

TAL ILAN

Tractates Pe'ah,
Demai and Kil'ayim

*A Feminist Commentary
on the Babylonian Talmud
I/2*

Mohr Siebeck

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edited by

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and Kil'ayim

Text, Translation, and Commentary

Mohr Siebeck

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Dedicated to my most faithful student Judith von Bresinsky

Acknowledgment

This book was conceived in the DFG-funded *FCBT* project at the Institut für Judaistik of the Freie Universität, Berlin. When in 2009, the funding for the Feminist Commentary on the Babylonian Talmud was continued, new research assistants were assigned for commenting on three mishnaic tractates each. One of them (who will not, according to her wishes, be named) was assigned the first three tractates of *Seder Zera'im*, that have no Babylonian gemara to them – *Pe'ah*, *Demai*, and *Kil'ayim*. Until 2012, when the new funding round had run out, the research assistant had completed a most praiseworthy feminist commentary on the last of these tractates. Because it was written in German, we commissioned the good services of Johanna Hornweg, who translated it masterfully into English, inclusive of the complex technical terminology embedded in the tractate.

When I finally got down to examining my assistant's commentary in 2020, she was no longer interested in being part of the project and told me I could use her work, but I was not to mention her name. I respect her wishes. For this reason, she is called in this book "Plonit" (Hebrew for "anonymous"). Because Hebrew is a gendered language, this designation discloses her gender. It cuts down the number of candidates for authorship to this commentary to half the human race. I sincerely hope this is anonymous enough.

I have written the commentary for the other two tractates - *Pe'ah* and *Demai* – as well as editing *Kil'ayim* and adding two entries to it, which I think Plonit had somehow overlooked. My name appears as author of these two.

I would like to thank my student and assistant, Judith von Bresinsky, who read my commentaries carefully and added to my work many thoughtful comments on issues I had overlooked, and which I have now adopted, as many footnotes in the commentary attest. This is not the first time that Judith has read my feminist commentaries, and her contribution to my work is invaluable. It is for this reason that I dedicate this book to her.

I would also like to thank my other erstwhile student Marcel Gaida, who has once again, with patience and good humor, typeset the manuscript to its present form, as he has to the last five other volumes in the *FCBT* series. Finally, I thank my publisher, Mohr Siebeck, for continually supporting this series. Every volume is a difficult birth and I am happy to have such a home in which to deliver these offspring.

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Tractates *Pe'ah*, *Demai* and *Kila'yim*

Introduction

A Feminist Commentary on the Mishnah

This volume is the second one appearing in this series dealing with the Mishnah. However, in the first volume by Dalia Marx, on Tractates *Tamid*, *Middot* and *Qinnim*, principles vital for writing a feminist commentary on a mishnaic tractate were not spelt out as such.¹ The following short introduction is meant to fill this gap.

We write a separate feminist commentary on a mishnaic tractate in cases where the tractate has no Babylonian gemara. This is because the aim of this project is to provide a feminist commentary on the second Jewish canon. The Mishnah, which was edited in the Land of Israel, gained a canonic status almost immediately after its publication, in all Jewish centers where rabbinic Judaism had taken hold. It is for this reason that it very soon became the focus of two great commentary projects – the two talmudim – the *Yerushalmi* and the *Bavli*. Both took the Mishnah as their focus of attention, but both never completed their task. The *Yerushalmi*, which was composed in the Land of Israel (and probably closed in the fourth century CE), failed to produce a commentary on the orders *Qodashim* and *Toharot*, and the *Bavli* (sixth to seventh century CE), failed to do so for *Zera'im* and *Toharot*. Because the *Bavli* (but not the *Yerushalmi*) ended up being as canonic as (if not more canonic than) the Mishnah, in this series there are commentaries for Tractates from *Seder Qodashim* with the *Bavli* commentary to them, but for tractates from the orders *Zera'im* and *Toharot* (and also for the three tractates from *Qodashim* on which Dalia Marx wrote, and for Tractates *Avot* and *Eduyot* in *Seder Neziqin*, and for Tractate *Sheqalim* in the order of *Mo'ed*) we write commentaries on the mishnayot alone. Because each mishnaic tractate is shorter than the same short text with an extended Babylonian commentary to it, we have decided that volumes dedicated to the mishnah will each include two to four tractates. This volume is on three tractates from *Seder Zera'im* – *Pe'ah* (“the edge of the field” – dealing with charity), *Demai* (an inexplicable term dealing with doubtfully tithed products) and *Kil'ayim* (“mixtures” – dealing with forbidden mixtures of plants and animals). These are tractates 2-4 in the order (Tractate 1 – *Berakhot* – having both a *Yerushalmi* and a *Bavli* gemara).

