A YERUSHALMI VIEW OF THE AUTHORSHIP
OF THE TOSEFTA

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The solution of the problem of the authorship of the Tosefta has been attempted by various scholars at different periods. Tradition regards R. Ḥiyya as the author of the Tosefta. The tradition is based on the fact that the schools of the Amoraim regarded as authoritative only those tannaitic traditions which had their origin in the collection of R. Ḥiyya or R. Hōshaiah. But if the collection of R. Hōshaiah was also considered authoritative, there are equal grounds for assuming either that R. Hōshaiah was the only author of the Tosefta, or that he and R. Ḥiyya edited the work in collaboration. It is argued, furthermore, that since R. Ḥiyya himself is mentioned in the Tosefta (Negaim 8, 6), the final redaction of the work must be attributed to a later hand.

The Baraitot of R. Ḥiyya and R. Hōshaiah quoted in the Babylonian and Palestinian Talmudim, which I have published in my Ozar Ha-Baraitot, Vol. II, are not of much help in solving the problem of the authorship of the Tosefta. For the expression קין ותניא may have a double meaning. It may refer to an individual teaching of R. Ḥiyya; and it may also refer to a collection of R. Ḥiyya. The same is true of the traditions introduced by the expression תני ר' והשעה; especially since these expressions were used by different Amoraim in different periods and countries.

I should like, therefore, to call attention here to two different passages in the Yerushalmi, which, in my opinion, assume definitely that R. Hōshaiah was the editor, or compiler of the Tosefta. In these passages, furthermore, the Amoraim mentioned are pupils of R. Yoḥanan, who in turn had been a pupil of R. Hōshaiah. We would then have direct evidence, coming from the schools of R. Hōshaiah, with regard to the authorship of the Tosefta.

The first passage is found in the Yerushalmi Baba Ḳamma,
ch. 3, 3c ed. Krotoshin, and reads as follows:  The Yerushalmi asks the question whether a man has to pay for the first theft, since that act will eventually bring about the punishment of death. An anonymous Baraita is quoted to prove that the maker of the theft would have to pay the fine. But a pupil of R. Yohanan, argues that R. Hoshiaia might have a reason of his own, as proven from another anonymous Baraita.

The question naturally arises, wherefrom does 's take for granted that R. Hoshiaia is the author of the two Baraitot, since both of them are practically found in the Tosefta, a compilation of R. Hoshiaia. The first Baraita is found in our Tosefta, Baba Kamma, ch. 9, sec. 19, ed. Zuck. With regard to the second Baraita, I could not locate it in our Tosefta. Nevertheless, a careful study of the laws of the Sabbath as found in the numerous statements in the 9th and 10th chapters of the Tosefta Shabbat, proves definitely that the author of the Tosefta was of the same opinion as expressed in that Baraita, namely that one has violated the law of the Sabbath by taking out an object from one territory to another, even when the object was not put down on the ground.
I am quite aware of another passage in the Yerushalmi which would apparently do away with my theory. The passage is found at the beginning of the tenth chapter in Yerushalmi Baba Kamma, and reads as follows:

אל תהי רב חיות אמר מוצאיי מרואון ולא משני, רב' יוחנן אמר אם ר', ימי מוצאיי אוכי ממשי. ר' אבר שלמה אוכי אוכי, היוה כרעתיה, ר', ימי אמר מוצאיי אוכי משני. Thus, we have here a similar expression for R. Hiyya: ר', היוה כרעתיה, which, according to the commentaries, refers to the Baraita that follows, a Baraita which is also found in our Tosefta. According to that passage, then, ר', a pupil of R. Hoshiaiah, assumes that R. Hiyya is the author of the Tosefta. But a careful examination of the entire discussion in the Yerushalmi, shows that the commentaries misunderstood the passage. After the Baraita has been quoted, another Amora remarks: אל הז緩 רב חיות חביב. Now, if the Baraita quotation was meant to show the view of מ', there would have been no need for additional adjustment of the Baraita. The real explanation is that the expression מ', meant to say that מ', does not disagree with מ', and that he is rather in agreement with the view of מ'. The Baraita which follows begins a new discussion; and is explained in the same manner as in the Babylonian Talmud, Baba Batra 46a.

My second proof that the Yerushalmi assumed R. Hoshiaiah to be the compiler of the Tosefta is the following: A Mishnah at the end of the fourth chapter in Rosh Ha-Shanah reads: רבא שלמה אומר שלמה ציבור מוצאיי אוכי דרבון רי יבמות. According to the Yerushalmi, at the end of that chapter in Rosh Ha-Shanah, as well as at the end of the fourth chapter in Berakot, Rabbi Yohanan decided the law in favor of the view of R. Gamaliel, and מ', a disciple of R. Yohanan, justifies the attitude of R. Yohanan on the ground that R. Hoshiaiah, unlike the Mishnah version, taught the view of R. Gamaliel in the name of the הכהנים, or the majority opinion. Now, in our Tosefta at the end of the treatise Rosh Ha-Shanah the reading apparently agrees with that of the Mishnah. But after the general statement, containing the controversy between Rabban Gamaliel and
the Sages, the argument follows. From that argument one can easily discover that the main statement originally read differently; that the view of the Sages in the Tosefta agreed with the view of Rabban Gamaliel in the Mishnah; and that the Babylonian version of the argument as recorded in Rosh Ha-Shanah 34b is based on a changed text of the Tosefta.

Hence, we have here a definite proof that, in saying מְצָאָה אֲמֹרָה, the pupil of R. Yohanan, in saying מְצָאָה אֲמֹרָה, R. Hoshiaiah was the author of the Tosefta.