

Does the Tosefta Precede the Mishnah: Halakhah, Aggadah, & Narrative Coherence

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THERE IS A LONG-STANDING ASSUMPTION THAT THE main focus of the ancient rabbinic enterprise was halakhah, and aggadah's philosophical and ethical musings were only a diversion. There is a parallel long-standing assumption that the primary tannaitic text was the Mishnah, and that the Tosefta, a companion collection of tannaitic teachings-was secondary. I would like to challenge both of these assumptions. Close examination of the Mishnah and the Tosefta leads to altogether different conclusions about the nature of their inter-relationship, as well as the relationship of halakhah and aggadah in ancient rabbinic discourse.

Consider the first chapter of M Kiddushin which discusses marriage and mizvot. The last paragraph of the chapter says:

[LANGUAGE NOT REPRODUCIBLE IN ASCII]

Anyone who performs [just] one mizvah, he [will] fare well, his days [will be] lengthened, and he [will] inherit the land.

But anyone who does not perform [just] one mizvah, he [will] not fare well, his days [will] not [be] lengthened, and he [will] not inherit the land.

The rhetoric in this passage is clearly biblical. The phrases "he will fare well," "his days will be lengthened," and "he will inherit the land," appear in a variety of places in the Torah, for example, in Deuteronomy 4:40, [1] where God promises these kinds of rewards to those who keep the mizvot. By using these phrases the Mishnah is suggesting to the reader (or hearer) the gravity of its message. Knowing all this, we still find the passage difficult. Why the great reward for performing just one mizvah? Why the great withholding of benefit for failing to perform just one mizvah? Why wouldn't the past performance of other mizvot bring a person great benefit, even if he failed to perform this one?

That a paragraph of the Mishnah is hard to understand on its own is a common, almost standard occurrence. Yet it never seems to trouble students of rabbinic texts. Like the Bible, they say, the Mishnah needs interpretation. Upon reading this or any other difficult mishnaic passage, they turn to the gemara, the later Talmudic explication and commentary, for a phrase by phrase analysis of the Mishnah in the context of related, contemporaneous rabbinic materials. Alternatively, the student of rabbinic texts turns for help to the Tosefta. There he will often find a citation of the very paragraph he finds difficult, followed by a detailed explanation. At the end of the inquiry, the student, it is claimed, will be fully satisfied. This process is inadequate. What logic is there to a work, namely the Mishnah, that cannot be understood on its own. If there were no Tosefta in existence at the time of the publication of the Mishnah (c. 200 c.E.)--and the gemara (c. 700 C.E.) had not yet come into being--then there would be no way to fathom what the Mishnah in many places was saying.

The dependence of the Mishnah on the Tosefta has led scholars to make assumptions about the relationship of these two tannaitic works to each other. Since the Tosefta is replete with explanations of the Mishnah's difficult passages, illustrations of the Mishnah's points, dissenting opinions with respect to the Mishnah's rules, and aggadic elaboration of the Mishnah's halakhah, the Tosefta has long been seen by scholars of rabbinics as a companion to the Mishnah. The standard operating assumption is that the Tosefta was put together in order to explain the Mishnah. This is the view of Saul Lieberman and Abraham Goldberg, among others. [2] They base their views on the assumption that the shorter document with the lectior difficiles, i.e., the phrases that appear to make no sense, is older, and the wordier, expansive document is newer, produced in response to the older work's opacity and brevity. As for the name Tosefta, which means "addition," once the Mishnah became the core of the curriculum, the other tannaitic collection, which often glossed passages in the Mishnah, came to be seen as a collection of supplements or additions. [3] There are problems, however, with this understanding of the relationship between these two works. It is widely and not unreasonably expected that a commentary should follow the order of the source document. But often the Tosefta has an order all its own, [4] one that is so different from that of the parallel materials in the Mishnah that someone looking to the Tosefta for help in explaining the Mishnah will experience serious difficulty. Compounding this problem, much of the Mishnah receives no attention in the Tosefta whatsoever. These interpretive gaps subvert the notion of the Tosefta as a commentary on the Mishnah.

Another problem with the view of the Tosefta as a response to the Mishnah is that the Tosefta often presents an altogether different perspective on the topic under discussion, in effect an alternative way of approaching the subject. [5] Even more intriguing, the Tosefta will often address the same general issue as the Mishnah but will do so in a more extensive manner, presenting a well-crafted literary unit, with a beginning, middle, and end. Some of the Tosefta

paragraphs parallel those in the Mishnah but others do not. [6] The more one reads the Tosefta on its own, independently of the Mishnah, the more one realizes that it is a coherent work, with its own point of view, halakhic stances, and style. [7]

Yet another problem with seeing the Tosefta as later than the Mishnah is that many passages in the Tosefta are attributed to tannaim who lived in the second century C.E., before the redaction of the Mishnah. For the most part, the same sages who speak in the Mishnah also speak in the Tosefta. [8] Therefore, those who claim that the Tosefta is a later response to the Mishnah need to reconcile their theory with this chronology. The explanation they give is that these older traditions do date back to the time of the Mishnah but, upon being "rejected" by the redactor of the Mishnah for inclusion in his work, continued to circulate as "bits and pieces," not as a collection. It was the redactor of the Tosefta who later assembled them and turned them into a work of commentary on the Mishnah. My critique of this theory is the same as above: if so, why did the redactor of this "commentary" not follow the order of the Mishnah? [9]

These peculiarities strongly suggest that the relationship of the Mishnah and the Tosefta to each other should be examined afresh. Scholars have been assuming for so long that the Tosefta is the handmaiden of the Mishnah [10] that they continue to hold fast to this theory even in the face of contradictory phenomena. [11] Rather than continue on this path, I would like to present an alternative model for the development of these works and their relationship to each other. [12] It is not clear to me that I can either prove my own theory or disprove the traditional one. But I would like to approach these tannaitic works from a different vantage point and see where that leads us. I believe I can provide better readings of the Mishnah in this way.

