the Babli in taking M3:7 as a case where the depositary had mixed the produce with his own.) If M3:7 is properly a qualification of M3:6, the subject of the expression harē zeh yōśi lō hesrōnā, literally: “lo, let this one take out diminutions (or: losses)” (M3:7 [B]) should perhaps be taken to refer to the owner and the whole phrase to read: “let him [the owner] make allowance for” (and not “let him [the depositary] make deductions,” i.e., when he returns the produce). By contrast, the reference to sedimentation in M3:8 [D] forces the conclusion that it is the depositary who, upon returning the deposit by pouring oil out of his own jars, makes appropriate deductions. (In M3:8 yōśi may plausibly be taken to have the depositary as subject ["let him deduct"]; cf. [G]: it is the seller, the one who is pouring out oil, who “accepts upon himself” a certain volume corresponding to the sediments [cf. Epstein, Nisah, 1017–8].)

One of the arguments in favor of seeing M3:6–8 as part of the ha-mapqids source is the link constituted by the glosses attributed to R. Judah. I shall argue in Section D that the “definite article + participle” series are characterized by attributions to both R. Simeon b. Gamaliel and R. Judah.

See also M10:5 [G]: “ha-tōker ‘et ha-pō‘ēl,” One who hires a worker,” which is remarkably similar to the protases of M7:1 and 7. It should be noted, however, that in M10:5 the formula refers to one worker, whereas in M7:1, 7, as in M6:1–2, the workers are referred to in the plural.

M6:6 [A–B] correlates the liability of an artisan with respect to the work in his possession to that of a paid or unpaid depositary, depending on circumstances (see the discussion of S. Friedman, Talmud Arukh: BT Bava Mez’ia VI, Commentary [Hebrew] [Jerusalem: JTSA, 1990], 241–2); M6:7 [A–C] considers an analogous problem in connection with a lender and the pledge that he holds (cf. m. Šebu. 6:7). M6:6 [C–D] deals with the legal force of certain
solely the rule that opens M6:6 that "all artisans (‘ūmānîm) are paid depositaries," which connects with the topic of the opening formulae of M6:1–2: "One who hires artisans (‘ūmānîm) ...." Considering M6:6–8 a coda to an already existing M6:1–5 accounts at once for why the traditions of M6:6–8 appear in their present context at all, and why they appear after M6:5 and not M6:1.85

In addition to this possible coda, it is possible to point to revisions of pericopae in Chapter 6. Consider M6:3 [A–E] and [K–R]:

[A] One who leases an ass—
[B] to walk it on the mountain
   and he walked it in the valley,

[K] One who leases an ass—
[L] to walk it on the mountain
   and he walked it in the valley,

[M] if it slipped he is exempt,
[N] but if it became overheated he
   is liable;

[O] in the valley and he walked it
   on the mountain

[P] If it slipped he is liable,
[Q] but if it became overheated he
   is exempt,

kinds of statements between owner and (potential) depositary. M6:8 rules, for the third time in this tractate, on the question of a depositary who has broken a jar in his care. The rule of Abba Shaul in M6:7 [D–E] does not connect directly with the question of deposit, but does build on the problem of the creditor who holds a pledge considered in an earlier part of the same pericope.

85 Of course, this argument is hardly probative. It does not necessarily follow that M6:1–5 constituted a source available to the redactor of the chapter: the ha-sôkèr series in Chapter 6 could have been constructed by the final editors of the chapter who, for their own reasons of formal consistency, did not want to break up the series they were constructing in order to present what they considered a related or relevant source (on M6:6–8 as a source see above Section A.1). One problem with the argument that M6:1–5 is a pre-existing series followed by a coda is that the ha-sôkèr series seems to be picked up again by M7:1, the pericope following M6:8. Why break the series after M6:5 and not after M7:1+7? If M7:1 and M7:7 concluded the ha-sôkèr series of Chapter 6, the redactors might have considered the shift in topic from the hiring of animals to the hiring of workers to be a sufficient break to warrant interpolation at that point, but in that case surely the break between the hiring of artisans (M6:1–2) and hiring of animals (M6:3–5) would have been more appropriate. Another possible explanation is that M7:1, 7 were not originally part of the ha-sôkèr series. However, while it is possible to argue that M7:7 deals with the right of workers to eat produce in the fields, and dependent upon M7:2–3 and therefore a later insertion to the chapter, there is no necessary reason to doubt the connection of M7:1 to M6:1–5. Cf. M9:1[A–E] (from another nominative absolute series), which serves as a near analogue to M7:1 [A–F].
but if [it became overheated] due to the height, he is liable.

even [if] this was ten miles and this was ten miles

and it died,

he is liable.

M6:3 [A–E] ruled simply that a renter who specifies a certain kind of use and deviates from that specified use has broken the contract and is liable for whatever damage may occur. M6:3 [K–R] has revised this rule to find the renter liable only when it can be presumed that it is precisely the renter’s deviation from the stated terms that has caused the damage to the rented animal. Strikingly, all of M6:4 follows the line of reasoning introduced by

[Cf. M6:2: [F]: “anyone who alters [the contract] is in the inferior position.” The expression yādō la-taḥtōnā, literally: “his hand is lower” (compared with its antithesis yādō la-ṭelyōnā, “his hand is higher”), typically means that the party so described is required to absorb loss (m. Šeq. 4:9; 5:4), or at any rate has a weaker legal claim (M4:2, 6; m. Šebu. 7:6).

The tension between M6:3 [A–E] and [K–R] was already noted by Amoraim. The opening question of the Babli concerning this pericope reads: “What is the difference between the first and last parts [of the Mishnah] (ma‘ā ṣānā ṭēḏa’ ... ù-ma‘ā ṣānā̄ ṭēpā’ ...) that the first part makes no division [between slipping and overheating] and the last part makes a distinction?” (B78a). This opening question is followed by several harmonizing suggestions (e.g., that the animal died by some other means in [A–E]) and finally by the view attributed to R. Hiyya b. Abba in the name of R. Yohanan (R. Yohanan alone in the Yerushalmi parallel, Y6:3 [11a]) that: “This [first part [A–E]] is according to whom? It is according to R. Meir ...” (following the language in the Babli; the Yerushalmi tradition is slightly different). What the solution proposed by (R. Hiyya b. Abba in the name of) R. Yohanan does not account for, however, is why the wording of the two parts of the pericope is so closely linked. (Cf. a closely parallel commentary on the Mishnah in Y6:3 [11a] the text of whose opening question is somewhat uncertain and obscure: “In the valley and he walked it on the mountain’ [M6:3 [B]] is understood [niḥā], [why does M6:3 [B] state ‘on the mountain and he walked it in the valley’ [as well]?” [The text is quoted from the Escorial manuscript, slightly emended; see Lieberman, Yerushalmi Neziqin, 164 to l. 26 and Friedman, 1990, 133–5.] The Yerushalmi’s question is apparently attached to M6:3 [A–E] alone: granted that the lessee is liable in the case of death for walking an animal on the mountain against the terms of the agreement because of the stress on the animal due to the climb, why should the lessee be liable for walking the animal in the valley, where the stress is less? As Friedman notes, all the answers given in the Yerushalmi, including that attributed to R. Yohanan, which assigns [A–E] to R. Meir, may be read as addressing that question. Arguably, the use of likely causes of death as criteria for liability in [K–R] may underlie the question about [A–E]. [Lieberman, Yerushalmi Neziqin, 164 to l. 26, sought to explain the question of the Yerushalmi as based on the rule about slipping in [O–R]: granting that the lessee who walked the animal on the mountain instead of in the valley is liable, because slipping is likely, why should that person be liable in the reverse case when slipping is not likely?] However, it is possible that the Yerushalmi, and the authors of the Palestinian
the latter part of M6:3, suggesting that it too was part of the process of revision and supplementation that produced M6:3 [K-R].

In light of this alteration of M6:3 in the direction of giving greater emphasis to the specific circumstances of the case, it is worth asking whether a similar process has taken place in M6:5 as well:

[A] One who leases an ass—
[B] to bring wheat and he brought barley,
[C] grain and he brought straw [and the animal was damaged]
[D] he is liable,
[E] for volume is as difficult as load.
[F] To bring a letek [a measure of volume] of wheat and he brought a letek of barley,
[G] he is exempt;
[H] and if he added to its load he is liable.
[I] And how much shall he add to its load and [thus] be liable?
[J] Symmakhos says in the name of R. Meir: "A se'ad for a camel; three qabbim for an ass.

It is possible that M6:5 [A–D] together with [F–G] formed a core pericope concerned with the implications of the stated terms of the agreement. Without the explanatory clause in [E], [A–D] can be taken as roughly analogous to M6:3 [A–E] (and M6:2[F]): any non-compliance with a contract makes the renter liable. [F–G] may add only that if the parties agreed to a specific

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88 Two additional points should be noted regarding M6:4. (1) It deals with the renting of a cow, whereas M6:3 and M6:5 both deal with renting an ass. (2) In M6:4 [A–F] the damage is not damage to the animal, as in M6:3; 6:4 [G–L]; 6:5, but to the plow. These two factors strengthen the supposition that M6:4 was added in the process of revision.

89 This may have already been hinted at by Nahmanides, Hiddusim, s.v. Abayye 'amar (to B80a). Commenting on the reading of the M6:5 [E] attributed to Abbaye ("for volume is as difficult as load"); this is also the reading in nearly all Mishnah texts, see Appendix I) as interpreted in the Babil, Nahmanides notes that an ass can carry several times the volume of straw that it can carry of grain, and that the reading "for volume is as difficult as load" is therefore problematic, and comments: "For Abbaye 'anyone who alters [the contract] is in the inferior position' [= M6:2 [F]]." See also Epstein, Nusah, 380, who takes the first part of M6:5 as prohibiting any change in the kind of load. Compare Friedman, 1990, 223–5, 232–6, who does not see the two parts of M6:5 in their present form as conflicting. Friedman sees M6:5 [A–B] as referring specifically to a case where the renter used the ass to carry the same weight in barley (but a greater volume, see Appendix I); by contrast, in [F–G], where the renter is exempt from liability, the ass has carried the same volume in barley (and less weight). Friedman’s argument
volume to be carried, it is that volume, and not the type of material, that is
decisive for determining whether the lessee has deviated from the contract. If
this is so, the "core pericope" (M6:5 [A–D + H–G]) reflects a concern with
the implications of the wording of contracts that is expressed in other perico-
pae in the tractate, especially in the nominative absolute series under consid-
eration here. The other material in the pericope [E, H–J] is explanatory or
serves to quantify rules, and may well consist of later additions. What this
supplementary material has in common, however, is that it introduces two
circumstantial factors, the stress of weight and volume, which might lead to
damage to the animal.

Alternatively, it is possible that [F–G] stands in some tension with [A–D]:
unlike [A–D] (and M6:3 [A–E]; cf. M6:2 [F]), it allows variation in content,
as long as the specified volume is maintained. [H], which may have been a
later supplement to [F–G], sets a limit on the kinds of changes permitted in
[F–G] by making the renter liable if the change involved a greater weight
than that of the initially specified load (in the case of the Mishnah, the
weight of a *letek* of wheat). [F–H] may be intended to recast [A–D] in a
manner that gives greater specificity (the volume of the load is explicitly
stated) and takes into account the factors of weight and volume (i.e., in
much the same way that M6:3 [A–E] has been revised in [K–R]). The

focuses, in part, on the gloss "for volume is as difficult as load" (M6:5 [E]), which he takes as
prohibiting additional volume. Even if this interpretation of M6:5 [E] is correct, this clause
remains a gloss that may have been added to reduce conflict between the first and second
parts of M6:5; without it M6:5 [A–D] is inexplicit and open to both interpretations.

Cf. M6:3 above; M8:8: the implications of renting "for a year" as opposed to "for twelve
months"; M9:10: leasing a field "for seven years" or "for a week of years." See also M9:8: leasing
a field and specifying a particular kind of produce to be grown. Cf. M7:1; M9:1, con-
cerned with what needs to be specified in the face of "local custom"; and M6:6 (not a member
of the *ha-soker* series), concerned with the kinds of statements that assign the liability of a paid
or unpaid depositary to the person who stated them.

Cf. Friedman, 1990, 225, who took [H] more generally and as applying equally to [A–
D] and [F–G] (i.e., "if the animal was made to carry more than its conventional load," no
matter what type of load it was carrying).

conflicting sources, the former prohibiting any change in kind, but the latter an increase in
weight. Friedman, 1990, 223–5, also saw M6:5 as derived from two sources that initially con-
flicted, but that no longer do. M6:5 [F–J], according to Friedman, 1990, is a revised version
of the tradition in T7:10 (cf. the *bānātâ* at B80a, according to the version of R. Hananel,
as cited by Nahmanides, *Hiddusim*, s.v. *Ha-soker* [to B80a]; see Epstein, *Nusah*, 380f; Lieberman
TK9, 254 [to T7:10; l. 45]; Friedman, 1990, 225–7): "If someone rents an ass to bring a *letek*
[= 15 *sērin*] of wheat and he brought sixteen *sērin* [= 1 *letek* + 1 *sēd*], he is exempt ...." The rest
of T7:10 largely parallels M6:5 [G–J]. According to Friedman, 1990, the pericope from the
Tosepta, despite its close parallels to the Mishnah, conflicts with M6:5 [A–D] taken together
insertion of [E], then, is also part of this process of revision and sets the ruling of [A–D] in terms of the stress of weight and volume rather than narrowly on the fact that the lessee said one thing and did another. [I–J] carry this process further by defining how much additional weight is considered non-negligible, and therefore makes the renter culpable.

The process of revision in M6:3–5, if such it was, indicates that at least some pericopae in M6:1–5 have been subjected to editorial alteration at some point. In and of themselves these corrections cannot constitute proof that the series M6:1–5 was utilized as a source. (Even if it is assumed, for instance, that M6:1–5 did constitute a source used by the redactor of the Mishnah, the corrections might already have been present in that source; cf. the discussion of M3:6–8 above.) However, if I am correct in suggesting that the series was utilized as a source that was available for use by the redactor of the Mishnah on other grounds (the “coda” in M6:6–8, as well as the formal literary links of the opening formulae), these revisions, which were carried out along the same conceptual, if not literary, lines, are suggestive of the kind of redactional work that may have gone into constructing a tractate out of sources.