¹ See MARX, *Tamid, Middot, Qinnim* (FCBT V/9). But see her preface to all three tractates explaining her methodology (pp. VII-VIII).

The principles for writing a feminist commentary on the mishnah are not very different from those of writing one on the *Bavli*. Indeed, each commentary on the *Bavli* is prefaced with a short commentary on its mishnah. It is, however, important to emphasize, when dealing with the gemara-less mishnayot, that it is a feminist act to read them really without any gemara. As Jacob Sussman had shown in his PhD dissertation,² even when a mishnah has no gemara to it, it is usually discussed at some length elsewhere in the *Bavli*. It can be very tempting to interpret the mishnah in question in light of the discussion of it in the *Bavli*. However, there were reasons why the editors of the *Bavli* chose not to produce commentaries on these mishnayot. For example, it is “common knowledge” that they refrained from composing commentaries on *Seder Zera'im* because it deals with laws connected with the Land of Israel, which were not practiced in the Babylonian diaspora. For this reason, the *Yerushalmi* does have a gemara for *Seder Zera'im*. This, however, is a partial explanation. *Seder Qodashim*, which deals with the Temple, also a Land-of-Israel institution, which, however, no longer exists, has no *Yerushalmi* gemara, but does have a *Bavli* one. What I am trying to say is that, although we may not know why the editors of the *Bavli* chose not to comment on all mishnaic tractates, they must certainly have had a reason not to do so. The canonic text for these tractates is thus the text of the Mishnah itself.

The mishnaic text reflects the approach of a Jewish intellectual movement (the rabbis) to Jewish law. The law's attitude to women and gender constitutes a major segment of this approach, not just in the Order of Women (*Nashim*), which is a sixth of the entire corpus, but throughout. The approach to women and gender mentioned in all mishnaic tractates can serve as a snapshot of how Jews in the Land of Israel understood the position of women at a given historical moment. The talmudim's reaction to the mishnaic statements constitutes a historical development – on occasion they may have agreed wholeheartedly with the Mishnah, but on others they may have disagreed. What may look to the reader as an unbiased explanation of a difficult text, or as a challenge to the dry letter of the law, can in fact often reflect a deep disagreement and an attempt (often successful) to overturn the mishnaic ruling. The difference between the way the mishnah ruled, and the *Bavli*'s new enactments marks a historical development and with it we may measure in what way women's position changed. Whether it changed for better or for worse is in the eyes of the beholder, but outlining the change is certainly the role of the feminist commentator (not to mention the feminist historian). Because of this division, we realize that what the *Bavli* says about the Mishnah is not what the Mishnah says (just as what Rashi says about the *Bavli* is not necessarily what the *Bavli* itself had had in mind).

In our commentaries to mishnaic tractates with a Babylonian gemara this sort of development is not a problem. We produce a commentary on the mishnah, as

² SUSSMANN, *Babylonian Sugiyot*.

though there is no gemara to it, because in the second part of the commentary we will turn to the gemara and review the way it tackles the mishnah. However, in cases where we are dealing with the mishnah pure and simple, and the mishnah is difficult to understand, it is often tempting to try and find an explanation for the mishnah in a Babylonian interpretation. In this volume I have not refrained from quoting the *Bavli* (or the *Yerushalmi* for that matter) on the various mishnaic texts under discussion, but I have always stated explicitly that, just like our commentary, the *Bavli* is also a commentary and it should be treated as such and not adopted as the correct meaning of the text.

In Mishnah commentaries, as I had written in the Introduction to this series, we read the Mishnah in synopsis with the Tosefta.³ I repeat here some of what I had written there. There are many debates about the relationship between the Tosefta and the Mishnah – is the Mishnah older and the Tosefta only an addition, the first commentary if you will? Is the Tosefta older and the Mishnah is a censored edition of the broader Tosefta? Or maybe there is a third explanation. The feminist commentary does not expressly adopt an opinion on this topic. The citation of the Tosefta is justified in the feminist commentary first and foremost because it is a discarded text, meaning that whatever is found in it is not authoritative. In my personal opinion (not necessarily shared by other participants in the commentary project), this is due to the fact that the Tosefta is the product of a competing rabbinic school that refused to accept the dictatorial rulings of the Mishnah. Thus, it certainly includes discarded voices on women. Unlike the *Bavli*, instead of erasing or interpreting away mishnaic texts it fails to adopt, the Tosefta directly confronts the mishnaic texts and challenges it. Identifying this challenge is the task of the feminist commentator.

