

JUDITH HAUPTMAN

Rereading the Mishnah

Texts and Studies in

Ancient Judaism

109

Mohr Siebeck

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Judith Hauptman

Rereading the Mishnah

A New Approach to Ancient Jewish Texts

Mohr Siebeck

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איך נפלו גבורים

In memory of my brother, Philip Jonathan Hauptman,
a heroic physician, who died on Rosh Hodesh Nisan 5765

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Preface

— *Change is the only constant* (anonymous aphorism)

I began researching the relationship between the Mishnah and the Tosefta about fifteen years ago, first reporting on it at the Tenth World Conference of Jewish Studies in Jerusalem in 1989. My main point was that paragraphs of Tosefta Gittin served as the basis of paragraphs of Mishnah Gittin. The presentation was later published in the Proceedings of the Conference (August 1990). From that time on, when reading Mishnah and Tosefta, I would look first at the Tosefta and only afterwards at the Mishnah. As a result, I was often able to produce better interpretations of the Mishnah, closer to the simple meaning of its words. This reading strategy also solved serious problems regarding the Tosefta. For instance, the fact that Tosefta paragraphs often did not follow the order of the Mishnah made sense if one assumed that the Tosefta was earlier than the Mishnah. Growing ever more convinced of the value of this new approach, I presented my theory at the Annenberg Conference in May 1990 (Philadelphia), published several more articles on it, and spoke about it again in 1993 at the Eleventh World Congress.

Let me backtrack a bit. My interest in tannaitic materials grew out of my doctoral research. In investigating the phrase *tanya nami hakhi* (thus is also taught in a “*baraita*”), I discovered a solution to the redundancy associated with this expression. The problem noted by many was that a *baraita* introduced by this phrase often repeated the preceding *memra* (amoraic dictum) verbatim. Textual comparisons revealed that before the text of the *baraita* was modified, the *memra* did not merely repeat the following *baraita* but instead made a comment of significance. In the course of time, however, similar texts have a tendency to become identical. The innovative point of the *memra*, I claimed, was inadvertently copied “down” into the following *baraita*. This created the impression of redundant sources.

As I studied case after case of a *baraita* introduced by this phrase, I began to notice that in the ancient period a mishnah was typically studied together with its associated *baraitot*, many of which are found in the Tosefta. I suggested in the last chapter of my dissertation, published in 1988 as a book, that a standard pericope in the Talmud – Bavli and Yerushalmi alike – contains a tannaitic substratum composed of mishnah and related *baraitot*. If so, I had considerably expanded the then regnant two-source theory, which

saw only the amoraic and *stama degemara* layers as defining elements of the pericope. My three-source theory posited three major components of the Talmudic sugya: a tannaitic layer of mishnah and *baraitot*, an amoraic layer of *memrot*, and an interpolated, late layer of *stama degemara*.

It was this study of *baraitot* that led me to begin comparing M and T Gittin systematically. I was hoping to discover that the Tosefta's pattern of divorce legislation was different from the Mishnah's. As I worked my way through M and T Gittin, comparing the two corpora paragraph by paragraph, not only did I find that there was a difference in their approach to divorce but also, and even more important, that many paragraphs of the Tosefta made no sense if assumed to be a commentary on and supplement to the Mishnah. It then occurred to me that many problems would be solved if the Tosefta were seen as the basis of the Mishnah.

After I entered these ideas into the public domain, others adopted them. The three-source theory has been extensively utilized by S. Friedman in his *Talmud Arukh*. As for the theory of Tosefta's priority in regard to specific paragraphs, it has become a standard feature of recent, critical scholarship.

The difference between my work and that of other investigators of Mishnah-Tosefta issues is that I have turned my findings of 1989 into a global theory. I suggest in this volume, and in papers already published, that there existed a collection called Tosefta even before the Mishnah came into being. It served both as the basis of some paragraphs of the Mishnah and as a commentary on many others.

Those who peruse this volume are invited to ponder anew the relationship of the Tosefta and the Mishnah. Many theories have been proposed in the past. I now add mine to that long list.

Let the readers judge for themselves if the arguments presented in this book are persuasive.

Many people over the last ten years have assisted me in thinking through the issues I deal with in this book. I will mention a few by name, but I owe a debt of gratitude to many others.

I wish to thank Shaye J. D. Cohen, Joseph Davis, Steven D. Fraade, Shamma Friedman, Alyssa Gray, David Halivni, Christine Hayes, Martin Jaffee, Elie Kaunfer, David Kraemer, Jacob Neusner, Tzvi Novick, Jay Rovner, Seth Schwartz and Zvi Steinfeld. Each in his or her way helped me in my research. Some read chapters and critiqued them, some offered encouragement, and some discussed ideas with me. Special thanks to Richard Kalmin who did all three.