In M8:1–3, the Mishnah takes for granted the rule that a borrower is liable for nearly any kind of damage that might occur; the three cases presented in M8:1–3 deal with when and how this liability applies. There is no internal evidence that implies either that these pericopae were used as a pre-existing source or that they are the product of the redactor of the tractate. There is, however, a small amount of evidence to be gleaned from the context of these pericopae. While the end of Chapter 7 does deal with “watchmen,” including the borrower, and one could argue that M8:1–3 has been brought here to follow this discussion, I shall argue below that M7:8–11 are better explained as a coda or supplement to the discussion of workers in M7:1–7. The two pericopae that follow M8:1–3 consist of four cases. The first three are cases of sale or exchange, and the fourth is an analogous extension of the

with [E] (“for volume is as difficult as weight”), which Friedman takes as prohibiting any increase in volume (Friedman, 1990, 223; see above n. 89). Friedman therefore suggests that T7:10 served as the source for M6:5 [F–J], but that its opening (M6:5 [F]) has been modified to resolve overt contradictions with M6:5 [A–E]. T7:10, however, could just as easily be seen as a revision of M6:5.

93 M8:1 interprets Ex. 22:14 as exempting the borrower from liability where the owner of the animal was hired or “borrowed” with or before the animal itself; M8:2 examines a case where it is not clear whether the animal that died was borrowed or rented (the renter is exempt in cases of accidental death, M7:8 [G–H]); M8:3 considers under what circumstances the borrower is already liable while the animal is still being delivered to him.

94 See below, Section C.1.
third case. All four of these cases are linked by the fact that they involve disputes over ownership resolved (in part, at least) through division of the disputed property, and by the formulaic manner in which this is expressed: (1) introductory case, (2) “this one says ... and this one says ...,” (3) “let them split [it].” It is this that constitutes the only link between M8:1–3 and 4–5, since M8:2 works out a similar kind of dispute (over liability) in similar language. By far the closest connection is that between M8:2 and M8:4 [F–S]:

**M8:2**

- [A] One who borrows a cow—
- [B] he borrowed it for half a day and leased it for half a day,
- [C] he borrowed it today, and leased it on the next day,
- [D] borrowed one and leased one:
- [E] the lender says: “The borrowed one died,” [or] “It died on the day it was borrowed,” [or] “It died at an hour when it was borrowed,”
- [F] and the latter says: “I do not know,”
- [G] he is liable.
- [H] The renter says: “The leased one died,” [or] “It died on the day it was leased,” [or] “It died at an hour when it was leased,”
- [I] and the latter says: “I do not know,”
- [J] he is exempt.
- [K] This one says: “The borrowed one [died],”

**M8:4**

- [F] He had two manservants, one big and one small:
- [G] and so too, two fields, one large and one small:
- [H] the purchaser says: “I bought the big one,”
- [I] and the latter says: “I do not know,”
- [J] he has gained the big one.
- [K] The seller says: “I sold the small one,”
- [L] and the latter says: “I do not know,”
- [M] he only has the small one.
- [N] This one says: “The big one [is mine],”

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95 M8:4 [A–E]: an animal or slave has given birth in the process of sale, and it is not clear in whose possession the mother was when she gave birth; M8:4 [F–S]: the sale of two items (slaves [F]; fields [G]), one large and one small; M8:5 [A–G]: olive trees were sold for wood, and produced olives; M8:5 [H–K]: olive trees were washed by a river into the field of another, where they were replanted and produced olives.
The two pericopae are clearly worked out along parallel conceptual and linguistic lines: definite claims and uncertainty (“I do not know”) are balanced against each other and against themselves. These two passages are significantly different from the other cases of M8:4–5. Formally, M8:2 and M8:4 [F–S] involve four different sets of claims and rulings culminating in the case where the parties split the disputed amount, whereas the remaining cases in M8:4–5 each have only one set of claims. Legally, M8:4 [F–S], like M8:2, introduces the problem of definite and indefinite claims and the requirement of oaths. Furthermore, by ruling that the disputed property is only divided in the case of indefinite claims (M8:4 [N–P]; cf. M8:2 [K–M]; the remaining cases allow this even in the case of definite claims), M8:4 [F–S] appears to be in some tension with M8:4 [A–E] and M8:5, which rule that money over which there are conflicting claims is to be divided among the claimants. If, despite this tension, M8:4–5 as a unit has been added as a coda to

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96 See Epstein, Násah, 384–5, and compare T8:23 in which the same case as M8:4 [A–E] (the offspring of an animal being sold) is cast in terms of M8:4 [F–S] and attributed to R. Meir (with two disputing views that, as Epstein has noted, seem to agree neither with R. Meir nor with the Mishnah as we have it). One could argue that M8:4 [A–E] (and M8:5) does not conflict with [F–S], but rules differently for a different kind of case. [A–E] deals with uncertainty over the “objective” status of a particular item of property (in whose possession was the mother when the offspring was born; in M8:5 both cases deal with the status of the olives grown); [F–S] is concerned with the “subjective” aspect of the terms assumed in the agreement (was the big field or slave meant, or the small one). For the Mishnah itself this may well be true (and may be the implicit legal exegetical rationale behind the inclusion of M8:4 [F–S] in this context). However, both the view attributed to R. Meir in T8:23 (treating the “objective” problem of M8:4 [A–E] in the same way as the “subjective” problem of [F–S]) and M8:2 (also treating an “objective” question of status: was the animal rented or borrowed when it died) suggests that Rabbis did not inevitably make this distinction, and that the difference between M8:4 [A–E] and [F–S] may instead reflect a disagreement over the questions of whether claimants are required to take an oath, and whether the property claimed should be split. (The formulation of T8:23 as a dispute also testifies that in antiquity precisely the case of M8:4 [A–E] was thought to be subject to a dispute in the Ushani period.)
M8:1–3, it suggests that the redactor responsible for compiling M8:4–5 was tolerant of contradictions in the composition, or that some implied exegetical rule allowed for the resolution of the tension. If the latter is the case, it is not impossible that the inclusion of M8:4 [F–S] in M8:4–5 is the work of the person who joined M8:1–3 and 4–5 and reflects a conscious effort to “update” M8:4–5, that is, to apply to the cases of disputed property the rules of conflicting claims from M8:2.

There is no unambiguous evidence in the pericopae in M8:6–9, linked by the opening formula ha-maiktir bayit lê-habêrô, to show that this series has been used as a source.\(^{97}\) Immediately following M8:9 is the last series of this type in m. Baba\(^{2}\) Mesi\(^{2}\) (M9:1–10). This is followed by a cluster of three pericopae dealing with material unrelated to M9:1–10 (the right of a worker to his pay, M9:11–2; the distraint of pledges, M9:13), which, I have argued earlier, is shaped by the juxtaposition of topics in Deuteronomy 24:10–5.\(^{98}\) One could argue, therefore, that a redactor has appended one cluster of materials at the conclusion of another. This argument would be stronger if we could show how M9:11–3 constitutes an appendix to specific materials that precede it. In that case one could hypothesize that the appendix or coda was added only at the end of a body of already existing material rather than interrupting that body of material. Unfortunately, there are no direct links between M9:11–3 and M9:1–10. On the whole, however, the conclusions regarding earlier series (in Chapters 3, 6 and in M8:1–3) should inform our understanding of the redaction of M8:6–9 and 9:1–10. Thus, although there is no specific way of proving that 8:6–9 or M9:1–10 were used as pre-existing sources, despite the suggestiveness of the opening formulae, it remains distinctly possible that these last two series were available to the redactor of the tractate for use as sources.

The only candidates for connecting M9:11–3 with preceding material are M7:1, 7, which deal with workers, and M8:1–3, which are concerned with

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\(^{97}\) Epstein, Nûsah, 338–9, argued on the basis of a comparison of M8:6 and a bâraîtâ in T8:27 (cf. Y8:8 [11d]; B101b), which apparently glosses M8:6 (“When they said, ‘Thirty days,’ and when they said ‘Twelve months,’ [this is] not that he may live in it for thirty days, and not that he may live in it for twelve months, but that [the landlord] must inform [the tenant] [of his eviction] thirty days before, and that he must inform him twelve months before”), that the passage of the Tosepta glosses a different version of the pericope in M8:6 (a version that only had cases stated in terms of “thirty days” and “twelve months,” but not our M8:6 [B]), and that our M8:6 is composed of two strands. This conclusion is not necessitated by the text or language of M8:6 itself. Even if correct, however, this conclusion need not imply that M8:6–9 constitutes a source that has undergone a revision in the process of inclusion in the Mishnah, but could as easily reflect the original composition of the series out of sources (whether at the hands of the final or of earlier redactors).

\(^{98}\) See above, Section A.1.
borrowers of animals. Neither of these candidates is entirely satisfying. If M9:11–3 were a coda to an article + participle (present) series that appears substantially earlier in the tractate, it would follow that not only each individual series, but an agglomeration of such series, perhaps all of them taken together, constituted a source for the redactor of the tractate. Although direct demonstration of this admittedly is impossible, there are certain impressionistic reasons to accept the possibility of one large nominative absolute series. First is the formal parallel between the several series, of which some, at least, appear to have preceded the redaction of the Baba’ Meṣi’a; and to have been utilized as sources. A second reason is the rather limited range of topics that are covered by these series: they all deal with contracts. I take it as no accident that in Baba’ Qamma’ and Baba’ Batra’, originally part of the same tractate as Baba’ Meṣi’a’, the only full-blown example of this type of series has the opening formula ha-mōkêr, “one who sells...” (m. B. Bat. 4–6). I am inclined to suggest, therefore, that the redactor of our tractate has used a collection of pericopae on contracts as a source (see further Section D.3 below). If this is so, the redactor of m. Baba’ Meṣi’a’ had at least one extended source organized according to topic available for use.

C. Traces of the Redactional Process

If the argument of the preceding sections is correct, the redactors of m. Baba’ Meṣi’a’ had before them a variety of materials, which they used to compile the tractate as we have it. The purpose of this section is to examine some of the evidence that can be used to identify the processes that these materials have undergone in their incorporation into the Mishnah. Once again, the methodological approach is to examine the literary evidence presented by the text of the Mishnah itself. Anecdotal testimonies about the redaction of the Mishnah from elsewhere in Rabbinic literature, and extr-Mishnaic Rabbinic legal and interpretative dicta, properly constitute separate bodies of evidence and deserve studies of their own, but are not discussed here.100

99 I have noted above possible objections to including M7:1 + 7 as part of the series begun at M6:1. If they are not connected with M6:1–5, M7:1 and M7:7 are too far separated in the chapter and too different in content to be considered automatically part of a series that has been disassembled. Moreover, the specific question of the laborer’s right to his wages is not dealt with in Chapter 7. As for M8:1–3, these pericopae deal specifically with the problem of the liability of a borrower of an animal when that animal has died. This is considerably different from the matter of distraint of a pledge in the case where the debtor has defaulted on a cash loan.

100 By “anecdotal” evidence I mean traditions that describe, or at least may be taken to
1. Codas.

One of the ways in which the Mishnah betrays its use of sources is the supplementation of passages with what I have been calling "codas," borrowing the term from D. Daube. I use the term coda to designate passages that supplement one element in a preceding body of material and that "logically" would have fit better if they were presented together with that element. In such cases it is distinctly likely that the reason that the supplement does not occur at the location where it belongs is that the body of material to which the coda is appended existed as a unit before the supplement, and that the person responsible for the coda chose not to interrupt it with an interpolation.101 Since I have repeatedly referred to examples of codas in *m. Baba* Ḥina, I discuss only one such passage here.102 M7:1–7, which deals with the rights of workers, falls into two parts: (a) M7:1, that workers be treated

describe, some aspect of the redaction of the Mishnah, such as the passage from *Abot R. Nat.* A 18 discussed above, Section A (introduction). For an example directly connected with *m. B. Mes.* see the discussion of both the Yerushalmi and the Babli concerning M4:1: the son of R. Judah the Patriarch asks why he taught one version of the M4:1 ("silver acquires gold") in his youth, and another in his old age ("gold acquires silver") (Y4:1 [9c]; B44a–b; see Appendix I). As an example of a "legal or interpretative dictum" see the comment attributed to (R. Hyya b. Abba in the name of) R. Yohanan that: "R. [Judah the Patriarch] saw the words of R. Meir in [the rule] "[As for an ox or a sheep, you shall not slaughter] it and its offspring [in one day]" (Lev. 22:28), and formulated them as the words of the sages [i.e., in *m. Hul.* 5:3]; and the words of R. Simeon [in the rule of] covering the blood [of non-domesticate animals when slaughtered] (Lev. 17:13), and formulated them as the words of the sages [in *m. Hul.* 6:2]" (b. Hul. 85a). One dictum that has been the crux of various interpretations of the redactional process of the Mishnah is the principle *mišnâ lo’ zâzâ mi-mêqômâh,* "the Mishnah [as originally formulated] has not moved from its place," even though the law is not in accord with the rule as formulated (b. Yeû. 30a, 32a; b. Qid. 25a; b. Sébu. 4a; b. Ab. Zar. 35b; b. Hul. 32b, 116b; see the recent article by Halivni on precisely this dictum, [1989], 63 and passim; see also Epstein, Siprut, 212; Albeck, Mâbô? , 105).

101 D. Daube, "Codes and Codas" in *Studies in Biblical Law* (New York: Ktav, 1969 [rpt.]), 74–101, suggests five reasons for the failure to modify the existing source of which four are relevant to the redaction of the Mishnah: inertia (laziness), the complexity of the technique required to fit in an interpolation, the facilitation of memorization (by leaving existing sources relatively unchanged), and the force of tradition (i.e., a conservatism with regard to altering traditional documents). In particular, the last two reasons are likely to be of greatest importance to our question (after all, laziness or reluctance to undertake a difficult task are likely to be justified by a redactor in terms of a more positive reason). The problem of the oral or written transmission of the Mishnah is beyond the scope of the present study (cf. Chapter I, n. 10), but, written or not, the earliest method of study and "performance" of the Mishnah seems to have been oral. I discuss the problem of "conservatism" with respect to traditional materials below.

102 See the discussion above of M4:7–8; M6:6–8; M10:4; and, more speculatively, of M3:12; M9:11–13.
according to the customary terms of work contracts; and (b) M7:2–7, that they are permitted to eat of the produce with which they are working. M7:2 introduces the second part of M7:1–7 with a distinction between workers who eat produce midibre tora, “according to the Torah” [A–D], and those who may not eat [E–H]. M7:8 [A–B] returns to this theme: “watchers of produce may eat according to the local custom (mê-hilkôt medînâ), but not according to the Torah (min ha-tora).” Moreover, the expression mê-hilkôt medînâ, “according to local custom,” echoes M7:1 [F, M] (minhag ha-medînâ), and, more generally, the rule of [A–E] (mâqôm se-nâhagû). Had all of M7:1–8 been composed by one redactor or author at one time, we might have expected the rule of M7:8 [A–B] to be more neatly incorporated after M7:2 (perhaps in M7:3). It is possible that M7:8 [A–B] serves as a coda: a later supplement to an already existing body of material.