My new set of assumptions is as follows: the Tosefta is not, in the main, a commentary on and continuation of the Mishnah. As noted above, too many of the Tosefta's characteristics make that theory impossible to retain. The Tosefta, or more likely a major strand of the Tosefta, may not have followed the Mishnah but preceded it. This means that the Mishnah may not be the first tannaitic collection to be "published" in the ancient world, as so many have thought for so long. [13] That distinction may belong to the Tosefta. The relationship between the Tosefta and the Mishnah may, therefore, be the opposite of what has been suggested until now: the Mishnah may be a response to an earlier tannaitic collection now embedded in our Tosefta. [14]

Consider the following: Prior to the time that Rebbe, as I shall refer to the redactor of the Mishnah, edited his collection, an older tannaitic collection was already circulating. This early collection was divided up into orders and tractates. It contained halakhot, halakhic anecdotes,

and aggadic materials that supplemented the halakhot and that formed a seamless whole with the halakhot. For the most part, this collection was easy to follow. If a historical event was referred to, it was spelled out in detail. If a halakhah was presented, all the necessary information for understanding it was provided. Many aggadic teachings, derived from often inscrutable Scriptural verses, pervaded the halakhah. The structure of this collection was generally topical but occasionally freewheeling. One statement would give rise to another with similar formal traits but on a different subject. It is also true that disjunctures abounded. By that I mean that the collection would jump from topic to topic without clear segues. As the reader may surmise, I have just described the Tosefta from a new perspective.

When the redactor of the Mishnah studied this collection in the tannaitic bet midrash, he decided to produce his own. His purpose seems to have been to present halakhah according to his point of view. He sometimes favored one of the already expressed tannaitic views over the others but frequently found none of them to be to his liking. He would therefore rewrite these paragraphs, often in a subtle manner, and present his own view which, although it did not fall far from the others, nonetheless did differ. He prepared his collection as one that could stand on its own, but at the same time, it was frequently obscure and even incomprehensible. He would include halakhot and aggadot that a reader could not possibly understand or would make reference to minor historical events that the reader could not possibly fathom.

Rebbe was able to do so because he did not intend for his Mishnah to replace the older collection but to supplement it. The reader, upon coming across a halakhah in the Mishnah that he could not understand, or a reference to an event that he did not know about, had to seek out the other, earlier collection for a full explanation. I think the redactor of the Mishnah could assume that his readers and hearers, many of them sages, had access to the older collection and for that reason he could allow himself to make shorthand, obscure references to halakhot and to events in the national memory. Furthermore, the redactor of the Mishnah reorganized his materials according to his own halakhic goals. By moving a halakhah from one place in the old collection to a different place in his work, he could alter or reinterpret it. [15]

My main point is that by seeing the Mishnah as a response to an older collection, and reading the Mishnah together with that collection, we can far more precisely and in a more nuanced manner determine the meaning and message of the Mishnah, just as reading Dead Sea Scrolls in conjunction with the Biblical books on which they are based allows the reader to appreciate more fully what the authors of the scrolls are trying to accomplish. Moreover, if we find a section of the Mishnah that closely parallels a section of the older, tannaitic collection, yet the Mishnah contains one or two new statements without parallel in the older work, we can surmise that the redactor inserted these new statements into his collection to tell the reader his own

view on the matter under consideration. With these kinds of reading strategies, we can begin to understand the redactor's agenda.

I am not suggesting that one can compare the Mishnah and the Tosefta and find them congruent to a great extent. Today's Tosefta is about three times as long as the Mishnah and contains much material found nowhere else in rabbinic literature. I am arguing, rather, that the Tosefta of today is composed of an early core and a later accretion of materials onto that core. [16] Only the core serves as the basis of the Mishnah. When I have trouble understanding a Mishnah-because there is information I need that is not included in the Mishnah itself-I can often open the Tosefta and find the missing pieces of the puzzle. If we select all of these materials in the Tosefta, i.e., those passages that are directly related to the Mishnah, and leave out all the rest, we will see that they form a coherent tannaitic collection, one that I claim is the forerunner of the Mishnah. Thus, according to my theory, we need neither accept that for a period of time the Mishnah was hard to understand, nor that the Tosefta, which has many hallmarks of an independent work, was from the start a commentary on the Mishnah. By turning the traditional theory upside down and seeing the Mishnah as a response to a core collection in the Tosefta, I have eliminated two thorny problems. [17]