The Order of the Tractates in this Volume

Seder Zera'im is about commandments associated with the Land of Israel (מצוות התלויות בארץ). As just stated, the usual explanation for the reason why it has no *Bavli* gemara is because that Talmud was a diaspora composition and was not interested in commandments that were only performed in the Land of Israel. For the same reason, there is a *Yerushalmi* commentary on it. In any case, this order does not begin with commandments associated with the Land, but rather with a tractate that targets a completely different topic – *Berakhot* (blessings). Perhaps it begins with this topic because blessings and prayers are, in all religions, probably the most important element. One should remember that the tractate that opens *Seder Zera'im* is also, incidentally the tractate that opens the entire Mishnah. Because of the importance of blessings and prayers in religious communities, it is unsurprising that Tractate *Berakhot* has both a *Yerushalmi* and a *Bavli* gemara. This

³ ILAN et al., *Feminist Commentary on the Mishnah and the Babylonian Talmud*, 16-17.

volume, which is a commentary on mishnayot, begins, therefore, with the next three tractates of *Seder Zera'im – Pe'ab, Demai and Kil'ayim*.

We have been taught to expect that the order of the tractates in a *seder* is according to the number of chapters each has. In *Seder Zera'im* this is certainly not the case. The longest tractate in the order is *Terumot* (dealing with the heave offerings that the Israelites are enjoined to give to the priests), with eleven chapters. It is number six in this Order. In other words, all three tractates in this volume are shorter than the longest tractate. The internal order of these three tractates is also not according to their length – *Kil'ayim*, which is the longest (nine chapters) is the last. *Pe'ab* has eight chapters and *Demai* has seven.

The question whether the explanation about the number of chapters is correct is still open. Both *bBQ* 102a and Sherira Gaon claim that there is no definitive sequence for the mishnaic tractates, so that every individual may learn them in whatever order he wishes.⁴ Maimonides, however, was at pains to find out the reason for the respective placings of the tractates in all of the orders. Thus, he thought that *Berakhot* should be viewed as a general introduction to the Mishnah and only with *Pe'ab*, *Seder Zera'im* actually begins. He argued that *Pe'ab's* position in the *Seder* derives from the fact that it is an earlier commandment than all others dependent on the land, because it is practiced before the harvest and all the other commandments become relevant after it (לפי שכל המתנות שהם חובת התבואה אינם לפי שכל). On placing *Demai* next, he commented that it belongs next to *Pe'ab* because it is also about the poor (כמו שיש להם בפאה, כמו שאמרו: מאכילין את העניים דמאי). He then stated that *Kil'ayim's* position resulted from the sequence of the commandments and/or prohibitions in the Torah. The *pe'ab* (Lev 19:9) duty is mentioned before the *kil'ayim* prohibition (Lev 19:19), and therefore the corresponding tractate also comes first (אחר דמאי כלאים לפי שכך סדר הכתוב) ויקרא יט ב"קדושים תהיו": "לא תכלה פאת שדך" ויקרא יט ט ואחריו "שדך לא תזרע כלאים" ויקרא יט (יט).⁵

Modern commentators have basically rejected Maimonides' explanations as harmonistic. In Michael Krupp's view the reason for the sequence-differences within the order is the lack of a *Bavli* commentary devoted to *Seder Zer'aim*, which would have set the record straight.⁶ Albeck offered other explanations for this order of tractates.⁷ He argued (with Maimonides and with our argument above) that the editors of the mishnah wished to emphasize the importance of *Berakhot* (blessings) and for this reason taught it first, and they taught *Pe'ab* second because it dealt with charity, and was therefore intensively studied even in Babylonia, even though no gemara was produced for it. However, this explanation does not take into account

⁴ Text by the *Sherira Gaon*, § 64-65, in: SCHLÜTER, *Auf welche Weise*, 103-104.

⁵ Maimonides, *Mishnah Commentary*, Introduction.

⁶ KRUPP, "Einleitung," *Die Mishna*, 109.

⁷ ALBECK, *Zera'im*, 1-3.

the muddle in the entire order of *Seder Zera'im*. Albeck also provided evidence for manuscripts, especially of the Tosefta, in which the order of the tractates is different from that of the printed editions, but these only add to the confusion. In none of them is the order according to length.