The situation appears to be more complicated, however, since M7:8 [A–B] serves as the hinge between M7:1–7 and M7:8 [C]–11 whose respective contents are irrelevant to each other. As a whole, M7:8 [C]–10 [G] deals with “depositaries” (including borrowers and renters). M7:8 [C–H] and M7:10 [E–G] are closely matched pericopae that show terminological links with Scripture. The intervening material (M7:9 [A]–10 [D]) abruptly introduces the problem of ônes (in its usage here, a Rabbinic term), which is directly relevant only to the paid depositary and the renter. The passage is formulated in connection with the kinds of damage that might occur to animals in a person’s care (i.e., some sort of shepherding arrangement, with liability rules approximating that of a paid depositary), but this is nowhere made explicit. This abrupt shift makes it possible that these passages were interpolated between M7:8 [C–H] and M7:10 [E–G]. While it is impossible to account with any degree of specificity for the failure of the redactors of m. Baba‘î Me’sî‘a‘î to incorporate M7:8 [C]–10 with the material on deposits from Chapter 3 and M6:6–8 (beyond, as I have been suggesting, the origins

103 A tradition attributed to R. Ashi that M7:2 distinguishes between those who may eat according to the Torah, and those who may not eat at all, while M7:8 [A–B] gives a case where local custom alone (but not the Torah) allows the worker to eat (B93a), may well describe the legal relationship between the passages. (R. Ashi glosses a dispute attributed to Rab and Samuel over the interpretation of M7:8 [A–B], of which a parallel dispute [between R. Huna and Samuel] is presented in the Yerushalmi, Y7:9 [11c].)

104 See above Section, A.1.

105 In addition, it is possible that M7:9 [A]–10 [D] stems from two separate sources: M7:9 and M7:10 use ônes in two related but distinct ways. See the discussion of the term ônes in the note to M7:9 in Appendix I. It was noted above that the links between M7:8 [C–H] and M7:10 [E–G] do not prove that they came from a single source: the second pericope could quite easily be a supplement (indeed, a coda as defined above) referring back to and echoing the earlier passage.
of this material in different sources), it may be possible to account for the presence of this cluster of material here: the rule of M7:8 [A-B] permitting those who watch produce (šômrê pêrôs; cf. M7:8 [C]: “There are four šômrîm”) to eat. The final pericope of Chapter 7 (M7:11), dealing with the validity of special stipulations in contracts, connects with M7:10 [E–G], which considered the kinds of special stipulations that depositaries might make.

Even if both claims made above, that M7:8 [A–B] (1) serves as a coda to M7:1–7, and (2) accounts for the juxtaposition of M7:1–7 and 8–11, are correct, it remains unclear whether the same person is responsible for both the addition of M7:8 [A–B] and the remainder of M7:8–11, and whether the cluster of traditions in M7:8–11, which may itself have been composed of disparate materials, was available more or less in its present state to be used by the redactor or whether it was assembled by the redactor. If it should be the case that M7:8–11 was also a single block of material used by the redactor, the present passages would not only offer an example of amplification or supplementation of a source through the use of codas, but also the juxtaposition of whole clusters of material through the use of codas. This sort of juxtaposition based on single elements in two separate sources suggests that although topical and logical organizational strategies dominate the tractate as a whole, the principle of redaction by associative logic was also used.

2. Glosses, revisions, corrections.

Those passages that have been glossed, revised or corrected comprise another crucial area for examining the process of redaction of m. Baba’ Mesi’â. If the redactional use of codas suggests by definition a reluctance to alter sources, the evidence for glosses and revision suggests both analogous and opposite tendencies. On the one hand, cases of correction can be identified precisely because both the “original” and the text that amplifies or corrects that “original” are present in the text, rather than a single recast text. Cases where revised texts alone are presented in the Mishnah are by and large difficult to identify on the evidence of the Mishnah itself, although by comparison to other Tannaitic sources it is sometimes possible to hypothesize such revisions.106 On the other hand, these corrections demonstrate at the same time the willingness on the part of the redactors to modify or alter transmitted material.

Unfortunately, identifying cases in which the Mishnah preserves the kind of glosses or revisions under consideration is not always easy. The rhetoric of the Mishnah tends to be based on short strophic patterns. Individual sentences are largely syntactically independent of one another, and it is therefore sometimes difficult to determine, for instance, whether one has found a gloss or a syntactically independent sentence carrying the idea of a preceding sentence forward. M1:8 [C–F] offers a case in point:

[C] If he found, in a bag or a chest, a bundle of documents or a bunch of documents,
[D] lo, let him return it.
[E] And how much is a bunch of documents?
[F] Three documents tied one to another.

The question and answer in [E–F] give greater specificity and precision to the rather vague term “bunch” in [C]. While this may mean that [E–F] constitutes an added gloss, it may equally reflect the “strophic” composition in the dialectical question-and-answer style that the Mishnah frequently utilizes.\(^{107}\)

The clearest example of revision has already been discussed at some length (section B.2, above). M6:3 [K–R] restates [A–E], adding greater nuance and specificity to the ruling: a renter is not automatically liable after any deviation from the terms of the contract, but only when that deviation could be presumed to have precipitated the damage to the rented animal. That both parts of the pericope have remained in the text suggests that the last part of M6:3 was intended to be taken as a “commentary” on the first.

Another reasonably straightforward example of a gloss occurs at M4:2. That M4:2 supplements the material that preceded it is announced by its opening expression (*kesad*, “how ...?” [A]).\(^{108}\) M4:1 [A–E] consists of a series

\(^{107}\) Much the same may be said about the tradition attributed to R. Simeon b. Gamaliel that follows in M1:8 [G]. However, the problem of statements attributed to named Rabbis is reserved for a later discussion (Section D below).

\(^{108}\) *Kesad* regularly designates some sort of explanation or amplification. This does not mean, however, that in every case the material introduced by *kesad* is automatically an added gloss (cf. Epstein, *Nusah*, 1032, who states generally that *kesad* “as a rule serves to interpret a halakhâ that preceded it [se-qâdmâ lâ, i.e., preceded temporally?]”). In particular, the Mishnah’s regular use of a dialectical rhetoric of questions and answers should be noted (e.g., M2:1–2; M5:1). In M5:10 [E–N], for instance, *kesad* [F] introduces illustrations of a rule attributed to R. Simeon b. Gamaliel (“there is interest in advance and interest delayed” [E]), each concluding with the formula *so hî* ribbit *muqdemet* [J]/*mê ubret* [N], “this is interest in advance [J]/delayed [N].” It seems likely that the whole of [E–N] is meant to be one single rhetorical unit. Similarly, in the case of M2:1 [E–G], it is not clear whether [F–G] (“How? He
of rules outlining whether one type of item in an exchange "acquires" (qôneh) the other. The language of this entire pericope is quite formulaic and repetitive, and is far from self-explanatory. M4:2 supplies a gloss to this material by explaining that what is meant by the expression qôneh is that transfer of the object for sale without transfer of money obligates the parties to uphold the sale, but transfer of money alone does not obligate the parties. While this is presumably meant to apply to all the clauses of M4:1, the part of M4:1 with the most immediate connection to the supplementary rule of M4:2 is M4:1 [E]: "Moveable goods acquire the coin but the coin does not acquire moveable goods." Yet it is here that we notice a peculiar shift in language between M4:2 [B–C] and M4:1, for whereas M4:1 [E] uses the terms mittalîelin, "moveable goods," and masbēʿa, "coin," M4:2 [B–C] uses pērot, "produce," and maʿârōt, "money." Moreover, in M4:2 the idiom has changed from one of "acquisition" to one of "withdrawal from the contract," and emphasis is placed not only upon transfer of goods, but also on mĕṣîkā, the acquisition of the money or produce by means of the formal possessory act of drawing it. While it is possible to account for these shifts along other lines,109 it is worth suggesting that the differences noted between the two

found a fig-round and in it there was a potsherd, a loaf and in it there was money"), which connects the statement attributed to R. Judah [E] explicitly to the list of items in [B], is part of the literary formulation of R. Judah's view itself, or whether [E] has been supplemented by a later hand in order to correlate it with [B]. In connection with M5:2 [D–K] it can be argued that kēsad [E] is part of a single rhetorical structure analogous to M5:10 [E–N].

A likely example of later material introduced by kēsad can be found in M5:1 [F–L], in which [H–L] comprises a far more complex example of the principle of "increasing with produce" than the context requires. Perhaps [H–L] originally circulated as an independent pericope (it requires only the participle ūṣūr, "it is prohibited" [cf. M5:2 [H, K]] to make the passage fully independent). (See m. Neg. 7:2 in which, according to Frankel, n.d. [1859], 298–9, explanatory material based on the view attributed to R. Meir in m. Neg. 1:1 has been added after the formulaic question kēsad. See also m. 'Ed. 3:1 = m. 'Ohal. 3:1, in which a dispute involving the power of a roof [a "tent"] under which there are human remains to transmit impurity to people and objects also under that roof when the contaminating material is in two pieces, neither of which alone is large enough to qualify as contaminating, is recast, following kēsad, in terms of touching, carrying and overshadowing [i.e., where the person involved has become a "tent" over the impure material] as well. Moreover, the problem has been complicated by the question of whether one can contract impurity by a combination of methods. See Epstein, Nūsah, 1039.)

109 In particular, the use of the rather general term "moveable goods" in M4:1 [E] might stem from the fact that M4:1 is giving general rules; but M4:2 [A–C] gives an illustration and therefore uses a noun with greater specificity, "produce." On the other hand, had the author of M4:1 been responsible for M4:2 [B–C] the language in M4:2 might have matched its antecedent more closely. Compare, for example, the language of T3:13:
pericopae result from the fact that M4:2 constitutes a later gloss to M4:1.\textsuperscript{110} M7:4 [D–H] requires some comment in the context of this discussion of glosses and revisions, since that passage seems to refer to and to gloss M7:2, but in a way that is quite curious. M7:2 reads as follows:

[A] These [workers in the field] eat according to the Torah:
[B] one who works on [produce still] attached to the ground, at the time of the completion of the work,
[C] and on [produce] detached from the ground, while its work has not yet been completed,
[D] as long as its growth is from the earth.

\[A\] “Gold acquires silver [=M4:1:1 [A] according to the “Babylonian” tradition (see Appendix I)]
\[B\] How (k\textit{\textasciitilde}s\textit{\textad}).
\[C\] He gave him a golden din\textit{\textacircumflex}r (cf. Latin \textit{aureus}) for twenty five silver [din\textit{\textacircumflex}rim], lo, this one has acquired [the silver coins] wherever they may be.
\[D\] But if he gave him twenty five silver [din\textit{\textacircumflex}rim] for a golden din\textit{\textacircumflex}r, lo, this one has not acquired [the gold coin] until such time as he draws it.

The text of T3:13 continues with a parallel exposition of M4:1 [B]. In both parts of T3:13, the idiom of “acquisition” is retained, and the notion of possessory acts is absent. At the same time, however, the general terms “silver” and “gold” have been replaced with coin denominations that show the relative values of the metals.

\textsuperscript{110} Other possible examples of later revisions or expansions include the following passages. M5:4 opens with a negative indefinite construction in the participle (present): \textit{en m\textit{\textasciitilde}s\textit{\textad}bin [A]. The negative construction repeats in [D, E], and a positive indefinite construction is found in [G, H]. By contrast, 5:4 [B] has a verb with a definite subject (“he,” i.e., the householder), in the imperfect (future): lo’yitten. Moreover, while this pericope uses technical jargon for the contracts in [A, D, E, G], the language of [B] is quite explicit: “let him not give him money in order to buy fruit with it.” The grammatical and linguistic shift is matched by one in content: while M5:4–5 (and M5:6 [A–C], also using an indefinite construction) as a whole is concerned with giving raw materials to a contractor to work with: M5:4 [B] adds the case of a shopkeeper given money to buy produce. M2:9 [H–J] may also be a supplement.

One of the difficulties in understanding this passage is that there seems to be a shift in the time to which the clauses are referring: [I–J], and perhaps [H], focus on the time at which the finder first comes upon the object; in [F–G] the finder, having already cared for the find wishes to be reimbursed for outlay (see the discussion in Appendix I). It seems possible that [H–J], giving an alternative means for the finder to retrieve the money, has been added to M5:4. Two passages already referred to in different contexts should be noted here: M4:6 [F–G] seems to conflict with the rules that precede it about the value of worn coins, but the inclusion of [F–G] in M4:5–6 seems to serve the purpose of revising these rules: although a coin may be worn more than the maximum amount, one may still be permitted to use it (see above, Section A.1); M10:4 [A–D] was described above as part of a coda to M10:1–3, with particular reference to M10:2; the opening word, \textit{we-k\textit{\textacircumflex}n}, “and so [too],” shows that what follows in M10:4 is meant to supplement M10:2.
And these do not eat:

one who works on [produce still] attached to the ground at a time that is not the completion of the work,

and on [produce] detached from the ground after the work has been completed,

and on something whose growth is not from the earth.