Special thanks also to Robert Brody for reading and critiquing the entire ms. and to Shmuel Sandberg for reviewing the entire ms. and improving its clarity and articulation. Responsibility for the finished product lies with me alone.

I wish to express my gratitude to Peter Schäfer for his continuing interest in and support of this project.

I thank my students over the years for lively and insightful discussions of the subject matter of this volume.

Thanks to the Jewish Theological Seminary for an Abbell research grant.

This manuscript was prepared in camera-ready copy by Steven Siebert, using *Nota Bene*. I wish to thank him for being unfailingly gracious regarding all matters, large and small.

My thanks to Yael Weinstock for preparing the source index and assisting me in a variety of ways.

Heartfelt thanks to my husband Milton Adesnik and my three sons Ariel David, Moshe Jed, and Hillel Azriel Adesnik, for ongoing, sometimes heated discussion of the topics of this book. As the Bible instructs, we spoke words of Torah “when staying home, traveling about, lying down, and getting up.” My family also offered me invaluable assistance in reading and critiquing various chapters of the ms. Their forbearance and patience are beyond acknowledgment.

I have dedicated this book to my brother, Philip Jonathan Hauptman who, most regrettably, did not live to see it in print. A kind, compassionate, and talented psychiatrist, he devoted himself to his geriatric patients far beyond the call of duty. He was a constant source of encouragement to me.

Notes to the Reader

In general, the translations of rabbinic texts are my own. Exceptions are noted. The Tosefta translations are taken, with occasional modifications, from J. Neusner's *The Tosefta*. The bracketed words are explanatory insertions.

Rabbinic texts have been downloaded from the Bar Ilan database. They have been checked against Albeck's edition of the Mishnah and Lieberman's edition of the Tosefta. Those tractates not included in Lieberman's edition have been checked against Zuckerman's edition.

The references to the Talmud Yerushalmi (Palestinian Talmud) are presented in two ways. The first is by chapter and paragraph (halakhah or mishnah) and the second by page and folio. The second reference is keyed to the standard one-volume Leiden/Venice edition of this Talmud.

Ms. variants appear in the notes. The Mishnah manuscripts consulted were Kaufman, Parma, and Paris. The Tosefta variants are taken from Lieberman's critical apparatus.

When a reference is to the Mishnah as an entire work, the "M" is uppercase. When a reference is to one paragraph (mishnah) within the larger work, the "m" is lowercase. The same is true of ur-Mishnah and ur-mishnah.

God is referred to in the masculine for ease of reference only.

The generations of individual tannaim, indicated as T1-T6, are taken from Albeck's list in *Mavo Lamishnah*.

Although this text makes reference to "readers" of Mishnah and Tosefta in the ancient world and calls the collections "documents," the model throughout is one of oral texts that are memorized and transmitted from one learned person to the next. The verb "rewrite" is not to be taken literally. It means to reformulate.

Abbreviations

AJS	Association for Jewish Studies
BB	Baba Batra
BM	Baba Mezia
BQ	Baba Qamma
BT	Talmud Bavli
HTR	Harvard Theological Review
JJS	Journal of Jewish Studies
JSIJ	Jewish Studies Internet Journal
M	Mishnah
PT	Talmud Yerushalmi
RH	Rosh Hashanah
R	Rabbi
Rabbi	Rabbi Judah ha-Nasi
T	Tosefta

Chapter 1

Rethinking the Relationship between the Mishnah and the Tosefta

Even the most cursory glance at the Tosefta (T) reveals how similar it is to the Mishnah (M). The Tosefta's statements are authored by the same spokesmen, in the same language,¹ on the same topics, and are presented in roughly the same order.

Because of these similarities, many scholars have long thought that the Tosefta emerged later than the Mishnah and that it was the Mishnah's first commentary.² A few have regarded it as a collection of material that remained after the redactor of Mishnah made his "cut."³ But there is another possibility: the Tosefta existed as an ordered collection prior to the time of the

¹ E. Y. Kutscher and M. Moreshet both hold that the Hebrew of the Mishnah and of the Tosefta is *mhl*, *leshon hakhamim aleph*. See E. Y. Kutscher, *A History of the Hebrew Language* (Jerusalem and Leiden, 1982), 116, and M. Moreshet, "Habaraitot Ha'ivriyot Babavli Einan Leshon Hakhamim Aleph," *Sefer Hazikkaron Lehanokh Yalon* (Ramat Gan, 1975), 275–314. Moreshet further claims that when the Talmud cites a *baraita* from the Tosefta, later additions sometimes find their way into the *baraita* because editors felt they had a free hand to alter the language. These additions are written in *mh2*.