Something about the Relationship between Pe'ah, Demai and Kil'ayim

The three tractates in this volume are dramatically different one from the other, and a feminist approach only highlights this difference. In none of these tractates are women abundantly present, but each tractate lends itself to a gender analysis in a different way, and each analysis serves well both to explain the tractate in a different light from the traditional one, and to underline various aspects of a feminist approach that is otherwise completely ignored.

Tractate *Pe'ah* is about charity. Women are the recipients of charity as much as men, if not more so. Charity is there to help the poor, and a larger portion of the world's poor is comprised of women than of men. The biblical Book of Deuteronomy knew this when it decreed charity specifically to the stranger, the widow and the orphan (Deut 24:12-29). However, Tractate *Pe'ah* completely ignores this biblical verse. In fact, women are never once viewed as comprising part of the poor who enjoy the charity laws of the tractate. Thus, the gender-analytical tool employed in the reading of this tractate is the one that highlights silence and invisibility. In most of my feminist analysis I search more for the invisible women than speak of those present.

Tractate *Demai* is much more historically minded than the other two discussed here. It is based on no biblical verse, because it actually addresses an issue that began to worry Jews in the Second Temple period, but not earlier – the enhanced obligation to tithe a produce, and to be particularly careful not to consume untithed products. Jews who followed this practice obviously distanced themselves from other Jews who were not so stringent. In other words, Tractate *Demai* is really a sectarian tractate, whose rulings are enhanced by a minority elitist group within Judaism. Were there women in this group, or was it an all-male elite? Reading the Mishnah, one would think there were none, but reading it alongside the Tosefta clearly demonstrates that women too were members of this sect. In the commentary below, special attention is paid to a synoptical analysis of the mishnaic text against its Tosefta parallel, which discloses women sectarians, and it is argued that, since the members of this sect were probably the historical Pharisees, the women members were women Pharisees, with all the attendant consequences.

Tractate *Kil'ayim* is about forbidden mixed breeding – both animal and vegetable. It does not speak of human mixed breeding (although, of course, the rabbis were also interested in this). From a feminist perspective, despite the complete absence of real women, the tractate lends itself easily to a feminist linguistic and metaphorical analysis. A linguistic inquiry into the use of male and female language in the discussion of mixed-breeding reveals much about the rabbis' gender

conception, regarding nature, and at the same time regarding humans – both male and female – who populate it. These metaphors are often taken from the human world, and reflect how rabbinic Jews understood the natural world with the help of these familiar metaphors, in which the feminine plays a major role.

Or, in other words, the three tractates have in common the almost complete evasion of anything that has to do with women and gender. A feminist analysis is required in order to unearth this evasion and discover the gendered world it conceals.

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Tractate *Pe'ab*

Introduction

General Introduction

Tractate *Pe'ab* (in the Mishnah and in the Tosefta) is considered to be (as described for example by Gregg Gardner) “the earliest extended discussions of care for the poor in rabbinic literature.”¹ The word *pe'ab* (פאה), which appears in Lev 19:9, means “edge” and it refers to the edge of the field that the landowner must not harvest, leaving it to be collected by the needy. Next to it, two (or three) other elements should also not be collected by the landowner, as five biblical verses found in Leviticus and Deuteronomy announce:

וּבְקִצְרְכֶם אֶת־קִצְרֵי אֲרָצְכֶם לֹא תִכְלֶה פֶּאֶת שְׂדֵךְ לְקַצֹּר וְלִקְטוֹת קִצְרֵיךָ לֹא תִלְקֹט: וְכַרְמְךָ לֹא תַעֲוִלֵל וּפְרֹט כְּרַמְךָ לֹא תִלְקֹט לְעֵנִי וְלִגֵּר תַּעֲזֹב אֹתָם אֲנִי ה' אֱלֹהֵיכֶם (ויקרא יט ט-י).

When you reap the harvest of your land, you shall not reap all the way to the edge of your field, or gather gleanings of your harvest. You shall not pick your vineyard bare, or gather the fallen fruit of your vineyard; you shall leave them for the poor and the stranger; I am your ה' God (Lev 19:9-10; cf. almost identically in Lev 23:22).

כִּי תִקְצֹר קִצְרֵיךָ בְּשֶׂדֶךָ וְשָׁכַחְתָּ עֹמֶר בְּשֶׂדֶךָ לֹא תִשׁוּב לְקַחְתּוֹ לִגֵּר לִיתוֹם וְלֹא־לְמִנָּה יִהְיֶה (דברים כד יט).