Let me illustrate this point with a brief example. [18] In its description of Simhat Bet Hashoevah, an all-night bout of merrymaking in the Temple following the first day of Succot, the Mishnah says that "they," apparently the kohanim, would go down to the Women's Gallery, "umetaqnin sham tiqqungadol" (Succah 5:2). These words have no obvious meaning. The verb *letaqen* means to enact, repair, or build. The noun *tiqqun* means an enactment, preparation, or improvement. What kind of preparation, enactment, or improvement did the kohanim make, year after year, in the Women's gallery? The Mishnah gives us no clue whatsoever. [19] Note that the repetition of the same root [T-Q-N] in predicate and object heightens the ambiguity. If we turn to Tosefta Succah 4:1 we find the answer. It tells a story about men and women who, at some time in the past, mingled at the celebration and behaved with *qalut rosh*, in sexually inappropriate ways. The rabbinical court, in response, decided to have viewing balconies built for the women to keep them away from the men but still able to see the "show." The "tiqqun gadol" of the Mishnah is thus a reminder of a past enactment or improvement and also a yearly preparation.

There is no way to deduce this interpretation from the words of the Mishnah themselves. Those who do not subscribe to the view of the Mishnah as a response to the Tosefta would have to say that in this instance the redactor of the Mishnah leaves his audience in the dark. I think it more reasonable to see this passage of the Mishnah as a precis of the Tosefta story, a version that makes limited sense on its own but forces the reader to look elsewhere for a full explanation.

Why, according to my theory, did the redactor of the Mishnah take a clear text-the story in the Tosefta-and make it unclear? Was it not so that he could hint at the story without relating it in full, so that he could be brief, and so that he could focus on halakhah and not history-a point to which we will return below.

The possibility of a core Tosefta collection as the basis of the Mishnah has not been previously considered for a number of reasons. First, the Epistle of R. Sherira Gaon says that the Tosefta is the companion volume to and commentary on the Mishnah and that it was produced by R. Hiyya, a younger contemporary of Rebbe. [20] The Rishonim-the early Talmudic commentators and later writers all followed R. Sherira Gaon's lead. Second, as noted above, on the surface the Tosefta often seems to comment on the Mishnah. It would thus have been counter-intuitive to think of the Tosefta as earlier than the Mishnah.

But in the last decade many articles have been published demonstrating that in individual cases the Mishnah is based on the Tosefta. [21] This theory is gaining more and more adherents. In my first article on the subject. [22] not only was I able to demonstrate that the Mishnah rewrote paragraphs of the Tosefta, but that it did so in order to make the law more stringent. Scholars have thus begun to think about the Tosefta differently from the way it was thought about in the past.

I am now taking this theory of the primacy of the Tosefta one step further and am claiming that it is not just individual paragraphs of the Mishnah that rework an early source, but that the Mishnah, paragraph after paragraph, systematically reworks an entire collection. This assumption allows for all kinds of new understandings of the evolution of halakhah and aggadah in general and of halakhot and aggadot in particular. It enables us to read the Mishnah against the backdrop of an earlier document and see which paragraphs the redactor included, excluded, added, or rewrote to his liking. In particular, it allows us to see that a given mishnah may be a carefully constructed summary of several Tosefta passages and can only be fully understood if read from that perspective. It also allows us to note that aggadah played a much greater role in the older tannaitic collection than it did in the Mishnah. [23] (The implications of this reduction in non-halakhic thinking will be examined below.) In short, assuming that the core of the Tosefta-the work more similar to the Mishnah than any other-is the basis of the Mishnah, allows us to understand the Mishnah at a deeper level, to arrive at mishnah kifshutah, at the simple meaning of the words, the one intended by the person who formulated them.

Consider the following cases which elaborate the benefits to be gained by reading the Mishnah as a response to the Tosefta. It will be evident that large chunks of the Mishnah are reworkings of even larger chunks of the Tosefta. Furthermore, these comparative readings will provide the evidence for deducing what the redactor of the Mishnah intended to accomplish by making these modifications.

Cherchez la Femme, Mishnah Sotah 9:13 and Tosefta Sotah 15

At the end of tractate Sotah, in discussing the deterioration of the social order prior to the destruction of the second Temple, the Mishnah cites much material also found in the Tosefta. It then says, [LANGUAGE NOT REPRODUCIBLE IN ASCII] . . . (9:13), which means "... But the Sages say, fornication and sorcery destroyed it all." Right before this statement R. Simon b. Elazar says that people lost their sense of taste (for food) [24] after the destruction and right after this statement the Mishnah talks about various restrictions on exuberant rejoicing that the rabbis issued in the years before the destruction. These same statements appear in the last chapter of T Sotah in the same order: T 15:2 talks about loss of taste (for food) and T 15:8,9 about restrictions on exuberant rejoicing. In between these passages, the Tosefta talks at length about the deaths of great men and the deleterious effects of these deaths on society (15:3-7). Since the Tosefta said earlier that the deaths of great men cause good to withdraw from the world and punishment to arrive, [25] these deaths are, by implication, the cause of the destruction of the Temple. The Mishnah cites the death of great men syndrome a little later (9:15). [26] After the Mishnah presents its view on what led to the destruction, it continues with a series of statements on deaths of great rabbis and the effects on society of these deaths, such as a loss of wisdom, of piety and humility, of wealth.