² Y. N. Epstein, *Mevo'ot Lesifrut Hatannaim* (Tel Aviv, 1957), 242; H. Albeck, *Mehqarim Bevrata Uvetosefta* (Jerusalem, 1944), 184; S. Lieberman, *Tashlum Tosefta* (Jerusalem, 1970), 21; A. Goldberg, *The Literature of the Sages*, part 1 (Philadelphia, 1987), 283; J. Neusner, *The Tosefta, Its Structure and Its Sources* (Atlanta, 1986), ix. See below. An issue for many who say that the Tosefta emerged later than the Mishnah is how to explain the presence in the Tosefta of so much material that clearly predates the publication (in whatever form) of the Mishnah. They respond that the early Tosefta material was composed before the Mishnah came into being, did not get selected for inclusion in the Mishnah, and continued to circulate in bits and pieces until the editor of the Tosefta incorporated them into his collection. These theorists thus hold that the Tosefta is a later collection containing much material of early vintage. If the pieces are very small, I find it hard to understand what it means that they circulated orally on their own. How could so many bits and pieces float about freely and not get lost? If the bits and pieces are large, then that is not so different from what I am saying. If the same theorists who hold the "bits and pieces" opinion also hold that different tannaim produced their own Mishnah collections, then why not also say that these many bits and pieces circulated in a collection? Epstein makes such an assumption when he says, basing himself in part on BT Sanhedrin 86a, that the Tosefta of R. Nehemiah followed the order of the Mishnah of R. Akiba. This suggests an early Mishnah and an early Tosefta.

³ The remaining material is called *שיור המשנה*. See A. Houtman, *Mishnah and Tosefta* (Tübingen, 1996), 9–10, who describes how Samuel ha-Nagid first introduced this idea.

Mishnah; many of its paragraphs served as building blocks of the Mishnah. That is, the redactor of Mishnah rewrites,⁴ reconceptualizes, and reorders the Tosefta collection, and other old materials, to produce his own work.⁵

If the Tosefta preceded the Mishnah, then the Mishnah can be read against the background of its sources. This is a little like reading the United States constitution together with the record of the constitutional convention. We can gain a deeper and more precise understanding of the Mishnah if we see how the redactor refashioned earlier material, for what reason, and to what end.⁶

Others followed in his footsteps.

⁴ I assume throughout this book that transmission of rabbinic texts was oral. See n. 24.

⁵ I am not suggesting that the Mishnah was fashioned from the Tosefta alone. But unlike most other sources that flowed into the Mishnah, the Tosefta is extant today, as are the halakic midrashim, which contain tannaitic material but may have been redacted in the amoraic period. As for other sources of the Mishnah, many scholars speak of early Mishnah collections of specific tannaim. The problem, to my mind, is that these are hypothetical constructs. If R. Akiba or R. Meir produced a Mishnah, there is no evidence that they did so. All one can point to are those places in the Mishnah where the view of R. Akiba predominates for several paragraphs and even chapters. It is also possible to point to statements in the Talmud that say that R. Akiba played a special role in editing rabbinic materials. See Epstein, *Mevo'ot*, 71, who identifies old chapters of the Mishnah. He says that R. Akiba began a new period in Mishnah production. The tanna produced new halakot for the hundreds and examined old halakot and corrected and edited them, . . . תיקן . . . הגידה. But Epstein cannot produce R. Akiba's Mishnah collection because, Epstein claims, R. Meir incorporated R. Akiba's collection into his own. And R. Meir's Mishnah was incorporated into "our" Mishnah. These old collections cannot, therefore, be identified. In his chapters on each of the prominent tannaim, Epstein demonstrates that anonymous mishnahs can be attributed to individual tannaim. However, the fact that their views appear in the Mishnah, and that even whole chapters can be attributed to them, only suggests that the editor of the Mishnah accepted the views of different people for different topics. It does not prove that each of these tannaim had a complete Mishnah collection, from Berakhot through Oqzim. Epstein, *Mavo Lenusah Hamishnah* (Jerusalem, 1948; 1964), 18, further says that Rabbi taught the Mishnah to his son R. Simon, and to most of his students, according to the opinion of one tanna, and to his student Levi according to the opinion of another tanna. The text of the Mishnah is according to what he taught Levi and the text of the Tosefta is according to the what he taught his son and his other students. In this way Epstein accounts for those places where the wording of the rule in the Mishnah differs from the wording of the same rule in the Tosefta. The problem of different versions of the same rule is real. His theory does not seem to be substantiated.