The expression *nigmērā mēl'ākā* [C, G] apparently means “at the time when the work [necessary to make the produce a finished product] has been completed.”\(^{111}\) In context, then, the related phrase *bē-šā'at gēmār mēl'ākā* [B, F] must mean something analogous, perhaps “at the time when the produce is ripe.”\(^{112}\) At any rate, it seems clear that [B] and [F] refer to a stage in the preparation of produce, and not a part of the work day. Compare, however, M7:4 [D–H]:

And [regarding] all of them, they only said: “At the time of the completion of the work (*bē-šā'at gēmār mēl'ākā*),”

but because of [the principle of] returning lost property to the owners they said:

“Workers eat while walking from row to row,

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\(^{111}\) This may be seen from T8:7 (of which versions are cited at Y7:2 [11b] = *y. Ma'as. 2:6* [50a]; B89a; cf. *Sipre Deut. 287* [ed. Finkelstein, p. 305]), in which threshing is done to something *še-lo" nigmērā mēl'akto*, “whose work is not complete”; as opposed to the preparation and baking of dough, which is carried out on already milled grain, i.e., material *še-nigmērā mēl'akto*, “whose work has been completed.” The relevance of the determination of when “the work has been completed” is clearest in connection with such agricultural obligations as tithes, where it is important to know at what point the produce is liable to tithing (with which T8:7 and the general tenor of the Babli’s discussion, B89a–b, correlate the rules of M7:2). See, e.g., *m. Ma'as. 2:4*; what is meant by this is outlined in *m. Ma'as. 1:5–7* (although using different terminology): “What is the [stage at which produce is considered to have reached] the *gōren* for tithes? For cucumbers and gourds, from the time that he has removed the coils of blossoms (*mi-še-yēpqaqtēs*, Jastrow, *s.v. pqs*), and if he does not remove the coils of blossoms, from the time that he makes a stack....” Even the term *gōren*, “granary” or “threshing floor” (cf. *M5:9* [A]), is suggestive of the fact that work has been completed, and the produce now put up for storage. See also *m. Pe'ēa 5:8*; *m. Ter. 1:10*; *m. Ma'as. Š. 3:6*. More explicit testimony for the use of the expression meaning “completing a finished product” can be found in the Mishnah outside of the realm of agriculture (e.g., *m. Šab. 22:2* in connection with the question of when an object first becomes susceptible to impurity, *m. Kel. 5:1*: “What is the *gēmār mēl'akd* [of an oven]? From the time that he [first] heats it to bake *supgānm* in it....”; see also *m. Ed. 2:5*; *m. Kel. 2:6; 4:4; 5:2; 20:7*; *m. Tob. 9:1, 3*).

\(^{112}\) See the note to M7:2 in Appendix I. Alternatively: “at the time when the work [leading up to the preparation of the crop for harvest] has been completed.”
What is meant by M7:4 [D–H] seems to be that an existing rule only stated that the workers may eat at the time of the completion of their work [D], but in the interest of curtailing the amount of time that workers take out to eat [E], workers were permitted to eat while they are walking from place to place, but not while they are actually engaged in the work of the harvest [F–G]. The expression 'āmra, “they said” [D], regularly refers to an anteced-
ent rule (cf. M3:1 [C] "For they said: ‘an unpaid depositary swears and is exempt’"), and frequently is used in the context of a gloss or revision. In the present case the parallel between M7:2 [B] and M7:4 [D] is close enough to suggest that M7:4 is referring to the rule in M7:2. However, in M7:4 the straightforward translation of בֵּ-שָׁעַת גֶּמֶר מֶלֶךָ is “at the time when the workers complete their work,” that is, a time in the worker’s day and not a phase of the ripening or processing of the produce. It is striking, then, that

supplement to the rules about persons in a slightly inappropriate place (see the commentaries cited in Appendix I who see [H] as an independent clause). In that case the author of [D–G] may have considered the rule of workers eating distinct from that concerning animals (compare Sipre Deut. 287 [p. 305] [cf. y. Ma’at. 2:6 (50a); B82b]: "‘You shall not muzzle an ox’ (Deut 25:4) ... If so, why has “ox” been said [explicitly]? It is an ox that you may not muzzle, but you may muzzle a person").

115 Frankel, n.d. (1859), 304 (Rule 27) stated as a general principle that 'אמור indicates an "ancient halakah." At most, all that can be established is that the expression refers to an antecedent rule: presumably that rule is prior chronologically, but its “antiquity” is not thereby fixed. In M4:2 [D] the expression is used to invoke a warning to (or curse on) those who profit by holding to the letter of the law rather than doing what is equitable. In M9:3 [P–Q], 'אמור introduces a comment on Scripture following the citation of a verse [O]. In neither of these cases is that which “they said” necessarily early. By contrast, in M3:1 [D], 'אמור introduces an underlying principle that may predate the formulation of the pericope as a whole. In M4:9 'אמור appears in the context of a dispute over whether the list of items in M4:9 [A–B] can be expanded: "they said to him: ‘they only said these things’" [H]. That is: the list that "they said" is assumed to include only certain items, and is taken by a later tradition to have referred to those few items exclusively. Here, then, 'אמור introduces a tradition that is subsequently glossed.

To take an example from outside the tractate in which the rule introduced by 'אמור is not merely referred to but commented upon see m. Pesah. 1:1:

[A] On the eve of the fourteenth of Nisan they inspect [for] the leaven by the light of the lamp.
[B] Any place in which they do not introduce leaven does not require inspection.
[C] And why did they say: “Two rows in the cellar”?
[D] [This refers to] a place in which they introduce leaven.
[E] The house of Shammai says: “Two rows across the entire face of the cellar”;
[F] the house of Hillel says “The two outer rows, which are the top ones.”

The antecedent rule “two rows in the cellar” is glossed in two ways: first, what kind of cellar is meant by the rule [D], and second, what is meant by “two rows” [E–F].

116 Following Nahmanides, Hiddusim, s.v. Hàד d-אמור (to B87b), it remains possible to take בֵּ-שָׁעַת גֶּמֶר מֶלֶךָ in M7:4 [D] as identical in meaning to ניגָמֶרֶד מֶלֶךָ in M7:2
if M7:4 [D] introduces a gloss and revision of M7:2 as we have it, the author of M7:4 seems to have misread that source. This may have been due to an error, or to a conscious “misreading” in order to provide a contextual hook upon which to hang a supplementary ruling. It is also possible that M7:2 itself is an amplification of a rule that read more simply that workers may eat bē-tā’at gēmār mēl’ākā, and that M7:2 and M7:4 involve differing interpretations of this rule.¹¹⁷

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¹¹⁷ Just how M7:2 might be amplifying a rule that said simply “the worker may eat at the time of the completing of the work,” is not clear. It may perhaps be harmonizing rules concerning workers with those involving tithes (i.e., that workers may eat produce until it is liable to tithing). In fact, the problem is probably more complicated than merely the relationship between M7:2 and M7:4 [D–H], since other traditions from outside the Mishnah and using much the same terminology appear to come to different conclusions. T8:7 (and, with differences in y. Ma’as. 2:6 [50a] and Y7:2 [11b]) derives the rules for workers from Ex. 25:4, which deals with muzzling oxen (see above n. 114), and allows the worker to eat “(1) whose work has not finished (je-lo’ nigmērā mēl’ākō) ... (2) whose growth is from the earth,... (3) that is separated from the earth,... (4) whose work is not finished with respect to tithes (je-lo’ nigmērā mēl’ākō le-ma’as’erōn).” The fourth part adds something we have not seen in the Mishnah, while parts (1–3) only permit eating produce that has been detached from the earth (cf. M7:2 [C]). T8:7 does not explicitly permit what M7:2 [B] permits.
3. Redaction as literary creation.

Codas, glosses, interpolations, and revisions in Mishnah tractate Baba2 Mesi'a2, to the extent that these can be recovered, give some indication of the way in which the redactors of the Mishnah used their sources, and illustrates some of the tensions between the reliance on extant material and the desire to present a collection of material reflective of the redactors' own particular viewpoint. Thus far, however, the analysis of the redactional traces has not focused on how various traditions could be used to build up a broader redactional structure. I have argued that on the whole m. Baba2 Mesi'a2 is organized in clusters of pericopae connected by topic. Although there is occasional overlap in content between our tractate and other tractates in the Mishnah, there can be little doubt about which range of topics is appropriate to Baba2 Mesi'a2 and which to other tractates.118 However, the standards of literary or redactional cohesion are different from our own, with the result that it is probably impossible to discern an overarching logical pattern of organization that will account for all the material in the tractate as a whole.119 If, for instance, the nominative absolute series did constitute a source on contracts, in the course of the inclusion of this material into the tractate codas and interpolations added to the parts of this source have broken it up, and have, at least occasionally, added material that seems rather extraneous (for example the inclusion of material about deposits following the discussion of hiring workers and animals in Chapter 6 and again in Chapter 7).

At the same time, there are passages in m. Baba2 Mesi'a2 that show a remarkably subtle structure. M1:1–4 may offer a useful example of creative redaction:

M1:1 [A] Two people are holding a garment:
[B] this one says ... and this one says ....
M1:2 [A] Two people were riding on an animal ...
[B] this one says ... and this one says ....

118 Compare, for instance, the contents of m. Baba2 Mesi'a2 with those of tractates Baba2 Qamma2 and Baba2 Batra2. Even if these tractates originally constituted a single tractate on civil law, the fact that this “meta-tractate” could be broken down rather neatly into three parts dealing with delict, contracts and property respectively (with some argument about the proper place of the final chapters of the first two of these tractates), indicates that care was taken to group material by appropriate subject matter, however unsatisfactory the organization might be by modern standards (see the rough outline by Daube, 1944, 356–7; cf. Neusner, Damages II, 5–15; III, 4–17).

119 There are tractates, or parts of tractates, which do clearly follow an overarching redactional pattern. For instance, the greater part of m. Šebu. is clearly a systematic working out of the different kinds of oaths and the rules connected with them. The whole of m. Sanh. is a logically organized tractate on the rules and procedures to be followed in court cases.
M1:3 [A] He was riding an animal,
[B] and he saw the found object ....
M1:4 [A] He saw the found object ....
[D] He saw them running ....

The four pericopae are easily separated into two units: the first (M1:1–2) is made up of two largely parallel pericopae about disputed claims to found property argued out in court;120 the second (M1:3–4) is constructed out of three independent cases each dealing with the acquisition of found objects, and which are linked by common terminology.121 What is striking in this example is the participial phrase “He was riding an animal” in M1:3 [A]. While the fact of riding or leading an animal is essential to the legal problem of M1:2 (“Two people were riding an animal, or one was riding and one was leading”) since both actions demonstrate possession of the animal, in the same way that “holding” (*ḥazām) demonstrates possession in M1:1, it is entirely irrelevant to the matter at hand in M1:3. I suggest that this phrase has been added to M1:3 to form a verbal bridge between M1:1–2 and M1:3–4, thus linking the two units of information into a single structure with possible legal implications.122

120 The problem with which M1:1–2 deals is how to rule in a case involving conflicting claims brought by the claimants; the rulings themselves are given in the jussive imperfect (future). M1:2 [E–F] offer an alternative ruling when the conditions of the case are somewhat different. The Sitz im Leben of M1:1–2 clearly appears to be the court. That this was the ancient understanding of these pericopae as well is proved, for instance, by the (first version of the) tradition attributed to R. Hyya, which is linked to M1:1–2 (with the formula we-tannâ' tānâ', “the tanna [reciter of the Mishnah] teaches”; see Epstein, Nusah, 887): “[The plaintiff says:] ‘You have a maneh belonging to me,’ and the latter says: ‘I have nothing belonging to you, and the witnesses testify that he has fifty zū (= dinārim, one half of a maneh) ....” (B3a).

By contrast, M1:3–4 presents the rules that govern the acquisition of found objects at the moment and in the context in which they were found.

121 These pericopae use the verb *zky/b, here in the sense of “gain possession,” in the apodoses to the cases (M1:3 [E], 4 [C, G]), and in the description of the cases themselves (M1:3 [F], 4 [F, I]). The verb *mr, “say,” features in the first and third case as a significant element in both the circumstances (M1:3 [C, D], 4 [F, I]) and in the rulings (lo' ṭāmar ḳēlām, “he has not said anything,” M1:3 [G], 4 [J]). Finally, as the summary of the pericopae given above in the text shows, each of the cases is introduced with the verb na'd,' “he saw.”

122 On the face of it, the importance of the fact that the claimants in M1:2 are holding or riding an animal is that the sole evidence before the court is that both parties equally demonstrate their ownership of the animal in question (riding or leading is something that someone with a legal right to an animal does with it). However, in T1:3 (cf. B8b–9a) a tradition attributed to R. Judah, if not the anonymous opinion to which it is attached, gives preference to one form of directing the animal and may presuppose that what is at issue for the view attributed to R. Judah, and by implication for M1:2, is the effectiveness of leading and riding as possessory acts:
Perhaps the clearest example is Chapter 5. Earlier in this chapter I pointed to the terminological shift between M5:1, which used the terms nesek and tarbit, and the remainder of Chapter 5 (and, indeed, of the Mishnah) in which the term ribbit is used, and suggested that the author of M5:1 is not the same as the author(s) who produced the remainder of the chapter. Here I wish to explore the redacted structure of the chapter as a whole. The rhetorical force of M5:1 at once links this pericope to the language of Scripture, and suggests that the field of usury as a whole is divided into two fields: outright usury on a loan in money or in kind (nesek) (M5:1 [B–D]), and (possible) increase accruing to the lender because of the rise in value of the produce that the borrower has agreed to pay (tarbit). The very next passage (M5:2 [A–C]) introduces a third type of usury, a gift to the lender (in the form of a reduction of rent) in consideration of a loan, and uses the term ribbit. Nevertheless, there are signs that M5:2 [A–C] was designed or altered to follow and supplement M5:1: the case is introduced ha-malweh, “one who lends ...” (M5:2 [A]; cf. M5:1 [C]) and concludes with the explanatory formula mi-pene scheme ribbit, “because it is interest (M5:2 [C]; cf. M5:1 [D], mi-pene scheme nosh, lit. “because it bites”). In M5:2 [D], the syntax moves away from the nominative absolute construction of M5:1 [B, F] and M5:2 [A], but the wording of the rule marbim ... we-en marbin ..., “one may increase ... but one may not increase ...” echoes ha-marbeh be-perot, “one who increases [his return by means of] produce” in M5:1 [F]. Moreover, the two cases that exemplify M5:2[D], and the cases of M5:3, have clearly parallel structures. Whatever their separate origins, the various parts of

[A] Two people were pulling [miskin] a camel, or leading [manhigin] the ass,
[B] or one person was pulling and one was leading,
[C] [the rule] follows the same manner [ka-middah ha-zot], referring to a text (presumably T1:2 or M1:2) of which T1:3 is a continuation.
[D] R. Judah says: “One who is pulling the camel or one who is leading the ass, lo, this one has gained possession (zaka).”

It is possible that the juxtaposition of M1:1–2 to M1:3–4, in which the force of possessory acts is explicitly discussed (M1:4), also presupposes this interpretation (the Babli, B8b, certainly assumed this). If this is so, this is a good example of the process of reinterpretation and supplementation of materials in the process of redaction.

123 See above, Section A.1.

124 As far as I know M5:1 [F] and M5:2 [D] are the only passages in the Mishnah that use the root rby as a verb to mean to make usurious gain. Compare the expression used in M5:6 [D]: lawi m me-hen u-malvim otn b-ribbit, “one borrows from them and lends to them at interest.”