The Sages' statement about fornication and sorcery is not found in the Tosefta (or anywhere else in tannaitic literature). [27] By incorporating this line into his account and displacing the passages the Tosefta had at this juncture, the redactor of the Mishnah articulates his own theodicy: The people misbehaved and thus invited God to punish them. They are to blame for their own misfortunes. God exists and God is just. The redactor is also implying that women in particular are to blame for the destruction. They are the ones who are generally associated with fornication, as evidenced by the subject matter of this very tractate, the sotah or wayward wife. Women are also linked in many places with sorcery, as in Hillel's statement, "the more wives, the more witchcraft" (Pirquei Avot 2:7). [28] Shifting the blame for misfortune to women is a tactic that goes back to the story of Adam and Eve. And here too it is a masculinist technique.

Furthermore, the rhetorical intensity of the Sages' statement sets a preachy tone for the end of Chapter 9, reminiscent of the one set earlier in the tractate by statements about the sotah herself: "God repays a person measure for measure. Just as she adorned herself for sin, so God will disfigure her, etc." (M Sotah 1:7). In the passage about fornication, the redactor seems to be saying that the people have betrayed God just as an unfaithful wife has betrayed her husband, a charge already leveled at them by Jeremiah and Hosea. For having unraveled the social fabric, Israel deserves to lose the Temple, the center of the cult. [29]

We can recognize the importance of the statement about fornication and sorcery only if the Mishnah and the Tosefta are read in conjunction with each other—and if the Tosefta is presumed to be the forerunner of the Mishnah. Those who hold the traditional theory will regard the passage about fornication as simply one more in the Mishnah that has no parallel in the Tosefta. Its special role in the chapter will go unnoticed. In addition, the different and difficult ordering of subject matter in parts of Tosefta 15 and Mishnah 9, as noted above, will go unexplained.

Rules for Remembering Rituals,

Mishnah Succah 4,5 and Tosefta Succah 3,4 Yet another feature of Rebbe's editorial work is his superimposing of tight literary structures on material that previously had been more loosely arranged. Often a chapter begins with a summary of what is to come, in this instance listing seven Succot rituals and specifying how many days each was to be performed (M Succah 4: 1). [30] Subsequently each one of the seven is introduced with a question like, "the mizvah of lulav, how does one perform it," as the text provides the reader with mnemonic devices. These make it easy to remember the order of large blocks of material, especially since the summary mishnah at the beginning can be referred to readily.

The parallel material in the Tosefta examines a series of Succot rituals, one after the other, but in a somewhat different order. There is no summary paragraph and there are no introductory questions. Two of M 4:1's rituals—simhah (rejoicing) and succah—do not appear even though the meaning of simhah in the Mishnah is far from clear. [31] One of the seven rituals, the halil (flute), is defined in the Mishnah as the halil that plays at the Simhat Bet Hashoevah, but in the Tosefta it is defined as the halil that plays on Festivals at the time that the sacrifices are offered. [32] It is hard to view these paragraphs of the Tosefta as a commentary on the parallel paragraphs of the Mishnah. The opposite view again seems more reasonable: that the redactor of the Mishnah took the five rituals mentioned in the Tosefta (in Chapters 3 and 4), changed the meaning of one of them and added two more (for reasons of his own which a close comparison

of the two works will reveal), and then composed a summary Mishnah paragraph to help the reader remember the order of the many and diverse materials that follow. To make following his train of thought easy, he added introductory questions each time he changed the subject.

Life in the Balance, Mishnah and Tosefta Kiddushin 1

One more largely unnoticed feature of Rebbe's editorial activity was to reduce significantly the aggadic content of the older tannaitic collection. I do not know how he characterized the older work but his own purports to be a code of Jewish law with little interspersed aggadah. Does he refer the reader to the other collection for a fuller exposition of aggadah? Does he attempt to eliminate aggadah from rabbinic discourse? It is hard to say. Since he requires the reader to look elsewhere to understand much halakhah, I think he may expect the reader to do the same for aggadah. Even some of his own, albeit limited aggadah is impossible to understand without reading it in conjunction with the more extensive aggadah of the older collection, as we will see below. Either way we understand his motives, by increasing the proportion of halakhah to aggadah, he is making a statement about the importance of halakhah.

Let us now return to the passage from Mishnah Kiddushin with which we began our discussion.

[LANGUAGE NOT REPRODUCIBLE IN ASCII]

Anyone who performs [just] one mizvah, he [will] fare well, his days [will be] lengthened, and he [will] inherit the land.

But anyone who does not perform [just] one mizvah, he [will] not fare well, his days [will] not [be] lengthened, and he [will] not inherit the land.

We noted above the difficulties in interpretation of this passage-why the great significance of just one act, whether committing or omitting it?-and concluded that this paragraph of the Mishnah, when read on its own, does not make sense. Turn now to parallel material in the Tosefta for help. [33]

[LANGUAGE NOT REPRODUCIBLE IN ASCII]

One who performs [just] one mizvah things [will] go well with him, his days and years [will] be lengthened, and he [will] inherit the land.

But anyone who transgresses [just] one mizvah, things [will] go badly for him, his days [will] be shortened, and he [will] not inherit the land.

About this it is said, "One sin will lose much good" (Ecclesiastes 9:18),-with this one sin he loses for himself many benefits.