⁶ C. Milikowsky, "Vayiqra Rabbah, Parashah 28, Hapetihta Harishonah . . .," *Tarbiz* 71 (2002), writes in praise of the comparative method. He says that investigating parallels is a principal way of gaining a deeper understanding of rabbinic literature. It can teach how primary and secondary editors created their works from the material available to them. Examining small units reveals differences of versions of text. Examining larger units, which is harder, reveals differences of order and organization. Milikowsky speaks of midrashic collections. The same holds true, to my mind, for Mishnah and Tosefta comparisons.

A. Two Illustrative Sets of Texts

The best way to grasp the significance of this approach is to consider a number of examples. Below is a short and clear one.

1. How to Pray on the Road

משנה ברכות פרק ד משנה ה
 היה רוכב⁷ על החמור ירד ואם אינו יכול לירד יחזיר את פניו
 ואם אינו יכול להחזיר את פניו יכון את לבו כנגד בית קדש הקדשים.

תוספתא ברכות פרק ג הלכה יח
 היה רוכב על החמור אם יש לו מי שיאחז החמור ירד למטה ויתפלל ואם לאו מתפלל
 במקומו
 ר' אר' בין כך ובין כך מתפלל במקומו ובלבד שיהא לבו מכוין.

M Berakhot 4:5

One who was riding on an ass, he should dismount [and pray]. But if he cannot dismount, he should turn his face.

But if he cannot turn his face, he should direct his heart to the chamber of the holy of holies.

T Berakhot 3:18

One who was riding on an ass: if there is someone who can hold the ass, he should dismount and pray; but if not, he should pray in his place [on the ass].

Rabbi says: In either case [whether he does or does not have someone to hold the ass], he should pray in his place as long as his heart directs.⁸

M Berakhot 4:5 speaks about praying on the road. It says that if a traveler is unable to dismount from his ass, then turning his face or body when praying, or even just directing his heart to the holy of holies, is sufficient. The parallel passage in the Tosefta deals with the same subject, in similar words, but presents a dispute. The first tanna says that one should dismount if possible; if not, one should pray in place. Rabbi (Judah haNasi), a late tanna, dissents and says that there is no need to dismount. A person may pray in place as long as he directs his heart.

Which of these two, closely related texts is older?⁹ It would be hard to argue in this case that the Tosefta responds to the Mishnah. It is improbable that Rabbi and another tanna would take the Mishnah's rule about prayer and

⁷ Kaufman MS (of the Mishnah) reads רכוב. Erfurt MS (of the Tosefta) also reads רכוב.

⁸ The expression "to direct the heart" derives from Psalm 10:17. The rabbis understood the verse to be saying that if a person directs his heart, God inclines his ear. See T Berakhot 3:4.

⁹ Orality theory denies the validity of such a question. See below for a discussion of this matter.

create two opinions, neither of which matches the Mishnah.¹⁰ The Mishnah says that one has to get down off the ass to pray, if possible, but Rabbi says that one may stay “in the saddle” and pray, even if it were possible to dismount. The Mishnah says that if a person cannot turn his body to Jerusalem, then in addition to praying, he has to direct his heart to the holy of holies. But the first tanna in the Tosefta says that if one cannot dismount, he should pray in his place on the ass.

It appears likely that the Mishnah was produced in response to the Tosefta and is the more recent of the two texts. The redactor of Mishnah seems to have known the Tosefta paragraph and have resolved the dispute, creating a hybrid view that reflects his own thinking and maybe even his own theology. He takes the idea of dismounting for prayer, when possible, from the first tanna, and the notion of directing one’s heart from Rabbi.¹¹ But the redactor of Mishnah adds that the heart must also be directed toward the holy of holies. He lifts this extra phrase from the immediately preceding Tosefta paragraphs (T 3:15, 16) which say that all Jews, depending on where they are, must face either Israel or Jerusalem or the temple or the holy of holies for prayer. The phrase “direct his heart to the holy of holies,” as it appears in the Mishnah, does not apply only to Jews who find themselves in the temple, as it does in the Tosefta, but to Jews who cannot turn their bodies in the desired direction. The Mishnah uses this phrase to indicate that even Jews far away from the temple, who are not able to face Jerusalem, should direct their hearts, not their bodies, to the holy of holies. This is a new idea.¹²

¹⁰ I am not raising, at this point, the issue of tannaitic statements in the Tosefta that, perforce, are older than the Mishnah. If attributions are reliable, there is much “old” material in the Tosefta. I am defining “old” as earlier than the redaction of the Mishnah.