125 (1) Case, in perfect (past) (M5:2 [F, I]; M5:3 [A, D]); (2) “(and) he said to him” (M5:2 [G, J]; M5:3 [B, E]); (3) ruling: it is permitted/prohibited (mutar da’asir) (M5:2 [H, K]; M5:3 [C]); cf., however, M5:3 [F]: “lo, it is his.” In M5:1 [H–L] a similar kind of case is brought,
M5:1–3 as they appear before us in the Mishnah seem crafted so as to form a single unit.

With M5:4 the dominant syntactical pattern changes from perfect (past) tense verbs with definite (if assumed) subjects, to indefinite constructions in the participle (present) and from casuistic presentation of cases to apodictic rules (for instance "en möšibín, "one may not set up [lit. seat] ...", M5:4 [A]). In M5:8 the syntactical pattern shifts again to a definite construction with the subject 'ādām supplied: malveh 'ādām, “a person may lend ...” (M5:8 [A]); lo' yo' mar 'ādām, “let a person not say ...” (M5:9 [A]); ōme 'ādām le-habèrò, “a person may say to his fellow” (M5:10 [A]). M5:10 [E–P] contains two sub-units that follow still another rhetorical structure. Finally, the syntactical structure, and contents of M5:11 (which lists the verses that the various participants to a usurious loan have transgressed) mark this pericope off as separate from the preceding. These syntactical shifts might reflect the juxtaposition of sources.

In terms of content, the major breaks in the chapter seem to be at M5:2 [D]; M5:4 [A]; M5:7 [A]; M5:8 [A]; M5:10 [E]; and M5:11 [A].

This gives a measure of support to the hypothesis that the various clusters linked by common syntax stem from different sources. As Neusner has already noted, however, the contents of M5:2 [E–10 [D] can be broken into two more general categories: the prohibitions of M5:2 [D]–6 seem to conform, by and large, to the definition of to explicate M5:1 [E–F] (note kèsad [G]; however a somewhat more complex case is presented, and no final ruling is offered). Thus similarly presented cases exemplify rules that use language unique to M5:1 [F] and M5:2 [D] (see previous note).

M5:10 [E–N] as a whole is structured similarly to M5:1: a statement proclaiming the existence of two categories [E], exemplified in subsequent clauses (see M5:10 [J, N]). The two cases themselves may follow the pattern of the cases in M5:2 [F]–3 (see previous note): (1) case in perfect (past): [G–H], [K–L]; (2) “... he said” [I, M]; (2) ruling: lo, this is interest in advance/delayed [J, N]. M5:10 [O–P], attributed to R. Simeon, supplements [E–N].

The topics of these sections are as follows: M5:2 [D]–3: intersection between sale and loan; M5:4–6: aspects of usury in giving raw material to contractors to work with (e.g., animals to be raised); this is at least the opening topic of M5:6, although that pericope includes subsidiary issues as well; M5:7: payment in advance for produce (whose price is liable to rise); M5:8–10 [D]: lending of produce or service measure for measure (and not by monetary value); M5:10 [E–P]: interest in advance, interest delayed; verbal interest; M5:11: the verses for which participants in usury are liable.

The major exception is M5:7 [A]. It is perhaps not accidental that in M5:7 the plural indefinite construction (pōsqtin, [A]) with which the pericope opens quickly gives way to the singular (pōsqt, [C, H, I, K]; cf. [L]). It is possible, then, that M5:7, too, constituted its own source.
nešek in M5:1: transactions in which the nature of the contract is such that the lender receives more than the amount of the loan. By contrast, the cases of M5:6–10 [D] are all concerned with the implications of fluctuations in value (especially of produce, but also of work, M5:10 [A–D]), which is one of the essential characteristics of the definition of tarbit in M5:1.\textsuperscript{129} If I am correct in seeing M5:2 [A–C] as defining a third kind of interest (a gift, not specified in the contract itself), we can find the echo of this form of interest in M5:10 [E–P] in which extra-contractual gifts of money [E–N] or information [O–P] are deemed usurious.\textsuperscript{130} Thus the redactor of this chapter of \textit{m. Baba}² \textit{Mesi'à}² may have set out at the beginning of the chapter a set of definitions, whose contents define the structure of nearly all the rest of the chapter. This is followed by M5:11, which linked the prohibition of interest back to its Scriptural roots. If the opening précis, and, as suggested above, the raw material of M5:2 [D]–10, are constructed out of a variety of sources, Chapter 5 is an example of how redaction can shape already existing sources into a body of material with an overarching thematic organization.

D. The Problem of Attributions

As far as possible, I have avoided until now a discussion of statements attributed to named sages. These statements, as the catalogue below will show, are quite numerous, and deserve a discussion in their own right. On the one hand, since we can place Rabbis into a general chronological framework, attributed statements constitute almost the only internal benchmarks for assigning a rough dating of individual rules in the Mishnah. On the other hand, the attributed statements are no less stylized than the rest of the Mishnah, and this makes it hard, if not impossible, to assume that the person to whom a statement is attributed actually said those words. If so, we are dealing in each case with a literary representation of someone’s opinion, which has inevitably altered (whether greatly or slightly, and whether knowingly or unknowingly) the view that that person held. Neusner’s procedure in his \textit{History of the Mishnaic Law} series was to group the attributed statements by generation, and to see whether the material belonging to particular generations coheres.\textsuperscript{131} Neusner went further by asking to what extent the topics or

\textsuperscript{129} Neusner, \textit{Damages} II, 66–7. Neusner makes the argument more generally for all of M5:2–10.

\textsuperscript{130} Here I am assuming that in M5:10 [P] it is the debtor who is not to give information, and not the creditor who is not to ask for information. Analogy with [E–N] supports the interpretation taken here. Unfortunately, [P] is not as clear as it might be. See Appendix I.

\textsuperscript{131} While he was neither the first nor the only person to recognize the implications of these traditions (see, e.g., Frankel, n.d. [1859], 21ff.; Weiss, 1941, 1–33), Neusner has made this
problems assigned to a particular generation were generative or determinative of the issues covered in the tractates (and by extension the Mishnah) as a whole.

In the case of *m. Baba*° *Mes'â°*, where the traditions assigned to the "Ushan" generation (i.e., middle to late second century CE) outnumber those of earlier generations by a factor of approximately four,¹³² and where the Ushan traditions do indeed correspond to the legal concerns of the tractate as a whole, it is easy to see why Neusner concluded that this tractate is largely the product of this generation.¹³³ Elsewhere I have made much the same argument: that *m. Baba*° *Mes'â°* is not the product of the second Temple period, and is more likely to be the work of the second century.¹³⁴ This argument is based on the distribution of attributed statements, the general evenness of the tractate as a whole in terms of style, syntax, and language (suggesting that its various parts were not composed over extremely long periods of time),¹³⁵ and the general absence of interest in questions of civil law from texts that did demonstrably come from the second Temple period. Here, however, I wish to point out that this argument, plausible though it may be, is neither self-evident nor conclusively provable. The argument from numerical distribution alone is problematic because we cannot control for literary processes that might skew the distribution. Labeling a tradition as coming from a particular sage is a literary convention, and we have no way of

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¹³² The breakdown by generation can be presented in tabular form as follows:

<table>
<thead>
<tr>
<th>Generation</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early</td>
<td>4</td>
</tr>
<tr>
<td>Yabnean</td>
<td>6</td>
</tr>
<tr>
<td>Ushan</td>
<td>38 (or 40 if we include M2:4 [E–F] and M4:12 [I–J])</td>
</tr>
<tr>
<td>Ushan/Late</td>
<td>2</td>
</tr>
<tr>
<td>Late</td>
<td>2</td>
</tr>
</tbody>
</table>

"Early" refers to figures thought to have flourished before 70 CE; "Yabnean" those between roughly 70 and 135; "Ushan" after 135; and "Late" those who flourished in the generation of Judah the Patriarch (late second or early third century).


¹³⁵ To this extent I concur with Neusner, *Purities XXI*, 234–46, in which he argues that the Mishnah (or at least the order of Purities) was composed by "tradent redactors," that is, the same people who are responsible for transmitting the material have also formulated it and organized it. However, in the same section (pp. 245–6), Neusner makes it clear that he is talking about "intermediate divisions" that, earlier in the volume (e.g., p. 124), he treats as having preceded the redaction of whole tractates. That is to say, there is still substantial room for the manipulation of sources (e.g., these "intermediate divisions") in the formulation of tractates in their final form.
knowing the extent to which such a convention might have developed over
time, with the result that later material was more likely to be assigned to a
sage than earlier material. Alternatively, traditions, however recast or
revised in their present form, may have survived a long period of transmis-
sion during which the names with which they were once associated have
been lost. Moreover, I will argue below (Section 2) that much of the attrib-
uted material, particularly of the Ushan generations, is largely supplementary
in character, and can be taken as secondary glosses or amplifications. In that
case, it is very difficult to argue that the Ushan material in the tractate can
conclusively date it. If the attributed material mostly supplements the Mish-
nah, the first attributed reference to a particular concept in the Mishnah can-
not conclusively date the concept since the concept could have been current
long before the attributed view was expressed (whatever relationship this
bears to its literary representation). In fact, the concept might have been current
only in the period in which the attribution was made to the sage, per-
haps falsely (again, whether knowingly or unknowingly), but long after the
death of that individual. It is still less possible to date the tractate as a literary
work on the basis of attributions, since we cannot account for the date of the
texts that the attributed material supplements.

The following survey of attributed statements in *m. Baba* yields
largely negative results in terms of the fixing of the date of the Mishnah and
its materials. However, there is at least one possible positive conclusion to
which I wish to draw attention. In Section 3, below, I will argue that the

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136 It is perhaps no accident that although traditions are associated with Hillel and Sham-
marmai, the generations following them are remembered only by their affiliation to one of these
two sages (the House of Hillel; the House of Shammai). Rabbinic tradition places Hillel and
Shammai after Shemaiah and Abtalion (*m. Hag.* 2:2; *m. Ab.* 1:10, 12), who may correspond
to the Samaias and Pollion who were contemporaries of Herod the Great and active in the
second half of the first century BCE (*Josephus, Antiquities*, 14.175 [events in 47 BCE]; 15.3
[37 BCE], 370 [20 BCE]; the literature and problems concerning the identification are
reviewed in E. Schürer, *A History of the Jewish People in the Age of Jesus Christ*, rev. ed. G. Ver-
mes, et al. [Edinburgh: T. and T. Clark, 1973–87], 2, 362–3). Hillel and Shammai them-
selves would have been active at the end of the first century BCE or the beginning of the first
century CE, leaving several decades (roughly as long as the period between the conventional
date of the beginning of the Ushan period and the redaction of the Mishnah, 135–200) in
which there are remarkably few attributions to, or stories about, named individuals, with the
notable exception of Gamaliel I. If the “Houses” material generally reflects the views of this
period (cf., however, Neusner’s argument that much of this material is pseudepigraphically
attributed to these first-century schools: Neusner, 1981, 20–1, worked out in greater detail in
*idem, Purities* XVII, 202–22 in connection with *m. Mak*), the absence of individual attribu-
tions is striking, and may reflect a shift in the methods of transmission, regardless of the date
in which the traditions themselves were put in their present form.
distribution of attributed statements may help elucidate the redactional history of some material in the Mishnah.

1. Catalogue of attributed statements:137

<table>
<thead>
<tr>
<th>Tradent</th>
<th>Gen.</th>
<th>Form</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:6 [G—I]</td>
<td>Meir</td>
<td>Reverse dispute form (includes qualifiers)</td>
<td>Return deeds (does court collect?)</td>
</tr>
<tr>
<td>2:1 [E—G]</td>
<td>Judah</td>
<td>Independent sentence (followed by explanatory clause, kēsad ...)</td>
<td>What things must be proclaimed</td>
</tr>
<tr>
<td>2:1[H]</td>
<td>Simeon b. Eleazar</td>
<td>Independent sentence</td>
<td>What things need not be proclaimed</td>
</tr>
<tr>
<td>[2:4 [E—F]</td>
<td>Judah</td>
<td>Gloss—supplement (*āp)?</td>
<td>Money (loose/bound) found in produce</td>
</tr>
<tr>
<td>2:6 [C—E]</td>
<td>Meir, Judah</td>
<td>Reverse dispute form (includes qualifier to R. Judah)</td>
<td>How long to proclaim?</td>
</tr>
<tr>
<td>2:7 [I—M]</td>
<td>Tarfon, Aqiba</td>
<td>Standard dispute form</td>
<td>What to do with the proceeds from the sale of a lost object</td>
</tr>
<tr>
<td>2:10 [K]</td>
<td>Simeon</td>
<td>Gloss—disputing (*āp)</td>
<td>Loading, unloading animal</td>
</tr>
<tr>
<td>2:10 [L—N]</td>
<td>Yose ha-Gelili</td>
<td>Gloss—disputing</td>
<td>Loading, unloading animal</td>
</tr>
</tbody>
</table>

137 I have used the following abbreviations: in the column labeled “Tradent”: BŠ (*bēt šammāt, the Shammaites); BH (*bēt hillel, the Hillelites); in the column labeled “Gen.” (generation): E (“Early”); Y (“Yabnean”); U (“Ushan”); and L (“Late”). The abbreviation U/L, which appears twice in the table, means that a late tradent is stating a tradition in the name of an Ushan figure. In the column headed “Form” I have distinguished between independent traditions, glosses, and dispute forms. The latter, in turn are divided into three types: (a) the “standard dispute form,” in which a heading is followed by the rulings of the disputants; (b) the “reverse dispute form,” where a statement is followed by the attribution “the words of (*dibrē) R. N.,” which is in turn followed by a disputing tradition; and (c) the “rejoinder dispute form,” in which a rule is introduced by an attribution to a sage, and followed by a disputing tradition attributed to a specific individual or to “the Sages” or an unspecified “They.”