This Tosefta passage pairs the Mishnah's first statement with a different second statement. It does not say that refraining from performing a mizvah causes a person to lose much good but that actively violating some rule brings on great punishment. Even with this different ending, the Tosefta passage remains difficult. Why does performing just one good deed bring such a great reward? Why does performing just one bad deed bring such great punishment?

The Tosefta continues:

1:13

[LANGUAGE NOT REPRODUCIBLE IN ASCII]

[LANGUAGE NOT REPRODUCIBLE IN ASCII]

A person should always see himself as half innocent [righteous] and half guilty. If he performs [just] one mizvah, he has tipped his [balance] towards innocence, And if he transgresses [just] one transgression, woe to him [for] he has tipped his [balance] towards guilt.

About this it is said, "One sin will lose much good." With this one sin that he committed he has lost for himself many benefits.

1:14

R. Simon b. Lezer says in the name of R. Meir: Because an individual is judged according to the majority [of his deeds]....

If he performed [just] one good deed, blessed is he for tipping himself and the world towards innocence,

If he transgressed [just] one transgression, woe to him for tipping himself and the world towards guilt,

For about this it is said, "One sin will lose much good."

1:15

R. Simon says: if a person was righteous his entire life but towards the end rebelled, he loses everything....

1:16

If a person was a sinner his entire life but towards the end he repented, God accepts him....

We see here a philosophy of life: a person's past record is not important; what he or she does from now on counts. Even someone with a fine record who sins but once will wipe out all past merit and lose every benefit he has accumulated. And a person with a bad record can have it erased in entirety if he performs just one good deed. Each successive act is the critical one.

These paragraphs suggest that there is never any justification for a good person to break the law, even once, because just one bad act carries heavy penalties (1:15). Nor is there any justification for a bad person to avoid performing a mizvah, even one more time, because just one good act can be redemptive (1:16). Note that most of these teachings are derived from one difficult verse in Ecclesiastes, "one sin will lose much good." It becomes the springboard for the rabbis' exegeses.

Reading the Mishnah against the backdrop of these statements in the Tosefta leads to the following observations. The redactor of the Mishnah wants to communicate to his audience the Tosefta's idea that each successive act carries great weight, but at the same time he is trying to make an even stronger point: not only does committing a bad deed bring on punishment, such as a shortened life span, but merely refraining from doing a good deed will deny a person great benefit, such as an opportunity for a long life. He treats omission in as grave a manner as commission. Whereas commission of a sin brings punishment, omission of a good deed causes good to be withheld, good that he earned by past good deeds but that he can now lose by refraining from taking action. This is a far greater demand than the one in the Tosefta about avoiding sin and punishment. The Mishnah appears intent on spurring people to action. [34]

By itself the Mishnah makes little sense. But read with the Tosefta, not only does the Mishnah make sense, we are even able, by close comparison of the two documents, to discern their differences. The redactor of the Mishnah, upon reading this material on the subject of reward and punishment in the tannaitic collection of his day, decided to eliminate most of it from his halakhic collection in order to emphasize the essential point of the entire section: each successive act is the critical one. However, the way in which he formulated this statement, as similar as it sounds to the Tosefta, makes no sense by itself. If we read this Mishnah passage with the Tosefta, as the redactor expects us to do, we gain the narrative network that makes it possible to understand the Mishnah. And if we assume that the core Tosefta is earlier than the Mishnah and accessible to the redactor of the Mishnah, we gain even more. We can say that he altered the passage because he wanted to make even greater demands on people: it is not enough that they refrain from sin; it is necessary for them not to avoid acts of righteousness. This may be his unique (and perhaps urgent) message. Furthermore, when we read M 1:10 as the closing paragraph of a chapter dealing with the acquisition of wives, slaves, and other possessions of value, and obligations to and (women's) exemptions from mizvot, we are likely to pay it little attention. It appears to be a charming but opaque homily. The Tosefta, by exhorting at length on this matter and making its points in a clear manner, grabs the reader's attention. He or she senses that the halakhot about mizvot, appearing earlier in the chapter, and the charge to keep the mizvot are intended to be equally important.

Were someone to make the traditional argument that the Tosefta is later than the Mishnah, he would have a hard time explaining why M 1:10 on its own is so difficult to understand and why the Tosefta makes no reference at all to the Mishnah's claim in the second clause that even holding back from performing one mizvah is crucial. The many passages of the Tosefta all discuss either performing one mizvah or committing one transgression. If the Tosefta is a commentary on the Mishnah, why does it pay no attention to the Mishnah's idea of omission? I therefore think it makes more sense to assume that the Tosefta's statement, with its sharp contrast of good and evil, is older than the Mishnah, and that the admonition not to refrain from performing good deeds is an innovation of the redactor of the Mishnah.

This example teaches much about the relative roles that halakhah and aggadah played in the older tannaitic collection and in the newer one. The Tosefta, as it is currently constituted, contains a much higher percentage of aggadic material than the Mishnah. These materials are interwoven with the halakhah. The complete meshing of the two genres gives the reader the impression that the tannaim did not differentiate sharply between halakhah and aggadah, as we do today, but viewed both (and produced both) as complementary strands of one, unified system. If the tannaim were speaking about overreaching in commercial transactions, they also dealt at length with overreaching in interpersonal transactions. If they were talking about mentioning the Exodus in the statutory prayers, they expanded on the subject of remaining grateful to God for that particular past salvation, even after later salvations had taken place. And if they were talking about rain falling on Succot, which they understood as a sign of God's displeasure, they spoke about other cosmic disturbances and their presumed cause, social ills.