¹¹ Note that the redactor of Mishnah knows the views of Rabbi, a tanna of the fifth generation (T5). This difference between the view of the redactor and that of Rabbi casts doubt on Rabbi as the redactor of Mishnah, unless we also assume that when editing he modifies his own opinion. The difference also suggests that the redactor of Mishnah accepts (in part) views of T5 tannaim but sometimes deletes their names.

¹² It is repeated in the next mishnah (M Berakhot 4:6) which says that those traveling by boat or wagon should direct their heart to the chamber of the holy of holies. The phrase “direct the heart” in the Tosefta varies in meaning depending on where the traveler is. U. Ehrlich, “Meqom Hashehinah Betoda’at Hamitpallel,” *Tarbiz* 65 (5756), 315–329, writes that the notion of prayer towards the Shekinah in the temple was widespread in the period of the temple. The expression “towards the chamber of the holy of holies” is found only in very old mishnahs. The rule of turning one’s face to the temple is attributed to early tannaim. As time passed, other approaches came to the fore, such as praying toward the Shekinah that is present in the synagogue. Ehrlich’s views support the one presented here, that the Tosefta’s notion of facing the holy of holies is older than the view of the corresponding mishnah which suggests directing only the heart to the holy of holies, when turning the body is not possible.

Note also that the Mishnah introduces the phrase, *lehahazir panim*, to turn the face,¹³ to denote physical turning, and then employs the phrase, *lekhaven et halev*, to direct the heart, to denote spiritual turning only. The Tosefta uses the expression *lekhaven et halev* to denote both.¹⁴ This differentiation of terms also points to the newness of the Mishnah's formulation relative to the Tosefta's.¹⁵

2. How Many New Years?

The following textual analysis is long and complex. It is worth following because the results are suggestive.¹⁶ Comparative analysis will demonstrate that the redactor of Mishnah knows the Tosefta material on the various new years and rewrites it to make several points of his own.

משנה ראש השנה פרק א
משנה א
ארבעה ראשי שנים הם:
באחד בניסן ראש השנה למלכים ולרגלים
באחד באולול ראש השנה למעשר בהמה רבי אלעזר ורבי שמעון אומרים באחד בתשרי
באחד בתשרי ראש השנה לשנים ולשמיטין וליובלות לנטיעה ולירקות
באחד בשבט ראש השנה לאילן כדברי בית שמאי בית הלל אומרים בחמשה עשר בו.

משנה ב
כארבעה פרקים העולם נידון:
בפסח על התבואה
(ו)¹⁷ בעצרת על פירות האילן

¹³ Also found in M Pesahim 7:13 and T Pisha 6:11.

¹⁴ The Tosefta (T Berakhot 3:15, 16) says that those outside the land must face Israel when praying, those inside the land must face Jerusalem, those inside Jerusalem must face the temple, and those in the temple must face the holy of holies. In this way, the Tosefta continues, all of Israel will pray to one and the same place. The expression used throughout is *מכוונין את לבם*. It denotes turning the body in a specific direction. In T 3:18, Rabbi uses this same expression to denote turning of the heart but not the body. He does not require turning the body to the holy of holies, just turning the heart.

¹⁵ M Berakhot 5:1 says that the early pious men used to spend time before prayer so that they could direct their hearts to the Maqom, the Place, למקום, כדי שיכונין את לבם למקום. I think God is called Place in this mishnah because the phrase "to direct one's heart" locates God in a place and it is to that place that one prays. Or maybe Maqom in this mishnah means holy of holies, as it does in M 4:5, 6 and not God per se. See Bereshit Rabbah 68:9, "Why is God called Maqom? Because He is the world's Place. But the world is not his place," meaning he is more extensive.

¹⁶ Several years ago I heard a lecturer say that if there ever were a clear case of the Tosefta commenting on the Mishnah, it is M and T Rosh Hashanah 1. One can easily see, he continued, that the Tosefta quotes the Mishnah and then explains it, section after section. Q.E.D. Upon examining the materials carefully, I arrived at the opposite conclusion.

¹⁷ Parentheses indicate that the "vav" appears in some MSS but not others.

(ו) בראש השנה כל באי העולם עוברין לפניו ככני מרון שנאמר (תהילים לג:טו) היוצר יחד לבם . . .
ובחג נידונין על המים.