138 See the note to M2:1 in Appendix I.

139 See the note to M2:4 in Appendix I and Epstein, Nāṣah, 1017. If we follow the reading “R. Judah says: ‘Even one who acquires ...,’” the tradition is supplementary. Without *āp, the tradition is independent in form.
<table>
<thead>
<tr>
<th>Page</th>
<th>Topic</th>
<th>Reference</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>3:2</td>
<td>Yose</td>
<td>[D-F]</td>
<td>Gloss—objection + dispute</td>
</tr>
<tr>
<td>3:4</td>
<td>Yose</td>
<td>[D-E]</td>
<td>Gloss—objection + dispute</td>
</tr>
<tr>
<td>3:5</td>
<td>Yose</td>
<td>[D-E]</td>
<td>Gloss—objection + dispute</td>
</tr>
<tr>
<td>3:8</td>
<td>Judah</td>
<td>[B]</td>
<td>Gloss—disputing</td>
</tr>
<tr>
<td>3:11</td>
<td>Meir, Judah</td>
<td>[F-G]</td>
<td>Reverse dispute form</td>
</tr>
<tr>
<td>3:12</td>
<td>BŠ, BH</td>
<td>[A-C]</td>
<td>Standard dispute form</td>
</tr>
<tr>
<td>3:12</td>
<td>Aqiba</td>
<td>[D]</td>
<td>Gloss—dispute? Third member of a dispute form?</td>
</tr>
<tr>
<td>3:12</td>
<td>BŠ, BH</td>
<td>[E-G]</td>
<td>Standard dispute form</td>
</tr>
<tr>
<td>4:4</td>
<td>Judah</td>
<td>[C]</td>
<td>Gloss—disputing</td>
</tr>
<tr>
<td>4:5</td>
<td>Meir, Judah, Simeon</td>
<td>[A-D]</td>
<td>Standard dispute form</td>
</tr>
<tr>
<td>4:9</td>
<td>Simeon</td>
<td>[F]</td>
<td>Independent statement?</td>
</tr>
<tr>
<td>4:9</td>
<td>Judah + &quot;They&quot;</td>
<td>[G-H]</td>
<td>Rejoinder dispute form</td>
</tr>
<tr>
<td>4:12</td>
<td>Judah + Sages</td>
<td>[D?]</td>
<td>Rejoinder dispute form</td>
</tr>
</tbody>
</table>

140 Reading `ap as in RLMPN; `ap is absent in K (cf. Appendix I). Without the word the tradition is formally independent.
<table>
<thead>
<tr>
<th>Verse</th>
<th>Name</th>
<th>Tradition</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>4:12 [I-J]</td>
<td>Abba Shaul (?)</td>
<td>U Reverse dispute form</td>
<td>Equitable market practice</td>
</tr>
<tr>
<td>5:5 [D-E?]</td>
<td>Simeon b. Gamaliel</td>
<td>U Gloss—supplementing?</td>
<td>Raising of cattle for a share</td>
</tr>
<tr>
<td>5:7 [I-J]</td>
<td>Yose + Sages</td>
<td>U Rejoinder dispute form</td>
<td>Sale of produce (dung) one does not have</td>
</tr>
<tr>
<td>5:7 [L]</td>
<td>Judah</td>
<td>U Gloss—disputing</td>
<td>Stipulation for lowest price for advance sale</td>
</tr>
<tr>
<td>5:9 [C]</td>
<td>Hillel</td>
<td>E Gloss—disputing ($\text{שָׂר}^\text{שָׂר}$)</td>
<td>Loans of produce</td>
</tr>
<tr>
<td>5:9 [D-G]</td>
<td>Hillel</td>
<td>E Independent tradition</td>
<td>Loans of produce</td>
</tr>
<tr>
<td>5:10 [E-N (9)]</td>
<td>Gamaliel</td>
<td>Y Independent tradition</td>
<td>Advanced and delayed interest</td>
</tr>
<tr>
<td>5:10 [O-P]</td>
<td>Simeon</td>
<td>U Independent tradition</td>
<td>Verbal interest</td>
</tr>
<tr>
<td>5:11 [C]</td>
<td>Sages</td>
<td>U Gloss—disputing</td>
<td>Who transgresses the prohibition of usury</td>
</tr>
<tr>
<td>6:5 [J]</td>
<td>Symmakhos in name of Meir</td>
<td>U/L Gloss (anonymous question + attributed ruling)</td>
<td>How much may be added to load of animal before liability</td>
</tr>
<tr>
<td>6:7 [B-C]</td>
<td>Judah</td>
<td>U Gloss—disputing</td>
<td>Secured loans of money or produce and the liability for security</td>
</tr>
<tr>
<td>6:7 [D-E]</td>
<td>Abba Shaul</td>
<td>U Independent tradition</td>
<td>Special rights of lender with respect to security</td>
</tr>
<tr>
<td>6:8 [D]</td>
<td>Eleazar</td>
<td>U Gloss—objecting</td>
<td>Liability of deposity with respect to a broken jar</td>
</tr>
<tr>
<td>7:1 [L-M]</td>
<td>Simeon b. Gamaliel</td>
<td>U Gloss—disputing (commentary)</td>
<td>Specific stipulations for rights of workers to food, etc.</td>
</tr>
</tbody>
</table>

141 See the note to M4:12 in Appendix I. I am inclined to follow the reading of K (קֶ֖דֶר, "according to the words of ..."), which takes the reference to Abba Shaul in [I] as a sort of cross-reference, and not as an attribution of [H] to him.

142 It is possible that only the opening statement [E] is, properly speaking, attributed to R. Gamaliel, and that the remainder of the tradition is a later elaboration. I am inclined, however, to see the whole of [E-N] as a single tradition.

143 I have followed the tradition of the Babli in taking the name intended here as Eleazar (b. Shamua) despite the strong attestation of the form “Eliezer.” See the notes to M6:8 in Appendix I.
<table>
<thead>
<tr>
<th>Section</th>
<th>Name(s)</th>
<th>Gloss</th>
<th>Context</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:3 [E]</td>
<td>Yose b. R. Judah</td>
<td>L</td>
<td>Gloss—disputing</td>
</tr>
<tr>
<td>7:5 [C–D (?)]</td>
<td>Eleazar Hisama + Sages</td>
<td>Y</td>
<td>Rejoinder dispute form</td>
</tr>
<tr>
<td>7:9 [C]</td>
<td>Judah</td>
<td>U</td>
<td>Gloss—disputing, qualifying</td>
</tr>
<tr>
<td>7:9 [E–F]</td>
<td>Yadua the Babylonian in the name of Meir</td>
<td>U/L</td>
<td>Gloss—disputing, qualifying</td>
</tr>
<tr>
<td>8:6 [H]</td>
<td>Simeon b. Gamaliel</td>
<td>U</td>
<td>Gloss—supplementary</td>
</tr>
<tr>
<td>9:5 [E–F]</td>
<td>Judah</td>
<td>U</td>
<td>Gloss—objection + dispute</td>
</tr>
<tr>
<td>9:6 [G–H]</td>
<td>Judah</td>
<td>U</td>
<td>Gloss—qualifying, disputing</td>
</tr>
<tr>
<td>9:8 [D]</td>
<td>Simeon b. Gamaliel</td>
<td>U</td>
<td>Gloss—disputing (‘ōsēr)</td>
</tr>
<tr>
<td>9:8 [G]</td>
<td>Simeon b. Gamaliel</td>
<td>U</td>
<td>Gloss—disputing (‘ōsēr)</td>
</tr>
<tr>
<td>10:2 [E]</td>
<td>Yose</td>
<td>U</td>
<td>Gloss—disputing</td>
</tr>
<tr>
<td>10:3 [F–H]</td>
<td>Judah</td>
<td>U</td>
<td>Gloss—objection + dispute (reformulation)</td>
</tr>
<tr>
<td>10:5 [A’]</td>
<td>Simeon b. Gamaliel</td>
<td>U</td>
<td>Gloss—disputing? (‘ap)</td>
</tr>
<tr>
<td>10:6 [A–H]</td>
<td>Meir, Judah, Simeon (?)</td>
<td>U</td>
<td>Standard dispute form (reworked; Simeon is a third member of the dispute?)</td>
</tr>
</tbody>
</table>
2. Attributed statements in \textit{m. Baba\textquotesingle Mesi\textquotesingle a}?

If one may take all of M3:12 [A–G] as a single unit, two of the three traditions attributed to the earliest tradents of the tractate ("E" in the catalogue)\textsuperscript{144} are formulated as independent statements. The third (M5:9 [C]: "Hillel prohibits"), although dependent upon the preceding material, is likely to be redactional, since it merely serves as the transition to the independent rule attributed to Hillel in M5:9 [D–G]. That these traditions are formulated as independent, in contrast to the bulk of the material ascribed to the Yabnean or still later generations, is striking. Moreover, in the case of M3:12 [A–G], the two Hillelite-Shammaite disputes encapsulate the entire discussion of the Mishnah on those subjects, with the result that if we removed the disputes, we would also remove the mention of the problem of how to value the deposit, and the implication of intention alone for liability.\textsuperscript{145} Perhaps these traditions assigned to the generations before 70 derive from a redactional strategy in which material assigned to the earliest generations is handled differently from other material. On formal grounds, this strategy need not reflect an "early" redactional layer: the differences might be due to the way in which late formulators of material cast traditions (perhaps pseudepigraphically) in the name of the earliest Rabbinic tradents. M3:12 [A–C] is supplemented with a statement attributed to the Yabnean R. Aqiba (M3:12 [D]), so that this passage, at least, can be seen as reflecting early concerns that have been subsequently developed. If this is so, then the possibility that we actually have an early text incorporated with a gloss into the Mishnah is strengthened.\textsuperscript{146} The case is harder to make for the other two "Early" traditions, since in neither case do we have explicit development or comment on the "early" material, as we do in the preceding example.\textsuperscript{147}

\begin{flushright}
\textsuperscript{144} The "early" traditions are: M3:12 [A–C], [E–G]; M5:9 [C], [D–G].
\end{flushright}

\begin{flushright}
\textsuperscript{145} This is especially the case if, with C. Levine, "The Concept of 'Shelihut Yad' in the Mechilta De Rashbi" [Hebrew] \textit{BIA} 18/19 (1981), 101–4, we take the case of "reaching of the hand" to the deposit as specific to deposit, and involving the temporary use of the deposit. If so, we cannot assume, for instance, that the rules of robbery, as in \textit{m. B. Qam.} 9:1–2, would apply. See further Section III.B.2. (n. 108).
\end{flushright}

\begin{flushright}
\textsuperscript{146} Neusner, \textit{Damages} V, 63–4, neglects to treat the tradition of R. Aqiba. See further Lapin, 1995, 177–8, n. 85.
\end{flushright}

\begin{flushright}
\textsuperscript{147} The concern in M5:9 [D–E] with the potentially usurious outcome of loans of produce is echoed in a story about R. Gamaliel (Yabnean) in M5:8. Neusner, \textit{Damages} V, 69 minimizing the significance of this intersection of concerns. It is also worth noting that both M5:9 [D–E] and M3:12 [A–C] attribute concerns with shifting market values to early tradents, and to that extent these passages support one another. Neusner, \textit{Damages} V, 64, argued that M3:12 [E–G] is a late passage falsely ascribed to the "Houses," and reflects the common Ushar concern for intention. However, since in the case of the treatment of deposit the issue of intention is not raised in material attributed to later generations, it is possible to argue that
\end{flushright}
event, since there are so few statements attributed to the earliest generations of tradents and since they deal with such a restricted range of topics (appropriation of deposits, M3:12 [A–G], and loans of produce, M5:9 [C, D–E]), it is impossible to argue that material composed (or even more or less accurately reflecting the views from) before 70 CE underlies m. Baba’ Mesi’as as a whole.

In the case of traditions assigned to the “Yabnean” period, we have a somewhat wider range of topics covered (in addition to usury and deposits, the Yabnean traditions address lost objects and the right of workers to eat of the produce with which they are working), although, again, the traditions are few enough that it is hard to substantiate a claim that in its basic outlines, much less in substance, m. Baba’ Mesi’as comes from this period.\textsuperscript{148} Assuming that M5:10 [E] and [F–N] were composed together as a unit, M5:10 [E–N] is the one Yabnean tradition that is both formally independent and encapsulates the entire discussion of the legal problem involved: without this statement we would have no discussion of “interest in advance” and “interest delayed.” Also perhaps originally independent is the dispute between the “Sages” and R. Eleazar Hisama (M7:5 [C–D]). The tradition of R. Eleazar Hisama [C], although somewhat abrupt, is comprehensible by itself, and in its present context the view ascribed to the “Sages” is redundant, since it agrees with M7:5 [A–B].\textsuperscript{149} However, this last passage, in its present position, serves as a parenthetical supplement to M7:5 [A–B + E–F]. The remaining Yabnean traditions come at the end of the units in which they appear, and similarly supplement the stock pericopae.\textsuperscript{150} Thus, in the case of

\begin{itemize}
\item \textsuperscript{148} The traditions are as follows: M2:7 [I–M]; M2:10 [L–N]; M3:7 [G–H]; M3:12 [D]; M5:10 [E–N (?)]; M7:5 [C–D (?)].
\item \textsuperscript{149} Cf. the question raised in the Babli: “The Sages are the same as the first reciter [i.e., [A–B]], ḥakāmīm haynū tannā? qammāר; B92a (on this formula see D. W. Halivni, Měqărēt ṭ- mědōrēt: Mōʿed [New York: JTSA, 1975–82], Sabbath, 75). In addition, the dispute is articulated in different terms than those of M7:5 [A–B]: the tradition of R. Eleazzer states the problem in terms of the amount of the worker’s wages for the day; in [A–B] a specific monetary amount, a dinār, is discussed. (Does the juxtaposition of M7:5 [A–B] and [C] allow us to conclude that a “typical” day’s wage should be identified with a dinār? Cf. Mt. 20:1–16, and see below, Chapter III.B.5) It is also possible that [E–F] extends the view of the sages in the dispute form (i.e., the sages permit eating more than one’s wages, but rule that workers ought to be taught not to do so), in which case the rather extended dispute form occurs at the end of the pericope, much as the other Yabnean materials cited do.
\item \textsuperscript{150} M2:7 [I–M] and M2:10 [L–N] come at the end of the pericopae, according to the standard division of the Mishnah. M3:7 [G–H] clearly comes at the end of the unit discussing
\end{itemize}
the problem of deductions made for produce on deposit, the tradition attributed to R. Yohanan b. Nuri (M3:7 [G–H]) clearly objects to the reasoning of the preceding material ("What does it matter to them? Mice eat [as much as they eat] whether from much or from little," [G]) and echoes the language directly: "Let him deduct losses only for a kôr" [H] (cf. [B]: "Lo, let this one deduct losses"; in [C–E] the losses are calculated per kôr).