The Mishnah often addresses the same halakhic subjects as the Tosefta but introduces aggadic teachings in a more limited fashion. Therefore, if it is true that the Mishnah is a response to an earlier, more expansive tannaitic collection, then the redactor of the Mishnah, in instance after instance, pared down the scope of the aggadah in order to produce a work principally of halakhah. He thus established a new kind of rabbinic discourse, a tightly organized code of law, pithy, relatively succinct, and low on ethical exhortations. Of course, he sends the reader to the older collection for help in understanding his opaque halakhic and aggadic statements, but his work, nonetheless, is much more halakhah than aggadah.

It is possible that halakhah, as the main subject of rabbinic inquiry and as divorced from aggadah, is Rebbe's innovation. If so, his role in the evolution of Jewish halakhic thinking may thus be even more important than previously thought. He rebelled against enmeshing the two strands. Not that he favored eliminating aggadah but reducing it and relegating it to a separate document. Rebbe's stress on halakhah may reflect a community that was growing apart in its practices, as many passages in the Mishnah seem to suggest. To bind the various groups

together, standardized practice was necessary, not a philosophy of life. Or Rebbe's attention to halakhah may have been a response to early Christianity which highlighted aggadah and downplayed halakhah. More simply, Rebbe may have excised aggadah to keep the collection from growing too large. Note that the other great tannaitic corpus, the midrash halakhah, which postdates the Mishnah but contains material that antedates the publication of the Mishnah, is a blend of halakhah and aggadah. [35]

It is noteworthy that Rebbe's attempt to play down aggadah did not last. Since both the Babylonian and the Jerusalem Talmud analyze many mishnahs in the context of the associated materials in the Tosefta, the aggadic portions of the Tosefta find their way into the Talmud and are analyzed by Talmudic spokesmen just as are halakhic portions of the Tosefta. The rabbis of the Talmud move effortlessly back and forth between halakhah and aggadah. In this way, in the short term, Rebbe failed. In later generations, however, his preoccupation with halakhah became the standard mode of operation, as evidenced by *Sefer Halakhot Pesuqot* (8 c.), and continuing thereafter. Halakhah thus became the major subject of inquiry. In time, Rebbe emerged victorious on this front as well. One outcome of the turn to halakhah is that, over time, learned and talented Jews often restricted their interests and literary production to the world of halakhah alone. [36] They viewed aggadah as suitable for those who were less able, men and also women. [37]

Today's Talmudist has the freedom to choose between this view of the relationship of the Mishnah and the Tosefta and the traditional one. I cannot disprove the traditional theory that the Tosefta was produced to explain the Mishnah. I can only observe that my theory—which accepts neither the notion of an incomprehensible or opaque Mishnah (as it left the hands of the redactor) nor that of a companion document as a commentary even though it does not consistently comment on the source document—provides stronger, more precise readings of the Mishnah and gives the reader a sense of the redactor's agenda. And an important corollary of seeing a core Tosefta as the basis of the Mishnah is that it sheds new light on the history of rabbinic thinking. It reveals that aggadah, inseparably bound up with halakhah, was the original form of rabbinic discourse.

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NOTES

(1.) [LANGUAGE NOT REPRODUCIBLE IN ASCII]

(Deuteronomy 3.28) [LANGUAGE NOT REPRODUCIBLE IN ASCII]

(2.) Saul Lieberman writes: "It is the practice of the Tosefta, in a thousand places, to cite a little from the Mishnah for reference" (zikhron devarim) (Tashlum Tosefta [Jerusalem: Wahrman, 1970, p. 21]); Abraham Goldberg says that the Tosefta is an addition, a prime commentary on, a continuation of, an elaboration of, and a supplement to the Mishnah ("The Tosefta-Companion to the Mishna," in *The Literature of the Sages* [Philadelphia: Fortress Press, 1987], p. 283). See Alberdina Houtman (*Mishnah and Tosefia* [Tubingen: J.C.B. Mohr, 1996]) for a historical overview of research on the relationship between the Mishnah and the Tosefta (7-19). See also Shamma Friedman, *Tosefta Aliqta* (forthcoming), for a much more detailed survey.

(3.) For an analysis of the term "Tosefta," see Y. N. Epstein, *Mevo'ot Lesifrut Hatannaim* (Jerusalem Tel Aviv: Magnes, Dvir, 1957), pp. 241ff.

(4.) See M and T Pesahim 10 and M and T Menahot 10 for instances in which some Toseftan halakhot appear in a different order from the parallel ones in the Mishnah. Goldberg, remarking upon this phenomenon, suggests that the Tosefta deliberately reorganized mishnaic material in order to place each passage in the most appropriate and useful place ("Seder Hahalakhot Utekhunot Hatosefta," in *Mehqerei Talmud 2* Jerusalem: Magnes Press, 1993], pp. 167, 188). Epstein suggests that the Tosefta's order only appears jumbled but is not. It is the sometimes anomalous ordering of the Mishnah that led to the ordering of the Tosefta (*Mevo'ot*, 259). See also Shamma Friedman's comments on the redactor of the Mishnah deliberately reconfiguring Toseftan material when preparing the Mishnah in "Ma'aseh Berabban Gamliel."