תוספתא ראש השנה פרק א

הלכה א

ניסן ראש השנה למלכים ולרגלים לחדשים ולתרומת שקלים ויש או' אף לשכר בתים
כיצד "למלכים" . . .

הלכה ב

כיצד "לרגלים" . . .

הלכה ג

כיצד "לחדשים" . . .

הלכה ד

כיצד "לתרומת שקלים" . . .

הלכה ה

כיצד "לשכר בתים" . . .

הלכה ו

באחד באלול ראש השנה למעשר בהמה ר' לעזר ור' שמעון אומ' באחד בתשרי
אמ' ר' שמעון בן עזי. . .

הלכה ז

תשרי ראש השנה לשנים ולשמטין וליובלות לנטיעה ולירקות ולמעשרות ולנדריים
כיצד "לשנים ולשמטין וליובלות" . . .

הלכה ח

כיצד "לנטיעה"?

אחד הנוטע ואחד המבריך ואחד המרכיב. . .

ופירות נטיעה זו אסורין עד חמשה עשר בשבט אם ערלה ערלה ואם רבעי רבעי.

הלכה ט

כיצד "לירקות"?

ליקט ירק בערב ראש השנה עד שלא בא השמש וחזר וליקט משבא השמש

אין תורמין ומעשרין מזה על זה מפני שזה חדש וזה ישן. . .

ליקט אתרוג בערב חמשה עשר בשבט עד שלא בא השמש וחזר וליקט משבא השמש

אין תורמין ואין מעשרין מזה על זה מפני שזה חדש וזה ישן. . .

הלכה י

כיצד "לנדרי" . . .

הלכה יא

בראש השנה כל באי עולם עוברין לפניו נומרון שנ' היוצר יחד לבם וגו' ואו' תקעו בחדש
שופר וגו' ואו' כי חק לישראל הוא וגו'. . .

הלכה יב

. . . אמ' ר' עקיבא אמרה תורה הבא עומר שעורין בפסח שהו פרק שעורין כדי שתתברך
לכם תבואה

הבא חטים בכורים¹⁸ בעצרת שהוא פרק אילן כדי שיתברכו עליך פירות אילן

¹⁸ The phrase "wheat first fruits" (*hittim bikkurim*) may seem awkward but it is based on Exodus 34:22, *bikkurei qezir hittim*.

הבא ניסוך המים בחג כדי שיתברכו עליך מי גשמים
אמרו לפניו מלכיות זכרונות ושופרות. . . .

הלכה יג

הכל נידונין בראש השנה וגזר דינו נחתם ביום הכפורים דברי ר' מאיר
ר' יהודה אומי¹⁹ הכל נידונין בראש השנה וגזר דינו של כל אחד ואחד נחתם בזמנו
בפסח על התבואה בעצרת על פירות האילן בחג על המים וגזר דינו של אדם נחתם ביום
הכפורים
ר' יוסה אומ' אדם נידון בכל יום שנאמ' ותפקדנו לבקרים.

M Rosh Hashanah (RH) 1:1

There are four new years:

On 1 Nisan the new year for kings and festival,

On 1 Elul the new year for tithing cattle; R. Eleazar and R. Simeon say on 1 Tishri,

On 1 Tishri the new year for [reckoning] years and sabbaticals and jubilees, for planting [trees] and for vegetables.

On 1 Shebat the new year for trees, according to Bet Shammai; Bet Hillel says, on 15 [Shebat].

M 1:2

At four seasons the world is judged:

At Pesah for grain,

At Azeret for fruit of the tree,

At Rosh Hashanah all who have entered the world pass before him like troops,²⁰ as it says. . .

And at Hag for rain.

T Rosh Hashanah 1:1

Nisan is the new year for kings and festival, for months, and for the offering of shekels, and some say, even for the rent of houses.

How so "for kings"? . . .

T 1:2

How so "for festival"? . . .

T 1:3

How so "for months"? . . .

T 1:4

How so "for the offering of shekels"? . . . [=T Sheqalim 2:7]

T 1:5

How so "for the rent of houses"? . . .

T 1:6

On 1 Elul, the new year for tithing cattle; R. Eleazar and R. Simeon say on 1 Tishri.

Said R. Simeon b. Azzai . . . [=T Bekhorot 7:9]

T 1:7

Tishri is the new year for [reckoning] years, and sabbaticals, and jubilees, for planting

¹⁹ Some MSS (Erfurt, London) say that R. Judah said this in the name of R. Akiba. See below.