When you reap the harvest of your field and overlook a sheaf in the field, do not turn back to get it; it shall go to the stranger, the orphan² and the widow in order that ה' your God may bless you in all your undertakings. When you beat down the fruit of your olive trees, do not go over them again; that shall go to the stranger, the orphan and the widow. When you gather the grapes of your vineyard, do not pick it over again; that shall go to the stranger, the orphan and the widow (Deut 24:19-21).

The laws formulated in these verses are known for short in rabbinic literature as *לקט*, *שכחה* and *ופאה* (gleanings, forgotten produce and *pe'ab*) and, in this ordering, they appear seven times in *mPeab* (4:6, 9, 5:4, 5[x2], 8:2, 8) and another seven times in *tPeab* (1:1, 2:2, 10, 11, 13, 17, 3:7). Tractate *Pe'ab* sorts out the laws in these verses and attempts to place them in a wider context of care for the poor. It thus discusses, aside from these agricultural left-overs, also other forms of providing for the poor – charity and alms-giving (צדקה – *tPea* 4:15-19; גמילות חסדים – *mPea* 1:1; and more specifically, for the distribution of charity, קופה – charity box, and תמחוי – food

¹ GARDNER, “Pursuing Justice,” 37.

² This is my translation for יתום. JPS has “fatherless” which may be literally more correct but fails to use a specific term for this person like the Bible does.

distribution, both in *mPea* 8:7; *tPea* 4:9-10³), as well as tithing for the poor (עני מעשר) – *mPea* 5:4-5; *tPea* 3:1, 4:2). Much discussion has been devoted to the meaning of this sort of care for the poor, to the changes it has undergone from the biblical period to tannaitic times, to its relationship to Greco-Roman and early Christian caring for the poor etc. and for this reason Tractate *Pe'ab* has been the subject of many recent studies about poverty.⁴

Contents

Tractate *Pe'ab* of the Mishnah includes eight chapters, making it the fifth longest in the *Seder* (after *Terumat*, *Berakhot*, *Shevi'it* and *Kil'ayim*) and the fact that it appears second in it (after *Berakhot*) shows, according to Albeck, the importance the sages accorded to charity.⁵ It is divided according to the topics mentioned above. Chapters 1:1-4:9 discuss the topic of *pe'ab* (פאה) proper. As of 4:10, which begins with the words: “what is *leget* (לקט)?” the issue of gleaning is discussed (4:10-5:6). As of 5:7, the mishnah deals with *shikbehab* (שכחה, i.e. the forgotten parts of the harvest – 5:7-7:2). Intertwined in these is the question of poor-tithes (עני מעשר – 5:4, which is also tackled in 8:2-3). In 7:3 *mPeab* inquires what constitutes *peret* (פרט), i.e. clusters of grapes that fell to the ground during the grape harvest. In 7:4 it inquires what is *olelot* (עוללות), i.e. grapes left in the vineyard after the grape harvest and a discussion of the two (*peret* and *olelot*) continues until 7:8. Chapter 8 is devoted to the question of poverty. It begins by describing the moment when the poor are allowed to descend on the field or the vineyard in order to collect their dues (8:1), continues by defining who among the poor can give evidence concerning their right to collect (8:2-4) and how much should the householder put aside for the poor on the threshing-floor after the abovementioned gifts had already been distributed (8:5-6). 8:7 sets a minimum for what one should give a poor person travelling from place to place, and 8:8-9 calculates how little should a person own in order to be counted a pauper, and thus become worthy of the gifts allocated to the poor.

Most of the mishnayot in the tractate are about very precise legal definitions of each of these categories. Or in the words of Gregg Gardner:

The authors and redactors ... are concerned with ensuring that the procedures for allocating these items are rigidly followed, so as to ensure that all poor individuals have the same opportunity to collect the produce.⁶

For example, in 3:1 the question of one sowing rectangles of wheat among olive trees is discussed, and while Beit Shammai think that he has to leave a *pe'ab* for the poor in each rectangle he sows, Beit Hillel think that the *pe'ab* of one of them suffices for the whole grove. Concerning *leget*, 5:2 rules that if an oat plant grew

³ On which see GARDNER, *Organized Charity*, 84-138; WILFAND, *Poverty*, 161-168.

⁴ See GARDNER, *Organized Charity*; WILFAND, *Poverty*; ANDERSON, *Charity*; GRAY, *Charity*.

⁵ ALBECK, *Zera'im*, 1-3.

⁶ GARDNER, “Pursuing Justice,” 39.

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