(5.) Compare the presentation of the topic of eruv tavshilin in M and T Bezah 2. See my article on this material, "Hamishnah Kh'ibbud shel Yezirah Tannait Qedumah," in the forthcoming festschrift for David Halivni.

(6.) Compare M Berakhot 1:5 and T Berakhot 1:loff.; M Succah 2:9 and T Succah 2:5,6.

(7.) See Houtman (pp. 76, 165) who says that T Berakhot and T Shebi'it are readable and intelligible as they are, without reference to the Mishnah.

(8.) Goldberg notes, however, the greater frequency of late tannaim in the Tosefta than in the Mishnah (295ff.). These statements do not account for a large fraction of Toseftan material.

(9.) It is also true that preserving "bits and pieces" is not the same as producing a commentary. This is a shift from the theory of the Tosefta as a commentary on the Mishnah.

(10.) See Epistle of R. Sherira Gaon below.

(11.) Whenever a problem arises, they fabricate yet another assumption that will help solve it. For instance, when the Tosefta passes over large pieces of the Mishnah in silence, they say that the Tosefta had nothing to say about those pieces, even if those pieces of the Mishnah are important and extensive. When the Tosefta differs with the Mishnah, they say each of the two approaches is that of a different tanna.

(12.) In his important programmatic essay, P. Schafer raises a number of new possibilities for the Mishnah-Tosefta relationship ("Research into Rabbinic Literature; An Attempt to Define the Status Quaestionis," JJS 37 [1986]: 139-152).

(13.) Scholars often say that tannaim prior to Rebbe, such as R. Judah and R. Yossi, produced a Mishnah of their own (Epstein, 246). But these collections have not survived. Therefore, when scholars say that the Mishnah came before the Tosefta, they mean that the Mishnah is the oldest extant tannaitic work.

(14.) One might also suppose that the two collections are independent of each other, that each is an extraction from the mass of material that was circulating in the ancient world, most likely orally. I find such a theory acceptable at times. In some cases, the Mishnah and the Tosefta, neither of which seems to be derived from the other, quote what seems to be a third or

Qsource. But since in so many other cases the passage in the Mishnah or the Tosefta seems to be derived from the parallel source in the other work, I see no reason to complicate matters by positing a third source.

(15.) See, for example, M Gittin 3:6 and T Gittin 1:1. It appears that the redactor of the Mishnah, upon introducing the notion of a messenger who fell ill, utilized the Tosefta's statements about one messenger appointing another.

(16.) Epstein posits a layered Tosefta, beginning with the collection of R. Nehemiah, one generation before Rebbe, and ending with the interpolated comments of the generation of tannaim who followed Rebbe (Mevo'ot, 242). But he does not suggest that any given layer of the Tosefta served as the basis of the Mishnah.

(17.) Even more remarkable, the older tannaitic collection has been preserved not only in the Tosefta but also in the two Talmuds. The Toseftan materials that gave rise to the Mishnah are the very same materials that the two Talmuds cite and analyze when studying a given mishnaic passage. In other words, many sugyot have at their base a skeleton of tannaitic passages and it is these passages that we find at the very same juncture in the Tosefta. See, for example, BT Baba Mezia 78b, the discussion of angaria.

(18.) For an extended analysis of this material, see my article, "Mishnah as a Response to Tosefta," in *The Synoptic Problem in Rabbinic Literature*, edited by Shaye J. D. Cohen (Providence, RI: Brown Judaic Studies 326, 2000), pp. 13-34.

(19.) One might think that the "preparation" refers to filling the golden menorahs with oil, as described in the very next passage. I do not find such an interpretation likely because the wording suggests that lighting the menorahs was a separate matter.

(20.) In the Epistle (Part 1, Chapter 5), R. Sherira Gaon says: "As for the Tosefta of R. Hiyya, surely he arranged it (terzah), but we cannot determine if he did so in the time of Rebbe or afterwards." A few paragraphs later he continues, "Rebbe could not have included everything in the Mishnah because it would have been too long. Rather, he put down the essence of the matter [iqar hadevarim] ... and along came R. Hiyya and explained ... [the next phrase varies by ms.]."