²⁰ Kaufman MS reads כבנומרין, meaning troops. See Lieberman, *Tosefta Ki-fshutah*, Moed (New York, 1955–1988), 1022; Albeck, *Shishah Sidrei Mishnah* (Jerusalem, 1955–1958), Moed, 486.

(trees), and for vegetables, and for tithes, and for vows.

How so “for years, . . .”?

T 1:8

How so “for planting [trees]”?²¹

All the same are the ones who plant a tree, plant a shoot, and graft a branch. . . .

And the fruit of such a sapling are forbidden until 15 *Shebat*; if *orlah*, *orlah*;²² if fourth year planting, fourth year planting. [=T Shevi’it 2:3]

T 1:9

How so “for vegetables”?

If one picked a vegetable on the eve of Rosh Hashanah before sunset . . . and went and picked another one after sunset,

They do not take heave-offering or give tithes from this [gathered before sunset] for that [gathered afterward]. . . .

If one picked a citron on the eve of 15 *Shebat* before sunset and went and picked another after sunset,

They do not take heave-offering or give tithes from this [gathered before sunset] for that [gathered afterward]. . . . [=T Terumot 2:6]

T 1:10

How so “for vows”? . . .

T 1:11

On Rosh Hashanah all who have entered the world pass before him like troops, as it says. . . .

T 1:12

. . . Said R. Akiba: the Torah says, bring a measure of barley on Pesah, the barley season, so that you are blessed with grain,

Bring wheat [and] first fruits on Azeret, the fruit season, so that you are blessed with fruit,

Bring a water libation on Hag so that you are blessed with rainwater,²³

Say before him *malkhiyot* [verses], *zikhronot* [verses], and *shofarot* [verses]. . . .

T 1:13

All are judged on Rosh Hashanah and the decree is sealed on the Day of Atonement (Yom Kippur), the opinion of R. Meir.

R. Judah says, all are judged on Rosh Hashanah but each decree is sealed in its own time;

On Pesah for grain, on Azeret for fruit of the tree, and on Hag for water. And the decree of humans is sealed on Yom Kippur.

R. Yosef says: humans are judged every single day, as it says. . . .

²¹ The word *neti’ah* suggests a young tree, as opposed to *zeqenah*, an old tree. See M Shevi’it 1:8 and T Shevi’it 1:3 for definitions of *neti’ah*.

²² If the fruit came out after Rosh Hashanah but before 15 *Shebat*, it is forbidden; if after 15 *Shebat*, it is permitted.

²³ R. Akiba holds that the water libation on Day Eight of Hag is mandated by Torah. See the discussion in Lieberman, *Tosefta Ki-fshutah*, Sukkah, 885. The parallel passage in Sifre Bemidbar, 150 (ed. Horovitz, 196) suggests that just as the Torah mandates bringing an *omer* of barley on Pesah for a good crop of grain, and *bikkurim* on Azeret for a good yield of fruit, so too the Torah mandates water libation on Hag for sufficient rain. The origin of the water libation was a matter of dispute between Sages and Boethusians. See M Sukkah 4:9; T Sukkah 3:16. See chapter 5F.

The Mishnah notes that there are four new years — 1 Nisan, 1 Elul, 1 Tishri, and 1/15 Shebat — and lists the features of each. Some are easy to grasp, such as that Nisan is the new year for festival, meaning that when listing the three pilgrimage festivals, one begins with Pesah. Others are not so easy to grasp, such as that 1 Tishri is a new year for vegetables. Since this mishnah is short and pithy, a reader²⁴ might expect that the Tosefta will walk through it, item by item. The reader will not be disappointed. Minimally he or she needs to understand why there are two new years for trees, 1 Tishri and 1/15 Shebat. The following analysis will show that the fourth new year, 1/15 Shebat, is a later addition of the redactor of Mishnah.

Like the Mishnah, the Tosefta opens with Nisan being a new year for kings and for festival. It then adds three more features of 1 Nisan: a new year for months, for the offering of shekels and, according to some, for renting homes (1:1).²⁵ The Tosefta then asks, for each of these features, “How so X?” and provides answers (1:1–5). The next paragraph (T 1:6) goes on to say, like the Mishnah, that the first of Elul is a new year for tithing of animals and that several tannaim debate the date. The paragraph continues with commentary by R. Simeon b. Azzai. The paragraph after that (T 1:7) says, again like the Mishnah, that 1 Tishri is a new year for years, sabbaticals, and jubilees, for planting [trees], and for vegetables. It adds for tithing,²⁶ and for vows (1:7). As it did for 1 Tishri, the Tosefta asks what each of these features means and provides answers (1:7–10). The Tosefta does not provide a separate paragraph for tithes, however, but includes them in its discussion of vegetables.²⁷ The next paragraph talks about Rosh Hashanah as a day on which human beings pass before God like troops (1:11). Two more paragraphs elaborate this idea (1:12, 13). The Tosefta then focuses on a new subject altogether, sending out messengers to announce the new month, which is parallel to M Rosh Hashanah 1:3.