As noted above, the vast bulk of the attributed statements are assigned to the "Ushah" period. A cursory glance at the catalogue above will show that the majority of the Ushah traditions are what I have termed (somewhat loosely, perhaps) "glosses." Some traditions are merely the brief expression of deductions for dry produce; together with the tradition attributed to R. Judah (M3:7 [I–J]) it comes at the end of a pericope as well. M3:12 [D] may be seen as either coming at the end of the dispute form [A–C] or as a parenthetical insertion. Since the conventional division of m. B. Meî into paragraphs is a printers' convention (which differs from that of earlier manuscripts), I make no claim that the coincidence of attributed statements with ends of pericopae reveals the original subdivision of the Mishnah into units (although more work could be done on this). My point is only that the stylistic, linguistic, or thematic criteria used by copyists or printers for identifying where new "paragraphs" begin often leaves attributed statements at the end of units.

Although in their present form all of these passages serve as supplements, in the case of M2:7 [I–M] and M2:10 [L–N] it is possible that (as proposed above in connection with M7:5) the Yabnean material originates in independent traditions that have been reapplied here. (1) As formulated, the subject of the "standard dispute form" attributed to R. Aqiba and R. Tarfon in M2:7 [I–M] supplements the topic of the main part of the pericope: [E–G] considers the circumstances under which a found animal should be sold; in [I–M] R. Aqiba and R. Tarfon dispute the secondary question of the handling of the proceeds of that sale. However, the dispute between R. Tarfon and R. Aqiba could easily be generalized to deposits of (loose) money, with R. Tarfon permitting use of such money. It is possible that M2:7 [I–M] originated as just such a dispute, which was later reapplied in a more narrow context: money resulting from the sale of a found object. (M3:11, using similar language, addresses just this issue of deposited money and rules that bankers may use loose money, but householders [as in M2:7] may not. Might M3:11 reflect the application of the view of R. Aqiba? For the question of using a deposit, compare the concept of depositum irregulare in Roman law, in which a banker might use loose money on deposit, having contracted to return the value of the deposit but not the coins themselves. Although this concept may be a "post-classical" one in Roman law, classical jurists were aware of how the concept of deposit might shade into that of a loan [see, e.g., D 12.1.9.9; 12.1.10 (Ulpian); 16.1.24 (Papinian)]. Moreover, Hellenistic legal traditions did allow for such "irregular" deposits. See further Chapter III.B.3.) (2) The tradition of R. Yose the Galilean, M2:10 [L–M] by itself is a fragment. However, it uses different terminology than [E–I] (zâqâq is used in [I]; hayyâb appears in [E] and [I], as well as [A–B]). Is it possible that what was originally an independent Scriptural exegesis (perhaps something along the lines of "Under its load" (Ex. 23:5), R. Yose ha-Gelili says ...) has been recast in Mishnaiic form (i.e., with the verse, preceded by se-ne'êmar, following the Rabbinic statement)?
a dissenting view.\textsuperscript{151} Others include clear reference to, and commentary on, preceding material. For instance, in the tradition attributed to R. Judah in M9:5 [E–F], R. Judah’s objection is directed both at the rule and the wording of the material to which it refers and supplies a clause to replace the one that R. Judah opposes.\textsuperscript{152} The language attributed to R. Eleazar in M6:8 [D], “I question whether this one or this one can swear” (\textit{tāmēhā \‘anî \textit{\‘im yəkōlîm zeh wē-zeh lēḥiśābē’}) expresses doubt about the correctness of a tradition as it has been passed down.\textsuperscript{153} The attributions in M4:9 [G–H] may be instructive (the pericope has been cited in full above, Section B.2). The dispute of R. Judah and “They” is over the interpretation of a list: is the list of items in [B] to be taken exclusively or not? The language of R. Judah certainly echoes that of [A] (\textit{\‘en lāhem hōnāyā}), and the wording of the rejoinder by “They” presupposes a preexisting list. These examples of attributed traditions that treat the preceding material as already existing and as susceptible to commentary may be explained as a rhetorical convention. Yet, as I have already argued, versions of M4:9 [A–F] circulated independently in the Mishnah, varying according to context.\textsuperscript{154} Here, then, there are independent grounds for considering the dispute a secondary addition to an already existing literary formulation.\textsuperscript{155} R. Simeon’s tradition (M4:9 [F]), which may have been


\textsuperscript{152} R. Judah objects: “What amount is a kērī (‘pile’)?” [D]; cf. [C]. In addition, where [C] reads “If there is in it enough to erect a pile with it” (\textit{tīm yet bāḥ kē-dē lēha’āmīd kērī)}, [G] reads “Rather [\textit{\‘elā}]: If there is in it sufficient for falling” (\textit{tīm yet lāḥ kē-dē nēpīlā}).

\textsuperscript{153} This is even clearer in the Babli’s version of this pericope (“R. Eliezer says: ‘This one and this one swear, but (\textit{we-}) I question whether this one or this one can swear’”; see the note to M6:8 in Appendix I). Compare Rashi, \textit{ad loc.} (B82b): “That is to say, ‘I, too, have heard thus from my masters, ... but (\textit{\‘abāl} I question ....’” The Babli’s version testifies, at the very least, to an early interpretation of R. Eleazar’s tradition as glossing a previously existing one.

\textsuperscript{154} See m. Sebu. 6:5; m. B. Qam. 7:4; and above, Section A.2.

\textsuperscript{155} Arguments of this kind are clearly subjective. Thus, for instance, in the case of M4:2 [C] (“R. Simeon says: ‘Whoever has the money in his hand, his hand is in the superior position’”) can plausibly be taken as a disputing gloss to M4:2 [B–C]. However, it could conceivably be taken as a legal aphorism that could circulate separately; cf. the rules in M6:2 [F–G], which have a similar form. Nevertheless, a reasonable case can be made for the following as referring back to existing text: M1:8 [G] (R. Simeon b. Gamaliel); M2:1 [E–G] (R. Judah; [F–G], however, could conceivably be a gloss added to the pericope already including R. Judah’s statement in [E]); M3:2 [D–F], 4 [D–E], 5 [D–E] (R. Yose, echoing [C] in all three pericopae); M3:7 [I] (R. Judah, echoing [B]); M3:11 [E–G] (R. Meir, R. Judah); M5:5 [D] (R. Simeon b. Gamaliel, referring back to [A]; alternatively M5:5 [D–F] can be taken as attributed to R. Simeon b. Gamaliel, and the whole taken as an originally independent statement); M5:7 [L–M] (R. Judah); M6:7 [B–C] (R. Judah); M7:1 [L–M] (R. Simeon b. Gamaliel,
used as a gloss as well, but which already circulated with the core pericope, serves to underscore the complicated process of transmission and modification of the materials that went into the Mishnah.

That attributed statements may be redactional and added to already-existing texts is suggested also by the placement of these passages. A substantial number of Ushn traditions appear at the end of pericope; others at the end of internal units of material; others still are parenthetical. In fact, if we were to remove all of the material attributed to the Ushn Rabbis, the basic structure and contents of the tractate would be altered only very slightly. This is not only because these attributed materials act formally as supplements (as I have been arguing), but their content frequently reflects secondary or supplementary concerns. Several traditions supply qualifications commenting on a story, and citing a rule presented verbatim in [F]); M7:9 [C] (R. Judah); M9:6 [G–H] (R. Judah, with [H] echoing [F]; the use of hakôrō in R. Judah’s statement explicitly for rent paid in money, despite the conventional meaning of the term hakôr as payment in kind, can be taken to suggest that the author of [H] is consciously echoing an already existing formulation despite the inapplicability of the terminology [see Appendix I, notes to M9:2, 3, 6]; M10:3 [F–H] ([F] objects to the preceding ruling; [G–H] recast [D–E]). These passages, together with the three mentioned above in the text, make up seventeen of the attributed statements, a sizeable proportion.


157 M2:1 [E] (if [F–G] is part of the original tradition, the statement attributed to R. Judah, together with that attributed to R. Simeon b. Eleazar (“Late”), appear at the end of the pericope); M2:10 [K]; M4:4 [C] ([D] begins a new, if related, problem); M6:7 [B–C] (the statement attributed to Abba Shaul in [D–E] deals with a new problem about pledges); M9:13 [H–I] (alternatively, M9:13 [J] continues the basic question of M9:13 [A–G], and the tradition attributed to R. Simeon b. Gamaliel is “parenthetical”). If, as I have suggested above, M4:9 [F] circulate together with [A–G], M4:9 [F] should probably be categorized as coming at the end of a unit as well.

158 M1:8 [G] ([H] continues with the same basic question, and the same formal patterning [másã‘…], as [C–D]); M3:8 [B]; M9:8 [D]. M2:6 (formulated as an Ushn “reverse dispute”) can be taken in its entirety as interrupting between M2:5 [D] (“so for everything that has identifying marks and has claimants, he [the finder] is required to proclaim”) and M2:7 [D] (“[If] he [the loser] said the lost object, and did not say its identifying marks…”).

159 If the text of the Ushon “reverse dispute form” (M1:6 [G–I]; M2:6 [D–F]; M3:11 [F–G]; depending on the textual history of the Mishnah, M2:1 [E–G] and M4:12 [I–J] might be examples of this as well) we were to remove the second disputing view and the formula “[the preceding were] the words of (dibrê) R. N” as well, but leave the initial view as anonymous, we would remove still less from the tractate.
or rule on special cases. For instance, the tradition attributed to R. Simeon b. Gamaliel in M1:8 [G] qualifies the preceding definition given for an ḥagidā of documents ("three tied to one another" [F]) as follows: "R. Simeon b Gamaliel says: 'One borrowing from three lenders, let him return it to the borrower. Three borrowing from one lender, let him return it to the lender.'"

Other traditions are concerned with quantification. Thus, R. Meir and R. Judah dispute the amount of time that a finder must proclaim the find (M2:6), and R. Meir, R. Judah, and R. Simeon dispute the permissible amount of wear in a short-weight coin (M4:5). M3:7–8 are interesting in this regard: the three traditions attributed to R. Judah offer examples of qualification (M3:7 [I–J]: the rule "lo, let this one deduct losses [B] ... all is assessed according to the measurement .... [F]" does not apply when the measurement was large), of quantification ("Let him deduct one sixth for wine. R. Judah says: 'One fifth.'") M3:8 [A–B], and—still a third type of supplementary material—of cross-reference (the rules cited in connection with the absorption of wine in casks apply equally to sale, M3:8 [G]). One "reverse dispute" questions whether a shopkeeper is covered by the rules for a householder or for a banker with respect to deposits of loose money; that is, it explores the grey area of a rule that is itself taken for granted (M3:11 [E–G]). Another tradition, already cited, questions the correctness of a transmitted rule, without, notably, explicitly disputing with it (M6:8 [D]). Attributed traditions addressing these kinds of "secondary" questions easily account for nearly half (if not more) of the Ushan traditions.

By contrast, only a very few traditions encapsulate the entire treatment of a given rule. M10:6, a dispute about produce growing from the divider between two terraced gardens, can clearly stand by itself; and although it is possible to account for its presence here by associative logic, the pericope is not carrying forward a problem dealt with previously in the tractate. If one may read all of M4:12 [D–M (?)] as the words of R. Judah, with parenthetical comments attributed to the "Sages" and a cross-reference to the views of Abba Shaul, we have here a discussion of market practices entirely attributed

160 See also M7:5 [C–D] (How much may a worker eat?); M9:5 ("What amount is a 'pile'?"); M9:13 [H–J] (For how long must a borrower return the pledge nightly?); M10:5 [A'] (How long may a builder put building materials in the public domain?).

161 In addition to the eight passages cited above in the text and the three in the preceding note, see, e.g., M4:9 [F] (qualifying "consecrated goods" [B]?); M4:9 [G–H] (whether the list in [B] is exclusive); M5:7 [L] (the rule of [K] applies even if the buyer has not stipulated); M7:1 (whether the son of Yohanan b. Mattia was required to make the stipulation that his father demanded); M7:9 [C] (an exception to the general rule in [A–B]); M9:6 ([G–H] (an exception to the rule in [A–F]). There are, thus, at least seventeen such passages.

162 See above, n. 66.
to a named figure, without which we would have no mention of these rules. M4:5 addresses the amount by which a coin may be short in weight and still be valid, and, although somewhat abrupt, clearly can stand by itself.

Other material, which appears to be formally independent of or which seems to encapsulate an entire discussion, nevertheless may be supplementary. Thus, for instance, the tradition attributed to R. Simeon in M5:10 [O–P] is formally an independent statement on verbal interest (not dealt with elsewhere), but as it is formulated, it seems clearly to develop M5:10 [E–M]. Since in the “rejoinder dispute” in M5:7 [I–J] the view of the “Sages” seems redundant, the dispute was possibly originally independent of the pericope in which it is now embedded. M1:6 is harder to assess. On the one hand, the pericope is an independent Ushan dispute that encompasses the entire dispute about the criteria for when one returns loan documents. Possibly the fact that this passage is part of a series of pericopae dealing with documents that have been found may be taken to imply that M1:6 is the work of “tradent redactors” (to use Neusner’s expression) who have incorporated attributed views into their formulation of the series. In fact, the situation may be more complicated. In the pericopae that follow, if the document found is considered valid one returns it to the nominal owner (M1:8), but if it can be presumed never to have been delivered, and therefore not valid, one does not return it (M1:7). In M1:6, however, the legal problem is different: the dispute focuses on the effectiveness of a specified or implied lien on property in a loan document. Moreover, in contrast to M1:7, the two disputants agree that it is precisely when the document would be fully effective (i.e., where a court would exact payment on the basis of such a document) that one does not return the document. The discontinuities are explained if

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163 “There is verbal interest” (M5:10 [O]; cf. E: “There is interest in advance and there is interest delayed”). Moreover, like [E–M], [P] appears to focus on what the borrower “says” to the lender (cf. Appendix I, note to M5:10). Note also M5:10 [B, D], which like [P] use the formula lo3 yo’mar lb, “let him not say to him...” (see also M5:9 [A–B]).