(21.) "Pesiqah Lehumra Bemishnat Gittin," in Proceedings of the Tenth World Congress of Jewish Studies: Division C (Jerusalem: World Union of Jewish Studies, 1990) 1:23-30; "Women and Procreation," Tikkun, November/December 1991; "Qiyum Merazon Shel Mitzvot Aseh Shehazeman Geraman Al Yedei Nashim," in Proceedings of the Eleventh World Congress of Jewish Studies: Division C Jerusalem: World Union of Jewish Studies, 1994) 1:161-168; "Mishnah as a Response to Tosefta," above, n. 17. "Nashim B'masechet Pesahim," in Atara L'Chaim, Studies in the Talmud and Medieval Rabbinic Literature in Honor of Professor Haim Zalman Dimitrovsky Jerusalem: Magnes Press, 2000), pp. 63-78. See also Shamma Friedman's detailed analyses in, "Tosefta Atiqta: Leyahas Maqbilot Hamishnah Vehatosefta (A), Kol kitvei haqodesh (Shabbat 16:1)," Tarbiz 62 (1993), 313-338; ". . (B), Ma'aseh Berabban Gamliel V'hazeqanim," Bar Ilan 26-27 (1995), 277-288, and the introduction and bibliography in his forthcoming volume, Tosefta Atiqta. See his other article (with a similar title) "Maqbilot Hamishnah V'hatosefta," Proceedings of the Eleventh World Congress of Jewish Studies: Division C (Jerusalem: World Union of Jewish Studies, 1994) 1:15-22. Houtman suggests (118, 206) that the Mishnah gives an abbreviated version of the Tosefta's ruling.

(22.) "Pesiqah Lehumra Bemishnat Gittin," see preceding note.

(23.) Houtman (78) notes that T Berakhot cites biblical verses 69 times and M Berakhot only 9 times.

Some of these verses are used, she says, in homiletical exercise.

(24.) According to some scholars, R Simon b. Elazar's statement is a later addition to the Mishnah. Even if they are right, my analysis is still cogent since his very point is also made at the end of the preceding paragraph of Mishnah (9:12).

(25.) [LANGUAGE NOT REPRODUCIBLE IN ASCII] [Tosefta Sotah 10.1] [LANGUAGE NOT REPRODUCIBLE IN ASCII]

(26.) Scholars hold that M 9:15 is a later addition. See Hanokh Albeck, Seder Nashim, Hashlamot 394.

(27.) The word pair fornication/sorcery first appears in Nahum 3:4. The notion of fornication bringing about general disaster also appears in amoraic literature: "R. Simlai says, wherever you find fornication, chaos takes over [androlomusia]" (PT Sotah 1:5 [17a]). The literal meaning of this Greek word is punishment that is meted out regardless of guilt or innocence.

(28.) If sorceresses are older women-and in many ancient and even modern societies they were and are-then the Sages of the Mishnah are suggesting that younger women snare men with sex and older women with spells, which is another way of saying that all women are dangerous.

(29.) It is for this reason-the perceived connection between the individual sotah and the entire nation as sotah-that musings about the destruction of the Temple appear at the end of Tractate Sotah.

(30.) [LANGUAGE NOT REPRODUCIBLE IN ASCII]

(31.) Simhah usually refers to sacrifices of simhah but here "the simhah" must mean something else. All the M says later about simhah is that one is obligated to Hallel and to simhah and to honoring the last day of the Festival just as one honors the first seven, [LANGUAGE NOT REPRODUCIBLE IN ASCII](M Succah 4:8). We thus see that the term simhah receives no explanation whatsoever. The point of the passage seems to be that the last day of Hag, now known as Shemini Azeret, is a holiday like Succot and deserves to be celebrated fully. As the Tosefta says (Succah 4:17), it should be a holiday in its own right.

(32.) See T Succah 4:14 and commentary of Lieberman (275). See parallel passage in T Arakhin 1:13.

(33.) David Halivni, in *Meqorot Umesorot, Nashim* (Tel Aviv: Dvir), 661-663, notes these difficulties in the Mishnah. His solution, based on the gemara's commentary on this paragraph of Mishnah, differs from mine. Shamma Friedman, in "Maqbilot Hamishnah V'hatosefta" (Proceedings of the Eleventh World Congress of Jewish Studies: Division C [Jerusalem: World Union of Jewish Studies, 1994], 1:21), states that M Kiddushin 1:10 is a reworking of the first two lines of T Kiddushin 1:13 for the sake of softening the language. My interpretation differs.

(34.) One might argue that the message of the Mishnah is identical to that of the Tosefta, that refraining from performing a mizvah (in the Mishnah) means nothing other than committing a transgression, and that Rebbe chose to express himself in this fashion to maintain consistency with the preceding and following mishnaic passages, each of which first talks about performing a certain act and then about not performing it. My response is: 1) The Mishnah seems to be formulated with great care. Not fulfilling a mizvah is different from committing a sin; 2) The last pair of statements in the Mishnah has only a partial parallel in the Tosefta, only a statement about the positive act of studying. There is no statement (in the Tosefta) about the consequences of not spending time in study. It is possible, therefore, that the closing statement in the Mishnah (about not spending time in study) was added to provide a counterbalance to the preceding passage about engaging in study.

(35.) The ratio of the genres to each other varies with the biblical subject under consideration. When the Torah deals with law, the midrash derives even more law. When the Bible exhorts people to behave righteously, the midrash develops the ideas in an aggadic mode.

(36.) However, Isaac Twersky argues that Joseph Karo's halakhic magnum opus, the Shulhan Arukh, was not intended as a manual for the observance of halakhah as divorced from "spiritual tension" but as a concretization of theological ideals and ethical norms ("The Shulhan Aruk: Enduring Code of Jewish Law," *JuDAISM* XVI 2, Spring 1967, 336).

(37.) The popular *Tsenerene* is a collection of aggadic materials prepared especially for women. See Chava Weissler, *Voices of the Matriarchs* (Boston: Beacon Press, 1998), pp. 38ff.