A comparison of the Mishnah and the Tosefta yields striking results. For the Mishnah’s first three new years the Tosefta serves as teacher and guide. It defines, or comments on, every one of the Mishnah’s phrases. But it then remains silent with regard to 1/15 Shebat! Unlike the Mishnah, which knows

²⁴ Whenever I use the term “reader,” I am referring to one who hears as well. I will use the terms document, rewrite, and reader, throughout the book for ease of reference. I am talking about a collection (not necessarily a written document), reformulating or reshaping as activities of the redactor (not necessarily rewriting), and an audience of listeners (not necessarily readers).

²⁵ In Mekhilta of R. Ishmael, Bo 1 (ed. Horovitz-Rabin, 7), R. Natan and R. Yizhaq, late tannaim, add “for rental of homes” to the list of features of 1 Nisan. The material in the Mekhilta seems to know some parts of M RH 1:1 but not others.

²⁶ Tithing refers to both fruits and vegetables.

²⁷ See previous note. See Lieberman, *Tosefta Ki-fshutah*, Rosh Hashanah, 1020, who says that the Tosefta combines tithing vegetables and fruits in one paragraph, using the simple examples of a vegetable and a citron.

of four new years, the Tosefta seems to know of only three. The Mishnah's fourth new year, 1/15 Shebat, does not merit mention in the Tosefta. The Tosefta does not call it a new year (*rosh hashanah*), as it does the other three, nor does it comment on the Houses' debate about its date. This omission is extremely hard to understand. Since the Tosefta was meticulous in reviewing every other new year along with its features, as presented in the Mishnah, and even added a few features of its own, why does it fail to mention 1/15 Shebat, a new year dating back to the Houses (at least)? What deepens the mystery is that 15 Shebat *does* appear in this Tosefta material but is not called a new year: it is merely a subcategory of the new year of 1 Tishri. The fifteenth of Shebat, according to the Tosefta, marks the beginning of the fiscal year for tithing fruit (1:8, 9).²⁸ The Tosefta is thus not ignorant of the significance of 15 Shebat²⁹ but thinks of it in different terms from the Mishnah. It seems unlikely that the Tosefta is a commentary on or a response to the Mishnah. The question thus remains, what is the nature of their relationship, close as it is?

A review of the Tosefta's paragraphs might yield some answers. It is easy to see that T Rosh Hashanah 1:1–10 is self-contained, in the sense that it is not dependent on any outside source. It presents three new years, lists the special features of each, and then proceeds to explain them, item by item.³⁰ As for 15 Shebat, the Tosefta recognizes that it begins a new fiscal year for tithing fruit but does not regard this date as an independent new year, only as one aspect of 1 Tishri. Nor does the Tosefta acknowledge, in these paragraphs, that this date is disputed by the Houses. However, the Tosefta does refer elsewhere to their dispute (T Shevi'it 4:21).³¹ But all that can be deduced from that latter text is that the Houses disagreed on the date for tithing fruit. The paragraph does *not* suggest that they called 1/15 Shebat a new year for fruit of the tree.

The redactor of Mishnah seems to have known these ten Tosefta paragraphs and gleaned ideas from them for inclusion in his much shorter collection.³² He presents only the statements of the new years (T 1:1a, 1:6a, 1:7a) but not the elaborations, the "How so's." He also makes a number of changes.

²⁸ See Y. Gilat's discussion of tithing fruit in *Peraqim Behishtalshelut Halakakah* (Ramat Gan, 1992), 243-248.

²⁹ The likely reason that the Tosefta makes no mention of 1 Shebat in this context is that it rules like Bet Hillel.

³⁰ For an alternative explanation, see n. 32.

³¹ "It once happened that R. Akiba picked a citron on 1 Shebat and handled it according to the opinion of Bet Shammai and according to the opinion of Bet Hillel." This means that he separated both second tithe, as if the citron were a fruit of the second or fifth year, and also poor man's tithe, as if the fruit were of the third or sixth year.

³² One might also say that the Tosefta explains a statement from an early Mishnah collection, phrase by phrase. I will later suggest that the Tosefta was commenting on an early or ur-Mishnah, which probably discussed, at this juncture, only the three new years that the Tosefta discusses in detail.

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