164 Cf. the Babli’s question (B74a): hakamim haynû tannâ? qammâ? (“The Sages are the same as the first reciter”).

165 This led both Talmuds to consider why it was the lien itself that was problematic. One view, attributed to R. Yohanan, is that the Mishnah was concerned with shady dealings (qênunyâ) between debtor and creditor: the creditor will collect the alienated property on the strength of the document and split it with the debtor (Y1:6 [8a]; B14b; cf. m. B. Bat. 10:7; m. ’Arak. 6:1 where precisely such a transaction is described). The Babli cites another reason: the debtor may have used a predated document, so that property alienated between the date of the document and that of the actual loan would be subject to unjust seizure on the basis of the document (this may be related to the view of R. Yassa in the name of R. Yohanan, Y1:6 [8a]). Predated documents are considered invalid at m. Šebi. 10:5.
we take M1:6 as a secondary elaboration of the problem of liens in the case of loan documents.\(^{166}\)

The traditions of the “Late” generation may be dealt with quite briefly. They are all dependent traditions. Two are statements made in the name of R. Meir (M6:5 [I–J]; M7:9 [E–F]). Of these, the first is a striking example of the supplementary character of attributed material:

[H] ... and if he added to its load he is liable.
[I] And how much shall he add to its load and [thus] be liable?
[J] Symmakhos says in the name of R. Meir: “A se'â for a camel; three qabbim for an ass.”

This Symmakhos/R. Meir tradition appears in the context of an explicit gloss to [H], and, notably, is concerned with quantification. The tradition of Yaddua the Babylonian in the name of R. Meir (M7:9) supplies a qualification of a rule. The remaining two late traditions are both mere notices of a disputing position (M2:1 [H]; M7:3 [E]). As in the case of the statements attributed to the earliest sages, there are too few examples here to show the dependence of the tractate on the work of this generation. However, the traditions are certainly consistent with the idea that attributed statements are frequently supplementary.\(^{167}\)

\(^{166}\) Note that in M1:8 [C–K] (and especially [G], which explicitly deals with loans) there is no mention of the problem of liens. On analogy with M1:7, an original pericope on loan documents might have read something like: “He found loan documents, let him not return them.” Cf. the Amoraic rule attributed to R. Eleazar: “For I say: ‘He wrote it to borrow, but did not borrow” (Y1:6 [8a]), which echoes M1:7 [C], and may presuppose an existing tradition of a rule for loan documents parallel to that for the documents listed in M1:7 [A]. See m. B. Bat. 10:3, which allows someone to write a document obligating himself to make some kind of payment in anticipation of the transaction itself, without the “creditor” of the particular transaction being present, since it is delivery of the document that makes it effective.

\(^{167}\) This assumption is in some tension with the traditional view that material attributed to individuals (yáhid, “[the opinion of a] single [person]”) is less authoritative than that of an anonymous opinion, presumed to reflect the majority (rábbim, “[opinion of the] many”). Already within the Mishnah itself, there are traces of a concern with the majority and minority opinion: “And why do they mention the words of the individual (díbré ha-yáhid) among the majority (ha-rábbim), inasmuch as the law is only according to the words of the majority?... Said R. Judah: ‘If so why do they mention the words of the individual among the majority for naught?’...” (m. Ed. 1:5–6). It does not necessarily follow that what is meant here is cases where an anonymous view is glossed with a named tradition: díbré ha-rábbim does not automatically imply an anonymous view. The question that begins the discussion in m. Ed. (“And why do they mention the words of Shammasi and Hillel for naught?...” [1:4]) suggests by analogy that what might be at issue is a case where two views are presented, in whatever form, and one is known (or can be shown) to be a majority opinion, and the other a
3. Attributions and the nominative absolute series.

I have been arguing in the preceding section that the attributed traditions, especially those of the Ushans and later periods are largely supplementary both in form and in content. Admittedly, it is impossible to argue conclusively that such traditions are in fact supplements added by redactors, although such passages as M4:9 (with its parallels in m. Šebu’ot 6:5 and m. Baba’ Qamma 7:5) support such an argument. Nor is it clear, even granting this argument, who would have done this and for what reasons. Earlier (Section B.1), I noted that the underlying link between the various parts of M3:2–5 was a series of attributions to R. Yose, and proposed that this might mark out this string of passages as the product of a person or persons (a “school”? ) for whom the traditions of R. Yose were particularly important. 

If correct, this proposal suggests one possible setting and rationale for adding attributed statements.

In the present section, I would like to carry this proposal forward by examining briefly the distribution of attributed statements in the nominative absolute (article + participle) series already discussed in some detail above minority opinion (see, e.g., those disputes in which an individual opinion is opposed to “the sages,” or simply “they”).

At any rate, the traditional view that the anonymous opinion is authoritative is reflected in the later interpretive and legal dicta about the Mishnah such as the rule that “the law follows the anonymous opinion in the Mishnah” (halakâ ki-sêtam mišnâ; see the sources cited in C. J. Kasowski, Thesaurus Talmudis [Jerusalem: JTSA, 1954–81], vol. 27, 363 col. b–c) or the pair of rules resolving the problem of a rule presented anonymously in one place and again later as a matter of dispute (in which case the law does not [automatically] follow the anonymous tradition), or presented first as a dispute but later anonymously (in which case the law follows the anonymous formulation) (sêtam we-’ahar ’akâ mahloqet ’en halakâ ki-sêtam; mahloqet we-’ahar ’akâ sêtam halakâ ki-sêtam; see y. Ta’an. 2:14 = y. Meg. 1:6; y. Yeb. 4:11; b. Yeb. 42b; b. B. Qam. b. 102a = b. Ab. Zar. 6b–7a; b. B. Bat. 122b; b. Nid. 11b). These dicta are the product of an exegetical program that took the Mishnah as an authoritative code, and required standards for judging cases where the Mishnah presents more than one opinion. As such, they do not necessarily reflect the process of redaction itself (both rules cited, in particular the first, are associated with R. Yohanan who flourished in the middle third century; other such dicta are attributed to R. Yohanan: see, e.g., y. Dem. 2:1 [22d]: how to resolve a dispute between R. Judah the Patriarch and others).

168 On this particular matter, my view is close to that of A. Goldberg, “Purpose and Method in R. Judah Hannasi’s Compilation of the Mishnah” [Hebrew], Tarbiz 28 (1958–9) 260–69; and more recently, “The Mishnah—A Study Book of Halakah,” in S. Safrai, ed., The Literature of the Sages (CRINT 3: Philadelphia and Assen: Fortress and Van Gorcum, 1987), 211–51. On the whole, however, Goldberg relies too heavily on the assumption that literary or thematic criteria can be used to isolate the work of individual traditions even when the material in question is presented anonymously (see the application of his method in idem, Commentary to the Mishnah Shabbat [Hebrew] [Jerusalem: JTSA, 1976] and The Mishnah Treatise Eruvin [Hebrew] [Jerusalem: Magnes, 1986]).
(Section B.2). In that discussion I suggested on formal and other grounds that these series originated as a source on contracts that was used by later redactors. A comparison of the pericopae that are members of these series with the list of attributions (above, Section D.1) yields the following results:

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<td>3:7</td>
<td>[I–J]</td>
<td>U</td>
<td>Judah</td>
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<td>3:11</td>
<td>[F–G]</td>
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<td>Meir, Judah</td>
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<td>6:5</td>
<td>[I–J]</td>
<td>U/L</td>
<td>Symmakhos in name of Meir</td>
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<td>8:6</td>
<td>[H]</td>
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<td>Simeon b. Gamaliel</td>
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<td>9:8</td>
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Nearly all of the attributions belong to either R. Judah or R. Simeon b. Gamaliel. Exceptions are one attribution to the Yabnean generation (M3:7 [G–H]), and one to a member of the later generation, to whom is attributed a statement in the name of R. Meir. The only direct attribution of a statement to an Ushan who is neither R. Judah nor R. Simeon b. Gamaliel is to R. Meir in a dispute with R. Judah.\(^{169}\) What is striking here is that material that on formal grounds appeared to be distinct from other parts of the tractate is consistently glossed by traditions attributed to the same two individuals.\(^{170}\) This differential distribution of attributed statements, it seems to me,

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\(^{169}\) It was suggested earlier that the *ha-moker* ("one who sells...") series in *m. B. Bat.*, which deals with a form of contract (sale), might be part of an original source on contracts. It is therefore interesting to note the distribution of attributed material in that series. If we consider only those pericopae that together constitute the series, we find, for the Yabnean generation, attributions to R. Eliezer (*m. B. Bat.* 4:4, 5) and to R. Aqiba and R. Ishmael (6:4), an entirely different distribution than *m. B. Mes.* For the Ushan generation there are repeated attributions to R. Judah (4:1; 5:2, 8, 9) and R. Simeon b. Gamaliel (4:7; 5:10, 11, 6:1, 4, 8), but only one pericope with attributions to R. Simeon (6:8, twice). (I do not include *m. B. Bat.* 4:9, since the final section of this pericope may easily be taken as an independent pericope [although, admittedly, opening with the nominative absolute *ha-magdiš* on the dedication of landed property.) The prevalence in *m. B. Bat.* of traditions of the two tradents who predominate in the series in *m. B. Mes.* as well suggests that these two series may have passed through the same hands.

\(^{170}\) It should also be pointed out that inasmuch as these pericopae account for some 30% of those in the tractate, the concentration of attributions is disproportionately high. This is
is not accidental, and reflects the activity of redactors, whether or not these statements are secondary additions, and constitutes an area that would reward further form-critical and redactional-critical study. If, as I have been arguing, such attributed material (especially Ushan material) derives from redactional additions, the nominative absolute series may not offer us the identity of the original authors of specific traditions, but—equally important—the attributions may serve as an indicator of the hands through which this material has passed.\footnote{In my earlier discussion of the nominative absolute series (for instance in connection M3:6–8; M6:3 and M6:5) I suggested that the "source" on contracts, if such it was, may have already included material from different sources as well as revision of material. If the argument here about the secondary character of attributed statements is correct, supplementation of existing traditions with attributed statements, together with collecting and shaping earlier material, may be part of the redactional procedure used by the people who produced that source.}

E. Conclusion: The Mishnah as a Literary Artifact

The purpose of this chapter was to show traces of a complex redactional process that produced the \textit{m. Baba\textsuperscript{a} Meisi\textsuperscript{a}}. I have attempted to demonstrate this, first, by stressing disjunctures in the Mishnah: places where sources contradict, or are at least in tension with one another. Second, I examined passages that seemed to have circulated independently of their present contexts, and that therefore seem to have been used as sources by a redactor or redactors. Next, I asked whether it is possible to recover strategies for organizing and presenting material that preceded the final redaction of the tractate. Several possible forms were identified, including organization based on Scripture, associative logic, formal patterning, or common content. Fourth, the traces of the adaptation of material were investigated: glosses, corrections,
supplementation, and the structuring of disparate material around broad themes (e.g., Chapter 5). Finally, I assessed the significance and utility of the traditions attributed to individuals, and found that much of this material supplemented the texts in which they were embedded.

I make no pretense of having fully answered any of these problems, or that every case to which I have drawn attention has been, or even can be, "proved." My goal has been to identify a sufficiently large number of wrinkles in the fabric of *m. Baba*? *Mesî’a* to point to a complex process of redaction that worked with two somewhat contradictory principles: to transmit material with a great degree of conservatism, retaining the language, style, form, and content of the sources, but at the same time to gloss, correct and above all organize and group the material. One implication of this result is that analyses of the "meaning" of the Mishnah (as Chapter III will attempt for *m. Baba*? *Mesî’a*) will have to take into account the indeterminacies built into the very structure and rhetoric of the Mishnah itself. In the process, I hope, this chapter has also succeeded in making some substantive contributions to the elucidation of the redactional history of the tractate and, by extension, of the Mishnah.

On the evidence of *m. Baba*? *Mesî’a*, there is frustratingly little that can be used to reconstruct the immediate social and institutional frameworks in which this first literary artifact of the Rabbinic movement was produced. On the basis of the material discussed in the preceding sections of this chapter (and on the assumption that the redactional history of *m. Baba*? *Mesî’a* mimics the social setting and literary practices of the people who produced it), I would like to propose the following model for its redaction. By the time of the redaction of the Mishnah (or at least tractate *Baba*? *Mesî’a*) there were various circles ("schools") with their own material (traces of whose redaction can sometimes be found in the distribution of attributed materials). The traditions of these various "schools" shared certain common characteristics (specific legal and theological interests, as well as a highly stylized language and tradition of transmission; the language of all the material in the tractate that is not a citation of Scripture is characteristically "Rabbinic"). Yet these circles or schools were different from one another, and their traditions were (at least sometimes) different as well; hence the differing strategies for formulating or organizing material. If the redactors of the Mishnah appear to take an active role in consolidating and organizing material (whether as a law code, or as some sort of approved collection), this is not to be explained solely as an exercise in philosophy or legal theory, although it may be that as well. I suggest that the redaction of the Mishnah was, at least in part, an effort to increase the centralization and institutionalization of the Rabbinic movement.
One last body of material in *m. Baba* Mesi’a helps elucidate the nature of some of the claims that Rabbis made on the world around them in producing the Mishnah: stories.\(^{172}\) Two things are common to all of the stories presented in the tractate: (1) they involve Rabbis; and (2) they assume that what is at issue is not merely correct opinion, but proper practice. Clearly, we are not in a position to evaluate the extent of Rabbinic authority to enforce their legal program, and that program itself clearly has utopian elements (see Chapter I). However, the rhetoric of these stories is that Rabbinic rules make demands upon the property and the day-to-day activities of its audience. How a Rabbi adjudicates cases and, more interestingly, what a Rabbi does in his own practice (how he treats his workers or tenants) is offered as evidence for how the world should be run. This “evidence” is not in every case presented unilaterally and decisively. The merchants oppose R. Tarfon’s ruling (M4:3 [G–H]); R. Gamaliel’s practice is immediately marginalized as supererogatory piety (M5:8 [F]: “not because such is the law, but because he wanted to be strict with himself’); and R. Simeon b. Gamaliel undercut the authority of the story of R. Yohanan b. Mattia and his son (M7:1 [L–M]). Nevertheless, however we imagine the Mishnah as a document (as law code, school text, philosophical document, or something else), and whatever the limits of Rabbinic influence or authority, there is at least one strain represented in *m. Baba* Mesi’a in which there is far more at stake in Rabbinic “discourse” than talk alone. Rabbinic Torah is to be played out in the practice of men and women. To go beyond this picture, will be necessary to take seriously the kinds of claims that the Mishnah makes, and root those claims in the “real” world in which the Rabbis who produced the Mishnah lived and worked. It is to this that I wish to turn next.

\(^{172}\) M4:3 [D–H] (R. Tarfon’s ruling is opposed by merchants because of the way it will effect them); M5:8 [C–E] (R. Gamaliel’s customary practice with his tenant farmers); M7:1 [G–K] (R. Yohanan b. Mattia orders his son to make specific stipulations with the workers he has hired); M8:8 [F–H] (R. Simeon b. Gamaliel and R. Yose rule on a bath house in Sepphoris).